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VOL I

L.R.O. 1/2018

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MALAŴI

FIFTH REVISED EDITION

Prepared under the Authority of

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by

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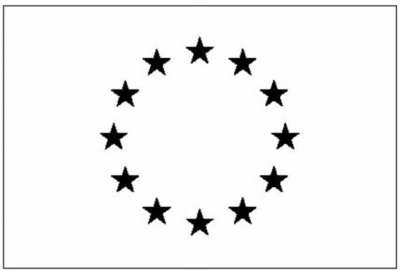

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PREFACE

This edition of the Laws of Malaŵi has been prepared under the authority of the Revision of the Laws Act (Cap. 1:02). It has been published in loose-leaf form so that it may be revised periodically (it is hoped annually) or as a consolidated revision where necessary.

The United Kingdom Acts in force in Malaŵi are not published in this edition. They were gradually replaced with Malaŵi Acts, and a number of such Malaŵi Acts which were passed appeared in the first edition. Enactments of the former Federation of Rhodesia and Nyasaland in force in Malaŵi at that time were completely assimilated to Malaŵi Acts and published as such (though the marginal notes to their long titles indicate their origin). The remaining enactments contained in this edition are Ordinances of the former Protectorate of Nyasaland (re-designed as Acts) and Malaŵi Acts.

Subject to the exception specified in section 9 of the Revision of the Laws Act, all Acts in force in Malaŵi have been published in this edition. A list of the omitted enactments has been published in accordance with section 8 (*d*) of the Act (at the end of the last volume immediately before the Index).

The Law Revision Commissioner is required by section 8 (*b*) of the Revision of the Laws Act to include in the Laws only such subsidiary legislation as he thinks fit to include therein. The general policy has been to include all statutory instruments other than appointments of named persons. Where any statutory instrument (other than the appointment of named persons) is omitted, an explanatory note has been inserted in the appropriate place in the Laws. Statutory instruments appear in the same Chapter as their parent Act and are arranged in the numerical order of the sections under which they are made.

Every Act except the Republic of Malaŵi (Constitution) Act is allotted a Chapter number in a scheme of Chapters arranged on the basis of subject matter. The Table of Contents presents a quick picture of the classification of the laws and the arrangement of insertion in the appropriate sector of the Laws of an indefinite number of new Acts on any given subject.

It is intended that at each periodical revision one revision date will be appointed for the whole of the Laws. Practical exigencies, however, compelled us to depart from this ideal in the initial publication of the First Edition. In this publication, the Acts and the subsidiary legislation are revised up to the 31st of December, 2017. All Acts passed and in force and the subsidiary legislation published between 1st January, 1994 and 31st December, 2017 have been incorporated in this edition by five consolidated Law Revision Orders namely, the Law Revision Order, 1/2000; Law Revision Order, 1/2003; Law Revision Order, 1/2010; Law Revision Order, 1/2015

and the Law Revision Order, 1/2018. It is hoped that after the Law Revision Order 1/2018, the laws will be revised annually as was the case in the previous editions.

The Government of Malaŵi is greatly indebted to the European Development Fund for making available a grant to the Ministry of Justice through the Chilungamo (Justice and Accountability) Programme in Malaŵi to finance the production of this revised edition of the Laws of Malaŵi and the Law Revision Order, 2018. A special tribute goes to the printers for their necessary expertise, experience and the capacity to accomplish the gigantic task of printing the revised edition of the Laws within a relatively short time.

May I, in conclusion, express my gratitude to Mr. Chizaso Eric Nyirongo, Chief Legislative Counsel; the Team Leader, Ms Sophie Racine and the staff of the Programme Management Unit (PMU) of the Chilungamo (Justice and Accountability) Programme; and Mr. Placid Hara, Chief Law Revision Officer and his team in the Law Revision Section of the Drafting Department for their invaluable contributions, cooperation and assistance which ensured speedy completion of this work.

Dr. JANET L. BANDA SC

Solicitor General and Secretary of Justice

Lilongwe
July, 2018

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An Act to adopt and enact the Constitution of the Republic of Malaŵi

[18th May, 1994]

20 of 1994
31 of 1994
6 of 1995
7 of 1995
1 of 1997
38 of 1998
11 of 1999
4 of 2001
8 of 2001
13 of 2001
4 of 2004
8 of 2010
11 of 2010
25 of 2012
15 of 2017

Short title

1. This Act may be cited as the Republic of Malaŵi (Constitution) Act.

Repeal of the 1966 Constitution

2. The Republic of Malaŵi (Constitution) Act, 1966, and the Constitution enacted thereunder and amended from time to time are hereby repealed.

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3. The Constitution set out hereunder shall be the Constitution of the Republic of Malaŵi and which shall come into force in accordance with the provisions thereof.

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THE PEOPLE OF MALAŴI—

recognizing the sanctity of human life and the unity of all mankind;

guided by their private consciences and collective wisdom;

seeking to guarantee the welfare and development of all the people of Malaŵi, national harmony and peaceful international relations;

desirous of creating a constitutional order in the Republic of Malaŵi based on the need for an open, democratic and accountable government:

HEREBY adopt the following as the Constitution of the Republic of Malaŵi.

CHAPTER I
THE REPUBLIC OF MALAŴI

Malaŵi a sovereign state

1. The Republic of Malaŵi is a sovereign State with rights and obligations under the Law of Nations.

The national flag, etc.

2. Malaŵi shall have a National Flag, a National Coat of Arms, a National Anthem and a Public Seal.

The national territory

3. The national territory of the Republic of Malaŵi shall consist of all the territory, including airspace, waters and islands which comprised the territory of Malaŵi before the commencement of this Constitution, and shall include any territory lawfully acquired thereafter by adjustment of boundaries or otherwise.

4. This Constitution shall bind all executive, legislative and judicial organs of the State at all levels of Government and all the peoples of Malaŵi are entitled to the equal protection of this Constitution, and laws made under it.

Protection of the people of Malaŵi under this Constitution

5. Any act of Government or any law that is inconsistent with the provisions of this Constitution shall, to the extent of such inconsistency, be invalid.

Supremacy of this Constitution

6. Save as otherwise provided in this Constitution, the authority to govern derives from the people of Malaŵi as expressed through universal and equal suffrage in elections held in accordance with this Constitution in a manner prescribed by an Act of Parliament.

Authority to govern, universal and equal suffrage
11 of 2010

7. The executive shall be responsible for the initiation of policies and legislation and for the implementation of all laws which embody the express wishes of the people of Malaŵi and which promote the principles of this Constitution.

The separate status, function and duty of the executive

8. The legislature shall be responsible for the enactment of laws and shall ensure that its deliberations reflect the interests of all the people of Malaŵi and that the values expressed or implied in this Constitution are furthered by the laws enacted.

The separate status, function and duty of the legislature
11 of 2010

9. The judiciary shall have the responsibility of interpreting, protecting and enforcing this Constitution and all laws and in accordance with this Constitution in an independent and impartial manner with regard only to legally relevant facts and the prescriptions of law.

The separate status, function and duty of the judiciary

CHAPTER II

Application and Interpretation

10.—(1) In the interpretation of all laws and in the resolution of political disputes the provisions of this Constitution shall be regarded as the supreme arbiter and ultimate source of authority.

Application of this Constitution

(2) In the application and formulation of any Act of Parliament and in the application and development of the common law and customary law, the relevant organs of State shall have due regard to the principles and provisions of this Constitution.

11.—(1) Appropriate principles of interpretation of this Constitution shall be developed and employed by the courts to reflect the unique character and supreme status of this Constitution.

Interpretation

(2) In interpreting the provisions of this Constitution a court of law shall—

(*a*) promote the values which underlie an open and democratic society;

(*b*) take full account of the provisions of Chapter III and Chapter IV; and

(*c*) where applicable, have regard to current norms of public international law and comparable foreign case law.

(3) Where a court of law declares an act of executive or a law to be invalid, that court may apply such interpretation of that act or law as is consistent with this Constitution.

(4) Any law that ousts or purports to oust the jurisdiction of the courts to entertain matters pertaining to this Constitution shall be invalid.

CHAPTER III

Fundamental Principles

Constitutional principles 11 of 2010

12.—(1) This Constitution is founded upon the following underlying principles—

(*a*) all legal and political authority of the State derives from the people of Malaŵi and shall be exercised in accordance with this Constitution solely to serve and protect their interests;

(*b*) all persons responsible for the exercise of powers of State do so on trust and shall only exercise such power to the extent of their lawful authority and in accordance with their responsibilities to the people of Malaŵi;

(*c*) the authority to exercise power of State is conditional upon the sustained trust of the people of Malaŵi and that trust can only be maintained through open, accountable and transparent Government and informed democratic choice;

11 of 2010

(*d*) the inherent dignity and worth of each human being requires that the State and all persons shall recognize and protect human rights and afford the fullest protection to the rights and views of all individuals, groups and minorities whether or not they are entitled to vote;

(*e*) as all persons have equal status before the law, the only justifiable limitations to lawful rights are those necessary to ensure peaceful human interaction in an open and democratic society; and

11 of 2010

(*f*) all institutions and persons shall observe and uphold this Constitution and the rule of law and no institution or person shall stand above the law.

11 of 2010

(2) Every individual shall have duties towards other individuals, his or her family and society, the State and other legally recognized communities and the international community and these duties shall include the duty to respect his or her fellow beings without discrimination and to maintain relations aimed at promoting,

safeguarding and reinforcing mutual respect and tolerance; and in recognition of these duties, individual rights and freedoms shall be exercised with due regard for the rights of others, collective security, morality and the common interest.

Principles of national policy 11 of 2010

13. The State shall actively promote the welfare and development of the people of Malaŵi by progressively adopting and implementing policies and legislation aimed at achieving the following goals—

11 of 2010

(*a*) *Gender Equality*

To obtain gender equality through—

(i) full participation of women in all spheres of Malaŵian society on the basis of equal opportunities with men;

(ii) the implementation of the principles of nondiscrimination and such other measures as may be required; and

(iii) the implementation of policies to address social issues such as domestic violence, security of the person, lack of maternity benefits, economic exploitation and rights to property.

(*b*) *Nutrition*

To achieve adequate nutrition for all in order to promote good health and self-sufficiency.

(*c*) *Health*

To provide adequate health care, commensurate with the health needs of Malaŵian society and international standards of health care.

(*d*) *The Environment*

To manage the environment responsibly in order to—

(i) prevent the degradation of the environment;

(ii) provide a healthy living and working environment for the people of Malaŵi;

(iii) accord full recognition to the rights of future generations by means of environmental protection and the sustainable development of natural resources; and

(iv) conserve and enhance the biological diversity of Malaŵi.

(*e*) *Rural Life*

To enhance the quality of life in rural communities and to recognize rural standards of living as a key indicator of the success of Government policies.

(*f*) *Education*

To provide adequate resources to the education sector and devise programmes in order to—

(i) eliminate illiteracy in Malaŵi;

(ii) make primary education compulsory and free to all citizens of Malaŵi;

(iii) offer greater access to higher learning and continuing education; and

(iv) promote national goals such as unity and the elimination of political, religious, racial and ethnic intolerance.

11 of 2010

(*g*) *Persons with Disabilities*

To enhance the dignity and quality of life of persons with disabilities by providing—

(i) adequate and suitable access to public places;

(ii) fair opportunities in employment; and

(iii) the fullest possible participation in all spheres of Malaŵian society.

(*h*) *Children*

To encourage and promote conditions conducive to the full development of healthy, productive and responsible members of society.

(*i*) *The Family*

To recognize and protect the family as a fundamental and vital social unit.

(*j*) *The Elderly*

To respect and support the elderly through the provision of community services and to encourage participation in the life of the community.

11 of 2010

(*k*) *International Relations*

To govern in accordance with the law of nations and the rule of law and actively support the further development thereof in regional and international affairs.

(*l*) *Peaceful Settlement of Disputes*

To strive to adopt mechanisms by which differences are settled through negotiation, good offices, mediation, conciliation and arbitration.

(*m*) *Administration of Justice*

To promote law and order and respect for society through civic education, by honest practices in Government, adequate

resourcing, and the humane application and enforcement of laws and policing standards.

(*n*) *Economic Management*

To achieve a sensible balance between the creation and distribution of wealth through the nurturing of a market economy and long-term investment in health, education, economic and social development programmes.

(*o*) *Public Trust and Good Governance* 11 of 2010

To introduce measures which will guarantee accountability, transparency, personal integrity and financial probity and which by virtue of their effectiveness and visibility will strengthen confidence in public institutions.

Application of the principles of national policy

14. The principles of national policy contained in this Chapter shall be directory in nature but courts shall be entitled to have regard to them in interpreting and applying any of the provisions of this Constitution or of any law or in determining the validity of decisions of the executive and in the interpretation of the provisions of this Constitution.

CHAPTER IV

Human Rights

Protection of human rights and freedoms 11 of 2010

15.—(1) The human rights and freedoms enshrined in this Chapter shall be respected and upheld by the executive, legislature, judiciary and all organs of the Government and its agencies and, where applicable to them, by all natural and legal persons in Malaŵi and shall be enforceable in the manner prescribed in this Chapter.

11 of 2010

(2) Any person or group of persons, natural or legal, with sufficient interest in the promotion, protection and enforcement of rights under this Chapter shall be entitled to the assistance of the courts, the Ombudsman, the Human Rights Commission and other organs of the Government to ensure the promotion, protection and enforcement of those rights and the redress of any grievances in respect of those rights.

The right to life

16. Every person has the right to life and no person shall be arbitrarily deprived of his or her life:

Provided that the execution of the death sentence imposed by a competent court on a person in respect of a criminal offence under the laws of Malaŵi of which he or she has been convicted shall not be regarded as arbitrary deprivation of his or her right to life.

Genocide

17. Acts of genocide are prohibited and shall be prevented and punished.

Liberty

18. Every person has the right to personal liberty.

Human dignity and personal freedoms

19.—(1) The dignity of all persons shall be inviolable.

(2) In any judicial proceedings or in any other proceedings before any organ of the State, and during the enforcement of a penalty, respect for human dignity shall be guaranteed.

(3) No person shall be subject to torture of any kind or to cruel, inhuman or degrading treatment or punishment.

(4) No person shall be subject to corporal punishment in connexion with any judicial proceedings or in any other proceedings before any organ of the State.

(5) No person shall be subjected to medical or scientific experimentation without his or her consent.

(6) Subject to this Constitution, every person shall have the right to freedom and security of person, which shall include the right not to be—

(*a*) detained without trial;

(*b*) detained solely by reason of his or her political or other opinions; or

(*c*) imprisoned for inability to fulfill contractual obligations.

Equality
11 of 2010

20.—(1) Discrimination of persons in any form is prohibited and all persons are, under any law, guaranteed equal and effective protection against discrimination on grounds of race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, disability, property, birth or other status or condition.

11 of 2010

(2) Legislation may be passed addressing inequalities in society and prohibiting discriminatory practices and the propagation of such practices and may render such practices criminally punishable by the courts.

Privacy
11 of 2010

21. Every person shall have the right to personal privacy, which shall include the right not to be subject to—

(*a*) searches of his or her person, home or property;

(*b*) the seizure of private possessions; or

(*c*) interference with private communications, including mail and all forms of telecommunications.

Family and marriage
11 of 2010

22.—(1) The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

(2) Each member of the family shall enjoy full and equal respect and shall be protected by law against all forms of neglect, cruelty or exploitation.

(3) All men and women have the right to marry and found a family.

(4) No person shall be forced to enter into marriage.

(5) Subsections (3) and (4) shall apply to all marriages at law, custom and marriages by repute or by permanent cohabitation.

(6) No person over the age of eighteen years shall be prevented from entering into marriage.

(7) [*Repealed by* 15 *of* 2017.]

(8) [*Repealed by* 15 *of* 2017.]

Rights of children 11 of 2010

23.—(1) All children, regardless of the circumstances of their birth, are entitled to equal treatment before the law, and the best interests and welfare of children shall be a primary consideration in all decisions affecting them.

(2) All children shall have the right to a given name and a family name and the right to a nationality.

(3) Children have the right to know, and to be raised by, their parents.

11 of 2010

(4) All children shall be entitled to reasonable maintenance from their parents, whether such parents are married, unmarried or divorced, and from their guardians; and, in addition, all children, and particularly orphans, children with disabilities and other children in situations of disadvantage shall be entitled to live in safety and security and, where appropriate, to State assistance.

11 of 2010

(5) Children are entitled to be protected from economic exploitation or any treatment, work or punishment that is, or is likely to—

(*a*) be hazardous;

(*b*) interfere with their education; or

(*c*) be harmful to their health or to their physical, mental or spiritual or social development.

11 of 2010
15 of 2017

(6) A child shall be a person under the age of eighteen years.

Rights of women 11 of 2010

24.—(1) Women have the right to full and equal protection by the law, and have the right not to be discriminated against on the basis of their gender or marital status which includes the right—

(*a*) to be accorded the same rights as men in civil law, including equal capacity—

(i) to enter into contracts;

(ii) to acquire and maintain rights in property, independently or in association with others, regardless of their marital status;

(iii) to acquire and retain custody, guardianship and care of children and to have an equal right in the making of decisions that affect their upbringing; and

(iv) to acquire and retain citizenship and nationality.

(*b*) on the dissolution of marriage, howsoever entered into—

(i) to a fair disposition of property that is held jointly with a husband; and

(ii) to fair maintenance, taking into consideration all the circumstances and, in particular, the means of the former husband and the needs of any children.

(2) Any law that discriminates against women on the basis of gender or marital status shall be invalid and legislation shall be passed to eliminate customs and practices that discriminate against women, particularly practices such as—

(*a*) sexual abuse, harassment and violence;

(*b*) discrimination in work, business and public affairs; and

(*c*) deprivation of property, including property obtained by inheritance.

Education

25.—(1) All persons are entitled to education.

(2) Primary education shall consist of at least five years of education.

(3) Private schools and other private institutions of higher learning shall be permissible, provided that—

(*a*) such schools or institutions are registered with a State department in accordance with the law;

(*b*) the standards maintained by such schools or institutions are not inferior to official standards in State schools.

Culture and language

26. Every person shall have the right to use the language and to participate in the cultural life of his or her choice.

Slavery, servitude and forced labour

27.—(1) No person shall be held in slavery or servitude.

(2) Slavery and the slave trade are prohibited.

(3) No person shall be subject to forced labour.

(4) No person shall be subject to tied labour that amounts to servitude.

Property

28.—(1) Every person shall be able to acquire property alone or in association with others.

(2) No person shall be arbitrarily deprived of property.

29. Every person shall have the right freely to engage in economic activity, to work and to pursue a livelihood anywhere in Malaŵi. Economic activity

30.—(1) All persons and peoples have a right to development to and therefore to the enjoyment of economic, social, cultural and political development and women, children and persons with disabilities in particular shall be given special consideration in the application of this right. Right to development 11 of 2010

(2) The State shall take all necessary measures for the realization of the right to development. Such measures shall include, amongst other things, equality of opportunity for all in their access to basic resources, education, health services, food, shelter, employment and infrastructure.

(3) The State shall take measures to introduce reforms aimed at eradicating social injustices and inequalities.

(4) The State has a responsibility to respect the right to development and to justify its policies in accordance with this responsibility.

31.—(1) Every person shall have the right to fair and safe labour practices and to fair remuneration. Labour

(2) All persons shall have the right to form and join trade unions or not to form or join trade unions.

(3) Every person shall be entitled to fair wages and equal remuneration for work of equal value without distinction or discrimination of any kind, in particular on basis of gender, disability or race.

(4) The State shall take measures to ensure the right to withdraw labour.

32.—(1) Every person shall have the right to freedom of association, which shall include the freedom to form associations. Freedom of association

(2) No person may be compelled to belong to an association.

33. Every person has the right to freedom of conscience, religion, belief and thought, and to academic freedom. Freedom of conscience

34. Every person shall have the right to freedom of opinion, including the right to hold, receive and impart opinions without interference. Freedom of opinion 11 of 2010

35. Every person shall have the right to freedom of expression. Freedom of expression

36. The press shall have the right to report and publish freely, within Malaŵi and abroad, and to be accorded the fullest possible facilities for access to public information. Freedom of the press

Access to information
11 of 2010

37. Every person shall have the right of access to all information held by the State or any of its organs at any level of Government in so far as such information is required for the exercise of his or her rights.

Freedom of Assembly

38. Every person shall have the right to assemble and demonstrate with others peacefully and unarmed.

Freedom of movement and residence

39.—(1) Every person shall have the right of freedom of movement and residence within the borders of Malaŵi.

(2) Every person shall have the right to leave the Republic and to return to it.

Political rights
11 of 2010

40.—(1) Subject to this Constitution, every person shall have the right—

(*a*) to form, to join, to participate in the activities of, and to recruit members for, a political party;

(*b*) to campaign for a political party or cause;

(*c*) to participate in peaceful political activity intended to influence the composition and policies of the Government; and

(*d*) freely to make political choices.

(2) The State shall, provide funds so as to ensure that, during the life of any Parliament, any political party which has secured more than one-tenth of the national vote in elections to that Parliament has sufficient funds to continue to represent its constituency.

11 of 2010

(3) Save as otherwise provided in this Constitution, every person shall have the right to vote, to do so in secret and to stand for election for any elective office.

Access to justice and legal remedies
11 of 2010

41.—(1) Every person shall have a right to recognition as a person before the law.

(2) Every person shall have the right of access to any court of law or any other tribunal with jurisdiction for final settlement of legal issues.

11 of 2010

(3) Every person shall have the right to an effective remedy by a court of law or tribunal for acts violating the rights and freedoms granted to him or her by this Constitution or any other law.

Arrest, detention and fair trial
11 of 2010

42.—(1) Every person who is detained, including every sentenced prisoner, shall have the right—

(*a*) to be informed of the reason for his or her detention promptly, and in a language which he or she understands;

11 of 2010

(*b*) to be held under conditions consistent with human dignity, which shall include at least the provision of reading and writing materials, adequate nutrition and medical treatment at the expense of the State;

(*c*) to consult confidentially with a legal practitioner of his or her choice, to be informed of this right promptly and, where the interests of justice so require, to be provided with the services of a legal practitioner by the State;

(*d*) to be given the means and opportunity to communicate with, and to be visited by, his or her spouse, partner, next-of-kin, relative, religious counsellor and a medical practitioner of his or her choice; 11 of 2010

(*e*) to challenge the lawfulness of his or her detention in person or through a legal practitioner before a court of law; and

(*f*) to be released if such detention is unlawful.

(2) Every person arrested for, or accused of, the alleged commission of an offence shall, in addition to the rights which he or she has as a detained person, have the right—

(*a*) promptly to be informed, in a language which he or she understands, that he or she has the right to remain silent and to be warned of the consequences of making any statement;

(*b*) as soon as it is reasonably possible, but not later than 48 hours after the arrest, or if the period of 48 hours expires outside ordinary court hours or on a day which is not a court day, the first court day after such expiry, to be brought before an independent and impartial court of law and to be charged or to be informed of the reason for his or her further detention, failing which he or she shall be released;

(*c*) not to be compelled to make a confession or admission which could be used in evidence against him or her;

(*d*) save in exceptional circumstances, to be segregated from convicted persons and to be subject to separate treatment appropriate to his or her status as an unconvicted person;

(*e*) to be released from detention, with or without bail unless the interests of justice require otherwise;

(*f*) as an accused person, to a fair trial, which shall include the right—

(i) to public trial before an independent and impartial court of law within a reasonable time after having been charged;

(ii) to be informed with sufficient particularity of the charge;

(iii) to be presumed innocent and to remain silent during plea proceedings or trial and not to testify during trial;

(iv) to adduce and challenge evidence, and not to be a compellable witness against himself or herself;

(v) to be represented by a legal practitioner of his or her choice or, where it is required in the interests of justice, to be provided with legal representation at the expense of the State, and to be informed of these rights;

(vi) not to be convicted of an offence in respect of any act or omission which was not an offence at the time when the act was committed or omitted to be done, and not to be sentenced to a more severe punishment than that which was applicable when the offence was committed;

11 of 2010

(vii) not to be prosecuted again for a criminal act or omission of which he or she has previously been convicted or acquitted, save upon the order of a superior court in the course of an appeal or review proceedings relating to that conviction or acquittal;

(viii) to have recourse by way of appeal or review to a higher court than the court of first instance;

(ix) to be tried in a language which he or she understands or, failing this, to have the proceedings interpreted to him or her, at the expense of the State, into a language which he or she understands; and

(x) to be sentenced within a reasonable time after conviction;

11 of 2010

(*g*) in addition, if that person is a person under the age of eighteen years, to treatment consistent with the special needs of children, which shall include the right—

(i) not to be sentenced to life imprisonment without possibility of release;

11 of 2010

(ii) to be imprisoned only as a last resort and for the shortest period of time consistent with justice and protection of the public;

(iii) to be separated from adults when imprisoned, unless it is considered to be in his or her best interest not to do so, and to maintain contact with his or her family through correspondence and visits;

(iv) to be treated in a manner consistent with the promotion of his or her sense of dignity and worth, which reinforces respect for the rights and freedoms of others;

(v) to be treated in a manner which takes into account his or her age and the desirability of promoting his or her reintegration into society to assume a constructive role;

(vi) to be dealt with in a form of legal proceedings that reflects the vulnerability of children while fully respecting human rights and legal safeguards; and

(*h*) in addition, if that person is a person with a disability, in recognition of his or her particular vulnerability, to be held, wherever possible, in separate accommodation. 11 of 2010

43. Every person shall have the right to— Administrative justice 11 of 2010

(*a*) lawful and procedurally fair administrative action, which is justifiable in relation to reasons given where his or her rights, freedoms, legitimate expectations or interests are affected or threatened; and

(*b*) be furnished with reasons, in writing, for administrative action where his or her rights, freedoms, legitimate expectations or interests are affected. 11 of 2010

44.—(1) No restrictions or limitations may be placed on the exercise of any rights and freedoms provided for in this Constitution other than those prescribed by law, which are reasonable, recognized by international human rights standards and necessary in an open and democratic society. Limitations on rights 11 of 2010

(2) Laws prescribing restrictions or limitations shall not negate the essential content of the right or freedom in question, and shall be of general application. 11 of 2010

(3) Expropriation of property shall be permissible only when done for public utility and only when there has been adequate notification and appropriate compensation, provided that there shall always be a right to appeal to a court of law. 11 of 2010

(4) Wherever it is stated in this Constitution that a person has the right to the services of a legal practitioner or medical practitioner of his or her own choice, that right shall be without limitation, save where the State is obliged to provide such services of a legal practitioner or medical practitioner, in which case an Act of Parliament may prescribe that the choice of the legal practitioner or medical practitioner should be limited to those in Government service or employment. 11 of 2010

45.—(1) No derogation from rights contained in this Chapter shall be permissible save to the extent provided for by this section and no such derogation shall be made unless there has been a declaration of a state of emergency within the meaning of this section. Derogation and public emergency 11 of 2010

(2) There shall be no derogation with regard to— 11 of 2010

(*a*) the right to life;

(*b*) the prohibition of torture and cruel, inhuman or degrading treatment or punishment;

(*c*) the prohibition of genocide;

(*d*) the prohibition of slavery, the slave trade and slave-like practices;

(*e*) the prohibition of imprisonment for failure to meet contractual obligations;

(*f*) the prohibition on retrospective criminalization and the retrospective imposition of greater penalties for criminal acts;

(*g*) the right to equality and recognition before the law;

(*h*) the right to freedom of conscience, belief, thought and religion and to academic freedom; or

(*i*) the right to *habeas corpus*.

11 of 2010 (3) The President may declare a state of emergency—

(*a*) only to the extent that it is provided for in this section;

(*b*) only with the approval of the Defence and Security Committee of the National Assembly;

(*c*) only in times of war, threat of war, civil war or widespread natural disaster;

(*d*) only with regard to the specific location where that emergency exists, and that any declaration of a state of emergency shall be publicly announced; and

(*e*) only after the state of emergency has been publicly announced.

11 of 2010 (4) Derogation from the rights contained in this Chapter, other than the rights listed in subsection (2), shall be permissible during a state of emergency within the meaning of this section and to the extent that—

(*a*) such derogation is consistent with the obligations of Malaŵi under international law; and

(*b*) in the case of—

(i) war or threat of war, it is strictly required to prevent the lives of defensive combatants and civilians as well as legitimate military objectives from being placed in direct jeopardy; or

(ii) a widespread natural disaster, it is strictly required for the protection and relief of those people and facilities whether in or outside the disaster area.

11 of 2010 (5) The declaration of a state of emergency and any action taken in consequence thereof shall be in force for a period of not more than twenty-one days, unless it is extended for a period of not longer than three months, or consecutive periods of not longer than three months at a time, by resolution of the National Assembly adopted by a majority of at least two-thirds of all its members.

(6) The High Court shall be competent to hear applications challenging the validity of a declaration of a state of emergency, any extension thereof, and any action taken, including any regulation enacted, under such declaration. 11 of 2010

(7) Where a person is detained under a state of emergency such detention shall be subject to the following conditions— 11 of 2010

(*a*) an adult family member or friend of the detainee shall be notified of the detention as soon as is reasonably possible and in any case not later than forty-eight hours of detention;

(*b*) the name of every detainee and a reference to the measures in terms of which he or she is being detained shall be published in the *Gazette* within five days of his or her detention;

(*c*) when rights entrenched in section 19 (6) (*a*) or section 42 (2) (*b*) have been suspended—

(i) the detention of a person shall, as soon as it is reasonably possible but not later than ten days after his or her detention, be reviewed by a court, and the court shall order the release of the detainee if it is satisfied that the detention is not necessary to restore peace or order;

(ii) a detainee shall at any stage after the expiry of a period of five days after a review under subparagraph (i) be entitled to apply to a court of law for a further review of his or her detention, and the court shall order the release of the detainee if it is satisfied that the detention is no longer necessary to restore peace or order;

(*d*) the State shall for the purpose of a review referred to in paragraph (*c*) submit written reasons to justify the detention or further detention of the detainee to the court, and shall furnish the detainee with such reasons not later than two days before the review.

(8) If a court finds the grounds for the detention of a person to be unjustified or illegal it shall order his or her release and that person shall not be detained again on the same grounds unless the State shows good cause to a court prior to such re-detention. 11 of 2010

(9) Under no circumstance shall it be possible to suspend this Constitution or any part thereof or dissolve any of its organs, save as is consistent with the provisions of this Constitution. 11 of 2010

Enforcement 11 of 2010

46.—(1) Save in so far as it may be authorized to do so by this Constitution, the National Assembly or any subordinate legislative authority shall not make any law, and the executive and the agencies of Government shall not take any action, which abolishes or abridges the rights and freedoms enshrined in this Chapter, and any law or action in contravention thereof shall, to the extent of the contravention, be invalid.

11 of 2010

(2) Any person who claims that a right or freedom guaranteed by this Constitution has been infringed or threatened shall be entitled—

(*a*) to make application to a competent court to enforce or protect such a right or freedom; and

(*b*) to make application to the Ombudsman or the Human Rights Commission in order to secure such assistance or advice as he or she may reasonably require.

(3) Where a court referred to in subsection (2) (*a*) finds that rights or freedoms conferred by this Constitution have been unlawfully denied or violated, it shall have the power to make any orders that are necessary and appropriate to secure the enjoyment of those rights and freedoms and where a court finds that a threat exists to such rights or freedoms, it shall have the power to make any orders necessary and appropriate to prevent those rights and freedoms from being unlawfully denied or violated.

(4) A court referred to in subsection (2) (*a*) shall have the power to award compensation to any person whose rights or freedoms have been unlawfully denied or violated where it considers it to be appropriate in the circumstances of a particular case.

(5) The law shall prescribe criminal penalties for violations of those non-derogable rights listed in section 44 (1).

CHAPTER V

Citizenship

Citizenship

47.—(1) Every person who, immediately before the appointed day, was a citizen of Malaŵi under any existing law shall continue to be a citizen of Malaŵi after the appointed day.

(2) An Act of Parliament may make provision for the acquisition or loss of citizenship of Malaŵi by any person after the appointed day, but citizenship shall not be arbitrarily denied or deprived.

(3) In this section, the expression—

(*a*) "acquisition of citizenship" includes acquisition by birth, descent, marriage, registration, naturalization or any other means prescribed by an Act of Parliament; and

(*b*) "loss of citizenship" includes loss by deprivation, renunciation or any other means prescribed by an Act of Parliament.

CHAPTER VI

The Legislature

Parliament
4 of 2001
13 of 2001

48.—(1) All legislative powers of the Republic shall be vested in Parliament which shall have the powers and responsibilities set out in this Constitution.

(2) An Act of Parliament shall have primacy over other forms of law, but shall be subject to this Constitution.

(3) Any question proposed for decision by the National Assembly shall be decided by a majority of the votes of the members present and voting, unless this Constitution or any Act of Parliament otherwise provides.

Definitions
4 of 2001
13 of 2001

49.—(1) For the purposes of this Constitution, unless otherwise provided, "Parliament" consists of the National Assembly and the President as Head of State.

(2) An "Act of Parliament" shall be a Bill which has—

(*a*) been laid before the National Assembly;

(*b*) been passed in the National Assembly by a simple majority or such other majority as is otherwise required by this Constitution in respect of any particular Bill; and

(*c*) been assented to by the President in accordance with this Chapter.

(3) "Chamber" means the Chamber of the National Assembly.

Quorum
4 of 2001
13 of 2001

50.—(1) The quorum of the National Assembly shall be formed by the presence at the beginning of any sitting of at least one half plus one of the members of that Chamber entitled to vote, not including the Speaker or a presiding member.

(2) If it is brought to the attention of the Speaker of the National Assembly or presiding member by any member of Parliament that there are less than the number of members prescribed by the Standing Orders and after such interval as may be prescribed by the Standing Orders, the Speaker of the National Assembly or presiding member ascertains that the number of members present is still less than that prescribed by the Standing Orders, he or she shall adjourn the proceedings of the National Assembly.

Qualifications of members of Parliament
6 of 1995
4 of 2001
13 of 2001
4 of 2004

51.—(1) A person shall not be qualified to be nominated or elected as a member of the Parliament unless that person—

(*a*) is a citizen of the Republic who at the time of nomination has attained the age of twenty-one years;

(*b*) is able to speak and to read the English language well enough to take an active part in the proceedings of Parliament; and

(*c*) is registered as a voter in a constituency.

6 of 1995

(2) Notwithstanding subsection (1), no person shall be qualified to be nominated or elected as a member of Parliament who—

(*a*) owes allegiance to a foreign country;

(*b*) is, under any law in force in the Republic, adjudged or otherwise declared to be mentally incompetent;

(*c*) has, within the last seven years, been convicted by a competent court of a crime involving dishonesty or moral turpitude;

(*d*) is an undischarged bankrupt, having been adjudged or otherwise declared bankrupt under any law in force in the Republic;

13 of 2001

(*e*) holds, or acts, in any public office or appointment, except where this Constitution provides that a person shall not be disqualified from standing for election solely on account of holding that office or appointment or where that person resigns from that office or appointment in order to stand;

13 of 2001
4 of 2004

(*f*) belongs to, and is serving in the Defence Force of Malaŵi or the Malaŵi Police Service; and

(*g*) has, within the last seven years, been convicted by a competent court of any violation of any law relating to election of the President or election of members of Parliament or local government elections.

(3) For the purposes of subsection (2) (*e*), an appointment as a Minister or Deputy Minister in accordance with section 94 (1) shall not be construed to be an appointment to a public office or to be a public appointment.

Oath of allegiance
4 of 2001

52. Every member of Parliament, before taking his or her seat, and every officer of Parliament, before assuming duties of his or her office, shall take and subscribe before the Chief Justice in the National Assembly—

(*a*) the oath of allegiance in the form prescribed by law; and

(*b*) such other oaths for the due performance of their respective offices as may be prescribed by law.

The Speaker and Deputy Speakers
4 of 2001
13 of 2001

53.—(1) There shall be a Speaker of the National Assembly who shall be elected by majority vote of the members thereof at the first sitting after every dissolution of the National Assembly.

(2) The members of the National Assembly shall elect one or more from among themselves to be Deputy Speaker or Deputy Speakers of the National Assembly at the first sitting after a general election.

(3) The office of Speaker or Deputy Speaker shall become vacant—

(*a*) on the death or resignation of the holder;

(*b*) if the holder ceases to be a member of the National Assembly;

(*c*) if the holder becomes President, Vice-President, a Minister or a Deputy Minister; or

(*d*) if the National Assembly, by a resolution supported by the votes of not less than two-thirds of the members of the National Assembly, resolves that the holder be removed from office:

Provided that the Speaker or the Deputy Speaker shall have the right to be heard by the Chamber on his or her own motion on any matter relating to his or her removal from office.

(4) The Speaker, or in his or her absence, such Deputy Speaker as the Speaker has nominated, shall preside at every sitting of the National Assembly:

Provided that in the absence of the Speaker and every Deputy Speaker, the members of the National Assembly may elect one of their number to act as Speaker for as long as there is no Speaker or Deputy Speaker.

(5) The Speaker, the Deputy Speaker or any other presiding member shall discharge his or her functions and duties and exercise such powers as he or she has by virtue of that office independent or the direction or interference of any body or authority, save as accords with the express will and the Standing Orders of the National Assembly.

(6) Notwithstanding that the Speaker, Deputy Speaker or any other presiding member has been elected as a member of a political party to the National Assembly he or she shall not be subject to the control, discipline, authority or direction of that political party or any other political party in the discharge of the functions and duties of that office and in the exercise of the powers of that office.

(7) The Speaker may, where the matter under debate in the National Assembly pertains to his or her constituency, temporarily vacate the Speaker's seat and participate in that debate and exercise a deliberative vote where there is voting on that matter.

Casting vote
4 of 2001

54.—(1) Subject to section 53 (7) the Speaker shall not have a deliberative vote, but if the votes of the National Assembly are equally divided upon any question, he or she shall exercise the casting vote.

(2) Any presiding member shall retain his or her original deliberative vote as a member and shall, in addition, have and exercise a casting vote

where the votes of the National Assembly on any question are equally divided.

The Clerk
4 of 2001

55. There shall be a Clerk to the National Assembly who shall be a public officer and shall assist the Speaker of the National Assembly and perform such other functions and duties as the Speaker may direct.

The right to regulate procedure
6 of 1995
4 of 2001
13 of 2001

56.—(1) Subject to this Constitution, the National Assembly, may by Standing Order or otherwise regulate its own procedure.

(2) Save as otherwise provided in this Constitution, the National Assembly may act unless more than two-thirds of all the seats of the National Assembly are vacant.

(3) The presence or participation of any person not entitled to be present or to participate in the proceedings of the National Assembly shall not invalidate those proceedings.

(4) The National Assembly shall provide access to the press and members of the public, except where a motion is passed with reasons prohibiting public access in the national interest.

(5) The proceedings of Parliament shall be conducted in the English language and such other languages as the National Assembly may prescribe.

(6) Parliament may establish any committees of its members and may form joint committees for the scrutiny of legislation and performance of other functions, except voting on motions and Bills.

6 of 1995

(7) In addition to any committee appointed under subsection (6), there shall be a Public Appointments Committee, a Budget Committee and a Legal Affairs Committee of the National Assembly which shall each—

(*a*) be appointed by the National Assembly with proportionate representation from all parties represented in the National Assembly;

(*b*) be appointed within thirty days of the first sitting of the National Assembly after a general election and thereafter annually; and

6 of 1995
13 of 2001

(*c*) perform such functions as are conferred on them by this Constitution or by an Act or resolution of Parliament or by the Standing Orders of Parliament.

Money bills
4 of 2001
13 of 2001

57. Except upon the recommendation of the Minister responsible for Finance, signified in writing, the National Assembly shall not—

(*a*) proceed upon any Bill or any amendment to a Bill that, in the opinion of the person presiding, makes provision for any of the following purposes—

(i) for the imposition of tax or the alteration of tax;

(ii) for the imposition of any charge upon the Consolidated Fund, or the alteration of any such charge;

(iii) for the payment, issue or withdrawal from the Consolidated Fund of any moneys not charged thereon, or any increase in the amount of such payment, issue or withdrawal; or

(iv) for the composition or remission of any debt due to the Government;

(*b*) proceed upon any motion or any amendment to a motion the effect of which, in the opinion of the person presiding, would be to make provision for any of the purposes specified in subsection (*a*); or

(*c*) receive any petition that, in the opinion of the person presiding, requests that provision be made for any of the purposes specified in paragraph (*a*).

Subsidiary legislation

58.—(1) Parliament may, with respect to any particular Act of Parliament, delegate to the executive or to the judiciary the power to make subsidiary legislation within the specification and for the purposes laid out in that Act and any subsidiary legislation so made shall be laid before Parliament in accordance with its Standing Orders.

(2) Notwithstanding subsection (1), Parliament shall not have the power to delegate any legislative powers which would substantially and significantly affect the fundamental rights and freedoms recognized by this Constitution.

Sessions, meetings and sittings
4 of 2001
13 of 2001

59.—(1) Every meeting of the National Assembly shall be held at such place within Malaŵi and shall commence at such time as the Speaker of the National Assembly, in consultation with the President, may appoint and the sittings of the National Assembly after the commencement of that meeting shall be held at such times and on such days as the National Assembly shall appoint:

Provided that—

(*a*) the President, in consultation with the Speaker of the National Assembly, may summon, on extraordinary occasions, a meeting of the National Assembly; and

(*b*) the President may, in consultation with the Speaker of the National Assembly, prorogue the National Assembly.

(2) There shall be held at least two meetings of the National Assembly in each session.

13 of 2001

(3) A session of the National Assembly shall be opened by the President on such date as the President, in consultation with the Speaker of the National Assembly, shall determine.

13 of 2001

(4) A session shall be of such duration as the President, in consultation with the Speaker of the National Assembly, shall determine.

Privileges and immunities
13 of 2001

60.—(1) The Speaker, every Deputy Speaker, and every member of the National Assembly shall, except in cases of treason, be privileged from arrest while going to, returning from or while in the precincts of the National Assembly and shall not, in respect of any utterances that forms part of the proceedings in the National Assembly, be amenable to any other action or proceedings in any court, tribunal or body other than Parliament.

(2) All official reports and publications of Parliament or of its proceedings or of the proceedings of any committee of the Parliament shall be privileged and utterances made in the Parliament or in any committee thereof wherever published shall be protected by absolute privilege.

(3) The National Assembly and any committee of the National Assembly shall have the power to conduct investigations and exercise the power to subpoena the attendance of any person or office holder whosoever as required in connexion with the prudent exercise of the functions of the National Assembly and failure to attend without leave or without valid reason or excuse shall be held to be a contempt of the National Assembly or committee in question.

(4) The National Assembly shall lay down in Standing Orders the procedure to be followed by the National Assembly or committee concerned in holding any person in contempt of the National Assembly or committee; and such procedure shall comply with the principles of natural justice so far as the circumstances allow.

Member's interests
4 of 2001
13 of 2001

61.—(1) A member of Parliament, where he or she has a direct or indirect material interest in a matter being debated by the National Assembly shall—

(*a*) disclose such interest to the National Assembly; and

(*b*) not be entitled to vote on that matter without leave of the National Assembly.

(2) Where a member of Parliament fails to disclose a material interest in accordance with subsection (1) that member shall be guilty of contempt of the National Assembly.

Composition of the National Assembly

62.—(1) The National Assembly shall consist of such number of seats, representing every constituency in Malaŵi, as shall be determined by the Electoral Commission.

(2) Each constituency shall freely elect any person, subject to this Constitution and an Act of Parliament, to represent it as a member of the National Assembly in such manner as may be prescribed by this Constitution or an Act of Parliament.

Vacancies in the National Assembly
31 of 1994
4 of 2001

63.—(1) The seat of a member of the National Assembly shall become vacant—

(*a*) if the National Assembly has been dissolved;

(*b*) if the member dies or resigns his or her seat;

(*c*) if the member ceases to be a citizen of Malaŵi;

(*d*) if the member assumes the office of President or Vice-President;

(*e*) if any circumstances arise that, if he or she were not a member of the National Assembly, would cause that member to be disqualified for election under this Constitution or any other Act of Parliament; or

(*f*) if the National Assembly declares a member's seat vacant in accordance with such Standing Orders as may permit or prescribe the removal of a member for good and sufficient reason provided that they accord with the principles of natural justice.

(2) The Speaker of the National Assembly shall give notice in the *Gazette* in the event that the seat of any member of the Assembly shall become vacant under this section:

Provided that—

(*a*) Parliament shall make provision for holding by-elections to fill any vacancy that shall occur;

(*b*) any by-election to fill a vacancy that occurs shall be held within sixty days after the seat of the member becomes vacant or, if in the opinion of the Speaker the circumstances do not so admit, then as expeditiously as possible after the expiry of that period; and 31 of 1994

(*c*) any member elected at a by-election shall serve until such time as his or her seat becomes vacant in accordance with subsection (1).

(3) The Speaker may, upon a motion of the National Assembly, postpone the declaration of a vacant seat for such period as that motion prescribes so as to permit any member to appeal to a court or other body to which an appeal lies against a decision which would require that member to vacate his or her seat in accordance with this section.

64. [*Repealed by Act No.* 6 *of* 1995].

Crossing the floor
8 of 2001

65.—(1) The Speaker shall declare vacant the seat of any member of the National Assembly who was, at the time of his or her election, a member of one political party represented in the National Assembly, other than by that member alone but who has voluntarily ceased to be a member of that party or has joined another political party represented in the National Assembly, or association or organization whose objectives or activies are political in nature.

(2) Notwithstanding subsection (1), all members of all parties shall have the absolute right to exercise a free vote in any and all proceedings of the National Assembly, and a member shall not have his or her seat declared vacant solely on account of his or her voting in contradiction to the recommendations of a political party, represented in the National Assembly, of which he or she is a member.

Functions and powers of the national Assembly
4 of 2001
13 of 2001

66.—(1) The National Assembly shall be a directly elected Chamber which shall have power, subject to this Constitution, to—

(*a*) receive, amend, accept or reject Government Bills and Private Bills;

(*b*) initiate Private Member's Bills on the motion of any member and amend, accept or reject all Private Member's Bills;

(*c*) debate and vote motions in relation to any matter including motions to indict and convict the President or Vice-President by impeachment;

(*d*) exercise such other functions and powers as are conferred on it by this Constitution or by an Act of Parliament; and

(*e*) take all actions incidental to and necessary for the proper exercise of its functions.

(2) For the purposes of this Constitution—

(*a*) a Government Bill shall be a Bill promulgated by the Government and introduced to Parliament on behalf of the Government;

(*b*) a Private Bill shall be—

(i) promulgated by an agency that is not part of the Government; and

(ii) introduced to Parliament on behalf of that agency where that agency is mandated by an Act of Parliament so to do;

(*c*) a Private Member's Bill shall be—

(i) promulgated by a member of Parliament; and

(ii) introduced by that member in the National Assembly in accordance with its own procedure.

Dissolution of the National Assembly
38 of 1998
11 of 1999

67.—(1) The National Assembly shall stand dissolved on the 20th of March in the fifth year after its election, and the polling day for the general elections for the next National Assembly shall be the Tuesday in the third week of May that year:

Provided that where it is not practicable for the polling to be held on the Tuesday in the third week of May, the polling shall be held on a day, within seven days from that Tuesday, appointed by the Electoral Commission; and provided further that, in the case of the elections to be held in 1999, the polling shall be held on a day, not later than 15th June, 1999, appointed by the Electoral Commission.

(2) This section shall not preclude the Electoral Commission from setting other days for polling in the general election for special classes or categories of voters, provided that such polling takes place not more than two days, before or after the polling day, excluding Sundays.

(3) The first meeting of the National Assembly shall commence on a date to be appointed by the President occurring within forty-five days after the polling day or, where polling takes place on more than one day, within forty-five days after the last polling day.

(4) If, between the dissolution of the National Assembly and the general election that follows, the President is of the opinion that a constitutional crisis or emergency has arisen which requires urgent legislation or consideration by the National Assembly, he or she may reconvene the National Assembly for that purpose alone, but in any event, that reconvened National Assembly, shall stand dissolved on the date of the general election.

(5) Notwithstanding the dissolution of the National Assembly on the date specified in subsection (1), every person who, immediately before the dissolution of the National Assembly in accordance with subsection (1), is a member of the National Assembly shall be entitled to receive his or her remuneration and other benefits up to and including the last date preceding the general election.

68.—72. [*Repeal by Act No*. 4 *of* 2001]

Presidential assent
6 of 1995

73.—(1) Where a Bill is presented to the President for assent, the President shall either assent or withhold assent and shall do so within twenty-one days from the date the Bill is presented to him or her.

(2) Where the President withholds assent to a Bill, the Bill shall be returned to the Speaker of the National Assembly by the President with a notification that the President's assent has been withheld, including reasons therefor, and the Bill shall not be again debated by the National Assembly until after the expiry of twenty-one days from the date of the notification of that withholding.

6 of 1995

(3) If the Bill is debated again and passed by a majority of the National Assembly at any time between the date of the expiry of the twenty-one days referred to in subsection (2) and three months from that date, the Bill shall again be presented for assent by the President.

(4) Where a Bill is again presented to the President for assent in accordance with subsection (3), the President shall assent to the Bill within twenty-one days of its presentation.

(5) When a Bill that has been duly passed is assented to in accordance with this Constitution, the Clerk shall cause it to be published immediately in the *Gazette*.

The coming into force of laws
13 of 2001

74. No law made by Parliament shall come into force until it has been published in the *Gazette*, but Parliament may prescribe that a law shall not come into force until some later date after its publication in the *Gazette*.

CHAPTER VII

Elections

The Electoral Commission

75.—(1) There shall be an Electoral Commission which shall consist of a Chairman who shall be a Judge nominated in that behalf by the Judicial Service Commission and such other members, not being less than six, as may be appointed in accordance with an Act of Parliament.

(2) A person shall not be qualified to hold the office of a member of the Electoral Commission if that person is a Minister, Deputy Minister, a member of Parliament or a person holding public office.

(3) Subject to this section, a person shall cease to be a member of the Electoral Commission—

(*a*) at the expiration of four years from the date of his or her appointment, unless re-appointed to a new four-year term; or

(*b*) if any circumstances arise that, if that person were not a member of the Electoral Commission, he or she would be disqualified for appointment as such.

(4) A member of the Electoral Commission may be removed from office by the President on the recommendation of the Public Appointments Committee on the grounds of incapacity or incompetence in the performance of the duties of that office.

Powers and functions
13 of 2001

76.—(1) The Electoral Commission shall exercise such functions in relation to elections as are conferred upon it by this Constitution or by an Act of Parliament.

(2) The duties and functions of the Electoral Commission shall include—

(*a*) to determine constituency boundaries impartially on the oasis of ensuring that constituencies contain approximately equal numbers of voters eligible to register, subject only to considerations of—

(i) population density;

(ii) ease of communication; and

(iii) geographical features and existing administrative areas;

(*b*) to review existing constituency boundaries at intervals of not more than five years and alter them in accordance with the principles laid down in subsection (2) (*a*);

(*c*) to determine electoral petitions and complaints related to the conduct of any elections;

(*d*) to ensure compliance with the provisions of this Constitution and any Act of Parliament; and

(*e*) to perform such other functions as may be prescribed by this Constitution or an Act of Parliament.

(3) Any person who has petitioned or complained to the Electoral Commission shall have a right to appeal to the High Court against determinations made under subsections (2) (*c*) and (2) (*d*).

(4) The Electoral Commission shall exercise its powers, functions and duties under this section independent of any direction or interference by other authority or any person.

(5) Without prejudice to subsection (3)—

(*a*) the High Court shall have jurisdiction to entertain applications for judicial review of the exercise by the Electoral Commission of its powers and functions to ensure that such powers and functions were duly exercised in accordance with this Constitution or any Act of Parliament; and

(*b*) the National Assembly shall confirm all determinations by the Electoral Commission with regard to the drawing up of constituency boundaries but may not alter the boundaries of any constituency, except upon the recommendation of the Electoral Commission.

The franchise
6 of 1995
11 of 2010

77.—(1) All persons shall be eligible to vote in any general election, by-election, presidential election, local government election or referendum, subject only to this section.

(2) Subject to subsection (3), a person shall be qualified to be registered as a voter in a constituency if, and shall not be so qualified unless, at the date of the application for registration that person—

(*a*) is a citizen of Malaŵi or, if not a citizen, has been ordinarily resident in the Republic for seven years;

(*b*) has attained the age of eighteen years; and

(*c*) is ordinarily resident in that constituency or was born there or is employed or carries on a business there.

(3) No person shall be qualified for registration as a voter in a constituency if that person—

(*a*) is under any law in force in the Republic adjudged or otherwise declared to be mentally incompetent;

(*b*) is under sentence of death imposed by a court having jurisdiction in the Republic, either before or after the appointed day; or

6 of 1995
11 of 2010

(*c*) is disqualified from registration as a voter on the grounds of his or her having been convicted of any violation of any law relating to elections passed by Parliament and in force at the time of, or after, the commencement of this Constitution, but such disqualification shall be valid only with respect to registration for the election in question and the person so disqualified shall be qualified to be registered as a voter in the next or any subsequent election.

(4) Where any person is qualified to be registered in more than one constituency as a voter, he or she may be so registered only in one of the constituencies.

(5) No person shall exercise more than one vote in any one election.

CHAPTER VIII

The Executive

The President
4 of 2004

78. There shall be a President of the Republic who shall be Head of State and Government and the Commander-in-Chief of the Defence Force of Malaŵi.

The Vice-President
31 of 1994

79. There shall be a First Vice-President and, subject to section 80 (5), a Second Vice-President both of whom shall assist the President and who shall exercise the powers and functions conferred on the First Vice-President or the Second Vice-President, as the case may be, by this Constitution or by any Act of Parliament and by the President.

Election of the President and the First Vice-President
31 of 1994
6 of 1995
38 of 1998

80.—(1) The President shall be elected in accordance with the provisions of this Constitution in such manner as may be prescribed by Act of Parliament and, save where this Constitution provides otherwise, the ballot in a Presidential election shall take place concurrently with the general election for members of the National Assembly as prescribed by section 67 (1).

(2) The President shall be elected by a majority of the electorate through direct, universal and equal suffrage.

(3) Every presidential candidate shall declare who shall be his or her First Vice-President if he or she is elected at the time of his or her nomination. 31 of 1994

(4) The First Vice-President shall be elected concurrently with the President and the name of a candidate for the First Vice-President shall appear on the same ballot paper as the name of the Presidential candidate who nominated him. 31 of 1994

(5) Where the President considers it desirable in the national interest so to do, he or she may appoint a person to the office of Second Vice-President and may do so upon taking his or her oath of office or at any time thereafter or upon a vacancy in the office of Second Vice-President; and where no person has been appointed to the office of Second Vice-President then— 31 of 1994, 6 of 1995

(*a*) the provisions of this Chapter making reference to that office shall be read *mutatis mutandis;* and

(*b*) the office of First Vice-President shall be known as the office of Vice-President as if section 79 created the office of a Vice-President only:

Provided that where the President was elected on the sponsorship of a political party, then he or she shall not appoint a Second Vice-President from that political party.

(6) Notwithstanding any provision of this Constitution to the contrary, a person shall only be qualified for nomination for election as President or First Vice-President or for appointment as First Vice-President or Second Vice-President if that person— 31 of 1994

(*a*) is a citizen of Malaŵi by birth or descent; and

(*b*) has attained the age of thirty-five years.

(7) No person shall be eligible for nomination as a candidate for election as President or First Vice-President or for appointment as first Vice-President or Second Vice-President if that person— 31 of 1994 6 of 1995 38 of 1998

(*a*) has been adjudged or declared to be of unsound mind;

(*b*) is an undischarged bankrupt having been declared bankrupt under a law of the Republic;

(*c*) has, within the last seven years, been convicted by a competent court of a crime involving dishonesty or moral turpitude;

(*d*) owes allegiance to a foreign country;

(*e*) is the holder of a public office or a member of Parliament, unless that person first resigns;

(*f*) is a serving Member of the Defence Forces or Malaŵi Police Service; or

(*g*) has, within the last seven years, been convicted by a competent court of any violation of any law relating to election of the President or election of the members of Parliament.

Oath of office
31 of 1994
13 of 2001

81.—(1) Before a person elected to be President or First Vice-President or appointed to be First Vice-President or Second Vice-President takes office that person shall take the following oath which shall be administered in public by the Chief Justice—

"I, ... do solemnly swear that I will well and truly perform the functions of the high office of President (or Vice-President) of the Republic of Malaŵi, and that I will preserve and defend the Constitution, and that I will do right to all manner of people according to law without fear or favour, affection or ill-will. So help me God."

(2) Instead of taking an oath, the President, First Vice-President or Second Vice-President may, if he or she thinks fit, make an affirmation which shall be in the like form with the substitution of "affirm" for "swear", and the omission of the final sentence.

(3) A person elected to be President or appointed to be First Vice-President or Second Vice-President shall be sworn into office, in accordance with subsection (1), within thirty days of being elected or appointed.

(4) The President and First Vice-President shall hold office until such time as his or her successor is sworn in.

Renumeration
31 of 1994
13 of 2001

82. The President, First Vice-President and Second Vice-President shall receive such salary, allowance or pension as may, from time to time, be determined by Parliament in consultation with the President and shall have such adequate number of residences and personal staff, at State expense, as an Act of Parliament may prescribe.

Tenure of office
31 of 1994
38 of 1998

83.—(1) The President shall hold office for five years from the date that his or her oath of office is administered, but shall continue in office until his or her successor has been sworn in.

(2) The First Vice-President and the Second Vice-President shall hold office from the date of the administration of the oath of office to them until the end of the President's term of office unless their office should come to an end sooner in accordance with the provisions of this Constitution.

(3) The President, the First Vice-President and the Second Vice-President may serve in their respective capacities a maximum of two consecutive terms, but when a person is elected or appointed to fill a vacancy in the office of President or Vice-President, the period between that election or appointment and the next election of a President shall not be regarded as a term.

(4) Whenever there is a vacancy in the office of President, the First Vice-President shall assume that office for the remainder of the term and shall appoint another person to serve as First Vice-President for the remainder of the term.

Death or resignation of a Vice-President
31 of 1994
13 of 2001

84. If the First Vice-President dies or resigns from office, or where in accordance with section 87 the office is vacated through the incapacity of the First Vice-President for more than twelve months, the vacancy shall be filled for the unexpired period of that term by a person appointed by the President.

Vacancy of office of President and Vice-President
31 of 1994

85. If at any time both the office of President and First Vice-President become vacant then the Cabinet shall elect from among its members an Acting President and Acting First Vice-President who shall hold office for not more than sixty days or, where four years of a Presidential term have expired, for the rest of that Presidential term.

Removal from office
31 of 1994
6 of 1995
4 of 2001
13 of 2001

86.—(1) The President or First Vice-President shall be removed from office where the President or First Vice-President, as the case may be, has been indicted and convicted by impeachment.

31 of 1994
6 of 1995

(2) The procedure for impeachment shall be as laid down by the Standing Orders of Parliament, provided that they are in full accord with the principles of natural justice and that—

(*a*) indictment and conviction by impeachment shall only be on the grounds of serious violation of the Constitution or serious breach of the written laws of the Republic that either occurred or came to light during the term of office of the President or the First Vice-President;

(*b*) indictment on impeachment shall require the affirmative vote of two-thirds of the members of the National Assembly in a committee of the whole house;

(*c*) conviction on impeachment shall require the affirmative vote of two-thirds of the members of the National Assembly;

(*d*) conviction in cases of impeachment shall cause the removal, and disqualification from such office in the future, of the office holder; and

(*e*) conviction by way of impeachment shall not act as a bar to legal proceedings.

31 of 1994

(3) The President shall have power to remove the Second Vice-President from office.

Incapacity
31 of 1994
6 of 1995
13 of 2001

87.—(1) Whenever the President is incapacitated so as to be unable to discharge the powers and duties of that office, the First Vice-President shall act as President, until such time, in the President's term of office, as the President is able to resume his or her functions.

(2) The President shall not be deemed to be incapacitated for the purposes of this section until and unless—

(*a*) there is a written declaration, certified by a board of independent medical practitioners, that the President is unable to discharge the duties of the office of President;

(*b*) the declaration is signed by the First Vice-President and a majority of the Cabinet, holding office at that time; and

(*c*) the declaration is submitted by the First Vice-President to the Speaker of the National Assembly.

(3) Upon submission to the Speaker of a declaration under subsection (2), the First Vice-President shall immediately assume the powers and duties of the office of President as Acting President.

(4) Where the President has been declared to be incapacitated in accordance with subsection (2) the President may, at any time thereafter, submit to the National Assembly a written declaration, certified by a board of independent medical practitioners, stating his or her fitness to carry on the duties of the office of President:

Provided that—

(*a*) upon receipt of such a declaration from the President, the National Assembly shall have thirty days within which to determine whether or not the President is in fact or not so incapacitated as to be unable to discharge the duties of the office of President; and

(*b*) if the National Assembly determines that the President remains so incapacitated so as to be unable to discharge the duties of the office of President, by an affirmative vote of two-thirds of all of its members, the First Vice-President shall continue to act as President until the National Assembly determines that the President is again fit to assume the duties and powers of the office of President; or

(*c*) if the National Assembly determines that the President is no longer so incapacitated as to be unable to discharge the duties of the office of President by an affirmative vote of two-thirds of the National Assembly, the President shall resume the duties of the office of President within thirty days of that vote.

(5) If, on the expiry of twelve months from the date of the Speaker being notified of the incapacity of the President, the National Assembly has not determined that the President is fit to perform duties of the office of President in accordance with subsection (4), then the office of President shall be deemed vacant and the Vice-President shall assume office for the remainder of the term in accordance with section 83 (4). 13 of 2001

(6) The provisions of this section, save for subsection 5 shall apply *mutatis mutandis* to the incapacity of the First Vice-President except that the certificate shall then be signed by the President and be submitted to the Speaker by the President and the functions of the First Vice-President shall be carried out by such other member of Cabinet as the President may appoint.

(7) Every board of independent medical practitioners required for the purposes of this section shall be selected in accordance with the procedure laid down in the Standing Orders of Parliament. 6 of 1995

Responsibility of the President 31 of 1994 13 of 2001

88.—(1) The President shall be responsible for the observance of the provisions of this Constitution by the executive and shall, as Head of State, defend and uphold the Constitution as the supreme law of the Republic.

(2) The President shall provide executive leadership in the interest of national unity in accordance with this Constitution and the laws of the Republic.

Prevention of conflicts of interests of the President and Cabinet 13 of 2001

88A.—(1) The President and members of the Cabinet shall not hold any public office and shall not perform remunerative work outside the duties of their offices and shall, within three months from the date of election or appointment, as the case may be, fully disclose all of their assests, liabilities and business interests, and those of their spouses

held by them or on their behalf as at that date; and, unless Parliament otherwise prescribes by an Act of Parliament, such disclosure shall be made in a written document delivered to the Speaker of the National Assembly who shall immediately upon receipt deposit the document with such public office as may be specified in the Standing Orders of Parliament.

(2) Any business interests held by the President and members of the Cabinet shall be held on their behalf in a beneficial trust which shall be managed in such manner as to ensure conformity with the responsibility and duties of their offices.

(3) The President and members of the Cabinet shall not use their respective offices for personal gain or place themselves in a situation where their materials interest conflict with the responsibilities and duties of their offices.

Powers and duties of the President
4 of 2001

89.—(1) The President shall have the following powers and duties—

(*a*) to assent to Bills and promulgate Bills duly passed by Parliament;

(*b*) to convene and preside over meetings of the Cabinet;

(*c*) to confer honours;

(*d*) to make such appointments as may be necessary in accordance with powers conferred upon him or her by this Constitution or an Act of Parliament;

(*e*) subject to this Constitution, to appoint, accredit, receive and recognize ambassadors, high commissioners, plenipotentiaries, diplomatic representatives and other diplomatic officers, consuls and consular officers;

(*f*) to negotiate, sign, enter into and accede to international agreements or to delegate such power to ministers, ambassadors and high commissioners;

(*g*) to appoint commissions of inquiry;

(*h*) to refer disputes of a constitutional nature to the High Court; and

(*i*) to proclaim referenda and plebiscites in accordance with this Constitution or an Act of Parliament.

(2) The President may pardon convicted offenders, grant stays of execution of sentence, reduce sentences, or remit sentences:

Provided that—

(*a*) decisions under this subsection shall be taken in consultation with an Advisory Committee on the Granting of Pardon, the composition and formation of which shall be determined by an Act of Parliament; and

(*b*) judgments in cases of impeachment of the President or Vice-President shall not be liable to pardon by the President.

(3) The President shall each year, immediately before the consideration of the official budget, attend Parliament and shall— 31 of 1994

(*a*) address Parliament on the state of the nation and on the future policies of the Government at that time;

(*b*) report on the policies of the previous year; and

(*c*) respond to questions.

(4) The President shall be called to Parliament to answer questions at such times as may be prescribed by the Standing Orders of Parliament or on a motion of the National Assembly. 4 of 2001

(5) Subject to this Constitution and any Act of Parliament, the President shall exercise all other powers reasonably necessary and incidental to the functions of his or her office in accordance with this Constitution.

(6) The powers and functions of the President shall be exercised by him or her personally or by a member of the Cabinet or by a government official to whom the President has delegated such power in writing.

Confirmation of decisions etc., of the President
13 of 2001

90.—(1) Decisions of the President shall be expressed in writing under his or her signature.

(2) Where law or practice so requires, the signature of the President on any instrument shall be confirmed by the Public Seal.

Immunity
13 of 2001

91.—(1) No person holding the office of President or performing the functions of President may be sued in any civil proceedings but the office of President shall not be immune to orders of the courts concerning rights and duties under this Constitution.

(2) No person holding the office of President shall be charged with any criminal offence in any court during his term of office.

(3) After a person has vacated the office of President, he or she shall not be personally liable for acts done in an official capacity during his or her term of office but shall not otherwise be immune.

Cabinet
31 of 1994
13 of 2001

92.—(1) There shall be a Cabinet consisting of the President, the First Vice-President, the Second Vice-President and such Ministers and Deputy Ministers as may, from time to time, be appointed by the President.

(2) The Cabinet shall exercise the powers and functions assigned to it by this Constitution or an Act of Parliament and shall be responsible for advising the President with respect to the policies of the Government and with respect to such other matters as may be referred to it by the President.

31 of 1994

(3) Cabinet meetings shall be presided over—

(*a*) by the President; or

(*b*) in the temporary absence of the President, by the First Vice-President; or

(*c*) in the temporary absence of both the President and First Vice-President, by the Second Vice-President.

13 of 2001

(4) There shall be a Secretary to the Cabinet who shall be appointed by the President and whose office shall be a public office and who shall—

(*a*) have charge of the Cabinet office;

(*b*) be responsible, subject to the directions of the Cabinet, for arranging the business, and keeping the minutes of the Cabinet;

(*c*) convey the decisions of the Cabinet to the appropriate persons or authorities; and

(*d*) have such other functions as the Cabinet may direct.

Government departments
13 of 2001

93.—(1) There shall be Ministers and Deputy Ministers who shall exercise such powers and functions, including the running of Government departments, as may be prescribed by the President subject to this Constitution.

(2) Every Government department shall be under the supervision of a Principal Secretary, whose office shall be a public office and who shall be under the direction of a Minister or Deputy Minister:

Provided that two or more Government departments may be placed under the supervision of one Principal Secretary, and one government department may be placed under the supervision of two or more Principal Secretaries.

Appointment of ministers and Deputy Ministers
6 of 1995
13 of 2001

94.—(1) The President shall have the power to appoint Ministers or Deputy Ministers and to fill vacancies in the Cabinet.

(2) A person shall not be qualified to be appointed as a Minister or Deputy Minister unless that person—

(*a*) is a citizen of the Republic who upon taking office, has attained the age of twenty-one years;

(*b*) is able to speak and to read the English language; and

(*c*) is registered as a voter in a constituency.

6 of 1995

(3) Notwithstanding subsection (2), no person shall be qualified to be appointed as a Minister or Deputy Minister who—

(*a*) owes allegiance to a foreign country;

(*b*) is, under any law in force in the Republic, adjudged or otherwise declared to be of unsound mind;

(*c*) has, within the last seven years, been convicted by a competent court of a crime involving dishonesty or moral turpitude;

(*d*) is an undischarged bankrupt, having been adjudged or otherwise declared bankrupt under any law in force in the Republic;

13 of 2001

(*e*) holds or acts in any public office or appointment;

(*f*) belongs to, and is serving in the Defence Forces of Malaŵi or in the Malaŵi Police Service;

(*g*) has, within the last seven years, been convicted by a competent court of any violation of any law relating to election of the President or election of the members of Parliament.

Oath of office and removal of Minister or Deputy Minister
13 of 2001

95.—(1) No Minister or Deputy Minister shall assume office unless an oath or solemn affirmation was taken and executed in a manner prescribed by an Act of Parliament.

(2) The President shall have the power to remove Ministers or Deputy Ministers from their posts.

Duties and functions of the Cabinet

96.—(1) The members of the Cabinet shall have the following functions—

(*a*) to advise the President;

(*b*) to direct, coordinate and supervise the activities of Government departments, including parastatal bodies;

(*c*) to initiate Bills for submission to the National Assembly and to explain those Bills;

(*d*) to prepare, explain and formulate for the Parliament the budget of the State and its economic programmes;

(*e*) to be available to Parliament for the purposes of answering any queries or participating in any debate pertaining to the content of the policies of the Government;

(*f*) to assist the President in determining what international agreements are to be concluded or acceded to and to inform Parliament thereon;

(*g*) to take responsibility for the implementation and administration of laws; and

(*h*) to carry out such other functions reasonably necessary for the performance of their duties in accordance with this Constitution, as may be prescribed by an Act of Parliament or the President.

(2) In performing the duties and functions referred to in this section the Cabinet shall make legislative proposals available in time in order to permit sufficient canvassing of expert and public opinion.

Ministerial accountability

97. All Ministers shall be responsible to the President for the administration of their own departments.

The Attorney General
13 of 2001

98.—(1) There shall be the office of Attorney General, who shall be the principal legal adviser to the Government.

(2) Any powers vested in the office of the Attorney General may be exercised by the person appointed to that office or, subject to his or her general or special instructions, by—

(*a*) persons in the public service acting as his or her subordinates; or

(*b*) such other legally qualified persons acting on the instructions of the Attorney General.

(3) Appointment to the office of Attorney General shall be made by the President.

(4) The office of Attorney General shall where it is held by a person employed in the public service, become vacant after the person holding that office has served for five years, or on his or her resignation or retirement or up to the end of the President's term of office whichever is sooner.

(5) The office of Attorney General may either be the office of a Minister or may be a public office.

(6) The Attorney General shall be subject to removal by the President on the grounds of incompetence, incapacity or being compromised in the exercise of his duties to the extent that his ability to give impartial legal advice is seriously in question.

The Director of Public Prosecution
1 of 1997
13 of 2001

99.—(1) There shall be a Director of Public Prosecutions, whose office shall be a public office.

(2) The Director of Public Prosecutions shall have power in any criminal case in which he or she considers it desirable so to do—

(*a*) to institute and undertake criminal proceedings against any person before any court (other than a court-martial) in respect of any offence alleged to have been committed by that person;

(*b*) to take over and continue any criminal proceedings which have been instituted or undertaken by any other person or authority; and

(*c*) subject to subsection (5) to discontinue at any stage before judgment is delivered any criminal proceedings instituted or undertaken by himself or herself or any other person or authority.

1 of 1997
13 of 2001

(3) Subject to section 101 (2), the powers conferred on the Director of Public Prosecutions by subsection (2) (*b*) and (*c*) shall be vested in him or her to the exclusion of any other person or authority and whenever exercised, reasons for the exercise shall be provided to the Legal Affairs Committee of the National Assembly within ten days:

Provided that where any other person or authority has instituted criminal proceedings, nothing in this subsection shall prevent the withdrawal of those proceedings by or at the instance of that person or authority and with the leave of the court.

(4) For the purposes of this section, any appeal from any judgment in any criminal proceedings before any court, or any case

stated or question of law reserved to any other court for the purpose of any such proceedings, shall be deemed to be part of those proceedings.

(5) The Director of Public Prosecutions shall not exercise the power under subsection (2) (*c*) to discontinue proceedings with respect to any appeal by a person convicted in any criminal proceedings or to any case stated or question of law reserved at the instance of such a person.

Delegation of powers to prosecute
13 of 2001

100.—(1) Save as provided in section 99 (3), such powers as are vested in the office of the Director of Public Prosecutions may be exercised by the person appointed to that office or, subject to his or her general or special instructions or to an Act of Parliament, by—

(*a*) persons in the public service acting as his or her subordinate; or

(*b*) such other legally qualified persons on instructions from the Director of Public Prosecution.

(2) Notwithstanding subsection (1)—

(*a*) the person appointed to the office of Director of Public Prosecutions shall be accountable to the Legal Affairs Committee of the National Assembly for the exercise of such powers in his or her own behalf and those powers exercised on his or her behalf by subordinates in accordance with subsection (1); and

(*b*) an Act of Parliament shall prescribe restrictions relating to the exercise of powers under this section by any member of the Malaŵi Police Service.

Appointment of the Director of Public Prosecutions
6 of 1995
1 of 1997

101.—(1) Appointment to the office of Director of Public Prosecutions shall be made by the President and confirmed by the Public Appointments Committee subject to satisfying requirements as to competence of the person so appointed to perform the duties of that office and as to capacity of a person so appointed to pursue prosecutions independently.

1 of 1997

(2) In the exercise of the powers conferred on him or her by this Constitution or any other law, the Director of Public Prosecutions shall be subject only to the general or special directions of the Attorney General but shall otherwise act independent of the direction or control of any other authority or person and in strict accordance with the law:

Provided that the Director of Public Prosecutions or the Attorney General may be summoned by the Legal Affairs Committee of Parliament to appear before it to give account for the exercise of those powers.

Removal of the Director of Public Prosecutions 13 of 2001

102.—(1) The office of the Director of Public Prosecutions shall become vacant after the person holding that office has served five years or on his or her resignation or retirement whichever is sooner:

Provided that the person holding that office may be appointed for such further terms, not exceeding five years, as the President considers appropriate.

(2) A person holding the office of the Director of Public Prosecutions may be removed from the office by the President before the expiration of his or her term of office, if the President is satisfied that the person holding that office—

(*a*) is incompetent in the exercise of his or her duties;

(*b*) is compromised in the exercise of his or her duties to the extent that his or her ability to exercise his or her functions impartially is in serious question;

(*c*) is otherwise incapacitated; or

(*d*) has attained the age prescribed for retirement.

CHAPTER IX

The Judicature

The independence and jurisdiction of the courts and the judiciary

103.—(1) All courts and all persons presiding over those courts shall exercise their functions, powers and duties independent of the influence and direction of any other person or authority.

(2) The judiciary shall have jurisdiction over all issues of judicial nature and shall have exclusive authority to decide whether an issue is within its competence.

(3) There shall be no courts established of superior or concurrent jurisdiction with the Supreme Court of Appeal or High Court.

The Supreme Court of Appeal

104.—(1) There shall be a Supreme Court of Appeal for Malaŵi, which shall be a superior court of record and shall have such jurisdiction and powers as may be conferred on it by this Constitution or by any other law.

(2) The Supreme Court of Appeal shall be the highest appellate court and shall have jurisdiction to hear appeals from the High Court and such other courts and tribunals as an Act of Parliament may prescribe.

Composition of the Supreme Court of Appeal

105.—(1) The Justices of the Supreme Court of Appeal shall be—

(*a*) the Chief Justice;

(*b*) such number of other Justices of Appeals not being less than three, as may be prescribed by an Act of Parliament.

(2) When the Supreme Court of Appeal is determining any matter, other than an interlocutory matter, it shall be composed of an uneven number of Justices of Appeal, not being less than three.

(3) A Justice of the Supreme Court of Appeal may only be appointed in accordance with section 111.

Acting Justices of Appeal

106.—(1) If, by reason of a vacancy of office, or by reason of the operation of section 107, there are less than three serving Justices of Appeal, then the President may, on the recommendation of the Judicial Service Commission, appoint judges of the High Court, to serve as Acting Justices of Appeal.

(2) An Acting Justice of Appeal shall hold that office only until such time as he or she is appointed Chief Justice or Justice of Appeal in accordance with section 111, but he or she shall cease to serve as a Justice of Appeal if—

(*a*) there are more than three serving Justices of Appeal, either by reason of a vacancy or vacancies being filled in accordance with section 111 or where such Justices of Appeal or Acting Justices of Appeal as have been excused from serving on the Supreme Court are able to resume their duties in accordance with section 107;

(*b*) he or she is excused from his or her duties as a Justice of Appeal or an Acting Justice of Appeal in accordance with section 107.

Relief from duties
13 of 2001

107.—(1) A Justice of Appeal or Acting Justice of Appeal shall be excused from serving on the Supreme Court of Appeal only for such time as is reasonably necessary and only—

(*a*) by reason of that Justice of Appeal or Acting Justice of Appeal having been a party to proceedings in a lower court, the decision of which is being appealed to the Supreme Court of Appeal; or

(*b*) for such other reason that the Chief Justice or Judicial Service Commission considers would prevent him or her from performing the duties of his or her office.

(2) For the purposes of this section "a party to proceedings" shall include—

(*a*) any person exercising a judicial function in those proceedings;

(*b*) having been retained for the purposes of legally representing a party to the proceedings; or

(*c*) being retained for the purposes of legal advice to party to the proceedings.

The High Court

108.—(1) There shall be a High Court for the Republic which shall have unlimited original jurisdiction to hear and determine any civil or criminal proceedings under any law.

(2) The High Court shall have original jurisdiction to review any law, and any action or decision of the Government, for conformity with this Constitution, save as otherwise provided by this Constitution and shall have such other jurisdiction and powers as may be conferred on it by this Constitution or any other law.

Composition of the High Court

109. The Judges of the High Court shall be such number of judges, not being less than three, as may be prescribed by an Act of Parliament.

Subordinate courts
1 of 1997
13 of 2001

110.—(1) There shall be such courts, subordinate to the High Court, as may be prescribed by an Act of Parliament which shall be presided over by professional magistrates and lay magistrates.

(2) There shall be an Industrial Relations Court, subordinate to the High Court, which shall have original jurisdiction over labour disputes and such other issues relating to employment and shall have such composition and procedure as may be specified in an Act of Parliament.

1 of 1997

(3) Parliament may make provision for traditional or local courts presided over by lay persons or chiefs:

Provided that the jurisdiction of such courts shall be limited exclusively to civil cases at customary law and such minor common law and statutory offences as prescribed by an Act of Parliament.

13 of 2001

(4) Appeals from subordinate courts shall lie to the High Court, unless provided in this Constitution or by an Act of Parliament.

Appointment of the Judiciary
6 of 1995
1 of 1997
11 of 2010

111.—(1) The Chief Justice shall be appointed by the President and confirmed by the National Assembly by a majority of two-thirds of the members present and voting.

(2) All other judges shall be appointed by the President on the recommendation of the Judicial Service Commission.

11 of 2010

(3) Magistrates and persons appointed to other judicial offices shall be appointed by the Chief Justice on the recommendation of the Judicial Service Commission and shall hold office until the age of seventy unless sooner removed by the Chief Justice on the recommendation of the Judicial Service Commission.

(4) For the purposes of this Chapter "judicial office" means the office of—

(*a*) a Justice of Appeal or Acting Justice of Appeal;

(*b*) a Judge of the High Court or Acting Judge of the High Court;

(*c*) the Registrar or Deputy Registrar of the Supreme Court of Appeal or High Court;

(*d*) a magistrate of whatever grade; and

(*e*) a person presiding over a traditional or local court.

6 of 1995

(5) A person appointed to fill a vacancy in the office of a Judge shall not be required, on being so appointed, to serve in an acting capacity.

6 of 1995
11 of 2010

(6) For the purposes of this Chapter "judge" shall mean the Chief Justice, a Justice of Appeal, an Acting Justice of Appeal, a Judge of the High Court or an Acting Judge of the High Court.

Qualification of Judicial officers

112.—(1) A person shall not be qualified for appointment as a judge unless that person—

(*a*) is, or has been, a judge of a court having unlimited jurisdiction in criminal or civil proceedings; or

(*b*) is entitled to practise as a legal practitioner or an advocate or a solicitor in such a court and has been entitled so to practise for not less than ten years.

(2) For the purposes of this section, a person shall be regarded as entitled to practise as a legal practitioner or an advocate or a solicitor if that person has been called, enrolled or otherwise admitted as such and has not been subsequently disbarred or removed from the roll of legal practitioners or advocates or solicitors notwithstanding that the person—

(*a*) holds or acts in any office the holder of which is, by reason of his or her office, precluded from practising in court; or

(*b*) does not hold a practising certificate and has not satisfied any other like condition of his or her being permitted to practise.

Vacancy

113.—(1) If the office of Chief Justice is vacant, or if the Chief Justice for any reason will not perform the functions of his or her office, then, until a person has been appointed to and has assumed the functions of that office, or until the person holding that office has resumed those functions, as the case may be, those functions shall be performed by the most senior judge then sitting on the Supreme Court of Appeal, or in the event that a Supreme Court judge is not available, then, by the most senior judge sitting on the High Court, appointed by the President after consultation with the Judicial Service Commission.

(2) If any judicial office is vacant or if any judge is appointed to act as Chief Justice, or is for any reason unable to perform the functions of his or her office, the President, on the recommendations of

the Judicial Service Commission, may appoint a person qualified for appointment to that judicial office under this section to act in that office.

Remuneration
11 of 2010

114.—(1) The Chief Justice and all other holders of judicial office shall receive a salary and other employment benefits for their services and, on retirement, such pension, gratuity or other allowance as may, from time to time, be determined by the National Assembly.

11 of 2010

(2) The salary, any allowance and other employment benefits of a holder of judicial office shall not without his or her consent be reduced during his or her period of office and shall be increased at intervals so as to retain its original value and shall be a charge upon the Consolidated Fund.

The Judicial oath

115. A person holding judicial office shall not enter upon the duties of his or her office unless that officer has taken and subscribed the oath of allegiance for the due execution of his or her office in such manner and form as may be prescribed by an Act of Parliament.

The Judicial Service Commission

116. There shall be a Judicial Service Commission for the regulation of judicial officers and which shall have such jurisdiction and powers as may be conferred on it by this Constitution or, subject to this Constitution, by any Act of Parliament.

Composition

117. The Judicial Service Commission shall consist of—

(*a*) the Chief Justice who shall be the Chairman;

(*b*) the Chairman of the Civil Service Commission, or such other member as may for the time being be designated in that behalf by the Chairman of the Civil Service Commission;

(*c*) such Justice of Appeal or Judge as may for the time being be designated in that behalf by the President acting after consultation with the Chief Justice; and

(*d*) such legal practitioner and such magistrate as may for the time being be designated in that behalf by the President acting after consultation with the Chief Justice.

Powers of the Judicial Service Commission
13 of 2001

118. The Judicial Service Commission shall have the authority to—

(*a*) nominate persons for judicial office;

(*b*) exercise such disciplinary powers in relation to persons in judicial office as shall be prescribed by an Act of Parliament, subject to this Constitution;

(*c*) recommend, subject to section 119, the removal of a person from judicial office;

(*d*) subject to this Constitution, make such representations to the President as may be prescribed by an Act of Parliament; and

(*e*) exercise such other powers as are conferred on it by this Constitution or as are reasonably necessary for the performance of its duties:

Provided that nothing in this section shall prejudice the right of any person in judicial office who was the subject of any decision by the Judicial Service Commission to appeal to the High Court against that decision.

Tenure of office of Judges
11 of 2010

119.—(1) Subject to this section, a person holding the office of Judge shall vacate that office on attaining the age prescribed in subsection (6):

Provided that the President, after consultation with the Judicial Service Commission, may permit a Judge who has attained that age to continue in office for such period as may be necessary to enable him or her to deliver judgment or to do any other thing in relation to proceedings that were commenced before him or her before he or she attained that age.

(2) A person holding the office of Judge may be removed from office only for incompetence in the performance of the duties of his or her office or for misbehaviour, and shall not be so removed except in accordance with subsections (3) and (4).

11 of 2010

(3) The President may by an instrument under the Public Seal and in consultation with the Judicial Service Commission remove from office any Judge where a motion praying for his or her removal on the ground of incompetence in the performance of the duties of his or her office or misbehaviour has been—

(*a*) debated in the National Assembly;

(*b*) passed by a majority of the votes of all the members of the Assembly; and

(*c*) submitted to the President as a petition for the removal of the judge concerned:

Provided that the procedure for the removal of a judge shall be in accordance with the principles of natural justice.

11 of 2010

(4) Where notice of intention to introduce before the National Assembly a motion praying for the removal of a Judge from his or her office has been lodged in the office of the Speaker, the President may, where after consultation with the Judicial Service Commission he or she is satisfied that it is in the public interest so to do, suspend the Judge from performing the duties of his or her office.

(5) The suspension of a Judge under subsection (4) may at any time be revoked by the President, after consultation with the Judicial Service Commission, and shall in any case cease to have effect where the motion is withdrawn before being debated in the National Assembly or, upon being debated, is not passed by a majority thereof.

(6) The prescribed age for purposes of subsection (1) shall be the age of sixty-five years or such other age as may be prescribed by Parliament: 11 of 2010

Provided that a law made by Parliament, to the extent that it alters the age at which a Judge shall vacate his or her office, shall not have effect in relation to a Judge after his or her appointment unless he or she consents to its having effect.

(7) Where the President considers it desirable in the public interest so to do, he or she may, with the consent of the person concerned, assign a person holding the office of Judge to any other office in the public service for such period as the President may determine during which that person may cease to perform the duties of his or her office as Judge; but so, however, that— 11 of 2010

(*a*) such assignment shall not be regarded as removal of that person under subsection (2) from his or her office as Judge;

(*b*) the resumption by that person of the duties of his or her office as Judge shall not require formal re-appointment;

(*c*) the retirement age of that person shall be that prescribed for Judges under subsection (1).

CHAPTER X

The Ombudsman

The office of the Ombudsman

120. There shall be a public office known as the office of the Ombudsman which shall have such powers, functions and responsibilities as are conferred upon that office by this Constitution and any other law.

Independence of the Ombudsman 13 of 2001

121. In the exercise of his or her powers, functions and duties the Ombudsman shall be completely independent of the interference or direction of any other person or authority, but shall otherwise be answerable to Parliament.

Appointment of Ombudsman 13 of 2001

122.—(1) Nominations for appointment to the office of Ombudsman shall be received from the public by way of a public advertisement placed by the Clerk to the National Assembly and the successful candidate shall be appointed by the Public Appointments Committee in accordance with the requirements of this section.

(2) The person appointed to the office of Ombudsman shall—

(*a*) have sufficient knowledge of the law;

(*b*) be publicly regarded as a person who can make impartial judgments;

(*c*) have sufficient knowledge of the workings of Government;

(*d*) not have had any criminal convictions and not have been a bankrupt;

(*e*) be otherwise competent and capable of performing the duties of his or her office;

(*f*) not be the President, Vice-President, a Minister or Deputy Minister, a serving public officer in any public office other than that of Ombudsman or a member of Parliament; and

(*g*) not hold any other public office unless otherwise provided for in this Constitution.

Functions and powers

123.—(1) The office of the Ombudsman may investigate any and all cases where it is alleged that a person has suffered injustice and it does not appear that there is any remedy reasonably available by way of proceedings in a court or by way of appeal from a court or where there is no other practicable remedy.

(2) Notwithstanding subsection (1), the powers of the office of the Ombudsman under this section shall not oust the jurisdiction of the courts and the decisions and exercise of powers by the Ombudsman shall be reviewable by the High Court on the application of any person with sufficient interest in a case the Ombudsman has determined.

Powers of investigation

124. The Ombudsman shall have full powers to—

(*a*) subpoena the attendance of any person who the Ombudsman reasonably believes to be connected with any investigation being undertaken by that office;

(*b*) require the immediate disclosure of information and the production of documents of any kind, from any public body;

(*c*) question any person who the Ombudsman reasonably believes to be connected with an investigation that is being undertaken by that office; and

(*d*) initiate contempt proceedings before the High Court against any person or authority in connexion with non-compliance with the powers conferred in this section.

Privileges and immunities of the Ombudsman

125. A person holding the office of Ombudsman shall—

(*a*) be provided with the necessary resources to discharge the functions of that office;

(*b*) be entitled to the fullest co-operation of any person or authority of whom he or she requests assistance in connexion with the duties of that office;

(*c*) enjoy, with respect to his or her official functions, similar protection and privileges in so far as they are appropriate as are enjoyed by members of Parliament; and

(*d*) be paid a salary to be charged to the Consolidated Fund and which shall not be reduced without the consent of the office holder.

Remedies 6 of 1995

126. Where the investigations of the Ombudsman reveal sufficient evidence to satisfy him or her that an injustice has been done, the Ombudsman shall—

(*a*) direct that appropriate administrative action be taken to redress the grievance;

(*b*) cause the appropriate authority to ensure that there are, in future, reasonably practicable remedies to redress a grievance; and

(*c*) refer a case to the Director of Public Prosecutions with a recommendation for prosecution, and, in the event of a refusal by the Director of Public Prosecutions to proceed with the case, the Ombudsman shall have the power to require reasons for the refusal.

Reports of the Ombudsman

127. The Ombudsman shall lay, each year, before the National Assembly a report which shall include a record of all complaints and applications to the office of Ombudsman, a record of the exercise of powers in relation to applications, of the remedies afforded to applicants in respect of grievances and shall also include a record of the general recommendations of the Ombudsman in respect of grievances.

Removal from office

128.—(1) A person appointed to the office of Ombudsman shall serve a term of not more than five years, provided that the Public Appointments Committee may appoint that person for such further terms of five years as it considers appropriate unless that Committee sooner terminates that appointment in accordance with this section.

(2) A person appointed to the office of Ombudsman shall not be removed by the Public Appointments Committee, except—

(*a*) in such circumstances where had that person not been Ombudsman, that person would have been disqualified from being appointed;

(*b*) for gross misconduct; or

(*c*) on reaching the age of sixty-five years.

CHAPTER XI

Human Rights Commission

Establishment of the Human Rights Commission

129. There shall be a Human Rights Commission the primary functions of which shall be the protection and investigation of violations of the rights accorded by this Constitution or any other law.

Powers
13 of 2001

130. The Human Rights Commission shall, with respect to the applications of an individual or class of persons, or on its own motion, have such powers of investigation and recommendation as are reasonably necessary for the effective promotion of the rights conferred by or under this Constitution, or any other written law but shall not exercise a judicial or legislative function and shall not be given powers so to do.

Composition
13 of 2001

131.—(1) The Human Rights Commission shall consist of—

(*a*) the person for the time being holding the office of Law Commissioner;

(*b*) the person for the time being holding the position of Ombudsman:

Provided that, save as prescribed by this section, no other member of the Human Rights Commission shall be a person in any public office or the President or Vice-President, a Minister or Deputy Minister or a member of Parliament.

(*c*) such persons as shall be nominated from time to time in that behalf by those organizations that are considered in the absolute discretion of both the Law Commissioner and the Ombudsman to be reputable organizations representative of Malaŵian Society and that are wholly or largely concerned with the promotion of the rights and freedoms guaranteed by this Constitution or any other written law.

(2) The Law Commissioner and the Ombudsman shall jointly refer the names of persons nominated under paragraph (*c*) of subsection (1) to the President who shall formally appoint such persons as members of the Human Rights Commission.

(3) A member of the Human Rights Commission, other than a member by virtue of paragraph (*a*) or (*b*) of subsection (1), shall, save as otherwise provided by an Act of Parliament, continue to be

a member of the Commission until such time as he or she is removed from office on the grounds of—

(*a*) incompetence;

(*b*) incapacity; or

(*c*) in circumstances where the member is compromised to the extent that his or her ability to impartially exercise the duties of his or her office is seriously in question.

CHAPTER XII

Law Commission

Establishment of the Law Commission 13 of 2001

132. There shall be a Law Commission which shall have the power to review and make recommendations relating to the repeal and amendment of laws and which shall have such powers and functions as are conferred on it by this Constitution and any Act of Parliament.

Composition 13 of 2001

133. The Law Commission shall consist of—

(*a*) a salaried Law Commissioner who shall be appointed by the President on the recommendation of the Judicial Service Commission and who shall be a legal practitioner or a person qualified to be a judge; and

(*b*) such number of other persons as the Law Commissioner in consultation with the Judicial Service Commission may appoint from time to time and for such time as they are required on account of their expert knowledge of a matter of law being then under review by the Law Commissioner, or on account of their expert knowledge of other matters relating to a legal issue being then under review.

Removal of the Law Commissioner 13 of 2001

134.—(1) The President may remove the Law Commissioner or other person appointed to the Law Commission on the recommendation of the Judicial Service Commission if the Judicial Service Commission is satisfied that the Law Commissioner or such other person appointed to the Law Commission, as the case may be, is not competent or otherwise incapacitated so as to be unable to perform the functions of his or her office.

13 of 2001

(2) The Law Commissioner shall serve a term of not more than five years but he or she may be appointed for such further term or terms not exceeding five years as the President shall, on the recommendation of the Judicial Service Commission, determine.

Powers and functions of the Law Commissioner

135. The Law Commission shall have the powers—

(*a*) to review and make recommendations regarding any matter pertaining to the laws of Malaŵi and their conformity with this Constitution and applicable international law;

(*b*) to review and make recommendations regarding any matter pertaining to this Constitution;

(*c*) to receive any submissions from any person or body regarding the laws of Malaŵi or this Constitution; and

(*d*) to report its findings and recommendations to the Minister for the time being responsible for Justice who shall publish any such report and lay it before Parliament.

Independence of the Law Commission

136. The Law Commission shall exercise its functions and powers independent of the direction or interference of any other person or authority.

CHAPTER XIII

National Compensation Tribunal

The National Compensation Tribunal

137. There shall be a National Compensation Tribunal which shall entertain claims with respect to alleged criminal and civil liability of the Government of Malaŵi which was in power before the appointed day and which shall have such powers and functions as are conferred on it by this Constitution and an Act of Parliament.

Exclusive original jurisdiction 1 of 1997

138.—(1) No person shall institute proceedings against any Government in power after the commencement of this Constitution in respect of any alleged criminal or civil liability of the Government of Malaŵi in power before the commencement of this Constitution arising from abuse of power or office, save by application to the National Compensation Tribunal, which shall hear cases initiated by persons with sufficient interest.

(2) The National Compensation Tribunal shall have all powers of investigation necessary to establish the facts of any case before it.

1 of 1997

(3) Notwithstanding subsection (1), the National Compensation Tribunal shall have the power to remit a case or a question of law for determination by the ordinary courts where the National Compensation Tribunal is satisfied that the Tribunal does not have jurisdiction, or where the Tribunal feels it is in the interest of justice so to do.

Composition 1 of 1997

139.—(1) There shall be a Chairman of the National Compensation Tribunal who shall be a judge and who shall—

(*a*) be appointed in that behalf by the Chief Justice on the nomination of the Judicial Service Commission; and

(*b*) hold the office of Chairman of the National Compensation Tribunal for not more than three years or until such time as that person ceases to be a judge whichever is sooner.

(2) The Chairman of the National Compensation Tribunal shall be assisted by such additional members and by such assessors and other experts as may be appointed in accordance with the provisions of an Act of Parliament.

Procedure
6 of 1995
1 of 1997

140.—(1) The rules of procedure of the National Compensation Tribunal and other matters of policy or principle concerning its powers and functions shall be prescribed by or under an Act of Parliament and shall be such as shall ensure expeditious disposal of cases, which may include an informal preliminary arbitration procedure.

1 of 1997

(2) Notwithstanding subsection (1), the procedures of the National Compensation Tribunal shall—

(*a*) conform to the standards of proof required for a normal civil court, unless the National Compensation Tribunal otherwise determines in the interest of justice in any particular case or class of cases; and

(*b*) conform with the standards of justice set out in this Constitution and the principles of natural justice.

Protection of third party rights
1 of 1997

141. Where a third party disputes a claim and has an interest in money or property that is the subject of a claim before the National Compensation Tribunal—

(*a*) that party shall be given adequate notification;

(*b*) that party shall be entitled to legal representation; and

(*c*) if the Chairman of the National Compensation Tribunal is satisfied that the person is of insufficient means to retain legal counsel, legal assistance shall be provided at the expense of the State.

Jurisdiction of ordinary courts

142.—(1) The High Court shall not be excluded from hearing applications for judicial review of the decisions of the Tribunal nor shall a determination by the Tribunal be a bar to further criminal or civil proceedings in an appropriate court against a private person for the duration of the existence of the fund.

(2) A "private person" for the purposes of this section means a person who was before the commencement of this Constitution a member of the Government or of an agent of the Government, who would, under the laws then in force, have been personally liable for an act that is the subject of the criminal or civil proceedings.

Power to waive statutory limitations

143. For the purposes of pursuing claims before the National Compensation Tribunal and criminal and civil proceedings against a private person within the meaning of section 142 (2), any statutory time limitation may be waived by the Tribunal or by a court if it seems to the Tribunal or the court equitable to do so.

National Compensation Fund
1 of 1997

144.—(1) There shall be a National Compensation Fund which shall be a trust vested in the Republic.

(2) The National Compensation Fund shall be used exclusively for the purposes assigned to it by this Constitution and shall—

(*a*) be a trust the purpose of which shall be for the exclusive benefit of those applicants to the National Compensation Tribunal who have been granted any award, gratuity, pension or other form of reparation according to the principles, procedures and rules of the National Compensation Tribunal;

(*b*) be held in a separate account within the Reserve Bank of Malaŵi; and

(*c*) have all of its reports, financial statements and information relating to its operation published and maintained for public scrutiny.

(3) Subject to this Chapter, the only charges on, or disbursements to be made from, the National Compensation Fund shall be by—

(*a*) the National Compensation Tribunal; or

(*b*) the trustees of the Fund in so far as such disbursements or charges are necessary and prudent for the efficient operation of the Fund in accordance with its purpose as declared in this subsection.

(4) There shall be not less than four trustees of the National Compensation Fund who shall be appointed from time to time by the Public Appointments Committee on the recommendation of the National Compensation Tribunal.

(5) A Trustee shall hold office for the duration of the Fund unless and only in such circumstances as that trustee is removed by the Public Appointments Committee on the grounds of—

(*a*) incompetence;

(*b*) incapacity; or

(*c*) being compromised in the exercise of his or her functions to the extent that his or her financial probity is in serious question.

(6) Trustees of the National Compensation Fund shall exercise their functions independent of any direction or interference by any body or authority, save as is provided by this section.

(7) The Auditor General shall make an annual report, to be laid before the National Assembly, on the conduct and status of the Fund which shall provide guidance to the National Assembly for voting an appropriation for the purposes of the National Compensation Fund.

(8) An appropriation for the purposes of the National Compensation Fund shall be laid before the National Assembly by the Minister responsible for Finance before the beginning, and with respect to, every financial year during the life of the Fund.

(9) With respect to any financial year, the Tribunal shall prescribe a period not being more than six months after the commencement of that financial year, after which the Tribunal shall not receive applications for compensation within that financial year from the National Compensation Fund.

Winding-up of the National Compensation Fund

145.—(1) The National Compensation Fund shall cease to be charged with new claims for compensation not later than ten years after the commencement of this Constitution at which time the National Compensation Tribunal shall dissolve.

(2) If, with respect to any year within the period prescribed in subsection (1), and after the second year of it coming into existence, less than ten applications are made to the National Compensation Tribunal, then the Chairman of the Tribunal may direct the Minister responsible for Finance to lay before the National Assembly a Bill—

(*a*) to dissolve the National Compensation Tribunal; and

(*b*) to confer on the High Court jurisdiction equivalent to that of the National Compensation Tribunal to determine claims against the Government within the meaning of this Chapter.

(3) Where the National Compensation Tribunal has been dissolved, for the remaining duration of the period prescribed in subsection (1) the uncommitted residue of the Fund shall remain a separate fund within the accounts of the Consolidated Fund which shall be drawn upon by the Minister responsible for Finance in respect of awards made by the High Court in relation to claims that would otherwise have been determined by the National Compensation Tribunal.

(4) The National Compensation Fund shall continue until there is no longer a committed residue.

CHAPTER XIV

Local Government

Local Government authorities
6 of 1995
13 of 2001

146.—(1) There shall be local government authorities which shall have such powers as are vested in them by this Constitution and an Act of Parliament.

(2) Local government authorities shall be responsible for the representation of the people over whom they have jurisdiction, for their welfare and shall have responsibility for—

(*a*) the promotion of infrastructural and economic development, through the formulation and execution of local development plans and the encouragement of business enterprise;

(*b*) the presentation to central government authorities of local development plans and the promotion of the awareness of local issues to national government;

(*c*) the consolidation and promotion of local democratic institutions and democratic participation; and

(*d*) such other functions, including the registration of births and deaths and participation in the delivery of essential and local services, as may be prescribed by any Act of Parliament.

(3) Parliament shall, where possible, provide that issues of local policy and administration be decided on at local levels under the supervision of local government authorities.

6 of 1995

(4) Parliament shall ensure that the composition of local government authorities includes a prescribed number of persons serving as Chiefs in the area of jurisdiction of such authorities and affords equal representation in respect of each ward within its jurisdiction, and that the boundaries of each ward shall be designated by the Electoral Commission in accordance with section 148.

Composition of local government authorities
6 of 1995
1 of 1997
13 of 2001
8 of 2010

147.—(1) Local government authorities shall consist of local councillors who shall be elected by free, secret and equal suffrage by the registered voters in the area over which that local government authority is to have jurisdiction and the election shall be organized, conducted and supervised by the Electoral Commission.

(2) The offices of local government shall include mayors in cities and municipalities and local councillors in all areas and they shall have such functions, powers and responsibilities as shall be laid down by an Act of Parliament.

(3) There shall be, in respect of each local government authority, such administrative personnel, subordinate to local councillors, as shall be required to execute and administer the lawful resolutions and policies of those councillors.

(4) There shall be a Local Government Service Commission, the composition, functions, powers and procedures of which shall be provided for by an Act of Parliament.

(5) Local government elections shall take place concurrently with general elections for members of the National Assembly as prescribed under section 67 (1), and local government authorities shall stand dissolved on the 20th day of March in the fifth year after their election. 13 of 2001 8 of 2010 25 of 2012

148.—(1) Subject to the recommendations of the Electoral Commission, and in accordance with the principles laid down in this Constitution and any other law relating to national elections, there shall be drawn boundaries for local government authorities. Jurisdiction of local government authorities

(2) Any boundaries determining the territorial jurisdiction of any local government authority shall be geographical only, without reference to race, colour, tribe or ethnic origin of the inhabitants of the area.

149.—(1) There shall be a National Local Government Finance Committee which shall hear submissions from each and every local government authority in respect of estimates of expenditure and requests for special disbursements and shall have such other powers and functions as may be conferred on it by this Constitution or an Act of Parliament. National Local Government Finance Committee, its establishment, powers and functions 13 of 2001

(2) The National Local Government Finance Committee shall have the power to—

(*a*) receive all estimates of revenue and all projected budgets of all local government authorities;

(*b*) examine and supervise accounts of local government authorities, in accordance with any Act of Parliament, subject to the recommendations of the Auditor General; 13 of 2001

(*c*) make recommendations relating to the distribution of funds allocated to local government authorities, and vary the amount payable from time to time and area to area according to, and with sole consideration of, economic, geographic and demographic variables;

(*d*) prepare a consolidated budget for all local government authorities and estimates after consultation with the Treasury, which shall be presented to the National Assembly for information purposes by the Minister responsible for Local Government before the commencement of each financial year; and

(*e*) make application to that Minister for supplementary funds where necessary.

13 of 2001

(3) Unless otherwise provided by an Act of Parliament, the accounts of local government authorities shall be audited by an auditor appointed by the local government authority with approval of the National Local Government Finance Committee.

Duty to provide adequate resources for local government functions
13 of 2001

150. The Government shall be under a duty to ensure that there is adequate provision of resources necessary for the proper exercise of local government functions and to this effect shall allow a local government authority to keep such proportion of the revenue collected by that authority as shall be prescribed by the National Local Government Finance Committee; and any surplus of the revenue shall be paid into the Consolidated Fund, unless otherwise provided by an Act of Parliament.

Composition of the National Local Government Finance Committee
13 of 2001

151.—(1) The members of the National Local Government Finance Committee shall be—

(*a*) one person who shall be nominated from time to time in that behalf by a caucus of local government authorities;

(*b*) the Principal Secretary for Local Government;

(*c*) one person who is a professionally qualified and practising accountant appointed by the Public Appointments Committee on the recommendation of the Minister responsible for Local Government;

13 of 2001

(*d*) the Chairperson of the Civil Service Commission or such member of that Commission as shall be nominated by the Chairperson from time to time in that behalf;

(*e*) one person who shall be nominated from time to time in that behalf by the Electoral Commission; and

13 of 2001

(*f*) the Principal Secretary responsible for finance or his or her senior representative.

(2) Except for persons who are or become members of the Local Government Finance Committee under subsection (1) (*b*), (*d*), (*e*), or (*f*), the term of office of a member of the National Local Government Finance Committee shall expire—

(*a*) three years after the date that member was first appointed; or

(*b*) on removal by the President on the recommendation of the Public Appointments Committee, but no member shall be

recommended for removal under this paragraph unless the Public Appointments Committee is satisfied that he or she is—

(i) not competent to exercise the duties of that office;

(ii) compromised to the extent that his or her financial probity is in serious question; or

(iii) otherwise incapacitated.

(3) For the purposes of subsection (1) (*a*), the Minister responsible for Local Government shall convene a caucus of local government authorities within thirty days of the election of those authorities. 13 of 2001

CHAPTER XV

The Police

152. There shall be a Malaŵi Police Service which shall be constituted by an Act of Parliament that shall specify the various divisions and functions of the Malaŵi Police Service. The Malaŵi Police Service 13 of 2001

153.—(1) The Malaŵi Police Service shall be an independent organ of the executive which shall be there to provide for the protection of public safety and the rights of persons in Malaŵi according to the prescriptions of this Constitution and any other law. Powers and functions of the Police 13 of 2001

(2) The Malaŵi Police Service shall enjoy only such powers as are necessary for the protection of rights under this Constitution and the maintenance of public safety and public order in accordance with the prescriptions of this Constitution and the law.

(3) In the exercise of their functions, members of the Malaŵi Police Service shall be subject to the direction of the courts and shall be bound by the orders of such courts.

(4) Political responsibility for the Malaŵi Police Service shall vest in a Minister of the Government who shall ensure that the discipline and conduct of the Malaŵi Police Service accords with the prescriptions of this Constitution and any other law.

154.—(1) There shall be an Inspector General of Police who shall be the Head of the Malaŵi Police Service whose office shall be a public office and shall be accountable to the Minister responsible for the Police. The Inspector General of Police 6 of 1995 13 of 2001

(2) The Inspector General of Police shall be appointed by the President and confirmed by the National Assembly by a majority of the members present and voting, but the Public Appointments Committee may at any time inquire as to the competence of the person so appointed to carry out the duties of that office and as to such other questions as may have direct bearing on the performance of the duties of that office.

(3) The office of the Inspector General of Police shall become vacant after the person holding that office has served for five years, but the person holding that office may be nominated for such further terms, not exceeding five years, as the President may deem appropriate.

(4) A person holding the office of Inspector General of Police shall be subject to removal by the President only by reason of that person being—

(*a*) incompetent in the exercise of his or her duties;

(*b*) compromised in the exercise of his or her duties to the extent that his or her capacity to exercise his or her powers impartially is in serious question;

(*c*) otherwise incapacitated; and

(*d*) over the age prescribed for retirement.

(5) In the exercise of the duties and powers vested in the office of the Inspector General of Police by this Constitution or any other law, the person holding that office shall not be subject to the direction or control of any other person or authority, other than as prescribed in this Constitution or an Act of Parliament.

(6) The Inspector General of Police may delegate such powers as are conferred on him or her by this Constitution or by an Act of Parliament to such other persons or authorities, being part of the Malaŵi Police Service, as he or she may consider appropriate.

(7) With respect to any powers under this section, the Inspector General of Police shall notify the Police Service Commission of any delegation and the Police Service Commission may prescribe any regulations it considers appropriate in relation to the manner and form of reports that the person exercising that power shall make and shall specify such restrictions as may be required to ensure the proper exercise of the powers delegated under this section in accordance with the law.

The Police Service Commission

155.—(1) There shall be a Police Service Commission with such powers and functions as are conferred upon it by this Constitution or an Act of Parliament.

(2) Subject to this Constitution, power to appoint persons to hold or act in offices in the Malaŵi Police Service other than that of Inspector General of Police, including the power to confirm appointments, and to remove such persons from office shall vest in the Police Service Commission.

(3) The Police Service Commission shall, subject to this Constitution and any general directions of an Act of Parliament, exercise disciplinary control over persons holding or acting in any office to which this section applies.

156.—(1) The Police Service Commission may, subject to such conditions as may be laid down by an Act of Parliament, delegate powers conferred by this Constitution or an Act of Parliament by directions in writing to any member of the Commission or to any public officer or public body.

Power to delegate
13 of 2001

(2) Where any person or body may from time to time exercise powers under this section on behalf of the Police Service Commission in accordance with subsection (1), the Police Service Commission shall—

(*a*) require that person or body to furnish reports in such manner or form as the Commission may prescribe in the directions which delegated those powers; and

(*b*) hear such complaints or appeals from persons with sufficient interest relating to the exercise of powers delegated under this section and shall have the authority to—

(i) quash the decision of a person or body exercising such powers;

(ii) exercise such disciplinary powers in relation to such person or body, subject to the conditions laid down by an Act of Parliament; and

(iii) revoke directions delegating powers to any person or body:

Provided that nothing in this section shall prejudice the right of any person who is the subject of a decision made by or on behalf of the Police Service Commission to appeal to the High Court or the right of any person with sufficient interest in such a decision to petition the High Court for judicial review of that decision.

157.—(1) The Police Service Commission shall consist of the following members—

Composition
13 of 2001

(*a*) such Justice of Appeal or Judge as may for the time being be nominated in that behalf by the Judicial Service Commission and who shall be the Chairman of the Police Service Commission;

(*b*) such member of the Civil Service Commission as may for the time being be nominated in that behalf by the Civil Service Commission;

(*c*) the Inspector General of Police or such senior officer in the Malaŵi Police Service as the Inspector General may for the time being nominate in that behalf;

(*d*) the Ombudsman; and

(*e*) such legal practitioner as may for the time being be nominated in that behalf by the President and confirmed by the Public Appointments Committee.

(2) Any three members of the Police Service Commission shall form a quorum.

13 of 2001

(3) A person shall not be qualified for appointment as a member of the Police Service Commission if he or she is President, Vice-President, a Minister or Deputy Minister, a Member of Parliament or, save as provided in subsection (1) (*c*), a police officer.

(4) Subject to this section, the office of a member of the Police Service Commission shall become vacant—

(*a*) at the expiration of three years from the date of that person's appointment, unless reappointed to a new three year term:

Provided that this paragraph shall not apply where the member in question still holds the office of Inspector General of Police or of Ombudsman, or other office in which behalf that person was appointed to the Police Service Commission; or

(*b*) if any circumstances arise that, if that person were not a member of the Police Service Commission, would cause that person to be disqualified from appointment as such.

Political independence of the Malaŵi Police Service
13 of 2001

158.—(1) Members of the Malaŵi Police Service shall ensure that they exercise their functions, powers and duties as impartial servants of the general public and the Government of the day.

(2) No member of the Malaŵi Police Service shall be permitted to participate directly in political activities:

Provided that—

(*a*) any member of the Malaŵi Police Service of Malaŵi shall have the right to resign in order to participate directly in political activities;

(*b*) nothing in this section shall be deemed to prejudice any member of the Malaŵi Police Service having the absolute right to vote in accordance with this Constitution; and

(*c*) nothing in this subsection shall prejudice the right of any member of the Malaŵi Police Service to hold office in or be a member of any association, group or professional body, the purposes of which are principally to represent their members interests in relation to the terms and conditions of employment or

the general carrying on of any profession or trade or the promotion of any interest, not pertaining directly to the promotion of a political party, campaign or philosophy or otherwise inconsistent with the functions of the Malaŵi Police Service.

(3) No government or political party shall cause any member of the Malaŵi Police Service acting in that behalf to exercise functions, powers or duties for the purposes of promoting or undermining the interests or affairs of any political party or individual member of that party, nor shall any member of the Malaŵi Police Service, acting in that behalf, promote or undermine any party or individual member of that party.

(4) No government or political party shall cause any member of the Malaŵi Police Service, acting in that behalf, to deploy resources, whether they be financial, material or human resources, for the purposes of promoting or undermining any political party or member of a political party or interest group, nor shall any member of the Malaŵi Police Service, acting in that behalf, cause such deployment:

Provided that nothing in this section shall be construed as derogating from the duty of the Police to uphold the rights and afford protection to all political parties, persons and organizations equally, without fear or favour, in accordance with this Constitution and subject to any law.

(5) Any member of the Malaŵi Police Service who contravenes this section shall be subject to such disciplinary measures as the Police Service Commission considers appropriate, taking into account the gravity and circumstances of the contravention, subject to such regulations as may be prescribed by an Act of Parliament.

(6) Where the Police Service Commission is satisfied that a government or political party or member of a political party has acted in contravention of subsection (3) or subsection (4), the Police Service Commission may initiate proceedings before the High Court for punitive damages and, in the case of a contravention of subsection (4), for the recovery of such resources or sums equivalent to the benefit of the enjoyment of those resources from the government, or political party or member of a political party who has so benefitted, as the case may be.

CHAPTER XVI

The Defence Force

The Defence Force of Malaŵi
13 of 2001
4 of 2004

159. There shall be the Defence Force of Malaŵi which shall be the only military force constituted in Malaŵi and which shall be regulated in accordance with this Constitution and any other written law.

Constitutional position of the Defence Force of Malaŵi
4 of 2004

160.—(1) The Defence Force of Malaŵi shall operate at all times under the direction of those civil authorities in whom this Constitution vests such power, and shall—

(*a*) uphold the sovereignty and territorial integrity of the Republic and guard against threats to the safety of its citizens by force of arms;

(*b*) uphold and protect the constitutional order in the Republic and assist the civil authorities in the proper exercise of their functions under this Constitution;

(*c*) provide technical expertise and resources to assist the civilian authorities in the maintenance of essential services in times of emergency; and

(*d*) perform such other duties outside the territory of Malaŵi as may be required of them by any treaty entered into by Malaŵi in accordance with the prescriptions of international law, but no part of the Defence Force of Malaŵi shall be employed outside the territory of the Republic for more than ninety days without the approval of the National Assembly.

(2) No person or authority may direct or deploy the Defence Force of Malaŵi to act in contravention of this Constitution.

Responsibility for the Defence Force of Malaŵi
13 of 2001
4 of 2004

161.—(1) The ultimate responsibility for the Defence Force of Malaŵi shall vest in the President as Commander-in-Chief.

(2) There shall be a Commander of the Defence Force of Malaŵi who shall be appointed by the President.

(3) The Commander of the Defence Force of Malaŵi shall, in the day to day management of the Defence Force, be accountable to the Minister responsible for defence in whom shall vest political responsibility for the Defence Force of Malaŵi.

(4) Any power conferred on the President by virtue of this Chapter shall only be exercised on the recommendation of Defence Council which shall be constituted under an Act of Parliament and which shall include the Minister responsible for Defence and the High Command of the Defence Force of Malaŵi and which shall have—

(*a*) the power to determine the operational use of the Defence Force of Malaŵi;

(*b*) the power to appoint and remove from office senior officers and other members of the Defence Force of Malaŵi; and

(*c*) such other powers and duties as may be prescribed by an Act of Parliament.

(5) All powers conferred by subsection (4) shall be exercised subject to the scrutiny of a Defence and Security Committee of the National Assembly established by section 162.

(6) The Defence Council may, by directions in writing and subject to such conditions as may be laid down by an Act of Parliament or as are adopted by the National Assembly on the recommendation of the Defence and Security Committee of the National Assembly, delegate to any member of the Defence Force of Malaŵi any of the powers conferred on the Defence Council by an Act of Parliament.

(7) Where it is necessary to deploy any part of the Defence Force of Malaŵi to counter a threat to Malaŵi or to any of its allies, the President shall declare a state of national defence and shall inform the National Assembly promptly and in appropriate detail.

(8) If a declaration of a state of national defence made under subsection (7) is not approved by the National Assembly within seven days after the declaration, the state of national defence shall lapse immediately after fourteen days.

(9) Where the National Assembly is not sitting at the time of the declaration of a state of national defence, the President shall summon an extraordinary meeting of the National Assembly within seven days to inform the National Assembly of the declaration.

The Defence and Security Committee of the National Assembly

162.—(1) There shall be a Defence and Security Committee of the National Assembly which shall represent proportionally the political parties having seats in the National Assembly, and shall have such powers and functions as may be conferred upon it by this Constitution and an Act of Parliament.

(2) The Defence and Security Committee may be assembled at any time, notwithstanding that Parliament stands adjourned and, where Parliament stands dissolved, shall continue to be constituted until such time as a new session of Parliament begins and a new Defence and Security Committee is appointed but no member shall otherwise hold office for more than one year.

CHAPTER XVII

Prisons

The Malaŵi Prisons Service
13 of 2001

163. There shall be the Malaŵi Prisons Service which shall consist of all penal institutions, labour camps, special and secure schools and other institutions that are used to house, detain and rehabilitate persons sentenced to imprisonment in whatever form such imprisonment may take, but shall not include holding cells in police stations.

The Chief Commissioner for Prisons

164.—(1) There shall be a Chief Commissioner for Prisons who shall be responsible for the Malaŵi Prisons Service and whose office shall be a public office with such powers, functions and duties as are conferred on it by this Constitution and an Act of Parliament.

(2) The principal responsibilities of the Chief Commissioner for Prisons shall be to ensure the proper and efficient administration of the penal institutions that comprise the Malaŵi Prisons Service, subject to and in accordance with—

(*a*) the protection of rights and other provisions of this Constitution or any other law;

(*b*) the recommendations of the Prisons Service Commission and the Inspectorate of Prisons in accordance with an Act of Parliament; and

(*c*) the directions of the courts in relation to persons convicted by the courts to a sentence of incarceration or penal servitude within a penal institution, or incarcerated by the courts pending execution of the sentence of the courts, or awaiting sentence by the courts or otherwise on remand to the custody of the Prisons Service or being held on behalf of the Malaŵi Police Service in connexion with any law.

(3) Save as provided in this section, in the exercise of the duties and powers vested in the office of the Chief Commissioner for Prisons by this Constitution or any other law, the person holding that office shall not be subject to the direction or control of any other person or authority, other than as prescribed in this Constitution and an Act of Parliament.

Power to delegate

165.—(1) The Chief Commissioner for Prisons may delegate the powers conferred on him or her by this Constitution or an Act of Parliament to such persons or authorities, being part of the Malaŵi Prisons Service, as he or she considers appropriate.

(2) With respect to the delegation of powers in subsection (1)—

(*a*) the Chief Commissioner for Prisons shall notify the Prisons Service Commission and the Inspectorate of Prisons of any such delegation; and

(*b*) the Prisons Service Commission or, as the case may be, the Inspectorate of Prisons may—

(i) prescribe any regulations it considers appropriate in relation to the manner and form of reports that the person or authority exercising that power shall make; and

(ii) shall prescribe such restrictions as may be required to ensure the proper exercise of powers delegated under this section.

Appointment of the Chief Commissioner for Prisons

166.—(1) The Chief Commissioner for Prisons shall be appointed by the President, but the Public Appointments Committee may at any time inquire as to the competence of the person so appointed to carry out the duties of that office and as to such other questions as may have direct bearing on the performance of the duties of that office.

(2) The office of the Chief Commissioner for Prisons shall become vacant after the person holding that office has served for five years, provided that the person holding that office may be appointed for such further term, not exceeding five years, as the President considers appropriate.

(3) A person holding the office of Chief Commissioner for Prisons shall be subject to removal by the President only by reason of that person being—

(*a*) incompetent in the exercise of his or her duties;

(*b*) compromised in the exercise of his or her duties to the extent that his or her capacity to impartially exercise the duties of that office is in serious question;

(*c*) otherwise incapacitated; or

(*d*) over the age prescribed for retirement.

The Prisons Service Commission 13 of 2001

167.—(1) There shall be a Prisons Service Commission with the powers and functions conferred on it by this Constitution and by an Act of Parliament.

(2) The Prisons Service Commission shall have the power to appoint persons to hold or act in offices in the Prisons Service of Malaŵi, other than the Chief Commissioner for Prisons, including the power to confirm appointments and to remove such persons from office.

(3) The Prisons Service Commission shall, subject to this Constitution and any Act of Parliament, exercise disciplinary control over persons holding or acting in any office to which this section applies.

(4) The Prisons Service Commission may, subject to such conditions as may be laid down by an Act of Parliament, delegate powers under this section by directions in writing to any member of the Commission or to any public officer or public body, being part of the Malaŵi Prisons Service.

(5) Where any person or body may, from time to time, exercise powers under this section on behalf of the Prisons Service Commission, in accordance with subsection (4), the Prisons Service Commission shall—

(*a*) require that person or body to furnish reports in such manner or form as the Commission has specified in the directions by which it delegated those powers;

(*b*) hear such complaints or appeals from persons with sufficient interest relating to the exercise of powers under this section and shall have the authority to—

(i) quash the decision of a person or body exercising such powers;

(ii) exercise such disciplinary powers with relation to such person or body, subject to the conditions laid down by an Act of Parliament;

(iii) revoke directions delegating powers to any person or body:

Provided that nothing in this section shall prejudice the right of any person who is the subject of a decision made by or on behalf of the Prisons Service Commission to appeal to the High Court or the right of any person with sufficient interest in such a decision to petition the High Court for judicial review of that decision.

Composition of Prisons Service Commission 13 of 2001

168.—(1) The Prisons Service Commission shall consist of the following members—

(*a*) such Justice of Appeal or Judge as may for the time being be nominated in that behalf by the Judicial Service Commission, who shall be chairman;

(*b*) such member of the Civil Service Commission as may for the time being be nominated in that behalf by the Civil Service Commission;

(*c*) such legal practitioner as may for the time being be nominated by the President subject to confirmation by the Public Appointments Committee;

(*d*) such person as may be nominated from time to time in that behalf by the Inspectorate of Prisons; and

(*e*) the Chief Commissioner for Prisons or a person nominated by the Chief Commissioner of Prisons from time to time in that behalf, being a senior member of the Malaŵi Prisons Service.

(2) A person shall not be qualified for appointment as a member of the Prisons Service Commission if he or she is President, Vice-President, a Minister or Deputy Minister, a Member of Parliament or, save as provided in subsection (1) (*d*) and (*e*), an officer in the Malaŵi Prisons Service.

(3) Subject to this section, the office of a member of the Prisons Service Commission shall become vacant—

(*a*) at the expiration of three years from the date of that member's appointment, unless the member is reappointed to a further term not exceeding three years; or

(*b*) if any circumstances arise that, if that member were not a member of the Prisons Service Commission, would cause that member to be disqualified from appointment as such:

Provided that paragraph (*a*) shall not apply where the member in question still holds the office of Chief Commissioner for Prisons, in which behalf that person was appointed to the Prisons Service Commission.

The Inspectorate of Prisons
13 of 2001

169.—(1) There shall be an Inspectorate of Prisons which shall have such powers, functions and duties in relation to the Malaŵi Prisons Service as are conferred on it by this Constitution or an Act of Parliament.

(2) The Inspectorate of Prisons shall exercise its powers, functions and duties independent of any direction or interference by any other person or authority.

(3) The Inspectorate of Prisons shall—

(*a*) be charged with monitoring the conditions, administration and general functioning of penal institutions taking due account of applicable international standards;

(*b*) have such powers as shall be required for it to make investigations and shall have the power to require any person to answer questions relating to such subjects as are relevant to those investigations;

(*c*) have the power to visit any and all institutions within the Malaŵi Prisons Service with or without notice and without let or hindrance; and

(*d*) exercise such other powers as may be prescribed by an Act of Parliament.

(4) The Inspectorate of Prisons shall cause to be laid before the National Assembly such reports as the Inspectorate of Prisons may make and such reports shall be so laid through the Minister responsible for Prisons in the form of a motion for acceptance of the recommendations of the Inspectorate of Prisons.

(5) Where the recommendations of the Inspectorate of Prisons require amendment to any law, the Minister shall lay before Parliament those recommendations in the form of a Bill.

(6) The powers conferred on the Inspectorate for Prisons by this section shall also be exercisable by the Inspectorate of Prisons with respect to holding cells in police stations.

Composition of the Inspectorate of Prisons 13 of 2001

170.—(1) The Inspectorate of Prisons shall consist of the following members—

(*a*) such Justice of Appeal or Judge as shall from time to time be nominated in that behalf by the Judicial Service Commission, who shall be chairman;

(*b*) the Chief Commissioner for Prisons or such person as he or she may nominate in that behalf being a senior member of the Malaŵi Prisons Service;

(*c*) such member of the Prisons Service Commission, other than the Chief Commissioner for Prisons, or other person nomination under section 168 (1) (*e*) as shall from time to time be nominated in that behalf by that Commission;

(*d*) such Magistrate as shall from time to time be nominated in that behalf by the Judicial Service Commission; and

(*e*) the Ombudsman.

(2) The Inspectorate of Prisons shall have power to co-opt persons as representatives of any local or international organizations having an office in Malaŵi involved in the monitoring of human rights or more generally concerned with the welfare of offenders as may be approved by the membership of the Inspectorate of Prisons.

13 of 2001

(3) For the purposes of exercising its powers of nomination under subsection (1) (*c*), the quorum of the Prisons Service Commission shall consist of the majority of those in office at the time of the nomination.

CHAPTER XVIII

Finance

Revenue

171. No tax, rate, duty, levy or imposition shall be raised, levied or imposed by or for the purposes of the Government or any local government authority otherwise than by or under the authority of the law.

The Consolidated Fund

172. All revenues or other moneys raised or received for the purposes of the Government shall, subject to this Constitution and any Act of Parliament, be paid into and form one Fund, to be known as the Consolidated Fund.

Withdrawal of money from the Consolidated Fund 13 of 2001

173.—(1) No money shall be withdrawn from the Consolidated Fund except—

(*a*) to meet expenditure that is charged upon the Fund by this Constitution or by any Act of Parliament consistent with this Constitution; or

(*b*) where the issue of those moneys has been authorized by an Appropriation Act, a Supplementary Appropriation Act or by an Act made in pursuance of subsection (5) of this section or of sections 178, 179, 180, 181 or 182 or by a resolution of the National Assembly made in accordance with section 177:

Provided that this subsection shall not apply to any sums mentioned in section 183 (3).

(2) Where any moneys are charged by this Constitution or by any Act of Parliament upon the Consolidated Fund, they shall be paid out of that Fund by the Minister responsible for Finance to the person or authority to whom the payment is due.

(3) No moneys shall be withdrawn from the Consolidated Fund except in the manner prescribed by the National Assembly.

(4) The investment of moneys forming part of the Consolidated Fund by way of deposit with a bank or such other secure investment as may be approved by the National Assembly shall not be regarded as a withdrawal of those moneys from the Consolidated Fund for the purposes of this Constitution.

(5) Notwithstanding subsection (1), provisions may be made by or under an Act of Parliament authorizing withdrawals to be made from the Consolidated Fund, in such circumstances and to such extent as may be prescribed by or under such Act of Parliament, for the purpose of making allowances to persons or authorities other than the Government:

Provided that no moneys shall be advanced from the Consolidated Fund under this subsection save on condition that they are repayable by the person or authority to whom or on behalf of whom they are advanced.

(6) This section shall not apply with respect to—

(*a*) the proceeds of Government loan raised for a specific purpose under an Act of Parliament;

(*b*) money or interest received by the Government subject to a trust;

(*c*) advance drawings and repayments of those drawings, authorized by the National Assembly; and

(*d*) such special funds under this Constitution where it is specified that this section should not apply.

Expenditure charged on the Consolidateed Fund

174.—(1) There shall be charged on the Consolidated Fund in addition to any grant, remuneration or other moneys so charged by this Constitution or any Act consistent with this Constitution—

(*a*) all debt charges for which the Government is liable;

(*b*) all pensions, compensations for loss of office and gratuities for which the Government is liable;

(*c*) any moneys required to satisfy any judgment, decision or award made or given against the Government by any court or tribunal other than those provided for in the National Compensation Fund; and

(*d*) all moneys or debt charges charged before the appointed day upon the revenues or public funds of Malaŵi.

(2) For the purposes of this section, "debt charges" includes interest, sinking fund charges, the repayment or amortization of debt, and all expenditure in connexion with the raising of loans on the security of the Consolidated Fund and the service and redemption of debt thereby created.

Annual estimates 13 of 2001

175.—(1) The Minister responsible for Finance shall lay before the National Assembly a statement of the estimated receipts and the expenditure of the Government in respect of that financial year, other than the sums specified in subsection (3).

(2) The statement of estimates shall be laid before the National Assembly in respect of every financial year and shall be so laid before the commencement of that financial year.

(3) Where the National Assembly does not propose to debate the estimates until after the commencement of the financial year to which they relate, the estimates of the revenue may be laid before the National Assembly at any time before the commencement of such debate.

(4) The estimates of expenditure shall show separately—

(*a*) the total sums required to meet the expenditure charged on the Consolidated Fund; and

(*b*) the sums respectively required to meet the heads of other expenditure proposed to be met from the Consolidated Fund.

(5) The sums to be shown in the estimates of receipts and expenditure shall not include—

(*a*) sums representing the proceeds of any loan raised by the Government for a specific purpose and appropriated for that purpose by the Act authorizing the raising of the loan;

(*b*) sums representing any money or interest on money received by the Government subject to a trust and to be held or applied in accordance with the terms of that trust;

(*c*) sums representing moneys authorized to be advanced from the Consolidated Fund under an Act of Parliament and repayments thereof; and

(*d*) sums representing moneys received for or to be applied from any special fund established and regulated by this Constitution or by an Act of Parliament which provides that subsections (1) and (4) shall not apply to that fund.

Appropriation Bills

176. When the estimates of expenditure to be met from the Consolidated Fund, but not charged thereon, have been approved by the National Assembly, a Bill, to be known as an Appropriation Bill, shall be introduced in the Assembly providing for the issue from the Consolidated Fund of the sums necessary to meet that expenditure and the appropriation of those sums, under separate votes for the several heads of expenditure approved, to the purposes specified in the Bill.

Supplementary appropriations

177.—(1) If in respect of any financial year it is found—

(*a*) that the amount appropriated by the Appropriation Act for any purpose is insufficient, or that a need has arisen for expenditure for a purpose for which no amount has been appropriated by the Appropriation Act; or

(*b*) that any moneys have been expended for any purpose in excess of the amount (if any) appropriated for that purpose by the Appropriation Act,

a supplementary estimate showing the sums required or spent shall be laid before the National Assembly and the heads of any such expenditure shall be included in a Supplementary Appropriation Bill or in a motion or motions approving such expenditure.

(2) Where any supplementary expenditure has been approved in a financial year by a resolution of the National Assembly under subsection (1), a Supplementary Appropriation Bill shall be introduced in the National Assembly as soon as practicable after the commencement of the financial year next following, providing for the appropriation of the sums so approved.

Authorization of expenditure in advance of appropriation

178. The National Assembly may make provision under which, if it appears to the Minister responsible for Finance that the Appropriation Act in respect of any financial year will not come into operation by the beginning of that financial year, he or she may authorize the withdrawal from the Consolidated Fund of moneys for the purpose of meeting expenditure necessary to carry on the services of the Government until the expiration of four months from the beginning of that financial year or the coming into operation of the Appropriation Act, whichever is earlier:

Provided that provision for any moneys so withdrawn shall be included, under the appropriate heads, in the Appropriation Bill.

Contingency Fund
1 of 1997

179.—(1) The National Assembly may make provision for the establishment of a Contingencies Fund and for authorizing the Minister responsible for Finance, if he or she is satisfied that there has arisen an urgent and unforeseen need for expenditure for which no other provision exists, to make advances from that Fund to meet that need.

1 of 1997

(2) Where any advance is made from the Contingencies Fund, a supplementary estimate shall, as soon as practicable, be presented to and voted by the National Assembly and a Supplementary Appropriation Bill or motion approving such expenditure in accordance with section 177 shall be introduced for the purpose of replacing the amount so advanced.

Raising of loans by the Government

180.—(1) A loan may be raised by the Government under the authority of an Act of Parliament and not otherwise.

(2) Parliament may, in the Act authorizing the raising of a loan or by any other Act, appropriate the proceeds of the loan for specific purposes and authorize the payment of such proceeds out of the Consolidated Fund for such purposes.

Special funds and trust moneys

181.—(1) An Act of Parliament may, subject to section 182, make provision for the creation of special funds which shall be accounted within the accounts of the Consolidated Fund and for the regulation or management of the moneys accounted in such special funds.

(2) An Act made in accordance with subsection (1) may provide that sections 175 (1) and 175 (4) shall not apply to any particular fund.

(3) Parliament may make provisions regulating the manner in which moneys or investments held by the Government subject to a trust are to be accounted for.

The Development Fund

182.—(1) There shall be a special fund within the Consolidated Fund to be known as the Development Fund in which shall be accounted receipts and expenditure of the Government relating to the development of the Republic, which have not been included in the annual statement provided for in section 175, and estimates of such receipts and expenditure shall be submitted by the Minister responsible for Finance to the National Assembly not less than once a year.

(2) When the estimates of expenditure to be met from the Development Fund have been approved by the National Assembly, a Bill to be known as Appropriation (Development Fund) Bill shall be introduced in the National Assembly providing for the issue from the Development Fund and appropriation of the sums necessary to meet that expenditure.

The Protected Expenditure Fund
13 of 2001

183.—(1) There shall be a special fund within the accounts of the Consolidated Fund, to be known as Protected Expenditure Fund, upon which shall be charged certain protected expenditure.

(2) The Minister responsible for Finance shall, before the commencement of every financial year, make provision in the annual Appropriation Bill for the purpose of voting sums for the purposes of the fund under subsection (1) and such provision shall be passed without revision by the National Assembly, save where it is insufficient to meet the expenditure to be charged for the purposes of the fund, in which case the National Assembly may revise the Bill so as to accommodate the expenditure to be charged.

13 of 2001

(3) No money shall be withdrawn from the Protected Expenditures Fund save in respect of the following classes of expenditure—

(*a*) the salaries, allowances and other benefits of the President and the First Vice-President;

(*b*) the salaries, allowances and other employment benefits of the Chief Justice, Justices of Appeal and judges of the High Court;

(*c*) the salary, allowances and other employment benefits of the Ombudsman; and

(*d*) the expenditure incurred to convene Parliament and to ensure the effective functioning of Parliament, including its committees.

Auditor General
6 of 1995

184.—(1) There shall be the office of the Auditor General who shall audit and report on the public accounts of Malaŵi, and shall exercise such other powers in relation to the public accounts and the accounts of public authorities and bodies as may be prescribed by an Act of Parliament, in so far as they are compatible with the principal duties of that office.

(2) The Auditor General shall submit reports at least once a year to the National Assembly, through the Minister responsible for Finance, not later than the first meeting of the National Assembly after the completion of the report.

6 of 1995

(3) Appointment to the office of Auditor General shall be made by the President and confirmed by the National Assembly by a majority of the members present and voting but the Public Appointments Committee may at any time inquire as to the competence of the person so appointed to perform the duties of that office and as to the financial probity of a person so appointed, so far as it is relevant to the duties of that office.

(4) The office of the Auditor General shall become vacant after the person holding that office has served for five years, but the person holding that office may be nominated for such further term not exceeding five years, as the President deems appropriate.

(5) The office of the Auditor General shall be a public office.

(6) A person holding the office of Auditor General shall be subject to removal by the President only by reason of that person being—

(*a*) incompetent in the exercise of his or her duties;

(*b*) compromised in the exercise of his or her duties to the extent that his or her financial probity is in serious question;

(*c*) otherwise incapacitated; or

(*d*) over the retirement age.

(7) Subject to subsection (6) in the exercise of the duties and powers vested in the office of the Auditor General by this Constitution or any other law, the person holding that office shall not be subject to the direction or control of any other person or authority.

(8) No person or authority may inhibit the Auditor General in the conduct of his or her functions and duties.

CHAPTER XIX

The Reserve Bank of Malaŵi

The Reserve Bank of Malaŵi 13 of 2001

185.—(1) There shall be established by an Act of Parliament a central bank of the Republic, known as the Reserve Bank of Malaŵi which shall serve as the State's principal instrument for the control of money supply, currency and the institutions of finance and shall serve generally in accordance with the normal functions of a central bank.

13 of 2001

(2) The Bank shall be controlled by a Board which shall consist of a chairperson and members of the Board who shall, subject to this Constitution, be appointed in accordance with the Act of Parliament by which the Bank is established.

CHAPTER XX

Civil Service

The Civil Service Commission 13 of 2001

186. There shall be a Civil Service Commission which shall have the powers and functions conferred upon it by this Constitution or any Act of Parliament and which shall consist of a chairperson, deputy chairperson and not less than six nor more than ten other members.

Powers and functions of the Civil Service Commission

187.—(1) Subject to this Constitution, power to appoint persons to hold or act in offices in the civil service, including the power to confirm appointments, and to remove such persons from office shall vest in the Civil Service Commission.

(2) The Civil Service Commission shall, subject to this Constitution and any Act of Parliament, exercise disciplinary control over persons holding or acting in any office to which this Chapter applies.

Delegation

188.—(1) The Civil Service Commission may, subject to such conditions as may be laid down an Act of Parliament, delegate powers under this section by directions in writing to any member of the Commission or to any civil servant or public body.

(2) Where any person or body may from time to time exercise powers under this section on behalf of the Civil Service Commission, in accordance with subsection (1), the Civil Service Commission shall—

(*a*) require that person or body to furnish reports in such manner or form as specified in the directions by which the Commission delegated those powers;

(*b*) hear such complaints or appeals from persons with sufficient interest relating to the exercise of powers under this section and shall have the authority to—

(i) quash the decision of a person or body exercising such powers;

(ii) exercise such disciplinary powers in relation to such person or body, subject to the conditions laid down by an Act of Parliament;

(iii) revoke directions delegating powers to any person or body:

Provided that nothing in this section shall prejudice the right of any person who is the subject of a decision made by or on behalf of the Civil Service Commission to appeal to the High Court or the right of any person with sufficient interest in such a decision to petition the High Court for judicial review of that decision.

Offices to which this Chapter does not apply
4 of 2001
13 of 2001
4 of 2004

189.—(1) This Chapter shall not apply where this Constitution has otherwise provided for the appointment or removal of a civil servant or other public appointee, or to appointments that are regulated by the Judicial Service Commission, the Police Service Commission, the Prisons Service Commission, by provisions relating to appointments in the Defence Force of Malaŵi nor shall it apply to the following offices—

(*a*) the Chief Justice, the Attorney General and Director of Public Prosecutions;

(*b*) such personal staff of the President as he or she shall determine subject to approval of the Public Appointments Committee or as an Act of Parliament may allow;

(*c*) the Secretary to the Cabinet;

(*d*) Ambassadors, High Commissioners and other principal diplomatic staff, within the meaning of section 190;

(*e*) the High Command of the Defence Force;

(*f*) the Inspector General of Police;

(*g*) the Chief Commissioner of Prisons;

(*h*) the office of a Principal Secretary;

(*i*) such other public office of sufficient seniority as may be prescribed by an Act of Parliament.

(2) Unless otherwise provided by this Constitution or by an Act of Parliament, the power to appoint persons to the public offices specified in paragraphs (*a*) to (*i*) of subsection (1) shall vest in the President.

4 of 2001
13 of 2001

(3) In any case where the Civil Service Commission, the President or any other authority has the power of appointment of the Clerk or the Clerk-Assistant to the National Assembly, before exercising that power, the Commission, the President or any such other authority shall consult the Speaker of the National Assembly.

The appointment of Diplomatic staff
13 of 2001

190. Ambassadors, High Commissioners and such other principal diplomatic staff as shall be determined by an Act of Parliament shall be appointed by the President, subject to confirmation by the Public Appointments Committee which may require persons so appointed to answer questions as to their competence and financial probity.

Appointment of members of the Civil Service Commission
13 of 2001

191.—(1) The members of the Civil Service Commission shall be appointed by the President, subject to satisfying the Public Service Appointments Committee as to the competence of persons so appointed to perform their duties as members of the Civil Service Commission.

(2) A person shall not be qualified for appointment as a member of the Civil Service Commission if that person is President, Vice-President, a Minister or Deputy Minister, a Member of Parliament or a serving civil servant.

(3) Subject to this section, the office of a member of the Civil Service Commission shall become vacant—

(*a*) at the expiration of five years from the date of the appointment of that person, unless the person is reappointed to a new term not exceeding five years; or

(*b*) if any circumstances arise that, if he or she were not a member of the Commission, would cause that person to be disqualified for appointment as such.

(4) A member of the Civil Service Commission may be removed from office by the President subject to the Public Appointments Committee being satisfied that the member is not competent to discharge his or her duties:

Provided that nothing in this subsection shall prejudice the right of a member of the Civil Service Commission who is removed to appeal to the High Court against the decision to remove him or her.

Vacancy
13 of 2001

192.—(1) If the office of Chairperson of the Civil Service Commission is vacant or the Chairperson is for any reason unable to perform the functions of his or her office, then those functions shall be performed by the Deputy Chairperson until that vacancy is filled or the Chairperson is able to resume his or her duties.

(2) If both the Chairperson and the Deputy Chairperson are unable to perform their functions, then another of the members of the Commission as may be designated in that behalf by the remaining members of the Commission shall perform the functions of the Chairperson.

(3) If at any time there are less than seven members of the Civil Service Commission and the Public Appointments Committee is not able to sit, either because of Parliament being dissolved or some other reason, the President may appoint such persons as qualified for appointment to the Commission and are required to act as members of the Commission:

Provided that the appointment of a person to act as a member of the Civil Service Commission in accordance with this subsection shall lapse on his or her appointment as a full member of the Commission in accordance with section 191 (1), or until the office in which he or she is acting is filled after the Public Appointments Committee has resumed sitting.

Independence of the Civil Service
13 of 2001

193.—(1) Members of the Civil Service shall ensure that the exercise of participation in political activities does not compromise their independent exercise of their functions, powers and duties as impartial servants of the general public.

(2) The National Assembly may prescribe a category of civil servants, who by reason of their seniority shall not be able to directly participate in political activities:

Provided that—

(*a*) the civil servants so restricted shall have the right to resign in order to participate directly in political activities;

(*b*) nothing in this section shall be deemed to prejudice any civil servant having the absolute right to vote in accordance with this Constitution;

13 of 2001

(*c*) without prejudice to subsection (1) any civil servant whose functions are not directly concerned with the formulation and administration of the policies of the Government shall be exempt from restrictions under this section; and

(*d*) nothing in this section shall prejudice the right of any civil servant to hold office in, or be a member of, any association, group or professional body, the purposes of which are principally to represent their member's interests in relation to the terms and conditions of employment or the general carrying on of any profession or trade or the promotion of any interest, not pertaining directly to the promotion of a political party, or its campaign or philosophy.

(3) No Government or political party shall cause any civil servant acting in that behalf to exercise functions, powers or duties for the purposes of promoting or undermining the interest or affairs of any political party or individual member of that party, nor shall any civil servant acting in that behalf promote or undermine any political party or member of that party, save as is consistent with the provisions in this section.

(4) No government or political party shall cause any civil servant, acting in that behalf to deploy resources, whether they be financial, material or human resources, for the purposes of promoting or undermining any political party or member of a political party or interest group, nor shall any civil servant acting in that behalf cause such deployment, save as prescribed by this Constitution or an Act of Parliament consistent with the provisions of subsection (1).

(5) Any civil servant who contravenes this section shall be subject to such disciplinary measures as the Civil Service Commission considers appropriate, taking into account the gravity and circumstances of the contravention, subject to such regulations as may be prescribed by an Act of Parliament.

(6) Where the Civil Service Commission is satisfied that a government or political party or member of a political party has acted in contravention of subsection (3) or subsection (4), the Civil Service Commission may initiate proceedings before the High Court for punitive damages and, in the case of a contravention of subsection (4), the recovery of such resources or sums equivalent to the benefit of the enjoyment of those resources from the government or political party or member of a political party who has so benefitted, as the case may be.

Chairing of boards, commissions, etc.

194. Where a law confers power to appoint a board, commission, council, committee or similar body and to appoint, elect or designate the chairperson thereof, no person shall be appointed, elected or designated as chairperson of more than one such board, commission, council, committee or similar body.

CHAPTER XXI

Amendment of this Constitution

Power to amend

195. Parliament may amend this Constitution in accordance with this Chapter

Restrictions on amendments 11 of 2010

196.—(1) Subject to this section, Parliament may amend this Chapter and the sections of this Constitution listed in the Schedule only if—

(*a*) the provision to be amended and the proposed amendment to it have been put to a referendum of the people of Malaŵi and the majority of those voting have voted for the amendment; and

11 of 2010

(*b*) the Electoral Commission has so certified to the Speaker of the National Assembly.

(2) The Parliament may pass a Bill proposing an amendment to which the conditions set out in subsection (1) have been satisfied by a simple majority.

(3) Notwithstanding subsection (1), Parliament may pass a Bill containing an amendment to the provisions referred to in that subsection without a referendum where—

(*a*) the amendment would not affect the substance or the effect of the Constitution;

(*b*) the Speaker has so certified; and

(c) the Bill is supported by a majority of at least two-thirds of the total number of members of the National Assembly entitled to vote.

Amendments by Parliament

197. Subject to section 196, Parliament may amend those Chapters and sections of this Constitution not listed in the Schedule only if the Bill proposing the amendment is supported by at least two-thirds of the total number of members of the National Assembly entitled to vote.

CHAPTER XXII

Transitional Issues

Republic, etc., to be constituted in accordance with this Constitution

198. The Republic of Malaŵi the organs of State and the offices referred to in this Constitution shall be defined and constituted in accordance with this Constitution.

Status of this Constitution

199. This Constitution shall have the status as supreme law and there shall be no legal or political authority save as is provided by or under this Constitution.

Saving of laws in force

200. Except in so far as they are inconsistent with this Constitution, all Acts of Parliament, common law and customary law in force on the appointed day shall continue to have force of law, as if they had been made in accordance with and in pursuance of this Constitution:

Provided that any laws currently in force may be amended or repealed by an Act of Parliament or be declared unconstitutional by a competent court.

Elections to the National Assembly

201. For the purposes of this Constitution the first National Assembly after the date of commencement of this Constitution shall be composed of those persons successfully elected to the National Assembly in accordance with the Act of Parliament then in force for the election of members of the National Assembly.

Election to the office of President

202. For the purposes of this Constitution the first President after the date of commencement of this Constitution shall be the person successfully elected in accordance with the Act of Parliament then in force for the election of a person to the office of President.

Saving of judicial power

203. The High Court shall have the same jurisdiction, powers and procedures as before the commencement of this Constitution, subject to amendment or repeal of such powers by an Act of Parliament in accordance with this Constitution.

204.—(1) All legal actions which, at the commencement of this Constitution, are pending or being undertaken before any court other than before the Supreme Court of Appeal, the High Court, a Magistrate Court, a District Traditional Appeal Court, District Traditional Court, a Grade A Traditional Court, or a Grade B Traditional Court shall be commenced or continued before the High Court of Malaŵi or before such Magistrate's court or District Traditional Appeal Court or District Traditional Court or Grade A Traditional Court or Grade B Traditional Court as the Registrar of the High Court shall direct. Pending legal actions

(2) All legal actions which, at the commencement of this Constitution, are pending or being undertaken before any Magistrate Court shall be commenced or continued before that court which shall have the same jurisdiction, powers and procedures as before the commencement of this Constitution subject to amendment or repeal of such powers by an Act of Parliament.

(3) All legal actions which, at the commencement of this Constitution, are pending or being undertaken before a District Traditional Appeal Court, a District Traditional Court, a Grade A Traditional Court or a Grade B Traditional Court before the commencement of this Constitution shall be commenced or continued before that court which shall have the same jurisdiction, powers and procedures as before the commencement of this Constitution subject to amendment or repeal of such powers by an Act of Parliament.

(4) Appeals against the decisions of a District Traditional Appeal Court or a District Traditional Court shall lie to the High Court which, in hearing such appeals, may sit with assessors appointed in accordance with an Act of Parliament.

205. All judgments or sentences pending execution shall be executed as if such judgments or sentences were ordered in accordance with this Constitution: Judgments and sentences pending execution

Provided that where the Constitution provides new grounds for appeal, any such appeal shall act as a stay of execution and the appeal shall be to the High Court.

206.—(1) Subject to the provisions of this Constitution, any person holding office under any law in force on the date of the commencement of this Constitution shall continue to hold such office until such time as— Existing appointments 13 of 2001

(*a*) that person is confirmed in that post, and such person shall be deemed to have been confirmed in that post after the end of one year from the appointed day. 13 of 2001

(*b*) that person is replaced by another person appointed or elected to that post in accordance with this Constitution; or

(*c*) that person resigns or retires or is removed in accordance with this Constitution:

Provided that where this Constitution has created an office with a different designation, but an equivalent function is exercised by an office existing at the time of the date of the commencement of this Constitution, a person occupying that office shall, from the date of commencement of this Constitution, have such powers, functions and designation as is prescribed for the equivalent office created by this Constitution.

(2) For the purposes of section 52 and section 81 (1), and only for that purpose, the person who at the commencement of this Constitution is holding the office of Chief Justice shall be deemed to be appointed under this Constitution as Chief Justice.

Vesting of lands, etc., in the Republic

207. Subject to the provisions of this Constitution, all lands and territories of Malaŵi are vested in the Republic.

Savings of rights of Government in property 13 of 2001

208. The Government shall have title to all rights in property which are vested in the Government of Malaŵi on the date of the commencement of this Constitution save as otherwise provided by section 209 (2) and provided that the disposal of rights in property where title is vested in the Government shall be made in accordance with an Act of Parliament.

Continuation of rights of persons in property

209.—(1) All persons who have rights in property at the date of the commencement of this Constitution shall continue to have such rights under this Constitution and any other law.

(2) This section shall not apply in respect of rights in property that have been acquired or vested by or on behalf of the Government where that property was acquired or vested at any time since 6th July, 1964, and where that right in property was obtained from citizens or permanent residents of Malaŵi—

(*a*) unlawfully according to the laws then in force in Malaŵi;

(*b*) by virtue of any law not being a penal law passed during that time that did not provide for adequate compensation; or

(*c*) through abandonment by reason of duress of circumstances.

(3) For the purposes of this section "Government" shall mean the President, the Cabinet, the Ministries, other organs of the President and Cabinet and their agents, including individuals and bodies under the authority of the President, the Cabinet or the Ministries.

(4) Rights in property which are not recognized by virtue of this section shall be vested in the National Compensation Fund and shall be disposed of in accordance with the principles, procedures and rules of the National Compensation Tribunal.

(5) Persons occupying or using property vested in the National Compensation Fund shall continue to occupy and use that property, as if they retained full legal and equitable title until such time as the National Compensation Tribunal otherwise orders.

210.—[*Repealed by Act No.* 4 *of* 2001]

International law
13 of 2001

211.—(1) Any international agreement entered into after the commencement of this Constitution shall form part of the law of the Republic if so provided by an Act of Parliament.

(2) Binding international agreements entered into before the commencement of this Constitution shall continue to bind the Republic unless otherwise provided by an Act of Parliament.

(3) Customary international law, unless inconsistent with this Constitution or an Act of Parliament, shall form part of the law of the Republic.

CHAPTER XXIII

Miscellaneous

Coming into force of this Constitution
4 of 2001

212.—(1) This Constitution shall provisionally come into force on 18th May, 1994, being the appointed day, and shall provisionally apply as the Constitution of the Republic of Malaŵi for a period of not less and not more than twelve months from that date (in this section referred to as the "period of provisional application").

(2) During the period of provisional application Parliament may amend or repeal this Constitution in accordance with this section subject only to section 196.

(3) Within fourteen days of the first sitting of Parliament after the appointed day, Parliament shall appoint a Committee to be known as the Constitution Committee which shall consist of the Speaker of the National Assembly as Chairman of the Committee and ten other members of Parliament appointed by the National Assembly.

(4) The function of the Constitution Committee shall be to—

(*a*) organize national education and consultation on this Constitution;

(*b*) organize a national conference fully representative of Malaŵian society;

(*c*) invite, receive and consider proposals from the citizens of Malaŵi for the amendment or for the repeal and replacement of this Constitution;

(*d*) allow citizens of Malaŵi in accordance with its own procedure to make written submissions to, or to be heard in person by, the Committee;

(*e*) compile reports of the proposals received and circulate such reports as widely as possible;

(*f*) lay the reports before Parliament for such period not being less than thirty days before taking action under paragraph (*g*) as would be reasonably sufficient for responses to be received; and

(*g*) to prepare a Bill or Bills for the amendment of this Constitution or, as provided in subsection (5), a Bill for the repeal and replacement of this Constitution and every such Bill shall be a separate Bill of its own, entitled a Bill to amend the Constitution or, as the case may be, a Bill to repeal and replace the Constitution, and to present such Bill or Bills to Parliament on its own motion.

(5) On the basis of the extensiveness of the proposals for amendments to this Constitution, Parliament may repeal and replace this Constitution during the period of provisional application, but no such repeal shall be made before, or in contradiction to the resolution of, the national conference referred to under section (4) (*b*).

(6) Within thirty days before the expiry of the period of provisional application, Parliament shall pass an Act by which this Constitution (with the amendments, if any, made to it under this section) or another Constitution replacing this Constitution shall be brought definitively into force on the expiry of the provisional period of application.

4 of 2001

(7) A Bill under this section to amend or to repeal and replace this Constitution shall be passed only if supported by not less than a two-thirds majority of all the members of the National Assembly.

(8) Unless this Constitution is being repealed and replaced, this section shall not be amended but shall lapse on the expiry of the period of provisional application, save only to the extent necessary to bring this Constitution definitively into force in the circumstances of subsection (9).

(9) If Parliament defaults to act in terms of subsection (6) this Constitution shall be deemed to have definitively come into force on the expiry of the period of provisional application.

Disclosure of assets by holders of certain offices
1 of 1997
4 of 2001

213.—(1) In addition to the President and members of the Cabinet as provided by section 88 (3), the holders of the following offices, that is to say—

(*a*) a member of the National Assembly;

(*b*) a public officer of such senior grade or position as shall be specified under subsection (2);

(*c*) an officer of such senior grade or position as shall be specified under subsection (2), of—

(i) a corporation, board, commission, council, or similar body established by or under an Act of Parliament;

(ii) any other body, corporate or unincorporate which in accordance with any Act of Parliament is subject to the same statutory procedures for financial control and accountability as apply in common to a body referred to in subparagraph (i), shall, within three months from the date of his or her election, nomination or appointment, as the case may be, fully disclose all of his or her assets, liabilities and business interests and those of his or her spouse held by him or her or on his or her behalf as at that date; and, unless Parliament otherwise prescribes by an Act of Parliament, such disclosure shall be made in a written document delivered to the Speaker of the National Assembly who shall immediately upon receipt deposit the document with such public office as may be specified in the Standing Orders of Parliament.

(2) For the purpose of paragraphs (*c*) and (d) of subsection (1), the National Assembly shall specify the grades and positions of the officers required to disclose assets in accordance with that subsection, and shall do so by resolution passed by the majority of the members present and voting and which shall be published in the *Gazette*.

(3) Notwithstanding subsection (1), in the case of those persons who, at the commencement of this section, hold the offices to which this section applies, the period within which they shall comply with subsection (1) shall be a period of three months—

(*a*) from the commencement of this section, in the case of members of the National Assembly;

(*b*) from the date of the publication of the resolution under subsection (2), in the case of others.

(4) There shall be a Committee of Parliament appointed by the National Assembly which shall have the function of monitoring the compliance with the requirement on the disclosure of assets under section 88 (3) and under this section and the Committee shall have all the powers necessary to perform its function.

Short title of this Constitution 1 of 1997

214. This Constitution of the Republic of Malaŵi may be cited as the Constitution.

Definition 1 of 1997

215. In this Constitution, unless the context otherwise requires—

"appointed day" means 18th May, 1994, being the date on which this Constitution shall come into operation;

"age prescribed for retirement" is such age as may be prescribed in an Act of Parliament for the retirement of a person holding public office.

SCHEDULE

11 of 2010

The sections of this Constitution listed in this Schedule and the entirety of the Schedule shall not be amended except in accordance with section 196.

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CHAPTER 1:01

GENERAL INTERPRETATION

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An Act to make provision with regard to the construction, application and interpretation of written law, to make certain general provisions with regard to such law and other like purposes

[29TH AUGUST, 1966]

Short title

1. This Act may be cited as the General Interpretation Act.

Interpretation of words and expressions
20 of 1975

2.—(1) In this Act and, subject to section 57, in every other written law enacted, made or issued before or after the coming into operation of this Act, the following words and expressions shall have the meanings respectively assigned to them, unless

there is something in the subject or context inconsistent with such construction or unless it is therein otherwise provided—

"act" used with reference to an offence or civil wrong includes an omission and extends to a series of acts and omissions;

"Act" used with reference to legislation means an Act of Parliament, an Ordinance, and any applied Act;

"administrative officer" means a District Commissioner or an Assistant District Commissioner;

"amendment" includes repeal, addition, variation and substitution;

"applied Act" means any legislation not enacted by the legislature of Malaŵi which by virtue of the Republic of Malaŵi (Constitution) Act has the force of an Act of Parliament in Malaŵi;

"Cabinet" means the Cabinet constituted by or under the Constitution;

"calendar year" means the period from the 1st January to the 31st December in the same year including both those days;

"Chief" has the meaning ascribed thereto by section 2 of the Chiefs Act; 23 of 1971 Cap. 22:03

"Chief Justice" means the Chief Justice of the High Court;

"cognizable to the police" and "cognizable" used with reference to an offence means that a police officer may arrest without warrant a person whom he suspects upon reasonable grounds of having committed that offence;

"commencement" used with reference to a written law means the date on which that written law comes into operation;

"Commonwealth" or "Commonwealth of Nations" means the Commonwealth of Nations comprised of all the Commonwealth countries;

"Commonwealth citizen" has the same meaning as in the Malaŵi Citizenship Act; Cap. 15:01

"Commonwealth country" or "member of the Commonwealth" or "country of the Commonwealth" means any country which is a member of the Commonwealth of Nations, and includes any colony, protectorate, trust territory or other dependency of such country; 20 of 1975

"Consolidated Fund" means the Consolidated Fund established under the Constitution;

"Constitution" or "Constitution of Malaŵi" means the Constitution of the Republic of Malaŵi established by section 4 of the Republic of Malaŵi (Constitution) Act and set forth in the Second Schedule thereto;

"consular officer" means consul-general, consul, vice-consul, consular agent, and any person for the time being authorized to discharge the duties of consul-general, consul, vice-consul or consular-agent;

"contrayene" in relation to any requirement or conditions specified in any written law, or in any permit, licence or other authority granted under any written law, includes a failure to comply with that requirement or condition;

"court" means any court of the Republic of competent jurisdiction;

"Crown Agents" and "Crown Agents for Oversea Governments and Administrations" both mean the persons for the time being acting as Crown Agents in England for Overseas Governments and Administrations;

Cap. 57:01 "customary land" has the meaning assigned thereto in the Land Act;

"customary law" means the customary law applicable in the area concerned;

"District" means one of the districts into which Malaŵi is divided for purposes of administration in accordance with the Regional and District Boundaries and Place Names Act;

Cap. 18:04

"District Commissioner" means the administrative officer in charge of a District, and "Assistant District Commissioner" shall be construed accordingly;

"District Council" means a District Council established under the Local Government (District Councils) Act, or a District Commissioner or a Commission when performing the functions of a District Council in accordance with the Local Government (District Councils) Act;

Cap. 22:02

"document" includes any matter written, expressed or described upon any substance by means of letters, figures or marks, or by more than one of those means, which is intended to be used or may be used for the purpose of recording that matter;

"export" means to take or cause to be taken out of Malaŵi by any means whatsoever;

"Gazette" means the Malaŵi Government *Gazette* and includes any supplement thereto and any *Gazette Extraordinary*;

"General Notice" (or its abbreviated form "Gen.N.") means any notice published as such in the *Gazette*;

"Government" means the Government of the Republic established under the Constitution;

"government analyst" includes any assistant or other analyst employed by the Government;

"Government land" has the meaning assigned thereto in the Land Act; Cap. 57:01

"Government Notice" (or its abbreviated form "G.N.") means any notice published as such in the *Gazette*;

"Government Printer" means the Government Printer of Malaŵi and any other printer authorized by or on behalf of the Government to print any written law or other document of the Government;

"High Court" means the High Court of Malaŵi established under the Constitution;

"immoveable property" means land whether covered by water or not, any estate or interest in or over land or arising out of or relating to land and anything permanently attached to the earth or permanently fastened to anything so attached;

"import" means to bring or cause to be brought into Malaŵi by any means whatsoever;

"judge" means a judge of the High Court and includes the Chief Justice;

"judgment" in relation to a court includes decree, order, sentence or decision;

"land surveyor" means a person lawfully entitled to carry out surveys of land under any written law;

"law officer" means a person for the time being holding the office of Attorney-General or Solicitor-General;

"legal practitioner" means a person entitled to practise as such under any Act for the time being applicable to legal practitioners;

"local authority" means a City Council, a District Council, a Municipal Council or a Town Council; 5 of 1981

"magistrate" has the meaning assigned thereto in the Courts Act; Cap. 3:02

"Malaŵi" means the Republic of Malaŵi and in relation to any period prior to the 6th July, 1964, means the territories comprising the former Nyasaland Protectorate and in relation to any period after that date means the territories comprising the Republic;

"master" used with reference to a ship means the person (except a pilot or harbour-master) having for the time being control, charge or command of such ship, and with reference to an aircraft means the person having for the time being control, charge or command of such aircraft;

"medical practitioner" means a medical practitioner duly registered or licensed as such under any Act for the time being applicable to the registration or licensing of medical practitioners;

"Minister" means a person appointed as a Minister of the Government under the Constitution;

"the Minister" means the Minister for the time being charged with responsibility for the matter in question, and includes the President when he has assigned to himself or is exercising such responsibility;

"month" means a calendar month;

"moveable property" means property other than immoveable property;

Cap. 22:01 "Municipal Council" has the meaning assigned thereto in the Local Government (Urban Areas) Act;

Cap. 22:01 "Municipality" has the meaning assigned thereto in the Local Government (Urban Areas) Act;

"oath" and "affidavit", in the case of a person allowed by law to affirm or declare instead of swear, include affirmation or declaration;

"Ordinance" means an Ordinance enacted in the former Nyasaland Protectorate;

23 of 1971 Cap. 22:03 "Paramount Chief" means a person holding or acting in the office of Paramount Chief under the Chiefs Act;

"Parliament" means the Parliament of the Republic established by the Constitution;

"Principal Secretary" or "Secretary" in relation to a Ministry means the public officer appointed as the Civil Service head of that Ministry;

"the Principal Secretary" or "the Secretary" in relation to any matter means the Principal Secretary of the Ministry for the time being charged with responsibility for the matter in question;

"person" includes any company or association or body of persons, corporate or unincorporate;

Cap. 13:01 "police officer" means any member of the Malaŵi Police Service constituted under the Police Act;

"power" includes any privilege, authority or discretion;

"prescribed" means prescribed by or under the written law in which the word occurs;

"President" means the President of the Republic;

Cap. 57:01 "private land" has the meaning assigned thereto in the Land Act;

"property" includes money, and every description of property, whether movable or immovable, animate or inanimate, obligations and every description of estate, interest and profit, present or future, vested or contingent, arising out of or incident to property;

"public holiday" means a day which is specified as, or deemed to be or interpreted as, a public holiday in accordance with the Public Holidays Act, or which is declared by the Minister to be a public holiday under the Public Holidays Act; Cap. 18:05

"public land" has the meaning assigned thereto in the Land Act; Cap. 57:01

"public office" means any office the holder of which is invested with or performing duties of a public nature;

"public officer" means a person holding or acting in any public office;

"public place" means every public highway, street, road, square, court, alley, lane, bridleway, footway, parade, wharf, jetty, quay, bridge, public garden, open space, theatre, place of public entertainment of any kind and other place to which the public are entitled or permitted to have access whether on payment or otherwise;

"Public Seal" means the Public Seal of Malaŵi;

"Region" means one of the Regions into which Malaŵi is divided for the purposes of administration in accordance with the Regional and District Boundaries and Place Names Act; Cap. 18:04

"registered" used with reference to a document means registered under the law for the time being applicable to the registration of such document;

"Registrar General" includes the Assistant Registrar General;

"repeal" includes rescind, revoke, cancel or delete;

"Republic" means the Republic of Malaŵi;

"Resident Magistrate" has the meaning assigned thereto in the Courts Act; Cap. 3:02

"road" has the meaning assigned to the word street;

"rule" includes rule of court, by-law and regulation;

"rule of court", when used in relation to any court, means a rule or order made by the authority empowered to make rules or orders regulating the practice and procedure of such court;

"sell" includes barter, exchange, and offer to sell or expose for sale;

"signature" with reference to a person who is unable to write his name, includes mark or thumbprint;

"statutory declaration" if made—

(*a*) in the Republic, means a declaration made under the Oaths, Affirmations and Declarations Act; Cap. 4:07

(*b*) in any other place, means a declaration made before a Malaŵi diplomatic or consular officer, a Notary Public or any other person having authority under the law of that place to take or receive a declaration;

"street" means any highway, street, road, bridge, square, court, alley, lane, bridleway, footway, parade, thoroughfare, passage or open space to which the public are entitled or permitted to have access whether on payment or otherwise;

23 of 1971 Cap. 22:03 "Sub-Chief" has the meaning ascribed thereto by section 2 of the Chiefs Act;

Cap. 3:02 "subordinate court" has the meaning assigned thereto in the Courts Act;

"subsidiary legislation" means a proclamation, regulation, rule, order, notice, by-law or other instrument made under any written law and having legislative effect;

"Supreme Court of Appeal" means the Supreme Court of Appeal established under the Constitution;

"swear" in the case of a person allowed by law to affirm includes affirm;

"Town Council" has the meaning assigned thereto in the Local Government (Urban Areas) Act; Cap. 22:01

"Township" has the meaning assigned thereto in the Local Government (Urban Areas) Act;

23 of 1971 "Traditional Authority" means, in relation to any part of Malaŵi, a Paramount Chief, Chief, Sub-Chief or any two or more of the persons holding or acting in such offices designated for the time being as the Traditional Authority of and for such part of Malaŵi by the President by notice published in the *Gazette*;

"treaty" means a treaty, convention or agreement made with a foreign state, together with any protocol, annex or declaration attached thereto, or independent thereof but referring thereto;

"United Kingdom" means Great Britain and Northern Ireland;

"veterinary surgeon" has the meaning assigned to that expression in the Veterinary Surgeons Act; Cap. 53:04

"will" includes codicil;

"word" includes figures, punctuation marks, parentheses and typographical, monetary and mathematical symbols;

"writing" and expressions referring to writing include printing, photography, lithography, type-writing and any other modes of representing or reproducing words in visible form;

"written law" includes the Constitution, Acts and subsidiary legislation;

"year" means a year reckoned according to the Gregorian Calendar.

(2) In every written law, unless a contrary intention appears, words and expressions importing the masculine gender include females, and words and expressions importing the feminine gender include males.

(3) In every written law, unless a contrary intention appears, words and expressions in the singular include the plural and words and expressions in the plural include the singular.

(4) Where the interpretation of any word or expression is defined in this or any other written law, such definition shall extend, with the necessary modifications, to the interpretation of the grammatical variations and cognate expressions of such word or expression.

(5) In every Act, unless a contrary intention appears, the words "chapter", "part", "section" and "schedule" denote respectively a chapter, part or section of or schedule to the Act in which the word occurs; and "subsection", "paragraph" and "subparagraph" denote respectively a subsection of the section or a paragraph or subparagraph of the section, subsection, paragraph or Schedule in which the word occurs. Corresponding expressions in subsidiary legislation shall be similarly construed and interpreted.

Acts shall be judicially noticed

3. Every Act enacted by Parliament shall be a public Act and shall be judicially noticed as such.

Notification of approval of appointment, etc.

4. Where, by or under any written law, it is provided that subsidiary legislation may be made or that any appointment may be made, function performed or power exercised with the approval or consent of, or after consultation with, the President or Minister or any other authority, a notification published in the *Gazette* stating that such approval or consent has been given or that such consultation has taken place shall be *prima facie* evidence in all courts and for all purposes whatsoever of such approval, consent or consultation.

Forms

5. Where a form is prescribed or specified by any written law, deviations therefrom neither materially affecting the substance nor calculated to mislead shall not invalidate the form used.

Acts to be divided into sections

6. All Acts shall be divided into sections, if there be more enactments than one, which sections shall be deemed to be substantive enactments without any introductory words.

Mode of citing written laws

7.—(1) Where any written law is referred to, it shall be sufficient for all purposes to cite such written law either by the short title or citation, if any, by which it is made citable, or, in the case of an Act, by the year in which it was made and its

number among the Acts of that year, or, in the case of any revised edition of the written laws issued under any Act providing for the issue of a revised edition, by its short title or its chapter number, or in the case of subsidiary legislation, by the year in which it was made and the number of the Government Notice or General Notice in which it was published in the *Gazette*, and the reference may in all cases be made according to the copies of the written law printed by the Government Printer.

(2) Any such citation of a written law shall, unless a contrary intention appears, be construed as a reference to such written law as amended from time to time by any other written law.

Schedules and tables to be part of written law

8. Every Schedule to or table in any written law shall, together with the notes thereto, be construed and have effect as part of such written law.

Time when written law comes into operation
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9.—(1) Subject to subsections (2) and (3), an Act assented to by the President shall come into operation immediately on the expiration of the day next preceding the day on which it is published in the *Gazette*.

(2) Where it is enacted in the Act, or in any other written law, that such Act or any provision thereof shall come or be deemed to have come into operation on some specified day, the Act or, as the case may be, such provision shall come or be deemed to have come into operation immediately on the expiration of the day next preceding such day.

(3) Where it is enacted in an Act, that such Act shall come into operation on such date as may be appointed by any person, such person may, by notice or order, bring the Act into operation on a day specified in the notice or order, or may by the same or by different notices or orders bring different provisions of the Act into operation on different dates.

Repealed written law not revived

10. Where any written law repealing in whole or in part any former written law is itself repealed, such last repeal shall not revive the written law or provisions before repealed unless words be added reviving such written law or provisions.

Repeal of amended written law to include amendment

11. Where any written law which has been amended by any other written law is itself repealed, such repeal shall, unless a contrary intention appears, include the repeal of all those provisions of other written laws by which such first-mentioned written law has been amended.

Reference to written law to include amendments

12. Where in any written law a reference is made to another written law, such reference shall, unless a contrary intention appears, be deemed to include a reference to such last-mentioned written law as the same may be, from time to time, amended.

Continuation of certain repealed laws

13. Where a written law repeals wholly or partially any former written law and substitutes provisions for the written law repealed, the repealed written law shall remain in force until the substituted provisions come into operation.

Provisions respecting effect of repealing written law

14.—(1) Where a written law repeals and re-enacts with or without modification, any provisions of any other written law, then unless a contrary intention appears—

(*a*) all proceedings commenced under any provision so repealed shall be continued under and in conformity with the provision so repealed;

(*b*) in the recovery or enforcement of penalties and forfeitures incurred and in the enforcement of rights existing under any provision so repealed or in any other proceedings in relation to matters which have happened before the repeal, the provision so repealed shall continue to apply;

(*c*) any reference in any unrepealed written law to any provision so repealed or to any person, authority or matter mentioned in any provision so repealed shall be read and construed as a reference to the provision, person, authority or matter respectively substituted therefor;

(*d*) any officer or person whose appointment under any provision so repealed was subsisting immediately before such repeal shall continue to hold office under the provision so substituted until another officer or person is appointed in his stead;

(*e*) any subsidiary legislation made under such repealed provisions shall remain in force, so far as it is capable of being made under the repealing written law, and is not inconsistent therewith, until it has been revoked or repealed by any other written law, and shall be deemed for all purposes to be subsidiary legislation made under such repealing written law.

(2) Where a written law repeals in whole or in part any other written law, then, unless a contrary intention appears, the repeal shall not—

(*a*) revive anything not in force or existing at the time at which the repeal takes effect;

(*b*) affect the previous operation of any written law so repealed or anything duly done or suffered under any written law so repealed;

(*c*) affect any right, privilege, obligation or liability acquired, accrued or incurred under any written law so repealed;

(*d*) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any written law so repealed; or

(*e*) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid, and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed, as if the repealing written law had not been made.

Construction of amending written law with amended written law

15. Where one written law amends another written law, the amending written law shall, so far as it is consistent with the tenor thereof, and unless a contrary intention appears, be construed as one with the amended written law.

Effect of expiry of written law

16. Upon expiry of any written law section 14 (2) shall apply as if such written law had been repealed.

Publication and commencement of subsidiary legislation 25 of 1968

17.—(1) No subsidiary legislation shall come into operation unless it has been published in the *Gazette*, but the date of commencement shall be in accordance with subsection (2).

(2) Where no date of commencement is expressly provided therein or in any other written law, subsidiary legislation shall come into operation on the expiry of the day immediately preceding the day of its publication in the *Gazette* or, where it is enacted either therein or in some other written law that subsidiary legislation shall come into operation on some specified day, subject to section 18, it shall come into operation on the expiry of the day immediately preceding that day.

Retrospective operation of subsidiary legislation 1 of 1969

18. Any subsidiary legislation, except where a contrary intention appears, may be made to operate retrospectively to any date, not being a date earlier than the commencement of the written law under which such subsidiary legislation is made, but so, however, that no person shall be made or become liable to any penalty whatsoever in respect of any act committed or failure to do anything before the day on which such subsidiary legislation is published in the *Gazette*.

Construction of subsidiary legislation

19. In all subsidiary legislation, except where a contrary intention appears—

(*a*) expressions used shall have the same respective meanings as in the written law under the authority of which the subsidiary legislation was made;

(*b*) any reference to "the Act" or to "the Ordinance" shall mean the Act or Ordinance under the authority of which the subsidiary legislation was made.

Exercise of powers between assent to and commencement of Act

20. Where an Act which confers power to make any appointment, to make subsidiary legislation, to prescribe forms or to do any other thing for the purposes of the Act, has been assented to by the President in accordance with the Constitution, such power may, unless a contrary intention appears, be exercised at any time after such assent, so however that any subsidiary legislation or appointment made or other thing done in exercise of such power shall not take effect until the Act comes into operation except to the extent necessary for bringing the Act into operation.

General provisions with respect to the power to make subsidiary legislation

21. Where any written law confers power on any person to make subsidiary legislation, the following provisions shall, unless a contrary intention appears, have effect with reference to the making of subsidiary legislation—

(*a*) where any subsidiary legislation purports to be made in exercise of a particular power or powers, it shall be deemed also to be made in exercise of all powers thereunto enabling;

(*b*) no subsidiary legislation shall be inconsistent with the provisions of any Act and any such legislation shall be of no effect to the extent of such inconsistency;

(*c*) subsidiary legislation may at any time be amended by the same person by whom and in the same manner in which it was made:

Provided that, where such person has been replaced wholly or in part by another person, the power conferred thereby upon the original person may be exercised by the replacing person concerning all matters or things within his jurisdiction as if he were the original person;

(*d*) where any written law confers power on any person to make subsidiary legislation for any general purpose, and also for any special purpose incidental thereto, the enumeration of the special purpose shall not be deemed to derogate from the generality of the powers conferred with reference to the general purpose;

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(*e*) there may be annexed to the breach of any subsidiary legislation such penalty not exceeding K1,000 or such term of imprisonment not exceeding three months, or both such fine and imprisonment, as the authority making the subsidiary legislation may think fit.

References to written laws to include subsidiary legislation thereunder

22. Any reference to a written law shall, except where a contrary intention appears, include a reference to any subsidiary legislation made under the written law to which rerefence is made.

Act done under subsidiary legislation deemed done under written law which authorizes it

23. An act shall be deemed to be done under any written law or by virtue of the powers conferred by any written law or in pursuance or execution of the powers of or under the authority of any written law, if it is done under or by virtue of or in pursuance of subsidiary legislation made under any power contained in that written law.

Fees

24.—(1) Where any written law confers power on any person to make subsidiary legislation, and provision may be made by such subsidiary legislation in respect of fees or other charges, such subsidiary legislation may, unless a contrary intention appears, provide for all or any of the following matters—

(*a*) specific fees or charges;

(*b*) maximum fees or charges;

(*c*) minimum fees or charges;

(*d*) the payment of fees or charges either generally or under specific conditions or in specific circumstances; and

(*e*) the reduction, waiver or refund, in whole or in part, of any such fees or charges, either upon the happening of a certain event or in the discretion of a specified person.

(2) Where any reduction, waiver or refund, in whole or in part, of any fee or charge is provided for, such reduction, waiver or refund may be expressed to apply or be applicable either generally or specifically—

(*a*) in respect of certain matters or transactions or classes of matters or transactions;

(*b*) in respect of certain documents or classes of documents;

(*c*) when any event happens or ceases to happen;

(*d*) in respect of certain persons or classes of persons; or

(*e*) in respect of any combination of such matters, transactions, documents, events and persons,

and may be expressed to apply or be applicable subject to such conditions as may be specified in the subsidiary legislation or in the discretion of any person specified therein.

Signification of orders by President or a Minister

25. Where, under any written law, the President or a Minister has exercised any power to make any subsidiary legislation or appointment, give any direction, issue any order, authorize any thing or matter to be done, grant any exemption, remit any fee or penalty, or has exercised any other power, it shall be sufficient if the exercise of such power be signified—

(*a*) in the case of the President, under the hand of the Minister for the time being responsible for the matter in question or of the Permanent Secretary nominated by such Minister in that behalf;

(*b*) in the case of a Minister, by the Permanent Secretary or other public officer nominated by such Minister in that behalf.

Appointments of officers by name or office

26. Where, by or under any written law, the President or any Minister or any other person is empowered to appoint or name a person to exercise any powers or perform any duties, the President or such Minister or other person may appoint a person by name or the person for the time being holding the office designated by the President, such Minister or other person to exercise such powers and perform such duties; and thereupon or from the date specified in the appointment, the person appointed by name or the person holding the office so designated may exercise such powers and perform such duties accordingly.

Powers and duties to be exercised and performed from time to time

27. Where any written law confers any power or imposes any duty, then, unless a contrary intention appears, the power may be exercised and the duty shall be performed from time to time as the occasion arises.

Powers and duties of office holder

28. Where any written law confers any power or imposes any duty on the holder of any office as such, then, unless a contrary intention appears, the power may be exercised and the duty shall be performed by the person for the time being holding that office.

Reference to holder of office includes person discharging

29. In any written law, instrument, appointment, warrant or process of any kind, any reference to a person holding an office shall include a reference to any person for the time being lawfully discharging the functions of that office.

Power to appoint substantively pending retirement etc., of existing holder

30.—(1) Where the substantive holder of any public office constituted by or under any Act is on leave pending relinquishment by him of such office, it shall be lawful for another person to be appointed substantively to the same public office.

(2) Where two or more persons are holding the same public office by reason of an appointment made in accordance with subsection (1), then for the purposes of every written law and in respect of every power conferred or duty imposed upon the holder of such office, the person last appointed to the office shall be deemed to be the holder thereof.

Effect of appointment to act in a public office

31. Where, by or under any written law, any powers are conferred or any duties are imposed upon the holder of a public office and a public officer has, under the Constitution, been appointed to act in such public office during any period owing to absence or inability to act of the holder due to illness or any other cause, such powers may be exercised and such duties shall be performed during such period by the public officer appointed to act in such public office, subject to such conditions, exceptions and qualifications as may be specified by the authority by whom the acting appointment is made.

Power to appoint to include power to dismiss, etc., and to re-appoint

32. Where, by or under any written law, a power is conferred upon any person to make any appointment or to constitute or establish any board, commission, committee or similar body, then, unless a contrary intention appears, the person having such power shall also have the power to remove, suspend, dismiss or revoke the appointment of, and to re-appoint or reinstate, any person appointed in the exercise of the power, or to revoke the appointment, constitution or establishment of, or dissolve any board, commission, committee or similar body appointed, constituted or established in exercise of such power, and to re-appoint, re-constitute, or re-establish the same:

Provided that where the power of such person so to act is exercisable only upon the recommendation, or is subject to the approval or consent of some other person, then such power shall, unless a contrary intention appears, be exercisable only upon such recommendation or subject to such approval or consent.

Change in title of public office

33. Whenever the title of any public office is changed, the President may, by order, direct that, for the purposes of all written laws, the title of the office shall be replaced by the new title from a date specified in the order, and with effect from such date any reference in any written law to the former title of such office shall be read and construed as a reference to that office by such new title.

Construction of enabling words

34. Where any written law confers power upon any person to do or to enforce the doing of any act or thing, all such powers shall be deemed to be also conferred as are necessary to enable the person to do or to enforce the doing of the act or thing.

Power of President to delegate authority

35.—(1) Where by any written law the President is empowered to exercise any powers or perform any duties, he may, unless by any written law expressly prohibited from doing so, depute any person by name, or the person for the time being holding the office designated by him, to exercise such powers or perform such duties on his behalf, subject to such conditions, exceptions and qualifications, as the President may prescribe, and

thereupon or from the date specified by the President the person so deputed may exercise such powers and shall perform such duties as aforesaid.

(2) Nothing in subsection (1) shall be deemed to relate to the appointment or functions of a Presidential Commission under the Constitution.

Power of Ministers and others to delegate

36. Where, by or under any written law, a Minister, the Attorney General, a Permanent Secretary, the Director of Public Prosecutions, or the Commissioner of Police is empowered to exercise any power or to perform any duty, such Minister, the Attorney General, such Permanent Secretary, the Director of Public Prosecutions or the Commissioner of Police, as the case may be, may, unless by any written law expressly prohibited from doing so, depute any person or the person for the time being holding any office designated by him to exercise such power or perform such duty on his behalf, subject to such conditions, exceptions and qualifications as the Minister, Attorney General, Permanent Secretary, Director of Public Prosecutions or Commissioner of Police, as the case may be, may specify, and thereupon from the date specified by the Minister, Attorney General, Permanent Secretary, Director of Public Prosecutions or Commissioner of Police, as the case may be, the person deputed may exercise such power and shall perform such duty, subject to any conditions, exceptions and qualifications as aforesaid:

Provided that nothing in this section shall extend to the delegation of any power to make subsidiary legislation.

Saving in respect of delegations

37. Notwithstanding the delegation under section 35 or 36 of any power or duty, the person by whom such delegation was made may—

(*a*) exercise such power or perform such duty; and

(*b*) vary or cancel such delegation.

Power of majority of more than two persons

38. Save as is otherwise expressly provided by any written law, whenever any act or thing is required to be done by more than two persons, a majority of them may do it.

Method of appeal to the President or a Minister and appearance thereon

39. Where, by or under any written law, a right of appeal to the President or a Minister against the decision of any person, statutory body or public officer is given to any person, such person may, in the absence of any express provision to the contrary—

(*a*) within thirty days of notification of the decision submit for the consideration of the President or Minister a written memorandum setting out the grounds of appeal on which he relies; and

(*b*) if he so desires, with the consent of the President or Minister, appear in person or by legal practitioner on such

date and at such time as the President or Minister may decide.

Power to appoint chairman etc., of board, etc.

40. Where, by or under any written law, power is given to any person to appoint any board, council, commission, committee or similar body, it shall be lawful for such person, unless a contrary intention appears, to appoint a chairman, deputy chairman, vice-chairman and secretary of such board, council, commission, committee or similar body.

Power to appoint members of board, etc., includes power to appoint public officers and alternates

41.—(1) Where, by or under any written law, any authority to appoint a person as member of any board, council, commission, committee or similar body is conferred, then, unless a contrary intention appears, the authority shall include a power—

(*a*) to appoint, by his official designation, any public officer; and

(*b*) to appoint a person as alternate member.

(2) On an appointment by his official designation of a public officer as a member or alternate member being made under subsection (1), then, until such appointment shall be revoked or otherwise determined, the person for the time being holding the office in question shall be a member or alternate member, as the case may be, of such board, council, commission, committee or similar body.

(3) Where any person has, under the powers conferred by subsection (1), been appointed an alternate member of any such board, council, commission, committee or similar body, such person shall—

(*a*) act as a member only when the member to whom he is alternate is by reason of illness, absence from the Republic or other like cause, unable to perform his duties as a member;

(*b*) when acting as a member, have all the powers of the member to whom he is alternate.

Powers of board, etc., not affected by vacancy or certain defects

42. Where, by or under any written law, any board, council, commission, committee or similar body, whether corporate or unincorporate, is established, then, unless a contrary intention appears, the powers of such board, commission, council, committee or similar body shall not be affected by—

(*a*) any vacancy in the membership thereof; or

(*b*) any defect afterwards discovered in the appointment or qualification of a person purporting to be a member thereof.

42A. [*Repealed by* 21 *of* 1996]

Authentication of decisions, etc., and affixing of common seal

43.—(1) In the absence of express provision to the contrary, a document, other than a document required to be under seal, and a decision of any board, council, commission, committee or similar body which requires authentication may be authenticated by the signature of the chairman of or other person authorized by the board, council, commission, committee or similar body.

(2) Where, by or under any written law, any board, council, commission, committee or similar body is constituted to be a corporate body having perpetual succession and a common seal, and any document requires to be sealed with such common seal, then, in the absence of express provision to the contrary, such common seal shall be affixed by the chairman of such board, council, commission, committee or similar body or other person authorized by the board, council, commission, committee or similar body and shall be authenticated by his signature.

Time

44.—(1) The standard time of Malaŵi shall be two hours in advance of Greenwich mean time:

Provided that the President may, by order, prescribe any other period by which the standard time of Malaŵi shall be in advance of Greenwich mean time.

(2) Where any expression of time occurs in any written law or in any deed, instrument, warrant or process of any kind, the time referred to shall, unless it is otherwise expressly provided, be deemed to be the standard time of Malaŵi.

Computation of time and meaning of clear days

45.—(1) In computing time for the purpose of any written law, unless a contrary intention appears—

(*a*) a period of days from the happening of an event or the doing of any act or thing shall be deemed to be exclusive of the day on which the event happens or the act or thing is done;

(*b*) if the last day of the period is a Sunday or a public holiday (which days are in this section referred to as excluded days) the period shall include the next following day which is not an excluded day;

(*c*) where any act or proceeding is directed or allowed to be done or taken on a certain day, then, if that day happens to be an excluded day, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next following day which is not an excluded day;

(*d*) where an act or proceeding is directed or allowed to be done or taken within any time not exceeding six days excluded days shall not be reckoned in the computation of time.

(2) Where, in any written law, an act or proceeding is directed or allowed to be done or taken within a number of clear days,

excluded days shall not be reckoned in the computation of such number.

Provision where no time prescribed

46. Where no time is prescribed or allowed within which anything shall be done, such thing shall be done without undue delay, and as often as due occasion arises.

Construction of power to extend time

47. Where, in any written law, a time is prescribed for doing any act or taking any proceeding, and power is given to a court or other authority to extend such time, then, unless a contrary intention appears, such power may be exercised by the court or other authority although the application for the same is not made until after the expiration of the time prescribed.

Measurement of distances

48. In the measurement of any distance for the purposes of any written law, that distance shall, unless a contrary intention appears, be measured in a straight line on a horizontal plane.

Evidence of signature of President, Minister or law officer, etc.

49. Where the fiat, consent or authority of the President, a Minister, the Attorney General, the Solicitor General or the Director of Public Prosecutions is necessary before any prosecution, action or other proceeding is commenced, any document purporting to bear the fiat, consent or authority of the President, Minister, Attorney General, Solicitor General or Director of Public Prosecutions shall be received as *prima facie* evidence in any proceeding without proof being given that the signature to such fiat, consent or authority is that of the President, Minister, Attorney General, Solicitor General or Director of Public Prosecutions.

Evidence of execution of instrument under seal by public officer
51 of 1971

49A.—(1) Whenever the Government is, or has at any time been, a party to any transaction which, in order to meet some requirement of the law or for some other sufficient reason, is constituted or evidenced by, or recorded in, an instrument under seal such instrument shall, subject to subsection (2), for all purposes be presumed to have been signed, sealed and delivered by the Government if executed by a public officer for, on behalf of and in the name of the Government by such officer signing and delivering the instrument after having affixed his personal seal thereto.

(2) The presumption referred to in subsection (1) may be rebutted only by evidence which establishes to the satisfaction of any court that the public officer who executed the instrument concerned did not have the authority, express or implied, to enter on behalf of the Government into the transaction constituted or evidenced by, or recorded in, such instrument.

Law officers

50. Any power conferred or duty imposed by any written law on the Attorney General may, unless a contrary intention appears, be exercised or performed by the Solicitor General if—

(*a*) the Attorney General is unable to act owing to illness or absence; or

(*b*) the Attorney General authorizes the Solicitor General to act in any particular matter or class of matters.

Ex-officio proceeding not to abate on death, etc.

51. Any civil or criminal proceeding taken by or against any person in virtue of his office shall not be discontinued or abated by his death, resignation or absence or removal from office, but may be carried on by or against, as the case may be, the person for the time being holding that office.

Imposition of penalty no bar to civil action

52. The imposition of a penalty or fine under the authority of any written law shall not, in the absence of express provision to the contrary, relieve any person from liability to answer for damages to any person injured.

Provision as to offences under two or more laws

53. Where an act or omission constitutes an offence under two or more written laws, the offender shall, unless a contrary intention appears, be liable to be prosecuted and punished under any of such laws, but shall not be liable to be punished twice for the same offence.

Penalties prescribed may be maximum penalties, but may be cumulative

54.—(1) Where any written law contains a provision prescribing a penalty for an offence, such provision shall, unless a contrary intention appears, mean that the offence shall be punishable by a penalty not exceeding the penalty prescribed.

(2) Where in any written law more than one penalty is prescribed for an offence, the use of the word "and" shall, unless a contrary intention appears, mean that the penalties may be inflicted alternatively or cumulatively.

Disposal of forfeits

55.—(1) Where any animal or other thing is by any written law declared, or is under any written law adjudged by any court or other authority, to be forfeited, it shall, in the absence of express provision to the contrary—

(*a*) be forfeited to the Government; and

(*b*) the net proceeds thereof, if it is ordered by a competent authority to be sold, shall be paid into the Consolidated Fund.

(2) Nothing in this section shall affect any provision in any written law whereby any portion of any fine or forfeit or the proceeds of any forfeit is expressed to be recoverable by any person or may be granted by any authority to any person.

Disposal of fines and penalties

56. Any fine or penalty imposed by or under the authority of a written law shall, in the absence of express provision to the contrary, be paid into the Consolidated Fund.

Interpretation of applied laws

57.—(1) Every applied law shall be read with such formal alterations as to names, localities, courts, offices, persons, moneys, penalties and otherwise as may be necessary to make the same applicable to the circumstances.

(2) Every applied law shall be construed in accordance with the law relating to the interpretation of such applied law which was in operation in the place where and at the time when the law was made.

Saving of rights of Government in written laws

58. No written law shall, in any manner whatsoever, affect the rights of the Government unless it is therein expressly provided, or unless it appears by necessary implication that the Government is bound thereby.

Service, etc. of documents
5 of 1981

59.—(1) Where in any written law, whether the word "serve", "send" or some other word is used, a document is required or permitted to be served on, sent or given to, any person under or

for the purposes of the written law and there is no express provision in the written law directing it to be served, sent or given in a particular manner, the document may be served, sent or given—

(*a*) in the case of an individual (except where paragraph (*b*) or (*c*) applies), by serving it upon the individual personally or by sending it by post in an envelope addressed to him at his usual or last known postal address;

(*b*) in the case of a public officer as such, by serving it upon him personally or by leaving it, in an envelope addressed to him, at the principal office where he exercises or performs his functions or by sending it by post in an envelope addressed to him at the postal address of such principal office;

(*c*) in the case of a partnership—

(i) by serving it upon a partner, or the person having the control or management of the partnership, personally; or

(ii) by leaving it at the principal office of the partnership, or by sending it by post, in an envelope addressed to such partner or person at the postal address of the principal office of the partnership,

Cap. 46:04 but without prejudice to section 18 of the Partnership Act;

(*d*) in the case of a body corporate, by leaving it at the registered or principal office of the body corporate, or by sending it by post, in an envelope addressed to the body corporate at the postal address of such registered or principal office; or

(*e*) in the case of a body, whether corporate or unincorporate, constituted or established by an Act, by leaving it at the principal office of the body or any other office specified by the body as one at which it will accept service of documents, or by sending it by post, in an envelope addressed to the body at the postal address of such principal or other office.

(2) For the purposes of paragraphs (*c*) and (*d*) of subsection (1), the principal office of a company registered outside Malaŵi or a partnership carrying on business outside Malaŵi is its principal office or registered principal place of business, as the case may be, within Malaŵi.

(3) Where in any written law, whether the word "serve", "send" or "give" or some other word is used, a document is required or permitted to be served on, sent or given to, any person because he is or was the occupier, lessee or owner of any building or other premises and it is not practicable after reasonable enquiry to ascertain that person's name, it is sufficient if he is described in the document as the occupier, lessee or owner, as the case may be.

(4) Where in any written law, whether the word "serve" or "give" or some other word is used, a document is required or permitted to be served on, or given to, any person as being the person having an estate or interest in land and it is not practicable after reasonable enquiry to ascertain that person's name or address, the document may be served or given—

(*a*) by addressing it to the person by the description of the person having that estate or interest in the land (naming it); and

(*b*) by delivering the document to some responsible person over the apparent age of eighteen years on the land or by affixing it, or a copy of it, in a conspicuous position on the land.

(5) Where a document is sent by post pursuant to subsection (1), it shall be deemed to have been received, unless the contrary is proved, at the time at which it would be delivered in the ordinary course of post.

60. [*Repealed by* 30 *of* 1969].

Production of *Gazette* and official copies to be *prima facie* evidence of contents

61. The production of a copy of the *Gazette* containing any written law or any notice of any kind whatsoever, or of a copy of any such written law or notice purporting to be printed by the Government Printer, shall be *prima facie* evidence in all courts and for all purposes whatsoever of the due tenor and making of such written law or notice.

Power to cancel licences, etc. 3 of 1968

62.—(1) Notwithstanding any other law, where any written law confers the power to issue any licence, permit or authorization, such licence, permit or authorization may at any time be cancelled upon the directions of the responsible Minister, without the assignment of any reason, if the Minister is satisfied that the holder of the licence has acted in a manner harmful to the interests of the national economy or the security of the State.

(2) Where under subsection (1) any licence, permit or authorization is cancelled, the Government and any Minister or officer of the Government shall not be liable for the payment of any compensation.

(3) Where any written law confers a power to issue any licence, permit or authorization, then, unless a contrary intention appears, such licence, permit or authorization may be issued subject to such conditions, not inconsistent with that law, as the authority issuing it deems expedient.

Cap. 14:06

(4) The Forfeiture Act may be applied in any case where a licence, permit or authorization has been cancelled under subsection (1).

Act for which payment required need not be performed until payment made

63.—(1) Where any person is required to do anything for which a fee is to be paid or a charge made under any written law, such person may decline to do that thing until the fee is paid or until payment of the charge is made, or, where the precise amount of the payment to be made cannot be ascertained until the thing has been done, until there is paid such an amount as may be estimated to be the correct amount by the person required to do the thing.

(2) Where a thing has been done for which an estimated amount has been paid, such amount shall be adjusted to the correct amount either by means of a further payment or by refund of the amount overpaid.

REVISION OF THE LAWS

CHAPTER 1:02

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CHAPTER 1:02

REVISION OF THE LAWS

ARRANGEMENT OF SECTIONS

SECTION

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An Act to provide for revisions of the Laws of Malaŵi and for matters connected therewith

15 of 1968
51 of 1971
9 of 1977
20 of 1978
11 of 1989

[2nd April, 1968]

1. This Act may be cited as the Revision of the Laws Act. Short title

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

"Commissioner" means the Law Revision Commissioner appointed by the Minister under section 3 (1);

"in force" in relation to an Act, means enacted and brought into operation, and in relation to subsidiary legislation, means made and brought into operation;

"Law Revision Officer" means the Law Revision Officer designated as such pursuant to section 3 (2);

"Law Revision Order" means an order made by the Minister under section 5;

"revision date" in respect of the first edition of the Laws of Malaŵi prepared and published under this Act, means, for Acts, the 1st January, 1968, and for subsidiary legislation, the 4th August, 1967, and in respect of subsequent revisions of the Laws of Malaŵi, means the 1st January in each year, or such other date, in any year, as the Minister may, by order, appoint as a revision date.

Commissioner: Law Revision Officer

3.—(1) The Minister may, from time to time, appoint a Commissioner for the purposes of this Act, who shall be known as the Law Revision Commissioner.

(2) There shall be a Law Revision Officer who shall be a public officer designated as such by the Minister.

Duties of Commissioner and Law Revision Officer

4.—(1) It shall be the duty of the Commissioner, in accordance with this Act, to prepare and publish, or cause to be prepared and published, an edition to be known as the Laws of Malaŵi, containing all the written laws required to be contained therein.

(2) It shall be the duty of the Law Revision Officer from time to time, as directed by the Attorney General, to maintain and revise the Laws of Malaŵi.

Publication of the Laws of Malaŵi
9 of 1977

5.—(1) The Laws of Malaŵi shall be published in looseleaf form, or such other form as the Commissioner may determine, and shall comprise only such pages as may be authorized to be included therein by the Minister under subsection (2).

(2) The Minister shall, by order, give authority for the inclusion in the Laws of Malaŵi of each and every page to be comprised therein, and may similarly authorize the replacement of pages therein and the removal of pages therefrom, and no page shall be deemed to form part of the Laws of Malaŵi until or unless it is so authorized.

(3) Every page comprised in the Laws of Malaŵi shall bear a reference to the Law Revision Order by which its inclusion therein was authorized:

9 of 1977

Provided that where pursuant to section 83 (1) of the Customs and Excise Act, any Order is made prescribing complete new tariffs under the said Act, and such Order is published in the *Gazette* as a separate Supplement thereto in a looseleaf or other form approved by the Commissioner, and the said separate Supplement is, by a Law Revision Order, made at any time after such publication, incorporated in its published form into the Laws of Malaŵi as a separate Supplementary Volume of such Laws of Malaŵi, the provisions of this subsection shall not apply to any pages comprised in such Supplementary Volume on the date of its said incorporation under such Law Revision Order, but shall apply to any pages included therein under the authority of any later Law Revision Order.

(4) A Law Revision Order may authorize the inclusion in the Laws of Malaŵi of pages on which are reproduced a written law although such written law may not have been in force on the last preceding revision date, provided that an instrument bringing that written law into operation has been published prior to the publication of such Law Revision Order.

Periodical revision of Laws of Malaŵi

6.—(1) As soon as practicable after the 1st January, 1969, and after each subsequent revision date the Laws of Malaŵi shall be revised in accordance with this Act, and the necessary pages prepared for inclusion in, or to replace pages in, the Laws of Malaŵi, and the necessary steps taken to remove from the Laws of Malaŵi pages no longer required, to the intent that the Laws of Malaŵi shall contain all the written laws which are required or authorized by this Act to be included therein and are in force on the relevant revision date.

(2) Where any error in or omission from the Laws of Malaŵi comes to light and such error or omission cannot be conveniently corrected under section 14, the Law Revision Officer may, at any time, prepare the necessary pages and take the necessary steps which should have been prepared or taken in order to comply with subsection (1). A Law Revision Order authorizing the inclusion, replacement or removal of pages for such purpose may have retrospective effect to the date of coming into operation of the Law Revision Order from which the error or omission resulted.

(3) Nothing in this section or in section 2 or 5 shall be construed to prevent the Minister from appointing more than one revision date in any year.

Laws of Malaŵi to constitute sole and proper version of laws

7. The written laws reproduced on the pages duly authorized for inclusion in the Laws of Malaŵi shall, in all courts and for all purposes, constitute the sole and proper version of those laws in force on the last preceding revision date.

Contents of Laws of Malaŵi
20 of 1978

8. The Laws of Malaŵi shall, in relation to any revision date, contain—

(*a*) every Act in force in Malaŵi, unless omitted under section 9;

(*b*) such subsidiary legislation in force in Malaŵi as the Attorney General thinks fit to include therein;

(*c*) a chronological list of Acts and a table of contents;

(*d*) a list of the Acts omitted under the authority of section 9 (*c*), (*d*) and (*e*).

Power to omit certain laws from the Laws of Malaŵi
20 of 1978

9. It shall not be necessary to include in the Laws of Malaŵi—

(*a*) any Appropriation Act or Supplementary Appropriation Act;

(*b*) any foreign law which is applied in Malaŵi by virtue of a specific provision in an Act of the Parliament of Malaŵi, even though not therein set out;

(*c*) any loan Act or loan guarantee Act;

(*d*) any Act of a temporary nature which can, in the opinion of the Attorney General, be conveniently omitted;

(*e*) any Act specified by the Minister, by order, for the purpose of this section;

(*f*) any subsidiary legislation which the Attorney General thinks fit to omit therefrom.

Validity of laws not included in the Laws of Malaŵi

10. Any written law omitted from the Laws of Malaŵi under the authority of section 9(*a*), (*b*) or (*f*), and any written law omitted from the Laws of Malaŵi under the authority of section 9(*c*), (*d*) or (*e*) which is specified in the list referred to in section 8(*d*), shall have the same force and effect as if it had not been so omitted, but otherwise no written law shall have force and effect in Malaŵi unless it is reproduced in the Laws of Malaŵi or specified in the list referred to in section 8(*d*):

Provided that this section shall not apply to any written law brought into operation after a revision date until after the next succeeding revision date.

Powers in respect of preparation of pages 20 of 1978

11.—(1) In the preparation of pages for inclusion in the Laws of Malaŵi, the Attorney General shall have power—

(*a*) to omit or remove from the Laws of Malaŵi—

(i) all written laws or parts of written laws which have been repealed expressly or specifically or by necessary implication, or which have expired, or have become spent or have had their effect;

(ii) all repealing enactments contained in written laws and also all tables or lists of repealed enactments, whether contained in schedules or otherwise;

(iii) all preambles or long titles to written laws where such omission can, in the opinion of the Attorney General, be conveniently made;

(iv) all introductory words of enactment in any provision of any written law;

(v) all enacting clauses;

(vi) all provisions prescribing the date when any written law or part of a written law is to come into force, where such omission can, in the opinion of the Attorney General, be conveniently made;

(vii) all amending written laws or parts thereof where the amendments effected thereby have been embodied by the Attorney General in the laws to which they relate;

(*b*) to consolidate into one written law any two or more written laws relating to similar matters, making all the necessary alterations therefor and affixing such date thereto as may seem convenient;

(*c*) to alter the order of the provisions in any written law and, in all cases where it is necessary to .do so, to renumber the provisions;

(*d*) to alter the form or arrangement of any provision by transferring words, by combining it in whole or in part with another provision or other provisions or by dividing it into two or more provisions;

(*e*) to divide any written law, whether consolidated or not, into Parts, Chapters or Divisions;

(*f*) to transfer any provision contained in any written law from that law to any other written law to which the Attorney General considers that it more properly belongs;

(*g*) to arrange written laws, whether consolidated or not, in any sequence or group that may be convenient, irrespective of the date of enactment;

(*h*) to add a long title, short title or citation to any written law which may require it, and where the Attorney General considers it necessary, to alter the long title, short title or citation in any written law;

(*i*) to supply or alter marginal notes;

(*j*) to supply or alter tables of contents;

(*k*) to shorten and simplify the phraseology of any enactment;

(*m*) to correct grammatical and typographical errors, or any clerical or printing errors in any written law and for that purpose to make verbal additions, omissions or alterations not affecting the meaning of any written law;

(*n*) to make such formal alterations as to names, localities, offices and otherwise as may be necessary to bring any written law into conformity with the circumstances of Malaŵi;

(*o*) to make such adaptations or amendments to any written law as may appear to be necessary or proper as a consequence of any change in the constitution of any Commonwealth country;

(*p*) to renumber any Part, Chapter or Division and to rearrange the order of Parts, Chapters or Divisions;

(*q*) to classify or arrange all written laws under headings or otherwise, and to add to, alter or abolish any such classification or arrangement;

(*r*) to cause to be included in the Laws of Malaŵi any written law which has been omitted therefrom under the authority of this Act;

(*s*) to do all things relating to form and method which to the Attorney General appear necessary for the perfecting of the Laws of Malaŵi.

(2) In the preparation of pages for inclusion in the Laws of Malaŵi there shall be power to make such amendments, modifications, adaptations, qualifications and exceptions to the written laws as may be necessary or expedient for bringing them into conformity with the provisions of the Republic of Malaŵi (Constitution) Act, or of the Constitution or of any written laws replacing them or otherwise for enabling effect to be given to such provisions.

No power to make amendments of substance

12. Subject to section 11 (2), nothing in this Act shall confer any power to make any alterations or amendments in the substance of any law.

Construction of reference to repealed, etc., written law 51 of 1971

13.—(1) Where in any written law or in any document of whatever kind reference is made to any law repealed or otherwise affected by or under the operation of this Act, such reference shall, where necessary and practicable, be deemed to extend and apply to the corresponding law in the Laws of Malaŵi.

(2) Whenever the coming into operation of a Law Revision Order renders inaccurate in any written law not incorporated in the Laws of Malaŵi any references by numerical or other designation to provisions in any written law so incorporated, such references shall be read and construed subject to such modifications as are necessary to result in their referring to such provisions as numbered or otherwise designated in the revision of the Laws of Malaŵi effected in accordance with such Order.

Power of Minister to rectify errors by order

14. The Minister may at any time, by order, rectify any clerical or printing error appearing in the Laws of Malaŵi, or rectify in a manner not inconsistent with the powers of revision conferred by this Act any other error so appearing, or any other matter or omission requiring revision.

PUBLIC SERVICE

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CHAPTER 1:03

PUBLIC SERVICE

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19 of 1994
G.N. 51/1994

An Act to make provision for the administration of the public service and for matters ancillary thereto or connected therewith

[1ST AUGUST, 1994]

PART I

PRELIMINARY

Short title

1. This Act may be cited as the Public Service Act.

Application

2. This Act shall apply with respect to the administration of the public service save as otherwise provided under any written law with respect to any part of the public service.

PART II

FUNDAMENTAL PRINCIPLES FOR THE ADMINISTRATION OF THE PUBLIC SERVICE

Character of the public service

3. The public service shall—

(*a*) aim to deliver services to the public in an efficient and effective manner;

(*b*) be the instrument for generating and maintaining public confidence in the Government;

(*c*) be impartial, independent and permanent so as to enable the public to continue to receive Government services and in order that the executive functions of the Government continue uninterrupted irrespective of which political party is in power;

(*d*) be guided only by concerns of the public interest and of the welfare of the public in the delivery of services and the formulation and implementation of development projects;

(*e*) aim to achieve and maintain the highest degree of integrity and proper conduct amongst the personnel at all grades.

Entry and advancement to be based on merit

4. Entry into and advancement within the public service shall be determined solely on the basis of merit, namely, relative ability, knowledge, skill and aptitude after fair and open competition which assures that all citizens receive equal opportunity.

Appointment to posts

5.—(1) In selecting candidates for appointment to posts in the public service, the selecting authority shall have regard primarily to the need for promoting efficiency in the public service.

(2) No person shall be appointed in the public service except to fill a post which is appropriately established and is vacant and has been properly estimated for in the estimates of expenditure.

Appointment of public officers above the rank of under secretary

6. Subject to the Constitution, the power to appoint any person in the public service to a post above the rank of under secretary shall vest in the President.

Fair and equal treatment of public officers

7. All public officers shall be treated fairly and equally in all aspects of human resource management and development without regard to their political, tribal or religious affiliation or to their sex, age or origin in Malaŵi.

Equal pay

8. The basis for remuneration of public officers shall be equal pay for work of equal value and recognition for excellence in the performance of their duties as determined by an objective method of evaluation.

Code of conduct

9. Disciplinary provisions to regulate the code of conduct of public officers shall be in accordance with regulations made, or deemed to have been made, under this Act.

Deployment of Public Officers

10. The deployment of public officers within the public service shall be based solely on the exigencies of the service, balancing the following factors—

(*a*) the need to promote and achieve higher individual output of the public officer and to ensure his job satisfaction;

(*b*) the need to achieve higher organizational performance of the public service; and

(*c*) the attainment of national objectives.

Retention of public officers

11. The retention of a public officer in the public service at any time after his appointment shall be justified only on the basis of the need for his duties and his satisfactory performance of those duties.

Promotion and training

12. All public officers shall be accorded opportunity for career advancement and self-development through promotions and appropriate available training.

Welfare, etc., for public officers

13. All public officers shall be accorded facilities for staff welfare, job satisfaction, higher quality of working life, rewards and incentives through the establishment and institution of appropriate schemes and mechanisms.

General approach in the management of the public service

14. The management of the public service shall be based on modern and appropriate human management concepts and techniques within a framework which meets the basic requirements for—

(*a*) efficient and effective delivery of service to the public;

(*b*) concern for the welfare of public officers, as employees;

(*c*) adherence to law;

(*d*) administration of staff regulations with sensitivity to the social and economical impact of such administration on the individual public officer.

PART III

Public Service Administration and Management

Constitution and abolition of public offices

15.—(1) Subject to the Constitution and to any other written law, the power to constitute or abolish public offices and to designate the titles thereof shall be exercised by the Minister by order published in the *Gazette*.

(2) An order made under subsection (1) may provide for—

(*a*) the title and number of offices;

(*b*) the emoluments to be attached to offices;

(*c*) such incidental, consequential or supplemental matters as, in the opinion of the Minister, are necessary or expedient to give effect to the order.

(3) Without restriction on the generality of subsection (2), such order may include provisions—

(*a*) making in any enactment regulating the number of offices in respect of which, or the number of office holders in respect of whom, emoluments may be paid, such modifications as may be expedient; and

(*b*) amending any enactment relating to the appointment, powers, duties, rights or liabilities of any officer holding the office specified in the order or bearing the same style and title as an officer appointed to an office specified in the order.

The head of the public service

16. The Secretary to the Cabinet shall be the head of the public service.

Functions of the head of the public service

17. Subject to this Act and any general or special directives of the Minister, the Secretary to the Cabinet, as head of the public service, shall be responsible for the overall management and administration of the public service and, without restriction on the generality of the foregoing, he shall—

(*a*) with the approval of the Minister, formulate, direct and co-ordinate the overall national policy in relation to the public service respecting—

(i) objectivity and permanency of service;

(ii) principles and criteria for recruitment, retention, advancement and termination of service;

(iii) staff welfare, motivation and remuneration of public officers;

(iv) deployment, utilization and performance evaluation;

(v) career planning, training, development and performance of the public service; and

(vi) discipline;

(*b*) provide leadership on all matters pertaining to the public service, including the development of—

(i) a positive public image of the public service;

(ii) high integrity and morale, and excellency in the performance of duty by the public service; and

(iii) fair and equitable treatment of all public officers;

(*c*) develop specific public service goals and priorities, to be achieved within a medium and long-term time frame.

Establishment of post of Secretary for Human Resource Management and Development

18. There shall be established the post of Secretary for Human Resource Management and Development (in this Act referred to as the "Secretary for Human Resource Management and Development") who shall be a public officer and shall be responsible for administering this Act.

Establishment of Department of Human Resource Management and Development

19. There is hereby established a department of the Government to be known as the Department of Human Resource Management and Development, to be headed by the Secretary for Human Resource Management and Development, and the principal objectives of which shall be—

(*a*) to effectively and judiciously administer the provisions of this Act and regulations made thereunder;

(*b*) to continuously examine the public service related needs and priorities at various levels of the administration of the Government and assess the relevance and effectiveness of current administrative instruments of the public service with a

view to recommending appropriate measures to meet the requirements of this Act;

(*c*) to develop and maintain sound and effective public service systems and practices appropriate to the requirements of Malaŵi;

(*d*) to periodically review the extent of centralization or delegation of authority necessary for efficient and effective performance of the public service; and

(*e*) to develop, introduce and judiciously administer the public service conditions of service, codes of ethics, precedents and norms to ensure that the integrity of the service, staff morale and welfare and overall performance of the public service continuously remain high.

Responsibilities of the Secretary for Human Resource Management and Development

20.—(1) Subject of this Act, the Secretary for Human Resource Management and Development shall take overall responsibility and related functions, on behalf of the Secretary to the Cabinet, with respect to the administration and management of the public service.

(2) Without restriction on the generality of subsection (1), the Secretary for Human Resource Management and Development shall be responsible for the following—

(*a*) human resource planning;

(*b*) human resource training and development;

(*c*) human resource complement, grading and deployment;

(*d*) human resource management;

(*e*) recruitment and promotion policy;

(*f*) performance and productivity improvement;

(*g*) direction, co-ordination and control of all professional, technical and administrative activities relating to functions specified in paragraphs (*a*) to (*f*) of this section;

(*h*) co-ordination of the training, development and utilization of human resources allocated to the Department of Human Resource Management and Development;

(*i*) management of all human resources, finances, materials, supplies and equipment allocated to the Department of Human Resource Management and Development in all fields and at all levels of the operation of the Department in an effective and efficient manner;

(*j*) development and maintenance of close liaison with national, regional and international agencies, and project the needs of Malaŵi in the field of public service sector human resource management;

(*k*) ensuring effective and efficient overall management of the Department of Human Resource Management and Development through, among other things, the development and maintenance of an effective organizational structure, the

introduction of efficient personnel work systems and procedures, providing positive leadership and supervision and the introduction of appropriate internal efficiency evaluation measures to enhance the overall performance of the Department;

(*l*) submission of periodic management reports to the Secretary to the Cabinet, analyzing in detail the achievements and management constraints being encountered by the public service and a plan of action for achieving further progress; and

(*m*) such other functions as may be prescribed by the Minister by regulations.

PART IV

Administration of Ministries and Departments

Responsibilities of Principal Secretaries and heads of department

21.—(1) The Principal Secretary of every ministry or the head of department of every department, as the case may be, shall be the overall Controlling Officer of that Ministry or department.

(2) Without restriction on the generality of subsection (1), a Controlling Officer shall, subject to the Constitution, be responsible for—

(*a*) the management and administration of all resources of the ministry or department in accordance with appropriate public service regulations;

(*b*) setting directions, objectives and appropriate guidelines and strategies for the ministry or the department; and

(*c*) initiating, formulating, implementing and reviewing the policies of the ministry or the department.

(3) Where the functions of a ministry or department have been assigned to a Minister, the Principal Secretary or head of department, as the case may be, shall be responsible for advising the Minister on all matters relating to the management and administration of the ministry or the department.

(4) In the performance of his functions, the Principal Secretary and the head of a department shall be subject to the general and special direction of the Minister.

Supervision of administration of Ministries

22. Subject to the Constitution and to the general and special directions of the Minister, the supervision of the administration of a ministry (including any department of that ministry) shall at all times remain the responsibility of the Principal Secretary of that ministry.

Accountability of Principal Secretaries and heads of department

23. The Principal Secretary of a ministry and the head of department, as the case may be, shall be accountable for all the administrative activities of the ministry or department for which that Principal Secretary or head of department is responsible.

Accountability by management

24. Subject to this Act, every public officer in the management level of a ministry or department shall be responsible for the efficient management of the resources of that ministry or department and shall be accountable in respect of the management of the resources of that ministry or department.

PART V

Individual Rights and Responsibilities of Public Officers

Responsibility and role of officers

25. Subject to this Act, every officer employed in the public service shall be responsible for the execution of the duties and tasks properly assigned to him and shall be accountable for his actions in the mobilization and utilization of resources made available in relation to the execution of duties and tasks.

Right of officers regarding terms and conditions of service

26. Subject to the Constitution and to this Act, every officer employed in the public service has the right of access to the terms and conditions on which he is employed.

PART VI

Miscellaneous

Restriction on termination of the service of public officers

27.—(1) Except in circumstances where a public officer has absconded from his duties within the meaning ascribed to the word "abscond" by the Minister by regulations made or deemed to have been made under this Act, or the post held by the public officer has been abolished, no public officer appointed to an established post in the public service on permanent and pensionable terms shall be dismissed or otherwise have his service terminated at the instance on the Government unless—

(*a*) he is proved to have committed a prescribed act of misconduct;

(*b*) he is presented with a notice of the disciplinary charge in writing specifying the prescribed act of misconduct he is alleged to have committed; and

(*c*) he is allowed a reasonable period, being not less than twenty-one days from the date of the notice of the disciplinary charge, within which he may reply to the charge in writing.

(2) Where a public officer has attained qualifying service for mandatory retirement or for retirement at his own option or with the approval of the Minister or other appropriate authority, termination of his service on the basis of a disciplinary charge

presented to him in accordance with subsection (1) shall be by way of retirement from service as if he had opted, or obtained the appropriate approval, to retire, unless the act of misconduct in question involves misappropriation of, or failure to account for, public funds or public stores entrusted to his control or custody.

The Civil Service Commission, etc.

28. Subject to the Constitution, the Civil Service Commission and every other Service Commission established under the Constitution shall, in the performance of its function, be bound and guided by the provisions of this Act.

Retirement age

29.—Subject to subsection (2), no officer shall continue to serve in the public service after attaining the mandatory retirement age of 55 years.

(2) The Minister may, from time to time, by order published in the *Gazette*, revise the mandatory retirement age prescribed under subsection (1).

Regulations

30.—The Minister may, subject to the Constitution and this Act, make regulations for the administration, regulation and disciplinary control of the public service and for matters incidental thereto.

(2) Without restriction on the generality of subsection (1), any such regulations may make provision for—

(*a*) the terms and conditions of service of public officers; and

(*b*) the performance of the functions of any appropriate authority and the forms and procedures to be followed by such authority in the exercise of its functions, or by a person to whom such functions may have been lawfully delegated.

Savings

31. Any regulations or other subsidiary legislation applicable with respect to the terms and conditions of service of public officers immediately before the commencement of this Act and which are or is capable of being made under section 30—

(*a*) shall continue in force and be deemed to be regulations or other subsidiary legislation made under this Act; and

(*b*) may be amended or replaced by subsidiary legislation made under this Act.

PUBLIC OFFICERS (DECLARATION OF ASSETS, LIABILITIES AND BUSINESS INTERESTS)

CHAPTER 1:04

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CHAPTER 1:04

PUBLIC OFFICERS (DECLARATION OF ASSETS, LIABILITIES AND BUSINESS INTERESTS)

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SCHEDULES

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22 of 2013
G.N. 24/2014

An Act to make provision for the declaration of assets, liabilities and business interests by certain public officers and for connected matters

[1st July, 2014]

PART I

Preliminary

Short title

1. This Act may be cited as the Public Officers (Declaration of Assets, Liabilities and Business Interests) Act.

Interpretation

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

"agent" means any person who acts for, or on behalf of, or in the name of, a public officer, and includes a trustee, an administrator or an executor;

"assets" means holdings of value, whether tangible or intangible, movable or immovable, including cash, property, goods, savings, investments, equipment, as well as other quantities possibly having no market value, pre-paid expenses, or goodwill;

"business interests" means participation with any individual in a commercial enterprise or venture, or participation in any association, institution, organization or entity, whether of a commercial nature or otherwise, regardless of whether a pecuniary benefit or other assets are derived from such participation;

"close associate" means any person, whether related or unrelated by blood or marriage, who holds or will hold any financial interest, or any power, for or on behalf of a public officer;

"declaration" means a declaration of assets, liabilities and business interests in accordance with this Act;

"liabilities" means a present obligation of the public officer, his or her spouse or member of his or her immediate family arising from past events the settlement of which is expected to result in an outflow from the public officer, his or her spouse or member of his or her immediate family, of resources embodying tangible or intangible benefits;

"member of immediate family", in relation to a public officer, includes the public officer's spouse, any biological or adoptive child who is below the age of eighteen or any biological or adoptive child whose means of support is wholly or partially from a public officer, irrespective of age;

"Monitoring Committee" means the Monitoring Committee of Parliament established under section 213 (4) of the Constitution;

"Public Appointments Committee" means the Public Appointments Committee of Parliament established under section 56 (7) of the Constitution;

"public officer" means any person who is a member of, or an employee of, the Government, a statutory body or any other body appointed by the Government, whether his or her membership or his or her employment is temporary, whole or part-time, paid or unpaid.

PART II

Objective and Guiding Principles of Ethical Conduct

Objective of the Act

3. The objective of the Act is to promote public confidence in the public service, including in the offices of public and elected officials.

Principles of ethical conduct

4.—(1) The guiding principles of the Act are integrity, honesty, accountability, responsibility, fairness, transparency, rule of law, professionalism and impartiality of public officers.

(2) In furtherance of the guiding principles of this Act, every public officer shall—

(*a*) not use his or her office for personal enrichment or to improperly enrich others;

(*b*) to the best of his or her ability, avoid being in a position in which his or her personal interests conflict with his or her public duties;

(*c*) avoid any activity that is inconsistent with his or her public functions;

(*d*) not misuse or misappropriate public property entrusted to his or her care;

(*e*) not be permitted to concurrently receive remuneration for the performance of his or her duties as a public officer and remuneration for the performance of private employment or of business or entrepreneurial activities, unless he or she makes a full disclosure of all outside employment, business interests or entrepreneurial activities:

Provided that no actual or potential conflict exists between the public officer's official duties and his or her outside employment, business interest or entrepreneurial activity.

Duty to submit declarations under the Act

5. A public officer listed in the First Schedule to the Act (in this Act otherwise referred to as the "listed public officer") shall submit declarations in accordance with this Act.

PART III

Office of the Director of Public Officers' Declarations

Establishment of office of the Director of Public Officers' Declarations

6.—(1) There is hereby established the Office of the Director of Public Officers' Declarations (in this Act otherwise referred to as the "Director") which shall be a public office.

(2) The Director shall be responsible for the administration of this Act.

(3) The Director shall perform his or her functions independent of any person or authority, but shall otherwise be accountable to Parliament.

Appointment of the Director and Deputy Director

7.—(1) The Director shall be appointed by the Public Appointments Committee.

(2) The Public Appointments Committee shall call for nominations from the public for appointment to the office of the Director by way of a public advertisement placed by the Clerk to the National Assembly, and the successful candidate shall be appointed in accordance with the requirements of this section.

(3) No person shall qualify for appointment as the Director unless that person has a record of high integrity, and possesses suitable qualifications and training necessary for effective performance of the duties of that office.

(4) The terms and conditions of service of the Director shall be determined by the Public Appointments Committee.

(5) The Director shall, subject to section 8, hold office for a period of three years and shall be eligible for reappointment for one additional term of three years.

(6) There shall be a Deputy Director of Public Officers' Declarations (in this Act otherwise referred to as the "Deputy Director") who shall be appointed by the Public Appointments Committee and who shall perform such functions and duties as may be assigned to him by the Director, from time to time.

(7) The Public Appointments Committee shall call of nominations from the public for appointment to the office of a public advertisement place by the Clerk to the National Assembly, and the successful candidate shall be appointed in accordance with the requirements of this section.

(8) No person shall qualify for appointment as Deputy Director unless that person has record of high integrity, and possesses suitable qualifications and training necessary for effective performance of that office.

(9) The terms and conditions of service of the Deputy Director shall be determined by the Public Appointments Committee.

(10) The Deputy Director shall—

(*a*) subject to section 8, hold office for a period of three years, and shall be eligible for reappointment for one additional term of three years; and

(*b*) qualify for appointment as Director.

Removal from office of the Director and Deputy Director

8.—(1) A person holding the office of the Director or the Deputy Director may be removed from office by the Public Appointments Committee—

(*a*) where had that person not been the Director or the Deputy Director, that person would have been disqualified from being appointed;

(*b*) for gross misconduct; or

(*c*) for inability to perform the functions of his or her office.

(2) The President may, where it is considered desirable in the public interest so to do, and with the confirmation by the Public Appointments Committee, suspend the Director or Deputy Director pending investigations to determine whether or not the Director or Deputy Director may be removed from office under subsection (1).

Acting Director

9. If the offices of Director and Deputy Director are vacant, or the Director and the Deputy Director are absent from duty or unable for any other reason to perform the functions of their office, the President shall appoint, subject to confirmation by the Public Appointments Committee, another duly qualified person to act as Director during such vacancy or temporary absence:

Provided that where the period of such vacancy or temporary absence has exceeded twenty-one days, the President shall, within fourteen days thereafter, furnish to the Public Appointments Committee the reasons why the vacancy in both or either of the two offices cannot be substantively filled with immediate effect, and an estimate of the time within which the vacancy shall be filled, being not longer than three months from the expiry of the period of twenty-one days herein referred to.

Appointment of other officers and staff

10. In addition to the Director and the Deputy Director there shall be appointed in the public service, such other officers subordinate to the Director as may be required for the proper performance of the functions of the Director, but the appointment of individual officers under this section shall not require the confirmation of the Public Appointments Committee.

Functions of the Director

11.—(1) The Director shall be responsible for the enforcement, regulation and monitoring of declarations, and other related matters in accordance with this Act.

(2) Without limiting the generality of subsection (1), the functions of the Director shall be to—

(*a*) receive declarations from listed public officers;

(*b*) verify declarations submitted by listed public officers;

(*c*) recommend to the Minister the development of rules and regulations necessary for the proper implementation of this Act;

(*d*) ensure accessibility of this Act by the general public;

(*e*) generally advise public officers concerning their obligations under this Act;

(*f*) provide technical assistance to listed public officers on the correct method of filing declarations;

(*g*) annually publicize in the *Gazette*—

(i) the names of listed public officers who have complied with this Act;

(ii) the names of listed public officers who have not complied with this Act; and

(iii) a summary of declarations filed by each listed public officer;

(*h*) provide, annually, an assessment report of compliance by public officers with the provisions of this Act to the Minister who shall lay the report before the National Assembly;

(*i*) enforce listed public officers' compliance with this Act by referring non-compliance with this Act to relevant employment authorities with recommendations for appropriate sanctions;

(*j*) upon verification of declarations, report any evidence or reasonable suspicion of criminal activity by a listed public officer to the Director of Public Prosecutions, the Police, or the Director of the Anti-Corruption Bureau, as the case may be; and

(*k*) report any elected public officer, Minister or any other listed public officer who, in the opinion of the Director, may properly be dealt with by the Monitoring Committee, to the Monitoring Committee, if such listed public officer fails to comply with the provisions of this Act.

Powers of the Director

12. For the performance of his functions under this Act, the Director may—

(*a*) institute an inquiry into alleged or suspected non- compliance with this Act;

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(*b*) notwithstanding section 6 of the Taxation Act, order the production of any information, documents, or the giving of testimony, from any public officer, government agency, private company or any person, relating to the declarations filed by a listed public officer;

(*c*) require a listed public officer to amend, within thirty days, any declaration that is procedurally or substantively defective; and

(*d*) perform such other acts as are reasonably necessary or required for the exercise of his or her functions.

Monitoring Committee to monitor functions and powers of the Director

13.—(1) The Monitoring Committee shall be responsible for monitoring the functions and powers of the Director.

(2) In the exercise of its functions, the Monitoring Committee shall—

(*a*) receive annual declarations reports prepared by the Director;

(*b*) confirm that all listed public officers are in full compliance with the requirements of this Act; and

(*c*) take any appropriate action to enforce the compliance of this Act by listed public officers.

PART IV

Content of Declarations, Procedure and Public Access to Declarations

Submission of declarations

14.—(1) Every listed public officer shall, no later than three months after assuming his or her duties as a listed public officer, submit his or her declaration to the Director.

(2) A declaration specified in subsection (1) shall be in the form set out in the Second Schedule.

(3) A listed public officer shall submit to the Director—

(*a*) an annual declaration update return within thirty days after the commencement of each fiscal year;

(*b*) a declaration three months before expiry of period of service, unless a declaration specified in subsection (1), and (3) (*a*) was filed within three months prior to the termination date.

(4) The declarations specified in subsection (3) shall be in the form set out in the Third Schedule.

(5) Where a contract of service is terminated without notice by either party, the Director may order that a declaration be submitted within thirty days from the date of termination, unless the declaration specified in subsections (1), and (3) (*a*) was filed within three months prior to the termination date.

(6) A listed public officer shall submit his or her signed declaration forms directly to the Director and retain a copy for his or her personal records.

(7) A listed public officer who is in the employment of the office of the Director shall, in accordance with the Act, submit his or her declarations to the office of the Speaker of Parliament.

Information to be specified in declarations

15.—(1) In the declaration, a listed public officer shall specify—

(*a*) his or her name, surname, and place of residence, and details of members of his or her immediate family;

(*b*) his or her office or position as a public officer;

(*c*) the date of election, appointment or selection to the public office;

(*d*) information on previous public offices held before submission of the declaration;

(*e*) assets, including information on—

(i) any asset in which he or she or any member of his or her immediate family has a full or part ownership interest, and the description of the asset, its location, the date of acquisition, the amount paid for the asset, the current valuation of the asset, and where possible, the contact details of the person or entity where the asset was acquired;

(ii) any asset which he or she or any member of his or her immediate family has sold, relinquished or otherwise transferred

within twenty-four months prior to the date of filing the declaration, and the description of the asset, the date the asset was sold, relinquished or transferred, the value of the asset at the time of sale, relinquishment or transfer, and the consideration received in exchange;

(iii) any other asset which he or she or any member of his or her immediate family has financed, or owns in any other name than his or her own name and the description of the asset, its location, the date of acquisition, the amount paid for the asset, the current valuation of the asset, and the name or names in which the asset is held or owned;

(iv) income which he or she or any member of his or her immediate family received within the past twelve months, and the source, amount, date and explanation of such income;

(v) any bank account, wherever located, held in his or her name or held jointly with any member of his or her immediate family, close associate, agent or business partner, and the name of the account holder, the name of the banking institution, the type of account, the account number, and the balance of the account; and

(vi) shares in any company, any government stocks, bonds, treasury bills, any life insurance policy or related schemes held in his or her name or held jointly with any member of his or her immediate family, agent or business partner, and a description of the location and value of such shares, stocks, bonds, treasury bills, life insurance policy or related assets;

(*f*) liabilities and debts which he or she owes or which any member of his or her immediate family owes, and the name and address of the individual or entity to which the debt or the liability is owed, the amount and nature of the debt or liability, and the date and circumstances under which it was incurred;

(*g*) business interests, including information on any commercial or entrepreneurial activity in which he or she or any member of his or her immediate family has engaged in the last twenty-four months, and the nature, location and dates of the commercial or entrepreneurial activity; and

(*h*) the date on which the declaration is submitted and his or her signature.

Retention of declarations

16.—(1) The Director shall keep declarations submitted under this Act for a period of seven years after the person ceases to be a listed public officer.

(2) Notwithstanding subsection (1), the Director may, where there is an investigation, keep the declaration which is the subject matter of the investigation for a longer period than seven years.

Public access to declarations

17.—(1) The declarations made under this Act shall be treated as public information and may be accessible to members of the public upon application to the Director in the form set out in the Fourth Schedule.

(2) The Director may, if there are reasonable grounds taking into account the objectives of this Act, refuse access to declarations.

(3) Where the Director refuses access to declarations, he shall, within fourteen days from receipt of the application, notify the requesting party in writing stating grounds for his refusal.

(4) The application to access declarations under this section shall be confidential unless the applicant—

(*a*) upon accessing the declarations, misuses or otherwise abuses the information; or

(*b*) upon being refused access to the declarations, applies for a judicial review of the decision of the Director.

PART V

General

Offences

18.—(1) A listed public officer who, without reasonable cause, fails to submit the required declaration within the time determined by this Act shall, subject to the Constitution and any other written law, be liable to be dismissed from the public office.

(2) A listed public officer who files a declaration which the public officer knows or believes to be inaccurate or misleading, or does not believe to be true, commits an offence and shall be liable on conviction to a fine of K500,000 and imprisonment for two years and shall, subject to the Constitution and any other written law, be dismissed from the public office.

(3) The Director may, notwithstanding any penalty imposed under this section, order the listed public officer to submit the required declaration.

(4) Any person who, upon accessing declarations submitted by a listed public officer under section 17, misuses or otherwise abuses the information commits an offence and shall be liable on conviction to a fine of K500,000 and imprisonment for two years, without prejudice to any other legal remedy available to the injured person.

Disqualification from public office and reference for investigation

19.—(1) In addition to the penalties prescribed under section 18, every listed public officer, who without reasonable cause, fails to submit a declaration or who knowingly submits an inaccurate or misleading declaration, shall—

(*a*) in the case of failure to submit a declaration, be disqualified from holding a public office for a period of three years;

(*b*) in the case of submitting an inaccurate or misleading declaration and upon conviction, be disqualified from holding any public office for a period of seven years; and

(*c*) be referred to the Director of Public Prosecutions, the Police or the Director of the Anti-Corruption Bureau for further investigation.

(2) If, after further investigation and prosecution, a listed public officer who is disqualified from holding a public office under subsection (1) (*a*), is convicted of an offence, the three-year disqualification period shall be substituted for a seven-year disqualification period.

Whistleblowers

20.—(1) Any person who reasonably believes or suspects that a listed public officer has submitted a false or inaccurate declaration or has otherwise not complied with this Act, (in this part otherwise referred to as a "whistleblower") may report the violation to the Director.

(2) No information relating to a whistleblower shall be admitted in evidence in any administrative, civil or criminal proceeding, and no person shall be obliged or permitted to disclose the name or address of such whistleblower, or state any matter which might lead to his discovery.

(3) If any documents, records or files which are in evidence or liable to inspection in any administrative, civil or criminal proceeding contain any entry in which the whistleblower is named or described or which might lead to his or her discovery, the Director or the court before which the proceeding is heard shall cause all such passages to be deleted so far as is necessary to protect the whistleblower from discovery.

(4) If the Director or any court, after full inquiry into the case, determines that the whistleblower provided information to the Director which he or she knew or believed to be false, or did not believe to be true, the Director or court may permit an inquiry and may require full disclosure concerning the whistleblower.

(5) Any person who, knowing that a whistleblower has informed the Director of an alleged or suspected violation of this Act or other offence connected therewith, does any action to punish or victimize the whistleblower in any way commits an offence and shall be liable on conviction to a fine of K500,000 and to imprisonment for two years.

Penalties for disclosing identity of whistleblowers

21. Any person who discloses the identity of a whistleblower commits an offence and shall be liable on conviction to a fine of K500,000 and to imprisonment for two years.

False information by whistleblowers

22. Any whistleblower who provides the Director with information which he or she knows or believes to be false, or does not believe to be true, commits an offence and shall be liable on conviction to a fine of K500,000 and to imprisonment for two years.

Expenditure in connexion with the function of the office of the Director

23. The expenditure in connexion with the office of the Director and the exercise of the powers of the Director, and the performance of the duties and functions of the Director, shall be paid from moneys appropriated for that purpose by Parliament.

Regulations

24. The Minister may, on the recommendation of the Director, and by notice in the *Gazette*, make regulations for the better carrying out of the provisions of this Act.

Transitional provisions

25. At the commencement of this Act, any person serving as a listed public officer shall be required to submit a declaration in the prescribed form within the time set by the Director.

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s. 5

FIRST SCHEDULE

Public Officers Required to Make Declarations

PART A

Political and Elected Officials

1. President
2. Vice President
3. Speaker and Deputy Speakers of the National Assembly
4. Cabinet Minister
5. Members of Parliament
6. Leader and Treasurer of a political party represented in Parliament
7. Mayor and Councillors of City Councils
8. Councillors of District and Town Councils

PART B

Senior Public Officers

9. Chief Justice
10. Attorney General
11. Secretary to the Cabinet
12. Deputy Secretary to the Cabinet

13. Judges of the High Court of Malaŵi and Justices of Appeal of the Supreme Court of Appeal
14. Solicitor General
15. Law Commissioner
16. Ombudsman
17. High Court and Supreme Court of Appeal Registrar
18. Director of Public Prosecutions
19. Director and Deputy Director of the Anti-Corruption Bureau
20. Director of the Office of Public Officers' Declarations
21. Inspector General of Police and senior officers of the rank of Superintendent and above
22. Chancellor and Vice Chancellor of a public University
23. Registrar of a public University and Finance Officers
24. Commissioner and Deputy Commissioner of Prisons and officers in charge of prison stations
25. Chief Immigration Officer
26. Auditor General
27. Director of Public Procurement and Deputy Director of Public Procurement
28. Commissioner General and Deputy Commissioner General of the Malaŵi Revenue Authority
29. District Commissioners and Assistant District Commissioners
30. Army Commander, Deputy Army Commander and senior officer of the rank of Major and above
31. Administrator General
32. Registrar General
33. Principal Secretaries and their Deputies
34. Chairperson, Board Members, Chief Executive and Deputy Chief Executive of a public body, parastatal, constitutional bodies and all other statutory bodies set up by an Act of Parliament
35. Governor, Deputy Governor, Director and Manager of the Reserve Bank of Malaŵi
36. Chief Executive, Deputy Chief Executive of City, District and Town Councils
37. Senior public officers of the grade equivalent to Director and Heads of Department

PART C

OTHER OFFICERS

38. Judicial officers
39. Procurement officers
40. Officers in the Road Traffic Department
41. Officers of the Malaŵi Revenue Authority
42. Immigration officers
43. State Advocates, Legal Aid Advocates and all public prosecutors
44. Police Traffic Officers and investigative officers
45. Advisor to the President and Vice President
46. Advisor to a Cabinet Minister
47. Accounting personnel
48. Officers of the Anti-Corruption Bureau
49. Officers of the Office of Director of Public Procurement

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SECOND SCHEDULE

DECLARATION OF ASSETS, LIABILITIES AND BUSINESS INTERESTS INITIAL DECLARATION FORM

1. PERSONAL PARTICULARS:

(*a*) Surname: .....

(*b*) Other Names: .....

(*c*) Date of Birth: .....

(*d*) Place of work: .....

(*e*) Present Grade/position: .....

(*f*) Date of Appointment/Election: .....

2. Houses in the Officer's Name:

	Location	*Plot No. Address/Town*	*Year Built or Purchased*	*Actual/ Estimated Cost*	*Source of Finance*

3. Houses in the Name of Members of Immediate Family:

	Location	*Plot No. Address/Town*	*Year Built or Purchased*	*Actual/ Estimated*	*Source of Finance Cost*	*Registered Owner*

4. Plots in the Officer's Name:

Plot No. Address and Town	*Source and Date Acquired*	*Cost of Purchase*	*Stage of Development*	*Cost of Development*	*Source of Finance*

5. Plots Owned by Members of Immediate Family:

Plot No. Address and Town	*Source and Date Acquired*	*Cost of Purchase*	*Stage of Development*	*Cost of Development*	*Source of Finance*	*Registered Owner*

6. Plant and Motor Vehicles in the Officer's Name:

State the number of vehicles owned within the last twenty-four months:

Type and Make	*Registration Number*	*Price Paid*	*Date Acquired*	*Current Status (i.e. sold or being used)*	*Source of Finance*

7. Plant and Motor Vehicle in the Name of Member of Immediate Family:

State vehicles owned within the last twenty-four months:

Type and Make	*Registration Number*	*Price Paid*	*Date Acquired*	*Current Status* (*i.e. sold or being used*)	*Source of Finance*	*Registered Owner*

8. Jointly Owned Assets (with Members of Immediate Family, Agent, Close Associate):

State vehicles owned within last twenty-four months:

Type and Make	*Registration Number*	*Price Paid*	*Date Acquired*	*Current Status* (*i.e. sold or being used*)	*Source of Finance*	*Partner*

9. Other Assets/Property:

Description	*Cost*	*Date Acquired*	*Current Status (i.e. sold or being used)*	*Source of Finance*	*Registered Owner*

10. Other Income:

(*a*) Company Shares Owned by the Officer:

Number and Details of Shares	*Price Paid*	*Date Acquired*	*Current Status (i.e. sold or being used)*	*Source of Finance*	*Estimated Current Value*

(*b*) Company Shares Owned by Members of Immediate Family:

Number and Details of Shares	*Registered Owner*	*Price Paid*	*Date Acquired*	*Current Status* (*i.e. sold or being used*)	*Source of Finance*	*Estimated Current Value*

(*c*) Stocks, Bonds and Treasury Bills Owned by Officer:

Number and Details of Shares	*Price Paid*	*Date Acquired*	*Current Status* (*i.e. sold or being used*)	*Source of Finance*	*Estimated Current Value*

(*d*) Stocks, Bonds and Treasury Bills Owned by Members of Immediate Family:

Number and Details of Shares	*Registered Owner*	*Price Paid*	*Date Acquired*	*Current Status* (*i.e. sold or being used*)	*Source of Finance*	*Estimated Current Value*

(*e*) Insurance Policies Owned by Officer:

Number and Details of Insurance Policies	*Price Paid*	*Date Acquired*	*Current Status* (*i.e. sold or being used*)	*Source of Finance*	*Estimated Current Value*

(*f*) Insurance Policies Owned by Members of Immediate Family:

Number and Details of Insurance Policies	*Registered Owner*	*Price Paid*	*Date Acquired*	*Current Status* (*i.e. sold or being used*)	*Source of Finance*	*Estimated Current Value*

11. Other Sources of Income:

(*a*) Have you in the last twelve months received income from other sources, e.g. dividends, share bonuses, etc?

YES or NO (delete whichever does not apply)

(*b*) If YES, how many ..... please give details below:

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Total Value: .....

(*c*) Any other disclosure that you believe that are material and should be made known?

YES or NO (delete whichever does not apply)

(*d*) If YES, please give details below:

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12.—(*a*) BANK ACCOUNT OWNED BY OFFICER:

Bank/Savings Bank/SACCO	*Type of Account*	*Account Number*	*Balance*

12.—(*b*) BANK ACCOUNTS OWNED BY MEMBERS OF IMMEDIATE FAMILY:

Bank/Savings Bank/SACCO	*Type of Account*	*Account Number*	*Registered Owner*	*Balance*

12.—(*c*) Joint Bank Accounts (with a Member of Immediate Family, Close Associate or Agent):

Bank/Savings Bank/SACCO	*Type of Account*	*Account Number*	*Registered Owner*	*Balance*

13. Assets in Other Names:

(*a*) Do you or any member of your immediate family have any assets in other name other than in your own or in the name of a member of immediate family e.g close associate, agent?

YES or NO (delete whichever does not apply)

If YES, how many ..... please give details below:

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(*b*) Do you or any member of your immediate family have any assets jointly owned with another person other than a member of immediate family, e.g., close associate, relative or agent?

YES or NO (delete whichever does not apply)

If YES, how many ..... please give details below:

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(*c*) Have you or any member of your immediate family financed asset(s) but which are in the name of other people other than a member of immediate family, e.g., close associates, agents or relatives?

YES or NO (delete whichever does not apply)

If YES, how many: ..... please give details below:

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(*d*) Have you or any member of your immediate family sold or transferred any asset(s) previously owned by you or the member of immediate family in the last twenty four months?

YES or NO (delete whichever does not apply)

If YES, how many: ..... please give details below:

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.....

(*e*) Are you or a member of your immediate family owed any debt(s)?

YES or NO (delete whichever does not apply)

If YES, please give details as follows—

(i) Debts in favour of the officer:

Short-Term:

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Long-Term:

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(ii) Debts in favour of immediate family:

Short-Term:

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Long-Term:

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14. LIABILITIES:

(*a*) Do you or a member of your immediate family have any liabilities?

YES or NO (delete whichever does not apply)

If YES, please give details as follows—

(i) Liabilities against the Officer:

Short-Term:

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Long-Term:

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(ii) Liabilities against a member of immediate family:

Short-Term:

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Long-Term:

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15. Business Interests:

(*a*) Do you have any business interest?

YES or NO (delete whichever does not apply)

If YES, please give details as follows—

(i) Those owned by the Officer:

Nature of Business	*Source of Funding*	*Partners*	*Estimated Income/Year*

(ii) Those owned by members of immediate family:

Nature of Business	*Source of Funding*	*Partners*	*Estimated Income/Year*

(iii) Those owned by close associates or agents:

Nature of Business	*Source of Funding*	*Partners*	*Estimated Income/Year*

(*b*) Are you affiliated in any way with any other institution, organization or entity, whether or not you derive income or assets from such affiliation?

YES or NO (delete whichever does not apply)

If YES, please give details as follows—

Name of Institution, Organization or Entity	*Nature of Affiliation*	*Estimated Income/Year* (*if any*)	*Period of Affiliation*

DECLARATION

(*a*) I declare that the information I have provided above is a correct account of my situation with regard to assets, liabilities and business interest that could be attributed to my name;

(*b*) I have no objection to the Director verifying the above information;

(*c*) I make this solemn declaration conscientiously believing the same to be true and by virtue of the Oaths, Affirmations and Declaration Act.

Declared at: .....
this .....
day of .....

.....
Signature of the Public Officer

Before me: .....
Commissioner for Oaths

FOR THE DIRECTOR'S USE ONLY

Received by: .....

Signature: .....

Title: .....

Date: .....

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THIRD SCHEDULE

Declaration of Assets, Liabilities and Business Interests Annual Declaration Form

1. Personal Particulars

   (*a*) Surname: .....

   (*b*) Other Names: .....

   (*c*) Date of Birth: .....

   (*d*) Place of work: .....

   (*e*) Present Grade/position: .....

   (*f*) Date of Appointment/Election: .....

2. Period of Declaration: .....

3. Describe any additional assets acquired or sold over stated period:

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4. Describe any additional liabilities incurred over the stated period:

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5. Describe any additional business interests acquired over the stated period:

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6. Any other material information:

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DECLARATION

(*a*) I declare that the information I have provided above is a correct account of my situation with regard to assets, liabilities and business interest that could be attributed to my name;

(*b*) I have no objection to the Director verifying the above information;

(*c*) I make this solemn declaration conscientiously believing the same to be true and by virtue of the Oaths, Affirmations and Declaration Act.

Declared at: .....
this .....
day of .....

.....
Signature of the Public Officer

Before me: .....
Commissioner for Oaths

FOR THE DIRECTOR'S USE ONLY

Received by: .....

Signature: .....

Title: .....

Date: .....

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FOURTH SCHEDULE

Declaration of Assets, Liabilities and Business Interests by Public and Elected Officers

Application Form

Particulars of Applicant:

(*a*) Surname: .....

(*b*) Other Names: .....

(*c*) Identity Number: .....

(*d*) Date of Birth: .....

(*e*) Occupation: .....

(*f*) Contact Details: .....

(i) Physical Address: .....

.....

(ii) Postal Address: .....

.....

(iii) Telephone Number: .....

(iv) Cellular Phone Number: .....

(v) Fax Number: .....

(vi) Email Address: .....

I, the bearer of the above particulars, DO HEREBY apply for access to the details of the declaration made by: .....

.....

(*state particulars of the Public Officer*) submitted to the office of the Director of Public Officer Declarations pursuant to section 15 (2). I would like to have access to the following information: .....

.....

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.....

.....

(specify the details being sought) for the following reasons: .....
.....
.....
.....
.....
.....

I DECLARE that the personal details provided above are correct and that I shall use the information sought for the furtherance of the objectives of this Act only.

I make this solemn declaration conscientiously believing the contents hereof to be to the best of my knowledge and information and by virtue of the Oaths, Affirmations and Declaration Act, and I am further aware that I will be committing an offence under this Act should I use the information requested in any way other than for the furtherance of the objectives of the Act.

Declared by the said: .....
at ..... this
day of ..... } .....
Signature of Applicant

Before me: .....
Commissioner for Oaths

FOR THE DIRECTOR'S USE ONLY

Received by: .....

Signature: .....

Title: .....

Date: .....

PARLIAMENTARY AND PRESIDENTIAL ELECTIONS

CHAPTER 2:01

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CHAPTER 2:01

PARLIAMENTARY AND PRESIDENTIAL ELECTIONS

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An Act to make provision with respect to the conduct of elections for the election of members of Parliament and for the election of the President of the Republic and for matters ancillary thereto or connected therewith

31 of 1993
16 of 1994
10 of 1998
10 of 2013

[31st December, 1993]

Short title

1. This Act may be cited as the Parliamentary and Presidential Elections Act.

Application

2. This Act shall apply to the election of members of Parliament and the election to the office of the President.

Interpretation
10 of 1998

3. In this Act, unless the context otherwise requires—

"ballot box" means the box into which a voter shall deposit the ballot paper or ballot papers corresponding to the candidate or candidates he has voted for in the election;

"ballot paper" means a rectangular sheet of paper for use by a voter in expressing his vote in an election;

"by-election" means the election of a member of the National Assembly to fill a seat in the National Assembly which has become vacant otherwise than by dissolution of Parliament;

"candidate" means any person who has been nominated under this Act as a candidate for election as a member of the National Assembly or for election to the office of President;

"Commission" means the Electoral Commission established under section 30 of the Constitution;

"constituency" means an area delimited as such under section 31 of the Constitution and section 8 (1) (*a*) and (*b*) of the Electoral Commission Act;

"Council" means the National Consultative Council established by the National Consultative Council Act 1993;

"election" means a general election or a by-election;

"election representative" means a person appointed by a candidate under section 35 to be the candidate's representative for purposes of an election;

"general election" means an election consequent upon dissolution of Parliament for the election in accordance with this Act of members of the National Assembly and the President;

"independent candidate" means a candidate not sponsored by a political party;

"irregularity;", in relation to the conduct of an election, means noncompliance with the requirements of this Act;

"National Assembly" means the National Assembly constituted under section 19 of the Constitution;

"nomination day" means the day appointed by the Commission for the receipt of nominations of candidates for an election under this Act;

"political party" means a political party registered under the Political Parties (Registration and Regulation) Act; Cap. 2:07

"polling day" means any day appointed by the Commission under section 36 (1) (*c*) and section 48 (1) (*b*), for the holding of a poll;

"polling station" means a place established as such under section 67;

"polling station officer" means a person appointed as such under section 68 (1);

"presiding officer" means a polling station officer designated as such under section 68 (2);

"Referendum" means the referendum held on 14th June, 1993, under the Constitution (Referendum on Malaŵi's Political System) Regulations, 1993;

"registration" means the registration of voters;

10 of 1998 "returning officer" means a returning officer appointed under section 34 (1);

"the first general election" means the first general election contested by more than one political party following the Referendum;

"voter" means a person registered to vote in an election;

"voters register" means the register of voters established under section 22;

"voters registration certificate" means a certificate issued to a voter under section 24;

"voting booth" means a compartment at a polling station for screening a voter from view when he is making his choice or choices in the poll.

PART II

The Electoral Commission

[*Sections* 4–14 *Repealed by Act No.* 10 *of* 1998].

PART III

Registration of Voters

15. Every citizen of Malaŵi residing in Malaŵi and who, on or before the polling day, shall have attained the age of eighteen years shall be eligible to register as a voter in an election. Eligibility

16. It shall be the right and the civic duty of every eligible citizen to present himself for registration as a voter and further he shall have the right to verify with the Commission or its officers that he has been registered and to request that any error or omission with respect to his registration be corrected. Right and duty to register

17. The Commission shall, in accordance with this Act, create the necessary conditions and take all necessary actions for promoting awareness among the citizens of Malaŵi of the need to register as a voter for the purpose of an election and of the need for their full participation in the election. Duty to promote registration

18. A Citizen eligible to register as a voter shall be registered only once. Single registration

19. A person shall be registered as a voter in the area where he ordinarily resides or was born or is employed or carries on business. Place of registration 16 of 1994

20.—(1) The Commission may employ temporary staff, on such terms and conditions as it shall determine, as registration officers who shall register voters throughout Malaŵi.

(2) No person shall be employed as a registration officer with respect to any local area of Malaŵi, unless—

(*a*) he is a citizen of Malaŵi and has attained the age of eighteen years;

(*b*) he has attained the minimum educational qualification of Junior Certificate of Education or its equivalent; and

(*c*) he has knowledge of the language commonly spoken in the area.

(3) Every registration officer shall, before commencing his duties, receive vocational training in the identification and registration of voters and generally in the requirements of this Act with respect to the registration of voters.

(4) In the performance of their duties, registration officers shall be under the supervision of the Chief Elections Officer and such of the other election officers as he or the Commission shall designate for the purpose.

21.—(1) The Commission shall establish centres throughout every constituency in Malaŵi as places where voters are to be Registration centres

registered and for this purpose the Commission shall endeavour to adopt the centres established for the registration of voters in the last previously held poll in addition to establishing new centres.

(2) No form of propaganda campaign material or advertisement shall be exhibited at a registration centre or within a radius of one hundred metres of a registration centre.

Voters registers

22. Voters registers shall be in the prescribed form and the Commission shall procure sufficient copies thereof for the registration of voters throughout Malaŵi and for distribution to registration officers at every registration centre and for that purpose may adopt existing voters registers which shall, as necessary, be updated by registration officers with new registrations.

Evidence of a person's eligibility to vote

23. An eligible person wishing to be registered as a voter in an election shall in person state that he is not registered at any other registration centre and shall present to a registration officer sufficient and cogent proof of his eligibility and may do so by producing—

(*a*) a passport, driver's licence, even if expired, tax certificate or marriage certificate, an employment identity card or employment discharge certificate or a birth certificate or similarly authentic document of identity;

(*b*) written, verbal or visual testimony of—

(i) the chief, a village headman or a registered voter of the area; or

(ii) the registration officer.

Registration and issue of voters registration certificate

24.—(1) Upon a registration officer being satisfied with proof of eligibility of a person to vote, he shall—

(*a*) issue to that person a voters registration certificate in the prescribed form;

(*b*) register that person in the voters register by entering the particulars of that person as prescribed therein.

(2) If a voters registration certificate issued to a voter is lost, destroyed, defaced, torn or otherwise damaged, the voter shall notify the registration officer or other officer duly authorized in that behalf in writing giving proof thereof, and upon such officer being satisfied with such proof he shall issue to the voter a duplicate copy of that voter's original voters registration certificate with the words "DUPLICATE" clearly marked or printed thereon.

10 of 1998

(3) A person to whom a voter's registration certificate has been issued shall be personally responsible at all times for its

safekeeping and shall not place or cause it to be placed in the custody of any other person or allow any other person to use it to vote in an election.

(4) No person shall receive, keep or use, in relation to an election, a voter's registration certificate that has not been issued to him in accordance with this section.

(5) Any person who contravenes subsection (3) or (4), or who aids, abets or counsels, or conspires with, any person to contravene subsection (3) or (4), shall be guilty of an offence and shall be liable to a fine of K50,000 and to imprisonment for seven years.

Updating of voters registers

25.—(1) In updating a voters register the registration officer shall do so by—

(*a*) adding the names and other prescribed particulars of the voters resulting from new registration;

(*b*) drawing a line, without affecting legibility, over the particulars of the persons who are known to be deceased or who have lost eligibility to vote and indicating in the margin the reasons therefor.

(2) The registration officer making new entries in a voters register or deleting entries therefrom shall initial every such new entry or deletion.

(3) Upon the registration officer being satisfied with proof of loss of eligibility of a registered voter, he shall immediately update the voters register in accordance with the procedure under this section.

Initialling of pages in voters rolls

26. In the case of registration in a new voters register, the registration officer shall initial both sides of every page at a point where registration on the page ends.

Monitoring of registration by political parties

27.—(1) Every political party contesting an election shall have the right to monitor the registration of voters and shall do so through its designated representatives assigned to a specified registration centre and whose names shall be notified in writing to the Commission, and in the absence of such notification by any political party it shall be presumed that such party does not desire to monitor the registration of voters at such registration centre.

(2) The Commission shall issue to every person designated as a representative under subsection (1) a document of identity which shall be in the prescribed form.

(3) There may be assigned to one registration centre more than one representative of a political party.

(4) Section 89 shall apply *mutatis mutandis* with respect to the registration of voters. 10 of 1998

Rights and duties of representatives of political parties

28.—(1) Representatives of political parties shall have the following rights—

(*a*) to be treated with due respect and consideration by all persons administering the registration of voters and by the representatives of other political parties;

(*b*) to request and obtain information on activities relating to the registration of voters; and

(*c*) to submit, to the Commission, in writing complaints and appeals about any irregularities in the registration of voters.

(2) It shall be incumbent upon the representatives of political parties in exercising their rights under subsection (1)—

(*a*) to monitor the registration activities conscientiously and objectively;

(*b*) to co-operate in order to ensure that the registration activities proceed normally by avoiding unjustified interference in and obstacles to the work of registration officers;

(*c*) to refrain from submitting complaints or appeals in bad faith or with the purpose of paralysing the registration process; and

(*d*) to refrain from divulging any information about a voter or prospective voter obtained as a consequence of acting as a representative and which is not relevant to the registration process.

(3) In addition to political parties and their representatives any person eligible to be registered as a voter and any registered voter may submit to the Commission in writing complaints and appeals about any irregularity in the registration of voters.

(4) The Commission shall endeavour to determine every complaint or appeal relating to registration of voters before the polling day and to remedy any confirmed irregularity.

Period for registration of voters
16 of 1994

29. The period for the registration of voters shall be determined by the Commission and notified in the *Gazette*, being a period of not less than fourteen days expiring not less than twenty-one days before the first polling day.

Closing of registration

30. At the close of registration, every registration officer shall sign off the voters register assigned to him and shall forward it for custody to the Chief Elections Officer or to such other officer as is designated by the Commission for the purpose and shall submit to such officer a summary of the total number of voters registered in the area assigned to him.

Voters register open to inspection

31. A voters register shall be open to inspection, for purposes of verifying the entries therein, by voters, representatives of political parties and international observers, and for this purpose the Commission shall make copies of voters registers

and post them for inspection at appropriate public places made known to the public.

PART IV

Holding of a General Election and By-Elections

Division 1—General

General election and by-election 10 of 1998

32.—(1) A general election shall be at such times as are required by the Constitution.

(2) When a member of the National Assembly dies or resigns, or the Speaker gives notice under the relevant provision of the Constitution that a seat of a member of the National Assembly has become vacant, a by-election shall be held.

(3) A candidate may stand for election as a member of the National Assembly or for election to the office of President either on the sponsorship of a political party or as an independent candidate, and the rights and duties conferred by this Act on political parties shall apply, *mutatis mutandis*, to an independent candidate as it applies to political parties.

(4) Subject to this Act, in a general election, the poll for election of members of the National Assembly may be taken simultaneously with the poll for election to the office of President.

Delay in publication of notice pending appeal

33. When a member of the National Assembly has been sentenced by a court to death or imprisonment for a term exceeding twelve months, is adjudged or declared by court to be of unsound mind or bankrupt, or has been convicted of any offence prescribed under this Act, it shall not be necessary for the Speaker to give notice that such member's seat has become vacant until the time for appeal against such decision has expired or, if there is an appeal, until the determination of that appeal.

Appointment of returning officers

34.—(1) The Commission shall appoint a returning officer with respect to every constituency who shall receive the nominations of candidates for election in that constituency as member of the National Assembly.

(2) For the purposes of subsection (1), the Commission may designate the District Commissioner as the returning officer in respect of every constituency in his District.

Election representative

35. Every candidate may appoint one person to be his election representative and notify in writing the returning officer of the constituency in which he is, or intends to be, a candidate of the name so appointed.

Division 2—Nomination of Members of the National Assembly

Procedure for commencing conduct of elections

36.—(1) Whenever a general election or a by-election is to be held, the Commission shall issue an order, notice of which shall be published in the *Gazette*—

(*a*) declaring—

(i) in the case of a general election, that an election be held throughout Malaŵi;

(ii) in the case of a by-election or by-elections, the constituency or constituencies in which an election is to be held;

(*b*) appointing the place, date and time for the receipt by the returning officer of the nominations of candidates, in respect of each such constituency;

(*c*) appointing the day or days on which a poll shall be taken if a poll becomes necessary in accordance with this Act.

(2) The date appointed under subsection (1) (*b*) shall be not less than fourteen days after the publication of the order.

(3) The period appointed under subsection (1) (*c*) during which a poll shall be taken shall commence not less than fourteen days after the nomination of candidates.

(4) Upon receipt of a copy of the order required by this section, the returning officer for each constituency named in the order shall proceed to hold an election in the manner prescribed by or under this Act.

Nomination of candidates

37.—(1) On the day or days and at the time or times and place fixed for the nomination of candidates the returning officer shall attend in the open court at the place notified to receive the nomination of candidates and shall receive such nomination papers as may be tendered to him, and which appear to him to comply with this Act.

(2) Subject to subsection (7), the nomination of every candidate shall—

(*a*) be made by means of a nomination paper in the prescribed form;

(*b*) be made by at least ten voters registered in the constituency in which the candidate intends to be a candidate, each of whom shall sign the nomination paper;

(*c*) be endorsed with the candidate's consent to nomination;

(*d*) if the candidate is to stand for, or to be sponsored by, a political party, specify that fact, together with the name of the political party and the name of the candidate or an abbreviation of the name of the candidate, and a distinctive symbol, which the candidate wishes to appear on the ballot paper in conjunction with him; and

(*e*) in the case of an independent candidate, specify the name of the candidate or an abbreviation of the name of the candidate, and a distinctive symbol, which the candidate wishes to appear on the ballot paper in conjunction with him.

(3) Every nominated candidate shall produce to the returning officer evidence, satisfactory to the returning officer, identifying him as the person nominated.

(4) Where a nomination paper specifies the matters referred to in paragraph (*d*) of subsection (1), the nomination paper shall be countersigned by a person who is an office-bearer of the political party concerned and who has authority to certify that the candidate is to stand for that political party.

(5) The fact that subsequent to nomination the name of any person who nominated a candidate under subsection (2) (*b*) is struck off the voters register shall not invalidate the nomination of the candidate.

(6) No candidate may be nominated for election in more than one constituency or, in the case of a by-election, while he is a member of the National Assembly.

(7) A voter shall not be entitled to subscribe to more than one nomination paper.

Nomination paper and supporting documents 10 of 1998

38.—(1) Every candidate or his election representative shall at the time of his nomination deliver to the returning officer—

(*a*) a nomination paper completed and executed in the prescribed form;

(*b*) evidence, or a statutory declaration by the candidate made before a magistrate or a commissioner for oaths, that the candidate—

(i) is a citizen of Malaŵi and has attained the minimum age required by the Constitution for election to the National Assembly; and

(ii) is able to speak and to read the English language well enough to take an active part in the proceedings of the National Assembly;

(*c*) evidence that he is registered as a voter in any constituency.

(2) The returning officer shall, if the candidate or his election representative so requests, examine the nomination paper and supporting documents of the candidate before they are tendered and advise the candidate or his election representative whether in his opinion they are in order.

(3) The returning officer shall, at the earliest opportunity and in any case, before the close of the period allowed for nominations, advise the candidate or his election representative of any defect in the candidate's nomination paper or supporting

documents and the candidate or his election representative may, before the close of such period, rectify the defect.

Invalid nominations

39. Where a nomination paper is delivered in conformity with this Part and it is not withdrawn, the candidate shall be deemed to stand nominated unless the returning officer is satisfied of the candidate's death or decides that the nomination paper is invalid on one of the following grounds, but on no other grounds, namely—

(*a*) that the description of the candidate is insufficient to identify him;

(*b*) that the nomination paper does not comply with this Act;

(*c*) that the nomination paper was not tendered within the time prescribed;

(*d*) that any supporting document required to accompany the nomination paper has not been lodged with the returning officer; or

(*e*) that the evidence delivered to the returning officer under section 37 (3) is insufficient.

Rejected nominations

40.—(1) If, after the close of the period allowed for nominations but before the polling day, the returning officer is of the opinion that—

(*a*) a candidate whose nomination paper has been lodged with him has not been duly nominated in accordance with this Act or is not qualified for election or has obtained nomination by fraud or false pretences;

(*b*) any symbol or abbreviation specified in respect of a candidate pursuant to paragraph (*d*) or (*e*) of section 37 (2) is indecent or obscene or is too complex or elaborate to be reproduced on a ballot paper or so closely resembles the symbol of any candidate contesting the election in the constituency concerned or the recognized symbol or abbreviation of any other candidate or of any political party, other than the political party, if any, for which the candidate concerned is standing or which is sponsoring him as to be likely to cause confusion; or

(*c*) where the nomination paper states that a candidate is to stand for or to be sponsored by a political party, there is reason to believe that that fact is not true; or

(*d*) the nomination paper lodged with the returning officer in respect of any candidate is for any other reason not in order; or

(*e*) the deposit referred to in section 45 was not lodged with a candidate's nomination paper; or

(*f*) a candidate is not qualified for election at that election; or

(*g*) a candidate has been duly nominated for election for another constituency,

the returning officer shall forthwith notify such candidate or his election representative giving the reasons for such opinion, and, if so requested by the candidate or his election representative, the returning officer shall draw up and sign a statement of the facts and his opinion based thereon and transmit it, together with the nomination paper and any certificate or affidavit which has been lodged with such nomination paper, to the Registrar of the High Court for hearing and decision by the High Court at the earliest opportunity; and a copy of the statement shall, at the same time, be delivered to the candidate or his election representative and to the Commission.

(2) If no request is made under subsection (1) the candidate shall be deemed not to have been duly nominated.

(3) The High Court may call for further information from the person making the request or from the returning officer.

(4) The High Court shall after determination of the matter direct the returning officer either to accept or to reject the nomination and the returning officer shall comply with such direction.

(5) Where any nomination has been referred to the High Court under the provisions of this section, the proceedings under sections 41, 42 and 43 shall be suspended pending determination of the matter.

(6) Without derogation from subsection (1), the returning officer shall not take the action under that subsection—

(*a*) solely on account of any minor variation between the name of any person as it appears on the nomination and as it appears on the voters register if the returning officer is reasonably satisfied that the variation is due to an error or is without significance;

(*b*) any other imperfection in the nomination paper if the returning officer is reasonably satisfied that there has been substantial compliance with this Part.

No nomination of candidate

41. If at the end of the period allowed for nomination no candidate has been duly nominated for a constituency, the Commission shall by notice published in the *Gazette*, extend the period for the receipt by the returning officer of nominations to a date not later than seven days before the polling day.

Publication of names of candidates for election as member of Parliament 10 of 2013

41A. After receiving nominations of candidates for election as member of Parliament under this Part, the Commission shall, within fourteen days after receiving the nominations, cause to be published in the *Gazette* and on the radio and in at least two newspapers in general circulation in Malaŵi the names of all candidates who have been validly nominated for election as member of Parliament in alphabetical order of surnames.

Procedure for uncontested election

42. If at the end of the period allowed for nomination there shall be only one candidate duly nominated in a constituency, the returning officer shall publicly declare that candidate to be elected and shall immediately thereafter inform the Commission of the name of the elected candidate and the constituency for which he has been elected. Such candidates shall thereupon be a member of the National Assembly.

Procedure when poll to be held

43.—(1) When two or more persons have been duly nominated as candidates for election in any constituency, the returning officer in such constituency shall, as soon as practicable after the close of the period for nomination, publicly declare and give public notice that a poll is to be taken stating—

(*a*) the names of the candidates in alphabetical order of surnames;

(*b*) the day or days and the times, as declared by the Commission under section 36, on which the poll shall be held; and

(*c*) the location of the polling station or stations.

(2) The returning officer may, with the consent of the Commission, alter the provisions of a public notice given under subsection (1) for the purpose of fulfilling the requirements of this Act and any such alteration shall be published in the same manner as the notice.

Special provisions with respect to by-elections

44.—(1) A vacancy in the membership of the National Assembly which exists otherwise than by reason of a dissolution of Parliament shall be published by the Speaker by notice in the *Gazette* stating the cause of the vacancy.

(2) If—

(*a*) within fourteen days of the publication of a notice referred to in subsection (1), the person to whom the notice relates has not presented a petition to the High Court seeking an order declaring that he has not ceased to be a member of the National Assembly; or

(*b*) after presenting a petition referred to in paragraph (*a*), the petitioner by his own default does not prosecute his petition within fourteen days of presenting the petition;

(*c*) after hearing the petition, the High Court confirms the declaration of the Speaker,

the Registrar of the High Court shall forthwith give notice of that fact to the Speaker.

(3) If, after hearing a petition referred to in subsection (2), the High Court makes an order declaring that the petitioner has not ceased to be a member of Parliament, the Registrar of the High Court shall forthwith give notice of that fact to the Speaker, who shall publish a notice in the *Gazette* stating the effect of the order of the High Court.

(4) The Attorney General shall be respondent on the hearing of a petition referred to in subsection (2).

Deposit on nomination 10 of 2013

45.—(1) At the same time as the nomination paper for a candidate is lodged, there shall be deposited with the returning officer by or on behalf of the person nominated, such sum as may be determined by the Commission, which shall not be refundable.

(2) If a poll for the constituency concerned does not take place, the sum deposited under subsection (1) shall be refundable to the payee.

(3) The Commission shall, six months before the nomination day—

(*a*) determine the sum to be deposited under subsection (1); and

(*b*) publish in the *Gazette*, on the radio and in at least two newspapers in general circulation in Malaŵi, the sum determined under subsection (1).

Withdrawal of a candidate

46.—(1) Subject to this section, a duly nominated candidate for elections for a constituency may withdraw his nomination at any time before the polling day.

(2) A withdrawal of a candidate under subsection (1) shall be effected by means of a written notification to the returning officer, signed by the candidate personally, and the returning officer shall notify the Commission in writing.

(3) Where a candidate has withdrawn his nomination under this section the sum deposited by or on his behalf under section 45 shall be forfeited and paid into the Consolidated Fund.

(4) In the event of a candidate withdrawing his nomination under this section, the returning officer shall take all such steps as are reasonably practicable to ensure that—

(*a*) the withdrawal is brought to the attention of voters in the constituency; and

(*b*) the name of the candidate who has withdrawn is either omitted or deleted from all ballot papers.

10 of 1998

(5) A withdrawal of a candidate under this section shall be voluntary and shall be under oath sworn by the candidate before a commissioner of oaths.

10 of 1998

(6) Any person who, in any way induces or influences a candidate to withdraw from an election shall be guilty of an offence.

Death of a candidate

47.—(1) If the returning officer of a constituency is satisfied that a duly nominated candidate for election in that constituency died before the close of the poll in that constituency, he shall stop all proceedings relating to the election in that constituency and forthwith notify the Commission of that fact.

(2) Where—

(*a*) the Commission is satisfied that a duly nominated candidate for election for a constituency died before the poll commenced or, if the polls has commenced, before the close thereof;

(*b*) the proceedings relating to an election for a constituency have been stopped under subsection (1),

the Commission shall, so far as concerns that constituency, declare that all proceedings relating to the election in that constituency are void and that all proceedings relating to that election shall be commenced afresh in the same manner as if a vacancy had occurred:

Provided that no fresh nomination shall be necessary in the case of a candidate who was duly nominated at the time when the proceedings were declared void if such candidate or his election representative notifies the returning officer of the constituency in writing of his intention to remain a candidate.

Division 3*—Nominations for Election to the office of President*

Notice of election to office of President 16 of 1994

48.—(1) For the purpose of election to the office of President, the Commission shall publish in the *Gazette* a notice declaring—

(*a*) a place or places at which, and a day or days, not less than fourteen days after the day of publication of the notice, on which the Commission shall sit in the open for the purpose of receiving nominations of candidates for election to the office of President; and

(*b*) a day or days, not less than twenty-one days after the nomination day or last nomination day, as the case may be, fixed under paragraph (*a*), on which a poll shall be taken if a poll becomes necessary in accordance with this Act.

(2) The Commission may, by further notice published in the *Gazette*, alter any day, time or place fixed under subsection (1).

Nomination of candidates for election to office of President 16 of 1994

49.—(1) The nomination of a candidate for election to the office of President shall be made by at least ten registered voters in each district each of whom shall sign a nomination paper in the prescribed form which—

(*a*) the candidate or his election representative shall lodge with the Commission;

(*b*) shall be countersigned by the candidate, endorsing thereby his acceptance of the nomination;

(*c*) shall, if the candidate is to stand for or to be sponsored by a political party, specify that fact, together with the name of the political party, the name of the candidate and an abbreviation of the name of the candidate and the distinctive symbol and other particulars approved by the Commission which the candidate

wishes to appear on the ballot paper in conjunction with him;

(*d*) in the case of an independent candidate, shall specify the name of the candidate or an abbreviation of the name of the candidate and the distinctive symbol and other particulars approved by the Commission which the candidate wishes to appear on the ballot paper in conjunction with him; and

(*e*) shall be accompanied with evidence, or a statutory declaration by the candidate made before a magistrate or a commissioner for oaths, that the candidate is a citizen of Malaŵi and has attained the minimum age required by the Constitution for the election to the office of President.

(*f*) specify the name of the Vice-President appointed by him as his running mate in the elections. 16 of 1994

(2) Where a nomination paper specifies the matters referred to in paragraph (*c*) of subsection (1), the nomination paper shall be countersigned by another person who is an office-bearer of the political party concerned and who has authority to certify that the candidate is to stand for or to be sponsored by that political party.

(3) Subject to this section, the provisions of sections 37 (2) and (3), 38 and 39 shall apply, *mutatis mutandis*, in relation to the nomination of candidates for election to the office of President, and references in that section to the returning officer shall be read as references to the Commission.

Deposit on nomination

50.—(1) At the same time as nomination papers are lodged by or on behalf of a candidate for election as President, there shall be deposited with the Commission by or on behalf of the person nominated, such sum as may be fixed by the Commission.

(2) Save as provided in section 52 (3), a deposit under subsection (1) shall, *mutatis mutandis*, be treated in the same manner as a deposit under section 45.

Publication of names of Presidential candidates 10 of 2013

51. The Commission shall, within seven days after receiving nominations of candidates for election to the office of the President under this Part, cause to be published in the *Gazette* and on the radio and in at least two newspapers in general circulation in Malaŵi the names of all candidates who have been validly nominated for election to the office of the President in alphabetical order of surnames.

Withdrawal of a candidate

52.—(1) A nominated candidate for election to the office of President may, by notice in writing addressed to the Commission, withdraw his candidature at any time before the day on which the poll in an election to the office of President is to be taken.

(2) On receipt of a notice of withdrawal under subsection (1), the Commission shall cause the withdrawal to be published in

the *Gazette* and on the radio and in a newspaper in general circulation in Malaŵi.

(3) Where a candidate for election as President has withdrawn his nomination under this section, the sum deposited by or on his behalf under section 50 shall be forfeited and paid into the Consolidated Fund.

No nomination of candidate for election to office of President

53. If at the end of the period allowed for nomination for election to the office of President no candidate has been duly nominated for election to the office of President, the Commission shall by notice published in the *Gazette* extend the period for the receipt by the Commission of nominations.

When fresh nominations are to be held

54. Where—

(*a*) no candidate for election to the office of the President has been validly nominated at the expiry of the time fixed for lodging nomination papers with the Commission or;

(*b*) no candidate nominated for election to the office of President is qualified in accordance with the Constitution for election as President; or

(*c*) a candidate nominated for election of President dies on or before the day on which the poll in the election is to be taken; or

(*d*) a candidate nominated for election to the office of President who would otherwise have been entitled to be declared duly elected as President dies after the poll has begun in the election to the office of President, but before he has been declared duly elected as President, the Commission shall, by notice published in the *Gazette*, declare that all proceedings relating to the election to the office of President are void and that proceedings shall be immediately commenced afresh in accordance with this Act.

Procedure when poll to be held for election to office of President

55. If two or more persons have been duly nominated as candidates for election to the office of President, the Commission shall, as soon as practicable after the close of the period for nomination give public notice that a poll is to be taken and such notice shall state—

(*a*) the names of the candidates in alphabetical order of surnames;

(*b*) the day or days and the times on which the poll shall be held as determined by the Commission under section 48 (1) (*b*); and

(*c*) the location of the polling stations.

(2) The Commission may, for the purpose of fulfilling the requirements of this Act, alter the provision of a public notice given under subsection (1) and any such alteration shall be published in the same manner as the notice.

PART V
Campaigning

Campaigning by political parties

56.—(1) All political parties shall have the right to campaign in an election.

(2) Campaigning by or in the name of any political party shall not be conducted in any public place unless the political party has notified the District Commissioner in writing, with a copy of such notification to the officer-in-charge of Police.

(3) The District Commissioner shall stamp every notification he has received under subsection (2) with his official date stamp showing the date the notification was received by him.

(4) Where two or more political parties have given notification under subsection (1) to hold a public meeting at the same venue, the political party whose notification was first received by the District Commissioner shall be the party entitled to hold the public meeting at such venue.

Period of campaigning

57. For the purposes of this Act the period of campaigning in public by every political party under this Part shall be a period of two months closing forty-eight hours before the opening of the poll on the first polling day:

Provided that in the case of the first general election such period shall be of any duration closing forty-eight hours before the opening of the poll on the first polling day.

Equal treatment of political parties

58. Every public officer and public entity or authority shall give and be seen to give equal treatment to all political parties to enable each political party to conduct its campaign freely.

Freedom of expression and information

59. Every political party and every representative, member or supporter thereof shall enjoy complete and unhindered freedom of expression and information in the exercise of the right to campaign under this Act and no person shall, during or after the period of campaigning, be subjected to any criminal prosecution for any statement he made or any opinion he held or any campaign material he produced, published or possessed while campaigning in the election.

Freedom of assembly

60. Subject only to section 56 (2), every political party and any representative, member or supporter thereof shall, either alone or in common with others, enjoy complete and unhindered freedom of peaceful assembly in campaigning in any election.

Ethical norms during campaigning

61.—(1) Notwithstanding guarantees of freedom of expression, information and assembly under this Act, no person shall in campaigning in an election use language which is inflammatory, defamatory or insulting or which constitutes incitement to public disorder, insurrection, hate, violence or war.

(2) The Commission may prescribe a code of conduct to be complied with by every political party in conducting its campaign in an election.

Prohibited places for campaigning

62. No person shall hold a campaign under this act in or within the premises of—

(*a*) military units or police stations;

(*b*) public institutions and workplaces during normal working hours;

(*c*) educational institutions during periods of classes.

News broadcasts and reports
10 of 2013

63.—(1) Every political party shall have the right to have the substance of its campaign propaganda reported on television and radio news broadcasts of the Malaŵi Broadcasting Corporation and in any newspapers in circulation in Malaŵi:

Provided that in the case of news broadcasts by the Malaŵi Broadcasting Corporation—

(*a*) the content of the news shall be professionally determined by the Malaŵi Broadcasting Corporation;

(*b*) the Malaŵi Broadcasting Corporation shall maintain neutrality in the manner of reporting the news of the campaign propaganda of political parties and generally in its commentaries;

(*c*) the Commission shall monitor such news broadcasts and shall ensure equal news coverage of the campaigning by all political parties;

(*d*) no political party or candidate shall be entitled to make commercial advertisement for its campaign.

10 of 2013

(2) The Commission may, by arrangements with the Malaŵi Broadcasting Corporation, allocate time on the television and radio during which political parties may be allowed to speak in campaigning for an election and the Commission shall allocate equal time to every political party.

(3) For the purposes of this section, "campaign propaganda" means any activity, statement or any other form of expression aiming directly or indirectly at promoting votes for any candidate or political party contesting in an election.

Publication of books, pamphlets, etc.,

64. During the campaign period any political party may publish campaign materials in the form of books, booklets, pamphlets, leaflets, magazines or newspapers and shall, in any such publication, specify particulars sufficient to identify the political party.

Campaign posters

65. The District Commissioner shall designate places or spaces in parts of his district on which may be posted or affixed campaign materials of political parties and every political party shall be entitled to equal access to such place or space.

Campaign financing

66. Every political party may, for the purpose of financing its campaign, appeal for and receive voluntary contributions from any

individual or any non-governmental organization or other private organization in or outside Malaŵi.

66A. The provisions of this Part shall apply, *mutatis mutandis*, in relation to the campaigning by independent candidates for election to the office of the President and candidates for election as member of Parliament.

Campaigning by independent candidates 10 of 2013

PART VI
Polling Stations

67.—(1) The Commission shall establish polling stations throughout the Republic and there shall be at least one polling station for every registration centre established under section 21.

Polling Stations 10 of 1998

(2) All polling stations shall be established and located in public buildings, including schools, community or social halls, administrative offices of the Government or local authorities, but not—

(*a*) at a military unit or police station;

(*b*) in a residential building;

(*c*) in a building occupied by a political party;

(*d*) in premises where alcoholic drinks are ordinarily sold or consumed;

(*e*) places of worship or dedicated to worship; and

(*f*) hospitals or other health centres.

(3) Notwithstanding subsection (2) (*a*), the Commission may establish polling stations at any military unit or police station for purposes of enabling members of the Defence Forces of Malaŵi, the Malaŵi Police Force and members of their families to vote in the last two days prior to the polling day.

10 of 1998

(4) The Commission shall, before the polling day, publish in the *Gazette* and in more than one issue of a newspaper in general circulation in Malaŵi and by radio announcements and by any other appropriate means the names of all places throughout Malaŵi at which polling stations have been established.

10 of 1998

68.—(1) The Commission shall appoint polling station officers in its service whose duty shall be to administer the proceedings at polling stations, including more particularly the casting of votes, and to count the votes cast at polling stations.

Polling station officers

(2) The Commission shall post at every polling station at least five polling station officers one of whom the Commission shall designate as the presiding officer for that polling station and at least one of whom shall be a person able to speak the language commonly spoken in the area of the polling station.

(3) Polling station officers may be appointed from amongst persons who served as registration officers and every person appointed as a polling station officer shall receive vocational training in his duties.

Working hours for polling station officers

69. Every polling station officer shall, on the polling day, report for work at the polling station not later than thirty minutes before the opening time for the casting of votes at that polling station and at any given time of the polling day there shall be a majority of polling station officers attending to their business at the polling station.

Work items for polling station officers
10 of 1998

70. The Commission shall ensure, in due time, that polling station officers at every polling station are supplied with all necessary items, namely—

(*a*) an authenticated copy of the voters register of the voters registered at the centre served by the polling station;

(*b*) the ballot papers and accompanying envelopes for use by voters in casting their votes;

(*c*) the ballot boxes;

(*d*) the seals, sealing wax and envelopes for the votes;

(*e*) indelible ink;

(*f*) record sheets for the record required under section 93;

(*g*) a lamp or lamps to be lit and used for counting votes at the close of the poll;

(*h*) a log book in which formal complaints under section 89 shall be recorded.

Security of work items at polling stations

71. Presiding officers at polling stations and, in general, the Commission shall be responsible for creating and guaranteeing all necessary and indispensable conditions for the custody, conservation, security and inviolability of the items specified in section 70, including more particularly the ballot papers and ballot boxes.

Monitoring of voting by political parties

72.—(1) Every political party shall have the right to monitor the voting process at polling stations and shall do so through its designated representatives who shall be notified to the Commission in writing specifying their names and the polling stations to which they are to be assigned and in the absence of such notification by any political party it shall be presumed that the political party does not desire to monitor the voting process at that polling station.

(2) The Commission shall issue to every person designated as a representative of a political party under subsection (1) a document of identity in the prescribed form.

Rights and duties of representatives of political parties

73. Representatives of political parties shall have—

(*a*) the following rights—

(i) to be present at the polling stations and to occupy the nearest seats or positions to the polling station officers so as to be able to monitor all the operations relating to the casting and counting of votes;

(ii) to verify and inspect, before the beginning of the casting of the votes, the ballot boxes and the polling booths;

(iii) to request and obtain from the polling station officers any information which they consider necessary relating to the voting process and the counting of the votes;

(iv) to be consulted about any question raised on the operation of the polling station whether during the casting or the counting of the votes;

(v) to consult the voters registers at any time;

(*b*) the following duties—

(i) to act conscientiously and objectively in the exercise of their rights under this section;

(ii) to co-operate with polling station officers in the operations relating to the casting and counting of votes;

(iii) to refrain from interfering unjustifiably and in bad faith with the duties of the polling station officers so as not to disturb the process of casting and counting the votes;

(iv) to maintain the secrecy of the ballot.

PART VII

The Vote and the Voting Process

Characteristic of the vote

74.—(1) The right of a person to vote in the general elections shall be exercised individually by him and he shall be required to be physically present.

(2) Voting shall be by secret ballot.

(3) A voter shall be entitled to cast his vote only once and one person shall have one vote.

Place where to cast the vote

75.—(1) Subject to subsection (2), a person shall be allowed to exercise his right to vote at a polling station located at the registration centre where he is registered.

(2) If it is not possible for a person to vote at a polling station located at the registration centre where he is registered, the registration officer of that centre or other duly authorized officer may, on the request of such person, grant him written authorization in the prescribed form to vote at a polling station located in the place where he will be present on the polling day and in that case the polling station officers at such other polling station shall record in the manner prescribed by the Commission instructions in writing his name, the number of his voters registration certificate and the place of his registration:

Provided that the registration officer or other authorized officer may at his sole discretion refuse to grant the request.

Ballot papers
10 of 1998

76. The Commission shall arrange for the printing of sufficient quantities of ballot papers—

(*a*) for candidates for election as member of Parliament; and

(*b*) for candidates for election as President, on which shall be printed clearly and legibly, in respect of each candidate, his name or abbreviation thereof and his election symbol or the election symbol of his political party, and such other particulars as the Commission may determine to identify him distinctly from other candidates.

Voting booths
10 of 1998

77. The Commission shall establish one voting booth or more at each polling station and a voting booth shall be constructed in such a way as to screen a voter from observation when he is selecting ballot papers according to his choice consistent with the doctrine of secret ballot.

Ballot boxes

78.—(1) The Commission shall procure ballot boxes of suitable material, specification and design for use in the casting of votes by voters.

(2) Subject to satisfying the requirements of this Act, on the polling day the presiding officer of a polling station shall position in respect of each voting booth at that polling station one ballot box in such a way that when voters cast their votes in the ballot box they shall do so in full view of the polling station officers and other officials present thereat.

Right of employees to be released for voting

79. Notwithstanding any provision to the contrary in any contract of employment, all persons in paid employment, including those working by shift, shall have the right to be released for the necessary time to exercise their right to vote.

Hours of voting

80. On the polling day voting shall begin at 6 o'clock in the morning and close at 6 o'clock in the evening, but before voting begins the presiding officer, together with the other polling station officers and representatives of political parties, shall verify that there are no irregularities with the voting booth and the working documents of the polling station officers and, shall, in particular, exhibit in front of all present the ballot box to verify that it is empty after which the ballot box shall be closed and sealed.

Order of voting

81. Upon verification in accordance with section 80 that there are no irregularities, the first persons to be allowed to vote shall be the presiding officer, the other polling station officers, representatives of political parties and all officers responsible for ensuring order and security at the polling station after whom all other persons shall vote according to the order of their arrival at the polling station and, to this end, they shall form a line; but subject thereto, the presiding officer shall exercise general powers for keeping order at the polling station and for

regulating the number of persons to be admitted to vote at any time and may, if circumstances so require, use his discretion to allow certain persons to vote inconsistently with the order of priority required by this section.

Continuity of the voting process

82. Subject to section 83, voting at every polling station shall continue uninterrupted until closed.

Adjournment in certain cases

83.—(1) Voting at any polling station may be adjourned to another day to be fixed by the Commission if—

(*a*) the polling station officers are unable to assemble at that polling station in accordance with this Act;

(*b*) there occurs some commotion which causes voting to be interrupted for more than three hours; and

(*c*) in the area where the polling station is located there has occurred some public disaster or a serious disturbance of public order, not being the death of any person, which affects the voting.

(2) Where voting has been adjourned to another day under subsection (1)—

(*a*) the hours of voting on that day shall be the same as for the original day;

(*b*) the voting process shall be conducted afresh and not as continuing from the original day; and

(*c*) the votes cast on the original day shall be null and void and shall be classified as such in the records of that polling station prepared under section 93.

Prohibited presence, etc., at polling stations

84.—(1) No form of propaganda, campaign material or advertisement shall be exhibited inside a polling station or within a radius of one hundred metres outside a polling station.

(2) Unless his presence is otherwise permitted under this Act, no person shall be allowed while voting continues within the premises of a polling station or to remain within the premises of a polling station if—

(*a*) he is not a registered voter; and

(*b*) he has already voted at that polling station or at any other polling station.

(3) An agent of a media organization shall be entitled to be present at a polling station during polling and for that purpose every such agent shall identify himself to the polling station officers by presenting his credentials from the organization he represents.

(4) No person shall be present at a polling station in the capacity of a member of the armed forces or the police or as a member of any paramilitary force or a uniformed organization, unless he is employed in the service of the Commission or has been invited by the presiding officer for purposes of keeping order.

(5) The presiding officer shall take all necessary steps to effectively bar or expel from within a radius of one hundred metres of a polling station any person who is evidently drunk and disorderly or is carrying a weapon of any kind or is disturbing the order or the peace at the polling station.

Requirements for exercising the right to vote

85. For a person to be allowed to vote he must first present to the polling station officers his voters registration certificate and must not yet have exercised his right to vote.

Manner of casting the vote
Cap. 22:02
10 of 1998
10 of 2013

86.—(1) After a voter has cast his vote in accordance with section 70 of the Local Government Elections Act with respect to the election of a councillor, he shall immediately be led to the next desk of polling station officers who, on verifying that the voter has had his right index finger dipped in indelible ink, shall hand to him a ballot paper for candidates in the constituency for election as member of Parliament for use by the voter in accordance with subsection (2), and then direct the voter to the voting booth for the election of a member of Parliament.

(2) The voter shall then proceed to cast his vote in such manner as the Commission may determine.

(3) After a voter has cast his vote in accordance with subsection (2) with respect to the election of a member of Parliament, he shall immediately be led to the next desk of polling station officers who, on verifying that the voter has had his right index finger dipped in indelible ink, shall hand to him a ballot paper for candidates for election to the office of President for use by the voter in accordance with subsection (4), and then direct the voter to the voting booth for the poll for election to the office of President.

(4) The voter shall then proceed to cast his vote in such manner as the Commission may determine.

Voting by blind and disabled persons

87. A voter who is blind or is affected by disease or other physical disability may vote accompanied by another registered voter of his own choice or, failing such voter, by a polling station officer who shall assist such person in casting his vote and shall act faithfully to the wish expressed by such person and with absolute secrecy regarding the vote cast by such person.

Null and void votes
10 of 1998

88.—(1) A vote cast is null and void if—

(*a*) the ballot paper has been torn into two or more parts; or

(*b*) has been classified as such pursuant to section 83 (2) (*c*).

(2) A null and void vote shall not be regarded as valid and shall not be counted in determining the results of the elections.

Doubts and complaints

89.—(1) In addition to representatives of political parties, any voter present at a polling station may raise doubts and present in writing complaints relating to the voting at the polling station and shall have the right to obtain information from the polling station officers and from relevant documents available at the polling station.

(2) No polling station officer shall refuse to receive a complaint presented to him under subsection (1) and shall initial every such presentation and annex it as part of the official record of the polling station.

(3) Any presentation received by polling station officers under this section shall be deliberated upon among, and be resolved by, the polling station officers who may, if necessary in their opinion, postpone such deliberation or resolution until the end of the voting process to enable the process to proceed.

PART VIII

Determination of Results of the Elections

Unused ballot papers

90. At the close of the poll at any polling station, the presiding officer shall proceed by first collecting together and separately all unused ballot papers and placing them in a separate envelope provided to him for the purpose and then sealing the envelope and initialling or stamping it over the sealed area.

Classification of votes cast

91. For the purposes of determining the results of the elections at a polling station and, in particular, in counting the votes thereat, the votes cast at a polling station shall be separately classified into—

(*a*) null and void votes;

(*b*) votes for each of the candidates for election as members of Parliament;

(*c*) votes for each of the candidates for election to the office of the President.

Opening of ballot box and counting of votes
10 of 1998

92. After the close of the poll at any polling station, and only thereafter, the presiding officer shall, in the presence of other polling station officers and representatives of political parties if any be present, open the ballot box and order the counting of the votes to proceed separately according to a procedure entailing the polling station officers—

10 of 1998

(*a*) picking out of the ballot box one paper and displaying the ballot paper to all present and announcing aloud the classification of the vote as specified in section 91;

(*b*) recording on a sheet of paper provided to the polling station officers for the purpose, showing the classification of votes, the votes cast for each classification;

(*c*) displaying the already announced ballot papers and separating them into lots corresponding to each classification; and

(*d*) announcing, through the presiding officer, the number of votes cast at the polling station under each classification.

Record of the polling process

93.—(1) The presiding officer shall cause to be prepared by the polling station officers—

(*a*) a record of the entire polling process at his polling station containing—

(i) the full particulars of the polling station officers and representatives of political parties;

(ii) the total number of voters;

(iii) the total number of votes for or under each classification of votes;

(iv) the number of unused ballot papers;

(v) the number of ballot papers which have been the subject of complaints, if any;

(vi) the discrepancies, if any, between votes counted and the number of voters;

(vii) the number of complaints and responses thereto and decisions taken thereon by the polling station officers;

(viii) any other occurrence which the polling station officers consider to be important to record; and

(*b*) a brief summary of the final result,

and such record and summary shall be legibly signed by the presiding officer and each of the other polling station officers and, if any be present, at least one representative of each political party.

(2) Representatives of political parties at a polling station shall be entitled to a copy of the duly signed summary of the final result of the poll at that polling station.

(3) The presiding officer shall post at the polling station a copy of the duly signed summary of the final result of the poll at that polling station.

Delivery of ballot papers, etc., from polling stations

94. The presiding officer of a polling station shall, with all dispatch, deliver to the office of the District Commissioner of his district under conditions of absolute security against loss, tampering or interference—

(*a*) the record prepared under section 93;

(*b*) all the ballot papers collected in separate lots corresponding to the classification under which they were counted;

(*c*) all unused ballot papers; and

(*d*) all voters registers and other work items provided to that polling station.

Compilation of the district result of the elections
10 of 1998

95.—(1) On receipt of records from polling stations, the Returning officer or an officer of the Commission duly authorized in that behalf shall, at the office of the District Commissioner, compile the result of the elections in his district on the basis of the duly signed summaries received with such records and shall prepare, on the appropriate sheets in the prescribed form provided for the purpose by the Commission, a record in respect of each constituency in the district and also in respect of the entire district showing—

(*a*) the total number of persons who registered as voters;

(*b*) the total number of persons who voted;

(*c*) the total number of votes for or under each classification of votes in accordance with section 91;

(*d*) the discrepancies, if any, between the votes counted and the number of persons who voted; and

(*e*) the complaints, if any, received by him and his decisions thereon.

(2) Representatives of political parties duly designated for the purpose, shall be entitled to observe the entire procedure followed at the office of the District Commissioner in compiling the district result of the elections under subsection (1).

(3) The record prepared under subsection (1) shall be legibly signed by the returning officer or other officer supervising the compilation thereof and, if any be present, by at least one representative of a political party which shall in addition, be entitled to receive a copy of the record. 10 of 1998

(4) The returning officer or an officer of the Commission duly authorized in that behalf shall publicly announce the result of 10 of 1998

the election in each constituency and in the entire district in accordance with the record prepared under subsection (1).

10 of 1998

(5) The returning officer or a duly authorized officer of the Commission shall, with all dispatch, deliver to the Chief Elections Officer under conditions of absolute security against loss, tampering or interference.

(*a*) the record prepared under subsection (1); and

(*b*) all items received from all polling stations in the district concerned.

Determination of the national result of a general election
10 of 1998

96.—(1) The Commission shall determine and publish the national result of a general election based on the records delivered to it from the districts and polling stations.

(2) The determination of the national result of a general election shall begin immediately after the Commission has received records from all districts and shall, subject only to subsection (3), continue uninterrupted until concluded.

10 of 1998

(3) If a record from any district or other element necessary for the continuation and conclusion of the determination of the national result of the election is missing, the Chairman of the Commission shall take necessary steps to rectify the situation and may, in such case, suspend the determination for a period not exceeding seventy-two hours.

(4) Representatives of political parties designated in writing to the Commission shall be entitled to observe the determination of the national result of the election.

(5) Subject to this Act, in any election the candidate who has obtained a majority of the votes at the poll shall be declared by the Commission to have been duly elected.

Analysis of complaints, etc., prior to determination of the national result

97. At the beginning of determining the national result of a general election, the Commission shall take a decision on any matter which has been a subject of a complaint and shall examine the votes which have been classified as null and void and may affirm or correct the determination thereof at the polling stations and at the offices of District Commissioners but without prejudice to the right of appeal conferred under section 114.

Records of the national result of a general election

98. The Commission shall summarize its determination of the national result of a general election in a written record indicating—

(*a*) the national result of the election as determined;

(*b*) the complaints and responses thereto and the decisions taken on them,

and the Chairman of the Commission shall legibly seal the national result of the election by signing the summary and every

political party shall be entitled to receive a signed copy of the summary.

Publication of the national result

99. The Commission shall publish in the *Gazette* and by radio broadcast and in at least one issue of a newspaper in general circulation in Malaŵi the national result of an election within eight days from the last polling day and not later than forty-eight hours from the conclusion of the determination thereof and shall, in such publication, specify—

(*a*) the total number of voters registered for the election;

(*b*) the total number of voters who voted;

(*c*) the total number of null and void votes; and

(*d*) the total number of valid votes cast for each classification of votes as specified in section 91.

PART IX

Election Petition in Respect of Election as Member of the National Assembly or to Office of President

Election petition in respect of election as member of the National Assembly or to office of President
16 of 1994
10 of 2013

100.—(1) A complaint alleging an undue return or an undue election of a person as a member of the National Assembly or to the office of President by reason of irregularity or any other cause whatsoever shall be presented by way of petition directly to the High Court within seven days, including Saturday, Sunday and a public holiday, of the declaration of the result of the election in the name of the person—

(*a*) claiming to have had a right to be elected at that election; or

(*b*) alleging himself to have been a candidate at such election.

(2) In proceedings with respect to a petition under subsection (1), the Commission shall be joined as respondent.

(3) If, on the hearing of a petition presented under subsection (1), the High Court makes an order declaring—

(*a*) that the member of the National Assembly or the President, as the case may be, was duly elected, such election shall be and remain valid as if no petition had been presented against his election; or

(*b*) that the member of the National Assembly or the President, as the case may be, was not duly elected, the Registrar of the High Court shall forthwith give notice of that fact to the Commission which shall publish a notice in the *Gazette* stating the effect of the order of the High Court.

(4) Pursuant to an order of the High Court under subsection 3 (*b*) declaring that the member of the National Assembly or the President, as the case may be, was not duly elected, a fresh

election for the seat of the member of the National Assembly or to the office of President, as the case may be, shall be held in accordance with this Act.

(5) A declaration by the High Court under subsection (3) (*b*) shall not invalidate anything done by the President before that declaration.

PART X

International Observation

Meaning of international observation

101. For the purposes of this Act, international observation means the verification of the various stages of the election by international organizations, non-governmental organizations, foreign governments and foreign personalities duly recognized for the purpose in accordance with this Part.

Scope of international observation

102. International observation shall consist of the following activities—

(*a*) to verify and monitor the impartiality and the functioning of the Commission and its officers in conformity with this Act;

(*b*) to verify and monitor the impartiality and legality of the decisions taken by the Commission and its officers in settling disputes;

(*c*) to verify and monitor the registration of voters;

(*d*) to observe the course of the campaigning for elections;

(*e*) to verify and monitor the voting process;

(*f*) to verify and monitor the determination of the results of the elections at all stages of determination;

(*g*) to observe access to and the use of the media.

(2) Any irregularities noted by international observers shall be reported to the Commission or to the competent officers of the Commission and the Commission or such officers shall examine the activities reported as irregularities and shall, where the irregularities are confirmed, take corrective measures necessary to bring the elections into conformity with this Act.

Beginning and end of international observation

103. International observation shall begin with the appointment of the Commission and end with the determination of the national result of the election or the settlement thereafter of all election disputes.

Collaboration by competent authorities

104. It shall be the duty of the Commission, every officer thereof and every competent public officer or other competent authority in Malaŵi to co-operate with international observers in their role and to offer to them the guarantees and other facilities necessary to fulfil their role.

Invitation to international observers

105. The Commission may send invitations for international observation and may do so on its own initiative or on request by a political party or by any government, organization or person competent under this Act to undertake international observation.

Categories of observers

106.—(1) For purposes of recognition under this Act, international observers shall be categorized as follows—

(*a*) observers from the United Nations Organization and its agencies, the Organization of African Unity and its agencies, the Commonwealth Secretariat and other international organizations;

(*b*) observers from non-governmental organizations constituted and operating in any foreign country;

(*c*) observers from foreign governments; and

(*d*) individual observers.

(2) A person shall not be recognized as an international observer unless—

(*a*) in the case of the first three categories specified in subsection (1), he has been designated by the relevant organization or foreign government in writing to the Commission disclosing his particulars and credentials;

(*b*) in the case of the category of individual observers, he is a person of recognized international experience and prestige.

Recognition and identification of international observers

107. Recognition of international observers on arrival in Malaŵi shall be granted by the Commission which, for that purpose, shall—

(*a*) establish adequate administrative procedures for the proper and timely recognition of the observers;

(*b*) devise an identity card for each category of international observers and issue to every recognized observer the card corresponding to his category.

(*c*) devise a common and easily identifiable badge for all international observers and issue the badge to every recognized international observer.

Compulsory use of identity cards and the common badge

108. Every international observer recognized under this Act shall, while exercising his functions, use the identity card and the badge issued to him.

Rights of international observers

109. International observers shall, in Malaŵi, have the right—

(*a*) to obtain a multiple entry visa to enter Malaŵi for the duration of the period of international observation as specified in section (103);

(*b*) to have unimpeded access to all election events and to observe all aspects of the civic education programmes, the registration of voters, the nomination of candidates, the campaign, the voting and the counting of votes at all stages;

(*c*) to enjoy freedom of circulation throughout Malaŵi;

(*d*) to seek and obtain information on the official organs involved in the conduct of an election and regarding the election itself;

(*e*) to communicate freely with any political party and with any organization or person;

(*f*) to have access to information transmitted by or to the Commission and its officers;

(*g*) to have access to complaints and responses about any occurrence or matter relating to the conduct of elections;

(*h*) to open offices within Malaŵi for the performance of their functions;

(*i*) to communicate any specific concerns they may have to members and officers of the Commission; and

(*j*) to communicate to the local and international media.

Obligations of international observers

110.—(1) International observers shall have the following obligations—

(*a*) to exercise their role with impartiality, independence and objectivity;

(*b*) to respect the Constitution and the laws of Malaŵi;

(*c*) not to interfere in, or to impede, the normal course of the election;

(*d*) to maintain the secrecy of the ballot;

(*e*) to provide to the Commission copies of written information and statements which they have produced; and

(*f*) to return the identity cards, the badge and any other identification material issued to them by the Commission after the end of their mission as observers.

(2) The Commission may revoke the accreditation of any international observer who persistently violates the obligations laid down in subsection (1) and thereupon his status as an international observer shall cease.

Position of diplomats

111. Diplomats accredited to Malaŵi who are designated and recognized as international observers under this Act shall exercise their functions as such international observers without prejudice to their status and positions as such diplomats.

Separate and joint operation of international observers

112. International observers may operate separately or jointly with other international observers of the same or different categories.

PART XI

Complaints and Appeals

Commission to decide on complaints

113. Save as otherwise provided in this Act, any complaint submitted in writing alleging any irregularity at any stage, if not satisfactorily resolved at a lower level of authority, shall be examined and decided on by the Commission and where the irregularity is confirmed the Commission shall take necessary action to correct the irregularity and the effects thereof.

Appeals to the High Court
10 of 1998

114.—(1) An appeal shall lie to the High Court against a decision of the Commission confirming or rejecting the existence of an irregularity and such appeal shall be made by way of a petition, supported by affidavits of evidence, which shall clearly specify the declaration the High Court is being requested to make by order.

(2) On hearing a petition under subsection (1), the High Court—

(*a*) shall subject to subsection 3, make such order or orders as it thinks fit;

(*b*) in its absolute discretion, may or may not condemn any party to pay costs in accordance with its own assessment of the merits of the complaint.

(3) An order of the High Court shall under subsection (2) not declare an election or the election of any candidate void except on the following grounds which are proved to the satisfaction of the court—

(*a*) that voters were corruptly influenced in their voting contrary to any provision of this Act; or had their ballot papers improperly rejected, or voted more than once;

(*b*) that persons not entitled to them were improperly granted ballot papers; or

(*c*) that persons entitled to them were improperly refused ballot papers:

Provided that the court shall not declare an election void, after proof of any ground in paragraphs (*a*), (*b*) or (*c*), if it is satisfied that the number of votes involved could not have affected the result of the election;

(*d*) non-compliance with this Act in the conduct of the election:

Provided that, if the court is satisfied that any failure to comply with this Act did not affect the result of the election, it shall not declare the election void;

(*e*) that the candidate was at the time of his election a person not qualified for election or that he was not properly

nominated, or that a duly qualified candidate had his nomination improperly rejected by the returning officer.

(4) The court shall have power to direct scrutiny and recount of votes if it is satisfied, during proceedings on an election petition, that such scrutiny and recount are desirable.

(5) At the conclusion of the trial of an election petition the court shall determine whether the member whose nomination or election is complained of, or any other and what person was duly nominated or elected, or whether the election was void, and shall report such determination to the Commission. Upon such report being given such determination shall be final.

10 of 1998

(6) No application shall be made to the High Court for an injunction or for an order restraining the holding of an election within fourteen days immediately preceding the date of the election.

10 of 1998

(7) Notwithstanding subsection (6), the High Court shall have power, subsequent to the holding of an election, to declare void the election if, upon hearing the petition referred to in subsection (1), the High Court is satisfied that there are good and sufficient grounds for declaring void the election.

PART XII

Offences and Penalty

Offences

115. A person who—

(*a*) in relation to registration of voters—

(i) obtains his registration by giving false information;

(ii) gives false information to obtain his registration or

(iii) obtains registration in more than one registration area;

(iv) registers another person knowing that that other person is not eligible for registration;

(v) prevents the registration of another person knowing that that person is eligible for registration;

(vi) having the authority to do so, does not delete a registration which he knows to be incorrect;

(vii) falsifies a register;

(viii) with fraudulent intent, modifies or substitutes a voters registration certificate;

(ix) through violence, threat or fraudulent intent, prevents the registration of another person;

(x) knowingly obstructs the detection of incorrect registration or the verification of voters rolls;

(*b*) in relation to campaigning for elections—

(i) holds a public meeting contrary to section 56 (2);

(ii) prevents the holding, or interrupts the proceedings of a public meeting authorized under section 56 (2);

(iii) campaigns or causes another person to campaign within forty-eight hours before opening of the poll on the first polling day contrary to section 57; 10 of 1998

(iv) denies any political party equal treatment with any other political party;

(v) destroys, defaces, tears or in any manner causes to be totally or partially useless or illegible any campaign material displayed in an authorized place or space or superimposes thereon any other material concealing the earlier material;

(vi) is entrusted, by virtue of his office or functions, with displaying or depositing in an authorized place or space any campaign material, fails to display or deposit such campaign material or misplaces, steals, removes or destroys such material;

(vii) contravenes section 61 (1);

(viii) because another person attended or did not attend any campaign meeting, directly or indirectly, dismisses that other person from any employment or other gainful occupation or prevents or threatens to prevent that other person from obtaining any employment or other gainful occupation or from continuing in any gainful occupation or applies or threatens to apply any sanction whatsoever to that other person;

(*c*) in relation to voting—

(i) not being otherwise authorized to be present or not being a registered voter, knowingly presents himself at a polling station;

(ii) knowing that he is not eligible to vote, casts a vote at any polling station;

(iii) fraudulently uses the identity of another person in order to exercise the right to vote;

(iv) consciously allows that the right to vote to be exercised by a person who does not have that right;

(v) votes more than once;

(vi) accompanying a blind or a disabled person to vote, fraudulently and faithlessly expresses a vote not according to the wish of that person;

(vii) within a radius of one hundred metres of a polling station, reveals his vote or procures another person by force or deceit to reveal that other person's vote;

(viii) uses or threatens violence or uses false information or other fraudulent means to coerce or induce another person to vote for or against a particular candidate or a candidate of a particular political party or to abstain from voting;

(ix) being a public officer, uses his office to coerce or induce another person to vote for or against a particular political party or candidate or abstain from voting:

(x) directly or indirectly, dismisses or threatens to dismiss another person from any employment or other gainful occupation or prevents or threatens to prevent another person from obtaining any employment or other gainful occupation or from continuing in any gainful occupation or applies or threatens to apply any sanction whatsoever to another person in order to induce that other person to vote for, or because that other person voted for, a particular candidate or a candidate of a particular political party or because that other person voted for or did not vote for a particular candidate or a candidate of a particular political party or because that other person abstained from voting;

(xi) being a presiding officer of a polling station, fails to display a ballot box in accordance with the requirements of this Act;

(xii) illicitly introduces ballot papers in a ballot box before, during or after the voting;

(xiii) fraudulently takes possession or conceals a ballot box with uncounted ballot paper or removes an uncounted ballot paper from a ballot box;

(xiv) being a polling station officer, purposely neglects his duty with a view to occasioning an irregularity;

(xv) being a polling station officer, unjustifiably refuses to receive a complaint, or a response to a complaint about the proceedings at his polling station or to examine and seek to resolve such a complaint;

(xvi) disturbs the regular functioning of a polling station;

(xvii) refuses to leave a polling station after being asked to do so by a polling station officer;

(xviii) being an officer in-charge of police requested to assign police officers to keep order at a polling station, fails without justification to do so within a reasonable time;

(xix) being a police officer assigned to keep order at a polling station wilfully neglects his duties;

(*d*) uses or threatens to use any force or restraint to induce or compel another person to sign or refrain from signing any nomination paper;

(*e*) in any manner, fraudulently spoils, substitutes, conceals, destroys, amends or falsifies any document relating to the election;

(*f*) in bad faith, submits a complaint, or a response to a complaint or challenges or questions the decisions thereon by a competent person or body; and

(*g*) without justification neglects to fulfil obligations imposed on him by or under this Act,

shall be guilty of an offence.

Maintenance of secrecy

116.—(1) Every election officer, candidate, election representative of a political party or other person in attendance at a polling station shall maintain and aid in maintaining the secrecy of the voting at such station, and shall not communicate, except for some purpose authorized by law, to any person any information as to the name of any voter who has or has not applied for any ballot paper or voted at that station; and no such officer, candidate, representative or other person shall interfere with a voter after he has received a ballot paper and before he has placed a ballot paper in a ballot box.

(2) No person, other than a person aiding a blind or an incapacitated voter in accordance with this Act, shall attempt to obtain in the polling station information as to the candidate for whom any voter in such station is about to vote or has voted.

(3) Any person who contravenes subsection (1) or (2) shall be guilty of an offence.

Offences under this Act cognizable offences Cap. 8:01

117. Every offence under this Act shall be a cognizable offence within the meaning of the Criminal Procedure and Evidence Code.

General penalty 10 of 2013

118.—(1) A person guilty of an offence under this Act for which no other penalty has been specified shall be liable to a fine of K500,000 and to imprisonment for two years.

(2) In addition to the penalty under subsection (1), the court may make an order—

(*a*) where applicable, barring the convicted person from performing the duties of his office in connexion with the election;

(*b*) suspending the right of the convicted person to vote in the election or annulling the vote cast by such person; and

(*c*) having regard to the nature of the activity constituting the offence, giving such directions as the court considers to be warranted in the circumstances.

PART XIII

General

Preservation of the election documents

119. At the end of its functions, the Commission shall deposit all documents forming the official record of an election (including voters registers, ballot papers, records from districts and polling stations and summaries thereof and the record and summary of the national result) with the Clerk of Parliament who shall retain and preserve such documents in safe and secure custody without destruction for a period of twelve months.

Failure to elect a member of the National Assembly

120. If after the holding of a general election no person has been elected in one or more constituencies, a session of the National Assembly may commence notwithstanding any such vacancy.

Regulations 10 of 1998

121. The Minister may, on the recommendation of the Commission make regulations for the better carrying out of the provisions of this Act.

PART XIV

Repeals and Savings

Repeals Cap. 2:01 Cap. 2:02 Cap. 2:03

122. The Presidential Elections Act, the Parliamentary Elections Act and the Registration of Voters Act are hereby repealed.

Savings

123. A person who at the commencement of this Act is a member of the National Assembly shall continue as such member until dissolution of Parliament next following the Referendum.

SUBSIDIARY LEGISLATION

PARLIAMENTARY AND PRESIDENTIAL ELECTIONS (FORMS) REGULATIONS

G.N. 13/1994

under s. 121

Citation

1. These Regulations may be cited as the Parliamentary and Presidential Elections (Forms) Regulations.

Forms

2.—(1) The forms set out in the Schedule shall be used for the purposes of the Act, and such particulars as are contained in those forms and not particularly prescribed by the Act are hereby prescribed as particulars required under the Act.

(2) Any form which, at the commencement of these Regulations, is in use by the Commission for the purpose for which a form set out in the Schedule hereto may be used, is deemed to be a form prescribed under these Regulations for such purpose, notwithstanding that it has any error or reference contained therein.

SCHEDULE (reg. 2)

FORMS FORM I

VOTERS' REGISTER

(under section 22)

Book
Serial
Letter

Registration Number	First name	Surname	Sex F/M	Village or Place of work	Traditional Authority or Township/Ward
01					
02					
03					
04					
05					
06					
07					
08					
09					
10					
11					
12					
13					
14					

15	
16	
17	
18	
19	
20	

Date..... No. on page ..... 20 .....

Less cancellations .....
Net total on page

.....
Signature of Registration Officer

Official stamp

VOTERS' REGISTRATION CERTIFICATE FORM II

(under section 24)

(*Use block letters throughout*)

(Surname) ..... (Village/Township) .....

(First names) ..... (Chief) .....

(Sex) ..... (District) .....

I certify that the above named person has today been registered as a Voter in the Register of Voters for the …… Constituency in accordance with the provisions of the Parliamentary and Presidential Elections Act, 1993.

(Signature) ..... (Date) .....
(*Registration Officer*)

Official stamp

NOMINATION FORM FOR A PARLIAMENTARY CANDIDATE FORM III

(under section 38)

Note: Please use block letters in completing this form

To: The Returning Officer, Constituency of ……....

We, the undersigned, whose names appear on the Voters Register for the above constituency, hereby nominate:

Mr./Mrs./Miss …… (*name in full*) of (*address*)……
……
……..

as a candidate to fill the vacancy in the National Assembly for the above-named constituency.

	Name	Signature	Registration Centre
Nominated by (1)			
(2)			
(3)			
(4)			
(5)			
(6)			
(7)			
(8)			
(9)			
(10)			

I, (candidate's name in full, *use block letters*) …… being the candidate sponsored by …… (*name of political party*)*/being an independent candidate and being qualified for election as member of the National Assembly, do hereby accept the above nomination and tender the following supporting documents—

(*a*) evidence/statutory declaration that I am a citizen of Malaŵi and have attained the age of 21 years; and

(*b*) evidence/statutory declaration that I am able to speak and to read the English language well enough to take an active part in the proceedings of the Assembly;

(*c*) evidence of my registration as a voter in the constitutency of ……

(*d*) evidence, as required under section 37 (3) of the Act, identifying me that I am the person so nominated,

And further I append thereto or specify hereunder the abbreviation of my name and the distinctive symbol to appear on the ballot paper in conjunction with my candidature.

Dated this …… day of …… 20……

(*Signature of candidate*) ……

**Delete as appropriate*

Form IV

NOMINATION FORM FOR A PRESIDENTIAL CANDIDATE

(under section 49)

Note: Please use block letters in completing this form

I, ...(*name in full*) of ..... (*address*)

..... (*occupation*) being a registered voter in the constituency of ..... in ..... District, as evidenced by my certificate of registration copy of which is attached hereto.

DO HEREBY NOMINATE
……..……..... (*name in full*) of
……..……..... (*address*)
……..……..... (*occupation*)
as a candidate for election to the office of President.

Dated this …….. day of …….. 20……

(*Signature of candidate*) ….....…

I, ..…….....…….....…….....
(*name in full of person nominated*) of .....
(*address*) ….....…….....(*occupation*)
being the candidate sponsored by …….....….....
(*name of political party*)*/being an independent candidate and being qualified for election to the office of President, DO HEREBY ACCEPT the foregoing nomination AND DO HEREBY CONSENT to stand for election to the office of President and further I append hereto or specify hereunder—

(*a*) the abbreviation of my name and distinctive symbol to appear on the ballot paper in conjunction with my candidature;

(*b*) evidence/statutory declaration that I am a citizen of Malaŵi and have the minimum age prescribed by the Constitution for election to the office of President;

(*c*) the name of the Vice-President appointed by me as my running mate in the election to the office of President.

Dated this …….. day of …….. 20……

(*Signature of candidate*) ……

**Delete as appropriate*

FORM V

APPLICATION FOR TRANSFER OF REGISTRATION AND CERTIFICATE OF TRANSFER

(under s. 75 (2))

PART I—APPLICATION FOR TRANSFER OF REGISTRATION

To: The Registration Officer
Registration Centre of .....
Name of Applicant (*Use Block Letters*) .....
(Surname) ..... (First Names) ..... (Sex) .....
..... (Village) (Chief) .....

I DECLARE THAT—

(i) I am registered on the register for the Registration Centre of ..... as Registered Voter No. .....

(ii) I am ordinarily resident/was born/am employed/am carrying on a business* in ……..…..……

(iii) My address is ……
……
……...…….

I, Therefore, Apply to have my name withdrawn from the register for the Registration Centre of .....
and transferred to the Registration Centre of ……..…….....
Date ..... Signature or thumbprint .....

**Delete as appropriate*

Part II—Certificate of Transfer

To: The Presiding Officer
..... Polling Station

This is to certify that .....
has been granted the transfer under section 75 (2) to vote at your polling station.

Signed .....

(*Registration Officer*)

Date .....

(Official stamp)

Form VI

RECORD OF POLLING PROCESS
(under section 93)

Part A

This Portion of the Official Record Must Be Completed by the Recording Secretary on the Opening of the Polling Station and Before Polling Begins

Time of Opening .....

Polling Station Number (from the stamp) .....

Total number of Registered Voters: .....

Total number of Ballot Papers received
for National Assembly Election:(*1) .....

Total number of Ballot Papers received
for Presidential Elections: (*2) .....

Presiding Officer .....

(*Name*) (*Signature*)

Recording Secretary .....
(*Name*) (*Signature*)

Clerk 1: .....
(*Name*) (*Signature*)

Clerk 2: .....
(*Name*) (*Signature*)

Clerk 3: .....
(*Name*) (*Signature*)

Clerk 4: .....
(*Name*) (*Signature*)

Clerk 5: .....
(*Name*) (*Signature*)

Clerk 6: .....
(*Name*) (*Signature*)

Clerk 7: .....
(*Name*) (*Signature*)

Clerk 8: .....
(*Name*) (*Signature*)

Clerk 9: .....
(*Name*) (*Signature*)

Clerk 10: .....
(*Name*) (*Signature*)

Names of Political Party Representatives present:

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Names and affiliation of Local Monitors:

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Names of International Observers present:

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.....

NATIONAL ASSEMBLY ELECTION ONLY

CLOSING OF THE POLL

PART B

THIS PART IS TO BE COMPLETED AT THE CLOSE OF POLLING

Time of closing ..... p.m. (time last voter left the station)

Total number of National Assembly Election .....
Ballot Papers received: (from Part A:*1)

DEDUCT: Number of unused ballot papers: .....

Sub-Total: .....

DEDUCT: Number of SPOILT ballot papers if any: .....

Total number of votes in ballot box to be counted (B*1):

Presiding Officer: .....
(*Signature*)

Recording Secretary: .....
(*Signature*)

Polling Staff Members: .....
(*Signature*)

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NATIONAL ASSEMBLY ELECTION ONLY

RECORD OF RESULTS

PART C

THIS PORTION OF THE OFFICIAL RECORD IS TO BE COMPLETED WHEN THE COUNTING OF VOTES FOR THE NATIONAL ASSEMBLY ELECTION HAS BEEN COMPLETED

Total Number of Ballot Papers to be counted (from Part B*1):

Number of Votes cast in favour of:

Candidate A ..... ☐

Candidate B ..... ☐

Candidate C ..... ☐

Candidate D ..... ☐

Candidate E ..... ☐

Candidate F ..... ☐

Candidate G ..... ☐

Candidate H ..... ☐

Null and void votes ..... ☐

Sub-Total ..... ☐
(*deduct this number from total number of ballot papers B*1*)

Discrepancy if any: ..... ☐

Presiding Officer: .....
(*Signature*)

Polling Staff: .....
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Names and Signatures of Party Representatives:

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Names and Affiliation of Local Monitors:

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International Observers:

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PRESIDENTIAL ELECTION ONLY

CLOSING OF THE POLL

PART D

THIS PART IS TO BE COMPLETED AT THE CLOSE OF POLLING

Time of closing ..... p.m. (time which last voter left)

Total number of National Assembly Election .....
Ballot Papers received: (from Part A:*2)

DEDUCT: Number of unused ballot papers: .....

Sub-Total: .....

DEDUCT: Number of SPOILT ballot papers if any: .....

Total number of votes in ballot box to be counted (D*1):

Presiding Officer: .....
(*Signature*)

Recording Secretary: .....
(*Signature*)

Polling Staff Members: .....
(*Signature*)

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.....

PRESIDENTIAL ELECTION ONLY

RECORD OF RESULTS

PART E

THIS PORTION OF THE OFFICIAL RECORD IS TO BE COMPLETED WHEN THE COUNTING OF VOTES FOR THE PRESIDENTIAL ELECTION HAS BEEN COMPLETED

Total Number of Ballot Papers to be counted (from Part D*1)

Number of Votes cast in favour of:

Candidate A ..... ☐

Candidate B ..... ☐

Candidate C ..... ☐

Candidate D ..... ☐

Candidate E ..... ☐

Candidate F ..... ☐

Candidate G ..... ☐

Candidate H ..... ☐

Null and void votes ..... ☐

Sub-Total .....
(*deduct this number from total number of ballot papers D*1*) ☐

Discrepancy if any: .....

Presiding Officer: .....
(*Signature*)

Names and signatures of Party Representatives:

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Names and affiliation of Local Monitors:

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International Observers:

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FORM VII

BALLOT PAPERS AUDIT TRAIL
(required for purposes of section 5 and Part VII)

RECEIPT ON TRANSFER OF BALLOT PAPERS

(Receipt should be in triplicate—one copy for each party involved in transfer of ballot papers and a copy for the Electoral Commission)

The Ballot papers listed hereunder were on ..... (date) at ..... (time)

transferred from:

.....

(*Name and title of person handing over ballot papers*)

to:

.....

(*Name and title of person receiving ballot papers*)

BALLOT PAPERS NUMBERED FROM ..... TO .....

TOTAL NUMBER (QUANTITY) OF BALLOT PAPERS

.....	.....
(*Signature of person handing over ballot papers*)	(*Signature of person receiving ballot papers*)

FORM VIII

COMPILATION OF CONSTITUENCY RESULTS FOR NATIONAL ASSEMBLY ELECTIONS
(under section 95)

RECORD OF RESULTS

CONSTITUENCY OF: .....

DISTRICT OF: .....

Total Registered Voters ..... [ ]

Number of Votes cast in favour of:

Candidate A ..... ☐

Candidate B ..... ☐

Candidate C ..... ☐

Candidate D ..... ☐

Candidate E ..... ☐

Candidate F ..... ☐

Candidate G ..... ☐

Candidate H ..... ☐

Null and void votes ..... ☐

Total Number of Votes cast ..... ☐

Returning Officer .....
(*Signature*)

Names and signatures of Party Representatives:

.....
.....
.....
.....
.....
.....

CONSTITUENCY OF:
DISTRICT OF:

No	Name of Poling Station	Total No. Voters Registered	Total No. of Persons Who Voted	Number of Null & Void Votes	Number of Votes for Candidate A	Number of Votes for Candidate B	Number of Votes for Candidate C	Number of Votes for Candidate D	Number of Votes for Candidate E	Number of Votes for Candidate F	Number of Votes for Candidate G	Number of Votes for Candidate H
	TOTALS:											

FORM IX

COMPILATION OF DISTRICT RESULTS FOR PRESIDENTIAL ELECTIONS
(under section 95)

RECORD OF RESULTS

DISTRICT OF: .....

Total Registered Voters ..... ☐

Number of Votes cast in favour of:

Candidate A ..... ☐

Candidate B ..... ☐

Candidate C ..... ☐

Candidate D ..... ☐

Candidate E ..... ☐

Candidate F ..... ☐

Candidate G ..... ☐

Candidate H ..... ☐

Null and void votes ..... ☐

Total Number of Votes cast ..... ☐

Returning Officer .....
(*Signature*)

Names and signatures of Party Representatives:

.....
.....
.....
.....
.....

CONSTITUENCY OF:
DISTRICT OF:

No	Name of Poling Station	Total No. Voters Registered	Total No. of Persons Who Voted	Number of Null & Void Votes	Number of Votes for Candidate A	Number of Votes for Candidate B	Number of Votes for Candidate C	Number of Votes for Candidate D	Number of Votes for Candidate E	Number of Votes for Candidate F	Number of Votes for Candidate G	Number of Votes for Candidate H
	TOTALS:											

PRESIDENTS (SALARIES AND BENEFITS)

CHAPTER 2:02

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CHAPTER 2:02

PRESIDENTS (SALARIES AND BENEFITS)

ARRANGEMENT OF SECTIONS

SECTION

1. Short title
2. Interpretation
3. Application of this Act to a former President
4. Salary, pension and benefits of the President, etc.
5. Circumstances when benefits, etc., not payable or available to a former President or former Vice-President
6. Death of the President, etc.

Schedule

An Act to provide for the salary, benefits, pension and other retirement benefits of the President, Vice-President, former Presidents and former Vice-Presidents of the Republic of Malaŵi and to provide for matters connected therewith or incidental thereto

26 of 1994
19 of 1995
7 of 2002

[2ND DECEMBER, 1994]

1. This Act may be cited as the Presidents (Salaries and Benefits) Act.

Short title

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

Interpretation

"former President" or "former Vice-President" means the person who was duly elected and took office as President, or, as the case may be, who was duly appointed and took office as Vice-President, of the Republic of Malaŵi;

"Vice-President" means First Vice-President and Second Vice-President.

3. The application of this Act shall extend to any former President who ceased to hold office before the commencement of this Act and shall so apply retrospectively to the date he ceased to hold office.

Application of this Act to a former President

4.—(1) Subject to the other provisions of this Act—

Salary, pension and benefits of the President, etc.
7 of 2002

(*a*) the President shall be entitled to—

(i) such salary, which shall be tax-free, as Parliament may, from time to time, appropriate to him;

(ii) the benefits and facilities specified in Part I of the Schedule;

Schedule, Part I

(*b*) the Vice-President shall be entitled to the salary, benefits and facilities specified in Part II of the Schedule;

Schedule, Part II

Schedule, Part III

(*c*) a former President shall, upon ceasing to hold office of President, be entitled to the gratuity, monthly pension, benefits and facilities specified in Part III of the Schedule; and

Schedule, Part IV

(*d*) a former Vice-President shall, upon ceasing to hold office of Vice-President, be entitled to the gratuity, monthly pension, benefits and facilities specified in Part IV of the Schedule.

7 of 2002

(2) The salary of the President shall not, without his consent, be reduced during his term of office, and shall be reviewed at annual intervals.

7 of 2002

(3) The salary, pension, gratuity and other benefits of the President, the Vice-President, a former President and a former Vice-President shall be a charge on the Consolidated Fund.

Circumstances when benefits, etc., not payable or available to a former President or former Vice-President

5.—(1) The pension, other benefits and facilities conferred by this Act on a former President or former Vice-President shall not be paid or enjoyed and shall not accrue during any period when the former President or former Vice-President, as the case may be, is in receipt of a salary from the Government or other State body.

(2) A former President or former Vice-President shall cease to be entitled to receive or enjoy the whole or part of the pension, other benefits and facilities conferred by this Act if—

(*a*) he ceased to hold office upon impeachment in accordance with the Constitution; or

(*b*) he is convicted of an offence and sentenced to imprisonment for a term exceeding six months without the option of a fine, and, in addition, the National assembly, on a motion supported by not less than two-thirds of the members of the Assembly, resolves that the former President or former Vice-President, as the case may be, shall not receive, or be entitled to, the whole or such part of the pension and other benefits as it may determine.

Death of the President, etc.

Schedule, Part III and IV

6.—(1) Subject to subsection (2), where the President, the Vice-President, a former President or a former Vice-President who is entitled to benefits conferred by this Act dies while in or after having left office, the surviving spouse and any children of the family who have not attained the age of eighteen years shall be entitled jointly to the pension specified in Part III or IV of the Schedule, as the case may be.

(2) The pension payable under subsection (1) shall cease to be payable, after twenty-four months (excluding the month in which the deceased died) or upon the death of the last eligible beneficiary thereof, whichever is the sooner.

SCHEDULE

ss. 4 and 6

Salary and Other Benefits of the President, Vice-President, Former President and Former Vice-President

PART I

The President

Benefits

Free house in Blantyre, Zomba, Lilongwe and Mzuzu, and at Chikoko Bay in Mangochi
Free food
Free water
Free electricity
Free medical services and personal physician for the President, spouse and children under the age of eighteen years
Free transport
Duty free importation of items for personal use
Motorcade escort
Presidential convoy

Staff

1 Chief of Staff
1 Aide-de-Camp (ADC)
Personal Assistants
3 Personal Bodyguards
1 Secretary
1 Staff Supervisor
1 Head Security Guard
Security Guards
3 Storekeepers
6 Cooks
4 Chauffeurs
4 Head Gardeners
Gardeners
House staff
1 Copy Typist
1 Messenger
1 Tailor
1 Valet
1 Lady-in-waiting/Dresser

Other Benefits

Spouse entitled to travel abroad at Government expense if in the company of the President
Spouse entitled to travel abroad privately at Government expense but restricted to three times a year for a duration not exceeding fourteen days each time

PART II

Vice-President

Benefits

Tax-free salary equal to two-thirds of the President's salary
Free house in Lilongwe
Free food
Free water
Free electricity
Free guest houses in Blantyre and Mzuzu
Free medical services and physician on call
Medical insurance for the spouse and children under the age of eighteen years
3 Motor cars
Motorcade escort by the Police
Duty-free importation of up to two personal motor vehicles every five years
Duty-free importation of other items for personal use

Staff

Personal Assistants
1 Personal Bodyguard
1 Staff Supervisor
1 Head Security Guard
6 Security Guards
1 Storekeeper
2 Cooks
2 Chauffeurs
1 Head Gardener
4 Gardeners

Other Benefits

Spouse entitled to travel abroad at Government expense if in the company of the Vice-President

Spouse entitled to travel abroad privately at Government expense but restricted to two times a year for a duration not exceeding fourteen days each time

PART III

Former President

19 of 1995 Benefits

Tax-free lump sum gratuity calculated in accordance with the formula applicable in the case of Civil Servants or one year tax-free salary, whichever is greater

Tax-free monthly pension at fifty per cent (50%) of the President's salary

Except where a house is provided at Government expense, a monthly housing allowance equal to forty percent (40%) of his salary at the time of ceasing to hold office as President:

Provided that nothing in this Part shall be construed as obliging the Government to provide a former President a house at Government expense

2 Motor vehicles (a saloon and a 4-wheel drive 10 seater)

Free electricity

Free water

Free telephone

Free medical services and a personal physician

Free local travel by scheduled air transport

STAFF

1 Personal Secretary at S8 Grade

1 Head Guard (Personal Bodyguard)

6 Security Guards

1 Staff Supervisor (E.O.)

1 Assistant Accountant (E.O.)

1 Storekeeper

1 Messenger

1 Valet

1 Housekeeper

1 Steward

4 Housemen

2 Cooks

1 Chauffeur

2 Drivers

2 Laundrymen

1 Head Gardener

3 Gardeners

OTHER BENEFITS

Housing Allowance for staff

Medical insurance for the former President, spouse and children under the age of eighteen years

In each year, one first class return air ticket for the former President and for the spouse to travel abroad

Duty-free importation, on application to the Minister responsible, of the following—

Foodstuff and beverages for personal consumption

Two personal motor vehicles every five years

Personal clothing

Books, newspapers and periodicals for personal use

Any other necessities

PART IV

Former Vice-President

19 of 1995 Benefits

Lump sum gratuity calculated in accordance with the Civil Service formula or one year tax-free salary, whichever is greater

Tax-free monthly pension at fifty per cent (50%) of the Vice-President's salary

1 Motor car

Except where a house is provided at Government expense, a monthly housing allowance equal to forty per cent (40%) of his salary at the time of ceasing to hold office as Vice-President:

Provided that nothing in this Part shall be construed as obliging the Government to provide a former Vice-President a house at Government expense

Free electricity

Free water

Free medical services

Staff

1 Cook

1 Chauffeur

1 Gardener

1 Security Guard

Other Benefits

Duty-free importation of one motor vehicle once in every five years

In each year one return air ticket for the former Vice-President and the spouse to travel abroad

Housing allowance for staff

Medical insurance for the former Vice-President, the spouse and children under the age of eighteen years.

ELECTORAL COMMISSION

CHAPTER 2:03

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CHAPTER 2:03

ELECTORAL COMMISSION

ARRANGEMENT OF SECTIONS

SECTION

PART I

PRELIMINARY

1. Short title
2. Interpretation

PART II

STATUS AND MEMBERSHIP OF THE COMMISSION

3. Legal personality and capacity of the Commission
4. Appointment of members of the Commission
5. Eligibility for appointment to the Commission
6. Independence of the Commission
7. Committees of the Commission

PART III

FUNCTIONS AND POWERS OF THE COMMISSION

8. Functions and powers of the Commission
9. Delegation of powers and functions
10. Vacancy in the membership of the Commission

PART IV

MEETINGS OF THE COMMISSION

11. Meetings of the Commission

PART V

MANAGEMENT

12. Appointment of Chief Elections Officer
13. Appointment of staff of the Commission
14. Vacancy where employee becomes candidate in the elections

PART VI

FINANCIAL PROVISIONS

15. Funds of the Commission
16. Books and other records of accounts, audit and reports of the Commission
17. Holdings of funds of the Commission
18. Financial year

SECTION

PART VII

MISCELLANEOUS

19. Duty to co-operate
20. Legal representation
21. Publicity
22. Regulations

PART VIII

TRANSITIONAL PROVISIONS

23. Savings
24. Transfer of assets, etc.

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11 of 1998
16 of 2010
11 of 2013

An Act to make provision for the appointment of members of the Electoral Commission; for the establishment of a Secretariat for the Electoral Commission; and for matters incidental thereto and connected therewith

[3RD JULY, 1998]

PART I

PRELIMINARY

Short title

1. This Act may be cited as the Electoral Commission Act.

Interpretation

Cap. 2:01

2. In this Act, unless the context otherwise requires, the several words and expressions used in this Act shall have the same meanings assigned to them in the Constitution and the Parliamentary and Presidential Elections Act and the following additional words shall have the following meaning—

"Chief Elections Officer" means the Chief Elections Officer appointed under section 12.

PART II

STATUS AND MEMBERSHIP OF THE COMMISSION

Legal personality and capacity of the Commission

3. The Commission shall be a body corporate with perpetual succession and a common seal and be capable of—

(*a*) acquiring, holding and disposing of real and personal property;

(*b*) suing and being sued in its own name; and

(*c*) doing or performing all such acts and things as bodies corporate may by law do or perform.

Appointment of members of the Commission

4.—(1) The President shall, subject to the Constitution and in consultation with the leaders of the political parties represented in the National Assembly, appoint suitably qualified persons to be members of the Commission on such terms and conditions as the Public Appointments Committee of Parliament shall determine.

(2) The remuneration and any allowance of a member of the Commission may not be reduced during his period of office without his consent, and may be increased at such intervals as the Public Appointments Committee of Parliament may determine.

(3) A member of the Commission may resign from his office at any time by notice in writing to the President.

Eligibility for appointment to the Commission

5. No person who is a candidate in any election or is a serving employee of the Commission shall be eligible to be appointed a member of the Commission or any of its committees.

Independence of the Commission

6.—(1) Every individual member and employee of the Commission shall perform the functions and exercise the powers provided for in this Act independently of the direction or interference of—

(*a*) any public office;

(*b*) any organ of the Government;

(*c*) any political party;

(*d*) any candidate; or

(*e*) any person whosoever or organization whatsoever:

Provided that for the purpose only of accountability the Commission shall be answerable, and report directly, to the President on the overall fulfilment of the functions and powers of the Commission.

(2) Upon assuming his office or immediately thereafter, every member of the Commission shall take an oath of office before the Chief Justice in the prescribed form.

Committees of the Commission

7.—(1) For the better carrying into effect of its functions, the Commission may establish such number of committees as it shall deem appropriate, to perform, subject to section 9, any of its functions and carry out such other responsibilities as the Commission may direct.

(2) A committee of the Commission may consist of either members of the Commission only or members of the Commission and such other suitably qualified persons as the Commission may deem fit.

(3) The Commission shall appoint the chairman of each committee from only amongst the members of the Commission.

(4) The provisions of this Act relating to meetings of the Commission shall apply *mutatis mutandis* to the meetings of its committees.

(5) Every committee of the Commission shall act in accordance with any directions given to it in writing by the Commission.

PART III

Functions and Powers of the Commission

Functions and powers of the Commission
16 of 2010
11 of 2013

8.—(1) In addition to the broad functions and powers conferred on the Commission by the Constitution and, subject to the Constitution, the Commission shall exercise general direction and supervision over the conduct of every election and, without prejudice to the generality of such functions and powers, it shall have the following further functions—

(*a*) to determine the number of constituencies for the purposes of elections;

(*b*) to undertake or supervise the demarcation of boundaries of constituencies;

Cap. 22:02
16 of 2010

(*c*) subject to the Local Government Elections Act and any other written law relating to local government elections, to undertake or supervise the demarcation of wards for purposes of local government elections and to determine the number of such wards:

Provided that—

(i) in the case of the City of Blantyre, the total number of wards shall not exceed thirty;

(ii) in the case of the City of Lilongwe, the total number of wards shall not exceed thirty;

(iii) in the case of the City of Mzuzu, the total number of wards shall not exceed fifteen;

11 of 2013

(iv) in the case of the City of Zomba, the total number of wards shall not exceed ten;

11 of 2013

(v) in the case of Kasungu Municipal Council, the total number of wards shall not exceed ten;

11 of 2013

(vi) in the case of Luchenza Municipal Council, the total number of wards shall not exceed eight;

11 of 2013

(vii) in the case of Mangochi Town Council, the total number of wards shall not exceed ten; and

11 of 2013

(viii) in all other cases, the number of wards shall not exceed two for each parliamentary constituency, and the Commission shall ensure that ward boundaries do not cross local authority boundaries;

(*d*) to organize and direct the registration of voters;

(*e*) to devise and establish voters registers and ballot papers;

(*f*) to print, distribute and take charge of ballot papers and voters registers;

(*g*) to approve and procure ballot boxes;

(*h*) to establish and operate polling stations;

(*i*) to establish security conditions necessary for the conduct of every election in accordance with any written law governing elections;

(*j*) to promote public awareness of electoral matters through the media and other appropriate and effective means and to conduct civic and voter education on such matters;

(*k*) to promote and conduct research into electoral matters and into any matter pertaining to its functions and to publish the results of such research;

(*l*) to perform the functions conferred upon it by or under any written law; and

(*m*) to take measures and to do such other things as are necessary for conducting free and fair elections.

(2) For purposes of discharging the functions and exercising the powers conferred upon it by the Constitution, this Act or any other written law relating to elections, the Commission shall freely communicate with the Government and any political party or any candidate, person or organization.

Delegation of powers and functions

9. The Commission may delegate to any of its committees, the Chief Elections Officer or other employee of the Commission all or any of its powers and functions.

Vacancy in the membership of the Commission

10. Subject to the Constitution and to section 11 (3), any vacancy in the membership of the Commission shall not affect its decisions, the performance of its functions or the exercise of its powers under the Constitution, this Act or any other written law.

PART IV

Meetings of the Commission

Meetings of the Commission

11.—(1) The Commission shall meet at such place or places, and at such time or times as the Chairman may determine:

Provided that the Chairman shall convene a meeting within fourteen days of receipt by him of a request in writing signed by the majority of members of the Commission and specifying the purpose for which the meeting is to be convened.

(2) The Chairman shall take all reasonable steps to ensure that every member of the Commission is given due and adequate notice of every meeting of the Commission.

(3) The quorum at every meeting of the Commission shall be fifty-one per centum of the members of the Commission.

(4) The Chairman shall preside at all meetings of the Commission. In the absence of the Chairman the members present and forming a quorum shall elect one of their number to preside over the meeting of the Commission.

(5) At any meeting of the Commission, the decision of the Commission on any matter shall be that of the majority of the members of the Commission present and voting, and at all such meetings, the person presiding shall have, in the event of an equality of votes, a casting vote in addition to his deliberative vote.

(6) Subject to the Constitution and this Act, the Commission shall have power to regulate its own procedure by standing

orders and the procedure of any of its committees and may vary, suspend or revoke any such standing orders.

(7) The Chief Elections Officer or such other employee of the Commission as the Commission may designate shall be the secretary to the Commission or at the meetings of any of its committees.

(8) Minutes of each meeting of the Commission or a committee of the Commission shall be kept by the secretary and shall be confirmed at the subsequent meeting of the Commission or committee, as the case may be.

PART V

Management

Appointment of Chief Elections Officer

12.—(1) The Commission shall appoint a suitably qualified person to be Chief Elections Officer upon such written terms and conditions as the Commission may, in its discretion, determine.

(2) The Chief Elections Officer shall hold office for a period of five years and shall be eligible to be reappointed as Chief Elections Officer for a further period of five years.

(3) The Chief Elections Officer shall be the chief executive officer of the Commission and, in the performance of his functions and duties, shall be responsible and answerable only to, and shall be under the direction, supervision and control, of the Commission.

(4) The Chief Elections Officer shall not divulge any information to any person or accept or seek instructions from any person in relation to his functions and duties or the functions or powers of the Commission or in relation to the conduct of any election.

Appointment of staff of the Commission

13.—(1) The Commission shall appoint such other professional, technical and administrative officers and support staff as the Commission may deem necessary, subject to such terms and conditions as the Commission shall, in its discretion, determine.

(2) The Commission may pay to every person in its service, including the Chief Elections Officer, such remuneration and allowances and grant to every such person such fringe benefits as it may deem appropriate.

(3) There may be seconded to the Commission such number of public officers as the Commission may arrange with the appropriate authority responsible for such public officers for such periods and on such terms and conditions as may be agreed between the Commission and the authority concerned.

(4) For purposes of this Act, a public officer who is seconded to the Commission under subsection (3), shall be deemed to be an employee of the Commission and shall enjoy the same benefits and shall be required to comply with the Constitution, this Act and any other written law relating to elections and any instruction, orders and directions of the Commission in the same manner as an employee recruited directly by the Commission under this Act.

(5) The Commission shall deploy persons in its service in such manner as it deems appropriate and shall, for each district, constituency, ward and polling station, designate a District Elections Officer, elections officers, assistant elections officers, returning officers, presiding officers, registration officers, polling officials and counting officers in such numbers as the Commission shall deem appropriate for purposes of conducting or supervising elections.

(6) Upon assuming office, or immediately thereafter, every employee including the Chief Elections Officer shall take an oath of office in the prescribed form before a commissioner of oaths and, if there be no such form, in such form as the Commission shall determine.

Vacancy where employee becomes candidate in the elections

14. The office or post of an employee of the Commission shall automatically become vacant in the event that the employee becomes a candidate in any presidential, parliamentary or local government election.

PART VI

Financial Provisions

Funds of the Commission

15.—(1) The funds of the Commission shall consist of—

(*a*) such sums as shall be appropriated by Parliament for purposes of the Commission;

(*b*) such sums or assets as may accrue to or vest in the Commission, whether in the course of the performance by the Commission of its functions or the exercise of its powers or otherwise;

(*c*) such sums or assets as may accrue to or vest in the Commission by way of grants, subsidies, bequests, donations, gifts and subscriptions, from the Government or any other person;

(*d*) such sums as are derived from the sale of any property, real or personal, by or on behalf of the Commission;

(*e*) such sums as are received by the Commission by way of voluntary contributions; and

(*f*) such sums or assets as may be donated to the Commission by any foreign government, international agency or other external body of persons, corporate or unincorporate.

(2) For the purposes of this section an "external body of persons", means any body of persons, corporate or unincorporated, formed under or by virtue of the laws of any country other than Malaŵi.

(3) The funds of the Commission shall exclusively be under the control of the Commission and shall be utilized solely for the purposes of this Act in accordance with the written directions of the Commission and for no other purpose.

Books and other records of accounts, audit and reports of the Commission

16.—(1) The Commission shall cause to be kept proper books and other records of account in respect of receipts and expenditures of the Commission in accordance with acceptable principles of accounting.

(2) The accounts of the Commission shall be audited annually by the Auditor General or by independent professional auditors appointed by the Commission in consultation with the Auditor General, and the expenses of the audit shall be paid out of the funds of the Commission.

(3) The Commission shall, as soon as practicable, but not later than six months after the end of the financial year of the Commission submit to the Minister and publish in the *Gazette* annual report on all the financial transactions of the Commission and on the work, activities and operations of the Commission.

(4) The report referred to in subsection (3) shall include a balance sheet and an income and expenditure account, and shall be laid by the Minister before the National Assembly in accordance with the Finance and Audit Act.

Cap. 37:01

(5) The Commission shall at all times comply with the provisions of the Finance and Audit Act.

Cap. 37:01

Holdings of funds of the Commission

17.— (1) All sums received for the purposes of the Commission shall be paid into one or more banking accounts at such bank or banks as the Commission may determine, and no amount shall be withdrawn therefrom except under the written authority of the Commission and by means of cheques signed by such persons as are authorized in that behalf by the Commission.

(2) Any sums not immediately required for the purposes of the Commission may be invested in such manner as the Commission may, in its discretion, determine.

Financial year

18. The financial year of the Commission shall be the period of twelve months commencing on the 1st July of each year and ending on the 30th June of the following year:

Provided that the first financial year may be a period shorter or longer than twelve months as the Commission shall determine, but in any case not longer than eighteen months.

PART VII

Miscellaneous

Duty to co-operate

19.—(1) It shall be the duty of every relevant or competent public officer and public or private entity to co-operate with the Commission in its activities and to contribute towards the success of an election and not to do anything that might hinder such process.

(2) It shall be the special duty of—

(*a*) all District Commissioners, in their respective districts, and all Clerks of local authorities, in their respective local authorities, to give the Commission and its officers the support and collaboration deemed by the Commission or its officers to be necessary for the execution of the activities connected with the conduct of an election; and

(*b*) officers-in-charge of police, in their respective areas of operation, to take all necessary measures for the maintenance of law and order and stability necessary for the conduct of an election and to protect and uphold the rights of all persons under any written law relating to elections.

Legal representation

20. The Commission may instruct the Attorney General or any legal practitioner to provide legal representation to the Commission in any court proceedings, including proceedings concerning appeals against its decisions on complaints about any aspect of the electoral process, or to provide general legal advice to the Commission.

Publicity

21. The Commission shall, in such manner as it shall consider appropriate, publish a notice for public information specifying—

(*a*) the location of its principal office; and

(*b*) its address or addresses, telephone numbers and other means of communication or contact with the Commission.

Regulations

22. The Minister may, on the recommendation of the Commission, make regulations for the better carrying out of this Act.

PART VIII

Transitional Provisions

Savings

23.—(1) Any person who, at the commencement of this Act, is a member or employee of the Commission, shall continue as such member or employee pursuant to the terms and conditions of his appointment.

(2) The validity of any legal proceedings commenced by or against the Commission and any thing done or action or

decision taken or made by a court or the Commission or any of its employees prior to the commencement of this Act shall not be affected by this Act.

Transfer of assets, etc.

24.—(1) All property, assets, rights, liabilities, obligations, agreements and other arrangements (other than arrangements with foreign Governments or other foreign donor agencies) existing at the commencement of this Act and vested in, acquired, incurred or entered into by or on behalf of the Commission shall, upon the commencement of this Act, be deemed to have vested in or to have been acquired, incurred or entered into by or on behalf of the Commission and shall become enforceable by or against the Commission to the same extent as they were enforceable by or against the Commission before the commencement of the Act.

(2) Where the transfer of any property transferred to or vested in the Commission under subsection (1) is required by any written law to be registered, the Commission shall, within one year from the commencement of this Act or within such other period as the written law may prescribe, apply to the appropriate registering authority for the registration of the transfer and thereupon the registering authority shall, at no cost to the Commission or any person by way of registration fees, stamp or other duties—

(*a*) make such entries in the appropriate register as shall give effect to the transfer;

(*b*) where appropriate, issue to the Commission a certificate of title or other statutory evidence of ownership of the property or make such amendments on such certificates or in the appropriate register as may be necessary; and

(*c*) make any necessary endorsements on such deeds or other documents as may be presented to such registering authority relating to the title, right or obligation concerned.

NATIONAL ASSEMBLY (POWERS AND PRIVILEGES)

CHAPTER 2:04

Containing Pages 1–12

L.R.O. 1/1968

CHAPTER 2:04

NATIONAL ASSEMBLY (POWERS AND PRIVILEGES)

ARRANGEMENT OF SECTIONS

PART I

Short Title and Interpretation

SECTION

1. Short title
2. Interpretation

PART II

Privileges and Immunities

3. Immunity from legal proceedings
4. Freedom from arrest
5. Exercise of civil process
6. Entry to Assembly
7. Regulation of admission to Assembly
8. Order of withdrawal from Assembly

PART III

Evidence

9. Power to order attendance of witnesses
10. Attendance to be notified by summons
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CHAPTER 2:04

NATIONAL ASSEMBLY (POWERS AND PRIVILEGES)

4 of 1957
G.N. 22/1963
16/1964(M)
137/1966
166/1967

An Act to declare and define certain Powers, Privileges and Immunities of the National Assembly and of the Members of such Assembly, to secure Freedom of Speech in the National Assembly, to regulate Admittance to the Precincts of the National Assembly, to give Protection to the Persons employed in the Publication of the Reports and other Papers of the National Assembly and for purposes incidental to or connected with the matters aforesaid

[13TH FEBRUARY, 1957]

PART I

SHORT TITLE AND INTERPRETATION

Short title

1. This Act may be cited as the National Assembly (Powers and Privileges) Act.

Interpretation

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

"Assembly" means National Assembly of Malaŵi;

"Clerk" means the Clerk of the National Assembly;

"committee" means any standing, sessional, select or other committee of the Assembly;

"journals" means the minutes of the Assembly or the official record of the votes and proceedings thereof;

"member" means any member of the Assembly;

"officer of the Assembly" means the Clerk or any other officer or person acting within the precincts of the Assembly, other than when serving a summons under section 10 (3), under the orders of the Speaker, and includes any police officer on duty within the precincts of the Assembly;

"police officer" has the same meaning as in the Police Act; Cap. 13:01

"precincts of the Assembly" means the chamber and offices of the Assembly and the galleries and places provided for the use or accommodation of strangers, members of the public and representatives of the press, and includes, while the Assembly is sitting, and subject to any exceptions made by direction of the Speaker, the entire building in which the chamber of the Assembly is situated, and any forecourt, yard, garden, enclosure or open space adjoining or appertaining to such building and used or provided for the purposes of the Assembly;

"Speaker" means the Speaker of the Assembly and includes any other member when such other member is presiding at a meeting of the Assembly;

"Standing Orders" means the Standing Orders of the Assembly for the time being in force;

"stranger" means any person other than a member or an officer of the Assembly.

PART II

Privileges and Immunities

Immunity from legal proceedings

3. No civil or criminal proceedings may be instituted against any member for words spoken before, or written in a report to, the Assembly or to a committee, or by reason of any matter or thing so brought by him by petition, Bill, motion or otherwise.

Freedom from arrest

4. No member shall be liable to arrest—

(*a*) for any civil debt whilst going to, attending at or returning from a sitting of the Assembly or any committee;

(*b*) within the precincts of the Assembly while the Assembly or a committee is sitting, for any criminal offence without the consent of the Speaker.

Exercise of process

5. No process issued by any court in the exercise of its jurisdiction shall be served or executed within the precincts of the Assembly while the

Assembly is sitting or through the Speaker, the Clerk or any officer of the Assembly.

Entry to Assembly

6. No stranger shall be entitled, as of right, to enter or to remain within the precincts of the Assembly.

Regulation of admission to Assembly

7.—(1) The Speaker is hereby authorized to issue such orders as he may in his discretion deem necessary for the regulation of the admittance of strangers to the precincts of the Assembly.

(2) Copies of orders made under this section shall be duly authenticated by the Clerk and exhibited in a conspicuous position in the precincts of the Assembly; and such copies when so authenticated and exhibited shall be deemed to be sufficient notice to all persons affected thereby.

Order of withdrawal from Assembly

8. The Speaker may at any time order any stranger to withdraw from the precincts of the Assembly.

PART III

Evidence

Power to order attendance of witnesses

9. The Assembly or any committee may, subject to section 14 and section 16, order any person to attend before the Assembly or before such committee and to give evidence or to produce any paper, book, record or document in the possession or under the control of such person.

Attendance to be notified by summons

10.—(1) Any order to attend to give evidence or to produce documents before the Assembly or a committee shall be notified to the person required to attend or to produce the documents by a summons, in such form as may be prescribed, under the hand of the Clerk issued by the direction of the Speaker or, in the case of a committee, by the chairman and so described on the face of such summons. Every such summons, if purporting to bear the signature of the Clerk, shall be deemed *prima facie* to be lawful and to be issued by the direction of the Speaker or the chairman as the case may be.

(2) In every summons under subsection (1) there shall be stated the time when and the place where the person summoned is required to attend and the particular documents which he is required to produce and the summons shall be served on the person mentioned therein either by delivering to him a copy thereof or by leaving a copy thereof at his usual or last known place of abode in Malaŵi, with some adult person; and there shall be paid or tendered to the person so summoned, if he does not reside within four miles of the place of attendance specified in the summons, such sum for his expenses as may be prescribed by Standing Orders.

(3) A summons under this section may be served by an officer of the Assembly or by a police officer.

Power to issue warrant to compel attendance

11.—(1) If a person to whom a summons under section 10 is directed does not attend before the Assembly or the committee at the time and place mentioned therein, the Speaker may, upon being satisfied that the summons was duly served or that the person to whom the summons is directed wilfully avoids service, direct the Clerk to issue a warrant, in such form as may be prescribed, to apprehend him and bring him, at a time and place to be stated in the warrant, before the Assembly or committee.

(2) A warrant issued under this section shall be executed by a police officer.

(3) The Speaker, on directing the issue of a warrant under this section, may, if he thinks fit, by ordering an appropriate endorsement on the warrant, direct that the person named in the warrant be released after arrest on his entering into such a recognizance before a court for his appearance before the Assembly or committee as may be required in the endorsement.

(4) Every warrant issued under this section and every endorsement upon such warrant shall, if purporting to bear the signature of the Clerk, be deemed *prima facie* to be lawful and to be issued or made under the direction or order of the Speaker.

Witnesses may be examined on oath

12. The Assembly or any committee empowered to order the attendance of witnesses may require that any facts, matters and things relating to the subject of inquiry before the Assembly or such committee be verified or otherwise ascertained by the oral examination of witnesses, and may cause any such witnesses to be examined upon oath, which the Clerk or the chairman of the committee or other person specially appointed for that purpose by the Assembly or by such committee is hereby authorized to administer.

Objection to answer question or to produce papers

13.—(1) Subject to section 14, where any person ordered to attend to give evidence or to produce any paper, book, record or document before the Assembly refuses to answer any question that may be put to him or to produce any such paper, book, record or document on the ground that the same is of a private nature and does not affect the subject of inquiry, the Speaker may excuse the answering of such question or the production of such paper, book, record or document, or may order the answering or production thereof.

(2) Subject to section 14, where any person ordered to attend or to give evidence or to produce any paper, book, record or document before any committee refuses to answer any question that may be put to him or to produce any such paper, book, record or document on the ground that the same is of a private

nature and does not affect the subject of inquiry, the chairman of the committee may report such refusal to the Speaker with the reasons therefor; and the Speaker may thereupon excuse the answering of such question or the production of such paper, book, record or document or may order the answering or production thereof.

Privileges of witnesses

14.—(1) Every person summoned to attend to give evidence or to produce any paper, book, record or document before the Assembly or a committee thereof shall be entitled, in respect of such evidence or the disclosure of any communication or the production of any such paper, book, record or document to the same right or privilege as before a court of law.

(2) Except with the consent of the President, no person in the employment of the Government shall—

(*a*) produce before the Assembly or a committee any paper, book, record or document; or

(*b*) give before the Assembly or a committee evidence,

relating to the correspondence of any naval, military or air force matter; nor shall secondary evidence be received by or produced before the Assembly or a committee of the contents of any such paper, book, record or document.

(3) Except when in the opinion of the President it would be contrary to the public interest and the President so directs, no person in the employment of the Government shall refuse—

(*a*) to produce before the Assembly or a committee any paper, book, record or document; or

(*b*) to give before the Assembly or a committee evidence,

relating to the correspondence of any civil department or to any matter affecting the public service; secondary evidence shall not be received by or produced before the Assembly or a committee of the contents of any such paper, book, record or document which the President has directed shall not be produced.

(4) An answer by a person to a question put by the Assembly or a committee shall not, except in the case of criminal proceedings under sections 105, 109, 110 and 112 of the Penal Code or of an offence against this Act, be in any proceedings, civil or criminal, admissible in evidence against him.

Cap. 7:01

Evidence of proceedings in Council or committee not to be given without leave

15.—(1) Save as provided in this Act, no member or officer of the Assembly and no person employed to take minutes of evidence before the Assembly or any committee shall give evidence elsewhere in respect of the contents of such minutes of evidence or of the contents of any document laid before the Assembly or such committee, as the case may be, or in respect of any proceedings or examination held before the Assembly or such committee,

as the case may be, without the special leave of the Assembly first had and obtained.

(2) The special leave referred to in subsection (1) may be given during a recess or adjournment by the Speaker, or during any dissolution of the Assembly, by the President.

Questions relating to evidence and production of documents before the Assembly or committee to be determined in accordance with usage of Parliament

16. Where at any time any question arises in the Assembly or in a committee in regard to—

(*a*) the right or power of the Assembly or a committee to hear, admit or receive oral evidence; or

(*b*) the right or power of the Assembly or a committee to peruse or examine any paper, book, record or document or to summon, direct or call upon any person to produce any paper, book, record or document before the Assembly or committee; or

(*c*) the right or privilege of any person (including a member of the Assembly or committee) to refuse to produce any paper, book, record or document or to lay any paper, book, record or document before the Assembly or committee,

that question shall, subject to the preceding provisions of this Act, and except in so far as express provision is made in those provisions for the determination of that question, be determined in accordance with the usage and practice of the Commons House of Parliament of the United Kingdom.

PART IV

Offences and Penalties

Proceedings to be deemed judicial proceedings for certain purposes Cap. 7:01

17. Any proceedings before the Assembly or a committee thereof at which any person gives evidence or produces any paper, book, record or document, shall be deemed to be judicial proceedings for the purposes of sections 105, 109,110 and 112 of the Penal Code.

Offences relating to admittance to the Assembly

18. Any person who—

(*a*) being a stranger enters or attempts to enter the precincts of the Assembly in contravention of any order of the Speaker; or

(*b*) being a stranger fails or refuses to withdraw from the precincts of the Assembly when ordered to withdraw therefrom by the Speaker; or

(*c*) being a stranger contravenes any order made under this Act by the Speaker regulating the admittance of strangers to the precincts of the Assembly or any rule made by the Speaker under the Standing Orders; or

(*d*) attends any sitting of the Assembly as the representative of any journal after the general permission granted under any order made under this Act or under the Standing Orders to the representative or representatives of that journal has been revoked,

shall be liable to a fine of £25 and to imprisonment for three months.

Other offences

19. Any person who—

(*a*) disobeys any order made by the Assembly or a committee for attendance or for production of papers, books, documents or records, unless such attendance or production be excused as hereinbefore provided; or

(*b*) refuses to be examined before, or to answer any lawful and relevant question put by the Assembly or a committee, unless such refusal be excused as hereinbefore provided; or

(*c*) offers to any member or officer of the Assembly any bribe, in order to influence him in his conduct as such member or officer, or offers to any member or officer of the Assembly any fee, compensation, gift or reward for or in respect of the promotion of or opposition to any Bill of matter submitted to or intended to be submitted to the Assembly or any committee; or

(*d*) assaults, obstructs, molests or insults any member coming to, being within, or going from the precincts of the Assembly, or endeavours to compel any member by force, insult or menace to declare himself in favour of or against any proposition or matter pending in or expected to be brought before the Assembly or any committee; or

(*e*) assaults, molests, insults, resists or obstructs any officer of the Assembly while in the execution of his duty or while proceeding to or from the Assembly knowing or having reasonable grounds for believing him to be such an officer; or

(*f*) creates or joins in any disturbance which interrupts or is likely to interrupt the proceedings of the Assembly or any committee while the Assembly or such committee is sitting; or

(*g*) presents to the Assembly or a committee any false, untrue, fabricated or falsified document with intent to deceive the Assembly or such committee; or

(*h*) utters or publishes any false or scandalous slander or libel on the Assembly or upon any member in his capacity as such; or

(*i*) attempts, directly or indirectly, by fraud, or by threats or intimidation of any kind, to influence a member in his vote,

opinion, judgment or action, upon any question arising in the Assembly or in a committee, or to induce him to absent himself from the Assembly or any committee; or

(*j*) threatens, assaults or insults a member or an officer of the Assembly on account of his conduct as such member or officer; or

(*k*) gives false evidence (in the case of witnesses not examined on oath), prevarication or other misconduct as a witness before the Assembly or a committee; or

(*l*) destroys documents which have been ordered to be produced before the Assembly or a committee; or

(*m*) endeavours, directly or indirectly, to deter or hinder any person from appearing or giving evidence before the Assembly or a committee; or

(*n*) tampers with a witness in regard to evidence to be given by him before the Assembly or a committee; or

(*o*) threatens or in any way punishes, damnifies or injures or attempts to punish, damnify or injure any person for having given evidence before the Assembly or a committee, or on account of the evidence which he has given before the Assembly or a committee; or

(*p*) publishes any evidence taken by, or document presented to, a committee where such evidence has been taken with closed doors, or where its publication has been expressly prohibited by the Assembly or the committee,

shall be liable to a fine of £200 and to imprisonment for two years.

Acceptance of bribes by members

20. Any member who accepts or agrees to accept or obtains or attempts to obtain for himself or for any other person any bribe, fee, compensation, reward or benefit of any kind for speaking, voting or acting as such member or for refraining from so speaking, voting or acting or on account of his having so spoken, voted or acted or having so refrained shall be liable on conviction before the High Court to a fine of £200 and to imprisonment for two years.

PART V

Miscellaneous

Commons Journals to be *prima facie* evidence in inquiries touching privilege

21. Subject to this Act, a copy of the Journals of the Commons House of Parliament of the United Kingdom printed or purporting to be printed by the order or by the Printer of the Commons House aforesaid shall be received as *prima facie* evidence without proof of its being such copy upon any inquiry touching the privileges, immunities and powers of the Assembly or of any member thereof.

Journals printed by the Government Printer to be admitted as evidence

22. Upon any inquiry touching the privileges, immunities and powers of the Assembly or of any member, any copy of the journals printed or purporting to be printed by the Government Printer shall be admitted as *prima facie* evidence of such journals in all courts and places without any proof being given that such copy was so printed.

Penalty for printing false copy of Act, journal, etc.

23. Any person who shall print or cause to be printed a copy of any Act now or hereafter in force, or a copy of any report, paper, minutes or votes and proceedings of the Assembly as purporting to have been printed by the Government Printer or by order or under the authority of the Assembly or by order or under the authority of the Speaker, and the same is not so printed, or shall tender in evidence any such copy as purporting to be so printed knowing that the same was not so printed, shall be liable to a fine of £200 and to imprisonment for three years.

Protection of persons responsible for publications authorized by the Assembly

24. Any person, being a defendant in any civil or criminal proceedings instituted for or on account or in respect of the publication by such person or by his servant, by order or under the authority of the Assembly, of any reports, papers, minutes, votes and proceedings, may, on giving to the plaintiff or prosecutor, as the case may be, twenty-four hours' written notice of his intention, bring before the court in which such civil or criminal proceedings are being held a certificate under the hand of the Speaker stating that the reports, papers, minutes, votes and proceedings in respect whereof such civil or criminal proceedings have been instituted were published by such person or by his servant by order or under the authority of the Assembly together with an affidavit verifying such certificate, and such court shall thereupon immediately stay such civil or criminal proceedings and the same and every process issued therein shall be deemed to be finally determined.

Publication of proceedings without malice

25. In any civil proceedings instituted for publishing any report or summary of or any extract from or abstract of any report, paper, minutes, votes and proceedings of the Assembly, if the court is satisfied that such report, summary, extract or abstract was published in good faith and without malice, judgment shall be entered for the defendant.

Exercise of jurisdiction by courts

26. Neither the Speaker, nor any officer of the Assembly, shall be subject to the jurisdiction of any court in respect of the exercise of any power conferred on or vested in the Speaker or such officer by or under this Act.

Powers of officers

27. Every officer of the Assembly shall, for the purposes of this Act and of the application of the provisions of the criminal law, have all the powers and enjoy all the privileges of a police officer.

Power of arrest

28. An Officer of the Assembly may arrest without warrant—

(*a*) any person who commits any offence contrary to section 18 or 19 in his presence;

(*b*) any person within the precincts of the Assembly whom he reasonably suspects of having committed, or being about to commit, an offence contrary to either of the said sections.

Speaker may order words out of order not to be published

29.—(1) Where the Speaker, under the Standing Orders of the Assembly, rules any words used by a member to be out of order, the Speaker may, in his absolute discretion, order that such words, or any words out of which they arose or arising out of them, shall not be published in any manner.

(2) Any person who publishes any words which are the subject of an order made under subsection (1) shall be liable to a fine of £200 and to imprisonment for two years.

Sanction for prosecutions

30. No prosecution for an offence under this Act shall be instituted except with the written sanction of the Director of Public Prosecutions.

Rules

31. The President may make Rules prescribing anything which, under this Act, may be or is to be prescribed.

SUBSIDIARY LEGISLATION

G.N. 68/1957

ADMITTANCE OF STRANGERS ORDER

under s. 7

1. No man may enter the precincts of the Assembly, that is to say, the top floor of the National Assembly building, while the Assembly is sitting unless he is cleanly and neatly dressed and is wearing a jacket with long trousers, or alternatively a jacket with shorts and stockings. In all cases a tie must be worn.

2. No woman may enter the precincts of the Assembly wearing shorts or trousers of any description.

NATIONAL ASSEMBLY (EMOLUMENTS)

CHAPTER 2:05

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NATIONAL ASSEMBLY (EMOLUMENTS)

ARRANGEMENT OF SECTIONS

SECTION

1. Short title
2. Interpretation
3. Salaries and allowances of members
4. Decisions of the President final

CHAPTER 2:05

NATIONAL ASSEMBLY (EMOLUMENTS)

An Act to provide for the payment of salaries, fees and allowances to Members of the National Assembly and to make provision for the matters incidental thereto

18 of 1955
9 of 1977
G.N. 22/1963
219/1964(N)
184/1966
166/1967

[14TH JULY, 1955]

1. This Act may be cited as the National Assembly (Emoluments) Act. Short title

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

"Assembly" means the National Assembly of Malaŵi;

"member" means a member of the Assembly.

3. The members shall be paid, from moneys provided for the purpose by Parliament, salaries, fees and allowances in respect of their services as members at such rate as the President may from time to time by order published in the *Gazette* authorize. Salaries and allowances of members 9 of 1977

4. If any question arises as to whether any member is or is not entitled to any payment under this Act or any order made thereunder, the decision of the President on such question shall be final. Decisions of the President final

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SUBSIDIARY LEGISLATION

G.N. 3/1964
185/1966
21/1969
80/1969
197/1980
42/1993

NATIONAL ASSEMBLY (EMOLUMENTS) ORDER

Citation

1. This Order may be cited as the National Assembly (Emoluments) Order.

Interpretation

2. For the purpose of this Order—

G.N. 42/1993

"specified member" means member of the National Assembly other than Mr. Speaker, a Minister or a Deputy Minister.

Salaries
G.N. 42/1993

3. Every specified member shall be paid a salary of K10,008 per annum.

Allowances
G.N. 80/1969
G.N. 42/1993

4.—(1) Every specified member shall be paid—

(*a*) a motor vehicle maintenance allowance of K20,400 per annum;

(*b*) a duty allowance of K2,880 per annum;

(*c*) a mileage allowance of K1 per kilometre for use, on the most direct route, of his motor vehicle on the official business of the National Assembly or a Committee thereof;

(*d*) a sitting allowance of K12 per each day of the sitting of the National Assembly; and

(*e*) a laundry allowance of K20 per each week, or part thereof, of a meeting of the National Assembly.

(2) The sitting allowance and the laundry allowance specified in subparagraph (1) shall also be payable to a specified member for attending a meeting of any Committee of the National Assembly whether or not such meeting occurs during a sitting or a meeting of the National Assembly.

PARLIAMENTARY PENSIONS (ENABLING PROVISIONS)

CHAPTER 2:06

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CHAPTER 2:06

PARLIAMENTARY PENSIONS (ENABLING PROVISIONS)

ARRANGEMENT OF SECTIONS

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PRELIMINARY

SECTION

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ESTABLISHMENT OF FUND

3. Establishment of the Fund
4. Objects of the Fund

PART III

THE TRUSTEES

5. Trustees of the Fund
6. Appointment and removal of Trustees
7. Disqualifications
8. Meetings of the Trustees
9. Powers of the Trustees
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11. Contributions from Parliamentary remuneration
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PART V

SUPPLEMENTAL SCHEMES

14. Trustees to formulate supplemental schemes
15. Contributions to supplemental scheme premiums

PART VI

MISCELLANEOUS

16. Rules against perpetuities, etc., not applicable

CHAPTER 2:06
PARLIAMENTARY PENSIONS (ENABLING PROVISIONS)

11 of 1981

An Act to provide for the constitution of contributory funds under the name of the Parliamentary Pensions Premium Fund for the purpose of effecting and maintaining pensions and related benefits for Members of the National Assembly and their dependants; and further to provide for periodic contributions by such Members and the Government to such funds and for the appointment of trustees of such funds under the name and style of the Trustees of the Parliamentary Pensions Premium Fund; to provide for the incorporation of such Trustees as a body corporate; to provide for the terms and conditions of the trusts under which the aforementioned funds shall be held and administered by such Trustees, and for the powers, duties and obligations of such Trustees in respect thereof and in relation to the beneficiaries thereunder; and further to provide for matters incidental to or connected with the foregoing

[1st January, 1972]

PART 1
Preliminary

Short title

1. This Act may be cited as the Parliamentary Pensions (Enabling Provisions) Act.

Interpretation

2. In this Act unless the context otherwise requires—

"Chairman" means the Chairman of the Trustees designated by section 6 (1) (2);

"Fund" means the Parliamentary Pensions Premium Fund, established by section 3;

"insurer" means any person doing business in Malaŵi, as a life insurer;

"Member" means a member of the National Assembly;

"Minister" includes the Speaker and Deputy Ministers;

"Parliamentary Service" means service as a Member of Parliament for any determinate period;

"reckonable service" means the aggregate of all Parliamentary Service;

"scheme" means any pension formulated under this Act and includes any supplemental scheme;

"Speaker" means the Speaker of the National Assembly

"Trustees" means the Trustees of the Parliamentary Pensions Premium Fund constituted by section 5.

PART II

Establishment of Fund

Establishment of the Fund

3. There is hereby established a fund to be known as the Parliamentary Pensions Premium Fund, which shall vest in, and be held and administered by the Trustees upon and subject to the trusts, and for the advancement and furtherance of the objects in this Act hereinafter declared.

Objects of the Fund

4. The objects of the Fund are to provide moneys for effecting and maintaining such pension and related benefits schemes as the Trustees may, under this Act, from time to time, formulate on behalf of Members and insure with insurers for the benefit of such Members or their dependants.

PART III

The Trustees

Trustees of the Fund

5. There is hereby constituted the Trustees of the Parliamentary Pensions Premium Fund, which shall by that name be a body corporate with perpetual succession and a common seal, capable of suing and being sued and, subject to this Act, of doing such acts and performing such deeds as a body corporate may by law do or perform.

Appointment and removal of Trustees

6.—(1) The Trustees of the Parliamentary Pensions Premium Fund shall be—

(*a*) the Speaker, who shall be executive Trustee, and the Chairman of the Trustees;

(*b*) two other persons appointed by the President.

(2) In the event of the Speaker being unable to act as such Trustee, the President shall appoint, from among the Members, a Trustee to act as executive Trustee and Chairman in the place and stead of the Speaker during such inability.

(3) Any Trustee appointed under paragraph (*b*) of subsection (1), or under subsection (2), may, at any time, resign from such trusteeship, by giving to the President and to the Speaker one month's notice in writing of his intention to resign.

(4) The President may, at any time, by notice in writing, remove any Trustee appointed pursuant to paragraph (*b*) of subsection (1), or pursuant to subsection (2), and may appoint in the place and stead of such removed Trustee, a new Trustee, who shall exercise all of the functions and powers of the Trustee whom he has replaced.

(5) Where, under section 7, any Trustee becomes disqualified from continuing to act as such, the President shall appoint, in his place and stead, a new Trustee who shall exercise all of the functions and powers of the Trustee he has replaced.

Cap. 1:01

(6) The provisions of section 42 of the General Interpretation Act shall apply to the Trustees.

Disqualifications

7. No person shall be appointed as a Trustee pursuant to paragraph (*b*) of subsection (1) of section 6, or to subsection (4) or (5) of the said section 6, or, having been so appointed, shall continue to act as such Trustee, who—

(*a*) is an undischarged bankrupt;

(*b*) has, within the past three years, been convicted of an offence involving fraud or dishonesty; or

(*c*) has been removed by a court from any office of trust by reason of misconduct

Meetings of the Trustees

8.—(1) Subject to subsection (2), the Trustees shall meet at such places and times and as often as the Chairman, in his absolute discretion, deems meet.

(2) A special meeting of the Trustees shall be convened by the Chairman at the written request of a majority of such Trustees.

(3) The Chairman shall convene all meetings of the Trustees by notice in writing posted by ordinary post to each Trustee at least five days before the date of the meeting:

Provided that, if any question or problem arises in respect of the Fund, or of any scheme or insurance effected or to be effected thereunder, which, in the opinion of the Chairman requires the Trustees to meet without delay to consider such question or problem, the Chairman, may, upon giving not less than one hour's notice to the Trustees, convene such a meeting, and the provisions of this subsection shall not apply to the convening of such meeting or to the form or manner of notice thereof to be given to the Trustees.

(4) The Chairman shall preside at all meetings of the Trustees.

(5) The Chairman and one other Trustee shall constitute a quorum of the Trustees.

(6) The Trustees may determine their own procedure for any meeting of the Trustees.

(7) Matters of the policy relating to the Fund, or to any scheme, or to any insurance effected under any such scheme, shall be determined at meetings of the Trustees.

Powers of the Trustee

9. The Trustees shall have power to hold the Fund upon and subject to the trusts declared by or under this Act, or by or under any scheme formulated under this Act, and shall have power to enter into any transaction or to do any act, which, in their opinion will tend to the advancement of the objects of the fund as declared by section 4 or which is incidental or contributory thereto, and without prejudice to the generality of the foregoing, shall have power to—

(*a*) formulate in conjunction with any insurer a scheme or schemes for the payment of pensions or other benefits to former Members and for the payment of pensions or other benefits to the surviving spouse, children or other dependants of deceased Members or former Members.

(*b*) insure such pension scheme or schemes with such insurer and to agree to and settle the terms of any master policy to be entered into with such insurer, insuring such pension scheme or schemes;

(*c*) increase, from time to time, by agreement with the relevant insurer, the amount *per annum* of any such pension benefits payable under any such scheme or the amount of any lump sum payment or other benefits payable thereunder and to provide from the Fund the amount of any additional insurance premium resultant upon any such increase;

(*d*) arrange, by agreement with the relevant insurer, for death and other benefits to be payable under any such scheme to the surviving spouse, children and other dependants of any deceased Member or deceased former Member who was a contributor to, or beneficiary under, the scheme at the date of his death;

(*e*) place any surplus moneys in the Fund on deposit account in any Bank until such moneys are required for the purposes of the Fund;

(*f*) otherwise manage and control the Fund to the best interests of the beneficiaries under the scheme or schemes by applying all the powers of investment prescribed by the Trustee Act. Cap. 5:02

10. The executive Trustee shall be the principal administrator of the Fund and of any scheme effected under this Act, and shall be responsible to the Trustees for the day-to-day running of the Fund and of any such scheme. Duties of the executive Trustee

PART IV

Financial Provisions

11.—(1) Subject to the provisions of this section, there shall be deducted from each payment of salary made to any Minister or Parliamentary Secretary, or to any Member pursuant to the National Assembly (Emoluments) Act, being a payment made in respect of any period after the 1st day of January, 1972, a sum calculated at the rate of 5 per cent of such payment; and all sums so deducted shall be paid into the Fund. Contributions from Parliamentary remuneration Cap. 2:05

(2) If any salary from which a deduction is required to be made under this section is not drawn by the relevant Minister, Parliamentary Secretary or Member, as the case may be, there shall be set aside, out of such moneys as are available for the payment of such salary, a sum equal to the relevant deduction, and any sum

so set aside shall be paid into the Fund as if it were a sum deducted under subsection (1), in respect of such Minister, Parliamentary Secretary or Member.

(3) Any sums which, pursuant to any arrangement or agreement between the President, the Speaker and the Members, have been deducted from any Member's salary for pension purposes for any period before this Act comes into force, or set aside out of moneys available for the payment of any such salary, shall, in so far as and to the extent that they would have fallen to be deducted under this section if it had been enacted and in force at the material time, be treated as sums deducted or set aside under this section; and any sum, or any part thereof, so deducted or set aside, which would not in that event have fallen to be deducted or set aside under this section shall be refunded to the Member from whose salary it was deducted or set aside.

Government contributions

12. Subject to this Act, there shall be paid into the Fund out of moneys provided by Government in each financial year a Government contribution of an amount equal to twice the total of the sums payable into the Fund in that financial year by, or in respect of, the Ministers, Parliamentary Secretaries and Members under section 11.

Conditions of pensions

13. Any scheme formulated and agreed by the Trustees and the insurers under this Act shall make provision for the payment of a pension to or in respect of any Member, who, after the commencement of this Act, ceases to be a Member or dies, having completed his reckonable service on or before the date upon which he so ceased to be a Member or died.

PART V

Supplemental Schemes

Trustees to formulate supplemental schemes

14.—(1) The Trustees shall have power to formulate, in conjunction with any insurer, a Ministers' Supplemental Scheme and a Parliamentary Secretaries' Supplemental Scheme, Supplementary to any Members Pension Scheme formulated under this Act, each of which supplemental schemes shall provide for the payment of a pension supplement or other benefits to any former Member or to the surviving spouse, children or other dependants of any such former Member, who, during any period of his reckonable service, held office as a Minister or as a Parliamentary Secretary.

(2) Any pension supplement or other benefits payable to any former Member or to the surviving spouse, children or other dependants of any such former Member under any supplemental scheme formulated pursuant to subsection (1) shall be in addition and supplemental to any pension or other benefits payable to

such former Member or to the surviving spouse, children or other dependants of any such former Member under any Members Pension Schemes, and shall be calculated upon and payable in respect of, any period, or the aggregate of any periods, of reckonable service during which any former Member held office as a Minister or as a Parliamentary Secretary, as the case may be.

(3) No pension supplement or other benefit under any supplemental scheme formulated under subsection (1) shall be payable to any person unless or until such person is entitled to the payment of a pension or other benefit under the Members Pension Scheme to which such supplemental scheme is supplementary.

Contributions to supplemental scheme premiums

15. Where any supplemental scheme has been formulated under section 14, the amount available out of the contributions to the Fund effected under section 11 for the payment of premiums in respect of any Member to whom such supplemental scheme relates shall be applied as follows—

(*a*) a sum equal to the premium payable in respect of an ordinary Member shall be applied towards the premium payment of the Members Pension Scheme in respect of the Member to whom such supplemental scheme relates;

(*b*) the excess over and above (*a*) shall be applied towards the premium payment of the relevant supplemental scheme.

PART VI

Miscellaneous

Rules agains perpetuities, etc., not applicable

16. Any trusts settled by or under this Act, or by, or in furtherance of, any scheme formulated under and in accordance with this Act, shall not be avoided or limited by any rule of law which prohibits or limits the settling of property in perpetuity, or the remote vesting of property, or which prohibits or limits accumulations, or restraints upon alienation.

POLITICAL PARTIES (REGISTRATION AND REGULATION)

CHAPTER 2:07

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CHAPTER 2:07

POLITICAL PARTIES (REGISTRATION AND REGULATION)

ARRANGEMENT OF SECTIONS

SECTION

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3. Establishment of office of Registrar

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19. Copy of constitution, etc.
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An Act to provide for the registration and regulation of political parties in Malaŵi; and to provide for matters connected with or incidental thereto 15 of 1993 18 of 1996

[5TH JULY, 1993]

PART I

Preliminary

Short title

1. This Act may be cited as the Political Parties (Registration and Regulation) Act.

Interpretation

2. In this Act—

"office bearer" includes the leader of a political party;

"political party" means a combination of persons who have constituted themselves for a political purpose;

"Registrar" means the Registrar of Political Parties appointed under section 3.

PART II

Establishment of Office of Registrar

Establishment of office of Registrar

3.—(1) There shall be a registrar of Political Parties (in this Act referred to as the "Registrar") appointed by the Minister, and whose office shall be a public office.

(2) In addition to the Registrar there shall be appointed in the public service such other officers subordinate to the Registrar as are necessary for the proper performance of the functions of the Registrar.

(3) Until appointments under subsections (1) and (2) have been made, the officer for the time being holding or acting in the office of Registrar General shall hold, or act in the office of Registrar and the officers subordinate to him shall be the officers for the purposes of subsection (2).

PART III

Registration of Political Parties

Register

4.—(1) The Registrar shall keep a register in which shall be recorded such particulars relating to a registered political party as are prescribed in this Act.

(2) A copy of an entry in the register certified under the hand of the Registrar or a person authorized by the Registrar shall, for the purposes of any written law, be *prima facie* evidence of the facts stated in the certificate.

Application for registration

5.—(1) A political party consisting of not less than 100 registered members may apply in writing to the Registrar for registration under this Act.

(2) An application for registration shall be signed by the office bearers of the political party and shall—

(*a*) specify the name of the party; and

(*b*) be accompanied by—

(i) two copies of the constitution, rules and manifesto of the party, duly certified by the leader of the party;

(ii) the particulars of the registered office of the party;

(iii) a list giving the names and addresses of the leader and other office bearers of the party;

(iv) a list giving the names and addresses of not less than 100 registered members of the party; and

(v) such further information or document as the Registrar may require for the purpose of satisfying himself that the application complies with this Act or that the party is entitled to be registered under this Act.

(3) The list referred to in paragraphs (*b*) (iii) and (iv) of subsection (2) shall be signed by each of the persons named therein.

(4) A person shall not be considered to be a member of a political party for the purpose of this Act unless he is a citizen of Malaŵi and has attained the voting age of voters in parliamentary general elections prescribed in a written law.

Certificate of registration

6.—(1) Where the Registrar registers a political party, he shall issue the party with a certificate of registration and shall register and stamp the copies of the constitution, rules and manifesto of the party submitted with the application and return a copy thereof to the party.

(2) A registered political party shall display its certificate of registration at its registered office.

(3) The Registrar shall, as soon as practicable, give notice of the registration of a political party in the *Gazette*.

Refusal to register political party 18 of 1996

7.—(1) The Registrar may refuse to register a political party if he is satisfied that—

(*a*) the application is not in conformity with this Act;

(*b*) the name of the party—

(i) is identical to the name of a registered political party or a political party whose registration has been cancelled under this Act;

(ii) so nearly resembles the name of a registered political party or a political party whose registration has been cancelled under this Act; or

(iii) denotes a religious faith;

(iv) is provocative or offends against public decency or is contrary to any other written law;

(*c*) any purpose or object of the party is unlawful.

(2) A political party shall be deemed to have a purpose or object which is unlawful for the purpose of this Act if—

(*a*) it seeks, directly or indirectly, to further ethnical, racial or religious discrimination or discrimination on the grounds of colour;

18 of 1996

(*b*) its objectives or membership is based on a religious faith;

(*c*) it advocates or seeks to effect political change in the Republic through violence or unlawful means; and

(*d*) it seeks to secede any part of the Republic from the Republic.

(3) For the purposes of determining whether a political party has an unlawful purpose or object the Registrar may consider any document issued or statement made by, or on behalf of, the party or by an office bearer of the party.

(4) Where the Registrar refuses to register a political party, he shall forthwith serve upon the party a notice in writing to that effect and shall specify the grounds for his refusal.

Appeal against refusal to register

8.—(1) Where the Registrar refuses to register a political party, an office bearer of the party may, within twenty-one days after receiving the notice of refusal, appeal to the High Court and the High Court may make such order as it thinks fit.

(2) The Registrar shall be entitled to be heard on an appeal.

Cancellation of registration

9.—(1) Subject to subsection (2), the Registrar may cancel the registration of a political party—

(*a*) at the request of the party made and signed by the office bearers of the party;

(*b*) on proof to the satisfaction of the Registrar that—

(i) the registration of the party has been obtained by fraud or mistake;

(ii) the party has a purpose or object which is unlawful; or

(iii) the number of registered members of the party has fallen below 100;

(*c*) if the party, after notice of the Registrar requiring compliance with this Act, fails to do so within a reasonable time or within the time specified by the Registrar in the notice;

(*d*) the Registrar is satisfied that the party has ceased to exist.

(2) The Registrar shall, twenty-one days before cancelling the registration of a political party, give notice in writing to the party of his intention to cancel its registration and of the grounds on which he intends to do so but no notice shall be required where subsection 1 (*a*) or (*c*) applies.

(3) The Registrar shall, as soon as practicable after cancelling the registration of a political party, give notice of the cancellation in the *Gazette*.

Appeal against cancellation of registration

10.—(1) An office bearer of a political party in respect of which the Registrar has issued a notice under section 9 (2) may, upon receipt of the notice and before the period specified in section 9 (2) has elapsed, appeal to the High Court against the finding of the Registrar contained in the notice of intended cancellation and the High Court may make such order as it thinks fit.

(2) Where the registration of a political party has been cancelled as a result of a request of the party or because the party has ceased to exist, a person who was a member of the party at the time of cancellation may, within fourteen days after the publication of the notice of cancellation in the *Gazette*, appeal to the High Court against the cancellation and the High Court may make such order as it thinks fit.

(3) The Registrar shall be entitled to be heard on an appeal.

Notice of change in registered particulars

11. Every registered political party shall, within seven days of any change occurring in the address of its registered office, or among its office bearers or in the particulars of its office bearers, notify the Registrar in writing of such change.

Notice of change in the constitution and rules, etc.

12.—(1) Every registered political party shall, within seven days of making an amendment to its constitution, rules or manifesto submit two copies of the amendment to the Registrar and the amendment shall not have effect until it has been registered by the Registrar.

(2) Where the Registrar registers an amendment submitted under subsection (1) he shall stamp the two copies of the amendment and return a copy to the political party.

Refusal to register amendments

13.—(1) The Registrar may refuse to register an amendment submitted under section 12 (1) if it appears to the Registrar that by reason of the amendment the purpose or object of the political party would be unlawful or the amendment contravenes this Act and the Registrar shall give notice in writing of the refusal to the party and shall specify the grounds for the refusal.

(2) Where the Registrar refuses to register an amendment an office bearer of the political party may, within fourteen days of the date of the notice of refusal, appeal to the High Court and the High Court may make such order as it thinks fit.

(3) The Registrar shall be entitled to be heard on an appeal.

Further information and inspection

14.—(1) The Registrar may, at any time after the registration of a political party, require the political party to submit to him any manifesto or other document issued or produced by it or in its name for any purpose.

(2) The Registrar or a person authorized in writing by the Registrar may at any reasonable time inspect and take or extract from copies of, or require an office bearer or employee of a registered political party to produce in readable form and provide him with, a copy of or extract from the record of a registered political party.

Confidentiality

15.—(1) The Registrar, a person authorized by the Registrar and an officer appointed under section 3 (2) shall not disclose to any person any information, other than—

(*a*) the name of a registered political party;

(*b*) the address of the registered office of a registered political party; or

(*c*) the particulars of the office bearers of a registered political party,

obtained in connexion with or in the course of the exercise of his functions under this Act, except for the purposes of, or in connexion with, an offence under this Act, or where required to do so under any other written law or an order of a Court.

(2) Every person who contravenes subsection (1) is guilty of an offence and is liable to a fine of K2,000 and imprisonment for twelve months.

PART IV

Miscellaneous

Onus of proof

16. Where a written law prohibits the doing of anything except by or restricts the doing of anything to, a registered political party, the onus of proving that—

(*a*) a political party is registered under this Act shall be on the person who claims that it is so registered;

(*b*) a person is an office bearer or member of or has been authorized by the registered political party in respect of which he claims to be acting shall be on the person who claims to be an office bearer or member of or to be authorized by the party.

Electioneering

17.—(1) A political party or any other combination of persons shall not represent itself as registered unless it is so registered.

(2) A political party or any other combination of persons shall not electioneer, or authorize any person to act on its behalf, in connexion with an election in which political parties contest unless it is a registered political party.

(3) No person shall act on behalf of, or represent himself as acting on behalf of, a political party or any other combination of persons in connexion with or for the purpose of a specified election unless—

(*a*) the political party or combination of persons is a registered political party; and

(*b*) the person is a member of, and has been authorized in writing to act on behalf of, the registered political party.

(4) A political party or any other combination of persons or any person who contravenes this section is guilty of an offence and liable to a fine of K2,000.

False information, obstruction, etc., of the Registrar

18.—(1) Every person who—

(*a*) for the purpose of obtaining the registration of a political party, wilfully—

(i) furnishes any false or misleading information;

(ii) makes any false declaration; or

(iii) forges or otherwise submits any document which he knows is false or misleading,

to the Registrar or any person authorized by the Registrar;

(*b*) fails to furnish the Registrar or any person authorized by the Registrar with any information, document or extract when required or within the time required;

(*c*) obstructs the Registrar or any person authorized by the Registrar in the performance of his functions under this Act,

is guilty of an offence and liable to a fine of K2,000 and imprisonment for twelve months.

Copy of constitution, etc.

19.—(1) An office bearer of a registered political party shall not distribute to any person, other than the Registrar or a person authorized by the Registrar in connexion with the performance of his functions under this Act or a police officer in connexion with an offence under this Act or any other written law, a document which purports to be a copy of or a copy of a part of or an extract from the constitution or rules of the political party unless the document is an exact copy of or an exact copy of the part of or exact extract from the latest registered copy of the constitution or rules of the political party.

(2) An office bearer who contravenes subsection (1) is guilty of an offence and is liable to a fine of K1,000 and to imprisonment for, six months.

Failure to notify changes

20. A registered political party which fails to comply with section 11 or section 12 is guilty of an offence and liable to a fine of K2,000 and to a further fine of K50 for each day that the offence continues after conviction.

Offences by office bearer

21. Where a political party, whether registered or not, or any other combination of persons commits an offence under this Act, every office bearer of the political party or of the combination of persons shall, unless it is proved—

(*a*) that the office bearer did not know of the act or omission constituting the offence; or

(*b*) that the offence is not attributable to the negligence of the office bearer,

be deemed to have committed the offence and liable to the fine prescribed for the offence and to imprisonment for twelve months.

Regulations

22. The Minister may make regulations for carrying into effect the provisions of this Act and for matters necessary or required to be prescribed or specified under this Act.

SUBSIDIARY LEGISLATION

POLITICAL PARTIES (REGISTRATION AND REGULATION) (FORMS) REGULATIONS

under s. 22

1. These Regulations may be cited as the Political Parties (Registration and Regulation) (Forms) Regulations. Citation

2. The forms set out in the Schedule shall be used for purposes of the Act, and the particulars contained in those forms and not particularly prescribed by the Act are hereby prescribed as particulars required under the Act. Forms

SCHEDULE (reg. 2)

FORMS

FORM NO. 1

POLITICAL PARTIES (REGISTRATION AND REGULATION) ACT APPLICATION FOR REGISTRATION

(*under section* 5)

Registration No.:.....

We of (*name of political party*) .....

of (*situation of the principal office of the political party*) .....

.....

(*Postal address of the principal office of the political party*) .....

.....

hereby apply for the registration of our said political party by its name under the Political Parties (Registration and Regulation) Act and we attach hereto—

(*a*) two duly certified copies of the constitution, rules and manifesto of the party;

(*b*) the list of particulars of the leader and office bearers of the party; and

(*c*) the list of particulars of registered members of the party (*at least 100 members*).

Dated this ..... day of ..... 19.....

Signed by the office bearers of the party as follows—

Name .....
and
Signature .....

Name .....
and
Signature .....

Name .....
and
Signature .....

Name .....
and
Signature .....

Name .....
and
Signature .....

Name .....
and
Signature .....

Particulars of office bearers of the political party:

Name	Former or other Name(s)	Residential/ Postal address	Occupation	Office held in the Party	Signature

Particulars of registered members of the political party (*at least 100 members*)

Name	Former or other Name(s)	Residential/ Postal address	Occupation	Signature

CERTIFICATE OF REGISTRATION

under s. 6

Registration No.: .....

of .....

.....

I hereby certify that the above-named political party has this day been registered under the Political Parties (Registration and Regulation) Act.

Given under my hand at Blantyre, Malaŵi, this .....

day of ..... nineteen hundred and .....

Signed .....
Registrar of Political Parties

(*Official stamp*)

PARLIAMENTARY SERVICE

CHAPTER 2:08

Containing Pages 1—13

CHAPTER 2:08

PARLIAMENTARY SERVICE

ARRANGEMENT OF SECTIONS

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35 of 1998

An Act to establish a Parliamentary Service and a Parliamentary Service Commission, and to provide for matters incidental thereto

[4TH DECEMBER, 1998]

PART I

PRELIMINARY

Short title

1. This Act may be cited as the Parliamentary Service Act.

Interpretation

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

"Commission" means the Parliamentary Service Commission established under section 5;

"Clerk" means the Clerk of the National Assembly appointed under section 16;

"Deputy Speaker" means a Deputy Speaker of the National Assembly;

"employee", in relation to the Parliamentary Service, means a person employed therein, whether on the permanent staff (including any person employed on probation) or temporarily or as a wage worker; but does not include a person engaged under a contract of service entered into under section 23;

"officer", in relation to the Parliamentary Service, means an employee of the Parliamentary Service other than a person employed on probation or a temporary salaried employee or a wage worker;

"Parliamentary Service" means the service established under section 3;

"Standing Orders" means the Standing Orders of the National Assembly;

"Speaker" means the Speaker of the National Assembly.

PART II

Establishment of Parliamentary Service

Establishment of Parliamentary Service

3.—(1) There is hereby established a service to be called the Parliamentary Service (in this Act otherwise referred to as the "Parliamentary Service").

(2) The Parliamentary Service shall be separate and independent from the Civil Service.

Duties of the Parliamentary Service

4.—(1) The principal duties of the Parliamentary Service shall be to provide to the National Assembly and to Members of the National Assembly such administrative and support services as may be necessary or desirable to facilitate the efficient operation of the National Assembly and the efficient carrying out by Members of the National Assembly of their duties, and without prejudice to the generality of the foregoing the Parliamentary Service shall—

(*a*) provide professional impartial advice and support for the National Assembly;

(*b*) provide non-partisan and impartial advice and services to the National Assembly, its committees and Members of the National Assembly;

(*c*) exhibit the highest ethical standards;

(*d*) perform its functions with probity and be accountable for its actions to the National Assembly;

(*e*) establish cooperative workplace relations based on consultation and communication;

(*f*) provide a fair, flexible, safe and rewarding workplace;

(*g*) focus on achieving results and management performance;

(*h*) use the resources of the National Assembly properly and cost-effectively; and

(*i*) perform such other duties as may be conferred or imposed on it by or under this Act or any other written law, or by resolution of the National Assembly.

(2) Nothing in this section limits the provision to the National Assembly and to Members of the National Assembly of administrative and support services by an instrument of the Government of Malaŵi, whether a Department, a corporation or an agency.

Parliamentary Service code of conduct

5.—(1) Every employee shall, in the course of his employment—

(*a*) behave honestly and with integrity;

(*b*) act with care and diligence;

(*c*) treat everyone with respect and courtesy, and without harassment;

(*d*) comply with all laws of Malaŵi;

(*e*) comply with any lawful and reasonable direction given by a person in charge of the Department in which he is employed, and who has authority to give the direction;

(*f*) disclose, and take reasonable steps to avoid, any conflict of interest in connexion with his employment in the Parliamentary Service;

(*g*) maintain appropriate confidentiality about dealings that the employee has with the National Assembly and its Committees, Members of the National Assembly and other employees;

(*h*) not provide false or misleading information in response to a request for information that is made for official purposes;

(*i*) not make improper use of inside information, or the employee's duties, status, power or authority, in order to gain, or seek to gain, a benefit or advantage for the employee or for anyone else;

(*j*) at all times behave in a way that upholds the values, integrity and good reputation of the Parliamentary Service;

(*k*) when on duty overseas, at all times behave in a way that upholds the good reputation of Malaŵi; and

(*l*) comply with any other requirement concerning personal conduct that is made by the Commission.

(2) Any employee who contravenes subsection (1) shall be liable to—

(*a*) termination of employment;

(*b*) demotion;

(*c*) re-assignment of duties;

(*d*) reduction in salary; and

(*e*) deductions from salary, by way of fine.

PART III

Establishment of Parliamentary Service Commission

Establishment of Parliamentary Service Commission

6. There is hereby established a commission to be called the Parliamentary Service Commission (in this Act otherwise referred to as the "Commission") which shall be a body corporate with perpetual succession and a common seal, and shall be capable of acquiring, holding, and disposing of real and personal property, of suing and being sued, and of doing and suffering all such acts and things as bodies corporate may do.

Composition of the Commission

7.—(1) Subject to section 10, the Commission shall consist of—

(*a*) the Speaker, who shall be the Chairman of the Commission; and

(*b*) such number of other members of the National Assembly, not exceeding five, who shall be appointed, from time to time, by resolution of the National Assembly.

(2) The Clerk shall be the Secretary of the Commission.

(3) The powers of the Commission shall not be affected by any vacancy in its membership.

Vacancy of office of Chairman

8.—(1) Where the Speaker is incapable of acting as Chairman by reason of illness, absence or other sufficient cause any Deputy Speaker nominated by the Speaker to act as Chairman shall have, and may exercise, all the powers, functions, and duties of the Chairman of the Commission.

(2) No act done by the Commission while a Deputy Speaker is acting for or in the place of the Speaker shall in any proceedings be questioned on the ground that the occasion for the acting Chairman to act for or in the place of the Speaker had not arisen or had ceased.

Vacation of office by appointed members

9.—(1) A member of the Commission who holds office by virtue of an appointment under section 7 (1) (*b*) shall vacate office as a member of the Commission—

(*a*) if the National Assembly rescinds the resolution by which the member was appointed, or resolves to appoint to the Commission, in the stead of that member, another member of the National Assembly;

(*b*) upon the expiry of the term of the National Assembly;

(*c*) if, before the term of the National Assembly expires, that member ceases to be a member of the National Assembly;

(*d*) if the member dies; and

(*e*) if the member resigns.

(2) A member of the Commission who holds office by virtue of an appointment under section 7 (1) (*b*) may, by notice in writing addressed to the Chairman of the Commission, at any time resign the office.

Membership of the Commission on expiration of the term of the National Assembly

10.—(1) On the expiration of the term of the National Assembly, the Commission shall, until the first meeting of the National Assembly after the general election of its members, consist of—

(*a*) the person holding the office of Speaker or Deputy Speaker at the time of the expiration or, if there was at that time a vacancy in the office of Speaker or Deputy Speaker or if the person holding that office at that time dies, the person elected from among members of the Commission who held such office immediately before the expiration of the term of the National Assembly;

(*b*) all other members of the Commission who held such office immediately before the expiration of the term of the National Assembly.

(2) On the expiration of the term of the National Assembly and until the first meeting of the National Assembly after the general election, the Chairman of the Commission shall be the person holding office as a member of the Commission under subsection (1) (*a*).

Functions of the Commission

11.—(1) The general functions of the Commission shall be—

(*a*) to prepare its own budget and to exercise budgetary control over the Parliamentary Service;

(*b*) to determine the size and organization of the Parliamentary Service;

(*c*) to determine the services to be provided by the Parliamentary Service;

(*d*) to supervise the administration of the services performed by the Parliamentary Service;

(*e*) to establish such departments in the National Assembly as may be necessary for the efficient management of the National Assembly;

(*f*) to act on all financial and administrative matters in respect of the National Assembly, its services and its, staff and the Members of the National Assembly;

(*g*) to receive and consider recommendations regarding conditions of service for Members of the National Assembly;

(*h*) to appoint persons to hold office in Parliamentary Service, including the power to confirm appointments, promotions, disciplinary matters and removal of persons from office:

Provided such removal shall be subject to the approval of the House;

(*i*) in exercise of its powers under paragraph (*h*), to base its employment decisions in the Parliamentary Service on merit.

(2) For the purposes of subsection (1) (*i*), a decision relating to engagement or promotion is based on merit if—

(*a*) an assessment is made of the relative suitability of the candidates for the duties, using a competitive selection process;

(*b*) the assessment is based on the relationship between the candidate's work-related qualities and the work-related qualities genuinely required for the duties;

(*c*) the assessment focuses on the relative capacity of the candidates to achieve outcomes related to the duties; and

(*d*) the assessment is the primary consideration in making the decision.

(3) The Commission shall perform such other functions as are conferred or imposed on it by or under this Act or any other written law.

(4) The Commission shall have such powers as are conferred on it by or under this Act or any other written law and such other powers as may be reasonably necessary to enable it to carry out its functions.

(5) Notwithstanding anything in subsections (1), (3) and (4), the Commission shall have no role in relation to—

(*a*) business transacted at meetings of the National Assembly or meetings of Committees of the National Assembly; or

(*b*) any other proceedings in Parliament.

Meetings of the Commission

12.—(1) Meetings of the Commission shall be held at such times and places as the Commission or its Chairman may, from time to time, appoint.

(2) The Chairman, or any three members, may at any time call a special meeting.

(3) At all meetings of the Commission the Chairman shall preside and, if the Chairman or any Deputy Speaker nominated by the Speaker to act as chairman is absent, the members present shall elect one of their number to be the chairman of that meeting.

(4) At any meeting of the Commission, the Chairman or other person presiding shall have a deliberative vote and, in the case of an equality of votes, also have a casting vote.

(5) At all meetings of the Commission four members shall form a quorum.

(6) The Commission may, in its discretion, at any time and for any length of period, write any person to attend any meeting of the Commission for the purpose of assisting or advising the Commission in respect of any matter under consideration by the Commission.

(7) Any person invited pursuant to subsection (6) may take part in the deliberations of the Commission, but shall not be entitled to vote on any matter at any meeting of the Commission.

Procedure of the Commission

13. Subject to this Act, the Commission may regulate its procedure and exercise its functions in such manner as it thinks fit.

Committees of the Commission

14.—(1) The Commission may, from time to time, appoint competent persons, whether members of the Commission or not, to be a committee or committees to assist the Commission on

such matters within the scope of its functions as are referred to them by the Commission.

(2) The power conferred by subsection (1) includes the power to appoint a committee having as its function or as one of its functions the function of consulting with, and giving advice to, the Commission on any matter affecting the staff of the Parliamentary Service:

Provided that no person employed in the Parliamentary Service shall be eligible to be appointed a member of a committee of the Commission.

(3) Subject to this Act and to any general or special directions of the Commission, any committee appointed under this section may regulate its procedure in such manner as it thinks fit.

Remuneration and expenses of members, etc.

15.—(1) Members of the Commission shall be paid from the funds of the Commission such allowances as the National Assembly shall determine.

(2) The Commission may make provision for the reimbursement of any reasonable expenses incurred by a member of the Commission or a member of a committee of the Commission in connexion with the business of the Commission.

PART IV

Parliamentary Staff

Clerk of the National Assembly

16.—(1) There shall be appointed, as an officer of the National Assembly, a Clerk of the National Assembly (in this Act otherwise referred to as the "Clerk") who shall be appointed by the President on the recommendation of the Commission.

(2) No person shall be appointed or reappointed as Clerk after that person has attained the age of sixty years.

(3) The Clerk shall be the chief executive officer of the National Assembly and shall be responsible for the day to day management of the affairs of the National Assembly.

(4) The Clerk shall without prejudice to the generality of subsection (3)—

(*a*) note all proceedings of the National Assembly; and

(*b*) carry out such duties and exercise such powers as may be conferred on the Clerk by this Act or any other written law, or by the Standing Orders, resolutions and practices of the National Assembly.

(5) In carrying out the duties specified in subsection (4) the Clerk shall be assisted, particularly in relation to the duties required to be performed at the Table of the National Assembly,

by a Deputy Clerk of the National Assembly and by such other Clerks as are necessary.

(6) Subject to subsections (7) and (8), the Clerk shall, in carrying out the duties and exercising the powers conferred on the Clerk be under the direction of the Speaker of the National Assembly.

(7) If during any period, other than the period between an expiration of the term of the National Assembly and the first meeting of the National Assembly after the general election of its members, there is no Speaker, the Clerk shall during that period be, in relation to the carrying out of the duties and the exercising of the powers referred to in subsections (3) and (4), be under the direction of the person appointed under section 9 (1) (*a*).

(8) On the expiration of the term of the National Assembly, the Clerk shall, until the first meeting of the National Assembly after the general election of its members, be, in relation to the carrying out of the duties and the exercising of the powers referred to in subsections (3) and (4), under the direction of—

(*a*) the person holding the office of Speaker at the time of the expiration of the term of the National Assembly; or

(*b*) if, at the time of the expiration, there is no Speaker, the person appointed in accordance with section 10 (1) (*a*);

(9) The Clerk shall not be eligible for election as a member of Parliament, unless he sooner resigns, and shall not, without the approval of the Speaker in each particular case, hold any office of trust or profit, other than that of Clerk, or engage in any occupation for reward outside the office of Clerk.

(10) There shall be paid to the Clerk—

(*a*) a salary at such a rate as the Commission may, from time to time determine; and

(*b*) such travelling and other allowances and expenses as the Commission may, from time to time, approve.

Tenure of office of Clerk

17.—(1) Subject to subsections (2) to (4), the Clerk shall hold office during good behaviour.

(2) The Clerk may at any time resign the office by notice in writing addressed to the Speaker, or if there is no Speaker or the Speaker is absent from Malaŵi, to the President.

(3) The Clerk may at any time be removed or suspended from office by the President upon the recommendation of the Commission for disability, bankruptcy, neglect of duty, or misconduct:

Provided always that the Clerk shall have the right to be heard by the Commission.

Delegation of powers of Clerk

18.—(1) On the occurrence from any cause of a vacancy in the office of Clerk, and in the case of absence from duty of the Clerk, and so long as any such vacancy or absence continues, the Deputy Clerk of the National Assembly or any other person for the time being performing, pursuant to the Standing Orders or by direction of the Speaker, the duties of the Clerk shall have and may exercise all the functions, duties, and powers of the Clerk.

(2) The fact that the Deputy Clerk or any other person exercises any function, duty or power of the Clerk shall be conclusive evidence of the authority of the Deputy Clerk or other person to do so.

Appointment of other employees of the Parliamentary Service

19.—(1) The Commission may, from time to time, appoint officers of the National Assembly and other employees of the Parliamentary Service subordinate to the Clerk as are necessary for the efficient and economical carrying on of the functions of the Parliamentary Service.

(2) The officers and employees appointed under subsection (1) shall include—

(*a*) a Deputy Clerk of the National Assembly and the other Clerks required for the purposes of section 16 (3);

(*b*) a Serjeant-at-Arms;

(*c*) a Chief Librarian;

(*d*) a Chief Editor of Hansard;

(*e*) a Chief Research Officer;

(*f*) a Chief Human Resource Officer;

(*g*) a Financial Controller; and

(*h*) a Chief Clerk of Committees.

(3) The Clerk shall have power to appoint such other junior staff as the Commission may specify.

Salary and terms of conditions of service of employees

20. Employees of the Parliamentary Service shall be paid such salary, remuneration and allowances and shall be employed on such conditions of service as may, from time to time, be determined by the Commission.

Retiring age

21. No officer shall continue to serve in the Parliamentary Service after attaining the mandatory retirement age of sixty years.

Application of Cap. 1:03

22. Save as in this Act expressly provided the Public Service Act, 1994, shall, with any necessary modifications, apply to employees in the Parliamentary Service in the same manner as they apply to employees in the public service.

Individual contracts of service

23. Notwithstanding section 20, the Commission may, in such circumstances as the Commission may determine, engage any person under an individual contract of service for such

period and on such terms and conditions of service as the Commission may determine.

Employment of experts

24. The Commission may engage any person, who in its opinion possesses expert knowledge or is otherwise able to assist it in connexion with the exercise of its functions, to make such inquiries or to conduct such research or to make such report as may be necessary for the efficient carrying out of any of its functions.

Provision of services

25.—The Commission may enter into contracts or arrangements for the execution or provision to the Commission or for Members of the National Assembly of any work or service, or for the supply to the Commission or Members of the National Assembly of any goods, stores or equipment, on and subject to such terms and conditions as may be agreed upon.

PART V

Financial Provisions

Funds of the Commission

26.—(1) The funds of the Commission shall consist of—

(*a*) such sums as shall be appropriated by Parliament to the National Assembly for purposes of the Commission;

(*b*) such sums or assets as may accrue to or vest in the Commission, whether in the course of the performance by the Commission of its functions or the exercise of its powers or otherwise;

(*c*) such sums or assets as may accrue to or vest in the Commission by way of grants, subsidies, bequests, donations, gifts and subscriptions, from the Government or any other person;

(*d*) such sums as are derived from the sale of any property, real or personal, by or on behalf of the Commission;

(*e*) such sums as are received by the Commission by way of voluntary contributions; and

(*f*) such sums or assets as may be donated to the Commission by any foreign government, international agency or other external body of persons, corporate or incorporated.

(2) The funds of the Commission shall exclusively be under the control of the Commission and shall be utilized solely for the purposes of this Act in accordance with the written directions of the Commission and for no other purposes.

Books and other records of accounts, audit and reports of the Commission

27.—(1) The Commission shall cause to be kept proper books and other records of accounts in respect of receipts and audit expenditures of the Commission in accordance with acceptable principles of accounting.

(2) The accounts of the Commission shall be audited annually by the Auditor General or by independent professional auditors appointed by the Commission in consultation with the Auditor General, and the expenses of the audit shall be paid out of the funds of the Commission.

(3) The Commission shall, as soon as practicable, but not later than six months after the end of the financial year of the Commission submit to the National Assembly an annual report on all the financial transactions of the Commission and on the work, activities and operations of the Commission.

(4) The report referred to in subsection (3) shall include a balance sheet and an income and expenditure account, and shall be laid before the National Assembly by the Speaker in accordance with the Finance and Audit Act.

Cap. 37:01

(5) The Commission shall at all times comply with the provisions of the Finance and Audit Act.

Cap. 37:01

Holdings of funds of the Commission

28.—(1) All sums received for the purposes of the Commission shall be paid into one or more banking accounts at such bank or banks as the Commission may determine, and no amount shall be withdrawn therefrom except under the written authority of the Commission and by means of cheques by such persons as are authorized in that behalf by the Commission.

(2) Any sums not immediately required for the purposes of the Commission may be invested in such manner as the Commission may, in its discretion, determine.

Financial year

29. The financial year of the Commission shall be the period of twelve months commencing on the 1st July of each year and ending on the 30th June of the following year:

Provided that the first financial year may be a period shorter or longer than twelve months as the Commission shall determine, but in any case not longer than eighteen months.

Annual report

30. As soon as practicable after the end of each year ending with the 30th day of June, the Commission shall prepare and lay before the National Assembly a report of its operations during that year.

By-laws

31.—(1) The Commission may make by-laws for the carrying into effect of the provisions of this Act.

(2) Without prejudice to the generality of subsection (1), the Commission may make by-laws—

(*a*) respecting the terms and conditions of service, including pensions, gratuities and other retirement benefits, of members of staff of the Parliamentary Service;

(*b*) prescribing the procedure for the appointment of members of the staff of the Parliamentary Service;

(*c*) respecting the code of conduct and discipline of members of staff of the Parliamentary Service; and

(*d*) respecting the administration and management of the funds of the Commission.

(3) All by-laws made pursuant of this section shall be laid before the National Assembly at the next meeting of the National Assembly occurring after the expiry of fourteen days after the making of the by-laws or, if the National Assembly is not then in session, within fourteen days after the commencement of its next meeting.

PART VI

Transitional Provisions

Persons employed in the Public Service to become persons employed in the Parliamentary Service

32.—(1) The person holding the office of Clerk immediately prior to the commencement of this Act shall be deemed to have been appointed to that office under section 16 and the salary and allowances of that person shall, until amended or superseded, continue to be payable at the rates applicable immediately before that date.

(2) Subject to this Act, every person, other than the Clerk, who immediately prior to the commencement of this Act is an employee or officer of the National Assembly, unless he opts not to continue serving with the National Assembly, shall become, on the commencement of this Act, without further appointment than this section, a person employed in the Parliamentary Service on and subject to the same terms and conditions of employment, including those applicable to salaries and allowances, as applied to that person immediately before the commencement of this Act.

SUPREME COURT OF APPEAL

CHAPTER 3:01

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CHAPTER 3:01

SUPREME COURT OF APPEAL

ARRANGEMENT OF SECTIONS

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CHAPTER 3:01

SUPREME COURT OF APPEAL

40 of 1963
17 of 1964(N)
13 of 1965
24 of 1968
5 of 1971
19 of 1973
1 of 2004
G.N. 219/1964(N)
137/1966
263/1969

An Act to make provision for the constitution of the Supreme Court of Appeal, the jurisdiction thereof, the procedure therein and matters connected therewith and incidental thereto

[1st January, 1964]

PART I

Preliminary

Short title

1. This Act may be cited as the Supreme Court of Appeal Act.

Interpretation

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

"Chief Justice" means the Chief Justice of Malaŵi appointed under section 63 of the Constitution;

"judge" includes the Chief Justice;

"judgment" includes decree, order, sentence and decision;

5 of 1971

"lower court" means a subordinate court;

"member" means a member of the Supreme Court of Appeal specified in section 67 (2) of the Constitution;

"rules of court" mean rules of court made under this Act.

PART II

Constitution and General Powers of Supreme Court of Appeal

Constitution of the Supreme Court of Appeal

3.—(1) This Act shall apply to the Supreme Court of Appeal for Malaŵi, hereinafter referred to as "the Court", established under section 67 of the Constitution.

1 of 2004

(2) In the absence of the Chief Justice, the senior member of Court shall preside.

(3) Subject to the provisions of this Act—

(*a*) for the purpose of the hearing and determination of appeals, the Court shall be constituted of the Chief Justice or other member presiding, and two other members;

(*b*) for the purpose of the hearing and determination of an appeal, if the question before the Court expressly or substantially relates to or concerns the interpretation or application of the Constitution, the Court shall be constituted of the Chief Justice or other member presiding, and four other members;

(*c*) the determination of any question before the Court shall be according to the opinion of the majority of the members of the Court hearing the appeal.

4. A judge shall not sit as a member on the hearing of an appeal from any judgment given by himself or given by any court on which he was sitting.

Judge not to sit on an appeal from his own decision

5. The Registrar of the High Court shall be the Registrar of the Court and every deputy Registrar of the High Court shall be a deputy Registrar of the Court.

Officers of the Court

6. The Court shall have a seal, having a device or impression approved by the Minister, with the inscription—"Supreme Court of Appeal".

Seal

7. A single member of the Court may exercise any power vested in the Court not involving the hearing or determination of an appeal:

Powers of a single member

Provided that—

(*a*) in criminal matters, if a single member refuses an application for the exercise of any such power, the applicant shall be entitled to have his application determined by the Court;

(*b*) in civil matters, any order, direction or decision made or given in pursuance of the powers conferred by this section may be varied, discharged or reversed by the Court.

8. The practice and procedure of the Court shall be in accordance with this Act and any rules of court made thereunder:

Procedure and practice

Provided that if this Act or any rules of court made thereunder does not make provision for any particular point of practice and procedure then the practice and procedure of the Court shall be—

(*a*) in relation to criminal matters, as nearly as may be in accordance with the law and practice for the time being observed in the Court of Criminal Appeal in England;

(*b*) in relation to civil matters, as nearly as may be in accordance with the law and practice for the time being observed by the Court of Appeal in England.

9. Every judgment of the Court shall have full force and effect and shall be enforceable in like manner as if it were a judgment of the High Court.

Effect of judgment of Court

10. Subject to section 19, in all proceedings before the Court the parties may appear in person or be represented and appear by a legal practitioner.

Right of audience

PART III

Criminal Appeals

Appeal in criminal cases
24 of 1968
19 of 1973

11.—(1) Subject to the other provisions of this section, any person aggrieved by a final judgment of the High Court in its original jurisdiction may appeal to the Court.

Cap. 8:01

(2) Any person aggrieved by a decision of the High Court in its criminal appellate jurisdiction or in exercise of the powers of review conferred upon the High Court by Part XIII of the Criminal Procedure and Evidence Code may appeal to the Court on a matter of law but such decision shall be final as to matters of fact and as to severity of sentence:

Provided that no appeal shall be made under this subsection against a decision of the High Court dismissing an appeal summarily under section 351 of the Criminal Procedure and Evidence Code or against any decision made in exercise of such powers of review or against refusal to entertain an appeal out of time without the leave of the Court or of the High Court.

(3) The Director of Public Prosecutions may appeal to the Court against any judgment, including a finding of acquittal, of the High Court, if, and only if, he is dissatisfied with such judgment upon a point of law. Subject as aforesaid, no appeal shall lie against a finding of acquittal made by the High Court.

(4) Upon receiving an appeal under subsection (1) or subsection (2) the Court may, if it considers the appeal to—

(*a*) be frivolous or vexatious;

(*b*) raise no sufficient ground which would enable the appeal to succeed; or

(*c*) be brought for purposes of delay,

dismiss the appeal summarily.

Determination of appeals in ordinary cases
24 of 1968

12.—(1) The Court shall allow an appeal under section 11 if it thinks that the judgment appealed against should be set aside—

(*a*) on the ground that it cannot be supported having regard to the evidence;

(*b*) on the ground of a wrong decision of any question of law; or

(*c*) on any ground that there was a miscarriage of justice,

and in any other case shall dismiss the appeal:

Provided that the Court may, notwithstanding the fact that it is of opinion that the point raised in the appeal might be decided in favour of the appellant, dismiss the appeal if it considers that no substantial miscarriage of justice has actually occurred.

(2) Subject to section 13 the Court shall, if it allows an appeal against conviction, quash the conviction and direct a judgment and verdict of acquittal to be entered or order the appellant to be retried by a court of competent jurisdiction.

(3) In an appeal against sentence the Court shall, if it thinks that a different sentence should have been passed, quash the sentence passed at the trial and pass such other sentence or make such other order warranted in law (whether more or less severe) in substitution therefor as it thinks ought to have been passed or made, and in any other case shall dismiss the appeal.

(4) On an appeal under section 11 (3) the Court shall hear and determine the question or questions of law arising on such appeal and may remit the case to the High Court with the opinion of the Court thereon with such directions as it may deem necessary, or may make such other order in relation to the appeal as to the Court may seem fit, or may dismiss the appeal.

Powers of Court in special cases 24 of 1968

13.—(1) If it appears to the Court that an appellant, though not properly convicted on some count of the information, summons or charge, has been properly convicted on some other count of the information, summons or charge, the Court may either confirm the sentence passed on the appellant at the trial or pass such sentence in substitution therefor as it thinks proper and as may be warranted in law on the count of the information, summons or charge on which the Court considers that the appellant has been properly convicted.

(2) Where an appellant has been convicted of an offence and the trial court could on the information, summons or charge have found him guilty of some other offence, and on the finding of the trial court it appears to the Court that the trial court must have been satisfied of facts which proved him guilty of that other offence, the Court may, instead of allowing or dismissing the appeal, substitute for the judgment of the trial court a judgment of guilty of that other offence and pass such sentence in substitution for the sentence passed at the trial as may be warranted in law for that other offence, not being a sentence of greater severity.

24 of 1968

(3) If on any appeal it appears to the Court that, although the appellant did the act or made the omission charged against him, he was insane so as not to be responsible, according to law, for his actions at the time when the act was done or omission made, the Court may set aside the conviction and make an order that a special finding to the effect that the appellant is not guilty by reason of insanity be substituted for such conviction. Thereafter the appellant shall be dealt with in accordance with section 135 of the Criminal Procedure and Evidence Code as if such special finding had been made at the trial.

Cap. 8:01

Powers of Court in relation to an order ancillary to conviction

14. Where the operation of any award or order of restitution or revesting of property and of any other award or order which is an award or order ancillary to conviction is suspended pending the determination of an appeal to the Court, the Court may, on

an appeal under section 11 by order annul or vary any such award or order although the conviction is not quashed; and the award or order, if annulled, shall not take effect, and if varied, shall take effect as so varied. If the conviction is quashed on the appeal, the award or order shall not take effect.

Detention as unconvicted prisoner

15. The time during which an appellant in custody is treated, pending the determination of his appeal, as an unconvicted prisoner shall not, unless the Court otherwise directs, count as part of any term of imprisonment under his sentence.

Supplementary powers of Court

16. For the purposes of this Part, the Court may, if it thinks it necessary or expedient in the interests of justice—

(*a*) order the production of any document, exhibit, or other thing connected with the proceedings, the production of which appears to it necessary for the determination of the case;

(*b*) order any witness who would have been a compellable witness at the trial to attend and be examined before the Court, whether he was or was not called at the trial, or order the examination of any such witness to be conducted in manner provided by rules of court before any judge of the Court or before any officer of the Court or other person appointed by the Court for the purpose, and allow the admission of any deposition so taken as evidence before the Court;

(*c*) receive the evidence, if tendered, of any witness (including the appellant) who is a competent but not compellable witness, and, if the appellant makes application for the purpose, of the husband or wife of the appellant;

(*d*) remit the case to the High Court for further hearing, with such instructions as regards the taking of further evidence or otherwise as appear to it necessary;

(*e*) where any question arising at the appeal involves prolonged examination of documents or accounts or any scientific or local investigation, which cannot, in the opinion of the Court, conveniently be conducted before the Court, order the reference of the question in manner provided by rules of court for inquiry and report to a special commissioner appointed by the Court, and act upon the report of any such commissioner so far as it thinks fit to adopt it;

(*f*) appoint any person with special expert knowledge to act as an assessor in an advisory capacity in any case where it appears to the Court that such knowledge is required for the proper determination of the case; and

(*g*) issue any warrant necessary for enforcing any order or sentence of the Court:

Provided that whenever the Court receives further evidence or gives instructions for the taking of further evidence, it shall make such order as will secure an opportunity to the parties to the proceedings to examine every witness whose evidence is taken.

Time for appealing 24 of 1968

17.—(1) If a person desires to appeal under this Part from the High Court to the Court, he shall, within thirty days of the judgment against which he desires to appeal and in such manner as may be prescribed by rules of court, give notice to the Registrar of the High Court of his intention to appeal.

(2) If the appellant is in prison, such notice may, within the time aforesaid, be given to the officer in charge of the prison, who shall forward the notice to such Registrar.

(3) The Court may extend the time for giving notice of intention to appeal, notwithstanding that the time for giving such notice has already expired.

Stay of execution of sentence of death or corporal punishment 24 of 1968

18.—(1) In the case of a sentence of death or of corporal punishment—

(*a*) the sentence shall not be executed until after the expiration of the time within which notice of intention to appeal may be given;

(*b*) if notice of intention to appeal is so given, the sentence shall not be executed until the appeal has been determined or abandoned.

(2) Notwithstanding subsection (1), a sentence of corporal punishment imposed or confirmed on appeal or review by the High Court may be executed before the expiration of the time within which the notice of intention to appeal may be given, if the person sentenced to such corporal punishment has given written notice to the Registrar or to the Registrar of the High Court that he wishes the sentence to be carried out without further delay and that he—

(*a*) does not intend to appeal; or

(*b*) has abandoned his appeal.

Right of appellant to be present

19.—(1) An appellant shall be entitled to be present, if he so desires, on the hearing of his appeal.

(2) An appellant may, either personally or through his legal practitioner, present his case and argument orally or in writing.

(3) The power of the Court to pass any sentence under this Act may be exercised notwithstanding that the appellant is for any reason not present.

24 of 1968

(4) Nothing in subsection (1) or subsection (2) shall apply to any appeal which the Court may dismiss under section 11 or section 12.

Statement of case on question of law arising on appeal

20. In the case of an appeal which involves a question of law alone, the Court may, if it thinks fit, request the High Court to state the question, together with all the circumstances under which the said question has arisen in such manner as may be prescribed by rules of court.

PART IV

Civil Appeals

Civil appeals 24 of 1968

21. An appeal shall lie to the Court from any judgment of the High Court or any judge thereof in any civil cause or matter:

Provided that no appeal shall lie where the judgment (not being a judgment to which section 68 (1) of the Constitution applies) is—

(*a*) an order allowing an extension of time for appealing from a judgment;

(*b*) an order giving unconditional leave to defend an action;

(*c*) a judgment which is stated by any written law to be final;

(*d*) an order absolute for the dissolution or nullity of marriage in favour of any party who having had time and opportunity to appeal from the decree *nisi* on which the order was founded has not appealed from that decree:

And provided further that no appeal shall lie without the leave of a member of the Court or of the High Court or of the judge who made or gave the judgment in question where the judgment (not being a judgment to which section 68 (1) of the Constitution applies) is—

(*a*) a judgment given by the High Court in exercise of its appellate jurisdiction or on review;

(*b*) an order of the High Court or any judge thereof made with the consent of the parties or an order as to costs only which by law is left to the discretion of the High Court;

(*c*) an order made in chambers by a judge of the High Court;

(*d*) an interlocutory order or an interlocutory judgment made or given by a judge of the High Court, except in the following cases—

(i) where the liberty of the subject or the custody of infants is concerned;

(ii) where an injunction or the appointment of a receiver is granted or refused;

(iii) in the case of a decision determining the claim of any creditor or the liability of any contributor or the liability of any director, or other officer, under the Companies Act in respect of misfeasance or otherwise; Cap. 46:03

(iv) in the case of a decree *nisi* in a matrimonial cause;

(v) in the case of an order on a special case stated under any law relating to arbitration;

(*e*) an order refusing unconditional leave to defend or granting such leave conditionally.

Powers of the Court on an appeal in civil matters

22.—(1) On the hearing of an appeal from any judgment of the High Court in a civil matter, the Court—

(*a*) shall have power to confirm, vary, amend, or set aside the judgment or give such judgment as the case may require;

(*b*) may, if it thinks it necessary or expedient in the interests of justice—

(i) order the production of any document, exhibit, or other thing connected with the proceedings, the production of which appears to it necessary for the determination of the case;

(ii) order any witness who would have been a compellable witness at the trial to attend and be examined before the Court, whether he was or was not called at the trial, or order the examination of any such witness to be conducted in manner provided by rules of court before any member of the Court or before any officer of the Court or other person appointed by the Court for the purpose, and allow the admission of any deposition so taken as evidence before the Court;

(iii) receive the evidence, if tendered, of any witness (including any party) who is a competent but not compellable witness, and, if a party makes application for the purpose, of the husband or wife of that party;

(iv) remit the case to the High Court for further hearing, with such instructions as regards the taking of further evidence or otherwise as appear to it necessary;

(*c*) shall, if it appears to the Court that a new trial should be held, have power to set aside the judgment appealed against and order that a new trial be held;

(*d*) may make such other order as the interests of justice may require.

(2) Whenever the Court gives instructions for the taking of further evidence, it shall make such order as will secure an opportunity to the parties to the proceedings to examine every witness whose evidence is taken.

Time for appealing 24 of 1968

23.—(1) If a person desires to appeal under this Part from the High Court to the Court, he shall, in such manner as may be prescribed by rules of court, give notice to the Registrar of the High Court of his intention to appeal—

(*a*) within 14 days of the judgment from which he wishes to appeal if such judgment is an interlocutory order;

(*b*) within six weeks of the judgment from which he wishes to appeal in any other case.

(2) The Court may extend the time for giving notice of intention to appeal under this Part, notwithstanding that the time for giving such notice has expired.

PART V

Miscellaneous

Admission of appellant to bail and custody when attending court

24.—(1) The Court may, if it deems fit, on the application of an appellant, admit the appellant to bail pending the determination of his appeal.

(2) The time during which the appellant, pending the determination of his appeal, is admitted to bail shall not count as part of any term of imprisonment under his sentence, and, in the case of an appeal under this Act, any imprisonment, under the sentence, of the appellant, whether it is the sentence passed by the High Court or by a lower court or the sentence passed by the Court, shall, subject to any directions which may be given by the Court, be deemed to be resumed or to begin to run, as the case requires, as from the day on which he is received or is received again into prison under the sentence.

Administration of oaths

25.—(1) The Court may require and administer any necessary oath.

(2) The form of an oath shall be that which is used in the High Court.

Warrant for production of appellant before Court

26. When the presence of an appellant who is in custody is necessary or desirable at the hearing of his appeal or he exercises the right to be present at the hearing of his appeal conferred upon him by section 19, the Court may issue a warrant for the production of the appellant on the hearing of the appeal.

Rules of Court

27. The Chief Justice, with the approval of the Minister, may make rules of court for the purposes of this Act to make provision with respect to any matter for which provision is to be made under this Act by rules of court, and may regulate generally the practice and procedure under this Act.

SUBSIDIARY LEGISLATION
SUPREME COURT OF APPEAL RULES

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G.N. 283/1963
137/1966

SUPREME COURT OF APPEAL RULES

under s. 27

ORDER I

GENERAL

Citation

1. These Rules may be cited as the Supreme Court of Appeal Rules.

Interpretation

2. In these Rules, unless it is otherwise provided or required by the context :

"appeal" includes an application for leave to appeal;

"appellant" means a party appealing from a judgment or applying for leave in that behalf and includes his legal representative;

"Registrar" means the Registrar of the Court;

"the Court" means the Supreme Court of Appeal;

"Court below" means the High Court;

"legal representative" means a person admitted to practise in the Court who has been retained by or assigned to a party to represent him in the proceedings before the Court;

"record" means the aggregate of papers relating to an appeal (including the pleadings, proceedings, evidence and judgments) proper to be laid before the Court on the hearing of the appeal;

"respondent" in a civil appeal means any party (other than the appellant) directly affected by the appeal, and in a criminal appeal means the person who undertakes the defence of the judgment appealed against;

Service

3.—(1) Any reference in these Rules to an address for service means an address within the jurisdiction where notices, pleadings, orders, summonses, warrants and other documents, proceedings, and written communications, if not required to be served personally, may be left, or to which they may be sent.

(2) Where under these Rules any person has given an address for service, any notice or other written communication which is not required to be served personally shall be sufficiently served upon him if it is left at that address or sent by registered post to that address, and in any case where the date of service by post is material section 2 (6) of the General Interpretation Act shall apply.

Cap. 1:01

(3) Where under these Rules any notice or other application to the Court, or to the Court below, is required to have an address for service endorsed on it, it shall not be deemed to have been properly filed unless such an address is endorsed on it.

(4) Any person desiring to change his address for service shall notify the Registrar, who shall thereupon communicate the new address for service to anyone to whom he may have communicated the former address.

(5) Where any person has given the address of a legal practitioner as his address for service and the legal practitioner is not, or has ceased to be, instructed by him for the purpose of the proceedings concerned, it shall be the duty of the legal practitioner to inform the Registrar as soon as may be that he is not authorized to accept service on behalf of the client, and if he omits to do so he may be ordered to pay any costs occasioned thereby.

(6) Except as may be otherwise provided in these Rules or in any other written law, no notice or other written communication in proceedings in the original or appellate jurisdiction of the Court, need be served personally except—

(*a*) in proceedings in the original jurisdiction of the Court, the writ of summons or other document issued by the Court for the institution of the proceedings; and

(*b*) in proceedings in the appellate jurisdiction of the Court, the notice of appeal:

Provided that if the Court is satisfied that the notice of appeal has in fact been communicated to the respondent no objection to the hearing of the appeal shall lie on the ground that the notice of appeal was not served personally.

(7) Where a Minister, or the Attorney General, or the Director of Public Prosecutions or any other public officer is a party *ex officio* or is representing the Government in any proceedings in the Court,

whether civil or criminal, any notice or other document may be served on him by leaving it at or by sending it by registered post to his chambers or office and service in this manner shall be as effective as if it were personal service.

(8) Where any document is required by these Rules to be served personally, it shall be sufficiently served if it is served in the manner prescribed by law for the personal service of a writ of summons issued by the High Court, and if it appears to the Court that for any reason personal service cannot be conveniently effected, the Court shall have the same power as the High Court to direct that service be effected in some other way.

(9) Where any person out of the jurisdiction is a necessary or proper party to an action commenced in the original jurisdiction of the Court and properly brought against some other person duly served within the jurisdiction, the Court may allow service of a summons out of the jurisdiction. If such first mentioned person is an alien and is resident, or probably may be found, in a foreign country, the Court may allow service out of the jurisdiction of such person in such country of notice of the issue of a summons in lieu of service of a summons.

(10) Every application for an order for leave to serve a summons, or notice of the issue of a summons, on a defendant out of the jurisdiction shall be supported by evidence on affidavit or otherwise showing in what place or country such defendant is or probably may be found, and the grounds upon which the application is made.

(11) Any order giving leave to effect service out of the jurisdiction shall prescribe the mode of service, and shall limit a time after such service within which such defendant is to enter an appearance, such time to depend on the place or country where or within which the summons is to be served, and the Court may receive an affidavit or statutory declaration of such service having been effected as *prima facie* evidence thereof.

Enlargement of time and departure from Rules

4. The Court may enlarge the time provided by these Rules for the doing of anything to which these Rules apply, or may direct a departure from these Rules in any other way when this is required in the interests of justice.

Fees

5. The fees set out in the Third Schedule shall be payable in respect of the matters to which they relate.

Registry

6.—(1) The Registry of the Court is situate at Blantyre and, except when otherwise expressly provided, all documents and proceedings shall be filed in that Registry, provided that whilst

the Court is sitting in any place other than Blantyre any documents or proceedings in connection with any matter to be dealt with at such sessions may be filed in the Court at such place.

(2) A document may be filed in the Registry of the Court either by being delivered there by the party or his legal representative or agent in person or by being sent there by registered post.

Sessions

7. Sessions of the Court shall be convened and constituted and the time, venue and forum for all sessions and for hearing interlocutory applications shall be settled in accordance with directions to be given by the Chief Justice.

Notification of sittings

8.—(1) The sittings of the Court and the matters to be disposed of at such sittings shall be advertised and notified in such manner as the Chief Justice may direct:

Provided that the Court may in its discretion hear any appeal and deal with any other matter whether or not the same has been advertised.

(2) This rule shall not apply to the hearing of any matter by a single member.

Adjournment

9. The Court may at any time on application or of its own accord adjourn any proceedings pending before it from time to time and from place to place.

Registrar

10. The Registrar shall have the custody of the records of the Court and shall exercise such other functions as are assigned to him by these Rules.

Other Registrars

11. The Chief Justice may assign, and the Registrar may, with the approval of the Chief Justice, delegate to a Deputy Registrar of the Court any functions required by these Rules to be exercised by the Registrar.

Seal of the Court

12. Subject to this rule, the Seal of the Court and any duplicate thereof shall be kept in the custody of the Registrar, and except as the Chief Justice may otherwise direct shall not be affixed to any writ, rule, order or other process or to any document without the express authority of the Registrar.

Powers of Registrar

13. The Registrar shall have the same jurisdiction, powers and dudes as the Masters of the Supreme Court, Clerks of Criminal Courts, Registrars and the like officers of the Supreme Court of Judicature and the Court of Criminal Appeal in England, in addition to such other jurisdiction, powers and duties as are given him by these Rules or such further powers and duties as the Chief Justice may direct.

Books to be kept by Registrar

14.—(1) The Registrar shall keep—

(*a*) a Criminal Appeal Book;

(*b*) a Civil Appeal Book; and

(*c*) a Civil Record Book,

each of which shall contain an index in alphabetical order.

(2) The following particulars shall be entered in the Criminal Appeal Book, and the Civil Appeal Book—

(*a*) the number of the appeal;

(*b*) the names of the appellant and respondent;

(*c*) the Court from which the appeal is brought;

(*d*) the date and place of hearing of the appeal;

(*e*) the names of counsel;

(*f*) the subject matter of the appeal;

(*g*) the judgment of the Court;

(*h*) any subsequent proceedings and remarks.

(3) The following particulars shall be entered in the Civil Record Book—

(*a*) the number of the application;

(*b*) the names of the parties;

(*c*) the date and place of hearing of the case;

(*d*) the names of counsel;

(*e*) the subject matter of the application;

(*f*) the judgment of the Court;

(*g*) any subsequent proceedings and remarks.

Covers

15. As soon as notice of appeal is delivered or an application for the exercise by the Court of its original jurisdiction is made to the Court or a member the Registrar shall prepare a cover in which pleadings or documents relating to the appeal or case shall be filed and on the front page thereof shall be recorded particulars of such pleadings or documents and the dates on which they are received.

Setting aside or varying order of Registrar

16. Any person aggrieved by anything done or ordered to be done by the Registrar other than anything ordered or done by the direction of the Chief Justice, may apply to a member to have the act, order or ruling complained of set aside or varied and the

member may give such directions or make such order thereon as he thinks fit. Such application shall be made by notice of motion supported by affidavits setting out the complaint and the relief sought.

17. The forms set out in the First and Second Schedules, or forms as near thereto as circumstances permit, shall be used in all cases to which such forms are applicable. Forms

18. Whenever an application may be made either to the Court below or to the Court, it shall be made in the first instance to the Court below but, if the Court below refuses the application, the applicant shall be entitled to have the application determined by the Court. Court to which application should be made

ORDER II

Original Jurisdiction

1. In the exercise of the original jurisdiction of the Court the practice and procedure of the Court shall be conducted in substantial conformity with the practice and procedure for the time being observed in the High Court. Procedure

ORDER III

Civil Appeals

1. This order shall apply to appeals to the Court from the High Court acting either in its original or its appellate jurisdiction in civil cases, and to matters related thereto. Application

2.—(1) All appeals shall be by way of rehearing and shall be brought by notice (hereinafter called "the notice of appeal") to be filed in the Registry of the Court below which shall set forth the grounds of appeal, shall state whether the whole or part only of the decision of the Court below is complained of (in the latter case specifying such part) and shall state also the exact nature of the relief sought and the names and addresses of all parties directly affected by the appeal, and shall be accompanied by a sufficient number of copies for service on all such parties. It shall also have endorsed on it an address for service. Notice and grounds of appeal Civil Form 1

(2) If the grounds of appeal allege misdirection or error in law the particulars and the nature of the misdirection or error shall be clearly stated.

(3) The notice of appeal shall set forth concisely and under distinct heads the grounds upon which the appellant intends to rely at the hearing of the appeal without any argument or narrative and shall be numbered consecutively.

(4) No ground which is vague or general in terms or which discloses no reasonable ground of appeal shall be permitted, save the general ground that the judgment is against the weight of the evidence, and any ground of appeal or any part thereof which is not permitted under this rule may be struck out by the Court of its own motion or on application by the respondent.

(5) The appellant shall not without the leave of the Court urge or be heard in support of any ground of appeal not mentioned in the notice of appeal, but the Court may in its discretion allow the appellant to amend the grounds of appeal upon such terms as the Court may deem just.

(6) Notwithstanding the foregoing provisions the Court in deciding the appeal shall not be confined to the grounds set forth by the appellant:

Provided that the Court shall not if it allows the appeal rest its decision on any ground not set forth by the appellant unless the respondent has had sufficient opportunity of contesting the case on that ground.

Application for leave to appeal

Civil Form 2

3.—(1) Where an appeal lies only by leave of the Court or of the Court below any application to the Court for such leave shall be made *ex parte* by notice of motion.

(2) If leave to appeal is granted by the Court or by the Court below the appellant shall file a notice of appeal :

Provided that nothing in this subrule shall be deemed to prohibit an appellant from filing a notice of appeal prior to the hearing of the application for leave to appeal.

Application for enlargement of time

4. Every application for an enlargement of time in which to appeal shall be supported by an affidavit setting forth good and substantial reasons for the failure to appeal within the prescribed period, and by grounds of appeal which *prima facie* show a good cause why the appeal should be heard. When time is so enlarged a copy of the order granting such enlargement shall be annexed to the notice of appeal.

Notice of appeal; on whom served

5.—(1) The Registrar of the Court below shall, after the notice of appeal has been filed, cause to be served a true copy thereof upon each of the parties mentioned in the notice of appeal. It shall not be necessary to serve any party not directly affected:

Provided that the Court may, of its own motion, or on the application of any person claiming to be affected, direct notice to be served on all or any parties to the action or other proceeding or upon any person not a party and in the meantime may postpone or adjourn the hearing of the appeal upon such terms as may be

just and make such order as might have been made if the persons served with such notice had been originally parties to the appeal.

(2) Notwithstanding anything in Order I rule 3 (6) (*b*), where in any proceeding in the Court below a party has given an address for service, notice of appeal from any decision made under such proceeding may be served on such party at such address for service, notwithstanding that the address may be that of a legal representative who has not been retained for the purpose of an appeal, and notice of any application preparatory or incidental to any such appeal may be served in like manner at any time before the date on which the respondent gives notice of his address for service in accordance with the immediately following rule.

(3) An appeal shall be deemed to have been brought when the notice of appeal has been filed in the Registry of the Court below.

Addresses for service

6.—(1) Every person who by virtue of service on him of a notice of appeal becomes a respondent to any appeal or intended appeal shall within thirty days after service on him of the notice of appeal file in duplicate with the Registrar of the Court below notice of a full and sufficient address for service in such number of copies as the said Registrar shall require. The Registrar of the Court below shall forthwith send a copy of the notice of address to the Registrar and shall cause a copy thereof to be served on the appellant.

(2) Such notice may be signed by the respondent or his legal representative.

(3) If any respondent fails or omits to file such notice of address for service it shall not be necessary to serve on him any other proceedings in the appeal or any notice of hearing thereof.

(4) Any party to an appeal or intended appeal may change his address for service at any time by filing and serving on all other parties to the appeal or intended appeal notice of such change.

Registrar's summons Civil Form 3

7. The Registrar of the Court below shall after the expiration of the time prescribed for filing notice of address for service summon the parties before him to settle the documents to be included in the record of appeal.

Record of appeal

8. The record of appeal shall contain the following documents in the order set out—

(*a*) the index;

(*b*) a statement by the Registrar of the Court below giving brief particulars of the case and including a schedule of the fees paid;

(*c*) copies of the documents settled by the Registrar of the Court below for inclusion in the record of appeal in accordance with rule 9 of this Order;

(*d*) a copy of the notice of appeal and other relevant documents filed in connection with the appeal.

Preparation of record

9.—(1) The appellant shall be responsible for the preparation of the record which shall be certified as correct by the Registrar of the Court below.

(2) The preparation of the record shall be subject to the supervision of the Court below and the parties may submit any disputed question to the decision of a Judge of the Court below in chambers who shall give such directions thereon as the justice of the case may require.

(3) The Registrar of the Court shall direct the number of copies of the record which shall be prepared.

(4) The record, which shall incorporate the notice of appeal, shall be printed or clearly typed or cyclostyled, double-spaced, upon thick paper and shall be bound and indexed.

(5) The Registrar of the Court below, as well as the parties and their legal representatives, shall endeavour to exclude from the record all documents (more particularly such as are purely formal) that are not relevant to the subject matter of the appeal and generally to reduce the bulk of the record as far as practicable, and to avoid the production of unnecessary exhibits, taking special care to avoid the duplication of documents and the unnecessary repetition of headings and other merely formal parts of documents; but the documents omitted to be copies shall be enumerated in a list to be placed after the index or at the end of the record.

(6) Where in the course of the preparation of a record one party objects to the inclusion of a document on the ground that it is unnecessary or irrelevant and the other party nevertheless insists upon it being included, the record shall, with a view to the subsequent adjustment of the costs of and incidental to such documents, indicate in the index of papers, or otherwise, the fact that the inclusion of the document was objected to and the party who so objected.

(7) The cost of preparing the record shall be paid by the appellant in the first instance but shall, unless the Court otherwise directs, be included in the costs in the appeal :

Provided that an appellant exempted from the payment of fees in terms of rule 33 of this Order shall not pay for the cost of the transcription or the duplicating of the record unless a member of the Court otherwise orders.

(8) The record of appeal shall be bound in book form with a limp cover of stout paper and may, if long, be in more volumes than one. The title of the appeal shall appear on the outside of the cover.

(9) The record of appeal shall be paged continuously throughout.

(10) Every tenth line of every record of appeal shall be indicated by numbering in the unbound portion of the margin.

(11) Every record of appeal shall contain a complete index of the evidence and all proceedings and documents in the case. Whenever the record comprises more than one volume, the index shall appear in the first volume.

Filing of record Civil Form 4

10. The Registrar of the Court below shall file the record in the Court when ready, together with—

(*a*) a certificate of service of the notice of appeal;

(*b*) four copies of the record for the use of the Court;

(*c*) the docket or file of the case in the Court below containing all papers or documents filed by the parties in connection therewith.

Notice of filing Civil Form 5

11. The Registrar of the Court shall cause to be served on all parties mentioned in the notice of appeal who have filed an address for service a notice that the record has been filed and shall in due course enter the appeal in the cause list and give notice to the parties of the date of hearing.

Security for costs

12. The Court may require security for costs or for performance of the orders to be made on appeal.

Cross appeal notice by respondent of contention that judgment should be varied or should be affirmed on other grounds Civil Forms 6 and 7

13.—(1) It shall not be necessary for the respondent to give notice of motion by way of cross-appeal; but if a respondent intends upon the hearing of the appeal to contend that the decision of the Court below should be varied, or that it should be affirmed on grounds other than those relied on by that Court he shall within one month after service upon him of the notice of appeal cause written notice of such intention to be given to every party who may be affected by such contention, whether or not such party has filed an address for service. In such notice the respondent shall clearly state the grounds on which he intends to rely and within the same period he shall file with the Registrar four copies of such notice of which one shall be included in the record, and the other three copies provided for the use of the members.

(2) Omission to give such notice shall not diminish any powers of the Court but may in the discretion of the Court be a ground for postponement or adjournment of the appeal upon such terms as to costs or otherwise as may be just.

Notice of preliminary objection to be filed Civil Form 8

14.—(1) A respondent intending to rely upon a preliminary objection to the hearing of the appeal shall give the appellant three clear days notice thereof before the hearing, setting out the grounds of objection, and shall file such notice together with four copies thereof with the Registrar within the same time.

(2) If the respondent fails to comply with this rule the Court may refuse to entertain the objection or may adjourn the hearing thereof at the cost of the respondent or may make such other order as it thinks fit.

Withdrawal of appeal Civil Form 9 Civil Form 10

15.—(1) An appellant may at any time before the appeal is called on for hearing serve on the parties to the appeal and file a notice with the Registrar to the effect that he does not intend further to prosecute the appeal.

(2) If all parties to the appeal consent to the withdrawal of the appeal without order of the Court, the appellant may file in the Registry the document or documents signifying such consent and signed by the parties or by their legal representatives and the appeal shall thereupon be deemed to have been withdrawn and shall be struck out of the list of appeals by the Registrar. In such event any sum lodged in Court as security for the costs of the appeal shall be paid out to the appellant.

(3) The withdrawal of an appeal with the consent of the parties under subrule (2) shall be a bar to further proceedings on any application made by the respondent under rule 13 of this Order.

(4) If all the parties do not consent to the withdrawal of the appeal as aforesaid, the appeal shall remain on the list, and shall come on for the hearing of any issue as to costs or otherwise remaining outstanding between the parties, including any application made by the respondent under rule 13 of this Order, and for the making of an order as to the disposal of any sum lodged in Court as security for the costs of appeal.

(5) An appeal which has been withdrawn under this rule, whether with or without an order of the Court, shall be deemed to have been dismissed.

Appeal by respondent where appeal withdrawn

16. Where an appeal is withdrawn under the preceding rule any respondent who has not given a notice under rule 13 of this Order may give notice of appeal and proceed therewith in the manner prescibed by the foregoing rules; and in such case the time limited for giving notice of appeal, may, on application to the Court, be extended so far as is reasonably necessary in all the circumstances of the case.

Non-compliance with conditions of appeal

17.—(1) If the appellant has failed to comply with any order made under rule 12 of this Order the Registrar shall certify such fact to the Court, which may thereupon order that the appeal be dismissed, either with or without costs, and shall cause the appellant and the respondent to be notified of the terms of its order.

(2) Where an appeal has been dismissed under subrule (1), a respondent who has given notice under rule 13 of this Order may

give notice of appeal and rule 16 of this Order shall apply as if the appeal were brought under that rule.

(3) If the repondent alleges that the appellant has failed to comply with a part of the requirements of rule 2 or 12 of this Order, the Court, if satisfied that the appellant has so failed, may dismiss the appeal for want of due prosecution or make such other order as the justice of the case may require.

(4) An appellant whose appeal has been dismissed under this rule may apply by notice of motion that his appeal be restored. Any such application may be made to the Court and the Court may in its discretion for good and sufficient cause order that such appeal be restored upon such terms as it may think fit.

Exhibits

18.—(1) Subject as hereinafter provided, each party shall, immediately after an appeal becomes pending before the Court, deliver to the Court below all documents (being exhibits in the case or which were tendered as exhibits and rejected) which are in his custody or were produced or put in by him at the trial.

(2) Subject as hereinafter provided, each party to an appeal shall be prepared to produce at the hearing of the appeal all exhibits, other than documents ,which are in his custody or were produced or put in by him at the trial.

(3) In case any party finds it difficult to comply with the previous provisions of this rule owing to the nature of the documents or other exhibit or owing to its being in possession of a third party or for any other reason, he may apply to the Registrar for directions.

(4) The Registrar may, either of his own motion or upon application, give any directions he sees fit, whether dispensing with this rule or modifying its application in any way or for securing compliance with it.

(5) All original documents delivered to the Court under this rule shall remain in the custody of the Court until the determination of the appeal:

Provided that the Court or Registrar may allow the return of any document to any party pending the hearing of the appeal and subject to such conditions as it or he may impose.

Control of proceedings during pendency of appeal

19. After an appeal has been entered and until it has been finally disposed of, the Court shall be seized of the whole of the proceedings as between the parties thereto, and except as may be otherwise provided in this Order, every application therein shall be made to the Court and not to the Court below.

Submission by party not appearing

20. At any time before hearing of the appeal any party to the appeal may file a declaration in writing that he does not wish to be present in person or by a legal representative on the hearing of the appeal together with four copies of such arguments as he desires to submit to the Court and serve a copy of such declaration and arguments upon every other party who has filed an address for service and thereupon the appeal shall be dealt with as if the party had appeared.

Non-appearance of appellant

21.—(1) If the appellant fails to appear when his appeal is called on for hearing and has not taken action under rule 20 of this Order, the appeal may be struck out or dismissed with or without costs.

(2) When an appeal has been struck out owing to the non-appearance of the appellant the Court may, if it thinks fit, and on such terms as to costs or otherwise as it may deem just, direct the appeal to be re-entered for hearing.

Non-appearance of respondent

22. If the respondent fails to appear when the appeal is called on for hearing and has not taken action under rule 20 of this Order, the Court may proceed to hear the appeal *ex parte*.

Application to set aside *ex parte* judgment

23.—(1) Where an appeal has been heard *ex parte* under rule 22 of this Order and any judgment has been given therein adverse to the repondent, he may apply to the Court to set aside such judgment and to rehear the appeal.

(2) No application to set aside and rehear under this rule shall be made after the expiration of twenty-one days from the date of the judgment sought to be set aside :

Provided that a respondent who has failed within the period of twenty-one days to make application under this rule may nevertheless at any time within a further period of three months thereafter apply to the Court on notice to the appellant to set aside such judgment, and the Court, if satisfied that good and sufficient cause has been shown for the application being out of time, may grant the application and make such order in relation thereto or as to costs as it may deem fit in the circumstances.

(3) Any such application shall be by motion accompanied by an affidavit setting forth the reasons and grounds for the application and the Court may thereupon in its discretion set aside the judgment and order that the appeal be reheard at such time and upon such conditions as to costs or otherwise as it may think fit.

New evidence on appeal

24. It is not open as of right to any party to an appeal to adduce new evidence in support of his original case; but, for the furtherance of justice, the Court may, where it thinks fit, allow or

require any new evidence to be adduced, such evidence to be either by oral examination in Court, by affidavit or by deposition taken before an examiner or commissioner as the Court may direct. A party may by leave of the Court allege any facts essential to the issue that have come to his knowledge after the decision of the Court below and adduce evidence in support of such allegations.

Interlocutory judgment not to prejudice appeal

25. No interlocutory judgment or order from which there has been no appeal shall operate so as to bar or prejudice the Court from giving such decision upon the appeal as may seem just.

Power of Court to give any judgment and make any order

26. The Court shall have power to give any judgment or make any order that ought to have been made, and to make such further or other order as the case may require including any order as to costs. These powers may be exercised by the Court, notwithstanding that the appellant may have asked that part only of a decision may be reversed or varied, and may also be exercised in favour of all or any of the respondents or parties, although such respondents or parties may not have appealed from or complained of the decision.

Judgment

27.—(1) The judgment of the Court shall be pronounced in open Court, either on the hearing of the appeal or at any subsequent time of which notice shall be given by the Registrar to the parties to the appeal.

(2) A certified copy of the judgment shall be filed by the Registrar in the Court below.

Order

28.—(1) Every judgment of the Court shall be embodied in an order.

(2) A sealed or certified copy of the order shall be filed by the Registrar in the Court below.

(3) Interlocutory orders shall be prepared in like manner.

Review of judgment

29. The Court shall not review any judgment once given and delivered by it save and except in accordance with the practice of the Court of Appeal in England.

Enforcement of judgment

30. Any judgment given by the Court may be enforced by the the Court or by the Court below or by any other Court which has been seized of the matter, as the Court may direct.

Execution of judgment by Court below

31. When the Court directs any judgment to be enforced by another Court, a certificate under the seal of the Court and the hand of the presiding member setting forth the judgment shall be transmitted by the Registrar to such other Court, and the latter shall enforce such judgment in terms of the certificate.

Costs

32. Where the costs of an appeal are allowed they may either be fixed by the Court at the time when the judgment is given or may be ordered to be taxed.

Fees

33.—(1) Save as hereinafter provided, the fees prescribed in the Third Schedule shall be charged in respect of the matters to which they are respectively assigned, and shall be paid to the Registrar.

(2) No fee shall be payable in respect of any matter where such fee would be payable by the Government:

Provided that when any person is ordered to pay the costs of the Government in any case, all fees which would have been payable but for this subrule shall be taken as having been paid and shall be recoverable from such person.

(3) The Court below or the Court may on account of the poverty of any party or for other sufficient reason, dispense, if it sees fit, with payment of any fees, if the circumstances of the case require :

Provided that if such party succeeds in any appeal which results in an order for payment to him of any costs, the Court may order that such fees shall be a first charge on any moneys recovered or to be recovered under such order.

Matters not expressly provided for

34. Where no other provision is made by these Rules the procedure and practice for the time being in force in the Court of Appeal in England shall apply in so far as it is not inconsistent with these Rules, and the forms in use therein may be used with such adaptations as are necessary.

ORDER IV

Criminal Appeals

Appeals from the High Court in its Original or Appellate Jurisdiction in Criminal Cases

Application

1. This order shall apply to appeals to the Court from the High Court acting either in its original or in its appellate jurisdiction in criminal cases, and to matters related thereto.

Applications not specially provided for

2. Except where otherwise provided in these Rules any application to the Court may be made by the appellant or respondent or by a legal representative on his behalf orally or in writing, but in regard to such applications if the appellant is unrepresented and in custody he shall make any such application by forwarding the same in writing to the Registrar who shall take the appropriate steps to obtain the decision of the Court thereon.

Obligation on appellant to fill up forms of appeal notices and answer questions thereon

3.—(1) A person desiring to appeal to the Court against any judgment, sentence or order of the Court below, whether in the exercise of its original or of its appellate jurisdiction, shall commence his appeal by sending to the Registrar of the Court below a notice of appeal or notice of application for leave to appeal or notice of application for extension of time within which such notice shall be given, as the case may be, in the form of such notices respectively set forth as Criminal Forms 1, 2, 3, 4, 5 or 6 in the Second Schedule:

Provided that no formal notice of application for leave to appeal shall be required in the case of an application made to the Court below at the time when the judgment is delivered.

(2) A person sending any notice or notices under this rule shall answer the questions and comply with the requirements set forth thereon.

Notices of appeal

4.—(1) Every notice of appeal or notice of application for leave to appeal or notice of application for extension of time within which such notice shall be given shall be signed by the appelant himself, except under subrules (4) and (5).

How notices, etc., may be given or sent

(2) Any notice or other document which is required or authorized to be given or sent shall be deemed to be duly given or sent if forwarded by registered post addressed to the person to whom such notice or other document is so required or authorized to be given or sent.

Where appellant unable to write

(3) Where an appellant or any other person authorized or required to give or send any notice of appeal or notice of any application is unable to write, he may affix his mark thereto in the presence of a witness who shall attest the same, and thereupon such notice shall be deemed to be duly signed by such appellant.

Where question of sanity involved

(4) Where, on the trial of a person entitled to appeal it has been contended that he was not responsible according to law for his actions on the ground that he was insane at the time the act was done or the omission made by him, or that at the time of the trial he was of unsound mind and consequently incapable of making his defence, any notice required to be given and signed by the appellant himself may be given and signed by his legal representative.

Notice, etc., on behalf of corporations

(5) In the case of a body corporate where any notice or other document is required to be signed by the appellant himself, it shall be sufficient compliance therewith if such notice or other document is signed by the secretary, clerk, manager or legal representative of such body corporate.

Application for extension of time

5. An application to the Court for an extension of time within which notices may be given shall be in Criminal Form 6 in the Second Schedule. Every person making an application for such extension of time shall send to the Registrar of the Court below, together with the proper form of such application, a form duly filled up, of notice of appeal, or of notice of application for leave to appeal, appropriate to the ground or grounds upon which he desires to question his conviction or sentence, as the case may be.

Notice of application for leave to appeal

6.—(1) Where the Court of the High Court has on a notice of application for leave to appeal duly sent and in the form provided under these Rules, given an appellant leave to appeal, it shall not be necessary for such appellant to give any notice of appeal but the notice of application for leave to appeal shall in such case be deemed to be a notice of appeal.

(2) Where an application for leave to appeal has been made to the High Court, the Registrar of that Court shall file in the records of the Court the result of the application.

Dealing with applications for leave to appeal and other preliminary applications

7.—(1) Where a single member deals with any preliminary application, the Registrar shall inform the applicant of the result of his application. In the event of such member refusing the application, the Registrar, on notifying such refusal to the applicant, shall forward to him Criminal Form 7 in the Second Schedule. If the applicant does not desire to have his said application determined by the Court or does not within thirty days of being notified of such refusal return Criminal Form 8 duly completed by him, the refusal of his application shall be final.

(2) The answers to the questions on Criminal Forms 1, 2, 3 and 4 shall be deemed to be applications to the Court in such matters.

(3) A member hearing a preliminary application may sit and act wherever convenient.

Preparation of record

8.— (1) When the Registrar of the Court below has received a notice of appeal or a notice of application to the Court for leave to appeal or for extension of time within which such appeal shall be given, the Registrar of the Court below shall prepare the record of appeal in the manner hereinafter prescribed and shall file the record in the Supreme Court. He shall also obtain the original exhibits in the case as far as practicable and any original depositions, information, inquisition, plea or other documents usually kept by him, or forming part of the record of the Court below, together with the originals of any recognisances entered into or any other documents filed in connection with the appeal or application.

(2) The Registrar shall forward to the appellant and to the Director of Public Prosecutions a copy each of the record :

Provided that if the appellant is not in custody a copy of the record shall only be supplied to him on request.

(3) The Court or Registrar may allow the return of any document to any party pending the hearing of the appeal and subject to such conditions as it or he may impose.

Record in criminal appeals from Court below in its original jurisdiction

9.—(1) The record of appeal in appeals or applications relating to appeals from a Court below acting in its original jurisdiction in criminal cases shall contain legible typed copies of the following items arranged in this order—

(*a*) the index;

(*b*) the charge or information;

(*c*) the transcript of the shorthand note of the evidence or, if no such note has been taken, the Judge's notes;

(*d*) the summing up to the assessors;

(*e*) the judgment or any additional ground or explanation thereof;

(*f*) the proceedings on or after sentence;

(*g*) all documentary exhibits put in at the trial including depositions read in consequence of the absence of a witness:

Provided that in the case of books of account or other documents of great length, extracts of the relevant portions thereof only shall be included;

(*h*) the notice of appeal or notice of application for leave to appeal, or notice of application for extension of time in which such notice shall be given.

(2) It shall not be necessary for the record of appeal to contain copies of any recognisances entered into or documents filed in connection with the appeal or application other than those set out in subrule (1) unless the Court or a Judge of the Court below shall otherwise direct.

Appeals in criminal matters from High Court in its appellate jurisdiction

10.—(1) The record of appeal in appeals or applications relating to appeals from the High Court acting in its appellate jurisdiction in criminal matters shall contain legible typed copies of the following items arranged in this order—

(*a*) the index which shall include the particulars of the record of proceedings from the lower Court;

(*b*) the record of proceedings from the lower Court as submitted to the High Court;

(*c*) the notice of appeal and all other relevant documents filed in connection with the appeal in the High Court;

(*d*) the notes of the Judge or the shorthand note on the hearing of the appeal, unless the Court shall otherwise direct;

(*e*) the judgment of the High Court;

(*f*) the notice of appeal to the Court or notice of application for leave to appeal to the Court, or notice of application to the Court for extension of time in which such notice shall be given;

(*g*) where leave to appeal has been granted by the High Court, a copy of the order granting leave.

(2) It shall not be necessary for the record of appeal to contain copies of any recognisances entered into for the purposes of the appeal to the High Court or of the appeal or application to the Court, unless the Court or a Judge of the High Court shall otherwise direct.

(3) The number of copies of the record and of the documents to be included in each copy shall be such as may be directed by the Chief Justice.

Report of Judge of Court of trial

11.—(1) The Registrar shall, if in relation to any appeal the Court directs him so to do, request the trial Judge to furnish him with a report in writing giving his opinion upon the case generally or upon any point arising upon the case of the appellant, and the trial Judge shall furnish the same to the Registrar.

(2) The report of the Judge shall be made to the Court and the Registrar shall on request furnish a copy thereof to the appellant and respondent.

Furnishing Judge of Court of trial with materials for report

12. When the Registrar requests the trial Judge to furnish a report under these Rules, he shall send to such a Judge a copy of the notice of appeal or notice of application for leave to appeal or any other document or information which he shall consider material, or which the Court at any time shall direct him to send or with which such Judge may request to be furnished by the Registrar to enable such Judge to deal in his report with the appellant's case generally or with any point arising thereon.

Bail

13.—(1) Where the Court or the Court below admits an appellant to bail pending the determination of his appeal on an application by him duly made, such Court shall specify the amounts in which the appellant and his surety or sureties (unless

such Court directs that no surety is required) shall be bound by recognisance,and shall direct, if it thinks fit so to do, before whom the recognisances of the appellant and his surety or sureties (if any) may be taken.

(2) In the event of such Court not making any special order or giving any special directions under this rule, the recognisances of the appellant and of his surety or sureties (if any) may be taken before a magistrate.

(3) The recognisances provided for in this rule shall be in Criminal Forms 9 and 10 in the Second Schedule.

(4) An appellant who has been admitted to bail shall be personally present at each and every hearing of his appeal and at the final determination thereof. The Court may, in the event of such appellant not being present at any hearing of his appeal, if it thinks right so to do, decline to consider the appeal, and may proceed summarily to dismiss the same and may issue a warrant for the apprehension of the appellant in Criminal Form 11 in the Second Schedule:

Provided that the Court may consider the appeal in his absence, or make such other order as it thinks fit.

(5) When an appellant is present before the Court, the Court may, on an application made by any person or, if it thinks right so to do, without any application, make an order admitting the appellant to bail, or revoke or vary any such order previously made, or enlarge from time to time the recognisances of the appellant or of his sureties or substitute any other surety for a surety previously bound as it thinks right.

(6) At any time after an appellant has been released on bail, the Court, or where the appellant was released on bail by the Court below, that Court, may, if satisfied that it is in the interest of justice so to do, revoke the order admitting to bail, and issue a warrant in Criminal Form 11 in the Second Schedule.

Fines

14.—(1) Where a person has, on his conviction, been sentenced to payment of a fine, and in default of payment to imprisonment, and such person remains in custody in default of payment of the fine, he shall be deemed, for purposes of appeal, to be a person sentenced to imprisonment.

(2) An appellant who has been sentenced to the payment of a fine, and has paid the same or part thereof in accordance with such sentence, shall, in the event of his appeal being successful, be entitled, subject to any order of the Court, to the return of the sum or any part thereof so paid by him.

Varying order of restitution of property

15. Where, upon the trial of a person entitled to appeal against his conviction, an order of restitution of any property to any person has been made by the Judge of the Court below, the person in whose favour or against whom the order of restitution has been made, and, with the leave of the Court, any other person, shall, on the final hearing by the Court of an appeal against his conviction on which such order of restitution was made, be entitled to be heard by the Court before any order annulling or varying such order of restitution is made.

Non-suspension of orders of restitution

16. Where the Judge of the Court below is of opinion that the title to any property the subject of an order of restitution made on a conviction of a person before him is not in dispute, he, if he shall be of opinion that such property or a sample or portion or facsimile representation thereof is reasonably necessary to be produced for use at the hearing of any appeal, shall give such direction to or impose such terms upon the person in whose favour the order of restitution is made, as he shall think right in order to secure the production of such sample, portion or facsimile representation for use at the hearing of any such appeal.

Notification of final determination of appeals

17. On the final determination of any appeal or of any application to the Court, the Registrar shall give to the appellant, if he be in custody and has not been present at such final determination, and to the respondent and the prison authority, notice of such determination.

Notification of appeal in capital cases

18. In any case of an appeal in relation to a conviction involving sentence of death, the Registrar shall, on receiving notice of appeal, send copies thereof to the Secretary for Justice for the information of the committee on the prerogative of mercy. He shall also notify the said Secretary of the final determination of the appeal.

Entry of result of appeal

19. The Registrar of the Court shall enter particulars of the result of any appeal on the records of the High Court.

Enforcement of orders

20. Any order given or made by the Court may be enforced by the Court or by the Court below as may be most expedient.

ORDER V

Miscellaneous

Waiver of non-compliance with Rules

1. Non-compliance on the part of an appellant with these Rules or with any rule of practice for the time being in force shall not prevent the further prosecution of the appeal if the Court considers that it is in the interests of justice that non-compliance be waived or the appellant given a further opportunity to comply with the Rules. The Registrar shall forthwith notify the appellant of any directions given by the Court under this Rule, where the appellant was not present at the time when such directions were given.

FIRST SCHEDULE

CIVIL FORM 1

IN THE SUPREME COURT OF APPEAL

NOTICE OF APPEAL

(ORDER III, RULE 2)

Between ..... Plaintiff

and

..... Defendant

TAKE NOTICE that the Plaintiff/Defendant being dissatisfied with the decision/that part of the decision more particularly stated in paragraph 2* of the ..... court contained in the judgment/order* of ..... dated the ..... day of ..... 19 ..... doth hereby appeal to the Court upon the grounds set out in paragraph 3 and will at the hearing of the appeal seek the relief set out in paragraph 4.

And the Appellant further states that the names and addresses of the persons directly affected by the appeal are those set out in paragraph 5.

2. Part of decision of the lower Court complained of†

3. Grounds of Appeal:

(1)

(2)

(3), etc.

4. Relief sought from the Court

5. Persons directly affected by the appeal:

	Name	Address
(1)		
(2)		
(3), etc.		

Dated this ..... day of ..... 19 .....

.....

Appellant,

whose address for service is

.....

* Strike out words inapplicable

† If appealing against the whole decision insert "whole decision".

NOTE — An address for service must be given.

CIVIL FORM 2

IN THE SUPREME COURT OF APPEAL

NOTICE OF MOTION FOR LEAVE TO APPEAL

(ORDER III, RULE 3)

Between ..... Plaintiff

and

..... Defendant

TAKE NOTICE that the Supreme Court of Appeal/High Court will be moved on the ..... day of ..... 19 ..... at ..... o'clock in the forenoon or as soon thereafter as counsel can be heard on the hearing of an application for leave to appeal against the decision of the ..... Court ..... given on the ..... day of ..... 19 .....

And further take notice that the grounds of this application are:—

Dated this ..... day of ..... 19 .....

.....

Applicant or his legal representative

whose address for service is

.....

.....

To:

THE REGISTRAR,

SUPREME COURT OF APPEAL/HIGH COURT

And* .....

* Insert name of Respondent.

Note: An address for service must be given.

CIVIL FORM 3

IN THE SUPREME COURT OF APPEAL

SUMMONS TO PARTIES BY REGISTRAR TO SETTLE RECORD

(ORDER III, RULE 7)

Between ..... Appellant

and

..... Respondent

TAKE NOTICE that all parties concerned are required to attend before me at the Court Office at .... on .... the ..... day of ..... 19 ... . at the hour of ..... in the ..... noon to proceed with settling of the record of appeal herein.

Dated this ..... day of ..... 19 .....

.....

Registrar

CIVIL FORM 4

IN THE SUPREME COURT OF APPEAL

CERTIFICATE OF SERVICE OF NOTICE OF APPEAL

(ORDER III, RULE 10)

Between ..... Appellant(s)

and

..... Respondent(s)

I, the undersigned Registrar of the ..... Court Do CERTIFY that notice of appeal in the above-named case was duly served upon ..... the Respondent herein

Dated at ..... this ..... day of ..... 19 .....

.....

Registrar

CIVIL FORM 5

IN THE SUPREME COURT OF APPEAL

NOTICE TO PARTIES OF FILING OF RECORD

(ORDER III, RULE 11)

Between ..... Appellant

and

..... Respondent

TAKE NOTICE that the record in the above-named appeal has this day been filed in the Supreme Court.

.....

Registrar

To:

CIVIL FORM 6

IN THE SUPREME COURT OF APPEAL

NOTICE BY RESPONDENT OF INTENTION TO CONTEND THAT DECISION OF COURT BELOW BE VARIED

(ORDER III, RULE 12)

Between ..... Appellant

and

..... Respondent

TAKE NOTICE that upon the hearing of the above appeal the Respondent herein intends to contend that the decision of the Court below dated the ..... day of ..... 19 ..... shall be varied as follows*:—

AND TAKE NOTICE that the grounds on which the Respondent intends to rely are as follows:—

1.

2.

3, etc.

Dated this ..... day of ..... 19 .....

.....

Respondent

*State the variation which will be asked for.

CIVIL FORM 7

IN THE SUPREME COURT OF APPEAL

NOTICE OF INTENTION TO CONTEND THAT JUDGMENT SHOULD BE AFFIRMED ON GROUNDS OTHER THAN THOSE RELIED ON BY THE COURT BELOW (ORDER III, RULE 13)

Between ..... Appellant

and

..... Respondent

TAKE NOTICE that upon the hearing of the above appeal the Respondent intends to contend that the decision of the Court below dated the ..... day of ..... 19 ..... shall be affirmed on grounds other than those relied on by the Court below.

And Take Notice that the grounds on which the Respondent intends to rely are as follows:—

1.

2.

3, etc.

Dated this ..... day of ..... 19 .....

.....

Respondent

Civil Form 8

In the Supreme Court of Appeal

NOTICE BY RESPONDENT OF INTENTION TO RELY UPON PRELIMINARY OBJECTION(S)
(Order III, Rule 14)

Appeal No. ..... 19 .....

Between ..... Appellant

and

..... Respondent

Take Notice that the Respondent herein named intends, at the hearing of this appeal, to rely upon the following preliminary objection(s) notice whereof is hereby given to you, viz:—

And Take Notice that the grounds of the said objections are as follows:—

1.

2.

3, etc.

Dated this ..... day of ..... 19 .....

.....

Plaintiff / Defendant-Respondent

To the above-named Plaintiff-Defendant/Appellant or his legal representative.

CIVIL FORM 9

IN THE SUPREME COURT OF APPEAL

NOTICE OF WITHDRAWAL OF APPEAL

(ORDER III, RULE 15)

Appeal No ..... 19 .....

Between ..... Appellant(s)

and

..... Respondent(s)

TAKE NOTICE that the Appellant(s) herein intend(s) and doth hereby wholly withdraw(s) his/their appeal against (all) the Respondent(s) in the above-mentioned appeal.

Dated at ..... this ..... day of ..... 19 .....

.....

Appellant(s)

THE REGISTRAR,

SUPREME COURT.

And to

CIVIL FORM 10

IN THE SUPREME COURT OF APPEAL

NOTICE OF WITHDRAWAL OF APPEAL BY AGREEMENT

(ORDER III, RULE 15)

Between ..... Appellant

and

..... Respondent

TAKE NOTICE that the above appeal is withdrawn with the consent of all parties thereto.

Dated this ..... day of ..... 19 .....

.....

Appellant or his legal representative

.....

Respondent or his legal representative

SECOND SCHEDULE

CRIMINAL FORM 1

IN THE SUPREME COURT OF APPEAL

NOTICE OF APPEAL FROM DECISION OF A COURT SITTING AS A COURT OF FIRST INSTANCE

(ORDER IV, RULE 3)

Republic v. .....

TO THE REGISTRAR OF THE .....

I, ... having been convicted of the offence of (1) .... and ..... being now a prisoner in prison at ..... or whose address for service is (2) .....

(1) State the offence

(2) Where appellant for any reason not in custody, set out address for service

do hereby give notice of appeal against my conviction (particulars of which hereinafter appear) to the Court on the following grounds (3):—

(Signed or mark) .....

Appellant

.....

Signature and address of witness attesting mark

Dated this ..... day of ..... 19 .....

(3) State as clearly as you are able the grounds on which you desire to appeal

PARTICULARS OF TRIAL AND CONVICTION

1. Date of trial .....
2. In what Court tried .....
3. Sentence .....

Fill in all these particulars

CRIMINAL FORM 2

IN THE SUPREME COURT OF APPEAL

NOTICE OF APPLICATION FOR LEAVE TO APPEAL FROM DECISION OF A COURT SITTING AS COURT OF FIRST INSTANCE

(ORDER IV, RULE 3)

Republic v. .....

TO THE REGISTRAR OF THE .....

I, ... having been convicted of the offence of (1) ....

(1) State the offence, e.g. larceny, forgery, etc.

and now being a prisoner in prison at .....

(2) Where applicant for any reason not in custody set out address for service

(or whose address for service is (2) .....
.....)

(3) If the appellant wishes to appeal against conviction only he should strike out the word "sentence". If he wishes to appeal against sentence only he should strike out the word "conviction" If he wishes to appeal against conviction and sentence he should leave in both words

and being desirous of appealing against my conviction/sentence (3), Do Hereby Give Notice that I hereby apply for leave to appeal on the following grounds:—

Signed or mark .....
Appellant

Signature and address of witness attesting mark { .....
.....

Dated this ..... day of ..... 19 .....

Particulars of Trial and Conviction

Fill in all these particulars

1. Date of trial .....
2. In what Court tried .....
3. Sentence .....

Criminal Form 3

In the Supreme Court of Appeal

NOTICE OF APPEAL FROM DECISION OF A COURT IN ITS APPELLATE JURISDICTION

(Order IV, Rule 3)

..... v .....

To the Registrar of the High Court

I, ... having been convicted

(1) State the offence

of the offence of (1) .....
....

now being prisoner in prison at .....

(or whose address for service is (2) .....
.....)

(2) Where applicant for any reason not in custody set out address for service

DO HEREBY GIVE NOTICE OF APPEAL against the decision of the High Court of ..
..... on the following grounds (3):—

(3) Set forth the grounds on which you desire to appeal and specify the extent, if any, to which the appeal Court varied the decision of the Court of trial

Signed or mark .....
Appellant

Signature and address of witness attesting mark } .....
.....

Dated this ..... day of ..... 19 .....

PARTICULARS OF TRIAL AND CONVICTION

1. Date of trial and sentence .....
2. In what Court tried .....
3. In what Court appeal heard .....
4. Sentence .....

Fill in all these particulars

CRIMINAL FORM 4
IN THE SUPREME COURT OF APPEAL

NOTICE OF APPLICATION FOR LEAVE TO APPEAL FROM DECISION OF A COURT IN ITS APPELLATE JURISDICTION

(ORDER IV, RULE 3)

..... v .....

TO THE REGISTRAR OF THE .....

I, ... having been convicted of the offence of (1) .....
.....

(1) State the offence

now being prisoner in prison at .....

(2) Where applicant for any reason not in custody set out address for service

(or whose address for service is (2) .....
.....)

(3) Set forth the grounds on which you desire to appeal and specify the extent, if any, to which the Appeal Court varied the decision of the Court of trial. It should also be stated whether the appeal is against conviction only or against sentence only, or against both sentence and conviction

Do Hereby Give Notice That I hereby apply for leave to appeal against the decision of the High Court on the following grounds (3):—

Signed or mark .....
Appellant

Signature and address of witness attesting mark } .....
.....

Dated this ..... day of ..... 19 .....

Particulars of Trial and Conviction

Fill in all these particulars

1. Date of trial and sentence .....
2. In what Court tried .....
3. In what Court appeal heard .....
4. Sentence .....

Criminal Form 5
In The Supreme Court of Appeal

NOTICE OF APPEAL BY PROSECUTOR
(ORDER IV, RULE 3)

..... v.....

To The Registrar of the High Court

I, ... of ..... the prosecutor in the above case and being desirous of appealing against the decision under section .....

..... of .....

.....

Do Hereby Give Notice Of Appeal (or application for leave to appeal) on the following grounds:—

.....

Prosecutor

Dated this ..... day of ..... 19 .....

Particulars of Trial and Conviction

1. Date of trial and sentence .....
2. In what Court tried .....
3. Nature of conviction .....
4. Sentence .....

Criminal Form 6
In the Supreme Court of Appeal

NOTICE OF APPLICATION FOR EXTENSION OF THE TIME WITHIN WHICH TO APPEAL

(Order IV, Rule 3)

Republic v. .....

To the Registrar of the .....

I, ... having been convicted of the offence of (1) .....

in the ..... court held at .....

on the ..... day of ..... 19 .....

and being now a prisoner in prison at .....

(or whose address for service is (2) .....

.....)

give you notice that I hereby apply to the Court for an extension of time within which I may give Notice of Appeal (or Notice of Application for Leave to Appeal) on the grounds (3) following:—

Signed or mark .....

Applicant

Signature and address of .....
Witness attesting mark .....

Dated this ..... day of ..... 19 .....

You are required to send to the Registrar of the Court, duly filled up, Criminal Forms 1, 2, 3 or Criminal Form 4, whichever is appropriate.

1. State the offence.
2. Where applicant for any reason not in custody set out address for service.
3. Set out clearly and concisely the reasons for the delay in giving such notice and the grounds on which you submit the Court should extend the time.

CRIMINAL FORM 7
IN THE SUPREME COURT OF APPEAL

NOTIFICATION TO APPELLANT OF A SINGLE MEMBER'S DECISION
(ORDER IV, RULE 7)

Republic v. .....

I hereby give you notice that a member of the Supreme Court of Appeal having considered your application(s) for:—

(*a*) Leave to appeal;

(*b*) For extension of time within which notice of appeal or of application for leave to appeal may be given;

(*c*) Admission to bail;

has refused the application(s) marked .... (and has granted your application(s) marked .....)

If you desire to have the above-mentioned application(s), which have been refused, determined by the full Court, you are required to fill up the enclosed form and return it to me forthwith.

Dated this ..... day of ..... 19 .....

Signed .....

Registrar of the Court

To the above-named.

CRIMINAL FORM 8
IN THE SUPREME COURT OF APPEAL

NOTICE OF APPEAL BY APPELLANT FROM REFUSAL OF A SINGLE MEMBER

(ORDER IV, RULE 7)

Republic v. ....

TO THE REGISTRAR OF THE SUPREME COURT OF APPEAL

I, ... having received your notification that my application(s) for—

(*a*) Leave to appeal;

(*b*) For extension of the time within which notice of appeal or application for leave to appeal may be given;

(*c*) Admission to bail;

have been refused;

Do Hereby Give You Notice that I desire that the said application(s) shall be considered and determined by the Court.

Signed or mark .....

Appellant

Signature and Address of Witness attesting Mark { .... }

Dated this ..... day of ..... 19 .....

If you desire to state any reasons in addition to those set out by you in your original notice upon which you submit that the full Court should grant your said application(s), you may do so in the space below.

Criminal Form 9

In the Supreme Court of Appeal

RECOGNISANCE OF BAIL OF APPELLANT

(Order IV, Rule 13)

Republic v.....

Be It Remembered That Whereas .....

was convicted of ..... on the ..... day of ..... 19 ..... and was thereupon sentenced to ..... and now is in lawful custody in prison at ..... and has duly appealed against his conviction (and sentence) to the Court and has applied for bail pending the determination of his appeal, and has been granted bail on entering into his own Recognisances in the sum of £..... (with sureties each in the sum of £.....) the said ..... personally cometh before me the undersigned, being the ..... (*state office*) and acknowledges himself to owe to the Government the said sum of £..... ..... of good and lawful money, to be made and levied of his goods and chattels, lands and tenements to the use of the Government, if he the said .. .. fail in the condition endorsed.

Taken and Acknowledged this ..... day of ..... 19 ..... at ..... before me. (*State office*)

Condition

The condition of the within written Recognisance is such that if the said ..... shall personally appear and surrender himself at and before the Court at each and every hearing

of his appeal to such Court and at the final determination thereof and then and there abide by the judgment of the said Court and not depart or be absent from such Court at any such hearing without the leave of the said Court, and in the meantime not depart from his usual place of abode without the leave of the Court, then this Recognisance shall be void, otherwise of full force and effect.

The following to be filled up by the Appellant and signed by him:—

When released on bail my address for service, to which any Notices etc., are to be addressed, will be as follows:—

Signed .....

Appellant

CRIMINAL FORM 10

IN THE SUPREME COURT OF APPEAL

RECOGNISANCE OF APPELLANT'S SURETIES

(ORDER IV, RULE 13)

Republic v. .....

BE IT REMEMBERED THAT on this ..... day of ..... 19 ....., ... of and ..... of ..... came before me the undersigned being the ..... and

(*State office*)

severally acknowledged themselves to owe to the Government several sums following, that is to say, the said ..... the sum of £..... and the said ..... the sum of £..... of good and lawful money, to be made and levied of their goods and chattels, lands and tenements respectively, to the use of the Government if .....
.....
now in lawful custody in prison at .....
fail in the condition hereon endorsed.

TAKEN AND ACKNOWLEDGED before me the undersigned the day and year first above-mentioned.

.....

Magistrate/Registrar

CONDITION

The condition of the within written Recognisance is such that whereas the said having been convicted of .....
and now in such lawful custody as before mentioned (under a sentence

of ..... for such offence), has duly appealed to the Court against his said conviction (and sentence), and having applied to the said Court for bail, pending the determination of his said appeal, has been granted bail on his entering into recognisances in the sum of K..... with sureties each in the sum of K..... if the said ..... shall personally appear and surrender himself at and before the said Court and at the final determination thereof, and then and there abide by the judgment of the said Court, and not depart or be absent from the said Court at any such hearing without the leave of the Court, and in the meantime not depart from his usual place of abode without the leave of the Court, then this recognisance shall be void, otherwise of full force and effect.

CRIMINAL FORM 11

IN THE SUPREME COURT OF APPEAL

WARRANT FOR ARREST OF APPELLANT ON BAIL

(ORDER IV, RULE 13)

Republic v. .....

TO THE CONSTABLES OF THE POLICE FORCE (OR COURT MESSENGERS AS THE CASE MAY BE), AND TO THE .....

(*State office*)

of the Prison at .....

WHEREAS ..... an Appellant in the Court has been released on bail, and it has now been ordered by the said Court that a Warrant be issued for the apprehension of the said .....

These are therefore to command you the said Constables (or Court Messengers or as the case may be) forthwith to apprehend the said .... and to bring him to the ..... of the said prison and there deliver him with this warrant into the custody of the said .... and you the said

(*State office*)

..... are hereby required to receive the said ..... into your custody in the said prison and there safely to keep him until further order of the said Court.

.....

Presiding Member

Dated this ..... day of ..... 19 .....

O. 1, r. 5

THIRD SCHEDULE

Fees in Civil Matters

A. Original Jurisdiction

The fees to be charged in the original jurisdiction of the Court shall be the same as those charged by the High Court in the exercise of its original jurisdiction.

B. Appellate Jurisdiction

	K t
On filing Notice of Appeal against a final judgment or decision ..	5 00
On Respondent's Notice of intention to contend that decision of Court below be varied	5 00
On filing Notice of Appeal against an interlocutory order or decision	2 00
On filing motion for leave to appeal	4 00
On filing Notice of Appeal where leave granted	1 00
On filing motion for extension of time—	
if the time has not yet expired	1 00
if the time has already expired	2 00
On filing any motion not otherwise provided for	2 00
On filing motion for stay of execution (if application is made by separate motion)	2 00
On filing amended or additional grounds of appeal—	
if filed at least three weeks before the date fixed for the commencement of the sitting for which the appeal is set down	2 00
if filed later, but before the hearing of the appeal	4 00
On amending or adding to grounds of appeal by leave or direction of the Court at the hearing	6 00
Hearing fee payable in advance	4 00
On filing motion to restore appeal dismissed under Order III, rule 17	2 00
On filing motion to restore appeal struck out under Order III, rule 21	1 00
On filing motion to set aside and rehear appeal determined *ex parte*	4 00
On filing motion to set aside Taxing Officer's decision or order ..	2 00
On every certificate of the order of the Supreme Court of Appeal (made on the final determination of appeals under Order III, rule 31) ..	2 00

C. General

1. The fees to be charged for any matter not expressly provided for in this Schedule shall be those chargeable in the High Court in the exercise of its appellate jurisdiction.

2. The fee for the service of any document or process shall be that charged for such service by the High Court.

3. The allowances payable to witnesses shall be those payable to witnesses in the High Court.

4. The fee for the services of a special interpreter of a language not in common use shall be that charged for such services by the High Court.

5. The following fees in connection with appeals are assessable in accordance with the rules in force in the Court below, and are not prescribed by these Rules:—

(*a*) fees for any application made to and determinable by the Court below;

(*b*) fees for the settling and preparation of the record of appeal, for the lodging of a bond to secure the costs of an appeal, and for the Registrar's certificate that the conditions of appeal have been fulfilled.

COURTS

CHAPTER 3:02

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CHAPTER 3:02

COURTS

ARRANGEMENT OF SECTIONS

SECTION

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An Act to consolidate the law relating to the High Court and certain courts subordinate thereto

[1ST AUGUST, 1958]

1 of 1958
8 of 1963
21 of 1967
38 of 1967
45 of 1967
47 of 1967
25 of 1968
19 of 1975
13 of 1980
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23 of 2016

G.N. 97/1960
22/1963
41/1963
219/1964 (N)
316/1965
137/1966
263/1969
35/2011

PART I

PRELIMINARY

1. This Act may be cited as the Courts Act. Short title

2. In this Act, unless the context otherwise requires— Interpretation 2 of 2004 23 of 2016

"civil matter" means a civil matter that is not a commercial, criminal, family or probate matter; 23 of 2016

23 of 2016 "commercial matter" means a civil matter of commercial significance arising out of or connected with any relationship of commercial or business nature, whether contractual or not, including—

(*a*) the formation or governance of a business or commercial organization;

(*b*) the contractual relationship of a business or commercial organization;

(*c*) liabilities arising from commercial or business transactions;

(*d*) the restructuring or payment of commercial debts;

(*e*) the winding-up of companies or bankruptcy of persons;

(*f*) the enforcement or review of commercial arbitration award;

(*g*) the enforcement of foreign judgments of commercial matters subject to the provisions of the law;

(*h*) the supply or exchange of goods and services;

(*i*) banking, negotiable instruments, international credit and similar financial services;

(*j*) insurance services; or

(*k*) the operation of stock and foreign exchange markets,

in the event of doubt as to whether a matter is commercial or not, the judge at the outset or during the course of the action, shall have power to resolve the issue;

"court" means the High Court and any subordinate court;

23 of 2016 "criminal matter" means a matter requiring a person to answer for an offence under any written law other than revenue law;

18 of 1984 "District Registrar" means a Deputy Registrar appointed under section 7A (3);

23 of 2016 "family matter" means a civil matter which concerns the entry, subsistence and exit from a marriage, and incidental matters thereto;

"High Court" means High Court of Malaŵi;

"Judge" means a Judge of the High Court and includes the Chief Justice;

"Judgment" includes any decision, decree, determination, finding or order of any court;

"magistrate" means a magistrate appointed under section 34 and includes a Resident Magistrate;

23 of 2016 "probate matter" means a civil matter which concerns succession to or inheritance of property and incidental matters;

"Registrar" means the Registrar of the High Court and includes a Deputy Registrar and an Assistant Registrar;

"Resident Magistrate" means a Resident magistrate appointed under section 34 and includes the Senior Resident Magistrate;

"revenue matter" means a civil or criminal matter which concerns taxes, duties, fees, levies, fines or other monies imposed by or collected under the written laws set out under the Malaŵi Revenue Authority Act; 23 of 2016 Cap. 39:07

"rules of court" means rules of court made under section 59 or 67;

"seal" includes stamp;

"Sheriff" includes a Sheriff's Deputy and any Sheriff's officer;

"subordinate court" means any court, subordinate to the High Court, established under this Act but does not include a Traditional Court established under the Traditional Courts Act or any Act replacing the same. Cap. 3:03

PART II

General

Process of courts

3.—(1) All summonses, warrants, orders, rules, notices and mandatory processes whatsoever, whether civil or criminal, shall—

(*a*) if issued or made by the High Court, be signed by the Registrar;

(*b*) if issued or made by the court of a magistrate, be signed by him,

and every such summons, warrant, order, rule, notice and mandatory process shall be sealed with the seal of the court issuing or making the same.

(2) All summonses, warrants, orders, rules, notices and other processes whatsoever, whether civil or criminal, issued or made by or with the authority of any court respecting any cause or matter within its jurisdiction shall have full force and effect and may be served or executed anywhere within Malaŵi.

(3) Service of any summons, warrant, order, notice or other document in a civil matter may be made by an officer of the court or by the legal practitioner acting for the party at whose instance, or on whose behalf, such service is to be effected, or by any person in the employment of such legal practitioner, or by an agent of such legal practitioner authorized in writing in that behalf.

Legal practitioners

4.—(1) Any person who is not entitled to practise as a legal practitioner before the courts of Malaŵi, by virtue of any law for the time being in force regulating the conditions on which persons may be

admitted to practise before the courts of Malaŵi, and who, unless he proves that the act was not done for or in expectation of any fee, gain or reward, either directly or indirectly, does any of the following acts—

(*a*) acts as a legal practitioner or, as such legal practitioner, serves out any process or commences, carries on or defends any action, suit or other proceeding in the name of any other person or in his own name, or does any act required by law to be done by legal practitioner in any court;

(*b*) draws or prepares any instrument relating to real or personal estate or any proceeding in law or draws or prepares any document or caveat relating to land registration;

Cap. 3:04
p. 28

(*c*) does any other work in respect of which scale or minimum charges are laid down by the Legal Practitioners (Scale and Minimum Charges) Rules, 1955, or by any other rules for the time being in force prescribing or relating to charges for any services to be performed by a legal practitioner,

shall be liable to a fine of K200.

(2) A person shall not be prosecuted for an offence under this section without the written consent of the Chief Public Prosecutor.

(3) This section shall not extend to—

(*a*) any public officer drawing or preparing instruments in the course of his duty;

(*b*) any person employed merely to engross any instrument or proceeding.

(4) For the purpose of this section the expression "instrument" does not include—

(*a*) a letter or power of attorney not under seal;

(*b*) a transfer of stock containing no trust or limitation thereof;

(*c*) a letter written for the purpose of collection of monies;

(*d*) an undefended trade mark or patent application;

(*e*) a passport application.

(5) Nothing contained in this section shall be deemed to limit the right of any person to appear on his own behalf before any court in any proceedings to which he is a party.

PART III

High Court

General

Constitution of High Court
7 of 1984
19 of 1987

5. The High Court shall consist of the Chief Justice and such number of other Judges as the President may, from time to time, appoint.

5A. Every Judge shall, in addition to such other powers as may be conferred upon him, have all the powers conferred on any subordinate court by any written law.

Judges to have powers of subordinate courts

6. The Chief Justice shall be Senior Judge of the High Court and the other Judges shall take precedence after him according to the priority of their respective appointments as such.

Senior Judge of the High Court

6A.—(1) The High Court shall have the following divisions—

Establishment of divisions of court
23 of 2016

(*a*) the Civil Division which shall hear civil matters not provided for under another Division of the High Court;

(*b*) the Commercial Division which shall hear any commercial matter;

(*c*) the Criminal Division which shall hear any criminal matter;

(*d*) the Family and Probate Division which shall hear any family and probate matter; and

(*e*) the Revenue Division which shall hear any revenue matter.

(2) Where a person commences a matter or makes an application in a division other than the appropriate division in accordance with this section, the Registrar shall, on his own volition or on application, immediately transfer the matter to the appropriate division.

(3) The Courts may order that any costs arising from the process under subsection (2) shall be borne by the party who commenced the matter in an inappropriate division.

7.—(1) There shall be a Registrar of the High Court and such Deputy Registrars and Assistant Registrars as may be appointed.

Registrars
19 of 1975
23 of 2016

(2) The qualifications provided by section 112 (1) of the Constitution for appointment as a Judge shall apply for appointment as the Registrar.

23 of 2016

7A.—(1) The Chief Justice may, by notice published in the *Gazette*, establish in such places as are specified in such notice, District Registries from which such writs of summons for the commencement of actions in the High Court may be issued, and wherein such other proceedings may be taken, as may be prescribed by rule.

Establishment of District Registries and appointment of District Registrars
18 of 1984
9 of 1986

(2) The Chief Justice may, at any time by notice published in the *Gazette*, vary or revoke any notice issued in pursuance of subsection (1).

(3) The Chief Justice may appoint any Deputy Registrar to be the District Registrar of any district registry.

(4) Every District Registrar shall be an officer of the High Court.

7B.—(1) In every District Registry there shall be used such seal as the Chief Justice shall direct.

Seals of District Registries

(2) The seal of every District Registry shall be impressed upon every document which is required by any written law to be so sealed, and all

such documents and copies thereof which purport to be sealed with the seal of a District Registry shall be received in evidence without further proof.

(3) For the purposes of this section "seal" means any device capable of making an imprint, whether embossed or otherwise, on paper.

Powers, functions and duties of District Registrars

7C.—(1) District Registrars may administer oaths and shall have such powers and perform such of the functions and duties of the Registrar with respect to proceedings in the High Court as the Chief Justice may by rule prescribe or as may be directed by any special order of the High Court in any particular cause or matter.

Transfer of proceedings

7D.—(1) Any party to any proceedings commenced in a District Registry may, at any time, apply to a Judge to transfer the proceedings from the District Registry to the Principal Registry of the High Court or to another District Registry, and the Judge shall have discretion whether or not to order that the proceedings be so transferred.

(2) Proceedings ordered to be transferred by virtue of subsection (1) and such original documents, if any, as have been filed therein shall, upon receipt of such order by the District Registrar concerned, be transmitted to the Principal Registry of the High Court or to such other District Registry accordingly, and the proceedings shall thenceforth continue in the same manner as if they had been originally commenced in the Principal Registry or such other District Registry, as the case may be.

(3) A Judge may order the transfer of any proceedings from the Principal Registry of the High Court to a District Registry and, in that event, the provisions of subsection (2) shall, *mutatis mutandis*, apply.

Rules to regulate practice and procedure in District Registries

7E. Without prejudice to section 67, the Chief Justice may make rules for regulating and prescribing the procedure and the practice to be followed in District Registries and in the Principal Registry of the High Court in all causes and matters whatsoever in or with respect to which they have for the time being jurisdiction and for all matters incidental or relating to any such procedure and practice, including (but without prejudice to the foregoing provisions) the manner in which and the time within which any applications thereto are to be made, the costs and charges to be allowed and the fees to be payable in respect of proceedings therein, and the review of any ruling or decision or matter heard by District Registrars in exercise, or purported exercise, of any power pursuant to section 7C or by the Registrar.

Directions by the Chief Justice as to duties and functions of District Registries

7F. The Chief Justice may give such directions as he thinks fit as to the duties to be carried out by, and for the apportionment of functions among, the staff of District Registries and, without prejudice to the generality of the power hereby conferred, such directions may specify, either by name or office, the persons who shall be responsible for the issue of summonses, warrants and writs of execution, for the registration

of orders and judgments, for the taxing of bills of costs, for the keeping of the records of proceedings, and for the custody of and other matters relating to fines, fees and other moneys paid into or out of any District Registry.

Powers of Registrar and other officers of Court
19 of 1975
18 of 1984
23 of 2016

8.—(1) The Registrar shall exercise jurisdiction, powers and duties as the Chief Justice may, by Rules prescribe, from time to time.

(2) Subject to the general or special directions of the Chief Justice, or to the directions of the High Court in any particular cause or matter, the manner in which Deputy Registrars, Assistant Registrars and other officers of the High Court (other than District Registrars and the staff of District Registries) carry out the duties imposed upon them by this or any other written law or otherwise shall be under the control and superintendence of the Registrar.

Proceedings of High Court to be disposed of by single judge
2 of 2004
23 of 2016

9.—(1) Save as otherwise provided by this Act, or by any other Act for the time being in force, every proceeding in the High Court and all business arising thereout shall be heard and disposed of by or before a single Judge.

(2) Every proceeding in the High Court and all business arising thereout, if it expressly and substantively relates to, or concerns the interpretation or application of the provisions of the Constitution, shall be heard and disposed of by or before not less than three judges.

23 of 2016

(3) The Chief Justice shall certify that a proceeding is one which comes within the ambit of subsection (2), and the certification by the Chief Justice shall be conclusive evidence of that fact.

Vacations

10. The Chief Justice may, by order published in the *Gazette*, direct such vacations, not exceeding three months in any one year, as he thinks fit.

Additional jurisdiction

11. Without prejudice to any jurisdiction conferred on it by any other written law the High Court shall have—

(*a*) jurisdiction—

(i) to appoint and control guardians of infants and generally over the persons and property of infants;

(ii) to order land to be charged or mortgaged, as the case may be, in any case in which there is jurisdiction to order a sale;

(iii) to grant relief by way of interpleader where the person seeking relief is under liability for any debt, money or goods or chattels for or in respect of which he has been or expects to be sued by two or more parties making adverse claims thereon, and to grant such relief where a Sheriff, or other officer of court, is

charged with the execution of process of the High Court and claim is made to any money or goods or chattels taken or intended to be taken in execution under any process or to the proceeds or value of any such goods or chattels by any person other than the person against whom the process is issued, and to order the sale of any property subject to interpleader proceedings;

(iv) to provide for the interim preservation of property the subject matter of any cause or matter by sale or by injunction or by the appointment of a receiver or by the registration of a caveat or *lis pendens* or in any other manner whatsoever;

(v) to direct interest to be paid on debts, including judgment debts, or on sums found due on taking accounts between parties or on sums found due and unpaid by receivers or other persons liable to account to the High Court;

(vi) to enforce a judgment of the High Court or a subordinate court in any manner which may be prescribed;

(vii) to transfer any civil proceedings from one place to another or to or from any subordinate court and in the case of transfer to or from a subordinate court to give any directions as to the further conduct thereof;

(viii) subject to any Act, to arrest a defendant before judgment;

(ix) subject to any Act, to attach the property of a defendant before judgment;

(x) to direct the payment of any judgment debt by instalments;

(*b*) all the jurisdiction and powers, civil or criminal, which belong to and are exercisable by any subordinate court;

(*c*) jurisdiction to order service out of the jurisdiction in accordance with rules of court for the time being in force.

Procedure in perjury

12. The High Court, if it appears that a person has been guilty of perjury in any proceedings before it, may order that he be tried by a court of a Resident Magistrate and bind any person by recognizance to give evidence at such trial.

Arrest and Attachment before judgment

Arrest before judgment

13.—(1) If, in any civil action or suit, the High Court is satisfied by evidence on oath that the plaintiff has a good cause of action and that the defendant, with intent to obstruct, defeat or delay the claim of the plaintiff, is about to leave Malaŵi or has disposed of or has removed or is about to remove his property or any part thereof out of Malaŵi,

the High Court may, upon application made by the plaintiff at any time after the issue of the writ, issue a warrant to bring the defendant before the High Court to show cause why he should not give security for his appearance to the satisfaction of the High Court.

(2) If the defendant fails to show cause or fails to give such

security as may be ordered, the High Court may commit him to custody until the determination of the action or suit or execution of the judgment, provided that it may release him at any time on such terms as it may think just.

Attachment before judgment

14.—(1) If, in any civil action or suit, the High Court is satisfied by evidence on oath that the plaintiff has a good cause of action and that the defendant, with intent to obstruct, defeat or delay the execution of any judgment that may be given against him, has disposed or is about to dispose of his property or any part thereof or has removed or concealed or made away with or handed over to others any of his property, the High Court may, upon application made by the plaintiff at any time after the issue of the writ, order the defendant to furnish security for such amount, not exceeding the claim and costs in the action or suit, as to the High Court may seem fit, or in default may direct that any property of the defendant be attached until further order.

(2) No attachment under this section shall prejudice the claims of any person not a party to the suit.

(3) The High Court may at any time order the attachment to be withdrawn.

Imprisonment for debt

15.—(1) No person shall be arrested or imprisoned for making default in the payment of a sum of money, except for—

(*a*) default in payment of a penalty, or sum in the nature of a penalty, imposed in any criminal proceeding;

(*b*) default by a trustee or person acting in a fiduciary capacity and ordered to pay by a court in exercise of its jurisdiction in equity any sum in his possession or under his control;

(*c*) default by a legal practitioner in payment of costs when ordered to pay costs for misconduct as such, or in payment of a sum of money when ordered to pay the same in his character of an officer of the court making the order;

(*d*) default in payment for the benefit of creditors of any portion of a salary or other income in respect of the payment of which any court having jurisdiction in bankruptcy is authorized to make an order;

(*e*) default in the payment of sums in respect of the payment of which orders are in this Act or in the Traditional Courts Act authorized to be made: Cap. 3:03

Provided that—

(i) no person shall be imprisoned in any case excepted from this section for a period longer than one year;

(ii) nothing in this section shall alter the effect of any judgment or order of any court for the payment of any money except as regards the arrest and imprisonment of the person making default in paying such money.

(2) In any case coming within the exceptions in subsection (1) (*b*) and (*c*) any court or Judge making the order for payment may inquire into the case and subject to the provisos to subsection (1) may grant or refuse, either absolutely or upon terms, any application for any writ of attachment, or other process or order of imprisonment and any application to stay the execution of any such writ, process or order or for discharge from arrest or imprisonment thereunder.

Committal of judgment debtors

16.—(1) Notwithstanding section 15 and subject to this section and to any rule of court, any court may commit to prison for a term not exceeding six weeks, or until payment of the sum due, any person who makes default in the payment of any debt or instalment of any debt due from him in pursuance of any order or judgment of that or other competent court:

Provided that the jurisdiction conferred by this section shall be exercised only by the High Court or by a subordinate court not being a court of a magistrate of the third grade.

(2) The jurisdiction conferred by this section shall only be exercised when it is proved to the satisfaction of the court that the person making the default either has or has had since the date of the order or judgment the means to pay the sum in respect of which he has made default, and has refused or neglected, or refuses or neglects, to pay the same.

(3) Proof of the means of the person making default may be given in such manner as the court thinks just and for the purposes of such proof the debtor and any witnesses may be summoned and examined according to the rules of court in force for the time being.

(4) For the purposes of this section any court may direct any debt due from any person in pursuance of any order or judgment of that or any other competent court to be paid by instalments and may from time to time rescind or vary such order.

(5) No imprisonment under this section shall operate as a satisfaction or extinguishment of any debt or demand or cause of action, or deprive any person of any right to take out execution against the movable or immovable property of the person imprisoned, in the same manner as if imprisonment had not taken place.

(6) A person imprisoned under this section shall be discharged out of custody upon a certificate in such form, if any, as may be prescribed, to the effect that he has satisfied a debt or instalment

of a debt in respect of which he was imprisoned, together with the prescribed costs, if any.

(7) Sequestration against property of a debtor may be issued by any court of equity in the same manner as if the debtor had been actually arrested.

Saving of provisions relating to examination of judgment debtors

17. Nothing contained in section 13 or 14 shall in any way affect the jurisdiction and powers of the High Court under sections 15 and 16 or its powers in regard to the examination of debtors in accordance with the Rules of the Supreme Court.

Appellate Jurisdiction of the High Court

Appellate criminal jurisdiction

18. The appellate criminal jurisdiction of the High Court shall consist of the hearing of appeals from subordinate courts, according to the law for the time being in force relating to criminal procedure and such other appellate criminal jurisdiction as may have been or may be conferred upon the High Court by any other law.

Appellate civil jurisdiction

19. The appellate civil jurisdiction of the High Court shall consist of the hearing of appeals from subordinate courts as hereinafter provided and such other appellate civil jurisdiction as may have been or may be conferred upon the High Court by any other law.

Civil Appeals from Subordinate Courts

Civil appeals from subordinate courts to the High Court

20.—(1) An appeal shall lie to the High Court from a subordinate court in the following cases—

(*a*) from all final judgments;

(*b*) from all interlocutory judgments and orders made in the course of any civil action or matter before a subordinate court:

Provided that no appeal shall lie, except with the leave of the subordinate court or of the High Court, from an order made *ex parte*, or by consent, or as to costs only.

(2) Appeals from subordinate courts shall be heard by one Judge, except where in any particular case the Chief Justice directs that the appeal shall be heard by two or more Judges.

(3) Subject to subsection (4), the High Court shall not entertain any appeal unless the appellant has fulfilled all the conditions of appeal imposed by the subordinate court or by the High Court or prescribed by any rules of court made for that purpose.

(4) Notwithstanding anything hereinbefore contained, the High Court may entertain any appeal from a subordinate court on any terms which it considers just.

Reservation of points of law

21. In addition to and without prejudice to the rights of appeal conferred by section 20 a subordinate court may reserve for consideration by the High Court any question of law which arises during the trial of any civil action or matter and may give any judgment or decision, subject to the opinion of the High Court, and the High Court shall have power to determine, with or without hearing argument, every such question.

Power of High Court in civil appeals

22. In a civil appeal the High Court shall have power—

(*a*) to dismiss the appeal;

(*b*) to reverse a judgment upon a preliminary point and, on such reversal, to remit the case to the subordinate court against whose judgment the appeal is made, with directions to proceed to determine the case on its merits;

(*c*) to resettle issues and finally to determine a case, notwithstanding that the judgment of the subordinate court against which the appeal is made has proceeded wholly on some ground other than that on which the High Court proceeds;

(*d*) to call additional evidence or to direct the subordinate court against whose judgment the appeal is made, or any other subordinate court, to take additional evidence;

(*e*) to make any amendment or any consequential or incidental order that may be just and proper;

(*f*) to confirm, reverse or vary the judgment against which the appeal is made;

(*g*) to order that a judgment shall be set aside and a new trial be had;

(*h*) to make such order as to costs in the High Court and in the subordinate court as may be just.

Appeal not to operate as stay of execution

23. In civil matters, an appeal shall not operate as a stay of execution or of proceedings under the judgment appealed from, except so far as the subordinate court or the High Court may otherwise order; and no intermediate act or proceeding shall be invalidated, except in so far as the High Court may direct.

Subordinate court shall conform to order of High Court

24. In civil appeals the subordinate court shall conform to and execute such judgment or order as shall be issued, made or pronounced by the High Court therein in like manner as any original judgment or order by the said subordinate court could be or might have been executed.

Revision by High Court of Proceedings of Subordinate Courts

Revision in criminal proceedings

25. The High Court shall exercise powers of review in respect of criminal proceedings and matters in subordinate courts in accordance with the law for the time being in force relating to criminal procedure.

26.—(1) In addition to the powers conferred upon the High Court by this or any other Act, the High Court shall have general supervisory and revisionary jurisdiction over all subordinate courts and may, in particular, but without prejudice to the generality of the foregoing provision, if it appears desirable in the interests of justice, either of its own motion or at the instance of any party or person interested at any stage in any matter or proceeding, whether civil or criminal, in any subordinate court, call for the record thereof and may remove the same into the High Court or may give to such subordinate court such directions as to the further conduct of the same as justice may require.

General supervisory powers of High Court

(2) Upon the High Court calling for any record under subsection (1), the matter or proceeding in question shall be stayed in the subordinate court pending the further order of the High Court.

27. Where an appeal lies from any judgment in any civil matter and no appeal is brought, no proceedings by way of review shall be entertained at the instance of the party who could have appealed.

No revision where appeal lies

28. No party shall have any right to be heard, either personally or by a legal practitioner, before the High Court when exercising its powers of review or supervision under sections 25 and 26:

No right of party to be heard on revision

Provided that no order shall be made to the prejudice of any person unless such person has had an opportunity of being so heard.

Practice and Procedure

29. The practice and procedure of the High Court shall be provided in the rules of procedure made by the Chief Justice under section 67.

Practice and procedure of the High Court
2 of 2004
23 of 2016

Costs and Fees

30. Subject to this Act, the costs of, and incidental to, all proceedings in the High Court, including the administration of estates and trusts, shall be in the discretion of the High Court; and the discretion shall be exercised in accordance with the practice and procedure provided in the rules of procedure made by the Chief Justice under section 67 of this Act.

Costs to be in the discretion of the High Court
23 of 2016

31.—(1) Where an action is commenced in the High Court which could have been commenced in a subordinate court then, subject to subsection (2), the plaintiff shall not be entitled to any more costs of the action than those to which he would have been entitled if the action had been brought in the appropriate subordinate court.

Costs when proceedings could have been commenced in subordinate court

(2) If in any such action as aforesaid the High Court is satisfied that there was sufficient reason for bringing the action in the High Court, it may allow the costs or any part of the costs thereof on the High Court scale or on such subordinate court scale as it may direct.

Fees

32.—(1) The fees set out in the Schedule shall be levied in the High Court in respect of the proceedings and matters therein mentioned.

(2) The Chief Justice may, with the approval of the Minister, from time to time, by notice published in the *Gazette*, revoke, replace or amend the Schedule.

(3) The High Court may in any cause or matter, if it thinks fit, dispense in whole or in part with the payment of any fee chargeable under the Schedule on the grounds of the poverty of any party or other person or for any other reason.

PART IV

SUBORDINATE COURTS

General

33. There are hereby established in Malaŵi the following courts subordinate to the High Court— Establishment of courts of magistrates

(*a*) courts of Resident Magistrates; 19 of 1995

(*b*) courts of magistrates of the first grade;

(*c*) courts of magistrates of the second grade;

(*d*) courts of magistrates of the third grade; and

(*e*) courts of magistrates of the fourth grade. 19 of 1995

34.—The courts of magistrates shall be constituted as follows— Constitution of courts of magistrates

(*a*) the court of a Resident Magistrate shall consist of a fit and proper person appointed by the President to be a Resident Magistrate; and

(*b*) the court of a magistrate of one of the following grades, that is to say, the first, second or third grades, shall consist of a fit and proper person appointed by the President to be a magistrate of each such grade respectively.

(2) Any magistrate may sit in and constitute a court of a lesser grade than the court which he himself constitutes as if he were a magistrate of such lesser grade.

(3) For the avoidance of possible doubts it is hereby declared that a court of a Resident Magistrate is of a higher grade than a court of a magistrate of the first grade.

35. Subject to any written law for the time being in force, the court of a magistrate shall exercise its jurisdiction throughout Malaŵi. A court of a magistrate to have jurisdiction throughout Malaŵi

36. The sittings of subordinate courts shall ordinarily be held in such places as the Chief Justice may direct and, subject to any directions of the Chief Justice, at such times as the magistrate constituting the court may deem most adapted to facilitate the business of the court. Places and times of sittings of subordinate courts

37. Subordinate courts shall keep written records and furnish returns of cases tried by them to the High Court in such manner as the Chief Justice may from time to time direct. Records to be kept

38. Subordinate courts shall use seals of such nature and patterns as the Chief Justice may direct. Seals

Civil Jurisdiction of Courts of Magistrates

Civil jurisdiction of courts of magistrates
13 of 1980
19 of 1992
19 of 1995
4 of 2000
7 of 2010

39.—(1) Subject to this or any other written law, in exercise of their civil jurisdiction the courts of magistrates shall have jurisdiction to deal with, try and determine any civil matter whereof the amount in dispute or the value of the subject matter does not exceed—

(*a*) in the case of a court of a Resident Magistrate, K2,000,000;

(*b*) in the case of a court of a magistrate of the first grade, K1,500,000;

(*c*) in the case of a court of a magistrate of the second grade, K1,000,000;

(*d*) in the case of a court of a magistrate of the third grade, K750,000; and

(*e*) in the case of a court of a magistrate of the fourth grade, K500,000.

(2) Notwithstanding subsection (1), no subordinate court shall have jurisdiction to deal with, try or determine any civil matter—

7 of 2010

(*a*) whenever the title to or ownership of land which is not customary land is in question save as is provided by section 156 of the Registered Land Act;

Cap. 58:01

(*b*) for an injunction;

(*c*) for the cancellation or rectification of instruments;

7 of 2010

(*d*) wherein the guardianship or custody of infants, other than under customary law, is in question, unless jurisdiction is specifically provided under any written law;

(*e*) except as specifically provided in any written law for the time being in force, wherein the validity or dissolution of any marriage celebrated under the Marriage Act or any other law, other than customary law is in question;

Cap. 25:01

(*f*) relating to the title to any right, duty or office; and

(*g*) seeking any declaratory decree.

Counterclaims in subordinate courts

40.—(1) Where, in any action or suit of a civil nature before a subordinate court, any defence or counterclaim of the defendant involves matters beyond the jurisdiction of such subordinate court, such defence or matter shall not affect the competence or the duty of the subordinate court to dispose of the whole matter in controversy so far as relates to the demand of the plaintiff and any defence thereto, but no relief exceeding that which the subordinate court has jurisdiction to award shall be given to the defendant upon such counterclaim.

(2) In any such case the High Court may, if it thinks fit, on the application of any party order that the action or suit be transferred to the High Court and the action or suit shall then be proceeded with as if such action or suit had been originally instituted therein.

Relinquishing part of claim

41. A plaintiff may relinquish any portion of his claim in order to bring the action or suit within the jurisdiction of a subordinate court, but he shall not afterwards sue in respect of the portion so relinquished.

Claims not to be split

42. Claims may not be split, nor may more than one action or suit of a civil nature be brought in respect of the same cause of action against the same party.

Jurisdiction to grant relief by way of interpleader

43. A court of a Resident Magistrate and a court of a magistrate of the first grade shall have jurisdiction to grant relief by way of interpleader and to order the sale of any property subject to interpleader proceedings.

Res judicata

44. A subordinate court may dismiss or stay proceedings where the matter in question is *res judicata* between the parties or where by reason of multiplicity of proceedings in any courts the proceedings ought not to be continued.

Stay of proceedings

45. A subordinate court may stay or transfer proceedings unless they have been instituted in the District in which—

(*a*) the cause of action arose; or

(*b*) the defendant resides or has his place of business; or

(*c*) one of several defendants resides or has his place of business; or

(*d*) the facts on which the proceedings are based exist or are alleged to have occurred; or

(*e*) for other reasons it is desirable in the interests of justice that proceedings should be held.

Transfer of proceedings

46.—(1) Subject to any written law, a subordinate court may—

(*a*) transfer any proceedings before itself to a subordinate court of a lesser grade;

(*b*) transfer any proceedings before itself to any subordinate court of a higher grade with the consent of such court; and

(*c*) direct the transfer to itself of any proceedings before any subordinate court of a lesser grade.

(2) A subordinate court shall comply with any direction given to it under subsection (1).

Set-off

47.—(1) A subordinate court may allow a set-off in any case where such a defence would be allowed in the High Court.

(2) Where in any action a set-off or counterclaim is established as a defence against the plaintiff's claim a subordinate court may, if the balance is in favour of the defendant, give judgment for the

defendant for such balance or may otherwise adjudge to the defendant such relief as he may be entitled to upon the merits of the case:

Provided that no relief exceeding that which the subordinate court has otherwise jurisdiction to award shall be given to the defendant upon such set-off or counterclaim.

Discovery

48. A subordinate court may order discovery of facts or documents by any party or person in such manner as may be prescribed.

Process to compel appearance

49.—(1) Subject to this Act, a subordinate court may issue process to secure the attendance of any person in court for any purpose, whether by warrant of arrest or summons, and may require any person to give security for his appearance, or to meet any claim or demand, in such manner as may be prescribed.

(2) The subordinate court may, in default of compliance with any such order for security, or in order to ensure the attendance in court of any person, order that such person be committed to prison for such period, not exceeding six weeks, and in such manner as may be prescribed.

(3) No proceedings shall issue to compel the attendance of any person who, by virtue of any law, is exempted from personal attendance in court.

Arrest

50.—(1) A subordinate court may commit to prison, for such period and in such manner as may be prescribed, any person who wilfully disobeys or fails to comply with any order of such court or who, with a view to defeating the ends of justice or preventing or delaying the satisfaction of a judgment or order passed, or which may be passed, against him, flees or attempts to flee Malaŵi, or disposes or attempts to dispose of any property, or evades or attempts to evade the service on him of any process of such court.

(2) No order for arrest or commitment under this section or section 49 shall operate to discharge or satisfy any debt.

Attachment of property

51. A subordinate court may, in such manner as may be prescribed, order the attachment and sale of any property of any person whom it might commit to prison under section 50.

52. Nothing contained in sections 50 and 51 shall be construed as conferring on any subordinate court any jurisdiction under section 16 which is not expressly conferred by that section or other provisions of this Act.

Sections 50 and 51 not to be construed as conferring jurisdiction under section 16

53. A subordinate court may discharge, vary or suspend the operation of any of its judgments or orders to such extent and in such manner as may be prescribed.

Variation and suspension of judgments

54.—(1) A subordinate court may take cognizance of any contempt of court and may impose punishment for the same, not exceeding a fine of £5 or imprisonment for a term not exceeding seven days, and in default of payment of any fine imposed may commit the offender to prison for a term not exceeding seven days, unless the fine be sooner paid.

Contempt of court

(2) In every case in which a subordinate court imposes any punishment under subsection (1), it shall without delay transmit to the Registrar for the consideration of the High Court under section 26, a statement certified to be true and correct of the grounds of and reasons for such imposition and shall also, if requested, furnish to the person committed or fined a copy of such statement certified as aforesaid.

55. A subordinate court shall have power to set aside, in such manner as may be prescribed, any judgment or order obtained by default or *ex parte*.

Setting aside judgments

56. A subordinate court shall have jurisdiction to attach debts due to a judgment debtor in such manner as may be prescribed:

Attachment of debt

Provided that, subject to any other law for the time being in force, no wages of any servant, labourer or workman shall be liable to attachment.

Execution

57. A subordinate court may suspend any execution, judgment or order issued, given or made by such subordinate court for such time and on such terms as it shall think fit.

Suspension of execution

Criminal Jurisdiction of Courts of Magistrates

58. In exercise of their criminal jurisdiction the powers of courts of magistrates shall be as provided for in this Act, in the Criminal Procedure and Evidence Code and in any other written law.

Criminal jurisdiction of courts of magistrates Cap. 8:01

Procedure

Rules of court regulating practice and procedure in subordinate courts

59. Without prejudice to section 67, the Chief Justice may make rules of court—

(*a*) regulating the pleading, practice and procedure to be followed in subordinate courts in all causes and matters whatsoever in or with respect to which subordinate courts have for the time being jurisdiction, and all matters incidental to or relating to any such pleading, practice and procedure, including the manner in which and the time within which any applications under any law for the time being in force are to be made to a subordinate court;

(*b*) regulating the costs and charges to be allowed and the fees to be payable in respect of proceedings in any subordinate court;

(*c*) regulating the procedure in connexion with the transfer of any proceedings from any subordinate court to the High Court or from the High Court to any subordinate court;

(*d*) regulating the means by which particular facts may be proved and the mode in which the evidence thereof may be given in any proceedings or on any application in connexion with, or at any stage of, any proceedings;

(*e*) amending the Rules of Court made under the British Central Africa Order in Council, 1902;

(*f*) prescribing anything which, under this Part, is to be or may be prescribed;

(*g*) generally for the better carrying out of this Part.

PART V

Miscellaneous

Proceedings to be in open court

60. In exercise of its jurisdiction, powers and authorities the proceedings of every court shall, except as otherwise provided by any other law for the time being in force, be carried on in an open court to which the public generally may have access:

Provided that any court shall have power to hear any matter or proceeding or any part thereof *in camera* if, in the opinion of the presiding Judge, or magistrate, it is expedient in the interest of justice or propriety or for other sufficient reason so to do.

Protection of judicial officers

61.—(1) No Judge, magistrate or other person acting judicially shall be liable to be sued in any court for any act done or ordered to be done by him in the discharge of his judicial duty whether or not within the limits of his jurisdiction, nor shall any order for costs be made against him, provided that he at the time in good faith believed himself to have jurisdiction to do or order the act complained of.

(2) No officer of any court or other person bound to execute the lawful warrants or orders of any Judge, magistrate or other person acting judicially shall be liable to be sued in any court for the execution of any warrant or order which he would be bound to execute if within the jurisdiction of the person issuing the same, nor shall any such person or the person at whose instance such warrant or order shall be executed be deemed to be a trespasser by reason of any irregularity in any proceeding on the validity of which such warrant or order depends or in the form of such warrant or order or in the mode of executing the same.

(3) No officer of any court shall be liable to be sued in any court for any act or omission of any police officer or other person in the execution of any process which shall have been done or may have occurred either through disobedience or neglect of the orders or instructions given.

Expenses of witnesses

62. Any court may, in civil proceedings, allow to all persons required to attend or to be examined as witnesses such sums of money as expenses or compensation for their loss of time as may be prescribed; but it shall not be lawful in any proceeding for any person to refuse to attend as a witness or to give evidence when so required by process of the court on the ground that his expenses have not been first paid or provided for.

Notice to bring persons from prison

63. Any court may, by notice addressed to the officer in charge of a prison, require any person in prison to be brought before it for any purpose.

Proof of customary law 25 of 1968

64. If in any proceeding a matter of customary law is material, such law shall be treated as a question of fact for purposes of proof. In determining such law the court may admit the evidence of experts and persons whom the court considers likely to be well acquainted with such law:

Provided that a court may judicially note any decisions of its own or of any superior court, determining the customary law applicable in a like case.

Interest on judgments

65. Every judgment in civil proceedings shall carry interest at the rate of five per centum per annum or such other rate as may be prescribed.

Execution of warrants

66. Any warrant of committal issued by the High Court in the exercise of its civil jurisdiction may be executed by a police officer or any other person to whom it is directed at any time, notwithstanding that the warrant is not in his possession at that time:

Provided that the warrant shall, on the demand of the person arrested, be shown to him as soon as practicable after his arrest.

Rules of court
23 of 2016

67.—(1) The Chief Justice may make rules of court prescribing anything which, under this Act, may be or is to be prescribed and generally for the better carrying out of the purposes of this Act.

23 of 2016

(2) This section shall not be construed as in any way limiting or modifying section 59.

Saving of rights of Government

68. Nothing in this Act shall be construed so as to limit or prejudice the rights of the Government applicable or attaching to any land under any grant, lease, right of occupancy or other disposition of land granted or made by the Minister responsible for land under any law in force at the time of such grant, lease, right of occupancy or other disposition.

Savings
3 of 1906
24 of 1929

69.—(1) Any criminal proceedings instituted before the coming into force of this Act shall be continued under and in conformity with the High Court Ordinance and the Courts Ordinance (now repealed) as if such Ordinances had not been repealed.

(2) Any civil proceedings instituted before the coming into force of this Act shall be continued under and in conformity with such repealed Ordinances as if such Ordinances had not been repealed, save that a court may, in its discretion, apply or adopt any rules of court governing practice and procedure made under this Act.

(3) Any magistrate and other person appointed to any office under such repealed Ordinances, and whose appointments thereunder were subsisting immediately before such repeal, shall be deemed to have been appointed as such under this Act.

Saving of offices
47 of 1967

70.—(1) Upon the coming into operation of the Courts (Amendment) Act, 1967 (referred to in this section as the amending Act), any person empowered to hold a Resident Magistrate's Court or a first, second or third class court under the provisions of this Act repealed by the amending Act shall be deemed to have been appointed to be a Resident Magistrate or magistrate of the first, second or third grade respectively, as the case may be, under the provisions substituted by the amending Act for such repealed provisions.

(2)—(*a*) Nothing in the amending Act shall affect the validity of proceedings instituted before the coming into operation of this Act in any subordinate court, but the same shall be carried on in the corresponding subordinate court established by the provisions substituted by this Act and enforced in like manner, as nearly as may be, as if the corresponding court were the court in which such proceedings were commenced and any such proceedings may be amended by order of a magistrate or under rules of court in such manner as may appear necessary or proper in consequence of this Act.

(*b*) An appeal shall lie to the High Court from any judgment of a subordinate court given prior to the coming into operation of this Act as it would have lain if this Act had not come into operation, if such appeal is commenced and prosecuted in accordance with the law and rules of court relating to appeals from subordinate courts in force immediately prior to the coming into operation of this Act.

SCHEDULE

s. 32

G.N. 152/1977 63/1997 31/1998 41/2004 35/2011

Fees to be Levied in the High Court

	Service	*Fee payable*	
		K	*t*
1.	For service of summons, petition, answer, motion paper, notice, warrant, decree, order or other document on a party, witness, juror, assessor, or other person under any branch whatever of the Civil Jurisdiction	cost actually and reasonably incurred	
	Decision of Questions Without Formal Suit		
2.	On summons for issue or special case . .	2,000	00
3.	On issue or special case	2,000	00
4.	On hearing	5,000	00
	Summary Procedure for Administration of Property of Deceased Persons		
5.	On summons	1,000	00
6.	On order	1,000	00
	Summary Orders		
7.	On application for order—		
	(*a*) *inter parte* application	3,000	00
	(*b*) *ex parte* application	5,000	00
	(*c*) *ex parte* application for stay	10,000	00
	(*d*) *ex parte* application for injunction . .	25,000	00
8.	On recognizance	2,000	00
9.	On order	2,000	00

	Service	*Fee payable*	
		K	*t*
	PROBATE AND ADMINISTRATION		
10.	On application for probate or administration	3,000	00
11.	On oath for every executor, administrator and surety, or on renunciation by an executor . .	1,500	00
12.	On every security	1,500	00
13.	On filing account	1,500	00
14.	On passing account	1,500	00
	ORDINARY SUITS		
15.	In every suit of any kind whatever, other than such as are before specified—		
	(*a*) on summons, petition, originating summons or motion	5,000	00
	* If commercial matter	1.5% of the value of the subject matter in dispute with a maximum of K150,000	00
	If commercial unquantifiable matter . .	150,000	00
	(*b*) on hearing	5,000	00
16.	On every summons, motion, application, notice or demand taken out, made or filed (not particularly charged).	1,000	00
17.	On filing any document for the filing whereof no specific fee is prescribed . .	1,000	00
18.	On every rule	2,000	00
19.	On every decree or order (not particularly charged)	1,000	00
20	On motion for new trial	4,000	00
21.	On order for adjournment of hearing rendered necessary by default of either party (to be paid by that party)	5,000	00
22.	On every warrant of execution against goods	5,000	00
23.	Sheriff's fees on execution of writs of *fiery facias*—		

*Note: "Commercial matter" has the same meaning as that provided under O.1, r. 5 of the High Court (Commercial Division) Rules.

Service	*Fee payable*	
	K	*t*
(*a*) for seizure by the Sheriff, for each building or place at which seizure is made whether execution is subsequently withdrawn, satisfied or stopped, for every Kwacha or fraction of a Kwacha of the value of the goods seized, as valued by the Sheriff or Under Sheriff or the Assistant Sheriff or the amount due under the warrant whichever is the less	0	15
(*b*) for man, or when necessary, men in possession	the sum actually and reasonably paid	
(*c*) for removal of goods or animals to a place of safekeeping when necessary and for warehousing or taking charge of the same when removed	the sum actually and reasonably paid	
(*d*) for preparing an inventory of goods seized, for every page or part thereof	200	00
(*e*) for a copy of the same	100	00
(*f*) for advertising and giving publicity to the sale, printing catalogues and bills and distributing same.	the sum actually and reasonably paid	

NOTE: The fee shall be payable by the person issuing the execution or the person at whose instance the sale is stopped, as the case may be.

For sale —10 per cent of the amount realized by the sale of the goods.

APPEAL TO THE HIGH COURT

24.	On lodging notice of appeal	1,000	00
25.	On motion for leave to appeal	2,000	00
26.	On every security	1,000	00
27.	On order for leave to appeal	1,000	00
28.	On the hearing of an appeal where judicial relief or assistance is sought, but not the recovery of money	2,000	00

	Service	*Fee payable*	
		K	*t*
29.	On the hearing of an appeal in matters other than those specified in item 28	$^1/_2$ per cent of the amount involved not exceeding a total fee of K10,000 but in no case less than K1,000	
30.	On every application, motion, order or rule not particularly charged	1,000	00
	APPEAL FROM THE HIGH COURT TO THE SUPREME COURT OF APPEAL		
31.	On motion for leave to appeal	10,000	00
32.	On every security	5,000	00
33.	On order for leave to appeal	5,000	00
34.	On filing memorandum of appeal	5,000	00
35.	On application or order to amend memorandum of appeal	5,000	00
36.	On every application, motion, order or rule not particularly charged	5,000	00
	MISCELLANEOUS		
37.	On taxation of any bill of costs, for every ten folios from each party to the taxation . .	1,000	00
38.	On every deposition taken before trial . .	500	00
39.	On balances of estates of deceased persons paid into Court otherwise than in a suit . .	$2^1/_2$ per cent of amount	
40.	On registration or registration and deposit of any deed (except power of attorney) . .	2,000	00
41.	On registration or registration and deposit of a power of attorney	3,000	00
42.	On registration or registration and deposit of any other document	4,000	00
43.	For taking inventory, per hour	500	00
44.	For taking an affidavit	2,000	00
45.	For every exhibit	500	00
46.	For drawing any document not particularly charged per foolscap sheet	500	00
47.	For certifying signature or seal	500	00

	Service	*Fee payable*	
		K	*t*
48.	For attesting a signature, or administering an oath, or receiving a declaration or affirmation for the purpose of obtaining relief from Income Tax	2,000	00
49.	(*a*) for certified copy of document . .	500	00
	(*b*) for Court record per page or part thereof limited to one copy of the record	100	00
50.	For an official certified translation of any document, every page or part thereof . .	1,000	00
51.	For certifying a copy of any document or part of a document	1,000	00
52.	For attaching documents under official seal	1,000	00
53.	For affixing the seal of the Court to any document not in a proceeding	1,000	00
54.	On reference to the archives	the sum actually and reasonably paid	
55.	For attendance at a sale—		
	(*a*) at request of parties interested or of local authorities if absent less than two hours . .	4,000	00
	(*b*) at request of parties interested, for each additional hour or part thereof (with a maximum per day of K10,000)	2,000	00
56.	For communication between two Courts . .	1,000	00
57.	For communication in writing to a foreign consulate or to local or foreign authority	the sum actually and reasonably paid	
58.	For receiving report of survey, filing original and making certified copy of request, order and report of survey	2,000	00
59.	For attendance of the Registrar or other officer of the Court at any other Court, office or Tribunal	the sum actually and reasonably paid	
60.	For filing request for survey and issuing order for survey	1,000	00
61.	For attendance of an interpreter at any Court, if required by a party in a suit, or ordered by the Court, for each hour or part of an hour . .	2,000	00

	Service	*Fee payable*	
		K	*t*
62.	On any search, including inspection, of any case record or register by a person other than a party to a case	1,000	00
63.	No fees shall be payable by the Government in respect of suits instituted by or against the Government		
64.	No fees shall be payable by the Department of Legal Aid in respect of a suit instituted by or against a person who has been granted legal aid under the Legal Aid Act: Provided that no fees paid in respect of a suit instituted by or against a person who has been granted legal aid under the Legal Aid Act shall be refunded.		

SUBSIDIARY LEGISLATION

COURTS (ESTABLISHMENT OF LILONGWE DISTRICT REGISTRY) NOTICE

G.N. 2/1986

under s. 7A (1)

Citation

1. This Notice may be cited as the Courts (Establishment of Lilongwe District Registry) Notice.

Lilongwe District Registry

2. There is hereby established at Lilongwe a District Registry to be known as the Lilongwe District Registry.

COURTS (HIGH COURT) (PROCEDURE IN DISTRICT REGISTRIES) RULES

G.N. 90/1985
16/2015

under s. 7E

Citation

1. These Rules may be cited as the Courts (High Court) (Procedure in District Registries) Rules.

Writ of other process may issue out of a District Registry

2.—(1) Subject to subrule (2) and to rule 3, in any action the plaintiff, wherever resident, may issue a writ or other originating process out of any District Registry.

G.N. 16/2015

(2) A writ or other originating process in an action relating to the registration of foreign judgments shall not be issued out of a District Registry.

Writ claiming relief under a mortgage or charge

3. A writ of summons or originating process in which there is a claim for payment of principal money or interest secured by a mortgage or charge upon real or leasehold property, or a claim for possession of any such property forming a security for payment to the plaintiff of any principal money or interest, shall not issue out of a District Registry, unless the property is situated within the District of the District Registry.

Title of causes commenced in a District Registry

4. Causes or matters commenced in a District Registry shall be entitled as causes or matters in that District Registry and shall be serially numbered in that District Registry.

Proceedings in District Registries to be taken down

5.—(1) Save as otherwise provided in the Act or in these Rules or as the court or a Judge may otherwise order, all proceedings, up to and including the entry of the final judgment or order, in any cause or matter proceeding in a District Registry shall be taken down in that District Registry.

(2) The District Registrar shall cause a proper book to be kept at the District Registry and to be entered therein every judgment or order made in any cause or matter proceeding in that District Registry as a like judgment or order is entered in the Principal Registry.

Entry of interlocutory judgment in a District Registry

6. Where the writ of summons or other originating process is issued out of a District Registry and the plaintiff is entitled to enter interlocutory judgment under Order 13 of the Rules of the Supreme Court, or where a cause or matter is proceeding in the District Registry and the plaintiff is entitled to enter interlocutory judgment under Order 19 of the Rules of the Supreme Court, then in either case such interlocutory judgment and, when damages have been assessed, the final judgment shall be entered in that District Registry unless the court otherwise orders.

Writs of execution

7. Where a cause or matter is proceeding in a District Registry, all writs of execution for enforcing any judgment or order therein and all summonses under Order VII of the Rules of the Supreme Court shall issue from that District Registry and all costs shall be taxed in that District Registry, unless the court otherwise orders.

Proceedings necessary or incidental to judgment

8. Where a cause or matter is proceeding in a District Registry, all proceedings relating to the following matters, that is to say—

(*a*) leave to issue or renew writs of execution;

(*b*) examination of judgment debtors for purposes of a garnishee order;

(*c*) garnishee orders;

(*d*) charging orders *nisi*; and

(*e*) interpleader orders,

shall be taken in the District Registry, unless the court otherwise orders.

Mode of application

9. Every application to a District Registrar shall be made in the same manner in which applications in chambers to the Registrar are made.

Reference of matter to a Judge

10. The District Registrar may refer to a Judge any matter which he thinks should properly be decided by a Judge, and the Judge may either dispose of the matter or refer it back to the District Registrar with such directions as he thinks fit.

Appeal from a District Registrar

11. An appeal shall lie from any decision, order or direction of a District Registrar in the same way as an appeal lies from any decision, order or direction of the Registrar under rule 3 of the High Court (Exercise of Jurisdiction of Registrar) Rules.

District Registrar to be subject to a Judge's directions

12. In the performance of the duties of his office, a District Registrar and every other officer of a District Registry shall at all times be subject to the general or special directions of a Judge.

13. Where a cause or matter is proceeding in a District Registry, all pleadings and other documents required to be filed shall be filed in that District Registry. Filing in a District Registry

14. A record of the court in a District Registry or any document filed in a District Registry shall not be taken out of the District Registry except upon an order or a direction of a Judge or the District Registrar; and, notwithstanding the provisions of any other written law, no subpoena shall be issued for the production of such record or document. Documents not to be taken out of a District Registry

15. Save as otherwise provided in these Rules, the Rules of the High Court, except Order VI, shall apply, *mutatis mutandis*, to the conduct of proceedings in District Registries. Application of the Rules of the High Court

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[*Deleted by G.N.* 84/1969]

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under s. 59

G.N. 95/1958	96/1964(N)
154/1958	128/1964(N)
20/1959	219/1964(N)
45/1959	315/1965
22/1962	84/1969
157/1962	5/1981
16/1963	44/1982
115/1963	11/1990
155/1963	43/1996
236/1963	31/2011

The following orders and rules may be cited as the Subordinate Courts Rules.

O. 1, rr. 1–2

ORDER I

PRELIMINARY

Special procedure

1. Nothing in these rules shall affect any special mode of procedure prescribed for particular matters by any law or confer on any Court jurisdiction to hear and determine any proceedings which it would not otherwise have had jurisdiction to hear and determine.

Where no procedure laid down

2.—(1) In any matter of practice or procedure not provided for in these rules the court may apply any appropriate provision thereof by construing the same with such modification not affecting the substance as may be necessary or proper to adapt the same to the matter before it.

(2) In any such matter in which it is not possible to apply subrule (1) the court may give such orders and directions as appear proper to do substantial justice between the parties, having regard to the summary settlement of matters in issue and to the saving of costs.

ORDER II

Interpretation

Interpretation

1.—(1) In these Rules, unless the context otherwise requires—

"action" includes suit and vice versa;

"certified translation" means a translation certified as correct by an Interpreter employed as such in or appointed by the High Court or in any other Court of Malaŵi;

"Court" means a Subordinate Court and includes Resident Magistrate or Magistrate as the case may be, and, as regards the performance of any ministerial act, includes the appropriate officer of the Court;

"notice" means written notice unless the Court in any case shall otherwise order;

(2) A form referred to in these Rules by number means the form so numbered in the First Schedule to these Rules, provided that where a document is required to be in a particular form, the notes to such form shall not be deemed to be part thereof, but the form shall be completed so as to give all particulars indicated by such notes.

ORDER III

Form of Proceedings

Size and format

1. Every proceeding and every document used in any proceeding, other than original documents produced in evidence, shall, unless the nature of the document renders it impracticable, be written, typewritten or printed, or partly written, partly typewritten, and partly printed, on foolscap folio paper of good quality and shall have adequate margins.

Language

2. Except where the Chief Justice otherwise directs, every such proceeding or document shall, if not in the English language, be accompanied by a certified translation thereof, and shall not otherwise be received, filed or used in Court.

Title and footnote Form 1

3.—(1) Every such proceeding or document shall bear the heading and title in Form 1.

(2) Every document filed in Court and every notice served in any proceedings shall contain at the foot or end thereof particulars of the party or person by or on whose behalf it is filed and shall state his address for service as hereinafter provided.

Rejection

4. A document not complying substantially with this Order may be rejected or returned for amendment, but the Court may in the interests of economy permit the use of forms or paper of smaller size or inferior quality.

ORDER IV

Joinder and Consolidation

Joinder of causes of action

1. The plaintiff may unite in the same action several causes of action:

Provided that the Court shall have regard to the convenience of trial, to possible embarrassment of any defendant, and to possible delay, and may in any case order separate trials or exclude any cause of action and order any amendment, and may also make such order as to costs as is just.

Consolidation

2.—(1) Two or more actions may be consolidated by order of the Court when such a course appears necessary or advisable.

(2) The application for consolidation shall be made in one action that such action may be consolidated with some other action.

(3) An order for consolidation shall direct that the action in which the application is made be thenceforward carried on in such other action, and that the title of such other action be amended by adding thereto the title of the action in which the application is made.

Consolidation applicable to third party procedure

3. An order for consolidation may be made in any case in which a defendant to an action claims to be entitled to contribution from or indemnity against any person not a party to the action.

ORDER V

Parties

Definitions

1. In this Order "plaintiff" includes an applicant and "defendant" includes a respondent and "sue" and "defend" shall be construed accordingly.

Joinder of parties

2.—(1) All persons may be joined as plaintiffs or defendants in one action in or against whom any right to relief in respect of or arising out of the same transaction or series of transactions is alleged to exist, whether jointly, severally or in the alternative, where, if several actions were brought, any common question of law or fact would arise:

Provided that, if it appears to the Court that any joinder may embarrass any defendant or delay the trial or be otherwise inconvenient the Court may, either on the application of such defendant or of its

own motion, order separate trials or make such other order as it thinks fit.

(2) Judgment may be given without any amendment for any plaintiff for the relief to which he is entitled, or against such one or more of the defendants as may be found liable according to their respective liabilities.

Change of parties

3. The Court may at any stage strike out, substitute or add any party in such manner and upon such terms as may be just:

Provided that no person shall be made a plaintiff without his consent, or, if under disability, the consent of his intended next friend or manager.

Right to omit defendants

4. A plaintiff may, at his option, join as parties to the same action all or any of the persons severally, or jointly and severally, liable on any one contract, including parties to bills of exchange and promissory notes.

Trusts and deceased persons' estates

5. Trustees, executors and administrators may sue or be sued on behalf of the trust or estate. If there be more than one, all shall be joined. The Court may for sufficient reason join any beneficiary.

Representation orders

6. Where numerous persons have the same interest in any proceeding, the Court may at any time authorize any one or more of them to act on behalf of all persons so interested, whether named as parties or not:

Provided that—

(*a*) no person shall be bound by any such order unless—

(i) he has been served with notice of intention to apply therefor; or

(ii) he has been served with a copy of the order and has not within ten days thereafter applied to the Court to discharge or modify it;

(*b*) where such persons are very numerous or not easily ascertainable the Court may direct service of the order in such manner as it thinks fit.

Amendment and service

7. Where any change of parties occurs during the pendency of any proceedings—

(*a*) the title of the proceedings shall be amended accordingly;

(*b*) any person added or substituted as a defendant shall be served with the proceedings unless he consents to waive such service. The proceedings as against him shall be deemed to have begun upon the date of such service or waiver, as the case may be.

Savings

8. No proceeding shall be defeated by reason only of mis-joinder or non-joinder of parties.

Married women

9. A married woman may sue and be sued as provided by the Married Women's Property Acts of the United Kingdom or other law for the time being in force.

Infants

10.—(1) The Court may entertain an action by an infant for money due to him for wages or piece work, or for work as a clerk or shop assistant or servant, in the same manner as if he were of full age.

(2) Save as provided in subrule (1), an infant may sue by his next friend and may defend by his guardian *ad litem*.

Persons of unsound mind

11.—(1) A person of unsound mind adjudged to be so under any Act for the time being in force may sue or defend by the manager of his estate or, if there be no such manager, may sue by his next friend and defend by his guardian *ad litem*.

(2) A person not so adjudged, who is found by the Court on inquiry, by reason of mental infirmity, to be incapable of protecting his interests in the action, may sue by his next friend and defend by his guardian *ad litem*.

Costs of next friend

12.—(1) A next friend shall in all cases be personally liable for costs, as if he were himself a plaintiff.

(2) The Court may in its discretion make an order for costs against the infant or person of unsound mind, and, if it does so, the next friend shall be entitled to indemnity as against the minor or person of unsound mind for any such costs, paid by him personally.

Guardian *ad litem*

13. If a defendant is an infant or a person of unsound mind having no manager or a person to whom rule 12 (2) applies—

(*a*) any person may apply *ex parte* to the Court for leave to act as guardian *ad litem*;

(*b*) The plaintiff may apply to the Court to appoint some proper person as guardian *ad litem* and notice of such application shall be served on the defendant;

(*c*) the Court may in pursuance of any such application of its own motion appoint any fit and proper person who has no interest adverse to the defendant in the proceedings in question and who consents to act to be guardian *ad litem*;

(*d*) the title and Cause Book or Register of Civil Actions shall thereupon be amended accordingly;

(*e*) a guardian *ad litem* shall not be personally liable for costs unless occasioned by his personal negligence or misconduct.

Consent on behalf of person under disability

14. A consent or waiver given or made on behalf of any person under disability by his next friend, guardian *ad litem* or manager, as the case may be, with the approval of the Court, shall be binding on the person under disability.

General provisions as to disability

15. Where a plaintiff is a person under disability—

(*a*) no settlement or compromise shall be valid without the Court's sanction;

(*b*) all money or other property recovered for the plaintiff in, or in consequence of, such action shall be paid into Court or deposited in Court, unless the Court shall otherwise order;

(*c*) the Court shall of its own motion, or on the application of any interested party, make such order for the investment or other disposal of the fund or property as seems proper:

Provided that this rule shall not apply where an infant sues under rule 10 (1), and shall not prejudice the lien of a legal practitioner for costs.

Irregular proceedings

16. Any proceeding taken by or against a person under disability otherwise than in accordance with this Order shall be struck out or dismissed, and any judgment or order made therein may be set aside.

Removal

17. The Court may for sufficient reason remove any next friend or guardian *ad litem* and replace him by another, being a fit and proper person and willing to act.

Minor plaintiff attaining majority

18.—(1) An infant plaintiff shall, on attaining majority during the pendency of the proceedings, either withdraw the same before taking any step therein or adopt the same.

(2) No leave to withdraw shall be required, but Order XVI rule 3 shall apply as regards subsequent proceedings.

(3) If the plaintiff withdraws as aforesaid, he shall not be personally liable for costs, nor liable to indemnify the next friend in respect of costs, unless the Court shall so order, and rule 13 (1) shall apply.

(4) If there are more plaintiffs than one, the former infant plaintiff shall not be entitled to withdraw without leave, but may apply to the Court to dismiss him from the action and the Court may do so, or, if he is a necessary party, may strike him out as plaintiff and add him as defendant, in either case on such terms as to costs or otherwise as may be just.

(5) If the plaintiff adopts the proceedings, he shall do so by applying to amend the title of the proceedings, and the same shall be amended to read—

"A.B., late an infant, by C.D., his next friend, but now having attained majority."

The Court may require due proof of majority. On such amendment, the next friend shall be discharged and shall not be liable for costs incurred thereafter and shall be entitled to indemnity against the plaintiff in respect of costs incurred previously unless the Court shall otherwise order.

Minor defendant attaining majority

19. If an infant defendant attains majority during the pendency of any proceedings, either he or his guardian *ad litem* may file an affidavit in proof of such majority and thereupon the title of the proceedings shall be amended and the guardian *ad litem* shall be discharged, subject to any question of costs occasioned by his negligence or misconduct.

Abatement of action

20. In case of the marriage, death or bankruptcy of any party—

(*a*) if the cause of action does not survive, the proceedings shall abate, save as provided in paragraph (*c*);

(*b*) if the cause of action survives or continues, the proceedings shall not abate or become defective;

(*c*) in case of death after the conclusion of the trial but before judgment is delivered or entered, the proceedings shall not abate, and judgment may be delivered and entered.

Devolution of interest

21. In case of any assignment, creation, change, transmission or devolution of the interest, estate, title or liability of any party, between the commencement of any proceedings and judgment therein, the person to or upon whom the interest, estate, title or liability has come or devolved may apply to be added or substituted as a party, and the plaintiff may in like manner apply for such addition or substitution, if the party concerned was a defendant. Notice of any such application shall be served on all parties.

Remedies for default

22. Where an application should be made under the preceding rule and is not made within a reasonable period, the Court may of its own motion or on the application of any party order the party or person concerned to make such application within a stated time, and in default may strike out or dismiss the proceedings, or order that the party or person concerned be precluded from defending, as the case may be.

Service

23. Where any of the matters referred to in rule 21 has occurred after judgment and there is money in Court to the credit of the proceedings, the Court may order any person or persons to be served with any application for an order for payment out.

ORDER VI

Summons

Form of summons

1.—(1) Every action shall be commenced by summons which shall be in Form 2.

(2) The statement of claim shall be endorsed on the back of the summons and shall comply with the requirements of Order X rules 1 and 2.

(3) Where, by reason of its length, it is impracticable to endorse the whole of the statement of claim on the back of the summons the same may be continued in a separate sheet or sheets of paper attached to the summons.

Copies of summons

2. Every summons against a single defendant shall be presented for filing in triplicate and an additional copy shall be presented for every defendant more than one.

Copies of summons. Issue and service

3. The Court shall examine the summons and, if it appears to be in proper form, and if the plaintiff shall have paid the appropriate fees (including if applicable the fees for service thereof), shall assign a serial number thereto, seal, sign and issue it, and deliver it to the proper person for service. If the Court is of opinion that the summons is not in proper form, it may reject it or direct that it be amended.

Time of service

4. A summons shall not be served more than twelve months after issue, unless by leave of the Court, which shall not be given unless reasonable efforts have been made to serve the summons, or for other good reason.

Lost summons

5. If a summons is lost after issue, the Court may order a new summons to issue bearing the date of, and having the like effect as, the original summons.

6. Every action shall, unless with the leave of the Court, be instituted in the Court of the lowest grade having jurisdiction to try it. Action in lowest Court

ORDER VII
Legal Practitioners

1. Where more parties than one are represented by the same legal practitioner in any proceedings, service of a single copy of any document on such legal practitioner shall be sufficient service on all such parties. Service on legal practitioner

2. If a party desires to change his legal practitioner, he shall file a memorandum in Form 3, and serve all other parties. Change of legal practitioner

3. If a party desires to discharge his legal practitioner, he shall file a memorandum in Form 4, and serve all other parties. Discharge of legal practitioner

4. If a legal practitioner representing any party applies to be discharged, the Court may discharge him. Notice of the application shall ordinarily be given to the party represented, and he shall, if necessary, be required to furnish a new address for service. Discharge on legal practitioner's application

5. Subject to rule 6, the legal practitioner whose name appears as legal practitioner for a party upon any document filed in any cause or matter shall be deemed to be the legal practitioner representing that party unless and until there has been a change of legal practitioner under rule 2 or the legal practitioner has been discharged. Legal practitioner deemed to act until changed or discharged

6. The death of either the party or his legal practitioner determines the retainer. Death

7. If a legal practitioner refuses to sign a memorandum in Form 3 or Form 4 the Court may on application order him to do so. On any such application the Court shall have regard to any claim to lien or to a charging order. The costs of the application shall be in the discretion of the Court. Retiring legal practitioner refusing to sign

ORDER VIII
Service

1. Every plaintiff or applicant, and every person filing any document in any proceedings (other than an officer of any Court acting as such) and any other person ordered by the Court so to do shall give an address for service in Malaŵi: Address for service

Provided that if any such plaintiff, applicant or person is represented by a legal practitioner having an office within Malaŵi the address of such office shall be the address for service.

Mode of service

2.—(1) Subject to this Order and Order IX, service of every document shall be personal, and shall be effected by delivering the document or by producing it for inspection and delivering a copy thereof. A copy bearing the seal of the Court and the signature of its proper officer shall for this purpose be deemed to be an original document.

(2) Such service shall be effected either by an officer of the Court or of another Court or by the legal practitioner acting for the party at whose instance or on whose behalf such service is to be effected or by a person in the employment of such legal practitioner or by an agent of such legal practitioner authorized in writing in that behalf.

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(3) Where the person to be served is in the Public Service, the Court shall ordinarily serve him by sending the process in duplicate to the Head of the Office in which such person is employed and such Head shall thereupon cause the process to be served by delivering a duplicate of the process and requiring the person served to sign a receipt therefor on the back of the original which shall then be returned to the Court which issued the process with a certificate that the process has been duly served, and stating the date of service.

Non-acceptance

3. If the person to be served refuses to accept the document or copy, it may be left near him and his attention directed to it.

Service on legal practitioner

4. A document may be served on the legal practitioner of any party represented by such legal practitioner.

Service at address for service

5. Any document delivered at the address for service of any person shall be deemed to be served on such person.

Notice of hearing

6. Notice of hearing shall be seven clear days' notice unless the Court shall otherwise order.

Return date, other proceedings

7. Notice of all other proceedings shall be two clear days' notice, subject to any law to the contrary, and unless the Court shall otherwise order.

Place and time

8. Service may be effected at any place, on any weekday and at any time of the day or night. Service after 4 p.m. shall ordinarily be deemed to have been effected on the following day.

Service effected after noon on the day preceding, or at any time on any public holiday, shall be deemed to have been effected on the day after such holiday.

Special cases

9.—(1) A married woman shall be served as if she were a *feme sole*.

(2) Where any person under disability is to be served, service shall be made on his manager, if any, or, if there is no manager, on the person with whom he resides or under whose care he is. The Court may order that service upon the person under disability shall be deemed good service.

(3) In any action relating to any business or work, where the defendant is outside the jurisdiction, service may be made on a manager or agent of the defendant actually in control or management of such business or work on behalf of the defendant.

(4) The master or agent of a ship may be served in an action relating to such ship against the owner or charterer thereof.

(5) A member of the armed forces of Malaŵi or of the armed forces of any Government serving in Malaŵi may be served by serving the commanding officer or adjutant of his unit, who shall cause the proceedings to be transmitted to him.

(6) A person in prison shall be served by serving the officer in charge of the prison, who shall cause the proceedings to be transmitted to him.

Corporations, etc.

10.—(1) Where an action is against a corporation, the summons may be served—

(*a*) by leaving it at the Registered office (if any) of the corporation; or

(*b*) by sending it by post in a letter addressed to the corporation at the office, or, if there be more offices than one, at the principal office of the corporation, whether such office be situated within Malaŵi or elsewhere; or

(*c*) by handing it to the secretary or to any director or other principal officer of the corporation.

(2) This rule does not restrict the operation of any law as to service on any particular person or authority.

Substituted service

11.—(1) Where the Court is satisfied that a party who has given no address for service was, at the date of the summons or other document to be served, resident within Malaŵi, and there is reason to believe that he is keeping out of the way for the purpose of avoiding service, or that for any sufficient reason the summons or other document cannot be served in the ordinary way, the Court may order the summons or other document to be served by affixing a copy thereof in some conspicuous

place in the Court House and also upon some conspicuous part of the building in which the party to be served is known to have last resided, or in any other manner as the Court thinks fit.

(2) The Court may also, in any case falling within the terms of subrule (1), make an order for service by advertisement in such local newspaper or newspapers as the Court may think fit.

(3) Substituted service shall be as effectual as personal service.

(4) In cases of substituted service, the Court, where it is necessary, shall fix the time for the appearance of the party to be served, as the case may require.

(5) No order for substituted service shall be made in respect of—

(*a*) a subpoena; or

(*b*) a judgment debtor summons; or

(*c*) any document initiating proceedings for the arrest or committal of any person.

Proof of service

12. Service of process may, unless the Court shall otherwise order, be proved either by the endorsement on the summons of the officer of the Court who effected service or by affidavit of the person who effected service and, where the service was personal and the person served was not personally known to him, by such affidavit and the affidavit of the person who identified the person to be served. The person served shall sign an acknowledgment of service, but refusal or inability so to sign shall not affect the validity of the service.

Variation of orders

13. Any order for service, or for substituted service, may be varied by the Court.

District Messengers

14. For the purpose of rules 2 and 12 a District Messenger shall be deemed to be an officer of the court.

ORDER IX

Service out of the Jurisdiction

When allowed

1.— (1) Subject to the Act, the Court may order service out of the jurisdiction of any process whenever—

(*a*) the whole subject matter of an action properly brought in the Court is immoveable property situate within Malaŵi (with or without rents, profits or damages) or any document relating thereto is sought to be construed; or

(*b*) any relief is sought against any person domiciled or ordinarily residing or carrying on business within Malaŵi; or

(*c*) the action is founded on any breach or alleged breach of a contract—

(i) made within Malaŵi; or

(ii) made by or through an agent trading or residing within Malaŵi on behalf of a principal trading or residing out of Malaŵi; or

(iii) by its terms or by implication to be governed by the law of Malaŵi,

or is founded on any breach or alleged breach within Malaŵi of a contract wherever made, even though such breach was preceded or accompanied by a breach out of Malaŵi which rendered impossible the performance of the part of the contract which ought to have been performed within Malaŵi; or

(*d*) the action is founded on a tort committed within Malaŵi; or

(*e*) the action is founded on a bill of sale over property situate in Malaŵi; or

(*f*) any person out of Malaŵi is a necessary or proper party to an action properly brought in the Court against some other person duly served within Malaŵi.

(2) Any order giving leave to effect such service shall direct in what mode service is to be effected and how such service may be proved.

Form of order

2. An order for service out of the jurisdiction shall fix the times within which Order X rule 3 shall be complied with and the date for any personal appearance by the person to be served and the Court shall have regard to and may require evidence as to the means of communication and transport.

Variation of orders

3. Any order for service out of the jurisdiction may be varied by the Court.

ORDER X

Pleadings

Statement of claim

1. Every statement of claim shall be signed by the plaintiff or his legal practitioner and shall contain—

(*a*) a concise statement in numbered paragraphs of the facts relied on by the plaintiff and indicating his cause of action

including particulars of any special capacity in which the plaintiff sues;

(*b*) sufficient particulars of the claim;

(*c*) a statement of the relief claimed; and

(*d*) particulars of any set-off allowed or of any partial relinquishment of the claim.

Distinct cause of action

2. Where more than one cause of action is relied on, grounds of each and the relief claimed thereon must be stated separately.

Affidavit by defendant

3.—(1) If a defendant desires to defend the whole or any part of the claim he shall, within eight days after service of the summons inclusive of the day of service, give notice by an affidavit made by himself or his legal practitioner to the Court from which the summons issued, of his intention to defend.

(2) The affidavit shall state that the defendant has a good defence to the plaintiff's claim and shall, subject to subrule (3), indicate clearly the grounds of his defence.

(3) If the grounds of the defendant's defence are such that the plaintiff's allegations in his Statement of Claim cannot be dealt with adequately except by filing a defence, the defendant's affidavit shall so state, and the defendant shall, within seven days after filing the affidavit or within such extended time as the Court may allow, file and cause to be served on each plaintiff a defence in Form 5:

Provided that no such defence shall be accepted by the Court if the defendant has not filed an affidavit under subrule (2).

(4) A copy of any affidavit filed by the defendant under this rule shall be served on each plaintiff.

(5) Upon the defendant filing an affidavit or a defence (as the case may be) the Court shall fix a date for the hearing and shall inform the parties of the date so fixed, subject to rule 6 (2).

(6) If a defendant desires to counterclaim he shall file and cause to be served on each plaintiff within the like period a counterclaim which may form part of the same document as his defence, if any.

Judgment in default of affidavit or defence

4.—(1) If a defendant does not comply with rule 3 within the time or times limited by that rule, the plaintiff may, where service of the summons upon the defendant has been personal, after eight days or, where rule 3 (3) applies, after fifteen days or where service has been other than personal, after one month from the day of service or such other period as may have been laid down in

any order for substituted service, enter judgment against the defendant for the amount of his claim and costs on the scales set out in the Second Schedule, and the Court fees paid on the summons and judgment. *Second Schedule*

(2) Any judgment given under this rule may, on application by the defendant for good reasons and upon such terms as may be just, be set aside. Notice of such application shall be given to the opposite party.

Instalments may be ordered by consent

5. Such judgment shall be for payment forthwith or at such time or times and by such instalments, if any, as the plaintiff or his legal practitioner shall in writing have consented to take.

Form of defence

6.—(1) Every defence shall—

(*a*) either admit or deny every material allegation of fact in the statement of claim; a denial must not be evasive, but must answer the point of substance;

(*b*) state concisely any new facts on which the defendant relies by way of defence or in mitigation of damages;

(*c*) raise concisely and without argument any necessary matters of law; and

(*d*) be signed by the defendant or his legal practitioner.

(2) (*a*) The court may either of its own motion or on the application of the plaintiff strike out a defence which does not comply with subrule (1), and may thereupon, unless the defendant shall satisfy it that he has a good defence to the action on the merits or shall disclose such facts as may be deemed sufficient to entitle him to defend the action generally, make an order empowering the plaintiff to enter such judgment as may be just, having regard to the nature of the remedy or relief claimed.

(*b*) This subrule shall apply *mutatis mutandis* to a defence to a counterclaim filed under rule 8.

Counterclaim

7.—(1) Every counterclaim shall contain the like matter and particulars as a statement of claim and shall be signed by the defendant or his legal practitioner.

(2) A counterclaim shall not be made against any person not then a party to the action, but, if a cross action is brought, an order for consolidation may be made in a proper case.

Defence to counterclaim

8. Where any defendant counterclaims, the plaintiff shall, if he desires to defend such counterclaim, file and cause to be served

on the counterclaimant a defence to counterclaim within such time as the Court shall direct.

Tender

9. If a defence of tender before action is raised, the defendant shall on filing his defence pay into Court the amount alleged to have been tendered.

Defence where joint liability

10. If a plaintiff or counterclaimant does not sue all of several persons jointly liable, the defendant or defendant to counterclaim may set up any defence which he would have been entitled to set up if all the persons liable had been sued.

Reply

11. The Court may, for sufficient reason, give leave to file and deliver a reply to a defence, whether such defence be to a claim or counterclaim.

Rejection and amendment

12. The Court may refuse to accept or may return for amendment any pleading which does not comply with this Order, and, if the pleading be a statement of claim, shall not in such event issue the summons.

Particulars

13.—(1) If any pleading does not contain sufficient particulars, the Court may, of its own motion or on the application of any party, order the party responsible to file and cause to be served further and better particulars and may stay all proceedings pending compliance, and may in case of default order that the action or counterclaim be dismissed or that the defendant or the defendant to a counterclaim be precluded from defending the action or counterclaim, as the case may be.

(2) Further and better particulars may be filed and served on request without order.

ORDER XI

Payment into Court

Payment into Court

1.—(1) A defendant may pay money into Court—

(*a*) in satisfaction of the claim; or

(*b*) in satisfaction of any one or more of separate causes of action; or

(*c*) in satisfaction of any part of the claim,

and may also pay into Court a sum of money in respect of costs.

(2) The defendant shall give notice to the plaintiff of the payment in and, where the payment in is less than the amount claimed, the notice shall state in respect of what it is paid.

Payment out of Court

2. Subject to Order V rule 15 and to rules 7 and 8 of this Order, where the payment in is of the amount claimed or the plaintiff elects to take it in satisfaction of the whole of his claim, the amount shall be paid out to him, and he may have judgment for all costs properly incurred prior to his receiving notice of the payment in, and costs of entering judgment for such costs, unless paid without order.

Part satisfaction

3. Subject to Order V rule 15 and to rules 7 and 8 of this Order, where the plaintiff elects to take the payment in satisfaction of any one or more of separate causes of action in respect of which it was paid in, he shall, within four days after receiving notice of the payment in, give notice of such acceptance. The amount shall thereupon be paid out to him and he may continue the action in respect of the other cause or causes of action.

Order for payment out

4. Save as aforesaid, money paid into Court shall not be paid out without order of the Court.

Costs

5. Where money has been paid into Court and the plaintiff does not receive judgment for any larger amount, the costs incurred by the defendant after payment in shall ordinarily be paid by the plaintiff.

Other relief

6. Where the plaintiff seeks relief other than the payment of money, he may continue his action for such other relief, notwithstanding the payment out to him of any money.

Several Defendants

7. Where payment in is made by one or more of several defendants sued jointly or in the alternative the money in Court shall not be paid out without order of Court.

Tender

8. Where payment in is made with a defence of tender and is accepted, the defendant shall ordinarily be entitled to full costs of the action and the money in Court shall not be paid out without order of Court

Defamation

9. In an action for libel or slander a plaintiff who takes money out of Court may make a statement in open Court in such terms as may be previously approved by the Court, after notice to the defendant.

Counterclaim

10. This Order shall apply *mutatis mutandis* to counterclaims.

ORDER XII

Applications

Form 6

1.—(1) Save as hereinafter provided, every application shall be made by means of a notice and affidavit in Form 6.

(2) If the application is in a pending proceeding it shall bear the heading and title of that proceeding.

(3) If the application is not in a pending proceeding it shall bear such heading and title as may be appropriate.

(4) The application shall state in full the nature of the order applied for and, in sufficient detail, the facts relied upon in support thereof, and unless the Court otherwise orders, shall be served on all parties and persons interested therein.

Oral application

2.—(1) The Court may in its discretion allow any application to be made orally on production by the applicant of an application form in Form 7 and on payment of the appropriate fee for an application. In such event the application form shall be completed by the Court and filed.

(2) The Court may direct that notice of any such application be given to any other party or person.

Application during trial

3. During the trial or hearing of any action or other proceeding any application arising therein may be made orally and without formality or fee, unless the Court shall otherwise order.

Hearing

4. Applications, if contested, shall be heard in open Court.

Terms

5. The Court may as a condition of allowing any application impose such terms as may be just.

Evidence

6. The Court may receive, by affidavit or orally, evidence in support of or in opposition to any application.

Powers of Court

7. Subject to any Act, the Court may make such interlocutory orders as may be necessary to do justice between the parties whether applied for or not.

ORDER XIII

Discovery

Discovery of documents

1.—(1) The Court may, if it appears desirable in the interests of justice, and upon such terms as to costs or otherwise as it thinks just, order any party—

(*a*) to state on oath orally or by affidavit what documents he has or has had in his possession or power relating to the matters in question, or whether he has or has had in his possession or power any specified document or documents or class of documents, and, in either case, the present whereabouts of any documents formerly, but not now, in his possession or power;

(*b*) to produce any document in his possession or power.

(2) If the party is a corporation, an officer thereof may be ordered to act in like manner on its behalf.

(3) The Court may stay the proceedings pending compliance and in default of compliance may dismiss the action or preclude the defendant from defending, as the case may be.

Inspection of documents

2. Any party shall be entitled to inspect and copy any document in the possession or power of another party and referred to in any pleading, affidavit or other document filed by him in the proceedings or on oral examination under rule 1.

Privilege

3. Production and inspection of documents under this Order shall be subject to any law relating to privileged communications and documents.

Notice to produce or admit

4. Notice to produce documents or to admit facts may be given by letter.

ORDER XIV

Amendment

Pleadings

1. Pleadings may be amended at any time by leave of the Court.

Defective proceedings

2. The Court may at any time, of its own motion or on the application of any party, and on such terms as may be just order—

(*a*) amendment of any defect or error in any proceedings;

(*b*) any amendment necessary for determining the real question in issue or doing substantial justice between the parties.

Method

3. Amendment shall be made by filing a fair copy of the amended document, which shall indicate in what manner the document was amended, and serving the other party or parties:

Provided that, if amendment is ordered during the trial or hearing of any action or proceeding, or if all parties are present when the amendment is made, the Court may in its discretion amend the document on the file and service on the parties shall not then be necessary.

Slips

4. Clerical mistakes or errors arising from any accidental slip or omission may at any time be corrected by the Court without formality.

ORDER XV

Transfer of Proceedings

Method

1. Where an order is made under the Act for the transfer or removal of any proceedings from one Court to another Court, the Court from which the proceedings are transferred or removed shall send to the Court to which the proceedings are transferred or removed—

(*a*) the order for transfer;

(*b*) the Court's file of the proceedings; and

(*c*) any other relevant documents,

and shall retain a copy of the order for transfer.

Conduct of transferred proceedings

2. Proceedings so transferred to any Court shall be entered in the books of such Court, and such Court may, of its own motion or on the application of any party, give such directions as to the further conduct of the proceedings as may be just.

Transfer to High Court

3. Where an order is made by the High Court for the transfer of proceedings from a Subordinate Court, the Subordinate Court shall send to the High Court its file of the proceedings and any other relevant documents and shall retain a copy of the order for transfer.

ORDER XVI

Withdrawal and Settlement

Withdrawal of claim

1. The plaintiff may at any time before judgment withdraw any proceedings wholly or in part by giving notice to the defendant.

Costs

2. The defendant shall thereupon be entitled to costs of the proceedings or such part thereof.

Res Judicata

3. Withdrawal shall afford a defence by way of *res judicata* to subsequent proceedings unless—

(*a*) it occurred before the filing of the defence, or, if no defence is filed, before the trial or hearing of the proceedings; or

(*b*) the Court has granted leave to institute fresh proceedings.

Stay

4. If the costs of any withdrawn proceedings have not been paid, the Court may stay any subsequent proceedings of a like nature pending payment thereof.

Withdrawal of defence

5. The defendant may at any time by giving notice to the plaintiff withdraw his defence or any part thereof and shall in such event be precluded from defending the proceedings or part thereof, as the case may be.

Settlement

6.—(1) Where by agreement of the parties an action has been settled—

(*a*) the Court may at any time by consent of the parties and without formality record the fact of such settlement with or without recording the terms thereof; or

(*b*) any party to the settlement may apply to have the settlement recorded and the Court, if satisfied, after hearing the parties, that the action has been settled, shall record the settlement and the terms thereof;

(*c*) the record of settlement shall afford a defence by way of *res judicata* to subsequent proceedings.

(2) Any party to an action which has been settled may obtain a certified copy of the settlement recorded.

ORDER XVII

Subpoenas

Request

1.—(1) No written application or request for issue of a subpoena shall be necessary.

(2) The Court may issue a subpoena of its own motion.

Form 8

2.—(1) A subpoena to produce documents shall be addressed to one person only, and shall be in Form 8.

(2) A subpoena to give evidence may be addressed to more than one person, and shall be in Form 9.

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Documents

3. A person ordered only to produce a document complies therewith by sending it to the Court.

Records of Court

4. No subpoena shall be issued to produce records of any Court, including the High Court. The Court may in its discretion request such production. No document so produced shall be marked. Production of original records shall not ordinarily be requested if a certified or office copy will serve the purpose.

Return date

5. The return date or any error in a subpoena may be amended by the Court at any time before service.

Service

6. Without leave of the Court, no subpoena shall be served outside Malaŵi.

Prisoners

7. A party requiring the attendance of a person in prison may be required to deposit in Court the probable cost of his conveyance under escort to and from the Court and subsistence. Subject to any Act, the Court may thereupon issue an order for his production in Court.

Attendance of witness

8. A person subpoenaed to give evidence shall attend throughout the trial or hearing, including any adjourned hearing unless released by the Court.

Failure to attend

9. Subject to rule 6, if any person duly served with a subpoena to give evidence or produce a document shall, without sufficient reason shown, fail to attend the Court, whether on the first or any adjourned hearing, or produce such document, as ordered, he shall be guilty of a contempt of Court. The Court may also issue a warrant for his arrest.

Contempt

10. If any person who is in Court and required to give evidence refuses to be sworn or affirmed, or to give evidence, or to answer any question allowed by the Court, he shall be guilty of a contempt of Court.

Persons in Court

11. Any person present in Court may be ordered to give evidence, or to produce any document then and there in his possession or custody, without service of a subpoena.

Commissions, etc.

12.—(1) In any action before the Court it may issue a subpoena for the purposes of any commission, letters of request or examination *de bene* esse.

(2) If any person duly served with a subpoena under subrule (1) shall—

(*a*) fail, without sufficient reason shown, to attend the hearing or adjourned hearing, or produce a document; or

(*b*) fail to attend throughout the hearing, including any adjourned hearing, unless released by the Commissioner or other presiding officer; or

(*c*) refuses to be sworn or affirmed, or to give evidence or to answer any question allowed by the Commissioner or other presiding officer,

he shall be deemed to be guilty of contempt of Court.

ORDER XVIII

Affidavits

Before whom sworn

1. An affidavit to be used in any proceeding in a Court may be sworn—

(*a*) in Malaŵi, before any Magistrate or Commissioner for Oaths;

(*b*) in any part of the Commonwealth, before a judge, Court, Registrar or Deputy Registrar of any Court, Magistrate, Notary Public, or person lawfully authorized to administer oaths;

(*c*) in the Republic of India or Pakistan before a Judge, Court, Registrar or Deputy Registrar of any Court, First Class Magistrate or Notary Public;

(*d*) elsewhere, before any accredited member of the Malaŵi Foreign Service or any British Consul or Vice-Consul, or before any person authorized, under the laws of the place of swearing, to administer oaths, if the signature of such person is verified by a certificate of any British Consul or Vice-Consul, and such certificate shall be sufficient evidence of such authority.

Form and contents

2. An affidavit shall be intituled in the proceeding in which it is sworn, shall be expressed in the first person, and shall be drawn up in paragraphs numbered consecutively. It shall state the full name or names of the deponent, his age, his description or occupation, his place of residence, and, if any facts therein are deposed to otherwise than of his personal knowledge, the sources of his information. It shall be signed by the deponent. The jurat shall show the place and date of swearing and shall be signed by the person administering the oath, who shall add the title of the office by virtue of which he acts.

Forms 10, 11, 12 and 13

3. Subject to Order XII, an affidavit shall ordinarily be in Form 10. If the deponent understands English but is unable to read, the jurat shall be in Form 11. If the deponent does not understand English, the jurat shall be in Form 12 or 13.

Irregular affidavits

4. The Court may in its discretion permit an affidavit to be used, although not in proper form, if otherwise satisfied that the deponent understood its contents and effect.

Exhibits

5.—(1) Every exhibit to an affidavit shall be marked in Form 14 by the person administering the oath.

(2) Exhibits shall remain in the custody of the party, if he so desires, unless the Court shall otherwise order.

Rejection

6. The Court may in its discretion reject any affidavit which by reason of its form or content cannot be easily read and understood, or in which there is any interlineation, alteration or erasure, or other defect of form.

Amendment

7. An affidavit may be amended and resworn at any time before filing.

Filing

8. Every affidavit shall be filed before use, unless the Court shall permit it to be used on the undertaking of a party to file it.

Cross-examination

9.—(1) Any party desiring to contest the truth of facts deposed to in an affidavit may serve on the party who filed the same, notice of intention to cross-examine the deponent, and thereupon, if the deponent is not produced for cross-examination, the Court shall, except in special circumstances, reject or disregard the affidavit.

(2) The Court may of its own motion require the attendance of any deponent for examination on his affidavit and, in default of such attendance, may reject or disregard the affidavit.

ORDER XIX

Trial or Hearing

Hearing in Court

1. Subject to section 60 of the Act, all proceedings shall be heard and determined in open Court.

Appearance

2.—(1) Any party may appear in person or by a legal practitioner:

Provided that joint plaintiffs shall not, unless by leave of the Court, be represented by separate legal practitioners.

(2) A person served under Order VIII rule 9 (3) or (4) may appear on behalf of the defendant for whom he was served.

(3) A partnership may appear by any partner or by its legal practitioner.

(4) An infant or person of unsound mind may appear by his next friend, guardian *ad litem* or manager, as the case may be.

Absence of parties

3.—(1) If, when any action is called on, neither party appears the action may be dismissed.

(2) If the defendant does not appear, the Court may, on proof of due service, hear and determine the action in his absence.

(3) If the plaintiff does not appear, the claim may be dismissed and the Court may hear and determine any counterclaim.

(4) The Court may in its discretion in any such case order an adjournment.

(5) Any judgment or order given or made in the absence of a party may, on his application and if good reason for such absence be shown, be set aside and the proceedings may be reheard upon such terms as to costs or otherwise as the Court shall think fit. Notice of such application shall be given to the opposite party.

(6) If there are more plaintiffs or defendants than one, and one at least is present, the Court may hear the action as if all were present.

Undefended actions

4.—(1) In any action in which the defendant, having filed a defence, does not appear at the trial, the Court may permit the plaintiff's case to be proved by evidence on affidavit:

Provided that the Court may, if it thinks fit, require the case to be proved by oral evidence, or require further evidence, oral or by affidavit, and may adjourn the trial for such purpose.

(2) In any action the Court may give leave to prove any particular fact by affidavit, but such leave shall not ordinarily be given if it appears that such fact is *bona fide* in dispute.

Counterclaims

5. The stay, withdrawal, striking out or dismissal of the plaintiff's claim shall not prevent the hearing and determination of a counterclaim.

Mutual claims

6. Where judgment is given for sums of money on both claim and counterclaim the Court may set the one off against the other and give judgment for the balance only but without prejudice to the power of the Court to make such order as to costs as shall be just.

Note of evidence

7. The Court shall take in English a note of the evidence given and, so far as appears desirable, of the submissions of law made, including any objections to evidence and may add remarks on the demeanour of witnesses and other material matters. The Court, unless it delivers a written judgment, shall also make a note of the judgment or order.

Exhibits

8. Documents put in evidence shall be marked and, unless the Court shall otherwise order, they shall, or copies thereof shall, be retained in Court during the pendency of the proceedings and until the time for appeal has expired. A negotiable instrument which was the basis of a successful claim shall be so retained, unless the Court shall otherwise order, and shall be endorsed with a note of the judgment. Documents tendered in evidence, but rejected, shall be marked. The Court may for sufficient reason order that any document produced in any proceedings be sent to the Attorney General or the Collector of Stamp Duties or their deputies.

Addresses

9.—(1) Each party may, before calling evidence, open his case. The party against whom judgment would be given on the pleadings, if no evidence were called, has the right to begin.

(2) Each party may sum up his case after the conclusion of the evidence, but so that the party who begins shall have the last word, whether or not any other party has called evidence.

(3) The Court may at any stage call any evidence which it considers desirable in the interests of justice, and may inspect any place or thing.

Trial not concluded

10. Where a Magistrate has commenced a trial and is unable for any reason to conclude it, another Magistrate may with the consent of all parties continue the trial and give judgment. In the absence of such consent the case shall be heard *de novo*.

Application

11. This Order shall apply, *mutatis mutandis,* to proceedings other than actions.

Adjournment

12. The Court may adjourn any proceedings from time to time and from place to place and may impose terms on so doing.

ORDER XX

Judgments and Orders

Pronouncing judgment

1. Judgment shall be pronounced in open Court. If the Magistrate has written, but is for any reason unable to read, a judgment, it may be read in open Court by any other Magistrate.

The original or a signed copy of every written judgment shall be filed.

2. Judgment by confession or consent of the parties may be recorded by the Court at any time. Judgment by consent

3. The Court shall settle the terms of a judgment or order. Settling judgment or order

4. If any order is made for payment by instalments, such instalments shall, in the absence of any direction to the contrary, be deemed to be payable on the first day of the calendar month next after that in which the order was made and on the first day of each succeeding calendar month. Instalments when due

5.—(1) Any debtor against whom judgment has been, or is about to be, given may apply to the Court for leave to pay the judgment debt by instalments, or, if an order for payment by instalments has been made, for leave to pay by reduced instalments, and the Court, after hearing the parties, may make such order as is just. Order for instalments

(2) If any such instalment is more than one calendar month in arrears, the said order shall be deemed to be vacated and the judgment creditor may execute for the whole amount then due on the judgment, but the judgment debtor may apply for another order.

(3) Any judgment creditor may, if an order for payment by instalments has been made, apply that it be vacated, or that the instalments be increased, and the Court, after hearing the parties, may make such order as is just.

6.—(1) Every judgment or order requiring any person to do any act other than the payment of money shall state the time within which the act is to be done. If no time be so stated, the act shall be done within seven days from the date of the judgment or order. Service of orders

(2) If the person required to do such act was personally present or represented by a legal practitioner when the judgment or order was given or made, it shall not be necessary to serve him with a copy thereof or any notice of the consequences of default. If he was not so personally present or represented, no proceedings for his arrest or commitment shall be taken unless he shall have been served with a copy of the judgment or order endorsed with a notice in Form 15.

7. Every judgment or order shall be dated and take effect as of the date on which it was given or made. Date

Supplementary provisions

8. A judgment for delivery of moveable property shall state the amount of money to be paid as an alternative if delivery cannot be had.

Requirement where defendant is employed in the public service

9. Where a defendant is a person employed in the public service, a true copy of the judgment or order shall, not later than three days from the date on which it is given or made, be sent by the Court to the Head of the Department or office wherein the defendant is employed.

ORDER XXI

Execution

Definitions

1. In this order "judgment" includes an order and "judgment creditor" and "judgment debtor" include respectively a person entitled to the benefit of, or bound by, any judgment or order.

Duty to comply

2. Every person directed by any judgment to do any act shall comply therewith without demand, and it shall not be necessary to serve him therewith or with any notice thereof save as provided in Order XX rule 6.

Leave to execute

3.—(1) Execution shall not issue without leave of the Court—

(*a*) if the judgment was subject to any condition or contingency;

(*b*) at any time more than six years from the date of the judgment;

(*c*) if any change has taken place by death, assignment or otherwise in the person entitled to enforce, or liable under, the judgment;

(*d*) if the judgment creditor desires to enforce the judgment against any person other than the judgment debtor named in the judgment;

(*e*) if an order of commitment is outstanding;

(*f*) save as in Order XX rule 5 (2) provided, if an order for payment by instalments is in force; or

(*g*) if execution has been stayed by the Court.

(2) An application for leave to execute may be made *ex parte*, but the Court may order service on any party or person concerned.

Warrant of Execution

4.—(1) A Warrant of Execution shall be in Form 16 or 23 as the case may be, and shall be valid for twelve months from the date of its issue unless renewed with leave of the Court.

(2) Upon receipt of the warrant the Sheriff may execute the judgment in all respects as though it were a judgment of the High Court.

Attachment of debts

5. A judgment creditor who has obtained a judgment or order for the recovery or payment of money may apply to the High Court under Order II of the Rules of the High Court for the attachment of debts as though the judgment were a judgment of the High Court.

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ORDER XXII

Judgment Debtors

Definitions

1. In this Order "judgment" means any judgment or order under which any person is bound to pay to another any sum of money and "judgment creditor" and "judgment debtor" have corresponding meanings.

Judgment debtor summons

2.—(1) Subject to subrule (10), a judgment creditor may, whether execution has issued or not, summon any judgment debtor with a summons in Form 17 to be examined as to his ability to pay the judgment debt, as to his property and as to any disposal thereof.

(2) If the judgment debtor is a corporation, any of its officers may be so summoned.

(3) The summons shall be personally served not less than two clear days before the hearing.

(4) At the hearing when the judgment debtor has been examined either party may adduce any additional evidence and the Court may make such order for payment whether by instalments or in one sum by the judgment debtor as may be just, or may make no order.

(5) If a judgment debtor duly summoned under this rule does not appear he may be arrested on a warrant and brought before the Court for examination.

(6) Any person wilfully failing or neglecting to comply with any order for payment made under this rule may, after due notice in Form 18, be committed to prison for any period not exceeding six weeks.

(7) A person so imprisoned shall be released forthwith upon payment of all sums due and payable at the date of payment under the order for non-compliance with which he was imprisoned, together with such part of any deposits made under rule 1 or 2 of Order XXIV as may actually have been expended.

(8) A person so imprisoned may at any time apply to be released and the Court may order his release on such terms as to re-arrest, security or otherwise, or unconditionally, as may be just.

(9) Any order made under this rule may be suspended, discharged, or varied by the Court.

(10) In the cases referred to in Order XXI rule 3, no summons shall issue without leave of the Court.

Arrest

3.—(1) If the Court is satisfied that a judgment debtor, with a view to avoiding or delaying payment of the judgment debt or examination of his affairs, has absconded or left Malaŵi, or is about to do so, or has disposed of or removed or concealed or made away with or handed over to others any of his property, or is about to do so, or has wilfully evaded or attempted to evade service of the process of the Court upon him, he may be arrested on a warrant and examined under rule 2 and may be detained in prison pending order of the Court.

(2) The Court may in any such case make any order under rule 2 and may in addition—

(*a*) order the judgment debtor to furnish security for his appearance or for payment of the judgment debt; or

(*b*) order that he be committed to the civil prison.

(3) Security under this rule may be given by payment into Court, or by bond with two sureties who may be required to justify, or in such other manner as the Court may permit. On furnishing security, the judgment debtor shall, if in custody be released.

Costs

4. Subject to rule 6 costs of proceedings under this Order shall, unless otherwise ordered, be added to the judgment debt.

Order

5. At the hearing, when the judgment debtor has been examined, either party may adduce any additional evidence, and the Court may order the judgment debtor to pay to the judgment creditor such amount, whether by way of instalments or in one lump sum, as may be just; or may make no order:

Provided that the judgment debtor shall be deemed to have complied with the order of the court if he pays the sum, or sums, so ordered, into the court and at the place where the original action was commenced.

6. If the judgment debtor elects to make payment through the court in terms of the proviso to rule 5, then the judgment creditor may either collect the sum in question from the court or may have it sent at his own expense either direct to himself or to his legal practitioner. Payment

ORDER XXIII

Attachment and Arrest Before Judgment

1.—(1) If the Court, after issue of the summons, is satisfied that a plaintiff has a good cause of action and that the defendant, with intent to defeat or delay the claim of the plaintiff, has absconded or left Malaŵi, or is about to do so, or has disposed of or removed or concealed or made away with or handed over to others any of his property, or is about to do so, or has wilfully evaded or attempted to evade service of the process of the Court upon him, the Court may— Powers of Court

(*a*) order his arrest on a warrant and require him to furnish security, in the manner set out in Order XXII rule 3 (3), for his appearance and, in default, commit him to prison; or

(*b*) order that attachment issue against the defendant's property, in all respects as if he were a judgment debtor, save and except that the order shall be in Form 19 and any property seized shall not be sold prior to judgment, unless subject to rapid decay or deterioration, or by leave of the Court.

(2) (*a*) If any property has been attached under subrule (1) (*b*), it shall not be necessary to seize it thereafter in execution, but it shall be deemed to have been seized in execution under a warrant of execution delivered to the Sheriff at 10 a.m. on the day after the judgment was given, and may be sold accordingly.

(*b*) For the purpose of security in any subsequent bankruptcy and of claims of judgment creditors *inter se*, the judgment creditor shall rank and have priority—

(i) if the property has been sold under subrule (1) at any time earlier than 10 a.m. on the day after judgment, as if the order of execution had been delivered to the Sheriff and the property seized and sold simultaneously at 10 a.m. on the day after judgment;

(ii) if the property is sold at any time after 10 a.m. on the day after judgment, as if the order for execution had been delivered to the Sheriff and the property had been seized at 10 a.m. on the day after judgment and the property had thereafter been sold at the actual time of sale.

(3) Any order made under this rule may be suspended, rescinded or varied in such manner and on such terms as may be just.

(4) A defendant committed to prison in default of furnishing security shall be released forthwith on furnishing the same at any time.

Procedure

2. Any application under this Order may be made *ex parte* but the Court may in its discretion order any person to be served.

Forms 20 and 21

3. A warrant under this Order shall be in Form 20 and an order of commitment in Form 21, with such variations as circumstances may require.

Costs

4. Costs of proceedings under this Order shall, unless otherwise ordered, be added to the judgment debt.

Compensation

5. If any order has been made under this Order and it later appears that such order was improperly obtained, or that the action was brought without sufficient grounds, the Court may on application by the defendant award against the plaintiff such damages, not exceeding £100 in the case of the Resident Magistrate's Court, or £25 in the case of any other Subordinate Court, as may be just to compensate the defendant for injury to his property, credit or reputation. If the defendant obtains an order under this rule, he shall be debarred from bringing any action in respect of the same matter.

Release of property

6. Any property seized or attached under this Order shall be released upon the defendant paying into Court, or giving security for, the value thereof or the amount of the plaintiff's claim, whichever be the less.

ORDER XXIV

General Provisions as to Arrest and Commitment

Expenses of arrest

Third Schedule

1. Before any order for the arrest of any person is executed, the party at whose instance it was issued shall pay into Court the fees prescribed in Items 18 or 19 of the Third Schedule, whichever fee is applicable.

Expenses of commitment

2. Before any order of commitment is made the Court shall direct that such commitment will be at the expense of the party, if any, at whose instance it is made, and in such event the order shall not be executed unless the party shall deposit in Court a sum sufficient to provide for the subsistence of the person committed for the period of his imprisonment.

Discharge of order on payment

3.—(1) Every order for arrest or order of commitment issued on grounds of failure to pay money shall show on its face the sum due and payable, and on payment thereof together with such part of any deposits made under rule 1 or 2 as may actually have been expended the order shall be deemed to be discharged and the party, if arrested or committed, shall forthwith be released.

(2) Payments on account of the sum due and payable shall be noted on the order by the Court or the officer in charge of the prison, as the case may be, and, if the order has not been served, it may be amended so as to give credit therefor.

(3) If payment in full is made to the Court while the party is in prison, the Court shall order his release in Form 22. The Court shall inform the prison authorities of any payment to account.

(4) If payment in full is made to the officer in charge of the prison, he shall release the prisoner and pay the money into Court.

Discharge of order in certain other cases

4.—(1) An order of arrest or commitment issued on grounds of failure to pay money shall be deemed to be discharged—

(*a*) if it appears that the party has been adjudged bankrupt or that a receiving order has been made against him; or

(*b*) if the party at whose instance the order was made files in Court a request in writing that the party in question be released.

(2) Notice of such discharge shall forthwith be sent by the Court to the officer in charge of the prison, if the party is in prison.

No further commitment for same sum

5. A debtor shall not be liable to be imprisoned a second time for non-payment of a sum in respect of which an order of commitment has been made and in respect of which he has been imprisoned.

Notice to judgment creditor

6. The Court shall give notice of any arrest forthwith to the person at whose instance the arrest was ordered.

Time

7. An order for arrest or commitment may not be executed more than one year after the date thereof, unless renewed by the Court.

Military men

8. An order for the arrest of any member of the armed forces of Malaŵi or of the armed forces of any Government serving in

Malaŵi may be delivered to the commanding officer or adjutant of his unit, who shall cause him to be arrested and delivered to the Court.

Arrest by another court

9. The Court may request any Court of coordinate jurisdiction to effect any arrest ordered by the requesting Court. Any person so arrested shall be brought before the requesting Court, subject to any question of payment or security, and shall be dealt with thereby.

Duration of imprisonment

10.—(1) Wherever by these Orders and Rules imprisonment may be ordered, the term thereof shall not exceed—

(*a*) six weeks, if ordered by a Resident Magistrate's Court; or

(*b*) three weeks, if ordered by a magistrate of the first grade Court; or

(*c*) one week, if ordered by a magistrate of the second or third grade Court.

(2) Wherever by these Orders and Rules imprisonment may be ordered for any reason other than non-payment of money, the Court may impose in lieu of imprisonment a fine not exceeding £50 for every week's imprisonment which might have been ordered.

(3) Notwithstanding anything herein contained, imprisonment under Order XXIII rule 1 shall not in any case continue after the decision of the action.

Effect of imprisonment

11. Subject to Order XXI rule 3, imprisonment shall not operate to prevent the issue of execution.

Release on illness

12.—(1) At any time after a warrant of arrest has been issued, the Court may cancel it if the person to be arrested is seriously ill.

(2) Where a person has been arrested, the Court may release him if in its opinion he is not in a fit state of health to be detained in prison.

(3) A person committed to prison may be released by order of the committing Court made on application or of its own motion if—

(*a*) he is seriously ill; or

(*b*) any infectious or contagious disease is likely to affect him or other inmates of the prison in which he is confined; or

(*c*) the Court for any other reason sees fit.

(4) A person released under this rule may be re-arrested, but the periods of his detention in prison shall not in the aggregate exceed those prescribed by rule 10 of this Order.

ORDER XXV

Interim Orders as to Property

Protective orders

1.—(1) Where in any action on a contract or for the recovery of any moveable property the plaintiff's claim is *prima facie* established and the defendant relies by way of defence on matters as to which the burden of proof is on him, or claims a lien, the Court may make such order for the delivery, preservation or custody of any moveable property the subject matter of the dispute, or for the payment into Court of any sum in dispute, or both, as may be just.

(2) This rule shall apply *mutatis mutandis* to counterclaims.

Sale of subject matter

2. The Court may order the sale (without prejudice to any subsequent finding), of any property in dispute in any proceedings, which—

(*a*) is subject, to rapid decay or deterioration; or

(*b*) incurs charges for food or keep; or

(*c*) for any other reason ought to be sold,

in such manner and on such terms and conditions as may be just.

Orders to facilitate trial

3. The Court may make any order for the detention, preservation, inspection, surveying, measuring, weighing or testing of any property or thing in dispute in any proceedings or as to which any question arises therein.

Additional powers

4. The Court may for any of the purposes of this order authorize any person to enter enclosed premises, by force if necessary, and to take samples, make plans, models or diagrams, or conduct experiments.

ORDER XXVI

Interpleader

Where allowed

1. Where any person (in this Order called "the applicant") is sued or expects to be sued by any two or more persons for or in respect of any debt or property in which he claims no interest

otherwise than for charges and costs, and such persons claim adversely to one another, the applicant may seek relief by way of interpleader in the Court in which he has been sued or, if not yet sued, in any Court in which he might be sued.

Procedure

2.—(1) The applicant shall file in Court an application in writing for the relief claimed.

(2) If the applicant has been sued, such application shall be filed within five days after service of the summons.

(3) A copy of the application shall be served on every person (including any plaintiff in an action against the applicant) believed by the applicant to be a claimant.

(4) Every claimant so served, except a plaintiff in an action against the applicant, shall before the hearing file either a notice that he makes no claim or particulars of his claim.

Hearing

3. On the hearing the Court may make such order for the consolidation and further conduct of all relevant proceedings as may be just, and may in particular make an order that the applicant, on paying any money into Court, or dealing with the property in issue as the Court may order, may be dismissed from the proceedings and that his costs may be paid out of the money or property in issue or in such other manner as the Court may direct, or it may determine all the matters in question in a summary manner.

Absent parties

4. Any claimant duly served shall be bound by the proceedings whether he appears therein, or files any notice or particulars of claim, or not.

Costs and sales

5. In any interpleader proceedings the Court may make such order as to costs and as to any sale or other disposal of any property in issue as may be just, and may itself assess the value of any such property.

ORDER XXVII

Actions by and Against Firms

Action in firm's name

1. Partners and persons liable as partners may be sued and partners may sue in the name of their firm.

Procedure

2.—(1) In every such action it shall be stated in the title or statement of claim that the plaintiffs sue or defendants are sued as a firm.

(2) The partners of the firm and each of them shall on demand in writing, which may be incorporated in or served with a pleading, file and serve on all parties concerned a statement of the names and addresses of all persons who are partners in the firm. Alternatively, any one partner may file and serve an affidavit giving such particulars of all the partners.

(3) Any person signing such a statement which declares him to be a partner, and any person named as such in any such affidavit, shall be deemed to have been served with the proceedings as a partner:

Provided that, where an affidavit has been so filed, the Court may require service on any alleged partner (other than the person who swore the affidavit) who is not registered as a partner under the Business Names Registration Act. Cap. 46:02

(4) In default of such statement or affidavit, the Court may stay the action, or preclude the defendants from defending, as the case may be, or may issue an order requiring such a statement or affidavit to be filed. Wilful non-compliance with such an order shall be a contempt of Court.

(5) Any partner or the person in control of the firm's principal place of business in Malaŵi may be served on behalf of the firm.

(6) A person served on behalf of a firm shall be deemed to be served as a partner, unless the contrary is stated in the summons or in a pleading.

(7) Any person served as a partner may apply to set aside the service on the ground that he is not a partner or liable as such, or may, in addition to any other defence, allege such matters by way of defence.

(8) When judgment is given against a firm, execution may issue—

(*a*) against any partnership property;

(*b*) against any partner served as such and not expressly found not to be a partner;

(*c*) against any person served as being, and expressly found to be, liable as a partner.

The judgment or order may name the persons against whom execution may issue under this rule.

(9) If after judgment the judgment creditor desires to issue execution against any other person as being, or being liable as, a partner, he may apply to the Court for leave to execute. If the person concerned is not registered as a partner under the Business Names Registration Act he shall be served with the Cap. 46:02

application and the Court may try any necessary issue of fact and give all necessary directions.

(10) Except in the case of a sole surviving partner, it shall not be necessary to join the personal representative of a partner who dies during the pendency of the proceedings, but execution shall not issue against his separate property, unless the personal representative has been served.

(11) If any defendant partner be an infant, judgment may be given against the firm other than him, and in such event no execution shall issue against his separate property. Where such a judgment is sought, it shall not be necessary to serve the infant or to appoint a guardian *ad litem* for him. If a plaintiff partner be an infant, it shall not be necessary for him to be represented by a next friend.

Application

3.—(1) This Order shall apply to actions between one or more partners and the other partners of a firm, and to actions between firms having partners in common. No execution shall issue in any such action without leave of the Court.

(2) This Order shall apply *mutatis mutandis* to an individual carrying on business in a name other than his own, save that an infant so carrying on business may not sue or be sued under this Order.

Dissolved partnerships

4. Where, to the knowledge of the plaintiff, a firm was dissolved before action brought, the plaintiff shall serve individually every person whom it is sought to make liable as a partner.

ORDER XXVIII

Executors and Administrators

Definition

1. In this Order "executor" means an executor who has proved the will or an administrator.

Costs of plaintiff

2. Costs of proceedings brought by an executor which are dismissed or fail shall ordinarily be borne by him personally, but the Court may for sufficient reason allow costs against the estate, either in the first place or if not recoverable from the executor.

Judgment against estate

3.—(1) A judgment against an executor shall provide that the amount of the judgment (including any costs) be satisfied out of property of the deceased which is in or may come into the hands of the executor to be administered by him as such.

It shall also provide that—

(*a*) as regards the amount of any costs; and

(*b*) as regards the amount of any assets of the deceased alleged and proved to have been wasted by the executor (but not as regards any other amount due on the judgment),

the judgment shall, if not satisfied out of the assets of the deceased, be satisfied by the executor personally.

(2) If an executor alleges and proves administration of assets, he may be granted costs of that defence, notwithstanding that judgment may be given to be satisfied out of any property of the deceased which may at a future time come to the hands of the executor to be administered by him as such.

Judgment *de bonis futuris*

4. On a judgment to be satisfied out of any property of the deceased which may at a future time come to the hands of the executor to be administered by him as such, execution shall not issue without leave of the Court and notice of the application shall be served on the executor. If waste since the date of the judgment is alleged, execution may be ordered against the executor to the extent of the waste and costs.

Form of warrant

5. A warrant of execution against an executor may be in Form 23.

ORDER XXIX

General Provisions

Forms

1. Forms prescribed by these Orders and Rules shall be used wherever applicable and with such variations as circumstances may require, but so that no form shall be varied in such a way as to impose on any person any obligation, or to deprive him of any right or information, otherwise than in due course of law.

Certificate of expert

2.—(1) In any proceedings the Court may, if it sees fit, receive in evidence and act upon the certificate of any accountant, actuary, architect, botanist, chemist, engineer, medical practitioner, surveyor or other scientific person or expert, and may similarly receive any account, analysis, plan, diagram or document relating to and identified by such certificate. On receiving such evidence the Court shall inform the parties of the right of cross-examination under subrule (2).

(2) Any party *bona fide* desiring to cross-examine in respect of any such matters shall be afforded the opportunity to do so, but may afterwards be ordered to pay any costs of, and incidental to, such cross-examination.

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Certified copies and lost documents

3.—(1) The Court may supply for any sufficient reason a certified copy of any document, including, with the consent of the Magistrate, any notes of evidence.

(2) The Court may upon proof of loss of any document issued by the Court order that a duplicate or copy be issued upon such terms as may be just.

Fees, deposits and disbursements

4. Where any fee or deposit is payable in respect of any act, or any disbursements are necessarily involved in doing the same, the officer charged with doing such act shall not be obliged to do it until such fee or deposit, or the amount of such disbursements, has been paid.

Independence of Court staff

5. No officer of any Court shall become a surety, or sign any receipt or document, or receive any money, for or on behalf of any party to any proceeding in the Court, or bid or otherwise become a purchaser directly or indirectly at any sale by the Court.

Furnishing security

6.—(1) Security shall be given by deposit of money or by bond. The amount shall be fixed by the Court. Expenses shall be borne by the person giving the security. The undertaking in writing of a legal practitioner may be accepted in lieu of other security.

(2) Where security is given by deposit of money, the money shall not be paid out without order of Court.

(3) Where security is given by bond two sureties shall be required unless the Court shall otherwise order, and the opposite party shall be given opportunity to object to the sureties.

Enlargement of time

7. The Court may extend or abridge the time limited for doing any act, upon such terms as may be just, and notwithstanding that the time originally limited has expired.

Enlargement by consent

8. Time for filing or serving any pleading, particulars, affidavit, notice or similar document may be extended by consent, unless in any case the Court shall otherwise order.

Irregularities

9.—(1) Non-compliance with these Rules or any rule of practice in force shall not render the proceedings void unless the Court shall so order, but the Court may of its own motion or on application of any party set aside any proceedings wholly or in part as irregular, or order amendment on such terms as may be just.

(2) Any such application may be dismissed unless made within a reasonable time and before the applicant has taken any step in the proceedings with knowledge of the irregularity.

Scandalous matter

10. The Court may at any time order that any scandalous, irrelevant, vexatious, oppressive, argumentative or prolix document, or matter in any document, be struck out, and may award costs of any application in that behalf.

Consents

11. A consent may be made or proved in such manner as the Court may approve.

Filing notices

12.—(1) In every case where any party is obliged to serve, or cause to be served, any notice on another party or person, he shall also file a copy of such notice in Court, unless the notice, document, or proceeding to be served, or a copy thereof, is already so filed.

(2) Service of any document may be proved by affidavit unless the Court shall otherwise order.

Personal appearance

13. Save as expressly provided by any law, the Court may for sufficient reason order the personal appearance of any party to any proceedings at any time unless such party is outside Malaŵi, and wilful failure to comply with such order shall be a contempt of Court, and, notwithstanding the appearance of any legal practitioner or other agent for such party, the Court may proceed as if he had not appeared in the proceedings. An order for personal appearance shall be personally served.

Defendant precluded from defending

14. If in any action it is ordered that a defendant be precluded from defending—

(*a*) his defence, if any, shall be deemed to have been struck out;

(*b*) the plaintiff at the trial may prove his case and obtain judgment in like manner as if the defendant had not appeared; and

(*c*) for the purpose of any appeal or further proceedings the judgment shall be deemed to have been given *inter partes*.

Service by other Court

15. Any process or document required to be served may be served by any other Court of coordinate jurisdiction on request by the first named Court.

Notice to admit fact or documents

16. When proof of any relevant fact or document is likely to be difficult or expensive, the party on whom the burden of proof thereof lies may by written request require any opposite party to

admit the same, for the purpose of specific proceedings only, and saving all just exceptions. Such admission may be made by letter. If the admission is not made, and the Court is of opinion that in the circumstances it was unreasonable not to make it, it may order such party to pay the costs of proving such fact or document.

Examination *de bene esse*

17. The Court may examine, or direct some fit and proper person to examine, any witness *de bene esse* at any place. Evidence so taken may be used at the trial.

Inherent powers

18. Nothing in these Orders and Rules shall be deemed to limit or affect the inherent power of the Court to make such orders as may be necessary to prevent abuse of the process of the Court.

ORDER XXX

Costs, Allowances and Court Fees

Costs discretionary

1. Subject to these Orders and Rules, costs of all proceedings shall be in the discretion of the Court. The Court may award costs of proceedings filed in that Court although it has no jurisdiction to determine such proceedings.

Assessment *Second Schedule*

2. Costs shall not be taxed but shall be assessed in accordance with the scale and rules in the Second Schedule by the Court at the trial or hearing, on settling the terms of the judgment or order, and shall be added to or set off against any sum payable thereunder. Costs may be made a charge on the subject matter of the proceedings.

Security for costs

3. A plaintiff who is out of Malaŵi, or who, being a married woman, is not liable as if she were a *feme sole*, may be ordered to give security for costs, and in default of such security the action may be dismissed. This Rule applies also to a counterclaimant. Where security for costs is so ordered, it may be given to the party or to the Court at the option of the person furnishing the same.

Special interpreters

4. The Court may employ and pay any necessary special interpreter and may in its discretion order his fee to be paid by the party calling the witness for whom such special interpreter shall have been required. A fee so paid shall be costs in the cause.

Plans, etc.

5. The Court may assess and allow as costs the reasonable cost of any plan, diagram, chart, photograph or model.

Witnesses

6. A person necessarily attending Court as a witness of fact (including a party giving evidence) shall be allowed, unless the Court otherwise orders, the appropriate sum as set out in Part III of the Second Schedule.

Second Schedule

Expert witnesses

7.—(1) A person necessarily attending Court as an expert witness may be allowed such fee for qualifying to give evidence and for giving evidence as the Court may direct, but not exceeding except for special reasons £5 for qualifying and £5 for each day of attendance in Court.

(2) For the purposes of this and the preceding rule necessity of attendance shall be determined in accordance with the probable normal course of the hearing. Attendance may be necessary although the witness is not in fact called and although no subpoena has been issued to him.

Subsistence and travelling

8. A party or witness may be allowed reasonable subsistence and travelling expenses in respect of his attendance at the trial or hearing.

Apportionment

9. In case of attendance for purposes of two or more distinct proceedings, allowances under this Order may be apportioned.

Seafaring men

10. A special allowance may be made by the Court to a seafaring man detained on shore.

Court fees

Third Schedule

11. The fees and percentages set out in the Third Schedule and no others shall be taken and paid in respect of all causes, matters and proceedings in Subordinate Courts.

Folio

12. A folio shall comprise seventy-two words and every figure shall be counted as one word.

Proceedings by Court

13. No fees shall be chargeable in respect of any proceedings issued or taken at the instance of the Court.

Exemption of Government from payment of fees

14. No fees shall be chargeable to or payable by the Government in respect of proceedings instituted by or against the Government; but a judgment in favour of the Government for costs shall include the amount of any fees which would have been payable if the proceedings had been instituted by or against a private person.

ORDER XXXI

Contempt of Court

Notice to shew cause

1.—(1) If a contempt is committed in face of the Court, it shall not be necessary to serve notice to shew cause, but the Court shall ensure that the person alleged to be in contempt understands the nature of the offence alleged against him and has the opportunity to be heard in his own defence, and shall make a proper record of the proceedings.

(2) In all other cases of contempt of Court, notice to shew cause why he should not be committed to the civil prison or fined shall be served personally.

Execution

2. An order imposing a fine may be enforced by order of execution or by commitment, but execution shall ordinarily issue in the first place.

Vacation of order

3. An order made by way of punishment for contempt of Court may be suspended, vacated or varied by the Court for sufficient reason, and in particular, but without prejudice to the generality of the foregoing, if the person guilty of contempt makes proper submission and apology or otherwise purges his contempt.

Contempt by corporation

4. If a corporation is guilty of contempt of Court, the Court may treat as guilty thereof, and punish accordingly, any officer of the corporation who caused or wilfully permitted or contributed to the contempt of Court.

Proceedings without authority

5. Any person doing any act or taking any proceeding in the name or on behalf of another person, not being, and knowing himself not to be, lawfully authorized thereunto, shall be guilty of contempt of Court.

ORDER XXXII

[Deleted by G.N. 84/1969.]

ORDER XXXIII

Appeals to the High Court

Notice of appeal

1.—(1) Appeals to the High Court shall be brought by giving notice of appeal in Form 26.

(2) The appellant may appeal from the whole or any part of a judgment, and the Notice of Appeal shall state whether the whole or part only, and what part, of the judgment is complained of.

(3) The Notice of Appeal shall be instituted and filed in the proceedings in which the judgment appealed from was pronounced, and shall be filed within fourteen days from the day on which such judgment was pronounced. At the same time the appellant shall pay the prescribed fee for such Notice.

(4) The Notice of Appeal shall be served by the appellant on all parties directly affected by the appeal or their legal practitioners respectively. It shall not be necessary to serve parties not so affected.

Copies of record of hearing

2.—(1) When the appellant has complied with rule 1 the Court appealed from shall prepare the requisite number of copies of the record comprising the pleadings, the notes of evidence, the judgment appealed from, the documentary exhibits and any other relevant documents.

(2) As soon as the copies of the record are ready, the Court appealed from shall serve the appellant with a notice in Form 27.

(3) Upon request by the appellant and upon payment by the appellant of the cost of preparing the record the Court shall supply the appellant with one copy thereof.

(4) Within fourteen days from the service upon him of the notice referred to in subrule (2) the appellant shall prepare a Memorandum in writing setting forth the grounds of appeal, and shall forward to the Court appealed from the number of copies of the Memorandum called for in the notice.

Record of Appeal

3. On receipt of the copies of the Memorandum of Appeal the Court appealed from shall prepare the Record of Appeal which shall consist of—

(*a*) the documents referred to in rule 2 (1); and

(*b*) the Memorandum of Appeal,

and shall forward the appropriate number of copies of the Record of Appeal to the Registrar of the High Court.

O. 33, r. 4

Execution of judgment on appeal

4. When either party has extracted the order of the High Court on any appeal and has produced such order to the Subordinate Court appealed from such Subordinate Court shall execute the order in accordance with section 24 of the Act and these Orders and Rules.

FIRST SCHEDULE **o. ii, r. 1 (2)**

FORM NO. 1

General Heading and Title **o. iii, r. 3**

In the Resident Magistrate's(1) Court at ..... 2)

..... Grade Subordinate(1)

.....(3) No. .....(4) of 19 .....(4)

Between

.....(5)	Plaintiff / Applicant	(1)
and		
.....(6)	Defendant / Respondent	(1)

NOTES—

(1) As may be applicable.

(2) Name of place.

(3) Nature of proceedings (e.g., Action, Civil Application, etc.).

(4) Complete in pending proceedings: otherwise leave blank, for completion by the Court.

(5) Name. If under disability, give particulars of representation (e.g. A.B., an infant, by C.D., his next friends).

(6) Name. If under disability, and representation has been ordered, give particulars (e.g. A.B., an infant, by C.D., his guardian *ad litem*).

If the proceedings are not *inter partes,* omit "Between .... and ....." *and head "In the matte* of ....." etc.

Every document field in Court and every notice served in any proceedings must bear a heading and title in this form with such variations only as the Court may permit.

Every document filed in Court, except a change or discharge of legal practitioner and every notice served in any proceeding must contain the particulars referred to in Order III, rule 3 (2) and the address for service (e.g. "This affidavit is filed by A.B., legal practitioner for the plaintiff, whose address for service is ....").

Every notice to be served on another party or person must be addressed to the person who is to be served, or his legal practitioner.

FORM NO. 2 **o. iv, r. 1**

SUMMONS

(*Heading*)

To ..... ([1]) the above-named defendant, a ..... ([2]) residing (or having his place of business or employed) at .... ([3]) ([4]).

TAKE NOTICE THAT

1. UNLESS within eight days after the personal service of this summons on you, inclusive of the day of service, you return to the Resident Magistrate at ..... the affidavit attached hereto, made and sworn by yourself or your legal practitioner stating that you intend to defend this action and have a good defence thereto and (*a*) either indicating clearly the grounds of your defence; or (*b*) stating that you intend to file a defence within seven days; and

2. UNLESS you have set out the grounds of your defence in the said affidavit, or have within seven days after filing the said affidavit caused to be served on the plaintiff a defence in the prescribed form,

you will not afterwards be allowed to make any defence to the claim which the plaintiff makes on you, the particulars of which are endorsed on the back of this summons, but the plaintiff will be entitled, without giving any proof in support of such claim, to proceed to judgment and execution against you.

If you return the affidavit to the Resident Magistrate at ..... and file and cause to be served a defence as aforesaid within the times specified above, the Resident Magistrate will send you by post notice of the day upon which the case will be tried; and you must then appear either in person or by your legal practitioner before the above-named Court on the day and at the time specified in such notice and in default of such appearance judgment may be given against you.

	£ s. d.	
Amount of claim ..		If you pay the debt and costs as stated in the margin to the Court before the expiration of eight days from the date of service of this summons inclusive of the day of such service and without returning the affidavit of defence you will avoid further costs. If you return the affidavit and then fail to file a defence or fail to appear the costs payable by you will be increased.
court fees on issue of .. summons		
Plaintiff's legal practitioners costs		
	_____	
TOTAL ...	_____	

Dated this ..... day of ..... 19 .....

L. S.

.....

Resident Magistrate

NOTES:

([1]) Name.

([2]) Description.

([3]) Full address.

([4]) If there are more defendants than one, each copy of the summons to be served must show to which defendant it is addressed.

(*Endorsement on back of above*)

STATEMENT OF CLAIM
(*in numbered paragraphs*)

Dated this ..... day of ....., 19 .....

.....

Plaintiff

Legal Practitioner for the Plaintiff

AFFIDAVIT OF DEFENCE
(*Heading*)

I, ... of ..... (or ..... Legal Practitioner for) the above-named defendant make oath and say:

1 I intend to defend this action and have a good defence to the plaintiff's claim.

2. The grounds of my defence are as follows:—

or

3. A statement of defence is necessary and I intend to file such defence within seven days from the filing of this affidavit.

Sworn at .....
..... District this
day of .....
19 .....,

.....

Before me

.....

Name and designation of Officer administering oath

FORM NO. 3 **o. vii, r. 2**

MEMORANDUM OF CHANGE OF LEGAL PRACTITIONER

(*Heading*)

To the ..... above-named

The ..... above-named has appointed Mr. ..... to act on his behalf in these proceedings in place of Mr. ..... who previously so acted. Address for service is now .....

Dated this ..... day of ....., 19 .....

.....

Signature of retiring legal practitioner

.....

Signature of new legal practitioner

FORM NO. 4 **o. vii, r. 3**

MEMORANDUM OF DISCHARGE OF LEGAL PRACTITIONER

(*Heading*)

To the ..... above-named

The ..... above-named, who has heretofore employed Mr. ..... as his legal practitioner in these proceedings, has ceased to employ him and is not now represented by a legal practitioner. His address for service is ....

Dated this ..... day of ....., 19 .....,

.....

Signature of retiring legal practitioner

.....

Signature of party

FORM NO. 5 **o. x, r. 3 (3)**

DEFENCE

(*Heading*)

Defence ([1])

1. The defendant admits .....([1])
2. The defendant denies .....([2])
3. The defendant will contend .....([3])

etc .....

Dated this ..... day of ....., 19 .....

.....(4)
Defendant
Legal practitioner for the Defendant

NOTES:

(1) If there are more Defendants than one, give particulars (e.g. Defence of the first-named Defendant).

(2) The Defendant should first admit or deny specifically every material allegation of fact in the statement of claim.

(3) The Defendant should then set out any other matters whereon he relies.

(4) Signature of defendant or his legal practitioner.

FORM NO. 6 **o. xii, r. 1**

APPLICATION

(*Heading*)

To .....

TAKE NOTICE that the ..... above-named will apply to the Court at ..... o'clock in the ..... noon on the ..... day of ..... 19 ....., for an order that (1) .... on the grounds appearing in the following affidavit (2)

..... (3)

I, ... (4) make $\frac{\text{oath}}{\text{affirmation}}$ and say:

1. (5)
2.

(Jurat. See Forms 10, 11, 12 and 13 .....)

NOTES:

(1) The nature of the order applied for must be stated with precision. Different matters arising in the same proceedings may be dealt with in the same application.

(2) If necessary for special reasons, additional affidavits may be used. If this is done, reference to all such affidavits must be made here.

(3) Signature of applicant or his legal practitioner.

(4) Name of deponent.

(5) For general directions as to completion of affidavits see Order XVIII and Form 10 and notes thereto.

FORM NO. 7 **o. xii, r. 2**

APPLICATION MADE ORALLY

(*Heading*)

Application by ..... for an order that .....

made on the ..... day of ....., 19 .....

Directions as to service .....

Other parties appearing .....

Evidence taken $\frac{\text{orally}}{\text{by affidavit}}$ of .....

Order made .....

Dated this ..... day of ....., 19 ...

.....

Resident Magistrate

FORM NO. 8 **o. xvii, r. 2 (1)**

SUBPOENA TO PRODUCE DOCUMENTS ONLY

(*Heading*)

To .....

of .....

.....

You are hereby commanded to produce before, or send to the above-named Court at or before ..... o'clock in the ..... noon on the ..... day of ....., 19 ....., the following document(s) namely:—

.....

Wilful failure to comply with this order may be treated as a contempt of Court.

Dated this ..... day of ....., 19 .....

L. S.

.....

Resident Magistrate

FORM NO. 9 **o. xvii, r. 2 (2)**

SUBPOENA TO GIVE EVIDENCE, ETC.

(*Heading*)

To .....

of .....

.....

You are hereby commanded personally to attend before the above-named Court at ..... o'clock in the ..... noon on the ..... day of ....., 19 ....., to give evidence on behalf of the .....

.....

and there to remain during the trial of the above-named proceedings or until you have the leave of the Court to depart.

(1) And also to bring with you into Court the following document(s), namely:

D

.....

Wilful failure to comply with this order may be treated as a contempt of Court.

Dated the ..... day of ....., 19 .....

L. S.

.....

Resident Magistrate

NOTE.—(1) Omit, if no documents are to be brought. If documents are to be brought, the subpoena can only be addressed to one person.

FORM NO. 10 **o. xviii, r. 3**

AFFIDAVIT

(*Heading*)

I ..... (1) make oath / affirmation and say:

1. I am a ..... (2) and reside at .....,(3)

I am of the full age of 21 years or over / My age is ..... years (4)

2. (Set out the facts deposed to)

Sworn / Affirmed at ..... this ..... day of ....., 19 ....(5)

Before me,

.....

Signature, mark or thumb-print of deponent.

.....

Name and designation of officer administering oath

NOTES:

(1) Full names.

(2) Description of deponent.

(3) Address of deponent.

(4) Age must be stated, if under 21.

(5) See also Forms 11, 12 and 13.

FORM NO. 11 **o. xviii, r. 3**

JURAT—ILLITERATE, ENGLISH-SPEAKING

Sworn / Affirmed at ..... this ..... day of ....., 19 .....,

I, having first truly, distinctly and audibly read over the contents of the above affidavit (add, if exhibits are referred to in the affidavit, "and explained the nature and effect of the exhibits therein referred to") to the said deponent who seemed perfectly to understand the same.

Before me,

.....

Name and designation of Officer administering oath

FORM NO. 12 **o. xviii, r. 3**

JURAT—INTERPRETED BY COURT INTERPRETER

Sworn / Affirmed at ..... this ..... day of ....., 19 .....

through the interpretation of a sworn interpreter of the Court, who has subscribed his name hereto.

.....

Court Interpreter

Before me,

.....

Name and designation of Officer administering oath

---

o. xviii, r. 3 FORM NO. 13

JURAT—INTERPRETED BY SPECIAL INTERPRETER

Sworn / Affirmed at ..... this ..... day of ....., 19 .....

through the interpretation of ..... who had first been sworn / affirmed that he had truly, distinctly and audibly translated the contents of this affidavit (and of the several exhibits therein referred to) to the deponent and that he would truly and faithfully interpret the oath / affirmation about to be administered to the said deponent, and who has subscribed his name hereto.

.....
Special Interpreter

Before me, ...
Name and designation of Officer administering oath

FORM NO. 14 **o. xviii, r. 5**

MARK ON EXHIBIT

This is the exhibit marked "....." referred to in the affidavit of ..... sworn / affirmed before me this ..... day of ....., 19 .....

.....
Initials of Officer administering oath

FORM NO. 15 **o. xx, r. 6**

NOTICE ENDORSED ON JUDGMENT

To .....

TAKE NOTICE that, unless you comply with the requirements of the order above written within the time thereby limited, or within four days after the service of this notice on you, whichever be the later, you will be guilty of contempt of Court and will be liable to be committed to prison.

Dated this ..... day of ....., 19 .....

.....
Resident Magistrate

FORM NO. 16 **o. xxi, r. 4**

WARRANT OF EXECUTION

(*Heading*)

To: The Sheriff of Malaŵi.

Whereas in the above case in this Court the said ..... on the ..... day of ...., last by judgment of the Court recovered against the said ..... the sum of £ ..... together with the sum of £..... for costs.

This is therefore to require you that of the goods and chattels of the said ..... in this District you cause to be levied by distress and sale of the goods and chattels of the said ..... wherever the same may be found within the District of this Court the sum of £ ..... together with interest thereon at the rate of £ ..... per annum from the ..... day of ..... 19 ....., and £ ..... costs of execution and your charges about the same and pay to the said .... the sum aforesaid; and to certify to the Court what you have done by virtue hereof, for which this shall be your warrant.

Given under my hand this ..... day of ....., 19 .....

L. S.

.....
Resident Magistrate

FORM NO. 17 **o. xxii, r. 2 (1)**

JUDGMENT DEBTOR SUMMONS

(*Heading*)

To .....([1])
of .....

You are hereby summoned to appear before the Court at ..... o'clock of the ..... noon on the ..... day of .... 19 ....., to be examined respecting your ([2]) ability to satisfy the judgment recovered against you herein on the ..... day of ....., 19 .....

TAKE NOTICE that in default of such appearance a warrant for your arrest may be issued.

Dated this ..... day of ....., 19 .....

L. S.

.....
Resident Magistrate

NOTES:

([1]) A judgment debtor summons must always be addressed to one individual only. If the judgment is against a firm, any partner bound as such by the judgment may be summoned to be examined, both as regards the firm's affairs and his own. If the judgment is against corporation, one of its officers may be examined concerning the corporation's affairs.

([2]) See note ([1]) above. This part of the form may be varied in the case of firm or corporation.

FORM NO. 18 **o. xxii, r. 2 (6)**

NOTICE TO DEBTOR

(*Heading*)

TAKE NOTICE that ..... will at .....o'clock of the ..... noon on the ..... day of ....., 19 ....., apply to the Court for an order that you be committed to prison for having wilfully neglected to comply with the order of Court made herein the ..... day of ....., 19 ....., requiring you to ....

AND FURTHER TAKE NOTICE that you are hereby required to appear at the time stated to show cause why an order of commitment should not be made, and that in default of such appearance a warrant for your arrest may be issued.

Dated this ..... day of ....., 19 .....

L. S. .....

Resident Magistrate

FORM NO. 19 **o. xxiii, r. 1**

ORDER FOR ATTACHMENT BEFORE JUDGMENT

(*Heading*)

Upon the application of ..... and upon reading the affidavit of ..... filed herein the ..... day of ....., 19 ....., (or upon hearing the evidence of ....).

It is ordered that the Sheriff do forthwith seize moveable property which shall be identified by or on behalf of ..... as belonging to ..... to the value of £ ..... as a pledge or surety to answer the just claim of ..... amounting to £ ..... and costs estimated at £ ..... until the trial of this action and satisfaction of any judgment that may be given against ..... herein.

Dated this ..... day of ....., 19 .....

L. S. .....

Resident Magistrate

FORM NO. 20 **o. xxiii, r. 3**

WARRANT OF ARREST BEFORE JUDGMENT

(*Heading*)

To all police officers of the ..... District / Malaŵi

WHEREAS upon the application of ..... and upon reading the affidavit of ..... filed herein the ..... day of ....., 19 ....., (or upon hearing the evidence of .....) it appears to the Court that ([1]) .....
.....
.....

You are hereby ordered to arrest the said ..... and to bring him forthwith before the Court and if the Court is not sitting to deliver him to the officer-in-charge of the Civil Prison there to be kept until the next sitting of the Court in order that he may show cause why he should not furnish security in the sum of £ ..... for his personal appearance before the Court until the trial of this action and satisfaction of any judgment that may be given against him herein:

Provided always that the defendant shall not be arrested if he pays to you the said sum of £ ..... to be deposited by you in Court to abide the trial of this action or the further order of the Court.

Dated the ..... day of ....., 19 .....

L. S.

.....
Resident Magistrate

NOTES:—([1]) State particulars of the person to be arrested and of the acts or omissions alleged against him by reason of which he is found liable to arrest before judgment.

FORM NO. 21 **o. xxiii, r. 3**

ORDER FOR COMMITMENT BEFORE JUDGMENT

(*Heading*)

WHEREAS upon the application of ..... it was ordered that ..... do show cause why he should not furnish security in the sum of £ ..... and the said ..... has failed to show such cause or to furnish such security.

It is ordered that the said ..... be detained in the Civil Prison for the term of ..... weeks from the date of his arrest, namely, the ..... day of ....., 19 ....., unless he sooner gives security to the satisfaction of the Court in the sum of £ ..... for the purposes hereinbefore set out.

Dated the ..... day of ....., 19 .....

L. S.

.....
Resident Magistrate

FORM NO. 21A

WARRANT OF ARREST AFTER JUDGMENT

In the Magistrate's Court at .....

Civil Cause No. ..... of 19 .....

Between

..... Plaintiff

versus

..... Defendant

To : All Police Officers

WHEREAS .....
it appears to the Court that .....
a judgment debtor of .....
has failed to answer a summons to appear in Court.

You are hereby ordered to arrest the said judgment debtor and to bring him forthwith before this Court and if the Court is not sitting to deliver him to the Officer-in-Charge of the Civil Prison there to be kept until the next sitting of the Court:

Provided always that the judgment debtor shall not be arrested if he pays to you the sum of £ ..... to be deposited in Court.

Dated the ..... day of ....., 19 .....

.....

(Seal) *Magistrate*

FORM NO. 22 **o. xxiv, r. 3**

ORDER OF RELEASE

(*Heading*)

WHEREAS by virtue of an order of this Court made herein the ..... day of ....., 19 ....., ... is detained in the Civil Prison at .....

It is ordered that the said ..... be forthwith discharged from custody.

Dated the ..... day of ....., 19 .....

L. S.

.....
Resident Magistrate

FORM NO. 23 **o. xxviii, r. 5**

WARRANT FOR EXECUTION AGAINST EXECUTOR

(*Heading*)

To: The Sheriff of Malaŵi.

WHEREAS in the above case in this Court the said A.B. on the ..... day of ..... last by judgment of the Court recovered against the said C.D. as Executor of the Will (or Administrator of the Estate) of E.F., deceased, the sum of £..... together with the sum of £ ..... for costs, AND WHEREAS by the said judgment it was provided that as regards the sum of £ ..... the said judgment should, if not satisfied within the assets of the deceased, be satisfied by the Executor personally, Now this is to require you to execute the said judgment—

(1) by levying the amounts due thereunder by distress and sale of the property of E.F., deceased, in the hands of C.D. as Executor of the Will (or Administrator of the Estate) of the said deceased to be administered;

(2) and if the said C.D. has not so much in his hands to be administered then as regards the said sum of £..... (being so much of the amount of the judgment as was ordered to be levied upon the property of the said C.D.) by levying distress and sale of the property of the said C.D. wherever the same may be found within the District of this Court.

TOGETHER with interest thereon at the rate of £ ..... per annum from the ..... day of ....., 19 ....., and £ ..... costs of execution and your charges about the same and pay to the said A.B. the sum aforesaid; and to certify to the Court what you have done by virtue hereof, for which this shall be your warrant.

GIVEN under my Hand this ..... day of ....., 19 .....

L. S.

.....
Resident Magistrate

FORM NO. 24 **o. xxxii, r. 1**

APPLICATION FOR LEAVE TO SUE AS A POOR PERSON

(*Heading*)

Date of application: this ..... day of ....., 19 .....,

I, A..B. make $\frac{\text{oath}}{\text{affirmation}}$ and say

1. I reside at ..... and am a ..... (*state occupation*).
2. I have a just claim against C.D. of ..... for (*here state concisely the claim and cause of action and all the material facts of the case*).
3. I desire to bring an action against the said C.D. but am unable to pay the Court fees therefor because (*state the reason why applicant is unable to pay the Court fees*).
4. I apply for leave to sue the said C.D., as a poor person.

$\frac{\text{Sworn}}{\text{Affirmed}}$ at .....

this ..... day of .....,

19 .....

Signed A.B.

.....

Before me,

.....

Resident Magistrate

FORM NO. 25 **o. xxxii, r. 1**

APPLICATION FOR LEAVE TO DEFEND AS A POOR PERSON

(*Heading*)

Date of application: this ..... day of ....., 19 .....,

I, C.D. make $\frac{\text{oath}}{\text{affirmation}}$ and say—

1. I am a defendant in this action and reside at ..... and am a ..... (*state occupation*).
2. (*a*) I have a good defence to this action on the following grounds (*state concisely the grounds of defence*).

(*b*) I have a just counterclaim against the plaintiff (*here state concisely the counterclaim and all material facts relating thereto*).

3. I am unable to pay the Court fees for my defence or counterclaim because (*state the reason why applicant is unable to pay the Court fees*).

4. I apply for leave to defend (and bring a counterclaim in) this action as a poor person.

Sworn / Affirmed at ..... this ..... day of ....., 19 .....

Signed C.D.
.....

Before me,

.....
Resident Magistrate

FORM NO. 26 **o. xxxiii, r. 1**

NOTICE OF APPEAL

(*Heading*)

TAKE NOTICE that ..... ([1]) being dissatisfied with the judgment of the ..... Court at ..... given on the ..... day of ....., 19 ....., appeals to the High Court against the whole of the said judgment / such part of the said judgment as decides that ([2]) (*set out details*).

Dated this ..... day of ....., 19 .....

.....
Appellant
Legal Practitioner for the Appellant

To: The ..... Court at ..... and to .....
..... ([3])

NOTES:

([1]) Insert names of appellant.

([2]) As may be applicable.

([3]) Insert name and address of respondent or respondents.

---

o. xxxiii, r. 2 FORM NO. 27

NOTICE THAT RECORD IS READY

(*Heading*)

TAKE NOTICE that the record in the above proceedings is ready, and that the cost of preparing such record is £ s. d. ([1])

The number of copies required of the Memorandum of Appeal is ..... ([2])

.....
Resident Magistrate

To ..... ([3])

.....

Notes:

([1]) Insert the exact amount

([2]) Insert number required according to number of parties.

([3]) Insert name and address of appellant.

---

o. x, r. 4 FORM NO. 28

JUDGMENT IN DEFAULT OF AFFIDAVIT OF DEFENCE

(*Heading*)

The defendant not having filed an affidavit of intention to defend herein (*or* not having filed a defence herein).

It is this day adjudged that the plaintiff recover against the said defendant £ ..... and £ ..... costs.

Dated this ..... day of ....., 19 .....

L. S.

.....
Resident Magistrate

FORM NO. 29

WARRANT OF ARREST AFTER JUDGMENT

(*Heading*)

To all Police Officers of Malaŵi.

WHEREAS upon the application of ..... it appears to the Court that ..... a judgment debtor of ..... has failed to answer a summons to appear in Court.

You are hereby ordered to arrest the said Judgment Debtor and to bring him forthwith before the Court and if the Court is not sitting to deliver him to the Officer-in-Charge of the Civil Prison there to be kept until the next sitting of the Court:

Provided always that the Judgment Debtor shall not be arrested if he pays to you the sum of £ ..... to be deposited by you in Court to abide the further order of the Court.

Dated the ..... day of ....., 19 .....

.....
Resident Magistrate

(Seal)

The sum of ..... shillings has been deposited in Court to cover the cost of arresting the judgment debtor. You are requested to endorse on the back of this Warrant the amount of time and money expended in bringing the debtor before this Court.

FORM NO. 30 G.N. 84/1968

REPUBLIC OF MALAŴI

In the Resident Magistrate's Court at .....

In the ..... Grade

Cause No. ..... of 19 .....

Between

..... Plaintiff

and

..... Defendant

ORDER FOR COMMITMENT AFTER JUDGMENT

To the Sheriff and Officers in Charge of Prisons in Malaŵi.

WHEREAS THIS COURT on the ..... day of ..... ordered that the above-named defendant be committed to prison for ..... days for wilfully failing to comply with a Court Order that he pay the sum of K .....

NOW THESE PRESENTS command you the Sheriff of Malaŵi to arrest the defendant and to deliver him to the Officer-in-Charge of the nearest Civil Prison;

AND THESE PRESENTS command the Officer-in-Charge of the Prison to keep the defendant safely in prison for ..... days or until ordered by this Court to release him:

Provided that the defendant shall not be arrested or if arrested or committed to Prison shall be released on payment of K ..... to be forwarded to this court at the expense of the Debtor forthwith.

Dated at ..... this ..... day of ....., 20.....

L. S.

.....
Resident Magistrate

FORM NO. 31

ORDER MADE ON THE HEARING OF A JUDGMENT DEBTOR SUMMONS

(*Heading*)

WHEREAS on the ..... day of ..... 20..... by judgment of the Court the Plaintiff recovered against the Defendant the sum of K ..... together with the sum of K ..... for costs and subsequent costs in pursuance thereof have been incurred amounting to K ..... ([1]) and subsequent payments made by the Defendant amounting to K .....

AND WHEREAS upon the hearing this day of a judgment debtor summons it appears to the court that the Defendant has*/does not have the means to satisfy the said judgment and costs forthwith.

It is therefore ordered that the Defendant pay the said sum of K ..... forth with*/within ..... days after the date hereof*/by instalments of K ..... on the ..... day of each calendar month after the date hereof*/ by the following instalments: the first of such instalments to be paid on the ..... day of ....., 20.....

([2]) Dated this ..... day of ....., 20..... at .....

L. S.

.....
Resident Magistrate

NOTES:

([1]) Including the costs on issue and hearing of this summons.

(*) Delete those alternatives which do not apply.

([2]) The date should be that on which the order is made in Court.

SECOND SCHEDULE **o. xxx, r. 2** G.N. 5/1981
44/1982
11/1990
43/1996
31/2011

COSTS

PART I

LEGAL PRACTITIONERS' COSTS

Plaintiff's costs or Defendant's costs	10 per centum of the sum sued for or value of the subject matter of the judgment.

(1) Plaintiff's costs in the above table include instructions, issue of process and, save as otherwise herein provided, every other proceeding down to the issue of execution.

(2) Defendant's costs include instructions, defence and, save as otherwise herein provided, every other proceeding down to the issue of execution.

(3) Where a defendant has stated in his Affidavit of Defence that he intends to file a defence and default is made in filing such defence within the time limited by Order X rule 3 (3), or where, having filed a defence, the defendant fails to appear at the hearing or appears at the hearing and agrees to judgment being given against him, the plaintiff shall be entitled to costs on the above scale increased by 50 per centum.

(4) Plaintiff's and Defendant's costs may be allowed at whatever stage the legal practitioner is retained so long as he is retained before the trial, or if there is no trial, before judgment is entered. Where judgment is not obtained by default and the hearing lasts more than one hour, an additional fee amounting to 20 per centum of the amount recovered in the case of plaintiff's costs and of the amount claimed in the case of the defendant's costs may be added to the above scale.

(5) Separate costs may be allowed in respect of claim or counterclaim.

(6) A refresher fee not exceeding three-quarters of the amount allowed by the above scale may be allowed when the hearing has occupied more than three hours without being concluded; such refresher fee may be allowed in respect of each period of three hours or part thereof subsequent, to the first three hours.

(6A) In addition to the costs in the above table, the legal practitioner's fee for attending the hearing of any matter before a Magistrate in chambers, either before or during the trial, shall be allowed in an amount not exceeding K2,000 per day.

(7) In actions between landlord and tenant the above costs may, at the discretion of the Court, be assessed on twelve months' rent of the premises added to the amount of any money claimed for rent, mesne profits or damages.

(8) In addition to the costs in the above table, costs for issuing execution shall be allowed as follows—

	K *t*
Where the amount for which the warrant issues does not exceed K1,000	Nil
Where the amount for which the warrant issues exceeds K1,000	1 per centum of the amount of the warrant.

(9) In addition to the costs in the above table and to the costs allowed in paragraph (8) above, costs for attending at the hearing of Judgment Debtor Summons or a Notice to Debtor issued under Order XXII shall be allowed as follows—

	K *t*
Where the amount due from the Judgment Debtor exceeds K1,000,000	4,000 00
In all other cases	3,000 00

In addition, travelling expenses may be allowed at the rate of kilometrage allowance prescribed from time to time by the Government as being payable to civil servants for use of their personal vehicles for travel on duty.

(10) The above costs may be allowed to a legal practitioner who appears in person as plaintiff or defendant, or to a firm of legal practitioners who appear as plaintiffs or defendants by a member of their firm.

(11) In *ex parte* applications under section 20 of the Hire Purchase Act the costs shall be as in any other civil cause, except that where the amount claimed exceeds K 250,000 the cost shall be 4 per centum of the amount or K 20,000 whichever shall be the greater.

(12) In cases where service of process is effected by a legal practitioner or by any person in the employment of such legal practitioner or by an agent of such legal practitioner the fees laid down in Item 22 of the Third Schedule shall be payable to the legal practitioner as costs in addition to the costs in the above table.

Third Schedule

PART II

Disbursements, Etc.

In addition to the above costs the Court may award to the successful party—

(*a*) the sum actually expended by him as Court fees;

(*b*) any other sum expressly authorized by these Orders and Rules.

PART III

Allowances to Witnesses

G.N. 5/1981
31/2011

(*a*)	Professional persons, owners, directors and managers of a business and persons in receipt of a salary or income exceeding K4,800,000 per annum	In the discretion of the Court, not exceeding K10,000 per day
(*b*)	Persons whose salary or income exceeds K3,600,000 but does not exceed K4,800,000 per annum	In the discretion of the Court, not exceeding K8,000 per day
(*c*)	Other persons.	In the discretion of the Court, not exceeding K4,000 per day

(*d*) The above allowances are additional to any allowance payable under Order XXX.

In granting an allowance to a witness regard should be had to—

(i) his salary or actual or estimated income or circumstances;

(ii) the time during which he was absent from his ordinary occupation while obliged to attend Court to give evidence.

THIRD SCHEDULE

Fees

	Item	*K*	*t*
1.	Statement of claim or counterclaim . .	500	00
2.	Summons to a defendant (for each defendant more than one)	1,000	00
	Statement of claim and summons (*i.e. 1 and 2 on First Schedule should be taken as one*)—		
	(*a*) where quantifiable minimum	500	00
	(*b*) where amount exceeds K50,000 . .	1% of the claim	
	(*c*) any non-quantifiable claim	500	00
3.	Summons to a witness (for each witness named)	500	00
4.	Notice of any kind (for each person to be notified)	500	00
5.	Taking an affidavit or declaration . . .	500	00
6.	Search warrant	1,500	00
7.	Marking an exhibit to an affidavit or declaration	500	00
8.	Filing an affidavit or declaration	500	00
9.	Any application not otherwise provided for	1,500	00
10.	Commission for any purpose	700	00
11.	Memorandum of change or discharge of legal practitioner	700	00
12.	Certified translation by an interpreter . .	500 20	00 plus 00 per 100 words
13.	Judgment for order.	700	00

	Item	*K*	*t*
14.	Filing or issuing any document not herein provided for, otherwise than a statement of defence	500	00
15.	Certified copy of any document when prepared by court	1,500	00
16.	Photostating documents	500	00
17.	Certifying copy of document	500	00
18.	Application to set aside judgment . .	500	00
19.	Application for Judgment Debtor Summons, attachment before judgment, arrest or commitment	1,000	00
20.	Warrant of Commitment or Arrest of Judgment Debtor in default of appearance	700	00
21.	Bonds, for every person executing the same (in addition to any stamp fee payable)	500	00
22	Notice of Appeal (from the Courts indicated)	1,000	00
23.	Service of any process or proceeding required to be served by the Court . .	700	00
24.	Registration of any judgment under the Service of Process and Execution of Judgments Act, Cap. 4:04	700	00
25.	For attendance of an interpreter (other than Court interpreter) at any Court if required by a party in a suit or ordered by the court	1,000	00 per day
26.	For any search of case record (per search) . .	1,000	00 per file
27.	Mediators fees per session	10,000	00

G.N. 164/1963
42/1965
86/1969
263/1969

TRADITIONAL COURTS (APPEALS TO HIGH COURT) RULES

under s. 67

Citation and application
G.N. 86/1969

1. These Rules may be cited as the Traditional Courts (Appeals to High Court) Rules and shall apply to all appeals from Traditional Appeal Courts, Urban Traditional Courts and Grade A.1. Traditional Courts to the High Court.

PART I

Appeals in Criminal Cases

Petition of appeal
G.N. 86/1969

2.—(1) Every appeal shall be made in the form of a petition in writing presented by the appellant or his legal practitioner and every such petition shall (unless the High Court otherwise directs) be accompanied by a copy of the judgment or order appealed against.

(2) Where the appellant is represented by a legal practitioner the petition shall contain particulars of the matter of law or of fact in regard to which the Traditional Appeal Court or Traditional Court, as the case may be, is alleged to have erred.

Appellant in prison

3. If the appellant is in prison he may present his petition of appeal and the copies accompanying the same to the officer in charge of the prison who shall thereupon forward such petition and copy of the judgment or order to the Registrar of the High Court.

Summary dismissal of appeal

4.—(1) On receiving the petition and copy under rule 2, the High Court shall peruse the same, and if it considers that there is no sufficient ground for interfering, it may dismiss the appeal summarily:

Provided that—

(*a*) no appeal shall be dismissed unless the appellant (if not in custody) or his legal practitioner has had a reasonable opportunity of being heard in support of the same;

(*b*) no appeal, where the appellant is in custody, shall be dismissed unless the appellant's legal practitioner (if the Court has been notified that he has a legal practitioner) has had such opportunity.

(2) Before dismissing an appeal under this section, the Court may call for the record of the case but shall not be bound to do so.

Preparation of record G.N. 86/1969

5. If the High Court does not dismiss the appeal summarily it shall call upon the Traditional Appeal Court or Traditional Court as the case may be, to cause the record to be prepared and to forward three copies thereof to the Registrar of the High Court.

Contents of record G.N. 86/1969

6.—(1) In the case of an appeal from a Traditional Appeal Court, the record of appeal shall contain legible typed copies of the following items arranged in the following order—

(*a*) the record of the proceedings in the Traditional Court of first instance as submitted to the Traditional Appeal Court;

(*b*) the notes taken at the hearing of the appeal in the Traditional Appeal Court;

(*c*) the judgment of the Traditional Appeal Court.

(2) In the case of an appeal from an Urban Traditional Court or Grade A.1. Traditional Court, the record of appeal shall contain—

(*a*) a copy of the relevant page of the criminal complaints book;

(*b*) a copy of the record of the proceedings in such Traditional Court (which record shall include the judgment given and particulars of any sentence passed or order given) duly certified in writing by the chairman of the Traditional Court in question to be accurate and complete in all respects;

(*c*) a copy of any other document necessary for the decision of the appeal.

Notice of time and place of hearing

7. The Registrar of the High Court shall cause notice to be given to the appellant or his legal practitioner and to the respondent, of the time and place at which the appeal will be heard and shall furnish the respondent with a copy of the proceedings and the petition of appeal.

Order of the High Court G.N. 86/1969

8.—(1) When a case is decided on appeal by the High Court, it shall certify its judgment or order to the Traditional Appeal Court, or the Traditional Court, from which the appeal was brought.

(2) The Traditional Appeal Court, or the Traditional Court, to which the High Court certifies its judgment or order shall thereupon make such orders as are conformable to the judgment or order of the High Court and, if necessary, the record shall be amended in accordance therewith.

PART II

Appeals in Civil Cases

Notice of appeal

9.—(1) Appeals to the High Court in civil matters shall be brought by giving notice of appeal in Form 1 in the First Schedule.

(2) The appellant may appeal from the whole or any part of the judgment, and the notice of appeal shall state whether the whole or part only, and what part, of the judgment is complained of.

(3) The notice of appeal shall be entitled and filed in the court in which the judgment appealed from was pronounced.

(4) The appellant shall pay the fees prescribed in the Second Schedule for such notice of appeal.

(5) The notice of appeal shall be served by the appellant on all parties directly affected by the appeal or their legal practitioners respectively:

Provided that upon payment of the prescribed fee by the appellant, the court in which the judgment appealed from was pronounced shall, if the appellant so requests, serve or cause to be served the notice of appeal on such parties or their legal practitioners.

Cost of record

10. The appellant shall, within such time as the Traditional Appeal Court directs, deposit a sum fixed to cover the estimated expense of making up and forwarding to the High Court the record of appeal.

Security for costs

11. The appellant shall, within such time as the Traditional Appeal Court directs, deposit such sum as shall be determined by such court or give security therefor by bond with one or more sureties for the due prosecution of the appeal and for the payment of any costs which may be ordered to be paid by the appellant.

Preparation of record

12.—(1) When the appellant has complied with the foregoing rules the Traditional Appeal Court shall prepare the requisite number of copies of the record of appeal.

(2) The record of appeal shall contain legible typed copies of the following items arranged in this order—

(*a*) the record of proceedings in the Traditional Court as submitted to the Traditional Appeal Court;

(*b*) the notes taken at the hearing of the appeal in the Traditional Appeal Court;

(*c*) the judgment of the Traditional Appeal Court.

(3) As soon as the copies of the record of appeal are ready the Traditional Appeal Court shall serve the appellant with a notice in Form 2 in the First Schedule.

(4) Upon request by the appellant the court shall supply the appellant with one copy of the record of appeal.

(5) Within fourteen days from the service upon him of the notice referred to in subrule (3), the appellant shall prepare a memorandum in writing setting forth the grounds of appeal and shall forward to the Traditional Appeal Court the number of copies of the memorandum called for in the notice.

Record of appeal

13. On receipt of the copies of the memorandum of appeal, the Traditional Appeal Court shall forward to the High Court the record and memorandum of appeal.

Submission by party not appealing

14. At any time before the hearing of the appeal any party to the appeal may file a declaration in writing that he does not wish to be present in person or by a legal representative on the hearing of the appeal, together with two copies of such arguments as he desires to submit to the High Court, and serve a copy of such declaration and arguments upon every other party and thereupon the appeal shall be dealt with as if the party had appeared.

Non-appearance of appellant

15.—(1) If the appellant fails to appear when his appeal is called on for hearing and has not taken action under rule 14, the appeal may be struck out or dismissed with or without costs.

(2) When an appeal has been struck out owing to the non-appearance of the appellant, the High Court may, if it thinks fit, on such terms as to costs or otherwise as it may deem just, direct the appeal to be re-entered for hearing.

Non-appearance of respondent

16. If the respondent fails to appear when the appeal is called on for hearing and has not taken action under rule 14, the High Court may proceed to hear the appeal *ex parte*.

Application to set aside *ex parte* judgment

17.—(1) Where an appeal has been heard *ex parte* under rule 16 and any judgment has been given therein adverse to the respondent, he may apply to the High Court to set aside such judgment and to re-hear the appeal.

(2) No application to set aside and re-hear under this rule shall be made after the expiration of twenty-one days from the date of the judgment sought to be set aside:

Provided that a respondent who has failed within the period of twenty-one days to make application under this rule may nevertheless, at any time within a further period of three months thereafter, apply to the High Court on notice to the appellant to set aside such judgment, and the High Court, if satisfied that good and sufficient case has been shown for the application being made out of time, may grant the application and make such order in relation thereto or as to costs as it may deem fit in the circumstances.

(3) Any such application shall be by motion accompanied by an affidavit setting forth the reasons and grounds for the application and the High Court may thereupon in its discretion set aside the judgment and order that the appeal be re-heard at such time and upon such conditions as to costs or otherwise as it may think fit.

Matters not expressly provided for

18. Where no other provision is made by these Rules, the procedure and practice for the time being in force in the Court of Appeal in England shall apply insofar as it is not inconsistent with these Rules, and the forms in use therein may be used with such adaptations as are necessary.

PART III

Miscellaneous

Waiver of non-compliance

19. Non-compliance with these Rules shall not prevent the prosecution of an appeal if the High Court considers that such non-compliance was not wilful and that it is in the interests of justice that non-compliance be waived.

FIRST SCHEDULE

Form No. 1

r. 9

NOTICE OF APPEAL

(Appellant) ..... v. (Respondent) .....

Take Notice that ..... ([1]), being dissatisfied with the judgment of the ..... Court at ..... given on the ..... day of ....., 19 ....., appeals to the High Court against .....([2]) such part of the said judgment as decides that (set out details)

Dated this ..... day of ....., 19 .....

.....

Appellant

Legal Practitioner for the Appellant

To: The ..... Court at ..... and to .....([3])

Notes:

([1]) Insert name of appellant.

([2]) As may be applicable.

([3]) Insert name and address of respondent or respondents.

FORM NO. 2

NOTICE THAT RECORD IS READY r. 12

(Appellant) ..... v. (Respondent) .....

TAKE NOTICE that the record in the above proceedings is ready, and that the cost of preparing such record is K ..... ([1])

The number of copies required of the Memorandum of Appeal is .... ([2]).

.....

Clerk of the Court

To: ..... ([3])

.....

NOTES:

([1]) Insert the exact amount.

([2]) Insert number required according to number of parties.

([3]) Insert name and address of appellant.

SECOND SCHEDULE

FEES

1. Notice of appeal	For these three items a single compendious fee of K3 will be charged
2. Service of any process or proceeding	
3. Certified copy of the record of the proceedings of the Traditional Appeal Court	
4. For each additional copy of the record of the proceedings of the Traditional Appeal Court	K2

COURTS (HIGH COURT) (JURISDICTION, POWERS AND DUTIES OF DISTRICT REGISTRARS) RULES

G.N. 87/1985

under s. 67 (1)

Citation

1. These Rules may be cited as the Courts (High Court) (Jurisdiction, Powers and Duties of District Registrars) Rules.

Powers of a District Registrar

2. With respect to any cause or matter proceeding in a District Registry, the District Registrar shall, subject to any rules of court, exercise the same jurisdiction, powers and duties as are conferred on the Registrar under section 8 of the Act.

G.N. 68/1998

SUBORDINATE COURTS (SMALL CLAIMS PROCEDURE) RULES

under s. 67

PART I

Preliminary

Citation

1. These Rules may be cited as the Subordinate Courts (Small Claims Procedure) Rules.

PART II

Interpretation

Interpretation

2. In these Rules, unless the context otherwise requires—

"Court" means a Subordinate Court established under section 33 of the Courts Act;

"Judgment" includes an order;

"Judgment creditor" means a person entitled to the benefit of any judgment;

"Judgment debtor" means a person bound by any judgment;

"Small Claims" means any civil case in which the subject matter of the claim does not exceed K5,000.

Reference in these Rules to the words "he", "him", and "his" shall be construed to include the words "she", "her" and "hers", as the case may be.

PART III

Commencement of Proceedings

Application

3. These Rules shall apply to small claims.

Commencement of proceedings

4.—(1) Every action relating to a small claim shall be commenced by Summons which shall be in Form 1.

(2) The Court shall examine the Summons and, if it appears to be in proper form, and if the plaintiff shall have paid the appropriate fees, (including, if applicable, fees for service thereof), shall assign a serial number thereto, date, seal and sign it.

(3) The fees payable on commencement of proceedings shall be as set out in the First Schedule.

PART IV

Service

Service

5.—(1) Except as provided in subrules (3), (4) and (5), service of every Summons shall be personal and shall be effected by

producing it for inspection and delivering a copy thereof to the person to be served and requiring him to sign the original copy.

(2) Service shall be effected by an officer of the Court or by a legal practitioner representing the party on whose behalf such service is to be effected.

(3) If the person to be served cannot be found after careful search, the Summons may be served by delivering a copy thereof to any adult person at his place of residence or to his employer.

(4) If the person to be served refuses to accept the Summons, a copy thereof may be left near him and his attention directed to it.

(5) Where service cannot be effected in the manner provided by subrule (3) or (4) the serving officer shall affix the duplicate of the Summons to some conspicuous part of the house in which the person to be served ordinarily resides and thereupon the Summons shall be deemed to have been duly served.

(6) Service of every Summons shall be effected at least seven clear days of the date of hearing, unless the Court otherwise orders.

(7) Service of every Summons may be effected at any place, on any week-day and at any time of the day. Service after 4.00 p.m. shall ordinarily be deemed to have been effected on the following work day.

(8) The person serving the Summons shall write on the back of the original copy retained by him the place, date and time when he served it and the name of the person upon whom it was served.

(9) A Summons shall not be served more than twelve months after being issued, unless by leave of the Court, which leave shall not be given unless reasonable efforts have been made to serve the Summons, or for other good reason.

PART V

Trial or Hearing

Trial or hearing

6.—(1) All proceedings shall be heard and determined in open Court unless the Court otherwise orders.

(2) A party to the proceedings may appear in person or by a legal practitioner.

(3) If, when the action is called neither party appears, the action may be dismissed.

(4) If the defendant does not appear, the Court may, on proof of due service, hear and determine the action in his absence.

(5) If the plaintiff does not appear, the claim may be dismissed and the Court may hear and determine any counterclaim.

(6) The Court may in its discretion in any case order an adjournment.

(7) Any judgment or order given or made in the absence of a party may, on his application and if good reason for such absence is shown, be set aside and the proceedings may be reheard upon such terms as to costs as the Court shall think fit and notice of such application shall be given to the opposite party.

(8) Any set-off or counterclaim shall be determined by the Court in the course of hearing but without prejudice to the power of the Court to make an order for a separate trial, or for the transfer of the case to be dealt with in accordance with the Subordinate Courts Rules.

Cap. 3:02 sub. leg. p. 31

(9) A plaintiff or a defendant may relinquish any portion of his claim or counterclaim respectively in order to bring the claim or counterclaim, as the case may be, within the jurisdiction of small claims under these Rules.

(10) The presiding Magistrate shall, at the commencement of the proceedings, make an appeal to the parties to settle their dispute by conciliation. Should this fail, the Court shall proceed to hear the parties and their witnesses, if any.

(11) The Court shall conduct the trial in such manner as to do substantial justice between the parties.

Witnesses

7.—(1) Any party who wishes to compel the attendance of any witness to give evidence at the trial, shall, in sufficient time for service to be effected, apply for a Summons to a Witness to be served on the witness. A Summons to Witness shall be in Form 2.

(2) Any person summoned to attend as a witness who, without lawful excuse, fails to attend as required by the Summons, or who, having attended, departs without having obtained the permission of the Court, or fails to attend after adjournment of the Court after being ordered to attend, shall be liable by order of the Court to a fine not exceeding K100.

(3) A fine imposed may be levied by attachment and sale of any movable property belonging to such witness.

(4) In default of recovery of the fine by attachment and sale the witness may, by order of the Court, be imprisoned as a civil prisoner for a term not exceeding fifteen days unless such fine is paid before the end of the said term.

(5) The High Court may, for good cause shown, remit or reduce any fine imposed under this rule.

Swearing of witnesses

8. The parties and witnesses shall be sworn or affirmed before giving evidence.

Evidence and judgment

9. The Court shall take note in English of the evidence given during the trial.

Transfer of proceedings

10.—(1) Any party to an action under these Rules may apply to the presiding Magistrate to transfer the proceedings to another Magistrate; and the presiding Magistrate may, in his discretion, order the transfer.

(2) Where a presiding Magistrate has commenced a trial and is unable for any reason to conclude it, another Magistrate may, with the consent of all parties, continue the trial and give judgment and in the absence of such consent, the case shall be heard afresh.

PART VI

Adjournment

Adjournment

11.—(1) The Court may, from time to time, adjourn the hearing of any case for a suitable period—

(*a*) if the plaintiff, the defendant or an essential witness is absent, or is otherwise unable or unfit to take part in the proceedings;

(*b*) if the hearing continues for more than one day;

(*c*) if the case cannot be started due to lack of time; and

(*d*) for any other sufficient reason to be recorded on the file.

(2) Before adjourning the case, the Court shall inform the parties and any witnesses who are present of the date to which the case is to be adjourned.

PART VII

Judgments or Orders

Judgments or Orders

12.—(1) Every judgment or order shall be written, dated and signed by the presiding Magistrate and shall take effect as of the date on which it was given or made.

Release of property

(2) If any judgment or order is delivered in the absence of either the plaintiff or the defendant, a copy of it shall be sent to the absent party.

(3) Judgment by admission or consent of the parties may be recorded by the Court at any time.

(4) Subject to Rule 13, the presiding Magistrate, following a judgment or order, may examine the judgment debtor as to his ability to pay the judgment debt:

Provided that if any instalment is more than one calendar month in arrears, the order for payment of the judgment debt by instalments shall be deemed to be vacated:

Provided further that any person who wilfully fails or neglects to comply with any order for payment under this Rule may be committed to prison for any period not exceeding seven days.

An application to commit a judgment debtor to prison shall be in Form 3.

(5) Any person imprisoned under rule 12 (6) shall be released forthwith upon payment of all sums due and payable at the date of payment under the Order for non-compliance in respect of which he was imprisoned.

(6) Any person so imprisoned may at any time apply to be released and the Court may order his release on such terms as to re-arrest, security or otherwise or unconditionally, as may be just.

(7) Any order made under this Rule may be suspended, discharged, or varied by the Court.

(8) Any imprisonment under this Rule shall not extinguish the judgment debt.

PART VIII
Enforcement

Enforcement

13.—(1) Every person directed by any judgment to do any act shall comply with it without demand.

(2) Every Court Messenger shall have power, in the execution of any lawful warrant or order issued or made by a Court in exercise of jurisdiction conferred by these Rules, to arrest the person named in such warrant or order. Such warrant of arrest shall be in Form 4.

PART IX
Costs and Courts Fees

Costs and courts fees

14.—(1) Costs of proceedings under these Rules shall, unless otherwise ordered, be added to the judgment debt.

(2) The Court before which any proceedings specified in these Rules is instituted may, on the grounds of poverty or for any other good cause, remit in whole or in part any fees specified in respect of such proceedings as the Court may think fit.

PART X
Appeals

Appeals

15.—(1) An appeal from a judgment given by Court shall lie to the High Court and an appeal shall be brought by giving notice which shall be in Form 5.

(2) The notice of appeal shall be filed in the trial Court within fourteen days from the day on which the judgment appealed from was pronounced.

(3) The appellant shall pay the fees prescribed in the First Schedule.

(4) When the appeal has been filed, the trial court shall cause the case record to be forwarded to the High Court.

FORM 1

MALAŴI

In the ..... Magistrate's Court (Small Claims) at .....

Civil Cause No. ....., 20.....

BETWEEN

..... PLAINTIFF

and

..... DEFENDANT

SUMMONS

(RULE 4 OF THE SUBORDINATE COURTS (SMALL CLAIMS PROCEDURE) RULES)

To:

.....
..... (Home Address)
..... (Business Address)

You are hereby ordered to appear before the above-mentioned Court on ..... the ..... of ....., 20..... at ..... o'clock in the ..... noon to answer the claim of the above-named plaintiff against you that .....
.....

If you fail to come to Court, judgment may be given against you in your absence.

Dated this ..... day of ....., 20.....

(Seal) .....
Magistrate

See overleaf for Return of Service.

Return of Service
Place of service .....
Date of service .....
Time of service .....
Name of person served .....
Signature of person served .....
Name of process server .....
Signature of process server .....

FORM 2

MALAŴI

In the ..... Magistrate's Court (Small Claims) at .....

Civil Case No. ..... of 20.....

(1) ..... PLAINTIFF

versus

(2) ..... DEFENDANT

SUMMONS TO WITNESS

(RULE 7 (1) OF THE SUBORDINATE COURTS (SMALL CLAIMS PROCEDURE) RULES)

To: (3) .....

of .....

You are ordered to come to the court house at (4) ..... on (5) ..... day the ..... day of ....., 20..... at ..... o'clock in the ..... noon as witness on behalf of (6) .....

If you fail to come you will be liable to be punished.

Dated this ..... day of ....., 20.....

(Seal) .....

Magistrate

(1) Insert name of plaintiff.

(2) Insert name of defendant.

(3) Insert name and address of witness.

(4) Insert place where witness is to come.

(5) Insert day, date and time of hearing.

(6) Insert name of person requiring attendance of this witness.

FORM 3

MALAŴI

In the ..... Magistrate's Court (Small Claims) at .....

Civil Case No. ..... of 20.....

(1) ..... PLAINTIFF

versus

(2) ..... DEFENDANT

NOTICE TO DEBTOR

(RULE 12 (4) OF THE SUBORDINATE COURTS (SMALL CLAIMS PROCEDURE) RULES)

To: (3) .....

.....

You are ordered to come to the court at (4) ..... on (5) ..... day the ..... day of ....., 20..... at ..... o'clock in the ..... noon to show cause why you should not be committed to prison for having wilfully neglected to comply with the order of the Court made on (6) ..... day of ....., 20..... requiring you to pay the sum of .....

If you fail to come to Court, an order for your arrest may be issued.

Dated this ..... day of ....., 20.....

(Seal) .....

Magistrate

(1) Insert name of plaintiff.

(2) Insert name of defendant.

(3) Insert name and address of defendant.

(4) Insert place.

(5) Insert day, date and time of hearing.

(6) Insert date of order or award.

FORM 4

MALAŴI

In the ..... Magistrate's Court (Small Claims) at .....

Civil Case No. ..... of 20.....

(1) ..... PLAINTIFF

versus

(2) ..... DEFENDANT

WARRANT OF ARREST

(RULE 13 (2) OF THE SUBORDINATE COURTS (SMALL CLAIMS PROCEDURE) RULES)

To all Court Messengers and Police Officers:

WHEREAS (3) ..... of ..... was summoned to attend the above Court on the ..... day of ....., 20....., and failed to do so*/attend the above Court on the ..... day of ....., 20..... and went away without first being given the permission of the Court*/ failed to attend after an adjournment of the Court after being told by the Court to so attend you are hereby directed to arrest the said (4) ..... and to produce him before this Court in execution of this your Warrant and HEREIN FAIL NOT.

Dated this ..... day of ....., 20.....

(Seal) .....

Magistrate

*Delete whichever does not apply.

(1) Insert name of plaintiff.

(2) Insert name of defendant.

(3) Insert name and address of defendant.

(4) Insert name of defendant.

FORM 5

MALAŴI

In the ..... Magistrate's Court (Small Claims) at .....

Civil Appeal No. ..... of 20.....

(1) ..... APPELLANT

versus

(2) ..... RESPONDENT

NOTICE OF APPEAL

(RULE 15 (1) OF THE SUBORDINATE COURTS (SMALL CLAIMS PROCEDURE) RULES)

TAKE NOTICE that (3) ..... being dissatisfied with judgment of the ..... Court at ..... given on the ..... day of ....., 20..... appeals to the High Court against (4) the whole of the said judgment

such part of the said judgment as decides that (*set out details*)

Dated this ..... day of ....., 20.....

.....

Appellant

Legal Practitioner for the Appellant

To: ..... Court at ..... and to .....

..... (5)

(1) Insert name of Appellant.

(2) Name of Respondent.

(3) Insert name of Appellant.

(4) As may be applicable.

(5) Insert name and address of respondent or respondents.

FIRST SCHEDULE

1. Fees payable on commencement of proceedings	. . . .	K30 00
2. Filing of Appeal and preparation of Court Record	. . . .	K30 00

COURTS (ESTABLISHMENT OF MZUZU DISTRICT REGISTRY) NOTICE

G.N. 14/2016

1. This Notice may be cited as the Court (Establishment of Mzuzu District Registry) Notice. Citation

2. There is hereby established at Mzuzu, a District Registry to be known as the Mzuzu District Registry. Established of Mzuzu District Registry

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COURTS (ESTABLISHMENT OF ZOMBA DISTRICT REGISTRY) NOTICE

G.N. 24/2016

1. This Notice may be cited as the Courts (Establishment of Zomba District Registry) Notice. Citation

2. There is hereby established at Zomba, a District Registry to be known as Zomba District Registry. Establishment of Zomba District

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COURTS (HIGH COURT) (CIVIL PROCEDURE) RULES

ARRANGEMENT OF RULES

RULES

ORDER 1
Preliminary

1. Citation
2. Commencement
3. Application
4. Interpretation
5. Objective

ORDER 2
Effect of Non-Compliance

1. Effect of non-compliance
2. Irregularity in a proceeding, document or step taken
3. Court's power on non-compliance
4. Application to set out details of non-compliance

ORDER 3
Time

1. Reckoning time referencing a given day
2. Exclusion of day when Registry is closed
3. Last day where Registry is closed
4. Excluded days
5. Extension or abridgement of time
6. Court to fix time

ORDER 4
Sitting, Vacations and Business Hours

1. Sittings of the High Court
2. Vacation
3. Registry opening hours
4. Closed days
5. Opening for urgent business

RULES

ORDER 5
Commencement

1. Commencement by filing summons
2. Content of summons
3. Particulars of summons
4. Registrar to sign and seal summons
5. Identification of summons or application
6. Endorsement of summons
7. Service of summons
8. Content and service of defence
9. Power of Registrar to reject documents
10. Rules to apply where statement of case is frivolous
11. Registrar to reject or refer documents to Judge
12. Judge to direct Registrar on documents
13. Notice and effect of rejection of documents
14. Rules to apply where documents rejected in error
15. Registrar to record filing of document
16. Retention of copies
17. Effect of acceptance of document
18. Court to stay proceeding where legal practitioner denies responsibility for summons
19. Assignment of summons

ORDER 6
Parties

1. Party to proceeding
2. Multiple parties to proceeding
3. Parties named separately
4. Adding a party without permission
5. Adding a party with permission
6. Consent required to be added as a claimant
7. Application to be added as a party
8. Removal as a party

Consolidation

9. Consolidation of claims
10. Separation of claims

RULES

11. Consolidation of hearings
12. Amendment and service of summons upon change of parties
13. Time for serving amended summons
14. Effect of change of parties

THIRD PARTY NOTICE

15. Third party notice
16. Third party notice with permission
17. Effect of third party notice

PERSON UNDER A DISABILITY

18. Disability
19. Litigation guardian
20. Person under disability to act through litigation guardian
21. Litigation guardian for claimant liable for costs
22. Costs enforced against litigation guardian
23. Litigation guardian for defendant liable for negligence
24. Qualification as litigation guardian
25. Continuation of claim upon death of claimant
26. Claimant's deceased estate or appointed representative of party

PARTNERSHIPS

27. Partnership
28. Claims against partners to a partnership
29. Request on particulars of partners

REPRESENTATIVE ACTIONS

30. Representatives with same interest

TRUSTEES

31. Trustees, executors or administrators

BUSINESSES

32. Claim against a person in respect of a business in Malaŵi
33. Proceeding commenced against a person in a business name

ORDER 7

STATEMENT OF CASE

1. Contents of statement of case
2. Statement of case to set out remedy sought

RULES

3. Defendant to file and service response
4. No need for response where defence served
5. Filing a defence
6. No general denial
7. Defence to state facts denied
8. Non-denial deemed agreement
9. Lack of knowledge on fact
10. Failure to reply deemed general denial
11. Reply with permission
12. Content of reply
13. Inference of claimant's denial
14. Content of statement of case in defence or reply
15. Defence to include details of counterclaim
16. Counterclaim to set out details as a claim
17. Claimant's reply may include defence to counterclaim
18. Defendant may file defence to reply in counterclaim
19. Effect of rules 20 to 22 to a counterclaim
20. Counterclaim against person other than claimant
21. Claim for damages to state nature and amount, etc.
22. Content of statement of case where damages sought
23. Amendment of statement of case
24. Filing statement of case out of time
25. Effect of non-compliance with time of service of summons

ORDER 8

SERVICE

1. Responsibility of service by party who filed
2. Service by person other than party filing
3. Copy of summons, etc., to be served personally
4. Address for service
5. Party filing document to state address for service
6. Change in address for service
7. Last known address effective for service
8. Service of documents other than summons
9. Alternative service
10. Service by facsimile
11. Contents of sworn statement on service by facsimile

RULES

12. Service by electronic mail
13. Service of sealed and stamped documents by electronic mail
14. Service of sworn statement by electronic mail
15. Service out of time
16. Power of court on service out of time
17. Personal service of documents
18. Service on body corporate or trust
19. Service on Government
20. Substituted service
21. Service on children
22. Appointment of litigation guardian for a child
23. Service on person with disability
24. Appointment of litigation guardian for a person with disability
25. Service on personal representative of deceased's estate
26. Service on a partnership
27. Proof of service of response or defence to counterclaim
28. Further action where party served fails to file document required by Rules
29. Content of sworn statement where document is served under rule 20
30. Service of summons outside Malaŵi
31. Application of rule 30
32. Extension of time for service
33. Claimant to serve copy of the order
34. Claimant to file statement giving proof of service
35. Copy shall be sealed

ORDER 9

CLOSURE OF STATEMENT OF CASE

1. Closure of statement of case
2. Compliance with a request or order for particulars immaterial

ORDER 10

APPLICATIONS IN PROCEEDINGS AND INTERLOCUTORY ORDERS

1. Application for an interlocutory order or direction
2. Particulars of an application in a proceeding
3. Time for making interlocutory applications

RULES

4. Particulars of an application for interlocutory orders
5. Service of an application for interlocutory orders
6. Service of an application for an interlocutory order before hearing of a proceeding
7. Hearing of interlocutory applications in open court an exception
8. Interlocutory order before commencement of a proceeding
9. Oral applications

FREEZING INJUNCTION

10. Interpretation of "owner"
11. Freezing injunction
12. Assets of non-party and conditions for granting freezing injunction
13. Particulars of freezing injunction before and after commencement
14. Service of freezing injunction where name and address not known
15. Powers of the Court on granting freezing injunction
16. Varying or setting aside freezing injunction

SEIZING INJUNCTION

17. Seizing injunction
18. Seizing injunction without notice
19. Conditions for granting seizing injunction
20. Particulars of application for seizing injunction
21. Contents of sworn statement accompanying application for seizing injunction
22. Seizing injunctions to detail the processing of the order
23. Powers of the court on granting seizing injunction
24. Appointment of receiver under seizing injunction
25. Conditions for appointment as receiver
26. Varying or setting aside seizing injunction

INTERLOCUTORY INJUNCTION

27. Interlocutory injunctions
28. Interlocutory orders
29. Service of interlocutory order
30. Claim for urgent relief

RULES

ORDER 11
Payment into Court

1. Payment into Court
2. Notice of payment into Court to be specific where two claims involved
3. Notice of payment into Court to be served on parties
4. Power to increase payment
5. Costs payable into Court where a party is liable to pay costs of another
6. Application of this Order in relation to costs
7. Lodging of bond
8. Copy of authority and bond to be filed with Court
9. Bond to bind approved person
10. Effect of lodging bond
11. Security for payment instead of actual payment
12. Presumption of claim for interest
13. Claimant may accept amount paid into Court
14. Rule 13 to apply to persons under disability
15. Acceptance to be by service of notice of acceptance
16. Defendant to pay amount of bond upon notice of acceptance
17. Effect of non-compliance
18. Payment in a claim by beneficiary
19. Payment by order of Court where party under disability
20. Parties may agree payment out of Court
21. Payment to claimant or legal practitioner
22. Payment to stay claim
23. Taxation for costs where payment satisfies all claims
24. Payment into Court as stay of claims for relief in counterclaim
25. Amount paid out with agreement of parties or Court order
26. Application of this Order
27. Informing Court of payment into Court
28. Consideration on determination of costs
29. Application of rules 30 to 31
30. Payment in relation to a holding and recovering party
31. Payment only with approval of Court in disability proceedings

RULES

ORDER 12

Ending a Proceeding Early

1. A proceeding to be stayed where claim for money or return of goods satisfied
2. Application of rule 1 and assessment of costs
3. Statement acknowledging amount and interest
4. Power to enter judgment without hearing
5. Costs when a proceeding could have been commenced in subordinate court

Judgment in Default

6. Judgment in default
7. Application for default judgment for liquidated claims to be made by filing draft judgment and sworn statement
8. Default judgment under rule 7 may be entered without a hearing
9. Contents of sworn statement under rule 7
10. Determination of costs on default judgment for debt or liquidated demand
11. Court to assess costs
12. Request for default judgment for unliquidated claim
13. Powers of Court on default judgment for unliquidated claim

Possession of Land

14. Application for recovery of possession of land
15. Court not to enter Judgment

Return of Goods

16. Application for return of goods
17. Determination of costs in relation to detention of goods
18. Powers of the Court in relation to rules 6 and 7

Assessment of Damages

19. Assessment of damages to be conducted as trial
20. Determination of damages without trial

Setting Aside Judgment in Default

21. Application to set aside default judgment
22. Application of rule 21

RULES

SUMMARY JUDGMENT

23. Summary judgment
24. Contents of sworn statement supporting an application for summary judgment
25. Procedure for an application for summary judgment
26. No summary judgment where there is relevant dispute
27. Security for costs

JUDGMENT ON ADMISSIONS

28. Admissions to be in writing
29. Admission made before commencement of proceedings
30. Period for returning admissions
31. Admissions by notice in writing
32. Admission of whole of claim for specified amount of money
33. Admission of part of a claim for a specified amount of money
34. Admission of liability to pay whole of claim for unspecified amount of money
35. Admission of liability to pay claim for unspecified amount of money where defendant offers a sum in satisfaction of the claim
36. Allocation of claims in relation to outstanding matters
37. Request for time to pay
38. Determination of rate of payment
39. Determination of rate of payment by judge
40. Right of redetermination
41. Interest

WITHDRAWAL AND DISCONTINUANCE

42. Discontinuance
43. Effect of abandoning claim to one or more remedies
44. Procedure for amending statement of case
45. Right to discontinue claim
46. Procedure for discontinuance
47. Right to apply to have notice of discontinuance set aside
48. Effect of discontinuance
49. Liability for costs
50. Discontinuance and subsequent proceedings
51. Stay of remainder of partly discontinued proceedings where costs not paid

RULES

52. Discontinuance against several defendants
53. Effect of discontinuance

WANT OF PROSECUTION

54. Dismissal for want of prosecution
55. Order of discontinuance may be amended or set aside on appeal

STRIKING OUT PROCEEDINGS

56. Striking out proceedings without notice
57. Striking out proceedings with notice
58. Notice of struck out proceedings

ORDER 13
MANDATORY MEDIATION

1. Mediation mandatory for all proceedings
2. Procedure on mediation session
3. Statement of case, forms and time
4. Parties and legal practitioners to attend mediation session
5. Power to settle a matter
6. Non-attendance without good cause
7. Confidentiality of the judge's notes and records
8. Settlement agreement
9. Failure to agree settlement
10, Period of mediation session
11. End of mediation session

ORDER 14
PRE-TRIAL PROCEDURE

1. Application of this Order
2. Scheduling conference
3. Represented party not required to attend
4. Pre-trial conference
5. Effect of non-compliance with directions
6. Pre-trial conference may be by phone, etc.

ORDER 15
DISCLOSURE OF DOCUMENTS AND INFORMATION

1. Disclosure of documents
2. Disclosure after reasonable search

RULES

3. Disclosure of copies
4. Copy not necessary where original disclosed
5. Disclosure by sworn statement
6. Sworn statement by a body corporate
7. Privilege
8. Accuracy of list of documents
9. Non-disclosure by order of court
10. Handling of privileged documents by legal practitioner
11. Inspection of documents
12. Continuation of disclosure
13. Disclosure of previously unknown documents
14. Disclosure of specific documents
15. Effect of non-disclosure
16. Order compelling disclosure
17. Effect on contempt
18. Restrictions on use of disclosed documents
19. Originals to be brought to trial
20. Indexing and numbering
21. Questionnaire on disclosure of information

ORDER 16
TRIAL

1. Trial bundle
2. Evidence
3. Parties other than claimants to make opening case
4. Trial to be in open court
5. Adjournment
6. Preliminary hearing
7. Effect of non-attendance
8. Re-opening proceedings after trial
9. Time limits for delivery of judgments and rulings
10. Recording time

ORDER 17
EVIDENCE

1. Directions on evidence
2. Proof by evidence of a witness

RULES

3. Evidence via video link or other means
4. Witness statement
5. Effect of witness statement at trial
6. Witness statement at hearing other than trial
7. Cross-examination at hearing other than trial
8. Form of witness statement
9. Witness summary
10. Failure to serve witness statement or summary
11. Cross-examination on witness statement
12. Use of witness statement
13. Inspection of witness statement
14. Contempt for false statement
15. Giving evidence before trial

EVIDENCE BY CHILDREN AND OTHER VULNERABLE PERSONS

16. Evidence by children or vulnerable persons

EXPERT EVIDENCE

17. Expert evidence
18. Duty of an expert
19. Court's permission on expert evidence
20. Expert evidence in written report
21. Written questions to expert instructed by other party
22. Single joint expert
23. Instructions and fees to single joint expert
24. Access to information not available to other party
25. Expert's report
26. Effect of disclosure of expert's report
27. Discussion between experts
28. Failure to disclose an expert's report
29. Expert's written requests for directions

ASSESSORS

30. Assessors

ATTENDANCE OF WITNESSES

31. Witness summons
32. Witness summons in aid of tribunal
33. Witness expenses

RULES

34. Service by party issuing summons
35. Non-attendance of witness

DEPOSITIONS

36. Depositions
37. Allocation of an examiner
38. Objection to examiner's question
39. Documents or exhibits on deposition
40. Questioning of deponent
41. Certificate of refusal or failure
42. Particulars of a deposition

DEPOSITIONS TAKEN ABROAD
FOR USE AS EVIDENCE IN PROCEEDINGS IN MALAŴI

43. Depositions taken abroad for use in Malaŵi

DEPOSITIONS TAKEN IN MALAŴI
FOR USE AS EVIDENCE FOR COURTS ABROAD

44. Letter of request from court in another jurisdiction
45. Sworn statement in support of letter of request
46. Giving effect to letter of request
47. Record of evidence to be signed and sealed
48. Effect of evidence by letter of request

NOTICE TO A NON-PARTY TO PRODUCE DOCUMENTS

49. Notice to non-party to produce documents
50. Inspection of documents upon production notice
51. Amendment or setting aside of notice
52. Objecting the production of documents
53. Failure to produce a document
54. Return of documents, etc.

HEARSAY EVIDENCE

55. Hearsay evidence
56. Exception of duty to give notice of hearsay evidence
57. Application to cross-examine maker of hearsay statement
58. Notice of intention to attack credibility of maker of hearsay statement

RULES

PLANS, PHOTOGRAPHS OR MODELS

59. Evidence of plans, photographs or models

EVIDENCE OF FINDING ON A QUESTION OF FOREIGN LAW

60. Evidence of finding on a question of foreign law

ORDER 18

SWORN STATEMENTS

1. Sworn statements
2. Documents verifiable by sworn statement and nature and content of sworn statement
3. Failure to verify claim by statement in sworn statement
4. Failure to verify witness statement in sworn statement
5. Power of court to order verification of document
6. Content of sworn statement
7. Numbering, paragraphs of sworn statement
8. Illiterate or blind deponent
9. Sworn statement in language not understood by deponent
10. Use of mark or thumb
11. Inability to sign, mark or make thumb impression
12. Non-compliance with rule 8
13. Alteration or erasure on sworn statement
14. Copies to be exhibited to a sworn statement
15. Impracticability to copy document
16. Certification as true copies of original
17. Request to produce original document
18. Defects
19. Use of statement with permission
20. Service of a sworn statement
21. Directions on service of sworn statements
22. Scandalous content
23. Attendance and cross-examination of person making sworn statement
24. Re-examination of a person making sworn statement

RULES

ORDER 19
Particular Proceedings

PART I
Matters Under The Constitution

1. Application of Part I
2. Certification
3. Commencement of a proceeding under Part I

General Proceedings

4. Nature and content of summons
5. Responses

Referral by the President

6. Particulars and content of referral

Referral by other Courts

7. Referral by other courts
8. Process to be served on Attorney General

Amicus Curiae

9. *Amicus curiae*
10. Application as *amicus curiae*
11. Effect upon appointment as *amicus curiae*

Delivery of Decision

12. Time of delivery of the decision

PART II
Election Matters

13. Commencement of an election matter
14. Service of response
15. Statement on reply
16. Hearing of application
17. Delivery of decision in an election matter
18. Certification as constitutional matter
19. Application for injunction to be *inter partes*

RULES

PART III
JUDICIAL REVIEW

20. Application for judicial review
21. Application for mandatory order, etc.
22. Application for a declaration or an injunction
23. Grounds for making application and content
24. Defence
25. Scheduling conference

PART IV
HABEAS CORPUS

26. *Habeas corpus*

PART V
DECLARATORY ORDERS

27. Declaratory orders

ORDER 20
SKELETON ARGUMENTS AND SUBMISSIONS

1. Skeleton arguments and submissions

ORDER 21
APPEALS

1. Appeals
2. Record of appeal
3. Hearing fees

ORDER 22
CASE STATED

1. Content of case stated
2. Particulars of case stated
3. Case stated with permission where a party is a person with disability
4. Directions, notice and hearing
5. Non-compliance with rule 1

RULES

ORDER 23
Judgments and other Orders

1. Particulars and contents of judgment and orders
2. Judgments or orders drawn by party
3. Service by court of judgment drawn by party
4. Service on party and legal practitioner
5. Agreed judgment or order
6. Time for judgment to take effect
7. Calculating interest on judgment
8. Persons who may set aside judgment
9. Compliance with judgments for payment
10. Correction of judgment
11. Judgment for amount for a claim and counterclaim
12. Part owners
13. Judgment book

ORDER 24
Documents and Forms

1. Forms
2. Particulars of documents
3. Filing of documents

ORDER 25
Powers and Functions of Registrars

1. Powers and functions of Registrars
2. Referral to Judge in Chambers

ORDER 26
Fees

1. Fees

ORDER 27
Record Keeping

1. Record keeping
2. Records and documents not to be taken out
3. Court seal
4. Request for copy of document

RULES

ORDER 28

Enforcement of Judgments

1. Enforcement of judgment
2. Modes of enforcement

Enforcement of Money Orders – General

3. Enforcement of money order
4. Particulars of enforcement order

Enforcement Hearing

5. Enforcement hearing

Seizure and Sale Order

6. Seizure and sale by Sheriff
7. Sheriff to enforce orders
8. Chronological execution
9. Disposal of seized property

Third Party Debt Orders

10. Third party debt order
11. Application for third party debt order
12. Interim third party debt notice
13. Third party debt order without hearing
14. Service of documents in support of application
15. Obligations of a financial institution served with an order
16. Hardship payment order
17. Contesting third party debt order
18. Third party debt order enforceable as order to pay
19. Money standing to the credit of enforcement debtor
20. Costs

Charging Orders

21. Application for a charging order
22. Interim charging order
23. Effect of disposition of property subject to interim charging order
24. Effect of disposition of interest in funds subject to interim order
25. Contesting application for final charging order

RULES

26. Application to discharge or vary charging order
27. Enforcement of charging order through sale

RECEIVERS

28. Interpretation of receiver
29. Appointment of receiver
30. Application without notice
31. Service of order appointing receiver
32. Directions for receiver
33. Application for directions
34. Remuneration
35. Preparation and service of accounts
36. Non-compliance by a receiver

POSSESSION OF LAND

37. Order of possession
38. Effect of order of possession
39. Display and service of order
40. Enforcement of order

DELIVERY OF GOODS

41. Order for delivery of goods
42. Effect of order for delivery of goods
43. Enforcement as money order

ORDERS TO DO OR NOT TO DO A THING

44. Application of rules 44 to 51
45. Enforcement of order not to do an act
46. Enforcement of an order not to do an act by the Court
47. Recovery of costs and expenses under money order
48. Suspension of enforcement order
49. Statement in support of suspension
50. Power of Court and suspension

VALIDITY OF ENFORCEMENT ORDER AND OTHER MATTERS

51. Validity of enforcement order
52. Renewal of enforcement order
53. Application for renewal of enforcement order
54. Application for renewal without hearing

RULES

55. Enforcement against a partnership
56. Enforcement against a business
57. Enforceability of enforcement order
58. Enforcement on debtor's estate
59. Payment by instalment order
60. When to make an instalment order
61. Application for instalment order
62. Considerations when making an instalment order
63. Enforcement against debtor's estate
64. Sealed copy of order to be served on debtor
65. Sealed copy of order to be served on creditor
66. Determination of instalment order

ORDER 29

INTERPLEADER PROCEEDINGS

1. Application of Order 29
2. Mode of application
3. Sworn statement in support of application
4. Copy of application to be served on claimant
5. Orders on hearing application for interpleader
6. Summary determination of claim
7. Relief where titles independent
8. Failure to appear and non-compliance
9. Order affecting several proceedings

ORDER 30

COMMITTAL PROCEEDINGS

1. Contempt of court

GENERAL RULES

2. Determination of application under rule 5 and enquiry under rule 13
3. Suspension of imprisonment for contempt
4. Discharging imprisonment for contempt

PROCEDURE ON APPLICATION

5. Procedure on application
6. Statement of a witness or hearsay

RULES

7. Declaration of a witness in a written statement
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Chief Justice to review Rules

G.N. 38/2017

COURTS (HIGH COURT) (CIVIL PROCEDURE) RULES

under s. 144

[3RD OCTOBER, 2017]

ORDER 1
PRELIMINARY

Citation

1. These Rules may be cited as the Courts (High Court) (Civil Procedure) Rules.

Commencement

2. These Rules shall come into force on such a date as may be appointed by the Chief Justice by a notice published in the *Gazette.*

Application

3.—(1) Subject to subrule (2), these Rules shall apply to all civil proceedings in the High Court.

(2) Other rules of practice and procedure shall so apply as long as it is so provided by an Act or any other written law.

Interpretation

4. Unless the context otherwise requires—

"Court" means the High Court of Malaŵi;

"election matter" means a proceeding that requires the application of the Constitution, the Parliamentary and Presidential Elections Act or the Local Government (Elections) Act due to an act or omission during an election; Cap. 2:01 Cap. 22:01

"judgment" includes any decision, decree, determination, finding or order of any court;

"mandatory order" means an order of the Court compelling a person to do a specified act;

"order" means an order of the Court;

"person under a disability" means, in relation to Order 6 rule 18, a person who is a child, or who does not understand the nature and possible consequences of the proceeding, or who is not capable of conducting the proceeding, due to a physical disability or other form of disability, or who is not capable of giving instructions for the conduct of the proceeding;

"prohibiting order" means an order of the Court compelling a person not to do a specified act;

"quashing order" means an order of the Court invalidating a decision;

"Sheriff" bears the same meaning as ascribed to that term under the Sheriffs Act; Cap. 3:05

"single joint expert" means an expert instructed to prepare a report for the Court on behalf of two or more of the parties to a proceeding; and

"statement of case" includes a claim, a defence, a reply and a counterclaim, but does not include an application in a proceeding.

Objective

5.—(1) The overriding objective of these Rules is to deal with proceedings justly and this includes—

(*a*) ensuring that the parties are on an equal footing;

(*b*) saving expenses;

(*c*) dealing with a proceeding in ways which are proportionate to the—

(i) amount of money involved;

(ii) importance of the proceeding; and

(iii) complexity of the issues;

(*d*) ensuring that a proceeding is dealt with expeditiously and fairly; and

(*e*) allocating to a proceeding an appropriate share of the Court's resources, while taking into account the need to allocate resources to other proceedings.

(2) The Court shall seek to give effect to the overriding principal objective whenever it—

(*a*) exercises any power conferred on it by these Rules; or

(*b*) interprets any written law, rules and regulations.

(3) The parties shall assist the Court to further the overriding objective.

(4) The Court shall further the overriding objective by active case management.

(5) Active case management includes—

(*a*) encouraging the parties to cooperate with each other in the conduct of the proceeding;

(*b*) identifying the issues for resolution at an early stage;

(*c*) deciding promptly which issues need full investigation and trial and accordingly disposing summarily of the others;

(*d*) deciding the order in which issues are to be resolved;

(*e*) encouraging the parties to use an alternative dispute resolution procedure if the Court considers it appropriate, and facilitating the use of such procedure;

(*f*) assisting the parties to settle the whole or part of the proceeding;

(*g*) fixing timetables or otherwise controlling the progress of the proceeding;

(*h*) considering whether the likely benefits of taking a particular step justify the cost of taking it;

(*i*) dealing with as many aspects of the proceeding as the Court can on the same occasion;

(*j*) making use of technology; and

(*k*) giving directions to ensure that the trial of a proceeding continues quickly and efficiently.

ORDER 2
Effect of Non-Compliance

Effect of non-compliance

1. The failure to comply with these Rules or a direction of the Court shall be an irregularity.

2. Notwithstanding rule 1, an irregularity in a proceeding, or a document, of a step taken, or order made in a proceeding, shall not render a proceeding, document, step taken or order a nullity.

Irregularity in a proceeding, document or step taken

3. Where there has been a failure to comply with these Rules or a direction of the Court, the Court may—

Court's power on non-compliance

(*a*) set aside all or part of the proceeding;

(*b*) set aside a step taken in the proceeding;

(*c*) declare a document or a step taken to be ineffectual;

(*d*) declare a document or a step taken to be effectual;

(*e*) make an order as to costs; or

(*f*) make any order that the Court may deem fit.

4. An application for an order under rule 3 shall—

Application to set put details of non-compliance

(*a*) be made within a reasonable time and before the party making the application takes a fresh step in the proceeding after becoming aware of the irregularity; and

(*b*) set out details of the failure to comply with these Rules or a direction of the Court.

ORDER 3
Time

1. Where a time of a day or a longer time is to be reckoned by reference to a given day or event, the given day or the day of the given event shall not be counted.

Reckoning time referencing a given day

2. Where a period, being a period of five days or less, would include a day on which the Registry is closed, that day shall not be counted.

Exclusion of day when Registry is closed

3. Where the last day for doing a thing is a day on which the Registry is closed, the thing may be done on the next day on which the Registry is open.

Last day where Registry is closed

4. In calculating the time fixed by these Rules or by any order fixing extending or abridging time, the period from the last Thursday before Christmas of one year to the second Tuesday of January of the next year shall not be counted, unless the Court orders otherwise.

Excluded days

5. The Court may by order extend or abridge any time fixed by these Rules or by a final or an interlocutory order.

Extension or abridgement of time

Court to fix time

6. Where time is not fixed by the Rules or by any order of the Court for the doing of anything in or, in connexion with any proceeding, the Court may fix the time within which the thing is to be done.

ORDER 4

Sitting, Vacations and Business Hours

Sittings of the High Court

1. There shall be four sittings of the Court in every year, that is to say—

(*a*) the "Lewis Chatsika sitting" which shall begin from the first Tuesday of October of one year and end on the last Thursday before the Christmas Day of the same year;

(*b*) the "Friday Makuta sitting" which shall begin from the second Tuesday of January of one year and end on the Wednesday before Easter Sunday of the same year;

(*c*) the "Richard Banda sitting" which shall begin on the second Tuesday after Easter Sunday of one year and end on the last Friday of May of the same year; and

(*d*) the "Leonard Unyolo sitting" which shall begin on the second Tuesday of June of one year and end on the last Thursday of July of the same year.

Vacation

2. The Court shall be in vacation between sittings.

Registry opening hours

3. Each Registry shall be open for Court business from 8:30 in the morning to 4:30 in the afternoon.

Closed days

4. Each Registry shall not be open for Court business on a Saturday, a Sunday or a public holiday.

Opening for urgent business

5. Notwithstanding rules 3 and 4, a Registry may be opened for urgent Court business on the direction of the Court.

ORDER 5

Commencement

Commencement by filing summons

1. Unless otherwise provided under these Rules or any other written law, a proceeding shall be commenced by filing a summons in Form 1.

Content of summons

2. A summons shall—

(*a*) specifically state the relief claimed by the claimant;

(*b*) contain a statement of case;

(*c*) set out the address that is to be the claimant's address for service of documents; and

(*d*) have with it a form of response that may be completed by the defendant.

Particulars of summons

3. A summons shall—

(*a*) be signed by the claimant or the claimant's legal practitioner;

(*b*) name as defendant anyone whose interest shall be affected by the order sought; and

(*c*) be signed and sealed by the Registrar.

Registrar to sign and seal summons

4. The Registrar shall sign and seal the summons and all filed copies of any summons and ensure that the summons has been stamped indicating the date of filing and the date of issue, and that relevant filing fees have been duly paid.

Identification of summons or application

5. When a summons is issued, or an application in a proceeding is issued before the filing of a summons, the Registrar shall give a distinguishing number or other unique identifier to the proceeding.

Endorsement of summons

6. The Registrar shall ensure that the original and each copy sealed under rule 4 is endorsed with—

(*a*) the distinguishing number or other unique identifier given to the proceeding; and

(*b*) the date when the process was filed in the court or, if the proceeding had been started by an oral application, the date when the application was made.

Service of summons

7.—(1) A summons shall be served on the defendant personally, at his last known address or by other alternative mode as the Court may order.

(2) A summons shall contain a notice advising the defendant that—

(*a*) he must file a response in Form 2 within fourteen days of the date of service, unless the defendant files a defence within that time;

(*b*) he must file a defence within twenty-eight days of the date of service;

(*c*) if he files a document in the proceeding, the Court shall notify the parties of the scheduling and pre-trial conferences under Order 14 where the defendant shall be required to attend or be represented in Court; and

(*d*) if he does not file a response or defence in the proceeding, the claimant may obtain judgment against the defendant.

(3) A summons commencing a proceeding shall have—

(*a*) a list of documents to be relied upon verified by a sworn statement; and

(*b*) copies of the documents on the list.

Content and service of defence

8. A defendant shall—

(*a*) serve the defence together with a list of documents verified by a sworn statement; and

(*b*) have copies of documents on the list.

Power of Registrar to reject documents

9. The Registrar may reject a document that is filed in the Court where—

(*a*) the document does not comply substantially with the requirements of these Rules;

(*b*) there is an approved form for the document and the document is not properly completed;

(*c*) a fee is payable for filing the document and the fee has not been paid subject to other written law; or

(*d*) the address for service stated in the document is manifestly insufficient for a party or the Court to effect proper service of process.

Rules to apply where statement of case is frivolous

10. Rules 11, 12 and 13 shall apply if a document that is filed in the Court appears to the Court on its face to be an abuse of the process of the Court, or to be frivolous or vexatious.

Registrar to reject or refer documents to Judge

11. The Registrar may reject a document or refer the document to a Judge for directions about how to deal with it.

Judge to direct Registrar on documents

12. A Judge may direct the Registrar to accept or reject the document.

Notice and effect of rejection of documents

13. Where the Court rejects a document—

(*a*) the Registrar shall give notice of the rejection together with the grounds of the rejection to the person who filed the document with the Court;

(*b*) the Registrar shall return the document and copies of the document filed with the document; and

(*c*) the document shall be taken not to have been filed.

Rules to apply where documents rejected in error

14. Rules 15 to 18 shall apply to a document that was previously rejected in error by the Court and has subsequently been accepted by the Court.

15. The Registrar shall record the filing of the document in the Court and, where appropriate, seal or stamp the document.

Registrar to record filing of document

16. Where the Registrar records the filing of the document, the Registrar shall return any copies of the document filed with the Court for sealing or stamping.

Retention of copies

17. The document shall be taken to have been filed with the Court on the day it would have been first filed if the Registrar had not rejected the document.

Effect of acceptance of document

18. Where a legal practitioner whose name is endorsed on a summons declares, in writing, that the summons was not issued by him or with his authority or privity, the Court may, on the application of a defendant who has been served with, or who has acknowledged service of, the summons, stay all matters in the proceeding.

Court to stay proceeding where legal practitioner denies responsibility for summons

19. Once a summons has been issued, the Judge-in-Charge shall assign the proceeding to a specific Judge and shall issue an initial direction in Form 3.

Assignment of summons

ORDER 6
Parties

1. Subject to rule 15, a person is a party to a proceeding if he is named as a claimant or as a defendant.

Party to proceeding

2. There may be more than one claimant, and more than one defendant in the same proceeding.

Multiple parties to proceeding

3. Each party to a proceeding shall be named separately.

Parties named separately

4. A person may be added as a party without the permission of the Court before the summons has been served by endorsing that person's name on copies of the summons.

Adding a party without permission

5. The Court may, on an application by a party, order that a person becomes a claimant in a proceeding where the person's addition as a party is necessary to enable the Court to make a decision fairly and effectively in the proceeding.

Adding a party with permission

6. A person may be added as a claimant in a proceeding with his consent and where the person does not consent to be added as a claimant, he shall be added as a defendant.

Consent required to be added as a claimant

Application to be added as a party

7. A person affected by a proceeding may apply to the Court for an order that he should be added as a party in the proceeding.

Removal as a party

8. The Court may, on an application by a party, order that a party in a proceeding is no longer a party where—

(*a*) the person's presence is not necessary to enable the Court to make a decision fairly and effectively in the proceeding; or

(*b*) there is no good and sufficient reason for the person to continue being a party.

Consolidation

Consolidation of claims

9. The Court may, on its own motion or on an application by a party, order that several claims against one party be included in one proceeding where—

(*a*) a common question of law or fact is involved in all the claims;

(*b*) the claims arise out of the same transaction or event; or

(*c*) there is no good and sufficient reason for the claims to continue separately.

Separation of claims

10. The Court may, on its own motion or on an application by a party, order that several claims against one party be treated and heard as separate proceedings where—

(*a*) the claims can be more effectively dealt with separately; or

(*b*) there is no good and sufficient reason for the claims to continue jointly.

Consolidation of hearings

11. The Court may, on its own motion or on an application by a party, order that several proceedings be. heard together where—

(*a*) the same question is involved in each proceeding;

(*b*) the decision in one proceeding will affect the other; or

(*c*) there is no good and sufficient reason for the proceedings to be heard separately.

Amendment and service of summons upon change of parties

12. Where the Court makes an order changing parties to a proceeding, the party who applied for the order shall—

(*a*) file an amended summons highlighting, in red, the new party and the date of the order; and

(*b*) serve the amended summons on all parties to the proceeding.

Time for serving amended summons

13. The amended summons shall be filed and served—

(*a*) within the time fixed by the order; or

(*b*) where no tune has been fixed, within fourteen days from the date of the order.

Effect of change of parties

14. Unless the Court orders otherwise, where an order added or substituted a claimant or defendant, everything done in the proceeding before the order was made shall have the same effect in relation to the new claimant or defendant.

Third Party Notice

Third party notice

15. Where a defendant claims a contribution, indemnity or other remedy against a person who is not a party to the proceeding, the defendant shall file and serve a notice (a 'third party notice') on that person stating that—

(*a*) he claims the contribution, indemnity or other remedy; and

(*b*) the person shall be a party to the proceeding from the date of service.

Third party notice with permission

16. The defendant shall obtain the permission of the Court where the third party notice is filed after the defence has been filed.

Effect of third party notice

17. A person served with a third patty notice under rule 15 or rule 16 shall become a party to the proceeding, as a third party, with the same rights and obligations in the proceeding as if the defendant had started a proceeding against such person.

Person Under A Disability

Disability

18. A person is under a disability if he—

(*a*) is under the age of eighteen years;

(*b*) does not understand the nature and possible consequences of the proceeding; or

(*c*) is not capable of conducting the proceeding or giving instructions for the conduct of the proceeding.

Litigation guardian

19. The Court may appoint a person not under disability to be the litigation guardian of a person under a disability.

Person under disability to act through litigation guardian

20. A person under a disability may commence or defend a proceeding only by acting through his litigation guardian.

Litigation guardian for claimant liable for costs

21. A litigation guardian for a claimant shall be liable for costs for which the claimant would have been liable if the claimant were not a person under a disability.

Costs enforced against litigation guardian

22. An order for costs against the claimant or the litigation guardian shall be enforced against the litigation guardian.

Litigation guardian for a defendant liable for negligence

23. A litigation guardian for a defendant shall not be liable for costs in a proceeding, unless the costs are incurred because of the litigation guardian's negligence or misconduct.

Qualification as litigation guardian

24. Unless a person is appointed as a litigation guardian by the Court, a person shall become a litigation guardian of a person under a disability in a proceeding—

(*a*) by filing a sworn statement by a legal practitioner for the person under a disability; or

(*b*) by filing a sworn statement by a person with knowledge of the facts, deponing that the intended litigation guardian—

(i) has agreed to be the litigation guardian;

(ii) is a proper person to be the litigation guardian;

(iii) has no interest in the proceeding that is adverse to the interest of the person under a disability; and

(iv) where the person under a disability is a claimant in the proceeding, has made an undertaking that he shall be liable for costs that the person under a disability might otherwise be required to pay in the proceeding.

Continuation of claim upon death of claimant

25. Where the claimant dies during a proceeding involving a statement of case that continues after death then—

(*a*) the proceeding may be continued by the claimant's personal representative; and

(*b*) the Court may give directions to allow the personal representative to continue the proceeding.

Claimant's deceased estate or appointed representative of party

26. Where, at the commencement of a proceeding a defendant is dead and a personal representative has not been appointed, and the statement of case continues after the defendant's death, then—

(*a*) where the claimant knows the defendant is dead, the claim shall name the estate of deceased defendant as a defendant; and

(*b*) after a personal representative is appointed, all documents in the proceeding thereafter shall name the personal representative as defendant.

Partnerships

27. A partner may start a proceeding in the name of the partnership. Partnership

28. A proceeding against persons who are alleged to be partners may be brought and continued against the persons in the name of the partnership. Claims against partners to a partnership

29.—(1) A party to a proceeding against a partnership may, by notice in writing, require the partnership, within two days of the date of service of the notice, to give the names and particulars of all partners. Request on particulars of partners

(2) The notice shall be served—

(*a*) at the place of business of the partnership; or

(*b*) on one of the partners personally.

(3) Where the partnership does not give this information, the Court may—

(*a*) order the proceeding to be suspended until the information is given;

(*b*) order a summons or defence, as the case may be, that has been filed to be struck out; or

(*c*) make any other order it considers appropriate.

Representative Actions

30.—(1) A proceeding may be commenced and continued by, or against, one or more persons who have the same interest in the subject matter of the proceeding as representing all of the persons who have the same interest and could have been parties in the proceeding. Representatives with same interest

(2) At any stage of the proceeding, the Court may appoint one or more parties named in the proceeding, or other persons, to represent in the proceeding, the persons having the same interest.

(3) When appointing a person who is not a party, the Court shall also order that the person shall become a party.

(4) An order made in a proceeding against a representative party may be enforced against a person not named as a party only with the permission of the Court.

(5) An application for permission to enforce the order shall be served on the person against whom enforcement is sought as if the application were a claim.

Trustees

Trustees, executors or administrators

31.—(1) A claim may be brought against trustees, executors or administrators of an estate in their capacity without joining the beneficiaries.

(2) A judgment or order made in the proceeding shall be binding on all beneficiaries unless the Court orders otherwise.

Businesses

Claim against a person in respect of a business in Malawi

32. Where a claim is made against a person in respect of anything done, omitted or suffered in the course of, or otherwise relating to, a business carried on within Malaŵi by that person under a business name—

(*a*) if the business name is registered, a proceeding may be commenced against that person in the business name or under the rules relating to partnerships; and

(*b*) if the business name is not registered, a proceeding may be commenced against that person in his own name.

Proceeding commenced against person in a business name

33. Where a proceeding is commenced against a person in a business name under rule 32 (*a*)—

(*a*) that business name shall, for the purpose of the proceeding, be a sufficient designation of that person in any court process; and

(*b*) a judgment or order made in the proceeding may be enforced against that person.

ORDER 7

Statement of Case

Contents of statement of case

1. A statement of case shall—

(*a*) set out the material facts between the parties, as each party sees them, but not the evidence to prove them;

(*b*) show the areas where the parties agree;

(*c*) show the areas where the parties disagree that need to be decided by the Court;

(*d*) be as brief as the nature of the proceeding permits;

(*e*) identify any statute or principle of law on which the party relies, but not contain the legal arguments about the statute or principle;

(*f*) where the party is relying on customary law, state the customary law;

(*g*) state specifically any fact that if not stated specifically, it would take another party by surprise; and

(*h*) where the statement of case was prepared by a legal practitioner, state the name and address of the legal practitioner.

Statement of case to set out remedy sought

2. Where the statement of case is set out in a claim or counterclaim, it must also set out the remedy or order sought.

Defendant to file and service response

3. Unless the defendant files and serves a defence, he shall file and serve a response within the period required by Order 5 rule 7 (2) (*a*), and the response must be completed and signed.

No need for response where defence served

4. The defendant need not file and serve a response if he files and serves a defence within fourteen days of the date of service of the claim.

Filing a defence

5. Where the defendant intends to contest the claim, the defendant shall file and serve a defence on the claimant within the period required by Order 5 rule 7 (2) (*b*).

No general denial

6. A defendant shall deal with each fact in the claim and shall not deny a claim generally.

Defence to state facts denied

7. Where the defendant does not agree with a fact that the claimant has stated in the claim, the defendant shall file and serve a defence that denies the fact and states what the defendant alleges happened.

Non-denial deemed agreement

8. Where the defendant does not deny a particular fact, the defendant shall be taken to agree with that fact.

Lack of knowledge on fact

9. Where the defendant does not know about a particular fact and cannot reasonably find out about it, the defendant shall say so in the defence.

Failure to reply deemed general denial

10. Where a claimant does not file and serve a reply, the claimant shall be taken to deny all the facts alleged in the defence.

Reply with permission

11. Where a claimant wishes to allege further material facts after the defence has been filed and served, the claimant shall seek the permission of the Court to file and serve a reply.

Content of reply

12. Where the permission is granted under rule 11, the reply of the claimant shall—

(*a*) contain a statement of case limited to matters raised for the first time in the defence; and

(*b*) state what the claimant alleges as having happened.

Inference of claimant's denial

13. Where the reply of the claimant does not deal with a particular fact, the claimant shall be taken to deny it.

Content of statement of case in defence or reply

14. In a defence or a reply, the statement of case shall specifically mention a matter that—

(*a*) makes another party's claim or defence untenable;

(*b*) shows a transaction is void or voidable; or

(*c*) raises a question of fact not arising out of a previous statement of case.

Defence to include details of counterclaim

15. Where a defendant in a proceeding wants to make a counterclaim instead of bringing a separate proceeding, the defendant shall include details of the counterclaim in the defence.

Counterclaim to set out details as a claim

16. The counterclaim under rule 15 shall—

(*a*) be shown clearly as the counterclaim; and

(*b*) set out details of the counterclaim as if it were a claim.

Claimant's reply may include defence to counterclaim

17. A claimant may include a defence to the counterclaim in his reply where the defendant has made a counterclaim and rules 6 to 10 inclusive shall apply to the part of the reply that deals with the counterclaim as if the reply were a defence.

Defendant may file defence to reply in counterclaim

18. Where the claimant defends the counterclaim in a reply, the defendant may file a defence to the reply dealing with that part of the claimant's reply that relates to the counterclaim and rules 6 to 10 inclusive shall apply to the defence to the reply.

Effect of rules 20 to 22 to a counterclaim

19. Rules 20 to 22 shall apply to the conduct of a counterclaim, whether the counterclaim is against a person who was a party before the counterclaim was made or not, as if—

(*a*) the counterclaim is a claim, and the person making it is a claimant in an original proceeding; and

(*b*) the party against whom the counterclaim is made is a defendant to an original proceeding.

Counterclaim against person other than claimant

20.—(1) A defendant may make a counterclaim against a person other than the claimant where—

(*a*) the person is also a party to the counterclaim; and

(*b*) either—

(i) the defendant alleges the person is liable with the claimant for the counterclaim; or

(ii) the relief the defendant claims against the person is related to, or connected with, the claim of the proceeding.

(2) The defendant shall serve the defence and counterclaim, and the claim, on the other party within the time allowed for service under Order 5 rule 7.

Claim for damages to state nature and amount, etc.

21. Where damages are claimed in a claim or counterclaim, the claim or counterclaim shall also state the nature and amount of the damages sought; including special, aggravated and exemplary damages, and the basis on which the amount claimed has been worked out or estimated.

Content of statement of case where damages sought

22. Where damages are sought, the statement of case shall include—

(*a*) the nature of the loss or damage suffered; and

(*b*) the exact circumstances in which the loss or damage was suffered.

Amendment of statement of case

23. (1) A party may amend a statement of case to—

(*a*) better identify the issues between the parties;

(*b*) correct a mistake or defect; or

(*c*) provide better facts about each issue.

(2) After closure of the statement of case, an amendment may only be made with the permission of the Court or the consent of the parties.

(3) In deciding whether to allow an amendment, the Court shall have regard to whether another party would be prejudiced in a way that cannot be remedied by—

(*a*) awarding costs;

(*b*) extending the time for anything to be done; or

(*c*) adjourning the proceeding.

Filing statement of case out of time

24.—(1) A party may, on application, file with the Court a statement of case after the time fixed by Order 5 rule 7.

(2) The Court may decide whether or not the document under subrule (1) is effective for the proceeding.

(3) In deciding whether a statement of case filed out of time is effective, the Court may have regard to—

(*a*) the reasons why the document was filed out of time; and

(*b*) any additional expense or inconvenience incurred by the other party to the proceeding, and the disadvantage to the first party if the filing out of time is not allowed.

(4) Where the Court decides the filing of the document is not effective, the Court may—

(*a*) make any order that is appropriate for the proceeding; and

(*b*) make an order about the costs incurred by a party because of the late filing.

Effect of non-compliance with time of service of summons

25.—(1) A summons shall be served within three months of the date endorsed by the Registrar under Order 5 rule 4.

(2) Where a summons is not served within three months of the date endorsed by the Registrar under Order 5 rule 4—

(*a*) the claimant may apply to the Court to have the claim renewed; and

(*b*) where the claimant does not apply for renewal, the summons ceases to be of any effect.

ORDER 8

Service

Responsibility of service by party who filed

1. Where these Rules require a document to be served, the party who filed the document shall be responsible for ensuring that the document is served.

Service by person other than party filing

2. The Court may, on application by a party responsible for the service, order that the document be served by the Sheriff or other person, if the Court is satisfied that the circumstances of the proceeding require it.

Copy of summons, etc., to be served personally

3. A copy of the summons, which has been sealed, and the response in Form 2 referred to in Order 5 rules 4 and 7 respectively, shall be served on the defendant personally, unless—

(*a*) rule 20 applies; or

(*b*) the Court orders that the summons and the response in Form 2 may be served in another way.

Address for service

4. An address for service is the address at which documents in a proceeding, other than a summons, can be served on the party giving the address, and shall be—

(*a*) a home or place of business located within the territory of Malaŵi;

(*b*) at a post office or postal agency; or

(*c*) where the party is represented by a legal practitioner, the address of the legal practitioner's office.

Party filing document to state address for service

5. Every document filed shall state an address for service for the party filing the document.

Change in address for service

6.—(1) Where a party's address for service changes, the party shall, within two days of the change, give the Court and the other party a notice in writing of the new address and the notice shall include—

(*a*) the number of the proceeding; and

(*b*) the names of the parties.

(2) The notice shall be filed with the Court and served on the other party.

Last known address effective for service

7. Service of a document at the last known address, given as an address for service of a party, is effective service, unless a notice of change of address for service has been given to the party serving the document.

Service of documents other than summons

8. Subject to any specific provision in these Rules or any other written law, a document, other than a summons and a response, may be served—

(*a*) on a party personally;

(*b*) by leaving it at the party's address for service; or

(*c*) by sending it to the party's address for service by prepaid post, registered mail, courier service, facsimile, or, if the party has given an address for service by electronic mail, by electronic mail.

Alternative service

9.—(1) Where a defendant has not filed a response or defence, or has not given an address for service and a document is not required to be served personally, the document may be served on the defendant by filing in the Court and sending a sealed or stamped copy by prepaid post, registered mail or courier service addressed to the defendant, at the last known address of the defendant.

(2) A document filed under this Rule shall state, on its first page, that it is filed under this Rule.

Service by facsimile

10. A document served by facsimile shall include a cover page stating the following—

(*a*) the name and address of the server;

(*b*) the name of the person to be served;

(*c*) the date and time of transmission;

(*d*) the total number of pages, including the cover page, transmitted;

(*e*) the facsimile telephone number from which the document is transmitted;

(*f*) the name and mobile cellular or fixed-line telephone number of a person to contact if there is a problem with the transmission; and

(*g*) that the transmission is for service under these Rules.

Contents of sworn statement on service by facsimile

11.—(1) Where a document is served by facsimile, the person serving the document shall make and file with the Court a sworn statement giving proof of service.

(2) A sworn statement of the service of a document by facsimile shall include, as an exhibit, the transmission advice, generated by the facsimile machine by the sender, indicating that the transmission was successful.

Service by electronic mail

12.—(1) A document sent by electronic mail shall be capable of being printed by the recipient with the content and in the form in which it was created.

(2) A document sent by electronic mail shall include—

(*a*) the name and cellular or fixed-line telephone number of a person to contact if there is a problem with the electronic mail; and

(*b*) a statement that the electronic mail is for service under these Rules.

(3) Where a document is required under these Rules to be signed before it is served, it shall be sufficient if the person serving the document by electronic mail—

(*a*) identifies himself in the electronic mail by stating his name and business address; and

(*b*) states in the electronic mail that the original of the document sent by electronic mail was signed and by whom.

Service of sealed and stamped documents by electronic mail

13. Where a document is required under these Rules to be sealed and stamped before it is served, it shall be sufficient if the document served by electronic mail—

(*a*) is a copy of a document that was sealed and stamped on a specified date and the date is indicated on the document; and

(*b*) the person who serves the document by electronic mail states that the original of the document was sealed and stamped on a specified date and the date is indicated on the document.

Service of sworn statement by electronic mail

14. Where the document sent by electronic mail is a copy of a sworn statement, the original sworn statement is taken to have been sworn where—

(*a*) the original sworn statement was properly sworn; and

(*b*) the person who serves the copy of the sworn statement states in the electronic mail that the original was properly sworn.

Service out of time

15.—(1) The Court may decide whether or not the service of a document out of time is effective in the proceeding.

(2) In deciding whether or not the service of a document out of time is effective, the Court may consider—

(*a*) the reasons why the document was served out of time; and

(*b*) any additional expense or inconvenience incurred by the other party to the proceeding, and the disadvantage to the first party if the service out of time is not allowed.

Power of court on service out of time

16. Where the Court decides the service of a document out of time is not effective, the Court may—

(*a*) make any order that is appropriate in the proceeding; and

(*b*) make an order about the costs incurred by a party because of the service out of time.

Personal service of documents

17. A document shall be served personally on an individual—

(*a*) by giving a copy of the document to the individual; or

(*b*) where the individual does not accept the document, by throwing it down in the individual's presence, drawing his attention to the document.

Service on body corporate or trust

Cap. 46:03
Cap. 5:03

18. A document shall be served on—

(*a*) a body corporate in accordance with section 372 of the Companies Act; a trust in accordance with section 13 of the Trustees Incorporation Act; or

(*b*) where a body corporate does not have a registered office in Malaŵi, by leaving a copy of the document at the principal place of business or at the principal office of the corporation in Malaŵi.

Service on Government

19.—(1) All documents required to be served on the Government for the purpose of, or in connexion with, any proceeding by or against the Government shall be served on the Attorney General or upon another public officer or Government department, expressly authorized by a

written law to institute or defend the proceeding in question on behalf of the Government.

(2) All documents required to be served on the Government under subrule (1), shall be served on the Attorney General or upon another public officer or Government department—

(*a*) personally; or

(*b*) by sending it to the Attorney General or upon another public officer or Government department through the address for service by prepaid post, registered mail, courier service, facsimile, or if the party has given an address for service by electronic mail, by electronic mail.

Substituted service

20.—(1) Where it is not practical for a party to serve a document personally and an alternative way of serving the document is reasonably unlikely to bring the document to the attention of the person to be served, the party may apply to the Court for an order that the document be served by other means (the 'substituted service').

(2) The Court may order that a document be served—

(*a*) on a village or a faith community leader who lives in the area where it is believed the person to be served is living;

(*b*) on a spouse, parent or sibling of the person to be served;

(*c*) by putting a notice in a newspaper circulating in the area where the person to be served lives;

(*d*) by arranging for an announcement about the document to be broadcast on the local radio in the area where the person to be served lives;

(*e*) by leaving the document with an adult person at the last known address of the person to be served; or

(*f*) in any other way that the Court is satisfied will ensure that the person to be served knows about the document and its contents.

(3) A notice in the newspaper, or an announcement on the radio shall—

(*a*) be addressed to the person being served;

(*b*) give the name and last known address of the person being served and the name and address for service of the claimant;

(*c*) state where a copy of the document can be picked up by the person being served; and

(*d*) where the document requires the person to go to a court, state the time, date and the place of the Court where the person being served is to go.

Service on children

21. A document to be served on a child shall be served—

(*a*) where the child is a party to the proceeding and has a litigation guardian, on the litigation guardian; and

(*b*) where the child is not a party to the proceeding, on the child's parent or guardian, or on a person who appears to be acting in the position of the child's parent or guardian.

Appointment of litigation guardian for a child

22. Where a child is a party to a proceeding but does not have a litigation guardian, the person wishing to serve the child with a document shall apply to the Court for the appointment of a litigation guardian of the child and serve the document on the litigation guardian.

Service on person with disability

23. A document to be served on a person with disability shall be served—

(*a*) where the person is a party to the proceeding and has a litigation guardian, on the litigation guardian; and

(*b*) where the person is not a party to the proceeding, on the person's guardian, or on a person who appears to be acting in the position of the person's guardian.

Appointment of litigation guardian for a person with disability

24. Where a person with disability is a party to a proceeding but does not have a litigation guardian, the person wishing to serve the person with a document shall—

(*a*) apply to the Court for the appointment of a litigation guardian for the person; and

(*b*) serve the document on the litigation guardian.

Service on personal representative of deceased's estate

25. In a proceeding where the estate of a deceased person is a party, all documents must be served on one of the personal representatives of the estate or other fit and proper person acting on behalf of the estate.

Service on a partnership

26.—(1) A summons against a partnership must be served—

(*a*) on a partner; or

(*b*) at the principal place of business of the partnership.

(2) Where a summons is served as required by subrule (1), each partner who was a partner when the claim was issued is taken to have been served.

Proof of service of response or defence to counterclaim

27. Where a defendant files and serves a response or a defence to a claim, the claimant need not file a sworn statement giving proof of service.

Further action where party served fails to file document required by Rules

28. Where a party on whom another document is served does not subsequently file a document required by these Rules to be filed, the party serving the first document cannot take any further action in the proceeding unless he or she files a sworn statement setting out details of the time and manner in which the first document was served.

Content of sworn statement where document is served under rule 20

29. Where a document is served under rule 20, the sworn statement shall—

(*a*) for service on a village head, give details of how and when the claim was served on the village head;

(*b*) for service through a newspaper or by radio, give details of the service, including a copy of the notice or of the announcement; and

(*c*) for service by other means, give details of how the document was served.

Service of summons outside Malawi

30.—(1) A party may apply to the Court for an order that a summons in the Court be served outside Malaŵi.

(2) The Court shall, on application, order that a summons or other process be served outside Malaŵi where the Court is satisfied that the party seeking permission has a good and arguable case for the relief sought by the party in the proceeding, and—

(*a*) the claim concerns land in Malaŵi;

(*b*) an Act of Parliament, deed, will, contract, obligation or liability affecting land in Malaŵi is sought to be interpreted, rectified, set aside or enforced;

(*c*) the claim is against a person who is domiciled or ordinarily resident in Malaŵi;

(*d*) the claim is for the administration of an estate of a person who was domiciled in Malaŵi at the date of the person's death;

(*e*) the claim is for the execution of a trust, the person to be served is the trustee, and the trust concerns property in Malaŵi;

(*f*) the claim concerns a contract made in Malaŵi or governed by the law of Malaŵi;

(*g*) the claim is based on a breach of contract committed in Malaŵi, whether or not the contract was made in Malaŵi;

(*h*) the claim is based on a tort committed in Malaŵi;

(*i*) the claim is for damage suffered in Malaŵi, whether or not the tort causing the damage happened in Malaŵi;

(*j*) the claim is for an amount payable under any law to a public institution in Malaŵi;

(*k*) the proceeding is brought against a person in Malaŵi and the other person outside Malaŵi is a necessary party to the proceeding;

(*l*) the proceeding is for an injunction ordering the person to do or not do anything in Malaŵi, whether or not damages are claimed; or

(*m*) for any other reason the Court is satisfied that it is necessary for the claim to be served on a person outside Malaŵi.

(3) An order that a summons or other process be served outside Malaŵi shall be on such terms and conditions as the Court considers appropriate.

Application of rule 30

31. Rule 30 shall apply to service of a counterclaim and a third party notice.

Extension of time for service

32. The Court may give directions extending the time for service of a claim, filing a response or defence to the claim.

Claimant to serve copy of the order

33. A claimant shall serve on the person a copy of the order and each sworn statement made in support of the order.

Claimant to file statement giving proof of service

34. A claimant shall file a sworn statement giving proof of service.

Copy shall be sealed

35. Where these Rules require a copy of a filed document to be served, the copy shall be a sealed copy.

ORDER 9

Closure of Statement of Case

Closure of statement of case

1. The statement of case in a proceeding shall be deemed to be closed—

(*a*) at the expiration of seven days after service of the reply or, where there is no reply but only a defence to counterclaim, at the expiration of seven days after service of the defence to counterclaim; or

(*b*) where neither a reply nor a defence to counterclaim is served, at the expiration of seven days after service of the defence.

Compliance with a request or order for particulars immaterial

2. The statement of case in a proceeding shall be deemed to be closed at the time under rule 1 notwithstanding that any request or order of the Court for particulars has been made but has not been complied with at that time.

ORDER 10

Applications in Proceedings and Interlocutory Orders

Application for an interlocutory order or direction

1. A party may apply during a proceeding for an interlocutory order or direction of the Court by filing an application in a proceeding in Form 4.

Particulars of an application in a proceeding

2.—(1) An application in a proceeding shall—

(*a*) be signed by the applicant or the applicant's legal practitioner;

(*b*) cite the same parties as in the proceeding and anyone whose interests are affected by the order sought; and

(*c*) be signed and sealed by the Registrar.

(2) Nothing in this rule shall prevent a party to a proceeding from making an oral application during the proceeding or the Court making an order on an oral application.

Time for making interlocutory applications

3. A party may apply for an interlocutory order at any stage, namely; before a proceeding has started, during a proceeding, or after a proceeding has been dealt with, and whether or not the party mentioned the particular relief being sought in his summons or counterclaim.

Particulars of an application for interlocutory orders

4. An application for an interlocutory order under rule 1 shall—

(*a*) state the relief sought by the applicant; and

(*b*) have with it a sworn statement by the applicant or his legal practitioner setting out the facts that support the relief sought, unless—

(i) there are no questions of fact that need to be decided in making the order sought; or

(ii) the facts relied on in the application are already known to the Court.

Service of an application for interlocutory orders

5. An application for an interlocutory order shall be served on the other party to the proceeding, unless—

(*a*) the matter is so urgent that the Court decides the application in a proceeding should be dealt with in the absence of the other party; or

(*b*) the Court orders, for good reason, that there is no need to serve it on the other party.

Service of an application for an interlocutory order before hearing of a proceeding

6. The application for an interlocutory order before the hearing of a proceeding shall be served at least two clear days before the time set for hearing, unless the Court orders otherwise.

Hearing of interlocutory applications in open court an exception

7. An application for an interlocutory order made during a proceeding shall not be dealt with in open court unless—

(*a*) it is in the public interest that the matter be dealt with in open court; or

(*b*) the Court is of the opinion, for good reason, that the matter should be dealt with in open court.

Interlocutory order before commencement of a proceeding

8.—(1) A person may apply for an interlocutory order before a proceeding has started by filing an application in a proceeding and the application shall—

(*a*) set out the substance of the claim;

(*b*) have a brief statement of the evidence on which the applicant will rely on;

(*c*) set out the reasons why it is appropriate that the order be made before a proceeding has started; and

(*d*) have with it a sworn statement in support of the application.

(2) The Court may make the order if it is satisfied that—

(*a*) the applicant has a serious question to be tried and, if the evidence brought by the applicant remains as it is, the applicant is likely to succeed; and

(*b*) the balance of convenience favors the making of the order.

(3) When making the order, the Court may also order that the applicant file an application by the time stated in the order.

Oral applications

9. The Court may allow an oral application in a proceeding to be made where—

(*a*) the application is for urgent relief;

(*b*) the applicant undertakes to file an application in a proceeding within the time directed by the Court; and

(*c*) the Court considers it appropriate—

(i) because of the need to protect persons or property;

(ii) to prevent the removal of persons or property from Malaŵi; or

(iii) because of other circumstances that justify making the order asked for.

Freezing Injunction

Interpretation of "owner"

10. For purposes of rules 11 to 16, "owner", in relation to assets, includes the person entitled to possession and control of the assets.

Freezing injunction

11. The Court may, on application, make an order (the 'freezing injunction') restraining a person from removing assets from Malaŵi or dealing with assets in or outside Malaŵi.

Assets of non-party and conditions for granting freezing injunction

12.—(1) The Court may make an order for a freezing injunction whether or not the owner of the assets is a party to an existing proceeding.

(2) The Court may make the order only where—

(*a*) the Court has already given judgment in favour of the applicant and the freezing injunction is ancillary to it; or

(*b*) the Court is satisfied that—

(i) the applicant has a good and arguable case;

(ii) a judgment or order in the matter, or its enforcement, is likely to involve the assets; and

(iii) the assets are likely to be removed from Malaŵi, or dealing with them should be restrained.

Particulars of freezing injunction before and after commencement.

13.—(1) Where a proceeding has commenced, the application shall—

(*a*) describe the assets and their value and location; and

(*b*) include the name and address of the owner of the assets, if known, and the identity of anyone else who may be affected by the order and how they may be affected.

(2) Where the proceeding has not commenced, the summons or application shall state—

(*a*) the name and address of anyone else likely to be a defendant;

(*b*) the basis of the applicant's claim;

(*c*) the amount or nature of the claim;

(*d*) what has been done to recover the amount of the claim, or to get the relief claimed; and

(*e*) any possible defence to the claim.

(3) Where the application is made in any other proceeding, the application shall set out—

(*a*) how the assets to be subject to the order will form part of any judgment or its enforcement; and

(*b*) what will be done to preserve the assets;

(i) where the application has not been made on notice, the reason for the lack of notice; and

(ii) an undertaking as to damages that may be caused to the defendant or potential defendant, or anyone else who may be adversely affected, if the order is made; and a sworn statement in support of the application and a draft freezing injunction.

(4) The sworn statement under rule 3 (*e*) shall include—

(*a*) the reason why the applicant believes—

(i) the assets may be removed from Malaŵi; or

(ii) dealing with the assets should be restrained;

(*b*) where the Court has already made a judgment or order, the reason why the applicant believes the judgment or order already made may not be satisfied, or may be thwarted, if the freezing injunction is not made;

(*c*) where a proceeding has not been started and the name and address of the owner of the assets, and anyone else likely to be a defendant, are not known, what has been done to find out those names and addresses; and

(*d*) in any other case, how the assets to be subject to the order will form part of any judgment or its enforcement, what will be done to preserve the assets, and if the application has not been made on notice, the reason for the lack of notice.

Service of freezing injunction where name and address not known

14. Where the name and address of the owner of the assets is not known, the application for a freezing injunction may be served as follows—

(*a*) for service on a vessel, by attaching it to the mast or other conspicuous place on the vessel;

(*b*) for service on an aircraft, by attaching it to the pilot controls or other conspicuous place on the aircraft; or

(*c*) in any other case, as the Court directs.

Powers of the Court on granting freezing injunction

15. When making the freezing injunction, the Court shall—

(*a*) where a proceeding has commenced, fix a date on which the person to whom the order is granted is to report back to the Court on what has been done under the order; and

(*b*) where a proceeding has not commenced, order that—

(i) the applicant file a summons by the time stated in the order;

(ii) where the defendant is not known, the defendant be described in the claim as "person unknown"; and

(iii) where the name and address of the defendant or potential defendant is known, fix a time for serving the summons on him.

Varying or setting aside freezing injunction

16. The Court may, on application, set aside or vary a freezing injunction.

SEIZING INJUNCTION

Seizing injunction

17. The Court may, on application, make an order (the 'seizing injunction') authorizing an applicant to seize documents and objects in the possession of another person.

Seizing injunction without notice

18. The Court may make the seizing injunction—

(*a*) without notice to the defendant or potential defendant; and

(*b*) where the matter is extremely urgent, before a proceeding has commenced.

Conditions for granting seizing injunction

19. The Court may make the seizing injunction, only if it is satisfied that—

(*a*) the order is required to preserve documents and objects as evidence;

(*b*) there is a real possibility that, unless the order is made, the defendant or potential defendant is likely to destroy, alter or conceal the documents or objects or remove them from Malaŵi;

(*c*) the applicant has a good and arguable case;

(*d*) where the documents or objects are not seized, there is the likelihood of serious potential or actual harm to the applicant's interests; and

(*e*) there is clear evidence that the documents or objects are in the defendant's possession.

Particulars of application for seizing injunction

20. An application for the seizing injunction shall—

(*a*) describe the documents and objects, or kinds of documents and objects, to be covered by the injunction;

(*b*) give the address of the premises for which the injunction is sought;

(*c*) set out the basis of the claim of the applicant;

(*d*) set out proposals for the matters listed in rule 22;

(*e*) include an undertaking as to damage that may be caused to the defendant or potential defendant, or any other person who may be adversely affected, if the injunction is granted; and

(*f*) be accompanied by a sworn statement in support of the application and a draft seizing injunction.

Contents of sworn statement accompanying application for seizing injunction

21. The sworn statement under rule 20 (*f*) shall include—

(*a*) the reason for the preservation of the documents or objects as evidence;

(*b*) the basis for the applicant's belief that—

(i) there is a real possibility that, unless the seizing injunction is granted, the defendant or potential defendant is likely to destroy, alter or conceal the documents or objects or remove them from Malaŵi; and

(ii) where the documents or objects are not seized, there is the likelihood of serious potential or actual harm to the interests of the applicant;

(*c*) verification of the facts that support the claim;

(*d*) the evidence that the documents or objects are in possession of the defendant; and

(*e*) the damage the applicant is likely to suffer if the seizing injunction is not granted.

Seizing injunctions to detail the processing of the order

22. The seizing injunction shall include provisions pertaining to—

(*a*) service of the injunction on the defendant or potential defendant;

(*b*) the person who is to carry out the order, including the appointment of an independent legal practitioner to supervise the implementation of the seizing injunction;

(*c*) the hours when the enforcement of the seizing injunction may be effected;

(*d*) the name of a neutral person who is to be present when the injunction is carried out and provisions in relation to payment of their costs;

(*e*) access to buildings, vehicles and vessels;

(*j*) the making of a record of seized documents or objects;

(*g*) the manner of the storage of the seized documents or objects;

(*h*) the time given for copying and returning documents;

(*i*) how long the injunction stays in force; and

(*j*) the setting down of a date on which the person to whom the injunction is granted is to report back to the Court on what has been done under the seizing injunction.

Powers of the Court on granting seizing injunction

23. The Court may, under a seizing injunction—

(*a*) require the defendant to give the information stated in the injunction about the proceeding; and

(*b*) include another injunction restraining, for not more than seven days, any person served with that injunction from telling another person about the seizing injunction, except for the purpose of obtaining legal advice.

Appointment of receiver under seizing injunction

24.—(1) The Court may, under a seizing injunction, appoint a person to be the receiver of property owned by the defendant.

(2) In deciding whether to appoint a receiver, the Court shall consider—

(*a*) the amount of the claim by the applicant;

(*b*) the amount likely to be obtained by the receiver; and

(*c*) the probable costs of appointing and paying a receiver.

Conditions for appointment as receiver

25.—(1) The Court shall not appoint a person as a receiver, unless the person consents to the appointment.

(2) The Court may require the receiver to give security acceptable to the Court for performing his duties.

(3) An application for the appointment of a receiver shall be supported by a sworn statement.

(4) A sworn statement in support of the application for the appointment of a receiver shall—

(*a*) describe the property owned by the defendant; and

(*b*) give the reasons why the appointment of a receiver is necessary to preserve the property owned by the defendant.

(4) The order appointing the receiver shall—

(*a*) specify the duties of the receiver;

(*b*) state the period of the appointment;

(*c*) specify remuneration of the receiver;

(*d*) require the receiver to file accounts and give copies to the parties, and at the times, the Court requires; and

(*e*) specify any matter the Court requires.

Varying or setting aside seizing injunction

26. The Court may, on application, set aside or vary the seizing injunction.

Interlocutory Injunctions

Interlocutory injunctions

27. The Court may, on application, grant an injunction by an interlocutory order when it appears to the Court—

(*a*) there is a serious question to be tried;

(*b*) damages may not be an adequate remedy; and

(*c*) it shall be just to do so,

and the order may be made unconditionally or on such terms or conditions as the Court considers just.

Interlocutory orders

28. The Court may make an interim declaration by an interlocutory order when it appears to the Court to be just and convenient to do so and the order may be made unconditionally or on such terms or conditions as the Court considers just.

Service of interlocutory order

29. An applicant shall serve a copy of an interlocutory order on—

(*a*) the respondent; and

(*b*) any other person who is required to comply with the order.

Claim for urgent relief

30. Where a party seeks an urgent relief, the party shall—

(*a*) state the urgent relief; and

(*b*) inform the Court, that the party is seeking an urgent relief.

ORDER 11
Payment into Court

Payment into Court

1. In a proceeding, a defendant may, when filing, or at any time after filing, a response or defence—

(*a*) pay an amount into Court in satisfaction of—

(i) the claim for relief; or

(ii) where there are two or more causes of action included in a single proceeding, one or more of the claims for relief; or

(*b*) in a proceeding for defamation, pay an amount into Court in anticipation of a remedy.

Notice of payment into Court to be specific where two claims involved

2. Where there are two or more claims included in a single proceeding, and an amount is paid into Court in satisfaction of one or more of the claims for relief, the notice stall state—

(*a*) the claim or each claim for which payment is made; and

(*b*) the part of the amount paid in satisfaction of the claim or each claim.

Notice of payment into Court to be served on parties

3. Where a defendant makes a payment into Court under this Order, the defendant shall serve the notice of payment into Court on the claimant and where there are two or more defendants, on each defendant, and where there are two or more claimants, the defendant shall serve the notice of payment into Court on each of the claimant.

Power to increase payment

4. A defendant who has paid an amount into Court may make further payments increasing the amount without the permission of the Court.

Costs payable into Court where a party is liable to pay costs of another

5. Where a party in a proceeding is liable to pay the costs of another party in the proceeding, the party may, at any time after the party becomes liable to pay the costs, pay an amount into Court in satisfaction of the costs.

Application of this Order in relation to costs

6. This Order shall apply, with necessary changes, in relation to costs as if—

(*a*) the party entitled to the costs is a claimant;

(*b*) the party liable to pay the costs is a defendant; and

(*c*) the entitlement of the party to costs is a claim for relief.

Lodging of bond

7.—(1) A party may lodge a bond for an amount with the Registrar instead of actually paying the amount into Court.

(2) The following persons may give a bond—

Cap. 44:01

(*a*) a licensed bank or financial institution under the Banking Act;

Cap. 44:05

(*b*) a licensed financial institution under the Financial Services Act;

Cap. 47:01

(*c*) a licensed insurer registered under the Insurance Act;

(*d*) a body corporate approved by the Registrar; or

(*e*) a person who is authorized by the Court, in writing, to give the bond for an approved person.

(3) The bond shall remain in effect, unless the Court otherwise orders.

Copy of authority and bond to be filed with Court

8. Where a bond is given by a person authorized to do so under rule 7 (2), a copy of the authority of such person and the bond shall be filed with the Court, unless the authority has already been filed.

Bond to bind approved person

9. An authority given by, or for, a person authorized to do so under rule 7 (2) that has been filed shall bind the authorized person, until notice of its revocation is filed.

Effect of lodging bond

10. Where a bond is lodged by a party in accordance with rules 7 to 9, this Order shall apply as if the party had paid an amount of the bond into Court.

Security for payment instead of actual payment

11. A party may lodge a security for payment of an amount with the Registrar instead of actually paying the amount into Court or lodging a bond under rule 7.

Presumption of claim for interest

12. In this Order, a claim by a claimant for relief for a debt, liquidated demand or damages shall be presumed to include a claim for interest that might be included in a judgment, where judgment was given at the date of the payment into Court.

Claimant may accept amount paid into Court

13. Where an amount is paid into Court under this Order by a defendant, the claimant may accept the amount in satisfaction of the claim for relief or, where there are two or more causes of action included in a single proceeding, the claim or each claim for which the payment is made.

Rule 13 to apply to persons under disability

14. Rule 13 shall apply in relation to a proceeding in which there is a claim for an amount, including an amount of damages, by or on behalf of a person under a disability, subject to the approval of the Court under rule 31.

Acceptance to be by service of notice of acceptance

15. The claimant may accept the amount by serving a notice of acceptance on the defendant or, where the payment was made by one of two or more defendants, each defendant—

(*a*) not later than fourteen days after the day notice of payment into Court is served on the claimant; or

(*b*) where two or more payments into Court have been made, not later than fourteen days after the day the notice of the last payment into Court is served on the claimant.

Defendant to pay amount of bond upon notice of acceptance

16. Where the claimant paid the amount into Court by bond or other security, the defendant shall pay into Court the amount of the bond or security not later than fourteen days after the day the notice of acceptance is served on the defendant.

Effect of non-compliance

17. Where the defendant does not comply with rule 16, he is not entitled to any advantage under this Order for the payment into Court, and the claimant may—

(*a*) withdraw, by a notice in writing, his acceptance; or

(*b*) request the Registrar to assign the bond or security to the claimant in order that he can enforce the bond or security.

Payment in a claim by beneficiary

18. Where an amount was paid into Court in a proceeding involving a claim by a beneficiary arising out of the death of a person, the amount shall only be paid out under an order of the Court.

Payment by order of Court where party under disability

19. Where an amount was paid into Court in a proceeding where one of the parties is a person under a disability, an amount shall not be paid out of court without an order of the Judge or Registrar, as the case may be.

Parties may agree payment out of Court

20. Subject to rules 18 and 19, where an amount was paid into Court in a proceeding, the parties may agree that the amount be paid out of Court.

Payment to claimant or legal practitioner

21. Unless the Court orders otherwise, payment shall be made to the claimant or, if the claimant has given written authority for payment to be made to his legal practitioner, then the legal practitioner.

Payment to stay claim

22. Where a payment out of Court is made, the claim for relief or stated claim shall be permanently stayed.

Taxation for costs where payment satisfies all claims

23.—(1) Where a claimant in a proceeding where there is one or more causes of action accepts an amount paid into court in satisfaction of all claims for relief, the claimant may file a bill of costs for assessment not earlier than seven days after the day the amount is paid out of Court.

(2) The costs claimed in the bill of costs may include—

(*a*) the costs incurred to the day of payment into Court;

(*b*) the costs reasonably incurred in accepting the payment; and

(*c*) the costs incurred in preparing the bill of costs.

Payment into Court as stay of claims for relief in counterclaim

24. Where—

(*a*) an amount is paid into Court by a defendant who made a counterclaim;

(*b*) the defendant stated in the notice of payment into court that in making the payment the defendant had taken into account and intended to dispose of all the claims for relief, or stated claims, for which the defendant counterclaimed; and

(*c*) the claimant accepts the amount,

the claims for relief, or stated claims, are permanently stayed against the claimant.

Amount paid out with agreement of parties or Court order

25. (1) Where an amount paid into Court is not taken out under rules 13 to 22, the amount may be paid out only with the agreement of all parties to the proceeding or under an order of the Court.

(2) The order under subrule (1) may be made at any time before, during or after the trial of the proceeding.

Application of this Order

26. This Order applies, with the necessary changes, to a claimant or any other person, made a defendant to a counterclaim, who pays an amount into Court under this Order.

Informing Court of payment into Court

27.—(1) Until judgment has been given, the Court at the trial of the proceeding shall not be informed about any payment into Court.

(2) Once judgment has been given, the Court shall be made aware of the payment into Court.

Consideration on determination of costs

28. When exercising the discretion about costs of a proceeding, other than an application for which a separate order for costs is to be made, the Court shall take into account—

(*a*) the fact that an amount has been paid into Court;

(*b*) the date the payment was made; and

(*c*) the amount of the payment or any other relevant factors.

Application of rules 30 to 31

29. Rules 30 to 31 shall apply—

(*a*) where a claimant (the 'recovering party') brings a proceeding to recover, or a defendant (the 'recovering party') in a counterclaim seeks to recover, property other than land; and

(*b*) the party (the 'holding party') from whom the recovery is sought does not dispute the right of the recovering party to the property, but claims to be entitled to retain the property because of a lien or other security for an amount.

Payment in relation to a holding and recovering party.

30.—(1) The Court may order that the recovering party pay the amount under rule 29, and an amount, if any, for interest or costs, into Court.

(2) The Court may make the order under subrule (1) at any time after the claim mentioned in rule 29 (*b*) is made in the statement of case or where there is no statement of case, by sworn statement or otherwise to the satisfaction of the Court.

(3) Once a payment into Court has been made, the holding party shall surrender the property to the recovering party.

Payment only with approval of Court in disability proceedings

31.—(1) In a proceeding or intended proceeding under which there is a claim for an amount, including an amount of damages, by, or on behalf of, a person under a disability, a settlement or compromise may only be entered into, and an amount paid into Court may only be accepted, with the approval of the Court.

(2) The application for the approval of the Court shall be made in the summons, unless the application is made in a proceeding that has commenced.

(3) The Court may make an order directing how an amount recovered, awarded or agreed to be paid in a proceeding in relation to the claim for relief of a claimant who is a person under a disability shall be dealt with.

(4) Without prejudice to subrule (3), the Court may, by order, direct—

(*a*) the payment of all or part of the amount to—

(i) the claimant or the claimant's litigation guardian for—

(A) expenses incurred by or paid for the claimant; or

(B) the maintenance or benefit of the claimant; or

(ii) the claimant's legal practitioner for costs;

(*b*) the investment of all, or part, of the amount for the claimant in the way stated in the order;

(*c*) the investment of all, or part, of the interest received from an investment under this rule for the claimant in the way stated in the order;

(*d*) the changing of an investment made for the claimant under this rule;

(*e*) the sale of securities in which an amount is invested for the claimant under this rule at the time, and on the conditions, stated in the order; or

(*f*) the payment of all, or part, of the amount, or the transfer of a security or investment under this rule, including an account with an authorized deposit-taking institution, for the claimant.

ORDER 12
Ending a Proceeding Early

A proceeding to be stayed where claim for money or return of goods satisfied

1. Where a proceeding is for a claim for money or the return of goods, the proceeding shall be stayed if, within the time allowed for filing any response or defence, the defendant—

(*a*) pays the claimant—

(i) the amount claimed;

(ii) any amounts claimed for interest; and

(iii) the amount of any filing and service fees actually paid; or

(*b*) returns the goods or pays the value of the goods.

Application of rule 1 and assessment of costs

2.—(1) This rule shall apply where a proceeding has been stayed under Rule 1.

(2) The claimant may have his costs assessed where—

(*a*) rule 5 applies; or

(*b*) he claims costs to be assessed.

Statement acknowledging amount and interest

3.—(1) The defendant shall file a statement acknowledging the amount and interest, if any, that has been claimed.

(2) Subrule (1) shall not apply if the defendant has filed a defence or the claimant has filed an application for a judgment in default under these Rules.

(3) Where a statement has been filed under subrule (1), the Court may enter judgment for the claimant for the amount and interest, if any, that has been claimed.

(4) Where interest is claimed under a proceeding and a judgment has been entered under subrule (3), interest shall be assessed using the rate stated in the summons to the date of judgment or, where a rate of interest is not stated in the summons, interest shall be assessed using statutory interest to the date of judgment, or a lump sum instead of that interest, which shall be decided by the Court.

(5) Where a claimant has claimed costs and disbursements, the Court may order the amount applicable under rule 5 or, in any other case, the Court shall order costs that have been agreed by parties or assessed by the Court.

Power to enter judgment without hearing

4.—(1) The Court may enter judgment for the claimant without a hearing.

(2) A judgment entered under subrule (1) fully discharges all the claims in the proceeding.

Costs when a proceeding could have been commenced in subordinate court

5. Where a proceeding is in the Court, and the proceeding could properly have been brought in the subordinate courts, the amount of costs to be awarded to the claimant or defendant, as the case may be, shall be the amount applying under the subordinate court scale.

Judgment in Default

Judgment in default

6. Where a defendant—

(*a*) does not file and serve a response or a defence within fourteen days after service of the summons; or

(*b*) files a response within the time under paragraph (*a*) but does not file and serve a defence within twenty-eight days after the service of the summons,

the claimant may file a sworn statement as a 'proof of service' that the summons and response in Form 2 was served on the defendant as required by Order 5 rule 7, and he may—

(i) apply to the Court for a judgment in default to be entered under this Order against the defendant; and

(ii) carry on the proceeding against any other party to the proceeding.

Application for default judgment for liquidated claims to be made by filing draft judgment and sworn statement

7.—(1) An application for a judgment in default for liquidated claims, unliquidated monetary claims, including claims for damages, the detention of goods, the recovery or delivery of possession of land in an application for possession of land, may be made by filing a draft of the judgment together with a sworn statement in support of the application.

(2) The draft of the judgment in default and the sworn statement under subrule (1) need not be served on any person unless the Court otherwise orders.

Default judgment under rule 7 may be entered without a hearing

8.—(1) The Court may enter a judgment in default for the claimant under rule 7 without a hearing for liquidated claims, unliquidated monetary claims, including claims for damages, the detention of goods, the recovery or delivery of possession of land in an application for possession of land, interest from the date of filing the application at a rate fixed by the Court, and costs.

(2) Where a judgment in default is entered in respect of an unliquidated claim, the claimant shall serve on the defendant a notice of assessment of damages.

Contents of sworn statement under rule 7

9. The sworn statement under rule 7 shall—

(*a*) state the liquidated amount owing, or the unliquidated damages due, to the claimant, in relation to the claim for relief, at the time the application was filed;

(*b*) give particulars of any reduction of the amount owing and costs, due to any payments made, or credits accrued, since the application was filed;

(*c*) state the amount claimed for interest, and how the amount is worked out;

(*d*) state that the proceeding has not been settled with the defendant;

(*d*) state any amounts paid in relation to the claim; and

(*e*) state the costs claimed.

Determination of costs on default judgment for debt or liquidated demand

10. Where a claim for a judgment in default is only for a debt or liquidated demand, with or without interest, and the Court enters judgment for the claimant under rule 7, the costs and disbursements, including any filing and service fees actually paid, shall be allowed without assessment if the costs and disbursements claimed, other than any filing and service fees actually paid, are not more than the costs applying, from time to time.

Court to assess costs

11. The costs and disbursements for the claimant shall be agreed or determined by the Court or assessed where the costs and disbursements claimed, other than any filing and service fees actually paid, are more than the costs applying under these Rules.

Request for default judgment for unliquidated claim

12. The claimant may file a request for judgment in default to be entered against the defendant under rule 7 for an amount to be assessed by the Court under rule 13.

Powers of Court on default judgment for unliquidated claim

13. The Court may enter a judgment in default against a defendant for an amount to be determined; and determine the amount of damages, or where there is not enough information before the Court to do so, fix a date for a conference or hearing to determine the amount of damages.

Possession of Land

Application for recovery of possession of land

14.—(1) Where an application is for the recovery of possession of land, the Court may enter a judgment for the claimant under rule 7 (1) for recovery of possession of the land against the defendant and costs.

(2) The application shall be supported by a sworn statement.

(3) A sworn statement in support of the application under subrule (1) shall—

(*a*) identify a person, other than the parties to the proceeding, who is in actual possession of the land or any part of it—

(i) at the time the application was filed; or

(ii) where the claim for possession arises from an amendment to the application, at the time the amendment was made;

(*b*) where the claim for possession of the land arises from a failure to pay an amount, give particulars of the failure; and

(*c*) state the costs claimed.

(3) The Court shall award the costs for issuing the application, costs for obtaining judgment, and any other fees and payments, to the extent they have been reasonably incurred and paid.

Court not to enter judgment

15. Where, before judgment is entered, a person files an application under Order 6 rule 7 for the person to be added as a defendant, the Court shall not enter judgment under rule 14 until it disposes of the application.

Return of Goods

Application for return of goods

16.—(1) Where an application is in relation to the detention of goods, the Court shall enter judgment for the claimant against the defendant under rule 7 (1) for the return of the goods to the applicant, payment to the applicant for the loss of use of the goods and costs, or payment to the applicant of the value of the goods and costs.

(2) The application shall be supported by a sworn statement.

(3) The sworn statement in support of the application under subrule (2) shall—

(*a*) state which goods have, and which have not, been delivered to the applicant since the claim or counterclaim was filed;

(*b*) give particulars of any payments the defendant has made to the applicant for the goods, or state that no payments have been made, since the claim or counterclaim was filed; and

(*c*) state the costs claimed.

(3) Where the Court enters judgment under subrule (1), and the claimant subsequently applies for an order under this rule, the Court may make an order for the return of the goods to the claimant without the option of the defendant paying the value of the goods.

(4) The Court shall specify a date before which the return of the goods shall take place under the judgment entered under subrule (1).

(5) Where the Court enters judgment for the return of goods, and the goods are subsequently damaged, destroyed or otherwise made unavailable for their return, the Court may, on an application by the claimant, order the defendant to pay the value of the goods to the claimant.

(6) The "value" of the goods under this Order means the value as assessed by, or in accordance with the directions of, the Court.

Determination of costs in relation to detention of goods

17.—(1) Where a claim for a judgment in default is only in relation to detention of goods, with or without interest, and the Court enters judgment for the claimant under rule 7, his costs and disbursements, plus any filing and service fees actually paid, must be allowed without assessment where the costs and disbursements claimed, other than any filing and service fees actually paid, are not more than the costs amount applying, from time to time, under these Rules.

(2) The costs and disbursements must be agreed or determined by the Court or assessed where the costs and disbursements claimed, other than any filing and service fees actually paid, are more than the costs amount applying under these Rules.

Powers of the Court in relation to rules 6 and 7

18. Where a defendant is in default under rule 6 and the claimant is not entitled to apply for judgment under rule 7, the Court may enter the judgment it considers just even if the judgment was not claimed.

Assessment of Damages

Assessment of damages to be conducted as trial

19.—(1) The Court shall conduct the assessment of the amount of damages in the same way as a trial.

(2) The Court may give directions about—

(*a*) the procedure to be followed before the assessment takes place;

(*b*) disclosure of information and documents;

(*c*) filing of statements of the case; and

(*d*) the conduct of the assessment generally.

(3) After damages have been assessed, the claimant shall enter judgment setting out the amount of damages and, unless the defendant was present when the damages were assessed, serve a copy of the judgment on the defendant.

Determination of damages without trial

20. The Court may determine damages without conducting a trial where—

(*a*) the claimant has filed a sworn statement as to the precise amount claimed;

(*b*) the sworn statement provides sufficient information for the Court to determine the amount for which judgment is to be entered; and

(*c*) the defendant has not challenged the amount and information.

Setting Aside Judgment in Default

Application to set aside default judgment

21.—(1) A defendant against whom judgment in default has been entered may apply to the Court to have the judgment set aside.

(2) The application under subrule (1) may be made not later than three months after the judgment is entered and shall—

(*a*) set out the reasons why the defendant did not defend the application;

(*b*) where the application is made more than three months after the judgment was entered, explain the delay; and the Court shall not set the judgment aside, unless it is satisfied that it is in the interests of justice to do so;

(*c*) give details of the defence to the application; and

(*d*) have a sworn statement in support of the application.

(3) The Court may set aside the judgment in default if it is satisfied that the defendant—

(*a*) has shown reasonable cause for not defending the application; and

(*b*) has a meritorious defence, either about his liability for the application or about the amount of the application.

(4) At the hearing of the application, the Court shall—

(*a*) give directions about the filing of the defence and other statements of the case;

(*b*) make an order about the payment of the costs incurred to date;

(*c*) consider whether an order for security for costs should be made; and

(*d*) make any other order necessary for the proper progress of the proceeding.

Application of rule 21

22.—(1) Rule 21 shall apply to a proceeding as if the proceeding were contested.

(2) Where a judgment in default against the defendant has been set aside under rule 21 (3), the defendant shall not file a statement acknowledging the amount claimed without the permission of the Court.

Summary Judgment

Summary judgment

23.—(1) The claimant may apply to the Court for a summary judgment where the defendant has filed a defence but the claimant believes that the defendant does not have any real prospect of defending the claim.

(2) Summary judgment shall not apply to a claim for libel, slander, false prosecution, false imprisonment, seduction or an Admiralty action *in rem.*

Contents of sworn statement supporting an application for summary judgment

24. An application for summary judgment shall be supported with a sworn statement which shall—

(*a*) verify the facts stated in the application;

(*b*) state that the applicant believes there is no defence to the claim or part of it; and

(*c*) state the specific orders that are sought by the claimant.

Procedure for an application for summary judgment

25. For purposes of rule 23—

(*a*) the claimant shall file the application and sworn statement, and shall serve a sealed copy of the application and statement on the defendant not less than fourteen days before the date of hearing;

(*b*) the defendant may file a sworn statement setting out the reasons why the defendant has a good and arguable defence, and shall serve the statement on the claimant at least seven days before the date of hearing; and

(*c*) the claimant may file a sworn statement in reply and shall serve the statement on the defendant at least two days before the date of hearing.

(2) Where the Court is satisfied that—

(*a*) the defendant has no arguable defence to the claim or part of the claim as presented in the application; and

(*b*) there is no need for a trial of the application or that part of the application, the Court shall—

(i) give judgment for the applicant for the application or part of the application; and

(ii) make any other order the Court may deem appropriate.

No summary judgment where there is relevant dispute

26. The Court shall not enter summary judgment against a defendant where it is satisfied that there is a relevant dispute between the parties about a fact or an arguable question of law.

Security for costs

27. Where the Court refuses to enter summary judgment, it may order the defendant to give security for costs within the time stated in the order.

JUDGMENT ON ADMISSIONS

Admissions to be in writing

28.—(1) A party may admit the truth of the whole or any part of another party's claim.

(2) The party may do this by giving notice in writing, such as in a statement of case or by letter.

(3) Where the only remedy which the claimant is seeking is the payment of money, the defendant may also make an admission in accordance with—

(*a*) rule 32;

(*b*) rule 33;

(*c*) rule 34; or

(*d*) rule 35.

(4) Where the defendant makes an admission as mentioned in paragraph (3), the claimant has a right to enter judgment, except where—

(*a*) the defendant is a person under a disability; or

(*b*) the claimant is a person under a disability and the admission is made under rule 33 or 35.

(5) The permission of the Court shall be required to amend or withdraw an admission.

Admissions made before commencement of proceedings

29.—(1) A person may, by giving notice in writing, admit the truth of the whole or any part of another party's claim before the commencement of a proceeding (a 'pre-action admission').

(2) Subrules (3) to (5) of this rule apply to a pre-action admission if one of the following conditions is met—

(*a*) it is made after the party making it has received a letter before claim; or

(*b*) it is made before the party receives the letter under paragraph (*a*), but it is stated to be made under this rule.

(3) A person may, by giving notice in writing, withdraw a pre-action admission—

(*a*) before the commencement of a proceeding, if the person to whom the admission was made agrees; or

(*b*) after the commencement of a proceeding, if all parties to the proceeding consent or with the permission of the Court.

(4) After the commencement of a proceeding—

(*a*) any party may apply for judgment on the pre-action admission; and

(*b*) the party who made the pre-action admission may apply to withdraw it.

(5) An application to withdraw a pre-action admission or to enter judgment on such an admission may be made—

(*a*) in accordance with Order 10; or

(*b*) as a cross-application.

Period for returning admissions

30.—(1) The period for returning an admission under rule 32 or for filing it under rules 33, 34 or 35 is—

(*a*) where the defendant is served with a claim form which states that particulars of claim will follow, fourteen days after service of the particulars; and

(*b*) in any other case, fourteen days after service of the claim form.

(2) Subrule (1) shall be subject to the following rules—

(*a*) Order 8 rule 30; and

(*b*) Order 7 rule 6.

(3) A defendant may return an admission under rule 32 or file it under rules 33, 34 or 35 after the end of the period for returning or filing it specified in paragraph (1) if the claimant has not obtained a judgment in default under rule 6.

(4) Where the defendant returns an admission, rule 28 shall apply as if the admission had been made within that period.

Admissions by notice in writing

31.—(1) Where a party makes an admission under rule 28 (2), any other party may apply for judgment on the admission.

(2) Judgment shall be such judgment as it appears to the Court that the applicant is entitled to on the admission.

Admission of whole of claim for specified amount money

32.—(1) This rule shall apply where—

(*a*) the only remedy which the claimant is seeking is the payment of a specified amount of money; and

(*b*) the defendant admits the whole of the claim.

(2) The defendant may admit the claim by returning to the claimant an admission in the relevant practice form.

(3) The claimant may obtain judgment by filing a request in Form 5 and, where they do so—

(*a*) where the defendant has not requested time to pay, the procedure in subrule (4) to (6) shall apply; and

(*b*) where the defendant has requested time to pay, the procedure in rule 37 shall apply.

(4) The claimant may specify in his request for judgment—

(*a*) the date by which the whole of the judgment debt is to be paid; or

(*b*) the times and rate at which it is to be paid by instalments.

(5) On receipt of the request for judgment, the Court shall enter judgment.

(6) Judgment shall be for the amount of the claim, less any payments made, and costs—

(*a*) to be paid by the date or at the rate specified in the request for judgment; or

(*b*) if none is specified, immediately.

Admission of part of a claim for a specified amount of money

33.—(1) This rule shall apply where—

(*a*) the only remedy which the claimant is seeking is the payment of a specified amount of money; and

(*b*) the defendant admits part of the claim.

(2) The defendant may admit part of the claim by filing an admission in Form 6.

(3) On receipt of the admission, the Court shall serve a notice on the claimant requiring the return of the notice stating that—

(*a*) the claimant accepts the amount admitted in satisfaction of the claim;

(*b*) the claimant does not accept the amount admitted by the defendant and wishes the proceedings to continue; or

(*c*) where the defendant has requested time to pay, the claimant accepts the amount admitted in satisfaction of the claim, but not the defendant's proposals as to payment.

(4) The claimant shall—

(*a*) file the notice; and

(*b*) serve a copy on the defendant,

within fourteen days after it is served.

(5) Where the claimant does not file the notice within fourteen days after it is served on him, the claim is stayed until the notice is filed.

(6) Where the claimant accepts the amount admitted in satisfaction of the claim, they may obtain judgment by filing a request in Form 7 and, if they do so—

(*a*) where the defendant has not requested time to pay, the procedure in subrules (7) to (9) shall apply;

(*b*) where the defendant has requested time to pay, the procedure in rule 37 shall apply.

(7) The claimant may specify, in his request for judgment—

(*a*) the date by which the whole of the judgment debt is to be paid; or

(*b*) the time and rate at which it is to be paid by instalments.

(8) On receipt of the request for judgment, the court shall enter judgment.

(9) Judgment shall be for the amount admitted, less any payments made, and costs—

(*a*) to be paid by the date or at the rate specified in the request for judgment; or

(*b*) if none is specified, immediately.

Admission of liability to pay whole of claim for unspecified amount of money

34.—(1) This rule shall apply where—

(*a*) the only remedy which the claimant is seeking is the payment of money;

(*b*) the amount of the claim is not specified; and

(*c*) the defendant admits liability but does not offer to pay a specified amount of money in satisfaction of the claim.

(2) The defendant may admit the claim by filing an admission in Form 8.

(3) On receipt of the admission, the Court shall serve a copy on the claimant.

(4) The claimant may obtain judgment by filing a request in Form 9.

(5) Where the claimant does not file a request for judgment within fourteen days after service of the admission, the claim shall be stayed until the request is filed.

(6) On receipt of the request for judgment, the Court shall enter judgment.

(7) Judgment shall be for an amount to be decided by the Court and costs.

Admission of liability to pay claim for unspecified amount of money where defendant offers a sum in satisfaction of the claim

35.—(1) This rule shall apply where—

(*a*) the only remedy which the claimant is seeking is the payment of money;

(*b*) the amount of the claim is not specified; and

(*c*) the defendant—

(i) admits liability; and

(ii) offers to pay a specified amount of money in satisfaction of the claim.

(2) The defendant may admit the claim by filing an admission in Form 10.

(3) On receipt of the admission, the Court shall serve a notice on the claimant requiring the return of the notice stating whether or not the claimant accepts the amount in satisfaction of the claim.

(4) Where the claimant does not file the notice within fourteen days after it is served, the claim is stayed until the notice is filed.

(5) Where the claimant accepts the offer, they may obtain judgment by filing a request in Form 11, and if they do so—

(*a*) where the defendant has not requested time to pay, the procedure in subrules (6) to (8) shall apply; and

(*b*) where the defendant has requested time to pay, the procedure in rule 37 shall apply.

(6) The claimant may specify in his request for judgment—

(*a*) the date by which the whole of the judgment debt is to be paid; or

(*b*) the times and rate at which it is to be paid by instalments.

(7) On receipt of the request for judgment, the Court shall enter judgment.

(8) Judgment shall be for the amount offered by the defendant, less any payments made, and costs—

(*a*) to be paid on the date or at the rate specified in the request for judgment; or

(*b*) where none is specified, immediately.

(9) Where the claimant does not accept the amount offered by the defendant, the claimant may obtain judgment by filing a request in Form 12.

(10) Judgment under subrule (9) shall be for an amount to be decided by the Court and costs.

Allocation of claims in relation to outstanding matters

36. Where the Court enters judgment under rule 35 for an amount to be decided by the Court, it shall—

(*a*) give any directions it considers appropriate; and

(*b*) where it considers it appropriate, set down the proceeding for hearing.

Request for time to pay

37.—(1) A defendant who makes an admission under rules 32, 33 or 35 may make a request for time to pay.

(2) The defendant's request for time to pay must be served or filed, as the case may be, with his admission.

(3) Where the claimant accepts the defendant's request, they may obtain judgment by filing a request in Form 13.

(4) On receipt of the request for judgment, the Court shall enter judgment.

(5) Judgment shall be—

(*a*) where rule 32 applies, for the amount of the claim, less any payments made, and costs;

(*b*) where rule 33 applies, for the amount admitted, less any payments made, and costs; or

(*c*) where rule 35 applies, for the amount offered by the defendant, less any payments made, and costs,

and, in all cases, shall be for payment at the time and rate specified in the defendant's request for time to pay.

Determination of rate of payment

38.—(1) This rule shall apply where the defendant makes a request for time to pay under rule 37.

(2) Where the claimant does not accept the defendant's proposals for payment, he shall file a notice in Form 14.

(3) Where the defendant's admission was served direct on the claimant, a copy of the admission and the request for time to pay must be filed with the claimant's notice.

(4) When the Court receives the claimant's notice, it shall enter judgment for the amount admitted, less any payments made, to be paid at the time and rate of payment determined by the Court.

Determination of rate of payment by Judge

39.—(1) Where a Judge is to determine the time and rate of payment, he may do so without a hearing.

(2) Where a Judge is to determine the time and rate of payment at a hearing, the proceeding shall be in open court.

(3) Where there is to be a hearing to determine the time and rate of payment, the Court shall give each party at least seven days' notice of the hearing.

Right of redetermination

40.—(1) Where a Judge has determined the time and rate of payment under rule 39 without a hearing, either party may apply for the decision to be re-determined by the Judge.

(2) An application for redetermination shall be made within fourteen days after service of the determination on the applicant.

Interest

41. Where judgment is entered under rule 32, interest shall be calculated according to rule 3 (4).

Withdrawal and Discontinuance

Discontinuance

42. The claimant may discontinue his claim at any time.

Effect of abandoning claim to one or more remedies

43. A claimant who—

(*a*) claims more than one remedy; and

(*b*) subsequently abandons his claim to one or more of the remedies but continues with his claim for the other remedies, is not treated as discontinuing all or part of a claim under these Rules.

Procedure for amending statement of case

44. The procedure for amending a statement of case, set out under Order 7, shall apply where a claimant abandons a claim for a particular remedy but wishes to continue with his claim for other remedies.

Right to discontinue claim

45.—(1) Subject to subrule (2), (3) and (4), a claimant may discontinue all or part of a claim at any time.

(2) A claimant shall obtain the permission of the Court if he wishes to discontinue all or part of a claim in relation to which—

(*a*) the Court has granted an interim injunction; or

(*b*) any party has given an undertaking to the Court.

(3) Where the claimant has received an interim payment in relation to a claim, whether voluntarily or under Order 10, he may discontinue that claim only if—

(*a*) the defendant who made the interim payment consents in writing; or

(*b*) the Court gives permission.

(4) Where there is more than one claimant, a claimant may not discontinue a claim, unless—

(*a*) every other claimant consents in writing; or

(*b*) the Court gives permission.

(5) Where there is more than one defendant, the claimant may discontinue all or part of a claim against all or any of the defendants.

Procedure for discontinuance

46.—(1) In order to discontinue a claim or part of a claim, a claimant shall—

(*a*) file a notice of discontinuance; and

(*b*) serve a copy of the notice on every other party to the proceeding.

(2) The claimant shall state in the notice of discontinuance which he files, that he has served the notice of discontinuance on every other party to the proceeding.

(3) Where the claimant needs the consent of another party, a copy of the consent shall be attached to the notice of discontinuance.

(4) Where the claimant needs the permission of the Court, the notice of discontinuance shall contain details of the order by which the Court gave permission.

(5) Where there is more than one defendant, the notice of discontinuance shall specify against which defendant the claim is discontinued.

Right to apply to have notice of discontinuance set aside

47.—(1) Where the claimant discontinues a claim, the defendant may apply to the Court to have the notice of discontinuance set aside and to file an application for assessment of costs.

(2) The defendant may not make an application under this rule more than twenty-eight days after the date when the notice of discontinuance was served on him.

Effect of discontinuance

48.—(1) Subject to rule 47, discontinuance against a defendant shall take effect on the date when the notice of discontinuance is served on him under rule 46.

(2) Discontinuance shall not affect any proceeding on determination or assessment of costs by the Court.

Liability for costs

49.—(1) Unless the Court orders otherwise, a claimant who discontinues is liable for the costs which a defendant against whom the claimant discontinues incurred on or before the date on which the notice of discontinuance was served on the defendant.

(2) Where a proceeding is partly discontinued—

(*a*) the claimant is liable under subrule (1) for costs relating only to the part of the proceeding which he is discontinuing; and

(*b*) unless the Court orders otherwise, the costs which the claimant is liable to pay shall not be assessed until the conclusion of the rest of the proceeding.

Discontinuance and subsequent proceedings

50.—(1) Where a claimant discontinues a claim after the defendant against whom he discontinued filed a defence, and the claimant makes a subsequent claim—

(*a*) against the same defendant;

(*b*) arising out of facts which are the same or substantially the same as those relating to the discontinued claim; and

(*c*) the claimant has not paid the defendant's costs of the discontinued claim,

the Court may stay the subsequent claim until such time as the costs of the discontinued claim are paid.

Stay of remainder of partly discontinued proceedings where costs not paid

51.—(1) This rule applies where—

(*a*) a proceeding is partly discontinued;

(*b*) a claimant is liable to pay costs under rule 49; and

(*c*) the claimant fails to pay those costs or make the payment within fourteen days of—

(i) the date on which the parties agreed the sum payable by the claimant; or

(ii) the date on which the Court ordered the costs to be paid or the payment to be made.

(2) Where this rule applies, the Court may stay the remainder of the proceeding until the claimant pays the whole of the costs which the claimant is liable to pay under rule 49.

Discontinuance against several defendants

52. Where there are several defendants to a proceeding, the claimant may discontinue against one or some of the defendants and the claim shall continue in force against the remaining defendants.

Effect of discontinuance

53. Where a claimant discontinues a claim—

(*a*) he may not revive the proceeding without the permission of the Court;

(*b*) a counterclaim by a defendant continues in force; and

(*c*) the party against whom the claimant discontinued the claim may apply to the Court for costs against the claimant.

Want of Prosecution

Dismissal for want of prosecution

54.—(1) A defendant in a proceeding may apply to the Court for an order dismissing the proceeding for want of prosecution where the claimant is required to take a step in the proceeding under these Rules or to comply with an order of the Court, not later than the end of the period specified under these Rules or the order and he does not do what is required before the end of the period.

(2) The Court may dismiss the proceeding or make any other order it considers appropriate.

Order of discontinuance may be amended or set aside on appeal

55.—(1) An order dismissing a proceeding for want of prosecution may be set aside on appeal or where the parties agree that the order be set aside.

(2) Notwithstanding subrule (1), the Court may amend or set aside an order dismissing the proceeding for want of prosecution that has been made in the absence of the claimant without the need for an appeal.

Striking Out Proceedings

Striking out proceedings without notice

56. The Court may strike out a proceeding without notice, if there has been no step taken in the proceeding for twelve months.

Striking out proceedings with notice

57.—(1) Where a step has not been taken in a proceeding for six months, the Court may give the claimant notice to appear before the

Court on a date specified in the notice to show cause why the proceeding should not be struck out.

(2) Where the claimant does not appear before the Court, or does not show cause why the proceeding should not be struck out, the Court shall strike out the proceeding, including any interlocutory relief that has been ordered in the proceeding.

Notice of struck out proceedings

58. Where the Court strikes out a proceeding, the Registrar shall send a notice to the parties informing them that the proceeding has been struck out.

ORDER 13
Mandatory Mediation

Mediation mandatory for all proceedings

1.—(1) Subject to subrule (2), all proceedings shall first go through mediation in accordance with this Order.

(2) This Order shall not apply to proceedings—

(*a*) in a matter where by law or practice, the trial is expedited;

(*b*) in an application for summary judgment;

(*c*) in an application for judgment on admission; or

(*d*) where the Court, in its discretion, so orders.

Procedure on mediation session

2.—(1) In conducting a mediation session under this Order—

(*a*) the parties shall strive to reduce costs and delay in litigation, and facilitate the early and fair resolution of disputes; and

(*b*) the Judge shall facilitate communication between or among the parties to the dispute in order to assist them in reaching a mutually acceptable resolution.

(2) Without derogation from the generality of subrule (1), the Judge—

(*a*) shall do everything necessary, in an independent and impartial manner, to help the parties to resolve their dispute;

(*b*) may, where necessary, conduct joint or separate meetings with the parties and may make recommendations for a settlement;

(*c*) may, where the services of an expert may be obtained at no cost or minimal cost, and if parties agree to pay the cost, obtain expert advice on a technical aspect of the dispute, which advice shall be given in an independent and impartial manner;

(*d*) shall be guided by principles of objectivity, fairness and natural justice, and shall give consideration to, among other things—

(i) the rights and obligations of the parties;

(ii) the usage of the trade concerned; and

(iii) the circumstances surrounding the disputes, including any previous business practices between the parties;

(*e*) may, at any stage of the mediation session and in a manner that the Judge considers appropriate, take into account the wishes of the parties, including any request by either of the parties that the Judge should hear oral statements for a speedy settlement of the dispute; and

(*f*) may, at any stage of the mediation session, make proposals for the settlement of the dispute.

(3) A request for the services of an expert under this Order may be made by the Judge or by any party with the consent of the other party or parties and the Court.

Statement of case, forms and time

3.—(1) Within seven days from the time the statement of case is deemed to be closed, every party shall prepare a statement in Form 15 and provide a copy to every other party to the mediation session and to the Judge.

(2) The Judge shall, within two days from the time the statement of case shall be deemed to be closed, issue a notice in Form 16 to the parties, advising them on the date of the mediation session.

(3) The statement referred to in subrule (1) shall identify the factual and legal issues in dispute and briefly set out the position and interest of the party making the statement.

(4) A party who makes a statement under this rule shall attach to it any material which the party considers of central importance in the matter.

Parties and legal practitioners to attend mediation session

4.—(1) The parties and their legal practitioners, if the parties are represented, shall attend the mediation session.

(2) Where a third party may be liable to satisfy all or part of a judgment in the action or to indemnify or reimburse a party for money paid in satisfaction of all or part of a judgment in the claim, the third party and a legal practitioner of the third party may also attend the mediation session, unless the Court orders otherwise.

Power to settle a matter

5.—(1) A party to a mediation session shall have authority to settle a matter during the mediation session.

(2) A party who requires the approval of another person before agreeing to a settlement shall, before the mediation session, arrange to

have ready means of communication to that other person throughout the session.

Non-attendance without good cause

6.—(1) Where it is not practical to conduct a scheduled mediation session because a party fails without good cause to attend within the time appointed for the commencement of the session, the Judge may—

(*a*) dismiss the claim, where the non-complying party is a claimant, or strike out the defence, where the non-complying party is a defendant;

(*b*) order a party to pay costs; or

(*c*) make any other order that is deemed just.

(2) A party whose case has been dismissed for non-attendance may apply to the Court for restoration of the case.

Confidentiality of the Judge's notes and records

7.—(1) All communication at a mediation session and the mediation notes and records of the Judge shall be confidential.

(2) Without derogation from the generality of subrule (1)—

(*a*) a record, report, settlement agreement, except where its disclosure is necessary for the purpose of implementation and enforcement, and any other documents required in the course of mediation shall be confidential;

(*b*) a Judge shall not—

(i) disclose information given in the course of the mediation to a person who is not a party to the mediation without the consent of the parties; or

(ii) be a witness in a proceeding relating to the same matter; and

(*c*) a party to a mediation shall not rely on—

(i) the record of the mediation;

(ii) a statement made at the mediation session; or

(iii) any information obtained during the mediation, as evidence in a proceeding or any other subsequent settlement initiative, except in relation to a proceeding brought by either party to vitiate the settlement agreement on the ground of fraud.

Settlement agreement

8.—(1) Where it appears to the Judge that there exists elements of an agreement on a settlement which may be acceptable to the parties, the Judge shall formulate the terms of a possible settlement and submit them to the parties for their consideration, and after receiving the

observations of the parties, the Judge may reformulate the terms of a possible settlement in the light of those observations and resubmit them to the parties as it appears to him expedient.

(2) Where the parties reach an agreement on a settlement of the dispute—

(*a*) the Judge shall immediately thereafter draw up a settlement agreement in conjunction with the parties; and

(*b*) the parties shall sign the settlement agreement in the presence of each other, and the Judge shall also sign the settlement agreement in the presence of the parties.

(3) The Judge shall furnish a copy of the signed settlement agreement to each of the parties and the agreement shall be deemed to be a judgment of the Court and may be enforced as such.

(4) An appeal shall not lie against a settlement agreement under subrule (3).

Failure to agree settlement

9.—(1) Where upon the conclusion of mediation a settlement agreement is not reached, the claim shall be referred to another Judge who shall continue with the claim from the point where, and at which, the claim was referred for mediation.

(2) Where there is no settlement agreement, the Judge who presided over the mediation shall make an order outlining the issues where the parties are in agreement and the issues where the parties are in disagreement and the order shall be referred to the Judge who shall continue with the claim.

Period of mediation session

10.—(1) The period of a mediation session shall not exceed a period of twenty-one days from the date of the first meeting of session.

(2) The Judge may extend the period of the mediation session for a further period not exceeding fourteen days from the date of expiry of the period.

End of mediation session

11. A mediation session shall end when—

(*a*) the parties execute a settlement agreement;

(*b*) the Judge cancels a mediation session for non-compliance on the part of any party; or

(*c*) the Judge, after consultation with the parties, makes a declaration to the effect that further mediation is not worthwhile.

ORDER 14
Pre-Trial Procedure

Application of this Order

1. This Order shall apply to all proceedings where there is no settlement agreement arising from a mediation session under Order 13.

Scheduling conference

2.—(1) Where a defendant files a defence in a proceeding, the Judge shall set a date for a scheduling conference and shall inform the parties the date set for the conference, unless a date for the hearing of an application in a case has previously been fixed, in which case the conference shall take place on that date.

(2) Unless the Judge orders otherwise, the date for the scheduling conference shall not be set down later than twenty-eight days after the day the defence is filed.

(3) The parties to a proceeding shall lodge with the Judge a trial check list in Form 17, not later than two days before the date of the scheduling conference, with copies to other parties.

(4) The Judge shall make directions at the scheduling conference on the conduct of the trial.

(5) The Judge may, on application by a party or on his own initiative, amend or revoke a direction made under subrule (4).

Represented party not required to attend

3. A party who is represented by a legal practitioner need not attend a scheduling conference in person unless, the Judge orders him to attend.

Pre-trial conference

4.—(1) The Judge may set a date for a pre-trial conference not less than fourteen days before the date of trial unless, in his opinion, the proceeding can be set down for trial without further conference.

(2) At a pre-trial conference, the Judge shall ascertain that parties have complied with the directions given at the scheduling conference.

Effect of non-compliance with directions

5. Where a party fails to comply with any of the directions, the Judge may make the following orders—

(*a*) dismiss the claim, where the non-complying party is a claimant;

(*b*) strike out the defence, where the non-complying party is a defendant;

(*c*) order costs against the non-complying party, or against his legal practitioner; or

(*d*) any other order that is deemed just.

6. A pre-trial conference may be held by fixed-line or mobile telephone, electronic mail, video conferencing or other means where the Judge and all parties are able to participate.

Pre-trial conference may be by phone, etc.

ORDER 15

Disclosure of Documents and information

1. A party shall disclose a document where—

Disclosure of documents

(*a*) the party is relying on the document; or

(*b*) the party is aware of the document,

and the document to a material extent adversely affects that party's case or supports another party's case.

2. A party shall disclose a document that he is, after a reasonable search, aware of at the time of disclosure.

Disclosure after reasonable search

3. A party shall disclose a copy of a document only where the copy has been changed from the original or previous copy of the document.

Disclosure of copies

4. A copy of a document shall not be disclosed where the original or another copy of the document has already been disclosed.

Copy not necessary where original disclosed

5.—(1) A party shall disclose documents by making a sworn statement that—

Disclosure by sworn statement

(*a*) lists the documents;

(*b*) states that the party understands the obligation to disclose documents;

(*c*) states that, to the best of the knowledge of the party, he has disclosed all documents that he must disclose; and

(*d*) specifies the documents that are privileged and gives the reasons for claiming such privilege.

(2) The party shall file and serve a copy of the sworn statement on each party to a proceeding.

6. A sworn statement by a party who is a body corporate shall—

Sworn statement by a body corporate

(*a*) be made by a responsible officer or employee;

(*b*) give the name and position of the person who identified the persons who may be aware of documents that are to be disclosed; and

(*c*) give the name and position of the persons who have been asked whether they are aware of any of those documents.

Privilege

7. Where a party claims that a document cannot be disclosed on the grounds of privilege, that party shall make an application for an order dispensing with the disclosure of the document on that ground.

Accuracy of list of documents

8. A party who believes a list of documents is not accurate, or that documents claimed as privileged are not privileged, may make an application for an order to correct the list.

Non-disclosure by order of court

9. A party need not list documents if the Court orders that the documents shall not be disclosed.

Handling of privileged documents by legal practitioner

10. Where a privileged document is disclosed to a legal practitioner, he shall not use it if, due to the manner and circumstances of its disclosure, he realizes that—

(*a*) the document is, in fact, privileged; and

(*b*) it was disclosed by mistake.

Inspection of documents

11.—(1) A party (the "inspecting party") may inspect the original copies of documents on a list served by another party except, documents that are no longer in the possession, custody or control of the other party or documents that are privileged.

(2) The inspecting party may obtain a copy of a document on the list served by another party and shall pay the reasonable costs of copying the document.

(3) The inspecting party shall give the other party reasonable notice to inspect the documents.

Continuation of disclosure

12. The duty to disclose documents continues throughout a proceeding.

Disclosure of previously unknown documents

13. Where a party becomes aware of a document that ought to have been disclosed, but has not been disclosed, the party shall disclose the documents—

(*a*) within seven days of becoming aware of the document, and in any case before the trial commences; or

(*b*) where the party becomes aware of the document after the trial has commenced, as soon as it is reasonably practicable, after becoming aware of the document.

Disclosure of specific documents

14.—(1) The Court may, on application of a party, order disclosure of specific documents or of a class of documents where the Court

is satisfied that disclosure is necessary to decide the matter fairly or save costs.

(2) In considering the application under subrule (1), the Court shall—

(*a*) weigh the likely advantage or disadvantage of disclosure; and

(*b*) assess whether the party who may be required to disclose the documents has sufficient financial resources to do so.

(3) The Court may order that the documents be disclosed in stages.

(4) The Court may order that a party need not disclose some or any documents where the Court is satisfied that—

(*a*) the documents are not relevant to the issues between the parties;

(*b*) disclosure is not necessary to decide the matter fairly;

(*c*) the costs of disclosure would outweigh the benefits; or

(*d*) for any other reason, the Court is satisfied that the documents need not be disclosed.

(5) The Court shall not order the disclosure of a document, unless the Court is satisfied that the person in possession, custody or control of the document has had an opportunity to be heard.

(6) The order of the Court may state the time and place of disclosure.

Effect of non-disclosure

15. A party who fails to disclose a document may not rely on the document, unless the Court allows it.

Order compelling disclosure

16.—(1) Where the Court makes an order compelling a party to disclose a document, the order shall be served on that party as soon as it is reasonably practicable.

(2) Where a party fails to disclose a document within seven days from the date of service of the order made under subrule (1), the Court may—

(*a*) order that all or part of the proceeding be stayed;

(*b*) dismiss the claim where the non-compliant party is the claimant;

(*c*) strike out the defence and enter judgment in favour of the claimant, where the non-compliant party is the defendant; or

(*d*) make any other order the Court thinks fit.

Effect on contempt

17. This Order shall not affect the power of the Court to punish a party for contempt of court.

Restrictions on use of disclosed documents

18.—(1) A party to whom a document is disclosed may only use the document for the purposes of the proceeding, unless the document has been read to, or by, the Court, or referred to in open court.

(2) A party, or person in possession or control of a document, may apply for an order restricting or prohibiting the use of a document even where it has been read to, or by, the Court, or referred to in open court.

(3) The Court may make an order restricting or prohibiting the use of a document where it is satisfied that the benefits of restricting or prohibiting its use outweigh the benefits of allowing the document to be used.

Originals to be brought to trial

19. The original copies of all documents to be relied upon by a party shall be brought to the trial, unless the Court orders otherwise.

Indexing and numbering

20.—(1) The documents that the parties have agreed on shall be gathered together, indexed and numbered.

(2) Where the parties do not agree about the disclosure of some documents or their use at the trial, the party in possession of the documents shall bring the documents to the trial.

Questionnaire on disclosure of information

21.—(1) A party may apply to the Court for permission to ask another party a set of written questions.

(2) Where the Court makes an order under subrule (1), the set of written questions shall be served on every party.

(3) A party shall answer, in writing, the set of written questions within fourteen days of service of the questions.

(4) A party shall set out each question, followed by the answer and shall be verified by a sworn statement made by the party answering the questions.

(5) The answer shall address the substance of each question, without evasion or resorting to technicality.

(6) A party may object to answering the questions and the objection shall set out the grounds for the objection and briefly state the facts on which the objection is based.

(7) A person may object to answering a written question only on the following grounds—

(*a*) the question does not relate to a matter at issue, or likely to be at issue, between the parties;

(*b*) the question is not reasonably necessary to enable the Court to decide the matters at issue between the parties;

(*c*) there is likely to be a simpler and cheaper way available at the trial to prove the matters asked about;

(*d*) the question is vexatious or oppressive; or

(*e*) privilege.

(8) The objection shall be dealt with at a scheduling conference.

(9) Where a party does not answer, or does not give a sufficient answer, to a written question, the Court may, on application, order the party to answer the question or attend Court to answer the question under oath.

(10) Where the party does not comply with the order under subrule (9), the Court may—

(*a*) order that all or part of the proceeding be stayed;

(*b*) dismiss the claim where the non-compliant party is the claimant;

(*c*) strike out the defence and enter judgment in favour of the claimant, where the non-compliant party is the defendant; or

(*d*) make any other order the Court considers just.

ORDER 16
Trial

Trial bundle

1. A claimant shall, not later than fourteen days before the date of the trial, file and serve on all parties a bundle (the 'Trial Bundle'), containing the following—

(*a*) the chronology of events;

(*b*) the summons;

(*c*) the defence;

(*d*) list of authorities;

(*e*) skeleton arguments;

(*f*) witness statements;

(*g*) any directions for particulars of any of the statement of case, and the particulars filed in response to such a direction;

(*h*) the third party notice, if any;

(*i*) any notice claiming contribution or indemnity;

(*j*) expert reports, including medical reports, if any;

(*k*) any sworn statement to be used at trial;

(*l*) any order in the proceeding to add a party; and

(*m*) any other document agreed by the parties to be included in the Trial Bundle.

Evidence

2. Where there are two or more parties to the proceeding, evidence shall be brought and addresses made, in the following order—

(*a*) the claimant may make an address opening the proceeding not exceeding ten minutes and, where evidence is to be given orally, bring evidence in support of his claim;

(*b*) the defendant and other party may cross-examine the claimant or his witness, if any;

(*c*) the defendant and other-party may make an address opening his case not exceeding ten minutes and, where evidence is to be given orally, bring evidence in support of his defence;

(*d*) the claimant may cross-examine the defendant or the other party or their witnesses, if any;

(*e*) the claimant or the defendant may re-examine their witnesses, if need be; and

(*f*) the parties may make closing addresses respectively not exceeding 60 minutes.

Parties other than claimants to make opening case

3. Notwithstanding rule 2, the Court may allow a party other than the claimant or defendant to make an opening address of his case before any evidence is given.

Trial to be in open court

4. The trial of a proceeding shall be held in open court unless the Court orders otherwise.

Adjournment

5. The Court may adjourn trial at any time for good reason, which reason shall at all times be endorsed on the Court record.

Preliminary hearing

6.—(1) The Court may hear arguments by the parties in a proceeding on preliminary issues of fact or law between the parties where it appears likely that, if the issues are resolved, the proceeding or part of the proceeding will be resolved without a trial, or the costs of the proceeding or the issues in dispute are likely to be substantially reduced.

(2) Where the parties have agreed on the facts but there remains a question of law in dispute, the Court may hear arguments from the parties about the question of law.

Effect on non-attendance

7.—(1) The Court may proceed with a trial in the absence of a party but—

(*a*) where a party does not attend the trial, it may strike out the whole of the proceeding;

(*b*) where a claimant does not attend, it may strike out his claim and any defence to a counterclaim; and

(*c*) where a defendant does not attend, it may strike out his defence and dismiss his counterclaim.

(2) Where the Court strikes out the proceeding or any part of it under this rule, it may, on application of a party, subsequently restore the proceeding, or that part of the proceeding that was struck out.

(3) Where a party does not attend and the Court gives judgment or makes an order against him, the party who failed to attend may apply for the judgment or order to be set aside.

(4) An application under subrules (2) or (3) respectively must be supported by evidence.

(5) Where an application is made under subrules (2) or (3) respectively by a party who failed to attend the trial, the Court may grant the application only if the applicant—

(*a*) acted promptly when he found out that the Court had exercised its power to strike out or to enter judgment or make an order against him;

(*b*) had a good reason for not attending the trial; and

(*c*) has a reasonable prospect of success at the trial.

Re-opening proceedings after trial

8. The Court may, on application, order the re-opening of a proceeding after trial but before judgment where the Court is satisfied that it is necessary to do so in the interests of justice.

Time limits for delivery of judgments and rulings

9.—(1) The Court shall deliver its judgment within ninety days from the last date the parties in a trial file written submissions.

(2) Where the Court has not delivered its judgment under subrule (1), the judge who conducted the trial shall—

(*a*) within fourteen days of the expiry of the period in subrule (1) set down the proceeding for mention;

(*b*) provide reasons to the parties for the failure to deliver the judgment; and

(*c*) fix a date, within thirty days from the expiry of the period in subrule (1) for delivery of the judgment, with appropriate directions for such delivery of the judgment.

(3) The Court shall deliver its ruling on an application heard in chambers within thirty days from the last date the parties in the application file written submissions.

(4) Where the Court has not delivered its ruling under subrule (3), the judge who heard the application shall—

(*a*) within seven days of the expiry of the period in subrule (3) set down the proceeding for mention;

(*b*) provide reasons to the parties for the failure to deliver the ruling; and

(*c*) fix a date, within fourteen days from the expiry of the period in subrule (3) for delivery of the ruling, with appropriate directions for such delivery of the ruling.

Recording time

10.—(1) The Court shall, on each day of the trial, record the times when the trial commences and ends.

(2) Where the costs of a party to the proceeding are to be assessed, the times recorded under subrule (1) shall be forwarded to the Registrar for the assessment.

(3) The Court shall record—

(*a*) the orders made by the Judge about judgment;

(*b*) the certificates, if any, given by the Judge; and

(*c*) any direction by the Judge.

ORDER 17
Evidence

Directions on evidence

1.—(1) The Court shall control evidence in a proceeding by giving directions in relation to—

(*a*) the issues on which it requires evidence;

(*b*) the nature of the evidence which it requires to decide those issues; and

(*c*) the way in which the evidence shall be placed before the Court.

(2) The Court may use its power under this Order to exclude evidence that would otherwise be admissible.

(3) The Court may limit cross-examination.

Proof by evidence of a witness

2.—(1) Subject to subrule (2), any fact which needs to be proved by the evidence of a witness shall be proved—

(*a*) at trial, by his oral evidence given in public; and

(*b*) at any other hearing, by his evidence in writing.

(2) These Rules, or an order of the Court, may specify the manner of giving evidence.

Evidence via video link or other means

3.—(1) The Court may, on an application by a party, allow a witness to give evidence through a video link or by other means.

(2) The application for evidence to be given by the video link or other means shall be supported by a sworn statement setting out—

(*a*) the name and address of the witness and the place where he shall be giving evidence;

(*b*) the matter on which the witness will be giving evidence;

(*c*) the type of video link or other means to be used and the specific facility to be used;

(*d*) the reason for the absence of the witness from the Court;

(*e*) information about the cost of the video link or other means; and

(*f*) any other information that will help the Court to make a fair and just decision.

(3) In making an order under subrule (2), the Court may take into account the interests of justice as to whether to allow the video link or other means, including—

(*a*) the public interest;

(*b*) fairness to the parties and the balance to their competing interests;

(*c*) the importance of the evidence to the proceeding;

(*d*) the reasonableness of the application having regard to the convenience and cost of the witness to attend the Court; and

(*e*) the reliability and quality of video link or other means.

Witness statement

4.—(1) The Court may order a party to serve on the other party or parties any witness statement of the oral evidence which the party serving the statement intends to rely on in relation to any issues of fact to be decided at the trial.

(2) The Court may give directions as to the order in which witness statements are to be served.

Effect of witness statement at trial

5.—(1) Where a party has served a witness statement and he wishes to rely at trial on the evidence of the witness who made the statement,

he shall call the witness to give oral evidence unless the Court orders otherwise or he puts the statement in as hearsay evidence.

(2) Where a witness is called to give oral evidence under subrule (1), his witness statement shall stand as his evidence in chief unless the Court orders otherwise.

(3) A witness giving oral evidence at trial may with the permission of the Court—

(*a*) amplify his witness statement; and

(*b*) give evidence in relation to new matters which have arisen since the witness statement was served on the other parties.

(4) The Court may give permission under subrule (3) only if it considers that there is good reason not to confine the evidence of the witness to the contents of his witness statement.

(5) Where a party who has served a witness statement does not call the witness to give evidence at trial or put the witness statement in as hearsay evidence, any other party may put the witness statement in as hearsay evidence.

Witness statement at hearing other than trial

6.—(1) Subject to subrule (2), the evidence at a hearing other than the trial shall be by witness statement unless the Court, a practice direction or any other law requires otherwise.

(2) At a hearing other than the trial, a party may rely on the matters set out in his claim or his application if the claim or application is verified by a sworn statement.

Cross-examination at hearing other than trial

7.—(1) Where, at a hearing other than a trial, evidence is given in writing, any party may apply to the Court for permission to cross-examine the person giving the evidence.

(2) Where the Court gives permission under subrule (1) but the person in question does not attend as required by the order, his evidence may not be used at the hearing unless the Court gives permission that the evidence shall be used at the hearing.

Form of witness statement

8. A witness statement shall be in Form 18 and shall be verified by a sworn statement.

Witness summary

9.—(1) A party who is required to serve a witness statement for use at trial, but is unable to obtain one, may apply, without notice, for permission to serve a witness summary instead.

(2) A witness summary is a summary of—

(*a*) the evidence, if known, which would otherwise be included in a witness statement; or

(*b*) the matters about which the party serving the witness summary proposes to question the witness where the evidence is not known.

(3) Unless the Court orders otherwise, a witness summary shall include the name and address of the intended witness.

(4) Unless the Court orders otherwise, a witness summary shall be served within the period in which a witness statement would have had to be served.

(5) Where a party serves a witness summary, so far as practicable, rules 4, 5 (3) (*a*) and 8 shall apply to the summary.

Failure to serve witness statement or summary

10. Where a witness statement or a witness summary for use at trial is not served in respect of an intended witness within the time specified by the Court, then the witness may not be called to give oral evidence unless the Court gives permission that the witness shall be called to give the evidence.

Cross-examination on witness statement

11. Where a witness is called to give evidence at trial, he may be cross-examined on his witness statement whether or not the statement or any part of it was referred to during the witness's evidence in chief.

Use of witness statement

12.—(1) Except as provided by this rule, a witness statement may be used only for the purpose of the proceeding in which it is served.

(2) Subrule (1) does not apply where, and to the extent that—

(*a*) the witness gives consent in writing to some other use of it;

(*b*) the Court gives permission for some other use; or

(*c*) the witness statement has been put in evidence at a hearing held in public.

Inspection of witness statement

13.—(1) A witness statement which stands as evidence in chief is open to inspection during the course of the trial unless the Court otherwise directs.

(2) Any person may ask for a direction that a witness statement is not open to inspection.

(3) The Court shall not make a direction under subrule (2) unless it is satisfied that a witness statement shall not be open to inspection because of—

(*a*) the interests of justice;

(*b*) the public interest;

(*c*) the nature of any expert medical evidence in the statement;

(*d*) the nature of any confidential information, including information relating to personal financial matters, in the statement; or

(*e*) the need to protect the interests of any child or protected party.

(4) The Court may exclude from inspection words or passages in the statement.

Contempt for false statement

14.—(1) A proceeding for contempt of court may be brought against a person where he makes, or causes to be made, a false statement in a document verified by a sworn statement without an honest belief in its truth.

(2) The proceeding under this rule may be brought only with the permission of the Court.

Giving evidence before trial

15.—(1) A party may apply to the Court for an order that a witness gives evidence before trial.

(2) The Court may order that the witness gives evidence before trial where the Court is satisfied that—

(*a*) the witness can give evidence that will be relevant to the case;

(*b*) the evidence is admissible; and

(*c*) the witness will not be available to give evidence at the trial because of his state of health, the witness is leaving Malaŵi either permanently or for an extended period of time, or for any other valid reason.

(3) The witness must give the evidence to the Court, in the presence of the legal practitioners for each party, if any; and may be cross-examined and re-examined.

(4) The Court may allow a person giving evidence before trial to give the evidence by video link or other means and the legal practitioner for each party, if any, shall be present.

Evidence by Children and other Vulnerable Persons

Evidence by children or vulnerable persons

16.—(1) Where a child or other vulnerable person is required to give evidence, the Court shall take the necessary steps to enable the child or

the vulnerable person to give evidence without intimidation, restraint or influence.

(2) In particular, the Court may—

(*a*) allow the child or the vulnerable person to give evidence while screened or otherwise obscured from the rest of the courtroom but remains in the full view of the Court;

(*b*) sit in a place other than the courtroom;

(*c*) allow only the legal practitioners of the parties to the proceeding to be present while the child or the vulnerable person to gives evidence;

(*d*) appoint a person to be with the child or the vulnerable person while the child or the person gives evidence;

(*e*) allow the child or the vulnerable person to give evidence from a place outside the courtroom which shall be transmitted to the courtroom by means of a video link or other means; and

(*f*) do anything else that may assist the child or the vulnerable person to give evidence.

Expert Evidence

Expert evidence

17. Expert evidence shall be restricted to a matter or issue which ought to be specifically clarified in order to determine a proceeding.

Duty of an expert

18. It is the duty of an expert to help the Court on a matter within his expertise and this duty overrides any obligation to the person from whom the expert has received instructions or by whom he is paid.

Court's permission on expert evidence

19.—(1) A party may not call an expert or put in evidence an expert's report without the permission of the Court.

(2) Where a party applies for permission to call for an expert, he shall identify—

(*a*) the matter or issue which requires expert evidence; and

(*b*) where practicable, the name of the proposed expert.

(3) The Court may grant the permission to call an expert in relation only to the expert named or the matter or issue identified under subrule (2).

(4) The permission under subrule (3) may be given for evidence from only one expert on a particular matter or issue.

(5) The Court may limit the amount of a party's expert's fees and expenses that may be recovered from any other party.

Expert evidence in written report

20.—(1) Expert evidence shall be given in a written report unless the Court directs otherwise.

(2) The Court may direct that an expert need not attend a hearing unless it is necessary to do so in the interests of justice.

Written questions to expert instructed by other party

21.—(1) A party may put written questions about an expert's report to an expert instructed by another party.

(2) The written questions under subrule (1)—

(*a*) may be put once;

(*b*) shall be put within twenty-eight days of service of the expert's report; and

(*c*) shall be for the purpose only of clarification of the report, unless in any case the Court gives permission or the other party agrees.

(3) An expert's answers to questions put under subrule (1) shall be treated as part of the expert's report.

(4) Where a party has put a written question to an expert instructed by another party and the expert does not answer that question, the Court may make one or both of the following orders in relation to the party who instructed the expert—

(*a*) that the party may not rely on the evidence of that expert; or

(*b*) that the party may not recover the fees and expenses of that expert from any other party.

Single joint expert

22.—(1) Where two or more parties wish to submit expert evidence on a particular matter or issue, the Court may direct that the evidence on that issue is to be given by a single joint expert.

(2) Where the parties who wish to submit the evidence cannot agree who should be the single joint expert, the Court may—

(*a*) select the expert from a list prepared or identified by the relevant parties; or

(*b*) direct that the expert be selected in such other manner as the Court may direct.

Instructions and fees to single joint expert

23.—(1) Where the Court gives a direction under rule 22 for a Single joint expert to be used, any of the parties to the proceeding may give instructions to the single joint expert.

(2) When a party gives instructions to the single joint expert that party shall, at the same time, send a copy to the other party or parties.

(3) The Court may give directions about the payment of the single joint expert's fees and expenses and any inspection, examination or experiments which the single joint expert wishes to carry out.

(4) The Court may, before a single joint expert is instructed—

(*a*) limit the amount that can be paid as fees and expenses to the single joint expert; and

(*b*) direct that some or all of the relevant parties pay that amount into Court.

(5) Unless the Court otherwise directs, the parties are jointly and severally liable for the payment of the single joint expert's fees and expenses.

Access to information not available to other party

24. Where a party has access to information which is not reasonably available to another party, the Court may, on application by a party, direct the party who has access to the information to prepare and file a document recording the information and serve a copy of that document on the other party.

Expert's report

25.—(1) An expert's report shall comply with the following requirements—

(*a*) expert evidence shall be the independent product of the expert uninfluenced by the pressure of a party to a proceeding;

(*b*) an expert shall assist the Court by providing objective, unbiased opinions on matters within his expertise, and shall not assume the role of an advocate;

(*c*) an expert shall consider all material facts, including those which might detract from his opinion;

(*d*) an expert shall make it clear—

(i) when a question or issue falls outside his expertise; and

(ii) when he is not able to reach a definite opinion;

(*e*) where after producing a report, an expert's view changes on any material matter, such change of view shall be communicated to all the parties without delay, and when appropriate to the Court;

(*f*) an expert's report shall be addressed to the Court and not to the party from whom the expert has received instructions; and

(*g*) an expert's report shall—

(i) give details of the expert's qualifications;

(ii) give details of any literature or other material which has been relied on in making the report;

(iii) contain a statement setting out the substance of all facts and instructions which are material to the opinions expressed in the report or upon which those opinions are based;

(iv) make clear which of the facts stated in the report are within the expert's own knowledge;

(v) state who carried out any examination, measurement, test of experiment which the expert has used for the report, give the qualifications of that person, and say whether or not the test or experiment has been carried out under the expert's supervision;

(vi) where there is a range of opinion on the matters dealt with in the report—

(A) summarize the range of opinions; and

(B) give reasons for the expert's own opinion;

(vii) contain a summary of the conclusions reached;

(viii) where the expert is not able to give an opinion without qualifications, state the qualification; and

(ix) contain a statement that the expert understands their duty to the Court, and has complied with that duty.

(2) At the end of an expert's report, there shall be a statement that the expert understands and has complied with his duty to the Court.

(3) The expert's report shall state the substance of all material instructions, whether written or oral, on the basis of which the report was written.

(4) The instructions referred to in subrule (3) shall not be privileged against disclosure, but the Court shall not, in relation to those instructions—

(*a*) order disclosure of any specific document; or

(*b*) permit any questioning in Court, other than by the party who instructed the expert, unless it is satisfied that there are reasonable grounds to consider the statement of instructions given under subrule (3) to be inaccurate or incomplete.

Effect of disclosure of expert's report

26. Where a party has disclosed an expert's report, any party may use that expert's report as evidence at the trial.

Discussion between experts

27.—(1) The Court may, at any stage, direct a discussion between experts for the purpose of requiring the experts to identify and discuss the expert issues in the proceeding and, where possible, reach an agreed opinion on those issues.

(2) The Court may specify the issues which the experts shall discuss.

(3) The Court may direct that following a discussion between the experts, the experts shall prepare a statement for the Court setting out those issues on which they agree and they disagree, with a summary of their reasons for the disagreement.

(4) The content of the discussion between the experts shall not be referred to at the trial unless the parties agree.

(5) Where experts reach an agreement on an issue during their discussions, the agreement shall not bind the parties unless the parties expressly agree to be bound by the agreement.

Failure to disclose an expert's report

28. A party who fails to disclose an expert's report may not use the report at the trial or call the expert to give evidence orally unless the Court gives permission.

Expert's written requests for directions

29.—(1) Experts may file written requests for directions for the purpose of assisting them in carrying out their functions.

(2) Experts shall, unless the Court orders otherwise, provide copies of the proposed requests for directions under subrule (1)—

(*a*) to a party instructing them, at least seven days before they file the requests; and

(*b*) to all other parties, at least four days before they file them.

(3) The Court, when it gives directions, may also direct that a party be served with a copy of the directions.

Assessors

Assessors

30.—(1) The Court may appoint an assessor to assist the Court in dealing with a matter in which the assessor has skill and experience.

(2) An assessor will take such part in the proceeding as the Court may direct and in particular the Court may direct an assessor to—

(*a*) prepare a report for the Court on any matter at issue in the proceeding; and

(*b*) attend the whole or any part of the trial to advise the Court on any such matter.

(3) Where an assessor prepares a report for the Court before the trial has begun, the Court will send a copy to each of the parties and the parties may use the copy at trial.

(4) The remuneration to be paid to an assessor shall be determined by the Court and will form part of the costs of the proceeding.

(5) The Court may order any party to deposit into Court a specified sum in respect of an assessor's fees and, where it does so, the assessor will not be asked to act until the sum has been deposited.

Attendance of Witnesses

Witness summons

31.—(1) A witness summons may require a witness to attend Court to give evidence, produce documents to the Court, or both, on either a date fixed for the hearing or such date as the Court may direct.

(2) Three copies of the witness summons shall be filed with the Court for sealing, one of which will be retained on the Court file.

(3) A mistake in the name or address of a person named in a witness summons may be corrected if the summons has not been served.

(4) The corrected summons shall be re-sealed by the Court and marked "Amended and Re-Sealed".

Witness summons in aid of tribunal

32.—(1) A witness summons may be issued in the Court in aid of a tribunal which does not have the power to issue a witness summons in relation to a proceeding before it.

(2) A witness summons referred to in subrule (1) may be set aside by the Court which issued it.

(3) An application to set aside a witness summons referred to in subrule (1) shall be heard by the Court.

(4) Unless the Court directs otherwise, the applicant must give at least two days' notice to the party who issued the witness summons of the application under subrule (3), which will normally be dealt with at a hearing.

Witness expenses

33.—(1) When a witness is served with a witness summons, he shall be offered a sum of money to cover his travelling expenses to and from the Court and compensation for his loss of time.

(2) Where the witness summons is to be served by the Court, the party issuing the summons shall deposit with the Court—

(*a*) a sum sufficient to pay for the witness's expenses in travelling to the Court and in returning to his home or place of work; and

(*b*) a sum in respect of the period during which earnings or benefit are lost, or such lesser sum as it may be proved that the witness will lose as a result of his attendance at Court in answer to the witness summons.

Service by party issuing summons

34. Where a party issuing the witness summons wishes to serve it himself, he shall—

(*a*) notify the Court in writing that he wishes to do so; and

(*b*) at the time of service offer the witness the sums mentioned in rule 33 (2) (*a*).

Non-attendance of witness

35. Where a witness does not attend the Court without reasonable excuse, the Court may—

(*a*) order the proceeding to be stayed until the witness attends the Court; or

(*b*) take the circumstances of the witness's refusal into account when considering the person's evidence.

Depositions

Depositions

36. A party may apply for an order for a person to be examined on oath before a Judge, an examiner of the Court or such other person as the Court may appoint.

Allocation of an examiner

37.—(1) The party who obtains an order for the examination of a deponent under rule 36 before an examiner of the Court shall—

(*a*) apply to the Court for the allocation of an examiner;

(*b*) when allocated, provide the examiner with copies of all documents in the proceedings necessary to inform the examiner of the issues; and

(*c*) pay the deponent a sum to cover his travelling expenses to and from the examination and compensation for his loss of time.

(2) In ensuring that the deponent's evidence is recorded in full, the Court or the examiner may permit it to be recorded on audiotape or videotape, but the deposition shall always be recorded in writing by the Court or the examiner.

(3) Where the deposition is not recorded word for word, it must contain, as nearly as possible, the statement of the deponent; the examiner may record word for word any particular questions and answers which appear to him to have special importance.

(4) Where the deposition is recorded before a person appointed by the Court, the Court shall give directions on the manner that the deposition shall be recorded.

Objection to examiner's question

38.—(1) Where a deponent objects to answering any question or where any objection is taken to any question, the examiner shall—

(*a*) record in the deposition or a document attached to it the question, the nature of and grounds for the objection, and any answer given; and

(*b*) give his opinion as to the validity of the objection and shall record it in the deposition or a document attached to it.

(2) The Court will decide as to the validity of the objection and any question of costs arising from it.

Documents or exhibits on deposition

39. Any document or exhibit given during the deposition shall—

(*a*) have an identifying number or letter marked on them by the examiner; and

(*b*) be preserved by the party or his legal practitioner who obtained the order for the examination, or as the Court or the examiner may direct.

Questioning of deponent

40. The examiner may put any question to the deponent as to the meaning of any of his answers, or any matter arising in the course of the examination.

Certificate of refusal or failure

41.—(1) Where a deponent fails to attend the examination, refuses to be sworn or answer any lawful question or to produce any document, the examiner will sign a certificate of such failure or refusal and may include in his certificate any comment as to the conduct of the deponent or of any person attending the examination.

(2) The party who obtained the order for the examination shall file the certificate with the Court and may apply for an order that the deponent attend for examination.

(3) The application under subrule (2) may be made without notice.

(4) The Court will make such order on the application under subrule (2) as it considers appropriate including an order for the deponent to pay any costs resulting from his failure or refusal.

(5) A deponent who wilfully refuses to obey an order made against him under this rule may be proceeded against for contempt of court.

Particulars of a deposition

42. A deposition shall—

(*a*) be signed by the examiner;

(*b*) have any amendments to it initialed by the examiner and the deponent;

(*c*) be endorsed by the examiner with—

(i) a statement of the time occupied by the examination; and

(ii) a record of any refusal by the deponent to sign the deposition and of his reasons for not doing so; and

(*d*) be sent by the examiner to the Court where the proceedings are taking place for filing on the Court file.

Depositions Taken Abroad for Use as Evidence in Proceedings in Malaŵi

Depositions taken abroad for use in Malawi

43.—(1) A party may apply to the Court for an order to take a deposition from a person outside the jurisdiction.

(2) An application under subrule (1) shall be supported by a sworn statement which shows—

(*a*) the relevance and admissibility of the evidence sought;

(*b*) the reason why the evidence cannot be obtained in Malaŵi; and

(*c*) there is an arrangement between Malaŵi and the jurisdiction concerned providing for the taking of evidence in that jurisdiction for the use in a proceeding in the Court or other court in Malaŵi.

(3) Upon hearing the application under subrule (1), the Court may order the issue of a letter of request to the judicial authority of the jurisdiction in which the proposed deponent is residing.

Depositions Taken in Malaŵi for Use as Evidence for Courts Abroad

Letter of request from Court in another jurisdiction

44. Where the Court receives a letter of request from a court in another jurisdiction for the taking of evidence in Malaŵi to use in a proceeding in that jurisdiction, the evidence shall be taken in accordance with rule 46.

Sworn statement in support of letter of request

45. The letter of request referred to in rule 44 shall be supported by a sworn statement by an officer of the Court of the other jurisdiction verifying the letter of request.

Giving effect to letter of request

46. The Court shall give effect to the letter of request by—

(*a*) issuing a summons to the person named in the letter to appear and give evidence, produce documents or both;

(*b*) hearing the witness's evidence orally;

(*c*) making a written record of the evidence; and

(*d*) sending the record of the evidence to the court in the other jurisdiction.

Record of evidence to be signed and sealed

47. The written record of the evidence shall be signed and sealed by the Judge before whom the evidence is given.

Effect of evidence by letter of request

48. A person who gives evidence for use in a proceeding outside Malaŵi is to be treated as if the person is giving evidence in a proceeding before the Court.

Notice to a Non-party to Produce Documents

Notice to non-party to produce documents

49.—(1) At the request of a party to a proceeding, the Court shall issue a notice requiring a person who is not a party to the proceeding to produce a document for inspection which—

(*a*) relates to an issue in the proceeding;

(*b*) is in the possession of that person; and

(*c*) the person shall be required to produce the document at the trial of the proceeding.

(2) A party may not seek the production of a document where it is possible to prove the issue in the proceeding through simple and inexpensive means.

(3) The notice under subrule (1) shall be served on the person who is not a party personally.

(4) The notice under subrule (1) shall be served on every party to the proceeding not later than two days from the date the notice is served on the person who is not a party.

(5) The party who requests the notice under subrule (1) shall bear the costs of compliance with the notice by the person who is not a party to the proceeding or the other party.

Inspection of documents upon production notice

50.—(1) A person or party served under rule 49 (3) and (4) may inspect the document stated in the notice before it is produced under the notice in order to determine whether or not to claim privilege.

(2) A person or party served under rule 49 (3) and (4) may produce the document sought, and the party seeking the production of the document may at his own cost, make a copy of the document.

Amendment or setting aside of notice

51. A person served with a notice under rule 49 (1) or a party to the proceeding may apply to the Court to amend or set aside the notice.

Objecting the production of documents

52.—(1) A person served with a notice under rule 49 (1) or a party to the proceeding may object to the production of a document and shall file a sworn statement, and serve a stamped copy on the person or party making the application under rule 49 (1), which—

(*a*) specifies the document that the person objects to being produced; and

(*b*) gives the reason why the person claims privilege or otherwise objects to the document being produced.

(2) The basis of the objection under subrule (1) may include, but is not limited to—

(*a*) the expense and convenience likely to be incurred through the compliance with the notice;

(*b*) the lack of relevance of the document to the proceeding;

(*c*) the lack of particularity with which the document is described;

(*d*) the confidential nature of the document or its contents;

(*e*) the effect disclosure of the document would have on any person; or

(*f*) the effect of absence of the service of the notice.

(3) The party to whom a notice under rule 49 is issued may apply to the Court for an order against any objection made under this rule.

Failure to produce a document

53. A person who fails to produce a document under a notice issued under rule 49 may, on application, be held in contempt of court.

Return of documents, etc.

54.—(1) The Court shall, within six months after a hearing, trial or appeal from a trial, return any document, exhibit or other thing to the party who put the document, exhibit or thing in evidence during a proceeding.

(2) Where the document, exhibit or other thing has not been returned under subrule 1, the Court may destroy or otherwise dispose of the document, exhibit or thing at the end of 6 months after the date of the hearing or, trial; or appeal from a trial.

Hearsay Evidence

Hearsay evidence

55.—(1) Where a party intends to rely on hearsay evidence at trial and either—

(*a*) that evidence is to be given by a witness giving oral evidence; or

(*b*) that evidence is contained in a witness statement of a person who is not being called to give oral evidence, that party shall notify any other party of that fact and, on request, give particulars of or relating to, the evidence when serving a witness statement on the other parties in accordance with the Court's order.

(2) Where subrule (1) (*b*) applies, the party intending to rely on the hearsay evidence shall, when he serves the witness statement—

(*a*) inform the other parties that the witness is not being called to give oral evidence; and

(*b*) give the reason why the witness will not be called.

(3) In all other cases where a party intends to rely on hearsay evidence at trial, that party shall notify any other party of that fact and, on request, give particulars of or relating to, the evidence when serving a notice on the other parties which—

(*a*) identifies the hearsay evidence;

(*b*) states that the party serving the notice proposes to rely on the hearsay evidence at trial; and

(*c*) gives the reason why the witness will not be called.

(4) The party proposing to rely on the hearsay evidence shall—

(*a*) serve the notice not later than the latest date for serving witness statements; and

(*b*) where the hearsay evidence is to be in a document, supply a copy to any party who requests him to do so.

Exception of duty to give notice of hearsay evidence

56. The duty to give notice of intention to rely on hearsay evidence does not apply—

(*a*) to evidence at a hearing other than a trial;

(*b*) to a sworn statement or witness statement which is to be used at a trial but which does not contain hearsay evidence;

(*c*) to a statement which a party to a probate action wishes to put in evidence and which is alleged to have been made by the person whose estate is the subject of the proceeding; or

(*d*) where the requirement is excluded by a practice direction.

Application to cross-examine maker of hearsay statement

57.—(1) Where a party proposes to rely on hearsay evidence and does not propose to call the person who made the original statement to give oral evidence, the Court may, on the application of any other party, permit that party to call the maker of the statement to be cross-examined on the contents of the statement.

(2) An application for permission to cross-examine under this rule shall be made not more than fourteen days after the day on which a notice of intention to rely on the hearsay evidence was served on the applicant.

Notice of intention to attack credibility of maker of hearsay statement

58.—(1) Where a party proposes to rely on hearsay evidence but does not propose to call the person who made the original statement to give oral evidence and another party wishes to call evidence to attack the credibility of the person who made the statement, the party who so wishes shall give notice of his intention to the party who proposes to give the hearsay statement in evidence.

(2) A party must give notice under subrule (1) not more than fourteen days after the day on which a hearsay notice relating to the hearsay evidence was served on him.

Plans, Photographs or Models

Evidence of plans, photographs or models

59.—(1) This rule applies to evidence, such as a plan, photograph or model, which is not—

(*a*) contained in a witness statement, sworn statement or expert's report;

(*b*) to be given orally at trial; or

(*c*) evidence of which prior notice is required to be given under rule 55.

(2) This rule includes documents which may be received in evidence without further proof in cases where the documents form part of the records of a business or public authority.

(3) Unless the Court orders otherwise, the evidence shall not be receivable at a trial unless the party intending to put it in evidence has given notice to the other parties in accordance with this rule.

(4) Where a party intends to use the evidence as evidence of any fact then, except where subrule (6) applies, he shall give notice not later than the latest date for serving witness statements.

(5) A party must give notice at least twenty-one days before the hearing at which he proposes to put in the evidence, if there are not to be witness statements, or he intends to put in the evidence solely in order to disprove an allegation made in a witness statement.

(6) Where the evidence forms part of expert evidence, a party shall give notice after the expert's report has been served on the other party.

(7) Where the evidence is being produced to the Court for any reason other than as part of factual or expert evidence, a party shall give notice at least twenty-one days before the hearing at which he proposes to put in the evidence.

(8) Where a party has given notice that he intends to put in the evidence, the party shall give every other party an opportunity to inspect it and to agree to its admission without further proof.

Evidence of Finding on a Question of Foreign Law

Evidence of finding on a question of foreign law

60.—(1) This rule sets out the procedure which shall be followed by a party who intends to put in evidence of finding on a question of foreign law.

(2) A person who is suitably qualified to do so on account of his knowledge or experience is competent to give expert evidence as to the law of any jurisdiction outside Malaŵi, irrespective of whether he has acted or is entitled to act as a legal practitioner in that jurisdiction.

(3) Where any question arises as to the law of any jurisdiction outside Malaŵi, with respect to any matter which has been determined in a proceeding specified in subrule (6) than in a proceeding before a court which cannot take judicial notice of the law—

(*a*) a finding made or decision given on that question in the first-mentioned proceeding shall, if reported or recorded in citable form, be admissible in evidence for the purpose of proving the law of that jurisdiction; and

(*b*) where that finding or decision, as reported or recorded, is given for that purpose, the law of that jurisdiction with respect to that matter shall be taken to be in accordance with that finding or decision unless the contrary is proved.

(4) Subrule (3) (*b*) shall not apply in the case of a finding or decision which conflicts with another finding or decision on the same question given under this rule in the same proceeding.

(5) A party shall—

(*a*) give any other party notice of his intention if there are to be witness statements, not later than the latest date for serving them or otherwise, not less than twenty-one days before the hearing at which he proposes to put the finding in evidence;

(*b*) specify the question on which the finding was made and enclose a copy of a document where it is reported or recorded; or

(*c*) with the permission of the Court, give in evidence a finding or decision under subrule (3) without prior notice to every other party to the proceeding that he intends to do so.

(6) The proceeding referred to in subrule (3) is a civil proceeding at first instance in the Court and appeals arising out of any such proceeding.

ORDER 18
Sworn Statements

Sworn statements

1.—(1) In any Act or subsidiary legislation, a reference to an affidavit shall be deemed to be a reference to a sworn statement.

(2) A sworn statement for use in a proceeding may be sworn before or after the commencement of the proceeding.

(3) A sworn statement shall be sworn before a Judge, a magistrate, a commissioner for oaths, a notary public, a legal practitioner with a valid practising licence, or an officer authorized to administer oaths under the provisions of any Act or subsidiary legislation.

(4) A person authorized under subrule (3) to take a sworn statement shall not do so in relation to a document in a proceeding in which the person is the legal practitioner to any of the parties, a clerk to any such legal practitioner or in which the person has an interest.

Documents verifiable by sworn statement and nature and content of sworn statement

2.—(1) The following documents shall be verified by a sworn statement—

(*a*) a claim;

(*b*) a defence;

(*c*) a response;

(*d*) a witness statement;

(*e*) a certificate of service; and

(*f*) any document where a rule or practice direction so requires.

(2) Where a claim is amended, the amendment shall be verified by a sworn statement unless the Court orders otherwise.

(3) Where a claimant wishes to rely on matters set out in his claim as evidence, the claim shall be verified by a sworn statement.

(4) Subject to subrule (5), a sworn statement is a confirmation that—

(*a*) the party putting forward the document;

(*b*) in the case of a witness statement, the maker of the witness statement; or

(*c*) in the case of a certificate of service, the person who signs the certificate,

believes the facts stated in the document are true.

(5) Where a party is conducting a proceeding with a litigation friend, the sworn statement in—

(*a*) a claim;

(*b*) a defence; or

(*c*) an application,

is a confirmation that the litigation friend believes the facts stated in the document being verified are true.

(6) The sworn statement shall be signed by—

(*a*) in the case of a claim, a defence or an application—

(i) the party or litigation friend; or

(ii) the legal practitioner on behalf of the party or litigation friend; and

(*b*) in the case of a witness statement, the maker of the statement.

(7) A sworn statement which is not contained in the document which it verifies, shall clearly identify that document.

Failure to verify claim by statement in sworn statement

3.—(1) Where a party fails to verify his claim by a sworn statement—

(*a*) the claim shall remain effective unless struck out; but

(*b*) the party may not rely on the claim as evidence of any of the matters set out in it.

(2) The Court may strike out a claim which is not verified by a sworn statement.

(3) Any party may apply for an order under subrule (2).

Failure to verify witness statement in sworn statement

4. Where the maker of a witness statement fails to verify the witness statement by a sworn statement the Court may direct that it shall not be admissible as evidence.

Failure to verify witness statement in sworn statement

5.—(1) The Court may order a person who has failed to verify a document under rule 2 (1) to verify the document.

(2) Any party may apply for an order under subrule (1).

Content of sworn statement

6.—(1) Subject to subrule (2), a sworn statement shall only contain facts that the deponent is able to prove with his own knowledge.

(2) A sworn statement may contain a statement of information and belief provided the sources of the information or the basis for the belief are also set out in the statement.

Numbering, paragraphs of sworn statement

7.—(1) The body of a sworn statement shall be divided into paragraphs numbered consecutively, each paragraph being as far as possible confined to a distinct portion of the subject.

(2) Each page of a sworn statement, including any exhibit, shall be numbered legibly and distinctively, beginning on the first page of the statement with the Arabic numeral '1'.

(3) Each exhibit to a sworn statement shall be identified sequentially on the first page of the exhibit by—

(*a*) a letter of the alphabet, beginning with the Roman letter 'A' for the first exhibit; or

(*b*) the initials of the deponent followed by a number, beginning with the Arabic numeral '1' for the first exhibit.

(4) The full name of the deponent and the date on which the sworn statement was sworn shall appear on the first visible page of the sworn statement.

(5) A sworn statement shall contain an authorizing part at the end of the body of the statement that—

(*a*) states whether the sworn statement was sworn or affirmed;

(*b*) states the place the person made the sworn statement;

(*c*) states the person making the sworn statement Understands the sworn statement shall be used in a proceeding;

(*d*) states the person who made the statement acknowledges that if he made a false statement he may commit perjury and be liable to a substantial penalty; and

(*e*) is signed by the person taking the sworn statement, above a statement of the person's full name, address and capacity to take the sworn statement.

Illiterate or blind deponent

8. Where it appears to the person before whom a sworn statement is sworn that the deponent is illiterate or blind, the person shall certify in, or below, the authorizing part, that—

(*a*) the sworn statement was read in his presence to the deponent;

(*b*) the deponent seemed to understand the sworn statement; and

(*c*) the deponent signed the sworn statement in his presence.

Sworn statement in language not understood by deponent

9. Where it appears to the person before whom a sworn statement is sworn that the statement is in a language not understood by the deponent, the person shall certify in or below the authorizing part that—

(*a*) the sworn statement was translated to the deponent in a language the deponent understands;

(*b*) the deponent confirmed to understand the translation of the statement; and

(*c*) the deponent signed the sworn statement in their presence.

Use of mark or thumb

10. Where the deponent makes a mark or thumb impression instead of signing, the person before whom the sworn statement is made shall certify in or below that authorizing part that the deponent made the mark or thumb impression in his presence.

Inability to sign, mark or make thumb impression

11. Where it appears to the person before whom a sworn statement is sworn that the deponent is by reason of physical incapacity unable to sign, make a mark or leave thumb impression on the statement, the person shall certify in or below the authorizing part that—

(*a*) the sworn statement was read out in his presence to the deponent;

(*b*) the deponent confirmed to understand the sworn statement; and

(*c*) the deponent signified he swore the sworn statement.

Non-compliance with rule 8

12. Where a sworn statement is made by an illiterate or blind deponent and a certification under rule 8 does not appear on the sworn statement, the statement may not be used in a proceeding unless the Court is satisfied that the statement was read to the deponent and the deponent confirmed to understand it.

Alteration or erasure on sworn statement

13.—(1) Where there is an inter-lineation, erasure or other alteration in the authorizing part or body of a sworn statement, the statement may be filed, unless the Court orders otherwise.

(2) Notwithstanding subrule (1), the sworn statement may not be used without the permission of the Court unless the person before whom the sworn statement is sworn initials the alteration and, in the case of an erasure, re-writes in the margin of the statement any words or figures written on the erasure and signs or initials them.

Copies to be exhibited to a sworn statement

14.—(1) A copy of a document to be used in conjunction with a sworn statement shall be exhibited to the sworn statement.

(2) Copies of all documents exhibited to a sworn statement shall be served with the sworn statement.

Impracticability to copy document

15. Where it is impracticable to copy a document to be used in conjunction with a sworn statement, a transcript or diagram of the document shall be exhibited to the sworn statement and the sworn statement shall give the reason why it is impracticable to copy the document.

Certification as true copies of original

16. A person taking a sworn statement with exhibits need not see the original documents and may certify that the copies, transcripts or diagrams were produced to them as true copies, transcripts or diagrams of the original documents.

Request to produce original document

17. Another party may require that the original of a copy of a document exhibited to a sworn statement be produced in Court.

Defects

18. Unless the Court orders otherwise, a sworn statement may be filed despite any defects in form.

Use of statement with permission

19. A sworn statement shall not be used in a proceeding without the permission of the Court if it has not been filed or it has been filed in a defective form.

Service of a sworn statement

20. A party intending to use a sworn statement shall serve the statement on each interested party not later than two clear days or as the Court orders otherwise before the occasion for using the statement arises.

Directions on service of statements

21. The Court may give directions concerning the service of sworn statements.

Scandalous content

22. Where there is a scandalous or an oppressive matter in a sworn statement, the Court may order that the whole or part of the statement be taken off the Court file.

Attendance and cross-examination of person making statement

23.—(1) A party may require the attendance, for cross-examination, of a person making a sworn statement.

(2) The requirement under subrule (1) shall be made by notice to the party filing or proposing to use the sworn statement.

(3) Where the attendance of a person is required under subrule (1) and that person does not attend the Court, his sworn statement may not be used in the proceeding without the permission of the Court.

Re-examination of a person making statement

24. Where a person making a sworn statement is cross-examined, the party using the sworn statement may re-examine the person.

ORDER 19
Particular Proceedings

PART I
Matters Under the Constitution

Application of Part I

1. This Part shall apply to a proceeding on the interpretation or application of the Constitution which is certified by the Chief Justice under rule 2 and shall be dealt with in the manner specified under section 9 (2) of the Act.

Certification

2.—(1) The Chief Justice may certify a proceeding under section 9 (3) of the Act where the proceeding involves—

(*a*) a matter under section 89 (1) (*h*) of the Constitution;

(*b*) the determination of the constitutionality of an Act of Parliament or its part;

(*c*) the determination of the constitutionality of an act or omission of an organ of State or other person;

(*d*) a matter concerning the status, powers or functions of State or a public authority under the Constitution;

(*e*) the determination of the relationship between the Constitution and a treaty or part of the treaty; or

(*f*) the enforcement and protection of the Constitution.

(2) The certification by the Chief Justice under subrule (1) shall be in Form 19.

(3) The certification by the Chief Justice shall be made within seven days from the date a proceeding is filed before, or referred to, him for such certification.

(4) The certification by the Chief Justice under this rule is an administrative function and the Chief Justice shall not hear arguments from the parties nor deliver a judicial determination on the certification.

Commencement of a proceeding under Part I

3.—(1) Subject to subrule (2), a proceeding under this Part shall be commenced by summons under Order 5.

(2) In the case of a referral by the President under section 89 (1) (*h*) of the Constitution, the proceeding shall be commenced by a notice of referral under rule 6.

(3) In the case of a referral by any other court under rule 7, the proceeding shall be commenced by a notice of referral in Form 20.

General Proceedings

Nature and content of summons

4. Notwithstanding Order 5, every summons under rale 3 shall be signed by the claimant or his legal practitioner, and shall contain a concise statement of case indicating the provision or provisions of the Constitution which the Court shall interpret or apply.

Responses

5.—(1) A defendant who wishes to defend the whole or any part of the summons under rule 3 shall, within seven days after service of the summons, inclusive of the day of service, file his response.

(2) The defendant who has filed a response shall serve on the claimant a defence within fourteen days from the date of the response.

(3) The Court shall, within seven days from the date of the filing of the defence, set down the matter for a scheduling conference where the Court shall give directions on the further conduct of the proceeding.

(4) The Court shall hear the summons within twenty-one days from the date of the scheduling conference.

(5) In the absence of a defence, the Court shall hear the summons within twenty-one days from the date of service of the summons.

Referral by the President

Particulars and content of referral

6.—(1) A referral by the President under section 89 (1) (*h*) of the Constitution shall be signed and sealed by the President, and shall contain a concise statement of facts indicating the provision or provisions of the Constitution forming the basis of the referral, and the referral shall be filed with the Court for certification by the Chief Justice under rule 2.

(2) The Court shall, within seven days of the filing of the referral under subrule (1)—

(*a*) cause to be published in the *Gazette,* and at least two daily newspapers of wide circulation in Malaŵi; and

(*b*) place at conspicuous places at the Court, a notice of the referral,

and the Court shall invite written arguments from any interested person, who shall file arguments with the Court within fourteen days from the date of the notice.

(3) The Court shall, within fourteen days after the expiry of the period referred to in subrule (2), set down the matter for a scheduling conference where the Court shall give directions on the further conduct of the matter.

(4) The referral shall be heard within twenty-one days from the date of the scheduling conference.

Referral by other Courts

Referral by other courts

7.—(1) Where a referral to the Court in relation to any matter on the interpretation or application of the Constitution is necessary as determined by an original court, the Judge, magistrate or chairperson of the original court shall, within seven days from the date of the determination, submit the referral in Form 20 to the Chief Justice for certification under rule 2.

(2) Where the original court has made a referral under subrule (1), the proceeding in the original court shall be stayed pending a decision of the Court.

(3) Where a referral has been certified by the Chief Justice under subrule (1), the Court shall, within fourteen days from the date of the certification, set down the matter for a scheduling conference where the Court shall give directions on the further conduct of the matter.

(4) The Court shall hear the referral within twenty-one days from the date of the scheduling conference.

(5) The decision of the Court shall be remitted to the original court which shall decide the proceeding before it, in accordance with the decision of the Court.

Process to be served on Attorney General

8. Every process under this Part shall be served on the Attorney General whether or not the Attorney General is a party to the proceeding.

Amicus Curiae

Amicus curiae

9. Any person interested in any matter in a proceeding before the Court may, with the permission of the Court, be admitted as *amicus curiae* upon such terms and conditions as the Court may determine.

Application as *amicus curiae*

10. An application to be admitted as *amicus curiae* shall briefly—

(*a*) describe the interest of the *amicus curiae* in the proceeding;

(*b*) identify the position to be taken by the *amicus curiae* in the proceeding; and

(*c*) set out the arguments to be advanced by the *amicus curiae,* then relevance to the proceeding and the reasons for believing that the arguments will be useful to the Court.

11. *Amicus curiae* shall, upon being admitted, be heard orally and lodge written submissions with the Court under the terms and conditions determined by the Court under rule 9.

Effect upon appointment as *amicus curiae*

Delivery of Decision

12.—(1) Each Judge on the panel shall deliver a decision in respect of a proceeding under this Part within forty-five days of the conclusion of the proceeding.

Time of delivery of the decision

(2) Notwithstanding subrule (1), a Judge may elect to concur with a decision of another Judge and such concurrence shall constitute a decision for purposes of this Order.

PART II

ELECTION MATTERS

13. An election matter shall commence in the manner specified under the Parliamentary and Presidential Elections Act, the Local Government Elections Act or, in any other event, by an application.

Commencement of an election matter
Cap. 2:01
Cap. 22:02

14. Within seven days of the date of service of an application on the respondent, or on the Attorney General, as the case may be, the respondent or the Attorney General shall file with the Court and serve on the applicant a sworn statement in reply with skeleton arguments.

Service of response

15. Within three days of being served with the sworn statement in response, the applicant may file with the Court and serve on the respondent, or on the Attorney General, as the case may be, a sworn statement in reply with skeleton arguments.

Statement on reply

16. The Court shall hear the application within three days after the service of the sworn statement in reply.

Hearing of application

17. The Court shall deliver its decision on the application within fourteen days of the conclusion of the hearing of the petition or application.

Delivery of decision in an election matter

18. Where the applicant considers his matter to be of a constitutional nature requiring certification by the Chief Justice under rule 2, the Chief Justice shall certify the matter within twenty-four hours from the time the matter was filed with his office.

Certification as constitutional matter

19. An application for an interim injunction in connexion with an election matter shall be made *inter partes* and shall be heard before a Judge.

Application for injunction to be *inter partes*

PART III
Judicial Review

Application for judicial review

20.—(1) Judicial review shall cover the review of—

(*a*) a law, an action or a decision of the Government or a public officer for conformity with the Constitution; or

(*b*) a decision, action or failure to act in relation to the exercise of a public function in order to determine—

(i) its lawfulness;

(ii) its procedural fairness;

(iii) its justification of the reasons provided, if any; or

(iv) bad faith, if any,

where a right, freedom, interests or legitimate expectation of the applicant is affected or threatened.

(2) A person making an application for judicial review shall have sufficient interest in the matter to which the application relates.

(3) Subject to subrule (3), an application for judicial review shall be commenced *ex parte* with the permission of the Court.

(4) The Court may upon hearing an *ex parte* hearing direct an *inter partes* hearing.

(5) Subject to subrule (6), an application for judicial review under subrule (3) shall be filed promptly and shall be made not later than three months of the decision.

(6) The Court may extend the period under subrule (5).

Application for mandatory order, etc.

21. An application for a mandatory order, a prohibiting order or a quashing order shall be made with an application to the Court for judicial review.

Application for a declaration or an injunction

22. An application for a declaration or an injunction shall be made with an application to the Court for judicial review and the Court may grant a declaration or injunction where it considers that it would be in the interests of justice to do so having regard to—

(*a*) the nature of the matter in which relief may be granted by a mandatory order, a prohibiting order or a quashing order;

(*b*) the nature of the person or institution against whom relief may be granted by such an order; and

(*c*) all the circumstances of the case.

Grounds for making application and content

23.—(1) An application for judicial review shall set out the grounds for making the application and shall be supported by a sworn statement.

(2) An application under subrule (1) shall name as defendant—

(*a*) for a declaration in relation to an Act or subsidiary legislation, the Attorney General;

(*b*) for an order that a person shall do or shall not do something, the person in question; and

(*c*) for an order about a decision, the person who made or should have made the decision.

(3) An application under subrule (1) shall be served on—

(*a*) the defendant within twenty-eight days from the date of filing the application;

(*b*) any other person who is directly affected by the application, within twenty-eight days of filing the application; and

(*c*) any other person the Court may order that he may be added as a party, within twenty-eight days of the order.

Defence

24. The defendant shall, within fourteen days of service of the application, file a defence supported by a sworn statement.

Scheduling conference

25. The Court shall set down a date for a scheduling conference not later than twenty-eight days from the date of filing the defence and Order 14 shall, with the necessary adaptation, apply to the application under this Part.

PART IV
Habeas Corpus

Habeas corpus

26.—(1) A person may make an application to the Court for a writ of *habeas corpus* for the release of a person who is being held under unlawful detention.

(2) An application under subrule (1) shall be supported by a sworn statement by the person under unlawful detention or a person who is applying on behalf of the person under unlawful detention.

(3) The application under subrule (1) need not be served on any other person.

(4) The application under subrule (1) shall name, as defendant, the person who, to the best of the applicant's knowledge, is responsible for the unlawful detention of the person who is the subject of the application.

(5) At the hearing of the application, the Court shall order that—

(*a*) the person be released from unlawful detention;

(*b*) the application and sworn statement be served on the defendant and any other person named in the order;

(*c*) the defendant and any other person file a defence and serve the same on the applicant within the date and time stated in the order;

(*d*) the application shall be further heard at the date and time stated in the order;

(*e*) the defendant brings the person in unlawful detention to the Court at the date and time stated in the order;

(*f*) the applicant or defendant comply with any other step stated in the order; or

(*g*) the application is dismissed.

(6) At any further hearing of the application under subrule (5) (*d*), the Court shall—

(*a*) hear evidence in support of the application;

(*b*) let the defendant show cause why the person should not be released;

(*c*) order the release of the person or order that the person be held in another place;

(*d*) dismiss the application;

(*e*) where the Court is satisfied that a person other than the defendant has custody of the person in unlawful detention, adjourn the proceeding and make orders about the service of the application and other matters the Court considers appropriate to deal with the application; or

(*f*) make any other orders it considers appropriate.

PART V
Declaratory Orders

Declaratory orders

27.—(1) A person may make an application to the Court for a declaratory order.

(2) An objection to a proceeding may not be made on the ground that the proceeding is merely seeking a declaratory order.

(3) The Court may make a binding declaratory order based on a right even if no consequential relief is or may be claimed.

ORDER 20
Skeleton Arguments and Submissions

Skeleton arguments submissions

1.—(1) In all interlocutory applications the parties shall file and serve skeleton arguments to be relied upon at least two days before the hearing of the application.

(2) Where the parties are required at the conclusion of a trial to make written submissions, they shall file the same within fourteen days from the last day of trial.

ORDER 21
Appeals

Appeals

1. An appeal from a subordinate court or other tribunal and other judicial and quasi-judicial bodies shall, with the necessary adaptation, be governed by Order XXXIII of the Subordinate Court Rules where there is no appellate procedure governing an appeal from that court or tribunal.

Cap. 3:02 sub. leg. p. 31

Record of appeal

2. On receipt of the copies of a Record of Appeal from a subordinate court or other tribunal and other judicial and quasi-judicial bodies, the Registrar shall—

(*a*) give notice to the Appellant of the hearing fees payable in, respect of the Appeal and demand payment; and

(*b*) serve the Respondent with the copy of the Record of Appeal.

Hearing fees

3. The Registrar shall, upon payment of hearing fees, enter the appeal and fix a date for the hearing thereof and shall give notice to the parties of the date so fixed.

ORDER 22
Case Stated

Content of case stated

1. A subordinate court or other tribunal may refer to the Court a question in the form of a case stated which shall—

(*a*) state the question to be decided by the Court;

(*b*) briefly state the facts and attach all documents giving rise to the question to be decided by the Court; and

(*c*) be divided into paragraphs numbered consecutively.

Particulars of case stated

2. Unless the subordinate court or other tribunal directs otherwise, the case stated shall—

(*a*) be prepared in draft by the initiating party after consultation with the other party;

(*b*) contain an address for service for each party;

(*c*) be settled by the subordinate court or the tribunal;

(*d*) be served on each party; and

(*e*) be filed in the Court by the initiating party on behalf of the subordinate court or the tribunal.

Case stated with permission where a party is a person with disability

3.—(1) Where a person with a disability is a party to the case stated, the case stated shall be set down for hearing with the permission of the Court.

(2) The application for permission under subrule (1) shall be supported by sufficient evidence that the statements contained in the case stated are true, as far as they affect the interests of the person with a disability.

Directions, notice and hearing

4.—(1) The Court shall—

(*a*) set a date for the directions of the case stated; and

(*b*) notify each party of the date of the hearing of the directions of the case stated.

(2) Where the Court is satisfied that each party has been served with the case stated, and the case stated is ready for hearing, the Court shall—

(*a*) set a date for the hearing of the case stated; and

(*b*) notify each party of the date of the hearing of the case stated.

Non-compliance with rule 1

5. Where the case stated has not complied with rule 1, the Court may—

(*a*) with the agreement of each party, amend the case stated;

(*b*) order the initiating party to amend the case stated; or

(*c*) receive evidence, make findings of fact, and, by its own initiative, amend case stated.

ORDER 23

Judgments and other Orders

Particulars and contents of judgment and orders

1.—(1) Subject to sections 3 and 8 of the Act, every judgment shall state the name and judicial title of the person who made it.

(2) A judgment shall—

(*a*) be in writing;

(*b*) contain a point or points for determination, the decision on the point or points and the reasons for the decision;

(*c*) bear the date on which it is given or made; and

(*d*) be sealed by the Court.

(3) Where a party applies for permission to appeal against a judgment at the hearing at which the judgment was made, the judgment shall state—

(*a*) whether or not the judgment is final;

(*b*) whether an appeal lies from the judgment and, if so, to which Court of Appeal; and

(*c*) whether the Court gives permission to appeal.

(4) Where the permission to appeal is not granted under subrule (3), the judgment shall state the appropriate Court of Appeal to which any further application for permission may be made.

Judgments or orders drawn by party

2.—(1) A judgment or order shall be drawn up by a party except for a judgment or an order made by the Court of its own initiative and unless the Court orders otherwise.

(2) The Court may direct that—

(*a*) a judgment or an order drawn up by a party must be checked by the Court before it is sealed; or

(*b*) before a judgment or an order is drawn up by the Court, the parties shall file an agreed statement of its terms.

(3) Where a judgment or an order is to be drawn up by a party—

(*a*) he shall file it not later than seven days after the date on which the Court ordered or permitted him to draw it up so that it can be sealed by the Court; and

(*b*) where he fails to file it within that period, any other party may draw it up and file it.

Service by court of judgment drawn by party

3.—(1) Where a judgment or an order has been drawn up by a party and is to be served by the Court—

(*a*) the party who drew it up must file a copy to be retained at the Court and sufficient copies for service on him and on the other parties; and

(*b*) once it has been sealed, the Court must serve a copy of it on each party to the proceeding.

(2) Unless the Court directs otherwise, any order made otherwise than at trial shall be served on—

(*a*) the applicant and the respondent; and

(*b*) any other person on whom the Court orders it to be served.

Service on party and legal practitioner

4. Where a party on whom a judgment or order is to be served is acting through a legal practitioner, the Court may order the judgment or order to be served on the party and on his legal practitioner.

Agreed judgment or order

5.—(1) This rule applies where all the parties agree on the terms in which a judgment should be given or an order should be made.

(2) The Court may enter and seal an agreed judgment or order if—

(*a*) the judgment or order is listed in subrule (3);

(*b*) none of the parties is a litigant in person; and

(*c*) the approval of the Court is not required by these Rules, a practice direction or any enactment before an agreed order can be made.

(3) The judgments and orders referred to in subrule (2) are—

(*a*) a judgment or order for—

(i) the payment of an amount of money, including a judgment or order for damages or the value of goods to be decided by the Court; or

(ii) the delivery of goods with or without the option of paying the value of the goods or the agreed value.

(*b*) an order for—

(i) the dismissal of a proceeding, in whole or in part;

(ii) the stay of a proceeding on agreed terms, disposing of the proceeding, whether those terms are recorded in a schedule to the order or elsewhere;

(iii) the stay of enforcement of a judgment, without condition or on condition that the money due under the judgment is paid by instalments specified in the order;

(iv) the setting aside of a judgment in default which has not been satisfied;

(v) the payment out of money which has been paid into Court;

(vi) the discharge from liability of any party; or

(vii) the payment, assessment or waiver of costs, or such other provision for costs as may be agreed.

(4) Rule 3 applies to judgments and orders entered and sealed by the Court under subrule (2) as it applies to other judgments and orders.

(5) Where subrule (2) does not apply, any party may apply for a judgment or order on the terms agreed.

(6) The Court may deal with an application under subrule (5) without a hearing.

(7) Where this rule applies, the order—

(*a*) which is agreed by the parties shall be drawn up in the terms agreed;

(*b*) shall be expressed as being 'By Consent'; and

(*c*) shall be signed by the legal representative acting for each of the parties to whom the order relates or, where subrule (5) applies, by the party if he is a litigant in person.

Time for judgment to take effect

6.—(1) A judgment or order takes effect from the day when it is given or made, or such later date as the Court may specify.

(2) This rule applies to all judgments and orders.

Calculating interest on judgment

7. Every judgment in a proceeding shall carry interest at the rate of five per centum per annum or such other rate as may be prescribed.

Persons who may set aside judgment

8. A person who is not a party but who is directly affected by a judgment or order may apply to have the judgment or order set aside or varied.

Compliance with judgments for payment

9. A party shall comply with a judgment or order for the payment of an amount of money, including costs, within fourteen days of the date of the judgment or order, unless—

(*a*) the judgment or order specifies a different date for compliance, including specifying payment by instalments;

(*b*) any of these Rules specifies a different date for compliance; or

(*c*) the Court has stayed the proceeding or judgment.

Correction of judgment

10.—(1) The Court may at any time correct an inadvertent slip or omission in a judgment or order.

(2) A party may apply for a correction of a judgment or order without notice.

Judgment for amount for a claim and counterclaim

11.—(1) This rule applies where the Court gives judgment for a specified amount both for the claimant on his claim and against the claimant on a counterclaim.

(2) If there is a balance in favour of one of the parties, the Court may order the party whose judgment is for the lesser amount to pay the balance.

(3) In a case to which this rule applies, the Court may make a separate order as to costs against each party.

Part owners

12.—(1) In this rule, 'part owner' means one of two or more persons who have an interest in the same goods.

(2) Where a part owner makes a claim relating to the detention of the goods and the claim is not based on a right to possession, a judgment or order given or made in respect of the claim is to be for the payment of damages only, unless the claimant had the written authority of every other part owner of the goods to make the claim on his behalf as well as for himself.

Judgment book

13.—(1) The Court shall keep a judgment book.

(2) The judgment book may be kept in electronic form.

(3) The Court shall record in the judgment book—

(*a*) the distinguishing number or other unique identifier given to the proceeding for which a judgment has been entered;

(*b*) the judgment in the proceeding;

(*c*) the date the judgment was entered; and

(*d*) any other information the Court may record in the judgment book.

ORDER 24

Documents and Forms

Forms
First Schedule

1. All documents filed in a proceeding shall be in the forms set out in the First Schedule.

Particulars of documents

2. All documents filed in a proceeding shall—

(*a*) be type written in Times New Roman font, size 12, spacing 1.5;

(*b*) be prepared on A4 International Standards Organization paper of durable quality having a margin, not less than 3.5 centimetres wide, on the left-hand side and on the right-hand side;

(*c*) be printed on one side only;

(*d*) have each page consecutively numbered;

(*e*) be divided into consecutively numbered paragraphs, with each paragraph dealing with a separate matter; and

(*f*) show the address of the party's legal practitioner or, where the party is not represented by a legal practitioner, the party's address.

Filing of documents

3.—(1) A document may be filed by delivering it to the appropriate registry of the Court by hand or by post, and upon payment of the appropriate filing fees.

(2) A document is filed when it is accepted by the Court and stamped with the seal of the Court.

(3) Where there are more than two claimants in a proceeding, the heading of a document shall state the full name of the first claimant followed by the words "and others" and a similar style shall apply with respect to defendants and other parties.

ORDER 25

Powers and Functions of Registrars

Powers and functions of Registrars

1. Subject to the direction of a Judge, the Registrar may exercise the jurisdiction, powers and functions of the Court to make, or refuse to make, an order, on any or all of the following—

(*a*) interlocutory orders, except orders for injunctions;

(*b*) orders consented to by—

(i) the parties to the application for the order; and

(ii) any other person who will be required to comply with the order or to suffer anything to be done under the order;

(*c*) the amendment of documents;

(*d*) the extension or abridgment of time;

(*e*) the consolidation of proceedings;

(*f*) service of documents;

(*g*) entering judgment on acknowledgment of a claim of money;

(*h*) entering a judgment in default;

(*i*) setting aside a judgment in default;

(*j*) striking out a proceeding;

(*k*) issuing a summons to give evidence or produce documents;

(*l*) inspection of a document or thing produced in response to summons;

(*m*) the enforcement of judgments or orders;

(*n*) assessment of damages;

(*o*) assessment of costs;

(*p*) costs in respect of any order granted or refused by the Registrar; or

(*q*) an injunction where the parties consent to any order under a proceeding.

Referral to Judge in Chambers

2.—(1) The Registrar may, of his own initiative, or on application by a party, refer a proceeding before him to a Judge in chambers.

(2) Upon receipt of reference of a proceeding under subrule (1), the Judge may—

(*a*) hear and determine any issue which was before the Registrar in the proceeding; or

(*b*) determine any question arising in the proceeding and may return the proceeding to the Registrar with directions as the Court considers appropriate.

ORDER 26
Fees

Fees
Second Schedule

1. The Court shall levy the fees as set out in the Second Schedule.

ORDER 27
Record Keeping

Record keeping

1. The Court shall keep a record of all documents filed in the Court.

Records and documents not to be taken out

2. Subject to Order 16 rule 54, unless the Court orders otherwise, the Court shall not allow a document filed in the Court, or a record kept by the Court, to be taken out of the Court.

Court seal

3.—(1) The Court shall keep a seal showing the name of the Court and its location.

(2) The Court seal shall be stamped on each document filed in the Court or issued by the Court.

Request for copy of document

4.—(1) Subject to subrule (2), a party, or a person who has a proper interest in a proceeding, may request the Court for a copy of a document filed in the Court.

(2) The Court shall release the copy requested under subrule (1) after the party or the person has paid for the cost of making the copy.

(3) The copy shall be sealed and stamped with the word "copy" on the first or cover page of the copy.

ORDER 28

Enforcement of Judgments

Enforcement of judgment

1. A judgment shall be enforced under an enforcement order as set out in this Order and the costs of enforcing an order shall be recoverable as part of the order.

Modes of enforcement

2.—(1) A judgment may be enforced by one or more of the following means—

(*a*) a seizure and sale order;

(*b*) third party debt order;

(*c*) a charging order;

(*d*) an appointment of a receiver;

(*e*) an order for possession of land;

(*f*) an order for delivery of goods; or

(*g*) an order to do or not to do a thing.

(2) The orders in subrule (1) (*a*), (*b*), (*c*) and (*d*) apply as money orders and the orders in subrule (1) (*e*), (*f*) and (*g*) apply as non-money orders.

(3) The Sheriff shall enforce the orders under subrule (1) (*a*), (*e*), (*f*) and (*g*) and an enforcement creditor shall enforce the orders under subrule (1) (*b*), (*c*) and (*d*).

Enforcement of Money Orders – General

Enforcement of money order

3.—(1) Subject to subrule (2), an enforcement creditor may apply for the issue of an enforcement order to enforce a money order.

(2) An enforcement creditor may, except where a written law provides otherwise, use more than one method of enforcement of a money order, either at the same time or one after the other.

(3) An enforcement creditor shall file—

(*a*) an application;

(*b*) a copy of the money order;

(*c*) five copies of the form of enforcement order; and

(*d*) a sworn statement setting out—

(i) the date of the money order;

(ii) the amount payable under the order;

(iii) the date and amount of any payment made under the order;

(iv) the costs of previous enforcement;

(v) the interest due at the date of the statement;

(vi) any other details needed to work out the amount payable under the money order at the date of the statement, and how the amount is worked out;

(vii) the daily amount of future interest; and

(viii) any other information needed for the order.

(4) Unless the Court orders otherwise, the application shall be dealt with or without a hearing and in the absence of the parties.

Particulars of enforcement order

4. The Court may issue an enforcement order which shall state—

(*a*) the enforcement debtor's name;

(*b*) the date, within one year of the date of the order, which the order ends; and

(*c*) the amount recoverable under the order, including—

(i) costs of the enforcement; and

(ii) the amount of interest.

Enforcement Hearing

Enforcement hearing

5.—(1) An enforcement creditor may apply to the Court for an order (an 'enforcement hearing order') that the enforcement debtor or independent witness attends an enforcement hearing and be examined about his financial circumstances and how he proposes to pay the amount of the judgment debt and bring sufficient documents to enable him to give a fair and accurate account of his financial circumstances.

(2) Where the Court orders an enforcement hearing it shall set a date for the hearing.

(3) Where the enforcement debtor or independent witness is not present when the Court orders an enforcement hearing, the enforcement creditor shall ensure that the order is served on the enforcement debtor or independent witness not less than seven days from the date of the hearing.

(4) Where the enforcement debtor or independent witness does not, without good reason, appear at the enforcement hearing to answer to an order, the debtor or independent witness may be in contempt of court.

Seizure and Sale Order

6. The Court may issue an enforcement order authorizing the Sheriff to seize and sell moveable property, other than property from seizure and sale under the Sheriffs Act, in which an enforcement debtor has legal title.

Seizure and sale by Sheriff

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7. The Court shall give an enforcement order to the Sheriff for enforcement.

Sheriff to enforce orders

8. Where there are several enforcement orders against the same enforcement debtor, the Sheriff shall execute the orders chronologically.

Chronological execution

9.—(1) Subject to the Sheriffs Act, the Sheriff may dispose of property seized under an enforcement order by public auction or private sale.

Disposal of seized property

(2) The Sheriff shall, within seven days after the public auction or private sale, pay the proceeds of the auction or sale to the Court.

(3) Upon receipt of the proceeds of the auction or sale under subrule (2), the Court shall, in the following sequence—

(*a*) pay the Sheriff the costs of executing the enforcement order;

(*b*) pay any balance, up to the amount of the enforcement order, to the enforcement creditor; and

(*c*) pay any balance remaining after the payment to the enforcement creditor, to the enforcement debtor.

Third Party Debt Orders

10.—(1) Upon the application of an enforcement creditor, the Court may make an order (a third party debt order) requiring a third party to pay to the enforcement creditor—

Third party debt order

(*a*) the amount of any debt due or, accruing due to the enforcement debtor from the third party; or

(*b*) so much of that debt as is sufficient to satisfy the judgment debt and the enforcement creditor's costs of the application.

(2) The Court shall not make an order under subrule (1) without first making an order (an 'interim third party debt order') under rule 13 (2).

11.—(1) An application for a third party debt order may be made without notice and shall be issued in the Court which made the judgment or order which it is sought to enforce; except that if the proceedings

Application for third party debt order

have since been transferred to a different registry, it shall be issued in that registry.

(2) The application notice shall be in Form 21 and shall contain the information specified in subrule (3) verified by a sworn statement.

(3) The application notice must contain the following information—

(*a*) the name and address of the enforcement debtor;

(*b*) details of the judgment or order sought to be enforced;

(*c*) the amount of money remaining due under the judgment or order;

(*d*) where the judgment debt is payable by instalments, the amount of any instalments which have fallen due and remain unpaid;

(*e*) the name and address of the third party;

(*f*) where the third party is a bank, building society or other financial institution—

(i) its name and the address of the branch at which the enforcement debtor's account is believed to be held;

(ii) the account number; and

(iii) where the enforcement creditor does not know all or part of this information, that fact;

(*g*) confirmation that to the best of the judgment creditor's knowledge or belief the third party is within the jurisdiction and owes money to or holds money to the credit of the enforcement debtor;

(*h*) where the enforcement creditor knows or believes that any person other than the enforcement debtor has any claim to the money owed by the third party—

(i) his name and, if known his address; and

(ii) such information as is known to the enforcement creditor about the person's claim;

(*i*) details of any other applications for third party debt orders issued by the enforcement creditor in respect of the same judgment debt; and

(*j*) the sources or grounds of the enforcement creditor's knowledge or belief of the matters referred to in (*g*) and (*h*).

Interim third party debt notice

12. The Court shall not grant a speculative application for a third party debt order, and shall only make an interim third party debt order against a bank, building society or financial institution where the enforcement creditor's application notice contains evidence to substantiate his belief that the enforcement debtor has an account with the bank, building society or financial institution in question.

Third party debt order without hearing

13.—(1) An application for a third party debt order shall initially be dealt with by the Court without a hearing.

(2) The Court may make an interim third party debt order—

(*a*) fixing a hearing to consider whether to make a final third party debt order; and

(*b*) directing that until that hearing the third party must not make any payment which reduces the amount he owes the judgment debtor to less than the amount specified in the order.

(3) An interim third party debt order shall specify the amount of money which the third party must retain, which will be the total of—

(*a*) the amount of money remaining due to the judgment creditor under the money order; and

(*b*) an amount for the enforcement creditor's fixed costs of the application.

(4) An interim third party debt order becomes binding on a third party when it is served on him.

(5) The date of the hearing to consider the application shall not be less than twenty-eight days after the interim third party debt order is made.

Service of documents in support of application

14.—(1) Copies of an interim third party debt order, the application notice and any documents filed in support of an interim third party debt order shall be served—

(*a*) on the third party, not less than twenty-one days before the date fixed for the hearing; and

(*b*) on the enforcement debtor not less than seven days before the date fixed for the hearing.

(2) Where the enforcement creditor serves the order, he shall either—

(*a*) file a certificate of service not less than two days before the hearing; or

(*b*) produce a certificate of service at the hearing.

Obligations of a financial institution served with an order

15.—(1) A bank, building society or other financial institution served with an interim third party debt order shall carry out a search to identify all accounts held with it by the enforcement debtor.

(2) The bank, building society or other financial institution shall disclose to the Court and the enforcement creditor, within seven days of being served with the order, in respect of each account held by the enforcement debtor—

(*a*) the number of the account;

(*b*) whether the account is in credit; and

(*c*) if the account is in credit—

(i) whether the balance of the account is sufficient to cover the amount specified in the order;

(ii) the amount of the balance at the date it was served with the order, if it is less than the amount specified in the order; and

(iii) whether the bank, building society or other financial institution asserts any right to the money in the account, whether pursuant to a right of set-off or otherwise, and if so giving details of the grounds for that assertion.

(3) Where—

(*a*) the enforcement debtor does not hold an account with the bank, building society or other financial institution; or

(*b*) the bank, building society or other financial institution is unable to comply with the order for any other reason,

the bank, building society or other financial institution shall inform the Court and the enforcement creditor of that fact within seven days of being served with the order.

(4) Any third party other than a bank, building society or financial institution served with an interim third party debt order shall notify the Court and the enforcement creditor in writing within seven days of being served with the order, if he claims—

(*a*) not to owe any money to the enforcement debtor; or

(*b*) to owe less than the amount specified in the order.

Hardship payment order

16.—(1) Where a judgment debtor is—

(*a*) an individual;

(*b*) prevented from withdrawing money from his account with a bank, building society or other financial institution as a result of an interim third party debt order; and

(*c*) suffering hardship, by himself or his family, in meeting ordinary living expenses as a result,

the Court may, on an application by the enforcement debtor, make an order ('a hardship payment order') permitting the bank, building society or other financial institution to make a payment or payments out of the account.

(2) An application for a hardship payment order may be made in the proceeding.

(3) An application notice seeking a hardship payment order shall—

(*a*) include detailed evidence explaining why the enforcement debtor needs a payment of the amount requested; and

(*b*) be verified by a sworn statement.

(4) Unless the Court orders otherwise, the application notice shall be served on the judgment creditor at least two days before the hearing but does not need to be served on the third party.

(5) A hardship payment order may—

(*a*) permit the third party to make one or more payments out of the account; and

(*b*) specify to whom the payments may be made.

Contesting third party debt order

17.—(1) Where the enforcement debtor or the third party objects to the Court making a final third party debt order, he shall file and serve written evidence stating the grounds for his objections.

(2) Where the enforcement debtor or the third party knows or believes that a person other than the enforcement debtor has a claim to the money specified in the interim order, he shall file and serve written evidence stating his knowledge of that matter.

(3) Where the third party has given notice under rule 15 (4) that he does not owe any money to the enforcement debtor, or that the amount which he owes is less than the amount specified in the interim order and the enforcement creditor wishes to dispute such assertion, the enforcement creditor shall file and serve written evidence setting out the grounds on which he disputes the third party's case.

(4) Written evidence under subrules (1), (2) or (3) shall be filed and served on each party, as soon as possible, and in any event not less than three days before the hearing.

(5) Where the Court is notified that a person other than the enforcement debtor may have a claim to the money specified in the interim order, the Court will serve on that person notice of the application and the hearing.

(6) At the hearing the Court may—

(*a*) make a final third party debt order;

(*b*) discharge the interim third party debt order and dismiss the application;

(*c*) decide any issues in dispute between the parties, or between any of the parties and any other person who has a claim to the money specified in the interim order; or

(*d*) direct a trial of any such issues, and if necessary give directions.

Third party debt order enforceable as order to pay

18.—(1) A final third party debt order shall be enforceable as an order to pay money.

(2) Where the third party pays money to the enforcement creditor in compliance with a third party debt order or the order is enforced against him, the third party shall, to the extent of the amount paid by him or realized by enforcement against him, be discharged from his debt to the enforcement debtor.

(3) Subrule (2) applies even where the third party debt order, or the original judgment or order against the judgment debtor, is later set aside.

Money standing to the credit of enforcement debtor

19.—(1) Where money is standing to the credit of the enforcement debtor in Court, the enforcement creditor may not apply for a third party debt order in respect of that money but he may apply for an order that the money in Court, or so much of it as is sufficient to satisfy the judgment or order and the costs of the application, be paid to him.

(2) An application notice seeking an order under this rule must be served on the enforcement debtor and the Registrar.

(3) Where an application notice has been issued under this rule, the money in Court shall not be paid out until the application has been disposed of.

Costs

20. Where the enforcement creditor is awarded costs on an application for an order under rules 10 or 19—

(*a*) he shall, unless the Court otherwise directs, retain those costs out of the money recovered by him under the order; and

(*b*) the costs shall be deemed to be paid first out of the money he recovers, in priority to the judgment debt.

Charging Orders

Application for a charging order

21.—(1) An application for a charging order may be made without notice.

(2) An application for a charging order shall be issued in the Court which made the judgment or order which it is sought to enforce, unless—

(*a*) the proceeding has since been transferred to a different Court, in which case the application shall be issued in that Court;

(*b*) the application is for a charging order over an interest in a fund in Court, in which case it must be issued in the Court in which the claim relating to that fund is or was proceeding; or

(*c*) the application is to enforce a judgment or order of the Court.

(3) Subject to subrule (2), a judgment creditor may apply for a single charging order in respect of more than one judgment or order against the same debtor.

(4) The application notice shall be verified by a sworn statement and shall contain the following information—

(*a*) the name and address of the judgment debtor;

(*b*) details of the judgment or order sought to be enforced;

(*c*) the amount of money remaining due under the judgment or order;

(*d*) where the judgment debt is payable by instalments, the amount of any instalments which have fallen due and remain unpaid;

(*e*) where the judgment creditor knows of the existence of any other creditors of the judgment debtor, their names and, if known, their addresses;

(*f*) identification of the asset or assets which it is intended to charge;

(*g*) details of the judgment debtor's interest in the asset; and

(*h*) the names and addresses of the persons on whom an interim charging order shall be served.

Interim charging order

22.—(1) An application for a charging order shall initially be dealt with by a judge without a hearing.

(2) The judge may make an order (an 'interim charging order')—

(*a*) imposing a charge over the judgment debtor's interest in the asset to which the application relates; and

(*b*) fixing a hearing to consider whether to make a final charging order.

(3) Copies of the interim charging order, the application notice and any documents filed in support of it shall, not less than twenty-one days before the hearing, be served on the following persons—

(*a*) the judgment debtor;

(*b*) such other creditors as the Court directs;

(*c*) where the order relates to an interest under a trust, on such of the trustees as the Court directs;

(*d*) where the interest charged is in securities other than securities held in Court, then—

(i) in the case of securities for which the Reserve Bank of Malaŵi keeps the register, the Reserve Bank of Malaŵi;

(ii) in the case of government securities to which subparagraph (i) does not apply, the keeper of the register;

(iii) in the case of securities of a body corporate incorporated within the jurisdiction, that body corporate;

(iv) in the case of securities of a body corporate incorporated outside the jurisdiction, which is registered in a register kept within the jurisdiction, the keeper of that register;

(v) in the case of units of any unit trust in respect of which a register of the unit holders is kept within the jurisdiction, the keeper of that register; and

(*e*) where the interest charged is in funds in Court, the Registrar.

(4) Where the judgment creditor serves the order, he shall either—

(*a*) file a certificate of service not less than two days before the hearing; or

(*b*) produce a certificate of service at the hearing.

Effect of disposition of property subject to interim charging order

23.—(1) Where a judgment debtor disposes of his interest in any securities, while they are subject to an interim charging order which has been served on him, that disposition shall not, so long as that order remains in force, be valid as against the judgment creditor.

(2) A person served under rule 22 (3) with an interim charging order relating to securities shall not, unless the Court gives permission—

(*a*) permit any transfer of any of the securities; or

(*b*) pay any dividend, interest or redemption payment relating to them.

(3) Where a person acts in breach of subrule (2), he shall be liable to pay to the judgment creditor—

(*a*) the value of the securities transferred or the amount of the payment made, as the case may be; or

(*b*) if less, the amount necessary to satisfy the debt in relation to which the interim charging order was made.

Effect of disposition of interest in funds subject to interim order

24. Where a judgment debtor disposes of his interest in funds in Court while they are subject to an interim charging order which has been served on him and on the Registrar, that disposition shall not, so long as that order remains in force, be valid as against the judgment creditor.

Contesting application for final charging order

25.—(1) Where a person objects to the Court making a final charging order, he shall file and serve on the applicant written evidence stating the grounds of his objections, not less than seven days before the hearing.

(2) At the hearing, the Court may—

(*a*) make a final charging order confirming that the charge imposed by the interim charging order shall continue, with or without modification;

(*b*) discharge the interim charging order and dismiss the application;

(*c*) decide any issues in dispute between the parties, or between any of the parties and any other person who objects to the court making a final charging order; or

(*d*) direct a trial of any such issues, and where necessary give directions.

(3) Where the Court makes a final charging order which charges securities other than securities held in Court, the order shall include a stop notice unless the Court orders otherwise.

(4) An order made at the hearing shall be served on all the persons on whom the interim charging order was required to be served.

Contesting application for final charging order

26.—(1) An application to discharge or vary a charging order shall be made to the Court which made the charging order.

(2) The Court may direct that—

(*a*) an interested person should be joined as a party to such an application; or

(*b*) the application should be served on such a person.

(3) An order discharging or varying a charging order must be served on all the persons on whom the charging order was required to be served.

Enforcement of charging order through sale

27.—(1) Subject to any other written law, the Court may, upon an application by a person who has obtained a charging order over an interest in property, order the sale of the property to enforce the charging order.

(2) An application for an order for sale under this rule shall be made to the Court which made the charging order, unless that court does not have jurisdiction to make an order for sale.

(3) An application under this rule shall be verified by a sworn statement.

(4) A copy of the charging order shall be filed with the application.

Receivers

Interpretation of receiver

28. For purposes of rules 28 to 36, "receiver" includes a manager.

Appointment of receiver

29.—(1) The Court may appoint a receiver—

(*a*) before a proceeding has started;

(*b*) in an existing proceeding; or

(*c*) on or after judgment.

(2) A receiver shall be an individual.

(3) The Court may at any time terminate the appointment of a receiver and appoint another receiver in his place.

Application without notice

30. An application for the appointment of a receiver may be made without notice and shall be supported by written evidence.

Service of order appointing receiver

31. An order appointing a receiver shall be served by the party who applied for it on—

(*a*) the person appointed as receiver;

(*b*) unless the Court orders otherwise, every other party to the proceeding; and

(*c*) such other persons as the Court may direct.

Directions for receiver

32.—(1) The Court may direct that before a receiver begins to act or within a specified time he shall either—

(*a*) give such security as the Court may determine; or

(*b*) file and serve on all parties to the proceedings evidence that he already has in force sufficient security, to cover his liability for his acts and omissions as a receiver.

(2) The Court may terminate the appointment of the receiver if he fails to give the security or satisfy the Court as to the security he has in force by the date specified.

Application for directions

33.—(1) A receiver may apply to the Court at any time for directions to assist him in carrying out his function as a receiver.

(2) The Court, when it gives directions, may also direct the receiver to serve on any person the directions and the application for directions.

Remuneration

34.—(1) A receiver may only charge for his services if the Court so directs and specifies the basis on which the receiver is to be remunerated.

(2) The Court may specify who is to be responsible for paying the receiver and the fund or property from which the receiver is to recover his remuneration.

(3) Where the Court directs that the amount of a receiver's remuneration is to be determined by the Court—

(*a*) the receiver may not recover any remuneration for his services without a determination by the Court; and

(*b*) the receiver or any party may apply at any time for such a determination to take place.

(4) Unless the Court orders otherwise, in determining the remuneration of a receiver the Court shall award such sum as is reasonable and proportionate in all the circumstances and which takes into account—

(*a*) the time properly given by him and his staff to the receivership;

(*b*) the complexity of the receivership;

(*c*) any responsibility of an exceptional kind or degree which falls on the receiver in consequence of the receivership;

(*d*) the effectiveness with which the receiver appears to be carrying out, or to have carried out, his duties; and

(*e*) the value and nature of the subject matter of the receivers.

(5) The Court may refer the determination of a receiver's remuneration to a single Judge.

Preparation and service of accounts

35.—(1) The Court may order a receiver to prepare and serve accounts.

(2) A party served with such accounts may apply for an order permitting him to inspect any document in the possession of the receiver relevant to those accounts.

(3) A party may, within fourteen days of being served with the accounts, serve notice on the receiver—

(*a*) specifying an item in the accounts to which he objects;

(*b*) giving the reason for such objection; and

(*c*) requiring the receiver, within fourteen days of receipt of the notice, either—

(i) to notify all the parties who were served with the accounts that he accepts the objection; or

(ii) where he does not accept the objection, to apply for an examination of the accounts in relation to the contested item.

(4) When the receiver applies for the examination of the accounts he shall at the same time file the accounts and a copy of the notice served on him under this rule.

(5) Where the receiver fails to comply with subrule (3) (*c*), any party may apply to the Court for an examination of the accounts in relation to the contested item.

(6) At the conclusion of its examination of the accounts, the Court shall certify the result.

Non-compliance by a receiver

36.—(1) Where a receiver fails to comply with any rule or direction of the Court, the Court may order him to attend a hearing to explain his non-compliance.

(2) At the hearing, the Court may make an order it considers appropriate, including—

(*a*) terminating the appointment of the receiver;

(*b*) reducing the receiver's remuneration or disallowing it completely; and

(*c*) ordering the receiver to pay the costs of any party.

(3) Where the Court has ordered a receiver to pay a sum of money into Court and the receiver has failed to do so, the Court may order him to pay interest on that sum for the time he is in default at such rate as it considers appropriate.

Possession of Land

Order of possession

37. The Court may issue an enforcement order for possession of land.

Effect of order of possession

38. The enforcement order authorizes the Sheriff to enter on the land described in the order and deliver possession of the land to the person named in the order as being entitled to possession of the land.

Display and service of order

39. The enforcement order shall be—

(*a*) served personally on the person against whom the order was made, and on anyone else who seems to be in possession of the land; and

(*b*) displayed prominently at the entrance to the land.

Enforcement of order

40. The enforcement order shall not be enforced until thirty days after the display and the latest date of service.

Delivery of Goods

Order for delivery of goods

41. The Court may issue an enforcement order for the delivery of goods where—

(*a*) the order for the delivery of the goods does not give the person against whom the order is made the option of keeping the goods and paying the assessed value of the goods; or

(*b*) the order gives the person the option of keeping the goods and paying the assessed value of the goods, but the person does not choose to pay for the goods.

Effect of order for delivery of goods

42. The enforcement order authorizes the Sheriff to seize the goods and give them to the person who is entitled to them under the order.

Enforcement as money order

43. Where the order gives the person the option for keeping the goods and paying the assessed value of the goods and the person chooses to keep the goods and pay the assessed value of the goods, the order may be enforced in the same way as a money order.

Orders to Do or Not to Do a Thing

Application of rules 44 to 51

44. Rules 44 to 51 apply to an order where—

(*a*) it is a non-money order;

(*b*) it requires a person to do an act within a specified time; and

(*c*) the person does not do the act within the time.

Enforcement of order not to do an act

45. The order may be enforced in one or more of the following—

(*a*) holding the person in contempt of court;

(*b*) seizing the person's property; or

(*c*) where the person is a body corporate, holding its officers in contempt of court, or seizing its property.

Enforcement of an order not to do an act by the Court

46. The Court may also enforce an order to do an act by—

(*a*) appointing another person to do the act; and

(*b*) ordering the person required to do the act to pay the costs and expenses caused by not doing the act.

Recovery of costs and expenses under money order

47. The costs and expenses may be recovered under an enforcement order for a money order.

Suspension of enforcement order

48. An enforcement respondent may apply to the Court for an order suspending the enforcement of an order.

Statement in support of suspension

49. The application under rule 48 shall be supported by a sworn statement and shall be filed and served on the enforcement creditor at least seven days before the application is to be heard.

Power of Court and suspension

50. The Court may—

(*a*) suspend the enforcement of all or part of the order because facts have arisen or been discovered since the order was made or for other reasons; and

(*b*) make other orders it considers appropriate, including another enforcement order.

VALIDITY OF ENFORCEMENT ORDER AND OTHER MATTERS

Validity of enforcement order

51. An enforcement order remains in force for one year after the day it is made unless the order states that it ends at an earlier time.

Renewal of enforcement order

52. An enforcement order may be renewed for further periods of not longer than one year at a time.

Application for renewal of enforcement order

53. An application for renewal of an enforcement order shall be made—

(*a*) before the order expires; and

(*b*) by filing in Court—

(i) a request for the order to be renewed for a stated period not longer than one year; and

(ii) a sworn statement setting out—

(A) the matters required to be included in the sworn statement in support of an application for an enforcement order of that kind; and

(B) the reasons why the order has not been enforced during the period that the order has been in force.

Application for renewal without hearing

54. Unless the Court orders otherwise, an application for the renewal of an enforcement order shall be dealt with without a hearing and in the absence of the parties.

Enforcement against a partnership

55.—(1) An order against partners in the partnership's name may be enforced against one or more of the following—

(*a*) property belonging to a partnership;

(*b*) a partner who filed a defence;

(*c*) a person who has admitted being a partner;

(*d*) a person who the Court has decided is a partner; or

(*e*) a person who has been individually served as a partner with the originating process and who has not filed a defence.

(2) On application by a person entitled to enforce an order against partners in the partnership name, the Court may amend the order to make it an order against the people who were partners when the cause of action arose.

(3) On application by a person entitled to enforce an order against partners in the partnership name, the Court may give permission for the order to be enforced against someone else who is liable to satisfy the order.

(4) The application for permission under rule 58 shall be served on the person against whom the order is sought to be enforced.

(5) Where, on the hearing of the application for permission, the person denies liability, the Court may decide liability summarily or give directions about how liability is to be decided.

(6) An enforcement order shall not be made against property of a partnership except to enforce an order against the partnership.

Enforcement against a business

56.—(1) Where a proceeding is brought against a person under a business name and Order 6 applies to the business name, an order in the proceeding may be enforced against any property of the person.

(2) The Court may amend an order made in the proceeding to make it an order against the person.

Enforceability of enforcement order

57. An enforcement order is enforceable throughout the jurisdiction.

Enforcement on debtor's estate

58. Where the enforcement debtor has died, only the assets of his estate can be the subject of an enforcement order.

Payment by instalment order

59. The Court may issue an instalment order authorizing satisfaction of the amount payable under the judgment debt by instalments by the enforcement debtor.

When to make an instalment order

60. The Court may make an instalment order—

(*a*) on application by the enforcement debtor when making the money order;

(*b*) after an enforcement hearing;

(*c*) after suspending another enforcement order;

(*d*) on application by the enforcement creditor for an instalment order; or

(*e*) on application by an enforcement debtor.

Application for instalment order

61. An application by an enforcement debtor for an instalment order shall be made by filing in the Court—

(*a*) a sworn statement of the enforcement debtor's financial position; and

(*b*) a draft of the order sought.

Considerations when making an instalment order

62.—(1) In deciding whether to make an instalment order the Court shall have regard to the following matters as far as they are known to the Court—

(*a*) whether the enforcement debtor is employed;

(*b*) the enforcement debtor's means of satisfying the judgment debt;

(*c*) whether the judgment debt, including any interest, shall be satisfied within a reasonable time;

(*d*) the necessary living expenses of the enforcement debtor and the enforcement debtor's dependants;

(*e*) other liabilities of the enforcement debtor; and

(*f*) where the applicant is the enforcement debtor, whether having regard to the availability of other enforcement means, making the order would be consistent with the public interest in enforcing orders justly.

(2) In deciding whether to make an instalment order, the Court may also have regard to any other matters the Court considers relevant.

Enforcement against debtor's estate

63. In deciding the amount and timing of instalments, the Court shall be satisfied that the instalment order will not impose unreasonable hardship on the enforcement debtor.

Sealed copy of order to be served on debtor

64. Where the Court makes an instalment order on the application of the enforcement creditor in the absence of the enforcement debtor, the enforcement creditor is responsible for ensuring a sealed copy of the order is served on the enforcement debtor.

Sealed copy of order to be served on creditor

65. Where the Court makes an instalment order on the application of the enforcement debtor in the absence of the enforcement creditor, the enforcement debtor is responsible for ensuring a sealed copy of the order is served on the enforcement creditor.

Determination of instalment order

66. An instalment order ceases to have effect where—

(*a*) the enforcement debtor fails to make two consecutive payments under the order at the time required by the order; and

(*b*) the enforcement creditor files in the Court a sworn statement stating that the enforcement debtor has failed to make two consecutive payments under the order at the time required by the order.

ORDER 29
Interpleader Proceedings

Application of Order 29

1. This Order shall apply where—

(*a*) a person, other than the Sheriff, (the 'stakeholder') is under a liability in relation to a debt or personal property (the 'disputed property'); and

(*b*) the stakeholder is, or expects to be, sued by two or more claimants making adverse claims to the disputed property.

Mode of application

2. A stakeholder shall apply for an interpleader relief, where a proceeding subsists, under the proceeding; or where there is no proceeding, by an application.

Sworn statement in support of application

3. An application under rule 2 shall be supported by a sworn statement which shall state that the stakeholder—

(*a*) makes no rival claim to the disputed property, other than for charges or costs;

(*b*) is not in collusion with any claimant; and

(*c*) is willing to—

(i) pay or transfer the disputed property into Court;

(ii) dispose of the property as the Court directs; or

(iii) give security to the value of the property to the Court's satisfaction.

Copy of application to be served on claimant

4.—(1) A sealed or stamped copy of the application and supporting sworn statement under rules 2 and 3 shall be served on each claimant.

(2) The application and sworn statement may be served by post but where a claimant is not a party to the proceeding, the application and sworn statement shall be served personally.

Orders on hearing application for interpleader

5.—(1) On hearing an application under rule 2, the Court may make orders it considers appropriate for hearing and deciding all matters in dispute, including—

(*a*) where a proceeding is pending against the stakeholder in relation to any of the disputed property, an order that a claimant in relation to the disputed property be included as a defendant in the proceeding in addition to or in substitution for the stakeholder;

(*b*) an order staying or dismissing the proceeding;

(*c*) an order that a question between claimants to the disputed property be stated and tried, and further direct which of the claimants is to be the claimant and the defendant respectively, and give any necessary directions for the trial;

(*d*) an order that the stakeholder pay or transfer all or any of the property in dispute or the proceeds of sale into Court or otherwise dispose of the property or proceeds of sale;

(*e*) where a claimant claims to be entitled to any of the disputed property by way of security for a debt, orders for the sale of all or part of the property and for the application of the proceeds of sale or other appropriate orders as the Court considers appropriate;

(*f*) decide summarily a question of law or fact arising on the application;

(*g*) order that a case stated be tried on a question of law under Order 22;

(*h*) release the stakeholder from further attendance on the stakeholder's undertaking not to dispose of the property otherwise than in accordance with an order of the Court, and abide by the order in relation to that property; or

(*i*) an order to finally dispose of all issues arising in the proceeding.

(2) Orders 14 and 16 shall apply to a direction for a trial under subrule (1) (*c*).

Summary determination of claim

6. The Court may, having regard to the value of the disputed property, decide the claimants' claims summarily on any conditions it considers appropriate where—

(*a*) the claimants so consent; or

(*b*) a claimant applies to the Court for the Court to decide the claims summarily.

Relief where titles independent

7. A stakeholder may still be entitled to relief even if the titles of the claimants do not have a common origin, but are adverse to, and independent of, one another.

Failure to appear and non-compliance

8. Where a claimant, having been served with an application under rule 2, does not appear on the hearing of the application or, having appeared, fails or refuses to comply with an order made in the application, the Court may order that the claimant, and all persons claiming under him, be barred from prosecuting his claim against the stakeholder for such relief and all persons claiming under him, but such an order shall not affect the rights of the claimants as between themselves.

9. Where the Court considers it necessary or expedient to make an order under this Order in several proceedings before different Judges, the Court may make such an order; and the order shall be entitled in all those proceedings and shall be binding on all the parties to them.

Order affecting several proceedings

ORDER 30

Committal Proceedings

1.—(1) Rules 2 and 3 of this Order shall apply where a party applies to the Court to deal with another party or person for contempt of court.

Contempt of Court

(2) Rules 2 and 4 of this Order shall apply where the Court, on its own initiative, enquires into what appears to be a contempt of court.

(3) In this Order, "respondent" means any person accused of contempt of court under rule 5 or into whose conduct the Court enquires under rule 13.

General Rules

2.—(1) The Court shall determine any application under rule 5 and pursue any enquiry under rule 13—

Determination of application under rule 5 and enquiry under rule 13

(*a*) at a hearing; and

(*b*) in the presence of a person making such an application.

(2) The Court may adjourn a hearing at any stage for good reasons which shall be endorsed in the court record.

(3) The Court shall not proceed in the respondent's absence unless—

(*a*) the respondent has had at least fourteen days' notice of the hearing, or was present when it was set down; or

(*b*) the respondent's disorderly behaviour makes it impracticable to proceed otherwise.

3.—(1) This rule applies where the Court suspends an order of imprisonment for contempt of court and the respondent is absent when the Court suspends the order.

Suspension of imprisonment for contempt voluntary arrangement

(2) The respondent shall be served with notice of the terms of the Court's order—

(*a*) by any applicant under rule 5; or

(*b*) by the Court, in any other case.

4.—(1) This rule applies where the Court can discharge an order for a respondent's imprisonment for contempt of court.

Discharging imprisonment for contempt

(2) A respondent who seeks the Court to discharge such an order shall—

(*a*) apply in writing, unless the Court directs otherwise, and serve any written application on the Court and any applicant under rule 5;

(*b*) explain why it is appropriate for the order for imprisonment to be discharged; and

(*c*) request for a hearing, if the respondent seeks one.

Procedure on Application

Procedure on application

5.—(1) A person who seeks the Court to deal with a respondent for contempt of court shall—

(*a*) apply in writing and serve the application on the Court;

(*b*) serve on the respondent—

(i) the application; and

(ii) notice of where and when the Court will hear the application; and

(*c*) the application shall be heard not less than fourteen days after the date of service.

(2) The application shall—

(*a*) identify the respondent;

(*b*) explain that it is an application for the respondent to be dealt with for contempt of court;

(*c*) contain such particulars of the conduct constituting contempt of court as to make clear what the applicant alleges against the respondent; and

(*d*) include a notice warning the respondent that the Court—

(i) can impose imprisonment, or a fine, or both, for contempt of court; and

(ii) may deal with the application in the respondent's absence, where the respondent does not attend the hearing of the application.

Statement of a witness or hearsay

6.—(1) A party who wants to introduce in evidence the written statement of a witness, or other hearsay, shall—

(*a*) serve a copy of the statement, or notice of other hearsay, on—

(i) the Court; and

(ii) the other party; and

(*b*) serve the copy or notice—

(i) when serving the application under rule 5, in the case of the applicant; or

(ii) not more than seven days after service of that application, in the case of the respondent.

(2) Such service is notice of that party's intention to introduce in evidence that written witness statement, or other hearsay, unless that party otherwise indicates when effecting service.

(3) A party entitled to receive such notice may waive that entitlement by so informing the Court and the party who would have given such notice.

Declaration of a witness in a written statement

7.—(1) This rule applies to a written witness statement served under rule 6.

(2) A written witness statement must contain a declaration by the person making it that it is true to the best of that person's knowledge and belief.

Contempt for false statement in written statement

8.—(1) The Court may punish for contempt of court a person who makes, or causes to be made, a false statement in such a written witness statement without an honest belief in its truth.

(2) The Court may exercise its power to punish that person for contempt of court—

(*a*) on an application by a party, with the Court's permission; or

(*b*) on its own initiative.

(3) A person who wants the Court to exercise that power shall comply with the rules in this Order.

Notice of hearsay

9.—(1) This rule applies to a notice of hearsay, other than a written witness statement, served under rule 6.

(2) Such a notice shall—

(*a*) set out the evidence, or attach the document that contains it; and

(*b*) identify the person who made the statement that is hearsay.

Cross-examination of person whose statement is to be used as hearsay

10.—(1) This rule applies where a party wants the Court's permission to cross-examine a person who made a statement which another party wants to introduce as hearsay.

(2) The party who wants to cross-examine that person shall—

(*a*) apply in writing, with reasons; and

(*b*) serve the application on—

(i) a court officer; and

(ii) the party who served the hearsay.

(3) A respondent who wants to cross-examine such a person shall apply to do so not more than seven days after service of the hearsay by the applicant.

(4) An applicant who wants to cross-examine such a person shall apply to do so not more than three days after service of the hearsay by the respondent.

(5) The Court—

(*a*) may decide an application under this rule without a hearing; but

(*b*) must not dismiss such an application unless the person making it has had an opportunity to make representations at a hearing.

Credibility of person whose statement is to be used as hearsay

11.—(1) This rule applies where a party wants to challenge the credibility or consistency of a person who made a statement which another party wants to introduce as hearsay.

(2) The party who wants to challenge the credibility or consistency of that person must—

(*a*) serve a written notice of intention to do so on—

(i) a court officer;

(ii) the party who served the hearsay; and

(*b*) in it, identify any statement or other material on which that party relies.

(3) A respondent who wants to challenge such a person's credibility or consistency must serve such a notice not more than seven days after service of the hearsay by the applicant.

(4) An applicant who wants to challenge such a person's credibility or consistency must serve such a notice not more than three days after service of the hearsay by the respondent.

(5) The party who served the hearsay—

(*a*) may call that person to give oral evidence instead; and

(*b*) if so, must serve a notice of intention to do so on—

(i) a court officer; and

(ii) the other party, as soon as it is reasonably practicable, after service of the notice under subrule (2).

Abridgement or variation of time

12.—(1) The Court may shorten or extend a time limit, even after it has expired, under rules 6, 10 or 11.

(2) A person who wants an extension of time shall—

(*a*) apply when serving the statement, notice or application for which extension of time is needed; and

(*b*) explain the delay.

Procedure on Enquiry

Procedure on enquiry

13.—(1) Unless the respondent's disorderly behaviour makes it impracticable to do so, the Court shall—

(*a*) explain, in terms the respondent can understand, with help, if necessary—

(i) the conduct that is in question;

(ii) that the Court can impose imprisonment, or a fine, or both, for such conduct;

(iii) where relevant, that the Court has power to order the respondent's immediate temporary detention, if in the Court's opinion that is required;

(iv) that the respondent may explain that conduct and, if he so wishes, apologize; and

(v) that the respondent may take legal advice; and

(*b*) give the respondent an opportunity to explain and apologize.

(2) Unless the Court accepts any explanation or apology offered by the respondent, the Court may postpone its enquiry into that conduct and instead exercise its power to enquire into that conduct as soon as possible.

Procedure on immediate temporary detention

14.—(1) This rule applies in a case in which the Court has ordered the respondent's immediate temporary detention.

(2) The Court shall review the case no later than the next business day.

(3) On the review, the Court shall—

(*a*) unless the respondent is absent, repeat the explanation required by rule 13 (1) (*a*); and

(*b*) give the respondent an opportunity to explain himself and apologize to the Court.

(4) Unless the Court accepts any explanation or apology offered by the respondent, the Court may—

(*c*) further postpone its enquiry into the respondent's conduct; and

(*d*) order the respondent's release from detention in the meantime and enquire into that conduct as soon as possible.

Procedure on postponement of enquiry

15.—(1) This rule applies where the Court postpones its enquiry—

(*a*) under rule 13, if the Court does not order the respondent's immediate detention; or

(*b*) under rule 14.

(2) The Court shall arrange for the preparation of a written statement—

(*a*) containing such particulars of the conduct that appears to constitute contempt of court as to make clear what the respondent appears to have done; and

(*b*) including a notice that—

(i) reminds the respondent that the Court can impose imprisonment, or a fine, or both, for contempt of court; and

(ii) warns the respondent that the Court may pursue the enquiry in the respondent's absence, if the respondent does not attend.

(3) The Court shall serve on the respondent that written statement and notice of the date and time when the postponed enquiry will take place.

Procedure at enquiry

16.—(1) At an enquiry, the Court shall—

(*a*) explain again, in terms the respondent can understand, with help, if necessary, the conduct that is in question, if the enquiry has been postponed from a previous occasion;

(*b*) explain what the procedure at the enquiry shall be; and

(*c*) ask whether the respondent admits the conduct.

(2) Where the respondent admits the conduct, the Court need not receive evidence.

(3) Where the respondent does not admit the conduct, the Court shall receive—

(*a*) the statement prepared under rule 15;

(*b*) any other evidence of the conduct;

(*c*) any evidence introduced by the respondent; and

(*d*) any representation by the respondent about the conduct.

(4) Where the respondent admits the conduct, or the Court finds it proved, the Court shall—

(*a*) before imposing any punishment for contempt of court, give the respondent an opportunity to make any representation relevant to punishment; and

(*b*) give sufficient reasons to explain its decision, including its findings of fact.

(5) The Court that conducts a postponed enquiry need not include the same member or members as the Court that postponed it but may do so, unless that would be unfair to the respondent.

Procedure on Court initiated enquiry

17.—(1) This rule applies where the Court, on its own initiative, enquires into what appears to be disobedience of its order, or a person wants to introduce in evidence the written statement of a witness, or other hearsay.

(2) Unless the Court directs otherwise, such a person shall, as soon as it is reasonably practicable, serve a copy of the statement, or notice of other hearsay, on—

(*a*) the Court; and

(*b*) the respondent, if that person is not the respondent.

(3) Such service is notice of that person's intention to introduce in evidence that written witness statement, or other hearsay, unless that person otherwise indicates when effecting service.

(4) A respondent entitled to receive such notice may waive that entitlement by so informing the Court and the person who would have given the notice.

(5) Rules 7 to 11 apply as if that statement, or other hearsay, had been served under rule 6, but with such time limits as the Court directs instead of the time limits in those rules.

Consequences on a finding of guilt

18. Where the Court finds a party or other person guilty of contempt of court, the Court may—

(*a*) impose a fine against the party or the person;

(*b*) commit the party or the person to prison for a period not exceeding two years;

(*c*) in the case of a body corporate—

(i) impose a fine; or

(ii) order the seizure of its property; or

(*d*) release the person with conditions or not.

Vacation or variation of order

19. The Court may, on application, vacate or revoke an order of a fine or committal made in the absence of a party or other person, with respect to contempt of court.

ORDER 31
Costs

General rules on costs

1.—(1) This Order provides the general rules about costs, entitlement to costs and orders in respect of *pro bono* representation.

(2) A party to a proceeding shall not be entitled to recover costs of the proceeding from any other party to the proceeding except under an order of the Court.

(3) The Court shall make an order, as it deems fit, regarding costs in a *pro bono* representation.

Notification of costs

2. Where the Court makes an order for costs against a party with legal representation and the party is not present when the order is made, the party's legal practitioner shall notify his client in writing of the order for costs not later than seven days after the legal practitioner receives notice of the order.

Courts' discretion on costs

3.—(1) The Court has discretion as to—

(*a*) whether costs are payable by one party to another;

(*b*) the amount of those costs; and

(*c*) when they are to be paid.

(2) Where the Court decides to make an order about costs, the unsuccessful party shall be ordered to pay the costs of the successful party.

(3) Notwithstanding subrule (2), the Court may make a different order about costs and the general rule shall not apply to a judgment, direction, decision or order given or made in probate or family proceedings.

(4) In deciding what order, if any, to make about costs, the Court shall have regard to all the circumstances, including—

(*a*) the conduct of all the parties;

(*b*) whether a party has succeeded on part of his case, even if he has not been wholly successful; and

(*c*) any payment into Court or admissible offer to settle made by a party which is drawn to the Court's attention.

(5) The conduct of the parties includes—

(*a*) conduct before, as well as during, the proceeding and, in particular, the extent to which the parties conducted themselves during mandatory mediation, scheduling and pre-trial conferences;

(*b*) whether it was reasonable for a party to raise, pursue or contest a particular allegation or issue;

(*c*) the manner in which a party has pursued or defended his case or a particular allegation or issue; and

(*d*) whether a claimant who has succeeded in his claim, in whole or in part, exaggerated his claim.

(6) The orders which the Court may make under this Order include an order that a party shall pay—

(*a*) a proportion of another party's costs;

(*b*) a stated amount in respect of another party's costs;

(*c*) costs from or until a certain date only;

(*d*) costs incurred before the proceeding has begun;

(*e*) costs relating to particular steps taken in the proceeding;

(*f*) costs relating only to a distinct part of the proceeding; and

(*g*) interest on costs from or until a certain date, including a date before judgment.

(7) Where the Court would otherwise consider making an order under subrule (6) (*f*), the Court shall instead, where practicable, make an order under subrule (6) (*a*) or (*c*).

(8) Where the Court has ordered a party to pay costs, it may order an amount to be paid on account before the costs are assessed.

(9) Where a party entitled to costs is also liable to pay costs, the Court may assess the costs which that party is liable to pay and either—

(*a*) set off the amount assessed against the amount the party is entitled to be paid and direct him to pay any balance; or

(*b*) delay the issue of a certificate for the costs to which the party is entitled until he has paid the amount which he is liable to pay.

Assessment of costs

4.—(1) Where the Court is to assess the amount of costs, whether by summary or detailed assessment, those costs shall be assessed on

the standard basis or the indemnity basis, but the Court will not in either case allow costs which have been unreasonably incurred or are unreasonable in amount.

(2) Where the amount of costs is to be assessed on the standard basis, the Court shall—

(*a*) only allow costs which are proportionate to the matters in issue; and

(*b*) resolve any doubt which it may have as to whether costs were reasonably incurred or reasonable and proportionate in amount in favour of the paying party.

(3) Where the amount of costs is to be assessed on the indemnity basis, the Court will resolve any doubt which it may have as to whether costs were reasonably incurred or were reasonable in amount in favour of the receiving party.

(4) Where the Court makes an order about costs without indicating the basis on which the costs are to be assessed or the Court makes an order for costs to be assessed on a basis other than the standard basis or the indemnity basis, the costs will be assessed on the standard basis.

Consideration of circumstances on assessment

5.—(1) The Court shall have regard to all the circumstances in deciding whether costs were—

(*a*) if it is assessing costs on the standard basis—

(i) proportionately and reasonably incurred; or

(ii) were proportionate and reasonable in amount; or

(*b*) if it is assessing costs on the indemnity basis—

(i) unreasonably incurred; or

(ii) unreasonable in amount.

(2) In particular, the Court shall give effect to any orders which have already been made.

(3) The Court shall also have regard to—

(*a*) the conduct of all the parties, including in particular—

(i) conduct before, as well as during, the proceedings; and

(ii) the efforts made, if any, before and during the proceedings in order to try to resolve the dispute;

(*b*) the amount or value of any money or property involved;

(*c*) the importance of the matter to all the parties;

(*d*) the particular complexity of the matter or the difficulty or novelty of the questions raised;

(*e*) the skill, effort, specialized knowledge and responsibility involved;

(*f*) the time spent on the case; and

(*g*) the place where and the circumstances in which work or any part of it was done.

Costs other than fixed costs

6. Where the Court orders a party to pay costs to another party, other than fixed costs, the Court may either—

(*a*) make a summary assessment of the costs; or

(*b*) order detailed assessment of the costs by a costs officer,

unless any rule, practice direction or other enactment provides otherwise.

Compliance with order of costs

7. A party must comply with an order for the payment of costs within fourteen days of—

(*a*) the date of the judgment or order if it states the amount of those costs;

(*b*) where the amount of those costs or part of the costs is decided under a certificate, the date of the certificate which states the amount; or

(*c*) such later date as the Court may specify.

Procedure where parties fail to agree on amount of costs

8.—(1) This rule sets out a procedure which may be followed where the parties to a dispute have reached an agreement on all issues, including which party is to pay the costs, which is made or confirmed in writing, but they have failed to agree the amount of those costs and no proceeding has been started.

(2) Either party to the agreement may start a proceeding under this rule.

(3) In a proceeding to which this rule applies, the Court may make an order for costs to be determined by detailed assessment or dismiss the claim and shall dismiss the claim where the other party opposes the assessment.

Failure to comply with Court order and improper conduct

9.—(1) The Court may make an order under this rule where—

(*a*) a party or his legal practitioner, in connexion with a summary or detailed assessment, fails to comply with a rule, practice direction or Court order; or

(*b*) it appears to the Court that the conduct of a party or his legal practitioner, before or during the proceeding which gave rise to the assessment hearing, was unreasonable or improper.

(2) Where subrule (1) applies, the Court may—

(*a*) disallow all or part of the costs which are being assessed; or

(*b*) order the party at fault or, his legal practitioner personally, to pay costs which he has caused any other party to incur, particularly where the claim had no prospects of success, or it was frivolous, vexatious or an abuse of the court process.

(3) Where the Court makes an order under subrule (2) against a legally represented party and the party is not present when the order is made, the party's legal practitioner shall notify his client in writing of the order not later than seven days after the legal practitioner receives notice of the order.

(4) Where the Court makes an order under subrule (2) against the legal practitioner to pay all or part of a party's costs if the costs are incurred because of the legal practitioner's conduct, the Court shall inform the legal practitioner's party of the order.

Legal practitioners' fees

10.—(1) A legal practitioner or his law firm shall be entitled to an instruction fee and not a brief fee where he or his firm have had instructions to act for a party from the commencement of a proceeding to trial.

(2) The Court may allow a legal practitioner or his law firm to be entitled to a single fee.

(3) A legal practitioner or his law firm shall be entitled to a brief fee where he or his firm have instructions from another legal practitioner or firm to appear on behalf of that legal practitioner or firm at trial.

Use or appearance of Senior Counsel

11.—(1) The Court shall determine the use or appearance of a Senior Counsel in a proceeding.

(2) The Court shall allow Senior Counsel's fees where his use or appearance has been determined under subrule (1).

(3) The Court may disallow Senior Counsel's fees where his use or appearance as Senior Counsel in a proceeding has been determined inappropriate under subrule (1) and may allow ordinary legal practitioners' fees.

Filing of bill of costs

12.—(1) A bill of costs shall be filed with the Court for assessment within three months from the date of the costs order and the bill shall be filed at the conclusion of the whole proceeding unless the Court orders otherwise.

(2) A party may apply to the Court to file a bill of costs before the conclusion of a proceeding or for an extension of time for filing of the bill under subrule (1).

(3) A bill of costs shall be accompanied by an assessment bundle which shall contain all documents, excluding those on the Court file, that a party shall rely on at the assessment hearing.

Duty to notify client of fee

13.—(1) A legal practitioner has a duty to notify, in writing, his client or other person liable to pay his fees, the legal practitioner's hourly fee and a reasonable estimate of his total fees for acting in a proceeding or application.

(2) The legal practitioner's estimate under subrule (1) shall take into account Part III of the Legal Practitioners (Scale and Minimum Charges) Rules under the Legal Education and Legal Practitioners Act.

Cap. 3:04 sub. leg. P. 29

(3) Where the legal practitioner complies with subrule (1), the Court shall assess his costs on an indemnity basis.

(4) Where the legal practitioner fails to comply with subrule (1), the Court shall assess his costs on a standard basis.

Fixed costs Cap. 3:04

14. A party may recover the fixed costs under the Legal Education and Legal Practitioners Act.

Costs where party acting in person

15.—(1) A party acting in person is entitled to recover disbursements if he succeeds in a proceeding and costs at a sum not exceeding two-thirds of the sum which in the opinion of the Court would have been allowed in respect of each item if the party was represented by a legal practitioner.

(2) This rule shall not apply to a party who is a legal practitioner and is acting in person in a proceeding.

Agreement on costs

16. Where parties agree costs in a proceeding, they may not file a statement of costs.

Review of decision on costs

17.—(1) A party to assessment of costs who is dissatisfied with any decision of the Court may, within twenty-one days after that decision, apply to the Court to review its decision.

(2) An application under subrule (1) shall specify, in writing, the nature and grounds of the objections.

(3) The objections under subrule (2) shall be served on every other party to the proceeding, and the other party shall, within twenty-one

days from the date of service, deliver answers to the Court, the applicant or other party to the proceeding.

(4) The Court may receive further evidence at the hearing of an application under subrule (1) and may order costs as it shall deem appropriate in the circumstances.

ORDER 32
Security for Costs

Security for costs

1.—(1) Where, on an application of a defendant to a proceeding, it appears to the Court—

(*a*) that the claimant is ordinarily resident out of the jurisdiction;

(*b*) that the claimant, not being a claimant suing in a representative capacity, is a nominal claimant who is suing for the benefit of some other person and that there is reason to believe that he will be unable to pay the defendant's costs if ordered to do so;

(*c*) the claimant may be unable to pay the defendant's costs if ordered to do so;

(*d*) subject to subrule (2), that the claimant's address is not stated in the claim, or is incorrectly stated;

(*e*) that the claimant has changed address since the proceeding started and there is reason to believe this was done to avoid the consequences of the proceeding; or

(*f*) that the claimant is about to leave the jurisdiction and there is reason to believe that he has insufficient property available within the jurisdiction for enforcement to pay the defendant's costs, then where, having regard to all circumstances of the case,

the Court considers it is in the interests of justice to do so, order the claimant to give such security for the defendant's costs of the proceeding.

(2) The Court shall not require a claimant to give security by reason only of subrule (1) (*d*) if he satisfies the Court that the failure to state his address was an innocent misstatement and was not made with the intention to deceive.

Considerations on order for security for costs

2. In deciding whether to make an order for security for costs, the Court may have regard to any of the following matters—

(*a*) the prospects of success of the proceeding;

(*b*) whether the claimant's lack of means is because of the defendant's conduct;

(*c*) whether the order would be oppressive or would stifle the proceeding;

(*d*) whether the proceeding involves a matter of public interest;

(*e*) whether the claimant's delay in commencing the proceeding has prejudiced the defendant; or

(*f*) the costs of the proceeding.

Manner of giving security

3. Where an order is made requiring a party to give security for costs, the security shall be given in such manner, at such time, and on such terms as the Court may direct.

Notice on manner of giving security

4. The claimant shall, as soon as practicable after the security is given, give the defendant a notice in writing specifying the date and manner of giving the security.

Suspension pending security

5. Where the Court orders the claimant to give security, the proceeding shall be suspended until security is given.

Non-compliance by claimant

6. Where the claimant does not give security, the defendant may apply to have the proceeding dismissed.

Variation

7. The Court may set aside or vary an order for security for costs where the Court is satisfied that the security is no longer necessary or there are other special circumstances.

Discharge of security

8. The security shall be discharged—

(*a*) once the costs have been paid;

(*b*) where the party who gave the security is not required to pay costs under a judgment;

(*c*) where the Court so orders; or

(*d*) where a party entitled to the benefit of the security so consents.

ORDER 33

Change of legal Practitioner

Change of legal practitioner

1.—(1) A party who is represented by a legal practitioner in a proceeding may change his legal practitioner without an order of the Court.

(2) The party or his legal practitioner shall file with the Court a notice of the change and shall serve the notice on each party to the proceeding.

(3) The party or his legal practitioner shall file with the Court a notice of appointment without an order of the Court and shall serve the notice on each party to the proceeding and on his former legal practitioner, if any.

(4) The notices under subrules (2) and (3) shall state the party's new address for service.

Continuation of responsibility

2. Where the address for service of a party is the business address of his legal practitioner, the legal practitioner shall be considered to be acting for that party until this Order has been complied with.

Cessation of responsibility by legal practitioner

3.—(1) A legal practitioner may apply for an order declaring that he has ceased to be the legal practitioner acting on behalf of a party.

(2) Where an application is made under this rule—

(*a*) notice of the application shall be given to the party for whom the legal practitioner is acting for, unless the Court directs otherwise; and

(*b*) the application shall be supported by a sworn statement.

(3) Where the Court makes an order that a legal practitioner has ceased to act—

(*a*) a copy of the order shall be served on each party to the proceeding; and

(*b*) where the order is served by a party or the legal practitioner, the party or the legal practitioner, as the case may be, shall file a certificate of service.

Death, bankruptcy, etc., of legal practitioner

4.—(1) Where—

(*a*) a legal practitioner who has acted for a party—

(i) has died;

(ii) has become bankrupt;

(iii) has ceased to practise; or

(iv) cannot be found; and

(*b*) the party has not given notice of a change of a legal practitioner or notice of intention to act in person,

any other party may apply for an order declaring that the legal practitioner has ceased to be the legal practitioner acting for the other party in the proceeding.

(2) Where an application is made under this Order, notice of the application shall be given to the party to whose legal practitioner the application relates unless the Court directs otherwise.

(3) Where the Court makes an order under this rule—

(*a*) a copy of the order shall be served on every other party to the proceeding; and

(*b*) where it is served by a party, that party shall file a certificate of service.

Party acting in person

5. Where a party intends to act in person, he shall file with the Court the notice of change and shall serve the notice on every other party and provide his address for service.

ORDER 34
Proceedings Against the State

Application of Rules Cap. 6:01

1. Subject to the Civil Procedure (Suits by or against the Government or Public Officers) Act, these Rules apply to civil proceedings by or against the State or a public officer.

Responsibility of the Attorney General

2. Where by reason of these Rules or Court order the State is permitted or required to—

(*a*) make a witness statement;

(*b*) make a sworn statement;

(*c*) verify a document by a sworn statement;

(*d*) make a sworn statement under notice to disclose; or

(*e*) to discharge any other procedural obligation, that function shall be performed by the Attorney General.

Prohibition of set-off

3.—(1) In a claim by the State for taxes, duties or penalties, the defendant shall not make a counterclaim or raise a defence of set-off.

(2) In any other claim by the State, the defendant shall not make a counterclaim or raise a defence of set-off which is based on a claim for repayment of taxes, duties or penalties.

Exemptions

4.—(1) The following orders under Order 28 shall not apply to any order against the State—

(*a*) a money order;

(*b*) a seizure and sale order;

(*c*) third party debt order;

(*d*) charging order; or

(*e*) an appointment of a receiver.

(2) In subrule (1), "order against the State" means any judgment or order against the State, a government department, public institution or public officer as such, made—

(*a*) in civil proceedings by or against the State;

(*b*) in proceedings in a tribunal;

(*c*) in connexion with an arbitration to which the State is a party; or

(*d*) in other proceedings to which the State is a party.

ORDER 35
Transitional Provisions

Interpretation

1. Under this Order—

"commencement date" means the date of coming into force of these Rules;

"existing proceeding" means a proceeding commenced before the commencement date.

Application of this Order

2. This Order deals with the application of these Rules to an existing proceeding before the commencement date.

Continuation of forms, documents, procedures, etc. Cap. 3:02

3.—(1) Where a step in compliance with the practice and procedure under section 29 of the Act (the "existing procedure rules") has been taken in an existing proceeding, before the commencement date, in particular one that uses forms or other documentation required by the existing procedure rules, the procedure shall proceed in the manner specified under the existing procedure rules.

(2) Any step which a party is required to take in response to something done by another party in accordance with the existing procedure rules shall be in accordance with those Rules.

(3) A party who is served with a mode of commencement under the existing procedure rules on or after the commencement date shall respond in accordance with those Rules and the instructions on any forms received with the mode of commencement.

(4) Where a proceeding has been begun by a mode of commencement under the existing procedure rules, whether served before or after the commencement date, filing and service of the statements of case, previously known as "pleadings", shall be done according to those Rules.

Default judgments

4. Where a party wishes a judgment in default to be entered in an existing proceeding, he shall do so in accordance with the existing procedure rules.

Court orders made before the commencement date

5. Where a Court order has been made before the commencement date that order shall still be complied with on or after the commencement date.

Validity of processes begun before the commencement date

6.—(1) Where a party has taken any step in a proceeding in accordance with the existing procedure rules that step shall remain valid on or after the commencement date.

(2) A party shall not ordinarily be required to take any action that would amount to taking that step again under these Rules.

(3) Where a new step is to be taken in an existing proceeding on or after the commencement date, it shall comply with these Rules.

Application of Order 1 Rule 5

7. Order 1 rule 5 shall apply to all existing proceedings from the commencement date onwards.

Post-commencement date forms

8.—(1) The forms under these Rules shall be issued by the Court on or after the commencement date.

(2) Where a party files with the Court a mode of commencement under the existing procedure rules on or after the commencement date it shall be returned unissued.

(3) The Court may, on an application made on or after the commencement date, extend the validity of a mode of commencement issued before the commencement date in accordance with these Rules or the existing procedure rules.

Post-commencement date applications

9. Any application to the Court made on or after the commencement date shall be made in accordance with these Rules.

Exemptions during transition

10. Notwithstanding this Order, where a proceeding comes before the Court for the first time on or after the commencement date, the Court may direct how these Rules are to apply to the proceeding and may not apply certain provisions of these Rules.

Hearing of application made before the commencement date

11. Where an application has been issued before the commencement date and the hearing of the application has been set for a date on or after the commencement date, the application shall be decided having regard to these Rules.

Hearing of an existing proceeding on or after the commencement date

12. When the first occasion on which an existing proceeding is before the Court on or after the commencement date is a trial or hearing of a substantive issue, the trial or hearing shall be conducted having regard to these Rules.

Pleadings closed on or after the commencement date

13.—(1) This Rule applies to an existing proceeding where statements of case, previously known as "pleadings", are deemed to close on or after the commencement date.

(2) Orders 12, 13, and 14 shall apply to an existing proceeding referred to in subrule (1) as part of case management envisaged under Order 1 rule 5.

Assessment of costs on or after the commencement date

14.—(1) Any assessment of costs that takes place on or after the commencement date shall be in accordance with Order 31.

(2) No costs for work done before the commencement date shall be disallowed if those costs would have been allowed in an assessment of costs before that date.

(3) The decision as to whether to allow costs for work undertaken on or after the commencement date will generally be taken in accordance with Order 31.

Proceedings not before the Court between the commencement date and a period of six months

15.—(1) Where an existing proceeding has not come before the Court between the commencement date and a period of six months from the commencement date, the proceeding shall be stayed.

(2) Any party to the proceeding may apply for the stay to be vacated.

(3) Proceedings of the following types will not be stayed as a result of this provision—

(*a*) where the case has been given a fixed trial date which is after a period of six months from the commencement date.

(*b*) personal injury cases where there is no issue on liability but the proceeding has been adjourned by court order to determine the prognosis of the claimant;

(*c*) where the Court is dealing with the continuing administration of an estate or a trust or a receivership; or

(*d*) applications relating to funds in Court.

(4) For the purposes of this rule, a proceeding shall not be an "existing proceeding" once the final judgment has been given.

Revocations

16. The following Rules are revoked—

Cap. 3:02 sub. leg. p. 289 Cap. 3:02 sub. leg. p. 103

(*a*) High Court (Exercise of Jurisdiction of Registrar) Rules;

Cap. 3:02 sub. leg. p. 103

(*b*) Rules of the High Court;

(*c*) Legal Practitioners Remuneration, Taxation of Costs and Allowances to Witnesses Rules; Cap. 3:02 sub. leg. p. 116

(*d*) Courts (Mandatory Mediation) Rules; Cap. 3:02 sub. leg. p. 133

(*e*) High Court (Commercial Division) Rules; Cap. 3:02 sub. leg. p. 146

(*f*) High Court (Commercial Division) (Mandatory Mediation) Rules; and Cap. 3:02 sub. leg. p. 203

(*g*) Courts (High Court) (Procedure on the Interpretation or Application of the Constitution) Rules. Cap. 3:02 sub. leg. p. 209

ORDER 36

Review of the Rules

Chief Justice to review Rules

1.—(1) Subject to subrule (2), the Chief Justice may review these Rules within two years from the date that the Rules are published in the *Gazette* and thereafter every other two years.

(2) Nothing in subrule (1) shall prevent the Chief Justice from reviewing these Rules at any time he considers appropriate.

O. 24 FIRST SCHEDULE

O. 5, r. 1 FORM 1

IN THE HIGH COURT OF MALAŴI

..... Registry

Case No. ..... of 20.....

BETWEEN

..... CLAIMANT

AND

..... DEFENDANT

SUMMONS

(SPECIALLY ENDORSED)

TO: THE DEFENDANT [name] ..... of [address] .....

THIS SUMMONS has been issued against you by the above-named claimant in respect of the claim set out on the back.

WE COMMAND YOU within twenty-eight days after the service of this Summons on you, inclusive of the day of service, you must either satisfy the claim or file with this Court a defence and list of documents. If you do not intend to contest the proceedings you must within fourteen days after service of this Summons on you inclusive of the day of service return the accompanying Response stating therein that you do not intend to contest the proceedings but desire a stay of enforcement of judgment, if any?

TAKE NOTICE that if you fail to satisfy the claim or to file a Defence and list of documents or to return the Response within the time stated, or if you return the Response without stating an intention to contest the proceedings, the claimant may proceed with the claim and judgment may be entered against you without further notice.

WITNESS The Honourable Chief Justice of the High Court of Malaŵi,

this ..... day of ....., 20.....

.....
Registrar
(Seal of court)

NOTE: This Summons is to be served within four calendar months (or, permission is required to effect service out of the jurisdiction, six months) beginning with that date unless renewed by order of the Court.

RELIEF

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

Dated this ..... day of ....., 20.....

(Signed) .....
[Claimant/Legal Practitioner for the Claimant]

If, within the time for returning the Response, the defendant pays the amount claimed and K ..... for costs and, if the claimant obtains an order for substituted service, the additional sum of K ..... further proceedings will be stayed.

The money must be paid to the claimant, his legal practitioner or agent.

THIS SUMMONS was issued by ..... of ..... legal practitioner for the said claimant whose address for service is .....

or

THIS SUMMONS was issued by the claimant who resides at .... and is (state occupation) .... and (if the claimant does not reside within the jurisdiction) whose address for service is ....

LIST OF DOCUMENTS

The following is a list of the documents relating the claim which are or have been in the possession, custody or power of the claimant

[or defendant] [name] and which is served in compliance with Order 5 Rule 8 [or Order 5 Rule 9].

1. The claimant [or defendant] has in his possession, custody or power the documents relating to the claim enumerated in Schedule 1.
2. The claimant [or defendant] objects to produce the documents enumerated in Part 2 of Schedule 1 on the ground that [stating the ground of objection].
3. The claimant [or defendant] has had, but has not now, in his possession, custody or power the documents relating to the claim enumerated in Schedule 2.
4. Of the documents in the said Schedule 2, those numbered ..... in that Schedule were last in the claimant's [or defendant's] possession, custody or power on [stating when] and the remainder on [stating when].

   [Here state what has become of the said documents and in whose possession they now are].
5. Neither the claimant [or defendant], nor his legal practitioner nor any other person on his behalf, has now, or ever had, in his possession, custody or power any document of any description whatever relating to the claim, other than the documents enumerated in Schedules 1 and 2.

SCHEDULE 1

PART 1

Use black ink and capital letters

[Here enumerate in a convenient order the documents (or bundles of documents, if of the same nature, such as invoices) in the possession, custody or power of the party in question which he does not object to produce, with a short description of each document or bundle sufficient to identify it.]

PART 2

[Here enumerate as aforesaid the documents in the possession, custody or power of the party in question which he objects to produce.]

SCHEDULE 2

[Here enumerate as aforesaid the documents which have been, but at the date of service of the list are not, in the possession, custody or power of the party in question.]

Dated this ..... day of ....., 20.....

NOTICE TO INSPECT

TAKE NOTICE that the documents in the above list, other than those listed in Part 2 of Schedule 1 [and Schedule 2], may be inspected at [the office of the legal practitioner of the above-named [claimant] [defendant] (insert address) or as the case may be] on the day of ..... 20....., between the hours of ..... and .....

TO: the defendant [or claimant] [name] and his legal practitioner.

Served the ..... day of ..... 20....., by ..... of ..... legal practitioner for [claimant] [defendant].

FORM 2 O. 5, r. 7

IN THE HIGH COURT OF MALAŴI

..... Registry

Case No. ..... of 20.....

BETWEEN

..... CLAIMANT

AND

..... DEFENDANT

RESPONSE

PART 1

(Your) (defendant's) full name .....

PART 2

(Do you) (Does the defendant) intend to contest:

The whole of the claim? Part of the claim? None of the claim? (Tick as appropriate)

NOTE: If you the defendant intends to contest this claim or any part of the claim you must within twenty-eight days file and serve a Defence and list of documents. Failure to do this may result in a default judgment being entered.

PART 3

If you have said that you do not intend to contest the whole, or part, of the claim will you (the defendant) be asking the Court for a stay of enforcement or judgment, if any?

Yes: No:

NOTE: If you tick yes there shall be an automatic stay of enforcement of judgment for a period of seven days.

PART 4

I acknowledge that (I have) (the defendant has) been served with a copy of the Summons.

Signed ..... Date .....
defendant (legal practitioner for the defendant) (authorized officer)

Address to which documents about this case should be sent:

Legal Practitioner's
reference: ..... Telephone No. ..... Fax No. .....

When completed, this form should be returned to the registry which issued the Summons.

Use black ink and capital letters

O. 5, r. 19

FORM 3

IN THE HIGH COURT OF MALAŴI

..... Registry

Case No. ..... of 20.....

BETWEEN

..... CLAIMANT

AND

..... DEFENDANT

INITIAL DIRECTION

Under Order 5 rule 20 of the (Courts) High Court (Civil Procedure) Rules it is ordered as follows:

1. Effective this date, this case is assigned to Honourable Justice ....., and to the individual calendar designated below.

2. All future documents filed in this case shall bear the Judge's name beneath the case number in the caption. On filing any chamber application or document, one copy for the Judge must be delivered to clerk of the Court along with the original.

3. Within fourteen days of service, the claimant shall file proof of service of the summons with the list of documents, this Initial Direction and any other order issued by the Judge.

4. If the defendant is not contesting the proceedings but desires to apply for a stay of execution, the defendant shall file Response within fourteen days of service indicating his intention not to contest the proceedings and his intention to apply for a stay of execution.

5. If the defendant intends to contest the proceedings, the defendant shall file and serve a defence and a list of documents within twenty-eight days from the date of service of the Summons.

6. Statements of case shall be deemed to be closed on the expiry of seven days from the date of defence is served or, where subsequent statements of case are served, seven days from the date of service of the last statement of case.

7. Within seven days from the closure of statements of case the proceeding shall proceed to mandatory mediation and all parties to this action shall lodge statements as provided for by Order 13 rule 3 of the Courts (High Court) (Civil Procedure) Rules.

Dated this..... day of ....., 20.....

.....
Judge

FORM 4 O. 10, r. 1

IN THE HIGH COURT OF MALAŴI

..... Registry

Case No. ..... of 20.....

(Before Honourable Justice .....)

BETWEEN

..... CLAIMANT

AND

..... DEFENDANT

APPLICATION IN PROCEEDING

LET ALL PARTIES attend before Honourable Justice ..... in Chambers on ..... day, the ..... day of ....., 20..... at ..... o'clock in the ..... noon on the hearing of an application by [claimant] [defendant] for [state the relief sought] against the [claimant] [defendant].

TAKE NOTICE that the sworn statement of ..... shall be read in support of the application.

ANY sworn statement in opposition must be filed and served at least [.....] days before the above-mentioned return date.

Dated this ..... day of ....., 20.....

.....
Honourable Justice

TO: The [claimant] [defendant] [claimant's/defendant's] legal practitioners.

Dated this ..... day of ....., 20.....

.....
Judge

Use black ink and capital letters

O. 12, r. 32 (3)

FORM 5

IN THE HIGH COURT OF MALAŴI

..... Registry

Case No. ..... of 20.....

BETWEEN

..... CLAIMANT

AND

..... DEFENDANT

JUDGMENT ON ADMISSION

LET ALL PARTIES attend the Judge in Chambers on ..... the day of 20..... at ..... o'clock in the ..... noon on the hearing of an application by the claimant to enter judgment on admission.

The sworn statement of [NAME] shall be used in support of the application.

Dated the ..... day of ....., 20.....

.....
[claimant] [claimant's legal practitioner]

To: [defendant] [defendant's legal practitioner]

FORM 6 O. 12, r. 33

IN THE HIGH COURT OF MALAŴI

..... Registry

Case No. ..... of 20.....

BETWEEN

..... CLAIMANT

AND

..... DEFENDANT

DEFENDANT'S ADMISSION OF PART OF CLAIM

I, [defendant] admit that out of the total claim in the sum of [STATE AMOUNT] made by the Claimant, I owe the Claimant the sum of [STATE AMOUNT] only.

Dated the ..... day of ....., 20.....

.....
[defendant][defendant's legal practitioner]

To: [JUDGE]

FORM 7 O. 12, r. 33 (6)

IN THE HIGH COURT OF MALAŴI

..... Registry

Case No. ..... of 20.....

BETWEEN

..... CLAIMANT

AND

..... DEFENDANT

CLAIMANT'S REQUEST FOR JUDGMENT

I [claimant] accept the amount admitted by the Defendant and I now request the Court to enter judgment for the sum of [STATE AMOUNT].

Dated the ..... day of ....., 20.....

.....
[claimant] [claimant's legal practitioner]

To: [JUDGE]

O. 12, r. 34 (2)

FORM 8

IN THE HIGH COURT OF MALAŴI

..... Registry

Case No. ..... of 20.....

BETWEEN

..... CLAIMANT

AND

..... DEFENDANT

DEFENDANT'S ADMISSION

I, [defendant] admit the claim in this proceeding in full.

Dated the ..... day of ....., 20.....

.....
[defendant] [defendant's legal practitioner]

To: [JUDGE]

O. 12, r. 34 (4)

FORM 9

IN THE HIGH COURT OF MALAŴI

..... Registry

Case No. ..... of 20.....

BETWEEN

..... CLAIMANT

AND

..... DEFENDANT

CLAIMANT'S REQUEST FOR JUDGMENT

I [claimant] accept the amount admitted by the Defendant and I now request the Court to enter judgment for the sum of [STATE AMOUNT].

Dated the ..... day of ....., 20.....

.....
[claimant] [claimant's legal practitioner]

To: [JUDGE]

FORM 10 O. 12, r. 35 (2)

IN THE HIGH COURT OF MALAŴI

..... Registry

Case No. ..... of 20.....

BETWEEN

..... CLAIMANT

AND

..... DEFENDANT

DEFENDANT'S ADMISSION

I, [DEFENDANT] admit the claim in this proceeding in full.

Dated the ..... day of ....., 20.....

.....
[defendant] [defendant's legal practitioner]

To: [JUDGE]

FORM 11 O. 12, r. 35 (5)

IN THE HIGH COURT OF MALAŴI

..... Registry

Case No. ..... of 20.....

BETWEEN

..... CLAIMANT

AND

..... DEFENDANT

CLAIMANT'S REQUEST FOR JUDGMENT

I [claimant] accept the amount admitted by the Defendant and I now request the Court to enter judgment for the sum of [STATE AMOUNT].

Dated the ..... day of ....., 20.....

.....
[claimant] [claimant's legal practitioner]

To: [JUDGE]

O. 12, r. 35 (9)

FORM 12

IN THE HIGH COURT OF MALAŴI

..... Registry

Case No. ..... of 20.....

BETWEEN

..... CLAIMANT

AND

..... DEFENDANT

CLAIMANT'S REQUEST FOR JUDGMENT

I [claimant] accept the amount admitted by the Defendant and I now request the Court to enter judgment for the sum of [STATE AMOUNT],

Dated the ..... day of ....., 20.....

.....
[claimant] [claimant's legal practitioner]

To: [JUDGE]

O. 12, r. 36 (3)

FORM 13

IN THE HIGH COURT OF MALAŴI

..... Registry

Case No. ..... of 20.....

BETWEEN

..... CLAIMANT

AND

..... DEFENDANT

CLAIMANT'S REQUEST FOR JUDGMENT

I [claimant] accept the amount admitted by the Defendant and I now request the Court to enter judgment for the sum of [STATE AMOUNT].

Dated the ..... day of ....., 20.....

.....
[claimant] [claimant's legal practitioner]

To: [JUDGE]

FORM 14 O. 12, r. 38 (2)

IN THE HIGH COURT OF MALAŴI

..... Registry

Case No. ..... of 20.....

BETWEEN

..... CLAIMANT

AND

..... DEFENDANT

CLAIMANT'S REQUEST FOR JUDGMENT UPON REJECTION OF DEFENDANT'S PROPOSAL

I [claimant] reject the Defendant's proposal to pay [STATE AMOUNT] and request that judgment be entered against the Defendant for [STATE AMOUNT].

Dated the ..... day of ....., 20.....

.....
[claimant] [claimant's legal practitioner]

To: [JUDGE]

FORM 15 O. 13, r. 3 (1)

IN THE HIGH COURT OF MALAŴI

..... Registry

Case No. ..... of 20.....

BETWEEN

..... CLAIMANT

AND

..... DEFENDANT

STATEMENT OF ISSUES

(*To be provided to Judge and parties at least seven days from the time pleadings are deemed to be closed*)

1. Factual and legal issues in dispute

   The claimant (or defendant) states that the following factual and legal issues are in dispute and remain to be resolved:

   (*Issues should be stated briefly and numbered consecutively*)

2. Part's position and interest (What the party hopes to achieve) (Brief summary)

3, Attached materials

   Attached to this form are the following materials that the claimant (or defendant) considers of central importance in the matter: (list)

Dated the ..... day of ....., 20.....

.....
Party's signature or Party's Legal Practitioner's Signature

(Name, address, telephone number, fax number and E-mail address of the party or Legal Practitioner of the party filing statement of issues.)

.....

.....

NOTE A: All communications at a mediation session and the Judge's notes and records shall be deemed to be confidential.

NOTE B: Consequences of non-compliance: Failure to submit a statement of issues may lead to—

(1) dismissal of action, if the non-complying party is a claimant; or striking out of defence, if the non-complying part is a defendant;

(2) an order that a party pays costs; or

(3) any other order that the Court deems fit.

Dated the ..... day of ....., 20.....

FORM 16 O. 13, r. 3 (2)

IN THE HIGH COURT OF MALAŴI

..... Registry

Case No. ..... of 20.....

BETWEEN

..... CLAIMANT

AND

..... DEFENDANT

NOTICE OF MEDIATION

TAKE NOTICE that the statements of case having been closed the matter is set down for mediation on ..... day of ....., 20..... at ..... o' Clock in the ..... noon before Honourable Justice ..... in Chambers.

Dated the ..... day of ....., 20.....

.....
JUDGE

TO: The claimant and his legal practitioners.

: The defendant and his legal practitioner.

Use black ink and capital letters

FORM 17 O. 14, r. 2 (3)

..... Registry

Case No. ..... of 20.....

BETWEEN

..... CLAIMANT

AND

..... DEFENDANT

TRIAL CHECK-LIST

1. Indicate the issues that shall proceed to trial.
2. Do you want to amend any of your statements of the case?

   Yes: ☐ No: ☐
3. If, so please attach hereto a copy of the intended amended statement of the case duly titled as an "amended" document with the amendments underlined in red ink.

4. Do you intend to seek further and better particulars of any of the opposite party's statement of the case?

   Yes: ☐ No: ☐

5. If so, please identify the particular paragraph(s) in a particular statement of the case over which you seek further and better particulars. Further, please attach hereto a separate sheet indicating the particulars that you seek to be provided.

6. Do you want to raise any challenge to any of the opposite parties' statement of the case?

   Yes: ☐ No: ☐

7. If so, please indicate the challenge on a separate sheet of paper and provide a sworn statement justifying the challenge together with your skeleton arguments in support of the challenge.

8. Are there matters in all the statements of the case that you perceive to be agreed facts between all the parties to case?

   Yes: ☐ No: ☐

9. If so, please attach hereto a sheet of paper indicating the facts or matters that yon perceive to be agreed facts.

10. Do you want to apply that any party should be added or removed from the proceeding?

    Yes: ☐ No: ☐

11. If so, on a separate sheet of paper identify the party to be added or removed, specifying the reasons for your application and the skeleton arguments in support of the application.

12. Do you intend to apply for security for costs against any of the opposite parties?

    Yes: ☐ No: ☐

13. If so, please provide the grounds for the application and a sworn statement justifying the same together with your skeleton arguments in support of the application.

14. Have all documents disclosed on the opposite parties list of documents been provided to you?

    Yes: ☐ No: ☐

15. If not, please specify which documents you have not been provided with.

16. Are there some documents that you think are relevant to the effective disposal of this case and are in the custody, control or possession of

the other side but which they have not been disclosed in their list of documents?

Yes: ☐ No: ☐

17. If so, on a separate sheet, please identify the documents, specifying, by way of a sworn statement, the grounds for your belief that the opposite party is in possession, custody or control of the named documents and why you think the same are relevant to the effective disposal of this case.

18. Do you want to ask the other side some questions which they must answer on oath before trial and whose answers you believe are necessary to speed up the effective and just disposal of the case?

Yes: ☐ No: ☐

19. If so, please outline the questions on a separate sheet of paper, indicating the person who must answer the identified questions.

20. Are there any facts that you would want the other side to admit on oath before trial so as to speed up the disposal of the case?

Yes: ☐ No: ☐

21. If so, on a separate sheet of paper, please outline the facts which the other side must admit on oath before trial.

22. Please specify how you will lead evidence to prove your case at trial.

23. If the evidence will not be adduced by oral testimony, on a separate sheet of paper, please provide the reasons for the other preferred mode of giving evidence.

24. If the agreed mode of giving evidence is by sworn statement, please state whether you intend to cross-examine any of the witnesses of the other party at trial and identify the witnesses you intend to cross-examine.

25. Please provide the names of witnesses that you intend to call at trial.

26. Please indicate if any of the witnesses are experts in any field, providing the name of the witnesses and his or her field of expertise.

Dated the ..... day of ....., 20.....

Signed: .....

Legal practitioner for the claimant/defendant

of ..... for the above-named

claimant/defendant whose address is .....

.....

O. 17, r. 8

FORM 18

IN THE HIGH COURT OF MALAŴI

..... Registry

Case No. ..... of 20.....

BETWEEN

..... CLAIMANT

AND

..... DEFENDANT

WITNESS STATEMENT

OF

[NAME]

ON BEHALF OF

[CLAIMANT'S NAME] [DEFENDANT'S NAME]

BEING WITNESS STATEMENT NO. .....

MADE

day of ..... 20.....

NOTE: The witness statement must, if practicable be in the intended witness's own words.

The statement should be expressed in the first person. The following is a guide to the content of statement.

1. The full name of the witness.
2. The witness's place of residence or, if he is making the statement in his professional, business or other occupational capacity, the address at which he works, the position he holds and the name of his firm or employer.
3. The witness's occupation, or if he has none, his description.
4. Whether he is a party to the proceedings or is the employee of such a party if it be the case.
5. Which of the statements in it are made from the witness's own knowledge.
6. Which of the statements are matters of information or belief, and the source for any matters of information or belief.

7. Any exhibit used in conjunction with a witness statement as follows:

   "I refer to the (*description of exhibit*) marked '...' "

   Any exhibit should be verified and identified by the witness and remain separate from the witness statement.

8. Where a witness makes more than one witness statement to which there are exhibits, in the same proceedings, the numbering of the exhibits should run consecutively throughout and not start again with each witness statement.

9. A witness statement should—

   (*a*) be produced on durable quality A4 paper with a 3.5cm margin;

   (*b*) be fully legible and should normally be typed on one side of the paper only;

   (*c*) where possible, be bound securely in a manner which would not hamper filing, or otherwise each page should be endorsed with the case number and should bear the initials of the witness;

   (*d*) have the pages numbered consecutively as a separate statement (or as one of several statements contained in a file);

   (*e*) be divided into numbered paragraphs;

   (*f*) have all numbers, including dates, expressed in figures; and

   (*g*) give the reference to any document or documents mentioned either in the margin or in bold text in the body of the statement.

10. It is usually convenient for a witness statement to follow the chronological sequence of the events or matters dealt with, each paragraph of a witness statement should as far as possible be confined to a distinct portion of the subject.

11. A witness statement is the equivalent of the oral evidence which that witness would, if called, give in evidence; it must include a statement by the intended witness that he believes the facts in it are true.

12. To verify a witness statement, the witness must state as follows:

    "I believe that the facts stated in this witness statement are true"

    Dated the ..... day of ....., 20.....

    Signed: .....

Legal practitioner for the claimant/defendant

of ..... for the above-named

claimant/defendant whose address is .....

.....

O. 19, r. 2

FORM 19

CERTIFICATION BY THE CHIEF JUSTICE

(*under s. 9* (*3*) *of the Act*)

Presidential Referral Number ..... of 20.....

Reference Number ..... of 20..... being Civil/Criminal Case Number ..... of 20..... before His/Her Worship/Honourable Justice .... sitting at .....

The proceedings registered as Civil/Criminal Cause Number ..... of 20..... are hereby certified as having complied with section 9 (3) of the Act.

Dated the ..... day of ....., 20.....

.....
Chief Justice

O. 19, rr. 3 and 7

FORM 20

REFERRAL BY A COURT

Reference Number ..... of 20..... being Civil/Criminal Case Number ..... of 20..... before His/Her Worship/Honourable Justice ..... sitting at .....

The original court being of the opinion that a matter on the interpretation or application of the Constitution has arisen in the above proceeding in respect of the following question or issue—

(*a*) .....

(*b*) .....

(*c*) .....

submits this Referral for the certification of the Honourable the Chief Justice under section 9 (3) of the Act.

Dated the ..... day of ....., 20.....

.....
Magistrate/Judge

FORM 21 O. 28, r. 11 (2)

IN THE HIGH COURT OF MALAŴI

..... Registry

Case No. ..... of 20.....

(Before Honourable Justice .....)

BETWEEN

..... CLAIMANT

AND

..... DEFENDANT

AND

.....THIRD PARTY

APPLICATION FOR THIRD PARTY DEBT ORDER

The [claimant] [defendant] ('the judgment creditor') applies for an order that the third party pay to the judgment creditor the debt which the third party owes to the [defendant] [claimant] ('the judgment debtor') (or so much of it as is necessary to discharge the amount owing under the judgment or order given on ..... 20..... [by the .....] and the costs of this application).

1. Judgment debtor

   The judgment debtor is .....

   whose address is .....

   .....

2. Judgment debt

   The judgment or order required the judgment debtor to pay K ..... (including any costs and interest). The amount now due is K ..... [which includes further interest],

   K ..... of the instalments due under the judgment or order has fallen due and remains unpaid.

   The judgment or order did not provide for payment by instalments.

3. Third party

   The third party is within Malaŵi and owes money to (or holds money to the credit of) the judgment debtor.

   The third party is a [bank or building society]

   Its name is .....

Its head office address in Malaŵi is: .....
.....

The branch at which the account is held is .....
[not known] whose address is: .....
.....

The account number is ..... [not known]

Made this ..... day of ....., 20.....

.....
[Judgment Creditor]

O. 26

SECOND SCHEDULE

PART 1

Fees Payable in Divisions other than the Commercial Division

Description of fee	*Fee payable*	
	K	*t*
Summons	5,000	00
Proceedings under Order 19	10,000	00
Application in a proceeding	5,000	00
Sworn statement	2,000	00
Order	2,000	00
Judgment	2,000	00
Notice	2,000	00
Notice of Adjournment	5,000	00
Notice on assessment of costs	5,000	00
Enforcement order	5,000	00
Certificate	2,000	00
Application	1,000	00
Trial fee per day (payable by claimant)	5,000	00
Sheriff's fees payable on execution of an enforcement order	Reasonable actual costs of execution, including travel, accommodation, sustenance, advertising,	

Description of fee	*Fee payable* K t
	storage, auction, transport and all other associated disbursements plus 5% of the net amount recovered after deduction of costs of execution
Service by the Sheriff within 50km radius from Court	5,000 00
Service by the Sheriff in any other place plus cost of travel and subsistence	5,000 00
Typing – first page	1,000 00
Typing – second and later pages	500 00
Certification of any copy document (in addition to typing or copy fees)	500 00
Copying – by photocopy or other means, per page	100 00

PART 2

FEES PAYABLE IN THE COMMERCIAL DIVISION

A. SERVICE	*Fee payable* K t
1. For service by an officer of the court of summons, petition, answer, motion paper, notice, warrant, decree, order or other document on a party, or witness	4,000 00
B. FILING OF DOCUMENTS	
1. On filing Summons	1.5% of the claim of value of the subject matter in dispute with a maximum of K150,000 (for K10,000,000 claim)

		Fee payable	
		K	*t*
3.	On filing an application in a proceeding	5,000	00
4.	On filing any sworn statement other than a sworn statement in support of service	2,000	00
5.	On filing every sworn statement in support of service	1,000	00
6.	On filing an order	2,000	00
8.	On filing a notice of adjournment of a hearing rendered necessary by default of either party . .	5,000	00
9.	On filing a mode of enforcement of judgment	5,000	00
	C. APPEALS TO THE DIVISION		
10.	On lodging notice of appeal	5,000	00
11.	On filing an application for permission to appeal	2,000	00
12.	On filing application for security	2,000	00
13.	On filing an order for permission to appeal . .	2,000	00
14.	On the hearing of an appeal where judicial relief or assistance is sought, but not the recovery of money	5,000	00
15.	On the hearing of an appeal in matters other than those specified in item 14	1% per cent of the amount involved but in no case less than K2,500	
16.	On every application, order or rule not particularly charged	3,000	00
	D. APPEAL FROM A DIVISION TO THE SUPREME COURT OF APPEAL		
17.	On an application for permission to appeal . .	10,000	00
18.	On filing an application for security	10,000	00
19.	On filing an order for permission to appeal . .	5,000	00
20.	On filing Notice of Appeal	10,000	00
21.	On application for an order to amend Notice of Appeal	5,000	00
22.	On every application, order or rule not particularly charged	2,000	00

PART 3

Suits by or Against the Government or Public Officer

1. No fees shall be payable by the Government in respect of suits instituted by or against the Government.

2. No fees shall be payable by the of Legal Aid Bureau in respect of a suit instituted by or against a person who has been granted legal aid under the Legal Aid Act. Cap. 4:01

LOCAL COURTS

CHAPTER 3:03

Containing Pages 1–21

CHAPTER 3:03

LOCAL COURTS

ARRANGEMENT OF SECTIONS

SECTION

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2. Interpretation
3. Substantial justice to be done without undue regard to technicalities

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ESTABLISHMENT AND CONSTITUTION OF LOCAL COURTS

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5. Composition of Local Courts
6. Qualification of Chairperson
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8. Functions and duties of assessors
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10. Places and times of sittings of Local Courts
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15. Practice and Procedure
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28. Committal of case to a magistrate court for sentencing
29. Compensation to injured or aggrieved person
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FIRST SCHEDULE

SECOND SCHEDULE

CHAPTER 3:03

LOCAL COURTS

An Act to make provision for the establishment and constitution of Local Courts, the jurisdiction thereof, the procedure therein and for the proper administration of justice by such courts

9 of 2011
G.N. 47/2017

[25th August, 2017]

PART I

Preliminary

1. This Act may be cited as the Local Courts Act.

Short title

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

Interpretation

"assessor" means a person appointed in accordance with section 7;

"Chairperson" means the chairperson of a Local Court appointed in accordance with section 5;

"language of the court" means the language or languages approved by the Chief Justice, in writing, as the language or languages in which the proceedings may be held;

"Local Court" means a court established under this Act and includes a District Appeals Local Court;

"witness" includes a complainant and an accused who gives evidence.

3. No proceedings in a Local Court and no summons, warrant, process, order or decree issued or made thereby shall be varied or declared void upon appeal by reason of any defect in procedure or want of form, and every court exercising appellate powers under this Act shall decide all matters according to substantial justice without undue regard to technicalities.

Substantial justice to be done without undue regard to technicalities

PART II

Establishment and Constitution of Local Courts

4. There are hereby established the following Local Courts, subordinate to the High Court—

Establishment of Local Courts

(*a*) the District Appeals Local Courts which shall be appellate courts established in each district; and

(*b*) Local Courts established in such places in each district as the Chief Justice may determine.

Composition of Local Courts

5.—(1) A District Appeals Local Court or a Local Court shall be presided over by a Chairperson who shall be appointed by the Chief Justice on the recommendation of the Judicial Service Commission.

(2) The Chairperson may sit with at least two assessors selected from a panel of assessors appointed in accordance with section 7.

Qualification of Chairperson

6. A person shall not qualify to be a Chairperson of a District Appeals Local Court or a Local Court unless that person—

(*a*) has attained the age of thirty-five years;

(*b*) is in possession of a Malaŵi School Certificate of Education or its equivalent;

(*c*) has adequate knowledge of the customary law of the area;

(*d*) has adequate command of the language of the Court;

(*e*) is proficient in English language;

(*f*) has no criminal record involving dishonesty or moral turpitude; and

(*g*) is otherwise a fit and proper person.

Assessors

7.—(1) In respect of every Local Court, the Registrar shall appoint a panel of assessors consisting of persons who are qualified to be assessors, and such appointment shall be on recommendation from the District Resident Magistrate.

(2) A person shall not qualify to be appointed as an assessor of a Local Court unless that person—

(*a*) has attained the age of fifty years;

(*b*) is able to read and write;

(*c*) has adequate knowledge of customary law of the area;

(*d*) has adequate command of the language of the Local Court;

(*e*) has no criminal record involving dishonesty or moral turpitude;

(*f*) is non partisan; and

(*g*) is otherwise a fit and proper person.

(3) The Registrar may, from time to time, in accordance with such directions as may be given by the Chief Justice, vary the composition of any panel of assessors appointed by him or her under this section.

8.—(1) The functions and duties of assessors shall include— Functions and duties of assessors

(*a*) advising the court in civil matters at customary law on any point or points, but such advice shall not be binding on the court; and

(*b*) monitoring seizure of property pursuant to a sale order or transfer order issued under this Act.

(2) An assessor shall attend the court to which he or she is appointed on such days and for such periods as the Chairperson shall, from time to time, direct.

9. Subject to this Act or any other written law for the time being in force a Local Court shall have, and may exercise, jurisdiction within the area of its locality. General jurisdiction

10. The sittings of Local Courts shall ordinarily be held in such places as the Chief Justice may direct in the local jurisdiction of such courts, at such times as the Chairperson convening the court may deem most adapted to facilitate the business of the court. Places and times of sitting of Local Courts

11. Subject to this Act, a Local Court shall administer— Laws to be administered

(*a*) the customary law prevailing in the jurisdiction or the court so far as it is not inconsistent with the Constitution or any written law in force in Malaŵi;

(*b*) the provisions of any Act which the court is by or under such Act authorized to administer; and

(*c*) the provisions of all rules, orders, regulations or by-laws made under the Local Government Act and in force in the area of jurisdiction of the court: Cap. 22:01

Provided that—

(*a*) no criminal proceedings shall be taken and no criminal penalty imposed otherwise than in respect of an offence constituted under an Act or under any rule, regulation, order or by-law made thereunder; and

(*b*) due regard shall be given to the provisions of the Constitution in applying any customary or statutory law.

12.—(1) The Chief Justice may appoint or authorize the appointment of suitable persons as court clerks and other officers of any Local Court. Court staff

Cap. 3:10

(2) Subject to the Judicature Administration Act and any rules made thereunder, the Chief Justice may terminate or authorize the termination of any appointment made under this section.

Records to be kept

13. Local Courts shall keep written records and furnish returns of cases tried by them to the District Appeals Local Court in such manner as the Chief Justice may from time to time direct.

Seals

14. Local Courts shall use seals of such nature and patterns as the Chief Justice may direct.

PART III

Practice and Procedure

Practice and procedure

15. The practice and procedure of Local Courts shall be in accordance with this Act and any rules made thereunder:

Provided that if this Act or any rules made thereunder does not make provision for any particular point of practice and procedure then the practice and procedure of Local Courts shall be—

Cap. 8:01

(*a*) in relation to criminal matters, in accordance with the Criminal Procedure and Evidence Code; and

(*b*) in relation to civil matters, as nearly as may be in accordance with the practice for the time being observed by magistrate courts.

Language of Court

16.—(1) In any civil or criminal proceedings, a Local Court shall use the language of the Court as may be approved by the Chief Justice.

(2) Notwithstanding subsection (1) the Chairperson of the Local Court shall personally record the proceedings in the English language and shall record the evidence of the witnesses in the form of a narrative:

Provided that the Chairperson may, in his discretion, take down any particular question and answer.

General supervisory powers of District Appeals Local Courts

17.—(1) A District Appeals Local Court shall have general supervisory and reversionary jurisdiction over all Local Courts within its jurisdiction and may, in a particular District, but without prejudice to the generality of the foregoing provision, if it appears desirable in the interests of justice, either of its own motion or at the instance of any party or person interested at any stage in any matter or proceeding, whether civil or criminal, call for the record thereof and may remove the same into the District Appeals Local Court or

may give such local Court such directions as to the further conduct of the same as justice may require.

(2) Upon the District Appeals Local Court calling for any record under subsection (1), the matter or proceeding in question shall be stayed in the Local Court pending the further order of the District Appeals Local Court.

PART IV

Civil Jurisdiction

Civil jurisdiction of Local Courts

18.—(1) Subject to this Act or any other written law, Local Courts shall have and may exercise jurisdiction over civil cases at customary law.

(2) Notwithstanding subsection (1), no Local Court shall have jurisdiction to deal with, try or determine any civil case at customary law—

(*a*) whenever the title or ownership of customary land is in question;

(*b*) relating to inheritance of deceased property;

(*c*) wherein the guardianship or custody of infants is in question;

(*d*) relating to issues of witchcraft under the Witchcraft Act; Cap. 7:02

(*e*) relating to chieftaincy; and

(*f*) any other matter deemed to be outside the jurisdiction of the Local Courts.

Awards in cases of a civil nature

19.—(1) A Local Court may in cases of a civil nature—

(*a*) award compensation which may include an amount for costs and expenses inclined by a successful party or his witnesses;

(*b*) order the restitution of any property;

(*c*) order the specific performance of any contract at customary law; or

(*d*) make any other order which the justice of the case may require.

(2) An award of compensation or other order under subsection (1) may provide for—

(*a*) payment in money or in kind;

(*b*) the time or times for making payment or doing any other act;

(*c*) payment by installments; or

(*d*) any other manner of compliance therewith as the court may think just.

Enforcement of awards

20. In case of any default in the performance of, or compliance with an award or other order in accordance with the terms thereof, the court may order that—

(*a*) any property, referred to in an order for restitution or an order for specific performance of a contract or other order for delivery or transfer of property, may be seized and transferred to the person entitled to receive it;

(*b*) payment of any sum of money due be enforced by the seizure of any property belonging to the person ordered to make the payment and—

(i) by the sale thereof; or

(ii) the transfer thereof to the person entitled to receive the payment at a value fixed by the Court; and

(*c*) the payment of compensation in kind be enforced by the seizure of property of that kind belonging to the person ordered to pay the compensation and the transfer thereof to the person entitled to receive the compensation.

Offences relating to execution of sale orders or transfer orders

21.—(1) Any person who rescues, attempts to rescue or in any unauthorized manner deals with any goods seized in the execution of a sale order or transfer order commits an offence and shall, on conviction, be liable to a fine of K20,000 and to imprisonment for three months.

(2) Any person who willfully obstructs or resists any assessor, officer of court or a bailiff or any person assisting him with the execution of a sale order or transfer order issued under this Act commits an offence and shall on conviction be liable to a fine of K50,000 and imprisonment for six months.

(3) A bailiff or an officer of a court may arrest with or without warrant a person who commits or attempts to commit an offence under this section and shall bring the person arrested before any Local Court without delay.

PART V

Criminal Jurisdiction

Criminal jurisdiction of Local Courts Cap. 7:01

First Schedule

22. Subject to this Act or any other written law, a Local Court shall have and may exercise criminal jurisdiction in such minor offences under the Penal Code and in any other written law as prescribed in the First Schedule.

Orders in cases of a criminal nature

23.—(1) Subject to this Act or any other written law, a Local Court may in cases of a criminal nature pass any of the following sentences—

(*a*) community service;

(*b*) fine not exceeding K5,000;

(*c*) payment of compensation;

(*d*) an order to keep peace and be of good behaviour;

(*e*) forfeiture, where it is provided for by an Act of Parliament; and

(*f*) imprisonment:

Provided that no sentence of imprisonment shall be imposed except in cases with aggravated circumstances or for repeat offenders and such sentence shall not exceed a maximum period of twelve months.

(2) A Local Court may pass any sentence combining any of the sentences specified in subsection (1) (*a*) to (*c*).

(3) A Local Court may impose a fine only where it is probable that the accused can afford to pay the fine and in such case the court may order that any fine which it shall impose shall be paid at such time or times or by such installments or in kind or otherwise as it shall think just.

(4) Where a Local Court makes an order for the payment of a fine, it shall have the power to direct by its sentence that in default of the payment of the fine the order should convert to community service as will satisfy the justice of the case.

(5) The order of community service imposed by a Local Court in default of payment of a fine shall terminate whenever the fine is paid.

(6) Where an order of community service is imposed by a Local Court in default of payment of a fine, that term shall, on the payment of a part of such sum, be proportionately reduced.

(7) When a person is convicted of any offence, a Local Court may, instead of passing sentence under subsection (1), order such

person to enter into a bond, with or without sureties in such amount as the court thinks fit, that he shall keep the peace and be of good behaviour for a time to be fixed by the court, and sections 123, 125 and 341 of the Criminal Procedure and Evidence Code shall apply *mutatis mutandis* to any bond entered into under this section.

Cap. 8:01

Power to release and caution by Local Court

24. Notwithstanding section 23, where in any trial a Local Court thinks that the charge is proved but is of the opinion that, having regard to the character, antecedents, age, health or mental condition of the accused, or to the trivial nature of the offence, or to the extenuating circumstances in which the offence was committed, it is inexpedient to inflict any punishment, the court may, without proceeding to conviction, make an order dismissing the charge, after such admonition or caution to the offender as the court sees fit.

Promotion of reconciliation

25. In case of common assault or any offence of a private nature not amounting to a felony, a Local Court may promote reconciliation and encourage an amicable settlement of the matter on payment of compensation or other terms approved by the Court and may thereupon order proceedings to be stayed or terminated.

Suspension of sentence

26.—(1) Where a person is convicted before any Local Court for an offence, the court may pass a sentence of imprisonment, but, in its discretion order the operation of the whole or any part of the sentence to be suspended for a period not exceeding two years on such conditions, relating to compensation to be made by the offender for damage or pecuniary loss, or to good conduct, or to any other matter whatsoever, as the court may specify in the order.

(2) If the conditions of any order made under subsection (1) are not fulfilled, the offender may upon the order of the trial court be arrested without warrant and brought before the said court to be committed to undergo the sentence of imprisonment originally imposed:

Provided that the said court may in its discretion grant an order further suspending the operation of the sentence subject to such conditions as might have been imposed at the time of the passing of the sentence.

Sentences which a Local Court may pass

27.—(1) The aggregate of any terms of consecutive sentences of imprisonment which a Local Court may impose on an offender shall not exceed two years.

(2) Where in a trial by a Local Court a person is convicted of an offence and if the court is of the opinion that greater punishment

should be inflicted for the offence than it has power to inflict, the court may, for reasons to be recorded in writing on the record of the case, instead of dealing with him in any other manner, commit him to an appropriate magistrate court for sentence.

(3) Any person committed to a magistrate court for sentence under this section shall be brought before the court to which he has been committed within a reasonable period of time.

(4) When a person is brought before a magistrate court for sentencing in accordance with subsection (3), the magistrate court shall inquire into the circumstances of the case and shall thereafter proceed as if such person had pleaded guilty before it of the offence in respect of which he has been committed.

Committal of case to a magistrate court for sentencing

28.—(1) Where in a trial by a Local Court a person is convicted of an offence, if the court is of the opinion that greater punishment should be inflicted for the offence than it has power to inflict, the court may, for reasons to be recorded in writing on the record of the case, instead of dealing with him or her in any other manner, commit him or her to an appropriate magistrate court for sentencing.

(2) Any person committed to a magistrate court for sentence under this section shall be brought before the court to which he or she has been committed within a reasonable period of time.

(3) When a person is brought before a magistrate court for sentencing in accordance with subsection (1), the magistrate court shall inquire into the circumstances of the case and shall thereafter proceed as if such person had pleaded guilty before it of the offence in respect of which he or she has been committed.

Compensation to injured or aggrieved person

29.—(1) A Local Court may, where it convicts any person, adjudge that such person pay reasonable compensation to, or to any member of the family of, any person injured by the act or omission in respect of which such conviction was made in addition to any other punishment which the court may impose.

(2) Any compensation awarded by a Local Court under this section may be ordered to be paid at such time or times or by such installments as it shall think just.

(3) Where a convicted person defaults in the payment of any compensation or any installments of the same when due, the court may order that the amount of the compensation or the installment, as the ease may be shall be levied by the sale of any property belonging to the convicted person.

Compensation not to preclude civil suit

30.—(1) Where a local court adjudges that a convicted person pay reasonable compensation to, or to any member of the family of, any person injured by the act or omission in respect of which such conviction was made, no person in whose favour such compensation was made shall be precluded from having or maintaining any suit for the recovery of damage for loss or injury sustained by him or her by reason of such act or omission.

(2) At the time of awarding compensation in any subsequent civil suit relating to the same matter, the court shall take into account any sum paid as compensation under this section.

Willful refusal to pay compensation

31. Any person subject to the jurisdiction of a Local Court who without lawful excuse and having the means to pay any compensation awarded against him refuses or willfully fails to make such payment after due notice commits an offence and shall, on conviction, be liable to a fine of K20,000 and to imprisonment for three months.

Places of imprisonment

Cap. 9:02

32. Any person sentenced by a Local Court to imprisonment or taken in the execution of the process of such Court shall be detained in a place authorized under the Prisons Act as a prison for the purposes of that Act.

PART VI

General Powers of Local Courts

Power to summon witnesses

33.—(1) Every Local Court shall have power to summon before the court any person within the jurisdiction of the court for the purpose of giving evidence.

(2) Any person who without reasonable excuse fails to obey summons lawfully issued under this section may be arrested and brought before the court and shall be liable to a fine of K20,000 and to imprisonment for three months.

Power to summon witness outside area of jurisdiction

34. Every Local Court shall have power to summon any person outside the area of jurisdiction of such court when the appearance of any such person shall be required as a witness in any proceedings within the jurisdiction of such court.

Power to transfer case to another Local Court before inquiry or trial, etc

35.—(1) Where a person appears before a Local Court, the Local Court—

(*a*) shall, if satisfied that it has no jurisdiction to try or inquire into the case; or

(*b*) may, if it is of the opinion that the case should be tried by or inquired into by another Local Court, direct that the case be

adjourned and transferred to any Local Court which is competent to try or inquire into the case.

Power to transfer case to a magistrate court and proceedings on transfer

36.—(1) A Local Court shall have power to transfer a case to a magistrate court for trial or retrial.

(2) Where a case is transferred to a magistrate court pursuant to subsection (1), the Local Court shall send a report of the proceedings to the magistrate court, and thereupon the magistrate court shall proceed to the trial or retrial of the case as though—

(*a*) in a criminal proceeding, a charge outlining the acts constituting the offence had been presented to the court; and

(*b*) in a civil proceeding, a complaint had been filed in the court.

Power of remand in criminal cases

37.—(1) Where a person is arrested for any criminal offence and taken into custody, whether with or without warrant, within the local limits or jurisdiction or a Local Court, then, notwithstanding that the charge is not one which is within the competence of the Local Court concerned to hear and determine, such person may be brought before the Local Court concerned for remand.

(2) Upon any person being brought before a Local Court under subsection (1), the Local Court may order that the person concerned—

(*a*) be remanded in custody and brought before a court of competent jurisdiction as soon as possible or on such date not exceeding forty-eight hours;

(*b*) be admitted to bail, subject to his appearance before a court of competent jurisdiction at such place and time as may be specified in such order.

(3) A Local Court making any order under subsection (2) shall forthwith send a copy of such order to the court before which the accused person is required thereunder to be brought or to appear.

Execution of orders of High Court, subordinate Courts, or other Local Courts

38.—(1) A Local Court shall carry into execution any decrees or orders of the High Court or of any subordinate court or of any other Court directed to such Local Court, and shall execute all other warrants, and serve all process issued by any such other courts and directed to the Local Court for execution or service and shall generally give such assistance to any such courts as may be required.

(2) Upon receipt of any decree, order, warrant or process under subsection (1), the Local Court shall enter such decree, order, warrant

or process in its own records and enforce, execute or serve them as though they were issued originally by that Local Court.

PART VII

MISCELLANEOUS

Contempt of court

39.—(1) Any person subject to the jurisdiction of a Local Court who without lawful excuse—

(*a*) omits to produce or deliver up any document or thing on the order of such court and the court is satisfied that such person was able to deliver up such document or thing;

(*b*) intentionally insults the court; or

(*c*) intentionally interrupts the proceedings of the court, shall be guilty of contempt of court and shall be liable to a fine of K20,000 and to imprisonment for three months.

(3) Where any person is charged with contempt of court in the circumstances under subsection (1), the Local Court shall issue a summons in Form in the Second Schedule.

Second Schedule

Representation of parties

40.—(1) Legal practitioners may appear or act for any party in any criminal matter before a Local Court.

(2) In any civil matter, a Local Court may permit the husband or wife or guardian or any servant or master of any plaintiff or defendant who shall give satisfactory proof that he or she has authority in that behalf to appear to act for such plaintiff or defendant.

Appeals

41.—(1) Any person aggrieved by any judgment in any proceedings, civil or criminal, before a Local Court may within thirty days of the delivery of such judgment appeal to a District Appeals Local Court.

(2) Any person aggrieved by any judgment of a District Appeals Local Court may, within thirty days of the delivery of such judgment, appeal to the High Court.

(3) Leave to appeal out of time under this section may be given by the court having power to hear the appeal.

Stay of execution and admission to bail pending appeal

42.—(1) Notice of intention to appeal in a criminal case shall not operate as a stay of execution of any sentence or order, but the court of first instance which passed the sentence or made the order or the District Appeals Local Court or High Court, as the case may be, may order that any such sentence or order be stayed pending the

hearing of an appeal and, if the appellant is in custody, that he may be released on bail with or without sureties, pending such hearing.

(2) If the appeal is ultimately dismissed and an original sentence of imprisonment confirmed, or some other sentence of imprisonment substituted therefore, the time during which the appellant has been released on bail shall be excluded in computing the term of imprisonment to which he is finally sentenced.

Power on appeal

43. A District Appeals Local Court in the exercise of its appellate jurisdiction in any cause or matter under this Act may—

(*a*) make any such order or pass any such sentence as the court of first instance could have made or passed in such cause or matter; and

(*b*) order any such cause or matter to be retried before the court of first instance or before any other Local Court.

Indemnity of certain persons

44.—(1) No person shall be liable to be sued in any court for any act done or ordered to be done by him or her in the exercise of jurisdiction conferred by this Act, whether or not within the limits of such jurisdiction, if at the time of such act or order he or she believed in good faith that he or she had jurisdiction to do such act or make such order.

(2) No officer of any Local Court or other person bound to execute lawful warrants or orders issued or made in the exercise of jurisdiction conferred by this Act shall be liable to be sued in any court for the execution of any warrant or order which he or she would be bound to execute, if the person issuing the same had been acting in the exercise of lawful authority.

Penalty for false evidence

45. Any person who gives evidence in any proceedings before a Local Court, whether upon oath or otherwise, which he knows to be false, or believes to be false, or does not believe to be true, commits an offence and shall on conviction be liable to a fine of K50,000 and to imprisonment for twelve months.

Rules

46.—(1) The Chief Justice may make rules for carrying this Act into effect.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for—

(*a*) the practice and procedure of Local Courts in their original and appellate jurisdiction;

(*b*) the procedure relating to the institution of criminal and civil proceedings;

(*c*) the practice relating to the arrest of accused persons;

(*d*) the practice relating to the remand of accused persons;

(*e*) the provisions relating to execution and attachment in cases of a criminal and civil nature;

(*f*) the fees to be charged in Local Courts;

(*g*) the disposal and application of fines and fees received in Local Courts;

(*h*) the empowering and requiring of Local Courts to enforce decrees, serve summonses and execute warrants made or issued by other Local Courts;

(*i*) the costs to be allowed in cases of a criminal or civil nature;

(*j*) the procedure regulating the institution of appeals;

(*k*) the records to be kept by Local Courts;

(*l*) the forms to be used; and

(*m*) the terms and conditions of service of Chairpersons, officers and staff of Local Courts, and the remuneration to be paid to assessors.

Repeals and savings Cap. 3:03

47.—(1) The Traditional Courts Act is hereby repealed.

(2) Any subsidiary legislation made under the Act repealed by subsection (1), in force immediately before the commencement of this Act—

(*a*) shall remain in force unless in conflict with this Act; and

(*b*) may be replaced, amended, or repealed by subsidiary legislation made under this Act.

FIRST SCHEDULE s. 22

JURISDICTION OF GRADE A AND GRADE B, LOCAL COURTS

Penal Code (Cap. 7:01)	
Section 47 (subsection (2) only)	Offences in relation to publications, importation of which is prohibited (whole).
Section 60	Publication of false news likely to cause fear and alarm to the public.
Section 81	Prohibition of carrying offensive weapons without lawful authority or reasonable excuse.
Section 84	Fighting in public.
Section 85	Challenging to fight a duel.
Section 88 (Subsections 1 (*a*) and 1 (*b*) only)	Intimidation.
Section 107	Deceiving witnesses.
Section 108	Destroying evidence.
Section 113	Offences relating to judicial proceedings.
Section 115	Escape.
Section 116	Permitting prisoners to escape.
Section 118	Removal, etc., of property under lawful seizure.
Section 123	Disobedience of statutory duty.
Section 128	Disturbing religious assemblies.
Section 129	Trespassing on burial places.
Section 130	Writing or uttering words with intent to wound religious feelings.
Section 131	Hindering burial of dead body, etc.
Section 137 (subsection (3) only)	Insulting the modesty of a woman.
Section 166	Master not providing for servants or apprentices.
Section 168	Common nuisance.
Section 180	Idle and disorderly persons.
Section 181	Conduct likely to cause a breach of the peace.
Section 182	Use of insulting language.
Section 183	Nuisances by drunken persons, etc.
Section 184	Rogues and vagabonds.
Section 197	Fouling water.
Section 198	Fouling air.

Section 199	Offensive trades.
Section 248	Dealing in poisonous substances in negligent manner.
Section 249	Endangering safety of persons traveling by railway.
Section 252	Danger or obstruction in public way or line of navigation.
Section 253	Common assault.
Section 278	General punishment for theft. (as read with sections 270 to 277 inclusive): Provided that the value of the thing stolen does not exceed K10,000.
Section 299	Unlawful use of vehicles, animals, etc.
Section 314	Criminal trespass.
Section 316	Unauthorized user of land and premises.
Section 321	Cheating: Provided that the value of the thing obtained does not exceed K10,000.
Section 325	Pretending to tell fortunes.
Section 326	Obtaining registration, etc., by false pretence.
Section 327	False declaration for passport.
Section 328 (subsection (2) only as read with subsection (3))	Receiving property unlawfully obtained: Provided that the value of the tiling received does not exceed K10,000.
Section 329	Person having in possession property suspected of being stolen.
Section 337	Arson, paragraphs (*a*), (*b*) and (*c*): Provided that the value of the subject matter does not exceed K10,000.
Section 339	Setting fire to crops: Provided that the value of such crops shall not exceed K10,000.
Section 344 (Subsection (1) only)	Malicious damage: Provided that the value of the subject matter does not exceed K10,000.
Section 389	Personation in general.
Section 401	Attempts, provided that a person may only be tried for an attempt to commit an offence which the court has jurisdiction to hear.

Criminal Procedure and Evidence Code (Cap. 8:01)

Community Service Regulations.

Local Government Act (Cap. 22:01)

All by-laws made under the Act and in force within the area of the Court's jurisdiction.

Public Health Act (Cap. 34:01)

Parts III, IV and V only.

Businesses Licensing Act (Cap. 46:01)

The whole Act.

Hide and Skin Trade Act (Cap. 50:02)

The whole Act
All rules made thereunder.

Liquor Act (Cap. 50:07)

The whole Act
All rules made thereunder.

Employment Act (Cap. 55:01)

Section 4	Prohibition against forced labour.
Section 21	Prohibition against child labour.
Section 22	Harzadous work.
Section 24	Offences under Part IV.
Section 52	Prohibition relating to payment of remuneration.
Section 66	Offences and penalties.

Forestry Act (Cap. 63:01)

The whole excepting sections 68, 70, 71, 73.

Plant Protection Act (Cap. 64:01)

Section 11 (*d*) excepting paragraph (1) (*d*)

Noxious Weeds Act (Cap. 64:02)

The whole Act.

Tobacco Act (Cap. 65:02)

The whole Act
All rules made thereunder.

Protection of Animals Act (Cap. 66:01)

The whole Act.

Control and Diseases of Animals Act (Cap. 66:02)

The whole Act
All regulations made thereunder.

Fisheries Conservation and Management Act (Cap. 66:05)

The whole Act
All rules made thereunder.

Road Traffic Act (Cap. 69:01)

All rules and regulations made thereunder.

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s. 39

SECOND SCHEDULE

Form

Malaŵi

In the ..... Local Court

Criminal Case No. ..... of 20.....

Republic

.....

versus

.....

[*Insert name of accused.*]

Criminal Summons for Contempt of Court

To: .....

[*Insert address of accused.*]

of .....

[*Insert place.*]

You are ordered to come to the Court at .....

[*Insert day, date and time of hearing.*]

..... on .....

[*Insert document or thing not produced.*]

day of ....., 20..... at ..... o'clock

in the *fore / after noon to answer a charge that you without lawful

excuse—

*omitted to produce or deliver up ..... to

[*Insert name of Court or person to whom document or thing was to be produced or name of person to whom compensation payable.*]

..... on the order of this Court
[*Insert date of order of award*.]

made on the ..... day of ....., 20.....
[*Insert date*.]

*having the means to pay compensation awarded against you by this

Court on the ..... day of ....., 20.....
[*Insert date*.]

have refused or neglected to pay such compensation and that you thereby committed an offence under section 20 of the Local Courts Act.

If you fail to come to Court you will be liable to arrest.

Seal

Date ....
Chairperson

[**Delete whichever is not applicable*.]

LEGAL EDUCATION AND LEGAL PRACTITIONERS

CHAPTER 3:04

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CHAPTER 3:04

LEGAL EDUCATION AND LEGAL PRACTITIONERS

ARRANGEMENT OF SECTIONS

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An Act to establish a Council of Legal Education and to provide for its functions and responsibilities; to establish criteria for the admission of persons to practise before the courts of Malaŵi as legal practitioners, and to provide for the professional discipline of legal practitioners; to establish the Malaŵi Law Society as a body corporate and to make provision for its objects and membership; to make comprehensive provision in relation to notaries public and for matters incidental thereto and connected therewith

20 of 1965
46 of 1965
4 of 1967
37 of 1967
45 of 1967
25 of 1968
23 of 1970
38 of 1971
13 of 1974
5 of 1974
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25 of 2010
G.N.
137/1966
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144/1971
65/1986

[12th April, 1965]

PART I

Preliminary

1. This Act may be cited as the Legal Education and Legal Practitioners Act. Short title

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

"Council" means the Council of Legal Education established by section 3;

"Director" means the Director of the Institute; 25 of 2010

"Institute" means the Malaŵi Institute of Legal Education under Part IIA; 25 of 2010

"legal practitioner" means a person who has been admitted to practise the profession of the law before the High Court, or before any court subordinate thereto, and whose name has been inscribed upon the Roll;

"Malaŵi Law Examination" means the examination in the local laws, practice and procedure of Malaŵi to be set by the Council from time to time in accordance with section 10;

"Registrar" means the Registrar of the High Court;

"Roll" means the Roll of Legal Practitioners maintained by the Registrar on which is inscribed the name of every person admitted to practise as a legal practitioner, and, save for the purposes of subsections (4) and (5) of section 11, includes the Supplementary Roll;

26 of 1990

"Supplementary Roll" means the Roll opened under subsection (4) of section 11.

PART II
The Malaŵi Council of Legal Education

Establishment of Council of Legal Education

3. There is hereby established a Council of Legal Education which shall be a body corporate to be styled "the Malaŵi Council of Legal Education", with perpetual succession and a common seal, with power to hold land and to sue and be sued in its corporate name.

Functions of the Council

4. The functions of the Council shall be—

(*a*) to make regulations for the syllabus and curriculum of legal education in, and for attendance at, a Law School or Schools in Malaŵi;

(*b*) to establish, conduct, regulate, manage, control and supervise courses of legal education in Malaŵi;

(*c*) to conduct, regulate, manage, control and supervise the holding of examinations in law in Malaŵi, and, in particular, to set the examination papers for and make arrangements for invigilation at such examinations, and to provide for the marking of the examination papers;

(*d*) to advise and make recommendations to the Minister generally on matters relating to legal education and the requisite qualifications for the admission and enrolment of legal practitioners;

(*e*) to perform such other functions and deal with such matters relating to legal education as the Minister may, in writing, from time to time, direct.

Members of the Council
33 of 1980
14 of 1997

5. The Council shall consist of the Chief Justice of Malaŵi, who shall be chairman of the Council, and the following other members, that is to say—

(*a*) the Attorney General or a representative appointed by him;

(*b*) a Justice of Appeal or a Judge of the High Court, to be appointed by the Chief Justice;

(*c*) a magistrate of a subordinate court in Malaŵi, to be appointed by the Chief Justice;

(*d*) two persons in the legal service of the Government, to be appointed by the Minister;

(*e*) the chairman of the Malaŵi Law Society;

(*f*) a legal practitioner to be nominated by the Malaŵi Law Society and appointed by the Minister; and

(*g*) two law teachers in Malaŵi, to be appointed by the Minister.

Tenure of members

6. Any person appointed to the Council shall hold office as a member of the Council for such period not exceeding four years as may be specified in his instrument of appointment unless he sooner resigns, or is removed from office, or ceases to have the qualification necessary as a prerequisite to appointment. At the conclusion of any person's term of office, he shall be eligible for reappointment.

Procedure of Council

7. The quorum of the Council shall be five, and the Council may regulate its own procedure; and the validity of any of the proceedings of the Council shall not be affected by any vacancy in the membership of the Council or by any defect in the appointment of a member, or by reason that a person not entitled to do so took part in any proceedings.

Powers of Council

8. The Council shall have power to do such things as it considers expedient for the carrying out of its responsibility, but no remuneration or allowance shall be paid to any member of the Council in respect of his office:

Provided that the Minister may from time to time authorize the payment of travelling and other allowances to members of the Council at the same rate as the like allowances are payable to officers in the service of the Government.

PART IIA
The Malaŵi Institute of Legal Education

Establishment of the Institute
25 of 2010

8A.—(1) There is hereby established an institute to be know as the Malaŵi Institute of Legal Education (in this Part otherwise referred to as the "Institute").

(2) The Institute shall be subject to the general or special directions of the Council in carrying out its functions.

Functions of the Institute
25 of 2010

8B.—(1) The functions of the Institute shall be to provide practical legal training in courses approved by the Council for purposes of the practice of law in Malaŵi, and such training shall be at post-graduate level.

(2) Without prejudice to the generality of subsection (1), the functions of the Institute shall be to—

(*a*) set minimum education entry qualifications, to be approved by the Council, for persons to enroll at the Institute;

(*b*) organize and conduct courses of instruction for the acquisition of legal knowledge and skills by persons seeking to be admitted as legal practitioners;

(*c*) set and conduct, on behalf of the Council, the Malaŵi Law Examinations;

(*d*) organize and conduct courses in legislative drafting;

(*e*) organize and conduct courses for public officers with a view to promoting their general understanding of the law in Malaŵi;

(*f*) organize and conduct courses for continuing legal education; and

(*g*) perform such other functions as the Council may, from time to time, direct in writing.

(3) All courses offered by the Institute shall be approved by the Council.

Fees and charges
25 of 2010

8C.—(1) The Institute may charge and receive such fees and other charges as the Council shall approve for any courses and other training programmes or activities offered by the Institute.

(2) All persons enrolled with the Institute for any course or attending any programme or activity offered by the Institute shall be liable to pay to the Institute the fees or charges for such course, programme or activity, and for any services or facilities offered by the Institute.

Director of the Institute
25 of 2010

8D.—(1) There shall be the office of Director of the Institute, which shall be a public office.

(2) The Director shall be appointed by the Council on such terms and conditions of service as the Council shall determine.

(3) The Director shall be a person who has knowledge of law and has had experience and has shown capacity in the field of law.

Duties of the Director
25 of 2010

8E. Subject to the general and special directions of the Council, the Director shall be responsible for the management of the Institute and shall exercise executive and administrative control over the other staff of the Institute.

Other staff of the Institute
25 of 2010

8F.—(1) The Council may appoint such other officers of the Institute, subordinate to the Director, as the Council considers to be necessary for the proper discharge of the functions of the Institute and who shall be officers in the public service and appointed on such terms and conditions of service as the Council shall determine.

(2) The Council may, by directions in writing, delegate to the Director the appointment of officers of the Institute of such junior ranks as the Council shall specify in such directions, and the Director shall report to the Council, at its regular meetings or as the Council may request, every appointment made pursuant to this subsection.

Consultants and Instructors of the Institute
25 of 2010

8G.—(1) The Council may engage persons to serve as consultants to the Institute on such terms and conditions of service as the Council shall determine.

(2) The Council shall engage persons as consultants to the Institute under subsection (1) on account of their knowledge, experience or

competence in relation to the work of the Institute and shall assign to such persons tasks for the discharge of the functions of the Institute.

Funds of the Institute
25 of 2010

8H.—(1) The funds of the Institute shall consist of—

(*a*) such sums as shall be appropriated by Parliament for the purposes of the Institute; and

(*b*) such moneys as may, with the approval of the Council, be raised by the Institute by way of fees, donations, subscriptions, gifts or charges.

(2) The Institute shall apply its funds for the purposes of its functions and may invest any surplus of its funds in the manner approved by the Council.

Books of accounts and audit
Cap. 37:02
25 of 2010

8I.—(1) The Institute shall keep and maintain proper books and records of account of its funds and shall in every respect comply with the Public Finance Management Act.

(2) The accounts of the Institute shall be examined and audited annually by auditors appointed by the Council, but the Council may direct that the accounts of the Institute be examined and audited at any time.

PART III
Admission to Practise

Admission to practise
9 of 2004

9.—(1) No person shall practise as a legal practitioner in Malaŵi, unless he has been admitted to practise in accordance with this Act.

(2) Where, pursuant to section 11A, a person is admitted to practise subject to the conditions imposed by subsection (2) of that section, such person shall not practise as a legal practitioner, unless he, at all material times, complies with such conditions.

(3) Subject to section 11 and section 12 (3), no person may apply for admission to practise as a legal practitioner, unless he qualifies for admission in accordance with subsection (4).

(4) A person may be admitted to practise as a legal practitioner if he is a citizen of Malaŵi or has resided in Malaŵi for a continuous period of not less than three months immediately before the date of the filing of his petition for admission under section 12, and—

(*a*) he holds a degree in law awarded by the University of Malaŵi; or

(*b*) has been admitted to practise as a member of the profession of law in England and Wales, Scotland, Northern Ireland or the Republic of Ireland and has passed the Malaŵi Law Examination; or

(*c*) subject to subsection (5) and to section 9A, he holds a foreign law qualification as defined in subsection (6).

(5) a person who holds a foreign law qualification, shall not be eligible to be admitted to practise law in Malaŵi, unless—

(*a*) he is a citizen of Malaŵi;

(*b*) the foreign law qualification was obtained from a jurisdiction that applies, as its prevailing basic system of law—

(i) the Common Law or a legal system founded wholly or in part on the Common Law; or

(ii) Roman-Dutch Law as applied and practised in countries of Southern Africa,

and in respect of which he studied, in the English language, at least all the subjects specified in the First Schedule;

First Schedule

(*c*) in the jurisdiction from which the foreign law qualification was obtained, he is either—

(i) admitted to practise the profession of law and is not under any disciplinary charge for professional misconduct; or

(ii) eligible to practise the profession of law, unless, although otherwise eligible, he is denied such eligibility solely on the ground that he is not a citizen or a resident of, or does not owe allegiance to, or solely to, the country or territory of that jurisdiction;

(*d*) he has resided in Malaŵi for a continuous period of not less than three months immediately before the date of the filing of his petition for admission; and

(*c*) he has passed the Malaŵi Law Examination.

(6) For the purposes of this Part, a foreign law qualification is a law qualification obtained from a jurisdiction other than Malaŵi and which is or includes, an undergraduate degree in law.

(7) The Minister may, on the advice of the Council, amend the First Schedule by Order published in the *Gazette*.

Conditions for recognition of a foreign law qualification
9 of 2004

9A.—(1) Subject to subsection (2), no foreign law qualification shall be recognized as a qualification for the admission of the holder to practise as a legal practitioner in Malaŵi, unless it is so recognized by the Council upon the Council being satisfied that—

(*a*) it was obtained pursuant to a course of undergraduate study, with a university or similar institution, that is designed to last at least three academic years;

(*b*) it is, as assessed by the Council, comparable in scope to the undergraduate degree in law awarded by the University of Malaŵi or otherwise to be of the appropriate scope for the training of a person to qualify him to practise the profession of law; and

(*c*) it constitutes qualifying training towards eligibility for admission to practise the profession of law in the jurisdiction from which it was obtained.

(2) In assessing a foreign law qualification for purposes of its recognition, the Council shall consider—

(*a*) the subjects of law studied;

(*b*) the content and duration of the courses of study that led to the award of the law degree;

(*c*) the basic system of law applied in the jurisdiction from which the degree was obtained;

(*d*) whether the applicant was admitted to practise the profession of law in the jurisdiction from which the qualification was obtained, and, if not, whether he fulfilled all the eligibility requirements for admission to practise the profession of law in that jurisdiction save only as otherwise provided in section 9 (5) (*c*) (ii); and

(*e*) other matters of proficiency as may appear to the Council to be relevant.

Malaŵi Law Examination 9 of 2004

10.—(1) Every person who seeks to be admitted to practise law in Malaŵi and who has petitioned to be so admitted, other than a person qualified under section 9 (4) (*a*), section 11 or section 12 (3), shall be required to take the Malaŵi Law Examination and his petition for admission shall not be heard unless the Council has certified in writing to the Registrar that he has passed the Malaŵi Law Examination.

(2) The Malaŵi Law Examination shall be set, conducted and managed by the Council, and for that purpose the Council shall—

(*a*) develop a syllabus in respect of which candidates are to be examined and shall make such syllabus generally available, and the Council may review such syllabus from time to time; and

(*b*) make available to every candidate, at least thirty days before the date of the examination, a copy of the syllabus for the examination.

(3) The Council may enlist the services of any person, body or institution with relevant expertise to assist it with the development of the syllabus referred to in subsection (2) and the setting, conduct or management of the Malaŵi Law Examination.

(4) Every candidate of the Malaŵi Law Examination shall before taking the examination pay to the Council such fee as may be prescribed, and the receipt of the Council issued to the candidate in respect of payment of examination fee shall be attested in the petition for the admission of the candidate.

(5) Any examination fee paid by a candidate shall not be refundable whether the candidate has passed or failed the examination.

(6) After a candidate has written the Malaŵi Law Examination, the Council shall arrange for the marking of the candidate's answers to determine whether the candidate has passed or failed the examination.

(7) The marking of a candidate's answers in the examination shall—

(*a*) be ordinarily done by the person or persons who set the examination or, in the absence of the person or persons who set the examination, be done by any other competent person appointed by the Council; and

(*b*) follow a marking scheme developed by the person or persons who set the examination and approved by the Council.

(8) A candidate who has failed the Malaŵi Law Examination and who disputes his failure may appeal to the Council to have his answers re-marked and the Council shall thereupon arrange for the answers to be re-marked within a reasonable time either by the person or persons who first marked the answers or by any other competent person or persons appointed by the Council for that purpose.

(9) A candidate who has failed the Malaŵi Law Examination may repeat taking the examination for not more than four times subsequent to the first attempt.

Admission to practise of legally qualified public officers
26 of 1990
12 of 1991
9 of 2004

11.—(1) Any person who—

(*a*) holds a degree in law awarded by the University of Malaŵi or has been admitted to practise as a member of the profession of law in England and Wales, Scotland, Northern Ireland and the Republic of Ireland; and

(*b*) has been in active employment, in a judicial or legal capacity, in the Judicial Department, Attorney General's Chambers, Department of Lands, the office of the Ombudsman, the Human Rights Commission, the Law Commission or other Department of Government performing legal duties on behalf of the Government for a period of or for periods amounting in all to one year,

may, on making application to the Chief Justice in that behalf, be admitted by the Chief Justice, after consultation with the Council, to practise as a legal practitioner.

(2) Every application under subsection (1) shall be by petition addressed to the Chief Justice and verified by affidavit of the applicant and shall be made within ninety days of the date of completing the qualifying period specified in that subsection:

Provided that the Chief Justice may hear an application made out of time upon good cause being shown by affidavit of the

applicant as to why the application was not made within the period allowed in this subsection.

(3) Every person who, before the commencement of this subsection, was admitted, or was entitled to apply for admission, under subsection (1) as legal practitioner shall, without further procedure and notwithstanding the actual date of admission in the case of an admitted person, be deemed to have been admitted to practise in Malaŵi as a legal practitioner and to have signed the Roll of the date of his first appointment in a judicial or legal capacity by which he became eligible for admission under subsection (1).

(4) The Registrar shall open a Supplementary Roll on which he shall inscribe, in chronological order of the dates of their first appointments in the public service in judicial or legal capacity the names of all persons who are deemed under subsection (3) to have been admitted to practise as legal practitioners and any such person shall be entitled at any time to affix his signature in the Supplementary Roll against his name.

(5) The inscription of a person's name on the Supplementary Roll pursuant to subsection (4) shall supersede, in all respects, the inscription of his name on the Roll.

(6) Save as provided in subsections (4) and (5) the Roll and the Supplementary Roll shall be read as one for all purposes of this Act.

(7) Nothing in subsection (3) shall be construed to have reinstated onto the Roll the name of a person struck off the Roll under section 21.

Conditional admission to practise
38 of 1971
13 of 1974
9 of 2004

11A.—(1) Where an application for admission to practise as a legal practitioner is made by a person, not being a person who possesses the qualifications set out in section 11 or section 12 (3), the Chief Justice may, subject to the other provisions of this Act, admit such person to practise as a legal practitioner and, unless the Chief Justice is of the opinion that such person has, for a period of not less than two years prior to the date of such application, practised as a qualified lawyer in—

(*a*) a country, state or territory which applies, as its prevailing basic system of law, the Common Law or a legal system founded wholly or in part on the Common Law; or

(*b*) a country of Southern Africa which applies, as its prevailing basic system of law, the Roman-Dutch Law,

such admission shall be a conditional admission for the purposes of this Act and subsection (2) shall apply.

(2) Subject to the other provisions of this Act, where any person has been admitted to practise as a legal practitioner and his

admission is conditional, he may not practise as a legal practitioner—

(*a*) except as the employee—

(i) of a prescribed legal practitioner; or

(ii) of a firm of legal practitioners of which at least one partner is a prescribed practitioner; or

(iii) in the legal department of a local authority, such department having a prescribed legal practitioner at its head; and

(*b*) unless while so practising he is under the general guidance, supervision and control of—

(i) the prescribed legal practitioner referred to in paragraph (*a*) (i); or

(ii) the partner referred to in paragraph (*a*) (ii) or a partner of his in the same firm who is a prescribed legal practitioner; or

(iii) the head of the legal department referred to in paragraph (*a*) (iii),

as the case may be.

For the purposes of this subsection, a prescribed legal practitioner is a legal practitioner of at least three years' standing whose own admission is not conditional:

Provided however that no legal practitioner shall be a prescribed legal practitioner while he is exercising, or attempting to exercise, the guidance, supervision and control referred to in paragraph (ii) over more than two legal practitioners whose admission is conditional.

(3) Any legal practitioner whose admission to practise is conditional under this section may, by motion within the relevant admission proceedings, apply to the Chief Justice for the removal of the conditions attaching to his admission by virtue of subsection (2), and upon satisfactory proof being adduced, whether by way of affidavit or otherwise as directed by the Chief Justice, that the applicant has, since the date of his admission, been actively employed for a continuous period of not less than twelve months in compliance with subsection (2), the Chief Justice shall order the removal of the said conditions and thereupon the admission to which they relate shall cease to be conditional.

(4) For the purposes of this section, the expression "a qualified lawyer" means any person whose right to practise the profession of law in the State in question is, in such State, equally as unlimited as that of a legal practitioner in Malaŵi.

Procedure on applications for admission to practise
9 of 2004

12.—(1) Application for admission to practise as a legal practitioner shall be made by petition, to be verified by an affidavit of the petitioner which shall be heard by the Chief Justice in open court.

(2) The Chief Justice may make rules generally regulating the procedure for the admission to practise of any person and more particularly concerning the form of any petition, the affidavit or other annexures required to be filed with any petition, and their form, the procedure on the hearing of a petition, the order to be made after a hearing, the oath or oaths to be taken by any person admitted to practise.

(3) Notwithstanding the foregoing provisions of this section, the Chief Justice may, without formality, admit to practise as a legal practitioner for the purpose of any specific cause or causes, any person who, in the opinion of the Chief Justice—

(*a*) has sufficient legal knowledge and qualifications;

(*b*) is of good character;

(*c*) has come to Malaŵi for the purpose of appearing in such cause or causes; and

(*d*) has paid the prescribed fee,

and any such person shall for the purposes of this Act be deemed to be a legal practitioner for the period required to appear in such cause or causes.

Reciprocal recognition to practise the profession of law
9 of 2004

12A. Notwithstanding the other provisions of this Part, recognition to practise the profession of law in Malaŵi may be granted to any person on the basis of, and in accordance with, any bilateral or multilateral agreement entered into in writing between Malaŵi and any other country or any group of countries providing for the reciprocal recognition of persons admitted to practise the profession of law in one country to be admitted to practise in the other country or in any country in such group of countries.

PART IV

Articled Clerks

13. [*Repealed by Act No.* 9 *of* 2004]

PART V

Notaries Public

Interpretation

14. In this Part, the expression "to practise as a notary public" means to perform *mutatis mutandis* the functions and duties commonly performed by a notary public in England.

Appointment of notaries public

15.—(1) Any legal practitioner holding a licence to practise as such in Malaŵi may apply to the Chief Justice for a certificate entitling him to be and practise as a notary public.

(2) In considering the application for such a certificate the Chief Justice shall have regard to—

(*a*) the requirements of the public and the number of notaries public already entitled to practise in Malaŵi and in the Districts in which such notaries public reside; and

(*b*) the length of time during which the applicant has been a legal practitioner,

and the granting of such a certificate shall be in the sole discretion of the Chief Justice:

Provided that such a certificate shall not be granted to a legal practitioner who has not held a licence to practise as such in Malaŵi for three years, unless the Chief Justice for good reason thinks fit so to do.

Certificate to practise as notary public 25 of 1968

16.—(1) A certificate to practise as a notary public shall be in the form set out in Part I of the Fourth Schedule and shall entitle the person named therein, upon payment of the fee set out in Part II of the Fourth Schedule to practise as such until the 31st March next following the date of issue and to levy fees in accordance with Part III of the Fourth Schedule.

(2) Every such certificate shall, on the expiry of its validity, be renewed by the Chief Justice for a period of one year, by endorsement thereon by the Registrar of the High Court, upon the application of the person named therein, and upon payment of the fee set out in Part II of the Fourth Schedule.

(3) The granting of every certificate under this section and every renewal thereof shall be recorded in the Roll.

(4) When a certificate granted under this section has been lost, destroyed or mutilated, it shall be replaced by a fresh certificate upon the application of the person named therein and upon payment of the fee set out in Part II of the Fourth Schedule.

17. Every notary public before whom any oath, affidavit, declaration or acknowledgment is taken or made shall state truly in the jurat or attestation at what place and on what date the oath, affidavit, declaration or acknowledgment is taken or made.

Jurat to state where and when oath, etc., is taken

18. Any certificate granted under section 16 may be suspended or cancelled by the Chief Justice in the event of a notary public ceasing to be entitled to practise as a legal practitioner in Malaŵi, or cancelled if, in the opinion of the Chief Justice, the notary public fails to carry out satisfactorily his duties as a notary public.

Suspension or cancellation

19.—(1) Any person who shall hold himself out to be a notary public or who shall receive any fee or reward as a notary public,

Penalty

without being entitled to practise as such or perform duties as such, shall be liable to a fine of K200 and for a second or subsequent offence to a fine of K500 and to imprisonment for six months.

(2) Nothing in this section shall be construed so as to exempt any person from any prosecution under any other law to which he would otherwise be liable:

Provided that no person shall be punished twice for the same offence.

20. The Chief Justice may make rules for carrying out the purposes of this Part. Powers of Chief Justice

PART VI

Discipline

21.—(1) The High Court, either of its own motion and after such inquiry as it thinks fit, or on an application made by the Attorney General, may make an order suspending any legal practitioner, or striking any legal practitioner off the Roll, or may admonish any legal practitioner in any of the following circumstances— Disciplinary powers of High Court 4 of 1981

(*a*) if the legal practitioner has taken instructions in any cause or matter except from the party on whose behalf he is retained, or from some person who is the agent of such party;

(*b*) if he has been guilty of fraudulent or improper conduct in the discharge of his professional duty or has misled the Court, or allowed it to be misled in such manner as to cause the Court to make an order which he knew or ought to have known to be wrong and improper;

(*c*) if he has made or agreed to make any payment or has consented to the retention of the whole or any part of any fee paid or payable to him for his services, in consideration of any person procuring or having procured the employment, in any legal business, of himself or any other legal practitioner;

(*d*) if he directly or indirectly has procured or attempted to procure the employment of himself as a legal practitioner through or by the intervention of any person to whom any remuneration for obtaining such employment has been given by him, or agreed or promised to be so given;

(*e*) if, without the previous written consent of the Malaŵi Law Society, he has made any charges for professional services (where such are prescribed) other than those which have been prescribed as scale charges, or less than those prescribed as minimum charges;

(*f*) if he has been adjudicated bankrupt;

(*g*) if he has practised for one month after having been warned in writing by the Registrar that he has no annual licence to practise;

(*h*) if he has been convicted of an offence punishable with imprisonment for a term of twelve months or more;

(*i*) if he has been guilty of conduct tending to bring the profession of the law into disrepute; or

4 of 1981

(j) if he has failed to comply with any of the provisions of this Act or of any rules made under section 36 (2) (*c*) or section 44 (4) (*a*), (*b*), (*c*) or (*d*).

(2) If the Court, on an application under subsection (1), is satisfied that a legal practitioner has been guilty of dishonesty in connexion with his practice as a legal practitioner or in connexion with any trust of which he is a trustee, the Court may order that no payment shall be made without the leave of a judge by any banker named in the order out of any banking account in the name of the legal practitioner or his firm.

(3) Whenever a legal practitioner is struck off the Roll or suspended under subsection (1) the Court may give such directions as it considers proper regarding the possession and control of deeds, wills, documents evidencing title to any property, books of account, records, vouchers or other documents in the possession or control of that legal practitioner or relating to any trust of which he is a trustee.

(4) Any application to the Court made under this section shall be heard by the Chief Justice sitting alone, or sitting together with such other judge or judges as he may direct, but no order shall be made suspending or striking off the Roll any legal practitioner without his being given reasonable opportunity of being heard and of calling witnesses.

When legal practitioner may not practise

22.—(1) A legal practitioner whose name has been struck off the Roll shall not practise in Malaŵi.

(2) A legal practitioner who has been suspended by an order made under section 21 shall not practise in Malaŵi during the period of such suspension

Annual licence

23.—(1) Every legal practitioner shall on admission pay the admission fee prescribed in the Second Schedule and shall, in the year of his admission, and annually thereafter, take out an annual licence for which he shall pay the fee specified in the Second Schedule.

(2) Every licence to practise shall expire on the 31st January next following the date of its issue, and every legal practitioner desirous of practising thereafter shall renew his licence.

(3) No legal practitioner shall be entitled to practise unless he has had issued to him a current licence to practise.

(4) Where the licence to practise of a legal practitioner has not been renewed for a period of six months after its expiry, such licence shall not be renewed except with the consent of the Chief Justice, to whom application may be made by the legal practitioner to whom the expired licence was issued, and such application shall be supported by affidavit stating the reasons why such licence was not timely renewed.

(5) This section shall not apply to a person permitted to practise as a legal practitioner under section 12 (3) or to a person who is an *ex-officio* legal practitioner or deemed to be a legal practitioner under section 38.

Unlawfully acting as a legal practitioner etc., an offence

24.—(1) Any person who is not, or who has ceased to be, entitled to practise as a legal practitioner before the courts of Malaŵi by virtue of this Act or any other written law, and who, unless he proves that the act was not done for or in expectation of any fee, gain or reward, either directly or indirectly, does any of the following acts—

(*a*) acts as a legal practitioner or, as such legal practitioner, serves out any process or commences, carries on or defends any action, suit or other proceeding in the name of any other person or in his own name, or does any act required by law to be done by a legal practitioner in any court;

(*b*) draws or prepares any instrument relating to real or personal estate or any proceeding in law or draws or prepares any document or caveat relating to land registration;

(*c*) does any other work in respect of which scale or minimum charges are laid down by the Legal Practitioners (Scale and Minimum Charges) Rules, or by any other rules for the time being in force prescribing or relating to charges for any services to be performed by a legal practitioner,

Below p. 24

shall be liable to a fine of £100.

(2) A person shall not be prosecuted for an offence under this section without the written consent of the Director of Public Prosecutions.

(3) This section shall not extend to—

(*a*) any public officer drawing or preparing instruments in the course of his duty;

(*b*) any person employed merely to engross any instrument or proceeding.

(4) For the purpose of this section the expression "instrument" does not include—

(*a*) a letter or power of attorney not under seal;

(*b*) a transfer of stock containing no trust or limitation thereof;

(*c*) a letter written for the purpose of collection of monies;

(*d*) an undefended trade mark or patent application;

(*e*) a passport application.

(5) Nothing contained in this section shall be deemed to limit the right of any person to appear on his own behalf before any court in any proceedings to which he is a party.

PART VII

The Malaŵi Law Society

Establishment of Malaŵi Law Society, vesting of assets and dissolution of the Nyasaland Law Society

25.—(1) There is hereby established a body corporate to be styled the Malaŵi Law Society (hereinafter referred to as "the Society") with perpetual succession and a common seal, with power to hold lands and to sue and be sued in its corporate name.

(2) All property and assets of every kind, whether real, chattel real or personal, of the Nyasaland Law Society shall, at the coming into operation of this section*, be vested in the Society without any further act, deed or other assurance and the Nyasaland Law Society shall, with effect from that date, automatically be dissoved.

Objects of Society

26.—(1) The objects for which the Society is established are—

(*a*) to represent, protect and assist legal practitioners as regards conditions of practice and otherwise;

(*b*) to present generally the views of legal practitioners and to sustain and preserve their rights and status;

(*c*) to engage in formal or informal activities designed to foster and extend the study of law, and for the benefit both of members of the Society or of other persons interested in the profession of the law;

(*d*) to protect and assist the public in Malaŵi on all matters touching, ancillary or incidental to the law;

(*e*) to acquire, hold, develop or dispose of properties of all kinds whether movable or immovable, and to derive capital or income therefrom, for all or any of the foregoing objects;

*On the 12th April, 1965.

(*f*) to raise or borrow money for all or any of the foregoing objects in such manner and upon such security as may from time to time be determined by the Society;

(*g*) to invest and deal with moneys of the Society not immediately required in such a manner as may be determined by the Society;

(*h*) to do all such other things as are incidental or conducive to the attainment of the foregoing objects or any of them.

(2) The Finance and Audit Act shall not apply to the Society until such time as the Minister may in his discretion direct. Cap. 37:01

27. The membership of the Society shall consist of the following— Membership of the Society

(*a*) all legal practitioners who are members of the Society by reason of section 28;

(*b*) all persons admitted to membership in the Society under section 29;

(*c*) all persons elected as honorary members of the Society under section 30.

28.—(1) Every legal practitioner who has in force a licence to practise shall, without election or appointment, become a member of the Society from the date on which his licence was issued to him. Every legal practitioner to be member of the Society

(2) Every legal practitioner who is a member of the Society by reason of subsection (1) shall, subject to subsection (3), remain a member until his licence to practise has expired and has not been renewed.

(3) When a legal practitioner who is a member of the Society by reason of subsection (1) has his name, whether at his own request or otherwise, removed from the Roll, he shall cease to be a member of the Society.

(4) A legal practitioner who is a member of the Society by reason of subsection (1), and who is suspended from practising, shall not be entitled during the period of such suspension to any of the rights and privileges of membership.

29.—(1) The Attorney General, the Solicitor General and any person in the public service, other than a judge, having the qualifications required for admission as a legal practitioner, other than the passing of the Malaŵi Law Examination, shall, after applying for membership in the prescribed form, be admitted as a member of the Malaŵi Law Society during such time as they hold their office or appointment. Persons entitled to become members

(2) The Society may from time to time elect to membership such other persons resident in Malaŵi who possess legal qualifications acceptable to the Society and who consent to be elected members.

Honorary members

30. The Society may elect as honorary members, either for life or for such period as it may deem appropriate, such persons whom it may think fit and who consent to such election.

Fees and subscription

31. The members of the Society shall pay to the Society such fees and subscription and at such times as may be prescribed by the Minister, after consultation with the Minister of Finance:

Provided that honorary members shall not be required to pay any subscription.

Resignation

32. No member of the Society who is a member by reason of section 28 may resign from the Society so long as he has in force a licence to practise, but, except as aforesaid, any member may resign, or may be expelled upon such grounds as may be specified by the Society, after having been given a reasonable opportunity of answering any allegation made against him.

Cessation of membership

33. Any member of the Society, other than an honorary member, who ceases to qualify for membership shall automatically cease to be a member of the Society.

Election

34. An annual election shall be held by the Society not later than the 28th day of February in every year, at which election the Society shall elect such officers or committees from its members as may be deemed necessary.

Delegation of powers and functions

35. The Society may from time to time delegate all or any of its powers or functions to any one or more of its officers or to any committee of the Society.

Society's power to make rules
5 of 1976,
9 of 1977

36.—(1) The Society may make rules prescribing anything which under this Part may be or is to be prescribed, and generally for the better carrying out of the purposes of this Part and the objects for which the Society is established.

(2) Without prejudice to the generality of the foregoing powers and subject to section 31, the Society may make rules dealing with any or all of the following matters—

(*a*) the annual and other subscriptions of the Society;

(*b*) the manner of application for membership of the Society;

(*c*) standards of professional conduct with which every legal practitioner is to comply;

(*d*) the grounds of expulsion of members of the Society and the procedure relating thereto;

(*e*) the resignation of members;

(*f*) the regulation of powers exercisable by any committee of the Society, and the delegation of powers;

(*g*) the manner of convening meetings of the Society and of committees, and quorums thereof, and the procedure relating thereto;

(*h*) the manner in which, and the conditions subject to which, any member not present at a general meeting may vote by proxy on any resolution before that meeting;

(*i*) the manner of election, removal and replacement of officers of the Society;

(*j*) the design, custody and use of the common seal;

(*k*) the classes of resolution at meetings of the Society and their effect;

(*l*) such other matters as may be deemed by the Society to be necessary for the proper conduct and regulation of its affairs.

(4) The High Court shall have jurisdiction to make any order it deems necessary or appropriate for the implementation or enforcement of any of the rights conferred upon the Society or any committee thereof, as the case may be, by rules made under paragraph (*e*) of subsection (3). The Chief Justice may, from time to time, make rules of court for the purposes of this subsection.

Disciplinary Committee

37.—(1) There shall be a disciplinary committee of the Society which shall consist of the Solicitor General and two other members elected by the Society.

(2) The disciplinary committee shall inquire into the conduct of legal practitioners—

(*a*) at the request of the High Court;

(*b*) on a complaint made by any person which indicates that there may be grounds on which the High Court could make an order under section 21 against a legal practitioner.

Cap. 18:01

(3) For the purpose of any inquiry under subsection (2) the disciplinary committee shall have all the powers of Commissioners under sections 9 and 10 of the Commissions of Inquiry Act, and sections 11, 12 and 13 of that Act shall apply to proceedings before the disciplinary committee as though it were a Commission appointed under that Act, save that the legal practitioner into whose conduct an inquiry is being made shall not be entitled to his expenses of attending before the disciplinary Committee save as provided in subsection (5).

(4) If as a result of such inquiry the disciplinary committee considers that a *prima facie* case has been established on which the High Court might make an order under section 21, the Committee shall report the matter to the Attorney General, who shall thereupon be empowered to apply for such an order. On such application, the High Court shall have jurisdiction to order that the costs of the inquiry shall be paid by the legal practitioner concerned.

(5) If as a result of such inquiry the disciplinary committee considers that such a *prima facie* case has not been established it shall so report to the High Court or shall dismiss the complaint as may be appropriate. If the disciplinary committee considers that any complaint was frivolous or vexatious it may direct the complainant to pay the costs of the inquiry including the expenses of attendance of the legal practitioner against whom the complaint was made. Any such costs shall be asssessed by the disciplinary committee, and no appeal shall lie from such assessment or from the order of the disciplinary committee directing the payment of costs.

PART VIII

Miscellaneous

Ex officio legal practitioner 8 of 1980

38.—(1) Any person holding the office of Attorney General, Solicitor General, Chief Public Prosecutor, Parliamentary Draftsman, Principal State Advocate, State Advocate, Principal Legal Aid Advocate or Legal Aid Advocate in Malaŵi shall, so long as he holds such office, be *ex officio* a legal practitioner and entitled to practise before the courts of Malaŵi.

(2) Every person appointed by the Attorney General to plead before the courts of Malaŵi on behalf of the Government in any cause or matter shall be deemed to be a legal practitioner for the purpose of such cause or matter.

Legal practitioner is officer of Court

39. Every legal practitioner shall be deemed to be an officer of the High Court.

Legal practitioners not to practise in certain courts except in accordance with the Traditional Courts Act, etc. Cap. 3:03

40. Notwithstanding anything contained in this Act, no legal practitioner shall be entitled to practise before a court established under the Traditional Courts Act or any Act replacing that Act except in accordance with that Act or any Act amending or replacing it.

Order of precedence 26 of 1990, 12 of 1991

41. Legal practitioners shall take precedence according to the dates they signed, or are deemed under section 11 (3) to have signed, the Roll:

Provided that the Attorney General and the Solicitor General shall take precedence before all other legal practitioners and in that order.

Legal practitioners list

42.—(1) The Registrar shall cause to be published in an issue of the *Gazette* appearing before the 31st March in each year a list (hereinafter referred to as "the legal practitioners list") of all legal practitioners licensed to practise during that year.

(2) The legal practitioners list shall include the name and address of every legal practitioner, the year in which he was admitted to practise in Malaŵi and such other biographical information dealing with the legal and educational background of the legal practitioner as the Chief Justice may direct.

Clerks to legal practitioners

43.—(1) Where—

(*a*) a person who is or was a clerk to a legal practitioner, not being himself a legal practitioner, has been convicted of an offence involving fraud or of any other offence in respect of any money or property belonging to or held or controlled by the legal practitioner by whom he is or was employed or any client of such legal practitioner; or

(*b*) it appears to the Attorney General that a person who is or was a clerk to a legal practitioner, not being himself a legal practitioner, has been a party to any act or default of such practitioner in respect of which an order has been made under section 21,

an application may be made by summons returnable in Chambers by the Attorney General to the High Court, that an order be made directing that, as from a date to be specified in such order, no legal practitioner shall, in connection with his practice as a legal practitioner, take or retain such person into or in his employment, or remunerate such person, without the written consent of the Attorney General.

(2) The High Court shall have power to make such order as is referred to in subsection (1), and to order the payment of costs by any party, but no such order shall be made against any person without his being given an opportunity of being heard and of calling witnesses.

(3) Any application under this section may be heard by any judge.

(4) Every order made under this section shall be filled with the Registrar, and the file shall be open to inspection by any legal practitioner wihout payment but shall not be open to inspection by any person other than a legal practitioner.

(5) A clerk in respect of whom an order under subsection (1) has been made shall not be entitled to be employed by a legal practitioner in respect of his practice until the order expires or is revoked.

Rules
4 of 1981

44.—(1) The Minister, in consultation with the Chief Justice may make rules for the better carrying out of this Act.

(2) Without derogating from the generality of subsection (1) such rules may—

(*a*) prescribe both scale charges and minimum charges that may be levied by legal practitioners; and

(*b*) provide for the taxation of costs and the remuneration of legal practitioners.

(3) For the avoidance of doubt, subsection (1) shall not derogate from section 7 (which empowers the Council to regulate its own procedure), the proviso to section 8 (which empowers the Minister to authorize the payment of certain allowances to the Council), section 9 (2) (*a*) (which empowers the Minister to prescribe certain educational institutions), section 12 (2) (which empowers the Chief Justice to make rules generally regarding the procedure for the admission to practise of any person), section 36 (which empowers the Society to make certain rules) or section 42 (2) (which empowers the Chief Justice to give certain directions in connexion with the preparation of legal practitioners list).

4 of 1981

(4) The Minister may make rules—

(*a*) as to the opening and keeping by legal practitioners of accounts at banks for client's money;

(*b*) as to the keeping by legal practitioners of accounts containing particulars and information as to moneys received, held or paid by them for or on account of clients;

(*c*) requiring the production by a legal practitioner of his books of account, bank passbooks, bank statements, statements of account, vouchers and any other necessary documents at any time on request by an officer of the Society for the inspection of a person nominated by the Society or by the disciplinary committee constituted under section 37;

(*d*) as to the regular audit of the accounts to be kept by legal practitioners and the furnishing of reports thereof; and

(*e*) for the purposes of protecting the interests, affairs or property of any person in the event of any legal practitioner bound by any professional duty or responsibility in respect of

such interest, affairs or property, becoming precluded, or absenting himself, from the practice of his profession without having performed or discharged such duty or responsibility and having made no adequate provision for the performance or discharge thereof,

and, without derogation from the generality of the foregoing, such rules may confer on the Society or any committee thereof such rights of access to, and production and possession of, such things as may be specified in the rules and may provide for the delegation of any of the rights, powers or duties of the Society, or of such committee, to any member of the Society, any Law Officer or any nominee of any Law Officer.

(5) The High Court shall have jurisdiction to make any order it deems necessary or appropriate for the implementation or enforcement of any of the rights conferred upon the Society or any committee thereof, as the case may be, by rules made under paragraph (*e*) of subsection (4); and the Chief Justice may, from time to time, make rules of court for the purposes of this subsection.

45.—(1) All mortgages, bonds, charges, agreements, contracts, or other instruments, and all commercial arrangements subsisting immediately before the date of the coming into operation of section 25, shall be of as full force and effect against, or in favour of, as the case may be, the Society and enforceable as fully and effectually as if, instead of the Malaŵi Law Society, the Society had been named therein and had been a party thereto. Savings

(2) Any legal proceedings or cause of action pending or subsisting immediately before the date of the coming into operation of section 25 by or against the Malaŵi Law Society may be continued or enforced by or against the Society as they could have been continued or enforced by or against the Malaŵi Law Society had this Act not been passed.

(3) Any person entitled, at the date of the coming into force of this Act, to practise as a notary public under the Commissioners for Oaths and Notaries Ordinance, 1960 (now repealed) shall be deemed to have been admitted to practise as a Notary Public under this Act. 26 of 1960

(4) Any person admitted to practise under the Legal Practitioners Rules (now revoked) or under the rules which these Rules replaced shall be deemed to have been admitted to practise under this Act. G.N. 61/1959

(5) All orders made under the Legal Practitioners Rules (now revoked) shall be deemed to be orders made under this Act.

FIRST SCHEDULE

s. 9 (5)

Minimum Subjects for a Qualifying Foreign Law Qualification

9 of 2004

(*a*) Civil Procedure;

(*b*) Criminal Procedure;

(*c*) Criminal Law;

(*d*) The Law of Evidence;

(*e*) The Law of Torts;

(*f*) The Law of Contracts;

(*g*) Legal Systems and Methods;

(*h*) Constitutional and Administrative Law.

s. 23

SECOND SCHEDULE

	Subject	K	t
1.	On admission to practise as legal practitioner	50	00
2.	Annual licence to practise	10	50

THIRD SCHEDULE

[*Repealed by Act No.* 9 *of* 2004]

s. 16 (1)

FOURTH SCHEDULE

34 of 1981

PART I

HIGH COURT OF MALAŴI

Certificate to Practise as a Notary Public in Malaŵi

It is hereby certified that ..... has this day been admitted to practise as a notary public in Malaŵi from the date hereof to the 31st March next.

Fee paid:

....., 20.....

.....

Chief Justice

Renewed until the ....., 20.....

Fee paid: ....., 20.....

.....

Registrar

s. 16 (1), (2) and (4)

PART II

FEES PAYABLE FOR CERTIFICATES

		K	t
1.	Fee payable on the granting of a certificate to practise as a notary public	10	00
	Provided that where the applicant holds or has held a certificate issued under section 4 of the Commissioners for Oaths and Notaries Ordinance (repealed by this Act) the fee shall be	0	50
2.	Fee payable on each annual renewal of such certificate	0	50
3.	Fee payable on replacement of lost, destroyed or mutilated certificate	1	00

PART III

s. 16 (1)

FEES FOR NOTARIAL ACTS

34 of 1981

		K	t
1.	For all protests, including drawing, engrossing and execution of the instrument of protest and duplicate, copies of bills, attending stamping and all incidental work, but excluding out-of-pocket expenses	15	00
2.	For noting any bill, including all attendances, drawing fees and notarial signatures, as follows—		
	If the bill is noted within the City of Blantyre (plus out-of-pocket expenses)	5	00
	If the bill is noted elsewhere	7	00
		per hour or part thereof	
	(plus 30t per kilometre travelling and other out-of-pocket expenses)		
3.	For administering an oath, or receiving a declaration or acknowledgment, with or without attestation of signature	1	50
4.	For every exhibit to an affidavit, declaration or acknowledgment	0	50
5.	For each signature attested by a notary public in any document not otherwise provided for.	1	50
6.	For certifying to a copy of any document or part of a document if not exceeding 100 words.	1	50
7.	For every additional 100 words or fraction thereof, if the document or part of a document exceeds 100 words . .	0	50
8.	For affixing notary's signature and seal if required to any document not otherwise provided for in this table . .	1	50
9.	For every notarial public seal affixed to a document, packet or article, when no signature is required	1	50
10.	For any other notarial act not specified in this table . .	1	50

ORDER

G.N. 144 /1971

under sections 9 *and* 11

It has been ordered in terms of sections 9 and 11 of the Act that the University of Malaŵi shall be an educational institution.

SUBSIDIARY LEGISLATION
MALAŴI LAW SOCIETY RULES

under s. 36

G.N. 144/1969 157/1972 140/1976

1. These Rules may be cited as the Malaŵi Law Society Rules. Citation

2.—(1) In each year an annual subscription shall be payable to the Society by each member thereof in the amount relevant to such member as set out in sub-rule (2). Subscription G.N. 140/1976

(2) The annual subscription payable pursuant to sub-rule (1) shall be—

	K t
(*a*) for the first three years after the date on which the member acquired the basic qualification enabling him to obtain admission as a legal practitioner in Malaŵi . .	3 50
(*b*) for each succeeding year after (*a*) above	7 00.

(3) Each subscription shall become due on the first day of January in the year to which it relates and shall be payable either—

(*a*) in one sum on or before the first day of February in that year; or

(*b*) in two equal instalments, each amounting to one-half of the relevant annual subscription, on the first days of February and July, respectively, of that year.

3. Any person entitled to apply for membership of the Society under section 29 may do so by applying in writing to the Secretary of the Society giving full particulars of his qualifications and of the post or office which he holds at the time of application. Method of application

4. A member of the Society who is not governed by section 28 may resign from the Society at any time by giving notice of his resignation in writing to the Secretary. Regulation

5. At the annual general meeting in each year the Society shall elect a Chairman, a Deputy Chairman, a Secretary, a Treasurer and such number of Committee Members, not exceeding three, as the Society may deem fit. Election of officers

6.—(1) In the event of the Chairman, by reason of illness, absence from Malaŵi or other cause, being unable to exercise his functions as such, the Deputy Chairman shall act as Chairman. Casual vacancies in offices of Chairman and Secretary

(2) In the event of the Secretary, by reason of illness, absence from Malaŵi or other cause, being unable to exercise his functions as such, the Treasurer shall act as Secretary.

7. The Chairman shall preside at all meetings of the Society but, in the event of his absence from a meeting or of a vacancy in his office, the Deputy Chairman shall preside at that meeting and Presiding at meetings

in the absence of both the Chairman and Deputy Chairman from any meeting, the members present shall appoint one of their number to preside at that meeting.

Delegation of power

8. The Society may by general resolution delegate to the Committee or any members thereof any of its powers and functions for such length of time and subject to such conditions as the resolution may specify.

Appointment of Sub-Committees

9. The Society may from time to time appoint Sub-Committees and may similarly delegate to such Sub-Committees any of its powers by general resolution subject to such conditions for such time as it may in that resolution specify.

Calling of meetings

10. The Secretary may at any time with the consent of the Chairman of the Society convene a meeting of the Society. Not less than four days' notice of a meeting shall be given to all members of the Society. The failure of any member to receive notice shall not invalidate the proceedings at any meeting.

Requisition for meetings

11. A meeting of the Society shall be convened by the Chairman within fourteen days of the receipt by the Secretary of a requisition convening a meeting signed by not less than four members of the Society. The quorum at all meetings of the Society shall be six. The quorum at any meeting of any Committee shall be two.

Nominations for office

12. Nominations for any office in the Society may be made in writing signed by the proposer and seconder within seven days of the date of the meeting at which the election is to take place or alternatively may be made orally at the meeting at which the election is to take place. A candidate for election must either consent to his nomination at the meeting at which the election is to take place or signify his consent in writing to accepting the nomination. In the event of there being more than one candidate for any office in the Society a poll shall be recorded by secret ballot under the direction of the Chairman or other person presiding at the meeting. The candidate receiving the majority of votes cast at any such poll shall be deemed to be the candidate elected.

Filling of vacancies

13. Casual vacancies occurring among the officers of the Society in the course of the year shall be filled as soon as practicable after the vacancy occurs.

Removal from office

14. Any officer of the Society or any member of the Committee or any Sub-Committee may be removed from office if a vote of censure upon that person is passed by a special resolution of the Society.

Common seal

15. The Secretary shall have the custody of the common seal of the Society which common seal shall be affixed to documents by the Secretary in the presence of the Chairman of the Society or

any member of the Committee who shall subscribe their names as witnesses to the placing of the common seal.

Resolutions

16. Resolutions of the Society shall be either general or special. A general resolution shall be deemed to be passed if the majority of those present and voting support it. A special resolution shall not be moved at any meeting of the Society unless at least fourteen days' notice thereof has been given to the members of the Society and a special resolution shall not be deemed to have been passed unless two-thirds of the members present and voting shall vote in favour thereof.

LEGAL PRACTITIONERS' ACCOUNTS RULES

G.N. 232/1967

under s. 36

Citation

1. These Rules may be cited as the Legal Practitioners' Accounts Rules.

Interpretation

2. In these Rules, unless the context otherwise requires—

"client" means any person on whose account a legal practitioner holds or receives client's money;

"client's account" means a current or deposit account at a bank in the name of the legal practitioner in the title of which the word "client" appears;

"client's money" means money held or received by a legal practitioner on account of a person for whom he is acting in relation to the holding or receipt of such money either as a legal practitioner or, in connexion with his practice as a legal practitioner, as agent, bailee, stakeholder or in any other capacity; provided that the expression "client's money" shall not include—

(*a*) money held or received on account of the trustees of a trust of which the legal practitioner is legal practitioner trustee, or

(*b*) money to which the only person entitled is the legal practitioner himself or, in the case of a firm of legal practitioners, one or more of the partners in the firm;

"committee" means the disciplinary committee constituted under section 37 of the Act;

"legal practitioner" includes a firm of legal practitioners;

"legal practitioner trustee" means a legal practitioner who is a sole trustee or who is a co-trustee only with a partner, clerk or servant of his or with more than one of such persons;

"trust money" means money held or received by a legal practitioner which is not client's money and which is subject to a trust of which the legal practitioner is a trustee whether or not he is legal practitioner trustee of such trust.

Client's account

3. Subject to rule 9, every legal practitioner who holds or receives client's money, or money which under rule 4 he is permitted and elects to pay into a client's account, shall without delay pay such money into a client's account. Any legal practitioner may keep one client's account or as many such accounts as he thinks fit.

Money to be paid into client's account

4. There may be paid into a client's account—

(*a*) trust money;

(*b*) such money belonging to the legal practitioner as may be necessary for the purpose of opening or maintaining the account;

(*c*) money to replace any sum which may by mistake or accident have been drawn from the account in contravention of rule 8 (2); and

(*d*) a cheque or draft received by the legal practitioner, which under rule 5 he is entitled to split but which he does not split.

Cheques including client's money or trust money of one or more trusts

5. Where a legal practitioner holds or receives a cheque or draft which includes client's money or trust money of one or more trusts—

(*a*) he may where practicable split such cheque or draft and, if he does so, he shall deal with each part thereof as if he had received a separate cheque or draft in respect of that part; or

(*b*) if he does not split the cheque or draft, he shall, if any part thereof consists of client's money, and may in any other case, pay the cheque or draft into a client's account.

Money not to be paid into client's account

6. No money other than money which under the foregoing rules a legal practitioner is required or permitted to pay into a client's account shall be paid into a client's account, and it shall be the duty of a legal practitioner into whose client's account any money has been paid in contravention of this rule to withdraw the same without delay on discovery.

Drawings from client's account

7. There may be drawn from a client's account—

(*a*) in the case of a client's money—

(i) money properly required for a payment to or on behalf of the client;

(ii) money properly required for or towards payment of a debt due to the legal practitioner from the client or in reimbursement of money expended by the legal practitioner on behalf of the client;

(iii) money drawn on the client's authority;

(iv) money properly required for or towards payment of the legal practitioner's costs where there has been delivered to the client a bill of costs or other written intimation of the amount of the costs incurred and it has thereby or otherwise in writing been made clear to the client that money held for him is being or will be applied towards or in satisfaction of such costs;

(v) money which is thereby transferred into another client's account;

(*b*) in the case of trust money—

(i) money properly required for a payment in the execution of the particular trust; and

(ii) money to be transferred to a separate bank account kept solely for the money of the particular trust;

(*c*) such money, not being money to which either paragraph (*a*) or paragraph (*b*) applies, as may have been paid into the account under rule 4 (*b*) or (*d*); and

(*d*) money which may by mistake or accident have been paid into the account in contravention of rule 6:

Provided that in any case under paragraph (*a*) or paragraph (*b*) the money so drawn shall not exceed the total of the money held for the time being in such account on account of such client or trust.

Drawings by cheque or transfer to bank account

8.—(1) No money drawn from a client's account under rule 7 (*a*) (ii), 7(*a*) (iv), 7(*c*) or 7(*d*) shall be drawn except by—

(*a*) a cheque drawn in favour of the legal practitioner; or

(*b*) a transfer to a bank account in the name of the legal practitioner not being a client's account.

(2) No money other than money permitted by rule 7 to be drawn from a client's account shall be so drawn unless the Society upon an application made to them by the legal practitioner specifically authorizes in writing its withdrawal.

No obligation to pay certain client's money into account

9.—(1) Notwithstanding these Rules, a legal practitioner shall not be under obligation to pay into a client's account client's money held or received by him—

(*a*) which is received by him in the form of cash, and is without delay paid in cash in the ordinary course of business to the client or on his behalf to a third party;

(*b*) which is received by him in the form of a cheque or draft which is endorsed over in the ordinary course of business to the client or on his behalf to a third party and is not passed by the legal practitioner through a bank account; or

(*c*) which he pays into a separate banking account opened or to be opened in the name of the client or of some person designated by the client in writing or acknowledged by the legal practitioner to the client in writing.

(2) Notwithstanding these Rules, a legal practitioner shall not pay into a client's account money held or received by him—

(*a*) which the client for his own convenience requests the legal practitioner to withhold from such account, such request being either in writing from the client or acknowledged by the legal practitioner to the client in writing;

(*b*) which is received by him for or towards payment of a debt due to the legal practitioner from the client or in reimbursement of money expended by the legal practitioner on behalf of the client; or

(*c*) which is expressly paid to him either—

(i) on account of costs incurred in respect of which a bill of costs or other written intimation of the amount of the costs incurred has been delivered; or

(ii) as an agreed fee (or on account of an agreed fee) for business undertaken or to be undertaken.

(3) Where a cheque or draft includes other client's money as well as money of the nature described in subrule (2) such cheque or draft shall be dealt with in accordance with rule 5.

(4) Notwithstanding these Rules the Society may upon an application made to them by a legal practitioner specifically authorize him in writing to withhold any client's money from a client's account.

No sums to be transferred from account of one client to that of another

10. No sum shall be transferred from the ledger account of one client to that of another client except in circumstances in which it would have been permissible under these Rules to have withdrawn from client's account the sum transferred from the first client and to have paid into client's account the sum so transferred to the second client.

Books and accounts

11.—(1) Every legal practitioner shall at all times keep properly written up such books and accounts as may be necessary—

(*a*) to show all his dealings with—

(i) client's money held or received or paid by him; and

(ii) any other money dealt with by him through a client's account, and

(*b*) to distinguish such money held, received or paid by him on account of each separate client and to distinguish such money from other money held, received, or paid by him on any other account.

(2) Every legal practitioner shall preserve for at least six years from the date of the last entry therein all accounts, books, ledgers or records kept by him under this rule.

Production of books and accounts on request of Society

12.—(1) In order to ascertain whether these Rules have been complied with, the Society, acting either—

(*a*) on their own motion; or

(*b*) on a written complaint lodged with them by a third party,

may require any legal practitioner to produce at a time and place to be fixed by the Committee his books of account, bank pass books, loose leaf bank statements, statements of account, vouchers and any other necessary documents for the inspection by the Committee and shall be directed to prepare for the

information of the Committee a report on the result of such inspection.

(2) Upon being required so to do a legal practitioner shall produce such books of account, bank pass books, loose leaf bank statements, statements of accounts, vouchers and documents at the time and place fixed.

(3) Before instituting an inspection on a written complaint lodged with them by a third party the Committee shall require prima facie evidence that a ground of complaint exists, and may require the payment by such party to the Committee of a reasonable sum to be fixed by them to cover the costs of the inspection, and the costs of the legal practitioner against whom the complaint is made. The Committee may deal with any sum so paid in such manner as they think fit.

Form of requirement of Committee

13. Every requirement to be made by the Committee of a legal practitioner under these Rules shall be made in writing under the hand of the Chairman of the Committee and sent by registered post to the last address of the legal practitioner appearing on the Roll and when so made and sent shall be deemed to have been received by the legal practitioner within one week of the time of posting.

Saving of rights

14. Nothing in these Rules shall deprive a legal practitioner of any recourse or right, whether by way of lien, set-off, counterclaim, charge or otherwise, against money standing to the credit of a client's account.

Right to be heard

15. In any matter referred to in these Rules for decision by the Society any legal practitioner affected shall have the right to be heard but not to vote unless the matter affects all practitioners similarly.

LEGAL PRACTITIONERS PRACTICE RULES

G.N. 232/1967 39/1988

under s. 36

Citation

1. These Rules may be cited as the Legal Practitioners Practice Rules.

Interpretation

2.—(1) In these Rules, unless the context otherwise requires—

"legal practitioner" means a person who has been admitted to practise the profession of the law before the High Court, or before any court subordinate thereto, and whose name has been inscribed upon the Roll; and the expression "legal practitioner" shall include a firm of legal practitioners;

"client" shall mean any person on whose account a legal practitioner holds or receives client's money.

Seeking business by improper means

3. A legal practitioner shall not directly or indirectly apply for or seek instructions for professional business or do or permit in the carrying on of his practice any act or thing which can reasonably be regarded as touting or advertising or as calculated to attract business unfairly.

Undercutting

Sub. Leg. p. 24

4. A legal practitioner shall not hold himself out or allow himself to be held out directly or indirectly and whether or not by name as being prepared to do professional business in contentious matters at less than the scale fixed by Rules of Court and in non-contentious matters at less than the scale of charges (if any) fixed by the Legal Practitioners (Scale and Minimum Charges) Rules or prescribed by any other written law.

Sharing profits with unqualified persons

5. A legal practitioner shall not agree to share with any person not being a legal practitioner or other duly qualified legal agent practising in a country granting similar reciprocal arrangements his profit costs in respect of any business either contentious or non-contentious:

Provided always that—

(*a*) a legal practitioner carrying on practice on his own account may agree to pay an annuity or other sum out of profits to a retired partner or predecessor or the dependants or legal personal representative of a deceased partner or predecessor;

(*b*) a legal practitioner who has agreed in consideration of a salary to do the legal work of an employer who is not a legal practitioner may agree with such employer to set off his profit costs received in respect of contentious business from the opponents of such employer or the costs paid to him as the legal practitioner for such employer by third parties in respect of non-contentious business against—

(i) the salary so paid or payable to him; and

(ii) the reasonable office expenses incurred by such employer in connexion with such legal practitioner (and to the extent of such salary and expenses).

Restrictions on acting in personal injury claims, etc.

6.—(1) A legal practitioner shall not join or act in association with any organization or person (not being a practising legal practitioner) whose business or any part of whose business is to make, support or prosecute (whether by action or otherwise and

whether by a legal practitioner or agent or otherwise) claims arising as a result of death or personal injury including claims under the Workmen's Compensation Act or any statutory modification or re-enactment thereof in such circumstances that such person or organization solicits or receives any payment, gift or benefit in respect of such claims, nor shall a legal practitioner act in respect of any such claim for any client introduced to him by such person or organization. Cap. 55:03

(2) A legal practitioner shall not with regard to any such claim knowingly act for any client introduced or referred to him by any person or organization whose connexion with such client arises from solicitation in respect of the cause of any such claim.

(3) It shall be the duty of a legal practitioner to make reasonable inquiry before accepting instructions in respect of any such claim for the purpose of ascertaining whether the acceptance of such instructions will involve a contravention of subrule (1) or (2).

Supervision of principal office and branch offices G.N. 39/1988

7. A legal practitioner who has established a legal firm, whether as a sole practitioner or in partnership with other legal practitioners, shall ensure that the principal office of his firm and every branch office thereof is, and can at all times be seen to be, properly supervised in accordance with the following minimum requirements, that is to say—

(*a*) that every such office is managed by a legal practitioner who—

(i) holds a currently valid practice certificate; and

(ii) is unconditionally admitted to practise; and

(iii) by reason of proximity of his place of residence, is able to be in regular attendance at that office during the hours it is open to the public;

(*b*) that the staff employed at every such office are so supervised, directed and controlled, and so appear, as to portray to the public a respectable image and the due dignity of the legal profession; and

(*c*) that at every such office there are adequate requisite facilities for consultation with clients and that there is an ample collection of such law books and other reference materials for legal research as will enable the legal practitioner readily to render appropriate professional service to his clients.

LEGAL PRACTITIONERS (ACCOUNTANTS' CERTIFICATES) RULES

G.N. 36/1982
3/1987
116/1988

under s. 44

Citation

1. These Rules may be cited as the Legal Practitioners (Accountants' Certificates) Rules.

Interpretation

2. In these Rules, unless the context otherwise requires—

"accountant" means a person qualified in accordance with the provisions of rule 7 to give an accountant's certificate;

"committee" means the disciplinary committee of the Society constituted under section 37;

"practice year" means the period of twelve months ending on the 31st December in each year;

"public officer" means an officer holding one of the offices to which section 38 (1) applies;

"Secretary" means the Secretary for the time being of the Society;

"Society" means the Malaŵi Law Society.

Accountant's Certificate to be delivered annually to the Society by every legal practitioner

3. Except in the circumstances in which rule 10 applies, every legal practitioner shall once in each practice year deliver to the Society a certificate in accordance with the provisions of these Rules (hereinafter referred to as an "accountant's certificate").

Accounting period for purposes of accountant's certificate

4. Subject to rules 11 and 12, the accounting period for the purposes of an accountant's certificate shall—

(*a*) begin at the expiry of the last preceding accounting period for which an accountant's certificate shall have been delivered;

(*b*) cover a period of not less than twelve months;

(*c*) terminate not more than six months before the date of delivery of the certificate to the Society; and

(*d*) so far as practicable consistently with paragraphs (*a*), (*b*) and (*c*), correspond to a period or consecutive periods for which the accounts of the Legal Practitioner or his firm are ordinarily made up.

Evidence of delivery of accountant's certificate

5. A written notification of receipt or of non-receipt of an accountant's certificate under the hand of the Secretary shall be *prima facie* evidence that a legal practitioner has or has not, as the case may be, delivered to the Society an accountant's certificate.

Certain exceptions where legal practitioner is a public officer

6. Where a legal practitioner is employed as public officer—

(*a*) nothing in these Rules shall apply to him unless he takes out a licence to practise;

(*b*) an accountant's certificate shall not in his case deal with any books, accounts or documents kept by him in the course of his duties as a public officer or by his employer;

(*c*) no examination under rule 8 shall be made of such books, accounts and documents.

Provisions as to the qualification of accountants to prepare and deliver certificates

7.—(1) Subject to this rule, an accountant shall be qualified to prepare and deliver an accountant's certificate only if he is engaged in the practice, in Malaŵi, of the profession of public accountant and is a member of one or more of the following accountancy bodies—

(*a*) the Institute of Chartered Accountants in England and Wales;

(*b*) the Institute of Chartered Accountants of Scotland; G.N. 3/1987, 116/1988

(*c*) the Institute of Chartered Accountants in Ireland;

(*d*) the Institute of Chartered Accountants of South Africa;

(*e*) the Chartered Association of Certified Accountants; G.N. 116/1988

(*f*) the Chartered Institute of Management Accountants;

(*g*) the Malaŵi Accountants Board; G.N. 3/1987

(*h*) the Institute of Chartered Accountants, India;

(*i*) the Institute of Chartered Accountants, Sri Lanka;

(*j*) the Institute of Chartered Accountants, Zimbabwe;

(*k*) the Institute of Chartered Accountants, Australia;

(*l*) the Australian Society of Accountants;

(*m*) the American Institute of Certified Public Accountants.

(2) Subject to rule 14, an accountant's certificate shall not be accepted by the Society if given by an accountant who either has been at any time during the accounting period, or subsequently, before giving the certificate, has become a clerk or servant of the legal practitioner to whom the certificate relates or of any partner of such legal practitioner.

(3) If the committee is satisfied that a legal practitioner has not complied with the Legal Practitioners' Accounts Rules in respect of matters not specified in an account's certificate and that the Cap. 3:04, sub. leg. p. 22c

accountant concerned was negligent in giving such certificate, the Committee may require the Secretary to give notice to the accountant that accountant's certificates signed by him after a date to be specified in the notice will not be accepted for the purposes of these Rules, and after the accountant shall have been so notified, unless and until the notice has been withdrawn by a further notice given by the Secretary on the instructions of the committee, an accountant's certificate so signed by that accountant shall not be accepted by the Society for the purposes of these Rules:

Provided that, before requiring the Secretary to act, the committee shall have furnished a reasonable opportunity for the giving of any observations or explanations by the accountancy body of which he is a member and shall have given any such observations or explanations due consideration.

Details of work to be done by accountant

8.—(1) With a view to the signing of an accountant's certificate, an accountant shall not be required to do more than carry out the following examination—

(*a*) make a general test of the accuracy of the books of account of the legal practitioner;

(*b*) ascertain whether any client's account is kept;

(*c*) make a general test of the accuracy of the bank passbooks and statements kept in relation to the legal practitioner's practice;

(*d*) make a comparison as at not fewer than two dates, selected by the accountant, between—

(i) the liabilities of the legal practitioner to his clients as shown by his books of account; and

(ii) the balances standing to the credit of the relevant client's account; and

(*e*) obtain such information and explanations as he may consider necessary for the purposes of the requirements of paragraphs (*a*) to (*d*) inclusive.

Cap. 3:04, sub. leg. p. 22c

(2) If, after making the examination required by subrule (1), it appears to the accountant that there is evidence of any breach of the Legal Practitioners' Accounts Rules, he shall make such further examination as may be necessary to enable him to sign the accountant's certificate, and if, after making such further examination, or if for any other reason, he feels unable to sign the certificate, he shall notify the Secretary in writing stating in detail his reasons.

Form of certificate

9. An accountant's certificate delivered by a legal practitioner under these Rules shall be in the form set out in the Schedule.

Delivery of certificate unnecessary in certain cases

10. The delivery of an accountant's certificate is unnecessary, and the committee shall not require evidence of that fact, in the case of any legal practitioner who—

(*a*) holds, or who in the immediately preceding practice year was holding, his first licence to practise; or

(*b*) after having ceased for twelve months or more to hold a licence to practise, holds his next licence to practise; or

(*c*) has ceased to be the holder of a licence to practise and has delivered an accountant's certificate in respect of the accounting period ending on the date upon which he ceased to hold or receive client's money; or

(*d*) has not at any time since the commencement of these Rules held a licence to practise;

(*e*) has not at any time since the commencement of these Rules held or received client's money;

(*f*) either has been admitted to practise in pursuance of section 12 (3), or is an *ex officio* legal practitioner or is deemed to be a legal practitioner under section 38.

Transitional provisions

11. The accounting period specified in an accountant's certificate delivered during the practice year commencing on the 1st January, 1982; shall begin—

(*a*) on the date to which the legal practitioner's books were last made up before the 1st January, 1982; or

(*b*) if the books were not made up during the practice year beginning on the 1st January, 1981, on either the 1st January, 1981, or the day upon which the legal practitioner first began or began again to hold or receive client's money, whichever is the later, and shall cover a period not less than six months or, in the case of a legal practitioner retiring from practice who has ceased to hold or receive client's money after the 31st December, 1980, the period up to the date upon which he so ceased.

Special accounting periods

12.—(1) In any practice year commencing on or after the 1st January, 1983—

(*a*) where a legal practitioner—

(i) becomes under an obligation to deliver his first accountant's certificate; or

(ii) having been exempt by reason of rule 10 from the necessity of delivering an accountant's certificate in the immediately preceding practice year, becomes under an obligation to deliver an accountant's certificate,

the accounting period shall begin on the date upon which he commenced to hold or receive client's money, and may cover a

period less than twelve months, but shall in all other respects comply with the requirements of rule 4; and

(*b*) where a legal practitioner retires from practice and he, having ceased to hold or receive client's money, is under an obligation to deliver his final accountant's certificate, the accounting period shall end on the date upon which he ceased to hold or receive client's money and may cover a period less than twelve months, but shall in all other respects comply with the requirements of rule 4.

(2) In any practice year commencing on or after the 1st January, 1983, where a legal practitioner—

(*a*) was not exempt by reason of rule 10 from delivering an accountant's certificate in the immediately preceding practice year; and

(*b*) since the end of the accounting period covered by such accountant's certificate, has become or ceased to be a member of a firm of legal practitioners,

the accounting period may cover a period less than twelve months but shall in all other respects comply with the requirements of rule 4.

(3) Where a legal practitioner has two or more places of business—

(*a*) a separate accounting period covered by a separate accountant's certificate may be adopted in respect of each place of business so long as each accounting period complies with the relevant requirements of these Rules;

(*b*) every accountant's certificate delivered by him to the Secretary in each practice year shall cover all client's moneys held or received by him during the appropriate accounting period.

13. Every notice given by the Secretary under rule 7 (3) or 14 shall be in writing and signed by him. Notices

14. The committee shall have power in any particular case, by notice given by the Secretary, to waive any of the requirements of these Rules other than those of rule 7 (3). Waiver

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SCHEDULE reg. 9

ACCOUNTANT'S CERTIFICATE

NOTE—*In the case of a firm with a number of partners, carbon copies of this certificate may be delivered if paragraph 1 below has been completed on each copy with the name of the partner to whom it relates.*

1. Legal practitioner's full name .....
2. Name of firm (if any) .....

3. Business address .....

.....

.....

4. Accounting period(s) .....

In compliance with the Legal Practitioners (Accountants' Certificate) Rules, I ..... have examined the books, accounts and documents produced to me relating to the above-named and I hereby certify that from my examination and from the explanations and information given to me pursuant to rule 8, I am satisfied that—*

*(*a*) during the accounting period(s) specified above he has complied with the provisions of the Legal Practitioners' Accounts Rules except so far as concerns—

(i) any trivial breach thereof due to clerical errors or mistakes in bookkeeping duly rectified after discovery which I am satisfied has not resulted in any loss to a client;

(ii) any matters set out on the reverse side of this certificate;

*(*b*) having retired from practice as a legal practitioner on the ..... 19..... the said ..... ceased to hold client's money on the ..... 19.....

Particulars of the Accountant certifying—

Full name .....

Qualifications .....

Name of firm (if any) .....

Address .....

Signature .....

Date ....., 19.....

To the Secretary,
Malaŵi Law Society

** Delete paragraph not applicable.*

NOTE

The following Rules owe their continued validity to section 5 of the Republic of Malaŵi (Constitution) Act. Though not deemed to be made under the Legal Education and Legal Practitioners Act, these Rules are published here because they fall within the ambit of the rule-making power conferred by section 44 of this Act.

LEGAL PRACTITIONERS (SCALE AND MINIMUM CHARGES) RULES

G.N. 99/1955
123/1957
21/1962
74/1984
83/1984
134/1987
78/1989
49/1999
6/2002

made under article 22 *of the British Central Africa Order in Council, 1902* (*now repealed*) *and continued in operation by section 5 of the Republic of Malaŵi (Constitution) Act*

Citation

1. These Rules may be cited as the Legal Practitioners (Scale and Minimum Charges) Rules.

Tariff of fees
G.N. 134/1987

2. The charge for any services specified in the First Schedule and performed by a legal practitioner after the coming into operation of these Rules shall be in accordance with the tariff of fees prescribed in that Schedule.

Concessionary scale charges
G.N. 134/1987

3. Where a legal practitioner performs the services specified in the First Column of the Second Schedule acting for and on behalf of a client specified in the Second Column of that Schedule in relation to, or for the purposes of, a project or scheme of national interest specified in the Third Column of that Schedule, the charges payable to the legal practitioner shall be the corresponding charges specified in the Fourth Column of that Schedule.

FIRST SCHEDULE

G.N. 74/1987
83/1984
134/1987
49/1999
6/2002

PART I

Scale Charges (Excluding Disbursements) to be Made by Legal Practitioners

Table 1

Nature of Work	*Scale Charges*
Scale, Purchases, first and subsequent Mortgages (including Debentures and further charges), Leases (including Rights of Occupancy and Subleases), Agreements for Leases (including Agreements for Rights of Occupancy and Agreements for Subleases) when no further document is to be executed, and Tenancy Agreements other than Leases, Agreements for Leases and Tenancy Agreements.	The Scale Charges as prescribed below plus where applicable— (1) negotiation fees of 2 per cent of the amount involved; and (2) K500 stamping and registration of each document: Provided that when acting for both parties the charge shall be Scale Charge when acting for the Vendor, Mortgagor, Lessor or Landlord, as the case may be, plus 50 per cent, where applicable— (1) negotiation fees of 2 per cent of the amount involved; and (2) K500 stamping and registration of each document— (*a*) for acting for one party in matters other than those specified in subparagraph (*b*) below—

Nature of Work	*Scale Charges*	
	(i) where the consideration does not exceed K50,000	K5,000
	(ii) where the consideration exceeds K50,000 but does not exceed K500,000. .	K5,000 plus 2 per cent of the consideration
	(iii) where the consideration exceeds K500,000 but does not exceed K1,000,000	K10,000 plus 1½ per cent of the considetion
	(iv) where the consideration exceeds K1,000,000 but does not exceed K5,000,000	K15,000 plus 1 per cent of the consideration
	(v) where the consideration exceeds K5,000,000. .	K25,000 plus 1 per cent of the consideration
	(*b*) for acting for one party in the case of Leases (including Rights of Occupancy and Subleases, Agreements for Rights of Occupancy and Agreements for Subleases), when no further document is to be executed, and Tenancy Agreements other than Leases, Agreements for Leases and Tenancy Agreements	K5,200 plus 3 per cent of annual rent.

TABLE 2

Reconveyance of Mortgage where acting for one party or both parties and chargeable only by the Mortgagor's Legal Practitioners, the Mortgagor not being liable for any charges of the Mortgagee's Legal Practitioners	(1) K2,500 or 10 per cent of the amount involved subject to a maximum of K7,500. (2) plus in each case, where applicable K500, for stamping and registration of the Reconveyance.

TABLE 3

Equitable Charges and Equitable Further Charges	K2,500 or 10 per cent of the amount secured subject to a maximum charge of K7,500.

Nature of Work	*Scale Charges*	
	TABLE 4	
Releases of Equitable Charges and Releases of Equitable Further Charges	K2,500 or 10 per cent of the amount secured subject to a maximum of K7,500.	
	TABLE 5	
Deeds of Arrangement requiring registration under the Deeds of Arrangement Act, including all incidental work	If the total estimated amount of the Debtor's property included in the Deed, as sworn to in pursuance of section 7 of the Act—	
	(*a*) does not exceed K500,000	K7,500
	(*b*) exceed K500,000	K7,500 plus 3 per cent of such total estimated amount in excess of K500,000.
	TABLE 6	
Collection of Monies, Solicitor and own client charge on collecting monies to be charged on receipt of monies:	If the amount collected—	
	(*a*) does not exceed K1,000	K200
	(*b*) exceeds K1,000 but does not exceed K5,000 . .	K300
	(*c*) exceeds K5,000 but does not exceed K10,000. .	K500
	(*d*) exceeds K10,000 but does not exceed K20,000 . .	K2,000
	(*e*) exceeds K20,000 but does not exceed K50,000 . .	K3,500
	(*f*) exceeds K50,000 but does not exceed K100,000. .	K5,000
	(*g*) exceeds K100,000 but does not exceed K500,000	15 % on the amount collected
	(*h*) exceeds K500,000 . .	15 % on the first K500,000, then 10 % on the next K1,000,000, and 3 % on the balance collected.
Provided that where proceedings are commenced the percentage may only be charged on the amount up to the date of commencement of such proceedings. Where proceedings are commenced Solicitor may charge Solicitor and own client charges in addition to party and party but, subject to any special agreement between Solicitor and client not on a percentage basis . .		
	TABLE 7	
Trade Marks, Patents and Designs	Such charges as may be prescribed in the Tariff of Charges for the time being in force of the Council of Institute of Patent Agents (Malaŵi).	

	Nature of Work	*Scale Charges*	
		TABLE 8	
	Probate and administration of deceased person's Estates including all work done in order to obtain and obtaining the issue of a grant including completion of assessment of gross value and obtaining final discharge from Estate Duty Commissioners ..	5 per cent of the gross value of the property.	
		TABLE 9	
	Attending to the stamping of any document at the Registrar General's Office	K500 to be made in addition to any other charges prescribed hereunder.	
		TABLE 10	
	Attending to the stamping and registration of any document ..	K500 to be made in addition to any other charges prescribed hereunder.	
		TABLE 11	
	Formation of Companies to include all work up to date of Certificate of Incorporation except such work as is included in other Tables in this Schedule	Minimum charge of K5,000 for any company that does not exceed K10,000 nominal capital plus 5 per cent the nominal capital if it exceeds K10,000.	
		TABLE 12	
	Application for Naturalization ..	K2,500 provided that if husband and wife are applying simultaneously then K3,000 to cover both applicants.	
		TABLE 13	
Cap. 46:02	Registration of particulars under the Business Names Registration Act	(1) Registration of new Application	K1,250
		(2) Registration of Cessation of Business	K1,000
		(3) Registration of change in Particulars	K1,000
		TABLE 14	
	Applicant for Passports	If first application for or renewal of a Passport	K500
		TABLE 15	
Cap. 48:03	Bill of Sale (other than Absolute Bills of Sale) requiring registration under the Bills of Sale Act, including attending to registration, attending to stamping and incidental matters ..	The Scale prescribed under Table 1.	
		TABLE 16	
	Conveyance of Assignments by deed of any property by way of gift ..	The Scale prescribed under Table 1.	

PART II

MINIMUM PROFESSIONAL CHARGES (EXCLUDING DISBURSEMENTS) TO BE MADE BY LEGAL PRACTITIONERS

TABLE 1

Nature of Work	*Minimum Charge*
Initial Partnership Deeds and Initial Partnership Agreements	K5,000 plus K250 for attending to stamping at Registrar General's Office where applicable.

TABLE 2

Powers of Attorney under Seal	K2,500 plus K500 for attending to stamping and registration or K250 for attending to the stamping only, where applicable.

TABLE 3

Employment Agreements	K5,000

PART III

General Guidelines on Legal Costs

1. Wherever scale charges are not applicable, the legal practitioner can charge such sum as may be fair and reasonable having regard to all the circumstances of the case and in particular to—

(*a*) the complexity of the matter or the difficulty or novelty of the questions raised;

(*b*) where money or property is involved, its amount or value;

(c) the importance of the matter to the client;

(*d*) the skill, labour, specialized knowledge and responsibility involved therein on the part of the legal practitioner;

(*e*) the number and importance of the documents prepared or perused, without regard to length;

(f) the place where the circumstances in which the business or any part thereof is transacted; and

(*g*) the time expended by the legal practitioner.

2. The client may apply to the Taxing Master for taxation of costs.

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reg. 3

SECOND SCHEDULE

G.N. 134/1987
78/1989

CONCESSIONARY SCALE CHARGES (EXCLUDING DISBURSEMENTS) TO BE MADE BY LEGAL PRACTITIONERS

Nature of Services	*Client*	*Project or Scheme*	*Charges*
Preparation of mortgage documents and deeds of appointment of receiver	The New Building Society The Malaŵi Housing Corporation	The Urban Housing Project authorized under the International Development Association (Urban Housing Project) Loan (Authorization) Act, 1984 (No. 23 of 1984)	Where the sum advanced— (*a*) does not exceed K10,000 K75; (*b*) exceeds K10,000 K100

SHERIFFS

CHAPTER 3:05

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CHAPTER 3:05

SHERIFFS

ARRANGEMENT OF SECTIONS

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Preliminary

SECTION

1. Short title
2. Interpretation

PART II

Appointment of Sheriff and other Officers

3. Appointment of Sheriff, Under-Sheriff and Assistant Sheriffs
4. Sheriff, etc., to be officers of court and they and persons acting under their directions or authority deemed employed in public service
5. Delegation of duties

PART III

Enforcement of Judgments and Orders against Movable Property and Committals, etc.

6. Execution of judgments or orders for sum of money
7. Execution of orders for payment by instalments
8. Execution to be superseded on payment
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10. Execution of warrants of possession
11. Property which may be seized
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16. Sales under execution to be published unless otherwise ordered
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18. Priority of warrants
19. Sales, the title obtained thereat and prohibition of certain purchases
20. Claims to property seized and interpleader by Sheriff
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22. Surplus after sale, residue of property, etc.
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24. Issue and execution of orders of committal

PART IV

Enforcement of Judgments against Private Land not Registered in the Lands Register

SECTION

25. Application of Part
26. Judgment creditor to file affidavit
27. Memorandum of approval by Registrar
28. Registration in Deeds Registry Office
29. Effect of registration
30. Execution of judgments of subordinate courts against land
31. Satisfaction of judgment
32. Order for sale
33. Notice of application
34. Powers of High Court in regard to sale
35. Application for stay
36. Land to be sold by public auction
37. Movable property to be first proceeded against
38. Protection of officers
39. Appeal from Deeds Registrar or Registrar

PART V

Enforcement of Judgments Against Land Registered in the Lands Register

40. Application of Part
41. Inhibition order against registered land, etc.
42. Order for sale of registered land, etc.
43. Application of sections 33, 34, 35 and 36 to sales, etc., under this Part

PART VI

Miscellaneous

44. Indemnity of Sheriff, etc.
45. Appearances by Sheriff and costs against Sheriff
46. Sheriff's powers of entry, search, etc.
47. Rules
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50. Saving

CHAPTER 3:05

SHERIFFS

An Act to make provision for the appointment of Sheriffs and other officers, to set out their respective powers and duties and the manner of the exercise thereof, and for matters incidental thereto 38 of 1967 22 of 1988

[1st February, 1968]

PART I

Preliminary

1. This Act may be cited as the Sheriffs Act. Short title

2. In this Act, unless the context otherwise requires— Interpretation 22 of 1988

"court" means the High Court and a subordinate court;

"judgment debtor" means a person liable under a judgment;

"process" means a formal written authority issued by a court for the enforcement of a judgment and includes a warrant of possession and any warrant or order of arrest, commitment or imprisonment;

"Sheriff" includes the Sheriff of Malaŵi appointed under section 3 (1), any Deputy Sheriff, any Under-Sheriff and any Assistant Sheriff appointed under section 3 (2); 22 of 1988

"subordinate court" bears the meaning ascribed to that term by section 2 of the Courts Act; Cap. 3:02

"warrant" includes writ.

PART II

Appointment of Sheriff and other Officers

3.—(1) The President may appoint a person to be Sheriff of Malaŵi. Appointment of Sheriff, Deputy Sheriff, Under-Sheriff and Assistant Sheriffs

(2) The President may appoint one or more persons to be Deputy Sheriffs or to be Under-Sheriffs and as many persons as he deems necessary to be Assistant Sheriffs.

(3) In the exercise of his powers and in the performance of his duties under this Act, a Deputy Sheriff, an Under-Sheriff and an Assistant Sheriff shall be subject to any general or special directions of the Sheriff. A Deputy Sheriff, an Under-Sheriff and an Assistant Sheriff shall have the same powers and protection as the Sheriff. 22 of 1988

(4) Unless and until other appointments are made to such offices under this section—

(*a*) the Registrar of the High Court shall be the Sheriff; and

(*b*) each District Commissioner shall be an Assistant Sheriff.

Sheriff, etc., to be officers of court and they and persons acting under their directions or authority deemed employed in public service Cap. 7:01 22 of 1988

4.—(1) The Sheriff, a Deputy Sheriff, an Under-Sheriff and an Assistant Sheriff shall, in the performance of his duties in connection with any process, be an officer of the court by which such process was issued.

(2) The Sheriff, a Deputy Sheriff, an Under-Sheriff, an Assistant Sheriff and any person acting under the directions or authority of any of them shall for the purposes of the Penal Code be deemed to be persons employed in the public service.

Delegation of duties

5. Every duty of the Sheriff in connexion with any process may be performed by such police officer or other person as may be authorized in that behalf by the Sheriff and every such officer or person who is in possession of such process shall be presumed to be so authorized, and shall, for all purposes connected therewith, be an officer of the court by which such process was issued:

Provided however that without the prior approval of the Commissioner of Police the Sheriff shall not authorize a police officer to perform any duty under a civil process involving the seizure and sale of any moveable property.

PART III

Enforcement of Judgments and Orders against Moveable Property and Committals, etc.

Execution of judgments or orders for sum of money

6.—(1) Any sum of money payable under a judgment of a court may be recovered, in case of default or failure of payment thereof forthwith or at the time or times and in the manner thereby directed, by seizure and sale of the moveable and immoveable property of the judgment debtor in accordance with this Act.

(2) The court on the application in the prescribed manner of the judgment creditor shall cause to be issued a warrant of seizure and sale whereby the Sheriff shall be empowered to seize and sell the moveable property of the judgment debtor, wherever it may be found in Malaŵi, to enforce payment of the amount due under the judgment and of the costs of the execution.

(3) The precise time of the making of an application to the court for the issue of a warrant shall be entered by it in the book

prescribed for the purpose and on the warrant, and when more than one such warrant is issued they shall be executed in the order of the times so entered.

Execution of orders for payment by instalments

7.—(1) Where a court has made an order for payment of any sum of money by instalments, no warrant of execution for the enforcement of the judgment shall be issued until after the default in payment of some instalment according to the order.

(2) On any such default, execution or successive executions may issue for the whole of the said sum of money and costs then remaining unpaid, or for such part thereof as the court may order, either at the time of making the original order or at any subsequent time.

Execution to be superseded on payment

8.—(1) In or upon every warrant of seizure and sale of the property of any person, the court shall cause to be inserted or endorsed the sum of money and costs adjudged, and the fees for the execution of the warrant.

(2) If the judgment debtor, before the actual sale of the property, pays or causes to be paid or tendered to the court from which the warrant issued, or to the Sheriff holding the warrant, the sum of money and costs inserted or endorsed as aforesaid, or such part thereof as the judgment creditor agrees to accept in full satisfaction, together with the fees inserted or endorsed as aforesaid, the execution shall be superseded, and the property of the judgment debtor shall be discharged and set at liberty.

Power to suspend execution

9. If at any time upon an inquiry made on the application of the judgment debtor, wherein the onus of proof shall be upon him, it appears to the satisfaction of the court that the judgment debtor has made a full surrender and disclosure of his property in the prescribed manner, and that he is unable because of unavoidable misfortune to satisfy the judgment, and that he has not been guilty of any misconduct cognisable by the court, and that his property ought to be released from attachment, the court may, in its discretion, stay any warrant of execution issued in the proceedings for such time and upon such terms as the court thinks fit, and so from time to time until it appears that the cause of inability has ceased.

Execution of warrants of possession

10. For the purpose of executing a warrant to give possession of any premises, it shall not be necessary to remove any movable property from those premises.

Property which may be seized

11.—(1) The Sheriff executing any warrant of execution issued from a court against the movable property of any person may by virtue thereof seize—

(*a*) any of the movable property of that person, except the wearing apparel and bedding to the value of fifteen pounds of that person or his family, the tools and implements of his trade, to the value of ten pounds, and the food of that person or his family to the value of ten pounds, which shall to that extent be protected from seizure; and

(*b*) any money, bank notes, bills of exchange, promissory notes, bonds, specialties or securities for money belonging to that person.

(2) The Sheriff shall become the special owner of movable property upon its being seized by him under this Act.

Custody of property seized

12. Movable property seized in execution under process of a court shall until the sale thereof—

(*a*) be deposited by the Sheriff in some fit place; or

(*b*) remain in the custody of a fit person approved by the Sheriff; or

(*c*) be safeguarded in such other manner as the Sheriff directs.

Disposal of bills of exchange, etc., seized

13. The Sheriff shall hold any bills of exchange, promissory notes, bonds, specialties or other securities for money seized in execution under process of a court as security for the amount due by the judgment debtor for the benefit of the judgment creditor, and the judgment creditor may sue in the name of the judgment debtor, or in the name of any person in whose name the judgment debtor might have sued, for the recovery of the sum secured or made payable thereby, when the time of payment thereof arrives.

Penalty for obstructing execution

14. If any person rescues or attempts to rescue any property seized in execution under process of a court or in any other way resists or obstructs the execution of any process for the enforcement of a judgment of a court, he shall be liable to a fine of £100, and the Sheriff may take him into custody with or without warrant, and bring him before the court.

Period to elapse before sale

15.—(1) No movable property seized in execution under process of a court shall be sold for the purpose of satisfying the warrant of execution until the expiration of a period of at least ten days next following the day on which the property has been so seized unless—

(*a*) the property is of a perishable nature; or

(*b*) the person whose property has been seized so requests in writing:

Provided that—

(*a*) the Sheriff may, if he is unable from want of time to complete the sale, adjourn the same for a period of not more than three days, and so on as often as may be necessary;

(*b*) the court may, if it thinks fit, direct that the sale shall be postponed for any time not exceeding twenty-eight days after the seizure.

(2) Subject to any directions of the court, movable property seized shall be set up for sale at such place as the Sheriff shall consider appropriate. Every such sale shall take place between the hours of seven o'clock in the morning and eight o'clock in the evening, and everything set up for sale shall be knocked down to the highest bidder for ready money.

(3) Notice of the day and hour of sale of any property seized shall be published four days at least before the day of such sale, by being posted upon the door of the court house nearest the place in which the seizure is made and where the sale is to take place at some other place, then at that other place also, and if the court so directs in a newspaper published in Malaŵi.

Sales under execution to be published unless otherwise ordered

16.—(1) Where any property is to be sold under a warrant for a sum exceeding twenty pounds, including proper incidental expenses, the sale shall, unless the court from which the warrant issued otherwise orders, be made by public auction, and shall be publicly advertised by the Sheriff on the day of sale and the three next preceding days.

(2) Where any property is seized in execution and the court has notice of another execution or other executions, the court shall not consider an application for leave to sell privately until the prescribed notice has been given to the other execution creditor or creditors, who may appear before the court and be heard on the application.

(3) If a person who holds a valid auctioneer's licence under the Businesses Licensing Act sells by public auction any movable property attached on the instructions of the Sheriff, the Sheriff may pay such person his charges for the sale and such payment shall be a first charge on the proceeds of the sale.

Cap. 46:01

Delivery of movable property in possession of judgment debtor

17. Where the property sold shall consist of movable property in the possession of the judgment debtor, or to the immediate possession of which the judgment debtor is entitled, and of which actual seizure has been made, the property shall be delivered to the purchaser.

Priority of warrants

18. When warrants against the property of any person have been issued from more than one court, the right to the proceeds of the property seized shall, subject to section 43 of the Bankruptcy Act, be determined according to the order of priority of

Cap. 11:01

the respective times of application to the courts for the issue of the warrants.

Sales, the title obtained thereat and prohibition of certain purchases

Cap. 11:01

19.—(1) Where any movable property in the possession of a judgment debtor at the time of seizure by the Sheriff is sold by the Sheriff without any claim having been made to the same, the purchaser of the property so sold shall have a good title to the property so sold and no person shall be entitled to recover against the Sheriff or anyone lawfully acting under his authority except as provided by the Bankruptcy Act for any sale of such property or for paying over the proceeds thereof unless it is proved that the person from whom recovery is sought had notice or might by making reasonable inquiry have ascertained that the property was not the property of the judgment debtor:

Provided that nothing in this section contained shall affect the right of any claimant who may prove that at the time of the sale he had a title to any property so seized and sold to any remedy to which he may be entitled against any person other than such purchaser, Sheriff or person lawfully acting under the authority of the Sheriff.

(2) Neither the Sheriff nor any police officer or other person acting under the directions, authority or instructions of any Sheriff in connection with the seizure or sale of any property seized under any process shall himself, or by any other person on his behalf, purchase such property at such sale.

Claims to property seized and interpleader by Sheriff

20.—(1) If a person (hereinafter in this section referred to as the claimant) claims any movable property seized in execution under any process, or the proceeds or value thereof, he shall first give notice in writing thereof to the Sheriff in such form, if any, as may be prescribed. The Sheriff shall thereupon serve copies of such notice in the manner prescribed for the service of any document of the court out of which the process issued upon the execution creditor and upon any other person he considers to be interested in the property.

(2) The Sheriff shall hold the property claimed for 14 days from the date upon which the last person was served with a copy of the claim under subsection (1) and if such claim is not disputed by any of the persons upon whom copies of the claimant's notice have been so served within such 14 days the Sheriff may deliver the property in question to the claimant.

(3) If the claimant's claim is disputed, the person disputing it shall give notice in writing in such form, if any, as may be prescribed to the Sheriff, who shall forthwith apply to the court from which the process was issued and such court shall issue a summons calling before the court the party at whose instance the process issued and the claimant.

(4) Upon the issue of the summons, any action brought in any court in respect of the claim or of any damage arising out of the execution of the warrant shall be stayed.

(5) On the hearing of the summons, the court shall adjudicate upon the claim, and shall also adjudicate between the parties or either of them and the Sheriff upon any claim to damages arising or capable of arising out of the execution of the warrant by the Sheriff, and shall make such order in respect of any such claim and the costs of the proceedings as it thinks fit.

Claims for rent where property seized in execution

21.—(1) The landlord of premises in which any property is seized may claim the rent of the premises in arrear at the date of the seizure, at any time within five days next following that date, or before the removal of the property, by delivering to the Sheriff making the seizure a claim in writing, signed by himself or his agent, stating—

(*a*) the amount of the rent claimed to be in arrear; and

(*b*) the period in respect of which the rent is due.

(2) Where such a claim is made, the Sheriff making the seizure shall in addition thereto distrain for the rent so claimed and the cost of the distress, and shall not within five days next after the distress, sell any part of the property seized, unless—

(*a*) the property is of a perishable nature; or

(*b*) the person whose property has been seized so requests in writing.

(3) The Sheriff shall afterwards sell under the execution and distress such of the property as will satisfy—

(*a*) first, the costs of and incidental to the sale;

(*b*) next, the claim of the landlord not exceeding—

(i) in a case where the tenement is let by the week, four weeks' rent;

(ii) in a case where the tenement is let for any other term less than a year, the rent of two terms of payment;

(iii) in any other case, one year's rent; and

(*c*) lastly, the amount for which the warrant of execution issued.

(4) The fees of the court and Sheriff for keeping possession and sale under any such distress shall be the same as would have been payable if the distress had been an execution of the court, and no other fees shall be demanded or taken in respect thereof.

Surplus after sale, residue of property, etc.

22. Any surplus of a sale by a Sheriff under this Act, and any residue of property seized shall be returned to the judgment debtor.

Property subject to lien

23. Where the property sold shall consist of movable property to which the judgment debtor is entitled, subject to a lien or right of any person to the immediate possession thereof, the delivery to the purchaser shall, as far as practicable, be made by the Sheriff giving notice to the person in possession prohibiting him from delivering possession of the property to any person except the purchaser thereof.

Issue and execution of orders of committal

24.—(1) Whenever any order or warrant for the committal of any person to prison is made or issued by a court, in any civil proceeding, whether in pursuance of this or any other written law or of rules of court made under this Act, the order or warrant shall be directed to the Sheriff, who shall thereby be empowered to take the body of the person against whom the order is made or warrant issued, and deliver him to the officer in charge of the prison mentioned in the order or warrant.

(2) The officer in charge of the prison mentioned in any such order or warrant shall be bound to receive and keep the person therein mentioned until he is lawfully discharged.

PART IV

Enforcement of Judgments against Private Land not Registered in the Lands Register

Application of Part

Cap. 58:01

25. This Part shall apply to the enforcement of judgments against private land other than land registered in accordance with the Registered Land Act. Such enforcement shall be effected in the manner provided for in this Part and not otherwise.

Judgment creditor to file affidavit

26.—(1) Where any judgment shall be entered in the High Court it shall be lawful for the judgment creditor at any time within six years of the date of such judgment (or after the expiration of six years with special leave of the High Court) to file with the Registrar an affidavit containing the following averments—

(*a*) the name or title of the cause or matter;

(*b*) the date of judgment;

(*c*) that full execution has been levied against the movable property of the debtor;

(*d*) full particulars of the amount of the debt and interest with which the lands are sought to be charged;

(*e*) the full name, address and description of the debtor;

Cap. 58:01

(*f*) that the debtor is seized or possessed of private land in Malaŵi other than land registered in accordance with the Registered Land Act, or that he has a disposing power capable of uncontrolled exercise in his own favour over such lands;

(*g*) a description of such lands sufficient for their proper identification, and reference to the dates and deed numbers under which the title deeds to the said lands are registered in the Deeds Registry Office.

(2) An affidavit filed under this section shall be chargeable with the stamp duty chargeable upon a mortgage of lands for the same sum as that specified in the affidavit under subsection (1) (*d*).

Memorandum of approval by Registrar

27. Upon the filing of an affidavit under section 26, the Registrar shall examine the affidavit, and if the same be regular and contain all that is required by section 26 he shall endorse a memorandum of approval thereon.

Registration in Deeds Registry Office

Cap. 58:02

28. It shall then be lawful for the judgment creditor who has sworn and filed such affidavit to register the same in the Deeds Registry Office by presenting to the Deeds Registrar an office copy of such affidavit authenticated by the Registrar, and such copy shall be registered under and be subject to the Deeds Registration Act.

Effect of registration

29. The registration of any such affidavit as aforesaid shall operate to vest in the judgment creditor registering such affidavit all the judgment debtor's estate and interest in the lands specified in such affidavit, subject to all such equities as may belong to other persons and subject to the judgment debtor's equity of redemption.

Execution of judgments of subordinate courts against land

30. No execution against land shall issue direct upon a judgment obtained in a subordinate court, but on the application of a judgment creditor on notice to the judgment debtor a judge shall have power to order that such subordinate court judgment be removed and entered as a High Court judgment, whereupon, for the purposes of this Part, such judgment shall forthwith be deemed to be a judgment of the High Court.

Satisfaction of judgment

31. Whenever satisfaction of a judgment, in respect of which an affidavit has been registered in the Deeds Registry Office, has been entered up by the Registrar, upon production of the Registrar's certificate of satisfaction the Deeds Registrar shall cause a memorandum of satisfaction to be made against the entry of such affidavit in the Deeds Register and such memorandum of satisfaction shall also be endorsed on the certified copy affidavit filed in the Deeds Registry Office; whereupon the lands of the judgment debtor shall become freed and discharged from the charge created by such affidavit and such affidavit shall stand expunged.

Order for sale

32. Where an affidavit has been registered against the lands of a judgment debtor as aforesaid and provided the judgment in

respect of which such affidavit has been registered remains unsatisfied, then the judgment creditor, at any time after the expiration of six months from the date of such registration, may apply to the High Court for an order for the sale of his judgment debtor's interest in so much of the lands specified in the affidavit as may be deemed sufficient to discharge the said judgment and all proper costs, charges and expenses thereunder.

Notice of application

33. Such application shall be by summons on fourteen days' notice to the judgment debtor and to all other parties who appear to be interested in the lands.

Powers of High Court in regard to sale

34. On the hearing of the summons the High Court may direct all such inquiries to be made as to the nature of the debtor's interest and title (or otherwise) as shall appear proper, and, upon any order for sale being made, such sale shall be carried out in all respects in accordance with the directions of the High Court. All applications relating to the sale, subsequent to an order for sale, shall be made to a judge in chambers or otherwise as the judge shall direct.

Application for stay

35. Any person who claims to be interested in any lands for the sale of which an order has been made may apply to the High Court to stay the sale and the High Court may, after hearing all necessary parties, give such directions and make such order as to the High Court shall appear proper and just.

Land to be sold by public auction

36. Every sale of lands in satisfaction of a judgment shall be made by public auction unless the High Court for special reasons shall otherwise direct.

Movable property to be first proceeded against

37. No judgment creditor shall, except by express leave of the High Court, register an affidavit under this Part against the lands of his judgment debtor until he has first endeavoured to recover the amount of his judgment debt by warrant of execution against the movable property of the judgment debtor and such execution has failed by reason of the insufficiency of the movable property seized to discharge the sum due or unless it appears that the judgment debtor has no movable property in his possession.

Protection of officers

38. Neither the Deeds Registrar, nor the Registrar, nor any other person shall be liable to any action, suit or proceeding for or in respect of any act or matter done in good faith or omitted to be done in the exercise, or supposed exercise, of the powers conferred by this Part or in pursuance of any order made under it.

39. Any person aggrieved by any decision of, or anything done or omitted by, the Deeds Registrar or the Registrar under this Part may appeal to a judge in chambers, and such appeal may be disposed of without formal notice of appeal unless the judge shall otherwise direct.

Appeal from Deeds Registrar or Registrar

PART V

Enforcement of Judgments against Land Registered in the Lands Register

40. This Part shall apply to the enforcement of judgments against land registered in the Lands Register under the Registered Land Act, and no other land. Such enforcement shall be effected in the manner provided for in this Part and not otherwise.

Application of Part
Cap. 58:01

41.—(1) Where any judgment shall be entered in the High Court it shall be lawful for the judgment creditor at any time within six years of the date of such judgment (or after the expiration of six years with special leave of the High Court) to apply to the High Court for an order upon such terms as appear to such court to be just under section 123 of the Registered Land Act, inhibiting the registration of any dealing with any land, lease or charge or with any interest in such land, lease or charge registered under the Registered Land Act, of which the judgment debtor is registered as proprietor.

Inhibition order against registered land, etc.

Cap. 58:01

(2) An order under section 123 of the Registered Land Act, may be made notwithstanding that full execution has not been levied against the judgment debtor's movable property.

42. Where a copy of an order under section 123 of the Registered Land Act has been registered in the Land Register and provided that the judgment in respect of which such order has been registered remains unsatisfied, full execution having been levied against any movable property of the judgment debtor, then the judgment creditor at any time after the expiration of six months from the date of such registration, may apply to the High Court for an order for the sale of his judgment debtor's interest in so much of the land, lease or charge specified in such order as may be deemed sufficient to discharge the said judgment and all proper costs, charges and expenses thereunder.

Order for sale of registered land, etc.
Cap. 58:01

Application of sections 33, 34, 35 and 36 to sales, etc., under this Part

43. Sections 33, 34, 35 and 36 shall, with any necessary modifications, apply to the sale of any interest in any land, lease or charge under this Part as they apply to a sale of land under Part IV.

PART VI

Miscellaneous

Indemnity of Sheriff, etc.

44.—(1) The Sheriff, Under-Sheriff, an Assistant Sheriff and a person duly authorized to carry out any duty of any of them in connection with any process shall not be liable to be sued for the proper exercise in manner authorized by law of any process which he is by this Act bound to execute nor shall he be liable by reason only of any want or irregularity in any proceedings in which such process was issued or in the form of such process.

(2) The Sheriff shall not be liable to be sued for any act or omission of any police officer or other person in the service of any document or the execution of any process which shall have been done, or omitted to have been done, or which may have occurred either through disobedience to or neglect of the orders or instructions given by the Sheriff.

(3) In the case of the execution of any process, all steps which may lawfully be taken therein shall be taken on the demand of the party who issued such execution, and such party shall be liable for any damage and costs arising from any irregular or illegal proceeding taken at his instance.

Appearances by Sheriff and costs against Sheriff

45. In any civil proceedings before a court the Sheriff may appear in person or may be represented by a legal practitioner. In no proceedings shall a court order all or any part of the costs thereof to be paid by the Sheriff unless it considers that the claim involved arose, or was resisted, as the case may be, by reason of bad faith on the part of the Sheriff.

Sheriff's powers of entry, search, etc.

46.—(1) In order to execute any process the Sheriff may enter any dwelling-house or other building by means of—

(*a*) an open door or an open window;

(*b*) an open door or an open window which he further opens; or

(*c*) a door or window which he opens by any usual means including the turning of a key or handle, the lifting of a latch or the drawing of a bolt :

Provided however that—

(i) for the purpose of executing a warrant for the arrest of any person or for the seizure of any property the Sheriff

shall not so open a door or window of any dwelling-house of any person other than the person to be arrested or the judgment debtor whose property is to be seized unless he believes on reasonable grounds such person to be arrested or property is within the dwelling-house;

(ii) for the purpose of executing a warrant for the arrest of any person or for the seizure of any property the Sheriff may, if so authorized by an order of the court which issued such warrant, use force to open a door or window of any building other than a dwelling-house or building within the curtilage of a dwelling-house of the person to be arrested or the judgment debtor whose property is to be seized.

(2) Once he has gained lawful entry to any building the Sheriff may for the purpose of executing any process—

(*a*) without prior demand, use any reasonable force and may break open any inner door, cupboard, box, trunk or other container;

(*b*) if thereafter forcibly expelled, without prior demand, use any reasonable force to gain re-entry; and

(*c*) break open any outer door to enable any property seized to be taken away if there is no other means of opening the door or if a demand to open it is refused by the judgment debtor or the person whose building it is.

(3) In this section, "Sheriff" includes any person authorized by him.

Rules

47.—(1) The Chief Justice may make rules—

(*a*) prescribing the forms to be used for the purposes of this Act;

(*b*) prescribing the fees, poundages and allowances which the Sheriff may demand, take and receive;

(*c*) generally for the better carrying out of the purposes of this Act.

(2) Such rules may require the judgment creditor—

(*a*) to make deposits in court to cover the anticipated expenses of attempted execution;

(*b*) to accompany the Sheriff and point out the debtor's property.

Saving of existing forms, fees, etc.

48. All forms prescribed for use in connection with the execution of judgments by a Sheriff, and all fees, poundages and allowances payable to him under any written law in force immediately prior to the commencement of this Act shall, until

amended or varied by rules made under section 47 continue to be used or payable or allowable as if the same had been prescribed or fixed under rules made under section 47.

Partly completed executions

49. Nothing in this Act contained shall invalidate anything done in connection with the execution of any process which has not been completed at the time of the coming into operation of this Act and such execution may be continued and completed in accordance with the law in force immediately prior to such coming into operation or, if the court which issued such process shall so direct in accordance with this Act.

Saving Cap. 12:01

50. Nothing contained in this Act shall in any way affect any of the provisions of the Army Act relating to the execution of processes against officers or soldiers of the Malaŵi Army or their property.

NATIONAL COMPENSATION TRIBUNAL

CHAPTER 3:06

Containing Pages 1–14

CHAPTER 3:06

NATIONAL COMPENSATION TRIBUNAL

ARRANGEMENT OF SECTIONS

SECTION
1. Short title
2. Interpretation
3. Rules of procedure of the Tribunal
4. Members of the Tribunal
5. Deadlines
6. Forms of reparation
7. Oral hearing
8. Oral testimony
9. Reasons for decisions
10. Composition of panels
11. Declaration of suspicion of interest
12. Assessment of loss
13. Categorization of claims
14. Expert guidance
15. Power to amend the Schedule
Schedule

An Act to make miscellaneous provisions for the operational procedures of the National Compensation Tribunal and to provide for matters ancillary thereto or connected therewith 8 of 1995 6 of 1996

[17TH MAY, 1995]

1. This Act may be cited as the National Compensation Tribunal (Miscellaneous Provisions) Act. Short title

2. In this Act, unless the context otherwise requires— Interpretation 6 of 1996

"agent" means a person appointed by a claimant to act on behalf of the claimant;

"claim" means an application by, or on behalf of, a claimant or joint claimants addressed to the Tribunal for an award in respect of a loss or injury;

"claimant" means a person who suffered loss or injury or a person who has at law inherited an entitlement to claim in respect of a loss or injury, and includes a dependant of a claimant and representative, but does not include an agent;

"Fund" means the National Compensation Fund established under section 144 of the Constitution;

"Public Appointments Committee" means the Public Appointments Committee of the National Assembly established under section 56 (7) of the Constitution;

"representative" means—

(*a*) a person through whom a claim is brought by a person beneficially entitled to claim but lacks legal capacity to act; or

(*b*) a person who is authorized to act for another person, including a family unit.

"Tribunal" means the National Compensation Tribunal established under Part XIII of the Constitution.

Rules of Procedures of the Tribunal

3. The procedures of the Tribunal required under section 140 of the Constitution shall be prescribed by the Chief Justice by rules published in the *Gazette*.

Members of the Tribunal
6 of 1996

4.—(1) In addition to the Chairman, there shall be such other members of the Tribunal as the Public Appointments Committee shall, from time to time, appoint on the recommendation of the Chief Justice.

(2) In recommending persons for appointment under subsection (1), the Chief Justice shall act upon requests made to him in that behalf by the Chairman of the Tribunal.

Deadlines
6 of 1996

5.—(1) The Tribunal may prescribe such deadlines as may be required for the expeditious determination of claims or categories of claims, but no final deadlines for the registration of claims or categories of claims shall be fixed upon less than twenty-four months' notice.

(2) The Tribunal shall have the discretion to extend or waive deadlines prescribed under subsection (1) in exceptional circumstances in the interest of justice.

Forms of reparation
6 of 1996

6. The Tribunal shall endeavour to recommend or award one or more forms of reparation to claimants which are most appropriate in the circumstances of the case and to do so in accordance with its rules of procedure. These forms of reparation shall include—

(*a*) formal acknowledgment and apology;

(*b*) medical care;

(*c*) establishment of memorials;

(*d*) job retraining;

(*e*) pensions;

(*f*) restitution of property;

(*g*) bonds, shares and share options;

(*h*) monetary compensation by way of a lump sum or instalments; and

(*i*) negotiated settlements with the Government or any other party in relation to the claim.

Oral hearing
6 of 1996

7. Subject to section 8, claims shall be determined on the basis of written submissions unless the Tribunal grants leave to

an oral hearing before the member or members of the Tribunal determining the claim.

Oral testimony 6 of 1996

8. The Tribunal shall ensure that persons shall be provided with an opportunity to present oral testimony at the district centre or at any other place appointed by the Tribunal to officers of the Tribunal authorized to take evidence, and such opportunity shall be provided on an annual basis or may be provided more often if the Tribunal so determines.

Reasons for decisions 6 of 1996

9. The Tribunal shall give reasons for its decisions which may be specific to a claim or relate to a category of claims.

Composition of panels 6 of 1996

10. Claims shall be determined by a single member of the Tribunal subject to the following rules—

(*a*) matters of principle shall be decided by all members wherever possible and in any event by not less than two members;

(*b*) claims shall not be dismissed, awards revised or requests for oral hearings refused by less than two members;

Schedule

(*c*) claims greater than the amount set out in the Schedule shall be determined by at least two members;

(*d*) claims determined by one member may be referred by that member to the Chairman of the Tribunal who may refer the case to two or more other members;

(*e*) any member who has an interest in any case before him shall declare that interest and refer the case to the Chairman of the Tribunal for reassignment;

(*f*) in determining a case, a panel may refer any outstanding matter relating to quantum to a single member for recommendation upon consultation with the Chairman of the Tribunal, provided that the rules set out in paragraphs (*a*) to (*e*) of this section are complied with.

Declaration of suspicion of interest 6 of 1996

11.—(1) Any claimant who has reason to believe that a member of the Tribunal has an interest in the case or would otherwise be biased shall declare such concern and the reasons therefor in writing to the Chairman of the Tribunal prior to referral of the case to a panel of members for determination.

(2) Upon receipt of any declaration under subsection (1), the Chairman of the Tribunal shall inquire into the matter and shall reassign the case if the claimant's concerns of bias are not unreasonable whether or not bias exists in fact.

Assessment of loss 6 of 1996

12.—(1) In determining an award, the Tribunal shall take into account such factors as it deems appropriate, including—

(*a*) the loss or injury suffered by the claimant and in this regard shall also take into account the mental or psychological elements of the loss or injury, but shall not make separate awards for such elements;

(*b*) the interests of third parties affected by its determination;

(*c*) the conduct of the claimant including, but not limited to, his conduct which has contributed to the losses or injuries suffered by other claimants;

(*d*) steps taken by the claimant to minimize the loss or injury;

(*e*) receipt or availability of other forms of reparation;

(*f*) such other equitable considerations as the Tribunal deems appropriate.

(2) In determining an award, the Tribunal shall not include any element in respect of interest or loss of business earnings subsequent to the event giving rise to the loss, and in addition, the Tribunal may exclude such other elements of loss which it deems to hinder the expeditious determination of claims or introduce arbitrary distinctions between claimants.

Categorization of claims
6 of 1996

13. The Tribunal shall establish expeditious procedures to deal with small claims and shall have discretion to give priority to cases on humanitarian grounds.

Expert guidance
6 of 1996

14. The Tribunal shall have power to appoint such assessors and experts as may be required to carry out research and provide needed guidance in establishing facts and sound principles for the performance of the functions of the Tribunal.

Power to amend the
6 of 1996
Schedule

15. The Minister may, on the recommendation of the Chief Justice acting on the request of the Chairman of the Tribunal, amend the Schedule by Order published in the *Gazette*.

SCHEDULE

ss. 10 (*c*) and 15
6 of 1996

The amount prescribed for the purposes of section 10 (*c*) shall be K10,000.

SUBSIDIARY LEGISLATION

NATIONAL COMPENSATION TRIBUNAL (PROCEDURE) RULES

ARRANGEMENT OF RULES

RULE

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G.N. 59/1997

NATIONAL COMPENSATION TRIBUNAL (PROCEDURE) RULES

Under s. 3

PART I

PRELIMINARY

Citation

1. These Rules may be cited as the National Compensation Tribunal (Procedure) Rules.

Interpretation

2. In these Rules, unless the context otherwise requires—

"agent" means a person appointed by a claimant to act on behalf of the claimant;

"claim" means an application by, or on behalf of, a claimant or joint claimants addressed to the Tribunal for an award in respect of a loss or injury;

"claimant" means a person who suffered loss or injury or a person who has at law inherited an entitlement to claim in respect of a loss or injury, and includes a dependant of a claimant and a representative, but does not include an agent;

"Fund" means the National Compensation Fund established under section 144 of the Constitution;

"representative" means—

(*a*) a person through whom a claim is brought by a person beneficially entitled to claim but lacks legal capacity to act; or

(*b*) a person who is authorized to act for another person, including a family unit;

"Tribunal" means the National Compensation Tribunal established under Part XIII of the Constitution.

Application

3. These Rules apply to all claims instituted before the Tribunal.

PART II

Notification and Registration of Claims

Notification of claims

4.—(1) Every person wishing to make a claim shall notify the Tribunal of his or her intention by submitting sufficient information to identify the claimant and the claim.

(2) Where the Tribunal receives notification of a claim, it shall, unless it decides such step to be unnecessary, forward to the claimant such claim forms as will facilitate the efficient assessment of the claim.

(3) Subject to subrule (4), every claimant shall append his or her signature or other identification mark to the notification and claim forms referred to in subrule (1) and (2), respectively.

(4) The Tribunal may, in exceptional circumstances and under such conditions as the Tribunal may in the best interests of the claimant impose, accept the signature of an agent instead of the signature or other identification mark of the claimant.

Registration of claims

5.—(1) Subject to subrule (3), the Tribunal shall upon receipt of a notification under rule 3 register the claim.

(2) Upon registration of a claim under subrule (1) the Tribunal shall within fourteen days send a written notice of the registration of the claim to the claimant.

(3) Subject to any deadlines that may be prescribed, from time to time, in respect of specific categories of claims, the Tribunal may register claims up to one year before the completion of the operations of the Tribunal.

PART III

Filing of Claims

Claims by representatives

6. Every person acting as a representative of a claimant shall produce evidence satisfactory to the Tribunal regarding his or her authority to so act.

Claims by agents

7.—(1) Every person acting as an agent of a claimant shall produce evidence satisfactory to the Tribunal regarding his or her authority to act as agent of the claimant for the purpose of making a claim, and such evidence shall include a letter of authority bearing the signature or other identification mark of the claimant authorizing the agent to act on behalf of the claimant.

(2) Where a claimant is represented by an agent—

(*a*) the claim shall continue in the name of the claimant who shall be entitled to receive a copy of all notices sent to the agent:

Provided that in the case of a claim by an unicorporated association the Tribunal may limit the number of persons entitled to receive copies of notices;

(*b*) the claimant shall have the right to terminate or limit the mandate of the agent at any time by written notice to the Tribunal;

(*c*) the Tribunal shall not entertain any claim in respect of fees or other expenses associated with the pursuit of a claim, either as an independent claim or as a charge against an award.

Claims by, or on behalf of, minors

8. A claim by, or on behalf of, a minor may be made by his or her parent, guardian, or person appointed by the court or by the Tribunal, and shall be styled "X on behalf of Y, a minor".

Claims by families

9. Where a claim arising from the same event or series of related events is brought by, or on behalf of, persons closely related, any person acting on behalf of the family shall be deemed to be an agent, unless the Tribunal determines otherwise, and payment may be made either to individual claimants or to the appropriate District Commissioner who shall pay the individual claimants.

Claims by unincorporated associations

10. Where a claim is made in respect of the loss of an unincorporated association, any two or more members of the association may represent the other members, if the Tribunal is satisfied that they are acting in the best interests of, and with the approval of, the other members of the association, and the claim shall be styled "X, an unincorporated association".

Associated and severed claims

11. Where, in the opinion of the Tribunal, two or more claims may be conveniently assessed or determined at the same time, the Tribunal may order that the claims, or parts of the claims be associated and where, in the opinion of the Tribunal, several claims may be conveniently treated as separate claims, it may likewise so order.

Third party interests

12.—(1) Where a claimant seeks restitution of specific property the Tribunal shall within a reasonable time notify the current title holder of the property of the existence of the claim and of his and her rights under these Rules.

(2) A third party who disputes a claim for restitution and who has a sufficient interest in the property which is the subject of a claim shall notify the Tribunal of his or her interest and, if the Tribunal finds the intervention or claim to be warranted, the Tribunal shall join that party to the proceedings.

(3) The title holder of any property notified under subrule (1) and any party joined to the proceedings under subrule (2) shall, within the time set out in any notice by the Tribunal, provide such information concerning his or her acquisition of the property or interest, and any other relevant information that the Tribunal may request.

(4) A party joined to proceedings pursuant to subrules (1) and (2) shall be entitled to all notices of the proceedings and be given the same opportunity to be heard as claimant.

PART IV

Submission, Preparation and Assessment of Claims

Evidence to establish the claim

13.—(1) The claimant shall provide such evidence as may be required to establish the claim.

(2) Notwithstanding subrule (1), the Tribunal may consider or hear any other evidence or information that may otherwise be presented to it, and for this purpose the Tribunal shall—

(*a*) have powers of the High Court in hearing evidence, summoning of witnesses and compelling the attendance of any person and the production of documents;

(*b*) have power to obtain evidence abroad, and may give such directions for the taking of such evidence and for the manner thereof as may be deemed expedient.

Appointment of experts

14. The Tribunal may, in respect of any claim or category claims, appoint such experts or panels of experts as it considers necessary and for such period as it considers appropriate to establish facts and to make appropriate recommendations on matters of policy.

Guidelines and tariffs

15. The Tribunal shall establish and publish assessment guidelines and tariffs for the expeditious processing of claims.

Preparation and assessment of claims

16.—(1) The Tribunal shall review each claim and the evidence in support of the claim, and may, by notice in writing addressed to the claimant, require the claimant to provide such further information or documents as in the opinion of the Tribunal, may be necessary to facilitate the assessment of the claim.

(2) A notice under subrule (1) may be supplemented by such additional requests and communications as the Tribunal may consider appropriate, and in each case the Tribunal shall specify the period within which the claimant shall respond.

PART V

Determination of Claims

Determination of claims

17.—(1) Subject to availability of funds for distribution and subrule (3), where the Tribunal considers that a claim is read for determination, or where no additional information or documents requested by notice to the claimant is supplied or expected, the Tribunal shall upon at least fourteen days written notice inform the claimant that the claim is ready for determination, and shall thereafter determine the claim.

(2) The Tribunal shall within seven days of the date of an award notify the claimant of any particulars of the award.

(3) Subject to rule 19 and subrule (1), the Tribunal shall determine claims in ascending order of size.

(4) The Tribunal may make such interim awards from time to time as it may deem to be just in the circumstances, provided that such award does not exceed the anticipated total value of the claim.

Oral hearings

18.—(1) The Tribunal may of its own volition or upon the application of a claimant order an oral hearing of a claim, and where the Tribunal so orders, it shall notify the claimant in writing at least fourteen days before the date of the hearing.

(2) Save as the Tribunal may otherwise order, an oral hearing shall be held in public at a place to be determined by the Tribunal.

Expedited claims

19. Where a claimant—

(*a*) has reached the age of sixty-five years; or

(*b*) produces a medical certificate which, in the opinion of the Tribunal, provides strong evidence that, in light of

the condition and prospects of the claimant, it would be inequitable not to expedite his or her claim, the Tribunal shall process the claim of the claimant on a priority basis:

Provided that the Tribunal may order an independent examination of the claimant to establish the *bona fides* of any claimant seeking relief under this rule.

PART VI

Awards

Payment of monetary awards

20.—(1) The Tribunal shall make payment of a monetary award to a successful claimant as expeditiously as possible in accordance with the following principles—

(*a*) lump sum monetary awards not exceeding a prescribed payment threshold to be determined by the Tribunal from time to time shall be paid in full as soon as possible;

(*b*) monetary awards exceeding or equal to a threshold determined by the Tribunal shall be paid up to the threshold amount, and any balance shall be discharged in a manner to be determined by the Tribunal having regard to amounts available for distribution in the Fund, and other available resources;

(*c*) all payments shall be made directly to the claimant or his or her legal representative, or a bank account or a building society account held in the name of the claimant;

(*d*) the Tribunal shall not entertain requests to make payments to third parties.

(2) Notwithstanding subrule (1), any monetary compensation payable to a minor shall be paid into court or to an appropriate District Commissioner, and shall be held in trust for the minor until such time as the minor reaches the age of majority.

(3) Where the Tribunal has made a monetary award in favour of an unincorporated association, the Tribunal may withhold payment until such time as the right of the representatives to receive funds has been established to the satisfaction of the Tribunal, and the Tribunal may for the purposes of making payment at any time appoint any other person in addition to, or in subsitution for, any person previously accepted as a representative.

Non-monetary awards

21.—(1) The Tribunal may, in respect of any claim, recommend a non-monetary award, including the restitution of property, and shall within seven days communicate its recommendation to the appropriate party.

(2) An order under this section shall have the same force and effect as an order of the High Court, and shall be enforced in the same manner.

Negotiated settlements and arbitration

22. Where it is in the interest of the parties and the Tribunal to do so, the Tribunal may negotiate the settlement of a claim or take part in any informal dispute resolution procedures, and any terms agreed as well as any recommendation arising from the procedures shall be subject to approval by the Tribunal.

PART VII

Review of Awards

Review of awards at the instance of claimant

23.—(1) A claimant may, within twenty-one days of receipt of notification of an award, file with the Tribunal an objection to the amount or type of award.

(2) An objection filed pursuant to subrule (1) shall state the reasons for the objection and may be supported by further information or documents made available by the claimant.

(3) Where the Tribunal, after considering the reasons for the objection and any further information or documents made available by the claimant, is of the opinion that—

(*a*) there is sufficient grounds on which to review an award; and

(*b*) there is sufficient reason for the further information or documents not being available at an earlier date, it may, subject to rule 25, review the award and revise its findings.

(4) The Tribunal shall, within seven days of a review of an award, notify the claimant of the amount and any particulars of the award as reviewed.

Review of awards at the instance of the Tribunal

24.—(1) The Tribunal may, subject to subrule (2), at any time before an award is paid out, of its own volition review an award.

(2) In the case of a review other than to increase the amount of an award, the Tribunal shall not proceed unless it has served twenty-one days written notice on the claimant stating an intention to review the award and the reasons for the review, and the Tribunal shall accord the claimant sufficient opportunity to be heard prior to the review.

No review where award paid

25. Except in cases of fraud, no review shall be made after the expiry of twenty-one days of the date of an award or where the amount of the award has been paid to the claimant.

PART VIII

Amendment, Withdrawal and Abandonment of Claims

Amendment of claims

26.—(1) A claimant may at any time before a claim is determined in accordance with rule 17 amend his or her claim.

(2) Save as otherwise provided in subrule (1), a claimant shall not, without leave of the Tribunal, amend his or her claim.

Change of claimant

27.—(1) The Tribunal may, on application by a person with a sufficient interest in the claim, add to or remove from a claim any person or change the particulars of any person to a claim:

Provided that any person to be removed shall have the right to be heard in the same manner as a determination of a claim under rule 17.

(2) Every application under subrule (1) shall be in writing and shall state the reason for the removal or addition of a person to the claim, or the change of the particulars of that person, as the case may be.

Withdrawal of claims

28.—(1) A claim may be withdrawn at any time:

Provided that where the claim was instituted or continued by an agent or a representative, the claim shall not be withdrawn save with the written consent of the claimant signified in writing.

(2) A claim which has been withdrawn shall not be re-instituted without the leave of the Tribunal.

Abandonment of claims

29.—(1) Where a claim has been dormant for a period of two years from the date of the last unanswered communication from the Tribunal addressed to the claimant and reasonable efforts have been made to locate the claimant but no evidence of continued interest of the claimant has been received by the Tribunal, the claim shall be deemed to have been abandoned.

(2) Where a claim is deemed abandoned in accordance with subrule (1), the Tribunal shall send to claimant, at his last address, written notice of abandonment, and the notice shall be published in the *Gazette* and in at least two issues of any national newspaper in general circulation.

(3) An abandonment claim shall be deemed withdrawn ninety days after a notice of abandonment has been given to the claimant in accordance with subrule (2).

PART IX

Miscelleneous

No assignment of claims

30. No claim shall be assigned and no form of reparation shall be awarded to the assignee of a claim.

Death of claimant

31. In the event of the death of a claimant, an award shall be payable to the estate of the deceased unless the award is specified to the claimant such as medical care or job retraining.

Orders and directions

32. Notwithstanding any other provision of these Rules, the Tribunal may, on application by the claimant or of its own volition, make any order or give any direction necessary to facilitate the fair and expeditious determination of a claim.

Formal requirements

33. Notwithstanding any other provision of these Rules, the Tribunal shall have the discretion to accept any communication in lieu of prescribed forms subject to such conditions as the Tribunal may in its discretion consider appropriate.

Maintenance and publication of records

34.—(1) The Tribunal shall maintain records of claims and the Fund in such a manner as to facilitate the periodic reporting of progress of the claims and to ensure transparency in the management of the Fund.

(2) The Tribunal shall publish in the *Gazette* beginning after the expiry of three months from the commencement of these Rules, a monthly progress report containing information covering—

(*a*) the total number of claims received;

(*b*) the number of claims in each category;

(*c*) the amounts awarded in each category;

(*d*) the total amount awarded;

(*e*) other forms of compensation awarded;

(*f*) the number of claims dismissed; and

(*g*) such other information as the Tribunal may consider appropriate.

Service by post

35. Any notice or other document required or authorized to be served on any person for the purposes of these Rules may be sent by prepaid post to that person or a representative or both, as the case may be, at the last address notified to the Tribunal and if so sent shall be deemed to have been duly served on the date of posting.

Languages

36.—(1) All communications in respect of claims under these Rules may be in any of the principal languages of Malaŵi.

(2) All forms, instructions and communications issuing from the Tribunal shall be in English, with such supplementary translations in additional languages as may be required for the effective prosecution of claims.

Corrections

37. Any clerical mistake or error in any determination, order or direction may at any time be corrected by the Tribunal of its own volition after giving notice to the claimant or at the request of the claimant.

OMBUDSMAN

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OMBUDSMAN

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DUTIES AND FUNCTIONS OF THE OMBUDSMAN

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An Act to define and prescribe the powers, duties and functions of the Ombudsman, and to provide for matters incidental thereto or connected therewith 17 of 1996

[12TH JULY, 1996]

PART I

PRELIMINARY

Short title

1. This Act may be cited as the Ombudsman Act.

Interpretation

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

"organ of Government" includes the State, and any local authority, board, commission, committee, corporation, body or institution established or instituted by or under any written law.

"Public Appointments Committee" means the Public Appointments Committee established under section 56 (7) of the Constitution.

PART II

Appointment of Ombudsman and Staff

Terms and conditions of appointment of the Ombudsman

3. The appointment of the Ombudsman under section 122 of the Constitution shall be on terms and conditions to be determined by the Public Appointments Committee.

Staff of the Ombudsman

4. The Ombudsman shall in the performance of his functions under this Act be assisted by staff appointed by him for that purpose on terms and conditions to be determined by agreement with such staff.

PART III

Duties and Functions of the Ombudsman

Duties and functions of the Ombudsman

5.—(1) Subject to the Constitution, the Ombudsman shall inquire into and investigate in accordance with the provisions of this Act, and take such action or steps as may be prescribed by this Act on any request or complaint in any instance or matter laid before the Ombudsman in accordance with section 7 (1) or (2), and concerning any alleged instance or matter of abuse of power or unfair treatment of any person by an official in the employ of any organ of Government, or manifest injustice or conduct by such official which would properly be regarded as oppressive or unfair in an open and democratic society.

(2) Without derogating from the provisions of subsection (1), any request or complaint in respect of any instance or matter referred to in that subsection may include any instance or matter in respect of which it is alleged—

(*a*) that any decision or recommendation taken or made by or under the authority of any organ of Government or any act or omission of such organ is unreasonable, unjust or unfair, or is based on any practice which may be deemed as such;

(*b*) that the powers, duties or functions which vest in any organ of Government are exercised or performed in a manner which is unreasonable, unjust or unfair.

(3) This section shall not apply in respect of any decision taken in or in connexion with any civil or criminal case by a court of law.

Powers of the Ombudsman

6.—(1) In the performance of his duties and functions under this Act—

(*a*) the Ombudsman may determine the nature and extent of any inquiry or investigation referred to in section 5;

(*b*) the Ombudsman or any person of his staff authorized in writing by the Ombudsman, if so authorized by a warrant issued by a magistrate upon showing cause to the magistrate why the warrant should be issued, shall have—

(i) access to any building or premises, other than a building or premises used as a private home, and to make such inquiries and put such questions to any person employed or found in that building or on that premises in connexion with an inquiry or investigation as the Ombudsman may deem necessary or appropriate;

(ii) access to, inspect and make copies of all books, records, returns, reports and other documents in the possession or under the control of any person, other than the private correspondence of any such person, and which the Ombudsman deems necessary or appropriate to inquire into or to investigate in connexion with such inquiry or investigation; but so, however, that in the case of the Government, such access shall not be permitted unless the warrant issued by the magistrate is served personally on the relevant responsible Minister, and after such service a period of seven days has expired within which the Minister may apply, or cause an application to be made, to a court for an order to prevent any document of the Government from being inspected or used in any inquiry or investigation, or alternatively, from being made public on the ground that the document is a state secret;

(iii) the right to request from any person particulars and information which the Ombudsman may deem necessary or appropriate in connexion with that inquiry or investigation;

(*c*) the Ombudsman may by notice in writing require any person to appear before him in relation to an inquiry or investigation at a time and place specified in such notice, and to call for all such books, records, returns, reports or other documents or things in the possession or under the control of any such person, and which the Ombudsman may deem necessary or appropriate in connexion with that inquiry or investigation;

(*d*) the Ombudsman may administer an oath or take an affirmation from any person whether or not any such person has been required to appear before the Ombudsman and

to question such person under oath or affirmation in connexion with any matter which the Ombudsman may deem necessary or appropriate in connexion with that inquiry or investigation;

(*e*) the Ombudsman may direct that any category of persons or all persons whose presence is in his opinion not desirable, shall not be present at any of the proceedings of an inquiry or investigation or any part thereof.

(2) Any person appearing before the Ombudsman in accordance with subsection (1) (*c*) shall be entitled to receive, from moneys appropriated by Parliament for such purposes as witness fees, an amount equal to the amount which such person would have received as witness fees had such person been summoned to attend criminal proceedings in the High Court held at the place mentioned in the notice in writing concerned.

(3) Any person questioned under subsection (1) shall, subject to subsections (1) (*b*) and (4)—

(*a*) co-operate with the Ombudsman and disclose truthfully all information within his knowledge relevant to an inquiry or investigation of the Ombudsman;

(*b*) produce any book, record, return, report or other document or thing to the Ombudsman which the Ombudsman may deem necessary or appropriate in connexion with an inquiry or investigation.

(4) The Ombudsman or any member of the staff of the Ombudsman is compellable to answer any question in any proceedings in a court of law or before any body or institution established by or under any law or before a commission instituted under the Commissions of Inquiry Act in connexion with information which came to his knowledge pursuant to subsection (3) (*a*), or to produce any book, record, return, report or other document or thing referred to in subsection (3) (*b*) as long as the investigations are not completed.

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Laying of complaints, etc.

7.—(1) Any person wishing to lay a request or complaint in respect of any instance or matter referred to in section 5 before the Ombudsman shall do so by communication in writing addressed to the Ombudsman, or in such other manner as the Ombudsman may determine.

(2) Any person referred to in subsection (1) who is detained pursuant to an order of a court or any law shall be entitled to lay before the Ombudsman a request or complaint on any instance or matter so referred to by way of communication to the Ombudsman by the person in charge of the place where any such person is detained or any other person.

(3) The Ombudsman shall not be required to inquire into or make further inquiries into or investigate any instance or matter

referred to in section 5 which has been laid before him under subsection (2) or (3) when the grounds on account of which the inquiry or investigation concerned or desired is, in the opinion of the Ombudsman, vexatious or frivolous.

Remedies

8.—(1) The Ombudsman shall after holding any inquiry or investigation in accordance with this Act—

(*a*) notify the person who laid the matter before him under section 7 (1) or (2) of the outcome of such inquiry or investigation in such manner and form as the Ombudsman may determine and to such extent as the Ombudsman may deem necessary or appropriate in the public interest, or that the matter will not be inquired into or investigated in accordance with section 7 (3);

(*b*) take appropriate action or steps to call for or require the remedying or reversal of matters or instances specified in section 5 through such means as are fair, proper and effective, including by—

(i) negotiation and compromise between the parties concerned;

(ii) causing the complaint and the Ombudsman's finding thereon to be reported to the superior of an offending person;

(iii) referring the matter to the Attorney General or the Director of Public Prosecutions or both, as the case may be.

(2) The Ombudsman may, but without derogating from any of the provisions of subsection 1 (*b*) if he is of the opinion that any instance or matter inquired into or investigated by him under section 5 can be rectified or remedied in any lawful manner, notify the organ of Government his findings and the manner in which the matter can be rectified or remedied.

PART IV

Miscellaneous

Reports of the Ombudsman

9.—(1) The Ombudsman shall compile a full report in respect of every matter inquired into or investigated by him under this Act and which has not been rectified or remedied as contemplated in this Act to the satisfaction of the Ombudsman, and shall submit such report as soon as possible to the Speaker of the National Assembly, and transmit a copy of such report to the Cabinet and any other relevant organ of Government.

(2) The Ombudsman shall submit annually, not later than 31st March, a report to the Speaker of the National Assembly in connexion with all the Ombudsman's activities during the period ending on 31st December of the previous year.

(3) The Speaker of the National Assembly shall lay before the National Assembly every report submitted in accordance with subsections (1) and (2) within fourteen days after it has so been submitted or, if the National Assembly is not then sitting, within fourteen days after the commencement of its next sitting.

(4) Where a report submitted to the Speaker of the National Assembly pursuant to this section contains information which has been obtained by the Ombudsman under this Act but which may not be obtained or made known by certain persons in terms of any law on the protection of certain information, or which has so been obtained by the Ombudsman notwithstanding any law on privilege arising from considerations concerning the security of the State, that report shall be laid before the National Assembly, as a confidential paper for submission to a select committee of the National Assembly and consideration of the question whether the report contains such information and the making of a report to the National Assembly shall be by such select committee of the National Assembly, and no person having access to that report shall disclose any such information.

Preservation of secrecy

10.—The Ombudsman and every other person employed or previously employed in carrying out the provisions of this Act shall—

(*a*) preserve and aid in preserving secrecy in respect of the instances or matters that may come to his knowledge in the exercise of his powers or the performance of his duties and functions in connexion with those provisions; and

(*b*) not communicate any such instance or matter to any person or permit any person to have access to any documents in his possession or custody, except in so far as any such communication is required to or may be made in accordance with this Act or any other law.

Limitation of liability

11.—The Ombudsman or any member of staff of the Ombudsman shall not be liable in respect of anything done or performed in good faith under this Act.

Expenditure in connexion with functions of the Ombudsman

12.—The expenditure in connexion with the office of the Ombudsman and the exercise of his power and the performance of his duties and functions shall be paid from moneys appropriated by Parliament for that purpose.

Offences and penalties

13.—Any person who—

(*a*) refuses or fails to comply with any notice issued under section 6 (1) (*c*);

(*b*) refuses to take the oath or to make an affirmation at the request of the Ombudsman in accordance with section 6 (1) (*d*), or refuses to co-operate as contemplated in that section,

or gives to such question an answer which to his knowledge is false, or refuses or fails to furnish particulars or information required from him under that section;

(*c*) contravenes or fails to comply with section 6 (3) (*b*);

(*d*) contravenes or fails to comply with section 9 (4) or 10;

(*e*) discloses to any other person the contents of any book, record, return, report or other document in the possession of the Ombudsman or a member of the staff of the Ombudsman, or the record of any proceedings at an inquiry or investigations of the Ombudsman;

(*f*) anticipates the proceedings at an inquiry or investigation or the findings of the Ombudsman in a manner calculated to influence such proceedings or findings;

(*g*) wilfully hinders or obstructs the Ombudsman or any member of the staff of the Ombudsman in the exercise of his powers of the performance of his duties or functions;

(*h*) wilfully interrupts the proceedings at an inquiry or investigation of the Ombudsman;

(*i*) in connexion with any inquiry or investigation of the Ombudsman, does anything which, if done in connexion with the proceedings of a court of law, would constitute contempt of court;

(*j*) does anything calculated improperly to influence the Ombudsman in respect of any matter being or to be considered by the Ombudsman in relation to any inquiry or investigation;

(*k*) directly or indirectly, makes use or threatens to make use of any violence, force or restraint, or inflicts or threatens to inflict any injury, damage, harm or loss, upon or against, or does or threatens to do anything to the disadvantage of, any other person, or his next of kin, on account of such other person—

(i) having referred any instance or matter to the Ombudsman under this Act; or

(ii) having furnished any particulars or information or produced any book, record, return, report or other document or thing, at or in connexion with any inquiry or investigation of the Ombudsman; or

(iii) intending to lay any instance or matter before the Ombudsman or to furnish any particulars or information or to produce any book, record, return, report or other document or thing at or in connexion with any inquiry or investigation of the Ombudsman,

shall be guilty of an offence and liable on conviction to a fine of K10,000 or to imprisonment for five years or to both such fine and such imprisonment.

Rules

14. The Ombudsman may make rules prescribing matters required or permitted by this Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to this Act

HUMAN RIGHTS COMMISSION

CHAPTER 3:08

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CHAPTER 3:08

HUMAN RIGHTS COMMISSION

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CHAPTER 3:08

HUMAN RIGHTS COMMISSION

27 of 1998
21 of 2016
G.N. 16/2001

An Act to make provision relating to the status and functioning of the Human Rights Commission established under Chapter XI of the Constitution and to provide for matters ancillary thereto or connected therewith

[11TH AUGUST, 1998]

PART I

PRELIMINARY

Short title

1. This Act may be cited as the Human Rights Commission Act.

Interpretation

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

"appointed members" means members of the Commission appointed under section 131 (1) (*c*) of the Constitution, being those other than the Law Commissioner and the Ombudsman;

"Commission" means the Human Rights Commission established under Chapter XI of the Constitution;

"Executive Secretary" means the officer of the Commission appointed under section 28;

"human rights" means human rights guaranteed by or under the Constitution or any other law in force in Malaŵi, including international law;

"premises" includes land, any building or structure, any vehicle, conveyance, ship, boat, vessel, aircraft or container.

PART II

Membership of the Commission

Number of appointed members G.N. 16/2001

3. The number of other members of the Commission appointed under section 131 (1) (*c*) of the Constitution (in this Act referred to as "appointed members") shall not exceed seven at any one time unless the President, on the recommendation of the Commission, by Order published in the *Gazette,* prescribes a greater number of appointed members.

Procedure for nominating appointed members

4.—(1) The procedure for nominating appointed members shall involve first the issuing of a public advertisement, signed jointly by the Law Commissioner and the Ombudsman, directed to the organizations described in section 131 (1) (*c*) of the Constitution, being those which both the Law Commissioner and the Ombudsman, in their absolute discretion, consider to be reputable organizations representative of Malaŵian society and that are wholly or largely concerned with the promotion of rights and fundamental freedoms guaranteed by the Constitution.

(2) The advertisement under subsection (1) shall invite all appropriate organizations to nominate up to two persons who are independent, non-partisan and of high integrity and standing from within or outside the organization for appointment as member or members of the Commission, and to do so within thirty days of the date of the publication of the advertisement and in writing addressed to the Commission, giving the full name and address of any person so nominated and his curriculum vitae.

(3) The Law Commissioner and the Ombudsman shall—

(*a*) jointly assess the reputation of the nominating organizations and may, for that purpose, seek other or further information pertaining to any nominated person from the person himself or any other person or source before recommending who among the nominated persons shall be formally appointed by the President as members of the Commission;

(*b*) according to their assessment under paragraph (*a*), keep a list of reserved names of nominated persons to be appointed

to fill any casual vacancy for the remainder of the term of a member who vacates office before the expiry of the term prescribed in section 5 (1).

(4) A list of the names of nominating organizations, the names of the persons nominated and the names of the persons formally appointed by the President and the resultant membership of the Commission shall be published in the *Gazette.*

Tenure of appointed members

5.—(1) Appointed members of the Commission shall hold office for a term of three years, and shall be eligible for re-appointment.

(2) when making recommendations for appointment after the expiry of the three-year term, the Law Commissioner and the Ombudsman shall have regard to the need to maintain a reasonable degree of continuity on the membership of the Commission, so that at least half of the appointed members shall be reappointed for the next term of office.

(3) A casual vacancy in the office of an appointed member shall occur if the member—

(*a*) is removed from office under section 131 (3) of the Constitution;

(*b*) dies; or

(*c*) resigns his office in accordance with subsection (4).

(4) An appointed member may at any time resign his office by giving one month notice addressed to the Law Commissioner and the Ombudsman who shall jointly transmit such notice to the President.

(5) A casual vacancy on the membership of the Commission shall be filled by the appointment of a person on the list of reserved names of nominated persons kept pursuant to section 4 (4).

(6) A person appointed to fill a casual vacancy shall serve for the remainder of the term of office but no person shall be so appointed where the remainder of the term of office is a period of less than six months.

Chairman of the Commission

6.—(1) There shall be a Chairman of the Commission who shall be elected by the Commission from among the appointed members at a meeting of the Commission attended by all members.

(2) Subject to subsection (3), the Chairman shall hold office as such until the expiry of his term of office as member of the Commission.

(3) The Chairman may be removed from office as such by the Commission for good cause and upon the unanimous decision of the rest of the members of the Commission.

7. Members of the Commission shall be paid such honorarium for membership and such allowances when discharging their duties as the Commission shall reasonably determine, subject to the approval of the Public Appointments Committee of Parliament. Remuneration

8.—(1) The Commission may establish such number of its own committees as it considers necessary for the performance of its functions and may assign to such committees any of its functions without prejudice to the power of the Commission itself to perform the function. Committees

(2) The composition of every committee of the Commission shall include one or more members of the Commission and may include persons who are not members of the Commission but shall not include members of staff of the Commission.

(3) Subject to any general or special directions of the Commission, every committee shall have power to determine its own procedure.

9.—(1) The Commission may invite or engage any person or persons to assist with the conduct of any inquiry or investigation before the Commission. Co-opted persons

(2) The Commission or a committee of the Commission may invite any person, on account of his special knowledge or expertize, for any duration of time to take part in its deliberations at any meeting but such person shall not be entitled to vote at such meetings.

PART III

Competence and Responsibilities of the Commission

10. The provisions of this Part are in furtherance of, and without prejudice to, the generality of the mandate, powers and functions of the Commission conferred by the Constitution. Provisions in furtherance of the Constitution

11. All authorities (including all organs of the Government) bodies and persons shall recognize the status of the Commission as a national institution independent of the authority or direction of any other body or person. Commission, an independent national institution

12. The Commission shall be competent in every respect to protect and promote human rights in Malaŵi in the broadest sense possible and to investigate violations of human rights on its own motion or upon complaints received from any person, class of persons or body. Competence and powers

13.—(1) The duties and functions of the Commission shall be— Duties and functions

(*a*) to act as a source of human rights information for the Government and the people of Malaŵi;

(*b*) to assist in educating the public on, and promoting awareness and respect for, human rights;

(*c*) to promote more particularly the human rights of vulnerable groups, such as children, illiterate persons, persons with disabilities and the elderly;

(*d*) to consider, deliberate upon, and make recommendations regarding any human rights issues, on its own volition or as may be referred to it by the Government;

(*e*) to study the status and effect of legislation, judicial decisions and administrative provisions for the protection and promotion of human rights and to prepare reports on such matters and submit the reports, with such recommendations or observations as the Commission considers appropriate, to the authorities concerned or to any other appropriate authorities;

(*f*) to perform any other function which the Government may assign to the Commission in connection with the duties of Malaŵi under those international agreements in the field of human rights to which Malaŵi is a party, without derogation from the fact that the Government shall remain primarily responsible for performing such functions.

(2) The Commission shall keep the President fully informed on matters concerning the general conduct of the affairs of the Commission.

Responsibilities

14. The Commission shall have the following responsibilities—

(*a*) to submit to the President, Parliament or any other competent authority, on an advisory basis, either at the request of the President, Parliament or such other authority or on its own volition, its opinions, recommendations, proposals or reports on any matters concerning the protection and promotion of human rights;

(*b*) to examine any legislation, judicial decisions or administrative provisions in force as well as Bills and administrative proposals and make recommendations as it considers appropriate in order to ensure that such legislation, judicial decisions, administrative provisions, Bills and administrative proposals conform to the fundamental principles of human rights;

(*c*) where necessary, to recommend the adoption of new legislation or administrative provisions, or the repeal, replacement or amendment of legislation or administrative provisions in force and relating to human rights;

(*d*) to comment publicly or as it sees fit on any general or specific situation of violation of human rights and to recommend initiatives or measures to put an end to such situation;

(*e*) to promote ratification by Malaŵi of any international human rights instruments;

(*f*) to promote the harmonization of national legislation and practices with international human rights instruments to which Malaŵi is a party and to promote and monitor their effective implementation;

(*g*) to contribute to the reports which Malaŵi is required to submit pursuant to treaty obligations and, where necessary, express its opinions on the subject matter but always with due regard to its status as an independent national institution;

(*h*) to co-operate with agencies of the United Nations, the Organization of African Unity, the Commonwealth and other multilateral or regional institutions and national institutions of other countries which are competent in the area of protection and promotion of human rights;

(*i*) to assist in the formulation of programmes for the teaching of, and research in, human rights and, where appropriate, to take part in their execution in institutions and other bodies, including in schools, universities and professional circles; and

(*j*) to publicize human rights with the aim of increasing public awareness.

Methods of operation

15. The Commission shall—

(*a*) freely and without any hinderance whatsoever consider any questions falling within its competence;

(*b*) hear any person and obtain any information or any other evidence necessary for assessing situations falling within its competence;

(*c*) subject to the provisions of Part IV, carry out investigations and conduct searches in connection with matters that are before it or generally in connexion with its powers, duties and functions;

(*d*) exercise unhindered authority to visit prisons or any place of detention of persons including police cells, with or without notice;

(*e*) develop work relationships with non-governmental organizations devoted to protecting and promoting human rights, including those organizations which promote economic and social development or which protect and promote the interest of vulnerable groups such as children, illiterate persons, persons with disabilities and the elderly;

(*f*) maintain consultation with other independent national institutions or bodies, such as the Law Commission, the Ombudsman and the Inspectorate of Prisons, in order to foster common policies, practices and approaches and to promote co-operation in relation to the handling of matters in cases of overlapping jurisdiction;

(*g*) progressively operate at the national, regional, district and other levels so as to enhance its outreach in the Republic; and

(*h*) to do or perform such other acts or things as are reasonably required for the exercise of its powers and the performance of its duties and functions.

PART IV

Hearings, Investigations and Remedies

Hearings

16.—(1) The Commission may hear and consider complaints and petitions within its competence brought before it by individuals or groups of individuals.

(2) Complaints may be brought before the Commission on behalf of individuals or groups of individuals by the individuals themselves, legal practitioners, their representatives, third parties, non-governmental organizations, professional associations or any other representative organizations having an appropriate interest in the matter.

Procedure for hearings

17. The Commission shall have power to determine its own procedure for the conduct of hearings of matters brought before it but may otherwise be guided by such procedures as may be prescribed by regulations made under this Act

Conduct of investigations

18.—(1) For the purposes of conducting investigations necessary for the exercise of its powers and performance of its duties and functions, the Commission shall have powers—

(*a*) through a member of the Commission or any member of its staff designated in writing by a member of the Commission or by the Commission either generally or specially to require from any person such particulars and information as may be reasonably necessary in connexion with any investigation;

(*b*) to require any person by notice in writing under the hand of a member of the Commission to appear before it at a time and place specified in such notice and to produce to it all articles or documents in the possession or custody or under the control of any such person and which may be necessary in connexion with that investigation:

Provided that—

(i) such notice shall contain the reasons why the presence of such person is required and why any such article or document should be produced;

(ii) when appearing and being examined before the Commission, such person may be assisted by a legal

practitioner and shall be entitled to peruse or examine the articles and documents to refresh his memory;

(*c*) through a member of the Commission, to administer an oath to, or take an affirmation from, any person referred to in paragraph (*b*), or any person present at the place referred to in paragraph (*b*), irrespective of whether or not such person has been required under that paragraph to appear before it, and question him under such oath or affirmation in connexion with any matter which may be necessary in connexion with that investigation.

(2) A notice under subsection (1) shall not be effectively served unless it is delivered by—

(*a*) a member of the Commission;

(*b*) a member of the staff of the Commission;

(*c*) a police officer or any other person, authorized in that behalf by the Commission in relation to an investigation.

(3) Any person questioned under subsection (1) shall—

(*a*) be competent and compellable to answer all questions put to him regarding any fact or matter connected with the investigation;

(*b*) be competent and compellable to produce to the Commission any article or document in his possession or custody or under his control which may be necessary in connexion with that investigation.

(4) The law regarding privilege as applicable to a witness summoned to give evidence in a criminal case in a court of law shall apply in relation to the questioning of a person under subsection (1).

(5) If it appears to the Commission during the course of an investigation that any person is being implicated in the matter being investigated, the Commission shall aford such person an opportunity to be heard in connexion therewith by way of the giving of evidence or the making of submissions and such person or his legal representative shall be entitled, through the Commission, to question other witnesses, determined by the Commission, who have appeared before the Commission pursuant to this section.

(6) The Commission may direct that any person or category of persons or all persons the presence of whom, in the opinion of the Commission, is not desirable shall not be present at the proceedings or any part thereof during, or in the course of, an investigation.

(7) The Commission may in its sole discretion conduct open or closed hearings during its investigation of any matter.

Entry and search of premises and attachment or removal of articles

19.—(1) Any—

(*a*) member of the Commission;

(*b*) member of the staff of the Commission;

(*c*) police officer or other person, authorized in that behalf by the Commission,

may, subject to the provisions of this section, for the purposes of an investigation, enter any premises on or in which anything connected with that investigation is or is reasonably suspected to be.

(2) The entry and search of any premises under this section shall be conducted with strict regard to decency and order, which shall include regard to—

(*a*) a person's right to respect for and protection of his dignity;

(*b*) the right to freedom and security of the person; and

(*c*) the right to his personal privacy.

(3) A person authorized under subsection (1) may, subject to the provisions of this section—

(*a*) inspect and search the premises and there make such enquiries as he may deem necessary;

(*b*) examine any article or document found on or in the premises;

(*c*) request from the owner or person in control of the premises or from any person in whose possession or control an article or document is information regarding the article or document;

(*d*) make copies of or take extracts from any book or document found on or in the premises;

(*e*) request from any person who has, or whom he has reason to believe has, the necessary information, an explanation regarding that article or document;

(*f*) attach anything on or in the premises which in his opinion has a bearing on the investigation concerned;

(*g*) remove from the premises, against issue of a receipt, the article or document for further examination or for safe custody, but any article or document so removed, shall be returned as soon as possible after the purpose for such removal has been accomplished.

Entry and search warrant

20.—(1) Entry and search of any premises under this Act shall only be upon a warrant issued by a magistrate if it appears to the magistrate from information on oath that there are reasonable grounds for believing that any article or document, which has a bearing on the investigation concerned, is on such premises.

(2) A warrant issued under this section may be issued on any day and shall be of force until—

(*a*) it is executed; or

(*b*) it is cancelled by the person who issued it or, if such person is not available, by any person with like authority; or

(*c*) the expiry of one month from the day of its issue; or

(*d*) the purpose for the issuing of the warrant has lapsed, whichever occurs first.

(3) A person executing a warrant under this section shall, at the commencement of such execution, hand the person referred to in the warrant or the person who is the owner or in control of the premises a copy of the warrant and identify himself, if such person is present or, if such person is not present, affix a copy of the warrant to the premises at a prominent visible place.

Order of attachment and removal

21. If during the execution of a warrant under this Part a person claims that an article or document found on or in the premises concerned contains privileged information and refuses the inspection or removal of such article or document, the person executing the warrant shall, if he is of the opinion that the article or document contains information that has a bearing on the investigation and that such information is necessary for the investigation, request the Registrar or an Assistant Registrar of the High Court to issue an order to attach and remove that article or document for safe custody until a court has made a ruling on the question whether the information concerned is privileged or not, but such an order shall lapse if after thirty days from the date of its issue no court has made such ruling.

Remedies

22. Upon hearing complaints brought before it or based upon any investigations it has carried out or at any stage, the Commission—

(*a*) shall seek an amicable settlement through conciliation and, where appropriate, on the basis of confidentiality;

(*b*) shall inform the complainant and the respondent of their respective rights, remedies or obligations and the Commission shall promote a party's access to the remedies;

(*c*) may, as provided by sections 15 (2) and 46 (2) (*b*) of the Constitution, render such assistance or advice as the party that brought the complaint or petition may reasonably require;

(*d*) may transmit a complaint, petition or any other matter to any other competent authority as prescribed by the law or as otherwise the Commission thinks fit; or

(*e*) make recommendations to the competent authority, proposing amendments or reforms of the laws, regulations or administrative provisions or practices if the Commission has identified such laws, regulations or administrative provisions to have created the difficulties or hardships encountered by the persons who brought the complaints or petitions; and

(*f*) may recommend to the relevant authority the prosecution of any person found to have violated human rights or the taking of any other action and any such authority shall consider the recommendation and take such action as it deems appropriate.

PART V

Meetings

Meetings

23.—(1) The Commission shall meet as often as its business requires and in any event not less than once every two months.

(2) Meetings of the Commission shall be held at such places and times as the Commission shall determine:

Provided that the first meeting and any meeting at which the Chairman of the Commission is to be elected shall be convened by the Law Commissioner in consultation with the Ombudsman and shall be presided over by the Law Commissioner until the Chairman is elected.

(3) A meeting of the Commission shall be convened at the direction of the Chairman by written notice of not less than seven days, but such period of notice may be dispensed with if in the opinion of the Chairman the urgency of any business or matter to be brought before the meeting so requires.

(4) The *quorum* for any meeting of the Commission or a committee of the Commission shall be formed by the presence of more than half of the members of the Commission or committee.

(5) Save as otherwise provided in subsection (2), meetings of the Commission shall be presided over by the Chairman of the Commission and, in the absence of the Chairman, members present may elect one of their number from among appointed members to preside.

Chairmen of committees

24.—(1) The chairman of every committee of the Commission shall be such member of the committee who is also a member of the Commission as the Commission shall designate.

(2) The chairman of a committee of the Commission shall preside over meetings of the committee and in his absence the members present may elect one of their number to preside.

Minutes

25. The Commission, and every committee of the Commission, shall cause minutes of its meetings to be recorded and kept.

Decisions

26. Save as provided in section 6 (3) in relation to the removal from office of the Chairman of the Commission, the decision of the Commission or of a committee of the Commission at any meeting shall be that of the majority of the members present and voting and in the event of a tie the person presiding shall have a casting vote in addition to his deliberative vote:

21 of 2016

Provided that the Law Commissioner and the Ombudsman shall have no voting rights in the proceedings of the Commission, or of a committee of the Commission.

PART VI

Administration

27. The Commission shall exercise regular supervision of the work of the Commission and over the members of staff of the Commission in the performance of their duties.

Regular supervision

28.—(1) There shall be the office of Executive Secretary of the Commission which shall be a public office.

Executive Secretary

(2) The Executive Secretary shall be appointed by the Commission on such terms and conditions as the Commission shall determine.

(3) The office of the Executive Secretary shall be held by a person who has had experience and shown capacity in a profession or in activities devoted or relevant to the protection and promotion of human rights.

29. Subject to the general and special directions of the Commission, the Executive Secretary shall be responsible for the day to day management of the Commission and the administrative control of the other members of staff of the Commission and, in that regard, shall be answerable and accountable to the Commission.

Duties of the Executive Secretary

30.—(1) There shall be employed in the service of the Commission, subordinate to the Executive Secretary, such other management, professional, research, technical, administrative and other support staff as the Commission shall consider necessary for the exercise of its powers and the performance of its duties and functions and who shall be officers in the public service.

Other staff

(2) The staff of the Commission under subsection (1) shall be appointed by the Commission on such terms and conditions as the Commission shall determine:

Provided that the Commission may by directions in writing delegate to the Executive Secretary the appointment of its staff in such junior ranks as it shall specify and the Executive Secretary shall report to the Commission every appointment he has made pursuant to this subsection.

31.—(1) The Executive Secretary, or any other officer of the Commission as the Executive Secretary shall designate with the approval of the Commission, shall attend meetings of the Commission or any committee of the Commission to record the minutes of the meetings and to take part in the deliberations thereof subject to the directions of the Commission or committee but shall not be entitled to vote.

Attendance of meetings by staff

(2) Where in any meeting the deliberations of the Commission or of a committee of the Commission concerns the Executive

Secretary or any officer of the Commission designated to attend the meeting, the Commission or the committee, as the case may be, may exclude the Executive Secretary or such officer from the meeting.

PART VII

Finance

Funding of the Commission

32.—(1) The Government shall adequately fund the Commission to enable it to exercise its powers and perform its duties and functions and so as to ensure its independence and impartiality.

(2) The Commission may receive any donations of funds, materials and any other form of assistance for the purposes of its duties and functions:

Provided that no such donation shall jeopardize or compromise the independence and impartiality of the Commission.

Accounting and audit

33. The Commission shall be liable to account to Parliament for its funds in the manner applicable to Government departments and the accounts of the Commission shall be liable to audit by the Auditor General.

PART VIII

Miscellaneous

Impartiality and independence

34.—(1) Every member of the Commission, of a committee of the Commission or of the staff of the Commission shall serve independently and impartially and exercise his powers or perform his duties and functions in good faith and without fear or favour.

(2) No organ of the Government and no member or employee of an organ of the Government nor any other person or body of persons, shall interfere with, hinder or obstruct the Commission, any committee of the Commission, any member of the Commission or of such committee or of the staff of the Commission or any person duly authorized to act in the service of the Commission in the exercise of its or his or her powers or the performance of its or his duties and functions.

(3) Any person who contravenes subsection (2) shall be guilty of an offence and liable to a fine of K20,000 and to imprisonment for five years.

(4) All organs of the Government shall accord the Commission such assistance and co-operation as may be reasonably required for the exercise of its powers and performance of its duties and functions and for the protection of the independence, impartiality and the due dignity of the Commission.

Disclosure of interest

35. No person shall conduct an investigation on behalf of the Commission or render assistance with regard to such investigation in respect of a matter in which he has any material or other interest which might preclude him from exercising his powers or performing his duties or functions in a fair, unbiased and proper manner; and where any person fails to disclose such interest or conducts an investigation or renders assistance with regard thereto in contravention of this section, the Commission may take such steps as it considers necessary to ensure a fair, unbiased and proper investigation.

Oath of office

36. Every member of the Commission (including the Law Commissioner and the Ombudsman) shall, as such member, as soon as practicable—

(*a*) after the commencement of this Act, in the case of a member holding office at the commencement of this Act;

(*b*) after his appointment, in the case of a member holding office subsequent to the commencement of this Act,

take an oath or make an affirmation for the due execution of his office before the President in the form set out in the Schedule to this Act:

Provided that in the case of an affirmation the form shall be modified so as to substitute the word "affirm" for the word "swear" and by omitting the last sentence in the form.

Annual reports to Parliament

37. In addition to any specific report which the Commission may at any other time submit to any authority under this Act, the Commission shall within three months after the end of every calendar year submit a report to Parliament on the activities it has carried out during that calendar year.

Regulations

38. The Minister may, on the advice of the Commission, make regulations for the better carrying out of the provisions of this Act.

SCHEDULE

s. 36

Oath of Office of Member of the Commission

I ..... , being a member of the Human Rights Commission, do swear that I will well and truly perform the functions of that office according to the Constitution and the laws of the Republic of Malaŵi without fear, favour, affection or ill will. So help me God.

SUBSIDIARY LEGISLATION

G.N. 44/2014

HUMAN RIGHTS COMMISSION (PROCEDURE FOR APPOINTMENT OF MEMBERS OF THE COMMISSION) REGULATIONS

under s. 38

ARRANGEMENT OF REGULATIONS

REGULATION

1. Citation
2. Interpretation
3. Public advertisement
4. List of nominating organizations
5. Handling of nominations
6. Pre-selection forum
7. Screening and assessment of nominations
8. Recommendation to the President
9. Notification of appointment
10. Publication
11. Oath of office
12. Orientation of members

First Schedule

Second Schedule

Citation

1. These Regulations may be cited as the Human Rights Commission (Procedure for Appointment of Members of the Commission) Regulations.

Interpretation

2. In these Regulations, unless the context otherwise requires—

"Chairman" means the Chairman of the Commission elected in accordance with section 6 of the Act; and

"UN Paris Principles" refers to the set of recommendations adopted by the United Nations General Assembly in Paris, in 1993, relating to the status and functioning of national institutions for the protection and promotion of human rights.

Public advertisement

3.—(1) A public advertisement calling for nominations of persons to be considered for appointment as members of the Commission shall be published in the last month of the third and last year of the tenure of office of a sitting Commission, and shall run for 30 days.

(2) The public advertisement which shall be signed jointly by the Law Commissioner and the Ombudsman, shall be in accordance with the First Schedule hereto, and shall call for the nominations of not more than two persons from each nominating institution.

List of nominating organizations

4.—(1) The Law Commissioner and the Ombudsman shall compile and update the list of reputable organizations representative of Malaŵian society three months prior to the completion of the tenure of the sitting Commission.

(2) A concerned organization not included in the list of reputable organizations mentioned in subregulation (1), may submit a written application, through the Executive Secretary, to be considered for inclusion on the list of reputable organizations.

(3) The concerned organization shall in its application, include detailed information about its work in the Malaŵian society and how their organization protects and promotes human rights and fundamental freedoms.

(4) The Law Commissioner and the Ombudsman shall consider the submission made by the concerned organization and shall accept or refuse the application.

(5) An application accepted under subregulation (4), shall be included in the final list of names of the nominating organizations that will be published in the *Gazette*, and the organization whose application has been accepted shall submit its nomination within the 30 days deadline stipulated in the public advertisement.

Handling of nominations

5.—(1) All the nominations that have been received by the Law Commissioner and the Ombudsman shall be treated as confidential documents.

(2) The Executive Secretary shall, on behalf of the Law Commissioner and the Ombudsman, compile all the nominations, indicating—

(*a*) name of nominating organizations;

(*b*) name of nominated persons;

(*c*) age of nominated persons;

(*d*) district of origin of nominated persons; and

(*e*) academic qualifications and occupation of nominated persons.

Pre-selection forum

6.—(1) The Law Commissioner and the Ombudsman may hold a pre-selection forum with all the nominated persons aimed at—

(*a*) providing a forum for the Law Commissioner and the Ombudsman to seek further information from the nominated persons in accordance with section 4(3) of the Act; and

(*b*) providing a forum for the interaction of the nominated persons with the Law Commissioner and the Ombudsman as part of the screening and assessment of the nominations.

(2) The Executive Secretary shall ensure that all nominated persons are invited to the pre-selection forum with a notice of not less than 14 days, and shall dispatch the invitation through multiple means including postal mail and e-mail.

(3) The pre-selection forum shall take the form of a highly participatory session.

Screening and assessment of nominations

7.—(1) Following the pre-selection forum, the Law Commissioner and the Ombudsman shall screen and assess the nominated persons on the basis of their Curriculum Vitae.

(2) In conducting the screening and the assessment, the Law Commissioner and the Ombudsman shall, in addition to the criteria set out in the Constitution, the Act and the UN Paris Principles, take into account the following—

(*a*) the need to maintain at least half of the number of the appointed members from the previous Commission that are eligible for re-appointment, in order to ensure continuity;

(*b*) the need to select persons with integrity, that are non-partisan and demonstrate a significant degree of independence;

(c) the type of expertise or work experience that is needed to be brought into the Commission;

(*d*) educational qualifications in order to ensure the competence of the individual in understanding the various human rights instruments, among the many other attributes required of a member of the Commission;

(*e*) the need to maintain a gender balance on the membership of the Commission;

(*f*) the age of the individual in order to ensure a degree of personal maturity and adequate experience;

(*g*) the need for diversity of the sectors represented in the Commission; and

(*h*) regional balance.

(3) The Law Commissioner and the Ombudsman shall draw up a list of seven names of successful nominated persons to be recommended for appointment as members of the Commission and three names of nominated persons to be kept on a list of reserved names to be appointed to fill any casual vacancy for the remainder of the term of a member who may vacate office before expiry of his term.

Recommendation to the President

8. The Law Commissioner and the Ombudsman shall, through a memorandum, recommend to the President the names of the nominated persons who shall be formally appointed by the President as members of the Commission.

Notification of appointment

9.—(1) Following the relaying of information to the Commission by the Office of the President and Cabinet on the appointment of members of the Commission, the Executive Secretary shall notify the appointed members within one week of receipt of the information.

(2) The Executive Secretary, in consultation with the Law Commissioner and the Ombudsman, shall ensure that the first meeting of the Commission is convened no later than 14 days from the date of the official appointment of the Commissioners.

Publication

10. The Executive Secretary shall, not later than 21 days from the date of the first official announcement of the appointment of the new members, facilitate the process of publication in the *Gazette*, and in at least two newspapers of daily circulation—

(*a*) the list of persons appointed as members of the Commission;

(*b*) the list of persons placed on the reserve list;

(*c*) a list of all nominations that were received; and

(*d*) a list of all the nominating institutions.

Oath of office

11.—(1) The Executive Secretary shall, in consultation with the Chairman, submit a memorandum to the Office of the President and Cabinet, requesting the President to preside over the ceremony where the new members of the Commission will take their oaths of office as required under section 36 of the Act.

(2) The memorandum mentioned in subregulation (1) shall be submitted not later than 7 days after the date of the official appointment of the new members of the Commission.

Orientation of members

12. The Executive Secretary shall, in consultation with the Chairman, make arrangements for the orientation of the new members of the Commission within 30 days from the date of the official announcement of the appointment of the new members of the Commission.

FIRST SCHEDULE

reg. 3 (2)

Human Rights Commission Act

(Cap. 3:08)

Public Advertisement for Nominations of Members of the Human Rights Commission Under Section 4 of the Human Rights Commission Act

This is a public advertisements under Section 4 of the Human Rights Commission Act, (Cap.3:08) of the Laws of Malaŵi, ("the Act") directed to the organizations described in section 131 (1) (*c*) of the Constitution.

This advertisement invites every organization listed below to nominate up to two persons who, in addition to the criteria prescribed in the Constitution and the Act, are independent, non-partisan and of high integrity and standing, from within or outside the organization for appointment as a member of the Human Rights Commission ("the Commission"); giving full names, addresses and curriculum vitae of any person so nominated. The person(s) so nominated should have a demonstrable passion for promotion and protection of

human rights in Malaŵi. Nominations should also take into account gender, sound legal background, maturity of the person and readiness to serve the Commission on full time basis.

Nominations in response of this advertisement will result in the filling of vacancies created by the expiry of the tenure of the office of the existing members of the Commission as prescribed by Section 5 of the Act.

All nominations must be submitted within thirty days of the date of the publication of this advert in writing to:

The Executive Secretary
Human Rights Commission
H.B. House, Off Paul Kagame Road
Private Bag 378,
Lilongwe 3
Malaŵi
Tel.: (265) 1 750 900/943/954
Fax.: (265) 1 750 943
Email: info@malaŵihrc.org

A list shall finally be published in the *Gazette* containing the names of the organizations which will have submitted nominations, the names of the persons nominated, the names of the persons formally appointed by the President and the resultant membership of the Commission. Persons appointed as members of the Commission shall serve a term of three years and shall be eligible for re-appointment.

The Commission was established under Chapter XI of the Constitution of the Republic of Malaŵi and accordingly all organizations to which this public advert is directed are requested to rise up to the constitutional and civil duty to respond, with a sense of seriousness and responsibility, by submitting their nominations of persons to be considered for appointment as members of the Commission and to vet nominees so as to ensure that they satisfy the requirement of being independent, non-partisan and of high integrity and standing.

Dated this ..... day of ..... 20 .....

....

Law Commissioner Ombudsman

A LIST OF REGISTERED NGOS AND ORGANIZATIONS THAT ARE CREDIBLE AND FUNCTIONAL (to be attached accordingly)

SECOND SCHEDULE

Format for the Advertisement of the Results of the Nomination and Selection Process of the Members of the Commission

General Notice No

Human Rights Commission Act

(Cap. 3:08)

It is hereby published in terms of the Human Rights Commission Act, (the Act), that His/Her Excellency the President, has appointed the following persons as members of the Human Rights Commission, pursuant to section 131 (2) of the Constitution of the Republic of Malaŵi, for a three year term of office with effect from .....

No.	*Name of Member*	*Name of Nominating Organization*
1.		
2.		
3.		
4.		
5.		
6.		
7.		

The Law Commissioner (..... insert name) and the Ombudsman (.....) also serve as members by virtue of holding their offices respectively, pursuant to sections 131 (1) (*a*) of the Constitution.

Further in terms of section 4 (3) (*b*) of the Act, the following is a list of reserved names of nominated persons to be appointed to fill any casual vacancy for the remainder of the term of a member who may vacate before the expiry of his or her terms:

Pursuant to section 4 (4) of the Act, the following list of all persons who were nominated and their nominating organizations is hereby published:

No.	*Name of Nominated Person*	*Name of Nominating Organization*
1.		
2.		
3.		
4.		

LAW COMMISSION

CHAPTER 3:09

Containing Pages 1–6

CHAPTER 3:09

LAW COMMISSION

ARRANGEMENTS OF SECTIONS

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1. Short title
2. Interpretation

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3. The Law Commissioner
4. Other staff of the Commission
5. Other members of the Commission

PART III

FUNCTIONS OF THE COMMISSION

6. Functions
7. Duties
8. Powers

PART IV

REPORTS OF THE COMMISSION

9. Publication of reports
10. Laying of reports in Parliament
11. Reference of reports to other Ministers
12. Promulgation of draft legislation recommended by the Commission
13. Comments by Cabinet, etc.

PART V

FINANCIAL PROVISIONS

14. Funding of the Commission
15. Accounting and auditing

PART VI

MISCELLANEOUS

16. Regulations

13 of 1998

An Act to make provision for the functional operation of the Law Commission established under Part XII of the Constitution and for matters connected therewith or ancillary thereto

[3rd July, 1998]

PART I

Preliminary

Short title

1. This Act may be cited as the Law Commission Act.

Interpretation

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

"Commission" means the Law Commission established under Chapter XII of the Constitution;

"Law Commissioner" means the officer designated and appointed as such under section 133 of the Constitution;

"matter" in relation to the work of the Commission, means a matter within the competence of the Commission under the Constitution or this Act;

"programme" means a programme of the work of the Commission prepared and published under section 7 (*a*);

"report" means a report of the findings and recommendations of the Commission required by section 135 (*d*) of the Constitution to be submitted to the Minister and to be published and laid in Parliament by him.

PART II

Staff of the Commission

The Law Commissioner

3. The Law Commissioner shall be paid such salary and allowances and shall be entitled to such benefits as Parliament shall determine.

Other staff of the Commission

4.—(1) There shall be employed in the service of the Commission, subordinate to the Law Commissioner, such other support staff as the Commission shall consider necessary for the performance and exercise of the functions, duties and powers of the Commission, and who shall be officers in the public service appointed by the Commission.

(2) Such of the professional or specialized staff of the Commission as the Commission shall specify shall be appointed on such terms and conditions of service as Parliament may approve.

Other members of the Commission

5. Members of the Commission, other than the Law Commissioner, appointed under section 133 (1) (*b*) of the Constitution shall receive such remuneration as Parliament shall specially or generally approve on the recommendation of the

Commission, but such members shall not, by reason only of their appointment as such, be deemed to be officers in the public service.

PART III

Functions of the Commission

Functions

6. The functions of the Commission, in addition to those conferred by the Constitution, shall be—

(*a*) to review the Laws of Malaŵi with a view to the systematic development and reform of the law, including, in particular—

(i) the modernization of the laws by bringing them into accord with current national and international conditions and norms;

(ii) the elimination from the laws of any defects, whether of a procedural, substantive or policy nature;

(iii) the simplification of the laws;

(iv) the recommendation of new or more effective methods and procedures for the administration of the laws;

(*b*) to make recommendations for the fusion or harmonization of customary law with other laws of Malaŵi;

(*c*) to make recommendations for the codification of any branch of the law or of any customary law; and

(*d*) to promote awareness of the laws and the Constitution by the public and by departments of the Government and other authorities or bodies.

Duties

7.—(1) In pursuance of its powers and functions under the Constitution and this Act, the Commission—

(*a*) shall, from time to time, prepare programmes of its work for any specified period not exceeding a calendar year setting out, in an order of priority, matters for its consideration and shall publish a notice of any such programme in the *Gazette*;

(*b*) may invite the Attorney General, on behalf of the Government, or any Minister to refer to the Commission any matter for inclusion in its programme to be prepared and published under paragraph (*a*);

(*c*) may conduct a public inquiry into any matter relating to law reform or development and, for the purposes of such inquiry, the Commission shall have the same powers as commissioners appointed under the Commissions of Inquiry Act; Cap. 18:01

(*d*) may invite or receive from any person or body proposals or submissions pertaining to any matter relating to law reform or development for its consideration;

(*e*) may, for purposes of considering any matter relating to law reform or development, consult any person or body or conduct public or national consultation whether by circulation of working papers setting forth preliminary views on the matter or otherwise;

(*f*) shall prepare a full written report incorporating the findings and recommendations it has made in respect of any matter it has considered, which report the Commission shall submit to the Minister pursuant to section 135 (*d*) of the Constitution;

(*g*) shall prepare and submit, as part of any of its reports to the Minister, draft legislation which it considers to be necessary or required to implement its recommendations;

(*h*) shall assist the Minister with the publication of any of the reports of the Commission as required by section 135 (*d*) of the Constitution;

(*i*) may prepare and publish law reports or assist in such preparation and publication; and

(*j*) shall act as the repository of public information on the state of the law in Malaŵi and of international instruments to which Malaŵi is party.

(2) A programme of work prepared and published under subsection (1) (*a*) shall serve as a guide to the Commission in proceeding with its work, but the Commission may at any time consider any matter not included in the programme and make its findings and recommendations thereon.

(3) The Commission shall keep the President and the Minister fully informed on matters concerning the general conduct of the affairs of the Commission.

Powers

8. The Commission shall have powers to—

(*a*) produce and distribute any publication arising from or connected with its work and to retain the proceeds or royalties from any sale thereof;

(*b*) sponsor, support or organize conferences, seminars, workshops and meetings on any matter under its consideration or generally for the promotion of its functions and objects;

(*c*) fix, receive, recover and retain any registration, attendance or other fees in connexion with its conferences, seminars, workshops or meetings;

(*d*) receive donations of funds, materials and technical assistance for the furtherance of its work;

(*e*) engage persons having suitable qualifications and experience as consultants to the Commission;

(*f*) determine its own procedures for carrying out consultations regarding any matter under its consideration and for the general conduct of its work; and

(*g*) do and perform all such things or acts as are necessary or expedient for the implementation of its programmes and the performance or exercise of its functions, duties and powers.

PART IV

Reports of the Commission

Publication of reports

9. The Minister shall publish any report he has received from the Commission in the *Gazette* or in such other manner as he shall determine with the advice of the Commission and shall do so within sixty days of the date of the report.

Laying of reports in Parliament

10. The Minister shall lay any report of the Commission in Parliament during the next fourteen sitting days of Parliament after publication of the report.

Reference of reports to other Ministers

11. Where a report submitted to the Minister contains a recommendation relating to a law the administration of which is assigned to another Minister, the Minister shall make available for the consideration of such other Minister a copy of the report or of the relevant extract of the report, inviting comments, if any, from that other Minister.

Promulgation of draft legislation recommended by the Commission

12.—(1) Any draft of principal legislation recommended by the Commission in any of its reports shall be referred by the Minister to the Cabinet for consideration and where Cabinet approves the draft legislation, with or without modification, such legislation shall—

(*a*) be published in the *Gazette* as a Government Bill; and

(*b*) be introduced in Parliament as a Government Bill by the Minister responsible for the matter in question.

(2) If a report of the Commission recommends the making of subsidiary legislation under an Act of Parliament, then the Minister or other authority responsible for the making of such subsidiary legislation may make the subsidiary legislation and cause it to be published in the *Gazette*.

Comments by Cabinet, etc.

13. The Commission shall receive any comments, opinions and views made by Cabinet on any draft of principal legislation or made by the responsible Minister or other authority on any draft of subsidiary legislation contained in its reports and shall reconsider its report and draft legislation taking due and reasonable account of such comments, opinions and views and may make new findings and recommendations in response thereto and submit further reports to the Minister.

PART V

Financial Provisions

Funding of the Commission

14.—(1) The Government shall adequately fund the Commission to enable it to exercise its powers and perform its duties and functions, and so as to ensure its independence and impartiality.

(2) The Commission may receive any donations of funds, materials and any other form of assistance for the purposes of its duties and functions:

Provided that no such donation shall jeopardize or compromise the independence and impartiality of the Commission.

Accounting and auditing

15. The Commission shall be liable to account to Parliament for its funds in the manner applicable to Government departments, and the accounts of the Commission shall be liable to audit by the Auditor General.

PART VI

Miscellaneous

Regulations

16. The Minister may, on the advice of the Commission, make regulations for the better carrying out of the provisions of this Act.

JUDICATURE ADMINISTRATION

CHAPTER 3:10

Containing Pages 1–2

CHAPTER 3:10

JUDICATURE ADMINISTRATION

ARRANGEMENT OF SECTIONS

SECTION
1. Short title
2. Interpretation
3. Chief Courts Administrator
4. Funds of the Judiciary
5. Regulations

An Act to provide for the establishment of the office of Chief Courts Administrator; the administration of the judiciary; the funding of the judiciary; the terms and conditions of service for members of staff of the judiciary; and for matters connected therewith or incidental thereto

11 of 2000
G.N. 60/2000

[1st December, 2000]

1. This Act may be cited as the Judicature Administration Act.

Short title

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

Interpretation

"Chief Courts Administrator" means the Chief Courts Administrator of the judiciary appointed under section 3;

"Commission" means the Judicial Service Commission established under section 116 of the Constitution;

"court fees" means any fees, commissions or charges payable under any written law in connexion with the filing, service, execution or administrative processing of any writ, application or other legal process, and includes sheriff's fees and any other commission, late fees or other charges so payable;

"judicial office" has the meaning ascribed to it under section 111 (4) of the Constitution;

"member of staff of the judiciary" means any employee of the judiciary, other than a person holding a judicial office.

3.—(1) There shall be a Chief Courts Administrator for the judiciary whose office shall be a public office and who shall be subordinate to the Registrar of the Supreme Court of Appeal and the High Court.

Chief Courts Administrator

(2) The Chief Courts Administrator shall oversee the general, financial and personnel administration of the judiciary and, in exercising his or her duties, shall be subject to any general or special directions of the Chief Justice.

Funds of the judiciary

4.—(1) Subject to section 114 (2) of the Constitution, the funds of the judiciary shall consist of—

(*a*) such sums as shall be appropriated by Parliament for the purpose of the judiciary;

(*b*) such sums as may be payable to the judiciary by way of court fees;

(*c*) such sums as may be received by the judiciary under subsection (2); and

(*d*) such sums as may otherwise vest in or accrue to the judiciary.

(2) The judiciary may accept grants, whether or not subject to conditions, for the benefit of any activity, function, fund or asset of the judiciary.

(3) There shall be paid out of the funds of the judiciary—

(*a*) the salaries, pension, gratuity and allowances of holders of judicial office in accordance with section 114 of the Constitution;

(*b*) the loans of holders of judicial office;

(*c*) the salaries, allowances and loans of members of staff of the judiciary as may be determined by the Commission in accordance with regulations made under this Act; and

(*d*) any other expenses incurred in connexion with the administration of the judiciary.

Regulations

5. The Commission may—

(*a*) subject to sections 118 and 119 of the Constitution, make regulations for—

(i) the nomination of persons for judicial office;

(ii) the exercise of disciplinary powers in relation to persons holding judicial office;

(*b*) make regulations for—

(i) the appointment of members of staff of the judiciary;

(ii) the exercise of disciplinary powers in relation to members of staff of the judiciary;

(iii) with the approval of the Minister responsible for finance, the terms and the conditions of service for members of staff of the judiciary; and

(*c*) make regulations for the general administration of the judiciary.

LEGAL AID

CHAPTER 4:01

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CHAPTER 4:01

LEGAL AID

ARRANGEMENT OF SECTIONS

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CHAPTER 4:01

LEGAL AID

An Act to make provision for the granting of legal aid in civil and criminal matters to persons whose means are insufficient to enable them to engage private legal practitioners and to other categories of persons where the interests of justice so require; to provide for the establishment of a Legal Aid Bureau; to provide for the establishment of a Legal Aid Fund; to allow for limited eligibility of other persons, besides legal practitioners, to provide legal aid for the purposes of this Act and to provide for matters connected therewith or incidental thereto

7 of 2011
G.N. 5/2013

[1st May, 2013]

PART I
Preliminary

1. This Act may be cited as the Legal Aid Act. Short title

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

"Bureau" means the Legal Aid Bureau established under Part III of this Act;

"civic education" means civic education in legal literacy or the general dissemination of information about the law to the general public and conducted as part of legal aid service under this Act;

"contribution" means a contribution to the costs of the proceedings or matter in respect of which legal aid is or is to be given;

"cooperation agreement" means a contract or agreement entered into between the Legal Aid Bureau and a civil society organization or a person or body, engaged or interested in the provision of legal aid, for the rendering of legal aid services wholly by such organization, person or body or jointly with the Bureau;

"contingency fee agreement" means an agreement between the Bureau and a legally aided person by which the Bureau agrees to represent such person on condition that compensation to the Bureau shall be a percentage of the amount recovered in favour of such person.

"criminal investigations" means investigations relating to an offence or to a person accused or convicted of an offence;

"criminal proceedings" means proceedings before a court, tribunal, or other body against a person for—

(*a*) an offence;

(*b*) contempt of, or before, such court, tribunal or other body;

"Director" and ''Deputy Director" means Director and Deputy Director of the Bureau appointed under section 9, respectively;

"legal advice" means oral or written advice on the application of written law or common law to any particular circumstances that have arisen in relation to the person seeking advice and as to the steps which that person might appropriately take having regard to the application of the law to those circumstances;

"legal aid" means service provided to persons under this Act by way of legal representation, legal advice or legal assistance;

"Legal Aid Advocate" means a person qualified as a legal practitioner appointed as a Legal Aid Advocate under section 12;

"Legal Aid Assistant" means a person who is not qualified as a legal practitioner but has attained the requisite minimum level of legal education as; may be prescribed by the Council of Legal Education under the Legal Education and Legal Practitioners Act to enable such person to be in full time employment with the Bureau or to provide services under any clinical law studies programme in partial compliance of the certification requirements for a legal practitioner under the Legal Education and Legal Practitioners Act;

Cap. 3:04

Cap. 3:04

"Legal Aid Fund" or "Fund" means the Legal Aid Fund established under section 39;

"legal assistance" means assistance in taking any of the steps which a person might take, including steps with respect to proceedings, having regard to the application of the law to any particular circumstances that require legal action, whether by taking such steps on behalf of that person, including assistance by way of representation, or by assisting that person in taking such steps on his own;

"legally aided person" means a natural or legal person in receipt of legal aid in accordance with this Act;

"Public Appointments Committee" means the Public Appointments Committee of the National Assembly established under section 56 (7) of the Constitution; and

"Registrar" means the Registrar of the High Court of Malaŵi.

PART II

Legal Aid Bureau

Establishment of the Legal Aid Bureau

3. There is hereby established the Legal Aid Bureau (in this Act otherwise referred to as the "Bureau") which shall be a Department of the Government.

Duties and functions of the Bureau

4.—(1) The duties and functions of the Bureau shall be to—

(*a*) provide legal aid in accordance with this Act;

(*b*) determine—

(i) the persons or classes of persons in respect of whom legal aid may be granted; and

(ii) the matters or classes of matters in respect of which legal aid may be granted;

(*c*) determine priorities in the provision of legal aid as between—

(i) different persons or different classes of persons; and

(ii) different matters or different classes of matters;

(*d*) specify the guidelines to be applied in determining eligibility for legal aid;

(*e*) specify the circumstances in which contributions towards legal aid shall be paid by legally aided persons and the way of calculating such contributions;

(*f*) establish and manage offices of the Bureau in such places as it considers appropriate;

(*g*) liaise and cooperate with civil society organizations or any other persons or bodies engaged or interested in the provision of legal aid;

(*h*) compile and publish information in respect of the functions of the Bureau and in respect of other schemes of legal aid provided in Malaŵi;

(*i*) undertake research into all aspects of legal aid including investigation and assessment of different methods of financing and providing legal aid;

(*j*) prepare reports and make recommendations to the Minister on such matters relating to the functions of the Bureau as the Bureau considers appropriate or as the Minister may reasonably request;

(*k*) exercise such other functions and duties as are conferred on the Bureau by or under this Act or any other written law.

Powers of the Bureau

5.—(1) The Bureau shall have the power to do such things as it considers necessary or desirable to secure the provision of legal aid under this Act or are calculated to facilitate or are incidental or conducive to the discharge of its functions.

(2) Without prejudice to the generality of its powers under subsection (1), the Bureau shall have power to—

(*a*) grant legal aid in accordance with this Act with or without conditions or vary, withdraw or revoke such grant;

(*b*) contract out legal aid work to legal practitioners in private practice on such terms and conditions as the Bureau may consider fit and appropriate;

(*c*) enter into cooperation agreements with civil society organizations or any other persons or bodies engaged or interested in the provision of legal aid;

(*d*) undertake any inquiry or investigation which the Bureau considers expedient in relation to the discharge of its duties and functions;

(*e*) receive donations of funds, materials and technical assistance in furtherance of its work;

(*f*) request and obtain the assistance of any public institution, Government Department, and other classes of institutions or bodies as may be necessary for carrying out the functions and duties under this Act;

(*g*) charge and collect fees in respect of programmes, publications, seminars, documents, and other services provided by the Bureau;

(*h*) disseminate or assist in the dissemination of information relating to the duties and functions of the Bureau;

(*i*) to develop *pro bono* programmes in conjunction with the Malaŵi Law Society; and

(*j*) do or perform all such acts or things as may be necessary or expedient for the discharge or exercise of its duties, functions and powers.

Independence of the Bureau

6.—(1) The Bureau shall exercise its powers and perform its duties and functions independent of the interference or direction of any person or authority.

(2) All organs of the Government shall accord the Bureau such assistance as may be reasonably required for the exercise of its powers and performance of its duties and functions and for the protection of the independence and impartiality of the Bureau.

PART III

Staff of the Bureau

Director and Deputy Director

7. There shall be a Director and a Deputy Director of the Bureau whose offices shall be public offices.

Qualifications of Director and Deputy Director Cap. 3: 04

8. No person shall be qualified to be appointed Director or Deputy Director unless he is entitled to practise as legal practitioner under the Legal Education and Legal Practitioners Act and has been entitled so to practise for a period of not less than ten years.

Appointment of the Director and Deputy Director

9.—(1) Nominations for appointment to the office of Director and Deputy Director shall be received from the general public following a public advertisement, and successful candidates shall be appointed by the Public Appointments Committee:

Provided that the Public Appointments Committee may, if it considers it appropriate so to do, and upon application by the officer concerned, consider an officer serving in the office of—

(*a*) Director or Deputy Director for re-appointment to the respective office;

(*b*) Deputy Director, for appointment to the office of the Director, without the requirement of a public advertisement.

Term of office of Director and Deputy Director

10. The Director or Deputy Director shall be appointed for a term of five years and shall be eligible for re-appointment for such further terms not exceeding five years as the Public Appointments Committee may consider appropriate.

Removal from office

11. A person appointed to the office of Director or Deputy Director shall not be removed from office except—

(*a*) for incompetence;

(*b*) for incapacity;

(*c*) for gross misconduct;

(*d*) where that person is compromised in the performance of his duties; and

(*e*) on reaching the retiring age prescribed generally for public officers other than judicial officers.

Other employees of the Bureau

12.—(1) There shall be employed in the service of the Bureau subordinate to the Director and Deputy Director, such Legal Aid Advocates, Legal Aid Assistants and such other support staff as may be required for the proper performance and exercise of its duties, functions, and powers, who shall be appointed by the Director and shall be officers in the public service.

(2) In appointing officers subordinate to the Director and Deputy Director, the Director may be assisted by appropriate persons with expertise relevant to the appointments and shall ensure that all proper transparency procedures have been followed.

(3) The appointment of officers under this section shall not require the confirmation of the Public Appointments Committee.

Delegation of powers

13. The duties, functions and powers of the Director may be performed or exercised by—

(*a*) the Director in person;

(*b*) the Deputy Director; or

(*c*) any other officer of the Bureau or other person acting in accordance with the: special directions from the Director.

Criteria for recruiting Legal Aid Assistants

14. In recruiting Legal Aid Assistants, the Bureau shall take into account academic qualifications, course work, training, and the experiential acquisition of knowledge and skills and shall have due regard to the need for Legal Aid Assistants to be able to—

(*a*) communicate effectively;

(*b*) assist legally aided persons to comply with procedural or administrative requirements;

(*c*) have basic understanding of common legal concepts;

(*d*) provide basic legal advice and legal assistance;

(*e*) understand the circumstances in which it is appropriate to refer matters to a Legal Aid Advocate or to a legal practitioner; and

(*f*) advise and educate members of communities on legal issues.

Terms and conditions of service

15. The terms and conditions of service of the staff of the Bureau shall be determined by Parliament on the recommendation of the Director after consultations with the Secretary to the Treasury.

PART IV

Provision of Legal Aid

Extent of legal aid

16. Legal aid shall consist of—

(*a*) legal advice;

(*b*) legal assistance;

(*c*) representation in any court, tribunal or similar body or authority; and

(*d*) the provision of civic education and information about the law.

Legal aid in criminal matters

17. The Bureau shall—

(*a*) develop and maintain a service to ensure that individuals against whom criminal proceedings have been instituted, who fulfill the requirements of section 18, have access to such legal aid as the interests of justice require;

(*b*) either on its own or through other actors under cooperation agreements, furnish such advice and assistance as may be considered by the Bureau or the cooperating partner to be appropriate—

(i) for individuals who are arrested and held in custody at a police station, prison or other place of detention; and

(ii) for individuals facing criminal investigations in such other circumstances as may be prescribed.

Eligibility for legal aid in criminal matters

18.—(1) A person shall be eligible for legal aid in criminal matters if—

(*a*) it is in the interests of justice that such person should have legal aid provided in accordance with this Act with respect to those criminal investigations or criminal proceedings in respect of which he seeks legal aid; and

(*b*) he has insufficient means to enable him to obtain the services of a private legal practitioner.

(2) The factors to be taken into account by a competent authority in determining whether it is in the interests of justice that legal aid be granted in criminal matters shall include the following—

(*a*) the offence is such that if the applicant were convicted it is likely that the court would impose a sentence which would deprive the accused of his liberty or lead to loss of his livelihood or to serious damage to his reputation;

(*b*) the determination of the case may involve consideration of a substantial question of law and adequate legal representation would make a material difference to the accused in receiving a fair trial;

(*c*) the accused may be unable to understand the proceedings or to state his own case because of his inadequate knowledge of the English language or due to mental illness or physical disability or on account of any other valid cause;

(*d*) the nature of the defence is such as to involve the tracing and interviewing of witnesses or to involve expert cross examination of a witness for the prosecution;

(*e*) it is in the interests of someone other than the accused that the accused be represented; and

(*f*) the accused would, if convicted, be given the option of a fine and such fine would remain unpaid for more than one month after the imposition of sentence.

Legal aid in civil matters

19.—(1) The Bureau shall develop and maintain a service to enable any person involved in civil proceedings as a litigant or as an interested party and who fulfills the requirements of section 20 to have access to—

(*a*) general information about the law and procedure in civil matters and the provision of legal services;

(*b*) legal advice as to how the law applies in particular circumstances;

(*c*) legal assistance in preventing or in settling or otherwise resolving disputes; and

(*d*) legal representation in any civil matter before the courts.

(2) Notwithstanding subsection (1), legal aid shall not be available in any civil matters listed in the First Schedule. *First Schedule*

(3) The Minister may, on the advice of the Bureau, amend the First Schedule by Order published in the *Gazette*. *First Schedule*

Eligibility for legal aid in civil matters

20. A person shall be eligible to receive legal aid in civil matters if, in the opinion of the Director, such person—

(*a*) has reasonable grounds for instituting or defending the matter for which he seeks legal aid; and

(*b*) has insufficient means to enable him to obtain the services of a legal private practitioner.

Assessment of means of an applicant

21.—(1) In assessing the means of any person applying for legal aid under this Act, the Director shall take into account such evidence of income and disposable assets of the applicant, the spouse of the applicant and the parents or guardian of the applicant if the applicant is below the age of twenty-one years, in accordance with this Act:

Provided that if the applicant is above twenty-one years of age but continues to receive formal education, then the Director shall take into account such evidence of income and disposable assets of the applicants parent's or guardian.

(2) In assessing the means of any person pursuant to subsection (1), the Director shall make due allowance of the other commitments of that person as may be disclosed to the Director.

Contributions towards legal aid

22.—(1) Where the Director is satisfied that a person who has applied for legal aid has sufficient means to enable him reasonably to make a contribution towards the total cost of the legal expenses incurred, the Director may require such person to make a contribution towards the costs.

(2) The amount of contribution required by the Director under subsection (1) shall not exceed in any case such sum as may be prescribed.

(3) An applicant shall have a right of appeal to the Registrar of the High Court against the requirement of the Director to make a contribution or against the level of the amount of contribution he is required to pay.

(4) Where in any proceedings an order or agreement for the recovery of any property, damages or other amount is made in favour of a legally aided person in such proceedings there shall be a first charge on such property, damages or other amount for the payment of any contribution due from such person in respect of such proceedings and for the payment of the amount by which such contribution is exceeded by the net liability of costs incurred on behalf of such person.

(5) Any sums recovered in proceedings by virtue of an order or an agreement for costs in favour of a legally aided person shall be paid to the Legal Aid Fund.

(6) For purposes of subsection (4), the following shall be immaterial—

(*a*) the nature of the property;

(*b*) the location of the property; or

(*c*) the charge on the property which includes—

(i) the rights of a person under any compromise or settlement arrived at to avoid the proceedings or to bring the proceedings to an end; or

(ii) any sums recovered by virtue of an order for costs made in favour of the legally aided person in the proceedings, not being sums payable to the Legal Aid Fund under subsection (5).

(7) The charge created by subsection (4) on any damages or costs shall not prevent a court from making an order allowing such damages or costs to be set off against other damages or costs in any case where a lien of the legal representative for costs would not prevent such order.

(8) If the contribution made by a person towards any legal expenses is more than the net liability for costs incurred on his behalf, the excess shall be repaid to that person.

(9) A person who in his application for legal aid, wilfully or knowingly fails to disclose his means or who wilfully or knowingly gives false information regarding his income and assets, commits an offence and shall be liable, on conviction, to a fine of K50,000 or to imprisonment for twelve months.

(10) In this section, references to the net liability for costs of any proceedings refer to the amount of the sums paid or payable on account of a legally aided person and not recouped by sums which are recovered by virtue of an order or agreement for costs made in favour of such person with respect to the proceedings.

Legal aid by courts

23.—(1) Any court may recommend to the Director that a person before it be granted legal aid where such court is satisfied that it is in the interests of justice to do so and that such person has insufficient means to enable him to obtain the services of a private legal practitioner.

(2) Where a court recommends the granting of legal aid, the Director may provide such legal aid if it is practicable to do so in all the circumstances.

(3) If the Director is unable to provide legal aid as recommended by a court under this section, he shall make the reasons for his inability known to such court, in writing, within seven days of the receipt of the recommendation and the court shall forthwith notify the Registrar of the High Court of the inability of the Bureau to grant legal aid.

Appeals against decision of Director

24.—(1) Where the Director refuses to grant legal aid, whether on an application made directly to the Bureau or upon a recommendation of the court for the grant of legal aid the applicant or the person recommended for legal aid may appeal to the Registrar of the High Court in writing within fourteen days of the refusal.

(2) Upon receipt of a notification made under subsection (1), the Registrar of the High Court may, after considering the written grounds of appeal submitted by the appellant and the reasons of the Director in refusing to grant legal aid—

(*a*) dismiss the appeal summarily and give reasons in writing; or

(*b*) direct that legal aid be granted.

Termination and revocation of legal aid

25.—(1) The Director may terminate legal aid—

(*a*) at any time upon the request of the legally aid person;

(*b*) where the legally aided person has been required to make a contribution and any payment in respect thereof is more than sixty days in arrears;

(*c*) if he is satisfied that the proceedings for which legal aid was granted have already been disposed of or are in the process of being disposed of with the assistance of another legal practitioner or any other person, body or civil society organization providing legal aid;

(*d*) if he is satisfied that the legally aided person has caused the proceedings to be conducted unreasonably so as to incur unjustifiable expense to the Legal Aid Fund or has unreasonably caused or required the proceedings to be continued; or

(*e*) if the legally aided person has died.

(2) Legal aid shall not be terminated under this section until notice that the Director may do so has been served on the legally aided person in order that such person may show cause why legal aid should not be terminated.

(3) Where the Director is satisfied that a legally aided person has willfully failed to comply with any requirement as to the information furnished by him or, in furnishing any such information, has knowingly made a false statement or false representation, the Director may, if he thinks fit—

(*a*) where such failure or act occurred prior to the grant of legal aid, revoke such grant;

(*b*) where such failure or act occurred after the grant of legal aid, terminate legal aid from the date upon which such failure or act was discovered.

(4) Where the Director terminates legal aid or revokes the grant of legal aid, he shall forthwith issue a notice of revocation or termination, as the case may be, and shall send the notice to the legally aided person and copies thereof to the court and to the other party to the proceedings.

Variation of grant of legal aid

26.—(1) The Director may at any time vary the grant of legal aid so as to—

(*a*) alter the nature and extent of legal aid;

(*b*) make the grant of legal aid subject to a contribution or a further contribution; or

(*c*) remove the requirement to make a contribution if he is satisfied upon reasonable grounds that there has been a material change in the circumstances of the legally aided person.

(2) In the exercise of the power to vary the grant of legal aid, the Director may—

(*a*) make such inquiries as he thinks fit as to the means and circumstances of the legally aided person and of each person who is associated with the legally aided person for the purposes of assessing his means under section 21;

(*b*) require the legally aided person to furnish such information and to produce such books or documents as the Director may specify.

(3) Where the grant of legal aid is varied under this section, the Director shall record the reasons for the variation of the grant.

Effect of revocation and termination of legal aid

27.—(1) Subject to this section, a person whose grant of legal aid has been revoked shall be deemed never to have been a legally aided person in relation to the proceedings to which the grant related, and a person whose legal aid is terminated shall, from the date of the termination, cease to be a legally aided person in the proceedings.

(2) Upon receipt by him of notice of revocation of the grant or termination of legal aid by the Director, the retainer of any legal practitioner acting on behalf of the legally aided person in the proceedings to which legal aid relates shall forthwith determine.

(3) Where a grant of legal aid has been revoked or terminated—

(*a*) the costs of the proceedings to which the grant of legal aid related incurred on behalf of the legally aided person may, as soon as practicable thereafter, be taxed; and

(*b*) the Bureau shall remain liable to a legal practitioner instructed by the Director to represent the legally aided person for the payment of any costs so taxed which relate to work done or expenses incurred by that legal practitioner.

(4) Where the grant of legal aid has been revoked or terminated, those provisions of section 22 which provide for a charge upon property recovered by a legally aided person shall apply to any property recovered as a result of the formerly legally aided person continuing to take, defend or be a party to the proceedings to which the legal aid related.

(5) For the purposes of subsection (4), reference to a person whose legal aid has been terminated shall, where the legal aid has been terminated under section 25, include his personal representative or his trustee in bankruptcy or the official receiver, as the case may be.

(6) Where a grant of legal aid has been revoked, the Director shall have the right to recover from the person to whom legal aid was granted the costs taxed under subsection (3) (*a*) less any amount received from him by way of contribution.

(7) Where legal aid has been terminated, the legally aided person shall remain liable for the payment of his maximum contribution, if any, as ordered and where he continues to take, defend or be a party to the proceedings to which the grant of legal aid related, those provisions of section 22 which relay to sums recovered by virtue of an order or agreement for costs made in favour of a legally aided person shall apply in so far as the costs were incurred while he was a legally aided person.

Cooperation agreements

28.—(1) The Bureau may enter into cooperation agreements with civil society organizations interested in the provision of legal aid.

(2) A cooperation agreement shall stipulate the conditions applicable and shall place on the cooperating partner the responsibility of funding any activities carried out in partnership with the Bureau.

PART V

Instruction of Private Legal Practitioners

Instruction of private legal practitioners

29.—(1) Where the Director is unable personally or through a Legal Aid Advocate to act on behalf of any person under this Act, he may instruct a legal practitioner in private practice to act on behalf of the person, and may pay the legal practitioner such fees as are specified in the Second Schedule.

Second Schedule

Second Schedule

(2) The Minister may, on the advice of the Bureau, amend the Second Schedule by Order published in the *Gazette*.

Panels of legal practitioners

30.—(1) The Director shall, pursuant to subsection (1), establish panels of legal practitioners to carry out legal aid work based on the expertise and areas of interest of the individual legal practitioners.

(2) Any legal practitioner in private practice may apply to the Bureau for appointment to one or more panels and such application shall indicate the expertise of the legal practitioner and area of interest.

(3) The Bureau may, after consultation with the Law Society—

(*a*) refuse to appoint a legal practitioner to a panel for which the legal practitioner has made application;

(*b*) appoint a legal practitioner to a panel for which the legal practitioner has not made application where the Director is of the opinion that the expertise of the legal practitioner warrants it;

(*c*) suspend or remove a legal practitioner from a panel—

(i) if the legal practitioner has been found guilty of misconduct under this Act or under the Legal Education and Legal Practitioners Act; or Cap. 3:04

(ii) where due to allegations of such misconduct or other sufficient cause, the Director is of the opinion that the legal practitioner is compromised in the performance of his work.

(4) Where the Bureau rejects an application for appointment to a panel, the Director shall give reasons to the concerned legal practitioner for the rejection.

(5) Before suspending or removing a legal practitioner from a panel, the Director shall give the legal practitioner a reasonable opportunity to be heard.

Conditions applying to members of a panel

31.—(1) A legal practitioner may be appointed to a panel for a period of five years, unless the legal practitioner is removed sooner from the panel at his request or in accordance with this Part.

(2) A legal practitioner may apply for re-appointment to a panel and may be so re-appointed in accordance with this Part.

(3) Any legal practitioner appointed to a panel shall enter into a service provision contract with the Bureau before being assigned any work by the Bureau.

(4) A service provision contract may make provision for or with respect to the following matters—

(*a*) the terms on which the legal practitioner is to provide services to a legally aided person;

(*b*) practice standards and compliance with practice standards;

(*c*) audits; and

(*d*) any other matter expedient to the provision of legal aid under the service provision contract.

(5) The Director may, after consultation with the Law Society. appoint a legal practitioner to act on behalf of a legally aided person if there are no legal practitioners registered in the area of expertise required or in any other exceptional circumstances in which such an appointment would be necessary.

Breach of service provision contracts

32.—(1) The Bureau shall monitor implementation of all service provision contracts entered into with legal practitioners.

(2) If a legal practitioner appears to have breached a service provision contract, the Bureau may give written notice to the legal practitioner of

the apparent breach and direct the legal practitioner to provide a written explanation to the Bureau.

(3) After a legal practitioner has provided a written explanation to the Bureau or, after having been given a reasonable opportunity to provide a written explanation to the Bureau and the legal practitioner has failed to provide that written explanation, the Bureau may—

(*a*) remove the legal practitioner from the panel;

(*b*) withdraw any work assigned to the legal practitioner; or

(*c*) not assign any work to the legal practitioner for a period of up to two years.

(4) A decision under subsection (3) may be made with or without conditions.

Audits

33.—(1) The Bureau may, at any time, in relation to any work assigned by the Bureau to a legal practitioner, (in this section referred to as an "assigned matter"), carry out an audit of the legal practitioner, or cause such audit to be carried out, in respect of any or more of the following—

(*a*) claims for payment;

(*b*) compliance with practice standards;

(*c*) compliance with terms and conditions of a service provision contract;

(*d*) compliance with the guidelines and policies of the Bureau and regulations made under this Act; and

(*e*) complaints relating to service delivery.

(2) An audit shall not be carried out until after seven clear days have elapsed of the written notice of intention to carry out the audit has been given to the legal practitioner concerned and such notice shall state the purpose and scope of the audit.

(3) So far as practicable, an audit shall be carried out at a time that is convenient to the legal practitioner concerned, having regard to the needs of his practice, but in any case such audit shall be earned out within a reasonable period from the time of the issue of the notice.

(4) The relationship between a private legal practitioner and a legally aided person shall not operate to prevent or to limit an audit under this section.

(5) For the purposes of an audit, the Bureau or a person appointed in that behalf by the Bureau, may—

(*a*) require the legal practitioner to produce for inspection of any files, records or documents relating to an assigned matter;

(*b*) make copies of, or take extracts or notes or entries from, any such files, records or documents; and

(*c*) require the legal practitioner to provide to the Bureau, or to the person so appointed, such information as is reasonably necessary for the purpose of the audit.

(6) If a record relating to an assigned matter is—

(*a*) not in writing;

(*b*) written in a language other than English; or

(*c*) not decipherable on sight, a requirement under subsection (5) (*a*) to produce the record, shall be a requirement to produce, in addition to the record if it is in writing, a statement, in the English language and decipherable on sight, that it contains all the information in the record.

(7) The Bureau shall reimburse a legal practitioner for disbursements and any other expenses reasonably incurred by the legal practitioner as a consequence of the audit.

(8) The production of a file, record, document or statement, or the giving of information under this section shall not subsequently affect any legal professional privilege to which, but for subsection (4), the file, record, document or statement would be subject.

(9) If a legal practitioner fails to cooperate in the carrying out of an audit under this section, the Bureau may do any of the following—

(*a*) terminate the services of the legal practitioner in relation to any assigned matter;

(*b*) remove the legal practitioner from a panel to which the legal practitioner is appointed; and

(*c*) refuse to pay the legal practitioner any money payable by the Bureau to the practitioner.

(10) Where an audit reveals evidence that a private legal practitioner carrying our: legal aid work has grossly and unethically misconducted himself, the Director shall report the matter to the disciplinary committee of the Law Society as a disciplinary complaint against the legal practitioner under the Legal Education and Legal Practitioners Act. Cap. 3:04

Confidentiality with regard to audit

34. Except in the performance of the duties, functions and powers conferred by this Act or by any other written law on the Director or any other employee or an agent of the Bureau, the Director or such employee or agent shall not disclose to any person any information that shall come to the attention of the Director or the employee pursuant to any audit carried out under this Act and all such information shall otherwise remain confidential.

PART VI

Regional and District Legal Aid Centres

Regional Legal Aid Centres

35.—(1) There may be established in every regional court administration centre, a Regional Legal Aid Centre.

(2) The Director may appoint a Legal Aid Advocate to a Regional Legal Aid Centre to—

(*a*) provide legal aid under this Act in that region;

(*b*) supervise the operations of Legal Aid Assistants providing legal aid in the District Legal Aid Centres of that region;

(*c*) provide technical support and assistance to the District Legal Aid Centres especially in matters that require legal representation or are beyond the competence of the Legal Aid Assistants.

District Legal Aid Centres

36.—(1) There may be established in every district, a District Legal Aid Centre.

(2) The Director may appoint Legal Aid Advocates or Legal Aid Assistants to a District Legal Aid Centre who shall be responsible for the provision of legal aid in accordance with this Act, for such matters as are within their competence.

Competence of Legal Aid Advocates and Legal Aid Assistants

37. The placement or posting of a Legal Aid Advocate or Legal Aid Assistant in a regional or district centre shall not preclude that Legal Aid Advocate or Legal Aid Assistant from performing legal aid duties in any other regional or district centre.

PART VII

Financial Provisions

Funding of the Bureau

38.—(1) The Government shall adequately fund the Bureau to enable it to perform its duties and functions and exercise its powers so as to ensure its independence and impartiality.

(2) The Bureau may receive donations of funds, materials and any other forms of assistance for the purposes of performing its duties and functions:

Provided that no such donation shall jeopardise or compromise the independence and impartiality of the Bureau.

Legal Aid Fund

39.—(1) There is hereby established a fund to be known as the Legal Aid Fund (in this Act otherwise referred to as the "Fund").

(2) The Fund shall consist of—

(*a*) sums appropriated by Parliament for the purposes of the Fund;

(*b*) any contributions made by legally aided persons;

(*c*) any deductions from awards to legally aided persons; costs awarded to legally aided persons;

(*e*) any sums accruing from contingency fee agreements entered into pursuant to this Act;

(*f*) any other sums that may vest or accrue to the Fund, whether through the provision of legal aid or otherwise or by way of donation, grant, gift or bequest.

(3) The Fund shall be administered by the Bureau in accordance with the purposes of this Act.

(4) The Fund shall be applied to the following—

(*a*) costs and expenses, necessarily incurred in the provision of legal aid in accordance with this Act; and

(*b*) any other purpose which the Bureau considers to be in the interests of the provision of legal aid in accordance with this Act.

Deductions from awards

40. The Director shall, for the benefit of the Fund, deduct such amount as the Minister may, on the advice of the Bureau, prescribe by Order published in the *Gazette* from—

(*a*) any damages or compensation awarded to a legally aided person by a court; and

(*b*) any amount payable to a legally aided person pursuant to any settlement negotiated with assistance of legal aid provided under this Act.

Costs awarded to legally aided persons

41.—(1) Where a court awards costs to a legally aided person, the costs shall, subject to subsection (3), accrue to the Fund.

(2) For the purpose of receiving any costs payable under subsection (1), the Director shall take all such steps and pursue all such remedies as would have been taken by the person to whom such costs were awarded, and any expenses incurred in taking such steps or pursuing such remedies shall be recovered by the Director on behalf of the Fund.

(3) Where a court awards costs to a legally aided person, the Director may authorise a refund to the legally aided person of any contributions made by such person under section 22.

Costs not to be awarded against legally aided persons

42. Notwithstanding any other written law, a court shall not award costs against a legally aided person.

Payments into the funds

43. Any contributions, deductions from awards, contingency fees and costs awarded by the courts due to the Bureau may be paid directly to the Fund.

Accounting and audit

44. The Bureau shall be accountable to Parliament for its funds in the manner applicable to Government departments and the accounts of the Bureau shall be liable to audit by the Auditor General.

PART VIII

General

Parties to submit mediation in certain cases

45.—(1) The Director may require parties to a dispute to submit to mediation as a precondition necessary for the grant of legal aid where both parties to the dispute apply for legal aid under this Act.

(2) The mediation under subsection (1) may be carried out by the Director, Deputy Director, a Legal Aid Advocate or any private legal practitioner instructed by the Director under Part V.

Cap. 3:02

(3) Where the mediation is carried out pursuant to the Courts Act, a legally aided person shall be exempted from paying mediation fees.

Bureau to enter into contingency fee agreements

46.—(1) The Bureau may enter into a contingency fee agreement with a person applying for legal aid where the Director considers it appropriate to do so.

(2) A contingency fee agreement shall—

(*a*) be in writing;

(*b*) relate to proceedings which cannot be the subject of an unenforceable contingency fee agreement; and

(*c*) state the percentage by which the amount of fees which would be payable if it were not a contingency fee agreement is to be increased.

(3) The proceedings which cannot be the subject of an enforceable contingency fee agreement are—

(*a*) criminal proceedings; and

(*b*) family proceedings.

(4) In this section "family proceedings" means proceedings under any or more of the following—

Cap. 10:02

(*a*) Deceased Estates (Wills, Inheritance and Protection) Act;

Act No. 4 of 2015

(*b*) the Marriage, Divorce and Family Relations Act; and

(*c*) Child Care, Protection and Justice Act. Cap. 26:03

47.—(1) Legal aid may be granted to any person for the purposes of any proceedings held before a board, council, body or any other authority, if such person may be so legally represented at such proceedings. Legal aid in matters before a tribunal

(2) In granting legal aid pursuant to subsection (1), the Director shall have regard to the provisions of section 19.

48.—(1) The Minister may, on the advice of the Bureau, make regulations for the better carrying into effect of this Act and, in particular and without prejudice to the generality of the foregoing, such regulations may provide for the following— Regulations

(*a*) the forms of certificates issued for the grant of legal aid in accordance with this Act;

(*b*) the forms of application for legal aid in accordance with this Act;

(*c*) the amounts which a person may be required to contribute towards the costs of legal aid and the recovery of refund of such amounts;

(*d*) procedure for the collection of funds payable to the Fund and the administration of the Fund;

(*e*) the assistance which may be required by the Director for the purposes of this Act from other public officers and from other classes of persons;

(*f*) the costs which are paid by or to either party to any civil proceedings including an appeal in respect of which legal aid is granted under this Act;

(*g*) appeals to the Registrar of the High Court against an order or direction for contribution; and

(*h*) the regulation of contingency fee agreements and generally for the percentage of fees that may be charged upon such agreements.

49.—(1) The Legal Aid Act is hereby repealed. Repeals and savings Cap. 4:01

(2) Any subsidiary legislation and any order made under the Legal Aid Act repealed by subsection (1) and in force immediately before the commencement of this Act—

(*a*) shall remain in force and effect unless in conflict with this Act, and shall be deemed to be subsidiary legislation or an order made under this Act; and

(*b*) may be replaced by subsidiary legislation or an order made under this Act.

Transitional

50.—(1) Save as provided in subsection (2), all persons employed under the repealed Act and who are in service at the commencement of this Act shall continue in service under this Act.

(2) Upon the commencement of this Act, the Director and Deputy Director shall be appointed in accordance with the provisions of section 9; but if the person appointed to either of those offices was a serving officer under the repealed Act or in any part of the public-service, his public service shall not be broken by reason only of his appointment to such office.

s. 19 (2)

FIRST SCHEDULE

Civil Matters Ineligible for the Grant of Legal Aid

Legal Aid shall not be granted for the following matters—

Cap. 2:01

(*a*) election petitions under the Parliamentary and Presidential Elections Act or in relation to Local Government Elections;

(*b*) proceedings for, or consequent to the issue of judgment summons, and in the case of a defendant, proceedings where the only question to be brought before the court is as to the time and mode of payment by him of a debt (including liquidated damages) and costs;

(*c*) insolvency proceedings;

(*d*) foreclosure of mortgages;

(*e*) drafting of documents for the registration of companies and firms;

(*f*) transfer of property and conveyancing, except where such transfer of property or conveyancing is incidental to or arises out of a matter eligible for legal aid which is being handled by the Legal Aid Bureau;

(*g*) proceedings incidental to any proceedings excepted by this Schedule; and

(*h*) defamation.

s. 19 (2)

SECOND SCHEDULE

Fees and Expenses to Private Legal Practitioners

1. Fees and expenses payable to a private legal practitioner shall be the prevailing party and party costs determined by the Registrar of the High Court in both civil and criminal cases as follows—

(*a*) in civil cases the maximum number of hours allowable in bills of costs shall be the party and party costs rate determined

by the Registrar of the High Court from time up to one hundred hours;

(*b*) in criminal cases, private legal practitioners shall be paid a maximum of K20,000 per case regardless of the number of hours spent;

(*c*) the Director shall not allow costs higher than K20,000 in criminal cases unless the private legal practitioner applies to the Director in writing for prior approval;

(*d*) if in civil matters the legal practitioner has reason to believe that the matter will exceed one hundred hours, the Director shall not pay for the extra hours unless the legal practitioner applies to the Director in writing for prior approval;

(*e*) in both civil matters and criminal cases the Director shall only allow higher fees or an extension of time where the legal practitioner shows exceptional circumstances; and

(*f*) there shall be no brief fees payable.

2. All fees and expenses claimed by a private legal practitioner shall be subject to the approval of the Bureau before payment.

3. Disbursements made by private legal practitioners shall be refunded by the Director upon furnishing proof of incurring such disbursements, the Director shall not pay disbursements that exceed one-half of the professional fee payable without prior written authorization.

INQUESTS

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CHAPTER 4:02

INQUESTS

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9 of 1948
8 of 1949
14 of 1951
8 of 1963
59 of 1966
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An Act relating to Inquests

[24TH FEBRUARY, 1948]

G.N. 22/1963
219/1964 (N)
166/1967

PART I

GENERAL PROVISIONS

Short title

1. This Act may be cited as the Inquests Act.

Interpretation

2. In this Act—

"coroner" means any person empowered to hold inquests under this Act;

"medical practitioner" means any person registered or licensed as a medical practitioner under the Medical Practitioners and Dentists Registration Act;

Cap. 36:01

"police officer in charge of a police station" has the meaning assigned thereto in section 2 of the Criminal Procedure and Evidence Code.

Cap. 8:01

Who may hold inquests

3.—(1) Every magistrate may hold inquests under this Act.

(2) The Minister may, by notice published in the *Gazette*, empower any other fit person or class of fit persons to hold inquests under this Act within any area specified in such notice.

(3) Any inquest commenced by a coroner may be continued, resumed, or reopened in the manner provided by this Act by such coroner or by his successor in office.

When inquest to be held

4. Whenever a coroner is credibly informed that the body of a deceased person is lying within his jurisdiction, and that there is reasonable cause to suspect that such person had died either a violent or an unnatural death, or in prison or in custody, or in a mental hospital, or in any place or circumstances which, in the opinion of the coroner, makes the holding of an inquest necessary or desirable, such coroner shall, subject as hereinafter in this section provided, hold an inquest on such body as soon as practicable:

Power to dispense with inquest in certain cases

Provided that—

(*a*) whenever it shall appear to the coroner, either from the report of a medical practitioner rendered under section 13 or otherwise, that the death is due to natural causes, and that the body shows no appearance of death being attributable to or having been accelerated by violence or by any culpable or negligent conduct either on the part of the deceased or of any other person, it shall thereupon be lawful for the coroner at his discretion (except in the cases specified in section 6) to dispense with the holding of an inquest;

(*b*) where the coroner is informed that criminal proceedings have been or are about to be instituted against any person already in custody or about to be arrested in respect of such death, the inquest shall not be commenced, or if commenced shall not be continued or resumed, until such proceedings have been concluded.

Power to order exhumation

5. Notwithstanding any law or custom to the contrary enacted or obtaining, whenever it shall appear to any coroner that the body of any person, who has died in circumstances requiring the holding of an inquest thereon, has been buried without being viewed or without such inquest having been held, or where such inquest, although held, has been quashed or reopened, it shall be lawful for such coroner by his warrant in Form A in the First Schedule to order the exhumation of such body; and he shall after such exhumation proceed to hold an inquest on such body and thereupon direct the reinterment thereof; and the expenses of such exhumation and reinterment shall be paid, upon the coroner's order, out of moneys provided by Parliament:

Provided that such exhumation shall not be ordered in any case where in the opinion of the coroner it would be injurious to public health, or where there is no reasonable probability of a satisfactory result being obtained thereby.

Inquest on all prisoners and on patients in mental hospitals

6. Notwithstanding anything contained in this Act, whenever any prisoner, or any person in custody, or any patient in a mental hospital, shall die from any cause whatsoever, a coroner of the district in which such death has occured shall hold an inquest.

Inquest to be held by coroner of place where body lying

7. Only a coroner having jurisdiction in the place where the body of any person upon whose death an inquest ought to be held is lying shall hold the inquest, notwithstanding that the cause of death arose elsewhere; and if any body is found in any river or in any inland waters, the inquest shall be held by a coroner within whose jurisdiction the body is first brought to land:

Provided that where it appears to a coroner by whom an inquest has been commenced that, owing to special circumstances to be entered upon the record of the inquest, it is expedient for the inquest to be continued by another coroner, he shall, after viewing the body (if such view is necessary in accordance with section 15 (1) and making such entry upon the record as is required to be made under section 15 (4), refer the record to such other coroner; and such other coroner shall thereupon, subject to any directions in that behalf which may be given by the High Court and which the High Court is hereby empowered to give, continue the inquest and conclude the same in accordance with this Act**.**

Inquest where body destroyed or irrecoverable

8. When a coroner has reason to believe that a death has occurred in the area within which he has jurisdiction in such circumstances that an inquest ought to be held, and that owing to the destruction of the body by fire or otherwise or to the fact that the body is lying in a place from which it cannot be recovered, an inquest cannot be held except by virtue of this section, he may, if he considers it desirable so to do, hold an inquest touching the death, and the law relating to inquests shall apply with such modifications as may be necessary in consequence of the inquest being held otherwise than on or after view of a body lying within the coroner's jurisdiction.

Coroner may prohibit burial or cremation till after inquest

9. A coroner may prohibit the burial or cremation of any body lying within his jurisdiction until an inquest shall have been held**.**

Notice of death

10. When any body is found or a person has died in such circumstances as to make the holding of an inquest under this Act necessary or desirable, it shall be the duty of any person finding the body or becoming aware of the death forthwith to inform the nearest Chief, officer in charge of a police station or administrative officer, and upon receiving any such information such Chief, police officer or administrative officer, shall notify the coroner having jurisdiction to hold an inquest. Any person who fails without good cause to inform the Chief, police officer or administrative officer, as required by this section, shall be liable to a fine of £25 and to imprisonment for three months:

Provided that in the event of the occurrence of any death referred to in section 6, the person having the custody or care of

the deceased at the time of his death shall, in Form B in the First Schedule (with such modifications therein as may be necessary), notify the coroner having jurisdiction to hold an inquest directly.

Duty of police officer or Chief

11.—(1) On information being given to a Chief, officer in charge of a police station or administrative officer in pursuance of section 10, such Chief or officer or a person delegated by him (hereinafter referred to as "the Authority") shall proceed to the place where the body of the deceased person is lying and shall make a full investigation into the circumstances, surrounding the death of the deceased and the probable cause thereof, and may arrest any person reasonably suspected of having caused the death.

(2) The Authority shall without delay cause notice of the death in Form B in the First Schedule (or a translation thereof in Chichewa or such other written language as the Authority understands) to be sent to a coroner having jurisdiction to hold an inquest, stating any particulars concerning the cause of death disclosed by the investigation and giving an opinion as to whether or not the death is due to any unlawful act or omission.

(3) In any case where the death is believed by the Authority not to be due to any unlawful act or omission, such Authority shall, if the dead body is not already buried, view the body and authorize its interment, but in all other cases the Authority shall cause the body to be taken to the nearest hospital or other place appointed for the reception of dead bodies unless the Authority certifies to the coroner that the requirements of this subsection cannot reasonably be complied with, having regard to the condition of the body, the weather and the distance to be travelled.

Coroner may call for statement recorded by police 51 of 1971

11A.—(1) Where a death has occurred in such circumstances that an inquest is required or ought to be held under the provisions of this Act, the coroner having jurisdiction may direct any police officer having charge of or concerned in an investigation into the death to produce to the coroner, prior to the holding of the inquest, any statement made to, and recorded in writing by, such police officer by any person having knowledge of the circumstances, the cause of the death or the identity of the deceased, as the case may be, and the coroner may postpone the holding of the inquest for such time as may be necessary to enable him to obtain and peruse any such statement.

(2) The coroner to whom a statement is produced under subsection (1) shall, before holding the inquest, return the statement to the police officer by whom it is so produced and may, at the same time, notify him of the name of any person whose attendance at the inquest will not be required unless otherwise ordered:

Provided that nothing in this section shall be construed as to prohibit the attendance at the inquest of any such person if he desires to attend.

PART II

Post-Mortem Examination

Coroner may direct post-mortem examinations

12.—(1) If any coroner considers it necessary, with a view to investigating the circumstances of the death of any person, to obtain a medical report on the appearance of the body of such person, and as to the conclusions to be drawn therefrom, he may, by written order in Form C in the First Schedule, require any Government medical officer or, in the absence of such officer, any other medical practitioner within his jurisdiction to make an examination of the body and to report thereon.

(2) In any case of emergency where it would be impracticable to secure a coroner's order, any police officer in charge of a police station may exercise the authority conferred on a coroner under subsection (1).

Medical practitioner to make an examination and report

13. Every medical practitioner upon the receipt of such order shall, unless he procures the services of some other medical practitioner to perform the duty, immediately make an examination of the body, with a view to determining therefrom the cause of death, and to ascertaining the circumstances connected therewith, and shall make a report in writing to the coroner describing the appearance of the body, and the conclusions which he draws therefrom touching the death of such person. The examination shall extend, when the medical practitioner considers it necessary but not otherwise, to such dissection of the body as he may think requisite. The report shall be in Form D in the First Schedule, and shall state the cause of death, and shall be signed and dated by the medical practitioner. Such report on being read at the inquest by the coroner shall be *prima facie* evidence of the facts therein stated without further proof, unless it is proved that the medical practitioner purporting to sign the report did not in fact sign it.

PART III

Procedure at Inquest

Inquiries to be made by coroner

14. At every inquest the coroner shall take on oath all such evidence as is procurable as to the identity of the deceased, and the time, place and manner of his death.

Provisions regarding the viewing of body

15.—(1) At or before the first sitting of an inquest on a body, the coroner shall view the body or shall satisfy himself that the body has been viewed by a police officer, medical practitioner or Chief:

Provided that, when an inquest on the body has been previously opened, it shall not be necessary upon a resumed, continued, or subsequent inquest for the body to be viewed a second time.

(2) An order authorizing the burial of a body upon which it has been decided to hold an inquest may be issued at any time after the body has been viewed.

(3) If the body has been buried and has not been viewed in the manner provided in subsection (1), the coroner shall order the exhumation of the body for the purpose of a view in the manner provided by section 5 unless he certifies that in his opinion such exhumation would be injurious to the public health or that no satisfactory result would be obtained thereby.

(4) In any case in which the coroner himself has viewed the body he shall certify the fact upon the record of the inquest, and in other cases he shall record evidence (if any) of the view of the body by a police officer, medical practitioner or Chief.

Coroner may summon witnesses

16.—(1) A coroner holding an inquest shall have and may exercise all the powers of a court with regard to summoning and compelling the attendance of witnesses and requiring them to give evidence, and with regard to the production of any document or thing at such inquest.

(2) Every summons and warrant of arrest and summons to produce shall be in writing signed by the coroner, and shall bear the seal of his court.

(3) Where the inquest concerns the death of a person executed in pursuance of a death warrant the medical practitioner who was present at the execution shall be an essential witness at such inquest.

Cap. 8:01

(4) The Criminal Procedure and Evidence Code shall, as far as may be, apply to summonses, warrants and summonses to produce issued by a coroner.

Coroner not bound by rules of evidence

17. A coroner holding an inquest shall not be bound by any rules of evidence which may pertain to civil or criminal proceedings, but any witness who objects to answer any question on the ground that it will tend to incriminate him shall not be required to answer the question nor be liable to any penalty for refusing so to answer.

Evidence how recorded
Cap. 8:01

18. The evidence of every witness shall be taken down and recorded in the form of a deposition in the manner prescribed for preliminary inquiries under Part VIII of the Criminal Procedure and Evidence Code.

Statements recorded by police may be evidence in inquest
51 of 1971

18A. Where, upon hearing the evidence of a police officer having charge of or concerned in an investigation into the death of the deceased person, the coroner is satisfied that there are no grounds for making a charge against any person in connexion with the death, the coroner may, notwithstanding the provisions of section 18, admit as evidence a statement made to, and recorded in writing by, a police officer by any person relating to the death or the identity of the deceased, and any such statement admitted as aforesaid shall be evidence in the inquest and shall form part of the record.

Power to take evidence of witnesses unable to attend

19.—(1) Where any person within the coroner's jurisdiction who is able to give material evidence in respect of any inquest is, owing to illness or other cause which appears satisfactory to the coroner, unable to attend at the place where the coroner usually sits, it shall be lawful for the coroner to take the deposition of such person in the place where such person is.

Cap. 8:01

(2) The provisions of the Criminal Procedure and Evidence Code, which provide for the examination of witnesses on commission, shall, *mutatis mutandis*, apply for the purpose of inquests held under this Act.

Inquest on Sunday, etc., or in private

20.—(1) A coroner may lawfully hold inquests on any Sunday or public holiday.

(2) If the coroner thinks it expedient in the interests of justice that any inquest should be held in private, he shall hold the same in private.

(3) Whenever an inquest is held in private, the coroner shall record his reasons for so holding it.

Adjournment of inquest

21. A coroner holding an inquest in any place may adjourn the inquest to another day and may order the adjourned inquest to be held in the same or any other place**.**

Staying of inquest and its resumption

22.—(1) If, in the course of an inquest the coroner is of opinion that sufficient grounds have been disclosed for instituting criminal proceedings in connexion with the death against any person already in custody or whose arrest is contemplated, the coroner shall stay the inquest until the trial of the person to be charged is concluded or he is discharged by a subordinate court under section 54 or section 270 of the Criminal Procedure and Evidence Code or it appears improbable that such person will be found.

Cap. 8:01

(2) Where an inquest is stayed in pursuance of subsection (1), the coroner may resume and conclude the inquest after the conclusion of the criminal proceedings if he is of opinion that public benefit is likely to result from his so doing; but, if he is of opinion that no public benefit is likely to result from his so doing, he shall certify his opinion to that effect and transmit to the Director of Public Prosecutions a copy of the inquest proceedings :

Provided that, if in the course of the criminal proceedings any person has been charged, then upon the resumed inquest no inquisition shall charge that person with an offence of which he could have been convicted on such information or contain any finding which is inconsistent with the determination of any matter by the result of those proceedings. 25 of 1968

(3) Notwithstanding subsection (2), where an inquest is stayed in pursuance of subsection (1), and it is ascertained that the person to be charged cannot be found, the coroner shall resume and conclude the inquest.

(4) For the purpose of this section, the expression "the criminal proceedings" means the proceedings before a subordinate court and before any court to which the accused person is committed for trial or before which an appeal from the conviction of that person is heard, and criminal proceedings shall not be deemed to be concluded until no further appeal can, without an extension of time being granted by any court to which an appeal lies, be made in the course thereof.

Issue of summons or warrant

23. If, during the course or at the close of any inquest, the coroner is of opinion that sufficient grounds are disclosed for making a charge against any person in connexion with the death, he may issue a summons or warrant to secure the attendance of such person before any subordinate court having jurisdiction, and may bind over any witness who has been examined by or before him on a recognizance with or without surety to appear and give evidence before such court.

The inquisition

24. After the view (if any) of the body and hearing the evidence, the coroner holding the inquest shall give his verdict and certify it by an inquisition in writing in Form E in the First Schedule, showing, so far as such particulars have been proved to him, who the deceased was, and how, when and where the deceased came by his death:

Provided that, where the inquest concerns the death of a person executed in pursuance of a death warrant the verdict and inquisition shall include a finding as to whether the death was instantaneous and the person executed was the person mentioned in such warrant.

Where guilty party unknown

25. If, at the close of any inquest, the coroner is of opinion that there is ground for suspecting that some person is guilty of an offence in respect of the matter inquired into, but cannot ascertain who such person is, he shall certify his opinion to that effect and transmit a copy of the proceedings to the Commissioner of Police.

Where guilty party cannot be found

26. Where the proceedings upon any inquest have been transmitted to the Commissioner of Police under section 25 and the guilty person remains undiscovered, and if, in the opinion of the Commissioner of Police, there is no probability that such person will be discovered, he shall certify his opinion to that effect and transmit the copy of the proceedings to the Director of Public Prosecutions.

Return of inquisitions 5 of 1971

27.—(1) Every inquisition, including the depositions and the recognizances of the witnesses, if any, shall be transmitted by the coroner, with all convenient despatch, to the Director of Public Prosecutions, who, after perusal thereof shall forward the same as soon as practicable to the Registrar of the High Court, who shall take charge thereof and preserve the same in safe custody.

Cap. 24:01

(2) When a coroner forwards an inquisition to the Director of Public Prosecutions under this section, he shall forward a copy of the inquisition to the person who, under section 19 of the Births and Deaths Registration Act, is Registration Officer for the District, or the specified part of the District, where the death occurred. Such Officer shall treat such copy as if it were a death report delivered to him under section 19 of that Act. Where under section 28 of this Act the verdict in an inquest is quashed, or another verdict is substituted for the one recorded, the Registrar of the High Court shall forthwith inform the Registrar General of such quashing or substitution and the Registrar General may correct any entry made by him in respect thereof.

Powers of High Court

28.—(1) Where the High Court, upon request made by or under the authority of the Director of Public Prosecutions, is satisfied that it is necessary or desirable so to do, it may—

(*a*) order an inquest to be held touching the death of any person;

(*b*) direct any inquest to be reopened for the taking of further evidence, or for the inclusion in the proceedings thereof and consideration with the evidence, already taken, of any evidence taken in any judicial proceeding which may be relevant to any issue determinable at such inquest, and the recording of a fresh verdict upon the proceedings as a whole;

(*c*) quash the verdict in any inquest substituting therefor

some other verdict which appears to be lawful and in accordance with the evidence recorded or included as hereinbefore in this section provided; or

(*d*) quash any inquest, with or without ordering a new inquest to be held.

(2) This section shall apply to all inquests and the verdicts therein.

(3) For the purpose of this section the expression "judicial proceeding" means a proceeding before any court, tribunal or person having by law power to hear, receive and examine evidence on oath.

(4) a request may be made under subsection (1) in such form as the Director of Public Prosecutions deems appropriate and may be considered by a Judge sitting in Chambers who may thereupon take such action authorized by subsection (1) as he deems proper without the attendance of any person or may adjourn the matter for determination in open court and give such direction regarding the attendance of any person in court in relation to the matter as he may deem appropriate.

PART IV

Miscellaneous Provisions

Penalty where body is buried without authority

29.—(1) Any person who without lawful authority or excuse interns, or cremates any body, the burial or cremation of which has been prohibited under section 9, or the body of any person who has died in any of the circumstances mentioned in section 4, or who removes or causes to be removed any body which he has found from the place in which it was lying when he found it, shall be liable to a fine of K50 and to imprisonment for three months.

(2) Where any person is charged with having committed an offence under this section the onus of proving that he has lawful authority or excuse shall be on the person charged.

Obstructing medical officer, etc.

30. Any person who obstructs a medical practitioner, police officer or Chief in the execution of any duty imposed upon him by this Act, shall be liable to a fine of K50 and to imprisonment for three months.

Power to make Rules

31.—(1) The Minister may make Rules prescribing the scale of fees to be paid by the Accountant General to medical practitioners for an examination, autopsy or other service required of them under this Act.

(2) The Rules in the Second Schedule shall be deemed to have been made under the power herein conferred.

32. The forms set out in the First Schedule shall be used for the several matters to which they relate with such variations as circumstances may require. The Minister may from time to time by order published in the *Gazette* amend, revoke, or add to the said Schedule. Forms First Schedule

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FIRST SCHEDULE s. 32

FORM A s. 5

THE INQUESTS ACT

ORDER FOR EXHUMATION

..... District

To .....

.....

Whereas it appears that ..... has died in circumstances requiring the holding of an inquest upon his body and that the body of the said ..... has been buried at …… without such inquest being held (or without the said body being viewed) (or that the inquest held at ..... on the ..... day of ..... 19 ....., was insufficient):

These are to charge and command you that you forthwith cause the said body to be taken up (and viewed) (or, and safely conveyed to ..... in the above-named District) that I may proceed to inquire into the cause of the death of the said ..... (or as the case may be).

Herein fail not.

Given under my hand at ..... this ..... day of ..... 19 .....

.....

Coroner

---

ss. 10 and 11 (2)

FORM B

THE INQUESTS ACT

DEATH REPORT TO CORONER

Particulars of Deceased, etc.

1. Name, sex and approximate age of deceased .....
.....
2. Nationality or Tribe .....
3. Occupation .....
4. Date, hour and place of death .....
5. Supposed cause of death .....
6. Person who found body or gave first information of death .....
.....
7. Date and hour first information received by police or Chief .....
.....
8. Circumstances of death and names of persons who can give information thereof .....
9. Name of police officer or Chief making first investigation .....
.....
10. Date and time of investigation .....
11. Describe where and how body found .....
.....
12. Marks of violence (if any) .....
13. Circumstances of suspicion (if any) .....
14. Date and hour when report sent to coroner .....

Having made full inquiries I have the honour to report that—

(i) there are no suspicious circumstances surrounding the death nor are there any marks of violence on the body;

(ii) in my opinion an inquest

ought to / need not * be held;

(iii) the body has been viewed by me and buried at .....
I am satisfied that the body viewed by me was the body of
.....

(iv) the body has been sent by me to .....

(v) the following persons have been arrested (or are about to be arrested) in connexion with the death on the charges stated hereunder—
.....
.....
.....

Station .....

Police Officer/Chief/Administrative Officer

I order that an inquest be opened at ..... on the ..... day of ..... 19 .....

(or) I do not consider that an inquest is necessary or desirable.

Date .....

.....

Coroner

*Strike out the statements of fact which are not applicable.

FORM C s. 12

THE INQUESTS ACT

ORDER FOR POST-MORTEM EXAMINATION

To .....

Dr. .....

.....

WHEREAS I am credibly informed that one ..... has died in circumstances which may require the holding of an inquest under the Inquests Act, you are hereby authorized and required to make a post-mortem examination of the body of the said ..... which will be delivered to you by ..... and to make a report to me thereon :

Given under my hand at ..... this ..... day of ..... 19 .....

.....
Coroner

FORM D s. 13

THE INQUESTS ACT

REPORT OF POST-MORTEM EXAMINATION

To the ..... (1) Place.

I HEREBY CERTIFY that, at (1) ..... on the ..... day of ....., 19 ....., commencing at the hour of ..... I examined the body of a (2) ..... (3) ..... (2) Sex. (3) Race (European, African, Asiatic or mixed).

(4) ..... (4) Infant, child or adult.

That body was identified to me by .... of ..... as being that of (5) .... (5) Name of deceased.

That as the result of my observations, a schedule of which is appended, I have formed the opinion that death occurred

(6) ..... prior to my examination, and that it was due to (6) Approximate time in hours, days etc.

(7) .... (7) Give cause or causes of death as evidenced solely by objective appearances. If more than one cause state primary first. If the cause of death has not been found the fact must be recorded.

L.R.O. 1/1968

(8) These should always include a brief statement by the officer in charge of the case (who should attend the postmortem) of the circumstances in which death is reported to have taken place.

Appearances which raise a presumption of criminality or of culpable neglect should also be briefly referred to here. See also Note (H).

Remarks (8) .....

.....

.....

.....

.....

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.....

.....

.....

Dated at ..... this .....

day of ..... 19 .....

Signature .....

Qualifications .....

Designation .....

SCHEDULE OF OBSERVATIONS

(*See Note* (*A*))

(9) Note position and attitude of body; state of pupils; condition as to nutrition; bodily warmth, and rigidity; presence of p.m. lividity and signs of putrefaction; presence of bruises, wounds, burns, fractures or other injuries; positions, form, direction and dimensions of injuries; condition of external apertures of body and presence of injury to or foreign bodies in same. See also Note (B) and (H).

External appearances (9) .....

.....

.....

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.....

.....

Age of deceased: Apparent .....

Reputed .....

Skull and its contents (10) .....

.....

.....

Mouth, Pharynx and Oesophagus .....

.....

Pericardium Pericardial Sac, and Heart (11) .....

.....

.....

.....

Large Blood-vessels (12) .....

.....

Larynx, Trachea and Bronchi .....

.....

Pleurae, Pleural Sacs and Lungs: .....

Right .....

.....

Left .....

.....

Thymus, Thyroid and Lymphatic Glands (13)

.....

.....

Peritoneum and Peritoneal Sac (14) .....

.....

.....

Spleen .....

(10) In addition to contents of cranium those of orbits, nasal cavities, etc., may be noted here.

(11) In case of suspected irritant metal poisoning, the endocardium lining the left ventricle should be carefully examined and the presence or absence of petechial or arger haemorrhages noted.

(12) Indications of disease in aorta, thrombosis or suppuration in large veins, etc., maybe noted here.

(13) Special attention should be paid to these organs in cases of sudden death not explained by other changes.

(14) Special attention should be paid, in the female, to the pouch of Douglas.

(15) The entire stomach should be ligatured off at both ends, removed from the body, planed in a clean dish, opened along its lesser curvature and a careful note made of its contents and the appearance of its inner surfaces.

Where poisoning is suspected the stomach and its contents should then be transferred to one of the two small special jars provided by the laboratories for this purpose. In such cases both kidneys and the whole liver should also be removed and placed together in the large jar. See also Note (C).

Stomach (15) and Omenta .....

.....

.....

.....

.....

.....

(16) Where poisoning is suspected the intestines should, after removal of the stomach, be removed, slit open, washed out and the appearance of the mucous membrane, especially that of the rectum, then carefully examined and noted. The presence or absence of solid faeces in the lower bowel should also be noted before the intestines are washed out. It is very rarely necessary to forward the intestines to the laboratory.

Intestines (16) and Mesentery .....

.....

.....

.....

Vermiform Appendix .....

.....

(17) See note (15) above

Liver (17), Gall Bladder and Bile Ducts .....

.....

.....

.....

.....

(18) See note (15) above

Kidneys (18), Ureters and Suprarenal Glands: .....

Right .....

.....

Left .....

Urinary Bladder (19) and Urethra .....

.....

.....

.....

(19) In all cases of suspected poisoning any urine which the bladder may contain should be preserved. In other cases, unless putrefaction be advanced, an examination of a sample of the urine may throw light on the cause of death.

Pancreas .....

Generative Organs (20) .....

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(20) In females, where abortion is suspected, after a thorough vaginal examination, the pelvic organs should be removed from the body in a mass, after ligaturing of the intestines, and the various organs dissected out one by one. To do this it is advisable to saw through the symphisis, separate the pelvic bones and remove all the tissues from the pelvis by cutting close to bones.

NB.—The condition of the uterus and appendages, the presence or absence of products of conception, signs of recent delivery, etc., should always be noted.

Spinal Column and Spinal Cord (21) .....

.....

(21) The spinal cord need only be exposed when positive information may be expected from its examination. Fractured-dislocation, especially in the upper cervical region, should always be examined for by manipulation; if detected, it should be investigated by dissection.

ADDITIONAL OBSERVATIONS

.....

.....

.....

.....

.....

Organs, Parts or Material reserved for further investigation, and how disposed of .....

.....

.....

NOTES

(*A*) The scheme, as given here, for the examination of a body is devised to meet the maximum requirements of any case. Although the following out of this scheme in every detail may be but rarely necessary, yet the examination of the body and its organs should be, in all cases, as exhaustive as the circumstances warrant and the occasion permits. A Medical Officer may be called upon to give considerably more information—arising from his examination of the body—than the mere cause of death.

In the event of the death forming the subject of court proceedings, any omission to examine a particular part of an organ may, by providing cause for uncertainty, seriously prejudice the course of justice: the responsibility for such omission must lie with the Medical Officer who conducted the autopsy. All the cavities of the body, as a rule, should be opened, even though an apparently sufficient CAUSE OF DEATH may have been found in the region first examined.

When there is definite suspicion as to the cause of death, that cavity is to be opened first in which the principal changes are supposed to exist. In the case of a new-born child, when it has to be determined whether the child has breathed or not, the trachea should first be ligatured above the sternum, the abdomen opened and the position of the diaphragm ascertained, and the thorax then opened and its organs removed—after dividing the trachea above the ligature. In all other cases the head should be opened first, the thorax, and lastly the abdomen.

(*B*) If the body be that of an unknown person, the apparent age, the height, colour of eyes and hair, number and condition of teeth, deformities, scars and tattoo marks should be noted as aids to subsequent identification.

(*C*) When the viscera are being kept for chemical investigation, in cases of suspected poisoning, no preservative of any kind should be added to them, except under the following circumstances:—

Where ordinarily it is not possible for the viscera to reach the laboratory within 48 hours of removal from a body, or where the viscera are already decomposed, the addition of spirit of wine thereto should be made, and the fact noted on the label to be attached to the jar. A sample of the spirit used should be forwarded with the jar in a sealed and labelled bottle.

It is to be carefully noted that no preservative other than spirit of wine is to be used. If spirit of wine is not available, no preservative is to be added. Methylated spirit (which contains pyridine) must be strictly avoided.

(*D*) When it is suspected that delivery has recently occurred at term, the breasts and the skin of the anterior abdominal wall should be examined and their condition noted. In case of suspected rape, or of violation of the dead, some of the secretion should be removed from the vaginal fornices and smeared upon clean glass slides for subsequent examination.

(*E*) When individual organs are found enlarged, or wasted, their actual weight should, if possible, be ascertained and noted.

(*F*) It may happen that a definite opinion as to the cause of death cannot be formed without a microscopic examination of tissues. In such cases, small pieces of organs should be placed in spirit and water (50% methylated spirit) and preserved for further investigation. When death may possibly have resulted, from anthrax, malaria, leukaemia, etc., blood-smears should be made upon clean glass slides preserved for microscopic examination.

(*G*) It is not necessary to record upon this form observations upon organs which show no evidence of injury or disease; the word "normal" is all that need be written in such cases.

(*H*) In the absence of a police officer, the clothing of the body should be noted and any observations concerning its surroundings or the conduct of outsiders which are likely to be of use in the subsequent inquiry should be briefly recorded in the Report under the heading "Remarks".

(*J*) At the conclusion of the necropsy the Medical Officer should see that the organs, if not required for further investigation, are returned to their proper cavities, and that the cavities are suitably closed. These precautions facilitate a re-examination should such be called for.

FORM E s. 24

THE INQUESTS ACT

THE INQUISITION

An inquisition taken at ..... in the District of ..... in Malaŵi, the ..... day of ..... 19 ....., before ....., on the view of the body of one ..... then and there lying dead.

Now I, ... charged to inquire when, where, how and after what manner the said ..... came to his/her death say that the following particulars have been disclosed—

1. Name of deceased .....
2. Residence and occupation .....
3. Means of identity .....
4. Where found, when, and under what circumstances .....
5. Date of death .....
6. Cause of death .....
7. Offence (if any) to which death attributable .....

And I, the said ..... say that my verdict is

.....

In witness whereof I have to this inquisition set my hand and the

seal of my Court the ..... day of ..... 19 .....

.....

Station *Coroner*

SECOND SCHEDULE s. 31 (2)

1. These Rules may be cited as the Inquests (Post-Mortem Fees) Rules.

2. A medical practitioner, other than a Government medical officer who was appointed to the public service after the 1st January, 1934, carrying out an external inspection by order of the coroner or a police officer (but not otherwise), shall receive a fee of £1 1s. 0d. or £3 3s. 0d. for a complete post-mortem examination. These fees shall include the prescribed report to the coroner, and giving evidence, if required at the inquest.

3. No fee shall be payable for post-mortem examination and evidence in the case of prisoners or inmates of Government hospitals, mental hospitals and institutions except where an autopsy is performed by order of the coroner or a police officer when a fee of £2 2s. 0d. shall be payable.

4. A fee of £3 3s. 0d. shall be payable to a medical practitioner, other than a Government medical officer who was appointed to the public service after the 1st January, 1934, who is required to superintend the exhumation of a body, in addition to the fee authorized for an external inspection or complete post-mortem examination.

5. Any reasonable travelling expenses, to be assessed by the coroner, which have been incurred by a medical practitioner in complying with any service ordered to be performed by him shall be payable to such medical practitioner.

SUBSIDIARY LEGISLATION
APPOINTMENT OF CORONERS

Gen. N. 687/1967

under s. 3

The Minister has empowered all Chairmen of Grade A.1. and Urban Traditional Courts to hold inquests under the Inquests Act within the area in which their respective Courts have jurisdiction for criminal cases prosecuted by a public prosecutor.

EVIDENCE BY COMMISSIONS

CHAPTER 4:03

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CHAPTER 4:03

EVIDENCE BY COMMISSIONS

ARRANGEMENT OF SECTIONS

SECTION

1. Short title

PART I

EVIDENCE BY COMMISSIONS OUTSIDE MALAŴI

2. Evidence in civil proceedings
3. Evidence in criminal proceedings
4. Effect of evidence taken on commission

PART II

EVIDENCE BY COMMISSIONS WITHIN MALAŴI

5. Examination of witnesses in matters before foreign courts or tribunals
6. Certificate of diplomatic representative
7. Examination on oath
8. Expenses of witness
9. Refusal to answer questions, etc.
10. Courts and judges having authority under this Part
11. Persons giving false evidence
12. Countries to which this Part applies

PART III

LAW ASCERTAINMENT

13. Ascertainment of law outside Malaŵi
14. Certified copies of opinion
15. Application of opinion

PART IV

MISCELLANEOUS

16. Proof of acts of state
17. Rules

An Act to provide for the taking of evidence within or without Malaŵi in relation to proceedings pending before courts within or without Malaŵi, for the ascertainment of foreign laws, and for other purposes connected therewith 16 of 1967 9 of 1977

[28TH JULY, 1967]

1. This Act may be cited as the Evidence by Commissions Act. Short title

PART I

Evidence by Commissions Outside Malaŵi

Evidence in civil proceedings

2. Where in any civil proceedings in any court in Malaŵi, an order for the examination of any witness has been made and a commission, order or other request for the examination of such witness has been addressed to any court of competent jurisdiction outside Malaŵi, such latter court or the chief judge thereof may nominate some fit person to take the examination, and any deposition or examination taken before an examiner so nominated shall be admissible in evidence to the same extent as if it had been taken by or before the court to which the commission, order or request was addressed.

Evidence in criminal proceedings 9 of 1977

3. Where in any criminal proceedings in Malaŵi an order for the examination of any witness, who is to be found outside the jurisdiction of the Malaŵi courts, has been made, and a commission, order or other request for the examination of such witness has been addressed to a court of competent jurisdiction in the country in which such witness is to be found, such court or the chief judge thereof may nominate any judge or magistrate or other judicial officer within the jurisdiction of such court to take the examination of such witness and any deposition or examination so taken shall be admissible in evidence to the same extent as if it had been taken by or before the court to which the said commission, order or other request was addressed.

Effect of evidence taken on commission

4. Whenever, in pursuance of sections 2 and 3 any person is examined outside Malaŵi, such person may be examined on oath, affirmation or otherwise in accordance with the law in force in the place where the examination is taken, and any deposition or examination so taken shall be as effectual for all purposes as if the witness had been so examined before the court in Malaŵi ordering the examination.

PART II

Evidence by Commissions within Malaŵi

Examination of witnesses in matters before foreign courts or tribunals

5.—(1) Whenever, upon application being made for this purpose, it appears to a court or a judge having authority under this Act, that any court or tribunal of competent jurisdiction of any country to which this Part applies before which any civil or commercial matter is pending, is desirous of obtaining the testimony, in relation to such matter, of any witness within Malaŵi such court or judge having authority under this Act may order the examination of such witness upon oath or affirmation, upon interrogatories or otherwise before any person named in such order, and by the same or subsequent order may command the attendance of any person named in such order for the purpose of being examined or the production of any document specified in such order.

(2) Any order made under subsection (1) may give such directions as to the time, place and manner of the examination and all matters connected therewith as may appear reasonable and just, and any such order may be enforced in like manner as an order made in a cause pending in the court or before the judge concerned.

Certificate of diplomatic representative

6.—(1) A certificate under the hand of a diplomatic representative of the country concerned that any matter in relation to which an application is made under this Part is a civil or commercial matter pending before a court or tribunal in the country of which he is the diplomatic representative and that such court or tribunal is desirous of obtaining the testimony of the witness to whom the application relates shall be evidence of the matters so certified.

(2) Where no certificate is produced under the preceding subsection other evidence to that effect shall be admissible.

Examination on oath

7. Every person authorized to take the examination of witnesses by order made in pursuance of this Part may take all such examinations upon the oath or affirmation of the witness to be administered by the person so authorized.

Expenses of witness

8. Every person whose attendance is required under this Part shall be entitled to the like conduct money and payment for expenses and loss of time as upon attendance at a trial.

Refusal to answer questions, etc.

9.—(1) Every person examined under any order made under this Part shall have the like right to refuse to answer questions tending to incriminate himself and other questions which a witness in any cause pending in the court by which or by a judge whereof or before the judge by whom the order for examination was made would be entitled to.

(2) Any person who refuses to answer a question under the preceding subsection shall not be compelled to produce under any such order as aforesaid any document that he would not be compellable to produce at a trial of such a cause.

Courts and judges having authority under this Part

10.—(1) The High Court of Malaŵi and the court of a resident magistrate, and any judge or resident magistrate of any such court shall respectively be courts or judges having authority under this Part.

(2) For the purposes of this Part, save as the context otherwise requires "judge" includes a resident magistrate.

Persons giving false evidence

11. Notwithstanding any other written law, every person examined upon oath or affirmation as a witness under this Part, who upon such examination wilfully gives any false evidence shall be guilty of perjury and liable to the penalties therefor.

Countries to which this Part applies

12. The countries to which this Part applies shall be such countries as the Minister may, by notice published in the *Gazette*, declare to be countries to which this Part applies.

PART III

Law Ascertainment

Ascertainment of law outside Malaŵi

13.—(1) Whenever in any action pending in any court in Malaŵi it appears to the court that it is necessary or expedient, for the proper disposal of the action before it, to ascertain the law applicable to the facts of the case as administered in another country on any point on which the law of such country is different from the law of Malaŵi, it shall be competent for the court in which the action is pending to direct a case to be prepared setting forth the facts—

(*a*) as these may be ascertained by the practice and procedure of the court;

(*b*) as may be agreed upon by the parties; or

(*c*) by such person as may be appointed by the court for that purpose in the event of the parties not agreeing.

(2) Upon the case being approved of by the court or a judge or magistrate thereof under subsection (1),—

(*a*) the parties thereto shall settle the question of law arising out of the case on which they desire to have the opinion of another court; and

(*b*) the judge or magistrate shall accordingly make an order remitting the question of law as settled under paragraph (*a*) together with the case to the court in the country whose opinion is desired upon the law administered by such court as applicable to the facts set forth in the case and desiring that court to pronounce its opinion on the question submitted to it under this Part.

(3) It shall be competent for any of the parties to any such action to present a petition to the court whose opinion is to be obtained praying that that court may hear the parties or their counsel and to pronounce its opinion thereon under this Part or to pronounce its opinion without hearing the parties or their counsel.

(4) The court to which a petition is presented shall, if it thinks fit, appoint an early date for hearing the parties thereto or their counsel and shall thereafter pronounce its opinion upon the questions of law as administered by it which are submitted to it by the court in Malaŵi.

(5) The court to which the petition is presented shall be entitled to take such further procedure thereupon as it deems fit.

Certified copies of opinion

14.—(1) Whenever an opinion is pronounced under section 13, a copy thereof certified by an officer of such court shall be given to each of the parties to the action by whom the same shall be required.

(2) The copy of an opinion so certified shall be deemed and held to contain a correct record of the opinion.

Application of opinion

15.—(1) It shall be competent for any of the parties to the action, after having obtained a certified copy of the opinion, to lodge the same with an officer of the court in which the action is pending, together with a notice of motion setting forth that the party will on a certain day named in the notice move the court to apply the opinion contained in the certified copy thereof to the facts set forth in the case.

(2) The court shall thereupon apply such opinion to the facts in the same manner as if the same had been pronounced by the court itself upon a case reserved for the opinion of the court.

PART IV

Miscellaneous

Proof of acts of state

16.—(1) Subject to this section, all proclamations, treaties and other acts of state of any country may be proved in any court in Malaŵi or before any person having by law or by consent of parties authority to hear, receive and examine evidence either by examined copies or by copies duly authenticated.

(2) A copy of any document mentioned in subsection (1), duly sealed or purporting to be sealed with the seal of the country to which the original document belongs, shall be deemed to be duly authenticated and shall be admissible in evidence to the same extent as the original document would be admissible in evidence, without proof of the seal thereon.

Rules

17. The Minister may, in consultation with the Chief Justice, make rules as shall be necessary or proper for giving effect to this Act and regulating the procedure thereunder.

SUBSIDIARY LEGISLATION

G.N. 35/1969
174/1971

DECLARATION OF COUNTRIES TO WHICH PART II APPLIES

under s. 12

The following countries have been declared countries to which Part II of the Act applies—

Austria;

Denmark;

Federal Republic of Germany;

Greece; and

United States of America.

SERVICE OF PROCESS AND EXECUTION OF JUDGMENTS

CHAPTER 4:04

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CHAPTER 4:04

SERVICE OF PROCESS AND EXECUTION OF JUDGMENTS

ARRANGEMENT OF SECTIONS

SECTION

PRELIMINARY

1. Short title
2. Interpretation

PART I

SERVICE OF SUMMONS IN CIVIL PROCEEDINGS AND PROCEEDINGS CONSEQUENT THEREON

3. Service of certain summons and process in Malaŵi
4. Endorsement of summons
5. Failure to endorse summons
6. Entry of appearance

PART II

SERVICE OF SUMMONS IN CIVIL PROCEEDINGS AND EXECUTION WARRANTS

7. Service of summons in criminal proceedings in Malaŵi
8. Execution of warrant of imprisonment for non-payment of fine

PART III

SERVICE OF A SUBPOENA

9. Service of a subpoena in Malaŵi

PART IV

ENFORCEMENT OF A JUDGMENT IN MALAŴI

10. Interpretation
11. Enforcement of a judgment in Malaŵi
12. Costs
13. Affidavit of liability to be filed
14. Stay of proceedings
15. Notification of proceedings upon a certificate

PART V

GENERAL

16. Proof of service
17. Regulations

CHAPTER 4:04

SERVICE OF PROCESS AND EXECUTION OF JUDGMENTS

4 of 1956 (F)
7 of 1963 (F)
G.N. 114/1964 (N)
263/1969

An Act to provide for the service in Malaŵi of civil and criminal process of any court of record of Zambia or Southern Rhodesia, the execution in Malaŵi of civil judgments of any such court, and for matters incidental to the foregoing and connected therewith

[1st February, 1957]

PRELIMINARY

Short title

1. This Act may be cited as the Service of Process and Execution of Judgments Act.

Interpretation

2.—In this Act, unless inconsistent with the context—

"court" means any court established by or under any law of Malaŵi, Zambia or Southern Rhodesia which is required by law to keep a record of its proceedings but shall not include a Traditional Court established in Malaŵi under the Traditional Courts Act, a court established in Zambia under either the Native Courts Ordinance (Chapter 158) or the Barotse Native Courts Ordinance (Cap. 160) or a court established in Southern Rhodesia under the Native Law and Courts Act (Chapter 73);

Cap. 3:03

"defendant" includes any party against whom relief is sought in a suit or who is required to attend the proceedings in any suit as a party thereto;

"party" includes the government of Southern Rhodesia, Zambia or Malaŵi, as the case may be, or any person suing or being sued on behalf thereof;

"plaintiff" includes any party seeking relief in a suit against any other party;

"proper officer" means the registrar of a court, or any other similar officer;

"suit" means any suit or action or other original proceedings in any court between parties commenced by a summons or in any such other manner as may be provided by or under any law in force in Southern Rhodesia, Zambia or Malaŵi, but does not include any criminal proceedings;

"summons" means—

(*a*) in relation to a suit any summons, writ of summons, concurrent writ of summons, originating summons or other process by which a

suit is commenced or the object of which is to require the appearance in any court of the government of Southern Rhodesia, Zambia or Malaŵi or of any person against whom relief is sought in a suit, or who is interested in resisting such relief;

(*b*) in relation to any criminal proceedings, a summons or other similar process which directs any person to appear before any court to answer a charge or complaint of having committed an offence.

PART I

Service of Summons in Civil Proceedings and Proceedings Consequent Thereon

Service of certain summons and process in Malaŵi

3. Wherever in a suit in a court in Southern Rhodesia or Zambia any summons or other process (other than a subpoena) is required to be served in Malaŵi, such service may be effected in such manner and by such person as may be prescribed.

Endorsement of summons

4.—(1) Every summons for service under this Part shall, in addition to any other endorsement or notice required by any law in force in the country in which the summons was issued and the endorsement or annexure required by subsection (2), have—

(*a*) the following endorsement thereon—

"This summons (or other process as the case may be) is to be served out of and in Malaŵi under the Service of Process and Execution of Judgments Act"; and

(*b*) such other endorsement as may be prescribed.

(2) Every summons for service under this Part shall contain and have endorsed thereon or annexed thereto a short statement of the nature of the claim made or relief sought by the plaintiff in the suit and, if the plaintiff sues in a representative capacity, shall state the capacity in which he sues.

Failure to endorse summons

5. If a summons or a copy thereof does not bear all the endorsements or annexures required by or under this Part, it shall be ineffective for service under this Part.

Entry of appearance

6.—(1) The period fixed by a summons for service under this Part for appearance being entered by the defendant shall, notwithstanding any rules of court governing the time for the entry of appearance, be such period, not being less than twenty-one days, as the proper officer of the court out of which the summons was issued may determine.

(2) Every appearance entered by or on behalf of a defendant to a summons served upon him under this Part shall, subject to

subsection (1), be entered in accordance with the rules of the court out of which the summons was issued and shall, in accordance with such rules, give an address at which all process, proceedings and notices may be served upon or left for him.

(3) If such address is not given or is fictitious or illusory, the appearance may be set aside as irregular.

PART II

Service of Summons in Criminal Proceedings and Execution Warrants

Service of summons in criminal proceedings in Malaŵi

7.—(1) Whenever a summons has been issued in Southern Rhodesia or Zambia directing any person to appear before a court of Southern Rhodesia or Zambia, as the case may be, to answer a charge or complaint of having committed an offence in respect of which such court has jurisdiction, the summons may be served on that person in Malaŵi in such manner and by such person, as may be prescribed.

(2) Every summons for service under this Part shall, in addition to any other endorsement required by any law in force in the country in which the summons was issued, have—

(*a*) the following endorsement thereon—

"This summons (or other process, as the case may be) is to be served out of and in Malaŵi under the Service of Process and Execution of Judgments Act"; and

(*b*) such other endorsement as may be prescribed.

(3) If a summons or copy thereof does not bear all the endorsements required by or under this Part, it shall be ineffective for service under this Part.

(4) If there is produced to a magistrate a warrant for the apprehension of the person upon whom a summons was so served in respect of the failure of such person to appear at the time and place mentioned in the summons and the magistrate is satisfied that such summons was duly served within a sufficient time before the day appointed for the hearing and that such warrant was issued by the court from which the summons was issued, he shall endorse the warrant in the manner prescribed and thereafter it may be executed within Malaŵi and shall be sufficient authority for any person charged with the execution of warrants in Malaŵi to apprehend the person against whom the warrant was issued and bring him before a magistrate having jurisdiction in the area in which the person was apprehended.

(5) Such magistrate may—

(*a*) order the person to be sent to the country in which the warrant was issued and, for that purpose, direct that he be

detained in a prison for a period not exceeding ten days pending his delivery into the custody of any person to whom the warrant was originally directed; or

(*b*) admit the person to bail on such recognizance as he thinks fit on condition that such person appears at an appointed time and place in the country in which the warrant was issued.

(6) Whenever any person has been admitted to bail in accordance with subsection (5) (*b*), and the court admitting the person to bail is satisfied that the person has failed to comply with the conditions of the recognizance on which he was admitted to bail, the court may declare the recognizance to be forfeited and the payment of any sum due by any person under the recognizance may be enforced in the same manner as a fine imposed by that court.

(7) Any sum recovered by virtue of subsection (6) shall be transmitted to the proper officer of the court out of which the warrant was issued.

Execution of warrant of imprisonment for non-payment of fine

8. Whenever a court in Southern Rhodesia or Zambia issues a warrant for the imprisonment of a convicted person who has failed to pay a fine imposed by that court, the warrant may, if it is endorsed in the manner prescribed, be executed in Malaŵi and shall be sufficient authority for—

(*a*) any person charged with the execution of warrants in Malaŵi to apprehend such convicted person and lodge him in the nearest prison; and

(*b*) the officer in charge of any prison and all other persons to carry into effect the sentence described in the warrant:

Provided that, if such convicted person tenders to the person executing the warrant the full amount of the fine imposed by the court, the warrant shall not be executed and the full amount of the fine shall be transmitted to the proper officer of the court out of which the warrant was issued.

PART III

Service of a Subpoena

Service of a subpoena in Malaŵi

9.—(1) Wherever a subpoena has been issued by a court in Southern Rhodesia or Zambia requiring any person to give evidence or to produce any books or documents in any criminal or civil proceedings before such court, such subpoena may be served on that person in Malaŵi in such manner and by such person as may be prescribed. This subsection shall not apply unless there has been transmitted to the person who is to effect service of the subpoena the expenses of such service and the

reasonable expenses to be incurred by the person required to appear to give evidence or to produce the books or documents, in going to and returning from the court named in the subpoena and to be incurred by him during his detention at the place where his evidence has to be given or the books or documents have to be produced.

(2) If there is produced to a magistrate a warrant for the apprehension of the person upon whom a subpoena was so served in respect of his failure to appear at the time and place mentioned in the subpoena, and the magistrate is satisfied that—

(*a*) the subpoena was duly served within a sufficient time before the time mentioned in the subpoena; and

(*b*) the warrant was issued by the court from which the subpoena was issued; and

(*c*) a reasonable sum was paid or tendered for such person's expenses, the magistrate shall endorse the warrant in the manner prescribed and thereafter it may be executed in Malaŵi and shall be sufficient authority for any person charged with the execution of warrants in Malaŵi to apprehend the person against whom the warrant was issued and bring him before a magistrate having jurisdiction in the area in which the person was apprehended.

(3) Section 7 (5), (6) and (7) shall apply in relation to a warrant endorsed under subsection (2) in the same manner as if the warrant had been endorsed under section 7 (4).

PART IV

Enforcement of a Judgment in Malaŵi

Interpretation

10. In this Part—

"judgment" means—

(*a*) any judgment or order whereunder a sum of money is payable given or made by a court in any civil proceedings, but does not include an order, other than an order made against a father for the maintenance of an illegitimate child, for the periodical payment of sums of money towards the maintenance of the wife or other dependants (including any woman from whom he has been divorced) of the person against whom the order is made;

(*b*) an award in proceedings on an arbitration, if the award has, in pursuance of the law in force in the country where it was made, become enforceable in the same manner as a judgment given by a court in that country; or

(*c*) any judgment or order given or made by a court in any criminal proceedings whereunder a sum of money is payable in respect of compensation or damages to an injured person.

Enforcement of a judgment in Malaŵi

11.—(1) Where a judgment is given or has, before the 1st day of January, 1964, been given in a court of Southern Rhodesia or Zambia, the party in whose favour such judgment is or has been given may obtain registration in Malaŵi of the certificate of such judgment by the production of a certificate of such judgment to the proper officer of—

(*a*) the High Court of Malaŵi, in the case of a certificate granted by the proper officer of the High Court of Southern Rhodesia or Zambia; or

(*b*) a subordinate court of Malaŵi, in the case of a certificate granted by the proper officer of an inferior court of Southern Rhodesia or Zambia.

Such certificate shall be in such form and contain such particulars of the judgment as may be prescribed.

(2) Upon the production to him of such certificate, the proper officer shall register the certificate by entering the particulars thereof in a register to be kept by him and to be called "The Register of Southern Rhodesia and Zambia Judgments."

(3) On registration thereof, such certificate shall be a record of the court in which it is registered and shall have the same force and effect in all respects as a judgment of that court, and the like proceedings, including, as the case may be, proceedings in insolvency or for the compulsory winding up of a body corporate, may be taken upon the certificate as if the judgment had been a judgment of that court, and interest shall be payable thereunder at the rate, if any, and from the date specified therein.

(4) No such certificate shall be registered after the expiration of a period of twelve months from the date of the judgment to which the certificate relates without the leave of the court in which it is desired to register the certificate.

Costs

12.—(1) Upon being satisfied that the registration of a certificate was reasonable and justifiable under the circumstances, the court in which the certificate has been registered may order that the plaintiff's costs of registration and other proceedings under this Act, in an amount to be determined by the court, but not exceeding such amount as may be prescribed, shall be paid by the defendant to the plaintiff.

(2) Any such order shall be deemed to be incorporated in the certificate and the amount payable thereunder shall be deemed to be payable under the certificate.

(3) For the purposes of this section, "plaintiff", in relation to a judgment referred to in section 10 (*c*), means the person to whom the sum of money is payable under the judgment, and "defendant" means the person liable to pay such sum of money.

Affidavit of liability to be filed

13. No execution shall be issued or other proceedings taken upon any such certificate unless there is filed in the court out of which it is intended to issue execution or take such other proceedings an affidavit made by the person in whose favour the judgment is given or by some other person cognizant of the facts of the case stating that the amount for which execution is proposed to be issued or other proceedings to be taken is actually due and payable.

Stay of proceedings

14. The court in which any such certificate has been registered may, on the application of any person against whom the judgment was given—

(*a*) order a stay of the proceedings on such terms as to the giving of security or as to the making of an application to the court by which the judgment was given to set aside the judgment; or

(*b*) grant such other relief;

as it may deem fit.

Notification of proceedings upon a certificate

15.—(1) Whenever—

(*a*) any such certificate is registered in any court; or

(*b*) any execution is issued or any other proceedings are taken upon any such certificate;

the proper officer shall forthwith notify the proper officer of the court in which the judgment was given accordingly.

(2) Whenever a judgment in respect of which a certificate has been registered in a court of Southern Rhodesia or Zambia has been set aside or varied, the proper officer of the court in which the judgment was given shall forthwith—

(*a*) in the case where the judgment has been set aside, notify in writing the proper officer of the court in which the certificate has been registered; and

(*b*) in the case where the judgment has been varied, forward to the proper officer of every court in which the certificate was registered notice in writing that the judgment has been varied and a certificate under his hand and seal of the judgment so varied.

(3) Whenever any judgment in respect of which a certificate has been registered in any court in Southern Rhodesia or Zambia has been satisfied in whole or in part, the proper officer of the court in which the judgment was given shall forthwith, upon such satisfaction being made or notified, as the case may be, enter such satisfaction upon the judgment and notify in writing the proper officer of every court in which the certificate has been registered.

(4) Where a certificate in respect of a judgment given in Southern Rhodesia or Zambia has been registered in any court in Malaŵi and—

(*a*) the proper officer of that court receives notice in writing from the proper officer of the court in which the judgment was given that the judgment has been set aside, the first-mentioned proper officer shall cancel the registration of the certificate;

(*b*) the proper officer of that court receives notice in writing from the proper officer of the court in which the judgment was given of the variation of the judgment and a certificate under the hand and seal of that proper officer of the judgment so varied, the first-mentioned proper officer shall cancel the registration of the certificate and register the new certificate of the judgment in the manner provided in section 11 (2), and thereafter sections 11 (3), 13 and 14 and subsection (1) shall apply in relation thereto.

(5) Whenever the proper officer of a court in Malaŵi receives notice in writing from the proper officer of a court in Southern Rhodesia or Zambia that a judgment in respect of which a certificate has been registered in the court of such first-mentioned proper officer has been satisfied in whole or in part, the proper officer receiving such notice shall enter such satisfaction upon the certificate so registered.

PART V

General

Proof of service

16. Whenever any process issued in Malaŵi has been served in Southern Rhodesia or Zambia, such service may be proved—

(*a*) by an affidavit sworn before a commissioner of oaths, notary public, or any other person having authority to administer oaths in the country in which the service was effected; or

(*b*) in such other manner as may be prescribed.

Regulations

17.—(1) The Minister may make regulations for the better carrying out of the objects and purposes of this Act, and without derogation from the generality of the foregoing, may make regulations—

(*a*) in respect of any matter which may be prescribed; and

(*b*) prescribing fees for the service of any process under this Act.

(2) Different regulations may be made under this section in respect of Southern Rhodesia or Zambia and in respect of different courts in each country.

L.R.O. 1/1969

SUBSIDIARY LEGISLATION

SERVICE OF PROCESS AND EXECUTION OF JUDGMENTS REGULATIONS

ARRANGEMENT OF REGULATIONS

REGULATION
1. Citation
2. Interpretation

PART I

SERVICE OF PROCESS

3. Persons authorized to effect service
4. Time when service may be effected
5. Service of summons or other process (other than a subpoena) in a suit
6. Endorsement of summons in a suit
7. Service of summons in criminal proceedings
8. Endorsement of warrant in criminal proceedings
9. Service of subpoena
10. Duties of person effecting service
11. Proof of service
12. Fees for the service of process

PART II

EXECUTION OF JUDGMENTS

13. Contents and form of certificate of judgment
14. Costs of registration of certificate of judgment

G.N. 210/1964 (N)

SERVICE OF PROCESS AND EXECUTION OF JUDGMENTS REGULATIONS

under s. 17

Citation

1. These Regulations may be cited as the Service of Process and Execution of Judgments Regulations.

Interpretation

2. In these Regulations, unless the context otherwise requires—

"copy", in relation to a summons, subpoena or other process, means a correct copy of the original thereof, certified as such under the hand and office stamp of the proper officer of the court out of which such summons, subpoena or other process was issued and bearing the seal, if any, of that court;

"sheriff" includes a sheriff's deputy and any sheriff's officer.

PART I

Service of Process

Persons authorized to effect service

3.—(1) Where any summons, subpoena or other process is required to be served under the Act on a sheriff or messenger of the court or on any member of the household of a sheriff or messenger of the court, such service shall be effected by a person appointed—

(*a*) in the case of a summons, subpoena or other process issued out of a High Court of Southern Rhodesia or Zambia by the High Court of Malaŵi or a judge thereof sitting in chambers;

(*b*) in the case of a summons, subpoena or other process issued out of an inferior court, by a magistrate having jurisdiction in the area in which service is to be effected.

(2) Save as otherwise provided in subregulation (1), a summons, subpoena or other process required to be served under the Act may be served—

(*a*) in the case of a summons, subpoena or other process issued out of a High Court, by any person who is, under the law in force in Malaŵi, authorized to serve a summons, subpoena or other process of the High Court of Malaŵi;

(*b*) in the case of a summons, subpoena or other process issued out of an inferior court, by any person who is, under the law in force in Malaŵi, authorized to serve a summons, subpoena or other process of a subordinate court of Malaŵi.

Time when service may be effected

4. A summons, subpoena or other process required to be served under the Act may be served on such day and at such time as is permitted in respect of the service of similar process issued out of a court of Malaŵi.

Service of summons or other process (other than a subpoena) in a suit

5.—(1) Subject to this regulation, where a summons or other process (other than a subpoena) is required to be served under Part I of the Act—

(*a*) on a person other than a body corporate, such service may be effected—

(i) on him personally or on his duly authorized agent; or

(ii) at his place of residence on any responsible member of his household; or

(iii) at his place of business on any responsible person employed there; or

(iv) at his place of employment on the manager or other person under whose supervision he works; or

(v) if he has chosen an address for service, at the address so chosen;

(*b*) on an incorporated company or other body corporate, such service may be effected at its registered or local office on a director, or the secretary, local manager or other principal officer of such company or body;

(*c*) on a partnership, such service may be effected—

(i) on any one or more of the partners in any manner prescribed in paragraph (*a*); or

(ii) at the principal place of business of the partnership on any person having, at the time of the service, the control or management of the partnership business;

(*d*) on two or more persons sued in their capacity as trustees of an insolvent or bankrupt estate, judicial managers, trustees or administrators, liquidators of a company, executors, guardians, or a committee in lunacy, such service may be effected on any one of such persons in any manner prescribed in paragraph (*a*);

(*e*) on a syndicate, unincorporated company, club, society, church, public institution or other body, such service may be effected—

(i) on the persons named in the summons or other process in any manner prescribed in paragraph (*a*); or

(ii) if the syndicate, unincorporated company, club, society, church, public institution or other body has been sued or cited in its unincorporated name, at the local office or place of business of such body or, if there is none, on the chairman, secretary or other officer thereof in any manner prescribed in paragraph (*a*);

(*f*) on a person detained in any prison established by law, such service may be effected at the prison on the officer in charge thereof, who shall cause the summons or other process to be delivered and explained to such person;

(*g*) on the Government such service may be effected on the Attorney General, Solicitor General or a State Counsel;

(*h*) on a person of unsound mind in respect of whom a committee has not been appointed or who has not been so found by inquisition such service may be effected on the person with whom such person of unsound mind resides or under whose care he is.

(2) When a rule *nisi* or decree *nisi* issued in any proceedings relating to divorce, judicial separation or nullity of marriage is required to be served under Part I of the Act, such service shall be effected on the person named therein personally.

(3) If a person required to be served under Part I of the Act keeps his residence or place of business closed and thereby prevents service being effected in a manner prescribed in subregulation (1),

such service may be effected by affixing a copy of the summons or other process to the outer or principal door of his residence or place of business.

Endorsement of summons in a suit

6. Every summons for service under Part I of the Act shall, if the law in force in the jurisdiction in which it is issued requires an appearance to be entered, have the following endorsement thereon—

"If you enter an appearance to this summons (*or other process, as the case may be*) you must give an address for service at some place within five miles of the ..... Court of ..... at ..... at which documents or notices may be left or served.".

Service of summons in criminal proceedings

7. Where a summons is required to be served under Part II of the Act—

(*a*) on any person other than an incorporated company or other body corporate, such service may be effected—

(i) on him personally; or

(ii) if he cannot, after diligent search, be found, then—

A. at his place of residence on any responsible member of his household; or

B. at his place of business on any responsible person there; or

C. at his place of employment on the manager or other person under whose supervision he works; or

(iii) if service in any manner prescribed in subparagraph (i) or (ii) cannot, by the exercise of reasonable diligence, be effected, then by affixing a copy of the summons to the outer or principal door of the house in which the person to be served ordinarily resides;

(*b*) on an incorporated company or other body corporate, such service may be effected at its registered or local office on a director or the secretary, local manager or other principal officer of such company or body.

Endorsement of warrant in criminal proceedings

8.—(1) A warrant endorsed under section 7 of the Act shall be endorsed in the manner set out in Part I of the First Schedule.

(2) A warrant issued by a court in Zambia or Southern Rhodesia for the imprisonment of a convicted person who has failed to pay a fine imposed by that court shall, if it is to be executed in Malaŵi, be endorsed in the manner set out in Part II of the First Schedule by a magistrate of Malaŵi.

Service of subpoena

9. Where a subpoena is required to be served under Part III of the Act, such service shall be effected on the person named therein personally or if he cannot, after diligent search, be found, then in any manner prescribed in regulation 5 (1) (*a*) or regulation 5 (3), as may be appropriate, for service of a summons or other process in a suit.

Duties of person effecting service

10.—(1) Subject to subregulation (2), the person serving any summons, subpoena or other process under the Act shall, if such service is effected on a person—

(*a*) deliver to such person a copy of the summons, subpoena or other process and exhibit to him the original or a duplicate original thereof; and

(*b*) if so requested by such person and able to do so, explain to him the contents and exigency of the summons, subpoena or other process.

(2) Where by reason of the violent behaviour of, or threats of violent behaviour made by, the person on whom the service is to be effected or any person acting in concert with him, service of any process under the Act cannot be effected in accordance with subregulation (1), such service may be effected by informing the person on whom service is to be effected of the nature of the process and by leaving a copy thereof as near to him as is practicable in the circumstances.

Proof of service

11.—(1) Where service of any process under the Act has been effected by a sheriff, messenger or other officer of the court, such service may be provided by a certificate of service in the form set out in the Second Schedule.

(2) Where service of any process under the Act has been effected by any other person, such service may be proved by an affidavit sworn in the manner prescribed in section 16 (*a*) of the Act and endorsed on or attached to the original or a duplicate original of such process verifying the manner, time and place of service and the person, if any, on whom service was effected.

(3) A certificate of service in the form set out in the Second Schedule shall, on production and without proof of signature, be *prima facie* evidence of the facts therein stated.

(4) The person who has effected service of any process under the Act shall forthwith deliver to the person from whom the process was received—

(*a*) the original or a duplicate original of the process served;

(*b*) the affidavit referred to in subregulation (2) or a certificate of service in the form set out in the Second Schedule, as the case may be; and

(*c*) a statement of the charges for effecting such service.

Fees for the service of process

12. The person serving any process under the Act shall be entitled to receive therefor such fees (including any allowances in respect of travelling and subsistence expenses) as are prescribed for the service of similar process by the law of Malaŵi, notwithstanding that he is not a person or member of a class of persons in respect of whom such fees are so prescribed.

PART II

Execution of Judgments

Contents and form of certificate of judgment

13. A certificate of judgment issued in accordance with section 11 of the Act shall—

(*a*) contain the following particulars of the judgment—

(i) the number of the cause or case;

(ii) the names of the plaintiff and defendant;

(iii) the name and address of the party against whom the judgment has been given;

(iv) the date on which the judgment was given;

(v) an abstract of the judgment specifying, in particular, any amount ordered to be paid, and interest payable thereon and the taxed or approved costs;

(*b*) be in the form set out in the Third Schedule.

Costs of registration of certificate of judgment

14. The amount of the plaintiff's costs of registration of a certificate of judgment shall not exceed—

(*a*) in the case of a certificate registered in the High Court, the sum of £4-4s-0d;

(*b*) in the case of a certificate registered in a subordinate court, the sum of £2-12s-6d.

FIRST SCHEDULE

reg. 8

Part I—Form of Endorsement of Warrant

The within warrant, duly signed by .....a ... . (*judge or magistrate*), and sealed with

the seal, if any, of the ..... Court at .....

having this day been produced to me by ....., I do hereby authorize the ..... and all other persons to whom this warrant is directed, or by whom it may be lawfully executed, and all other police officers of Malaŵi to execute this warrant within Malaŵi and to bring the said .....

....., if he be apprehended before me or some

other magistrate having jurisdiction in the area in which he has been apprehended, to be dealt with according to law.

Given under my hand at .....

this ..... day of ....., 19 .....

Signature .....

Magistrate

PART II—FORM OF ENDORSEMENT OF WARRANT

The within warrant, duly signed by ..... a ..... (*judge or magistrate*), and sealed with the seal, if any, of the ..... Court at ....., having this day been produced to me by....., I do hereby authorize the ..... and all other persons to whom this warrant is directed, or by whom it may be lawfully executed, and also all police officers of Malaŵi to execute this warrant and to lodge the said ....., if he be apprehended, in the nearest prison, to be dealt with according to law.

Given under my hand at .....

this ..... day of ....., 19 .....

Signature .....

Magistrate

SECOND SCHEDULE

reg. 11

FORM OF CERTIFICATE OF SERVICE

I, ...

of the ..... court at .....

hereby certify that I have this ..... day of .....

19 ..... served a true copy of this ..... upon

..... the defendant/respondent named therein at

..... and that I have/have not explained to him the contents and exigency thereof.

Dated at ..... this ..... day of .....

19 .....

Signature .....

THIRD SCHEDULE

reg. 13

Form of Certificate of Judgment

No. of cause or case	Names of plaintiff/ appellant and defendant/ respondent	Name and address of party against whom judgment is given	Date of judgment	Abstract of judgment and amount ordered to be paid, the interest, if any, payable thereon and the taxed or approved costs

I certify that this certificate contains an accurate and correct statement of the particulars of a judgment given in the ..... Court at .....

on the ..... day of ....., 19 .....

Dated this ..... day of ....., 19 .....

.....

Registrar/Clerk of the Court

BANKERS' BOOKS EVIDENCE

CHAPTER 4:05

Containing Pages 1–3

L.R.O. 1/1968

CHAPTER 4:05

BANKERS' BOOKS EVIDENCE

ARRANGEMENT OF SECTIONS

SECTION

1. Short title
2. Interpretation
3. Mode of proof of entries in bankers' books
4. Proof that book is a banker's book
5. Verification of copy
6. Case in which banker, etc. not compellable to produce books
7. Court or judge may order inspection, etc.
8. Costs
9. Warrant to investigate

An Act with respect to Evidence in Relation to Bankers' Books 47 of 1966

[10TH JANUARY, 1967]

1. This Act may be cited as the Bankers' Books Evidence Act. Short title

2.—(1) In this Act, unless the context otherwise requires— Interpretation

"court" means the court, judge, arbitrator or person before whom a legal proceeding is held or taken;

"judge" means a judge of the High Court;

"legal proceeding" includes any civil or criminal proceeding, inquiry or arbitration in which evidence is or may be given.

(2) In this Act, the expressions "bank" and "banker" mean any person carrying on banking business within the meaning of the Banking Act and duly registered under that Act, also any savings bank operated by a registered commercial bank, and also any post office savings bank. Cap. 44:01

(3) The fact of any such bank having been duly registered may be proved in any legal proceeding by the affidavit of a partner or officer of the bank, or by the production of a copy of the *Gazette* containing a copy of a statement of assets and liabilities under section 24 of the Banking Act; the fact that any such bank is a post office savings bank may be proved by a certificate purporting to be under the hand of the Postmaster-General or of an officer of the Post Office.

(4) Expressions in this Act relating to "bankers' books" include looseleaf records and records produced by mechanical or electronic means, ledgers, day books, cash books, account books, and all other books used in the ordinary business of the bank.

Mode of proof of entries in bankers' books

3. Subject to this Act, a copy of any entry in a banker's book shall in all legal proceedings be received as *prima facie* evidence of such entry, and of the matters, transactions and accounts therein recorded.

Proof that book is a banker's book

4. A copy of an entry in a banker's book shall not be received in evidence under this Act unless it be first proved that the book was at the time of the making of the entry one of the ordinary books of the bank, and that the entry was made in the usual and ordinary course of business, and that the book is in the custody or control of the bank.

Such proof may be given by a partner or officer of the bank, and may be given orally or by an affidavit sworn before any commissioner for oaths, or person authorized to take affidavits.

Verification of copy

5.—(1) A copy of an entry in a banker's book shall not be received in evidence under this Act unless it be further proved that the copy has been examined with the original and is correct.

(2) Such proof shall be given by some person who has examined the copy with the original entry, and may be given either orally or by an affidavit sworn before any commissioner for oaths, or person authorized to take affidavits.

Case in which banker, etc., not compellable to produce books

6. A banker or officer of a bank shall not, in any legal proceeding to which the bank is not a party, be compellable to produce any banker's book the contents of which can be proved under this Act, or to appear as a witness to prove the matters, transactions and accounts therein recorded, unless by order of a judge made for special cause.

Court or judge may order inspection, etc.

7. On the application of any party to a legal proceeding a court or judge may order that such party be at liberty to inspect and take copies of any entries in a banker's book for any of the purposes of such proceeding. An order under this section may be made either with or without summoning the bank or any other party, and shall be served on the bank three clear days before it is to be obeyed, unless the court or judge otherwise directs.

Costs

8. The costs of any application to a court or judge under or for the purposes of this Act, and the costs of anything done or to be done under an order of a court or judge made under or for the purposes of this Act shall be in the discretion of the court or judge, who may order the same or any part thereof to be paid to

any party by the bank where the same have been occasioned by any default or delay on the part of the bank. Any such order against a bank may be enforced as if the bank was a party to the proceedings.

Warrant to investigate

9.—(1) Where a judge or magistrate is satisfied by evidence on oath, that in fact, or according to reasonable suspicion, the inspection of any banker's book is necessary or desirable for the purpose of any investigation into the commission of an offence, the judge or magistrate concerned may, by warrant, authorize a police officer or other person named therein to investigate the account of any specified person in any banker's book, and such warrant shall be sufficient authority for the production of any such banker's book as may be required for scrutiny by the officer or person named in the warrant, and such officer or person may take copies of any relevant entry or matter in such banker's book.

(2) Any person who fails to produce any such banker's book to the police officer or other person executing a warrant issued under this section, or to permit such officer or person to scrutinize the book or to take copies of any relevant entry or matter therein shall be liable to a fine of £50.

AUTHENTICATION OF DOCUMENTS

CHAPTER 4:06

Containing Pages 1–8

L.R.O. 1/1968

CHAPTER 4:06

AUTHENTICATION OF DOCUMENTS

ARRANGEMENT OF SECTIONS

SECTION

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PART II

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3. Effect of authentication

PART III

DOCUMENTS SIGNED IN MALAŴI AND INTENDED FOR USE IN MALAŴI

4. Authentication of documents in Malaŵi
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PART IV

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9. Certain affidavits
10. Certain official documents
11. Documents from the Commonwealth
12. Public documents from Convention countries
13. Other documents
14. Translations

PART VI

GENERAL

15. More than one mode of authentication
16. Documents executed by persons on active service

SCHEDULES

An Act providing for the Authentication of Documents for use both in and outside Malaŵi and for Matters Connected therewith 50 of 1966

[23RD OCTOBER, 1967]

PART 1

PRELIMINARY

1. This Act may be cited as the Authentication of Documents Act. Short title

Interpretation

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

"authenticate" in relation to a document means to certify the authenticity of the signature thereon, the capacity in which the person signing the document has acted and, where appropriate, the identity of the seal or stamp which the document bears;

"competent authority" means a person for the time being performing the duties of one of the offices designated in section 7;

"Convention" means the Convention abolishing the Requirement of Legalisation for Foreign Public Documents made at the Hague and dated the 5th day of October, 1961;

"document" includes a book, record, deed, power of attorney, affidavit, certificate, contract, plan, map, drawing, writing and any other method of conveying information in visible form;

"legalisation" means the formality by which the diplomatic or consular agent of the country in which a document is to be produced certifies the authenticity of the signature, the capacity in which the person signing the document has acted and where appropriate, the identity of the seal or stamp which it bears;

"public document" means—

(*a*) a document emanating from an authority or an official connected with the courts or tribunals of any State being a party to the Convention, including those emanating from a public prosecutor, a clerk or registrar of a Court, a sheriff or a process server;

(*b*) an administrative document not hereinafter excluded;

(*c*) a notarial act;

(*d*) an official certificate which is placed on a document signed by a person in his private capacity, such as an official certificate recording the registration of a document, or the fact that it was in existence on a certain date, and an official or notarial authentication of a signature,

but does not include—

(*e*) a document executed by a diplomatic or consular agent;

(*f*) an administrative document dealing directly with a commercial or customs operation;

"signature", in relation to a document, includes execution of the document by any other lawful means.

PART II

Effect of Authentication

Effect of Authentication

3.— (1) This section shall apply in all criminal and civil proceedings in any court in Malaŵi and to the acceptance of documents by the officer in charge of any public office in Malaŵi.

(2) A certificate which purports to be signed, sealed or stamped by an officer whose certificate is declared by this Act to be sufficient authentication of a document may, if duly stamped under the Stamps Act, be accepted in evidence without proof of the signature, seal or stamp of such officer, and when accepted shall be presumed to be signed, sealed, or stamped by such officer.

Cap. 43:01

(3) The certificate of such officer shall be *prima facie* evidence of the facts therein certified or attested.

(4) Nothing in this Act shall prevent the acceptance by any court or officer in charge of a public office of other evidence that a document was in fact signed by the person by whom it purports to have been signed or as to the capacity in which the person signing acted.

PART III

Documents Signed in Malaŵi and intended for use in Malaŵi

Authentication of documents in Malaŵi

4.— (1) Upon payment of any stamp duty payable, an administrative officer may attest the signature on any document subject to the following conditions—

(*a*) if the document is signed by an individual, upon condition that such individual is personally known to him or is identified to him by two respectable and responsible persons both of whom are known to him;

(*b*) if the document is signed by or on behalf of any individual, company or association or body of persons, corporate or unincorporate, upon condition that the person signing the document is personally known to him or is identified to him as provided in paragraph (*a*) and he is satisfied as to the capacity and authority of the person signing the document to do so on behalf of such individual, company or association or body of persons, and as to the identity of any seal or stamp which is affixed to the document in his presence.

(2) If the administrative officer requested to attest the signature on a document is not satisfied as to the identity of the individual signing the document or, as the case may be, of the identity, capacity and authority of the person signing or as to the identity of the seal or stamp, as provided in subsection (1) (*b*), he shall refuse to attest the document.

(3) An administrative officer who is requested to attest the signature on a document by a person purporting to do so on behalf of some other person or on behalf of a company or association or body of persons, corporate or unincorporate, shall not be satisfied as to the capacity and authority of the person signing the document except by written evidence such as—

(*a*) a valid power of attorney containing such authority;

(*b*) the memorandum and articles of association of a company and evidence that the seal of the company is used in accordance therewith and that the persons present have the capacity which they claim;

(*c*) the rules or other constitution of any association or body of persons and evidence that the document is signed in accordance therewith and that the persons present have the capacity which they claim.

(4) An administrative officer, who attests the signature on a document may endorse on or attach to the document a certificate in the appropriate form set out in the First Schedule with any necessary modifications, and such certificate, shall be sufficient authentication of the document for use in Malaŵi.

(5) Nothing in this section shall in any way affect the authentication of a document by a notary public admitted to practise as such in accordance with the Legal Education and Legal Practitioners Act.

Cap. 3:04

Use of seal or stamp

5. An administrative officer who authenticates a document shall affix his seal or stamp of office thereto in addition to his signature, or, if he has no seal or stamp of office, shall state such fact in writing on the document or in his certificate.

Official documents

6. In any criminal or civil proceedings a document—

(*a*) purporting to bear the signature of any person holding office in the service of the Malaŵi Government; and

(*b*) bearing a seal or stamp which purports to be a seal or stamp of the Ministry, department, office or institution to which such person is attached,

shall on its mere production, without proof of such signature, seal or stamp, be presumed to have been signed by such person, unless it is proved not to have been signed by him.

PART IV

Documents Emanating in Malaŵi and intended for use outside Malaŵi

Competent Authorities

7.—(1) The authorities who are competent to issue the certificate referred to in section 8 (2) are—

(*a*) a law officer;

(*b*) the Permanent Secretary of a Government Ministry;

(*c*) the Registrar of the High Court;

(*d*) the Registrar General;

(*e*) a District Commissioner;

(*f*) a notary public;

(*g*) a Resident Magistrate; and

(*h*) such other person as the Minister may by notice published in the *Gazette*, appoint.

(2) Each of the said authorities shall keep a register or card index in which shall be recorded in respect of every certificate issued—

(*a*) the number and date of such certificate.

(*b*) the name of the person signing the public document and capacity in which he has acted or, in the case of documents signed otherwise than by an individual, the name of the authority which has affixed the seal or stamp.

(3) At the request of any interested person, the authority which has issued the certificate shall verify whether the particulars in the certificate correspond with those in the register or card index.

Method of authentication

8.—(1) Authentication of a document for use outside Malaŵi shall be in accordance with the laws of the country or place where the document is to be used.

(2) Subject to subsection (1) a public document for use in a place where the Convention is in operation may be authenticated by a competent authority who shall place, on the document itself or on an "allonge", a certificate in the form set out in the Second Schedule, the dimensions of which form shall be a square of which the sides shall be not less than 9 centimetres long.

PART V

Documents emanating outside Malaŵi and intended for use in Malaŵi

Certain affidavits

9. An affidavit, which purports to have been sworn before and attested by a notary public of Malaŵi or commissioner for oaths of Malaŵi outside Malaŵi bearing the seal or stamp of the notary public or commissioner for oaths, shall be accepted for use in any court in Malaŵi without further authentication unless it is proved not to have been signed or sworn by the person by whom it purports to have been signed or sworn.

Certain official documents

10. Section 6 shall apply in respect of a document emanating outside Malaŵi which purports to bear the signature of any person holding office in the service of the Malaŵi Government in any place outside Malaŵi as they apply in respect of a document signed in Malaŵi which purports to bear the signature of any person holding such office therein.

Documents from the Commonwealth

11. A document signed in any country or place within the Commonwealth shall be sufficiently authenticated if authenticated by the certificate of a notary public, under his signature and seal of office, the mayor or provost of any town under his signature and seal of office, the permanent head of a Government Ministry or department, the registrar or assistant registrar of a court of justice having unlimited jurisdiction, the high sheriff of a county or any person designated for the purposes of the Convention as an authority competent to issue a certificate or "apostille":

Provided that a document so signed which affects or relates to property not exceeding in amount or value £500 shall require no further authentication if it is authenticated by the certificate, to the like effect of one of the certificates in the First Schedule, of a magistrate, assistant magistrate or a justice of the peace of the country or place in which such document is signed.

Public documents from Convention countries

12. Notwithstanding sections 10 and 11, a public document signed in any country or place in which the Convention is in operation shall be sufficiently authenticated if authenticated by a certificate or "apostille", in the form set out in the Second Schedule, signed by any person designated in that country or place for the purposes of the Convention as an authority competent to issue a certificate or "apostille"

Other documents

13. Notwithstanding the other provisions of this Act, a document signed in any country or place shall be sufficiently authenticated if authenticated by a suitable certificate under the signature and seal or stamp of office of—

(*a*) a Malaŵi Consular Officer of such country or place; or

(*b*) a person shown by the certificate of a Malaŵi Consular Officer of such country or place, or of a person holding an office in such country or place equivalent to that of Secretary of State or Under Secretary of State, or of a Diplomatic or Consular Officer of such country or place in Malaŵi to be authorized to authenticate such document by the law of such country or place.

Translations

14. A certificate or "apostille" which is not in the English or French language shall be accompanied by a translation.

PART VI

General

More than one mode of authentication

15. Where under this Act a document may be authenticated in more than one manner, it shall be no objection to the acceptance of the document that the authentication could have been carried out in some manner other than that which has been adopted.

Documents executed by persons on active service

16. Notwithstanding this Act a document signed by a person on active service in the Malaŵi Army, or other armed service of Malaŵi, wherever signed, shall be sufficiently authenticated if authenticated by the signature of a commissioned officer of such service.

s. 4 (4) and 11

FIRST SCHEDULE
AUTHENTICATION BY ADMINISTRATIVE OFFICER

Notes on forms:

(1) Here insert qualification to authenticate.
(2) Whichever is applicable.
(3) Delete if no Seal or Stamp and statement under section 5.
(4) Name of place.
(5) Name of county or territory.

Form I

I, X. Y., in my capacity as ..... (1) do hereby certify that on the date, hereunder written A.B. signed the above written (*or* annexed) (2) document in my presence and that A.B. is personally known to me (*or* that C.D. and E.F., being persons known to me, have severally testified before me that the person signing the said document is personally known to them as A.B.).(2)

Given under my Hand (and Seal) (3) at ..... (4) in ..... (5) on the ..... day of ..... 19 .....

.....
Signature

Seal or stamp of office or statement in lieu thereof

Form II

I, X. Y., in my capacity as ..... (1) do hereby certify that on the date hereunder written the Common Seal of A.B. Company Limited was affixed to the above written (*or* annexed) (2) document in my presence in accordance with the provisions of the Memorandum and Articles of Association thereof, which have been examined by me, and that the signatures L.M. and O.P. thereon are respectively the true signatures of ..... and ..... (give full names) who are respectively a director and the secretary (or as the case may be) of the said company.

Given under my Hand (and Seal) (3) at ..... (4) in ..... (5) on the ..... day of ..... 19 .....

.....
Signature

Seal or stamp of office or statement in lieu thereof

FORM III

I. X. Y., in my capacity as ..... ([1]) do hereby certify that on the date hereunder written there appeared before me A.B. who is personally known to me (*or* who was identified to me by C.D. and E.F., being persons known to me, who have severally testified before me that the person signing the above written (*or* annexed) ([2]) document is personally known to them as A.B.) ([2]) and that the said A.B. produced to me a Power of Attorney which appeared to have been given on the ..... day of ..... 19 ..... by L.D. of ..... and to have been duly registered at ..... and, in his capacity as the attorney of the said L.D.,signed the above written (*or* annexed) (2) document in my presence.

Given under my Hand (and Seal) ([3]) at ..... ([4]) in ..... ([5]) on the ..... day of ..... 19.....

.....
Signature

Seal or stamp of office or statement in lieu thereof

s. 8 (2) and 12

SECOND SCHEDULE

CERTIFICATE OR APOSTILLE

The certificate will be in the form of a square with sides at least 9 centimetres long.

APOSTILLE

(Convention de La Haye du 5 octobre 1961)

1. Country: .....

This public document

2. has been signed by .....

3. acting in the capacity of .....

4. bears the seal/stamp of .....

.....

Certified

5. at ..... 6. the .....

7. by .....

8. No .....

9 Seal/stamp: 10. Signature:

....

OATHS, AFFIRMATIONS AND DECLARATIONS

CHAPTER 4:07

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CHAPTER 4:07

OATHS, AFFIRMATIONS AND DECLARATIONS

ARRANGEMENT OF SECTIONS

PART I

Preliminary

SECTION

1. Short title

PART II

Oaths and Affirmations

2. Persons by whom oaths and affirmations must be made
3. Authority to administer oaths and affirmations
4. Commissioners for oaths, etc.
5. Penalty for holding self out as commissioner for oaths without entitlement and suspension from practising
6. How oaths and affirmations may be administered
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PART III

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10. Jurat, etc. to state where and when oath, etc., taken
11. Savings

FIRST SCHEDULE
SECOND SCHEDULE
THIRD SCHEDULE
FOURTH SCHEDULE
FIFTH SCHEDULE

An Act relating to Oaths, Affirmations and Declarations and Matters Incidental thereto 45 of 1967 G.N. 142/1976

[1st February, 1968]

PART I

Preliminary

1. This Act may be cited as the Oaths, Affirmations and Declarations Act. Short title

PART II

Oaths and Affirmations

2.—(1) Oaths and affirmations shall be made for the purposes of judicial proceedings by— Persons by whom oaths and affirmations must be made

(*a*) all persons who may lawfully be examined, or give, or be required to give, evidence by or before any court or person

having by law or consent of parties authority to examine such persons or receive evidence;

(*b*) interpreters of questions put to and evidence given by such persons;

(*c*) assessors.

(2) Oaths and affirmations by interpreters and assessors shall be made in the same manner as that prescribed by section 6 in the case of witnesses.

Authority to administer oaths and affirmations

3.—(1) Courts and persons having by law or consent of parties authority to examine witnesses or receive evidence are authorized to administer by themselves or by an officer empowered by them in that behalf, oaths and affirmations in discharge of their duties, or in exercise of the powers imposed or conferred upon them respectively by law.

(2) A commissioner for oaths may either in Malaŵi or beyond it administer any oath or affirmation or take any affidavit for the purpose of any judicial or other proceeding in Malaŵi.

Commissioners for oaths, etc.

4.—(1) The following persons shall be commissioners for oaths—

Cap. 3:04

(*a*) legal practitioners for the time being holding a licence to practice as such under the Legal Education and Legal Practitioners Act:

(*b*) magistrates;

(*c*) other public officers for the time being holding or acting in a public office of one of the following grades, that is to say, Professional Officer or Administrative Officer;

(*d*) persons appointed commissioners for oaths under any other written law; and

(*e*) such other persons as the Minister may by notice appoint to be commissioners for oaths.

(2) No commissioner for oaths shall exercise any of his powers as such in any proceeding in which he or any partner or employee of his is acting for any party or in which he has a personal interest.

(3) Commissioners for oaths shall be entitled to charge the fees set out in the First Schedule in respect of the several matters to which they are applicable:

Provided that all such fees taken by a commissioner for oaths who is a public officer shall be forthwith paid by him into the Consolidated Fund.

(4) The Chief Justice may by notice from time to time amend the First Schedule.

Penalty for holding self out as commissioner for oaths without entitlement and suspension from practising

5.—(1) Any person who shall hold himself out to be a commissioner for oaths or who shall receive any fee or reward as a commissioner for oaths, without being entitled to practise as such or perform duties as such, shall be liable to a fine of £100 and for a second or subsequent offence to a fine of £250 and to imprisonment for six months.

(2) Any commissioner for oaths may be suspended from practising as such for such period as the Chief Justice may in his discretion think fit for any failure to perform his functions in the prescribed manner or for making any charge or demanding any payment for any act performed in his capacity as a commissioner for oaths in excess of that prescribed in the First Schedule.

How oaths and affirmations may be administered

6.—(1) Before giving evidence in a judicial proceeding, a witness shall make the oath or affirmation set out in the Second Schedule. The court, or a person authorized by law or by the court in that behalf, shall ask such witness if he believes in Almighty God and, if so, whether he agrees to make the oath. If he answers both questions affirmatively he shall be required by such court or person authorized, as the case may be, to make the oath holding his right hand uplifted. In all other cases he shall be required by the court or person authorized to make the affirmation:

Provided however that where, in any proceedings against a person for any offence, any person of immature age, before the court as a witness, does not in the opinion of the court understand the nature of either an oath or an affirmation the court may receive his evidence, though not given on oath or affirmation, if, in the opinion of the court, he is possessed of sufficient intelligence to justify the reception of the evidence.

(2) Where evidence is received by a court in accordance with the proviso to subsection (1), the accused shall not be liable to be convicted on such evidence unless it is corroborated by some other material evidence implicating him.

Effect of irregularities

7. No omission to make any oath or affirmation, no substitution of any one for any other of them, and no irregularity whatever, in the form in which any one of them is administered, shall invalidate any proceeding or render inadmissible any evidence whatever, in or in respect of which such omission, substitution or irregularity took place, or shall affect the obligation of a witness to state the truth.

Rules relating to duties of commissioners for oaths

8. The Chief Justice may make rules prescribing the manner in which a commissioner for oaths is to perform his duties.

PART III

Statutory Declarations

Statutory declarations

9.—(1) Wherever by law a solemn declaration is directed, permitted or authorized, or wherever a person voluntarily desires to make a solemn declaration, it shall be sufficient if such declaration is made and subscribed (as nearly as material) in the form set forth in the Third Schedule.

(2) Any commissioner for oaths and such other persons as the Minister may by notice authorize may take and receive the solemn declaration of any person.

(3) Whenever any declaration is made and subscribed under this section, such fee as would have been payable on the making of any oath, affirmation or affidavit may be charged in like manner.

(4) A declaration made under this section may be referred to in any other law or legal document as a statutory declaration.

(5) When a declarant is unacquainted with the English language the declaration shall be in the form in the Fourth Schedule, the interpreter having first declared as in the form in the Fifth Schedule. The declaration of the interpreter shall be deemed a statutory declaration.

(6) Whenever in any written law any person is required for any purpose whatsoever other than the purpose of a judicial proceeding to make or take an oath, affirmation or affidavit he may in lieu thereof make and subscribe a declaration under this section :

Provided however that this subsection shall not apply to any requirement that any person make or take a promissory oath or affirmation under the Constitution, the Promissory Oaths Act or any other written law.

Cap. 17:01

PART IV

Miscellaneous

Jurat, etc. to state where and when oath etc., taken

10. Any commissioner for oaths before whom any oath, affirmation or affidavit is made or taken and every person before whom a statutory declaration is made shall state truly in the jurat or attestation at what place and on what date the oath, affirmation affidavit, or declaration is made or taken.

Savings

11.—(1) Nothing contained in this Act shall apply to proceedings before Courts-Martial.

(2) Nothing in this Act contained shall affect any provision in any law under which any certificate or other document is made admissible in evidence, and this Act shall be deemed to be additional to, and not in derogation of, any such provision.

FIRST SCHEDULE

s. 4 and 5

	K t	
1. For taking any affidavit, acknowledgement or declaration	1 00	G.N. 142/1976
2. For every exhibit to any affidavit, acknowledgement or declaration	0 40	
3. For attending to administer an oath or to take a declaration or acknowledgement elsewhere than at the office or place of business of the person taking an affidavit, acknowledgement or declaration, in addition to expenses incurred and the ordinary fee thereon	1 00	
4. For explaining fully the purpose and, effect of a bill of sale and attesting the same	2 00	

SECOND SCHEDULE

s. 6 (1)

Form of Oath

I swear by Almighty God that the evidence I shall give shall be the truth, the whole truth and nothing but the truth.

Form of Affirmation

I do solemnly, sincerely and truly declare and affirm that the evidence I shall give shall be the truth, the whole truth and nothing but the truth.

THIRD SCHEDULE

s. 9 (1)

form of Declaration

I, A.B. of ..... do solemnly and sincerely declare as follows—

(Here insert matter declared)

AND I MAKE this solemn declaration, conscientiously believing the same to be true and by virtue of the Oaths, Affirmations and Declarations Act.

Declared at ..... this ..... day of .....19 .....

Before me:

FOURTH SCHEDULE

s. 9 (5)

DECLARATION BY A PERSON WHO DOES NOT UNDERSTAND THE ENGLISH LANGUAGE

I, A.B., do solemnly and sincerely declare as follows—

..... and I make this solemn declaration conscientiously believing the same to be true and by virtue of the Oaths, Affirmations and Declarations Act.

(Signed) A.B.

Declared at ..... this ..... day of ..... 19 ....., through the interpretation of ..... of ..... who has first declared that he had truly, distinctly, and audibly interpreted the contents of this document to the declarant, and that he

would truly and faithfully interpret the declaration about to be administered to him.

Before me:

FIFTH SCHEDULE

DECLARATION BY INTERPRETER

s. 9 (5)

I, C.D., do solemnly and sincerely declare that I well understand the English and the ..... languages and that I have truly, distinctly and audibly interpreted the contents of this document to the declarant A.B. in the ..... language and that I will truly and faithfully interpret the declaration about to be administered to him.

(Signed) C.D.

Interpreter

Declared at ..... this ..... day of ..... 19 .....

Before me:

SUBSIDIARY LEGISLATION

COMMISSIONERS FOR OATHS RULES

G.N. 10/1968

under s. 8

1. These Rules may be cited as the Commissioners for Oaths Rules. Citation

2. In these Rules, unless the context otherwise requires— Interpretation

"affidavit" includes a deposition or other document containing a statement of fact to the truth of which the deponent swears or affirms;

"attest" includes the administration of an oath or affirmation and certifying that such administration has been done in accordance with these Rules;

"deponent" means the person making a statement contained in an affidavit;

"oath" includes affirmation.

3. In taking any affidavit, the commissioner for oaths shall ask the deponent if he believes in Almighty God and, if so, whether he agrees to make the oath. If the deponent answers both questions affirmatively he shall be required by the commissioner for oaths to make the oath. In all other cases he shall be required by the commissioner for oaths to make the affirmation. When oath or affirmation made

4.—(1) The form of words to be used in an affidavit which is sworn on oath shall be— Form of oath or affidavit

"I, ..., of ....., (setting out the name, address and description of the deponent) make oath and say as follows:— "

(2) In administering the oath the commissioner for oaths shall require the person making the oath to hold his right hand uplifted and, indicating the affidavit, utter the words "I swear by Almighty God the contents of this, my affidavit, are true."

(3) The form of words to be used in an affidavit which is affirmed shall be—

"I, ..., of ....., (setting out the name, address and description of the deponent) solemnly, sincerely and truly declare and affirm as follows:—".

(4) In administering the affirmation the commissioner for oaths shall cause the deponent to hold his right hand uplifted and, indicating the affidavit, utter the words— "I solemnly, sincerely and truly declare and affirm the contents of this, my affidavit, are true."

(5) The deponent shall, after making the oath or affirmation, affix his usual signature in his own handwriting on the affidavit in the presence of the commissioner for oaths.

(6) If the deponent cannot write he shall affix his thumbprint on the affidavit in the presence of the commissioner for oaths.

(7) The signature or print affixed by the deponent to an affidavit shall, until the contrary is proved, be deemed to have been affixed in the presence of the commissioner for oaths attesting such affidavit.

Duties of commissioners for oaths

5.—(1) No commissioner for oaths is required to attest an affidavit which is in a language which is not understood by him.

(2) Before attesting an affidavit the commissioner for oaths shall ask the deponent whether he knows and understands the contents of the affidavit and if his answer is in the affirmative the commissioner for oaths shall—

(*a*) certify below the deponent's signature or mark that the deponent has acknowledged that he knows and understands the contents of the affidavit;

(*b*) thereafter set forth, in writing, the manner, place and date of attestation of the affidavit; and

(*c*) sign the affidavit by affixing his usual signature in his own handwriting over his designation and shall state below his designation the office held by him if he holds his appointment *ex officio* :

Provided that—

(i) if the deponent is unable to read the affidavit the commissioner for oaths shall, before attesting it, cause the affidavit to be read over to the deponent and shall include in his certificate a statement that he has done so;

(ii) if the affidavit is in a language not understood by the deponent the services of an interpreter may be employed to explain the nature and contents of the affidavit and in such case the commissioner for oaths shall include in his certificate a statement of the language in which that explanation was given and the name of the person who acted as interpreter and the interpreter shall sign such certificate in addition to the signature of the commissioner for oaths.

(3) The certificate of attestation of a commissioner for oaths may be in the form in the Schedule with such variations as the circumstances require.

When commissioner for oaths is required to attest

6.—(1) If the commissioner for oaths is of opinion that the deponent does not understand the nature and contents of the affidavit by reason of infirmity of mind, intoxication or for any other cause, he shall refuse to attest it.

(2) A commissioner for oaths is not required to attest an affidavit outside business hours on business days.

(3) Subject to subrule (1) a commissioner for oaths may not arbitrarily refuse to attest an affidavit but if he has considered the matter and has good ground for considering that the oath or affirmation may be false or intended for an improper purpose, his refusal is not arbitrary.

Stamp duties

7. The commissioner for oaths attesting an affidavit shall ensure that the provisions, if any, of the law relating to stamp duties are complied with in relation to such affidavit.

Certificate of attestation

8. A certificate of attestation may be in the form in the Schedule with such variations as the circumstances require.

SCHEDULE

rr. 5 and 8

Form of Attestation Certificate

Sworn ([1])/Affirmed ([1]) before me this ..... day of ....., 19 ....., at ..... (after having been read over in the ..... language through the interpretation of the undersigned ....)

.....
Signature of Commissioner for Oaths

.....
Particulars of appointment

([1]) Delete whichever is inappropriate

Interpreted to the deponent in the ..... language by me.

.....
Interpreter

.....
(*Qualifications, if any*)

STATUTE LAW (MISCELLANEOUS PROVISIONS)

CHAPTER 5:01

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CHAPTER 5:01

STATUTE LAW (MISCELLANEOUS PROVISIONS)

ARRANGEMENT OF SECTIONS

SECTION

1. Short title

PART I

FATAL ACCIDENTS

2. Interpretation
3. Action maintainable against person causing death through wrongful act
4. Action to be for benefit of family of deceased
5. Payment into court
6. Funeral expenses may be awarded by way of damages in certain cases
7. Action by persons beneficially interested
8. Plaintiff to deliver full particulars of the persons for whom damages claimed
9. In the event of death, action maintainable against estate

PART II

SURVIVAL OF CAUSES OF ACTION

10. Effect of death on certain causes of action

PART III

JOINT TORTFEASORS

11. Proceedings against, and contribution between, joint and several tortfeasors

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CONTRIBUTORY NEGLIGENCE

12. Apportionment of liability in case of contributory negligence
13. Provisions as to workmen and employers
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ABOLITION OF THE DOCTRINE OF COMMON EMPLOYMENT

15. Common employment

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MANDAMUS, PROHIBITION, CERTIORARI AND HABEAS CORPUS

16. Abolition of prerogative writs and substitution of orders or directions
17. Rules of court

PART VII

EXECUTION OF INSTRUMENTS BY CORPORATIONS

18. Execution of instruments by or on behalf of corporations

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FRUSTRATED CONTRACTS

19. Adjustment of rights and liabilities of parties to frustrated contracts
20. Provision as to application of this Part

PART IX

APPORTIONMENT

21. Rents and other periodical payments to accrue from day to day and be apportionable

PART X

APPLICATION TO THE GOVERNMENT

22. Act to bind the Government

CHAPTER 5:01

STATUTE LAW
(MISCELLANEOUS PROVISIONS)

27 of 1967
9 of 1977

An Act to consolidate, replace and amend certain statutory provisions relating to Compensation in cases of fatal Accident, survival of causes of action, tortfeasors, contributory negligence, common employment, prerogative writs, execution of instruments by corporations, frustrated contracts, apportionment and matters connected therewith

[14TH NOVEMBER, 1967]

Short title

1. This Act may be cited as the Statute Law (Miscellaneous Provisions) Act.

PART I

Fatal Accidents

2.—(1) In this Part, except where the context otherwise requires— Interpretation

"child" means a son, a daughter, a grandson, a granddaughter, a stepson and a stepdaughter;

"parent" means a father, a mother, a grandfather, a grandmother, a stepfather and a stepmother.

(2) For the purposes of this section, a person shall be deemed to be the child or parent of the deceased person notwithstanding that he was only related to him illegitimately or in consequence of adoption; and accordingly in deducing any relationship which under this section is included within the meaning of the expression "child" and "parent", any illegitimate person and any adopted person shall be treated as being, or as having been, the legitimate offspring of his mother and reputed father or, as the case may be, of his adopters.

(3) In this section, "adopted person" means a person who has been adopted under any written or customary law for the time being in force in the country in which such adoption took place.

3. Whenever the death of a person is caused by a wrongful act, neglect or default, and the act, neglect or default is such as would (if death had not ensued) have entitled the person injured to maintain an action and recover damages in respect thereof, then and in every such case the person who would have been liable, if death had not ensued, shall be liable to an action for damages notwithstanding the death of the person injured and although the death shall have been caused under such circumstances as amount in law to felony. Action maintaiable against person causing death through wrongful act

4.—(1) Every action brought by virtue of this Part shall be for the benefit of the wife, husband, parent and child of the person whose death shall have been so caused, and shall, subject to section 7, be brought by and in the name of the executor or administrator of the person deceased; and in every such action, the court may award such damages as it may think proportioned to the injury resulting from such death to the persons respectively for whom and for whose benefit such action is brought; and the amount so recovered after deducting the costs not recovered from the defendant, shall be divided amongst the before-mentioned persons in such shares as the court, by its judgment, shall find and direct: Action to be for benefit of family of deceased

Provided that not more than one action shall lie for and in respect of the same subject-matter of complaint, and that every such action shall be commenced within three years after the death of such deceased person.

(2) In assessing damages, under subsection (1), the court shall not take into account—

(*a*) any sum paid or payable on the death of the deceased under any contract of assurance or insurance, whether made before or after the passing of this Act;

(*b*) any widows' or orphans' pension or allowance payable or any sum payable under any contributory pension or other scheme declared by the Minister, by notice published in the *Gazette*, to be a scheme for the purpose of this paragraph.

Paymet into court

5. Notwithstanding section 4, it shall be sufficient, when the defendant pays money into court, that he pays it as a compensation in one sum to all persons entitled under the said section to damages for his wrongful act, neglect or default, without specifying the shares into which it is to be divided by the court; and if the said sum is not accepted, and an issue is taken by the plaintiff as to its sufficiency, and the court shall think the same sufficient, the defendant shall be entitled to judgment on that issue.

Funeral expenses maybe awarded by way of damages in certain cases

6. In an action brought by virtue of this Part, the court may award, in addition to any damages awarded under section 4 (1), damages in respect of the funeral expenses of the deceased person, if such expenses have been incurred by the parties for whom and for whose benefit the action is brought.

Action by persons beneficially interested

7. Where, in any case intended and provided for by this Part, there shall be no executor or administrator of the person deceased, or if no action is brought by such executor or administrator within six months after the death of such deceased person, an action may be brought by and in the name or names of all or any of the persons for whose benefit such action would have been brought, if it had been brought by and in the name of such executor or administrator, and every action so brought shall be for the benefit of the same person or persons as if it were brought by and in the name of such executor or administrator.

Plaintiff to deliver full particulars of the persons for whom damages claimed

8. In every action brought by virtue of this Part, the plaintiff on the record shall be required, together with the statement of claim, to deliver to the defendant, or his legal representative, full particulars of the person or persons for whom, and on whose behalf, such action is brought, and of the nature of the claim in respect of which damages are sought to be recovered.

In the event of death, action maintainable against estate

9.—(1) Upon the death of any person against whom, were it not for his death, an action would be maintainable by virtue of this Part, such action shall be maintainable against his estate.

(2) No proceedings shall be maintainable in respect of a cause of action which by virtue of this section has survived against the estate of a deceased person, unless either—

(*a*) proceedings against him in respect of that cause of action were pending at the date of his death; or

(*b*) proceedings are taken in respect thereof not later than six months after his personal representative took out representation.

(3) Where, by virtue of this Act, a cause of action would have subsisted against any person if that person had not died before or at the same time as the damage was suffered, there shall be deemed, for the purposes of this Part, to have been subsisting against him before his death such cause of action as would have subsisted if he had died after the damage was suffered.

(4) Notwithstanding any other written law, in the event of the insolvency of an estate against which proceedings are maintainable by virtue of this section, any liability in respect of the cause of action by reason of which the proceedings are maintainable shall be deemed to be a debt provable in the administration of the estate.

PART II

Survival of Causes of Action

Effect of death on certain causes of action

10.—(1) Subject to this section, on the death of any person after the commencement of this Act, all causes of action subsisting against or vested in him shall survive against, or, as the case may be, for the benefit of, his estate:

Provided that this subsection shall not apply to causes of action for defamation or seduction or for inducing one spouse to leave or remain apart from the other or to claims for damages on the ground of adultery.

(2) Where a cause of action survives as aforesaid for the benefit of the estate of a deceased person, the damages recoverable for the benefit of the estate of that person—

(*a*) shall not include any exemplary damages;

(*b*) in the case of a breach of promise to marry, shall be limited to such damage, if any, to the estate of that person as flows from the breach of promise to marry; and

(*c*) where the death of that person has been caused by the act or omission which gives rise to the cause of action, shall be

calculated without reference to any loss or gain to his estate consequent on his death, except that a sum in respect of funeral expenses may be included.

(3) No proceedings shall be maintainable in respect of a cause of action in tort which by virtue of this section has survived against the estate of a deceased person unless either—

(*a*) proceedings against him in respect of that cause of action were pending at the date of his death; or

(*b*) proceedings are taken in respect thereof not later than six months after his executor or administrator took out representation.

(4) Where damage has been suffered by reason of any act or omission in respect of which a cause of action would have subsisted against any person if that person had not died before or at the same time as the damage was suffered, there shall be deemed, for the purposes of this Part, to have been subsisting against him before his death such cause of action in respect of that act or omission as would have subsisted if he had died after the damage was suffered.

(5) The rights conferred by this Part for the benefit of the estates of deceased persons shall be in addition to and not in derogation of any rights conferred on the dependants of deceased persons by Part I, or the Warsaw Convention, 1929 (relating to carriage by air) in its application to Malaŵi or any other Convention relating to carriage by air to which Malaŵi accedes, and so much of this Part as relates to causes of action against the estates of deceased persons shall apply in relation to causes of action under Part I and such Convention as it applies in relation to other causes of action not expressly excepted from the operation of subsection (1).

(6) In the event of the insolvency of an estate against which proceedings are maintainable by virtue of this section, any liability in respect of the cause of action in respect of which the proceedings are maintainable shall be deemed to be a debt provable in the administration of the estate, notwithstanding that it is a demand in the nature of unliquidated damages arising otherwise than by a contract, promise or breach of trust.

PART III

Joint Tortfeasors

Proceedings against, and contribution between, joint and several tortfeasors

11.—(1) Where damage is suffered by any person as a result of a tort (whether a crime or not)—

(*a*) a judgment recovered against any tortfeasor liable in respect of that damage shall not be a bar to an action against any other person who would, if sued, have been liable as a joint tortfeasor in respect of the same damage;

(*b*) if more than one action is brought in respect of that damage by or on behalf of the person by whom it was suffered, or for the benefit of the estate, or of the wife, husband, parent or child, of that person against tortfeasors liable in respect of the damage (whether as joint tortfeasors or otherwise), the sums recoverable under the judgments given in those actions by way of damages shall not in the aggregate exceed the amount of the damages awarded by the judgment first given; and in any of those actions, other than that in which judgment is first given, the plaintiff shall not be entitled to costs unless the court is of opinion that there was reasonable ground for bringing the action;

(*c*) a tortfeasor liable in respect of that damage may recover contribution from any other tortfeasor who is, or would if sued in due time have been, liable in respect of the same damage whether as a joint tortfeasor or otherwise:

Provided that—

(i) no person shall be entitled to recover contribution under this paragraph from any person entitled to be indemnified by him in respect of the liability in respect of which the contribution is sought;

(ii) no proceedings under this paragraph may be brought after the expiry of the period—

(A) within which proceedings were maintainable by the person who suffered the damage or the person entitled to bring an action under section 4 or 7; or

(B) of six months from the date on which proceedings by the person who suffered the damage or the person entitled to bring an action under section 4 or 7, or proceedings under this paragraph were served on the person claiming contribution, whichever period last expires;

(2) In any proceedings for contribution under this section, the amount of the contribution recoverable from any person shall be such as may be found by the court to be just and equitable having regard to the extent of that person's responsibility for the damage; and the court shall have power to exempt any person from liability to make contribution, or to direct that the contribution to be recovered from any person shall amount to a complete indemnity.

(3) For the purposes of this section—

(*a*) "parent" and "child" have the same meaning as they have for the purposes of Part I;

(*b*) "proceedings" includes third party proceedings; and

(*c*) the reference in this section to "the judgment first given" shall in a case where that judgment is reversed on appeal, be construed as a reference to the judgment first given which is not so reversed, and, in a case where a judgment is varied on appeal, be construed as a reference to that judgment as so varied.

(4) Nothing in this section shall—

(*a*) affect any criminal proceedings against any person in respect of any wrongful act; or

(*b*) render enforceable any agreement for indemnity which would not have been enforceable if this section had not been enacted.

PART IV

Contributory Negligence

Apportionment of liability in case of contributory negligence

12.—(1) Where any person suffers damage as a result partly of his own fault and partly of the fault of any other person or persons, a claim in respect of that damage shall not be defeated by reason of the fault of the person suffering the damage, but the damages recoverable in respect thereof shall be reduced to such extent as the court thinks just and equitable having regard to the claimant's share in the responsibility for the damage:

Provided that—

(*a*) this subsection shall not operate to defeat any defence arising under a contract;

(*b*) where any contract or written law providing for the limitation of liability is applicable to the claim, the amount of damages recoverable by the claimant by virtue of this subsection shall not exceed the maximum limit so applicable.

(2) Where damages are recoverable by any person by virtue of subsection (1) subject to such reduction as is therein mentioned, the court shall find and record the total damages which would have been recoverable if the claimant had not been at fault.

(3) Part III shall apply in any case where two or more persons are liable or would, if they had all been sued, be liable by virtue of subsection (1) in respect of the damage suffered by any person.

(4) When any person dies as a result partly of his own fault and partly of the fault of any other person or persons, and accordingly, if an action were brought for the benefit of the estate under Part II, the damages recoverable would be reduced

under subsection (1), any damages recoverable in an action brought for the benefit of the dependants of that person under Part I, shall be reduced to a proportionate extent.

(5) Where, in any case to which subsection (1) applies, one of the persons at fault avoids liability to any other such person or his executor or administrator by pleading any written law limiting the time within which proceedings may be taken, he shall not be entitled to recover any damages or contribution from that other person or executor or administrator by virtue of the said subsection.

(6) Article 21 of the Warsaw Convention 1929 (which empowers a court to exonerate wholly or partly a carrier who proves that the damage was caused by or contributed to by the negligence of the injured person) or any provision to the like effect in any Convention, relating to carriage by air, to which Malaŵi accedes in addition to or in lieu of the said Warsaw Convention, shall, in its application to Malaŵi, have effect subject to this section.

(7) For the purposes of this section, "fault" means negligence, breach of statutory duty or other act or omission which gives rise to a liability in tort or which would, apart from this section, give rise to the defence of contributory negligence.

Provisions as to workmen and employers Cap. 55:03

13.—(1) Where, within the time limited for the taking of proceedings under the Workmen's Compensation Act (hereafter in this section referred to as "the Act") an action is brought to recover damages independently of the Act in respect of an injury or disease giving rise to a claim for compensation under the Act, and it is determined in that action that—

(*a*) damages are recoverable independently of the Act subject to such reduction as is mentioned in section 12 (1) of this Act; and

(*b*) the employer would have been liable to pay compensation under the Act,

and if the claimant chooses to have compensation assessed and awarded in accordance with section 25 (2) of the Act (which enables the court, on the dismissal of an action to recover damages independently of the Act, to assess and award compensation under the Act), that section shall apply in all respects as if the action has been dismissed and no damages shall be recoverable in the said action.

(2) Where a workman or his executor or administrator or any of his dependants has recovered compensation under the Act, in respect of an injury caused under circumstances which would give a right to recover reduced damages in respect thereof by virtue of section 12 of this Act from some person other than the employer

(hereinafter referred to as the third party), any right conferred by section 24 of the Act on the person by whom the compensation was paid, or on any person called on to pay an indemnity under section 23 of the Act, to be indemnified by the third party shall be limited to a right to be indemnified in respect of such part only of the sum paid or payable by the said person as bears to the total sum so paid or payable the same proportion as the said reduced damages bear to the total damages which would have been recoverable if the workman had not been at fault.

(3) For the purposes of this section, "dependants", "employer" and "workman" have the same meaning as in the Act.

Application of this Part 1 and 2 Geo. 5, c. 57

14. This Part shall not apply to any claim to which section 1 of the Maritime Conventions Act, 1911, of the United Kingdom applies, and that Act shall have effect as if this Part had not been enacted.

PART V

Abolition of the Doctrine of Common Employment

Common employment

15.—(1) It shall not be a defence to an employer who is sued in respect of personal injuries caused by the negligence of a person employed by him that that person was at the time the injuries were caused in common employment with the person injured.

(2) Any provision contained in a contract of service or apprenticeship, or in an agreement collateral thereto (including a contract or agreement entered into before the commencement of this Act), shall be void in so far as it would have the effect of excluding or limiting any liability of the employer in respect of personal injuries caused to the person employed or apprenticed by the negligence of persons in common employment with him.

(3) For the purposes of this section, "personal injury" includes any disease and any impairment of a person's physical or mental condition, and "injured" shall be construed accordingly.

PART VI

Mandamus, Prohibition, Certiorari and Habeas Corpus

Abolition of prerogative writs and substitution of orders or directions 9 of 1977

16.—(1) The High Court shall not, whether in the exercise of its civil or criminal jurisdiction, issue any of the prerogative writs.

(2) In any case in which the High Court in England is, by virtue of section 7 of the Administration of Justice (Miscellaneous

Provisions) Act, 1938, of the United Kingdom empowered to make an order of mandamus, prohibition or certiorari, the High Court shall have power to make a like order. 1 and 2 Geo. 6, c. 63

(3) No return shall be made to any such order, and no pleadings in prohibition shall be allowed, but the order shall be final, subject to the right of appeal therefrom conferred by subsection (5).

(4) In any written law, references to any writ of mandamus, prohibition or certiorari shall be construed as references to the corresponding order, and references to the issue or award of any such writ shall be construed as references to the making of the corresponding order.

(5) Any person aggrieved by an order made in the exercise of the jurisdiction of the High Court under the foregoing provisions of this section may appeal therefrom to the Supreme Court of Appeal.

(6) (*a*) The High Court may whenever it thinks fit direct—

(i) that any person within the limits of Malaŵi be brought up before the Court to be dealt with according to law;

(ii) that any person illegally or improperly detained in public or private custody within such limits be set at liberty;

(iii) that any prisoner detained in any prison situate within such limits be brought before the Court to be there examined as a witness in any matter pending or to be inquired into in such Court;

(iv) that any prisoner detained as aforesaid be brought before a court-martial or any commissioners acting under the authority of any written law for trial or to be examined touching any matter pending before such court-martial or commissioners respectively;

(v) that any prisoner within such limits be removed from one custody to another for the purpose of the trial; and

(vi) that the body of a defendant within such limits be brought in on a return of *cepi corpus* to a writ of attachment.

(*b*) The Chief Justice may from time to time make rules to regulate the procedure in cases under this subsection. 9 of 1977

17.—(1) Any power to make rules of court to provide for any matters relating to the procedure of civil courts shall include power to make rules of court— Rules of court

(*a*) prescribing the procedure and the fees payable on documents filed or issued in cases where an order under section 16 is sought;

(*b*) requiring, except in such cases as may be specified in the rules, that leave shall be obtained before an application is made for any such order;

(*c*) requiring that, where leave is obtained, no relief shall be granted and no ground relied upon except with the leave of the court, other than the relief and grounds specified when the application for leave was made.

(2) Subject to subsection (3), rules made under subsection (1) may prescribe that applications for an order of mandamus, prohibition or certiorari shall, in specified proceedings, be made within six months, or such shorter period as may be prescribed, after the act or omission to which the application for leave relates.

(3) In the case of an application for an order of certiorari to remove any judgment, order, decree, conviction or other proceeding for the purpose of its being quashed, leave shall not be granted unless the application for leave is made not later than six months after the date of such judgment, order, decree, conviction or other proceeding or such shorter period as may be prescribed under any written law; and where such judgment, order, decree, conviction or other proceeding is subject to appeal and a time is limited by law for the bringing of the appeal, the court or judge may adjourn the application for leave until the appeal is determined or the time for appealing has expired.

15 and 16 Geo.5, c. 49

1 and 2 Geo.6, c. 63

(4) Until rules under subsection (1) have been made, the rules of court made under section 99 of the Supreme Court of Judicature (Consolidation) Act, 1925, pursuant to section 10 of the Administration of Justice (Miscellaneous Provisions) Act, 1938, of the United Kingdom shall apply with such adaptation as appears appropriate.

PART VII

Execution of Instruments by Corporations

Execution of instruments by or on behalf of corporations

18.—(1) In favour of a purchaser a deed shall be deemed to have been duly executed by a corporation aggregate if its seal be affixed thereto in the presence of and attested by its clerk, secretary or other permanent officer or his deputy, and a member of the board of directors, council or other governing body of the corporation, and where a seal purporting to be the seal of a corporation has been affixed to a deed, attested by persons purporting to be persons holding such offices as aforesaid, the deed shall be deemed to have been executed in accordance with the requirements of this section, and to have taken effect accordingly.

(2) The board of directors, council or other governing body of a corporation aggregate may by resolution or otherwise, appoint an agent either generally or in any particular case, to execute on behalf of the corporation any agreement or other instrument not under seal in relation to any matter within the powers of the corporation.

(3) Where a person is authorized under a power of attorney or under any statutory or other power to convey any interest in property in the name or on behalf of a corporation sole or aggregate, he may as attorney execute the conveyance by signing the name of the corporation in the presence of at least one witness, and in the case of a deed by affixing his own seal, and such execution shall take effect and be valid in like manner as if the corporation had executed the conveyance.

(4) Where a corporation aggregate is authorized under a power of attorney or under any statutory or other power to convey any interest in property in the name or on behalf of any other person (including another corporation), an officer appointed for that purpose by the board of directors, council or other governing body of the corporation by resolution or otherwise, may execute a deed or other instrument in the name of such other person; and where an instrument appears to be executed by an officer so appointed, then in favour of a purchaser the instrument shall be deemed to have been executed by an officer duly authorized.

(5) The foregoing provisions of this section apply to transactions wherever effected.

(6) Notwithstanding anything contained in this section, any mode of execution or attestation authorized by law or by practice or by the written law, charter, memorandum or articles, deed of settlement or other instrument constituting the corporation or regulating the affairs thereof, shall (in addition to the modes authorized by this section) be as effectual as if this section had not been passed.

PART VIII

Frustrated Contracts

Adjustment of rights and liabilities of parties to frustrated contracts

19.—(1) Where a contract governed by the law of Malaŵi has become impossible of performance or been otherwise frustrated, and the parties thereto have for that reason been discharged from the further performance of the contract, the following provisions of this section shall, subject to section 20, have effect in relation thereto.

(2) All sums paid or payable to any party in pursuance of the contract before the time when the parties were so discharged (in this Part referred to as "the time of discharge") shall, in the case of sums so paid, be recoverable from him as money received by him for the use of the party by whom the sums were paid, and, in the case of sums so payable, cease to be so payable:

Provided that, if the party to whom the sums were so paid or payable incurred expenses before the time of discharge in, or for the purpose of, the performance of the contract, the court may, if it considers it just to do so having regard to all the circumstances of the case, allow him to retain or, as the case may be, recover the whole or any part of the sums so paid or payable, not being an amount in excess of the expenses so incurred.

(3) Where any party to the contract has, by reason of anything done by any other party thereto in, or for the purpose of, the performance of the contract, obtained a valuable benefit (other than a payment of money to which subsection (2) applies) before the time of discharge, there shall be recoverable from him by the said other party such sum (if any), not exceeding the value of the said benefit to the party obtaining it, as the court considers just, having regard to all the circumstances of the case and, in particular—

(*a*) the amount of any expenses incurred before the time of discharge by the benefited party in, or for the purpose of, the performance of the contract, including any sums paid or payable by him to any other party in pursuance of the contract and retained or recoverable by that party under subsection (2); and

(*b*) the effect, in relation to the said benefit, of the circumstances giving rise to the frustration of the contract.

(4) In estimating, for the purposes of the foregoing provisions of this section, the amount of any expenses incurred by any party to the contract, the court may, without prejudice to the generality of the said provisions, include such sum as appears to be reasonable in respect of overhead expenses and in respect of any work or services performed personally by the said party.

(5) In considering whether any sum ought to be recovered or retained under the foregoing provisions of this section by any party to the contract, the court shall not take into account any sums which have, by reason of the circumstances giving rise to the frustration of the contract, become payable to that party under any contract of insurance unless there was an obligation to insure imposed by an express term of the frustrated contract or by or under any written law.

(6) Where any person has assumed obligations under the contract in consideration of the conferring of a benefit by any

other party to the contract upon any other person, whether a party to the contract or not, the court may, if in all the circumstances of the case it considers it just to do so, treat for the purposes of subsection (3) any benefit so conferred as a benefit obtained by the person who has assumed the obligations as aforesaid.

Provision as to application of this Part

20.—(1) This Part shall apply to contracts, whether made before or after the commencement of this Act, as respects which the time of discharge is on or after the commencement of this Act, but not to contracts as respects which the time of discharge is before the said date.

(2) Where any contract to which this Part applies contains any provision which, upon the true construction of the contract, is intended to have effect in the event of circumstances arising which operate, or would but for the said provision operate, to frustrate the contract, or is intended to have effect whether such circumstances arise or not, the court shall give effect to the said provision and shall only give effect to section 19 to such extent, if any, as appears to the court to be consistent with the said provision.

(3) Where it appears to the court that a part of any contract to which this Part applies can properly be severed from the remainder of the contract, being a part wholly performed before the time of discharge, or so performed except for the payment in respect of that part of the contract of sums which are or can be ascertained under the contract, the court shall treat that part of the contract as if it were a separate contract and had not been frustrated and shall treat section 19 as only applicable to the remainder of that contract.

(4) This Part shall not apply—

(*a*) to any charterparty, except a time charterparty or a charterparty by way of demise, or to any contract (other than a charterparty) for the carriage of goods by sea; or

(*b*) to any contract of insurance, save as is provided by section 19 (5): or

(*c*) to any contract to which section 9 of the Sale of Goods Act (which avoids contracts for the sale of specific goods which perish before the risk has passed to the buyer) applies, or to any other contract for the sale, or for the sale and delivery, of specific goods, where the contract is frustrated by reason of the fact that the goods have perished. Cap. 48:01

PART IX

Apportionment

Rents and other periodical payments to accrue from day to day and be apportionable

21. All rents, annuities, salaries, pensions, dividends, interest and other periodical payments in the nature of income (whether received or made payable under an instrument in writing or otherwise) shall be deemed to accrue from day to day and shall be apportionable in respect of time accordingly:

Provided that—

(*a*) this section shall not extend to any case in which it is or shall be expressly stipulated that no apportionment shall take place;

(*b*) the apportioned part of any such rent or other payment shall be payable or recoverable in the case of a continuing rent or other such payment when the entire portion, of which such apportioned part forms part, shall become due and payable and, in the case of a rent or other such payment determined by re-entry, death or otherwise, when the next entire portion of the same would have been payable if the same had not so determined.

PART X

Application to the Government

Act to bind the Government

22.—This Act shall bind the Government.

SUBSIDIARY LEGISLATION

STATUTE LAW (MISCELLANEOUS PROVISIONS) DIRECTION RULES

G.N. 72/1982

under s. 16 (6) (*b*)

Citation

1. These Rules may be cited as the Statute Law (Miscellaneous Provisions) Direction Rules.

Manner of applying for a direction under section 16 (6) (*a*) of Cap. 5:01

2.—(1) An application for a direction under section 16 (6) (*a*) of the Statute Law (Miscellaneous Provisions) Act must be made to a Judge in chambers.

(2) An application for such direction may be made *ex parte* and, subject to subrule (3), must be supported by an affidavit by the person restrained, showing that it is made at his instance and setting out the nature of the restraint.

(3) Where the person restrained is unable for any reason to make the affidavit required by subrule (2), the affidavit may be made by some other person on his behalf and that affidavit must state that the person restrained is unable to make the affidavit himself and specify for what reason.

Power of Judge to whom application is made

3.—(1) The Judge to whom an application under rule 2 is made may give a direction forthwith or may order that an application therefor be made by originating motion to a Judge in court.

(2) The notice of motion must be served personally on such persons as the Judge shall direct and, unless the Judge otherwise orders, there must be at least ten clear days between the service of the notice and the date named therein for the hearing of the application.

Copies of affidavits to be supplied

4. Every party to an application must supply to every other party, on demand, a copy of each affidavit which he proposes to use at the hearing of the application.

Power to direct release of person restrained

5. The Judge hearing an application for a direction may in his discretion direct that the person restrained be released, and such direction shall be sufficient warrant to any prison superintendent, police officer, or other person, for the release of the person restrained.

TRUSTEE

CHAPTER 5:02

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CHAPTER 5:02

TRUSTEE

An Act relating to Trusts and Trustees

24 of 1967
G.N. 115/1990

[10th November, 1967]

PART I
Preliminary

1. This Act may be cited as the Trustee Act. Short title

2.—(1) In this Act except where the context otherwise requires—"authorized investments" means investments authorized by the Interpretation and trust corporation

instrument, if any, creating the trust for the investment of money subject to the trust, or by law;

Cap. 44:01 "bank" means a commercial bank registered under the Banking Act;

53 and 54 Vict. c. 69 "capital money" has the meaning assigned to that expression in the Settled Land Acts, 1882 to 1890, of the United Kingdom;

"contingent right" as applied to land includes a contingent or executory interest, a possibility coupled with an interest, whether the object of the gift or limitation of the interest or possibility is or is not ascertained also a right of entry, whether immediate or future, and whether vested or contingent;

"convey" and "conveyance" as applied to any person include the execution by that person of every necessary or suitable assurance (including an assent) for conveying, assigning, appointing, surrendering, or otherwise transferring or disposing of land whereof he is seized or possessed, or wherein he is entitled to a contingent right, either for his whole estate or for any less estate, together with the performance of all formalities required by law for the validity of the conveyance;

"Court" means the High Court or a judge thereof;

"land" includes land of any tenure, and mines and minerals, whether or not severed from the surface, buildings or parts of buildings, and other corporeal hereditaments; also a rent and other incorporeal hereditaments, and an easement, right, privilege, or benefit in, over, or derived from land, but not an undivided share in land; and in this definition "mines" and "minerals" include any strata or seam of minerals or substances in or under any land, and powers of working and getting the same, but not an undivided share thereof;

Cap. 58:01 "mortgage" includes a charge registered under the Registered Land Act;

"pay" and "payment" as applied in relation to stocks and securities and in connexion with the expression "into Court" include the deposit or transfer of the same in or into Court;

"personal representative" means the executor, original or by representation, or administrator for the time being of a deceased person;

"possession" includes receipt of rents and profits or the right to receive the same, if any; and "possessed" applies to receipt of income of and to any vested estate less than a life interest in possession or in expectancy in any land;

"property" includes real, chattel-real and personal property, and any estate, share or interest in any property, real, chattel-real or personal, and any debt, money, chose in action or any other legal or equitable right or interest:

Provided that it does not include a future interest, whether vested or contingent, but the falling into possession of such an interest, or the receipt of the proceeds of the sale thereof, shall be treated for the purposes of this Act as an accrual of property to the trust fund;

"tenant for life" means a tenant for life under a will, settlement or other instrument,

"transfer" in relation to stock or securities includes the performance and execution of every deed, power of attorney, act and thing on the part of the transferor to effect and complete the title in the transferee;

"trust" does not include the duties incident to an estate conveyed by way of mortgage, but, with this exception, the expressions "trust" and "trustee" extend to implied and constructive trusts, and to cases where the trustee has a beneficial interest in the trust property, and to the duties incident to the office of a personal representative, and "trustee" where the context admits, includes a personal representative, and "new trust" includes an additional trustee;

"trust corporation" means a corporation or company

(*a*) carrying on business in Malaŵi as a commercial bank registered as such under the Banking Act; or Cap. 44:01

(*b*) approved for the time being under subsection (2), and includes the Administrator General;

"trust for sale" in relation to land means an immediate binding trust for sale, whether or not exercisable at the request or with the consent of any person, and with or without power at discretion to postpone the sale; "trustees for sale" means the persons (including a personal representative) holding land on trust for sale.

(2) The Minister responsible for Finance may approve as a trust corporation any corporation or company, empowered by its memorandum of association or other instrument constituting it to undertake trusts, if he is satisfied that it has financial resources sufficient to ensure the probability that all claims against it arising out of its trust business will be met. As a condition of such approval such Minister may require the deposit of security with the Secretary to the Treasury, and may, as a condition of continuing approval, require such security to be increased from time to time.

Application of Act

3.—(1) This Act, except where otherwise expressly provided, shall apply to trusts including, so far as this Act applies thereto, executorships and administratorships constituted or created either before or after the commencement of this Act.

(2) The powers conferred by this Act on trustees shall be in addition to the powers conferred by the instrument, if any, creating the trust, but those powers, unless otherwise stated, shall apply if and so far only as a contrary intention is not expressed in the instrument, if any, creating the trust, and shall have effect subject to the terms of that instrument.

(3) This Act shall not affect the legality or validity of anything done before the commencement of this Act, except as otherwise hereinafter expressly provided.

PART II

Investment

Powers of investment of trustees

4.—(1) Subject to section 5 (2), a trustee may invest any property in his hands, whether at the time in a state of investment or not, in any manner specified in Part I or II of the Schedule and may also from time to time vary any such investments.

(2) No provision relating to the powers of the trustee contained in any instrument (not being a written law or an instrument made under a written law) made before the coming into operation of this Act shall limit the powers conferred by this section but those powers are exercisable only in so far as a contrary intention is not expressed in any written law or instrument made under a written law and so relating or in any other instrument so relating which is made after the coming into operation of this Act.

Restrictions on wider range investment

5.—(1) In this Act "narrower range investment" means an investment falling within Part I of the Schedule and "wider range investment" means an investment falling within Part II of the Schedule.

(2) A trustee not being a trust corporation shall not have power by virtue of section 4 to make a wider range investment unless before so doing he has obtained and considered proper advice on the question whether the investment is satisfactory having regard to the matters mentioned in section 8.

How proper advice to be obtained and given and responsibility of trust corporation for advice

6.—(1) A trustee who desires to make or retain a wider range investment may request a trust corporation to provide proper advice. Such request shall be accompanied by adequate particulars of the trusts on which the trust property is held and of the existing state of investment of such trust property.

(2) A trust corporation which receives a request for proper advice under this section may itself give such advice or may seek the advice of a suitable expert in or outside Malaŵi.

(3) The advice of the trust corporation and the advice of the expert selected by the trust corporation obtained in response to a request made in accordance with subsection (1) shall be deemed to be proper advice for the purposes of this section, if given or confirmed in writing.

(4) A trust corporation shall not be responsible for any loss which may result to the trust property by reason of the advice furnished under subsection (3)—

(*a*) if the advice was given in good faith; and

(*b*) where advice is furnished by an expert, if the person furnishing such advice was an expert of good repute at the time when the trust corporation applied to him for advice.

Relationship between Act and other powers of investment

7.—(1) The powers conferred by section 4 are in addition to and not in derogation from any other power of investment or postponing conversion exercisable by a trustee (hereinafter referred to as a "special power").

(2) Any special power (however expressed) to invest property in any investment for the time being authorized by law for the investment of trust property, being a power conferred on a trustee before the passing of this Act or conferred on him under any written law passed or made before the commencement of this Act, shall have effect as a power to invest property in like manner and subject to the like provisions as under sections 4 and 5.

Duty of trustees in choosing and retaining investments

8.—(1) In the exercise of his powers of investment a trustee shall have regard—

(*a*) to the need for diversification of investments of the trust, in so far as is appropriate to the circumstances of the trust;

(*b*) to the suitability to the trust of investments of the description of investment proposed and of the investment proposed as an investment of that description.

(2) A trustee retaining any wider range investment made in the exercise of a power of investment conferred by this Act shall determine at what intervals the circumstances, and in particular the nature of the investment, make it desirable to obtain advice under section 6, and shall obtain and consider such advice accordingly.

Purchase at a premium of redeemable stocks; change of character of investment

9.—(1) A trustee may, under the powers of this Act, invest in any of the securities mentioned or referred to in section 4 (1), notwithstanding that the same may be redeemable, and that the price exceeds the redemption value.

(2) A trustee may retain until redemption any redeemable

stock, fund or security which may have been purchased in accordance with the powers conferred by this Act, or any written law replaced by this Act.

Discretion of trustees

10. Every power conferred by section 4 and section 9 shall be exercised according to the discretion of the trustee, but subject to any consent or direction required by the instrument, if any, creating the trust or by law with respect to the investment of the trust funds. A trustee may consider advice other than advice received from a trust company.

Power to retain investment which has ceased to be authorized

11. A trustee shall not be liable for breach of trust by reason only of his continuing to hold an investment which has ceased to be an investment authorized by the trust instrument or by the general law.

Enlargement of powers of investment

12.—(1) A trustee having power to invest in freehold securities may invest and shall be deemed always to have had power to invest on mortgage of property held for an unexpired term of not less than forty years, and not subject to a reservation of rent greater than four per centum of the unimproved value thereof, or to any right of redemption or to any condition for re-entry, except for non-payment of rent.

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(2) A trustee having power to invest in freehold securities may accept the security in the form of a registered charge under the Registered Land Act.

(3) Land purchased in exercise of the power of investment conferred by section 4 shall be held upon trust for sale. Land may be so purchased whether or not other land remains in the trust and notwithstanding that the property invested in the purchase comprises wholly or in part the proceeds of the sale of a similar investment or of other land held upon trust for sale.

(4) Trust funds shall not be employed in executing any improvement authorized by law on, or in connection with, or for the benefit of, any land held upon trust for sale unless the trustee has obtained and considered proper advice obtained in accordance with section 6.

Investment in bearer securities

13.—(1) A trustee may, unless expressly prohibited by the instrument creating the trust, retain or invest in securities payable to bearer which, if not so payable, would have been authorized investments:

Provided that securities to bearer retained or taken as an investment by a trustee (not being a trust corporation) shall, until sold, be deposited by him for safe custody and collection of income with a bank.

(2) A direction that investments shall be retained or made in the name of a trustee shall not, for the purposes of subsection (1), be deemed to be such an express prohibition as aforesaid.

(3) A trustee shall not be responsible for any loss incurred by reason of such deposit, and any sum payable in respect of such deposit and collecting shall be paid out of the income of the trust property.

Loans and investments by trustees not chargeable as breaches of trust

14.—(1) A trustee lending money on the security of any property on which he can properly lend shall not be chargeable with breach of trust by reason only of the proportion borne by the amount of the loan to the value of the property at the time when the loan was made, if it appears to the court—

(*a*) that in making the loan the trustee was acting upon a report as to the value of the property made by a person whom he reasonably believed to be an able practical surveyor or valuer instructed and employed independently of any owner of the property, whether such surveyor or valuer carried on business in the locality where the property is situate or elsewhere; and

(*b*) that the amount of the loan does not exceed two third parts of the value of the property as stated in the report; and

(*c*) that the loan was made under the advice of the surveyor or valuer expressed in the report.

(2) A trustee lending money on the security of any leasehold property shall not be chargeable with breach of trust only upon the ground that in making such loan he dispensed either wholly or partly with the production or investigation of the lessor's title.

(3) A trustee shall not be chargeable with breach of trust only upon the ground that in effecting the purchase, or in lending money upon the security, of any property he has accepted a shorter title than the title which a purchaser is, in the absence of a special contract, entitled to require, if in the opinion of the court the title accepted be such as a person acting with prudence and caution would have accepted.

(4) This section shall apply to transfers of existing securities as well as to new securities and to investments made before as well as after the commencement of this Act.

Liability for loss by reason of improper investment

15.—(1) Where a trustee improperly advances trust money on a mortgage security which would at the time of the investment be a proper investment in all respects for a smaller sum than is actually advanced thereon, the security shall be deemed an authorized investment for the smaller sum, and the trustee shall only be liable to make good the sum advanced in excess thereof with interest.

(2) This section applies to investments made before as well as after the commencement of this Act.

Powers supplementary to powers of trustees

16.—(1) Trustees lending money on the security of any property on which they can lawfully lend may contract that such money shall not be called in during any period not exceeding seven years from the time when the loan was made, provided that interest be paid within a specified time not exceeding thirty days after every half-yearly or other day on which it becomes due, and that there be no breach of any covenant by the mortgagor contained in the instrument of mortgage for the maintenance and protection of the property.

(2) On a sale of land held on a freehold or registered title, or for a term having at least forty years to run, by trustees or by a tenant for life, the trustees, or, as the case may be, the tenant for life on behalf of the trustees of the settlement, may, where the proceeds are liable to be invested, contract that the payment of any part, not exceeding two-thirds, of the purchase money shall be secured by a mortgage of the land sold, with or without the security of any other property, such mortgage, if any buildings are comprised in the mortgage, to contain a covenant by the mortgagor to keep them insured against loss or damage by fire to the full value thereof.

(3) The trustees shall not be bound to obtain any report as to the value of the land or other property to be comprised in such mortgage, or any advice as to the making of the loan, and shall not be liable for any loss which may be incurred by reason only of the security being insufficient at the date of the mortgage; and the trustees of the settlement shall be bound to give effect to any such contract made by the tenant for life.

(4) Where any securities of a company are subject to a trust, the trustees may concur in any scheme or arrangement—

(*a*) for the reconstruction of the company; or

(*b*) for the sale of all or any part of the property and undertaking of the company to another company; or

(*c*) for the acquisition of the securities of the company, or of control thereof, by another company; or

(*d*) for the amalgamation of the company with another company; or

(*e*) for the release, modification or variation of any rights, privileges or liabilities attached to the securities or any of them,

in like manner as if they were entitled to such securities beneficially, with power to accept any securities of any denomination or description of the reconstructed or purchasing or

new company in lieu of or in exchange for all or any of the first-mentioned securities; and the trustees shall not be responsible for any loss occasioned by any act or thing so done in good faith, and may retain any securities so accepted as aforesaid for any period for which they could have properly retained the original securities.

(5) If any conditional or preferential right to subscribe for any securities in any company is offered to trustees in respect of any holding in such company, they may, as to all or any of such securities, either exercise such right and apply capital money subject to the trust in payment of the consideration, and may retain such securities for any period for which the trustees have power to retain the holding in respect of which the right to subscribe for the securities was offered, but subject to any conditions subject to which the trustees have that power, or may renounce such right, or assign for the best consideration that can be reasonably obtained the benefit of such right or the title thereto to any person, including any beneficiary under the trust, without being responsible for any loss occasioned by any act or thing so done by them in good faith:

Provided that the consideration for any such assignment shall be held as capital of the trust.

(6) The powers conferred by this section shall be exercisable subject to the consent of any person whose consent to a change of investment is required by any written law or by the instrument, if any, creating the trust.

(7) Where the loan referred to in subsection (1) or the sale referred to in subsection (2), is made under an order of the court, the powers conferred by subsections (1), (2) and (3) respectively shall apply only if and as far as the Court may by order direct.

Power to deposit money at bank and to pay calls

17.—(1) Trustees may, pending the negotiation and preparation of any mortgage, or during any other time while an investment is being sought for, pay any trust money into a bank to a deposit or other account, and all interest, if any, payable in respect thereof shall be applied as income.

(2) Trustees may apply capital money subject to a trust in payment of the calls on any shares subject to the same trust.

Trust property and trust funds

18.—(1) So much of the property in the hands of a trustee shall, for the purposes of this Act, constitute one trust fund as is held on trusts which (as respects the beneficiaries or their respective interests or the purposes of the trust or as respects the powers of the trustee) are not identical with those on which any other property in his hands is held.

(2) Where property is taken out of a trust fund by way of

appropriation so as to form a separate fund, the trustees shall obtain proper advice on the valuation of the trust fund and the separate fund and the constitution of both funds in relation to the narrower range and wider range parts of the investments thereof.

Saving for powers of Court

19. The investment powers of trustees authorized by this Act shall not lessen any power of the Court to confer wider powers of investment on trustees, or affect the extent to which any such power is to be exercised.

Powers of Minister to amend Schedule

20. The Minister of Finance may, if he considers it expedient to do so, by order published in the *Gazette*, delete from, vary or add to Part I or Part II of the Schedule:

Provided that any such order shall not come into operation unless and until the same shall have been approved by a resolution of the National Assembly, on notice given by the Minister responsible for Finance.

PART III

General Powers of Trustees and Personal Representatives

General Powers

Power of trustees for sale to sell by auction, etc.

21.—(1) Where a trust for sale or a power of sale of property is vested in a trustee, he may sell or concur with any other person in selling all or any part of the property, either subject to prior charges or not, and either together or in lots, by public auction or by private contract, subject to any such conditions respecting title or evidence of title or other matter as the trustee thinks fit, with power to vary any contract for sale, and to buy in at any auction, or to rescind any contract for sale and to resell, without being answerable for any loss.

(2) A trust or power to sell or dispose of land includes a trust or power to sell or dispose of part thereof.

Power to sell subject to depreciatory conditions

22.—(1) No sale made by a trustee shall be impeached by any beneficiary upon the ground that any of the conditions subject to which the sale was made may have been unnecessarily depreciatory, unless it also appears that the consideration for the sale was thereby rendered inadequate.

(2) No sale made by a trustee shall, after the execution of the conveyance, be impeached as against the purchaser upon the ground that any of the conditions subject to which the sale was made may have been unnecessarily depreciatory, unless it appears

that the purchaser was acting in collusion with the trustee at the time when the contract for sale was made.

(3) No purchaser, upon any sale made by a trustee, shall be at liberty to make any objection against the title upon any of the grounds aforesaid.

(4) This section shall apply to sales made before as well as after the commencement of this Act.

Power of trustees to give receipts

23.—(1) The receipt in writing of a trustee for any money, securities, or other movable property or effects payable, transferable, or deliverable to him under any trust or power shall be a sufficient discharge to the person paying, transferring, or delivering the same and shall effectually exonerate him from seeing to the application or being answerable for any loss or misapplication thereof.

(2) This section shall not, except where the trustee is a trust corporation, enable a sole trustee to give a valid receipt for the proceeds of sale or other capital money arising under a disposition on trust for sale of land.

(3) This section shall apply notwithstanding anything to the contrary in the instrument, if any, creating the trust.

Power to compound liabilities

24. A personal representative, or two or more trustees acting together, or, subject to the restrictions imposed in regard to receipts by a sole trustee not being a trust corporation, a sole acting trustee where by the instrument, if any, creating the trust, or by law, a sole trustee is authorized to execute the trusts and powers reposed in him, may, if and as he or they think fit—

(*a*) accept any property, movable or immovable, before the time at which it is made transferable or payable; or

(*b*) sever and apportion any blended trust funds or property; or

(*c*) pay or allow any debt or claim on any evidence that he or they think sufficient; or

(*d*) accept any composition or any security, movable or immovable, for any debt or for any property, movable or immovable, claimed; or

(*e*) allow any time for payment of any debt; or

(*f*) compromise, compound, abandon, submit to arbitration or otherwise settle any debt, account, claim or thing whatever relating to the testator's or intestate's estate or to the trust, and for any of those purposes may enter into, give, execute and do such agreements, instruments of composition or arrangement, releases and other things as to him or them seem expedient,

without being responsible for any loss occasioned by any act or thing so done by him or them in good faith.

Power to raise money by sale, mortgage, etc.

25.—(1) Where trustees are authorized by the instrument, if any, creating the trust or by law to pay or apply capital money subject to the trust for any purpose or in any manner, they shall have and shall be deemed always to have had power to raise the money required by sale, conversion, calling in or mortgage of all or any part of the trust property for the time being in possession.

(2) This section shall apply notwithstanding anything to the contrary contained in the instrument, if any, creating the trust, but shall not apply to trustees of property held for charitable purposes.

Protection to purchasers and mortgagees dealing with trustees

26. No purchaser or mortgagee, paying or advancing money on a sale or mortgage purporting to be made under any trust or power vested in trustees, shall be concerned to see that such money is wanted, or that no more than is wanted is raised, or otherwise as to the application thereof.

Devolution of powers or trusts

27.—(1) Where a power or trust is given to or imposed on two or more trustees jointly, the same may be exercised or performed by the survivors or survivor of them for the time being.

(2) Until the appointment of new trustees, the personal representatives or representative for the time being of a sole trustee, or, where there were two or more trustees, of the last surviving or continuing trustee, shall be capable of exercising or performing any power or trust which was given to, or capable of being exercised by, the sole or last surviving or continuing trustee, or other the trustees or trustee for the time being of the trust.

(3) This section shall take effect subject to the restrictions imposed in regard to receipts by a sole trustee, not being a trust corporation.

(4) In this section "personal representative" does not include an executor who has renounced or has not proved.

Power to insure

28.—(1) A trustee may insure against loss or damage by fire any building or other insurable property to any amount, including the amount of any insurance already on foot, for the full value of the building or property, and pay the premiums for such insurance out of the income thereof or out of the income of any other property subject to the same trusts without obtaining the consent of any person who may be entitled wholly or partly to such income.

(2) This section shall not apply to any building or property which a trustee is bound forthwith to convey absolutely to any beneficiary upon being requested to do so.

Application of insurance money where policy kept up under any trust power or obligation

29.—(1) Money receivable by trustees or any beneficiary under a policy of insurance against the loss or damage of any property subject to a trust, whether by fire or otherwise, shall, where the policy has been kept up under any trust in that behalf, or under any power statutory or otherwise, or in performance of any covenant or of any obligation statutory or otherwise, be capital money for the purposes of the trust.

(2) If any such money is receivable by any person, other than the trustees of the trust, that person shall use his best endeavours to recover and receive the money, and shall pay the net residue thereof, after discharging any costs of recovering and receiving it, to the trustees of the trust, or if there are no trustees capable of giving a discharge therefor, into Court.

(3) Any such money—

(*a*) if it was receivable in respect of property held upon trust for sale, shall be held upon the trusts and subject to the powers and provisions applicable to money arising by a sale under such trust;

(*b*) in any other case, shall be held upon trusts corresponding as nearly as may be with the trusts affecting the property in respect of which it was payable.

(4) Such money, or any part thereof, may also be applied by the trustees, or, if in Court, under the direction of the Court, in rebuilding, reinstating, replacing or repairing the property lost or damaged, but any such application by the trustees shall be subject to the consent of any person whose consent is required by the instrument, if any, creating the trust to the investment of money subject to the trust.

(5) Nothing contained in this section shall prejudice or affect the right of any person to require any such money or any part thereof to be applied in rebuilding, reinstating or repairing the property lost or damaged, or the rights of any mortgagee, lessor or lessee, whether under any law or otherwise.

(6) This section shall apply to policies effected either before or after the commencement of this Act, but only to money received after such commencement.

Deposit of documents for safe custody

30. Trustees may deposit any documents held by them relating to the trust, or to the trust property, with any bank or any other company whose business includes the undertaking of the safe custody of documents, and any sum payable in respect of such deposit shall be paid out of the income of the trust property.

Reversionary interests, valuations and audit

31.—(1) Where trust property includes any share or interest in property not vested in the trustees, or the proceeds of the sale of any such property, or any other thing in action, the trustees, on the same falling into possession, or becoming payable or transferable, may—

(*a*) agree or ascertain the amount, or value thereof or any part thereof in such manner as they may think fit;

(*b*) accept in or towards satisfaction thereof, at the market or current value, or upon any valuation or estimate of value which they may think fit, any authorized investments;

(*c*) allow any deductions for duties, costs, charges and expenses which they may think proper or reasonable;

(*d*) execute any release in respect of the premises so as effectually to discharge all accountable parties from all liability in respect of any matters coming within the scope of such release,

without being responsible in any such case for any loss occasioned by any act or thing so done by them in good faith.

(2) The trustees shall not be under any obligation and shall not be chargeable with any breach of trust by reason of any omission—

(*a*) to apply for any stop or other like order upon any securities or other property out of or on which such share or interest or other thing in action as aforesaid is derived, payable or charged; or

(*b*) to take any proceedings on account of any act, default, or neglect on the part of the persons in whom such securities or other property or any of them or any part thereof are for the time being, or had at any time been, vested,

unless and until required in writing so to do by some person, or the guardian of some person, beneficially interested under the trust, and unless also due provision is made to their satisfaction for payment of the costs of any proceedings required to be taken:

Provided that nothing in this subsection shall relieve the trustees of the obligation to get in and obtain payment or transfer of such share or interest or other thing in action on the same falling into possession.

(3) Trustees may, for the purpose of giving effect to the trust, or any of the provisions of the instrument, if any, creating the trust or of any law, from time to time (by duly qualified agents) ascertain and fix the value of any trust property in such manner as they think proper, and any valuation so made in good faith shall be binding upon all persons interested under the trust.

(4) Trustees may, in their absolute discretion, from time to time, but not more than once in every three years unless the nature of the trust or any special dealings with the trust property make a more frequent exercise of the right reasonable, cause the accounts of the trust property to be examined or audited by an independent accountant, and shall, for that purpose, produce such vouchers and give such information to him as he may require; and the costs of such examination or audit, including the fee of the auditor, shall be paid out of the capital or income of the trust property, or partly in one way and partly in the other, as the trustees, in their absolute discretion, think fit, but, in default of any direction by the trustees to the contrary in any special case, costs attributable to capital shall be borne by capital and those attributable to income by income.

Power to employ agents

32.—(1) Trustees or personal representatives may, instead of acting personally, employ and pay an agent, whether a legal practitioner, bank, stock broker or other person, to transact any business or do any act required to be transacted or done in the execution of the trust, or the administration of the testator's or intestate's estate, including the receipt and payment of money, and shall be entitled to be allowed and paid all charges and expenses so incurred, and shall not be responsible for the default of any such agent if employed in good faith.

(2) Trustees or personal representatives may appoint any person to act as their agent or attorney for the purpose of selling, converting, collecting, getting in and executing and perfecting assurances of, or managing or cultivating or otherwise administering, any property, real or personal, movable or immovable, subject to the trust or forming part of the testator's or intestate's estate, in any place outside Malaŵi or executing or exercising any discretion or trust or power vested in them in relation to any such property, with such ancillary powers, and with and subject to such provisions and restrictions as they may think fit, including a power to appoint substitutes, and shall not, by reason only of their having made such appointment, be responsible for any loss arising thereby.

(3) Without prejudice to such general power of appointing agents as aforesaid—

(*a*) a trustee may appoint a legal practitioner to be his agent to receive and give a discharge for any money or valuable consideration or property receivable by the trustee under the trust, by permitting the legal practitioner to have the custody of, and to produce, a deed having in the body thereof or endorsed thereon a receipt for such money or valuable consideration or property, the deed being executed, or the endorsed receipt being signed, by the person entitled to give a receipt for that consideration;

(*b*) a trustee shall not be chargeable with breach of trust by reason only of his having made or concurred in making any such appointment; and the production of any such deed by the legal practitioner shall have the same validity and effect as if the person appointing the legal practitioner had not been a trustee;

(*c*) a trustee may appoint a bank or a legal practitioner to be his agent to receive and give a discharge for any money payable to the trustee under or by virtue of a policy of insurance, by permitting the bank of the legal practitioner to have the custody of, and to produce, the policy of insurance with a receipt signed by the trustee, and a trustee shall not be chargable with breach of trust by reason only of his having made or concurred in making any such appointment:

Provided that nothing in this subsection shall exempt a trustee from any liability which he would have incurred if this Act and any written law replaced by this Act had not been passed, in case he permits any such money, valuable consideration, or property to remain in the hands or under the control of the bank or legal practitioner for a period longer than is reasonably necessary to enable the bank or legal practitioner, as the case may be, to pay or transfer the same to the trustee.

(4) This section shall apply whether the money or valuable consideration or property was or is received before or after the commencement of this Act.

Power to concur with others

33. Where an undivided share in the proceeds of sale of land directed to be sold, or in any other property, is subject to a trust, or forms part of the estate of a testator or intestate, the trustees or personal representatives may (without prejudice to the trust for sale affecting the entirety of the land and the powers of the trustees for sale in reference thereto) execute or exercise any trust or power vested in them in relation to such share in conjunction with the persons entitled to or having power in that behalf over the other share or shares, and notwithstanding that any one or more of the trustees or personal representatives may be entitled to or interested in any such other share, either in his or their own right or in a fiduciary capacity.

Power to delegate trusts during absence abroad

34.—(1) A trustee intending to remain out of Malaŵi for a period exceeding one month may, notwithstanding any rule of law or equity to the contrary, by power of attorney, delegate to any person (including a trust corporation) the execution or exercise during his absence from Malaŵi of all or any trusts, powers and discretions vested in him as such trustee, either alone or jointly with any other person or persons:

Provided that a person being the only other co-trustee and not being a trust corporation shall not be appointed to be an attorney under this subsection.

(2) The donor of a power of attorney given under this section shall be liable for the acts or defaults of the donee in the same manner as if they were the acts or defaults of the donor.

(3) The power of attorney shall not come into operation unless and until the donor is out of Malaŵi, and shall be revoked by his return.

(4) The power of attorney shall be attested by at least one witness and shall have annexed thereto a statutory declaration by the donor that he intends to remain out of Malaŵi for a period exceeding one month from the date of such declaration, or from a date therein mentioned.

(5) The statutory declaration aforesaid and a statutory declaration by the donee of the power of attorney that the power has come into operation and has not been revoked by the return of the donor shall be conclusive evidence of the facts stated in favour of any person dealing with the donee.

(6) In favour of any person dealing with the donee, any act done or instrument executed by the donee shall, notwithstanding that the power has never come into operation or has become revoked by the act of the donor or by his death or otherwise, be as valid and effectual as if the donor were alive and of full capacity, and had himself done such act or executed such instrument, unless such person had actual notice that the power had never come into operation or of the revocation of the power before such act was done or instrument executed.

(7) For the purpose of executing or exercising the trusts or powers delegated to him, the donee may exercise any of the powers conferred on the donor as trustee by law or by the instrument creating the trust, including power, for the purpose of the transfer of any inscribed stock, himself to delegate to an attorney power to transfer but not including the power of delegation conferred by this section.

(8) The fact that it appears from any power of attorney given under this section, or from any evidence required for the purposes of any such power of attorney or otherwise, that in dealing with any stock the donee of the power is acting in the execution of a trust shall not be deemed for any purpose to effect any person in whose books the stock is inscribed or registered with any notice of the trust;

(9) In this section "trustee" includes a tenant for life.

Power for trust corporations to act jointly as trustees and hold property as joint tenants

35.—(1) A trust corporation shall be capable of being appointed a trustee jointly with another trust corporation or with an individual and of acquiring and holding any property, movable or immovable, in joint tenancy in the same manner as if it were an individual; and where a trust corporation and an individual, or two or more trust corporations, become entitled to any such property under circumstances or by virtue of any instrument which would, if the trust corporation had been an individual, have created a joint tenancy, they shall be entitled to the property as joint tenants.

(2) Where a trust corporation is a joint tenant of any property, then on its dissolution the property shall devolve on the other joint tenant.

Indemnities

Protections against liability in respect of rents and covenants

36.—(1) Where a personal representative or trustee liable as such for—

(*a*) any rent, covenant, or agreement reserved by or contained in any lease; or

(*b*) any rent, covenant or agreement payable under or contained in any grant made in consideration of a rent charge; or

(*c*) any indemnity given in respect of any rent, covenant or agreement referred to in either of the foregoing paragraphs,

satisfies all liabilities under the lease or grant which may have accrued, or been claimed, up to the date of the conveyance hereinafter mentioned, and, where necessary, sets apart a sufficient fund to answer any future claim that may be made in respect of any fixed and ascertained sum which the lessee or grantee agreed to lay out on the property demised or granted, although the period for laying out the same may not have arrived, then and in any such case the personal representative or trustee may convey the property demised or granted to a purchaser, legatee, devisee or other person entitled to call for a conveyance thereof, and thereafter—

(i) he may distribute the residuary movable and immovable estate of the deceased testator or intestate, or, as the case may be, the trust estate (other than the fund, if any, set apart as aforesaid) to or amongst the persons entitled thereto, without appropriating any part, or any further part, as the case may be, of he estate of the deceased or of the trust estate to meet any future liability under the said lease or grant;

(ii) notwithstanding such distribution, he shall not be personally liable in respect of any subsequent claim under the said lease or grant.

(2) This section shall operate without prejudice to the right of the lessor or grantor, or the persons deriving title under the lessor or grantor, to follow the assets of the deceased or the trust property into the hands of the persons amongst whom the same may have been respectively distributed, and shall apply notwithstanding anything to the contrary in the will or other instrument, if any, creating the trust.

(3) In this section, "lease" includes an underlease and an agreement for a lease or underlease and any instrument giving any such indemnity as aforesaid or varying the liabilities under the lease; "grant" applies to a grant whether the rent is created by limitation, grant, reservation, or otherwise, and includes an agreement for a grant and any instrument giving any such indemnity as aforesaid or varying the liabilities under the grant; "lessee" and "grantee" include persons respectively deriving the title under them.

Protection by means of advertisements

37.—(1) With a view to the conveyance to or distribution among the persons entitled to any movable or immovable property, the trustees of a settlement or of a disposition on trust for sale or personal representatives may give notice, by advertisement in the *Gazette* and in a daily or weekly newspaper circulating in Malaŵi, of their intention to make such conveyance or distribution as aforesaid, and requiring any person interested to send to the trustees or personal representatives within the time, not being less than two months, fixed in the notice or, where more than one notice is given, in the last of the notices, particulars of his claim in respect of the property or any part thereof to which the notice relates.

(2) At the expiration of the time fixed by the notice, the trustees or personal representatives may convey or distribute the property or any part thereof to which the notice relates to or among the persons entitled thereto, having regard only to the claims, whether formal or not, of which the trustees or personal representatives then had notice, and shall not, as respects the property so conveyed or distributed, be liable to any person of whose claim the trustees or personal representatives have not had notice at the time of conveyance or distribution; but nothing in this section shall—

(*a*) prejudice the right of any person to follow the property, or any property representing the same, into the hands of any person, other than a purchaser, who may have received it; or

(*b*) free the trustees or personal representatives from any obligation to make searches or obtain official certificates of search similar to those which an intending purchaser would be advised to make or obtain.

(3) This section shall apply notwithstanding anything to the contrary in the will or other instrument, if any, creating the trust.

Protection in regard to notice

38. A trustee or personal representative acting for the purposes of more than one trust or estate shall not, in the absence of fraud, be affected by notice of any instrument, matter, fact or thing in relation to any particular trust or estate if he has obtained notice thereof merely by reason of his acting or having acted for the purposes of another trust or estate.

Exonerations of trustees in respect of certain powers of attorney

39. A trustee acting or paying money in good faith under or in pursuance of any power of attorney shall not be liable for any such act or payment by reason of the fact that at the time of the act or payment the person who gave the power of attorney was subject to any disability or bankrupt or dead, or had done or suffered some act or thing to avoid the power, if this fact was not known to the trustee at the time of his so acting or paying:

Provided that—

(*a*) nothing in this section shall affect the right of any person entitled to the money against the person to whom the payment is made;

(*b*) the person so entitled shall have the same remedy against the person to whom the payment is made as he would have had against the trustee.

Implied indemnity of trustees

40.—(1) A trustee shall be chargeable only for money and securities actually received by him notwithstanding his signing any receipt for the sake of conformity, and shall be answerable and accountable only for his own acts, receipts, neglects, or defaults, and not for those of any other trustee, nor for any banker, broker, or other person with whom any trust money or securities may be deposited, nor for the insufficiency or deficiency of any securities, nor for any other loss unless the same happens through his own wilful default.

(2) A trustee may reimburse himself or pay or discharge out of the trust premises all expenses incurred in or about the execution of the trusts or powers.

Maintenance, Advancement and Protective Trusts

Power to apply income for maintenance and to accumulate surplus income during a minority

41.—(1) Where any property is held by trustees in trust for any person for any interest whatsoever, whether vested or contingent, then, subject to any prior interests or charges affecting that property—

(*a*) during the minority of any such person, if his interest so long continues, the trustees may, at their sole discretion, pay to his parent or guardian, if any, or otherwise apply for or

towards his maintenance, education or benefit, the whole or such part, if any, of the income of that property as may, in all the circumstances, be reasonable, whether or not there is—

(i) any other fund applicable to the same purpose; or

(ii) any person bound by law to provide for his maintenance or education; and

(*b*) if such person on attaining his majority has not a vested interest in such income, the trustees may thenceforth at their sole discretion pay the whole or such part, if any, as they may think fit of the income of that property and of any accretion thereto under subsection (2) to him, until he either attains a vested interest therein or dies, or until failure of his interest:

Provided that, in deciding whether the whole or any part of the income of the property is during a minority to be paid or applied for the purposes aforesaid, the trustees shall have regard to the age of the minor and his requirements and generally to the circumstances of the case, and in particular to what other income, if any, is applicable for the same purposes; and where trustees have notice that the income of more than one fund is applicable for those purposes, then, so far as practicable, unless the entire income of the funds is paid or applied as aforesaid or the court otherwise directs, a proportionate part only of the income of each fund shall be so paid or applied.

(2) During the minority of any such person, if his interest so long continues, the trustees shall accumulate all the residue of that income in the way of compound interest by investing the same and the resulting income thereof from time to time in authorized investments, and shall hold those accumulations as follows—

(*a*) if any such person—

(i) attains his majority and his interest in such income during his minority is a vested interest; or

(ii) on attaining his majority becomes absolutely entitled to the property from which such income arose, the trustees shall hold the accumulations in trust for such person absolutely; and

(*b*) in any other case the trustees shall, notwithstanding that such person had a vested interest in such income, hold the accumulations as an accretion to the capital of the property from which such accumulations arose, and as one fund with such capital for all purposes,

but the trustees may, at any time during the minority of such person, if his interest so long continues, apply those accumulations, or any part thereof, as if they were income arising in the then current year.

(3) This section shall apply in the case of a contingent interest only if the limitation or trust carries the intermediate income of the property, but it applies to a future or contingent legacy by the parent of, or a person standing *in loco parentis* to, the legatee, if and for such period as under the general law the legacy carries interest for the maintenance of the legatee, and in any such case as last aforesaid the rate of interest shall (if the income available is sufficient, and subject to any rules of court to the contrary) be five pounds per centum per annum.

(4) This section shall apply to a vested annuity in like manner as if the annuity were the income of property held by trustees in trust to pay the income thereof to the annuitant for the same period for which the annuity is payable, save that in any case accumulations made during the minority of the annuitant shall be held in trust for the annuitant or his personal representatives absolutely.

(5) This section shall not apply where the instrument, if any, under which the interest arises came into operation before the commencement of this Act.

(6) For the purpose of this Act, "minor" means a person under the age of twenty-one years and "minority" and "majority" shall be construed accordingly.

Power of advancement

42.—(1) Trustees may at any time or times pay or apply any capital money subject to a trust, for the advancement or benefit, in such manner as they may, in their absolute discretion, think fit, of any person entitled to the capital of the trust property or of any share thereof, whether absolutely or contingently on his attaining any specified age or on the occurrence of any other event, or subject to a gift over on his death under any specified age or on the occurrence of any other event, and whether in possession or in remainder or reversion, and such payment or application may be made notwithstanding that the interest of such person is liable to be defeated by the exercise of a power of appointment or revocation, or to be diminished by the increase of the class to which he belongs:

Provided that—

(*a*) the money so paid or applied for the advancement or benefit of any person shall not exceed altogether in amount one-half of the presumptive or vested share or interest of that person in the trust property; and

(*b*) if that person is or becomes absolutely and indefeasibly entitled to a share in the trust property the money so paid or applied shall be brought into account as part of such share; and

(*c*) no such payment or application shall be made so as to prejudice any person entitled to any prior life or other interest, whether vested or contingent, in the money paid or applied unless such person is in existence and attains his majority and consents in writing to such payment or application.

(2) This section shall apply only where the trust property consists of money or securities or of property held upon trust for sale, calling in and conversion, and such money or securities or the proceeds of such sale, calling in and conversion are not by law or in equity considered as land, or applicable as capital money.

(3) This section shall not apply to trusts constituted or created before the commencement of this Act.

Protective trusts

43.—(1) Where any income, including an annuity or other periodical income payment, is directed to be held on protective trusts for the benefit of any person (in this section called the principal beneficiary) for the period of his life or for any less period, then, during that period (in this section called the trust period) the said income shall, without prejudice to any prior interest, be held on the following trusts namely—

(*a*) upon trust for the principal beneficiary during the trust period or until he, whether before or after the termination of any prior interest, does or attempts to do or suffers any act or thing, or until any event happens, other than an advance under any statutory or express power, whereby, if the said income were payable during the trust period to the principal beneficiary absolutely during that period, he would be deprived of the right to receive the same or any part thereof, in any of which cases, as well as on the termination of the trust period, whichever first happens, this trust of the said income shall fail or determine;

(*b*) if the trust aforesaid fails or determines during the subsistence of the trust period, then, during the residue of that period, the said income shall be held upon trust for the application thereof for the maintenance or support, or otherwise for the benefit, of all or any one or more exclusively of the other or others of the following persons (that is to say)—

(i) the principal beneficiary and his or her wife or husband, if any, and his or her children or more remote issue, if any; or

(ii) if there is no wife or husband or issue of the principal beneficiary in existence, the principal beneficiary and the persons who would, if he were actually dead, be entitled to the trust property or the income thereof or to the annuity fund, if any, or arrears of the annuity, as the case may be,

as the trustees in their absolute discretion, without being liable to account for the exercise of such discretion, think fit.

(2) This section shall not apply to trusts coming into operation before the commencement of this Act, and shall have effect subject to any variation of the implied trusts aforesaid contained in the instrument creating the trust.

(3) Nothing in this section shall operate to validate any trust which would, if contained in the instrument creating the trust, be liable to be set aside.

PART IV

Appointment and Discharge of Trustees

Limitation of the number of trustees

44.—(1) Where, at the commencement of this Act, there are more than four trustees of a settlement of land or more than four trustees holding land on trust for sale, no new trustees shall (except where as a result of the appointment the number is reduced to four or less) be capable of being appointed until the number is reduced to less than four, and thereafter the number shall not be increased beyond four.

(2) In the case of settlements and dispositions on trust for sale of land made or coming into operation after the commencement of this Act—

(*a*) the number of trustees thereof shall not in any case exceed four, and, where more than four persons are named as such trustees, the four first named (who are able and willing to act) shall alone be the trustees, and the other persons named shall not be trustees unless appointed on the occurrence of a vacancy;

(*b*) the number of the trustees shall not be increased beyond four.

(3) This section shall only apply to settlements and dispositions of land, and the restrictions imposed on the number of trustees shall not apply—

(*a*) in the case of land vested in trustees for charitable, ecclesiastical, or public purposes; or

(*b*) where the net proceeds of the sale of the land are held for like purposes; or

(*c*) to the trustees of a term of years absolute limited by a settlement on trusts for raising money, of a like term created under the statutory remedies relating to annual sums charged on land.

Appointments of trustees of settlements and dispositions on trust for sale of land

45.—(1) Appointments of new trustees of conveyances on trust for sale on the one hand and of the settlement the proceeds of sale on the other hand, shall, subject to any order of the Court, be effected by separate instruments, but in such manner as to secure that the same persons shall become the trustees of the conveyance on trust for sale as become the trustees of the settlement of the proceeds of sale.

(2) Where new trustees of a settlement are appointed, a memorandum of the names and addresses of the persons who are for the time being the trustees thereof shall be endorsed on or annexed to the last or only principal vesting instrument by or on behalf of the trustees of the settlement, and such vesting instrument shall, for that purpose, be produced by the person having the possession thereof to the trustees of the settlement when so required.

(3) Where new trustees of a conveyance on trust for sale relating to a legal estate are appointed, a memorandum of the persons who are for the time being the trustees for sale shall be endorsed on or annexed thereto by or on behalf of the trustees of the settlement of the proceeds of sale, and the conveyance shall, for that purpose, be produced by the person having the possession thereof to the last-mentioned trustees when so required.

(4) This section shall only apply to settlements and dispositions of land.

Power of appointing new or additional trustees

46.—(1) Where a trustee, either original or substituted, and whether appointed by a court or otherwise, is dead, or remains out of Malaŵi for more than twelve months, or desires to be discharged from all or any of the trusts or powers reposed in or conferred on him, or refuses or is unfit to act therein, or is incapable of acting therein, or is a minor, then, subject to the restrictions imposed by this Act on the number of trustees—

(*a*) the person or persons nominated for the purpose of appointing new trustees by the instrument, if any, creating the trust; or

(*b*) if there is no such person able and willing to act, then the surviving or continuing trustees or trustee for the time being, or the personal representative of the last surviving or continuing trustee,

may, by writing, appoint one or more other persons (whether or not being the person exercising the power) to be a trustee or trustees in the place of the trustee so deceased, remaining out of Malaŵi, desiring to be discharged, refusing, or being unfit or being incapable, or being a minor, as aforesaid.

(2) Where a trustee has been removed under a power contained in the instrument creating the trust, a new trustee or new trustees may be appointed in the place of the trustee who is removed, as if he were dead, or, in the case of a corporation, as if the corporation desired to be discharged from the trust, and this section shall apply accordingly, but subject to the restrictions imposed by this Act on the number of trustees.

(3) Where a corporation being a trustee is or has been dissolved either before or after the commencement of this Act, then, for the purposes of this section and of any written law replaced thereby, the corporation shall be deemed to be and to

have been from the date of the dissolution incapable of acting in the trusts or powers reposed in or conferred on the corporation.

(4) The power of appointment given by subsection (1) or any similar previous written law to the personal representatives of a last surviving or continuing trustee shall be and shall be deemed always to have been exercisable by the executors for the time being (whether original or by representation) of such surviving or continuing trustee who has proved the will of their testator or by the administrators for the time being of such trustee without the concurrence of any executor who has renounced or has not proved.

(5) But a sole or last surviving executor intending to renounce, or all the executors where they all intend to renounce, shall have and shall be deemed always to have had power, at any time before renouncing probate, to exercise the power of appointment given by this section, or by any similar previous written law if willing to act for that purpose and without thereby accepting the office of executor.

(6) Where a sole trustee, other than a trust corporation, is or has been originally appointed to act in a trust, or where, in the case of any trust, there are not more than three trustees (none of them being a trust corporation) either original or substituted and whether appointed by the Court or otherwise, then and in any such case—

(*a*) the person or persons nominated for the purpose of appointing new trustees by the instrument, if any; creating the trust; or

(*b*) if there is no such person, or no such person able and willing to act, then the trustee or trustees for the time being,

may, by writing, appoint another person or other persons to be an additional trustee or additional trustees, but it shall not be obligatory to appoint any additional trustee unless the instrument, if any, creating the trust or any law provides to the contrary, nor shall the number of trustees be increased beyond four by virtue of any such appointment.

(7) Every new trustee appointed under this section as well before as after all the trust property becomes by law or by assurance or otherwise vested in him, shall have the same powers, authorities and discretions, and may in all respects act, as if he had been originally appointed a trustee by the instrument, if any, creating the trust.

(8) The provisions of this section relating to a trustee who is dead include the case of a person nominated trustee in a will but dying before the testator, and those relative to a continuing trustee include a refusing or retiring trustee, if willing to act in the execution of this section.

(9) Where a lunatic or defective, being a trustee, is also

entitled in possession to some beneficial interest in the trust property, no appointment of a new trustee in his place shall be made by the continuing trustees or trustee under this section, unless leave has been given by the court to make the appointment.

Supplemental provisions as to appointment of trustees

47.—(1) On the appointment of a trustee for the whole or any part of trust property—

(*a*) the number of trustees may, subject to the restrictions imposed by this Act on the number of trustees, be increased; and

(*b*) a separate set of trustees, not exceeding four, may be appointed for any part of the trust property held on trusts distinct from those relating to any other part or parts of the trust property, notwithstanding that no new trustees or trustee are or is to be appointed for other parts of the trust property, and any existing trustee may be appointed or remain one of such separate set of trustees, or, if only one trustee was originally appointed, then, save as hereinafter provided, one separate trustee may be so appointed; and

(*c*) it shall not be obligatory, save as hereinafter provided, to appoint more than one new trustee where only one trustee was originally appointed, or to fill up the original number of trustees where more than two trustees were originally appointed, but, except where only one trustee was originally appointed, and a sole trustee when appointed will be able to give valid receipts for all capital money, a trustee shall not be discharged from his trust unless there will be either a trust corporation or at least two individuals to act as trustees to perform the trust; and

(*d*) any assurance or thing requisite for vesting the trust property, or any part thereof, in a sole trustee, or jointly in the persons who are the trustees, shall be executed or done.

(2) Nothing in this Act shall authorize the appointment of a sole trustee, not being a trust corporation, where the trustee, when appointed, would not be able to give valid receipts for all capital money arising under the trust.

Evidence as to a vacancy in a trust

48.—(1) A statement, contained in any instrument coming into operation after the commencement of this Act by which a new trustee is appointed for any purpose connected with land, to the effect that a trustee has remained out of Malaŵi for more than twelve months or refuses or is unfit to act, or is incapable of acting, or that he is not entitled to a beneficial interest in the trust property in possession, shall, in favour of a purchaser of a legal estate, be conclusive evidence of the matter stated.

(2) In favour of such purchaser any appointment of a new trustee depending on that statement, and any vesting declaration, express or implied, consequent on the appointment, shall be valid.

Retirement of trustee without a new appointment

49.—(1) Where a trustee is desirous of being discharged from the trust, and after his discharge there will be either a trust corporation or at least two individuals to act as trustees to perform the trust, then, if such trustee as aforesaid by deed declares that he is desirous of being discharged from the trust, and if his co-trustees and such other person, if any, as is empowered to appoint trustees, by deed consent to the discharge of the trustee, and to the vesting in the co-trustees alone of the trust property, the trustee desirous of being discharged shall be deemed to have retired from the trust, and shall, by the deed, be discharged therefrom under this Act, without any new trustee being appointed in his place.

(2) Any assurance or thing requisite for vesting the trust property in the continuing trustees alone shall be executed or done.

Vesting of trust property in new or continuing trustees

50.—(1) Where by a deed a new trustee is appointed to perform any trust, then—

(*a*) if the deed contains a declaration by the appointor to the effect that any estate or interest in any land subject to the trust, or in any chattel so subject, or the right to recover or receive any debt or other thing in action so subject, shall vest in the persons who by virtue of the deed become or are the trustees for performing the trust, the deed shall operate, without any conveyance or assignment, to vest in those persons as joint tenants and for the purposes of the trust the estate, interest or right to which the declaration relates; and

(*b*) if the deed is made after the commencement of this Act and does not contain such a declaration, the deed shall, subject to any express provision to the contrary therein contained, operate as if it had contained such a declaration by the appointor extending to all the estates, interests and rights with respect to which a declaration could have been made.

(2) Where by a deed a retiring trustee is discharged under the statutory power without a new trustee being appointed then—

(*a*) if the deed contains such a declaration as aforesaid by the retiring and continuing trustees, the deed shall, without any conveyance or assignment, operate to vest in the continuing trustees alone, as joint tenants, and for the purposes of the trust, the estate, interest, or right to which the declaration relates; and

(*b*) if the deed is made after the commencement of this Act and does not contain such a declaration, the deed shall, subject to any express provision to the contrary therein contained, operate as if it had contained such a declaration by such persons as aforesaid extending to all the estates, interests and rights with respect to which a declaration could have been made.

(3) An express vesting declaration, whether made before or after the commencement of this Act, shall, notwithstanding that the estate, interest or right to be vested is not expressly referred to, and provided that the other statutory requirements were or are complied with, operate and be deemed always to have operated (but without prejudice to any express provision to the contrary contained in the deed of appointment or discharge) to vest in the persons respectively referred to in subsections (1) and (2), as the case may require, such estates, interests and rights as are capable of being and ought to be vested in those persons.

(4) This section shall not extend—

(*a*) to land conveyed by way of mortgage for securing money subject to the trust, except land conveyed on trust for securing debentures or debenture stock;

(*b*) to land held under a lease which contains any covenant, condition or agreement against assignment or disposing of the land without licence or consent, unless, prior to the execution of the deed containing expressly or impliedly the vesting declaration, the requisite licence or consent has been obtained, or unless, by virtue of any law, the vesting declaration, express or implied, would not operate as a breach of covenant or give rise to a forfeiture;

(*c*) to any share, stock, annuity or property which is only transferable in books kept by a company or other body, or in manner directed by or under written law;

(*d*) to land the title to which is registered under the Registered Land Act. Cap. 58: 01

In this subsection "lease" includes an underlease and an agreement for a lease or underlease.

(5) For the purposes of registration of the deed in any registry, the person or persons making the declaration, expressly or impliedly, shall be deemed the conveyancing party or parties, and the conveyance shall be deemed to be made by him or them under a power conferred by this Act.

PART V

Powers of the Court

Appointment of new Trustees

Power of court to appoint new trustees

51.—(1) The Court may, whenever it is expedient to appoint a new trustee or new trustees, and it is found inexpedient, difficult or impracticable so to do without the assistance of the Court, make an order appointing a new trustee or new trustees either in substitution for or in addition to any existing trustee or trustees, or although there is no existing trustee.

(2) In particular and without prejudice to the generality of the foregoing provision, the Court may make an order appointing a new trustee in substitution for a trustee who is convicted of felony, or is a lunatic or a defective, or is a bankrupt, or is a corporation which is in liquidation or has been dissolved.

(3) An order under this section, and any consequential vesting order or conveyance, shall not operate further or otherwise as a discharge to any former or continuing trustee than an appointment of new trustees under any power for that purpose contained in any instrument would have operated.

(4) Nothing in this section shall give power to appoint an executor or administrator.

Power to authorize remuneration

52. Where the Court appoints a person to be a trustee either solely or jointly with another person, the Court may authorize such person to charge such remuneration for his services as trustee as the Court may think fit.

Powers of new trustee appointed by the Court

53.—Every trustee appointed by the Court shall, before as well as after the trust property becomes by law, or by assurance, or otherwise, vested in him, have the same powers, authorities, and discretions, and may in all respects act as if he had been originally appointed a trustee by the instrument, if any, creating the trust.

Vesting Orders

Vesting orders of land

54.—In any of the following cases, namely—

(*a*) where the Court appoints or has appointed a trustee, or where a trustee has been appointed out of Court under any statutory or express power;

(*b*) where a trustee entitled to or possessed of any land or interest therein, whether by way of mortgage or otherwise, or entitled to a contingent right therein, either solely or jointly with any other person—

(i) is under disability; or

(ii) is out of the jurisdiction of the Court; or

(iii) cannot be found, or being a corporation, has been dissolved;

(*c*) where it is uncertain who was the survivor of two or more trustees jointly entitled to or possessed of any interest in land;

(*d*) where it is uncertain whether the last trustee known to have been entitled to or possessed of any interest in land is living or dead;

(*e*) where there is no personal representative of a deceased trustee who was entitled to or possessed of any interest in land, or where it is uncertain who is the personal representative of a deceased trustee who was entitled to or possessed of any interest in land;

(*f*) where a trustee jointly or solely entitled to or possessed of any interest in land, or entitled to a contingent right therein, has been required, by or on behalf of a person entitled to require a conveyance of the land or interest or a release of the right, to convey the land or interest or to release the right, and has wilfully refused or neglected to convey the land or interest or release the right for twenty-eight days after the date of the requirement;

(*g*) where land or any interest therein is vested in a trustee whether by way of mortgage or otherwise, and it appears to the Court to be expedient,

the Court may make an order (in this Act called a vesting order) vesting the land or interest therein in any such person in any such manner and for any such estate or interest as the Court may direct, or releasing or disposing of the contingent right to such person as the Court may direct:

Provided that—

(i) where the order is consequential on the appointment of a trustee the land or interest therein shall be vested for such estate as the Court may direct in the persons who on the appointment are the trustees; and

(ii) where the order relates to a trustee entitled or formerly entitled jointly with another person, and such trustee is under disability or out of the jurisdiction of the Court or cannot be found, or being a corporation has been dissolved, the land interest or right shall be vested in such other person who remains entitled, either alone or with any other person the Court may appoint.

Orders as to contingent rights of unborn persons

55. Where any interest in land is subject to a contingent right in an unborn person or class of unborn persons who, on coming into existence would, in respect thereof, become entitled to or possessed of that interest on any trust, the Court may make an order releasing the land or interest therein from the contingent right, or may make an order vesting in any person the estate or interest to or of which the unborn person or class of unborn persons would, on coming into existence, be entitled or possessed in the land.

Vesting order in place of conveyance by minor mortgagee

56. Where any person entitled to or possessed of any interest in land, or entitled to a contingent right in land, by way of security for money, is a minor, the Court may make an order vesting or releasing or disposing of the interest in the land or the right in like manner as in the case of a trustee under disability.

Vesting order consequential on order for sale or mortgage of land

57. Where any Court gives a judgment or makes an order directing the sale or mortgage of any land, every person who is entitled to or possessed of any interest in the land, or entitled to a contingent right therein, and is a party to the action or proceeding in which the judgment or order is given or made or is otherwise bound by the judgment or order, shall be deemed to be so entitled or possessed, as the case may be, as a trustee for the purposes of this Act, and the Court may, if it thinks expedient, make an order vesting the land or any part thereof for such estate or interest as the Court thinks fit in the purchaser or mortgagee or in any other person.

Vesting order consequential on judgment for specific performance, etc.

58. Where a judgment is given for the specific performance of a contract concerning any interest in land, or for sale or exchange of any interest in land, or generally where any judgment is given for the conveyance of any interest in land either in cases arising out of the doctrine of election or otherwise, the Court may declare—

(*a*) that any of the parties to the action are trustees of any interest in the land or any part thereof within the meaning of this Act; or

(*b*) that the interests of unborn persons who might claim under any party to the action, or under the will or voluntary settlement of any deceased person who was during his lifetime a party to the contract or transaction concerning which the judgment is given, are the interests of persons who, on coming into existence, would be trustees within the meaning of this Act,

and thereupon the Court may make a vesting order relating to the rights of those persons, born and unborn, as if they had been trustees.

Effect of vesting order

59. A vesting order under any of the foregoing provisions shall in the case of a vesting order consequential on the appointment of a trustee, have the same effect—

(*a*) as if the persons who before the appointment were the trustees, if any, had duly executed all proper conveyances of the land for such estate or interest as the Court directs; or

(*b*) if there is no such person, or no such person of full capacity, as if such person had existed and been of full capacity, and had duly executed all proper conveyances of the land for such estate or interest as the Court directs,

and shall in every other case have the same effect as if the trustee or other person or description or class of persons to whose rights or supposed rights the said provisions respectively relate had been an ascertained and existing person of full capacity, and had executed a conveyance or release to the effect intended by the order.

Power to appoint person to convey

60. In all cases where a vesting order can be made under any of the foregoing provisions, the Court may, if it is more convenient, appoint a person to convey the land or any interest therein or release the contingent right, and a conveyance or release by that person in conformity with the order shall have the same effect as an order under the appropriate provision.

Vesting orders as to stock and things in action

61.—(1) In any of the following cases, namely—

(*a*) where the Court appoints or has appointed a trustee, or where a trustee has been appointed out of Court under any statutory or express power;

(*b*) where a trustee entitled, whether by way of mortgage or otherwise, alone or jointly with another person to stock or to a thing in action—

(i) is under disability; or

(ii) is out of the jurisdiction of the Court; or

(iii) cannot be found, or, being a corporation, has been dissolved; or

(iv) neglects or refuses to transfer stock or receive the dividends or income thereof, or to sue for or recover a thing in action, according to the direction of the person absolutely entitled thereto for twenty-eight days next after a request in writing has been made to him by the person so entitled; or

(*v*) neglects or refuses to transfer stock or receive the dividends or income thereof, or to sue for or recover a thing in action for twenty-eight days next after an order of the Court for that purpose has been served on him;

(*c*) where it is uncertain whether a trustee entitled alone or jointly with another person to stock or to a thing in action is alive or dead;

(*d*) where stock is standing in the name of a deceased person whose personal representative is under disability;

(*e*) where stock or a thing in action is vested in a trustee whether by way of mortgage or otherwise and it appears to the Court to be expedient,

the Court may make an order vesting the right to transfer or call for a transfer of stock, or to receive the dividends or income thereof, or to sue for or recover the thing in action, in any such person as the Court may appoint:

Provided that—

(i) where the order is consequential on the appointment of a trustee, the right shall be vested in the persons who, on the appointment, are the trustees; and

(ii) where the person whose right is dealt with by the order was entitled jointly with another person, the right shall be vested in that last-mentioned person either alone or jointly with any other person whom the Court may appoint.

(2) In all cases where a vesting order can be made under this section, the Court may, if it is more convenient, appoint some proper person to make or join in making the transfer:

Provided that the person appointed to make or join in making a transfer of stock shall be some proper officer of the bank, or the corporation or society whose stock is to be transferred.

(3) The person in whom the right to transfer or call for the transfer of any stock is vested by an order of the Court under this Act may transfer the stock to himself or any other person, according to the order, and banks and all other associations and corporations shall obey every order under this section according to its tenor.

(4) After notice in writing of an order under this section it shall not be lawful for any bank or any other corporation or association to transfer any stock to which the order relates or to pay any dividends thereon except in accordance with the order.

(5) The Court may make declarations and give directions concerning the manner in which the right to transfer any stock or thing in action vested under this Act is to be exercised.

(6) The provisions of this Act as to vesting orders shall apply to shares in ships registered under any written laws relating to merchant shipping as if they were stock.

Vesting orders of charity property

62. The powers conferred by this Act as to vesting orders may be exercised for vesting any interest in land, stock, or thing in action in any trustee of a charity or society over which the Court would have jurisdiction upon action duly instituted, whether the appointment of the trustee was made by instrument under a power or by the Court under its general or statutory jurisdiction.

Vesting orders in relation to minor's beneficial interests

63. Where a minor is beneficially entitled to any property the Court may, with a view to the application of the capital or income thereof for the maintenance, education, or benefit of the minor, make an order—

(*a*) appointing a person to convey such property; or

(*b*) in the case of stock, or a thing in action, vesting in any person the right to transfer or call for a transfer of such stock, or to receive the dividends or income thereof, or to sue for and recover such thing in action, upon such terms as the court may think fit.

Orders made upon certain allegations to be conclusive evidence

64. Where a vesting order is made as to any land under this Act, founded on an allegation of any of the following matters namely—

(*a*) the personal incapacity of a trustee or mortgagee; or

(*b*) that a trustee or mortgagee or the personal representative of or other person deriving title under a trustee or mortgagee is out of the jurisdication of the Court or cannot be found, or being a corporation has been dissolved; or

(*c*) that it is uncertain which of two or more trustees, or which of two or more persons interested in a mortgage, was the survivor; or

(*d*) that it is uncertain whether the last trustee or the personal representative of, or other person deriving title under, a trustee or mortgagee, or the last surviving person interested in a mortgage is living or dead; or

(*e*) that any trustee or mortgagee has died intestate without leaving a person beneficially interested under the intestacy or has died and it is not known who is his personal representative or the person interested,

the fact that the order has been so made shall be conclusive evidence of the matter so alleged in any court upon any question as to the validity of the order; but this section shall not prevent the Court from directing a reconveyance or surrender or the payment of costs occasioned by any such order if improperly obtained.

Jurisdiction to make other Orders

Power of Court to authorize dealings with trust property

65.—(1) Where in the management or administration of any property vested in trustees, any sale, lease, mortgage, surrender, release, or other disposition, or any purchase, investment, acquisition, expenditure, or other transaction, is in the opinion of the Court expedient, but the same cannot be effected by reason of the absence of any power for that purpose vested in the trustees by the trust instrument, if any, or by law, the Court may by order confer upon the trustees, either generally or in any particular instance, the necessary power for the purpose, on such terms, and subject to such provisions and conditions, if any, as the Court may think fit and may direct in what manner any money authorized to be expended, and the costs of any transaction, are to be paid or borne as between capital and income.

(2) The Court may, from time to time, rescind or vary any order made under this section, or may make any new or further order.

(3) An application to the Court under this section may be made by the trustees, or by any of them, or by any person beneficially interested under the trust.

(4) This section shall not apply to trustees of a settlement of land.

Persons entitled to apply for orders

66.—(1) An order under this Act for the appointment of a new trustee or concerning any interest in land, stock, or thing in action subject to a trust, may be made on the application of any person beneficially interested in the land, stock, or thing in action, whether under disability or not or on the application of any person duly appointed trustee thereof.

(2) An order under this Act concerning any interest in land, stock, or thing in action subject to a mortgage may be made on the application of any person beneficially interested in the equity of redemption, whether under disability or not, or of any person interested in the money secured by the mortgage.

Power to give judgment in absence of a trustee

67. Where in any action the Court is satisfied that diligent search has been made for any person who, in the character of trustee, is made a defendant in any action, to serve him with a process of the Court, and that he cannot be found, the Court may hear and determine the action and give judgment therein against that person in his character of a trustee as if he had been duly served, or had entered an appearance in the action, and had also appeared by his legal representative at the hearing, but without prejudice to any interest he may have in the matters in question in the action in any other character.

Power to charge costs on trust estate

68. The Court may order the costs and expenses of and incident to any application for an order appointing a new trustee, or for a vesting order, or of and incident to any such order, or any conveyance or transfer in pursuance thereof, to be raised and paid out of the property in respect whereof the same is made, or out of the income thereof, or to be borne and paid in such manner and by such persons as to the Court may seem just.

Power to relieve trustee from personal liability

69. If it appears to the Court that a trustee, whether appointed by the Court or otherwise, is or may be personally liable for any breach of trust, whether the transaction alleged to be a breach of trust occurred before or after the commencement of this Act, but has acted honestly and reasonably, and ought fairly to be excused for the breach of trust and for omitting to obtain the directions of the Court in the matter in which he committed such breach, then the Court may relieve him either wholly or partly from personal liability for the same.

Power to make beneficiary indemnify for breach of trust

70.—(1) Where a trustee commits a breach of trust at the instigation or request of with the consent in writing of a beneficiary, the Court may, if it thinks fit, and notwithstanding that the beneficiary may be a married woman restrained from anticipation, make such order as to the Court seems just, for impounding all or any part of the interest of the beneficiary in the trust estate by way of indemnity to the trustee or persons claiming through him.

(2) This section shall apply to breaches of trust committed before as well as after the commencement of this Act.

Power to vary trusts

71.—(1) Where property, whether movable or immovable is held on trusts arising, whether before or after the commencement of this section, under any will, settlement or other disposition, the Court may, if it thinks fit, by order approve on behalf of—

(*a*) any person having, directly or indirectly, an interest, whether vested or contingent, under the trusts who by reason of minority or other incapacity is incapable of assenting; or

(*b*) any person (whether ascertained or not) who may become entitled, directly or indirectly, to an interest under the trusts as being at a future date or on the happening of a future event a person of any specified description or a member of any specified class of persons, so however that this paragraph shall not include any person who would be of that description, or a member of that class; as the case may be, if the said date had fallen or the said event had happened at the date of the application to the Court; or

(*c*) any person unborn; or

(*d*) any person in respect of any discretionary interest of his under protective trusts where the interest of the principal beneficiary has not failed or determined,

any arrangement (by whomsoever proposed, and whether or not there is any other person beneficially interested who is capable of assenting thereto) varying or revoking all or any of the trusts, or enlarging the powers of the trustees of managing or administering any of the property subject to the trusts:

Provided that, except by virtue of paragraph (*d*), the Court shall not approve an arrangment on behalf of any person unless the carrying out thereof would be for the benefit of that person.

(2) In subsection (1), "protective trusts" means the trusts specified in section 43 (1) (*a*) and (*b*), or any like trusts; "the principal beneficiary" has the same meaning as in section 43 (1); and "discretionary interest" means an interest arising under the trust specified in section 43 (1) (*b*) or any like trust.

(3) Nothing in the foregoing provisions of this section shall apply to trusts affecting property settled by any written law.

(4) Nothing in this section shall be taken to limit the powers conferred by section 65, or the powers of the Court conferred by the Mental Treatment Act.

Cap. 34:02

Payment into Court

Payment into Court by trustees

72.—(1) Trustees, or the majority of trustees, having in their hands or under their control money or securities belonging to a trust, may pay the same into Court; and the same shall, subject to rules of Court, be dealt with according to the orders of the Court.

(2) The receipt or certificate of the proper officer shall be a sufficient discharge to trustees for the money or securities so paid into Court.

(3) Where money or securities are vested in any persons as trustees, and the majority are desirous of paying the same into Court, but the concurrence of the other or others cannot be obtained, the Court may order the payment into Court to be made by the majority without the concurrence of the other or others.

(4) Where any such money or securities are deposited with any bank, broker, or other depositary, the Court may order payment or delivery of the money or securities to the majority of the trustees for the purpose of payment into Court.

(5) Every transfer, payment and delivery made in pursuance of any such order shall be valid and take effect as if the same had been made on the authority or by the act of all the persons entitled to the money and securities so transferred, paid or delivered.

PART VI

General Provisions

Application of Act to Settled Land Acts trustee 53 and 54 Vict. c. 69

73.—(1) All the powers and provisions contained in this Act with reference to the appointment of new trustees, and the discharge and retirement of trustees, apply to and include trustees for the purposes of the Settled Land Acts, 1882 to 1890 of the United Kingdom, and trustees for the purpose of the management of land during a minority, whether such trustees are appointed by the Court or by the settlement, or under provisions contained in any instrument.

(2) Where, either before or after the commencement of this Act, trustees of a settlement have been appointed by the Court for the purposes of the Settled Land Acts, 1882 to 1890 of the United Kingdom, then, after the commencement of this Act—

(*a*) the person or persons nominated for the purpose of appointing new trustees by the instrument, if any, creating the settlement, though no trustees for the purposes of the said Acts were thereby appointed; or

(*b*) if there is no such person, or no such person able and willing to act, the surviving or continuing trustees or trustee for the time being for the purposes of the said Acts, or the personal representatives of the last surviving or continuing trustee for those purposes,

shall have the powers conferred by this Act to appoint new or additional trustees of the settlement for the purposes of the said Acts.

(3) Appointments of new trustees for the purposes of the said Acts made or expressed to be made before the commencement of this Act by the trustees or trustee or personal representatives referred to in subsection (2) (*b*) or by the persons referred to in paragraph (*a*) of that subsection are, without prejudice to any order of the Court made before such commencement, hereby confirmed.

Trust estates not affected by trustee becoming subject to forfeiture Cap. 14:06

74. Property vested in any person on any trust or by way of mortgage shall not, in case of that person being declared subject to forfeiture within the meaning of the Forfeiture Act, vest in the Registrar General under that Act, but shall remain in the trustee or mortgagee, or pass to his co-trustee in right of survivorship or devolve on his personal representative as if he had not been declared subject to forfeiture:

Provided that this section shall not affect the title to the property so far as relates to any beneficial interest therein of any such trustee or mortgagee.

Indemnity to banks, etc.

75. This Act, and every order purporting to be made under this Act, shall be a complete indemnity to a bank, and to any persons for any acts done pursuant thereto, and it shall not be necessary for any bank or for any person to inquire concerning the propriety of the order, or whether the Court by which the order was made had jurisdiction to make it.

Rules of court

76. The Chief Justice may make rules of court regulating the practice and procedure in respect of any proceedings in the Court under this Act.

Act binding on Government

77. This Act shall bind the Government.

Saving and consequential provision
23 of 1957
56 and 57 Vict. c. 53
44 of 1953

78.—(1) Nothing in this section shall affect any vesting order or appointment made or other thing done under the Trustee Act, 1893 (Amendment) Ordinance (now repealed), the Trustee Act, 1893, of the United Kingdom (now repealed) in so far as it had effect in Malaŵi, and the Administration of Estates by Corporations Ordinance, 1953 (now repealed), and any order or appointment so made may be revoked or varied in like manner as if it had been made under this Act.

(2) References in any document to any of the repealed enactments referred to in subsection (1) shall be construed as references to this Act or to the corresponding provision in this Act.

ss. 5 and 20
G.N. 115/1990

THE SCHEDULE

PART I

Narrower Range Investments

1. Securities issued by the Government of Malaŵi being fixed interest securities repayable not later than 15 years after the date of purchase.

2. Deposits in the Post Office Savings Bank or a bank.

3. Shares of or deposits with a building society registered under the Building Societies Act.

Cap. 32.01

G.N. 115/1990

4. Treasury paper issued by the Government of Malaŵi.

5. Promissory notes and other securities issued by the Reserve Bank of Malaŵi under section 28 (*s*) of the Reserve Bank of Malaŵi Act.

Cap. 44:02

G.N. 115/1990

PART II

Wider Range Investments

In the purchase of or on mortgage of land situate in a Local Government Area within the meaning of the Local Government (Urban Areas) Act and held on—

Cap. 22:01

(*a*) freehold title;

(*b*) registered title as owner under the Registered Land Act; or

Cap. 58:01

(*c*) a leasehold title held for an unexpired term of not less than forty years,

upon which land a good and substantial building constructed of permanent materials has been erected.

2. Securities issued by the Government of Malaŵi not being securities falling within Part I of this Schedule.

3. Deposits with a maturity of six months or less with Leasing and Finance Company of Malaŵi Limited, Mercantile Credit Limited or any bank or other institution registered under the Banking Act. G.N. 115/1990 Cap. 44:01

4. Shares, bonds and other securities issued for public trading in Malaŵi in compliance with section 24 of the Capital Market Development Act. Cap. 46:06

5. Securities issued by institutions established in Malaŵi for collective investment and management of securities and licensed under section 35 of the Capital Market Development Act. Cap. 46:06

TRUSTEES INCORPORATION

CHAPTER 5:03

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CHAPTER 5:03

TRUSTEES INCORPORATION

ARRANGEMENT OF SECTIONS

SECTION

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2. Interpretation
3. Upon application of trustees Minister may grant certificate of registration
4. Trusts not affected
5. Liability of trustees notwithstanding incorporation
6. Manner of vesting land
7. Vacancies in trustees
8. Name and change of name
9. Change in constitution
10. Contracts made by trustees
11. Gifts to charity before incorporation to have same effect afterwards
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An Act to amend the law relating to the incorporation of the Trustees of certain Charities and Associations

5 of 1962
18 of 1996
G.N. 22/1963
219/1964(N)

[15TH JUNE, 1962]

1. This Act may be cited as the Trustees Incorporation Act. Short title

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

"constitution" means the rules, regulations and documents, relating to the objects of a charity or association and regulating the affairs thereof, and the appointment of trustees or other officers thereof; 18 of 1996

"public security" includes the prevention and suppression of violence, intimidation, disorder, crime, mutiny, rebellion and concerted defiance of and disobedience to lawfully constituted authority and laws in force in Malaŵi, and the maintenance of the administration of justice; 18 of 1996

"Registrar" means the Registrar General;

"trustees" includes a sole trustee.

Upon application of trustees Minister may grant certificate of registration 18 of 1996

3.—(1) Trustees of any charity for religious, educational, literary, artistic, scientific or public charitable purposes or of any association of persons for any religious, educational, literary, artistic, scientific, social, athletic or charitable purpose or for any purpose which in the opinion of the Minister is for the benefit or welfare of the inhabitants of Malaŵi or any part thereof may apply in the prescribed manner to the Minister for a certificate of incorporation of the trustees of such charity or association as a corporate body.

(2) If the Minister, having regard to the extent, nature and objects and other circumstances of the charity or association, shall consider such incorporation expedient he may grant such certificate:

18 of 1996

Provided that if the Minister is satisfied that it is necessary for the preservation of public security so to do, he may refuse to grant such certificate.

(3) Upon the issue of a certificate under subsection (2), the trustees shall thereupon become a body corporate by the name described in the certificate and shall have perpetual succession and a common seal and power to sue and to be sued in such corporate name.

(4) Subject to this Act, such body corporate shall also have power to hold and acquire and, by instrument under its common seal, to convey, assign, transfer, mortgage, demise or otherwise deal with any property movable or immovable or any interest therein belonging to or held on trust for the charity or association in the like manner and subject to such restrictions and provisions as the trustees of the charity or association might without incorporation convey, assign, transfer, mortgage, demise or otherwise deal with such property or interest for the purposes of the charity or association.

(5) A certificate of incorporation so granted shall be conclusive evidence that all the requirements in respect of such incorporation have been complied with and the date of incorporation mentioned in such certificate shall be deemed to be the date at which incorporation has taken place.

Trusts not affected

4. Any property movable or immovable vested in, transferred to, held or acquired by the body corporate shall be held for the purposes of the charity or association and in such and the like manner as it was held by the trustees prior to incorporation, subject to this Act.

Liability of trustees not-withstanding incorporation

5. After a certificate of incorporation has been granted under this Act, all trustees of the charity or association, notwithstanding their incorporation, shall be chargeable for such property as shall come into their hands and shall be answerable and accountable for their own acts, receipts, neglects and defaults and for the due administration of the property of the charity or

association, in the same manner and to the same extent as if no such incorporation had been effected.

Manner of vesting land

6.—(1) Any immovable property may be vested in a body corporate to which a certificate has been issued under section 3, in accordance with any other law relating to such matters or in accordance with this section.

Cap. 58:02

(2) Subject to section 17 (1) of the Deeds Registration Act, the certificate of incorporation or a copy thereof certified under the hand of the Registrar may be registered in the Deeds Registry provided that particulars of the immovable property intended to be affected are attached thereto.

(3) Upon registration of the certificate of incorporation in accordance with subsection (1), all immovable property of which particulars have been so attached, and which belonged to or was held by any person, immediately prior to the date of the certificate, in trust for the charity or association shall vest in such body corporate for such estate and interest, if any, as the person held immediately prior to registration, and all covenants and conditions relating to such land enforceable by or against the trustees thereof before registration shall be enforceable to the same extent and by the same means by or against the body corporate.

(4) Any person who shall make or permit to be made any transfer or payment *bona fide* in reliance on any instrument to which the common seal of any body corporate created under this Act is affixed shall be indemnified and protected in respect of such transfer or payment notwithstanding any defect or circumstances affecting the execution of the instrument.

Vacancies in trustees

7.—(1) Where a certificate of incorporation has been granted to the trustees of a charity or association, vacancies in the number of trustees thereof shall from time to time be filled as required by the constitution of the charity or association or by such legal means as would have been available for the appointment of new trustees thereof if no such certificate of incorporation had been granted; and the appointment of every new trustee shall be certified and registered in the prescribed manner and thereupon the new trustee shall be deemed to be incorporated for the purposes of this Act.

(2) Within one month after the expiration of each year after the grant of a certificate of incorporation, and whenever required by the Registrar, a return shall be made in the prescribed manner by the trustees of the charity or association of the names of the trustees thereof together with their addresses.

Name and change of name

8.—(1) The name of every body corporate registered under this Act shall include the words "registered" and "trustees".

(2) Subject to subsection (1) such body corporate may with the written approval of the Registrar change its name.

(3) In any case where such body corporate is trustee for an association, a change of name shall also be effected in accordance with the constitution of that association.

(4) Where such body corporate changes its name the Registrar shall enter a new name on the register in place of the former name and shall issue a certificate of incorporation altered to meet the circumstances of the case.

(5) Change of name shall not affect any rights or obligations of the body corporate or render defective any legal proceedings by or against the body corporate, and any legal proceedings that

might have been continued or commenced against it by its former name may be continued or commenced against it by its new name.

Change in constitution

9.—(1) In case any association, on whose behalf any property is held by a body corporate registered under this Act, desires to change its constitution in any manner described in subsection (3), it shall first submit, in the prescribed form, a draft of the proposed amendment for the approval of the Minister, who may, in his discretion, grant or withhold his approval.

(2) Every amendment of the constitution of an association approved by the Minister shall be registered in the prescribed manner.

(3) The amendments which require approval under subsection (1) are those which in any way affect the objects of the association, the appointment, retirement and authority of the trustees or other officers thereof, the authorization by the association of acts of the trustees thereof and the manner in which such authorization may be verified and the use of the common seal.

(4) The constitution of an association, particulars, whereof are registered under this Act, shall, in favour of any person dealing with that body corporate, be deemed to be the constitution of that body corporate.

(5) In case any association to which this section applies alters its constitution in any manner not approved by the Minister, the Minister may by notice published in the *Gazette* revoke the certificate of incorporation granted to the trustees thereof, and thereupon all property vested in the body corporate shall vest in the trustees at that date of the association, but if there be no such trustee, in the officers of the association, upon such trusts and subject to such obligations as were binding upon the body corporate at the date of revocation.

Contract made by trustees

10. Every contract made or entered into by the trustees of a charity or association which would be valid and binding according to the constitution of the charity or association if no such incorporation had taken place under this Act shall be valid and binding although the same shall not have been made or entered into under the common seal of the trustees.

Gifts to charity before incorporation to have same effect afterwards

11. After the incorporation of the trustees of any charity under this Act, every donation, gift and disposition of property movable or immovable, theretofore lawfully made (but not actually having taken effect), or thereafter lawfully made by deed, will, or otherwise to or in favour of such charity, or to trustees thereof, or otherwise for the purposes thereof, shall take effect as if the same had been made to or in favour of the incorporated body or otherwise for the like purposes.

Registrar may strike off a defunct corporate body

12.—(1) Where the Registrar has reasonable cause to believe that any charity or association whose trustees are incorporated under this Act is no longer in operation, he shall send to each of the trustees by post a letter enquiring whether the charity or association is in operation.

(2) If the Registrar does not within two months of sending the letter receive any answer thereto, he shall within fourteen days after the expiration of the period of two months send to each of the trustees by post a registered letter referring to the first letter and stating that no answer thereto has been received, and that if an answer is not received to the second letter within one month from the date thereof, a notice will be published in the *Gazette* with a view to striking the name of the body corporate off the register.

(3) If the Registrar either receives an answer to the effect that the association is not in operation or does not within one month after sending the second letter receive any answer, he may publish in the *Gazette*, and send to the trustees by post a notice that at the expiration of three months from the date of that notice, the name of the body corporate mentioned therein will, unless cause is shown to the contrary, be struck off the register.

(4) At the expiration of the time mentioned in the notice, the Registrar may, unless cause to the contrary is previously shown, strike the name of the body corporate off the register, and shall publish notice thereof in the *Gazette*, and on the publication in the *Gazette* of this notice, the body corporate shall be dissolved and the liability, if any, of every trustee shall continue and may be enforced as if the body corporate had not been dissolved.

(5) If an association or trustee thereof, or a trustee of a charity, or a creditor of the body corporate feels aggrieved by the body corporate having been struck off the register, the High Court, on the application of the person aggrieved, may, if satisfied that it is just that the body corporate be restored to the register, order the name of the body corporate to be restored to the register and thereupon the body corporate shall be deemed to have continued in existence as if its name had not been struck off, and the Court may give such directions and make such provisions as seem just in the matter.

Service of process and notices

13.—(1) Every body corporate registered under this Act shall register with the Registrar an address in Malaŵi at which service of process and notices may be effected.

(2) Trustees incorporated under this Act shall be deemed to be authorized to accept service of process and any notices required to be served on the body corporate.

(3) Any process, notice or other document may be served on a body corporate registered under this Act by leaving it at or send-

ing it by post to the address for service registered under this section.

Register
14 of 1921

14. The Registrar shall compile and maintain a register of all bodies corporate incorporated under the Trustees Incorporation Ordinance (now repealed) and under this Act, and such register shall be open to public inspection in accordance with rules made under this Act and on payment of the prescribed fee.

Rules

15. The Minister may make rules—

(1) prescribing the number and forms of registers to be kept, the duties of the Registrar and other persons authorized to supervise any operation prescribed by this Act or rules made thereunder;

(2) prescribing the fees and fixing the charges to be made for any act, matter or thing under this Act, or rules made thereunder, to be done or observed, and penalties for failure to comply with such requirements, and for the remission of penalties;

(3) generally for carrying any of the purposes or provisions of this Act into effect.

Transitional
14 of 1921

16.—(1) Every body corporate incorporated under the Trustees Incorporation Ordinance (now repealed) shall continue in existence as though it had been incorporated under this Act, and this Act and any rules made thereunder shall apply to every such body corporate, but no such body corporate shall be required to comply with section 8 (1) unless and until it is desired to change its name.

(2) The Minister shall have power to fix a date on or before which such body corporate is to register an address for service, and penalties for failure so to do.

(3) The Minister may approve the adoption by any such body corporate of a new common seal.

SUBSIDIARY LEGISLATION

TRUSTEES INCORPORATION RULES

under s. 15

G.N. 87/1962
20/1997
22/2005

1.—(1) These Rules may be cited as the Trustees Incorporation Rules. Citation

(2) In these Rules references to sections are references to sections of the Act.

2.—(1) In the case of an application under section 3 by trustees of an association, the application shall be made to the Registrar and shall— Application by trustees

(*a*) be in Form A in the First Schedule; *First Schedule*

(*b*) be accompanied by two copies of the constitution certified by the secretary or other principal officer of the association, and a copy so certified of the minutes of the meeting of the association at which the trustees were authorized to apply for incorporation.

(2) In the case of an application under section 3 by trustees of a charity, the application shall be made to the Registrar and shall—

(*a*) be in Form B in the First Schedule; *First Schedule*

(*b*) be accompanied by the original of the will, deed or other instrument creating or regulating the charity or by a copy thereof certified by a trustee or authorized officer of the charity.

(3) Every application shall be accompanied by the device in quadruplicate of the proposed common seal and the prescribed fee.

(4) The signatures of the applicants and the statements in the application shall be verified by declaration before a legal practitioner, commissioner for oaths, mayor or District Commissioner or in such other manner as the Registrar shall require.

(5) Any person who knowingly and wilfully makes in such declaration a statement false in a material particular shall be liable to a fine of £50 and to imprisonment for three months.

3. On receipt of an application, the Registrar shall examine the documents presented to him and shall report to the Minister whether— Registrar's report on application

(*a*) in his opinion the objects of the association or charity are limited to one or more of the objects specified in section 3;

(*b*) the constitution of the charity or association makes adequate provision for filling vacancies in the number of trustees and whether an adequate address for service has been furnished;

(*c*) the trustees of any association have been duly authorized by the association to apply for incorporation;

(*d*) limitations, and if so what, are placed by the constitution on the disposition of property by the proposed body corporate and what are the provisions regarding the custody and use of the common seal;

(*e*) the name proposed for the corporate body is identical with a registered business name or that by which a company or body corporate is already registered or so nearly resembles such name as to be calculated to deceive;

(*f*) in his opinion there is any, and if so what, objection to the application.

Incorporation
First Schedule

4.—(1) The certificate of incorporation issued by the Minister shall be in Form C in the First Schedule.

(2) The original certificate, together with a copy thereof certified by the Registrar, shall be issued to the body corporate and a further certified copy shall be retained by the Registrar.

(3) Securely attached to the original certificate and all copies thereof shall be a copy of the approved device for the common seal.

(4) Every body corporate incorporated or deemed to be incorporated under the Act shall have its name engraven in legible characters on its seal, and if any such body corporate fails to comply with this subrule, the body corporate shall be liable to a fine of £50 payable to the Registrar on demand:

Provided that in the cases provided for by section 16, the body corporate may continue to use a common seal which is not engraven until the expiration of a period of twelve months after the coming into operation of the Act or until the approval of a new device for its common seal, whichever shall first happen.

New trustee

5.—(1) The appointment of a new trustee shall be notified in writing to the Registrar within twenty-eight days after such appointment with particulars of the name and address of the trustee.

(2) Every such notification shall be accompanied by the original document (if any) effecting the appointment and informa-

tion regarding the death or retirement of any prior trustee, and the prescribed fee.

(3) The Registrar may require further evidence by statutory declaration or otherwise in verification of the facts notified and on being satisfied of the truth thereof shall make the necessary entries in the register maintained by him and shall return any document effecting the appointment which was presented to him.

Return of trustees

6. The return to be made under section 7 (2) shall be in Form D in the First Schedule.

Change of name

7.—(1) If any body corporate registered under the Act wishes to change its name, the application for that purpose shall be signed by all the trustees and shall be in Form E in the First Schedule and shall be accompanied by four copies of the device proposed for a new common seal, the prescribed fee, and, in the case of a body corporate which is trustee of an association, a copy, certified by the principal officer, of the resolution approving the proposed change of name.

(2) The certificate of incorporation issued by the Registrar under section 8 (4) shall be in Form F in the First Schedule.

Change in constitution

8.—(1) The submission of proposed amendments to a constitution under section 9 shall be made in Form G in the First Schedule, and shall be accompanied by the prescribed fee.

(2) If a change is made in the constitution of an association, the trustees shall notify such change to the Registrar within twenty-eight days of it being made, and in case of default each trustee shall be liable to pay a penalty of £5 to the Registrar on demand.

(3) The certificate of registration of a change of constitution shall be in Form H in the First Schedule.

Register

9. The particulars to be recorded in the register kept by the Registrar under section 14 shall be those specified in Form I in the First Schedule.

Change of address for service

10. A body corporate incorporated under the Act may, on payment of the prescribed fee, change the address for service registered in respect of it under section 13 by applying to the Registrar, who shall notify the body corporate of the registration of the new address.

Transitional 14 of 1921

11. Within six months of the publication of these Rules, a body corporate incorporated under the Trustees Incorporation Ordinance (now repealed) shall register an address for service and failure so to do shall make each and every trustee liable to pay to the Registrar a penalty of £5 on demand.

Inspection

12.—(1) Subject to subrule (2), the register maintained under section 14 and the registered copy of the certificate of incorporation, the constitution, the registered addresses of the trustees and other registered documents shall be open to inspection by the public and any person shall be permitted to take copies of or extracts from any such document, and may require any such copy or extract to be certified under the hand of the Registrar.

(2) The rights conferred by subrule (1) shall be subject to payment of the prescribed fees.

Powers of Registrar

13. The Registrar shall have power—

(*a*) to remit any penalty payable under these Rules;

(*b*) to issue a duplicate of any document previously issued by him under these Rules, if he is satisfied that such document is lost or destroyed, and upon payment of the prescribed fee.

Fees

14. The fees set out in the Second Schedule shall be payable to the Registrar in respect of the several matters specified therein, and no other fees shall be payable.

FIRST SCHEDULE

r. 2 (1) *FORM A*

THE TRUSTEES INCORPORATION RULES

APPLICATION FOR INCORPORATION OF TRUSTEES OF AN ASSOCIATION

To: The Registrar.

WE HEREBY APPLY for incorporation and registration in accordance with the Trustees Incorporation Act of ourselves as a body corporate to be known as

We are the trustees of the
an association whose objects are—

We enclose herewith—

(*a*) two copies of the constitution, certified by*
, and a copy of the minutes of the association at which we were authorized to apply for incorporation;

(*b*) the device in quadruplicate of the proposed common seal, together with two copies of the rules regulating the use and custody of the seal.†

The address for service under section 13 will be—

We consent to continue to act after incorporation as trustees in accordance with the Act.

PARTICULARS OF TRUSTEES

	Full Name	*Address*	*Occupation*	*Signature*
1.				
2.				
3.				
4.				
5.				
6.				

* Here insert name and office of the secretary or other principal office of the association concerned.

† These rules must not be separately supplied if included in the constitution.

FORM B r. 2 (2)

THE TRUSTEES INCORPORATION RULES

APPLICATION FOR INCORPORATION OF TRUSTEES OF A CHARITY

To: The Registrar.

WE HEREBY APPLY for incorporation and registration in accordance with the Trustees Incorporation Act of ourselves as a body corporate to be known as

We are the trustees of the

a charity formed on the day of and of which the objects are—

We enclose herewith—

(*a*) * the original will, deed or other instruments creating or regulating the charity *a copy of the original will, deed or other instrument creating or regulating the charity certified by a trustee or authorized officer of the charity;

(*b*) the device in quadruplicate of the proposed common seal, together with two copies of the rules regulating the use and custody of the seal.

The address for service under section 13 will be—

We consent to continue to act after incorporation as trustees in accordance with the Act.

PARTICULARS OF TRUSTEES

	Full Name	*Address*	*Occupation*	*Signature*
1.				
2.				
3.				
4.				
5.				
6.				

* Delete if inapplicable.

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r. 4 (2) *FORM C*

THE TRUSTEES INCORPORATION RULES

CERTIFICATE OF INCORPORATION

I HEREBY CERTIFY that

is this day incorporated under the Trustees Incorporation Act and that the device affixed hereto of the common seal is approved.

Given under my hand at this day of nineteen hundred and

Minister of Justice

---

r. 6 *FORM D*

THE TRUSTEES INCORPORATION RULES

Return of the

made up to the day of , 19

1. Particulars of Trustees

Name	*Address*	*Occupation*	*Date of Appointment*

2. Particulars of the former Trustees (since date of last return)

Name	*Address*	*Occupation*	*Date of Appointment*

3. Has any change been made in the name since the date of the last return? .....

4. (In the case of trustees of an association). Has any change been made in the constitution since the date of the last return? .....
.....

TRUSTEES:

FORM E r. 7 (1)

THE TRUSTEES INCORPORATION RULES

APPLICATION FOR CHANGE OF NAME

To: The Registrar.

WE, the trustees incorporated by the abovenamed, HEREBY APPLY for the name of the incorporated body to be changed from

to

and for the name in the Register to be altered accordingly.

We enclose four copies of the proposed device of the new common seal.

Dated this day of , 19

TRUSTEES:

FORM F r. 7 (2)

THE TRUSTEES INCORPORATION RULES

CERTIFICATE OF INCORPORATION

I HEREBY CERTIFY that the

was incorporated on the day of , 19 , under the Trustees Incorporation Act and that the name of

was changed to

under the Trustees Incorporation Act, and the new device of the common seal attached hereto is approved.

Given under my hand at this day of , 19 ....

Registrar

---

r. 8 (1) *FORM G*

THE TRUSTEES INCORPORATION RULES

NOTICE OF PROPOSED ALTERATION OF CONSTITUTION

To: The Registrar.

Notice is hereby given that it is proposed that the constitution of the be amended.

Two copies of the proposed amendment(s) are enclosed herewith. It is proposed that the rule(s) set out in Column 1 hereof be altered to read as in Column 2 hereof.

Column 1 Column 2

TRUSTEES:

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r. 8 (3) *FORM H*

THE TRUSTEES INCORPORATION RULES

CERTIFICATE OF REGISTRATION OF CHANGE OF CONSTITUTION

IT IS HEREBY CERTIFIED that the rules of the constitution of the as set out in Column 1 have been changed as set out in Column 2.

Column 1 Column 2

and that such change has been registered by me pursuant to the Trustees Incorporation Act.

Dated this day of , 19

Registrar

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r. 9 *FORM I*

THE TRUSTEES INCORPORATION RULES

REGISTER OF BODIES CORPORATE

1. Registered name of body corporate.
2. Registered address.
3. Date of incorporation.
4. Number of certificate of incorporation.
5. Date(s) of alteration of constitution.
6. Date of striking off.
7. Reasons for striking off.
8. Particulars of publication of striking off in official *Gazette*.

TRUSTEES:

Name	*Address*	*Occupation*	*Date of Appointment*	*Date of Retirement, etc.*

SECOND SCHEDULE

r. 14 G.N. 20/1997
22/2005

	Matter	Fees K	t
1.	On application for incorporation, including certificate of incorporation	1,000	00
2.	On notification of change of trustee, or registration of new address of service	100	00
3.	On application for approval of change of name or constitution, including registration of change or issue of new certificate of incorporation, as the case may be	500	00
4.	On inspection of register or other registered documents	500	00
5.	For taking a copy or extract of any document (in addition to inspection fee)	200	00
6.	For certification of any copy or extract taken—		
	(i) minimum	50	00
	(ii) for every 100 words or part thereof after the first 500 word	5	00
7.	For a copy of any document previously issued—		
	(i) minimum	50	00
	(ii) for every 100 words or part thereof after the first 500 words	5	00

PRESS TRUST RECONSTRUCTION

CHAPTER 5:04

Containing Pages 1–13

CHAPTER 5:04

PRESS TRUST RECONSTRUCTION

ARRANGEMENT OF SECTIONS

SECTION
1. Short title
2. Interpretation
3. Variation of original deed
4. Appointment of Trustees
5. Transfer of assets, liabilities, etc.
6. Freezing of the Trust Fund
7. Liquidation of Press (Holdings) Limited
8. Penalty
9. Rules
Schedule

An Act to make provision for the reconstruction of the Press Trust; to clarify the objects and status of the Press Trust and to provide for consequential changes relating to assets forming part of the Press Trust Fund and for matters connected with or incidental to the foregoing 15 of 1995

[15TH NOVEMBER, 1995]

1. This Act may be cited as the Press Trust Reconstruction Act. Short title

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

"existing trustees" means the trustees of the Press Trust at the commencement of this Act;

"initial trustee" means the person appointed as such in accordance with section 4;

"original deed" means the Press Trust Deed dated the 10th day of February, 1982, and incorporated under the Trustees Incorporation Act on the 5th day of March, 1982, at the office of the Registrar General; Cap. 5:03

"official receiver" has the meaning ascribed to it in the Companies Act; Cap. 46:03

"Press (Holdings) Limited" means the company of that name incorporated under the Companies Act on 13th January, 1969, under company registration number 1210; Cap. 46:03

"Press Trust" means the Trust established under the original deed;

"Settlor" means the person referred to in the original deed as the Founder Trustee;

"Trust Fund" has the meaning ascribed to it in the original deed and includes any sums wherever held on account of the Trust Fund.

Variation of original deed *Schedule*

Schedule

3. For the better administration of the Press Trust, the original deed shall be deemed varied in the terms and form as set out in the Schedule at the expiry of 14 days from the date of publication in the *Gazette* of a notice to that effect given by the Minister of Finance and the terms and form as set out in the Schedule are hereinafter referred to as the "Deed of Variation".

Appointment of Trustees

4.—(1) Upon the publication of the notice referred to in section 3, the President and the Settlor shall, within twenty days from the date thereof, each appoint, by notice in writing to the Attorney General, one person to hold office as initial trustee provided such person is qualified to be appointed a trustee under the Deed of Variation.

(2) In the event that either the President or the Settlor fails for whatever reason within the twenty days to appoint the initial trustee under subsection (1), the Attorney General shall appoint such person as he thinks fit, being a person who is qualified under the Deed of Variation to be appointed a trustee, to be initial trustee and such appointment shall be valid for all purposes as if it had been made by the President or Settlor, as the case may be.

(3) Upon the appointment of the second of the initial trustees, the existing trustees other than an initial trustee shall cease to hold office as trustee of Press Trust.

Transfer of assets, liabilities, etc.

5. Upon the appointment of the initial trustees all the assets or rights of the Trust Fund and all liabilities or obligations of the Trust Fund properly incurred by the existing trustees shall be deemed transferred from the existing trustees to the initial trustees.

Freezing of the Trust Fund

6.—(1) During the period referred to in section 3, no withdrawal, transfer or disposal shall be made of, nor any overdraft, loan or other encumbrance shall be charged upon, any assets held on account of the Trust Fund without the prior written approval of the Attorney General who, in giving approval, shall at all times act in the best interest of the Press Trust having regard to the provisions of the Deed of Variation.

(2) Any person acting in any capacity whatsoever who does anything contravening, or which has the effect of contravening, subsection (1) shall be guilty of an offence.

Liquidation of Press (Holdings) Limited Cap. 46:03

7.—(1) Upon the publication of the notice referred to in section 3, all assets and liabilities of Press (Holdings) Limited shall, notwithstanding the provisions of the Companies Act or any other law, be placed in liquidation.

(2) For the purposes of the liquidation of the Press (Holdings) Limited under subsection (1), the official receiver shall appoint a duly qualified person as liquidator to wind up the affairs of Press (Holdings) Limited and such costs of liquidation as may be reasonable shall be paid out of the Trust Fund.

8. Any person guilty of an offence under this Act shall be liable to a fine of K50,000 and to imprisonment for five years. Penalty

9. The Minister responsible for finance may make rules or orders for the better carrying out of the provisions of this Act. Rules

SCHEDULE G.N. 72/1995

Dated ..... 20 .....

THE DEED OF VARIATION OF THE PRESS TRUST
BY
The Government of Malaŵi

THIS DEED OF VARIATION is made the, ... day of 20 .....

BY: The Government of Malaŵi ("the Government")

WHEREAS:

(A) The Government acting through the Minister responsible for finance under the powers given to it by the Press Trust Reconstruction Act has made this Deed in order to vary the terms of the Press Trust (which expression shall have the same meaning in this Deed as in the said Act) in the manner hereinafter appearing;

(B) This Variation shall be irrevocable.

NOW THIS DEED WITNESSETH as follows—

1. Under the powers given to it by the Press Trust Reconstruction Act and all other powers the Government hereby declares that the Press Trust shall from the date of this Deed be read and construed for all purposes as if all the clauses contained in the Press Trust Deed dated 10th February, 1982, and registered at the office of the Registrar General on 5th March, 1982, had been revoked and the following Clauses of this Deed had replaced them.

2. *Interpretation*

In this Deed the following expressions have the following meaning—

(*a*) "Initial Trustees" shall mean the persons appointed as Initial Trustees under the terms of the Press Trust Reconstruction Act, and "Initial Trustee" shall mean one of the Initial Trustees;

(*b*) "Chartered Accountant" means an accountant who is admitted to membership of and entitled to practise according to the rules of a professional body regulating Chartered Accountants in any Commonwealth country, any member state of the European Union or the United States of America;

(*c*) "National Benefit Purposes" ("NBP") means such charitable purposes as are in the interest and for the benefit of the people of Malaŵi including but without prejudice to the generality of the

foregoing for the advancement of their education, health, welfare and housing;

(*d*) "the Trust Fund" means—

(i) all monies, investments or other property which form any part or parts of the Trust Fund of the Press Trust at the date of this Deed;

(ii) all monies, investments or other property hereinafter paid or transferred by any person or persons to or so as to be under the control of and (in either case) accepted by the Trustees as additions to the Trust Fund;

(iii) all accumulations (if any) of income directed to be held as an accretion to the capital of the Trust Fund;

(iv) the monies, investments and property from time to time representing the said monies, investments, property, additions and accumulations;

(*e*) "Trustees" means the Initial Trustees, the Successor Trustees, the International Trustee and Ordinary Trustees and "Trustee" means any one of them;

(*f*) "Associate" means—

(i) a Trustee's spouse;

(ii) a Trustee's parents, sister, brother, child, business partner and the spouse of any of them; and

(iii) a company controlled by a Trustee or a person or persons falling within paragraphs (i) and (ii) of this sub-clause;

(*g*) "the Trust's Year End" shall mean 31st March in each year;

(*h*) "Financial Year" shall mean from 1st April in one year to 31st March in the following year provided that the first Financial Year shall be the period starting at the date of this Deed and ending on 31st March, 1996.

3. *Objects*

(*a*) the Trustees shall hold the capital and the income of the Trust Fund upon trust to apply the income for or towards the NBP by making such charitable donations, grants, or contributions to any person or persons or institution or institutions at such time or times and in such manner as the Trustees may in their absolute discretion think fit provided that subject always to sub-clauses (*b*) and (*c*) hereof the Trustees may at their absolute discretion for the period of 21 years from the date of this Deed instead of applying the income of the Trust in any year accumulate part of such income at compound interest by investing the same and the resulting income in any investments authorized under the terms of this Deed or by law and hold the same as an accretion to and as part of the capital of the Trust Fund;

(*b*) the Trustees shall distribute not less than 50 per cent of the Trust's income in any Financial Year;

(*c*) if at the end of any five Financial Years the total amount of income distributed is less than 66 per cent of the income arising to the Trust during that period then the Trustees shall distribute sufficient of the income accumulated during that period as if the same were income of the Trust arising in the then current year so that not less than 66 per cent of the total income of the Trust is distributed in any five year period;

(*d*) the Trustees may not distribute to any one person, institution or project in any Financial Year more than 25 per cent of the total of such distributions;

(*e*) the Trustees shall have power to apply from time to time the whole or any part or parts of the Trust Fund for or towards the NBP provided always and notwithstanding anything to the contrary in this Deed this power shall only be exercisable by the Trustees if they agree to do so unanimously and provided that the court agrees that such distribution of the Trust Fund would further the NBP.

4. *Investment Power*

In addition to the Trustees' investment powers under the general law, money to be invested may be applied or invested as the Trustees shall in their absolute discretion think fit in—

(*a*) the purchase of or at interest upon security of any shares, stocks, funds or securities quoted on any recognized stock exchange anywhere in the world (subject to the Exchange Control Act and the Regulations made thereunder) provided that the Trustees shall not control more than 50 per cent of the voting rights of any company which forms part of the Trust Fund unless the company is the Press Corporation Limited or any other company that by reason of any reorganization of the Press Corporation Limited or any of its subsidiaries may be owned directly by the Trustees;

(*b*) the purchase of or at interest upon security of any land or building (the "Relevant Land") provided that before any such transaction the Trustees obtain from a qualified Chartered Surveyor selected by the Trustees for such purpose, a written report covering the following:

(i) a full description of the Relevant Land; and

(ii) the Surveyor's opinion as to the current value of the Relevant Land having regard to its current state of repair and other relevant circumstances;

(*c*) assets which in the opinion of the Trustees have a development benefit to Malaŵi but would not normally be considered a suitable investment for Trustees PROVIDED that monies so applied or invested represent no more than 50 per cent of the total value of such asset and provided that the Trustees satisfy themselves that the Co-investor being a Pension Fund, Financial Institution or reputable developer has carried out (and made available to the Trustees) appropriate due diligence work in respect of the proposed investment and has provided the remainder of the funding for the total value of such asset. Investment in such assets is within the sole discretion of the Trustees and no more than 5 per cent of the Trust income arising in a Financial Year may be invested in such assets;

(*d*) all assets of the Trust Fund shall be held on trust for sale but the Trustees shall have power to postpone such sale for such period as they, in their absolute discretion, think fit.

5. *Further Powers*

In furtherance of the NBP but not further or otherwise the Trustees shall have the following additional powers—

(*a*) to construct, maintain, improve or alter any buildings or works (so far as necessary for carrying out the purposes of the Trust) on land comprised in the Trust Fund;

(*b*) subject to appropriate professional advice to sell, lease, demise, let, license and generally manage and deal with any land or buildings or interest therein at the prevailing market rates;

(*c*) to accept donations, subscriptions, covenants, sponsorships and legacies to be held on trust for the purposes of the Trust or any of them and as an addition to the Trust Fund;

(*d*) subject to the restrictions imposed by this Deed, to make regulations for the management of the Trust and for the conduct of the business of the Trustees and from time to time to amend such regulations;

(*e*) to delegate the management of any land forming part of the Trust Fund to any person who is in the opinion of the Trustees qualified for that purpose provided that all acts and proceedings made by any such person are reported to the Trustees as soon as possible;

(*f*) to delegate upon such terms and at such reasonable remuneration as the Trustees may think fit to professional investment managers ("the Managers") the exercise of all or any of their powers of investment and to a secretary ("the Secretary") the exercise of their powers of administration for day to day management of the Trust:

Provided always that—

(i) neither the Managers nor the Secretary shall be a Trustee or an Associate;

(ii) the Managers shall be persons who are qualified to carry on investment business under the laws of the country in which they are resident;

(iii) the delegated powers shall be exercisable only within clear policy guidelines drawn up in advance by the Trustees and within the powers of investment conferred by this Trust;

(iv) the Managers and the Secretary shall be under a duty to report promptly to the Trustees any exercise of the delegated powers and in particular the Managers will report every transaction carried out by them to the Trustees within 14 days and report on the performance of investments managed by them at least every three months;

(v) the Trustees shall be entitled at any time and without notice to review, alter or determine the delegation of terms;

(vi) the Trustees shall be bound to review the arrangements for delegation at intervals (in the absence of special reasons) not exceeding 12 months but so that any failure by the Trustees to undertake such reviews within the period of 12 months shall not invalidate the delegation;

(vii) the Trustees shall be liable for wilful default and any failure to take reasonable care in choosing the Managers or the Secretary, fixing or enforcing the terms upon which the Managers or the Secretary are employed, requiring the remedying of any breaches of those terms and otherwise supervising the Managers and the Secretary but otherwise shall not be liable for the acts and defaults of the Managers or the Secretary;

(*g*) to employ any person, firm or company not being a Trustee or an Associate to manage or assist in managing the day to day running of the Trust Fund upon such reasonable terms as the Trustees think fit and to pay the Secretary or such officials or staff not being a Trustee or an Associate as the Trustees may in their discretion from time to time determine and to enter into agreements and fix such reasonable salaries as the Trustees may deem proper and to enter into any service arrangements which they shall consider to be reasonable and necessary including power to determine any such employment upon such terms as the Trustees may decide and to make all reasonable and necessary provisions for payment of pensions and superannuation to or on behalf of employees and their widows or widowers and dependants;

(*h*) to apply income in insuring any buildings or other property comprised in the Trust Fund to their full value;

(*i*) to arrange for the accounts of the Trust to be audited annually by a Chartered Accountant at the expense of the Trust Fund and generally to take all such actions as are necessary to comply with the accounting and reporting requirements contained in the Laws of Malaŵi;

(*j*) to do such acts or things in collaboration with any person, institution, authority or otherwise not being a Trustee or Associate provided that no part of the Trust Fund shall be used or applied for purposes other than the NBP;

(*k*) when making grants of any funds to any charitable organization or charitable institution to accept as a good discharge in respect of any such funds the receipt of the treasurer or secretary or other authorized officer for the time being of such charitable organization or charitable institution;

(*l*) in respect of any property subject to the trusts hereof to vest the same in any corporation or any other person or persons being at least two in number (whether or not including one or more of the Trustees) as nominee or nominees for the Trustees.

6. *Trustees' Appointment*

(*a*) the total number of Trustees appointed at any one time shall be seven individuals who shall comprise a Board of Trustees and if the number shall fall below seven the remaining Trustees cannot conduct any Trust business except that of appointing a new Trustee or Trustees (in accordance with the provisions set out below) until the number of Trustees is once again seven;

(*b*) confirmation of the appointment of any Trustee shall be recorded in the Minutes of a meeting of the Board of Trustees;

(*c*) an Initial Trustee shall hold office for the period of six years from the date of this Deed (to be called the "Initial Term");

(*d*) an initial Trustee may designate by prior notice in writing to be delivered to each of the other Trustees a person called a Successor Trustee who shall succeed the Initial Trustee for the remainder of his Initial Term in the event of his death, retirement or disqualification as Trustee (under the provisions of sub-clause (*k*) of this clause) at any time during the Initial Term. The Successor Trustee's appointment shall forthwith on the occasion of any such event be notified by the Successor Trustee, and in the event of

retirement with the Initial Trustee jointly, to each of the other Trustees who shall, upon receipt, be deemed to have confirmed such appointment. Upon such appointment any Successor Trustee shall have all the same powers as the Initial Trustee he replaced (including the power to appoint a Successor Trustee.) If in the event of death, retirement or disqualification of an Initial Trustee there shall be no Successor Trustee to take office then the remaining Trustees shall appoint by unanimous agreement an Ordinary Trustee to replace him to serve for the remainder of his Initial Term;

(*e*) an International Trustee who shall be a person of good standing and repute who is not a citizen of Malaŵi shall within 10 days of the date of this Deed be appointed by agreement between the Initial Trustees;

(*f*) the International Trustee shall hold office for six years from the date of this Deed;

(*g*) there shall be appointed within 21 days of the date of this Deed by the unanimous agreement of the Initial Trustees and the International Trustee acting together four Ordinary Trustees—

(i) two Ordinary Trustees to hold office for two years from the date of this Deed; and

(ii) two Ordinary Trustees to hold office for four years from the date of this Deed;

(*h*) (i) if the International Trustee or an Ordinary Trustee dies, retires or is otherwise disqualified from acting as a Trustee before the expiry of his term of office then the remaining Trustees shall appoint by unanimous agreement an Ordinary Trustee to replace him for the remainder of his term;

(ii) at the expiry of any Trustee's term of office the remaining Trustees shall appoint by unanimous agreement an Ordinary Trustee to serve for a term of six years;

(iii) all Trustees except the International Trustee shall be eligible for re-appointment once only for a period of six years;

(*i*) in the event of either appointment to be made under sub-clauses (*e*) and (*g*) above not being made within the respective time limits specified therein or in the event of the remaining Trustees being unable to reach unanimous agreement on the appointment of a Trustee to fill any vacancy occurring within sixty days of such vacancy occurring, then any two Trustees may apply to Court and ask the Court to make the appropriate appointment;

(*j*) in selecting the persons to be appointed as Trustees the Trustees shall take into account the person's standing in the community, technical abilities and other characteristics normally required of a Trustee;

(*k*) no person may be appointed nor continue acting as a Trustee—

(i) unless he has attained the age of 30 years; or

(ii) if by reason of mental disorder, illness or injury he is incapable of managing and administering his own affairs; or

(iii) if he is disqualified from acting as a trustee under the Laws of Malaŵi; or

(iv) (except the International Trustee) unless he is a citizen and resident of Malaŵi; or

(v) if he is a director of Press Corporation Limited or any subsidiary or associated company of Press Corporation Limited or if he is a director of a company of which the Trustees control more than 50 per cent of the voting rights;

(*l*) (i) the Chairman of the Board of Trustees shall hold office for one year and shall be elected from amongst the eligible candidates by simple majority and shall have no casting vote;

(ii) the first Chairman shall be elected from amongst the two Ordinary Trustees appointed in accordance with clause (*g*) (i) above and the other Ordinary Trustee appointed in accordance with clause (*g*) (i) above shall become the Second Chairman;

(iii) the third and fourth Chairmen will be chosen in like manner from amongst the two Ordinary Trustees appointed in accordance with clause (*g*) (ii);

(iv) the fifth and sixth Chairmen will be chosen in like manner from amongst the two initial Trustees;

(v) in the seventh and subsequent years the Chairman will be elected annually by simple majority by a procedure to be determined by the Trustees provided no retiring Chairman shall be eligible for immediate re-election.

7. *Meetings*

(*a*) the Board of Trustees shall meet within thirty days from the date of the Board of Trustees being fully constituted at such place and time as agreed by the Initial Trustees, and thereafter at such times and places as the Board of Trustees shall agree;

(*b*) an annual meeting of the Board of Trustees will be held on a date not less than 120 days and not more than 180 days from the Trust's Year End and at that meeting the accounts and annual report shall be considered;

(*c*) a special meeting of the Board of Trustees may be called at any time by any Trustee upon not less than 28 days' notice in writing being given to the other Trustees of the date and place of the meeting and the matters to be discussed;

(*d*) there shall be a quorum when at least four of the number of Trustees are present at the meeting in person or by proxy;

(*e*) (i) Trustees may attend meetings in person or by proxy; Any proxy must be in writing and specific for that meeting.

(ii) an individual is eligible to be appointed a proxy if—

(A) he is eligible to be appointed as a Trustee hereunder; and

(B) he is not a Trustee at the date of the meeting.

(iii) no person may hold more than one proxy for any given meeting;

(*f*) meetings of the Trustees shall be held in Malaŵi and all Trustees shall be given at least 28 days notice in writing of such meetings (unless the Trustees unanimously agree to dispense with such notice);

(*g*) the Board of Trustees shall keep minutes, in books for the purpose, of the proceedings at their meetings;

8. *Initial Meeting Business*

At the first meeting of the Board of Trustees as prescribed in subclause 7 (*a*) the Board of Trustees shall—

(*a*) requisition an Extraordinary General Meeting of the Press Corporation Limited at the earliest date permitted by the Articles of Association of Press Corporation Limited to consider a motion to remove from office the Board of Directors of Press Corporation Limited and to elect a new Board of Directors to serve in its place;

(*b*) resolve that the Trust's shares shall be voted at such Extraordinary General meeting in favour of dismissal of the Board of Directors of Press Corporation Limited;

(*c*) agree by simple majority vote a list of nominees to the Board of Directors of Press Corporation Limited in support of whom the Trust's shares in Press Corporation Limited shall be voted at the said Extraordinary General Meeting.

9. *Voting*

(*a*) Unless otherwise stated in this Deed powers of the Trustees shall be exercisable only by two-thirds majority decision of the Trustees present in person or by proxy at any duly constituted meeting;

(*b*) if a Trustee (other than in his capacity as a Trustee) is a shareholder or director of any company the shares of which form part of the Trust Fund or the shares of which the Trustees are considering acquiring then he shall declare any such interest and shall not be able to vote on any issue relating to such company and he shall be treated (on such issue or issues only) as not being present at the meeting for the purpose of the voting requirements set out in sub-clause (*a*) above.

10. *Reporting*

(*a*) The Trustees shall prepare in respect of each Financial Year an annual report containing—

(i) a report by the Trustees on the activities of the Trust during that year; and

(ii) a statement of assets, creditors, liabilities, cash, investments, debtors, gross income and expenditure; and

(iii) a detailed statement of all expenditure, costs, expenses, remuneration and other charges, together with the amounts paid and the identity of the recipients of such amounts; and

(iv) an audit of the accounts of the Trust together with detailed notes of the accounts carried out by a firm of Chartered Accountants with a statement that the receipts and payment accounts and statement of assets and liabilities are in all material respects complete and accurate and give a true and fair view of the Trust; and

(v) a statement that the reporting and audit requirements set out in sub-clause (*b*) of this clause have been complied with; and

(vi) a statement as to whether in the opinion of the auditor to the Trust the expenses incurred by the Trust have been reasonable; and

(vii) a statement by the auditor of any activities or affairs of the Trust which the auditors reasonably believe not to be in the interest of the Trustor on the proper exercise of the Trustees' powers and the reasons for such a view. In the absence of any such activities or affairs the auditor shall confirm such in a statement in the annual report; and

(viii) a forecast of anticipated income and a budget for the current Financial Year approved by the Trustees which will set out details of—

(A) the estimated amount of income to be distributed for the NBP;

(B) committed funding and an outline of the proposed allocation of other distributions;

(C) the estimated costs and expenses of the Trust;

(D) a scheme of investment for any income retained by the Trustees.

(*b*) the Trustees shall procure as a condition for the distribution of funds that all recipients of any amounts of income or capital from the Trust Fund prepare an annual report on the use of such funds and submit themselves to an audit. If the Trustees shall enter into any projects themselves then the same reporting requirements will also apply to such projects. The manner and form of the report to be prepared and the information to be provided by the recipients shall—

(i) if the distribution is in excess of K200,000 be similar to that required to be prepared and provided by the Trustees under clause 10 (*a*) above;

(ii) if the distribution is less than K200,000 and if required by the Trust's auditor to do so, be a simple report on the way the funds from the Trust have been used by such recipients;

(iii) the sum of K200,000 stated in paragraphs (i) and (ii) above shall be increased each year by an amount to be set by the auditor. Such increase is to be based on a scale equivalent to the increase in the consumer prices index during the same period. At every five-year interval the Trustees shall have power to alter this figure to such amount as shall in the circumstances be reasonable.

(*c*) the Trustees shall cause to be published in at least one national newspaper of Malaŵi within seven days of the annual meeting the following information—

(i) an income and expenditure account for the preceding year;

(ii) the balance sheet at the preceding Trust's Year End;

(iii) a complete list of recipients of the Trust income and capital during the year in question and the amount received by each;

(iv) an outline of the proposed allocation of distributions and a list of projects to which funding has been committed;

(v) an abbreviated form of the Trustees' Report;

(*d*) the Trustees shall cause to be published in like manner above within seven days of each meeting at which they resolve to distribute funds for the NBP, a complete list of the proposed

recipients and the amount and the purpose for which the funds are to be applied.

11. *Trustees' Responsibility as Shareholder*

The Trustees shall not by exercise of their vote in general meeting or otherwise interfere in the management or conduct of the business of any company the shares or securities of which comprise the whole or any part of the Trust Fund or any subsidiary of such company except in so far as required to safeguard their economic interest in such companies or subsidiaries and Provided Always that where the Trustees' holding of such share is sufficient to confer voting control of the company concerned the Trustees shall nevertheless from time to time seek to obtain such information from the company as would be made available to a non-executive director to satisfy themselves (so far as may be possible from such information) that the affairs of the company are being properly managed and in the absence of any notice to the contrary the Trustees shall leave the conduct of its business (including the payment or non-payment of dividends) wholly to the directors.

12. *Power to Amend Administrative Provisions*

If at any time during the continuance of the Trust it shall appear to the Trustees that either by reason of changes in the law affecting the administration of charitable or this or other trusts or of changes in social, scientific or educational conditions or by reason of any defect or omission in the preceding provisions of this Deed it would be necessary for the effective operation of the trusts set up by this Deed that the Trustees should possess or be invested with any further or administrative powers which the Trustees do not or may not possess then the Trustees shall apply to the Court for the Court to determine if such amendment to the administrative powers would be in the best interests of the Trust.

13. *Trustee Liability*

In the professed execution of these trusts and powers Trustees shall not be liable for any loss to the Trust Fund arising by reason of any investment made in good faith (so long as the Trustees shall have sought and considered professional advice before making such investment) or for the negligence or fraud of any agent employed by any of the Trustees in good faith although the employment of such agent was not strictly necessary or expedient (provided reasonable supervision shall have been exercised) or by reason of any mistake or omission made in good faith by any Trustee.

14. *Trustee's Remuneration and Expenses*

(*a*) no Trustee shall benefit from the Trust nor from any position held by a Trustee on behalf of the Trust save that Trustees shall be reimbursed for the cost of travelling to attend meetings of the Trust or board meetings of companies where they are attending as nominees of the Trust and reasonable costs of accommodation incurred wholly, exclusively and necessarily in the attendance of such meetings:

PROVIDED always that the auditor of the Trust shall certify that any such sums are so payable and reasonable and, in the event that any sums paid to a Trustee by the Trust shall not be so

certified, such sum shall be due as a debt from the Trustee to the Trust.

(*b*) if any Trustee shall in his personal capacity be or become a director of a company no more than 50 per cent of the voting rights of which are controlled by the Trustees then he shall be entitled to retain for his own use and benefit any fee or other remuneration received by him from such company.

15. *Notice*

Notices required to be given under the terms of this Trust shall be in writing and shall be sufficiently given if delivered to the addressee either personally or sent by Express Mail and a receipt obtained provided that in the case of the International Trustee notice shall be sufficiently given if it is delivered personally or by facsimile with acknowledgement by the addressee or by international courier with a receipt obtained.

16. *Prohibition on Trading*

The Trustees shall not carry on any permanent trading activities in raising funds for the charitable objects hereof.

17. *Clause Headings*

The clause headings are included for reference only and do not affect the interpretation of this Settlement.

IN WITNESS whereof the Minister responsible for finance, acting on behalf of the Government of Malaŵi, has hereunder set his hand and seal the day and year first before written.

SIGNED, SEALED AND

DELIVERED by: .....
in the presence of: .....

SIGNED, SEALED AND

DELIVERED by: .....
in the presence of: .....

NON-GOVERNMENTAL ORGANIZATIONS

CHAPTER 5:05

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CHAPTER 5:05

NON-GOVERNMENTAL ORGANIZATIONS

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CHAPTER 5:05

NON-GOVERNMENTAL ORGANIZATIONS

An Act to provide for the rights and obligations of Non-Governmental Organizations in Malaŵi, to promote the development and values of a strong independent civil society, to provide for the establishment, functions and powers of the Non-Governmental Organizations Board of Malaŵi and the right of the public to access information with respect to registered organizations and to provide for matters incidental thereto or connected therewith

6 of 2001
G.N. 11/2007

[17TH MARCH, 2001]

PART I

PRELIMINARY

1. This Act may be cited as the Non-Governmental Organizations Act.

Short title

2. In this Act, unless the content otherwise requires—

Interpretation

"Board" means the Non-Governmental Organizations Board of Malaŵi established under section 6;

"designated NGO Coordinating body" means an independent institution representing Non-Governmental Organizations in Malaŵi established under section 24;

"exempt organization" means an NGO exempted from the provisions of this Act under section 5;

"international NGO" means an institution or organization for public benefit purposes, established under the laws of a country other than Malaŵi, or established under a treaty or convention and conducting some or all of its activities in Malaŵi;

"NGO" means a Non-Governmental Organization constituted for a public benefit purpose to which the provisions of this Act are applicable under section 4;

"public benefit purposes" means organizational purposes involving developmental and charitable purposes including but not limited to, educational, health, welfare, advocacy, cultural, civic, social, recreational, scientific, environmental, or other similar objects for the benefit of the general public, a section thereof or members of the organization but excluding involving the activities of a church or religion, trade union, employers organization or political party;

"public fundraising'' means the soliciting from the general public in Malaŵi, for public benefit purposes, of contributions of value, whether in cash or in kind, but for the avoidance of

doubt does not include the kind of soliciting directed to members, office bearers or other persons who have a relationship with the organization concerned;

"Registrar of NGOs" means the Registrar appointed under section 19.

Objects of the Act

3. The objects of this Act are—

(*a*) to promote the development of a strong independent civil society in Malaŵi and to facilitate the formation and effective functioning of NGOs for public benefit purposes;

(*b*) to create a conducive environment for NGO development through Government provision of incentives;

(*c*) to promote donor and public confidence in the NGO sector, and to encourage the development of an NGO code of conduct, incorporating principles of fiduciary integrity, public accountability, democratic decision-making, developmental synergy, non-discrimination and beneficiary equity;

(*d*) to facilitate a relationship between NGOs and the Government involving constructive collaboration and partnership in furtherance of the public interest; and

(*e*) to affirm the human rights enshrined in the Constitution of the Republic of Malaŵi.

Application of the Act

4. Save as otherwise provided in this Act, the provisions of this Act shall apply to an NGO within Malaŵi which fulfils the following conditions—

(*a*) it has a written constitution or a governing instrument;

(*b*) it is not established, administered or controlled directly or indirectly by the Government of Malaŵi, or any other government;

(*c*) it applies all its funds and resources for public benefit purposes only;

(*d*) it does not transfer or distribute, whether directly or indirectly, any benefit to its members, donors, trustees, directors or other officers, or their associates or next of kin, except if such benefits represent—

(i) reasonable remuneration for services actually rendered; or

(ii) benefits conferred, without favour or discrimination, by reason of the beneficiary being part of an eligible group or category entitled to benefit in accordance with the public benefit purposes of the organization concerned;

(*e*) it is not for private profit or gain for the persons controlling or managing the affairs of the NGO without prejudice to the rights and privileges of employees;

(*f*) it is managed or controlled by a committee, board or trust;

(*g*) it serves all eligible people, regardless of age, gender, tribe, race, religion, creed, sex, political affiliation, nationality, region, disability or being a member of a minority group;

(*h*) it is not a church or religious organization of a purely evangelistic or proselytizing nature;

(*i*) it is not a political party, trade union or a social club created to pursue the interests of its members.

Exempt organizations

5. Subject to the provisions of section 20 (2), this Act shall not apply to an organization which is—

(*a*) informal, and does not have a written constitution;

(*b*) excluded, so that it belongs to a category of organizations deemed not to fall within the ambit of this Act;

(*c*) established, administered or controlled by or on behalf of the Government of Malaŵi or other government; or

(*d*) specially exempted, so that the Board has determined in its discretion that such organization is to be exempted from all or some of the requirements of this Act.

PART II
Establishment of the NGO Board of Malaŵi

Establishment of the Board

6.—(1) There is hereby established a Board to be known as the Non-Governmental Organizations Board of Malaŵi which shall be a body corporate having perpetual succession and a common seal and shall, under that name, be capable of suing and being sued and of purchasing or otherwise acquiring, holding and alienating moveable or immoveable property and, subject to the provisions of this Act, of performing all such acts as bodies corporate may by law, perform.

(2) The Board shall function without political or religious bias or interference by donors, the Government, an organ of the State or a political party.

Composition of the Board

7. The Board shall consist of ten members who shall be citizens of Malaŵi and appointed as follows—

(*a*) seven members, at least three of whom shall be women, appointed by the Minister in consultation with CONGOMA; and

(*b*) the following members *ex officio*—

(i) the Secretary for Gender, Youth and Community Services;

(ii) the Secretary for Justice; and

(iii) the Secretary to the Treasury.

Disqualification from appointment to the Board

8. Any person who—

(*a*) is declared bankrupt under any law in force in Malaŵi;

(*b*) is, under any law in force in Malaŵi, adjudged or otherwise declared to be of unsound mind;

(*c*) has at any time been convicted of an offence involving theft, fraud, forgery, perjury or other dishonesty;

(*d*) has, within the past five years, been convicted of an offence under any written law punishable by a term of imprisonment of six months without the option of a fine;

(*e*) would for any other reason be disqualified by law from serving as a director of a company or a trustee of a trust within Malaŵi,

shall be disqualified from being appointed as a member of the Board.

Removal of Board members

9. Members of the Board, other than members *ex officio*, shall be subject to removal and substitution anytime, by a decision of the Minister in consultation with CONGOMA.

Tenure of office

10.—(1) A member of the Board, other than a member *ex officio*, shall hold office for a period of three years and at the expiry of that period shall be eligible for re-appointment for one more similar term.

(2) The office of the member of the Board shall be vacated—

(*a*) upon his death;

(*b*) upon written resignation delivered to the Board;

(*c*) if any circumstances arise that, if he were not a member, would cause that member to be disqualified from appointment as member;

(*d*) if he has been absent without valid excuse from three consecutive meetings of the Board of which he has had notice; or

(*e*) if he is incapable of efficiently performing his duties as a member of the Board.

Filling of vacancies

11.—(1) On vacation of office by a member of the Board, the vacancy shall be filled by a person appointed in accordance with section 7.

(2) The membership of the Board as first and subsequently appointed and every change in the membership shall be published in the *Gazette*.

Invited persons

12. The Board may invite any person, based on his experience and expertise, to attend any meeting of the Board and take part in the deliberations of the Board but such person shall not be entitled to vote at that meeting.

Allowances, etc., of Board members

13. Members of the Board shall be paid such honoraria as the Board may determine and the Board may make provision for the reimbursement of any reasonable expenses incurred by a member of the Board in connexion with the business of the Board.

Chairman and Vice-Chairman

14.—(1) The Board shall elect both the Chairman and Vice-Chairman from among their number who shall, subject to subsection (2), hold office for the duration of their membership on the Board.

(2) The offices of the Chairman and Vice-Chairman shall become vacant—

(*a*) if the holder resigns his office by notice in writing to the Board;

(*b*) if the holder of the office ceases to be a member of the Board; or

(*c*) if the Board so decides by a two-thirds majority vote.

(3) Whenever the Chairman is absent or is for any reason unable to discharge the functions of his office, the Vice-Chairman shall discharge the functions of the Chairman.

PART III

Meetings of the Board

Meetings of the Board

15.—(1) The Board shall hold ordinary meetings for the dispatch of business at least once every three months in each year.

(2) No member of the Board shall attend the meetings of the Board by representation.

(3) An extraordinary meeting of the Board—

(*a*) may be convened by the Chairman within seven days after giving notice in writing to members of the Board;

(*b*) shall be convened by the Chairman within fourteen days of the receipt by him of a request in writing signed by not less than four members of the Board and specifying the purpose for which the meeting is convened; or

(*c*) if the Chairman does not convene the meeting requested, the members requesting such meeting may themselves convene the meeting.

(4) At any meeting of the Board—

(*a*) the Chairman or in his absence the Vice-Chairman shall preside;

(*b*) in the absence of both the Chairman and the Vice-Chairman, the members present shall elect one of their number to preside;

(*c*) quorum shall be formed by any six members.

(5) At any meeting of the Board, a decision on any matter shall be that of the majority of the members present and voting and in the event of an equality of votes, the person presiding shall have a casting vote in addition to his deliberative vote.

(6) The Board shall cause minutes to be kept of the proceedings of every meeting of the Board.

Establishment of committees

16. The Board may, for the better carrying into effect of its purposes and functions under this Act, establish such committees as the Board shall deem appropriate to perform such functions and responsibilities as the Board may consider expedient.

Disclosure of interest

17.—(1) A member of the Board who has an interest directly or indirectly, in any matter to be considered by the Board shall, soon after the facts have come to the knowledge of the member, disclose this fact and the nature of the interest to the Board.

(2) After the disclosure, the remaining members shall discuss the matter and determine whether the member should be precluded from participating further in the meeting concerned and the decision taken by the remaining members regarding the matter shall be recorded in the minutes of the meeting.

(3) Subject to the provisions of subsection (2), a member who has an interest in a matter that is before the Board and who cannot therefore perform his functions in a fair, unbiased and proper manner shall not vote, participate in any other manner in the proceedings of a meeting of the Board or be present at the venue where such a meeting is being held.

(4) Where a member does not comply with the provisions of subsections (1) and (3) then the proceedings of such a meeting relating to the matter in which he has an interest shall be void.

PART IV
Duties, Functions and Powers of the Board

Duties and functions of the Board

18.—(1) The Board shall register and regulate operations of NGOs in Malaŵi.

(2) Without derogating from the generality of subsection (1), the Board shall—

(*a*) establish and maintain the register of NGOs, incorporating a database and a public documentation centre in respect of NGOs incorporated or operating within Malaŵi, and such additional registers or sub-registers, including such as may relate to exempt organizations and international NGOs;

(*b*) consider and adjudicate upon applications for registration by NGOs and ensure due compliance by the NGOs with the prescribed reporting requirements;

(*c*) withhold, suspend or cancel registration of NGOs in the event of failure or refusal to comply with the provisions of this Act;

(*d*) provide free public access to the NGO register and data-base, including the records and returns of NGOs lodged in the public documentation centre;

(*e*) determine, from time to time, the incentives applicable to NGOs under this Act or any other written law and make the necessary recommendations to the Minister;

(*f*) commission surveys, enquiries and research, with a view to advising the Government with regard to any matter affecting NGOs;

(*g*) appoint a suitably qualified person as Registrar and such other employees as it may deem necessary for the discharge of the duties and functions of the Board; and

(*h*) do all such things as are necessary or incidental or conducive to the better carrying out of the objects and functions of the Board specified in this Act.

PART V
Management of the Board

Registrar and other employees

19.—(1) The Board shall appoint the Registrar who shall be the chief executive officer of the Board and Secretary to the Board.

(2) The terms and conditions of service of the Registrar shall be subject to the approval of the Board.

(3) The Registrar shall establish and maintain the register, administer and implement this Act and perform such other duties as the Board may, from time to time assign to him.

(4) The Board may appoint, on such terms and conditions, such other employees subordinate to the Registrar as it may deem necessary for the carrying out the functions of the Board.

(5) The Board may delegate to the Registrar the appointment of employees of such ranks as the Board may specify.

PART VI

Registration of NGOs

Registration

20.—(1) Every NGO established or operating in Malaŵi which is recognized as a legal person under the laws of Malaŵi, except the exempt organizations, shall register with the Board:

Provided that an NGO existing at the time of coming into force of this Act shall be required to register within a period of twelve months from the date this Act comes into force.

(2) No NGO shall be registered under this Act unless a minimum of two of its directors or trustees, as the case may be, are citizens of Malaŵi.

(3)—(*a*) An application for registration shall be in a prescribed form and accompanied by—

(i) a certified copy of the constitution or governing instrument of the NGO;

(ii) such registration fees as may be prescribed by the Board from time to time;

(iii) a plan of the activities which the NGO intends to undertake;

(iv) approval from the Ministry responsible for the activities to be undertaken by the NGO in the form of a memorandum of understanding or any other agreement between the Ministry and the NGO;

(v) proof that the NGO is a member of CONGOMA;

(vi) a statement that the NGO shall not engage in partisan politics including electioneering and politicking; and

(vii) the source of funding for the NGO.

(*b*) The form shall contain the following particulars of the NGO concerned—

(i) name of the NGO;

(ii) physical and postal address;

(iii) telephone, facsimile and telex numbers, where applicable;

(iv) the full names, addresses, occupations and nationalities of all Trustees, Directors and other executive Board members;

(v) the name and address of the NGO's auditors, who are acceptable to the Board;

(vi) the latest available audited annual financial statements and annual report, in respect of existing NGOs.

(4)—(*a*) The Board shall accept or reject an application within a period of ninety days from the date the application was received by the Board or the date on which the applicant provides the information sought by the Board if that date is later.

(*b*) Where the Board rejects an application for registration by an NGO, the Board shall furnish in writing to the NGO concerned its reasons.

Certificate of Registration

21.—(1) The Board shall issue a certificate of registration to every NGO registered under this Act.

(2) A certificate of registration shall constitute proof that the NGO concerned—

(*a*) is a body corporate and separate from its members, with perpetual succession;

(*b*) can engage in public interest activities and public fundraising throughout Malaŵi;

(*c*) is eligible for such fiscal or other benefits and privileges, as may be applicable to registered NGOs from time to time.

Reporting requirements

22. Every registered NGO shall file with the Registrar's office the following documents and information which shall be part of the Registry accessible to the public under section 18 (2) (*d*)—

(*a*) on an annual basis, and by such date as may be prescribed—

(i) its audited annual financial statements;

(ii) its annual report outlining the activities undertaken by the NGO in that year and such other information as may be prescribed;

(iii) an annual return reflecting details of its trustees, directors, office bearers, auditors and such other information as may be prescribed; and

(iv) its source of funding;

(*b*) in the event of any amendment to its constitution or governing instrument, a certified copy of such amendment, within sixty days of such amendment being adopted; and

(*c*) any such further documentation or information regarding the officers and activities of a registered NGO which the Board may require.

Cancellation or suspension of registration

23.—(1) The Board may order the Registrar to cancel or suspend the registration of an NGO if it is satisfied that the NGO—

(*a*) has ceased to exist or function for the purposes for which it was constituted; or

(*b*) has failed or refused to comply with the provisions of this Act; or

(*c*) has been engaged in partisan politics.

(2) The NGO coordinating body may, where it has good and valid reasons, make recommendations to the Board for cancellation or suspension of the registration of an NGO.

(3) An order cancelling or suspending the registration of an NGO under subsection (1) shall not be issued, unless—

(*a*) the NGO concerned has been given at least thirty days prior written notice, sent to its last known address, of the Board's intention to impose such sanction; and

(*b*) the NGO has been given an opportunity to be heard either verbally or in writing as the Board may determine.

(4) Any NGO aggrieved by a decision of the Board made under this part may apply to the High Court for judicial review.

PART VII
The Designated NGO Co-Ordinating Body

Designation of body

24.—(1) The General Assembly shall designate the Council for Non-Governmental Organizations in Malaŵi (in this Act otherwise referred to as "CONGOMA") as the designated NGO co-ordinating body for the purposes of this Act.

(2) As the designated NGO co-ordinating body, CONGOMA shall represent and promote the collective interests and concerns of NGOs in Malaŵi.

Functions of CONGOMA

25. For the purposes of this Act, the functions of CONGOMA shall be—

(*a*) to enhance and improve operational environment within which NGOs function;

(*b*) to promote and facilitate coordination, collaboration and cooperation between the NGO community, the Government, the Donor Community and the commercial sector in Malaŵi;

(*c*) to further the standing of NGOs as competent, professional and suitable agents of development;

(*d*) to support NGOs to become institutionally strong; and

(*e*) to assist NGOs carry out their functions under this Act.

PART VIII

General Assembly

General Assembly

26.—(1) For purposes of good administration and proper management, CONGOMA shall hold a General Assembly of the NGOs which shall be attended by the following—

(*a*) all members of the Board;

(*b*) all Board Members of CONGOMA; and

(*c*) all NGOs registered under this Act.

(2) The General Assembly of the NGOs shall be held once every year to transact the following business—

(*a*) receive a report concerning the activities of the Board during that financial year; and

(*b*) to deal with any matter which the Board desires to bring before it and any other matter or suggestion which the general membership may bring before it:

Provided that no such suggestions shall be considered by the General Assembly unless one week prior notice in writing is served on the members before the meeting is held.

(3) A notice convening the General Assembly shall be sent to members not less than fourteen days before the date of the meeting and the notice shall be accompanied by the agenda for the meeting.

(4) At the General Assembly the quorum shall be formed by fifty per cent of the membership.

(5) At the General Assembly voting shall be by secret ballot and in the event of an equality of votes the Chairperson shall have a casting vote in addition to his deliberative vote.

(6) The general public may attend the General Assembly as observers and shall not directly participate in the proceedings of the General Assembly but may make their observations in writing to the Chairperson.

(7) The Chairperson of the Board of CONGOMA shall preside at the General Assembly.

PART IX

Financial Provisions

Funding of the Board

27.—(1) The funds of the Board shall consist of—

(*a*) any fees, fines and charges payable under this Act; and

(*b*) such other moneys and assets as may accrue to or vest in the Board by way of donation, loan or otherwise received by the Board.

Borrowing powers

28. The Board shall have powers to borrow either temporarily, by way of overdraft or otherwise, such sums as it may require, for meeting its obligations or discharging its functions under this Act:

Provided that any such borrowing shall subsequently be approved by the General Assembly.

Investment of surplus money

29. The Board may invest any money in such a manner as the Board may deem expedient.

Financial year

30. The financial year of the Board shall be a period of twelve months as the Board shall determine:

Provided that the first financial year of the Board may be such shorter or longer period than twelve months as the Board shall determine but being not less than six months nor more than eighteen months.

Accounts and audit

31.—(1) The Board shall keep proper accounts and other accounting records in accordance with the generally accepted accounting principles and practice.

(2) The accounts of the Board shall be audited annually by independent auditors appointed by the Board and approved by the General Assembly.

Annual reports

32.—(1) As soon as practicable, but not later than six months after the expiry of each financial year, the Board shall submit to all members of the General Assembly and the Ministry responsible a report concerning its activities during that financial year.

(2) The Report referred to in subsection (1) shall include information on the financial affairs of the Board, and there shall be appended to the report—

(*a*) an audited balance sheet;

(*b*) an audited statement of income and expenditure; and

(*c*) such other information as the Board may consider appropriate.

PART X

Fundraising

Fundraising by registered NGOs

33. Every NGO registered under this Act, including an exempt organization which is registered, may solicit and accept funds and contributions and engage in public fundraising for the furtherance of its public benefit purposes as it may deem appropriate, subject to compliance with the reporting requirements prescribed under this Act, or any other written law.

PART XI

Miscellaneous Provisions

34. An NGO which contravenes the provisions of the Act shall be guilty of an offence and liable on conviction to a fine of K50,000 or an amount equivalent to the financial gains generated by the offence, whichever is the greater. Offence and penalty

35.—(1) The Minister may, on the advice of the Board, make regulations for carrying out or giving effect to the provisions of this Act and without prejudice to the generality of the foregoing such regulations may— Regulations

(*a*) prescribe fees payable—

(i) upon application for registration;

(ii) for restoration to a register;

(iii) for any other matter under this Act; and

(*b*) prescribe the forms required to be prescribed under this Act.

(2) A regulation made under subsection (1) may, notwithstanding the provisions of the General Interpretation Act, prescribe penalties for any contravention of its provisions or failure to comply therewith, involving the imposition of a fine not exceeding K25,000. Cap. 1.01

36. This Act shall not derogate from the terms of any agreement or similar arrangement concluded between the Government and any NGO prior to the coming into force of this Act with reference to the operations of any such NGO in Malaŵi. Savings

CIVIL PROCEDURE (SUITS BY OR AGAINST GOVERNMENT OR PUBLIC OFFICERS)

CHAPTER 6:01

Containing Pages 1–4

CHAPTER 6:01

CIVIL PROCEDURE (SUITS BY OR AGAINST THE GOVERNMENT OR PUBLIC OFFICERS)

ARRANGEMENT OF SECTIONS

SECTION

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   (3) Claims by private persons against the Government
4. Notice previous to suing
5. Time within which suit may be brought against a public officer
6. Exemption from arrest and personal appearance
7. (1) Application where Government undertakes defence
   (2) Procedure where no application is made
   Defendant not liable to arrest before judgment
8. Execution of decree
9. Costs
10. No injunction or specific performance against Government

An Act relating to Civil Suits by or against the Government or Public Officers

[28TH DECEMBER, 1946]

37 of 1946
31 of 1953
12 of 1993
17 of 1993
19 of 1995
11 of 2011
23 of 2012
G.N. 22/1963
137/1966
166/1967

Short title

1. This Act may be cited as the Civil Procedure (Suits by or against the Government or Public Officers) Act.

Claims against Government cognizable by competent court, whether claim in contract or tort

2. Any claim against the Government which would if such claim had arisen against a subject be the ground of an action in any competent court shall be cognizable by the said court whether such claim shall arise or have arisen out of any contract lawfully entered into on behalf of the Government or out of any wrong committed by any servant of the Government acting in his capacity and within the scope of his authority as such servant:

Provided that no claim shall lie against the Government by virtue of this section in respect of any wrong committed by a servant of the Government unless the wrong would, apart from this Act, have given rise to a claim against that servant or his estate:

Provided further that nothing herein contained shall be construed as affecting any law which limits the liability of the Government or any department thereof in respect of any act or omission of its servants,

or which prescribes specified periods within which a claim shall be made in respect of any such liability or imposes conditions on the institution of any action.

Suits by or against Government to be instituted by or against the Attorney General

3.—(1) Save as may otherwise expressly be provided by any Act, suits by or against the Government shall be instituted by or against the Attorney General. Such suits shall be instituted and tried in the same manner as suits to which the Government is not a party.

(2) The Attorney General or other person authorized by the Attorney General to act for the Government in respect to any judicial proceedings shall be deemed to be the recognized agent by whom appearances, acts and applications may be made or done on behalf of the Government.

Claims by private persons against the Government

(3) All documents which in a suit of the same nature between private parties would be required to be served on the defendant shall be delivered at the office of the Attorney General or other person authorized to act on behalf of the Government in respect of such judicial proceeding.

Notice previous to suing 19 of 1995

4. No suit shall be instituted against the Government, or against any public officer until the expiration of three months next after notice in writing has been, in the case of the Government, delivered to or left at the office of the Attorney General, and in the case of a public officer, delivered to him or left at his office, stating the cause of action, the name, description and place of residence of the plaintiff and the relief which he claims.

Time within which suit may be brought against a public officer

5.—(1) No suit shall be instituted against a public officer in respect of any such act, neglect or default as aforesaid, unless such notice as aforesaid shall be so delivered or left within six months next after the act, neglect or default complained of, or in the case of a continuance of injury or damage, within three months next after the ceasing thereof:

Provided that if the suit be at the instance of any person for cause arising while such person was a convicted prisoner such notice may be delivered or left within six months after the discharge of such person from prison or, in the case of a continuance of injury or damage, within three months next after the ceasing thereof.

(2) This section shall not affect any proceedings by any department of the Government against a local authority, or officer of a local authority.

Exemption from arrest and personal appearance

6. In a suit instituted against a public officer in respect of any such act, neglect or default as aforesaid—

(*a*) the defendant shall not be liable to arrest nor his property to attachment otherwise than in execution of a decree; and

(*b*) where the court is satisfied that the defendant cannot absent himself from his duty without detriment to the public service, it shall exempt him from appearing in person.

Application where Government undertakes defence

7.—(1) Where the Government undertakes the defence of a suit against a public officer, the Attorney General or other person appointed for that purpose by Government; upon being furnished with authority to appear and defend, shall apply to the court, and upon such application the court shall cause a note of his authority to be recorded.

Procedure where no application is made

(2) Where no application is made by the Attorney General or other person appointed as aforesaid on or before the day fixed in the notice for the defendant to appear and answer, the case shall proceed as in a suit between private parties:

Defendant not liable to arrest before judgment

Provided that the defendant shall not be liable to arrest nor his property to attachment otherwise than in execution of a decree.

Execution of decree

8. When the decree is against the Government, or against a public officer in respect of such act, neglect or default as aforesaid, a time shall be specified in the decree within which it shall be satisfied; and if the decree is not satisfied within the time so specified the court shall report the case for the orders of the Government. Execution shall not be issued on any such decree unless it remains unsatisfied for a period of three months computed from the date of the report.

Costs

9. In all suits under this Act costs may be awarded in the same manner as in suits between private parties.

No injunction or specific performance against Government
11 of 2011
23 of 2012

10.—(1) Nothing in this Act contained shall be construed as authorizing the grant of relief by way of injunction or specific performance against the Government, but in lieu thereof the court may make an order declaratory of the right of the parties.

(2) The court shall not in any suit grant any injunction or make any order against a public officer if the effect of granting the injunction or making the order would be to give any relief against the Government which could not have been obtained in a suit against the Government.

SUBSIDIARY LEGISLATION

G.N. 47/1961

AUTHORIZATION

under s. 3 (2)

The Attorney General has authorized the Solicitor General and all State Advocates to act for the Government in respect of any civil proceedings.

LIMITATION

CHAPTER 6:02

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CHAPTER 6:02

LIMITATION

An Act to provide for the Limitation of certain actions and Arbitrations and for matters incidental thereto and comnected therewith 17 of 1967

[1st April, 1968]

PART 1

Preliminary

1. This Act may be cited as the Limitation Act. Short title

2.—(1) In this Act, unless the context otherwise requires— Interpretation

"action" includes any proceeding in a court;

"arbitration agreement" has the meaning assigned to that expression in the Arbitration Act; Cap. 6:03

"award" means an award of an arbitrator under the Arbitration Act or a foreign award within the meaning of the Arbitration Act;

"land" includes corporeal hereditaments and rent charges, and any legal or equitable estate or interest therein, including an interest in the proceeds of the sale of land held on trust for sale, but save as provided in this definition does not include any incorporeal hereditament;

"officer", in relation to the Government, includes the President, a Minister and any servant of the Government;

"personal estates" and "personal property" do not include chattels real;

"personal injuries" includes any disease and any impairment of a person's physical or mental condition;

"rent" includes a rent charge;

"rent charge" means any annuity or periodical sum of money charged upon or payable out of land, except interest on a mortgage of land;

"trust", "trustee" and "trust for sale" have the same meanings respectively as in the Trustee Act. Cap. 5:02

(2) For the purposes of this Act, proceedings by or against the Government shall include proceedings by or against any Government department or officer of the Government as such.

(3) (*a*) For the purposes of this Act, a person shall be deemed to be under a disability while he is a minor, or of unsound mind.

(*b*) For the purposes of paragraph (*a*) but without prejudice to the generality thereof, a person shall be conclusively presumed to be of unsound mind while he is detained in pursuance of any written law authorizing the detention of persons of unsound mind or criminal lunatics.

(4) A person shall be deemed to claim through another person, if he became entitled by, through, under or by the act of that other person to the right claimed:

Provided that a person becoming entitled to any estate or interest by virtue of a special power of appointment shall not be deemed to claim through the appointer.

(5) References in this Act to a right of action to recover land shall include references to a right to enter into possession of the land or, in the case of rent charges, to distrain for arrears of rent, and references to the bringing of an action in respect of such a right of action shall include references to the making of such an entry or distress.

(6) References in this Act to the possession of land shall, in the case of rent charges, be construed as references to the receipt of the rent, and references to the date of dispossession or discontinuance of possession of land shall, in the case of rent charges, be construed as references to the date of the last receipt of rent.

(7) In Part III references to a right of action shall include references to a cause of action and to a right to receive money secured by a mortgage or charge on any property or to recover proceeds of the sale of land, and to a right to receive a share or interest in the personal estate of a deceased person; and references to the date of the accrual of a right of action shall—

(*a*) in the case of an action for an account, be construed as references to the date on which the matter arose in respect of which an account is claimed;

(*b*) in the case of an action upon a judgment, be construed as references to the date on which the judgment became enforceable;

(*c*) in the case of an action to recover arrears of rent or interest, or damages in respect thereof, be construed as references to the date on which the rent or interest became due.

PART II

Periods of Limitation for Different Classes of Action

3. This Part shall have effect subject to the provisions of Part III, which provides for the extension of the periods of limitation in the case of disability, acknowledgment, part payment, fraud and mistake.

Part II to be subject to provisions of Part III relating to disability, acknowledgment, fraud, etc.

Actions of Contract and Tort and Certain other Actions

4.—(1) The following actions shall not be brought after the expiration of six years from the date on which the cause of action arose, that is to say—

Limitation of actions of contract and tort and certain other actions

(*a*) actions founded on contract or on tort;

(*b*) actions to enforce a recognisance;

(*c*) actions to enforce an award;

(*d*) actions to recover any sum recoverable by virtue of written law, other than a penalty or forfeiture or sum by way of penalty or forfeiture:

Provided that, in the case of actions for damages for negligence, nuisance or breach of duty (whether the duty exists by virtue of a contract or of provision made by or under any written law or independently of any such contract or any such provision) where the damages claimed by the plaintiff for the negligence, nuisance or breach of duty consist of or include damages in respect of personal injuries to any person, this subsection shall have effect as if for the reference to six years there were substituted a reference to three years.

(2) An action for an account shall not be brought in respect of any matter which arose more than six years before the commencement of the action.

(3) An action shall not be brought upon any judgment after the expiration of twelve years from the date on which the judgment became enforceable, and no arrears of interest in respect of any judgment debt shall be recovered after the expiration of six years from the date on which the interest became due.

(4) An action to recover any penalty or forfeiture, or sum by way of penalty of forfeiture, recoverable by virtue of any written law shall not be brought after the expiration of two years from the date on which the cause of action accrued:

Provided that for the purposes of this subsection the expression "penalty" shall not include a fine to which any person is liable on conviction for a criminal offence.

(5) Subsection (1) shall apply to an action to recover seamen's wages, but otherwise this section shall not apply to any cause of action within the Admiralty jurisdiction of the court which is enforceable in rem.

(6) This section shall not apply to any claim for specific performance of a contract or for an injunction or for other equitable relief, except in so far as any provision thereof may be applied by the court by analogy in like manner as the periods of limitation in force before the commencement of this Act have heretofore been applied.

Limitation in case of successive conversions and extinction of title of owner of converted goods

5.—(1) Where any cause of action in respect of the conversion or wrongful detention of a chattel has accrued to any person and, before he recovers possession of the chattel, a further conversion or wrongful detention takes place, no action shall be brought in respect of the further conversion or detention after the expiration of six years from the accrual of the cause of action in respect of the original conversion or detention.

(2) Where any such cause of action has accrued to any person and the period prescribed for bringing an action thereon and for bringing any action in respect of such further conversion or wrongful detention as aforesaid has expired and he has not during that period recovered possession of the chattel, the title of that person to the chattel shall be extinguished.

Actions to Recover Land and Rents

Limitation of actions to recover land

6. No action shall be brought by any person to recover any land after the expiration of twelve years from the date on which the right of action accrued to him or, if it first accrued to some person through whom he claims, to that person.

Accrual of right of action in case of present interests in land

7.—(1) Where the person bringing an action to recover land, or some person through whom he claims, has been in possession thereof, and has while entitled thereto been dispossessed or discontinued his possession, the right of action shall be deemed to have accrued on the date of the dispossession or discontinuance.

(2) Where any person brings an action to recover any land of a deceased person, whether under a will or on intestacy, and the deceased person was, on the date of his death, in possession of the land or, in the case of a rent charge created by will or taking effect upon his death, in possession of the land charged and was the last person entitled to the land to be in possession thereof, the right of action shall be deemed to have accrued on the date of his death.

(3) Where any person brings an action to recover land, being an estate or interest in possession assured otherwise than by will to him, or to some person through whom he claims, by a person

who, at the date when the assurance took effect, was in possession of the land or, in the case of a rent charge created by the assurance, in possession of the land charged, and no person has been in possession of the land by virtue of the assurance, the right of action shall be deemed to have accrued on the date when the assurance took effect.

Accrual of right of action in case of future interests

8.—(1) Subject as hereafter in this section provided, the right of action to recover any land shall, in a case where the estate or interest claimed was an estate or interest in reversion or remainder or any other future estate or interest and no person has taken possession of the land by virtue of the estate or interest claimed, be deemed to have accrued on the date on which the estate or interest fell into possession by the determination of the preceding estate or interest.

(2) If the person entitled to the preceding estate or interest, not being a term of years absolute, was not in possession of the land on the date of the determination thereof, no action shall be brought by the person entitled to the succeeding estate or interest after the expiration of twelve years from the date on which the right of action accrued to the person entitled to the preceding estate or interest, or six years from the date on which the right of action accrued to the person entitled to the succeeding estate or interest, whichever period last expires.

(3) Subsections (1) and (2) shall not apply to any estate or interest which falls into possession on the determination of an entailed interest and which might have been barred by the person entitled to the entailed interest.

(4) No person shall bring an action to recover any estate or interest in land under an assurance taking effect after the right of action to recover the land had accrued to the person by whom the assurance was made or some person through whom he claimed or some person entitled to a preceding estate or interest, unless the action is brought within the period during which the person by whom the assurance was made could have brought such an action.

(5) Where any person is entitled to any estate or interest in land in possession and, while so entitled, is also entitled to any future estate or interest in that land, and his right to recover the estate or interest in possession is barred under this Act, no action shall be brought by that person, or by any person claiming through him, in respect of the future estate or interest, unless in the meantime possession of the land has been recovered by a person entitled to an intermediate estate or interest.

Provisions in case of settled land and land held on trust

9.—(1) Subject to section 19 (1), this Act shall apply to equitable interests in land, including interests in the proceeds of the sale of land held upon trust for sale, in like manner as they apply to legal estates, and accordingly a right of action to recover the land shall, for the purposes of this Act but not otherwise, be deemed to accrue to a person entitled in possession to such an equitable interest in the like manner and circumstances and on the same date as it would accrue if his interest were a legal estate in the land.

(2) Where the period prescribed by this Act has expired for the bringing of an action to recover land by a tenant for life of settled land, his legal estate shall not be extinguished, if and so long as the right of action to recover the land of any person entitled to a beneficial interest in the land either has not accrued or has not been barred by this Act, and the legal estate shall accordingly remain vested in the tenant for life and shall devolve accordingly but if and when every such right of action as aforesaid has been barred by this Act, the said legal estate shall be extinguished.

(3) Where any land is held upon trust including a trust for sale, and the period prescribed by this Act has expired for the bringing of an action to recover the land by the trustees, the estate of the trustees shall not be extinguished if and so long as the right of action to recover the land of any person entitled to a beneficial interest in the land or in the proceeds of sale either has not accrued or has not been barred by this Act, but if and when every such right of action has been so barred, the estate of the trustees shall be extinguished.

(4) Where any land is held upon trust, including a trust for sale, an action to recover the land may be brought by the trustees on behalf of any person entitled to a beneficial interest in possession in the land or in the proceeds of sale whose right of action has not been barred by this Act, notwithstanding that the right of action of the trustees would apart from this provision have been barred by this Act.

(5) Where any settled land or land held on trust for sale is in the possession of a person entitled to a beneficial interest in the land or in the proceeds of sale, not being a person solely and absolutely entitled thereto, no right of action to recover the land shall be deemed for the purposes of this Act to accrue during such possession to any person in whom the land is vested as trustee or to any other person entitled to a beneficial interest in the land or the proceeds of sale.

Accrual of right of action in case of forfeiture or breach of condition

10.—A right of action to recover land by virtue of a forfeiture or breach of condition shall be deemed to have accrued on the date on which the forfeiture was incurred or the condition broken:

Provided that, if such a right has accrued to a person entitled

to an estate or interest in reversion or remainder and the land was not recovered by virtue thereof, the right of action to recover the land shall not be deemed to have accrued to that person until his estate or interest fell into possession, as if no such forfeiture or breach of condition had occurred.

Accrual of right of action in case of certain tenancies

11.—(1) A tenancy at will shall, for the purposes of this Act. be deemed to be determined at the expiration of a period of one year from the commencement thereof, unless it has previously been determined, and accordingly the right of action of the person entitled to the land subject to the tenancy shall be deemed to have accrued on the date of such determination.

(2) A tenancy from year to year or other period, without a lease in writing, shall, for the purposes of this Act, be deemed to be determined at the expiration of the first year or other period, and accordingly the right of action of the person entitled to the land subject to the tenancy shall be deemed to have accrued at the date of such determination:

Provided that, where any rent has subsequently been received in respect of the tenancy, the right of action shall be deemed to have accrued on the date of the last receipt of rent.

(3) Where any person is in possession of land by virtue of a lease in writing by which a rent of not less than twenty shillings is reserved, and the rent is received by some person wrongfully claiming to be entitled to the land in reversion immediately expectant on the determination of the lease, and no rent is subsequently received by the person rightfully so entitled, the right of action of the last named person to recover the land shall be deemed to have accrued at the date when the rent was first received by the person wrongfully claiming to be entitled to the land in reversion immediately expectant on the determination of the lease and not at the date of the determination of the lease.

Right of action not to accrue or continue unless there is adverse possession

12.—(1) No right of action to recover land shall be deemed to accrue unless the land is in the possession of some person in whose favour the period of limitation can run (hereafter in this section referred to as "adverse possession") and where under sections 6 to 11 inclusive any such right of action is deemed to accrue on a certain date and no person is in adverse possession on that date, the right of action shall not be deemed to accrue unless and until adverse possession is taken of the land.

(2) Where a right of action to recover land has accrued and thereafter, before the right is barred, the land ceases to be in adverse possession the right of action shall no longer be deemed to have accrued and no fresh right of action shall be deemed to have accrued unless and until the land is again taken into adverse possession.

(3) For the purposes of this section—

(*a*) possession of any land subject to a rent charge by a person (other than the person entitled to the rent charge) who does not pay the rent shall be deemed to be adverse possession of the rent charge; and

(*b*) receipt of rent under a lease by a person wrongfully claiming, in accordance with section 11 (3), the land in reversion shall be deemed to be adverse possession of the land. land.

Cure of defective disentailing assurance

13. Where a person entitled in remainder to an entailed interest in any land has made an assurance thereof which fails to bar the issue in tail or the estates and interests taking effect on the determination of the entailed interest, or fails to bar the last-mentioned estates and interests only, and any person takes possession of land by virtue of the assurance, and that person or any other person whatsoever (other than a person entitled to possession by virtue of the settlement) is in possession of the land for a period of twelve years from the commencement of the time at which the assurance, if it had then been executed by the person entitled to the entailed interest, would have operated, without the consent of any other person, to bar the issue in tail or the estates and interests taking effect on the determination of the entailed interest, then, at the expiration of that period, the assurance shall operate, and be deemed always to have operated, to bar the issue in tail and those estates and interests.

Limitation of redemption actions

14. When a mortgagee of land has been in possession of any of the mortgaged land for a period of twelve years, no action to redeem the land of which the mortgagee has been so in possession shall thereafter be brought by the mortgagor or any person claiming through him.

No right of action to be preserved by formal entry or continual claim

15. For the purposes of this Act, no person shall be deemed to have been in possession of any land by reason only of having made a formal entry thereon, and no continual or other claim upon or near any land shall preserve any right of action to recover the land.

Extinction of title after expiration of period

16. Save as in this Act otherwise provided, at the expiration of the period prescribed by this Act for any person to bring an action to recover land (including a redemption action) the title of that person to the land shall be extinguished.

Limitation of action to recover rent

17. No action shall be brought, or distress made, to recover arrears of rent or damages in respect thereof, after the expiration of six years from the date on which the arrears became due.

Actions to Recover Money Secured by a Mortgage or Charge or to Recover Proceeds of the Sale of Land

Limitation of actions to recover money secured by a mortgage or charge or to recover proceeds of the sale of land

18.—(1) No action shall be brought to recover any principal sum of money secured by a mortgage or other charge on property, whether real or personal, or to recover proceeds of the sale of land, after the expiration of twelve years from the date when the right to receive the money accrued.

(2) No foreclosure action in respect of mortgaged personal property shall be brought after the expiration of twelve years from the date on which the right to foreclose accrued:

Provided that if, after that date, the mortgagee was in possession of the mortgaged property, the right to foreclose on the property which was in his possession shall not, for the purposes of this subsection, be deemed to have accrued until the date on which his possession discontinued.

(3) The right to receive any principal sum of money accrued by a mortgage or other charge and the right to foreclose on the property subject to the mortgage or charge shall not be deemed to accrue so long as that property comprises any future interest or any life insurance policy which has not matured or been determined.

(4) Nothing in this section shall apply to a foreclosure action in respect of mortgaged land, but the provisions of this Act relating to actions to recover land shall apply to such an action.

(5) No action to recover arrears of interest payable in respect of any sum of money secured by a mortgage or other charge or payable in respect of proceeds of the sale of land or to recover damages in respect of such arrears shall be brought after the expiration of six years from the date on which the interest became due:

Provided that—

(*a*) where a prior mortgagee or other incumbrancer has been in possession of the property charged and an action is brought within one year of the discontinuance of such possession by the subsequent incumbrancer, he may recover by that action all arrears of interest which fell due during the period of possession by the prior incumbrancer or damages in respect thereof notwithstanding that the period exceeded six years;

(*b*) where the property subject to the mortgage or charge comprises any future interest or life insurance policy and it is a term of the mortgage or charge that arrears of interest shall be treated as part of the principal sum of money secured by the mortgage or charge, interest shall not be deemed to become

due before the right to receive the principal sum of money has accrued or is deemed to have accrued.

(6) This section shall not apply to any mortgage or charge on a ship.

Actions in Respect of Trust Property or the Personal Estate of Deceased Persons

Limitation of actions in respect of trust property

19.—(1) No period of limitation prescribed by this Act shall apply to an action by a beneficiary under a trust, being an action—

(*a*) in respect of any fraud or fraudulent breach of trust to which the trustee was a party or privy; or

(*b*) to recover from the trustee trust property or the proceeds thereof in the possession of the trustee, or previously received by the trustee and converted to his use.

(2) Subject to subsection (1), an action by a beneficiary to recover trust property or in respect of any breach of trust, not being an action for which a period of limitation is prescribed by any other provision of this Act, shall not be brought after the expiration of six years from the date on which the right of action accrued:

Provided that the right of action shall not be deemed to have accrued to any beneficiary entitled to a future interest in a trust property, until the interest fell into possession.

(3) No beneficiary as against whom there would be a good defence under this Act shall derive any greater or other benefit from the judgment or order obtained by any other beneficiary than he could have obtained if he had brought the action and this Act had been pleaded in defence.

Limitation of actions claiming personal estate of a deceased person

20.—Subject to section 19 (1), no action in respect of any claim to the personal estate of a deceased person or to any share or interest in such estate, whether under a will or on intestacy, shall be brought after the expiration of twelve years from the date when the right to receive the share or interest accrued, and no action to recover arrears of interest in respect of any legacy, or damages in respect of such arrears, shall be brought after the expiration of six years from the date on which the interest became due.

PART III

Extension of Limitation Periods in Case of Disability, Acknowledgment, Part Payment, Fraud and Mistake

Disability

Extension of limitation period in case of disability

21.—(1) If on the date when any right of action accrued for which a period of limitation is prescribed by this Act, the person to whom it accrued was under a disability, the action may be brought at any time before the expiration of six years from the date when the person ceased to be under a disability or died, whichever event first occurred, notwithstanding that the period of limitation has expired:

Provided that—

(*a*) this section shall not affect any case where the right of action first accrued to some person (not under a disability) through whom the person under a disability claims;

(*b*) when a right of action which has accrued to a person under a disability accrues, on the death of that person while still under a disability, to another person under a disability, no further extension of time shall be allowed by reason of the disability of the second person;

(*c*) no action to recover land or money charged on land shall be brought by virtue of this section by any person after the expiration of thirty years from the date on which the right of action accrued to that person or some person through whom he claims;

(*d*) this section shall not apply to any suit to recover a penalty or forfeiture, or sum by way thereof, by virtue of any written law, except where the action is brought by an aggrieved party.

(2) In the case of actions for damages for negligence, nuisance or breach of duty (whether the duty exists by virtue of a contract or of provision made by or under any written law or independently of any contract or any such provision) where the damages claimed by the plantiff for the negligence, nuisance or breach of duty consist of or include damages in respect of personal injuries to any person—

(*a*) subsection (1) shall have effect as if for the words "six years" there were substituted the words "three years"; and

(*b*) this section shall not apply unless the plaintiff proves that the person under the disability was not, at the time when the right of action accrued to him, in the custody of a parent.

(3) For the purposes of this section "parent" in relation to any person has the meaning assigned to "parent" in Part I of the Statute Law (Miscellaneous Provisions) Act. Cap. 5:01

Acknowledgment and Part Payment

Fresh accrual of action on acknowledgment or part payment

22.—(1) Where there has accrued any right of action (including a foreclosure action) to recover land or any right of a mortgagee of personal property to bring a foreclosure action in respect of the property, and—

(*a*) the person in possession of the land or personal property acknowledges the title of the person to whom the right of action has accrued; or

(*b*) in the case of a foreclosure or other action by a mortgagee, the person in possession of the land or personal property or the person liable for the mortgage debt makes any payment in respect thereof, whether of principal or interest,

the right shall be deemed to have accrued on and not before the date of the acknowledgment or payment.

(2) Subsection (1) shall apply to a right of action to recover land accrued to a person entitled to an estate or interest taking effect on the determination of an entailed interest against whom time is running under section 13, and on the making of the acknowledgment that section shall cease to apply to the land.

(3) Where a mortgagee is by virtue of the mortgage in possession of any mortgaged land and either receives any sum in respect of the principal or interest of the mortgage debt or acknowledges the title of the mortgagor, or his equity of redemption, an action to redeem the land in his possession may be brought at any time before the expiration of twelve years from the date of the payment or acknowledgment.

(4) Where any right of action has accrued to recover any debt or other liquidated pecuniary claim, or any claim to the personal estate of a deceased person or to any share or interest therein, and the person liable or accountable therefor acknowledges the claim or makes any payment in respect thereof, the right shall be deemed to have accrued on and not before the date of the acknowledgment or the last payment:

Provided that a payment of a part of the rent or interest due at any time shall not extend the period for claiming the remainder then due, but any payment of interest shall be treated as a payment in respect of the principal debt.

Normal provisions as to acknowledgments and part payments

23.—(1) Every such acknowledgment as is mentioned in section 22 shall be in writing and signed by the person making the acknowledgment.

(2) Any such acknowledgment or payment as is mentioned in section 22 may be made by the agent of the person by whom it is required to be made to the person, or to an agent of the person, whose title or claim is being acknowledged or, as the case may be, in respect of whose claim the payment is being made.

Effect of acknowledgment or part payment on persons other than the maker or recipient

24.—(1) An acknowledgment of the title to any land or mortgaged personalty, by any person in possession thereof shall bind all other persons in possession during the ensuing period of limitation.

(2) A payment in respect of a mortgage debt by the mortgagor or any person in possession of the mortgaged property shall, so far as any right of the mortgagee to foreclose or otherwise to recover the property is concerned, bind all other persons in possession of the mortgaged property during the ensuing period of limitation.

(3) Where two or more mortgagees are by virtue of the mortgage in possession of the mortgaged land, an acknowledgment of the mortgagor's title or of his equity of redemption by one of the mortgagees shall only bind him and his successors and shall not bind any other mortgagee or his successors, and where the mortgagee by whom the acknowledgment is given is entitled to a part of the mortgaged land and not to any ascertained part of the mortgage debt, the mortgagor shall be entitled to redeem that part of the land on payment, with interest, of the part of the mortgage debt which bears the same proportion to the whole of the debt as the value of the part of the land bears to the whole of the mortgaged land.

(4) Where there are two or more mortgagors, and the title or right to redemption of one of the mortgagors is acknowledged in the circumstances referred to in subsection (3), the acknowledgment shall be deemed to have been made to all the mortgagors.

(5) An acknowledgment of any debt or other liquidated pecuniary claim shall bind the acknowledgor and his successors but not any other person:

Provided that an acknowledgment made after the expiration of the period of limitation prescribed for the bringing of an action to recover the debt or other claim shall not bind any successor on whom the liability devolves on the determination of a preceding estate or interest in property under a settlement taking effect before the date of the acknowledgment.

(6) A payment made in respect of any debt or other liquidated pecuniary claim shall bind all persons liable in respect thereof:

Provided that a payment after the expiration of the period of limitation prescribed for the bringing of an action to recover the debt or other claim shall not bind any person other than the person making the payment and his successors, and shall not bind any successor on whom the liability devolves on the determination of a preceding estate or interest in property under a settlement taking effect before the date of the payment.

(7) An acknowledgment by one of several personal representatives of any claim to the personal estate of a deceased person, or

to any share or interest therein, or a payment by one of several personal representatives in respect of any such claim shall bind the estate of the deceased person.

(8) In this section the expression "successor", in relation to any mortgagee or person liable in respect of any debt or claim means his personal representatives and any other person on whom the rights under the mortgage or, as the case may be, the liability in respect of the debt or claim devolve, whether on death or bankruptcy or the disposition of property or the determination of a limited estate or interest in settled property or otherwise.

Fraud and Mistake

Postponement of limitation period in case of fraud or mistake

25. Where, in the case of any action for which a period of limitation is prescribed by this Act, either—

(*a*) the action is based upon the fraud of the defendant or his agent or of any person through whom he claims or his agent; or

(*b*) the right of action is concealed by the fraud of any such person as is mentioned in paragraph (*a*); or

(*c*) the action is for relief from the consequences of a mistake,

the period of limitation shall not begin to run until the plaintiff has discovered the fraud or the mistake, as the case may be, or could with reasonable diligence have discovered it:

Provided that nothing in this section shall enable any action to be brought to recover, or enforce any charge against, or set aside any transaction affecting, any property which—

(i) in the case of fraud, has been purchased for valuable consideration by a person who was not a party to the fraud and did not at the time of the purchase know or have reason to believe that any fraud had been committed; or

(ii) in the case of mistake, has been purchased for valuable consideration, subsequently to the transaction in which the mistake was made, by a person who did not know or have reason to believe that the mistake had been made.

PART IV

General

Application of Act and other limitation law to arbitrations

26.—(1) This Act and any other written law relating to the limitation of actions shall apply to arbitrations as they apply to actions in the High Court.

(2) Notwithstanding any term in an arbitration agreement to

the effect that no cause of action shall accrue in respect of any matter required by the agreement to be referred until an award is made under the agreement, the cause of action shall, for the purpose of this Act and of any other written law relating to the limitation of actions (whether in their application to arbitrations or to other proceedings), be deemed to have accrued in respect of any such matter at the time when it would have accrued but for that term in the agreement.

(3) For the purposes of this Act and of any other written law relating to the limitation of actions, an arbitration shall be deemed to be commenced when one party to the arbitration serves on the other party or parties a notice requiring him or them to appoint an arbitrator or to agree to the appointment of an arbitrator, or, where the arbitration agreement provides that the reference shall be to a person named or designated in the agreement, requiring him or them to submit the dispute to the person so named or designated.

(4) Any such notice as is referred to in subsection (3) may be served in the manner prescribed by the Rules of the High Court for the service of summonses, as well as in any other manner provided in the arbitration agreement. Cap. 3:20 p. 103

(5) Where the High Court orders that an award be set aside or orders, after the commencement of an arbitration, that the arbitration shall cease to have effect with respect to the dispute referred, the Court may further order that the period between the commencement of the arbitration and the date of the order of the Court shall be excluded in computing the time prescribed by this Act or any other written law relating to the limitation of actions for the commencement of proceedings (including arbitration) with respect to the dispute referred.

(6) This section shall apply to an arbitration under any written law as well as to an arbitration pursuant to an arbitration agreement, and subsections (3) and (4) shall have effect, in relation to an arbitration under any written law, as if for the references to the arbitration agreement there were substituted references to such of the provisions of the written law as relate to the arbitration.

Provisions as to set-off or counterclaim

27. For the purposes of this Act, any claim by way of set-off or counterclaim shall be deemed to be a separate action and to have been commenced on the same date as the action in which the set-off or counterclaim is pleaded.

Acquiescence

28. Nothing in this Act shall affect any equitable jurisdiction to refuse relief on the ground of acquiescence or otherwise.

Application to registered land

29. Without prejudice to the operation of any written law relating to the registration of land this Act shall apply to land registered under such written law in the same manner and to the same extent as it applies to land not so registered, except that where, if the land were not registered, the estate of the person registered as proprietor would be extinguished, such estate shall not be extinguished but shall be deemed to be held by the person registered as proprietor for the time being in trust for the person who, by virtue of this Act, has acquired title against any person registered as proprietor, but without prejudice to the estates and interests of any other person interested in the land whose estate or interest is not extinguished by this Act.

Application to proceedings by or against the Government

30. Save as in this Act otherwise provided, this Act shall apply to proceedings by or against the Government as they apply to proceedings between private persons.

Miscellaneous savings

31. (1) Nothing in this Act shall—

(*a*) affect the right of the Government to land, or apply to an action brought by the Government to recover possession of land;

(*b*) apply to any proceedings by the Government for the recovery of any tax or duty or the interest thereon or to any forfeiture proceedings relating thereto or to any proceedings in respect of the forfeiture of a ship or of forfeiture under the Forfeiture Act;

Cap. 14:06

(*c*) apply to any criminal proceedings;

(*d*) apply to any proceedings in a local court based on customary law;

(*e*) affect any right to mines and minerals vested in the Government;

(2) For the purposes of this section "local court" means a court established under the Traditional Courts Act.

Cap. 3:03

Saving for other limitation laws

32. This Act shall not apply to any action or arbitration for which a period of limitation is prescribed by any other written law or to any action or arbitration to which the Government is a party and for which, if it were between private persons a period of limitation would be prescribed by any other written law.

Provisions as to actions already barred and pending suits

33. Nothing in this Act shall—

(*a*) enable any action to be brought which was barred before the commencement of this Act, except in so far as the cause of action or right of action may be revived by an acknowledgment or part payment made in accordance with this Act; or

(*b*) affect any action or arbitration commenced before the commencement of this Act or the title to any property which is the subject of any such action or arbitration.

Transitional provisions

34. The time for bringing proceedings in respect of a cause of action which arose before the commencement of this Act shall if it has not then already expired, expire at the time when it would have expired apart from the provisions of this Act or at the time when it would have expired if all the provisions of this Act had at all material times been in force, whichever is the later.

ARBITRATION

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ARBITRATION

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CHAPTER 6:03

ARBITRATION

An Act Relating to Arbitration 26 of 1967

[6TH NOVEMBER, 1967]

PART I

PRELIMINARY

1. This Act may be cited as the Arbitration Act. Short title

2. In this Act, unless there is anything repugnant in the subject or context— Interpretation

"arbitration agreement" means a written agreement to submit present or future differences to arbitration whether an arbitrator is named therein or not; and

"the Court" means the High Court.

PART II

GENERAL PROVISIONS

Effect of Arbitration Agreements, etc.

3. The authority of an arbitrator or umpire appointed by or by virtue of an arbitration agreement shall, unless a contrary intention is expressed in the agreement, be irrevocable except by leave of the Court. Authority of arbitrators and umpires to be irrevocable

4.—(1) An arbitration agreement shall not be discharged by the death of any party thereto, either as respects the deceased or any other party, but shall in such an event be enforceable by or against the personal representative of the deceased. Death of party

(2) The authority of an arbitrator shall not be revoked by the death of any party by whom he was appointed.

(3) Nothing in this section shall be taken to affect the operation of any written law or rule of law by virtue of which any right of action is extinguished by the death of a person.

5.—(1) Where it is provided by a term in a contract to which a bankrupt is a party that any differences arising thereout or in connection therewith shall be referred to arbitration, the said term shall, if the trustee in bankruptcy adopts the contract, be enforceable by or against him so far as relates to any such differences. Bankruptcy

(2) Where a person who has been adjudged bankrupt had, before the commencement of the bankruptcy, become a party to an arbitration agreement, and any matter to which the agreement applies requires to be determined in connection with or for the purposes of the bankruptcy proceedings, then, if the case is one to which subsection (1) does not apply, any other party to the agreement or, with the consent of the committee of inspection, the trustee in bankruptcy, may apply to the Court for an order directing that the matter in question shall be referred to arbitration in accordance with the agreement, and the Court may, if it is of opinion that, having regard to all the circumstances of the case, the matter ought to be determined by arbitration, make an order accordingly.

Staying court proceedings where there is submission to arbitration

6.—(1) If any party to an arbitration agreement, or any person claiming through or under him, commences any legal proceedings in any court against any other party to the agreement, or any person claiming through or under him, in respect of any matter agreed to be referred, any party to those legal proceedings may at any time after appearance, and before delivering any pleadings or taking any other steps in the proceedings, apply to that court to stay the proceedings, and that court, if satisfied that there is no sufficient reason why the matter should not be referred in accordance with the agreement, and that the applicant was, at the time when the proceedings were commenced, and still remains, ready and willing to do all things necessary to the proper conduct of the arbitration, may make an order staying the proceedings.

(2) Notwithstanding anything in this Part, if any party to a submission to arbitration made in pursuance of an agreement to which the protocol set out in the Second Schedule applies, or any person claiming through or under him, commences any legal proceedings in any court against any other party to the submission, or any person claiming through or under him, in respect of any matter agreed to be referred, any party to those legal proceedings may at any time after appearance, and before delivering any pleadings or taking any other steps in the proceedings, apply to that court to stay the proceedings, and that court, unless satisfied that the agreement or arbitration has become inoperative or cannot proceed or that there is not in fact any dispute between the parties with regard to the matter agreed to be referred, shall make an order staying the proceedings.

Reference of interpleader issues to arbitration

7. Where relief by way of interpleader is granted and it appears to the court that the claims in question are matters to which an arbitration agreement, to which the claimants are parties, applies, the court may direct the issue between the claimants to be determined in accordance with the agreement.

Arbitrators and Umpires

Appointment of arbitrator or umpire

8.—(1) Unless a contrary intention is expressed therein, every arbitration agreement shall, if no other mode of reference is provided, be deemed to include a provision that the reference shall be to a single arbitrator.

(2) The parties to an arbitration agreement may agree that the reference shall be to an arbitrator or arbitrators to be appointed by a person designated therein, either by name or as the holder for the time being of any office or appointment.

(3) Any appointment of an arbitrator or umpire may be made by name or by reference to the holder for the time being of any office or appointment.

Power of parties in certain cases to supply vacancy

9. Where an arbitration agreement provides that the reference shall be to two arbitrators, one to be appointed by each party, then, unless a contrary intention is expressed therein—

(*a*) if either of the appointed arbitrators refuses to act, or is incapable of acting, or dies, the party who appointed him may appoint a new arbitrator in his place;

(*b*) if, on such a reference, one party fails to appoint an arbitrator, either originally, or by way of substitution as aforesaid, for seven clear days after the other party, having appointed his arbitrator, has served the party making default with notice to make the appointment, the party who has appointed an arbitrator may appoint that arbitrator to act as sole arbitrator in the reference and his award shall be binding on both parties as if he had been appointed by consent:

Provided that the Court may set aside any appointment made in pursuance of this section.

Umpires

10.—(1) Unless a contrary intention is expressed therein, every arbitration agreement shall, where the reference is to two arbitrators, be deemed to include a provision that the two arbitrators shall appoint an umpire immediately after they are themselves appointed.

(2) Unless a contrary intention is expressed therein, every arbitration agreement shall, where such a provision is applicable to the reference, be deemed to include a provision that if the arbitrators have delivered to any party to the arbitration agreement, or to the umpire, a notice in writing stating that they cannot agree, the umpire may forthwith enter on the reference in lieu of the arbitrators.

(3) At any time after the appointment of an umpire, however appointed, the Court may, on the application of any party to the reference and notwithstanding anything to the contrary in the

arbitration agreement, order that the umpire shall enter upon the reference in lieu of the arbitrators and as if he were a sole arbitrator.

Agreements for reference to three arbitrators

11.—(1) Where an arbitration agreement provides that the reference shall be to three arbitrators, one to be appointed by each party and the third to be appointed by the two appointed by the parties, the agreement shall have effect as if it provided for the appointment of an umpire, and not for the appointment of a third arbitrator, by the two arbitrators appointed by the parties.

(2) Where an arbitration agreement provides that the reference shall be to three arbitrators to be appointed otherwise than as mentioned in subsection (1), the award of any two of the arbitrators shall be binding.

Power of Court in certain cases to appoint an arbitrator or umpire

12. In any of the following cases—

(*a*) where an arbitration agreement provides that the reference shall be to a single arbitrator, and all the parties do not, after differences have arisen, concur in the appointment of an arbitrator;

(*b*) if an appointed arbitrator refuses to act, or is incapable of acting, or dies, and the arbitration agreement does not show that it was intended that the vacancy should not be supplied and the parties do not supply the vacancy;

(*c*) where the parties or two arbitrators are at liberty to appoint an umpire or third arbitrator and do not appoint him, or where two arbitrators are required to appoint an umpire and do not appoint him;

(*d*) where an appointed umpire or third arbitrator refuses to act, or is incapable of acting, or dies, and the arbitration agreement does not show that it was intended that the vacancy should not be supplied, and the parties or arbitrators do not supply the vacancy,

any party may serve the other parties or the arbitrators, as the case may be, with a written notice to appoint or, as the case may be, concur in appointing, an arbitrator, umpire or third arbitrator, and if the appointment is not made within seven clear days after the service of the notice, the Court may, on application by the party who gave the notice, appoint an arbitrator, umpire or third arbitrator who shall have the like powers to act in the reference and make an award as if he had been appointed by consent of all parties.

Conduct of Proceedings, Witnesses, etc.

Conduct of proceedings, witnesses. etc.

13.—(1) Unless a contrary intention is expressed therein, every arbitration agreement shall, where such a provision is applicable to the reference, be deemed to contain a provision that the parties to the reference, and all persons claiming through them respectively, shall, subject to any legal objection, submit to be examined by the arbitrator or umpire, on oath or affirmation, in relation to the matters in dispute, and shall, subject as aforesaid, produce before the arbitrator or umpire all documents within their possession or power respectively which may be required or called for, and do all other things which during the proceedings on the reference the arbitrator or umpire may require.

(2) Unless a contrary intention is expressed therein, every arbitration agreement shall, where such a provision is applicable to the reference, be deemed to contain a provision that the witnesses on the reference shall, if the arbitrator or umpire thinks fit, be examined on oath or affirmation.

(3) An arbitrator or umpire shall, unless a contrary intention is expressed in the arbitration agreement, have power to administer oaths to, or take the affirmations of, the parties to and witnesses on a reference under the agreement.

(4) The Court may issue the same processes to any of the parties and witnesses whom the arbitrator or umpire desires to examine as the Court may issue in suits tried before it.

(5) Persons not attending in accordance with such process or making any other default, or refusing to give their evidence, or guilty of any contempt to the arbitrator or umpire during the investigation of the matters referred, shall be subject to the like disadvantages, penalties, and punishments, by order of the Court on the representation of the arbitrator or umpire, as they would incur for the like offences in suits tried before the Court.

(6) The Court shall have, for the purpose of and in relation to a reference, the same power of making orders in respect of—

(*a*) security for costs;

(*b*) discovery of documents and interrogatories;

(*c*) the giving of evidence by affidavit;

(*d*) examination on oath of any witness before an officer of the Court or any other person, and the issue of a commission or request for the examination of a witness out of the jurisdiction;

(*e*) the preservation, interim custody or sale of any goods which are the subject matter of the reference;

(*f*) securing the amount in dispute in the reference;

(*g*) the detention, preservation or inspection of any property or thing which is the subject of the reference or as to which any question may arise therein, and authorizing for any of the purposes aforesaid any persons to enter upon or into any land or building in the possession of any party to the reference, or authorizing any samples to be taken or any observation to be made or experiment to be tried which may be necessary or expedient for the purpose of obtaining full information or evidence; and

(*h*) interim injunctions or the appointment of a receiver,

as it has for the purpose of and in relation to an action or matter in the Court:

Provided that nothing in this subsection shall be taken to prejudice any power which may be vested in an arbitrator or umpire of making orders with respect to any of the matters aforesaid.

Provisions as to Awards

Time for making award

14.—(1) Subject to subsection (3), section 23 (2), and anything to the contrary in the arbitration agreement, an arbitrator or umpire shall have power to make an award at any time.

(2) The time, if any, limited for making an award, whether under this Act or otherwise, may from time to time be enlarged by order of the Court, whether that time has expired or not.

(3) The Court may, on the application of any party to a reference, remove an arbitrator or umpire who fails to use all reasonable dispatch in entering on and proceeding with the reference and making an award, and an arbitrator or umpire who is removed by the Court under this subsection shall not be entitled to receive any remuneration in respect of his services.

For the purposes of this subsection, the expression "proceeding with the reference" includes, in a case where two arbitrators are unable to agree, giving notice of that fact to the parties and to the umpire.

Interim awards

15. Unless a contrary intention is expressed therein, every arbitration agreement shall, where such a provision is applicable to the reference, be deemed to contain a provision that the arbitrator or umpire may, if he thinks fit, make an interim award, and any reference in this Part to an award includes a reference to an interim award.

Specific performance

16. Unless a contrary intention is expressed therein, every arbitration agreement shall, where such a provision is applicable to the reference, be deemed to contain a provision that the

arbitrator or umpire shall have the same power as the Court to order specific performance of any contract other than a contract relating to land or any interest in land.

Awards to be final

17. Unless a contrary intention is expressed therein, every arbitration agreement shall, where such a provision is applicable to the reference, be deemed to contain a provision that the award to be made by the arbitrator or umpire shall be final and binding on the parties and the persons claiming under them respectively.

Power to correct slips

18. Unless a contrary intention is expressed in the arbitration agreement, the arbitrator or umpire shall have power to correct in an award any clerical mistake or error arising from any accidental slip or omission.

Costs, Fees and Interest

Costs

19.—(1) Unless a contrary intention is expressed therein, every arbitration agreement shall be deemed to include a provision that the costs of the reference and award shall be in the discretion of the arbitrator or umpire, who may direct to and by whom and in what manner those costs or any part thereof shall be paid, and may tax or settle the amount of costs to be so paid or any part thereof, and may award costs to be paid as between legal practitioner and client.

(2) Any costs directed by an award to be paid shall, unless the award otherwise directs, be taxable in the Court.

(3) Any provision in an arbitration agreement to the effect that the parties or any party thereto shall in any event pay their or his own costs of the reference or award or any part thereof shall be void, and this Part shall, in the case of an arbitration agreement containing any such provision, have effect as if that provision were not contained therein:

Provided that nothing in this subsection shall invalidate such a provision when it is a part of an agreement to submit to arbitration a dispute which has arisen before the making of that agreement.

(4) If no provision is made by an award with respect to the costs of the reference, any party to the reference may, within fourteen days of the publication of the award or such further time as the Court may direct, apply to the arbitrator for an order directing by and to whom those costs shall be paid, and thereupon the arbitrator shall, after hearing any party who may desire to be heard, amend his award by adding thereto such directions as he may think proper with respect to the payment of the costs of the reference.

Taxation of arbitrator's or umpire's fees

20.—(1) If in any case an arbitrator or umpire refuses to deliver his award except on payment of the fees demanded by him, the Court may, on an application for the purpose, order that the arbitrator or umpire shall deliver the award to the applicant on payment into court by the applicant of the fees demanded, and further that the fees demanded shall be taxed by the taxing officer and that out of the money paid into court there shall be paid out to the arbitrator or umpire by way of fees such sum as may be found reasonable on taxation and that the balance of the money, if any, shall be paid out to the applicant.

(2) An application for the purposes of this section may be made by any party to the reference unless the fees demanded have been fixed by a written agreement between him and the arbitrator or umpire.

(3) A taxation of fees under this section may be reviewed in the same manner as a taxation of costs.

(4) The arbitrator or umpire shall be entitled to appear and be heard on any taxation or review of taxation under this section.

Interest on awards

21. A sum directed to be paid by an award shall, unless the award otherwise directs, carry interest as from the date of the award and at the same rate as a judgment debt.

Special Cases, Remission and Setting aside of Awards, etc.

Statement of case

22.—(1) An arbitrator or umpire may, and shall if so directed by the Court, state—

(*a*) any question of law arising in the course of the reference; or

(*b*) an award or any part of an award,

in the form of a special case for the decision of the Court.

(2) A special case with respect to an interim award or with respect to a question of law arising in the course of a reference may be stated, or may be directed by the Court to be stated, notwithstanding that proceedings under the reference are still pending.

(3) A decision of the Court under this section shall be deemed to be a judgment of the Court within the meaning of section 22 of the Supreme Court of Appeal Ordinance, 1963 (which relates to the jurisdiction of the Supreme Court of Appeal to hear and determine appeals from, any judgment of the High Court), but no appeal shall lie from the decision of the Court on any case stated under subsection (1)(*a*) without the leave of the Court or of the Supreme Court of Appeal.

40 of 1963

Power to remit award

23.—(1) In all cases of reference to arbitration the Court may from time to time remit the matters referred, or any of them, to the reconsideration of the arbitrator or umpire.

(2) Where an award is remitted, the arbitrator or umpire shall, unless the order otherwise directs, make his award within three months after the date of the order.

Removal of arbitrator and setting aside of award

24.—(1) Where an arbitrator or umpire has misconducted himself or the proceedings, the Court may remove him.

(2) Where an arbitrator or umpire has misconducted himself or the proceedings, or an arbitration or award has been improperly procured, the Court may set the award aside.

(3) Where an application is made to set aside an award, the Court may order that any money made payable by the award shall be brought into court or otherwise secured pending the determination of the application.

Power of Court to give relief where arbitrator is not impartial or the dispute involves question of fraud

25.—(1) Where an agreement between any parties provides that disputes which may arise in the future between them shall be referred to an arbitrator named or designated in the agreement, and after a dispute has arisen any party applies, on the ground that the arbitrator so named or designated is not or may not be impartial, for leave to revoke the authority of the arbitrator or for an injunction to restrain any other party or the arbitrator from proceeding with the arbitration, it shall not be a ground for refusing the application that the said party at the time when he made the agreement knew, or ought to have known, that the arbitrator, by reason of his relation towards any other party to the agreement or of his connection with the subject referred, might not be capable of impartiality.

(2) Where an agreement between any parties provides that disputes which may arise in the future between them shall be referred to arbitration, and a dispute which so arises involves the question whether any such party has been guilty of fraud, the Court shall, so far as may be necessary to enable that question to be determined by the Court, have power to order that the agreement shall cease to have effect and power to give leave to revoke the authority of any arbitrator or umpire appointed by or by virtue of the agreement.

(3) In any case where by virtue of this section the Court has power to order that an arbitration agreement shall cease to have effect or to give leave to revoke the authority of an arbitrator or umpire, the Court may refuse to stay any action brought in breach of the agreement.

Power of Court where arbitrator is removed or authority of arbitrator is revoked

26.—(1) Where an arbitrator (not being a sole arbitrator), or two or more arbitrators (not being all the arbitrators) or an umpire who has not entered on the reference is or are removed by the Court, the Court may, on the application of any party to the arbitration agreement, appoint a person or persons to act as arbitrator or arbitrators or umpire in place of the person or persons so removed.

(2) Where the authority of an arbitrator or arbitrators or umpire is revoked by leave of the Court, or a sole arbitrator or all the arbitrators or an umpire who has entered on the reference is or are removed by the Court, the Court may, on the application of any party to the arbitration agreement, either—

(*a*) appoint a person to act as sole arbitrator in place of the person or persons removed; or

(*b*) order that the arbitration agreement shall cease to have effect with respect to the dispute referred.

(3) A person appointed under this section by the Court as an arbitrator or umpire shall have the like power to act in the reference and to make an award as if he had been appointed in accordance with the terms of the arbitration agreement.

(4) Where it is provided (whether by means of a provision in the arbitration agreement or otherwise) that an award under an arbitration agreement shall be a condition precedent to the bringing of an action with respect to any matter to which the agreement applies, the Court, if it orders (whether under this section or under any other written law) that the agreement shall cease to have effect as regards any particular dispute, may further order that the provision making an award a condition precedent to the bringing of an action shall also cease to have effect as regards that dispute.

Enforcement of Award

Enforcement of award

27. An award on an arbitration agreement may, by leave of the Court, be enforced in the same manner as a judgment or order to the same effect, and where leave is so given, judgment may be entered in terms of the award.

Miscellaneous

Power of Court to extend time for commencing arbitration proceedings

28. Where the terms of an agreement to refer future disputes to arbitration provide that any claims to which the agreement applies shall be barred unless notice to appoint an arbitrator is given or an arbitrator is appointed or some other step to commence arbitration proceedings is taken within a time fixed by the agreement, and a dispute arises to which the agreement

applies, the Court, if it is of opinion that in the circumstances of the case undue hardship would otherwise be caused, and notwithstanding that the time so fixed has expired, may, on such terms, if any, as the justice of the case may require, but without prejudice to the provisions of any written law limiting the time for the commencement of arbitration proceedings, extend the time for such period as it thinks proper.

Terms as to costs, etc.

29. Any order made under this Part may be made on such terms as to costs or otherwise as the authority making the order thinks just:

Provided that this section shall not apply to any order made under section 6 (2).

Power of Chief Justice to make rules

30. The Chief Justice may make rules consistent with this Act as to—

(*a*) the filing of awards and all proceedings consequent thereon or incidental thereto;

(*b*) the filing and hearing of special cases and all proceedings consequent thereon or incidental thereto;

(*c*) the staying of any suit or proceeding in contravention of a submission to arbitration; and

(*d*) generally, all proceedings in court under this Act.

Government to be bound

31. This Part shall be binding on the Government.

Forms

32. The forms set forth in the First Schedule, or forms similar thereto, with such variations as the circumstances of each case require, may be used for the respective purposes there mentioned, and, if used, shall not be called in question.

Application of Part II to statutory arbitrations

33. Subject to section 34, this Part, except sections 4 (1), 5, 6 (2), 7, 19 (3), 25, 26 and 28, shall apply to every arbitration under any other written law (whether passed before or after the commencement of this Act) as if the arbitration were pursuant to an arbitration agreement and as if that other written law were an arbitration agreement, except in so far as this Act is inconsistent with that other written law or with any rules or procedure authorized or recognized thereby.

Operation of Part II

34. This Part shall not affect any arbitration commenced before the commencement of this Act, but shall apply to an arbitration so commenced after the commencement of this Act under an agreement made before the commencement of this Act.

Application of this Act to arbitration under certain contracts 14 Geo. 6, c. 27

35. Whenever in any contract it is directed or agreed that any arbitration under or in pursuance of such contract shall be under the Arbitration Act, 1950, of the United Kingdom, or any Act which that Act replaced, such contract shall be read as if this Act were substituted for the aforesaid Act of the United Kingdom,

PART III

Enforcement of Certain Foreign Awards

Awards to which Part III applies

36.—(1) This Part applies to any award made after the 28th of July, 1924—

(*a*) in pursuance of an agreement for arbitration to which the protocol set out in the Second Schedule applies; and

(*b*) between persons of whom one is subject to the jurisdiction of some one of such Powers as the Minister, being satisfied that reciprocal provisions have been made, may by notice published in the *Gazette* declare to be parties to the convention set out in the Third Schedule, and of whom the other is subject to the jurisdiction of some other of the Powers aforesaid; and

(*c*) in one of such territories as the Minister, being satisfied that reciprocal provisions have been made, may by notice published in the *Gazette* declare to be territories to which the said convention applies;

and an award to which this Part applies is in this Part referred to as "a foreign award".

(2) The Minister may by a subsequent notice vary or revoke any notice previously made under this section.

(3) Where Malaŵi becomes a party to any protocol or convention in lieu of or in addition to, those referred to in subsection (1) the Minister may, by regulations, amend the Second and Third Schedules and may make any necessary amendments to this Part.

Effect of foreign awards

37.—(1) A foreign award shall, subject to this Part, be enforceable in Malaŵi either by action or in the same manner as the award of an arbitrator is enforceable by virtue of section 27.

(2) Any foreign award which would be enforceable under this Part shall be treated as binding for all purposes on the persons as between whom it was made, and may accordingly be relied on by any of those persons by way of defence, set off or otherwise in any legal proceedings in Malaŵi, and any references in this Part to enforcing a foreign award shall be construed as including references to relying on an award.

Conditions for enforcement of foreign awards

38.—(1) In order that a foreign award may be enforceable under this Part it must have—

(*a*) been made in pursuance of an agreement for arbitration which was valid under the law by which it was governed;

(*b*) been made by the tribunal provided for in the agreement or constituted in manner agreed upon by the parties;

(*c*) been made in conformity with the law governing the arbitration procedure;

(*d*) become final in the country in which it was made;

(*e*) been in respect of a matter which may lawfully be referred to arbitration under the law of Malaŵi,

and the enforcement thereof must not be contrary to the public policy or the law of Malaŵi.

(2) Subject to this subsection, a foreign award shall not be enforceable under this Part if the Court is satisfied that—

(*a*) the award has been annulled in the country in which it was made; or

(*b*) the party against whom it is sought to enforce the award was not given notice of the arbitration proceedings in sufficient time to enable him to present his case, or was under some legal incapacity and was not properly represented; or

(*c*) the award does not deal with all the questions referred or contains decisions on matters beyond the scope of the agreement for arbitration:

Provided that, if the award does not deal with all the questions referred, the Court may, if it thinks fit, either postpone the enforcement of the award or order its enforcement subject to the giving of such security by the person seeking to enforce it as the Court may think fit.

(3) If a party seeking to resist the enforcement of a foreign award proves that there is any ground other than the non-existence of the conditions specified in subsection (1) (*a*), (*b*) and (*c*), or the existence of the conditions specified in subsection (2) (*b*) and (*c*) entitling him to contest the validity of the award, the Court may, if it thinks fit, either refuse to enforce the award or adjourn the hearing until after the expiration of such period as appears to the Court to be reasonably sufficient to enable that party to take the necessary steps to have the award annulled by the competent tribunal.

Evidence

39.—(1) The party seeking to enforce a foreign award must produce—

(*a*) the original award or a copy thereof duly authenticated in manner required by the law of the country in which it was made; and

(*b*) evidence proving that the award has become final; and

(*c*) such evidence as may be necessary to prove that the award is a foreign award and that the conditions mentioned in section 38 (1) (*a*), (*b*) and (*c*) are satisfied.

(2) In any case where any document required to be produced under subsection (1) is in a foreign language, it shall be the duty of the party seeking to enforce the award to produce a translation certified as correct by a diplomatic or consular agent of the country to which that party belongs, or certified as correct in such other manner as may be sufficient according to the law of Malaŵi.

(3) Subject to this section, the Chief Justice may make rules, with respect to the evidence which must be furnished by a party seeking to enforce an award under this Part.

Meaning of "final award"

40. For the purposes of this Part, an award shall not be deemed final if any proceedings for the purpose of contesting the validity of the award are pending in the country in which it was made.

Saving for other rights, etc.

41. Nothing in this Part shall—

(*a*) prejudice any rights which any person would have had of enforcing in Malaŵi any award or of availing himself in Malaŵi of any award if this Part had not been enacted; or

(*b*) apply to any award made on an arbitration agreement governed by the law of Malaŵi.

s. 32

FIRST SCHEDULE

Reference to Single Arbitrator

FORM I

In the matter of the Arbitration Act (Cap. 6:03)

Whereas differences have arisen and are still subsisting between A.B. of ..... and C.D. of ..... concerning .....

NOW WE, the said A.B. and C.D. do hereby agree to refer the said matters in difference to the award of X.Y.

(*Signed*) A.B .....
C.D. .....

Dated the .....

FORM II

REFERENCE OF PARTICULAR DISPUTE TO SINGLE ARBITRATOR

In the matter of the Arbitration Act (Cap. 6:03)

WHEREAS differences have arisen and are still subsisting between A.B. of ..... and C.D. of ..... concerning .....

NOW WE the said A.B. and C.D. do hereby agree to refer the said matters in difference to the award of X.Y.

(*Signed*) A.B .....
C.D. .....

Dated the .....

FORM III

APPOINTMENT OF SINGLE ARBITRATOR UNDER AGREEMENT TO REFER FUTURE DIFFERENCES TO ARBITRATION

In the matter of the Arbitration Act (Cap. 6:03)

WHEREAS, by an agreement in writing, dated the ..... day of ....., and made between A.B. of .....and C.D. of ....., it is provided that differences arising between the parties thereto shall be referred to an arbitrator as therein mentioned.

AND WHEREAS differences within the meaning of the said provision have arisen and are still subsisting between the said parties concerning .....
.....
.....

NOW WE, the said parties, A.B. and C.D., do hereby refer the said matter in difference to the award of X.Y.

(*Signed*) A.B .....
C.D. .....

Dated the .....

FORM IV

ENLARGEMENT OF TIME BY ARBITRATOR BY ENDORSEMENT ON ARBITRATION AGREEMENT

In the matter of the Arbitration Act (Cap. 6:03) and an arbitration between A.B. of ..... and C.D. of .....

I hereby enlarge the time of making my award in respect of the matters in difference referred to me by the within (or above) arbitration agreement until the ..... day of .....

(*Signed*) X.Y .....
Arbitrator

FORM V

SPECIAL CASE

In the matter of the Arbitration Act (Cap. 6:03) and an arbitration between A.B. of ..... and C.D. of .....

The following special case is, pursuant to section 22 of the said Act, stated for the opinion of the High Court.

(Here state the facts concisely in numbered paragraphs).

The questions of law for the opinion of the said Court are—

Firstly, whether .....
.....

Secondly, whether .....
.....

(*Signed*) X.Y .....
Arbitrator

Dated the .....

FORM VI

AWARD

In the matter of the Arbitration Act (Cap. 6:03) and an arbitration between A.B. of ..... and C.D. of .....

WHEREAS, in pursuance of an agreement in writing dated the ..... day of ..... , made between A.B. of ..... and C.D. of ..... the said A.B. and C.D. have referred to me X.Y. the matters in difference between them concerning (or as the case may be).

NOW I, the said X.Y. having duly considered the matters submitted to me, do hereby make an award as follows—

I award—

(1) That .....
.....

(2) That .....
.....

(*Signed*) X.Y .....
Arbitrator

Dated the .....

SECOND SCHEDULE

ss. 6, 36

Protocol on Arbitration Clauses Signed on Behalf of the United Kingdom at a Meeting of the Assembly of the League of Nations held on the Twenty-Fourth Day of September, Nineteen Hundred and Twenty-Three

The undersigned, being duly authorized, declare that they accept, on behalf of the countries which they represent, the following provisions:—

1. Each of the Contracting States recognizes the validity of an agreement whether relating to existing or future differences between parties, subject respectively to the jurisdiction of different Contracting States by which the parties to a contract agree to submit to arbitration all or any differences that may arise in connecion with such contract relating to commercial matters or to any other matter capable of settlement by arbitration, whether or not the arbitration is to take place in a country to whose jurisdiction none of the parties is subject.

Each Contracting State reserves the right to limit the obligation mentioned above to contracts which are considered as commercial under its national law. Any Contracting State which avails itself of this right will notify the Secretary-General of the League of Nations, in order that the other Contracting States may be so informed.

2. The arbitral procedure, including the constitution of the arbitral tribunal, shall be governed by the will of the parties and by the law of the country in whose territory the arbitration takes place.

The Contracting States agree to facilitate all steps in the procedure which require to be taken in their own territories, in accordance with the provisions of their law governing arbitral procedure applicable to existing difference.

3. Each Contracting State undertakes to ensure the execution by its authorities and in accordance with the provisions of its national laws of arbitral awards made in its own territory under the preceding articles.

4. The tribunals of the Contracting Parties, on being seized of a dispute regarding a contract made between persons to whom Article 1 applies and including an arbitration agreement whether referring to present or future differences which is valid in virtue of the said article and capable of being carried into effect, shall refer the parties on the application of either of them to the decision of the arbitrators.

Such reference shall not prejudice the competence of the judicial tribunals in case the agreement or the arbitration cannot proceed or become inoperative.

5. The present Protocol, which shall remain open for signature by all States, shall be ratified. The ratifications shall be deposited as soon as possible with the Secretary-General of the League of Nations, who shall notify such deposit to all the signatory States.

6. The present Protocol shall come into force as soon as two ratifications have been deposited. Thereafter it will take effect, in the case of each Contracting State, one month after the notification by the Secretary-General of the deposit of its ratification.

7. The present Protocol may be denounced by any Contracting State on giving one year's notice. Denunciation shall be effected by a notification addressed to the Secretary-General of the League, who will immediately transmit copies of such notification to all the other signatory States and inform them of the date on which it was received. The denunciation shall take effect one year after the date on which it was notified to the Secretary-General, and shall operate only in respect of the notifying State.

8. The Contracting States may declare that their acceptance of the present Protocol does not include any or all of the under-mentioned territories: that is to say, their colonies, overseas possessions or territories, protectorates or the territories over which they exercise a mandate

The said States may subsequently adhere separately on behalf of any territory thus excluded. The Secretary-General of the League of Nations shall be informed as soon as possible of such adhesions. He shall notify such adhesions to all signatory States. They will take effect one month after the notification by the Secretary-General to all signatory States.

The Contracting States may also denounce the Protocol separately on behalf of any of the territories referred to above. Article 7 applies to such denunciation.

s. 36

THIRD SCHEDULE

Convention on the Execution of Foreign Arbitral Awards Signed at Geneva on behalf of the United Kingdom on the Twenty-Sixth Day of September, Nineteen Hundred and Twenty-Seven

Article 1

In the territories of any High Contracting Party to which the present Convention applies, an arbitral award made in pursuance of an agreement, whether relating to existing or future differences (hereinafter called "a submission to arbitration)" covered by the Protocol on Arbitration Clauses, opened at Geneva on September 24, 1923, shall be recognized as binding and shall be enforced in accordance with the rules of the procedure of the territory where the award is relied upon, provided that the said award has been made in a territory of one of the High Contracting Parties to which the present Convention applies and between persons who are subject to the jurisdiction of one of the High Contracting Parties.

To obtain such recognition or enforcement, it shall, further, be necessary—

(*a*) That the award has been made in pursuance of a submission to arbitration which is valid under the law applicable thereto;

(*b*) That the subject-matter of the award is capable of settlement by arbitration under the law of the country in which the award is sought to be relied upon;

(*c*) That the award has been made by the Arbitral Tribunal provided for in the submission to arbitration or constituted in the manner agreed upon by the parties and in conformity with the law governing the arbitration procedure;

(*d*) That the award has become final in the country in which it has been made, in the sense that it will not be considered as such if it is open to *opposition, appel* or *pourvoi en cassation* (in the countries where such forms of procedure exist) or if it is proved that any proceedings for the purpose of contesting the validity of the award are pending;

(*e*) That the recognition or enforcement of the award is not contrary to the public policy or to the principle of the law of the country in which it is sought to be relied upon.

ARTICLE 2

Even if the conditions laid down in Article 1 hereof are fulfilled, recognition and enforcement of the award shall be refused if the Court is satisfied—

(*a*) That the award has been annulled in the country in which it was made;

(*b*) That the party against whom it is sought to use the award was not given notice of the arbitration proceedings in sufficient time to enable him to present his case, or that, being under a legal incapacity, he was not properly represented;

(*c*) That the award does not deal with the differences contemplated by or falling within the terms of the submission to arbitration or that it contains decisions on matters beyond the scope of the submission to arbitration.

If the award has not covered all the questions submitted to the arbitral tribunal, the competent authority of the country where recognition or enforcement of the award is sought can, if it thinks fit, postpone such recognition or enforcement or grant it subject to such guarantee as that authority may decide.

ARTICLE 3

If the party against whom the award has been made proves that, under the law governing the arbitration procedure, there is a ground, other than the grounds referred to in Article 1 (*a*) and (*c*) and Article 2 (*b*) and (*c*), entitling him to contest the validity of the award in a Court of Law, the Court may, if it thinks fit, either refuse recognition or enforcement of the award or adjourn the consideration thereof, giving such party a reasonable time within which to have the award annulled by the competent tribunal.

ARTICLE 4

The party relying upon an award or claiming its enforcement must supply, in particular:—

(1) The original award or a copy thereof duly authenticated, according to the requirements of the law of the country in which it was made;

(2) Documentary or other evidence to prove that the award has become final, in the sense defined in Article 1 (*d*), in the country in which it was made;

(3) When necessary, documentary or other evidence to prove that the conditions laid down in Article 1, paragraph 1 and paragraph 2 (*a*) and (*c*), have been fulfilled.

A translation of the award and of the other documents mentioned in this Article into the official language of the country where the award is sought to be relied upon may be demanded. Such translation must be certified correct by a diplomatic or consular agent of the country to which the party who seeks to rely upon the award belongs or by a sworn translator of the country where the award is sought to be relied upon.

ARTICLE 5

The provisions of the above Articles shall not deprive any interested party of the right of availing himself of an arbitral award in the manner and to the extent allowed by the law or the treaties of the country where such award is sought to be relied upon.

ARTICLE 6

The present Convention applies only to arbitral awards made after the coming into force of the Protocol on Arbitration Clauses, opened at Geneva on September 24th, 1923.

ARTICLE 7

The present Convention, which will remain open to the signature of all the signatories of the Protocol of 1923 on Arbitration Clauses, shall be ratified.

It may be ratified only on behalf of those Members of the League of Nations and non-Member States on whose behalf the Protocol of 1923 shall have been ratified.

Ratifications shall be deposited as soon as possible with the Secretary-General of the League of Nations, who will notify such deposit to all the signatories.

ARTICLE 8

The present Convention shall come into force three months after it shall have been ratified on behalf of two High Contracting Parties.

Thereafter, it shall take effect, in the case of each High Contracting Party, three months after the deposit of the ratification on its behalf with the Secretary-General of the League of Nations.

ARTICLE 9

The present Convention may be denounced on behalf of any Member of the League or non-Member State. Denunciation shall be notified in writing to the Secretary-General of the League of Nations, who will immediately send a copy thereof, certified to be in conformity with the notification, to all the other Contracting Parties, at the same time informing them of the date on which he received it.

The denunciation shall come into force only in respect of the High Contracting Party which shall have notified it and one year after such notification shall have reached the Secretary-General of the League of Nations.

The denunciation of the Protocol on Arbitration Clauses shall entail, *ipso facto*, the denunciation of the present Convention.

ARTICLE 10

The present Convention does not apply to the Colonies, Protectorates or Territories under suzerainty or mandate of any High Contracting Party unless they are specially mentioned.

The application of this Convention to one or more of such Colonies, Protectorates or Territories to which the Protocol on Arbitration Clauses, opened at Geneva on September 24th, 1923, applies can be effected at any time by means of a declaration addressed to the Secretary-General of the League of Nations by one of the High Contracting Parties.

Such declaration shall take effect three months after the deposit thereof.

The High Contracting Parties can at any time denounce the Convention for all or any of the Colonies, Protectorates or Territories referred to above. Article 9 hereof applies to such denunciation.

ARTICLE 11

A certified copy of the present Convention shall be transmitted by the Secretary-General of the League of Nations to every Member of the League of Nations and to every non-Member State which signs the same.

LOANS RECOVERY

CHAPTER 6:04

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CHAPTER 6:04

LOANS RECOVERY

ARRANGEMENT OF SECTIONS

SECTION

1. Short title
2. Interpretation
3. (1) Power to court to reopen money-lending transactions (*a*) in suits by creditors
   (2) (*b*) at instance of debtor
   (4) Application of section
   (5) Saving for *bona fide* assignee, etc.

An Act Relating to Money-lending Transactions

7 of 1934
24 of 1972
13 of 1974
G.N. 219/1964(N)

[2nd July, 1934]

1. This Act may be cited as the Loans Recovery Act. Short title

2. In this Act— Interpretation

"court" includes the High Court and any subordinate court and any Traditional Court other than a Regional Traditional Court or a court of a grade below that of a Grade AI Traditional Court.

3.—(1) Where proceedings are taken in any court for the recovery of any money lent after the commencement of this Act, or the enforcement of any agreement or security made or taken after the commencement of this Act, in respect of money lent either before or after the commencement of this Act, and there is evidence which satisfies the court that the interest charged in respect of the sum actually lent is excessive, or that the amounts charged for expenses, inquiries, fines, bonus, premium, renewals or any other charges, are excessive, and that, in either case, the transaction is harsh and unconscionable, or is otherwise such that a court of equity would give relief, the court may reopen the transaction, and take an account between the lender and the person sued, and may, notwithstanding any statement or settlement of the account or any agreement purporting to close previous dealings and create a new obligation, reopen any account already taken between them, and relieve the person sued from payment of any sum in excess of the sum adjudged by the court to be fairly due in respect of such principal, interest, and charges, as the court having regard to the risk and all the circumstances, may adjudge to be reasonable; and, if any such excess has been paid, or allowed in account, by the debtor, may order the creditor to

Power to court to reopen money-lending transactions (*a*) in suits by creditors

repay it; and may set aside, either wholly or in part, or revise, or alter, any security given or agreement made in respect of money lent by the lender, and if the lender has parted with the security may order him to indemnify the borrower or other person sued.

(b) at instance of debtor

(2) Any court in which proceedings might be taken for the recovery of money lent by a lender shall have and may, at the instance of the borrower or surety or other person liable, exercise the like powers as may be exercised under this section where proceedings are taken for the recovery of money lent; and the court shall have power, notwithstanding any provision or agreement to the contrary, to entertain any application under this Act by the borrower or surety, or other person liable, notwithstanding that the time for repayment of the loan, or any instalments thereof, may not have arrived.

(3) On any application relating to the admission or amount of a proof by a money-lender in any bankruptcy proceedings, the court may exercise the like powers as may be exercised under this section when proceedings are taken for the recovery of money.

Application of section

(4) The foregoing provisions of this section shall apply to any transaction which, whatever its form may be, is substantially one of money-lending.

Saving for *bona fide* assignee, etc.

(5) Nothing in the foregoing provisions of this section shall affect the rights of any *bona fide* assignee or holder for value without notice.

LAWS OF MALAŴI

VOL II

L.R.O. 1/2018

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CHAPTER 7:01

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CHAPTER 7:01

PENAL CODE

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An Act to establish a Code of Criminal Law.

[1st April, 1930]

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PART I

General Provisions

Chapter I—Preliminary

Short title

1. This Act may be cited as "The Penal Code" and hereinafter referred to as "this Code".

Savings of certain laws 1 of 2011

2. —(1) Nothing in this Code shall affect—

(*a*) the liability, trial or punishment of a person for an offence against the common law or against any other law in force in the Republic other than this Code;

(*b*) the liability of a person to be tried or punished for an offence under the provisions of any law in force in relation to the jurisdiction of courts in respect of acts done beyond the ordinary jurisdiction of such courts;

(*c*) the power of any court to punish a person for contempt of such court;

(*d*) the liability or trial of a person, or the punishment of a person under any sentence passed or to be passed, in respect of any act done or commenced before the commencement of this Code;

(*e*) any power of the President to grant any pardon or to remit or commute in whole or in part or to respite the execution of any sentence passed or to be passed; or

(*f*) any of the Acts or Regulations for the time being in force for the Defence Force of Malaŵi or the Malaŵi Police Service.

(2) Where a person commits an offence which is punishable under this Code and is also punishable under another Act or Regulation, he shall not be punished for that offence both under that Act or Regulation and also under this Code.

Chapter II—Interpretation

General rule of construction of the Code

1 of 2011

3. This Code shall be interpreted in accordance with the principles of legal interpretation that—

(*a*) take full account of the principles and provisions enshrined in the Constitution; and

(*b*) where applicable, have regard to common law and comparable English criminal law.

Interpretation

1 of 2011

4. In this Code, unless the context otherwise requires—

"Act" includes any subsidiary legislation made under the authority of any Act;

"court" means a court of competent jurisdiction;

"dangerous harm" means harm endangering life;

"dwelling-house" includes any building or structure or part of a building or structure which is for the time being kept by the owner or occupier for the residence therein of himself, his family or servants or any of them, and it is immaterial that it is from time to time uninhabited; a building or structure adjacent to or occupied with a dwelling-house is deemed to be part of the dwelling-house if there is a communication between such building or structure and the dwelling-house, either immediate or by means of a covered and enclosed passage leading from the one to the other, but not otherwise;

"felony" means an offence which is declared by law to be a felony or, if not declared to be a misdemeanor, is punishable, without proof of previous conviction, with death, or with imprisonment with hard labour for three years or more;

"grievous harm" means any harm which amounts to a main or dangerous harm, or seriously or permanently injures health or which is likely so to injure health, or which extends to permanent disfigurement or to any permanent or serious injury to any external or internal organ, membrane or sense;

"harm" means any bodily hurt, disease or disorder whether permanent or temporary;

1 of 2011

"husband" or "wife" includes a person living in a marriage relationship as recognized by section 22 (5) of the Constitution;

1 of 2011

"judicial proceeding" includes any proceeding had or taken in or before any court, tribunal, commission of inquiry, or person, in which evidence may be taken on oath or not;

"knowingly" used in connexion with any term denoting uttering or using, implies knowledge of the character of the thing uttered or used;

"maim" means the destruction or permanent disabling of any external or internal organ, membrane or sense;

"misdemeanor" means any offence which is not a felony;

"money" includes bank notes, bank drafts, cheques and any other orders, warrants or requests for the payment of money;

"night" or "night-time" means the interval between half-past six o'clock in the evening and half-past six o'clock in the morning;

"oath" includes affirmation or declaration;

"offence" means an act, attempt or omission punishable by law; 1 of 2011

"person" and "owner" and other like term when used with reference to property includes corporations of all kinds and any other association of persons capable of owning property, and also when so used includes the Government;

"person employed in the public service" means any person holding any of the following offices or performing the duty thereof, whether as a deputy or otherwise, namely—

(*a*) any civil office including the office of President, the power of appointing a person to which or of removing from which is vested in the President or in a Minister or in any public Commission or Board; or

(*b*) any office to which a person is appointed or nominated by Act or by election; or

(*c*) any civil office, the power of appointing to which or removing from which is vested in any person or persons holding an office of any kind included in either paragraph (*a*) or (*b*); or 1 of 2011

(*d*) any office of arbitrator or umpire in any proceeding or matter submitted to arbitration by order or with the sanction of any court, or in pursuance of any Act; and the said term further includes—

(i) a member of a commission of inquiry appointed under or in pursuance of any Act;

(ii) any person employed to execute any process of a court; 1 of 2011

(iii) all persons employed in the Defence Force of Malaŵi or Police Service of the Republic; 1 of 2011

(iv) all persons in the employment of any government department of the Republic;

(v) a person acting as a Minister of religion of whatsoever denomination, in so far as he performs functions in respect of the notification of intending marriage or in respect of the

solemnization of marriage, or in respect of the making or keeping of any register or certificate of marriage, birth, baptism, death or burial, but not in any other respect;

(vi) a person employed in the service of any Local Authority or of any board, Council, society or other authority, whether incorporated or otherwise, established by or under any Act, other than the Companies Act;

Cap. 46:03

(vii) a person employed in any class of employment which may be specified as public service by the Minister by notice published in the *Gazette;*

1 of 2011

(viii) a member of Parliament;

(ix) any Chief.

"possession", "be in possession of" or "have in possession" includes not only having in one's own personal possession, but also knowingly having anything in the actual possession or custody of any other person, or having anything in any place (whether belonging to, or occupied by oneself or not) for the use or benefit of oneself or of any other person; and if there are two or more persons and any one or more of them with the knowledge and consent of the rest has or have anything in his or their custody or possession, it shall be deemed and taken to be in the custody and possession of each and all of them;

"property" includes anything animate or inanimate capable of being the subject of ownership;

"public" refers not only to all persons within Malaŵi but also to the persons inhabiting or using any particular place, or any number of such persons, and also to such indeterminate persons as may happen to be affected by the conduct in respect of which such expression is used;

"publicly" when applied to acts done means either—

(*a*) that they are so done in any public place as to be seen by any person whether such person be or be not in a public place; or

(*b*) that they are so done in any place not being a public place as to be likely to be seen by any person in a public place;

"public place" or "public premises" includes any public way and any building, place or conveyance to which, for the time being, the public are entitled or permitted to have access either without any condition or upon condition of making any payment, and any building or place which is for the time being used for any public or religious meetings or assembly or as an open court;

"public way" includes any highway, market place, square, street, bridge or other way which is lawfully used by the public;

"utter" includes using or dealing with or attempting to use or attempting to induce any person to use, deal with or act upon the thing in question; 1 of 2011

"valuable security" includes any document which is the property of any person, and which is evidence of the ownership of any property or of the right to recover or receive any property;

"vessel" has the same meaning as assigned thereto in the Inland Waters Shipping Act; Cap. 71:01 1 of 2011

"wound" means any incision or puncture which divides or pierces any exterior membrane of the body, and any membrane is exterior for the purpose of this definition which can be touched without dividing or piercing any other membrane.

Chapter III—Territorial Application of this Code

Offence committed partly within and partly beyond the jurisdiction 1 of 2011

5. Except as otherwise provided in this Code, when an act which, if wholly done within the jurisdiction of the court, would be an offence against this Code, is done partly within and partly beyond the jurisdiction, every person who within the jurisdiction does or takes any part in such act may be tried and punished under this Code in the same manner as if such act had been done wholly within the jurisdiction.

Jurisdiction and procedure in respect of certain offences committed in countries outside Malaŵi

6.—(1) Any Malaŵi citizen being a person employed in the public service of Malaŵi who commits, in any other country, when acting or purporting to act in the course of his employment, any offence which, if committed in Malaŵi, would be punishable in Malaŵi, shall be guilty of an offence of the same nature, and subject to the same punishment, as if the offence had been committed in Malaŵi.

(2) A person may be proceeded against, charged, tried and punished for an offence against this section in any place in Malaŵi in which he is apprehended or is in custody as if the offence had been committed in that place; and the offence shall, for all purposes incidental to or consequential on the trial or punishment thereof, be deemed to have been committed in that place.

Chapter IV—General Rules as to Criminal Responsibility

Ignorance of law

7. Ignorance of the law does not afford any excuse for any act or omission which would otherwise constitute an offence unless knowledge of the law by the offender is expressly declared to be an element of the offence.

Bona fide claim of right

8. A person is not criminally responsible in respect of an offence relating to property, if the act done or omitted to be done by him with respect to the property was done in the exercise of an honest claim of right and without intention to defraud.

Intention: motive
1 of 2011

9.—(1) Subject to the express provisions of this Code relating to negligent acts and omissions, a person is not criminally responsible for an act or omission which occurs independently of the exercise of his will, or for an event which occurs by accident.

(2) Unless the intention to cause a particular result is expressly declared to be an element of the offence constituted, in whole or part, by an act or omission, the result intended to be caused by an act or omission is immaterial.

(3) Unless otherwise expressly declared, the motive by which a person is induced to do or omit to do an act, or to form an intention, is immaterial so far as regards criminal responsibility.

(4) In determining whether a person has committed an offence a court shall not be bound to infer that he intended or foresaw a result of his actions by reason only of its being the natural and probable consequence of those actions, but shall decide whether he did intend or foresee that result by reference to all the evidence, drawing such inference from the evidence as appears proper in the circumstances.

Mistake of fact
1 of 2011

10.—(1) A person who does or omits to do an act under an honest and reasonable, but mistaken, belief in the existence of any state of things is not criminally responsible for the act or omission to any greater extent than if the real state of things had been such as he believed to exist.

(2) The operation of this rule may be excluded by the express or implied provisions of the law relating to the subject.

Presumption of sanity

11. Every person is presumed to be of sound mind, and to have been of sound mind at any time which comes in question, until the contrary is proved.

Insanity
1 of 2011

12. Subject to the provision of this Code with regard to persons suffering from diminished responsibility, a person is not criminally responsible for an act or omission if at the time of doing the act or making the omission he is, through any disease affecting his mind, incapable of understanding what he is doing, or knowing that he ought not to do the act or make the omission; but a person may be criminally responsible for an act or omission, although his mind is affected by disease, if such disease does not in fact produce upon his mind one or other of the effects above mentioned in reference to that act or omission.

Intoxication
1 of 2011

13.—(1) Save as provided in this section, intoxication shall not constitute a defence to any criminal charge.

(2) Intoxication shall be a defence to any criminal charge if by reason thereof the person charged at the time of the act or omission complained of did not know that such act or omission was wrong or did not know what he was doing, and—

(*a*) the state of intoxication was caused without his consent by the malicious or negligent act of another person; or

(*b*) the state of intoxication was caused by medicinal administration of a generally or specially prescribed drug whether that drug was self-administered or not; or 1 of 2011

(*c*) the person charged was by reason of intoxication insane, temporarily or otherwise, at the time of such act or omission. 1 of 2011

(3) Where the defence under the preceding subsection is established, then in a case falling under paragraph (*a*) thereof the accused person shall be discharged, and in a case falling under paragraph (*b*) the provisions of section 12 shall apply.

(4) Intoxication shall be taken into account for the purpose of determining whether the person charged had formed any intention, specific or otherwise, in the absence of which he would not be guilty of the offence.

(5) For the purposes of this section "intoxication" shall be deemed to include a state produced by narcotics or drugs.

Immature age 1 of 2011

14.—(1) A person under the age of ten years is not criminally responsible for any act or omission.

(2) A person under the age of fourteen years is not criminally responsible for an act or omission unless it is proved that at the time of doing the act or making the omission he had capacity to know that he ought not to do the act or make the omission.

(3) A male person under the age of twelve years is presumed to be incapable of having carnal knowledge.

Judicial officers

15. Except as expressly provided by this Code, a judicial officer is not criminally responsible for anything done or omitted to be done by him in the exercise of his judicial functions, although the act done is in excess of his judicial authority or although he is bound to do the act omitted to be done.

Compulsion 1 of 2011

16. A person is not criminally responsible for an offence if it is committed by two or more offenders, and if the act is done or committed only because during the whole of the time in which it is being done or committed the person is compelled to do or omit to do the act by threats on the part of the other offender or offenders, instantly to kill him or his spouse, child or any person under his charge or to do him, his spouse, child or any person under his charge grievous bodily harm if he refuses; but threats of future injury do not excuse any offence.

Defence of person or property 1 of 2011

17. Subject to any express provisions in this Code or any other law in operation in Malaŵi, criminal responsibility for the use of force in the defence of person or property shall be determined according to the principles of common law.

Use of force in effecting arrest

18. Where any person is charged with a criminal offence arising out of the lawful arrest, or attempted arrest, by him of a person who forcibly resists such arrest or attempts to evade being arrested, the court shall, in considering whether the means used were necessary, or the degree of force used was reasonable, for the apprehension of such person, have regard to the gravity of the offence which had been or was being

committed by such person and the circumstances in which such offence had been or was being committed by such person.

Compulsion by spouse 1 of 2011

19. A spouse is not free from criminal responsibility for doing or omitting to do an act merely because the act or omission takes place in the presence of his or her spouse; but on a charge against a spouse for any offence other than treason, murder or genocide it shall be a good defence to prove that the offence was committed in the presence of, and under the coercion of, the other spouse.

Person not to be punished twice for the same offence

20. A person shall not be punished twice, either under the provisions of this Code or under the provisions of any other law, for the same offence.

Chapter V—Parties To Offences

Principal offenders 1 of 2011

21.—(1) When an offence is committed, each of the following persons is deemed to have taken part in committing the offence and to be guilty of the offence, and may be charged with actually committing it, that is to say—

(*a*) every person who actually does the act or makes the omission which constitutes the offence;

(*b*) every person who does or omits to do any act for the purpose of enabling or aiding another person to commit the offence;

(*c*) every person who aids or abets another person to commit the offence; and

(*d*) any person who counsels or procures any person to commit the offence.

(2) In a case arising under subsection (1) (*d*), the accused may be charged with himself committing the offence or with counselling or procuring its commission.

(3) A conviction of counselling or procuring the commission of an offence entails the same consequences in all respects as a conviction of committing the offence.

(4) Any person who procures another to do or omit to do any act of such a nature that if he had himself done the act or made the omission would have constituted an offence on his part, is guilty of an offence of the same kind, and is liable to the same punishment, as if he had himself done the act or made the omission; and he may be charged with himself doing the act or making the omission.

Offences committed by joint offenders in prosecution of common purpose

22. When two or more persons form a common intention to prosecute an unlawful purpose in conjunction with one another, and in the prosecution of such purpose an offence is committed of such a nature that its commission was a probable consequence of the prosecution of such purpose, each of them is deemed to have committed the offence.

Counselling another to commit an offence
1 of 2011

23. When a person counsels another to commit an offence, and an offence is actually committed after such counsel by the person to whom it is given, it is immaterial whether the offence committed is the same as that counselled or a different one, or whether the offence is committed in the way counselled or in a different way, provided in either case that the facts constituting the offence actually committed are a probable consequence of carrying out the counsel, drawing such inference from the evidence as appears proper in the circumstances; and in either case the person who gave counsel is deemed to have counselled the other person to commit the offence actually committed by him.

Offences by corporations, societies, etc.

24. Where an offence is committed by any company or other body corporate, or by any society, association or body of persons, every person charged with or concerned or acting in, the control or management of the affairs or activities of such company, body corporate, society, association or body of persons shall be guilty of that offence and shall be liable to be punished accordingly, unless it is proved by such person that, through no act or omission on his part, he was not aware that the offence was being or was intended or about to be committed, or that he took all reasonable steps to prevent its commission.

Chapter VI—Punishments

Different kinds of punishments
8 of 1999
1 of 2011

25. The following punishments may be inflicted by a court—

(*a*) death;

(*b*) imprisonment;

(*c*) fine;

(*d*) compensation;

(*e*) finding security to keep the peace and be of good behaviour; or to come up for sentence;

(*f*) liability to police supervision;

(*g*) forfeiture;

(*h*) suspended sentence;

(*i*) public work;

(*j*) community service;

(*k*) probation;

(*l*) weekend or public holiday;

(*m*) attendance centre orders;

(*n*) any other punishment provided by this Code or by any other written law.

Sentence of death
1 of 2011

26.—(1) When any person is sentenced to death the sentence shall direct that he shall suffer death by hanging within the prison in which he is detained.

(2) Sentence of death shall not be pronounced on or recorded against a person convicted of an offence if it appears to the court that at the time when the offence was committed he was under the age of 18 years, but in lieu thereof the court shall sentence him to be detained during the President's pleasure, on the advice of the Board of Visitors appointed under the Children and Young Persons Act.

Cap. 26:03

(3) When a person has been sentenced to be detained during the President's pleasure under the last subsection (2), the presiding judge shall forward to the President a copy of the notes of evidence taken on the trial, with a report in writing signed by him containing any recommendation or observations on the case he may think fit to make.

Cap. 8:01

(4) Where a woman convicted of an offence punishable with death is found, in accordance with section 327 of the Criminal Procedure and Evidence Code, to be pregnant, the sentence to be passed on her shall be a sentence of imprisonment for life instead of a sentence of death.

Imprisonment

27.—(1) All imprisonment shall be with or without hard labour in the discretion of the court, unless the imposition of imprisonment only without hard labour is expressly prescribed by law.

(2) A person liable to imprisonment for life or any other period may be sentenced for any shorter term.

(3) A person liable to imprisonment may be sentenced to pay a fine in addition to or instead of imprisonment.

28. [*Repealed by* 1 *of* 2011].

Short sentences of imprisonment
1 of 2011

28A.—(1) Where a court passes a sentence of imprisonment on an offender for a period of not exceeding three months, or where a convicted person is required to serve a sentence of such duration in lieu of payment of a fine, and the court is satisfied—

(*a*) on an application made before it by or on behalf of the convicted person of the existence of the conditions set out in subsection (2); and

(*b*) on a report from the Chief Commissioner of Prisons that satisfactory arrangements exist for the sentence to be served in the manner applied for,

it may order that the sentence be served at stated periods.

(2) The conditions required for the purposes of subsection (1) shall be that—

(*a*) the convicted person was in employment at the time of the commission of the offence or that he is or was in employment at the time of conviction;

(*b*) the convicted person would continue to be in such employment if it were not for such conviction and the obligation to serve the sentence of imprisonment;

(*c*) the discontinuance of the convicted person from such employment would cause hardship to his dependants; and

(*d*) the convicted person consents to serve the sentence of imprisonment in the manner ordered by the court.

(3) Where an order under subsection (1) is made, the court shall cause a copy of the order to be served on the police officer who is in charge of the police station in the District in which the convicted person resides or will reside.

(4) A stated period for the purposes of this section shall be at the discretion of the court but shall not be less than twenty-four hours of continuous duration for any one week.

(5) When any convicted person as is mentioned in this section has failed to serve any stated portion of his sentence, the Chief Commissioner of Prisons may, on application made by way of summons, so inform the court which sentenced such person under subsection (1), and the court may thereupon, after hearing the convicted person, revoke the order for imprisonment at stated periods and substitute therefor a continuous sentence not exceeding the unserved portion of the sentence originally passed.

(6) The court may on application made by a convicted person vary the commencement or duration of a stated period.

Fines
11 of 1989
1 of 2011

29.—(1) Where a fine is imposed under any law, then in the absence of express provisions relating to such fine in such law the following provisions shall apply—

(*a*) where no sum is expressed to which the fine may extend the amount of the fine which may be imposed is unlimited, but shall not be excessive;

(*b*) in the case of an offence punishable with a fine or a term of imprisonment the imposition of a fine or a term of imprisonment shall be a matter for the discretion of the court.

(2) In any case in which any person is sentenced to a fine with or without imprisonment, or is ordered to pay any costs under section 33, or is adjudged to make any compensation under section 32, or is adjudged to pay any sum under any Act, the court may—

1 of 2011

(*a*) direct by its sentence that, in default of payment of the fine, costs, compensation or sum, as the case may be, the convicted person

shall suffer imprisonment, community service or public work for a certain period, which imprisonment, community service or public work shall be in addition to any other imprisonment to which he may have been sentenced or to which he may be liable under a commutation of sentence; and

1 of 2011

(*b*) issue a warrant for the levy of the amount on the moveable and immoveable property of the offender by distress and sale under warrant:

Provided that if the sentence directs that in default of payment of the fine, costs, compensation or sum the offender shall be imprisoned or, shall do community service or public work, and if such offender has undergone the whole of such imprisonment or completed his community service or public work, in default, no court shall issue a distress warrant unless for special reasons to be recorded in writing it considers it necessary to do so.

(3) In the absence of express provisions in any Act relating thereto the term of imprisonment ordered by a court in respect of the non-payment of any sum adjudged to be paid for costs under section 33 or compensation under section 32 or in respect of the non-payment of a fine or of any sum adjudged to be paid under any Act shall be such term as in the opinion of the court will satisfy the justice of the case, but shall not exceed in any case the maximum fixed by the following scale—

11 of 1989
1 of 2011

Amount	*Maximum Period*
Not exceeding K1,000	1 month
Exceeding K1,000 but not exceeding K5,000 . .	3 months
Exceeding K5,000 but not exceeding K10,000	6 months
Exceeding K10,000 but not exceeding K20,000	8 months
Exceeding K20,000	12 months.

(4) Any term of imprisonment imposed under this section in default of the payment of any fine, costs or compensation, or of any sum adjudged to be paid under any Act, shall terminate whenever the payment is made or the sum ordered to be paid is levied by process of law.

1 of 2011

(5) The Minister may, by Order published in the *Gazette*, amend the monetary sums prescribed in the scale in subsection (3).

Forfeiture
1 of 2011

30. When any person is convicted of an offence under any of the following sections, namely, sections 90, 91, 92, 110, 111, 331A and 396, the court may, in addition to or in lieu of any penalty which may be imposed, order the forfeiture of any property which has passed in connexion with the commission of the offence, or, if such property cannot be forfeited or cannot be found, of such sum as the court shall assess as the value of the property; and any property or sum so forfeited shall be dealt with in such manner as the Minister may direct. Payment of

any sum so ordered to be forfeited may be enforced in the same manner and subject to the same incidents as in the case of the payment of a fine.

Suspension or forfeiture of right to carry on business
1 of 2011

31.—(1) Where a person is convicted of any offence mentioned in Chapter XXXII and such offence arose out of, or was committed in the course of, any trade or business, whether carried on by such person or not, the court by which the conviction is recorded may, in addition to any other penalty which it may impose, make an order, having effect for such period as the court may think fit, prohibiting such person from carrying on, or being concerned or employed, directly or indirectly, in carrying on, any such trade or business or any branch of any such trade or business of the same or similar character.

1 of 2011

(2) Any person who fails to comply with an order made under subsection (1) shall be guilty of an offence and shall be liable to a fine of K10,000 and to imprisonment for six months.

Compensation
1 of 2011

32.—(1) Any person who is convicted of an offence may be adjudged to make compensation to any person who has suffered personal injury or loss of property by such offence. Any such compensation may be either in addition to or in substitution for any other punishment.

1 of 2011

(2) A person shall not be precluded from instituting civil proceedings but the court shall take cognisance of the earlier compensation awarded in criminal proceedings under subsection (1).

1 of 2011

(3) Where a person dies as a result of an offence, compensation under subsection (1) may be awarded by the court to any surviving spouse, child or dependant of the deceased person.

Costs
Cap. 8:01

33. Subject to the limitations imposed by section 142 of the Criminal Procedure and Evidence Code a court may order any person convicted of an offence to pay the costs of and incidental to the prosecution or any part thereof.

General punishment for misdemeanors

34. When in this Code no punishment is specially provided for any misdemeanor, it shall be punishable with a fine or with imprisonment for a term not exceeding two years or with both.

Sentences cumulative unless otherwise ordered
1 of 2011

35. Where a person after conviction for an offence is convicted of another offence, either before sentence is passed upon him under the first conviction or before the expiration of that sentence, any sentence, other than a sentence of death, which is passed upon him under the subsequent conviction, shall be executed after the expiration of the former sentence, unless the court directs that it shall be executed concurrently with the former sentence or of any part thereof:

Provided that it shall not be lawful for a court to direct that a sentence of imprisonment in default of payment of a fine shall be executed concurrently with a former sentence under section 29 (2) (*a*) or of any part thereof.

Escaped convicts to serve unexpired sentences when recaptured
1 of 2011

36. When sentence is passed under this Code on an escaped convict, such sentence—

(*a*) if of death, or fine shall, subject to this Code and of any other law, take effect immediately;

(*b*) if of imprisonment, shall run consecutively or concurrently, as the court shall order, with the unexpired portion of the sentence which the convict was undergoing when he escaped.

37. [*Repealed by* 5 *of* 1969].

PART II

Crimes

Division I—Offences Against Public Order

Chapter VII—Treason and Other Offences Against the Government's Authority

Treason

38.—(1) Any person who—

(*a*) prepares, endeavours or conspires to overthrow the lawfully constituted Government by force or other unlawful means;

(*b*) prepares, endeavours or conspires to procure by force any alteration of the law or the policies of the lawfully constituted Government;

(*c*) prepares, endeavours or conspires to carry out by force any enterprise which would, if effected, usurp the executive power of the State;

(*d*) incites or assists any person or conspires to invade the Republic with force or unlawfully to subject any part of the Republic to armed attack by land, sea or air, or assists in the preparation of any such invasion or attack;

(*e*) in time of war and with intent to give assistance to the enemy, does any act which is likely to assist the enemy; or

(*f*) recruits or trains persons for the implementation of any of the aforementioned purposes, or participates in any such recruitment or training,

shall be guilty of treason and shall on conviction be sentenced to death.

(2) In this section, the expressions—

(*a*) "the lawfully constituted Government" includes the President and any Minister of the Government;

(*b*) "force" means either—

(i) force used in such a manner as, whether by reason of the number of persons involved or the means used or both, to imperil or be likely to imperil the safety of the State or to cause, or be likely to cause, death or grievous bodily harm or serious damage to property, or

(ii) a show of aggression calculated to arouse reasonable apprehension that force, as defined in subparagraph (i) will be used;

(*c*) "armed attack" shall include any unlawful use of force constituting an act of rebellion against or calculated to undermine the authority of the Government or any arm thereof.

(3) A person may be tried and punished for an offence against this section whether committed within or outside the Republic.

Concealment of treason

39. Any person who—

(*a*) becomes an accessory after the fact to treason; or

(*b*) knowing that any person intends to commit treason, does not give information thereof with all reasonable despatch to the President, an administrative officer, magistrate, or officer of police or use other reasonable endeavours to prevent the commission of the offence,

shall be guilty of the felony termed misprision of treason and liable to imprisonment for life.

Promoting war, etc., amongst groups
1 of 2011

40. Any person who, without lawful authority, carries on or makes preparation for carrying on or aids in or advises carrying on of or preparation for any war or war-like undertaking, violence, fighting or similar undertaking with, for, by, or against any ethnic, tribal, racial, religious, political or other group of people, shall be guilty of a felony and shall be liable to imprisonment for life.

Inciting to mutiny
1 of 2011

41. Any person who advisedly attempts to effect any of the following purposes, that is to say—

1 of 2011

(*a*) to seduce any person serving in the Defence Force of Malaŵi or the Malaŵi Police Service from his duty and allegiance to the President; or

(*b*) to incite any such persons to commit an act of mutiny or any traitorous or mutinous act; or

(*c*) to incite any such persons to make or endeavour to make a mutinous assembly,

shall be guilty of a felony, and shall be liable to imprisonment for life.

Aiding soldiers or policemen in acts of mutiny
1 of 2011

42. Any person who—

(*a*) aids, abets, or is accessory to, any act of mutiny by; or

(*b*) incites to sedition or to disobedience to any lawful order given by a superior officer,

1 of 2011

any non-commissioned officer or private of the Defence Force of Malaŵi or any police officer, shall be guilty of a misdemeanor.

Inducing soldiers or policemen to desert
1 of 2011

43. Any person who, by any means whatever, directly or indirectly—

(*a*) procures or persuades or attempts to procure or persuade to desert; or

(*b*) aids, abets, or is accessory to the desertion of; or

(*c*) having reason to believe he is a deserter, harbours or aids in concealing,

1 of 2011

any non-commissioned officer or private of the Defence Force of Malaŵi, or any police officer, shall be guilty of an offence and shall be liable to imprisonment for life.

Aiding prisoners of war to escape
1 of 2011

44. Any person who—

(*a*) knowingly and advisedly aids an alien enemy of the Republic, being a prisoner of war in the Republic, whether such prisoner is confined in a prison or elsewhere or is suffered to be at large on his parole, to escape from his prison or place of confinement, or, if he is at large on his parole, to escape from the Republic shall be guilty of a felony and shall be liable to imprisonment for life;

1 of 2011

(*b*) negligently and unlawfully permits the escape of any such person as is mentioned in paragraph (*a*), shall be guilty of a misdemeanor.

Definitions
24 of 2012

45. For the purposes of the four next following sections of this Code—

"import" includes—

(*a*) to bring into the Republic; and

(*b*) to bring within the inland waters of the Republic whether or not the publication is brought ashore, and whether or not there is an intention to bring the same ashore;

"publication" includes all written and printed matter, and any gramophone or other record, perforated roll, recording tape, cinematograph film or other contrivance by means of which any words or ideas may be mechanically produced, represented or conveyed, and everything, whether of a nature similar to the

foregoing or not, containing any visible representation or by its form, shape or other characteristics, or in any manner capable of producing, representing or conveying words or ideas, and every copy or reproduction of any publication;

"periodical publication" includes every publication issued periodically or in parts or numbers at intervals whether regular or irregular;

"seditious publication" means a publication having a seditious intention;

"seditious words" means words having a seditious intention.

46.–49. [*Repealed by* 24 *of* 2012].

Seditious intention 12 of 1993 32 of 1993

50.—(1) A "seditious intention" is an intention—

(*a*) to bring into hatred or contempt or to excite disaffection against the person of the President, or the Government;

(*b*) to excite the subjects of the President to procure the alteration, otherwise than by lawful means, of any other matter in the Republic; or

(*c*) to bring into hatred or contempt or to excite disaffection against the administration of justice in the Republic; or

(*d*) to raise discontent or disaffection amongst the subjects of the President; or

(*e*) to promote feeling of ill-will and hostility between different classes of the population of the Republic.

32 of 1993

But an act, speech or publication is not seditious if not done, spoken or published, as the case may be, with intention to incite violence or by reason only that it intends—

(i) to show that the President has been misled or mistaken in any of his measures; or

(ii) to point out errors or defects in the Government or Constitution or in legislation or in the administration of justice with a view to the remedying of such errors or defects; or

(iii) to persuade the subjects of the President to attempt to procure by lawful means the alteration of any matter in the Republic; or

(iv) to point out, with a view to their removal, any matters which are producing or have a tendency to produce feelings of ill-will and enmity between different classes of the population of the Republic.

(2) In determining whether the intention with which any act was done, any words were spoken, or any document was published, was or was not seditious, every person shall be deemed to intend the consequences

which would naturally follow from his conduct at the time and under the circumstances which he so conducted himself.

Seditious offences
1 of 2011

51.—(1) Any person who—

(*a*) does or attempts to do, or makes any preparation to do any act with a seditious intention;

(*b*) utters any seditious words;

(*c*) prints, publishes, sells, offers for sale, distributes or reproduces any seditious publication;

(*d*) imports any seditious publication, unless he has no reason to believe that it is seditious,

1 of 2011

shall be liable for a first offence to a fine of K50,000 and to imprisonment for five years and for a subsequent offence to imprisonment for seven years; and any seditious publication shall be forfeited.

(2) Any person who without lawful excuse has in his possession any seditious publication shall be liable for a first offence to a fine of K20,000 and to imprisonment for three years and for a subsequent offence to imprisonment for four years; and such publication shall be forfeited.

1 of 2011

(3) It shall be a defence to a charge under the preceding subsection that, if the person charged did not know that the publication was seditious when it came into his possession, he did, as soon as the nature of the publication became known to him, deliver the publication to the nearest District Commissioner or to the officer in-charge of the nearest police station.

Forfeiture of machine and prohibition of publication

52.—(1) Any printing machine which has been, or is reasonably suspected of being, used for or in connexion with the printing or reproduction of a seditious publication may be seized or otherwise secured by a police officer pending the trial and conviction or discharge or acquittal of any person accused of printing or reproducing any seditious publication; and, when any person is convicted of printing or reproducing a seditious publication, the court may, in addition to any other penalty which it may impose, order that the printing machine on which the publication was printed or reproduced shall be either confiscated for a period not exceeding one year, or be forfeited, and may make such order whether or not the person convicted is, or was at the time when the publication was printed or reproduced, the owner of the printing machine. A printing machine forfeited under this subsection shall be sold, and the proceeds, less expenses, shall be paid into the Consolidated Fund.

(2) When a proprietor, publisher, printer or editor of a newspaper is convicted of printing or publishing a seditious publication in a newspaper, the court may, in addition to any other punishment it may impose, and whether or not it has made an order under subsection (1),

make an order prohibiting any further publication of the newspaper for a period not exceeding one year.

(3) The court may, at any time, on the application of the Attorney General and on taking such security, if any, for good behaviour as the court may see fit to order, revoke any order made by it forfeiting or confiscating a printing machine or prohibiting further publication of a newspaper.

(4) A court, before ordering the forfeiture or confiscation of a printing machine under this section, shall be satisfied that the printing machine was the printing machine upon or by which the seditious publication was printed or reproduced.

(5) In any case in which a printing machine has been secured or confiscated under this section, the Inspector General of Police may, in his discretion, cause—

(*a*) the printing machine or any part of it to be removed; or

(*b*) any part of the machine to be sealed so as to prevent its use.

Provided that the owner of the printing machine or his agents shall be entitled to reasonable access to it to keep it in working order.

(6) The Inspector General of Police or any police officer acting in pursuance of the powers conferred by this section shall not be liable for any damage caused to a printing machine, whether by neglect or otherwise, not being damage wilfully caused to the machine.

(7) Any person who uses or attempts to use a printing machine confiscated under subsection (1) shall be liable to imprisonment for three years.

(8) Any person who prints or publishes a newspaper in contravention of an order made under subsection (2) shall be liable to imprisonment for three years.

(9) In this section the expression "printing machine" includes a printing press, copying press, type-setting machine, photographic, duplicating or engraving apparatus, or other machine or apparatus used for or in connexion with printing or reproducing publications, and the type, appurtenances and equipment thereof.

Legal proceedings

53.— (1) No prosecution for an offence under section 51 or 52 shall be begun except within six months after the offence is committed:

Provided that where a person leaves the Republic within six months of committing such offence, the prosecution for such offence may be begun within six months from the date when such person returns to the Republic after leaving it.

(2) A person shall not be prosecuted for an offence under section 51 without the written consent of the Director of Public Prosecutions.

Unlawful oaths to commit capital offences

54.—Any person who—

(*a*) administers or is present at, and consents to the administering of, any oath, or engagement in the nature of an oath, purporting to bind the person who takes it to commit any offence punishable with death; or

(*b*) takes any such oath or engagement, not being compelled to do so,

shall be guilty of a felony, and shall be liable to imprisonment for life.

Other unlawful oaths to commit offences

55.—Any person who—

(*a*) administers or is present at, and consents to the administering of, any oath or engagement in the nature of an oath, purporting to bind the person who takes it to act in any of the ways following, that is to say—

(i) to engage in any mutinous or seditious enterprise;

(ii) to commit any offence not punishable with death;

(iii) to disturb the public peace;

(iv) to be a member of any association, society or confederacy, formed for the purpose of doing any such act as aforesaid;

(v) to obey the orders or commands of any committee or body of men not lawfully constituted, or of any leader or commander or other person not having authority by law for that purpose;

(vi) not to inform or give evidence against any associate, confederate or other person;

(vii) not to reveal or discover any unlawful association, society or confederacy, or any illegal act done or to be done or any illegal oath or engagement that may have been administered or tendered to or taken by himself or any other person, or the import of any such oath or engagement; or

(*b*) takes any such oath or engagement, not being compelled to do so,

shall be guilty of a felony, and shall be liable to imprisonment for ten years.

Compelling another person to take an oath

56.—(1) Any person who by the use of physical force, or by threat or intimidation of any kind, compels another person to take an oath or engagement in the nature of an oath purporting to bind the person who

takes it to act or not to act in any way shall be guilty of a felony and shall be liable to imprisonment for seven years.

(2) Any person who is present at the consents to the administering, by physical force or under threat or intimidation of any kind, of any oath or engagement in the nature of an oath, to any person purporting to bind the person who takes it to act or not to act in any way shall be guilty of a felony and shall be liable to imprisonment for three years.

Compulsion, how far a defence
1 of 2011

57. It shall not be a defence for a person who takes any oath or engagement in the nature of an oath mentioned in section 54, section 55 or section 56 to prove that he was compelled to do so unless within five days after the taking of such oath or engagement in the nature of an oath or, if he is prevented by physical force or sickness, within five days after the termination of such physical force or sickness, he reported to the police, or, if he is in the actual service of the Defence Force of Malaŵi or in the Malaŵi Police Service, either he so reported as aforesaid, or he reported to his commanding officer, everything he knows concerning the matter, including the person or persons by whom and in whose presence, and the place where, and the time when, the oath or engagement was administered or taken.

Person present deemed to consent to administering of oath unless he reports to authorities
1 of 2011

58. Any person who is present at the administering of an oath or engagement in the nature of an oath mentioned in section 54, section 55 or section 56 shall be deemed to have consented to the administering of such oath or engagement unless within five days thereafter, or, if he is prevented by physical force or sickness, within five days after the termination of such physical force or sickness he reports to the police, or if he is in the actual service of the Defence Force of Malaŵi or in the Malaŵi Police Service he so reports as aforesaid, or he reports to his commanding officer, everything he knows concerning the matter, including the person or persons by whom and in whose presence, and the place where, and the time when, the oath or engagement in the nature of an oath was administered.

Unlawful drilling

59.—(1) Any person who—

(*a*) without the permission of the President trains or drills any other person to the use of arms or the practice of military exercises, movements, or evolutions; or

(*b*) is present at any meeting or assembly of persons, held without the permission of the President, for the purpose of training or drilling any other persons to the use of arms or the practice of military exercises, movements, or evolutions,

shall be guilty of a felony, and shall be liable to imprisonment for seven years.

(2) Any person who, at any meeting or assembly held without the permission of the President, is trained or drilled to the use of arms or

the practice of military exercises, movements, or evolutions, or who is present at any such meeting or assembly for the purpose of being so trained or drilled, shall be guilty of a misdemeanor.

Publication of false news likely to cause fear and alarm to the public

60.—(1) Any person who publishes any false statement, rumour or report which is likely to cause fear and alarm to the public or to disturb the public peace shall be guilty of a misdemeanor.

(2) It shall be a defence to a charge under subsection (1) if the accused proves that, prior to publication, he took such measures to verify the accuracy of such statement, rumour or report as to lead him reasonably to believe that it was true.

60A. [*Repealed by* 17 *of* 1994].

Chapter VIII—Offences Affecting Relations with Foreign States and External Tranquillity

Defamation of foreign dignitaries 1 of 2011

61. Any person who without such justification or excuse as would be sufficient in the case of the defamation of a private person publishes anything intended to be read, or any sign of visible representation, tending to degrade, revile or expose to hatred or contempt any foreign prince, potentate, ambassador or other foreign dignitary with intent to disturb the peace and friendship between the Republic and the country to which such prince, potentate, ambassador or dignitary belongs, shall be guilty of a misdemeanor.

Foreign enlistment 1 of 2011

62. Any person commits a misdemeanor who does any of the following acts without the licence of the President, that is to say—

(*a*) who prepares or fits out any naval or military expedition to proceed against any friendly state, or is engaged in such preparation or fitting-out, or assists therein, or is employed in any capacity in such expedition; or

(*b*) who, being a citizen of Malaŵi, accepts or agrees to accept any commission or engagement in the military or naval service of any foreign state at war with any friendly state, or, whether a citizen of Malaŵi or not, induces any other person to accept or agree to accept any commission or engagement in the military or naval service of any such foreign state as aforesaid; or

(*c*) who, being a citizen of Malaŵi, quits or goes on board any ship with a view of quitting the Republic, with intent to accept any commission or engagement in the military or naval service of any foreign state at war with a friendly state, or, whether a citizen of Malaŵi or not, induces any other person to quit or to go on board any ship with a view of quitting the Republic with the like intent; or

(*d*) who, being the master or owner of any ship, knowingly either takes on board, or engages to take on board, or has on board such ship any illegally enlisted person; or

(*e*) who, with intent or knowledge, or having reasonable cause to believe that the same will be employed in the military or naval service of any foreign state at war with any friendly state builds, agrees to build, causes to be built, equips, despatches, or causes or allows to be despatched, any ship, or issues or delivers any commission for any ship:

Provided that a person building, causing to be built, or equipping a ship in any of the cases aforesaid, in pursuance of a contract made before the commencement of such war as aforesaid, is not liable to any of the penalties specified in this section in respect of such building or equipping if—

(i) upon a proclamation of neutrality being issued he forthwith gives notice to the President that he is so building, causing to be built, or equipping such ship, and furnishes such particulars of the contract and of any matters relating to, or done, or to be done under the contract as may be required by the President; and

(ii) he gives such security, and takes and permits to be taken such other measures, if any, as the President may prescribe for ensuring that such ship shall not be despatched, delivered, or removed without the licence of the President until the termination of such war as aforesaid.

Piracy
1 of 2011

63.—(1) Any person who commits piracy shall be guilty of an offence and shall be liable to death or imprisonment for life.

(2) Piracy consists of any of the following acts—

(*a*) any illegal acts of violence, detention or any act of depredation committed for private ends by the crew or the passengers of a private ship or a private aircraft and directed—

(i) on the high seas against another ship or aircraft, or against persons or property on board such ship or aircraft;

(ii) against a ship, aircraft, persons or property in a place outside the jurisdiction of any State;

(*b*) any act of voluntary participation in the operation of a ship or aircraft with the knowledge of facts making it a pirate ship or aircraft;

(*c*) any act of inciting or intentionally facilitating an act described in paragraph (*a*) (i) or (ii).

(3) The acts of piracy, as defined in subsection (2), committed by a warship, government ship or government aircraft whose crew has mutinied and taken control of the ship or aircraft are assimilated to acts committed by a private ship.

(4) A ship or aircraft is considered to be a pirate ship or aircraft—

(*a*) if it is intended by the person in dominant control to be used for the purposes of committing one of the acts referred to in subsection (2); or

(*b*) if the ship or aircraft has been used to commit any such act as long as it remains under the control of the persons guilty of that act.

(5) For the purposes of any proceedings before a court in Malaŵi in respect of piracy, the provisions set out in subsection (2) shall be treated as constituting part of the law of nations and any such court having jurisdiction in respect of piracy committed on the high seas shall have jurisdiction in respect of piracy committed by or against a ship or aircraft wherever the piracy is committed.

Chapter IX—Unlawful Assemblies, Riots and other Offences Against Public Tranquillity

Definition of society and unlawful society
32 of 1993
1 of 2011

64.—(1) A society includes any combination of persons, whether the society be known by any name or not.

(2) A society is an unlawful society if formed for, or carries on, any of the following purposes—

(*a*) levying war or encouraging or assisting any person to levy war on the Government or the inhabitants of any part of the Republic;

(*b*) killing or injuring or inciting to the killing or injuring of any person;

(*c*) destroying or injuring or inciting to the destruction or injuring of any property;

(*d*) committing or inciting to acts of violence or intimidation;

(*e*) interfering with, or resisting, or inciting to interference with or resistance to the administration of the law; or

(*f*) disturbing or inciting to the disturbance of peace and order in any part of the Republic.

Managing unlawful society

65.—Any person who manages or assists in the management of an unlawful society shall be guilty of a felony and shall be liable to imprisonment for fourteen years.

Being member of unlawful society

66. Any person who—

(*a*) is a member of an unlawful society; or

(*b*) knowingly allows a meeting of an unlawful society, or of members of an unlawful society, to be held in any house, building or place belonging to or occupied by him, or over which he has control; or

(*c*) carries or displays anything whatsoever indicating that he is a member of or in any way associated with an unlawful society or shouts or utters any slogan or makes any sign associated with an unlawful society; or

(*d*) contributes or solicits anything as a subscription or otherwise in the name of or to be used directly or indirectly for the benefit of an unlawful society; or

(*e*) in any way takes part in any activity of an unlawful society or carries on any activity in the direct or indirect interests of an unlawful society in which activity it was or could have engaged prior to the date upon which it became an unlawful society,

shall be guilty of a felony, and shall be liable to imprisonment for seven years.

Prosecutions under sections 65 and 66 1 of 2011

67.—(1) A prosecution for an offence under sections 65 and 66 shall not be instituted except with the consent of the Director of Public Prosecutions:

Provided that a person charged with such an offence may be arrested, or a warrant for his arrest may be issued and executed, and any such person may be remanded in custody or on bail, notwithstanding that the consent of the Director of Public Prosecutions to the institution of a prosecution for the offence has not been obtained, but no further or other proceedings shall be taken until that consent has been obtained.

(2) Any person who attends a meeting of an unlawful society shall be presumed, until and unless the contrary is proved, to be a member of the society.

(3) When any books, accounts, writings, papers, documents, banners or insignia of, or relating to, an unlawful society are found in the possession or under the control of any person, or when any person wears any of the insignia of, or is marked with any mark of, an unlawful society, it shall be presumed, until the contrary is proved, that such person is a member of the unlawful society.

(4) When any books, accounts, lists of members, seals, minutes or correspondence of, or relating to, an unlawful society are found in the possession or under the control of any person, it shall further be presumed, until the contrary is proved, that such person assists in the management of the unlawful society.

Powers of entry, arrest, search, etc.

68. Any police officer of or above the rank of inspector may, without warrant, enter, with or without assistance, any house or building or into any place in which he has reason to believe—

(*a*) that a meeting of an unlawful society or of persons who are members of an unlawful society is being held; or

(*b*) that a member of an unlawful society resides or is; or

(*c*) that documents, funds, moneys or other information relating to an unlawful society may be found,

and arrest or cause to be arrested all persons found therein, and search such house, building or place and seize or cause to be seized all insignia, banners, arms, books, papers, documents and all other property which he may have reasonable cause to believe to belong to any unlawful

society or to be in any way connected with the purpose of the meeting or with the unlawful society.

Disposal of property of an unlawful society
1 of 2011

69.—(1) When a society is found by a court to be an unlawful society, the following consequences shall ensue—

(*a*) the property of the society within the Republic shall forthwith vest in an officer appointed by the court;

(*b*) the officer appointed by the court shall proceed to wind-up the affairs of the society, and after satisfying and providing for all debts and liabilities of the society and the cost of the winding-up, if there shall then be any surplus assets, he shall prepare and submit to the court a scheme for the application of such surplus assets;

(*c*) such scheme, when submitted for approval, may be amended by the court in such way as it shall think proper in the circumstances of the case;

(*d*) the approval of the court to such scheme shall be denoted by the endorsement thereon of a memorandum of such approval signed by the court, and, upon this being done, the surplus assets, the subject of the scheme, shall be held by such officer upon the terms and to the purposes thereby prescribed;

(*e*) for the purpose of the winding-up, the officer appointed by the court shall have all the powers vested in the Official Receiver for the purpose of the discovering of the property of a debtor and the realization thereof.

(2) The court may, for the purpose of enabling a society to wind-up its own affairs, suspend the operation of this section for such period as to him shall seem expedient.

(3) Subsection (1) shall not apply to any property seized at any time under section 68.

Forfeiture of insignia, etc.
1 of 2011

70. Subject to section 69, the insignia, banners, arms, books, papers, documents and other property belonging to an unlawful society shall be forfeited and shall be dealt with in such manner as the court may direct.

Unlawful assembly
1 of 2011

71.—(1) When three or more persons assemble with intent to commit an offence, or, being assembled with intent to carry out some common purpose, conduct themselves in a manner likely to cause persons in the neighbourhood reasonably to fear that the persons so assembled will commit a breach of the peace, or will by such assembly needlessly and without any reasonable occasion provoke other persons to commit a breach of the peace, they are an unlawful assembly.

(2) It is immaterial that the original assembling was lawful if, being assembled, they conduct themselves with a common purpose in such a manner as aforesaid.

Riot

(3) When an unlawful assembly has begun to execute its purpose by a breach of the peace, the assembly is called a riot, and the persons assembled are said to be riotously assembled.

Punishment of unlawful assembly

72. Any person who takes part in an unlawful assembly shall be guilty of a misdemeanor and shall be liable to imprisonment for one year.

Punishment of riot
1 of 2011

73. Any person who takes part in a riot shall be guilty of an offence and shall be liable to imprisonment for five years.

Making proclamation for rioters to disperse
1 of 2011

74. Any magistrate or, in his absence, any police officer of or above the rank of assistant inspector or any commissioned officer in the Defence Force of Malaŵi, in whose view twelve or more persons are riotously assembled, or who apprehends that a riot is about to be committed by twelve or more persons assembled within his view, may make or cause to be made a proclamation in the President's name, in such form as he thinks fit, commanding the rioters or persons so assembled to disperse peaceably.

Dispersion of rioters after proclamation made

75. If upon the expiration of a reasonable time after such proclamation made, or after the making of such proclamation has been prevented by force, twelve or more persons continue riotously assembled together, any person authorized to make proclamation, or any police officer or any other person acting in aid of such person or police officer, may do all things necessary for dispersing the persons so continuing assembled, or for apprehending them or any of them, and, if any person makes resistance, may use all such force as is reasonably necessary for overcoming such resistance, and shall not be liable in any criminal or civil proceeding for having, by the use of such force, caused harm or death to any person.

Rioting after proclamation

76. If proclamation is made, commanding the persons engaged in a riot, or assembled with the purpose of committing a riot, to disperse, every person who, at or after the expiration of a reasonable time from the making of such proclamation, takes or continues to take part in the riot or assembly shall be guilty of a felony and shall be liable to imprisonment for life.

Preventing or obstructing the making of proclamation
1 of 2011

77. Any person who forcibly prevents or obstructs the making of such proclamation as mentioned in section 74 shall be guilty of a felony, and shall be liable to imprisonment for life; and if the making of the proclamation is so prevented, every person who, knowing that it has

been so prevented, takes or continues to take part in the riot or assembly shall be liable to imprisonment for life.

Rioters demolishing buildings, etc.

78. Any persons who, being riotously assembled together, unlawfully pull down or destroy or begin to pull down or destroy any building, railway, machinery or structures shall be guilty of a felony and each of them shall be liable to imprisonment for life.

Rioters injuring buildings, machinery, etc.
1 of 2011

79. Any persons who, being riotously assembled together, unlawfully damage any of the things mentioned in section 78 shall be guilty of a felony and each of them shall be liable to imprisonment for seven years.

Riotously preventing the sailing of ship

80. All persons are guilty of a misdemeanor who, being riotously assembled, unlawfully and with force prevent, hinder, or obstruct the loading or unloading, or the sailing or navigating of any vessel, or unlawfully and with force board any vessel with intent to do so.

Prohibition of carrying offensive weapons without lawful authority or reasonable excuse
1 of 2011

81.—(1) Any person who, without lawful authority or reasonable excuse, the proof whereof shall lie on him, has with him in any place any offensive weapon shall be guilty of an offence and shall be liable to a fine of K10,000 and to imprisonment for two years.

(2) Where any person is convicted of an offence under subsection (1), the court may make an order for the forfeiture or disposal of any weapon in respect of which the offence was committed.

(3) A police officer may arrest without warrant any person whom he has reasonable cause to believe to be committing an offence under subsection (1) if the police officer is not satisfied as to that person's identity or place of residence, or has reasonable cause to believe that it is necessary to arrest him in order to prevent the commission by him of any other offence in the course of committing which an offensive weapon might be used.

(4) In this section, an offensive weapon means any article made or adapted for use, or suitable, for causing injury to the person or intended by the person having it with him for such use by him.

Forcible entry
1 of 2011

82.—(1) Any person who, in order to take possession thereof, enters on any lands or tenements in a violent manner, whether such violence consists in actual force applied to any other person or in threats or in breaking open any house or in collecting an unusual number of people, shall be guilty of the misdemeanor termed forcible entry.

(2) It is immaterial whether he is entitled to enter on the land or not, provided that a person who enters upon lands or tenements of his own, but which are in the custody of his servants or bailiff, does not commit the offence of forcible entry.

Forcible detainer

83. Any person who, being in actual possession of land without colour of right, holds possession of it in a manner likely to cause a breach of the peace or reasonable apprehension of a breach of the peace against a person entitled by law to the possession of the land shall be guilty of the misdemeanor termed forcible detainer.

Fighting in public

84. Any person who takes part in a fight in a public place shall be guilty of a misdemeanor and shall be liable to imprisonment for one year.

Challenge to fight a duel

85. Any person who challenges another to fight a duel, or attempts to provoke another to fight a duel, or attempts to provoke any person to challenge another to fight a duel, shall be guilty of a misdemeanor.

Threatening violence
1 of 2011

86.—(1) Any person who—

(*a*) with intent to intimidate or annoy any person, threatens to break or injure a dwelling-house; or

(*b*) with intent to alarm any person discharges loaded firearms or commits any other breach of the peace,

shall be guilty of an offence and shall be liable to imprisonment for three years.

(2) If the offence is committed in the night the offender shall be liable to imprisonment for four years.

Proposing violence at assemblies
1 of 2011

87.—(1) Any person who, without lawful excuse, at any assembly makes any statement or behaves in any manner which is calculated or is likely to incite or induce the persons assembled—

(*a*) to kill or do physical injury to any person or to any class or community of persons, or

(*b*) wilfully to destroy or do any damage to any property; or

(*c*) to deprive any person of the possession or use of any property either permanently or temporarily,

shall be guilty of an offence and shall be liable to imprisonment for five years. 1 of 2011

(2) In this section the word "assembly" means an assembly of three or more persons.

Intimidation
1 of 2011

88.—(1) Any person who—

(*a*) by word, attitude, manner or conduct, threatens another with any injury to his person, reputation or property or to the person, reputation or property of anyone in whom that person is interested, with intent to cause alarm to that person, or to cause that person to do any act which he is not legally bound to do, or to omit to do any

act which he is legally entitled to do, or to prevent that person from carrying out any duties or work essential to the maintenance of public security, public tranquillity or public order or to the maintenance of essential services, as a means of avoiding the execution of such threat; or

(*b*) in the like manner and with the like intention threatens persons generally or any class or description of persons; or

(*c*) is the publisher, editor or printer of any newspaper, pamphlet or other document containing any such threat as is referred to in paragraph (*a*) or (*b*); or

(*d*) is the writer of, or directly or indirectly causes any person to receive, any letter, writing or other document containing any such threat as is referred to in paragraph (*a*) or (*b*),

shall be guilty of an offence.

(2) For the purposes of this section a person is deemed to print a newspaper, pamphlet or other document if he prepares it by printing, lithography, typewriting, photography, or any other mode of reproducing matter.

1 of 2011

(3) Any person who commits an offence against subsection (1), shall be liable to a fine of K50,000 and to imprisonment for five years and for a subsequent offence to imprisonment for seven years; and if the threat be to cause death or grievous hurt, or to cause the destruction of any property by fire, or to cause an offence punishable with death or with imprisonment for a term which may extend to seven years, shall be liable to imprisonment for ten years.

Assembling for the purpose of smuggling
1 of 2011

89. Any persons who assemble together, to the number of two or more, for the purpose of unshipping, carrying, or concealing any goods subject to customs duty and liable to forfeiture under any law relating to the customs, shall be guilty of a misdemeanor, and each of them shall be liable to a fine of K30,000 or to imprisonment for two years.

Division II—Offences Against the Administration of Lawful Authority

Chapter X—Corruption and the Abuse of Office

Official corruption
21 of 1995
1 of 2011

90. Any person who—

(*a*) being employed in the public service, and being charged with the performance of any duty by virtue of such employment, corruptly solicits, receives, or obtains, or agrees or attempts to receive or obtain, any property or benefit of any kind for himself or any other person on account of anything already done or omitted to be done, or to be afterwards done or omitted to be done, by him in the discharge of the duties of his office; or

(*b*) corruptly gives, confers or procures, or promises or offers to give or confer, or to procure or attempt to procure, to, upon, or for any person employed in the public service, or to, upon, or for any other person, any property or benefit of any kind on account of any such act or omission on the part of the person so employed,

shall be guilty of a felony and shall be liable to imprisonment for twelve years. 1 of 2011

Extortion by public officers 21 of 1995 1 of 2011

91. Any person who, being employed in the public service, takes or accepts from any person for the performance of his duty as such officer, any reward beyond his proper pay and emoluments, or any promise of such reward, shall be guilty of a felony and shall be liable to imprisonment for twelve years.

Public officers receiving property to show favour 21 of 1995 1 of 2011

92. Any person who, being employed in the public service, receives any property or benefit of any kind for himself, on the understanding, express or implied, that he shall favour the person giving the property or conferring the benefit, or any one in whom that person is interested, in any transaction then pending, or likely to take place, between the person giving the property or conferring the benefit, or any one in whom he is interested, and any person employed in the public service, shall be guilty of a felony and shall be liable to imprisonment for twelve years. 1 of 2011

Officers charged with administration of property of a special character or with special duties

93. Any person who, being employed in the public service, and being charged by virtue of his employment with any judicial or administrative duties respecting property of a special character, or respecting the carrying on of any manufacture, trade or business of a special character, and having acquired or holding, directly or indirectly, a private interest in any such property, manufacture, trade, or business, discharges any such duties with respect to the property, manufacture, trade, or business in which he has such interest or with respect to the conduct of any person in relation thereto, shall be guilty of a misdemeanor and shall be liable to imprisonment for one year.

False claims by officials

94. Any person who, being employed in the public service in such a capacity as to require him or enable him to furnish returns or statements touching any sum payable or claimed to be payable to himself or to any other person, or touching any other matter required to be certified for the purpose of any payment of money or delivery of goods to be made to any person, makes a return or statement touching any such matter which is, to his knowledge, false in any material particular, shall be guilty of a misdemeanor.

Abuse of office 1 of 2011

95.—(1) Any person who, being employed in the public service, does or directs to be done, in abuse of the authority of his office, any arbitrary act prejudicial to the rights of another shall be guilty of a misdemeanor.

(2) If the act is done or directed to be done for purposes of gain he shall be guilty of a felony and shall be liable to imprisonment for three years.

(3) A prosecution for any offence under this or either of section 93 or 94 shall not be instituted except by or with the sanction of the Director of Public Prosecutions.

False certificates by public officers

96. Any person who, being authorized or required by law to give any certificate touching any matter by virtue whereof the rights of any person may be prejudicially affected, gives a certificate which is, to his knowledge, false in any material particular shall be guilty of a misdemeanor.

Unauthorized administration of oaths

97. Any person who administers an oath, or takes solemn declaration or affirmation or affidavit, touching any matter with respect to which he had not by law any authority to do so shall be guilty of a misdemeanor and shall be liable to imprisonment for one year:

Provided that this section shall not apply to an oath, declaration, affirmation or affidavit administered by or taken before a magistrate in any matter relating to the preservation of the peace or the punishment of offences or relating to inquiries respecting sudden deaths, nor to an oath, declaration, affirmation, or affidavit administered or taken for some purpose which is lawful under the laws of another country, or for the purpose of giving validity to an instrument in writing which is intended to be used in another country.

False assumption of authority

98. Any person who—

(*a*) not being a judicial officer, assumes to act as a judicial officer; or

(*b*) without authority assumes to act as a person having authority by law to administer an oath or take a solemn declaration or affirmation or affidavit or to do any other act of a public nature which can only be done by persons authorized by law to do so; or

(*c*) represents himself to be a person authorized by law to sign a document testifying to the contents of any register or record kept by a lawful authority, or testifying to any fact or event, and signs such document as being so authorized, when he is not, and knows that he is not, in fact, so authorized,

shall be guilty of a misdemeanor.

Personating public officers 20 of 1973

99. Any person who—

(*a*) personates any person employed in the public service on an occasion when the latter is required to do any act or attend in any place by virtue of his employment; or

(*b*) falsely represents himself to be a person employed in the public service, and assumes to do any act or to attend in any place for the purpose of doing any act by virtue of such employment,

shall be guilty of an offence and shall be liable to imprisonment for ten years.

Threat of injury to persons employed in public service

100. Whoever holds out any threat of injury to any person employed in the public service, or to any person in whom he believes that person employed in the public service to be interested, for the purpose of inducing that person employed in the public service to do any act or to forbear or delay to do any act connected with the exercise of the public functions of such person employed in the public service shall be guilty of a misdemeanor.

Chapter XI—Offences Relating to the Administration of Justice

Perjury and subornation of perjury
1 of 2011

101.—(1) Any person who, in any judicial proceeding, or for the purpose of instituting any judicial proceeding, knowingly gives false testimony touching any matter which is material to any question then depending in that proceeding or intended to be raised in that proceeding, shall be guilty of the misdemeanor termed perjury.

1 of 2011

(2) For the purposes of subsection (1)—

(*a*) it is immaterial whether the testimony is given on oath or in any other manner authorized by law;

(*b*) the forms and ceremonies used in administering the oath or in otherwise binding the person giving the testimony to speak the truth are immaterial, if he assents to the forms and ceremonies actually used;

(*c*) it is immaterial whether the false testimony is given orally or in writing;

(*d*) it is immaterial whether the court or tribunal is properly constituted or is held in the proper place or not, if it actually acts as a court or tribunal in the proceedings in which the testimony is given;

(*e*) it is immaterial whether the person who gives the testimony is a competent witness or not, or whether the testimony is admissible in the proceeding or not.

(3) Any person who aids, abets, counsels, procures, or suborns another person to commit perjury shall be guilty of the misdemeanor termed subornation of perjury.

(4) In this section, the expression "judicial proceeding" includes a proceeding before any court, tribunal, or person having by law power to hear, receive and examine evidence on oath.

(5) When a statement made for the purposes of a judicial proceeding is, not made on oath before the tribunal itself, but is made before a person authorized by law to administer an oath to the person who makes the statement, and to record and authenticate the statement, or is made in any form and manner permitted by any written law, it shall for the purposes of this section be treated as having been made in a judicial proceeding.

1 of 2011

(6) Where, for the purposes of a judicial proceeding in Malaŵi, a person is lawfully sworn—

(*a*) in a foreign jurisdiction under the authority or an Act of Parliament of that jurisdiction; or

(*b*) in a tribunal of any foreign state,

a statement made by such person (unless the Act of Parliament under which it was made otherwise specifically provides) shall be treated for the purposes of this section as having been made in the judicial proceeding in Malaŵi for which it was made.

Perjury in written statement Cap. 8:01 1 of 2011

102. Section 101 shall apply in relation to the making by any person of a written statement tendered in evidence by virtue of section 175 of the Criminal Procedure and Evidence Code, as it applies in relation to the making of an oral statement by a person lawfully sworn as a witness.

False statements by interpreters

103. If any person, lawfully sworn as an interpreter in a judicial proceeding, wilfully makes a statement material in the proceeding which he knows to be false, or does not believe to be true, he shall be guilty of perjury.

Punishment of perjury and subornation

104. Any person who commits perjury or suborns perjury shall be liable to imprisonment for seven years.

Fabricating evidence 1 of 2011

105. Any person who, with intent to mislead any court or tribunal in any judicial proceeding—

(*a*) fabricates evidence by any means other than perjury or subornation of perjury; or

(*b*) knowingly makes use of such fabricated evidence,

shall be guilty of an offence, and shall be liable to imprisonment for seven years.

False swearing

106. Any person who swears falsely or makes a false affirmation or declaration before any person authorized to administer an oath or take a declaration under such circumstances that the false swearing or declaration if committed in a judicial proceeding would have amounted to perjury shall be guilty of a misdemeanor.

Deceiving witnesses

107. Any person who practises any fraud or deceit, or knowingly makes or exhibits any false statement, representation, token, or writing, to any person called or to be called as a witness in any judicial proceeding, with intent to affect the testimony of such person as a witness, shall be guilty of a misdemeanor.

Destroying evidence

108. Any person who, knowing that any book, document, or thing of any kind whatsoever, is or may be required in evidence in a judicial proceeding, wilfully removes or destroys it or renders it illegible or undecipherable or incapable of identification, with intent thereby to prevent it from being used in evidence, shall be guilty of a misdemeanor.

Conspiracy to defeat justice and interference with witnesses

109. Any person who—

(*a*) conspires with any other person to accuse any person falsely of any crime or to do anything to obstruct, prevent, pervert, or defeat the course of justice; or

(*b*) in order to obstruct the due course of justice, dissuades, hinders or prevents any person lawfully bound to appear and give evidence as a witness from so appearing and giving evidence, or endeavours to do so; or

(*c*) obstructs or in any way interferes with or knowingly prevents the execution of any legal process, civil or criminal,

shall be guilty of an offence and shall be liable to imprisonment for five years.

Compounding felonies

110. Any person who asks, receives or obtains, or agrees or attempts to receive or obtain, any property or benefit of any kind for himself or any other person upon any agreement or understanding that he will compound or conceal a felony, or will abstain from, discontinue, or delay a prosecution for a felony, or will withhold any evidence thereof, shall be guilty of a misdemeanor.

Compounding penal actions

111. Any person who, having brought, or under pretence of bringing, an action against another person in order to obtain from him a penalty for any offence committed or alleged to have been committed by him, compounds the action without the order or consent of the court in which the action is brought or is to be brought, shall be guilty of a misdemeanor.

Advertisements for stolen property 1 of 2011

112. Any person who—

(*a*) publicly offers a reward for the return of any property which has been stolen or lost, and in the offer makes use of any words purporting that no questions will be asked, or that the person producing such property will not be seized; or

(*b*) publicly offers to return to any person who may have bought or advanced money by way of loan upon any stolen or lost property the money so paid or advanced, or any other sum of money or reward for the return of such property; or

(*c*) prints or publishes any such offer,

shall be guilty of a misdemeanor.

Offences relating to judicial proceedings 1 of 2011

113.—(1) Any person who—

(*a*) within the premises in which any judicial proceeding is being had or taken, or within the precincts of the same, shows disrespect, in speech or manner, to or with reference to such proceeding, or any person before whom such proceeding is being had or taken; or

(*b*) having been called upon to give evidence in a judicial proceeding, fails to attend, or having attended, refuses to be sworn or to make an affirmation or, having been sworn or affirmed, refuses without lawful excuse to answer a question or to produce a document, or remains in the room in which such proceeding is being had or taken, after the witnesses have been ordered to leave such room; or

(*c*) causes an obstruction or disturbance in the course of a judicial proceeding; or

(*d*) while a judicial proceeding is pending, makes use of any speech or writing misrepresenting such proceeding or capable of prejudicing any person in favour of or against any parties to such proceeding, or calculated to lower the authority of any person before whom such proceeding is being had or taken; or

(*e*) publishes a report of the evidence taken in any judicial proceeding which has been directed to be held in private; or

(*f*) attempts wrongfully to interfere with or influence a witness in a judicial proceeding, either before or after he has given evidence, in connexion with such evidence; or

(*g*) dismisses a servant because he has given evidence on behalf of a certain party to a judicial proceeding; or

(*h*) wrongfully retakes possession of land from any person who has recently obtained possession by a writ of court; or

1 of 2011

(*i*) commits any other act of intentional disrespect to any judicial proceeding, or to any person before whom such proceeding is being had or taken; or

1 of 2011

(*j*) obtains, discloses or solicits any particulars of statements made, opinions expressed, arguments advanced or votes cast by members of a jury in the course of their deliberations in any judicial proceedings,

shall be guilty of an offence and shall be liable to imprisonment for three years.

(2) When any offence against subsection (1) (*a*), (*b*), (*c*) or (*i*) is committed in view of the court, the court may cause the offender to be detained in custody and at any time before the rising of the court on the same day may take cognizance of the offence and sentence the offender to a fine of K10,000 or in default of payment to imprisonment without hard labour for six months. 1 of 2011

(3) This section shall be deemed to be in addition to and not in derogation from the power of the High Court to punish for contempt of court.

(4) Subsection (1) (*j*) shall not apply to any disclosure of any particulars— 1 of 2011

(i) in the proceedings in question for the purpose of enabling the jury to arrive at their verdict, or in connexion with the delivery of that verdict; or

(ii) in evidence in any subsequent proceedings for an offence alleged to have been committed in relation to the jury in the first mentioned proceedings, or in relation to the publication of any particulars so disclosed.

Chapter XII—Rescues, Escapes and Obstructing Officers of Court of Law

114.—(1) Any person, who by force rescues or attempts to rescue from lawful custody any other person— Rescue 1 of 2011

(*a*) if such last-named person is under sentence of death or imprisonment for life, or charged with an offence punishable with death or imprisonment for life shall be guilty of a felony, and shall be liable to imprisonment for life;

(*b*) if such other person is imprisoned on a charge or under sentence for any offence other than those specified in paragraph (*a*), shall be guilty of a felony and shall be liable to imprisonment for seven years; and

(*c*) in any other case, shall be guilty of a misdemeanor.

(2) If the person rescued is in the custody of a private person, the offender must have notice of the fact that the person rescued is in such custody.

115. Any person who, being in lawful custody, escapes from such custody, shall be guilty of a misdemeanor. Escape

Permitting prisoners to escape
1 of 2011

116. Any person who, having another person lawfully in his custody, intentionally or negligently permits that other person to escape, shall be guilty of an offence and shall be liable to imprisonment for seven years.

Aiding prisoners to escape

117. Any person who—

(*a*) aids a prisoner in escaping or attempting to escape from lawful custody; or

(*b*) conveys anything or causes anything to be conveyed into a prison with intent to facilitate the escape of a prisoner,

shall be guilty of a felony and shall be liable to imprisonment for seven years.

Removal, etc., of property under lawful seizure

118. Any person who, when any property has been attached or taken under the process of authority of any court, knowingly, and with intent to hinder or defeat the attachment or process receives, removes, retains, conceals, or disposes of such property, shall be guilty of a felony and shall be liable to imprisonment for three years.

Obstructing court officers

119. Any person who wilfully obstructs or resists any person lawfully charged with the execution of an order or warrant of any court, shall be guilty of a misdemeanor and shall be liable to imprisonment for one year.

Chapter XIII—Miscellaneous Offences Against Public Authority

Frauds and breaches of trust by public officers

120. Any person employed in the public service who, in the discharge of the duties of his office, commits any fraud or breach of trust affecting the public, whether such fraud or breach of trust would have been criminal or not if committed against a private person, shall be guilty of a misdemeanor.

Neglect of official duty

121. Every person employed in the public service who wilfully neglects to perform any duty which he is bound either by common law or by Act to perform, provided that the discharge of such duty is not attended with greater danger than a man of ordinary firmness and activity may be expected to encounter, shall be guilty of a misdemeanor.

False information to person employed in the public service
1 of 2011

122. Whoever gives to any person employed in the public service any information which he knows or believes to be false intending thereby to cause, or knowing it to be likely that he will thereby cause such person employed in the public service—

(*a*) to do or omit anything which such person employed in the public service ought not to do or omit if the true state of facts respecting which such information is given were known to him; or

(*b*) to use the lawful power of such person employed in the public service to the injury or annoyance of any person,

shall be guilty of a misdemeanor and shall be liable to a fine of K10,000 and to imprisonment for three years. 1 of 2011

123. Everyone who wilfully disobeys any Act by doing any act which it forbids, or by omitting to do any act which it requires to be done, and which concerns the public or any part of the public, shall be guilty of a misdemeanor and shall be liable, unless it appears from the Act that it was the intention of the Legislature to provide some other penalty for such disobedience, to imprisonment for two years. Disobedience of statutory duty

124.— (1) Any person who, whether in writing or by words or by his behaviour or otherwise— Soliciting, etc., to break the law 1 of 2011

(*a*) solicits or incites any other person to fail to comply with or to contravene any law in force in Malaŵi or in any part thereof; or

(*b*) indicates or implies to any person that it would be incumbent or desirable to fail to comply with or to contravene any such law,

shall be guilty of an offence and shall be liable to imprisonment for five years. 1 of 2011

(2) It shall be no defence to a charge under this section that the solicitation, incitement, indication or implication, as the case may be, neither has had nor could have had any effect.

125. Any person who, whether in writing or by words or by his behaviour or otherwise, solicits or incites— Soliciting public officers, etc., to fail to carry out their duties 1 of 2011

(*a*) any person employed in the public service;

(*b*) a Chief or any person in the service of a Chief,

to fail to carry out any of his duties as such shall be guilty of an offence and shall be liable to imprisonment for five years.

126. A police officer or Chief or any person acting under the direction of a police officer or Chief may arrest without warrant any person whom he has reasonable cause to believe to be committing or to have committed an offence under section 124 or 125. Arrest without warrant

Division III—Offences Injurious to the Public in General

Chapter XIV—Offences Relating to Religion

127. Any person who destroys, damages or defiles any place of worship or any object which is held sacred by any class of persons with the intention of thereby insulting the religion of any class of persons or Insult to religion of any class

with the knowledge that any class of persons is likely to consider such destruction, damage or defilement as an insult to their religion, shall be guilty of a misdemeanor.

Disturbing religious assemblies

128. Any person who voluntarily causes disturbance to any assembly lawfully engaged in the performance of religious worship or religious ceremony shall be guilty of a misdemeanor.

Trespassing on burial places

129. Every person who with the intention of wounding the feelings of any person or of insulting the religion of any person, or with the knowledge that the feelings of any person are likely to be wounded, or that the religion of any person is likely to be insulted thereby, commits any trespass in any place of worship or in any place of sepulture or in any place set apart for the performance of funeral rites or as a depository for the remains of the dead, or offers any indignity to any human corpse, or causes disturbance to any persons assembled for the purpose of funeral ceremonies, shall be guilty of a misdemeanor.

Writing or uttering, words with intent to wound religious feelings

130. Any person who, with the deliberate intention of wounding the religious feelings of any other person, writes any word, or any person who, with the like intention, utters any word or makes any sound in the hearing of any other person or makes any gesture or places any object in the sight of any other person, shall be guilty of a misdemeanor and shall be liable to imprisonment for one year.

Hindering burial of dead body, etc.
1 of 2011

131.—(1) Whoever unlawfully hinders the burial of the dead body of any person, or without lawful authority in that behalf disinters, dissects, or harms the dead body of any person or, being under a duty to cause the dead body of any person to be buried, fails to perform such duty, shall be guilty of a misdemeanor.

(2) In this section the word "burial" means burial in earth, interment or any other form of sepulture, or the cremation or any other mode of disposal of a dead body and "buried" has a corresponding meaning.

Chapter XV—Offences Against Morality

Definition of rape

132. Any person who has unlawful carnal knowledge of a woman or girl, without her consent, or with her consent if the consent is obtained by force or means of threats or intimidation of any kind, or by fear of bodily harm, or by means of false representations as to the nature of the act, or in the case of a married woman, by personating her husband, shall be guilty of the felony termed rape.

Punishment of rape
1 of 2011

133. Any person who commits the offence of rape shall be liable to be punished with death or with imprisonment for life.

Attempted rape
1 of 2011

134. Any person who attempts to commit rape shall be guilty of a felony and liable to imprisonment for life.

135. Any person who, with intent to marry or carnally know a woman of any age, or to cause her to be married or carnally known by any other person, takes her away, or detains her, against her will, shall be guilty of a felony and shall be liable to imprisonment for seven years.

Abduction

136. Any person who unlawfully takes an unmarried girl under the age of sixteen years out of the custody or protection of her father or mother or other person having the lawful care or charge of her, and against the will of such father or mother or other person, shall be guilty of a misdemeanor.

Abduction of girls under sixteen

137.—(1) Any person who unlawfully and indecently assaults any woman or girl shall be guilty of a felony and shall be liable to imprisonment for fourteen years.

Indecent assaults on females
1 of 2011

(2) It shall be no defence to a charge for an indecent assault on a girl under the age of sixteen years to prove that she consented to the act of indecency.

(3) Whoever, intending to insult the modesty of any woman, utters any word, makes any sound or gesture or exhibits any object intending that such word or sound shall be heard, or that such gesture or object shall be seen, by such woman or intrudes upon the privacy of such woman, shall be guilty of a misdemeanor and shall be liable to imprisonment for one year.

Insulting the modesty of a woman

137A. Any female person who, whether in public or private, commits any act of gross indecency with another female person, or procures another female person to commit any act of gross indecency with her, or attempts to procure the commission of any such act by any female person with herself or with another female person, whether in public or private, shall be guilty of an offence and shall be liable to imprisonment for five years.

Indecent practices between females
1 of 2011

138.— (1) Any person who carnally knows any girl under the age of sixteen years shall be guilty of a felony and shall be liable to imprisonment for life.

Defilement of girls under sixteen years of age
1 of 2011

(2) Any person who attempts to have carnal knowledge of any girl under the age of sixteen years of shall be guilty of a felony and shall be liable to imprisonment for fourteen years:

Attempt

Provided that it shall be a sufficient defence to any charge under this section if it shall be made to appear to the court, jury or assessors before whom the charge shall be brought that the person so charged had reasonable cause to believe and did in fact believe that the girl was of or above the age of sixteen years.

Defilement of idiots or imbeciles

139. Any person who, knowing a woman or girl to be an idiot or imbecile, has or attempts to have unlawful carnal knowledge of her under circumstances not amounting to rape, but which prove that the offender knew at the time of the commission of the offence that the woman or girl was an idiot or imbecile, shall be guilty of a felony and shall be liable to imprisonment for fourteen years.

Procuration
1 of 2011

140. Any person who—

(*a*) procures or attempts to procure any girl or woman under the age of twenty-one years to have unlawful carnal connexion, either in Malaŵi or elsewhere, with any other person or persons; or

(*b*) procures or attempts to procure any woman or girl to become, either in Malaŵi or elsewhere, a common prostitute; or

(*c*) procures or attempts to procure any woman or girl to leave Malaŵi with intent that she may become an inmate of or frequent a brothel elsewhere; or

(*d*) procures or attempts to procure any woman or girl to leave her usual place of abode in Malaŵi with intent that she may, for the purposes of prostitution, become an inmate of or frequent a brothel either in the Republic or elsewhere,

1 of 2011

shall be guilty of an offence and shall be liable to imprisonment for fourteen years.

Procuring defilement of woman by threats or fraud or administering drugs
1 of 2011

141. Any person who—

(*a*) by threats or intimidation procures or attempts to procure any woman or girl to have any unlawful carnal connexion, either in Malaŵi or elsewhere; or

(*b*) by false pretences or false representations procures any woman or girl to have any unlawful carnal connexion, either in Malaŵi or elsewhere; or

(*c*) applies, administers to, or causes to be taken by any woman or girl any drug, matter, or thing, with intent to stupefy or overpower so as thereby to enable any person to have unlawful carnal connexion with such woman or girl,

1 of 2011

shall be guilty of an offence and shall be liable to imprisonment for fourteen years:

Provided that no person shall be convicted of an offence under this section upon the evidence of one witness only, unless such witness be corroborated in some material particular by evidence implicating the accused.

142. Any person who, being the owner or occupier of premises or having or acting or assisting in the management or control thereof, induces or knowingly suffers any girl under the age of sixteen years to resort to or be upon such premises for the purpose of being carnally known by any man, whether such carnal knowledge is intended to be with any particular man or generally, shall be guilty of a felony, and shall be liable to imprisonment for five years.

Householder, etc., permitting defilement of girl under sixteen years of age on his premises
1 of 2011

143.—(1) Any person who detains any woman or girl against her will—

Detention with intent or in brothel
1 of 2011

(*a*) in or upon any premises with intent that she may be unlawfully and carnally known by any man, whether any particular man or generally; or

(*b*) in any brothel,

shall be guilty of an offence and shall be liable to imprisonment for five years.

(2) When a woman or girl is in or upon any premises for the purpose of having any unlawful carnal connexion, or is in any brothel, a person shall be deemed to detain such woman or girl in or upon such premises or in such brothel, if, with intent to compel or induce her to remain in or upon such premises or in such brothel, such person withholds from such woman or girl any wearing apparel or other property belonging to her, or where wearing apparel has been lent or otherwise supplied to such woman or girl by or by the directions of such person, such person threatens such woman or girl with legal proceedings if she takes away with her the wearing apparel so lent or supplied.

Constructive detention by withholding clothes

(3) No legal proceedings, whether civil or criminal, shall be taken against any such woman or girl for taking away or being found in possession of any such wearing apparel as was necessary to enable her to leave such premises or brothel.

144.—(1) If it appears to any magistrate, on information made before him on oath by any parent, relative or guardian of any woman or girl or other person who, in the opinion of the magistrate, is acting *bona fide* in the interests of any woman or girl, that there is reasonable cause to suspect that such woman or girl is unlawfully detained for immoral purposes by any person in any place within the jurisdiction of such magistrate, such magistrate may issue a warrant authorizing the person named therein to search for, and, when found, to take to and detain in a place of safety such woman or girl until she can be brought before a magistrate; and the magistrate before whom such woman or girl is brought may cause her to be delivered up to her parents or guardians, or otherwise dealt with as circumstances may permit and require.

Power of search
1 of 2011

(2) A magistrate issuing such warrant may, by the same or any other warrant, cause any person accused of so unlawfully detaining such woman or girl to be apprehended and brought before a magistrate and proceedings to be taken for punishing such person according to law.

(3) A woman or girl shall be deemed to be unlawfully detained for immoral purposes if she is so detained for the purpose of being unlawfully and carnally known by any man, whether any particular man or generally; and—

(*a*) either is under the age of thirteen years; or

(*b*) if she is of or over the age of thirteen years and under the age of eighteen years, is so detained against her will or against the will of her father or mother or of any person having the lawful care or charge of her; or

(*c*) if she is of or over the age of eighteen years and is so detained against her will.

(4) Any person authorized by warrant under this section to search for any woman or girl so detained as aforesaid may enter (if need be by force) any house, building, or other place mentioned in the warrant and may remove such woman therefrom.

Male person living on earnings of prostitution or persistently soliciting
1 of 2011

145.—(1) Every male person who—

(*a*) knowingly lives wholly or in part on the earnings of prostitution; or

(*b*) in any public place persistently solicits or importunes for immoral purposes,

shall be guilty of a misdemeanor.

(2) If it is made to appear to a magistrate by information on oath that there is reason to suspect that any house or any part of a house is used by a woman or girl for purposes of prostitution, and that any person residing in or frequenting the house is living wholly or in part on the earnings of the prostitute, the magistrate may issue a warrant authorizing any police officer to enter and search the house and to arrest that person.

(3) Where a male person is proved to live with or to be habitually in the company of a prostitute or is proved to have exercised control, direction or influence over the movements of a prostitute in such a manner as to show that he is aiding, abetting or compelling her prostitution with any other person or generally, he shall unless he shall satisfy the court to the contrary be deemed to be knowingly living on the earnings of prostitution.

146. Every woman who knowingly lives wholly or in part on the earnings of prostitution, or who is proved to have, for the purpose of gain, exercised control, direction or influence over the movements of a prostitute in such a manner as to show that she is aiding, abetting or compelling her prostitution with any person, or generally, shall be guilty of a misdemeanor.

Woman aiding, etc., for gain prostitution of another woman

147. Any person who keeps a house, room, set of rooms, or place of any kind whatsoever for purposes of prostitution shall be guilty of an offence and shall be liable to imprisonment for seven years.

Brothels
1 of 2011

147A.—(1) Any person who—

Promoting prostitution, etc.
1 of 2011

(*a*) owns, controls, manages, supervises or otherwise keeps, alone or in association with another person, a house or business for prostitution;

(*b*) procures, encourages, induces, or otherwise purposely causes another person to become or remain a common prostitute;

(*c*) solicits another person to patronize a prostitute;

(*d*) transfers or transports any person into or out of or within Malaŵi with the purpose to engage that other person in prostitution; or

(*e*) rents or permits any place to be regularly used for prostitution or promotion of prostitution,

shall be guilty of an offence and shall be liable to imprisonment for fourteen years.

(2) For the purposes of this section—

(*a*) "prostitution" means any sexual activity with another person for money or something of economic value, or the offer or acceptance of an offer made to engage in sexual activity in exchange for money or something of economic value; and

(*b*) "sexual activity" includes sexual intercourse whether in the form of genital, oral-genital, anal-genital contact or otherwise, whether between persons of the same or opposite sex, masturbation, touching of the genitals, buttocks, breasts, sadistic or masochistic abuse and other deviant sexual relations.

148. Any person who conspires with another to induce any woman or girl, by means of any false pretence, false representation or other fraudulent means, to permit any man to have unlawful carnal knowledge of her shall be guilty of a felony, and shall be liable to imprisonment for three years.

Conspiracy to defile
1 of 2011

Attempts to procure abortion

149. Any person who, with intent to procure a miscarriage of a woman, whether she is or is not with child, unlawfully administers to her or causes her to take any poison or other noxious thing, or uses any force of any kind, or uses any other means whatever, shall be guilty of a felony and shall be liable to imprisonment for fourteen years.

The like by woman with child

150. Any woman who, being with child, with intent to procure her own miscarriage, unlawfully administers to herself any poison or other noxious thing, or uses any force of any kind, or uses any other means whatever, or permits any such thing or means to be administered or used to her, shall be guilty of a felony, and shall be liable to imprisonment for seven years.

Supplying drugs or instruments to procure abortion

151. Any person who unlawfully supplies to or procures for any person any thing whatever, knowing that it is intended to be unlawfully used to procure the miscarriage of a woman, whether she is or is not with child, shall be guilty of a felony and shall be liable to imprisonment for three years.

Knowledge of age of female immaterial

152. Except as otherwise expressly stated, it is immaterial in the case of any of the offences committed with respect to a woman or girl under a specified age, that the accused person did not know that the woman or girl was under that age, or believed that she was not under that age.

Unnatural offences
1 of 2011

153. Any person who—

(*a*) has carnal knowledge of any person against the order of nature; or

(*b*) has carnal knowledge of an animal; or

(*c*) permits a male person to have carnal knowledge of him or her against the order of nature,

1 of 2011

shall be guilty of a felony and shall be liable to imprisonment for fourteen years.

Attempt to commit unnatural offences
1 of 2011

154. Any person who attempts to commit any of the offences specified in section 153 shall be guilty of a felony and shall be liable to imprisonment for seven years.

Indecent assault of boys under fourteen
1 of 2011

155. Any person who unlawfully and indecently assaults a boy under the age of fourteen years shall be guilty of a felony and shall be liable to imprisonment for seven years.

Indecent assault against idiots and imbeciles
1 of 2011

155A. Any person who indecently assaults a male person, knowing that person to be an idiot or imbecile, shall be guilty of an offence and shall be liable to imprisonment for seven years.

156. Any male person who, whether in public or private, commits any act of gross indecency with another male person, or procures another male person to commit any act of gross indecency with him, or attempts to procure the commission of any such act by any male person with himself or with another male person, whether in public or private, shall be guilty of a felony and shall be liable to imprisonment for five years.

Indecent practices between males
1 of 2011

157.—(1) Any male person who has carnal knowledge of a female person, who is to his knowledge his grand-daughter, daughter, sister, mother or grandmother, shall be guilty of a felony and shall be liable to imprisonment for five years:

Incest by males
1 of 2011

Provided that if it is alleged in the information or charge and proved that the female person is under the age of sixteen years, the offender shall be liable to imprisonment for life.

(2) It is immaterial that the carnal knowledge was had with the consent of the female person.

Consent immaterial

(3) If any male person attempts to commit any such offence as aforesaid he shall be guilty of a misdemeanor.

Attempt

(4) On the conviction before any court of any male person of an offence under this section, or of an attempt to commit the same, against any female under the age of twenty-one years, it shall be in the power of the court to divest the offender of all authority over such female, and, if the offender is the guardian of such female, to remove the offender from such guardianship, and in any such case to appoint any person or persons to be the guardian or guardians of such female during her minority or any less period:

Order for guardianship

Provided that the High Court may at any time vary or rescind the order by the appointment of any other person as such guardian, or in any other respect.

158. Any female person of or above the age of sixteen years who with consent permits her grandfather, father, brother, or son to have carnal knowledge of her (knowing him to be her grandfather, father, brother, son or grandson, as the case may be), shall be guilty of a felony and shall be liable to imprisonment for five years.

Incest by females
1 of 2011

159. In the two last preceding sections the expressions "brother" and "sister", respectively, include half-brother and half-sister, and the said sections shall apply whether the relationship between the person charged with an offence and the person with whom the offence is alleged to have been committed is or is not traced through lawful wedlock.

Test of relationship

Sexual intercourse with minors under one's care or protection
1 of 2011

159A. Any person who has sexual intercourse with a person under the age of twenty-one years who—

(*a*) is the first mentioned person's stepchild, foster child, dependant or ward; or

(*b*) is, at the time of the intercourse, living with the first mentioned person as a member of that person's family or is under that person's care or protection,

shall be guilty of an offence and shall be liable to imprisonment for five years.

Sanction of Director of Public Prosecutions
1 of 2011

160. No prosecution for an offence under section 157, 158 or 159A shall be commenced without the sanction of the Director of Public Prosecutions.

Chapter XVA—Offences Against Morality Relating to Children

Definitions
1 of 2011

160A. In this Chapter—

"child" means a child under the age of sixteen years;

"sexual activity" means sexual contact other than sexual intercourse (whether between persons of the same or opposite sex) in the form of genital, oral-genital, anal-genital contact or otherwise, masturbation, touching of genitals, buttocks or breasts, sadistic or masochistic abuse and other deviant sexual behaviour;

"prohibited sexual act" includes sexual intercourse, anal intercourse, masturbation, bestiality, sadism, masochism, fellatio, cunnilingus, or nudity if the nudity is depicted for the purpose of sexual stimulation or gratification of any person who may view such depiction;

"material" includes—

(*a*) an object;

(*b*) a still visual image of any kind, whether a drawing, painting, photograph, or other representation on a surface of any kind, and whether printed or not;

(*c*) a moving visual image of any kind, whether produced from a cinematographic film, video tape or other medium; or

(*d*) a hologram;

"offensive material" means material that—

(*a*) describes, depicts, expresses, or otherwise deals with matters of sex, drug misuse or addiction, crime, cruelty or violence, or revolting or abhorrent phenomena, in a manner that is likely to cause offence to a reasonable adult;

(*b*) depicts a person (whether engaged in sexual activity or otherwise) who is, or who is apparently, a child under the age of sixteen years in a manner that is likely to cause offence to a reasonable adult;

(*c*) describes, depicts, expresses, or otherwise deals with sexual activity of any kind between a human being and an animal;

(*d*) promotes, incites, or instructs in matters of crime or violence, and includes a publication, the publication or importation of which is prohibited under this Code or under any other written law;

"public entertainment" means an entertainment to which the public or any section of the public is admitted or in connexion with which a charge, whether for admission or otherwise, is made.

Sexual activity with a child
1 of 2011

160B.—(1) Any person who engages or indulges in sexual activity with a child shall be guilty of an offence and shall be liable to imprisonment for fourteen years.

(2) If the offence under subsection (1) is committed in circumstances of aggravation, the offender shall be liable to imprisonment for twenty-one years.

(3) For the purposes of subsection (2), "circumstances of aggravation" means circumstances in which—

(*a*) at or immediately before or immediately after the commission of the offence—

(i) the accused is armed with any dangerous or offensive weapon or instrument or pretends to be so armed;

(ii) the accused is in company with another person or persons;

(iii) the accused by his acts or conduct wounds, maims, disfigures or endangers the life of the victim;

(iv) the accused does an act which is likely seriously and substantially to degrade or humiliate the victim; or

(v) the accused threatens to kill the victim;

(*b*) the accused is a step parent, foster parent, teacher, guardian or is a person who has the guardianship or charge of the child or is a person with whom the child is living as part of the accused's family.

Indecent practice in the presence of or with a child
1 of 2011

160C. Any person who, whether in public or private—

(*a*) procures a child to commit any act of gross indecency with him or with another person; or

(*b*) commits an act of gross indecency with a person of the same or opposite sex in the presence of a child,

shall be guilty of an offence and shall be liable to imprisonment for fourteen years.

Showing, selling, exposing offensive materials to a child
1 of 2011

160D. Any person who, with intent to commit an offence, shows, sells, or exposes offensive material to a child, shall be guilty of an offence and shall be liable to imprisonment for seven years.

Recording a child
1 of 2011

160E. Any person who—

(*a*) causes or permits a child to be engaged in a prohibited sexual act or simulation of such act if the person knows or has reason to know or intends that the prohibited act may be photographed, filmed, reproduced, or reconstructed in any manner or may be part of an exhibition or performance;

(*b*) photographs or films a child in a prohibited sexual act or in the simulation of such an act or uses any device to reproduce or reconstruct the image of a child in a prohibited sexual act or in the simulation of such an act;

(*c*) knowingly receives for the purpose of selling or knowingly sells, procures, manufactures, gives, provides, lends, trades, mails, delivers, sends, transfers, publishes, distributes, circulates, disseminates, presents, exhibits, advertises, offers or agrees to offer any photograph film, video tape, computer programme, video game or any other reproduction or reconstruction which depicts a child engaging in a prohibited sexual act or in the simulation of such act;

(*d*) knowingly possesses or knowingly views any photograph, film, video tape, computer programme, video game or any other reproduction or reconstruction which so depicts a child,

shall be guilty of an offence and shall be liable to imprisonment for fourteen years.

Procuring child to take part in public entertainment
1 of 2011

160F.—(1) Any person who causes or procures any child, or being a parent or guardian of the child, allows the child to take part in any public entertainment—

(*a*) of an immoral nature;

(*b*) which is dangerous to life or prejudicial to the health, physical fitness and kind treatment of the child,

shall be guilty of an offence and shall be liable to a fine of K100,000 and to imprisonment for seven years.

(2) If the person convicted of an offence under subsection (1) is the holder of a licence issued under a law regulating public entertainment or under any other relevant law, the court may also order the cancellation of the licence or its suspension for such period as the court may think fit.

Knowledge of age of child immaterial
1 of 2011

160G. It shall not be a defence to a charge for an offence under this Chapter that the accused did not know that the child in respect of whom the offence was committed was under the prescribed age of sixteen years, or believed that the child was not under that age.

Chapter XVI—Offences Relating to Marriage and Domestic Obligations

Fraudulent pretence of marriage

161. Any person who wilfully and by fraud causes any woman who is not lawfully married to him to believe that she is lawfully married to him and to cohabit or have sexual intercourse with him in that belief, shall be guilty of a felony and shall be liable to imprisonment for ten years.

Bigamy

162. Any person who, having a husband or wife living, goes through a ceremony of marriage which is void by reason of its taking place during the life of such husband or wife, shall be guilty of a felony and shall be liable to imprisonment for five years:

Provided that this section shall not extend to any person whose marriage with such husband or wife has been declared void by a court of competent jurisdiction, nor to any person who contracts a marriage during the life of a former husband or wife, if such husband or wife, at the time of the subsequent marriage, shall have been continually absent from such person for the space of seven years, and shall not have been heard of by such person as being alive within that time.

Marriage ceremony fraudulently gone through without lawful marriage

163. Any person who dishonestly or with fraudulent intention goes through the ceremony of marriage, knowing that he is not thereby lawfully married, shall be guilty of a felony, and shall be liable to imprisonment for five years.

Desertion of children
1 of 2011

164. Any person who being the parent, guardian or other person having the lawful care or charge of a child under the age of sixteen years, and being able to maintain such child, wilfully and without lawful and reasonable cause deserts the child and leaves it without means of support, shall be guilty of an offence and shall be liable to imprisonment for seven years.

Neglecting to provide food, etc., for children 1 of 2011

165. Any person who, being the parent or guardian or other person having the lawful care or charge of any child under the age of sixteen years and unable to provide for itself, refuses or neglects (being able to do so) to provide sufficient food, clothes, bedding and other necessaries for such child, so as thereby to injure the health of such child, shall be guilty of an offence and shall be liable to imprisonment for seven years.

Master not providing for servants or apprentices

166. Any person who, being legally liable either as master or mistress, to provide for any apprentice or servant necessary food, clothing, or lodging, wilfully and without lawful excuse refuses or neglects to provide the same, or unlawfully or maliciously does or causes to be done any bodily harm to such apprentice or servant so that the life of such apprentice or servant is endangered or that his health has been or is likely to be permanently injured shall be guilty of a misdemeanor.

Child stealing 1 of 2011

167.—(1) Any person who, with intent to deprive any parent, guardian, or other person who has the lawful care or charge of a child under the age of sixteen years, of the possession of such child—

(*a*) forcibly or fraudulently takes or entices away, or detains the child; or

(*b*) receives or harbours the child, knowing it to have been so taken or enticed away or detained,

shall be guilty of a felony and shall be liable to imprisonment for seven years.

(2) It is a defence to a charge of any of the offences defined in this section to prove that the accused person claimed in good faith a right to the possession of the child, or, in the case of an illegitimate child, is its mother or claimed to be its father.

Chapter XVII—Nuisances and Offences against Health and Convenience

Common nuisance 1 of 2011

168.—(1) Any person who does an act not authorized by law or omits to discharge a legal duty and thereby causes any common injury, or danger or annoyance, or obstructs or causes inconvenience to the public in the exercise of common rights, commits the misdemeanor termed a common nuisance and shall be liable to imprisonment for one year.

(2) It is immaterial that the act or omission complained of is convenient to a larger number of the public than it inconveniences, but the fact that it facilitates the lawful exercise of their rights by a part of the public may show that it is not a nuisance to any of the public.

Gaming houses 1 of 2011

169.—(1) Any person being the owner or occupier, or having the use of, any house, room or place, who shall open, keep or use the same for the purpose of unlawful gaming being carried on therein, and any person who, being the owner or occupier of any house, room or place, shall knowingly and wilfully permit the same to be opened, kept or used by any other person for the purpose aforesaid, and any person having the care or management of or in any manner assisting in conducting the business of any house, room or place opened, kept or used for the purpose aforesaid, is said to keep a common gaming house.

(2) In this section "unlawful gaming" means any game the chances of which are not alike favourable to all the players, including the banker or other person or persons by whom the game is managed or against whom the other players stake, play or bet.

(3) Any person who keeps a common gaming house shall be guilty of a misdemeanor.

(4) Any person other than the persons mentioned in subsection (1) who is found in a common gaming house shall be deemed, unless the contrary is proved, to be there for the purpose of unlawful gaming, and shall be guilty of a misdemeanor and shall be liable to a fine of K1,000 for the first offence, and for each subsequent offence to a fine of K2,000 and to imprisonment for three months. 1 of 2011

Betting houses

170. Any house, room or place which is used for any of the purposes following, that is to say—

(*a*) for the purpose of bets being made therein between persons resorting to the place and—

(i) the owner, occupier, or keeper of the place, or any person using the place; or

(ii) any person procured or employed by or acting for or on behalf of any such owner, occupier or keeper, or person using the place; or

(iii) any person having the care or management, or in any manner conducting the business, of the place; or

(*b*) for the purpose of any money or other property being paid or received therein by or on behalf of any such owner, occupier or keeper, or person using the place, as, for the consideration—

(i) for an assurance, undertaking, promise, or agreement, express or implied, to pay or give thereafter any money or other property on any event or contingency of or relating to any horse race, or other race, fight, game, sport, or exercise; or

(ii) for securing the paying or giving by some other person of any money or other property on any such event or contingency,

is called a common betting house.

Any person who, being the owner or occupier of any house, room, or place, knowingly and wilfully permits it to be opened, kept or used, as a common betting house by another person, or who has the use or management, or assists in conducting the business, of a common betting house, shall be guilty of a misdemeanor and shall be liable to imprisonment for one year:

Totalizator

Provided always that nothing herein contained shall make illegal the use of a totalizator by a race club, gymkhana club or sports club recognized by the Government at any public meeting, with the approval in each case of the Inspector General of Police. In this proviso, "totalizator" means and includes the instrument, machine or contrivance commonly known as the totalizator, and any other instrument, machine or contrivance of a like nature, or any scheme for enabling any number of persons to make bets with one another on the like principles.

Authorized lotteries

171. For the purposes of sections 173 and 180, "authorized lottery" means—

(*a*) any lottery—

(i) organized to raise funds within Malaŵi for social service, public welfare, relief of distress, patriotic purposes, or to provide sporting or recreational facilities; and

(ii) of which at least one-quarter of the gross proceeds shall be devoted to the object for which the lottery is conducted; and

(iii) authorized by the Inspector General of Police or by a police officer to whom power has been delegated by the Inspector General of Police to give such authority;

(*b*) any lottery deemed to be an authorized lottery under section 172;

(*c*) any lottery declared by the Minister to be an authorized lottery:

Provided that a lottery declared to be an authorized lottery under the provisions of this paragraph shall be conducted in accordance with and subject to such conditions as the Minister may impose.

Small lotteries incidental to certain entertainments to be authorized lotteries

172.—(1) A lottery promoted as an incident of an entertainment to which this section applies shall be deemed to be an authorized lottery, but the conditions specified in subsection (2) shall be observed in the promotion and conduct of the lottery, and if any of those conditions is broken the lottery shall cease to be an authorized lottery.

(2) The conditions referred to in subsection (1) are that—

(*a*) the whole proceeds of the entertainment (including the proceeds of the lottery) after deducting—

(i) the expenses of the entertainment excluding the expenses incurred in connexion with the lottery; and

(ii) the expenses incurred in printing tickets in the lottery; and

(iii) such sum (if any) not exceeding K2,000 as the promoters of the lottery think fit to appropriate on account of any expense incurred by them in purchasing prizes in the lottery, shall be devoted to purposes other than private gain;

(*b*) tickets or chances in the lottery shall not be sold or issued, nor shall the result of the lottery be declared, except in the premises on which the entertainment takes place and during the progress of the entertainment; and

(*c*) the facilities provided for participating in lotteries shall not be the only, or the only substantial, inducement to persons to attend the entertainment.

(3) The entertainments to which this section applies are bazaars, sales of work, fetes and other entertainments of similar character, whether limited to one day or extending over two or more days.

Lotteries
1 of 2011

173.—(1) Any person who opens, keeps or uses any place for carrying on a lottery other than an authorized lottery shall be guilty of a misdemeanor and shall be liable to imprisonment for six months.

(2) Any person who prints or publishes, or causes to be printed or published, any advertisement or other notice of or relating to a lottery, not being an authorized lottery, or of or relating to the sale of any ticket or chance or of any share in any ticket or chance in any lottery other than an authorized lottery shall be liable to a fine of K10,000.

1 of 2011

(3) In this section "lottery" includes any scheme or device for the sale, gift, disposal, or distribution of any property, depending upon or to be determined by lot or chance, whether by the throwing or casting of dice, or by the drawing of tickets, cards, lots, numbers, or figures, or by means of a wheel or trained animal, or otherwise howsoever.

(4) When any person is convicted of an offence under this section, the court may, in addition to or in lieu of, any penalty which may be imposed, order the forfeiture of any instrument or thing used in connexion with the lottery concerning which the conviction has taken place.

Exemption of private lotteries 1 of 2011

174.—(1) In this section, the expression "private lottery" means a lottery which is promoted for, and in which the sale of tickets or chances by the promoters is confined to, either—

(*a*) members of one society established and conducted for purposes not connected with gaming, wagering or lotteries; or

(*b*) persons all of whom work on the same premises; or

(*c*) persons all of whom reside on the same premises,

and which is promoted by persons each of whom is a person to whom, under the foregoing provisions, tickets or chances may be sold by the promoters and, in the case of a lottery promoted for the members of a society, is a person authorized in writing by the governing body of the society to promote the lottery.

For the purposes of this section, the expression "society" includes a club, institution, organization or other association of persons by whatever name called, and each local or affiliated branch or section of a society shall be regarded as a separate and distinct society.

(2) A private lottery shall be deemed to be an authorized lottery, but the following conditions shall be observed in connexion with the promotion and conduct of the lottery, that is to say—

(*a*) the whole proceeds, after deducting only expenses incurred for printing and stationery, shall be devoted to the provision of prizes for purchasers of tickets or chances or for other persons being themselves lawful participants in the lottery to whom any purchaser or purchasers may have sold all of or any share in a ticket or chance or tickets or chances, or, in the case of a lottery promoted for the members of a society, shall be devoted either to the provision of prizes as aforesaid or to purposes which are purposes of the society or, as to part, to the provision of prizes as aforesaid and, as to the remainder, to such purposes as aforesaid;

(*b*) there shall not be exhibited, published or distributed any written notice or advertisement of the lottery other than—

(i) a notice thereof exhibited on the premises of the society for whose members it is promoted or, as the case may be, on the premises on which the persons for whom it is promoted work or reside; and

(ii) such announcement or advertisement thereof as is contained in the tickets, if any;

(*c*) the price of every ticket or chance shall be the same, and the price of every ticket shall be stated on the ticket;

(*d*) every ticket shall bear upon the face of it the names and addresses of each of the promoters and a statement of the persons to whom the sale of tickets or chances by the promoters is restricted, and a statement that no prize or part thereof won in the lottery shall be paid or delivered by the promoters to any person other than the person to whom the winning ticket or chance was sold by them, or to any other person being himself a lawful participant in the lottery to whom the buyer of a ticket or chance shall have sold all of or a share in such ticket or chance, and no prize shall be paid or delivered except in accordance with that statement;

(*e*) no ticket or chance shall be issued or allotted by the promoters except by way of sale and upon receipt of the full price thereof, and no money or valuable thing so received by a promoter shall in any circumstances be returned; and

(*f*) no tickets in the lottery shall be sent through the post.

(3) If any of the conditions specified in subsection (2) is broken, each of the promoters of the lottery, and where the person by whom the condition is broken is not one of the promoters, that person also, shall be liable to a fine of K2,000 and to imprisonment for three months: 1 of 2011

Provided that it shall be a defence for a person charged only by reason of his being a promoter of the lottery that the offence was committed without his knowledge.

(4) The Inspector General of Police, or any other police officer appointed by him for the purpose, may at any time inspect the accounts of any private lottery, and the promoters of such lottery shall give to the Inspector General of Police or to such officer access to all vouchers or other documents connected therewith and such other information as he may require.

Keeper of premises defined

175. Any person who appears, acts, or behaves as master or mistress, or as the person having the care or management of any such house, room, set of rooms, or place as is mentioned in section 169, 170 or 173 is to be taken to be the keeper thereof, whether he is or is not the real keeper.

Offence to organize or manage or conduct pools 1 of 2011

176. Any person who takes part in the organization, management or conduct of a pool shall be guilty of a misdemeanor and shall be liable to a fine of K10,000 and to imprisonment for six months.

For the purposes of this section "pool" means any invitation to the public to foretell the result of any game, race or event.

Chain letters 1 of 2011

177.—(1) Any person who sends or causes to be sent any chain letter or who sends or receives any money or money's worth in connexion

with any chain letter is guilty of a misdemeanor and is liable to a fine of K5,000 and to imprisonment for six months.

(2) For the purposes of this section "chain letter" means a document addressed by one person to another person suggesting to, requesting or inviting the person to whom it is addressed—

(*a*) that he should send or request to be sent a document having the same purport to one or more other persons; or

(*b*) that he should communicate, verbally or otherwise, the contents or import of the first-mentioned document to one or more other persons in order to solicit, induce, canvass or cause those persons, or any of them, to act in accordance with the suggestion, request or invitation contained in the first-mentioned document; and in either of the above cases;

(*c*) that he should remit to a person or to an address specified in the first-mentioned document money or money's worth.

Opening of postal article suspected of containing chain letter
1 of 2011

178.—(1) If the Postmaster General or any other officer authorized by him in that behalf has reasonable grounds to believe that any postal article is, or contains, a chain letter sent in contravention of any of the provisions of section 177, he may apply to a court of a Resident Magistrate or First Grade Magistrate for a warrant to detain and open the postal article.

(2) Every application under this section shall be made in writing and on oath, setting out the facts relied upon.

(3) On an application made in accordance with this section, the court may grant the warrant if it is satisfied that there, are reasonable grounds for believing that the postal article is, or contains, a chain letter.

(4) The court may order that any bank note, currency note, postal order, money order, coin, money or money's worth found in any such postal article so opened under subsection (1) shall be forfeited.

(5) In this section, the expression "postal article" includes any letter, printed paper, newspaper, parcel or other article whatsoever in course of transmission by post, and a telegram when conveyed by post.

Obscene matters or things
11 of 1973
1 of 2011

179.—(1) Any person who—

(*a*) makes, produces or has in his possession any one or more obscene writings, drawings, prints, paintings, printed matter, pictures, posters, emblems, photographs, photographic negatives or prints, cinematograph films, gramophone records or other contrivances for the reproduction of sound or any other obscene objects or any other objects tending to corrupt morals; or

(*b*) imports, conveys or exports, or causes to be imported, conveyed or exported, any such matters or things, or in any manner whatsoever puts any of them in circulation; or

(*c*) carries on or takes part in any business, whether public or private, concerned with any such matters or things in any manner whatsoever, or distributes any of them, or exhibits any of them publicly, or makes a business of lending any of them; or

(*d*) advertises or makes known by any means whatsoever, with a view to assisting the circulation of, or traffic in, any such matters or things, that a person is engaged in any of the acts referred to in this section, or advertises or makes known how, or from whom, any such matters or things can be procured either directly or indirectly; or

(*e*) publicly exhibits any indecent show or performance or any show or performance tending to corrupt morals,

is guilty of an offence and shall be liable to a fine of K500,000 and to imprisonment for a term of two years. 1 of 2011

(2) If, in respect of any of the offences specified in paragraphs (*a*), (*b*), (*c*) or (*d*) of subsection (1), any constituent element thereof is committed in Malaŵi such commission shall be sufficient to render the person accused of such offence triable therefor in Malaŵi.

(3) A court, on convicting any person of an offence against this section, may order to be confiscated or destroyed any matter or thing made, possessed or used for the purpose of such offence.

(4) A court may, on the application of a public prosecutor order the destruction of any obscene matter or thing to which this section relates, whether any person may or may not have been convicted under the provisions of this section in respect of such obscene matter or thing. In this subsection, the term "public prosecutor" bears the meaning ascribed to such term by section 2 of the Criminal Procedure and Evidence Code. Cap. 8:01

(5) Where a person is convicted of an offence under this section and the court convicting him is satisfied that the offence arose out of, or was committed in the course, or furtherance, of any trade or business carried on by him and in respect of which he holds a licence issued under any written law, such court shall order the cancellation of such licence. 1 of 2011

(6) No prosecution for an offence under this section shall be instituted without the written consent of the Director of Public Prosecutions.

Idle and disorderly persons 1 of 2011

180. The following persons—

(*a*) every common prostitute behaving in a disorderly or indecent manner in any public place;

(*b*) every person wandering or placing himself in any public place to beg or gather alms, or causing or procuring or encouraging any child or children so to do;

(*c*) every person playing at any game of chance not being an authorized lottery or a private lottery for the purposes of section 174, for money or money's worth in any public place;

(*d*) every person who without lawful excuse publicly does any indecent act;

(*e*) every person who in any public place solicits for immoral purposes; and

(*f*) every person wandering about and endeavouring by the exposure of wounds or deformation to obtain or gather alms,

1 of 2011

shall be deemed idle and disorderly persons, and shall be liable for the first offence to a fine of K1,000 and to imprisonment for three months and for a subsequent offence to a fine of K3,000 and to imprisonment for six months.

Conduct likely to cause a breach of the peace
1 of 2011

181. Every person who in any public place conducts himself in a manner likely to cause a breach of the peace shall be guilty of an offence and shall be liable to a fine of K3,000 and to imprisonment for three months.

Use of insulting language
1 of 2011

182. Every person who uses insulting, abusive, indecent or threatening language or otherwise conducts himself in a manner likely to give such provocation to any person as to cause such person to break the peace or to commit any offence against the person shall be liable to a fine of K100 and to imprisonment for six months.

Nuisances by drunken persons, etc.
1 of 2011
Cap. 50:07

183.—(1) Every person found drunk and incapable in any public place, or on any premises licensed under the Liquor Act, shall be guilty of an offence and shall be liable to a fine of K1,000, and on a second or subsequent conviction shall be liable to a fine of K5,000.

Cap. 50:07

(2) Every person who, in any public place or any premises licensed under the Liquor Act, while drunk conducts himself in a riotous or disorderly behaviour shall be guilty of an offence and shall be liable to a fine of K3,000.

Cap. 50:07

(3) Every person who, in any public place or on any premises licensed under the Liquor Act, while drunk is in possession of any loaded firearm shall be liable to a fine of K10,000 and to imprisonment for two years.

(4) Any person who commits an offence against this section may be arrested without a warrant.

184.—(1) The following persons— Rogues and vagabonds 1 of 2011

(*a*) every person going about as a gatherer or collector of alms, or endeavouring to procure charitable contributions of any nature or kind, under any false or fraudulent pretence;

(*b*) every suspected person or reputed thief who has no visible means of subsistence and cannot give a good account of himself;

(*c*) every person found in or upon or near any premises or in any road or highway or any place adjacent thereto or in any public place at such time and under such circumstances as to lead to the conclusion that such person is there for an illegal or disorderly purpose;

(*d*) every person who, without the prior consent in writing in that behalf of the District Commissioner, collects or makes any appeal for subscriptions of money in any public place in such District Commissioner's District for any purpose;

(*e*) every person who has collected money by subscription in any place in Malaŵi, who fails to produce to a District Commissioner or to publish in a newspaper named by a District Commissioner, correct accounts of any money received by such subscription and of the disposal thereof, when called upon so to do by such District Commissioner,

shall be deemed to be a rogue and vagabond, and shall be guilty of a misdemeanor and shall be liable for the first offence to imprisonment for six months, and for every subsequent offence to imprisonment for eighteen months:

Provided that paragraphs (*d*) and (*e*) shall not apply to—

(i) any person or to the duly authorized representative of any organization who has received the written consent of the Inspector General of Police to collect, or make any appeal for, subscriptions of money for religious or charitable purposes. 1 of 2011

(ii) any person authorized to collect, or make any appeal for subscriptions of money, under the provisions of any by-law of a local authority which is in force in Malaŵi:

Provided further that for the purposes of paragraph (*d*) the definition of "public place" in section 4 shall not be deemed to include any recognized place of religious worship.

(2) In granting his consent to any person to collect money or to make an appeal for subscriptions of money under subsection (1) (*d*), a District Commissioner may impose such conditions as he may think fit. Any person who, having been granted such consent fails to comply with any such condition, shall be deemed to have committed an offence against

subsection (1) and shall be liable to the penalties provided by such subsection.

Power to order removal of undesirable persons from certain Municipalities, Townships and other areas
1 of 2011

185.—(1) This section shall extend to such Municipalities, Townships and other areas as the Minister may, by order published in the *Gazette*, direct, and shall apply to—

(*a*) persons of any age which, according to law or custom, should render them subject to control, where the person whose duty it is to exercise control is resident outside a Municipality, Township or other area to which this section applies; or

(*b*) persons having no settled home within such a township or such an area whose District of origin or last place of ordinary residence is outside the Municipality, Township or other area.

(2) For the purposes of subsection (1) (*b*) a person shall be deemed to have a settled home within a Municipality, Township or other area if he satisfies the magistrate—

(*a*) that one or other of his parents is ordinarily resident in such Municipality, Township or other area; or

(*b*) that he is, and has been for a period or periods amounting in the aggregate to not less than eighteen months during the two years immediately preceding the month then current, ordinarily resident in such Municipality, Township or other area.

(3) Where a magistrate has reasonable cause to believe that a person belongs to one of the categories specified in subsection (1) and that the presence of such person within any Municipality, Township or other area within his jurisdiction to which this section extends is, by reason of any of the matters mentioned in subsection (3), undesirable in the public interest, he may make an order (in this section referred to as a removal order) requiring such person—

(*a*) to leave the Municipality, Township or other area not later than such date as may be specified in the Order;

(*b*) thereafter to remain outside the Municipality, Township or other area either during a period to be specified in the order or until further order.

(4) A removal order may be made on any of the following grounds—

(*a*) that a person has been convicted of an offence under section 184;

(*b*) that he has no regular employment or other reputable means of livelihood and cannot give a good account of himself;

(*c*) that he has been convicted of an offence against the person or in relation to property.

(5) Before a removal order is made with respect to any person, he shall be informed of the reasons why it is proposed to make such order and shall be given an opportunity to show cause why such order should not be made.

Appeal against removal order
1 of 2011

186.—(1) A person with respect to whom a removal order under section 185 has been made may appeal against any such order to the High Court, whose decision shall be final.

(2) The High Court may, on receiving notice of appeal within the prescribed time, by order, suspend the operation of the removal order on such terms (including detention in custody or the provision of sureties or the entering into recognizances or reporting to the police) as may appear expedient pending the determination of the appeal:

Provided that any such suspension shall cease to have effect if no appeal against such removal order is lodged in the manner and within the time prescribed.

(3) The High Court at the hearing of the appeal may receive evidence and may confirm or, on cause shown, cancel or vary the removal order.

1 of 2011

(4) The Chief Justice may make Rules prescribing the manner in which and the time within which notice of appeal may be given and an appeal lodged, and generally the procedure to be followed in any appeal to the High Court under this section.

Detention in custody pending consideration of making of removal order
1 of 2011

187.—(1) Any person with respect to whom it is proposed to make a removal order under section 185 may be arrested by any police officer without a warrant and may be detained in custody for a period not exceeding fifteen days for the purpose of enabling the magistrate to make such inquiries as may be necessary.

(2) During any period of detention under subsection (1) such person shall be treated as a person awaiting trial and not as a convicted prisoner.

Subsistence allowance where removal order made

188. Every person with respect to whom a removal order is made shall be provided with such allowance in cash or in kind as the magistrate thinks sufficient to enable him to reach his district of origin or his last place of ordinary residence.

Penalty for failing to comply with removal order, etc.
1 of 2011

189.—(1) Any person with respect to whom a removal order has been made under section 185 and who fails to comply with any of the terms of the order shall be guilty of an offence:

Provided that the magistrate may in writing suspend the operation of a removal order for such period and on such terms as he thinks fit.

1 of 2011

(2) Any person who is guilty of an offence against this section shall be liable to a fine of K1,000 and to imprisonment for three months.

(3) A second or subsequent removal order may be made with respect to any person who is convicted of an offence against this section.

(4) Any police officer may arrest without a warrant any person whom he has reason to believe is guilty of an offence against this section.

(5) In any prosecution for an offence against this section, any document purporting to be a removal order made under section 185 may be admitted in evidence without proof of its authenticity.

(6) A magistrate who has made a removal order shall not, by reason of that fact, be precluded from inquiring into and trying any offence alleged to have been committed against this section by a person with respect to whom such removal order was made.

Review of removal orders

190. In every case where a removal order has been made under section 185, the person with respect to whom such order has been made may apply to a magistrate at the end of a period of six months from the date of the making of the order, and thereafter at the end of every ensuing period of six months, for a review of such order and the magistrate, after considering the matter, may, if he thinks fit, vary, suspend or cancel the order.

Wearing uniform without authority prohibited
1 of 2011

191.—(1) Any person who, not being a person serving in any constabulary or police service in Malaŵi, wears, without the permission of the Minister or without other lawful authority, the uniform of any of those services or any dress having the appearance or bearing any of the distinctive marks of such uniform shall be guilty of a misdemeanor and shall be liable to a fine of K5,000 or to imprisonment for three months:

Provided that nothing in this section shall prevent any person from wearing any uniform or dress in the course of a stage play performed in any place in which stage plays may lawfully be publicly performed or in the course of a music-hall or circus performance.

Bringing contempt on uniform

(2) Any person who unlawfully wears the uniform of any of the forces aforesaid, or any dress having the appearance or bearing any of the distinctive marks of any such uniform, in such a manner or in such circumstances as to be likely to bring contempt on that uniform, or employs any other person so to wear such uniform or dress, is guilty of a misdemeanor, and shall be liable to a fine of K5,000 or to imprisonment for nine months.

1 of 2011

(3) Any person who, not being in the service of the Malaŵi Government or having previously received the written permission of the Minister so to do, imports or sells or has in his possession for sale any such uniform or dress as is mentioned in this section, or the buttons or badges appropriate thereto, is guilty of a misdemeanor, and shall be liable to a fine of K10,000 or to imprisonment for twelve months:

Importation and sale of uniform, etc., without authority, prohibited
1 of 2011

Provided that nothing in this subsection shall be deemed to prohibit the importation of any such uniform or dress by any person who, having served in any constabulary or police service as aforesaid, is lawfully in possession thereof.

(4) When any person shall have been convicted of any offence under this section, the uniform, dress, button, badge or other thing in respect of which the offence has been committed shall be forfeited unless the Minister shall otherwise order.

Forfeiture of uniform, etc., on conviction

192. Any person who unlawfully, negligently or recklessly does any act which is, and which he knows or has reason to believe to be, likely to spread the infection of any disease dangerous to life, shall be guilty of an offence and shall be liable to imprisonment for fourteen years.

Negligent act likely to spread disease dangerous to life
1 of 2011

193. Any person who adulterates any article of food, or drink, so as to make such article noxious as food or drink, intending to sell such article as food or drink, or knowing it to be likely that the same will be sold as food or drink, shall be guilty of an offence and shall be liable to imprisonment for seven years.

Adulteration of food or drink intended for sale
1 of 2011

193A. Any person who imports any adulterated article of food or drink knowing it to be adulterated and intending to sell such article as food or drink or knowing that it is likely that such article will be sold as food or drink shall be guilty of an offence and shall be liable to imprisonment for seven years.

Importation of adulterated food or drinks
1 of 2011

194. Any person who sells, or offers or exposes for sale, as food or drink, any article which has been rendered or has become noxious, or is in a state unfit for food or drink, knowing or having reason to believe, that the same is noxious as food or drink, shall be guilty of an offence and shall be liable to imprisonment for seven years.

Sale of noxious food or drink
1 of 2011

195. Any person who adulterates any drug or medical preparation in such a manner as to lessen the efficacy or change the operation of such drug or medical preparation, or to make it noxious, intending that it shall be sold or used for, or knowing it to be likely that it will be sold or used for, any medicinal purpose, as if it had not undergone such adulteration,

Adulteration of drugs
1 of 2011

shall be guilty of an offence and shall be liable to imprisonment for seven years.

Importation of adulterated drugs
1 of 2011

195A. Any person who imports any adulterated drug or medical preparation knowing it to be adulterated and intending that it shall be sold or used for, or knowing it to be likely that it will be sold or used for, any medicinal purposes as if it had not undergone such adulteration shall be guilty of an offence and shall be liable to imprisonment for seven years.

Sale of adulterated drugs
1 of 2011

196. Any person who, knowing any drug or medical preparation to have been adulterated in such a manner as to lessen its efficacy, to change its operation or to render it noxious, sells the same, or offers or exposes it for sale, or issues it from any dispensary for medicinal purposes as unadulterated, or causes it to be used for medicinal purposes by any person not knowing of the adulteration, shall be guilty of an offence and shall be liable to imprisonment for seven years.

Fouling water

197. Any person who voluntarily corrupts or fouls the water of any public spring or reservoir, so as to render it less fit for the purpose for which it is ordinarily used, shall be guilty of a misdemeanor.

Fouling air

198. Any person who voluntarily vitiates the atmosphere in any place so as to make it noxious to the health of persons in general dwelling or carrying on business in the neighbourhood or passing along a public way, shall be guilty of a misdemeanor.

Offensive trades

199. Any person who, for the purposes of trade or otherwise, makes loud noises or offensive or unwholesome smells in such places and circumstances as to annoy any considerable number of persons in the exercise of their common rights, commits and shall be liable to be punished as for a common nuisance.

Chapter XVIII—Defamation

Definition of libel

200. Any person who, by print, writing, painting, effigy, or by any means otherwise than solely by gestures, spoken words, or other sounds, unlawfully publishes any defamatory matter concerning another person, with intent to defame that other person, shall be guilty of the misdemeanor termed "libel".

Definition of defamatory matter

201. Defamatory matter is matter likely to injure the reputation of any person by exposing him to hatred, contempt or ridicule, or likely to damage any person in his profession or trade by an injury to his reputation. It is immaterial whether at the time of the publication of the defamatory matter the person concerning whom such matter is published is living or dead:

Provided that no prosecution for the publication of defamatory matter concerning a dead person shall be instituted without the consent of the Director of Public Prosecutions.

Definition of publication

202.—(1) A person publishes a libel if he causes the print, writing, painting, effigy or other means by which the defamatory matter is conveyed to be so dealt with, either by exhibition, reading, recitation, description, delivery, or otherwise, as that the defamatory meaning thereof becomes known or is likely to become known to either the person defamed or any other person.

(2) It is not necessary for libel that a defamatory meaning should be directly or completely expressed; and it suffices if such meaning and its application to the person alleged to be defamed can be collected either from the alleged libel itself or from any extrinsic circumstances, or partly by the one and partly by the other means.

Definition of unlawful publication
1 of 2011

203. Any publication of defamatory matter concerning a person is unlawful within the meaning of this Chapter.

Cases in which publication of defamatory matter is absolutely privileged
1 of 2011

204.—(1) The publication of defamatory matter is absolutely privileged, and no person shall under any circumstances be liable to punishment under this Code in respect thereof, in any of the following cases, namely—

(*a*) if the matter is published by the President, or by the Cabinet or the National Assembly, in any official document or proceeding; or

(*b*) if the matter is published in the Cabinet or the National Assembly by any member of such bodies; or

(*c*) if the matter is published concerning a person subject to military or naval discipline for the time being, and relates to his conduct as a person subject to such discipline, and is published by some person having authority over him in respect of such conduct, and to some person having authority over him in respect of such conduct; or

(*d*) if the matter is published in the course of any judicial proceedings by a person taking part therein as a judge or magistrate or commissioner or legal practitioner or juror or assessor or witness or party thereto; or

(*e*) if the matter published is in fact a fair report of anything said, done, or published in the Cabinet or National Assembly; or

(*f*) if the person publishing the matter is legally bound to publish it.

(2) Where a publication is absolutely privileged, it is immaterial for the purposes of this Chapter whether the matter be true or false, and whether it be or be not known or believed to be false, and whether it be or be not published in good faith:

Provided that nothing in this section shall exempt a person from any liability to punishment under any other Chapter of this Code or under any other Act in force within the Republic.

Cases in which publication of defamatory matter is conditionally privileged

205. A publication of defamatory matter is privileged, on condition that it was published in good faith, if the relation between the parties by and to whom the publication is made is such that the person publishing the matter is under some legal, moral or social duty to publish it to the person to whom the publication is made or has a legitimate personal interest in so publishing it, provided that the publication does not exceed either in extent or matter what is reasonably sufficient for the occasion, and in any of the following cases, namely—

(*a*) if the matter published is in fact a fair report of anything said, done, or shown in a civil or criminal inquiry or proceeding before any court:

Provided that if the court prohibits the publication of anything said or shown before it, on the ground that it is seditious, immoral, or blasphemous, the publication thereof shall not be privileged; or

(*b*) if the matter published is a copy or reproduction, or in fact a fair abstract, of any matter which has been previously published, and the previous publication of which was or would have been privileged under the last preceding section; or

(*c*) if the matter is an expression of opinion in good faith as to the conduct of a person in a judicial, official, or other public capacity or as to his personal character so far as it appears in such conduct; or

(*d*) if the matter is an expression of opinion in good faith as to the conduct of a person in relation to any public question or matter, or as to his personal character so far as it appears in such conduct; or

(*e*) if the matter is an expression of opinion in good faith as to the conduct of any person as disclosed by evidence given in a public legal proceeding, whether civil or criminal, or as to the conduct of any person as a party, witness, or otherwise in any such proceeding, or as to the character of any person so far as it appears in any such conduct as in this paragraph mentioned; or

(*f*) if the matter is an expression of opinion in good faith as to the merits of any book, writing, painting, speech, or other work,

performance, or act published, or publicly done or made, or submitted by a person to the judgment of the public, or as to the character of the person so far as it appears therein; or

(*g*) if the matter is a censure passed by a person in good faith on the conduct of another person in any matter in respect of which he has authority, by contract or otherwise, over the other person, or on the character of the other person, so far as it appears in such conduct; or

(*h*) if the matter is a complaint or accusation made by a person in good faith against another person in respect of his conduct in any matter, or in respect of his character so far as it appears in such conduct, to any person having authority, by contract or otherwise, over that other person in respect of such conduct or matter, or having authority by law to inquire into or receive complaints respecting such conduct or matter; or

(*i*) if the matter is published in good faith for the protection of the rights or interests of the person who publishes it, or of the person to whom it is published, or of some person in whom the person to whom it is published is interested.

Explanation as to good faith

206. A publication of defamatory matter shall not be deemed to have been made in good faith by a person, within the meaning of the last preceding section if it is made to appear either—

(*a*) that the matter was untrue, and that he did not believe it to be true; or

(*b*) that the matter was untrue, and that he published it without having taken reasonable care to ascertain whether it was true or false; or

(*c*) that in publishing the matter, he acted with intent to injure the person defamed in a substantially greater degree or substantially otherwise than was reasonably necessary for the interest of the public or for the protection of the private right or interest in respect of which he claims to be privileged.

Presumption as to good faith

207. If it is proved, on behalf of the accused person, that the defamatory matter was published under such circumstances that the publication would have been justified if made in good faith, the publication shall be presumed to have been made in good faith until the contrary is made to appear, either from the libel itself, or from the evidence given on behalf of the accused person, or from evidence given on the part of the prosecution.

Chapter XIX—Murder and Manslaughter

Manslaughter

208. Any person who by an unlawful act or omission causes the death of another person shall be guilty of the felony termed "manslaughter". An unlawful omission is an omission amounting to culpable negligence to discharge a duty tending to the preservation of life or health, whether such omission is or is not accompanied by an intention to cause death or bodily harm.

Murder

209. Any person who of malice aforethought causes the death of another person by an unlawful act or omission shall be guilty of murder.

Punishment of murder
1 of 2011

210. Any person convicted of murder shall be liable to be punished with death or with imprisonment for life.

Punishment of manslaughter

211. Any person who commits the felony of manslaughter shall be liable to imprisonment for life.

Malice aforethought

212. Malice aforethought shall be deemed to be established by evidence proving any one or more of the following circumstances—

(*a*) an intention to cause the death of or to do grievous harm to any person, whether such person is the person actually killed or not;

(*b*) knowledge that the act or omission causing death will probably cause the death of or grievous harm to some person, whether such person is the person actually killed or not, although such knowledge is accompanied by indifference whether death or grievous bodily harm is caused or not, or by a wish that it may not be caused;

(*c*) an intent to commit a felony;

(*d*) an intention by the act or omission to facilitate the flight or escape from custody of any person who has committed or attempted to commit a felony.

Killing on provocation

213.—(1) When a person who unlawfully kills another under circumstances which, but for this section, would constitute murder, does the act which causes death in the heat of passion caused by sudden provocation as hereinafter defined, and before there is time for his passion to cool, he is guilty of manslaughter only.

(2) This section shall not apply unless the court is satisfied that the act which causes death bears a reasonable relationship to the provocation.

Provocation defined 1 of 2011

214.—(1) The term "provocation" means, except as hereinafter stated, any wrongful act or insult of such a nature as to be likely, when done or offered to an ordinary person, or in the presence of an ordinary person to another person who is under his immediate care, or to whom he stands in a conjugal, parental, filial, or fraternal relation, or in the relation of master and servant, to deprive him of the power of self-control and to induce him to assault the person by whom the act or insult is done or offered.

(2) When such an act or insult is done or offered by one person to another, or in the presence of another to a person who is under the immediate care of that other, or to whom the latter stands in any such relation as aforesaid, the former is said to give to the latter provocation for an assault.

(3) A lawful act is not provocation to any person for an assault.

(4) An act which a person does in consequence of incitement given by another person in order to induce him to do the act and thereby to furnish an excuse for committing an assault is not provocation to that other person for an assault.

(5) An arrest which is unlawful is not necessarily provocation for an assault, but it may be evidence of provocation to a person who knows of the illegality.

(6) For the purposes of this section the expression "an ordinary person" shall mean an ordinary person of the community to which the accused belongs.

Diminished responsibility 1 of 2011

214A.—(1) Where a person kills or is party to the killing of another, he shall not be convicted of murder if he was suffering from such abnormality of mind, whether arising from a condition of arrested or retarded development of mind or other inherent cause induced by disease or injury, as has substantially impaired his mental responsibility for his acts in doing or being a party to the killing.

(2) On a charge of murder it shall be for the defence to prove that the person charged is, by virtue of this section, not liable to be convicted of murder.

(3) A person who, but for this section would be liable, whether as a principal or otherwise, to be convicted of murder shall be liable instead to be convicted of manslaughter.

(4) The fact that one party to the killing is by virtue of this section not liable to be convicted of murder shall not affect the question whether the killing amounted to murder in the case of any other party to the killing.

Causing death defined 23 of 1970

215. A person is deemed to have caused the death of another person although his act is not the immediate or not the sole cause of death in any of the following cases—

(*a*) if he inflicts bodily injury on another person in consequence of which that other person undergoes surgical or medical treatment which causes death. In this case it is immaterial whether the treatment was proper or mistaken, if it was employed in good faith and with common knowledge and skill; but the person inflicting the injury is not deemed to have caused the death if the treatment which was its immediate cause was not employed in good faith or was so employed without common knowledge or skill;

23 of 1970

(*b*) if he inflicts a bodily injury on another which would not have caused death if the injured person had submitted to proper surgical or medical treatment or had observed proper precautions as to his mode of living;

(*c*) if by actual or threatened violence he causes such other person to perform an act which causes the death of such person, such act being a means of avoiding such violence which in the circumstances would appear natural to the person whose death is so caused;

(*d*) if by any act or omission he hastened the death of a person suffering under any disease or injury which apart from such act or omission would have caused death;

(*e*) if his act or omission would not have caused death unless it had been accompanied by an act or omission of the person killed or of other persons.

When child deemed to be a person capable of being killed

216. A child becomes a person capable of being killed when it has completely proceeded in a living state from the body of its mother, whether it has breathed or not, and whether it has an independent circulation or not, and whether the navel-string is severed or not.

217. [*Repealed by* 23 *of* 1970].

Chapter XIXA—Genocide

Genocide 1 of 2011

217A.—(1) A person commits the offence of genocide if he does any of the following acts with intent to destroy, in whole or in part, a national, ethnic, tribal, racial or religious group—

(*a*) killing members of the group; or

(*b*) causing serious bodily or mental harm to members of the group; or

(*c*) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; or

(*d*) imposing measures intended to prevent births within the group; or

(*e*) forcibly transferring children of the group to another group.

(2) A person guilty of the offence of genocide shall on conviction—

(*a*) if the offence consists of the killing of any person, be liable to be punished with death or imprisonment for life;

(*b*) in any other case, be liable to imprisonment for twenty-one years.

(3) A person may be tried and punished for the offence of genocide whether committed within or outside the Republic.

Chapter XX—Duties Relating to the Preservation of Life and Health

Responsibility of person who has charge of another

218. It is the duty of every person having charge of another who is unable by reason of age, sickness, unsoundness of mind, detention or any other cause to withdraw himself from such charge, and who is unable to provide himself with the necessaries of life, whether the charge is undertaken under a contract, or is imposed by law, or arises by reason of any act, whether lawful or unlawful, of the person who has such charge, to provide for that other person the necessaries of life; and he is held to have caused any consequences which result to the life or health of the other person by reason of any omission to perform that duty.

Duty of parent, etc.
1 of 2011

219. It is the duty of every person who, as parent, guardian or other person has charge of a child under the age of sixteen years, being a member of his household, to provide the necessaries of life for such child; and he is held to have caused any consequences which result to the life or health of the child by reason of any omission to perform that duty, whether the child is helpless or not.

Duty of masters

220. It is the duty of every person who as master or mistress has contracted to provide necessary food, clothing, or lodging for any servant or apprentice under the age of sixteen years to provide the same; and he or she is held to have caused any consequences which result to the life or health of the servant or apprentice by reason of any omission to perform that duty.

Duty of persons doing dangerous acts

221. It is the duty of every person who, except in a case of necessity, undertakes to administer surgical or medical treatment to any other person, or to do any other lawful act which is or may be dangerous to human life or health, to have reasonable skill and to use reasonable care in doing such act; and he is held to have caused any consequences which result to the life or health of any person by reason of any omission to observe or perform that duty.

Duty of persons in charge of dangerous things

222. It is the duty of every person who has in his charge or under his control anything, whether living or inanimate, and whether moving or stationary, of such a nature that, in the absence of care or precaution in its use or management, the life, safety, or health of any person may be endangered, to use reasonable care and take reasonable precautions to avoid such danger; and he is held to have caused any consequences which result to the life or health of any person by reason of any omission to perform that duty.

Chapter XXI—Offences Connected with Murder and Suicide

Attempt to murder

223. Any person who—

(*a*) attempts unlawfully to cause the death of another; or

(*b*) with intent unlawfully to cause the death of another does any act, or omits to do any act, which it is his duty to do, such act or omission being of such a nature as to be likely to endanger human life,

shall be guilty of a felony, and is liable to imprisonment for life.

224. [*Repealed by* 1 *of* 2011].

Accessory after the fact to murder

225. Any person who becomes an accessory after the fact to murder shall be guilty of a felony, and is liable to imprisonment for life.

Written threats to murder

226. Any person who, knowing the contents thereof, directly or indirectly causes any person to receive any writing threatening to kill any person is guilty of a felony, and is liable to imprisonment for seven years.

Conspiracy to murder

227. Any person who conspires with any other person to kill any person, whether such person is in the Republic or elsewhere, shall be guilty of a felony and shall be liable to imprisonment for fourteen years.

Aiding suicide

228. Any person who—

(*a*) procures another to kill himself; or

(*b*) counsels another to kill himself and thereby induces him to do so; or

(*c*) aids another in killing himself,

is guilty of a felony, and shall be liable to imprisonment for life.

229. Any person who attempts to kill himself shall be guilty of a misdemeanor. Attempting suicide

230. Where a woman by any wilful act or omission causes the death of her child being a child under the age of twelve months, but at the time of the act or omission the balance of her mind was disturbed by reason of her not having fully recovered from the effect of giving birth to the child or by reason of the effect of lactation consequent upon the birth of the child, then, notwithstanding that the circumstances were such that but for this section the offence would have amounted to murder, she shall be guilty of felony, to wit of infanticide, and may for such offence be dealt with and punished as if she had been guilty of the offence of manslaughter of the child. Offence of infanticide

231. Any person who, when a woman is about to be delivered of a child, prevents the child from being born alive by any act or omission of such a nature that, if the child had been born alive and had then died, he would be deemed to have unlawfully killed the child, shall be guilty of a felony and shall be liable to imprisonment for life. Killing unborn child

232. If any woman shall be delivered of a child, every person who by any secret disposition endeavours to conceal the birth of the child shall be guilty of an offence and shall be liable to imprisonment for five years. Concealing birth of child 1 of 2011

232A. Any woman who, being delivered of a child, abandons the child at birth, whether such child dies or lives, shall be guilty of an offence and shall be liable to imprisonment for two years. Abandonment of child at birth 1 of 2011

Chapter XXII—Offences Endangering Life or Health

233. Any person who, by any means calculated to choke, suffocate or strangle, and with intent to commit or to facilitate the commission of a felony or misdemeanor, or to facilitate the flight of an offender after (the commission or attempted commission of a felony or misdemeanor, renders or attempts to render any person incapable of resistance, shall be guilty of a felony and shall be liable to imprisonment for life. Disabling in order to commit felony or misdemeanor 1 of 2011

Stupefying in order to commit felony or misdemeanor

234. Any person who, with intent to commit or to facilitate the commission of a felony or misdemeanor, or to facilitate the flight of an offender after the commission or attempted commission of a felony or misdemeanor, administers or attempts to administer any stupefying or overpowering drug or thing to any person, shall be guilty of a felony and shall be liable to imprisonment for life.

Acts intended to cause grievous harm or prevent arrest
1 of 2011

235. Any person who, with intent to maim, disfigure or disable any person, or to do some grievous harm to any person, or to resist or prevent the lawful arrest or detention of any person—

(*a*) unlawfully wounds or does any grievous harm to any person by any means whatever; or

(*b*) unlawfully attempts in any manner to strike any person with any kind of projectile or with a spear, sword, knife, or other dangerous or offensive weapon; or

(*c*) unlawfully causes any explosive substance to explode; or

(*d*) unlawfully sends or delivers any explosive substance or other dangerous or noxious thing to any person; or

(*e*) unlawfully causes any such substance or thing to be taken or received by any person; or

(*f*) unlawfully puts any corrosive fluid or any destructive or explosive substance in any place; or

(*g*) unlawfully casts or throws any such fluid or substance at or upon any person, or otherwise applies any such fluid or substance to the person of any person,

shall be guilty of a felony, and shall be liable to imprisonment for life.

Preventing escape from wreck

236. Any person who unlawfully—

(*a*) prevents or obstructs any person who is on board of, or is escaping from, a vessel which is in distress or wrecked, in his endeavours to save his life; or

(*b*) obstructs any person in his endeavours to save the life of any person so situated,

shall be guilty of a felony and shall be liable to imprisonment for life.

Intentionally endangering safety of persons travelling by railway or road
1 of 2011

237. Any person who, with intent to injure or to endanger the safety of any person travelling by any railway or road, whether a particular person or not—

(*a*) places anything on the railway or road; or

(*b*) deals with the railway or road, or with anything whatever upon or near the railway or road, in such a manner as to affect or endanger

the free and safe use of the railway or road or the safety of any such person; or

(*c*) shoots or throws anything at, into, or upon or causes anything to come into contact with any person or thing on the railway or road; or

(*d*) shows any light or signal, or in any way deals with any existing light or signal, upon or near the railway or road; or

(*e*) by any omission to do any act which it is his duty to do causes the safety of any such person to be endangered,

shall be guilty of a felony, and shall be liable to imprisonment for life.

Grievous harm

238. Any person who unlawfully does grievous harm to another shall be guilty of a felony and shall be liable to imprisonment for fourteen years.

Attempting to injure by explosive substances

239. Any person who unlawfully, and with intent to do any harm to another, puts any explosive substance in any place whatever, shall be guilty of a felony and shall be liable to imprisonment for fourteen years.

Maliciously administering poison with intent to harm

240. Any person who unlawfully, and with intent to injure or annoy another, causes any poison or noxious thing to be administered to, or taken by, any person, and thereby endangers his life, or does him some grievous harm, shall be guilty of a felony, and shall be liable to imprisonment for fourteen years.

Wounding and similar acts

241. Any person who—

(*a*) unlawfully wounds another; or

(*b*) unlawfully, and with intent to injure or annoy any person, causes any poison or other noxious thing to be administered to, or taken by, any person,

shall be guilty of a felony, and shall be liable to imprisonment for seven years.

Failure to supply necessaries

242. Any person who, being charged with the duty of providing for another the necessaries of life, without lawful excuse fails to do so, whereby the life of that other person is or is likely to be endangered, or his health is or is likely to be permanently injured, shall be guilty of a felony, and shall be liable to imprisonment for three years.

Surgical operation

243. A person is not criminally responsible for performing in good faith and with reasonable care and skill a surgical operation upon any person for his benefit, or upon an unborn child for the preservation of the mother's life, if the performance of the operation is reasonable, having

regard to the patient's state at the time, and to all the circumstances of the case.

Excess of force

244. Any person authorized by law or by the consent of the person injured by him to use force is criminally responsible for any excess, according to the nature and quality of the act which constitutes the excess.

Consent

245. Notwithstanding anything contained in section 244 consent by a person to the causing of his own death or his own maim does not affect the criminal responsibility of any person by whom such death or maim is caused.

Chapter XXIIA—Offences Endangering Environment

Endangering the environment
1 of 2011

245A. Any person who in such a manner as to endanger or to be likely to cause harm to the environment—

(*a*) manages hazardous materials, processes and wastes in an environmentally unsound manner;

(*b*) mislabels wastes, pesticides or chemicals;

(*c*) aids or abets the illegal trafficking in wastes, chemicals, pesticides, hazardous processes or substances; or

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(*d*) discharges or emits any pollutant into the environment otherwise than in accordance with the provisions of the Environment Management Act,

shall be guilty of an offence and shall be liable to a fine of K10,000,000 and to imprisonment for ten years.

Chapter XXIII—Criminal Recklessness and Negligence

Reckless and negligent acts
1 of 2011

246. Any person who in a manner so rash or negligent as to endanger human life or to be likely to cause harm to any person—

(*a*) drives any vehicle or rides on any public way; or

(*b*) navigates, or takes part in the navigation or working of, any vessel; or

(*c*) does any act with fire or any combustible matter, or omits to take precautions against any probable danger from any fire or any combustible matter in his possession; or

(*d*) omits to take precautions against any probable danger from any animal in his possession; or

(*e*) gives medical or surgical treatment to any person whom he has undertaken to treat; or

(*f*) dispenses, supplies, sells, administers, or gives away any medicine or poisonous or dangerous matter; or

(*g*) does any act with respect to, or omits to take proper precautions against any probable danger from, any machinery of which he is solely or partly in charge; or

(*h*) does any act with respect to, or omits to take proper precautions against any probable danger from, any explosive in his possession; or

(*i*) does any act with respect to, or omits to take proper precautions against any probable danger from, any loaded firearm in his possession,

shall be guilty of an offence and shall be liable to imprisonment for seven years. 1 of 2011

247. Any person who unlawfully does any act, or omits to do any act which it is his duty to do, not being an act or omission specified in the preceding section, by which act or omission harm is caused to any person, shall be guilty of an offence and shall be liable to imprisonment for five years.

Other negligent acts causing harm
1 of 2011

248. Whoever does, with any poisonous substance any act in a manner so rash or negligent as to endanger human life, or to be likely to cause hurt or injury to any other person, or knowingly or negligently omits to take such care with any poisonous substance in his possession as is sufficient to guard against probable danger to human life from such poisonous substance, shall be guilty of an offence and liable to imprisonment for two years.

Dealing in poisonous substances in negligent manner
1 of 2011

249. Any person who, by any unlawful act or omission not specified in section 237, causes the safety of any person travelling by any railway or road to be endangered, shall be guilty of a misdemeanor.

Endangering safety of persons travelling by railway or road
1 of 2011

250. Any person who exhibits any false light, mark or buoy, intending or knowing it to be likely that such exhibition will mislead any navigator, shall be guilty of an offence and shall be liable to imprisonment for seven years.

Exhibition of false light, mark or buoy
1 of 2011

251. Any person who knowingly or negligently conveys, or causes to be conveyed for hire, any person by water in any vessel, when that vessel is in such a state or so loaded as to be unsafe, shall be guilty of an offence and shall be liable to imprisonment for seven years.

Conveying person by water for hire in unsafe or overloaded vessel
1 of 2011

Danger or obstruction in public way or line of navigation
1 of 2011

252. Any person who by doing any act, or by omitting to take reasonable care with any property in his possession or under his charge, causes danger, obstruction or injury to any person in any public way or public line of navigation, shall be guilty of an offence and shall be liable to imprisonment for five years.

Chapter XXIV—Assaults

Common assault

253. Any person who unlawfully assaults another is guilty of a misdemeanor, and, if the assault is not committed in circumstances for which a greater punishment is provided in this Code, shall be liable to imprisonment for one year.

Assaults occasioning actual bodily harm
1 of 2011

254. Any person who commits an assault occasioning actual bodily harm shall be guilty of an offence and shall be liable to imprisonment for five years.

Assaults on persons protecting wreck
1 of 2011

255. Any person who assaults and strikes or wounds any magistrate, officer, or other person lawfully authorized in or on account of the execution of his duty in or concerning the preservation of any vessel in distress, or of any vessel or goods or effects wrecked, stranded, or cast on shore, or lying under water, shall be guilty of an offence, and shall be liable to imprisonment for seven years.

Assaults punishable with five years imprisonment
1 of 2011

256. Any person who—

(*a*) assaults any person with intent to commit a felony or to resist or prevent the lawful apprehension or detainer of himself or of any other person for any offence; or

(*b*) assaults, resists, or wilfully obstructs any police officer in the due execution of his duty, or any person acting in aid of such officer; or

(*c*) assaults any person in pursuance of any unlawful combination or conspiracy to raise the rate of wages, or respecting any trade, business, or manufacture or respecting any person concerned or employed therein; or

(*d*) assaults, resists or obstructs any person engaged in such lawful execution of process, or in making a lawful distress, with intent to rescue any property lawfully taken under such process or distress; or

(*e*) assaults any person on account of any act done by him in the execution of any duty imposed on him by law,

1 of 2011

shall be guilty of an offence, and shall be liable to imprisonment for five years.

CHAPTER XXV—OFFENCES AGAINST LIBERTY

257. Any person who conveys any person beyond the limits of the Republic without the consent of that person, or of some person legally authorized to consent on behalf of that person, is said to kidnap that person from Malaŵi.

Definition of kidnapping from the Republic

258. Any person who unlawfully takes or induces from lawful guardianship any child under the age of sixteen years or any person of unsound mind out of the keeping of the lawful guardian of such child or person of unsound mind, without the consent of such guardian, is said to kidnap such child or person of unsound mind from lawful guardianship.

Definition of kidnapping from lawful guardianship
1 of 2011

259. Any person who by force compels, or by any deceitful means induces, any person to go from any place, is said to abduct that person.

Definition of abduction

260. Any person who kidnaps any person from Malaŵi or from lawful guardianship, shall be guilty of a felony, and shall be liable to imprisonment for seven years.

Punishment for kidnapping

261. Any person who kidnaps or abducts any person in order that such person may be murdered, or may be so disposed of as to be put in danger of being murdered, shall be guilty of a felony and shall be liable to imprisonment for life.

Kidnapping or abducting in order to murder
1 of 2011

262. Any person who kidnaps or abducts any person with intent to cause that person to be secretly and wrongfully confined, shall be guilty of a felony, and shall be liable to imprisonment for seven years.

Kidnapping or abducting with intent to confine person

263. Any person who kidnaps or abducts any person in order that such person may be subjected, or may be so disposed of as to be put in danger of being subjected, to grievous harm, or ransom or slavery, or to the unnatural lust of any person, or knowing it to be likely that such person will be so subjected or disposed of, shall be guilty of a felony and shall be liable to imprisonment for ten years.

Kidnapping or abducting in order to subject person to grievous harm, ransom, slavery, etc.
1 of 2011

264. Any person who, knowing that any person has been kidnapped or has been abducted, wrongfully conceals or confines such person, shall be guilty of a felony and shall be punished in the same manner as if he had kidnapped or abducted such person with the same intention or knowledge, or for the same purpose, as that with or for which he conceals or detains such person in confinement.

Wrongfully concealing or keeping in confinement kidnapped or abducted person

265. Any person who kidnaps or abducts any child under the age of sixteen years with the intention of taking dishonestly any movable property from the person of such child, shall be guilty of a felony and shall be liable to imprisonment for seven years.

Kidnapping or abducting child under sixteen years with intent to steal from its person
1 of 2011

Punishment for wrongful confinement 1 of 2011

266. Whoever wrongfully confines any person shall be guilty of an offence and shall be liable to a fine of K100,000 or to imprisonment for five years.

Buying or disposing of any person as a slave

267. Any person who imports, exports, removes, buys, sells or disposes of any person as a slave, or accepts, receives or detains against his will any person as a slave, shall be guilty of a felony, and shall be liable to imprisonment for seven years.

Habitual dealing in slaves

268. Any person who habitually imports, exports, removes, buys, sells, traffics or deals in slaves shall be guilty of a felony, and shall be liable to imprisonment for ten years.

Unlawful compulsory labour

269. Any person who unlawfully compels any person to labour against the will of that person shall be guilty of a misdemeanor.

Division V—Offences Relating to Property

Chapter XXVI—Theft

Things capable of being stolen 1 of 2011

270.—(1) Every inanimate thing whatever which is the property of any person, and which is movable, is capable of being stolen.

(2) Every inanimate thing which is the property of any person, and which is capable of being made movable, is capable of being stolen as soon as it becomes movable, although it is made movable in order to steal it.

(3) Every tame animal, whether tame by nature or wild by nature and tamed, which is the property of any person, is capable of being stolen.

(4) Animals wild by nature, of a kind which is not ordinarily found in a condition of natural liberty in Malaŵi, which are the property of any person, and which are usually kept in a state of confinement, are capable of being stolen, whether they are actually in confinement or have escaped from confinement.

(5) Animals wild by nature, of a kind which is ordinarily found in a condition of natural liberty in Malaŵi, which are the property of any person, are capable of being stolen while they are in confinement and while they are being actually pursued after escaping from confinement, but not at any other time.

(6) An animal wild by nature is deemed to be in a state of confinement so long as it is in a den, cage, sty, tank, or other small enclosure, or is otherwise so placed that it cannot escape, and that its owner can take possession of it at pleasure.

(7) Wild animals in the enjoyment of their natural liberty are not capable of being stolen, but their dead bodies are capable of being stolen.

(8) Everything produced by or forming part of the body of an animal capable of being stolen is capable of being stolen.

Definition of theft

271.—(1) A person who fraudulently and without claim of right takes anything capable of being stolen, or fraudulently converts to the use of any person other than the general or special owner thereof anything capable of being stolen, is said to steal that thing.

(2) A person who takes or converts anything capable of being stolen is deemed to do so fraudulently if he does so with any of the following intents, that is to say—

(*a*) an intent permanently to deprive the general or special owner of the thing of it;

(*b*) an intent to use the thing as a pledge or security;

(*c*) an intent to part with it on a condition as to its return which the person taking or converting it may be unable to perform;

(*d*) an intent to deal with it in such a manner that it cannot be returned in the condition in which it was at the time of the taking or conversion;

(*e*) in the case of money, an intent to use it at the will of the person who takes or converts it, although he may intend afterwards to repay the amount to the owner.

The term "special owner" includes any person who has any charge or lien upon the thing in question, or any right arising from or dependent upon holding possession of the thing in question.

(3) When a thing stolen is converted, it is immaterial whether it is taken for the purpose of conversion, or whether it is at the time of the conversion in the possession of the person who converts it. It is also immaterial that the person who converts the thing in question is the holder of a power of attorney for the disposition of it, or is otherwise authorized to dispose of it.

(4) When a thing converted has been lost by the owner and found by the person who converts it, the conversion is not deemed to be fraudulent if at the time of the conversion the person taking or converting the thing does not know who is the owner, and believes on reasonable grounds that the owner cannot be discovered.

(5) A person shall not be deemed to take a thing unless he moves the thing or causes it to move.

Special cases

272.—(1) When a factor or agent pledges or gives a lien on any goods or document of title to goods entrusted to him for the purpose of sale or otherwise for any sum of money not greater than the amount due to him from his principal at the time of pledging or giving the lien, together with the amount of any bill of exchange or promissory note, accepted or made by him for or on account of his principal, such dealing with the goods or document of title is not deemed to be theft.

(2) When a servant, contrary to his master's orders, takes from his possession any food in order that it may be given to an animal belonging to or in the possession of his master, such taking is not deemed to be theft.

Funds, etc., held under direction

273. When a person receives, either alone or jointly with another person, any money or valuable security or a power of attorney for the sale, mortgage, pledge or other disposition of any property, whether capable of being stolen or not, with a direction in either case that such money or any part thereof, or any other money received in exchange for it, or any part thereof, or the proceeds or any part of the proceeds of such security or of such mortgage, pledge, or other disposition, shall be applied to any purpose or paid to any person specified in the direction, such money and proceeds are deemed to be the property of the person from whom the money, security, or power of attorney was received until the direction has been complied with.

Funds, etc., received by agents for sale

274. When a person receives, either alone or jointly with another person, any property from another on terms authorizing or requiring him to sell it or otherwise dispose of it, and requiring him to pay or account for the proceeds of the property, or any part of such proceeds, or to deliver anything received in exchange for the property, to the person from whom it is received, or some other person, then the proceeds of the property, and anything so received in exchange for it, are deemed to be the property of the person from whom the property was so received, until they have been disposed of in accordance with the terms on which the property was received, unless it is a part of those terms that the proceeds, if any, shall form an item in a debtor and creditor account between him and the person to whom he is to pay them or account for them, and that the relation of debtor and creditor only shall exist between them in respect thereof.

Money received for another

275. When a person receives, either alone or jointly with another person, any money on behalf of another, the money is deemed to be the property of the person on whose behalf it is received, unless the money is received on the terms that it shall form an item in a debtor and creditor account, and that the relation of debtor and creditor only shall exist between the parties in respect of it.

276. When any person takes or converts anything capable of being stolen, under such circumstances as would otherwise amount to theft, it is immaterial that he himself has a special property or interest therein, or that he himself is the owner of the thing taken or converted subject to some special property or interest of some other person therein, or that he is lessee of the thing, or that he himself is one of two or more joint owners of the thing, or that he is a director or officer of a corporation or company or society who are the owners of it.

Theft by persons having an interest in the thing stolen

277. A person who, while a man and his wife are living together, procures either of them to deal with anything which is, to his knowledge, the property of the other in a manner which would be theft if they were not married, shall be deemed to have stolen the thing, and may be charged with theft.

Husband and wife

278. Any person who steals anything capable of being stolen shall be guilty of the felony termed theft and shall be liable, unless owing to the circumstances of the theft or the nature of the thing stolen some other punishment is provided, to imprisonment for five years.

General punishment for theft

279. If the thing stolen is a testamentary instrument, whether the testator is living or dead, the offender shall be liable to imprisonment for ten years.

Stealing wills

280. If the thing stolen is postal matter or any chattel, money, or valuable security contained in any postal matter, the offender shall be liable to imprisonment for ten years.

Stealing postal matter, etc.

281. If the thing stolen is any of the things following, that is to say: a horse, mare, gelding, ass, mule, bull, cow, ox, ram, ewe, wether, goat, pig, or ostrich, or the young of any such animal, the offender shall be liable to imprisonment for fourteen years.

Stealing cattle

282. If a theft is committed under any of the circumstances following, that is to say—

Stealing from the person; stealing goods in transit, etc.
1 of 2011

(*a*) if the thing is stolen from the person of another;

(*b*) if the thing is stolen in a dwelling-house and its value exceeds K10, or the offender at or immediately before or after the time of stealing uses or threatens to use violence to any person in the dwelling-house;

(*c*) if the thing is stolen from any kind of vessel or vehicle or place of deposit used for the conveyance or custody of goods in transit from one place to another;

(*d*) if the thing stolen is attached to or forms part of a railway;

(*e*) if the thing is stolen from a vessel which is in distress or wrecked or stranded;

(*f*) if the thing is stolen from a public office in which it is deposited or kept;

(*g*) if the offender, in order to commit the offence, opens any locked room, box, or other receptacle, by means of a key or other instrument;

1 of 2011 (*h*) if the thing stolen is a bicycle;

1 of 2011 (*i*) if the thing stolen is a vessel, an aircraft, a vehicle or a draught,

the offender is liable to imprisonment for ten years.

Stealing by persons in public service
32 of 1969
20 of 1973
6 of 1987
21 of 1996
1 of 2011

283.—(1) Where it is proved to the satisfaction of the court that any person employed in the public service has by virtue of his employment received or has in his custody or under his control any money or other property, and such person has been unable to produce to his employer such money or other property or to make due account therefor, such person shall, unless he satisfies the court to the contrary, be presumed to have stolen such money or other property, and shall be convicted of the felony of theft.

(2) Where a person employed in the public service is charged with theft, and it is proved to the satisfaction of the court that during a period of that person's employment there has been paid into a bank, Post Office Savings or other account to the credit of that person a greater amount in the aggregate than that person has received by way of lawful remuneration during such period, and the accused person fails to give to the court a satisfactory explanation of how he came into possession of such excess amount, the court shall take into consideration such failure in determining whether or not the accused person is guilty of the theft with which he is charged.

(3) Where a person employed in the public service is charged with theft, and it is proved to the satisfaction of the court that during a period of that person's employment there has been any sudden or substantial enrichment of that person, or of any member of his family or household, in respect of money or other property, and no satisfactory explanation of such enrichment is given to the court, the court shall take into consideration the absence of such explanation in determining whether or not the accused person is guilty of the theft with which he is charged.

20 of 1973
21 of 1996
1 of 2011

(4) The punishment for an offence under this section shall be an imprisonment for a minimum term of two years and a maximum of imprisonment for life.

32 of 1969

(5) Where the court convicts of theft any person to whom subsection (1) applies, the court shall make an Order for the seizure of

any money and the seizure and sale of any property of that person, or of any member of that person's family or household whom the court is satisfied has been fraudulently enriched from the proceeds of the theft, sufficient to realize an amount, equivalent to the amount or value of the money or other property proved to have been stolen less the amount or value of any part of such money or property restored to his employer and any amount ordered to be paid under subsection (7), to be paid forthwith to his employer.

(6) Where a court convicts of theft any person to whom subsection (2) applies, the court shall make an Order for the payment to that person's employer out of that person's bank, Post Office Savings or other account of a sum equivalent to the amount or value of the money or other property proved to have been stolen less the amount or value of any part of such money or property restored to his employer, by that person. Any such Order shall be a sufficient authority to the banker, Post Office or other person or authority with whom the account is maintained for the payment to the employer of the amount specified in the Order out of any sums standing to the credit of the convicted person in such account.

Negligence by public officer in preserving money or other property

284.—(1) Where any person employed in the public service has by virtue of such employment received or had in his custody or under his control any money or other property, and as a result of the gross negligence or recklessness of that person that money or other property, or any part thereof, is lost or stolen or cannot be accounted for by that person, then that person shall be guilty of an offence.

(2) Where any person is convicted of an offence under this section he shall be liable to a fine not exceeding the amount or value of the money or other property lost, stolen or unaccounted for, and to imprisonment for five years.

(3) Where any person is convicted of an offence under this section, the Court may make an Order for the seizure and sale of any property of the convicted person sufficient to realize an amount equivalent to the amount or value of the money or other property proved to have been lost or stolen, to be paid forthwith to his employer.

Theft of public subscriptions

285. Where a person convicted of the theft of money or other property which has been collected either wholly or in part by way of public subscription is a member or agent of any committee or similar body which is intended to administer such money or property, the Court may make such orders in relation to such person as it is required to make in respect of a person to whom section 283 (2) and (7) apply.

Stealing by clerks and servants
32 of 1969
5 of 1976

286.—(1) If the offender is a clerk or servant, and the thing stolen is the property of his employer, or came into the possession of the offender on account of his employer, he shall be liable to imprisonment for fourteen years.

(2) Where a court convicts a person to whom subsection (1) applies, the court shall make an order for the seizure of any money and for the seizure and sale of any other property of that person, or any member of his household whom the court is satisfied has been fraudulently enriched from the proceeds of the theft, sufficient to realize an amount equivalent to the amount or value of the money or property proved to have been stolen, less the amount or value of any part of such money or property restored to his employer, and the court shall order the amount realized as aforesaid to be paid forthwith to his employer.

Stealing by directors or officers of companies 5 of 1976

287. If the offender is a director or officer of a corporation or company, and the thing stolen is the property of the corporation or company, he shall be liable to imprisonment for fourteen years.

Stealing by agents, etc.

288. If the thing stolen is any of the things following, that is to say—

(*a*) property which has been received by the offender with a power of attorney for the disposition thereof;

(*b*) property which has been entrusted to the offender either alone or jointly with any other person for him to retain in safe custody or to apply, pay, or deliver for any purpose or to any person the same or any part thereof or any proceeds thereof;

(*c*) property which has been received by the offender either alone or jointly with any other person for or on account of any other person;

(*d*) the whole or part of the proceeds of any valuable security which has been received by the offender with a direction that the proceeds thereof should be applied to any purpose or paid to any person specified in the direction;

(*e*) the whole or part of the proceeds arising from any disposition of any property which have been received by the offender by virtue of a power of attorney for such disposition, such power of attorney having been received by the offender with a direction that such proceeds should be applied to any purpose or paid to any person specified in the direction,

the offender shall be liable to imprisonment for seven years.

Stealing by tenants or lodgers 1 of 2011

289. If the thing stolen is a fixture or chattel let to the offender to be used by him with a house or lodging, he shall be liable to imprisonment for seven years.

Stealing after previous conviction

290. If the offender, before committing the theft, had been convicted of a theft punishable under section 278, he shall be liable to imprisonment for seven years.

Chapter XXVII—Offences Allied to Stealing

291. Any person who, with intent to defraud, conceals or takes from its place of deposit any register which is authorized or required by law to be kept for authenticating or recording the title to any property, or for recording births, baptisms, marriages, deaths or burials, or a copy of any part of any such register which is required by law to be sent to any public office, shall be guilty of a felony, and shall be liable to imprisonment for ten years. Concealing registers

292. Any person who, with intent to defraud, conceals any testamentary instrument, whether the testator is living or dead, shall be guilty of a felony, and shall be liable to imprisonment for ten years. Concealing wills

293. Any person who, with intent to defraud, conceals the whole or part of any document which is evidence of title to any land or estate in land, shall be guilty of a felony and shall be liable to imprisonment for three years. Concealing deeds

294. Any person who kills any animal capable of being stolen with intent to steal the skin or carcass, or any part of the skin or carcass, shall be guilty of an offence and shall be liable to the same punishment as if he had stolen the animal. Killing animals with intent to steal

295. Any person who makes anything movable with intent to steal it shall be guilty of an offence and shall be liable to the same punishment as if he had stolen the thing after it had become movable. Severing with intent to steal

296.—(1) Any person who, being the mortgagor of mortgaged goods, removes or disposes of the goods without the consent of the mortgagee, and with intent to defraud, shall be guilty of a misdemeanor. Fraudulent disposal of mortgaged goods 1 of 2011

(2) Any person, being such a mortgagor as mentioned in subsection (1), who destroys, breaks, injures, kills, or otherwise damages any mortgaged goods with intent to deprive the mortgagee of his security or any part thereof, or to defeat or otherwise impair the security, shall be guilty of an offence and shall be liable to imprisonment for seven years. 1 of 2011

(3) In this section the term "mortgaged goods" includes any goods and chattels of any kind, and any animals, and any progeny of any animals, and any crops or produce of the soil, whether growing or severed, which are subject for the time being, by virtue of any Act or of any written instrument, to a valid charge or lien by way of security for any debt or obligation.

(4) The consent of the mortgagee, as referred to in subsection (1), may be either express or implied from the nature of the property mortgaged. 1 of 2011

Fraudulently dealing with minerals in mines

297. Any person who takes, conceals, or otherwise disposes of any ore or any metal or mineral in or about a mine, with intent to defraud any person, shall be guilty of a felony and shall be liable to imprisonment for five years.

Fraudulent appropriation of power
1 of 2011

298. Any person who fraudulently abstracts or diverts to his own use or to the use of any other person any mechanical, illuminating, or electrical power derived from any machine, apparatus or substance, the property of another person, shall be guilty of a felony, and shall be liable to imprisonment for five years and a fine of K1,000,000.

Fraudulent appropriation of water
1 of 2011

298A. Any person who fraudulently abstracts or diverts to his own use or the use of any other person water from any pipes or apparatus shall be guilty of a felony and shall be liable to a fine of K1,000,000 and to imprisonment for five years.

Fraudulent appropriation of telecommunication services
1 of 2011

298B. Any person who dishonestly obtains a telecommunication service for his own use or for the use of any other person with intent to avoid payment of charge applicable to the provision of that service shall be guilty of an offence and shall be liable to a fine of K2,000,000 and to imprisonment for ten years.

Unlawful use of vehicles, animals, etc.
1 of 2011

299. Any person who unlawfully and without colour of right, but not so as to be guilty of stealing, takes or converts to his own use or to the use of any other person, any draught or riding animal or any vehicle or cycle, however propelled, or any vessel, shall be guilty of a misdemeanor and shall be liable to a fine of K10,000 and to imprisonment for six months.

Chapter XXVIII—Robbery and Extortion

Definition of robbery

300. Any person who steals anything, and, at or immediately before or immediately after the time of stealing it, uses or threatens to use actual violence to any person or property in order to obtain or retain the thing stolen or to prevent or overcome resistance to its being stolen or retained, shall be guilty of the felony termed "robbery".

Punishment of robbery
1 of 2011

301.—(1) Any person who commits the felony of robbery shall be liable to imprisonment for fourteen years.

(2) If the offender is armed with any dangerous or offensive weapon or instrument, or is in company with one or more other person or persons, or if, at or immediately before or immediately after the time of the robbery, he wounds, beats, strikes, or uses any other personal violence to any person, he shall be liable to be punished with death, or with imprisonment for life.

44 of 1970

Attempted robbery
1 of 2011

302.—(1) Any person who assaults any person with intent to steal anything, and, at or immediately before or immediately after the time of the assault, uses or threatens to use actual violence to any person or property in order to obtain the thing intended to be stolen, or to prevent or overcome resistance to its being stolen, shall be guilty of a felony and shall be liable to imprisonment for seven years.

(2) If the offender is armed with any dangerous or offensive weapon or instrument, or is in company with one or more other person or persons, or if, at or immediately before or immediately after the time of the assault, he wounds, beats, strikes, or uses any other personal violence to any person, he shall be liable to imprisonment for life.

Assault with intent to steal

303. Any person who assaults any person with intent to steal anything shall be guilty of a felony and shall be liable to imprisonment for three years.

Demanding property by written threats

304. Any person who, with intent to extort or gain anything from any person, and knowing the contents of the writing, causes any person to receive any writing demanding anything from any person without reasonable or probable cause, and containing threats of any injury or detriment of any kind to be caused to any person, either by the offender or any other person, if the demand is not complied with, shall be guilty of a felony and shall be liable to imprisonment for fourteen years.

Attempts at extortion by threats
1 of 2011

305.—(1) Any person who with intent to extort or gain anything from any person—

(*a*) accuses or threatens to accuse any person of committing any felony or misdemeanor, or of offering or making any solicitation or threat to any person as an inducement to commit or permit the commission of any felony or misdemeanor; or

(*b*) threatens that any person shall be accused by any other person of any felony or misdemeanor, or of any such act; or

(*c*) knowing the contents of the writing, causes any person to receive any writing containing any such accusation or threat as aforesaid,

shall be guilty of a felony, and if the accusation or threat of accusation is of—

(i) an offence for which the punishment of death or imprisonment for life may be inflicted; or

(ii) any of the offences defined in Chapter XV, or an attempt to commit any of such offences; or

(iii) an assault with intent to have carnal knowledge of any person against the order of nature, or an unlawful and indecent assault upon a male person; or

(iv) a solicitation or threat offered or made to any person as an inducement to commit or permit the commission of any of the offences aforesaid,

the offender shall be liable to imprisonment for fourteen years.

(2) In any other case not mentioned in subsection (1) the offender shall be liable to imprisonment for three years.

(3) It is immaterial whether the person accused or threatened to be accused has or has not committed the offence or act of which he is accused or threatened to be accused.

Procuring execution of deeds, etc., by threats

306. Any person who, with intent to defraud, and by means of any unlawful violence to, or restraint of, the person of another, or by means of any threat of violence or restraint to be used to the person of another, or by means of accusing or threatening to accuse any person of committing any felony or misdemeanor, or by offering or making any solicitation or threat to any person as an inducement to commit or permit the commission of any offence, compels or induces any person—

(*a*) to execute, make, accept, endorse, alter, or destroy the whole or any part of any valuable security; or

(*b*) to write any name or impress or affix any seal upon or to any paper or parchment, in order that it may be afterwards made or converted into or used or dealt with as a valuable security,

shall be guilty of a felony and shall be liable to imprisonment for fourteen years.

Demanding property with menaces with intent to steal

307. Any person who, with intent to steal any valuable thing, demands it from any person with menaces or force, shall be guilty of a felony and shall be liable to imprisonment for five years.

Chapter XXIX—Burglary, Housebreaking and Similar Offences

Definitions
1 of 2011

308.—(1) A person who breaks any part, whether external, or internal, of a building, or opens by unlocking, pulling, pushing, lifting, or any other means whatever, any door, window, shutter, cellar, flap, or other thing intended to close or cover an opening in a building, or an opening giving passage from one part of a building to another, is deemed to break the building.

(2) A person is deemed to enter a building as soon as any part of his body or any part of any instrument used by him is within the building.

(3) A person who obtains entrance into a building by means of any threat or artifice used for that purpose, or by collusion with any person in

the building, or who enters any aperture of the building left open for any purpose, but not intended to be ordinarily used as a means of entrance, is deemed to have broken and entered the building.

Housebreaking and burglary
44 of 1970
1 of 2011

309.—(1) Any person who—

(*a*) breaks and enters any building, tent or vessel used as a human dwelling with intent to commit a felony therein; or

(*b*) having entered any building, tent or vessel used as a human dwelling with intent to commit a felony therein, or having committed a felony in any such building, tent or vessel, breaks out thereof,

shall be guilty of a felony termed "housebreaking" and shall be liable to be punished with death or with imprisonment for life.

(2) If the offence is committed in the night, it is termed "burglary" and the offender shall be liable to be punished with death or with imprisonment for life.

Entering dwelling-house with intent to commit felony
1 of 2011

310.—(1) Any person who enters or is in any building, tent or vessel used as a human dwelling with intent to commit a felony therein, shall be guilty of a felony and shall be liable to imprisonment for five years.

(2) If the offence is committed in the night, the offender shall be liable to imprisonment for seven years.

Breaking into building and committing a felony
1 of 2011

311. Any person who—

(*a*) breaks and enters a schoolhouse, shop, warehouse, store, office, counting-house, garage, pavilion, club, factory or workshop, or any building belonging to the Government, or to any Government Department, or to any Municipality, Township or other public or local authority, or a building which is adjacent to a dwelling-house and occupied with it, but is not part of it, or any building used as a place of worship and commits a felony therein; or

(*b*) breaks out of the same having committed any felony therein,

shall be guilty of a felony and liable to imprisonment for ten years.

Breaking into building with intent to commit a felony

312. Any person who breaks and enters a schoolhouse, shop, warehouse, store, office, counting-house, garage, pavilion, club, factory or workshop or any building belonging to the Government, or to any Government Department, or to any Municipality, Township or other public or local authority, or a building which is adjacent to a dwelling-house and occupied with it, but is not part of it, or any building used as a place of worship, with intent to commit a felony therein, shall be guilty of a felony and shall be liable to imprisonment for five years.

Persons found armed etc., with intent to commit felony
1 of 2011

313.—(1) Any person who is found under any of the circumstances following, that is to say—

(*a*) being armed with any dangerous or offensive weapon or instrument, and being so armed with intent to break or enter a dwelling-house, and to commit a felony therein;

(*b*) being armed as aforesaid by night, and being so armed with intent to break or enter any building whatever, and to commit a felony therein;

(*c*) having in his possession by night without lawful excuse, the proof of which lies on him, any instrument of housebreaking;

(*d*) having in his possession by day any such instrument with intent to commit a felony;

(*e*) having his face masked or blackened or being otherwise disguised, with intent to commit a felony;

(*f*) being in any building whatever by night with intent to commit a felony therein;

(*g*) being in any building whatever by day with intent to commit a felony therein, and having taken precautions to conceal his presence,

shall be guilty of a felony and shall be liable to imprisonment for three years.

(2) If the offender has been previously convicted of a felony relating to property, he shall be liable to imprisonment for seven years.

Criminal trespass
1 of 2011

314.—(1) Any person who—

(*a*) enters into or upon property in the possession of another with intent to commit an offence or to intimidate, insult or annoy any person lawfully in possession of such property;

(*b*) having lawfully entered into or upon such property unlawfully remains there with intent thereby to intimidate, insult or annoy any such person or with intent to commit any offence,

shall be guilty of the misdemeanor termed "criminal trespass" and shall be liable to imprisonment for three months.

(2) If the property upon which the offence is committed is any building, tent or vessel used as a human dwelling or any building used as a place of worship or as a place for the custody of property the offender shall be liable to imprisonment for twelve months.

Forfeiture

315. When any person is convicted of an offence under this Chapter the court may order that any dangerous or offensive weapon or

instrument of housebreaking carried or used in connexion with any such offence shall be forfeited.

Chapter XXX—Miscellaneous Provisions

Unauthorized user of land and premises

316.—(1) Any person who ploughs, sows or otherwise cultivates any land or who occupies, uses or damages any land or anything thereon, the freehold or leasehold title of which land is vested in any other person, without the consent of the person in whom such title is vested or his agent, shall be guilty of a misdemeanor and shall be liable to imprisonment for three years.

(2) Section 8 shall not apply in the case of any prosecution under this section unless the person charged proves to the satisfaction of the court that he is entitled to do those things for which he is being prosecuted.

Forfeiture of aircraft, vessel or vehicle
1 of 2011

317.—(1) Where any person is convicted of an offence, or of an attempt to commit an offence, or of counselling or procuring the commission of an offence, under Chapters XXVI, XXVIII or XXIX or of section 328 and the court by which such person is convicted finds that any aircraft, vessel or vehicle was used or employed by such person in the commission or to facilitate the commission of the offence of which he is convicted, such aircraft, vessel or vehicle shall be forfeited.

Cap. 8:01

(2) Where any aircraft, vessel or vehicle is detained by any police officer under the provisions of the Criminal Procedure and Evidence Code and no person is, within seven days, charged with any offence specified in subsection (1) a magistrate shall, upon the written application of a police officer of or above the rank of inspector, inquire into the circumstances in which such aircraft, vessel or vehicle was detained and shall determine whether or not it was used for or employed in the commission or attempted commission of any such offence; and, if the magistrate finds that it was so used or employed, such aircraft, vessel or vehicle shall be forfeited:

Provided that no forfeiture of any such aircraft, vessel or vehicle shall take place if, on the trial of any person mentioned in subsection (1) or in any inquiry held under subsection (2) the court finds that neither such owner nor any of his agents, or servants consented to the use or employment of such aircraft, vessel or vehicle or was aware that it was so being used or employed.

Cap. 8:01

(3) The owner of any such aircraft, vessel or vehicle shall have all the rights of an accused person under Part VII of the Criminal Procedure and Evidence Code and, so far as the same are applicable, that Part shall apply to an inquiry held under subsection (2).

Damaging or unlawfully removing detained aircraft, vessel or vehicle Cap. 8:01

(4) Any person who damages or unlawfully removes any aircraft, vessel or vehicle while it is detained under section 25 of the Criminal Procedure and Evidence Code, shall be guilty of a misdemeanor.

Interpretation

(5) For the purposes of this section, the expressions "aircraft" "vessel" and "vehicle" respectively include everything contained in, or on, or attached to any aircraft, vessel or vehicle, as the case may be, which, in the opinion of the court, forms part of the equipment of such aircraft, vessel or vehicle.

Chapter XXXI—False Pretences

Definition of false pretence

318. Any representation made by words, writing or conduct, of a matter of fact, either past or present, which representation is false in fact, and which the person making it knows to be false or does not believe to be true, is a false pretence.

Obtaining by false pretences 32 of 1969 1 of 2011

319.—(1) Any person who by any false pretence, and with intent to defraud, obtains from any other person anything capable of being stolen or any services or induces any other person to deliver to any person anything capable of being stolen shall be guilty of a misdemeanor, and shall be liable to imprisonment for five years.

1 of 2011

(2) It is an obtaining of service where there is induced to confer a benefit by doing some act, or causing or permitting some act to be done, on the understanding that the benefit has been or will be paid for with money or money's worth.

Fraud other than false pretence 1 of 2011

319A. Any person who by deceit or other fraudulent means—

(*a*) obtains property from any person;

(*b*) induces any person to deliver property to another person;

(*c*) gains a benefit, pecuniary or otherwise, from any person;

(*d*) causes a detriment, pecuniary or otherwise, to any person;

(*e*) induces any person to do any act that the person is lawfully entitled to abstain from doing; or

(*f*) induces any person to abstain from doing any act that the person is lawfully entitled to do,

shall be guilty of an offence and shall be liable to imprisonment for seven years.

Evasion of liability by false pretence 1 of 2011

319B.—(1) Where a person by any deception—

(*a*) dishonestly secures the remission of the whole or any part of existing liability to make a payment, whether his own or another's; or

(*b*) with intent to make permanent default in whole or in part on any existing liability to make a payment, or with intent to let another do so, dishonestly induces the creditor or any person claiming payment on behalf of the creditor to wait for payment (whether or not the due date for payment is deferred) or to forgo payment; or

(*c*) dishonestly obtains any exemption from or abatement of liability to make a payment,

shall be guilty of an offence and shall be liable to imprisonment for five years.

(2) For the purposes of this section, "liability" means legally enforceable liability; and subsection (1) shall not apply in relation to a liability that has not been accepted or established to pay compensation for a wrongful act of omission.

(3) For the purposes of subsection (1) (*b*), a person induced to take in payment a cheque or other security for money by way of conditional satisfaction of a pre-existing liability is to be treated not as being paid but as being induced to wait for payment.

(4) For the purposes of subsection (1) (*c*), "obtains" includes obtaining for another or enabling another to obtain.

Making off without payment 1 of 2011

319C.—(1) Any person who knowing that payment on the spot for any goods supplied, work done or payment service provided is required or expected of or from him, dishonestly makes off without having paid as required or expected and with intent to avoid payment of the amount due shall be guilty of an offence and shall be liable to a fine of K5,000 and to imprisonment for twelve months.

(2) For purposes of this section, "payment on the spot" includes payment at the time of collecting goods on which work has been done or in respect of which service has been provided.

(3) Subsection (1) shall not apply where the supply of the goods or where the service provided is such that payment is not legally enforceable.

Passing valueless cheque 1 of 2011

319D.—(1) Any person who obtains any chattel, money, valuable security, credit, benefit or advantage by passing a cheque which is not paid on presentation shall be guilty of an offence and shall be liable to a fine of K5,000 and to imprisonment for twelve months.

(2) The fact that at the time when the cheque was passed there were some funds to the credit of the account on which the cheque was drawn is not of itself a defence.

Obtaining execution of a security by false pretences
32 of 1969
1 of 2011

320. Any person who by any false pretence, and with intent to defraud, induces any person to execute, make, accept, endorse, alter, or destroy the whole or any part of any valuable security, or to write any name or impress, or affix any seal upon or to any paper or parchment in order that it may be afterwards made or converted into or used or dealt with as a valuable security, shall be guilty of an offence and shall be liable to imprisonment for five years.

Cheating
1 of 2011

321. Any person who by means of any fraudulent trick or device obtains from any other person anything capable of being stolen, or induces any other person to deliver to any person anything capable of being stolen or to pay or deliver to any person any money or goods or any greater sum of money or greater quantity of goods than he would have paid or delivered but for such trick or device, shall be guilty of an offence and shall be liable to imprisonment for three years.

Obtaining credit, etc., by false pretences

322. Any person who—

(*a*) in incurring any debt or liability obtains credit by any false pretence or by means of any other fraud; or

(*b*) with intent to defraud his creditors or any of them, makes or causes to be made any gift, delivery, or transfer of or any charge on his property; or

(*c*) with intent to defraud his creditors or any of them, sells or removes any part of his property since or within two months before the date of any unsatisfied judgment or order for payment of money obtained against him,

shall be guilty of a misdemeanor and shall be liable to imprisonment for one year.

Conspiracy to defraud

323. Any person who conspires with another by deceit or any fraudulent means to affect the market price of anything publicly sold, or to defraud the public, or any person, whether a particular person or not, or to extort any property from any person, shall be guilty of a misdemeanor and shall be liable to imprisonment for three years.

Frauds on sale or mortgage of property

324. Any person who, being a seller or mortgagor of any property, or being the legal practitioner or agent of any such seller or mortgagor, with intent to induce the purchaser or mortgagee to accept the title offered or produced to him, and with intent to defraud—

(*a*) conceals from the purchaser or mortgagee any instrument material to the title, or any incumbrance; or

(*b*) falsifies any pedigree on which the title depends or may depend; or

(*c*) makes any false statement as to the title offered or conceals any fact material thereto,

shall be guilty of a misdemeanor and shall be liable to imprisonment for two years.

Pretending to tell fortunes

325. Any person who for gain or reward undertakes to tell fortunes, or pretends from his skill or knowledge in any occult science to discover where or in what manner anything supposed to have been stolen or lost may be found, shall be guilty of a misdemeanor.

Obtaining registration, etc., by false pretence

326. Any person who wilfully procures or attempts to procure for himself or any other person any registration, licence or certificate under any law by any false pretence, is guilty of a misdemeanor, and is liable to imprisonment for twelve months.

False declaration for passport

327. Any person who makes a statement which is to his knowledge untrue for the purpose of procuring a passport, whether for himself or any other person, shall be guilty of a misdemeanor.

Chapter XXXII—Receiving Property Stolen or Unlawfully Obtained and Like Offences

Receiving stolen property, etc. 1 of 2011

328.—(1) Any person who receives or retains any chattel, money, valuable security or other property whatsoever, knowing or having reason to believe the same to have been feloniously stolen, taken, extorted, obtained or disposed of, shall be guilty of a felony and shall be liable to imprisonment for fourteen years.

Receiving property unlawfully obtained

(2) Any person who receives or retains any chattel, money, valuable security or other property whatsoever, knowing or having reason to believe the same to have been unlawfully taken, obtained, converted or disposed of in a manner which constitutes a misdemeanor, shall be guilty of a misdemeanor and shall be liable to the same punishment as the offender by whom the property was unlawfully obtained, converted or disposed of.

(3) No person shall be convicted of an offence under this section unless it shall first be proved that the property which is the subject matter of the charge has in fact been stolen, or feloniously or unlawfully taken, extorted, obtained, converted or disposed of.

1 of 2011

(4) For the purposes of this section, the term "receives" or "retains" includes dishonestly undertaking or assisting in the retention, removal, disposal or realization of stolen property by or for the benefit of another person or arranging to doing so.

Person having in possession property suspected of being stolen

329. Any person who is brought before a court charged with having in his possession anything which may be reasonably suspected of having been stolen or unlawfully obtained, and who does not give an account to the satisfaction of such court of how he came by the same, shall be guilty of a misdemeanor.

Tracing possession 1 of 2011

330.—(1) If any person brought or appearing before a court under section 329 declares that he received any such thing as therein mentioned from some other person, or that he was employed as a carrier, agent, or servant to convey the same for some other person, the court may cause every such other person, and also any other person through whose possession any such thing shall previously have passed, to be brought before it.

1 of 2011

(2) Upon any such person as is mentioned in subsection (1) being brought before it, it shall be lawful for the court to examine him as to whether he has been in possession of any such thing as aforesaid, and upon his admitting such possession, or upon it being proved to the satisfaction of the court that such person has been in possession of any such thing, the court may call upon such person to give an account to the satisfaction of the court by what lawful means such person came by such thing and, if such person fails within a reasonable time to be assigned by such court, to give such account, he shall be liable to a fine of K3,000 or to imprisonment for six months.

1 of 2011

(3) For the purposes of this section, the possession of a carrier, agent, or servant shall be deemed also to be the possession of the person who shall have employed such carrier, agent, or servant to convey the same.

Receiving or bringing in property dishonestly acquired outside Malaŵi

331. Any person who, without lawful excuse, knowing or having reason to believe the same to have been stolen or obtained in any way whatsoever under such circumstances that if the act had been committed in Malaŵi the person committing it would have been guilty of felony or misdemeanor, receives or has in his possession any property so stolen or obtained outside Malaŵi, or having himself so stolen or obtained such property, brings the same into, or has it in his possession within, Malaŵi, shall be guilty of an offence of the like degree (whether felony or misdemeanor) and shall be liable to imprisonment for seven years.

Money laundering 1 of 2011

331A.—(1) Any person who engages in money laundering shall be guilty of an offence and shall be liable—

(*a*) in the case of a natural person, to a fine of K2,000,000 and imprisonment for ten years;

(*b*) in the case of a body corporate, to a fine of K10,000,000.

(2) For the purposes of this section—

(*a*) a person engages in money laundering if—

(i) the person engages, directly or indirectly, in a transaction involving property that the person knows to be tainted; or

(ii) the person receives, possesses, conceals, disposes of or brings into Malaŵi property that the person knows to be tainted;

(*b*) "tainted property" is property derived or realized, directly or indirectly, from unlawful activity either within or outside Malaŵi, but property ceases to be "tainted" when it passes into the hands of a person who acquires it in good faith, without knowledge of the illegality and for value; and

(*c*) a transaction includes a gift.

(3) A person may be tried and punished for an offence against this section whether committed within or outside the Republic of Malaŵi.

Chapter XXXIII—Frauds by Trustees and Persons in a Position of Trust, and False Accounting

Trustees fraudulently disposing of trust property 1 of 2011

332.—(1) Any person who, being a trustee of any property, destroys the property with intent to defraud, or, with intent to defraud, converts the property to any use not authorized by the trust, shall be guilty of a felony and shall be liable to imprisonment for seven years.

(2) For the purposes of this section the term "trustee" includes the following persons, that is to say—

(*a*) trustees upon express trusts created by a deed, will, or instrument in writing, whether for a public or private or charitable purpose;

(*b*) trustees appointed by or under the authority of an Act for any such purpose;

(*c*) persons upon whom the duties of any such trust as aforesaid devolve;

(*d*) executors and administrators; 1 of 2011

(*e*) persons acting under powers of attorney. 1 of 2011

Directors and officers of corporations or companies fraudulently appropriating property, or keeping fraudulent accounts or falsifying books or accounts

333. Any person who—

(*a*) being a director or officer of a corporation or company, receives or possesses himself as such of any of the property of the corporation or company otherwise than in payment of a just debt or demand, and, with intent to defraud, omits either to make a full and true entry thereof in the books and accounts of the corporation or company, or to cause or direct such an entry to be made therein; or

(*b*) being a director, officer, or member of a corporation or company, does any of the following acts with intent to defraud, that is to say—

(i) destroys, alters, mutilates or falsifies any book, document, valuable security or account, which belongs to the corporation or company, or any entry in any such book, document or account, or is privy to any such act; or

(ii) makes, or is privy to making, any false entry in any such book, document, or account; or

(iii) omits or is privy to omitting, any material particular from any such book, document or account,

shall be guilty of a felony and shall be liable to imprisonment for seven years.

False statements by officials of companies

334. Any person who, being a promoter, director, officer or auditor of a corporation or company, either existing or intended to be formed, makes, circulates or publishes, or concurs in making, circulating or publishing, any written statement or account which, in any material particular, is to his knowledge false, with intent thereby to effect any of the purposes following, that is to say—

(*a*) to deceive or to defraud any member, shareholder, or creditor of the corporation or company, whether a particular person or not;

(*b*) to induce any person, whether a particular person or not, to become a member of, or to entrust or advance any property to, the corporation or company, or to enter into any security for the benefit thereof,

shall be guilty of a felony and shall be liable to imprisonment for seven years.

Fraudulent false accounting

335. Any person who, being a clerk or servant, or being employed or acting in the capacity of a clerk or servant, does any of the acts following with intent to defraud, that is to say—

(*a*) destroys, alters, mutilates or falsifies any book, document, valuable security or account which belongs to or is in the possession of his employer, or has been received by him on account of his employer, or any entry in any such book, document or account, or is privy to any such act; or

(*b*) makes, or is privy to making, any false entry in any such book, document or account; or

(*c*) omits, or is privy to omitting, any material particular from any such book, document or account,

shall be guilty of a felony and shall be liable to imprisonment for seven years.

False accounting by public officer

336. Any person who, being an officer charged with the receipt, custody or management of any part of the public revenue or property, knowingly furnishes any false statement or return of any money or property received by him or entrusted to his care, or of any balance of money or property in his possession or under his control, shall be guilty of a misdemeanor.

Fraudulent trading by a company
1 of 2011

336A.—(1) If any business of a company is carried on with intent to defraud creditors of a company or creditors of any other person for any fraudulent purposes, every person who is or was knowingly a party to the carrying on of a business in that manner shall be guilty of an offence and shall be liable to a fine of K10,000,000 and to imprisonment for seven years.

(2) This section shall apply whether or not the company has been, or is in the course of being, wound-up.

Division VI—Malicious Injuries to Property

Chapter XXXIV—Offences Causing Injury to Property

Arson

337. Any person who wilfully and unlawfully sets fire to—

(*a*) any building or structure whatever, whether completed or not; or

(*b*) any vessel, whether completed or not; or

(*c*) any stack of cultivated vegetable produce, or of mineral or vegetable fuel; or

(*d*) a mine, or the workings, fittings, or appliances of a mine,

shall be guilty of a felony and shall be liable to imprisonment for life.

Attempts to commit arson
1 of 2011

338. Any person who—

(*a*) attempts unlawfully to set fire to any such thing as is mentioned in section 337; or

(*b*) wilfully and unlawfully sets fire to anything which is so situated that any such thing as is mentioned in section 337 is likely to catch fire from it,

shall be guilty of a felony and shall be liable to imprisonment for fourteen years.

Setting fire to crops and growing plants

339. Any person who wilfully and unlawfully sets fire to—

(*a*) a crop of cultivated produce, whether standing, picked or cut; or

(*b*) a crop of hay or grass under cultivation, whether the natural or indigenous product of the soil or not, and whether standing, picked or cut; or

(*c*) any standing trees, saplings, or shrubs, whether indigenous or not, under cultivation,

shall be guilty of a felony and shall be liable to imprisonment for fourteen years.

Attempting to set fire to crops, etc. 1 of 2011

340. Any person who—

(*a*) attempts unlawfully to set fire to any such thing as is mentioned in section 339; or

(*b*) wilfully and unlawfully sets fire to anything which is so situated that any such thing as is mentioned in section 339 is likely to catch fire from it,

shall be guilty of a felony and shall be liable to imprisonment for seven years.

Casting away ships 1 of 2011

341. Any person who—

(*a*) wilfully and unlawfully casts away or destroys any vessel, whether completed or not; or

(*b*) wilfully and unlawfully does any act which tends to the immediate loss or destruction of a vessel in distress; or

(*c*) with intent to bring a vessel into danger, interferes with any light, beacon, buoy, mark, or signal used for purposes of navigation, or exhibits any false light or signal,

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shall be guilty of a felony and shall be liable to imprisonment for life.

Attempts to cast away ships 1 of 2011

342. Any person who attempts unlawfully to cast away or destroy a vessel, whether completed or not, or attempts unlawfully to do any act tending to the immediate loss or destruction of a vessel in distress, shall be guilty of a felony and shall be liable to imprisonment for fourteen years.

Killing or injuring animals 1 of 2011

343.—(1) Any person who wilfully and unlawfully kills, maims or wounds any animal capable of being stolen, shall be guilty of an offence and shall be liable to imprisonment for three years.

(2) If the animal in question is a horse, mare, gelding, ass, mule, bull, cow, ox, ram, ewe, wether, goat, pig, or ostrich or the young of any such animal or any animal kept for commercial or conservation purposes, the offender shall be liable to imprisonment for fourteen years.

344.—(1) Any person who wilfully and unlawfully destroys or damages any property is guilty of an offence, which unless otherwise stated, is a misdemeanor, and he shall be liable, if no other punishment is provided, to imprisonment for five years.

Punishment for malicious injuries in general

(2) If the property in question is a dwelling-house or a vessel, and the injury is caused by the explosion of any explosive substance, and if—

In special cases: Destroying or damaging an inhabited house or a vessel with explosives

(*a*) any person is in the dwelling-house or vessel; or

(*b*) the destruction or damage actually endangers the life of any person,

the offender shall be guilty of a felony and shall be liable to imprisonment for life.

1 of 2011

(3) If—

River bank or wall, or navigation works, or bridges
1 of 2011

(*a*) the property in question is a bank or wall of a river, canal, aqueduct, reservoir, or inland water, or work which appertains to a dock, reservoir, or inland water, and the injury causes actual danger of inundation or damage to any land or building; or

(*b*) the property in question is a railway or is a bridge, viaduct, or aqueduct which is constructed over a highway, railway, or canal, or over which a railway, highway, or canal passes, and the property is destroyed; or

(*c*) the property in question, being a railway, or being any such bridge, viaduct, or aqueduct, is damaged, and the damage is done, with intent to render the railway, bridge, viaduct or aqueduct, or the highway, railway, or canal passing over or under the same, or any part thereof, dangerous or impassable, and the same or any part thereof is thereby rendered dangerous or impassable,

the offender shall be guilty of a felony and shall be liable to imprisonment for life.

(4) If the property in question is a testamentary instrument, whether the testator is living or dead, or a register which is authorized or required by law to be kept for authenticating or recording the title to any property, or for recording births, baptisms, marriages, deaths, or burials, or a copy of any part of any such register which is required by law to be sent to any public officer, the offender shall be guilty of a felony and shall be liable to imprisonment for fourteen years.

Wills and registers

(5) If the property in question is a vessel in distress or wrecked, or stranded, or anything which belongs to such vessel, the offender shall be guilty of a felony and shall be liable to imprisonment for seven years.

Wrecks

(6) If the property in question is any part of a railway, or any work connected with a railway, the offender shall be guilty of a felony and shall be liable to imprisonment for fourteen years.

Railways

Other things of special value

(7) If the property in question—

(*a*) being a vessel, whether completed or not, is destroyed; or

(*b*) being a vessel, whether completed or not, is damaged, and the damage is done with intent to destroy it or render it useless; or

(*c*) is a light, beacon, buoy, mark, or signal, used for the purposes of navigation, or for the guidance of persons engaged in navigation; or

(*d*) is a bank or wall of a river, canal, aqueduct, reservoir, or inland water, or a work which appertains to a dock, canal, aqueduct, reservoir, or inland water, or which is used for the purposes of lading or unlading goods; or

(*e*) being a railway, or being a bridge, viaduct, or aqueduct which is constructed over a highway, railway, or canal, or over which a highway, railway, or canal passes, is damaged, and the damage is done with intent to render the railway, bridge, viaduct, or aqueduct, or the highway, railway, or canal passing over or under the same, or any part thereof, dangerous or impassable; or

(*f*) being anything in process of manufacture, or an agricultural or manufacturing machine, or a manufacturing implement, or a machine or appliance used or intended to be used for performing any process connected with the preparation of any agricultural or pastoral produce, is destroyed; or

1 of 2011

(*g*) being any such thing, machine, implement, or appliance, as mentioned in paragraph (*f*), is damaged, and the damage is done with intent to destroy the thing in question or to render it useless; or

(*h*) is a shaft or a passage of a mine, and the injury is done with intent to damage the mine or to obstruct its working; or

(*i*) is a machine, appliance, apparatus, building, erection, bridge or road, appertaining to or used with a mine, whether the thing in question is completed or not; or

(*j*) being a rope, chain, or tackle, of whatever material, which is used in a mine, or upon any way or work appertaining to or used with a mine, is destroyed; or

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(*k*) being any such rope, chain, or tackle, as mentioned in paragraph (*j*), is damaged, and the damage is done with intent to destroy the thing in question or to render it useless; or

(*l*) is a well, or bore for water, or the dam, bank, wall, or floodgate of a millpond or pool,

the offender shall be guilty of a felony and shall be liable to imprisonment for ten years.

(8) If the property in question is a document which is deposited or kept in a public office, or which is evidence of title to any land or estate in land, the offender shall be guilty of a felony and shall be liable to imprisonment for ten years.

Deeds and records

345. Any person who, unlawfully and with intent to destroy or damage any property, puts any explosive substance in any place whatever, shall be guilty of a felony and shall be liable to imprisonment for fourteen years.

Attempts to destroy property by explosives

346. Any person who wilfully and unlawfully causes, or is concerned in causing, or attempts to cause, any infectious disease to be communicated to or among any animal, or animals capable of being stolen, shall be guilty of a felony and shall be liable to imprisonment for seven years.

Communicating infectious diseases to animals

347. Any person who wilfully and unlawfully, and with intent to defraud, removes or defaces any object or mark which has been lawfully erected or made as an indication of the boundary of any land, shall be guilty of a felony and shall be liable to imprisonment for three years.

Removing boundary marks with intent to defraud

348. Any person who—

(*a*) wilfully removes, defaces or injures any survey mark or boundary mark which shall have been made or erected by or under the direction of any Government Department or in the course of or for the purposes of a Government survey or for the purposes of any written law; or

(*b*) being under an obligation to maintain in repair any boundary mark made or erected as aforesaid, neglects or refuses to repair the same; or

(*c*) wilfully removes, defaces, or injures any survey mark erected by or under the authority of any licensed surveyor or any mark erected by an intending applicant for any lease, licence or right under an Act relating to mines or minerals,

shall be guilty of a misdemeanor and shall be liable to a fine of K5,000 or to imprisonment for three months and may further be ordered by the court to pay the cost of repairing or replacing the survey mark or boundary mark and of making any survey rendered necessary by the offender's act or neglect.

Wilful damage, etc., to survey and boundary marks
1 of 2011

349. Any person who—

(*a*) wilfully damages, injures, or obstructs any work, way, road, building, turnstile, gate, toll bar, fence, weighing machine, engine,

Penalties for damage, etc., to railway works
1 of 2011

tender, carriage, wagon, truck, material, or plant acquired for or belonging to any railway works; or

(*b*) pulls up, removes, defaces, or destroys, or in any way interferes with, any poles, stakes, flags, pegs, lines, marks, or anything driven or placed in or upon the ground, trees, stones, or buildings, or any other material, belonging to any railway works; or

(*c*) commits any nuisance or trespass in or upon any land, buildings, or premises, acquired for or belonging to any railway works; or

(*d*) wilfully molests, hinders or obstructs the officer in-charge of any railway or his assistants or workmen in the execution of any work done or to be done in reference to the construction or maintenance of any such railway,

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shall be guilty of a misdemeanor and shall be liable to a fine of K5,000 and to imprisonment for three months.

Threats to burn, etc.

350. Any person who, knowing the contents thereof, sends, delivers, utters, or directly or indirectly causes to be received, any letter or writing threatening to burn or destroy any house, barn, or other building, or any rick or stack of grain, hay, or straw, or other agricultural produce, whether in or under any building or not, or any ship or vessel, or to kill, maim, or wound any cattle, shall be guilty of a felony and shall be liable to imprisonment for ten years.

Division VII—Forgery, Coining and Counterfeiting

Chapter XXXV—Definitions

Definition of forgery

351. Forgery is the making of a false document with intent to defraud or to deceive.

Document

352. The term "document" in this Division of this Code does not include a trade mark or any other sign used in connexion with articles of commerce though they may be written or printed.

Making a false document

353. Any person makes a false document who—

(*a*) makes a document purporting to be what in fact it is not;

(*b*) alters a document without authority in such a manner that if the alteration had been authorized it would have altered the effect of the document;

(*c*) introduces into a document without authority whilst it is being drawn-up matter which if it had been authorized would have altered the effect of the document;

(*d*) signs a document—

(i) in the name of any person without his authority whether such name is or is not the same as that of the person signing;

(ii) in the name of any fictitious person alleged to exist whether the fictitious person is or is not alleged to be of the same name as the person signing;

(iii) in the name represented as being the name of a different person from that of the person signing it and intended to be mistaken for the name of that person;

(iv) in the name of a person personated by the person signing the document, provided that the effect of the instrument depends upon the identity between the person signing the document and the person whom he professes to be.

Intent to defraud

354. An intent to defraud is presumed to exist if it appears that at the time when the false document was made there was in existence a specific person ascertained or unascertained capable of being defrauded thereby, and this presumption is not rebutted by proof that the offender took or intended to take measures to prevent such person from being defrauded in fact, nor by the fact that he had or thought he had a right to the thing to be obtained by the false document.

Chapter XXXVI—Punishments for Forgery

Definition of currency note

355. In this Chapter the expression "currency note" includes any note (by whatever name called) which is legal tender in the country in which it is issued.

General punishment for forgery

356. Any person who forges any document shall be guilty of an offence which, unless otherwise stated, is a felony and he shall be liable, unless owing to the circumstances of the forgery or the nature of the thing forged some other punishment is provided, to imprisonment for three years.

Forgery of wills, etc.

357. Any person who forges any will, document of title to land, judicial record, power of attorney, bank note, currency note, bill of exchange, promissory note or other negotiable instrument, policy of insurance, cheque or other authority for the payment of money by a person carrying on business as a banker, shall be liable to imprisonment for life and the court may in addition order that any such document as aforesaid shall be forfeited.

Forgery of judicial or official documents

358. Any person who forges any judicial or official document shall be liable to imprisonment for ten years.

Forgery, etc., of stamps
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359. Any person who—

(*a*) forges any stamp whether impressed or adhesive used for the purposes of revenue or accounting by any Government Department; or

(*b*) without lawful excuse, the proof whereof shall lie upon him, makes or has knowingly in his possession any die or instrument capable of making the impression of any such stamp; or

(*c*) fraudulently cuts, tears in any way, or removes from any material any stamp used for purposes of revenue or accounting by the Government, with intent that another use shall be made of such stamp or any part thereof; or

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(*d*) fraudulently mutilates any such stamp as mentioned in paragraph (*c*), with intent that another use shall be made of such stamp; or

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(*e*) fraudulently fixes or places upon any material or upon any such stamp as mentioned in paragraph (*c*) any stamp or part of a stamp which whether fraudulently or not has been cut, torn, or in any way removed from any other material or out of or from any other stamp; or

(*f*) fraudulently erases or otherwise either really or apparently removes from any stamped material any name, sum, date, or other matter or thing whatsoever written thereon with the intent that another use shall be made of the stamp upon such material; or

(*g*) knowingly and without lawful excuse, the proof whereof shall lie upon him, has in his possession any stamp or part of a stamp which has been fraudulently cut, torn, or otherwise removed from any material, or any stamp which has been fraudulently mutilated, or any stamped material out of which any name, sum, date, or other matter or thing has been fraudulently erased or otherwise really or apparently removed,

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shall be guilty of an offence and shall be liable to imprisonment for seven years.

Uttering false document

360. Any person who knowingly and fraudulently utters a false document shall be guilty of an offence of the same kind and shall be liable to the same punishment, as if he had forged the thing in question.

Uttering cancelled or exhausted documents

361. Any person who knowingly utters as and for a subsisting and effectual document, any document which has by any lawful authority been ordered to be revoked, cancelled, or suspended, or the operation of which has ceased by effluxion of time, or by death, or by the happening of any other event, shall be guilty of an offence of the same kind and shall be liable to the same punishment, as if he had forged the document.

Procuring execution of documents by false pretences

362. Any person who, by means of any false and fraudulent representations as to the nature, contents, or operation of a document, procures another to sign or execute the document, shall be guilty of an offence of the same kind and shall be liable to the same punishment, as if he had forged the document.

Obliterating crossings on cheques

363. Any person who, with intent to defraud—

(*a*) obliterates, adds to, or alters the crossing on a cheque; or

(*b*) knowingly utters a crossed cheque, the crossing on which has been obliterated, added to, or altered,

shall be guilty of a felony and shall be liable to imprisonment for seven years.

Making documents without authority

364. Any person who, with intent to defraud or to deceive—

(*a*) without lawful authority or excuse, makes, signs, or executes, for or in the name or on account of another person, whether by procuration or otherwise, any document or writing; or

(*b*) knowingly utters any document or writing so made, signed, or executed by another person,

shall be guilty of a felony and shall be liable to imprisonment for seven years.

Demanding property upon forged testamentary instruments

365. Any person who procures the delivery or payment to himself or any other person of any property or money by virtue of any probate or letters of administration granted upon a forged testamentary instrument, knowing the testamentary instrument to have been forged, or upon or by virtue of any probate or letters of administration obtained by false evidence, knowing the grant to have been so obtained, shall be guilty of an offence of the same kind and shall be liable to the same punishment, as if he had forged the document or thing by virtue whereof he procures the delivery or payment.

Importing or purchasing forged notes

366. Any person who, without lawful authority or excuse, the proof of which lies on him, imports into the Republic, or purchases or receives from any person, or has in his possession, a forged bank note, or currency note, whether filled up or in blank, knowing it to be forged, shall be guilty of a felony and shall be liable to imprisonment for seven years.

Falsifying warrants for money payable under public authority

367. Any person who, being employed in the public service, knowingly and with intent to defraud makes out or delivers to any person a warrant for the payment of any money payable by public authority, for a greater or less amount than that to which the person on whose behalf

the warrant is made out is entitled, shall be guilty of a felony and shall be liable to imprisonment for seven years.

Falsification of register

368. Any person who, having the actual custody of any register or record kept by lawful authority, knowingly permits any entry which in any material particular is to his knowledge false, to be made in the register or record, shall be guilty of a felony and shall be liable to imprisonment for seven years.

Sending false certificate of marriage to Registrar

369. Any person who signs or transmits to a person authorized by law to register marriages, a certificate of marriage, or any document purporting to be a certificate of marriage, which in any material particular is to his knowledge false, shall be guilty of a felony and shall be liable to imprisonment for seven years.

False statements for registers of births, deaths and marriages

370. Any person who knowingly and with intent to procure the same to be inserted in a register of births, deaths, or marriages, makes any false statement touching any matter required by law to be registered in any such register, shall be guilty of a felony and shall be liable to imprisonment for three years.

Chapter XXXVII—Offences Relating to Coin and to Bank and Currency Notes

Definitions

371. In this chapter—

the term "coin" includes any coin lawfully current in Malaŵi or in any other State;

the term "counterfeit coin" means coin not genuine but resembling or apparently intended to resemble or pass for genuine coin; and includes genuine coin prepared or altered so as to pass for coin of a higher denomination;

the term "currency note" includes any note (by whatever name called) which is legal tender in the country in which it is issued.

Counterfeiting coin

372. Any person who makes or begins to make any counterfeit coin shall be guilty of a felony and shall be liable to imprisonment for life.

Preparations for coining
1 of 2011

373.—(1) Any person who—

(*a*) gilds or silvers any piece of metal of a fit size or figure to be coined, with intent that it shall be coined into counterfeit coin; or

(*b*) makes any piece of metal into a fit size or figure to facilitate the coining from it of any counterfeit coin, with intent that such counterfeit coin shall be made from it; or

(*c*) without lawful authority or excuse, the proof of which lies on him—

(i) buys, sells, receives, pays, or disposes of any counterfeit coin at a lower rate than it imports or is apparently intended to import, or offers to do any such thing; or

(ii) brings or receives into Malaŵi any counterfeit coin, knowing it to be counterfeit; or

(iii) makes or mends, or begins or prepares to make or mend, or has in his possession, or disposes of any stamp or mould which is adapted to make the resemblance of both or either of the sides of any coin, or any part of either side thereof, knowing the same to be a stamp or mould or to be so adapted; or

(iv) makes or mends, or begins or prepares to make or mend, or has in his possession, or disposes of any tool, instrument or machine which is adapted and intended to be used for marking coin round the edges with marks or figures apparently resembling those on the edges of any coin, knowing the same to be so adapted and intended; or

(v) makes or mends, or begins or prepares to make or mend, or has in his possession, or disposes of any press for coinage, or any tool, instrument, or machine which is adapted for cutting round blanks out of gold, silver, or other metal, knowing such press, tool, instrument, or machine to have been used or to be intended to be used for making any counterfeit coin,

shall be guilty of a felony.

(2) If the offence is committed with respect to current coin, he shall be liable to imprisonment for life.

(3) If the offence is committed with respect to coin of another State, he shall be liable to imprisonment for seven years.

Making or having in possession paper or implements for forgery
1 of 2011

374. Any person who, without lawful authority or excuse, the proof of which lies on him—

(*a*) makes, uses, or knowingly has in his custody or possession any paper intended to resemble and pass as a special paper such as is provided and used for making any bank note or currency note;

(*b*) makes, uses, or knowingly has in his custody or possession any frame, mould, or instrument for making such paper, or for producing in or on such paper any words, figures, letters, marks, lines, or devices peculiar to and used in or on any such paper;

(*c*) engraves or in anywise makes upon any plate, wood, stone, or other material, any words, figures, letters, marks, lines or devices,

the print whereof resembles in whole or in part any words, figures, letters, marks, lines or devices peculiar to and used in or on any bank note or currency note;

(*d*) uses or knowingly has in his custody or possession any plate, wood, stone, or other material, upon which any such words, figures, letters, marks, lines or devices have been engraved or in anywise made as mentioned in paragraph (*c*);

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(*e*) uses or knowingly has in his custody or possession any paper upon which such words, figures, letters, marks, lines or devices have been printed or in anywise made as mentioned in paragraph (*c*),

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shall be guilty of a felony and shall be liable to imprisonment for seven years.

Clipping

375. Any person who deals with any current coin in such a manner as to diminish its weight with intent that when so dealt with it may pass as current coin, shall be guilty of a felony and shall be liable to imprisonment for seven years.

Melting down of currency

376. Any person who melts down, breaks up, defaces by stamping thereon any name, word or mark, or uses otherwise than as currency any coin current for the time being in Malaŵi shall be guilty of a misdemeanor and shall be liable to a fine of K20,000 and to imprisonment for six months.

Impounding and destruction of counterfeit coin
1 of 2011

377.—(1) Any officer of the Government or the manager of any bank who receives, during the performance of his duties, any coin which he has reasonable ground for believing to be counterfeit coin shall impound such coin and transmit it to the Governor of the Reserve Bank of Malaŵi who may cut, deface or destroy it with or without compensation, as he thinks fit, if in his opinion it is counterfeit.

(2) For the purposes of this section the decision of the Governor of the Reserve Bank of Malaŵi that a coin is counterfeit and that compensation shall be granted or withheld shall, subject to judicial review, be final, and no person shall be entitled to claim and no proceedings or action shall be brought against the Governor of the Reserve Bank of Malaŵi, the Government, the officer of the Government concerned, the manager of the bank concerned or his bank in respect of any loss or damage suffered by reason of such impounding and cutting, defacing or destruction.

Possession of clippings

378. Any person who unlawfully has in his possession or disposes of any filings, or clippings of gold or silver, or any gold or silver in bullion, dust, solution, or any other state, obtained by dealing with current gold or silver coin in such a manner as to diminish its weight, knowing the same to have been so obtained, shall be guilty of a felony and shall be liable to imprisonment for seven years.

379. Any person who utters any counterfeit coin, knowing it to be counterfeit, shall be guilty of a misdemeanor.

Uttering counterfeit coin

380. Any person who—

Repeated uttering

(*a*) utters any counterfeit coin, knowing it to be counterfeit, and at the time of such uttering has in his possession any other counterfeit coin; or

(*b*) utters any counterfeit coin, knowing it to be counterfeit, and either on the same day or on any of the ten days next ensuing utters any other counterfeit coin, knowing it to be counterfeit; or

(*c*) receives, obtains, or has in his possession any counterfeit coin, knowing it to be counterfeit, with intent to utter it,

shall be guilty of a felony and shall be liable to imprisonment for three years.

381.—(1) Any person who, with intent to defraud, utters as and for coin any medal or piece of metal shall be guilty of a misdemeanor and shall be liable to imprisonment for twelve months.

Uttering metal or coin not current as coin

(2) Any person who, with intent to defraud, utters as and for coin lawfully current in Malaŵi any coin not so lawfully current shall be guilty of a misdemeanor and shall be liable to imprisonment for twelve months.

382. Any person who without lawful authority or excuse, the proof whereof lies upon him, sells or offers or exposes for sale any article which bears a design in imitation of any currency or bank note or coin in current use in Malaŵi or elsewhere shall be guilty of an offence and shall be liable to imprisonment for ten years.

Selling articles bearing designs in imitation of currency
1 of 2011

383. Any person who, without lawful authority or excuse, the proof of which lies on him, exports or puts on board of a vessel or vehicle of any kind for the purpose of being exported from Malaŵi, any counterfeit coin whatever or any forged bank note or currency note, knowing it to be counterfeit, shall be guilty of an offence and shall be liable to imprisonment for seven years.

Exporting counterfeit coin
1 of 2011

384. When any person is convicted of an offence under this Chapter, or Chapter XXXVI, the court shall order the forfeiture of any forged bank note or currency note or of any counterfeit coin or any stamp, mould, tool, instrument, machine, press, or any coin, bullion or metal, or any article bearing a design in imitation of any currency, bank note or coin used or employed in the commission of any such offence.

Forfeiture
1 of 2011

Chapter XXXVIII —Counterfeit Stamps

Possession of die used for purpose of making stamps
1 of 2011

385. Any person who, without lawful authority or excuse, the proof of which lies on him—

(*a*) makes or mends, or begins or prepares to make or mend, or uses, or knowingly has in his possession, or disposes of any die, plate or instrument capable of making an impression resembling that made by any die, plate or instrument used for the purpose of making any stamp, whether impressed or adhesive, which is used for the purposes of the public revenue or for the purposes of Malaŵi Posts or of any postal administration in any country, or capable of producing in or on paper any words, figures, letters, marks, or lines resembling any words, figures, letters, marks or lines used in or on any paper specially provided by the proper authority for any such purpose; or

(*b*) knowingly has in his possession or disposes of any paper or other material which has on it the impression of any such die, plate or instrument, or any paper which has on it or in it any such words, figures, letters, marks or lines as mentioned in paragraph (*a*); or

(*c*) fraudulently, and with intent that use may be made of any such stamp as mentioned in paragraph (*a*), or of any part of it, removes the stamp from any material in any way whatever; or

(*d*) fraudulently, and with intent that use may be made of any part of such stamp, mutilates the stamp; or

(*e*) fraudulently fixes or places upon any material or upon any such stamp, any stamp or part of a stamp which has been in any way removed from any other material, or out of or from any other stamp; or

(*f*) fraudulently, and with intent, that use may be made of any such stamp which has been already impressed upon or attached to any material, erases or otherwise removes, either really or apparently, from such material anything whatever written on it; or

(*g*) knowingly has in his possession or disposes of anything obtained or prepared by any such unlawful act as mentioned in paragraph (*a*); or

(*h*) fraudulently, or with intent to cause loss to the Government or Malaŵi Posts, uses for any purpose a stamp issued by Government or Malaŵi Posts for the purpose of revenue which he knows to have been before used,

shall be guilty of a felony and shall be liable to imprisonment for seven years, and any die, plate, instrument, paper or other thing as mentioned in paragraph (*a*) which are found in his possession shall be forfeited.

Paper and dies for postage stamps
1 of 2011

386.—(1) Any person who, without lawful authority or excuse, the proof of which lies on him—

(*a*) makes, or begins or prepares to make, or uses for any postal purpose, or has in his possession, or disposes of any imitation or representation on paper or any other material, of any stamp used for denoting any rate of postage of Malaŵi, or of any other country; or 1 of 2011

(*b*) makes or mends, or begins or prepares to make or mend, or uses, or has in his possession, or disposes of any die, plate, instrument, or material for making any such imitation or representation,

shall be guilty of a misdemeanor and shall be liable to a fine of K10,000 and to imprisonment for twelve months. And any stamps and any other such things as mentioned in paragraphs (*a*) and (*b*), which are found in his possession, shall be forfeited.

(2) For the purposes of this section a stamp purporting to denote a rate of postage of any country is to be taken to be a stamp used for postal purposes in that country until the contrary is shown.

Chapter XXXIX—Trade Marks

Trade mark defined

387. A trade mark is—

(*a*) a mark lawfully used by any person to denote any chattel to be an article or thing of the manufacture, workmanship, production, or merchandise of such person or to be an article or thing of any peculiar or particular description made or sold by such person;

(*b*) any mark or sign which in pursuance of any law in force for the time being relating to registered designs is to be put or placed upon or attached to any chattel or article during the existence or continuance of any copyright or other sole right acquired under such law.

Counterfeiting trade marks misdemeanor
1 of 2011

388.—(1) Any person who does any of the following things with intent to defraud or to enable another to defraud any person, that is to say—

(*a*) forges or counterfeits any trade mark;

(*b*) applies any trade mark, or any forged or counterfeit trade mark, to any chattel or article, not being the merchandise of any person whose trade mark is so forged or counterfeited;

(*c*) applies any trade mark or any forged or counterfeit trade mark to any chattel or article not being the particular or peculiar description of merchandise denoted or intended to be denoted by such trade mark or by such forged or counterfeited trade mark;

(*d*) applies any trade mark or any forged or counterfeited trade mark to any thing intended for any purpose of trade or manufacture, or in, on, or with which any chattel or article is intended to be sold or is sold or offered or exposed for sale;

(*e*) encloses or places any chattel or article in, upon, under, or with any thing to which any trade mark has been falsely applied, or to which any forged or counterfeit trade mark has been applied;

(*f*) applies or attaches any chattel or article to any case, cover, reel, ticket, label, or other thing to which any trade mark has been falsely applied, or to which any false or counterfeit trade mark has been applied;

(*g*) encloses, places, or attaches any chattel or article in, upon, under, with, or to any thing having thereon any trade mark of any other person,

shall be guilty of a misdemeanor.

(2) When any person is convicted of an offence under subsection (1), the court shall order the forfeiture of—

(*a*) all chattels and articles to which any such trade mark or counterfeit trade mark is applied or caused or procured to be applied;

(*b*) every instrument for applying any such trade mark or counterfeit trade mark in his possession or power;

(*c*) the chattels and articles and the things mentioned in paragraphs (*d*), (*e*) and (*g*) of subsection (1), and all similar things made to be used in like manner in his possession or power.

Chapter XL—Personation

Personation in general
1 of 2011

389.—(1) Any person who, with intent to defraud any person, falsely represents himself to be some other person, living or dead, shall be guilty of a misdemeanor.

(2) If the representation is that the offender is a person entitled by will or operation of law to any specific property and he commits the offence to obtain such property or possession thereof, he shall be liable to imprisonment for seven years.

Falsely acknowledging deeds, recognizances, etc.

390. Any person who, without lawful authority or excuse, the proof of which lies on him, makes, in the name of any other person, before any court or person lawfully authorized to take such an acknowledgment, an acknowledgment of liability of any kind, or an acknowledgment of a deed or other instrument, shall be guilty of a misdemeanor.

391. Any person who utters any document which has been issued by lawful authority to another person, and whereby that other person is certified to be a person possessed of any qualification recognized by law for any purpose, or to be the holder of any office, or to be entitled to exercise any profession, trade, or business, or to be entitled to any right or privilege, or to enjoy any rank or status, and falsely represents himself to be the person named in the document, shall be guilty of an offence of the same kind and shall be liable to the same punishment as if he had forged the document.

Personation of a person named in a certificate

392. Any person who, being a person to whom any document has been issued by lawful authority whereby he is certified to be a person possessed of any qualification recognized by law for any purpose, or to be the holder of any office, or to be entitled to exercise any profession, trade, or business, or to be entitled to any right or privilege, or to enjoy any rank or status, sells, gives, or lends the document to another person with intent that that other may represent himself to be the person named therein, shall be guilty of a misdemeanor.

Lending, etc., certificate for personation

393. Any person who, for the purpose of obtaining any employment, utters any document of the nature of a testimonial of character given to another person, shall be guilty of a misdemeanor and shall be liable to imprisonment for twelve months.

Personation of person named in a testimonial of character

394. Any person who, being a person to whom any such document as is mentioned in section 393 has been given, gives, sells, or lends such document to another person with the intent that that other person may utter such document for the purpose of obtaining any employment, shall be guilty of a misdemeanor.

Lending, etc., testimonial for personation
1 of 2011

Chapter XLI—Secret Commissions and Corrupt Practices

395.—(1) For the purpose of this Chapter, the expression "consideration" includes valuable consideration of any kind; the expression "agent" includes any person employed by or acting for another; and the expression "principal" includes an employer.

Interpretation

(2) A person serving under the Government or under any municipal council or board or under any other public body having power to impose rates or entrusted with the expenditure of any Government funds or grants, and a member of any such municipal council or board or other public body is an agent within the meaning of this Chapter.

396.—(1) If any agent corruptly accepts or obtains, or agrees to accept or attempts to obtain, from any person, for himself or for any other person, any gift or consideration as an inducement or reward for

Corrupt practices
1 of 2011

doing or forbearing to do or for having done or forborne to do, any act in relation to his principal's affairs or business or for showing or forbearing to show favour or disfavour to any person in relation to his principal's affairs or business, he shall be guilty of an offence.

(2) If any person corruptly gives or agrees to give or offers any gift or consideration to any agent as an inducement or reward for doing or forbearing to do, or for having done or forborne to do, any act in relation to his principal's affairs or business, or for showing or forbearing to show favour or disfavour to any person in relation to his principal's affairs or business, he shall be guilty of an offence.

(3) If any person knowingly gives to any agent, or if any agent knowingly uses, with intent to deceive his principal, any receipt, account or other document in respect of which the principal is interested, and which contains any statement which is false or erroneous or defective in any material particular, and which to his knowledge is intended to mislead the principal, he shall be guilty of an offence.

(4) Any person guilty of an offence under this section shall be liable to imprisonment for twelve years.

Secret commission on Government contracts 1 of 2011

397. Any person convicted of an offence under this Chapter where the matter or transaction in relation to which the offence was committed was a contract or a proposal for a contract with the Government or any Government Department or a municipal council or board or other public body having power to impose rates or entrusted with the expenditure of any Government funds or grants, or a sub-contract to execute any work comprised in such contract, shall be liable to a fine of K1,000,000 and to imprisonment for fourteen years.

Presumption as to corrupt practices

398. Where in any proceedings against a person for an offence under this Chapter it is proved that any money, gift or other consideration has been paid or given to or received by a person in the employment of any Government Department or a municipal council or board or other public body having power to impose rates or entrusted with the expenditure of any Government funds or grants, by or from a person or agent of a person holding or seeking to obtain a contract from any Government Department or municipal council or board or other public body having power to impose rates or entrusted with the expenditure of any Government funds or grants, the money, gift or consideration shall be deemed to have been paid or given and received corruptly as such inducement or reward as is mentioned in this Chapter, unless the contrary is proved.

Consent of Director of Public Prosecutions to prosecution 1 of 2011

399. A prosecution for an offence under this Chapter shall not be instituted without the written consent of the Director of Public Prosecutions.

Division VIII—Attempts and Conspiracies to Commit Crimes, and Accessories after the Fact

Chapter XLII—Attempts

400.—(1) When a person, intending to commit an offence, begins to put his intention into execution by means adapted to its fulfilment, and manifests his intention by some overt act, but does not fulfil his intention to such an extent as to commit the offence, he is deemed to attempt to commit the offence. Attempt defined 1 of 2011

(2) It is immaterial, except so far as regards punishment, whether the offender does all that is necessary on his part for completing the commission of the offence, or whether the complete fulfilment of his intention is prevented by circumstances independent of his will, or whether he desists of his own motion from the further prosecution of his intention.

(3) It is immaterial that by reason of circumstances not known to the offender it is impossible in fact to commit the offence.

401. Any person who attempts to commit a felony or misdemeanor shall be guilty of an offence, which, unless otherwise stated, is a misdemeanor. Attempts to commit offences

402. Any person who attempts to commit a felony of such a kind that a person convicted of it is liable to the punishment of death or imprisonment for a term of fourteen years or upwards, with or without other punishment, shall be guilty of a felony, and shall be liable, if no other punishment is provided, to imprisonment for seven years. Punishment of attempts to commit certain felonies

403. Every person who, knowing that a person designs to commit or is committing a felony, fails to use all reasonable means to prevent the commission or completion thereof, shall be guilty of a misdemeanor. Neglect to prevent felony

Chapter XLIII—Conspiracies

404. Any person who conspires with another to commit any felony, or to do any act in any part of the world which if done in Malaŵi would be a felony, and which is an offence under the laws in force in the place where it is proposed to be done, shall be guilty of a felony and shall be liable, if no other punishment is provided, to imprisonment for seven years, or, if the greatest punishment to which a person convicted of the felony in question is liable is less than imprisonment for seven years, then to such lesser punishment. Conspiracy to commit felony

405. Any person who conspires with another to commit a misdemeanor, or to do any act in any part of the world which if done in Malaŵi would Conspiracy to commit misdemeanor

be a misdemeanor, and which is an offence under the laws in force in the place where it is proposed to be done, shall be guilty of a misdemeanor.

Other conspiracies

406. Any person who conspires with another to effect any of the purposes following, that is to say—

(*a*) to prevent or defeat the execution or enforcement of any Act; or

(*b*) to cause any injury to the person or reputation of any person, or to depreciate the value of any property of any person; or

(*c*) to prevent or obstruct the free and lawful disposition of any property by the owner thereof for its fair value; or

(*d*) to injure any person in his trade or profession; or

(*e*) to prevent or obstruct, by means of any act or acts which if done by any individual person would constitute an offence on his part, the free and lawful exercise by any person of his trade, profession, or occupation; or

(*f*) to effect any unlawful purpose; or

(*g*) to effect any lawful purpose by any unlawful means,

shall be guilty of a misdemeanor.

Chapter XLIV—Accessories After the Fact

Definition of accessories after the fact
1 of 2011

407.—(1) A person who receives or assists another who is, to his knowledge, guilty of an offence, in order to enable him to escape punishment, is said to become an accessory after the fact to the offence.

(2) A wife does not become an accessory after the fact to an offence of which her husband is guilty by receiving or assisting him in order to enable him to escape punishment; or by receiving or assisting, in her husband's presence and by his authority, another person who is guilty of an offence in the commission of which her husband has taken part, in order to enable that other person to escape punishment; nor does a husband become an accessory after the fact to an offence of which his wife is guilty by receiving or assisting her in order to enable her to escape punishment.

Punishment of accessories after the fact to felonies

408. Any person who becomes an accessory after the fact to a felony shall be guilty of a felony, and shall be liable, if no other punishment is provided, to imprisonment for three years.

Punishment of accessories after the fact to misdemeanors

409. Any person who becomes an accessory after the fact to a misdemeanor shall be guilty of a misdemeanor.

SUBSIDIARY LEGISLATION

NOTICE SPECIFYING PUBLIC SERVICE

G.N. 25/1968

under s. 46

[*Revoked by* 24 *of* 2012]

PROHIBITED PUBLICATIONS ORDER

G.N. 135/1980 107/1983 154/1983 20/1985 29/1985 57/1985 33/1986 146/1987 25/1993 9/1994 84/1995

under s. 46

[*Revoked by* 24 *of* 2012]

UNLAWFUL SOCIETIES ORDER

G.N. 235/1969 127/1967 85/1993

under s. 64 (2) (ii)

[*Revoked by* G.N. 85/1993]

APPLICATION OF SECTION 185 ORDER

G.N. 189/1955

under s. 185

It has been directed that section 185 of the Penal Code shall extend to the areas described in the Schedule hereto.

SCHEDULE

1. The City of Blantyre whose boundaries are set out in G.N. 11/1964 (N) (L.G. Supp. Cap. 22:01).
2. The City of Lilongwe whose boundaries are set out in G.N. 157/1966 (L.G. Supp. Cap. 22:01).
3. The Salima Township whose boundaries are set out in G.N. 162/1966 (L.G. Supp. Cap. 22:01).
4. The Municipality of Zomba whose boundaries are set out in G.N. 163/1966 (L.G. Supp. Cap. 22:01).

REMOVAL ORDERS (APPEALS) RULES

G.N. 11/1956

under s. 186 (4)

Citation

1. These Rules may be cited as the Removal Orders (Appeals) Rules.

Time of appeal

2. Every appeal against a removal order shall be entered within thirty days of the date of such order:

Provided that—

(*a*) in computing the said period of limitation the time requisite for obtaining a copy of the order appealed against shall be excluded; and

(*b*) the High Court may for good cause admit an appeal though the period of limitation prescribed in this Rule has elapsed.

Form of appeal

3.—(1) Every appeal against an order made under section 185 of the Penal Code shall be made in the form of a petition in writing presented by the appellant or his legal practitioner, and every such petition shall, unless the High Court otherwise directs, be accompanied by a copy of the order appealed against.

(2) Where the appellant is represented by a legal practitioner the petition shall contain particulars of the matters of law or of fact in regard to which the subordinate court appealed from is alleged to have erred.

Appeal by a prisoner

4. If the appellant is in prison he may present his petition of appeal and the copies accompanying the same to the officer in charge of the prison, who shall thereupon forward such petition and copies to the Registrar of the High Court.

Notice of hearing

5. The High Court shall cause notice to be given to the appellant or his legal practitioner and to the Chief Public Prosecutor of the time and place at which such appeal will be heard, and shall furnish the Chief Public Prosecutor with a copy of the proceedings and of the grounds of appeal.

Right to attend hearing

6. The appellant whether in custody or not shall be entitled to be present at the hearing of his appeal.

Judgment

7.—(1) When a case is decided on appeal by the High Court, the High Court shall certify its judgment or order to the court by which the order appealed against was recorded or passed.

(2) The court to which the High Court certifies its order shall thereupon make such orders as are conformable to the judgment or order of the High Court, and, if necessary the records shall be amended in accordance therewith.

Additional evidence

8.—(1) In dealing with an appeal under section 186 of the Penal Code the High Court, if it thinks additional evidence is necessary, shall record its reasons, and may either take such evidence itself or direct it to be taken by a subordinate court.

(2) When additional evidence is taken by a subordinate court on the direction of the High Court, such subordinate court shall certify such evidence to the High Court, which shall thereupon proceed to dispose of the appeal.

(3) Unless the High Court otherwise directs, the appellant or his legal practitioner shall be present when any additional evidence is taken.

(4) Evidence taken in pursuance of this rule shall be taken as if it were evidence taken at a trial before a subordinate court.

WITCHCRAFT

CHAPTER 7:02

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CHAPTER 7:02

WITCHCRAFT

ARRANGEMENT OF SECTIONS

SECTION

1. Short title
2. Prohibition of trial by certain ordeals
3. (1) Instigating, directing, etc., trial by prohibited ordeal
   (3) Being present at trial by prohibited ordeal
   (4) Making, etc., poison for trial by prohibited ordeal
4. Charging person with witchcraft
5. Employment of witchfinder
6. Pretending witchcraft
7. Chiefs and headmen permitting, etc., prohibited trials by ordeal
8. Profession of witchcraft illegal
9. Using charms, lots, etc.
10. Act not to affect liability for wilful murder
11. Power to make Rules

An Act to deal with Trial by Ordeal, Witchcraft and the use of Charms

4 of 1911
8 of 1929
31 of 1946
G.N. 22/1963
219/1964(N)

[12TH MAY, 1911]

Short title

1. This Act may be cited as the Witchcraft Act.

Prohibition of trial by certain ordeals

2. Trial by the ordeal of muabvi or other poison, fire, boiling water, or by any ordeal which is likely directly or indirectly to result in the death of or bodily injury to any person shall be and is hereby prohibited.

Instigating, directing, etc., trial by prohibited ordeals

3.—(1) Any person who directs or controls or presides at any trial by ordeal which is prohibited by this Act shall be liable to imprisonment for seven years:

(2) Any person who within Malaŵi instigates or conspires or confederates or agrees to hold a trial by ordeal which is prohibited by this Act, whether the same is to be held within Malaŵi or elsewhere, shall be liable to imprisonment for seven years.

Provided that where any such trial as mentioned in the two foregoing subsections results in the death of any person, the person directing, controlling or presiding at such trial and the person instigating any such trial or conspiring, confederating or agreeing to hold any such trial shall be liable to imprisonment for life or for any shorter term.

Being present at trial by prohibited ordeal

(3) Any person who is present at or takes any part in any trial by ordeal which is prohibited by this Act shall be liable to a fine of £5 and to imprisonment for one year:

Provided that no person shall be punished in respect of the same trial by ordeal under this and the last preceding subsection.

Making etc., poison for trial by prohibited ordeal

(4) Any person who collects, makes, sells, or assists or takes part in making or selling, or has in his possession any poison or thing which is intended to be used for the purposes of any trial by ordeal which is prohibited by this Act shall be liable to a fine of £5 and to imprisonment for one year.

An African found in possession of muabvi or other poison commonly used for the purpose of trial by ordeal shall be deemed to have committed an offence under this section unless he shall prove that such poison was not intended for such purpose.

Charging person with witchcraft

4. Any person who, otherwise than in laying information before a court, a police officer, a Chief, or other proper authority, accuses any person with being a witch or with practising witchcraft or names or indicates any person as being a witch or wizard shall be liable to a fine of £25 and to imprisonment for five years.

Employment of witch-finder

5. Any person who employs or solicits any other person to name or indicate by the use of any non-natural means any person as the perpetrator of any alleged crime or other act complained of shall be liable to a fine of £25 and to imprisonment for five years.

Pretending witchcraft

6. Any person who by his statements or actions represents himself to be a wizard or witch or as having or exercising the power of witchcraft shall be liable to a fine of £50 and to imprisonment for ten years.

Chiefs and Headmen permitting, etc., prohibited trials by ordeal

7. Any Chief or Headman who directly or indirectly permits, promotes, encourages or facilitates any trial by ordeal which is prohibited by this Act, or who knowing of such trial or intended trial does not forthwith report the same to the District Commissioner of the District in which such trial has been or is intended to be held, shall be liable to a fine of £25 and to imprisonment for five years.

Every Chief or Headman within whose territory or village any prohibited trial by ordeal takes place shall be deemed to have committed an offence under this section, unless he shall prove that as a matter of fact he was justifiably ignorant of such trial or intended trial.

Profession of witchcraft illegal

8. The profession or calling of witchfinder or witchdoctor or of professional maker or mixer of poison is hereby declared to be an illegal calling and every person exercising or pretending to

exercise such calling or profession shall be guilty of felony and shall be liable to imprisonment for life.

Using charms, lots, etc

9. Any person who shall use or assist in using any lot or charm with a view to the commission of any unlawful act shall be liable to a fine of £5 and to imprisonment for one year

Act not to affect liability for wilful murder

10. Nothing in this Act shall affect the liability to the death penalty of any person who under a pretence of trial by ordeal or of using any lot or charm commits wilful murder.

Power to make Rules

11. The Minister shall have power to make Rules for the better carrying into effect of this Act and such Rules may impose fines not exceeding £5 and imprisonment not exceeding one year

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HIJACKING

CHAPTER 7:03

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CHAPTER 7:03

HIJACKING

ARRANGEMENT OF SECTIONS

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5. Jurisdiction in regard to offences under section 4(2)
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10. Offences against motor vehicles, trains and vessels and penalty
11. Acts taking place outside Malaŵi on board vessels
12. Acts taking place outside Malaŵi on motor vehicles or trains
13. Jurisdiction in regard to offence under section 12

PART IV

MISCELLANEOUS

14. Consent of the Director of Public Prosecutions
15. Provisions of Act to be additional

An Act to provide for the prevention and punishment of unlawful acts against aircraft, motor vehicles, trains and vessels and, in relation to aircraft, to give effect to the Convention on Offences and certain other Acts Committed on board Aircraft, the Convention for the Suppression of Unlawful Seizure of Aircraft, and the Convention for the Suppression of unlawful Acts against the Safety of Civil Aviation; and for purposes connected therewith or incidental thereto 19 of 1972

[31ST DECEMBER, 1972]

PART I

PRELIMINARY

1. This Act may be cited as the Hijacking Act. Short title

2.—(1) In this Act, unless the context otherwise requires— Interpretation

"aircraft" means any machine that can derive support in the atmosphere from the reactions of the air, other than the reactions of the air against the surface of the earth;

"commander" in relation to an aircraft means the member of the crew designated as commander of that aircraft by the operator thereof, or failing such a person, the person who is for the time being the pilot in command of the aircraft;

"Convention country" means a country in which either the Convention on Offences and certain other Acts Committed on board Aircraft signed at Tokyo on 14th September, 1963, or the Convention for the Suppression of Unlawful Seizure of Aircraft signed at The Hague on 16th December, 1970, or the Convention for the Suppression of unlawful Acts against the Safety of Civil Aviation signed at Montreal on 23rd September, 1971, is for the time being in force;

"immigration officer" bears the meaning ascribed to that term in section 2 of the Immigration Act; Cap 15:03

"Malaŵian aircraft" means an aircraft registered in Malaŵi and includes any aircraft that is operated by joint air transport operating organizations or international operating agencies established by the Government and any other Convention country if such last-mentioned aircraft has been declared by the Minister, by notice published in the *Gazette*, to be a Malaŵian aircraft;

"Malaŵian vessel" means a vessel registered under Part I of the Inland Waters Shipping Act; Cap 71.01

"motor vehicle" bears the meaning ascribed to that term by the Road Traffic Act; Cap 69.01

"oath" includes an affirmation or declaration in the case of persons allowed by the law of any country concerned to affirm or declare instead of swearing;

"pilot in command", in relation to an aircraft, means a person who for the time being is in charge of the piloting of the aircraft without being under the direction of any other pilot in the aircraft;

"train" means any railway engine, carriage, waggon or truck or other railway rolling stock no matter how propelled whether as a single unit or as a combination of units;

"vessel" includes a ship, boat and every other kind of vessel used in navigation either on the sea or in inland waters.

(2) For the purposes of this Act an aircraft shall be deemed to be in flight—

(*a*) at any time from the moment when all its external doors are closed following embarkation until the moment when any such door is opened for disembarkation or, if the aircraft makes a forced landing, until the competent authorities of the country in which the landing takes place take over the responsibility for the aircraft and for the persons and property on board;

(*b*) during any period when it is on the surface of the sea or land but not within the territorial limits of any country.

(3) For the purposes of this Act an aircraft shall be deemed to be in service—

(*a*) from the beginning of the preflight preparation of such aircraft by ground personnel or by the crew for a specific flight until twenty-four hours after any landing; and

(*b*) at any time when it is deemed to be in flight under the provisions of subsection (2).

(4) For the purposes of this section the territorial waters of any State shall be treated as part of its territory.

PART II

Air Transportation

Offences against aircraft and penalty for such offences

3. Any person, whatever his nationality, who unlawfully—

(*a*) on board any aircraft in flight—

(i) by use of force or by threats of any kind, seizes that aircraft or exercises control of it;

(ii) assaults any person, if such assault is likely to endanger the safety of that aircraft;

(iii) assaults or interferes with any member of the crew of that aircraft in the performance of his duties;

(*b*) destroys an aircraft in service or causes damage to such aircraft which renders it incapable of flight or which is likely to endanger its safety in flight;

(*c*) places, or causes to be placed, on an aircraft in service, by any means whatsoever, a device or substance which is likely to destroy that aircraft or to cause damage to it which renders it incapable of flight or to cause damage to it which is likely to endanger its safety in flight;

(*d*) destroys or damages air navigation facilities or interferes with their operation if such destruction, damage or interference is likely to endanger the safety of an aircraft in flight;

(*e*) communicates information which he knows to be false, thereby endangering the safety of an aircraft in flight;

(*f*) falsely alleges that any other person is about to commit a contravention of paragraph (*a*) (i) or (*c*) or has committed a contravention of paragraph (*c*);

(*g*) performs any other act which jeopardizes or may jeopardize the safety of an aircraft in flight or of persons or property therein or which may jeopardize good order and discipline on board an aircraft in flight,

shall commit an offence and shall be liable to imprisonment for life.

Acts in relation to aircraft taking place outside Malaŵi

4.—(1) Any act taking place on board a Malaŵian aircraft in flight elsewhere than in or over Malaŵi and which, if taking place in or over Malaŵi would be an offence under the law in force in Malaŵi shall constitute that offence and shall be deemed to have been committed also in any place in Malaŵi:

Provided that this subsection shall not apply to any act which is expressly or impliedly authorized by or under that law when taking place outside Malaŵi.

(2) Any act referred to in section 3 and committed outside Malaŵi on board any aircraft in flight, other than a Malaŵian aircraft, and any act of violence against passengers or crew committed on any such aircraft by a person in connexion with an act referred to in subparagraph (i) of paragraph (*a*) of section 3 shall—

(*a*) if such aircraft lands in Malaŵi with the person who committed such act still on board;

(*b*) if such aircraft is leased without crew to a lessee who has his principal place of business or, if he has no such place of business, his permanent residence in Malaŵi; or,

(*c*) if that person is present in Malaŵi,

be deemed to have been committed also in Malaŵi.

Jurisdiction in regard to offences under section 4(2)

5. Any offence referred to in section 4(2) shall for the purposes of jurisdiction be deemed to have been committed in any place where the accused happens to be.

Extradition

Cap. 8:03

6.—(1) Every offence referred to in section 3 shall be deemed to be a relevant offence within the meaning ascribed to that term by section 2 of the Extradition Act, for the purposes of the extradition of any person from Malaŵi to any Convention country which is also a designated country within the meaning ascribed to that term by the said section 2 of the Extradition Act, 1968.

Cap. 8:03

(2) For the purposes of the application of the said Extradition Act,, to an offence committed on board an aircraft in flight—

(*a*) any aircraft registered in any Convention country shall, at any time while the aircraft is in flight, be deemed to be within the jurisdiction of that country, whether or not it is for the time being also within the jurisdiction of any other country;

(*b*) if such aircraft lands in any other Convention country with the offender still on board, the offence shall be deemed to have been committed also in that country;

(*c*) if such aircraft was leased without crew to a lessee who has his principal place of business or, if he has no such place of business, his permanent residence in any other Convention

country, the offence shall be deemed to have been committed also in that country.

Powers of commander of aircraft and certain other person

7.—(1) If the commander of an aircraft in flight, wherever that aircraft may be, has reasonable grounds to believe in respect of any person on board that aircraft—

(*a*) that he has done or is about to do any act on the aircraft in flight which jeopardizes or may jeopardize—

(i) the safety of the aircraft or of persons or property on board the aircraft;

(ii) good order and discipline on board the aircraft; or

(*b*) that he has done on the aircraft in flight any act which in the opinion of the commander is a serious offence under the law in force in the country in which the aircraft is registered, not being a law of a political nature or based on racial or religious discrimination,

then, subject to the provisions of subsection (3), the commander may take with respect to that person such reasonable measures, including restraint of his person, as may be necessary—

(i) to protect the safety of the aircraft or of persons or of property on board the aircraft;

(ii) to maintain good order and discipline on board the aircraft; or

(iii) to enable the commander to disembark or deliver that person in accordance with subsection (4).

(2) Any member of the crew of an aircraft and any other person on board may, at the request or with the authority of the commander of the aircraft, and any such member shall, if so required by the commander, render assistance in restraining any person whom the commander is entitled, under subsection (1), to restrain, and at any time while an aircraft is in flight any such member or person may, without obtaining the authority of the commander, take with respect to any person on board the aircraft any measures such as are mentioned in the said subsection (1) which he has reasonable grounds to believe are immediately necessary to protect the safety of the aircraft or of persons or of property on board the aircraft.

(3) Any restraint imposed on any person on board an aircraft under the powers conferred by subsections (1) and (2) shall not be continued after the time when the aircraft first thereafter ceases to be in flight, unless before or as soon as is reasonably practicable after that time the commander of the aircraft causes notice of the fact that a person on board the aircraft is under restraint and of the reasons therefor to be sent to an appropriate authority of the country in which the aircraft so ceases to be in flight, and may, if such notice has been so sent, be continued after that time—

(*a*) for any period (including the period of any further flight) between that time and the first occasion thereafter on which the commander is able, with any requisite consent of the appropriate authorities, to disembark or deliver the person under restraint in accordance with subsection (4); or

(*b*) if the person under restraint agrees to continue his journey under restraint on board that aircraft.

(4) The commander of an aircraft—

(*a*) if, in the case of any person on board the aircraft, he has reasonable grounds—

(i) to believe as mentioned in subsection (1) *(a)*; and

(ii) to believe that it is necessary so to do in order to protect the safety of the aircraft or of persons or property on board the aircraft or to maintain good order and discipline on board the aircraft,

may disembark that person in any country in which that aircraft may be; and

(*b*) if, in the case of any person on board the aircraft, he has reasonable grounds to believe as mentioned in subsection (1) (*b*), may deliver that person—

(i) in Malaŵi to a police officer or immigration officer; or

(ii) in any other Convention country, to an officer there having functions corresponding to the functions in Malaŵi of such a police officer or immigration officer.

(5) The commander of an aircraft—

(*a*) if he disembarks any person in accordance with subsection (4) (*a*), in the case of a Malaŵian aircraft, in any country, or, in the case of any other aircraft, in Malaŵi, shall report the disembarkation, and the reasons therefor, to—

(i) an appropriate authority in the country of disembarkation; and

(ii) the appropriate diplomatic or consular office of the country of nationality of that person;

(*b*) if he intends to deliver any person in accordance with subsection (4) (*b*) in Malaŵi, or, in the case of a Malaŵian aircraft, in any other Convention country, shall before or as soon as reasonably practicable after landing, give notice of his intention and of the reasons therefor—

(i) where the country in question is Malaŵi, to a police officer or to an immigration officer, or, in the case of any other country, to an officer there having functions corresponding to the functions in Malaŵi of such a police officer or immigration officer; and

(ii) in either case to the appropriate diplomatic or consular office of the country of nationality of that person.

(6) Any commander of an aircraft who without reasonable cause fails to comply with the requirements of subsection (5) shall commit an offence and be liable to a fine not exceeding two thousand Kwacha.

(7) The provisions of subsections (1) to (4) shall apply for the purposes of any proceedings before a court in Malaŵi.

Admissibility of certain statements as evidence

8.—(1) Where in any proceedings before any court in Malaŵi for an offence committed on board an aircraft the evidence of any person is required and the court is satisfied that that person cannot be found in Malaŵi, there shall be admissible in evidence before such court any statement in writing relating to the subject matter of those proceedings previously made on oath by that person outside Malaŵi and which was so made—

(*a*) in the presence of the person charged with the offence; and

(*b*) in any other Convention country to an officer having functions corresponding to the functions in Malaŵi either of a judge, magistrate or consular officer.

(2) Any such statement shall be authenticated by the signature of the officer before whom it was made, who shall certify that the person charged was present at the taking of the statement.

(3) It shall not be necessary in any proceedings to prove the signature or official character of the person appearing so to have authenticated any such statement or to have given such a certificate, and such certificate shall, unless the contrary is proved, be sufficient evidence in any proceedings that the person charged with the offence was present at the making of the statement.

(4) Nothing in this section contained shall prejudice the admission as evidence of any statement which is admissible in evidence apart from this section.

Aircraft to which Part shall not apply

9. This Part shall not apply to aircraft used in military, customs or police services.

PART III

Land and Water Transportation

Offences against motor vehicles,trains and vessels and penalty

10. Any person, whatever his nationality, who unlawfully—

(*a*) by use of force or by threats of any kind seizes or exercises control of any motor vehicle, train or vessel;

(*b*) for the purpose, or in the course, of seizing or exercising control contrary to paragraph (*a*), assaults any person;

(*c*) places, or causes to be placed, on any motor vehicle, train or vessel, by any means whatsoever, a device or substance

which is likely to destroy it or to cause damage to it which is likely to endanger its safety in use;

(*d*) destroys or damages navigation facilities intended for use by vessels or interferes with their operation if such destruction, damage or interference is likely to endanger the safety of vessels in use;

(*e*) falsely alleges that any other person is about to commit a contravention of paragraph (*a*) or (*b*) or has committed a contravention of paragraph (*c*),

shall commit an offence and shall be liable to imprisonment for life.

Acts taking place outside Malaŵi on board vessels

11.—(1) Any act taking place on board a Malaŵian vessel on waters outside Malaŵi waters and which, if taking place on Malaŵi waters, would be an offence under the law in force in Malaŵi shall constitute that offence and shall be deemed to have been committed also in any place in Malaŵi:

Provided that this subsection shall not apply to any act which is expressly or impliedly authorized by or under that law when taking place outside Malaŵi.

(2) Any act referred to in section 10 and committed outside Malaŵi on board any vessel, other than a Malaŵian vessel, and any act of violence against passengers or crew committed on any such vessel by a person in connexion with an act referred to in paragraph (*a*) of section 10 shall—

(*a*) if such vessel comes into Malaŵi with the person who committed such act still on board;

(*b*) if such vessel is chartered without crew to a person who has his principal place of business or, if he has no such place of business, his permanent residence in Malaŵi; or,

(*c*) if such first-mentioned person is present in Malaŵi, be deemed to have been committed also in Malaŵi.

Acts taking place outside Malaŵi on motor vehicles or trains

12. Any act referred to in section 10 and committed outside Malaŵi and any act of violence against the person in control of, or the passengers or crew of, any motor vehicle or train committed in or on such motor vehicle or train in connexion with an Act referred to in paragraph (*a*) of section 10 shall—

(*a*) if such motor vehicle or train comes into Malaŵi with the person who committed such act still on or in such motor vehicle or train; or

(*b*) if such person is present in Malaŵi, be deemed to have been committed also in Malaŵi.

Jurisdiction in regard to offence under section 12

13. Any offence referred to in section 12 shall for the purposes of jurisdiction be deemed to have been committed in any place where the accused happens to be.

PART IV

Miscellaneous

Consent of the Director of Public Prosecutions

14. Except with the consent of the Director of Public Prosecutions, no proceedings for any offence under the law in force in Malaŵi committed—

(*a*) on board any aircraft while in flight elsewhere than in or over Malaŵi;

(*b*) on board any vessel while on waters other than Malaŵi waters; or

(*c*) in, or on, any motor vehicle or train outside Malaŵi,

shall be instituted but the foregoing provisions of this section shall not prevent the arrest, or the issue of a warrant for arrest, of any person in respect of any offence, or the remanding in custody or on bail of any person charged with any offence.

Provisions of Act to be additional

15. The provisions of this Act shall be in addition to and not in derogation of any provisions of any other law for the time being in force in Malaŵi relating to piracy.

CORRUPT PRACTICES

CHAPTER 7:04

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CORRUPT PRACTICES

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18 of 1995
17 of 2004
G.N. 10/1996

[15TH FEBRUARY, 1996]

PART I

PRELIMINARY

1. This Act may be cited as the Corrupt Practices Act. Short title

2.—(1) Save as otherwise provided, the provisions of this Act shall apply notwithstanding anything to the contrary contained in the Criminal Procedure and Evidence Code or in any other written law. Application Cap. 8:01

(2) Subject to subsection (1), all offences under this Act shall be inquired into, tried and otherwise dealt with in accordance with the provisions of the Criminal Procedure and Evidence code. Cap. 8:01

Interpretation
17 of 2004

3. In this Act, unless the context otherwise requires—

"advantage" means any benefit, service, enjoyment or gratification, whether direct or indirect, and includes a payment, whether in cash or in kind, or any rebate, deduction, concession or loan, and any condition or circumstance that puts one person or class of persons in a favourable position over another;

"agent" means any person who acts for or on behalf, or in the name, of a public body or a private body or any other person, and includes a trustee, an administrator, an executor and an employee;

Cap. 44:01

"bank" has the meaning ascribed thereto in the Banking Act, and includes a financial institution;

"Bureau" means the Anti-Corruption Bureau established under section 4;

"corruptly" means the doing of, or the engaging in, any corrupt practice;

"corrupt practice" means—

(*a*) the offering, giving, receiving, obtaining or soliciting of any advantage to influence the action of any public officer or any official or any other person in the discharge of the duties of that public officer, official or other person;

(*b*) influence peddling;

(*c*) the extortion of any advantage;

"Director" means the person appointed under section 5 to be the Director of the Bureau;

"Deputy Director" means the person appointed under section 7 to be the Deputy Director of the Bureau;

"entertainment" means the provision of food or drink for consumption on the occasion when it is provided and any other entertainment connected with, or provided at the same time as, such food or drink;

"extortion", in relation to corrupt practice, includes—

(*a*) the demanding or receiving by a person in office of a fee or other payment for services, work, supplies or other thing which should be performed, done, delivered, offered, provided or given gratuitously; or

(*b*) where compensation is permissible, the demanding or receiving of a fee or other payment larger than is justified or which is not due;

Cap. 44:01

"financial institution" has the meaning ascribed thereto in the Banking Act;

"Government" includes any Ministry, Department, service or undertaking of the Government;

"influence" means any influence, whether or not the use of it leads to the intended result;

"pecuniary resources or property", when used to denote the proceeds of crime or any thing obtained from or connected with, or suspected to have been obtained from or to be connected with, the commission of an offence under this Act, includes pecuniary resources or property of whatever description into which any pecuniary resources or property derived or realized from the commission of the offence was later successively converted, transformed or intermingled, as well as income, capital or other economic gains derived or realized from such pecuniary resources or property at any time since the commission of the offence;

"principal" includes an employer, a beneficiary under a trust, and a trust estate as though it were a person, and any person beneficially interested in the estate of a deceased person as though the estate were a person;

"private body" means any person or organization not being a public body, and includes a voluntary organization, charitable institution, company, partnership and a club;

"Public Appointments Committee" means the Public Appointments Committee of the National Assembly established under section 56 (7) of the Constitution;

"public body" means the Government, a statutory body or any other body appointed by the Government;

"public officer" means any person who is a member of, or holds office in, or is employed in the service of, a public body, whether such membership, office or employment is permanent or temporary, whole or part-time, paid or unpaid, and includes the President, a Vice-President, a Minister and a member of Parliament;

"senior police officer" means any police officer of or above the rank of Inspector;

"statutory body" has the meaning ascribed thereto in the Public Audit Act and includes the Reserve Bank of Malaŵi and any company, association, body, board or institution in which a statutory body has a financial interest. Cap. 37:01

PART II
The Anti-Corruption Bureau

Establishment and composition of the Bureau

4.—(1) There is hereby established a body to be known as the Anti-Corruption Bureau which shall consist of the Director, the Deputy Director and such other officers of the Bureau, as may be appointed under section 9.

(2) The Bureau shall be a Government Department and the finances of the Bureau shall be charged to the Consolidated Fund.

17 of 2004

(3) The Bureau shall exercise its functions and powers independent of the direction or interference of any other person or authority.

17 of 2004

(4) The Director shall submit reports to the President and to the Minister regarding the general conduct of the affairs of the Bureau.

Appointment of Director 17 of 2004

5.—(1) The President shall, on such terms and conditions as he thinks fit, appoint the Director, and the appointment of any person as Director shall be subject to confirmation by the Public Appointments Committee.

(2) The Director and other officers of the Bureau shall not, while holding such office, discharge the duties of any other office of emolument in the Republic.

Civil suits by or against the Director 17 of 2004 Cap. 6:01

5A. Any civil suit arising from the exercise of the functions, duties and powers of the Bureau or the Director shall be instituted by or against the public office of the Director, but the provisions of the Civil Procedure (Suits by or against the Government or Public Officers) Act shall otherwise apply in respect of any such suit as they apply in respect of any suit by or against any other public officer.

Legal representation 17 of 2004

5B. The Director may, apart from the Attorney General, instruct any legal practitioner—

(*a*) to provide legal representation to the Director in any civil proceeding before any court, including any proceeding concerning appeals against the decisions of the Director on any aspect of the exercise of the functions, duties and powers of the Bureau or of the Director; or

(*b*) generally to provide legal advice or to act for on behalf of the Director.

Qualifications and tenure of office of Director

6.—(1) No person shall qualify for appointment as Director unless he is of high integrity and possesses qualifications and training necessary for the performance of the duties of that office.

(2) A person holding the office of Director may be removed from office by the President, with the confirmation of the Public Appointments Committee, for inability to perform the functions of his office (whether arising from infirmity of body or mind or from any other cause) or for misbehaviour.

(3) The President may, if he considers it desirable in the public interest so to do, suspend the Director from exercising the duties of the office of Director pending investigations to determine whether or not the Director may be removed from office under subsection (2).

Appointment of Deputy Director

7.—(1) The President may appoint a Deputy Director on such terms and conditions as the President thinks fit, and the appointment of any person as Deputy Director shall be subject to confirmation by the Public Appointments Committee.

(2) No person shall qualify for appointment as a Deputy Director unless he is of high integrity and possesses qualifications and training necessary for the performance of the duties of that office.

(3) A person holding the office of Deputy Director may be removed or suspended from office by the President in the same manner and on the same grounds as apply to the removal or suspension, as the case may be, of a person holding the office of Director.

Acting Director

8.—(1) If the office of the Director is vacant or the Director is absent from duty or unable for any other reason to perform the functions of his office, the Deputy Director shall act as Director.

(2) If both the Director and the Deputy Director are absent from duty or unable for any other reason to perform the functions of their office, the President shall appoint another duly qualified person to act as Director during such temporary absence or vacancy:

Provided that where the period of such temporary absence has exceeded twenty-one days the President shall, within fourteen days thereafter, furnish to the Public Appointments Committee the reasons why the vacancy in both or either of the two offices cannot be substantively filled with immediate effect and an estimate of the time within which the vacancy shall be filled, being not longer than three months from the expiry of the period of twenty-one days herein referred to.

Appointment of other officers of the Bureau

9. In addition to the Director and Deputy Director there shall be appointed in the public service, on terms and conditions approved by the President, investigating officers and such other officers of the Bureau as may be required for the proper performance of the

functions of the Bureau but the appointment of officers under this section shall not require the confirmation of the Public Appointments Committee.

PART III

Functions and Powers of the Bureau

Functions of the Bureau 17 of 2004

10.—(1) The functions of the Bureau shall be to—

(*a*) take necessary measures for the prevention of corruption in public bodies and private bodies, including, in particular, measures for—

(i) examining the practices and procedures of public bodies and private bodies in order to facilitate the discovery of corrupt practices and secure the revision of methods of work or procedures which in the opinion of the Bureau may be prone or conducive to corrupt practices;

(ii) advising public bodies and private bodies on ways and means of preventing corrupt practices, and on changes in methods of work or procedures of such public bodies and private bodies compatible with the effective performance of their duties, which the Bureau considers necessary to reduce the likelihood of the occurrence of corrupt practices;

(iii) disseminating information on the evil and dangerous effects of corrupt practices on society;

(iv) enlisting and fostering public support against corrupt practices;

(*b*) receive any complaints, report or other information of any alleged or suspected corrupt practice or offence under this Act;

(*c*) investigate any complaint, report or other information received under paragraph (*b*);

(*d*) investigate any alleged or suspected offence under this Act;

(*e*) investigate any offence under any written law disclosed in the course of investigating any alleged or suspected corrupt practice or offence under this Act;

(*f*) subject to the directions of the Director of Public Prosecutions, prosecute any offence under this Act;

(*g*) investigate the conduct of any public officer which, in the opinion of the Bureau, may be connected with, or conducive to, corrupt practices and to report thereon to the appropriate authority;

(*h*) inquire into any matter in relation to the exercise of its other functions under this section.

(2) The Bureau may decline to conduct an investigation into any complaint alleging an offence under this Act or to proceed further with any investigation if the Bureau is satisfied that—

(*a*) the complaint is trivial, frivolous, vexatious or not made in good faith; or

(*b*) the investigation would be unnecessary, improper or futile.

(3) In any case in which the Bureau declines to conduct an investigation, or to proceed further with any investigation, the Bureau shall inform the complainant in writing of its decision.

(4) Where the Bureau has carried out any investigation of any alleged or suspected corrupt practice or offence under this Act, it may, if it considers it necessary so to do, report its findings and recommendations to the appropriate authority regarding any matter which reveals, or points to, the existence or prevalence of any conduct connected with; or conducive to, corrupt practices; and in any such report, the Bureau may require the appropriate authority to take or institute such corrective action or measure as the Bureau shall reasonably specify in the report or to explain to the Bureau why such action or measure may not be taken or instituted or what other action or measure may instead be taken or instituted, and the Bureau may make such modification to its recommendations or requirements as it may consider desirable. 17 of 2004

Powers of the Bureau 17 of 2004

11.—(1) For the performance of the functions of the Bureau under this Act, the Director may—

(*a*) authorize in writing any officer of the Bureau to conduct an inquiry or investigation into alleged or suspected offences under this Act;

(*b*) require any public officer or other person to answer questions concerning the duties of that public officer or of any other public officer or other person, and order the production for inspection of any standing orders, directives or office instructions relating to the duties of the public officer or such other public officer or other person;

(*c*) require any person in charge of any office or establishment of the Government, or the head, chairman, manager or chief executive officer of any public body or private body or produce or furnish within such time as may be specified by the Bureau, any document or a certified true copy of any document which is in his possession or under his control and which the Bureau considers necessary for the conduct of investigation into any alleged or suspected offence under this Act;

(*d*) require any person, including any public officer, to provide any information, or to answer any question, in connexion with an inquiry or investigation under this Act;

(*e*) do or perform such other acts or things as are reasonably necessary or required for the exercise of the functions of the Bureau and the performance of his duties.

17 of 2004

(2) In the performance of his duties under this Act, the Director, the Deputy Director or other officer of the Bureau authorized in writing by the Director or Deputy Director, if so authorized by warrant issued, by a magistrate upon showing cause to the magistrate why the warrant should be issued shall have—

(*a*) access to all books, records, returns, reports and other documents relating to the work of the Government or any public body or private body;

(*b*) access at any time to the premises of any Government office, public body or private body, or to any vessel, boat, aircraft or other vehicle whatsoever, and may search such premises or such vessel, boat, aircraft or other vehicle if he has reason to suspect that any property corruptly acquired has been placed, deposited or concealed therein.

(3) In the exercise of the power of access and search under subsection (2) (*b*), the Director, the Deputy Director or other officer of the Bureau authorized in writing by the Director or Deputy Director may use such reasonable force as is necessary in the circumstances, and may be accompanied or assisted by such other persons as he deems necessary to assist him to enter into or upon any premises, or upon any vessel, boat, aircraft or other vehicle, as the case may be.

(4) Any person who accompanies or assists the Director, the Deputy Director or other officer of the Bureau to enter into or upon any premises, or upon any vessel, boat, aircraft or other vehicle, as the case may be, shall, during the period of such accompaniment or assistance, enjoy the same immunity as is conferred under section 22 upon the Director, the Deputy Director or other officer of the Bureau.

Special powers of investigation

12.—(1) The Director may, by order in writing supported by a warrant issued by a magistrate upon showing cause to the magistrate why the order should be issued, authorize any officer of the Bureau of such category and such senior rank as the Director may determine, to investigate any bank account, share account, purchase account, expense account or any other account, or any safe box in any bank.

(2) An order made under subsection (1) shall be sufficient authority for the disclosure or production by any person of all or any information, accounts, documents or articles as may be required by the officer of the Bureau so authorized.

(3) Any person who fails to disclose such information or to produce such accounts, documents or articles to the officer of the Bureau so authorized shall be guilty of an offence and liable to a fine of K50,000 and to imprisonment for five years.

Further powers of the Director to obtain information 17 of 2004

12A.—(1) If, in the course of any investigation or proceedings relating to any offence under Part IV, the Director is satisfied that it would assist or expedite such investigation or proceedings, he may, by notice, require—

(*a*) any suspected person to furnish a sworn statement in writing enumerating all moveable or immoveable property belonging to or possessed by him, and specifying the date on which every such property was acquired and the consideration paid therefor, and explaining whether the property was acquired by way of purchase, gift, bequest, inheritance or otherwise;

(*b*) any suspected person to furnish a sworn statement in writing of any moneys or other property sent out of Malaŵi by him during such period as may be specified in such notice;

(*c*) any other person with whom the Director believes that the suspected person had any financial transactions or other business dealing relating to an offence under Part IV to furnish a sworn statement in writing enumerating all moveable or immoveable property belonging to or possessed by such other person at the material time:

Provided that the Director shall not require any such other person to furnish such sworn statement unless he has reasonable ground to believe that such information can assist in the investigation or proceedings;

(*d*) the Commissioner of Taxes, notwithstanding the provisions of section 6 of the Taxation Act, to furnish all information in his possession relating to the affairs of any suspected person and to produce or furnish any documents or a certified true copy of any document relating to such suspected person which is in the possession or under the control of the Commissioner of Taxes; Cap. 41:01

(*e*) the manager of any bank to furnish any information or the originals, or certified true copies, of the accounts or the statements of account at the bank of any suspected person.

(2) Every person on whom a notice is served by the Director under subsection (1) shall, notwithstanding any oath of secrecy,

comply with the requirements of the notice within such time as may be specified therein.

Bail where suspect or accused is about to leave Malaŵi
17 of 2004

12B. If any person against whom investigations or proceedings for an offence under Part IV are pending is preparing or about to leave Malaŵi, whether temporarily or permanently, the Director or any officer authorized by him in that behalf may apply to any court for an order requiring such person to furnish bail in any sum, or, if he has already been admitted to bail, in such greater sum and on such additional conditions, as the case may require, with or without sureties; and in any such application the court may make such order as it deems fit.

Obstructing of officers of the Bureau
17 of 2004

13. Any person who—

(*a*) assaults, resists, in any way threatens or otherwise obstructs the Director, the Deputy Director or other officer of the Bureau in the execution of his duties;

(*b*) unlawfully hinders or delays the Director, Deputy Director or other officer of the Bureau in effecting entry into or upon any premises, boat, aircraft or vehicle,

shall be guilty of an offence and liable to a fine of K70,000 and to imprisonment for seven years.

False reports of information to the Bureau
17 of 2004

14.—(1) Any person who—

(*a*) gives or causes to be given to the Bureau testimony or information or a report which is false in any material particular in relation to any matter under investigation by the Bureau;

(*b*) makes or causes to be made to the Bureau a false report of the commission of an offence under this Act;

(*c*) misleads the Director, Deputy Director or other officer of the Bureau by giving or causing to be given to them or to the Bureau false information or by making or causing to be made to them or to the Bureau any false statements or accusations,

shall be guilty of an offence and liable to a fine of K100,000 and to imprisonment for ten years.

(2) It shall be a defence to a charge for an offence against subsection (1) that the accused did not know, or did not have reasonable ground to believe, that the matter in question was false.

Powers of arrest

15. The Director, the Deputy Director or any officer of the Bureau, of such category and such senior rank as the Director may determine, if authorized by warrant issued by a magistrate, may arrest any person if he reasonably suspects that the person has committed or is about to commit an offence under this Act.

Identity cards

16. Every officer of the Bureau including the Director and Deputy Director shall have an identity card which shall be *prima facie* evidence of the officer's appointment as such and which shall be issued—

(*a*) in the case of the Director and Deputy Director, by the Minister; and

(*b*) in the case of any other officer, by the Director.

Impersonation, etc., of officers of the Bureau

17. Any person who falsely pretends that—

(*a*) he is an officer of the Bureau or has any of the powers of such officer under this Act, or under any authorization or warrant issued under this Act; or

(*b*) he is able to procure an officer of the Bureau to do or refrain from doing anything in connexion with the duties of such officer;

shall be guilty of an offence and liable to a fine of K70,000 and to imprisonment for seven years.

Standing Orders

18.—(1) The Director may make standing orders, which shall be subject to the approval of the Minister, providing for—

(*a*) the control, direction and administration of the Bureau;

(*b*) the discipline, training, classification and promotion of officers of the Bureau;

(*c*) the duties of officers of the Bureau;

(*d*) the financial regulations of the Bureau;

(*e*) such other matters as may, in his opinion, be necessary or expedient for preventing the abuse or neglect of duty and for upholding the efficiency and integrity of the Bureau, and may, in such standing orders, modify the application to the officers of the Bureau the procedures and regulations otherwise applicable to public officers in general.

(2) No standing order made by the Director shall be inconsistent with any provision of this Act or any other Act.

Accounts

19.—(1) The Director shall maintain proper accounts of such expenditure by the Bureau as the Secretary to the Treasury may require.

(2) As soon as may be after the end of each financial year, the Director shall cause a statement of accounts covering the operations of the Bureau during the previous financial year to be prepared.

Audit

20.—(1) The Auditor General shall, at any time, have access to all accounts maintained under section 19, and may require such information and explanation thereon as he thinks fit.

(2) The Auditor General shall audit the statement of accounts prepared under section 19 and report thereon to the President.

Annual reports
17 of 2004

21.—(1) The Director shall, within three months after the end of every year, submit to the National Assembly and to the President, the Cabinet, and the Minister a report on the activities of the Bureau during the previous year.

(2) The Minister shall formally lay the report submitted under subsection (1) in the National Assembly within fourteen days of the date of the report or, if the National Assembly is then not sitting, within the first fourteen days of the next sitting of the National Assembly.

(3) Any competent committee of the National Assembly may at any time summon the Director to appear before it to answer questions on the contents of the report submitted under subsection (1) and generally to give account of the performance of the functions of the Bureau or of his duties.

Immunity of officers of the Bureau

22. No action or other proceedings shall lie against the Director, the Deputy Director or other officer of the Bureau in respect of any act or thing done or omitted to be done in good faith in the exercise of his duties under this Act.

Restriction on disposal of property, etc.
17 of 2004

23.—(1) Where the Bureau has instituted an investigation or a prosecution in respect of an offence under this Act, the Director may, by written notice to any person, direct that such person shall not, without the written consent of the Director, dispose of or otherwise deal with any property, or proceed with any contract, transaction, agreement or other arrangement, specified in such notice, which is the subject of, or is otherwise implicated in, such investigation or prosecution.

(2) A notice issued under subsection (1) may be served by delivering it personally to the person to whom it is addressed or may, where the Director is satisfied that such person cannot be found or is not in the Republic, be served on, or brought to the knowledge of, such person in such other manner as the Director may direct.

(3) A notice issued under subsection (1) shall have effect from the time of service and shall continue in force for a period of three months or until cancelled by the Director, whichever is earlier, but may upon expiry be renewed for further periods of three months

on application to a magistrate showing cause why the notice should be renewed.

(4) Any person who, having been served with, or having knowledge of, a notice issued under subsection (1), disposes of or otherwise deals with any property specified in the notice other than in accordance with the consent of the Director, shall be guilty of an offence and liable to a fine of K200,000 and to imprisonment for fourteen years.

(5) Any person aggrieved by a directive contained in a notice issued under subsection (1) may, at any time, apply to the High Court for an order to reverse or vary such directive.

(6) A person making an application under subsection (5) shall give to the Director such notice of the day appointed for the hearing of the application as a judge of the High Court may order.

(7) On the hearing of an application under subsection (5) the High Court may—

(*a*) confirm the directive;

(*b*) reverse the directive and consent to the disposal of, or other dealing with, any property specified in the notice, subject to such terms and conditions as it thinks fit; or

(*c*) vary the directive as it thinks just.

Seizure of property, etc.

23A. At any stage during the investigation of, or the proceedings for, an offence under this Act, a court may issue a warrant authorizing the Director, the Deputy Director or a senior police officer to seize or freeze any document, or other records or evidence or any asset, account, money or other pecuniary resource, wealth, property, or business or other interest.

PART IV

Offences

Corrupt practices by or with public officers
17 of 2004

24.—(1) Any public officer who by himself, or by or in conjunction with any other person, corruptly solicits, accepts or obtains, or agrees to accept or attempts to receive or obtain, from any person for himself or for any other person, any advantage as an inducement or reward for doing or forbearing to do, or for having done or forborne to do, anything in relation to any matter or transaction, actual or proposed, with which any public body is or may be concerned shall be guilty of an offence.

(2) Any person who by himself, or by or in conjunction with any other person, corruptly gives, promises or offers any advantage to any public officer, whether for the benefit of that public officer or of any other public officer, as an inducement or reward for doing

or forbearing to do anything in relation to any matter or transaction, actual or proposed, with which any public body is or may be concerned shall be guilty of an offence.

Corrupt use of official powers and procuring corrupt use of official powers 17 of 2004

25.—(1) Any public officer who, being concerned with any matter or transaction falling within, or connected with, his jurisdiction, powers, duties or functions, corruptly solicits, accepts or obtains, or agrees to accept or attempts to receive or obtain for himself or for any other person any advantage in relation to such matter or transaction shall be guilty of an offence.

(2) Any person who, being concerned with any matter or transaction falling within the scope of authority, or connected with the jurisdiction, powers, duties or functions of any public officer, by himself, or by or in conjunction with any other person, corruptly gives, promises or offers any advantage, whether directly or indirectly, to such public officer either for himself or for any other person shall be guilty of an offence.

Public officers performing functions corruptly 17 of 2004

25A.—(1) Any public officer who, being concerned with any matter or transaction falling within or connected with the jurisdiction, powers, duties or functions of his office, exercises or performs his powers, duties or functions corruptly, or otherwise acts corruptly, in relation to such matter or transaction shall be guilty of an offence.

(2) Any person who uses his influence on, or induces or persuades, a public officer concerned with any matter or transaction falling within or connected with that public officer's jurisdiction, powers, duties or functions to exercise or perform his powers, duties or functions corruptly, or otherwise to act corruptly, in relation to such matter or transaction shall be guilty of an offence.

Misuse of public office 17 of 2004

25B.—(1) Any public officer who uses, misuses or abuses his public office, or his position, status or authority as a public officer, for his personal advantage or for the advantage of another person or to obtain, directly or indirectly, for himself or for another person, any advantage, wealth, property, profit or business interest shall be guilty of an offence.

(2) Any person who uses his influence on, or induces or persuades, a public officer to use, misuse or abuse his public office, or his position, status or authority as a public officer, for such person's advantage or for the advantage of another person or to obtain, directly or indirectly, for such person or for another person any advantage, wealth, property, profit or business interest shall be guilty of an offence.

(3) Where in any proceedings for an offence under this section the prosecution proves that the accused did or directed to be done,

or was in any way party to the doing of, any arbitrary act which resulted in the loss or damage of any property of the Government or of a public body, or the diversion of such property to or for purposes for which it was not intended, the accused shall, unless he gives proof to the contrary, be presumed to have committed the offence charged.

(4) For purposes of this section "arbitrary", in relation to actions of a public officer concerning the duties of his office, includes the doing, or directing the doing, of anything contrary to—

(*a*) procedures prescribed by or under any written law; or

(*b*) established practice or any agreed rules or arrangement which is known or ought to be known to him or is, in relation to the matter under consideration, brought to his attention in writing or other sufficient means.

Dealing in contracts 17 of 2004

25C.—(1) This section shall apply to any information which—

(*a*) a public officer holds by virtue of his office;

(*b*) would not be expected, or it would not be reasonable for it, to be disclosed by a public officer except in the proper performance of the functions of his office; or

(*c*) the public officer holding the information knows or ought to know that it is unpublished tender information in relation to any contract or proposed contract of a public body.

(2) Any public officer who holds information to which this section applies, or any person who has, directly or indirectly, obtained any such information from a public officer whom that person knows or has reasonable cause to believe held the information by virtue of his office, and who—

(*a*) deals in any contract or proposed contract to which the information relates and in which the public body is involved;

(*b*) counsels or procures another person to deal in any such contract or proposed contract, knowing or having reasonable cause to believe that such other person would deal in such contract or proposed contract;

(*c*) communicates to any other person the information held or, as the case may be, obtained by him if he knows or has reasonable cause to believe that such other person or any other person would make use of the information for the purpose of dealing in, or counselling or procuring any person to deal in, any contract or proposed contract to which the information relates and in which a public body is involved,

shall be guilty of an offence.

Disclosure of interest by public officers 17 of 2004

25D.—(1) Where a contract or proposed contract in which a public officer or any member of his immediate family, or other close associate of his, has a direct or indirect interest is, to his knowledge, being, or is to be, considered—

(*a*) at a meeting at which the public officer is or will be present; or

(*b*) in any other circumstances relating to his duties as a public officer,

such public officer shall, at the commencement of the meeting or at any time upon becoming so aware, declare to the meeting or to the appropriate authority or in the manner prescribed the nature of such interest and shall not take part in, or be in attendance during, the discussion or consideration of the contract or proposed contract or vote on any matter or do any other thing relating to the contract or proposed contract.

(2) Any public officer who—

(*a*) fails to make a declaration of interest as required by subsection (1);

(*b*) in making a declaration of interest pursuant to subsection (1), makes a false declaration or a false statement;

(*c*) otherwise contravenes subsection (1),

shall be guilty of an offence.

(3) It shall be a defence to a charge for an offence against subsection 2 (*b*) that the accused did not know, or did not have reasonable ground to believe that the declaration or statement was false.

(4) In this section—

"interest" means interest in a private capacity; and

"member of immediate family" in relation to a public officer, includes that public officer's spouse, child, parent, brother, sister, grandchild, grandparent, uncle, aunt and other close relative.

Corrupt transactions by or with private bodies 17 of 2004

26.—(1) Any person who by himself, or by or in conjunction with any other person, corruptly solicits, accepts or obtains, or agrees to accept or attempts to receive or obtain, from any person for himself or for any other person, any advantage as an inducement or reward for doing or forbearing to do, or for having done or forborne to do, anything in relation to any matter or transaction, actual or proposed, with which any private body is or may be concerned shall be guilty of an offence.

(2) Any person who by himself, or by or in conjunction with any other person, corruptly gives, promises or offers any advantage to

any person, whether for the benefit of that person or of any other person, as an inducement or reward for doing or forbearing to do, or for having done or forborne to do, anything in relation to any matter or transaction, actual or proposed, with which any private body is or may be concerned shall be guilty of an offence.

Corrupt transactions by or with agents 17 of 2004

27.—(1) Any agent who solicits, accepts or obtains, or agrees to accept or attempts to receive or obtain, from any person for himself or for any other person, any advantage as an inducement or reward for doing or forbearing to do, or for having done or forborne to do, anything in relation to his principal's affairs or business, or for showing or having shown favour or disfavour to any person in relation to his principal's affairs or business or otherwise acts corruptly in relation to his principal's affairs or business shall be guilty of an offence.

(2) Any person who gives, promises or offers any advantage to any agent as an inducement or reward for doing or forbearing to do, or for having done or forborne to do, anything in relation to his principal's affairs or business, for showing or having shown favour or disfavour to any person in relation to his principal's affairs or business or otherwise acts corruptly in relation to his principal's affairs or business shall be guilty of an offence.

(3) Any person who gives to an agent, or any agent who with intent to deceive his principal uses, any receipt, account or other document in respect of which the principal is interested or which relates to this principal's affairs or business and which contains any statement which is false or erroneous or defective in any material particular, and which to his knowledge or belief is intended to mislead the principal shall be guilty of an offence.

(4) Any person who, having, or claiming or pretending to have influence with a public body or a public officer, demands, accepts, offers or agrees to accept for himself or another person an advantage or does anything in order to corruptly exercise influence in connexion with any matter or business with the public body or public officer shall be guilty of an offence.

(5) For the purposes of subsections (1) and (2), the permission of a principal to the soliciting, accepting or obtaining of any advantage by his agent shall constitute a valid defence.

Corruption of members of public bodies in regard to meetings, etc. 17 of 2004

28.—(1) Any person who, being a member of any public body, by himself or by or in conjunction with any other person, corruptly solicits, accepts or obtains, or agrees to accept or attempts to receive or obtain, from any person, for himself or for any other person, any advantage as an inducement or reward for—

(*a*) his voting or abstaining from voting at any meeting of such public body in favour of or against any measure, matter, resolution or question submitted to such public body; or

(*b*) his performing, or abstaining from performing, or for his aid in procuring, expediting, delaying, hindering or preventing the performance of, any official act by such public body; or

(*c*) his aid in procuring or preventing the passing of any vote or the granting of any contract or advantage in favour of any person,

shall be guilty of an offence.

(2) Any person who, by himself or by or in conjunction with any other person, corruptly gives, promises or offers any advantage to a member of any public body in any such circumstances as are referred to in subsection (1) shall be guilty of an offence.

Advantage for giving assistance, etc., in regard to contracts 17 of 2004

29.—(1) Any public officer who directly or indirectly by himself, or by or in conjunction with any other person, corruptly solicits, accepts or obtains, or agrees to accept or attempts to receive or obtain, from any person for himself or for any other person, any advantage as an inducement or reward for or otherwise on account of his giving assistance or using influence in, or having given assistance or used influence in—

(*a*) the promotion, execution, or procurement of—

(i) any contract with a public body or private body for the performance of any work, the provision of any service, the doing of anything or the supplying of any article, material or substance; or

(ii) any subcontract to perform any work, provide any service, do anything or supply any article, material or substance required to be performed, provided, done or supplied under any contract with a public body or private body; or

(*b*) the payment of the price; consideration or other moneys stipulated or otherwise provided for in any such contract or subcontract,

shall be guilty of an offence.

(2) Any person who corruptly gives, promises or offers any advantage to any public officer as an inducement or reward for or otherwise on account of such public officer giving assistance or using influence in, or having given assistance or used influence in—

(*a*) the promotion, execution or procurement of; or

(*b*) the payment of the price, consideration or other moneys stipulated or otherwise provided for in any such contract or subcontract as is referred to in subsection (1),

shall be guilty of an offence.

Advantage for procuring withdrawal of tenders 17 of 2004

30.—(1) Any person who directly or indirectly, by himself or by or in conjunction with any other person, corruptly solicits, accepts or obtains, or agrees to accept or attempts to receive or obtain from any person for himself or for any other person, any advantage as an inducement or reward for or otherwise on account of the withdrawal of a tender, or the refraining from the making of a tender, for any contract with a public body or private body for the performance of any work, the provision of any service, the doing of anything or the supplying of any article, material or substance, shall be guilty of an offence.

(2) Any person who corruptly gives, promises or offers any advantage to any other person as an inducement or reward for or otherwise on account of the withdrawal of a tender, or the refraining from the making of a tender, for such a contract as is referred to in subsection (1) shall be guilty of an offence.

Advantage in regard to bidding at auction sales 17 of 2004

31.—(1) Any person who directly or indirectly by himself, or by or in conjunction with any other person, corruptly solicits, accepts or obtains, or agrees to accept or attempts to receive or obtain from any person, for himself or for any other person, any advantage as an inducement or reward for or otherwise on account of his refraining or having refrained from bidding at any sale by auction conducted by or on behalf of any public body or private body shall be guilty of an offence.

(2) Any person who corruptly gives, promises or offers any advantage to any other person as an inducement or reward for or otherwise on account of that other person refraining or having refrained from bidding at any auction as is referred to in subsection (1) shall be guilty of an offence.

Possession of unexplained property 17 of 2004

32.—(1) The Director, the Deputy Director or any officer of the Bureau authorized in writing by the Director may investigate any public officer where there are reasonable grounds to believe that such public officer—

(*a*) maintains a standard of living above that which is commensurate with his present or past official emoluments or other known sources of income;

(*b*) is in control or possession of pecuniary resources or property disproportionate to his present or past official emoluments or other known sources of income; or

(*c*) is in receipt directly or indirectly of the benefit of any services which he may reasonably be suspected of having received corruptly or in circumstances which amount to an offence under this Act.

(2) Any public officer who, after due investigation carried out under the provisions of subsection (1), is found to—

(*a*) maintain a standard of living above that which is commensurate with his present or past official emoluments or other known sources of income;

(*b*) be in control or possession of pecuniary resources or property disproportionate to his present or past official emoluments or other known sources of income; or

(*c*) be in receipt directly or indirectly of the benefit of any services which he may reasonably be suspected of having received corruptly or in circumstances which amount to an offence under this Act, shall, unless he gives a reasonable explanation, be charged with having or having had under his control or in his possession pecuniary resources or property reasonably suspected of having been corruptly acquired and, unless he gives a satisfactory explanation to the court as to how else he was able to maintain such a standard of living, or such pecuniary resources or property came under his control or his possession, or he came to enjoy the benefits of such services, he shall be guilty of an offence.

(3) In this section—

(*a*) "official emoluments" includes a pension, gratuity or other terminal benefits;

(*b*) "public officer" includes any person who has held office as a public officer on or after 6th July, 1964.

Certain matters not to constitute defence
17 of 2004

33.—(1) If, in any proceedings for an offence under any section of this Part, it is proved that the accused accepted any advantage, believing or suspecting or having reasonable grounds to believe or suspect that the advantage was given as an inducement or reward for or otherwise on account of his doing or forbearing to do, or having done or forborne to do, any act referred to in that section, it shall be no defence that—

(*a*) he did not actually have the power, right or opportunity so to do or forbear;

(*b*) he accepted the advantage without intending so to do or forbear; or

(*c*) he did not in fact so do or forbear.

(2) If, in any proceedings for an offence under any section of this Part, it is proved that the accused offered any advantage to any other person as an inducement or reward for or otherwise on account of that other person doing or forbearing to do, or having done or forborne to do, any act referred to in that section, believing or suspecting or having reasonable grounds to believe or suspect that such other person had the power, right or opportunity so to do or forbear, it shall be no defence that such other person had not such power, right or opportunity.

Penalty
17 of 2004

34. Any person who is guilty of an offence under this Part shall be liable to imprisonment for twelve years.

Attempts, conspiracies, etc.

35. Any person who attempts to commit, or who aids, abets or counsels, or conspires with, any person to commit an offence under this Part shall be guilty of committing that offence.

Duty of public officers to make reports, etc.
17 of 2004

36.—(1) A public officer to whom any advantage is corruptly given, promised or offered shall make a full report of the circumstances of the case to a police officer or an officer of the Bureau within forty-eight hours of the occurrence of the event; and if he fails to do so without reasonable cause he shall be guilty of an offence and liable to a fine of K10,000 and to imprisonment for three years.

(2) Any police officer or officer of the Bureau may, if authorized by warrant issued by a magistrate, arrest any person in respect of whom a report is made under subsection (1).

(3) Any police officer or officer of the Bureau may, if authorized by warrant issued by a magistrate, search any person arrested for an offence under this Act and take possession of all articles found upon such person which the police officer or officer of the Bureau believes upon reasonable grounds to constitute evidence of the commission of an offence by such person under this Part.

Tracing of property
17 of 2004

36A.—Where a court is satisfied in proceedings for an offence under this Part that, having regard to the closeness of his relationship to the accused and to other relevant circumstances, there is reason to believe that any person was holding pecuniary resources or property in trust for or otherwise on behalf of the accused or acquired such pecuniary resources or property as a gift or loan from the accused without adequate consideration, such pecuniary resources or property shall, until the contrary is proved, be deemed to have been under the control or in the possession of the accused.

Value of property 17 of 2004

36B. In any proceedings for an offence under this Part, the court may infer that property was obtained or derived as a result of the commission of an offence where there is evidence establishing that the value after the commission of the offence of all the property of the accused exceeds the value of all his property before the commission of the offence, and the court is satisfied that his income from sources unrelated to the offence he is alleged to have committed cannot reasonably account for that increase in value.

PART V

Additional Penalties and Recovery of Corrupt Advantage

Penalty additional to other punishment 17 of 2004

37. Where any person is convicted of an offence under Part IV, the court shall, in addition to any other penalty that it may pass under section 34—

(*a*) order that any money or other pecuniary resources, wealth, property, profit, asset, business interest or other advantage, or the value thereof, as is ascertained by the court to have been acquired through or to be tainted with or otherwise connected with the commission of the offence shall be forfeited to the Government; and for the purpose of such forfeiture, the court may, immediately upon such conviction, or at any time after conviction upon application by the Bureau, make further orders—

(i) requiring the convicted person to effect or facilitate, by any means possible in the circumstances, the return, transfer or repatriation to Malaŵi of any money or other financial resources or any property or the value of any property maintained or located outside Malaŵi that may be attached to the order of forfeiture under this paragraph; or

(ii) for otherwise effecting the order of forfeiture under this paragraph as the court may consider necessary, and failure by the convicted person to comply with any such further order shall render him liable to conviction, without further procedure, for contempt of court;

(*b*) where appropriate, order the convicted person to pay to the rightful owner the amount or value, as determined by the court, of any advantage actually received or obtained by him:

Provided that where, after reasonable inquiry, the rightful owner cannot be found, or is himself implicated in the giving of the advantage, the court shall order that the amount or value thereof shall be forfeited to the Government.

Recovery of advantage by distress, etc. 17 of 2004

38. Any fine imposed under the provision of Part IV and the amount or value of any advantage ordered to be paid under section 37 may be recovered by distress and sale of such movable and immovable property of the person sentenced as is ascertained to have been acquired through, or is tainted or otherwise connected with, the commission of the offence of which he is convicted.

Principal may recover advantage corruptly received by agent 17 of 2004

39.—(1) Where any advantage has been given by any person to or for or on account of an agent in contravention of any provision of this Act, the principal may recover, as a civil debt, the amount or value of such advantage from the agent, and the acquittal of the agent or such person in respect of an offence under Part IV shall not operate as a bar to any proceedings for such recovery.

(2) Nothing in subsection (1) shall be deemed to prejudice or affect any right which any principal may have under any written law or rule of law to recover from his agent any money or property.

Effect of conviction of an offence under Part IV

40. Any person convicted of an offence under Part IV shall, by reason of such conviction, be disqualified for a period of seven years from the date of such conviction from being elected or appointed to, or from holding or continuing to hold, any office or position in any public body.

Certificate of Government valuation officer or other specialist valuer 17 of 2004

41. In any proceedings under this Act, a certificate by a Government valuation officer or other specialist valuer with respect to the value of any advantage or to any movable or immovable property shall be sufficient proof of such value, unless the contrary is proved.

PART VI

Powers of the Director of Public Prosecutions

Consent of the Director of Public Prosecutions 17 of 2004

42.—(1) No prosecution for an offence under Part IV shall be instituted except by or with the written consent of the Director of Public Prosecutions.

(2) Where under subsection (1) the Director of Public Prosecutions withholds consent to any prosecution under this Act, he shall—

(*a*) provide to the Director reasons in writing, devoid of any consideration other than those of fact and the law, for the withholding of consent; and

(*b*) in addition to providing reasons to the Director, inform the Legal Affairs Committee of Parliament of his decision within thirty days of the decision.

(3) The Director of Public Prosecutions shall give consent under subsection (1), or reasons in writing under subsection (2) (*a*), as the

case may be, within thirty days, failing which the Director shall be entitled to proceed as if consent to prosecute had been given under subsection (1).

(4) Notwithstanding the provisions of subsection (1), a person may be arrested and charged with an offence under Part IV or a warrant for his arrest may be issued and executed, and any such person may be remanded in custody or on bail, notwithstanding that the written consent of the Director of Public Prosecutions to the institution of a prosecution for the offence with which he is charged has not been obtained, but no such person shall continue to be remanded in custody or on bail for a period longer than fourteen days on such charge unless in the meantime the written consent of the Director of Public Prosecutions aforesaid has been obtained.

(5) When a person is brought before a court before the written consent of the Director of Public Prosecutions to the institution of a prosecution against him is obtained, the charge shall be explained to the person accused but he shall not be called upon to plead.

(6) No proceedings for an offence under Part IV shall be commenced after the expiry of twelve months from the date the written consent of the Director of Public Prosecutions is given.

43. [*Repealed by Act No.* 17 *of* 2004]

44. [*Repealed by Act No.* 17 *of* 2004]

PART VII

Evidence and Presumptions

Presumptions of corrupt intention 17 of 2004

45.—(1) Where, in any proceedings under this Act, it is proved that any advantage has been received by any person with the knowledge and acquiescence or consent of the accused person, and the court is satisfied, having regard to his relationship to the accused person or to any other circumstances, that such person has received the advantage for or on behalf of the accused person, or otherwise on account of or in connexion with the office or duties of the accused person, then, unless the contrary is proved, the advantage shall be presumed to have been received by the accused person.

(2) Where, in any proceedings for an offence under Part IV, it is proved that any person solicited, accepted or obtained or agreed to accept or attempted to receive or obtain any payment in any of the circumstances set out in the relevant section under which he is charged, then, unless the contrary is proved, such payment shall be presumed to have been solicited, accepted or obtained or agreed to be accepted, received or obtained, corruptly.

(3) For the purposes of subsection (2) "payment" means any corrupt payment, whether in cash or in kind.

Evidence of custom
17 of 2004

46.—(1) In any proceedings for an offence under Part IV, it shall not be a defence that any advantage solicited, accepted or obtained or agreed to be accepted, given, offered or promised, is customary in any profession, business, trade, vocation or calling.

(2) Notwithstanding the provisions of subsection (1), no entertainment offered or accepted under such conditions as may be prescribed in regulations made under this Act shall constitute an offence under Part IV.

PART VIII

Miscellaneous Provisions

Absence of power, authority or opportunity no defence
17 of 2004

47. Where any public officer has corruptly solicited, accepted, obtained, or agreed to accept or attempted to receive or obtain any advantage, it shall not be a defence in any trial in respect of an offence under Part IV—

(*a*) that the appointment, nomination or election of such person or any other person as a public officer was invalid or void; or

(*b*) that such public officer or any other public servant did not have the power, authority or opportunity of doing or of forbearing from doing the act, favour or disfavour to which the advantage related; or

(*c*) that the public officer did not actually do any act, favour or disfavour to induce the advantage, or never had the intention of doing so.

Corrupt practice coming to the notice of a commission
Cap. 18:01

48. Where any commission established by or under the Constitution, or appointed under the Commissions of Inquiry Act, in the course, or upon conclusion, of any proceedings before it, is of the opinion that the conduct of any person appears to constitute an offence under this Act and ought to be inquired into for the purposes of this Act, the commission concerned shall, subject to any prohibition, restriction or restraint imposed upon it by or under the Constitution or any other written law, communicate its opinion to the Bureau together with the particulars of the person concerned and such other facts of the case as the commission may deem necessary.

False, frivolous or groundless complaints or allegations

49.—(1) Where, at the conclusion of the trial of a person charged with an offence under Part IV, the court is of the opinion that any person has wilfully, and with intent to harm or injure the accused person in any manner, made a false, frivolous or groundless

complaint or allegation against him, the court shall certify that opinion in writing and shall transmit it together with a certified copy of the record of the proceedings to the Director of Public Prosecutions to consider possible prosecution.

(2) Any person who, in the opinion of the court certified under subsection (1) has made a false, frivolous or groundless complaint or allegation to the effect that any person has committed or attempted to commit, or aided, abetted or counselled the commission of, or conspired with any other person to commit any offence under Part IV, shall be guilty of an offence and liable to a fine of K100,000 and to imprisonment for seven years.

Non-compliance with Bureau's orders, directions, etc. 17 of 2004

49A. Any person who contravenes or fails to comply with any order, direction, notice, requirement or demand of the Bureau issued, given or made under this Act shall be guilty of an offence and liable to a fine of K50,000 and to imprisonment for two years.

Unauthorized disclosure by employees, etc., of the Bureau 17 of 2004

49B. Any person in the service of the Bureau as an employee, an agent or a consultant or in any other capacity, and having taken an oath of secrecy in the prescribed form in relation thereto, who—

(*a*) except as a witness in any court or in pursuance of his duties in relation to the Bureau, directly or indirectly, provides or discloses to any unauthorized person the nature or contents of any document, communication or information whatsoever which has come to his knowledge in the course of his duties in relation to the Bureau;

(*b*) makes use for his own purposes or for the purposes of any other person any knowledge acquired from any document, communication or information which he has acquired or obtained in the course of his duties in relation to the Bureau,

shall be guilty of an offence and shall be liable to a fine of K50,000 and imprisonment for two years.

Alternative convictions and amending particulars

50.—(1) If, on the trial of any offence under Part IV, it is not proved that the accused is guilty of the offence charged but it is proved that the accused is guilty of some other offence under Part IV, the accused may, notwithstanding the absence of the written consent of the Director of Public Prosecutions in respect of such other offence, be convicted of such other offence.

(2) If, on the trial of any person for any offence under Part IV, there is any material variance between the particulars of the offence charged and the evidence adduced in support thereof, such variance shall not, of itself, entitle the accused to an acquittal of the offence charged if, in the opinion of the court, there is *prima facie* evidence of the commission of that offence; and in such a case

the court may, notwithstanding the absence of the written consent of the Director of Public Prosecutions in respect of the particulars supported by the evidence adduced, make the necessary amendment to the particulars, and shall thereupon read and explain the same to the accused and parties shall thereupon be allowed to recall and examine on matters relevant to such amendment any witness who may have been examined and, subject to subsection (3), to call any further witness.

(3) If an amendment is made under subsection (2) after the prosecution case is closed, no further witness may be called by the prosecution other than a witness on such matters only as it would, apart from this subsection, be permissible to call and put in evidence in rebuttal.

Legal practitioners and privileged information

51.—(1) Save as provided in this section, nothing in this Act shall require the disclosure by a legal practitioner of any privileged information, communication, book, document or other article.

(2) Subject to subsection (3), a legal practitioner may be required by notice under paragraph (*c*) of subsection (1) of section 43—

(*a*) to state whether, at any time during such period as is specified in the notice, he has acted on behalf of any person named or otherwise identified in the notice in connexion with—

(i) the transfer by such person of any moneys out of Malaŵi; or

(ii) the investment by such person within or outside Malaŵi of any moneys; and

(*b*) if so, to furnish information in his possession with respect thereto, being information relating to—

(i) the date of the transfer or investment;

(ii) the amount of the transfer or investment;

(iii) in the case of a transfer, the name and address of the bank and the name and number, if any, of the account to which the money was transferred;

(iv) in the case of investment, the nature of the investment,

notwithstanding that the effect of compliance with such requirement would be to disclose any privileged information or communication.

(3) Nothing in subsection (2) shall require a legal practitioner to comply with any such requirement as is specified therein to the extent to which such compliance would disclose any privileged information or communication which came to his knowledge for the purpose of any proceedings, began or contemplated before a court or to enable him to give legal advice to his client.

(4) The protection conferred by this section on a legal practitioner shall extend to a clerk or servant of, or employed by, a legal practitioner.

Protection of whistle-blowers and other informers 17 of 2004

51A.—(1) Any person believing that the public interest overrides the interest of the institution, organization or office in or under which he serves or to which he is subject or overrides the interest of a particular community, association or society to which he belongs, and any other person whosoever, may inform the Bureau or the police of an alleged or suspected corrupt practice, or other offence connected therewith, which he knows or believes is being perpetrated by or in that institution, organization, office, community, association or society.

(2) Except as provided in subsections (3) and (4), no information relating to a whistle-blower or to any other informer who has provided information to the Bureau or to the police pursuant to subsection (1) as to an offence under this Act shall be admitted in evidence in any civil or criminal proceeding, and no witness shall be obliged or permitted to disclose the name or address of such whistle-blower or other informer, or state any matter which might lead to his discovery.

(3) If any books, documents or papers which are in evidence or liable to inspection in any civil or criminal proceeding contain any entry in which the whistle-blower or other informer is named or described or which might lead to his discovery, the court before which the proceeding is heard shall cause all such passages to be concealed from view or to be obliterated so far as is necessary to protect the whistle-blower or other informer from discovery, but no further.

(4) If on a trial for any offence under this Act the court, after full inquiry into the case, is of the opinion that the whistle-blower or other informer wilfully provided information which he knew or believed to be false, or did not believe to be true, in material particular, or if in any other proceeding the court is of the opinion that justice cannot be fully done between the parties thereto without the discovery of the whistle-blower or other informer, the court may permit inquiry and require full disclosure concerning the whistle-blower or other informer, and, if the information was provided in writing, require the production of the original thereof.

(5) Any person who, having knowledge that any person referred to in this section as a whistle-blower or an informer, has informed the Bureau or the police of an alleged or a suspected corrupt practice, or other offence connected therewith, takes, by himself or through another person, an action of any kind to punish or victimize such whistle-blower or informer in any way shall be

guilty of an offence and liable to a fine of K50,000 and to imprisonment for two years.

Defences
17 of 2004

52. In any proceedings for an offence under this Act it shall be a valid defence that the advantage offered or accepted is an entertainment.

Appeals
17 of 2004

52A. In any proceedings for an offence under this Act, the prosecution may appeal against any final judgment or order, including a finding of acquittal, of the trial court if, and only if, dissatisfied upon a point of law; but, save as so provided, no appeal shall lie by the prosecution against a finding of acquittal by the trial court.

Liability of citizens and residents of Malaŵi for offences committed outside Malaŵi

53.—(1) The provisions of this Act shall have effect, in relation to citizens or residents of Malaŵi, outside as well as within Malaŵi; and where an offence under this Act is committed by a citizen or resident of Malaŵi in any place outside Malaŵi, he may be dealt with in respect of such offence as if it had been committed within Malaŵi.

(2) Any proceedings against any person under this section which would be a bar to subsequent proceedings against such person for the same offence if such offence had been committed in Malaŵi shall be a bar to further proceedings against him under any written law for the time being in force relating to the extradition of persons to a country outside Malaŵi in respect of the same offence.

Regulations
17 of 2004

54. The Minister may make regulations for the effective carrying out of this Act and, without prejudice to the generality of the foregoing, such regulations may provide for—

(*a*) the prevention of corruption generally;

(*b*) the disclosure by public officers of interest in contracts or proposed contracts;

(*c*) situations of conflict of interest;

(*d*) the disposal of recovered advantage and gifts;

(*e*) any matter required to be prescribed under this Act.

SUBSIDIARY LEGISLATION

G.N. 37/1999

CORRUPT PRACTICES (DISPOSAL OF RECOVERED, SEIZED OR FROZEN PROPERTY) REGULATIONS

under s. 54

Citation

1. These Regulations may be cited as the Corrupt Practices (Disposal of Recovered, Seized or Frozen Property) Regulations.

Interpretation

2. In these Regulations, unless the context otherwise requires—

"recovered, seized or frozen property" means any monies, property or thing of any description which was the subject of investigation into, or prosecution in relation to, any offence alleged or suspected to have been committed under the Act.

Disposal of recovered, seized or frozen property

3.—(1) Any recovered, seized or frozen property which comes into the possession of the Bureau shall, subject to sub-regulation (2), vest in the State if such recovered, seized or frozen property cannot be returned to the rightful owner because—

(*a*) the rightful owner thereof, being the subject of an investigation or prosecution in respect of an offence alleged or suspected to have been committed by him under the Act, leaves Malaŵi for the purpose or apparent purpose of evading the consequences of such investigation or prosecution brought against him;

(*b*) the rightful owner or the person in possession thereof absconds;

(*c*) the rightful owner cannot be traced or ascertained;

(*d*) the person in possession thereof admits his involvement in the alleged corrupt act and agrees to surrender such recovered, seized or frozen property to the State because of such involvement;

(*e*) the Court has so ordered on an application by the Director.

(2) No recovered, seized or frozen property shall vest in the State under paragraphs (*a*), (*b*) or (*c*) of subregulation (1) unless—

(*a*) the Director gives, in accordance with these Regulations, notice to the effect that such recovered, seized or frozen property is liable to vest in the State if it is not claimed within three months from the date of the publication of such notice in the *Gazette*;

(*b*) three months after the giving of such notice, such recovered, seized or frozen property remains unclaimed.

(3) The notice referred to in subregulation (2) shall be deemed to have been duly given if it is published in the *Gazette* and a copy is—

(*a*) served on the person concerned; or

(*b*) left at or posted to the usual or last known place of bode or business of the person concerned; or

(*c*) published in such a newspaper as the Director may decide if the person concerned is unknown or if his address or whereabouts are unknown.

Fast decaying property

4.—(1) Where the Director is of the opinion that any recovered, seized or frozen property is subject to speedy or unnatural decay or that its immediate sale would be for the benefit of the owner, the Director may, at any time, direct that such property be sold or destroyed:

Provided that no sale or disposal of any such recovered, seized or frozen property shall be ordered without first obtaining leave from the Court.

(2) On the completion of any sale under subregulation (1) the right of any person to take legal proceedings for the recovery of the property sold shall cease; but a claim may be established to the proceeds of such sale.

Payment into Consolidated Fund

5. All monies and proceeds from the sale or other disposal of any recovered, seized or frozen property which vest in the State in accordance with these Regulations shall be paid into the Consolidated Fund.

CORRUPT PRACTICES (PROHIBITION OF ABUSE OF INFORMATION OBTAINED IN OFFICIAL CAPACITY) REGULATIONS

G.N. 46/1999

under s. 54

Citation

1. These Regulations may be cited as the Corrupt Practices (Prohibition of Abuse of Information Obtained in Official Capacity) Regulations.

Application

2. These Regulations shall apply to any information which—

(*a*) a public officer holds by virtue of his office;

(*b*) it would not be reasonable or expected to be disclosed by a public officer except in the proper performance of the functions of his office;

(*c*) the public officer holding the information knows or ought to know that it is unpublished tender information in relation to any contract or proposed contract of a public body.

Dealing in contracts

3. A public officer holding information to which these Regulations apply or any other person who has obtained any such information directly or indirectly from a public officer whom that person knows or has reasonable cause to believe held the information by virtue of his position as a public officer shall not—

(*a*) deal in any contract or proposed contract to which the information relates and in which a public body is involved;

(*b*) counsel or procure any other person to deal in any such contract or proposed contract, knowing or having reasonable cause to believe that the other person would deal in such contract or proposed contract;

(*c*) communicate to any other person the information held or, as the case may be, obtained by him if he knows or has reasonable cause to believe that that person or some other person would make use of that information for the purpose of dealing in or counselling or procuring any other person to deal in any contract or proposed contract to which the information relates in which a public body is involved.

Offences and penalty

4. Any public officer or any other person who contravenes these Regulations shall be guilty of an offence and shall be liable, upon conviction, to a fine of K50,000.00 and to imprisonment for five years.

G.N. 47/1999

CORRUPT PRACTICES (DISCLOSURE BY PUBLIC OFFICERS OF INTEREST IN CONTRACTS AND PROPOSED CONTRACTS) REGULATIONS

under s. 54

Citation

1. These Regulations may be cited as the Corrupt Practices (Disclosure by Public Officers of Interest in Contracts and Proposed Contracts) Regulations.

Interpretation

2. In these Regulations, unless the context otherwise requires—

"immediate family member", in relation to any public officer, means that public officer's spouse, child, parent, brother, sister, grandchild or grandparent;

"interest" means interest in a private capacity.

Disclosure of interest

3. Where a public officer is present at any meeting at which a contract or proposed contract is the subject of discussion or consideration, or becomes aware of any contract or proposed contract in which the public officer or any immediate family

member of his family has a direct or indirect interest, the public officer shall, immediately after the commencement of such meeting or within three days of his becoming aware of such contract or proposed contract, declare the nature of such interest and shall not take part in any discussion, or vote on any matter or do any other such thing touching upon the said contract or proposed contract.

Offences and penalty

4. Any public officer who—

(*a*) fails to disclose any interest as required to be disclosed under regulation 3;

(*b*) in disclosing any such interest, makes any statement which he knows to be false or which he has no reason to believe is true;

(*c*) otherwise contravenes the provisions of regulation 3,

shall be guilty of an offence and liable, upon conviction, to a fine not exceeding K50,000.00 and to a term of imprisonment of five years.

CORRUPT PRACTICES (OATH OF SECRECY) REGULATIONS

G.N. 48/1999

under s. 54

Citation

1. These Regulations may be cited as the Corrupt Practices (Oath of Secrecy) Regulations.

Interpretation

2. In these Regulations, unless the context otherwise requires—

"officer" means any person employed in the service of the Anti-Corruption Bureau, whether temporarily or permanently, and shall include any agent of the Anti-Corruption Bureau who is required by the Director to take an Oath of Secrecy.

Oath of secrecy

3.—(1) The oath of secrecy required to be taken by every employee of the Bureau and every consultant in the service of the Bureau shall be in the form set out in the Schedule.

(2) Instead of taking an oath, a person referred to in subregulation (1) may make an affirmation which shall be in the like from applicable to him with the substitution of the word "affirm" for the word "swear" and the omission of the last sentence.

Offences and penalty

4. Any officer or consultant in the service of the Bureau who—

(*a*) except as a witness in any count or in pursuance of his duties directly or indirectly reveals to any unauthorized person or otherwise the contents of any document, communication or

information whatsoever which has come to his knowledge in the course of his duties as such officer or consultant;

(*b*) makes use for his own purposes, any knowledge acquired from such document, communication or information,

shall be guilty of an offence and liable, upon conviction, to a fine not exceeding K50,000.00 and to a term of imprisonment of five years.

SCHEDULE

Oath of Secrecy

I, ... having been appointed as an employee of the Anti-Corruption Bureau or a consultant in the service of the Anti-Corruption Bureau do solemnly swear that I will not, directly, reveal the business or proceedings of the Anti-Corruption Bureau or the nature or contents of any document communicated to me or any matter coming to my knowledge in my capacity as an employee of the Anti-Corruption Bureau or a consultant in the service of the Anti-Corruption Bureau and that I will well and truly perform the functions and duties of that office. So help me God.

Sworn at .....
this .....
day of .....
.....

.....
Signature of Deponent

Before me: .....
(*Commissioner for Oaths*)

PREVENTION OF DOMESTIC VIOLENCE

CHAPTER 7:05

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An Act to make provision for the prevention of domestic violence, for the protection of persons affected by domestic violence; and for matters connected therewith 5 of 2006 G.N. 9/2007

[29TH DECEMBER, 2006]

PART I

PRELIMINARY

1. This Act may be cited as the Prevention of Domestic Violence Act. Short title

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

"applicant" means a person who applies, or on whose behalf an application is made, for an order pursuant to this Act;

"child" means a person under the age of eighteen years who ordinarily or periodically resides with the applicant, whether or not the child is a child of the applicant and the respondent or either of them, and includes an adopted child, a stepchild, or a child who is treated as a child of the family but does not include a person who is, or has been, married;

"court" means a court which, in accordance with section 45, has competent jurisdiction;

"dependant" means a person over the age of eighteen years, living within the household, who by reason of age, physical or mental disability or infirmity is reliant on either the applicant or respondent for his or her welfare;

"domestic relationship", in relation to domestic violence, means the relationship between persons who are family members and share a household residence or are dependent on each other socially or financially, and includes the relationship where—

(*a*) the applicant and the respondent are husband and wife;

(*b*) a person has a child in common with the respondent and that person is being subjected or is likely to be subjected to domestic violence by the respondent;

(*c*) one is a parent and the other is his or her child or dependant; and

(*d*) the applicant and the respondent are or have been in a visiting relationship for a period exceeding twelve months;

"domestic violence" means any criminal offence arising out of physical, sexual, emotional or psychological, social, economic or financial abuse committed by a person against another person within a domestic relationship;

"economic abuse" means the denying of a person the liberty to undertake any lawful income generating activity or access economic resources, and includes refusal to provide basic household necessities, withholding that person's income or salary and denying that person the opportunity to seek employment;

"emergency monetary relief", in relation to an interim protection order, means relief provided to the applicant to compensate for loss suffered as a result of the domestic violence, and includes medical and dental expenses, accommodation and transport expenses, household necessities and loss of earnings;

"emotional or psychological abuse" means a pattern of behaviour of any kind, the purpose of which is to undermine the emotional or mental well being of a person, and includes—

(*a*) persistent intimidation by the use of abusive or threatening language;

(*b*) persistent following of a person from place to place;

(*c*) depriving a person of the use of his or her property;

(*d*) the watching or besetting of the place where a person resides, works, carries on business or happens to be;

(*e*) interfering with or damaging the property of a person;

(*f*) the forced confinement of a person;

(*g*) persistent telephoning of a person at his or her place of residence or work; and

(*h*) making unwelcome and repeated or intimidatory contact with a child, dependant or elderly relative of a person;

"enforcement officer" means any officer designated as such by the Minister under section 31;

"financial abuse" means a pattern of behaviour of a kind, the purpose of which is to exercise coercive control over, or exploit or limit a person's access to financial resources so as to ensure financial dependence;

"household residence" means the dwelling-house that is or was last used habitually by persons within a domestic relationship as the only principal family residence, together with any land, buildings or improvements appurtenant thereto, and wholly or mainly used for the purposes of the household;

"interim order" means an interim occupation order, an interim protection order, or an interim tenancy order;

"occupation order" means an order made under section 11, and includes an interim occupation order;

"order" means an occupation order, a protection order, or a tenancy order, but does not include an interim order;

"parent" means a person who is a parent or grandparent in relation to a child, dependant, spouse or respondent, as the case may be, by blood, marriage or adoption;

"physical abuse" means any act or omission which causes or is intended to cause physical injury or reasonable apprehension of physical injury;

"prescribed person", in relation to a respondent, means a husband or wife, parent, child or dependant of the respondent;

"protection order" means an order made under section 5 and, includes an interim protection order;

"service provider" means any person or body of persons approved by the Minister by order published in the *Gazette* to provide assistance to victims of domestic violence, and includes the police, community policing forums, faith-based organizations, Government institutions, non-governmental, voluntary or charitable organizations;

"sexual abuse" includes sexual contact of any kind that is made by force or threat and the commission of, or an attempt to commit, any of the offences under Chapter XV of the Penal Code; Cap. 7:01

"social abuse" includes denying a person the freedom to associate freely with others with the aim of possessing that person so as to let that person become completely dependent on the abuser;

"tenancy order" means an order made under section 15, and includes an interim tenancy order;

"tenant", in relation to a dwelling-house, includes any person—

(*a*) whose tenancy has expired or has been determined; and

(*b*) who is for the time being deemed under or by virtue of any written law to continue to be the tenant of the dwelling-house, and the term "tenancy" has a corresponding meaning.

Purpose of Act

3. The purpose of this Act is to ensure the commitment of the State to eliminate gender-based violence occurring within a domestic relationship, and to provide for effective legal remedies and other social services to persons affected by domestic violence.

Persons who may apply for orders

4.—(1) An application for a protection order under this Act may be made by—

(*a*) a husband or wife, as the case may be, being the person against whom domestic violence has been, or is likely to be, engaged in by the respondent;

(*b*) a person who has a child in common with the respondent and that person is being subjected to or is likely to be subjected to domestic violence by the respondent;

(*c*) a parent or guardian of the child or dependant, or a person with whom the child or dependant ordinarily or periodically resides, where domestic violence involves a child or dependant;

(*d*) a dependant, where the dependant is not mentally disabled;

(*e*) a parent or sibling, by blood or marriage of the applicant or respondent, not being a member of the household;

(*f*) a police officer;

(*g*) an enforcement officer;

(*h*) a service provider approved by the Minister by order published in the *Gazette*.

(2) An application for an occupation order may be made by persons described in subsection (1), except those described in paragraphs (*b*) and (*c*).

(3) An application for a tenancy order may be made by—

(*a*) the husband or wife of the respondent; or

(*b*) in the case of a child or dependent who is subjected to domestic violence, and the husband or wife is unwilling to make an application, by a parent or guardian of that child or dependant.

PART II

Protection Orders

Application for a protection order *Schedule*

5. An application for a protection order shall be in accordance with the form prescribed in Form 1 of the Schedule, and may pray for an order—

(*a*) prohibiting the respondent from—

(i) committing any further acts of domestic violence;

(ii) entering or remaining in the household residence of a prescribed person;

(iii) entering or remaining in any area specified in the order, being an area in which the household residence of a prescribed person is located;

(iv) entering the place of work, business or education of a prescribed person;

(v) entering and remaining in any place where a prescribed person happens to be;

(*b*) directing that the respondent—

(i) be of good behaviour;

(ii) returns to the applicant specified property that is in his or her possession or under his or her control;

(iii) pays compensation for monetary loss incurred by an applicant as a direct result of conduct that amounted to domestic violence;

(iv) pays monetary relief to the applicant for the benefit of the applicant and any child or dependant, where there is no existing order relating to maintenance until such time as an obligation for support is determined pursuant to any other written law;

(v) complies with any other condition which the court deems necessary for the effective protection of the applicant;

(vi) immediately vacates any place or residence for a specified period, whether or not the residence is jointly owned or leased by the respondent and the applicant, or solely owned or leased by the respondent or the applicant;

(vii) relinquishes to the police any firearm licence, firearm or any other weapon which he or she may have in his possession or control and which may or may not have been used in the course of domestic violence;

(viii) makes or continues to make payments in respect of rent or mortgage payments for premises occupied by the applicant for a reasonable period;

(ix) ensures that reasonable care is provided in respect of a child or dependant; or

(x) the applicant or both, receive professional counselling or therapy from any person or agency or from a programme approved by the Minister in writing;

(*c*) directing that the order be applied for the benefit of a child or dependant of the applicant or respondent;

(*d*) prohibiting the respondent from taking possession of damaging, converting or otherwise dealing with, property that the applicant may have an interest in, or is reasonably used by the applicant, as the case may be;

(*e*) prohibiting the respondent from molesting a prescribed person by—

(i) watching or besetting the household residence, or place of work, business or education of the prescribed person;

(ii) following or stalking the prescribed person in any place;

(iii) making persistent telephone calls to a prescribed person;

(iv) using abusive language to or behaving towards a prescribed person in any other manner which is of such nature and degree as to cause annoyance to, or result in ill-treatment of the prescribed person; or

(v) causing or encouraging another person to engage in conduct referred to in paragraphs (i) to (iv).

Grant of a protection order on an *ex parte* application

6.—(1) A protection order may be made on an *ex parte* application if the court is satisfied that the delay that would be caused by proceeding on notice would or might entail—

(*a*) risk to the personal safety of a prescribed person; or

(*b*) serious injury or harm or, undue hardship.

(2) Any protection order made on an *ex parte* application shall be an interim order.

(3) Without limiting the generality of the foregoing, the court may, in determining whether to issue an interim protection order, have regard to—

(*a*) the perception of the applicant, or a child or any other person within the domestic relationship, of the nature and

seriousness of the behaviour in respect of which the application is made; and

(*b*) the effect of the behaviour of the respondent on the applicant, or a child or any other person within the domestic relationship.

(4) Where a protection order is granted on an *ex parte* application, the respondent may apply immediately for it to be discharged.

(5) An interim protection order remains in force until—

(*a*) such time as the court grants a protection order under section 7; or

(*b*) the order is discharged pursuant to section 10.

Grant of a protection order *Schedule*

7.—(1) On hearing an application under section 5 the Court may make a protection order in accordance with the form prescribed in Form 2 of the Schedule if it is satisfied that—

(*a*) a case for domestic violence has been made out against the respondent; and

(*b*) having regard to all the circumstances, the order is necessary for the protection of the prescribed person,

and the court may, if it thinks fit, attach a power of arrest to the protection order.

(2) Where the court makes an order which directs the payment of compensation under section 5 (*b*) (iii), such compensation shall include, but not limited to—

(*a*) loss of earning;

(*b*) medical and dental expenses;

(*c*) moving and accommodation expenses;

(*d*) reasonable legal costs, including the cost of an application pursuant to this Act.

(3) Where the Court makes an order which directs counselling under section 5 (*b*) (x) the order shall specify—

(*a*) that the Court receive written notification from the counsellor or therapist of sessions missed without reasonable excuse; and

(*b*) the date by which the counsellor or therapist shall submit a report to the Court in respect of the counselling or therapy, such report to include a prognosis for recovery.

(4) The court shall have jurisdiction to award compensation not exceeding K 1,000,000 and the payment of such compensation shall be received by the Court on behalf of the applicant.

(5) Where the Court makes an order which—

(*a*) directs that the respondent vacate a household residence or any place; or

(*b*) directs the respondent to return to the applicant specified property that is in his or her possession or control,

the Court may, in that same order, if it thinks necessary and notwithstanding any other law, direct the police to remove the respondent either immediately or within a specified time from the said place or residence, or to accompany the applicant, as the case may be, either immediately or within a specified time to specified premises to supervise the removal of property belonging to the applicant and to ensure the protection of that person.

Court may make a direction for alternative dispute resolution

8.—(1) Subject to subsection (3), at any time during the proceedings for an application for a protection order, but before the issuing of such order, the applicant or respondent may request the court to direct the suspension of the proceedings on condition that both the applicant and respondent, including any child or any other person within the domestic relationship, agree to undergo an alternative dispute resolution process with the assistance of a service provider.

(2) Where, at the time of making the protection order, the applicant or respondent has not made a request pursuant to this section, the court shall, if it considers that it is in the best interest of the parties, inform the parties of their right to make such a request.

(3) A request or a direction pursuant to this section shall not be made more than once in relation to the same protection order.

Existence of other proceedings

9. A court shall not decline to make a protection order under section 6 or 7 on the grounds only of the existence of other proceedings, including proceedings relating to custody of, or access to, a child between or relating to the parties, whether or not those proceedings relate to any other person.

Variation or discharge of a protection order

10.—(1) The court may, on the application of any party of the proceedings, vary or discharge a protection order or, an interim protection order, as the case may be, by—

(*a*) varying or discharging any condition;

(*b*) imposing any new condition;

(*c*) making a direction pursuant to section 8; or

(*d*) varying or discharging a direction made pursuant to section 8.

(2) On the application of the applicant, the court may, if it thinks fit, vary a protection order by directing that the protection

order also apply for the benefit of a particular person within the domestic relationship.

(3) A copy of an application made under section (1) shall be served personally on each person who was a party to the proceedings in which the protection order was made.

(4) In determining whether to discharge a protection order the Court shall have regard to the matters referred to in section 7.

PART III

Occupation Orders

Application for an occupation order

Schedule

11.—(1) An application may be made to the court for an occupation order granting the prescribed person or persons named in the order the right to live in the household residence, and every such application shall be made in accordance with the form prescribed in Form 5 of the Schedule.

Schedule

(2) Subject to subsection (3) and section 19, the court may, on an application under subsection (1), make an occupation order in accordance with the form prescribed in Form 6 of the Schedule granting to the prescribed person or any person named in the order for such period or periods and on such terms and subject to such conditions as the court thinks fit, the right to occupy the household residence or any other premises forming part of the household residence.

(3) The court shall not make an order under subsection (2) unless it is satisfied that such an order—

(*a*) is necessary for the protection of a prescribed person; or

(*b*) is in the best interest of a child or dependant.

Grant of an occupation order on *ex parte* application

12.—(1) An occupation order may be made on an *ex parte* application if the court is satisfied that—

(*a*) the respondent has used violence, against or caused physical or emotional injury to a prescribed person; and

(*b*) the delay that would be caused by proceeding on notice could or might expose the prescribed person to physical or emotional injury.

(2) Any occupation order made on an *ex parte* application shall be an interim order.

(3) Where the court grants an occupation order on an *ex parte* application, the court shall, at the same time, make an interim protection order unless it considers that there are special reasons why such an interim order should not be made.

(4) An occupation order which is made on an *ex parte* application while the prescribed person concerned and the

respondent are living together in the same household residence shall expire—

(*a*) on its discharge by the court;

(*b*) on the discharge of an interim protection order made pursuant to subsection (3); or

(*c*) in any other case, at the expiration of a period of fourteen days after the date on which the occupation order was made.

(5) Where an occupation order is made, on an *ex parte* application, the respondent may apply immediately for its variation or discharge.

Effect of an occupation order

13. Where an occupation order is made the prescribed person to whom it relates shall be entitled, to the exclusion of the respondent, personally to occupy the household residence to which that order relates.

Variation or discharge of occupation order
Schedule

14. The court may, if it thinks fit on an application of either party in accordance with the form prescribed in Form 7 of the Schedule, make an order, in accordance with the form prescribed in Form 8 of the Schedule—

(*a*) extending or reducing any period specified by the court pursuant to section 11 (2); or

(*b*) varying or discharging any terms and conditions imposed by the Court pursuant to section 11 (2).

PART IV

Tenancy Orders

Application for a tenancy order
Schedule

15.—(1) An application may be made to the court in accordance with the form prescribed in Form 9 of the Schedule for an order vesting in the applicant the tenancy of any dwelling-house which, at the time of the making of the order—

(*a*) the respondent is either the sole tenant or a tenant holding jointly or in common with the applicant; and

(*b*) is the household residence of the applicant or the respondent.

Schedule

(2) Subject to section 19, the court may make an order in accordance with the form prescribed in Form 10 of the Schedule on an application under subsection (1) if the Court is satisfied that such an order—

(*a*) is necessary for the protection of the applicant; or

(*b*) is in the best interest of a child or a dependant.

Grant of a tenancy order on an *ex parte* application

16.—(1) A tenancy order may be made on an *ex parte* application if the Court is satisfied that—

(*a*) the respondent has used violence against or caused physical or emotional injury to the applicant, or any other prescribed person; and

(*b*) the delay that would be caused by proceeding on notice would or might expose the applicant or any other prescribed person as the case may be, to physical injury.

(2) Any tenancy order made on an *ex parte* application shall be an interim order.

(3) Where the court makes a tenancy order on an *ex parte* application, the court shall, at the same time, make an interim protection order unless the court considers that there are special reasons why such an order should not be made.

(4) A tenancy order which is made on an *ex parte* application while the applicant and the respondent are living together in the same household residence shall expire—

(*a*) on its discharge by the court;

(*b*) on the discharge of an interim protection order made under subsection (3);

(*c*) in any other case, at the expiration of a period of fourteen days after the date on which the tenancy order was made.

(5) Where a tenancy order is made on an *ex parte* application, the respondent may apply immediately for variation or discharge of that order.

Effect of a tenancy order

17.—(1) Where a tenancy order is made, the applicant shall, unless the tenancy is sooner determined, become the tenant of the dwelling-house upon and subject to the terms and conditions of the tenancy in force at the time of the making of that order, and the respondent shall cease to be the tenant.

(2) Every tenancy order shall have effect and may be enforced as if it were an order of the court for possession of land granted in favour of the applicant.

(3) Nothing in this Act or in any tenancy order shall—

(*a*) limit or affect the operation of any written law for the time being applicable to any tenancy to which a tenancy order applies, or to the dwelling-house held under the tenancy; or

(*b*) authorize the court to vary, except by vesting the tenancy pursuant to this section or revesting the tenancy pursuant to section 18, any express or implied term or condition of the tenancy.

Power to discharge tenancy order and revesting tenancy

18.—(1) The court may, if it thinks fit on the application of—

(*a*) the applicant or respondent; or

(*b*) the personal representative of either party,

make an order (in this section referred to as a "revesting order") revesting the tenancy accordingly.

(2) Where a revesting order is made under subsection (1), the person in whose favour it is made shall, unless the tenancy is sooner determined, become the tenant of the dwelling-house upon and subject to the terms and conditions of the tenancy in force immediately before the date on which the revesting order was made.

PART V

Provisions Relating to Occupation Orders and Tenancy Orders

Procedure relating to occupation orders and tenancy orders

19.—(1) Before making an occupation order (other than an interim occupation order) or a tenancy order (other than an interim tenancy order), the court shall direct that notice be given to any person having an interest in the property which would be affected by any such order.

(2) A person referred to in subsection (1) shall, upon being notified pursuant to that subsection, be entitled to appear and to be heard in the matter of the application for the occupation order or tenancy order, as the case may be, as a party to that application.

(3) Where an application is made for an occupation order, the court may treat that application as an application for a tenancy order or an occupation order or both, and may make a tenancy order, whether or not it makes an occupation order, if it is satisfied that—

(*a*) it has jurisdiction to make the tenancy order and that the making of such an order is appropriate; and

(*b*) subsection (1) has been complied with in respect of the making of a tenancy order.

(4) Where an application is made for a tenancy order, the court may treat that application as an application for an occupation order or a tenancy order or both, and may make an occupation order, whether or not it makes a tenancy order, if it is satisfied that—

(*a*) it has jurisdiction to make an occupation order and that the making of such an order is appropriate; and

(*b*) subsection (1) has been complied with in respect of the making of an occupation order.

Ancillary orders respecting furniture, etc.

20.—(1) On or after making an occupation order or a tenancy order, the court may, subject to subsection (2), make an order granting to the applicant the use, for such period and on such terms and subject to such conditions as the court thinks fit, of all or any of—

(*a*) the furniture;

(*b*) household appliances; and

(*c*) household effects,

in the household residence or other premises to which the occupation order relates or in the dwelling-house to which the tenancy order relates.

(2) An order made under subsection (1) shall continue in force for a period of ninety days beginning on the date on which the order is made, unless the court otherwise directs, but so however that such order shall expire if an occupation order made in relation to the household residence or other premises or a tenancy order made in relation to the dwelling-house expires or is discharged.

PART VI

Interim Orders

Interim order

21.—(1) Every interim order made under this Act on an *ex parte* application shall specify a date, which shall be as soon as reasonably practicable, but no later than twenty-one days thereafter, for a hearing on whether an order should be made in substitution for the interim order.

(2) A copy of every such interim order made under this Act shall be served on the respondent and shall notify the respondent that unless the respondent attends on the specified date to show cause why an order should not be made in substitution for the interim order, the court may discharge the interim order and make an order in substitution therefor.

(3) At the hearing referred to in subsection (1) the court may—

(*a*) discharge the interim order;

(*b*) discharge the interim order and make an order in substitution therefor; or

(*c*) on good cause being shown, adjourn the hearing to such date and place as the court may specify; but so however that any such adjournment shall not exceed thirty days from the date of the application.

(4) Where a hearing is adjourned under subsection (3) (*c*), the court may, at the adjourned hearing, exercise either the power conferred by paragraph (*a*) or paragraph (*b*) of that subsection.

PART VII

Procedures in Respect of Applications for Orders

Date of hearing

22. Where an application is made for any order, the Clerk of the Court or the Registrar shall fix a date for the hearing of the application which shall be no more than twenty-one days from the date on which the application is filed.

Notice of proceedings

23.—(1) A copy of the application for an order, together with a notice of the date on which, and the time and place at which, the application is to be heard, shall be served on the respondent.

Schedule

(2) A notice of proceedings shall be issued in accordance with the form prescribed in Form 13 of the Schedule.

(3) Where an application for an order is filed in respect of a child or dependant, a copy of the application, together with notice of the date on which, and the time and place at which, the application is to be heard, shall as soon as practicable, be served on the parent or guardian or other person with whom the child or dependant normally resides or resides with on a regular basis.

(4) A notice of proceedings which is issued and served under this section is deemed to be a summons that is duly issued and served and compels the respondent to appear in court to answer the application as if it were a complaint.

Schedule

(5) A notice of proceedings issued under this section may be served by the applicant or his or her agent, and the court shall receive proof of such service by affidavit in accordance with the form prescribed in Form 14 of the Schedule.

(6) Where the hearing of an application for an order is adjourned because the application and the notice of proceedings have not been served on the respondent, the time and place fixed by the court for the adjourned hearing, shall be the date, time and place stated in the new notice of proceedings.

Absence of respondent

24. Where notice of proceedings has been served on the respondent in accordance with section 23 and the respondent fails to appear in person at the time fixed for the hearing, the court may—

(*a*) proceed to hear and determine the matter in the absence of the respondent; or

(*b*) where the court is satisfied, having regard to the materials before it, that it is appropriate to do so, adjourn the matter and issue a warrant for the respondent to be apprehended and brought before the court.

Absence of applicant

25. Where, on the date of the hearing of an application for an order, the respondent appears in court, but neither the applicant nor the person on whose behalf the application is made appears either in person or is represented by his legal practitioner, the court may—

(*a*) dismiss the application;

(*b*) having received a reasonable excuse for the non-appearance of the applicant or other person, adjourn the hearing upon such terms as it considers just; or

(*c*) where it is satisfied, having regard to the submissions before it, that it is appropriate for evidence to be given by affidavit, so direct, but so however that the court may, on the application of a respondent, order the attendance for cross-examination of the deponent of any such affidavit.

Explanation of orders

26. Where the court proposes to make an order or an interim order, and the respondent is before the court, the court shall explain to the respondent—

(*a*) the purpose, terms and effect of the order;

(*b*) the consequences of failing to comply with the order; and

(*c*) the means by which the order may be varied or discharged.

Service of orders

Schedule

27. Where an order or interim order is made or varied by the court, the Clerk of the court shall arrange for the order or interim order to be drawn up on the relevant form prescribed in the Schedule; and the court shall cause a copy of the order or interim order to be served on—

(*a*) the respondent;

(*b*) any other person to whom the order or interim order applies, whether or not the person is a party to the proceedings;

(*c*) the police officer in-charge of the station located nearest to the area where the respondent or applicant resides,

and if the order or interim order relates to real property, it shall also be lodged with the registrar of titles by the applicant as a *lis pendens*.

Service other than personal service

28.—(1) Where the court has not been able to serve an interim order or an order, as the case may be, upon the respondent personally, it may make an order for substituted service of the interim order or order, as the case may be.

(2) For the purpose of subsection (1) "substituted service" means—

(*a*) service by registered post to the last known address of the respondent;

(*b*) leaving the document at the last known address of the respondent;

(*c*) service by advertisement in two daily newspapers in circulation in Malaŵi, the cost of which shall be borne by the applicant; or

(*d*) such other manner as the court may direct.

Respondent to have notice

29. Subject to sections 24 and 28, a respondent shall not be bound by an order or interim order—

(*a*) where he or she was not present at the time of the making of the order; or

(*b*) where the order has not been served on him or her personally.

PART VIII

Enforcement of Orders

Breach of orders

30.—(1) Subject to subsection (2), any person—

(*a*) against whom an order has been made;

(*b*) has had notice of the order; and

(*c*) fails to comply with the order or any direction of the court in relation thereto,

is liable to a fine of up to K500,000;

(2) Where an order contains a direction of the court, pursuant to section 5 (*b*) (x), requiring the respondent, or the applicant, as the case may be, to seek counselling or therapy and the respondent, or the applicant, as the case may be, unreasonably refuses or neglects to comply with such a direction, the respondent, or the applicant, as the case may be, shall be liable to a fine of K50,000.

PART IX

Designation, Duties and Powers of Enforcement Officers

Designation of enforcement officers

31. The Minister may, by notice published in the *Gazette,* designate public officers within the Ministry responsible for gender affairs as enforcement officers for purposes of this Act.

Duties of enforcement officers

32. An enforcement officer shall have the following duties—

(*a*) to ensure that victims of domestic violence are accorded proper treatment and are provided with the necessary assistance;

(*b*) to ensure the proper administration and enforcement of the provisions of this Act;

(*c*) to advise the Minister on the effective implementation of this Act and other ancillary matters;

(*d*) to perform such other duties as are necessary for the effective carrying out of the purposes of this Act.

Powers of enforcement officers

33.—(1) Where an enforcement officer reasonably suspects or receives information that a person has been, or is likely to be, subjected to domestic violence, he or she shall, as soon as is practicable, cause—

(*a*) an investigation to be made into the matter;

(*b*) an entry to be made, at the nearest police station, in the book or such other record maintained for that purpose.

(2) Where, after investigation, the enforcement officer reasonably believes that it is necessary to take steps in order to protect the victim of domestic violence from any further acts of domestic violence, he or she shall—

(*a*) explain to the victim of domestic violence his or her right to protection against domestic violence;

(*b*) assist the victim of domestic violence to file a complaint regarding the domestic violence;

(*c*) arrange for the provision of medical assistance to the victim of domestic violence at the nearest hospital or health facility;

(*d*) arrange for alternative residence or a temporary safe place of shelter for the victim of domestic violence; and

(*e*) inform the victim of domestic violence, and where possible, the perpetrator of the domestic violence about the available alternative dispute resolution mechanisms, including counselling and reconciliation.

(3) An enforcement officer may, on behalf of a victim of domestic violence, file an application for an order under this Act and shall to that effect swear an affidavit supporting the facts on which the enforcement officer relies to make the application on behalf of the victim of domestic violence.

(4) An enforcement officer may solicit the services of any service provider to assist with any action to be taken under this Act.

PART X

Duties and Powers of Police Officers

Duties of police officers

34.—(1) Every police officer shall respond to every complaint or report alleging domestic violence whether or not the complainant is the victim.

(2) It shall be the duty of every police officer responding to a domestic violence complaint to complete a domestic violence report which shall form part of a national domestic violence register, and shall be maintained by the Commissioner of Police of each region.

Schedule

(3) A domestic violence report shall be in the form prescribed in Form 15 of the Schedule, and shall include—

(*a*) the names of the parties;

(*b*) the relationship and sex of the parties;

(*c*) the date, place and time the alleged conduct occurred;

(*d*) information relating to the history of domestic violence between the parties;

(*e*) the date and time the complaint was received; and

(*f*) the type of abuse and the weapon used, if any.

Issue of warrant

35. Where a court is satisfied, by information on oath, that—

(*a*) there are reasonable grounds to suspect that a person on premises has suffered or is in imminent danger of physical injury at the hands of another person in a situation amounting to domestic violence and needs assistance to deal with or prevent the injury; and

(*b*) a police officer has been refused permission to enter the premises for the purpose of giving assistance to the person first mentioned in paragraph (*a*),

the court may issue a warrant in writing authorizing a police officer to enter the premises specified in the warrant at any time within twenty-four hours after the issue of the warrant, and subject to any conditions specified in the warrant, to take such action as is necessary to prevent the commission or repetition of the offence or a breach of the peace or to protect life or property.

Police powers of entry without warrant

36.—(1) Where a police officer has reasonable cause to believe that a person is engaging in or attempting to engage in conduct which amounts to domestic violence and failure to act immediately may result in serious physical injury or death, he or she may, without warrant, enter the premises on which such domestic violence is, or is likely to be committed and to take such action as is necessary to prevent serious physical injury or death.

(2) Nothing in this section authorizes the entry onto premises by a police officer for the purpose of any search or the arrest of any person, otherwise than in connexion with the conduct referred to in subsection (1).

(3) Where a police officer exercises a power of entry under subsection (1), he or she shall, immediately thereafter, submit a written report to the Officer-in-Charge of Police of the area where the incident occurred, and the report shall contain the following information—

(*a*) the reasons for entering the premises without a warrant;

(*b*) the offence being committed or about to be committed; and

(*c*) the manner in which the investigation was conducted and the measures taken to ensure the protection and safety of the person at risk.

(4) The report referred to in subsection (3) shall be submitted by the Officer-in-Charge of Police to the Commissioner of Police of the region in which the incident occurred within seven days.

(5) Where a complaint is made against a police officer by a person resident in premises alleging that the officer's entry onto the premises under subsection (1) was unwarranted, the Commissioner of Police of the region in which the incident occurred shall immediately after the receipt of the complaint institute an investigation into the complaint and shall, within fourteen days of the complaint having been made, submit a report in relation thereto to the Inspector General of Police.

Duty of police officers to assist victims

37. Where a police officer has entered premises pursuant to sections 35 or 36 (1), he or she shall—

(*a*) give assistance to a person who has suffered injury;

(*b*) ensure the welfare and safety of a child, dependant or other vulnerable persons who may be on the premises; and

(*c*) prevent any further breach of the law.

Powers of arrest where order is in force

38.—(1) Where an order is in force and a police officer believes on reasonable grounds that a person has committed a breach of the order, the police officer may detain and arrest that person without a warrant for the protection of a prescribed person.

(2) No person shall be arrested under this section unless the police officer believes that the arrest of the person is reasonably necessary for the protection of a prescribed person.

(3) For the purposes of subsection (1), the police officer shall take into account—

(*a*) the seriousness of the act which constituted the alleged breach;

(*b*) the time that has elapsed since the alleged breach was committed;

(*c*) the restraining effect of other persons or circumstances on the respondent; and

(*d*) the need for a cooling-off period.

(4) Where an arrest is made under this section—

(*a*) the person arrested shall be entitled to make a telephone call to one person of his choice, other than the applicant or a prescribed person;

(*b*) it shall be the duty of the police officer who makes the arrest to ensure that the person arrested is informed, as soon as practicable after the arrest, of the right conferred by paragraph (*a*).

Existing criminal law to apply

39.—(1) Subject to subsection (2), where a person is arrested under section 35 or 36, he or she shall be charged in accordance with the relevant provisions of the criminal law for committing or attempting to commit any offence under that law, and shall be dealt with accordingly.

(2) Where an application for a protection order has been made, or where a person has been arrested pursuant to section 35 or 36 and charged with an offence, and after hearing all the evidence the court is satisfied that—

(*a*) the incident was an isolated one;

(*b*) there are circumstances which make it desirable to preserve the family unit; and

(*c*) the conduct complained of is not sufficiently grave to warrant the imposition of either the order or the penalty, as the case may be,

the court may, with the consent of the applicant or complainant, as the case may be, withhold the granting of a protection order or the imposition of any penalty as prescribed by law and require the respondent or defendant to enter into a bond of good behaviour for a period not exceeding six months.

(3) Where a bond of good behaviour has been entered into pursuant to subsection (2), the court may prescribe such additional conditions as follows—

(*a*) that the parties receive professional counselling, including family counselling;

(*b*) that the parties report to an enforcement officer at certain fixed intervals; or

(*c*) that the matter be reviewed by the court within three months.

(4) A bond of good behaviour entered into pursuant to subsection (2) shall be forfeited if the court is satisfied that—

(*a*) the respondent or defendant has continued to engage in conduct amounting to domestic violence against the complainant;

(*b*) based on a report from an enforcement officer; a police officer or such other service provider, domestic violence is likely to be perpetrated against the applicant or complainant; or

(*c*) the applicant or complainant has become fearful of the respondent or defendant to the extent that he or she is no longer willing to continue the relationship.

Refractory witnesses

40.—(1) Where direct oral evidence of a fact would be admissible in any proceedings under this Act, a document containing a statement made by the complainant which forms part of the record compiled by the police and tending to establish that fact, shall be admissible in circumstances where—

(*a*) the complainant refuses to be sworn as a witness; or

(*b*) having been sworn as a witness, the complainant gives oral evidence which is inconsistent or contradictory to the statement forming part of the police record.

(2) A statement admitted as evidence pursuant to subsection (1), shall be treated by the court as a statutory declaration made under the Oaths, Affirmations and Declarations Act, and the court may draw any reasonable inference from the form or content of that statement and determine the weight, if any, to be attached to the evidence of any fact stated therein. Cap. 4:07

Granting of bail Cap. 8:05

41.—(1) Notwithstanding the Bail (Guidelines) Act, where the Court is required to determine whether to grant bail in respect of an offence under this Act, the Court shall consider—

(*a*) the need to protect the applicant from domestic violence;

(*b*) the welfare of a child where the respondent or victim of the alleged offence has custody of that child;

(*c*) the welfare of any child being a member of the household; and

(*d*) any hardship that may be caused to the respondent or other members of the family if bail is not granted.

(2) Notwithstanding the Bail (Guidelines) Act, the court may, in granting bail, order that the recognizance be subject to such of the following conditions as the court considers appropriate— Cap. 8:05

(*a*) that the respondent shall not harass or molest or cause another person to harass or molest the victim of the alleged offence;

(*b*) that the respondent shall not be on the premises in which the victim resides, works or carries on business;

(*c*) that the respondent shall not be in a locality in which are situated the premises in which the victim resides or works; and

(*d*) where the respondent continues to reside with the victim, that the respondent shall not enter or remain in the place or residence while under the influence of alcohol or drugs.

(3) Where a police officer believes on reasonable grounds that a person who has been admitted to bail subject to one or more conditions referred to in subsection (2), has failed to comply with a condition of the recognizance, the police officer may, notwithstanding anything in any other written law, arrest the person without a warrant.

PART XI
Miscellaneous

Duty to report domestic violence

42. Any person who—

(*a*) witnesses the commission of domestic violence; or

(*b*) has reason to believe that an act of domestic violence has been, is being or is likely to be committed,

may report to the police, or give information to an enforcement officer, who shall then report the matter to the police.

Service providers to assist

43. Pursuant to section 33 (4), any service provider may, upon being aware of an incident of domestic violence or soon thereafter as is reasonably practicable—

(*a*) render such assistance to the victim of domestic violence as may be required in the circumstances including—

(i) making arrangements for the victim of domestic violence to find suitable temporary shelter and to obtain medical treatment, if so required;

(ii) ensuring that the victim of domestic violence has access to information about the range of service providers and the kind of support that may be provided by any service provider;

(*b*) inform the victim of domestic violence of the right to the available legal remedies, including the right to apply for an order under this Act.

Protection of authorized persons

44. No civil, criminal, administrative or disciplinary proceedings shall be taken against a police officer, an enforcement officer, a service provider or any person authorized to perform any duty under this Act, in relation to any information given or any action done in good faith pursuant to this Act.

Jurisdiction

45. Any court within the area in which—

(*a*) the applicant or the respondent ordinarily resides, carries on business or is employed; or

(*b*) the domestic violence occurs,

has jurisdiction to grant an occupation order, a protection order, a tenancy order or any interim order, as the case may be, under this Act.

Single act of condonation

46. A court shall not refuse to grant an order under this Act merely on the grounds only that—

(*a*) a single act of domestic violence has been committed by the respondent; or

(*b*) the applicant condoned acts of domestic violence committed by the respondent.

Conduct of proceedings

47.—(1) No person shall be present during the hearing of any proceedings under this Act (other than criminal proceedings) except—

(*a*) officers of the court;

(*b*) parties to the proceedings and their legal counsel;

(*c*) witnesses;

(*d*) any other person permitted by the presiding Judge or Magistrate to be present.

(2) A witness shall leave the courtroom if asked to do so by the presiding Judge or Magistrate.

(3) Nothing in this section shall limit any other power of the court to hear proceedings in camera or to exclude any person from the court.

Evidence

48. In any proceedings under this Act (other than criminal proceedings) including proceedings by way of appeal, the court may receive such evidence as it thinks fit whether it is, or is not otherwise admissible in a court of law or not.

Standard of proof

49. Every question of fact arising in any proceedings under this Act (other than criminal proceedings) shall be decided on a balance of probabilities.

Restriction of publication of report of proceedings

50.—(1) Subject to subsection (4), no person shall publish any report of proceedings under this Act, other than a report of criminal proceedings, except with the leave of the court which heard the proceedings.

(2) Any person who contravenes or fails to comply with subsection (1) commits an offence and is liable to a fine of K1,000,000.

(3) Nothing in this section limits—

(*a*) the provisions of any other written law relating to the prohibition or regulation of the publication of reports or particulars relating to judicial proceedings; or

(*b*) the power of the court to punish any contempt of court.

(4) Nothing in this section applies in respect of—

(*a*) the publication of a *bona fide* law report or any *bona fide* research relating to proceedings under this Act which does not mention the names or reveal the identities of the parties to the proceedings or any witnesses at such proceedings;

(*b*) the publication of any report in any publication that is of a *bona fide* professional or technical nature or is intended for circulation among members of the legal or medical professions, officers of the Public Service, psychologists, marriage counsellors, enforcement officers or any service provider carrying out functions pursuant to this Act; or

(*c*) statistical information relating to proceedings under this Act.

Order by consent

51. In any proceedings under this Act a court may make any consent order by the consent of all the parties to such proceedings.

Counselling

52. The court may, on making an order under this Act, recommend either or both parties to participate in counselling of such nature as the court may specify, including counselling by marriage advocate relations, religious leaders and chiefs.

Appeals

53.—(1) A person aggrieved by—

(*a*) the making of an order by the court; or

(*b*) the refusal of the court to make an order, may, within twenty-eight days after the decision of the court, appeal against the decision of the court.

(2) Except where the court which makes an order under this Act otherwise directs, the operation of such order shall not be suspended by reason only of an appeal having been lodged under this section, and every such order may be enforced in the same manner and in all respects as if no appeal under this section were pending.

Protection of mortgage

54.—(1) The rights conferred on any person in respect of any property by an order made under this Act shall be subject to the rights of any other person entitled to the benefit of any mortgage, security, charge or encumbrance affecting the property if such mortgage, security, charge or encumbrance was registered before the order was registered or if the rights of that other person entitled to that benefit arise under an instrument executed before the date of the making of the order.

(2) Notwithstanding anything in any written law or in any instrument, no money payable under any mortgage, security, charge or encumbrance shall be called up or become due by reason of the making of an order under this Act.

55. The Chief Justice may make rules for the purpose of regulating the practice and procedure of the court in proceedings under this Act, and providing for such matters as are necessary for giving full effect to the provisions of this Act and for the due administration thereof. Rules of court

56. The Minister may make regulations for the effective carrying out of the provisions of this Act, and without prejudice to the generality of the foregoing, such regulations may provide for— Regulations

(*a*) the designation of enforcement officers;

(*b*) the approval of services or programmes for the purposes of this Act;

(*c*) the approval of persons or organizations that could provide services or programmes under this Act;

(*d*) the prescribing of qualifications and experience for persons who may provide services;

(*e*) the collection of data on incidences and causes of domestic violence for purposes of policy reform and programming;

(*f*) additions to, amendment or substitution of any forms; and

(*g*) any matter required to be prescribed under this Act.

SCHEDULE

Form 1

Application for Protection Order/Interim Protection Order

under ss. 5 *and* 6

In the ..... Court at .....

No. ..... of 20 .....

Between

A. B. Applicant

and

C. D. Respondent

I, ...

(*Name of Applicant*)

of .....

(*Address*)

hereby apply under section 5/6 of the Prevention of Domestic Violence Act for a protection order/interim protection order to be made by the court

against .....

(*Name of Respondent*)

who is .....

(*Specify relationship to named Respondent*)

and who resides at .....

(*Specify address of Respondent*)

in respect of the following conduct.

(*Specify dates, times, place and details of alleged conduct*) .....

Applicant

Dated this ..... day of ..... 20 .....

FORM 2

PROTECTION ORDER/INTERIM PROTECTION ORDER

under ss. 5 *and* 6

In the ..... Court at .....

No. ..... of 20 .....

BETWEEN

A. B. APPLICANT

and

C. D. RESPONDENT

The Court having heard an application made by .....

(*Name of Applicant*)

in respect of the conduct or threatened conduct of .....

(*Name of Respondent*)

towards .....

(*Name of person to be protected*)

NOW THIS COURT ORDERS that for the period from the .....
day of ....., to the ..... day of .....,.....

YOU .....

(*Name of Respondent*)

1. Shall not engage in the following conduct: .....

(*Specify conduct*)

2. Shall not engage in any conduct that constitutes an offence under this Act.
3. Shall comply with the following prohibitions and conditions:

   (*Specify prohibitions and conditions imposed and any period or periods for which they may be imposed if different from the period of the Protection/Interim Protection Order*).

If you the said ..... fail to comply with any

(*Name of Respondent*)

of the terms of this Order you shall be liable to imprisonment and/or a fine pursuant to section 31 of the Act.

.....

Registrar/Magistrate

Dated this ..... day of ..... 20 .....

FORM 3

APPLICATION FOR DISCHARGE OF PROTECTION ORDER OR INTERIM PROTECTION ORDER

under s. 10

In the ..... Court at .....

No. ..... of 20 .....

BETWEEN

A. B. APPLICANT

and

C. D. RESPONDENT

I, ... hereby apply under section 10

(*Name of Applicant*)

of the Prevention of Domestic Violence Act for discharge of the Protection Order made against .....

(*Name of Person against whom the Order was made*)

on the day of ....., by the ..... Court (*a copy* of which is attached to the said application) in respect of certain conduct or threatened conduct towards .....

(*Name of person who is protected by an Order*)

I ask for a discharge of the Order on the following grounds: .....
.....

(*specify grounds and details*)

Dated this ..... day of ..... 20 .....

.....

Applicant

FORM 4

ORDER DISCHARGING PROTECTION ORDER/INTERIM PROTECTION ORDER

under s. 10

In the ..... Court at .....

No. ..... of 20 .....

BETWEEN

A. B. APPLICANT

and

C. D. RESPONDENT

The Court, having heard an application made under section 5/6 of the Prevention of Domestic Violence Act by .....

(*Name of Applicant*)

in respect of the conduct or threatened conduct of

..... towards ..... and the Court

(*Name of Respondent*) (*Name of person protected by the Order*)

having on the ..... day of ..... made an Order, a copy of which is attached, prohibiting the Respondent from engaging in the conduct specified therein.

NOW the Court on the application of ..... for a discharge of the Order and being satisfied that the Order should be discharged, does this day Order that the Protection Order/Interim Protection Order be discharged.

Dated this ..... day of ..... 20 .....

.....

Registrar/Magistrate

FORM 5

APPLICATION FOR OCCUPATION ORDER/INTERIM OCCUPATION ORDER

under ss. 11 *and* 12

In the ..... Court at .....

No. ..... of 20 .....

BETWEEN

A. B. APPLICANT

and

C. D. RESPONDENT

I, ...

(*Name of Applicant*)

of .....

(*Address*)

hereby apply under section 11/12 of the Prevention of Domestic Violence Act for an Occupation Order/Interim Occupation Order to be made by the

Court against .....

(*Name of Respondent*)

who is .....

(*Specify relationship to named Respondent*)

and who resides at .....

(*Specify address of Respondent*)

in respect of the following conduct: .....

.....

(*Specify dates, times, place and details of alleged conduct*)

Dated this ..... day of ..... 20 .....

.....

Applicant

FORM 6

OCCUPATION ORDER/INTERIM OCCUPATION ORDER

under ss. 11 *and* 12

In the ..... Court at .....

No. ..... of 20 .....

BETWEEN

A. B. APPLICANT

and

C. D. RESPONDENT

The Court having heard an application made under section 11/12 of the Prevention of Domestic Violence Act by .....

(*Name of Applicant*)

in respect of the conduct or threatened conduct of .....

(*Name of Respondent*)

towards .....

(*Name of person to be protected*)

NOW this Court Orders that, for the period from the ..... day of ..... to the ..... day of ..... you .....

(*Name of Respondent*)

1. Shall not engage in the following conduct: .....

(*specify conduct*)

2. Shall not engage in conduct that constitutes a domestic violence offence;

3. Shall comply with the following prohibitions and conditions: .....\

.....

(*specify prohibitions and conditions and any period or periods for which they may be imposed*)

If you, the said ..... fail to comply with any of

(*Name of Respondent*)

the terms of this Order you shall be liable to imprisonment and/or a fine pursuant to section 30 of the Act.

Dated this ..... day of ..... 20 .....

.....

Registrar/Magistrate

FORM 7

APPLICATION FOR VARIATION OR DISCHARGE OF OCCUPATION ORDER/INTERIM OCCUPATION ORDER

under s. 14

In the ..... Court at .....

No. ..... of 20 .....

BETWEEN

A. B. APPLICANT

and

C. D. RESPONDENT

I, ...

(*Name of Applicant*)

hereby apply under section 14 of the Prevention of Domestic Violence Act, for a variation/discharge of the Order made against .....

.....

(*Name of person against whom the Order was made*)

on ..... by the ..... Court

(*a copy of which is attached to the said application*) in respect of certain conduct or threatened conduct towards .....

.....

(*Name of person who is protected by Order*)

There have been no previous proceedings in any Court in respect of the said Order and I now ask for a discharge or variation of that order to be made.

(*Specify details of variation/grounds for discharge*)

Dated this ..... day of ..... 20 .....

.....

Applicant

FORM 8

VARIATION OR DISCHARGE INTERIM OCCUPATION ORDER

under s. 14

In the ..... Court at .....

No. ..... of 20 .....

BETWEEN

A. B. APPLICANT

and

C. D. RESPONDENT

The Court, having heard an application made under section 14 of the Prevention of Domestic Violence Act, by .....
.....

(*Name of Applicant*)

in respect of the conduct or threatened conduct of .....
.....

(*Name of Respondent*)

towards ..... and the Court

(*Name of person to be protected*)

having on the ..... day of ..... made an Order, a copy of which is

(*Date of original order*)

attached, prohibiting the Respondent from engaging in the conduct specified therein: .....

Now the Court on the application of ..... this day orders

(*Name of Applicant*)

that the Occupation Order or (Interim Occupation Order) be: .....

1. Discharged .....

(*Specify effective date of discharge*)

2. Varied as follows:.....

(*Specify details of variation*)

Dated this ..... day of ..... 20 .....

.....

Registrar/Magistrate

FORM 9

APPLICATION FOR TENANCY ORDER/INTERIM TENANCY ORDER

under ss. 15 *and* 16

In the ..... Court at .....

No. ..... of 20 .....

BETWEEN

A. B. APPLICANT

and

C. D. RESPONDENT

I, ...

(*Name of Applicant*)

of .....

(*Address*)

.....

hereby apply under section 15/16 of the Prevention of Domestic Violence Act for a Tenancy Order/Interim Tenancy Order to be made by the Court against

.....

(*Name of Respondent*)

who is .....

(*Specify relationship to named Respondent*)

and who resides at .....

(*Specify address of Respondent*)

in respect of the following conduct: .....

.....

(*specify dates, time, place and details of alleged conduct*)

Dated this ..... day of ..... 20 .....

.....

Applicant

FORM 10

TENANCY ORDER/INTERIM TENANCY ORDER

under ss. 15 *and* 16

In the ..... Court at .....

No. ..... of 20 .....

BETWEEN

A. B. APPLICANT

and

C. D. RESPONDENT

The Court having heard an application made under section 15 (1)/16 (1) of the Prevention of Domestic Violence Act, by .....

(*Name of Applicant*)

in respect of the conduct or threatened conduct of .....

(*Name of Respondent*)

towards .....

(*Name of person to be protected*)

Now This Court ORDERS, that for the period from the ..... day of ..... to the ..... day of ..... you .....

(*Name of Respondent*)

1. Shall not engage in the following conduct: .....

.....

(*specify conduct*)

2. Shall not engage in any conduct that constitutes an offence under this Act;
3. Shall comply with the following prohibitions and conditions.

.....

(*Specify prohibitions and conditions and any period or periods for which they may be imposed*)

Dated this ..... day of ..... 20 .....

.....

Registrar/Magistrate

FORM 11

APPLICATION TO DISCHARGE TENANCY ORDER AND REVESTING TENANCY

under s. 18

In the ..... Court at .....

No. ..... of 20 .....

BETWEEN

A. B. APPLICANT

and

C. D. RESPONDENT

I, ...

(*Name of Applicant*)

hereby apply under section 18 of the Prevention of Domestic Violence Act, for a discharge of the order made against .....

.....

(*Name of person against whom the Order was made*)

on the ..... day of ..... by the Court (*a copy of* which is attached to the said application) in respect of certain conduct or threatened conduct towards .....

.....

(*Name of person who is protected by Order*)

There has been no previous proceedings in any Court in respect of the said order and I now ask for a discharge of that order to be made.

Dated this ..... day of ..... 20 .....

.....

Applicant

FORM 12

ORDER DISCHARGING TENANCY ORDER AND REVESTING TENANCY

under s. 18

In the ..... Court at .....

No. ..... of 20 .....

BETWEEN

A. B. APPLICANT

and

C. D. RESPONDENT

The Court, having heard an application made under section 18 of the Prevention of Domestic Violence Act, by .....

(*Name of Applicant*)

in respect of the conduct or threatened conduct of .....

.....

(*Name of Respondent*)

towards ..... and having on

(*Name of person to be protected*)

the ..... day of ..... made an order, a copy of which is attached,

(*Date of original order*)

prohibiting the respondent from engaging in the conduct specified therein: .....

.....

Now the Court on the application of ..... this day orders

(*Name of Application*)

that the Tenancy Order be discharged and revested in .....

with effect from .....

Dated this ..... day of ..... 20 .....

.....

Registrar/Magistrate

FORM 13

NOTICE OF PROCEEDINGS

under s. 23

In the ..... Court at .....

No. ..... of 20 .....

BETWEEN

A. B. APPLICANT

and

C. D. RESPONDENT

TO THE RESPONDENT

An application under section 23 of the Prevention of Domestic Violence Act, for a Protection Order/Occupation Order/Tenancy Order has been made by .....
.....

(*Name of Applicant*)

against you.

A copy of the application is attached. The application has been set down for hearing on the ..... day of ....., at ..... a.m./p.m.

(*time)*

at .....

(*place*)

If you do not appear in person at the hearing of the Application, the Court may—

(*a*) deal with the application in your absence; or

(*b*) issue a warrant for your arrest and to be brought before the Court.

Dated this ..... day of ..... 20 .....

.....

Clerk of Court/Registrar

FORM 14

AFFIDAVIT FOR USE IN PROVING SERVICE OF PROCESS

under s. 23

In the ..... Court at .....

No. ..... of 20 .....

BETWEEN

A. B. APPLICANT

and

C. D. RESPONDENT

Return of service of process in respect of Domestic Violence Offence(*s*) for the

..... Court.

Name of Respondent	Name of Applicant	Document Served	Date of Service	Place of Service	Mode of Service

I do swear that the above Return of Service is true and in accordance with the facts of such Service.

.....

(*Deponent*)

Sworn to by me ..... the above-named Deponent

(*Name and rank* (*where applicable*) *of Deponent*)

Dated this ..... day of ..... 20 .....

.....

Registrar/Magistrate

FORM 15

DOMESTIC VIOLENCE POLICE REPORT

under s. 34

In the ..... Court at .....

STATION ..... DIVISION ..... Reference No .....

Complaint made by .....

Surname *First Name*

Address .....

Relationship to Victim or Alleged Offender .....

Telephone No.: .....

Mode of Report .....

(*Telephone, Personal, Referred (by whom), etc.*)

Date ..... Time ..... Diary Reference .....

Recorded by: (*Number/Rank/Name*) .....

Name of Victim .....

Surname *First Name*

..... Religion .....

Address .....

Telephone No.: ..... Marital Status .....Relationship to Offender .....

Sex ..... Age ..... Occupation .....

Address of Employment .....

Name of Alleged Offender .....

Surname *First Name*

..... Religion .....

Address .....

Sex ..... Age .....Marital Status ..... Telephone No.: .....

Occupation ..... Address of Employment .....

Name of Witness .....

Address .....

Relationship to Victim/Alleged Offender .....

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CHAPTER 7:06

TRAFFICKING IN PERSONS

An Act to make provision for the prevention and elimination of trafficking in persons; to provide for the establishment of the National Coordination Committee against Trafficking in Persons for the coordination and management of matters related to trafficking in persons; and to provide for matters incidental thereto and connected therewith

3 of 2015
G.N. 39/2015

[1st November, 2015]

PART I

PRELIMINARY

1. This Act may be cited as the Trafficking in Persons Act.

Short title

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

Interpretation

"AIDS" means Acquired Immune Deficiency Syndrome;

"child" means a person below the age of eighteen years;

"Committee" means the National Coordination Committee against Trafficking in Persons established under section 4;

"exploitation" includes—

(*a*) forced labour or any extraction of work or services from a person;

(*b*) the forced participation of a person in all forms of commercial sexual activity such as prostitution, sexually-explicit performance, or in the production of pornography;

(*c*) the removal of body parts or the extraction of organs or tissue; or

(*d*) any other practice in terms of which it cannot be said that the person participated willingly;

"Fund" means the Anti-Trafficking Fund established under section 51;

"HIV" means the Human Immuno-deficiency Virus which causes AIDS;

"organized criminal group" means a group of two or more persons, existing for a period of time and acting in concert with the aim of committing an offence under this Act;

"relative" means—

(*a*) a parent, step parent, foster parent, grand parent, sibling, guardian or any person who has legal custody over the child or to whom the child is a dependent; or

(*b*) at the time the offence under the Act is committed, a person who is living with the child as a member of that person's family or was under the person's family care and protection;

"substantial health risk" means—

(*a*) infection with—

(i) HIV;

(ii) a sexually transmitted disease; or

(iii) any other highly contagious or infectious disease;

(*b*) any medical condition, occasioned as a result of the exploitation;

"trafficked person" means a person or child who has suffered harm, including mental and physical injury, emotional suffering, economic loss or substantial impairment of the persons fundamental human rights through acts that contravene sections 14 and 15;

"trafficking in persons" means recruiting, transporting, transferring, harbouring, receiving or obtaining a person, within or beyond the territory of Malaŵi, through—

(*a*) threats or use of force or coercion;

(*b*) abduction;

(*c*) fraud or deception;

(*d*) abuse or threats of abuse of power or position;

(*e*) abuse or threats of abuse of position of vulnerability;

(*f*) abuse or threats of abuse of the law or legal process; or

(*g*) giving or receiving of payments to obtain consent of a person having control of the trafficked person, for the purpose of exploitation of that person.

Scope of application

3.—(1) This Act shall apply to a natural or legal person where the offence—

(*a*) is committed wholly or partly within Malaŵi;

(*b*) is committed outside Malaŵi and the trafficked person is a citizen of Malaŵi;

(*c*) is committed outside Malaŵi by a citizen of Malaŵi or a person who is resident in Malaŵi;

(*d*) committed outside Malaŵi with a view to the commission of an offence under this Act, within Malaŵi; or

(*e*) involves an organized criminal group.

(2) Where a person has already been convicted or acquitted of an offence under this Act in a foreign jurisdiction, he shall not be prosecuted again for the same offence in Malaŵi, unless the proceedings of the court in the foreign jurisdiction—

(*a*) were for the purpose of shielding the person concerned from criminal proceedings outside in a foreign jurisdiction; or

(*b*) were not conducted independently or impartially in accordance with norms of due process recognized by international law and were conducted in a manner which, in the circumstances, was inconsistent with an intent to bring the person concerned to justice.

PART II

Administration

National Coordination Committee against Trafficking in Persons

4.—(1) There shall be a committee to be known as the National Coordination Committee against Trafficking in Persons for the proper administration of this Act.

(2) The Committee shall have its secretariat within the Ministry responsible for home affairs or any other ministry, as the President may direct.

Composition of the Committee

5.—(1) The Committee shall consist of—

(*a*) the Secretary responsible for Home Affairs;

(*b*) the Secretary responsible for Justice;

(*c*) the Secretary responsible for Gender;

(*d*) the Inspector General of Police;

(*e*) the Chief Immigration Officer;

(*f*) the Executive Director of the Human Rights Commission;

(*g*) a representative of the Faith-Based Organizations, appointed by the Minister; and

(*h*) a representative of non-governmental organizations dealing with issues of trafficking in persons, appointed by the Minister.

(2) The Minister shall publish in the *Gazette* names of all members of the Committee as first constituted, and every subsequent change in the membership.

(3) A member shall not be in the employment of the Committee nor serve on a full time basis.

(4) A person shall not be qualified for appointment by the Minister as a member of the Committee if he—

(*a*) holds a political office; or

(*b*) with the exception of the members listed in section 5 (1) (*a*) to (*e*), is an employee in the public service.

Chairperson of the Committee

6. The Secretary responsible for Home Affairs shall be the Chairperson of the Committee.

Tenure of office

7.—(1) Save for the members appointed under section 5 (1) (*a*) to (*e*), a member of the Committee shall, unless he resigns, hold office for a period of three years from the date of appointment and may be eligible for re-appointment once.

(2) The office of a member appointed under section 5 (1) (*g*) and (*h*) of the Committee shall become vacant in the event where the member—

(*a*) dies;

(*b*) is adjudged bankrupt;

(*c*) is sentenced, for an offence against any written law, to any term of imprisonment without the option of a fine;

(*d*) fails, without the permission of the Chairperson, to attend three successive meetings of the Committee of which he has had notice;

(*e*) becomes incapacitated by reason of physical or mental disability; or

(*f*) resigns in accordance with subsection (4).

(3) A member other than any of those appointed under section 5 (1) (*a*) to (*e*), may at any time resign his office by giving one month written notice to the Chairperson, who shall forward that resignation to the Minister.

(4) A vacancy in the membership of the Committee shall be filled by the appointment of a person in accordance with section 5, and the person appointed to fill the vacancy shall serve for the remainder of the relevant term of office, provided that a person shall not be appointed to fill a vacancy if that remaining period of a term is less than six months.

Functions and powers of the Committee

8.—(1) The functions of the Committee shall be to—

(*a*) coordinate and oversee investigations and receive reports from enforcement officers on the investigation and prosecution of offences under this Act;

(*b*) ensure that trafficked persons are treated with dignity and respect of their rights during interviews and throughout the investigation and prosecution process;

(*c*) ensure that all screening interviews of trafficked persons are conducted in accordance with the Guiding Principles for Conducting Screening Interviews for the Identification of Trafficked Persons contained in the First Schedule and Second Schedule hereto;

First Schedule
Second Schedule

(*d*) supervise protection officers in the provision of care, assistance, support and protection of trafficked persons;

(*e*) initiate education and awareness programmes on causes and consequences of trafficking in persons;

(*f*) formulate and oversee implementation activities aimed at the suppression of trafficking in persons;

(*g*) formulate policy, programmes and strategies to prevent and suppress trafficking in persons;

(*h*) make recommendations to the Minister on all aspects of prevention and suppression of trafficking in persons;

(*i*) coordinate and oversee training of relevant law enforcement and judicial officers;

(*j*) liaise with Government agencies and non-governmental organizations on rehabilitation and reintegration of trafficked persons;

(*k*) manage the Anti-Trafficking Fund and prepare guidelines for disbursements from the Fund;

(*l*) coordinate research on international, regional and national developments and standards on trafficking in persons;

(*m*) coordinate and oversee data collection; and

(*n*) generally coordinate and monitor the implementation of the Act.

(2) The Committee shall have powers as may be necessary for, or in connexion with, or incidental to the performance of its functions under this Act on matters of or related to trafficking in persons.

Duties of the Committee

9. The Committee shall ensure that a trafficked person—

(*a*) is not subjected to any discriminatory practice;

(*b*) has access to adequate health care during their residence at a shelter or any other place;

(*c*) where applicable, has access to his diplomatic mission within Malaŵi on any matter;

(*d*) has the right, facilitated by the State, to return to his country of origin;

(*e*) is granted a temporary residence permit pending completion of any matter before a court or tribunal in Malaŵi;

(*f*) has his or her full rights respected and observed during investigation, gathering and interpretation of evidence;

(*g*) is kept separately from adults, if the trafficked person is a child; and

(*h*) is protected from any harm during residence at a shelter.

Meetings of the Committee

10.—(1) The Committee shall hold meetings, at least once every three months, at a place and time to be determined by the Chairperson.

(2) The *quorum* of a meeting of the Committee shall be constituted by at least half of its members.

(3) The Chairperson shall convene and preside over meetings of the Committee.

(4) In the absence of the Chairperson, the membership of the Committee shall elect a member present, to preside over the meeting.

(5) At a meeting of the Committee—

(*a*) a matter for the decision of the Committee shall be decided by a majority of members present and voting; and

(*b*) the Chairperson or a person elected to act as such in the event of equality of votes, shall have a deliberative vote in addition to a casting vote.

Allowances on Committee

11. A member of the Committee shall be paid such allowances or other benefits as the Minister may approve, from time to time.

Procedure

12. The Committee shall determine the procedure for its meetings.

Minutes of meetings

13. The Committee shall cause to be kept minutes of proceedings of its meetings.

PART III

Offences

Trafficking in persons

14.—(1) A person who trafficks another person commits the offence termed trafficking in persons and shall, upon conviction, be liable to imprisonment for fourteen years without the option of a fine.

(2) The consent of a trafficked person is immaterial, where any of the means set out in section 2 have been used.

Trafficking in children

15.—(1) Notwithstanding section 14, a person who trafficks a child commits an offence termed trafficking in children and shall, upon conviction, be liable to imprisonment for twenty-one years without the option of a fine.

(2) It is immaterial that at the time of commission of trafficking in children, the means set out in section 2, with respect to trafficking in persons were not used or that the child consented to the commission of the offence.

Aggravated form of trafficking

16.—(1) An offence of trafficking in persons or trafficking in children is deemed to be aggravated if committed in any of the following circumstances—

(*a*) the judicial processes of adoption, fosterage, guardianship or wardship have been used to recruit a child;

(*b*) the accused is a relative of the trafficked person;

(*c*) the trafficked person is of unsound mind;

(*d*) the offence is committed by an organized criminal group;

(*e*) the offence is committed by a public servant, a religious leader, a traditional leader or any person acting in an official capacity in the exercise of his duties;

(*f*) the offence is committed by a person purporting to act, in the exercise of an official duty where such official acts in abuse of authority or moral ascendancy;

(*g*) the offence is committed for the purpose of removing body parts or extracting, tissue or organs; or

(*h*) as a consequence of the commission of the offence the trafficked person—

(i) dies;

(ii) develops a medical condition;

(iii) becomes pregnant or is forced to terminate a pregnancy;

(iv) suffers mutilation, disfigurement or permanent bodily injury; or

(v) is exposed to any other substantial health risk.

(2) A person who commits the offence of trafficking in persons or trafficking in children in any of the circumstances in subsection (1), shall, upon conviction, be liable to imprisonment for life without the option of a fine.

Trafficking in persons an offence involving dishonesty or moral turpitude

17. The offence of trafficking in persons or trafficking in children constitutes an offence of dishonesty or moral turpitude for the purposes of sections 51 and 80 of the Constitution.

Prohibition against working with children

18. A person convicted of the offence of trafficking in persons or trafficking in children is ineligible to work in any capacity with children for a period of seven years following their conviction.

Court to order closure of an establishment

19. Where an offence of trafficking in persons or trafficking in children is committed by a person acting or purporting to act in an official capacity for a non-governmental organization or other establishment or body, the court may, upon conviction, order the closure and de-registration of the non-governmental organization, establishment or body under which the person acted.

20. A person who intentionally benefits from the exploitation of a trafficked person or causes or enables another person to benefit from exploitation of a trafficked person, commits an offence and shall, upon conviction, be liable to imprisonment for five years.

Benefiting from exploitation of trafficked persons

21.—(1) Where an offence under this Act is committed, each of the following persons is deemed to have taken part in the commission of the offence and may be charged and convicted with the actual commission of the offence—

Attempts, aiding or abetting to commit an offence

(*a*) a person who attempts to do the act or to make the omission which constitutes the offence;

(*b*) a person who does or omits to do any act for the purpose of aiding or enabling another person to commit the offences;

(*c*) a person who aids or abets another person to commit the offence;

(*d*) a person who counsels or procures any other person to commit the offence; or

(*e*) a person who being an employee or agent, acted in employment, or under instructions.

(2) A conviction of an offence pursuant to subsection (1) entails the same consequences in all respects as a conviction of committing the offence.

(3) Any person who procures another to do or omit to do any act of such nature that if he had himself done the act or made the omission, the act or omission would have constituted an offence on his part, commits an offence of the same kind, and is liable to the same punishment, as if he had himself done the act or made the omission and he may be charged with himself doing the act or making the omission.

22.—(1) A person who knows, suspects or has reason to suspect that an offence under this Act is being, has been or is about to be committed, shall as soon as is practicable, report this to the Police.

Duty to report

(2) A person who contrary to subsection (1), fails to report to the Police, commits an offence and shall, upon conviction, be liable to a fine of K500,000 and to imprisonment for one year.

(3) The Officer-in-Charge of the Police Station to which a report has been made shall ensure that the identity of the informant is not revealed.

23. Where an offence under this Act has been committed by a legal person, any person who at the time of the commission of the

Liability of legal person

offence was in any manner responsible for the management of any affairs of the legal person shall be liable for the offence, unless he or she proves that—

(*a*) the offence was committed without his knowledge, consent or connivance; or

(*b*) he exercised all diligence to prevent the commission of the offence under the circumstances.

Carrier liability

24.—(1) An international transportation provider shall verify that each passenger to any destination into or outside Malaŵi possesses the necessary travel documents, including a passport and a visa, to enter the destination country and any transit countries.

(2) Subsection (1) shall apply to the international transportation provider, his agents, and any person selling or issuing tickets, boarding passes or similar documents allowing passengers to travel, and to persons collecting or checking such tickets, boarding passes or similar documents prior to or subsequent to boarding.

(3) Any person referred to in subsection (2) who fails to comply with subsection (1) commits an offence and shall be liable to a fine of K5,000,000 and to imprisonment for five years.

(4) Where an offence is committed under this section, the international transportation provider shall bear the costs of returning the person to his initial point of embarkation and shall be liable to pay the person's costs associated with providing accommodation and meals for the person and any accompanying children.

(5) Where an international transportation provider knowingly transports a trafficked person into or from Malaŵi, such international transportation provider shall be liable for costs associated with providing accommodation and meals for the trafficked person and any accompanying children for the duration of the person's stay outside or inside Malaŵi.

(6) An international transportation provider shall not commit the offence under subsection (1) if the—

(*a*) international transportation provider had reasonable grounds to believe that the documents which the person possess are the travel documents required for lawful entry of that person into the receiving country;

(*b*) person possessed the travel documents required for lawful entry into the receiving country when that person boarded, or

last boarded, the means of transport to travel to the receiving country; or

(*c*) entry into the receiving country occurred only because of illness of or injury to a person on board, stress of weather or other circumstances beyond the control of the international transportation provider.

Other acts that promote or facilitate trafficking

25. A person who, for the purpose of the promotion of trafficking in persons or trafficking in children, intentionally—

(*a*) leases or subleases, uses or allows to be used any house, building or establishment;

(*b*) produces, prints, broadcasts or distributes by any means including the use of information technology or the internet, any brochure, flyer or any other communication material that promotes trafficking in persons;

(*c*) assists in misrepresentation or fraud for the purposes of procuring or facilitating the acquisition of necessary exit documents from the Department of Immigration for the purposes of trafficking in persons;

(*d*) facilitates exit from or entry into Malaŵi, a person who is in possession of unissued, tampered or fraudulent travel documents for the purpose of trafficking in persons;

(*e*) confiscates, withholds or destroys the passport, travelling documents or personal documents which belong to a trafficked person for the purposes of furthering trafficking in persons; or

(*f*) prevents a trafficked person from leaving Malaŵi or seeking redress from appropriate law enforcement authorities,

commits an offence and shall be liable, upon conviction, to imprisonment for fourteen years without the option of a fine.

PART IV

Investigation and Criminal Proceedings

Designation of enforcement officers

26. The Minister may, by notice published in the *Gazette*, designate the following persons as enforcement officers, for the purposes of this Act—

(*a*) a police officer;

(*b*) an immigration officer; or

(*c*) any other public officer as the Minister may deem fit.

Powers of enforcement officer Cap. 8:01

27. Notwithstanding the provisions of the Criminal Procedure and Evidence Code, an enforcement officer—

(*a*) suspects or receives information, that any offence under this Act has been committed or is about to be committed; and

(*b*) in his opinion there is a need for urgent action to be taken, and that any delay in doing so would occasion a miscarriage of justice in the circumstances of the matter, or for the purposes of this Act, the enforcement officer shall have power to—

(i) institute and carry out an investigation;

(ii) arrest any suspect;

(iii) interrogate any suspect;

(iv) enter premises and search and seize any item under section 33;

(v) interview any person suspected of being trafficked in accordance with the Guiding Principles for Conducting Screening Interviews for the Identification of Trafficked Persons contained in the First Schedule hereto; and

First Schedule

(vi) certify a person as a trafficked person if such person provides satisfactory information to that effect during the screening interview, having duly completed Form A contained in the Second Schedule hereto.

Second Schedule

Duties of enforcement officer

28. An enforcement officer shall—

(*a*) record all cases of offences under this Act in accordance with section 31;

(*b*) refer all trafficked persons to a protection officer for screening as soon as is practicably possible, but in any case no later than twenty-four hours after such a person is brought to the attention of the enforcement officer;

(*c*) ensure the proper administration and enforcement of the provisions of this Act;

(*d*) submit quarterly reports of all cases of offences in this Act within ten days of the last day of each preceding quarter to the Chairperson of the Committee;

(*e*) advise the Committee on the effective implementation of this Act and other ancillary matters;

(*f*) refer the cases for further investigation or prosecution as necessary; and

(*g*) perform such other duties as are necessary for the effective carrying out of the purposes of this Act.

Identification of enforcement officers

29. An enforcement officer, in the exercise of any powers or in the discharge of any functions under this Act shall—

(*a*) declare his designation as an enforcement officer; and

(*b*) produce evidence of his designation to any person, if required.

Arrest by person who is not a police officer

30. Where an arrest of any person under this Act is made by a private person or an enforcement officer who is not a police officer, the person effecting the arrest shall present the arrested person to the nearest police station, as soon as it is practicable to do so, but in any case no later than twenty four hours after the arrest.

Records

Second Schedule

31.—(1) An enforcement officer shall during interrogation register all relevant information about the offence in a book to be kept in every police station for such purpose and to be called "The Trafficking in Persons Register" in addition to being recorded in the Occurrence Book, according to Form A contained in the Second Schedule hereto in triplicate.

(2) The Officer in Charge of the police station to which a person suspected of having committed or is about to commit an offence under this Act is presented, shall within ten days after the last day of each quarter send to the Inspector General of Police a certified copy of all entries made in the Trafficking in Persons Register during the preceding quarter.

(3) The Inspector General of Police shall file the certified copy of the entry in the Trafficking in Persons Register in his office and maintain a database of the same.

Search and seizure

32.—(1) Where an enforcement officer has reasonable cause to believe that—

(*a*) any premises or conveyance has or is being or is about to be used for the commission of an offence; or

(*b*) any premises or conveyance has evidence for an offence under this Act,

he or she may apply to a Magistrate on written information, under oath, for a warrant authorizing entry into the premises or conveyance.

(2) A warrant issued under subsection (1) may authorize the enforcement officer to—

(*a*) search the premises or conveyance for any matter connected to the commission of an offence under this Act;

(*b*) seize or remove any matter which may be used in evidence for an offence under this Act; or

(*c*) copy or extract any matter found in the premises or conveyance.

(3) Where it is deemed necessary, the enforcement officer may, in exercise of his powers under this Act—

(*a*) break a door of premises or a conveyance or obstruction to the premises or conveyance in order to effect entry into the premises or conveyance;

(*b*) remove by force, any obstruction to entry, search, seizure or removal of any matter, to which this section applies; or

(*c*) detain a person found in the premises or conveyance until the search is completed.

(4) Where, by reason of its nature, size or quantity, it is not possible to remove any matter seized under this section, the enforcement officer shall—

(*a*) seal the matter, premises or conveyance; and

(*b*) indicate, where possible, that the matter, premises or conveyance has been sealed.

(5) A person who, without written authority—

(*a*) breaks, tampers with, damages or alters the seal referred to in subsection (4); or

(*b*) attempts, aids or abets in breaking, tampering with, damaging or altering the seal,

commits an offence and shall, upon conviction, be liable to a fine of K1,000,000 and to imprisonment for two years.

Search and seizure without warrant

33.—(1) Where an enforcement officer has reasonable grounds to believe that obtaining a warrant under section 32 may cause delay or would adversely affect investigation of an offence under this Act, he may, without warrant, with assistance and force as is necessary—

(*a*) enter or search any premises or conveyance;

(*b*) stop, enter and search any conveyance;

(*c*) seize or detain a conveyance or any matter connected to investigation for an offence under this Act; or

(*d*) inspect, copy or extract any matter found at any premises or conveyance.

(2) In exercising powers under this section, the enforcement officer shall have all powers conferred on him under this Act.

List of seized items

34.—(1) An enforcement officer shall prepare a list of all items seized under this Part, in triplicate, and immediately deliver one copy of the list, duly signed by the enforcement officer, to an occupier or owner or an agent or servant of premises or conveyance to which the list applies, and another copy to the Chairperson of the Committee.

(2) Where premises or conveyance are not occupied, the enforcement officer shall, if possible, post the list of items seized at a conspicuous place on the premises or conveyance.

Access to electronic data

35.—(1) A search to which the provisions under this Part applies, shall include data in a computer or other electronic device.

(2) When exercising powers under subsection (1), an enforcement officer shall be given a password, encryption code, decryption code, software or hardware or any other means required to enable access or comprehension of the data.

(3) A person who contravenes this section commits an offence and shall, upon conviction, be liable to a fine of K1,000,000 and imprisonment for two years.

Burden of proof

36. Where in any proceedings for an offence under this Act, the prosecution proves that the accused person—

(*a*) lived with;

(*b*) was habitually in the company of; or

(*c*) had knowledge about the whereabouts of the trafficked person,

the accused person shall, unless he or she gives proof to the contrary, be presumed to have committed the offence charged.

Confiscation

37. Where an arrested person is convicted of an offence under this Act, an enforcement officer shall apply to court for an order of confiscation and disposal of the convicted person's assets and properties acquired, obtained or associated with the offence under which the person was convicted.

Disposal of confiscated property

38.—(1) Where an order under section 37 is issued, the Minister shall, by sale or otherwise, dispose off assets and property to which the order applies.

(2) The proceeds realized from disposal of confiscated assets shall be paid into the Anti-Trafficking Fund.

Acquittal and assets

39. Where an accused person whose property was seized under this Act has been acquitted for an offence under the Act, the court may order that the seized property be released to that person.

Right to institute civil action

40. A trafficked person, irrespective of his immigration status, has the right to—

(*a*) institute civil proceedings against any person including a public officer in respect of an offence under this Act; or

(*b*) seek compensation, restitution and recovery in damages from any person or from the proceeds of disposal of assets of any person connected with an offence under this Act.

Obstruction

41. A person who obstructs, impedes, interferes with or fails to comply with a lawful demand of an enforcement officer in the performance of powers conferred under this Act commits an offence, and shall be liable to imprisonment for five years without the option of a fine.

Immunity of trafficked persons

42. A person who has been certified as a trafficked person by an enforcement officer or a protection officer, in accordance with this Act, shall not be subjected to any criminal proceedings directly relating to, or as a direct consequence of, the person's situation as a trafficked person.

PART V

Care and Protection

Appointment of protection officers

43. The Minister may, by notice published in the *Gazette*, appoint an officer charged with duties in relation to social welfare, to exercise and perform the duties of a protection officer under this Act.

Duties of protection officers

44. A protection officer shall perform the following duties—

(*a*) ensure that trafficked persons are accorded proper treatment and are provided with the necessary care, assistance and protection; and

(*b*) ensure that all interviews of trafficked persons are conducted in accordance with the Guiding Principles for Conducting Screening Interviews for the Identification of Trafficked Persons

contained in the First Schedule and that Form A contained in the Second Schedule is duly completed. *First Schedule Second Schedule*

45.—(1) The Minister may, by notice published in the *Gazette*— Shelters

(*a*) designate any premises to be a shelter for the care and protection of trafficked persons;

(*b*) make rules for the standard of care and protection services for trafficked persons at a shelter; and

(*c*) make regulations for the administration of any shelter within Malaŵi.

(2) A person in charge of a shelter shall ensure that the rights and freedoms of trafficked persons are observed and protected.

(3) A person or organization may apply to the Minister to designate the premises of that person or organization as a shelter.

(4) A person who operates a shelter in contravention of this section commits an offence and shall, upon conviction, be liable to a fine of K5,000,000 and to imprisonment for five years.

(5) For the purposes of this Part, "Minister" means the Minister responsible for Gender, Children and Social Welfare.

PART VI

Witness Protection

46.—(1) A person shall not, without leave of court, disclose in the public media regarding— Restriction on disclosure

(*a*) any step taken in relation to a trafficked person at any stage of any judicial proceedings under this Act; or

(*b*) the identity of a trafficked person or any particular that may lead to disclosure of his identity.

(2) A person shall not disclose any information, capable of prejudicing the safety or provision of care and protection to any trafficked person, acquired in the exercise of the powers, performance of the functions or carrying out of the duties conferred upon, assigned to or imposed upon him by or under this Act.

(3) Any person who contravenes the provisions of this section commits an offence and shall, upon conviction, be liable to a fine of K1,000,000 and to imprisonment for two years.

47. A person who wilfully or negligently— Witness protection

(*a*) allows any unauthorized person to gain access to any witness, trafficked person or child;

(*b*) discloses, in contravention of any provision of this Act—

(i) the identity of any protected person;

(ii) information that a particular protected person is under protection;

(iii) the place of safety or location where any person is under protection or has been relocated in terms of this Act;

(iv) any information which could lead to the identification of any such person or any such place of safety;

(v) any information which undermines or compromises or could undermine or compromise the integrity of a witness protection programme in terms of this Act; or

(vi) any information relating to the relocation or change of identity of a protected person,

commits an offence and shall, upon conviction, be liable to imprisonment for seven years without the option of a fine.

Application for protection

48.—(1) A witness who reasonably believes that his or her safety or the safety of any member of his family, is or may be threatened, by any person or group or class of persons, by reason of his or her being a witness, may—

(*a*) report such belief—

(i) to the investigating officer in the proceedings concerned;

(ii) to the officer in charge of a police station;

(iii) if he is in prison, to the officer in charge of the prison where he is being detained; or

(iv) to the Director of Public Prosecutions; and

(*b*) apply to the court requesting that the applicant or any family member be placed under protection.

(2) If a witness is for any reason unable to make the report or to make an application for protection referred to under subsection (1), any interested person or the investigating officer concerned, who reasonably believes that the safety of the witness or any family member is or may be threatened as contemplated in subsection (1), may make such a report or application on behalf of the witness.

(3) Unless otherwise provided for under this Act, an application for protection of a minor may be made by or on behalf of the minor without the consent of his parent or guardian.

(4) Any person to whom a report is made as contemplated in subsection (1), shall assist the applicant in the making of an application for protection and, unless he is the Chairperson of the Committee, shall—

(*a*) inform the Chairperson of the Committee of the application; and

(*b*) submit the application to the court.

Confidentiality

49. A person, being the Chairperson or member of the Committee, an enforcement officer, a protection officer and an employee of a non-governmental organization or otherwise accredited by the Committee to handle cases dealing with trafficked persons, shall either upon taking office or upon handling every case, taken an oath or make affirmation in the form specified in the Form B, in the Third Schedule hereto before a Commissioner for Oaths.

Third Schedule

PART VII

Financial Provisions

Funding of the Committee

50.—(1) The Government shall adequately fund the Committee to enable it to perform its duties and functions and exercise its powers effectively.

(2) The Committee may receive grants or donations of funds, material or any other forms of assistance for the purposes of performing its duties and functions.

Anti-Trafficking Fund

51.—(1) There is hereby established a Fund to be known as the Anti-Trafficking Fund.

(2) The Fund shall consist of—

(*a*) such amount of money as may be appropriated by Parliament for payment into the Fund;

(*b*) such amount of money as may be paid to the Fund by way of grants or donations;

(*c*) such amount of money as may be realized from proceeds of confiscation, seizure, or sale of property connected with trafficking in persons after conviction of the offence under this Act; or

(*d*) such amount of money from any source approved by the Minister and the Minister responsible for Finance.

Purpose of the Fund

52. The purpose of the Fund is to finance—

(*a*) the training of enforcement officers, protection officers or any other personnel engaged in any capacity to effect the provisions of this Act;

(*b*) the provision of care, assistance and support to victims of trafficking in persons, specifically by—

(i) constructing or commissioning a building as a reception shelter for such victims;

(ii) tracing the family of a victim of offences under this Act and where possible facilitating the reintegration of such a victim with his family;

(iii) repatriation of trafficked persons to their respective homes or countries; or

(iv) any activity or matter as the Committee may deem fit for the prevention and suppression of trafficking in persons.

Management of the Fund

53.—(1) The Fund shall be managed by the Committee which shall deposit all money due to the Fund in an account opened for that purpose.

(2) The Committee shall develop guidelines for disbursements of money from the Fund.

(3) The Committee shall, not later than three months before the end of each financial year, prepare and submit to the Minister, detailed estimates of income and expenditure for the next financial year.

Accounts and Audit

54.—(1) The Committee shall keep books of accounts of the Fund and proper records in relation to them as approved by the Auditor General.

(2) The Committee shall submit accounts of the Fund to the Auditor General for audit within three months after the end of the financial year.

(3) The Auditor General shall, not later than three months after the receipt of the accounts, audit the account of the Fund in accordance with the provisions of the Public Audit Act and forward a copy of the audit report to the Minister.

Cap. 37:01

Financial year

55. The financial year for the Fund shall be the same as the financial year of the Government.

Annual Report

56.—(1) The Minister shall within one month after the receipt of the audit report, submit an annual report to Parliament covering the activities and the operations of the Fund for the year to which the report relates.

(2) The annual report shall include—

(*a*) the audited accounts of the Fund;

(*b*) the Auditor General's report on the accounts of the Fund; and

(*c*) other information that the Minister may consider necessary.

PART VIII

Miscellaneous

General Penalty

57. A person who commits an offence under this Act, where a punishment has not been expressly provided for, shall be liable on conviction to imprisonment for two years without an option of a fine.

Amendments

58. The Minister may by notice published in the *Gazette* amend the Schedules to this Act.

Regulations

59. The Minister may, on the advice of the Committee, make regulations for the better carrying into effect of the provisions of this Act.

FIRST SCHEDULE

ss. 8, 27 and 44

Guiding Principles in Conducting Screening Interviews for the Identification of Trafficked Person

PART I

Minimum Standards for Interviews

In all interviews under this Act, regardless of the legal status of the person being interviewed, the person conducting the interview shall ensure that the following minimum standards are in place—

Information

1. The presumed trafficked person should be informed about the procedure of the police interrogation and its consequences.

Language

2. The information given should be clear, accurate and in a language the presumed trafficked person understands.

Interpretation

3. Experienced interpreters should be present during the interview.

Privacy

4. Questions touching upon the person's privacy, for instance regarding intimate relationships and experiences in prostitution, should be avoided.

Identification

5. A trafficked person can only be conclusively identified as such if the distinct elements of the crime of trafficking have been detected. This may require time because of the complexity of the crime of trafficking and the vulnerable status of trafficked persons suffering from post-traumatic stress disorder.

Evidence

6. Besides the statements of the presumed trafficked person, other evidence should be collected to identify all the facts and relevant information to determine if the case is one of trafficking.

PART II

General Principles

In all interviews under this Act, regardless of the immigration status of the person being interviewed, the person conducting the interview shall endeavour to do the following—

Do not harm

1. Treat each presumed trafficked person and the situation as if the potential for harm is extreme until there is evidence to the contrary. Do not undertake any interview that will make a presumed trafficked person's situation worse in the short term or longer term.

Case familiarization and risk assessment

2. Learn the risks associated with trafficking and each presumed trafficked person's case before undertaking an interview.

Preparation of referral information

3. Be prepared to provide information in a presumed victim's native language and the local language (if different) about appropriate legal, health, shelter, social support and security services and to help with referral, if requested.

Careful selection and preparation of interpreters and co-workers

4. Weigh the risks and benefits associated with employing interpreters, co-workers or others and develop adequate methods for training.

Ensuring anonymity and confidentiality

5. Protect a respondent's identity and confidentiality throughout the entire interview process from the moment a presumed trafficked person is contacted to the time that details of his case are made public.

Getting informed consent

6. Make certain that each presumed trafficked person clearly understands the content and purpose of the interview, the intended use of the information, his right not to answer questions, his right to terminate the interview at any time and his right to put restrictions on how the information is used.

Listening to and respecting each presumed trafficked person's assessment of her situation and risk to her safety

7. Recognize that each presumed trafficked person will have different concerns and that the way he views his concerns may be different from how others might assess them.

Re-traumatization

8. Do not ask questions intended to provoke an emotionally charged response. Be prepared to respond to a presumed trafficked person's distress and highlight his strengths.

9. Be prepared to respond if a presumed trafficked person says he is in imminent danger. Emergency intervention

10. Use information in a way that benefits an individual presumed trafficked person or that advances the development of good policies and interventions for persons suspected of being trafficked generally. Use of information collected

PART III

Children

The following principles shall be used in all cases concerning children—

1. Interviews should take place as soon as possible after the allegation or suspicion of abuse emerges. Time is of the essence

2. A child should feel safe and supported during the interview. Safety and support

3. Girls and younger boys should be interviewed by female interviewers. Older boys can be interviewed by male interviewers. Sex/age appropriate interviewers

4. An adult, who the child trusts, should generally be present during the interview. This person's responsibility is to look after the child's best interests. It could be a guardian, a legal representative or, if neither has been appointed, a teacher or social worker. Presence of familiar adult during interview

5. Interviews should take place in an informal setting and be conducted by interviewers trained to talk with children. Informal setting

6. Interviews should be in the child's own language. If this is impossible to organize, considerable care must be taken in arranging interpretation. Language of interview

7. If possible, interviews should not be too long to avoid tiring the child. Length of interview

8. The child's developmental stage and needs should be considered in planning the interview. Child's developmental stage

9. The characteristics of the child and the child's family background should be considered in planning the interview. Child's characteristics

10. The children should be given an opportunity to narrate their story in their own way, before they are asked explicit questions. Opportunity to narrate

11. The questions should begin with open questions and direct or leading questions should be reserved for the latter part of the interview. Interview plan

ss. 8, 27, 31 and 44

SECOND SCHEDULE
TRAFFICKING IN PERSONS ACT

Form A

Trafficked Persons Screening and Identification Form

PART I

Informed Consent

Has the individual been informed that the Enforcement Officer and/or .... (name of partnering organization) reserves the right to share her/his individual case data for assistance purposes and only with authorized officers in the Malaŵi Police Service, the Department of Immigration and partnering organizations involved in direct assistance? (Yes/No)*

1. Has the individual further been informed that the Malaŵi Government reserves the right to use (only anonymous, aggregate) data for research purposes? (Yes/No)*

2. Has the individual's full and informed consent been obtained to conduct the screening interview based on information given regarding the designation of the enforcement officer, the role of the organization, the voluntary nature of the interview and the use of the information provided by the individual as outlined above? (Yes/No)*

Note: Informed consent is necessary for all services, such as medical examination and procedure, health assessments, assisted voluntary returns and reintegration assistance.

If the individual is a minor, has the consent of the parent(s)/guardian(s) been obtained? (Yes/No)*

Signature of interviewer: ..... Date: .....

Signature of trafficked person: ..... Date: .....

PART II

Registration Data

1. First name(s): .....
2. Family name(s): .....
3. Sex: .....
4. Country of birth: .....

**Circle as appropriate*

5. Place of birth: .....
6. Last place of residence in country of origin: .....
7. Date of birth: .....
8. Is date of birth an estimate? (Yes/No)* .....
9. Age (in number of years): .....
10. Citizenship: .....
11. Ethnicity: .....
12. Identity document (type, country, number and expiry date): .....
.....

PART III

CASE AND INTERVIEW DATA

1. (*Where the trafficked person is referred*:)

Type of referring organization/individual: (non-governmental organization/ international organization/law enforcement/immigration/Government/ embassy/International Organization for Migration (IOM) mission/hotline/ self-referral walk-in/family/friend/client/other)* Other, please specify .....
.....

2. Name/location of referring organization/individual: .....
.....
3. Address and telephone number of referring organization: .....
.....
4. Screening date: .....
5. Screening location: .....
6. Name/Designation/Rank of interviewer: .....
.....
7. Name of organization/institution: .....
.....
8. Interviewee's language(s): .....
.....
9. Interpreter? (Yes/No)* .....
10. Name of interpreter: .....
11. If minor: Name(s), address(es) and telephone number of parent(s) or guardian(s): .....

**Circle as appropriate*

PART IV

Entry into Trafficking in Persons Process

1. How did the individual enter the process (indicate multiple options and continue on separate sheet, if necessary)?

   .....
   .....
   .....
   .....
   .....
   .....
   .....
   .....

2. Did entry into the process involve recruitment? (Yes/No)* If Yes, how was the contact initiated between the individual and her/his recruiter? (personal contact/employment agency/travel agency/Internet advertisement/newspaper advertisement/radio advertisement/television advertisement/other)*

3. If labour migration, what activity did the individual believe he or she was going to be engaged in following arrival at the final destination (indicate multiple options if necessary)? (Agricultural work/begging/child care/construction/domestic work/factory work/fishing/low-level criminal activities/military service/mining/prostitution/restaurants and hotel work/study/small street commerce/trade/transport/other)* If other, please specify

   .....

4. What was the individual told would be their benefits following arrival at final destination?

   Salary (equivalent in US$ per month)

   .....

   Other benefits

   .....
   .....
   .....

5. In which month/year did the individual enter into the process?

   .....

6. Was the individual a minor at the time of entry into the process? (Yes/No)*

7. From which place/country did the individual enter into the process?

   .....

**Circle as appropriate*

8. What place/country is the last (or intended) destination?

   .....

9. Did the individual travel alone? (Yes/No)* If No, who did the individual travel with (indicate multiple options if necessary)? Husband/wife/partner/relative/friend/recruiter/transporter/unknown persons/other)* If other, specify

   .....

10. Did the individual spend any time in transit place(s)/country(ies) (Yes/No)*
    (*a*) If Yes, who did the individual travel with? (husband/wife/partner/relative/friend/recruiter/transporter/unknown persons/other)* If other, specify

    .....

11. Did he or she engage in any activity in this place(s)/country(ies) (Yes/No)* If Yes, which activity in first/only transit place/country? (agricultural work/begging/child care/construction/domestic work/factory work/fishing/low-level criminal activities/marriage/military service/mining/prostitution/restaurants and hotel work/study/small street commerce/trade/transport sector/other)* If other, specify

    .....

12. If more places/countries, add respective places and activities engaged in

    .....
    .....
    .....
    .....

13. Were any of the following means used to control the individual?
    (*a*) Physical abuse? (Yes/No)* If Yes, by who? (Recruiter/Transporter/Harbourer/Receiver/Other)* If other, specify

    .....

    (*b*) Psychological abuse? (Yes/No)* If Yes, by who? (Recruiter/Transporter/Harbourer/Receiver/Other)* If other, specify

    .....

    (*c*) Sexual abuse? (Yes/No)* If Yes, by who? (Recruiter/Transporter/Harbourer/Receiver/Other)* If other, specify

    .....

    (*d*) Threats to individual? (Yes/No)* If Yes, by who? (Recruiter/Transporter/Harbourer/Receiver/Other)* If other, specify

    .....

    (*e*) Threat of action by law enforcement? (Yes/No)* If Yes, by who? (Recruiter/Transporter/Harbourer/Receiver/Other)* If other, specify

    .....

**Circle as appropriate*

(*f*) Threats to family? (Yes/No)* If Yes, by who? (Recruiter/Transporter/Harbourer/Receiver/Other)* If other, specify

.....

(*g*) False promises/deception? (Yes/No)* If Yes, by who? (Recruiter/Transporter/Harbourer/Receiver/Other)* If other, specify

.....

(*h*) Denial of freedom of movement? (Yes/No)* If Yes, by who? (Recruiter/Transporter/Harbourer/Receiver/Other)* If other, specify

.....

(*i*) Giving of drugs? (Yes/No)* If Yes, by who? (Recruiter/Transporter/Harbourer/Receiver/Other)* If other, specify

.....

(*j*) Giving of alcohol? (Yes/No)* If Yes, by who? (Recruiter/Transporter/Harbourer/Receiver/Other)* If other, specify

.....

(*k*) Denial of medical treatment? (Yes/No)* If Yes, by who? (Recruiter/Transporter/Harbourer/Receiver/Other)* If other, specify

.....

(*l*) Denial of food/drink? (Yes/No)* If Yes, by who? (Recruiter/Transporter/Harbourer/Receiver/Other)* If other, specify

.....

(*m*) Withholding of identity documents? (Yes/No)* If Yes, by who? (Recruiter/Transporter/Harbourer/Receiver/Other)* If other, specify

.....

(*n*) Withholding of travel documents? (Yes/No)* If Yes, by who? (Recruiter/Transporter/Harbourer/Receiver/Other)* If other, specify

.....

(*o*) Debt bondage? (Yes/No)* If Yes, by who? (Recruiter/Transporter/Harbourer/Receiver/Other)* If other, specify

.....

PART V

Exploitation Phase

1. What activity has the individual undertaken since her/his arrival in the last destination? (Agricultural work/begging/child care/construction/domestic work/factory work/fishing/low-level criminal activities/marriage/military service/mining/prostitution/restaurants and hotel work/study/small street commerce/trade/transport sector/unemployed/other)* If other, specify

.....

**Circle as appropriate*

(*a*) How old was the individual when the activity began?

.....

(*b*) How long did the only/most significant activity last?

.....

2. Were any of the following means used to control the individual during the activity? Physical abuse? (Yes/No)* If Yes, by who? (Receiver/Exploiter/Clients/Other)* If other, specify

(*a*) Psychological abuse? (Yes/No)* If Yes, by who? (Receiver/Exploiter/Clients/Other)* If other, specify

.....

(*b*) Sexual abuse? (Yes/No)* If Yes, by who? (Receiver/Exploiter/Clients/Other)* If other, specify

.....

(*c*) Threats to individual? (Yes/No)* If Yes, by who? (Receiver/Exploiter/Clients/Other)* If other, specify

.....

(*d*) Threat of action by law enforcement? (Yes/No)* If Yes, by who? (Receiver/Exploiter/Clients/Other)* If other, specify

.....

(*e*) Other Threats to family? (Yes/No)* If Yes, by who? (Receiver/Exploiter/Clients/Other)* If other, specify

.....

(*f*) False promises/deception? (Yes/No)* If Yes, by who? (Receiver/Exploiter/Clients/Other)* If other, specify

.....

(*g*) Denial of freedom of movement? (Yes/No)* If Yes, by who? (Receiver/Exploiter/Clients/Other)* If other, specify

.....

(*h*) Giving of drugs? (Yes/No)* If Yes, by who? (Receiver/Exploiter/Clients/Other)* If other, specify

.....

(*i*) Giving of alcohol? (Yes/No)* If Yes, by who? (Receiver/Exploiter/Clients/Other)* If other, specify

.....

(*j*) Denial of medical treatment? (Yes/No)* If Yes, by who? (Receiver/Exploiter/Clients/Other)* If other, specify

.....

(*k*) Denial of food/drink? (Yes/No)* If Yes, by who? (Receiver/Exploiter/Clients/Other)* If other, specify

.....

(*l*) Withholding of wages? (Yes/No)* If Yes, by who? (Receiver/Exploiter/Clients/Other)* If other, specify

.....

**Circle as appropriate*

(*m*) Withholding of identity documents? (Yes/No)* If Yes, by who? (Receiver/Exploiter/Clients/Other)* If other, specify
.....

(*n*) Withholding of travel documents? (Yes/No)* If Yes, by who? (Receiver/Exploiter/Clients/Other)* If other, specify
.....

(*o*) Debt bondage? (Yes/No)* If Yes, by who? (Receiver/Exploiter/Clients/Other)* If other, specify
.....

(*p*) Excessive working hours? (Yes/No)* If Yes, by who? (Receiver/Exploiter/Clients/Other)* If other, specify
.....

3. If exploited for prostitution (sexual exploitation) were any of the following means used to control the individual during the exploitation?

(*a*) Denial of freedom to refuse client? (Yes/No)* If Yes, by who? (Receiver/Exploiter/Clients/Other)* If other, specify
.....

(*b*) Denial of freedom to refuse certain acts? (Yes/No)* If Yes, by who? (Receiver/Exploiter/Clients/Other)* If other, specify
.....

(*c*) Denial of freedom to use condom? (Yes/No)* If Yes, by who? (Receiver/Exploiter/Clients/Other)* If other, specify
.....

(*d*) Other means of control. Specify:
.....

4. Did the individual experience exploitation? (Yes/No)* If no exploitation took place—

(*a*) was there any indication of a real and substantial threat of exploitation?
.....

(*b*) If Yes, what were the reasons why exploitation never took place? (Rescue/Escape/Other)* If other, specify
.....

PART VI

Additional Corroborative Evidence

(To be answered as appropriate)

1. Are any of the following additional corroborative materials available?

(*a*) Police or other official reports (Yes/No)*

(*b*) Identity documents (Yes/No)*

**Circle as appropriate*

(*c*) Travel documents (Yes/No)*

(*d*) Medical reports (Yes/No)*

(*e*) Copies of employment contract (Yes/No)*

(*f*) Recruitment offer (Yes/No)*

(*g*) Personal writings by the individual (Yes/No)*

(*h*) Hotline reports (Yes/No)*

(*i*) If other, specify

.....

2. Is the individual a trafficked person? Justify this decision with reference to responses to questions 1-17 above. (Continue on separate sheet, if necessary).

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.....
.....

3. Certification that the individual is a trafficked person made by: (specify names, designation and rank):

.....
.....
.....
.....
.....

4. If the individual is a trafficked person, was the type of trafficking in-country or transnational? (in-country/transnational/both)*

5. If the individual is not a trafficked person, is he or she in need of assistance? (Yes/No)* If Yes, what is the individual's situation? (Please specify all that applies.)

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*Circle as appropriate

6. Additional remarks

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s. 49

THIRD SCHEDULE

Form B

Form of Oath

I, ... of ..... swear by Almighty God that I shall not make a record of, divulge or communicate information in contravention of this Act.

Form of Affirmation

I, ... of ..... do solemnly, sincerely and truly declare and affirm that I shall not make a record of, divulge or communicate, information in contravention of this Act.

FINANCIAL CRIMES

CHAPTER 7:07

Containing Pages 1–116

CHAPTER 7:07

FINANCIAL CRIMES

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CHAPTER 7:07

FINANCIAL CRIMES

An Act to establish an independent and autonomous Financial Intelligence Authority; to better prevent, investigate and combat financial and related or consequential crimes; to enable the tracing, identification, tracking, freezing, seizure or confiscation of proceeds of crimes; and to provide for connected and incidental matters

14 of 2017
G.N. 10/2017

[17TH FEBRUARY, 2017]

PART I

PRELIMINARY

1. This Act may be cited as the Financial Crimes Act.

Short title

2.—(1) In this Act, unless the context otherwise requires—

Interpretation

"account" means any facility or arrangement by which a financial institution does at least one of the following—

(*a*) accepts deposits of currency;

(*b*) allows withdrawals of currency or transfers of currency into or out of the account;

(*c*) pays cheques or payment orders drawn on a financial institution by, or collects cheques or payment orders on behalf of, a person;

(*d*) supplies a facility or arrangement for a safe deposit box;

"administrator" means a person appointed under section 99;

"Authority" means the Financial Intelligence Authority established pursuant to section 3;

"authorized officer" means an officer the Minister may, by notice published in the *Gazette*, designate;

"bearer negotiable instrument" includes monetary instruments in bearer form such as traveller's cheques; negotiable instruments, including cheques, promissory notes and money orders, that are either in bearer form, endorsed without restriction, made out to a fictitious payee, or otherwise in a form that title thereto passes upon delivery; incomplete instruments, including cheques, promissory notes and money orders, signed but with the payee's name omitted;

"beneficial owner" means a natural person who ultimately owns or controls a customer or a person on whose behalf, a transaction is conducted and includes a natural person who exercises ultimate effective control over a legal person or arrangement;

"business relationship" means an arrangement or proposed arrangement between a person and a reporting institution where the purpose or effect of the arrangement is to facilitate a frequent, habitual or a regular course of dealing between the person and the institution; even if the total amount of a payment to be made by a person to another in the course of that arrangement is not known or not capable of being ascertained, at the time the arrangement is made;

"close associate" includes a controlling party, beneficial owner, a subsidiary of the legal person or arrangement and in relation to an individual includes a close relation of the individual or a partner or a close relation of the partner, of the individual and includes a beneficial owner;

"collective investment scheme" has the same meaning as defined in the Securities Act; Cap. 46:06

"competent authority" means where appropriate, office of the Attorney General, office of the Director of Public Prosecutions, office of the Registrar General, office of the administrator General, a police officer, an immigration officer, a revenue officer, the Anti-Corruption Bureau, the Authority, the Reserve Bank of Malaŵi, the Registrar of Financial Institutions as defined in the Financial Services Act, and includes any person authorized by any of them in that behalf and any other person the Minister may, by notice published in the *Gazette*, designate; Cap. 44:05

"correspondent banking" is the provision of banking services by one bank ("the correspondent bank") to another bank ("the respondent bank") and includes other similar relationships or arrangements;

"counter-terrorism conventions" means any of the United Nations counter-terrorism conventions set out in the First Schedule; *First Schedule*

"court" has the meaning ascribed to it under the courts Act; Cap. 3:02

"currency" means the coin and paper money of Malaŵi or of a foreign country that is designated as legal tender and which is customarily used and accepted as a medium of exchange in the country of issue and may be represented in coin, paper or electronic form;

"customer" in relation to a transaction or an account, includes—

(*a*) the person in whose name a transaction or account is arranged, opened or undertaken;

(*b*) a signatory to a transaction or account;

(*c*) a person to whom a transaction has been assigned or transferred;

(*d*) a person who is authorized to conduct a transaction on behalf of another; or

(*e*) a person the Minister may, by notice published in the *Gazette*, prescribe;

"designated non-financial businesses and professions" include—

(*a*) a safe deposit or custody services provider;

(*b*) a gambling house;

(*c*) a casino or lottery;

(*d*) a trust or company service provider not otherwise covered by this definition, which, as a business, provides any of the following services to third parties—

(i) acting as an agent for the establishment of legal persons;

(ii) acting as, or arranging for another person to act as a director or secretary of a company, a partner in a partnership or a similar position in relation to other legal persons;

(iii) providing a registered office, business address or accommodation, correspondence or administrative address for a company, a partnership or any other legal person or arrangement;

(iv) acting as, or arranging for another person to act as, a trustee of an express trust; or

(v) acting as, or arranging for another person to act as, a nominee shareholder for another person;

(*e*) legal practitioners, notaries, other independent legal professionals and accountants when they prepare for or carry out transactions for their client concerning the following activities—

(i) buying and selling of real estate;

(ii) managing of client money, securities or other assets;

(iii) management of bank, savings or securities accounts on behalf of clients;

(iv) organization of contributions for the creation, operation or management of companies; or

(iv) creation, operation or management of legal persons or arrangements, and buying and selling of business entities;

(*f*) estate agents dealing in real estate, when the person dealing is involved in transactions for a client concerning the letting, buying and selling of real estate;

(*g*) dealers in precious metals, stones and bullion;

(*h*) any other business as the Minister may, by notice published in the *Gazette*, prescribe;

"Director General" means the chief executive officer of the Authority appointed pursuant to section 6;

"document" means any record of information and includes—

(*a*) anything on which there is writing;

(*b*) anything on which there are marks, figures, symbols, or perforations having meaning for persons qualified to interpret them;

(*c*) anything from which sounds, images or writing can be produced, with or without the aid of anything else; and

(*d*) a map, plan, drawing, photograph or similar thing;

"financial crime" means a criminal offence whether or not arising under a financial services law or relating to a financial institution, that involves—

(*a*) fraud or dishonesty;

(*b*) financing or facilitating a criminal offence;

(*c*) dealing with proceeds of a criminal offence; and

includes offences under this Act;

"financial institution" bears the meaning ascribed to it under the Financial Services Act and includes money transfer service providers; Cap. 44:05

"financial services laws" has the same meaning ascribed to it under the Financial Services Act; Cap. 44:05

"Fund" means the Confiscation Fund established under section 128;

"gift" includes a direct or indirect transfer of property by a person to another person—

(*a*) after the commission of an offence by the first person;

(*b*) for a consideration the value of which is significantly less than the value of the consideration provided by the first person; and

(*c*) to the extent of the difference between the market value of the property transferred and the consideration provided by the transferee;

"interest", in relation to property, means—

(*a*) a legal or equitable interest in the property;

(*b*) a right, power or privilege in connexion with the property;

"politically exposed persons" includes, in Malaŵi or a foreign country, the President; the Vice-President; persons appointed into public office by the President or other public body or directed officers; elected officers; persons holding management positions in public institutions including state owned corporations; members of governing bodies of political parties; independent politicians; persons entrusted with a prominent function in an international organization and individuals having family, social or business connexions with the aforementioned persons;

"possession" has the meaning ascribed to it under the Penal Code; Cap. 7:01

"proceedings" means any civil or criminal procedure conducted by or under the supervision of a judge or judicial officer, however described, in relation to an alleged or proven offence, or property derived from such offence, and includes an inquiry, investigation, preliminary or final determination of facts;

"proceeds of crime, proceeds of an offence or proceeds of predicate offence" means any property directly or indirectly derived or realized from an offence, and includes, on a proportional basis, property into which any property derived or realized directly from the offence was later successively converted, transformed or intermingled, as well as income, capital or other economic

gains derived or realized from the property at any time since the commission of the offence;

"property" means an asset of every kind, whether corporeal or incorporeal, movable or immovable, whether situated in Malaŵi or elsewhere and whether tangible or intangible, and includes any legal or equitable interest in any such property;

"Public Appointments Committee" bears the meaning ascribed to it under section 56 (7) of the Constitution;

"realizable property" means property of corresponding value—

(*a*) held by a defendant;

(*b*) possessed by a person to whom a defendant has directly or indirectly made a gift as defined in this Act; or

(*c*) to which a defendant is a beneficiary entitled;

"Registrar" means the Registrar of Financial Institutions established under the Financial Services Act;

Cap. 44:05

"reporting institution" means a financial institution or a designated non-financial business or profession;

"self-regulatory bodies" means any professional body made up of members of the profession which has a role in regulating persons qualified to enter and practice the profession and performs certain supervisory or monitoring functions;

"shell bank" means a bank that has no physical presence in the country in which it is incorporated and licensed, and which is unaffiliated with a regulated financial group that is subject to effective consolidated supervision;

"supervisory authority" means an authority having oversight over a reporting institution or profession as the Minister may designate by notice in the *Gazette* and includes the Reserve Bank of Malaŵi and the Registrar;

"tainted property" means proceeds, including income or other benefits derived from the proceeds or instrumentalities used for or intended for use of, in money laundering or predicate offences;

"terrorist" means a natural person who, directly or indirectly, unlawfully and willfully, commits or attempts to commit a terrorist act, and includes a natural person who participates as an accomplice, organizes or directs others to commit a terrorist act; or otherwise contributes to the commission of a terrorist act by another individual or a group of persons;

"terrorist act" means—

(*a*) an act or omission whether committed in or outside Malaŵi, which constitutes an offence within the scope of United Nations counter-terrorism conventions; or

(*b*) an act, or threat of action in or outside Malaŵi which—

(i) involves serious bodily harm to a person;

(ii) involves serious damage to property;

(iii) endangers a person's life;

(iv) creates a serious risk to the health or safety of the public or a section of the public;

(v) involves the use of firearms or explosives;

(vi) involves releasing into the environment or any part thereof of, or distributing or exposing the public or any part thereof, to any dangerous, hazardous, radioactive or harmful substance; any toxic chemical; or any microbial or other biological agent or toxin;

(vii) is designed or intended to disrupt any computer system or the provision of services directly related to communications infrastructure, banking or financial services, utilities, transportation or other essential infrastructure;

(viii) is designed or intended to disrupt the provision of essential emergency services such as police, civil, defence or medical services;

(ix) prejudices national security or public safety; or

(x) involves participating in the activities of a terrorist group, including the supplying of information or material resources, or the funding of its activities in any way, with knowledge of the fact that such participation will contribute to the criminal activities of the group, and is intended, or by its nature and context, may reasonably be regarded as being intended, to intimidate the public or a section of the public; or compel a Government or an international organization to do, or refrain from doing, an act; or seriously destabilize or destroy the fundamental, political, constitutional, economic or social structures of a country or an international organization, and for the purpose of advancing a political, ideological, or religious cause; but does not include an act which disrupts any services, and is committed in pursuance of a protest, demonstration or

stoppage of work, as long, and as long only, as the act is not intended to result in any harm referred to in this paragraph;

"terrorist organization" means a legal person or any group of terrorists that, directly or indirectly—

(*a*) unlawfully and willfully, commits or attempts to commit, a terrorist act by any means;

(*b*) participates as an accomplice in a terrorist act;

(*c*) organizes or directs others to commit a terrorist act; or

(*d*) contributes to the commission of a terrorist act by a group of persons acting with a common purpose where the contribution is made intentionally and with the aim of furthering the terrorist act or with the knowledge of the intention of the group to commit a terrorist act;

"terrorist property" means—

(*a*) proceeds from the commission of a terrorist act;

(*b*) money or other property which has been, or is likely to be used to commit a terrorist act; or

(*c*) money or other property which has been, is being, or is likely to be used by a terrorist group;

"ultimately owns or controls" and "ultimate effective control" refer to situations in which ownership or control is exercised through a chain of ownership or by means of control other than direct control and also includes beneficial ownership under a life or other investment linked insurance policy.

(2) Any reference in this Act to a person being charged or about to be charged with an offence is a reference to a procedure, however described, in Malaŵi or elsewhere by which criminal proceedings may be commenced.

(3) For the purposes of this Act, a person shall be taken to be convicted of an offence if—

(*a*) the person is convicted of the offence;

(*b*) a charge is proved against a person, but the person is discharged without any conviction being recorded; and

(*c*) a court, with the consent of the convicted person, takes the offence, of which the person has not been found guilty, into account in passing sentence on the person for another offence.

(4) For the purposes of this Act, a conviction of a person for an offence shall be taken to be quashed in any case—

(*a*) where subsection (3) (*a*) applies, if the conviction is quashed or set aside;

(*b*) where subsection (3) (*b*) applies, if the finding of guilt is quashed or set aside;

(*c*) where subsection (3) (*c*) applies, if either—

(i) the conviction of the person for the other offence referred to in that section, is quashed or set aside;

(ii) the decision of a court to take the offence into account in passing sentence for that other offence is quashed or set aside.

(5) (*a*) Subject to paragraphs (*b*) and (*c*), for the purposes of this Act, the value of property, other than cash, in relation to any person holding the property is—

(i) the market value of the property; or

(ii) where any other person holds an interest in the property, the market value of the beneficial interest of first mentioned person in the property less the amount required to discharge any encumbrance, other than a charging order, on that interest;

(*b*) subject to subsection (7) (*b*), references in this Act to the value, at any time referred to in paragraph (*c*) as "the material time" of a gift or of any payment or reward, are references to—

(i) the value of the gift, payment or reward to the recipient when he or she received it, adjusted to take account of subsequent changes in the value of money; or

(ii) where paragraph (*c*) applies, the value therein mentioned, whichever is the greater;

(*c*) subject to subsection (7) (*b*), if at the material time the recipient holds—

(i) the property which he or she received (not being cash); or

(ii) property which in whole or in part indirectly represents, in the recipient's hands, the property which he or she received,

the value referred to in paragraph (*b*) (ii) is the value to him or her at the material time of the property mentioned in paragraph (*b*) (i) or, as the case may be, paragraph (*b*) (ii) so far as it represents the

property which he or she received, but disregarding in either case any charging order.

(6) For purposes of this Act, dealing with property held by any person includes—

(*a*) where the property is a debt owed to that person, making a payment to any person in reduction or full settlement of the amount of the debt;

(*b*) making or receiving a gift of the property; or

(*c*) removing the property from Malaŵi.

(7) (*a*) A gift is caught by this Act if—

(i) it was made by the defendant at any time after the commission of an offence, or if more than one, the earliest of the offences, to which the proceedings for the time being relate; and

(ii) the court considers it appropriate in all the circumstances to take the gift into account;

(*b*) For the purposes of this Act, the circumstances in which the defendant is to be treated as making a gift include those where the defendant transfers property to another person, directly or indirectly, for a consideration, the value of which is significantly less than the value of the consideration provided by the defendant; and the provisions of sections 6 (2) and (3) shall apply as if the defendant had made a gift of such share in the property as bears to the whole property the same proportion as the difference between the values referred to under this subsection of the consideration provided by the defendant.

(8) A reference to a benefit derived or obtained by or otherwise accruing to a person includes a reference to a benefit derived or obtained by, or otherwise accruing to, another person at the request or direction of the first person.

(9) For the purposes of this Act—

(*a*) a person has benefited from an offence if the person has at any time received any payment or other reward in connexion with, or derived any pecuniary advantage from, the commission of an offence, whether committed by that person or another person;

(*b*) proceeds of crime of a person are any payments or other awards received by him or her in connexion with, and any pecuniary advantage derived by him or her at any time from, the commission of an offence; and

(*c*) the value of the proceeds of crime of a person is the aggregate of the values of the payments, rewards or pecuniary advantages received by him or her in connexion with, or derived by him or her from, the commission of an offence.

(10) For purposes of this Act, any offence shall be considered a predicate offence.

PART II

The Financial Intelligence Authority

Establishment of Financial Intelligence Authority

3.—(1) There is hereby established a public body to be known as the Financial Intelligence Authority (in this Act, referred to as "the Authority") which shall be the principal national agency responsible for preventing and combating financial crimes.

(2) The Authority shall be a body corporate with perpetual succession and a common seal with power to enter into contracts, capable of suing and being sued in its own name; hold land; and do or perform all other things or acts as a body corporate for the proper administration of this Act.

(3) The Authority shall not, in the performance of its functions, be subject to the direction of, control or influence from any other person, authority or entity which may compromise its operational independence.

Functions of the Authority

4. The functions of the Authority are to—

(*a*) request, receive and analyze reports submitted by reporting institutions pursuant to this Act;

(*b*) report, spontaneously or upon request, to the relevant law enforcement authorities, or a supervisory authority if, on the basis of its analysis and assessment, the Authority determines that there is an element of any offence under this Act or any relevant written law;

(*c*) create and maintain a database of statistics and records on matters relevant to the effectiveness and efficiency of the implementation of the objectives of this Act;

(*d*) conduct research into trends, techniques and developments in the area of financial crimes, including money laundering, tracing proceeds of crime and terrorist financing in order to improve the detection, prevention and deterrence of money laundering and terrorist financing;

(*e*) cooperate with local and international institutions, organizations or agencies in realizing the objects of this Act;

(*f*) advise and apprise the Minister on trends, patterns and developments emerging in relation to the provisions of this Act;

(*g*) offer training and support on any matter pursuant to objectives of and compliance with this Act;

(*h*) conduct public awareness on matters relating to the offences under this Act or any relevant law;

(*i*) design, develop and implement internal systems, controls, policies and procedures with respect to security of its personnel, documents and information, including procedures for handling, storage, dissemination, and protection of, and access to, information; and

(*j*) do any other things as are necessary or incidental to the performance of its functions under this Act.

Powers of the Authority

5. The Authority shall have power to—

(*a*) issue, in writing, instructions, directions, directives, guidelines or rules to reporting institutions as it may consider necessary for the better carrying out of its functions under this Act or regarding the application of this Act;

(*b*) impose and enforce administrative sanctions and penalties for breach of this Act;

(*c*) investigate any matter in relation to implementation of this Act;

(*d*) inspect any record, document or information kept pursuant to this Act and upon demand, obtain or compel the production of or access to any record, document or information and make notes and take copies of whole or any part of the record, document or information;

(*e*) where appropriate, in consultation with a supervisory authority or self-regulatory body—

(i) issue instructions, directions, guidelines or rules to a supervisory authority or self-regulatory body as it may consider necessary for the better carrying out of its functions under this Act or regarding the application of this Act;

(ii) delegate powers to a supervisory authority or self-regulatory body to issue instructions, directions, guidelines or rules regarding the application of this Act:

Provided that a supervisory authority or self-regulatory body shall consult the Authority prior to issuing any instructions, directions, guidelines or rules under this section;

(*f*) access the widest possible range of financial, administrative and law enforcement information from any supervisory authority, financial regulatory authority, fiscal or tax agency, competent authority or fraud investigations agency for the proper discharge of the functions of the Authority under this Act or for purposes of achieving the objectives of the Act;

(*g*) request and receive information or additional information, as the case may be, from any person, institution or agency, whether local or international, for purposes of this Act;

(*h*) request and receive progress and outcome reports from law enforcement or prosecutorial agents on matters referred to them;

(*i*) instruct a reporting institution to take such steps as may be appropriate to facilitate any investigation anticipated by the Authority;

(*j*) enter into any agreements or arrangements with any local institution or agency regarding the exchange of information; and

(*k*) do any act it is authorized to do under this Act for the better carrying out of its functions or application of this Act.

Appointment and qualifications of Director General

6.—(1) There shall be a Director General of the Authority who shall be appointed by the President, for a five year term, renewable once, upon terms and conditions as may be specified in the instrument of appointment.

(2) The Director General shall be a public officer and the appointment to the office shall be subject to confirmation by the Public Appointments Committee of the National Assembly:

Provided that the Public Appointments Committee shall have the power to request particulars relating to the recruitment process itself as provided for under section 7 of this Act.

(3) The Director General shall be the chief executive officer of the Authority and shall perform any functions and duties, and exercise powers, as are conferred upon him by this Act or any other written law.

(4) A person shall not be appointed or remain Director General who, upon appointment, is or remains—

(*a*) a member of Parliament;

(*b*) a Minister or Deputy Minister;

(*c*) a serving member of the Judiciary;

(*d*) a holder of office in a political party or its affiliate;

(*e*) a minor or a person under legal disability;

(*f*) a person who has been responsible for a loss suffered by a licensed financial institution in Malaŵi or elsewhere;

(*g*) a person who has been removed by a court of competent jurisdiction, whether in Malaŵi or elsewhere, from an office of trust on account of misconduct in the exercise of his duties in that office;

(*h*) a person who provides or is engaged to provide, whether as a member of a firm or not, professional services to a financial institution;

(*i*) a director or holder of five per cent or more shares in a reporting institution;

(*j*) in terms of any law in force in any country, adjudged or otherwise declared bankrupt or insolvent and has not been rehabilitated or discharged, made an assignment to, or arrangement or composition with, his or her creditors, which has not been rescinded or set aside;

(*k*) convicted of an offence, the punishment of which has no option of a fine;

(*l*) in a position where there is a conflict of interest between the office of the Director General and his business interest; or

(*m*) not a citizen of Malaŵi.

(5) The Director General shall be a person of integrity with recognized, relevant qualifications, and experience in matters of finance, law or law enforcement.

(6) The Director General may delegate to any person, subject to any terms and conditions that the Director General may specify, any power, duty or function conferred on the Director General under this Act.

(7) In the event of incapacity of the Director General, or if the office of Director General is vacant, the Deputy Director General shall act in his place and have all of the powers, duties and functions of the Director General:

Provided that the Deputy Director General, shall not act as Director General for a period exceeding six months.

(8) In the event of incapacity of the Director General and Deputy Director General or if the offices of the Director General and Deputy Director General are vacant, the President shall appoint a suitably qualified person to act as Director General for a period not exceeding six months or until the vacancy is filled.

Recruitment process for Director General

7.—(1) In the event of a vacancy in the office of the Director General, the Minister shall advertise the position in the *Gazette* and at least two newspapers of widest circulation in Malaŵi and carry out shortlisting and interviews in order to select a minimum of two and a maximum of three candidates for the position.

(2) The Minister shall send the list to the President for the appointment of one of the candidates as Director General.

(3) The shortlisted candidates for the position of Director General shall undergo necessary security clearance and vetting procedures.

(4) The President shall, subject to section 6 (2), appoint a Director General only from the names on the list recommended by the Minister:

Provided that if the President rejects all the names on the said list, he shall send the list back to the Minister with reasons for the rejection and the Minister shall advertise the position again and carry out fresh interviews.

Vacation from office of Director General

8.—(1) Subject to this Act, where the President is satisfied that the Director General—

(*a*) is incapacitated by physical or mental illness; or

(*b*) has become bankrupt or made arrangements with his creditors;

(*c*) misconducted himself in a manner that brings his position or office into disrepute; or

(*d*) is otherwise unable or unfit to discharge the functions of the office,

the President shall appoint a committee to inquire into the information and furnish its findings to the President.

(2) The committee appointed under subsection (1) shall consist of—

(*a*) a person, who has sufficient knowledge of the law, who shall be the chairperson of the committee; and

(*b*) two other persons of good character, high integrity and with at least ten years' experience in the field of economics or finance.

(3) At the time of appointing the committee under subsection (1), the President may send the Director General on leave, or suspend the Director General from office, pending—

(*a*) the determination of any inquiry as to whether grounds of misconduct, incapacity or incompetence exist; or

(*b*) an investigation of alleged violation of section 10.

(4) The committee in discharging its functions under this section shall give the Director General an opportunity to be heard.

(5) Where the committee, on the basis of its findings, advises the President that the Director General concerned ought to be removed from office, the President shall terminate the appointment of the Director General.

(6) The decision to terminate the appointment referred to in subsection (5), shall not take effect unless confirmed by the Public Appointments Committee.

(7) The Director General may, at any time, by notice in writing, to the Minister, resign his office.

Appointment of Deputy Director General and other staff of the Authority

9.—(1) The Minister, in consultation with the Director General, shall appoint the Deputy Director General who shall be a person of integrity with recognized, relevant qualifications, and experience in matters of finance, law or law enforcement.

(2) The Director General shall appoint and employ at such remuneration and subject to such terms and conditions as the Minister may approve, suitably qualified and experienced persons as members of staff of the Authority, for the purpose of ensuring the proper performance of its functions and the attainment of its objectives.

(3) The Authority shall, in its human resource policies and procedures, prescribe qualifications and competency requirements for each position.

(4) The Authority shall ensure that its staff members have the necessary security clearance, vetting procedures and understanding of their responsibilities in handling and disseminating sensitive and confidential information.

(5) A person appointed under this section shall be an officer in the public service.

Disclosure of information

10.—(1) This section applies to an officer, employee, consultant or agent of the Authority while the person is or after the person ceases to be an officer, employee, consultant or agent of the Authority.

(2) Except for the purpose of the performance of his duties or the exercise of his functions under this Act or when lawfully required to do so by a court, any person referred to in subsection (1) shall not disclose any information or matter or source of information or matter which has been obtained by him, in the performance of his duties or the exercise of his functions under this Act or which he

has knowledge except for purposes of implementing and enforcing this Act.

(3) An employee or agent of the Authority shall not disclose any information that would directly or indirectly identify an individual who provided a report or information to the Authority, or a person or an entity about whom a report or information was provided under this Act.

(4) The Director General, the Deputy Director General and every member of staff, consultant or agent of the Authority shall, before he assumes office, take the oath or make an affirmation specified in the Second Schedule.

Second Schedule

(5) Notwithstanding this section, the Director General may, for the purpose of an enquiry into any matter under this Act, impart to any agency in Malaŵi or abroad, any piece of information, as may appear to him to be necessary to assist an investigation or prosecution of an offence under this Act.

(6) A person who, without lawful excuse, contravenes this section commits an offence and shall, on conviction, be liable to imprisonment for fifteen years and a fine of K30,000,000.

Immunity of the Authority and officials

11. An action shall not lie against the Authority, the Director General, or the Deputy Director General, officer or employee of the Authority or any person acting under the direction of the Authority for anything done in good faith in the administration or discharge of any powers, duties or functions under this Act.

Funds of the Authority

12.—(1) The funds of the Authority shall consist of—

(*a*) money appropriated annually by the National Assembly for the purposes of the Authority;

(*b*) penalties the Authority may impose for breach of this Act;

(*c*) fees charged by the Authority; and

(*d*) grants, gifts and donations made to the Authority with prior approval of the Minister.

(2) The financial year of the Authority shall be the financial year of Government.

Annual budget

13. The Authority shall prepare for each new financial year an annual budget of revenue and expenditure which shall be submitted to the Minister at least three months prior to the commencement of the financial year.

Accounts and audit

Cap. 37:02

14.—(1) The Authority shall cause to be kept proper books and other records of accounts in respect of receipts and expenditures of the Authority in accordance with the Public Finance Management Act.

(2) The Authority shall cause to be prepared, as soon as practicable, but not later than six months after the end of the financial year, an annual report on all the financial transactions of the Authority.

(3) The report referred to in subsection (2) shall include a balance sheet, an income and expenditure account and may include the report of the Auditor General and shall be laid by the Minister before the National Assembly.

(4) The Authority shall be subject to examination and audit by the Auditor General.

(5) The Auditor General and every person acting on behalf of or under the direction of the Auditor General shall not use or disclose any information relating to the work of the Authority that they have obtained, or to which they have had access, in the course of an audit.

Annual or other reports

15.—(1) The Authority shall—

(*a*) prepare and submit to the Minister on or before 30th September in each year an annual report of the Authority;

(*b*) from time to time advise the Minister on the work of the Authority and in particular on matters that could affect public policy or the priorities to be set by the Authority.

(2) The Minister shall lay or cause to be laid a copy of the annual report of the Authority on the table of Parliament.

PART III

Reporting Obligations

Verification of customers' identity

16.—(1) Every reporting institution shall, before or after entering into a business relationship with a customer, whether on behalf of himself or a beneficial owner, identify the customer or the beneficial owner, on the basis of an official document and verify the identification through reliable and independent source documents, data or information or other evidence as is reasonably capable of verifying the identity of the customer or beneficial owner when—

(*a*) opening an account or otherwise establishing a continuing business relationship with a customer;

(*b*) a customer who is neither an account holder nor in an established business relationship with the reporting institution,

wishes to carry out a transaction in an amount prescribed in a regulation or directive, either generally or in relation to any class of reporting institution, whether conducted as a single transaction or several transactions that appear to be linked;

(*c*) a customer who is neither an account holder nor in an established business relationship with the reporting institution, wishes to carry out a domestic or international wire transfer of monetary amounts prescribed in a regulation or directive, either generally or in relation to any class of reporting institution;

(*d*) there is a suspicion of commission of an offence under this Act; or

(*e*) the reporting institution has doubts about the veracity or adequacy of the customer identification and verification documentation or information it had previously obtained.

(2) Without limiting the generality of subsection (1), every reporting institution shall—

(*a*) when establishing a business relationship, seek, and where necessary, obtain information on the purpose and intended nature of the business relationship;

(*b*) if the customer is a natural person, adequately identify and verify the identity of the person, including information relating to—

(i) the name, address and occupation of the person;

(ii) the national identity card or passport or other applicable official identifying document of the person; and

(iii) the source of wealth and source of property of the person determined through the use of reasonable measures;

(*c*) if the customer is a legal person, every reporting institution shall—

(i) understand the nature of the customer's business and its ownership and control structure;

(ii) identify the customer and verify his identity through the following information—

(A) name, legal form and proof of existence;

(B) the powers that regulate and bind the legal person, as well as the names of the relevant persons having a senior management position in the legal person; and

(*cc*) the address of the registered office and, if different, a principal place of business;

(*d*) if the customer is a politically exposed person, in addition to the requirements in paragraph (1) and (2) (*a*), (*b*), and (*c*) a reporting institution shall—

(i) establish risk management systems to determine whether a customer or the beneficial owner is a politically exposed person;

(ii) obtain senior management approval prior to establishing (or continuing, in respect of existing customers) the business relationships;

(iii) take reasonable measures to establish the source of wealth and the source of funds of customers and beneficial owners identified as a politically exposed person;

(iv) conduct enhanced ongoing monitoring on that relationship;

(v) take reasonable measures to identify family members and close associates of politically exposed persons;

(vi) take reasonable measures to determine whether the beneficiary of a life insurance policy or, where the beneficiary is not a natural person, the beneficial owner of the beneficiary is a politically exposed person before a payout is made;

(vii) where higher risks are determined, inform senior management before the payout of the policy proceeds is made, conduct enhanced scrutiny of the entire business relationship and consider submitting a suspicious transaction report.

(3) Every reporting institution shall identify the beneficial owner and take reasonable measures to verify the identity of the beneficial owner, using relevant information or data obtained from a reliable source, such that the reporting institution is satisfied that it knows who the beneficial owner is.

(4) Every reporting institution shall identify and take reasonable measures to verify the identity of beneficial owners of legal persons through the following information—

(*a*) the identity of the natural person who ultimately has a controlling ownership interest in a legal person;

(*b*) the identity of the natural person exercising control of the legal person through other means; or

(*c*) the identity of the relevant natural person who holds a senior management position.

(5) In respect of a trust, the identity of a settlor, a trustee, the protector, if any, a beneficiary or class of beneficiaries, and any other natural person exercising ultimate effective control over the trust, including through a chain of control or ownership.

(6) For other types of legal arrangements, the identity of persons in equivalent or similar positions referred to in subsection (4) (*a*), (*b*) and (*c*) above.

(7) Notwithstanding the provisions of subsections (1), (2), (3) and (4) above, reporting institutions may, after carrying out risk management procedures, complete verification after the establishment of the business relationship:

Provided that—

(*a*) the verification of identity may be completed as soon as reasonably practicable after the commencement of the business;

(*b*) the risk of money laundering or financing of terrorism is effectively managed;

(*c*) a delay in verification is unavoidable in the interest of not interrupting the normal conduct of business.

(8) Subject to provisions of section 21 (5), in case of non face-to-face business relationships, a reporting institution shall—

(*a*) apply same identification and verification measures and ongoing monitoring standards as for face-to-face customers;

(*b*) accept non face-to-face business only from non-resident customers.

(9) Every reporting institution shall—

(*a*) take reasonable measures to ascertain the purpose of any transaction in excess of an amount the Director General may prescribe, from time to time, by notice published in the *Gazette*, and the origin and ultimate destination of the funds involved in the transaction;

(*b*) where it appears to a reporting institution that a person requesting to enter into any transaction, whether or not in the course of a continuing business relationship, is acting on behalf of another person, verify that the person purporting to act on behalf of the customer has the necessary authority, identify and verify the identity of the person.

(10) Subsections (1), (2) and (9) (*a*) do not apply, unless the reporting institution has reason to suspect that the transaction is suspicious or unusual—

(*a*) when the transaction is part of an existing and regular business relationship with a person who has already produced satisfactory evidence of identity;

(*b*) when the transaction is an occasional transaction not exceeding an amount the Minister prescribes, by notice published in the *Gazette*; or

(*c*) subject to an adequate analysis of money laundering and terrorist financing risk, to such other customer or reporting institution as the Minister may prescribe by notice published in the *Gazette*.

(11) The Minister, may by notice published in the *Gazette*, prescribe—

(*a*) the official or identifying documents, or the reliable and independent source documents, data or information or other evidence that is required for identification or verification of any particular customer or class of customers;

(*b*) the threshold for the circumstances in which, the provisions of this section shall apply in relation to any particular customer or class of customers.

(12) In respect of customer accounts and business relationships that existed before the coming into force of this Act, a reporting institution shall apply measures set out under this section on the basis of materiality and risk within a period the Minister may prescribe, by notice published in the *Gazette*.

(13) The customer due diligence shall be conducted on any existing relationships, at appropriate times, taking into account whether and when the identification and verification measures were previously undertaken and the adequacy of information obtained.

(14) A person who contravenes this section commits an offence and shall, on conviction, be liable to—

(*a*) in the case of a natural person of a reporting institution, imprisonment for five years and to a fine of K10,000,000; or

(*b*) in the case of a legal person, a fine of K50,000,000 and revocation of a business licence.

Reliance on intermediaries or third parties

17.—(1) Where a reporting institution relies on an intermediary or third party to undertake its obligations under section 16 to introduce business to it, the ultimate responsibility for identification and verification measures shall remain with the reporting institution relying on the third party or intermediary and shall—

(*a*) obtain immediately the necessary information concerning the identity and nature of customer's business;

(*b*) ensure that copies of identification data and other relevant documentation relating to the applicable requirements in section 16 will be made available to it from the intermediary or the third party upon request without delay;

(*c*) satisfy itself that the third party or intermediary is regulated and supervised for, and has measures in place to comply with customer due diligence and record keeping requirements;

(*d*) obtain and evaluate information concerning the level of country risk in the country in which the third party is domiciled before engaging the third party.

(2) If the third party is part of the same financial group, the home and host competent authorities must satisfy themselves that the requirements in subsection (1) are met in the following circumstances—

(*a*) the group applies same or stricter customer due diligence and record-keeping, and internal control requirements against money laundering and terrorist financing;

(*b*) the implementation of those customer due diligence, record-keeping requirements and programmes to counter money laundering and terrorist financing is supervised at a group level by a competent authority; and

(*c*) any higher national risk is adequately mitigated by the group's anti-money laundering or combating financing of terrorism policies.

Insurance companies to identify and verify beneficiaries

18.—(1) In addition to the provisions under section 16, insurance companies shall be required to take the following measures on the beneficiary of life insurance and other investment related insurance policies, as soon as the beneficiary is identified or designated—

(*a*) for a beneficiary that is identified as specifically named natural or legal persons or legal arrangements taking the name of the person;

(*b*) for a beneficiary that is designated by characteristics or by class or by other means obtaining sufficient information concerning the beneficiary to satisfy the reporting institution that it will be able to establish the identity of the beneficiary at the time of the payout.

(2) The verification of the identity of the beneficiary shall occur at the time of the payout.

(3) The insurance company shall include the beneficiary of a life insurance policy as a relevant risk factor in determining whether ongoing due diligence is applicable.

(4) If the insurance company determines that a beneficiary who is a legal person or a legal arrangement presents a higher risk, it shall take enhanced measures which should include reasonable measures to identify and verify the identity of the beneficial owner of the beneficiary, at the time of payout.

Customer's failure to produce evidence of identity

19.—(1) If satisfactory evidence of the identity of a customer is not produced, or obtained by a reporting institution in accordance with section 16, the reporting institution shall—

(*a*) not open the account, commence business relations or perform the transaction;

(*b*) submit a suspicious transaction report to the Authority within three days; and

(*c*) shall not proceed any further with the transaction, unless directed to do so by the Authority.

(2) A person who contravenes this section shall be liable—

(*a*) in the case of a natural person, to imprisonment for five years and to a fine of K10,000,000; or

(*b*) in the case of a legal person, to a fine of K50,000,000 and revocation of a business licence.

Maintenance of accounts in true name

20.—(1) A reporting institution that maintains accounts, shall maintain them in the true name of the account holder.

(2) The reporting institution shall not open, operate or maintain any anonymous account or any account which is in a fictitious, false or incorrect name.

(3) The reporting institution who contravenes this section shall be liable—

(*a*) in the case of a natural person, to imprisonment for five years and to a fine of K10,000,000; or

(*b*) in the case of a legal person, to a fine of K50,000,000 and revocation of a business licence.

(4) For the purposes of this section, "true name" means the name of that appears on the identifying document that a customer presents at the time of commencing a business relationship.

Risk-based approach

21.—(1) Every reporting institution shall identify, assess, and understand the money laundering, and terrorist financing risks with regard to its products, services, delivery channels as well as its customers, geographical locations and country risk.

(2) Based on the assessment in subsection (1), each reporting institution shall apply a risk-based approach to ensure that measures to prevent or mitigate money laundering and terrorist financing are commensurate with the risks identified.

(3) In relation to subsection (1), every reporting institution shall—

(*a*) document its risk assessments;

(*b*) consider all the relevant risk factors before determining the level of overall risk and the appropriate level and type of mitigation to be applied; and

(*c*) keep the assessments up to date.

(4) A reporting institution shall ensure that it adopts measures and procedures commensurate with its money laundering and terrorist financing risks.

(5) Where the reporting institution identifies lower risks, the reporting institution may decide to allow simplified measures for customer due diligence and where the risk is identified as high, enhanced customer due diligence measures shall be applied.

(6) Every reporting institution shall—

(*a*) apply risk-based countermeasures against any country when called upon to do so by the Authority or any duly delegated competent authority, as communicated from time to time;

(*b*) apply enhanced due diligence, proportionate to the risks, to business relationships and customer transactions with natural or legal persons, including financial institutions, from countries which have been designated as high risk by the Authority or any duly delegated competent authority, as communicated from time to time.

Establishment and maintenance of customers' records

22.—(1) Every reporting institution shall establish and maintain records of—

(*a*) the identity of a person obtained in accordance with section 16;

(*b*) all transactions carried out by it and correspondence relating to the transactions as is necessary to enable the transaction to be readily reconstructed at any time by the Authority or competent authority;

(*c*) all reports made to the Authority under sections 23 and 33;

(*d*) all reports of investigations by a reporting institution but not reported to the Authority; and

(*e*) enquiries relating to money laundering and financing of terrorism made to it by the Authority.

(2) Notwithstanding any other law, the records mentioned in subsection (1) shall be kept for a minimum period of seven years from the last date—

(*a*) the evidence of a person's identity was obtained;

(*b*) of any transaction or correspondence;

(*c*) when the account is closed or business relationship ceases, whichever is later.

(3) The records established and maintained for purposes of subsection (1) shall be—

(*a*) sufficient to enable the transaction to be readily reconstructed at any time by the Authority or competent authority to provide, if necessary, evidence for prosecutions of any offence or for purposes of civil proceedings under this Act;

(*b*) maintained in a manner and form that will enable the reporting institution to comply immediately with requests for information from a competent authority.

(4) Where any record is required to be kept under this Act, a copy of it, with the appropriate back-up and recovery procedures shall be kept.

(5) The records maintained under subsection (1) shall be made available upon request to the Authority, law enforcement agency, supervisory authorities or competent authority for purposes of ensuring compliance with this Act and for purposes of an investigation and prosecution of an offence or civil proceedings under this Act.

(6) A person who contravenes this section shall be liable—

(*a*) in the case of a natural person, to imprisonment for five years and to a fine of K10,000,000; and

(*b*) in the case of a legal person, to a fine of K50,000,000 and revocation of a business licence.

Reporting suspicious transactions

23.—(1) Whenever a reporting institution suspects or has reasonable grounds to suspect or confirms, that a transaction or an attempted transaction is related to the commission of an offence under this Act, it shall as soon as possible but not later than three days after forming that suspicion and, wherever possible, before the transaction is carried out—

(*a*) take reasonable measures to ascertain the purpose of the transaction, the origin and ultimate destination of the funds involved and the identity and address, of any ultimate beneficiary;

(*b*) prepare a report of the transaction in accordance with subsection (2), and communicate the information contained in the report to the Authority in writing and in a manner the Director General may prescribe.

(2) A report required under subsection (1) shall be submitted regardless of the amount involved and shall—

(*a*) where applicable, contain particulars of the matters specified in subsection (1) and in section 16 (2), (3), (4), (5), (6) or 18;

(*b*) contain a statement of the grounds on which the reporting institution holds the suspicion; and

(*c*) be signed or otherwise authenticated by the reporting institution.

(3) A reporting institution which has reported a suspicious transaction in accordance with this section shall, if requested to do so by the Authority, give such further information as it has in relation to the transaction.

(4) After receipt of a suspicious transaction report required under subsection (1) or whenever the Authority has reasonable grounds to suspect that funds in a particular customer account maintained at any reporting institution may be proceeds of an offence or related to terrorist financing, the Authority may direct the reporting institution in writing or by telephone to be followed up in writing within one working day, not to proceed with the carrying out of that transaction or proposed transaction or any other transaction immediately and where

appropriate, freeze any funds or reverse any transaction in respect of the funds affected by that transaction or proposed transaction for a period not exceeding ninety working days in order to allow the Authority—

(*a*) to make necessary inquiries concerning the transaction; and

(*b*) if deemed appropriate, to inform and advise a competent authority.

(5) The court may, upon the application of the Authority, order the extension of the direction under subsection (4), for a period of not less than three months:

Provided that a party affected or likely to be affected by the order, may apply on notice to all parties concerned to court to be heard on the matter.

(6) A person who contravenes this section shall be liable—

(*a*) in the case of a natural person, to imprisonment for five years and to a fine of K10,000,000; or

(*b*) in the case of a legal person, to a fine of K50,000,000 and revocation of a business licence.

Disclosure of suspicious transaction reports and other information

24.—(1) A person or institution shall not disclose to any person—

(*a*) that a report to the Authority under sections 23 (1) or 37 and 39 has been or may be made, or further information has been given under section 23 (3);

(*b*) that the person or institution has formed a suspicion in relation to a transaction for purposes of sections 23 (1), 37 and 39; or

(*c*) any other information from which the person to whom the information is disclosed could reasonably be expected to infer that a suspicion has been formed or that a report has been or may be made.

(2) A person who contravenes subsection (1) shall, on conviction, be liable—

(*a*) in the case of a natural person, to imprisonment for five years and to a fine of K10,000,000; or

(*b*) in the case of a legal person, to a fine of K50,000,000 and revocation of a business licence.

(3) Any person who knows or suspects that a report under sections 23 (1), 37 and 39 is being prepared or has been sent to the Authority; and discloses to another person such information in manner which is likely to prejudice any investigation commits an offence and shall be liable, on conviction, to imprisonment for ten years.

Protection of identity of persons and information in suspicious transaction reports

25.—(1) A person shall not disclose any information that will identify or is likely to identify—

(*a*) any person who has handled a transaction in respect of which a suspicious transaction report has been made;

(*b*) any person who has prepared a suspicious transaction report;

(*c*) any person who has made a suspicious transaction report; or

(*d*) information provided pursuant to section 23 (3), except for the following purposes, namely, the supervisory authority in the course of carrying out official functions, the investigation or prosecution of a person or persons for an offence under this Act and the enforcement of this Act.

(2) Nothing in this section prohibits the disclosure of any information for the purposes of prosecution of any offence under this Act.

(3) A person who contravenes this section shall, on conviction, be liable—

(*a*) in the case of a natural person, to imprisonment for five years and to a fine of K10,000,000; or

(*b*) in the case of a legal person, to a fine of K50,000,000 and revocation of a business licence.

Protection of persons reporting suspicious transactions

26.—(1) No civil, criminal, administrative or disciplinary proceedings shall be taken against—

(*a*) a supervisory authority;

(*b*) a reporting institution; or

(*c*) director, officer, employee or agent of the supervisory authority or the reporting institution, acting in the course of that person's employment or agency,

in relation to any action by the supervisory authority or reporting institution, or its officer, employee or agent taken under this Act, if

carried out in good faith or in compliance with directions given by the Authority pursuant to this Act, regardless of whether the criminal activity occurred or not.

(2) Subsection (1) shall not apply in respect of proceedings for an offence against section 24.

Compliance officer and internal reporting procedures

27.—(1) Every reporting institution shall—

(*a*) appoint a compliance officer;

(*b*) establish and maintain compliance management programme which shall include but not limited to the following requirements set out in this Act—

(i) risk-based approach;

(ii) customer identification;

(iii) record keeping and retention;

(iv) reporting;

(v) confidentiality;

(vi) transaction monitoring systems;

(vii) making its officers and employees aware of the laws and regulations relating to money laundering and financing of terrorism as well as procedures, policies and audit systems adopted by it to deter money laundering and financing of terrorism;

(viii) screening persons before hiring them as employees;

(ix) screening customers against relevant sanctions lists;

(*c*) conduct ongoing training of its directors, officers, employees and agents to recognize suspicious transactions, trends in money laundering and financing of terrorism activities and money laundering and financing of terrorism risks within the financial institution's products, services and operations; and

(*d*) establish an independent audit function to test its anti-money laundering and financing of terrorism procedures and systems.

(2) The policies, procedures and systems to be established under subsection (1) above must be written and approved by the person or body exercising ultimate effective control of the reporting institution and must be accessible to the Authority and the supervisory authority any time they request to see the same.

(3) A compliance officer appointed pursuant to this section, shall—

(*a*) be a senior officer at management level, as defined in the regulations with relevant qualifications and experience to enable him to respond sufficiently well to enquiries relating to the reporting institution and the conduct of its business;

(*b*) be responsible for establishing and maintaining a manual of compliance procedures in relation to its business as the Authority or the supervisory authority may, from time to time, require;

(*c*) be responsible for ensuring compliance, by staff, of the reporting institution with the provisions of this Act and any other law relating to money laundering or financing of terrorism and the provisions of any manual of compliance procedures established pursuant to this section; and

(*d*) act as the liaison between the reporting institution and Authority or the supervisory authority and in matters relating to compliance with the provisions of this Act and any other law or directive with respect to money laundering or financing of terrorism.

(4) Subsections 1 (*a*) and 1 (*d*) does not apply to a reporting institution which in the course of carrying out its business does not employ more than five employees.

(5) A person who contravenes this section shall be liable—

(*a*) in the case of a natural person, to imprisonment for five years and to a fine of K5,000,000; or

(*b*) in the case of a legal person, to a fine of K50,000,000 and revocation of a business licence.

Inclusion of originator information Cap. 44:05

28.—(1) Every institution or person that is licensed to do business in Malaŵi as a financial institution under the Financial Services Act, or as a money transmission service provider shall include accurate originator and beneficiary information and other related messages when conducting domestic and international electronic funds transfers and such information shall remain with the transfer.

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

(*a*) payments that result from a transaction carried out using a credit or debit card:

Provided that the credit or debit card number is included in the information accompanying such a transfer; and

(*b*) electronic funds transfers and settlements between financial institutions where the originator and beneficiary of the funds transfer are financial institutions acting on their own behalf.

(3) All records and information collected under subsection (1) shall be maintained in accordance with section 22.

(4) Where the required originator or beneficiary information accompanying a cross-border wire transfer does not remain with a related domestic wire transfer, the intermediary financial institution shall keep a record, for at least seven years, of all the information received from the ordering financial institution or another intermediary financial institution.

(5) Every financial institution, person or money transmission service provider whether acting as an originator, intermediary or beneficiary institution shall consider all information received in order to determine whether a suspicious transaction has to be filed:

Provided that where a name designated on a prescribed sanctions list is encountered and confirmed, the financial institution, person or money transmission service provider shall freeze the transaction.

(6) A person who contravenes this section commits an offence and shall, on conviction, be liable to—

(*a*) in the case of a natural person, imprisonment for five years and to a fine of K10,000,000; or

(*b*) in the case of a legal person, a fine of K50,000,000 and revocation of a business licence.

Monitoring transactions and ongoing due diligence

29.—(1) Every reporting institution shall pay special attention to—

(*a*) any complex, unusual or large transactions that have no apparent or visible economic or lawful purpose;

(*b*) business relations and transactions with persons in jurisdictions that do not have adequate systems in place to prevent or deter money laundering or terrorist financing;

(*c*) electronic fund transfers that do not contain complete originator information.

(2) In relation to subsection (1), every reporting institution shall—

(*a*) verify the background and purpose of the transactions or business relations and record its findings, in writing;

(*b*) upon request, shall make available such findings to the Authority or to the supervisory authority.

(3) Every reporting institution shall conduct ongoing due diligence and monitor its business relationships and the transactions undertaken throughout the course of the relationship to ensure that its obligations under sections 16 and 18 are met, and that the transactions conducted are consistent with the information that the reporting institution has of its customer and the risk profile of the business of the customer including where necessary, the source of funds.

(4) Every reporting institution shall ensure that documents, data or information collected under sections 16 and 18 is kept up-to-date and relevant, by undertaking reviews of existing records.

(5) Every reporting institution shall apply a risk-based approach when monitoring its business relationships and customer transactions.

(6) Every reporting institution shall ascertain the purpose of any transaction in excess of an amount that the Director General may, from time to time, prescribe, by notice published in the *Gazette*, and the origin and ultimate destination of the funds involved in the transaction.

(7) A person who contravenes this section commits an offence and shall, on conviction, be liable—

(*a*) in the case of a natural person, to imprisonment for five years and to a fine of K10,000,000; or

(*b*) in the case of a legal person, to a fine of K50,000,000 and revocation of a business licence.

Correspondent banking

30.—(1) Every financial institution shall, in relation to its correspondent banking and other similar relationships—

(*a*) adequately identify and verify the identity of the correspondent or respondent institution with which it seeks to enter into a business relationship;

(*b*) gather sufficient information about a respondent institution to understand the nature of the respondent's business;

(*c*) determine from publicly available information on the reputation of the institution and the quality of supervision including whether it has been subject to a money laundering or terrorist financing investigation or regulatory action;

(*d*) obtain approval from senior management before establishing a new correspondent relationship;

(*e*) clearly understand and document the responsibilities of the financial institution and the correspondent or respondent institution;

(*f*) assess the respondent institution's controls against money laundering and terrorist financing.

(2) A financial institution shall not enter into, or continue, correspondent banking relationships with shell banks and shall satisfy themselves that respondent financial institutions do not permit their accounts to be used by shell banks.

(3) Before a financial institution enters into a correspondent banking relationship with another financial institution, the financial institution shall—

(*a*) carry out an assessment of the risk the financial institution may reasonably face if the correspondent banking relationship might whether inadvertently or otherwise involve or facilitate an offence under this Act;

(*b*) carry out an assessment of such matters as are specified in the regulations; and

(*c*) prepare a written record of the assessment as soon as practicable after the completion of the assessment, if carrying out the assessment is warranted by the risk identified in the assessment carried out by the financial institution under subsection (1).

(4) Where the relationship is a payable-through account, a financial institution shall ensure that the institution with which it has established the relationship—

(*a*) has verified the identity of, and performed ongoing due diligence on the customers of that institution that have direct access to accounts of the correspondent bank; and

(*b*) is able to provide the relevant customer due diligence information upon request to the correspondent bank.

(5) A person who contravenes this section commits an offence and shall, on conviction, be liable—

(*a*) in the case of a natural person, to imprisonment for five years and to a fine of K10,000,000; or

(*b*) in the case of a legal person, to a fine of K50,000,000 and revocation of a business licence.

Foreign branches, subsidiaries or head office

31.—(1) A reporting institution which is part of a group shall implement group wide programmes against money laundering, terrorist financing and handling of proceeds of crime.

(2) The obligations set out in section 27 shall apply to all foreign branches and majority-owned subsidiaries of a reporting institution and shall include—

(*a*) policies and procedures for sharing information within the group for money laundering and terrorist financing purposes;

(*b*) the provision, at group-level compliance, audit, or money laundering and terrorist financing functions, of customer, account, and transaction information from branches and subsidiaries when necessary for money laundering and terrorist financing purposes; and

(*c*) adequate safeguards on the confidentiality and use of information exchanged.

(3) A reporting institution shall ensure that its foreign branches and majority owned subsidiaries apply measures against money laundering, terrorist financing and handling of proceeds of crime that are not less stringent than those of the home country requirements.

(4) Every reporting institution shall apply appropriate additional measures to manage the money laundering, terrorist financing and handling of proceeds of crime risks, if the country in which the branch or subsidiary does not permit the proper implementation of the measures.

(5) The provisions of subsection (2) apply to Malaŵi branches of foreign reporting institutions *mutatis mutandis*.

(6) The provisions of the subsections (2) and (3) notwithstanding obligations imposed by this Act must be complied with by all financial institutions.

(7) A person who contravenes this section commits an offence and shall, on conviction, be liable—

(*a*) in the case of a natural person, to imprisonment for five years and to a fine of K10,000,000; or

(*b*) in the case of a legal person, to a fine of K50,000,000 and revocation of a business licence.

Secrecy obligations overridden

32.—(1) A duty of secrecy or confidentiality or any other restriction on the disclosure of information, whether imposed by legislation or arising from the common law or other agreement, shall not affect compliance, by reporting institutions, with the provisions of this Act.

(2) Subsection (1) does not apply if the obligation of secrecy or other restriction is based on the common law right to professional privilege between a legal practitioner and his client in respect of information communicated to the legal practitioner so as to enable him to—

(*a*) provide advice to the client;

(*b*) defend the client; or

(*c*) render other legal assistance to the client, in connexion with an offence under any law in respect of which—

(i) the client is charged;

(ii) the client has been arrested or summoned to appear in court; or

(iii) in respect of which an investigation with a view to institute criminal proceedings is being conducted against the client.

(3) Notwithstanding any other law, a court may, on application being made in relation to an investigation under this Act, order a legal practitioner to disclose information available to him in respect of any transaction or dealing relating to the matter under investigation.

(4) Nothing in subsection (3) shall require a legal practitioner to comply with an order under that subsection to the extent that the compliance would be in breach of subsection (2).

Other reports

33.—(1) A reporting institution shall, as guided by the Authority, report to the Authority on various matters, whether a suspicious transaction report was made already or not, as follows—

(*a*) large transaction reports;

(*b*) domestic and international electronic funds transfer reports:

Provided that the Authority may seek more detailed particulars on a particular report in which case, the detailed particulars must be submitted to the Authority within a period specified by the Authority in the request.

(2) A reporting institution shall—

(*a*) file reports under this section to the Authority on all transactions equivalent to or exceeding the amount prescribed in the regulations, whether they appear to be suspicious or not;

(*b*) monitor and report, on an ongoing basis, all large transactions, domestic and international electronic funds transfer

or any other transactions as may be specified in the regulations, whether completed or not;

(*c*) pay attention to all unusual patterns of transactions, and to insignificant but periodic patterns of transactions when preparing the reports mentioned in subsection (1);

(*d*) as directed by the Authority, examine the background and purpose of the transactions referred in subsection (1) and shall set out its findings in writing;

(*e*) retain its findings under subsection (2) for at least seven years from the date of making the report thereof, and shall, on request, make them available to the Authority and to the respective supervisory authority or auditors.

(3) A report under this section shall be accompanied by copies of all documentation directly relevant to the transaction as directed by the Authority.

(4) The Authority may, in writing, require the person making the report under this section to provide the Authority with—

(*a*) particulars or further particulars of any matter concerning the transaction to which the report relates and the grounds upon which it is based; and

(*b*) copies of all available documents concerning such particulars or further particulars.

(5) When a reporting institution receives a request under subsection (4), the reporting institution shall furnish the Authority with the required particulars or further particulars and copies of documents to the extent that the particulars or documents are available to that person within a reasonable time, but in any case not later than seven days from the date of the receipt of the request:

Provided that the Authority may, upon written application by the reporting institution responding to a request and with the approval of the Director General, grant the reporting institution an extension of the time within which to respond.

Penalties and sanctions

34.—(1) Except for offences under Part V of this Act, if the Authority or supervisory authority, is satisfied on reasonable grounds that a person or reporting institution has contravened the provisions of this Act, the Authority may impose administrative penalties on that person or institution by doing one or more of the following—

(*a*) giving the person a written warning;

(*b*) directing that person to do a specified act or refrain from doing a specified act for one or more of the following specified purposes—

(i) to remedy the effects of the contravention;

(ii) to compensate persons who have suffered loss because of the contravention;

(iii) to ensure that the person does not commit further contraventions of this Act;

(*c*) requiring the director, officer, employee of the reporting institution or reporting institution to pay a monetary penalty as may be prescribed in regulations;

(*d*) publication of the non-compliant reporting institution in newspapers of widest circulation or the website of the Authority or supervisory authority website if it persistently breaches this Act or regulations;

(*e*) to recommend to the supervisory authority or self-regulatory body for sanctions under the respective law governing that person as a professional or employment or business authority misconduct.

(2) Where the administrative penalty imposed by the Authority or supervisory authority is a monetary penalty and the director, officer, or employee of the reporting institution or reporting institution on whom the monetary penalty has been imposed does not pay the monetary penalty within twenty-one days from the date of demand the amount thereof shall be recovered as a civil debt with interest at the ruling Lombard rate.

(3) Where the need for criminal proceedings arises, the Authority shall recommend the commencement of criminal proceedings against a reporting institution to the Director of Public Prosecutions.

(4) In this section, "Lombard rate" means the interest rate at which banks borrow from the Reserve Bank of Malaŵi in respect to short term loans.

PART IV

Supervisory Authorities

Supervisory duties of the authority

35.—(1) The Authority shall ensure that all reporting institutions comply with the provisions of this Act.

(2) The authority may delegate powers to a supervisory authority or a self-regulatory body to regulate and supervise reporting institutions under its purview.

(3) On matters arising under this Act, the supervisory authority or a self-regulatory body shall consult with the authority, before any action is taken against any reporting institution in terms of this Act or any order, determination, directive, instruction or rule made under this Act.

Duties of supervisory authorities

36.—(1) Each supervisory authority shall be responsible for regulating, supervising and enforcing compliance with this Act or any regulation, instruction, direction, guideline or rule made pursuant to or in terms of this Act, by all reporting institutions regulated or supervised by it and to whom the provisions of this Act apply.

(2) The obligation referred to in subsection (1) shall form part of the legislative mandate of any supervisory authority and shall constitute a core function of that supervisory authority.

(3) Any law which regulates a supervisory authority to supervise or regulate any reporting institution to whom the provisions of this Act apply, shall take account of subsection (1), and a supervisory authority may utilize any fees or charges it is authorized to impose or collect to defray expenditure incurred in performing its obligations under this Act or any order, determination or directive made in terms of this Act.

(4) A supervisory authority, in meeting its obligation referred to in subsection (1), shall—

(*a*) in addition to any powers it has under any other Act, exercise any power afforded to it in this Act;

(*b*) take any measures it considers necessary or expedient to meet its obligations as imposed by this Act or any order, determination, instruction, directive or rule made under this Act, or achieve the objectives of this Act;

(*c*) require a reporting institution supervised or regulated by it and to whom the provisions of this Act apply, to report on that institution's compliance with this Act or any order, determination, instruction, directive or rule made under this Act in the form, manner and within the period determined by the supervisory authority;

(*d*) renew or amend any licence, registration, approval or authorization that the supervisory authority may issue or grant in accordance with any Act, to include the following conditions—

(i) compliance with this Act;

(ii) the continued availability of human, financial, technological and other resources to ensure compliance with this Act or any order, determination or directive made under this Act;

(*e*) in making a determination in accordance with any Act applicable to it as to whether a person is fit and proper to hold office in a reporting institution, take into account any involvement, whether directly or indirectly, by that person in any non-compliance with this Act or any order, determination, instruction, directive or rule made in terms of this Act, or has been convicted of any offence punishable by a term of imprisonment in excess of twelve months, or any involvement in any money laundering, or terrorist financing activity;

(*f*) compel production of any records, documents and information relevant to monitoring compliance with this Act and relevant regulations or directives;

(*g*) have sufficient operational independence and autonomy to ensure freedom from any undue influence or interference in the performance of its duties;

(*h*) review the money laundering and terrorist financing risk profiles and risk assessments prepared by reporting institutions and take the result of this review into consideration;

(*i*) review the adequacy and implementation of reporting institutions policies, internal controls and procedures, taking into account the money laundering and terrorist financing risk profile and size of the institution.

(5) Each supervisory authority shall develop and implement a risk-based approach to supervision.

(6) A supervisory authority shall submit to the authority, within ten working days a written report on any action taken against any reporting institution in terms of this Act or any order, determination, directive, instruction, or rule made under this Act.

(7) The authority and each supervisory body shall coordinate the exercising of their powers and performance of their functions under this Act to ensure consistent application of the Act, and may for that purpose, enter into a written memorandum of understanding in respect thereof.

Supervisory authority or external auditor to report suspicious transactions

37.—(1) Where the supervisory authority or an external auditor of a reporting institution comes across information during the normal course of their duties or suspect or have reasonable grounds to suspect that information that they have concerning any transaction or attempted transaction may be—

(*a*) related to the commission of an offence under this Act;

(*b*) of assistance in the enforcement of this Act; or

(*c*) relevant to an act preparatory to the offence under this Act,

shall within three working days report the transaction or attempted transaction to the authority.

(2) Any person who, deliberately or with intention to deceive, does not make a report in accordance with this section commits an offence.

Duties of self-regulatory bodies

38. Every self-regulatory body shall—

(*a*) ensure that designated non-financial businesses and professions are subject to effective systems for monitoring and ensuring compliance with requirements set out under this Act on the basis of risk sensitivity;

(*b*) ensure that its members comply with their obligations to prevent the commission of offences under this Act;

(*c*) take the necessary measures to prevent criminals or their associates from being professionally accredited, or holding or being the beneficial owner of a significant or controlling interest or holding a management function, and have effective, proportionate, and dissuasive sanctions for any member who does not comply with this Act.

Self-regulatory bodies to report suspicious transactions to the Authority

39.—(1) A self-regulatory body shall, within three days of forming the suspicion, report to the authority any suspicious transaction that the self-regulatory body may encounter during the normal course of their duties.

(2) Any person who, deliberately or with intention to deceive, does not make a report in accordance with this section commits an offence.

(3) A person who contravenes this section shall, on conviction, be liable to imprisonment for five years and to a fine of K10,000,000.

PART V

Offences

Extra-territorial application

40. For offences under this Part shall be considered offences whether—

(*a*) wholly or partially committed in Malaŵi; or

(*b*) committed by or against a Malaŵian person.

False or misleading statements

41. A person or reporting institution which in relation to Part IV and V makes any statement that the person or reporting institution knows is false or misleading in a material particular or omits from

any statement any matter or thing without which the person knows that the statement is false or misleading in a material particular commits an offence and shall be liable on conviction—

(*a*) in the case of a natural person, to imprisonment for five years and to a fine of K10,000,000; or

(*b*) in the case of a legal person, to a fine of K50,000,000 and revocation of a business licence.

Money laundering

42.—(1) A person who, knowingly or who has reasonable grounds to believe that any property, including his own property, in whole or in part, directly or indirectly, represents proceeds of a predicate offence—

(*a*) converts or transfers property with the aim of concealing or disguising the illicit origin of that property, or of aiding any person, including himself, involved in the commission of the offence to evade the legal consequences thereof;

(*b*) conceals or disguises the true nature, origin, location, disposition, movement or ownership of the property;

(*c*) acquires, possesses or uses that property; or

(*d*) participates in, associates with or conspires to commit, attempts to commit and aids, abets and facilitates the commission of any act or omission referred to in paragraphs (*a*), (*b*) or (*c*),

commits an offence.

(2) For purposes of proving of an offence under subsection (1), it is not necessary that the predicate offence be committed.

(3) A person who commits an offence under this section shall, on conviction, be liable—

(*a*) in the case of a natural person, to imprisonment for life;

(*b*) in the case of a legal person, a fine of K500,000,000 and revocation of a business licence.

Terrorist financing

43.—(1) Any person who by any means, directly or indirectly, provides or receives funds, or attempts to do so, with the intention that they should be used or in the knowledge that they are to be used, in whole or in part—

(*a*) in order to carry out a terrorist act;

(*b*) by a terrorist; or

(*c*) by a terrorist organization,

commits an offence.

(2) An offence under subsection (1) is committed—

(*a*) even if the act of terrorism thereto referred does not occur;

(*b*) even if the funds were not actually used to commit or attempt the act of terrorism thereto referred; and

(*c*) regardless of the State or territory in which the act of terrorism is intended or does occur.

(3) It shall also be an offence to, knowingly and intentionally—

(*a*) participate as an accomplice in an offence within the meaning of subsection (1);

(*b*) organize or direct others to commit an offence within the meaning of subsection (1);

(*c*) contribute to the commission of an offence under subsection (1) by a group of persons acting with a common purpose, where the contribution is to further the criminal activity or purpose of the group that includes commission of an offence under subsection (1) or where the contribution is made knowing the intention of the group is to commit an offence under subsection (1);

(*d*) provide financial support for training or upkeep of a terrorist or for commission of a terrorist act.

(4) Any person who commits an offence under this section shall, on conviction, be liable—

(*a*) in the case of a natural person, to imprisonment for life;

(*b*) in the case of a legal person, to a fine of K500,000,000 and revocation of a business licence.

Other terrorist financing offences

44.—(1) Any person who solicits, receives, provides or possesses money or other property, enters into, or becomes concerned in, an arrangement as a result of which money or other property is made available or is to be made available, for the purposes of commission of a terrorist act, or for a terrorist or proscribed organization, commits an offence and shall be liable, on conviction—

(*a*) in the case of a natural person, to imprisonment for twenty-five years;

(*b*) in the case of a legal person, to a fine of K250,000,000 and revocation of a business licence.

(2) For the purpose of proving the offence under this section, it is an irrelevant fact whether the funds were actually used in carrying out a terrorist act.

General penalty for financial crimes

45. Any person convicted of a financial crime for which a penalty has not been prescribed under this Act shall be liable, on conviction—

(*a*) in the case of an individual to imprisonment of ten years and a fine of K20,000,000; or

(*b*) in the case of a legal person, to a fine of K100,000,000 and revocation of a business licence.

Financing of proliferation of weapons of mass destruction

46.—(1) Any person who, alone or in association with others, directly or indirectly, finances the proliferation of weapons of mass destruction within the meaning of this Act commits an offence.

(2) Any person convicted of the offence of financing the proliferation of weapons of mass destruction shall be liable to—

(*a*) in the case of a natural person, imprisonment for life; and

(*b*) in the case of a legal person, a fine of K500,000,000 and revocation of a business licence.

(3) For purposes of this Part, "financing of proliferation of weapons of mass destruction" refers to the act of providing funds or financial services which are used, in whole or in part, for the manufacture, acquisition, possession, development, export, transshipment, brokering, transport, transfer, stockpiling or use of nuclear, chemical or biological weapons and their means of delivery and related materials, including both technologies and dual use goods used for non-legitimate purposes, in contravention of any written law or, where applicable, an international obligation.

Dealing in terrorist property

47. Any person who, knowingly or has reasonable cause to suspect, enters into, or becomes concerned in, an arrangement which facilitates the retention or control by, or on behalf of, another person, of terrorist property, in any manner, including—

(*a*) concealment;

(*b*) removal from the jurisdiction; or

(*c*) transfer to any other person,

commits an offence and shall be liable, on conviction, to imprisonment for fifteen years.

Confiscation and compensation on conviction Cap. 8:01

48.—(1) Section 149 of the Criminal Procedure and Evidence Code shall apply to proceedings under this Part with such modifications as are necessary.

(2) Without limiting the generality of subsection (1), a court, upon conviction of an accused person, shall order forfeiture or confiscation

of tainted property of the convicted person as one of the penalties to be imposed in sentencing the convicted person.

(3) The court may order compensation of the victims of the crime by the convicted person.

Confiscation order on conviction

49.—(1) Where, property is tainted property in respect of an offence of which a person has been convicted, the court shall order that specified property be confiscated.

(2) In determining whether property is tainted property the court may infer, in the absence of evidence to the contrary—

(*a*) that the property was used in or in connexion with the commission of an offence, if it was in the possession of the person at the time of, or immediately after the commission of the offence for which the person was convicted;

(*b*) that the property was derived, obtained or realized as a result of the commission of the offence if it was acquired by the person during or within a reasonable time after the period of the commission of the offence of which the person was convicted, and the court is satisfied that the income of that person from sources unrelated to criminal activity of that person cannot reasonably account for the acquisition of that property.

(3) Where the court orders that property, other than money, be confiscated, the court shall specify, in the order, the amount that it considers to be the value of the property at the time when the order is made.

(4) Where the court makes a confiscation order, the court may give any dirertions as it may deem necessary or convenient for giving effect to the order.

Effects of confiscation order on conviction

50.—(1) Subject to subsection (2), where a court makes a confiscation order against any property under this Part, the property, by virtue of the order, vests absolutely with the Government.

(2) Where property ordered to be confiscated is registrable property—

(*a*) the property vests with the Government in equity but does not vest with the Government at law until the applicable registration requirements have been complied with;

(*b*) Government is entitled to be registered as owner of the property;

(*c*) the Attorney General has power on behalf of the Government to do or authorize the doing of anything necessary or convenient to obtain the registration of the Government as owner, including the execution of any instrument to be executed by a person transferring an interest in property of that kind.

(3) Where the court makes a confiscation order against property under this Part—

(*a*) the property shall not, except with the leave of the court, be disposed of, or otherwise dealt with, by or on behalf of the Government before an appeal process is concluded; and

(*b*) if, after the appeal process, the order has not been discharged, the property may be disposed of and the proceeds applied or otherwise dealt with in accordance with the provisions of this Act.

(4) For purpose of this section—

"registrable property" means property, the title to which is passed by registration in accordance with the provisions of a written law;

"relevant appeal date" in relation to a confiscation order made in consequence of a conviction of a person of an offence means—

(*a*) the date on which the period allowed by rules of court for the lodging of an appeal against the conviction of a person or for the lodging of an appeal against the making of a confiscation order expires without an appeal having been lodged, whichever is the latter; or

(*b*) where an appeal against the conviction of a person or against the making of a confiscation order is lodged, the date on which the appeal lapses in accordance with the rules of court or is finally determined, whichever is later.

Pecuniary penalty order on conviction

51.—(1) Subject to this section, where a competent authority applies to the court for a pecuniary penalty order against a person in respect of the conviction of that person for an offence under this Act, the court shall, if it is satisfied that the person has benefited from the offence, order him to pay to the Government an amount equal to the value of his benefit from the offence or a lesser amount certified by the court in accordance with this Act to be the amount that might be realized at the time the pecuniary penalty order is made.

(2) The court shall assess the value of the benefit derived by a person from the commission of an offence under this Act.

(3) The court shall not make a pecuniary penalty order under this section—

(*a*) until the period allowed by the rules of court for the lodging of an appeal against conviction has expired without the appeal being lodged; or

(*b*) where an appeal against conviction has been lodged, until the appeal lapses in accordance with the rules of court or is finally determined, whichever is later.

Procedure for enforcement of fines

52. Where the court orders a person to pay an amount under this Part, that amount shall be treated as if it were a fine imposed upon him in respect of a conviction for an offence under this Act, and the court may—

(*a*) notwithstanding anything contained in any other written law, impose in default of the payment of the amount, a term of imprisonment—

(i) of five years, where the amount does not exceed K10,000,000;

(ii) of ten years, where the amount exceeds K20,000,000 but does not exceed K40,000,000;

(iii) of twenty years, where the amount exceeds K40,000,000;

(*b*) direct that the term of imprisonment imposed pursuant to paragraph (*a*) be served consecutively to any other form of imprisonment imposed on that person or that the person is then serving.

Confiscation where a person dies or absconds

53.—(1) Where an application is made to the court for a confiscation order against any tainted property in consequence of a person having died or absconded in connexion with an offence under this Act and the court is satisfied that—

(*a*) any property is tainted property in respect of an offence under this Act;

(*b*) proceedings in respect of an offence under this Act committed in relation to that property were commenced; and

(*c*) the defendant charged with the offence referred to in paragraph (*b*) has died or absconded,

the court may order that confiscation proceedings proceed under Part VII of this Act.

(2) The provisions of Part VII and Part VIII of this Act shall apply with such modifications as are necessary to give effect to this section.

PART VI

Civil Forfeiture, Seizure, Detention, Freezing and Preservation of Assets

Civil proceedings

54.—(1) All proceedings under this Part, except where the section creates an offence, shall be civil proceedings.

(2) The rules of evidence applicable in civil proceedings shall apply to proceedings under this Part.

(3) The Authority shall take all necessary measures to ensure that the application of provisions under this Part do not unduly hamper trade activities.

(4) Any application made under this Part shall be heard by the High Court.

Seizure and detention of suspicious imports or exports of currency

55.—(1) Any person who leaves or arrives in Malaŵi, transports, sends or receives currency or bearer negotiable instruments to or from Malaŵi, shall report, in a prescribed manner, to an authorized officer at the port of departure or entry, as carrying, sending, receiving or transporting the amount of currency or bearer negotiable instruments, as the case may be; and the authorized officer shall, without delay, send a copy of the report if it is in excess of the amount prescribed in regulations to the Authority.

(2) Where a person is about to leave Malaŵi or has arrived in Malaŵi, or is about to board or leave, or has boarded or left, any ship or aircraft or car or bus or train, and in the case of a parcel, it is about to be sent across the borders or received in Malaŵi either by mail or containerized cargo, an authorized officer may, with reasonable and necessary assistance and with use of force as is necessary—

(*a*) examine any article which a person has with him or in his luggage;

(*b*) if the authorized officer has reasonable grounds to suspect that an offence under subsection (1) may have been or is being committed, he shall search the person for the purpose of determining whether the person has, in his possession, any currency or negotiable bearer instruments in respect of which a report under subsection (1) is required; and

(*c*) the authorized officer and any person assisting the officer, may stop, board and search any ship, aircraft, bus, car, train or other conveyance for the purposes of exercising the powers conferred by this subsection.

(3) Where the authorized officer has reasonable grounds to believe that currency or negotiable bearer instruments found in the course of an examination or search, conducted under subsection (2) may afford evidence as to the commission of an offence under this Act, the officer shall seize the currency or negotiable bearer instruments.

(4) The authorized officer who has seized currency and negotiable bearer instruments under subsection (3) shall report such seizure to the Authority.

(5) An authorized officer shall, upon discovery of a false declaration or non-declaration, enquire from the person in whose possession, the currency or negotiable bearer instrument(s) is found regarding its origin and intended use, and shall record the same in writing signed by the person in possession of the currency or negotiable bearer instrument(s) and countersigned by the authorized officer.

(6) A person who fails to declare or makes a false declaration commits an offence and shall be liable, on conviction, to a fine of K5,000,000 and ten per cent of non-declared amount.

Seizure of currency or bearer negotiable instruments

56. An authorized officer may seize and detain any currency or bearer negotiable instruments imported into or about to be exported from Malaŵi, in any form or manner if he has reasonable grounds for suspecting that—

(*a*) the currency is derived from an offence under any written law;

(*b*) the person carrying the currency carries it in breach of the exchange control laws; or

(*c*) the currency is intended for use by any person in the commission of an offence under this Act.

Detention and release of currency or bearer negotiable instruments seized

57.—(1) Currency and bearer negotiable instruments seized under section 55 or section 56 shall not be detained for more than fourteen days after seizure, unless a court grants an order of continued detention for a period not exceeding three months from the date of seizure, upon being satisfied that—

(*a*) there are reasonable grounds to suspect that the currency or bearer negotiable instrument was derived from an offence under this Act or is intended by any person for use in the commission of any such offence; and

(*b*) the continued detention of the currency or bearer negotiable instrument is justified while its origin or derivation is further investigated.

(2) The court may subsequently order, after hearing all parties concerned, the continued detention of the currency and bearer negotiable instruments, if the court satisfied of the matters mentioned in subsection (1), but the total period of detention shall not exceed two years from the date of the order.

(3) Subject to subsection (5), currency and bearer negotiable instruments detained under this section shall be released in whole or in part to the person from whom it was seized or to other persons claiming an interest in the currency or bearer negotiable instrument—

(*a*) by order of a court that its continued detention is no longer justified, upon application by or on behalf of that person and after considering any views of the competent authority to the contrary; or

(*b*) by an authorized officer, if satisfied that its continued detention is no longer justified.

(4) Where the currency and bearer negotiable instruments have not been claimed by any person within two years of it being seized or detained, an authorized officer may make an application to the court that such cash or negotiable instrument be forfeited to the Government.

(5) Any car, cash or bearer negotiable instruments detained under this section shall not be released where—

(*a*) an application is made under this Part VII or Part VIII for the purpose of—

(i) the forfeiture or confiscation of the whole or any part of the currency or negotiable bearer instrument; or

(ii) the continued detention of the currency or negotiable bearer instrument pending determination of its liability to forfeiture or confiscation; or

(*b*) proceedings are instituted in Malaŵi or elsewhere against any person for an offence with which the currency or bearer negotiable instrument is connected, unless and until the proceedings relating to the relevant application or the proceedings for the offence, as the case may be, have been concluded.

Seizure of terrorist cash

58.—(1) Where a competent authority has reasonable grounds to suspect that any cash—

(*a*) is intended to be used for commission of a terrorist act;

(*b*) belongs to, or is held on trust for, a proscribed terrorist individual or organization; or

(*c*) is or represents property obtained through acts of terrorism,

the competent authority shall seize the cash.

(2) The competent authority shall seize cash under subsection (1) even if it reasonably suspects part only of the cash to be terrorist cash, where it is not reasonably practicable to seize that part only of the cash.

(3) The competent authority may exercise its powers under subsection (1), whether or not any proceedings have been brought for an offence in connexion with the terrorist cash.

(4) The competent authority shall, as soon as is reasonably practicable, apply to a judge in chambers for a detention order with respect to the cash seized under subsection (1).

(5) The judge in chambers shall not make an order for detention of the cash unless he is satisfied that there are reasonable grounds for suspecting that the cash—

(*a*) is intended to be used for the purposes of terrorism;

(*b*) consists of resources of a proscribed terrorist individual or organization; or

(*c*) is or represents property obtained through act of terrorism.

(6) Subject to subsection (8), any order made under subsection (5) shall remain valid for a period of ninety days, and may be renewed for further periods of ninety days by the judge in chambers, until production of the cash before the court in proceedings against any person for an offence with which the cash is connected.

(7) Any cash detained under this section shall be deposited by the competent authority in an interest-bearing account.

(8) The cash, with the interest, may be released by order of the judge in chambers—

(*a*) where the conditions under subsection (5) are no longer met; or

(*b*) where no proceedings are brought in connexion with the cash detained.

(9) For the purposes of this section, "cash" means—

(*a*) currency;

(*b*) bearer negotiable instruments; or

(*c*) any other monetary instruments the Minister may, by notice published in the *Gazette*, specify.

Power of the authority to obtain search warrant

59.—(1) The authority may apply to court for a warrant to enter any premises belonging to or in the possession or control of a reporting institution, or any employee thereof, and to search the premises and remove any document, material or other thing therein for the purpose of the authority, as ordered by the court and specified in the warrant.

(2) The court may grant the application, if it is satisfied that there are reasonable grounds to believe that—

(*a*) the reporting institution has failed to keep a transaction record or report a suspicious transaction or provide other documents as required by this Act; or

(*b*) an officer or employee of a reporting institution is committing, has committed or is about to commit an offence of money laundering or financing terrorism.

Property tracing, tracking and monitoring orders

60. For purposes of determining whether any property belongs to or is in the possession or under the control of any person, a competent authority may, upon application to the court, obtain an order—

(*a*) that any document relevant to—

(i) tracing, identifying, locating or quantifying the property; or

(ii) identifying or locating any document necessary for the transfer of the property, belonging to, or in the possession or control of that person,

be delivered forthwith to the competent authority; and

(*b*) that the reporting institution produce forthwith to the competent authority all information obtained about any transaction conducted by or for that person during the period before or after the order as the court directs.

Orders to enforce compliance with obligations under this Act

61.—(1) The Authority may, upon application to the court, after satisfying the court that a reporting institution has failed to comply with any obligation under this Act, obtain an order against all or any officers or employees of the institution on terms as the court deems necessary, in order to enforce compliance with the obligation.

(2) In granting the order pursuant to subsection (1), the court may order that where the reporting institution fails to comply with all or any provision of the order, the institution, officer or employee shall pay a financial penalty in the sum and in the manner directed by the court.

(3) All officers and employees of a reporting institution shall take all reasonable steps to ensure the compliance by that reporting institution with its obligations under this Act.

Preservation or assets freezing orders

62.—(1) Where a reporting institution has reason to believe or suspects that funds or property it is holding belongs to a terrorist individual or organization, it shall immediately freeze the funds or the property, in a prescribed manner, and report the fact to the Authority, as the case may be, within twenty-four hours.

(2) Where the supervisory authority has reason to believe or suspects that a reporting institution holds an account or property on behalf of a terrorist, it shall within forty-eight hours issue a written direction to the reporting institution requiring it to restrain or freeze any account or other property held by that reporting institution on behalf of the terrorist and the reporting institution shall—

(*a*) comply with the directive; and

(*b*) report the matter to the Authority within twenty-four hours.

(3) Subject to subsection (4), a decision to freeze funds or property pursuant to subsection (1) or a directive given by the supervisory authority pursuant to subsection (2) shall be effective for three months unless sooner revoked by authority.

(4) The court may upon the application of the authority order the extension of the decision freezing the funds or property or restraining or refreezing directive need pursuant to subsection (3).

(5) Any person affected by the decision or directive made under subsection (3) may apply to the court for a revocation of the decision or directive in relation to him.

Monitoring orders

63.—(1) A competent authority may apply to a judge for an order (in this section otherwise called a "monitoring order") directing a reporting institution to give information and the application shall be supported by an affidavit.

(2) A monitoring order shall—

(*a*) direct a reporting institution to disclose information obtained by the institution about transactions conducted through an account held by a particular person with the institution;

(*b*) not have retrospective effect; and

(*c*) only apply for a period of a maximum of three months from the date of the making of the order.

(3) A judge shall not issue a monitoring order unless he is satisfied that there are reasonable grounds for suspecting that the person, in respect of whose account the order is sought—

(*a*) has committed or was involved in the commission, or is about to commit or be involved in the commission of, an offence under this Act; or

(*b*) has benefited, directly or indirectly, or is about to benefit, directly or indirectly from the commission of an offence under this Act.

(4) Monitoring order shall specify—

(*a*) the name or names in which the account is or is believed to be held; and

(*b*) the class of information that the institution is required to give.

(5) Where a reporting institution, which has been given notice of a monitoring order, knowingly—

(*a*) contravenes the order; or

(*b*) provides false or misleading information in purported compliance with the order,

the institution commits an offence and shall be liable, on conviction, in the case of a natural person responsible for the commission of the offence, to imprisonment for five years and a fine of K10,000,000 and, in the case of a legal person, to a fine of K50,000,000.

Monitoring orders not to be disclosed

64.—(1) A reporting institution that is, or has been, subject to a monitoring order shall not disclose the existence or operation of the order to any person except—

(*a*) an officer or agent of the institution for the purpose of ensuring compliance with the order;

(*b*) a legal adviser for the purpose of obtaining legal advice or representation in respect of the order; or

(*c*) a police officer or an authorized officer of the Authority authorized, in writing, to receive the information.

(2) Any person who contravenes subsection (1) commits an offence and shall be liable, on conviction—

(*a*) in the case of a natural person, to imprisonment for five years and a fine of K10,000,000;

(*b*) in the case of a legal person, to a fine of K50,000,000.

(3) A person described in subsection (1) shall not disclose the existence or operation of a monitoring order except to another person described in that subsection and may do so only for the purposes of the performance of the person's duties or functions.

(4) Nothing in this section prevents the disclosure of information concerning a monitoring order for the purposes of, or in connexion with, legal proceedings or in the course of proceedings before a court:

Provided that nothing in this section shall be construed as requiring a legal practitioner to disclose to any court the existence or operation of a monitoring order.

Preservation orders

65.—(1) A competent authority may apply to the court for an order prohibiting any person, subject to the conditions and exceptions specified in the order, from dealing in any manner with any realizable or tainted property.

(2) The court shall make an order under subsection (1) if there are reasonable grounds to believe that the property concerned—

(*a*) has been used or is intended for use in the commission of an offence; or

(*b*) constitutes proceeds of an offence.

(3) A court making a preservation order shall, at the same time, make an order authorizing the seizure of the property concerned by the competent authority, and any other ancillary orders that the court considers appropriate for the proper, fair and effective execution of the order.

(4) Property seized under subsection (3) shall be dealt with in accordance with the directions of the court that made the relevant preservation order.

Notice of preservation order to be given to persons with interest in the property

66.—(1) If a court makes a preservation order, the Authority shall, within twenty-one days after the making of the order, give notice of the order to all persons known to the Authority to have an interest in property which is subject to the order; and publish a notice of the order in the *Gazette* or two newspapers of widest circulation in Malaŵi.

(2) A notice under subsection (1) shall be served in the same way as any other civil court process.

(3) A person who has an interest in the property which is subject to a preservation order may give notice of his intention to oppose the making of a forfeiture order, or to apply for an order excluding his interest in the property concerned from the operation thereof.

(4) A notice under subsection (3) shall be served upon the Director General, in the case of—

(*a*) a person upon whom a notice has been served under subsection (1), within fourteen days after service; or

(*b*) any other person, within fourteen days after the date upon which a notice under subsection (1) is published in the *Gazette* or newspaper of wide circulation.

(5) A notice served under subsection (3) or (4) shall contain full particulars of the address for the delivery of documents concerning further proceedings under this Part and shall be accompanied by an affidavit stating—

(*a*) full particulars of the identity of the person entering the appearance;

(*b*) the nature and extent of his interest in the property concerned; and

(*c*) the reasons which the person intends to rely on in opposing a forfeiture order or applying for the exclusion of his interest from the operation thereof.

Duration of preservation orders

67. A preservation order shall expire ninety days after the date on which notice of the making of the order is published in the *Gazette* or two newspapers of widest circulation in Malaŵi, unless—

(*a*) there are criminal proceedings pending before a court in respect of property subject to a preservation order;

(*b*) there is an application for a forfeiture order pending before the court in respect of the property subject to the preservation order;

(*c*) there is an unsatisfied forfeiture order in force in relation to the property subject to the preservation order; or

(*d*) the order is rescinded before the expiry of that period.

Seizure of property subject to preservation orders

68.—(1) In order to prevent property subject to a preservation order from being disposed of or removed contrary to that order, the competent authority may instruct a police officer to seize any such property if the competent authority has reasonable grounds to believe that the property may be disposed of or removed.

(2) Property seized under subsection (1) shall be dealt with in accordance with the directions of the court that made the relevant preservation order.

Orders in respect of immovable property subject to preservation orders

69.—(1) A court that has made a preservation order in respect of immovable property may at any time, on application by a competent authority, order the Registrar of Lands to place a restriction on the land register in respect of that immovable property.

(2) An order under subsection (1) may be made in respect of the following restrictions—

(*a*) that the immovable property shall not, without the consent of the court, be encumbered;

(*b*) that the immovable property shall not without the consent of the court, be attached or sold in execution; and

(*c*) that the immovable property shall not, without the consent of the court—

(i) vest in an administrator when the estate of the owner of that immovable property is sequestrated;

(ii) where the owner of the immovable property is a corporate body which is being wound-up, form part of the assets of that corporate body.

(3) In order to give effect to subsection (1), the Registrar of Lands concerned shall make the necessary entries in his registers and thereupon any such restriction shall be effective against all persons except, in the case of a restriction contemplated in subsection (2) (*b*), against any person in whose favour a mortgage bond or other charge was registered against the title deed of immovable property prior to the endorsement of the restriction on the title deed of the immovable property, but shall lapse on the transfer of ownership of the immovable property concerned.

(4) Unless the court directs otherwise, the custody of immovable property on the title deed of which a restriction contemplated in subsection (2) (*c*) was endorsed shall, from the date on which—

(*a*) the estate of the owner of the immovable property is sequestrated; or

(*b*) where the owner of the immovable property is a company or other corporate body, that company or corporate body is being wound-up,

vest in the person or persons in whom the said custody would have vested if such a restriction were not so endorsed.

(5) Where the court granted its consent in respect of a restriction contemplated in subsection (2) (*c*) and endorsed on the title deed

of immovable property, the immovable property shall be deemed, if the—

(*a*) estate of the owner of the immovable property was sequestrated, to have vested in the Registrar of the High Court or Official Receiver concerned, as the case may be, as if such a restriction were not so endorsed; or

(*b*) owner of the immovable property is a company or other legal entity which is being wound-up, to have formed part of the assets of such company or legal entity as if such a restriction were not so endorsed.

(6) A person affected by an order contemplated in subsection (1) may at any time apply for the rescission of the order.

Living expenses of a person with interest in property subject to preservation order

70.—(1) A preservation order may make a provision as the court deems fit for reasonable living expenses of a person holding an interest in property subject to a preservation order and his immediate family.

(2) A court shall not make provisions for any expenses under subsection (1) unless it is satisfied that—

(*a*) the person cannot meet the expenses concerned out of his property which is not subject to the preservation order; and

(*b*) the person has disclosed under oath all his interest in the property and has submitted to that court an affidavit.

(3) Upon conviction, the court may order refund of the expenses referred to in subsections (1) and (2) and the refund may be recovered as a civil debt against the person.

Variation or rescission of preservation order

71.—(1) A court which makes a preservation order—

(*a*) may, on application by a person affected by that order, vary or rescind the preservation order or an order authorizing the seizure of the property concerned or other ancillary order, if it is satisfied—

(i) that the operation of the order concerned will deprive the applicant of the means to provide for his reasonable living expenses and cause undue hardship for the applicant;

(ii) that the hardship that the applicant will suffer as a result of the order outweighs the risk that the property concerned may be destroyed, lost, damaged, concealed or transferred; and

(*b*) shall rescind the preservation order when the criminal proceedings against the defendant concerned are concluded.

(2) When a court orders the rescission of an order authorizing the seizure of property under paragraph (*a*) of subsection (1), the court shall make such other order as it considers appropriate for the proper, fair and effective execution of the preservation order concerned.

(3) A person affected by an order in respect of immovable property may, at any time, apply for the rescission of the order.

(4) The court that made an order in respect of immovable property—

(*a*) may, if it deems it necessary in the interests of justice, at any time rescind the order; or

(*b*) shall rescind the order, if the relevant preservation order is rescinded.

(5) If an order in respect of immovable property is rescinded, the court shall direct the Registrar of Lands concerned to lift any caveat entered by virtue of that order on the land register in respect of that immovable property, and the Registrar shall give effect to the direction.

Forfeiture of property subject to preservation order

72.—(1) If a preservation order is in force, a competent authority may apply to a court for an order forfeiting to Government all or any of the property that is subject to the preservation order.

(2) The competent authority shall give a notice of fourteen days of an application under subsection (1) to every person who has served notice in terms of section 66 (3).

(3) A notice under subsection (2) shall be served in accordance with the law relating to service of civil process.

(4) A person who served notice under section 66 (3) may appear at the hearing of the application under subsection (1) to—

(*a*) oppose the making of the order; or

(*b*) apply for an order—

(i) excluding his interest in that property from the operation of the order; or

(ii) varying the operation of the order in respect of that property, and may adduce evidence at the hearing of the application.

Leave to serve notice out of time

73.—(1) A person who, for any reason, does not serve notice in terms of section 66 (3) may, within fourteen days of his becoming aware of the existence of a preservation order, apply to the court for leave to serve that notice out of time.

(2) An application under subsection (1) may be made before or after the date on which an application for a forfeiture order is made, but shall be made before judgment is given in respect of such an application for a forfeiture order.

(3) The court may grant an applicant referred to in subsection (1) leave to serve notice in terms of section 66 (3) within the period which the court deems appropriate, if the court is satisfied on good cause shown that the applicant—

(*a*) has for sufficient reason failed to serve notice in terms of section 66 (3); and

(*b*) has an interest in the property which is subject to the preservation order.

(4) When a court grants an applicant leave to serve notice out of time, the court—

(*a*) shall make any order as to costs against the applicant; and

(*b*) may make any order to regulate the further participation of the applicant in proceedings concerning an application for a forfeiture order, which it deems appropriate.

(5) A notice served after leave has been obtained under this section shall contain full particulars of the chosen address of the person who serves the notice for the delivery of documents concerning further proceedings under this Part and shall be accompanied by the affidavit referred to in section 66 (5).

Forfeiture orders

74.—(1) A court shall, subject to this Act, make an order of forfeiture, if it finds on a balance of probabilities that the property concerned—

(*a*) has been used or is intended for use in the commission of an offence under this Act; or

(*b*) constitutes proceeds of crime.

(2) The court may, when it makes a forfeiture order or at any time thereafter, make ancillary orders that it considers appropriate, including orders for and with respect to facilitating the transfer to Government of property forfeited to it under the order.

(3) The absence of a person whose interest in property may be affected by a forfeiture order does not prevent the court from making the order.

(4) The validity of an order under subsection (1) is not affected by the outcome of criminal proceedings, or of an investigation with a

view to institute the proceedings, in respect of an offence with which the property concerned is in some way associated.

(5) The competent authority applying for a forfeiture order shall publish a notice thereof in the *Gazette* or two newspapers of widest circulation in Malaŵi as soon as practicable but not more than thirty days after the order is made.

(6) A forfeiture order shall not take effect—

(*a*) before the period allowed for an application under sections 75 (2) and 78 (1) or an appeal under section 75 (5) has expired; or

(*b*) before the application or appeal has been disposed of.

A person with an interest in property subject of forfeiture

75.—(1) Where an application is made for a forfeiture order against property, a person who claims an interest in the property may apply to the court, before the forfeiture order is made and the court, if satisfied on a balance of probabilities—

(*a*) that the person was not in any way involved in the commission of the offence; and

(*b*) where the person acquired the interest during or after the commission of the offence, that he acquired the interest—

(i) for sufficient consideration; and

(ii) without knowing, and in circumstances that could not arouse a reasonable suspicion that the property was, at the time he acquired it, tainted property,

the court shall make an order declaring the nature, extent and value (at the time the order was made) of the person's interest.

(2) Subject to subsection (3), where a forfeiture order has already been made directing the forfeiture of property, a person who claims an interest in the property may, before the end of the period of twelve months commencing on the day on which the forfeiture order is made, apply under this subsection to the court for an order under subsection (1).

(3) A person who—

(*a*) had knowledge of the application for the forfeiture order before the order was made; or

(*b*) appeared at the hearing of that application,

shall not be permitted to make an application under subsection (2), except with leave of the court.

(4) A person who makes an application under subsection (1) or (2) shall give not less than fourteen days' written notice of the making of the application to the competent authority who shall be a party to any proceedings in the application.

(5) An applicant or the competent authority may in accordance with court rules, appeal against an order made under subsection (1).

(6) A person appointed by the court under this Act as an administrator shall, on application by any person who has obtained an order under subsection (1), and where the period allowed by the rules of court with respect to the making of appeals has expired and any appeal against that order has been determined—

(*a*) direct that the property or part thereof to which the interest of the applicant relates, be returned to the applicant; or

(*b*) direct that an amount, equal to the value of the interest of the applicant, as declared in the order, be paid to the applicant.

Bona fide purchaser for sufficient consideration

76.—(1) A court may, on application under section 75 or by a person referred to in section 78, and when it makes a forfeiture order, make an order excluding certain interests in property which is subject to the order, from the operation of the order.

(2) The court may make an order under subsection (1) in relation to the forfeiture of the proceeds of crime if it finds, on a balance of probabilities, that the applicant for the order—

(*a*) has acquired the interest concerned legally and for a consideration, the value of which is not significantly less than the value of that interest; and

(*b*) where the applicant had acquired the interest concerned after the commencement of this Act, that the person neither knew nor had reasonable grounds to suspect that the property in which the interest is held constitutes proceeds of crime.

(3) The court may make an order under subsection (1), in relation to the forfeiture of property which has been used or is intended for use in the commission of an offence, if it finds, on a balance of probabilities, that the applicant for the order had acquired the interest concerned legally and—

(*a*) neither knew nor had reasonable grounds to suspect that the property in which the interest is held has been used or is intended for use in the commission of an offence; or

(*b*) where the offence concerned had occurred before the commencement of this Act, the applicant has since the

commencement of this Act taken all reasonable steps to prevent the use of the property concerned in connexion with the commission of an offence.

(4) If an applicant for an order under subsection (1) adduces evidence to show that he did not know or did not have reasonable grounds to suspect that the property in which the interest is held is tainted property, the Authority may submit a return of the service on the applicant in rebuttal of that evidence in respect of the period since the date of the service.

(5) Where the Authority submits a return of the service on the applicant under subsection (4), the applicant shall, in addition to the facts referred to in subsections (2) (*a*) and (*b*), also prove on a balance of probabilities that, since the service, he has taken all reasonable steps to prevent the further use of the property concerned in the commission of an offence.

(6) The court making an order for the exclusion of an interest in property under subsection (1) may, in the interest of the administration of justice or in the public interest, make that order upon the conditions that the court deems appropriate, including a condition requiring the person who applied for the exclusion to take all reasonable steps, within a period that the court may determine, to prevent the future use of the property in connexion with the commission of an offence.

Forfeiture order by default

77.—(1) If a competent authority applies for a forfeiture order, and the court is satisfied that no person has appeared on the date upon which an application under section 76 (1) is to be heard and, on the grounds of sufficient proof or otherwise, that all persons who served notices in terms of section 73 (3) have knowledge of notices given under section 76 (2), the court may—

(*a*) make any order by default which the court could have made under sections 72 (1) and (2);

(*b*) make an order as the court may consider appropriate in the circumstances; or

(*c*) make no order.

(2) The court may, before making an order in terms of subsection (1), call upon the competent authority to adduce further evidence, either in writing or orally, in support of this application as the court may consider necessary.

(3) A person whose interest in the property concerned is affected by the forfeiture order or other order made by the court under subsection (1) may, within twenty days after that person has acquired

knowledge of the order or direction, set the matter down for variation or rescission by the court.

(4) The court may, upon good cause shown, vary or rescind the default order or give any other direction on such terms as it deems appropriate.

Failure to serve notice of application for forfeiture

78.—(1) A person affected by a forfeiture order who was entitled to receive notice of the application for the order under section 75 (2), but did not receive the notice, may, within forty-five days after the notice is published in the *Gazette* or newspaper aforesaid, apply to court for an order excluding his interest in the property concerned from the operation of the order, or varying the operation of the order in respect of the property.

(2) The hearing of the application shall, to the extent practicable and consistent with the interests of justice be held within thirty days of the filing of the application.

(3) The court may make an order under subsection (1) if it finds on a balance of probabilities that the applicant for the order falls within the provisions of section 72 (2) or section 73 (1).

(4) The provisions of subsection (4) and section 72 (5) shall apply to all proceedings under this section.

Status of orders pending appeal

79. Any preservation order and any order authorizing the seizure of the property concerned or other ancillary order which is in force at the time of any decision regarding the making of a forfeiture order under section 75 (1) shall remain in force pending the outcome of any appeal against the decision concerned.

Administrator to take possession of forfeited property

80.—(1) Where the court has made a forfeiture order and an administrator has not been appointed in respect of any of the property concerned, the court may appoint an administrator to perform any of the functions referred to in section 81 in respect of that property.

(2) On the date when a forfeiture order takes effect the property subject to the order shall be forfeited to Government and vest in the administrator on behalf of Government.

(3) Upon a forfeiture order taking effect, the administrator may take possession of the property subject to the order on behalf of Government from any person in possession, or entitled to possession, of the property.

Disposal of forfeited property

81.—(1) An administrator shall, subject to any order for the exclusion of interests in forfeited property under section 75 (1),

76 (2) (*a*) or 78 (1) or section 75 (3) and in accordance with the directions of the Authority—

(*a*) deposit any moneys forfeited into the Fund; or

(*b*) dispose of property forfeited by sale or any other means and deposit the proceeds of the sale or disposition into the Fund.

(2) Any right or interest in forfeited property not exercisable by or transferable to the Government, shall expire and shall not revert to the person who has possession, or was entitled to possession, of the property immediately before the forfeiture order took effect.

(3) A person who has possession, or was entitled to possession, of forfeited property immediately before the forfeiture order took effect, or any person acting together with, or on behalf of that person, shall not be eligible to purchase forfeited property at any sale held by the administrator.

(4) The expenses incurred in connexion with the forfeiture and the sale, including expenses of seizure, maintenance and custody of the property pending its disposition, advertising and the court costs shall be defrayed out of the Fund.

PART VII

Confiscation or Forfeiture of Assets Generally

Voidable transfers

82. The court may—

(*a*) before making a confiscation order under this Part; and

(*b*) in the case of property in respect of which a preservation order was made, where the order was served in accordance with Part VI,

set aside any conveyance or transfer of the property that occurred after the seizure of the property or the service of the restraining order, unless the conveyance or transfer was made for valuable consideration to a person acting in good faith and without notice.

Protection of third parties

83.—(1) Where an application is made for a confiscation order against property under this Act, a person who claims an interest in the property may apply to the court, before the confiscation order is made, for an order under subsection (2).

(2) If a person applies to the court for an order under this section in respect of property and the court is satisfied on a balance of probabilities that—

(*a*) the person was not in any way involved in the commission of an offence under this Act; and

(*b*) where the person acquired the interest during or after the commission of the offence, he acquired the interest—

(i) for sufficient consideration; and

(ii) without knowing, and in circumstances such as not to arouse a reasonable suspicion that the property was, at the time he acquired it, tainted property,

the court shall make an order declaring the nature, extent and value at the time the order is made of the interest of the person.

(3) Subject to subsection (4), where a confiscation order has already been made directing the confiscation of property, a person who claims an interest in the property may, before the end of the period of twelve months commencing on the day on which the confiscation order is made, apply to the court for an order under subsection (2).

(4) A person who—

(*a*) had knowledge of the application for the confiscation order before the order was made; or

(*b*) appeared at the hearing of that application,

shall not be permitted to make an application under subsection (3), except with leave of the court.

(5) A person who makes an application under subsection (1) or (3) shall give not less than fourteen days' written notice of the making of the application to the Attorney General who shall be a party to the proceedings in the application.

(6) An applicant or the Attorney General may in accordance with the rules of court, appeal against an order made under subsection (2).

Discharge of confiscation order on appeal and quashing of conviction

84.—(1) Where the court makes a confiscation order under this Act against property in reliance on a conviction of a person and the conviction is subsequently quashed, the quashing of the conviction discharges the order.

(2) Where a confiscation order against property is discharged as provided for in subsection (1), or by the court hearing an appeal against the making of the order, any person who claims to have an interest in the property immediately before the making of the confiscation order may apply to the court in writing for the transfer of the interest to the person.

(3) On receipt of an application under subsection (2), the court shall—

(*a*) if the vested interest is in Malaŵi, give directions that the property or part thereof to which the interest of the applicant relates be transferred to the person; or

(*b*) in any other case, direct that there be payable to the person an amount equal to that of the interest as at the time the order is made.

Payment *in lieu* of a confiscation order

85. Where a court is satisfied that a confiscation order shall be made in respect of the property of a person convicted of an offence under this Act but that the property or any part thereof or interest therein cannot be made subject to the order and, in particular, the property—

(*a*) cannot, on the exercise of due diligence, be located;

(*b*) has been transferred to a third party in circumstances which do not give rise to a reasonable inference that the title or interest was transferred for the purpose of avoiding the confiscation of the property;

(*c*) is located outside Malaŵi;

(*d*) has been substantially diminished in value or rendered worthless; or

(*e*) has been commingled with other property that cannot be divided without difficulty,

the court may, instead of ordering the property or part thereof or interest therein to be confiscated, order the convicted person to pay to Government an amount equal to the value of the property, or part interest.

Rules of determining benefit and assessing value

86.—(1) Where a person obtains property as the result of, or in connexion with, the commission of an offence under this Act, his benefit is the value of the property so obtained.

(2) Where a person derived an advantage as a result of, or in connexion with, the commission of an offence under this Act, his advantage shall be deemed to be a sum of money equal to the value of the advantage so derived.

(3) In determining whether a person has benefited from the commission of an offence under this Act or from the offence taken together with another offence, the court shall, unless the contrary is proved, deem—

(*a*) all property appearing to the court to be held by the person, on the day on which the application is made, to be property that

came into the possession or under the control of the person by the reason of the commission of that offence or other serious offences for which the person was convicted; and

(*b*) any property received or deemed to have been received by the person at any time as a result of, or in connexion with the commission by him of that offence or those offences as property received by him free of any interest therein.

(4) Where a pecuniary penalty order has been previously made against a person, in assessing the value of any benefit derived by him from the commission of the offence, the court shall leave out of account any of the benefits that are shown to the court to have been taken into account in determining the amount to be recovered under that order.

(5) If evidence is given at the hearing of the application that the value of the property of a person at any time after the commission of an offence under this Act exceeded the value of the property of that person before the commission of the offence, then the court shall, subject to subsection (6), treat the value of the benefit as being not less than the amount of that excess.

(6) If, after evidence of the kind referred to in subsection (5) is given, the person satisfies the court that the whole or part of the excess of the value of property was due to causes unrelated to the commission of an offence under this Act, subsection (5) does not apply to the excess or, as the case may be, that Part.

Statements relating to benefit from commission of an offence

87.—(1) Where—

(*a*) a person has been convicted of an offence and the competent authority tenders to the court a statement as to any matters relevant to—

(i) determine whether the person has benefited from the offence or from any other offence of which he is convicted in the same proceedings or which is taken into account in determining his or her sentence; or

(ii) an assessment of the value of the benefit of the person from the offence or any other offence of which he is convicted in the same proceedings or which is taken into account; and

(*b*) the person accepts to any extent an allegation in the statement referred to in paragraph (*a*),

the court may, for the purposes of so determining or making that assessment, treat his acceptance as conclusive of the matters to which it relates.

(2) Where—

(*a*) a statement is tendered under subsection (1) (*a*); and

(*b*) the court is satisfied that a copy of that statement has been served on the person,

the court may require the person to indicate to what extent he accepts each allegation in the statement and so far as he does not accept any allegation, to indicate any matters he proposes to rely on.

(3) Where the person fails in any respect to comply with a requirement under subsection (2), he may be treated for the purposes of this section as having accepted every allegation in the statement other than—

(*a*) an allegation in respect of which he complied with the requirement; and

(*b*) an allegation that he has benefited from the offence or that any property or advantage was obtained by him as a result of or in connexion with the commission of the offence.

(4) Where—

(*a*) the person tenders to the court a statement as to any matters relevant to determining the amount that might be realized at the time the pecuniary penalty order is made; and

(*b*) the competent authority accepts, to any extent, any allegation in the statement,

the court may, for the purposes of that determination, treat the acceptance of the competent authority as conclusive of the matters to which it relates.

(5) An allegation may be accepted or a matter indicated for the purposes of this section either—

(*a*) orally before the court; or

(*b*) in writing in accordance with rules of court.

(6) An acceptance by a person under this section that he received any benefit from the commission of an offence is admissible in proceedings for any offence.

Amount recovered under pecuniary penalty order

88.—(1) Subject to subsection (2), the amount to be recovered from a person under a pecuniary penalty order shall be the amount which the court assesses to be the value of the benefit of the person from an offence, or if more than one, all the offences in respect of which the order may be made.

(2) Where the court is satisfied as to any matter relevant for determining the amount which might be realized at the time, the pecuniary penalty order is made, whether by acceptance under section 87 or otherwise, the court may issue a certificate giving its opinion as to the matters concerned, and shall do so, if satisfied that the amount that might be realized at the time the pecuniary penalty order is made is less than the amount it assesses to be the value of the benefit of the person from the offence, or if more than one, all the offences in respect of which the pecuniary penalty order may be made.

Variation of pecuniary penalty order

89. Where—

(*a*) the court makes a pecuniary penalty order against a person in relation to an offence under this Act;

(*b*) in calculating the amount of the pecuniary penalty order, the court took into account a confiscation order of the property or proposed confiscation order in respect of property; and

(*c*) an appeal against confiscation or a confiscation order is allowed or the proceedings from the proposed confiscation order terminate without the proposed confiscation order being made,

a competent authority may apply to court for variation of the pecuniary penalty order to increase the amount of the order by the value of the property not so confiscated and the court may, if it considers it appropriate to do so, vary the order accordingly.

Lifting the corporate veil

90.—(1) In assessing the value of benefit derived by a person from the commission of an offence under this Act, the court may treat as property of the person, any property that, in the opinion of the court, is subject to the effective control of the person whether or not he has—

(*a*) any legal or equitable interest in the property; or

(*b*) any right, power or privilege in connexion with the property.

(2) Without prejudice to the generality of subsection (1), the court may have regard to—

(*a*) shareholdings in, debentures over or directorships in any company that has an interest, whether direct or indirect, in the property, and for this purpose the court may order the investigation and inspection of the books of a named company;

(*b*) any trust that has any relationship to the property; and

(*c*) any relationship whatsoever between the persons having an interest in the property or in companies of the kind referred to in paragraph (*a*) or trust of the kind referred to in paragraph (*b*), and any other persons.

(3) Where the court, for the purposes of making a pecuniary order against a person, treats particular property as the property of a person pursuant to subsection (1), the court may, on application by the competent authority make an order declaring that the property is available to satisfy the order.

(4) Where, under subsection (3), the court declares that property is available to satisfy a pecuniary penalty order—

(*a*) the order may be enforced against the property as if the property were the property of the person against whom the order is made; and

(*b*) a restraining order may be made in respect of the property as if the property were property of the person against whom the order is made.

(5) Where the competent authority makes an application for an order under subsection (3) that property is available to satisfy a pecuniary penalty order against a person—

(*a*) the competent authority shall give written notice of the application to the person and to any person who the competent authority has reason to believe may have an interest in the property; and

(*b*) the person and any person who claims an interest in the property may appear and adduce evidence at the hearing of the application.

Enforcement of pecuniary penalty order

91. Where the court orders a person to pay an amount under a pecuniary penalty order, section 52 shall apply with such modifications as the court may determine for the purpose of empowering the court to impose a term of imprisonment on a person in default of compliance with a pecuniary penalty order.

Discharge of pecuniary penalty order

92. A pecuniary penalty order is discharged—

(*a*) if the conviction of the offences in reliance on which the order was made is or is taken to be quashed and no conviction for the offence or offences is substituted;

(*b*) if the order is quashed on appeal; or

(*c*) on the satisfaction of the order by payment of the amount due under the order.

Powers to search for and seize tainted property

93.—(1) A competent authority may—

(*a*) search a person for tainted property;

(*b*) enter upon land or upon or into premises and search the land premises for tainted property, and in either case, seize any property found in the course of the search that the competent authority believes, on reasonable grounds to be tainted property:

Provided that the search or seizure is made—

(*a*) with the consent of the person or the occupier of the land or premises, as the case may be;

(*b*) under warrant issued under section 94.

(2) Where the competent authority searches a person under subsection (1), the competent authority may also search any property in, or apparently in, the immediate control of that person.

Search warrant in relation to tainted property

94.—(1) Where the competent authority has reasonable grounds for suspecting that there is, or may be within the next seventy-two hours, tainted property of a particular kind—

(*a*) on a person;

(*b*) in the clothing that is being worn by a person;

(*c*) otherwise in the immediate control of the person;

(*d*) upon land or upon or in any premises,

the competent authority may lay before a magistrate an information on oath setting out those grounds and apply for a warrant to search the person, the land or the premises, as the case may be, for tainted property of that kind.

(2) Where an application is made under subsection (1) for a warrant to search a person, land or premises, the magistrate may, subject to subsection (4), issue a warrant authorizing the competent authority, with assistance and by such force as is necessary and reasonable, to—

(*a*) search the person for tainted property of that kind;

(*b*) enter upon the land or in or upon any premises and to search the land or premises for tainted property of that kind; and

(*c*) seize property found in the course of the search that the competent authority believes on reasonable grounds to be tainted property of that kind.

(3) A warrant may be issued under subsection (2) in relation to tainted property whether or not, an information has been laid in respect of the relevant offence.

(4) A magistrate shall not issue a warrant under subsection (2) unless, where an information has not been laid in respect of the relevant offence at the time when the application for the warrant is made, the magistrate is satisfied that—

(*a*) an information will be laid in respect of the relevant offence within forty-eight hours; and

(*b*) the property is tainted property.

(5) A warrant issued under this section shall state—

(*a*) the purpose for which it is issued, including a reference to the nature of the relevant offence;

(*b*) a description of the kind of property authorized to be seized;

(*c*) a time at which the warrant ceases to be in force; and

(*d*) whether entry is authorized to be made at any time of the day or night or during specified hours.

(6) If during the course of searching under a warrant issued under this section, the competent authority finds—

(*a*) property that the competent authority believes on reasonable grounds to be tainted property either of a type not specified in the warrant or tainted property in relation to another offence; or

(*b*) anything the competent authority believes on reasonable grounds will afford evidence as to the commission of an offence,

the competent authority may seize that property or thing and the warrant shall be deemed to authorize such seizure.

Search in emergencies

95.—(1) Where the competent authority suspects, on reasonable grounds, that—

(*a*) particular property is tainted property;

(*b*) it is necessary to exercise the power of search and seizure in order to prevent the concealment, loss or destruction of the property; and

(*c*) the circumstances are so urgent that they require immediate exercise of the power without the authority of a warrant or the order of a court,

the competent authority may search a person, enter upon land, or upon or into premises and search for the property; and if property is found, seize the property.

(2) If during the course of a search conducted under this section, the competent authority finds—

(*a*) property that the competent authority believes, on reasonable grounds, to be tainted property; or

(*b*) anything the competent authority believes, on reasonable grounds, will afford evidence as to the commission of an offence,

the competent authority may seize that property or thing.

Record of property seized

96.—(1) The competent authority which seizes property under section 94 or section 95 shall detain the property seized, taking reasonable care to ensure that the property is preserved.

(2) The competent authority referred under subsection (1) shall be required to report to the Authority, on a monthly basis, on the status of all seized property.

Return of seized property

97.—(1) Where property has been seized under section 94 or section 95 otherwise than because it may afford evidence of the commission of an offence, a person who claims an interest in the property may apply to the court for an order that the property be returned to the person.

(2) Where a person makes an application under subsection (1) and the court is satisfied that—

(*a*) the person is entitled to possession of the property;

(*b*) the property is not tainted property; and

(*c*) the person in respect of conviction, charging or proposed charging the seizure of the property was made has no interest in the property,

the court shall order the return of the property to the person.

Restitution of restrained property

98. Where an investigation has begun against a person for an offence under this Act and, property was restrained under this Act in relation to that offence, and any of the following occurs—

(*a*) the person is not charged in Malaŵi with the offence;

(*b*) the person is charged with the offence in Malaŵi but not convicted of that offence;

(*c*) a conviction for the offence in Malaŵi is taken to be quashed and no conviction for such an offence substituted,

the court shall order restitution of the restrained property.

Appointment of an administrator

99.—(1) The Minister shall, by notice published in the *Gazette*, appoint a suitably qualified person as an administrator for purposes of this Act.

(2) Subject to the directions of the court or the Authority, the administrator shall do any one or more of the following in respect of property subject of a preservation order—

(*a*) assume control over the property;

(*b*) care for the property;

(*c*) administer the property and to do any act necessary for that purpose;

(*d*) where the property is a business or undertaking, to carry on, with due regard to any law which may be applicable, the business or undertaking; and

(*e*) in the case of property that is perishable, or liable to deterioration, decay or injury by being detained in custody to sell or otherwise dispose of the property;

(*f*) comply with an order of the court;

(*g*) order any person holding property subject to the preservation order to surrender the property forthwith, or within a period the court may determine, into the custody of the administrator.

(3) The court that made an order under subsection (1) may make the order relating to the fees and expenditure of the administrator as it deems fit—

(*a*) from the forfeited property, if a forfeiture order is made; or

(*b*) by the Government, if no forfeiture order is made.

Realization of property

100.—(1) Where—

(*a*) a pecuniary penalty order is made;

(*b*) the order is not subject to appeal; and

(*c*) the order is not discharged,

the court may, on an application by the competent authority, exercise the powers conferred upon the court by this section.

(2) The court has, under this section, power to—

(*a*) empower the administrator to take possession of any realizable property subject to conditions or exceptions specified by the court;

(*b*) order any person having possession of realizable property to give possession of it to the administrator;

(*c*) empower the administrator to realize any realizable property in a manner the court may direct;

(*d*) order any person holding an interest in realizable property to make payment to the administrator in respect of any beneficial interest held by the defendant or, as the case may be, the recipient of a gift caught by this Act as the court may direct; and

(*e*) on the payment being made, by order, transfer, grant or extinguish any interest in the property.

(3) The court shall not, in respect of any property, exercise the powers conferred by subsection (2) unless a reasonable opportunity has been given for persons holding any interest in the property to make representations to the court.

Application of proceeds of realization and other sums

101.—(1) Subject to subsection (2), the following property in the hands of an administrator, that is to say—

(*a*) the proceeds of the realization of any property; and

(*b*) any other sums, being property held by the defendant,

shall, after the payments, if any, as the court may direct, have been made out of those sums, be payable to the Registrar or the clerk of the court and be applied on the defendant's behalf towards the satisfaction of the pecuniary penalty order in the manner provided by subsection (3).

(2) If after the amount payable under the pecuniary penalty order has been fully paid, any sums that remain in the hands of the administrator, the administrator shall distribute those sums among persons who held property which has been realized under this Part, and in such proportions, as the court may direct after giving a reasonable opportunity for those persons to make representations to the court.

(3) Property received by the court on account of an amount payable under a confiscation order shall be applied as follows—

(*a*) if received by him from an administrator under subsection (1), it shall first be applied in payment of the receiver's remuneration and expenses; and

(*b*) the balance shall be paid or, as the case may be, transferred to the Fund.

Paramountcy of this Act in bankruptcy or winding-up

102.—(1) Where a person who holds realizable property is adjudged bankrupt—

(*a*) property for the time being subject to a restraining order made before the order adjudging him bankrupt; and

(*b*) any proceeds of property realized by virtue of this Act for the time being in the hands of the administrator,

is excluded from the property of the bankrupt for the purposes of the Insolvency Act. Cap. 11:01

(2) Where a person has been declared bankrupt, the powers conferred on the court by this Act or on a person appointed as administrator shall not be exercised in relation to property for the time being comprised in the property of the bankrupt for the purposes of the Insolvency Act. Cap. 11:01

(3) Where, in the case of a debtor, a receiver stands appointed under the Insolvency Act and any property of the debtor is subject to a restraining order, the powers conferred on the receiver by virtue of that Act, do not apply to property for the time being subject to a restraining order. Cap. 11:01

(4) Where a person is declared bankrupt and has directly or indirectly made a gift as defined in this Act—

(*a*) an order shall not be made by virtue of the Insolvency Act in respect of the making of the gift at any time when the person has been charged with an offence and the proceedings have not been concluded by the acquittal of the defendant or discontinuance of the proceedings, or when property of the person to whom the gift was made is subject to a restraining order or a charging order; and Cap. 11:01

(*b*) any order made under the Insolvency Act after the conclusion of the proceedings shall take into account any realization under this Act of property held by the person to whom the gift was made. Cap. 11:01

Functions of a liquidator, etc.

103.—(1) Where realizable property is held by a legal person and an order for the winding-up receivership or reorganization of the legal person has been made or a resolution has been passed by the legal person for its voluntary winding-up, reorganization or receivership, the functions of the liquidator, administrator or receiver shall not be exercisable in relation to—

(*a*) property for the time being subject to a preservation order made before the relevant time; or

(*b*) any proceeds of property realized by virtue of this Act for the time being in the hands of the administrator but there shall be payable out of such property any expenses, including the remuneration of the liquidator, administrator or receiver, properly incurred in the winding-up reorganization or receivership in respect of the property.

(2) Where, in the case of a legal person, an order for winding-up, reorganization or receivership has been made or a resolution for winding-up has been passed, the powers conferred on the court by this Act or the administrator shall not be exercised in relation to any realizable property held by the legal person in relation to which the functions of the liquidator, administrator or receiver are exercisable, so as to—

(*a*) inhibit him from exercising those functions for the purpose of distributing any property held by the legal person to the legal person's creditors; or

(*b*) prevent the payment out of any property of expenses including the remuneration of the liquidator, administrator or receiver properly incurred in the winding-up in respect of the property.

(3) Subsection (2) does not affect the enforcement of a charging order—

(*a*) made before the relevant time; or

(*b*) on property which was subject to a preservation order at the relevant time.

(4) In this section—

(*a*) "administrator" when used in reference to a legal person in reorganization, bears the meaning ascribed to it under the Insolvency Act; Cap. 11:01

(*b*) "liquidator" bears the same meaning ascribed to it under the Insolvency Act; and Cap. 11:01

(*c*) "receiver" bears the same meaning ascribed to it under the Insolvency Act; and Cap. 11:01

(*d*) "the relevant time" means—

(i) where no order for the winding-up, reorganization or receivership of the legal person has been made, the time of the passing of the resolution for voluntary winding-up, reorganization or receivership;

(ii) where an order for the winding-up of legal person has been made and before the presentation of the petition for the winding-up of the legal person by the court, such resolution having been passed by the legal person, the time of the passing of the resolution; and

(iii) in any other case where an order for the winding-up, reorganization or receivership of a legal person has been made, the time of the making of the order.

Production orders

104.—(1) Where a person has been charged with or convicted of an offence under this Act, and the competent authority or an authorized officer of the Authority has reasonable grounds for suspecting that any person has possession or control of—

(*a*) a document relevant to identifying, locating or quantifying property of the person or to identifying or locating a document necessary for the transfer of property of such person; or

(*b*) a document relevant to identifying, locating or quantifying tainted property in relation to the offence or to identifying or locating a document necessary for the transfer of tainted property in relation to the offence,

the competent authority may apply, in writing, to a judge or magistrate in chambers for an order against the person suspected of having possession or control of a document of the kind referred to, and the application shall be supported by an affidavit.

(2) The judge or magistrate may, if he considers there are reasonable grounds for so doing, make an order that the person produce to the competent authority, at a time and place specified in the order, any documents of the kind referred to in subsection (1):

Provided that an order under this subsection may not require the production of bank books.

(3) The competent authority to whom documents are produced may—

(*a*) inspect the documents;

(*b*) make copies of the documents; or

(*c*) retain the documents for so long as is reasonably necessary for the purposes of this Act.

(4) Where the competent authority retains documents produced to it under subsection (3), it shall make a copy of the documents available to the person who produced them.

(5) A person is not entitled to refuse to produce documents ordered to be produced under this section on the ground that—

(*a*) the document might tend to incriminate the person or make him liable to a penalty; or

(*b*) the production of the document would be in breach of an obligation, whether imposed by a written law or otherwise, of the person not to disclose the existence or contents of the document.

Evidential value of information

105.—(1) Subject to section 104, where a person who is not charged with an offence produces a document pursuant to an order under section 104, the production of the document, or any information, document or thing obtained as a direct or indirect consequence of the production of the document is not admissible against the person in any criminal proceedings except proceedings under section 106.

(2) For the purposes of subsection (1), proceedings on an application for a restraining order, a confiscation order or a pecuniary penalty order are not criminal proceedings.

Failure to comply with a production order

106. Where a person is required by a production order to produce a document to the competent authority, the person commits an offence against this section if he—

(*a*) contravenes the order without reasonable cause; or

(*b*) in purported compliance with the order, produces or makes available a document known to the person to be false or misleading in a material particular and does not so indicate to the competent authority and provide to the competent authority any correct information of which the person is in possession, and on conviction shall be liable—

(i) in the case of a natural person, to imprisonment for five years and a fine of K10,000,000; or

(ii) in the case of a body corporate, a fine of K50,000,000.

Application for preservation and restraining orders

107.—(1) A competent authority may apply to the court for a preservation order against any realizable property held by the defendant or specified realizable property held by a person other than the defendant.

(2) An application for a restraining order shall be made, without informing the other party, in writing and be accompanied by an affidavit stating—

(*a*) where the defendant has been convicted of an offence under this Act, the offence for which he was convicted, the date

of the conviction, the court before which the conviction was obtained and whether an appeal has been lodged against the conviction;

(*b*) where the defendant has not been convicted of an offence under this Act, the serious offence for which he is charged or about to be charged and grounds for believing that the defendant committed the offence;

(*c*) a description of the property in respect of which the restraining order is sought;

(*d*) the name and address of the person who is believed to be in possession of the property;

(*e*) the grounds for the belief that the property is tainted property in relation to the offence;

(*f*) the grounds for the belief that the defendant derived a benefit, directly or indirectly, for the commission of the offence;

(*g*) where the application seeks a restraining order against property of a person other than the defendant, the grounds for the belief that the property is tainted property in relation to the offence and is subject to the effective control of the defendant;

(*h*) the grounds for the belief that a confiscation order or a pecuniary penalty order may be or is likely to be made in respect of the property.

Preservation orders

108.—(1) Subject to this section, where the competent authority applies to the court for a preservation order under section 107 against property and the court is satisfied that—

(*a*) the defendant has been convicted of an offence under this Act or has been charged or is about to be charged with an offence under this Act;

(*b*) where the defendant has not been convicted of an offence under this Act, there are reasonable grounds for believing that the defendant has committed an offence under this Act;

(*c*) there is reasonable cause to believe that the property is tainted property in relation to an offence or that the defendant derived a benefit directly or indirectly from the commission of the offence;

(*d*) where the application seeks a restraining order against property of a person other than the defendant, there are reasonable grounds for believing that the property is tainted property

in relation to an offence and that the property is subject to the effective control of the defendant; and

(*e*) there are reasonable grounds for believing that a confiscation order or a pecuniary penalty order is likely to be made under this Act in respect of the property,

the court may make an order in accordance with subsection (2).

(2) An order made pursuant to subsection (1) may—

(*a*) prohibit the defendant or any person from disposing of, or otherwise dealing with, the property or a part thereof or interest therein as is specified in the order, except in a manner specified in the order; and

(*b*) at the request of the competent authority, where the court is satisfied that the circumstances so require—

(i) direct such person as the court may appoint to take custody of the property or such part thereof as is specified in the order and to manage or otherwise deal with all or any part of the property in accordance with the directives of the court; and

(ii) requiring any person having possession of the property to give possession thereof to the person appointed under subparagraph (i) to take custody and control of the property.

(3) An order under subsection (2) may be made subject to such conditions as the court thinks fit, and without limiting the generality of this subsection, may make provision for meeting out of the property or a specified part of the property, any or all of the following—

(*a*) the reasonable living expenses of the person, including the reasonable living expenses of the dependents of the person, if any, and reasonable business expenses;

(*b*) the reasonable expenses of the person in defending the criminal charge and any proceedings under this Division; and

(*c*) any specified debt incurred by the person in good faith.

(4) In determining whether there are reasonable grounds for believing that property is subject to the effective control of the defendant the court may have regard to the matters referred to in section 66.

(5) Where the other person appointed under subsection (2) (*b*) (i) is given a direction in relation to any property, he may apply to the court for directions or any question respecting the management or preservation of the property under his or her control.

(6) An application under subsection (1) shall be served on all persons interested in the application or any of them as the court thinks expedient and all persons shall have the right to appear at the hearing and be heard.

(7) Where the application is made under subsection (1) on the basis that a person is about to be charged, any order made by the court shall lapse if the person is not charged—

(*a*) where the offence is an offence against the laws of Malaŵi, within three months; and

(*b*) where the offence is an offence against the laws of a foreign State, within twelve months.

Undertaking by Government

109.—(1) Before making a restraining order under section 107 the court may require the Attorney General, on behalf of Government, to make specified undertakings as the court considers appropriate with respect to the payment of damages or costs, or both, in relation to the making and execution of the order.

(2) Nothing in this Act affects the right of a person whose property has been restrained to seek the payment of damages, in cases where it is alleged that the action of the Government involved any abuse of process.

Registration of preservation order affecting land

110.—(1) A competent authority shall upon obtaining a restraining order which affects land in Malaŵi register it with the appropriate land registry and shall not take effect until it is registered.

(2) Where particulars of a preservation order affecting land are registered with the appropriate registry, a person who subsequently deals with the property shall, for the purposes of this Act be deemed to have notice of the order at the time of the dealing.

Contravention of preservation order

111.—(1) A person who knowingly contravenes a preservation order by disposing of or otherwise dealing with property that is subject to the restraining order commits an offence and shall, upon conviction, be liable—

(*a*) in the case of a natural person, to imprisonment of five years and a fine of K10,000,000; or

(*b*) in the case of a body corporate a fine of K50,000,000.

(2) Where a restraining order is made against property and the property is disposed of, or otherwise dealt with, in contravention of the restraining order, and the disposition or dealing was not for sufficient consideration or not in favour of a person who acted in

good faith and without notice, the competent authority may apply to the court that made the restraining order for an order that the disposition or dealing be set aside.

(3) Where the competent authority makes an application under subsection (2) in relation to a disposition or dealing, the court may—

(*a*) set aside the disposition or dealing as from the day on which the disposition or dealing took place; or

(*b*) set aside the disposition or dealing as from the day of the order under this subsection; and

(*c*) declare the respective rights of any person who acquired interests in the property on, or after the day on which the disposition or dealing took place, and before the day of the order under this subsection.

Duration of preservation order

112. A preservation order remains in force until—

(*a*) it is discharged, revoked or varied;

(*b*) the period of twelve months from the date on which it is made has lapsed or such later time as the court may determine; or

(*c*) a confiscation order or a pecuniary order, as the case may be, is made in respect of property which is the subject of the order.

Review of preservation order

113.—(1) A person who has an interest in property in respect of which a preservation order was made under section 108 may, at any time, apply to the court for an order under subsection (4).

(2) An application under subsection (1) shall not be heard by the court unless the applicant has given to the competent authority at least three clear days' notice in writing of the application.

(3) The court may require notice of the application to be given to, and may hear, any person who in the opinion of the court appears to have an interest in the property.

(4) On an application under subsection (1), the court may revoke or vary the restraining order or make the order subject to any conditions that the court thinks fit:

Provided that, for the purposes of this subsection, the court may—

(*a*) require the applicant to enter into recognizances;

(*b*) vary the restraining order to permit the payment of reasonable living expenses of the applicant, including his dependants, if any, and reasonable legal or business expenses of the applicant.

(5) An order under subsection (4) may only be made if the court is satisfied that—

(*a*) the applicant is the lawful owner of the property or is entitled to lawful possession thereof and appears to be innocent of any complicity in the commission of an offence under this Act or of any collusion in relation to the offence; and

(*b*) the property will no longer be required for the purposes of any investigation or as evidence in any proceedings.

Extension of preservation order

114.—(1) The competent authority may apply to the court that made a preservation order for an extension of the period of the operation of the order.

(2) Where the competent authority makes an application under subsection (1), the court may extend the operation of a restraining order for a specified period if it is satisfied that a confiscation order may be made in respect of the property or part thereof or that a pecuniary penalty order may be made against the person.

Powers of search for and seize documents relevant to locating property

115. The competent authority may, with the consent of the occupier of the land or the premises, or under warrant issued under section 116—

(*a*) enter upon land or upon or into premises;

(*b*) search the land or premises for any document of the type described in section 104 (1); and

(*c*) seize any document found in the course of that search that the competent authority believes, on reasonable grounds, to be a relevant document in relation to an offence.

Search warrant for locating documents for locating property

116.—(1) Where—

(*a*) a person has been charged or convicted of an offence under this Act; or

(*b*) the competent authority has reasonable grounds for suspecting that there is, or may be within the next seventy-two hours, upon any land or upon or in any premises, a document of the type described in section 104 (1) in relation to the offence,

the competent authority may make an application supported by information on oath to a court for a search warrant in respect of that land or those premises.

(2) Where an application is made under subsection (1) for a warrant to search land or premises, the magistrate or judge may,

subject to subsection (4), issue a warrant authorizing competent authority, with such assistance and by necessary and reasonable force to—

(*a*) enter upon the land or in or upon any premises and to search the land or premises for property of that kind; and

(*b*) seize property found in the course of the search that the competent authority believes on reasonable grounds to be property of that kind.

(3) A court shall not issue a warrant under subsection (2) unless it is satisfied that—

(*a*) a production order has been given in respect of the document and has not been complied with;

(*b*) a production order in respect of the document would be unlikely to be effective;

(*c*) the investigation for the purposes of which the search warrant is being sought might be seriously prejudiced, if the competent authority does not gain immediate access to the document without any notice to any person; or

(*d*) the document involved cannot be identified or described with sufficient particularity to enable a production order to be obtained.

(3) A warrant issued under this section shall state—

(*a*) the purpose for which it is issued, including a reference to the nature of the relevant offence;

(*b*) a description of the kind of documents authorized to be seized;

(*c*) a time at which the warrant ceases to be in force; and

(*d*) whether entry is authorized to be made at any time of the day or night or during specified hours.

(4) If during the course of searching under a warrant issued under this section, the competent authority finds—

(*a*) a document of the type described in section 104 (1) that the competent authority believes on reasonable grounds to relate to the relevant offence or to another indictable offence; or

(*b*) anything the competent authority believes on reasonable grounds will afford evidence as to the commission of an offence, the competent authority may seize that property or thing and the warrant shall be deemed to authorize such seizure.

PART VIII

Extradition and Mutual Assistance

117. Where a foreign State requests assistance to locate or seize property suspected to be tainted property in respect of an offence within its jurisdiction, the provisions of section 104 and section 105 apply with necessary modification.

Search for and seizure of tainted property in relation to foreign offences

118. Where a foreign State requests assistance to locate or seize property suspected to be tainted property in respect of an offence within its jurisdiction and the Attorney General has, under the Mutual Assistance in Criminal Matters Act, authorized the giving of assistance to the foreign State, the provisions of section 104 apply *mutatis mutandis*.

Search warrants in relation to foreign offences
Cap. 8:04

119. For the purpose of any law relating to extradition of fugitive offenders, offences under this Act shall be offences for which extradition or rendition may be granted.

Offences for extradition purposes

120.—(1) Where for the investigation or prosecution of an offence under this Act or for the making or execution of any order or direction made under this Act in respect of such offences, any assistance is required from a foreign State, the Minister, under the Mutual Assistance in Criminal Matters Act, may request assistance from the designated country as if such investigation, prosecution, making or execution is a criminal matter within the meaning of that Act.

Mutual assistance

Cap. 8:04

(2) Where a request is made by a foreign State in the investigation or prosecution of an offence equivalent to an offence under this Act, in that country or for the making or execution of any order or direction made in that country in respect of such an offence, the Minister may in accordance with the Mutual Assistance in Criminal Matters Act, provide such assistance as if such investigation, prosecution, making or execution is a criminal matter within the meaning of that Act.

Cap. 8:04

121. For purposes of this Part, the principles of mutuality and reciprocity shall, at all times, be recognized.

Mutuality and reciprocity

122.—(1) For the purpose of an investigation or proceedings under this Act, the Attorney General may request an appropriate authority of another country to arrange for—

Reciprocal assistance

(*a*) evidence to be taken, or information, documents or articles to be produced or obtained in that country;

(*b*) a warrant or other instrument authorizing search and seizure to be obtained and executed in that country;

(*c*) a person from that country to come to malawi to assist in the investigation or proceedings;

(*d*) a preservation order or forfeiture order made under this Act to be enforced in that country, or a similar order to be obtained and executed in that country to preserve property that had it been located in malawi would be subject to forfeiture or confiscation under this Act;

(*e*) an order or notice under this Act to be served on a person in that country; or

(*f*) other assistance to be provided, whether pursuant to a treaty or other written arrangement between malawi and that country or otherwise.

(2) Requests by other countries to malawi for assistance of a kind specified in subsection (1) shall be made to the Attorney General.

Foreign evidence

123. Evidence, documents or articles obtained pursuant to a request made under section 124 shall—

(*a*) be received in evidence in Malaŵi;

(*b*) not be used for a purpose other than that specified in that request, except with the consent of the appropriate authority of the foreign country; and

(*c*) be returned when its use is no longer required, unless that authority indicates to the contrary.

Extradition of persons

124.—(1) The effect of a request made pursuant to this Act for extradition shall be to authorize the entry into and departure from Malaŵi of the person who is the subject of the request, as well as the presence of the person in Malaŵi for so long as required for the purposes of the request.

(2) Where the person who is the subject of a request under this Part is in custody in the other country by virtue of a sentence or order of a court or tribunal exercising criminal jurisdiction, the effect of a request under this section shall be to authorize the detention in custody of the person in transit to or from Malaŵi, and while in Malaŵi at a place the Attorney General may specify.

(3) A person in Malaŵi, pursuant to a request under this section, shall not be required to give evidence or produce a document or thing

in any proceeding in Malaŵi other than the proceeding to which the request relates.

Taking of evidence in Malaŵi

125.—(1) Where a country requests assistance from Malaŵi in obtaining evidence for the purpose of an investigation or a proceeding in relation to an offence under corresponding law of that country, the Attorney General may nominate a court in Malaŵi to receive such evidence as appears to the court appropriate in order to give effect to the request.

(2) The court nominated pursuant to subsection (1) shall have the same power to secure the attendance of witnesses, administer oaths and receive evidence as it has for the purposes of other proceedings before the court.

(3) The evidence received by the court shall be certified or verified by the court in a manner the Attorney General specifies and then furnished to the Attorney General for transmission to the requesting country.

Foreign country request for search and seizure warrant

126.—(1) Where a country requests assistance from Malaŵi in obtaining and executing a search and seizure warrant for the purposes of an investigation or proceedings relating to the corresponding law of that country, the Attorney General may apply to the court for the warrant requested.

(2) Where, on application, the court is satisfied that—

(*a*) a proceeding or investigation relating to an offence has commenced in the requesting country; and

(*b*) there are reasonable grounds for believing that evidence relevant to the investigation or proceedings is located in Malaŵi,

it may issue a warrant under this section authorizing entry for the purpose of search for the thing and if found the thing shall be seized.

(3) Any written law with respect to the procedure for the making and disposal of an application for the execution of a search warrant shall apply, as if the application were for the issue of a warrant under the Criminal Procedure and Evidence Code. Cap. 8:01

Requests to Malaŵi for the enforcement of certain orders

127.—(1) Where—

(*a*) a court or tribunal of another country issues a preservation order or confiscation order, (whether based upon criminal or *in rem* or other non-conviction based proceedings), in respect of an offence against the corresponding law of that country; and

(*b*) that country requests assistance from Malaŵi in enforcing those orders against property believed to be located in Malaŵi, the Attorney General may apply to the court for the registration of the order.

(2) Where the Attorney General applies to the court for the registration of an order pursuant to subsection (1), the court shall register the order.

(3) An order registered in accordance with this section shall have effect and shall be enforced, as if it were an order made under this Act or forfeiture orders, as the case may be where the court is satisfied that—

(*a*) the order is final, not subject to appeal, and a certified copy of the order bearing the seal or the signature of the court has been submitted;

(*b*) the person against whom, or in relation to whose property the order has been made, received notice of the proceedings outside of Malaŵi and had an opportunity to defend his interest in the property; and

(*c*) enforcement of the order would not be contrary to the interests of justice.

(4) The Attorney General may, in order to preserve the availability of property in Malaŵi that is subject to confiscation proceedings that have been or are likely to be instituted in another country, apply to the court to issue an order of preservation of the said property.

(5) In issuing the order of preservation, the court may rely on information set forth in the request from the other country describing the nature of the pending investigations or proceedings and setting forth a reasonable basis to believe that the said property will be named in a confiscation order at the conclusion of the proceedings.

(6) A copy of the application to register and enforce orders from another country shall be provided to any person who appears to own or control or otherwise have a legal interest in the property in the manner prescribed in this Act.

(7) A person entitled to notice pursuant to subsection (6) shall have thirty days from the date of such receipt of notice or publication, whichever is later, to file an objection contesting the enforcement of the order from another country.

(8) Unless a person contesting enforcement of an order from another country is able to establish one of the conditions in subsection (3), the court may enter such orders as may be necessary

to give effect to the orders of a court or tribunal of the other country and the court shall be bound by the findings of fact to the extent that they are stated in the foreign order.

(9) Where an amount of money is to be paid under an order from another country is expressed in a currency other than that of Malaŵi, the amount shall be converted into the currency of Malaŵi on the basis of the official exchange rate prevailing as on the date of the registration of the order.

(10) Where the Attorney General considers it appropriate either because an international arrangement so requires or because it is permitted or in the public interest, he may order that the whole or any part of any property forfeited pursuant to this section or the value thereof be returned or remitted to the requesting State.

PART IX

The Confiscation Fund

Confiscation Fund

128. There is hereby established a fund to be known as the Confiscation Fund (hereinafter in this Act referred to as "the Fund").

Composition of the Fund

129. The Fund shall comprise—

(*a*) funds and property confiscated to the Government whether under civil or criminal process under this Act;

(*b*) funds and property subject to a preservation order; provided that the funds and property may not be applied by the Government until after confiscation;

(*c*) any other funds or property lawfully payable to the Fund whether under this Act or otherwise.

Vesting of the Fund
Cap. 37:02

130.—(1) The Fund shall vest in the Minister and, subject to this Act and the Public Finance Management Act, shall be administered in accordance with his directions.

(2) The Fund shall be administered on behalf of the Minister responsible for finance by the Authority in accordance with instructions referred to in section 132.

(3) The Authority shall submit to the Minister such periodic reports on the inflow and outflow of the funds as he requires.

Objects of the Fund

131. The object for which the Fund is established is to hold funds and property forfeited or confiscated under any written law or subject to a preservation order made under this Act.

Application of the Fund

132.—(1) The Fund may be applied for the purposes set out in this Act.

(2) Without limiting the generality of subsection (1), the Fund may be applied to—

(*a*) pay the costs and fees of the administrator;

(*b*) pay the costs of the liquidator or trustee in bankruptcy as the case may be, where there is liquidation or bankruptcy of the person subject of the confiscation in accordance with this Act;

(*c*) pay for the cost of maintaining or managing the funds or property confiscated or preserved;

(*d*) any other purpose which the National Assembly may approve.

Books and other records of account, audit and reports of the Fund
Cap. 37:02

Cap. 37:01

133.—(1) The Minister shall cause to be kept proper books and other records of account in respect of receipts and expenditures of the Fund in accordance with the Public Finance Management Act.

(2) The accounts of the Fund shall be audited by the Auditor General who shall have all the powers conferred upon him by the Public Audit Act.

(3) The Minister shall cause to be prepared, as soon as practicable, but not later than six months after the end of the financial year, an annual report on all the financial transactions of the Fund.

(4) The report referred to in subsection (3) shall include a balance sheet, an income and expenditure account and the annual report of the Auditor General and shall be laid by the Minister before the National Assembly.

Holdings of the Fund

134.—(1) All sums received for the purposes of the Fund shall be paid into a bank account and no amount shall be withdrawn therefrom except under section 132 (2) of this Act.

(2) Any part of the Fund not immediately required for the purposes of the Fund as provided for under section 132 (2) of this Act may be invested in such manner as the Minister may determine.

Financial year of the Fund

135. The financial year of the Fund shall be the financial year of Government:

Provided that the first financial year of the Fund may be a period shorter or longer than twelve months as the Minister shall determine, but in any case not longer than eighteen months and not shorter than six months.

PART X

Transition

Saving of existing agreements and arrangements

136. Subject to this Act, where an agreement or arrangement was entered into on a date before the commencement of this Act, by the former Financial Intelligence Unit then the agreement or arrangement, as the case may be, shall have effect and be taken always to have had effect as if this Act was in operation when the arrangement or agreement was entered into.

Vesting of assets of the former Financial Intelligence Unit

137.—(1) Any property procured or acquired by the Financial Intelligence Unit shall vest in the Authority.

(2) On or after the appointed date, there shall be transferred to, and vested in, or subsisted against, the Authority by virtue of this Act and without further assurance—

(*a*) the affairs of the Financial Intelligence Unit;

(*b*) subject to this Act, all property, rights and obligations which immediately before the appointed date that were the property, rights and obligations of the Financial Intelligence Unit.

(3) Except as provided in this Act, every deed, bond and agreement (other than an agreement for personal service) to which the Financial Intelligence Unit was a party immediately before the appointed date, whether in writing or not, and whether or not of such nature that rights, liabilities and obligations thereunder could be assigned, shall, unless its subject matter or terms make it impossible that it should have effect as modified in the manner provided by this subsection, have effect from the date of the assignment thereof, as if—

(*a*) the Authority had been a party thereto;

(*b*) for any reference to the Financial Intelligence Unit were substituted, as regards anything falling to be done on or after the appointed date, a reference to the Authority; and

(*c*) for any reference to any officer of the Financial Intelligence Unit not being a party thereto and beneficially interested therein there were substituted, as regards anything falling to be done on or after the appointed date, or reference to such officer of the Authority as the Authority shall designate.

(4) Subject to the provisions of subsection (2), documents, other than those referred to therein, which refer specifically or generally to the Authority shall be construed in accordance with subsection (2) as far as applicable.

Registration of property transferred by the Financial Intelligence Unit

138.—(1) Where under this Act, any property, rights, liabilities and obligations of the Financial Intelligence Unit are deemed to have been transferred to the Authority in respect of transferred property, rights, liabilities and obligations whose transfer a written law provides for registration, the Authority shall make an application in writing to the appropriate authority for registration of such transfer.

(2) The registration authority referred to in subsection (1) shall make such entries in the appropriate register as shall give effect to such transfer and, where applicable, issue to the transferee concerned a certificate of title in respect of the property or make necessary amendments to the register, as the case may be, and shall make endorsement on the deeds relating to the title, right or obligation concerned, and no registration fees, stamp duty or other duties shall be payable in respect thereof.

Legal proceedings

139.—(1) Without prejudice to the other provisions of this Act, where any right, liability or obligation vests in the Authority by virtue of this Act, the Authority and all other persons shall, as from the appointed date, have the same rights, powers and remedies (and in particular the same rights as to the instituting or defending of legal proceedings or the making or resisting of applications to any authority) for ascertaining, perfecting that right, liability or obligation as they would have had if it had at all times been a right, liability or obligation of the Authority.

(2) Any legal proceedings or application of any authority pending immediately before the appointed date by or against the Financial Intelligence Unit may be instituted by or against the Authority.

(3) After the appointed date, proceedings in respect of any right, liability or obligation which was vested in, held, enjoyed, incurred or suffered by the Financial Intelligence Unit may be instituted by or against the Authority.

Transfer of employees

140.—(1) Any person who immediately prior to the commencement of this Act is employed by the Financial Intelligence Unit shall be deemed to have been transferred to the employment of the Authority under his former terms and conditions of service and for purposes of determining his rights thereunder his service shall be regarded as being continuous from the time he was appointed by the Financial Intelligence Unit.

(2) An employee of the Authority transferred to the Authority by virtue of this section shall not be entitled to claim any payments merely by virtue of the transfer.

141.—(1) Subject to subsection (2), the Money Laundering, Proceeds of Serious Crime and Terrorist Financing Act is hereby repealed. Repeal and savings Cap. 8:07

(2) Anything done in accordance with the Money Laundering, Proceeds of Serious Crime and Terrorist Financing Act repealed under subsection (1), prior to the commencement of this Act and which may be done in accordance with the provisions of this Act, shall be deemed to have been done in accordance with this Act. Cap. 8:07

(3) Any subsidiary legislation made or deemed to have been made under the Money Laundering, Proceeds of Serious Crime and Terrorist Financing Act repealed by subsection (1) in force immediately before the commencement of this Act— Cap. 8:07

(*a*) shall remain in force, unless in conflict with this Act, and shall be deemed to be subsidiary legislation made under this Act; and

(*b*) may be replaced, amended or repealed by subsidiary legislation made under this Act.

(4) All contracts awarded by the Financial Intelligence Unit under the Money Laundering, Proceeds of Serious Crime and Terrorist Financing Act repealed by subsection (1), prior to the commencement of this Act, shall be deemed to be contracts awarded by the Authority in accordance with this Act. Cap. 8:07

PART XI

Miscellaneous

142.—(1) The Minister may, on the recommendation of the Authority, by notice published in the *Gazette*, publish a national list of terrorists or terrorist organizations and the Authority shall circulate that list to all reporting institutions. Terrorist list

(2) In publishing the list under subsection (1), the Minister may, consult another country or international organization.

143.—(1) The obligations under Part III apply, where applicable and with necessary modifications, to relevant competent authorities. Application of Part III to relevant competent authorities

(2) The Minister may, by regulations published in the *Gazette*, prescribe the obligations of a relevant competent authority under Part III.

144.—(1) The Minister may make regulations for carrying the purpose and provisions of this Act into effect and prescribing all matters which are necessary or convenient to be prescribed for the better carrying out of the provisions of this Act. Regulations

Cap. 1:01

(2) Notwithstanding the provisions of section 21 (*e*) of the General Interpretation Act, the Minister may, in regulations made under this Act, prescribe a fine of up to K100,000,000 and imprisonment to ten years for an offence committed in contravention of such regulations.

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s. 2

FIRST SCHEDULE

United Nations Counter-Terrorism Conventions

(*a*) Convention on Offences and Certain Other Acts committed on Board Aircraft, signed at Tokyo on 14th September, 1963;

(*b*) Convention for the Suppression of Unlawful Seizure of Aircraft, done at The Hague on 16th December, 1970;

(*c*) Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, done at Montreal on 23rd September, 1971;

(*d*) Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, including Diplomatic Agents, adopted by the General Assembly of the United Nations on 14th December, 1973;

(*e*) International Convention against the Taking of Hostages, adopted by the General Assembly of the United Nations on 17th December, 1979;

(*f*) Convention on the Physical Protection of Nuclear Material, adopted at Vienna on 3rd March, 1980;

(*g*) Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal on 24th February, 1988;

(*h*) Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, done at Rome on 10th March, 1988;

(*i*) Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf, done at Rome on 10th March, 1988;

(*j*) Convention on the Making of Plastic Explosives for the Purposes of Detention, signed at Montreal, on 1st March, 1991;

(*k*) International Convention for the Suppression of Terrorist Bombings, adopted by the General Assembly of the United Nations on 15th December, 1997;

(*l*) International Convention for the Suppression of the Financing of Terrorism, adopted by the General Assembly of the United Nations on 9th December, 1999.

SECOND SCHEDULE

s. 10

Oath of Secrecy

I, ... having been appointed as an employee of the Financial Intelligence Authority or an agent in the service of the Financial Intelligence Authority do solemnly swear/affirm that I will not, directly, or indirectly divulge the business or proceedings of the Financial Intelligence Authority or the nature or contents of any document communicated to me or any matter coming to my knowledge in my capacity as an employee of the Financial Intelligence Authority or an agent in the service of the Financial Intelligence Authority and that I will well and truly perform the functions and duties of that office.

So help me God.

SWORN at .....

.....

Signature of Deponent

This ..... day of ....., 20.....

Before me: .....

Commissioner for Oaths

SUBSIDIARY LEGISLATION

FINANCIAL CRIMES (SUPPRESSION OF TERRORIST FINANCING AND PROLIFERATION) REGULATIONS

ARRANGEMENT OF REGULATIONS

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FINANCIAL CRIMES (SUPPRESSION OF TERRORIST FINANCING AND PROLIFERATION) REGULATIONS

G.N. 11/2017

under s. 144

PART I
PRELIMINARY

Citation

1. These Regulations may be cited as Financial Crimes (Suppression of Terrorist Financing and Proliferation) Regulations.

Interpretation

2. In these Regulations, unless the context otherwise requires—

"Act" means the Financial Crimes Act;

"dealing" in relation to own or other property or funds means receiving, acquiring, transacting, representing, concealing, disposing, converting, transferring or moving, using as security or providing financial services;

"designated person" means a person designated pursuant to these Regulations or the applicable United Nations Security Council Resolutions adopted under Chapter VII of the United Nations Charter;

"designation" or "listing" means the identification of a person or group of persons that is subject to targeted sanctions pursuant to the applicable United Nations Security Council Resolutions;

"domestic list" means the list prepared and approved by the Panel under regulation 12;

"freeze" means to prevent or restrain specific property from being used, transferred, transacted, converted, altered, concealed, moved or disposed of without affecting the ownership thereof;

"Panel" means the National Counter-Terrorism Panel established under regulation 4;

"property" has the meaning ascribed to it under the Act and includes electronically or digitally evidenced title or interest, bank credits, money orders, shares, securities and letters of credit and cash;

"Resolution 1267" means Resolution 1267 of the Security Council passed on 15th October, 1999 and its successor resolutions;

"Resolution 1373" means Resolution 1373 of the Security Council passed on 28th September, 2001 and its successor resolutions;

"Resolution 1718" means Resolution 1718 of the Security Council passed on 14th October, 2006 and its successor resolutions;

"Resolution 1988" means Resolution 1988 of the Security Council passed on 17th June, 2011 and its successor resolutions;

"Resolution 1989" means Resolution 1989 of the Security Council passed on 11th June 2011 and its successor resolutions;

"Sanctions Committee" means a committee of the Security Council of the United Nations established under a Resolution of the Security Council;

"sanctions list" means the 1989 Al-Qaida sanctions list, the 1988 Taliban sanctions list, the 1718 sanctions list, the 1737 sanctions list or other similar list issued by the Security Council from time to time;

"Security Council" means the Security Council of the United Nations established under Article 7 of Chapter III of the United Nations Charter;

"terrorist financing" includes the offence specified under section 43 of the Act.

Application

3. These Regulations shall apply to—

(*a*) a person contained in the Consolidated List of the United Nations designated under Resolutions 1989 Sanctions Committee, the 1988 Sanctions Committee, or any other such United Nations Sanctions Committee which may be established under any other United Nations Security Council Resolution;

(*b*) designated persons and entities under Resolution 1373 by a third party, international organization or foreign country;

(*c*) a person designated under Resolution 1718;

(*d*) a person designated under Resolution 1737; and

(*e*) designated persons or entities approved by the Panel under Resolution 1373.

PART II
Implementation Mechanism

National Counter-Terrorism Panel

4.—(1) There is hereby established a Panel to be known as the National Counter-Terrorism Panel.

(2) The Panel shall consist of—

(*a*) the Director General of the National Intelligence Service, who shall be the chairperson;

(*b*) a senior public officer designated by the Chief Secretary;

(*c*) the Secretary responsible for Home Affairs and Internal Security;

(*d*) the Secretary to the Treasury;

(*e*) the Secretary responsible for Foreign Affairs and International Cooperation;

(*f*) the Attorney General;

(*g*) the Army Commander;

(*h*) the Inspector General;

(*i*) the Registrar of financial institutions; and

(*j*) the Director General, who shall be secretary to the Panel.

Functions

5.—(1) The functions of the Panel shall be to—

(*a*) facilitate implementation of Resolutions 1267, 1373, 1718, 1737 and 1988 and all successor resolutions relating to the suppression of terrorist financing and the prevention, suppression and disruption of the proliferation of, and financing of, dealings with weapons of mass destruction and such other related resolutions in accordance with these Regulations;

(*b*) formulate and supervise the implementation of the National Strategy and Action Plan on Counter-Terrorism Financing; and

(*c*) perform any other functions as may be conferred on it by a written law.

(2) The Panel may, in carrying out its functions, cooperate with any person for the purposes of—

(*a*) identifying persons for the purpose of designation;

(*b*) examining and giving effect, upon a request by a foreign country, to an action initiated under the freezing mechanism of that foreign country, which is consistent with the public interest of Malaŵi;

(*c*) considering requests for the de-listing of a designated person under Resolution 1373; and

(*d*) the performance of its functions under these Regulations.

(3) The Panel shall, in carrying out its obligations under Resolutions 1267, 1373, 1718, 1737, 1988 and all successor resolutions relating to the banning of travel, granting of visas and purchase of arms and related resolutions, cooperate with any person for the purposes specified under subregulation (2).

Powers

6.—(1) Subject to a written law, the Panel shall have all the powers necessary for the performance of its functions under these Regulations.

(2) Without prejudice to the generality of paragraph (1), the Panel shall have the powers to—

(*a*) issue guidelines or instructions as it may consider necessary for the effective implementation of these Regulations; and

(*b*) set criteria, on the basis of reasonable grounds, for designating persons in line with Resolution 1373.

(3) The Panel shall determine its own procedure and the procedure of committees established under these Regulations.

(4) A member of the Panel or any other person shall not, without the consent of the Panel, in writing, publish or disclose to any person other than in the course of his duties, the contents of any document, communication or information which relates to, and which has come to his knowledge in the course of his duties under these Regulations.

(5) A person who contravenes subregulation (4) commits an offence and shall on conviction be liable to imprisonment for three years and a fine of K5,000,000.

Committees

7.—(1) The Panel may, from time to time, establish committees as it may consider necessary for the effective discharge of its functions under these Regulations.

(2) The Panel may co-opt into a committee established under paragraph (1) any person whose presence, participation, knowledge or skills is necessary for the proper performance of the functions of the Panel.

(3) A person co-opted under subregulation (2) may attend the meetings of the Panel and participate in its deliberations but shall have no right to participate in the making of any decision of the Panel at the meeting.

PART III
Procedures for Implementation

Domestic list

8.—(1) The Panel shall, at a meeting, receive proposals for the declaration of a person as a designated person in accordance with the criteria set out in Resolution 1373.

(2) Where the Panel designates a person, it shall forthwith direct the Secretary of the Panel to prepare a list of designated persons and disseminate the list of designated persons to all reporting institutions.

(3) The Authority shall disseminate the designated names to the United Nations Sanctions Committee and all diplomatic representatives in Malaŵi and the submission shall state the reasons for the designation.

(4) The domestic list prepared under subregulation (2) shall include, where applicable, the following information—

(*a*) name and an alias or title;

(*b*) place and date of birth, establishment or incorporation;

(*c*) sex;

(*d*) original or acquired nationality;

(*e*) passport numbers, identity card numbers or registration number;

(*f*) physical and postal addresses;

(*g*) occupation;

(*h*) telephone number;

(*i*) an explanation of how the person meets the designation criteria; and

(*j*) any other information which the Panel may consider relevant.

(5) The Authority shall, in exercise of powers under the Act, issue a provisional freezing order prohibiting any person from disposing of, or dealing with, any interest in the property specified in the order.

(6) A person who is aggrieved by the decision of the Panel under this regulation may, upon giving notice to the Authority, appeal to the court.

United Nations Consolidated List

9.—(1) The Authority shall—

(*a*) receive all designations made by the Security Council and any sanctions list or other similar list issued in connexion therewith; and

(*b*) without delay, submit all designations to the Panel.

(2) The Director General shall, without delay, circulate the designation or sanctions list under subregulation (1) to—

(*a*) members of the Panel;

(*b*) supervisory authorities which are not members of the Panel;

(*c*) national security organs which are not members of the Panel;

(*d*) other law enforcement agencies, as it may consider necessary;

(*e*) any institution which is authorized to—

(i) detect, freeze or seize the funds or the property of a designated entity under a written law; or

(ii) take any reasonable action as may be necessary to give effect to Resolutions 1267, 1373, 1718, 1783, 1988 or such other relevant Resolutions.

(3) A supervisory authority shall, upon receipt of the designations or sanctions list submitted to it under this regulation—

(*a*) circulate the designations or sanctions list to all reporting institutions under its purview for information and immediate action;

(*b*) where necessary, provide guidance to the reporting institutions holding funds or other property of a designated person, in relation to their obligations under these Regulations.

(4) Where a supervisory authority fails to comply with subregulation (3), the Authority shall impose a penalty of K20,000,000 for each case of non-compliance.

Designations by third parties

10.—(1) Any country which, pursuant to Resolution 1373 makes or requests designation of a person shall give details of the designation to an accredited diplomatic representative of Malaŵi in that country or in the absence of a diplomatic representative, the Ministry responsible for foreign affairs in that country.

(2) Upon receipt of the request under subregulation (1), the diplomatic office or the Ministry responsible for foreign affairs in that country shall send the request to the Authority, through the Secretary responsible for Foreign Affairs and International Cooperation in Malaŵi.

(3) The Authority shall, upon receipt of the request under subregulation (2), forthwith submit to the Attorney General for a determination as to whether there are sufficient grounds to designate the person in accordance with these Regulations.

(4) When considering the request for designation, the Attorney General shall have regard to the following evidential criteria, whether any person—

(*a*) has committed or attempted to commit a terrorist act or participated in or facilitated the commission of a terrorist act; or

(*b*) has been owned or controlled directly or indirectly by a person designated by a foreign country or by Malaŵi;

(*c*) has acted on behalf, or at the direction of any person designated by another country on the basis of the criteria set in the Resolution.

(5) If the Attorney General has determined that there are reasonable grounds to designate the person, he shall inform the Director General who shall without delay, inform the Panel and request it to—

(*a*) make a provisional determination designating the person;

(*b*) disseminate the name of the designated person to supervisory authorities and reporting institutions.

Freezing of property

11.—(1) A designation or a consolidated list circulated by or through the Authority shall be deemed to immediately authorize a reporting institution or any other institution which holds the property of a designated person to freeze, until further notice, the property whether—

(*a*) held by the designated person;

(*b*) wholly or jointly held or controlled directly or indirectly by the designated person;

(*c*) property derived or generated from assets owned or controlled directly by the designated person;

(*d*) property of a person acting on behalf of or at the direction of a designated person;

(*e*) the property in question was used or intended to be used for a particular terrorist or proliferation act or plot.

(2) For purposes of subsection (1), in determining whether the property is controlled by a designated person, the fact that the property is held in the name of an associate or a relation of the person shall be immaterial.

(3) A person to whom a designation or United Nations Consolidated Sanctions List is submitted shall, where applicable—

(*a*) take the necessary measures to freeze the property owned, held or controlled by the designated person, without delay and without notice to the entity;

(*b*) within twenty-four hours of detecting the property and freezing it, file a suspicious transaction report with the Authority; and

(*c*) take any other action as may be necessary to give effect to Resolutions 1267, 1373, 1718, 1783 and 1988.

(4) The reporting institution shall inform the Authority of the accounts identified and frozen duly indicating the account balances.

(5) An order to freeze property under paragraph (1) shall include an ongoing prohibition against the provision of funds or financial services to the designated individual or entity against which the order is made.

(6) Subject to the provisions of these Regulations—

(*a*) detained property under Resolutions 1267, 1373, 1718, 1783 and 1988 shall be held indefinitely until the relevant United Nations Sanctions Committee de-lists the person;

(*b*) the designated person under Resolutions 1267, 1373, 1718, 1783 and 1988 shall be prohibited from accessing the property or being provided with financial services except with the approval of the United Nations Sanctions Committee;

(*c*) detained property under Resolution 1373 shall not be released without authorization from the Panel and the designated person shall be prohibited from accessing the property or financial services until the designation has been lifted.

(7) Detention or freezing of property shall be without prejudice to the rights of third parties acting in good faith.

Obligations of reporting institutions

12.—(1) Every reporting institution shall develop and implement a system to facilitate review of the United Nations Consolidated List and the domestic list prior to carrying out any transaction or entering into a relationship with any person on an ongoing basis to mitigate against the risks of the occurrence of the financing of terrorism.

(2) Where the name of the person is confirmed to be on any list, the reporting institution shall immediately block the property identified as belonging or connected with the person or entity on the list and shall ensure that no transaction is performed in connexion with the property and thereafter submit a suspicious transaction report to the Authority, including reports or information on all actions taken.

(3) Upon receipt of the report, the Authority shall inform the Panel accordingly.

(4) Where a reporting institution makes a report to the Authority, it shall state—

(*a*) the information or other matters on which the knowledge or suspicion is based;

(*b*) any information it holds about the person;

(*c*) the nature and amount of property held by the institution for the person at any time up to five years prior to the designation being made.

(5) A reporting institution shall not deal with property owned, held or controlled directly or indirectly by a designated person save as provided for under the Regulations.

(6) For purposes of subregulation (5), "deal with" means—

(*a*) use, alter, move, allow, access or transfer;

(*b*) deal with in any other way that would result in any change in volume, amount, location, ownership, possession, character or destination;

(*c*) make any other change that would enable use, including portfolio management.

(7) A person shall not make available, directly or indirectly, property or financial services to or for the benefit of a designated person.

(8) Any person who, knowingly or having reasonable grounds to suspect that the property was owned, held or controlled by a designated person, contravenes this regulation, commits an offence and is liable, upon conviction, to a fine of K500,000,000 or twenty years imprisonment.

(9) Any person who knowingly participates in activities, the object or effect of which is directly or indirectly, to—

(*a*) circumvent the prohibitions in this regulation; or

(*b*) enable or facilitate the contravention of the provisions of the regulation,

commits an offence and is liable, upon conviction, to a fine of K500,000,000.

PART IV
Conditions and Procedures for Utilization of Frozen Property

Applications under domestic list

13.—(1) The Panel may, where necessary, approve access to frozen property or part thereof—

(*a*) to meet the basic needs and expenses of a designated person under investigation such as food, rental, medical needs and any other general expenses as the Panel may approve;

(*b*) to meet professional fees and settlement of expenses including legal services, bank and related charges;

(*c*) for any other exceptional services not provided for in paragraphs (*a*) and (*b*) above.

(2) An application to utilize money from the frozen property shall be made to the Panel by a designated person or his authorized representative with supporting documents.

(3) The Panel shall consider the application and grant, refuse or reduce the sum specified in the request made in the application as considered reasonable in the circumstances.

(4) Where approval has been granted, a person in custody of the property shall be informed, in writing, by the Director General, to implement the approval and furnish a report to the Panel of the action taken.

Applications under United Nations' List

14.—(1) A person wishing to access and use frozen property shall submit an application to the Panel, through the Director General, for onward transmission to the United Nations Sanctions Committee stating the purpose for which the property is required and, where applicable, attach supporting documents.

(2) The Director General shall, prior to submitting the application under subregulation (1), inform the Panel.

(3) When a decision is made by the United Nations Sanctions Committee, it shall be transmitted to the Panel, through the Director General, who shall inform the person in custody of the property in writing to implement the decision.

(4) The person in custody of the property shall inform the designated person or his representative of the decision in writing.

(5) A person who is aggrieved with the decision made under this regulation may appeal to court for redress.

Additional funds

15.—(1) Any property accruing to a frozen account including—

(*a*) interest or other earnings due to the account;

(*b*) payments due under contracts, agreement, or obligations that were concluded or arose before the account became frozen; or

(*c*) funds transferred to the account,

shall be received and credited into an escrow account opened for this purpose and shall constitute part of frozen property and the person in custody of the property shall file a report of receipt of such additional funds with the Authority which shall inform the Panel accordingly.

(2) Property received or credited into a frozen account shall be subject to the provisions and measures contained in these Regulations.

Application to unfreeze property

16.—(1) Where property was frozen wrongfully as a result of any error, the person affected may apply to the Panel for release of the property.

(2) Upon receipt of the application referred to in subregulation (1), the Panel shall—

(*a*) where the application relates to the United Nations Consolidated List, shall submit the request to the United Nations Sanctions Committee for determination, and upon receipt of feedback, the Panel shall inform the applicant of the decision taken;

(*b*) assess the application and make a determination and inform the applicant of the decision not later than fifteen working days from the date of receipt of the application.

PART V

Restrictions on Travel and Dealings in Arms

Travel restrictions

17.—(1) A person designated under the United Nations Sanctions Committee shall not be allowed to enter, transit or remain in Malaŵi.

(2) Notwithstanding the provisions of regulation 18 (1), a designated person shall not be prevented from entering or transiting through Malaŵi, where—

(*a*) the designated person is a citizen of Malaŵi;

(*b*) the entry or transit is necessary for compliance with a judicial process; and

(*c*) the United Nations Sanctions Committee determines, on a case-by-case basis, that the entry or transit is justified.

(3) For purposes of subregulation (1), the Minister responsible for Foreign Affairs and International Cooperation shall, upon receipt of a list of designated persons from the United Nations Sanctions Committee, request the Minister responsible for Home Affairs and Internal Security to refuse any application by a designated person for a visa to enter Malaŵi and all visas previously granted to the designated person shall be canceled.

(4) Where an international warrant of arrest is issued for the arrest of a designated person who has entered Malaŵi, the Inspector General shall immediately effect the arrest of the person and communicate the fact to the Authority.

(5) The Chief Immigration Officer shall enforce measures including watch list action to prevent a designated person from entering or escaping from Malaŵi.

(6) A person, being a Malaŵian citizen, having become a designated person pursuant to regulation 9 shall be prevented from leaving Malaŵi until investigations into the activities that led to his designation have been concluded.

(7) A designated person aggrieved by the implementation of these Regulations shall be entitled to seek legal redress.

Arms embargo

18.—(1) Any person shall not, directly or indirectly, supply, sell, transfer, carry, deliver, train in or provide technical assistance or any deal with any weapons or related materials of any type, knowing that the weapons or materials are—

(*a*) intended to be imported by a designated person; or

(*b*) to be supplied or delivered to, or to the order of, a designated person.

(2) A person shall not use a ship or aircraft in Malaŵi or use a Malaŵian ship or aircraft in any place outside Malaŵi for the carriage of weapons or related materials from or to a designated person.

PART VI
Application for De-Listing

Application for de-listing

19.—(1) A designated person who wishes to have his name deleted from any list under these Regulations may, in respect of—

(*a*) the domestic list, submit an application to the Panel; or

(*b*) the United Nations Consolidated List, submit an application through the Authority, to the United Nations Sanctions Committee, stating reasons for the application.

(2) The Panel shall consider the application made under subregulation (1) (*a*) and make a decision within sixty days.

(3) The Authority shall promptly inform the applicant of the decision made by the Panel or the United Nations Sanctions Committee promptly.

Grounds for application

20.—(1) An application made under subregulation (1) (*b*) may be made based on the following grounds—

(*a*) mistaken identity;

(*b*) relevant and significant change of facts or circumstances including the inclusion of the applicant in a witness protection program;

(*c*) the death, dissolution or liquidation of a designated person; or

(*d*) any other circumstance which would show that the basis for designation no longer exists.

(2) Where the United Nations Sanctions Committee has referred an application for removal from the United Nations Consolidated List to the Panel for comments, the Panel shall, within the time specified by the United Nations Sanctions Committee respond to the request stating reasons for the recommendation for retention or removal from the Consolidated List.

(3) Where the United Nations Sanctions Committee has granted leave for the removal of a designated person from the Consolidated List, the Panel shall, within twenty-four hours of the deletion, notify the relevant agencies and reporting institution of the deletion and direct the institutions to delete the de-listed name from any list circulated to them.

Effect of de-listing

21. An approval issued under regulation 20 shall have the effect of revoking the freezing order and other sanctions imposed against the person whose name is deleted from the list.

Immunity

22. No proceedings shall lie against any person, including reporting institutions and relevant Government agencies, in respect of effecting or implementing an order designating a person or freezing the property or funds of a designated person, in good faith, under these Regulations.

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Third Schedule

An Act to provide for the law relating to procedure and evidence in criminal proceedings and for incidental matters

[1ST FEBRUARY, 1968]

36 of 1967
23 of 1968
24 of 1968
5 of 1969
30 of 1969
31 of 1969
32 of 1969
23 of 1970
33 of 1970
5 of 1971
51 of 1971
24 of 1972
18 of 1973
19 of 1977
30 of 1994
19 of 1995
18 of 1996
20 of 1996
9 of 1999
14 of 2010

PART I

PRELIMINARY

Short title
14 of 2010

1.—(1) This Act may be cited as the Criminal Procedure and Evidence Code.

(2) This Act is hereinafter referred to as "this Code".

Interpretation
14 of 2010

2. In this Code, unless the context otherwise requires—

"arrestable offence" means an offence for which a police officer may, in accordance with the First Schedule or under any law for the time being in force, arrest without warrant;

"character" includes reputation and disposition;

"complaint" means an allegation that some person known or unknown has committed an offence;

"court" means the High Court and any subordinate court;

"document" means anything in or on which information of any description is recorded, and includes—

(*a*) anything in or on which there is writing;

(*b*) anything is or on which there are marks, figures, symbols or perforations having meaning for a person qualified to interpret them;

(*c*) anything from which sounds, images or writing can be produced, with or without the aid of anything else;

(*d*) a map, a plan, drawing, photograph or similar thing;

(*e*) any disc, tape, soundtrack or other device on which sounds or other data, not being visual images, are embodied so as to be capable, with or without the aid of some other equipment, of being reproduced therefrom; and

(*f*) any film, negative, tape or other device on which one or more visual images are embodied so as to be capable, with or without the aid of some other equipment, of being reproduced therefrom;

"evidence" means information of any description which facts tend to be proved, and includes—

(*a*) oral evidence, that is to say all statements which the court permits or requires to be made before it by witnesses in relation to matters of fact under enquiry; and

(*b*) documentary evidence, that is to say all documents produced for the inspection of the court;

"fact" includes—

(*a*) any thing, state of things, or relation to things capable of being perceived by the senses; and

(*b*) any mental condition of which any person is conscious;

"fact in issue" means any fact from which, either by itself or in connexion with other facts, the existence, non-existence, nature or extent of any right, liability or disability, asserted or denied in any proceeding necessarily follows;

"mental hospital" bears the meaning ascribed to that term in section 2 of the Mental Treatment Act; Cap. 34:02

"non-arrestable offence" means an offence for which a police officer requires a warrant to make an arrest;

"police officer in charge of a police station" means the senior police officer on duty at a police station at the time in question;

"police station" means any post or place appointed by the Inspector General to be a police station;

"preliminary inquiry" means an inquiry into a criminal charge held by a subordinate court with a view to the committal of the accused person for trial before the High Court;

"proclaimed person" or "proclaimed offender" means any person in respect of whom a proclamation has been published under section 106;

"Public Prosecutor" means the Director of Public Prosecutions, or, subject to his or her general or special instructions or to an Act of Parliament—

(*a*) persons in the public service acting as his or her subordinates; or

(*b*) such other legally qualified persons acting on instructions from the Director of Public Prosecutions;

"Registrar" means the Registrar of the High Court and includes a deputy Registrar and an Assistant Registrar;

"Resident Magistrate" means a Resident Magistrate appointed under section 111 of the Constitution;

"subordinate court" means any court of a magistrate or any other court subordinate to the High Court;

"summary committal procedure" means the procedure provided for in Part IX for the committal of an accused person by a subordinate court for trial before the High Court without the necessity for holding or completing a preliminary inquiry;

"summary trial" means a trial by a subordinate court under Part VII;

"Sunday" includes Saturday and public holiday;

"traditional or local court" means a traditional or local court provided for under section 110 of the Constitution.

Principle on which Code is to be applied

3. The principle that substantial justice should be done without undue regard for technicality shall at all times be adhered to in applying this Code.

Finding, etc., not to be set aside merely because proceedings in wrong place

4. No finding, sentence or order of any criminal court shall be set aside merely on the ground that the inquiry, trial or other proceedings, in the course of which it was arrived at or passed, took place in a wrong Region, District or other local area, unless it appears that such error has in fact occasioned a failure of justice.

Finding, etc., not to be reversed, etc., on account of errors not occasioning failure of justice
14 of 2010

5.—(1) Subject to section 3 and to the other provisions of this Code, no finding arrived at, sentence or order passed by a court of competent jurisdiction shall be reversed or altered on appeal of complaint, summons, warrant, charge, proclamation, order, judgment or other proceedings before or during the trial or in any inquiry or other proceedings under this Code unless such error, omission or irregularity has in fact occasioned a failure of justice.

(2) In determining whether any error, omission or irregularity has occasioned a failure of justice the court shall consider the question whether the objection could and should have been raised at an earlier stage in the proceedings.

(3) The important admission or rejection of evidence shall not, of itself, be a ground for the reversal or alteration of any decision in any case unless, in the opinion of the court before which an objection is raised—

(*a*) the accused would not have been convicted if such evidence had not been given or if there was no other sufficient evidence to justify the conviction; or

(*b*) it would have varied the decision if the rejected evidence had been received.

Trial of offences under Penal Code and other laws
14 of 2010
Cap. 7:01

6.—(1) Subject to any Act of Parliament establishing traditional or local courts, all offences under the Penal Code shall be inquired into and otherwise dealt with in accordance with this Code.

(2) All offences under any other written law shall be inquired into, tried, and otherwise dealt with according to this Code, subject, however, to any enactment for the time being in force regulating the manner or place of inquiring into, trying or otherwise dealing with such offences.

Part II

Powers of Courts and Special Areas

Offences under Penal Code
Cap. 7:01

7. Subject to the other provisions of this Code, any offence under the Penal Code may be tried by the High Court.

8. [*Repealed by* 31 *of* 1969].

Offences under laws other than Penal Code

9.—(1) Any offence under any law other than the Penal Code shall, where any court is mentioned in that law or any other written law as having jurisdiction to try that offence, be tried by such court.

(2) Where no court is so mentioned, the offence may, subject to the other provisions of this Code, be tried by the High Court, by

any subordinate court or by any traditional or local court of competent jurisdiction.

10. The High Court may pass any sentence or order authorized by law.

Sentences and orders which High Court may pass
14 of 2010

11. Where a person, who is not less than twenty-one years of age—

Power of certain courts to pass sentence of imprisonment for protection of public
14 of 2010

(*a*) is convicted by the High Court or by a Resident Magistrate's court or by a court of a magistrate of the first grade of an offence punishable with imprisonment for a term of five years or more; and

(*b*) has been convicted on at least three previous occasions, since he attained the age of eighteen years, of offences punishable with imprisonment for a term of five years or more; and

(*c*) has been sentenced on at least two previous occasions to imprisonment, other than a suspended sentence which has not taken effect,

the court may, if satisfied that it is expedient for the protection of the public that he should be detained in custody for a substantial time, pass, in lieu of any other sentence, a sentence of imprisonment for a term of not less than five nor more than fourteen years, as the court may determine.

12. Subject to section 14 any court may pass any lawful sentence combining any of the sentences which it is authorized by law to pass.

Combination of sentences

13.—(1) A Resident Magistrate court and any court of a magistrate of the first or second grade may try any offence under the Penal Code or any other law other than—

General jurisdiction of subordinate courts
Cap. 7:01
19 of 1995
14 of 2010

(*a*) offences under sections 38, 39, 63, 208, 209 and 217 of the Penal Code; and

(*b*) attempts to commit or aiding, abetting, counselling or procuring the commission of any of the offences specified in paragraph (*a*).

(2) Notwithstanding subsection (1), offences under sections 133, 134 and 138 of the Penal Code shall not be tried by any court of the second grade magistrate.

Cap. 7:01

(3) A court of the third grade magistrate may try any offence specified in the Second Schedule in respect of which the maximum sentence does not exceed the jurisdiction conferred on such court under section 14 (3).

Second Schedule

(4) A court of a magistrate of the fourth grade may try any offence specified in the Third Schedule in respect of which the maximum sentence does not exceed the jurisdiction conferred on such court under section 14 (3).

(5) The Chief Justice may by notice published in the *Gazette* amend the Second Schedule and the Third Schedule.

Sentences which subordinate courts may pass
14 of 2010
Cap. 7:01

14.—(1) A Resident Magistrate's court may pass any sentence, other than a sentence of death or a sentence of imprisonment for a term exceeding twenty-one years, authorized by the Penal Code or any other written law.

(2) A court of a magistrate of the first grade magistrate may pass any sentence, other than a sentence of death or a sentence of imprisonment for a term not exceeding fourteen years, authorized by the Penal Code or any other written law.

Cap. 7:01

(3) A court of a magistrate of the second grade may pass a sentence of imprisonment for a term not exceeding ten years or a fine not exceeding K200,000 or both.

(4) A court of a magistrate of—

(*a*) the third grade may pass a sentence of imprisonment for a term not exceeding three years or a fine not exceeding K150,000 or both; and

(*b*) the fourth grade may pass a sentence of imprisonment for a term not exceeding twelve months or a fine not exceeding K100,000 or both.

(5) In addition to the powers conferred upon them by subsections (3) and (4), courts of magistrate of the second, third and fourth grade may also pass any sentence authorized by section 25 (5), (6), (7), (8) and (9) of the Penal Code.

Cap. 7:01

(6) Where in a trial by a subordinate court a person is convicted of an offence, if the court is of the opinion that greater punishment should be inflicted for the offence than it has power to inflict, the court may, for reasons to be recorded in writing on the record of the case, instead of dealing with him in any other manner, commit him to the High Court or to another subordinate court of higher grade than itself for sentence.

(7) A court committing a convicted person for sentencing by the High Court or another subordinate court of higher grade under subsection (6) shall, until sentence is passed, either admit him to bail or send him to prison for safekeeping, and the warrant of the subordinate court shall be sufficient authority to the officer in charge of any prison appointed for the custody of any prisoner committed for trial.

(8) Any person committed to the High Court or to another subordinate court for sentence under this section shall be brought before the Court to which he has been committed at the first convenient opportunity, and in any event not later than fourteen days; but failure to bring the accused before a higher court within the specified period shall not itself invalidate the proceedings.

(9) Where any person is brought for sentence before the High Court or a subordinate court in accordance with subsection (8), the High Court or the subordinate court, as the case may be, shall inquire into the circumstances of the case and shall thereafter proceed as if such person has been convicted by it of the offence in respect of which he has been committed.

(10) Notwithstanding subsection (6), where a person has been committed for sentence under that subsection and has appealed against his conviction, he shall be brought before the High Court for sentence at the time when such appeal is to be determined by the High Court, and where the appeal is dismissed or the finding altered, he shall thereupon be sentenced by the High Court.

(11) Where the High Court, on appeal against conviction, alters the finding, such person shall be deemed to be committed for sentence to the High Court on the offence found by the High Court to have been committed by such person.

Certain sentences to be confirmed on review by High Court before being given effect, etc.
14 of 2010

15.—(1) Where in any proceedings a subordinate court imposes—

(*a*) a fine exceeding "K1,000";

(*b*) Any sentence of imprisonment exceeding

(i) in the case of a Resident Magistrate's court, two years;

(ii) in the case of a Magistrate's court of the first or second grade, one year; or

(iii) in the case of a court of a magistrate of the third or fourth grade, six months;

(*c*) any sentence of imprisonment upon a first offender which is not suspended under section 340,

it shall immediately send the record of the proceedings to the High Court for the High Court to exercise powers of review under Part XIII.

(2) No person authorized by warrant or order to levy any fine falling within subsection (1) (*b*), and no person authorized by any warrant for the imprisonment of any person in default of the payment of such fine, shall execute or carry out any such warrant order until he has received notification from the High Court

that it has in exercise of its powers of appeal or review confirmed the imposition of such fine.

(3) An officer in charge of a prison or other person authorized by a warrant of imprisonment to carry out any sentence of imprisonment failing within subsection (1) (*c*) (i), (ii) or (iii) shall treat such warrant as though it had been issued in respect of a period of two years, one year or six months respectively, as the case may be, until such time as he shall receive notification from the High Court that it has in exercise of its powers of appeal or review confirmed that such sentence may be carried out as originally imposed.

(4) Nothing in this section shall affect or derogate from the powers of the High Court to reverse, set aside, alter or otherwise deal with any sentence of a subordinate court on review or appeal.

(5) When a subordinate court has passed a sentence or made an order falling within subsection (1) it shall endorse on the warrant or order that the sentence or order is one required to be submitted to the High Court for review and which part if any of the sentence or order may be treated as valid and effective pending such review.

(6) In this section "sentence of imprisonment" means a substantive sentence of imprisonment or a sentence of imprisonment in default of payment of fine, costs or compensation or a combination of such sentences and includes a sentence of imprisonment the operation of which is suspended under section 339.

5 of 1969

Release on bail pending order of the High Court
14 of 2010

16.—(1) If a subordinate court imposes a sentence falling within section 15 (1) (*c*) or (*d*) the court imposing such sentence may on the application of the person sentenced release the person sentenced on bail pending the order of the High Court.

(2) If the person sentenced is released on bail under subsection (1), the term of imprisonment shall run from the date upon which such person begins to serve his sentence after confirmation by or other order of the High Court.

Sentences in cases of conviction of several offences at one trial
14 of 2010

17.—(1) Where a person is convicted at one trial of two or more distinct offences the court may sentence him, for such offences, to the several punishments prescribed therefor which such court is competent to impose; such punishments, when consisting of imprisonment, to commence the one after the expiration of the other in such order as the court may direct, unless the court directs that such punishments shall run concurrently.

(2) In the case of consecutive sentences it shall not be necessary for the court, by reason only of the aggregate punishment for the several offences being in excess of the punishment which it is

competent to impose on conviction of a single offence, to send the offender for trial before a higher court.

(3) The aggregate of any terms of consecutive sentences of imprisonment imposed under subsection (2) by a—

(*a*) Resident Magistrate, shall not exceed twenty-one years;

(*b*) magistrate of the first grade, shall not exceed fourteen years;

(*c*) magistrate of the second grade, shall not exceed ten years;

(*d*) magistrate of the third grade, shall not exceed four years; and

(*e*) magistrate of the forth grade, shall not exceed two years.

(4) For the purpose of appeal or review the aggregate of consecutive sentences imposed under this section in case of convictions for several offences at one trial shall be deemed to be a single sentence.

Appointment of special areas

18. The President, in his discretion, may by order direct that any area in Malaŵi shall be a special area for the purposes of this Code.

Magisterial powers to officers in charge of special areas
23 of 1965

19. The Minister may by notice published in the *Gazette* confer upon any officer in charge of a special area all or any of the powers conferred or conferrable on a magistrate of the first, second, or third grade.

PART III

General Provisions

Arrest, how made
14 of 2010

20.—(1) In making an arrest a police officer or other person making the arrest shall actually touch or confine the body of the person to be arrested, and shall inform the person that he is under arrest.

(2) Where the person to be arrested submits to the custody by word or action, the arrest shall be effected by informing the person that he is under arrest.

(3) If the person forcibly resists the endeavour to arrest him, or attempts to evade the arrest, such police officer or other person may use all means necessary to effect the arrest.

(4) This section shall not justify the use of a greater force than was reasonable in the particular circumstances in which it was employed or was necessary for the apprehension of the offender.

Information to be supplied on arrest
14 of 2010

20A.—(1) Subject to subsection (5), where a person is arrested, otherwise than by being informed that he is under arrest, the arrest is not lawful unless the person arrested is informed that he is under arrest at the time of the arrest or as soon as is practicable after his arrest.

(2) Where a person is arrested by a police officer, subsection (1) applies regardless of whether the fact of the arrest is obvious.

(3) Subject to subsection (5), no arrest is lawful unless the person arrested is informed of the reason for the arrest at the time of, or as soon as is practicable after, the arrest.

(4) Where the person is arrested by a police officer, subsection (3) applies regardless of whether the reason for the arrest is obvious.

(5) Nothing in this section shall be deemed to require a person to be informed—

(*a*) that he is under arrest; or

(*b*) of the reason for the arrest,

if it was not reasonably practicable for him to be so informed by reason of his having escaped from arrest before the information could be given.

(6) Where the person is arrested, the police officer shall promptly inform him that he has the right to remain silent, and shall warn him of the consequences of making any statement, but any omission by the police officer to inform the arrested person of this right shall not render the arrest unlawful.

Voluntary attendance at police station
14 of 2010

20B. Where, for the purpose of assisting with an investigation, a person attends voluntarily at a police station or at any other place where a police officer is present or accompanies a police officer to a police station or any other such place without having been arrested—

(*a*) he shall be entitled to leave at will, unless he is placed under arrest; and

(*b*) if he is placed under arrest, section 20A shall apply.

Arrest for further offence
14 of 2010

20C. Where a person has been arrested for an offence and is in custody in consequence of that arrest, and it appears to the police officer that if the person were released from that arrest he would be liable to arrest for some other offence, he shall be arrested for that other offence.

Additional rights of children and young persons on arrest
14 of 2010

20D.—(1) Where a child or a young person is arrested, such steps as are necessary shall be taken to ascertain the identity of a person responsible for his welfare.

(2) The person identified under subsection (1) shall be informed of the following—

(*a*) that the child or young person has been arrested;

(*b*) the reasons for his arrest; and

(*c*) the place where he is being held.

(3) The information under subsection (2) shall be given as soon as is practicable to do so.

(4) For purposes of this section, the persons who may be responsible for the welfare of the child or young person are—

(*a*) his parent or guardian;

(*b*) any other person or organization that has for the time being assumed responsibility for his welfare.

(5) If at the time of the arrest it appears that a supervision order as provided for under section 16 (1) (*e*) of the Children and Young Persons Act is in force in respect of the child or young person, the person responsible for his supervision shall also be informed as soon as it is reasonably practicable to do so as is described under subsection (2). Cap. 26:03

Search of place entered by person to be arrested 14 of 2010

21.—(1) If any person acting under a warrant of arrest, or any police officer having authority to arrest, has reason to believe that the person to be arrested has entered into or is within any place, the person residing in or being in charge of such place shall, on demand of such person acting as aforesaid or such police officer, allow him free entry thereto and afford all reasonable facilities for a search therein.

(2) If entry to the place cannot be obtained under subsection (1), it shall be lawful in any case for a person acting under a warrant or for a police officer where a warrant may issue but cannot be obtained without affording the person to be arrested an opportunity to escape, to enter the place and search therein.

(3) In order to effect an entrance under subsection (2), the police officer may break open an outer or inner door or window of any house or place, whether that of the person to be arrested or of any other person, if after notification of his authority or purpose, and demand of admittance duly made, he cannot otherwise obtain admittance.

Powers to break open doors and windows for purposes of liberation

22. Any police officer or other person authorized to make an arrest may break open any outer or inner door or window of any house or place in order to liberate himself or any other person who, having lawfully entered for the purpose of making an arrest, is detained therein.

No unnecessary restraint

23. The person arrested shall not be subjected to more restraint than is necessary to prevent his escape.

Search of arrested persons
14 of 2010

24.—(1) Whenever a person is arrested—

(*a*) by a police officer under a warrant which does not provide for the taking of bail, or under a warrant which provides for the taking of bail but the person arrested cannot furnish bail; or

(*b*) without warrant, or by a private person under a warrant, and the person arrested cannot legally be admitted to bail or is unable to furnish bail,

the police officer making the arrest or, when the arrest is made by a private person, the police officer to whom he makes over the person arrested may search such person and place in safe custody all articles, other than necessary wearing apparel and shoes, found upon him.

(2) In addition to the power to search an arrested person conferred under subsection (1), the police officer shall have power in any such case—

(*a*) to search the arrested person for anything which—

(i) may present a danger to himself or others;

(ii) he might use to assist himself escape from lawful custody;

(iii) may afford evidence of the commission or suspected commission of an offence whether within Malaŵi or elsewhere; or

(iv) is intended to be used, or is on reasonable grounds believed to be intended to be used, in the commission of an offence within Malaŵi or elsewhere;

(*b*) to enter and search any premises in which the person was when arrested or immediately before the arrest for evidence relating to the offence for which he has been arrested.

(3) A police officer may not search a person in the exercise of the power conferred by subsection (2), unless he has reasonable grounds for believing that the person to be searched may have concealed on him anything for which a search is permitted under that subsection.

(4) The power to search conferred under subsection (2) is only a power to search to the extent that is reasonably required for the purpose of discovering any such thing or any such evidence.

Entry and search after arrest
14 of 2010

24A.—(1) Any police officer may enter and search any premises occupied or controlled by a person who is under arrest for an arrestable offence, if he has reasonable grounds for suspecting that there is on the premises evidence that relates to that offence or to

some other arrestable offence which is connected with or similar to that offence.

(2) The police officer may seize and retain anything for which he may search under subsection (1).

(3) The power to search under subsection (1) is only a power to search to the extent that is reasonably required for the purpose of discovering such evidence.

(4) Subject to subsection (5), the powers conferred by this section may not be exercised unless a search warrant has been issued in respect of the premises.

(5) A police officer may conduct a search under subsection (1) before taking the person to a police station and without a search warrant if the presence of that person at a place other than a police station is necessary for the effective investigation of the offence.

(6) If the premises consist of two or more separate dwellings, the police officer may search—

(*a*) any dwelling in which the arrest took place or in which the person arrested was immediately before his arrest; and

(*b*) any parts of the premises which the occupier of any such dwelling uses in common with the occupiers of any other dwellings comprised in the premises.

(7) If the person who was in occupation or control of the premises at the time of the search is in police detention at the time the record is to be made, the police officer shall make the record as part of his custody record.

(8) For the purposes of this section "premises" includes any—

(*a*) vehicle, vessel, aircraft or hovercraft;

(*b*) offshore installation; and

(*c*) tent or movable structure.

Power of police officer to search and detain aircraft, vessel or vehicle and persons in certain circumstances 14 of 2010

25.—(1) Any police officer, or other person authorized in writing by the Inspector General of Police, may stop search and detain—

(*a*) any aircraft, vessel or vehicle in or upon which there shall be reason to suspect that anything stolen or unlawfully obtained may be found;

(*b*) any aircraft, vessel or vehicle which there shall be reason to suspect has been used or employed in the commission, or to facilitate the commission, of any offence under Chapters XXVI, XXVIII, or XXIX or section 328 of the Penal Code; or

Cap. 7:01

(*c*) any person who may be reasonably suspected of having in his possession or conveying in any manner anything stolen or unlawfully obtained,

and, where anything is found for which such search is being made, may seize such thing.

(2) No person shall be entitled to any damages or compensation for any loss of damage suffered by him in respect of the detention under this section of any aircraft, vessel or vehicle or of the seizure of anything found and seized under this section except where the police officer or authorized person acted without reasonable cause.

(3) For the purpose of this section the expressions "aircraft", "vessel" and "vehicle" respectively, include everything contained in, being on, or attached to any aircraft, vessel or vehicle, as the case may be, which forms part of the equipment of such aircraft, vessel or vehicle.

Mode of search of women and men
14 of 2010

26.—(1) Whenever it is necessary to search a woman, the search shall be made by another woman with strict regard to decency.

(2) Whenever it is necessary to search a man, the search shall be made by another man with strict regard to decency.

(3) The powers to search a person shall not be construed as authorizing a police officer to require a person—

(*a*) to remove any necessary wearing apparel in public;

(*b*) to remove any unnecessary wearing apparel in public where it will be unnecessary to do so.

Power to seize offensive weapons

27. The officer or other person making any arrest may take from the person arrested any offensive weapon which he has about his person, and shall deliver all weapons so taken to a court or the officer before whom the officer or person making the arrest is required by law to produce the person arrested.

Arrest by police officer without warrant
14 of 2010

28. Any police officer may, without an order from a magistrate and without a warrant, arrest—

(*a*) any person whom he suspects upon reasonable grounds of having committed an arrestable offence;

(*b*) any person who commits a breach of the peace in his presence;

(*c*) any person who obstructs a police officer while in the execution of his duty, or who has escaped or attempts to escape from lawful custody;

(*d*) any person who has been proclaimed as an offender under section 106;

(*e*) any person whom he suspects upon reasonable grounds of being a deserter from the Defence Force of Malaŵi and the Malaŵi Police Service;

(*f*) any person whom he finds lying or loitering in any highway, yard or other place during the night and whom he

suspects upon reasonable grounds of having committed or being about to commit a felony;

(*g*) any person whom he suspects upon reasonable grounds of having been concerned in any act committed at any place out of Malaŵi which, if committed in Malaŵi, would have been punishable as an offence and for which he is under any written law liable to be apprehended and detained in Malaŵi;

(*h*) any person having in his possession without lawful excuse, the burden of providing which excuse shall lie on such person, any implement of housebreaking;

(*i*) any released convict committing a breach of any provision prescribed by section 343 or of any rule made thereunder;

(*j*) any person in whose possession anything is found which may reasonably be suspected to be stolen property or who may reasonably be suspected of having committed an offence with reference to such thing;

(*k*) any person for whom he has reasonable cause to believe a warrant of arrest has been issued; and

(*l*) any person who is about to commit an arrestable offence or whom he has reasonable grounds for suspecting to be about to commit an arrestable offence.

Arrest of vagabonds, habitual robbers, etc. 14 of 2010

29. Any police officer may without an order from a magistrate and without a warrant, arrest or cause to be arrested—

(*a*) any person found taking precautions to conceal his presence within the limits of an area policed from a police station under circumstances which afford reason to believe that he is taking such precautions with a view to committing an arrestable offence;

(*b*) any person within the limits of such station who cannot give a satisfactory account of himself; and

(*c*) any person who is by repute a habitual robber, house-breaker or thief or a habitual receiver of stolen property knowing it to be stolen, or who by repute habitually commits extortion or in order to facilitate the committing of extortion habitually puts or attempts to put persons in fear of injury.

Procedure when police officer deputes subordinate to arrest without warrant

30. When any police officer of the rank of inspector or above requires any officer subordinate to him to arrest without a warrant (otherwise than in his presence) any person who may lawfully be arrested without a warrant, he shall deliver to the officer required to make the arrest an order in writing specifying the person to be arrested and the offence or other cause for which the arrest is to be made.

Refusal to give name and residence
14 of 2010

31.—(1) When any person who in the presence of a police officer has committed or has been accused of committing a non-arrestable offence refuses on the demand of such officer to give his name and residence, or gives a name and residence which such officer has reason to believe to be false, he may be arrested by such officer in order that his name or residence may be ascertained.

(2) When the true name and residence of such person have been ascertained he shall be released on his executing a bond, with or without sureties, to appear before a magistrate or traditional or local court if so required.

(3) Where any person arrested under this section is not resident in Malaŵi, the bond shall be secured by a surety or sureties resident in Malaŵi.

(4) Should the true name and residence of such person not be ascertained within forty-eight hours from the time of arrest or should be fail to execute the bond or, if so required, to furnish sufficient sureties, he shall immediately be forwarded to the nearest magistrate or tradition or local court having jurisdiction in the case.

(5) Any police officer may arrest without a warrant any person who has committed a non-arrestable offence in his presence if reasonable grounds exist for believing that he could not be found or made answerable to justice unless he is arrested immediately.

Disposal of persons arrested by police officers
14 of 2010

32. A police officer making an arrest without a warrant shall, without unnecessary delay and in any event not later than forty-eight hours, or if the period of forty-eight hours expires outside ordinary court hours or on a day which is not a court day, the first court day after such expiry, take or send the person arrested before a magistrate or traditional or local court having jurisdiction in the case.

Powers to release and caution by the police
14 of 2010

32A.—(1) For any offence not amounting to a serious offence and not aggravated in degree, a police officer of the rank of sub-inspector and above may, orally or in writing, caution an arrested person against repetition of criminal conduct and then release him.

(2) A person arrested for an offence under subsection (1) may be cautioned and then released where there is enough evidence to warrant a prosecution if he voluntarily admits having committed the alleged offence.

(3) A child offender who voluntarily admits the commission of an offence under subsection (1) may be released on caution if his parent or guardian consents to disposal of the case in this manner and if the caution is administered in the presence of such parent or guardian.

(4) In exercising the discretion whether to caution and release a person arrested for an offence under this section, the police officer entitled to exercise of this power shall, inter alia, bear in mind—

(*a*) the petty nature of the offence;

(*b*) the circumstances in which it was committed;

(*c*) the views of the victim or complainant; and

(*d*) the personal consideration of the arrested person, including age and physical or mental infirmity, and in the case of a child his general character and family circumstances.

(5) The Chief Justice may by rules issue guidelines to the police on the exercise of the powers referred to in this section.

Arrest by private person 14 of 2010

33.—(1) Any private person may without a warrant, arrest anyone—

(*a*) who is in the act of committing an arrestable offence;

(*b*) whom he has reasonable grounds for suspecting to be committing an arrestable offence;

(*c*) whom he reasonably suspects of having committed a serious offence;

(*d*) who has been proclaimed an offender under section 106.

(2) Persons found committing an offence involving damage to property may be arrested without a warrant by the owner of the property or his servants or persons authorized by him.

Disposal of person arrested by private person 14 of 2010

34.—(1) Any private person arresting any person without a warrant shall without unnecessary delay make over the person so arrested to a police officer, or in the absence of a police officer shall take such person to the nearest police station.

(2) If there is reason to believe that the arrested person comes under section 28, a police officer shall arrest him.

(3) If there is reason to believe that the arrested person has committed a non-arrestable offence, and he refuses on the demand of a police officer to give his name and residence, or gives a name or residence which such officer has reason to believe to be false, he shall be dealt with under section 31.

(4) If there is no sufficient reason to believe that the arrested person has committed any offence, he shall be released immediately.

Detention of persons arrested without warrant 14 of 2010

35.—(1) When any person has been taken into custody without a warrant for an offence, other than an offence punishable with death, the police officer in charge of the police station to which such person shall be brought may, in any case, and shall—

(*a*) if it does not appear practicable to bring such person before a subordinate court or a traditional or local court having jurisdiction to try such offence within forty-eight hours after he was so taken into custody, inquire into the case; and

(*b*) unless the offence appears to the officer to be of a serious nature, release the person on his executing a bond, with or without sureties, for a reasonable amount to appear before a subordinate court or traditional or local court having jurisdiction at the time and place to be named in the bond.

(2) When the person is detained in custody he shall be brought before a subordinate court or traditional or local court having jurisdiction as soon as practicable and in any event not later than forty-eight hours after the arrest, or if that period expires outside ordinary court hours or on a day which is not a court day, the first court day after expiry.

(3) A police officer in charge of a police station may release a person arrested on suspicion on a charge of committing any offence when, after due police inquiry, insufficient evidence is, in his opinion, disclosed on which to proceed with the charge.

Police to report apprehensions 14 of 2010

36. Police officers in charge of police stations shall report to the nearest magistrate the cases of all persons arrested within the limits of their respective areas, whether such persons have been admitted to bail or otherwise.

Offence committed in magistrate's presence

37. When any offence is committed in the presence of a magistrate he may himself arrest or order any person to arrest the offender, and may thereupon, subject to the provisions herein contained as to bail, commit the offender to custody.

Arrest by magistrate

38. Any magistrate may at any time arrest or direct the arrest in his presence of any person for whose arrest he is competent at the time and in the circumstances to issue a warrant.

Recapture of person escaping

39. If a person in lawful custody escapes or is rescued, the person from whose custody he escapes or is rescued may immediately pursue and arrest him in any place in Malaŵi.

Provisions of sections 21 and 22 to apply to arrests under section 39

40. Sections 21 and 22 shall apply to arrest under section 39 although the person making any such arrest is not acting under a warrant and is not a police officer having authority to arrest.

Assistance to magistrate or police officer 14 of 2010

41. Every person is bound to assist a magistrate or police officer reasonably demanding his aid—

(*a*) in the taking or preventing the escape of any other person whom such magistrate or police officer is authorized to arrest;

(*b*) in the prevention or suppression of a breach of the peace, or in the prevention of any injury attempted to be committed to any buoy, mark used in navigation, air-service, electricity supply, railway, telegraph or any public land-mark road, property or utility.

Security for keeping the peace
14 of 2010

42.—(1) Where a Resident Magistrate or a magistrate of the first or second grade is informed on oath that any person is likely—

(*a*) to commit a breach of the peace or disturb the public tranquility; or

(*b*) to do any wrongful act that may probably occasion a breach of the peace or disturb the public tranquility,

the magistrate may, in the manner hereafter provided, require such person to show cause why he should not execute a bond, with or without sureties, for keeping the peace for such period, not exceeding one year, as the magistrate thinks fit to fix.

(2) Where any magistrate not empowered to proceed under subsection (1) or a traditional or local court has reason to believe that—

(*a*) any person is likely to commit a breach of the peace or disturb the public tranquility, or to do any wrongful act that may probably occasion a breach of the peace or disturb the public tranquility;

(*b*) the breach of the peace or disturbance cannot be prevented otherwise than by detaining such person in custody,

such magistrate or traditional or local court may, after recording his or its reasons, issue a warrant for the arrest of such person, if he is not already in custody or before the magistrate or traditional or local court, and may send him before a magistrate empowered to deal with the case with a copy of his or its reasons.

Security for good behaviour from persons disseminating seditious matters, etc.
14 of 2010

43. Where a Resident Magistrate or a magistrate of the first or second grade has information that there is any person who either orally or in writing or in any other manner, disseminates or attempts to disseminate, or in any wise abets the dissemination of—

(*a*) any seditious matter, that is to say, any matter the publication of which is punishable under section 51 of the Penal Code; or — Cap. 7:01

(*b*) any matter concerning a judge or magistrate which amounts to libel under the Penal Code, — Cap. 7:01

such magistrate may, in the manner provided in this Code, require such person to show cause why he should not be ordered to execute a bond, with or without sureties, for his good behaviour for such period, not exceeding one year, as the magistrate thinks fit to fix.

Security for good behaviour from vagrants and suspected persons
14 of 2010

44. Where a Resident Magistrate or a magistrate of the first or second grade receives information—

(*a*) that any person is taking precautions to conceal his presence and that there is reason to believe that such person is taking such precautions with a view to committing any offence; or

(*b*) that there is a person who has no visible means of subsistence, or who cannot give a satisfactory account of himself,

such magistrate may, in the manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond, with sureties, for his good behaviour for such period, not exceeding one (1) year, as the magistrate thinks fit to fix.

Security for good behaviour from habitual offenders
14 of 2010

45. Where a Resident Magistrate or a magistrate of the first or second grade receives information that any person—

(*a*) is by habit a robber, house-breaker or thief; or

(*b*) is by habit a receiver of stolen property, knowing the same to have been stolen; or

(*c*) habitually protects or harbours thieves, or aids in the concealment or disposal of stolen property; or

(*d*) habitually commits or attempts to commit, or aids or abets in the commission of, any offence punishable under Chapters XXXI, XXXIV or XXXVII of the Penal Code; or

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(*e*) habitually commits or attempts to commit, or aids or abets in the commission of, offences involving a breach of the peace; or

(*f*) is so desperate and dangerous as to render his being at large without security hazardous to the community,

such magistrate may, in the manner hereinunder provided, require such person to show cause why he should not be ordered to execute a bond, with sureties, for his good behaviour for such period, not exceeding three (3) years, as the magistrate thinks fit to fix.

Order to be made
14 of 2010

46. Where a magistrate acting under section 42, 43, 44 or 45 deems it necessary to require any person to show cause under any such section, he shall make an order in writing setting forth—

(*a*) the substance of the information received;

(*b*) the amount of the bond to be executed;

(*c*) the term of which it is to be in force; and

(*d*) the number, character and class of sureties, if any, required.

47. If the person in respect of whom an order is made under section 46 is present in court, it shall be read over to him and the substance thereof shall be explained to him.

Procedure in respect of person present in court
14 of 2010

48.—(1) If such person is not present in court, the magistrate shall issue a summons requiring him to appear, or, when the person in respect of whom an order is made under section 46 is in custody, a warrant directing the officer in whose custody he is to bring him before the court.

Summons or warrant in case of person not so present
14 of 2010

(2) Where it appears to the magistrate, upon the report of a police officer or upon other information, the substance of which report or information shall be recorded by the magistrate, that there is reason to fear the commission of a breach of the peace, and that such breach of the peace cannot be prevented otherwise than by the immediate arrest of the person, the magistrate may at any time issue a warrant for his arrest.

49. Every summons or warrant issued under section 48 shall be accompanied by a copy of the order made under section 46, and such copy shall be delivered by the officer serving or executing such summons or warrant to the person served with or arrested under the summons or warrant.

Copy of order under section 46 to accompany summons or warrant
14 of 2010

50. The magistrate may, if he sees sufficient cause, dispense with the personal attendance of any person called upon to show cause why he should not be ordered to execute a bond for keeping the peace, and may permit him to appear by legal practitioner.

Power to dispense with personal attendance
14 of 2010

51.—(1) When an order under section 46 has been read or explained under section 47 to a person present in court, or when any person appears or is brought before a magistrate in compliance with or in execution of a summons or warrant issued under section 48, the magistrate shall proceed to inquire into the truth of the information upon which the action has been taken, and to take such further evidence as may appear necessary.

Inquiry as to truth of information
14 of 2010

(2) The inquiry under subsection (1) shall be made, as nearly as may be practicable, in the manner hereinafter prescribed for conducting trials and recording evidence in trials before sub-ordinate courts.

(3) For the purpose of this section the fact that the person is a habitual offender may be proved by evidence of general repute or otherwise.

(4) Where two or more persons have been associated together in the matter under inquiry, they may be dealt with in the same or separate inquiries as the magistrate thinks just.

Order to give security
14 of 2010

52.—(1) If upon an inquiry held under section 51 it is proved that it is necessary for keeping the peace or maintaining good behaviour, as the case may be, that the person in respect of whom the inquiry is made should execute a bond, with or without sureties, the magistrate shall make an order accordingly:

Provided that—

(*a*) no person shall be ordered to give security of a nature different from, or of an amount larger than, or for a period longer than, that specified in the order made under section 46;

(*b*) the amount of every bond shall be fixed with due regard to the circumstances of the case and shall not be excessive; and

(*c*) if the person in respect of whom the inquiry is made is under the age of eighteen years, the bond shall be executed only by his sureties.

(2) Any person ordered to give security under this section may appeal to the High court, and the provisions of Part XIII relating to appeals shall apply to every such appeal.

Conditions of bonds

53. Where any person is required by any court to execute a bond, with or without sureties, and in such bond the person executing it binds himself to keep the peace or binds himself to be of good behaviour, the court may require that there shall be included in such bond one or more of the following conditions—

(*a*) a condition that such person shall remain under the supervision of some other person named in the bond during such period as may be specified therein;

(*b*) such conditions for securing such supervision as the court may think it desirable to impose; and

(*c*) such conditions with respect to residence, employment, associations, abstention from intoxicating liquor or with respect to any other matter whatsoever as the court may think desirable to impose.

Discharge of person informed against

54. If on an inquiry under section 51 it is not proved that it is necessary for keeping the peace or maintaining good behaviour, as the case may be, that the person in respect of whom the inquiry is made should execute a bond, the magistrate shall make an entry on the record to that effect, and, if such person is in custody only for the purposes of the inquiry, shall release him, or, if such person is not in custody, shall discharge him.

Commencement of period for which security is required

55.—(1) If any person in respect of whom an order requiring security is made under section 46 or section 52, is, at the time such order is made, sentenced to or undergoing a sentence of

imprisonment, the period for which such security is required shall commence on the expiration of such sentence.

(2) In other cases such period shall commence on the date of such order unless the magistrate, for sufficient reason, fixes a later date.

Contents of bond

56. The bond to be executed by any such person shall bind him to keep the peace or to be of good behaviour, as the case may be, and in the latter case the commission or attempt to commit or aiding, abetting, counselling, or procuring the commission of any offence punishable with imprisonment, wherever it may be committed, shall be a breach of the bond.

Power to reject sureties

57. A magistrate may refuse to accept any surety offered under any of the provisions of this Part on the ground that, for reasons to be recorded by the magistrate, such surety is an unfit person.

Procedure on failure of person to give security
14 of 2010

58.—(1) If any person ordered to give surety under section 52 does not give such surety on or before the date on which the period for which such security is to be given commences, the magistrate who made the order shall, except in the case mentioned in subsection (2), issue a warrant directing him to be detained in prison until such period expires or until within such period he gives the required security.

(2) When such person has been ordered to give security for a period exceeding one year, the magistrate who made the order shall, if such person does not give such security, issue a warrant directing him to be detained in prison pending the orders of the High Court, and the proceedings shall forthwith be forwarded to such Court.

(3) The High Court, after examining such proceedings and requiring from the magistrate any further information or evidence which it thinks necessary, may make such order in the case as it thinks fit.

(4) The period, if any, for which any person is imprisoned for failure to give security shall not exceed one year.

(5) If the security is rendered to the officer in charge of the prison, he shall forthwith refer the matter to the magistrate who made the order and shall await the orders of such magistrate.

(6) Imprisonment for failure to give security for keeping the peace shall be without hard labour.

(7) Imprisonment for failure to give security for good behaviour may be with or without hard labour as the magistrate or the High Court in each case directs.

Power to release persons imprisoned for failure to give security
14 of 2010

59. Where a Resident Magistrate or a magistrate of the first or second grade is of the opinion that any person imprisoned for failing to give security may be released without hazard to the community, such magistrate shall make an immediate report of the case for the orders of the High Court, and such Court may, if it thinks fit, order such person to be discharged.

Power of High Court to cancel bond
14 of 2010

60. The High Court may at any time, for sufficient reason to be recorded in writing, cancel any bond for keeping the peace or for good behaviour executed under any of the preceding sections of this Part by order of any court.

Discharge of sureties
14 of 2010

61.—(1) Any surety for the peaceable conduct or good behaviour of another person may at any time apply to a Resident Magistrate or a magistrate of the first or second grade to cancel any bond executed under any of the provisions of this Part.

(2) On such application being made, the magistrate shall issue his summons or warrant, as he thinks fit, requiring the person for whom such surety is bound to appear or to be brought before him.

(3) Where such person appears or is brought before the magistrate, such magistrate shall cancel the bond and shall order such person to give, for the unexpired portion of the term of such bond, fresh security of the same description as the original security; and every such order shall for the purposes of sections 56, 57, 58 and 59 be deemed to be an order made under section 52.

Police to prevent arrestable offences
14 of 2010

62. Every police officer may interpose for the purpose of preventing, and shall, to the best of his ability prevent, the commission of any arrestable offence.

Information of design to commit such offences
14 of 2010

63. Every police officer receiving information of a design to commit any arrestable offence shall communicate any such information to the police officer to whom he is subordinate, and to any other officer whose duty it is to prevent or take cognizance of the commission of any such offence.

Arrest to prevent such offences
14 of 2010

64. A police officer knowing of a design to commit any arrestable offence may arrest, without orders from a magistrate and without a warrant, the person so designing if it appears to such officer that the commission of the offence cannot otherwise be prevented.

Prevention of injury to public property, etc.
14 of 2010

65. A police officer may of his own authority interpose to prevent any injury attempted to be committed in his view to any things mentioned in section 41 (*b*).

Part IV

Provisions Relating to All Criminal Proceedings

General authority of courts of Malaŵi

66. Every court has authority to cause to be brought before it any person who is in Malaŵi and is charged with an offence committed within Malaŵi or partly within and partly beyond Malaŵi or which according to law may be dealt with by it and to deal with the accused person according to its jurisdiction.

Powers of High Court 14 of 2010

67. The High Court may inquire into and try any offence subject to its jurisdiction at any place within Malaŵi:

Provided that—

(*a*) except where the High Court, for any special reason (to be recorded on the minutes of the proceedings), shall otherwise direct, no criminal case shall be brought under the cognizance of the High Court, unless the case shall have been previously investigated by a subordinate court, and the accused person shall have been committed for trial before the High Court, or unless the accused person has been committed for trial by summary committal procedure;

(*b*) a charge may be signed and filed in respect of any offence founded on the facts disclosed in the despositions or in respect of any offence whatsoever where the accused person has been committed for trial by summary committal procedure.

Place and date of sessions of the High Court

68.—(1) For the exercise of its original criminal jurisdiction the High Court shall hold sittings at such places and on such days as the Chief Justice may direct.

(2) The Registrar of the High Court shall ordinarily give notice beforehand of all such sittings.

Ordinary place of inquiry and trial 14 of 2010

69. Subject to section 67 and to the powers of transfer conferred by sections 74 and 75 every offence shall ordinarily—

(*a*) be tried by the traditional or local court, if any, having jurisdiction in the case in question within the local limits of whose jurisdiction the offence was committed or the accused was apprehended or is in custody on a charge for the offence; or

(*b*) be inquired into or tried by the subordinate court nearest to the place at which the offence took place, or where the accused was apprehended or is in custody or has appeared in answer to a summons lawfully issued charging the offence.

High Court to decide in cases of doubt 14 of 2010

70.—(1) Where any doubt arises as to the subordinate court by which any offence should be inquired into or tried, any subordinate court entertaining such doubt may, in its discretion, report the circumstances to the High Court.

(2) Upon receiving a report under subsection (1), the High Court shall decide by which court the offence shall be inquired into or tried, and any such decision of the High Court shall be final and conclusive, except that it shall be open to an accused to show that no court in Malaŵi has jurisdiction in his case.

Court to be open and may be held on a Sunday
14 of 2010

71.—(1) All proceedings under this Code shall, except as otherwise expressly provided by any law for the time being in force, be carried on in an open court to which the public generally may have access:

Provided that—

(*a*) any court shall have power to hear any inquiry or trial or any part thereof, in closed court and to exclude any particular person from the court, if, in the opinion of the presiding judge or magistrate, it is expedient in the interests of justice or propriety or for other sufficient reason so to do;

(*b*) nothing in this section shall apply to—

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(i) the proceedings of a juvenile court in accordance with the Children and Young Persons Act;

(ii) any proceedings in the High Court relating solely to a person under the apparent age of eighteen years;

(iii) any proceedings in the High Court, other than the trial of a person of the apparent age of eighteen years or upwards, which the High Court, in its discretion, may think fit to conduct in closed court;

(iv) proceedings before a magistrate under section 83 (2), (3) and (4) or under section 84;

(v) the deliberation of a jury in the course of any proceedings;

(vi) any proceedings, other than an inquiry or trial, which the Chief Justice may, by writing, direct shall not be subject to this section.

(2) Where the presiding judge or magistrate is of the opinion that, for purpose of avoiding delay, expense or inconvenience which in the circumstances of the case would be unreasonable, a court should be held on a Sunday, such court may be so held and no finding, sentence or order made or passed by a court of competent jurisdiction shall be reversed or altered only by reason of the fact that the same was made or passed on a Sunday.

Evidence of victims of sexual offences
14 of 2010

71A.—(1) Where a victim of a sexual offence is to give evidence in any proceedings under this Code, the court may, of its own motion, upon application made by a party to the proceedings, or a victim of a sexual offence, make one or more of the following orders—

(*a*) that the court close while evidence is being given by the witness in the proceedings, including evidence given under cross-examination, and that no person remain in or enter a room or place in which the court is being held, or remain within the hearing of the court, without its permission;

(*b*) that a screen, partition or one-way glass be placed to obscure the witness's view of a party to whom the evidence relates, but not so as to obstruct the view of the witness by the magistrate or the judge and jury;

(*c*) that the witness be accompanied by a relative or friend for the purpose of providing emotional support;

(*d*) that the evidence of the witness be given at a place outside the courtroom and transmitted to the courtroom by means of closed circuit television.

(2) Where the order is made under subsection (1) (*b*) or (*d*), the judge, in a trial by jury, shall cause a direction to be issued to the jury to the effect that—

(*a*) the procedure is a routine practice of the court;

(*b*) no adverse inference is to be drawn against the accused person as a result of the issue of these orders; and

(*c*) the evidence of the witness is not to be given any greater or lesser weight because of the use of such orders.

(3) Where an order is made under subsection (1) (*c*), the relative or friend accompanying the witness shall be visible to the parties and the court and, in a trial by jury, to the jury, while the witness is giving evidence.

(4) An order under this section may be made, varied or revoked on the court's own initiative or on the application of a party or witness.

Removal of person to another prison by warrant
14 of 2010

72. A magistrate may on the application of the Director of Public Prosecutions grant a warrant for the removal of any person detained by virtue of a warrant in a prison on any criminal charge to any prison specified in such application therein to be detained for further examination or for trial, or until released or removed therefrom in due course of law.

Transfer of case to another subordinate court before inquiry or trial and transfer of trial to another subordinate court
14 of 2010

73.—(1) Where an accused person appears before another subordinate court, the court—

(*a*) shall, if satisfied that it has no jurisdiction of transfer to try or inquire into the case; or

(*b*) may, if it is of the opinion that the case should be tried by or be inquired into by another subordinate court,

direct that the case be adjourned and transfered to any subordinate court which is competent to try or inquire into the case.

(2) The court directing an adjournment in accordance with subsection (1) shall order the accused person to appear before the court to which the case has been transfered at such time and place as may be appointed and state in the presence and hearing of the party or parties or in the case of an accused who is represented, in the presence of his legal practitioner then present, and the court may further order that, in the meantime, the accused person be—

(*a*) released unconditionally;

(*b*) committed to prison; or

(*c*) released upon his entering into a bond, with or without sureties, at the discretion of the court, for the purpose of ensuring his appearance at the time and place appointed before the court to which the case has been transfered:

Provided that no such adjournment shall be for a longer period than is reasonably necessary in the circumstances of the case, and shall not in any event exceed thirty days or, if the accused person is committed to prison, fifteen days; and the day following that on which the order is made shall be counted as the first day.

(3) A subordinate court may, on application or of its own motion, at any stage in an inquiry or trial, transfer such inquiry or trial, for hearing before itself at some other place.

Transfer to another magistrate after commence-ment of inquiry or trial 14 of 2010

74.—(1) Where, in the course of any inquiry or trial before a magistrate, the evidence appears to warrant a presumption that the case is one which should be tried or committed for trial or inquiry by some other magistrate, he shall stay proceedings and submit the case with a brief report thereon to the Resident Magistrate in charge of the region who shall, in accordance with section 73 (2), make such order for the transfer of the case as he deems to be necessary or expedient.

(2) Where, in the course of any inquiry or trial before a Resident Magistrate in charge of a region, the evidence appears to warrant a presumption that the case is one which should be tried or committed for trial by some other magistrate, he shall stay and submit the case with a brief report thereon to the High Court which shall, in accordance with section 73 (2), make such order for the transfer of the case as it may deem to be necessary or expedient.

Power of High Court to change venue 14 of 2010

75.—(1) Where it is made to appear to the High Court that—

(*a*) a fair and impartial enquiry or trial cannot be had in any criminal court subordinate thereto;

(*b*) some question of law of unusual difficulty is likely to arise;

(*c*) viewing of the place or near which any offence has been committed may be required for the satisfactory inquiry into or trial of the same;

(*d*) an order under this section will be for the general convenience of the parties or witnesses; or

(*e*) an order under this section is expedient in the interest of justice or required by any provision of this Code,

it may make an order in accordance with subsection (2).

(2) For the purposes of subsection (1), the High Court may order—

(*a*) that any offence be inquired into or tried by any court not empowered under the preceding provisions of this Part but in other respects competent to inquire into or try such offence; and

(*b*) that any particular criminal case or class of cases be transferred from a criminal court to any other such criminal court of equal or superior jurisdiction.

(3) In making an order under this section, the High Court may act either on the report of the subordinate court or on the application of a party interested or on its own motion.

(4) Every application for the exercise of the power conferred by this section shall be made by motion, which shall be supported by affidavit.

(5) Any accused making an application under this section shall give to the Director of Public Prosecutions notice in writing of the application, together with a copy of the grounds on which it is made; and no order shall be made on the merits of the application unless at least twenty-four hours have elapsed between the giving of such notice and the hearing of the application.

(6) Where an accused makes an application under this section, the High Court may direct him to execute a bond, with or without sureties, on condition that he will, if convicted, pay the costs of the prosecution.

Director of Public Prosecutions 14 of 2010

76.—(1) The Director of Public Prosecutions shall in accordance with, and subject to, section 99 of the Constitution, have vested in him the right and be entrusted with the duty of prosecuting all crimes and offences against the laws of Malaŵi.

(2) Any officer, legal practitioner or other person appointed to be a public prosecutor under section 79 shall, in carrying out his duties as such, be under the direction and control of the Director of Public Prosecutions and be bound to conform to any direction which may be given to him by the Director of Public Prosecutions.

Power to enter discontinuance 14 of 2010

77.—(1) In any criminal proceedings, and at any stage thereof before judgment is pronounced, the Director of Public Prosecutions may enter a discontinuance, either by stating in court or informing the court in writing, that the State intends that the proceedings shall not continue, and thereupon—

(*a*) if the discontinuance is entered before the accused person is called upon to make his defence, he shall be discharged immediately in respect of the charge for which the discontinuance is entered, and if the accused person—

(i) has been committed to prison, he shall be released; or

(ii) is on bail, his recognizances shall be discharged,

but such discharge of an accused person shall not operate as a bar to any subsequent proceedings commenced once against him within six months of the discharge, on account of the same facts;

(*b*) if the discontinuance is entered after the accused person is called upon to make his defence, he shall be acquitted.

(2) If the accused person is not before the court when a discontinuance in respect of a charge against him is entered in accordance with subsection (1) the Registrar or clerk of such court shall forthwith cause a notice in writing of the entry of the discontinuance to be given to—

(*a*) the keeper of the prison in which the accused person may be detained; or

(*b*) if the accused person has been committed for trial, the subordinate court by which he was so committed; and such subordinate court shall forthwith cause a similar notice in writing to be given to—

(i) any witnesses bound over to prosecute and give evidence, and their sureties, if any; and

(ii) the accused person and his sureties, in case he shall have been granted bail.

78. [*Repealed by* 14 *of* 2010].

Power to appoint public prosecutors 14 of 2010

79.—(1) The Director of Public Prosecutions may, by writing under his hand, appoint generally, or in any case or any class of cases, any person employed in the Public Service or such other legally qualified person to be a public prosecutor.

(2) Every public prosecutor shall be subject to the express directions of the Director of Public Prosecutions.

Powers of public prosecutors 14 of 2010

80. A public prosecutor may appear and plead without any written authority before any court in which any case of which he has charge is under inquiry, trial or appeal; and if any private

person instructs legal practitioner to prosecute in any such case a public prosecutor may conduct the prosecution, and the legal practitioner so instructed shall act therein under the directions of the public prosecutor.

Withdrawal from prosecution in trials before subordinate courts 14 of 2010

81. In any trial before a subordinate court any public prosecutor may, with the consent of the court or on the instruction of the Director of Public Prosecutions, at any time before judgment is pronounced, withdraw from the prosecution of any person; and upon such withdrawal—

(*a*) if it is made before the accused is called upon to make his defence, he shall be discharged, but such discharge of an accused shall not operate as a bar to subsequent proceedings against him on account of the same facts;

(*b*) if it is made after the accused is called upon to make his defence, he shall be acquitted.

Permission to conduct prosecution 14 of 2010

82.—(1) Any magistrate inquiring into or trying any case may permit the prosecution to be conducted by any person, but no person other than a public prosecutor or other officer generally or specially authorized by the Director of Public Prosecutions in his behalf shall be entitled to do so without permission.

(2) Any such person or officer shall have the like power of withdrawing from the prosecution as is provided by section 81, and that section shall apply to any withdrawal by any such person or officer.

(3) Subject to any law for the time being in force, any person conducting the prosecution may do so personally or by legal practitioner.

Mode of instituting proceedings 14 of 2010

83.—(1) Proceedings may be instituted—

(*a*) by the making of a complaint before a magistrate;

(*b*) by bringing before a magistrate a person who has been arrested without warrant;

(*c*) by a public prosecutor or a police officer signing and presenting a formal charge to a magistrate.

(2) A complaint under subsection (1) (*a*) may be made by any person who believes from reasonable cause that an offence has been committed.

(3) When a magistrate has received a complaint under subsection (1) (*a*), he shall at once examine the complaint upon oath, and the substance of the examination shall be reduced to writing and signed by both the complainant and the magistrate.

(4) If the magistrate sees reason to doubt the truth of a complaint made under subsection (1) (*a*), he may record his reason

for doubting the truth of the complaint and may then postpone the issue of process for compelling the attendance of the person complained against and either inquire into the case himself or direct some police officer to make inquiries for the purpose of ascertaining the truth or falsehood of the complaint and report to him the result of such inquiries.

(5) The magistrate may dismiss a complaint made under subsection (1) (*a*) if, after examining the complaint and recording his examination and considering the result of the inquiry under subsection (4), there is in his judgment no sufficient ground for proceeding, and he shall record his reasons for dismissal.

(6) If the magistrate considers that there are sufficient grounds for proceeding with a complaint made under subsection (1) (*a*), or upon the bringing before him of an accused arrested without warrant under subsection (1) (*b*), the magistrate shall forthwith draw up and charge containing a statement of the offence with which the accused is charged.

Issue of summons or warrant

84.—(1) Upon a formal charge having been completed in accordance with section 83, the magistrate may, in his discretion, issue either a summons or a warrant to compel the attendance of the accused before a subordinate court having jurisdiction to inquire into or try the offence alleged to have been committed.

(2) The validity of any proceedings taken in pursuance of a complaint or charge shall not be affected either by any defect in the complaint or charge or by the fact that a summons or warrant was issued without complaint or charge.

(3) Any summons or warrant may be issued on Sunday.

Form and contents of summons
14 of 2010

85.—(1) Every summons issued by a court under this Code shall be in writing, in duplicate, signed and sealed by the presiding officer of such court or by such other officer as the Chief Justice may from time to time, by rule, direct.

(2) Every summons shall—

(*a*) be directed to the person summoned, and shall require him to appear at a time and place to be mentioned in the summons before a court having jurisdiction to inquire into and deal with the complaint or charge;

(*b*) contain a statement of the offence with which the person summoned is charged, and shall also contain the particulars of such offence.

Penalty for non-attendance of accused
14 of 2010

86. Any accused summoned to attend before a court who, without lawful excuse, fails to attend as required by the summons, or who, having attended, departs without having obtained the permission of the court, or fails to attend after adjournment of the

court after being ordered to attend, shall be liable by order of the court to a fine of K50,000.

Service of summons

87.—(1) Every summons shall be served by a police officer or by an officer of the court issuing it or other public servant and shall, if practicable, be served personally on the person summoned by delivering or tendering to him one of the duplicates of the summons.

(2) Every person on whom a summons is so served shall, if so required by the serving officer, sign a receipt therefore on the back of the other duplicate.

Service when person summoned cannot be found
14 of 2010

88. Where the person summoned cannot by the exercise of due diligence be found, the summons may be served by leaving one of the duplicates for him with some adult member of his family or with his adult servant residing with him or with his employer; and the person with whom the summons is so left shall, if so required by the serving officer, sign a receipt therefore on the back of the other duplicate.

Procedure when service cannot be effected as before provided

89. If service in the manner provided by section 87 or section 88 cannot by the exercise of due diligence be affected, the serving officers shall affix one of the duplicates of the summons to some conspicuous part of the house in which the person summoned ordinarily resides, and thereupon the summons shall be deemed to have been duly served.

Service on servant of Government

90. Where the person summoned is in the service of the Government, the court issuing the summons shall ordinarily send it in duplicate to the head of the office in which such person is employed, and such head shall thereupon cause the summons to be served in the manner provided by section 87 and shall return it to the court under his signature with the endorsement required by that section. Such signature shall be evidence of the service.

Service of summons on company, etc.
14 of 2010

91.—(1) Service of a summons on a company incorporated in Malaŵi or on any other body corporate not being a company referred to in subsection (2) shall be effected in one of the following manners that is to say—

(*a*) by serving it on the company secretary, local manager or other principal officer of the company or body;

(*b*) by delivering it to an adult person employed by such company or body at its registered office in Malaŵi; and

(*c*) by sending it in a registered letter addressed to the chief officer of the company or body in Malaŵi.

(2) Service of a summons on a company incorporated outside Malaŵi which has established a place of business within Malaŵi shall be effected by serving it on one of the person whose names and addresses have been filed with the registrar of companies as being authorized to accept service of process on behalf of the company under section 311 of the Companies Act.

Cap. 46:03

Proof of service

92.—(1) Where the officer who has served a summons is present at the hearing of the case, in the absence of other proof of service, he may give evidence on oath of that fact and the manner in which he effected such service.

(2) Where the officer who has served a summons is not present at the hearing of the case, an affidavit that such summons has been served, and a duplicate of the summons purporting to be endorsed in the manner hereinbefore provided by the persons to whom it was delivered or tendered or with whom it was left, shall be admissible statements made therein shall be deemed to be correct unless and until the contrary is proved.

(3) The affidavit mentioned in this section may be attached to the duplicate of the summons and returned to the court.

Power to dispense with personal attendance of accused
14 of 2010

93.—(1) Whenever a magistrate issues a summons in respect of any offence other than a felony, he may, if he sees reason so to do, and shall when the offence with which the accused is charged is punishable—

(*a*) with a fine only; or

(*b*) with both a fine and imprisonment for a term not exceeding three months; or

(*c*) with a fine or imprisonment for a term not exceeding three months,

dispense with the personal attendance of the accused, provided that the accused pleads guilty in writing or appears by legal practitioner.

(2) The magistrate inquiring into or trying any case may in his discretion, at any subsequent stage of the proceedings, direct the personal attendance of the accused, and, if necessary, enforce such attendance in a manner hereinafter provided.

(3) A magistrate shall not impose a sentence of imprisonment without the option of a fine, except in the presence of the accused.

(4) If a magistrate imposes a fine on an accused whose personal attendance has been dispensed with under this section, the magistrate shall specify the time within which such fine must be paid, and if such fine is not paid within the time prescribed for such payment the magistrate may forthwith issue a summons calling upon such accused to show cause why he should not be committed

to prison for such term as the magistrate may then prescribe; and if such accused does not attend upon the return of such summons the magistrate may forthwith issue a warrant and commit such accused to prison for such term as the magistrate may then fix.

(5) If a previous conviction, not admitted in writing or through his legal practitioner is alleged against an accused whose attendance has been dispensed with under this section, the magistrate may adjourn the proceedings and direct the personal attendance of the accused, and if necessary, enforce such attendance in accordance with section 95.

(6) The Chief Justice may, make rules for the better carrying out of this section.

Warrant after issue of summons

94. Notwithstanding the issue of a summons, a court may issue a warrant at any time before or after the time appointed in the summons for the appearance of the accused.

Summons disobeyed
14 of 2010

95.—(1) If an accused person does not appear at the time and place mentioned in a summons and his personal attendance has not been dispensed with under section 93, the court may issue a warrant to arrest him and cause him to be brought before the court.

(2) A warrant under subsection (1) shall not be issued unless the court is satisfied that the accused has been served with the summons.

Form, contents and duration of warrant of arrest
14 of 2010

96.—(1) Every warrant of arrest shall be issued in the prescribed form, and shall be signed by the judge or magistrate issuing the warrant and shall bear the seal of the court.

(2) Every warrant shall contain a statement of the offence with which the person against whom it is issued is charged and shall also contain the particulars of such offence and every warrant shall name or otherwise described such person, and it shall order the person or persons to whom it is directed to arrest the person against whom it is issued and bring him before the court issuing the warrant or before some other court having jurisdiction in the case to answer the charge therein mentioned and to be further dealt with according to law.

(3) Every such warrant shall remain in force until it is executed or until it is cancelled by the court which issued it.

Court may direct security to be taken
14 of 2010

97.—(1) Any court issuing a warrant for the arrest of any person in respect of any offence other than genocide, murder, treason or rape may in its discretion direct by endorsement on the warrant that, if such person executes a bond with sufficient sureties for his attendance before the court at a specified time and thereafter until

otherwise directed by the court, the officer to whom the warrant is directed shall take such security and shall release such person from custody.

(2) The endorsement shall state—

(*a*) the number of sureties;

(*b*) the amount in which they and the person for whose arrest the warrant is issued are to be respectively bound; and

(*c*) the time at which he is to attend before the court.

(3) Whenever security is taken under this section the officer to whom the warrant is directed shall forward the bond to the court.

Warrants, to whom directed
14 of 2010

98. A warrant of arrest may be directed to one more police officer, or to one police officer and to all other police officers of the District, or generally to all police officer; but any court issuing such a warrant may, if its immediate execution is necessary, and no police office is immediately available, direct it to any other person or persons, and such person or persons shall execute the same.

Effect of addressing warrant to more than one officer or person

99. When a warrant is directed to more officers or persons than one, it may be executed by all or by any one or more of them.

Execution of warrant directed to police officer

100. A warrant directed to any police officer may also be executed by any officer whose name is endorsed upon the warrant by the officer to whom it is directed or endorsed.

Notification of substance of warrant

101. The police officer or other person executing a warrant of arrest shall notify the substance thereof to the person to be arrested and, if so required, shall show him the warrant.

Person arrested to be brought before the court without delay
14 of 2010

102. The police officer or other person executing a warrant of arrest shall, subject to the provisions of section 97 as to security, without unnecessary delay bring the person arrested before the court before which he is required by law to produce such person.

Where warrant of arrest may be executed
14 of 2010

103. A warrant of arrest may be executed at any place in Malaŵi and on any day including Sunday.

Procedure on arrest of person
14 of 2010

104.—(1) When a warrant of arrest is executed, the person arrested shall unless the court which issued the warrant is within thirty kilometres of the place of arrest, or is nearer than any other subordinate court, or unless security is taken under section 97, be taken before the subordinate court nearest to the place of arrest.

(2) The magistrate presiding over such subordinate court shall, if the person arrested appears to be the person intended by the court which issued the warrant, direct his removal in custody to such court.

(3) If the person has been arrested for an offence, other than genocide, murder, treason or rape, and he is ready and willing to give bail to the satisfaction of such magistrate, or if a direction has been endorsed under section 97 on the warrant and such person is ready and willing to give the security required by such direction, the magistrate shall take such bail or security, as the case may be, and shall forward the bond to the court which issued the warrant.

(4) Nothing in this section shall be deemed to prevent a police officer from taking security under section 97.

Irregularities in warrant
23 of 1968
14 of 2010

105.—(1) Any irregularity or defect in the substance or form of a variance between it and the written complaint or charge, or between either and the evidence produced on the part of the prosecution at any enquiry or trial, shall not affect the validity of any proceedings at or subsequent to the hearing of the case.

(2) Where the irregularity or defect and any such variance appears to the court to be such that the accused has been thereby deceived or misled, the court may, at the request of the accused, adjourn the hearing of the case to some future date, and in the meantime remand the accused or grant him bail.

Proclamation for person absconding
14 of 2010

106. (1) If any court has reason to believe, whether after taking evidence or not, that any person against whom a warrant of arrest has been issued by it—

(*a*) has absconded; or

(*b*) is concealing himself so that such warrant cannot be executed,

such court may publish a written proclamation requiring him to appear at a specified time not less than thirty days from the date of publishing such proclamation.

(2) The court shall publish the proclamation as follows—

(*a*) it shall be publicly read in some conspicuous place of the town, village or area in which such person ordinarily resides, or if such person has no ordinary place of residence in Malaŵi, in which he was last known to be residing;

(*b*) it shall be affixed to some conspicuous part of the house in which such person ordinarily resides or to some conspicuous place of the area, town or village in which he was last known to be residing;

(*c*) a copy thereof shall be affixed to some conspicuous part of the court house.

(3) A statement in writing by the court issuing the proclamation to the effect that the proclamation was duly published on a specified day shall be conclusive evidence that the requirements of this section have been complied with and that the proclamation was published on such day.

Attachment of property of proclaimed person
14 of 2010

107.—(1) The court issuing the proclamation under section 106 may at any time order the attachment of any property, movable or immovable, or both, belonging to the proclaimed person as is appearance at the place and time specified in the proclamation.

(2) Such order shall be in writing and shall authorize the attachment of any property belonging to the proclaimed person.

(3) If the property ordered to be attached is a debt or movable property, the attachment under this section shall be made—

(*a*) by seizure; or

(*b*) by the appointment of a receiver; or

(*c*) by an order in writing prohibiting the delivery of such property to the proclaimed person or to anyone on his behalf; or

(*d*) by all or any two of such methods as the court thinks fit.

(4) If the property ordered to be attached is immovable, attachment under this section shall be made—

(*a*) by taking possession; or

(*b*) by the appointment of a receiver; or

(*c*) by an order in writing prohibiting the payment of rent or delivery of property to the proclaimed person, or to anyone on his behalf; or

(*d*) by all or any two of such methods as the court thinks fit.

(5) If the property ordered to be attached consists of livestock, or is of a perishable nature, the court may, if it thinks it expedient, order immediate sale thereof, and in such case the proceeds of the sale shall abide the order of the court.

(6) The Chief Justice may make rules—

(*a*) prescribing the powers, duties and liabilities of a receiver appointed under this section; and

(*b*) for the better regulation of the attachment process.

(7) If the proclaimed person does not appear within the time specified in the proclamation, the property under attachment shall be at the disposal of the Government; but it shall not be sold until the expiration of six months from the date of attachment unless it is subject to speedy and natural decay, or the court considers that the sale would be for the benefit of the owner, in either of which cases the court may cause it to be sold when it shall think fit. The purchaser of any property so sold shall acquire a good title to it.

Restoration of attached property 14 of 2010

108.—(1) Any proclaimed person may apply for the delivery of property which is or has been at the disposal of Government under within two years of the date of the attachment, he appears voluntarily or is arrested and brought before the court by whose order the property was attached or the High Court.

(2) If the proclaimed person proves to the satisfaction of the court that—

(*a*) he did not abscond or conceal himself for the purpose of avoiding execution of the warrant; and

(*b*) he had not such notice of the proclamation as to enable him to attend within the time specified in the warrant,

such property, or, if the same has been sold, the net proceeds of the sale, or, if part of the property has been sold, the net proceeds of the sale and the residue of the property, shall, after satisfying all costs incurred in consequence of the attachment, be delivered to him.

(3) Any person whose application under this section for the delivery of property or the proceeds of the sale of the property, as the case may be has been rejected by any court may appeal to the High Court, and the provisions of Part XIII relating to appeals shall apply to any such appeal.

Power to take bond for appearance 14 of 2010

109. Where any person for whose appearance or arrest any court is empowered to issue a summons or warrant is present in such court, the court may require such person to execute a bond, with or without sureties, for his appearance in such court.

Arrest for breach of bond for appearance

110. When any person who is bound by any bond taken under this Code to appear before a court does not so appear, such court may issue a warrant directing that such person be arrested and produced before it.

Power of court to order prisoner to be brought before it 14 of 2010

111.—(1) Where any person for whose appearance or arrest a court is empowered to issue a summons or warrant is confined in any prison, the court may issue an order to the officer in charge of such prison requiring him to bring such prisoner in proper custody, at a time to be named in the order, before such court.

(2) The officer in charge of prison, on receipt of the order under subsection (1), shall comply with it in accordance therewith, and shall provide for the safe custody of the prisoner during his absence from the prison for the purpose of court attendance.

Provisions of this Part generally applicable to summonses and warrants 14 of 2010

112. The provisions contained in this Part relating to a summons and warrant, and their issue, service and execution, shall, so far as may be, apply to every summons and every warrant of arrest issued under this Code.

Power to issue search warrant 14 of 2010

113.—(1) Where a police officer applies for a search warrant, he shall—

(*a*) state the ground on which he makes the application and the law under which the warrant will be issued;

(*b*) specify the premises, ship, aircraft, carriage, box or receptacle which it is desired to enter and search; and

(*c*) identify, so far as is practicable, the articles or persons to be sought.

(2) An application for a search warrant shall be made *ex-parte*, and shall be supported by information in writing.

(3) The police officer making the application shall answer on oath any question that the court hearing the application may put to him.

(4) A search warrant shall authorize an entry on one occasion only.

Search warrant 14 of 2010

113A.—(1) A court may issue a warrant authorizing a police officer to enter and search any premises, ship, aircraft, carriage, box or receptacle if, on application made by a police officer, the court is satisfied that there are reasonable grounds for believing that—

(*a*) an offence has been committed;

(*b*) there is material on any premises, ship, aircraft, carriage, box or receptacle specified in the application which is likely to be of substantial value, whether by itself or together with other material, to the investigation of the offence; and

(*c*) the material does not consist of or include items subject to legal privileges.

(2) If the police officer finds the material in respect of which a search warrant is issued under subsection (1), he shall seize it and carry it before the court issuing the warrant or some other court to be dealt with according to law.

Execution of search warrant

114. Every search warrant may be issued on any day including Sunday between the hours of sunrise and sunset, but the court may, by the warrant, in its discretion, authorize the police officer or other person to whom it is addressed to execute it at any hour.

Persons in charge of closed place to allow entry

115.—(1) Whenever any building or other place liable to search is closed, any person residing in or being in charge of such building or place shall, on demand of the police officer or other person executing the search warrant, and on production of the warrant, allow him free entry thereto and departure therefrom and afford all reasonable facilities for a search therein.

(2) If entry into, or departure from, such building or other place cannot be so obtained, the police officer or other person executing the search warrant may proceed in the manner prescribed by section 21 or 22.

(3) Where any person in or about such building or place is reasonably suspected of concealing about his person any article for which search should be made, such person may be searched. If such person is a woman, section 26 (1) shall be observed.

Detention of property seized

116.—(1) When any such thing is seized and brought before a court, it may be detained until the conclusion of the case or the investigation, reasonable care being taken for its preservation.

(2) If any appeal is made, or if any person is committed for trial, the court may order it to be further detained for the purpose of the appeal or trial.

(3) If no appeal is made, or if no person is committed for trial, the court shall direct such thing to be restored to the person from whom it was taken, unless the court sees fit and is authorized or required by law to dispose of it otherwise.

Provisions applicable to search warrants

117. Section 96 (1) and (3) and sections 98, 99, 100, 103, 104 and 105 shall, so far as may be, apply to all search warrants issued under section 113.

Bail in certain cases
14 of 2010

118.—(1) When any person, other than a person accused of an offence punishable with death, is arrested or detained without warrant by a police officer, or appears or is brought before a subordinate court, and is prepared at any time while in the custody of such police officer or at any stage of the proceedings before such subordinate court to give bail, such person may be released on bail by such police officer or such subordinate court, as the case may be, on a bond, with or without sureties.

(2) The amount of bail shall be fixed with due regard to the circumstances of the case and shall not be excessive.

(3) The High Court may, either of its own motion or upon application, direct that any person be released on bail or that the amount of, or any condition attached to, any bail required by a subordinate court or police officer be reduced or varied.

(4) A magistrate may direct that the amount of, or any condition attached to, any bail by a police officer be reduced or varied.

(5) No application for a direction that any person in custody pending proceedings in a subordinate court be released on bail shall be entertained by the High Court unless such subordinate court has first refused to direct such release.

Bail bond
14 of 2010

119.—(1) Before any person is released on bail, a bond for such sum as the police officer or court, as the case may be, thinks sufficient, shall be executed by such person and, where sureties are ordered, by one or more sufficient sureties.

(2) The bond under this section shall be on condition that the person released shall attend at the time and place mentioned in the bond, and that he shall continue so to attend until otherwise directed by the police officer or court.

(3) The bond may, as the police officer or court thinks fit, contain additional conditions relating to, among others—

(*a*) the prohibition of, or control over, the movements of the person released;

(*b*) the prohibition of, or control over, communication by the released person with witnesses for the prosecution;

(*c*) the supervision the released person should undergo while on bail;

(*d*) the prohibition against the commission of offences by the released person while on bail; and

(*e*) the prohibition against obstruction of the course of justice by the released person while on bail.

Discharge from custody

120.—(1) As soon as the bond has been executed the person for whose appearance it has been executed shall be released, and when he is in prison the court shall issue an order of release to the officer in charge of the prison, and such officer on receipt of the order shall release him.

(2) Nothing in this section or in section 118 shall be deemed to require the release of any person liable to be detained for some matter other than in respect of which the bond was executed.

Deposit in place of, or in addition to, bond
14 of 2010

121.—(1) When any person is required by any police officer or court to execute a bond, with or without sureties, such police officer or court may, except in the case of a bond for good behaviour, permit him to deposit a sum of money or property to such amount or value as the police officer or court may require in place of, or in addition to, executing such a bond; and such amount or value shall be fixed with due regard to the circumstances of the case and shall not be excessive.

(2) Where any money or property has been deposited in accordance with subsection (1) and it is proved to the satisfaction of a court that the depositor has not fulfilled the conditions upon which such money or property was deposited, the court shall record the grounds of such proof and may call upon the depositor to show cause why such money or property should not be forfeited, and if sufficient cause is not shown or if the court is satisfied that the depositor has absconded or cannot be traced the court may order such money or property to be forfeited.

Power to order sufficient bail when that first taken is insufficient

122. If, through mistake, fraud or otherwise, insufficient sureties have been accepted, or if they afterwards become insufficient, the court may issue a warrant of arrest directing that the person released on bail be brought before it and may order him to find sufficient sureties, and on his failing so to do may commit him to prison until the trial or until the court shall see fit to admit him to bail upon a fresh bond.

Discharge and death of sureties
14 of 2010

123.—(1) All or any of the sureties for the appearance and attendance of a person released on bail may at any time apply to a magistrate to discharge the bond either wholly or so far as it relates to the applicant or applicants.

(2) On such application being made the magistrate shall issue a warrant of arrest directing that the person so released be brought before him.

(3) On the appearance of such person pursuant to the warrant, or on his voluntary surrender, the magistrate shall direct the bond to be discharged either wholly or so far as it relates to the applicant or applicants, and shall call upon such person to find other sufficient sureties, and if he fails to do so may commit him to prison until the trial or until the court shall see fit to admit him to bail upon a fresh bond.

(4) Where a surety to bond before the bond is forfeited, his estate shall be discharged from all liability in respect of the bond, but the party who gave the bond may be required to admit him to bail upon a fresh bond.

Person bound by bond absconding may be committed

124. If it is made to appear to any court, by information upon oath, that any person bound by bond is about to leave Malaŵi, the court may cause him to be arrested and may commit him to prison until the trial, unless the court shall see fit to admit him to bail upon a fresh bond.

Forfeiture of bond

125.—(1) Whenever it is proved to the satisfaction of the court that any condition of a bond taken under this Part has not been complied with, the court shall record the grounds of such proof

and may call upon any person bound by such bond to pay the penalty thereof or to show cause why it should not be paid.

(2) If sufficient cause is not shown and the penalty is not paid or if the court is satisfied that the person so bound has absconded or cannot be traced, the court may proceed to recover the penalty by issuing a warrant for the attachment and sale of the movable property belong to such person, or his estate if he be dead.

(3) If such penalty is not paid and cannot be recovered by such attachment and sale, the person so bound shall be liable, by order of the court, which issued the warrant, to imprisonment for six months.

(4) The court may, at its discretion, remit any portion of the penalty mentioned and enforce payment in part only.

(5) When any person who has furnished security is convicted of an offence the commission of which constitutes a breach of the conditions of his bond a certified copy of the judgment of the court by which he was convicted of such offence may be used as evidence in proceedings under this section against his surety or sureties, and, if such certified copy is so used the court shall presume that such offence was committed by him unless the contrary is proved.

(6) All orders made under this section by any magistrate shall be appealable to and may be reviewed by the High Court.

Offences to be specified with necessary particulars
14 of 2010

126. Every charge shall contain, and shall be sufficient if it contains—

(*a*) a statement of the specified offence or offences with which the accused is charged; and

(*b*) particulars of such offence or offences.

Joinder of counts in a charge and joinder of two or more accused in one charge
30 of 1969
14 of 2010

127.—(1) Any offences, whether felonies or misdemeanours, may be charged together in the same charge if the offences charged are founded on the same facts or form, or are part of, a series of offences of the same or similar character.

(2) When more than one offence is charged in a charge, a description of each offence so charged shall be set out in a separate paragraph of the charge called a count.

(3) Where, before trial, or at any stage of the trial, the court is of opinion that—

(*a*) an accused may be prejudiced or embarrassed in his defence by reason of being charged with more than one offence in the same charge; or

(*b*) for any other reason it is desirable to direct that the person should be tried separately for any one or more offences charged in a charge,

the court may order a separate trial of any count or counts of such charge.

(4) The following persons may be joined in one charge and may be tried together, namely—

(*a*) persons accused of the same offence committed in the course of the same transaction;

(*b*) persons accused of an offence and persons accused of abetment, or of an attempt to commit such offence;

(*c*) persons accused of more offences than one of the same kind (that is to say, offences punishable with the same amount of punishment under the same section of the Penal Code or of any other written law) committed by them jointly within a period of twelve months; Cap. 7:01

(*d*) persons accused of different offences committed in the course of the same transaction; 30 of 1969

(*e*) persons accused of any offence under Chapters XXVI to XXXI, inclusive, of the Penal Code and persons accused of receiving or retaining property, possession of which is alleged to have been transferred by any such offence committed by the first-named person, or of abetment or of attempting to commit either of such last-named offences; Cap. 7:01

(*f*) persons accused of any offence relating to counterfeit coin under Chapter XXXVII of the Penal Code, and persons accused of any other offence under the said Chapter relating to the same coin, or of abetment or of attempting to commit any such offence. Cap. 7:01

Rules for the framing of charges 14 of 2010

128. The following provisions shall apply to all charges and notwithstanding any rule of law or practice, a charge shall, subject to this Code, not be open to objection in respect of its form or contents if it is framed in accordance with the provisions of this Code—

(*a*)—(i) a count of a charge shall commence with a statement of the offence charged, called the statement of offence;

(ii) the statement of the offence be short and shall describe the offence in ordinary language, avoiding as far as possible the use of technical terms, and without necessarily stating all the essential elements of the offence, and if the offence charged is one created by written law, shall contain a reference to the section, regulation, by-law or rule of the written law creating the offence;

(iii) after the statement of the offence, particulars of such offence shall be set out in ordinary language, giving reasonable information as to the commission of the offence and avoiding as far as possible the use of technical terms;

(iv) where any rule of law or any Act limits the particulars of an offence which are required to be given in a charge, nothing in this paragraph shall require any more particulars to be given than those so required;

(v) such forms as the Chief Justice may by rule prescribe or forms conforming thereto as nearly as may be shall be used in cases to which they are applicable, and in other cases forms to the like effect or conforming thereto as nearly as may be shall be used, the statement of offence and the particulars of offence being varied according to the circumstances of each case;

(vi) where a charge contains more than one count, the counts shall be numbered consecutively;

(*b*)—(i) where a written law constituting an offence states the offence to be an omission to do any one of any different acts in the alternative, or the doing or the omission to do any act in any one of any different capacities, or with any one of different intentions, or states any part of the offence in the alternative, the acts, omissions, capacities or intentions, or other matters stated in the alternative in the law may be stated in the alternative in the count charging the offence;

(ii) it shall not be necessary in any count charging an offence constituted by a written law, to negative any exception or exemption from, or qualifications to, the operation of the law creating the offence;

(*c*)—(i) the description of property in a charge shall be in ordinary language, and such as to indicate with reasonable clearness the property referred to, and, if the property is so described, it shall not be necessary (except when required for the purpose of describing an offence depending on any special ownership of property or special value of property) to name the person to whom the property belongs or the value of the property;

(ii) where the property is vested in more than one person, and the owners of the property are referred to in a charge, it shall be sufficient to describe the property as owned by one of those persons by name with the others, and if the persons owning the property are a body of persons with a collective name, such as a joint stock company or "Inhabitants", "Trustees", "Commissioners", or "Club", or other such name it shall be sufficient to use the collective name without naming any individual;

(iii) property belonging to or provided for the use of any public establishment, service or department may be described as the property of the Government;

(iv) coin and banknotes may be described as money; and any allegation as to money, so far as regards the description of the property, shall be sustained by proof of any amount of coin or of any bank or currency note (although the particular species of coin of which such amount was composed, or the particular nature of the bank or currency note, shall not be proved); and in cases of stealing and defrauding by false pretences, by proof that the accused dishonestly appropriated or obtained any coin or any bank or currency note, or any portion of the value thereof, although such coin or bank or currency note may have been delivered to him in order that some part of the value thereof should be returned to the party delivering the same or to any other person and such party shall have been returned accordingly;

(*d*) the description or designation in a charge of the accused, or of any other person to whom reference is made therein, shall be such as is reasonably sufficient to identify him, without necessarily stating his correct name, or his abode, style, degree or occupation; and if, owing to the name of the person not being known, or for any other reason, it is impracticable to give such a description or designation, such description or designation, shall be given as is reasonably practicable in the circumstance, or such person may be described as "a person unknown";

(*e*) where it is necessary to refer to any document or instrument in a charge, it shall be sufficient to describe it by any name or designation by which it is usually known, or by the purport thereof, without setting out any copy thereof;

(*f*) subject to any other provisions of this section it shall be sufficient to describe any place, time, thing, matter, act or omission whatsoever to which it is necessary to refer in any change in ordinary language in such a manner as to indicate with reasonable clearness the place, time, thing, matter, act or omission referred to;

(*g*) it shall not be necessary in stating any intent to defraud, deceive or injure to state an intent to defraud, deceive or injure any particular person, where the written law creating the offence does not make an intent to defraud, deceive or injure a particular person an essential ingredient of the offence;

(*h*) where any person is charged with an offence and such person would, if convicted thereof, be liable, under the provision of any law, to an enhanced punishment by reason of a previous conviction for any offence, the charge shall not

contain any reference to such previous conviction, and he shall be liable to such enhanced punishment if such previous conviction is proved after he has been convicted of the offence with which he is charged;

(*i*) figures and abbreviations may be used for expressing anything which is commonly expressed thereby; and

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(*j*) when a person is charged with any offence under section 283, 286, 287 or 288 of the Penal Code it shall be sufficient to specify the gross amount of the property in respect of which the offence is alleged to have been committed and the dates between which the offence is alleged to have been committed without specifying particular times or exact dates.

Previous conviction or acquittal of same offence
23 of 1968

129. Where an act or omission constitutes an offence under two or more written laws, the offender shall, unless the contrary intention appears, be liable to be prosecuted and punished under any one of such laws, but shall not, while a conviction or acquittal of an offence by a court has not been set aside, be liable to be tried again on the same facts for substantially the same offence:

Provided that a person convicted or acquitted of an offence may afterwards be tried for any distinct offence with which he might have been charged under section 127 at the trial at which he was so convicted or acquitted.

Consequences supervening and not known at time of former trial

130. A person convicted or acquitted of any act causing consequences which together with such act constitute a different offence from that for which such person was convicted or acquitted, may be afterward tried for such last-mentioned offence, if the consequences had not happened or were not known to the court to have happened at the time when he was acquitted or convicted.

Pleas that accused has been previously acquitted or convicted of same offence
14 of 2010

131.—(1) A accused against whom a charge has been filed may plead that he has been previously convicted or acquitted by a court of the same offence.

(2) If the court holds that the facts alleged by the accused do not prove the plea, or if it finds that it is false in fact, the accused shall be required to plead to the charge.

(3) If the court holds that the plea is true in fact, the accused shall be discharged.

(4) For a plea under subsection (1) to succeed, the earlier conviction or acquittal relied on by the accused must have been by a court of competent jurisdiction and the proceedings must not have been *ultra vires*.

Where original court was not competent to try subsequent charge

132. A person convicted or acquitted of any offence constituted by any acts may, notwithstanding such conviction or acquittal be subsequently charged with and tried for any other offence constituted by the same acts which he may have committed, if the court by which he was first tried was not competent to try the offence with which he is subsequently charged.

Inquiry by court as to unsoundness of mind
23 of 1968
14 of 2010

133.—(1) When in the course of a trial or preliminary inquiry the court has reason to believe that the accused may be of unsound mind so as to be incapable of making his defence, the court shall adjourn the trial or inquiry for such period, not exceeding one month, as the court may deem fit, and shall thereafter—

(*a*) order that during such adjournment the accused shall be kept in custody or at such other appropriate place as the court may direct, for observation and treatment;

(*b*) direct that a medical practitioner examine the accused and inquire into his mental condition, with particular reference to his capability of making his defence, and report to the court thereon, and the medical practitioner shall comply with such direction and his report shall on its mere production be admissible in evidence as proof of its contents;

(*c*) the court shall forward to the medical practitioner with its the reasons for its giving such directions.

(2) If at the time and place to which the hearing shall be adjourned such report is not, or has not been, furnished to it, the court may, without requiring any attendance before it of the accused, adjourn the trial or inquiry for such further period, not exceeding fourteen days, as may appear to it necessary to enable such report to be so furnished.

(3) If at the time and place to which the hearing or the further hearing shall be adjourned, such report is, or has been, furnished to the court, it shall consider the same. Copies of the report shall be supplied by the court to the prosecution and to the accused or his legal practitioner either at the hearing, or, if practicable, before it. The court may in its discretion cause the medical practitioner who furnished the report to be summoned to give oral evidence at the hearing. If upon consideration of the report and of any evidence which may have been adduced upon the question of the mental condition of the accused by or on behalf of the prosecution or the accused the court is of the opinion that the accused is of unsound mind and consequently incapable of making his defence it shall adjourn further proceedings in the case to a then unspecified time and place.

(4) If the case is one in which bail may be taken, the court may release the accused on sufficient security being given that he will be

properly taken care of and prevented from doing injury to himself or any other person, and for his appearance before the court or such other officer as the court may appoint in that behalf.

(5) If the case is one in which bail ought not to be taken, or if sufficient security be not given, the court shall make a reception order for the admission of the accused to a mental hospital. No person admitted to a mental hospital under a reception order made under this subsection may be discharged from such hospital without the sanction of the court unless a discontinuance has been entered discontinuing the proceedings in the course of which such order was made. If such a discontinuance has been entered a copy of the discontinuance order shall be served on the Secretary for Health and the person detained may be discharged from the mental hospital upon an order in writing by the Secretary for Health or by three of the visitors of the mental hospital one of whom shall be a medical practitioner.

(6) Whenever any preliminary inquiry or trial is postponed the court may at any time resume the preliminary inquiry or trial and to appear or be brought before such court, when, if the court considers him capable of making his defence, the preliminary inquiry or trial shall proceed. But if the court considers the accused to be still incapable of making his defence, it shall act as if the accused were brought before it for the first time.

23 of 1968

(7) Any question arising under this section in any proceedings held before the High Court shall be determined by the judge and not by a jury.

(8) If the trial is one before the High Court, and the High Court has reason to believe that the accused may be of unsound mind so as to be incapable of making his defence at any time after the accused has been given in charge of a jury, the High Court may order the jury to be discharged from giving a verdict on the count or counts in the charge when it makes any adjournment under this section.

(9) Notwithstanding the discontinuance pursuant to this section, the Secretary for Health shall furnish to the court monthly reports in the prescribed form on the status of the person detained until such person is discharged from hospital.

(10) Where it appears that there is sufficient reason to believe that an accused is of unsound mind and incapable of conducting his defence, the court may, if the accused is not represented by a legal practitioner and the court considers that the interest of justice so requires, assign a legal practitioner to act on behalf of the accused.

Defence of insanity at preliminary inquiry

134. When the accused appears to be of sound mind at the time of the preliminary inquiry, the court, notwithstanding that it is alleged that at the time when the act was committed in respect of which the accused is charged he was by reason of unsoundness of mind incapable of knowing the nature of the act or that it was wrong or contrary to law, shall proceed with the case and, if the accused ought, in the opinion of the court, to be committed for trial, the court shall so commit him.

Defence of insanity on trial
14 of 2010

135.—(1) Where any act or omission is charged against any person as an offence, and it is given in evidence on the trial of such person for that offence that he was insane so as not to be responsible, according to law, for his actions at the time the act was done or omission made, then, if it appears to the court before which such person is tried that he did the act or made the omission charged but was insane as aforesaid at the time when he did or made the same, the court shall make a special finding to the effect that the accused is not guilty by reason of insanity.

(2) When such special finding is made the court shall make a reception order for the admission of the accused to a mental hospital and the court may, if it thinks fit, make a further order, with or without limitation of time, restricting his discharge from such mental hospital without the sanction of the Minister.

(3) Any question arising under this section in any proceedings held before the High Court shall be determined by the jury and not by the judge. 23 of 1968

Certificate of medical officer as to sanity to be evidence

136. If, while an accused is detained in a mental hospital under a reception order made under section 133 (4), the medical officer in charge of such mental hospital certifies to the court that he is satisfied that the accused can properly be tried, he shall remit the accused to prison to be brought before the court at such time as the court appoints to be dealt with according to law and the certificate of such medical officer shall be receivable in evidence. The medical officer shall forward a copy of such medical certificate to the officer in charge of the prison to which he remits the accused and such certificate shall be sufficient authority for the reception of the accused into such prison and for his detention until he is so dealt with by the court. The court may in its discretion cause the medical practitioner to be summoned to give oral evidence at the hearing. On the arrival of the accused at the prison the order made under section 133 (4) shall cease to have effect. When the accused is brought before the court, if the court considers him capable of making his defence, the preliminary inquiry or trial shall proceed. If the court considers the accused to be still incapable of making

his defence, it shall act as if the accused were brought before it for the first time.

Authority and effect of reception orders made under section 133 or 135 Cap. 34:02

137. Subject to sections 133 (4) and 135, a reception order made thereunder shall have the same authority and effect as a reception order lawfully made under section 20 of the Mental Treatment Act and the court by which any such order as aforesaid is made may give such directions as it thinks fit for the conveyance of the accused to whom the order relates to a place of safety and his detention therein pending his admission to the mental hospital.

Procedure where accused does not understand proceedings

138. If the accused, though not insane, cannot be made to understand the proceedings, the court may proceed with the preliminary inquiry or trial; and in the case of a court other than the High Court, if such trial results in a conviction the proceedings shall be forwarded to the High Court with a report of the circumstances, and the High Court shall make thereon such order as it thinks fit.

Mode of delivering judgment 23 of 1968 14 of 2010

139.—(1) The judgment in every trial, other than a jury trial, in any criminal court in the exercise of its original jurisdiction shall be pronounced, or the substance of such judgment shall be explained, in open court, either immediately after the termination of the trial or at some subsequent time of which notice shall be given to the parties; but the whole judgment shall be read out by the presiding judge or magistrate if he is requested to do so either by the prosecution or defence.

(2) The accused shall, if in custody, be brought up or, if not in custody, be required by the court to attend to hear judgment delivered, except where his personal attendance during the trial has been dispensed with and the sentence is one of fine only; but if the court intends to acquit the accused it may dispense with his attendance.

(3) No judgment delivered by any court shall be deemed to be invalid by reason only of the absence of any party or his legal practitioner on the day or from the place notified for the delivery thereof, or of any omission to serve, or defect in serving, on the parties or legal practitioner, or any of them, the notice of such day and place.

(4) Nothing in this section shall be construed to limit in any way the provisions of section 5.

Contents of judgments 23 of 1968 14 of 2010

140.—(1) Every judgment shall, except as otherwise expressly provided by this Code, be in writing and shall contain the point or points for determination, the decision thereon and the reasons for the decision and shall be dated and signed by the presiding officer.

(2) In the case of a conviction the judgment shall specify the offence of which, and the section of the Penal Code or other law under which the accused is convicted, and the punishment to which he is sentenced. Cap. 7:01

(3) In the case of an acquittal the judgment shall state the offence of which the accused is acquitted.

(4) The requirements of this section, other than the requirements that judgments be in writing and signed, shall not apply to any judgment given in accordance with the verdict of a jury.

Copy of judgment, etc., to be given to accused on application 14 of 2010

141. On the application of the accused a copy of the judgment or, when he so desires, a translation in a language he understands, if practicable, shall be given to him without delay. There shall be payable for such copy such fee, if any, as may be prescribed.

Costs against accused or private prosecutor 14 of 2010

142.—(1) It shall be lawful for a judge or a magistrate to order any person convicted before him of an offence to pay to the public as the case may be, such reasonable costs as to such judge or magistrate may seem fit, in addition to any other penalty imposed.

(2) A judge or magistrate who acquits or discharges a person accused of an offence may, if the prosecution for such offence was originally instituted on summons or warrant issued by a court on application of a private prosecutor, and the judge or magistrate considers that the prosecutor had no reasonable grounds for making his complaint, order such private prosecutor to pay to the accused such reasonable costs as the judge or magistrate may deem fit.

(3) The costs awarded under this section may be awarded in addition to any compensation awarded under section 144.

(4) In this section—

"public prosecutor" means any person prosecuting for or on behalf of the State and any public prosecutor appointed under section 79;

"private prosecutor" means any prosecutor other than a public prosecutor.

Order to pay costs appellable 14 of 2010

143. An appeal shall lie from any order awarding costs under section 142 if made by a magistrate to the High Court and if by a judge to the Supreme Court of Appeal. The appellate court shall have power to make such order regarding the costs of the appeal as it shall deem reasonable.

Costs and compensation to be specified in order, how recoverable 14 of 2010

144.—(1) Sums allowed for costs under section 142 or any compensation awarded shall in all cases be specified in the judgment of the court.

(2) If the person who has been ordered to pay the costs or compensation fails to pay, he shall, in default of seizure and sale

levied in accordance with section 330, be liable to imprisonment in accordance with the scale laid down in section 29 of the Penal Code, unless such costs or compensation be sooner paid.

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Power of court to award expenses or compensation out of fine

145.—(1) Whenever any court imposes a fine, or confirms on appeal, review or otherwise a sentence of fine, or a sentence of which a fine forms part, the court may, when giving judgment, order the whole or any part of the fine recovered to be applied—

(*a*) in defraying expenses properly incurred in the prosecution;

(*b*) in the payment to any person of compensation for any loss or injury caused by the offence when substantial compensation is in the opinion of the court recoverable by civil suit.

Payment of amount awarded under section 145, etc.

146.—(1) If the fine referred to in section 145 is imposed in a case which is subject to appeal no such expenses or compensation shall be paid out of the fine before the period allowed for presenting the appeal has elapsed, or, if an appeal is presented, before the decision of the appeal.

(2) At the time of awarding compensation in any subsequent civil suit relating to the same matter, the court shall take into account any sum paid or recovered as compensation under this section.

Property found on accused person

147. Where, on the apprehension of a person charged with an offence, any property is taken from him, the court before which he is charged may order—

(*a*) that the property or a part thereof be restored to the person who appears to the court to be entitled thereto, and, if he is the person charged, that it be restored either to him or to such other person as he may direct; or

(*b*) that the property or a part thereof be applied to the payment of any fine or any costs or compensation directed to be paid by the person charged.

Restitution of stolen property
Cap. 7:01
14 of 2010

148.—(1) If any person guilty of an offence mentioned in Chapters XXVI to XXXII, inclusive, of the Penal Code, in stealing, taking, obtaining, extorting, converting, or disposing of, or in knowingly receiving any property, is prosecuted to conviction, the property shall be restored to the owner or his representative.

(2) In every case referred to in this section, the court before which such offender is convicted shall have power to award, from time to time, writs of restitution thereof in a summary manner.

(3) Where goods have been obtained by fraud or other wrongful means not amounting to stealing, the property in such goods shall not vest in the person who was the owner of the goods, or his

personal representative, by reason only of the conviction of the offender.

(4) On the restitution of any stolen property, if it appears to the court by the evidence that the offender has sold the stolen property to any person, that such person has had no knowledge that the same was stolen, and that any moneys have been taken from the offender on his apprehension, the court may, on the application of such purchaser, order that out of such moneys a sum not exceeding the amount of the proceeds of such sale be delivered to the said purchaser.

(5) The operation of any order made under this section shall, before which the conviction takes place directs to the contrary in any case in which the title to the property is not in dispute, be suspended until the time for appeal has elapsed and in any case where an appeal is lodged, until the determination of the appeal.

(6) Where the operation of any order made under this section is suspended until the determination of the appeal, the order shall not take effect as to the property in question if the conviction is quashed on appeal.

(7) The Chief Justice may make provision by rules for securing the safe custody of any property, pending the suspension of the operation of any such order.

(8) Any person aggrieved by an order made under this section may appeal to the High Court, and upon the hearing of such appeal the High Court may by order annul or vary any order made on a trial for the restitution of any property to any person, although the conviction is not quashed.

(9) In this section the word "goods" includes all chattels, personal (other than things in action and money) emblements, industrial growing crops, and, where there is a contract for sale, things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale.

(10) Nothing in this section shall apply to the case of any security which has been paid in good faith or discharged by a person liable to the payment thereof, or being a negotiable instrument, has been taken in good faith or received by transfer or delivery by a person for a just and valuable consideration without any notice or without reasonable cause to suspect that the same has been stolen.

Disposal of property 14 of 2010

149.—(1) At any time in the course of, or after the conclusion of, an inquiry or trial, the court may make such order as it thinks fit for the disposal, by destruction, forfeiture, confiscation, delivery to any person claiming to be entitled to possession thereof, or in any other manner, of any property or documents produced before it or

in its custody or regarding which any offence appears to have been committed or which has been used for the commission of any offence.

(2) When the High Court makes such order and cannot through its own officers conveniently carry out such order, the High Court may direct that the order be carried into effect by a subordinate court.

(3) When an order is made under this section, such order shall not (except where the property is livestock or is subject to speedy and natural decay) be carried out until the period allowed for appealing against such order has expired or, when an appeal is brought within such period, until such appeal has been disposed of.

(4) In this section, "property" includes, in the case of property regarding which an offence appears to have been committed, not only such property as has been originally in the possession or under the control of any person but also any property into or for which the same may have been converted or exchanged and anything acquired by such conversion or exchange whether immediately or otherwise.

When offence proved is included in offence charged
14 of 2010

150.—(1) When a person is charged with an offence consisting of several particulars, a combination of some only of which constitutes a complete minor and cognate offence, and such combination is proved but the remaining particulars are not proved, he may be convicted of the minor and cognate offence although he was not charged with it.

(2) When a person is charged with an offence and facts are proved which reduce it to a minor and cognate offence, he may be convicted of the minor and cognate offence although he was not charged with it.

Alteration of charge, etc.
5 of 1971
14 of 2010

151.—(1) Every objection to any charge for any formal defect on the face thereof shall be taken immediately after the charge has been read over to the accused and not later.

(2) Where at any stage of the trial before the court complies with section 254, or call on the accused for his defence under section 313, as the case may be, it appears to the court—

(*a*) that the charge is defective either in substance or form;

(*b*) that the evidence discloses an offence other than the offence with which the accused is charged;

(*c*) that the accused desires to plead guilty to an offence other than the offence with which he is charged,

the court may make such order for the alteration of the charge, either by way of amendment of the charge or by the substitution or

addition of a new charge as it thinks necessary to make in the circumstances of the case, unless, having regard to the merits of the case, such amendments cannot be made without injustice.

(3) Where a charge is so amended, a note of the order for amendment shall be endorsed on the charge and the charge shall be treated for the purposes of the proceedings in connexion therewith as having been filed in the amended form.

(4) Every such new or altered charge shall be read and explained to the accused.

(5) The court shall thereupon call upon the accused to plead to the altered charge and to state whether he is ready to be tried on such new or altered charge.

(6) If the accused declares that he is not ready, the court shall duly consider the reasons he may give and, if proceeding immediately with the trial is not likely in the opinion of the court to prejudice the accused in his defence or the prosecution in the conduct of the case, the court may, after such charge or alteration has been framed or made, proceed with the trial as if the new or altered charge had been the original charge.

(7) If the new or altered charge is such that proceeding immediately with the trial is likely in the opinion of the court to prejudice the accused or the prosecution, the court may direct a new trial or adjourn for such period as is necessary.

(8) Where a magistrate decides to proceed with the new or altered charge without directing a new trial he shall, save where he is of the opinion that the presence of a witness cannot be obtained without an amount of delay or expense which, in the circumstances of the case, he considers unreasonable, re-summon all or any witness for re-cross-examination if so requested by the accused.

(9) If the offence stated in the new or altered charge is one for the prosecution of which previous sanction is necessary, the case shall not be proceeded with until such sanction is obtained, unless sanction has already been obtained for a prosecution on the same facts as those on which the new or altered charge is founded.

(10) Variance between the charge and the evidence adduced in support of it with respect to the time at which the alleged offence was committed is not material and the charge need to be amended for such variance if it is proved that the proceedings were instituted within the time limited by law for the institution thereof.

Person charged with any offence may be convicted of attempt

152. When a person is charged with an offence, he may be convicted of having attempted to commit that offence, although he was not charged with the attempt.

Alternative verdicts in various offences involving the homicide of children
14 of 2010

153.—(1) When a woman is charged with the murder of her child, being a child under the age of twelve (12) months, and the court is of opinion or the jury finds, as the case may be, that she, by any willful act or omission, caused its death but at the time of the act or omission she had not fully recovered from the effect of giving birth to such child and that by reason thereof or by reason of the effect of lactation consequent upon the birth of the child, the balance of her mind was then disturbed, she may, notwithstanding that the circumstances were such that but for section 230 of the Penal Code she might be convicted of murder, be convicted of the offence of infanticide although she was not charged with it.

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(2) When a person is charged with the murder or manslaughter of any child or with infanticide, or with an offence under section 149 or section 150 of the Penal Code (relating to the procuring of abortion), and the court is of opinion or the jury finds, as the case may be, that he is not guilty of murder, manslaughter or infanticide or of an offence under section 149 or section 150 of the Penal Code, but that he is guilty of the offence of killing an unborn child, he may be convicted of that offence although he was not charged with it.

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(3) When a person is charged with killing an unborn child and the court is of opinion or the jury finds, as the case may be, that he is not guilty of that offence but that he is guilty of an offence under either section 149 or section 150 of the Penal Code, he may be convicted of that offence although he was not charged with it.

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(4) When a person is charged with the murder or infanticide of any child or with killing an unborn child and the court is of opinion or the jury finds, as the case may be, that he is not guilty of any of the said offences, but that he is guilty of the offence of concealment of birth or the offence of abandonment of child at birth, he may be convicted of the offence of concealment of birth or the offence of abandonment of child at birth although he was not charged with it.

Alternative verdict in charge of manslaughter from driving of motor vehicle
23 of 1968
14 of 2010
Cap. 69:01

154. When a person is charged with manslaughter in connexion with the driving of a motor vehicle by him and the court is of opinion or the jury finds, as the case may be, that he is not guilty of that offence, but that he is guilty of an offence under section 126, 127 or 128 of the Road Traffic Act, or under any law in substitution therefor, he may be convicted of that offence although he was not charged with it.

155.—(1) When a person is charged with rape and the court is of opinion or the jury finds, as the case may be, that he is not guilty of that offence but that he is guilty of an offence under one of the sections 137, 138, 141 and 157 of the Penal Code, he may be convicted of that offence although he was not charged with it.

Alternative verdict in charges of rape and kindred offences
23 of 1968
14 of 2010
Cap. 7:01

(2) When a person is charged with an offence under section 157 of the Penal Code and the court is of opinion or the jury finds, as the case may be, that he is not guilty of that offence but that he is guilty of an offence under one of the sections 138 and 139 of the Penal Code, he may be convicted of that offence although he was not charged with it.

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(3) When a person is charged with the defilement of a girl and the court is of opinion or the jury finds, as the case may be, that he is not guilty of that offence but that he is guilty of an offence under one of the sections 137 and 141 of the Penal Code, he may be convicted of that offence although he was not charged with it.

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156. When a person is charged with an offence mentioned in Chapter XXIX of the Penal Code and the court is of opinion or the jury finds, as the case may be, that he is not guilty of any other offence mentioned in the said Chapter, he may be convicted of that other offence although he was not charged with it.

Person charged with burglary, etc., may be convicted of kindred offence
23 of 1968
Cap. 7:01

157.—(1) When a person is charged with stealing anything and—

Alternative verdicts in charges of stealing and kindred offences

(*a*) it is proved that he received the thing knowing the same to have been stolen, he may be convicted of the offence of receiving although he was not charged with it;

(*b*) it is proved that he obtained the thing in any such manner as would amount, under the Penal Code or any other law for the time being in force, to obtaining it by false pretences with intent to defraud, he may be convicted of the offence of obtaining it by false pretences although he was not charged with it;

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(*c*) the facts proved amount to an offence under section 329 of the Penal Code, he may be convicted of the offence under that section although he was not charged with it.

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(2) When a person is charged with obtaining anything capable of being stolen by false pretences with intent to defraud, and it is proved that he stole the thing, he may be convicted of the offence of stealing although he was not charged with it.

158. Sections 150 to 157, inclusive, shall be construed as being in addition to, and not in derogation of, any other written law and the other provisions of this Code, and sections 152 to 157,

Construction of sections 150 to 157

inclusive, shall be construed as being without prejudice to the generality of sections 150 and 151.

Person charged with misdemeanour not to be acquitted if felony proved, unless court so directs
14 of 2010

159.—(1) Where in any trial for a misdemeanour the facts proved in evidence amount to a felony the accused shall not be acquitted of the misdemeanour.

(2) No person tried for a misdemeanour under subsection (1) shall be liable afterwards to be prosecuted for a felony on the same facts, unless the court shall think fit, in its discretion, without recording a verdict, to direct such person to be prosecuted for the felony.

(3) Where the court directs that the person be prosecuted for the felony under subsection (2), the person may be dealt with as if previously he was not put on trial for the misdemeanour.

160. [*Repealed by* 14 *of* 2010].

Promotion of reconciliation
14 of 2010

161. In all cases a court may, without formality, promote reconciliation and encourage and facilitate the settlement in an amicable way of proceedings for common assault, or for any other offence of a personal or private nature not amounting to felony, and not aggravated in degree, on terms of payment of compensation or other terms approved by the court and may thereupon order the proceedings to be stayed or terminated.

PART IVA

Pre-Trial Custody Time Limits

Pre-trial custody time limits
14 of 2010

161A. An accused person may be held in lawful custody in relation to an offence while awaiting the commencement of his trial in accordance with the periods specified under this Part.

Interpretation
14 of 2010

161B. In this Part, unless the context otherwise requires, "lawful custody" means custody sanctioned by a court order pending trial.

Reckoning of time
14 of 2010

161C.—(1) For the purposes of this Part, time shall run upon the expiry of forty-eight hours after the arrest of an accused person, or if the period of forty-eight hours expires outside ordinary court hours or on a day which is not a court day, the first court day after such expiry.

(2) Notwithstanding subsection (1), where an accused person is in lawful custody in relation to one offence and is subsequently charged with another offence not arising on the same facts or in the course of the same transaction, the time in relation to the subsequent offence shall run from the date when the accused person is charged with the offence.

161D. The maximum period that a person accused of an offence triable in a subordinate court may be held in lawful custody pending commencement of his trial in relation to the offence shall be thirty days.

Custody time limit for offences triable in subordinate courts
14 of 2010

161E. The maximum period that a person accused of an offence triable in the High Court may be held in lawful custody pending his committal for trial to that Court under Part VIII or Part IX of this Code in relation to that offence shall be thirty days.

Custody time limit in relation to committal proceedings
14 of 2010

161F. Where a person accused of an offence triable in the High Court is committed to the High Court for trial, the maximum period that he may be held in lawful custody pending commencement of his trial in relation to that offence shall be sixty days.

Custody time limit for offences triable in the High Court
14 of 2010

161G. The maximum period that a person accused of treason, genocide, murder, rape, defilement and robbery may be held in lawful custody pending commencement of his trial in relation to that offence shall be ninety days.

Custody time limit for serious offences
14 of 2010

161H.—(1) The prosecution may, at least seven days before the expiry of the custody time limit imposed under this Part, make an application to the subordinate court or the High Court, as the case may be, for extension or further extension of that time limit.

Extension of custody time limit
14 of 2010

(2) Upon an application under subsection (1), the subordinate court or the High Court, as the case may be, may extend or further extend the custody time limit imposed under this Part if it is satisfied that there is good and sufficient cause for doing so.

(3) Any extension or extensions of custody time limits under this section shall not exceed in total a period of thirty days.

161I. At the expiry of a custody time limit or of any extension thereof, the Court may of its own motion or on application by or behalf of the accused person or on information by the prosecution, grant bail to an accused person.

Bail on expiry of custody time limit
14 of 2010

161J. Nothing in this Part shall preclude an accused person in lawful custody from otherwise applying for bail under any other law during the subsistence of a custody time limit.

Application of general law on bail
14 of 2010

PART V

Mode of Taking and Recording Evidence in Inquiries and Trial

162. Except as otherwise expressly provided, all evidence taken in any inquiry or trial under this Code shall be taken in the

Evidence to be taken in presence of accused
14 of 2010

presence of the accused, or, when his personal attendance has been dispensed with, in the presence of his legal practitioner, if any.

Manner of recording evidence before magistrate 14 of 2010

163. In inquiries and trials, other than trials under section 159, by or before a magistrate, the evidence of the witnesses shall be recorded in the following manner—

(*a*) the evidence of each witness shall be taken down in writing in the language of the court by the magistrate, or in his presence and hearing under his personal direction and superintendence, and shall be signed by the magistrate, and shall form part of the record;

(*b*) such evidence shall not ordinarily be taken down in the form of question and answer, but in the form of a narrative:

Provided that the magistrate may, in his discretion, take down or cause to be taken down any particular question and answer.

Interpretation of evidence to accused or his legal practitioner 14 of 2010

164.—(1) Whenever any evidence is given in a language not understood by the accused, and he is present in person, it shall be interpreted to him in a language understood by him.

(2) If he appears by legal practitioner and the evidence is given in a language other than the language of the court, and not understood by the legal practitioner, it shall be interpreted to such legal practitioner in the language of the court.

(3) When documents are put in for the purpose of formal proof it shall be in the discretion of the court to interpret as much thereof as appears necessary.

Cases heard by one magistrate continued by another magistrate 14 of 2010

165. (1) Subject to subsections (2) and (3) respectively, wherever any magistrate, after having heard and recorded the whole or any part of the evidence in an inquiry or trial, ceases to exercise jurisdiction therein and is succeeded, whether by virtue of an order of transfer under this Code or otherwise, by another magistrate who has and who exercises such jurisdiction, the succeeding magistrate may act on the evidence so provided by his predecessors, or partly recorded by his predecessor and partly himself, or he may re-summon the witnesses and after recording the reasons for the first mentioned magistrate's ceasing to exercise jurisdiction recommence the inquiry or trial.

(2) In any trial the succeeding magistrate shall, save where he is of the opinion that the presence of a witness cannot be obtained without an amount of delay or expense which, in the circumstances of the case, he considers unreasonable, re-summon and release the witness or any of them if so requested by an accused.

(3) The High Court may, whether there be an appeal or not, set aside an conviction passed on evidence not wholly recorded by the

magistrate before whom the conviction was heard, if it is of opinion that the accused has been materially prejudiced thereby, and may order a new inquiry or trial.

Sentence by one magistrate of person convicted by another magistrate

166. Whenever any magistrate who has presided at any trial which has resulted in the conviction of the accused, ceases to exercise jurisdiction before sentence has been passed, and is succeeded, whether by virtue of an order of transfer under this Code or otherwise, by another magistrate who has and who exercises such jurisdiction, the magistrate so succeeding may sentence the accused or may make any order in such case which he could have made if he himself had convicted the accused.

Record of evidence in High Court and subordinate courts

167. The Chief Justice may from time to time, by rules, prescribe the manner in which evidence shall be taken down in cases coming before the High Court and subordinate courts and the judges and magistrates, as the case may be, shall take down the evidence or the substance thereof, in accordance with such rules.

PART VI

Evidence in Criminal Proceedings

Application of this Part

168. This Part shall apply to all criminal proceedings in or before the High Court and all subordinate courts.

When a fact said to be proved, disproved and not proved
2 of 1968

169.—(1) A fact is said to be proved when, after considering the matters before it, the court or jury, as the case may be, either believes it to exist or to have existed or considers its existence at the relevant time so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists or existed.

(2) A fact is said to be disproved when, after considering the matter before it, the court or jury, as the case may be, either believes that it does not exist or did not exist or considers its non-existence at the relevant time so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it does not exist or did not exist at the relevant time.

(3) A fact is said to be not proved when it is neither proved nor disproved.

(4) "Sufficient evidence" when used in relation to a fact means evidence by reason of which the court or jury, as the case may be, regards such fact as proved, unless and until it is disproved. 5 of 1969

Presumptions
23 of 1968

170.—(1) Whenever it is provided by this Code that the court or jury, as the case may be, may presume a fact, it may either regard

such fact as proved, unless and until it is disproved, or may call for proof of it.

(2) Whenever it is directed by this Code that the court or jury, as the case may be, shall presume a fact, it shall regard such fact as proved, unless and until it is disproved.

(3) When one fact is declared by this Code to be conclusive proof of another, the court or jury, as the case may be, shall on proof of the one fact, regard the other as proved, and shall not allow evidence to be given for the purpose of disproving it.

(4) A court or jury, as the case may be, may presume the existence of any fact which it thinks likely to have happened, regard being had to the course of natural events, human conduct and public and private business, in relation to the facts of a particular case.

Relevancy of facts

171.—(1) Subject to any other law, evidence may be given in any proceeding of the existence or non-existence of every fact in issue, and of such other facts as are hereinafter declared to be relevant, and of no others.

(2) Facts are relevant which—

(*a*) though not themselves in issue, are so connected with a fact in issue as to form part of the same transaction, whether they occurred at the same time and place or at different times and places;

(*b*) are the occasion, the cause or the effect, immediate or otherwise, of relevant facts, or facts in issue, or which constitute the state of things under which they happened, or which afforded an opportunity for their occurrence or transaction;

(*c*) show or constitute a motive or preparation for any fact in issue or relevant fact;

(*d*) in so far as they are necessary to explain or introduce a fact in issue or relevant fact, or which support or rebut an inference suggested by a fact in issue or relevant fact, or which establish the identity of any thing or person whose identity is relevant or fix the time or place at which any fact in issue or relevant fact happened, or which show the relation of persons by whom any such fact was transacted;

(*e*) though not otherwise relevant—

(i) are inconsistent with any fact in issue or relevant fact;

(ii) by themselves or in connexion with other facts they make the existence or non-existence of any fact in issue or relevant fact highly probable or improbable;

(*f*) show the existence of any state of mind, such as intention, knowledge, good faith, negligence, rashness, ill-will or goodwill

towards any particular person, or show the existence of any state of body or bodily feeling, when the existence of any such state of mind or body or such bodily feeling is in issue or relevant;

(*g*) where there is a question as to the existence of any right or custom, show or constitute—

(i) any transaction by which the right or custom in question was created, claimed, modified, recognized, asserted or denied, or which was inconsistent with its existence;

(ii) particular instances in which the right or custom was claimed, recognized, or exercised, or in which its exercise was disputed, asserted or departed from;

(*h*) when there is a question whether an act was accidental or intentional, or done with a particular knowledge or intention, show that such act formed part of a series of similar occurrences, in each of which the person doing the act was concerned;

(*i*) when there is a question whether a particular act was done, show the existence of any course of business, according to which it naturally would have been done.

(3) The conduct of any person is relevant in reference to any fact in issue, and the conduct of any person, an offence against whom is the subject of any proceeding, is relevant if such conduct influences or is influenced by any fact in issue or relevant fact and whether it was previous or subsequent thereto. When the conduct of any person is relevant, any statement made to him, or in his presence and hearing, which affects such conduct, is relevant. Subject to any other provisions of this Code relating to the relevancy of statements, the expression "conduct" in this subsection does not include statements, unless those statements accompany and explain acts other than statements.

(4) Where there is reasonable ground to believe that two or more persons have conspired together to commit an offence anything said, done or written by one of such persons in reference to their common intention after the time when such intention was first entertained by any one of them is a relevant fact against each of the persons believed to be so conspiring, as well for the purpose of proving the existence of the conspiracy as for the purpose of showing that any such person was a party to it.

Admissibility of evidence

172.—(1) When either party proposes to give evidence of any fact, the court may ask the party proposing to give the evidence in what manner the alleged fact, if proved, would be relevant; and the court shall admit the evidence if it thinks that the fact, if proved, would be relevant, and not otherwise.

(2) If the fact to be proved is one of which evidence is admissible only upon proof of some other fact, such last mentioned fact must be proved before evidence is given of the fact first-mentioned unless the party undertakes to give proof of such fact and the court is satisfied with such undertaking.

(3) If the relevancy of one alleged fact depends upon another alleged fact being first proved, the court may, in its discretion, either permit evidence of the first fact to be given before the second fact is proved or require evidence to be given of the second fact before evidence is given of the first fact.

Statement of person who cannot be called as witness

173. A statement, written or verbal, of relevant facts made by a person who is dead, or who cannot be found, or who has become incapable of giving evidence, or whose attendance cannot be procured without an amount of delay or expense which in the circumstances of the case appears to the court unreasonable, is itself a relevant fact—

(*a*) when the statement was made by a person as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death in a case in which the cause of that person's death comes into question and whether the person who made it was or was not, at the time when the statement was made, under expectation of death and whatever may be the nature of the criminal proceeding in which the cause of his death comes into question;

(*b*) when the statement was made by such person in the ordinary course of business and in particular when it consists of any entry or memorandum made by him in books kept in the ordinary course of business or in the discharge of professional duty, or of an acknowledgement written or signed by him of the receipt of money, goods, securities or property of any kind or of a document used in commerce written or signed by him, or of the date of a letter or other document usually dated, written or signed by him;

(*c*) when the statement was against the pecuniary or proprietary interest of the person making it, or when, if true, it would expose him or would have exposed him to a criminal prosecution or to a suit for damages;

(*d*) when the statement gave the opinion of such person as to the existence of any public right or custom, or matter of public or general interest, of the existence of which, if it existed, he would have been likely to be aware, and when such statement was made before any controversy as to such right, custom or matter had arisen;

(*e*) when the statement relates to the existence of any relationship by blood, marriage or adoption between persons as to whose relationship by blood, marriage or adoption the person making the statement had special means of knowledge and when the statement was made before the question in dispute was raised;

(*f*) when the statement relates to the existence of any relationship by blood, marriage or adoption between persons deceased, and is made in any will or deed relating to the affairs of the family to which any such deceased persons belonged, or in any family pedigree, or upon any tombstone, family portrait or other thing on which such statements are usually made, and when such statement was made before the question in dispute was raised;

(*g*) when the statement is contained in any deed, will or other document which relates to any transaction by which any right or custom in question was created, claimed, modified, recognized, asserted or denied, or which was inconsistent with its existence; and

(*h*) when the statement was made by a number of persons, and expressed feelings or impressions on their part relevant to the matter in question.

Relevancy of statements made in special circumstances
23 of 1968
14 of 2010

174.—(1) A statement contained in any entry in a book of account, regularly kept in the course of business, is a relevant fact whenever it refers to a matter into which the court has to inquire, but such statement shall not alone be sufficient evidence to charge any person with liability.

(2) An entry in any public or other official book, register or record, stating a fact in issue or relevant fact, and made by a public servant in the discharge of his official duty or by any other person in performance of a duty specially enjoined by the law of the country in which such book, register or record is kept, is itself a relevant fact.

(3) A statement of fact in issue or relevant fact, made in a published map or chart generally offered for public sale or in a map or plan made under the authority of the Government, as to matters usually represented or stated in such maps, charts or plans, is itself a relevant fact.

(4) When the court or jury, as the case may be, has to form an opinion as to the existence of any fact of a public nature, any statement of it—

(*a*) made in a recital contained in any Act; or

(*b*) in the notification by or on behalf of the Government published in the *Gazette*; or

(*c*) in any printed paper purporting to be a Government *Gazette* or publication of similar effect,

is a relevant fact.

23 of 1968

(5) When a court or jury, as the case may be, has to form an opinion as to a law of any country, any statement of such law contained in a book purporting to be published under the authority of the Government of such country and to contain any such law and any report of any ruling of the courts of such country contained in a book purporting to be a report of such ruling are relevant.

Proof of facts by written statement
14 of 2010

175.—(1) In any criminal proceeding, a written statement by any person shall, if such of the conditions mentioned in subsection (2) as are applicable are satisfied, be admissible as evidence to the like extent as oral evidence to the like effect by that person.

(2) The said conditions are—

(*a*) the statement purports to be signed by the person who made it;

(*b*) the statement contains a declaration by that person to the effect that it is true to the best of his knowledge and belief and that he made the statement knowing that, if it were tendered in evidence, he would be liable to prosecution if he willfully stated in it anything which he knew to be false or did not believe to be true;

(*c*) before the hearing at which the statement is tendered in evidence, a copy of the statement is served, by or on behalf of the party proposing to tender it, on each of the other parties to the proceedings; and

(*d*) none of the other parties, within seven days from the service of the copy of the statement, serves a notice on the party so proposing objecting to the statement being tendered in evidence under this section:

Provided that the conditions mentioned in paragraphs (*c*) and (*d*) shall not apply if the parties agree before or during the hearing that the statement shall be so tendered.

(3) Notwithstanding that a written statement made by any person may be admissible as evidence by virtue of this section—

(*a*) the party by whom or on whose behalf a copy of the statement was served may call that person to give evidence; and

(*b*) the court may, of its own motion or on the application, made before or at the hearing, of any party to the proceedings require that person to attend before the court to give evidence.

(4) So much of any statement as is admitted in evidence by virtue of this section shall, unless the court otherwise directs, be read aloud at the hearing.

(5) A document required by this section to be served on any person may be served—

(*a*) by delivering it to him or to his legal practitioner;

(*b*) by addressing it to him and leaving it at his usual or last known place of abode or place of business or, in a case where he has given an address for service, at that address;

(*c*) by sending it in a prepaid registered letter or by the recorded delivery service addressed to him at his usual or last known place of abode or place of business, or, in a case where he has given an address for service, at that address; or

(*d*) in the case of a body corporate by serving it in one of the manners prescribed for the service of a summons upon such body corporate by section 91.

(6) Section 101 of the Penal Code (false statements by any person lawfully sworn as a witness or as an interpreter in any judicial proceedings) shall apply in relation to the making by any person of a written statement tendered in evidence by virtue of this section as it applies in relation to the making of an oral statement by a person lawfully sworn as a witness. Cap. 7:01

Confessions 23 of 1968

176.—(1) Evidence of a confession by the accused shall, if otherwise relevant and admissible, be admitted by the court notwithstanding any objection to such admission upon any one or more of the following grounds (however expressed) that such confession was not made by the accused or, if made by him, was not freely and voluntarily made and without his having been unduly influenced thereto.

(2) No confession made by any person shall be admissible as evidence against any other person except to such extent as that other person may adopt it as his own.

(3) Evidence of a confession admitted under subsection (1) may be taken into account by a court, or jury, as the case may be, if such court or jury is satisfied beyond reasonable doubt that the confession was made by the accused and that its contents are materially true. If it is not so satisfied, the court or the jury shall give no weight whatsoever to such evidence. It shall be the duty of the judge in summing up the case specifically to direct the jury as to the weight to be given to any such confession.

(4) Nothing in this section except subsection (2) shall apply to any confession made by an accused at his trial or in the course of any preliminary inquiry relating thereto.

Evidence of persons who are seriously ill

177.—(1) Notwithstanding the provisions of this Code, a magistrate shall take a statement on oath of a person who—

(*a*) is sufficiently proven "to be seriously" ill;

(*b*) is certified by a medical practitioner that he is unlikely to recover from such illness;

(*c*) is liable and willing to give material information in respect of an offence or an accused person; and

(*d*) it is impracticable to examine or take his deposition in accordance with this Code.

(2) The magistrate shall, on taking the statement under subsection (1)—

(*a*) give the reasons for taking such statement;

(*b*) record the names of witnesses, if any;

(*c*) indicate the date and place of taking such statements; and

(*d*) sign such statement.

(3) The statement taken under this section may be read in evidence for or against an accused upon proof of death or infirmity, as the case may be, of the person who made such statement:

Provided that—

(*a*) the statement may be read before the magistrate who took it;

(*b*) it is proved to the satisfaction of the court that reasonable notice of the intention to take the statement was given to the party against whom it is proposed to be read in evidence; and

(*c*) the party against whom the statement is proposed to be read in evidence had an opportunity, if he were to be present, himself or by his legal practitioner, to cross-examine the person who made such statement.

Relevancy of certain evidence for proving in subsequent proceeding the truth of facts stated therein
14 of 2010

178.—(1) Evidence given by a witness in criminal proceedings, or before any person authorized by law to take it, is relevant for the purpose of proving in a subsequent criminal proceeding or in a later stage of the same proceeding the truth of the facts which it states, when such evidence is the evidence of a witness conditionally bound over to attend under section 278, and his attendance has not been duly required, or when the witness is dead, or is absent from Malaŵi, or cannot be found, or is incapable of giving evidence, or is kept out of the way by the adverse party, or if his presence cannot be obtained without an amount of delay or expense which, in the circumstances of the case, the court considers unreasonable.

(2) Subsection (1) shall apply on condition that—

(*a*) the proceeding was between the same prosecutor and accused;

(*b*) the adverse party in the first proceeding had the right and opportunity to cross examine; and

(*c*) the question in issue were substantially the same in the first as in the second proceedings.

(3) For the avoidance of possible doubt, it is declared that a preliminary inquiry and any trial for any offence charged in any charge by the Director of Public Prosecutions on such inquiry are stages of the same criminal proceedings.

Admissibility of photographs, plans

179. A photograph or plan relating to any matter which is relevant to the issue in any proceedings shall be admissible in evidence at any stage of such proceedings if the evidence of any person who is a competent and compellable witness in such proceedings and upon whose indications or observations such photograph or plan was taken or prepared is given either before or after such photograph or plan is put in by the party tendering such evidence.

Admissibility of the reports of experts
5 of 1969
24 of 1972
20 of 1975
14 of 2010

180.—(1) Whenever any facts ascertained by any examination, including the examination of any person or body, or by any process requiring any skill in pathology, bacteriology, biology, chemistry, medicine, physics, botany, astronomy or geography or any body of knowledge or experience sufficiently organized or recognized as a reliable body of knowledge or experience and the opinions thereon of any person having that skill are or may become relevant to the issue in any criminal proceedings, a document purporting to be a report of such facts and opinions, by any person qualified to carry out such examination or process (in this section referred to as an "expert") who has carried out any such examination or process shall, subject to subsection (5), on its mere production by any party to those proceedings, be admissible in evidence therein to prove those facts and opinions if one of the conditions specified in subsection (3) is satisfied.

(2) The Minister of Health may by notice appoint any person for the time being holding the office of Chief Clinical Officer, Senior Clinical Officer or Clinical Officer to be a medical expert for the purposes of this section. A person so appointed shall be deemed qualified to carry out medical examinations and post-mortem examinations.

(3) The conditions referred to in subsection (1) are—

(*a*) that the other parties to the proceedings consent; or

(*b*) that the party proposing to tender the report has served on the other parties a copy of the report and, by endorsement on the report or otherwise, notice of his intention to tender it in evidence and none of the other parties has, within seven (7) days from such service, served on the party so proposing a notice objecting to the report being tendered in evidence under this section.

The provisions of section 175 (5) shall apply to service under this subsection.

(4) Notwithstanding that a report may be admissible as evidence under this section—

(*a*) the party by whom or on whose behalf a copy of the report was served may call the author thereof to give evidence;

(*b*) the court may, of its own motion or on the application, made before or at the hearing, of any party to the proceedings

(i) summon the expert, if in Malaŵi, to give oral evidence;

(ii) if the expert is not in Malaŵi, cause written interrogatories to be submitted to him for reply.

Any such interrogatories and any reply thereto purporting to be a reply from such expert shall, subject to all just exceptions, likewise be admissible in evidence.

(5) The admissibility of any report under subsection (1) shall not be affected by any neglect or failure of the expert concerned to appear in answer to any summons or to answer any interrogatories under subsection (4) if it is shown to the satisfaction of the court that he is dead, absent from Malaŵi, incapable of giving evidence, cannot be found, is being kept out of the way by the adverse party or his attendance cannot be obtained without any amount of delay or expense which, in the circumstances of the case, the court considers unreasonable, but save as aforesaid the court may refuse to admit in evidence the report of an expert who fails to attend court or reply to interrogatories after having been required to do so under subsection (4).

(6) Nothing in this section shall—

(*a*) affect the admissibility of evidence under the provisions of sections 173, 175, 177, 178 or sections 204 to 208 (inclusive);

(*b*) be deemed to affect any provision of this or any other written law under which any certificate or other document is made admissible in evidence and the provisions of this section shall be construed in addition to, and not in substitution of, any such provision.

How previous convictions may be proved

181.—(1) A previous conviction may be proved in any legal proceeding against any person by producing a record or extract of such conviction and by giving proof of the identity of the person against whom the conviction is sought to be proved with the person appearing in the record or extract of conviction to have been convicted.

(2) A record or extract of a conviction shall consist of a certificate in such form, if any, as may be prescribed containing the substance and effect only (omitting any formal part of the charge and conviction) and purporting to be signed, in the case of a conviction by the High Court, by the Registrar of the High Court or other officer having the custody of the records of the court and, in the case of any other conviction, by the clerk or other officer having custody of the records of the court by which such conviction was made.

(3) A record or extract of any conviction made in pursuance of this section shall be admissible in evidence without proof of the signature or official character of the person appearing to have signed the same.

(4) The mode of proving a previous conviction authorized by this section shall be in addition to and not in exclusion of any other authorized mode of proving such a conviction.

(5) A conviction made before the day upon which this section came into operation may be proved in the same manner as if it had taken place after such day.

Judicial notice
23 of 1968
14 of 2010

182.—(1) No fact of which the court or the jury, as the case may be, will take judicial notice need be proved.

(2) A court or a jury, as the case may be, shall take judicial notice of the following facts—

(*a*) all Acts enacted by the Parliament of Malaŵi and all subsidiary legislation made under those Acts;

(*b*) all Acts of Parliament of the United Kingdom, Orders in Council, laws, statutory instruments or subsidiary legislation now or heretofore in force in Malaŵi;

(*c*) the course of proceedings of Parliament, and of local government authorities established under Chapter XIV of the Constitution and of other authorities in Malaŵi established under law for the purpose of making laws including subsidiary legislation;

(*d*) the accession to office, name, titles, functions and signature of the President;

(*e*) the accession to office, names, titles, functions and signature of the persons filling for the time being any public

office in any part of Malaŵi if the fact of their appointment to such office is notified in the *Gazette*;

(*f*) the seals of all the courts of Malaŵi duly established and all seals which any person is authorized to use by any Act or other written law;

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(*g*) public holidays declared under the Public Holidays Act;

(*h*) the territories of the commonwealth;

(*i*) the existence, title and national flag of every state or sovereign recognized by the Government;

(*j*) the divisions of time and the geographical divisions of the world;

(*k*) the commencement, continuance and termination of between the State of Malaŵi and any other state or body of persons;

(*l*) the names of the members and officers of the court and of their deputies and subordinate officers and assistants, and also of all officers acting in execution of its process and of all legal practitioners and other persons authorized by law to appeal or act before it; and

(*m*) the rule of the road on land or water.

(3) In all cases as are mentioned in subsection (2) and also on matters of public history, literature, science or art, the court or jury, as the case may be, may resort for its aid to appropriate books or documents of reference.

(4) If the court or jury, as the case may be, is called upon by any person to take judicial notice of any fact, it may refuse to do so unless and until such person produces any such book or document as it may consider necessary to enable it to do so.

Proof by formal admission 14 of 2010

183.—(1) Subject to this section, any fact of which oral evidence may be given in any criminal proceedings may be admitted for the purpose of those proceedings by or on behalf of the prosecution or the accused, and the admission of any such fact under this section shall be conclusive evidence in those proceedings of the fact admitted.

(2) An admission under this section—

(*a*) may be made before or at the proceedings;

(*b*) if made otherwise than in court, shall be in writing;

(*c*) if made in writing by an individual, shall purport to be signed by the person making it and, if so made by a body corporate, shall purport to be signed by a director or manager, or the secretary or clerk, or some other similar officer of the body corporate;

(*d*) if made on behalf of a defendant who is an individual, shall be made by his legal practitioner;

(*e*) if made before the trial by a defendant who is an individual, must be approved by his legal practitioner either at the time it was made or subsequently.

(3) An admission under this section for the purpose of proceedings relating to any matter shall be treated as admission for the purpose of any subsequent criminal proceedings relating to that matter (including any appeal, review or retrial).

(4) An admission under this section may with the leave of the court be withdrawn in the proceedings for the purpose of which it is made or any subsequent criminal proceedings relating to the same matter.

(5) In this section "director", in relation to any statutory body within the meaning ascribed to that term by section 2 of the Statutory Bodies (Control of Contracts) Act, being a body corporate whose affairs are managed by its members, means a member of that body corporate. Cap. 18:07

Hearsay evidence not admissible, etc. 14 of 2010

184.—(1) Oral evidence must, in all cases whatever, be direct, that is to say—

(*a*) if it refers to a fact which could be seen, it must be the evidence of a witness who says he saw it;

(*b*) if it refers to a fact which could be heard, it must be the evidence of a witness who says he heard it;

(*c*) if it refers to a fact which could be perceived by any other sense, or in any other manner, it must be the evidence of a witness who says he perceived it by that sense or in that manner; and

(*d*) if it refers to an opinion or to the grounds on which that opinion is held, it must be the evidence of the person who holds that opinion on those grounds.

(2) For purposes of subsection (1)—

(*a*) the opinions of experts expressed in any treatise commonly offered for sale, and grounds upon which such opinions are held, may be proved by the production of such treatises, if the author is dead or cannot be found or has become incapable of giving evidence, or cannot be called as a witness without an amount of delay or expense which the court regards as unreasonable; and

(*b*) if oral evidence refers to the existence or condition of any material thing other than a document, the court may, if it thinks fit, require the production of such material thing for inspection.

Previous judgments relevant to bar a second trial

185. The existence of any judgment, order or decree which by law prevents any court from holding a trial is a relevant fact when the question is whether such court ought to hold such trial.

Relevancy of certain judgments conferring legal character, etc.

186.—(1) A final judgment, order or decree of a competent court or in the exercise of probate, matrimonial, admiralty or insolvency jurisdiction which confers upon or takes away from any person any legal character, or which declares any person to be entitled to any such character, or to be entitled to any specific thing, not as against any specified person but absolutely, is relevant when the existence of any such legal character, or the title of any such person to any such thing, is relevant.

(2) Any judgment, order or decree as is mentioned in subsection (1) is conclusive proof—

(*a*) that any legal character which it confers accrued at the time when such judgment, order or decree came into operation;

(*b*) that any legal character to which it declares any such person to be entitled, accrued to that person at the time when such judgment, order or decree declares it to have accrued to that person;

(*c*) that any legal character which it takes away from any such person ceased at the time from which such judgment, order or decree declares that it ceased or should cease; and

(*d*) that anything to which it declares any person to be so entitled was the property of that person at the time from which such judgment, order or decree declares it had been or should be his property.

(3) Judgments, orders or decrees, other than those mentioned in subsection (1) are relevant if they relate to matters of a public nature relevant to the inquiry; but except as provided in any other written law such judgments, orders or decrees are not conclusive proof of that which they state.

(4) Judgments, orders or decrees, other than those mentioned in section 185 and subsections (1) and (2) of this section are irrelevant unless the existence of such judgment, order or decree is a fact in issue, or is relevant under some other provision of this Code.

(5) Any party to a proceeding may show that any judgment, order or decree which is relevant under section 185, or under this section, and which has not been proved by the adverse party, was delivered by a court not competent to deliver it or was obtained by fraud or collusion.

Burden of proof
23 of 1968

187.—(1) The burden of proving any particular fact lies on the person who wishes the court or jury, as the case may be, to believe

in its existence, unless it is provided by any written law that the proof of such fact shall lie on any particular person:

Provided that subject to any express provision to the contrary in any written law the burden of proving that a person who is accused of an offence is guilty of that offence lies upon the prosecution.

(2) The burden of proving any fact necessary to be proved in order to enable any person to give evidence of another fact is on the person who wishes to give such evidence.

Burden of proving that case of accused comes within exceptions and facts especially within his knowledge 23 of 1968 14 of 2010

188.—(1) Where a person is accused of an offence, the burden of proving the existence of circumstances bringing the case within any exception or exemption from, or qualification to, the operation of the law creating the offence with which he is charged and the burden of proving any fact especially within the knowledge of such person is upon him; but so however that—

(*a*) such burden shall be deemed to be discharged if the court or jury, as the case may be, is satisfied by evidence given by the prosecution, whether in cross-examination or otherwise, that such circumstances or facts exist; and

(*b*) the accused shall be entitled to be acquitted of the offence with which he is charged if the court is satisfied that the evidence given by either the prosecution or the defence creates a reasonable doubt as to the guilt of the accused in respect of that offence.

(2) Nothing in this section shall—

(*a*) prejudice or diminish in any respect the obligation to establish by evidence according to law any acts, omissions or intentions which are legally necessary to constitute the offence with which the accused is charged; or

(*b*) impose on the prosecution the burden of proving that the circumstances or facts described in subsection (1) do not exist; or

(*c*) affect the burden placed upon an accused to prove a defence of intoxication or insanity.

Burden of proving death, partnership, etc.

189.—(1) When the question is whether a man is alive or dead and it is shown that he was alive within thirty years, the burden of proving that he is dead is on the person who affirms it.

(2) When the question is whether a man is alive or dead, and it is proved that he has not been heard of for seven years by those who would naturally have heard of him if he had been alive, the burden of proving that he is alive is shifted to the person who affirms it.

(3) When the question is whether persons are partners, landlord and agent, and it has been shown that they have been acting as such, the burden of proving that they do not stand or have ceased to stand to each other in those relationships respectively is on the person who affirms it.

(4) When the question is whether any person is the owner of anything of which he is shown to be in possession, the burden of proving that he is not the owner is on the person who affirms that he is not the owner.

(5) Where there is a question as to the good faith of a transaction between parties, one of whom stands to the other in a position of active confidence, the burden of proving the good faith of the transaction is on the party who is in a position of active confidence.

Opinions of experts
2 of 1968
20 of 1975
14 of 2010

190.—(1) When the court or the jury, as the case may be, has to form an opinion upon a point of foreign law, or of science or art, or as to the identity of handwriting or fingerprints, the opinions upon that point of persons specially skilled in such foreign law, science, art or anybody of knowledge or experience sufficiently organized or recognized as a reliable body of knowledge or experience or in questions as to identity of handwriting or fingerprints are relevant facts. Such persons are called experts.

(2) Facts, not otherwise relevant, are relevant if they support or are inconsistent with the opinions of experts when such opinions are relevant.

(3) The Minister of Health, in his discretion, may by notice published in the *Gazette* appoint any person for the time being holding the office of Chief Clinical Officer, Senior Clinical Officer or Clinical Officer to be a medical officer for the purposes of this subsection and any such officer shall conduct such post-mortem examinations as the Minister may direct and any opinion stated by such officer touching upon any such examination or matters arising therefrom, shall be receivable in evidence as the opinion of an expert.

Opinions as to handwriting, customs, tenets, etc.
23 of 1968

191.—(1) When the court or the jury, as the case may be, has to form an opinion as to the person by whom any document was written or signed, the opinion of any person acquainted with the handwriting of the person by whom it is supposed to be written or signed that it was or was not written or signed by that person is a relevant fact. A person shall be held to be acquainted with the handwriting of another person when he has seen that person write, or when he has received documents purporting to be written by that person or under his authority and addressed to that person, or when, in the ordinary course of business, documents purporting to be written by that person have been habitually submitted to him.

(2) When the court or the jury, as the case may be, has to form an opinion as to the existence of any general custom or right, including customs or rights common to any considerable class of persons, the opinions as to the existence of such custom or right, of persons who would be likely to know of its existence, if it existed, are relevant.

(3) When the court or the jury, as the case may be, has to form an opinion as to—

(*a*) the usages and tenets of any body of men or family;

(*b*) the constitution and government of any religious or charitable foundation; or

(*c*) the meaning of words or terms used in particular areas or by particular classes of people,

the opinions of persons having special means of knowledge thereon are relevant facts.

(4) When the court or the jury, as the case may be, has to form an opinion as to the relationship of one person to another, the opinion, expressed by conduct, as to the existence of such relationship, of any person who, as a member of the family or otherwise, has special means of knowledge on the subject is a relevant fact:

Provided that such an opinion shall not be sufficient to prove a marriage in prosecutions under section 162 of the Penal Code. 30 of 1969 Cap. 7:01

(5) Whenever the opinion of any living person is relevant, the grounds on which such opinion is based are also relevant.

Character of the accused 14 of 2010

192.—(1) In criminal proceedings, the fact that the accused is of good character is relevant.

(2) Subject to section 193, in criminal proceedings the fact that the accused has a bad character is irrelevant, unless evidence has been given that he has a good character, in which case it becomes relevant.

(3) Notwithstanding subsection (2), a conviction for any offence becomes relevant after conviction in the case under trial, for the purpose of affecting the sentence to be imposed by the court.

(4) Subsections (1), (2) and (3) do not apply to cases in which the bad character of any person is a fact in issue.

(5) A previous conviction is relevant as evidence of bad character.

(6) Except as expressly provided in this Code, evidence of character may be given only of general reputation and general disposition and not of particular acts by which reputation or disposition were shown.

Evidence by accused for the defence
23 of 1968
14 of 2010

193.—(1) Every accused shall be a competent witness for the defence at every stage of the proceedings, whether charged solely or jointly with any other person; but an accused shall not be called in pursuance of this section except on his own application or by a court under section 256 or 314.

(2) An accused called as a witness in pursuance of this section, or in pursuance of section 255 (1) or 314—

(*a*) may be asked any question in cross-examination notwithstanding that it would tend to criminate him as to the offence charged;

(*b*) shall not be asked, and if asked shall not be required to answer, any question tending to show that he has committed or been convicted of or been charged with any offence other than that he is then charged, or is of bad character, unless—

(i) the proof that he has committed or been convicted of such other offence is admissible evidence to show that he is guilty of the offence with which he is then charged; or

(ii) he has personally or by his legal practitioner asked questions of the witness for the prosecution with a view to establishing his own good character, or has given evidence of his own good character, or the nature or conduct of the defence is such as to involve imputations on the character of the complainant or the witnesses for the prosecution; or

(iii) he has given evidence against any other person charged with the same offence.

(3) Every accused called as witness in pursuance of this section, or pursuance of section 255 (1) or 314, shall unless otherwise ordered by the court, give his evidence from the witness box or other place from which the other witnesses give their evidence.

Evidence of *alibi*
14 of 2010

193A.—(1) As early as is reasonably practicable and in any event prior to the commencement of the trial, the defence shall notify the prosecution of its intent to enter the defence of *alibi*.

(2) The notification under subsection (1) shall specify the place or accused claims to have been present at the time of the alleged crime and the names and addresses of witnesses and any other evidence upon which the accused intends to rely to establish the *alibi*.

(3) Failure by the defence to provide notification of the defence of *alibi* as required by this section shall not limit the right of the accused at any time during trial to rely on such defence.

Evidence by husband and wife of an accused

194. A husband or wife of an accused shall be a competent and compellable witness for the prosecution or for the defence at every stage of any proceedings:

Provided that such husband or wife shall not be called as a witness for the defence except upon the application of the accused.

Summons for witness
5 of 1969

195. If it is made to appear that evidence material to any criminal cause or matter before, or pending before, any court can be given by, or is in the possession of, any person, it shall be lawful for a police officer of the rank of Assistant Superintendent or above, or the Registrar of the High Court, or the magistrate having cognizance of such cause or matter, to issue a summons to such person requiring his attendance before such court or requiring him to bring and produce to such court for the purpose of evidence all documents and writings in his possession or power which may be specified or otherwise sufficiently described in the summons.

Warrant for witness who disobeys summons
14 of 2010

196. If, without sufficient excuse, a witness does not appear in obedience to the summons, the court, on proof of the proper service of the summons a reasonable time before, may issue a warrant to bring him before the court at such time and place as shall be specified in the warrant.

Warrant for witness in first instance
14 of 2010

197. If the court is satisfied by evidence on oath that a person summoned as a witness under section 195 will not attend unless compelled to do so, it may at once issue a warrant for the arrest and production of the witness before the court at a time and place to be specified in the warrant.

Mode of dealing with witness arrested under warrant

198. When any witness is arrested under a warrant the court may, on his furnishing security by recognizance to the satisfaction of the court or of a police officer of the rank of Assistant Superintendent or above for his appearance at the hearing of the case, order him to be released from custody, or shall, on his failing to furnish such security, order him to be detained for production at such hearing.

Power of court to order prisoner to be brought up for examination

199.—(1) Any court desirous of examining as a witness, in any case pending before it, any person confined in any prison may issue an order to the officer in charge of such prison requiring him to bring such prisoner in proper custody, at a time to be named in the order, before the court for examination.

(2) The officer so in charge, on receipt of such order, shall act in accordance therewith and shall provide for the safe custody of the prisoner during his absence from the prison for the purpose aforesaid.

Penalty for non-attendance of witness 14 of 2010

200.—(1) Any person summoned to attend as a witness who, without lawful excuse, fails to attend as required by the summons, or who, having attended, departs without having obtained the permission of the court, or fails to attend after adjournment of the court after being ordered to attend, shall be liable by order of the court to a fine of K10,000.

(2) Such fine shall be levied by attachment and sale of any movable property belonging to such witness.

(3) In default of recovery of the fine by attachment and sale the witness may, by order of the court, be imprisoned as a civil prisoner for a term of fifteen (15) days unless such fine is paid before the end of the said term.

(4) For good cause shown, the High Court may remit or reduce any fine imposed under this section by a subordinate court.

Power to summon material witness present 14 of 2010

201.—(1) Subject to subsection (2), any court may, of its own motion at any stage of any inquiry, trial or other proceeding under this Code, summon or call any person as a witness, or examine any person in attendance though not summoned as a witness, or recall and re-examine any person already examined or recall and re-examine any such person if his evidence appears to it essential to the just decision of the case.

(2) The prosecution or the accused or his legal practitioner shall have the right to cross-examine such person, and the court shall adjourn the case for such time, as it thinks necessary to enable such cross-examination to be adequately prepared if, in its opinion, either party may be prejudiced by the calling of such person as witness.

(3) In exercising the powers conferred on it under subsection (1), the court shall be governed by the interests of justice and, in particular shall avoid taking over the prosecution of the case.

Refractory witnesses 14 of 2010

202.—(1) Whenever a person, appearing either in obedience to a summons or by virtue of a warrant or being present in court and being verbally required by the court to give evidence—

(*a*) refuses to be sworn; or

(*b*) having been sworn, refuses to answer any question put to him; or

(*c*) refuses or neglects to produce any document or thing which he is required to produce; or

(*d*) refuses to sign his deposition, without in any such case offering any sufficient excuse for such refusal or neglect,

the court may adjourn the case for a period not exceeding eight days, and may in the meantime commit such person to prison, unless he sooner consents to do what is required of him.

(2) If such person, upon being brought before the court at or before such adjourned hearing, again refuses to do what is required of him, the court may, if it sees fit, again adjourn the case and commit him for the like period, and so again from time to time until such person consents to do what is so required of him.

(3) Nothing in this section shall affect the liability of such person to any other punishment or proceeding for refusing or neglecting to do what is so required of him, or shall prevent the court from disposing of the case in the meantime according to any other sufficient evidence taken before it.

(4) Nothing in this section shall apply to the accused, if having elected to give evidence, he refuses or neglects to be sworn or to answer any question or to do any other thing required of him in pursuance of section 255, 256, or 314.

Power to take evidence in absence of accused
14 of 2010

203.—(1) If it is proved that an accused has absconded, and that there is no immediate prospect of arresting him, the court competent to try him or commit him for trial for the offence complained of may, in his absence, examine the witnesses produced on behalf of the prosecution, and record their depositions.

(2) Depositions taken under subsection (1) may, on the arrest of the accused be given in evidence against him on the inquiry into or trial for the offence with which he is charged if the deponent is dead or incapable of giving evidence, or his attendance cannot be procured without an amount of delay, expense or inconvenience which under the circumstances of the case, would be unreasonable.

(3) If it appears that an offence punishable with death or imprisonment for a term of not less than seven years has been committed by some person or persons unknown, the High Court may direct that any magistrate shall hold an inquiry and examine any witnesses who can give evidence concerning the offence and any depositions so taken may be given in evidence against any person who is subsequently accused of the offence if the deponent is dead or incapable of giving evidence or beyond the limits of Malaŵi.

Issue of commission for examination of witness within Malaŵi
14 of 2010

204.—Whenever in the course of any proceeding under this Code the High Court or a subordinate court is satisfied that the examination of a witness is necessary in the interests of justice, and that the attendance of such witness cannot be procured without an amount of delay, expense or inconvenience which, under the circumstances of the case, would be unreasonable, the High Court or subordinate court may issue a commission to any magistrate to take the evidence of such witness.

Duties of magistrate to whom commission issued

205. The magistrate to whom the commission is issued shall proceed to the place where the witness is or shall summon the witness before him and shall take down his evidence in the same manner, and may for this purpose exercise the same powers, as in the case of a trial.

Parties may examine witness
14 of 2010

206.—(1) The parties to any proceeding under this Code in which a commission under section 204 is issued may respectively forward any interrogatories in writing which the court directing the commission may think relevant to the issue, and the magistrate to whom the commission is directed shall examine the witness upon such interrogatories.

(2) Any party mentioned in subsection (1) may appear before the magistrate by his legal practitioner, or if not in custody, in person, and may examine, cross-examine and re-examine, as the case may be, the said witness.

Return of commission

207. After any commission issued under section 204 has been duly executed, it shall be returned, together with the deposition of the witness examined thereunder, to the court by which it was issued and the commission, the return thereto, and the deposition shall be open at all reasonable times to inspection of the parties, and may, subject to all just exceptions, be read in evidence in the case by either party, and shall form part of the record.

Examination of witnesses outside Malaŵi
14 of 2010

208.—(1) Whenever in the course of any proceedings under this Code the High Court is satisfied that the examination of a witness outside Malaŵi is necessary in the interests of justice, the High Court may issue an order for the examination of such witness to a court of competent jurisdiction outside Malaŵi under, and in accordance with, the Evidence by Commissions Act, or any other time being in force relating to the taking of evidence in criminal proceedings outside Malaŵi.

Cap. 4:03

(2) Whenever in the course of any proceedings under this Code before a magistrate it appears that the examination of a witness outside Malaŵi is necessary in the interests of justice, such magistrate shall apply to the High Court, stating the reasons for the application, and the High Court may issue an order under subsection (1) for the examination of such witness.

Adjournment of proceedings

209. Where a commission is issued under section 204 or an order is made under section 208, the proceedings may be adjourned for a specified time reasonably sufficient for the execution and return of the commission or of compliance with the order.

Who may testify

210. All persons shall be competent to testify unless the court considers that they are prevented from understanding the

questions put to them, or from giving rational answers to those questions, by immature or extreme old age, disease, whether of mind or body, or any cause of the same kind, subject however in the case of persons of immature age to section 6 of the Oaths, Affirmations and Declarations Act, relating to the reception of their unsworn evidence. Cap. 4:07

211. A witness who is unable to speak may give his evidence in any manner in which he can make it intelligible, as by writing or by signs; but such writing must be written, and the signs made, in open court. Evidence so given shall be deemed to be oral evidence. Dumb witnesses 14 of 2010

212. Subject to this Code and any other law for the time being in force, no particular number of witnesses shall in any case be required for the proof of any fact. Number of witnesses

213. The order in which witnesses are produced and examined shall be regulated by Parts VII to X inclusive and, subject thereto, by the discretion of the court. Order of examination of witnesses

214.—(1) The examination of a witness by the party who calls him shall be called his examination-in-chief. Examination, cross-examination and re-examination 14 of 2010

(2) The examination of a witness by the adverse party shall be called cross-examination.

(3) The examination of a witness subsequent to the cross-examination, by the party who called him, shall be called his re-examination.

(4) Subject to this Code, a witness shall be first examined-in-chief, then (if the adverse party so desires) cross-examined, then (if the party calling him so desires) re-examined.

(5) The examination and cross-examination must relate to relevant facts, but the cross-examination need not be confined to the facts to which the witness testified on his examination-in-chief.

(6) The re-examination shall be directed to the explanation of matters referred to in cross-examination; and if new matter is, by permission of the court, introduced in re-examination, the adverse party may further cross-examine upon that matter.

(7) When a witness is cross-examined, he may in addition to the questions elsewhere in this Part referred to, be asked any questions which tend—

(*a*) to test his veracity;

(*b*) to discover who he is and what is his position in life;

(*c*) to shake his credit, by injuring his character, although the answer to such questions might tend directly or indirectly to incriminate him or might expose or tend directly or indirectly to

expose him to a penalty or forfeiture. When any such question relates to a matter relevant to the proceeding, section 228 shall apply thereto.

Court to decide when questions shall be asked and when witness compelled to answer
23 of 1968
14 of 2010

215.—(1) If any question asked under section 214 (7) relates to a matter not relevant to the proceeding, except in so far as it affects the credit of the witness by injuring his character, the court shall decide whether or not the witness shall be compelled to answer it, and may, if it thinks fit, warn the witness that he is not obliged to answer it. In exercising its discretion, the court shall have regard to the following considerations—

(*a*) such questions are proper if they are of such a nature that the truth of the imputation conveyed by them would seriously affect the opinion of the court or jury, as the case may be, as to the credibility of the witness on the matter to which he testifies;

(*b*) such questions are improper if the imputation which they convey relates to matters so remote in time, or of such a character, that the truth of the imputation would not affect, or would affect in a slight degree, the opinion of the court or jury, as the case may be, as to the credibility of the witness on the matter to which he testifies;

(*c*) such questions are improper if there is a great disproportion between the importance of the imputation made against the witness's character and the importance of his evidence;

(*d*) the court or jury, as the case may be, may, if it sees fit, draw from the witness's refusal to answer, the inference that the answer if given would be unfavourable.

(2) No such question as is referred to in subsection (1) may properly be asked unless the person asking it has reasonable grounds for thinking that the imputation which it conveys is well founded.

(3) The court may forbid any question or inquiries which it regards as indecent or scandalous, although such questions or inquiries may have some bearing on the questions before the court, unless they relate to facts in issue, or to matters necessary to be known in order to determine whether or not the facts in issue existed.

(4) The court shall forbid any question which appears to it to be intended to insult or annoy, or which, though proper in itself, appears to the court needlessly offensive in form.

Cross-examination of persons summoned to produce a document

216. A person summoned to produce a document does not become a witness by the mere fact that he produces it, and cannot be cross-examined unless and until he is called as a witness.

Leading questions

217.—Any person suggesting the answer which the person putting it wishes or expects to receive is called a leading question.

When leading questions may be asked

218.—(1) In any trial before the High Court leading questions must not, if objected to by the adverse party, be asked in examination-in-chief or in re-examination, except with the permission of the Court.

(2) In any trial before a subordinate court leading questions must not, if objected to by the adverse party, be asked in examination-in-chief or in re-examination.

(3) The High Court or a subordinate court shall permit leading question as to matters which are introductory or undisputed, or which have, in its opinion, already been sufficiently proved.

(4) Leading questions may be asked in cross-examination without permission of the court in trials before the High Court and subordinate courts.

Evidence as to matters in writing and cross-examination as to previous writings
14 of 2010

219.—(1) Any witness may be asked, whilst under examination, whether any contract, grant or other disposition of property, as to which he is giving evidence, was not contained in a document, and if he says that it was, or if he is about to make any statement as to document which, in the opinion of the court, ought to be produced, the adverse party may object to such evidence being given until such document is produced, or until facts that have been proved which entitle the party who called the witness to give secondary evidence of it; but a witness may give oral evidence of statements made by other persons about the contents of documents if such statements are themselves relevant facts.

(2) A witness may be cross-examined as to previous statements made by him in writing or reduced into writing, and relevant to matters in question, without such writing being shown to him, or being proved; but if it is intended to contradict him by the writing, his attention must, before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him.

Communication during marriage

220. A husband shall not be compelled to disclose any communication made to him by his wife during their marriage and a wife shall not be compelled to disclose any communication made to her by her husband during their marriage.

221.–222. [*Repealed by* 14 *of* 2010].

Judges, magistrates, police and revenue officers

223.—(1) No judge or magistrate shall, except upon the special order of some court to which he is subordinate, be compelled to answer any questions as to his own conduct in court as such judge or magistrate, or as to anything which came to his knowledge in court as such judge or magistrate; but he may be examined as to other matters which occurred in his presence while he was so acting.

(2) No magistrate or police officer shall be compelled to disclose the source or origin from which he received any information as to the commission of any offence, and no revenue officer shall be compelled to disclose the source or origin from which he received any information as to the commission of any offence against the public revenues.

Professional communications 14 of 2010

224.—(1) No legal practitioner shall at any time be permitted, unless with his client's consent, to disclose any communication made to him in the course and for the purpose of his employment as such legal practitioner by or on behalf of his client, or to state the contents or condition of any document with which he has become acquainted in the course and for the purpose of such employment.

(2) Nothing in this section shall protect from disclosure—

(*a*) any such communication in furtherance of any illegal purpose; and

(*b*) any fact observed by a legal practitioner in the course of his employment as such, showing that any crime or fraud had been committed since the commencement of his employment.

(3) It is immaterial whether the attention of such legal practitioner was or was not directed to such fact by or on behalf of his client and the obligation referred to in this section continues after the employment has ceased.

(4) This section applies to interpreters and to the clerks and servants of a legal practitioner.

Privilege not waived by volunteering evidence 14 of 2010

225. If a party to any proceedings give evidence he shall not be deemed to have consented thereby to such disclosure as is mentioned in section 224 and if any such party calls as a witness any such legal practitioner as is mentioned in section 224, he shall be deemed to have consented to such disclosure only if he questions such legal practitioner on matters which, but for such question, he would not be at liberty to disclose.

Confidential communications with legal practitioner 23 of 1968 14 of 2010

226. No person shall be compelled to disclose to the court or to the jury any confidential communication, which has taken place between him and any legal practitioner advising or representing him unless he has offered himself as a witness or its giving evidence upon being required to do so under section 256 (1) or section 314

in which case he may be compelled to disclose any such communication as may appear to the court necessary to be known in order to explain any evidence which he has given and no other.

Production of documents another person having possession would refuse
14 of 2010

227. No person shall be compelled to produce documents in his possession which any other person would be entitled to refuse to produce if they were in his possession, unless such last-mentioned person consents to their production.

Witness not excused from answering question on ground that answer will incriminate
14 of 2010

228. A witness shall not be excused from answering any question as to any matter relevant to the matter in issue upon the ground that the answer to such question will incriminate, or may tend directly or indirectly to incriminate, such witness, or that it will expose such witness to a penalty or forfeiture of any kind, or that it may establish or tend to establish that he owed a debt or is otherwise subject to a civil suit:

Provided that no such answer which a witness shall be compelled to give may subject him to any arrest or prosecution or be proved against him in any subsequent criminal proceeding, except a prosecution for giving false evidence by such answer.

Exclusion of evidence to contradict answers to questions testing veracity

229. When a witness has been asked and has answered a question which is relevant to the inquiry only in so far as it tends to shake his credit by injuring his character, no evidence shall be given to contradict his answer; but, if he answers falsely, he may afterwards be charged with giving false evidence:

Provided that—

(*a*) if a witness is asked whether he has been previously convicted of any crime, and denies it, evidence may be given of his previous conviction;

(*b*) if a witness is asked a question tending to impeach his impartiality and answers it by denying the facts suggested, he may be contradicted.

Question by party to his own witness if hostile
14 of 2010

230. The court may, in its discretion, permit the person who calls a witness to put any question to him which might be put in cross-examination by the adverse party.

Impeaching credit of witness
14 of 2010

231.—(1) The credit of a witness may be impeached in the following ways by the adverse party, or with the consent of the court, by the party who calls him—

(*a*) by the evidence of persons who testify that they, from their knowledge of the witness, believe him to be unworthy of credit;

(*b*) by proof that the witness has been bribed, or has accepted the offer of a bribe, or has received any other corrupt inducement to give his evidence;

(*c*) by proof of former statements inconsistent with any part of his evidence which is liable to be contradicted.

(2) A witness declaring another witness to be unworthy of credit may not, upon his examination-in-chief, give reasons for his belief, but he may be asked his reasons in cross-examination, and the answers which he gives cannot be contradicted, though, if they are false, he may afterwards be charged with giving false evidence.

Evidence tending to corroborate evidence of relevant fact admissible

232.—(1) When a witness whom it is intended to corroborate gives evidence of any relevant fact, he may be questioned as to any other circumstances which he observed at or near to the time or place at which such relevant fact occurred, if the court is of opinion that such circumstances, if proved, would corroborate the testimony of the witness as to the relevant fact which he testifies.

(2) Evidence of a statement made at the time when, or shortly before, or shortly after an offence is alleged to have been committed and directly relating to a fact relevant in the case is admissible if it was made by a person who is a witness and if such statement is used for showing its consistency with his evidence.

Former statements of witness may be proved to show consistency of later testimony as to same fact

233. In order to show the consistency of the testimony of a witness, any former statement made by such witness relating to the same fact, at or about the time when the fact took place, or before any authority legally competent to investigate the fact, may be proved.

What matters may be proved in connexion with proved statement relevant under section 173 or 178

234. Whenever any statement, relevant under section 173 or 178 is proved, all matters may be proved either in order to contradict or to collaborate it, or in order to impeach or confirm the credit of the person by whom it was made, which might have been if that person had been called as a witness and had denied upon cross- examination the truth of the matter suggested.

Refreshing memory
14 of 2010

235.—(1) A witness may, with the permission of the court, refresh his memory by referring to any writing made by himself at the time of the transaction concerning which he is questioned, or as soon afterwards that the court considers it likely that the transaction was at that time fresh in his memory.

(2) The witness may also refer to any such writing made by any other person, and read by the witness within the time aforesaid, if when he read it he knew it to be correct.

(3) Whenever a witness may refresh his memory by reference to any document, he may, with the permission of the court, refer to a

copy of such document if the court is satisfied that there is sufficient reason for non-production of the original.

(4) An expert may refresh his memory by reference to professional treatises.

(5) A witness may also testify to facts mentioned in any such documents as are mentioned in this section although he has no specific recollection of the facts themselves, if he is sure that the facts were correctly recorded in the documents.

(6) Subject to the provisions of this Code or any other written law to the contrary, any writing referred to under this section must be produced and shown to the adverse party if he requires it; such party may, if he pleases, cross-examine the witness thereupon.

Giving as evidence document called for and produced on notice

236. When a party calls for a document which he has given the other party notice to produce, and such document is produced and inspected by the party calling for its production, he is bound to give it as evidence if the party producing is requires him to do so.

Using as evidence document production of which was refused on notice

237. When a party has refused to produce a document which he has had notice to produce, he cannot afterwards use the document as evidence without the consent of the other party or the order of the court.

Court's power to put questions or order production 14 of 2010

238.—(1) The judge or magistrate may, in order to discover or obtain proof of relevant facts—

(*a*) ask any question it pleases, in any form, at any time, of any witness, or of the parties about any fact relevant or irrelevant;

(*b*) order production of any document or thing,

and neither party shall be entitled to make any objection to any such question or order, nor, without the leave of the court, to cross-examine any witness upon any answer given in reply to any such question.

(2) Notwithstanding subsection (1)—

(*a*) any judgment entered under this section must be based upon facts declared by this Code to be relevant, and duly proved;

(*b*) this section shall not authorize any judge or magistrate to—

(i) compel any witness to answer any question or to produce any document which such witness would be entitled to refuse to answer or to produce under section 193 (2) or under sections 219 to 227, inclusive, if the question were asked or the documents were called for by the adverse party;

(ii) ask any question which it would be improper for any person to ask under section 229;

(iii) dispense with primary evidence of any document, except in the cases hereinbefore excepted.

239. [*Repealed by* 23 *of* 1968].

No new trial for improper admission or rejection of evidence

240. The improper admission or rejection of evidence shall not be ground of itself for a new trial, or reversal of any decision in any case, if it shall appear to the court before such objection is raised that, independently of the evidence objected to and admitted, there evidence to justify the decision or that, if the rejected evidence had been received, it ought not to have varied the decision.

Production of document

241.—(1) A witness summoned to produce a document shall, if it is in his possession or power, bring it to court, notwithstanding any objection which there may be to its production or to its admissibility and the validity of any such objection shall be decided by the court.

(2) The court, if it sees fit, may inspect the document or take other evidence to enable it to determine its admissibility.

(3) If, for the purpose of subsection (2), it is necessary to cause any document to be translated, the court may, if it thinks fit, direct the translator to keep the content secret, unless the document is to be given in evidence; and if he disobeys such directions, he shall be held to be in contempt of court.

Accomplice 14 of 2010

242. An accomplice shall be a competent witness against an accused person; and a conviction shall not be set aside merely because it proceeds upon the uncorroborated testimony of an accomplice:

Provided that the court shall take recognizance of the fact that it is unsafe to convict an accused on the uncorroborated evidence of an accomplice, and shall weigh the evidence, and if it comes to the conclusion that the evidence of the accomplice, although uncorroborated, is true, it may be used as a basis of a conviction.

What evidence is to be given when a statement forms part of a conversation, document, etc.

243. When any statement of which evidence is given forms part of a longer statement or of a conversation or of an isolated document, or is contained in a document which forms part of a book or of a connected series of letters or papers, evidence shall be given of so much and no more of the statement, conversation, book or series of letters or papers as the court considers necessary in that particular case to the full understanding of the nature and effect of the statement and the circumstances in which it was made.

Corroboration in cases of sedition, perjury, etc. Cap. 7:01

244.—(1) No person shall be convicted of an offence under section 51 of the Penal Code (which relates to seditious offences) on the uncorroborated testimony of one witness.

(2) No person shall be convicted of committing perjury or subornation of perjury solely upon the evidence of one witness as to the falsity of any statement alleged to be false.

Rules relating to documentary evidence 14 of 2010

245.—(1) The Chief Justice may make rules relating to documentary evidence in criminal proceedings under this Code.

(2) In particular and without prejudice to the generality of the power conferred by subsection (1), such rules may provide for—

(*a*) the admission of documentary evidence in criminal proceedings under this Code;

(*b*) the manner in which documentary evidence is to be proved;

(*c*) notices for the production of documentary evidence;

(*d*) the proof of public and private documents and copies thereof;

(*e*) presumptions to be made regarding documentary evidence;

(*f*) the exclusion of oral evidence by documentary evidence;

(*g*) the weight to be given to any particular documentary evidence; and

(*h*) such other matters regarding documentary evidence as may be considered necessary.

PART VII

Procedure in Trials Before Subordinate Courts

Summary trial procedure

246.—(1) The procedure prescribed in this part shall be observed in trials by subordinate courts whether resulting from a complaint under section 83 (2) or a charge under section 83 (1) or (4).

(2) Other relevant provisions of this Code shall apply to trials before subordinate courts, except in so far as express provision is made in this part which in inconsistent with such other relevant provisions.

Absence of complainant or prosecutor 51 of 1971 14 of 2010

247.—(1) When proceedings have been instituted under section 83 and, at the time fixed for the hearing of the case or the time to which a hearing is adjourned, the complainant or the prosecutor, as the case may be, is either absent or unable or unwilling to proceed with the case against the accused, the court, if it is satisfied that the complainant or prosecutor has had reasonable notice of the time and place fixed for the hearing, shall, unless it considers there is good reason to adjourn the hearing, discharge the accused.

(2) A discharge under subsection (1) shall not operate as a bar to any subsequent proceeding against the accused commenced within twelve months of the date of the discharge on account of the same facts after which period the discharge shall become absolute and operate as an acquittal for all purposes.

(3) If the Court is not satisfied as provided in subsection (1) or considers that there is a good reason for adjournment, the court shall adjourn the hearing.

Absence of accused
14 of 2010

248.—(1) If, upon the day fixed for trial or the day to which the hearing or further hearing is adjourned, the accused shall not appear and, in the case of proceedings originating by summons, it appears to the court by evidence on oath that the summons was duly served a reasonable time before the time appointed for appearing, the court may, instead of directing the issue of a warrant of arrest under section 95, proceed with the hearing or further hearing as if the accused were present:

Provided that no sentence of imprisonment, other than a sentence in default of payment of a fine, shall be imposed on any person under this subsection.

(2) If the court convicts the accused in his absence, it may set aside such conviction upon being satisfied that such absence was due to causes over which he had no control and that he had a probable defence on the merits.

(3) If the accused who has not appeared as is mentioned in subsection (1) is charged with felony, or if the court, in its discretion, refrains from convicting or acquitting the accused in his absence, the court shall issue a warrant for the apprehension of the accused and cause him to be brought before the court.

Withdrawal of complaint

249. If a complaint, at any time before a final order is passed in any proceeding conducted by him after complaint made under section 83 (2), satisfies the court that there are sufficient grounds for permitting him to withdraw his complaint, the court may permit him to withdraw the same and shall thereupon acquit the accused.

Adjournment
14 of 2010

250.—(1) The court may in its discretion, before or during the hearing of any case, adjourn the hearing to a time and place to be then stated to the parties.

(2) Where the court adjourns the hearing of a case under subsection (1) it may—

(*a*) release the accused, without security or upon his entering into a bond with or without sureties, at the discretion of the court, conditioned for his appearance at the time and place so stated; or

(*b*) commit the accused to prison.

(3) If the accused—

(*a*) has not been committed to prison, the adjournment under subsection (1) may, with the consent of the parties, be for any period not exceeding three months or, in the absence of the consent of the parties, for a period not exceeding thirty days;

(*b*) has been committed to prison, the adjournment under subsection (1) shall not be for more than fifteen days.

(4) The day following that on which any adjournment is made under subsection (3) shall be counted as the first day of the

(5) Where a court adjourns any proceedings for a period exceeding the maximum period for which in the circumstances an adjournment may be granted in conformity with subsection (3), the adjournment shall not of itself affect the validity of the proceedings or the power of the presiding magistrate to continue to hear and determine the case.

(6) The High Court may, on the application of the court or of either party, or of its own volition, give such directions as it deems necessary for the resumption of adjourned proceedings.

Plea of guilty

251.—(1) When an accused appears or is brought before a court, a charge containing the particulars of the offence of which he is accused shall be read and explained to him and he shall be asked whether he admits or denies the truth of the charge.

(2) If the accused admits the truth of the charge his admission shall be recorded as nearly as possible in the words used by him and he may be convicted and sentenced thereon:

Provided that before a plea of guilty is recorded, the court shall ascertain that the accused understands the nature and consequences of his plea and intends to admit without qualification the truth of the charge against him.

Plea of not guilty
14 of 2010

252. If the accused does not admit the truth of the charge or does not plead, the court shall proceed to hear the case as hereinafter provided.

Rules relating to plea bargaining
14 of 2010

252A.—(1) The Chief Justice may make rules that shall permit parties to enter into plea bargaining where appropriate.

(2) For the purposes of this section "plea bargaining" means the process whereby the accused and the prosecutor in a criminal case work out a mutually satisfactory disposition of the case subject to court approval and it includes—

(*a*) the defendant pleading guilty to a lesser offence; or

(*b*) the defendant pleading guilty to only one or more counts of a charge.

Evidence for the prosecution 14 of 2010

253.—(1) In cases where section 252 applies, the court shall proceed to hear the complainant or the public prosecutor and to take all such evidence as is produced in support of the prosecution.

Cap. 4:07

(2) Witnesses for the prosecution, shall be sworn or affirmed in accordance with the Oaths, Affirmations and Declarations Act before they are examined.

Procedure on close of case for prosecution 14 of 2010

254.—(1) If, upon taking all the evidence referred to in section 253 and any evidence which the court may decide to call at that stage of the trial under section 201, the court is of opinion that no case is made out against the accused sufficiently to require him to make a defence, the court shall deliver a judgment in the manner provided for in sections 139 and 140 acquitting the accused.

(2) If, when the evidence referred to in subsection (1) has been taken, the court is of opinion that a case is made out against the accused sufficiently to require him to make a defence in respect of the offence charged or some other offence which such court is competent to try and in its opinion it ought to try, it shall consider the charge recorded against the accused and decide whether it is sufficient and, if necessary, shall amend the same, subject to section 151.

(3) The charge, if amended, shall be read to the accused, and he shall be asked whether he admits the truth of the charge or has any defence to make.

(4) If the accused does not admit the truth of the charge as amended or if no amendment is made, the accused shall be informed by the court that he has the right to remain silent or to give evidence upon oath and if he elects to give evidence upon oath, he shall be asked whether he has any witness to examine or other evidence to adduce in his defence.

Case for the defence 14 of 2010

255.—(1) After the procedure under section 254, the court shall then hear the accused and his witnesses and his other evidence, if any.

Cap. 4:07

(2) The witnesses for the defence shall be sworn or affirmed in accordance with the Oaths, Affirmations and Declarations Act before they are examined.

(3) The accused shall, without further process, at any time while he is making his defence be allowed to recall and re-examine any witness present in the court or its precincts.

(4) If the accused, whether before or after giving evidence, applies to the court to issue any process for—

(*a*) compelling the attendance of a prosecution witness for cross-examination or re-examination or his witness for examination;

(*b*) production of any document or other thing, the court shall issue such process unless it considers that such application should be refused on the ground that it is for the purpose of the vexation or delay or defeating the interests of justice, in which case grounds shall be recorded by the court in writing.

(5) The court may, before summoning a witness pursuant to an application made under subsection (4), require that his reasonable expenses incurred in attending court for the purpose of trial shall be met by the accused and shall be deposited at the court.

Evidence for the defence 14 of 2010

256.—(1) When the court is satisfied that the defence should proceed then, after such address, if any, as the accused or his legal practitioner shall elect to make at the opening of the case, the accused shall, from the witness box, or such other place as the court may see fit to direct, and upon oath, or giving an affirmation, give his evidence and answer any question or produce anything lawfully put to or required of him by the court or in cross-examination.

(2) If the accused elects to give evidence and thus becomes a witness in his own defence but refuses or neglects to—

(*a*) be sworn;

(*b*) give evidence;

(*c*) answer any question lawfully put to him by the court or in cross-examination; or

(*d*) produce any document or thing which he is required to produce,

such refusal or neglect may be commented upon by the prosecution and may be taken into account by the court in reaching its decision.

(3) Where an accused elects to call witnesses other than himself on his behalf, he shall do so after he himself has been called as a witness.

Evidence in reply

257. If the accused adduces evidence in his defence introducing new matter which the prosecutor could not by the exercise of reasonable diligence have foreseen, the court may allow the prosecution to adduce evidence in reply to rebut the said matter.

Addresses 14 of 2010

258.—(1) The prosecution shall be entitled, but shall not be required, to address the court before calling evidence.

(2) At the close of the evidence for the prosecution, the accused or his legal practitioner may address the court for the purpose of

submitting that a case has not been made out against the accused sufficiently to require him to make a defence and the prosecution shall have the right to reply to such submission.

(3) When the accused is called upon to make a defence, he or his legal practitioner may—

(*a*) before producing his evidence, open his case stating the law on which he intends to rely; and

(*b*) if the accused gives evidence or witnesses are examined on his behalf, sum up his case.

(4) The prosecution shall have the right to reply on the whole case.

The decision
14 of 2010
Cap. 7.01

259.—(1) The court having heard both the prosecution and the accused and their witnesses and evidence shall, subject to section 37 of the Penal Code, deliver a judgment in the manner provided for in sections 139 and 140 either acquitting or convicting him.

(2) If the court acquits the accused, the court shall record the acquittal and shall forthwith release the accused unless if the accused is held on another charge.

(3) If the court convicts the accused the court shall record the conviction and pass sentence or make an order against him according to law either forthwith or on such day as the court may appoint.

(4) A judgment signed under section 140 or a copy thereof certified by the court or its clerk shall be sufficient evidence in any court for the purposes of section 185 of the conviction or acquittal.

Evidence for arriving at proper sentence
14 of 2010

260.—(1) The court may, before passing sentence, receive such evidence as it thinks fit in order to inform itself as to the sentence proper to be passed.

(2) Evidence that the court may receive under subsection (1) may, in addition to the evidence of the accused or the prosecution, include the evidence by or on behalf of the victim of the offence and any relevant reports to enable the court assess the gravity of the offence.

Prosecution time limits for trials in subordinate courts
14 of 2010

261.—(1) Subject to subsections (2) and (3), the trial of any person accused of an offence triable by a subordinate court, other than any other offence punishable by imprisonment of more than three (3) years, shall—

(*a*) be commenced within twelve months from the date the complaint arose; and

(*b*) be completed within twelve months from the date the trial commenced.

(2) Where the person who committed the offence is at large, the period prescribed by subsection (1) within which to commence the trial shall run from the date the person is arrested for the offence.

(3) Where the cause of the failure or delay to complete the trial prescribed by subsection (1) is not attributable to any conduct on the part of the prosecution, the court shall order such extension of time as it consider necessary to enable the completion of the trial.

(4) A person accused of an offence shall not be liable to be tried, or continue to be tried, for the offence of his trial is not commenced or has not been completed within the period prescribed by subsection (1), and in such case the accused shall stand discharged of the offence at the expiry of such period.

Rules relating to procedure in subordinate courts
14 of 2010

261A. The Chief Justice may make rules relating to trials before subordinate courts and such rules may provide for—

(*a*) adjournments;

(*b*) receiving evidence before sentencing; and

(*c*) disclosure of information of such other matters as may be considered necessary.

Part VIII
Provisions Relating to the Committal of Accused Persons for Trial before the High Court

Power to commit for trial

262. Any magistrate may commit any person for trial to the High Court.

Court to hold preliminary inquiry

263. Whenever a charge has been brought against a person of an offence not triable by a subordinate court or as to which the subordinate court is of the opinion that it is not suitable to be disposed of upon summary trial, a preliminary enquiry shall be held according to the provisions hereinafter contained by a subordinate court:

Provided that no such preliminary enquiry shall be held in any case where the certificate of the Director of Public Prosecutions is produced to a subordinate court in accordance with Part IX.

Charge to be read to accused, etc.

264. At the commencement of a preliminary enquiry the magistrate shall read the charge to the accused but the accused shall not be required to make any reply thereto.

Depositions
14 of 2010

265.—(1) When the accused charged with an offence described under section 263 comes before a subordinate court, on summons or warrant or otherwise, the court shall, in his presence, take down in writing, or cause to be so taken down, the statements on oath of

witnesses, who shall be sworn or affirmed in accordance with the Oaths, Affirmations and Declarations Act.

Cap. 4:07

(2) Statements of witnesses so taken down in writing are termed depositions.

(3) The accused may put questions to each witness produced against him and the answer of the witness thereto shall form part of such witness's depositions.

(4) If the accused does not employ a legal practitioner, the court shall, at the close of the examination of each witness for the prosecution, ask the accused whether he wishes to put any question to that witness.

(5) The deposition of each witness shall be read over to such witness and shall be signed by him and the magistrate.

Variance between evidence and charge
14 of 2010

266.—(1) No objection to a charge, summons or warrant for the defect in substance or in form, or for variance between it and the evidence of the prosecution, shall be allowed.

(2) If the variance to a charge, summons or warrant under subsection (1) appears to the court to be such that the accused has been thereby deceived or misled, the court may, on the application of the accused, adjourn the inquiry and allow any witness to be recalled, and allow such questions to be put to him as by reason of the terms of the charge may have been omitted.

Remand
14 of 2010

267.—(1) If, from the absence of witnesses or any other reasonable cause to be recorded in the proceeding, the court considers it necessary or advisable to adjourn the inquiry, the court may from time to time by warrant remand the accused for a reasonable time, not exceeding fifteen days at any one time, to some prison or other place of security.

(2) During a remand the court may at any time order the accused to be brought before it.

(3) The court may on a remand admit the accused to bail if the charge is one in respect of which bail may be granted by that court.

Provisions as to taking statements or evidence of accused
14 of 2010

268.—(1) If, after examination of the witnesses called on behalf of the prosecution, the court considers that on the evidence as it stands there are sufficient grounds for committing the accused for trial, the magistrate shall frame a charge under his hand declaring with what offence or offences the accused is charged and shall read the charge to the accused and explain the nature thereof to him in simple language, and address to him the following words or words to the like effect

"This is not your trial. You will be tried later in another court and before another judge and a jury, where all the witnesses you

have heard here will be produced and you will be allowed to question them. You will then be able to address the court and to give evidence on oath and to call any witnesses on your own behalf. Unless you wish to reserve your defence, which you are at liberty to do, or you do not wish to say anything pursuant to exercising your right to remain silent, you may now either make a statement not on oath, or give evidence on oath, and if you do, you may also call witnesses on your own behalf. If you give evidence on oath you will be liable to cross-examination. Anything you may say whether on oath or not will be taken down and may be used in evidence at your trial.".

(2) Before the accused makes any statement in answer to the charge, or gives evidence, as the case may be, the magistrate shall state to him and give him clearly to understand that he has nothing to hope from any promise of favour and nothing to fear from any threat which may have been held out to him to induce him to make any confession of his guilt, but that whatsoever he then says may be given in evidence on his trial notwithstanding any such promise or threat.

(3) Everything which the accused says, either by way of statement or evidence, shall be recorded in full and shall be shown or read over to him, and he shall be at liberty to explain or add to anything contained in the record thereof.

(4) When the procedure under subsections (1), (2) and (3) is made conformable to what he declares is the truth, the record thereof shall be attested by the magistrate, who shall certify that such statement or evidence was taken in his presence and hearing and contains accurately the whole statement made, or evidence given, as the case may be, by the accused. The accused shall sign or attest by his mark such record. If he refuses, the court shall add a note of his refusal and the record may be used as if he had signed or attested it.

Evidence and address in defence
14 of 2010

269.—(1) Immediately after complying with the requirements of section 268 relating to the statement or evidence of the accused, and whether the accused has or has not made a statement or given evidence, the court shall ask him whether he desires to call witnesses on his own behalf.

(2) The court shall take the evidence of any witnesses called by the accused in like manner as in the case of witnesses for the prosecution, and every such witness, not being merely a witness to the character of the accused, shall, if the court be of opinion that his evidence is any way material to the case, be bound by bond to appear and give evidence at the trial of such accused.

(3) If the accused states that he has witnesses to call, but that they are not present in court, and the court is satisfied that the absence of such witnesses is not due to any fault or neglect of the accused, and that there is a likelihood that they could, if present, give material evidence on behalf of the accused, the court may adjourn the enquiry and issue process, or take other steps, to compel the attendance of such witnesses and on their attendance shall take their depositions and bind them by bond in the same manner as witnesses under subsection (2).

(4) In any preliminary enquiry under this Part the accused or his legal practitioner shall be at liberty to address the court—

(*a*) after examination of the witnesses called on behalf of the prosecution;

(*b*) if no witnesses for the defence are to be called, immediately after the statement or evidence of the accused;

(*c*) if the accused elects—

(i) to give evidence or to make a statement and witnesses for the defence are to be called; or

(ii) not to give evidence or to make a statement, but to call witnesses,

immediately after the evidence of such witnesses.

(5) If the accused or his legal practitioner addresses the court in accordance with subsection (4) (*a*) or (*c*) the prosecution shall have the right to reply.

(6) Where the accused reserves his defence or elects to exercise the right to remain silent, or at the conclusion of any statement in answer to the charge or evidence in defence, as the case may be, the court shall ask him whether he intends to call witnesses at the trial other than any whose evidence has been taken under this section, and, if so, whether he desires to give their names and addresses so that they may be summoned. The court shall thereupon record the names and addresses of any such witnesses whom he may mention.

Discharge of accused
14 of 2010

270.—(1) If, at the close of the case for the prosecution or after hearing any evidence in defence, the court considers that the evidence against the accused is not sufficient to put him on his trial, the court shall forthwith order him to be discharged as to the particular charge under inquiry; but such discharge shall not be a bar to any subsequent charge in respect of the same facts.

(2) Nothing in this subsection shall prevent the court either forthwith, or after such adjournment of the enquiry as may seem expedient in the interests of justice, proceeding to investigate any other charge upon which the accused may have been summoned or otherwise brought before it, or which in the cause of the charge so

dismissed as aforesaid, it may appear that the accused has committed.

Commitment for trial 14 of 2010

271. If, at the close of the case for prosecution or hearing any evidence in defence, the court considers the evidence sufficient to put the accused on trial, the court shall commit him for trial to the High Court and shall, until the trial, either admit him to bail or send him to prison for safe-keeping. The warrant of such first-mentioned court shall be sufficient authority to the officer in charge of any prison appointed for the custody of prisoners committed for trial.

Conflict of evidence

272. Where there is a conflict of evidence, the court shall consider the evidence to be sufficient to put the accused on his trial if the evidence against him is such as, if uncontradicted, would raise a probable presumption of his guilty, notwithstanding that it is contradicted in material points by evidence in favour of the accused, unless the court, for reasons to be recorded in the proceedings, shall see fit to deviate from this rule.

Committal to next sessions

273. All persons committed for trial by a subordinate court shall be committed for trial at the next convenient sessions of the High Court.

Summary adjudication

274. If, at the close of or during the inquiry, it shall appear to the subordinate court that the offence is of such a nature that it may suitably be dealt with under the powers possessed by the court, the court may, subject to Part VII, hear and finally determine the matter:

Provided that in every such case the accused shall be entitled to have recalled for cross-examination all or any of the witnesses for the prosecution.

Complainant and witnesses to be bound over

275. When the accused is committed for trial before the High Court, a subordinate court committing him shall bind by bond, with or without surety or sureties, as it may deem requisite, the complainant and every witness to appear at the trial to give evidence, and also to appear and give evidence, if required, at any further examination concerning the charge which may be held by direction of the Director of Public Prosecutions.

Refusal to be bound over 14 of 2010

276. If a person refuses to enter into a bond under section 275, the court may commit him to prison or into the custody of any officer of the court, there to remain until after the trial, unless in the meantime he enters into a bond; but if afterwards from want of sufficient evidence or other cause, the accused is discharged, the

court shall order that the person imprisoned for so refusing be also discharged.

Accused entitled to copy of depositions 14 of 2010

277.—(1) A person who has been committed for trial before the High Court shall be entitled at any time before the trial to have a copy of the depositions.

(2) The court shall at the time of committing him for trial inform the accused of the effect of this provision.

Binding over of witnesses conditionally

278.—(1) Where a person charged before a subordinate court with an offence triable before the High Court is committed for trial, and it appears to such subordinate court, after taking into account anything which may be said with reference thereto by the accused or the prosecutor, that the attendance at the trial of any witness who has been examined before it is unnecessary by reason of anything contained in any statement by the accused or the evidence of the witness being merely of a formal nature, the subordinate court shall, if the witness has not already been bound over, bind him over to attend the trial conditionally upon notice given to him and not otherwise, or shall, if the witness has already been bound over, direct that he shall be treated as having been bound over to attend only conditionally as aforesaid, and shall transmit to the High Court a statement in writing of the names, addresses and occupations of the witnesses who are, or who are to be treated as having been, bound over to attend the trial conditionally.

(2) Where a witness has been, or is to be treated as having been, bound over conditionally to attend the trial, the Director of Public Prosecutions or the person committed for trial may be given notice at any time before the opening of the sessions of the High Court to the committing subordinate court and at any time thereafter to the Registrar of the High Court that he desires the witness to attend the trial, and then such court or Registrar to whom any such notice is given shall forthwith notify the witness that he is required so to attend in pursuance of his bond.

(3) The subordinate court shall, on committing the accused for trial, inform him of his right to require the attendance at the trial of any such witness as aforesaid, and of the steps which he must take for the purpose of enforcing such attendance.

(4) Any documents or articles produced in evidence before the subordinate court by any witness whose attendance at the trial is stated to be unnecessary in accordance with this section and marked as exhibits shall, unless in any particular case the subordinate court otherwise orders, be retained by the subordinate court and forwarded with the depositions to the Registrar of the High Court.

279. In the event of committal for trial the written charge (if any), the depositions, the statement of the accused, the bond of the accused, the complainant and the witness and any documents or things which have been put in evidence, shall be transmitted without delay by the committing court to the Registrar of the High Court, and an authenticated copy of the written charge, the depositions and the statement of the accused shall also without delay be transmitted to the Director of Public Prosecutions.

Transmission of records to High Court and Director of Public Prosecutions 14 of 2010

280.—(1) If, after receipt of the authenticated copy of the written charge, the depositions and the statement of the accused provided for by section 279, and before the trial before the High Court, the Director of Public Prosecutions shall be of the opinion that further investigation is required before such trial, it shall be lawful for him to direct that the original depositions be remitted to the court which committed the accused for trial, and such court shall thereupon reopen the case and after taking the depositions of such witnesses as may have been called as a result of such further investigation, dispose of the case in accordance with sections 268 to 278 inclusive.

Power of Director of Public Prosecutions to direct further investigation and to order further depositions 14 of 2010

(2) If, after receipt of the authenticated copy of the depositions and statement of the accused and before the trial before the High Court, the Director of Public Prosecutions shall be of opinion that there is, in any case committed for trial, any material or necessary witness for the prosecution or the defence who has not been bound over to give evidence on the trial of the case, the Director of Public Prosecutions may make any application to the subordinate court which committed the accused for trial to take the depositions of such witness and compel his attendance either by summons or by warrant as hereinbefore provided.

281.—(1) If, before the trial before the High Court the Director of Public Prosecutions is of opinion, upon the record of the committal proceedings received by him, that the case is one which may suitably be tried by a subordinate court, he may cause the court record to be returned to the court which committed the accused, and thereupon the case shall be reopened, tried and determined in the same matter as if such person had not been committed for trial.

Return of depositions with a view to summary trial 14 of 2010

(2) In every case falling under subsection (1) the accused shall be entitled to have recalled for cross-examination or further cross-examination all or any of the witnesses for the prosecution.

282.—(1) The Director of Public Prosecutions shall forthwith after receipt of the authenticated copy of the depositions referred to in section 279 draw up and sign a charge in accordance with this

Filing of a charge 14 of 2010

Third Schedule

Code in the form set out in the Third Schedule, which shall be filed in the Registry of the High Court, unless a judge makes an order to the contrary pursuant to section 281.

(2) In any charge filed under subsection (1), the Director of Public Prosecutions may charge the accused with any offences which in his opinion are disclosed by the depositions either in addition to, or in substitution for, the offences upon which the accused has been committed for trial.

Notice of trial

283. The Registrar or his deputy shall endorse on or annex to every charge filed under section 282, and to every copy thereof delivered to the officer of the court or police officer for service thereof, a notice of trial, which notice shall specify the particular sessions of the High Court at which the accused is to be tried on the said charge. Such notice shall be in the form set out in the Third Schedule or as near thereto as may be.

Third Schedule

Copy of charge and notice of trial to be served
14 of 2010

284.—(1) The Registrar shall deliver or cause to be delivered a charge and to the officer of the court, or police officer serving the charge, a copy of the charge with the notice of trial endorsed thereon or annexed thereto; and if there are more persons committed for trial than one, then as many copies as there are such persons and the Registrar shall deliver or cause to be delivered to the officer of the court or police officer as many copies of the charge with the notice of trial endorsed thereon or annexed thereto as there are such persons.

(2) The officer of the court or police officer shall, as soon as possible after receipt of the charge and notice of trial under subsection (1), and at least three (3) days before the date of trial, serve the copy of the charge and notice of trial on the person or persons committed for trial, and shall explain to him or them the nature and exigency thereof.

(3) Where any accused person who has been admitted to bail cannot readily be found—

(*a*) the officer of the court or police officer shall leave a copy of the charge and notice of trial with someone of the accused's household at his dwelling house, or with a surety for his bail; and

(*b*) if no such person mentioned in paragraph (*a*) can be found, the officer of the court or police officer shall affix a copy of the charge and the notice of trial to the outer or principal door of the dwelling house or dwelling houses of the accused or of any surety for his bail.

(4) Nothing in this section shall prevent any person committed for trial and in custody at the opening of or during any sessions of

the High Court, for being tried thereat if he agrees to be so tried and no special objection is made on the part of the prosecution.

Return of service
14 of 2010

285. The officer serving the copy or copies of the charge and notice and notices of trial under section 284 shall forthwith make to the Registrar a return of the mode of service thereof.

Postponement of trial before commence-ment
14 of 2010

286.—(1) The High Court may, upon application of the prosecution or the accused, if it considers that there is sufficient cause for the delay, postpone any trial of the accused to the subsequent sessions of the High Court.

(2) Where the High Court postpones a trial under subsection (1) it may—

(*a*) direct that the trial be held before itself sitting at some other convenient place;

(*b*) respite the bonds of the complaint and witnesses;

(*c*) release the accused unconditionally, or commit him to prison, or release him upon his entering into a bond with or without sureties, at its discretion, for the purposes of ensuring his appearance at the time and place directed by the court for trial.

(3) Any bond respited under subsection (2) (*b*) shall have the same force and effect as a fresh bond to prosecute and give evidence at any subsequent sessions would have had.

Directions as to service of notices
14 of 2010

287. The High Court may give such directions for the service of any notices which the Court may deem necessary in consequence of any order made under section 286.

Part IX

Summary Committal Procedure for Trial of Persons before the High Court

Interpretation

288. In this Part, unless the context otherwise requires—

"Director of Public Prosecutions" means the person holding that office or a State Advocate acting under the direction of that person;

"summary procedure case" means any case certified under section 289 as a proper case for trial before the High Court after summary committal procedure.

Certifying of case as a summary procedure case

289. Notwithstanding anything contained in Part VIII, in any case where a person is charged with an offence, the Director of Public Prosecutions may issue a certificate in writing that the case is a proper one for trial by the High Court as a summary procedure case and such case shall, upon production to a subordinate court of such certificate, be dealt with by the subordinate court in accordance with this Part.

No preliminary inquiry in summary procedure case 14 of 2010

290.—(1) A subordinate court shall not hold a preliminary inquiry as is referred to in Part VIII in respect of any case in which the Director of Public Prosecutions has issued a certificate under section 289 and the prosecution has produced such certificate to a subordinate court.

(2) The subordinate court before which the accused is brought shall, upon production of the certificate and whether or not a preliminary inquiry has already been commenced, forthwith commit the accused for trial before the High Court upon such charge or charges as may be specified in the certificate.

(3) Upon the committal of the accused for trial under this section, the court shall ask him whether he intends to call witnesses at the trial and, if so, whether he desires to give their names and addresses so that they may be summoned and the court shall thereupon record the names and addresses of any such witnesses whom he may mention.

Record to be forwarded 14 of 2010

291. Upon the committal of the accused for trial in a summary procedure case the record of the proceedings, including, in any case where a preliminary inquiry has been commenced, any depositions taken and any exhibits produced, shall be transmitted without delay by the committing court to the Registrar of the High Court and an authenticated copy of the record shall also be transmitted without delay to the Director of Public Prosecutions.

Filing of a charge 14 of 2010

292.—(1) The Director of Public Prosecutions shall, unless he had entered a discontinuance, forthwith after receipt of the authenticated copy of the record in a summary procedure case as mentioned under section 291, draw up and sign a charge in accordance with this Code, which shall be filed in the registry of the High Court, or enter a discontinuance.

(2) In the charge drawn up under subsection (1), the Director of Public Prosecutions may alter or redraft the charge or charges against the accused or frame an additional charge or charges against him.

(3) Sections 283 to 287 inclusive shall apply with suitable modification to a charge filed under this section as they do to a charge filed under section 282.

(4) For the purposes of entering a discontinuance, the "Director of Public Prosecutions" shall not include a "State Advocate".

Statement, etc., to be supplied to accused
14 of 2010

293. In every summary procedure case the prosecution shall, not less than twenty-one clear days before the date fixed for the trial of the case, furnish to the accused or his legal practitioner, if any, and to the Registrar of the High Court a list of the persons whom it is intended to call as witnesses for the prosecution at the trial and a statement of the substance of the evidence of each witness which it is intended to adduce at the trial.

Part X

Trials Before the High Court

Trial before the High Court
33 of 1970
20 of 1996
14 of 2010

294.—(1) Subject to subsection (2) all criminal trials before the High Court shall be by jury. A jury shall, except where otherwise specially provided, consist of twelve persons.

(2) The Minister may, by Order published in the *Gazette* direct that any case or class of cases shall be triable by the High Court without a jury, and in any such case or class of case instead of the procedure set out in this Part the High Court shall, with any necessary modifications, follow the procedure set out in Part VII for trials before subordinate courts.

Qualifications and liability to serve as a juror
20 of 1996

295. Every person between the ages of twenty-one and sixty shall, subject to the exceptions contained in section 296, be qualified and liable to serve as a juror at any trial before the High Court.

Exemptions from liability for jury service
14 of 2010

296. The following persons are exempt from liability to serve as jurors, that is to say—

(*a*) members of the Cabinet and Ministers;

(*b*) Judges, Magistrates and officers of the court including traditional or local courts;

(*c*) Members of Parliament;

(*d*) police officers and persons holding public offices in the Ministry of Justice;

(*e*) persons actively discharging the duties of priests or ministers of their respective religions;

(*f*) medical practitioners, registered dentists, apothecaries, registered pharmacists, veterinary surgeons and nurses in active practice;

(*g*) legal practitioners in active practice;

(*h*) officers and others in the Defence Force of Malaŵi on full pay;

(*i*) persons exempted from personal appearance in court under written law for the time being in force;

(*j*) persons upon whom a court in Malaŵi has imposed a sentence of death or of imprisonment for any term exceeding six (6) months such sentence not having been set aside, or reduced to imprisonment for a term of less than six months on appeal or review;

(*k*) persons with mental infirmity;

(*l*) other persons exempted by the Minister by notice published in the *Gazette* from liability to serve as jurors.

Preparation of lists of jurors
20 of 1996

297.—(1) The Registrar shall, in accordance with such directions as may, from time to time, be given by the Chief Justice, prepare and maintain a jury list for the whole Malaŵi containing names and addresses of all persons who are qualified and liable to serve as jurors and who have a place of residence in Malaŵi.

(2) The Registrar may, in accordance with such directions as may be given by the Chief Justice, revise the list of jurors under this section, and for such purpose may amend or delete any name or address appearing therein or add any new name or address thereto.

Summoning of jurors
14 of 2010

298. —(1) The Registrar, ordinarily seven days at least before the day fixed for the holding of any sessions of the High Court shall summon from among the persons whose names appear on the lists of jurors not less than twenty persons to provide jurors for the trial which are intended to take place at such sessions.

(2) Every summons to a juror shall be in writing and shall require his attendance as a juror at a time and place to be mentioned therein.

Excusing from attendance

299. The High Court may for reasonable cause excuse any person from attendance as a juror at any particular sessions, and may, if it shall think fit, at the conclusion of any trial, direct that jurors who have served at such trial shall not be summoned to serve again as jurors for a period not exceeding twelve months.

Penalty for non-attendance
14 of 2010

300. Every person summoned as a juror who, without lawful excuse, fails to attend as required by the summons, or who, having without having obtained the permission of the High Court, or who fails to attend after adjournment of the High Court after being ordered to attend, shall be guilty of an offence and liable to a fine of K20,000.

Want of qualification ground for challenge but not for avoiding trial

301. If any person summoned as a juror is not qualified or liable to serve as a juror, or is exempt from service, such want of qualification or exemption shall be a good cause of challenge and the person so summoned shall be discharged on such challenge or on his own application if the High Court is satisfied as to the fact of such want and so directs; but no such want of qualification or exemption, if not submitted to the High Court before such person is sworn, shall afterwards be accepted as a ground for impeaching any verdict given by a jury upon which such person has served.

When accused to be tried
14 of 2010

302.—(1) Every accused person shall be tried at the sessions then in progress, or, failing that, at the next convenient sessions.

(2) The High Court, in its discretion, on the application of the prosecution or the accused, by motion in open court may postpone the trial of any person charged at any sessions to the next or subsequent sessions.

Third Schedule

(3) All charges upon which persons are tried before the High Court shall be brought in the name of the Republic of Malaŵi and shall be in accordance with the form in the Third Schedule and shall be signed by the Director of Public Prosecutions or by some other persons authorized by him in that behalf and in the latter case the words "by authority of the Director of Public Prosecutions" shall be prefixed to the signature.

Prosecution time limits for trials in the High Court
14 of 2010

302A.—(1) Subject to subsections (2) and (3), the trial of any person accused of an offence triable by the High Court other than any other offence punishable by imprisonment of more than three (3) years, shall—

(*a*) be commenced within twelve months from the date the complaint arose; and

(*b*) be completed within twelve months from the date the trial commenced.

(2) Where the accused person is at large the period prescribed by subsection (1) within which to commence the trial shall run from the date the person is arrested for the offence.

(3) Where the cause of the failure or delay to complete the trial within the period prescribed by subsection (1) is not attributable to any conduct on the part of the prosecutions, the court shall order of time as it considers necessary to enable the completion of the trial.

(4) A person accused of an offence shall not be liable to be tried, or continue to be tried, for the offence if his trial is not commenced or has not been completed within the period prescribed by subsection (1), and in such case the accused shall stand discharged of the offence at the expiry of such period.

Commencement of trial in the High Court: plea and directions hearing
14 of 2010

303.—(1) When the High Court is ready to start trial, the accused shall appear or be brought before it in order to conduct a plea and directions hearing.

(2) The purpose of the plea and directions hearing shall be to ensure that all necessary steps have been taken in preparation for trial and to provide sufficient information for a trial date.

(3) At the plea and directions hearing, the charge shall be read out and explained to the accused, and he shall be asked whether he admits or denies the truth of the charge.

(4) Where the accused admits the truth of the charge his admission shall be recorded as nearly as possible in the words used by him and he may be convicted and sentenced thereon.

(5) Where the accused denies the truth of the charge the Court shall enter a plea of not guilty and the prosecution and the defence shall inform the court of—

(*a*) the issues in the case;

(*b*) issues, if any, as to the mental or medical condition of the accused or any witness;

(*c*) the number of witnesses whose evidence will be given, either orally or in writing;

(*d*) the defence witnesses under paragraph (*c*) whose statements have been served and whose evidence the prosecution will accept to be given in writing;

(*e*) any additional witnesses who may be called by the prosecution and the evidence that they are expected to give;

(*f*) exhibits and schedules which are to be admitted by mutual consent;

(*g*) the order and pagination, if any, of the papers, to be used by the prosecution at the trial and the order in which the prosecution witnesses are likely to be called;

(*h*) any application to submit pre-recorded interviews with a child witness as evidence-in-chief;

(*i*) any other significant matter which might affect the proper and convenient trial of the case, and whether any additional work needs to be done by the parties;

(*j*) availability of witnesses and estimated length of trial;

(*k*) availability of defence legal practitioner,

and any other matters for further directions.

(6) The High Court may give such directions as it considers necessary and make such further orders to secure the proper and efficient trial of the case.

(7) Unless the court otherwise directs, each party shall, at least seven days before the date of trial, confirm to the court that all such directions and orders have been fully complied with.

(8) The Chief Justice may make rules providing for the conduct of plea and direction hearing.

Selection of jurors
18 of 1996
20 of 1996
14 of 2010

304.—(1) If the accused does not admit the truth of the charge, the High Court shall enter a plea of not guilty and shall then, either forthwith or after such adjournment as it may order, proceed to choose the jurors as hereinafter directed for the trial of the case.

(2) The High Court shall by ballot choose twelve jurors from among those summoned to serve as jurors at the sessions, and the ballot shall be conducted by such method as the Chief Justice may, from time to time, direct.

(3) The accused, or his legal practitioner or the prosecution, may object to any juror so chosen on any ground and the objections shall be allowed if the High Court considers it well-founded.

(4) If the High Court is satisfied that an objection is well-founded, it shall chose another of those summoned in the place of the person to whom such objection was made. Such other person shall be chosen from those whose names are on the same list as the person to whom objection has been made.

Jurors to be sworn and foreman appointed
14 of 2010

305.—(1) At the commencement of every trial, every juror shall swear that he shall listen to the evidence, and give a true verdict, in accordance with the evidence, to the best of his skills and knowledge without fear, favour or affection.

(2) When the jurors have been sworn they shall appoint one of their number to be foreman.

(3) If the majority of the jury do not agree on the appointment of a foreman within such time as to the High Court seems reasonable, the High Court shall appoint a foreman.

Duties of foreman

306. The foreman shall preside over any deliberation of the jury and ask any information from the High Court that is required by the jury or any of the jurors and shall announce the verdict of the jury.

Court to inform the jury about the charge

307. The jury having been sworn, and a foreman having been elected or appointed, the jury shall be informed of the charge against the accused.

Provision in case of death, illness, or non-attendance of juror
14 of 2010

308.—(1) Where, in the course of a trial of any person for an offence, any member of the jury dies or is discharged by the court by reason of illness, default of attendance or for any other reason, the High Court may order the trial to be proceeded with in like manner as if the full number of jurors had continued to serve on

the jury, and any verdict returned by the remaining jurors in which not less than eight of such jurors concur shall be of equal validity as if it had been returned by a jury consisting of the full number of jurors.

(2) If more than four jurors are prevented from attending or absent themselves, the proceedings shall be stayed, the jury shall be discharged and a new trial shall be held before a fresh jury.

Keeping jury together
14 of 2010

309.—(1) After the accused has been put in charge of the jury, the jury shall be kept in some convenient place in court apart by themselves until the judge has summed up the evidence and has left the case with the jury.

(2) If the High Court adjourns during the hearing of the case, either during the sitting or at the end of a day's sitting, the High Court may either allow the jury to disperse, or may direct that they be removed in charge of an officer of the High Court or some other proper to some convenient place, there to take refreshments at their own expense and rest, until the High Court reassembles, and such officer shall be sworn that he will not permit any person except himself to speak to or to communicate with the members of the jury without the leave of the High Court.

(3) If, after the case has been left with the jury, they desire to withdraw for the purpose of considering their verdict, then the jury shall be kept by an officer of the High Court in some convenient place apart by themselves, but they shall be allowed reasonable refreshments at their own expense, with the power also to retire alone for personal purposes, until they are agreed upon their verdict or are discharged therefrom by the High Court; and the officer shall be sworn that he will suffer none to have access to them nor speak to them himself, except to ask whether they, or at least eight of them are agreed upon their verdict or to communicate between them and the High Court.

Postponement of trial and the effect of order postponing trial or order for separate trial
14 of 2010

310.—(1) When before or at any stage of a trial or a separate trial the High Court is of opinion that the postponement of the trial or a separate trial is expedient the High Court may make such order as to postponement of the trial or a separate trial as appears necessary.

(2) Where an order is made for the postponement of a trial or an order is made for a separate trial—

(*a*) the High Court may order the jury to be discharged from giving a verdict on any count or counts the trial of which is postponed or is ordered to take place separately;

(*b*) the procedure or the separate trial of a count shall be the same in all respects as if the court has been found in a separate

charge, and the procedure on the postponed trial shall be the same in all respects (provided that the jury, if any, have been discharged) as if the trial had not commenced; and

(*c*) the High Court may make such order as releasing the accused on bail, and as to the enlargement of bonds and otherwise as the High Court thinks fit.

(3) The power of the High Court under this section shall be in addition to and not in derogation of any other power of the High Court for the same or similar purposes.

The prosecution to open its case and examine witnesses
14 of 2010

311.—(1) When the jury has been sworn the prosecution may open his case by stating briefly the nature of the offence charged and the evidence by which he proposes to prove the guilt of the accused.

(2) The prosecution shall then examine their witnesses.

(3) A person who has not given evidence at a preliminary inquiry or whose statement of evidence has not been furnished under section 293 or section 175 shall not be called as a witness by the prosecution at any trial unless the accused or his legal practitioner and the Registrar, have been previously served with reasonable notice in writing of the intention to call such person, stating the person's name and address and the substance of the evidence intended to be given:

Provided that—

(*a*) no notice need be given under this subsection if the accused waives his right thereto;

(*b*) nothing in this subsection shall apply to any person summoned as a witness under section 180.

Recorded statement or evidence of accused may be put in as evidence
14 of 2010

312. The statement or evidence of the accused recorded by the committing magistrate under section 268 may be put in by the prosecution and read as evidence.

Close of case for the prosecution
14 of 2010

313.—(1) If, when the case for the prosecution is closed, and upon hearing any evidence which the High Court may decide to call at that stage of the trial under section 201, the High Court is of the opinion that no case is made out against the accused sufficiently to require him to make a defence, the High Court shall discharge the jury and record an acquittal.

(2) If, when the case for the prosecution is closed, and any evidence called under section 201 has been taken, the High Court is of the opinion that a case is made out against the accused sufficiently to require him to make a defence, the High Court shall inform the accused that he has the right to remain silent or to give

evidence on oath, and thereupon call on him to enter his defence and to give evidence.

(3) Any question arising under this section in any proceedings held before the High Court shall be determined by the judge and not by the jury.

The defence
14 of 2010

314.—(1) Where the accused elects to give evidence, he may then open his case stating the facts or law on which he intends to rely, and making such comments as he thinks necessary on the evidence for the prosecution.

(2) The accused shall thereupon from the witness box, or such other place as the High Court may direct, and upon oath, give his evidence and answer any questions or produce anything lawfully put to, or required of him by the High Court or in cross-examination.

(3) If the accused elects to give evidence and thus becomes a witness in his own defence, but refuses or neglects to—

(*a*) be sworn;

(*b*) give evidence;

(*c*) answer any question lawfully put to him by the High Court or in cross-examination;

(*d*) produce any document or thing which he is lawfully required to produce,

such refusal or neglect may be commented upon by the prosecution and may be taken into account by the jury in reaching its verdict.

(4) Where an accused elects to call witnesses other than himself, his evidence shall be taken before that of any other witness for the defence.

(5) After the accused and his witness, if any, have been called after the examination, cross-examination and re-examination, if any, the accused or his legal practitioner may sum up his case.

Additional witnesses for the defence

315. The accused shall be allowed to examine any witness not previously bound over to give evidence at the trial, if such witness is in attendance, or if his attendance may be procured without unreasonable expense, delay or inconvenience, but he shall not be entitled as of right to have any witness summoned other than the witnesses whom he named to the subordinate court committing him for trial as witnesses whom he desired to be summoned.

316. If the accused adduces evidence in his defence introducing new matter which the prosecution could not by the exercise of reasonable diligence have foreseen, the High Court may allow the prosecution to call evidence to rebut the said matter.

Evidence in reply
14 of 2010

317.—(1) If the accused has called no witness other than himself, the prosecution may, if he wishes, reply upon the whole case immediately before the accused or his legal practitioner is afforded the opportunity to sum up his case.

Summing up by the accused or his legal practitioner and reply by prosecution
3 of 1968
14 of 2010

(2) If, and only if, the accused has called any witness other than himself, the prosecution may, after the accused or his legal practitioner has been afforded the opportunity to sum up his case, reply upon the whole case.

(3) The accused, or his legal practitioner, or the prosecution may Court on any point of law raised for the time in the case by either party in his summing up or in commenting upon evidence in reply.

318. During any trial and at any stage thereof prior to the close of the evidence, the High Court may adjourn for the purpose of inspecting any place, or anything which it is not possible or convenient to bring into court, the inspection of which may be material to the proper determination of the proceedings in question and, if the High Court sees fit, may permit evidence to be given at such place or in the vicinity of such thing.

View by the High Court
14 of 2010

319. When, in a trial by a jury, the case on both sides is closed, the judge shall sum up the law and evidence in the case.

Summing up to jury
14 of 2010

320.—(1) In a trial by a jury it is the duty of a judge—

Duties of judge in trials by a jury
14 of 2010

(*a*) to preside over and control the proceedings in accordance with the provisions of this Code and any other relevant written law;

(*b*) to decide all questions of law arising in the course of the trial including questions as to the admissibility of evidence;

(*c*) to decide all questions upon the meaning and construction of all documents given in evidence at trial;

(*d*) to decide on all matters of fact which it may be necessary to prove in order to enable evidence of particular matters to be given;

(*e*) to decide whether any question which arises is for himself or for the jury, and upon this point his decision shall bind the jurors.

(2) The judge may, if he thinks proper, in the course of his summing up, express to the jury his opinion upon any question of

fact or upon any question of mixed law and fact relevant to the proceedings.

Duty of jury

321. It is the duty of the jury to consider the evidence and, subject to any direction of the judge, return a true verdict.

Jury to consider evidence
14 of 2010

321A.—(1) After the summing up by a judge the jury shall consider the evidence, and for that purpose may retire.

(2) Subject to section 309, except with the leave of the High Court, no person other than a juror shall speak or hold any communication with any member of the jury while the jury are considering their verdict.

Effect of plea of guilty prior to verdict by jury
14 of 2010

321B. If at any time after the accused is given in charge but before the verdict of the jury has been finally communicated to the judge the accused pleads guilty to any charge against him the judge may convict him of such charge as if the accused had pleaded guilty thereto before he had been given in charge of the jury and the jury shall be discharged from giving its verdict thereon.

Verdict of majority of not less than eight to be verdict of jury
20 of 1996
14 of 2010

321C. In the event of any of the jurors, after reasonable consultation, dissenting from the remainder, the verdict of a majority consisting of not fewer than eight jurors or, in any case to which section 308 applies, the verdict of the eight remaining jurors, shall be taken to be the verdict of the jury.

Court may direct further consideration

321D. If in any case it seems to him for any reason to be desirable, the judge may direct a jury to consider its verdict further.

How verdict to be given, etc.
20 of 1996
14 of 2010

321E.—(1) The verdict of the jury shall in all cases be given in open court by the foreman in the presence of all the jury and of the accused and shall thereupon be recorded by the judge, who shall before taking the verdict ask the jurors if they are all or, if not all, not fewer than eight are, agreed thereon and whether they find the accused person guilty or not guilty of each of the offences charged against him and the jury shall pronounce a general verdict of guilty or not guilty thereon.

(2) When by accident or mistake a wrong verdict is delivered, the jury may, before or immediately after it is recorded, amend the verdict and it shall stand as ultimately amended.

(3) Unless otherwise ordered by the High Court, the jury shall return a verdict on all charges on which the accused is tried and the judge may ask them such questions as are necessary to ascertain what their verdict is on each charge, and such questions and the answers to them shall be recorded.

Failure of jury to agree
14 of 2010

321F.—(1) When it sufficiently appears to the High Court that a jury cannot agree upon a verdict, and that there is not such a majority agreeing as may be taken as a verdict of the jury as hereinbefore provided, the High Court shall discharge such jury and shall as soon as is convenient cause a new jury to be empanelled and sworn and charged with any accused and the charge against such accused may be tried as if such first jury had not been empanelled.

(2) If it sufficiently appears to the High Court that the new jury cannot reach a verdict, and that there is not such a majority agreeing as may be taken as a verdict of the jury as herein before provided, the High Court shall acquit the accused.

Judgment to be in accordance with verdict of jury
14 of 2010

321G. When the verdict of the jury is unanimous, or there is such a majority agreeing as may be taken as a verdict as herein before provided, the judge shall give judgment in accordance with that verdict.

Calling upon the accused before passing sentence
14 of 2010

321H. If the accused is convicted or if the accused pleads guilty, it shall be the duty of the judge before passing sentence to ask him whether he has anything to say why sentence should not be passed upon him according to law, but the omission so to ask him shall have no effect on the validity of the proceedings.

No stay, etc., of judgment for irregularity of certain grounds
14 of 2010

321I. No judgment shall be stayed or reversed on the ground of any objection based on alleged irregularity or defect which, if stated after the charge was read over to the accused, or during the trial, might have been cured by amending the charge, nor for any informality in swearing the jurors, witnesses or any of them.

Evidence in arriving at a proper sentence
14 of 2010

321J.—(1) Where a verdict of guilty is recorded, the High Court may, after judgment but before passing sentence, receive such information or evidence as it thinks fit, in order to inform itself as proper to the proper sentence to be passed.

(2) The information or evidence that the court may receive under subsection (1) may, in addition to the evidence of the accused or the prosecution, include information or evidence by or on behalf of the victim of the offence and any relevant reports to enable the court assess the gravity of the offence.

Rules relating to procedure in the High Court
14 of 2010

321K. The Chief Justice may make rules relating to trials in the High Court and such rules may provide for—

(*a*) disclosure of information of such matters as may be considered necessary;

(*b*) adjournments;

(*c*) receiving of evidence before sentencing; and

(*d*) any other matter falling within the functions, duties and powers of the court.

Part XI

Consideration by High Court and Subordinate Courts of other Offences Admitted by the Accused

Consideration of other offences admitted by accused 14 of 2010

322.—(1) Where an accused has been convicted of any offence the court may, with the consent of the prosecution and on application by the accused that the court take into consideration in deciding his sentence, other untried offences of a like character which are on record and to which the accused admits having committed, take such other offences into consideration in deciding the sentence, if the court is satisfied that the accused freely and voluntarily admits having committed such other offences.

(2) If the court takes such other untried offences into consideration in deciding the sentence, the court shall record the date, place and nature of such other offences so admitted and the accused shall be deemed to have been convicted by the court of such other offences, unless the conviction of the offence with which he was charged is set aside on appeal or review.

Part XII

Sentences and their Execution

Sentence of death

323. When any person is sentenced to death, the sentence shall direct that he shall suffer death in the manner authorized by law.

Accused to be informed of right to appeal 14 of 2010

324. When an accused is sentenced to death, the court shall inform him that he has a right to appeal the period within which, if he wishes to appeal, his appeal should be preferred.

Authority for detention 14 of 2010

325. A certificate, in the prescribed form, signed by the Registrar that the sentence of death has been passed and naming the person so sentenced shall be sufficient authority for the detention of such person.

Record and report to be sent to President 14 of 2010

326.—(1) As soon as conveniently may be after sentence of death has been pronounced, if no appeal from the sentence is preferred, or if such appeal is preferred and the sentence is confirmed, then as soon as conveniently may be after such confirmation, the presiding judge shall forward to the President a copy of notes of evidence taken on the trial, with a report in writing signed by him containing any recommendation or observation on the case he may think fit to make.

(2) The President shall communicate to the said judge, or his successor in office, the terms of any decision which he may have reached in the matter, and such judge shall cause the tenor and substance thereof to be entered in records of the Court.

(3) Subject to section 89 of the Constitution, the President shall under his hand in accordance with section 89 (2) of the Constitution issue—

(*a*) a death warrant;

(*b*) an order for the sentence of death to be commuted; or

(*c*) a pardon,

to give effect to his decision.

(4) Where the sentence of death is to be carried out, the warrant shall state the place where and the time when the execution is to be held, and shall give directions as to the place of burial of the body of the person executed.

(5) Where the sentence of death is commuted for any other punishment, the order shall specify that other punishment.

(6) Where the person sentenced is pardoned, the pardon shall state whether the pardon is free, or to what conditions, if any, it is subject.

(7) The warrant, or order, or pardon of the President shall be sufficient authority in law to all persons to whom the same is directed, to carry out the direction therein given in accordance with the terms thereof.

Procedure where a woman convicted of capital offence alleges she is pregnant
14 of 2010

327.—(1) In every case where a woman is convicted of an offence punishable with death, the court shall, before sentence is passed on her, inquire as to whether she is pregnant.

(2) Where a woman convicted of an offence punishable with death alleges that she is pregnant, or where the Court before whom a woman is so convicted thinks fit to order, the question whether or not the woman is pregnant shall, before sentence is passed on her, be determined by the Court.

(3) The question whether the woman is pregnant or not shall be determined by the Court on such evidence as may be laid before it either on the part of the woman or on the part of the Republic and the Court shall find that the woman is not pregnant unless it is proved affirmatively to its satisfaction that she is pregnant.

(4) Where on proceedings under this section the Court finds that the woman in question is not pregnant the woman may appeal to the Supreme Court of Appeal and that Court, if satisfied that the finding that the woman is pregnant should be set aside, shall quash the sentence passed on her and instead thereof pass on her a sentence of imprisonment for life.

Sentence of death not to be passed on pregnant woman

328. Where a woman convicted of an offence punishable with death is found to be pregnant in accordance with section 327, the sentence to be passed on her shall be a sentence of imprisonment for life instead of sentence of death.

Warrant in case of sentence of imprisonment
14 of 2010

329.—(1) A warrant signed by a judge or magistrate by whom any person shall be sentenced to imprisonment, ordering that the sentence shall be carried out in any prison within Malaŵi, shall be issued by the sentencing judge or magistrate and shall be full authority to the officer in charge of such prison and to all other persons for carrying into effect the sentence described in such warrant not being a sentence of death.

Cap. 7:01

(2) Subject to section 35 of the Penal Code every sentence shall be deemed to commence from, and to include, the whole of the day of the date on which it was pronounced except where the court pronouncing such sentence otherwise directs or where otherwise provided in the Code.

Recovery of fine, penalty, etc.

330. When a court orders money to be paid by an accused or by a prosecutor or complainant for fine, penalty, restitution, compensation, costs, expenses or otherwise, the money may be levied by seizure and sale of the movable or immovable property of the person ordered to pay as if it were money payable under a judgment and the Sheriffs Act, with any necessary modifications, shall apply to such seizure and sale.

Cap. 3:05

Suspension of execution of sentence of imprisonment in default of fine
14 of 2010

331. Where a convicted person has been sentenced to a fine only and to imprisonment in default of payment of a fine, and whether or not a warrant of seizure and sale has been issued under section 330, the court may suspend the execution of the sentence of imprisonment and may release the convicted person upon his executing a bond, with or without sureties, as the court thinks fit, conditioned for his appearance before such court on a day not being more than thirty days from the time of executing the bond.

(2) Where a convicted person fails to pay a fine specified under or before the day appointed by the court, the court may, subject to the other provisions of this Code, direct the sentence of imprisonment to be carried into execution forthwith.

Order for payment of money on non-recovery of which imprisonment may be imposed
14 of 2010

332.—(1) In any case in which an order for the payment of money has been made, on non-recovery of which imprisonment may be imposed, and the money is not paid forthwith, the court may require the person ordered to make such payment to enter into a bond as prescribed in section 331, and in default of his so doing may at once pass sentence of imprisonment as if the money had not been recovered.

(2) The court may in its discretion direct that any money to which this section applies may be paid by instalments at such times

and in such instalments as the court may deem fit; but in default of payment of such instalments the whole amount outstanding shall become and be immediately due and payable, and all the provisions of this Code and of the Penal Code applicable to a sentence of fine and imprisonment in default of payment of a fine shall apply. Cap. 7:01

(3) A warrant of commitment to prison in respect of the non-payment of any sum of money by a person to whom time has been allowed for payment under subsection (1), or who has been allowed to pay by instalments under subsection (2), shall not be issued unless the court shall first make inquiry as to his means in his presence.

(4) After making inquiry in accordance with subsection (3), the court may, if it thinks fit, instead of issuing a warrant of commitment to prison, make an order extending the time allowed for payment or varying the amount of the instalments or the time at which the instalments were, by the previous order of the court, directed to be paid, as the case may be.

(5) For the purpose of enabling inquiry to be made under subsection (3), the court may issue a summons to the person ordered to pay the money to appear before it and, if he does not appear in obedience to the summons, may issue a warrant for his arrest or, without issuing a summons, issue in the first instance a warrant for his arrest.

Commitment for want of seizure and sale

333. If the officer having the execution of a warrant of seizure and sale reports that he could find no property or not sufficient property whereon to levy the money mentioned in the warrant with expenses, the court may by the same or a subsequent warrant commit the person ordered to go to prison for a time specified in the warrant, unless the money and all expenses of the seizure and sale, commitment and conveyance to prison, to be specified in the warrant, are sooner paid.

Payment in full after commitment 14 of 2010

334. Any person committed to prison for non-payment may pay the sum mentioned in the warrant, with the amount of expenses therein authorized, if any, into court or to the person in whose custody he is, and that person shall thereupon discharge him if he is in custody for no other matter.

Part payment after commitment 14 of 2010

335.—(1) If any person committed to prison for non-payment shall pay any sum in part satisfaction of the sum adjudged to be paid, the term of his imprisonment shall be reduced by a number of days bearing as nearly as possible the same proportion to the total number of days for which such person is committed as the sum so paid bears to the sum for which he is liable.

(2) The officer in charge of a prison in which a person is confined who is desirous of taking advantage of subsection (1)

shall, on application being made to him by such prisoner, at once take him before a court, and such court shall certify the amount by which the term of imprisonment originally imposed is reduced by such payment in part satisfaction, and shall make such order as is required in the circumstances.

(3) If any sum paid in part satisfaction of the sum adjudged to be paid exceeds the proportion as calculated in accordance with subsection (1), the court shall certify the amount by which such sum exceeds such proportion and such amount shall be refunded to the person who paid the same.

Who may issue warrant
14 of 2010

336. Subject to section 326, every warrant for the execution of any sentence may be issued either by the judge or magistrate who passed the sentence or by his successor in office or by such other court exercising jurisdiction in the area concerned as may be specified by the Chief Justice by notice.

Orders where punishment not appropriate, absolute or conditional discharge, probation, etc.
5 of 1969
23 of 1970
14 of 2010

337.—(1) Where in any trial for an offence, the court thinks that the charge is proved but is of the opinion that, having regard to the youth, old age, character, antecedents, home surroundings, health or mental condition of the accused, or to the fact that the offence has not previously committed an offence, or to the nature of the offence, or to the extenuating circumstances in which the offence was committed, it is inexpedient to inflict any punishment, the court may—

(*a*) without proceeding to conviction, make an order dismissing the charge, after such admonition or caution to the offender as to the court seems fit;

(*b*) convict the offender, and if probation is not appropriate, make an order either discharging him absolutely or, if the court thinks fit, discharging him subject to the condition that he commits no offence during such period, not exceeding twelve months from the date of the order, as may be specified therein;

(*c*) where the court considers it expedient to release the offender on probation—

(i) if the offender express his willingness to comply with the order, after or without convicting the offender, make a probation order; or

(ii) convict the offender and direct that he be released on his entering into such bond as is referred to in section 53, with or without sureties, and, in addition to any other condition, subject to the condition that, during such period (not exceeding three years) as the court may direct, he shall appear and receive sentence when called upon and in the meantime shall keep the peace and be of good behavior.

(2) An order made under subsection (1) (*a*) shall, for the purpose of reverting or restoring stolen property and of enabling the court to make any order under sections 147 and 148 have the like effect as a conviction.

(3) An order discharging an offender conditionally under subsection (1) (*b*) is in this Code referred to as an order for conditional discharge, and the period specified in any such order is referred to as the period of conditional discharge.

(4) A probation order made under subsection (1) (*c*) (*i*) shall be made in accordance with section 4 of the Probation of Offenders Act and shall have effect in accordance with that Act. In this Code a bond entered into under subsection (1) (*c*) (ii) is referred to as a probation bond and the period of a probation order or probation bond is referred to as the probation period. The provisions of sections 123 and 125 shall, with any necessary modifications, apply to probation bonds. Cap. 9:01

(5) Before making an order for conditional discharge or acting under subsection (1) (*c*) the court shall explain to the offender in ordinary language that—

(*a*) if he commits another offence during the period of conditional discharge or the probation period; and

(*b*) in the case of a probation order or probation bond, if he fails in any respect to comply therewith,

he will be liable to be sentenced or convicted and sentenced for the original offence.

(6) Where, under section 341, a person conditionally discharged is sentenced for the offence in respect of which the order for conditional discharge was made, that order shall cease to have effect.

Security for keeping the peace

338.—(1) A person convicted of an offence may, instead of or in addition to, any punishment to which he is liable, be ordered to enter into a bond with or without sureties, in such amount as the court thinks fit, that he shall keep the peace and be of good behaviour for a time to be fixed by the court, and may be ordered to be imprisoned until such bond, with sureties if so directed, is entered into.

(2) The imprisonment under subsection (1) for not entering into the bond shall not extend for a term longer than one (1) year, and shall, together with the fixed terms of imprisonment, if any, extend for a term longer than the longest term for which he might be sentenced to be imprisoned without fine.

(3) The provisions of sections 123 and 125 shall, with any necessary modifications, apply to bonds under this section.

Suspended sentence
5 of 1969
18 of 1973
23 of 1990
9 of 1999
14 of 2010

339.—(1) When a person is convicted of any offence the court may pass sentence of imprisonment but order the operation thereof to be suspended for a period not exceeding three years, on one or more conditions, relating to compensation to be made by the offender for damage or pecuniary loss, or to good conduct, or to any other matter whatsoever, as the court may specify in the order.

(2) When a person is convicted of any offence, not being an offence the sentence for which is fixed by law, the court may, if it is of the opinion that the person would be adequately punished by a fine or imprisonment for a term not exceeding twelve months, fine the person or sentence the person to a term of imprisonment not exceeding twelve months but the court may, as the case may be, order the suspension of the payment of the fine or operation of the sentence of imprisonment on condition that the person performs community service for such number of hours as the court may specify in the order.

Imprisonment of first offenders
5 of 1969
14 of 2010

340.—(1) Where a person is convicted by a court of an offence and no previous conviction is proved against him, he shall not be sentenced for that offence, otherwise than under section 339, to undergo imprisonment, not being imprisonment to be undergone in default of the payment of a reasonable fine, unless it appears to the court, on good grounds, which shall be set out by the court in the record, that there is no other appropriate means of dealing with him.

(2) The provisions of sections 15 and 16 shall apply to a sentence of imprisonment imposed by a subordinate court under subsection (1) to the extent specified in such sections.

Consequences of breach of conditions
5 of 1969
14 of 2010

341.—(1) If any condition of—

(*a*) an order for conditional discharge or a probation bond under section 337; or

(*b*) an order under section 339,

is not complied with the court may summon the offender to attend court or, if it is satisfied that his attendance is not likely otherwise to be secured, may order his arrest and, on his appearance before the court, may commit him to undergo the term of imprisonment already imposed or, as the case may be, may deal with him for the offence for which the order was made or the bond was entered into in any manner in which the court could have dealt with him if he had just been convicted by that court of that offence:

Provided that the court may in its discretion grant an order further suspending the operation of the sentence subject to such conditions as might have been imposed at the time of the passing of the sentence.

(2) The forfeiture of a probation bond under section 125 for failure to comply with any condition other than the condition requiring the offender to appear and receive sentence when called

upon shall not affect the continuation in operation of the bond for the purpose of this section in relation to the probation period.

(3) If, during any period of conditional discharge or suspension of a sentence or during a probation period, the person discharged, sentenced or released on probation, as the case may be, is convicted of an offence by any other court such other court may commit him in custody or release him on bail until he can be brought before the court by which the order for conditional discharge, suspended sentence or probation bond was made and, it if does so, shall send to the court a copy of the judgment of that other court.

Person twice convicted may be subjected to police supervision
14 of 2010

342.—(1) When any person, having been convicted of any offence punishable with imprisonment for a term of three years or more, is again convicted of an offence punishable with imprisonment for a term of three years or more, the court may, if it thinks fit, at the time of passing sentence or imprisonment on such person, also order that he shall be subject to police supervision as hereinafter provided for a term not exceeding five years from the date of his release from prison:

Provided that where any person has been released from imprisonment on licence, any period of police supervision to which such person is subject shall not start to run until after the expiry of the period of such release on licence.

(2) If such conviction is set aside on appeal or otherwise, such order shall become void.

(3) An order under this section may be made by the High Court when exercising its powers to review.

Requirements from persons subject to police supervision

343.—(1) Every person subject to police supervision, and who is at large in Malaŵi shall—

(*a*) report himself personally once in each month to the officer in charge of the police station nearest to his place of residence at such time as may be directed by such police officer, or as may been prescribed by rules under this section; and

(*b*) notify the place of his residence and any change of such residence at such time and place and in such manner and to such person as may be prescribed by rules under this section.

(2) The Minister may make rules for carrying out this section.

Failure to comply with requirements under section 343
14 of 2010

344.—(1) Any person subject to police supervision who is at large in Malaŵi and who refuses or neglects to comply with any requirement prescribed by section 343 or by any rule made thereunder shall be guilty of an offence and shall be liable to imprisonment for six months.

(2) It shall be a defence to any charge under this section if it shall be made to appear to the court before which the charge shall be brought that the person so charged did his best to act in conformity with the law.

Errors and omission in orders and warrants

345. The court may at any time amend any defect in substance or in form in any order or warrant, and no omission or error as to time and place, and no fact in form in any order or warrant given under this Code shall be held to render void or unlawful any act done or intended to be done by virtue of such order or warrant, provided that it is therein mentioned, or may be inferred therefrom, that it is founded on a conviction or judgment, and there is a valid conviction or judgment to sustain the same.

Part XIII

Appeals and Review

Appeal to High Court
5 of 1969
14 of 2010

346.—(1) Save as hereinafter provided, any person aggrieved by any final judgment or order, or any sentence made or passed by any subordinate court may appeal to the High Court.

5 of 1969

(2) An appeal under subsection (1) may be upon a matter of fact as well as on a matter of law.

(3) Save as provided in subsection (4), no appeal shall lie against a finding of acquittal made by a subordinate court.

(4) The Director of Public Prosecutions may appeal to the High Court against any final judgment or order, including a finding of acquittal of any subordinate court, if, and only if, he is dissatisfied upon a point of law; and the provisions of this Part shall apply to an appeal under this subsection with such modifications as the circumstances may require.

Number of judges on appeal
14 of 2010

347.—(1) An appeal from a subordinate court shall be heard by one judge of the High Court except where, in any particular case, the Chief Justice directs that an appeal be heard by two or more judges of the High Court.

(2) The direction made by the Chief Justice under subsection (1) may be given before the hearing of the appeal or any time before judgment is delivered.

(3) If, on the hearing of the appeal, the court is equally divided in opinion, the appeal shall be dismissed.

348. [*Repealed by* 14 *of* 2010].

Limitation of appeals
14 of 2010

349.—(1) No appeal to the High Court shall be entertained from any finding, sentence or order unless the appellant shall have given notice in writing to the High Court of his intention to appeal

within ten days of the date of the finding, sentence or order appealed

Provided that—

(*a*) where an appellant in custody delivers to any person in whose custody he has a notice in writing of his intention to appeal, for transmission to the High Court, he shall be deemed to have given such notice to the High Court;

(*b*) if an appellant is unrepresented and states his intention to appeal in the court by which the finding, sentence or order was made and at the time thereof, such statement shall be deemed to be a notice in writing to the High Court of his intention to appeal.

(2) If the appellant, at the time when he gave notice of his intention to appeal, asked for a copy of the finding, sentence or order appealed against, the appellant shall enter a petition, in accordance with section 350, within thirty days of the date of his receipt of such copy, or his appeal shall not be entertained.

(3) If the appellant, at the time when he gave notice of his intention to appeal, did not ask for a copy of the finding, sentence or order appealed against, the appellant shall enter a petition in accordance with section 350, within thirty days of the date of the finding, sentence or order appealed against, or his appeal shall not be entertained.

(4) Notwithstanding the other provisions of this section, the High Court may, for good cause, admit an appeal although the periods of limitation prescribed in this section have elapsed.

Petition of appeal
14 of 2010

350.—(1) Every appeal to the High Court shall be made in the form of a petition in writing presented by the appellant or his legal practitioner, setting out the grounds of appeal.

(2) Where the appellant is represented by a legal practitioner, the petition shall contain particulars of the matters of law or of fact in regard to which the subordinate court appealed from is alleged to have erred, and shall be accompanied by two copies.

(3) If the appellant is in custody, he may present his petition of appeal to the person in whose custody he is, who shall thereupon forward such petition to the Registrar of the High Court.

Summary dismissal of appeal
14 of 2010

351.—(1) On receiving the petition under section 350, the High Court shall peruse the same and may, if it considers that the appeal is vexatious or frivolous or otherwise raises no sufficient ground which would enable the appeal to succeed, dismiss the appeal summarily.

(2) Before dismissing an appeal under this section, the court shall call for the record of the case to satisfy itself that the petition indeed raises no sufficient grounds.

Notice of time and place of hearing
14 of 2010

352. Where an appeal has not been dismissed summarily under section 351, the High Court shall cause notice to be given to the parties of the time and place at which such appeal shall be heard, and shall furnish both parties with a copy of the proceedings and of the grounds of appeal.

Powers of the High Court
5 of 1969
14 of 2010

353.—(1) The High Court shall, after giving notice to the parties under this section send for the record of the case, if such record is not already in court.

(2) After perusing the record of the case and after hearing the appellant or his legal practitioner if he appears, the court may, if it considers that there is no sufficient ground for interfering, dismiss the appeal, or may—

(*a*) in an appeal by any aggrieved person from a conviction—

(i) reverse the finding and sentence, and acquit or discharge the accused, or order him to be tried by a court of competent jurisdiction, or commit him for trial;

(ii) alter the finding maintaining the sentence, or, with or without altering the finding, reduce or increase the sentence;

(iii) with or without such reduction, or increase and with or without altering the finding, alter the nature of the sentence;

(*b*) in an appeal by any aggrieved person from any other order, alter or reverse such order;

(*c*) in an appeal by the Director of Public Prosecutions from a finding of acquittal—

(i) if the finding of acquittal was arrived at without the defence having been called, remit the case to the subordinate court with a direction to proceed with the trial and to call on the defence;

(ii) in any other case, convert the finding of acquittal into one of conviction and either make an order under section 337, 338 or 339 or pass sentence or remit the case to the subordinate court for sentence, and in any of the cases mentioned in this subsection the court may make any amendment or any consequential or incidental order that may appear just and proper.

(3) Where the appellant does not appear at the hearing of an appeal, the court may—

(*a*) if the appellant is the Director of Public Prosecutions, dismiss the appeal; or

(*b*) if the appellant is the convicted person, adjourn the case.

(4) Nothing in this section shall authorize the High Court to impose a greater punishment for the offence, which in the opinion of the High Court the accused has committed, than the trial court could have imposed.

(5) When any person is acquitted of the offence with which he was charged but is convicted of another offence, whether charged with such offence or not, the High Court may, if it reverses the finding of conviction, itself convert the finding of acquittal into one of conviction.

(6) An appellant whether in custody or not shall be entitled to be present at the hearing of his appeal.

(7) Where the Director of Public Prosecutions indicates to the High Court that he does not wish to be heard in support of a conviction appealed against, he shall be required to give reasons to the court and the High Court may allow the appeal summarily and the appellant notwithstanding that the date fixed for hearing has not arrived.

(8) The High Court may itself hear evidence relating to the previous convictions of any appellant.

Orders conformable to judgment or order
14 of 2010

354.—(1) When a case is decided on appeal by the High Court, it—

(*a*) itself make such orders as are conformable to its judgment or order and copies of such judgment and order, and of the orders conformable thereto, shall in due course be transmitted to the court by which the conviction, sentence or order appealed from was recorded or made; or

(*b*) certify its judgment or order to such court which shall thereupon make such orders as are conformable to that judgment or order.

(2) If any amendment of the record is necessary by reason of any judgment or order made under subsection (1), it shall be made by the subordinate court.

Stay of execution and admission to bail pending appeal

355.—(1) Subject to this Code, neither a notice of intention to appeal given under section 349 nor a petition of appeal under section 350 shall operate as a stay of execution of any sentence or order, but the subordinate court which passed the sentence or made the order, or the High Court, may order that any such sentence or order be stayed pending the hearing of an appeal and if the appellant is in custody that he may be released on bail, with or without sureties, pending such hearing.

(2) If the appeal is ultimately dismissed and an original sentence of imprisonment confirmed, or some other sentence of imprison-

ment substituted therefore, the time during which the appellant has been released on bail shall be excluded in computing the term of imprisonment to which he is finally sentenced.

Additional evidence
14 of 2010

356.—(1) In dealing with an appeal from a subordinate court the High Court, if it thinks additional evidence is necessary, shall record its reasons, and may either take such evidence itself or direct it to be taken by a subordinate court.

(2) When the additional evidence is taken by a subordinate court, such court shall certify such evidence to the High Court, which shall thereupon proceed to dispose of the appeal.

(3) Unless the High Court otherwise directs, the accused or his legal practitioner shall be present when the additional evidence is taken.

(4) Evidence taken in pursuance of this section shall be taken as if it were evidence taken at a trial before a subordinate court.

Abatement of appeals
14 of 2010

357. Every appeal from a subordinate court, except an appeal from a sentence of fine, shall finally abate on the death of the appellant.

358. [*Repealed by* 24 *of* 1968].

Admission to bail pending appeal

359. The High Court may in its discretion in any case in which an appeal to the Supreme Court of Appeal is filed grant bail pending the hearing of an appeal.

Power of High Court to call for records for review

360. The High Court may call for and examine the record of any criminal proceedings before any subordinate court for the purpose of reviewing the proceedings and satisfying itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of any such subordinate court.

Power of Resident Magistrates to call for records of lower courts and to report to the High Court
14 of 2010

361.—(1) Any Resident Magistrate may call for and examine the record of any criminal proceedings before a subordinate court of the first, second, third or fourth grade, for the purpose of satisfying himself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of such inferior subordinate court.

(2) If any Resident Magistrate acting under subsection (1) considers that any finding, sentence or order of the subordinate court of the first, second, third or fourth grade is illegal or improper, or that any such proceedings are irregular, he shall forward the record, with such remarks thereon as he thinks fit, to the High Court.

Powers of the High Court on review
19 of 1997
14 of 2010

362.—(1) In the case of a proceeding in a subordinate court the record of which has been called for or which has been forwarded under section 361, or which otherwise comes to its knowledge, the High Court, by way of review, may exercise the same powers as are conferred upon it on appeal by sections 353 (2) (*a*), (*b*) and (*c*), and 356.

(2) No order made in exercise of the powers conferred in this section shall be made to the prejudice of an accused unless he has first had an opportunity of being heard either personally or by a legal practitioner in his own defence.

(3) The proceedings by way of review may take place notwithstanding—

(*a*) that an appeal lies from the finding made, or sentence imposed, in the proceedings under review; and

(*b*) that the time limited for the bringing of such appeal has not elapsed—

(i) the time limited for the bringing of an appeal against the finding made, or the sentence imposed, in such proceedings has elapsed; or

(ii) the accused has declared in writing that he does not intend to appeal against either such finding or such sentence.

(4) The exercise of the High Court of its powers of review under this section in relation to any proceedings shall not operate as a bar to any appeal which may lie against the finding made, or the sentence imposed, in such proceedings:

Provided, however, that such review shall operate as a bar to such appeal if the proceedings by way of review took place in open court and the accused had an opportunity of being heard either personally or by a legal practitioner.

Discretion of Court as to hearing parties
14 of 2010

363.—(1) The High Court may, if it thinks fit, when exercising powers of review, hear any party either personally or by a legal practitioner.

(2) No party has any right to be heard either personally or by a legal practitioner before the High Court when exercising its powers of review but nothing in this subsection shall be deemed to affect section 362 (2).

Part XIV

Miscellaneous

Rules relating to duties of court officials, interpreters, etc.

364.—(1) The Chief Justice may make rules of Court providing for the performance of their duties in connexion with proceedings under this Code by court officials, interpreters and other persons.

(2) Without derogating from the powers conferred by subsection (1), such rules may provide among other things for the occasions upon which interpreters shall be required to take oaths, or make affirmations, for the purposes of proceedings in the High Court or subordinate courts.

Rules relating to community service
9 of 1999
14 of 2010

364A.—(1) The Chief Justice may make rules relating to the imposition and performance of community service pursuant to an order made under section 339 (2).

(2) Without derogating from the powers conferred by subsection (1), such rules may provide for—

(*a*) the procedure before, during and after imposing an order to perform community service;

(*b*) the regulation of hours to be performed by the person ordered to perform community service;

(*c*) the appointment of a national committee on community service;

(*d*) the appointment of national coordinators and regional coordinators of community service; and

(*e*) such other matters as are necessary for the proper administration and execution of an order to perform community service.

Shorthand notes, and electronic records of proceedings
14 of 2010

365. Shorthand notes may be taken, and electronic records be made, of the proceedings at the trial of any person before the High Court and a transcript of such notes or records shall be made if the court so directs, and such transcript may for all purposes be deemed to be the official record of the proceedings at such trial.

Copies of proceedings
14 of 2010

366. If any person affected by any judgment or order passed in any proceedings under this Code desires to have a copy of the judgment or order or any deposition or other part of the record, he shall on applying for such copy be furnished therewith upon payment of such fee as may be prescribed by the Chief Justice from time to time.

Forms

367. The Chief Justice may by notice published in the *Gazette* prescribe the forms which are to be used for the purposes of this Code.

Allowances to jurors, complainants and witnesses
14 of 2010

368.—(1) The Minister may, in consultation with the Chief Justice, make rules providing for the payment of allowances to jurors, complainants and witnesses for attending before a court for the purposes of any inquiry, trial or other proceeding under this Code.

(2) Subject to any rules made under subsection (1) a court may order payment on the part of the Government of the reasonable expenses of any juror, complainant or witness for so attending.

Part XV

Savings and Consequential Amendments

Savings
Cap. 14:03
Cap. 14:02
Cap. 69:01

369. This Code shall be in addition to and not in derogation of the Restriction and Security Orders Act, the Preservation of Public Security Act and the Road Traffic Act.

370. [*Repealed by* 14 *of* 2010].

Application of Code to criminal proceedings in any traditional or local court

371.—(1) The Chief Justice may by notice published in the *Gazette* from time to time specify that any provisions of this Code shall apply to criminal proceedings in any traditional or local court and such provisions shall so apply.

(2) Except as expressly provided for in this Code, by any notice under subsection (1), or by any other written law, no provision of this Code shall apply to any criminal proceeding in any traditional or local court.

14 of 2010

FIRST SCHEDULE

ARRESTABLE OFFENCES

Part I

Offences Under the Penal Code

Explanatory Note —The entries in the Second Column of this Schedule headed "Offence" are not intended as definitions of the offences described in the several corresponding sections of the Penal Code or even as abstract of these sections, but merely as references to the subject of the section, the number of which is given in the First Column.

1	2	3
Section	*Offence*	*Whether the police may arrest without warrant or not*
21.	Aiding, abetting counselling or procuring the commission of an offence	May arrest without warrant if arrest for the offence aided, abetted, counselled or procured offence may be made without warrant but not otherwise

Division 1—Offences Against Public Order

Chapter VII—Treason and Other Offences Against the Republic

1	2	3
Section	*Offence*	*Whether the police may arrest without warrant or not*
38.	Treason	May arrest without warrant
39.	Misprision of treason	ditto
40.	Promoting war etc, against groups	May arrest without warrant
41.	Inciting to mutiny	ditto
42.	Aiding in acts of mutiny	Shall not arrest without warrant
43.	Inducing desertion	ditto
44. (1)	Aiding prisoner of war to escape	May arrest without warrant
(2)	Permitting prisoner of war to escape	Shall not arrest without warrant
46. (1)	Importing, etc, prohibited publications	Shall not arrest without warrant
(2)	Possessing prohibited publications	ditto
48. (1)	Failing to deliver prohibited publications to police	May arrest without warrant
51. (1)	Seditious offences	Shall not arrest without warrant
(2)	Possessing seditious publications	ditto
(10)	Using or attempting to use a confiscated printing machine	ditto
(11)	Printing or publishing a newspaper in contravention of an order made under section 51 (2)	ditto
54.	Administering or taking oath to commit capital offence	May arrest without warrant
55.	Administering or taking other oaths	ditto
56. (1)	Compelling another person to make an oath	ditto
(2)	Being present at and consenting to the administration of an oath	ditto
59. (1)	Unlawful drilling	May arrest without warrant
(2)	Being unlawfully drilled	ditto
60.	Publishing false reports	Shall not arrest without warrant

1	2	3
Section	*Offence*	*Whether the police may arrest without warrant or not*
60A.	Communication of false statements, etc., which may be published generally outside Malaŵi	Shall not arrest without warrant

CHAPTER VIII—OFFENCES AFFECTING RELATIONS WITH FOREIGN STATES AND EXTERNAL TRANQUILITY

61.	Defamation of foreign dignitaries	Shall not arrest without warrant
62.	Foreign enlistment	ditto
63	Piracy	May arrest without warrant
65.	Managing unlawful society	ditto
66.	Being member of unlawful society	ditto

CHAPTER IX—UNLAWFUL ASSEMBLIES, RIOTS AND OTHER OFFENCES AGAINST PUBLIC TRANQUILITY

71.	Unlawful assembly	May arrest without warrant
71.	Riot	ditto
76.	Rioting after proclamation	ditto
77.	Obstructing proclamation	ditto
78.	Rioters destroying buildings	ditto
79.	Rioters damaging buildings	ditto
80.	Riotously preventing sailing of ship	ditto
81.	Prohibition of carrying offensive weapons without lawful authority or reasonable excuse	May arrest without warrant subject to the provisions of subsection (3) of the section
82.	Forcible entry	May arrest without warrant
83.	Forcible detainer	ditto
84.	Committing affray	ditto
85.	Challenging to fight a duel	Shall not arrest without warrant
86.	Threatening violence	May arrest without warrant
87.	Proposing violence at assemblies	ditto
88.	Intimidation	ditto
89.	Assembling for purpose of smuggling	ditto

Division II—Offences against the Administration of Lawful Authority

CHAPTER X—CORRUPTION AND THE ABUSE OF OFFICE

1	2	3
Section	*Offence*	*Whether the police may arrest without warrant or not*
90.	Official corruption	Shall not arrest without warrant
91.	Extortion by public officers	ditto
92	Receiving property to show favour	ditto
93.	Officer discharging duties in respect of property in which he has a special interest	ditto
94.	False claim by officials	ditto
95.	Abuse of office	ditto
96.	False certificates by public officers	May arrest without warrant
97.	Unauthorized administration of oaths	ditto
98.	False assumption of authority	ditto
99.	Personating public officers	ditto
100.	Threat of injury to persons employed in public service	ditto

CHAPTER XI—OFFENCES RELATING TO THE ADMINISTRATION OF JUSTICE

103.	False statements by interpreters	Shall not arrest without warrant
104.	Perjury or subornation of perjury	ditto
105.	Fabricating evidence	ditto
106.	False swearing	ditto
107.	Deceiving witnesses	ditto
108.	Destroying evidence	ditto
109.	Conspiracy to defeat justice and interference with witnesses	ditto
110.	Compounding penal actions	ditto
111.	Compounding felonies . .	ditto
112.	Advertising for stolen property	ditto
113.	Offences relating to judicial proceedings	ditto

Chapter XII—Rescues, Escapes and Obstructing Officers of Courts of Law

1	2	3
Section	*Offence*	*Whether the police may arrest without warrant or not*
114.	Rescue	
	(*a*) if person rescued is under sentence of death or imprisonment for life or charged with offence punishable with death or imprisonment for without warrant or not life . .	May arrest without warrant
	(*b*) if person rescued is imprisoned on a charge or under sentence for any other offence	ditto
115.	Escape	ditto
116.	Permitting prisoners to escape	ditto
117.	Aiding prisoners to escape	ditto
118.	Removal, etc., of property under lawful seizure	ditto
119.	Obstructing court officers . .	ditto

Chapter XIII—Miscellaneous Offences Against Public Authority

120.	Frauds and breaches of trust by public officers	Shall not arrest without warrant
121.	Neglect of official duty . .	ditto
122.	False information to person employed in public service	May arrest without warrant
123.	Disobedience of statutory duty	Shall not arrest without warrant
124.	Soliciting persons to break the law	May arrest without warrant
125.	Soliciting public officers, etc., to fail to carry out their duties	ditto

Division III—Offences to the Public in General

Chapter XIV—Offences Relating to Religion

127.	Insult to region of any class	May arrest without warrant
128.	Disturbing religious assemblies	ditto
129.	Trespassing on burial places	ditto

1	2	3
Section	*Offence*	*Whether the police may arrest without warrant or not*
130.	Uttering words with intent to wound religious without warrant or not feelings . .	Shall not arrest without warrant
131.	Hindering burial of dead body, etc.	May arrest without warrant

CHAPTER XV—OFFENCES AGAINST MORALITY

132.	Rape	May arrest without warrant
134.	Attempted rape	ditto
135.	Abduction	ditto
136.	Abduction of girl under sixteen years	ditto
137. (1)	Indecent assault on females	ditto
(3)	Insulting the modesty of a woman	ditto
137A.	Indecent practices between females	ditto
138. (1)	Defilement of girl under sixteen years	ditto
(2)	Attempted defilement of girl under sixteen years	ditto
139.	Defilement of an idiot or imbecile	ditto
140.	Procuration	ditto
141.	Procuring defilement by threats or fraud or administering drugs	ditto
142.	Householder permitting defilement of girl under sixteen years on his premises	ditto
143.	Detention with intent or in brothel	ditto
145.	Male person living on earnings of prostitution or persistently soliciting	Shall not arrest without warrant
146.	Woman aiding, etc., for gain prostitution of another woman	May arrest without warrant
147.	Keeping a brothel	ditto
147A.	Promoting prostitution, etc. .	ditto
148.	Conspiracy to defile	ditto

1	2	3
Section	*Offence*	*Whether the police may arrest without warrant or not*
149.	Attempt to procure without warrant or not abortion . .	May arrest without warrant
150.	Woman attempting to procure her own abortion	ditto
151.	Supplying drugs or instruments to procure abortion	ditto
153.	Unnatural offences	ditto
154.	Attempt to commit unnatural offences	ditto
155.	Indecent assault on boys under fourteen years	ditto
155A.	Indecent assault against idiots and imbeciles	ditto
156.	Indecent practices between males	ditto
157. (1)	Incest by males Proviso: if female person is under the age of sixteen years	ditto
(3)	Attempt to commit incest . .	ditto
158.	Incest by females	ditto

Chapter XVI—Offences Relating to Marriage and Domestic Obligations

161.	Fraudulent pretence of marriage	Shall not arrest without warrant
162.	Bigamy	ditto
163.	Dishonestly or fraudulently going through ceremony of marriage	ditto
164.	Desertion of children	ditto
165.	Neglecting to provide food, etc., for children	ditto
166.	Master not providing for servants or apprentices . .	ditto
167.	Child stealing	May arrest without warrant

Chapter XVII—Nuisance Offences Against Health and Convenience

168.	Committing common nuisance	Shall not arrest without warrant

1		2	3
Section		*Offence*	*Whether the police may arrest without warrant or not*
169.	(3)	Keeping common gaming house	Shall not arrest without warrant
	(4)	Being found in common gaming house	ditto
170.		Keeping or permitting the keeping of a common betting house	ditto
171.	(1)	Carrying on a lottery	ditto
	(2)	Printing or publishing advertisement relating to a lottery	ditto
176.		Organizing, managing or conducting pools	ditto
177.		Chain letters	ditto
179.		Trafficking in obscene publications	May arrest without warrant
180.		Being an idle or disorderly person	ditto
181.		Conduct likely to lead to breach of peace	Shall not arrest without warrant
182.		Use of insulting language . .	ditto
183.		Nuisances by drunken persons.	ditto
	(1)	Found drunk and incapable	May arrest without warrant
	(2)	Riotousor disorderly behaviour or in possession of a firearm while drunk	ditto
184.		Being a rogue or vagabond	ditto
191.	(1)	Wearing uniform without authority	ditto
	(2)	Bringing contempt on uniform	ditto
	(3)	Importing or selling uniform without authority	ditto
192.		Doing any act likely to spread infection of dangerous disease	ditto
193.		Adulteration of food or drink intended for sale	ditto
193A.		Importation of adulterated food or drinks	ditto

1	2	3
Section	*Offence*	*Whether the police may arrest without warrant or not*
194.	Selling, or offering or exposing for sale, noxious without warrant or not food or drink	May arrest without warrant
195.	Adulteration of drugs intended for sale	ditto
195A.	Importing of adulterated drugs	ditto
196.	Selling adulterated drugs . .	ditto
197.	Fouling water of public spring or reservoir	ditto
198.	Making the atmosphere noxious to health	Shall not arrest without warrant
199.	Carrying on offensive trade	ditto

CHAPTER XVIII—DEFAMATION

200.	Libel	Shall not arrest without warrant

Division IV—Offences Against the Person

CHAPTER XIX—MURDER AND MANSLAUGHTER

208.	Manslaughter	May arrest without warrant
209.	Murder	ditto

CHAPTER XIX A—GENOCIDE

217.	Genocide	May arrest without warrant

CHAPTER XXI—OFFENCES CONNECTED WITH MURDER AND SUICIDE

223.	Attempted murder	May arrest without warrant
224.	Attempted murder by convict	ditto
225.	Being accessory after the fact to murder	ditto
226.	Sending written threat to murder	ditto
227.	Conspiracy to murder . .	ditto
228.	Aiding suicide	ditto
229.	Attempted suicide	ditto
230.	Infanticide	ditto
231.	Killing unborn child	ditto
232.	Concealing the birth of a child	ditto
232A.	Abandonment of child at birth	ditto

CHAPTER XXII—OFFENCES ENDANGERING LIFE OR HEALTH

1	2	3
Section	*Offence*	*Whether the police may arrest without warrant or not*
233.	Disabling in order to commit felony or without warrant or not misdemeanour	May arrest without warrant
234.	Stupefying in order to commit felony or misdemenour . .	ditto
235.	Acts intended to cause grievous harm or to prevent arrest	ditto
236.	Preventing escape from wreck	ditto
237.	Intentionally endangering safety of persons travelling by railway	ditto
238.	Doing grievous harm	ditto
239.	Attempting to injure by explosive substances	ditto
240.	Administering poison with intent to harm	ditto
241.	Wounding and similar acts. .	ditto
242.	Failing to provide necessaries of life	Shall not arrest without warrant

CHAPTER XXII—OFFENCES ENDANGERING THE ENVIRONMENT

245A.	Offences endangering the environment	May arrest without warrant

CHAPTER XXIII—CRIMINAL RECKLESSNESS AND NEGLIGENCE

246.	Rash and negligent acts . .	May arrest without warrant
247.	Other negligent acts causing harm	ditto
248.	Dealing in poisonous substances in negligent manner	ditto
249.	Endangering safety of persons travelling by railway	ditto
250.	Exhibiting false light, mark or buoy	ditto
251.	Conveying person by water for hire in unsafe or over loaded vessel.	ditto
252.	Causing danger of obstruction in public way or line of navigation	ditto

Chapter XXIV—Assaults

1	2	3
Section	*Offence*	*Whether the police may arrest without warrant or not*
253.	Common assault	Shall not arrest without warrant
254.	Assault occasioning actual bodily harm	May arrest without warrant
255.	Assaulting person protecting wreck	ditto
256.	Various assaults	ditto

Chapter XXV—Offences Against Liberty

260.	Kidnapping	May arrest without warrant
261.	Kidnapping or abducting in murder a person	ditto
262.	Kidnapping or abducting with intent to confine a person . .	ditto
263.	Kidnapping or abducting in order to subject person to grievour's hurt, slavery, etc.	ditto
264.	Wrongfully concealing or keeping in confinement a kidnapped or abducted person	ditto
265.	Kidnapping or abducting child under fourteen years with intent to steal from its person . .	ditto
266.	Punishment for wrongful confinement	ditto
267.	Buying or disposing of any person as a slave	ditto
268.	Habitually dealing in slaves	ditto
269.	Unlawful compulsory labour	ditto

Division V—Offences Relating to Property

Chapter XXVI—Theft

278.	Theft	May arrest without warrant
279.	Stealing wills	ditto
280.	Stealing postal matter, etc	ditto
281.	Stealing cattle, etc.	ditto
282.	Stealing from the person in a dwelling-house, in transit, etc	ditto

1	2	3
Section	*Offence*	*Whether the police may arrest without warrant or not*
283.	Stealing by persons in the without warrant or not public service	May arrest without warrant
284.	Negligence by public officer in preserving money, etc. . .	ditto
286.	Stealing by clerks and servants	ditto
287.	Stealing by director or officers of companies	ditto
288.	Stealing by agents, etc. . .	ditto
289.	Stealing by tenants or lodgers	ditto
290.	Stealing after previous conviction	ditto
	CHAPTER XVII—OFFENCES ALLIED TO STEALING	
291.	Concealing registers	May arrest without warrant
292.	Concealing wills	ditto
293.	Concealing deeds.	ditto
294.	Killing animals with intent to steal	ditto
295.	Severing with intent to steal	ditto
296.	Fraudulent disposal of mortgaged goods	ditto
297.	Fraudulently dealing with ore or minerals in mines	ditto
298.	Fraudulent appropriation of mechanical or electrical power	ditto
298A.	Fraudulent appropriation of water	ditto
298B.	Fraudulent appropriation of telecommunication services	ditto
299.	Unlawfully using vehicle, animals, etc..	ditto
	CHAPTER XXVIII—ROBBERY AND EXTORTION	
300.	Robbery	May arrest without warrant
	Robbery with violence. . .	ditto
302.	Attempted robbery	ditto
	Attempted robbery with violence	ditto
303.	Assault with intent to steal	ditto

1	2	3
Section	*Offence*	*Whether the police may arrest without warrant or not*
304.	Demanding property by without warrant or not written threats	May arrest without warrant
305.	Threatening with intent to extort —	
	In certain specified cases . .	ditto
	In other cases	ditto
306.	Procuring execution of deeds, etc., by threats	ditto
307.	Demanding property with menaces with intent to steal	ditto
	CHAPTER XXIX—BURGLARY, HOUSEBREAKING AND SIMILAR OFFENCES	
309.	Housebreaking	May arrest without warrant
310.	Entering dwelling-house with intent to commit felony . .	ditto
311.	Breaking into building and committing felony	ditto
312.	Breaking into building with intent to commit felony	ditto
313.	Being found armed, etc., with intent to commit felony . .	ditto
	If offender has been previously convicted of a felony relating to property	ditto
314.	Criminal trespass	ditto
	If the property upon which offence committed is building used as human dwelling or as a place of worship or as a place for custody of property . .	ditto
316.	Unauthorized user of land and premises	Shall not arrest without warrant
317. (4)	Damaging or unlawfully removing detained aircraft, vessel or vehicle	ditto
	CHAPTER XXXI—FALSE PRETENCES	
319.	Obtaining property by false pretence	May arrest without warrant
319A.	Fraud other than false pretence	ditto

1	2	3
Section	*Offence*	*Whether the police may arrest without warrant or not*
319B.	Evasion of liability by false without warrant or not pretence	May arrest without warrant
319C.	Making off without payment	ditto
319D.	Passing valueless cheques . .	ditto
320.	Obtaining execution of a security by false pretence	ditto
321.	Cheating	ditto
322.	Obtaining credit, etc. by false pretence	ditto
323.	Conspiracy to defraud . . .	ditto
324.	Frauds on sale or mortgage of property	ditto
325.	Pretending to tell fortunes . .	ditto
326.	Obtaining registration, etc., by false pretence	ditto
327.	False declaration for passport	ditto

CHAPTER XXXII—RECEIVING PROPERTY STOLEN OR UNLAWFULLY OBTAINED AND LIKE OFFENCES

328. (1)	Receiving or retaining stolen property	May arrest without warrant
(2)	Receiving property unlawfully obtained, converted or disposed of	ditto
329.	Failing to account for possession of property suspected to be stolen or unlawfully obtained. . .	ditto
331.	Receiving goods stolen outside Malaŵi.	ditto
331A.	Money laundering	ditto

CHAPTER XXXIII—FRAUDS BY TRUSTEES AND PERSONS IN A POSITION OF TRUST, AND FALSE ACCOUNTING

332.	Fraudulently disposing of trust property	May arrest without warrant
333.	Directors and officers of corporations fraudulently appropriating property, or keeping fraudulent accounts, or falsifying books or accounts . .	ditto

1	2	3
Section	*Offence*	*Whether the police may arrest without warrant or not*
334.	False statements by without warrant or not officials of corporations	May arrest without warrant
335.	Fraudulent false accounting by clerks or servants	ditto
336.	False accounting by public officer	ditto
336A.	Fraudulent trading by a company	ditto

Division VI—Malicious Injuries to Property

CHAPTER XXXIV—OFFENCES CAUSING INJURY TO PROPERTY

337.	Arson	May arrest without warrant
338.	Attempt to commit arson	ditto
339.	Setting fire to crops or growing plants	ditto
340.	Attempting to set fire to crops or growing plants	ditto
341.	Casting away a ship	ditto
342.	Attempt to cast away a ship	ditto
343.	Killing or wounding animals in the case of certain animals . .	ditto
	In any other case	ditto
344. (1)	Destroying or damaging property in general	ditto
(2)	Destroying or damaging an inhabited house or a vessel with explosives	ditto
(3)	Destroying or damaging river bank or wall, or navigation works, or bridges	ditto
(4)	Destroying or damaging wills or registers	ditto
(5)	Destroying or damaging wreck	ditto
(6)	Destroying or damaging railways	ditto
(7)	Destroying or damaging property of special value	ditto
(8)	Destroying or damaging deeds or records	ditto

1	2	3
Section	*Offence*	*Whether the police may arrest without warrant or not*
345.	Attempt to destroy or damage property by use of without warrant or not explosives . .	May arrest without warrant
346.	Communicating infectious disease to animals	ditto
347.	Removing boundary marks with intent to defraud	ditto
348.	Removing or injuring survey or boundary marks	ditto
349.	Injuring or obstructing railway works, etc.	ditto
350.	Threatening to burn any building, etc., or to kill or wound any cattle	ditto

Division VII—Forgery, Coining, Counterfeiting and Similar Offences

CHAPTER XXXVI—FORGERY

351.	Forgery (where no special punishment is provided) . .	May arrest without warrant
357.	Forgery of a will, document of title, security, cheque, etc. . .	ditto
358.	Forgery of judicial or official document	ditto
359.	Forgery etc., of stamps . .	ditto
360.	Uttering false document . .	ditto
361.	Uttering cancelled or exhausted document	ditto
362.	Procuring execution of document by false pretence	ditto
363.	Obliterating or altering the crossing on a cheque	ditto
364.	Making or executing document without authority	ditto
365.	Demanding property upon forged testamentary instrument . .	ditto
366.	Importing or purchasing forged notes	ditto
367.	Falsifying warrant for money payable under public authority	ditto
368.	Permitting falsification of register or record	ditto

1	2	3
Section	*Offence*	*Whether the police may arrest without warrant or not*
369.	Sending false certificate of with out warrant or not marriage to Registrar	May arrest without warrant
370.	Making false statement for insertion in register of births, deaths or marriages	ditto

CHAPTER XXXVII—OFFENCES RELATING TO COIN AND TO BANK AND CURRENCY NOTES

372.	Counterfeiting coin	May arrest without warrant
373.	Making preparation for coining if the offence is committed with respect to coin of a foreign sovereign state	ditto
374.	Making or having in possession paper or implements for forgery.	ditto
375.	Clipping current coin . .	ditto
376.	Melting down currency . .	ditto
378.	Being in possession of clippings	ditto
379.	Uttering counterfeit coin . .	ditto
380.	Repeated uttering of counterfeit coin	ditto
381.	Uttering metal or coin not current as coin	ditto
382.	Selling articles bearing designs in imitation of currency . .	ditto
383.	Exporting counterfeit coin. .	ditto
385.	Being in possession, etc., of die or paper used for purpose of making revenue stamps . .	ditto
386.	Being in possession, etc., of die or paper used for postage stamps	ditto

CHAPTER XXXIX—COUNTERFEITING TRADE MARKS

388.	Counterfeiting, etc., trade mark	Shall not arrest without warrant

Chapter XL—Personation

1	2	3
Section	*Offence*	*Whether the police may arrest without warrant or not*
389.	Personation in general . . .	May arrest without warrant
	If representation is that the offender is a person entitled by will or operation of law to any specific property and he commits the offence to obtain such property	ditto
390.	Falsely acknowledging deeds, recognizances, etc.	ditto
391.	Personation of a person named in a certificate	ditto
392.	Lending, etc., certificate for purposes of personation . .	ditto
393.	Personation of person named in a testimonial of character	ditto
394.	Lending, etc., testimonial of character for purposes of personation	ditto

Chapter XLI—Secret Commissions and Corrupt Practices

396.	Corrupt practices	Shall not arrest without warrant
397.	Secret commissions on Government Contracts . .	ditto

Division VIII—Attempts and Conspiracies to Commit Crimes and Accessories After the Fact

Chapter XLII—Attempts

401.	Attempt to commit a felony or misdemeanour	According as to whether or not the offence is one for which the police may arrest without a warrant
402.	Attempt to commit a felony punishable with death or imprisonment for fourteen years or upwards.	May arrest without warrant
403.	Neglecting to prevent commission or completion of a felony	Shall not arrest without warrant

CHAPTER XLIII—CONSPIRACIES

1	2	3
Section	*Offence*	*Whether the police may arrest without warrant or not*
404.	Conspiracy to commit a felony	May arrest without warrant
405.	Conspiracy to commit a misdemeanour	According as to whether or not the offence is one for which the police may
406.	Conspiracy to effect certain without a warrant specified purposes	Shall not arrest without warrant

CHAPTER XLIV—ACCESSORIES AFTER THE FACT

407.	Being an accessory after the fact to a felony	May arrest without warrant
409.	Being accessory after the fact to a misdemeanour	Shall not arrest without warrant

PART II

OFFENCES UNDER OTHER LAWS

EXPLANATORY NOTE: The entries in the Third Column of this Part of this Schedule headed Offences are not intended as definitions of the offences described in the several corresponding sections of the laws referred to in the Second Column or even as abstracts of those number of which is given in the First Column.

1	2	3	4
Section	*Law*	*Offence*	*Whether the police may arrest without warrant or not*
3.	Hijacking Act, Cap. 7:03	Offences against aircraft	May arrest without warrant
10.	Hijacking Act, Cap. 7:03	Offences against motor vehicles, trains and vessels	ditto
3.	Witchcraft Act, Cap. 7:02	Trial by prohibited ordeal.	ditto
4.	Witchcraft Act, Cap 7:02	Charging persons with witchcraft	Shall not arrest without warrant
5.	Witchcraft Act, Cap. 7:02	Employment of witch finder	ditto
6.	Witchcraft Act, Cap. 7:02	Pretending witchcraft	ditto

1 *Section*	2 *Law*	3 *Offence*	4 *Whether the police may arrest without warrant or not*
7.	Witchcraft Act, Cap 7:02	Chiefs and headmen permitting etc., prohibited trials by ordeal	May arrest without warrant
8.	Witchcraft Act, Cap. 7:02	Profession of witchcraft illegal . .	ditto
9.	Witchcraft Act, Cap. 7:02	Using charms, lots, etc.	Shall not arrest without warrant

Second Schedule

Part A

Offences Triable by Subordinate Courts of the Third Grade Offences Under the Penal Code

Section	*Offence*
43.	Inducing soldiers or policemen to desert
47.	Offences in relation to publications importation of which is prohibited (whole)
60.	Publication of false news likely to cause fear and alarm to the public
71.	Unlawful assembly
81.	Prohibition of carrying offensive weapons without lawful authority or reasonable excuse
82.	Forcible entry
83.	Forcible detainer
84.	Fighting in public
85.	Challenging to fight a duel
86.	Threatening violence
88.	Intimidation (whole)
89.	Assembling for the purpose of smuggling
98.	False assumption of authority
99.	Personating public officers
100.	Threat of injury to persons employed in public service
107.	Deceiving witnesses
108.	Destroying evidence
113.	Offences relating to judicial proceedings
114.	Rescue (paragraph (*c*) only)
115.	Escape

Section	*Offence*
116.	Permitting prisoners to escape
118.	Removal, etc., of property under lawful seizure
119.	Obstructing court officers
122.	False information to person employed in the public service
123.	Disobedience of statutory duty Insult to religion of any class
128.	Disturbing religious assemblies
129.	Trespassing on burial places
130.	Writing or uttering words with intent to wound religious feelings
131.	Hindering burial of dead body, etc.
135.	Abduction of girls under sixteen years
137.	Insulting the modesty of a woman (subsection (3) only)
141.	Procuring defilement of women by threats or fraud or administering drugs
143.	Detention with intent or in brothel
145.	Male person living on earnings of prostitution or persistently soliciting
146.	Woman aiding, etc., for gain prostitution of another woman
147.	Brothels
164.	Desertion of children
165.	Neglecting to provide food, etc., for children
166.	Master not providing for servants or apprentices
168.	Common nuisance
169.	Gaming houses
170.	Betting houses
171.	Lotteries
174.	Exemption of private lotteries
177.	Chain letters
179.	Traffic in obscene publications
180.	Idle and disorderly persons
181.	Conduct likely to cause a breach of the peace
182.	Use of insulting language
183.	Nuisances by drunk persons, etc.
184.	Rogues and vagabonds
185.	Removal orders
189.	Penalty for failing to comply with removal order, etc.
190.	Review of removal order
191.	Wearing uniform without authority prohibited
192.	Negligent act likely to spread disease dangerous to life
193.	Adulteration of food or drink intended for sale
194.	Sale of noxious food or drink
195.	Adulteration of drugs
196.	Sale of adulterated drugs

Section	*Offence*
197.	Fouling water
198.	Fouling air
199.	Offensive trades
241.	Wounding and similar acts (whole)
246.	Reckless and negligent acts
247.	Other negligent acts
248.	Dealing in poisonous substances in negligent manner
249.	Endangering safety of persons traveling by railway
251.	Conveying person by water for hire in unsafe or overloaded vessel
252.	Danger or obstruction in public way or line or navigation
253.	Common assault
254.	Assaults occasioning actual bodily harm
256.	Other aggravated assaults
269.	Unlawful compulsory labour
278.	General punishment for theft (as read with sections 270 to 277 inclusive)
281.	Stealing cattle
294.	Killing animals with intent to steal
299.	Unlawful use of vehicles, animals, etc.
303.	Assault with intent to steal
314.	Criminal trespass
316.	Unauthorized user of land and premises
319.	Obtaining by false pretences
321.	Cheating
322.	Obtaining credit by false pretences
325.	Pretending to tell fortunes
326.	Obtaining registration, etc., by false pretence
327.	False declaration for passport
328.	Receiving property unlawfully obtained (subsection (2) only as read with subsection (3))
329.	Person suspected of having or conveying stolen property
337.	Arson (whole)
338.	Attempts to commit arson
339.	Setting fire to crops
340.	Attempting to set fire to crops, etc.
344. (1)	Malicious damage (subsection (1) only)
347.	Removing boundary marks with intent to defraud
348.	Willful damage, etc., to survey and boundary marks
349.	Penalties for damage, etc., to railway works
386.	Paper and dies for postage stamps
389.	Personation in general Personation of a person named in certificate
392.	Lending, etc. certificate for personation

Section	*Offence*
393.	Personation of person named in a testimonial of character
394.	Lending, etc., testimonial for personation
400.	Attempts, provided that a person may only be tried for an attempt to commit an offence which the court has power to hear
403.	Neglect to prevent a felony

Offences under Other Laws

CONVICTED PERSONS (EMPLOYMENT ON PUBLIC WORKS) ACT (CAP. 9:03)
The whole

POLICE ACT (CAP. 13:01)
Section
26. Penalty for disobeying order or violating conditions of a permit issued under section 25
27. Unlawful assemblies Section
28. Penalty for any violation of an order prohibiting meetings and processions
29. Prohibition of weapons at assemblies, meetings and processions

RESERVATION OF PUBLIC SECURITY ACT (CAP. 14:02)
The whole All regulations made thereunder

FIREARMS ACT (CAP. 14:08)
The whole
All regulations made thereunder

LOCAL GOVERNMENT (CAP. 22:01)
Elections and membership
By-laws

CHIEFS ACT (CAP. 22:03)
The whole

PUBLIC HEALTH ACT (CAP. 34:01)
The whole
All rules and regulations made thereunder

TAXATION ACT (CAP. 41:01)
The whole
All rules made thereunder

CUSTOMS AND EXCISE ACT (CAP. 42:01)
Section:
142 Smuggling

BUSINESSES LICENSING ACT (CAP. 46:01)
The whole

HIDE AND SKIN TRADE ACT (CAP. 50:02)
The whole
All rules made thereunder
Section: Offence

INTOXICATING LIQUOR ACT (CAP. 50:03)
The whole
All rules made thereunder

REGULATION OF MINIMUM WAGES AND CONDITIONS OF EMPLOYMENT ACT (CAP. 55:01) [*Repealed by* 6 *of* 2000]
The whole

FOREST ACT (CAP. 63:01)
The whole
All rules made thereunder

PLANT PROTECTION ACT (CAP. 64:01)
The whole
All rules made thereunder

NOXIOUS WEEDS ACT (CAP. 64:02)
The whole

TOBACCO ACT (CAP. 65:02)
The whole
All rules made thereunder

PROTECTION OF ANIMALS ACT (CAP. 66:01)
The whole

CONTROL AND DISEASES OF ANIMALS ACT (CAP. 66:02)
The whole
All regulations made thereunder

NATIONAL PARKS AND WILDLIFE ACT (CAP. 66:07)

FISHERIES ACT (CAP. 66:05)
The whole
All rules made thereunder

ROAD TRAFFIC ACT (CAP. 69:01)
Traffic (Certificate of Fitness) regulations: (G.N. 40/1964(M))
The whole
Road Traffic (Public Service Vehicles) (Operations) Regulations: (G.N. 41/1964(M))
The whole
Road Traffic (Speed Limits) Regulations: (G.N. 43/1964(M)
The whole
Road Traffic (Test Certificates) Regulations: (G.N. 44/1964(M)
The whole
Road Traffic (Traffic Signs) Regulations: (G.N. 51/1964(M))
The whole
Road Traffic (Construction, Equipment and Use) Regulations: (G.N. 56/1964(M))
The whole
Road Traffic (Driving Licence) Regulations: (G.N. 57/1964(M))
The whole
Road Traffic (Insurance) Regulations: (G.N. 76/1964(M)
The whole
Road Traffic (Road Service and Private Carriers Permits) (Application and Issue) Regulations: (G.N. 100/1964(M))
The whole
Road Traffic (Seating Capacity) Regulations: (G.N. 101/1964(M))
The whole
Road Traffic (Registration and Licensing) Regulations: (G.N. 164/1964s(M))
The whole
Road Traffic (Bicycles) Regulations: (G.N. 84/1968))
The whole
Road Traffic (Prescribed Offences and Penalties) Regulations (G.N. 22/1999))

Road traffic (Driving Instructors and Schools) Regulations: (G.N. 52/1964(M))
The whole
Road Traffic (International Circulation) Regulations: (G.N. 45/1964(M))
The whole
Road Traffic (Miscellaneous) Regulations: (G.N. 175/1964(M)
The whole
Road Traffic (Motor Cycles) (Protective Helmets) Regulations: (G.N. 264/1965)
The whole
Road Traffic (Carriage of Dangerous Cargo) Regulations: (G.N. 230/1966)
The whole

Part B

Offences Triable by Subordinate Courts of the Fourth Grade
Offences Under the Penal Code

Section	*Offence*
21.	Aiding, abetting, counselling or procuring the commission of an offence which the court can try
43.	Inducing soldiers or policemen to desert
84.	Fighting in public
84.	Challenging to fight a duel
84.	Threatening violence
89.	Assembling for purpose of smuggling
115.	Escape from lawful custody
168.	Committing common nuisance
180.	Being an idle or disorderly person
197.	Fouling water of public spring or reservoir
197.	Fouling air
197.	Carrying on offensive trade
253.	Common assault
269.	Unlawful compulsory labour
278.	Theft, provided that the value of the thing stolen does not exceed K5,000
295.	Severing with intent to steal, provided that the value of thing severed does not exceed K5,000
344. (1)	Destroying or damaging property in general
349.	Injuring or obstructing railway works, etc.
401.	Attempts to commit offence which court can try
	Offences under Other Laws Any offence punishable with a fine or with imprisonment for a period not exceeding six months with or without a fine.

THIRD SCHEDULE

FORM 1

CHARGE BY DIRECTOR OF PUBLIC PROSECUTIONS FOR FILING IN HIGH COURT

IN THE HIGH COURT OF MALAŴI

The ..... day ..... of 20 .....
Sessions holden at ..... on the ..... day of ..... 20 ....., it is stated to the Court by the Director of Public Prosecutions on behalf of the Republic of Malaŵi that "A.B." is charged with the following offence or offences:

FORM 2

FORM OF NOTICE OF TRIAL IN THE HIGH COURT OF MALAŴI

To: "A.B."

TAKE NOTICE that you will be tried on the charge whereof this is a true copy at the Sessions of the High Court to be held at

on the ..... day of ..... 20 .....

.....
Registrar

SUBSIDIARY LEGISLATION

APPOINTMENTS OF PUBLIC PROSECUTORS

G.N. 85/1962

deemed to be made under s. 79

[*made under s.* 85 *of the Criminal Procedure Code,* 1929 (*now repealed*)]

All police officers of or above the rank of sub-inspector have been appointed to be public prosecutors in all criminal cases before subordinate courts in Malaŵi.

NOTE

A number of appointments of named persons have been made out are not published here.

CRIMINAL PROCEDURE (PLEAS OF GUILTY IN WRITING) RULES

G.N. 14/1959
242/1963

deemed to be made under s. 93

[*made under s.* 100 *of the Criminal Procedure Code,* 1929 (*now repealed*)]

Citation

1. These Rules may be cited as the Criminal Procedure (Pleas of Guilty in Writing) Rules.

Conditions for acceptance of plea of guilty in writing

2.—(1) A Subordinate Court shall not accept a plea of guilty in writing under section 93 of the Code unless the Court is satisfied that a document containing—

(*a*) a notification of the effect of section 93 of the Code and of these Rules; and

(*b*) a concise statement of such facts relating to the charge as will be placed before the Court by or on behalf of the Prosecutor if the accused pleads guilty without appearing before the Court, has been served upon the accused with the summons.

(2) Such document shall be in the form set out in the Schedule with such variations as the circumstances of each case may require.

Notification and statement to be read in court

3. Before accepting a plea of guilty and convicting the accused in his absence, the Court shall cause the notification and statement of facts aforesaid, including any submission received with the notification which the accused wishes to be brought to the attention of the Court with a view to mitigation of sentence to be read out before the Court.

Statement of other facts on behalf of Prosecutor not permitted

4. If the Court proceeds under section 93 of the Code to hear and dispose of the case in the absence of the accused the Court shall not permit any statement to be made by or on behalf of the Prosecutor with respect to any facts relating to the offence charged other than the statement of facts aforesaid, except on a resumption of the trial after any adjournment for the purpose of procuring the personal attendance of the accused.

r. 2

SCHEDULE

Statement to be Served with Summons

In the Court at

Case No. 20 .....

To ..... (Insert name of accused person)

It will not be necessary for you to attend personally before the Court in answer to the attached summons if before the day appointed therein for your appearance—

(*a*) you state clearly in the space provided below that you wish to plead guilty to the charge, and that you agree that the facts herein below stated are correct; and

(*b*) you sign your name at the end of this document (or if you cannot sign your name you thumb print it in the presence of a witness); and

(*c*) you return this document either by post or otherwise to the Court above mentioned.

Statement of Facts

1. Plea .....

2. Whether the facts above stated are correct .....

3. Any facts in mitigation of sentence which you wish to draw to the attention of the Court should be stated here .....
.....
.....

Signature of accused person: .....
(*or thumbprint of accused person*)
Witness: .....

CRIMINAL PROCEDURE AND EVIDENCE (DOCUMENTARY EVIDENCE) RULES

ARRANGEMENT OF RULES

RULE

1. Citation
2. Interpretation
3. Proof of contents of documents; primary and secondary evidence defined
4. Notice to produce
5. Proof of signature and handwriting in certain circumstances
6. Comparison of signature, writing or seal with others
7. Public documents and private documents
8. Certified copies of public documents
9. Proof of public documents
10. Evidence of certain United Kingdom Acts and proclamations, etc.
11. Presumption as to genuineness of certified copy
12. Presumption as to documents produced as record of evidence
13. Presumption as to *Gazettes*, newspapers, private Acts, etc.
14. Presumption as to maps or plans made by authority of Government
15. Presumption as to collections of laws and reports of decisions
16. Presumption as to due executions, etc., of documents not produced
17. Presumption as to documents twenty years old
18. Presumption as to certain books
19. Presumption as to telegraphic messages
20. Presumption as to powers of attorney
21. Presumptions as to certified copies of foreign judicial records
22. Private documents executed outside Malaŵi
23. Proof of execution of documents required by law to be attested
24. Evidence of terms of contracts, grants, etc., reduced to form of a document
25. Exclusion of evidence of oral agreement
26. Exclusion of evidence to explain, etc.
27. Evidence as to document unmeaning in reference to existing facts, etc.

RULE

28. Evidence as to meaning of illegible characters, etc.
29. Who may give evidence of agreement varying terms
30. Saving of provisions relating to wills

G.N. 7/1968

CRIMINAL PROCEDURE AND EVIDENCE (DOCUMENTARY EVIDENCE) RULES

under s. 245

Citation

1. These Rules may be cited as the Criminal Procedure and Evidence (Documentary Evidence) Rules and shall apply to documentary evidence in criminal proceedings in or before the High Court and all subordinate courts.

Interpretation

2. In these Rules, unless the context otherwise requires—

Cap. 4:05

"bank", "banker", and "bankers' books" bear the meanings ascribed respectively, to those terms in section 2 of the Bankers' Books Evidence Act.

Proof of contents of documents; primary and secondary evidence defined

3.—(1) The contents of documents may be proved either by primary or secondary evidence.

(2) In these Rules "primary evidence" means the document itself produced for the inspection of the court. Where a document is executed in several parts, each part is primary evidence of the document. Where a document is executed in counterpart, each counterpart being executed by one or some of the parties only, each counterpart is primary evidence as against the parties executing it; where a number of documents are all made by one uniform process, as in the case of printing, lithography or photography, each is primary evidence of the contents of the rest; but where there are all copies of a common original, they are not primary evidence of the contents of the original.

(3) In these Rules "secondary evidence" means—

(*a*) certified copies given under these Rules;

(*b*) copies made from the original by mechanical processes which in themselves insure the accuracy of the copy, and copies compared with such copies;

(*c*) copies made from or compared with the original;

(*d*) counterparts of documents as against the parties who did not execute them; or

(*e*) oral accounts of the contents of a document given by some person who has himself seen it.

(4) Documents must be proved by primary evidence except in the cases hereinafter mentioned.

(5) Secondary evidence may be given of the existence, condition or contents of a document in the following cases—

(*a*) when the original is shown or appears to be in the possession or power of the person against whom the document is sought to be proved, or any persons out of each of, or not subject to, the process of the court or of any person legally bound to produce it, and when, after the notice mentioned in rule 4 such person does not produce it;

(*b*) when the existence, condition or contents of the original have been proved to be admitted in writing by the person against whom it is proved in which case such written admission is admissible;

(*c*) when the original has been destroyed or lost or is in the power of a person not legally bound to produce it, and who refuses to or does not produce it after reasonable notice or when the party offering evidence of its contents cannot, for any other reason not arising from his own default or neglect, produce it in reasonable time;

(*d*) when the original is of such a nature as not be easily movable;

(*e*) when the original is a public document within the meaning of rule 7;

(*f*) when the original is a document of which a certified copy is permitted by these Rules, or by any other law in force in Malaŵi, to be given in evidence;

(*g*) where the originals consist of numerous accounts or other documents which cannot conveniently be examined in court, and the fact to be proved is the general result of the whole collection:

Provided however that evidence as to such general result may be given only by a person who has examined them and is skilled in the examination of such documents.

(6) Oral admissions as to the contents of a document are not relevant unless and until the party proposing to prove them shows that he is entitled to give secondary evidence of the contents of such document under these Rules or unless the genuineness of a document is in question.

Notice to produce

4. Secondary evidence of the contents of the documents referred to in rule 3 (5) (*a*) shall not be given unless the party proposing to give such secondary evidence has previously given to the party in whose possession or power the document is, or to his legal practitioner, such notice to produce it as is prescribed by law, and

if no notice is so prescribed, then, such notice as the court considers reasonable in the circumstances of the case:

Provided that such notice shall not be required in order to render secondary evidence admissible in any of the following cases, or in any other case in which the court thinks fit to dispense with it—

(*a*) when the document to be proved is itself a notice;

(*b*) when, from the nature of the case, the adverse party must know that he will be required to produce it;

(*c*) when it appears or is proved that the adverse party has obtained possession of the original by fraud or force;

(*d*) when the adverse party or his legal practitioner has the original in court;

(*e*) when the adverse party or his legal practitioner has admitted loss of the document; and

(*f*) when the person in possession of the document is out of reach of, or not subject to, the process of the court.

Proof of signature and handwriting in certain circumstances

5. If a document is alleged to be signed or to have been written wholly or in part by any person, the signature or the handwriting of so much of the document as is alleged to be in that persons handwriting must be proved to be in his handwriting.

Comparison of signature, writing or seal with others

6.—(1) In order to ascertain whether a signature, writing or seal is that of the person by whom it purports to have been written or made, any signature, writing or seal admitted or proved to the satisfaction of the court to have been written or made by that person may be compared with one which is to be proved, although that signature, writing or seal has not been produced or proved for any other purpose.

(2) The court may direct any person present in court to write any words or figures for the purpose of enabling the court to compare the words or figures so written with any words or figures alleged to have been written by such person:

Provided that no court shall under this subrule direct any accused to write anything unless he has elected, or had been required by the court, to give evidence in his own defence.

(3) A refusal by an accused to comply with a direction given under subrule (2) shall be deemed a refusal to give evidence under section 256 or 313, as the case may be.

(4) This rule applies also, with any necessary modifications, to finger prints.

Public documents and private documents

7.—(1) The following documents are public documents—

(*a*) documents forming the acts or records of the Acts—

(i) the sovereign authority;

(ii) official bodies and tribunals; and

(iii) public bodies, legislative, judiciary and executive whether of Malaŵi or of any other country;

(*b*) public records kept in Malaŵi of private documents;

(*c*) documents other than documents specified in paragraph (*a*) or paragraph (*b*) which are public documents within the meaning of the Authentication of Documents Act. Cap. 4:06

(2) All documents, other than those specified in subrule (1) are private documents.

Certified copies of public documents

8.—(1) Every public officer having the custody of a private document, which any person has a right to inspect, shall give that person on demand a copy of it on payment of the legal fees, if any, therefore, together with a certificate written at the foot of such copy that it is a true copy of such document or part thereof, as the case may be, and such certificate shall be dated and subscribed by such officer with his name and official title and shall be sealed whenever such officer is authorized by law to make use of a seal, and such copies so certified shall be called certified copies.

(2) Any officer who, in the ordinary course of his official duty, is authorized to deliver such certified copies, shall be deemed to have the custody of such documents within the meaning of this rule.

(3) Such certified copies may be produced in proof of the contents of the public documents or parts of the public documents of which they purport to be copies.

Proof of public documents

9. The following public documents may be proved as follows—

(*a*) Acts, orders or notifications of the Government—

(i) by the records of the ministries or departments, certified by the respective heads thereof;

(ii) by any documents purported to be printed by order of the Government; or

(iii) by published laws or abstracts or by copies purporting to be printed by order of the Government;

(*b*) Acts of the executive or the proceedings of the legislature of the Commonwealth or foreign country by journals published by their authority of commonly received in that country as such, or by a copy certified under the seal of the country or sovereign or by recognition thereof in some law of Malaŵi;

(*c*) the proceedings of a local or municipal body in Malaŵi by a copy of such proceedings certified by the legal keeper thereof or by a printed book purporting to be published by the authority by such a body; and

(*d*) if a public document within the meaning of the Authentication of Documents in a manner provided for in the Act.

Cap. 4:06

Evidence of certain United Kingdom Acts and proclamations, etc

10. Sufficient evidence of any Act, proclamation, order, rule or regulation issued in the United Kingdom by or under the authority of the sovereign, Parliament or the Government of the United Kingdom, or by the Privy Council, may be given as follows—

(*a*) by the production of a copy of the official *Gazette* of the United Kingdom purporting to contain such Act, proclamation, order, rule or regulation;

(*b*) by the production of a copy of such Act, proclamation, order, rule or regulation purporting to be printed under the authority of the legislature of Malaŵi or printed in the United Kingdom by, or under the superintendence or authority of, the Printer to the Government of the United Kingdom or the Stationery Office therefore; or

(*c*) by the production in the case of any proclamation, order, rule or regulation issued by such sovereign or by the Privy Council, of a copy of extract purporting to be certified to be true by the Clerk of Privy Council or by anyone of the Privy Council.

Any copy or extract made in pursuance of this rule may be in print or in writing or partly in print and partly in writing. No proof shall be required of the handwriting or official position of any person certifying in pursuance of this section to the truth of any copy of or any extract from any proclamation, order, rule or regulation.

Presumption as to genuineness of certified copy

11.—(1) A court shall presume every document purporting to be a certificate, certified copy of other documents, which is by law declared to be admissible as evidence or any particular facts, and which purports to be duly certified by any officer in Malaŵi, to be genuine:

Provided that such document is substantially in the form and purports to be executed in the manner directed by law in that behalf.

(2) A court shall also presume that any officer by whom any such documents purports to be signed or certified held, when he signed it, the official character which he claims in such document.

Presumption as to documents produced as record of evidence

12. Whenever a document is produced before any court, purporting to be a record or memorandum of any evidence given in a judicial proceeding or before any officer authorized by law to take evidence required by law to be reduced to writing and purporting to be signed by any judge or magistrate, or by any such officer as aforesaid, the court may presume that such document is genuine and that the evidence was the evidence actually given, may take oral evidence of the proceedings and the evidence given; and shall not be precluded from admitting any such document merely by reason of the absence of any formality required by law:

Provided always that an accused person is not injured as to his defence on the merits.

Presumption as to *Gazettes*, newspapers, private Acts, etc.

13. A court shall presume the genuineness of every document purporting to be the *Gazette* or Government *Gazette* of any country of the Commonwealth, or to be a newspaper or journal or to a copy of a private Act of Parliament printed by a Government Printer or in any of the manners mentioned in rule 10, and of every document purporting to be a document directed by any law to be kept by any person, if such document is kept substantially in the form required by law and is produced from proper custody. Documents are said to be in proper custody if they are in the place which, and under the care of the person with whom, they would naturally be; but no custody is improper if it is proved to have a legitimate origin or if the circumstances of the particular case are such as to render such an origin probable.

Presumptions as to maps or plans made by authority of Government

14. The court shall presume that maps or plans purporting to be made by the authority of the government were so made, and are accurate.

Presumption as to collections of laws and reports of decisions

15. The court shall presume the genuineness of every book purporting to be printed or published under the authority of the government of any country, and to contain any of the laws of that country; and of every book purporting to contain reports of decisions of the courts of such country.

Presumption as to due execution, etc., of documents not produced

16. The court shall presume that every document, called for and not produced after notice to produce, was attested, stamped, and executed in the manner required by law.

Presumption as to documents twenty years old

17. When any document, purporting to or proved to be twenty years old, is produced from any custody which the court in the particular case considers proper, the court may presume that the signature and every other part of such document, which purports to be in the handwriting of any particular person, is in that persons

handwriting, and, in the case of a document executed or attested, that it was duly executed and attested by the persons by whom it purports to be executed. Documents are said to be in proper custody if they are in the place in which, and under the care of the person with whom, they would naturally be; but no custody is improper if it is proved to have had a legitimate origin, or if the circumstances of the particular case are such as to render such an origin probable.

Presumption as to certain books

18. The court may presume that any book to which it may refer for information on matter of public or general interest, and that any published map or chart. The statements of which are relevant facts, and which is produced for its inspection, was written and published by the person, and at the time and place, by whom or at which it purports to have been written or published.

Presumption as to telegraphic messages

19. The court may presume that a message, forwarded from a telegraphic office to the person to whom such message purports to be addressed, corresponds with the message delivered for transmission at the office from which the message purports to be sent; but the court shall not make any presumption as to the person by whom such message was delivered for transmission.

Presumption as to powers of attorney

20. The court shall presume that every document purporting to be a power of attorney and to have been executed before and authenticated by a notary public, or any court, judge, magistrate, or representative of any Government of the Commonwealth, was so executed and authenticated.

Presumption as to certified copies of foreign judicial records

21. The court may presume that any document purporting to be a certified copy of any judicial record of any country not forming part of the Commonwealth is genuine and accurate, if the document purports to be certified in any manner which is certified by any representative of any government of the Commonwealth in or for such country to be the manner commonly in use in that country for the certification of copies of judicial records.

Private documents executed outside Malaŵi Cap. 4:06

22. A court shall presume that a private document purporting to be a document executed out of Malaŵi was executed and is duly authenticated if it purports to be authenticated in accordance with the provisions of the Authentication of Documents Act relating to the authentication of such a private document.

Proof of execution of documents required by law to be attested

23.—(1) If a document is required by law to be attested, it shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution, if there be an attesting witness alive and subject to the process of the court and capable of giving evidence.

(2) If no such attesting witness can be found, it must be proved that the attestation of one attesting witness at least is in his handwriting, and that the signature of the person executing the document is in the handwriting of that person.

(3) The admission of a party to an attested document of its execution by himself shall be sufficient proof of its execution as against him, though it be a document required by law to be attested.

(4) If the attesting witness denies or does not recollect the execution of the document, its execution may be proved by other evidence.

(5) An attested document not required by law to be attested may be proved asif it were unattested.

(6) This rule shall not apply to any document sufficiently authenticated under section 4 of the Authentication of Documents Act or authenticated by a notary public admitted to practice as such in accordance with the Legal Education and Legal Practitioners Act. Cap. 4:06 Cap. 3:04

Evidence of terms of contracts, grants, etc., reduced to form of a document

24.—(1) When the terms of the contract or a grant, or of any other disposition of property, have been reduced to the form of a document, and in all cases in which any matter is required to be reduced to the form of a document, no evidence served as mentioned in rule 25 shall be given in proof of the terms of such contract, grant or other disposition of property or of such manner except the document itself, or secondary evidence of its contents in case in which secondary evidence is admissible under the provisions hereinbefore contained:

Provided that—

(*a*) when a public officer is required by law to be appointed in writing, and when it is shown that any particular person has acted as such officer, the writing by which he is appointed need not be proved;

(*b*) wills admitted to probate in Malaŵi may be proved by the probate.

(2) The statement in any document whatever of a fact, other than the facts referred to in this rule, shall not preclude the admission of oral evidence as to the same fact.

(3) Where there more originals than one, one original only need be proved.

(4) This rule applies to cases in which the contracts, grants or dispositions of property referred to are contained in one document and to cases in which they are contained in more documents than one.

Exclusion of evidence of oral agreement

25. When the terms of any such contract, grant or other disposition of property or any matter required by law to be reduced to the form of a document, have been proved according to rule 24, no evidence of any oral agreement or statement shall be admitted as between the parties to any instrument or their representatives in interest, for the purpose of contradicting, varying, adding to or subtracting from its terms:

Provided that—

(*a*) any fact may be proved which would invalidate any document, or which would entitle any person to any degree or order relating thereto, such as fraud, intimidation, illegality, want of due execution, want of capacity in any contracting party, want or failure of consideration, or mistake in fact or law;

(*b*) the existence of any separate oral agreement as to any matter on which a document is silent, and which is not inconsistent with its terms, may be proved. In considering whether or not this proviso applies, the court have regard to the degree of formality of the document;

(*c*) the existence of any separate oral agreement constituting a condition precedent to the attaching or any obligation under such contract, grant or disposition of property, may be proved;

(*d*) the existence of any distinct subsequent oral agreement to rescind or modify any such contract, grant or disposition of property, may be proved except in cases in which such contracts, grants of disposition of property is law required to be writing or has been registered according to the law in force for the time being as to the registration of documents;

(*e*) any usage or custom by which incidents not expressly mentioned in any contract are usually annexed to contracts of that description may be proved if the annexing of such incident would not be repugnant to, or inconsistent with, the express terms of the contract; and

(*f*) any fact may be proved which shows in what manner the language of the document is related to the existing facts.

Exclusion of evidence to explain, etc.

26.—(1) When the language used in a document is on its face so ambiguous or defective as to be wholly incapable of explanation in

the nature of things, evidence may not be given of facts which would show its meaning or supply its defects.

(2) When the facts are such that the language used might have been meant to apply to anyone, and could not have been meant to apply to more than one, of several persons or things, evidence may be given of facts which show to which of those persons or things it was intended to apply such facts.

Evidence as to document unmeaning in reference to existing facts, etc.

27.—(1) When language used in a document is plain in itself but is unmeaning in reference to existing facts, evidence may be given to show that it was used in a peculiar sense.

(2) When the facts are such that the language used might have been meant to apply to any one, and could not have been meant to apply to more than one, of several persons or things, evidence may be given of facts which show to which of those persons or things it was intended to apply.

(3) When the language used in a document applies partly to one set of existing facts, and partly to another set of existing facts, but the whole of it does not apply correctly to either, evidence may be given to show to which of the two it was meant to apply.

Evidence as to meaning of illegible characters, etc

28. Evidence may be given to show the meaning of illegible or not commonly intelligible characters, of foreign obsolete, technical, local and provincial expressions, of abbreviations and of words used in a peculiar sense.

Who may give evidence of agreement varying terms

29. Persons who are not parties to a document, or their representatives in interest, may give evidence of facts tending to show a contemporaneous agreement varying the terms of a document.

Saving of provisions relating to wills

30. Nothing in rules 24 to 29 inclusive, shall be taken to affect any of the provisions of any law for the time being in force in Malaŵi as to the construction of wills.

[Subsidiary] *Criminal Procedure and Evidence (Police Supervision) Rules*

G.N. 12/1936

CRIMINAL PROCEDURE (POLICE SUPERVISION) RULES

deemed to be made under s. 343

[*made under s.* 325 *of the Criminal Procedure Code,* 1929 (*now repealed*)]

Citation

1. These Rules may be cited as the Criminal Procedure (Police Supervision) Rules.

Notification of place of residence

2. Every person subject to police supervision under section 242 of the Code (hereinafter referred to as a released convict) shall, not less than fourteen days before the date on which he is entitled to be released, inform the officer in charge of the prison in which he may for the time being be confined, of the place at which he intends to reside after his release.

Identity card

3. On his release from prison every such released convict shall be issued by the officer in charge of the police in the District with an identity card, in the form set out in the Schedule, in which shall be filled in the several particulars specified respecting such released convict.

Amendment of endorsement

4. Subject to such directions as the Commissioner of Police may give, any police officer of or above the rank of Assistant Superintendent may, as circumstances require, amend any endorsement in respect of the place at which, or the person to whom such released convict is required to report.

Intended change of residence

5. Whenever any such released convict intends to change his place of residence from the place specified at the time of his release to any other place he shall notify the officer in charge of the nearest police station not less than fourteen days before he so changes his residence, of the fact of such intention and the place at which he thereafter intends to reside. Such officer shall, if necessary and subject to the general directions of the Commissioner of Police, amend the endorsement in such released convicts identity card to accord with the change in residence,

Notification of intended change of residence

6. Whenever any released convict intends to change his place of residence from any place at which he may at any time be residing under rule 5, he shall notify any intended change of residence in the manner, in that rule, provided.

Arrival at new residence

7. Every such released convict shall, within forty-eight hours of his arrival at the place of changed residence notified under rule 5

or 6, notify the fact of his arrival at the place and to the person last endorsed on his card, and thereafter shall continue to report himself as required.

Notification of report to be made in person

8. Every notification or report required to be made by any released convict shall be made by him in person:

Provided that if from illness any released convict is prevented from making in person any notification or report required by these Rules, he may do so in any one of the following ways—

(*a*) in person, to any senior officer of the Government residing nearest the place of his residence;

(*b*) in person, to the Chief exercising jurisdiction in the area which he resides; or

(*c*) by oral communication sent by a messenger, and production of the identity card to the person whose name or office is endorsed on his card.

Notification under rule 8 proviso (*a*) or (*b*)

9. In any case where a report has been made under paragraph (*a*) or (*b*) of the proviso to the last preceding rule, it shall be incumbent on the person receiving such report to inform the officer to whom such released convict should have reported, as soon as may be convenient, of the fact and date of such report.

Identity card to be produced

10. On the occasion of every notification or report required to be made under these Rules, the identify card issued to the released convict making such notification or report shall be produced.

Surrender of card at the end of term

11. At the end of the term of police supervision ordered by the court the released convict shall surrender his card to the person to whom he last reported for transmission to the Commissioner of Police.

Rules to be annexed to card

12. A copy of these Rules shall be annexed to each identity card issued to a released convict.

r. 3

SCHEDULE

Page 1	Page 2
	GENERAL DESCRIPTION
Police Station	Tribe or Nationality
Prison number	District of origin
Name	Chief
Aliases	Headman
	Village
Court in which order made	Sex Age
	Height Marks or scars
Criminal Court File No.	
Police Case File No.	
Offence convicted under with section of law	
Sentence last served	Signature of Police Officers issuing certificate

Page 3 Alteration of address		Page 4		
From	To	Place	Date	Signature of Officer to whom report made
.....	.....	.....	.....	.....
.....	.....	.....	.....	.....
.....	.....	.....	.....	.....
.....	.....	.....	.....	.....
.....	.....	.....	.....	.....
.....	.....	.....	.....	.....
.....	.....	.....	.....	.....

Page 5	
Prison from which released	
Date released from prison	
Term of notification of address	
Date of Expiry of order	
Address on release	
Space for photograph when available	Right thumb impression

CRIMINAL PROCEDURE (FORMS) NOTICE

Index of Forms

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Form XXI	Caution to the accused before committal for trial, and the accused's statement, or evidence, if any
Form XXII	Warrant of commitment on committal for trial
Form XXIII	Bond to give evidence
Form XXIV	Summons to a juror
Form XXV	Authority for detention of person sentenced to death

Form XXVI	Warrant of commitment
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Form XXX	Bond to keep the peace and to be of good behaviour
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Form XXXIV	Warrant to levy money by distress and sale

G.N. 4/1968
59/1968
107/1968
73/1969

CRIMINAL PROCEDURE (FORMS) NOTICE

under s. 367

Citation

1. This Notice may be cited as the Criminal Procedure (Forms) Notice.

Prescription of forms

2. The following forms are hereby prescribed as the forms which may be used, with such variations as the circumstances of each case may require, for the respective purposes under the Criminal Procedure and Evidence Code mentioned therein—

FORM I

REPUBLIC OF MALAŴI

In the Resident Magistrate's / Grade Subordinate Court at .....

Case No ..... of 20 .....

The Republic *versus*

ORDER TO SHOW CAUSE WHY A BOND SHOULD NOT BE ENTERED INTO

(SECTION 46 OF THE CRIMINAL PROCEDURE AND EVIDENCE CODE)

Whereas it has made to appear to me by credible information that it is necessary to require ..... of ..... to show cause why he should not

execute a bond to $\frac{\text{keep the peace*}}{\text{be of good behaviour*}}$;

And Whereas

(*a*) the substance of the information received is that .....
.....;

(*b*) the amount of the bond to be executed is the sum of K .....;

(*c*) the term for which the said bond is to be in force is

..... $\frac{\text{months*}}{\text{years*}}$;

(*d*) the sureties required are in number and of a character and class to be approved by the officer in charge of the .....
..... Police Station.

NOW IT IS HEREBY ORDERED that the said ..... of ..... do appear before this Court on the ..... day of ..... , 20 ....., at ..... o'clock in the ..... noon to show cause as aforesaid.

Dated this ..... day of ..... 20 .....

(Seal) (*Resident*) *Magistrate*

*Delete as appropriate

FORM II

REPUBLIC OF MALAŴI

In the $\frac{\text{Resident Magistrate's}}{\text{Grade Subordinate}}$ Court at .....

Case No ..... of 20 .....

The Republic *versus*

SUMMONS TO APPEAR TO SHOW CAUSE

(SECTIONS 48 AND 49 OF THE CRIMINAL PROCEDURE AND EVIDENCE CODE)

To ..... of .....

Whereas your presence is necessary to show cause why you should not be ordered to execute a bond in pursuance of the Order of this Court made on the ..... day of ..... (a copy of which Order accompanies this summons) you are hereby required to appear before this Court on the ..... day of ..... at ..... o'clock in the ..... noon.

Herein Fail Not.

Dated this ..... day of ..... 20 .....

(Seal) (*Resident*) *Magistrate*

(*N.B.*—This summons must be accompanied by a copy of the Order made under section 46).

FORM III

REPUBLIC OF MALAŴI

In the Resident Magistrate's / Grade Subordinate Court at .....

Case No ..... of 20 .....

The Republic *versus*

BOND TO KEEP THE PEACE

(SECTIONS 42 AND 56 OF THE CRIMINAL PROCEDURE AND EVIDENCE CODE)

Whereas I, ... have been called upon to execute a bond in the sum of K..... to keep the peace for the period of ..... from the execution of these presents upon the conditions hereinafter appearing;

And Whereas it is a condition of this bond that ([1])

I hereby bind myself as aforesaid and in the event of making default agree to forfeit to the Government the said sum.

This ..... day of ..... 20 .....

Signature

([2]) [We hereby bind ourselves jointly and severally in the sum of K ..... to answer that the above-named will keep the peace during the said term.

First Surety:	*Second Surety:*
Name	.....
Address	.....
.....	.....
Occupation	.....]

Entered into before me this ..... day of ..... 20 ..... at .....

(*Resident*) *Magistrate*

([1]) Here insert any conditions which have been imposed under section 53.

([2]) Where sureties are not required the part of the form contained in square brackets should be deleted.

FORM IV

REPUBLIC OF MALAŴI

In the Resident Magistrate's / Grade Subordinate Court at .....

Case No ..... of 20 .....

The Republic *versus*

BOND TO BE OF GOOD BEHAVIOUR

(SECTIONS 42, 43, OR 44 OF THE CRIMINAL PROCEDURE AND EVIDENCE CODE)

Whereas I, ... have been called upon to execute a bond in the sum of K..... *to be of good behaviour/*to keep the peace for the period of ..... from the execution of these presents upon the conditions hereinafter appearing;

And Whereas it is a condition of this bond that ([1])

I hereby bind myself as aforesaid and in the event of making default agree to forfeit to the government the said sum.

This ..... day of ..... 20 .....

Signature

([2]) [We hereby bind ourselves jointly and severally in the sum of K ..... to answer that the above-named will *be of good behaviour/ *keep the peace during the said term.

First Surety:	*Second Surety:*
Name	.....
Address	.....
.....	.....
Occupation	.....]

Entered into before me this ..... day of ..... 20 ..... at .....

(*Resident*) *Magistrate*

*Delete as appropriate

([1]) Here insert any conditions which have been imposed under section 53.

([2]) Sureties are necessary under sections 44 and 45 and may be required under section 43. Where sureties are not required the part of this form contained in square brackets should be deleted.

FORM V

REPUBLIC OF MALAŴI

In the $\frac{\text{Resident Magistrate's}}{\text{Grade Subordinate}}$ Court at .....

Case No ..... of 20 .....

The Republic *versus*

WARRANT OF COMMITMENT ON FAILURE TO FIND SECURITY TO KEEP THE PEACE OR TO BE OF GOOD BEHAVIOUR

(SECTION 58 OF THE CRIMINAL PROCEDURE AND EVIDENCE CODE)

To the Officer in Charge of the Prison at .....

Whereas ..... of ..... appeared before me on the day of ..... in obedience to a summons calling upon him to show cause why he should not execute a bond for K .....

to $\frac{\text{*keep the peace}}{\text{*be of good behaviour}}$

And Whereas an Order was then made requiring the said .....

to execute such bond $\frac{\text{*with}}{\text{*without}}$ sureties for a period of .....

and he has failed to comply with the said Order.

This is to empower and require you the said Officer in Charge to receive the said ..... together with this warrant, and detain him safely to keep in custody for the said period of .... unless and until he tender the said security, in which event you shall forthwith make report of the matter to this Court; and return this your warrant with an endorsement certifying the manner of its execution.

Given under my hand and the seal of the court, this day ..... of ..... 20 ...

(Seal) (*Resident*) *Magistrate*

*Delete as appropriate

FORM VI

REPUBLIC OF MALAŴI

In the $\frac{\text{Resident Magistrate's}}{\text{Grade Subordinate}}$ Court at .....

Case No ..... of 20 .....

The Republic *versus*

SUMMONS/CHARGE SHEET

(SECTIONS 83 AND 84 OF THE CRIMINAL PROCEDURE AND EVIDENCE CODE)

Accused

Name: ..... Tribe: .....

Sex: ..... Village: .....

Age: ..... Chief and District: .....

To: ..... above-named.

Whereas your presence is necessary to answer the charge(s) hereunder set out you are hereby required to appear in person before this Court on the ..... day of ..... 20 ..... at ..... o'clock in the ..... noon.

And Herein Fail Not.

Dated this ..... day of ..... 20 .....

(Seal) (*Resident*) *Magistrate*

OFFENCE (SECTION AND LAW)

.....

.....

.....

PARTICULARS OF OFFENCE

.....

.....

.....

OFFENCE (SECTION AND LAW)

.....

.....

.....

PARTICULARS OF OFFENCE

.....

.....

.....

Police Station ..... Public Prosecutor .....

Date ..... (*Resident*) *Magistrate* .....

FORM VII

REPUBLIC OF MALAŴI

In the Resident Magistrate's / Grade Subordinate Court at .....

Case No ..... of 20 .....

The Republic *versus*

SUMMONS TO ENFORCE PAYMENT OF A FINE

(SECTION 93 (3) OF THE CRIMINAL PROCEDURE AND EVIDENCE CODE)

To: .....

Whereas on the ..... day of ..... 20 ..... you were convicted of the offence of ..... and were ordered to pay a fine of K..... by ..... and whereas the whole amount of K ..... remains unpaid.

You are hereby required to pay the said amount of K ..... appear before this Court on the ..... day of ..... 20 ..... at ..... o'clock in the ..... noon to show cause why you should not be committed to prison for such term as the Court may then prescribe.

Given under my hand and the seal of the Court on this ..... day of ..... 20 .....

(Seal) (*Resident*) *Magistrate*

FORM VIII

REPUBLIC OF MALAŴI

In the Resident Magistrate's / Grade Subordinate Court at .....

Case No ..... of 20 .....

The Republic *versus*

WARRANT OF ARREST FOR FAILURE TO APPEAR AFTER NON-PAYMENT OF FINE

(SECTION 93 (3) OF THE CRIMINAL PROCEDURE AND EVIDENCE CODE)

To all Police Officers of the .....

Whereas ..... of ..... was on the ..... day of ..... 20 ..... convicted of the offence of ..... and was ordered to pay a fine of K.....

And Whereas the whole amount of K..... remains unpaid, And Whereas the said ..... failed to answer a summons to appear in this Court to show cause why he should not be committed to prison for failing to pay the said fine.

You are hereby directed to arrest the said ..... and to produce him before this Court in execution of this warrant, unless the said ..... shall sooner pay you the said sum of K ..... which you shall pay forthwith to this court.

And Herein Fail Not.

(Seal) (*Resident*) *Magistrate*

FORM IX

REPUBLIC OF MALAŴI

In the Resident Magistrate's / Grade Subordinate Court at .....

Case No ..... of 20 .....

The Republic *versus*

WARRANT OF ARREST OF PERSON CHARGED

(SECTIONS 96, 98, AND 99 OF THE CRIMINAL PROCEDURE AND EVIDENCE CODE)

To all Police Officers

Whereas ..... of ..... is charged as follows—

OFFENCE (SECTION AND LAW)

.....
.....
.....

PARTICULARS OF OFFENCE

.....
.....
.....

you are hereby directed to arrest the said ..... and to produce him before this Court in execution of this warrant.

And Herein Fail Not.

Dated this ..... day of ..... 20 .....

(*Resident*) *Magistrate*

(SECTION 97 OF THE CRIMINAL PROCEDURE AND EVIDENCE CODE)

This warrant may be endorsed as follows:

If the said (insert name of person arrested) ..... shall give bail in the sum of K ..... without sureties or shall give bail with one sufficient surety in the sum of K ..... , or shall give bail with two sufficient sureties each in the sum of K..... to attend before this Court on the ..... day of ..... and to continue so to attend until otherwise directed, he shall be released.

Dated this ..... day of ..... 20 .....

(Seal) (*Resident*) *Magistrate*

FORM X

REPUBLIC OF MALAŴI

In the Resident Magistrate's / Grade Subordinate Court at .....

Case No ..... of 20 .....

The Republic *versus*

PROCLAMATION REQUIRING THE APPEARANCE OF AN ACCUSED PERSON AND ORDER ATTACHING HIS PROPERTY

(SECTIONS 106 AND 107 OF THE CRIMINAL PROCEDURE AND EVIDENCE CODE)

To: .....

Whereas this Court has reason to believe that ..... of ....., against whom a warrant of arrest for ..... has been issued, has absconded or is concealing himself so that such warrant cannot be executed.

Proclamation is hereby made that the said ..... is required to appear before this Court at ..... o'clock in the ..... noon on the ..... day of ..... next to answer the said charge.

*And it is hereby ordered that the property belonging to the said ..... be attached and all persons concerned are hereby authorized to attach the following property belonging to the said .....

LIST OF PROPERTY

.....

.....

.....

.....

Dated this ..... day of ..... 20 .....

at: .....

(Seal) (*Resident*) *Magistrate*

*When attachment is not ordered, strike out this part.

FORM XI

REPUBLIC OF MALAŴI

In the Resident Magistrate's / Grade Subordinate Court at .....

Case No ..... of 20 .....

The Republic *versus*

SEARCH WARRANT

(SECTION 113 OF THE CRIMINAL PROCEDURE AND EVIDENCE CODE)

To .....

Whereas it has been proved on oath to this Court that the following articles(s) ..... being article(s) by or in respect of which the offence of .... has been committed or which are necessary to the investigation into such offence, are in fact, or according to reasonable suspicion in the* .....

This is to authorize and require you to enter upon and search the said premises and, if discovered, to take possession of the said article(s) and produce the same forthwith before this Court returning; this warrant with an endorsement certifying the manner of its execution.

Given under my hand this ..... day of ..... 20 .....

(Seal) (*Resident*) *Magistrate*

*Here set out the building, ship, aircraft, carriage, box, receptacle or place.

FORM XII

REPUBLIC OF MALAŴI

In the $\frac{\text{Resident Magistrate's}}{\text{Grade Subordinate}}$ Court at .....

Case No ..... of 20 .....

The Republic *versus*

BAIL-BOND AFTER ARREST TAKEN BY A COURT OR BY A POLICE OFFICER

(SECTIONS 118 AND 119 OF THE CRIMINAL PROCEDURE AND EVIDENCE CODE)

I,.....of..... being charged with the offence of ..... and being required to appear before the above-named Court on the ..... day of ..... next do hereby bind myself to attend the said Court on the date named and to continue so to attend until my trial be concluded, and, should I fail to do so, I bind myself to forfeit to the Government the sum of K .....

Signature and address .....

This ..... day of ..... , 20 .....

SURETIES

We jointly and severally declare ourselves and each of us sureties for the appearance of the said ..... as above set out, and in case of his making default therein we hereby bind ourselves severally to forfeit to the Government the sum of K .....

Signature and address .....

This ..... day of ..... , 20 .....

First Surety:	*Second Surety:*
Name	.....
Address	.....
.....	.....
Occupation	.....

Entered into before me this ..... day of ..... 20 ....

(Seal) (*Resident*) *Magistrate*

FORM XIII

REPUBLIC OF MALAŴI

In the Resident Magistrate's / Grade Subordinate Court at .....

Case No ..... of 20 .....

The Republic *versus*

DEPOSIT OF PROPERTY IN LIEU OF, OR ADDITIONAL TO, BAIL BOND

(SECTION 121 OF THE CRIMINAL PROCEDURE AND EVIDENCE CODE)

To ..... of .....

The receipt is hereby acknowledged of .... deposited in lieu of, or additional to, a bail bond.

You are hereby warned that if you fail to attend at the above-named Court on the ..... day of ..... next and thereafter until your trial is concluded, the above property will be liable to forfeiture.

Dated this ..... day of ..... 20 ....., at .....

.....

Signature of Police Officer or Officer of the Court receiving the deposit

---

FORM XIV

REPUBLIC OF MALAŴI

In the Resident Magistrate's / Grade Subordinate Court at .....

Case No ..... of 20 .....

The Republic *versus*

SUMMONS TO FORFEIT DEPOSIT IN LIEU OF, OR ADDITIONAL TO, BOND

(SECTION 121 OF THE CRIMINAL PROCEDURE AND EVIDENCE CODE)

To .....

Whereas it has been proved to the satisfaction of the Court that the conditions upon which you on the ..... day of ..... deposited ([1]) ..... at ..... have not been complied with in that you ([2]) .....
.....
.....
.....

You are hereby required to appear before this Court on the ..... day of ..... next at ..... in the ..... noon to show cause why the said property should not be forfeited.

Given under my hand and the seal of the Court on this ..... day of ..... 20 .....

(Seal) (*Resident*) *Magistrate*

([1]) State here the money or property deposited.

([2]) Here insert the manner in which the conditions of the deposit have not been complied with.

FORM XV

REPUBLIC OF MALAŴI

In the $\frac{\text{Resident Magistrate's}}{\text{Grade Subordinate}}$ Court at .....

Case No ..... of 20 .....

The Republic *versus*

SUMMONS TO PAY PENALTY OF BOND

(SECTION 125 OF THE CRIMINAL PROCEDURE AND EVIDENCE CODE)

To .....

Whereas it has been proved to the satisfaction of the Court that the conditions of the bond entered into by you in the amount of K ..... on the ..... day of ..... have not been complied with in that you* .....
.....
.....
.....
.....

You are hereby required to pay the said amount of K ..... or to appear before this Court on the ..... day of ..... next at ..... o'clock in the ..... noon to show cause why the sum of K..... should not be paid.

Given under my hand and the seal of the Court on this ..... day of ..... 20 .....

(Seal) (*Resident*) *Magistrate*

* Here insert the manner in which the conditions of the bond have not been complied with.

FORM XVI

REPUBLIC OF MALAŴI

In the $\frac{\text{Resident Magistrate's}}{\text{Grade Subordinate}}$ Court at .....

Case No ..... of 20 .....

The Republic *versus*

WARRANT OF ATTACHMENT AND SALE TO ENFORCE A BOND

(SECTION 125 OF THE CRIMINAL PROCEDURE AND EVIDENCE CODE)

To all Police Officers of the ..... District.

Whereas ..... has failed to comply with the conditions of his bond in that behalf and has by such default forfeited to the Government the sum of K..... secured by the said bond.

This is to authorize and require you to attach any movable or immovable property of the said ..... that you may find within the District of ..... by seizure and detention, and, if the said amount be not paid within ..... days hereof to sell the property so attached or so much thereof as may be sufficient to realize the amount aforesaid by public auction, and forthwith to return this warrant with an endorsement certifying the manner of its execution.

Given under my hand and the seal of the Court, this ..... day of ..... 20 .....

(Seal) (*Resident*) *Magistrate*

FORM XVII

REPUBLIC OF MALAŴI

In the Resident Magistrate's / Grade Subordinate Court at .....

Case No ..... of 20 .....

The Republic *versus*

SUMMONS TO A WITNESS*

(SECTION 195 OF THE CRIMINAL PROCEDURE AND EVIDENCE CODE)

To .....

Whereas complaint has been made that ..... of ..... has committed the offence of

You are hereby summoned to appear before this Court on the ..... day of ..... next at ..... o'clock in the ..... noon to testify what you know concerning the matter of the said complaint, and so on from day to day until the trial be concluded.

Given under my hand the seal of the Court, this ..... day of ..... 20 .....

(Seal) (*Resident*) *Magistrate/ Police Officer**

*Only police officers of the rank of Assistant Superintendent or above may issue a summons to a witness.

FORM XVIII

REPUBLIC OF MALAŴI

In the Resident Magistrate's / Grade Subordinate Court at .....

Case No ..... of 20 .....

The Republic *versus*

WARRANT TO COMPEL ATTENDANCE OF A WITNESS

(SECTION 196 OF THE CRIMINAL PROCEDURE AND EVIDENCE CODE)

To all Police Officers of the ..... District.

Whereas ..... of ..... was duly summoned to appear before this Court on the ..... day of

....., 20 ..... to give evidence at the trial of the above-mentioned case, but has failed, without sufficient excuse shown to the Court, to appear in obedience to the summons.

This is to authorize you to arrest the said ..... and bring him/her before this Court on the ..... day of ..... next to be examined regarding the said case.

Given under my hand the seal of the Court, this ..... day of ..... 20 .....

(Seal) (*Resident*) *Magistrate*

FORM XIX

REPUBLIC OF MALAŴI

In the $\frac{\text{Resident Magistrate's}}{\text{Grade Subordinate}}$ Court at .....

Case No ..... of 20 .....

The Republic *versus*

WARRANT TO COMPEL ATTENDANCE OF A WITNESS

(SECTION 197 OF THE CRIMINAL PROCEDURE AND EVIDENCE CODE)

To: All Police Officers of the ..... District.

Whereas complaint has been made that ..... of ..... has committed the offence of ..... and it has been made to appear that ..... of ..... can give evidence concerning the said offence;

And Whereas the Court is satisfied by evidence on oath that the said ..... will not of $\frac{\text{his}}{\text{her}}$ own accord attend as witness on the hearing of the said complaint.

This is to authorize and require you to arrest the said ..... and bring $\frac{\text{him}}{\text{her}}$ before this Court on the ..... day of ..... next to be examined regarding the offence complained of.

Given under my hand the seal of the Court, this ..... day of ..... 20 .....

(Seal) (*Resident*) *Magistrate*

FORM XX

REPUBLIC OF MALAŴI

In the Resident Magistrate's / Grade Subordinate Court at .....

Case No ..... of 20 .....

The Republic *versus*

COMMITMENT ON ADJOURNMENT OR REMAND

(SECTIONS 250 AND 267 OF THE CRIMINAL PROCEDURE AND EVIDENCE CODE)

To the Officer in Charge of the Prison at .....

Whereas ..... stands charged with the offence of ..... these are to command you to lodge the said ..... in the prison at ..... and to keep him safely there until the ..... day of ..... next when you shall bring the said ..... before this Court at ..... o'clock in the ..... noon.

Given under my hand this ..... day of ..... 20 .....

(Seal) (*Resident*) *Magistrate*

Further Remands

Date	*Remanded to*	*Signature of (Resident) Magistrate*

[Subsidiary]

Criminal Procedure (Forms) Notice

FORM XXI

REPUBLIC OF MALAŴI

In the Resident Magistrate's / Grade Subordinate Court at .....

Case No ..... of 20 .....

The Republic *versus*

CAUTION TO THE ACCUSED BEFORE COMMITTAL FOR TRIAL AND THE ACCUSED'S STATEMENT, OR EVIDENCE, IF ANY

(SECTION 268 OF THE CRIMINAL PROCEDURE AND EVIDENCE CODE)

The charge against you is (*a*) ..... and I inform you that this is not your trial. You will be tried later in another court and before another judge, where all the witnesses you have heard here will be produced and you will be allowed to question them. You will then be able to address the court and to give evidence on oath and to call any witnesses on your own behalf. Unless you wish to reserve your defence, which you are at liberty to do, you may now either make a statement not on oath or give evidence on oath, and may call witnesses on your behalf. If you give evidence on oath you will be liable to cross-examination. Anything you may say whether on oath or not will be taken down and may be used in evidence at your trial. And I give you clearly to understand, that you have nothing to hope from any promise of favour, and nothing to fear from any threat which may have been held out to you to induce you to make any confession of your guilt. But whatsoever you shall now say may be given in evidence on your trial, notwithstanding any such promise or threat.

The accused in reply states (or electing to be sworn is duly sworn and states)—

.....

.....

.....

.....

.....

I read over the above to the accused who agrees that it is correct and that he has nothing to add to it and I certify that the above statement or evidence was taken in my presence and hearing and contains accurately the whole statement made, or evidence given, by the accused.

Signature or mark of accused
Witness to mark

.....
Signature of (*Resident*) *Magistrate and date*

I ask the accused whether he desires to call any witness
He replies—(*b*) .....

.....
Signature of (*Resident*) *Magistrate and date*

(*a*) The Magistrate reads and explains the charge in simple language.

(*b*) The depositions of the accused's witnesses are not to be taken on this sheet, only his answer to the question.

FORM XXII

REPUBLIC OF MALAŴI

In the Resident Magistrate's / Grade Subordinate Court at .....

Case No ..... of 20 .....

The Republic *versus*

WARRANT OF COMMITMENT ON COMMITTAL FOR TRIAL

(SECTION 271 OF THE CRIMINAL PROCEDURE AND EVIDENCE CODE)

To the Officer in Charge of the Prison at .....

These are to command you to lodge .... who is accused of the offence of ..... in the prison at ..... and keep him there safely until his trial at the next Sessions at ..... when you shall bring him before the High Court.

Given under my hand on the ..... day of ..... 20 .....

(Seal) (*Resident*) *Magistrate*

FORM XXIII

REPUBLIC OF MALAŴI

In the Resident Magistrate's / Grade Subordinate Court at .....

Case No ..... of 20 .....

The Republic *versus*

BOND TO GIVE EVIDENCE

(SECTION 275 OF THE CRIMINAL PROCEDURE AND EVIDENCE CODE)

I, ... of .... do hereby bind myself to attend at the next Sessions of the High Court and then and there to give evidence in the matter of a charge of ..... against ..... and, in case of making default herein, I bind myself to forfeit to the Government the sum of K .....

This ..... day of ..... 20 .....

.....

Signature

Entered into before me this ..... day of ..... 20 .....

(*Resident*) *Magistrate*

FORM XXIV

REPUBLIC OF MALAŴI

In the Resident Magistrate's / Grade Subordinate Court at .....

Case No ..... of 20 .....

The Republic *versus*

SUMMONS TO A JUROR

(SECTION 298 OF THE CRIMINAL PROCEDURE AND EVIDENCE CODE)

To: .....

You are hereby summoned to attend and act as a juror in the High Court at ..... on the ..... day of next at ..... o'clock in the forenoon.

Given under my hand this ..... day of ....., 20 .....

Registrar of the High Court

FORM XXV

REPUBLIC OF MALAŴI

In the Resident Magistrate's / Grade Subordinate Court at .....

Case No ..... of 20 .....

The Republic *versus*

AUTHORITY FOR DETENTION OF PERSON SENTENCED TO DEATH

(SECTION 325 OF THE CRIMINAL PROCEDURE AND EVIDENCE CODE)

To: The Officer in Charge of the Central Prison at Zomba.

I, ..., Registrar of the High Court of Malaŵi, hereby certify that ..... of ..... District, was on the ..... day of ..... 20 ..... convicted before the High Court of the offence of murder contrary to section 209 of the Penal Code and was sentenced to suffer death in the manner authorized by law.

This certificate shall be your authority to detain the said ..... in the Central Prison, Zomba, until you shall receive the further order of the President.

Given under my hand this ..... day of ....., 20 ....

Registrar of the High Court

FORM XXVI

REPUBLIC OF MALAŴI

In the Resident Magistrate's / Grade Subordinate Court at .....

Case No ..... of 20 .....

The Republic *versus*

WARRANT OF COMMITMENT

(SECTION 329 OF THE CRIMINAL PROCEDURE AND EVIDENCE CODE)

To the Officer in Charge of the Prison at .....

Whereas.....of..... was [*this day] [[16]*on the ..... day of ..... 20 .....] convicted before this Court of the offence of .....

under section ..... of the ..... and was sentenced to ..... *(*a*) imprisonment *with/*without hard labour;

*(*b*) a fine of K..... or in default of payment to imprisonment *with/*without hard labour;

*And Whereas of the said fine *the whole/*the sum of K ..... remains unpaid.

You are hereby required to receive the said ..... into your custody in the said prison together with this warrant and there carry the aforesaid sentence into effect according to law subject as hereafter specified.

Unless confirmation of the said sentence shall sooner be communicated to you by ..... you are required to release the prisoner at the expiration of the period appropriate in the case of a sentence of ..... months' imprisonment.

Given under my hand and the seal of the Court on this ..... day of ..... 20 .....

(Seal) (*Resident*) *Magistrate*

*Delete as appropriate

FORM XXVII

REPUBLIC OF MALAŴI

In the $\frac{\text{Resident Magistrate's}}{\text{Grade Subordinate}}$ Court at .....

Case No ..... of 20 .....

The Republic *versus*

WARRANT OF COMMITMENT ON FAILURE TO PAY COSTS AND COMPENSATION

(SECTION 332 OF THE CRIMINAL PROCEDURE AND EVIDENCE CODE)

To the Officer in Charge of the Prison at .....

Whereas on the ..... day of ..... 20 ..... lodged a complaint against .....

And Whereas the Court $\frac{\text{acquitted}}{\text{discharged}}$ the said accused and made an order that the * ..... should pay to the *..... the sum of K .....

by way of costs (and compensation) or in default be imprisoned for a period of .....

And Whereas of the said sum the whole (or the sum of K .....) remains unpaid, you are hereby required to receive the said ..... into your custody in the said prison together with this warrant and there carry the aforesaid sentence into execution according to law.

Given under my hand and the seal of the Court on this ..... day of ..... 20 .....

(Seal) (*Resident*) *Magistrate*

*Insert "complainant" or "accused" as the case requires.

FORM XXVIII

REPUBLIC OF MALAŴI

In the $\frac{\text{Resident Magistrate's}}{\text{Grade Subordinate}}$ Court at .....

Case No ..... of 20 .....

The Republic *versus*

SUMMONS TO ENFORCE PAYMENT OF A FINE

(SECTION 331 OF THE CRIMINAL PROCEDURE AND EVIDENCE CODE)

To: .....

Whereas on the ..... day of ..... 20 ....., you were convicted of ..... the offence of .... and were ordered to pay a fine of K ..... and were allowed until the ..... day of ..... 20 ..... to pay—

*(*a*) an installment of K .....

*(*b*) the whole amount of the fine.

And Whereas the said amount of K ..... has not been paid.

You are hereby required to appear before this Court on the ..... day of ..... 20 .... at ..... o'clock in the forenoon to be present at an inquiry as to your means.

Given under my hand and the seal of the Court on the ..... day of ..... 20 .....

(Seal) (*Resident*) *Magistrate*

*Delete where inappropriate.

FORM XXIX

REPUBLIC OF MALAŴI

In the Resident Magistrate's / Grade Subordinate Court at .....

Case No ..... of 20 .....

The Republic *versus*

WARRANT OF ARREST FOR FAILURE TO ANSWER SUMMONS TO INQUIRY AS TO MEANS

(SECTION 332 OF THE CRIMINAL PROCEDURE AND EVIDENCE CODE)

To all Police Officers of the .....

Whereas ..... of ..... was on the ..... day of ..... 20 ..... convicted of the offence and was ordered to pay a fine of K .....

And Whereas the whole amount of K ..... remains unpaid. And Whereas the said ..... failed to answer a summons to appear in this Court to be present at an inquiry as to his means.

You are hereby directed to arrest the said ..... and to produce him before this Court in execution of this your warrant, unless the said ..... shall sooner pay you the said sum of K ..... which you shall pay forthwith to this Court.

And Herein Fail Not.

(Seal) (*Resident*) *Magistrate*

FORM XXX

REPUBLIC OF MALAŴI

In the Resident Magistrate's / Grade Subordinate Court at .....

Case No ..... of 20 .....

The Republic *versus*

BOND TO KEEP THE PEACE AND TO BE OF GOOD BEHAVIOUR

(SECTION 338 OF THE CRIMINAL PROCEDURE AND EVIDENCE CODE)

Whereas I, ... have been called upon to enter into a bond in the sum of K ..... to keep

the peace and to be of good behaviour for the period of ..... from the execution of these presents upon the conditions hereinafter appearing .....;

And Whereas it is a condition of this bond that ([1])—

I hereby bind myself as aforesaid and in the event of making default agree to forfeit to the Government the said sum.

This ..... day of ..... 20 .....

Signature

([2]) [We hereby bind ourselves jointly and severally in the sum of K ..... to answer that the above-named will keep the peace and be of good behaviour during the said term.

First Surety:	*Second Surety:*
Name	.....
Address	.....
.....	.....
Occupation	.....]

Entered into before me this ..... day of ..... 20 ....., at .....

(*Resident*) *Magistrate*

(1) Here insert any conditions which have been imposed under section 338.

(2) Where sureties are not required the part of the form contained in square brackets should be deleted.

FORM XXXI

REPUBLIC OF MALAŴI

In the Resident Magistrate's / Grade Subordinate Court at .....

Case No ..... of 20 .....

The Republic *versus*

BOND TO APPEAR AND RECEIVE SENTENCE

(SECTION 337 OF THE CRIMINAL PROCEDURE AND EVIDENCE CODE)

Whereas I, ... have been called upon to enter into a bond in the sum of K ..... to appear and receive sentence when called upon and in the meantime to keep the peace and to be of good behaviour for the period of .....

from the execution of these presents upon the conditions hereinafter appearing;

And Whereas it is a condition of this bond that ([1])—

I hereby bind myself as aforesaid and in the event of making default agree to forfeit to the Government the said sum.

This ..... day of ..... 20 .....

Signature .....

([2]) [We hereby bind ourselves jointly and severally in the sum of K ..... to answer that the above-named will keep the peace and be of good behaviour during the said term.

First Surety:	*Second Surety:*
Name	.....
Address	.....
.....	.....
Occupation	.....]

Entered into before me this ..... day of ..... 20 ....., at .....

(*Resident*) *Magistrate*

([1]) Here insert any conditions which have been imposed under section 337.

([2]) Where sureties are not required the part of the form contained in square brackets should be deleted.

FORM XXXII

REPUBLIC OF MALAŴI

In the Resident Magistrate's / Grade Subordinate Court at .....

Case No ..... of 20 .....

The Republic *versus*

BOND TO APPEAR AND RECEIVE SENTENCE

(SECTION 339 OF THE CRIMINAL PROCEDURE AND EVIDENCE CODE)

Whereas I, ... have been called upon to enter into a bond in the sum of K ..... to appear and receive sentence *on the ..... day of .....20 ..... / *when called upon

And Whereas it is a condition of this bond that ([1])—

I hereby bind myself as aforesaid and in the event of making default agree to forfeit to the Government the said sum.

This ..... day of ..... 20 .....

Signature: .....

([2]) [We hereby bind ourselves jointly and severally in the sum of K ... . to answer that the above-named will keep the peace and be of good behaviour during the said term.

First Surety:	*Second Surety:*
Name	.....
Address	.....
.....	.....
Occupation	.....]

Entered into before me this ..... day of ..... 20 ....., at .....

(*Resident*) *Magistrate*

* Delete where inappropriate.

([1]) Here insert any conditions which have been imposed under section 337.

([2]) Where sureties are not required the part of the form contained in square brackets should be deleted.

FORM XXXIII

REPUBLIC OF MALAŴI

In the $\frac{\text{Resident Magistrate's}}{\text{Grade Subordinate}}$ Court at .....

Case No ..... of 20 .....

The Republic *versus*

ORDER FOR RELEASE OF PERSON IN CUSTODY

To the Officer in Charge of the Prison at .....

Whereas on the ..... day of ..... 20 ....of....., in the District of ..... , was ordered by the Court to be acquitted and set at liberty, this is to require you, forthwith to release the said ..... from custody.

Given under my hand on the ..... day of ..... 20 .....

(*Resident*) *Magistrate*

FORM XXXIV

REPUBLIC OF MALAŴI

In the Resident Magistrate's / Grade Subordinate Court at .....

Case No ..... of 20 .....

The Republic *versus*

WARRANT TO LEVY MONEY BY DISTRESS AND SALE

(SECTION 330 OF THE CRIMINAL PROCEDURE AND EVIDENCE CODE)

To: All Police Officers of the ..... District.

Whereas ..... was on the ..... day of ..... ordered by this Court to pay sum of K ..... as* .....

And Whereas the said ..... has not paid the said sum or any part thereof:

This is to authorize and require you to make distress by seizure of any movable or immovable property belonging to the said ..... which may be found within the ..... District; and, if within ..... days of such distress the said sum be not paid, to sell by public auction the property distrained, or so much thereof as shall be sufficient to satisfy the said sum and thereupon return this warrant with an endorsement certifying the manner of its execution.

Given under my hand and the seal of the Court this ..... day of ....., 20 .....

(Seal) (*Resident*) *Magistrate*

* Here insert whether fine, penalty, compensation, costs, expenses or otherwise.

CRIMINAL PROCEDURE AND EVIDENCE (JURORS AND WITNESSES ALLOWANCES) RULES

G.N. 72/1969
29/1996

under s. 368

1. These Rules may be cited as the Criminal Procedure and Evidence (Jurors and Witnesses Allowances) Rules. Citation

2. In these Rules unless the context otherwise requires— Interpretation

"claimant" means a juror, complainant, or witness who claims to be entitled to an allowance under these Rules;

"juror" means a person who attends the High Court in response to summons to a juror issued in pursuance of the Code;

"Registrar" means the Registrar of the High Court;

"witness" means a person who attends a court to give evidence in any criminal proceedings.

3.—(1) A juror, complainant or witness who attends court for the purpose of any criminal proceedings shall be entitled to an attendance allowance in accordance with the scale contained in the Schedule hereto for each day of such attendance: Attendance allowance *Schedule*

Provided that if, in the opinion of the Registrar or magistrate, hardship would be caused, in any special case, the scale may be increased at his discretion.

(2) An attendance allowance shall be paid in respect of the time a claimant is necessarily detained and for the time reasonably occupied in travelling.

(3) No additional allowance shall be paid merely because the claimant attends more than one case on the same day.

4.—(1) Claimants shall, in addition to an attendance allowance, be entitled to travelling allowances as follows— Travelling allowances G.N. 29/1996

(*a*) Claimants travelling by air, rail or public conveyance shall receive a refund of the actual fare paid, and those travelling by hired transport, if the journey would not, in the opinion of the Registrar or Magistrate, have been more reasonably performed by air, rail or public conveyance, a refund of the actual cost of such hired transport, but not exceeding the equivalent charge per kilometer in accordance with current rates used by the Plant and Vehicle Hire Organization, in relation to the type of the motor vehicle used, provided that such cost is, in the opinion of the Registrar or Magistrate, fair and reasonable;

(*b*) Witnesses using their own transport, provided that the journey could not, in the opinion of the Registrar or Magistrate have been more reasonably performed by air, rail or public

conveyance, shall receive payment for each mile traveled each way between the court and their place of residence at the equivalent rate of travel allowances for motor vehicles, motor cycles, and pedal cycle prescribed from time to time for civil servants.

(2) When two or more modes or routes of travel are reasonably available, the one entailing the least expense shall be allowed for, and when a journey is performed by air, rail or public conveyance a refund will only be made of the fare of the class by which the claimant might ordinarily be expected to travel.

(3) No travelling allowance shall be paid to any claimant residing within two miles of the court, unless, owing to physical disability, a conveyance for such claimant is necessary.

Subsistence allowance

5. In addition to an attendance allowance and a travelling allowance, a claimant shall be paid a subsistence allowance for each day during which he is necessarily detained and for the time reasonably occupied in travelling, such sum not being less than 3s.0d: nor more than 15 s Od. as the Registrar or Magistrate may consider reasonable.

Night allowance G.N. 29/1996

6. Where a claimant is necessarily detained overnight from his place of residence, he shall, in addition to any other sums payable under these Rules, be paid expenses necessarily incurred by him for lodging for that night upon production of such evidence of the expenditure as the Registrar or Magistrate may require.

Object of expenses and allowances

7.—(1) The allowances payable under rules 4, 5 and 6 are intended to cover the bare necessary out-of-pocket expenses incurred—

(*a*) in travelling to and from the court; and

(*b*) on food and lodging during the time a claimant is travelling or is necessarily detained in connexion with criminal proceedings.

(2) The Registrar or Magistrate may require a claimant to verify his claim by receipted vouchers or other evidence relating to any such expenses.

Method of payment

8. Claims for allowances relating to attendance at the High Court shall be made to the Registrar. Such claims relating to attendance at the court of a Magistrate shall be made to that Magistrate. All such claims shall be made immediately after the close of the hearing of the criminal proceedings:

Provided that payment may be made at any time if, in the opinion of the Registrar or Magistrate, hardship would be caused to any claimant if payment were deferred until after the criminal proceedings.

9. Civil servants who attend a court to give evidence or act as jurors in any criminal proceedings shall be paid travelling and subsistence allowances equivalent to the allowances to which they, when travelling on duty, are entitled under the Malaŵi Public Service Regulations but shall not be entitled to any attendance allowance. Civil Servants

SCHEDULE r. 3

ATTENDANCE ALLOWANCE G.N. 29/1996

1. Allowances to Witnesses—	
(*a*) Professional persons, owners, directors, and managers of business, and persons in receipt of a salary or income exceeding K30,000 per annum	In the discretion of the Court, not exceeding K100 per day
(*b*) Persons whose salary or income exceed K20,000 but does not exceed K30,000 per annum	In the discretion of the Court, not exceeding K75 per day
(*c*) Other person	In the discretion of the Court, not exceeding K50 per day
2. Allowances to Jurors	K100 per day

NOTICE APPLYING CERTAIN PROVISIONS OF THE CODE TO CRIMINAL PROCEEDINGS IN ALL TRADITIONAL OR LOCAL COURTS

G.N. 161/1970

under s. 371

The Minister has applied to all Traditional or Local Courts the provisions of the Code set out hereunder—

Section	77	relating to	Discontinuance by Director of Public Prosecutions
”	81	”	Withdrawal of prosecutions
”	152	”	Conviction of attempt
”	153	”	Alternatives verdicts
”	158	”	Construction of sections 152 and 153
”	176	”	Confessions

”	179	”	Admissibility of photographs and plans
”	180	”	Admissibility of medical reports
”	181	”	Admissibility of scientific reports
”	194	”	Evidence of husband or wife of accused
”	337	”	Conditional or absolute discharge, probation of offenders, etc.
”	339	”	Suspended sentences
”	340	”	Imprisonment of first offenders
”	341	”	Consequence of breach of conditions.

G.N. 241/1971

NOTICE APPLYING PROVISIONS OF SECTION 322 OF THE CODE TO CRIMINAL PROCEEDINGS IN CERTAIN TRADITIONAL OR LOCAL COURTS ONLY

under s. 371

The Minister has applied to the Traditional Courts specified hereunder the provisions of section 322 of the Code—

(*a*) the Southern Regional Traditional Court;

(*b*) the Central Regional Traditional Court;

(*c*) the Northern Regional Traditional Court;

(*d*) any Urban Traditional Court; and

(*e*) any Grade A. 1 Traditional Court.

CRIMINAL PROCEDURE AND EVIDENCE CODE

G.N. 43/1995
7/1996

CRIMINAL PROCEDURE (SELECTION OF JURORS) ORDER

under s. 297

Citation

1. This Order may be cited as the Criminal Procedure (Selection of Jurors) Order.

Division of Malaŵi into areas for selection of jurors

2. The areas into which Malaŵi is divided for the selection of jurors for the purpose of section 297 of the Code shall be the areas specified in the Schedule to this Order.

G.N. 43/1995
7/1996

SCHEDULE (para. 2)

AREAS FOR SELECTION OF JURORS

1. Each area of a Traditional Authority as designated under the Chiefs Act.
2. The areas of jurisdiction of a City Council, a Municipal Council and a Town Council.

CRIMINAL PROCEDURE (TRIALS WITHOUT JURY) ORDER

G.N. 8/1996
8/1997
3/2008

under s. 294 (2)

1. This Order may be cited as the Criminal Procedure (Trials Without Jury) Order. Citation

2. The cases or class of cases specified in the Schedule hereto shall be triable in the High Court without a Jury, and in any such case or class of cases instead of the procedure set out in Part X of the Criminal Procedure and Evidence Code, the High Court shall, with any necessary modifications follow the procedure set out in Part VII of the Criminal Procedure and Evidence Code for trials before subordinate courts. Trials without jury

SCHEDULE para. 2

1. All offences under the Customs and Excise Act.
2. All offences under the Exchange Control Act.
3. All offences under the Taxation Act.
4. All offences under Chapter XIX of the Penal Code.
5. All offences under Chapter XXXIII of the Penal Code.

COMMUNITY SERVICE (GENERAL) RULES

G.N. 34/2000

under s. 364A

PART I

Preliminary

1. These Rules may be cited as the Community Service (General) Rules. Citation

2. In these Rules, unless the context otherwise requires— Interpretation

"Community Service Officer" means a Community Service Officer appointed under rule 9;

"form" means a form prescribed under these rules;

"National Committee" means the Malaŵi National Committee on Community Service established under rule 3;

"National Coordinator" means the National Coordinator for Community Service appointed under rule 8;

"Supervisor" means the person referred to in rule 11.

PART II

Organization and Structure

Establishment of National Committee

3.—(1) There is hereby established the Malaŵi National Committee on Community Service.

(2) The National Committee shall consist of—

(*a*) a chairperson who shall be a judge appointed by the Chief Justice;

(*b*) a deputy chairperson who shall be the Principal Secretary to the Ministry of Justice or his representative;

(*c*) the Attorney-General or his representative;

(*d*) the Inspector General of Police or his representative;

(*e*) the Principal Secretary for Social Welfare, Children and Women Affairs or his representative;

(*f*) the Principal Secretary for Local Government or his representative;

(*g*) the National Coordinator;

(*h*) the Chief Commissioner of Prisons or his representative;

(*i*) the Chief Resident Magistrate's or their representatives;

(*j*) such other persons as may be appointed by the Chief Justice or co-opted by the National Committee from time to time—

(i) to represent organizations which have an interest in the well-being or reformation of prisoners; or

(ii) on account of their special skills or interest which may assist the National Committee.

Functions of National Committee

4. The functions of the National Committee shall be—

(*a*) to advise the Chief Justice on community service;

(*b*) to issue guidelines on community service to those concerned with the administration of justice and those concerned with supervising offenders placed on community service;

(*c*) to conduct workshops and seminars for those concerned with implementation of community service; and

(*d*) generally, to supervise, coordinate, promote and develop community service throughout Malaŵi.

Meetings of National Committee

5.—(1) The National Committee shall meet at such times and places as may be determined by the Chairperson.

(2) The procedure at any meeting of the National Committee shall be as directed by the Chairperson.

(3) In the absence of the Chairperson, the Deputy Chairperson or any other member elected by the persons present, shall preside at meetings.

(4) A quorum at a meeting of the National Committee shall be constituted by any five members.

Appointment of Committees

6. For the better exercise of its functions, the National Committee may appoint—

(*a*) an executive committee in accordance with rule 7; and

(*b*) such other committees as it deems fit and which shall exercise such functions as the National Committee may direct.

Executive Committee

7.—(1) The executive committee appointed by the National Committee shall consist of—

(*a*) a chairperson, who shall be the Chairperson of the National Committee or, in his absence, the Deputy Chairperson of the National Committee;

(*b*) the National Coordinator;

(*c*) Regional Coordinators;

(*d*) such other members as the National Committee; and

(*e*) any person whom the Executive Committee may from time to time co-opt.

(2) Subject to the control of the National Committee, the functions of the Executive Committee shall be—

(*a*) to carry out the regular and ordinary functions as may be directed by the National Committee; and

(*b*) to carry out such other functions as may be directed by the National Committee; and

(*c*) to report on its activities at every meeting of the National Committee.

(3) Notwithstanding the appointment of the Executive Committee or the vesting of any functions of the Executive Committee, the National Committee may amend or rescind any of the decisions of the Executive Committee.

National Coordinator

8.—(1) The Chief Justice shall, in consultation with the Chairperson of the National Committee, appoint a person to be the National Coordinator for Community Service.

(2) The National Coordinator shall—

(*a*) subject to the directions of the National Committee, coordinate, promote and develop community service throughout Malaŵi;

(*b*) liaise with the magistrates courts and all those concerned with the operation and promotion of community service in order to achieve an effective and efficient system of community service throughout Malaŵi;

(*c*) attend meetings of the National Committee;

(*d*) supervise the day to day work of the Regional Coordinators and Community Service Officers; and

(*e*) generally, coordinate community service throughout Malaŵi.

Community Service Officers

9.—(1) The Chief Justice shall, on the recommendation of the National Executive Committee, appoint a suitable number of persons in the Judiciary to be Community Service Officers who shall nevertheless remain subject to the general administration and discipline of the Judiciary.

(2) A Community Service Officer shall, subject to the directions and guidance of the National Coordinator, promote, organize and foster community service within the area or district for which he is appointed.

(3) A Community Service Officer shall assist the magistrate courts in his area or district in the implementation of community service and shall act on the directions and advice of the Chief Resident Magistrate within whose region he has responsibilities.

District Committee

10.—(1) Every magistrate in a district shall appoint as many district committees as may be possible and convenient to implement community service in that district.

(2) The district committee shall consist of—

(*a*) the Community Service Officer;

(*b*) the Public Prosecutor;

(*c*) the Officer-in-Charge of Police or his representative;

(*d*) the District Administrator for the District;

(*e*) the officer-in-charge of the Prison within the District concerned or his representative;

(*f*) the Social Welfare Officer for the District concerned;

(*g*) members of the Court Users Committee not reflected in (*a*) to (*f*) above.

(3) A District Committee shall identify local institutions or other places which are suitable and willing to receive and supervise persons placed on community service and shall generally endeavour to promote and develop community services within its District.

Supervisor

11.—(1) The person in charge of an institution or place where an offender has been directed to perform community service shall supervise the performance of the community service concerned.

(2) A supervisor shall—

(*a*) allocate work to the offender concerned as specified in the court order or, where no details have been specified, shall allocate such work as he considers suitable at the institution or place concerned;

(*b*) generally, monitor the performance of the work concerned and, where practicable and possible, shall offer instruction and guidance to the offender concerned in the performance of the work;

(*c*) keep records and submit returns relating to the community service performed as may be directed by the clerk of court or Community Service Officer;

(*d*) exercise a discretion in regard to requests by the offender for leave of absence and generally as to the administration of community service in accordance with such guidelines as may be issued by the National Committee and such advice as may be given by the local Community Service Officer or the National Coordinator;

(*e*) advise the Community Service Officer or clerk of the court of any unresolved problems encountered in connexion with the community service rendered at his institution so that they may be resolved.

(3) Where practical or possible a supervisor shall arrange for counselling of the offender where a request in this regard has been made:

Provided that any such counselling shall not count as part of the time requires to be spent by the offender on performing community service.

Part III

Administration

Preliminary requirements to making an Order

12. Before making a Community Service Order the court shall—

(*a*) undertake an inquiry as to the general suitability of the offender for community service;

(*b*) explain the aims and objects of a community service order to the offender, the duties of the offender expected thereunder, his rights to the court for any variation or revocation of the order and the consequences of any breach or non-compliance therewith;

(*c*) ascertain whether or not the offender is willing to render community service and have regard to his attitude in finally determining whether to make the order;

(*d*) ascertain whether a suitable institution or place is available for reception and supervision of the offender in respect of the proposed community service.

Distribution of the order

13. Upon making a Community Service Order, the court shall cause a copy to be—

(*a*) given to the offender concerned;

(*b*) submitted to the person in charge of the institution or place where the community service is to be performed; and

(*c*) given to Community Service Officer for the area.

Contents of an order

14. A Community Service Order shall specify—

(*a*) the number of hours required to be worked;

(*b*) the days on which work is to be performed;

(*c*) the starting and finishing times of the work;

(*d*) the place where the work is to be performed; and

(*e*) any other special terms or conditions of the community service order.

Application for amendment or revocation

15.—(1) An application for the amendment or revocation of Community Service Order shall be made in writing and lodged with the court which made the order.

(2) Where an offender making an application for an amendment or revocation requires assistance in making a written application the clerk of court shall assist the offender.

(3) An application shall—

(*a*) specify the name of the offender and shall refer to the criminal record book number of his conviction;

(*b*) specify the grounds upon which the amendment or revocation is based and in the case of an amendment, the nature of the amendment being sought;

(*c*) be accompanied by any observation or recommendations which may have been made by the Community Service Officer or the supervisor of the community service concerned.

(4) The clerk of the court shall fix a date, time and place for the hearing of the application and shall serve—

(*a*) a notice of the hearing on the Director of Public Prosecutions or his representative, Community Service Officer and the offender or, if he is a minor, his parent or lawful guardian;

(*b*) a copy of the application on the public prosecutor and the offender, if he is a minor, his parent or lawful guardian where either such person has not himself made the application.

(5) At the hearing of the application the applicant, the Director of Public Prosecutions or his representative and the Community Service Officer shall be entitled to be heard by the court and, in addition, the court may require the supervisor of the institution or place of community service or any other interested person to attend and to assist the court in determining the issue before the court.

(6) Notwithstanding the provisions of subrules (1) to (4) where subsequent to the making of a Community Service Order, the offender is appearing before a court in connexion with other criminal proceedings, an application for the amendment or variation of the Community Service Order may be made verbally to the court by or on behalf of the offender or the public prosecutor.

Breach of Community Service Order

16.—(1) Where a magistrate has reason to believe, from information on oath or otherwise, that an offender has failed to comply with a Community Service Order imposed on him, the magistrate may issue an order in the form set out in Part I of Form CS/7 requiring the offender to appear before the magistrate court which made the order.

(2) Where a magistrate considers it necessary for the purposes of an order referred to in subrule (1) that the offender concerned—

(*a*) should be arrested, he may issue an order in the form set out in Form CS/8 directing the arrest of the offender; or

(*b*) should be further detained, he may issue an order in the form set out in Form CS/9, directing the further detention of the offender for a period not exceeding fourteen days.

(4) Any Order issued in terms of subrule (2) shall be sufficient authority to arrest or detain the offender, whichever may be applicable in terms of the order.

Forms and returns

17. Unless otherwise prescribed in these rules, the forms and returns to be used in connexion with the administration of community service shall be as prescribed from time to time by the National Committee with such variations as the circumstances may require.

Condonation or variation of Part III

18. A court may, in appropriate circumstances condone any failure to comply with the provisions of this Part or may permit or direct such variations as may be appropriate and no Community

Service Order or any document or revocation thereof shall be invalid on the grounds alone of any such condonation or variation.

SCHEDULE FORM CS/1

COMMUNITY SERVICE (GENERAL) RULES

COMMUNITY SERVICE ORDER

PLACEMENT OF AN OFFENDER ON COMMUNITY SERVICE

Filed by: Clerk of Court

Copies: 1. Retain at sentencing court.

2. Send to coordinating body for community service (district/region provincial as necessary).

3. Send to head of institution where service is to be performed.

CASE NUMBER:	
First offender (tick one): yes/no	Has offender served C.S. before? yes/no
Total hours ordered:	Date ordered:
Date work to start:	Completion period:

Offender's Surname:	Middle initials(s):
First name:	
Address:	Nationality:
Village:	Traditional Authority:
District:	Marital Status:
Date of birth[1]:	Educational level:
Sex: (tick one) male/female	Occupation:

Court:	Judicial Officer's name:
Address:	Phone:
Offence[2]:	Estimated custody time[3]:

[1] If date of birth is unknown, fill in year of birth. If year is also unknown, write juvenile or adult.

[2] Include chapter/section number from Penal Code whenever possible.

[3] Sentencing judge should estimate the custody time the offender would serve if community service were not an option. If the offence would not normally involve custody (but rather a fine, probation, etc.), enter none in this box.

FORM CS/2

COMMUNITY SERVICE (GENERAL) RULES

DAILY RECORD OF COMMUNITY SERVICE WORK PERFORMED BY THE OFFENDER

Filed by: Supervisor of offender, on a daily basis
Copies: Retain at host institution

Offender's surname	
First name	
Middle initials	
Offender's address	
Case number	
Name of institution	
Address	
Task assigned to offender	

Date	*Time of arrival*	*Time of departure*	*Hours worked*	*Supervisor*	*Offender's signature or thumbprint*
				Name ..... *Signature*	
				Name ..... *Signature*	
				Name ..... *Signature*	
				Name ..... *Signature*	
				Name ..... *Signature*	
				Name ..... *Signature*	

Date	*Time of arrival*	*Time of departure*	*Hours worked*	*Supervisor*	*Offender's signature or thumbprint*
				Name ..... *Signature*	
				Name ..... *Signature*	
				Name ..... *Signature*	
				Name ..... *Signature*	
				Name ..... *Signature*	
				Name ..... *Signature*	

FORM CS/3

COMMUNITY SERVICE (GENERAL) RULES

COMMUNITY SERVICE REPORT OF DEFAULT BY OFFENDER

Filed by: Controller at community service institution
Copies: To Clerk of Court
Copies: To Clerk of Court at .....

Offender's surname	
First name	
Middle initials	
Offender's address	
Case number	
Name of institution	
Address	

This is to advise that the above-named offender has defaulted his/her community service for the following reasons (give details, e.g. failed to report for work, persistently late for work, failed to perform work properly)—

.....

.....

The action I have taken so far is as follows (give details, e.g. I have warned him/her that the matter is being referred to the court, I have continued to give him/her work, I have sent him/her home, I have advised the community service officer—

.....

.....

I request that the matter be brought before the court with the community service being cancelled if the court sees fit.

Date: ..... Signature: .....

Full name: .....

.....

Controller of Institution

FORM CS/4

COMMUNITY SERVICE (GENERAL) RULES

COMMUNITY SERVICE REPORT FOR VARIATION OF CONDITIONS

Filed by: Controller at community service institution
Copies: To Clerk of Court.
Copies: To Clerk of Court at .....

Offender's surname	
First name	
Middle initials	
Offender's address	
Case number	
Name of institution	
Address	

This is to request that the conditions of the community service order imposed on the offender be varied as follows (give details, e.g. "Offender presently directed to work on Monday, Tuesday, Wednesday, but I request this be varied to Thursday, Friday, Saturday", or "Offender's present work hours are 6 p.m. to 8 p.m., but I request this be varied to 7 p.m. to 9 p.m.'')—

.....

.....

.....

.....

In the meantime the action I have taken is as follows (give details, e.g. I have informally authorized the offender to change his days or times as follows)—

.....

.....

.....

I request that the matter be brought before the court as soon as possible.

Date: ..... Signature: .....

Full name: .....

.....

Controller of Institution

FORM CS/5

COMMUNITY SERVICE (GENERAL) RULES

REPORT OF COMPLETION OR TERMINATION OF COMMUNITY SERVICE ORDER

Filed by: Controller at community service institution

Copies: 1. To Clerk of Court

2. To community service coordinating body (district/regional as necessary).

Copies: To Clerk of Court at .....

Offender's surname	
First name	
Middle initials	
Offender's address	
Case number	
Name of institution	
Address	

Results of community service order:

Offence for which community service was performed	
Commencement date of community service	
Total number of hours offender was required to work	
Total number of hours actually worked by offender	
Date community service completed or terminated	

Reasons why community service came to an end (*tick applicable item or items*)

Offender satisfactorily completed all hours of work stipulated by the court	
Offender committed further offences and was arrested by the police	
Offender referred back to the sentencing court because of a breach of the community service condition(s) laid down by the court	
Offender fell ill and was admitted to a clinic or hospital	
Offender was injured at the institution and was admitted to a clinic or hospital	
Community service was terminated for reasons other than those listed above (*state reasons overleaf*)	

If the job was being done by a paid worker, what would be the rate of pay per hour?

Date: ..... Signature: .....

Full name: .....

.....

Controller of Institution

FORM CS/6

COMMUNITY SERVICE (GENERAL) RULES

GRID OF HOURS

Duration	*Hours*
1 month	40 Hours
2 months	80 hours
3 months	120 hours
4 months	160 hours
5 months	200 hours
6 months	240 hours
7 months	280 hours
8 months	320 hours
9 months	360 hours
10 months	400 hours
11 months	440 hours
12 months	480 hours

FORM CS/7

COMMUNITY SERVICE (GENERAL) RULES

ORDER IN TERMS OF SECTION 364A OF THE CRIMINAL PROCEDURE AND EVIDENCE CODE

(CAP. 8:01)

To .....

Name of Offender

of: .....

Address of Offender

WHEREAS a Community Service Order was made against you by the High Court/ Magistrate Court, (.....) on the ..... day of ..... 20 ..... which requires you to perform Community Service at ..... AND WHEREAS from the information received it appears that you have failed to comply with the Order in the following respects—

.....

Set out particulars of the alleged breach

.....

.....

YOU ARE REQUIRED to appear before the Magistrate Court ..... on the ..... day of ..... at ..... to show cause why you should not be dealt with according to law.

Date: ..... Signature: .....

Magistrate at

.....

Magistrate Court

FORM CS/8

COMMUNITY SERVICE (GENERAL) RULES

ORDER FOR ARREST IN TERMS OF SECTION 364A CRIMINAL PROCEDURE AND EVIDENCE CODE

(CAP. 8:01)

To the Officer-in-Charge—Malaŵi Police

This is to direct you to arrest the offender (name) ..... of (address) ..... and to bring him/her before a magistrate of this court as soon as possible and in any case not later than 48 hours after his/her arrest so that the arrest of his /her further detention may be determined.

Date: ..... Signature: .....

Magistrate at

.....

Magistrate Court

FORM CS/9

COMMUNITY SERVICE (GENERAL) RULES

(CAP. 8:01)

ORDER FOR DETENTION IN TERMS OF SECTION 364A OF THE CRIMINAL PROCEDURE AND EVIDENCE CODE

(CAP. 8:01)

To the Officer-in-Charge—Prison

This is to direct you to detain the offender (name) .....
of (address) .....
unless he is admitted to bail or otherwise lawfully released, until—

(*a*) he is brought before the court on the date and time fixed for the inquiry referred to in Part I of this order, or

(*b*) the expiry of a period of 14 days from the date specified below; whichever is the sooner.

Date: ..... Signature: .....

Magistrate at
.....
Magistrate Court

Extended to: ..... Signature: .....

Magistrate at
.....
Magistrate Court

FINGERPRINTS

CHAPTER 8:02

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CHAPTER 8:02

FINGERPRINTS

ARRANGEMENT OF SECTIONS

SECTION
1. Short title
2. Interpretation
3. Power to take fingerprints of accused or convicted persons
4. Conviction to be recorded on fingerprint form
5. Establishment of fingerprint bureau
6. Fingerprint forms to be evidence
7. Proof of conviction by fingerprints
8. Power to make Rules
9. Saving

An Act to facilitate the identification of criminals by means of fingerprints

5 of 1928
30 of 1969
G.N. 22/1963
16/1964(M)

[14TH APRIL, 1928]

Short title

1. This Act may be cited as the Fingerprints Act.

Interpretation

2. In this Act and any Rules made hereunder, unless the context otherwise requires—

"authorized officer" means any police officer or prison officer of Malaŵi;

"fingerprints" include the marks made by the papillary ridges of the fingers and palms of the hands and the toes and soles of the feet;

"fingerprint form" means a piece of paper or cardboard printed in accordance with Rules framed under this Act. 30 of 1969

Power to take fingerprints of accused or convicted persons

3.—(1) An authorized officer may take the fingerprints of any person in lawful custody for any offence, whether accused or convicted, or who is subject to police supervision.

(2) The person whose fingerprints are taken, if able to write, shall sign the form in the place provided for the purpose.

30 of 1969

(3) If any such person, when required to do so by an authorized officer, refuses to have his fingerprints taken or to sign the fingerprint form, he shall commit an offence and be liable to a fine of ten pounds and to imprisonment for one month and to enable such fingerprints to be taken reasonable force may be used by an authorized officer with the permission, and in the presence, of a magistrate or an officer in charge of police of the rank of Inspector or above.

Conviction to be recorded on fingerprint form

4. If the person whose fingerprints are taken is convicted of any offence, his conviction and sentence shall be recorded in the space provided for the purpose on the fingerprint form.

If he is acquitted, the fingerprint form shall be destroyed.

Establishment of fingerprint bureau

5. There shall be established at a place to be approved by the Minister an office (in this Act and any Rules made hereunder referred to as the "fingerprint bureau") for the preservation, comparison and indexing of the fingerprint forms.

Fingerprint forms to be evidence

6. Where the fingerprints on a fingerprint form purport to have been taken and the entries thereon purport to have been made by an authorized officer, the fingerprint form shall be admissible in evidence without proof, and shall be *prima facie* evidence of the conviction and sentence of the person whose fingerprints are impressed thereon.

Proof of conviction by fingerprints

7. For the purpose of proving a previous conviction of a person accused or convicted of any offence, a certificate in the form contained in the Rules made under this Act and purporting to be signed by the officer in charge of the fingerprint bureau, or by the officer in charge of any fingerprint bureau without Malaŵi, shall be admissible in evidence without proof, and shall be *prima facie* evidence that the fingerprints to which the certificate relates are the fingerprints of the same person and also of the previous convictions and sentences recorded in the certificate.

Power to make Rules

8. The Minister may make Rules regulating the work of the fingerprint bureau, and for the better carrying out of the purposes of this Act, and any person guilty of a breach of such Rules shall be liable to a fine of £10 and to imprisonment for one month

Saving 6 of 1921

9. Any fingerprints taken under the Prisoners Identification Ordinance, 1921 (now repealed) shall be deemed to have been taken under this Act, and the forms on which such fingerprints were taken shall be deemed to be fingerprint forms as defined by this Act.

SUBSIDIARY LEGISLATION

FINGERPRINTS RULES

under s. 8

G.N. 203/1928 196/1958

1. These Rules may be cited as the Fingerprints Rules. Citation

2. The fingerprint bureau, subject to the general supervision of the Commissioner of Police, shall be under the control of a police officer expert in the comparison of fingerprints to be appointed from time to time by the said Commissioner. Fingerprint bureau

Completed fingerprint forms shall be sent to and be preserved at the fingerprint bureau.

3. The fingerprint form shall be in the form set out on the obverse in the Schedule. Fingerprint form

4. All fingerprints taken under the Act shall be made by pressing the fingers and thumbs on an inked pad or plate and then on a fingerprint form in accordance with directions printed on the form. Method of taking fingerprints

As many impressions may be taken as may be required.

5. The certificate referred to in section 7 of the Act shall be in the form set out on the reverse in the Schedule. Certificate referred to in section 7

SCHEDULE r.3

OBVERSE

MALAŴI POLICE

NAME	*For use in C.R.O.*
ALIAS	Date of Search.....
STATION.....	F.P. No ..... C.R.O. No. .....
C.R. NUMBER.....	Classification.....
C.R. Number (if known)	Classified by.....Date .....
Fingerprints taken by:	Checked by ..... Date.....
No..... Rank..... Date	Result of search:
Offence (with section and law)	

Right hand	Right Thumb	Right Fore Finger	Right Middle Finger	Right Ring Finger	Right Little Finger	Right hand
	(fold)				(fold)	
Left hand	Left Thumb	Left Fore Finger	Left Middle Finger	Left Ring Finger	Left Little Finger	Left hand
	(fold)				(fold)	

Left hand	Plain impression of the Four Fingers taken simultaneously	Plain impression of the Four Fingers taken simultaneously	Right hand
	(fold)	(fold)	

Nationality or race.....	Signature of accused
Address particulars.....	
.....	
Age.....Height.....	Right Fore-finger to be impressed immediately after signature is written
Build.....Hair	
Build Hair Bodily marks, scars, tattoo marks, etc	
.....	
.....	

The following certificate must be completed by the *Prosecutor,* in the *exact wording* of the sentence and offence appearing in the Court Record or Committal Warrant.

Sentence by .....Court at..... on .....

To (sentence).....

For (offence).....

Court Record No ..... Certified by ..... Rank..... Date .....

High Court revisions, etc., if any (red ink) .....

see certificate of comparison of fingerprints on reverse.

I hereby certify that I have compared the fingerprints No. F.P. ..... overleaf, which purport to have been taken at ..... on the ..... day of ..... and to be the fingerprints of a male (female) person named ..... with the fingerprints on the Fingerprint Forms the particulars recorded on which are as follows—

Form No. Fingerprint	Full Name and alias	Place where and date when fingerprints were taken	Court by which convicted	Place where convicted	Date of conviction	Offence of which convicted	Sentence

And that the fingerprints on all the said forms are the fingerprints of the same person.

Date .....

.....

Officer in Charge of Fingerprint Bureau

EXTRADITION

CHAPTER 8:03

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CHAPTER 8:03

EXTRADITION

ARRANGEMENT OF SECTIONS

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CHAPTER 8:03
EXTRADITION

9 of 1968
19 of 1972
19 of 1992

An Act to make provision for the extradition of offenders from and to Malaŵi, and for matters connected therewith and incidental thereto

[13TH APRIL, 1972]

PART I
PRELIMINARY

Short title

1. This Act may be cited as the Extradition Act.

Interpretation

2.—(1) In this Act, unless the context otherwise requires—

"court" means a subordinate court of a magistrate of the first grade or any higher grade;

"designated country" where the agreement between such country and Malaŵi so provides, shall include any colony, protectorate, trust territory or other dependency of such country;

"fugitive offender" means a person accused or convicted of a relevant offence committed according to the law of a designated country, who is in or is suspected of being in or on his way to Malaŵi;

"relevant offence" means a relevant offence within the meaning of section 5 or an offence deemed to be a relevant offence by section 6 (1) of the Hijacking Act;

Cap. 7:03

"warrant" in the case of a designated country includes any judicial document authorizing the arrest of a person accused or convicted of a crime in accordance with the law of that country.

(2) For the purposes of this Act a person convicted of an offence in his absence shall be deemed to be a person accused of that offence.

PART II
ARRANGEMENTS FOR SURRENDER OF FUGITIVE OFFENDERS

Extradition arrangements

3.—(1) The Minister may enter into arrangements with the government of any country providing, subject to the provisions of this Act, for the surrender on a basis of reciprocity, of fugitive offenders, and providing for any matters which, in the opinion of the Minister are incidental thereto.

(2) Where the Minister has entered into an arrangement with the government of any country in accordance with subsection (1) he may, by order, designate such country, hereinafter referred to as a designated country, as a country to which this Act shall apply subject to such conditions, exceptions, adaptations or modifications as may be specified in the order.

(3) The countries specified in the First Schedule shall be deemed to be designated countries to which the whole of this Act (other than Part IV) applies unless or until the Minister, by order, otherwise directs, and the Minister shall be deemed to have entered into appropriate arrangements with such countries in accordance with subsection (1).

Surrender of fugitive offenders

4. Subject to the provisions of this Act, any fugitive offender from a designated country may be arrested, detained and surrendered to such country in the manner provided by this Act, whether or not the relevant offence in respect of which his extradition is sought was committed before or after the commencement of this Act.

Relevant offences

5.—(1) For the purposes of this Act an offence of which a fugitive offender is accused or has been convicted in a designated country is a relevant offence if—

(*a*) it is an offence which, however described in the law of the country concerned, falls within any of the descriptions set out in the Second Schedule to this Act, and is punishable under that law with imprisonment for a term of twelve months or any greater punishment; and

(*b*) the act or omission constituting the offence, or the equivalent act or omission, would constitute an offence against the law of Malaŵi if it took place in Malaŵi or, in the case of an extra-territorial offence, in corresponding circumstances outside Malaŵi.

(2) In determining for the purposes of this section whether an offence against the law of the designated country falls within a description set out in the Second Schedule, any special intent or state of mind or special circumstances of aggravation which may be necessary to constitute that offence under that law shall be disregarded.

(3) The descriptions set out in the Second Schedule include in each case offences of attempting or conspiring to commit, of assisting, counselling or procuring the commission of, or being accessory before or after the fact to, the offences therein described, and of impeding the apprehension or prosecution of persons guilty of those offences.

(4) References in this section to the law of any country include references to the law of any part of that country.

General restrictions on surrender

6.—(1) A fugitive offender shall not be surrendered under this Act to a designated country, or committed to or kept in custody for the purposes of such surrender, if it appears to the Minister, to the court of committal, or to the High Court or the Supreme Court of Appeal on an application for directions in the

nature of habeas corpus or for the review of the order of committal—

(*a*) that the offence of which the fugitive offender is accused or was convicted is an offence of a political character;

(*b*) that the request for his surrender (though purporting to be made on account of a relevant offence) is in fact made for the purpose of prosecuting or punishing him on account of his race, religion, nationality or political opinions;

(*c*) that he might, if surrendered, be prejudiced at his trial or punished, detained or restricted in his personal liberty by reason of his race, religion, nationality or political opinions.

(2) A fugitive offender shall not be surrendered under this Act to any designated country, or committed to or kept in custody for the purposes of such surrender, if it appears as aforesaid that if charged with that offence in Malaŵi he would be entitled to be discharged under any rule of law relating to previous acquittal or conviction.

(3) A fugitive offender shall not be surrendered under this Act to any designated country, or be committed to or kept in custody for the purposes of such surrender, unless provision is made by the law of that country, or by an arrangement made with that country, for securing that he will not, unless he has first been restored or had an opportunity of returning to Malaŵi, be dealt with in that country for and in respect of any offence committed before his surrender under this Act other than—

(*a*) the offence in respect of which his surrender under this Act is requested;

(*b*) any lesser offence proved by the facts proved before the court of committal; or

(*c*) any other offence being a relevant offence in respect of which the Minister may consent to his being so dealt with.

(4) Any such arrangement as is mentioned in subsection (3) may be an arrangement made for the particular case or an arrange ment of a more general nature, and for the purposes of subsection (3) a certificate issued by or under the authority of the Minister confirming the existence of an arrangement with any country and stating its terms shall be conclusive evidence of the matters contained in the certificate.

(5) The reference in this section to an offence of a political character does not include an offence against the life or person of the Head of the Commonwealth or of the Head of any designated country or any related offence referred to in section 5 (3).

PART III

Proceedings for Surrender

Authority to proceed

7.—(1) Subject to the provisions of section 8 (1) (*b*) and section 15, a fugitive offender shall not be dealt with under this Act except in pursuance of a direction by the Minister, hereinafter referred to as an authority to proceed, issued as a result of a request made to him through diplomatic channels by or on behalf of the government of the designated country in which the fugitive offender to be surrendered is accused or was convicted.

(2) There shall be furnished with any request made for the purposes of this section on behalf of any designated country—

(*a*) in the case of a fugitive offender accused of an offence, a warrant for his arrest issued in that country;

(*b*) in the case of a fugitive offender unlawfully at large after conviction of an offence, a certificate of the conviction and sentence in that country, and a statement of the amount, if any, of that sentence which has been served,

together, in each case, with particulars of the fugitive offender whose surrender is requested and of the facts upon which and the law under which he is accused or was convicted, and evidence sufficient to justify the issue of a warrant for his arrest under section 8 of this Act.

(3) On receipt of such a request the Minister may issue an authority to proceed unless it appears to him that an order for the surrender of the fugitive offender could not lawfully be made, or would not in fact be made, in accordance with the provisions of this Act.

Issue of warrant of arrest

8.—(1) A warrant for the arrest of a fugitive offender may be issued by a court—

(*a*) on the receipt of the authority to proceed issued by the Minister under section 7;

(*b*) without such authority to proceed, upon information that the said fugitive offender is in or is believed to be in or on his way to Malaŵi.

(2) A warrant of arrest under this section may be issued upon such evidence as would, in the opinion of the court authorize the issue of a warrant for the arrest of a person accused of committing a corresponding offence, or as the case may be, of a person alleged to be unlawfully at large after conviction of an offence, within the jurisdiction of the court.

(3) Where a warrant is issued under subsection (1) (*b*) the court by whom it is issued shall forthwith give notice to the Minister, and transmit to him the information and evidence, or

certified copies thereof, upon which it was issued, and the Minister may in any case, and shall if he decides not to issue an authority to proceed in respect of the fugitive offender concerned, cancel the warrant, and if the fugitive offender has been arrested thereunder, discharge him from custody.

(4) A warrant of arrest issued under this section may, without being endorsed, be executed in any part of Malaŵi, and may be so executed by the person to whom it is directed or by any police officer.

Proceedings for committal

9.—(1) A person arrested in pursuance of a warrant issued under section 8 shall, unless previously discharged under section 8 (3), be brought as soon as practicable before a court, which shall receive evidence in the same manner, and shall have the same jurisdiction and powers in respect thereof as in a preliminary inquiry.

(2) The court shall receive any evidence which may be tendered to show that the case is one to which the relevant provisions of section 6 apply, or that the offence of which the person arrested is accused is not a relevant offence.

(3) Where the person arrested is in custody by virtue of a warrant of arrest issued under section 8 (1) (*b*) and no authority to proceed has been received in respect of him, the court may fix a reasonable period (of which notice shall be given to the Minister) after which he will be discharged from custody unless such an authority to proceed has been received.

(4) Where an authority to proceed has been issued in respect of the person arrested and the court is satisfied, after hearing any evidence tendered in support of the request for the surrender of that person, or on behalf of that person, that the offence to which the said authority relates is a relevant offence and is further satisfied that—

(*a*) where the person is accused of the offence, that the evidence would be sufficient to warrant his trial for that offence if it had been committed within the jurisdiction of the court;

(*b*) where that person is alleged to be unlawfully at large after conviction of the offence, that he has been so convicted and appears to be so at large,

the court shall, unless his committal is prohibited by any other provision of this Act, commit that person to custody to await his surrender thereunder; but if the court is not so satisfied or if the committal of that person is so prohibited, the court shall discharge him from custody.

Habeas corpus etc

10.—(1) Where a fugitive offender is committed to custody under section 9 the court shall inform him that he will not be surrendered until after the expiration of fifteen days and that he has the right to apply to the High Court for the issue of directions in the nature of habeas corpus or for review of the order of committal.

(2) A fugitive offender committed to custody under section 9 shall not be surrendered under this Act—

(*a*) in any case, until the expiration of the period of fifteen days beginning with the day on which the order for his committal is made;

(*b*) if an application is made to the High Court for the issue of directions in the nature of habeas corpus, or for review of the order of committal, so long as proceedings on that application are pending.

(3) On any such application to the High Court, the High Court may, without prejudice to any other jurisdiction of the High Court, order the person committed to be discharged from custody if it appears to the High Court that—

(*a*) by reason of the trivial nature of the offence of which he is accused or was convicted; or

(*b*) by reason of the passage of time since he is alleged to have committed it or to have become unlawfully at large, as the case may be; or

(*c*) because the accusation against him is not made in good faith in the interests of justice,

it would, having regard to all the circumstances, be unjust or oppressive to surrender him.

(4) On any such application the High Court may receive additional evidence relevant to the exercise of their jurisdiction under subsection (3) or under section 6.

(5) For the purposes of this section proceedings on any such application shall be treated as pending until any appeal to the Supreme Court of Appeal in those proceedings is disposed of; and such an appeal shall be deemed to be disposed of at the expiration of the time within which the appeal may be brought or, where leave to appeal is required, within which the application for leave may be made, if the appeal is not brought or the application made within that time.

Order for surrender to requesting country

11.—(1) Where a fugitive offender is committed in custody under section 9 to await his surrender, and is not discharged by order of the High Court, the Minister may by warrant direct that he be surrendered to the country by which the request for his surrender was made unless the surrender of the fugitive offender

is prohibited, or prohibited for the time being under section 6 or this section, or unless the Minister decides under this section to make no such direction in his case.

(2) A warrant shall not be issued by the Minister under this section in the case of a fugitive offender who is serving a sentence of imprisonment or detention, or is charged with an offence, in Malaŵi—

(*a*) in the case of a person serving such a sentence, until the sentence has been served;

(*b*) in the case of a person charged with an offence in Malaŵi until the charge is disposed of or withdrawn and, if it results in a sentence of imprisonment, until the sentence has been served.

(3) The Minister shall not direct the surrender of any fugitive offender under this section if it appears to him, on the grounds referred to in section 10 (3) that it would be unjust or oppressive to surrender him.

(4) The Minister may decide to issue no warrant under this section in the case of a fugitive offender accused or convicted of a relevant offence which is not punishable with death in Malaŵi if that person could be or has been sentenced to death for that offence in the country by which the request for his surrender is made.

(5) The Minister may decide to issue no warrant under this section for the surrender of a fugitive offender committed in custody in consequence of a request made on behalf of any designated country if another request for his surrender under this Act has been made on behalf of another designated country and it appears to the Minister, having regard to all the circumstances of the case, and in particular—

(*a*) the relative seriousness of the offences in question;

(*b*) the date on which each request was made; and

(*c*) the nationality or citizenship of the fugitive offender concerned, and his ordinary residence,

that preference should be given to the other request.

(6) Notice of the issue of a warrant by the Minister under this section shall forthwith be given to the fugitive offender to be surrendered thereunder.

Discharge in case of delay in surrendering

12.—(1) If any fugitive offender committed in custody to await his surrender under this Act is still in custody after the expiration of the following period, that is to say—

(*a*) in any case, the period of two months beginning with the first day on which, having regard to section 10 (2), he could have been surrendered;

(*b*) where a warrant for his surrender has been issued under section 11, the period of one month beginning with the day on which that warrant was issued,

he may apply to the High Court for his discharge.

(2) If upon any such application the High Court is satisfied that reasonable notice of the proposed application has been given to the Minister, it may, unless sufficient cause is shown to the contrary, order the applicant to be discharged from custody and, if a warrant for his surrender has been issued under section 11, quash that warrant.

Evidence

13.—(1) In any proceedings under this Act, including proceedings for the issue of directions in the nature of habeas corpus in respect of a fugitive offender in custody thereunder—

(*a*) a document, duly authenticated, which purports to set out evidence given on oath in a designated country shall be admissible as evidence of the matters stated therein;

(*b*) a document, duly authenticated which purports to have been received in evidence, or to be a copy of a document so received, in any proceeding in a designated country shall be admissible in evidence;

(*c*) a document, duly authenticated, which certifies that a person was convicted on a date specified in the document of an offence against the law of, or of a part of, a designated country, shall be admissible as evidence of the fact and date of the conviction.

(2) A document shall be deemed to be duly authenticated for the purposes of this section—

(*a*) in the case of a document purporting to set out evidence given as aforesaid, if the document purports to be certified by a judge, or magistrate or officer in or of the designated country concerned to be the original document containing or recording that evidence or a true copy of such a document;

(*b*) in the case of a document which purports to have been received in evidence as aforesaid or to be a copy of document so received, if the document purports to be certified as aforesaid to have been, or to be a true copy of a document which has been, so received;

(*c*) in the case of a document which certifies that a person was convicted as aforesaid, if the document purports to be certified as aforesaid,

and in any such case the document is authenticated either by the oath of a witness or by the official seal of a Minister, permanent secretary or other officer administering a department of the government of the designated country concerned.

(3) Nothing in this section shall prejudice the admission in evidence of any document which is admissible in evidence apart from this section.

Custody

14.—(1) Any fugitive offender remanded or committed to custody under section 9 shall be committed to the like institution as a person charged with an offence before the court of committal.

(2) Where a fugitive offender, being in custody in any part of Malaŵi, whether under this Act or otherwise, is required to be removed in custody by whatever means under this Act to another part of Malaŵi, he shall be deemed to continue in legal custody until he reaches the place to which he is required to be removed.

(3) A warrant under section 11 for the surrender of a fugitive offender to any designated country shall be sufficient authority for all persons to whom it is directed, and for all police officers to receive that fugitive offender, keep him in custody and convey him into the jurisdiction of that country.

PART IV

Reciprocal Backing of Warrants

Application of this Part

15. Where the Minister is satisfied that reciprocal provision has been or will be made by or under the law of any designated country for the backing of warrants issued in Malaŵi and their execution in that country and that it is appropriate to do so, he may, by order, declare that this Part shall apply in the case of that country subject to such conditions, exceptions, adaptations or modifications as may be specified in the order and thereupon the provisions of this Part shall apply accordingly in relation to fugitive offenders from that country notwithstanding anything to the contrary in Part III.

Backing of warrant issued in another country

16.—(1) Where a warrant has been issued in a designated country to which this Part applies for the arrest of a fugitive offender and he is or is believed to be in or on the way to Malaŵi, a court may, if it is satisfied that the warrant was issued by a person having lawful authority to issue it, endorse such warrant.

(2) An endorsement of a warrant under this section shall be signed by a magistrate of the court and shall authorize all or any of the persons named in the endorsement and every police officer to execute the warrant by arresting the person named therein and bring him before a court.

(3) A warrant endorsed under this section shall be sufficient authority to arrest, within the jurisdiction of the court endorsing the warrant, the person named in the warrant and to bring him before a court.

(4) This Part shall apply whatever the date of the warrant and whether the relevant offence concerned is alleged to have been committed before or after the commencement of this Act or the application of this Part to the designated country concerned.

Provisional warrant

17.—(1) Notwithstanding that a warrant for the arrest of a fugitive offender issued in a designated country to which this Part applies may not yet have been endorsed in accordance with section 16, a court may issue a provisional warrant for the arrest of such fugitive offender on such information and under such circumstances as would, in its opinion, justify the issue of a warrant if the relevant offence of which the fugitive offender is accused were an offence punishable by the law of Malaŵi and had been committed within its jurisdiction; and such warrant may be endorsed in the manner provided in the Criminal Procedure and Evidence Code, and may be executed accordingly. Cap. 8.01

(2) Where a person is arrested under such a provisional warrant—

(*a*) no order may be made under section 18 for his surrender to the designated country in which the original warrant was issued unless the original warrant is produced and endorsed in accordance with this Part; and

(*b*) he shall be discharged unless the original warrant is produced and endorsed within such time as the court thinks reasonable in the circumstances.

Surrender of prisoner

18.—(1) Subject to the provisions of section 6, where a person arrested under a warrant endorsed in accordance with section 16 or a provisional warrant issued under section 17 is brought before a court, and in the case of a person arrested under a provisional warrant, the original warrant has been produced and endorsed, the court may if it is satisfied—

(*a*) that the warrant is duly authenticated in the manner provided in section 13 and was issued by a person having lawful authority to issue the same; and

(*b*) by evidence on oath, that the prisoner is the person named or otherwise described in the warrant,

order the prisoner to be surrendered to the designated country in which the original warrant was issued, and for that purpose to be delivered into the custody of the person to whom the warrant is directed or any one or more of them and to be held in custody and conveyed to that country.

(2) A person to whom the warrant is directed and the person so authorized may receive, hold in custody and convey the prisoner named or described in the warrant into the jurisdiction of the designated country concerned.

(3) A court shall, so far as is necessary for the exercise of the powers conferred by this section, have the same powers, including the power to remand and admit to bail, as it has in the case of a person arrested under a warrant issued by him.

(4) In proceedings, under this section, the court shall receive any evidence which may be tendered to show that the case is one to which the relevant provisions of section 6 apply.

Review etc.

19.—(1) Where a court orders the surrender of a fugitive offender under section 18, it shall so notify the Minister and shall comply with the provisions of section 10 as though it were committing the fugitive offender to custody under section 9, and the provisions of section 10 shall apply to the fugitive offender as if he were being so committed.

(2) If, in any proceedings under this Part which are brought to his attention, the Minister is of opinion that the offence is one of a political character, he may order the fugitive offender arrested under this Part to be discharged from custody and may quash any order for his surrender.

Discharge of fugitive offender

20. Where a fugitive offender, ordered to be surrendered under this Part is not conveyed out of Malaŵi within one month of the date of the order or, if proceedings are commenced under section 10, within one month of the first day on which, having regard to the provisions of section 10 he could be surrendered, a court may—

(*a*) upon application by or on behalf of the fugitive offender;

(*b*) upon proof that reasonable notice of the intention to make the application has been given to the Minister; and

(*c*) unless sufficient cause is shown to the contrary, order the fugitive offender to be released.

PART V

Fugitive Offenders Surrendered to Malaŵi

Trial of fugitive offender surrendered to Malaŵi

21. Where in pursuance of an agreement under this Act, a fugitive offender is surrendered by a designated country to Malaŵi, the offender shall not, until he has been restored or had an opportunity of returning to that country, be dealt with in Malaŵi for and in respect of an offence committed before his surrender other than—

(*a*) the offence in respect of which his surrender was requested;

(*b*) any lesser offence proved by the facts proved for the purpose of his surrender; or

(*c*) any other relevant offence in respect of which the appropriate authorities in the designated country concerned may consent to his being so dealt with.

Sending back of person not prosecuted within six months or acquitted

22. Where a person surrendered to Malaŵi in pursuance of an arrangement made or deemed to be made under section 3, either is not prosecuted for the offence in respect of which he has been so surrendered within six months after his arrival in Malaŵi or is acquitted of that offence, then the Minister may, if he thinks fit, on the request of such person cause him to be returned to the country from which he was surrendered free of cost and with as little delay as possible.

PART VI

General

Escape by fugitive offender

23. Where a person in custody under the provisions of this Act escapes, by breach of prison or otherwise, from such custody he may be retaken in the same manner, and shall be subject to the same penalties, as in the case of a person accused of a like offence in Malaŵi.

Search warrants

24. Where a warrant is issued or endorsed under this Act for the arrest of any fugitive offender accused of an offence of theft or receipt of stolen property, or any other offence in respect of property a court shall have the like power to issue a warrant to search for the property as if the offence had been committed within the jurisdiction of the court.

Handing over of property

25.—(1) Where a fugitive offender is surrendered to a designated country in pursuance of this Act, any court may order that any property within its jurisdiction which may serve as proof of the relevant offence in respect of which he is surrendered, and which was seized under the authority of a search warrant issued under section 24 or which was in the possession of such fugitive offender at the time of his arrest, shall be handed to the appropriate authorities of the designated country.

(2) If any property which is the subject of an order made under subsection (1) is—

(*a*) property liable to seizure or forfeiture in accordance with or under any written law; or

(*b*) property in respect of which any person in Malaŵi claims any title or interest,

the court making the order may direct that the property be handed over to the aforesaid appropriate authorities on condition that it is returned to Malaŵi at the conclusion of the proceedings relating to the offence in respect of which the surrender is requested.

Rules and rules of courts

26.—(1) The Minister may make rules prescribing all matters which by this Act are required or permitted to be prescribed, forms of warrants, orders and other documents to be used for the purposes of this Act, and providing for any other matters which in his opinion are necessary or convenient for the better carrying out of or giving effect to the provisions of this Act.

(2) The Chief Justice may make rules of court for the purpose of appeals to the High Court under this Act.

(section 3 (3))

FIRST SCHEDULE

Designated Countries

1 The United Kingdom
2 The Republic of South Africa
3 Southern Rhodesia

(section 5)

SECOND SCHEDULE

Relevant Offences

1 Murder of any degree
2 Manslaughter or culpable homicide
3 An offence against the law relating to abortion
4 Maliciously or willfully wounding or inflicting grievous bodily harm
5 Assault occasioning actual bodily harm
6 Rape
7 Unlawful sexual intercourse with a female
8 Indecent assault
9 Procuring, or trafficking in, women or young persons for immoral purposes
10 Bigamy
11 Kidnapping, abduction or false imprisonment, or dealing in slaves
12 Stealing, abandoning, exposing or unlawfully detaining a child
13 Bribery
14 Perjury or subornation of perjury or conspiring to defeat the course of justice
15 Arson or fire-raising
16 An offence concerning counterfeit currency
17 An offence against the law relating to forgery
18 Stealing, embezzlement, fraudulent conversion, fraudulent false accounting, obtaining property or credit by false pretences, receiving stolen property or any other offence in respect of property involving fraud
19 Burglary, housebreaking or any similar offence
20 Robbery

21 Blackmail or extortion by means of threats or by abuse of authority

22 An offence against bankruptcy law or company law

23 Malicious or willful damage to property

24 Acts done with the intention of endangering vehicles, vessels or aircraft

25 An offence against the law relating to dangerous drugs or narcotics

26 Piracy

27 Revolt against the authority of the master of a ship or the commander of an aircraft

28 Contravention of import or export prohibitions relating to precious stones, gold and other precious metals or currency

29 Specified offences under the Firearms Act

30 Any other offence specially agreed to be a relevant offence under an extradition arrangement entered into by the Minister under section 3 — 19 of 1960

SUBSIDIARY LEGISLATION

G.N. 71/1972
28/1977
64/1998
17/2017

EXTRADITION (DESIGNATED COUNTRIES) ORDER

under s. 3

Citation

1. This Order may be cited as the Extradition (Designated Countries) Order.

Designation of countries and application of Act
G.N. 64/98

2. The following countries, being countries with which arrangements have been entered into in accordance with section 3 (1) of the Act, are hereby designated as countries to which the Act, other than Part IV, shall apply:

Australia
Bahamas
Bermuda
British Honduras
British Indian Ocean Territory
Botswana
Cyprus
Fiji
Falkland Islands and Dependencies
Gibraltar
Gilbert and Ellice Islands
Hong Kong
Kenya
Lesotho
Mauritius
New Hebrides
Papua New Guinea
Pitcairn Islands
Rwanda
Singapore
Seychelles
Sovereign Base Areas of Akrotiri and Dhekelia
St. Helena (with Ascension and Tristan da Cunha)
Swaziland
Tanzania
Zimbabwe

MUTUAL ASSISTANCE IN CRIMINAL MATTERS

CHAPTER 8:04

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CHAPTER 8:04

MUTUAL ASSISTANCE IN CRIMINAL MATTERS

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Schedule

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24 of 1991
G.N. 23/1994

An Act to make provision with respect to the scheme relating to mutual assistance in criminal matters within the Commonwealth, to facilitate the operation of that scheme in Malaŵi and to make provision concerning mutual assistance in criminal matters between Malaŵi and countries other than Commonwealth countries, and to provide for matters connected therewith or incidental thereto

[1st April, 1994]

PART I

PRELIMINARY

Short title

1. This Act may be cited as the Mutual Assistance in Criminal Matters Act.

Interpretation

2.—(1) In this Act, unless the context otherwise requires—

"appropriate authority"—

(*a*) in relation to Malaŵi, means the person or authority designated pursuant to section (4);

(*b*) in relation to any Commonwealth country, means the person or authority designated by that country for the purpose of transmitting and receiving requests under the Scheme;

"judicial records" means judgments, orders and decisions of courts, and other records held by judicial authorities;

"official records" means documents held by government departments or agencies or prosecution authorities;

"relevant proceedings" means proceedings under or pursuant to this or any other Act arising directly or indirectly from a request for assistance under this Act by a Commonwealth country;

"Scheme" means the scheme relating to Mutual Assistance in Criminal Matters within the Commonwealth;

"serious offence" means an offence the maximum penalty for which is death or imprisonment for not less than twelve months;

"transmitted", in relation to a request, means—

(*a*) in Part II, transmitted by the appropriate authority in Malaŵi to the appropriate authority in the commonwealth country from which assistance is requested; and

(*b*) in Part III, transmitted by the appropriate authority in the Commonwealth country making a request for assistance, to the appropriate authority in Malaŵi.

(2) A reference in this Act to the law of a Commonwealth country includes a reference to the law of a part of or the law in force in a part of, that country.

(3) For the purposes of this Act, a ship or aircraft of, or registered in, Malaŵi or a Commonwealth country shall be deemed to be part of Malaŵi or, as the case may be, the Commonwealth country.

(4) For the purposes of this Act, a person shall be deemed to have been charged with a serious offence in Malaŵi or in a Commonwealth country if any information or indictment has been laid or filed against the person for the offence, whether or not—

(*a*) a summons to require the attendance of the person to answer to the information or indictment; or

(*b*) a warrant for the apprehension of the person, has been issued.

(5) Where, in Malaŵi or a Commonwealth country—

(*a*) a person has been convicted by a court of a serious offence; and

(*b*) with his consent, another serious offence, of which he has not been found guilty, is taken into account by the court in passing sentence for the offence referred to in paragraph (a), the person shall, for the purposes of this Act, be deemed to have been convicted by the court of the offence so taken into account on the date on which the sentence was passed.

(6) A reference in this Act to property derived or obtained from the commission of an offence shall be deemed to include reference to property used in, or in connexion with, the Commission of the offence.

Application of this Act

3.—(1) Subject to subsection (2), this Act shall apply in relation to all Commonwealth countries.

(2) The Minister may, by order published in the Gazette, direct that the application of this Act in relation to a particular Commonwealth country be subject to such conditions, exceptions or qualifications as are specified in the order and in that event this Act shall apply accordingly.

Appropriate authority for Malaŵi

4. The Minister may, by order published in the *Gazette*, designate any person or authority as the appropriate authority in Malaŵi for the purpose of this Act.

Restriction with respect to operation of this Act

5.—(1) Nothing in this Act shall derogate from existing forms or prevent the development of other forms of co-operation (whether formal or informal) in respect of criminal matters between Malaŵi and any Commonwealth country, or between Malaŵi, or any enforcement agencies or prosecuting authorities in Malaŵi, and the International Criminal Police Organization or any such agencies or authorities outside Malaŵi.

(2) Nothing in this Act shall authorize the extradition, or the arrest or detention with a view to extradition of any person.

PART II

Requests by Malaŵi to Commonwealth Countries for Assistance

Division 1—General Assistance

Assistance in obtaining evidence, etc

6. Where the appropriate authority in Malaŵi has reasonable grounds to believe that evidence or information relevant to any criminal matter may be obtained if in a Commonwealth country—

(*a*) evidence is taken from any person;

(*b*) information is provided;

(*c*) any—

(i) person;

(ii) sample, specimen or other item from or provided by a person; or

(iii) remains which are or may be human, is or are subjected to any examination or test;

(*d*) judicial records or official records are produced, copied or examined;

(*e*) any record or article is produced, copied or examined;

(*f*) samples of any matter or thing are taken, examined or tested; or

(*g*) any building, place or thing is viewed or photographed,

a request may be transmitted by such authority requesting that assistance be given by the Commonwealth country concerned in obtaining the evidence or information.

Assistance in locating or identifying person

7. Where the appropriate authority in Malaŵi has reasonable grounds to believe that a person who—

(*a*) is or might be concerned in or affected by;

(*b*) could give or provide evidence or assistance relevant to,

any criminal matter is in a Commonwealth country, a request may be transmitted by such authority to the appropriate authority in the Commonwealth country requesting that assistance be given by the country in locating that person or, if his identity is unknown, in identifying and locating him.

Assistance in obtaining article or thing by search and seizure if necessary

8. Where the appropriate authority in Malaŵi has reasonable grounds to believe that an article or thing is in a Commonwealth country and would, if produced, be relevant to any criminal matter, a request may be transmitted by such authority to the appropriate authority in the Commonwealth country requesting that assistance be given by the Commonwealth country in obtaining, by search and seizure if necessary, the article or thing.

Assistance in arranging attendance of persons

9. Where the appropriate authority in Malaŵi has reasonable grounds to believe that a person in a Commonwealth country could give or provide evidence or assistance relevant to any criminal matter, a request may be transmitted by such authority to the appropriate authority in the Commonwealth country requesting that assistance be given by the Commonwealth country in arranging the attendance of the person in Malaŵi to give or provide that evidence or, as the case may be, assistance

Assistance in transfering prisoners

10.—(1) Where the appropriate authority in Malaŵi has reasonable grounds to believe that a person who is a prisoner in a Commonwealth country could give or provide evidence or assistance relevant to any criminal matter, a request may be transmitted by such authority to the appropriate authority in the Commonwealth country requesting the Commonwealth country to transfer the prisoner to Malaŵi to give or provide that evidence or, as the case may be, assistance.

(2) Where, pursuant to a request made under subsection (1), a prisoner is transferred to Malaŵi from a Commonwealth country subject to conditions with respect to his custody, release or return or with respect to any other matter, the appropriate authority in Malaŵi shall, unless and to the extent that the Commonwealth country waives their observance,

take the necessary steps to ensure that the conditions are observed.

(3) Where any condition referred to in subsection (2) requires that a prisoner be kept in custody while in Malaŵi, the prisoner shall, while in Malaŵi or travelling to or from Malaŵi pursuant to the request, be kept in such custody as the Minister may direct in writing.

(4) In this section, "prisoner", in relation to a Commonwealth country, means a person who is being held in custody pending trial for, or sentence for, or is under a sentence of imprisonment for, an offence against the law of that country, or is subject to any limitation on his personal liberty pursuant to such law.

Assistance in serving documents

11. Where, for the purpose of, or in connexion with, any criminal matter, it is necessary or desirable to serve a document on any person or any authority in a Commonwealth country, a request may be transmitted by the appropriate authority in Malaŵi to the appropriate authority of the Commonwealth country requesting that assistance be given by the Commonwealth country in effecting the service.

Restriction on use of evidence, etc.

12. Any—

(*a*) evidence or information obtained or, as the case may be, given or provided by any person pursuant to a request referred to in section 6, 9 or 10;

(*b*) article, record or thing obtained pursuant to a request referred to in section 6, 8 or 9,

shall be used in Malaŵi only for the purposes of the criminal proceedings to which the request related or, as the case may be, any criminal proceedings consequent on the investigation to which the request related, unless the Commonwealth country to which the request was made consents to the evidence or information being in Malaŵi used for the purposes of any other criminal proceedings.

Immunities and privileges

13.—(1) Subject to subsection (2), a person in Malaŵi pursuant to a request made under section 9 or 10—

(*a*) shall not be liable to be detained, prosecuted or punished in Malaŵi for any offence that is alleged to have been committed, or that was committed, before the person's departure, pursuant to the request, from the Commonwealth country to which the request was made;

(*b*) may refuse to answer any question or to produce any article, record or thing if the refusal is based on the law of Malaŵi; and

(*c*) shall not be compelled to give or provide evidence, information or assistance for the purposes of, or in connexion with, any criminal matter other than that to which the request related.

(2) Subsection (1) (*a*) shall not apply to a person—

(*a*) if he leaves Malaŵi and then returns otherwise than pursuant to the same or another request; or

(*b*) who has been notified by the appropriate authority in Malaŵi that his presence is no longer required for the purposes of the request and who then remains in Malaŵi for more than 14 days after the first date on which he had a reasonable opportunity to leave Malaŵi.

(3) For the purposes of subsection (1) (*a*), an offence shall be treated as having been committed only on the date when the conduct constituting the offence was complete, notwithstanding that the offence concerned may be a continuing offence.

Division 2—Assistance in Connexion with Serious Offences

Assistance in tracing property, etc.

14. Where—

(*a*) a person has been charged with, or convicted of, a serious offence; or is suspected, on reasonable grounds, of having committed such an offence; and

(*b*) property derived or obtained, directly or indirectly, from the commission of that offence is suspected, on reasonable grounds, to be in a Commonwealth, country,

a request may be transmitted by the appropriate authority in Malaŵi to the appropriate authority in the Commonwealth country requesting that assistance be given by the Commonwealth country in accordance with the laws of that country in identifying, locating or assessing the value or amount of any such property.

Assistance in relation to certain orders

15.—(1) Where—

(*a*) an order has been made restraining dealings with identified property which is, or is suspected on reasonable grounds of being, property derived or obtained, directly or indirectly, from the commission of a serious offence or an order has been made confiscating property derived or obtained, directly or indirectly, from the commission of a serious offence; and

(*b*) property to which the restraining order applies or, as the case may be, which is available for the satisfaction of the confiscation order is suspected, on reasonable grounds, to be in a Commonwealth country,

then, subject to subsection (3), a request may be transmitted by the appropriate authority in Malaŵi to the appropriate authority in the Commonwealth requesting that the order concerned be enforced in accordance with the laws of the Commonwealth country and that, to that end, the country give appropriate assistance.

(2) In any case where a request to a Commonwealth country under this section is accepted, the appropriate authority in Malaŵi shall inform the appropriate authority in that country if the confiscation order or restraining order concerned is thereafter varied or has thereafter ceased to have effect.

(3) A request shall not be made under this section for the enforcement of a confiscation order if the amount specified in the order or the total value of property required to satisfy the order or the pecuniary penalty under the order would be less than K25,000 or such other amount as may be prescribed.

Assistance in obtaining orders in nature of restraining orders

16. Where—

(*a*) a person has been, or is likely to be, charged with, or has been convicted of, a serious offence and a confiscation order has been, or is likely to be made confiscating property derived or obtained, directly or indirectly, from the commission of the serious offence; and

(*b*) the property so derived or obtained is suspected, on reasonable grounds, to be in a Commonwealth country,

a request may be transmitted by the appropriate authority in Malaŵi to the appropriate authority in the Commonwealth country requesting that an order be made, in accordance with the laws of the Commonwealth country, restraining dealings with the identified property and that, to that end, the country give appropriate assistance.

PART III

Requests by Commonwealth Countries to Malaŵi for Assistance

Division 1—Form and Acceptance or Refusal of Requests

Form of requests

17.—(1) Subject to subsection (2), the Schedule shall apply to the request for assistance under this Act made by a Commonwealth country.

(2) Subsection (1) shall not apply to an informal request for assistance under this Act which is transmitted orally, but in the event that such a request is accepted—

(*a*) it shall be required to be implemented only to the extent that the appropriate authority in Malaŵi considers reasonable; and

(*b*) such request shall be deemed to have been withdrawn if a request in accordance with subsection (1) for the assistance concerned is not transmitted within such period as the appropriate authority in Malaŵi considers reasonable.

(3) Where a Commonwealth country making a request for assistance under this Act wishes the request or any part of it to

be kept confidential, it shall so state, giving reasons, in the request or in a document accompanying, but not forming part of, the request.

Acceptance or refusal of requests, etc.

18.—(1) Subject to subsections (2) and (3) a request for assistance under this Act duly made by a Commonwealth country shall be accepted.

(2) A request for assistance under this Act made by a Commonwealth country to Malaŵi shall be refused if, in the opinion of the appropriate authority in Malaŵi—

(*a*) the request relates to the prosecution or punishment of a person for an offence that is, or is by reason of the circumstances in which it is alleged to have been committed or in which it was committed, an offence of a political character;

(*b*) there are substantial grounds for believing that the request has been made with a view to prosecuting or punishing a person for an offence of a political character;

(*c*) there are substantial grounds for believing that the request was made for the purpose of prosecuting, punishing or otherwise causing prejudice to a person on account of the person's race, sex, religion, nationality, place of origin or political opinions;

(*d*) the request relates to the prosecution or punishment of a person in respect of conduct that, if it had occured in Malaŵi, would not have constituted an offence under the criminal law of Malaŵi;

(*e*) the granting of the request would be contrary to the Constitution of Malaŵi, or would prejudice the security, international relations or any substantial interest related to national security or other essential public policy of Malaŵi;

(*f*) the request relates to conduct by a person which constitutes an offence in respect of which the person has already been convicted or acquitted by a court or tribunal in Malaŵi;

(*g*) the prisoner is not willing to give his consent to the transfer in the case of a request referred to in section 23 (1);

(*h*) the request is for assistance of a kind which cannot be given under this Act or requires steps to be taken for its implementation that could not be lawfully taken; or

(*i*) the implementation of the request would require an individual to act, or refrain from acting and the individual is not willing to do so and cannot be lawfully compelled to do so.

(3) A request for assistance under this Act made by a Commonwealth country to Malaŵi may be refused if, in the opinion of the appropriate authority in Malaŵi—

(*a*) the request relates to the prosecution or punishment of a person in respect of conduct that occurred, or is alleged to

have occurred, outside the country making the request and similar conduct occurring outside Malaŵi in similar circumstances would not have constituted an offence against the laws of Malaŵi;

(*b*) the request relates to the prosecution or punishment of a person in respect of conduct where, if it had occurred in Malaŵi at the same time and had constituted an offence against the law of Malaŵi, the person responsible could no longer be prosecuted by reason of lapse of time or for any other reason;

(*c*) the provision of the assistance would impose an excessive burden on the resources of Malaŵi;

(*d*) the conditions, exceptions or qualifications imposed pursuant to section 3 (2) in relation to the country prevent the request being accepted;

(*e*) the request, not being one referred to in section 17 (2), does not meet the requirements of the Schedule;

(*f*) there are reasonable grounds for doing so in the case of a request referred to in section 23 (1); or

(*g*) the request cannot be accommodated within relevant legal practices and procedures in Malaŵi.

(4) If, in the opinion of the appropriate authority in Malaŵi the expense involved in complying with a request for assistance under this Act made by a Commonwealth country and accepted would be of an extraordinary nature, the appropriate authority in Malaŵi shall consult with the appropriate authority in the Commonwealth country as to the terms and conditions under which compliance with the request may continue and, in the absence of agreement in that regard, the appropriate authority in Malaŵi may refuse to continue further with the request.

(5) Where any of the grounds referred to in subsection (2) or (3) apply in relation to some, but not all, of the matters in respect of which a request for assistance under this Act is made, nothing in this section shall operate to prevent the request being accepted to the extent that no such ground applies.

(6) If a request for assistance under this Act made by a Commonwealth country, other than an informal one made pursuant to section 17 (2), is refused, the fact of and, subject to subsection (7), the grounds for, the refusal shall be given by the appropriate authority in Malaŵi to the appropriate authority in the Commonwealth country.

(7) In the case of a refusal of a request such as is referred to in section 23 (1), the appropriate authority in Malaŵi is not required to give grounds for the refusal.

(8) After giving preliminary consideration to a request for assistance under this Act made by a Commonwealth country, the appropriate authority in Malaŵi may require the appropriate authority in the Commonwealth country to furnish information relative to the request, and if that information is not furnished within such period as the appropriate authority in Malaŵi considers reasonable the request shall be deemed to have been withdrawn.

(9) For the purposes of this section, an offence is not an offence within the scope of any international convention to which both Malaŵi and the Commonwealth country making the request are parties and which imposes on the parties thereto an obligation to afford mutual assistance in criminal matters relating to the offence.

Division 2—General Assistance

Assistance to a country in obtaining evidence, etc

19.—(1) This section shall apply where a request is transmitted requesting assistance by Malaŵi in obtaining, evidence or information relevant to any criminal matter in relation to the Commonwealth country making the request and the request is accepted.

(2) Subject to this section, regulations made under this Act may prescribe practices and procedures for obtaining evidence or information pursuant to a request for assistance under this section by a Commonwealth country.

(3) A person from whom evidence is taken in Malaŵi pursuant to a request for assistance under this section by a Commonwealth country—

(*a*) may refuse to answer any question if—

(i) the refusal is based on the laws of Malaŵi;

(ii) to require the person to answer the question would constitute a breach of a privilege recognized by the laws of the Commonwealth country;

(iii) to answer the question would constitute the commission by the person of an offence against the laws of the Commonwealth country;

(b) shall not be compelled to give or provide evidence or information for the purposes of, or in connexion with, any criminal matter other than to which the request relates.

(4) Where the request for assistance under this section is to the effect that evidence or information be obtained, copies of records not publicly available may be produced, copied or examined only to the extent that they could be produced to, or examined by, enforcement agencies or prosecuting or judicial authorities in Malaŵi.

Assistance to a country in locating or identifying a person

20.—(1) This section shall apply where a request is transmitted requesting assistance by Malaŵi in locating, or in identifying and locating, a person believed to be in Malaŵi who—

(*a*) is or might be concerned in or affected by; or

(*b*) could give or provide evidence or assistance relevant to,

any criminal matter in relation to the Commonwealth country making the request and the request is accepted.

(2) Where this section applies, the appropriate authority in Malaŵi shall ensure that the person is located, or identified and located, and shall inform the appropriate authority in the Commonwealth country making the request accordingly.

Assistance to a country in obtaining article or thing, by search and seizure if necessary

21.—(1) This section shall apply where a request is transmitted requesting assistance by Malaŵi in obtaining, by search and seizure if necessary, an article or thing in Malaŵi for the purposes of, or in connexion with, any criminal matter in relation to the Commonwealth country making the request and the request is accepted.

(2) Where this section applies, the appropriate authority in Malaŵi shall, unless the article or thing concerned is otherwise lawfully obtained, authorize in writing a police officer to apply to a magistrate for a search warrant in respect of the article or thing.

(3) A police officer authorized under subsection (2) may apply for the issue of a search warrant to a magistrate having jurisdiction in the area where the article or thing is believed to be located.

(4) The laws of Malaŵi with respect to the procedure for—

(*a*) the making and disposal of an application for a search warrant;

(*b*) the execution of a search warrant,

shall apply, so far as they are capable of applying, to an application under subsection (3) and to the execution of any warrant issued pursuant to any such application.

(5) The appropriate authority in Malaŵi shall provide such certification as may be required by the appropriate authority in the Commonwealth country making the request concerning the result of any search, the place and circumstances of any seizure and the subsequent custody of any property seized.

(6) Where this section applies, the appropriate authority in Malaŵi may give authority in writing to enable any article or thing obtained pursuant to a request to be removed to the Commonwealth country that made the request.

Assistance to country in arranging attendance of persons to give evidence

22.—(1) This section shall apply where a request is transmitted to the appropriate authority in Malaŵi by the appropriate authority in a Commonwealth country requesting that assistance be given by Malaŵi in arranging the attendance, in the Commonwealth country making the request, of a person in Malaŵi to give or provide evidence or assistance relevant to any criminal matter in relation to that Commonwealth country and the request is accepted.

(2) Where this section applies, the appropriate authority in Malaŵi shall—

(*a*) inquire whether or not the person concerned is willing to attend as requested;

(*b*) inform the appropriate authority in the Commonwealth country making the request as to the outcome of the inquiry;

(*c*) if the person is willing to attend as requested, make appropriate arrangements to facilitate that attendance.

Assistance to a country by transferring a prisoner

23.—(1) This section shall apply where a request is transmitted by a Commonwealth country in Malaŵi to the Commonwealth country making the request to give or provide evidence or assistance relevant to any criminal matter and the request is accepted.

(2) Where this section applies, the Minister shall cause a prisoner to be transferred to the Commonwealth country making the request for the purpose of giving effect to the request.

(3) The appropriate authority in Malaŵi may state, and inform the appropriate authority in the Commonwealth country making the request as to, conditions subject to which a prisoner is to be transferred, including conditions with respect to the custody, release or return of the prisoner.

(4) Any period during which a prisoner is in custody in a Commonwealth country pursuant to a request, shall be deemed, for all purposes, to be time served in custody in Malaŵi.

(5) In this section, "prisoner" means a person who is being held in custody pending trial for, or sentence for, or is under imprisonment for, an offence, or is subject to any limitation on his personal liberty pursuant to any law.

Assistance to a country in serving documents

24.—(1) This section shall apply where a request is transmitted requesting Malaŵi to transfer a prisoner in Malaŵi to the Commonwealth country making the request to give or provide evidence or assistance relevant to any criminal matter in relation to that Commonwealth country and the request is accepted.

(2) Where this section applies, the appropriate authority in Malaŵi shall—

(*a*) ensure that the document is served—

(i) in accordance with procedures proposed in the request; or

(ii) if those procedures would be unlawful or inappropriate, or no procedures are so proposed, in accordance with the laws of Malaŵi;

(*b*) if the document—

(i) is served, transmit to the appropriate authority in the Commonwealth country making the request a certificate as to service;

(ii) is not served, transmit to the appropriate authority in the Commonwealth country a statement of the reasons which prevented the service.

(3) In this section, "document" does not include—

(*a*) a subpoena;

(*b*) any process—

(i) requiring the attendance of a person before court or tribunal in the Commonwealth country making the request;

(ii) which attracts a criminal penalty or sanction for non-compliance with its requirements.

Division 3—Assistance in Connexion with Serious Offences in Commonwealth Countries

Assistance to a country in tracing property, etc.

25.—(1) This section shall apply where—

(*a*) the appropriate authority in a Commonwealth country transmits to the appropriate authority for Malaŵi a certificate given, for the purposes of a request for assistance under this section, by a person legally qualified in a Commonwealth country, to the effect that in that country a named person—

(i) has been charged with, or convicted of, a specified serious offence; or

(ii) is suspected, on reasonable grounds, of having committed such a specified serious offence;

(*b*) the property derived or obtained, directly or indirectly, from the commission of a specified serious offence is suspected, on reasonable grounds, to be in Malaŵi;

(*c*) a request is transmitted requesting assistance by Malaŵi in identifying, locating or assessing the value or amount of that property; and

(*d*) the request is accepted.

(2) Where this section applies, the appropriate authority in Malaŵi—

(*a*) shall give the assistance requested and, in doing so, shall invoke such powers and procedures as are available for that purpose; and

(*b*) shall inform the appropriate authority in the Commonwealth country making the request accordingly.

Assistance to a country in relation to certain orders

26.—(1) This section shall apply where—

(*a*) an order is made in a Commonwealth country—

(i) confiscating property derived or obtained, directly or indirectly, from the commission of a specified serious offence;

(ii) imposing on the person against whom the order is made a pecuniary penalty calculated by referrence to the value of property so derived or obtained; or

(iii) restraining dealings with property which is, or is suspected, on reasonable grounds, of being, property so derived or obtained;

(*b*) property available for the satisfaction of the order or the pecuniary penalty under the order, or to which the order would apply, as the case may be, is suspected, on reasonable grounds, to be in Malaŵi.

(*c*) a request is transmitted requesting that the order concerned be enforced in accordance with the laws of Malaŵi and that, to that end, Malaŵi is requested to give appropriate assistance; and

(*d*) the request is accepted.

(2) Where this section applies, the appropriate authority in Malaŵi shall cause an application to be made to the High Court in accordance with the Rules of the Supreme Court for the registration of the order concerned.

(3) On application made pursuant to subsection (2), the High Court shall register the order if it is satisfied—

(*a*) that at the time of registration the order is in force; and

(*b*) in the case of an order such as is referred to in subsection (1) (*a*) (ii)—

(i) that the person against whom the order was made appeared in the proceedings or, if he did not do so, that he received notice of the proceedings in sufficient time to enable him to defend himself, or that he had died or absconded before such notice could be given to him; and

(ii) that the order is not subject to appeal.

(4) Where an order is registered in accordance with this section, a copy of any amendment made to the order (whether before or after registration) may be registered in the same way as

the order and the amendment shall not, for the purposes of this Act, have effect until it is so registered.

(5) An order or an amendment of an order shall be registered by the registration, in accordance with the Rules of the Supreme Court, of—

(*a*) a copy of the order or amendment; or

(*b*) a copy of the order or amendment duly authenticated in accordance with section 31 (2) (*a*).

(6) The High Court shall, after appropriate notice has been given to the appropriate authority in Malaŵi, cancel the registration of an order in accordance with this section if it appears to the High Court to have ceased to have effect in the Commonwealth country that made the request for assistance.

(7) In this section, "appeal" includes any proceedings by way of discharging or setting aside a judgment or an application for a new trial or stay of execution.

Assistance to a country in obtaining orders in nature of restraining orders

27.—(1) This section shall apply where—

(*a*) the appropriate authority in the Commonwealth country transmits to the appropriate authority in Malaŵi a certificate given, for the purposes of a request for assistance under this section, by a person legally qualified in the Commonwealth country, to the effect that in that country—

(i) a named person has been, or is likely to be, charged with, or has been convicted of, a specified serious offence; and

(ii) an order has been, or is likely to be, made that has or, as the case may be, will have, the effect under the law of that country of confiscating property derived or obtained, directly or indirectly, from the commission of the specified serious offence or of imposing on that named person a pecuniary penalty calculated by reference to the value of the property so derived or obtained;

(*b*) property so derived or obtained, or which would be available to satisfy a pecuniary penalty under the confiscation order or, as the case may be, under such an order if made, is suspected, on reasonable grounds, to be in Malaŵi;

(*c*) a request is transmitted requesting that an order be made, in accordance with the laws of Malaŵi, restraining dealings with property and that, to that end, Malaŵi is requested to give appropriate assistance; and

(*d*) the request is accepted.

(2) Where this section applies, the appropriate authority in Malaŵi shall cause such application to be made as he deems necessary to secure the making of an order of the kind requested.

PART V

MISCELLANEOUS

Certificates given by the appropriate authority

28.—(1) The appropriate authority may give a certificate in such form as he determines, certifying all or any of the following facts, namely, that—

(*a*) a request for assistance under this Act has been made by a Commonwealth country;

(*b*) the request meets the requirements of this Act;

(*c*) the acceptance of the request was duly made under and in accordance with this Act.

(2) In any relevant proceedings a certificate purporting to have been given under subsection (1) shall be received as conclusive proof of the matters certified by the certificate.

Proof of documents

29.—(1) In any relevant proceedings a document that is duly authenticated is admissible in evidence.

(2) A document is duly authenticated for the purposes of subsection (1) if it purports to be—

(*a*) signed or certified by a Judge or magistrate of the Commonwealth country making a request;

(*b*) authenticated by the oath of a witness, or of a public officer, of the Commonwealth country making request; or

(*c*) sealed with an official or public seal of a Minister of State, or of a department or public office of the Government, of the Commonwealth country making the request.

(3) In any relevant proceedings, a certificate purporting to have been given—

(*a*) by the appropriate authority in a Commonwealth country certifying the matters referred in the definition of "serious offence"; or

(*b*) by a legally qualified person for the purposes of a request for assistance under section 26 or 28,

shall be received as evidence of the matters duly certified by the certificate.

(4) Nothing in this section operates to prevent the proof of any matter, or the admission of any document, in accordance with this Act or any other law.

Transit

30.—(1) Where a person is to be transported in custody from a Commonwealth country through Malaŵi to another Commonwealth country pursuant to a request for assistance, of the kind referred to in the scheme, by that other Commonwealth country, the person—

(*a*) may be transported through Malaŵi in the custody of another person; and

(*b*) if an aircraft or ship which the person is being transported lands or calls at a place in Malaŵi, shall be kept in such custody as the Minister may direct in writing until the person's transportation is continued.

(2) Where a person is being held in custody pursuant to a direction under subsection (1) (*b*) and the person's transportation is not, in the opinion of the Minister, continued within a reasonable time, the Minister may direct that the person be transported in custody to the Commonwealth country from which the person was first transported.

Escaping

31. Any person who escapes from lawful custody while in Malaŵi pursuant to a request under section 10, or while being kept in custody pursuant to a direction under section 30 (1) (*b*), shall be guilty of an offence and be liable to imprisonment for two years.

Arrest of person who has escaped from custody

32.—(1) Any police officer may, without warrant, arrest a person, if the police officer has reasonable grounds to believe that the person—

(*a*) has been brought to Malaŵi pursuant to a request under section 10, or was being kept in custody pursuant to a direction under section 30 (1) (*b*); and

(*b*) has escaped from lawful custody while in Malaŵi pursuant to the request, or while being so kept in custody.

(2) A person who has been arrested pursuant to subsection (1) shall be returned to custody in accordance with this Act.

Regulations

33.—(1) The Minister may make regulations prescribing any matter necessary or convenient to be prescribed for carrying out or giving effect to this Act and, in particular—

(*a*) making provisions as to evidence or proof of any matter for the purposes of this Act;

(*b*) prescribing expenses and allowances payable to any person in Malaŵi pursuant to a request;

(*c*) prescribing conditions to be imposed for the protection of any interest in any property to be sent to a requesting country pursuant to a request; or

(*d*) prescribing conditions for the protection of any property sent to or by a Commonwealth country pursuant to a request, and making provision for the return of property in Malaŵi pursuant to a request.

(2) Regulations made for the purposes of section 19 (2) may include procedures for, and powers in relation to, the taking of evidence in Malaŵi by commissions from, or nominated by, the Commonwealth country concerned.

SCHEDULE

(s. 17(1))

Form of Request for Assistance Made by Commonwealth Countries

1. A request for assistance under this Act made by a Commonwealth country shall—

(*a*) specify the assistance requested;

(*b*) identify the person, agency or authority that initiated the request;

(*c*) state any period within which the country wishes the request to be complied with;

(*d*) if the request would involve travel by any person from Malaŵi to the Commonwealth country, give details of allowances and accommodation to which the person would be entitled; and

(*e*) contain such information as is available to the appropriate authority in the Commonwealth country as will facilitate compliance with the request.

2.—(1) Where the assistance requested by a Commonwealth country is for the purposes of an investigation, the request—

(*a*) shall be accompanied by the certificate, in relation to the investigation;

(*b*) shall state when the investigation commenced and the nature of the investigation.

(2) Where the assistance requested by a Commonwealth country is for the purposes of proceedings, the request—

(*a*) shall be accompanied by the certificates, in relation to the proceedings;

(*b*) shall—

(i) give details of the proceedings and the offence concerned, including a summary of the known facts;

(ii) give the identity, if known, of the person to whom the proceedings relate or would relate;

(iii) state when the proceedings were instituted, the stage reached in the proceedings and, where applicable, identify the court exercising jurisdiction.

3. Where a request referred to in section 19 is made by a Commonwealth country, the request shall—

(*a*) give details of the proceedings that the country wishes to be followed in giving effect to the request, including details of the manner and form in which any evidence or information is to be supplied to that country;

(*b*) where relevant, indicate whether any person from whom evidence is to be taken is to be examined—

(i) orally or in writing;

(ii) under oath;

(iii) in the presence of his legal representative;

(iv) in the presence of the person to whom any relevant proceedings in the Commonwealth country relate;

(*c*) where evidence is to be taken from a person, specify the questions to be put to the person or the subject-matter about which the person is to be examined;

(*d*) where evidence is to be taken from a person, give details of any special requirements of the country as to the manner of taking evidence relevant to its admissibility in the country;

(*e*) give details of any privileges or exceptions under the laws of the Commonwealth country in relation to obtaining evidence or information by the means proposed in the request.

4. Where a request referred to in section 21 is made by a Commonwealth country, the request shall identify the article or thing which is to be obtained and, so far as is reasonably practicable, shall contain all information available to the appropriate authority in the country which may be required to be adduced in an application under the laws of Malaŵi for any necessary warrant or authorization to effect a seizure of that article or thing.

5. Where a request referred to in section 23 is made by a Commonwealth country, the request shall identify the subject on which evidence or information is to be provided and state the reasons for requiring the personal appearance of the prisoner.

6. Where a request referred to in section 24 is made by a Commonwealth country, the request shall—

(*a*) be accompanied by the document to be served; and

(*b*) where that document relates to the attendance of any person in the country, give such notice as the Commonwealth country is able to provide of outstanding warrants or other judicial orders in criminal matters against that person.

7.Where a request referred to in section 25 is made by a Commonwealth country, the request shall—

(*a*) give details of the specified serious offence; and

(*b*) state the grounds for suspecting that the relevant property is in Malaŵi and give any information in the possession of the Commonwealth country which will assist in identifying or locating the property.

8. Where a request referred to in section 26 is made by a Commonwealth country, the request shall—

(*a*) be accompanied by a copy of the relevant order made in the Commonwealth country sealed by the court that made the order and duly authenticated, and shall identify the law under which the order was made;

(*b*) give details of the specified serious offence;

(*c*) state the grounds for suspecting that the relevant property is in Malaŵi and give any information in the possession of the Commonwealth country which will assist in identifying or locating the property; and

(*d*) give particulars of any amount paid or recovered under the relevant order.

9. Where a request referred to in section 27 is made by a Commonwealth country, the request shall—

(*a*) if relevant, be accompanied by a copy of the order made in the country, sealed by the court that made the order and duly authenticated, and shall identify the law under which the order was made;

(*b*) if relevant, state the grounds for believing that an order is likely to be made;

(c) give details of the serious offence in respect of which the order was or, as the case may be, is likely to be made;

(*d*) state the grounds for suspecting that the relevant property is in Malaŵi and give any information in the possession of the Commonwealth country which will assist in identifying the property.

SUBSIDIARY LEGISLATION

G.N. 22/1994

MUTUAL ASSISTANCE IN CRIMINAL MATTERS (DESIGNATION OF AUTHORITY) ORDER

under s. 4

Citation

1. This Order may be cited as the Mutual Assistance in Criminal Matters (Designation of Authority) Order.

Appropriate authority for purposes of the Act

2. The Attorney General is hereby designated as the appropriate authority for purposes of implementing the provisions of the Act.

BAIL GUIDELINES

CHAPTER 8:05

Containing Pages 1–5

CHAPTER 8:05

BAIL GUIDELINES

ARRANGEMENT OF SECTIONS

SECTION
1. Short title
2. Application
3. Bail guidelines

An Act to provide for guidelines to be followed by the police and courts when granting bail in criminal cases 8 of 2000

[17TH JULY, 2000]

1. This Act may be cited as the Bail (Guidelines) Act. Short title

2. This Act shall apply to all criminal cases where the granting of bail is considered by the police and courts under section 118 of the Criminal Procedure and Evidence Code. Application Cap. 8:01

3. In considering whether to grant or refuse bail, a police officer or a court, as the case may be, shall be guided by the principles, factors and other matters, constituting Guidelines on Bail, specified in the Schedule. Bail guidelines

s .3

SCHEDULE

GUIDELINES ON BAIL

PART I

BAIL BY THE POLICE

1. Where a person has been arrested, whether with or without warrant, but the most Senior Police Officer at the police station where he or she is detained is not satisfied that there is sufficient evidence to charge him or her, then the most Senior Police Officer should release him or her either unconditionally or on bail.

2. Where a person has been arrested and is then charged at the police station, the most Senior Police Officer must decide whether to keep him or her in custody till he or she can be brought before the court or to release him or her on bail.

3. Bail should not be granted to a person arrested for an offence punishable with death such as treason, murder, rape, armed robbery and burglary.

4. Where a person has been remanded in custody by a court, the police should not grant bail to that person.

5. The principles which the police should take into account in deciding whether or not bail should be granted include—

(*a*) the likelihood of the accused failing to appear for further inquiry or for his or her trial;

(*b*) the likelihood of the accused committing an offence while on bail; and

(*c*) the likelihood of the accused interfering with witnesses or tampering with evidence or otherwise obstructing the course of justice.

6. In considering whether the principles stated above have been established, the police shall take into account the following factors—

(*a*) the nature and the seriousness of the offence;

(*b*) the strength of the evidence against the accused;

(*c*) the sentence which the offence may carry upon conviction;

(*d*) the character, antecedents, associations and community ties of the accused;

(*e*) the safety and protection of the accused; and

(*f*) the state of health of the accused, as certified by a medical practitioner.

7. Where the accused is a juvenile the police shall, in addition, consider the following factors—

(*a*) the welfare of the juvenile;

(*b*) whether it is necessary in the interest of the juvenile to remove him or her from association with any undesirable person; and

(*c*) whether the release of the juvenile will defeat the ends of justice.

8. Any bail conditions given to the accused should not be unreasonable.

9. In all cases where bail is granted or refused the police shall record that fact.

10. Where bail is refused, the police shall—

(*a*) give the accused reasons for the refusal; and

(*b*) inform the accused of his or her right to apply to a court for bail.

PART II

Bail by the Courts

1. A person arrested for, or accused of, the alleged commission of an offence is entitled to be released, with or without bail, at any stage preceding his or her conviction in respect of the offence, unless the court finds that it is in the interests of justice that he or she be detained in custody.

2. In bail proceedings the court shall deal with such proceedings expeditiously but may postpone the proceedings to allow the accused or the prosecutor to adduce evidence or further information.

3. If reliable or sufficient information is not before the court, the court may order its production.

4. The principles which the court should take into account in deciding whether or not bail should be granted include the following—

(*a*) the likelihood that the accused, if released on bail, will attempt to evade his or her trial; and in considering this principle the court may, where applicable, take into account the following factors—

(i) the nature and the seriousness of the offence for which the accused is to be tried;

(ii) the strength of the case against the accused and the temptation that he or she may in consequence attempt to evade his or her trial;

(iii) the nature and the severity of the punishment which is likely to be imposed should the accused be convicted of the offence against him or her;

(iv) whether the accused is in custody on another charge;

(v) the emotional, family, community or occupational ties of the accused to the place at which he or she is to be tried;

(vi) the assets held by the accused and where such assets are situated;

(vii) the means and travel documents held by the accused which may enable him or her to leave the country;

(viii) the extent, if any, to which the accused can afford to forfeit the amount of bail which may be fixed, thereby inducing him or her to jump bail;

(ix) whether the extradition of the accused could readily be effected should he or she flee across the borders of the Republic in an attempt to evade his or her trial; and

(x) any other factor which in the opinion of the court should be taken into account;

(*b*) the likelihood that the accused, if he or she were released on bail, will attempt to influence or intimidate witnesses or to conceal or destroy evidence; and in considering this principle the court may, where applicable, take into account the following factors—

(i) the fact that the accused is familiar with the identity of witnesses and with the evidence which they may bring against him or her;

(ii) whether the witnesses have already made statements and agreed to testify;

(iii) the relationship of the accused with the various witnesses and the extent to which they could be influenced or intimidated;

(iv) whether the investigation against the accused has already been completed;

(v) how effective and enforceable bail conditions prohibiting communication between the accused and witnesses are likely to be;

(vi) whether the accused has access to evidentiary material which is to be presented at his or her trial;

(vii) the ease with which evidentiary material could be concealed or destroyed;

(viii) the fact that the accused, knowing it to be false, supplied false information at the time of his or her arrest or during the bail proceedings;

(ix) any other factor which in the opinion of the court should be taken into account;

(*c*) the likelihood that the accused, if he or she were released on bail, will endanger the safety of the community or any particular

person or will commit an offence; and in considering this principle the court may, where applicable, take into account the following factors—

(i) the degree of violence towards others implicit in the charge against the accused;

(ii) any threat of violence which the accused may have made to any person;

(iii) any resentment the accused is alleged to harbour against any person;

(iv) any disposition to violence on the part of the accused as is evident from his or her past conduct;

(v) any other factor which in the opinion of the court should be taken into account;

(*d*) in exceptional circumstances, the likelihood that the release of the accused will disturb the public order or undermine the public peace or security; and in considering this principle the court may, where applicable, take into account the following factors—

(i) whether the nature of the offence or the circumstances under which the offence was committed is such that the release of the accused is likely to induce a sense of shock or outrage in the community where the offence was committed, and whether the shock or outrage of the community might lead to public disorder if the accused is released;

(ii) whether the safety of the accused might be jeopardized by his or her release;

(iii) whether the sense of peace and security among members of the public will be undermined or jeopardized by the release of the accused; and

(iv) any other factor which in the opinion of the court should be taken into account.

5. Where the accused is a juvenile, the court shall, in addition, consider the following factors—

(*a*) the welfare of the juvenile;

(*b*) whether it is necessary in the interest of the juvenile to remove him or her from association with any undesirable person; and

(*c*) whether the release of the juvenile will defeat the ends of justice.

6. In applying the principles stated in this Part, the court shall weigh the interests of justice against the right of the accused to his or her personal freedom and in particular the prejudice he or she is likely to suffer if he or she were to be detained in custody, taking into account, where applicable, the following factors—

(*a*) the period for which the accused has already been in custody since his or her arrest;

(*b*) the probable period of detention until the disposal or conclusion of the trial if the accused is not released on bail;

(*c*) the reason for any delay in the disposal or conclusion of the trial and any fault on the part of the accused with regard to such delay;

(*d*) any impediment to the preparation of the accused's defence or any delay in obtaining legal representation which may be brought about by the detention of the accused;

(*e*) the state of health of the accused, as certified by a medical practitioner; and

(*f*) any other factor which in the opinion of the court should be taken into account.

7. Any bail conditions given to the accused should not be unreasonable.

8. In all bail proceedings, the State should be served with notice of such proceedings.

9. Notwithstanding the fact that the prosecution does not oppose the granting of bail, the court has the duty to weigh up the personal interests of the accused against the interests of justice.

10. Where the accused has been refused bail he or she may bring a fresh application before the same magistrate or court, or another magistrate or court, only if there has been a change of circumstances since the earlier application.

11. Where the circumstances have not changed, the accused may proceed by way of appeal setting out the grounds upon which the lower court is alleged to have erred.

12. No application for bail in any case pending before a subordinate court shall be entertained by the High Court unless bail was refused in the subordinate court.

FINES (CONVERSION)

CHAPTER 8:06

Containing Pages 1–3

CHAPTER 8:06

FINES (CONVERSION)

ARRANGEMENT OF SECTIONS

SECTION

PART I

PRELIMINARY

1. Short title
2. Interpretation
3. Non-application of Cap. 45:02

PART II

CONVERSION OF FINES TO PENALTY VALUES

4. Fines to be converted to penalty values
5. Method of conversion
Schedule

An Act to provide for the conversion of amounts of existing fines for offences expressed in Kwacha or in pounds to penalty values so as to take into account the depreciation of the value of the Malaŵi currency and to provide for connected matters 10 of 2005

[9th DECEMBER, 2005]

PART I

PRELIMINARY

1. This Act may be cited as the Fines (Conversion) Act. Short title

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

"fine" means an amount of money prescribed in an Act as punishment or penalty for an offence against the Act, but does not include—

(*a*) an amount prescribed by section 21 (*e*) of the General Interpretation Act or by a provision of any other Act as the amount of a fine that may be prescribed for an offence or a contravention against any subsidiary legislation; or Cap. 1:01

(*b*) a fine prescribed by any subsidiary legislation for an offence or a contravention against such subsidiary legislation;

"penalty value" means the amount in Kwacha ascertained by converting a fine in accordance with section 5.

Non-application of Cap. 45:02

3. The Decimal Currency Act shall not apply in respect of the conversion of fines.

PART II

Conversion of Fines to Penalty Values

Fines to be converted to penalty values

4. Where a provision in an Act prescribes a fine and the fine is stated as—

(*a*) an amount in Kwacha or in pounds; or

(*b*) a rate specified as an amount in Kwacha or in pounds,

the amount shall be converted to a penalty value by a calculation in accordance with section 5 and the provision in the Act shall, for the purposes of the Act or of any other written law, be read as if the amount were instead stated as the penalty value so ascertained, and such penalty value shall apply in substitution of the stated amount.

Method of conversion

5. If a fine or the rate of a fine—

Schedule Part I

(*a*) is expressed in Kwacha and was last varied, or, if never varied was prescribed by an Act which was passed, in the year specified in Column 1 of Part I of the Schedule, the penalty value of the fine shall be ascertained by multiplying the amount stated in the Act by the multiplier number specified in relation to such year in Column 2 of that Part;

Schedule Part II

(*b*) is expressed in pounds, the penalty value of the fine shall be ascertained by multiplying the amount of the fine stated in the Act by the multiplier number specified in Part II of the Schedule.

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SCHEDULE

PART I

Multiplier Numbers for Fines Expressed in Kwacha

Column 1	*Column 2*
Year in which fine or rate of a fine was prescribed or last varied	Multiplier number
From:	
1971 to 1981	100
1982 to 1986	75
1987 to 1992	50
1993 to 1995	40
1996 to 2000	20
2001 to 2004	10
2005	1

PART II

Multiplier Number for Fines Expressed in Pounds

The multiplier number for fines expressed in pounds is 1,000.

PROBATION OF OFFENDERS

CHAPTER 9:01

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CHAPTER 9:01

PROBATION OF OFFENDERS

ARRANGEMENT OF SECTIONS

SECTION

1. Short title and application
2. Interpretation
3. [*Repealed by* 5 *of* 1969]
4. Probation order
5. Further provisions where court makes probation order
6. Commission of further offences by probationers
7. Failure by probationer to comply with probation order
8. Probation order: disqualification or disability
9. Transmission of documents when case is remitted to another court
10. Amendment of probation orders
11. Discharge of probation orders
12. Transmission of copies of orders for amendment or discharge of probation orders
13. Selection of probation officers
14. Contributions towards institutions
15. Appointments
16. Rules

An Act to provide for the probation of offenders

10 of 1945
1 of 1957
8 of 1963
5 of 1969
G.N. 195/1961
68/1962
38/1963

[19TH APRIL, 1945]

Short title and application

1. This Act may be cited as the Probation of Offenders Act, and shall apply to such areas of Malaŵi and from such date as the Minister may, by order, *from time to time declare.

Interpretation

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

"court" does not include a Traditional Court established under the Traditional Courts Act; Cap.3:03

"probationer" means a person placed under supervision by a probation order;

"probation order" means an order made under section 337 (1) (*c*) (*i*) of the Criminal Procedure and Evidence Code; 5 of 1969 Cap.8:01

*Applied to the Southern Region by G.N. 5/1946 and to the Central Region by G.N. 22/1961.

"probation officer" means a probation officer appointed under section 15.

3. (*Repealed by* 5 *of* 1969)

Probation order

4.—(1) A probation order shall have effect for such period of not less than one year and of not more than three years from the date of the order as may be specified therein, and shall require the probationer to submit during that period to the supervision of a probation officer to be named in the order, and shall contain such provisions as the court considers necessary for securing the supervision of the offender, and such additional conditions as to residence and other matters as the court having regard to the circumstances of the case, considers necessary for securing the good conduct of the offender or for preventing a repetition of the same offence or the commission of other offences.

(2) Where a probation order contains a provision as to residence, the place at which and the period for which the probationer is to reside shall be specified in the order, and where any such provision requires the probationer to reside in an institution, the period for which the probationer is required so to reside shall not extend beyond twelve months from the date of the order, and the court shall forthwith give notice of the terms of the order to the Minister.

(3) The court by which a probation order is made shall furnish two copies of the order, one copy to be given to the probationer and the other to the probation officer under whose supervision he is placed.

Further provisions where court makes probation order Cap7:01

5. Where a person is placed by a probation order under the supervision of a probation officer, the court may in addition order such person to pay costs and compensation in accordance with the Penal Code.

Commission of further offences by probationers

6.—(1) If it appears to a judge or any magistrate that a probationer has been convicted of an offence committed while the probation order was in force, he may issue a summons requiring the probationer to appear at the place and time specified therein or may issue a warrant for his arrest:

Provided that a magistrate shall not issue such a summons or such a warrant except on information in writing and on oath.

(2) A summons or warrant issued under this section shall direct the probationer to appear or to be brought before the court by which the probation order was made.

(3) Where a probationer is convicted by a magistrate of an offence committed while the probation order was in force the magistrate may commit the probationer to custody or release him on bail, with or without sureties, until he can be brought or appear before the court by which the probation order was made.

(4) Where it is proved to the satisfaction of the court by which the probation order was made that the probationer has been convicted of an offence while the probation order was in force then—

(*a*) if the probationer was not convicted of the original offence in respect of which the probation order was made, the court may convict him of that offence and pass any sentence which it could pass if the probationer had just been convicted before that court of that offence; or

(*b*) if the probationer was convicted of the original offence in respect of which the probation order was made the court may pass any sentence which it could pass if the probationer had just been convicted before that court of that offence.

(5) Where a probationer in respect of whom a probation order has been made by a magistrate is convicted before the High Court of an offence committed while the probation order was in force then—

(*a*) if the probationer was not convicted of the original offence in respect of which the probation order was made the High Court may convict him of that offence and may pass any sentence which the court which made the probation order could pass if the probationer had just been convicted before that court of that offence; or

(*b*) if the probationer was convicted of the original offence in respect of which the probation order was made the High Court may pass any sentence which the court which made the probation order could pass if the probationer had just been convicted before that court of that offence.

Failure by probationer to comply with probation order

7.—(1) If it appears to a judge or a magistrate that a probationer has failed to comply with any of the provisions of the probation order he may issue a summons to the probationer requiring him to appear at the place and time specified therein or may issue a warrant for his arrest:

Provided that a magistrate shall not issue such a summons or such a warrant except on information in writing and on oath.

(2) A summons or warrant under this section shall direct the probationer to appear or to be brought before the court by which the probation order was made.

(3) If it is proved to the satisfaction of the court by which the probation order was made that the probationer has failed to comply with any of the provisions of the probation order then—

(*a*) without prejudice to the continuance in force of the probation order, the court may impose on the probationer a fine not exceeding £10; or

(*b*)—(i) if the probationer was not convicted of the original offence in respect of which the probation order was made the court may convict him and pass any sentence which it could pass if the probationer had just been convicted before that court of that offence; or

(ii) if the probationer was convicted of the original offence in respect of which the probation order was made, the court may pass any sentence which it could pass if the probationer had just been convicted before that court of that offence:

Provided that where a court has under paragraph (*a*) imposed a fine on the probationer, then, on any subsequent sentence being passed upon the probationer under the last preceding section or this section, the imposition of the said fine shall be taken into account in fixing the amount of the said sentence.

Probation order: disqualification or disability

8.—(1) Where a person is convicted of an offence and is released under a probation order, his conviction for that offence shall be disregarded for the purposes of any enactment by or under which any disqualification or disability is imposed upon convicted persons by or under which provision is made for a different penalty in respect of a second or subsequent offence or in respect of an offence committed after previous conviction:

Provided that if the probationer is subsequently sentenced for the original offence, this section shall cease to apply in respect of that offence, and he shall be deemed, for the purposes of any such enactment imposing a disqualification or disability, to have been convicted on the date of sentence.

(2) Where a person is released on probation without the court having proceeded to conviction and he is subsequently convicted and sentenced for the original offence, then he shall be deemed, for the purposes of any enactment by or under which any disqualification is imposed upon convicted persons or by or under which provision is made for a different penalty in respect of a second or subsequent offence or in respect of an offence committed after a previous conviction, to have been convicted on the date of such conviction and sentence.

Transmission of documents when case is remitted to another court

9. Where a probationer is committed to custody or released on bail by a magistrate until he can be brought or appear before the court which made the probation order the magistrate shall transmit to the said court such particulars of the case as he thinks desirable, and where the probationer has been convicted of a subsequent offence by a magistrate, the magistrate shall transmit to the said court a certificate to that effect signed by him, and for the purposes of proceedings in the court to which it is transmitted any such certificate, if purporting to be so signed, shall be admissible as evidence of the conviction.

Amendment of probation orders

10.—(1) Subject to this section, where on the application of a probationer or of the principal probation officer, the court which made the probation order is satisfied that the provisions of the probation order should be varied, or that any provisions should be inserted or cancelled, the court may by order amend the probation order accordingly:

Provided that no order shall be made under this section reducing the period of duration of the probation order to less than one year, or extending that period beyond a period of three years from the date of the probation order.

(2) An order under the foregoing subsection may require a probationer to reside in an institution for any period not extending beyond twelve months from the date of that order, if the total period or the aggregate of the periods for which he is required to

reside in any institution or institutions under the probation order does not exceed twelve months.

(3) The court shall if it is satisfied on the application of the principal probation officer that the probationer has changed, or is about to change, his residence from one District to another, by order vary the probation order by substituting for the probation officer named therein another probation officer belonging to the District where the probationer is residing or is about to reside, and shall transmit to the court for the new District or area all documents and information relating to the case, and thereupon the last-mentioned court shall be deemed for all the purposes of this Act to be the court by which the probation order was made.

(4) An order under this section cancelling a provision of a probation order or substituting another probation officer for the probation officer named therein may be made without summoning the probationer, but no other order under this section shall be made except on the application or in the presence of the probationer.

(5) Where an order is made under this section for the variation, insertion, or cancellation of a provision requiring a probationer to reside in an institution, the court shall forthwith give notice of the terms of the order to the Minister.

Discharge of probation orders

11.—(1) The court by which a probation order was made may, on the application of the probationer or of the principal probation officer, discharge the probation order, and, where the application is made by the principal probation officer, the court may deal with it without summoning the probationer.

(2) Where an offender in respect of whom a probation order has been made is subsequently sentenced for the offence in respect of which the probation order was made the probation order shall cease to have effect.

Transmission of copies of orders for amendment or discharge of probation orders

12. Where an order is made for the amendment or discharge of a probation order the clerk or other officer of the court by which the order is made shall furnish two copies of the order to the principal probation officer, one copy of which shall be given by the principal probation officer to the probationer.

Selection of probation officers

13.—(1) The probation officer who is to be responsible for the supervision of any probationer shall be selected by the court.

(2) Where a woman or girl is placed under the supervision of a probation officer the probation officer shall be a woman.

Contributions towards institutions

14. Such contributions may be made towards the establishment or maintenance of institutions for the reception of persons placed under the supervision of probation officers as the Minister may approve.

Appointments

15.—(1) There shall be—

(*a*) a principal probation officer who shall organize and supervise the probation service in Malaŵi in accordance with Rules made under this Act;

(*b*) a sufficient number of probation officers, qualified by character and experience to be probation officers, who shall perform such duties as may be prescribed by Rules made under this Act.

(2) The Minister may appoint a probation committee or probation committees, consisting of such persons as the Minister shall think fit, who shall review the work of probation officers in individual cases and perform such duties in connexion with probation as may be prescribed by Rules made under this Act.

Rules

16. The Minister may make Rules prescribing—

(*a*) the duties of the principal probation officer;

(*b*) the duties of probation officers;

(*c*) the constitution and duties of a probation committee or probation committees;

(*d*) the form of records to be kept under this Act;

(*e*) what shall be an institution for the purposes of this Act;

(*f*) the remuneration of any person appointed to carry out any duties under this Act, and the fees and charges to be made for any act, matter or thing under this Act to be done or observed;

(*g*) generally for carrying out the purposes and provisions of this Act.

SUBSIDIARY LEGISLATION

G.N. 153/1961

CONSTITUTION OF PROBATION COMMITTEES

under s. 15 (2)

ZOMBA DISTRICT

A Probation Committee has been constituted for the Zomba District consisting of the following members—

The Resident Magistrate, Zomba

The District Commissioner, Zomba

All Probation Officers performing their duties in the Zomba District.

G.N. 98/1961

PROBATION OF OFFENDERS (PROBATION COMMITTEE) RULES

*un*der *s.* 16

Citation

1. These Rules may be cited as the Probation of Offenders (Probation Committee) Rules, and shall apply to every probation committee appointed under section 15 (2) of the Act.

Interpretation

2. In these Rules, unless the context otherwise requires—

"area of jurisdiction" means the area for which a probation committee is appointed;

"committee" means a probation committee appointed under section 15 (2) of the Act.

Appointment of chairman and secretary

3. A committee shall elect from amongst its members a chairman and a secretary.

Quorum

4. Three members of a committee including the chairman shall form a quorum.

Casting vote

5. The chairman shall in addition to a deliberative vote have a casting vote.

Meetings of Committees

6. A committee shall hold a meeting at least once in every three months.

Special meetings

7. A meeting of a committee may be summoned at any time at the discretion of the chairman.

Duties of Probation Committee

8. Every committee shall—

(*a*) consider any written or oral reports received from probation officers within its area of jurisdiction;

(*b*) discuss from time to time with probation officers the progress of cases under their supervision and afford them such help and advice as it can in carrying out their duties;

(*c*) satisfy itself as to the manner in which probation officers within its area of jurisdiction perform their duties;

(*d*) at the direction of the principal probation officer exercise general supervision over the making and keeping of records by probation officers within its area of jurisdiction;

(*e*) furnish to the principal probation officer and the Secretary for Labour a copy of the minutes of all meetings and business transacted by the committee;

(*f*) be responsible for the implementation within the area of its jurisdiction of all directives and policies regarding probation work issued by the principal probation officer.

Duties of Secretary

9. It shall be the duty of the secretary of a committee—

(*a*) to keep or arrange for the keeping of the minutes of the proceedings of all meetings of the committee. Such minutes shall be signed by the chairman;

(*b*) to arrange for the keeping of such records as may be directed by the principal probation officer from time to time under rule 8 (*f*);

(*c*) to arrange for the distribution of copies of all minutes of meetings and business transacted at committee meetings, in accordance with rule 8 (*e*).

[Subsidiary] *Probation of Offenders Rules*

G.N. 3/1946

PROBATION OF OFFENDERS RULES

under s. 16

Citation

1. These Rules may be cited as the Probation of Offenders Rules.

Duties of principal probation officer

2. The principal probation officer shall—

(*a*) receive and consider the written and oral reports of probation officers;

(*b*) make or direct the making of any communication which may be necessary to the court;

(*c*) discuss from time to time with probation officers the progress of cases under their supervision and afford them such help and advice as he can in carrying out their duties;

(*d*) satisfy himself as to the manner in which probation officers perform their duties and consider and investigate any complaint against probation officers in the execution of such duties;

(*e*) exercise a general supervision over the making or keeping of records by probation officers.

Duties of probation officers

3.—(1) A probation officer shall make such preliminary inquiries, including inquiries into the home surroundings, as the court may direct, in respect of any offender in whose case the making of a probation order may arise.

(2) A probation officer shall, when required by a probation order, undertake the supervision of any offender.

(3) A probation officer shall, subject to any directions given to him by the court—

(*a*) visit from time to time the place of residence of probationers and make inquiry as to their behaviour, mode of life, and employment;

(*b*) ascertain that probationers understand the conditions of their recognizances, and by warning and persuasion endeavour to secure their observance of them;

(*c*) advise, assist and befriend probationers and where necessary endeavour to find them employment.

Reports by probation officers

4.—(1) A probation officer shall report to the court in accordance with any directions given by the court in the probation order or otherwise.

(2) A probation officer shall report as to the conduct and mode of life of probationers, and generally as to their progress, to the principal probation officer.

(3) If a probationer fails to observe any of the conditions of his recognizance, the probation officer concerned shall report the matter to the court and to the principal probation officer.

Records

5. A probation officer shall keep a separate record of each case placed under his supervision.

Court records

6. A probation officer shall have free access at all reasonable times to the court records of every case in which a probationer under his supervision is concerned.

Expenses of probation officers

7. Probation officers shall be entitled to claim payment on account of expenses incurred by them in the performance of their duties.

Expenses which can be claimed

8. Such expenses if necessarily incurred shall include—

(*a*) actual expenses of subsistence and travelling;

(*b*) where a probation officer uses his own motor car or motor cycle, a mileage allowance at the rate from time to time applicable to Government officials;

(*c*) the cost of stationery necessary for the proper performance of a probation officer's duties and not otherwise supplied;

(*d*) the cost of stamps, telephone calls and telegrams actually paid in the discharge of a probation officer's duties.

Expenses by whom paid

9. A probation officer shall submit all claims for expenses incurred by him in the performance of his duties to the principal probation officer, who shall, on satisfying himself that claims submitted are in respect of expenses necessarily and properly incurred in the discharge of the duties of the claiming probation officer, pay such claims.

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9 of 1955 (F)
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37 of 1967
30 of 1991
33 of 1993
G.N.
213/1960F
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An Act to provide for the establishment of Prisons within Malaŵi, for a Prison Service, for the discipline of Prison Officers, for the management and control of Prisons and Prisoners lodged therein, and for matters incidental thereto

[23rd April, 1956]

PRELIMINARY

Short title

1. This Act may be cited as the Prisons Act.

Interpretation

2. In this Act, unless inconsistent with the context—

"convicted prisoner" means any prisoner under sentence of a court or court-martial;

"junior officers" means a prison officer of one of the ranks of junior officers set out in the Schedule;

"mechanical restraint" means restraint by the use of handcuffs, leg irons, straight jacket, or any other form of restraint approved by the Minister;

"medical officer" means a medical officer appointed or nominated under section 25;

"officer in charge" means the person appointed to be in charge of a prison under section 9;

"official visitor" means a person appointed as such under section 38;

"penal diet" means a punishment diet prescribed as a penal diet;

"prison" means any building or place declared to be a prison and includes a temporary prison established under section 4;

"prison officer" means any officer of the prison service and includes any officer seconded to such service;

"prisoner" means any person, whether convicted or not, under detention in any prison;

"prohibited article" means any article which is not issued to any prisoner by authority of the officer in charge, with the approval of the Commissioner, or in accordance with this Act;

"reduced diet" means a punishment diet prescribed as a reduced diet;

"senior officer" means a prison officer of one of the ranks of senior officers set out in the Schedule;

"subordinate officer" means a prison officer of one of the ranks of subordinate officers set out in the Schedule and includes any person temporarily employed under section 73(5);

"the service" means the prison service established under this Act;

"unconvicted prisoner" means any person, not being a convicted prisoner, duly committed to custody under a writ, warrant, or order of any court, or any order of detention issued by any person authorized thereto by any Malaŵi law, or by order of a court-martial;

"visiting justice" means a visiting justice appointed under sections 34 and 35;

"weapon" means any firearm, baton, tear smoke, or such other instrument as may be prescribed;

"young prisoner" means a prisoner under the apparent age of 19 years and may, at the discretion of an officer in charge, include a prisoner whose apparent age does not exceed 20 years.

PART I

Establishment of Prisons

Establishment of prisons

3. The Minister may declare any building or place in Malaŵi to be a prison under this Act, and may declare that any such prison shall cease to be a prison.

Temporary prisons

4. Such provision shall be made as the Commissioner may direct for the shelter and safe custody in temporary prisons of such number of prisoners as the Commissioner may determine, and every such temporary prison shall be deemed to be a prison for the purpose of this Act.

PART II

Constitution and Administration

Establishment of service

5. There shall be established in Malaŵi a prison service.

Application of Act to serving prison officers 27 of 1945

6. All the provisions of this Act shall extend to all persons who, immediately before the date of commencement of this section, were serving as members of any prison service or department established under the Prisons Ordinance, 1945 (now repealed) as if such persons had been appointed under this Act, and service under

any such legislation, for the purposes of this Act, shall be deemed to be service under this Act.

Commissioner of prisons and prison officers

7. There shall be a Commissioner of Prisons, hereinafter referred to as the Commissioner, who shall, subject to any general or special directions of the Minister, be responsible for the administration of this Act, and such prison officers as may be necessary for the administration of the prison service.

Officers

8. The service shall consist of the ranks set out in the Schedule and that Schedule may be varied by the Minister by notice published in the *Gazette*.

Appointment of prison officers

9.—(1) The Commissioner shall appoint prison officers to be officers in-charge.

(2) In any place where there is a prison but no prison officer has been appointed as officer in-charge thereof, such prison shall be in the charge of such person as the Minister may appoint and the person so appointed shall, in matters relating to the prison and prisoners, be subject to the orders and directions of the Commissioner and shall, subject to any express limitation which may have been imposed on him by the Commissioner, be deemed to be the officer in-charge of the prison and shall have all the powers conferred by this Act upon an officer in-charge.

Liberty to resign

10.—(1) Unless expressly permitted to do so by the Commissioner, no prison officer shall be at liberty to resign from the service except as may be provided by regulations.

(2) Any member of the service whose period of service expires during a state of war, insurrection, disturbance of the public peace, or other emergency or apprehended emergency, may be retained and his services prolonged for such period as the Minister may direct.

(3) If any prison officer withdraws himself from his official duties in contravention of this section, he shall be liable to a fine of K100.00 and to imprisonment for three months.

Payments due to prison officers and other persons employed in prisons leaving the prison service may be set off

11. A sum due to a prison officer or other person employed in prisons or to his estate by way of salary, refund of pension contributions, pension or any other benefit whatsoever may be set off against a sum payable to the Government by the prison officer or other person employed in prisons on or at the time of his retirement, resignation, loss of office, death, discharge or other termination of service, as the case may be.

Minister may appoint committee of inquiry

12. The Minister may, whenever he deems it necessary or desirable, appoint a committee of two or more persons of whom—

(*a*) one shall be the Commissioner; and

(*b*) the other or others shall be an officer or officers of the Public Service,

to enquire into and report to him on the conduct, management or administration of any prison or any matter connected therewith or incidental thereto.

PART III

Powers and Duties of Prison Officers

General powers and duties of Commissioner
30 of 1991
33 of 1993
Cap. 1:01

13. The Commissioner shall, subject to any orders or directions of the Minister, have the administrative command, superintendence, control, and direction of prisons and prison officers, and, for the exercise of these powers, may issue standing orders relating thereto. Notwithstanding the General Interpretation Act, standing orders issued in terms of this section need not be published in the *Gazette*.

Officer in-charge of a prison to supervise and control prison

14. Every officer in-charge shall supervise and control all matters in connexion with the prison to which he is appointed and shall be responsible to the Commissioner for the conduct and treatment of prison officers and prisoners under his control and for the due observance by prison officers and prisoners of this Act.

Powers and duties of prison officers

15. Every prison officer shall exercise such powers and perform such duties as may be assigned to him in accordance with this Act and shall obey all lawful directions in respect of the execution of his office which he may receive from any officer senior to him in the service.

Prison officers always available for duty

16. Every prison officer shall be deemed to be available for duty at all times and may at any time be detailed for duty in any part of Malaŵi.

Prison officers and prohibited activities

17.—(1) No prison officer shall be concerned in any employment other than the duties assigned to him in accordance with this Act.

(2) No prison officer shall accept any bribe, fee, gratuity, or reward from, or, without the permission of the Commissioner, have any business dealings with, prisoners, visitors to prisoners, persons he knows to be ex-prisoners, or friends of prisoners or ex-prisoners.

(3) Except with the written consent of the Minister and in accordance with such directions as the Minister may give, no prison officer shall commit any act which is prescribed as being an act constituting active participation in politics.

18. No subordinate officer shall punish a prisoner unless lawfully ordered so to do by the Commissioner or by an officer in charge.

Punishment by subordinate officers

19.—(1) Subject to this section, a prison officer may use a weapon against—

Use of weapons by prison officers

(*a*) a prisoner who is—

(i) escaping or attempting to escape; or

(ii) engaged in a combined outbreak or in an attempt to force, break open or scale the outside door, gate, fence or enclosure wall of the prison; or

(iii) using violence to him or another prison officer or other person; and

(*b*) a person who—

(i) whilst assisting a prisoner to escape, is using violence to him or another prison officer or other person; or

(ii) is engaged in a combined break-in or in an attempt to force, break open or scale the outside door, gate, fence or enclosure wall of the prison or an inside door, gate, fence or wall of the prison; or

(iii) whilst so engaged, is using violence to him or another prison officer or other person.

(2) Resort shall not be had to the use of a weapon—

(*a*) as in subsection (1) (*a*) (i) is authorized, unless—

(i) the prison officer has reasonable grounds to believe that he cannot otherwise prevent the escape; and

(ii) the prison officer gives a warning to the prisoner that he is about to use the weapon against him; and

(iii) the warning given by the prison officer is unheeded;

(*b*) as in subsection (1) (*a*) (iii), (1) (*b*) (i) and (1) (*b*) (iii) is authorized unless the prison officer has reasonable grounds to believe that he or the other prison officer or other person, as the case may be, is in danger of suffering grievous bodily harm.

(3) No prison officer shall in the presence of a prison officer senior to himself make use of a weapon as in subsection (1) is authorized, except on the orders of the senior prison officer.

(4) The use of weapons in pursuance of this section shall be, as far as possible, to disable and not to kill.

Prison officers' power of arrest

20. For the purpose of apprehending any person who may have escaped from lawful custody, every prison officer shall have the power to arrest such person and to convey him to a prison.

Prison officers' visits to cells

21.—(1) No prison officer shall, except in the case of sickness or emergency, enter a prison cell or ward at night unless accompanied by another prison officer.

(2) No male prison officer shall enter a cell in which female prisoners are confined, unless accompanied by a female prison officer.

Power to take photographs and fingerprints of prisoners

22. An officer in charge may cause statistics as to height, weight, and measurements, photographs, fingerprints, handprints, and footprints of any prisoner to be taken by any person whom he may designate for such purpose, and shall make such records as the Commissioner may determine.

Immunity for act done under authority of warrant

23. Where the defence to any suit instituted against a prison officer is that the act complained of was done in obedience to a warrant purporting to be issued by a judge or a magistrate, the court shall, upon production of the warrant containing the signature of the judge or the magistrate, and upon proof that the act complained of was done in obedience to such warrant, enter judgment in favour of such prison officer.

Proof of signature not required

24. No proof of the signature of such judge or magistrate as is mentioned in section 23 shall be required unless the court has reason to doubt the genuineness thereof, and, where such signature is proved not to be genuine, judgment shall nevertheless be given in favour of such prison officer, if it be proved that, at the time the act complained of was committed, he believed on reasonable grounds that such signature was genuine.

PART IV

Appointment and Duties of Medical Officers

Medical officers

25.—(1) The Minister may appoint as medical officer of a prison any medical practitioner who is registered as such in accordance with the law and where no such medical practitioner is available, may also appoint as medical officer of a prison any person who is licensed in terms of section 15 of the Medical Practitioners and Dentists Registration Act.

Cap. 36:01

(2) In default of any appointment in terms of subsection (1), a Government medical officer resident at the place where such prison is situated and nominated for such duty by the Secretary for Health shall be a medical officer for such prison.

26. Subject to section 14, the medical officer shall have the general care of the health of prisoners and shall visit the prison daily where practicable or when called upon by the officer in charge. He shall report to the officer in charge any circumstances connected with the prison or the treatment of prisoners which at any time appear to him to require consideration on medical or health grounds.

Duties of medical officers

27.—(1) The medical officer shall, where practicable, ensure that every prisoner is medically examined on admission to and before discharge from a prison, and shall perform such other duties as may be prescribed, and shall ensure that a record is kept of the state of health of every prisoner.

Medical inspection

(2) Until he has been examined by the medical officer, every prisoner on admission shall, so far as possible, be kept apart from other prisoners.

28. The medical officer shall observe the mental condition of all prisoners under sentence of death or charged with a capital offence and, for this purpose, shall personally examine all such prisoners on every day on which he visits the prison, and shall furnish reports on such prisoners to the officer in charge in such form and at such times as may be prescribed.

Observation of prisoners charged with a capital offence

29. The medical officer shall ensure that every prisoner under sentence of death, or charged with a capital offence, or in solitary confinement, or in hospital, is medically examined every day on which the medical officer visits the prison.

Examination of prisoners in solitary confinement or in hospital

30. Every officer in charge may order any prisoner to submit himself to medical examination as often as such officer thinks necessary.

Officer in charge empowered to order prisoner to be examined

31. The medical officer shall, on the death of any prisoner otherwise than by lawful execution, record in a register to be kept for such purpose the following particulars, so far as they can be ascertained—

Death of a prisoner

(*a*) the day on which the deceased was sentenced;

(*b*) the day on which he was admitted to prison;

(*c*) the day on which he first complained of illness, or was observed to be ill;

(*d*) the labour, if any, on which he was engaged on that day;

(*e*) the scale of his diet on that day;Death of a prisoner

(*f*) the day on which he was admitted to hospital;

(*g*) the day on which the medical officer or his subordinate was first informed of the illness;

(*h*) the nature of the disease;

(*i*) when the deceased was last seen before death by the medical officer or his subordinate;

(*j*) when the prisoner died and, in cases where a postmortem examination is made, an account of the appearance after death, together with any special remarks that may appear to the medical officer to be required; and

(*k*) his opinion as to the cause of death.

Notification of death of prisoner

32. Upon the death of a prisoner, the officer in charge shall at once notify a magistrate or coroner and the medical officer of the prison and shall arrange for compliance with the law relating to inquests.

PART V

Visiting Justices, Official Visitors, Ministers of Religion and Prisoners' Aid Societies

Judges may visit prisons

33. Judges of the High Court may visit and inspect any prison at any time and, while so doing, may inquire into any complaint or request made by a prisoner.

Ministers to be visiting justices

34. Ministers of Malaŵi Government shall be visiting justices of all prisons in Malaŵi.

Magistrates to be visiting justices in own areas

35. Magistrates shall be visiting justices of the prisons situated in the area in which they normally exercise jurisdiction.

Powers of visiting justices

36.—(1) Any visiting justice may at any time visit a prison in respect of which he is a visiting justice, and may—

(*a*) call for all books, papers, and records relating to the management and discipline of the prison;

(*b*) visit every part of the prison and see every prisoner in confinement;

(*c*) inspect and test the quality and quantity of prisoners' food;

(*d*) ascertain, so far as possible, that the standing orders and regulations are observed;

(*e*) inquire into any complaint or request made by a prisoner.

(2) A visiting justice who is a magistrate—

(*a*) may, if requested by the Commissioner or the officer in charge, hear and determine a charge under section 90 (1) (*b*); and

(*b*) for the exercise of such powers, may summon witnesses and administer oaths.

Visiting justice to record visit in prescribed book

37. On completion of each visit, a visiting justice shall enter in a book to be kept for such purpose such remarks, suggestions, or recommendations for the information of the Commissioner as he may deem fit

Appointment of official visitors

38. The Minister may appoint official visitors to any prison.

Duties of official visitors

39. An official visitor shall—

(*a*) at least once in every two months visit the prison to which he is appointed between such hours as may be prescribed;

(*b*) visit all parts of the prison and see every prisoner in confinement, save that female official visitors may visit only those parts of each prison set aside for the detention of female prisoners;

(*c*) inspect and test the quality and quantity of prisoners' food;

(*d*) ascertain, so far as possible, that the standing orders and regulations are observed; and

(*e*) inquire into any complaint or request made by a prisoner.

Official visitors to record visit in prescribed book

40. On completion of each visit, an official visitor shall enter in a book to be kept for such purpose such remarks, suggestions, or recommendations for the information of the Commissioner as he may deem fit.

Ministers of religion may visit prison

41. Ministers of religion, or other accredited representatives of any religious body recognized by the Minister whose visits are approved by the Commissioner, may at such hours and in such places as may be prescribed or as the officer in charge may permit—

(*a*) be admitted to the prison to visit prisoners who may be desirous of their services; and

(*b*) be permitted to hold religious services.

Visits of probation officers and representatives of prisoners' aid society

42. A probation officer appointed as such under any law, or a representative of a prisoners' aid society who has obtained the written permission of the Commissioner, may be admitted to any prison at times to be arranged by the officer in charge.

PART VI

Discipline of Prison Officers

Offences against discipline by prison officers

43.—(1) Any prison officer, other than the Commissioner who—

(i) uses traitorous or disloyal words regarding the President;

(ii) is disrespectful in word, act, or demeanour to an officer senior to him in the service;

(iii) disobeys any lawful order including any standing order issued by the Commissioner in terms of section 13;

(iv) contravenes or fails or neglects to comply with any provision of regulations with which it is his duty to comply;

(v) renders himself unfit for duty through drink or by the use of drugs;

(vi) habitually uses to excess intoxicating beverages or habit-forming drugs;

(vii) absents himself without leave or overstays his leave;

(viii) sleeps at his post, or leaves it before being lawfully relieved, except in fresh pursuit of any offender whom it is his duty to apprehend;

(ix) being under arrest or confinement, leaves or escapes from his arrest or confinement before he is set at liberty by proper authority;

(x) neglects or refuses to assist in the apprehension of any prison officer or prisoner whom it is his duty to arrest;

(xi) by his neglect or default—

(A) allows; or

(B) contributes to,

the escape of any prisoner;

(xii) offers or uses unwarranted personal violence to any person in his custody;

(xiii) shows cowardice in the course of his duty;

(xiv) uses any weapon without just cause or order;

(xv) without cause, fails to appear or appears late at any parade or duty appointed by an officer senior to him in the service;

(xvi) pawns, sells, loses by neglect, makes away with,

wilfully spoils or fails to report any damage to any arms, ammunition, accoutrements, clothing, any medal or decoration granted to him for service or good conduct, or any other public property;

(xvii) steals or destroys any property belonging or issued to a prison or prisoner;

(xviii) is slovenly, inattentive, uncivil, or quarrelsome;

(xix) without due authority, discloses or conveys any information concerning any investigation or matter relating to the service;

(xx) malingers or feigns or wilfully produces any disease or infirmity or fails to report any disease or accident;

(xxi) is guilty of misconduct or disobeys, whether in hospital or otherwise, any orders, by means of which misconduct or disobedience he produces or aggravates any disease or infirmity or delays its cure;

(xxii) incurs debt without any reasonable prospect, or intention, of paying the same, or, having incurred any debt, makes no reasonable effort to pay the same;

(xxiii) without proper authority, demands from any person any article, carriage, or porterage;

(xxiv) resists an escort whose duty it is to apprehend him or to have him in charge;

(xxv) breaks out of, or leaves without lawful excuse, warders' lines, camp, or quarters;

(xxvi) makes or signs any false report or statement in any official record or document, knowing or having reasonable ground to believe that the same is false;

(xxvii) refuses or, by culpable neglect, omits to make or send a report or return which it is his duty to make or send;

(xxviii) knowingly makes a false accusation against any other prison officer or prisoner, or wilfully suppresses any material facts, or makes or joins in making any anonymous complaint;

(xxix) is unduly familiar with prisoners;

(xxx) assists or connives with any prisoner in having or obtaining any prohibited article;

(xxxi) with intent to cause any breach of this Act, holds correspondence or any intercourse with persons who have been discharged from prison or with their relatives or friends;

(xxxii) being called upon by the Commissioner (duly authorized thereto by the Minister) to furnish a full and true statement of his financial position, fails to do so;

(xxxiii) contravenes section 17, 18, 19 or 21;

(xxxiv) is guilty of any neglect of duty; or

(xxxv) is guilty of any other act, conduct, disorder, or neglect of duty to the prejudice of good order or discipline,

shall be guilty of an offence against discipline.

(3) Nothing in this section shall be construed to exempt any prison officer from being proceeded against for any offence against any other law, so however that no such officer shall be punished twice for the same act or omission.

Prison officer to have power to arrest

44. Any prison officer may arrest without warrant any prison officer, not being an officer of his own or of senior rank or grade, whom he suspects on reasonable grounds of having committed an offence under section 43. A prison officer effecting an arrest under this section shall forthwith bring the accused before the officer in charge, who shall cause the case to be heard without undue delay and may order the remand of the accused in custody for so long as may reasonably be necessary.

Confinement of arrested prison officer

45. Until such time as his case is heard in accordance with this Act, any prison officer arrested under this Act may be confined in any prison quarters allocated for prison or guardroom purposes, or, if no other suitable quarters are available, in any prison quarters set apart for the detention of prisoners awaiting trial.

Power to try junior prison officers

46.—(1) The Commissioner, or a senior officer authorized by the Commissioner, may inquire into any alleged offence against discipline by a prison officer who shall be present at such inquiry and thereupon, if satisfied that such offence has been committed, the offender may be punished by—

(*a*) admonition;

(*b*) reprimand;

(*c*) severe reprimand;

(*d*) stoppage of pay where there has been absence without leave, or loss by negligence of or injury to public property;

(*e*) fine not exceeding a month's pay;

(*f*) reduction in rank;

(*g*) dismissal, subject to any regulation;

(*h*) the punishment set out in paragraph (*a*) or (*b*) and the punishment set out in paragraph (*d*);

(*i*) any two or more of the punishments set out in paragraphs (*c*) to (*g*) inclusive:

Provided that, in the case of dismissal, the only further punishments which may be imposed shall be those set out in paragraphs (*d*) and (*e*).

(2) Every punishment awarded or recommendation made by a senior officer under subsection (1) shall be subject to confirmation by the Commissioner, and any such punishment shall remain in abeyance until the Commissioner has signified his decision thereon.

Power to try subordinate prison officers

47.—(1) The Commissioner, a senior officer or officer in charge may inquire into any alleged offence against discipline by a prison officer subordinate to him who shall be present at such inquiry and thereupon, if satisfied that such offence has been committed, the offender may be punished by—

(*a*) admonition;

(*b*) reprimand;

(*c*) severe reprimand;

(*d*) confinement to lines or extra duty for a period not exceeding seven days, or both such confinement and such extra duty;

(*e*) fine not exceeding one-half of a month's pay;

(*f*) forfeiture of one or more efficiency badges;

(*g*) stoppage of pay where there has been absence without leave, or loss by neglect of or injury to public property;

(*h*) reduction in rank;

(*i*) dismissal, subject to any regulation;

(*j*) the punishment set out in paragraph (*a*) or (*b*) and the punishment set out in paragraph (*g*);

(*k*) any two or more of the punishments set out in paragraphs (*c*) to (*i*) inclusive:

Provided that, in the case of dismissal, the only further punishments which may be imposed shall be those set out in paragraphs (*e*) to (*g*) inclusive.

(2) Any sentence of a fine exceeding twenty shillings, reduction in rank, forfeiture of efficiency badges, or dismissal awarded by a senior officer or officer in charge under subsection (1) shall be subject to confirmation by the Commissioner, and any such punishment shall remain in abeyance until the Commissioner has signified his decision thereon.

Procedure after award of punishment

48.—(1) The Commissioner may enhance, vary, or remit any punishment referred to him for confirmation under section 46 or 47 and may cancel any recommendation made thereunder.

(2) An appeal against any decision of the Commissioner relating to any punishment awarded or recommendation made under section 46, 47 or section 51 (2) shall lie to the Minister, who may vary, or remit any such punishment and may act upon

any such recommendation as he deems fit. No appeal shall lie under this subsection unless notice of intention to appeal has been given to the Commissioner within fourteen days of his decision being conveyed to the prison officer concerned.

(3) No decision by the Minister or Commissioner in terms of this section shall be made to the prejudice of the prison officer concerned unless such officer has had an opportunity of making representations in writing on his own behalf to the Minister or Commissioner, as the case may be.

Stoppages of pay

49. Any stoppage of pay exceeding one-half of the offender's monthly pay imposed by an officer in charge shall be subject to confirmation by the Commissioner and all stoppages of pay shall be recovered from the offender's pay due or thereafter accruing, and so much only of his pay shall be stopped as shall leave him a residue of at least one-half of his monthly pay.

Power to summon witnesses

50.—(1) Any prison officer empowered to make an inquiry under sections 46 and 47 may, subject to the general or special approval of the Commissioner, summon and examine witnesses on oath, may require the production of any document which in his opinion is relevant to such inquiry, may from time to time adjourn any such inquiry and, for the purposes of this section, may administer oaths.

(2) Any person summoned as a witness under subsection (1) who fails to attend at the time and place mentioned in the summons or, when required so to do by the prison officer holding the inquiry, fails to attend any adjourned hearing, refuses to take the oath or to answer any question lawfully put to him shall on conviction in a magistrate's court be liable to a fine not exceeding five pounds, or to imprisonment for a period not exceeding one month:

Provided that no witness shall be obliged to answer any question which may tend to incriminate him or render him liable to any forfeiture or penalty.

(3) Any person other than a prisoner summoned as a witness under subsection (1) shall be entitled to be paid such allowances and expenses as are normally allowed to such a witness when giving evidence before a magistrate's court.

Offence against discipline may be tried by a magistrate

51.—(1) In any case where it appears to the Commissioner, the senior officer or the officer in charge who is inquiring into an alleged offence against section 43 that the offence alleged to have been committed would not, by reason of its gravity or by reason of previous offences or for any other reason, be adequately punished by any of the punishments provided in sections 46 and 47 the Commissioner or such officer, as the case may be, shall, without recording a finding, stay the proceedings and, if the case

is being investigated by a senior officer or the officer in charge, such officer shall transmit the proceedings to the Commissioner. Where any proceedings have been stayed by the Commissioner or by a senior officer or the officer in charge the Commissioner may order the accused to be taken before a magistrate's court to be dealt with in accordance with subsection (3).

(2) Where a case has been stayed and transmitted to the Commissioner, the Commissioner may, in lieu of ordering the accused to be dealt with by a magistrate's court, himself hear and determine the case, or direct the case to be dealt with by the senior officer or the officer in charge who transmitted it or by any other officer.

(3) Where an accused person is taken before a magistrate's court under subsection (1), he shall be liable for any of the offences mentioned in section 43 to a fine not exceeding three months' pay, and to imprisonment for six months.

Interdiction

52.—(1) The Commissioner may, at any time, in the interests of discipline or public interest, interdict from duty any prison officer if disciplinary or criminal proceedings are being instituted against him.

(2) Any prison officer interdicted in terms of subsection (1) shall receive such portion of his pay, being not less than one half, as the Commissioner shall determine.

(3) If such prison officer is not dismissed from the service, he shall receive for the period of his interdiction—

(*a*) in the case of acquittal, his full pay;

(*b*) in any other case, such proportion of his pay as the Commissioner may decide.

An appeal shall lie to the Minister from any decision of the Commissioner under paragraph (*b*) and such appeal shall be made and may be dealt with, *mutatis mutandis*, in accordance with section 48 (2).

(4) A prison officer shall not by reason of being interdicted from office cease to be a prison officer. During the term of such interdiction, the powers, functions, and privileges vested in him as a prison officer shall be in abeyance, but he shall continue subject to the same responsibilities, discipline, and penalties, and to the same authorities, as if he had not been interdicted.

Dismissal upon fine or imprisonment

53. The Minister may, on the recommendation of the Commissioner, dismiss from the service any junior or subordinate officer sentenced by a court to a fine or imprisonment in respect of any offence against any law.

Pay not to accrue during absence without leave or imprisonment

54. Unless the Commissioner otherwise orders, no pay shall accrue to any prison officer in respect of any day during which he is absent from duty without leave or is undergoing any sentence of imprisonment.

PART VII

Desertion or Inciting

Desertion

55. Any prison officer who absents himself from duty without reasonable cause for a period exceeding twenty-one days shall be deemed to be a deserter and shall be liable to a fine of £100 and to imprisonment for two years.

Deserter may be apprehended by prison or police officer

56. Any prison officer or police officer who has reason to believe that any prison officer has deserted from the service may apprehend him and—

(*a*) take him forthwith to a police station and lay a charge against him; or

(*b*) if there is no police station in the vicinity, take such person forthwith before a magistrate with a view to obtaining a warrant for his arrest.

Penalty for inciting prison officer to desert

57. Any person who by any means, directly or indirectly, procures or persuades, or attempts to procure or persuade, any officer of the service to desert, or who aids, abets or is accessory to the desertion of any officer of the service, or who, having reason to believe that any person is a deserter, harbours such deserter, or aids him in concealing himself or assists in his rescue, shall be liable to a fine of £50 and to imprisonment for six months.

Penalty for mutiny or sedition

58. Any prison officer who mutinies and any prison officer or other person who, directly or indirectly, instigates, commands, counsels, or solicits any mutiny or sedition amongst any prison officers or prisoners or disobedience to any lawful command given by any prison officer, or who attempts to seduce any prison officer from his allegiance or duty, shall be liable to a fine of £100 and to imprisonment for two years, and in addition to any such punishment shall be liable to a sentence of corporal punishment in accordance with section 98.

PART VIII

Admission and Confinement of Prisoners

Admission of prisoners

59.—(1) No person shall be admitted into a prison unless accompanied by—

(*a*) a remand warrant, order of detention, warrant of con-

viction or of committal under the hand of any person authorized to sign or countersign such warrant or order under any law;

(*b*) an order of a court martial;

(*c*) a written requisition of an immigration officer issued in terms of the Immigration Act; or Cap. 15:03

(*d*) an order in writing signed by a member of a police force of or above such rank as may be prescribed.

(2) An order issued under subsection (1) (*d*) shall be valid only for such period as is necessary to obtain a warrant or order referred to in subsection (1) (*a*) and for no longer.

(3) The officer in charge shall satisfy himself before the admission of a prisoner that such prisoner is the person named in the requisition or in the warrant or order of detention accompanying him, and that such requisition, warrant, or order bears the signature of the proper authority lawfully authorized to issue it, and that it is in all other respects in order.

(4) The officer in charge shall not refuse to accept any prisoner merely on the ground that there is an error on the face of any requisition, warrant or order of detention accompanying such prisoner, but shall take steps as soon as practicable to have such error corrected.

Admission of infant child with female prisoner

60. Subject to such conditions as may be specified by the Commissioner any unweaned infant child of a female prisoner may be received into prison with its mother and may be supplied with clothing and necessaries at the public expense:

Provided that, when such child has been weaned, the officer in charge, on being satisfied that there are relatives or friends of the child able and willing to support it, shall cause such child to be handed over to such relatives or friends, or, if he is not so satisfied, shall hand such child over to the care of such welfare authority as may be approved for the purpose by the Commissioner.

Particulars of prisoner to be recorded

61. Upon the admission to prison of any person, the officer in charge shall cause to be recorded such particulars regarding such person as may be prescribed.

Search of prisoners

62. Every prisoner, male or female, shall be searched on admission, and at such time subsequently as may be prescribed by a prison officer of his or her own sex, but not in the presence of a person of the opposite sex, and all prohibited articles taken from him.

Money and other effects of prisoners to be kept in custody of the officer in charge

63.—(1) All money, clothes, or other effects brought into a prison by any prisoner, or sent to a prison for his use, which he is not permitted to retain shall be placed in the custody of the officer in charge, who shall keep an inventory of the same, and all such money, clothes, or other effects shall be returned to such prisoner when he is released or discharged.

(2) Where any clothes of such prisoner are so old, worn-out, or dirty as to be unsuitable for further use, the officer in charge may order the same to be destroyed, and in such case, on the release or discharge of such prisoner, the officer in charge may, at the public expense, provide him with suitable clothing.

(3) The officer in charge may refuse to take into prison any property of a prisoner which by reason of its bulk, nature, or excessive quantity cannot be conveniently stored in the prison.

PART IX

Segregation and Classification of Prisoners

Separation of prisoners

64. —(1) Male and female prisoners shall be kept apart and confined in separate parts of the prison in such manner as to prevent their communicating the one sex with the other.

(2) Subject to subsection (1), prisoners of each sex shall be divided into the following classes—

(*a*) unconvicted prisoners;

(*b*) convicted prisoners;

(*c*) young prisoners;

(*d*) adults;

(*e*) first offenders;

(*f*) prisoners with previous convictions;

(*g*) prisoners suspected or certified as being of unsound mind;

(*h*) such other classes as the Commissioner may determine; and, so far as the prison accommodation renders it practicable, each such class shall be kept apart from the other classes.

PART X

Custody and Removal of Prisoners

Prisoners in lawful custody of officer in charge

65.—Every person confined in a prison shall be in the lawful custody of the officer in charge thereof and, subject to this Act, shall remain in such lawful custody and be subject to prison discipline and to this Act during the whole period of his imprisonment, whether he is or is not within the precincts of a prison.

Production of prisoners in court

66.—(1) Where it appears to the High Court or any magistrate's court that the attendance before such court of a person who is a prisoner is necessary for the purpose of obtaining evidence in any proceeding before such court, the judge or magistrate, as the case may be, may issue an order directed to the officer in charge of the prison where the prisoner is serving a sentence, requiring him to produce the prisoner at the time and place specified in the order, and such officer in charge shall arrange for compliance with such order.

(2) The court before which any person is produced in accordance with an order issued in terms of subsection (1) may give such directions as to the costs of compliance with the order as such court may deem fit.

Prisoners under police escort

67.—(1) Prisoners on remand or committed for trial, who are required to attend any court, may be taken for that purpose into police custody at the prison to which they have been committed, and shall remain under police supervision and guard until returned to the prison or discharged by the court.

(2) Where on the removal of any prisoner from any prison the number of prison officers is insufficient to provide escort for such prisoner, the officer in charge of the prison from which the prisoner is to be removed may, with the general or special permission of the Commissioner of Police in Malaŵi, deliver the prisoner to any member of the police force who may be detained for such duty.

(3) While a prisoner is in the custody of a member of a police force in accordance with this Act, he shall be deemed to be in lawful custody, and escape from the custody of such member of a police force shall be deemed to be escape from lawful custody.

Statements to police officers

68.—(1) Subject to subsection (2), a member of a police force, with the approval of the officer in charge of a prison and on production of an order in writing from a member of a police force of or above such rank as may be prescribed, may, in the sight and hearing of a prison officer, interview within a prison any prisoner for purposes connected with the investigation of any offence whatsoever.

(2) If the officer in charge is satisfied that a prisoner is willing to be interviewed by members of a police force out of the sight and hearing of a prison officer, then the officer in charge may permit that prisoner to be interviewed by not less than two members of a police force within the prison and out of the sight and hearing of a prison officer.

Prisoners and criminal investigations

69.—(1) If a commissioned officer of a police force certifies verbally or in writing that a prisoner is required at a police station or any other place in the interests of justice or in

connexion with the investigation of a crime, whether committed or alleged to have been committed by such prisoner or by some other person and whether or not such prisoner is detained in connexion with such crime, the officer in charge in whose custody such prisoner is may release, remove, or permit the removal of such prisoner from prison in accordance with this section.

(2) An officer in charge may release any unconvicted prisoner into police custody for such period as he considers necessary for the purposes mentioned in subsection (1).

(3) An officer in charge may remove or permit the removal of a convicted prisoner from prison in the custody of a prison officer, and in any interview between the police and such prisoner such prison officer shall remain in sight of the prisoner.

(4) Subject to the general or specific directions of the Commissioner, an officer in charge may release any convicted prisoner into police custody for such period as he considers necessary for the purposes mentioned in subsection (1).

Removal of prisoners from one prison to another

70. The Commissioner may, by any general or special order, direct that any prisoner shall be removed to any prison other than that in which he is confined or to which he has been committed.

Certain prisoners may be restrained

71. Whenever the officer in charge considers it necessary for the safe custody of any prisoner that he should be confined by means of mechanical restraint, he may so confine him but in accordance with such regulations as may be prescribed.

Mentally disordered or defective prisoners

72.—(1) Any convicted prisoner adjudged according to any law to be a mentally disordered or defective person shall remain in the place named in the order providing for his detention as such until such prisoner has been discharged in accordance with such law, whereupon the Minister shall, if such prisoner has not completed the sentence in respect of which he was committed, order that he be delivered into the custody of the officer in charge of a prison for the completion of such sentence. In cases where the prisoner has completed the sentence in respect of which he was committed, he shall forthwith be released.

(2) If any prisoner mentioned in subsection (1) was sentenced to death before being adjudged to be a mentally disordered or defective person and such sentence has not, at the time when he is certified to be of sound mind, been commuted to a term of imprisonment, then the Minister shall report the matter to the President.

Removal of sick prisoners to hospital

73.—(1) In the case of the serious illness of a prisoner, the officer in charge, on the advice of the medical officer, may make an order for the removal of such prisoner to a hospital. In cases

of emergency, or in the absence of the medical officer, such removal may be ordered by the officer in charge.

(2) So long as any prisoner who has been removed to any hospital under this section remains therein, he shall be deemed to be in lawful custody. The medical authority in charge of the hospital shall on admission of such prisoner, and at the end of every month while such prisoner remains in hospital, transmit to the officer in charge of the prison whence he came a certificate signed by him, stating his opinion as to the necessity for such prisoner to remain in the hospital and, when possible, stating the period for which such prisoner should so remain.

(3) When, in the opinion of the medical authority in charge of any hospital, it is no longer necessary that any prisoner should remain therein, he shall transmit to the officer in charge of the prison whence such prisoner came a certificate stating that such necessity has ceased, and thereupon such officer in charge shall cause such prisoner to be brought to the prison, if he is still liable to be confined therein.

(4) Every reasonable precaution shall be taken by the medical and other officers of any hospital to prevent the escape of any prisoner at any time under treatment therein, and it shall be lawful for such officers to take such measures for preventing the escape of any such prisoner as are reasonably necessary:

Provided that the medical authority in charge of any such hospital may refuse to take or permit any action authorized under this section, if, in his opinion, such action would be prejudicial to the health of such prisoner or impracticable for any good and sufficient reason.

(5) Where, on account of the gravity of the offence for which any prisoner is in custody, or for any other reason, an officer in charge considers it to be desirable to take special measures for the security of such prisoner while he is undergoing treatment in hospital, it shall be lawful for him, by order in writing, to give such prisoner into the custody of fit and proper persons, being not less than two in number and willing to undertake such duty, one of whom at least shall always be with such prisoner by day and night, and such persons are hereby vested with authority to do all things reasonably necessary to prevent such prisoner from escaping and shall be answerable for his safe custody until such time as he is handed over to an officer in charge on his discharge from hospital, or until such time as his sentence expires, whichever may first occur.

Serving sentence while in hospital

74. The period during which a prisoner has been detained in any hospital or institution in terms of section 72 or 73 shall be reckoned as part of his period of imprisonment.

PART XI

Labour of Prisoners

Employment of convicted prisoners

75.—(1) Subject to subsection (2), every prisoner under sentence of imprisonment may be kept to labour within or without the precincts of any prison in any part of Malaŵi and in any employment that may be approved by the Minister.

(2) Female prisoners shall not be employed outside a prison except on the recommendation of a medical officer, and then only on such labour as may be prescribed.

Employment of unconvicted prisoners

76. Unconvicted prisoners may elect to be given light employment, but shall be required to keep clean their cells, precincts of cells, clothing, furniture, and utensils.

PART XII

Maintenance

Maintenance of unconvicted prisoners from private sources

77. An unconvicted prisoner may be permitted to maintain himself and to arrange for the purchase of, or receive from private sources at proper hours, such food, clothing, bedding, or other necessaries as the Commissioner may from time to time determine.

Food, etc., not to be transferred to other prisoners

78. No food, clothing, bedding or other necessaries permitted under section 77 shall be given, hired, or sold to any other prisoner, and any prisoner who contravenes this section shall be liable to lose all privileges permitted under section 77 for such time as the officer in charge may determine.

Food, clothing and bedding for unconvicted prisoners

79. If an unconvicted prisoner does not provide himself with food, clothing, and bedding, he shall receive the normal prison food, clothing, and bedding.

PART XIII

Prohibited Articles and Areas

Power to search

80. Any prison officer may examine anything being brought into or being taken out of a prison and may stop and search, or cause to be stopped and searched, any person or vehicle suspected by him of bringing any prohibited article into, or taking any such article out of, a prison, or of carrying out of a prison any property belonging to such prison, and the officer in charge shall immediately be informed of the finding of any such article or property and may seize and dispose of it in accordance with the instructions of the Commissioner.

Penalty for introduction or removal of prohibited articles into and from prison and for unauthorized communication with prisoners

81. Any person who, save as is provided in this Act—

(*a*) removes from or introduces into or throws from or into or attempts by any means whatsoever to remove from or introduce into a prison or takes from or gives to any prisoner any article whatsoever; or

(*b*) communicates with any prisoner,

shall be liable to a fine of £25 and to imprisonment for six months.

Power of arrest

82. Any prison officer may arrest without a warrant any person who—

(*a*) commits or attempts to commit any offence against section 81;

(*b*) when suspected by him of committing any offence against section 81 refuses on demand of such prison officer to give his name and address; or

(c) on the demand of a prison officer, gives a name or an address which such prison officer knows or has reason to believe to be false or which subsequently proves to be false,

and shall deliver such person into the custody of a member of a police force, and thereupon such member of a police force shall proceed as if the offence had been committed in his presence.

Unauthorized communications

83.—(1) Every letter or document, except as may be prescribed, written in a prison by or on behalf of a prisoner shall be delivered to the officer in charge of that prison who shall, before the letter or document is removed from the prison, clearly endorse or cause to be endorsed thereon—

(*a*) the name of the prison;

(*b*) a statement to the effect that its removal from the prison is authorized; and

(*c*) the signature or initials of the prison officer making the endorsement.

(2) Every person who comes into possession of a letter or document which he has reasonable cause to believe was written in a prison by or on behalf of a prisoner and which is not endorsed in accordance with subsection (1) shall report that fact as soon as possible to the Commissioner or the officer in charge of the nearest prison and shall deliver the letter or document or cause it to be delivered to the Commissioner or such officer in charge.

(3) No person shall, without the authority of the Minister, publish or cause to be published or transmit to any person for publication or otherwise the whole or any part of a letter or

document which he has reasonable cause to believe was written in a prison by or on behalf of a prisoner and which is not endorsed in accordance with subsection (1).

(4) Any person who contravenes or fails to comply with this section shall be liable to a fine of £25 and to imprisonment for six months.

Offences in respect of prisons and prisoners

84. Any person who—

(*a*) is found loitering within one hundred yards of any prison, or other place where prisoners may be for the purpose of imprisonment or labour, and who fails to depart therefrom upon being requested to do so by any prison officer or by a member of a police force; or

(*b*) in any manner wilfully interferes with any prisoner or gang of prisoners,

shall be liable to a fine of £25 and to imprisonment for six months.

Removal of certain offenders

85. Any person who is found committing an offence against section 84 may be removed from the place where he is committing such offence by a prison officer or a member of a police force and, if the offence is repeated by any such person after he has once been removed in accordance with this section, he may be arrested without a warrant by a prison officer, who, if he makes such an arrest, shall hand the offender over to a member of a police force.

Unlawful possession of articles supplied to prison officers

86. Any person, other than a prison officer, who is found in possession of any article which has been supplied to any prison officer for the purposes of his duty, or of any other prison property, and who fails to account satisfactorily for his possession thereof, or who, without lawful authority, purchases or receives any such article or property from any prison officer, or who aids or abets any prison officer in selling or disposing of any such article or property, shall be liable to a fine of £25 and to imprisonment for six months.

Offences in connexion with uniforms and decorations

87. (1) Any person who wears or uses without due authority any uniform or decoration supplied to or authorized for use by any member of the service, or any uniform or decoration so nearly resembling the same as to be calculated to deceive, shall be guilty of an offence.

(2) Any person who falsely represents himself by act or words to be a person who is or has been entitled to use or wear any uniform or decoration referred to in subsection (1) shall be guilty of an offence.

(3) Any person convicted of an offence under this section shall be liable to a fine of £25 and to imprisonment for six months.

88. The officer in charge shall cause to be affixed in a conspicuous place outside the prison a notice setting forth the acts prohibited under sections 81, 84 and 86 and the penalties which may be incurred by their commission.

Notice to be displayed stating offences in respect of prisons and prisoners

PART XIV

Discipline of Prisoners

89. The following acts and omissions shall be prison offences when committed by a prisoner—

Prison offences

(1) mutiny;

(2) incitement to mutiny;

(3) quarrelling with any other prisoner;

(4) making groundless complaints;

(5) making false charges against prison officers in reply to any questions as to matters concerning the prison or prison discipline, or answering untruthfully any questions put by a prison officer while carrying out this Act;

(6) holding any communication, in writing, by word of mouth or otherwise, with a prisoner or any other person in disobedience of the regulations of the prison;

(7) doing any act calculated to create any unnecessary alarm among prisoners or prison officers;

(8) omitting or refusing to march as ordered, when moving about the prison, or when proceeding to or returning from work;

(9) refusing, without satisfactory reason, to eat the food prescribed;

(10) eating or appropriating any food not assigned to him or taking from or adding to the portions of food assigned to other prisoners;

(11) without permission of a prison officer, removing food from a cookhouse or from a place where meals are served, or disobeying any order as to the issue and distribution of food and drink;

(12) wilfully destroying food, or throwing it away without orders;

(13) introducing into food or drink anything likely to render it unpalatable or unwholesome;

(14) omitting or refusing to wear the clothing issued to him, or exchanging any portion of it for the clothing of other prisoners, or losing, discarding, damaging, or altering any part of it;

(15) removing, defacing, or altering any distinctive number, mark, or badge attached to or worn on such clothing;

(16) omitting or refusing to keep his person clean, or disobeying any order as to the cutting or shaving of hair;

(17) omitting or refusing to keep clothing, blankets, bedding, or equipment clean, or disobeying any order as to the arrangement or disposition of any such articles;

(18) interfering in any way with prison locks, lamps, or lights, or other public property without authority;

(19) stealing the prison clothing or any part of the prison equipment of any other prisoner;

(20) committing a nuisance in any part of the prison;

(21) defacing or injuring the walls, furniture, or other property of the prison;

(22) spitting on or otherwise soiling any floor, door, wall, or other part of the prison building, or any article in the prison;

(23) wilfully fouling latrines, washing or bathing places;

(24) failing or refusing to take due care of, or injuring, destroying, or misappropriating any tools or any clothing or other articles, being public property;

(25) wilfully causing to himself, or failing to report, any illness, injury, or disability;

(26) any act of insubordination;

(27) failing to assist in the suppression of violence;

(28) taking part in any attack upon any prison officer or upon another prisoner;

(29) escaping, conspiring with a person to procure the escape of a prisoner or assisting or inciting another prisoner to escape from the prison in which he is detained or from a conveyance, hospital or other place whatsoever where or in which he may be or whilst in course of removal in custody from one place to another or from any other lawful custody;

(30) possessing any instrument or other thing with intent to procure his own escape or that of another prisoner;

(31) omitting or refusing to help any prison officer to prevent an escape, an attempted escape, or an attack upon such officer or upon another prisoner;

(32) contravening or failing or neglecting to comply with any regulation or lawful order, including a standing order, made under this Act or under any regulation with which it is his duty to comply;

(33) treating with disrespect any prison officer, or any visitor or any person employed in connexion with the prison;

(34) being idle, careless, or negligent at work, or refusing to work;

(35) leaving his cell or other appointed location, or his place of work, without permission;

(36) receiving or having in his possession any prohibited article which he is not entitled to have;

(37) any assault or act of violence;

(38) making unnecessary noise;

(39) disorderly or indecent behaviour;

(40) insulting, threatening, or indecent language;

(41) malingering, or refusing to undergo medical treatment;

(42) wilfully bringing a false accusation against any prison officer or prisoner;

(43) abetting the commission of any prison offence; or

(44) any other act, conduct, disorder, or neglect to the prejudice of good order or discipline.

Trial of prison offences

90.—(1) A charge against a prisoner in respect of a prison offence may, subject to this section, be heard and determined—

(*a*) before a magistrate's court, by a magistrate; or

(*b*) within a prison, by the Commissioner or, at the request of the Commissioner or the officer in charge, by a visiting justice.

(2) A prisoner charged with a prison offence under subsection (1) (*b*) shall be informed of the nature of the charge and shall be given an opportunity of hearing the facts alleged against him and of being heard in his defence.

(3) The Commissioner may confer the power of hearing and determining a charge under subsection (1) (*b*) upon an officer in charge and, in so doing, may limit the officer's power to award punishments conferred by section 92 to punishments less stringent than those specified in that section.

(4) Nothing in this section contained shall be construed as precluding the prosecution of a prisoner for an offence in terms of any other law, so, however, that no prisoner shall be punished twice for the same act or omission.

Punishments for prison offences heard and determined before a magistrate's court

91.—(1) A prisoner found guilty of a prison offence under section 90 (1) (*a*) may be awarded—

(*a*) any one or more or all of the following punishments—

(i) imprisonment for a period not exceeding six months;

(ii) loss, for a period not exceeding sixty days, of a remission of sentence earned in terms of section 107;

(iii) corporal punishment in accordance with sections 96, 97 and 98;

(iv) deprivation of privileges;

(v) extra work for a period not exceeding ten days; and, additionally or alternatively,

(*b*) if he is of or over the age of sixteen years, one, but not more than one, of the following punishments—

(i) solitary confinement for a period not exceeding twenty-five days;

(ii) solitary confinement with penal diet in accordance with section 93 (1);

(iii) reduced diet with or without solitary confinement in accordance with section 93 (2).

(2) If a prisoner is found guilty of a prison offence specified in section 89 (1), (2), (28), (29), (30) or (31), subsection (1) (*a*) (i) shall have effect as if the reference in that subsection to the words "six months" were a reference to the words "two years".

(3) A sentence of imprisonment awarded for a prison offence in terms of this section to a prisoner who—

(*a*) is a convicted prisoner shall commence on the date of expiry of the sentence of imprisonment being served by the convicted prisoner at the time of the offence;

(*b*) is not a convicted prisoner shall commence on the date the sentence of imprisonment is awarded.

Punishments for prison offences heard and determined within a prison

92.—(1) A prisoner found guilty of a prison offence under section 90 (1) (*b*) may, subject to subsection (2), be awarded—

(*a*) any one or more or all of the punishments specified in section 91 (1) (*a*) (ii) to (v) inclusive; and, additionally or alternatively,

(*b*) if he is of or over the age of sixteen years, one, but not more than one, of the punishments specified in section 91 (1) (*b*).

(2) The following provisions shall apply in connexion with the award, in terms of subsection (1), of a sentence of corporal punishment to a prisoner found guilty of a prison offence under section 90 (1) (*b*)—

(*a*) in a case tried by the Commissioner or by a visiting justice the sentence shall not be subject to confirmation;

(*b*) in a case tried by a senior officer or officer in charge, the sentence shall be subject to confirmation by the Commissioner;

(*c*) if a sentence of corporal punishment is not carried out, for medical reasons, the Commissioner, visiting justice, senior officer or officer in charge, as the case may be, may substitute for the sentence any punishment, other than corporal punishment, which he is authorized to award in accordance with subsection (1)

Special provisions relating to the punishments of solitary confinement with penal diet and of reduced diet

93.—(1) Punishment of solitary confinement with penal diet awarded to a prisoner found guilty of a prison offence shall not be awarded for a period exceeding fifteen days and, when awarded for a period exceeding three days, the punishment of penal diet shall be imposed, at three-day intervals, for periods of not more than three consecutive days at a time. No prisoner sentenced to solitary confinement with penal diet shall be put to any form of manual labour until the sentence is completed and no period of solitary confinement served in terms of this subsection shall exceed fifteen days.

(2) Punishment of reduced diet with or without solitary confinement shall not be awarded to a prisoner found guilty of a prison offence for a period exceeding twenty-five days and, when awarded for a period exceeding eight days, the punishment of reduced diet shall be imposed, at three-day intervals, for periods of not more than eight consecutive days at a time.

PART XV

Escapes

Assisting prisoner to escape, etc.

94.—(1) A person, other than a prisoner, who—

(*a*) aids a prisoner in escaping or attempting to escape, conspires with a person to procure the escape of a prisoner or incites a prisoner to escape from the prison in which he is detained or from a conveyance, hospital or other place whatsoever where or in which he may be or whilst in course of removal in custody from one place to another or from any other lawful custody; or

(*b*) with intent to facilitate the escape of a prisoner—

(i) conveys any thing—

(A) to a prisoner; or

(B) into a conveyance, prison, hospital or other place whatsoever where or in which a prisoner may be;

or

(ii) places any thing outside a conveyance, prison, hospital or other place whatsoever where or in which a prisoner may be so that it may come into the possession or use of a prisoner,

shall be liable to imprisonment for seven years.

Harbouring prisoners

95. A person harbouring or employing a prisoner whom he knows to be unlawfully at large shall be liable to a fine of £50 and to imprisonment for six months.

PART XVI

Corporal Punishment

Prison offences for which corporal punishment may be awarded

96. No sentence of corporal punishment for a prison offence shall be awarded under section 91 or 92 unless the prison offence is one specified in section 89 (1), (2), (28), (29), (30), (31) or (37) or is a third or subsequent offence against any provision of that section.

Certain prisoners not liable to corporal punishment

97. No sentence of corporal punishment for a prison offence shall be awarded in terms of section 91 or 92 to a prisoner who is—

(*a*) a woman; or

(*b*) under sentence of death.

Number of strokes to be specified

98. Whenever a sentence of corporal punishment for a prison offence is awarded under section 91 or 92 the number of strokes, which shall not exceed twelve, shall be specified.

Corporal punishment; confirmation

99. Where any law provides for confirmation of any sentence of corporal punishment awarded by a court, no such sentence shall be carried out until it has been confirmed in accordance with such law.

Type of cane and method of infliction

100. Corporal punishment shall be inflicted with a cane of a type and in a manner approved by the Minister.

Medical officer and officer in charge to be present while corporal punishment is being inflicted

101. A sentence of corporal punishment shall not be carried out unless—

(*a*) a medical officer has, after examination, certified that in his opinion the prisoner is physically fit to undergo the sentence of corporal punishment about to be inflicted on him; and

(*b*) the medical officer who made the examination referred to in paragraph (*a*) and the officer in charge are present while the corporal punishment is being inflicted on the prisoner.

102. The medical or prison officer mentioned in section 101 may at any time during the carrying out of the sentence of corporal punishment intervene and prohibit the remainder of the sentence from being carried out if in his opinion the punishment is likely to cause more serious injury than is contemplated in the sentence.

Sentence of corporal punishment may be stayed

103. No sentence of corporal punishment shall be carried out by instalments.

Corporal punishment not to be inflicted by instalments

PART XVII

Prisoners Under Sentence of Death

104. Every prisoner sentenced to death shall be confined in some safe place within a prison and, if possible, shall be kept apart from other prisoners and shall be placed under constant observation both by day and by night.

Confinement of condemned prisoner

105. No person other than a prison officer, a medical officer, a visiting justice, a minister of religion, or person authorized by the Commissioner shall have access to a prisoner under sentence of death:

Persons who may have access to condemned prisoner

Provided that such prisoner may, with the consent of and subject to any reasonable conditions which may be imposed by the Commissioner or the officer in charge, be visited by his legal advisers and such of his relatives and friends as he may express a wish to see.

106.—(1) Executions shall be carried out at such prisons as the Commissioners may specify and shall be attended by the officer in charge and such other prison officers as the Commissioner or officer in charge may direct, and may be attended by the sheriff, or deputy sheriff, by a minister of religion and such other persons as the Minister may authorize.

Attendance at execution by officials

(2) As soon as may be after sentence of death has been executed on the prisoner, the medical officer shall examine the body and shall ascertain the fact of death and shall sign a certificate thereof and deliver such certificate to the officer in charge, who shall also sign such certificate and transmit it to the registrar of the court which imposed the sentence.

PART XVIII

Remission of Sentence

107.—(1) A convicted prisoner under sentence of imprisonment for a period of more than one month, other than a prisoner

Remission

sentenced to imprisonment for life, may earn by satisfactory industry and good conduct remission of one-third of his sentence:

Provided that in no case shall a sentence be reduced by reason of remission to less than one month.

24 of 1962(F)

(2) Any convicted prisoner who, immediately before the date of commencement of the Prisons Amendment Act, 1962 (that is to say, the 1st October, 1962), was serving a sentence of imprisonment of less than three years, may earn by satisfactory industry and good conduct remission of his sentence equal to—

(*a*) one-quarter of the period of imprisonment which he had served at the said date; and

(*b*) one-third of the sentence which was imposed on him and which is unexpired at the said date;

and accordingly any remission credited to such prisoner on the said date shall be disregarded:

Provided that in no case shall a sentence be reduced by reason of remission to less than one month.

(3) Any convicted prisoner other than a prisoner—

(*a*) sentenced to imprisonment for life; or

(*b*) referred to in subsection (4) or in section 109,

who, immediately before the date of commencement of the Prisons Amendment Act, 1962, was serving a sentence of imprisonment of three years or more, may earn by satisfactory industry and good conduct remission of one-third of his sentence.

(4) Any convicted prisoner who, immediately before the date of commencement of the Prisons Amendment Act, 1962, was being detained in prison in consequence of the cancellation of a licence granted to him under the provisions then comprising Part XIX of this Act to be at large in Malaŵi or in any other territory, may earn by satisfactory industry and good conduct remission of one-third of the sentence of imprisonment which was imposed on him and which was unexpired at the date his detention commenced in consequence of the cancellation of his licence.

(5) For the purpose of giving effect to subsections (1), (2), (3) and (4) every prisoner referred to in those subsections shall—

(*a*) in the case of a prisoner referred to in subsection (1), on his admission to prison; and

(*b*) in the case of a prisoner referred to in subsections (2), (3) and (4), on the date of commencement of the Prisons Amendment Act, 1962,

be credited with the full amount of remission he can earn from which shall be deducted any loss of remission awarded to him for a prison offence in terms of section 91 or 92.

(6) The Commissioner may restore in whole or in part any remission forfeited or lost under this Act including any remission forfeited or lost before the date of commencement of the Prisons Amendment Act, 1962.

Remission on special grounds

108. The Commissioner may recommend to the Minister, who, if he thinks fit, may recommend to the President that remission should be granted to a prisoner by reason of the meritorious conduct or the mental or physical condition of such prisoner.

PART XIX

Transitional Provisions Relating to a Prisoner in Relation to Whom a Licence to be at Large was in Force at the Date of Commencement of the Prisons Amendment Act, 1962

Transitional provisions

24 of 1962(F)

109.—(1) Notwithstanding the repeal of the former Part XIX of this Act by section 11 of the Prisons Amendment Act, 1962, the provisions of that Part, other than section 113 (2) and (3), as in force before such repeal shall, subject to subsection (2), continue to apply in relation to a licence to be at large which was in force immediately before the date of commencement of the Prisons Amendment Act, 1962 (that is to say, the 1st October, 1962), and in relation to the person to whom that licence refers.

(2) Any person referred to in subsection (1) who, after the date of commencement of the Prisons Amendment Act, 1962, is detained in prison by virtue of Part XIX of this Act as in force immediately before such date, may earn by satisfactory industry and good conduct remission of one-third of the sentence of imprisonment which was imposed on him and which was unexpired at the date such detention commenced.

(3) For the purpose of giving effect to subsection (2) any prisoner referred to in that subsection shall, on the date on which his detention commences, be credited with the full amount of remission he can earn from which shall be deducted any loss of remission awarded to him for a prison offence under section 91 or 92.

PART XX

Release on Licence of Prisoners Undergoing Imprisonment for Life

Release on licence of prisoners undergoing imprisonment for life

110.—(1) The Minister may at any time if he thinks fit release on licence a prisoner undergoing imprisonment for life for any offence for which he was convicted, subject to such conditions as may be specified in the licence; and the Minister may at any time vary, modify or cancel any such condition.

(2) The Minister who released a prisoner in terms of subsection (1) may at any time by order recall to prison that prisoner but without prejudice to the power of the Minister to release him on licence again: and where any prisoner is so recalled his licence shall cease to have effect and he shall, if at large, be deemed to be unlawfully at large.

(3) An order made in terms of subsection (2) shall be sufficient authority for the arrest of the prisoner to whom it relates as if it were a warrant of arrest issued by a magistrate.

PART XXI

Report on Long-term Prisoners

Report on long-term prisoners

111.—(1) At the end of every four years' imprisonment of each prisoner undergoing imprisonment for life, or for a period exceeding seven years, the Commissioner shall forward, in accordance with this section, a report upon such prisoner.

(2) If the prisoner was sentenced for an offence against any law, the report shall be submitted to the Minister.

(3) Where the Minister asks for a report on any prisoner to be supplied at any time or at intervals more frequent than those provided in subsection (1), the Commissioner shall supply such report as requested, and shall arrange for compliance with any instructions as to pardon, respite, reprieve, commutation or remission of sentence given by the President.

PART XXII

Discharge of Prisoners

Officer in charge to be responsible for discharge of prisoners

112.—(1) Every officer in charge shall be responsible for the due discharge from prison of all prisoners under his control immediately upon their becoming entitled thereto.

(2) Where, by or under any enactment in force in Malaŵi, a prisoner becomes entitled to discharge from a prison otherwise than by the expiration of his sentence, the officer in charge shall not discharge him otherwise than in accordance with the terms of an order, warrant or instruction issued in writing under the hand of a person authorized to do so under such enactment or in due course of law.

Day of discharge of prisoners

113. All prisoners who are not persons committed to a prison under the provisions of a law relating to imprisonment for non-payment of debts shall be discharged by noon on the day on which they are entitled to be discharged, but, should that day fall on a Sunday or public holiday, they shall be discharged by noon on the next preceding day not being a Sunday or public holiday.

114. The travelling expenses to such place as the Commissioner may determine of a prisoner on his discharge from prison shall, if the Commissioner by standing orders or otherwise so directs, be paid out of moneys provided by Parliament.

Travelling expenses of prisoner on discharge

PART XXIII

Miscellaneous

115. Every officer in charge within the area for which any session of a High Court is held for the trial of criminal cases shall deliver to that Court at the commencement of each such session a list of the unconvicted prisoners then within his prison, and that list shall specify in the case of each such prisoner the date of admission and the authority for detention, and shall deliver also a list of detained witnesses.

List of prisoners detained to be delivered to High Court

116.—(1) The Commissioner may offer rewards to persons who give information leading to the apprehension of prisoners who have escaped from custody, and any person giving any such information, whether or not any such offer has previously been made, and any person who apprehends, secures, and hands over or causes to be handed over to any officer in charge any prisoner who has escaped may be paid his just and reasonable expenses and, in addition, such sum by way of reward as the Commissioner may determine.

Rewards for apprehension of escaped prisoners

(2) No payment of any sum as a reward shall be made under the authority of this section to any prison officer or member of a police force unless, in the opinion of the Commissioner, such exceptional circumstances exist as to justify such a payment being made.

117. Where the President pardons any person who has been sentenced to death on condition that he serves a period of imprisonment, that person shall be deemed to have been sentenced to such period by the court before which he was convicted.

Commutation of death sentence to sentence of imprisonment

118.—(1) Every person who has been sentenced by a competent court within any country to which the Minister may declare this section to apply may be sent into, imprisoned, and detained in Malaŵi until the expiration of such sentence, or during such portion thereof as may be deemed necessary, and shall be treated and be subject to this Act as if he were undergoing the sentence of a competent court of Malaŵi.

Detention of prisoners from other countries

(2) A certificate under the hand of the Minister, setting forth that from documents laid before him it appears that the person named in the certificate has been sentenced as described in subsection (1) to a period of imprisonment as specified in the certificate, shall be accepted at all times during the continuance

of such period as conclusive evidence that such person is lawfully under detention in accordance with this section.

Removal of prisoners outside Malaŵi

119.—(1) Every person who has been or may hereafter be sentenced to imprisonment by any competent court within Malaŵi may, by warrant signed by the Minister, be removed to any country in which he was born or where he normally resided before his entry into Malaŵi, in order that such person may be detained in any prison in such country until the expiration of his sentence or release according to law.

(2) Every person detained in custody by reason of his having been charged with an offence and either found to have been insane at the time of such offence, or found or certified or otherwise lawfully proved to be unfit on the grounds of his insanity to be tried for such offence, and every person convicted of an offence, and afterwards certified or otherwise lawfully proved to be insane may, by warrant signed by the Minister, be removed to any such territory as is provided in subsection (1), in order that such person may be confined in such place as may be stated in such warrant until the Minister may otherwise determine.

(3) Any person in course of removal under a warrant signed in accordance with this section shall be deemed to be in lawful custody whilst in any part of Malaŵi.

(4) Nothing in this Act contained shall prevent the conviction, judgment, finding, order, or sentence recorded or made in respect of any person removed in terms of this section from being questioned within Malaŵi in the same manner as if he had not been removed, and the sentence of such person may be remitted and his discharge ordered in the same manner and by the same authority as if he had not been removed.

Minister may grant permission to be absent from prison

120. The Minister may, subject to such conditions as he may specify, grant a prisoner permission in writing to be absent from prison for a specified period for personal, family or other reasons if, in the opinion of the Minister, the circumstances of the case warrant the granting of such permission.

PART XXIV

Regulations and Transitional

Power to make regulations

121.—(1) The Minister may make regulations with respect to any of the following matters—

(*a*) the powers and duties and terms and conditions of engagement and service of prison officers and other persons employed in prisons;

(*b*) the powers and duties of medical officers and the medical inspection of prisoners;

(*c*) measures for the prevention of contagious and infectious diseases in prisons;

(*d*) the powers and duties of visiting justices, official visitors, ministers of religion, and prisoners' aid societies;

(*e*) the type and description of cells for separate confinement;

(*f*) the safe custody, classification, hours of labour, mode of employment, segregation, diet, clothing, maintenance, instruction, discipline, discharge, treatment, correction, and training of prisoners;

(*g*) visits to and communications with prisoners;

(*h*) the introduction of a progressive stage system;

(*i*) the introduction of a payment system for prisoners;

(*j*) for the responsibility and safe keeping of all stores, equipment, and accoutrements issued to prisons;

(*k*) for accounts and accounting procedure;

(*l*) for preventing prison officers or visitors or other persons who have access to prisons from divulging to any unauthorized person any information concerning the administration of prisons or the condition, treatment, and affairs of prisoners;

(*m*) the establishment, constitution, functions, and procedure of a prison officers' association and for matters incidental thereto;

(*n*) the custody and maintenance, including charges to be paid by a judgment creditor, of persons who may be committed to a prison under any law relating to imprisonment for non-payment of debts;

(*o*) the treatment of persons declared to be habitual criminals under any law;

(*p*) the carrying out of any sentence of solitary confinement, or spare or reduced diet, awarded under any law;

(*q*) the establishment of such boards as the Minister deems necessary or expedient for any purpose arising under this Act and the powers, rights, privileges and duties of and the procedure to be followed by such boards;

(*r*) prescribing anything to be prescribed under this Act; and

(*s*) generally for the effective administration of this Act, for the good management and government of prisons, and the discipline and safe custody of prisoners.

(2) Regulations made under subsection (1) may prescribe penalties for a contravention thereof, or failure to comply therewith, not exceeding a fine of £100 and imprisonment for twelve months.

(3) In exercising the powers conferred upon him by subsection (1), the Minister may restrict the application of any regulation to one or more prisons and may apply differing regulations in respect of different prisons or classes of prisoners determined by him.

(4) Different regulations may be made in terms of subsection (1) (*a*) for different classes of prison officers and other persons employed in prisons.

Transitional

122.—(1) Unless a contrary intention appears therein, references in any written law to a prison shall be construed as including a reference to a prison established under this Act.

(2) Any person sentenced to any period of imprisonment under any law having force and effect in Malaŵi, who at the date of commencement of this section was due to serve some further part of such sentence, shall be deemed to be a prisoner for the purposes of this Act.

s. 8

SCHEDULE

Ranks of the Service

Senior Officers

Commissioner for Prisons
Senior Superintendent
Superintendent

Junior Officers

Assistant Superintendent
Technical officer Gaoler
Gaoler

Subordinate Officers

Warder 1st Class
Warder 2nd Class
Warder 3rd Class
Warder 4th Class
Instructor

SUBSIDIARY LEGISLATION

ESTABLISHMENT OF PRISONS NOTICE

G.N. 222/1963 268/1970 88/1971 1/1974

under s. 3

The President has declared that the prisons specified in the Schedule shall be prisons under the provisions and for the purposes of the Act.

SCHEDULE

CLASS I

Malaŵi Government Prison, Blantyre
Malaŵi Government Prison, Domasi
Malaŵi Government Prison, Dzeleka Farm, Dowa
Malaŵi Government Prison, Lilongwe
Malaŵi Government Prison, Mikuyu Farm, Zomba
Malaŵi Government Prison, Mikuyu, Zomba
Malaŵi Government Prison, Mpyupyu Farm, Zomba
Malaŵi Government Prison, Zomba

CLASS II

Malaŵi Government Prison, Bvumbwe Tung Station
Malaŵi Government Prison, Chikwawa
Malaŵi Government Prison, Chitipa
Malaŵi Government Prison, Dedza
Malaŵi Government Prison, Karonga
Malaŵi Government Prison, Lilongwe Remand
Malaŵi Government Prison, Mangochi
Malaŵi Government Prison, Mulanje
Malaŵi Government Prison, Mzimba
Malaŵi Government Prison, Mzuzu
Malaŵi Government Prison, Ntcheu
Malaŵi Government Prison, Nkhata Bay
Malaŵi Government Prison, Nkhotakota
Malaŵi Government Prison, Nsanje
Malaŵi Government Prison, Thyolo.

PRISON REGULATIONS

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42/1956 (F)
109/1956 (F)
205/1959 (F)
227/1960 (F)
304/1960 (F)
395/1961 (F)
273/1962 (F)
219/1963
16/1969
88/1975
31/1982

PRISON REGULATIONS

under s. 121

Preliminary

Citation

1. These Regulations may be cited as the Prison Regulations.

Interpretation

2. In these Regulations, unless inconsistent with the context—

"civil prisoner" means any person detained in a prison in terms of section 16 (1) of the Immigration Act, and any other person detained in a prison who is not serving a sentence of imprisonment or who is not an untried prisoner;

"judgment debtor" means a person committed to a prison under any law relating to imprisonment for non-payment of debts;

"long-term prisoner" means any prisoner serving a total sentence of imprisonment of seven years or more;

"offence against discipline" means an offence committed by a prison officer to which Part VI of the Act relates;

"prison offence" means an offence committed by a prisoner to which Part XIV of the Act relates;

"prisoner" does not include a civil prisoner;

"standing orders" means orders issued by the Commissioner under section 13 of the Act.

PART I

Miscellaneous Provisions Relating to Prison Officers

Attestation

3. Every person shall, on enlistment in the service, make a declaration in the form prescribed in the First Schedule.

Training

4. A prison officer shall undergo such training at such places and at such times as the Commissioner may determine.

Searching of staff and quarters

5.—(1) Subject to subregulations (2) and (3) a prison officer and his quarters may be searched at any time.

(2) No search of a prison officer shall be made in the presence of prisoners or otherwise than—

(*a*) on the order of a prison officer who is his senior in rank; and

(*b*) by a prison officer who is—

(i) of like sex; and

(ii) his senior in rank; and

(*c*) in the presence of another prison officer of like sex.

(3) No search of a prison officer's quarters shall be made in the presence of prisoners or otherwise than—

(*a*) on the order of a prison officer who is his senior in rank; and

(*b*) by a prison officer who is his senior in rank; and

(*c*) in the presence of another prison officer.

Liberty to resign

6.—(1) Subject to section 10 of the Act and subregulation (2), no prison officer shall be at liberty to resign from the service until he has completed three years' service and unless he has given one month's notice of his intention to resign to the Commissioner.

(2) A junior prison officer shall be at liberty to resign from the service before he has completed three years' service if—

(*a*) he satisfies the Commissioner that for reasons of urgent private affairs he has good cause to do so; and

(*b*) he makes a refund of the expenses of his engagement as follows—

(i) in the case of a junior prison officer recruited in the United Kingdom whose passage and rail fare to Malaŵi were paid by the Government—

(A) on resignation during his first year of service, £50;

(B) on resignation during his second year of service, £40;

(C) on resignation during his third year of service, £30;

(ii) in the case of a junior prison officer whose rail fare to Malaŵi was paid by the Government and who—

(A) was recruited in the Republic of South Africa; or

(B) paid his own passage to South Africa—

I. on resignation during his first year of service, £30;

II. on resignation during his second year of service, £20;

III. on resignation during his third year of service, £10;

(iii) in the case of a junior prison officer who—

(A) was recruited in Malaŵi; or

(B) paid on his own passage and rail fare to Malaŵi—

I. on resignation during his first year of service, £20;

II. on resignation during his second year of service, £10;

III. on resignation during his third year of service, £5.

Participation in politics

7.—(1) Subject to subregulation (2), the following acts in relation to a prison officer are prescribed as being acts constituting active participation in politics for the purposes of section 17 (3) of the Act—

(*a*) joining or being associated with an organization or movement of a political character;

(*b*) canvassing any person in support of or otherwise actively assisting an organization or movement of a political character;

(*c*) displaying or wearing rosettes, favours, symbols, posters, placards or like articles having a political significance;

(*d*) attending a political meeting or assembly when wearing the uniform of the service or any part thereof which is likely to identify him with the service;

(*e*) asking questions from the floor at a political meeting;

(*f*) expressing views of a political character to a prisoner or publishing such views or causing them to be published in speeches, broadcasts, letters to the Press, articles, leaflets, posters, placards, books or otherwise;

(*g*) any other act or conduct whatever of a prison officer whereby the public might reasonably be induced to associate or identify him with an organization or movement of a political character.

(2) Nothing in subregulation (1) shall be construed as precluding an officer from—

(*a*) asking questions from the floor at a political meeting held with the permission of the Minister responsible for the Public Service at which the audience consists only of persons in the employment of the Government of Malaŵi;

(*b*) explaining Government policy in the course of his duties as an officer;

(*c*) performing the duties of a returning officer, polling officer or like officer at a parliamentary or local authority election or at a referendum;

(*d*) voting at a parliamentary or local authority election or at a referendum.

PART II

Powers, Functions and Duties of Prison Officers Generally

Visits and inspections

8. The Commissioner shall visit and inspect and cause to be visited and inspected all prisons as often as is necessary in the interests of good administration.

Uniforms

9. Unless the Commissioner otherwise directs, a prison officer on duty shall wear the appropriate uniform and badges of rank prescribed in the Second Schedule.

Duty to report irregularities

10. A prison officer, other than an officer in charge, shall immediately report any contravention of the Act or of the regulations made thereunder or of standing orders which comes to his notice to the officer in charge.

Arms, Accoutrements, etc., to be delivered up on discharge

11. A prison officer shall, on his discharge from the service, deliver his arms, ammunition, accoutrements, uniform and other equipment which has been issued to him—

(*a*) if he is an officer in charge, to his relieving officer; or

(*b*) if he is not an officer in charge, to the officer in charge.

Representations to Minister or Commissioner

12.—(1) A prison officer who wishes to make representations of a public nature to the Commissioner, shall—

(*a*) if he is an officer in charge, submit his representations in writing direct to the Commissioner;

(*b*) if he is not an officer in charge, submit his representations in writing to the officer in charge for transmission to the Commissioner.

(2) A prison officer who wishes to make representations of a private and confidential nature to the Commissioner shall submit his representations in writing direct to the Commissioner.

(3) The Commissioner may, if he considers it necessary in the interests of the service to interview any prison officer who has made representations under subregulation (1) or (2), summon that prison officer before him at public expense.

(4) If a prison officer requests that any representations made by him under subregulation (1) or (2) shall be brought to the notice of the Minister, the Commissioner shall forward those representations to the Minister with such comments as he may wish to make.

PART III

Powers, Functions and Duties of an Officer in Charge

Investigation of irregularities

13.—(1) An officer in charge shall investigate without delay any contravention of the Act or of the regulations made thereunder or of standing orders which is reported to him by a prison officer or otherwise comes to his notice.

(2) In the case of a prison offence or an offence against discipline, an officer in charge shall investigate the matter not later than the following day or, if the following day is a Sunday or a public holiday, on the next following working day.

Cleanliness of prison

14. An officer in charge shall cause the prison to be kept clean and tidy and all cells to be washed or cleaned once each week or more frequently, if circumstances require.

Prison walls, etc.

15. An officer in charge shall—

(*a*) ensure that both sides of the outside walls of the prison are kept clear of vegetation, rubbish or anything likely to facilitate escape; and

(*b*) cause all tools and other equipment likely to facilitate escape which are not in use or under lock and key in a store to be guarded.

Precautions against fire

16. An officer in charge shall—

(*a*) prescribe—

(i) the precautions against fire to be observed in the prison;

(ii) the steps to be taken for the disposal and safeguarding of prisoners in the event of fire;

(iii) the measures to be taken to extinguish and prevent the spreading of any fire; and

(iv) the duties of prison officers with respect to any matter referred to in this paragraph;

(*b*) ensure—

(i) that all prison officers are acquainted with and trained in their duties in the event of fire; and

(ii) that appliances for the extinction of fire are kept at all times in good order and ready for use.

Notification of illness and injury of prison officers

17.—(1) An officer in charge shall notify without delay the illness or injury of any prison officer to the medical officer.

(2) If a prison officer is injured in the course of duty, the officer in charge shall submit a report in writing to the Commissioner giving full particulars of the circumstances in which the prison officer sustained his injury.

Sick prisoners

18.—(1) An officer in charge shall notify the medical officer of the name of any prisoner who—

(*a*) is ill or injured; or

(*b*) complains of illness or injury; or

(*c*) appears to the officer in charge to require treatment for any physical or mental ailment; or

(*d*) is in solitary confinement; or

(*e*) is under restraint.

(2) An officer in charge shall notify the medical officer of any case of sudden illness or serious injury in the prison.

(3) An officer in charge shall ensure that adequate arrangements are made for sick prisoners and for their safe custody and shall, so far as he is able in the circumstances, put into effect any written recommendation regarding the treatment, isolation or care of a sick prisoner made to him by the medical officer.

(4) If an officer in charge is notified by the medical officer that a prisoner is dangerously ill, he shall inform the Commissioner and the relatives of the prisoner.

(5) If a prisoner is seriously injured at labour or otherwise, the officer in charge shall submit a report in writing to the Commissioner giving full particulars of the circumstances in which the prisoner sustained his injury.

Recommendations of medical officer

19.—(1) An officer in charge shall comply, whenever it is practicable, with the lawful and reasonable recommendations of the medical officer.

(2) If an officer in charge is of the opinion that it is not practicable to comply with any recommendation made to him by the medical officer, or that the recommendation is not lawful or reasonable, he shall refer the matter to the Commissioner for his decision.

Disposal of body

20.—(1) If the interests of public health and the circumstances permit, an officer in charge shall, after complying with section 32

of the Act, cause the body of any prisoner who has died to be delivered to his relatives or friends for burial, should they so request.

(2) If the relatives or friends of any dead prisoner do not request that the body of the prisoner be delivered to them for the purpose of burial, an officer in charge shall cause the body to be decently interred at public expense.

(3) An officer in charge shall dispose of the property of a dead prisoner, which was taken from him on his admission to prison, in accordance with the law of Malaŵi relating to the administration of the estates of deceased persons.

Complaints and applications of prisoners

21.—(1) An officer in charge shall—

(*a*) ensure that every prisoner is given opportunity, and reasonable facilities therewith, to—

(i) make complaints to him; or

(ii) make application to him in regard to any matter; or

(iii) interview a visiting justice; or

(iv) interview an official visitor;

(*b*) investigate any complaint made to him by a prisoner;

(*c*) deal with any application made to him by a prisoner; and

(*d*) redress any legitimate grievance of a prisoner.

(2) A note of any complaint or application made by a prisoner to an officer in charge in terms of subregulation (1) (*a*) (i) or (ii) shall be entered in the record of that prisoner, together with a note of the decision of or the action taken by the officer in charge.

Prisoners to have facilities to appeal

22. An officer in charge shall ensure that every prisoner is given opportunity, and reasonable facilities therewith, to—

(*a*) note and prosecute an appeal against conviction and, additionally or alternatively, sentence; or

(*b*) submit a statement on review in terms of any Territorial law relating to the review of criminal judgments.

Petitions

23.—(1) Subject to subregulation (3) an officer in charge shall permit a prisoner to submit a petition to the Minister with respect to any matter relating to his imprisonment or in mitigation of sentence.

(2) The Minister may, if he thinks fit, transmit any petition made to him in terms of subregulation (1) to the President, as the circumstances of the case require, for his consideration and decision.

(3) No petition referred to in subregulation (1) shall be made—

(*a*) in mitigation of sentence, if an appeal by the prisoner to a court is pending;

(*b*) within twelve months of the rejection of a similar petition by the prisoner;

(*c*) if the decision on a petition already submitted by the prisoner is pending.

(4) A prisoner may submit a petition to the Commissioner with respect to any matter affecting his imprisonment at any time.

(5) An officer in charge shall forward to the Commissioner for his decision, or, as the case may be, for transmission to the Minister any petition under this section, together with a report on the prisoner giving his full particulars, a medical report, if the circumstances of the case require, and any comments which the officer in charge may wish to make.

(6) The Commissioner shall give notice of the decision come to on any petition submitted by a prisoner in terms of this regulation to the officer in charge who shall—

(*a*) cause a note of the decision to be entered on the record of the prisoner; and

(*b*) inform the prisoner of the decision.

(7) A prisoner shall acknowledge that he has been informed of the decision on his petition by affixing his signature or mark against the note of the decision entered on his record.

Visits and inspections

24.—(1) Subject to subregulation (2), an officer in charge shall—

(*a*) visit and inspect daily all wards, cells, yards, workshops, kitchens, latrines and other parts of the prison;

(*b*) visit and inspect daily all working parties of prisoners;

(*c*) so far as circumstances permit, see each prisoner daily; and

(*d*) inspect the food issued to prisoners daily and ascertain whether the food is wholesome and of the correct quantity.

(2) If an officer in charge is unable to carry out the visits and inspections referred to in subregulation (1), he shall record in a journal to be kept for the purpose to what extent he has omitted to do so and the reason for the omission.

(3) An officer in charge who is unable to make any or all of the visits and inspections referred to in subregulation (1) may delegate his duties to another prison officer.

Unlock and lock-up

25. An officer in charge shall ensure that all prisoners are locked-up and unlocked at the times prescribed in standing orders or otherwise fixed by the Commissioner in writing.

Reports accounting for prisoners

26.—(1) An officer in charge shall require and be furnished with reports accounting for all prisoners in the prison at lock-up and unlock of the prisoners and at the hours they go to and return from labour.

(2) An officer in charge may require and shall be furnished with reports accounting for all prisoners at such times other than those specified in subregulation (1) as he may think fit.

Accounts, stores, records, etc.

27. An officer in charge shall—

(*a*) be responsible for the safe custody of all prisoners' records, warrants, monies, stores, furniture, tools, clothing, arms, ammunition and other things and materials, including the property taken from prisoners on admission to prison, kept in the prison;

(*b*) ensure that such books and records as the Commissioner may determine are properly maintained and kept up to date.

Maintenance of arms, ammunition, etc.

28. An officer in charge shall ensure that all arms, ammunition, batons and similar equipment kept in the prison are maintained in good condition, securely stored and readily available for issue to prison officers.

Night visits

29.—(1) An officer in charge shall ensure that the night guard of the prison and each part of the prison is visited at least once a week at an uncertain hour between the hours of eleven at night and five in the morning.

(2) An officer in charge shall cause a note of every visit made in terms of subregulation (1), stating the hour, the condition of the prison and the alertness of the guard, to be recorded in red ink in a book kept for the purpose.

Recreation of prisoners on public holidays

30. An officer in charge shall ensure that on public holidays properly organized recreation and exercise are arranged for the prisoners.

PART IV

Powers, Functions and Duties of Medical Officers

Medical Inspection

31.—(1) A medical officer shall not less than once each week inspect every part of the prison and, in particular, the sanitation and the facilities provided for washing and cooking, in order to ascertain whether any condition exists which is likely to be injurious or dangerous to the health of the prisoners.

(2) A medical officer shall immediately report in writing to the officer in charge any condition in the prison which, in his opinion, is likely to be injurious or dangerous to the health of the prisoners.

Labour classification

32.—(1) A medical officer shall, if circumstances permit, examine each convicted prisoner and classify him for the purposes of labour as—

(*a*) fit for all types of labour; or

(*b*) fit for industrial labour; or

(*c*) fit for light labour; or

(*d*) unfit for any type of labour.

(2) A medical officer shall endorse the labour classification of each prisoner on his record.

Medical attention

33. A medical officer shall—

(*a*) examine all prisoners who complain of illness;

(*b*) treat all sick prisoners;

(*c*) notify the officer in charge of all cases of serious illness or infectious or contagious disease; and

(*d*) make in writing to the officer in charge such recommendations regarding the treatment, isolation or care of a sick prisoner as he thinks fit.

Medical reports on prisoners under sentence of death

34.—(1) For the purposes of section 28 of the Act, a medical officer shall report to the officer in charge on the mental condition of a prisoner under sentence of death—

(*a*) within one week of his first examination of the prisoner;

(*b*) if subsequently there is, in the opinion of the medical officer, a change in the mental condition of the prisoner, immediately on observation of that change; and

(*c*) immediately after the dismissal of any appeal lodged by the prisoner.

(2) A medical officer shall report to the officer in charge on the physical condition of a prisoner under sentence of death at the same time as he reports on the mental condition of that prisoner in terms of subregulation (1).

(3) An officer in charge shall immediately submit any report made by a medical officer in terms of this regulation to the Commissioner, together with any comments which he may wish to make.

(4) In this regulation, any reference to a medical officer shall be construed as a reference to the medical officer of the prison to which a prisoner under sentence of death has been transferred in terms of regulation 116 (1).

Report on serious medical condition of prisoner

35. If a medical officer is of the opinion that—

(*a*) the life of a prisoner is likely to be endangered by his further confinement in prison; or

(*b*) a sick prisoner is unlikely to survive his sentence; or

(*c*) a prisoner is totally and permanently unfit to undergo prison discipline; or

(*d*) the mental health of a prisoner appears likely to become impaired by his further confinement in prison,

he shall submit a report in writing giving his opinion and the reasons for his opinion to the officer in charge who shall immediately forward it to the Commissioner for transmission to the Minister.

Vaccination or inoculation

36. A medical officer may, if he thinks it necessary for the interests of health, vaccinate or inoculate any prisoner who, in his opinion, is fit to be vaccinated or inoculated.

Pregnancy

37.—(1) A medical officer shall notify the officer in charge in writing of any woman prisoner who is pregnant.

(2) The officer in charge shall, in the case of an unconvicted prisoner who is pregnant, report the fact to the court in which criminal proceedings against her have been instituted.

Maintenance of books and records

38. In addition to the register referred to in section 31 of the Act, a medical officer shall maintain such books and records as the Commissioner may determine.

Safekeeping of drugs, poisons and surgical instruments

39. A medical officer, in conjunction with the officer in charge, shall make such arrangements and take such precautions as may be necessary for the safe keeping of any drugs, poisons and surgical instruments in any prison so that no unauthorized person shall have access to them.

Application where no medical officer appointed

40. Nothing in this Part relating to medical officers shall apply with respect to any prison to which a medical officer has not been appointed or nominated in terms of section 25 of the Act.

PART V

Visiting Justices, Official Visitors, Ministers of Religion and Prisoners' Aid Societies

Visiting Justices and official visitors

41. An officer in charge shall—

(*a*) notify a visiting justice or official visitor of the name of any prisoner who has expressed a desire to interview him;

(*b*) notify the Commissioner immediately of any visit made by a visiting justice or official visitor to the prison stating the remarks made by that visiting justice or official visitor in the visitors' book and the action taken by him in regard to those remarks.

Hours at which official visitors may visit prisons

42.—(1) An official visitor may visit the prison to which he is appointed between the time at which the prisoners parade for labour and half an hour before the time at which the prisoners parade for lock-up.

(2) An officer in charge may in special circumstances which he shall report to the Commissioner permit an official visitor to enter the prison at a time other than a time specified in sub-regulation (1).

Ministers of religion

43. An officer in charge shall render every reasonable assistance to ministers of religion who have been duly authorized to visit the prison to hold religious services and give religious instruction.

Prisoners' aid societies

44.—(1) Authorized members of a prisoners' aid society shall only interest themselves in the welfare of prisoners.

(2) An officer in charge shall afford every assistance to authorized members of prisoners' aid societies to visit prisoners for the purposes of their welfare.

Grants to prisoners' aid societies

45. The Minister may pay to the council of any approved prisoners' aid society, under such conditions as he may think fit, any grant which may be made by Government towards prisoners' aid work.

Payment of travelling and subsistence allowances

46. The Minister may approve the payment of travelling and subsistence allowance to official visitors, duly recognized ministers of religion and authorized representatives of a prisoners' aid society from moneys provided by Parliament for the purpose.

PART VI

Discipline of Prison Officers

Complaints against prison officers

47. An officer in charge shall refer to the Commissioner any complaint or charge against a prison officer with which he is not competent to deal.

Submission of returns to Commissioner

48. An officer in charge shall render to the Commissioner each month a return showing the particulars of any punishment—

(*a*) referred to in section 47 (1) (*a*) to (*d*) inclusive of the Act;

(*b*) of a fine of twenty shillings or less,

imposed on a prison officer during the preceding month for an offence against discipline.

PART VII

Desertion

Desertion

49.—(1) If a prison officer absents himself from duty, the officer in charge shall make reports to the Commissioner after the prison officer has been absent for periods of seven days, fourteen days and twenty-one days.

(2) After a prison officer has been absent for a period exceeding twenty-one days, the officer in charge shall report him as a deserter to the person in charge of the nearest police station.

(3) The officer in charge shall report to the Commissioner and to the person in charge of the nearest police station the return to duty of any prison officer whose absence has been reported in terms of this regulation.

PART VIII

Admission and Confinement of Prisoners

New admissions to be interviewed by officer in charge

50. All prisoners admitted to a prison on conviction or transfer shall be interviewed by the officer in charge as soon after their admission as possible.

Hours of admission

51. No person shall be admitted to prison between the hours of 10 p.m. and 6 a.m.

Ranks of police officers who may sign order

52. The rank of a member of a police force by whom an order in writing shall be signed for the admission of a person into prison under section 59 (1) (*d*) of the Act shall be a rank of commissioned or superior officer of police.

Diet, clothing, etc., of prisoners

53.—(1) On admission to prison, a prisoner shall, subject to regulations 54 and 55, be—

(*a*) placed on the appropriate diet scale prescribed in the Third Schedule;

(*b*) issued with the clothing and accessories in the appropriate scale prescribed in the Fourth Schedule;

(*c*) issued with the cell equipment in the appropriate scale prescribed in the Fifth Schedule.

(2) An officer in charge may, in assessing the appropriate scales referred to in subregulation (1), act on the advice of the medical officer and such other authorities as he may deem necessary to consult.

Diet scale of prisoners may be varied

54.—(1) An officer in charge may vary the prescribed scale of diet or substitute one item of diet for another.

(2) An officer in charge shall report to the Commissioner any variation or substitution made by him in terms of subregulation (1).

(3) A prisoner admitted to a civil hospital shall be placed on the normal hospital diet.

Variation of diet, clothing, accessories and cell equipment of individual prisoners

55.—(1) An officer in charge may increase, reduce or vary the diet of any individual prisoner or the clothing, accessories and cell equipment issued to any individual prisoner.

(2) An officer in charge shall cause details of any increase, reduction or variation made by him in terms of subregulation (1) to be entered in a book kept for the purpose.

Prisoners' property

56.—(1) The property of a prisoner which is taken from him on his admission to prison shall be labelled so as to be easily identifiable as the property of the prisoner from whom it is taken, and the prisoner shall acknowledge that the property taken from him is correctly listed and accurately described so as to provide conclusive evidence of its value in the inventory kept by the officer in charge under section 63 of the Act by affixing his signature or mark against the entry relating to his property in that inventory.

(2) An officer in charge shall cause the clothes of any prisoner taken from him on admission to prison, which are not so old, worn out or dirty as to be unsuitable for further use, to be washed before being placed in store.

(3) No tobacco, intoxicating liquor, snuff, foodstuff, firearms

or ammunition in the possession of a prisoner shall be accepted as prisoner's property at the time of his admission, and if any tobacco, intoxicating liquor, snuff, or foodstuff cannot otherwise be disposed of it shall be destroyed.

(4) An officer in charge shall give every facility to a prisoner to dispose of his property:

Provided that sufficient clothing for the prisoner to wear on discharge shall be retained.

(5) An officer in charge shall inspect the place where property which is taken from prisoners on their admission to prison is stored at regular intervals and take such steps as he may consider necessary for its proper preservation.

(6) The property of any prisoner who has escaped and has not been recaptured or who has been released and which has not been claimed by him may be sold by public auction after the expiration of a period of five years from the date of his escape or, as the case may be, his release.

(7) The proceeds of any property sold by public auction under subregulation (6), together with any money deposited in the name of any prisoner referred to in that subregulation, shall be credited to revenue.

(8) An officer in charge may order any property referred to in subregulation (6) which, in his opinion, has no value to be destroyed.

Weighing of prisoners

57.—(1) An officer in charge shall, if circumstances permit, cause every prisoner to be weighed immediately on his admission to prison and once each month thereafter.

(2) The weight of a prisoner determined at each weighing referred to in subregulation (1) shall be recorded in the prisoner's record and in such books as the Commissioner may determine.

(3) An officer in charge shall notify the medical officer of any substantial change in the weight of any prisoner.

Haircutting and shaving

58.—(1) The hair of a convicted male prisoner shall be kept short and tidy.

(2) The head of a convicted prisoner shall not be shaved except on the order of the officer in charge acting on the advice of the medical officer in the interests of health and hygiene.

(3) Save as is provided in subregulation (4), a convicted male prisoner shall keep his face close shaved unless he has the permission of the officer in charge to keep or grow a moustache and additionally or alternatively a beard.

(4) If the genuine religious principles of any convicted prisoner inhibit the shaving of his face or the cutting of his hair, he shall not be required to shave or to have his hair cut except on the order of the officer in charge acting on the advice of the medical officer in the interests of health and hygiene.

(5) The hair of a convicted female prisoner shall be kept clean and tidy and shall not be cut except at her request or on the order of the officer in charge acting on the advice of the medical officer in the interests of health and hygiene.

(6) An unconvicted prisoner shall not be required to shave his face or to have his hair cut except on the order of the officer in charge acting on the advice of the medical officer in the interests of health and hygiene.

Bathing

59. Subject to such instructions as the officer in charge acting on the advice of the medical officer may give, every prisoner shall bathe himself on his admission to prison and thereafter as often as the officer in charge may require.

Rights and privileges of prisoner

60.—(1) No prisoner shall conduct any business in any prison or initiate any legal proceedings from prison without the permission of the Commissioner.

(2) A prisoner shall not be entitled to exercise any right or claim any privilege which is not a right or privilege conferred on a prisoner by the Act or these Regulations or by any other law.

Forcible feeding

61. A prisoner shall not be forced to eat except on the order of the officer in charge acting on the advice of the medical officer.

PART IX

Classification of Prisons

Classification of prisons G.N. 88/1975

62. Prisons shall be classified into the following categories which may be either maximum or medium security prisons—

(*a*) Prisons for the detention of all classes of prisoners sentenced to any term of imprisonment; — Class I prisons.

(*b*) Prisons for the detention of all classes of prisoners sentenced to any term of imprisonment not exceeding two years and prisoners awaiting transfer to a Class I prison; — Class II prisons.

Detention of prisoners in any prison

63. The Commissioner may generally or specifically order the detention in any prison of prisoners for the purposes of their classification under section 64 of the Act.

Cell accommodation

64.—(1) In no circumstances shall two male prisoners only be locked up together in the same cell; the number shall always be one or three or more.

(2) A prisoner shall not be authorized to change the cell allotted to him except on the order of the officer in charge.

PART X

Custody, Removal and Restraint of Prisoners

Medical examination before transfer

65.—(1) A medical officer shall examine any prisoner who is to be transferred to another prison.

(2) No prisoner shall be transferred to another prison—

(*a*) unless the medical officer has certified that he is fit to be transferred; and

(*b*) otherwise than in accordance with such instructions in regard to his health as the medical officer may give.

Prisoner under restraint

66.—(1) A prisoner confined by means of mechanical restraint under section 71 of the Act shall be confined by means of a strait-jacket, handcuffs or leg-irons.

(2) A prisoner confined by means of mechanical restraint shall be released from his confinement as soon as circumstances permit.

(3) In no circumstances shall mechanical restraint be used as a punishment.

(4) An officer in charge shall—

(*a*) on each occasion on which he employs mechanical restraint, record the circumstances in a book kept for the purpose stating—

(i) the mechanical restraint employed;

(ii) the reason why such mechanical restraint was necessary; and

(iii) the period for which it was employed; and

(*b*) notify the Commissioner, the medical officer and the visiting justice who next visits the prison of the particulars entered in that book.

Use of handcuffs and leg-irons

67.—(1) An officer in charge may order the use of handcuffs for prisoners transferred to another prison.

(2) In no circumstances shall leg-irons be used for prisoners transferred to another prison.

Prisoners' clothing at court

68.—(1) A convicted or unconvicted prisoner shall not appear in court in prison clothing.

(2) If the clothing of a convicted or an unconvicted prisoner is not suitable or sufficient for the purpose of his appearance in court, he shall be provided with garments which are not of a prison pattern.

PART XI

Labour of Prisoners

Hours of work

69.—(1) Subject to this regulation and regulation 71, the hours of work for prisoners shall be the hours of work prescribed in standing orders or otherwise fixed by the Commissioner in writing.

(2) The hours of work for prisoners shall be—

(*a*) not less than eight or more than ten hours each week day; and

(*b*) not more than five hours on Saturday.

(3) Prisoners employed on task work shall cease work on completion of each task.

Days of rest

70. Except under special circumstances which shall be reported to the Commissioner, Sundays and all public holidays shall be observed as days of rest.

Wet weather

71. In wet weather an officer in charge shall decide whether prisoners are to be sent to work outside the prison and the times at which they are to be sent to work outside the prison.

Exercise of prisoners employed on sedentary work

72. Prisoners who are not employed in association with one another or who are employed on sedentary work, such as tailoring or matmaking, shall, if circumstances permit, be permitted to exercise in the open air for one hour each day.

Prison labour

73. An officer in charge shall ensure that—

(*a*) prisoners are properly and usefully employed; and

(*b*) work on which prisoners are employed is not dangerous; and

(*c*) a note of each type of work on which a prisoner is employed is entered in his record.

(2) No prisoner shall be authorized to transfer from one working party to another except on the order of the officer in charge.

Prisoners classified as unfit for labour

74.—(1) If a prisoner is classified under regulation 32 as unfit for any type of labour, he shall, if circumstances permit and whilst he is so classified, be detained in the prison hospital but not in solitary confinement.

(2) A prisoner classified as unfit for any type of labour shall be permitted to exercise for one hour each day if he is fit enough to do so.

Outside working parties

75.—(1) Prisoners working outside the prison shall not be employed at a distance of more than ten miles from the prison except on the authority of the Commissioner.

(2) An officer in charge shall ensure that every working party employed at a distance of more than ten miles from the prison is adequately supervised and visited.

(3) No prison officer shall be given charge of more than five prisoners in any isolated working party employed outside the precincts of the prison.

(4) An officer in charge shall decide, with particular reference to security, the proportion of prison officers to prisoners in working parties of more than five prisoners employed outside the precincts of the prison.

Restriction on employment of prisoners

76. Except on the order of the Commissioner, no prisoner shall be employed—

(*a*) in the service of any other prisoner; or

(*b*) in the service of any prison officer or servant of the prison; or

(*c*) for the private benefit of any person.

Prisoner not to be employed in disciplinary capacity

77. No prisoner shall be employed in any disciplinary capacity.

Prisoner may be ordered not to work in association

78.—(1) If at any time it appears to an officer in charge that it is desirable for the maintenance of good order and discipline or in the interests of any prisoner that the prisoner should not be employed in association with other prisoners, he may arrange for that prisoner to work in a cell or in a place apart from other prisoners and not in association with other prisoners.

(2) A prisoner who is not employed in association with other prisoners shall be returned to work in association with other prisoners on the order of the officer in charge.

(3) An officer in charge shall, on the advice of the medical officer, order that a prisoner who is not employed in association with other prisoners shall be returned to work in association with other prisoners.

Simple imprisonment

79. A convicted prisoner sentenced to simple imprisonment may be employed in cleaning the yards, wards or any part of the prison or in his regular trade or occupation, but shall not be employed outside the precincts of the prison.

Labours for female prisoners

80. The labour prescribed for the purposes of section 75 (2) of the Act shall be light labour of a suitable nature authorized by an officer in charge.

PART XII

Maintenance: Civil Prisoners

Civil prisoner may procure food and other necessaries

81.—(1) A civil prisoner shall be allowed to procure for himself and to receive at hours to be determined by the officer in charge food and other necessaries.

(2) An officer in charge may regulate the amount and quality of the food and other necessaries procured by any civil prisoner for the prevention of extravagance and luxury.

(3) If a civil prisoner does not procure food for himself, he shall receive the appropriate prison diet.

No statistics to be taken of civil prisoner

82. No person shall take the statistics of any civil prisoner which are referred to in section 22 of the Act.

Civil prisoners may smoke

83. A civil prisoner shall be permitted to smoke and to receive reputable newspapers and magazines in accordance with such restrictions as to time and place as the officer in charge may determine.

Employment

84.—(1) A civil prisoner may elect to be given employment.

(2) A civil prisoner shall be required to keep his cell, the precincts of his cell, his clothing, furniture and utensils clean and tidy.

Clothing

85.—(1) A civil prisoner shall not be given or compelled to wear prison dress unless, in the opinion of the officer in charge, his clothing is insufficient, improper or in an insanitary condition.

(2) An officer in charge may require any civil prisoner who attempts to escape to wear prison clothing.

Exercise

86.—(1) A civil prisoner may exercise daily during such periods as the officer in charge may determine.

(2) A civil prisoner shall not associate with any other class of prisoner during any period of exercise.

Property

87. The property of a civil prisoner, other than the clothing which he is wearing in accordance with regulation 85, shall be dealt with in accordance with regulation 56.

Visits

88. A civil prisoner may be visited daily at such times and places as the officer in charge may determine.

Letters

89. A civil prisoner shall be permitted to write and receive one letter each week and in special circumstances may be permitted by the officer in charge to write and receive more than one letter each week.

Restrictions on food, clothing or bedding

90.—(1) An officer in charge may order that any food, clothing or bedding which a civil prisoner receives from private sources in terms of this Part shall be searched.

(2) An officer in charge may confiscate any prohibited article discovered in the course of any search made under subregulation (1).

(3) Any prohibited article discovered in the course of a search made under subregulation (1) shall, if it is perishable, be destroyed, or, if it is not perishable, be placed with the prisoner's property.

Maintenance of judgment debtor

91.—(1) The amount prescribed by the Minister to be paid for the daily maintenance of a judgment debtor shall be paid weekly in advance.

(2) An officer in charge shall not admit to his prison any person as a judgment debtor unless he has received from the judgment creditor payment of one week's maintenance in advance.

(3) For the purposes of payment of maintenance, a period of detention of a judgment debtor shall be treated as commencing at twelve noon on the day of his admission to prison.

(4) If the maintenance of a judgment debtor has not been paid by twelve noon on the day it is due, the officer in charge shall forthwith discharge the judgment debtor.

(5) An officer in charge shall discharge a judgment debtor immediately—

(*a*) upon payment of the amount of the debt and costs mentioned in the warrant; and

(*b*) on the giving by the judgment creditor of his written consent to the discharge; and

(*c*) upon an order of court.

PART XIII

Searches

Prohibited Articles and Areas

Responsibility for search

92.—(1) For the purpose of ensuring that prohibited articles are not being kept in the prison, an officer in charge shall, subject to this Part, cause the prison and all prisoners to be searched at such times as he may fix.

(2) An officer in charge shall ensure that searches are performed conscientiously and frequently enough to prevent the keeping of prohibited articles in the prison.

Search of wards and cells

93. Prison wards and cells shall be searched not less frequently than once every two weeks.

Search of workshops

94.—(1) When a prison workshop is searched, the technical officer in charge of the work carried on in that workshop and the discipline officer in charge of the workshop shall be present.

(2) A search of a prison workshop shall, if circumstances permit, be carried out by prison officers who are not prison officers detailed for duty in that workshop.

(3) A search of a workshop shall include a search of all cupboards and receptacles therein.

Separate search of prisoners and cells

95.—(1) The following prisoners and the cells which they occupy shall be searched each morning and evening—

(*a*) prisoners undergoing punishment for a prison offence;

(*b*) prisoners awaiting trial for a prison offence;

(*c*) prisoners who are mentally disordered or defective persons in terms of any law relating to mental disorders;

(*d*) prisoners under sentence of death;

(*e*) prisoners under observation.

(2) An officer in charge may order the search each morning and evening of—

(*a*) any prisoner other than a prisoner referred to in subregulation (1);

(*b*) the cell of any prisoner other than a prisoner referred to in subregulation (1).

Special search

96. If a prison officer has reason to suspect that a prisoner is in possession of a prohibited article, he shall carry out a special search of—

(*a*) such prisoner by removing his clothing out of sight of other prisoners and the prison staff;

(*b*) the cell occupied by such prisoner.

Entries in search book

97. An officer in charge shall on each occasion on which a search is carried out under this Part, other than a search of—

(*a*) a returning work party carried out at the prison gate; or

(*b*) a prisoner on admission to prison; or

(*c*) a workshop party leaving a prison workshop,

record the particulars in a book kept for the purpose stating—

(i) the results of the search;

(ii) the names of the prison officers carrying out the search.

Rub-down search

98.—(1) For the purposes of this section—

"rub-down search" means a quick search of a prisoner without removing his clothes.

(2) All prisoners leaving a prison workshop after labour or for any other reason shall be subjected to a rub-down search to

ensure that no tools or other prohibited articles are removed from the workshop.

99. Unless the Commissioner otherwise directs, every prisoner shall be searched on his return to prison from labour outside the prison. Search on return from labour

100. Working parties leaving the prison for labour outside shall be searched at irregular intervals to ensure that no property is being taken out of the prison to be disposed of by prisoners. Search of outgoing working parties

101. A search shall, if circumstances permit, be carried out by more than two prison officers. Two or more prison officers to carry out search

102. A prisoner shall only be searched by a prison officer of like sex. Officers of the same sex to carry out search

PART XIV

Discipline of Prisoners

103.—(1) When a prisoner is undergoing solitary confinement, the bedding, accessories and clothing which he is not wearing and all the cell equipment, other than the bed and the chamber pot, shall be removed from his cell. Solitary confinement

(2) A prisoner undergoing solitary confinement may be supplied with a book of a religious nature.

(3) A prisoner undergoing solitary confinement shall be exercised for one hour each day.

(4) A prisoner undergoing solitary confinement may be permitted to bathe himself during the daily period of exercise referred to in subregulation (3).

104. An officer in charge shall ensure that every prisoner under punishment for a prison offence is visited not less than twice daily by a prison officer. Visits to prisoners under punishment

105. An officer in charge shall render to the Commissioner each month a return showing the particulars of any punishment imposed on a prisoner under section 90 of the Act. Submission or return of punishments to Commissioner

106. The Commissioner may review any punishment imposed upon a prisoner and may vary or remit such punishment. Commissioner may review punishments

107. Disciplinary proceedings against a prisoner shall be recorded in writing. Written record of proceedings

PART XV

Escaping

Prevention of escape

108. It shall be the duty of all prison officers at all times to prevent the escape of any prisoner.

Escapes to be reported

109. An officer in charge shall—

(*a*) immediately report—

(i) in the form prescribed in Part I of the Sixth Schedule, the escape of any prisoner;

(ii) in the form prescribed in Part II of the Sixth Schedule, the recapture of any escaped prisoner,

to the person in charge of the nearest police station and to the Commissioner;

(*b*) take all reasonable steps practicable to effect the recapture of an escaped prisoner.

Inquiry into escape

110. An officer in charge shall hold an inquiry into the escape of any prisoner and submit a full report to the Commissioner.

PART XVI

Corporal Punishment

Type of cane and method of infliction

111.—(1) The type of cane with which corporal punishment shall be inflicted approved by the Minister under section 100 of the Act shall be—

(*a*) in the case of a prisoner under the age of nineteen years, a rattan cane, three feet long and not more than three-eighths of an inch in diameter;

(*b*) in the case of a prisoner who is nineteen years of age or over, a rattan cane, four feet long and not more than half an inch in diameter.

(2) The manner in which corporal punishment shall be inflicted approved by the Minister under section 100 of the Act shall be as follows—

(*a*) a blanket or similar form of protection shall be placed across the small of the prisoner's back above the buttocks;

(*b*) a small square of thin calico shall be dipped in water, wrung out and tied over the prisoner's buttocks;

(*c*) strokes shall be administered from one side, upon the buttocks of the prisoner and on no account on the back.

Sentence of corporal punishment to be carried out as soon as possible

112. Subject to section 99 of the Act, a sentence of corporal punishment shall be carried out as soon as possible after it has been awarded.

Senior or Junior officer to be present

113.—(1) The officer in charge or a senior or a junior prison officer to whom he has delegated that duty shall attend the infliction of every sentence of corporal punishment.

(2) Corporal punishment shall not be inflicted in the presence of other prisoners.

Endorsement of warrant

114. An officer in charge shall cause the date a sentence of corporal punishment is inflicted, together with the number of strokes inflicted, to be endorsed on the warrant of sentence.

Corporal punishment prevented on grounds of health

115.—(1) If a sentence of corporal punishment is not carried out wholly or in part on the grounds of the prisoner's health, the officer in charge shall forward to the Commissioner a certificate given by the medical officer stating that fact.

(2) If a sentence of corporal punishment which—

(*a*) is not a sentence of corporal punishment awarded under section 90 of the Act; and

(*b*) is not awarded with any other punishment,

is not carried out wholly or in part on the grounds of the prisoner's health, the officer in charge shall forward immediately to the court imposing the sentence of corporal punishment a certificate given by the medical officer stating that fact.

(3) The officer in charge shall inform the Commissioner of any order made by the court in and the result of any case referred to in subregulation (2).

PART XVII

Prisoners under Sentence of Death

Transfer

116.—(1) The Commissioner shall cause a prisoner under sentence of death to be transferred immediately under sufficient escort to the prison where the sentence of death is to be carried out.

(2) An officer in charge shall report the admission of a prisoner under sentence of death who has been transferred under subregulation (1) to the Commissioner stating the date of the sentence, the court imposing the sentence and the offence.

Right of appeal

117.—(1) An officer in charge shall inform every prisoner under sentence of death who has been transferred under regulation 116 (1) of his right to appeal.

(2) An officer in charge shall report to the Commissioner—

(*a*) if a prisoner under sentence of death lodges an appeal;

(*b*) when the period in which a prisoner under sentence of death may lodge an appeal has lapsed.

(3) A certificate stating that compliance has been made with subregulation (1) and standing orders relating to appeals by prisoners under sentence of death shall be sent with any report made to the Commissioner under subregulation (2) (*b*).

Illness of prisoner under sentence of death

118.—(1) A prisoner under sentence of death who becomes sick shall not be removed from the cell set aside for his detention without the authority of the Commissioner.

(2) A medical officer shall not treat any sick prisoner under sentence of death in any other place than the cell set aside for his detention without the authority of the Commissioner.

(3) An officer in charge shall cause such bedding and other equipment to be placed in the cell set aside for the detention of a prisoner under sentence of death who is sick as the medical officer may require in writing.

Report on mental condition

119.—(1) Any prison officer who notices anything in the demeanour or behaviour of a prisoner under sentence of death that indicates to him that the prisoner has become mentally disordered shall immediately report in writing to the officer in charge.

(2) The officer in charge shall forward any report made to him under subregulation (1) to the medical officer and to the Commissioner.

Searching

120. An officer in charge shall cause a prisoner under sentence of death to be searched twice daily by a responsible person and shall take every precaution to ensure that he does not obtain any article with which he may do himself injury.

Supervision

121. If more than one prisoner under sentence of death is confined in any prison, the officer in charge shall ensure that adequate arrangements are made in accordance with section 104 of the Act for their proper supervision.

Facility to see minister of religion

122. An officer in charge shall ensure that every prisoner under sentence of death is given every facility to see a minister of religion.

Visits

123.—(1) An officer in charge shall arrange for a prisoner under sentence of death, who so wishes, to be visited by his relatives or, if he has no relatives, by his friends.

(2) If an officer in charge is satisfied that the relatives or friends of a prisoner under sentence of death have not the means to pay the costs of their transport to the prison, he may recommend to the Commissioner that the whole or part of the costs shall be paid from moneys provided by Parliament for the purpose.

Issue of cigarettes and other luxuries

124. A prisoner under sentence of death may be issued with cigarettes, tobacco, snuff and such other luxuries as the Commissioner may in standing orders or otherwise in writing authorize.

Notification of date of execution to prisoner

125.—(1) On receipt of the warrant of execution, an officer in charge or the officer responsible, as the case may be, shall give a prisoner under sentence of death three days' notice of his impending execution.

(2) A prisoner under sentence of death who has been informed of his impending execution may be given a special diet and such other privileges as the Commissioner may in standing orders or otherwise in writing authorize.

Disposal of property

126. An officer in charge shall ensure that every prisoner under sentence of death who has been informed of his impending execution is given an opportunity and reasonable facilities therewith to dispose of his property.

Notification of execution to press

127.—(1) Save as is provided in subregulation (2), no information concerning any prisoner under sentence of death shall be divulged to any unauthorized person, whether before or after his execution.

(2) An officer in charge shall issue a public notice in the following form after an execution has been carried out—

> "This is to certify that the sentence of death passed upon ..... by the High Court sitting at ..... was duly carried out at the Prison ..... this ..... day of ....., 19 ....."

Carrying out of death sentence

128. Execution of a death sentence shall be carried out by such person or persons as the Commissioner may appoint.

Medical officer

129.—(1) A medical officer may attend executions.

(2) A medical officer shall be within the prison whenever an execution is carried out.

Disposal of body

130. The body of an executed prisoner shall be disposed of in accordance with the instructions of the Commissioner.

Allowances

131. Such allowances as the Minister may approve shall be paid from moneys provided by Parliament for the purpose to the executioner, assistant executioner and the prison officers attending any execution.

PART XVIII

Remission of Sentence

Remission table

132. Remission of sentence in accordance with Part XVIII of the Act shall be calculated by means of the Remission Table drawn up and issued by the Commissioner.

PART XIX

Licence to be at Large

Interpretation of terms

133. In this Part—

"holder" means a person to whom a licence has been issued under section 108 of the Act as in force immediately before the commencement of the Prison Amendment Act, 1962 (that is to say, the 1st October, 1962);

"licence" means a licence to be at large under Part XIX of the Act as in force immediately before the commencement of the Prison Amendment Act, 1962 (that is to say, the 1st October, 1962).

Records of reports made by holder

134. The officer in charge of the police station to whom a holder is required to report shall enter in the place provided in the licence a note of each occasion on which the holder reports to him.

Commissioner to be notified if holder fails to comply with conditions of licence

135. A magistrate, prison officer, probation officer or a member of a police force shall notify the Commissioner immediately it comes to his notice that a holder has failed to comply with any condition of his licence.

PART XX

Report on Long-term Prisoners

Prisoners detained during President's pleasure

136. An officer in charge shall immediately report to the Commissioner the admission to his prison of any person on a warrant of the President detaining that person during His Excellency's pleasure.

Reports on detainees

137. An officer in charge shall submit reports on prisoners referred to in regulation 136 at such times as the Commissioner may in each case determine.

PART XXI

Discharge of Prisoners

Reduction of sentence on proportionate payment of fine

138. If a portion of a fine imposed on a prisoner is paid before the expiration of a period of imprisonment imposed on him in default of payment of that fine, a proportionate reduction in the period of his imprisonment shall be made.

Amount proportionate to part of day not to be paid

139. No amount which would have the effect of reducing a period of imprisonment imposed in default of payment of a fine by part of a day shall be paid.

Mode of payment

140. Payment of a portion of a fine shall be made in office hours to the officer in charge or the clerk of the court imposing the fine.

Rations or subsistence allowance on discharge

141. A prisoner discharged from a prison in a District in which he does not normally reside shall be supplied with sufficient food for his journey to his home within Malaŵi or with a subsistence allowance at such rates as are prescribed in standing orders or are otherwise authorized by the Commissioner in writing.

Hours of discharge

142. No prisoner shall be discharged from a prison between the hours of 10 p.m. and 6 a.m.

PART XXII

Visits and Communications

Restriction on visits to prisons and communication with prisoners

143. Save as is provided in the Act, in Part V and in this Part, no person who is not a prison officer or a medical officer shall—

(*a*) communicate with any prisoner without the authority of the officer in charge or the Commissioner; or

(*b*) enter any prison otherwise than in accordance with the terms of a permit issued by the officer in charge on the authority of the Minister or the Commissioner; or

(*c*) be in any prison between the hours of six at night and five in the morning without the written authority of the officer in charge or the Commissioner.

Minimum provision of visits and letters

144.—(1) Save as is otherwise provided in this Part and in Part XXIV, every prisoner shall be permitted—

(*a*) to write and receive one letter on his admission to prison and thereafter once every four weeks;

(*b*) to receive one visitor once every four weeks; and

(*c*) to write one letter to his family for the purpose of informing them of his transfer to another prison.

(2) An officer in charge may permit a prisoner who is eligible for a visit to write a letter and receive a reply instead of receiving a visitor.

(3) If a prisoner becomes eligible to receive a visitor or a letter whilst undergoing solitary confinement, an officer in charge may order that that visit or the delivery of the letter be deferred until the prisoner has ceased to be in solitary confinement.

(4) The Commissioner may, on the recommendation of an officer in charge, as a privilege, permit any prisoner or class of prisoner to write and receive more than one letter and receive more than one visitor each month.

(5) In addition to the letters which a prisoner may be eligible to write and receive or the visitor which a prisoner may be eligible to receive in terms of this regulation, an officer in charge may permit him to write and receive letters and to receive visitors for any purpose which, in the opinion of the officer in charge, is likely to promote the best interests of the prisoner or his family, either during his confinement in prison or after his discharge, and such letter or visit shall be reported to the Commissioner.

Visits to persons imprisoned in default of payment of a fine

145.—(1) An officer in charge shall permit any prisoner undergoing a period of imprisonment in default of the payment by him of a fine to interview relatives or friends at a reasonable hour on any weekday or to communicate with them by letter for the purpose of procuring the payment of that portion of the fine imposed on him necessary to secure his release.

(2) An officer in charge shall inform every prisoner referred to in subregulation (1) of the provisions of that subregulation on his admission to prison.

General restriction and supervision

146.—(1) The Commissioner may impose such restrictions upon and supervision over letters and visits as he deems necessary for securing discipline and good order, for the prevention of crime and the association of criminals and for the welfare of prisoners.

(2) For the purposes of section 83 of the Act, there shall be exempt from subsection (1) of that section a letter or document written or prepared by a prisoner or by a legal practitioner acting on his behalf—

(*a*) for the purposes of or in connexion with proceedings in any court or tribunal;

(*b*) purporting to be a power of attorney, agreement, deed, conveyance, transfer, mortgage, bond, assignment, cession, lease, promissory note, bill of exchange, will or other legal document of a like nature;

(*c*) purporting to be a note, memorandum or instruction authorizing a legal practitioner acting on behalf of a prisoner to prepare any of the documents referred to in paragraph (*b*);

(*d*) purporting to be a notice, application, certificate, return, statutory declaration or other like document prescribed or required in terms of any law.

Censorship of letters

147.—(1) An officer in charge or a prison officer to whom he has delegated the duty shall read every letter to and from a prisoner.

(2) An officer in charge may stop any letter referred to in subregulation (1), if, in his opinion, its contents are objectionable or it is of inordinate length.

(3) A prisoner to whom or by whom a letter is written which is stopped in terms of subregulation (2) shall be advised that the letter has been stopped.

(4) A prisoner to whom a letter is written which has been stopped in terms of subregulation (2) may elect to have the letter returned to the writer or placed with his property against his discharge.

Postage

148.—(1) Letters written by prisoners in terms of this Part shall be dispatched at public expense in a plain envelope.

(2) In no circumstances shall an envelope in which a letter written by a prisoner is contained bear the initials O.M.G.S. or any official frank or any other thing which might indicate that it contains a letter written by a prisoner.

Restriction and supervision of visits

149. Unless the Commissioner otherwise instructs—

(*a*) all visits take place—

(i) within the sight and hearing of a prison officer;

(ii) at such times and places as the officer in charge may determine;

(*b*) a prisoner shall not be visited by more than three visitors at any one visit;

(*c*) a visit shall not last longer than thirty minutes.

Visits by members of a police force

150. An order in writing for the interview of a prisoner in terms of section 68 (1) of the Act may be made by a member of the police force of or above the rank of assistant inspector.

Visits by legal representatives

151. An officer in charge shall permit the legal representative of any prisoner—

(*a*) who is a party to legal proceedings, to interview him in connexion with those proceedings in the sight of, but not in the hearing of, a prison officer;

(*b*) who is not a party to legal proceedings, to interview him in connexion with other legal business in the sight of and in the hearing of a prison officer,

for reasonable periods at all reasonable times.

Costs of indigent visitors may be defrayed from public funds

152.—(1) The Commissioner may authorize that the costs or a portion of the costs of any visit made by the indigent relatives of a long-term prisoner shall be paid from moneys provided by Parliament.

(2) An officer in charge shall recommend to the Commissioner any case in which, in his opinion, the costs or a portion of the costs of a visit should be paid from moneys provided by Parliament.

Visits by Government officers

153. An officer of the Government who is required to visit a prison in the course of his duties may do so with the permission of the officer in charge.

Visitors' book to be signed

154.—(1) Any person, other than a visitor to a prisoner who visits a prison in terms of this Part shall sign the prison visitors' book.

(2) An officer in charge shall report to the Commissioner forthwith all visits made to his prison to which subregulation (1) relates and shall inform the Commissioner of the remarks made in the prison visitors' book by the persons making the visits and any action taken by the officer in charge thereon.

Certain visits shall not be liable to forfeiture

155. Visits to which regulations 144 (5), 145 and 151 relate shall not be liable to forfeiture.

PART XXIII

Payment Scheme

Introduction of payment scheme

156. The Commissioner may authorize the introduction in any prison or part of a prison of a payment scheme for prisoners.

Payment scales

157. A convicted prisoner sentenced to imprisonment for a period exceeding two years, shall, on the completion of one year of such term of imprisonment and provided that he has been of good behaviour during such year, be placed on the payment scale prescribed in the Eighth Schedule if he is detained in a prison or part of a prison in which a payment scheme has been introduced.

Rate of payment may be varied

158.—(1) Notwithstanding regulation 157, the Commissioner, on the recommendation of an officer in charge, may vary the rate of payment made to any prisoner.

(2) Any variation in the rate of payment to a prisoner made under subregulation (1) shall be noted in his record.

Payments to prisoners

159.—(1) The Commissioner shall, by standing orders or otherwise in writing, prescribe the periods on the expiration of which prisoners may make purchases of goods with the amounts which they have earned during the preceding payment period.

(2) Prisoners shall not without the authority of the Commissioner be authorized to handle any amounts which they have earned and purchases shall be made on their behalf by the officer in charge.

(3) Payments made to prisoners in terms of this Part shall be limited to the purchase of such luxuries, including cigarettes, tobacco and snuff, as the officer in charge may determine.

(4) At the end of each payment period the officer in charge shall inform each prisoner eligible for payment of the amount he has earned.

(5) A prisoner shall elect at the end of each payment period either to make purchases to the total amount due to him or to have the total amount due to him placed to his credit for payment to him on his discharge.

Restriction on goods purchased

160. The Commissioner may, by standing orders or otherwise in writing, restrict the issue and use and provide for the safe-keeping of goods purchased by prisoners in terms of this Part.

Method of accounting

161. The Commissioner shall, by standing orders or otherwise in writing, prescribe the method of accounting to be adopted in the administration of payment schemes.

Payments may be forfeited

162. Payments made in terms of this Part are a privilege for prisoners whose conduct and industry warrant it, and payments may be forfeited in whole or in part as in section 91 (1) (*a*) (iv) of the Act is provided.

PART XXIV

Progressive Stage System

Prisoners eligible

163. Prisoners serving a total sentence of imprisonment of three years or more or life sentences shall serve their sentences in accordance with this Part which the officer in charge shall explain to them on their admission to prison.

First stage

164. A prisoner who is eligible shall, on his admission to prison, be a first stage prisoner.

Second stage

165.—(1) If a first stage prisoner is of good behaviour for a continuous period of six months, he shall be advanced to the second stage.

(2) A second stage prisoner shall wear a yellow armband on his right arm.

Privileges second stage

166. A second stage prisoner shall be permitted to write and receive a letter and to receive a visitor once every three weeks and shall be given such other privileges as the officer in charge may determine.

Third stage

167.—(1) If a second stage prisoner is, as a second stage prisoner, of good behaviour for a continuous period of twelve months, he shall be advanced to the third stage.

(2) A third stage prisoner shall wear a blue armband on his right arm.

Privileges third stage

168. A third stage prisoner shall be—

(*a*) permitted to write and receive a letter and to receive a visitor once every two weeks;

(*b*) permitted to remain unlocked, in such places as the officer in charge may determine, for a period of one hour after the prescribed lock-up time for the purpose of participating in games and such other pursuits as the officer in charge may determine; and

(*c*) allotted responsible employment in the prison and in working parties.

Special stage leaders

169.—(1) If a third stage prisoner is, as a third stage prisoner, of good behaviour for a continuous period of six months and proves himself to be reliable and trustworthy, he shall be advanced to the special stage as a leader.

(2) A special stage leader shall wear a red chevron on each arm.

Privileges special stage leaders

170.—(1) A special stage leader shall have the privileges of a third stage prisoner and may, in addition, be permitted to smoke during the period he is unlocked after the prescribed lock-up time in a place set apart from other prisoners if the officer in charge so determines.

(2) The officer in charge may—

(*a*) permit a special stage leader to escort other prisoners in the vicinity of the prison or in small working parties; and

(*b*) permit a special stage leader to move about in the vicinity of the prison unescorted.

Reduction in stage

171.—(1) If a punishment referred to in section 91 (1) (*a*) (i) to (iv) inclusive or 91 (1) (*b*) of the Act is imposed on any prisoner referred to in this Part for a prison offence, the authority punishing him shall order that he be reduced for such period as the authority may fix, to the stage next below the stage in which he was placed at the time of his offence.

(2) If a prisoner who has been reduced to a lower stage under subregulation (1) is of good behaviour throughout the period fixed by the authority imposing the punishment, he may be advanced to the stage from which he was reduced.

Reduction of special stage leader

172. An officer in charge may at his discretion reduce a special stage leader who proves unreliable or neglects his duties or fails in his responsibilities to the third stage for a period to be fixed by him.

Promotion in stage

173. The Commissioner may authorize the promotion of any prisoner, who has not advanced through the appropriate stages, direct to the special stage for any act or conduct, in the opinion of the Commissioner, particularly deserving of reward.

Transitional provisions

174. Any person serving a total sentence of imprisonment of three years or more or a life sentence, who has completed two years of his sentence at the date of commencement of these Regulations, may be admitted to the special stage if he has been of good behaviour for the continuous period of six months immediately preceding that date.

PART XXV

Miscellaneous

Persons not to divulge information without authority

175.—(1) Save as is provided in subregulations (2) and (3), no prison officer or other person authorized to visit a prison shall, without the authority of the Commissioner, divulge to any person, otherwise than in the course of his duties, any information concerning the administration of prisons and the condition and treatment and affairs of prisoners.

(2) A visiting justice or official visitor may bring to the notice of the Minister or the Commissioner any contravention of the Act or of these Regulations or any other matter affecting the welfare or interests of a prisoner which comes to his notice in the course of duties.

(3) A member of a prisoners' aid society authorized to visit a prison, may bring to the notice of the Commissioner, a visiting justice or official visitor any contravention of the Act or of these Regulations or any other matter affecting the welfare or interests of a prisoner which comes to his notice in the course of his duties.

Cameras and photographs prohibited without authority

176. No person shall take a camera into any prison or take photographs in any prison without the authority of the Commissioner.

Offences and penalty

177. Any person who contravenes or fails to comply with the provisions of this Part or of regulation 143 shall be liable to a fine of K200 and to imprisonment for twelve months.

SCHEDULES

reg. 3

FIRST SCHEDULE
DECLARATION ON ENLISTMENT

I, A. B., ... swear by Almighty God/do solemnly, sincerely, and truly declare and affirm that I will be faithful and bear true allegiance to the Republic of Malaŵi and will obey all orders of the President and all the officers placed over me and subject myself to all Acts, regulations and standing orders relating to the Malaŵi Prison Service during my service.

reg. 9

SECOND SCHEDULE
DRESS REGULATIONS

PART I

Badges of Rank

Commissioner of Prisons : (*a*) Cherry red braid band and one row of silver oak leaves on edge of cap peak.

(*b*) Collar gorgettes—black with silver oak leaf spray.

		(*c*) Crossed tipstaves surrounded by a wreath and surmounted by two sun emblems on shoulder straps.
Assistant Commissioner	:	(*a*) Cherry red braid band and one row of silver oak leaves on edge of cap peak.
		(*b*) Collar gorgettes—black with silver stripe.
		(*c*) Crossed tipstaves surrounded by a wreath on shoulder straps.
Senior Superintendent	:	(*a*) Plain silver band on edge of cap.
		(*b*) Lion's head and sun emblem on shoulder straps.
Superintendent	:	(*a*) Plain silver band on edge of cap peak.
		(*b*) Lion's head on shoulder straps.
Assistant Superintendent	:	Two sun emblems on shoulder straps.
Gaoler	:	Malaŵi Arms within wreath on right arm.
Warder Class I	:	Three chevrons.
Warder Class II	:	Two chevrons.
Warder Class III	:	One chevron.

NOTES : 1. The following items of equipment shall be of white metal—

(*a*) Cap badge
(*b*) Buckles
(*c*) Clasps
(*d*) Chain
(*e*) Whistle.

2. Chevrons shall be of white braid on a green base.
3. All buttons to bear the Central Shield of the Malaŵi Coat of Arms and to be of green horn.
4. Prison Service badge to be the Central Shield of the Malaŵi Coat of Arms in a garter bearing the inscription "MALAŴI GOVERNMENT SECURITY PRISONS" surmounted by a Lion and the Rising Sun.

PART II

A. Senior and Junior Staff Uniforms

(*a*) Cap, khaki with soft crown and cherry red braid band, Prison Service badge on front, black leather chin-strap and black leather edging to peak.

(*b*) Bush shirt, terylene, open neck, four pockets with flaps, shoulder straps, short sleeves with turn-ups and belt as (i) below.

(*c*) Shorts, terylene, two side pockets, to be worn 2 inches above the knee-cap.

(*d*) Stockings, khaki, wool or cotton, to be worn with shorts.

(*e*) Hose tops, black to be worn with stockings.
(*f*) Stocking flashes—cherry red.
(*g*) Shoes, black leather, plain toe-caps.
(*h*) Boots, black leather.
(*i*) Belt, cloth, with buckle.
(*j*) Lanyard, double cord, black with clip and swivel.
(*k*) Raincoat, approved pattern.
(*l*) Pullover, khaki, long sleeves, V-neck, to be worn over shirt and collar and tie, shoulder straps carrying badges of rank will be worn.
(*m*) Badges and buttons of approved pattern.
(*n*) Whistle.

B. Subordinate Staff

(*a*) Cap, khaki, with soft crown and cherry red braid band, Malaŵi Prison Service badge in front, black leather chin-strap.
(*b*) Bush shirt, khaki drill, open neck, four pockets with flaps, short sleeves with turn-up.
(*c*) Shorts, khaki drill, two side pockets, to be worn 2 inches above the knee-cap.
(*d*) Shirts, khaki flannel with collar attached, open neck, two breast pockets, shoulder straps, long sleeves.
(*e*) Shorts, khaki terylene, two side pockets, to be worn 2 inches above the knee-cap.
(*f*) Pullover, khaki, long sleeves, V-neck.
(*g*) Black belt, leather, with Prison Service clasp.
(*h*) Raincape.
(*i*) Whistle and chain, to be worn on belt with jersey pullover and across top of pocket with tunic or shirt.
(*j*) Badges, buttons and buckles as specified.
(*k*) Socks, wool.
(*l*) Hose tops, khaki long. } Warders Class IV only
(*m*) Puttees, green, short. } Warders Class IV only
(*n*) Boots, black leather. } Warders Class IV only
(*o*) Stockings, khaki mixture. } Warders Classes III, II and I only.
(*p*) Stocking flashes, cherry red. } Warders Classes III, II and I only.
(*q*) Shoes, black leather.

PART III

Scale of Issue of Clothing and Personal Equipment

SUBORDINATE OFFICERS

	On attestation	*Thereafter*
1. Cap	1	1 annually
2. Bush shirt, khaki drill	1	1 every 3 years

		On attestation	*Thereafter*
3.	Shorts, khaki drill	1	1 every 3 years
4.	Shirts, khaki flannel	2	2 annually
5.	Shorts, khaki terylene	2	2 annually
6.	Pullover, khaki	1	1 every 2 years
7.	Belt, black leather	1	1 every 5 years
8.	Raincape	1	1 every 3 years
9.	Whistle and chain	1	
10.	Badges, buckles, buttons—		
	(*a*) Badge, Wap	1	
	(*b*) Clasp (belt buckle)	1	
	(*c*) Buttons, green horn. . . .	1 set of 10	
	(*d*) Chevrons	1 set	1 set annually
11.	Socks, wool	4 pairs	4 pairs annually
12.	Hosetops, khaki	2 pairs	2 pairs annually
13.	Puttees, green short	2 pairs	2 pairs annually
14.	Boots, black leather	2 pairs	2 pairs annually
15.	Stockings, khaki	3 pairs	3 pairs annually
16.	Stocking flashes, cherry red . .	2 pairs	1 pairs annually
17.	Shoes, black leather	2 pairs	2 pairs annually
18.	Baton, short	1	
19.	Overalls (drivers only)	as required	

PART IV

Marking of Uniform-Subordinate Staff

All issues of uniform to subordinate staff must be clearly marked with the officer's number and the date of issue, e.g. 256—1–9–68.

Marking will be carried out as follows:

	Colour of Mark
Helmet—on sweat band	Black
Bush Shirt—inside collar, at back	Black
Shorts—inside waistband, at back	Black
Jersey—inside welt, at back	White
Puttees—inside, at junction of tape	White
Boots—inside, on left side	White
Belt—inside, at back	Black
Rain Cape—inside collar, at back	White
Blanket—across two corners diagonally opposite . .	White
Shirt—inside collar, at back	Black

(1) Marking will be by stencil and marking paint.

(2) As far as practicable, marking will be carried out at Headquarters Stores before issue to prisons.

PART V

General Instructions—Wearing of Uniforms
Issue of Clothing and Equipment

1.—(1) An officer shall, on first appointment, be issued with clothing and personal equipment as prescribed:

Provided that the Commissioner of Prisons may, in respect of certain officers, or certain classes of officers, direct that specified articles of clothing and personal equipment prescribed shall not be issued.

(2) Any clothing and personal equipment issued to an officer in terms of paragraph (1) shall remain the property of the Malaŵi Government and an officer may at any time be ordered by the Commissioner of Prisons to return all or any such article so issued.

Return of Clothing and Equipment

2.—(1) An officer who fails to return any articles of clothing or equipment issued to him when ordered to do so in terms of pararaph 1 (2) or in terms of subparagraph (2) of this paragraph shall be liable to pay to the Government an amount equal to the cost thereof unless he can show to the satisfaction of the Commissioner of Prisons that such article was stolen, lost or destroyed, and that he took all reasonable precautions to prevent its theft, loss or destruction.

(2) An officer who retires, resigns or is discharged from the service shall return all articles of clothing and equipment on issue to him.

Wearing of Uniform

3.—(1) Unless the Commissioner of Prisons otherwise directs, an officer when on duty shall wear the appropriate uniform and badges of rank.

(2) An officer shall not wear any article of uniform or badge of rank which he is not authorized to wear.

(3) An officer shall not wear any article of uniform or badge of rank when he is off duty.

Maintenance of Clothing and Equipment

4. An officer shall maintain the clothing and personal equipment issued to him in serviceable condition.

5. *Bona fide* repairs to uniforms may be carried out in prison shops at the discretion of the officer in charge. The washing of uniforms within a prison may also be permitted where appropriate facilities exist and with the approval of the Commissioner of Prisons.

reg. 53
G.N. 31/1982

THIRD SCHEDULE

Ordinary Diet	*Daily Issues All Prisons*
Maize Meal	680 g
or Rice	454 g
or Cassava Meal	680 g
or Millet Meal	680 g
Peas or Beans	113 g
Fresh Vegetables	117 g
or Fresh Peas or Beans	57 g
or Sweet Potatoes	284 g
Chillies or Peppers	4 g

Ordinary Diet	*Daily Issues All Prisons*
Dripping	14 g
or Groundnut Oil	7 g
or Groundnuts (shelled)	28 g
or Red Palm Oil	4 g
Salt	21 g
Fruit (in season)	113 g

Ordinary Diet	*Daily Issues Class I and II Prisons*
Meat	113 g
or Fresh Fish	
or Dry Fish	

Penal Diet	*Daily Issues Class I and II Prisons*
Meat	454 g
or Cassava Meal	
or Millet Meal	454 g
Unlimited water	

Penal Diet	*Daily Issues Class I and II Prisons*
Maize Meal	340 g
or Cassava Meal	340 g
or Millet Meal	340 g
Fresh Vegetables	170 g
or Fresh Peas or Beans	57 g
or Sweet Potatoes	284 g
Peas or Beans	57 g
Dripping	284 g
or Groundnut Oil	
or Groundnuts (shelled)	
or Red Palm Oil	
Salt	284 g
Unlimited water	

General observation:

(i) The above quantities are raw weight.

(ii) Water used for cooking vegetables and meat should be issued as soup.

(iii) Vegetables include: spinach, cabbage, tomatoes, kale, pumpkin, turnip, kohlrabi, lettuce, onions, beetroot, carrots, peas and leeks.

(iv) Fruit includes: lemons, limes, oranges, pawpaws, bananas, mangoes, guavas, granadillas and mulberries.

(v) Expenditure may be incurred at such rates as the Minister may approve from time to time for the purpose of purchasing additional rations for issue on Christmas Day.

reg. 53

FOURTH SCHEDULE

Prisoners' Clothing and Accessories

Scale *Male*

2 Shirts
2 pairs of shorts
2 singlets (cold season only)
2 lb. soap monthly (where no laundry)
1 lb. soap monthly (where laundry)
1 pair of sandals, at the discretion of the officer in charge

Scale *Female*

2 dresses
2 pairs of knickers
2 petticoats
2 singlets (cold season only)
2 lb. soap monthly (where no laundry)
1 lb. soap monthly (where laundry)
1 pair of sandals, at the discretion of the officer in charge

reg. 53

FIFTH SCHEDULE

Cell Equipment

Scale

3 or 4 blankets (cold season)
2 or 3 blankets (hot season)
1 sleeping mat
1 mug

Where no permanent latrine is available the following additional issue will be made:

1 latrine bucket or 1 chamber pot

reg. 109

SIXTH SCHEDULE

MALAŴI PRISON SERVICE

PART I

ESCAPE REPORT

1. Name and Prison No. .....
2. Village ..... Chief .....
3. District of origin .....

4. Sentence .....

5. Offence .....

6. Court and date awarded .....

7. Warder from whose custody he escaped .....

.....

8. Time and date of escape .....

9. Whether from inside or outside the prison .....

.....

10. Place .....

.....

11. Method of escape .....

.....

12. Labour on which employed .....

.....

13. If blame attached to any person .....

.....

14. Steps taken to recapture .....

.....

15. If fire-arms used amount of ammunition expended .....

16. Clothing or other articles of Government property taken by escapee and value .....

.....

17. Description (overleaf)

..... Prison .....

Officer in Charge

..... 19 .....

To: The Commissioner of Prisons, P.O. Box 28, Zomba, Malaŵi.
The Officer in Charge, Police, ...District.
Officer in Charge, C.I.D., Zomba.

Description:

Height .....
Age (state if known or estimated) .....
Weight .....
Build .....
Peculiarities of body or limb .....
Colour .....
Colour of face or features .....
District .....
Chief .....
Sub-Chief .....
Village .....
Last address .....
.....
Distinguishing characteristics (gait, speech, gestures, smoking or drug habit, etc.) .....
.....
.....
.....
.....
Tattoo marks .....
Finger-print classification .....
Any other particulars that will assist in aiding recapture .....
.....
.....
.....
.....
.....
.....
.....

PART II

MALAŴI PRISON SERVICE

REPORT OF RECAPTURE OF ESCAPEE

No. ..... Name .....

who escaped from ..... Prison

on ..... was recaptured on .....

at .....

Period at large .....

To *Officer in Charge*

Prison .....

[Subsidiary]
Section 110

Prison Regulations

SEVENTH SCHEDULE

Licence to be at Large

Licence:

Granted under the Prisons Act, to Prisoner No .....
.....

Name ..... convicted by ..... on the ..... day of ..... 19 ..... of the offence of ..... and sentenced to imprisonment for life ..... as recorded in Case File No. ..... of ..... Court.

By virtue of the powers conferred by Part XX if the Prisons Act, I hereby order and direct that ..... at present undergoing the above sentence in ..... Prison be set at large on the ..... day of ..... 19 .....

And this shall be full and sufficient licence for the said ..... to remain at large subject to the conditions and to the provisions of the aforesaid Act.

Given under my hand at ..... this ..... day of ..... 19 .....

.....
Minister

Description of Holder of Licence

Race .....
Colour .....
Apparent age (date of birth if known) .....
Address .....
Trade or profession .....
Father's name.....
Height.....
Build (stout, Medium, Slender) .....
District..... } Where applicable
Chief ..... } Where applicable
Village ..... } Where applicable

IDENTIFICATION MARKS

Photographs

Side Face	Front Face

Fingerprints

RIGHT HAND

Right Thumb	Right Forefinger	Right Middle Finger	Right Ring Finger	Right Little Finger

LEFT HAND

Left Thumb	Left Forefinger	Left Middle Finger	Left Ring Finger	Left Little Finger

Passport or Identification Card No. (where known) .....

Criminal Records Office No. .....

DETAILS OF LICENCE

(1) Period of Licence ..... months ..... days

(2) Expiration date .....

Record or Reports made by Holder of Licence		
Date	Place	Signature and Designation of Officer to whom Report made

CONDITIONS OF LICENCE TO BE AT LARGE

You are hereby licensed to be at large within ..... subject to the following conditions—

(*a*) you shall preserve this licence and at all times produce it on demand by a magistrate, prison officer, probation officer, or member of a police force;

(*b*) you shall abstain from any violation of any written law;

(*c*) you shall not habitually associate with bad characters such as reputed thieves, house-breakers, receivers of stolen property and the like;

(*d*) you shall not lead an idle or dissolute life;

(*e*) you shall, at the time of your release from prison, inform the officer in charge thereof of the place where you intend to reside and shall as soon as possible proceed to such place and report personally to the officer in charge of the police station or the magistrate or District Commissioner in charge of the District whose office is nearest to the place where you intend residing;

(*f*) you shall thereafter ..... report personally to the officer in charge of the police station, the magistrate or the District Commissioner in charge of the District whose office is nearest to the place where you reside;

(*g*) you shall, on every change of address within the same District, notify either personally or by letter the person to whom you originally reported in terms of paragraph (*e*) and, on every change of your residence from one District to another, shall either personally or by letter give that person forty-eight hours' prior notice of your intention to leave and, so far as is practicable, your future address and shall, within forty-eight hours of arrival at your destination within the new District in which you intend to reside, report yourself personally to the officer in charge of the police station, or the magistrate or District Commissioner whose office is nearest to your destination;

(*h*) .....

If you prove to the satisfaction of any magistrate that you have, through no fault of your own, lost this licence, you shall be entitled to a duplicate.

If the Minister is satisfied that you have failed to comply with any of the conditions of this licence, he may order it to be cancelled, unless he is satisfied that your failure was due to circumstances beyond your control and that you observed the conditions of your licence as soon as circumstances permitted.

You are warned that, once your licence has been cancelled, you will be treated as unlawfully at large and may be arrested and, in addition to any penalty which you may incur in respect of the act which led to the cancellation of your licence, be liable to be detained in prison for the period of your original sentence which was unexpired at the date of the cancellation of your licence.

If during the period of this licence to be at large you leave Malaŵi, unless authorized to do so by this licence or by the Minister, you will be guilty of an offence and liable to imprisonment for a period of three months.

I hereby certify that I fully understand the conditions of this licence, which have been explained to me by the officer in charge.

.....	.....
Witness	*Signature or Mark of Holder*
.....	.....
Date	*Officer in Charge*

..... *Prison*

EIGHTH SCHEDULE

reg. 157

Payment Scheme

(1) The following pay may be earned by prisoners in accordance with Part XXIII of these Regulations:

After 12 months . . . . . 1 s per week

(2) Special stage leaders appointed under regulation 169 may receive a gratuity of two shillings per month in addition to the above rate of pay.

NOTE

The Prison (*Maintenance of Judgment Debtors*) *Regulations,* 1956 (*G.N.* 110/1956 (*F*)) *are not published here as these Regulations are to be replaced shortly.*

CONVICTED PERSONS (EMPLOYMENT ON PUBLIC WORK)

CHAPTER 9:03

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CHAPTER 9:03

CONVICTED PERSONS (EMPLOYMENT ON PUBLIC WORK)

ARRANGEMENT OF SECTIONS

SECTION

1. Short title
2. Interpretation
3. Power of court to order persons to perform public work
4. Payment of fine either in full or in part
5. Duties of persons ordered to perform public work
6. Penalty for failure to comply with an order to perform public work
7. Revision and appeals
8. Rules
9. Saving

An Act to consolidate and amend the law relating to the employment of convicted persons on public work

16 of 1954
39 of 1954
27 of 1964
(N)
G.N. 166/1967

[28TH MAY, 1954]

Short title

1. This Act may be cited as the Convicted Persons (Employment on Public Work) Act.

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

Interpretation
Cap. 3:03

"court" means a subordinate court and includes a Traditional Court to the extent to which it is empowered under the Traditional Courts Act to make an order to perform public work.

Power or court to order persons to perform public work

3.—(1) When a person is convicted of any offence by a court and such court is of opinion that the offence would be adequately punished by a sentence of imprisonment not exceeding six months, the court may, instead of awarding a sentence of imprisonment, order such person to perform public work for a period not exceeding six months.

(2) Subject to subsection (1), the court shall not order any person to perform public work for a longer period than the maximum sentence of imprisonment which it could have imposed on such person in respect of the offence of which he has been convicted.

(3) Where any Act provides that an offence is punishable by fine only or by fine and imprisonment in default of payment of such fine, the court may order the person convicted to perform

public work for a period not exceeding six months in default of payment.

Cap. 8:01

(4) Notwithstanding the Criminal Procedure and Evidence Code, no court may order a person to perform public work for a total period exceeding six months where such order is made in respect of two or more offences tried together.

Payment of fine either in full or in part

4.—(1) If any person, ordered to perform public work in default of payment of a fine, pays such fine in full to the court which so ordered him, the order shall thereupon determine.

(2) If any person, ordered to perform public work in default of payment of a fine, pays any sum in part satisfaction of such fine, the period of the public work ordered to be performed by him shall be reduced by a number of days bearing as nearly as possible the same proportion to the total number of days for which such person was ordered to perform public work as the sum so paid bears to the fine imposed.

(3) Where any person is desirous of taking advantage of subsection (2), any payment in part satisfaction of the fine shall be made by such person to the court which ordered him to perform public work and the court shall certify the number of days by which the period of public work originally ordered is reduced by such payment.

Duties of persons ordered to perform public work

5. A person ordered by a court to perform public work shall—

(*a*) work for a period not exceeding eight hours each day (excluding Sundays and public holidays) on such work as shall be allotted to him by the District Commissioner of the District in which such person was convicted or by any person authorized by such District Commissioner in that behalf;

(*b*) reside in such place as the District Commissioner shall direct, or, if the court so orders, in a camp.

Penalty for failure to comply with an order to perform public work

6.—(1) Every person ordered by a court to perform public work who shall without reasonable cause—

(*a*) fail to perform the work lawfully allotted to him; or

(*b*) absent himself from his place of work or of residence; or

(*c*) fail to comply with any Rules made under this Act,

shall be liable to imprisonment for six months:

Provided that where any person is sentenced to a term of imprisonment under this subsection, the court imposing such sentence of imprisonment may, in its discretion, revoke the order to perform public work.

(2) A return of all sentences imposed by a court under this section shall be made monthly to the High Court.

Revision and appeal

7. Where a sentence of fine or imprisonment or an order to perform public work comes before the High Court on appeal or in exercise of its powers of revision, the High Court may alter any sentence of fine or imprisonment to an order to perform public work, or an order to perform public work to a sentence of fine or imprisonment.

Rules

8. The Minister may make Rules—

(*a*) prescribing the nature of the public work to be performed under this Act;

(*b*) establishing camps in which persons ordered to perform public work may be required to reside;

(*c*) prescribing the manner in which persons ordered to perform public work shall be supervised;

(*d*) prescribing anything which, under this Act, may be or is to be prescribed;

(*e*) generally for the better carrying into effect of this Act.

Saving 22 of 1946

9. Any rules made under the Convicted Persons (Employment on Public Work) Ordinance, 1946 (now repealed) and in force at the time of the coming into operation of this Act shall be deemed to have been made under this Act and shall continue in force until other Rules shall be made by virtue of this Act.

SUBSIDIARY LEGISLATION

G.N. 149/1948 152/1964(M)

CONVICTED PERSONS (EMPLOYMENT ON PUBLIC WORK) RULES

deemed to be made under s. 8

[*made under s.* 8 *of the Convicted Persons* (*Employment on Public Work*) *Ordinance,* 1946*, No.* 22 *of* 1946 (*now repealed*)]

Citation

1. These Rules may be cited as the Convicted Persons (Employment on Public Work) Rules.

Minister may declare camps

2. The Minister may by notice published in the *Gazette* declare any place to be a labour camp for the purpose of these Rules.

Interpretation

3. In these Rules—

"camp" means a labour camp declared under rule 2;

"labourer" means any person who has been ordered by a court to perform public work under section 3 of the Act and who has been directed by a District Commissioner to reside in a camp under section 5 (*b*) of the Act.

Medical Examination

4. Any person who has been ordered by a Court to perform public work may be permitted, at the discretion of the public officer having responsibility for the allocation of such work, to be examined by a medical officer who shall notify whether or not that person is fit to perform ordinary labour.

Management of a camp

5. Every camp shall be under the management of a public officer appointed by the Minister.

Appointment of a clerk and labour supervisor

6. The officer appointed as manager of the camp shall appoint one clerk in charge who shall be responsible for the keeping of camp stores, the issue of rations, the making of returns, and the sanitary condition of the camp.

Provision of food

Cap. 9:02, p. 46

7. Food shall be provided for labourers so far as possible in accordance with the diet prescribed in the Third Schedule to the Prison Regulations, and labourers shall partake of food before commencing and at the end of the day's work:

Provided that it shall be lawful to pay such cash allowance, if any, as the Minister may, from time to time, determine, in lieu of food.

8. Labourers shall unless a District Commissioner otherwise directs perform such work as is ordinarily performed by paid labourers employed by the Government department having management of the camp. Work to be performed

9. Every labourer shall obey all lawful and reasonable orders given by a clerk in charge or supervisor of labour. Duty to obey orders

10. Labourers may be given permission to leave the camp area from after work until sunset on Mondays to Fridays inclusive and from after work on Saturdays until sunset on the ensuing Sunday. Permission to leave camp

11. The officer in medical charge of the District in which a camp is declared under rule 2 shall visit such camp at least once in every month. Medical officer

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DECLARATION OF LABOUR CAMPS

42 of 1967

under r. 2

of the Convicted Persons (*Employment on Public Work*) *Rules*

The following places have been declared to be labour camps for the purposes of the Convicted Persons (Employment on Public Work) Rules—

(1) the buildings enclosed by a wire fence at Mpatamanga, in the Southern Region; G.N. 128/1953

(2) the buildings constructed for the purpose at the Agricultural Research Station, Chitedze, Lilongwe, in the Central Region; G.N. 129/1953

(3) The Kochirira Leper Settlement. G.N. 212/1953

(4) Bvumbwe Experimental Station. G.N. 116/1958(F)

ADVISORY COMMITTEE ON THE GRANTING OF PARDON

CHAPTER 9:05

Containing Pages 1

CHAPTER 9:05

ADVISORY COMMITTEE ON THE GRANTING OF PARDON

ARRANGEMENT OF SECTIONS

SECTION
1. Short title
2. Interpretation
3. Composition of the Committee
4. Meetings of the Committee

An Act to make provisions relating to the formation and composition of the Advisory Committee on the Granting of Pardon and for matters ancillary thereto or connected therewith 9 of 1995

[19TH MAY, 1995]

1. This Act may be cited as the Advisory Committee on the Granting of Pardon Act. Short title

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

"Committee" means the Advisory Committee on the Granting of Pardon required to be constituted pursuant to section 89 (2) of the Constitution.

3. The Committee shall consist of— Composition of the Committee

(*a*) the President;

(*b*) such number of ministers of the Government as the President shall consider appropriate to appoint to the Committee; and

(*c*) the Attorney General.

4.—(1) The Committee shall meet at such places and times as the President shall determine. Meetings of the Committee

(2) Meetings of the Committee shall be presided over by the President.

(3) The Committee shall have power to determine its own procedure for its meetings.

ADMINISTRATOR GENERAL

CHAPTER 10:01

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CHAPTER 10:01

ADMINISTRATOR GENERAL

ARRANGEMENT OF SECTIONS

SECTION

1. Short title
2. Incorporation of Administrator General
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An Act to incorporate the Administrator General and to provide for the Official Administration of the Estates of deceased persons and other Trusts and for matters incidental thereto 30 of 1967 30 of 1994

[6TH NOVEMBER, 1967]

Short title

1. This Act may be cited as the Administrator General Act.

Incorporation of Administrator General 30 of 1994

2.—(1) There shall be appointed in the public service an officer to be designated as Administrator General and such other officers subordinate to him may be required to carry out the functions and duties of the Administrator General.

(2) The Administrator General and his successors in office shall be a body corporate under the name of Administrator General (hereinafter in this section referred to as "the Corporation").

(3) The Corporation may sue and be sued in its own name and shall have perpetual succession and a common seal:

Provided that until such time as a common seal for the Corporation can be provided the Corporation may use such seal or stamp as may be approved by the Minister.

(4) The Corporation may acquire, hold and enjoy property of every description and may convey, assign, mortgage, charge, devise or otherwise dispose of or deal with any property vested in the Corporation upon such terms as to the Corporation seems fit, and may do all such other acts and things as bodies corporate may lawfully do, including acting as a trust corporation, and as guardian *ad litem* or next friend of any person under a disability.

(5) The seal of the Corporation may be affixed to any document on the authority of the officer for the time being discharging the duties of the office of Administrator General who shall sign every document to which the seal is affixed and such signature shall be sufficient evidence that the seal was duly and properly affixed.

(6) A notice published in the *Gazette* of the appointment of any person to hold or act in the office of Administrator General shall be conclusive evidence that such person was duly so appointed.

3. [*Repealed by Act No.* 30 *of* 1994]

District Commissioner to act as agent of Administrator General

4. Every District Commissioner shall, at the request of the Administrator General, act as his agent for the purposes of this Act:

Provided that nothing herein contained shall affect the Administrator General's power to appoint such other agents as he thinks fit.

Administrator General or his agents not liable for acts done in performance of their duties

5. Neither the Administrator General nor any of his agents shall be personally liable to any person in respect of goods or chattels in the possession at the time of his death of any person whose estate shall be administered by the Administrator General which shall be sold by the Administrator General or such agents unless the Administrator General or agent shall know or have actual notice before the sale that such goods or chattels were not in fact the property of the person whose estate is being administered by him, and generally neither the Administrator General nor any agent shall be liable for any act done by him *bona fide* in the supposed and the intended performance of his duties unless it shall be shown that such act was done not only illegally, but willfully or with gross negligence:

Provided always that in case of any sale by the Administrator General or any agent of goods or chattels belonging in fact to any third person the amount realized by such sale shall be paid

over to the owner upon proof by him of such ownership unless the same shall have already been applied in payment of the debts of the deceased or shall have been distributed in the ordinary course of administration whilst the Administrator General or agent was in ignorance and without actual notice of the claim of such person to the goods or chattels sold.

Protection of certain property

6.—(1) Where any person has died and—

(*a*) it is not known to the District Commissioner of the District in which he died that he has left any widow, other relative or executor who can properly administer his estate; or

(*b*) it appears advisable to the Administrator General or to such District Commissioner for the protection of the property of the deceased person,

the District Commissioner may take into his custody, without any grant or order of court, all the property of which the deceased was possessed and shall forthwith report the death and particulars of the property to the Administrator General.

(2) A District Commissioner who takes custody of any property under subsection (1) shall dispose of such property in accordance with the directions of the Administrator General.

Cases in which Administrator General may apply for administrations

7. Where—

(*a*) the Administrator General has received a report from a District Commissioner under section 6; or

(*b*) it otherwise comes to the knowledge of the Administrator General that a person has died and that no person has obtained a grant of probate or letters of administration to his estate,

the Administrator General may apply to the court for a grant of letters of administration, with or without a will annexed, to the estate of the deceased and the Court may make such a grant:

Provided that—

(i) no such grant shall be made by the Court until after the expiration of 3 months from the death of the deceased if the Court considers it likely that a person may apply for a grant to whom the Court would, but for this section, make a grant;

(ii) the Administrator General shall not apply to a Local Court for any grant.

Administrator General may be appointed executor

8. Any person may appoint the Administrator General to be executor of his will:

Provided that nothing in this section shall deprive the Administrator General of his right to renounce probate of any will.

Notice of applications

9. The Administrator General shall cause notice of his intention to apply for letters of administration under section 7 to be published in the *Gazette* at least fourteen days before making the application and the cost of such publication shall in every case be deemed to be a testamentary expense and be payable out of the estate of the deceased whether such estate be administered by the Administrator General or any other person:

Provided that nothing in this section shall be construed to limit in any way the powers of the Court to order the sale of perishable property or to make any other order for the interim protection of any estate.

Grant to Administrator General may be revoked and grant made to other person

10. At any time after a grant of letters of administration to the Administrator General under this Act, any person to whom the High Court might have committed administration if no such grant had been made may apply to the High Court for revocation of such grant and for the grant to himself of probate or letters of administration; but no such application shall be made until seven days after notice of intention to make it shall have been given to the Administrator General. Upon such application the High Court, after hearing the Administrator General if he appears, may revoke the grant to the Administrator General and grant probate or letters of administration to the applicant subject to such limitations and conditions as it may think fit.

Administrator General to make inventory and keep accounts

11. The Administrator General shall make a complete inventory of every estate of which administration is committed to him, and shall keep an account of all receipts, payments and dealings with every such estate.

Court may appoint persons to receive minor's share

12. Where any person entitled to a share under the will or in the distribution of the estate of a deceased person whose estate is being administered by the Administrator General is a minor, the High Court may, upon the application of the Administrator General, appoint the father or mother of such minor or some other suitable person to receive the share of such minor on his behalf and upon such appointment being made the Administrator General may pay the share of such minor to such person on behalf of such minor and the receipt of such person shall be a full and complete discharge to the Administrator General so far as regards such share.

Unclaimed and small balances

13.—(1) If after payment of all claims which have been made and admitted or established against an estate being administered by the Administrator General there remains in the hands of the Administrator General a balance to which no person has established a claim, the Administrator General shall publish a notice in the *Gazette* notifying the fact that such balance remains in his hands and calling upon all persons having any claim thereto to send in such claim to him.

(2) After the expiration of two years from the publication of any such notice the Administrator General shall pay any balance as to which no claim shall have been established into the Consolidated Fund and upon such payment all claims of any person whatsoever thereto shall become extinguished:

Provided that nothing herein contained shall prejudice or affect legal proceedings in respect of any such claim which shall have been instituted before the expiration of the said period of two years.

(3) Where the cost of distribution of any balance of an estate in the hands of the Administrator General would exceed the amount of such balance, the Administrator General may pay that balance into the Consolidated Fund and thereupon all claims of any person thereto or to any share therein shall become extinguished.

Liability of the Governments

14. The Government shall be liable to make good all sums required to discharge any liability which the Administrator General, if he were an individual, would be personally liable to discharge and any sums so paid by the Government shall be a charge on the Consolidated Fund.

Fees of Administrator General

15.—(1) There shall be payable to the Administrator General out of every estate administered by him such fees as the Minister may by Rule prescribe.

(2) The Administrator General shall be entitled to recover from the estate any payments properly made by him or his agents in respect of any estate in his or their charge.

(3) The fees and reimbursements authorized by this section shall be a first charge on the estate after payment of funeral expenses, and shall be paid into the Consolidated Fund.

Minister may make Rules

16. The Minister may make Rules for the better carrying out of the purposes and provisions of this Act.

Transitional 24 of 1921

17.—(1) Notwithstanding the repeal of the Administrator General's Ordinance, all Rules made thereunder shall, until revoked, remain in full force and effect as if they had been made under this Act.

(2) The Corporation sole incorporated by this Act shall be deemed the successor to the corporation incorporated under the Administrator General's Ordinance (now repealed) and all property, rights, obligations and liabilities which immediately before the coming into operation of this Act were held for, vested in, belonged to or were obligations or liabilities of the Administrator General incorporated by the said Ordinance shall upon the coming into operation of this Act vest in or, as the case may be, be held for, belong to or be the obligations or liabilities of the Administrator General incorporated by this Act.

SUBSIDIARY LEGISLATION

G.N.68/1963

ADMINISTRATOR GENERAL'S (FEES) RULES

deemed to be made under s. 15

[*made under s.* 19 *of the Administrator General Ordinance,* 1921 (*now repealed*)]

Citation

1. These Rules may be cited as the Administrator General's (Fees) Rules.

Fees

2. Fees at the following rates shall be payable to the Administrator General out of every estate administered by him—

(*a*) on the value of the assets in Malaŵi—

(i) on the first	£1,000 or less of such value			..	5%
(ii) on the second	”	”	”	..	4%
(iii) on the third	”	”	”	..	3%
(iv) on the fourth	”	”	”	..	2%
(v) on the fifth	”	”	”	..	1%
(vi) on the remainder of such value				.. ..	½%:

Provided that the minimum fee under this head shall be £10;

(*b*) in respect of any part of the estate outside Malaŵi which is distributed by the Administrator General or by his agent on his behalf, on the value of the assets 1%:

Provided that the fee under this head shall be additional to the proper charges of the agents who administer the assets outside Malaŵi;

(*c*) on all income of the estate received by the Administrator General 5%:

Provided that where the Administrator General carries on a business on behalf of the estate, the percentage payable shall be charged on the net income received from the business;

(*d*) in the case of an insolvent estate, upon the amounts which would be available for distribution but for payment of this fee, an additional fee at the rate of .. .. 2%.

Meaning of the value of assets

3.—(1) The expression "the value of the assets" means the gross value before making any deduction except in respect of a specific charge on the asset, and—

(*a*) when the assets are realized, at the date of such realization;

(*b*) where the assets are not realized, at the date of distribution to the beneficiaries.

(2) The expression "the value of the assets" shall not include any gratuity granted under section 16 of the European Officers Pensions Ordinance, 1945, or any other written law, or any assets not administered by the Administrator General or held by the deceased as a trustee.

Fees when payable

4.—(*a*) The fees payable under rule 2 (*a*) shall be due when the Administrator General has taken the initial steps to administer the estate, but the Administrator General shall have a discretion to postpone taking payment in whole or in part to such date or dates as may be convenient in due course of administration.

(*b*) The fees payable under rule 2 (*b*) and (*c*) shall be due on receipt of the assets or income by the Administrator General and may be charged in the accounts at intervals of six months.

(*c*) The fees payable under rule 2 (*d*) shall be due and paid immediately before a distribution is made.

Remittance of fees

5. If, upon application made to him by the Administrator General or by any person interested in the estate, the Registrar of the High Court certifies in writing under his hand that—

(*a*) the circumstances have been such as to render the duties of the Administrator General-exceptionally simple;

(*b*) the Administrator General has, before completing the administration of the estate, the duty to hand over the assets of the estate to some other person to whom the High Court has granted probate or letters of administration;

(*c*) by reason of the poverty of any person beneficially interested in the estate a remission of some part of the fees is desirable,

a part of the fees not exceeding one half may be remitted:

Provided that—

(i) the certificate of the Registrar records his reasons for remission;

(ii) the application is made before the residue of the estate or a substantial part thereof has been paid away or distributed.

Applications

6. These Rules shall apply in every case in which fees have not previously been charged.

DECEASED ESTATES (WILLS, INHERITANCE AND PROTECTION)

CHAPTER 10:02

Containing Pages 1–35

CHAPTER 10:02

DECEASED ESTATES (WILLS, INHERITANCE AND PROTECTION)

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CHAPTER 10:02

DECEASED ESTATES (WILLS, INHERITANCE AND PROTECTION)

14 of 2011

An Act to provide for the making of wills and the devolution of property under a will; the inheritance to the estates of persons dying without valid wills; the protection of deceased estates; the administration of deceased estates; the prosecution of offences relating to deceased estates; the civic education of the public; the functions of courts in relation to deceased estates and for other connected matters

[19TH AUGUST, 2011]

PART I
PRELIMINARY

Short title

1. This Act may be cited as the Deceased Estates (Wills, Inheritance and Protection) Act.

Application

2.—(1) Subject to subsection (2) this Act shall apply to the administration of estates of all persons dying domiciled, or leaving property, in Malaŵi on or after the date upon which it comes into operation; but any property belonging to the estate of such persons which, at the coming into operation of this Act, remains partly or wholly undistributed, shall be distributed in accordance with the provisions of this Act.

(2) This Act shall not apply to any benefit or other entitlement of a deceased person occurring out of a pension fund unless that benefit or entitlement was already payable or had accrued at the time of the deceased's death.

Interpretation

3.—(1) In this Act, unless the context otherwise requires—

"administration grant" means the grant made under section 65;

"administrator" means a person to whom a grant of letters of administration or administration grant has been made under this Act;

"child" means a child of the deceased person, regardless of the circumstances of the birth of the child and includes an adopted child, and an unborn child in the womb of its mother;

"court" means the High Court or a court having jurisdiction as specified under section 20;

"court of probate" means a court or authority by whatever name designated, in any country, having jurisdiction in matters of probate;

"dependant" in relation to a deceased person means a person, other than a member of the immediate family, who was maintained by that deceased person immediately prior to his or her death and who was—

(*a*) his or her parent; or

(*b*) a minor whose education was being provided for by that deceased person, who is not capable, wholly or in part, of maintaining himself or herself;

"executor" means a person to whom the administration of the estate of a testator or part of such estate is entrusted by express or implied appointment under a will;

"hardship" in relation to any person means deprivation of the ordinary necessities of life according to the way of living enjoyed by that person during the lifetime of the intestate, and in the case of a minor includes deprivation of the opportunities for education which he or she could reasonably have expected had the intestate continued to live;

"guardian" means a person who has lawful or legitimate custody, care or control of a child in place of a parent;

"household belongings" means articles and effects of every description used in, and for the purpose, of maintaining and enjoying a home and family life;

"inheritable property" includes all causes of action which survive the deceased, clothing and institutional money but does not include any property which passes to another person by right of survivorship;

"institutional money" means money—

(*a*) held on a deposit or current account with a bank or a financial or similar institution;

(*b*) due under any policy of insurance or assurance;

(*c*) due under provisions of any provident fund or similar provision for employees;

(*d*) by way of gratuity, terminal benefits, leave pay or otherwise under the terms of employment of the deceased;

(*e*) received by any public officer, other than the Administrator General, or received by a bank or a financial or similar institution, as representing the property of a person domiciled in Malaŵi who has died outside Malaŵi;

(*f*) held by way of treasury bills or other government bonds;

(*g*) due under a court order;

Cap. 55:03 (*h*) due under the Workers' Compensation Act; or

(*i*) held in or with such other institution as the Minister may prescribe by an order published in the *Gazette*;

"immediate family", in relation to any person, means that person's spouse and children;

"intestate property" means property in respect of which there is an intestacy under section 16;

"Letters of Administration" means a formal document issued by a court appointing a person to manage the assets and liabilities of a deceased person;

"minor" means a person who has not yet attained the age of eighteen years unless—

(*a*) the person is lawfully married;

(*b*) the person is heading a household and is not below the age of fourteen years; or

(*c*) the person holds property in his or her own right in accordance with this Act or any other written law;

"parent" includes an adoptive parent, foster parent or any person acting in whatever way as parent;

"probate" means the certificate of the court that a will, of which a certified copy in accordance with the Oaths, Declarations and Affirmations Act is attached, has been proved a valid will; Cap. 4:07

"Probate Rules" means rules made by the Chief Justice under section 22;

"provident fund" means fund for the future welfare of any person and includes a similar provision for employees;

"Registrar" means the Registrar of the High Court as defined under the Courts Act; Cap. 3:02

"small estate" means the estate of a deceased person consisting of property which does not exceed K1,000,000 or such higher amount as the Minister shall from time to time specify by notice in *Gazette* in value at the date of the death of the deceased without making any deduction for debts;

"spouse" means a person's husband or wife in relation to a marriage recognized under section 22 (5) of the Constitution;

"will" means a legal declaration by a person of his or her wishes or intentions regarding the disposition of his or her property after his or her death.

(2) A person is said to die intestate if he or she dies without leaving a will which is valid in accordance with Part II of the Act.

Variation of customary law in relation to inheritance

4. Except as provided for in this Act, no person shall be entitled under customary law or any other written law to take by inheritance any of the property to which a deceased person was entitled at the date of his or her death.

PART II

Wills

Capacity to dispose of property by will

5.—(1) Subject to this Act, a person who is of sound mind and is not a minor may dispose of all or any of his or her property after his or her death by will.

(2) A will may appoint persons who are not minors to administer the estate of the testator or any property which is disposed of by will.

(3) Subject to section 6, disposal of property by will may be made to any person and subject to any condition other than special provision.

(4) A parent may by his or her will appoint a guardian of his or her minor child for the administration of the benefits of such child under the will; and subject to Part XIII, a guardian so appointed shall, to the exclusion of any customary guardian, have such powers as are conferred by law upon a guardian.

(5) Where a person appointed as a guardian under subsection (4) dies or otherwise desists from taking up the appointment, the court shall appoint another person as a guardian in the absence of the initial appointee.

(6) A will may nominate a subordinate court to which applications relating to the administration of the testator's estate may be made and a court so nominated shall, subject to section 20, have jurisdiction accordingly.

Making of wills

6.—(1) Every will shall be made in writing and shall be signed by the testator in the presence of at least two competent witnesses who shall also sign the will in the presence of the testator and in the presence of each other as witnesses to the signature of the testator.

(2) Any person who is of sound mind and is not a minor shall be a competent witness for the purpose of this section.

(3) A will may be made outside Malaŵi in respect of any property in Malaŵi and a will so made shall be valid if made in accordance with the provisions of this section or of the law of the place where it was made, or the law of the place where the testator had his or her domicile when the will was made.

(4) Notwithstanding the other provisions of this section and of section 5 (1), a member of the Malaŵi Police Service, or a member of the defence force of Malaŵi, on actual service as such, may make a will which shall be valid that any of the formalities required by this section have not been complied with.

(5) Subject to subsection (6), the Minister may, for the guidance of the general public, by notice in the *Gazette*, prescribe a form in which a will may be made.

(6) The validity of a will shall not be affected by reason of the fact that it is not made in the form prescribed by the Minister or any other form if that will otherwise complies with the requirements of this section.

Witness under will

7.—(1) Subject to subsection (2), a person who witnesses the testator's signature of a will and a spouse of such witness shall not be entitled to take any benefit under the will but shall be entitled to act as executor of the will:

Provided that a beneficiary under a will shall not be disentitled to a benefit under the will by reason that he or she or his or her spouse has attested a codicil confirming the will.

(2) A benefit under a will to a witness who is a member of the immediate family of the testator shall be valid if a court is satisfied, upon the application of or on behalf of the witness, that—

(*a*) there was no other competent person who could have been witness to the will;

(*b*) the benefit is fair in all the circumstances or the benefit consists of property that would have devolved to the witness upon intestacy; and

(*c*) there is no evidence of fraud, coercion, undue influence or other impropriety or suspicious circumstances surrounding the making of the will.

(3) A benefit to a witness as provided under subsection (2) shall not take effect except upon an order of the court made after hearing the application in respect thereof confirming the conditions set out in that subsection.

Safe custody of wills

8.—(1) A living person may deposit his or her will for safe custody with the Registrar or at the office of the District Commissioner or a resident magistrate or a magistrate of the first grade subject to such conditions relating to the deposit and withdrawal thereof as may be prescribed in Probate Rules.

(2) Nothing in this section shall preclude the deposit of a will with any other person, whether such other person is a bank, an insurer, a law firm, an administrator of a provident fund or an employer.

Revocation and alteration of wills

9.—(1) The testator may at any time revoke his or her will—

(*a*) by destroying the will with the intention to revoke it; or

(*b*) by making, in a subsequent will or some document executed like a will, a statement of his or her intention to that effect.

(2) Where a testator dies having made more than one will the latest in time of the said wills shall prevail over the earlier wills to the extent of any revocation, variation or inconsistency.

(3) No obliteration, interlineations or other alteration made in a will after its execution has any effect unless such alteration is signed and attested as a will is required to be signed and attested under section 6, or is referred to in a memorandum written at the end or some other part of the will and so signed and attested.

Effect of subsequent marriage and divorce

10.—(1) A will shall be revoked by the marriage after the making of the will by the testator unless the will was made in contemplation of marriage with the person who becomes the spouse of the testator as the case may be.

(2) Upon the end of a marriage of a testator by reason of divorce, unless the will provides otherwise—

(*a*) any gift made in a will in existence at the time the marriage ends by the testator to the spouse; or

(*b*) any appointment of the spouse as an executor, trustee, advisory trustee or guardian made by the will,

shall be revoked.

PART III

Construction of Wills

Intention of the testator to prevail

11.—(1) Subject to the provisions of this Part and Part IV, it shall be the duty of a court, in construing a will, to give effect to the intention of the testator so far as such intention can be ascertained from the wording of the will, and, in so doing, the court shall not be bound to follow any statutory provision, rule of common law or doctrine of equity.

(2) The intention of a testator, as disclosed by his or her will, shall not be set aside because it cannot take effect to the full extent, but effect shall be given to it as far as possible.

Where two constructions possible

12. Where any clause of a will is susceptible of two meanings, one of which has some effect and one of which can have none, the former shall be preferred.

Will to speak as from death

13.—(1) Every will shall be construed with reference to the estate comprised therein, so as to take effect as if made immediately before the death of the testator.

(2) A gift to a person who predeceases the testator shall lapse and be of no effect.

Technical words and terms not necessary

14. It shall not be necessary for technical words or terms of art to be used in a will, but only that the wording be such that the intention of the testator can be ascertained therefrom.

PART IV

Provision in a Will for the Immediate Family of the Testator

Provision for members of immediate family not adequately provided for by will

15.—(1) Subject to section 11, on the application in the prescribed manner of a person claiming to be, or to be acting on behalf of, a member of the immediate family of a testator, a court may, if it is satisfied that—

(*a*) the applicant is a member of the immediate family or person acting on behalf of such member; and

(*b*) the testator has inadvertently or otherwise, omitted to make a reasonable provision in his or her will for such member,

order that a reasonable provision shall be made for the member in accordance with this section.

(2) Where an application is made under subsection (1), it shall be competent for the court to order, as the court considers on reasonable grounds to be just and proper, that such part of the value of the testator's

estate after payment of the testator's debts and funeral and administration expenses of the estate, be applied for the maintenance of the member, and the manner in which it is to be so applied.

(3) In considering whether an order under this section should be made and, if so, what order is proper, the court shall have regard to—

(*a*) the nature of testator's property;

(*b*) any past, present or future capital or income from any source of the applicant;

(*c*) the conduct of the applicant in relation to the testator and otherwise;

(*d*) the circumstances of the other members of the immediate family and the beneficiaries under the will; and

(*e*) the general circumstances of the case.

PART V

INTESTACY

Property in respect of which there is intestacy

16. If a person dies without having left a will valid under section 6, there shall be an intestacy in respect of the property to which he or she was entitled at the date of his or her death:

Provided that if the deceased person left a will which does not dispose of all his or her property there shall be an intestacy in respect of the property which is not disposed of by will.

Principles of distribution of intestate property to immediate family and dependants

17.—(1) Upon intestacy, the persons entitled to inherit the intestate of fair property shall be the members of the immediate family and dependants of the intestate, and their shares shall be ascertained upon the following principles of fair distribution—

(*a*) protection shall be provided for members of the immediate family and dependants from hardship so far as the property available for distribution can provide such protection;

(*b*) every spouse of the intestate shall be entitled to retain all the household belongings which belong to his or her household;

(*c*) if any property shall remain after paragraphs (*a*) and (*b*) have been complied with, the remaining property shall be divided between the surviving spouse or spouses, the children, and the parents of the intestate;

(*d*) as between the surviving spouse or spouses and the children of the intestate, their shares shall be determined in accordance with all the special circumstances including—

(i) any wishes expressed by the intestate in the presence of reliable witnesses;

(ii) such assistance by way of education or other basic necessities any of the spouses or children may have received from the intestate during his or her lifetime; and

(iii) any contribution made by the spouse or child of the intestate to the value of any business or other property forming part of the estate of the intestate, and in this regard the surviving spouse shall be considered to have contributed to the business unless proof to the contrary is shown by or on behalf of the child,

but in the absence of special circumstances the spouses and children shall, subject to subsection (3) be entitled to equal shares;

(*e*) as among the children of the intestate, the age of each child shall be taken into account with the younger child being entitled to a greater share of the property than the older child unless the interests of the children require otherwise; and

(*f*) in the absence of any spouse or child of the intestate the property described in paragraph (*c*) shall be distributed between the dependants of the intestate, if more than one, in equal shares.

(2) If the intestate left more than one female spouse surviving him each living in a different locality, each spouse and her children by the intestate shall be entitled to a share of the property of the intestate in their locality in accordance with this section; but such spouse and children shall have no claim to any share of the property of the intestate in the locality where another spouse lives:

Provided that this subsection shall not apply to the property of the intestate of a value exceeding a small estate or institutional money or private land.

(3) If the intestate left more than one female spouse surviving him all living in the same locality, each spouse and her children by the intestate shall be entitled to a share of the property of the intestate proportionate to their contribution.

(4) Re-marriage shall not deprive a surviving spouse of property inherited under intestacy except in the case of property on customary land where title in that property shall devolve to the children of the spouse by the intestate upon the re-marriage of the surviving spouse.

Inheritance of intestate property by other relations

18. In the absence of the beneficiaries to the estate of an intestate referred to under section 17, the whole of such property comprising the estate of the intestate shall be distributed as follows—

(*a*) the grandchildren of the intestate shall, if they survive the intestate, be entitled in equal shares;

(*b*) if none of the persons referred to in paragraph (*a*) survive the intestate, the brothers and sisters of the whole blood of the intestate shall, if they survive the intestate, be entitled in equal shares and

failing any surviving brothers and sisters of the whole blood of the intestate, the brothers and sisters of the half blood of the intestate shall, if they survive the intestate, be entitled in equal shares;

(*c*) if none of the persons referred to in paragraphs (*a*) and (*b*) survive the intestate, the grandparents of the intestate shall, if they survive the intestate, be entitled in equal shares;

(*d*) if none of the persons referred to in paragraphs (*a*), (*b*) and (*c*) survive the intestate, the uncles, aunts, nephews and nieces of the intestate shall be entitled in equal shares;

(*e*) if none of the persons referred to in paragraphs (*a*), (*b*), (*c*) and (*d*) survive the intestate, other relatives who are in the nearest degree of consanguinity shall, if they survive the intestate, be entitled in equal shares; or

(*f*) if none of the persons referred to in paragraphs (*a*), (*b*), (*c*) and (*d*) survive the intestate, the Government shall be entitled to take title in the property comprising the estate of the intestate.

PART VI

Survivorship

Uncertainty regarding survivorship

19. Where two or more persons have died in circumstances rendering it uncertain which of them survived the other or others, such death shall, subject to any order of a court, for all purposes affecting rights in, to or over property, be presumed to have occurred in order of seniority in the age of the deceased persons, and accordingly the younger shall be deemed to have survived the elder.

PART VII

Jurisdiction of Courts and Powers of Consular Officers

Jurisdiction of courts and powers of consular officers

20.—(1) Subject to this section, the High Court shall have jurisdiction in all matters relating to the probate and the administration of estates of deceased persons, with power to grant probates of wills and letters of administration to the estates of deceased persons and to alter or revoke such grants.

(2) The High Court shall have jurisdiction to reseal grants of probate and letters of administration made by a court of probate in any country.

(3) A court of a resident magistrate or a court of a magistrate of the first grade shall exercise jurisdiction relating to the estate of a deceased person which is a small estate to grant probate and letters of administration in relation thereto.

(4) No act of a magistrate exercising jurisdiction under subsection (3) shall be invalid because it is afterwards discovered that the gross

value of the estate exceeds the limit of a small estate but the magistrate shall report to the High Court any such discovery of which he or she becomes aware.

(5) The High Court may direct that any proceedings under this Act in a court of a resident magistrate or magistrate of the first grade are to be removed to and continued in the High Court:

Provided that the High Court shall not give any direction under this subsection unless it considers that it is necessary in the interests of justice or for the protection of a beneficiary or creditor that the estate should be administered under the supervision of the High Court.

(6) The High Court may authorize the payment to an executor or administrator of remuneration for his or her services as such, to such extent as, in all circumstances, appears reasonable:

Provided that nothing in this subsection shall be construed so as to deprive an executor of remuneration to which he or she is entitled under the provisions of a will.

Grants to Consular Officers

21.—(1) Where a foreign national—

(*a*) dies within Malaŵi; or

(*b*) dies outside Malaŵi leaving property within Malaŵi, and no person is present in Malaŵi at the time of his or her death who is rightfully entitled to administer the estate of such deceased person, a consular officer of the foreign state of which the deceased is a national, within Malaŵi, may take possession of the property of such deceased person, and shall be entitled to obtain from the court letters of administration of the property of such deceased person limited in such manner as the court may deem fit.

(2) Where any person who is a foreign national is a person to whom a grant of representation to the estate of a deceased person in Malaŵi may be made, then, if the court is satisfied that such national is not resident in Malaŵi, the court may, on the application of a consular officer of the foreign state of which the deceased person is a national, make to that consular officer such grant of representation to the estate of the deceased as would be made to him or her if he or she were duly authorized by power of attorney to act for the person entitled to the grant.

(3) Letters of administration granted to a consular officer shall be granted to him or her in his or her official style and title and not in his or her personal name, and the estate of the deceased shall vest in each successive holder of the office during his or her continuance in office without any order of court or instrument whatsoever.

(4) Where a person who is a foreign national—

(*a*) is entitled to any money or other property in Malaŵi forming part of the estate of a deceased person, or to receive payment in Malaŵi of any money becoming due on the death of a deceased person; or

(*b*) is among the persons to whom any money or other property of a deceased person may under any written law be paid or delivered without any grant of probate or other proof of title,

then, if that national is not resident in Malaŵi, a consular officer of the foreign state of which he or she is a national shall have the right and power to receive and give a valid discharge for any such money or property as if he or she were duly authorized by power of attorney to act for him in that behalf:

Provided that no person shall be authorized or required by this subsection to pay or deliver any money or property to a consular officer if it is within his or her knowledge that any other person in Malaŵi has been expressly authorized to receive that money or property on behalf of such national.

(5) Notwithstanding any rule of law conferring immunity or privilege in respect of the official acts and documents of consular officers, a consular officer shall not be entitled to any immunity or privilege in respect of any act done by virtue of the powers conferred on him or her by or under this section or in respect of any document for the time being in his or her possession relating thereto.

Chief justice to make Probate Rules

22.—(1) The Chief Justice may make Probate Rules—

(*a*) regulating proceedings for the grant of probate and letters of administration and other proceedings under this Act;

(*b*) for the procedure to be observed in relation to wills deposited under section 8 and for the preservation, copying and inspection of wills and grants of probate and administration;

(*c*) prescribing fees and forms; and

(*d*) generally in relation to matters of probate and letters of administration.

(2) Without prejudice to the generality of subsection (1), Probate Rules may require a person to whom a grant of letters of administration is made to give security for the due administration of the estate by a bond with one or more sureties and for the furnishing of accounts to court.

(3) A bond for the due administration of an estate shall engage the parties thereto to make payment to the Registrar or a resident magistrate or magistrate of the first grade.

(4) Upon the application of any person beneficially interested in the estate and upon being satisfied that the engagement of any such bond has not been kept, the Court may direct the Registrar to, or a resident magistrate or a magistrate of the first grade shall, assign the bond to some proper person and thereupon such person shall be entitled to sue on the bond in his or her own name as if it had originally been given to him or her and not to the Registrar or resident magistrate or magistrate of the first grade and to recover thereon, as trustee for all persons interested, the full amount recoverable in respect of any breach thereof.

PART VIII

Protection of Estates Pending Grant

Receiver pending grant

23.—Where any person dies leaving property in Malaŵi, the court, may appoint such person as the court thinks fit to be a receiver of probate or letters of administration, if it appears on the application of any person—

(*a*) claiming to be interested in such property;

(*b*) having custody or control thereof at the time of the death of the deceased; or

(*c*) being at such time an attorney of the deceased,

that there is danger that such property may be wasted or may otherwise be dealt with in contravention of this Act.

Sale by order of court

24. The court may, on application by a receiver of property appointed under section 23, or any person interested in the estate, order the sale of the whole or any part of such property, if it appears that such sale will be beneficial to the estate.

Suits against receiver

25. A person aggrieved may bring a suit against a receiver appointed under section 23 in relation to any thing done or intended to be done by him or her in respect of the property of the deceased in the exercise or intended exercise of the powers vested in him or her.

Chief Justice to make rules for application to receiver

26. The Chief Justice may make rules to guide the court in hearing an application for appointment of a receiver under section 23.

PART IX

Renunciation by Executors

Express renunciation of right to probate

27. A person who is entitled to probate may expressly renounce such right orally on the hearing of any application to the court or in writing signed by the person making the renunciation and attested by a person before whom an affidavit may be sworn.

Citation and presumed renunciation

28.—(1) A person claiming an interest in the estate of a deceased person or a creditor of a deceased person may cause to be issued by the court a citation directed to the executors appointed by the will of the deceased calling upon them to accept or renounce their executorship.

(2) A person served with a citation may acknowledge service thereof, but if he or she defaults on the terms of the acknowledgement of the service, he or she shall be deemed to have renounced his or her executorship; and if, having made such acknowledgement, he or she does not proceed to apply for probate, the court may limit the time within which such application is to be made and if the application for probate is not made within the time so limited the executor in default shall be deemed to have renounced his or her right to probate and the court may appoint another person it deems fit to be the executor of the estate.

Effects of renunciation

29. Renunciation under section 27 or 28 shall preclude the right of the person so renouncing to probate but the court may at any time grant probate to such person if it is shown that the grant is likely to benefit the estate or the persons interested therein.

PART X

Grant of Probate and Letters of Administration by the Court

Grants to corporations

30.—(1) A corporation or company or trust corporation may be granted probate or letters of administration either solely or jointly with another person.

(2) Probate or letters of administration shall not be granted to a syndic or nominee on behalf of a corporation or company.

Number of executors and administrators

31.—(1) Probate or letters of administration shall not be granted to more than four persons in respect of the same property.

(2) In the case of a minority or life interest under a will or on intestacy, probate or letters of administration shall, subject to the maximum number specified in subsection (1), be granted to not less than two persons and a court shall appoint another person to act as an executor or an administrator in such cases if there is one person acting as such at any time.

Beneficiary may oppose appointment of executor or administrator

32. Any beneficiary under a will or on intestacy may apply to the court opposing the appointment of an executor or administrator under a will or on intestacy.

Grant of probate

33.—(1) Probate may be granted only to an executor appointed by the will, and shall not be granted to a minor or person of unsound mind.

(2) The appointment of an executor may be express or by necessary implication.

(3) Where several executors are appointed, probate may be granted to them simultaneously or at different times.

(4) If an executor is appointed by the will for a limited purpose only, probate shall not be granted to him or her except limited to that purpose.

Estate duty affidavit

34. Every application for a grant of probate or letters of administration shall be accompanied by a copy of the estate duty affidavit and by a certificate of the Secretary to the Estate Duty Commissioners under section 33 of the Estate Duty Act.

Cap. 43:02

Probate of copy, draft of contents of will

35.—(1) Where a will has been lost or mislaid or has been destroyed by a wrong or an accident, and not only by any act of the testator—

(*a*) if a copy or draft of the will has been preserved, probate may be granted of such copy or draft, limited until the original or a properly authenticated copy of it is admitted to probate;

(*b*) if no such copy or draft has been preserved, probate, limited as provided in paragraph (*a*), may be granted to the contents of the will if they can be established by evidence.

(2) Where a will is in the possession of a person outside Malaŵi who has refused or neglected to deliver it up, but a copy has been transmitted to the executor, probate may, if the interests of the estate so require, be granted of the copy so transmitted, limited as provided in paragraph (*a*).

Codicil propounded after probate

36. Where, after probate has been granted, a codicil of the will is propounded, probate may be granted of the codicil:

Provided that where the codicil expressly revokes the appointment of any executor to whom probate has been granted, such probate shall be revoked and a new probate granted of the will and codicil together.

Authenticated copy of will proved abroad

37. Where a will has been proved and deposited in a court of competent jurisdiction outside Malaŵi, and a properly authenticated copy of the will is produced, probate may be granted of the authenticated copy of the will or letters of administration granted with a copy of the authenticated copy of the will attached.

Effect of probate

38.—(1) Probate of a will when granted establishes the will and evidences the title of the executor from the death of the testator.

(2) Probate of a will shall also have the effects described in section 50.

Failure of executors

39.—(1) Subject to subsections (2) and (3), where—

(*a*) no executor is appointed by a will;

(*b*) the executor or all the executors appointed by a will have renounced, or are persons to whom probate may not be granted;

(*c*) no executor survives the testator;

(*d*) all the executors die before obtaining probate or before having administered all the estate of the deceased; or

(*e*) the executors appointed by any will do not appear and take out probate,

letters of administration with the will annexed may be granted of the whole estate or so much thereof as may be unadministered to such person or persons as the court deems the fittest to administer the estate.

(2) A prior right to such grant shall belong to the following persons in the following order—

(*a*) a universal or residuary beneficiary;

(*b*) an executor or administrator of a deceased's universal or residuary beneficiary;

(*c*) such person or persons, being beneficiaries under the will, as would have been entitled to a grant of letters of administration if the deceased had died intestate;

(*d*) a beneficiary having a beneficial interest;

(*e*) a creditor of the deceased; and

(*f*) the Administrator General as the public trustee.

(3) A court shall not grant letters of administration with the will annexed in respect of a will by which an executor is appointed, if the executor—

(*a*) is living and his or her whereabouts are known; and

(*b*) is a person to whom probate may be granted; and

(*c*) has not renounced his or her office,

unless and until a citation has been issued calling upon the executor to accept or renounce his or her office and the executor has renounced or has been deemed to have renounced his or her office in accordance with sections 27 and 28.

Attorney of absent executor

40. Where any executor is absent from Malaŵi, and there is no other executor within Malaŵi willing to act, letters of administration

with the will annexed may be granted to a lawfully constituted attorney, ordinarily resident within Malaŵi, of the absent executor, limited until the absent executor obtains probate for himself or herself, and in the meantime to any purpose to which the attorney's authority is limited.

Attorney of person entitled to letters of administration

41. Where any person, to whom letters of administration might be granted under section 39, is absent from Malaŵi, letters of administration with the will annexed may be granted to his lawfully constituted attorney ordinarily resident in Malaŵi, limited in the manner provided in section 40.

Codicil propounded after letters of administration granted

42. The provisions of section 36 shall apply in the case of a grant of administration with the will annexed in like manner as they apply in the case of a grant of probate.

Letters of administration on intestacy

43.—(1) Where the deceased has died intestate, letters of administration of his or her estate may be granted to any person who, under section 17 or 18, would be entitled to the whole or any part of such deceased's estate.

(2) Where more than one person applies for letters of administration, it shall be in the discretion of the court to make a grant to any one or more of them, and in the exercise of its discretion the court shall take into account greater and immediate interests in the deceased's estate in priority to lesser or more remote interests.

(3) Where no person as mentioned in subsection (1) applies for letters of administration, letters of administration may be granted to a creditor of the deceased.

(4) Where it appears to the court to be necessary or convenient to appoint some person to administer the estate or any part thereof other than the person who under ordinary circumstances would be entitled to a grant of letters of administration, the court may, in its discretion, having regard to consanguinity, amount of interest, the safety of the estate and probability that it will be properly administered, appoint such person as it thinks fit to be administrator; and in every such case letters of administration may be limited or not as the court thinks fit.

Attorney of person entitled to administration

44. Where a person entitled to letters of administration in the case of an intestacy is absent from Malaŵi, and no person equally entitled is willing to act, letters of administration may be granted to a lawfully constituted attorney, ordinarily resident in Malaŵi, of such person, limited until such person obtains letters of administration himself or herself and in the meantime to any purpose to which the attorney's authority is limited.

45. When no will of the deceased is forthcoming, but there is reason to believe that there is a will in existence, letters of administration may be granted, limited until the will or an authenticated copy thereof is produced.

Letters of Administration pending production of will

46. Pending the determination of any proceedings touching the validity of the will of a deceased person or for obtaining or revoking any probate or any grant of letters of administration, the court may appoint an administrator of the estate of such deceased person, who shall have all the rights and powers of a general administrator other than the right of distributing such estate, and every such administrator shall be subject to the immediate control of the court and shall act under its discretion.

Pending litigation

47. Where a person dies, leaving property of which he or she was the sole surviving trustee, or in which he or she had no beneficial interest on his or her own account, and leaves no general representative, or one who is unable or unwilling to act as such, letters of administration, limited to such property, may be granted to the beneficiary, or to some other person on his or her behalf.

Trust property

48. Whenever the nature of the case requires that an exception be made, probate or letters of administration with or without the will annexed shall be granted subject to such exception.

Grants with exception

49. Whenever a grant with exception of probate or letters of administration with or without the will annexed has been made, further grant may be made of the part of the estate so excepted.

Grants of excepted part

50.—(1) Subject to all such limitations and exceptions contained therein and, where the grant is made for a special purpose, for that purpose only, letters of administration shall entitle the administrator to all rights belonging to the deceased as if the letters of administration had been granted at the moment of his or her death:

Effects of grant of letters of administration or probate

Provided that letters of administration shall not render valid any intermediate acts of the administrator tending to the diminution or damage of an intestate's estate.

(2) Probate and, subject to subsection (1), letters of administration have effect over all the inheritable property of the deceased throughout Malaŵi and—

(*a*) shall be conclusive against all debtors of the deceased and all persons holding inheritable property of the deceased;

(*b*) afford full indemnity to all debtors paying their debts, and all persons delivering up such property to the person to whom such probate or letters of administration shall have been granted.

Death of one of several executors or administrators

51. Subject to section 31, where probate or letters of administration have been granted to more than one executor or administrator and one of them dies, the representation of the estate to be administered shall, in the absence of any direction in the will or grant, accrue to the surviving executor or administrator.

Death of sole or surviving executor or administrator

52. Subject to section 31, on the death of a sole or sole surviving executor or who has proved the will or of a sole or sole surviving administrator, letters of administration may be granted in respect of that part of the estate not fully administered, and in granting such letters of administration the court shall apply the same provisions as apply to original grants:

Provided that where one or more executors have proved the will or where letters of administration with the will annexed have been issued, the court may grant letters of administration under this section without citing an executor who has not proved the will.

Expiry of limited grant when estate not fully administered

53. When a limited grant has expired by lapse of time, or the happening of the event of contingency on which it was limited and there is still some part of the deceased's estate unadministered, letters of administration may be granted to those persons to whom original grants might have been made.

PART XI

Revocation and Alteration of Grants and Removal of Executor and Administrator

Rectification of errors

54. Errors in names and descriptions, or in setting forth the time and place of the deceased's death, or in specifying the purpose in a limited grant, may be rectified by the court, and the grant of probate or letters of administration may be altered and amended accordingly.

Revocation of grants and removal of executors or administrators

55.—(1) The grant of probate and letters of administration may be revoked or annulled for any of the following reasons—

(*a*) that the proceedings to obtain the grant were defective in substance;

(*b*) that the grant was obtained fraudulently by making a false suggestion, or by concealing from the court something material to the case;

(*c*) that the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant, though such allegation was made in ignorance or inadvertently;

(*d*) that the grant has become useless and inoperative;

(*e*) that the person to whom the grant was made has without reasonable cause omitted to furnish an account of his or her administration after having been lawfully called upon to do so or has prepared an account which is untrue in a material respect.

(2) Where it is satisfied that the due and proper administration of the estate and the interests of the persons beneficially entitled thereto so require, the court may suspend or remove an executor or administrator and provide for the succession of another person to the office of such executor or administrator who may cease to hold office, and for the vesting in such person of any property belonging to the estate.

Payments by or to representatives whose grants are revoked

56.—(1) Where any probate is, or letters of administration are, revoked, all payments made in good faith to any executor or administrator under such probate or administration before the revocation thereof shall, notwithstanding such revocation, be a legal discharge to the person making the same.

(2) The executor or administrator who shall have acted under any such revoked probate or administration may retain and reimburse himself or herself out of the assets of the deceased in respect of any payments made by him or her which the person to whom probate or letters of administration shall be afterwards granted might have lawfully made.

Surrender of revoked grants

57.—(1) When a grant of probate or letters of administration is revoked under this Act, the person to whom the grant was made shall forthwith deliver up the probate or letters to the court which made the grant.

(2) If the person wilfully and without sufficient cause omits so to deliver up the probate or letters, he or she shall be guilty of an offence and liable to a fine of K50,000 and to imprisonment for three months.

PART XII

Re-Sealing

Sealing of certain grants made outside Malaŵi

58.—(1) Where a court of probate has, before or after this Act, granted probate or letters of administration to the estate of a deceased person, the court—

(*a*) upon production of—

(i) the grant so made;

(ii) a duplicate sealed with the seal of the court which made the grant; or

(iii) a copy certified by or under the authority of the court of probate which made the grant; and

(*b*) upon the deposit of a copy of the grant,

may seal with the seal of the court the document so produced and deposited and thereupon the grant so made outside Malaŵi shall be of the like force and effect and have the same operation in Malaŵi as if granted by the court.

(2) Probate Rules may prescribe the security to be given and evidence of domicile to be furnished in relation to any application for sealing under subsection (1).

PART XIII
Small Estates

Application

59. This Part shall apply only to small estates except as may be otherwise expressly provided.

Exercise of jurisdiction by magistrate courts

60.—(1) Parts VIII, IX, X and XII shall not apply to the exercise by a court of resident magistrate or a court of a magistrate of the first grade of jurisdiction under this Act, but instead this Part shall apply.

(2) Part XI shall apply to a court of resident magistrate or a court of a magistrate of the first grade as though an administration grant made by such court was a grant of probate or of letters of administration.

Relatives may agree between themselves

61.—(1) Where all the members of immediate family and dependants of a deceased person who are not minors agree on the manner of distribution and administration of a small estate they may proceed in accordance with such agreement:

Provided that—

(*a*) such agreement shall be recorded at the District Commissioner's office;

(*b*) this section shall not apply to the distribution or administration of private land or institutional money;

(*c*) no such agreement shall prevent a court from exercising its jurisdiction under this Act; and

(*d*) upon an application to a court relating to such estate the rights of the persons entitled to any share or interest in the estate shall be

the rights and interests provided for in this Act notwithstanding any agreement to the contrary.

(2) Where none of the members of the immediate family and dependants of a deceased person who are not minors is available to proceed in accordance with subsection (1), persons comprising the next degree of consanguinity of the relations of the deceased person as outlined under section 17, who are not minors and survive the deceased, may agree on the manner of distribution and administration of the small estate subject to the proviso in subsection (1).

Private land

62. Where a small estate includes private land, no dealing with such land shall, subject to Part VIII, be lawful until an administration grant has been made in respect of the estate under section 65.

Institutional money

63.—(1) Where upon the death of a person, institutional money is payable to the executor or administrator or to members of the immediate family or to dependants of that person or to any person, such institutional money shall be dealt with in accordance with this section.

(2) Where subsection (1) applies—

(*a*) the executor or administrator or a member of the immediate family or a dependant of the deceased or any person in possession of evidence that institutional money is payable may report the death of the deceased to the District Commissioner of the district which the deceased claimed to be or was known to be the deceased's district of origin or where the deceased ordinarily resided prior to his or her death, and on making such report, shall deposit with the District Commissioner the evidence that institutional money is payable together with a death certificate or other suitable evidence of the death;

(*b*) in the event that there is more than one District Commissioner as referred to in paragraph (*a*) and they each receive a report of the death of a person, the District Commissioners shall decide, giving due weight to the wishes of the members of the immediate family, or failing agreement among such members, of the most senior member of the immediate family, which of the District Commissioners shall proceed under this section and if the District Commissioners fail so to decide, the District Commissioner preferred by the members of the immediate family or, where applicable by the most senior member of the immediate family shall have the authority to proceed under this section;

(*c*) the District Commissioner shall thereupon verify the amount of the institutional money and shall cause enquiries to be made whether or not such money is disposed of by any will made by the deceased;

(*d*) where it appears to the District Commissioner that the institutional money may have been disposed of by a valid will he or she shall take no further action except to advise the persons concerned to apply for an administration grant under section 65;

(*e*) where it appears to the District Commissioner that the institutional money is not disposed of by a valid will, he or she shall refer the matter to court and shall request the court to certify the beneficiaries of the institutional money and their shares and the creditors of the deceased;

(*f*) in the reference under paragraph (*e*), the District Commissioner shall set out the facts of the case to the best of his or her knowledge or information;

(*g*) upon receipt of the reference under paragraph (*e*), the court shall certify who are the beneficiaries or creditors of the deceased and their shares and shall forward the certificate to the District Commissioner who made the reference;

(*h*) upon receipt of a certificate issued under paragraph (*g*) and a request for payment by a District Commissioner, the holder of or a person liable to pay, the institutional money shall within thirty days from the date of the request send to the District Commissioner a separate cheque payable to each of the persons shown in the certificate for the amount shown therein to be payable to him or her:

Provided that in the case of any person shown to be a minor the cheque shall be made payable to the Government and the District Commissioner shall open a separate deposit account for every such minor and shall deposit therein the amount due to the minor.

(3) The receipt of a District Commissioner for a sum paid to the District Commissioner under subsection (2) by the holder of, or by a person liable to pay institutional money shall be a good discharge to the person paying the money for the sum so paid.

(4) Money held by a District Commissioner under a deposit account on behalf of a minor under subsection (2) may be applied for the benefit of such minor as the District Commissioner deems fit.

(5) Where subsection (1) applies and institutional money is disposed of by will, payment may be made to the executor or administrator of the deceased.

(6) Where institutional money is due under a contract of employment, a policy of insurance or assurance, a provident fund, the employer, insurer or administrator of a provident fund shall, if it appears that the institutional money is not disposed of by a valid will, refer the matter to court, setting out the facts as known according to available information

and shall request the court to certify the beneficiaries and their shares and the creditors of the deceased, and the certificate of the court shall be authority for the employer, insurer or administrator of a provident fund to make payments to the beneficiaries and the creditors.

Production to court of a will and court to which application may be made

64.—(1) Where a person dies having left a will—

(*a*) if the will has been deposited with any person under section 8 and a court to which an application is made under subsection (4) so requests, or if a court to which an original will is produced sends the will to the Registrar, the Registrar shall send to the court making the request or sending the original will two certified copies of the will;

(*b*) in any other case the person in possession of the will shall produce the original will to a court to which an application may be made under subsection (4) and may apply to such court for an administration grant.

(2) Any person with whom a will is deposited under section 8 shall, on request of the court, forward the will to the court.

(3) Where an original will is produced to a court under subsection (1) (*b*), the court shall make a copy thereof and issue written notices under section 65.

(4) A person who has verified the fact that a deceased person left a will which is deposited for safety under section 8 may apply to—

(*a*) the court nominated by the will;

(*b*) the court having jurisdiction in the area in which the deceased ordinarily resided prior to his or her death;

(*c*) the court having jurisdiction in the area in which private land belonging to the estate is situated;

(*d*) such other court as may be prescribed,

for a certified copy of the will to be produced to the court, and for an administration grant.

Administration grant

65.—(1) Any person interested in a small estate as executor of will, beneficiary or, under a will or intestacy, creditor of an estate, may apply to a court for an administration grant in such manner as may be prescribed.

(2) Before hearing any application under subsection (1), the court shall, by notice, require the members of the immediate family and the persons, if any, named in the will, if any, as executors to attend before the court for the hearing of the application on a date and at a time specified in the notice, which date shall not be less than thirty days and not more than sixty days from the date of service of the notice.

Effects of administration grant

66. Subject to section 63, an administration grant entitles the administration to all the inheritable property of the deceased with effect from the date of the death of the deceased.

Death or disability of administrator

67. If a person to whom an administration grant has been made dies or becomes unable by reason of illness, whether physical or mental, or any other cause to carry out his or her duties before the estate has been fully administered, the other persons to whom the grant was made, if more than one, shall be entitled to continue and complete the administration:

Provided that on the application of any interested person the court may and, if there is only one remaining administrator, shall appoint another administrator.

Guardians

68.—(1) Where it is known to a court that a guardian of a minor has been appointed by a will, the court shall not appoint any other person to be guardian of that minor except in exercise of its powers under section 73.

(2) A court may direct the transfer to, or the vesting in, the guardian of a minor of any property of the minor and may authorize or direct the sale of the property of a minor or any part thereof.

(3) A guardian appointed by a will or under this Act shall be entitled to represent the interests of the minor in any proceedings in court relating to the administration of the estate in which the minor has a share.

Duties and powers of administrator or executor

69.—(1) The duties of every administrator or executor, where applicable shall be—

(*a*) to pay the debts and funeral expenses of the deceased and to pay estate duty if estate duty is payable;

(*b*) if the deceased left a valid will, to distribute the property disposed of by the will in accordance with the provisions thereof or of an order of court under;

(*c*) in respect of intestate property, to effect a distribution thereof in accordance with the rights of the persons interested therein under this Act.

(2) Where a sale of any of the property forming part of the estate of a deceased person is necessary or desirable in order to carry out the duties outlined in subsection (1) the administrators shall have power to sell such property in such manner as appears likely to secure receipt of the best price available for such property.

(3) Where the value of the property to which a person was entitled at the date of his or her death is less than the limit of a small estate, an

administrator of his or her estate shall not be deemed to be an executor within the meaning of the Estate Duty Act. Cap. 43:02

70. An administrator or guardian may incur expenditure on such acts as may be necessary for the proper care and management of any property belonging to the estate of a deceased person or to a minor. Expenditure for care and management

71.—(1) Unless there is express provision to that effect in the will, no administrator or guardian shall derive any pecuniary benefit from his or her office. Administrator or guardian not to derive benefit

(2) If an administrator or guardian purchases, either directly or indirectly, any part of the property of the deceased or of a minor for whom he or she is responsible, the sale may be set aside by the court on the application made within a reasonable time of any other person interested in the property sold or in the proceeds of sale.

72.—(1) Where there are several administrators, the powers of all may, the absence of any direction to the contrary in the will or administration grant, be exercised by the majority of them. Exercise of powers of several administrators

(2) Where there are only two administrators, the court shall have power on the application by either or both of the two administrators, to appoint one more administrator to act generally or in respect of a particular matter in question.

73.—(1) On the application in the prescribed manner by an interested person, a court shall have jurisdiction, where there is a dispute, in relation to a deceased person's estate— Disputes

(*a*) to decide whether a document purporting to be a will is a valid will and whether the deceased person died testate or intestate;

(*b*) to decide what is the property to which the deceased person was entitled at the date of his or her death;

(*c*) to decide if any person is or is not entitled as a beneficiary of the estate;

(*d*) to decide how the distribution of the property forming part of the deceased person's estate should be carried out;

(*e*) to order the sale or other disposition of property belonging to a deceased person's estate for the purpose of paying the debts of the deceased or for the purposes of distribution;

(*f*) to appoint a guardian in place of a guardian who has acted improperly;

(*g*) to decide whether an administrator or the person administering the property of a deceased person by agreement under section 61 has failed to carry out any of his or her duties and to order payment of

compensation by such administrator or other person to a person who has suffered injury as a result of such failure; and

(*h*) to decide any other matter in dispute which the court considers to be competent for its jurisdiction.

(2) In the determination of a dispute under subsection 1 (*g*), the court shall be guided by the following principles—

(*a*) that no order for compensation shall be made if the injury had come to the knowledge of the injured person, not being a minor, more than two years before the application relating thereto was made to the court;

(*b*) that in case the injured person was a minor an application for compensation for injury suffered may be made within two years after—

(i) he or she ceased to be a minor; or

(ii) the date when the injury came to his or her knowledge, whichever is later in time.

Offences by administrators and guardians

74.—(1) An administrator or guardian who wrongfully deprives a beneficiary of property or a share in property to which the beneficiary is entitled intending thereby to benefit such administrator or guardian or any other person, commits an offence and shall, on conviction, be liable to a fine of K1,000,000 and to imprisonment for three years.

(2) A court shall order restitution of property or otherwise in favour of the minor against the administrator or guardian found guilty under this section.

Subsequent discovery that estate dealt with as small estate exceeds limit of small estate

75.—(1) No act of a court exercising jurisdiction under this Part, or of an administrator to whom an administration grant has been made shall be invalid because it is afterwards discovered that the gross value of the estate in relation to which the act was done exceeds the value of a small estate.

(2) Every administrator of an estate appointed under this Part who discovers that the gross value of estate exceeds the value of a small estate shall immediately report the discovery to the court by which he or she was appointed and to the Secretary to the Commissioners of Estate Duty, stating what he or she now considers the gross value of the estate to have been at the death of the deceased and the reason for the lateness of the discovery.

(3) The presiding officer of a court who discovers that the gross value of an estate, which has been the subject of the proceedings in the court is believed to exceed the value of a small estate or who receives a report under subsection (2) shall, after such further inquiry, if any, as he or she deems appropriate, report the matter to the High Court and

to the Secretary to the Commissioners of Estate Duty; and such report shall set out briefly the circumstances of the estate and shall contain a recommendation whether further proceedings in court relating to the estate should be continued in the High Court or the original court.

(4) After making a report under subsection (3), the presiding officer of the court shall not exercise jurisdiction under this Part without the written directions of the High Court and shall do so subject to such directions as the High Court may consider it appropriate.

Chief Justice to make rules on small estates

76. The Chief Justice may make rules prescribing the procedure to be observed in respect of applications relating to small estates, the forms to be used and the fees to be paid and all other matters arising under this Part.

PART XIV
General

Preservation of will and register of wills

77.—(1) The original of every will of which probate is granted or in respect of which a grant of letters of administration with a certified copy the will annexed or an administration grant with a certified copy of the will annexed is made under this Act shall be deposited and preserved in the registry of the court that made the grant, but it may, if the court so determines, be transmitted for such preservation to a registry of the High Court.

(2) A court shall maintain a register of all wills deposited with it and may at any time furnish a certified copy thereof to any person.

(3) Subject to the control of the court and to the provisions of any rules made under this Act, a will deposited with a court shall be open to inspection.

Court's discretion in matters of probate or letters of administration

78.—(1) A court shall not be bound to grant any application under this Act for a grant of probate or letters of administration but may exercise probate or its discretion in relation thereto.

(2) If an application for a grant of probate or letters of administration is refused the court shall state the reason for refusal within a reasonable time not being more than a period of thirty days failing which the application shall be deemed granted by that court and the court shall proceed to effect the grant unless the interests of justice require otherwise.

Payment of salary or wages by employers

79.—(1) Notwithstanding any of the other provisions of this Act, where a person was employed at the date of his or her death, his or her employer shall immediately pay directly to the surviving spouse or in the absence of a surviving spouse to the senior and responsible

member of the deceased person's family known to be living with him or her, the amount due to his or her estate in respect of salary, wages, allowances or arrears for the pay period interrupted by his or her death and, if still unpaid, the immediately prior pay period and the payment to such surviving spouse or other member of his or her family shall be a good discharge to the employer for the amount so paid and the recipient of the amount shall, if required, account to the executor or administrator of the deceased for the expenditure thereof.

(2) The person to whom money is paid under subsection (1) may apply the money for the purpose of paying normal household expenses of the family of the deceased or family expenses in relation to the funeral of the deceased.

Sane murderer not to benefit from estate of victims

80.—(1) Notwithstanding any of the other provisions of this Act, a person who, while sane, murders another person, shall not be entitled, directly or indirectly, to any share in the estate of the murdered person and the beneficiaries to the estate of the murdered person shall be ascertained as though the person who murdered the other had never been born.

(2) For the purposes of this section the conviction of a person of a crime of murder shall be sufficient evidence of the fact that the person convicted committed the murder unless the contrary is proved.

(3) Subject to subsections (1) and (2), the benefit under a will or on intestacy accruing to a person charged with the murder of testator or intestate shall be held upon trust as directed by the court and upon his or her conviction the proceeds from the trust shall be applied as the court may deem appropriate.

Application of Trustee Act Cap. 5:02

81.—(1) The Trustee Act shall apply to executors and administrators of small estates as it applies to all other executors and administrators in respect of deceased estates.

(2) An executor or administrator shall have all the powers of investment of trustees and Part II of the Trustee Act shall apply in relation to investments made or retained by an executor or administrator.

(3) Nothing in this section shall be construed so as to derogate from the generality of the provisions of the Trustee Act.

Proof of claims

82.—(1) When an executor or administrator has received a notice from a claimant in respect of an estate or property which he or she wishes to distribute, he or she may, by a notice in writing served personally or by post, require the claimant prior to a date to be named in such

notice, which shall not be less than sixty days from the service of such notice, either to institute proceedings to establish the claim or otherwise to satisfy the executor or administrator of the validity of the claim by affidavit.

(2) At the expiry of the time mentioned in the notice, the executor or administrator shall be at liberty to distribute the estate or property to which the notice relates amongst the parties entitled thereto without having regard to the claims of persons who shall have been served with such notice but shall have failed to comply with the requirements thereof and the executor or administrator shall not be liable to any such person for the estate or property so distributed.

(3) Nothing in this section shall prejudice the right of any claimant to trace the property or any property representing the property being claimed into the hands of any person, other than a *bona fide* purchaser of the legal estate in the property for value without notice, who may have received it.

Payments to representatives in country of domicile

83. Where an executor or administrator in Malaŵi has been granted probate or letters of administration to the estate in Malaŵi of any person who was at the time of his or her death domiciled outside Malaŵi and probate of whose will or letters of administration of whose estate or equivalent grant in the place of such domicile has been granted to some other person, the executor or administrator may pay over to such other person the balance of the estate in Malaŵi after payment of proved debts and funeral and administration expenses without seeing to the application of such balance and without incurring any liability in regard to such payment.

Unlawful possession, etc., of deceased estate

84.—(1) Any person not being entitled thereto under a will or upon any intestacy who, in contravention of the will or of this Act, takes possession of, grabs, seizes, diverts or in any manner deals in, or disposes of, any property forming part of the estate of a deceased person, or does anything, in relation to such property, which occasions or causes, or is likely to occasion or cause deprivation or any form of hardship to a person who is entitled thereto under the will or upon the intestacy, commits an offence and shall, on conviction, be liable to a fine of not less than the value of the property possessed, seized, diverted or otherwise grabbed, and to imprisonment for ten (10) years, and in addition to such sentence, the court shall make an order directing that—

(*a*) the property or the monetary value thereof be immediately restored to the person or persons lawfully entitled thereto or to the estate of the deceased person; and

(*b*) the whole, or such part as the court shall specify in the order, of the fine imposed be paid to the person or persons entitled or into the estate of the deceased person.

(2) subject to any other written law in relation to spent convictions, a person found guilty under this section shall not qualify as an executor, administrator or guardian in relation to an estate of a deceased person in Malaŵi.

Civic awareness

85. The Minister responsible for matters of gender and community affairs shall have power to design and implement programmes for the civic awareness of the law under this Act and, for that purpose—

(*a*) that Minister shall enlist the services of chiefs and other traditional authorities and the services of non-governmental organizations in disseminating information, and in the conduct of any other activities, connected with such programmes;

(*b*) there shall be appointed in the public service such officers as shall be required to carry out activities for the implementation of such programmes.

Regulations

86. The Minister may make regulations for the better carrying out of this Act.

Periodic reports by executors and administrators

87. An executor and administrator shall, periodically, make reports and update the beneficiaries of the estate, in a form and manner as prescribed by the Minister from time to time.

Offences by executors and administrators

88. An executor or administrator who wrongfully deprives a beneficiary of property or a share in property to which the beneficiary is entitled intending thereby to benefit such executor or administrator or any other person, commits an offence and shall, on conviction, be liable to a fine of K1,000,000 and to imprisonment for three years.

PART XV
Transitional Provisions

Repeal and savings Cap. 10:02

89.—(1) Subject to subsection (2), the Wills and Inheritance Act is hereby repealed.

(2) Any subsidiary legislation made under the Act repealed by subsection (1) in force immediately before the commencement of this Act—

(*a*) shall remain in force unless in conflict with this Act and shall be deemed to be subsidiary legislation made under this Act.

(*b*) may be replaced, amended or repealed by subsidiary legislation made under this Act.

Existing rights

90. Except as expressly provided, nothing in this Act shall be deemed to affect the rights and duties of executors and administrators or the law relating to the administration of estates.

Transitional

91. An application to the court for probate, letters of administration or re-sealing made before the coming into operation of this Act may be continued as though the application had been made under this Act.

INSOLVENCY

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CHAPTER 11:01

INSOLVENCY

9 of 2016
G.N. 16/2016

An Act to regulate matters relating to insolvency and bankruptcy; to make provision for the procedures and processes for bankruptcy; to make provisions for administration of insolvency and to provide for matters incidental thereto and connected therewith

[20TH MAY, 2016]

PART I

PRELIMINARY

Short title

1. This Act may be cited as the Insolvency Act.

Interpretation

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

"administrator" means a person appointed under this Act to manage the affairs, business and property of a company under reorganization and where the context requires, includes reference to a former administrator;

"bankrupt" means a natural person who has been adjudicated bankrupt, and includes a partnership, sole proprietorship or other body corporate which cannot be wound-up under the provisions of Part V;

Cap. 46:03

"company" means a company incorporated under the Companies Act and includes any other company not registered in Malaŵi which has its affairs dealt with under the provisions of this Act;

"company reorganization order" means an order appointing a person as the administrator of a company;

Cap. 46:03

"contributory" has the meaning assigned thereto in the Companies Act;

"correspondence" includes correspondence by telephonic or other electronic means;

"Court" means the High Court of Malaŵi established under the Constitution;

"declaration of solvency" means a declaration by or on behalf of a company that the company's assets exceed its liabilities and that the company is able to pay its debts as they fall due;

"Director" means the Director of Insolvency referred to in section 4 (1);

"discharge" means—

(*a*) in relation to a bankruptcy order, the removal of the impediment of bankruptcy; and

(*b*) in relation to a company reorganization order, the setting aside or discontinuance of a company reorganization order by the Court;

"financial institution" has the meaning ascribed thereto in the Financial Services Act; Cap. 44:05

"financial service law" has the meaning ascribed thereto in the Financial Services Act; Cap. 44:05

"immovable property" means land whether covered by water or not, any estate or interest in, or over, land, or arising out of, or relating to, land, and anything permanently attached to the earth, or permanently fastened to anything so attached;

"inability to pay its debts" has the meaning ascribed thereto in section 182 and section 183;

"insolvency practitioner" means a duly qualified natural person who is entitled to practice as such in terms of Part X;

"insolvency proceeding" means a collective judicial or administrative proceeding, including an interim proceeding, pursuant to a law relating to insolvency whether personal or corporate in which the assets and affairs of a debtor are subject to control or supervision by a judicial or other authority competent to control or supervise that proceeding, for the purpose of reorganization or liquidation;

"liquidator" means a liquidator appointed in terms of the provisions of this Act, and includes a provisional liquidator;

"market value" means the amount which would be realized on a sale of property in the open market by a willing vendor;

"Official Receiver" means the person or office designated an Official Receiver under section 5;

"partnership" has the meaning ascribed thereto in the Partnership Act; Cap. 46:04

"prohibition order" means an order made under section 100 or section 180;

"qualifications" in relation to an insolvency practitioner, means those qualifications that would entitle a person to act as a qualified auditor or a licensed legal practitioner in Malaŵi, or such other qualifications as may be prescribed by the Minister in accordance with section 311 (1) (*b*);

"qualifying security interest" means—

(*a*) a valid security interest;

(*b*) a number of valid security interests; or

(*c*) valid security interests and other forms of security,

over the whole or substantially the whole of the property of a company, partnership or sole proprietorship in terms of the provisions of the Personal Property Security Act;

Cap. 48:03

"receiver" means a receiver duly appointed under the provisions of Part IV;

"Registrar of Companies" means the public officer for the time being holding the office of Registrar of Companies established by section 3 of the Companies Act, and includes a Deputy or Assistant Registrar;

Cap. 46:03

"related person", in relation to a natural person, means—

(*a*) his parent, spouse, child, brother, or sister;

(*b*) the parent, child, brother or sister of his spouse; or

(*c*) a nominee or trustee of the person specified in paragraphs (*a*) and (*b*);

"Rules" means the Rules promulgated in terms of this Act;

"secured creditor" means a creditor with valid and enforceable security amounting to—

(*a*) a security interest over movable property in terms of the provisions of the Personal Property Security Act; and

Cap. 48:03

(*b*) a valid mortgage over immovable property;

"statutory demand" means, in relation to—

(*a*) a company being wound-up in terms of this Act, a statutory demand described in section 184; and

(*b*) a bankrupt, a statutory demand as described in section 190;

"the purpose of company reorganization" means an objective specified in section 14 (1).

Application of this Act
Cap. 44:05

3. This Act shall not apply to financial institutions unless provided otherwise in the Financial Services Act.

PART II

Administration of this Act

Director of Insolvency

4.—(1) The Secretary responsible for industry and trade or such other person as the Minister may appoint, shall be the Director of Insolvency (hereinafter referred to as "Director"), who shall be responsible for the effective administration and application of this Act.

(2) Without derogating from the generality of subsection (1), the functions of the Director shall be to—

(*a*) keep under review the law and practice relating to the insolvency of individuals, partnerships, sole proprietorships, companies and other corporate bodies in Malaŵi and make recommendations to the Minister on any changes considered to be necessary;

(*b*) have an overview of the administration of insolvency in Malaŵi and in particular the administration of insolvency under this Act;

(*c*) receive reports from the Official Receiver on the administration of insolvencies, monitor the performance of the Official Receiver and report to the Minister on any resourcing or other needs in relation to the effective performance of the Official Receiver's functions;

(*d*) monitor the performance of insolvency practitioners and, where required, make an application to the Court for the discipline or removal of an insolvency practitioner;

(*e*) set rules and provide guidance governing the performance and conduct of insolvency practitioners in consultation with the relevant professional bodies;

(*f*) foster the development of training and in-service seminars to enhance the skills and encourage improved standards of performance on the part of insolvency practitioners in consultation with all relevant professional bodies;

(*g*) carry out research, commission studies, disseminate information and provide public education in the area of insolvency administration;

(*h*) establish and maintain communication and liaise with international agencies, in the area of international insolvencies and insolvency administration; and

(*i*) advise the Minister generally on any matter relating to the law and practice of insolvency and insolvency administration.

(3) The Director shall have a seal and such seal shall bear the words "Director of Insolvency, Malaŵi".

(4) In the performance of his duties under this Act, the Director shall be subject to—

(*a*) the general and special directions of the Minister, not inconsistent with the provisions of this Act; and

Cap. 1:03

(*b*) for avoidance of doubt, the provisions of the Public Service Act.

Official Receiver

5.—(1) The Minister shall designate a suitable person or office to be the Official Receiver.

(2) The Chief Justice shall by Rules prescribe a mandatory threshold including the procedure for small individual bankruptcies and individual voluntary arrangements to be adjudicated upon and administered by courts of the Chief Resident Magistrate summarily notwithstanding anything to the contrary.

Office and name of Official Receiver

6.—(1) The Official Receiver shall have legal personality and may sue and be sued as the Official Receiver of the property of bankrupt, or of the company which is the subject of a winding-up order, and may do all acts necessary or expedient to be done in the execution of his office.

(2) The Official Receiver may administer oaths and take declarations and may appear in Court and examine a bankrupt or the directors of a company who are the subject of a winding-up order or any other person who appears in proceedings under this Act.

(3) The Official Receiver may execute all documents, signing his private name under the official name, and may affix a seal to any document:

Provided that nothing in this subsection shall prevent the Official Receiver from affixing the seal of his office to any document.

Vacation of office of Official Receiver

7.—(1) A person shall not act or continue to act as Official Receiver in relation to the estate of any debtor of which he is a creditor (not being a creditor in the capacity of Official Receiver in

the property of any other bankrupt or the liquidator of any company) if the creditors declare by resolution that they do not wish him to act as Official Receiver.

(2) In any case where a disqualification under subsection (1) occurs, the Minister shall appoint a suitable person to act as the Official Receiver of the estate referred to in subsection (1).

Register of insolvency practitioners

8.—(1) The Director shall keep and maintain a register of insolvency practitioners in which there shall be entered the name, address and qualifications of every insolvency practitioner.

(2) An insolvency practitioner shall, within the prescribed period of the date of his appointment, give notice to the Director in the prescribed form.

(3) An insolvency practitioner who for a period of six months has ceased to hold office as an insolvency practitioner shall give notice of that fact to the Director within the prescribed period.

(4) An insolvency practitioner who is suspended or removed from the practice of accountancy or law or the practice of a company secretary by the relevant professional body in Malaŵi, or by a comparable professional body outside Malaŵi, shall give notice of that fact to the Director within the prescribed period of the insolvency practitioner receiving notice of the suspension or removal from practice.

(5) Where the Director receives notice under subsection (4), or is otherwise advised by the professional body concerned, or has reasonable grounds to suspect that an insolvency practitioner has been suspended from the practice of accountancy or law or the practice of a company secretary, the Director may, where he has reasonable ground to suspect that the person may be unfit to continue to act as an insolvency practitioner, after providing the insolvency practitioner with an opportunity to be heard, suspend the insolvency practitioner from continuing in office as an insolvency practitioner pending the making of further inquiries and the making of an application to the Court under section 9, and the issuance by the Court of a prohibition order pursuant to section 100 or section 180.

(6) The Director shall enter against the name of a person concerned in the register of insolvency practitioners any of the following matters that may affect the person—

(*a*) that the person has been subject to a prohibition order by the Court under section 100 or section 180;

(*b*) where the Director has received notice to that effect from the professional body or from the person concerned that the person has been suspended or removed from the practice of accountancy or law or the practice of a company secretary by any professional body in Malaŵi, or by any comparable body outside Malaŵi;

(*c*) that the person has died; or

(*d*) that the person has ceased to practice as an insolvency practitioner and has requested the Director to remove his name from the register.

Conduct and performance of insolvency practitioners

9.—(1) The Director shall keep under review the conduct and performance of persons appointed to be insolvency practitioners and may require any document or information concerning an insolvency practitioner to be provided to the Director by the Official Receiver, the Court, the Minister, any other insolvency practitioner or any person who is or has been an auditor of a company in which the insolvency practitioner has held office.

(2) The Director may receive representations from any person on the conduct and performance of an insolvency practitioner and shall within the prescribed period of receiving any such representation disclose the substance of the representation to the insolvency practitioner and seek comment on it.

(3) Any representation made to the Director under subsection (2) and any communication of the terms of the representation made in confidence shall be protected by absolute privilege.

(4) Where the Director has reasonable ground to suspect that an insolvency practitioner has—

(*a*) failed to comply with a provision of this Act in a manner which has or may materially affect creditors, contributories or persons dealing in good faith with a debtor; or

(*b*) been suspended or removed from the practice of accountancy or law or the practice of a company secretary by a professional body in Malaŵi, or by a comparable body outside Malaŵi,

the Director may inquire into the conduct of the insolvency practitioner.

(5) For the purposes of an inquiry under subsection (4), the Director may, by notice in writing, require a director, shareholder, a company or any other person, including the secretary of any relevant professional body to deliver to the Director such books, records or

documents of the company in that person's possession or under that person's control that are relevant to the subject matter of the inquiry as the Director requires.

(6) The Director may, for the purposes of an inquiry under subsection (4), by notice in writing require—

(*a*) a director or former director of a company;

(*b*) a shareholder of a company;

(*c*) a person who was involved in the promotion of formation of a company;

(*d*) a person who is, or has been, an employee of a company;

(*e*) a receiver, liquidator, administrator, accountant, auditor, bank officer or other person having knowledge of the affairs of a company; or

(*f*) a person who is acting or who has at any time acted as a legal practitioner for a company,

to do any of the things specified in subsection (7).

(7) A person referred to in subsection (6) may be required to—

(*a*) appear before the Director at such reasonable time and at such place as may be specified in a request;

(*b*) provide the Director with such information about the business, accounts, or affairs of the company as the Director requests;

(*c*) be examined on oath by the Director or by a legal practitioner acting on behalf of the Director on any matter relating to the business, accounts or affairs of the company; or

(*d*) assist the Director to the best of the person's ability.

(8) The Director may pay to a person referred to in subsection (6) (*c*), (*d*) or (*f*), not being an employee of the company, reasonable travelling and other expenses in complying with a requirement of the Director under subsection (7).

(9) No action or proceeding (including disciplinary proceedings by any professional tribunal, body or authority having jurisdiction in respect of professional conduct) shall lie against any person arising from disclosure in good faith of information to the Director pursuant to this section.

Director may make application to Court

10.—(1) Where the Director, as a result of the outcome of an inquiry under section 9 or otherwise, considers that there is reasonable ground to believe that the insolvency practitioner is unfit to act as such by reason of—

(*a*) persistent failure to comply with this Act;

(*b*) the seriousness of the failure to comply with this Act; or

(*c*) misconduct or serious incompetence on the part of the insolvency practitioner,

the Director may apply to the Court for a prohibition order under section 100 or section 180.

(2) Where the Court makes a prohibition order pursuant to subsection (1), that fact shall be entered in the register kept under section 12 and in the register of prohibited persons kept pursuant to section 180 (5).

Disclosure to and consultation with, Director

11.—(1) Every person who holds or at any time has held office as an agent for, or trustee of, holders of any security issued by a company, or who has been an auditor of a public company, shall disclose to the Director information relating to the affairs of the company obtained in the course of holding that office where, in the opinion of the person—

(*a*) the company is insolvent, is likely to become insolvent or is in serious financial difficulties; or

(*b*) the company has breached, or is likely to breach in a significant respect—

(i) the terms of the agency deed or trust deed for secured parties;

(ii) the terms of the offer of any securities; or

(iii) the disclosure of the information is likely to assist, or be relevant to, the exercise of any power conferred on the Director or the Court under this Part.

(2) Every auditor of, or agent or trustee for, secured parties in a secured transaction shall, before disclosing any information to the Director under subsection (1), take reasonable steps to inform the company concerned of his intention to disclose the information and the nature of the information.

(3) The agent, trustee or auditor who has made disclosure to the Director under subsection (1), may on his own initiative, consult with

the Director or may be required by the Director to consult with him on the position of the company and the way in which the difficulties of the company may be addressed.

(4) The Director may, for the purpose of addressing the difficulties of a company identified by a consultation under subsection (3), give advice and assistance in connexion with any scheme for resolving the difficulties of the company, and may appoint an independent advisor to work with the company to address such difficulties and report to the Director.

(5) No action or proceedings including disciplinary proceedings by any professional tribunal, body or authority having jurisdiction in respect of professional conduct, shall lie against any agent, trustee or auditor arising from the disclosure in good faith of information to the Director pursuant to subsection (1).

Other registers to be kept by Director

12.—(1) The Director shall keep and maintain—

(*a*) a public register of discharged and undischarged bankrupts; and

(*b*) a public register of persons who are subject to an individual voluntary arrangement.

(2) The registers shall be maintained in accordance with the Rules.

PART III

Company Reorganization

Meaning of a company in reorganization

13.— (1) For the purposes of this Part—

(*a*) a company is "in company reorganization" while the appointment of an administrator of the company has effect;

(*b*) a company "enters company reorganization" when the appointment of an administrator takes effect;

(*c*) a company ceases to be in company reorganization when the appointment of an administrator of the company ceases to have effect in accordance with this Act;

(*d*) a company shall not cease to be in company reorganization merely because an administrator vacates office whether by reason of resignation, death or otherwise or is removed from office;

(*e*) the provisions of sections 182 and 183 shall apply when determining whether or not a company is unable to pay its debts under section 17; and

(*f*) the provisions of section 136 shall apply *mutatis mutandis*, to a company or companies "in company reorganization".

(2) A person may be appointed as administrator by a company reorganization order of the Court under section 19.

(3) The provisions of this Part shall apply, in so far as they may be conveniently applied, to a case of a business reorganization carried on by a partnership or a sole proprietorship.

Objective of company reorganization

14.—(1) The administrator shall perform his functions with the objective of—

(*a*) rescuing the company as a going concern; restoring the company to solvency and thereby preserving the company and its business operations as a going concern; or

(*b*) achieving a better result for the company's creditors as a whole than would be likely if the company were wound-up without first being in company reorganization, which may include a sale or a transfer of any business of the company as a going concern; or

(*c*) realizing property in order to make a distribution to one or more secured or preferential creditors.

(2) Subject to subsection (4), the administrator shall perform his functions in the interests of the company's creditors as a whole.

(3) The administrator shall perform his functions with the objective specified in subsection (1) (*a*) unless he thinks that—

(*a*) it is not reasonably practicable to achieve the objective; or

(*b*) the objective specified in subsection (1) (*b*) would achieve a better result for the company's creditors as a whole.

(4) The administrator may perform his functions with the objective specified in subsection (1) (*c*) only if—

(*a*) he determines that it is not reasonably practicable to achieve the objectives specified in subsection (1) (*a*) or (*b*); and

(*b*) the performance of his functions would not unnecessarily harm the interests of the creditors of the company as a whole.

(5) The administrator shall perform his functions as quickly and efficiently as is reasonably practicable.

Administrator to be an officer of the Court

15. An administrator shall be an officer of the Court.

Appointment of an administrator

16. A person may be appointed as administrator only if he is qualified to act as an insolvency practitioner in relation to the company.

Conditions for making reorganization order

17. The Court shall make a company reorganization order in relation to a company only if satisfied—

(*a*) that the company is or is likely to become unable to pay its debts as they fall due; and

(*b*) that the company reorganization order is reasonably likely to achieve the objective set out in section 14.

Application for a reorganization order

18.—(1) An application to the Court for a company reorganization order in respect of a company (a "company reorganization application") may be made only by—

(*a*) the company;

(*b*) the directors of the company;

(*c*) one or more creditors of the company; or

(*d*) a combination of persons listed in paragraphs (*a*), (*b*) and (*c*).

(2) As soon as is reasonably practicable after the making of a company reorganization application, the applicant shall notify—

(*a*) any person who has appointed a receiver of the company under Part IV;

(*b*) any person who is or may be entitled to appoint a receiver of the company under Part IV; and

(*c*) such other persons as may be prescribed.

(3) A company reorganization application shall not be withdrawn without the order of the Court.

(4) In subsection (1), "creditor" includes a contingent creditor and a prospective creditor.

Powers of Court

19.—(1) On hearing a company reorganization application, the Court may—

(*a*) make the company reorganization order sought;

(*b*) dismiss the application;

(*c*) adjourn the hearing conditionally or unconditionally;

(*d*) make an interim order;

(*e*) treat the application as a winding-up petition and make any order which the Court could make under section 109; and

(*f*) make any other order which the Court thinks appropriate.

(2) The appointment of an administrator by company reorganization order shall take effect—

(*a*) at a time appointed by the order; or

(*b*) where no time is appointed by the order, when the order is made.

(3) An interim order under subsection (1) (*d*) may, in particular—

(*a*) restrict the exercise of a power of the directors of the company;

(*b*) make provision conferring discretion on the Court or on a person qualified to act as an insolvency practitioner in relation to the company.

Application by holder of qualifying security interest

20. This section shall apply where a company reorganization application—

(*a*) is made by a holder of a qualifying security interest; and

(*b*) includes a statement that the application is made in reliance on this section.

Intervention by holder of a qualifying security interest

21.—(1) This section shall apply where—

(*a*) a company reorganization application in respect of a company is made by a person who is not the holder of a qualifying security interest; and

(*b*) the holder of a qualifying security interest applies to the Court to have a specified person other than the person specified by the company reorganization applicant appointed as Administrator.

(2) The holder of a qualifying security interest may make a company reorganization application.

(3) The Court shall grant an application under subsection (1) (*b*) unless the Court determines it right to refuse the application because of the particular circumstances of the case.

Application for reorganization order where company in liquidation

22.—(1) The holder of the qualifying security interest may make a company reorganization application.

(2) This section shall apply where the holder of a qualifying security interest cannot apply for a company reorganization order

due to the fact that the company is already in liquidation by virtue of a winding-up order by the Court.

(3) The liquidator of a company may make a company reorganization application.

(4) If the Court makes a company reorganization order on hearing an application under subsection (3)—

(*a*) the Court shall discharge any winding-up order in respect of the company;

(*b*) the Court shall make orders for such matters as may be prescribed;

(*c*) the Court may make other consequential orders;

(*d*) the Court shall specify which of the powers under this Act are to be exercisable by the administrator; and

(*e*) this Act shall have effect with such modifications as the Court may specify.

(5) If the Court makes a company reorganization order on hearing an application made under subsection (1)—

(*a*) the Court shall discharge the winding-up order;

(*b*) the Court shall make orders for such matters as may be prescribed;

(*c*) the Court may make such other consequential orders;

(*d*) the Court shall specify which of the powers under this Act are to be exercisable by the administrator; and

(*e*) this Act shall have effect with such modifications as the Court may specify.

Effects of receivership

23.—(*a*) Where an application for a company reorganization order is made after a receiver of a company has been appointed under the provisions of Part IV, the Court shall dismiss the application in respect of the company, unless the person by whom or on behalf of whom the receiver was appointed, or the receiver himself when he has the necessary authority to do so, consents to the making of the company reorganization order; or

(*b*) the Court considers that the security by virtue of which the receiver was appointed would be liable to be released, discharged or challenged under Part VIII.

Dismissal of pending winding-up petition

24. A petition for the winding-up of a company shall be dismissed on the making of a company reorganization order in respect of the company.

Dismissal of receiver

25.— (1) A receiver of a company shall vacate office when a company reorganization order takes effect in respect of the company.

(2) Where a company is in company reorganization, any receiver of part of the company's property shall vacate office if the administrator requires him to.

(3) Where a receiver vacates office under subsection (1) or (2), his remuneration shall be charged on and paid out of any property of the company which was in his custody or under his control immediately before he vacated office.

(4) In the application of subsection (3)—

(*a*) "remuneration" includes expenses properly incurred and any indemnity to which the receiver is entitled out of the assets of the company;

(*b*) the costs so imposed shall take priority over any security interests; and

(*c*) the provision for payment shall be subject to section 27.

Moratorium on insolvency proceedings

26.—(1) This section shall apply to a company in company reorganization.

(2) Where a company is in company reorganization—

(*a*) a resolution may not be passed for the winding-up of the company; and

(*b*) an order may not be made for the winding-up of the company.

Moratorium on other legal processes

27.—(1) No steps shall be taken to create, perfect or enforce any security interests over the company's property except with—

(*a*) the consent of the administrator; or

(*b*) the permission of the Court.

(2) A landlord shall not exercise a right of forfeiture by peaceable re-entry in relation to premises let to the company except with—

(*a*) the consent of the administrator; or

(*b*) the permission of the Court.

(3) No legal process, including legal proceedings, execution or distress may be instituted or continued against the company or property of the company except with—

(*a*) the consent of the administrator; or

(*b*) the permission of the Court.

(4) Where the Court gives permission under this section, it may impose any condition or requirement as it sees fit.

(5) In this section, "landlord" includes a person to whom rent is payable.

Interim moratorium

28.—(1) This section shall apply where a company reorganization application in respect of a company has been made and the application has—

(*a*) not yet been granted or dismissed; or

(*b*) been granted, but the company reorganization order has not yet taken effect.

(2) The provision of sections 26 and 27 shall apply, except for any reference to the consent of the administrator.

(3) If there is a receiver of the company when the company reorganization application is made, the provisions of sections 26 and 27 shall not apply by virtue of this section until the person by or on behalf of whom the receiver was appointed consents to the making of the company reorganization order.

Publicity

29.—(1) While a company is in company reorganization, every document issued by or on behalf of the company or the administrator shall state—

(*a*) the name of the administrator; and

(*b*) that the affairs, business and property of the company are being managed by him.

(2) Any of the following persons commits an offence if without reasonable excuse, he authorizes or permits a contravention of subsection (1)—

(*a*) the administrator;

(*b*) an officer of the company; and

(*c*) the company.

Announcement of administrator's appointment

30.—(1) This section shall apply where a person becomes the administrator.

(2) As soon as is reasonably practicable, the administrator shall—

(*a*) send a notice of his appointment to the company; and

(*b*) publish a notice of his appointment in the prescribed manner.

(3) As soon as is reasonably practicable, the administrator shall—

(*a*) obtain a list of the company's creditors; and

(*b*) send a notice of his appointment to each creditor of whose claim and address he is aware of.

(4) The administrator shall send a notice of his appointment to the Director and the Registrar of Companies within the prescribed period, beginning with the date of the order.

(5) The administrator shall send a notice of his appointment to such other persons as may be prescribed before the end of the prescribed period, beginning with the date of the order.

(6) The Court may direct that subsection (3) (*b*) or subsection (5)—

(*a*) shall not apply; or

(*b*) shall apply with the substitution of a different period.

(7) A notice under this section shall—

(*a*) contain the prescribed information; and

(*b*) be in the prescribed form.

Statement of company's affairs

31.—(1) Within the prescribed period after appointment, the administrator shall by notice in the prescribed form require one or more relevant persons to provide the administrator with a statement of the affairs of the company.

(2) The statement shall—

(*a*) be verified by a statutory declaration in accordance with the Oaths, Affirmations and Declarations Act;

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(*b*) be in the prescribed form;

(*c*) give particulars of the company, debts and liabilities;

(*d*) give the names and addresses of the company's creditors;

(*e*) specify the security interests held by each creditor;

(*f*) give the date on which each security interest was perfected; and

(*g*) contain such other information as may be prescribed.

(3) In subsection (1), "relevant person" means—

(*a*) a person who is or has been an officer of the company;

(*b*) a person who took part in the formation of the company during the period of one year ending with the date on which the company enters company reorganization;

(*c*) a person employed by the company during the period referred to in paragraph (*b*); and

(*d*) a person who is or has been during that period an officer or employee of a company which is, or has been during that year an officer of the company.

(4) For the purposes of subsection (3), a reference to employment is a reference to employment through a contract of employment or a contract for services.

Prescribed period for submission of statement of affairs

32.—(1) A person required to submit a statement of affairs shall do so within the prescribed period, beginning with the date on which he receives notice of the requirement.

(2) The administrator may—

(*a*) revoke a requirement under section 31 (1); or

(*b*) extend the period specified in subsection (1), whether before or after the expiry of such period.

(3) If the administrator refuses a request to act under subsection (2)—

(*a*) the person whose request is refused may apply to the Court; and

(*b*) the Court may take action of a kind specified in subsection (2).

Administrator's proposals

33.—(1) The administrator shall make a statement setting out proposals for achieving the purpose of company reorganization.

(2) A statement under subsection (1) shall, in particular—

(*a*) deal with such matters as may be prescribed; and

(*b*) where applicable, explain why the administrator thinks that the objective mentioned in section 14 (1) (*a*) or (*b*) cannot be achieved.

(3) Proposals under this section may include a proposal for an arrangement to be sanctioned under the provisions of section 156.

(4) The administrator shall send a copy of the statement of his proposals to—

(*a*) the Registrar of Companies;

(*b*) the Director;

(*c*) every creditor of the company of whose claim and address he is aware of; and

(*d*) every member of the company of whose claim and address he is aware of.

(5) The administrator shall comply with subsection (4)—

(*a*) as soon as is reasonably practicable after the company enters company reorganization; and

(*b*) in any event, before the end of the prescribed period beginning with the day on which the company enters company reorganization.

(6) The administrator shall be taken to comply with subsection (4) (*d*) if he publishes in the prescribed manner a notice undertaking to provide a copy of the statement of proposals free of charge to any member of the company who applies in writing to a specified address.

Creditors' meeting

34.—(1) In this Act, "creditors' meeting" means a meeting of creditors of a company summoned by the administrator—

(*a*) in the prescribed manner; and

(*b*) giving the prescribed period of notice to every creditor of the company of whose claim and address he is aware of.

(2) A period prescribed under subsection (1) (*b*) may be varied in accordance with the Rules.

(3) A creditors' meeting shall be conducted in accordance with the Rules.

Requirement for initial creditors' meeting

35.—(1) Each copy of an administrator's statement of proposals sent to a creditor under section 33 shall be accompanied by an invitation to a creditors' meeting (hereinafter referred to as an "initial creditors' meeting").

(2) The date set for an initial creditor's meeting shall be as soon as is reasonably practicable after the company enters company reorganization and in any event within the prescribed period beginning with the date on which the company enters company reorganization.

(3) An administrator shall present a copy of his statement of proposals to an initial creditors' meeting.

(4) A period specified in this section may be varied in accordance with the Rules.

(5) Subsection (1) shall not apply where the statement of proposals states that the administrator thinks that—

(*a*) the company has sufficient property to enable each creditor of the company to be paid in full;

(*b*) the company has insufficient property to enable a distribution to be made to unsecured creditors; or

(*c*) none of the objectives specified in section 14 can be achieved.

(6) Notwithstanding the provisions of subsection (5), the administrator shall summon an initial creditors' meeting if it is requested—

(*a*) by creditors of the company whose debts amount to at least the prescribed amount as determined by the Rules;

(*b*) in the prescribed manner; and

(*c*) in the prescribed period.

(7) A meeting requested under subsection (6) shall be summoned for a date in the prescribed period.

(8) The period prescribed under subsection (7) may be varied in accordance with the Rules.

Business and result of initial creditors' meeting

36.—(1) An initial creditors' meeting to which an administrator's proposals are presented shall consider the proposals and may—

(*a*) approve them without modification in accordance with subsection (2); or

(*b*) approve them with modification to which the administrator consents.

(2) Subject to the provisions of subsection (3), the administrator's proposals shall be deemed to be approved when a majority in value

of those creditors present and voting, in person or by proxy, have voted in favour of the proposals.

(3) The administrator's proposals shall not be approved if those voting against the proposals include more than half in value of the creditors to whom notice of the meeting was sent and who are not, to the best of the chairman of the meeting's belief, persons connected with the company.

(4) After the conclusion of an initial creditors' meeting, the administrator shall as soon as is reasonably practicable report any decision taken to—

(*a*) the Court;

(*b*) the Director;

(*c*) the Registrar of Companies; and

(*d*) such other persons as may be prescribed.

Substantial revision after approval

37.—(1) This section shall apply where—

(*a*) an administrator's proposals have been approved at an initial creditors' meeting;

(*b*) the administrator proposes a revision to the proposals; and

(*c*) the administrator thinks that the proposed revision is substantial.

(2) The administrator shall—

(*a*) summon a creditors' meeting;

(*b*) send a statement in the prescribed form, of the proposed revision with the notice of the meeting sent to each creditor;

(*c*) send a copy of the statement, within the prescribed period, to each member of the company of whose address he is aware of; and

(*d*) present a copy of the statement to the meeting.

(3) The administrator shall be taken to have complied with subsection (2) (*c*) if he publishes a notice undertaking to provide a copy of the statement free of charge to any member of the company who applies in writing to a specified address.

(4) A notice under subsection (3) shall be published—

(*a*) in the prescribed manner; and

(*b*) within the prescribed period.

(5) A creditors' meeting to which a proposed revision is presented shall consider it and may—

(*a*) approve it without modification; or

(*b*) approve it with modification to which the administrator consents,

by applying the voting rules set out in section 36 (2) and (3).

(6) After the conclusion of a creditors' meeting, the administrator shall as soon as is reasonably practicable report any decision taken to—

(*a*) the Court;

(*b*) the Director;

(*c*) the Registrar of Companies; and

(*d*) such other persons as may be prescribed.

Failure to obtain approval of administrator's proposals

38.—(1) This section shall apply where an administrator reports to the Court that—

(*a*) an initial creditors' meeting has failed to approve the administrator's proposals presented to it; or

(*b*) a creditors' meeting has failed to approve a revision of the administrator's proposal presented to it.

(2) The Court may—

(*a*) order that the appointment of an administrator shall cease to have effect from a specified time;

(*b*) adjourn the hearing conditionally or unconditionally;

(*c*) make an interim order; and

(*d*) make any other order which the Court thinks appropriate.

Further creditors' meetings

39. The administrator shall summon a creditors' meeting if—

(*a*) it is requested in the prescribed manner by creditors of the company whose debts amount to at least ten per cent of the total debts of the company; or

(*b*) he is directed by the Court to summon a creditors' meeting.

Creditors' committee

40.—(1) A creditors' meeting may establish a creditors' committee.

(2) A creditors' committee may require the administrator to—

(*a*) attend on the committee at any reasonable time of which he is given notice of at least the prescribed number of days; and

(*b*) provide the committee with information about the exercise of his functions.

Correspondence instead of creditors' meeting

41.—(1) Anything which is required or permitted by or under this Act to be done at a creditors' meeting may be done by correspondence between the administrator and creditors—

(*a*) in accordance with the Rules; and

(*b*) subject to any prescribed condition.

(2) A reference in this Act to anything done at a creditors' meeting shall include a reference to anything done in the course of correspondence in reliance on subsection (1).

(3) A requirement to hold a creditors' meeting shall be satisfied by conducting correspondence in accordance with this section.

General powers of administrator

42.—(1) The administrator may do anything necessary or expedient for the management of the affairs, business and property of the company.

(2) A provision of this Act which expressly permits the administrator to do a specified thing shall be without prejudice to the generality of subsection (1).

(3) A person who deals with the administrator in good faith need not inquire whether the administrator is acting within his powers.

(4) In addition to the powers conferred on the administrator by this Act, he shall also have the powers specified in the Rules.

(5) The administrator may—

(*a*) remove a director of the company; and

(*b*) appoint a director of the company whether or not to fill a vacancy.

(6) The administrator may call a meeting of members or creditors of the company.

(7) The administrator may apply to the Court for directions in connexion with his functions.

(8) A company in company reorganization or an officer of a company in company reorganization may not exercise a management power without the consent of the administrator.

(9) The administrator may raise finance by way of a loan or other credit or finance facility for the benefit of the company, provided that

such loan or facility is necessary for the continuation of any business of the company.

(10) In exercising the powers conferred by subsection (9), the administrator may give security interests over the assets of the company:

Provided that no such security interests shall take priority over any existing security interests in favor of a creditor of the company without the consent of the creditor holding the security interest or an order of the Court.

(11) The administrator may apply to the Court for an order under subsection (10).

(12) Upon an application under subsection (11), the Court may grant such order only if the Court is satisfied that the interest of any existing secured creditor will not be adversely affected.

(13) For the purposes of subsection (8)—

(*a*) "management power" means a power which could be exercised so as to interfere with the exercise of the administrator's powers and it is immaterial whether the power is conferred by a written law or an instrument; and

(*b*) consent may be general or specific.

Distribution

43.—(1) The administrator may make a distribution to a creditor of the company.

(2) Section 297 shall apply in relation to a distribution under this section as it applies in relation to a winding-up.

(3) A payment may not be made by way of distribution under this section to a creditor of the company who is not secured or preferential unless the Court gives permission.

(4) The administrator may make a payment otherwise than in accordance with subsection (2) or (3) or as prescribed in the Rules if he thinks it likely to assist achievement of the purpose of company reorganization.

General duties of administrator

44.—(1) The administrator shall, on his appointment, take custody or control of all the property to which he thinks the company is entitled.

(2) Subject to subsection (3), the administrator shall manage the affairs, business and property of the company in accordance with—

(*a*) any proposals approved under section 36;

(*b*) any revision of those proposals which is made by him and which he does not consider substantial; and

(*c*) any revision of those proposals approved under section 37.

(3) If the Court gives directions to the administrator in connexion with any aspect of his management of the company's affairs, business or property, the administrator shall comply with such directions.

(4) The Court may give directions under subsection (3) only if—

(*a*) no proposals have been approved under section 36;

(*b*) the directions are consistent with any proposals or revision approved under section 36 or 37;

(*c*) the Court thinks the directions are required in order to reflect a change in circumstances since the approval of proposals or a revision under section 36 or 37; or

(*d*) the Court thinks the directions are desirable because of a misunderstanding about proposals or a revision approved under section 36 or 37.

Administrator as agent of the company

45. In exercising his functions under this Act, an administrator shall act as the agent of the company.

Secured property: qualifying security interest

46.—(1) An administrator may dispose of, or take action, relating to property which is subject to a qualifying security interest as if it were not subject to the security interest.

(2) Where property is disposed of in reliance on subsection (1), the holder of the qualifying security interest shall have the same priority in respect of acquired property as he had in respect of the property disposed of.

(3) In subsection (2), "acquired property" means property which directly or indirectly represents the property disposed of.

Secured property: non-qualifying security interest

47.—(1) The Court may by order enable an administrator to dispose of property which is subject to a security interest other than a qualifying security interest, as if it were not subject to the security interest.

(2) An order under subsection (1) may be made only—

(*a*) on the application of an administrator; and

(*b*) where the Court thinks that disposal of the property would be likely to promote the purpose of company reorganization in respect of the company.

(3) An order under this section shall be subject to the condition that there be applied towards discharging the sums secured by the security interest—

(*a*) the net proceeds of disposal of the property; and

(*b*) any additional money required to be added to the net proceeds so as to produce the amount determined by the Court as the net amount which would be realized on a sale of the property at market value.

(4) If an order under this section relates to more than one security interest, application of money under subsection (3) shall be in the order of the priorities of the securities.

(5) An administrator who makes a successful application for an order under this section shall send a copy of the order to the Director and the Registrar of Companies within the prescribed period starting with the date of the order.

Protection for secured or preferential creditor

48.—(1) An administrator's statement of proposals under section 33 shall not include any action which—

(*a*) affects the right of a secured creditor of the company to enforce his security interest;

(*b*) would result in a preferential debt of the company being paid otherwise than in priority to its non-preferential debts; or

(*c*) would result in one preferential creditor of the company being paid a smaller proportion of his debt than another.

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

(*a*) action to which the relevant creditor consents; or

(*b*) a proposal for an arrangement to be sanctioned under the provisions of section 156.

(3) The reference to a statement of proposals in subsection (1) shall include a reference to a statement as revised or modified.

Challenge to administrator's conduct of company

49.—(1) A creditor or member of a company in company reorganization may apply to the Court claiming that the administrator—

(*a*) is acting or has acted so as to unfairly harm the interests of the applicant whether alone or in common with some or all other members or creditors; or

(*b*) proposes to act in a way which would unfairly harm the interests of the applicant whether alone or in common with some or all other members or creditors.

(2) A creditor or member of a company in company reorganization may apply to the Court claiming that the administrator is not performing his functions as quickly or as efficiently as is reasonably practicable.

(3) The Court may—

(*a*) grant relief;

(*b*) dismiss the application;

(*c*) adjourn the hearing conditionally or unconditionally;

(*d*) make an interim order; or

(*e*) make any other order it thinks appropriate.

(4) An order under this section may—

(*a*) regulate the administrator's exercise of his functions;

(*b*) require the administrator to do or not to do a specified thing;

(*c*) require a creditors' meeting to be held for a specified purpose;

(*d*) provide for the appointment of an administrator to cease to have effect; or

(*e*) make consequential provision.

(5) An order may be made on a claim under subsection (1) whether or not the action complained of—

(*a*) is within the administrator's powers under this Act;

(*b*) was taken in reliance on an order under section 47.

(6) An order may not be made under this section if it would impede or prevent the implementation of—

(*a*) an arrangement sanctioned in terms of the provisions of section 156; or

(*b*) proposals or a revision approved under section 36 or 37 more than the prescribed number of days before the day on which the application for the order under this section is made.

50.—(1) The Court may examine the conduct of a person who— Misfeasance

(*a*) is, or purports to be the administrator; or

(*b*) has been or has purported to be the administrator.

(2) An examination under this section may be held only on the application of—

(*a*) the Official Receiver;

(*b*) the administrator;

(*c*) the liquidator of the company;

(*d*) a creditor of the company;

(*e*) a contributory of the company; or

(*f*) the Director.

(3) An application under subsection (2) shall allege that the administrator—

(*a*) has misapplied or retained money or other property of the company;

(*b*) has become accountable for money or other property of the company;

(*c*) has breached a fiduciary or other duty in relation to the company; or

(*d*) has been guilty of misfeasance.

(4) On an examination under this section into a person's conduct, the Court may order him to—

(*a*) repay, restore or account for money or property;

(*b*) pay interest; or

(*c*) contribute a sum to the company's property by way of compensation for breach of duty or misfeasance.

(5) In subsection (3), "administrator" includes a person who purports or has purported to be a company's administrator.

(6) An application under subsection (2) in respect of an administrator who has been discharged under section 64 shall not be made without the permission of the Court.

Automatic end of company reorganization

51.—(1) Subject to subsections (2), (3) and (4), the appointment of an administrator shall cease to have effect at the end of the period of six months beginning with the date on which it takes effect.

(2) On the application of an administrator, the Court may by order extend the term of office of the administrator for a further six months.

(3) Where the Court has extended an administrator's term of office under subsection (2), it may by order further extend his term of office for a specified period for good cause shown.

(4) An administrator's term of office may be extended for a specified period not exceeding six months by consent.

(5) An order of the Court under subsection (3)—

(*a*) may be made in respect of an administrator whose term of office has already been extended by order or by consent; and

(*b*) may not be made after the expiry of the administrator's term of office.

(6) Where an order is made under subsection (5), the administrator shall as soon as is reasonably practicable notify the Director and the Registrar of Companies.

(7) In subsection (4), "consent" means the consent of—

(*a*) each secured creditor of the company; and

(*b*) if the company has unsecured debts, creditors whose debts amount to more than fifty per cent of the company's unsecured debts, disregarding debts of any creditor who does not respond to an invitation to give or withhold consent.

(8) Notwithstanding subsection (7), where the administrator has made a statement under section 35 (6) (*b*), "consent" means—

(*a*) consent of each secured creditor of the company; or

(*b*) if the administrator thinks that a distribution may be made to preferential creditors, the consent of—

(i) each secured creditor of the company; and

(ii) preferential creditors whose debts amount to more than fifty per cent of the preferential debts of the company, disregarding debts of any creditor who does not respond to an invitation to give or withhold consent.

(10) Consent for the purposes of subsection (4) may be—

(*a*) written; or

(*b*) signified at a creditors' meeting.

(11) An administrator's term of office may—

(*a*) be extended by consent only once;

(*b*) not be extended by consent after extension by order of the Court; and

(*c*) not be extended by consent after expiry.

(12) Where an administrator's term of office is extended by consent, he shall as soon as is reasonably practicable—

(*a*) file notice of the extension with the Court; and

(*b*) notify the Director and the Registrar of Companies.

Court ending company reorganization on application of administrator

52.—(1) On the application of an administrator, the Court may provide for the appointment of an administrator to cease to have effect from a specified time.

(2) An administrator shall make an application under this section if—

(*a*) he thinks the purpose of company reorganization cannot be achieved in relation to the company;

(*b*) he thinks the company should not have entered company reorganization; or

(*c*) a creditors' meeting requires him to make an application under this section.

(3) On an application under this section, the Court may—

(*a*) adjourn the hearing conditionally or unconditionally;

(*b*) dismiss the application;

(*c*) make an interim order; and

(*d*) make any order it thinks appropriate whether in addition to, in consequence of or instead of the order applied for.

Termination of company reorganization where objective achieved

53.—(1) If an administrator thinks that the purpose of company reorganization has been sufficiently achieved in relation to the company he may file a notice to that effect in the prescribed form.

(2) An administrator's appointment shall cease to have effect when the requirements of subsection (1) are satisfied.

(3) Where an administrator files a notice, he shall, within the prescribed period, send a copy to every creditor of the company of whose claim and address he is aware of.

(4) The Rules may provide that an administrator shall be taken to have complied with subsection (3) if before the end of the prescribed period he publishes in the prescribed manner a notice undertaking to provide a copy of the notice under subsection (1) to any creditor of the company who applies in writing to a specified address.

Court order ending company reorganization on application of creditor

54.—(1) On the application of a creditor of a company, the Court may order that the appointment of an administrator of the company cease to have effect at a specified time.

(2) An application under this section shall allege an improper motive on the part of the applicant for the company reorganization order.

(3) On an application under this section, the Court may—

(*a*) adjourn the hearing conditionally or unconditionally;

(*b*) dismiss the application;

(*c*) make an interim order; or

(*d*) make any order it thinks appropriate whether in addition to, in consequence of, or instead of, the order applied for.

Public interest winding-up of company in company reorganization

55.—(1) This section shall apply where a winding-up order is made for the winding-up of a company in company reorganization on a petition presented under section 107 (2) (*e*).

(2) This section shall apply where a provisional liquidator of a company in company reorganization is appointed following the presentation of a petition under section 107 (2) (*e*).

(3) The Court may order that the appointment of the administrator—

(*a*) cease to have effect; or

(*b*) continue to have effect.

(4) If the Court makes an order under subsection (3) (*b*), it may—

(*a*) specify which of the powers under this Act are to be exercisable by the administrator; and

(*b*) order that this Act shall have effect in relation to the administrator with specified modifications.

Moving from company reorganization to creditors' voluntary winding-up

56.—(1) This section shall apply where the administrator thinks that—

(*a*) the total amount each secured creditor of the company is likely to receive has been paid to him or set aside for him; and

(*b*) a distribution will be made to unsecured creditors of the company if there are any.

(2) The administrator shall send to the Director and the Registrar of Companies a notice that this section applies.

(3) On receipt of a notice under subsection (2), the Director and the Registrar of the Company shall register the notice.

(4) If an administrator sends a notice under subsection (2), he shall as soon as is reasonably practicable—

(*a*) file a copy of the notice with the Court; and

(*b*) send a copy of the notice to each creditor of whose claim and address he is aware.

(5) On the registration of a notice under subsection (3)—

(*a*) the appointment of an administrator in respect of the company shall cease to have effect; and

(*b*) the company shall be wound-up as if a resolution for voluntary winding-up under section 141 (1) (*b*) were passed on the day on which the notice is registered.

(6) The liquidator for the purposes of the winding-up shall be—

(*a*) a person nominated by the creditors of the company in the prescribed manner and within the prescribed period; or

(*b*) if no person is nominated under paragraph (*a*), the administrator.

(7) In the application of Part V to a winding-up by virtue of this section—

(*a*) section 106 shall apply as if the reference to the time of the passing of the resolution for voluntary winding-up were a reference to the beginning of the date of registration of the notice under subsection (2); and

(*b*) section 141 (3) shall not apply;

(*c*) section 141 (8) shall apply as if the reference to the time of the passing of the resolution for voluntary winding-up were a reference to the beginning of the date of registration of the notice under subsection (3);

(*d*) sections 143, 146, and 147 shall not apply;

(*e*) any creditors' committee which is in existence immediately before the company ceases to be in company reorganization shall continue in existence after that time as if appointed as a liquidation committee under section 148.

Moving from company reorganization to dissolution

57.—(1) If the administrator thinks that the company has no property which might permit a distribution to its creditors, he shall send a notice to that effect to the Director and the Registrar of Companies.

(2) The Court may on the application of the administrator disapply subsection (1) in respect of the company.

(3) On receipt of a notice under subsection (1), the Registrar of Companies shall register the notice.

(4) On the registration of a notice in respect of a company under subsection (1), the appointment of an administrator shall cease to have effect.

(5) If an administrator sends a notice under subsection (1), he shall, as soon as is reasonably practicable—

(*a*) file a copy of the notice with the Court; and

(*b*) send a copy of the notice to each creditor of whose claim and address he is aware.

(6) At the end of the prescribed period beginning with the date of registration of a notice in respect of a company under subsection (1), the company shall be deemed to be dissolved.

(7) On an application in respect of a company by the administrator or another interested person, the Court may—

(*a*) suspend or extend the period specified in subsection (6); or

(*b*) disapply subsection (6).

(8) Where an order is made under subsection (7) in respect of a company, the administrator shall as soon as is reasonably practicable notify the Director and the Registrar of Companies.

Discharge of company reorganization order where company reorganization ends

58.—(1) This section shall apply where the Court makes an order under this Act providing for the appointment of an administrator to cease to have effect.

(2) The Court shall discharge the company reorganization order where company reorganization ends.

Notice to Registrar of Companies where company reorganization ends

59.—(1) This section shall apply where the Court makes an order under this Act providing for the appointment of an administrator to cease to have effect.

(2) The administrator shall send a copy of the order to the Director and the Registrar of Companies within the prescribed period beginning with the date of the order.

Resignation of administrator

60.—(1) An administrator may resign only in the prescribed circumstances.

(2) Where an administrator may resign, he may do so only by notice in writing to the Court.

Removal of administrator from office

61. The Court may order the removal of an administrator from office.

Administrator ceasing to be qualified

62.—(1) An administrator shall vacate office if he ceases to be qualified to act as an insolvency practitioner in relation to the company.

(2) Where an administrator vacates office by virtue of subsection (1) he shall give notice in writing to the Court.

Vacancy in office of administrator

63.—(1) This section shall apply where an administrator—

(*a*) dies;

(*b*) resigns;

(*c*) is removed from office under section 61; or

(*d*) vacates office under section 62.

(2) The Court may replace the administrator on an application under this subsection made by—

(*a*) a creditors' committee of the company;

(*b*) the company;

(*c*) the directors of the company;

(*d*) one or more creditors of the company; or

(*e*) where more than one person was appointed to act jointly or concurrently as the administrator, any of those persons who remain in office.

(3) An application may be made in reliance on subsection (2) (*b*), (*c*) and (*d*) only where—

(*a*) there is no creditors' committee of the company;

(*b*) the Court is satisfied that the creditors' committee or a remaining administrator is not taking reasonable steps to make a replacement; or

(*c*) the Court is satisfied that for another reason it is right for the application to be made.

(4) The Court may replace an administrator on the application of a person listed in subsection (2) if the Court is of the opinion that for any reason, it is right for the Court to make the replacement.

Vacation of office: discharge from liability

64.—(1) Where a person ceases to be the administrator, whether because he vacates office by reason of resignation, death or otherwise, because he is removed from office, or because his appointment ceases to have effect, he shall be discharged from liability in respect of any of his actions as administrator.

(2) The discharge provided by subsection (1) shall take effect—

(*a*) in the case of an administrator who dies, on the filing with the Court of notice of his death; or

(*b*) in any other case, at a time specified by the Court.

(3) The discharge under this section shall—

(*a*) apply to liability accrued before the discharge takes effect; and

(*b*) not prevent the exercise of the Court's powers under section 50.

Vacation of office: charges and liabilities

65.—(1) This section shall apply where a person ceases to be the administrator whether because—

(*a*) he vacates office by resignation, death or otherwise;

(*b*) he is removed from office; or

(*c*) his appointment ceases to have effect.

(2) In this section—

(*a*) "the former administrator" means the person referred to in subsection (1); and

(*b*) "cessation" means the time when he ceases to be the company's administrator.

(3) The former administrator's remuneration and expenses shall be—

(*a*) charged on and payable out of property of which he had custody or control immediately before cessation; and

(*b*) payable in priority to any security to which section 46 applies.

(4) A sum payable in respect of a debt or liability arising out of a contract entered into by the former administrator or a predecessor before cessation shall be—

(*a*) charged on and payable out of property of which the former administrator had custody or control immediately before cessation; and

(*b*) payable in priority to any security interest arising under subsection (3).

(5) Subsection (4) shall apply to a liability arising under a contract of employment which was adopted by the former administrator or a predecessor before cessation; and for that purpose—

(*a*) action taken within the prescribed period after an administrator's appointment shall not be taken to amount or contribute to the adoption of a contract;

(*b*) no account shall be taken of a liability which arises, or in so far as it arises, by reference to anything which is done or which occurs before the adoption of the contract of employment; and

(*c*) no account shall be taken of a liability to make a payment other than wages or salary.

(6) In subsection (5) (*c*), "wages or salary" includes—

(*a*) a sum payable in respect of a period of holiday (for which purpose the sum shall be treated as relating to the period by reference to which the entitlement to holiday accrued);

(*b*) a sum payable in respect of a period of absence through illness or other good cause;

(*c*) a sum payable *in lieu* of holiday;

(*d*) in respect of a period, a sum which would be treated as earnings for that period for the purposes of a written law about social security; and

(*e*) a contribution to an occupational pension scheme.

Multiple appointments

66.—(1) In this Act—

(*a*) a reference to the appointment of an administrator includes a reference to the appointment of a number of persons to act jointly or concurrently as the administrator; and

(*b*) a reference to the appointment of a person as administrator includes a reference to the appointment of a person as one of a number of persons to act jointly or concurrently as the administrator.

(2) The appointment of a number of persons to act as administrator shall specify—

(*a*) which functions (if any) are to be exercised by the persons appointed acting jointly; and

(*b*) which functions (if any) are to be exercised by any or all of the persons appointed.

Joint administrators

67.—(1) This section shall apply where two or more persons are appointed to act jointly as an administrator of a company.

(2) A reference to an administrator of the company is a reference to those persons acting jointly.

(3) Notwithstanding subsection (2), a reference to an administrator in sections 60 to 66 inclusive is a reference to any or all of the persons appointed to act jointly.

(4) Where an offence of omission is committed by the administrator, each of the persons appointed to act jointly—

(*a*) commits the offence; and

(*b*) may be proceeded against and punished individually.

(5) The reference in section 29 (1) (*a*) to the name of the administrator is a reference to the name of each of the persons appointed to act jointly.

(6) Where persons are appointed to act jointly in respect of only some of the functions of the administrator, this section shall apply only in relation to those functions.

Concurrent administrators

68.—(1) This section shall apply where two or more persons are appointed to act concurrently as the administrator.

(2) A reference to the administrator in this Act is a reference to any of the persons appointed (or any combination of them).

Joint or concurrent administrators

69.—(1) Where a company is in company reorganization, a person may be appointed to act as administrator jointly or concurrently with the person or persons acting as the administrator of the company.

(2) An appointment under subsection (1) shall be made by the Court on the application of—

(*a*) a person or group listed in section 26 (1), (2) and (3); or

(*b*) the person or persons acting as the administrator of the company.

(3) An appointment under subsection (1) may be made only with the consent of the person or persons acting as the administrator of the company.

Presumption of validity

70. An act of the administrator shall be valid notwithstanding a defect in his appointment or qualification.

Majority decision of directors

71. A reference in this Act to something done by the directors of a company includes a reference to the same thing done by a majority of the directors of a company.

Extension of time limit

72.—(1) Where a provision of this Act provides that a period may be varied in accordance with this section, the period may be varied in respect of a company—

(*a*) by the Court; and

(*b*) on the application of the administrator.

(2) A time period may be extended in respect of a company under this section—

(*a*) more than once; and

(*b*) after expiry of the period.

Variation of period

73.—(1) A period specified in sections 33 (5), 34 (1) (*b*) or 35 (2) may be varied in respect of a company by the administrator with consent.

(2) The power to extend under subsection (1) may—

(*a*) be exercised in respect of a period only once;

(*b*) not be used to extend a period by more than the prescribed period;

(*c*) not be used to extend a period which has been extended by the Court; and

(*d*) not be used to extend a period after expiry.

Extended period

74. Where a period is extended under section 72 or 73, a reference to the period shall be taken as a reference to the period as extended.

PART IV

RECEIVERSHIP

Appointment of receiver

75.—(1) A receiver—

(*a*) may be appointed—

(i) under any instrument that confers on a secured creditor the power to appoint a receiver; or

(ii) by the Court, whether or not the person appointed is empowered to sell any of the property in receivership; and

(*b*) shall not include a mortgagee in possession who personally or as or through an agent exercises a power to—

(i) receive income from mortgaged property;

(ii) enter into possession or assume control of mortgaged property; or

(iii) sell or otherwise alienate mortgaged property.

(2) An instrument that creates a security interest in respect of the property of the company may confer on the secured party the power to appoint a receiver, or a receiver and manager, of the property concerned or of that part which is secured by the security interest.

(3) A receiver may not be appointed under this Part if a company is already in company reorganization under Part III, or where an application has already been made to place the company under company reorganization.

Qualification of receiver

76.—(1) Unless the Court orders otherwise, no person may be appointed as a receiver who—

(*a*) is not qualified to be an insolvency practitioner;

(*b*) is a creditor of the debtor;

(*c*) is or has within the prescribed period immediately preceding the commencement of the receivership been a director, officer or auditor of the debtor of the property in receivership, or of any company which is a related company of the secured party;

(*d*) has, or has within the prescribed period immediately preceding the commencement of the receivership had, an interest, direct or indirect, in a share issued by the debtor;

(*e*) is a person in respect of whom an order for his removal as an insolvency practitioner has been made or is prohibited from acting as an insolvency practitioner; or

(*f*) is a person who is disqualified from acting as a receiver by the instrument that confers the power to appoint a receiver.

Appointment of receiver under instrument

77.—(1) When an instrument confers on the secured party the power to appoint a receiver or a receiver and manager, the secured party may appoint a receiver or a receiver and manager by an instrument in writing signed by him or on his behalf.

(2) A receiver or a receiver and manager appointed by, or under a power conferred by, an instrument shall be the agent of the debtor, unless the instrument expressly provides otherwise.

(3) A receiver or a receiver and manager may be appointed under this section—

(*a*) notwithstanding any other law; and

(*b*) whether or not the property in respect of which the receiver or receiver and manager is appointed includes immovable property.

(4) A person appointed a receiver shall not act as receiver and manager unless the instrument appointing him includes his appointment as a manager.

(5) A power conferred by an instrument to appoint a receiver includes, unless the instrument expressly provides otherwise, the power to appoint—

(*a*) two or more receivers;

(*b*) a receiver additional to a receiver in office; and

(*c*) a receiver to succeed a receiver whose office has become vacant.

Appointment of receiver by Court

78.—(1) The Court may appoint a receiver, or a receiver and manager, on the application of a secured party or of any other person and on notice to the company, where the Court is satisfied that—

(*a*) the company has failed to pay a debt due to the secured party or has otherwise failed to meet any obligation to the secured party, or that any principal money borrowed by the company or interest is in arrears for more than the prescribed period;

(*b*) the company proposes to sell or otherwise dispose of the secured property in breach of the terms of any instrument creating the security interest; or

(*c*) it is necessary to do so to ensure the preservation of the secured property for the benefit of the secured party.

(2) A receiver or receiver and manager may be appointed under this section—

(*a*) notwithstanding any other law; and

(*b*) whether or not the property in respect of which the receiver is appointed includes immovable property.

(3) A person appointed by the Court as a receiver shall be appointed receiver and manager unless the Court directs that the person is to be appointed only as a receiver.

Notice of appointment of receiver

79.—(1) A receiver shall, within the prescribed period after being appointed—

(*a*) give written notice of his appointment to the debtor;

(*b*) give public notice of his appointment, including—

(i) the receiver's full name;

(ii) the date and time of the appointment;

(iii) the receiver's office address; and

(iv) a brief description of the property in receivership; and

(*c*) send a copy of the notice to the Director and the Registrar of Companies.

(2) Where the appointment of the receiver is in addition to that of a receiver who already holds office or is in place of a person who has vacated office as receiver, every notice under this section shall state that fact.

Notice of receivership

80.—(1) Where a receiver is appointed, every agreement entered into, and every document issued, by or on behalf of the chargor or the receiver and on which the name of the chargor appears shall state clearly that a receiver has been appointed.

(2) Where a receiver is appointed in relation to a specific asset, every agreement entered into, and every document issued, by or on behalf of the chargor or the receiver that relates to the asset and on which the name of the chargor appears shall state clearly that a receiver has been appointed.

(3) A failure to comply with subsection (1) or (2) shall not affect the validity of the agreement or document.

Vacancy in office of receiver

81.—(1) The office of a receiver shall become vacant if the person holding office resigns, dies or becomes disqualified.

(2) A receiver appointed under a power conferred by an instrument may resign office by giving written notice of not less than the prescribed period of his intention to resign to the person by whom he was appointed.

(3) If for any reason other than resignation a vacancy occurs in the office of a receiver, written notice of the vacancy shall forthwith be delivered to the Director and to Registrar of Companies by the person vacating office or, if that person is unable to act, by his legal representative.

(4) A receiver appointed by the Court shall not resign without first obtaining the leave of the Court to do so.

(5) A person vacating the office of receiver shall, where practicable, provide such information and give such assistance in the conduct of the receivership to his successor as that person reasonably requires.

(6) On the application of a person appointed to fill a vacancy in the office of receiver, the Court may make any order that it considers necessary or desirable to facilitate the performance of his duties.

Powers of receiver

82.—(1) A receiver shall have the powers and authorities expressly or impliedly conferred by the instrument or the order of the Court by or under which the appointment was made.

(2) Subject to the instrument or order of the Court by or under which the appointment was made, a receiver shall have and may exercise the powers set out in the Rules.

(3) A receiver may, subject to the instrument or order of the Court by or under which the appointment is made, exercise the receiver's powers and authorities to the exclusion of the board of directors or debtor company.

(4) Two or more receivers may act jointly or severally to the extent that they have the same powers unless the instrument under which, or the order of the Court by which, they are appointed expressly provides otherwise.

Execution of documents

83.—(1) A receiver may execute in the name and on behalf of the company every document necessary or incidental to the exercise of the receiver's powers.

(2) A document signed on behalf of a company by a receiver shall be deemed to have been properly signed on behalf of the company.

(3) Notwithstanding any other law, or the memorandum and articles of association of a company that is a debtor, where the instrument under which a receiver is appointed empowers him to execute a document and to use the company's common seal for that purpose, the receiver may execute the document in the name and on behalf of the company by affixing the company's seal to the document and attesting the affixing of the seal or in such a manner as may be prescribed in the Rules.

Obligations of company and directors

84.—(1) Where a receiver is appointed in respect of the property of a company, the company and every director of the company shall—

(*a*) within the prescribed period make available to the receiver all books, documents and information relating to the property in receivership in the company's possession or under the company's control;

(*b*) if required to do so by the receiver, verify by affidavit that the books, documents and information are complete and correct;

(*c*) within the prescribed period after receipt of the notice of the receiver's appointment, or such longer period as may be allowed by the Court, make out and submit a statement as to the affairs of the company;

(*d*) give the receiver such assistance as he may reasonably require; and

(*e*) where the company has a seal, make the seal available for use by the receiver.

(2) The receiver shall within the prescribed period after receipt of the statement under subsection (1) (*c*) or such extended period as the Court may allow—

(*a*) lodge with the Director and the Registrar of Companies a copy of the statement and of any comments the receiver sees fit to make on the statement;

(*b*) send to the company a copy of any such comments or, if the receiver does not see fit to make any comment, a notice to that effect.

(3) The statement as to the affairs of a company required by subsection (1) (*c*) shall show—

(*a*) the particulars of the company's assets;

(*b*) debts and liabilities;

(*c*) the names and addresses of its creditors;

(*d*) security interests held by them respectively;

(*e*) the dates when the security interests were respectively created; and

(*f*) a statement confirming that payment for amounts owing to the government and relating to taxes or any other levies, have been paid on the due dates.

(4) The statement as to the affairs of a company required by subsection (1) (*c*) shall be submitted in the form of an affidavit by a director and a secretary of the company or by any of the following persons whom the receiver may require—

(*a*) a person who is or has been an officer of the company;

(*b*) a person who has taken part in the formation of the company at any time within one year before the date of the receiver's appointment;

(*c*) a person who is or has been an employee of the company within that year and is, in the opinion of the receiver, capable of giving the information required; or

(*d*) a person who is or has been within that year an officer of or employee of a corporate which is, or within that year was, an officer of the company to which the statement relates.

(5) Any person making a statement under this section shall be allowed and shall be paid by the receiver out of his receipts such costs and expenses incurred in and about the preparation and making of the statement as the receiver may consider reasonable.

(6) Any person aggrieved by a decision of the receiver under subsection (5) may, within the prescribed period, appeal to the Court and the Court, on hearing the appeal, may make such order as it thinks appropriate.

(7) On the application of the receiver, the Court may make an order requiring the company or a director of the company to comply with subsection (1).

Validity of act of receiver

85.—(1) Subject to subsection (2), no act of a receiver shall be invalid merely because the receiver was not validly appointed or is disqualified from acting as a receiver or is not authorized to do the act.

(2) No transaction entered into by a receiver shall be invalid merely because the receiver was not validly appointed or is not authorized to

enter into the transaction unless the person dealing with the receiver has, or ought to have, by reason of his relationship with the receiver or the property by whom the receiver was appointed, knowledge that the receiver was not validly appointed or did not have authority to enter into the transaction.

Consent of mortgagee to sale of property

86.—(1) Where the consent of a mortgagee is required to the sale of property in receivership and the receiver is unable to obtain that consent, the receiver may apply to the Court for an order authorizing the sale of the property, by itself or together with other assets.

(2) The Court may, on application under subsection (1), make such order as it thinks appropriate authorizing the sale of the property by the receiver where it is satisfied that—

(*a*) the receiver has made reasonable efforts to obtain the mortgagor's consent; and

(*b*) the sale—

(i) is in the interests of the chargor and chargor's creditors; and

(ii) will not substantially prejudice the interests of the mortgagee.

General duties of receiver

87.—(1) A receiver shall exercise his powers in good faith.

(2) A receiver shall exercise his powers in a manner which he believes on reasonable grounds to be in the interests of the person in whose interest he was appointed.

(3) While acting in accordance with subsections (1) and (2), a receiver shall exercise his powers with reasonable regard to the interests of—

(*a*) the debtor company;

(*b*) the persons claiming, through the debtor company, interests in the property in the receivership;

(*c*) unsecured creditors of the chargor; and

(*d*) sureties who may be called upon to fulfill obligations of the chargor.

(4) A receiver shall not be bound to act in accordance with the directions of the person appointing him and any such failure shall not be regarded as being in breach of the duty referred to in subsection (2).

(5) A receiver who exercises a power of sale of property in a receivership owes a duty to the debtor company to obtain the best price reasonably obtainable as at the time of sale.

(6) Notwithstanding any other law or anything contained in the instrument by or under which a receiver is appointed—

(*a*) it shall not be a defence to proceedings against a receiver for a breach of the duty imposed by subsection (5) that the receiver was acting as the debtor company's agent or under a power of attorney from the debtor company; and

(*b*) a receiver shall not be entitled to compensation or indemnity from the property in receivership or the debtor company in respect of any liability incurred by the receiver arising from a breach of the duty imposed by subsection (5).

(7) A receiver shall keep money relating to the property in receivership separate from other money received in the course of, but not relating to, the receivership and from other money held by or under the control of the receiver.

(8) A receiver shall at all times keep accounting records that correctly record and explain all receipts, expenditure and other transactions relating to the property in receivership.

(9) The accounting records shall be retained by the receiver for not less than the prescribed period after the receivership ends.

(10) The receiver shall, in claiming remuneration, be entitled to include the reasonable costs of storage of records required to be kept by this section.

First report by receiver

88.—(1) Not later than the prescribed period after his appointment, a receiver shall prepare a report on the state of the affairs with respect to the property in receivership including—

(*a*) particulars of the assets comprising the property in receivership;

(*b*) particulars of the debts and liabilities to be satisfied from the property in receivership;

(*c*) the names and addresses of the creditors with an interest in the property in receivership;

(*d*) particulars of any secured interest over the property in receivership held by any creditor including the date on which it was created;

(*e*) particulars of any default by the debtor company in making relevant information available; and

(*f*) such other information as may be prescribed.

(2) The report required to be prepared under subsection (1) shall also include details of—

(*a*) the events leading up to the appointment of the receiver, so far as the receiver is aware of them;

(*b*) property owing, as at the date of appointment, to any person in whose interests the receiver was appointed;

(*c*) amounts owing, as at the date of appointment, to any person in whose interest the receiver was appointed;

(*d*) amounts owing, as at the date of appointment, to creditors of the debtor company having preferential claims; and

(*e*) amounts likely to be available for payment to creditors other than those referred to in subsection (2) (*c*) or (*d*).

(3) A receiver may omit from the report required to be prepared under subsection (1) details of any proposals for disposal of the property in receivership where he considers that their inclusion would materially prejudice the exercise of his functions.

Further report by receiver

89.—(1) Not later than the prescribed period after—

(*a*) the end of each period of six months after his appointment as receiver; and

(*b*) the date on which the receivership ends, a receiver or a person who was a receiver at the end of the receivership, as the case may be, shall prepare a further report summarizing the state of affairs with respect to the property in receivership as at those dates, and the conduct of the receivership, including all amounts received and paid, during the periods to which the report relates.

(2) The report required to be prepared under subsection (1) shall include details of—

(*a*) property disposed of since the date of any previous report and any proposals for the disposal of property in receivership;

(*b*) amounts owing, as at the date of the report, to any person in whose interests the receiver was appointed;

(*c*) amounts owing, as at the date of the report, to creditors of the debtor company who have preferential claims; and

(*d*) amounts likely to be available as at the date of the report for payment to creditors, other than those referred to in subsection (2) (*b*) or (*c*).

(3) A receiver may omit from the report required to be prepared in accordance with subsection (1) (*a*) details of any proposal of property in receivership if he considers that their inclusion would materially prejudice the exercise of his functions.

Extension of time for preparing reports

90. A period of time within which a person is required to prepare a report under section 88 or 89 may be extended, on the application of the person, by—

(*a*) the Court, where the person was appointed a receiver by the Court; or

(*b*) the Registrar of Companies, where the person was appointed a receiver by or under an instrument.

Persons entitled to receive reports

91.—(1) A copy of every report prepared under section 88 or 89 shall be sent by the person required to prepare it to the debtor company and the debtor company shall as soon as possible cause public notice to be given that a report has been prepared and is available for inspection.

(2) A person appointed as a receiver by the Court shall file a copy of every report prepared under section 88 or 89 with the Court.

(3) Not later than the prescribed period after receiving a written request for a copy of any report from—

(*a*) a creditor, director or surety of the debtor company; or

(*b*) any other person with an interest in any of the property in the receivership,

and on payment of the costs of making and sending the copy, the person who prepared the report shall send a copy of the report to the person requesting it.

(4) Within the prescribed period after preparing a report under section 88 or 89, the person who prepared the report shall send or deliver a copy of the report to the Director and the Registrar of Companies in the prescribed manner.

(5) A person to whom a report must be sent in accordance with subsection (1) or (3) shall be entitled to inspect the report during normal working hours at the office of the person required to send it.

Duty to notify breaches of Acts
Cap. 46:03
Cap. 46:06

92.—(1) A receiver who considers that the company or any director or officer of the company has committed an offence under the Companies Act or the Securities Act shall forthwith report that fact to the Director and the Registrar of Companies.

(2) A report made under subsection (1), and any communication between a receiver and the Director and the Registrar of Companies relating to that report, shall be protected by absolute privilege.

Notice of end of receivership

93. Not later than the prescribed period after a receivership ceases, the person who held office as receiver at the end of the receivership shall send or deliver to the Director and the Registrar of Companies notice in writing of the fact that the receivership has ceased.

Preferential claims

94.—(1) Subject to the rights of any of the persons referred to in subsection (2), a receiver shall pay moneys received by him to the secured party of the secured transaction by virtue of which he was appointed in or towards satisfaction of the debt secured by the secured transaction.

(2) The following persons shall be entitled to payment out of the property of a company in receivership in priority to the secured party under a security interest, and in the following order of priority—

(*a*) first, the receiver for his expenses and remuneration and any indemnity to which he is entitled from out of the property of the company;

(*b*) second, any amount secured by any security interest that ranks in priority to the security in relation to which the receiver was appointed; and

(*c*) third, where the company is in liquidation, the persons entitled to preferential claims to the extent and in the order of priority required by section 297.

(3) The receiver shall hold and retain from any personal property of a company subject to the security interest or any proceeds of realization of such property, sufficient funds or value of property to discharge any claims under subsection (2) (*b*) and (*c*).

Powers of receiver on liquidation

95.—(1) Subject to subsection (2), a receiver may continue to act as a receiver and exercise all the powers of a receiver in respect of property of a company that has been put into liquidation unless the Court orders otherwise.

(2) After the commencement of the winding-up of a company, a receiver shall not be appointed in respect of the property of the

company except under an order of the Court on such terms as the Court thinks appropriate.

(3) A receiver holding office in respect of property referred to in subsections (1) and (2) may act as the agent of the chargor only with the written—

(*a*) approval of the Court; or

(*b*) consent of the liquidator.

(4) A debt or liability incurred by a chargor through the acts of a receiver who is acting as the agent of the chargor in accordance with subsection (2) shall not be a cost, charge or expense of liquidation.

Liability of receiver

96.—(1) Subject to subsections (2) and (3), a receiver shall be personally liable—

(*a*) on a contract entered into by the receiver in the exercise of any of his powers; and

(*b*) for payment of wages or salary that, during the receivership, accrue under a contract of employment relating to the property in receivership and entered into before his appointment if notice of the termination of the contract is not lawfully given within the prescribed period after the date of appointment.

(2) The terms of a contract referred to in subsection (1) (*a*) may exclude or limit the personal liability of the receiver other than a receiver appointed by the Court.

(3) The Court may, on the application of a receiver, made before the end of the period of the prescribed period, extend the period within which notice of the termination of a contract is required to be given under subsection (1) (*b*) and may extend that period on such terms and conditions as the Court thinks fit.

(4) Subject to subsection (6), a receiver shall be personally liable, to the extent specified in subsection (5), for rent and any other payments becoming due under an agreement subsisting at the date of his appointment relating to the use, possession or occupation by the chargor of property in receivership.

(5) The liability of a receiver under subsection (4) shall be limited to that portion of the rent or other payments which is attributed to the prescribed period commencing after the date of appointment of the receiver and ending on—

(*a*) the date on which the receivership ends; or

(*b*) the date on which the debtor company ceases to use, possess or occupy the property,

whichever occurs earlier.

(6) The Court may, on the application of a receiver—

(*a*) limit the liability of the receiver to a greater extent than that specified in subsection (5); or

(*b*) excuse the receiver from the liability under subsection (4).

(7) Nothing in subsection (4) or subsection (5)—

(*a*) shall be taken as giving rise to an adoption by the receiver of an agreement referred to in subsection (4); or

(*b*) shall render a receiver liable to perform any other obligation under the agreement.

(8) A receiver shall be entitled to an indemnity out of the property in receivership in respect of his personal liability under this section.

(9) Nothing in this section shall—

(*a*) limit any other right of indemnity to which a receiver may be entitled;

(*b*) limit the liability of a receiver on a contract entered into without authority; or

(*c*) confer on a receiver a right to an indemnity in respect of liability on a contract entered into without authority.

Relief from liability

97.—(1) The Court may relieve a person who has acted as a receiver from any personal liability incurred in the course of the receivership where it is satisfied that—

(*a*) the liability was incurred solely by reason of a defect in the appointment of the receiver or in the instrument or order of the Court by or under which the receiver was appointed; and

(*b*) the receiver acted honestly and reasonably and ought, in the circumstances, to be excused.

(2) The Court may exercise its powers under subsection (1) subject to such terms as it thinks appropriate.

(3) A person in whose interests a receiver was appointed shall be liable, subject to such terms as the Court thinks appropriate, to the extent to which the receiver is relieved from liability under subsection (1).

Court supervision of receiver

98.—(1) The Court may, on the application of a receiver—

(*a*) give directions in relation to any matter arising in connexion with the performance of the functions of the receiver; and

(*b*) revoke or vary any such directions.

(2) The Court may, on the application of a person referred to in subsection (3)—

(*a*) in respect of any period, review the remuneration of a receiver at a level which is reasonable in the circumstances;

(*b*) to the extent that an amount retained by a receiver as remuneration is found by the Court to be unreasonable in the circumstances, order the receiver to refund the amount; or

(*c*) declare whether or not a receiver was validly appointed in respect of any property or validly entered into possession or assumed control of any property.

(3) Any of the following persons may apply to the Court under subsection (2)—

(*a*) the receiver;

(*b*) the debtor company;

(*c*) a creditor of the debtor company;

(*d*) a person claiming, through the debtor company, an interest in the property in receivership;

(*e*) a liquidator; or

(*f*) the Director.

(4) The powers of the Court under subsections (1) and (2)—

(*a*) shall be in addition to any other power which the Court may exercise; and

(*b*) may be exercised whether or not the receiver has ceased to act as receiver when an application is made.

(5) The Court may, on the application of a person referred to in subsection (3), revoke or vary an order made under subsection (2).

(6) Subject to subsection (7), it shall be a defence to a claim against a receiver in relation to any act or omission by the receiver that he acted in accordance with a direction given under subsection (1).

(7) The Court may, on the application of a person referred to in subsection (3), order that, by reason of the circumstances in which a direction was obtained under subsection (1), a receiver is not entitled to the protection given by subsection (6).

Court may terminate or limit receivership

99.—(1) The Court may, on the application of the debtor company or a liquidator of the debtor company—

(*a*) order that a receiver shall cease to act as such as from a specified date, and prohibit the appointment of any other receiver in respect of the property in receivership; or

(*b*) order that a receiver shall, as from a specified date, act only in respect of specific assets forming part of the property in receivership.

(2) An order shall not be made under subsection (1) unless the Court is satisfied that—

(*a*) the purpose of the receivership has been satisfied so far as possible; or

(*b*) circumstances no longer justify its continuation.

(3) Unless the Court orders otherwise, a copy of an application under this section shall be served on the receiver not less than the prescribed period before the hearing of the application, and the receiver may appear and be heard at the hearing.

(4) An order under subsection (1)—

(*a*) may be made on such terms as the Court thinks appropriate; and

(*b*) shall not affect a security interest over the property in respect of which the order is made.

(5) The Court may, on the application of any person who applied for or is affected by the order, rescind or amend an order under this section.

Order to enforce receiver's duties

100.—(1) An application for an order under this section may be made by—

(*a*) the Registrar of Companies;

(*b*) a receiver;

(*c*) a person seeking appointment as a receiver;

(*d*) the debtor company;

(*e*) the secured party;

(*f*) a person with an interest in the property in receivership;

(*g*) a creditor of the debtor company;

(*h*) a guarantor of an obligation of the debtor company;

(*i*) a liquidator of the debtor company;

(*j*) the Director; or

(*k*) a receiver of the property of a debtor company in relation to a failure to comply by another receiver of the property of the debtor company.

(2) No application shall be made to the Court in relation to a failure to comply unless notice of the failure to comply has been served on the receiver not less than the prescribed number of days before the date of the application and, as at the date of the application, there is a continuing failure to comply.

(3) Where the Court is satisfied that there is, or has been, a failure to comply, the Court may—

(*a*) relieve the receiver of the duty to comply, wholly or in part; or

(*b*) without prejudice to any other remedy that may be available in relation to a breach of duty by the receiver, order the receiver to comply with the extent specified in the order.

(4) The Court may, in respect of a person who fails to comply with an order made under subsection (3) (*b*), or is or becomes disqualified to become or remain a receiver—

(*a*) remove the receiver from office; or

(*b*) order that the person may be appointed and act or may continue to act as a receiver, even when he is not qualified.

(5) Where it is shown to the satisfaction of the Court that a person is unfit to act as a receiver by reason of—

(*a*) persistent failures to comply; or

(*b*) the seriousness of a failure to comply,

the Court shall make, in relation to that person, a prohibition order for a period not exceeding the prescribed period.

(6) A person to whom a prohibition order applies shall not—

(*a*) act as a receiver in any receivership and if currently acting shall cease to act;

(*b*) act as a liquidator in any liquidation; or

(*c*) act as an administrator.

(7) In making an order under this section, the Court may, if it thinks appropriate—

(*a*) make an order extending the time for compliance;

(*b*) impose any term or condition; or

(*c*) make any other ancillary order.

(8) A copy of every order made under subsection (5) shall, within the prescribed period of the order being made, be delivered by the applicant to the Registrar of Companies and to the Director who shall keep it on a public file indexed by reference to the name of the receiver concerned.

(9) Evidence that, on two or more occasions within the preceding prescribed period—

(*a*) a Court has made an order to comply under this section, and section in respect of the same person; or

(*b*) an application for an order to comply under this section has been made in respect of the same person and that in each case the person has complied after the making of the application and before the hearing, is, in the absence of special reasons to the contrary, evidence of persistent failures to comply for the purposes of this section.

Order for protection of property in receivership

101. The Court may, on making an order that removes, or has the effect of removing, a receiver from office, make such order as it thinks fit—

(*a*) for preserving the property in receivership; and

(*b*) requiring the receiver for that purpose to make available to any person specified in the order any information and document in the possession or under the control of the receiver.

Refusal to provide essential service

102.—(1) In this section—

(*a*) "essential service" means—

(i) retail supply of electricity;

(ii) the supply of water; or

(iii) telecommunication services; and

(*b*) "telecommunication services" means the conveyance from one device to another by any line, radio frequency or other medium, of any sign, signal, impulse, writing, image, sound, instruction, information or intelligence of any nature, whether or not for the information of a person using the device.

(2) Notwithstanding any other written law or any contract, a supplier of an essential service shall not—

(*a*) refuse to supply the service to a receiver or to the owner of the property in receivership by reason of the chargor's default in paying charges due for the service in relation to a period before the date of the appointment of the receiver; or

(*b*) make it a condition of the further supply of the service to a receiver or to the owner of property in receivership that payment be made of outstanding charges due for the service in relation to a period before the date of appointment of the receiver.

(3) Nothing in this section shall prevent the supplier of an essential service from exercising any right or power under any contract or under any written law in respect of a failure by a company to pay charges due for the service in relation to any period after the commencement of the liquidation.

(4) The provision of services under this section forms part of the costs of receivership.

PART V

Winding-Up of Companies

Division I—Winding-up of Other Bodies Corporate and Foreign Companies

Winding-up of other bodies corporate

103.—(1) Subject to the provisions of this Act, any body corporate, not being a company, foreign company (or body corporate specified in subsection (2)), a partnership or sole proprietorship which has assets situated in Malaŵi, may be wound-up under this Part, and all the provisions of this Part shall apply to such body corporate as if it were a company.

(2) This section shall not apply to any body corporate incorporated by or under any written law for the time being in force in Malaŵi, which law makes specific provision for the winding-up of bodies corporate formed by or under it.

(3) Section 104 shall apply to a winding-up under this section, as if the body corporate were an external company.

Winding-up of foreign companies

104.—(1) A foreign company may be wound-up pursuant to this Part whether or not it has been dissolved or has otherwise ceased to exist according to the law of the country of its incorporation.

(2) A foreign company being wound-up in terms of the provisions of this part shall be subject to the provisions of this section.

(3) A foreign company shall not be wound-up except on a petition to the Court.

(4) A foreign company may be wound-up by the Court—

(*a*) if it is in the course of being wound-up, voluntarily or otherwise, in the country of its incorporation;

(*b*) if it is dissolved in the country of its incorporation or has ceased to carry on business in Malaŵi, or is carrying on business for the purpose only of winding-up its affairs;

(*c*) if it is unable to pay its debts;

(*d*) if the Court is of the opinion that the business or objects of the company, or any of them, are unlawful, or that the company is being operated in Malaŵi for any unlawful purpose or is carrying on a business or operations not authorized by its charter, memorandum or constitution;

(*e*) if the company has, for three months or more immediately preceding the filing of the petition, failed to comply with any provision of this Part requiring the delivery of any document or notice by the company to the Registrar of Companies for registration; or

(*f*) if the Court is of the opinion that it is just and equitable that the company should be wound-up.

(5) In determining whether the external company is unable to pay its debts, the provisions of sections 182 and 183 shall apply.

(6) Where an order is made by the Court for the winding-up in Malaŵi of a foreign company the company shall, for all of the purposes of such winding-up, be treated as if it were a company incorporated in Malaŵi and, subject to the provisions of Part X, only the assets and liabilities situated in Malaŵi shall be deemed to be the assets and liabilities thereof.

(7) The Court may, in the winding-up order or on subsequent application by the liquidator, direct that all transactions in Malaŵi by or with such foreign company shall be deemed to be validly done notwithstanding that they occurred after the date when such foreign company was dissolved or otherwise ceased to exist according to the law of the country of its incorporation, and may make such order on such terms and conditions as it deems fit.

Division II—Winding-up Generally

Modes of winding-up

105.—(1) The winding-up of a company may be effected by way of—

(*a*) winding-up order made by the Court; or

(*b*) a voluntary winding-up commenced by a resolution passed by the company.

(2) A voluntary winding-up may be—

(*a*) a creditors' voluntary winding-up where the company is insolvent and the liquidator is appointed by a meeting of creditors; or

(*b*) a shareholder's voluntary winding-up where the company is solvent and the liquidator is appointed by a shareholders' meeting.

Commencement of winding-up

106.—(1) Where, before the presentation of a petition to the Court under section 107, a resolution has been passed by the company for voluntary winding-up, the winding-up of the company shall be deemed to have commenced at the time of the passing of the resolution, and, unless the Court on proof of fraud or mistake thinks fit to direct otherwise, all proceedings taken in the voluntary winding-up shall be deemed to have been validly taken.

(2) In every other case of a winding-up by the Court, the winding-up shall be deemed to have commenced at the time of the presentation of the petition for the winding-up.

(3) Where—

(*a*) a liquidator is appointed under section 113 (1) the Court shall record on the order appointing the liquidator the date on which, and the time at which, the order was made;

(*b*) a liquidator is appointed under section 113 (2), the board of the company shall cause to be recorded in the instrument appointing the liquidator the date on which, and the time at which, the special resolution is passed.

(*c*) a liquidator is appointed under section 104, the shareholders shall cause to be recorded in the special resolution appointing the liquidator the date on which, and the time at which, the special resolution is passed.

(4) If any question arises as to whether on the date on which a liquidator was appointed an act was done or a transaction was entered into or effected before or after the time at which the liquidator was appointed, the act or transaction shall, in the absence of proof to the contrary, be deemed to have been done or entered into or affected, as the case may be, after that time.

Division III—Winding-up by Court

Petition for winding-up

107.—(1) Subject to the provisions of this section, a company may, whether or not it is being wound-up voluntarily and on petition made in accordance with this section, be wound-up under an order of the Court.

(2) A petition to wind-up by a company may be presented by—

(*a*) the company;

(*b*) a shareholder;

(*c*) a creditor, including a contingent or prospective creditor, of the company;

(*d*) a liquidator; or

(*e*) the Director.

(3) The Court shall not hear a petition presented by a contingent or prospective creditor until such security for costs has been given as the Court thinks reasonable and a *prima facie* case for winding-up has been established to the satisfaction of the Court.

(4) Subject to this section, a petition to wind-up may be presented where—

(*a*) the company has by special resolution resolved that it be wound-up by the Court;

(*b*) the company is unable to pay its debts;

(*c*) the company does not commence its business (if any) within a year from its incorporation or suspends its business for a whole year;

(*d*) the number of members is reduced below two;

(*e*) the period, if any, fixed for the duration of the company by the memorandum or articles expires or the event, if any, on the

occurrence of which the memorandum or articles provide that the company is to be dissolved, has occurred; or

(*f*) the Court is of opinion that it is just and equitable to do so.

Preliminary costs

108.—(1) Where a person, other than a company or a liquidator, presents a petition under section 107 and a winding-up order is made, the person shall at his own cost prosecute all proceedings in the winding-up until a liquidator is appointed.

(2) The liquidator shall, unless the Court otherwise directs, reimburse the petitioner out of the assets of the company the reasonable costs incurred by the petitioner under subsection (1).

(3) Where a winding-up order is made on the petition of a company or a liquidator, the costs incurred under subsection (1) shall, unless the Court otherwise directs, be paid out of the assets of the company as if they were the costs of any other petitioner.

Power of Court on petition for winding-up

109.—(1) Subject to this section, on hearing a petition to wind-up, the Court may in its discretion grant the petition and make a winding-up order, dismiss the petition, adjourn the hearing conditionally or unconditionally, adjourn the petition in the case of a company in company reorganization, or make such interim or other order that it thinks fit, but the Court shall not refuse to make a winding-up order by reason that—

(*a*) the assets of the company have been charged to an amount equal to or in excess of those assets;

(*b*) the company has no assets; or

(*c*) in the case of a petition by a contributory, there will be no assets available for distribution, amongst the contributories.

(2) The Court may at the hearing of a petition, adjourn the petition for not more than the prescribed period and direct that the Director prepare a report for the Court, with a copy being provided to the company and the petitioner, on whether it is appropriate in the circumstances for the company to be placed in company reorganization under Part III.

(3) The Court may, at the hearing of a petition or at any other time, on the application of the petitioner, the company, or any person who has given notice that he intends to appear on the hearing of the petition—

(*a*) direct that notices be given or any other steps be taken before or after the hearing of the petition;

(*b*) dispense with any notice being given or step being taken which is required by this Act or by any previous order of the Court; or

(*c*) give such other directions as to the proceedings as the Court thinks fit.

(4) An order for winding-up of a company shall operate in favour of all the creditors and contributories of the company as if it was made on the joint petition of a creditor and of a contributory.

(5) Where the Court dismisses a petition and considers that the petition is frivolous or vexatious and ought not to have been brought, it may award costs against the petitioner.

Proceedings against company

110.—(1) At any time after the presentation of a petition under section 107 and before a winding-up order is made, the company, a creditor, or member may, where any action or proceedings against the company is pending, apply to the Court to stay further proceedings in the action or proceedings, and the Court may stay or restrain the proceedings accordingly on such terms as it thinks appropriate.

(2) Where a winding-up order has been made or a provisional liquidator has been appointed, no action or proceedings shall be proceeded with or commenced against the company except—

(*a*) by leave of the Court; and

(*b*) on such terms as the Court thinks appropriate.

Property of company

111.—(1) A disposition of any property of a company and a transfer of shares or alteration in the status of a shareholder made after the commencement of the winding-up by the Court shall, unless the Court otherwise directs, be void.

(2) Any attachment, sequestration, distress or execution put in force against the assets of a company after the commencement of the winding-up by the Court shall be void.

Lodging and service of order

112. A petitioner shall, within the prescribed period after the making of a winding-up order—

(*a*) lodge with the Director—

(i) a copy of the order; and

(ii) the name and address of the liquidator;

(*b*) deliver a copy of the order to the Official Receiver;

(*c*) cause a copy of the order to be served on the secretary of the company or on such other person or in such manner as the Court directs; and

(*d*) deliver a copy of the order to the liquidator with a statement that the requirements of this section have been complied with.

Appointment of provisional liquidator

113.—(1) The Court may, on the presentation of a petition under section 107 and at any time thereafter but before the making of a winding-up order, and on being satisfied that—

(*a*) there are reasonable grounds for believing that the company is unable to pay its debts; or

(*b*) any of the property of the company available to meet its debts is at risk or may be removed from Malaŵi,

appoint the Official Receiver or any other qualified person to be provisional liquidator who shall, subject to such limitations and restrictions as the Court may specify in the order, have and may exercise all the functions and powers of a liquidator.

(2) On his appointment under subsection (1), a provisional liquidator shall forthwith take into his custody or control all the property, movable or immovable, including all bank accounts and other financial assets, to which the company is or appears to be entitled.

(3) Where a winding-up order is made—

(*a*) the Official Receiver shall, unless another person has been appointed, become the provisional liquidator and continue to act as such until he or another person becomes liquidator and is capable of acting as such;

(*b*) the Official Receiver shall, where no liquidator is appointed, summon separate meetings of the creditors and contributories of the company for the purpose of determining whether or not an application is to be made to the Court for appointing a liquidator in the place of the Official Receiver;

(*c*) the Court may appoint a liquidator and, if there is a difference between the determination of the meetings of the creditors and members in that respect, make such order as it thinks fit;

(*d*) the Official Receiver shall, where a liquidator is not appointed by the Court, be the liquidator;

(*e*) subject to paragraph (*f*), the official receiver shall be the liquidator during any vacancy in the office of liquidator; and

(*f*) any vacancy in the office of a liquidator appointed by the Court may be filled by the Court.

(4) A meeting of creditors under this section shall be called and conducted in accordance with the Rules.

(5) Where the names and address of all creditors are not known to the Official Receiver, public notice of the meeting shall be advertised in at least two daily newspapers of national circulation.

(6) The Official Receiver shall not be required to call a meeting of creditors under subsection (3) (*b*) where—

(*a*) he considers, having regard to the assets and liabilities of the company, the likely result of the liquidation of the company, and any other relevant matters, that no such meeting should be held;

(*b*) he gives notice in writing to the creditors stating—

(i) that he does not consider that a meeting should be held;

(ii) the reasons for his views; and

(iii) that no such meeting will be called unless a creditor gives notice in writing to the Official Receiver within the prescribed period after receiving the notice, requiring a meeting to be called; and

(*c*) no notice requiring the meeting to be called is received by the Official Receiver within that period.

(7) A notice under subsection (6) (*b*) shall be given to every known creditor—

(*a*) where section 119 (1) (*c*) applies, together with the report and notice referred to in section 119 (1) (*c*); or

(*b*) where section 119 (1) (*c*) is not applicable, at the time the Official Receiver would have been required to send the report and notice referred to in section 119 (1) (*c*) if it were applicable.

(8) A liquidator, other than the Official Receiver, appointed by the Court may resign or, on good cause shown, be removed from office by the Court.

(9) Where the Court appoints more than one liquidator, it shall declare whether anything by this Act required or authorized to be done by the liquidator is to be done by all or any one or more of the persons appointed.

Custody and vesting of company's property

114.—(1) Where a provisional liquidator has been appointed or a winding-up order has been made, the provisional liquidator or liquidator shall forthwith take into his custody or under his control all the property to which the company is or appears to be entitled.

(2) The Court may, on the application of the liquidator, order that the property of the company vest in the liquidator and the property shall, subject to subsection (4), vest accordingly and the liquidator may, after giving such indemnity, if any, as the Court directs, bring or defend any action which relates to that property or which it is necessary to bring or defend for the purpose of effectually winding-up the company and recovering its property.

(3) On the service of an order appointing a provisional liquidator or liquidator on any bank, financial institution, issuer of securities or any other person holding property or securities on behalf of or in the name of the company, the bank, institution, issuer or person shall hold the property for and at the discretion of the provisional liquidator or liquidator.

(4) Where an order is made under subsection (2), every liquidator in relation to whom the order is made shall, within the prescribed period of the making of the order—

(*a*) lodge with the Director a copy of the order; and

(*b*) where the order relates to land, delivery a copy of the order to the Land Registrar or Deeds Registrar, as the case may be.

(5) No order under subsection (2) shall have effect to transfer or otherwise vest land until the appropriate entries are made with respect to the vesting by the Land Registrar or Deeds Registrar, as the case may be.

Statement of company's affairs

115.—(1) There shall be delivered to the liquidator in accordance with subsection (2) a statement as to the affairs of the company as at the date of the winding-up order showing—

(*a*) the particulars of its assets, including any inventory of stock, debts and liabilities;

(*b*) the names and addresses of its creditors;

(*c*) the security interests held by them;

(*d*) the dates on which the security interests were respectively given; and

(*e*) such further information as may be prescribed or as the liquidator requires.

(2) The statement shall be verified by the statutory declaration of one or more of the persons who at the date of the winding-up order are directors, and by the secretary of the company, or by such of the following persons as the liquidator may, subject to any order made by the Court, require—

(*a*) a person who is or has been an officer;

(*b*) a person who has taken part in the formation of the company at any time within two years before the date of the winding-up order; or

(*c*) a person who is, or has been, within that period an officer of, or in the employment of, a corporation which is, or within that period was, an officer of the company to which the statement relates.

(3) The statement shall be submitted within the prescribed period after the date of the winding-up order or within such extended time as the liquidator or the Court may authorize.

(4) The liquidator shall, within the prescribed period after its receipt, file with the Court and lodge with the Director a copy of the statement and, where the Official Receiver is not the liquidator, cause a copy to be delivered to the Official Receiver.

(5) Any person making or concurring in making a statement required by subsection (1) may, subject to any order made by the Court, be allowed and paid, out of the assets of the company, such costs and expenses incurred in, and about, the preparation and making of the statement as the liquidator considers reasonable.

Liquidator's report

116.—(1) The liquidator shall, within the prescribed period after receipt of the statement of affairs, submit a preliminary report to the Court—

(*a*) as to the amount of capital issued, subscribed and paid up and the estimated amount of assets and liabilities;

(*b*) where the company is unable to pay its debts, as to the likely causes of the inability; and

(*c*) whether in his opinion, further inquiry is desirable as to any matter relating to the promotion, formation or inability to pay debts of the company or the conduct of its business.

(2) The liquidator may also, if he thinks fit, make further reports stating the manner in which the company was formed and whether in his opinion any fraud has been committed or any material fact has been concealed by any person in its promotion or formation or by any officer in relation to the company since its formation, and whether any officer of the company has contravened or failed to comply with any provision of this Act, and specifying any other matter which in his opinion is desirable to bring to the notice of the Court.

Principal duty of liquidator

117. Subject to section 118, the principal duty of the liquidator shall be to act in a reasonable and efficient manner so as to—

(*a*) take possession of, protect, realize, and distribute the assets, or the proceeds of the realization of the assets, of the company to its creditors in accordance with this Act; and

(*b*) where there are surplus assets remaining, distribute them, or the proceeds of the realization of the surplus assets, in accordance with sections 303 and 304.

Liquidator not required to act in certain cases

118.—(1) Notwithstanding this Part—

(*a*) except where a security interest is surrendered or taken to be surrendered under the Rules, a liquidator may, but is not required to, carry out any duty or exercise any power in relation to property that is subject to a security interest; and

(*b*) where—

(i) a company is wound-up by order of the Court; and

(ii) the company has no assets available for distribution to creditors of the company,

the liquidator shall not be required, without the consent of the Director, to carry out any duty or exercise any power in connexion with the liquidation where to do so would or would be likely to involve incurring any expense.

Other duties of liquidator

119.—(1) A liquidator shall—

(*a*) within the prescribed period of being appointed or being notified of his appointment, give public notice in the prescribed manner;

(*b*) within the prescribed period of being appointed or being notified of his appointment, submit to the Director and the Registrar of Companies notice of his appointment;

(*c*) within the prescribed period, or at the end of each period of six months following the commencement of the liquidation, prepare and send to every known creditor and shareholder, and submit to the Director and the Registrar of Companies, a report—

(i) on the conduct of the liquidation during the preceding six months;

(ii) containing the prescribed information; and

(iii) of any further proposals which the liquidator has for completing the liquidation.

(2) The Court may, on the application of a liquidator and on such terms as it thinks appropriate—

(*a*) exempt the liquidator from compliance with any of the provisions of this section; or

(*b*) modify the application of those provisions in relation to the liquidator.

(3) A liquidator shall not be required to comply with subsection (1) (*c*) where he is satisfied that the value of the assets of the company available for distribution to unsecured creditors, not being creditors entitled to be paid in the order of the priority set out in section 297, is not likely to exceed the prescribed amount owed to such creditors.

(4) A liquidator who considers that the company or any person has—

(*a*) committed an offence in relation to the company;

(*b*) been guilty of any negligence, default, breach of duty or trust in relation to the company; or

(*c*) committed any offence that is material to this Act, the Companies Act or the Securities Act,

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shall within the prescribed period submit a written report of that fact to the Director and the Registrar of Companies and give the Director such information or documents, and such assistance, including further reports, and access to and facilities for inspecting and taking copies of any documents, as the Director may require.

(5) A liquidator shall ensure that every document entered into, made, or issued by him on behalf of a company shall state in a prominent position that the company is in liquidation.

Powers of liquidator

120. A liquidator of a company shall have power to do all or any of the following—

(*a*) commence, continue, discontinue and defend legal proceedings;

(*b*) carry on the business of the company to the extent necessary for the liquidation;

(*c*) appoint a legal practitioner to assist him in his duties;

(*d*) appoint an agent or expert to do any business which the liquidator himself is unable to do;

(*e*) with the leave of the liquidation committee or the Court, pay any class of creditors in full;

(*f*) subject to section 156, make a compromise or any arrangement with creditors or persons claiming to be creditors or who have or allege the existence of claim against the company, whether present or future, actual or contingent, or ascertained or not;

(*g*) compromised cause and liabilities for cause, debts and liabilities capable of resulting in debts and claims, present or future, actual or contingent, or call ascertain or not, subsisting or supposed to subsist between the company and any person and all questions relating to or affecting the assets or the liquidation of the company, on such terms as may be agreed, and take security for the discharge of any such call, debt, liability or claim and give a complete discharge;

(*h*) sell or otherwise dispose of the property of the company with the approval of the liquidation committee;

(*i*) act in the name and on behalf of the company and enter into deeds, contracts and arrangements in the name and on behalf of the company;

(*j*) prove, rank and claim in the bankruptcy or a shareholder for any balance against that person's estate, and receive dividends in the bankruptcy or insolvency, as a separate debt due from the bankrupt or insolvent, and ratably with the other separate creditors;

(*k*) draw, accept, make and endorse a bill of exchange or promissory note in the name and on behalf of the company in the course of its business;

(*l*) borrow money whether with or without providing security over the assets of the company;

(*m*) take action in his name as liquidator for transfer to the heir or executor of a deceased shareholder of any shares in the name of the deceased and to do in that name any other act necessary for obtaining payment of money due from a shareholder or his estate which cannot be conveniently done in the name of the liquidator; or

(*n*) call a meeting of creditors or shareholders for—

(i) the purpose of informing creditors of progress in the liquidation;

(ii) the purpose of ascertaining the views of creditors or shareholders on any matter arising in the liquidation; or

(iii) such other purpose connected with the liquidation thinks fit.

Power of liquidator relating to documents and information

121.—(1) A liquidator shall in pursuance of the powers provided under section 120 have power to obtain documents and information set out in this section.

(2) A liquidator may, by notice in writing, require a director or former director or shareholder of the company or any other person to give him such record or document of the company in that person's possession or under that person's control as he may require.

(3) A liquidator may, by notice in writing, require—

(*a*) a director or former director of the company;

(*b*) a shareholder of company;

(*c*) a person who was involved in the promotion or formation of the company;

(*d*) a person who is, or has been, an employee of the company;

(*e*) a receiver, accountant, auditor, bank officer, or other person having knowledge of the affairs of the company; or

(*f*) a person who is acting or has at any time acted as a legal practitioner for the company,

to do any of the things specified in subsection (4).

(4) A person referred to in subsection (3) may be required to—

(*a*) attend on the liquidator at such reasonable time or times and at such place, including a place of meeting of creditors, as may be specified in the notice;

(*b*) provide the liquidator with such information about the business, accounts, or affairs of the company as the liquidator request and be examined by the liquidator in connexion with such affairs of the company; and

(*c*) assist in the liquidation to the best of the person's ability.

(5) Where a person directed to attend before the liquidator under subsection (3) applies to the Court to be exculpated from any charges made or suggested against him, the liquidator shall appear on the hearing of the application and call the attention of the Court to any matters which appear to him to be relevant and the Court may, after hearing any evidence given or witnesses called by the liquidator, grant the application.

(6) Notes of the examination of a person under subsection (4)—

(*a*) shall be reduced to writing;

(*b*) shall be read over to, or by, and signed by, the person examined;

(*c*) may, subject to section 124, thereafter be used in evidence in any legal proceedings against the person examined; and

(*d*) shall be open to the inspection of any creditor or member.

Document in possession of receiver

122.—(1) A receiver shall not be required to hand over to a liquidator any record or document that the receiver requires for the purpose of exercising any powers or functions as receiver in relation to property of a company in liquidation.

(2) A liquidator may, by notice in writing, require a receiver to—

(*a*) make such record and document available for inspection by the liquidator at any reasonable time; and

(*b*) provide the liquidator with copies of such record and document, or extracts from them.

(3) The liquidator shall pay the reasonable expenses of the receiver in complying with a requirement of the liquidator under subsection (2).

(4) No person may, as against the liquidator of a company, claim or enforce a lien over a record or document of the company.

Document creating charge over property

123.—(1) A person may be required to give a document to a liquidator under section 121 even though possession of the document creates a security interest over property of a company.

(2) Production of the document to the liquidator under subsection (1) shall not prejudice the existence or priority of the security interest.

(3) Notwithstanding subsection (2), the liquidator shall make the document available to the person entitled to it for the purpose of dealing with or realizing the security interest.

Power of Court

124.—(1) The Court may, on the application of a liquidator, order a person who has failed to comply with a requirement of the liquidator under sections 120 and 121 to comply with the requirement.

(2) A liquidator may apply to the Court for directions in relation to any particular matter in a winding-up.

(3) The Court may, on the application of the liquidator, order a person to whom section 119 (3) applies to—

(*a*) attend before the Court and be examined on oath or affirmation by the Court, the liquidator or a legal practitioner acting on behalf of the liquidator on any matter relating to the business, accounts or affairs of the company; and

(*b*) produce any record or document relating to the business, accounts, or affairs of the company in that person's possession or under that person's control.

(4) Where a person is examined under subsection (3) (*a*)—

(*a*) the examination shall be recorded in writing; and

(*b*) the person examined shall sign the record.

(5) Subject to any direction by Court, a record of an examination under this section shall be admissible in evidence in any proceedings under this Act.

(6) A person shall not be excused from answering a question put in course of being examined under subsection (3) on the ground that the answer might incriminate or tend to incriminate that person.

(7) The testimony of the person examined shall not be admissible as evidence in criminal proceedings against that person except on a charge of perjury in relation to that testimony.

Release of liquidator and dissolution of company

125.—(1) Where a liquidator has—

(*a*) realized all the property of the company or so much as can in his opinion be realized without needlessly protracting the liquidation;

(*b*) distributed a final dividend, if any, to the creditors;

(*c*) adjusted the rights of the members among themselves; and

(*d*) made a final return, if any, to the members,

he may apply to the Court for an order that he be released or for an order that he be released and that the company be dissolved.

(2) Where a liquidator has resigned or been removed from his office, he may apply to the Court for an order that he be—

(*a*) released; or

(*b*) released and that the company be dissolved.

(3) A liquidator shall present to the Court an account showing how the winding-up has been conducted and how the property of the company has been disposed of.

(4) Where an order is made that the company be dissolved, the company shall from the date of the order be dissolved accordingly.

(5) The Court—

(*a*) may cause a report on the accounts of a liquidator, other than the Official Receiver, to be prepared by the Official Receiver or by a qualified auditor appointed by the Court;

(*b*) shall, on the liquidator complying with all the requirements of the Court, take into consideration the report and any objection which is urged by the Official Receiver, auditor, any creditor, contributory or other person interested against the release of the liquidator; and

(*c*) shall grant or withhold the release accordingly.

(6) Where the release of a liquidator is withheld, the Court may, on the application of any creditor, contributory or person interested, make such order as it thinks appropriate charging the liquidator with the consequence of any act done or default which he may have done or made contrary to his duty.

(7) Subject to subsection (8), an order of the Court releasing a liquidator shall discharge him from all liability in respect of any act

done or default made by him in the administration of the affairs of the company or otherwise in relation to his conduct as liquidator.

(8) Any order under subsection (7) may be revoked on proof that it was obtained by fraud or by suppression or concealment of any material fact.

(9) Where the liquidator has not previously resigned or been removed, his release shall operate as a removal from office.

(10) Where the Court has made—

(*a*) an order that the liquidator be released; or

(*b*) an order that the liquidator be released and the company be dissolved,

a copy of the order shall be lodged with the Director and the Registrar of Companies by the liquidator and delivered to the Official Receiver within the prescribed period.

Liquidation committee in winding-up by Court

126.—(1) The liquidator may summon separate meetings of the creditor and members for the purpose of determining whether or not creditors or members require the appointment of a liquidation committee to act with the liquidator, and if so, who are to be members of the committee provided that in the case of a public company or on request by a creditor or a member, the summon of the meeting shall be mandatory.

(2) If the meeting of members requires a liquidation committee to be appointed, the Court shall decide whether such a committee should be appointed, and the Court shall also determine any difference as to who are to be members of the committee and make such order as it thinks fit.

(3) A liquidation committee shall consist of a number of creditors and members of the company or of persons holding—

(*a*) general powers of attorney from creditors; or

(*b*) special authority from creditors or members authorizing the persons named thereto and therein to act on such a committee appointed by the meetings of creditors and contributories in such proportions as are agreed to or in case of difference as are determined by the Courts.

(4) The liquidator may at any time on his own motion at least once every six months, and shall, within the fourteen days on the written request of a creditor or member, summons a meeting of creditors or

of members to consider any appointment or revoke the appointment and appoint another creditor or member or person holding a general power or special authority as specified in subsection (1) to be a member of the committee.

(5) The Rules shall govern proceedings at meetings of a liquidation committee.

List of members

127.—(1) As soon as it deems fit after making a winding-up order, the Court may settle a list of members and rectify the shareholder or member's register in every case where rectification is required pursuant to this Part, and shall cause the assets of the company to be collected and applied in discharge of its liabilities.

(2) In settling a list of members, the Court shall distinguish between persons who are members in their own right and person who are members as being representatives of or liable for the debts of others.

(3) This list of members, when settled, shall be *prima facie* evidence of the liabilities of the persons named therein as members.

Liabilities of present and past shareholders

128.—(1) This section shall apply only in the case of a company being limited by guarantee, an unlimited company, and a company having shares which are not fully paid up.

(2) On a company being wound-up, any past member shall, subject to the provisions of this section, be liable to contribute to the assets of the company to an amount sufficient for payment of its debts and liabilities, and the costs, charges and expenses of the winding-up and for the adjustment of the rights of the members among themselves.

(3) A past member shall not be liable to contribute in respect of any debt or liability of the company contracted after he has ceased to be a member.

(4) A past member shall not be liable to contribute if he has ceased to be a member for one year or more before the commencement of the winding-up.

(5) A past member shall not be liable to contribute unless it appears to the Court that the existing members are unable to satisfy the contributions required to be made by them in pursuance of this Act.

(6) In the case of a company limited by shares, no contribution shall be required from any past member exceeding the amount unpaid on the shares in respect of which he is liable.

(7) For the purposes of this section, any reference to a member shall, unless the context otherwise requires—

(*a*) be deemed to include a past member who is liable by virtue of this section, to contribute to the assets of the company; and

(*b*) for the purpose of all proceedings for determining, and of all proceedings prior to the final determination of, the persons who are deemed to be so liable (including the presentation of a winding-up petition), includes any person claiming or alleged to be so liable.

Death of member

129. If a member dies before or after he has been placed on the list of those liable to contribute to the assets of the company, his personal representatives shall be so liable in due course of administration and, if they make default in paying any money ordered to be paid by them, proceedings may be taken for administering the estate of the deceased members and for compelling payment there out of the money due.

Bankruptcy of member

130. If a member becomes bankrupt, before or after he has been placed on the list of those liable to contribute to the assets of the company—

(*a*) his trustee in bankruptcy shall represent him for all the purposes of the winding-up, and shall be liable to contribute accordingly; and

(*b*) there may be proved against the estate of the bankrupt the estimated value of his liability to future calls and as to calls already made.

Payment of debt due by contributory

131.—(1) The Court may make an order directing a member for the time being on the list of contributories to pay to the company in the manner directed by the order any money due from him or from the estate of the person whom he represents, exclusive of any money payable by him or the estate by virtue of any call in pursuance of this Act, and may—

(*a*) in the case of unlimited company, allow to the contributory by way of set-off any money due to him or to the estate which he represents from the company on any independent dealing or contract other than money due to him as a shareholder or member in respect of any dividend or profit;

(*b*) in the case of a limited company, make a similar allowance to a director whose liability is unlimited, or to his heir; and

(*c*) in the case of any company, when all the creditors are paid in full, allow a contributory by way of set-off against any subsequent call any money due on any account whatever to a contributory from the company.

(2) The Court may, before or after it has ascertained the sufficiency of the company—

(*a*) make a call on any contributory for the time being on the list of contributories, to the extent of his liability, for—

(i) the payment of any money which the Court consider necessary to satisfy the debts and liability of the company and the costs, charges and expenses of winding-up; and

(ii) the adjustment of the rights of the contributories among themselves; and

(*b*) make an order for payment of all calls so made, and, in making a call, the Court may have regard to the probability that some of the contributories may partly or wholly fail to pay the call.

(3) The Court may order any contributory or other person from whom money is due to the company to pay the amount due to the account of the liquidator into a bank named in the order instead of to the liquidator, and any such order may be enforced in the same manner as if it had directed payment to the liquidator.

(4) An order made by the Court under this section shall, subject to any right of appeal, be conclusive evidence that any money thereby appearing to be due or ordered to be paid is due, and that any other relevant fact therein stated is true and correctly stated.

Special manager

132.—(1) Where a liquidator is satisfied that the nature of the assets or business of the company, or the interests of the creditors or members generally, require the appointment of special manager other than himself, he may, apply to the Court which may appoint a special manager to act during such time as the Court directs with such powers, including any of the powers of a receiver or manager, as are entrusted to him by the Court.

(2) The special manager—

(*a*) shall give such security and account in such manner as the Court directs;

(*b*) shall receive such remuneration as is fixed by the Court; and

(*c*) may at any time resign after giving not less than one month's written notice to the liquidator or his intention to resign, or on cause shown be removed by the Court.

Receiver for secured creditors

133. Where an application is made to the Court to appoint a receiver on behalf of the secured creditors of a company which is being wound-up by the Court, the Court may grant the application on such terms as the Court thinks appropriate.

Creditor's claim

134. The Court may fix a date on or before which creditors are to prove their debts or claims, after which date they will be excluded from the benefit of any distribution made before those debts are proved.

Power of arrest

135.—(1) The Court may, at any time before or after making a winding-up order, on proof of probable cause for believing that a member or officer or a former member or officer of the company, is about to leave Malaŵi or otherwise to abscond or to remove or conceal any of his property for the purpose of evading payment of any money due to the company or of avoiding examination regarding the affairs of the company, may cause the member, office or former member or officer to be arrested and his books and papers and movable personal property to be seized and be kept safely until such time as the Court orders otherwise.

(2) For the purposes of this section, "officer" shall include a banker, legal practitioner or auditor of the company.

Foreign companies Cap. 46:03

136.—(1) Subject to the provisions of this section, a liquidator may be appointed for a foreign company as defined in the Companies Act by the Court on the application of—

(*a*) a liquidator appointed in the country of the company's incorporation;

(*b*) a creditor; or

(*c*) the Director,

and thereupon the provisions of this Act shall apply.

Cap. 46:03

(2) Where the circumstances regarding an external company set out in section 369 (1) of the Companies Act have been brought to the attention of the Director, the Director may apply to the Court for an order for the winding-up of the affairs of the company in so far as they relate to its assets in Malaŵi.

(3) Where, on an application under subsection (1) or (2), an order is made for the winding-up of the affairs of the company so far as assets in Malaŵi are concerned, the company shall not carry on business or establish or keep a place of business in Malaŵi.

Pooling of assets of related companies

137.—(1) If, on the application of a liquidator, creditor or shareholder, the Court is satisfied that it is just and equitable to do so, the Court may order that—

(*a*) a company that is, or has been, related to a company in liquidation shall pay to the liquidator any claim made in the liquidation; or

(*b*) where two or more related companies are in liquidation, the liquidations in respect of each company must proceed together as if they were one company to the extent that the Court so orders and subject to such terms as the Court may impose.

(2) The Court may make such orders or give such directions to facilitate giving effect to an order under subsection (1) as it thinks appropriate.

Guidelines for orders

138.—(1) In deciding whether it is just and equitable to make an order under section 137 (1) (*a*), the Court shall have regard to the extent to which the circumstances that gave rise to the liquidation of the company are attributable to the actions of the related company.

(2) In deciding whether it is just and equitable to make an order under section 137 (1) (*a*), the Court shall have regard to—

(*a*) the extent to which any of the companies took part in the management of any of the other companies;

(*b*) the conduct of any of the companies towards the creditors of any of the other companies;

(*c*) the extent to which the circumstances that gave rise to the liquidation of any of the companies are attributable to the actions of the other companies; and

(*d*) the extent to which the business of the companies have been combined.

(3) The fact that creditors of a company in liquidation relied on the fact that another company is, or was, related to it shall not be a ground for making an order under section 137.

Duty to identify and deliver property

139. A present or former director or employee of a company in liquidation shall—

(*a*) forthwith after the company is put into liquidation give the liquidator details of property of the company in his possession or under his control; and

(*b*) on being required to do so by the liquidator forthwith or within such time as may be specified by the liquidator, deliver the

property to the liquidator or such other person as the liquidator may direct, or dispose of the property in such manner as the liquidator may direct.

Refusal to supply essential service

140.—(1) For the purposes of this section—

(*a*) "essential service" means—

(i) the retail supply of electricity;

(ii) the supply of water; or

(iii) telecommunications services; and

(*b*) "telecommunication service" means the conveyance from one device to another by a line, radio frequency, satellite transmission or other medium of a sign, signal, impulse, writing, image, sound, instruction, information or intelligence of any nature, whether or not for the information of a person using the device.

(2) Notwithstanding any other law, a supplier of an essential service shall not—

(*a*) refuse to supply the service to a liquidator, or to a company in liquidation, by reason of the company's default in paying charges due for the service in relation to a period before the commencement of the liquidation; or

(*b*) make it a condition of the supply of the service to a liquidator, or to a company in liquidation, that payment be made of outstanding charges due for the service in relation to a period before the commencement of the liquidation.

(3) The charges incurred by a liquidator for the supply of an essential service shall be an expense incurred by the liquidator as part of the costs of the liquidation.

Division IV—Voluntary Winding-up

Circumstances for voluntary winding-up

141.—(1) Subject to subsection (2), a company may be wound-up voluntarily where—

(*a*) the period, if any, fixed for its duration by its memorandum and articles of association expires, or the event, if any, occurs, on the occurrence of which the memorandum and articles of association provides that the company is to be dissolved, and the company passes an ordinary resolution that it shall be wound-up; or

(*b*) the company passes a special resolution that it shall be wound-up.

(2) Where an application for winding-up has been presented on the ground that a company is unable to pay its debts, the company shall not, without the leave of the Court, resolve that it be wound-up voluntarily.

(3) A company shall—

(*a*) within the prescribed period, lodge with the Director and the Registrar General a copy of the winding-up resolution; and

(*b*) within the prescribed period, give notice of the winding-up resolution in one daily newspaper and in the *Gazette*.

(4) Where it appears to the directors of a company that the company is insolvent, the directors may, before holding a meeting for the passing of the special resolution referred to in subsection (1)—

(*a*) lodge with the Director and the Registrar of Companies a declaration and deliver a copy thereof to the Official Receiver, stating that—

(i) the company cannot by reason of its liabilities continue its business; and

(ii) meetings of the company and of its creditors have been summoned for a date not later than the prescribed period of the date of the declaration; and

(*b*) appoint a person to be the provisional liquidator who shall, subject to such limitations and restrictions as may be prescribed, have and may exercise all the functions and powers of a liquidator in a creditors' winding-up.

(5) The appointment of a provisional liquidator shall continue for the prescribed period from the date of his appointment or for such further period as the Official Receiver may allow or until the appointment of a liquidator, whichever occurs first.

(6) The company shall, within the prescribed period, give notice of the appointment of a provisional liquidator and the lodging of the declaration in one daily newspaper and in the *Gazette*.

(7) A provisional liquidator shall be entitled to receive remuneration as determined in the Rules.

(8) A voluntary winding-up shall commence—

(*a*) where a provisional liquidator is appointed under subsection (4) before a winding-up resolution is passed, at the time when a declaration under subsection (4) is lodged; and

(*b*) in every other case, at the time of the passing of the winding-up resolution.

Effect of voluntary winding-up

142.—(1) A company shall, from the commencement of its winding-up, cease to carry on its business except so far as is in the opinion of the liquidator required for the beneficial winding-up of the company.

(2) The corporate status and corporate powers of the company shall, notwithstanding anything in the memorandum and articles of association, continue until it is dissolved.

(3) Any transfer of shares, not being a transfer made to or with the sanction of the liquidator, and any alteration in the status of the shareholders made after the commencement of the winding-up, shall be void.

Declaration of solvency

143.—(1) Where it is proposed to wind-up a company voluntarily as a shareholders' voluntary winding-up, the directors or the majority of them shall, before the date on which the notices of the meeting at which the winding-up resolution is to be proposed are set out, make a written declaration to the effect that—

(*a*) they have made an inquiry into the affairs of the company; and

(*b*) at a meeting of directors, they have formed the opinion that the company will be able to pay its debts in full within a period not exceeding the prescribed period after the commencement of the winding-up.

(2) There shall be attached to the declaration under subsection (1) a statement of the affairs of the company showing—

(*a*) the assets of the company and the total amount expected to be realized therefrom;

(*b*) the liabilities of the company; and

(*c*) the estimated expenses of winding-up, made up to the latest practicable date before the making of the declaration.

(3) A declaration made under subsection (1) shall have no effect unless it is—

(*a*) made at the meeting of directors referred to in subsection (1); or

(*b*) made within the prescribed period immediately preceding the passing of the winding-up resolution; and

(*c*) lodged with the Director and the Registrar of Companies before the date on which the notices of the meeting at which the resolution for the winding-up of the company is to be proposed are sent out.

Liquidator in voluntary winding-up

144.—(1) The company shall, in a general meeting, appoint a liquidator for the purpose of winding-up the affairs and distributing the assets of the company, and may fix the remuneration to be paid to the liquidator.

(2) On the appointment of a liquidator, all the powers of the directors shall cease except so far as the liquidator, or, with the liquidator's consent, the company in a general meeting, may otherwise determine.

(3) Subject to subsection (4), the company in a general meeting convened by a contributory may, by special resolution of which special notice has been given to the creditors and the liquidator, remove a liquidator.

(4) A resolution under subsection (3) shall have no effect if, on the application of the liquidator or a creditor, the Court otherwise directs.

(5) Where a vacancy occurs, by death, resignation, removal or otherwise, in the office of a liquidator the company in a general meeting may fill the vacancy by the appointment of a liquidator and fix the remuneration to be paid to him, and for that purpose a general meeting may be convened by a contributory, or, if there were more liquidators than one, by the continuing liquidators.

(6) A general meeting under subsection (5) shall be held in the manner provided by the Rules, the Companies Act or in such manner as, on the application of a contributory or the continuing liquidators, the Court may direct. Cap. 46:03

(7) Where a company in a general meeting has failed to fill a vacancy under subsection (5), any creditor or member of the company may apply to the Court for the appointment of the Official Receiver as provisional liquidator of the company and, if appointed by the Court, the Official Receiver shall act as provisional liquidator of the company until further order of the Court made on application by the company following a resolution in a general meeting nominating a liquidator for appointment by the Court.

Insolvency of company

145.—(1) Where a liquidator is of the opinion that the company will not be able to pay or provide for the payment of its debts in full

within the period stated in the declaration of solvency made under section 143, he shall forthwith—

(*a*) summon a meeting of the creditors; and

(*b*) lay before the meeting a statement of the assets and liabilities of the company.

(2) The notice summoning the meeting shall draw the attention of the creditors to the right conferred upon them by subsection (3).

(3) The creditors may at the meeting appoint some other person to be liquidator for the purpose of winding-up the affairs and distributing the assets of the company instead of the liquidator appointed by the company.

(4) Where the creditors appoint some other person under subsection (3), the winding-up shall proceed as if the winding-up were a creditors' winding-up.

(5) The liquidator or, if some other person has been appointed by the creditors to be the liquidator, the person so appointed, shall, within the prescribed period, lodge a notice of the holding of the meeting with the Director and deliver a copy to the Official Receiver.

(6) Where, at a meeting summoned under subsection (1), the creditors do not appoint another liquidator, the winding-up shall proceed as if the winding-up were a creditors' voluntary winding-up.

(7) The liquidator shall not be required to summon an annual meeting of creditors at the end of the first year from the commencement of the winding-up if the meeting was held less than three months before the end of that year.

Creditor's meeting

146.—(1) Where no declaration of solvency is made under section 143, the voluntary winding-up shall be a voluntary winding-up by resolution.

(2) Directors shall cause—

(*a*) a meeting of the creditors of the company to be summoned for the day, or the day next following the day on which there is to be held the meeting at which a winding-up resolution is to be proposed; and

(*b*) the notice of the meeting of creditors shall be given in the prescribed manner at the same time as the notice of the meeting of the company are sent.

(3) Directors shall convene the meeting at a time and place convenient to the majority in value of the creditors and shall—

(*a*) give the creditors at least the prescribed period of notice of the meeting; and

(*b*) send to each creditor with the notice a statement showing the names of all creditors and the amounts of their claims.

(4) Directors shall cause notice of the meeting of the creditors to be advertised at least for the prescribed number of days before the date of the meeting in one daily newspaper.

(5) Directors shall—

(*a*) cause a full statement of the company's affairs showing, in respect of assets, the method and manner in which the valuation of the assets was arrived at, together with a list of the creditors and the estimated amount of their claims to be laid before the meeting of creditors; and

(*b*) appoint one of their number to attend the meeting.

(6) A director appointed under subsection (5) (*b*) shall attend the meeting and disclose to the meeting the company's affairs and the circumstances leading up to the proposed winding-up.

(7) Creditors may appoint one of their number or the director appointed under subsection (5) (*b*) to preside at the meeting.

(8) The chairman shall at the meeting determine whether the meeting has been held at a time and place convenient to the majority in value of the creditors and his decision shall be final.

(9) Where the chairman decides that the meeting has not been held at a time and place convenient to the majority, the meeting shall lapse and a further meeting shall be summoned by the company as soon as is practicable.

(10) The Rules shall apply to the meeting so far as they are applicable and consistent with this section.

Liquidator in creditors' winding-up

147.—(1) Creditors may nominate a person to be the liquidator for the purpose of winding-up the affairs and distributing the assets of the company, and if the creditors and the directors nominate different persons, the person nominated by the creditors shall be the liquidator, and if no person is nominated by the creditors, the person nominated by the directors shall be the liquidator.

(2) Where different persons are nominated to be the liquidator, any director, shareholder or creditor may, within the prescribed period after the date on which the nomination was made by the creditors, apply to the Court for an order directing that the person nominated as liquidator by the directors shall be the liquidator instead of, or jointly with, the person nominated by the creditors.

(3) The liquidator, or liquidators, where more than one has been appointed, shall be entitled to remuneration in the amount and in the order of priority as set out in the Rules.

(4) On the appointment of a liquidator, all the powers of the directors shall cease, except so far as the liquidation committee or, if there is no such committee, the creditor, approve the continuance thereof.

(5) Where a liquidator, other than a liquidator appointed by, or by the direction of, the Court, dies, resigns or otherwise vacates the office, the creditors may fill the vacancy and for the purpose of so doing, a meeting of the creditors may be summoned by any two of their number.

Liquidation committee in voluntary winding-up

148.—(1) The creditors at a meeting summoned pursuant to section 146 or 147, or at any subsequent meeting may, if they think fit, appoint a liquidation committee consisting of not more than five persons, whether creditors or not.

(2) Where a liquidation committee is appointed, the directors may, at the meeting at which the winding-up resolution is passed or at any time subsequently in a general meeting, appoint such number of persons not being more than five as it thinks fit, to act as members of the committee.

(3) The creditors may, if they think fit, resolve that all or any of the persons appointed by the directors under subsection (2) ought not to be members of the liquidation committee and, if the creditors so resolve, the persons mentioned in the resolution shall not, unless the Court otherwise directs, be qualified to act as members of the committee, and on any application to the Court under subsection (2), the Court may, if it thinks fit, appoint other persons to act as such members in place of the persons mentioned in the resolution.

(4) A committee appointed under this section shall meet at least once every six months.

(5) The provisions in the Rules shall apply to a liquidation committee appointed under this section.

Property and proceedings

149.—(1) Any attachment, sequestration, distress or execution put in force against the assets of a company after the commencement of a creditors' winding-up shall be void.

(2) After the commencement of a creditors' winding-up, no action or proceeding shall be proceeded with or commenced against the company except by leave of the Court and subject to such terms as the Court thinks appropriate.

Distribution of property

150.—(1) Subject to sections 297, 303 and 304, the free assets of a company shall, on its winding-up—

(*a*) be applied *pari passu* in satisfaction of its liabilities; and

(*b*) unless the memorandum and articles of association provide otherwise, be distributed among the shareholders according to their rights and interests in the company.

Division V—Liquidators

Appointment and removal of liquidator

151.—(1) Where there is no liquidator acting in a voluntary winding-up, the Court may appoint a liquidator.

(2) The Court may, on cause shown, remove a liquidator and appoint another liquidator.

(3) The acts of a liquidator shall be valid notwithstanding any defect that may afterwards be discovered in his appointment or qualification.

(4) Any assignment, transfer, or other disposition of a company's property made by a liquidator shall, notwithstanding any defect or irregularity affecting the validity of the winding-up or the appointment of the liquidator, be valid in favour of any person taking the property *bona fide* and for value, and without notice of the defect or irregularity.

(5) Any person who makes or permits a disposition of property to a liquidator shall not incur any liability and shall be indemnified out of the property of the company notwithstanding any defect or irregularity affecting the validity of the winding-up or the appointment of the liquidator not then known to that person.

Powers and duties of liquidator in voluntary winding-up

152.—(1) A liquidator may—

(*a*) exercise any of the powers of a liquidator in a winding-up by the Court—

(i) in the case of a shareholders' voluntary winding-up, with the approval of a special resolution of the company; and

(ii) in the case of a creditor's voluntary winding-up, with the approval of the Court or the liquidation committee;

(*b*) exercise any other power given by this Act to a liquidator in a winding-up by the Court;

(*c*) exercise the power of the Court of settling a list of members, and the list of the members shall be *prima facie* evidence of the liability of the persons named therein to be members and sections 128, 129, 130 and 131 shall apply to the liability of contributories;

(*d*) exercise the power of the Court under section 131 (2) of making calls; or

(*e*) summon general meetings of the company for the purpose of obtaining the sanction of the company by special resolution in respect of any matter or for any other purpose he thinks appropriate.

(2) The liquidator shall pay the debts of the company and adjust the rights of the members among themselves.

(3) Where several liquidators are appointed, any power may be exercised by a liquidator designated at the time of their appointment, or in default of such determination, by any number not less than two.

Sale of company's property

153.—(1) Subject to subsection (5), where it is proposed that the business or property of a company be transferred to another company, the liquidator may, with the sanction of a special resolution conferring on him a general authority or an authority in respect of a particular arrangement—

(*a*) receive in compensation or part compensation for the transfer of cash, shares, policies or other like interests in the corporation for distribution among the members; or

(*b*) enter into any other arrangement whereby the members may, *in lieu* of, or in addition to receiving cash, shares, debentures, policies or other like interests, participate in the profits of or receive any other benefit from the corporation, and any such transfer or arrangement shall be binding on the shareholders.

(2) Where a shareholder, within the prescribed period, by written notice addressed to the liquidator and left at his office, dissents from the resolution, he may require the liquidator to—

(*a*) abstain from carrying the resolution into effect; or

(*b*) purchase his interest at a price to be determined by agreement or by the Court.

(3) Where the liquidator elects to purchase the shareholder's interest, the purchase money shall be paid before the company is dissolved and be raised by the liquidator in such manner as is determined by special resolution.

(4) A special resolution shall not be invalid for the purposes of this section by reason that it is passed before, or concurrently with, a winding-up resolution or a resolution appointing a liquidator, but if an order for winding-up the company by the Court is made within one year after the passing of the resolution, it shall not be valid unless sanctioned by the Court.

(5) Subsection (1) shall not apply in the case of a creditors' winding-up except with the approval of the Court or the liquidation committee.

Annual meeting of shareholders and creditors

154.—(1) Where a voluntary winding-up continues for more than the prescribed period, the liquidator shall at the expiry of the first prescribed period from the commencement of the winding-up and of each succeeding prescribed period, summon a general meeting of the company, or in the case of a creditors' voluntary winding-up, a meeting of the company and the creditors, and shall lay before the meeting an account of his acts and dealings and of the conduct of the winding-up during the preceding year.

(2) The liquidator shall cause the notices of the meeting of creditors to be sent at the same time as the notices of the meeting of the company are sent.

Final meeting and dissolution in voluntary winding-up

155.—(1) Where the affairs of the company have been fully wound-up, the liquidator shall as soon as possible—

(*a*) make up an account showing how the winding-up has been conducted and how the property of the company has been disposed of; and

(*b*) call a general meeting of the company, or in the case of a creditors' voluntary winding-up a meeting of the company and the creditors, and shall lay the account before the meeting.

(2) A meeting under subsection (1) shall be called by advertisement published in at least one daily newspaper which shall—

(*a*) specify the time, place and object of the meeting; and

(*b*) be published within the prescribed period before the meeting.

(3) The liquidator shall, within the prescribed period, lodge a notice, with the Director, of the holding of the meeting, and of its date, together with a copy of the account and deliver a copy of the notice to the Official Receiver.

(4) The *quorum* at a meeting of the company shall be two and at a meeting of the company and the creditors shall be two shareholders and two creditors, and if a *quorum* is not present at the meeting, the liquidator shall *in lieu* of the notice specified in subsection (3) lodge a notice together with a copy of the account, that the meeting was summoned and that no *quorum* was present.

(5) Subject to subsection (6), the company shall be dissolved on the expiry of the prescribed period after the notice has been lodged and, if a *quorum* is reached, when a copy of the notice has been delivered to the Official Receiver.

(6) The Court may, on the application of the liquidator or of such other person as the Court thinks fit, direct that the date at which the dissolution of the company is to take effect shall be deferred for such time as the Court thinks fit.

(7) The person on whose application an order of the Court under subsection (6) is made shall, within the prescribed period, lodge a copy of the order with the Director and deliver a copy to the Official Receiver.

Arrangement binding on creditors

156.—(1) Any arrangement entered into between a company, about to be or in the course of being wound-up voluntarily, and its creditors shall, subject to subsection (4), be binding on—

(*a*) the company if sanctioned by a special resolution; and

(*b*) the creditors if acceded to by—

(i) three-fourths in value of the creditors; and

(ii) one-half of the number of persons who are creditors for the prescribed amount or more.

(2) A creditor shall be accounted a creditor for such sum as appears to be the balance due to him upon an account fairly stated, after allowing the value of security or liens held by him and the amount of any debt or set-off owing by him to the debtor.

(3) Any dispute with regard to the value of any security or lien, or the amount of a debt or set-off may, on the application of the company, the liquidator or the creditor, be settled by the Court.

(4) A creditor or contributory may, within the prescribed period from the completion of the arrangement, appeal to the Court against it, and the Court may amend, vary or confirm the arrangement.

Costs

157. All proper costs, charges and expenses of, and incidental to, a voluntary winding-up, including the remuneration of the liquidator, shall be payable out of the assets of the company in priority to all other claims.

PART VI

Provisions Applicable to Every Winding-Up

Effect of liquidation

158.—(1) With effect from the commencement of the liquidation of a company—

(*a*) the liquidator shall have custody and control of the company's assets;

(*b*) the directors shall remain in office but cease to have powers, functions or duties, other than those required or permitted to be exercised by this Act;

(*c*) unless the liquidator agrees or the Court orders otherwise, a person shall not—

(i) commence or continue legal proceedings against the company or in relation to its property; or

(ii) exercise or enforce, or continue to exercise or enforce, a right or remedy over or against property of the company;

(*d*) unless the Court orders otherwise, no share in the company shall be transferred;

(*e*) an alteration shall not be made to the rights or liabilities of a shareholder of the company;

(*f*) a shareholder shall not exercise a power under the memorandum or articles of association of the company or this Act, except for the purposes of this Act; and

(*g*) the memorandum and articles of association of the company shall not be altered.

(2) Subsection (1) shall not affect the right of a secured creditor to take possession of, and realize or otherwise deal with, property of the company over which that creditor has a security interest.

Application to Court

159.—(1) Any person aggrieved by any act or decision of the liquidator may appeal to the Court which may confirm, reverse or modify the act or decision complained of and make such order as it thinks fit.

(2) A liquidator, contributory or creditor may apply to the Court—

(*a*) to determine any question arising in the winding-up of a company; or

(*b*) to exercise all or any of the powers which the Court might exercise if the company were being wound-up by the Court.

(3) Where, in the course of the winding-up of a company, it appears to the Court that a person who has taken part in the formation or promotion of the company, or a past or present director, manager, liquidator, administrator or receiver of the company, has misapplied or retained or become liable or accountable for money or property of the company, or been guilty of negligence, default or breach of duty or trust in relation to the company, the Court may on the application of the liquidator or a creditor or shareholder or the Director and the Registrar of Companies—

(*a*) inquire into the conduct of the promoter, director, manager, liquidator, administrator or receiver; and

(*b*) order that person—

(i) to repay or restore the money or property or any part of it with interest at a rate the Court thinks just;

(ii) to contribute such sum to the assets of the company by way of compensation as the Court thinks just; or

(iii) where the application is made by a creditor, order that person to pay or transfer the money or property or any part of it with interest at a rate the Court thinks just to the creditor.

(4) An order for payment of money under subsection (3) shall be deemed to be a final judgment within the meaning of the rules of civil procedure.

Powers of Official Receiver

160.—(1) Where a person, other than the Official Receiver, is the liquidator and there is no liquidation committee, the Official Receiver may, on the application of the liquidator, do any act or thing or give any direction or permission which is by this Act authorized or required to be done or given by the committee.

(2) Where the Official Receiver is the liquidator and there is no liquidation committee, the Official Receiver may in his discretion do any act or thing which is by this Act required to be done by, or subject to any direction or permission given by, the committee.

Notice of appointment and address of liquidator

161.—(1) Every liquidator shall within seven days—

(*a*) lodge a notice of his appointment and of the situation of his office under section 118 with the Director;

(*b*) in the event of any change in the situation of his office lodge with the Director a notice to that effect;

(*c*) where he resigns or is removed from office, lodge with the Director a notice to that effect; and

(*d*) deliver to the Registrar and the Official Receiver a copy of every such notice.

Payment into bank by liquidator

162.—(1) Subject to any order which the Court may make, every liquidator shall pay all money received by him into a special bank account in the name of the company in liquidation.

(2) Where a liquidator retains for more than the prescribed period a sum exceeding the prescribed amount, or such other amount as the Court in any particular case authorizes him to retain, he shall, unless he explains the retention to the satisfaction of the Court, pay interest on the amount so retained in excess with effect from the day following the expiry of the prescribed period until he has complied with subsection (1), at the ruling bank rate and be liable to—

(*a*) disallowance of all or such part of his remuneration as the Court thinks fit;

(*b*) be removed from his office by the Court; and

(*c*) pay any expenses occasioned by reason of his default.

(3) A liquidator shall not pay any sums derived by him as liquidator into his private bank account.

(4) The "ruling bank rate" referred to in subsection (2) is the rate of interest charged by the bank from time to time based on the prevailing interest rates set by the Reserve Bank of Malaŵi.

Liquidator's accounts

163.—(1) Every liquidator shall within one month after the expiration of the period of six months from the date of his appointment and of every subsequent period of six months and in any case within one month after ceasing to act as liquidator or obtaining an order of release, deliver to the Director for registration and, if the liquidator is not the Official Receiver, to the Official Receiver an account of his receipts and payments and a statement of the position in the winding-up, verified by statutory declaration.

(2) The Director may cause the account of any liquidation to be audited by an auditor approved by him and, for the purpose of the audit, the liquidator shall furnish the auditor with such vouchers and information as he requires, and the auditor may at any time require the production of, and inspect, any books or accounts kept by the liquidator.

(3) A copy of the account or, if audited, a copy of the audited account shall be kept by the liquidator at his office and shall there be open to the inspection of any member or creditor or of any other person interested in the winding-up of the affairs of the company.

(4) The liquidator shall, when he is next forwarding any report or notice to the creditors and member generally—

(*a*) give notice to every member and creditor that the account has been prepared; and

(*b*) in such notice, inform members and creditors that the account may be inspected at his office and state the times during which inspection may be made.

(5) The costs of an audit under this section shall be fixed by the Director and be part of the expenses of winding-up.

(6) A liquidator, other than the Official Receiver, who fails to comply with this section shall be liable to a fine.

Default by liquidator

164.—(1) Where a liquidator who has made default in lodging or making any application, return, account or other document or in giving any notice which he is required to lodge, make or give, fails to make good the default within the prescribed period after the service on him of a notice issued by the Registrar of Companies or the Official Receiver or the Director requiring him to do so, the Court may, on the application of a member or creditor of the company, the Official Receiver or the Registrar of Companies or the Director, make an order directing the liquidator to make good the default within such time as is specified in the order.

(2) An order under subsection (1) may provide that all costs of and incidental to the application shall be borne by the liquidator.

Notification of liquidation

165. Where a company is being wound-up, every invoice, order for goods or business letter issued by or on behalf of the company, a liquidator of the company or a receiver or manager of the property of the company, being a document on or in which the name of the company appears, shall have the words "in liquidation" added after the name of the company where it first appears.

Books of company

166.—(1) Every book of a company and of a liquidator that is relevant to the affairs of the company at, or subsequent to, the commencement of a winding-up shall, as between the contributories, be *prima facie* evidence of the truth of all matters purporting to be recorded therein.

(2) Subject to subsection (3), where a company has been wound-up, the liquidator shall retain every book referred to in subsection (1) for a prescribed period from the date of the dissolution of the company, and a creditor or contributory may, unless the Court on the application of the liquidator otherwise directs, inspect such books.

(3) Where a company has been wound-up, every book referred to in subsection (1) may be destroyed—

(*a*) in the case of a winding-up by the Court, in accordance with the directions of the Court;

(*b*) in the case of a shareholder's voluntary winding-up, as the company may, by ordinary resolution, direct; and

(*c*) in the case of a creditor's voluntary winding-up, as the liquidation committee, or, if there is no committee, as the creditors of the company may direct.

(4) Subject to subsection (5), where—

(*a*) a company that is in liquidation and is unable to pay all its debts has, during the prescribed period preceding the winding-up of the company, failed to comply with section 180 or 185 of the Companies Act; and

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(*b*) the Court considers that—

(i) the failure to comply has contributed to the company's inability to pay all its debts, or has resulted in substantial uncertainty as to the assets and liabilities of the company, or has substantially impeded the orderly winding-up of the company; or

(ii) for any other reason it is proper to make a declaration under this subsection,

the Court, on the application of the liquidator, may, if it thinks it proper to do so, declare that any one or more of the directors and former directors of the company shall be personally responsible, without limitation of liability, for all or any part of the debts and other liabilities of the company as the Court may direct.

(5) The Court shall not make a declaration under subsection (4) in relation to a person where the Court considers that the person—

(*a*) took all reasonable steps to secure compliance by the company with the applicable provision referred to in subsection (4) (*a*); or

(*b*) had reasonable grounds to believe and did believe that a competent and reliable person was charged with the duty of seeing that that provision was complied with and was in a position to discharge that duty.

(6) A declaration under subsection (4) shall be deemed to be a final judgment within the meaning of the rules of civil procedure.

Investment of surplus funds

167.—(1) Whenever the cash balance standing to the credit of a company which is being wound-up is in excess of the amount which, in the opinion of the liquidation committee or, if there is no committee, of the liquidator, is required for the time being to answer demands in respect of the estate of the company, the liquidator may, subject to any written directions of the liquidation committee, if any, and unless the Court on application by a creditor otherwise directs, invest the sum in Government securities or place it on deposit at interest with a bank, and any interest received in that respect shall form part of the assets of the company.

(2) Where any money so invested, in the opinion of the liquidation committee, or, if there is no liquidation committee, in the opinion of the liquidator, is required to answer any demands in respect of the company's estate, the liquidation committee may direct, or, if there is no liquidation committee, the liquidator may arrange for the sale or realization of that part of the securities as is necessary.

Unclaimed assets

168.—(1) Where a liquidator has in his possession, custody or control—

(*a*) any unclaimed dividend or other money which has remained unclaimed for more than the prescribed period from the date when the dividend or other money became payable; or

(*b*) after making a final distribution, any unclaimed or undistributed money arising from the property of the company,

he shall forthwith pay those moneys to the Official Receiver to be placed to the credit of a Companies Liquidation Account and, on such payment, he shall be entitled to a certificate issued by the Official Receiver which shall be an effectual discharge to him in that behalf.

(2) The Court may on the application of the Official Receiver—

(*a*) order a liquidator to submit an affidavit or the account of any unclaimed or undistributed dividend or other money in his possession, control or custody;

(*b*) direct an audit of the account; or

(*c*) direct the liquidator to pay the money to the Official Receiver to be placed to the credit of the Companies Liquidation Account.

(3) Except where it is otherwise prescribed, the Court may, for the purposes of this section, exercise all powers conferred by this Act with respect to the discovery and realization of the property of the company.

(4) Where a person makes a claim to any money placed to the credit of the Companies Liquidation Account, the Official Receiver shall, on being satisfied that the claimant is the owner of the money, authorize payment to be made to him accordingly out of the Companies Liquidation Account.

(5) Any person aggrieved by a decision of the Official Receiver in respect of a claim under subsection (4) may appeal to the Court which may confirm, reverse or modify the decision and make such order as it thinks fit.

(6) Where any money paid to a claimant is afterwards claimed by another person, that other person shall not be entitled to any payment out of the Companies Liquidation Account but may have recourse against the claimant to whom the money has been paid.

(7) Any unclaimed money paid to the credit of the Companies Liquidation Account to the extent to which the money has not under this section been paid out of the account shall, after the expiry of the prescribed period from the date of the payment of the moneys to the credit of the account, be paid into the Insolvency Surplus Account.

Expenses of winding-up where assets are insufficient

169.—(1) A liquidator shall not, unless expressly directed to do so by the Official Receiver, be liable to incur any expenses in relation to the winding-up of a company unless there are sufficient available assets.

(2) The Official Receiver may, on the application of a creditor or a member, direct a liquidator to incur a particular expense on condition that the creditor or member indemnifies the liquidator in respect of the recovery of the amount expended and, if the Official Receiver so

directs, gives such security to secure the amount of the indemnity as the Official Receiver thinks fit.

Resolution at adjourned meeting of creditors and members

170. Subject to section 146 (9), where a resolution is passed at an adjourned meeting of creditors or members of a company, the resolution shall for all purposes be treated as having been passed on the date on which it was in fact passed and not on any earlier date.

Meeting to ascertain wishes of creditors or members

171.—(1) The Court may, in the winding-up of a company, have regard to the wishes of the creditors or members and, if it thinks fit, for the purpose of ascertaining those wishes direct meetings of the creditors or members to be called, held and conducted in such manner as the Court directs, and may appoint a person to act as chairman of any such meeting and to report the result thereof to the Court.

(2) For purposes of subsection (1), regard shall be had—

(*a*) in the case of creditors, to the value of each creditor's debt; and

(*b*) in the case of members, to the number of votes conferred on each member by this Act or the memorandum and articles of association of the company.

(3) A liquidator who calls a meeting of creditors or shareholders shall call such a meeting in accordance with the Rules.

(4) Nothing in this section shall limit or prevent a liquidator from exercising his discretion in carrying out his functions and duties under this Act.

Completion of liquidation

172. The liquidation of a company shall be completed when the liquidator—

(*a*) in the case of a winding-up by the Court, complies with section 125;

(*b*) in the case of a voluntary winding-up, complies with section 155.

Court may terminate liquidation

173.—(1) The Court may, at any time after the appointment of a liquidator, if it is satisfied that it is just and equitable to do so, make an order terminating the liquidation of the company, or stay the liquidation for such time as the Court thinks fit.

(2) An application under this section may be made by—

(*a*) the liquidator;

(*b*) a director or shareholder of the company;

(*c*) a creditor of the company;

(*d*) the Director; or

(*e*) such other person as the Court may authorize.

(3) The Court may require the liquidator to furnish a report to the Court with respect to any facts or matters relevant to the application.

(4) The Court may, on making an order under subsection (1), or at any time thereafter, make such other order as it thinks fit in connexion with the termination or staying of the liquidation.

(5) Where the Court makes an order under this section, the person who applied for the order shall, within the prescribed period after the order was made, submit a certified copy of the order to the Director for registration.

(6) Where the Court makes an order under subsection (1) terminating the liquidation, the company shall cease to be in liquidation and the liquidator shall cease to hold office with effect on, and from, the making of the order, or such other date as may be specified in the order.

(7) Where the Court makes an order under subsection (1) staying the liquidation for a period of time, the liquidator shall cease to conduct any further action on behalf of the company from the date named by the Court.

Right of creditor to complete execution, distraint or attachment

174.—(1) Subject to subsection (3), a creditor shall not be entitled to retain the benefit of any execution process, distress or attachment over or against the property of a company unless the execution process, distress, or attachment is completed before—

(*a*) the passing of a resolution under section 141 (1) (*a*) appointing a liquidator of the company, or the date on which the creditor had notice of the calling of a meeting at which such a resolution was proposed, whichever occurs first;

(*b*) the making of an application to the Court under section 141 (4) to appoint a liquidator of the company;

(*c*) the making of an application to the Court under section 107 to appoint a liquidator of the company;

(*d*) the passing of an ordinary resolution under section 141 (1) (*a*) that a company should be wound-up, or the date on which the creditor had notice of the calling of the meeting at which such a resolution was proposed, whichever occurs first.

(2) Notwithstanding subsection (1)—

(*a*) a person who, in good faith, purchases property of a company from an officer charged with an execution process acquires a good title as against the liquidator of the company; and

(*b*) a person who, in good faith, purchases property of a company on which distress has been levied acquires a good title as against the liquidator of the company.

(3) The Court may order that subsection (1) shall not apply to such an extent and on such terms as the Court thinks appropriate.

(4) For the purposes of this section—

(*a*) an execution or distraint against movable property shall be completed by seizure and sale;

(*b*) an attachment of a debt shall be completed by receipt of the debt; and

(*c*) an execution against immovable property shall be completed by sale.

(5) Nothing in this section shall affect section 282.

Duties of sheriff in execution process

175.—(1) Subject to subsection (6), where property of a company is taken in an execution process and, before completion of the execution process, the sheriff charged with the execution process receives notice that a liquidator of the company has been appointed, he shall, on being required by the liquidator to do so, give or transfer the property and any money received in satisfaction or partial satisfaction of the execution or paid to avoid a sale of the property, as the case may be, to the liquidator.

(2) The costs of the execution process shall be a first expense on any property or money given or transferred to the liquidator under subsection (1) and the liquidator may sell all or some of the property to satisfy the expense.

(3) Subject to subsection (6), where—

(*a*) property of a company is sold in an execution process in respect of a judgment for a sum exceeding the prescribed amount, or such other amount as may be prescribed; or

(*b*) money is paid to the sheriff charged with the execution process to avoid a sale of the property,

the sheriff shall retain the proceeds of sale or the money so paid for the prescribed period.

(4) Subject to subsection (6), where—

(*a*) within the prescribed period, the sheriff has notice of—

(i) the calling of a meeting of the company at which a resolution to appoint a liquidator is proposed under section 141 (1) (*a*);

(ii) the calling of a meeting at which a resolution is proposed to appoint a liquidator pursuant to section 141 (1) (*b*);

(iii) the making of an application to the Court to appoint a liquidator pursuant to section 107; and

(*b*) the company is put into winding-up,

the sheriff shall deduct from the amount the costs of the execution process and pay the balance to the liquidator.

(5) A liquidator to whom money is paid under subsection (4) shall be entitled to retain it as against the execution creditor.

(6) The Court may set aside the application to such extent and on such terms as it thinks appropriate.

Consent to appoint and validity of act of liquidator

176.—(1) The appointment of a person as liquidator, other than on the order of the Court, shall be of no effect unless that person has consented in writing to the appointment.

(2) The act of a person as a liquidator shall be valid even though the person is not qualified to act as a liquidator.

Vacancy in the office of liquidator

177.—(1) The office of liquidator shall become vacant where the person holding office resigns, dies, or ceases to be qualified under Part IX.

(2) A person, other than a person appointed by the Court, may resign from the office of liquidator by appointing another such person as his successor and submitting a notice of the appointment of his successor to the Director.

(3) With the approval of the Court, a person appointed as a liquidator by the Court may resign from the office of liquidator.

(4) The Court may, on the application of the company or a shareholder, director or creditor of the company, review the appointment of a successor to a liquidator and may appoint any person who is qualified for appointment under Part IX to be the liquidator of the company.

(5) Where, for any reason other than resignation, a vacancy occurs in the office of liquidator, notice of the vacancy shall be submitted to the Director within the prescribed period by the person vacating office or, where that person is unable to act, by his personal representative.

(6) Where, as the result of the vacation of office by a liquidator, appointed by the Court, no person is acting as liquidator, the Director may appoint a person to act as liquidator until a successor is appointed under this section.

(7) Where a vacancy occurs in the office of the liquidator, or a liquidator has been appointed under subsection (6), as the case may be, the Court may, on the application of the company, or a shareholder or director or creditor of the company, or the Director, appoint a person who is qualified for appointment as a liquidator under Part IX to be the liquidator of the company.

(8) A person vacating the office of liquidator shall, where practicable, provide such information and give such assistance to that person's successor as he reasonably requires in taking over the duties of liquidator.

Court supervision of liquidation

178.—(1) The Court shall have regard to the conduct of every liquidator and, where a liquidator does not faithfully perform his duties and observe the requirements of the Court or where there is a failure to comply with a relevant duty, or where a complaint is made in that behalf to the Court by a creditor, member or liquidation committee, or by the Official Receiver or Registrar of Companies or the Director, the Court shall inquire into the matter and make such order as it thinks fit.

(2) The Registrar of Companies, the Director or the Official Receiver may report to the Court any matter which in his opinion is a misfeasance, neglect or omission on the part of the liquidator, and the Court may order the liquidator to make good any loss which the estate of the company has sustained and make such other order it thinks fit.

(3) On the application of the liquidator, the liquidation committee, the Director, the Registrar of Companies, or, with the leave of the Court, a creditor, shareholder, other entitled person, or director of a company in liquidation, the Court may—

(*a*) give direction in relation to any matter arising in connexion with the liquidation;

(*b*) confirm, reverse or modify an act or decision of the liquidator;

(*c*) order an audit of the accounts of the liquidation;

(*d*) order the liquidator to produce the accounts and records of the liquidation for audit and to provide the auditor with such information concerning the conduct of the liquidation as the auditor requests;

(*e*) in respect of any period, review or fix the remuneration of the liquidator at a level which is reasonable in the circumstances;

(*f*) to the extent that an amount retained by the liquidator as remuneration is found by the Court to be unreasonable in the circumstances, order the liquidator to refund the amount;

(*g*) declare whether or not the liquidator was validly appointed or validly assumed custody or control of property; and

(*h*) make order concerning the retention or the disposition of the accounts and records of the liquidation or of the company.

(4) The powers given by subsection (3) are in addition to any other powers the Court may exercise in its discretion relating to liquidators, and may be exercised in relation to a matter occurring before or after the commencement of the liquidation, or the removal of the company from the register, and whether or not the liquidator has ceased to act as liquidator when the application or the order is made.

(5) Subject to subsection (6), a liquidator who has—

(*a*) obtained a direction of the Court with respect to a matter connected with the exercise of the powers or functions of a liquidator; and

(*b*) acted in accordance with the direction,

shall be entitled to rely on having so acted as a defence to a claim in relation to anything done or not done in accordance with the direction.

(6) The Court may, on the application of any person, order that, by reason of the circumstances in which a direction was obtained under subsection (1), the liquidator does not have the protection given by subsection (3).

Order to enforce or relieve liquidator from compliance

179.—(1) An application for an order to enforce, or relieve a liquidator from, compliance may be made by—

(*a*) a liquidator;

(*b*) a person seeking appointment as a liquidator;

(*c*) a liquidator committee;

(*d*) a creditor, shareholder, other entitled person, or a director of the company in liquidation;

(*e*) a receiver appointed in relation to property of the company in liquidation;

(*f*) the Registrar of Companies; or

(*g*) the Director.

(2) No application may be made to the Court by a person, other than a liquidator, in relation to a failure to comply unless notice of the failure to comply has been served on the liquidator not less than five days before the date of the application and, as at the date of the application, there is a continuing failure to comply.

(3) Where the Court is satisfied that there is, or has been, failure to comply, the Court may—

(*a*) relieve the liquidator of the duty to comply, wholly or in part; or

(*b*) without prejudice to any other remedy which may be available in relation to a breach of duty by the liquidator, order the liquidator to comply to the extent specified in the order.

(4) The Court may, in relation to a person who fails to comply with an order made under subsection (3), or is, or becomes, disqualified under Part IX to become or remain a liquidator—

(*a*) remove the liquidator from office; or

(*b*) order that the person may be appointed and act, or may continue to act, as liquidator, notwithstanding the provisions of Part IX.

Prohibition order

180.—(1) Where it is shown to the satisfaction of the Court that a person is unfit to act as liquidator by reason of—

(*a*) persistent failures to comply;

(*b*) the seriousness of a failure to comply; or

(*c*) misconduct or serious incompetence on the part of the person,

the Court shall make, in relation to the person, a prohibition order for a period not exceeding the prescribed period.

(2) A person to whom a prohibition order applies shall not act as an insolvency practitioner and, if currently acting, shall be removed from office.

(3) Evidence that, on two or more occasions within the preceding prescribed period—

(*a*) the Court has made an order to comply in respect of the same person; or

(*b*) an application for an order to comply has been made in respect of the same person and in each case the person has complied after the making of the application and before the hearing shall,

in the absence of special reasons to the contrary, constitute evidence of persistent failure for the purposes of subsection (1).

(4) In making an order under this section, the Court may, if it thinks fit—

(*a*) make an order extending the time for compliance;

(*b*) impose a term or condition; or

(*c*) make such other order as it thinks fit.

(5) A copy of every order made under subsection (1) shall, within the prescribed period of the order being made, be given by the applicant to the Director who shall keep it on a register indexed by reference to the name of the liquidator concerned.

Meaning of "failure to comply"

181. In sections 178, 179 and 180, "failure to comply" means a failure of a liquidator to comply with relevant duty arising—

(*a*) under this or any other Act or from an order of a competent Court; or

(*b*) under any order or direction of the Court.

Meaning of "inability to pay debts"

182.—(1) Unless the contrary is proved, and subject to section 183, a company shall be presumed to be unable to pay its debts as they become due in the ordinary course of business where—

(*a*) the company has failed to comply with a statutory demand in terms of section 184;

(*b*) execution issued against the company in respect of a judgment debt has been returned unsatisfied;

(*c*) a person entitled to a security interest over the whole or substantially the whole of the property of the company has

appointed a receiver under the instrument creating the security interest; or

(*d*) an arrangement between a company and its creditors has been put to a vote in accordance with the provisions of section 156 and has not been approved.

Evidence of inability to pay debts

183.—(1) On an application to the Court for an order that a company be put into liquidation, evidence of failure to comply with a statutory demand in terms of section 184 shall not be admissible as evidence that a company is unable to pay its debts as they become due in the ordinary course of business unless the application is made within the prescribed period after the last date for compliance with the demand.

(2) Section 182 shall not prevent proof by other means that a company is unable to pay its debts as they become due in the ordinary course of business.

(3) In determining whether a company is unable to pay its debts as they become due in the ordinary course of business, its contingent or prospective liabilities may be taken into account.

(4) An application to the Court for an order that a company be put into liquidation on the ground that it is unable to pay its debts as they become due in the ordinary course of business may be made by a contingent or prospective creditor only with the leave of the Court, and the Court may give such leave, with or without conditions, only if it is satisfied that a *prima facie* case has been made out that the company is unable to pay its debts as they become due in the ordinary course of business.

Statutory demand

184. A statutory demand under this Part shall—

(*a*) be in respect of a debt that is due and is not less than the prescribed amount;

(*b*) be in the prescribed form;

(*c*) be served on the company; and

(*d*) require the company to pay the debt, or enter into a compromise or otherwise compound with the creditor, or give a security interest over its property to secure payment of the debt, to the reasonable satisfaction of the creditor, within the prescribed period of the date of service, or such longer period as the Court may order.

Court may set aside statutory demand

185.—(1) The Court may, on the application of the company, set aside a statutory demand provided for in section 184.

(2) The application shall be made, and be served on the creditor, within the prescribed period of the date of service of the demand.

(3) No extension of time may be given for making or serving an application to have a statutory demand set aside, but at the hearing of the application the Court may extend the time for compliance with the statutory demand.

(4) The Court may grant an application to set aside a statutory demand where it is satisfied that—

(*a*) there is a substantial dispute, whether or not the debt is owing or is due;

(*b*) the company appears to have a counterclaim, set-off or cross-demand and the amount specified in the demand less the amount of the counterclaim, set-off or cross-demand is less than the prescribed amount; or

(*c*) the demand ought to be set aside on other grounds.

(5) A statutory demand shall not be set aside by reason only of a defect or irregularity unless the Court considers that substantial injustice would be caused if it were not set aside.

(6) In subsection (5), "defect" includes an immaterial misstatement of the amount due to the creditor and an immaterial misdescription of the debt referred to in the demand.

(7) Where, on the hearing of an application under this section, the Court is satisfied that there is a debt due by the company to the creditor that is not the subject of substantial dispute, or is not subject to a counterclaim, set-off or cross-demand, the Court may—

(*a*) order the company to pay the debt within a prescribed period and that, in default of payment, the creditor may make an application to put the company into liquidation; or

(*b*) dismiss the application and forthwith make an order under section 107 putting the company into liquidation, on the ground that the company is unable to pay its debts as they become due in the ordinary course of business.

(8) For the purposes of the hearing of an application to put the company into liquidation pursuant to an order made under subsection (7), the company shall be presumed to be unable to pay

its debts as they become due in the ordinary course of business where it failed to pay the debt within the specified period.

(9) An order under this section may be made subject to conditions.

Fraudulent trading

186.—(1) This section shall apply if in the course of the winding-up of a company it appears that any business of the company has been carried on with intent to defraud creditors of the company, or creditors of any other person, or for any fraudulent purpose.

(2) The Court, on the application of the liquidator, may declare that any persons who were knowingly parties to the carrying on of the business in the manner referred to in subsection (1), are to be liable to make such contributions to the company's assets as the Court thinks proper.

Wrongful trading

187.—(1) Subject to subsection (3), if in the course of the winding-up of a company it appears that subsection (2) applies in relation to a person who is or has been a director of the company, the Court, on the application of the liquidator, may declare that that person is to be liable to make such contribution to the company's assets as the Court thinks proper.

(2) This subsection shall apply in relation to a person if—

(*a*) the company has gone into insolvent liquidation;

(*b*) at some time before the commencement of the winding-up of the company, the person knew or ought to have concluded that there was no reasonable prospect that the company would avoid going into insolvent liquidation; and

(*c*) the person was a director of the company at that time.

(3) The Court shall not make a declaration under this section with respect to any person if it is satisfied that, after the condition specified in subsection (2) (*b*) was first satisfied in relation to him, the person took every step with a view to minimizing the potential loss to the company's creditors as he ought to have taken.

(4) For the purposes of subsections (2) and (3), the facts which a director of a company ought to know or ascertain, the conclusions which he ought to reach and the steps which he ought to take are those which would be known or ascertained, or reached or taken, by a reasonably diligent person having—

(*a*) the general knowledge, skill and experience that may reasonably be expected of a person carrying out the same functions as are carried out by that director in relation to the company; and

(*b*) the general knowledge, skill and experience that that director has.

(5) The reference in subsection (4) to the functions carried out in relation to a company by a director of the company includes any functions which he does not carry out but which have been entrusted to him.

(6) For the purposes of this section, a company goes into insolvent liquidation if it goes into liquidation at a time when its assets are insufficient for the payment of its debts and other liabilities and the expenses of the winding-up.

(7) In this section, "director" includes a shadow director.

(8) This section shall apply without prejudice to section 186.

PART VII

Bankruptcy and Alternatives

Division I—Bankruptcy Process

Adjudication

188.—(1) A debtor shall be adjudicated bankrupt where—

(*a*) a creditor of the debtor petitions the Court for a bankruptcy order; or

(*b*) the debtor petitions the Court for a bankruptcy order,

and the Court makes the bankruptcy order.

(2) The Court shall not make a bankruptcy order on a creditor's petition unless one of the following grounds of adjudication is established to the satisfaction of the Court—

(*a*) failure to comply with a statutory demand issued under section 190;

(*b*) departure from Malaŵi by the debtor with intent to defeat or delay payment of a claim to a creditor;

(*c*) notification in writing by the debtor to a creditor that he has suspended, or proposes to suspend, payment of his debts; or

(*d*) admission to creditors that the debtor is insolvent.

(3) There shall be an "admission" for the purposes of subsection (2) (*d*) where the debtor admits at a meeting of creditors that he is insolvent and—

(*a*) a majority in number and value of the creditors present at the meeting require the debtor to file an application for adjudication; or

(*b*) the debtor agrees to file an application for adjudication and does not do so within the prescribed number of days after the meeting.

(4) The Court shall not make a bankruptcy order on the petition of a secured creditor unless the creditor concerned has established that the amount of the debt exceeds the value of the security claimed by the creditor by at least the prescribed amount.

(5) A petition under this section may not be withdrawn except with leave of the Court on such terms as it may determine.

(6) In this Part, "debtor", means a natural person, a partnership, a sole proprietorship and any other form of debtor that cannot be wound-up under the provisions of Part V.

Creditor's petition

189.—(1) A person referred to in subsection (2) may petition the Court for a bankruptcy order where—

(*a*) the debtor owed the creditor the prescribed amount or more or, where two or more creditors join in the application, the debtor owed a total of the prescribed amount or more to those creditors between them;

(*b*) one of the grounds for adjudication referred to in section 188 is established to the satisfaction of the Court;

(*c*) the debt is a liquidation sum; and

(*d*) the debt is payable immediately or at some certain future time.

(2) Subject to subsection (3), a petition for a bankruptcy order may be made by—

(*a*) a creditor;

(*b*) creditors jointly where there are two or more creditors; or

(*c*) the trustee or provisional trustee of a debtor.

(3) A secured creditor may petition the Court for a bankruptcy order where—

(*a*) the petition contains a statement that he is willing, in the event of a bankruptcy order being made, to give up his security for the benefit of all the bankrupt's creditors; or

(*b*) the petition is expressed not to be made in respect of the secured part of the debt and contains a statement by that person of

the estimated value at the date of the petition of the security for the secured part of the debt.

(4) A debtor against whom a bankruptcy order may be made shall—

(*a*) be domiciled in Malaŵi; and

(*b*) be present in Malaŵi on the day on which the application for a bankruptcy order is presented; or

(*c*) have, at any time in the period of three years ending with that day—

(i) been ordinarily resident, or had a place of residence, in Malaŵi; or

(ii) have carried on business in Malaŵi.

(5) For the purposes of subsection (4) (*c*) (ii), carrying on business includes—

(*a*) the carrying on of business by a partnership of which the debtor is a partner;

(*b*) the carrying on of business by an agent or manager for the debtor or for such partnership; or

(*c*) the carrying on of business as a sole proprietorship, unregistered company, or association of persons with the aim of making profit.

(6) An application by a creditor for a bankruptcy order shall—

(*a*) be verified by affidavit of the creditor or some other person having knowledge of the facts;

(*b*) be served on the debtor in the prescribed manner; and

(*c*) call on the debtor to show cause at the hearing of the application as to why the debtor should not be made bankrupt.

Statutory demand

190.—(1) A statutory demand shall require the debtor, in relation to the sum ordered to be paid under a final order or the amount otherwise claimed to be owing—

(*a*) to pay the amount owing, including any interest to the date of payment of a debt that carries interest, plus costs; or

(*b*) to give security for the amount owing that satisfies the creditor or the Court.

(2) The statutory demand shall be served on the debtor in Malaŵi or, with the Court's permission, outside Malaŵi.

(3) The statutory demand may name an agent to act on behalf of the creditor in so far as the demand requires—

(*a*) any payment to be made to the creditor; or

(*b*) any other step to be taken that involves the creditor.

Overstatement in a statutory demand

191.—(1) Overstatement in a statutory demand of the amount actually owing by the debtor shall not invalidate the notice, unless—

(*a*) the debtor notifies the creditor in writing that he disputes the validity of the demand because it overstates the amount actually owing; and

(*b*) the debtor makes that notification within the time specified in the demand for the debtor to comply with the demand.

(2) A debtor shall comply with a demand that overstates the amount actually owing by—

(*a*) taking steps that would have been compliance with the demand had it stated the correct amount owing such as by paying the creditor the correct amount owing plus costs; and

(*b*) taking those steps within the time specified in the demand for the debtor to comply.

Failure to comply with statutory demand

192.—(1) There shall be a failure to comply with a statutory demand where the requirements of subsection (2) or (3) are satisfied.

(2) The requirements of this subsection are that—

(*a*) the debtor has, within the prescribed period before the date of the petition for a bankruptcy order, been served with a statutory demand; and

(*b*) the debtor has not, within the time limit specified in subsection (4)—

(i) complied with the requirements of the demand; or

(ii) satisfied the Court that he has a cross-claim against the creditor.

(3) The requirements of this subsection are that—

(*a*) the debtor is indebted to the creditor in relation to a provable debt;

(*b*) the debtor has within the prescribed period before the date of the petition for a bankruptcy order been served with a statutory demand;

(*c*) the debtor has not within the time limit specified in subsection (4)—

(i) complied with the requirements of the demand; or

(ii) satisfied the Court that the debtor has a cross-claim against the creditor; and

(*d*) the statutory demand informs the debtor that if the debtor disputes the debt or claims that any indebtedness on the part of the debtor to the creditor is less than the prescribed amount, the debtor may appear before the Court in opposition to any petition filed by the creditor to have the debtor adjudicated bankrupt and provide a cause that he—

(i) does not owe a debt to the creditor; or

(ii) owes a debt to the creditor, but the debt is less than the prescribed amount.

(4) The time limit referred to in subsection (2) (*b*) and subsection (3) (*c*) shall be—

(*a*) where the debtor is served with the statutory demand in Malaŵi, the prescribed number of days after service; or

(*b*) where the debtor is served with the bankruptcy notice outside Malaŵi, the time specified in the order of the Court permitting service outside Malaŵi.

(5) In this section—

(*a*) a "cross-claim" means a counterclaim, set-off or cross-demand that—

(i) is equal to, or greater than, the judgment debt or the amount that the debtor has been ordered to pay; and

(ii) the debtor could not use as a defence in the action or proceedings in which the judgment or the order, as the case may be, was obtained.

Adjournment of petition or refusal to adjudicate

193.—(1) The Court may, at its discretion, stay or adjourn the hearing of a petition conditionally or unconditionally—

(*a*) for obtaining further evidence; or

(*b*) for any other just cause.

(2) The Court may, at its discretion, refuse to adjudicate the debtor bankrupt where—

(*a*) the creditor has not established the requirements set out in section 188 or 189;

(*b*) the creditor has not established that the debtor has been served with a statutory demand;

(*c*) the debtor satisfies the Court that he is able and willing to pay his debts; or

(*d*) it is just and equitable or there is other sufficient cause that the Court does not make a bankruptcy order.

Judgment under appeal

194. Where the creditor's petition for a bankruptcy order relies on the ground that the debtor failed to comply with a statutory demand, and the debtor has appealed against the judgment or order underlying the statutory demand or the judgment for non-payment of trust money, as the case may be, and the appeal is still to be determined, the Court may—

(*a*) stay the creditor's petition for a bankruptcy order; or

(*b*) refuse the petition.

Underlying debt not determined

195.—(1) This section shall apply where the debtor appears in opposition to a creditor's petition and avers that he—

(*a*) does not owe a debt to the creditor; or

(*b*) owes a debt to the creditor, which is less than the prescribed amount.

(2) The Court may, instead of refusing the petition, stay the petition so that the question of whether the debt is owed, or how much of the debt is owed, can be resolved at a trial.

(3) Where the petition is based on the grounds set out in section 192 (3), the Court shall have jurisdiction for the trial of any question in relation to the existence or amount of the debt.

(4) Where the petition is made on any ground, other than the grounds set out in section 192 (3), the trial in relation to a debt of less than the prescribed amount shall, unless the Court orders otherwise, be held in the Magistrate Court.

(5) As a condition of staying the petition, the court may require the debtor to give security to the creditor for any debt that may be

established as owing by the debtor to the creditor, and for the costs of establishing the debt.

Court's power where more than one petition or more than one debtor

196.—(1) Where there is more than one petition for a bankruptcy order, and one petition has been stayed or adjourned by the Court, the Court may, if there is a good reason, make a bankruptcy order on the application that has not been stayed or adjourned.

(2) Where the Court makes a bankruptcy order under subsection (1) the Court shall dismiss the petition that has been stayed or adjourned on terms that the Court thinks appropriate.

(3) Where a creditor's petition for a bankruptcy order relates to more than one debtor, the Court may refuse to make an order in relation to one or more of the debtors without affecting the petition in relation to the remaining debtor or debtors.

Order on disposition of property or proposal

197.—(1) This section shall apply where the debtor has made a disposition of all, or substantially all, of his property to a trustee for the benefit of his creditors.

(2) The debtor or the trustee for the debtor's creditors or any creditor may apply to the Court for an order under this section.

(3) On the hearing of the application, the Court may—

(*a*) order that the disposition or proposal is not a ground for making a bankruptcy order;

(*b*) stay or refuse the petition for a bankruptcy order;

(*c*) order that any other petition for a bankruptcy order shall not be filed;

(*d*) make any order as to costs that the Court thinks appropriate; or

(*e*) where it orders that costs shall be paid to the creditor who has petitioned for the bankruptcy order, order that the costs shall be paid out of the debtor's estate.

Substitution of creditor

198.—(1) The Court may substitute another creditor for the creditor making the petition for a bankruptcy order where—

(*a*) the creditor making the petition has not proceeded with due diligence or at the hearing of the application offers no evidence; and

(*b*) the debtor owes the other creditor the prescribed amount or more.

(2) The other creditor shall, in that case, file another petition for a bankruptcy order, but may rely on the grounds of adjudication to which the first petition related.

Debtor's petition

199.—(1) Subject to subsection (2), a debtor may file a petition with the Court to have himself adjudicated bankrupt on the ground that he is unable to pay his debts where he has combined debts of the prescribed amount or more.

(2) The Court shall not receive for filing a petition by a debtor for a bankruptcy order unless he also files with the Court a statement of his affairs in the prescribed form which is not, in the Court's opinion, incorrect or incomplete.

(3) A debtor's petition shall not after presentation be withdrawn without leave of the Court.

Order on debtor's petition

200.—(1) Where the grounds set out in section 199 (1) are established to the satisfaction of the Court and the requirements of section 199 (2) are complied with, the Court shall make a bankruptcy order against the debtor unless the Court is of the opinion that it would be appropriate in the circumstances to direct the Director to prepare a report under section 200 on whether the debtor should make a proposal, in which case the Court shall adjourn the application.

(2) A bankruptcy order on a debtor's petition shall have the same consequences as a bankruptcy order made on a creditor's petition.

Report of the Director

201.—(1) Where the Court under section 193 (1) (*b*) or 200 (1) directs the Director to prepare a report, the Director shall within the prescribed period submit to the Court a report on whether the debtor is willing to enter into a proposal.

(2) A report which states that the debtor is willing to enter into a proposal shall state—

(*a*) whether, in the opinion of the Director, a meeting of the debtor's creditors should be summoned to consider the proposal; and

(*b*) where in the Director's opinion such a meeting should be summoned, the date on which, and time and place at which, he suggests that the meeting should be held.

(3) On considering a report under this section, the Court may—

(*a*) without any application make an order for the appointment of the Official Receiver as interim receiver under section 204

where it feels that it is appropriate to do so for the purpose of facilitating the consideration and implementation of the debtor's proposal; or

(*b*) where it feels it would be inappropriate to make such an order, make a bankruptcy order.

(4) An order made under subsection (3) (*a*) shall cease to have effect at the end of such period as the Court may specify for the purpose of enabling the debtor's proposal to be considered by his creditors.

(5) Where it has been reported to the Court under this section that a meeting of the debtor's creditors should be summoned, the Director shall, unless the Court otherwise directs, summon the meeting for the time, date, and place suggested in his report.

Debtors' joint petition

202.—(1) Two or more debtors, who are carrying on a business as partners, may file a joint petition.

(2) The debtors shall be automatically adjudicated bankrupt, separately and jointly, when the petition is filed.

Summary administration

203.—(1) Where, on the hearing of a debtor's petition, the Court makes a bankruptcy order and the conditions laid down under subsection (2) are satisfied, the Court shall, if it appears to be appropriate to do so, issue a certificate for the summary administration of the bankrupt's estate.

(2) The circumstances in which a certificate for summary administration may be issued are that—

(*a*) the aggregate amount of the bankruptcy debts so far unsecured would be less than the prescribed amount by the Rules; and

(*b*) within the prescribed period ending with the filing of the petition the debtor has not been adjudicated bankrupt nor made a composition with his creditors in satisfaction of his debts or a proposal.

(3) The Court may revoke a certificate issued under this section where it appears to it that, on any grounds existing at the time the certificate was issued, the certificate ought not to have been issued.

(4) Where a certificate for summary administration is issued—

(*a*) the Official Receiver may dispense with the first meeting of creditors provided for in section 210;

(*b*) no fee shall be allowed to any legal practitioner except on the certificate of the Court that the presence of counsel or attorney was necessary; and

(*c*) the period after which the bankrupt is automatically discharged shall be two years.

Division II—Interim Receiver

Appointment of Official Receiver as interim receiver

204.—(1) Where a creditor's petition for a bankruptcy order has been filed, a creditor of the debtor may apply to the Court for an order appointing the Official Receiver as interim receiver of all or part of the debtor's property.

(2) The Court may make an order under subsection (1) at any time before it makes a bankruptcy order.

(3) As part of the order or, on the application of a creditor or the Official Receiver, subsequently, the Court may authorize the Official Receiver to—

(*a*) take possession of any property;

(*b*) sell any perishable property or property that is likely to fall rapidly in value;

(*c*) control the debtor's business or property as directed by the Court; or

(*d*) exercise, in relation to the debtor, any of the powers vested in him by section 237 in relation to a bankrupt.

(4) An order for the Official Receiver's control of the debtor's business shall be confined to what is necessary, in the Court's opinion, for conserving the debtor's property.

(5) The appointment of the Official Receiver as interim receiver of the debtor's property shall be advertised by him in such manner as may be prescribed.

(6) A creditor of the debtor shall not issue any execution process against the property of the debtor after the appointment of the Official Receiver as interim receiver has been advertised.

(7) A creditor shall not continue an execution process already issued before the advertisement.

(8) A creditor or any other person interested may apply to the Court for an order allowing the issue or continuation of an execution process, and the Court may make an order on terms that it thinks appropriate.

(9) Where execution process is stayed under this section, sections 240 and 241 shall apply as if a bankruptcy order had been made against the debtor.

Division III—Effect of Adjudication

Date of adjudication and disqualification of bankrupt

205.—(1) The date of an adjudication, and the commencement of a bankruptcy, shall be the date and time when the Court made the bankruptcy order.

(2) The Court shall record on the bankruptcy order the date and time when the order was made.

(3) The Court shall notify the Official Receiver as soon as possible after an order of adjudication is made.

(4) It shall be presumed that an act was done, or a transaction entered into or effected, after the date of an adjudication, but the presumption shall not apply if the contrary is proved.

(5) Unless an adjudication is the subject of an appeal—

(*a*) no one may later assert that the adjudication was not valid or that a prerequisite for adjudication was absent; and

(*b*) the adjudication shall be binding on every person.

(6) Where a debtor is adjudged bankrupt, he shall, subject to this Act, be disqualified from being elected to any public office.

(7) The disqualification under subsection (6) shall be removed and shall cease when the adjudication in bankruptcy is annulled, or when the debtor obtains his discharge with a certificate from the Court to the effect that his bankruptcy was caused by misfortune without any misconduct on his part.

(8) The Court may grant or withhold certificate referred to in subsection (7) as it thinks fit, but any refusal of such certificate shall be subject to appeal.

Procedure following adjudication

206.—(1) On adjudication—

(*a*) the Official Receiver shall advertise the adjudication under subsections (2) and (3);

(*b*) the bankrupt shall file with the Official Receiver a statement of his affairs under section 209 if the bankrupt has not already done so;

(*c*) the Official Receiver may call a meeting of the bankrupt's creditors under section 210;

(*d*) proceedings to recover certain debts shall be stayed under section 207;

(*e*) execution process may not be commenced or continued after the adjudication is advertised under section 208; and

(*f*) the property of the bankrupt vests in the Official Receiver under section 214.

(2) Subject to subsection (3), the Official Receiver shall, advertise the adjudication of a bankrupt in the prescribed manner as soon as practicable after it has occurred.

(3) The Court may order that the Official Receiver shall not advertise the adjudication if the bankrupt has appealed against the bankruptcy order.

Stay of proceedings

207.—(1) Subject to subsection (2) on adjudication, all proceedings to recover any debt provable in the bankruptcy shall be stayed.

(2) On the application of any creditor or other person interested in the bankruptcy, the Court may allow proceedings that had already begun before the date of adjudication to continue on terms that the Court thinks appropriate.

Execution process after adjudication

208.—(1) A creditor shall not begin or continue an execution, attachment or other process and shall not have any remedy against the bankrupt's property or person, for the recovery of a debt provable in the bankruptcy, after the Official Receiver has—

(*a*) advertised the bankruptcy order; or

(*b*) given notice of the making of the bankruptcy order to the creditor.

(2) After advertisement of the adjudication or notice by the Official Receiver to the creditor, a creditor shall not seize or sell any property by way of distress for rent due by the bankrupt:

Provided that he may continue with the distress procedure if it has already begun.

Statement of affairs

209.—(1) After adjudication, the bankrupt shall file with the Official Receiver a statement in the prescribed form of his affairs, unless he has already filed a statement under section 199.

(2) Where no statement or, in the Official Receiver's view, no sufficient statement of affairs has been filed under section 199 the Official Receiver shall, as soon as practicable after adjudication, send to the bankrupt a notice stating—

(*a*) that the bankrupt shall file a statement of the bankrupt's affairs; and

(*b*) the time when the statement shall be filed.

(3) The Official Receiver shall send the notice to the address of the bankrupt given in the application for a bankruptcy order or the bankrupt's last known address.

(4) The bankrupt shall file his statement of affairs with the Official Receiver within the prescribed period of the adjudication or, as the case may be, after receiving the Official Receiver's notice under subsection (2).

(5) At anytime after filing a statement of affairs with the Official Receiver, the bankrupt may file additional or amended statements or answers.

Meeting of creditors

210.—(1) Subject to section 203 and this section, the Official Receiver shall, after adjudication, call the first meeting of the bankrupt's creditors.

(2) The Official Receiver shall call the meeting as soon as practicable after adjudication and, unless there are special circumstances, not less than the prescribed period after adjudication, by sending a notice of the time and place of the meeting by ordinary post to—

(*a*) the bankrupt, at the bankrupt's last known address;

(*b*) each creditor named in the bankrupt's statement of affairs, at the address given in the statement of affairs or any other address that the Official Receiver believed is the creditor's address; and

(*c*) any other creditor known to the Official Receiver.

(3) The Official Receiver shall advertise the time and place of the meeting in such manner as may be prescribed.

(4) The meeting shall be held in accordance with the Rules.

(5) The Official Receiver need not call a first creditors' meeting where he—

(*a*) decides that the meeting should not be called; or

(*b*) sends each creditor named in the bankrupt's statement of affairs, and any other creditor known to the Official Receiver a notice that complies with subsection (7); and

(*c*) does not receive, within the prescribed period after the Official Receiver's notice was sent, written notice from a creditor requiring the Official Receiver to call the meeting.

(6) In deciding whether the meeting should not be called, the Official Receiver shall consider—

(*a*) the bankrupt's assets and liabilities;

(*b*) the likely result of the bankruptcy; and

(*c*) any other relevant matter.

(7) The Official Receiver's notice to creditors under subsection (5) (*b*) shall—

(*a*) state that the Official Receiver considers that the first creditor's meeting should not be called;

(*b*) give the reasons for not calling the meeting; and

(*c*) state that the Official Receiver shall not call the meeting unless the creditor gives the Official Receiver written notice, within the prescribed number of days after the Official Receiver's notice was sent, requiring the Official Receiver to call the meeting.

(8) The Official Receiver may call subsequent meetings of creditors after the first meeting of creditors.

(9) The Official Receiver shall call a subsequent meeting if required to do so by one-quarter in number and value of the creditors who have proved their debts.

(10) Meetings shall be held in accordance with the Rules.

(11) A creditors' meeting and the resolutions passed at the meeting shall be valid even if some creditors did not receive the notice of the meeting, unless the Court orders otherwise.

Appointment of expert and inspection of documents

211.—(1) A creditor's meeting may pass a resolution—

(*a*) appointing an expert to assist the Official Receiver in the administration of the bankrupt's estate; and

(*b*) providing for the expert's remuneration out of the bankrupt's estate.

(2) A creditors' meeting may pass a resolution appointing a committee to assist the Official Receiver in the administration of the bankrupt's estate, and the Court may approve any remuneration of the members of the committee out of the bankrupt's estate.

(3) A creditor, or a legal practitioner or accountant acting for the creditor, who has lodged a proof of debt may at any reasonable time inspect and take extracts or copies of—

(*a*) the bankrupt's accounting records;

(*b*) the bankrupt's answers to questions;

(*c*) the bankrupt's statement of affairs;

(*d*) all proofs of debt; and

(*e*) the minutes of any creditors' meeting.

Bankrupt's death after adjudication

212. Where a bankrupt dies after adjudication, the bankruptcy shall continue in all respects as if the bankrupt were alive.

Division IV—Bankrupt's Estate

Bankrupt's estate

213.—(1) Subject to subsection (2), a bankrupt's estate for the purpose of this Act shall comprise—

(*a*) all property belonging to or vested in the bankrupt at the commencement of the bankruptcy; and

(*b*) any property which, pursuant to this Division, forms part of that estate or is treated as forming part of that estate.

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

(*a*) such tools, books, vehicles and other items of equipment as are necessary to the bankrupt for use personally by him in his employment, business or vocation up to a maximum value assessed by the Official Receiver or such other amount as may be prescribed or agreed to by resolution of the creditors;

(*b*) such clothing, bedding, furniture, household equipment and provisions as are necessary to satisfy the basic domestic needs of the bankrupt and his family, up to a maximum value assessed by the Official Receiver or such other amount as may be prescribed or agreed by resolution of the creditors; and

(*c*) held by the bankrupt on trust for any other person.

(3) In this Act, "property", in relation to a bankrupt, includes reference to any power exercisable by the bankrupt over or in respect of property in or outside Malaŵi for the bankrupt's own benefit.

(4) For the purposes of this Act, property which forms part of the bankrupt's estate shall do so subject to the rights of any person other than the bankrupt, and a secured creditor may take possession of and realize and otherwise deal with property over which he has a security interest, disregarding any rights the secured creditor has given up under section 189 and any rights which have otherwise been given up in accordance with the Rules or in such manner as may be prescribed.

(5) This section shall apply to any other written law under which any property is to be excluded from a bankrupt's estate.

Vesting in Official Receiver

214.—(1) On adjudication, all the bankrupt's estate shall vest in the Official Receiver.

(2) Where any property which is, or is to be, comprised in the bankrupt's estate vests in the Official Receiver, it shall so vest without any conveyance, assignment or transfer.

(3) A power exercisable over or in respect of property shall be deemed, for the purposes of this Act, to vest in the person entitled to exercise it at the time of the transaction or event by virtue of which it is exercisable by that person.

Property acquired after adjudication

215. Subject to section 216, between the commencement of the bankruptcy and the discharge of the bankrupt—

(*a*) all property in or outside Malaŵi that the bankrupt acquires or that passes to the bankrupt shall vest in the Official Receiver; and

(*b*) the powers that the bankrupt could have exercised in, over, or in respect of that property for the bankrupt's own benefit shall vest in the Official Receiver.

Transaction in good faith and for value

216.—(1) A transaction between the bankrupt and any other person under which, after adjudication, the bankrupt acquires property, or property passes to the bankrupt, shall be valid against the Official Receiver where—

(*a*) the other person deals with the bankrupt in good faith and for value; and

(*b*) the transaction is completed without an intervention by the Official Receiver.

(2) Where the other person in subsection (1) is the bankrupt's bank, a transaction dealing with the bankrupt for value includes—

(*a*) the receipt by the bank of any money, security, or negotiable instrument from the bankrupt or by the bankrupt's order or direction;

(*b*) a payment by the bank to the bankrupt or by the bankrupt's order or direction; and

(*c*) the delivery by the bank of a security or negotiable instrument to the bankrupt or by the bankrupt's order or direction.

(3) A payment of money or delivery of property by legal personal representative to, or direction of, the bankrupt shall be a transaction for value.

Rights under execution or attachment

217.—(1) Where a creditor has issued execution against movable property of a debtor, or has attached any debt due to him, he shall not be entitled to retain the benefit of the execution or attachment against the Official Receiver, unless he has completed the execution or attachment before adjudication and before notice of the presentation of any application for a bankruptcy order by or against the debtor.

(2) For the purposes of this section, an execution against goods shall be completed by seizure and sale and an attachment of a debt is completed by receipt of the debt.

Duties of sheriff as to seized goods

218.—(1) Where movables of a debtor are taken in execution and, before their sale, notice is served on the sheriff that a bankruptcy order has been made against the debtor, the sheriff shall, on request, deliver the goods to the Official Receiver, but the costs of execution shall be an expense against the goods delivered, and the Official Receiver may sell the goods or an adequate part thereof, for the purpose of satisfying the expense.

(2) Where movables of a debtor are sold under an execution in respect of a judgment for a sum exceeding the prescribed sum, the sheriff shall deduct the costs of the execution from the proceeds of the sale, and pay the balance to the cashier of the Court to which he is attached, and the cashier shall retain it for the prescribed period and if within that time notice is served on him of a bankruptcy petition having been presented against or by the debtor, the cashier shall hold the proceeds on trust to pay to the Official Receiver.

(3) Where no notice referred to in subsection (2) is served within such period or where such notice having been served, the debtor is not adjudged bankrupt on such petition or on any other petition of which the cashier has notice, the cashier may deal with the proceeds as if no notice had been served on him.

(4) A person who purchases the goods in good faith under a sale by the sheriff shall in all cases acquire a good title against the Official Receiver.

Bona fide transaction without notice

219.—(1) Subject to the provisions of this Act, nothing in this Act shall, in the case of a bankruptcy, invalidate—

(*a*) any payment by the bankrupt to any of his creditors;

(*b*) any payment or delivery to the bankrupt;

(*c*) any conveyance or assignment by the bankrupt for valuable consideration; or

(*d*) any contract, dealing or transaction by or with the bankrupt for valuable consideration, where—

(i) the payment, delivery, conveyance, assignment, contract, dealing, or transaction, as the case may be, takes place before adjudication; and

(ii) the person (other than the debtor) to, by or with whom the payment, delivery, conveyance, assignment, contract, dealing, or transaction was made, executed, or entered into, has not at the time of the payment, delivered, conveyance, assignment, contract, dealing or transaction, notice of the presentation of an application for a bankruptcy order before that time.

Immovable property

220.—(1) Any interest of the bankrupt in any immovable property shall on adjudication vest in the Official Receiver without any conveyance, assignment or transfer.

(2) The sale of any land or interest in land which vests in the Official Receiver shall be effected in accordance with section 274 and the Registered Land Act, Deeds Registration Act and Conveyancing Act shall not apply to the sale.

Cap. 58:01
Cap. 58:02
Cap. 58:03

Transfer of shares and other securities

221.—(1) The Official Receiver may transfer the following property belonging to the bankrupt in the same way as the bankrupt could have transferred it if the bankrupt had not been adjudicated bankrupt—

(*a*) securities in a company;

(*b*) securities of the Government;

(*c*) securities issued by a local authority;

(*d*) shares in ships; and

(*e*) any other property transferable in the records of a company, office, or person.

(2) A person whose act or consent is necessary for the transfer of the property shall, on the Official Receiver's request, do whatever is necessary for the transfer to be completed.

(3) In the case of the transfer by the Official Receiver of securities in a company, a shareholder to whom the securities must be offered for sale under the memorandum and articles of association of the company and who agrees to purchase shall pay a reasonable price for the securities, whether or not the memorandum and articles of association provides a procedure for fixing the price.

(4) The Official Receiver may disclaim any liability under shares owned by the bankrupt in any company by disclaiming the shares in accordance with sections 312 and 313.

Second bankruptcy

222.—(1) Where a bankrupt is, before discharge, adjudicated bankrupt for a second time—

(*a*) subject to subsection (2), any property that is acquired by, or has passed to, the bankrupt since the first bankruptcy, including property acquired or that has passed since the second bankruptcy, shall vest in the Official Receiver in the second bankruptcy; and

(*b*) any surplus in the second bankruptcy is an asset in the estate in the first bankruptcy, and shall be paid to the Official Receiver in the first bankruptcy.

(2) The Court may, if it thinks it appropriate, order that the following assets or their proceeds vest in the Official Receiver in the first bankruptcy—

(*a*) assets in the second bankruptcy that, in the Court's opinion, were acquired independently of the creditor in the second bankruptcy; and

(*b*) assets in the second bankruptcy that devolved upon the bankrupt.

(3) Where the Official Receiver receives notice that a creditor has filed an application for a second bankruptcy, he shall—

(*a*) hold property in his possession that has been acquired by, or passed to, the bankrupt since the first bankrupt until the application for a second bankruptcy has been dealt with; and

(*b*) transfer the property and its proceeds, less any deduction for the Official Receiver's costs and expenses, to the Official Receiver in the second bankruptcy where the creditor's application results in a second bankruptcy, or if the bankrupt is automatically adjudicated bankrupt on his own application.

Division V—Duties of Bankrupt

General duties of bankrupt

223.—(1) A bankrupt shall aid in the realization of his property and the distribution of the proceeds amongst his creditors and shall—

(*a*) give a complete and accurate list of his property and of his creditors and debtors and such other information as to this property as the Official Receiver requires;

(*b*) attend before the Official Receiver whenever called upon to do so; and, if required to do so by the Official Receiver verify any statement by affidavit;

(*c*) disclose to the Official Receiver as soon as practicable any property which may be acquired by him before his discharge and would be divisible amongst his creditors;

(*d*) supply to the Official Receiver such information as he may require regarding his expenditure and sources of income after adjudication;

(*e*) execute such power of attorney, transfer or instrument, in relation to his property and the distribution of the proceeds amongst his creditors, as are required by the Official Receiver, prescribed or directed by the Court;

(*f*) deliver on demand any of his property that is divisible amongst his creditors and is under his possession or control to the Official Receiver;

(*g*) deliver on demand to the Official Receiver any property that is acquired by him before his discharge; and

(*h*) immediately notify the Official Receiver in writing of any change of his address, his employment or his name.

Financial information

224.—(1) A bankrupt shall give the Official Receiver the information and details that are necessary to prepare a statement of the financial position of the bankrupt's estate.

(2) Where required by the Official Receiver, the bankrupt shall, within a reasonable time of adjudication, prepare and deliver to the Official Receiver full, true and detailed accounts and statements of his financial position that show details of—

(*a*) the bankrupt's trading and stocktaking; and

(*b*) the bankrupt's profit and losses in any period before the adjudication.

(3) For the bankrupt to prepare the accounts and statements referred to in subsection (2)—

(*a*) the Official Receiver shall give the bankrupt full access to the bankrupt's books and papers in the Official Receiver's possession; and

(*b*) where the Official Receiver thinks it necessary, the bankrupt shall be assisted by an accountant at the expense of the bankrupt's estate.

Division VI—Control over Bankrupt

Contribution to payment of debts

225.—(1) Where required by the Official Receiver, a bankrupt shall pay an amount of periodic amounts during the bankruptcy as a contribution towards payment of the bankrupt's debts on such terms and conditions as the Official Receiver may direct.

(2) Before the Official Receiver requires a bankrupt to make payment under subsection (1), he shall—

(*a*) have regard to all the circumstances of the bankruptcy and the bankrupt's conduct, earning power, responsibilities and prospects; and

(*b*) make reasonable allowance for the maintenance of the bankrupt and his dependent relatives.

(3) The Court may, on the application of the bankrupt or any creditor—

(*a*) vary, suspend or cancel the bankrupt's obligations to make a payment under subsection (1); or

(*b*) remit any arrears owing by the bankrupt.

(4) Where the bankrupt defaults in making a payment required under subsection (1), the burden shall be on the bankrupt in any proceedings arising out of the default to show that the default was not willful.

Bankrupt entering business

226.—(1) An undischarged bankrupt shall not, without the consent of the Official Receiver or the Court, directly or indirectly—

(*a*) enter into, carry on, or take part in the management or control of any business;

(*b*) be employed by a relative of the bankrupt; or

(*c*) be employed by a company, trust, trustee, or any partnership or unincorporated association that is carrying on a business that is managed or controlled by a relative of the bankrupt.

(2) This section shall be in addition to, section 164 (2) (*c*) of the Companies Act.

Cap. 46:03

Search and seizure of property

227.—(1) Notwithstanding any other written law, the Court may issue a search warrant to the Official Receiver where there is reason to believe that any relevant property is concealed in any premises or place.

(2) The warrant issued under subsection (1) may authorize the Official Receiver and any person required to assist him, to—

(*a*) enter and search any premises or place;

(*b*) seize and take possession of any relevant property; and

(*c*) where necessary, use force to enter the locality, premises or place.

(3) Where he is authorized by a warrant issued by a competent Court, the Official Receiver and any other person, required to assist him, may—

(*a*) seize any of the bankrupt's property in the custody or possession of the bankrupt or of any other person;

(*b*) with a view to seizing the bankrupt's property—

(i) break open any building or room of the bankrupt's property;

(ii) break open any building or receptacle of the bankrupt where the bankrupt's property is believed to be; and

(iii) seize and take possession of the bankrupt's property found in the building, room or receptacle.

(4) Where the Official Receiver is satisfied that another person is entitled to any relevant property, he may retain possession of the property for a prescribed number of days from the date on which he first receives notice that another person claims to be entitled to the property, or such further period as the Court may allow.

(5) The Official Receiver may copy or extract from any relevant property any information relating to the property, conduct or dealings of the bankrupt.

(6) In this section, "relevant property" includes any document, computer, facsimile machine or other electronic equipment containing information relating to the bankrupt's property, conduct or dealings.

Vacation of property

228. Notwithstanding any other written law, the Official Receiver may require a bankrupt and any of his relatives to vacate any land or building that is part of the property vested in the Official Receiver under the bankruptcy, and the bankrupt and his relatives shall comply with the request.

Right to inspect documents

229.—(1) A bankrupt may at any convenient time inspect, and take extracts or copies of—

(*a*) his accounting records;

(*b*) his answers to questions put to him by the Official Receiver;

(*c*) his statement of affairs;

(*d*) all proofs of debt;

(*e*) the minutes of any creditors' meeting; and

(*f*) the record of any examination of the bankrupt.

Recovery, release or discharge of property

230. Subject to sections 215 and 216, after adjudication, a bankrupt, and any person other than the Official Receiver, who claims through or under the bankrupt, shall not be empowered to—

(*a*) recover any property that is part of the bankrupt's estate; or

(*b*) give a release or discharge in relation to the property.

Defeating beneficial interest

231.—(1) After adjudication, a bankrupt shall not execute a power of appointment, or any other power vested in the bankrupt, where the result is to defeat or destroy any contingent or other estate or interest in any property to which the bankrupt may otherwise be entitled at any time before his discharge.

(2) The restriction imposed on the bankrupt by subsection (1) shall, subject to sections 215 and 216, apply before and after the bankrupt obtains a discharge.

Bank accounts

232.—(1) Where a bank ascertains that a customer of the bank is an undischarged bankrupt, it shall—

(*a*) as soon as possible, notify the Official Receiver of any account that the bankrupt holds with the bank; and

(*b*) not pay any money out of the account, except as provided under subsection (2).

(2) The bank may pay money out of the account where—

(*a*) the bank is authorized by an order of the Court or instructed by the Official Receiver to do so; or

(*b*) the bank has notified the Official Receiver that the bank holds such an account and has not, within the prescribed period of notification, received any instructions from the Official Receiver.

Allowance to bankrupt

233.—(1) Notwithstanding any other written law, the Official Receiver may make an allowance out of the property of a bankrupt to the bankrupt or any relative of the bankrupt for the support of the bankrupt and his dependent relatives.

(2) The Official Receiver may allow a bankrupt to retain, for the immediate maintenance of the bankrupt and his dependent relatives, any money up to a specified maximum amount, or such sum as may be prescribed that the bankrupt has in his possession or in a bank account at the time of adjudication.

Examination of bankrupt and others

234.—(1) The Official Receiver may at any time, before or after a bankrupt's discharge—

(*a*) summon any of the persons specified in subsection (2) to appear before him, or the Court to be examined on oath; and

(*b*) require that person to produce and surrender to the Official Receiver any document in that person's possession or control that relates to the bankrupt's property or dealings.

(2) The persons referred to in subsection (1) are—

(*a*) the bankrupt;

(*b*) the bankrupt's spouse;

(*c*) a person known or suspected to possess any of the bankrupt's property or any document relating to the affairs or property of the bankrupt;

(*d*) a person believed to owe the bankrupt money;

(*e*) a person believed to be able to give information regarding—

(i) the bankrupt; or

(ii) the bankrupt's trade, dealings, property, income from any source, or expenditure; and

(*f*) a trustee of a trust of which the bankrupt is a settler or of which the bankrupt is or has been a trustee.

(3) An examination shall be recorded in writing, and the person examined must sign the written record if required to do so.

(4) Where a person summoned does not appear at the appointed time and has no reasonable excuse, the Court may—

(*a*) on the Official Receiver's application, by warrant, have him arrested and brought for examination before the Court; and

(*b*) where the Court thinks that his evidence was necessary for the purposes of the bankrupt's estate, order him to pay all the expenses arising out of his arrest and examination.

(5) On the Official Receiver's application, the Court may permit publication of a report under the conditions that the Court imposes.

(6) Subsections (1) to (5) also apply when the Official Receiver has been appointed a receiver and manager of all or part of a debtor's property under section 204, and references in those sections to the bankrupt must be read as if they were references to the debtor.

Public examination of bankrupt

235.—(1) The Court shall hold a public examination of a bankrupt where, at any time before an order for the bankrupt's discharge is made, there is filed with the Court a statement by the Official Receiver, or a copy of a creditors' ordinary resolution, requiring that the bankrupt should be publicly examined.

(2) The copy of the resolution referred to in subsection (1) shall be certified by the Official Receiver or the chairperson of the meeting at which it was passed.

(3) Every public examination shall be conducted in accordance with the Rules.

Documents and other records

236.—(1) The Official Receiver may, by notice in writing, require a bankrupt, the bankrupt's spouse, or any other person to deliver to him any document relating to the dealings or property of the bankrupt in the person's possession or under the person's control.

(2) Subject to subsection (3), no person may, as against the Official Receiver, withhold possession of, or claim a privilege or lien over—

(*a*) a deed or instrument that belongs to the bankrupt; or

(*b*) accounting records, accounts, receipts, bills, invoices, or other papers relating to the bankrupt's accounts, trade dealings, or business.

(3) A person who is not the bankrupt's spouse may claim as secured creditor where the person—

(*a*) has performed services in connexion with the bankrupt's accounting records or a deed or instrument belonging to the bankrupt; and

(*b*) has not been paid, or has not been paid in full, for those services; and

(*c*) would, but for subsection (1), ordinarily have had a lien over the accounting records, deed, or instrument, as the case may be.

Division VII—Powers and Duties of Official Receiver

Official Receiver's powers

237.—(1) The Official Receiver shall have and exercise the powers set out in the Rules.

(2) Subject to subsection (3), the Official Receiver may, on such terms as he thinks appropriate—

(*a*) sell the bankrupt's property by public auction or public tender to one or more persons, in such parcels or in such order as he thinks fit;

(*b*) buy in at an auction of the bankrupt's property;

(*c*) rescind or vary a contract for the sale of the bankrupt's property;

(*d*) for the purposes of paragraph (*a*), sell the whole of the bankrupt's property to one person;

(*e*) for the purposes of paragraph (*a*), sell the bankrupt's property in parcels and in any order.

(3) The Official Receiver shall not sell any of the bankrupt's property until after the date fixed for the first creditors' meeting, except where—

(*a*) the property is perishable or likely to fall rapidly in value;

(*b*) in the Official Receiver's opinion, the sale of the property might be prejudiced by delay; or

(*c*) expenses are likely to be incurred by any delay, and before selling the Official Receiver consults a creditor or creditors whom the Officer Receiver considers to be representative of the interests of creditors.

(4) For the purposes of sale by public auction or public tender under subsection (2) (*a*), the Official Receiver—

(*a*) may instruct a licensed auctioneer to conduct the sale; and

(*b*) shall ensure that the sale is advertised at least twice at an interval of seven days between the advertisements in two daily

newspapers circulating widely in Malaŵi and notice of the sale is given to the bankrupt in each case not less than the prescribed period before the date of the sale.

(5) Subject to this Act, the Official Receiver may sell the following property of the bankrupt by private contract—

(*a*) perishable property or property that is likely to fall rapidly in value;

(*b*) property that is unsold after being offered for sale by public auction or public tender;

(*c*) property that the Official Receiver considers unnecessary or inadvisable to sell by public auction or public tender, because of its nature, situation, value or other special circumstances;

(*d*) property authorized by a resolution of creditors to be sold by private contract in accordance with the authority given by the creditors; and

(*e*) company securities, Government securities and local authority securities, if sold on a securities market operated by a securities exchange licensed under the Securities Act. Cap. 46:06

(6) The title of a purchaser of the bankrupt's property from the Official Receiver under a document that is made in the exercise of the Receiver's power of sale under this section shall not be—

(*a*) challenged except on the ground of fraud; and

(*b*) affected by an absence of authority to sell, or the improper or irregular exercise of the power of sale.

Bank account and investment

238.—(1) The Official Receiver shall have a bank account and he shall pay into that account all money that he receives in that capacity in such manner as may be prescribed.

(2) The Official Receiver may invest money that is not immediately required to be paid out in the administration of an estate in an investment of a type approved by the Minister and shall credit to that estate the interest or dividends that accrue on the investment.

Official Receiver's discretion

239.—(1) The Official Receiver shall use his discretion in the administration of a bankrupt's property.

(2) When exercising discretion under subsection (1), the Official Receiver shall have regard to the resolutions of the creditors at creditor's meetings.

(3) The Official Receiver or a creditor may apply to the Court for directions where the Official Receiver or creditor believes that a resolution of the creditors—

(*a*) conflicts with this Act or any other written law; or

(*b*) is unjust or unfair.

Division VIII—End of Bankruptcy

Automatic discharge

240.—(1) Subject to section 203 and this section, a bankrupt shall automatically be discharged from bankruptcy after adjudication, but may apply to be discharged earlier.

(2) A bankrupt shall not be automatically discharged where—

(*a*) the Officer Receiver or a creditor has objected under subsection (4) and the objection has not been withdrawn after adjudication;

(*b*) the bankrupt has to be publicly examined under section 234 and that examination has not taken place; or

(*c*) the bankrupt is undischarged from an earlier bankruptcy.

(3) The automatic discharge of a bankrupt shall have the same effect as if the Court made an order for the bankrupt's discharge.

(4) The Official Receiver or, with the permission of the Court, a creditor may object to a bankrupt's automatic discharge in such manner as may be prescribed.

(5) An objection to the automatic discharge of a bankrupt may be withdrawn in such manner as may be prescribed.

(6) The bankrupt shall be automatically discharged on the withdrawal of an objection where—

(*a*) the prescribed period has elapsed after adjudication; and

(*b*) there is no other objection to the discharge that has not been withdrawn.

Application for discharge

241.—(1) A bankrupt may at any time apply to the Court for an order of discharge, unless the Court has previously refused an application for a discharge, and specified the earliest date when the bankrupt may again apply.

(2) The Official Receiver shall, as soon as practicable after the expiry of three years from the date of adjudication, summon the

bankrupt to be publicly examined by the Court concerning his discharge, and the Court shall conduct the examination where—

(*a*) the Official Receiver or a creditor has objected to the bankrupt's automatic discharge;

(*b*) the bankrupt is due for automatic discharge but is still undischarged from an earlier bankruptcy; or

(*c*) the bankrupt has been required to be publicly examined under section 234 and that examination has not taken place.

Official Receiver's report

242.—(1) The Official Receiver shall prepare a report and file it in the Court where—

(*a*) the bankrupt has applied for a discharge; or

(*b*) the Official Receiver has summoned the bankrupt to be examined under section 241 (2).

(2) The Official Receiver shall report as to—

(*a*) the bankrupt's affairs;

(*b*) the causes of the bankruptcy;

(*c*) the bankrupt's performance of his duties under this Act;

(*d*) the manner in which the bankrupt has complied with an order of the Court;

(*e*) the bankrupt's conduct before and after adjudication; and

(*f*) any other matter that would assist the Court in making a decision as to the bankrupt's discharge.

Notice of opposition to discharge

243.—(1) A creditor shall give notice to the Official Receiver and the bankrupt where he intends to oppose the bankrupt's discharge on a ground that is not mentioned in the Official Receiver's report.

(2) The notice shall—

(*a*) set out the ground for opposing the discharge; and

(*b*) be given within the prescribed time.

Grant or refusal of discharge

244.—(1) Where the Court hears an application for discharge, or conducts the examination of the bankrupt under section 241 (2), the Court may, having regard to all the circumstances of the case—

(*a*) immediately discharge the bankrupt;

(*b*) discharge the bankrupt on such conditions as it thinks appropriate;

(*c*) discharge the bankrupt but suspend the order for a period;

(*d*) discharge the bankrupt, with or without conditions, at a specified future date; or

(*e*) refuse an order of discharge, in which case the Court may specify the earliest date when the bankrupt may apply again for discharge.

(2) Where the Court discharges the bankrupt on the condition that the bankrupt consents to any judgment, and the bankrupt does consent, the Court may vary the judgment as it thinks appropriate.

Engaging in business after discharge

245.—(1) The Court may, where it makes an order of discharge, prohibit the bankrupt, after discharge, from doing any of the following acts without the Court's permission—

(*a*) entering into, carrying on, or taking part in the management or control of, any business or class of business;

(*b*) being a director of, or being concerned in, or taking part, directly or indirectly in, the management of any company;

(*c*) being employed by a relative of the bankrupt; or

(*d*) being employed by a company, trust or trustee, or a partnership or incorporated association carrying on any business that is managed or controlled by a relative of the bankrupt.

(2) The Court may make an order under subsection (1) for a specified period or without a time limit and may at any time vary or cancel the prohibition.

Reversal of order of discharge

246.—(1) The Court may, on the application of the Official Receiver or a creditor, reverse the discharge of a bankrupt at any time before two years after—

(*a*) the discharge, in the case of an absolute discharge; and

(*b*) the discharge takes effect, in the case of a discharge that is conditional or suspended.

(2) Where the Court reverses a discharge, the Court may, at the same time or at any time thereafter, make a new order of discharge, whether absolute, suspended or conditional.

(3) The Court may reverse a discharge where—

(*a*) the bankrupt has been given notice of the application; and

(*b*) the Court is satisfied that facts have been established that—

(i) were not known to the Court when it made the order of discharge; and

(ii) had the Court known of them, it would have been justified in refusing a discharge or discharging the bankrupt on conditions.

(4) The Court shall not reverse a discharge where the facts relied on in the application, at the time when the Court made an order discharging the bankrupt—

(*a*) were known to the applicant; or

(*b*) could have been known if the applicant had inquired with reasonable diligence.

(5) The reversal of a discharge shall not prejudice or affect any right or remedy that any person, other than the bankrupt, would have had if the discharge had not been reversed.

(6) Any property that has been acquired by the bankrupt after discharge and that is vested in the bankrupt at the date of the reversal—

(*a*) shall vest in the Official Receiver subject to any encumbrance; and

(*b*) shall be applied by the Official Receiver to pay debts that the bankrupt has incurred since the date of discharge.

Powers of the Court where conditions of discharge too onerous

247.—(1) A bankrupt who cannot comply with any condition of his discharge may apply to the Court for an absolute discharge.

(2) The Court may discharge the bankrupt absolutely where it is satisfied that the bankrupt's inability is due to circumstances for which the bankrupt should not reasonably be held responsible.

Release from debts

248.—(1) On discharge, a bankrupt shall be released from all debts provable in the bankruptcy except those listed in subsection (2).

(2) The bankrupt shall not be released from—

(*a*) a debt or liability incurred by fraud or fraudulent breach of trust to which the bankrupt was a party;

(*b*) a debt or liability for which the bankrupt has obtained forbearance through fraud to which the bankrupt was a party;

(*c*) a judgment debt or an amount payable for which the bankrupt is liable under section 225 or 244;

(*d*) an amount payable under a spousal maintenance order; or

(*e*) a student loan in favour of the bankrupt, or for which the bankrupt is liable, and which has not been fully repaid.

Other effects of discharge

249.—(1) A discharge shall be conclusive evidence of the bankruptcy and of the validity of the proceedings in the bankruptcy.

(2) A discharge shall not release any person who, at the date of adjudication, was—

(*a*) a business partner of the bankrupt;

(*b*) a co-trustee with the bankrupt;

(*c*) jointly bound or had made any contract with the bankrupt; or

(*d*) a surety or guarantee or in the nature of surety for the bankrupt.

(3) A discharged bankrupt shall assist the Official Receiver, as required by the Court or the Official Receiver, in the realization and distribution of the bankrupt's property that is vested in the Official Receiver.

(4) Where the Court has refused a bankrupt a discharge or discharged a bankrupt but suspended the discharge, that information shall be entered in the public register maintained under section 12.

(5) The Director and the Official Receiver shall not be sued in relation to any publication made under this section in good faith and with reasonable care.

Division IX—Annulment of Adjudication

Annulment

250.—(1) The Court may, on the application of the Official Receiver or any person interested, annul an adjudication where the Court—

(*a*) considers that the bankrupt should not have been adjudicated bankrupt;

(*b*) is satisfied that the bankrupt's debts have been fully paid or satisfied; or

(*c*) considers that the liability of the bankrupt to pay his debts should be reviewed because there has been a substantial change in the bankrupt's financial circumstances since the date of adjudication.

(2) In the case of an application on one of the grounds specified in subsections (1) (*a*) to (*c*) by an applicant who is not the Official Receiver—

(*a*) a copy of the application shall be served on the Official Receiver in the manner and within the time that the Court directs; and

(*b*) the Official Receiver may appear on the hearing of the application as a party to the proceedings.

(3) An adjudication shall be annulled—

(*a*) from the date of adjudication, in the case of an application on the ground specified in subsection (1) (*a*); or

(*b*) from the date of the Court's order of annulment, in the case of an application on one of the grounds specified in subsections (1) (*b*) to (*c*).

(4) In the case of an application for annulment on the ground that the adjudication should not have been made because of a defect in form or procedure, the Court may, in addition to annulling the adjudication, exercise its powers under subsection (5) to correct the defect and order that the application for adjudication be reheard.

(5) Where the Court annuls the adjudication on one of the grounds specified in subsections (1) (*a*) to (*c*)—

(*a*) the Court may, on the Official Receiver's application, fix an amount as reasonable remuneration for the Official Receiver's services and order that it be paid, in addition to any costs that may be awarded;

(*b*) the Court shall make any determination under paragraph (*a*) promptly;

(*c*) the fee shall be paid into the Consolidated Fund; and

(*d*) the Official Receiver shall not be entitled to remuneration for those services.

Effects of annulment

251.—(1) On the annulment of an adjudication, all property of the bankrupt vested in the Official Receiver on bankruptcy and not sold or disposed of by the Official Receiver shall revest in the bankrupt without the necessity for any conveyance, transfer or assignment.

(2) Any contract, sale, disposition or payment duly made or anything duly done by the Official Receiver before the annulment shall—

(*a*) not be prejudiced or affected as to validity by the annulment; and

(*b*) have effect as if it had been made or done by the bankrupt while no adjudication was in force.

Division X—Voluntary Arrangements for Individual Debtors

Interim order of Court

252.—(1) In the circumstances specified in section 253, the Court may in the case of a debtor (being an individual) make an interim order under this section.

(2) An interim order shall have the effect that, during the period for which it is in force—

(*a*) no bankruptcy petition relating to the debtor may be presented or proceeded with;

(*b*) no landlord or other person to whom rent is payable may exercise any right of forfeiture by peaceable re-entry in relation to premises let to the debtor in respect of a failure by the debtor to comply with any term or condition of his tenancy of such premises, except with the leave of the Court; and

(*c*) no other proceedings, and no execution or other legal process, may be commenced or continued and no distress may be levied against the debtor or his property except with the leave of the Court.

Application for interim order

253.—(1) Application to the Court for an interim order may be made where—

(*a*) the debtor intends to make a proposal to his creditors for a composition in satisfaction of his debts or a scheme of arrangement of his affairs (hereinafter referred to as a "voluntary arrangement"); or

(*b*) two or more debtors who are carrying on business in partnership, or a debtor who is carrying on business as a sole proprietor, intend to make a proposal for reorganization of the business and, in such a case, the proposal shall conform, as far as possible, to a proposal for company reorganization.

(2) The proposal under subsection (1) shall provide for some person ("the nominee") to act in relation to the voluntary

arrangement as trustee or otherwise for the purpose of supervising its implementation and the nominee shall be a person who is qualified to act as an insolvency practitioner, or authorized to act as nominee, in relation to the voluntary arrangement.

(3) Subject to subsections (4) and (5), the application may be made—

(*a*) if the debtor is an undischarged bankrupt, by the debtor, the trustee of his estate, or the Official Receiver; and

(*b*) in any other case, by the debtor.

(4) An application shall not be made under subsection (3) (*a*) unless the debtor has given notice of the proposal to the Official Receiver and, if there is one, the trustee of his estate.

(5) An application shall not be made while a bankruptcy petition presented by the debtor is pending.

Effect of application

254.—(1) At any time when an application under section 253 for an interim order is pending—

(*a*) no landlord or other person to whom rent is payable may exercise any right of forfeiture by peaceable re-entry in relation to premises let to the debtor in respect of a failure by the debtor to comply with any term or condition of his tenancy of such premises, except with the leave of the Court; and

(*b*) the Court may forbid the levying of any distress on the debtor's property or its subsequent sale, or both, and stay any action, execution or other legal process against the property or person of the debtor.

(2) Any Court in which proceedings are pending against an individual may, on proof that an application under section 253 has been made in respect of that individual, stay the proceedings or allow them to continue on such terms as it thinks fit.

Cases in which interim order can be made

255.—(1) The Court shall not make an interim order on an application under section 253 unless it is satisfied that—

(*a*) the debtor intends to make a proposal under this Division;

(*b*) on the day of the making of the application the debtor was an undischarged bankrupt or was able to petition for his own bankruptcy;

(*c*) no previous application has been made by the debtor for an interim order in the prescribed period ending with that day; and

(*d*) that the nominee under the debtor's proposal is willing to act in relation to the proposal.

(2) The Court may make an order if it thinks that it would be appropriate to do so for the purpose of facilitating the consideration and implementation of the debtor's proposal.

(3) Where the debtor is an undischarged bankrupt, the interim order may contain provision as to the conduct of the bankruptcy, and the administration of the bankrupt's estate, during the period for which the order is in force.

(4) Subject to subsections (5) and (6), the provision contained in an interim order by virtue of subsection (3) may include provision staying proceedings in the bankruptcy or modifying any provision and any provision of the Rules in their application to the debtor's bankruptcy.

(5) An interim order shall not, in relation to a bankrupt, make provision relaxing or removing any of the requirements of provisions or of the Rules, unless the Court is satisfied that that provision is unlikely to result in any significant diminution in, or in the value of, the debtor's estate for the purposes of the bankruptcy.

(6) Subject to the provisions of this Division, an interim order made on an application under section 253 shall cease to have effect at the end of the prescribed period beginning with the day after the making of the order.

Nominee's report on debtor's proposal

256.—(1) Where an interim order has been made on an application under section 253, the nominee shall, before the order ceases to have effect, submit a report to the Court stating—

(*a*) whether, in his opinion, the voluntary arrangement which the debtor is proposing has a reasonable prospect of being approved and implemented;

(*b*) whether, in his opinion, a meeting of the debtor's creditors should be summoned to consider the debtor's proposal; and

(*c*) if in his opinion such a meeting should be summoned, the date on which, and time and place at which, he proposes the meeting should be held.

(2) For the purpose of enabling the nominee to prepare his report, the debtor shall submit to the nominee—

(*a*) a document setting out the terms of the voluntary arrangement which the debtor is proposing; and

(*b*) a statement of his affairs containing—

(i) such particulars of his creditors and of his debts and other liabilities and of his assets as may be prescribed; and

(ii) such other information as may be prescribed.

(3) The Court may—

(*a*) on an application made by the debtor in a case where the nominee has failed to submit the report required by this section or has died; or

(*b*) on an application made by the debtor or the nominee in a case where it is impracticable or inappropriate for the nominee to continue to act as such,

direct that the nominee shall be replaced as such by another person qualified to act as an insolvency practitioner, or authorized to act as nominee, in relation to the voluntary arrangement.

(4) The Court may, on an application made by the debtor in a case where the nominee has failed to submit the report required by this section, direct that the interim order shall continue, or if it has ceased to have effect, be renewed, for such further period as the Court may specify in the direction.

(5) The Court may, on the application of the nominee, extend the period for which the interim order has effect so as to enable the nominee to have more time to prepare his report.

(6) If the Court is satisfied on receiving the nominee's report that a meeting of the debtor's creditors should be summoned to consider the debtor's proposal, the Court shall direct that the period for which the interim order has effect shall be extended, for such further period as it may specify in the direction, for the purpose of enabling the debtor's proposal to be considered by his creditors.

(7) The Court may discharge the interim order if it is satisfied, on the application of the nominee, that—

(*a*) the debtor has failed to comply with his obligations under subsection (2); or

(*b*) for any other reason, it would be inappropriate for a meeting of the debtor's creditors to be summoned to consider the debtor's proposal.

Division XI—Procedure Where No Interim Order Made

Debtor's proposal and nominee's report

257.—(1) This section shall apply where a debtor, being an individual—

(*a*) intends to make a proposal under this Part where an interim order has not been made in relation to the proposal and no application for such an order is pending; and

(*b*) if he is an undischarged bankrupt, has given notice of the proposal to the Official Receiver and, if there is one, the trustee of his estate, unless a bankruptcy petition presented by the debtor is pending.

(2) For the purpose of enabling the nominee to prepare a report to the Court, the debtor shall submit to the nominee—

(*a*) a document setting out the terms of the voluntary arrangement which the debtor is proposing; and

(*b*) a statement of his affairs containing—

(i) such particulars of his creditors and of his debts and other liabilities and of his assets as may be prescribed; and

(ii) such other information as may be prescribed.

(3) If the nominee is of the opinion that the debtor is an undischarged bankrupt, or is able to petition for his own bankruptcy, the nominee shall, within the prescribed period, or such longer period as the Court may allow, after receiving the document and statement mentioned in subsection (2), submit a report to the Court stating—

(*a*) whether, in his opinion, the voluntary arrangement which the debtor is proposing has a reasonable prospect of being approved and implemented;

(*b*) whether, in his opinion, a meeting of the debtor's creditors should be summoned to consider the debtor's proposal; and

(*c*) if in his opinion such a meeting should be summoned, the date on which, and time and place at which, he proposes the meeting should be held.

(4) The Court may—

(*a*) on an application made by the debtor in a case where the nominee has failed to submit the report required by this section or has died; or

(*b*) on an application made by the debtor or the nominee in a case where it is impracticable or inappropriate for the nominee to continue to act as such,

direct that the nominee shall be replaced as such by another person qualified to act as an insolvency practitioner, or authorized to act as nominee, in relation to the voluntary arrangement.

(5) The Court may, on an application made by the nominee, extend the period within which the nominee is to submit his report.

Division XII—Creditors' Meeting

Summoning of creditors' meeting

258.—(1) Where it has been reported to the Court under section 256 or 257 that a meeting of the debtor's creditors should be summoned, the nominee, or his replacement, shall, unless the Court otherwise directs, summon that meeting for the time, date and place proposed in his report.

(2) The persons to be summoned to the meeting under subsection (1) shall be every creditor of the debtor of whose claim and address the person summoning the meeting is aware.

(3) For purpose of subsection (2), the creditors of a debtor who is an undischarged bankrupt include—

(*a*) every person who is a creditor of the bankrupt in respect of a bankruptcy debt; and

(*b*) every person who would be such a creditor if the bankruptcy had commenced on the day on which notice of the meeting is given.

Decision of creditors' meeting

259.—(1) A creditors' meeting summoned under section 258 shall decide whether to approve the proposed voluntary arrangement.

(2) The meeting may approve the proposed voluntary arrangement with modifications, but shall not do so unless the debtor consents to each modification.

(3) The modifications subject to which the proposed voluntary arrangement may be approved may include modification conferring the functions proposed to be conferred on the nominee on another person qualified to act as an insolvency practitioner or authorized to act as nominee, in relation to the voluntary arrangement:

Provided that they shall not include any modification by virtue of which the proposal ceases to be a proposal under this Part.

(4) The meeting shall not approve any proposal or modification which affects the right of a secured creditor of the debtor to exercise his security interest, except with the concurrence of the creditor concerned.

(5) Subject to subsections (6), (7) and (8), the meeting shall not approve any proposal or modification under which—

(*a*) any preferential debt of the debtor is to be paid otherwise than in priority to such of his debts as are not preferential debts; or

(*b*) a preferential creditor of the debtor is to be paid an amount in respect of a preferential debt that bears to that debt a smaller proportion than is borne to another preferential debt by the amount that is to be paid in respect of that other debt.

(6) Notwithstanding subsections (1), (2), (3), (4) and (5), the meeting may approve such a proposal or modification with the concurrence of the preferential creditor concerned.

(7) Subject to subsections (1), (2), (3), (4), (5) and (6), the meeting shall be conducted in accordance with the Rules.

(8) In this section, "preferential debt" has the meaning ascribed thereto in section 297 and "preferential creditor" is to be construed accordingly.

Report of decisions to Court

260.—(1) After the conclusion in accordance with the rules of the meeting summoned under section 258, the chairman of the meeting shall report the result of it to the Court and, immediately after so reporting, shall give notice of the result of the meeting to such persons as may be prescribed.

(2) If the report under subsection (1) is that the meeting has declined, with or without modifications, to approve the debtor's proposal, the Court may discharge any interim order which is in force in relation to the debtor.

Effect of approval

261.—(1) This section shall have effect where the meeting summoned under section 258 approves the proposed voluntary arrangement, with or without modifications.

(2) The approved arrangement shall—

(*a*) take effect as if made by the debtor at the meeting; and

(*b*) bind every person who in accordance with Rules—

(i) was entitled to vote at the meeting, whether or not he was present or represented; or

(ii) would have been so entitled if he had had notice of it, as if he were a party to the arrangement.

(3) If—

(*a*) when the arrangement ceases to have effect, any amount payable under the arrangement to a person bound by virtue of subsection (2) (*b*) (ii) has not been paid; and

(*b*) the arrangement did not come to an end prematurely,

the debtor shall at that time become liable to pay to that person the amount payable under the arrangement.

(4) Any interim order in force in relation to the debtor immediately before the end of the prescribed period beginning with the day on which the report with respect to the creditors' meeting was made to the Court under section 260 shall cease to have effect at the end of that period.

(5) Subsection (4) shall apply except to such extent as the Court may direct for the purposes of any application under section 263.

Additional effect on undischarged bankrupt

262.—(1) This section shall apply where—

(*a*) the creditors' meeting summoned under section 258 approves the proposed voluntary arrangement with or without modifications; and

(*b*) the debtor is an undischarged bankrupt.

(2) Where this section applies, the Court shall annul the bankruptcy order on an application made—

(*a*) by the bankrupt; or

(*b*) where the bankrupt has not made an application within the prescribed period, by the Official Receiver.

(3) An application under subsection (2) may not be made—

(*a*) during the period specified in section 263 (3) (*a*) during which the decision of the creditors' meeting can be challenged by application under section 263;

(*b*) while an application under that section is pending; or

(*c*) while an appeal in respect of an application under that section is pending or may be brought.

(4) Where this section applies, the Court may give such directions about the conduct of the bankruptcy and the administration of

the bankrupt's estate as it thinks appropriate for facilitating the implementation of the approved voluntary arrangement.

Challenge of creditors' meeting's decision

263.—(1) Subject to this section, an application to the Court may be made, by any of the persons specified in subsection (2), on one or both of the following grounds, namely—

(*a*) that a voluntary arrangement approved by a creditors' meeting summoned under section 258 unfairly prejudices the interests of a creditor of the debtor;

(*b*) that there has been some material irregularity at or in relation to such a meeting.

(2) The persons who may apply under this section are—

(*a*) the debtor;

(*b*) a person who—

(i) was entitled, in accordance with the Rules, to vote at the creditors' meeting; or

(ii) would have been so entitled if he had had notice of it;

(*c*) the nominee or his replacement under sections 256 (3), 257 (4) or 259 (3); and

(*d*) if the debtor is an undischarged bankrupt, the trustee of his estate or the Official Receiver.

(3) An application under this section shall not be made—

(*a*) after the end of the prescribed period beginning with the day on which the report of the creditors' meeting was made to the Court under section 260; or

(*b*) in the case of a person who was not given notice of the creditors' meeting, after the end of the prescribed period beginning with the day on which he became aware that the meeting had taken place, but (subject to that) an application made by a person within subsection (2) (*b*) (ii) on the ground that the arrangement prejudices his interests may be made after the arrangement has ceased to have effect, unless it has come to an end prematurely.

(4) Where on an application under this section, the Court is satisfied as to either of the grounds mentioned in subsection (1), it may do one or both of the following, namely—

(*a*) revoke or suspend any approval given by the meeting;

(*b*) give a direction to any person for the summoning of a further meeting of the debtor's creditors to consider any revised proposal he may make or, in a case falling within subsection (1) (*b*), to reconsider his original proposal.

(5) Where at any time after giving a direction under subsection (4) (*b*) for the summoning of a meeting to consider a revised proposal the Court is satisfied that the debtor does not intend to submit such a proposal, the Court shall revoke the direction and revoke or suspend any approval given at the previous meeting.

(6) Where the Court gives a direction under subsection (4) (*b*), it may also give a direction continuing or, as the case may require, renewing, for such period as may be specified in the direction, the effect in relation to the debtor of any interim order.

(7) In any case where the Court, on an application made under this section with respect to a creditors' meeting, gives a direction under subsection (4) (*b*) or revokes or suspends an approval under subsection (4) (*a*) or (5), the Court may give such supplemental directions as it thinks fit and, in particular, directions with respect to—

(*a*) things done since the meeting under any voluntary arrangement approved by the meeting; and

(*b*) such things done since the meeting as could not have been done if an interim order had been in force in relation to the debtor when they were done.

(8) Except in pursuance of the preceding provisions of this section, an approval given at a creditors' meeting summoned under section 258 is not invalidated by any irregularity at or in relation to the meeting.

False representations

264.—(1) A debtor commits an offence if for the purpose of obtaining the approval of his creditors to a proposal for a voluntary arrangement, the debtor—

(*a*) makes any false representation; or

(*b*) fraudulently does, or omits to do, anything.

(2) Subsection (1) shall apply even if the proposal is not approved.

Prosecution of delinquent debtors

265.—(1) This section shall apply where a voluntary arrangement approved by a creditors' meeting summoned under section 258 has taken effect.

(2) If it appears to the nominee or supervisor that the debtor has committed an offence in connexion with the arrangement for which he is criminally liable, he shall forthwith—

(*a*) report the matter to the Director; and

(*b*) provide the Director with such information and give the Director such access to, and facilities for, inspecting and taking copies of documents, information in his possession or under his control and relating to the matter in question, as the Director requires.

(3) Where a prosecuting authority institutes criminal proceedings following any report under subsection (2), the nominee or, as the case may be, the supervisor shall give the authority all assistance in connexion with the prosecution which he is reasonably able to give.

(4) The Court may, on the application of the prosecuting authority, direct a nominee or supervisor to comply with subsection (3) if he has failed to do so.

Arrangements coming to an end prematurely

266. For the purposes of this Part, a voluntary arrangement approved by a creditors' meeting summoned under section 258 shall come to an end prematurely if, when it ceases to have effect, it has not been fully implemented in respect of all persons bound by the arrangement by virtue of section 261 (2) (*b*) (i).

Implementation and supervision of approved voluntary arrangement

267.—(1) This section shall apply where a voluntary arrangement approved by a creditors' meeting summoned under section 258 has taken effect.

(2) The person who is for the time being carrying out, in relation to the voluntary arrangement, the functions conferred by virtue of the approval on the nominee (or his replacement) shall be known as the supervisor of the voluntary arrangement.

(3) If the debtor, any of his creditors or any other person is dissatisfied by any act, omission or decision of the supervisor, he may apply to the Court; and on such an application, the Court may—

(*a*) confirm, reverse or modify any act or decision of the supervisor;

(*b*) give him directions; or

(*c*) make such other order as it thinks fit.

(4) The supervisor may apply to the Court for directions in relation to any particular matter arising under the voluntary arrangement.

(5) The Court may, whenever—

(*a*) it is expedient to appoint a person to carry out the functions of the supervisor; and

(*b*) it is inexpedient, difficult or impracticable for an appointment to be made without the assistance of the Court,

make an order appointing a person who is qualified to act as an insolvency practitioner or authorized to act as supervisor, in relation to the voluntary arrangement, in substitution for the existing supervisor or to fill a vacancy.

(6) The power conferred by subsection (5) is exercisable so as to increase the number of persons exercising the functions of the supervisor or, where there is more than one person exercising those functions, so as to replace one or more of those persons.

Availability of fast-track voluntary arrangement

268.—(1) Section 269 shall apply where an individual debtor intends to make a proposal to his creditors for a voluntary arrangement and—

(*a*) the debtor is an undischarged bankrupt;

(*b*) the Official Receiver is specified in the proposal as the nominee in relation to the voluntary arrangement; and

(*c*) no interim order is applied for under section 253.

Decision

269.—(1) The debtor may submit to the Official Receiver—

(*a*) a document setting out the terms of the voluntary arrangement which the debtor is proposing; and

(*b*) a statement of his affairs containing such particulars as may be prescribed, of his creditors, debts, other liabilities and assets, and such other information as may be prescribed.

(2) If the Official Receiver thinks that the voluntary arrangement proposed has a reasonable prospect of being approved and implemented, he may make arrangements for inviting creditors to decide whether to approve it.

(3) For the purposes of subsection (2), a person is a "creditor" only if—

(*a*) he is a creditor of the debtor in respect of a bankruptcy debt; and

(*b*) the Official Receiver is aware of his claim and his address.

(4) Arrangements made under subsection (2)—

(*a*) shall include the provision to each creditor of a copy of the proposed voluntary arrangement;

(*b*) shall include the provision to each creditor of information about the criteria by reference to which the Official Receiver will determine whether the creditors approve or reject the proposed voluntary arrangement; and

(*c*) may not include an opportunity for modifications to the proposed voluntary arrangement to be suggested or made.

(5) Where a debtor submits documents to the Official Receiver under subsection (1), no application under section 253 for an interim order shall be made in respect of the debtor until the Official Receiver has—

(*a*) made arrangements as described in subsection (2); or

(*b*) informed the debtor that he does not intend to make arrangement because he—

(i) does not think the voluntary arrangement has a reasonable prospect of being approved;

(ii) declines to act.

Report of Official Receiver to Court on proposed voluntary arrangement

270. As soon as is reasonably practicable after the implementation of arrangements under section 269, the Official Receiver shall report to the Court whether the proposed voluntary arrangement has been approved or rejected.

Approval of voluntary arrangement

271.—(1) Where the Official Receiver reports to the Court under section 270 that a proposed voluntary arrangement has been approved, the voluntary arrangement shall—

(*a*) take effect;

(*b*) bind the debtor; and

(*c*) bind every person who was entitled to participate in the arrangements made under section 269.

(2) The Court shall annul the bankruptcy order in respect of the debtor on an application made by the Official Receiver.

(3) An application under subsection (2) shall not be made—

(*a*) during the period specified in section 273 (3) during which the voluntary arrangement can be challenged by application under section 273 (2);

(*b*) while an application under that section is pending; or

(*c*) while an appeal in respect of an application under that section is pending or may be brought.

(4) The Court may give such directions about the conduct of the bankruptcy and the administration of the bankrupt's estate as it thinks appropriate for facilitating the implementation of the approved voluntary arrangement.

(5) A reference in this Act or another enactment to a voluntary arrangement approved under this Part includes a reference to a voluntary arrangement which has effect by virtue of this section.

Implementation of a voluntary arrangement approved by a creditors' meeting

272. Section 267 shall apply to a voluntary arrangement which has effect by virtue of section 271 (2) as it applies to a voluntary arrangement approved by a creditors' meeting.

Revocation

273.—(1) The Court may make an order revoking a voluntary arrangement which has effect by virtue of section 271 (2) on the ground that—

(*a*) it unfairly prejudices the interests of a creditor of the debtor; or

(*b*) a material irregularity occurred in relation to the arrangements made under section 269.

(2) An order under subsection (1) may be made only on the application of—

(*a*) the debtor;

(*b*) a person who was entitled to participate in the arrangements made under section 269 (2);

(*c*) the trustee of the bankrupt's estate; or

(*d*) the Official Receiver.

(3) An application under subsection (2) shall not be made after the end of the prescribed period beginning with the date on which the Official Receiver makes his report to the Court under section 269.

(4) Notwithstanding subsection (3), a creditor who was not made aware of the arrangements under section 269 (2) at the time when they were made may make an application under subsection (2) during the prescribed period beginning with the date on which he becomes aware of the voluntary arrangement.

Offences

274.—(1) Section 264 shall have effect in relation to obtaining approval to a proposal for a voluntary arrangement under section 271.

(2) Section 265 shall apply *mutatis mutandis*, in relation to a voluntary arrangement which has effect by virtue of section 271 (2).

PART VIII

General Provisions for All Debtors

Definition of debtor

275. In this Part, "debtor" means—

(*a*) a person who is adjudicated bankrupt; or

(*b*) a company in the course of being wound-up by the Court or by way of a creditors' voluntary winding-up.

Provable debt and proof of debt

276.—(1) A provable debt shall be a present, future, certain or contingent debt or liability which a creditor may prove in a bankruptcy or a winding-up and that a debtor owes—

(*a*) at the time of adjudication or, in the case of a company, on the commencement of the winding-up; or

(*b*) after adjudication but before discharge or, in the case of a company, after the commencement of the winding-up and before dissolution, by reason of an obligation incurred by the debtor before adjudication or dissolution, as the case may be.

(2) A fine, penalty, order for restitution or other order for the payment of money that has been made following a conviction for an offence shall not be—

(*a*) a provable debt; and

(*b*) shall be discharged when the debtor, in the case of bankruptcy, is discharged from bankruptcy.

(3) A proof of debt shall be a document that a creditor submits, for the purpose of proving the debt, to—

(*a*) the Official Receiver, in the case of a bankruptcy; or

(*b*) a liquidator, in the case of a company winding-up.

(4) A debt shall be proved when a decision is made by the Official Receiver or liquidator to admit the debt in accordance with the Rules as being a debt provable in the bankruptcy.

Procedure for proving debts

277.—(1) The Rules shall govern the manner in which a proof of debt shall be submitted and examined, and the procedure to be followed in relation to the proving of debts, including the options available to a secured creditor and the procedure to be followed by a secured creditor.

(2) The proof shall also comply with such other requirements as may be prescribed.

(3) The creditor shall bear the costs of proving the debt, unless the Court makes an order directing that the bankrupt's estate or company in winding-up is to pay the creditor's costs.

Uncertain proof

278.—(1) Where a proof is subject to a contingency, or is for damages, or where for some other reason the amount of the proof is uncertain, the Official Receiver or liquidator may estimate the amount of the proof.

(2) The Court shall determine the amount of an uncertain proof on the application of—

(*a*) the Official Receiver or liquidator, where the Official Receiver or liquidator chooses not to estimate the amount; or

(*b*) a creditor, where the Official Receiver or liquidator has estimated the amount and the creditor is aggrieved by the estimate.

Proof of debt payable six months or more after adjudication or winding-up

279.—(1) A proof of debt that would, but for a bankruptcy or a liquidation, be payable six months or more after the date of adjudication or winding-up, shall be treated as a proof for the present value of the debt.

(2) The present value of the debt shall be calculated by discounting the debt at the prescribed rate for the period from the date of adjudication or winding-up to the date when the debt would be payable.

Mutual credit and set-off

280.—(1) Where there have been mutual credits, mutual debts or other mutual dealings between a debtor and another person—

(*a*) an account shall be taken of what is due from one party to the other party in respect of those credits, debts, or dealings;

(*b*) an amount due from one party to the other shall be set-off against an amount due from the other party;

(*c*) only the balance of the account may be proved in a bankruptcy or a liquidation; and

(*d*) only the balance of the account shall be payable to the Official Receiver or liquidator, as the case may be.

(2) A person, other than a related person, shall not be entitled under this section to claim the benefit of a set-off arising from—

(*a*) a transaction made within the specified period, being a transaction by which the person gave credit to the debtor or the debtor gave credit to the person; or

(*b*) the assignment within the specified period to the person of a debt owed by the debtor to another person, unless the person proves that, at the time of the transaction or assignment, the person did not have reason to suspect that the debtor was unable to pay his debts as they became due.

(3) A related person shall not be entitled under this section to claim the benefit of a set-off arising from—

(*a*) a transaction made within the restricted period, being a transaction by which the related person gave credit to the debtor or the debtor gave credit to the related person; or

(*b*) the assignment within the restricted period to the person of a debt owed by the debtor to another person, unless the related person proves that, at the time of the transaction or assignment, the related person did not have reason to suspect that the debtor was unable to pay his debts as they became due.

(4) This section shall not apply to an amount paid or payable by a shareholder—

(*a*) as the consideration, or part of the consideration, for the issue of a share; or

(*b*) in satisfaction of a call in respect of an outstanding liability of the shareholder made by the board of directors or by the liquidator.

(5) In this section—

(*a*) "related person" means—

(i) a related company; and

(ii) includes a director of a company in liquidation;

(*b*) "restricted period" means the period of two years before the date of an adjudication or the commencement of a winding-up; and

(*c*) "specified period" means the period of six months before the date of an adjudication or the commencement of a winding-up.

Interest on claims

281.—(1) The amount of a claim may include interest up to the date of the adjudication or the commencement of the winding-up—

(*a*) at such rate as may be specified or contained in any contract that makes provision for the payment of interest on that amount; or

(*b*) in the case of a judgment debt, at such rate as is payable on the judgment debt.

(2) Where any surplus assets remain after the payment of all admitted claims, interest shall be paid at the prescribed rate on those claims from the date of adjudication or commencement of the winding-up to the date on which each claim is paid, and where the amount of the surplus assets is insufficient to pay interest in full on all claims, payment shall abate rateably among all claims.

(3) Where any surplus assets remain after the payment of interest in accordance with subsection (2), interest shall be paid on all admitted claims referred to in subsection (1) from the date of adjudication or the commencement of the winding-up to the date on which the claim is paid at a rate equal to the excess between the prescribed rate and the rate referred to in subsection (1) (*a*) or subsection (1) (*b*), as the case may be, and, where the amount of the surplus assets is insufficient to pay interest in full on all claims, payment shall abate rateably among all claims.

Voidable preference

282.—(1) A transaction by a debtor may be set aside by the Court on the application of the Official Receiver or a liquidator where it—

(*a*) is a voidable preference; and

(*b*) was made within two years immediately before adjudication or commencement of the winding-up.

(2) A voidable preference shall be a transaction by the debtor that—

(*a*) is made at a time when the debtor is unable to pay his due debts; and

(*b*) enables another person to receive more towards satisfaction of a debt by the debtor than the person would receive, or would be likely to receive, in the bankruptcy or liquidation.

(3) "Transaction" in subsection (2) means any of the following steps by the debtor—

(*a*) conveying or transferring the debtor's property;

(*b*) creating a charge over the debtor's property;

(*c*) incurring an obligation;

(*d*) undergoing an execution process;

(*e*) paying money (including money paid in accordance with a judgment or an order of a Court); or

(*f*) anything done or omitted to be done for the purpose of entering into the transaction or giving effect to it.

(4) For the purposes of subsection (1), a transaction that is made within six months immediately before the debtor's adjudication or the commencement of the winding-up shall be presumed, unless the contrary is proved, to be made at a time when the debtor is unable to pay his due debts.

(5) Where—

(*a*) a transaction is, for commercial purposes, an integral part of a continuing business relationship such as a running account between a debtor and a creditor, including a relationship to which other persons are parties; and

(*b*) in the course of the relationship, the level of the debtor's net indebtedness to the creditor is increased and reduced from time to time as the result of a series of transactions forming part of the relationship, then—

(i) subsection (1) shall apply in relation to all the transactions forming part of the relationship as if they together constituted a single transaction; and

(ii) the transaction referred to in paragraph (*a*) may only be taken to be an insolvent transaction voidable by the Official Receiver or liquidator where the effect of applying subsection (1) in accordance with subparagraph (i) is that the single transaction referred to in subparagraph (i) is taken to be an insolvent transaction voidable by the Official Receiver or liquidator.

Voidable security interest

283.—(1) A security interest over any property or undertaking of a debtor may be set aside by the Court on the application of the Official Receiver or a liquidator where—

(*a*) the security interest was given within two years immediately before the date of the debtor's adjudication or the commencement of the winding-up; and

(*b*) immediately after the security interest was given, the debtor was unable to pay his due debts.

(2) A security interest given by a debtor under an agreement to give the security interest that was made before the period of two years immediately before the date of adjudication or the commencement of the winding-up shall not be set aside under subsection (1).

Security interest or security for new consideration

284.—(1) A security interest may not be set aside under section 283 where the security interest secures money actually advanced or paid, or the actual price or value of property sold or supplied, or any other valuable consideration given in good faith, by the holder of the security interest to the debtor at the time when, or at any time after, the security interest was given.

(2) A security interest may not be set aside under section 283 where the security interest is a substitute for an existing security interest that was given by the debtor more than two years before the date of adjudication or the commencement of the winding-up, except to the extent that—

(*a*) the amount secured by the substituted security interest is greater than the amount that was secured by the existing security interest; or

(*b*) the value of the property subject to the substituted security interest at the date of substitution was greater than the value of the property subject to the existing security interest at that date.

Presumption that debtor unable to pay due debts

285. A debtor who gives a security interest within six months immediately before the date of adjudication or the commencement of the winding-up or bankruptcy shall be presumed, unless the contrary is proved, to have been unable to pay his due debts immediately after giving the security interest.

Security for unpaid purchase price given after sale of property

286. Where a debtor, after purchasing property, has within two years immediately before the date of adjudication or the commencement of the winding-up given the seller a security interest over the property, section 283 shall not affect the security interest to the extent that it secures unpaid purchase money, whether it is unpaid

in relation to the property over which the security interest is given or some other property, or the security interest was given not more than the prescribed number of days after the date of the sale of the property to the debtor.

Appropriation of payment by debtor to security interest holder

287.—(1) Where a debtor has made a payment to a secured party after the debtor has given a security interest to which section 283 or 285 applies, the debtor's payment shall be credited as far as is necessary towards—

(*a*) repayment of the money actually advanced or paid by the secured party to the debtor when or after the debtor gave the security interest;

(*b*) payment of the actual price or value of property sold by the secured party to the debtor when or after the debtor gave the security interest; or

(*c*) payment of any other liability of the debtor to the secured party, including in respect of any other valuable consideration given in good faith when or after the debtor gave the security.

(2) Nothing in this section shall apply to any payment received by a bank in good faith in the ordinary course of business and without negligence.

Alienation of property with intent to defraud a creditor

288.—(1) Subject to subsection (2), every alienation of property made by a debtor within five years immediately before the date of adjudication or the commencement of the winding-up of the debtor with intent to defraud a creditor may be set aside by the Court on the application of the Official Receiver or a liquidator.

(2) This section shall not apply to any estate or interest in property alienated to a purchaser in good faith not having at the time of the alienation notice of the intention to defraud any creditor.

Voidable gift

289.—(1) A gift by a debtor to another person may be set aside by the Court on the application of the Official Receiver or a liquidator where—

(*a*) the debtor made the gift within two years immediately before the date of adjudication or the commencement of the winding-up; and

(*b*) the debtor was unable to pay his due debts immediately after making the gift.

(2) A gift that is made within six months immediately before the date of the debtor's adjudication or the commencement of the

winding-up shall be presumed, unless the contrary is proved, to be made at a time when the debtor is unable to pay his due debts.

Procedure for setting aside voidable transaction

290.—(1) The procedure set out in this section shall apply to—

(*a*) a voidable preference;

(*b*) a voidable security interest;

(*c*) an alienation of property with intent to defraud a creditor; and

(*d*) a voidable gift.

(2) To initiate the setting aside of a voidable transaction to which this section applies, the Official Receiver or liquidator shall, as soon as practicable, serve a notice that meets the requirements set out in subsection (3) on—

(*a*) the other party to the transaction; and

(*b*) any other party from whom the Official Receiver or liquidator intends to recover.

(3) The notice shall—

(*a*) be in writing;

(*b*) state the Official Receiver's or liquidator's address;

(*c*) specify the voidable transaction to be set aside;

(*d*) describe the property or state the amount that the Official Receiver or liquidator wishes to recover;

(*e*) state that the person named in the notice may object to the setting aside of the transaction if the person sends a written notice of objection to the Official Receiver or liquidator within the prescribed number of days after the notice has been served on the person; and

(*f*) state that the transaction will be set aside as against the person named in the notice if that person does not object.

(4) A voidable transaction shall be automatically set aside as against a person named in the notice if the person has not objected, by the sending of a notice by the Official Receiver or liquidator to the person not later than the prescribed number of working days after the expiry of the time limit specified in subsection (3) (*e*).

(5) A notice of objection shall state the reasons for objecting.

(6) The Court may, on the application of the Official Receiver or liquidator, set aside the voidable transaction in any case where a person named in the notice has given a notice of objection under subsection (4).

Court may order re-transfer or payment

291.—(1) On the setting aside of a voidable transaction, the Court may make an order for—

(*a*) the re-transfer to the Official Receiver or liquidator of any property of the debtor, or any interest in that property, that was transferred under the transaction; or

(*b*) payment to the Official Receiver or liquidator of a sum of money that the Court thinks appropriate, but the sum must not be greater than the value of the property when the transaction was set aside.

(2) The Court may make any other order for the purpose of giving effect to an order under subsection (1).

(3) An order under subsection (1) shall be in addition to any other right and remedy available to the Official Receiver or liquidator.

Limits on recovery

292. The Court shall not make an order setting aside a transaction under section 290 against a person, the person proves that, when he received the property—

(*a*) he acted in good faith;

(*b*) a reasonable person in his position would not have suspected that the debtor was, or would become, unable to pay his due debts; and

(*c*) he gave value for the property or altered his position in the reasonably held belief that the transfer of the property to him was valid and would not be set aside.

Transaction with debtor for inadequate or excessive consideration

293.—(1) Where, within the specified period, a debtor has acquired a business or property from, or the services of—

(*a*) a person who was, at the time of the acquisition, a nominee or relative of or a trustee for, or a trustee for a relative of the debtor, or, in the case of a debtor that is a company, a director of the company;

(*b*) in the case of a debtor that is a company, a person or a relative of a person who, at the time of the acquisition, had control of the company;

(*c*) in the case of a debtor that is a company, another company that was, at the time of the acquisition, controlled by a director of the company, or a nominee or relative of or a trustee for, or a trustee for a relative of a director of the company; or

(*d*) in the case of a debtor that is a company, another company that was, at the time of the acquisition, a related company,

the Official Receiver or the liquidator may recover from the person, relative, company or related company, as the case may be, any amount by which the value of the consideration given for the acquisition of the business, property or services exceeded the value of the business, property or services at the time of the acquisition.

(2) Where, within the specified period, a debtor has disposed of a business or property, provided a guarantee or services, or, in the case of a debtor that is a company, has issued shares, for the benefit of—

(*a*) a person who was, at the time of the disposition, provision or issue a nominee or relative of or a trustee for or a trustee for a relative of the debtor or in the case of a company, a director of the company;

(*b*) in the case of a debtor that is a company, a person or a relative of a person who, at the time of the disposition, provision or issue, had control of the company;

(*c*) in the case of a debtor that is a company, another company that was, at the time of the disposition, provision or issue, controlled by a director of the company or a nominee or relative of or a trustee for or a trustee for a relative of a director of the company; or

(*d*) in the case of a debtor that is a company, another company that, at the time of the disposition, provision or issue, was a related company,

the Official Receiver or the liquidator may recover from the person, relative, company or related company, as the case may be, any amount by which the value of the business, property or services, or the value of shares at the time of the disposition, provision or issue exceeded the value of any consideration received by the debtor.

(3) For the purposes of this section—

(*a*) the value of a business or property includes the value of any goodwill attaching to the business or property; and

(*b*) "specified period" means the period of two years before the date of adjudication or commencement of the winding-up.

Court may order recipient to pay value

294.—(1) On the application of the Official Receiver or a liquidator, the Court may order the recipient of a contribution by the debtor to the recipient's property to pay the value of the contribution to the Official Receiver or liquidator.

(2) The Court may make an order under subsection (1) where—

(*a*) the debtor was not paid an adequate amount in money or money's worth for the contribution;

(*b*) the value of the debtor's assets was reduced by the contribution; and

(*c*) the debtor made the contribution—

(i) within two years immediately before the date of adjudication or commencement of the winding-up; or

(ii) within five years immediately before the date of adjudication or commencement of the winding-up and the recipient is not able to prove that the debtor, at the time of the contribution or at any later time before the date of adjudication or commencement of the winding-up, was able to pay the debtor's debts without the aid of the contribution.

(3) For the purposes of this section and section 295, a debtor has made a contribution to the recipient's property where he has—

(*a*) erected buildings on, or otherwise improved, land or any other property of the recipient;

(*b*) bought land or property in the recipient's name;

(*c*) provided money to buy land or other property in the recipient's name or on the recipient's behalf; or

(*d*) paid installments for the purchase of, or towards the purchase of, any land or any other property in the recipient's name or on the recipient's behalf.

Court's power in relation to debtor's contribution

295.—(1) The Court may ascertain the value of a debtor's contribution (including any payment of legal expenses, interest, rates, and other expenses or charges) for the purposes of section 294 and order the recipient to pay it to the Official Receiver or liquidator.

(2) The Court may order the recipient to pay less than the value of the contribution, or refuse to order the recipient to pay anything, where—

(*a*) the recipient acted in good faith and has altered his position in the reasonably held belief that the debtor's contribution was valid and that the recipient would not be liable to repay it in full or in part; or

(*b*) in the Court's opinion, it is unfair that the recipient should repay all or part of the contribution.

(3) Where the Court orders that the recipient shall repay a debtor's contribution, the Court may also, in the same or a subsequent order—

(*a*) direct the Official Receiver or liquidator to sell the whole or part of the relevant property, and to convey or transfer it to the buyer; and

(*b*) make vesting and other orders that are necessary for the sale and conveyance or transfer of the property.

Use of repayment of debtor's contribution to property

296. The Official Receiver or the liquidator shall use money repaid under section 295 by the recipient of a contribution by the debtor to property, or the proceeds of the sale of the property, as the case may be, by taking the following steps in order—

(*a*) step 1: the Official Receiver or liquidator shall keep as much of the proceeds as the Official Receiver or liquidator needs, when added to the other assets in the debtor's estate, to pay the creditors in full, including interest;

(*b*) step 2: if there is a surplus after the creditors have been paid in full, the Official Receiver or liquidator shall pay as much of the surplus to the recipient of the property to which the debtor has contributed as the Official Receiver or liquidator first retained; and

(*c*) step 3: the Official Receiver or liquidator shall not pay any sum to the debtor before the Official Receiver or liquidator has taken the steps in subsections (*a*) and (*b*).

Preferential claims

297.—(1) Subject to the provisions of this Act, in a winding-up or a bankruptcy, there shall be paid in priority to all other unsecured debts—

(*a*) the costs and expenses of the winding-up or bankruptcy, including the taxed costs of a petitioner, the remuneration of the

liquidator or trustee and the costs of any audit carried out pursuant to the provisions of this Act;

(*b*) the claim of an employee or those claiming on his behalf to wages and other payments to which he is entitled under the Employment Act or any contract, for the following amounts—

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(i) wages, overtime pay, commissions and other forms of remuneration relating to work performed during the twelve weeks preceding the date of the declaration of insolvency or winding-up;

(ii) holiday pay due as a result of work performed during the two years preceding the date of the declaration of insolvency or winding-up;

(iii) amounts due in respect of other types of paid absence accrued during the three months preceding the date of the declaration of insolvency or winding-up; and

(iv) severance pay, compensation for unfair dismissal and other payments due to employees upon termination of their employment;

(*c*) all amounts due in respect of workers' compensation under any written law relating to workers' compensation accrued before the commencement of the winding-up or bankruptcy;

(*d*) any tax, duty or rate payable by the company or bankrupt to the government in respect of any period prior to the commencement of the winding-up or bankruptcy, whether or not payment has become due after that date;

(*e*) all government rents not more than five years in arrears;

(*f*) all rates due from the company or bankrupt to a local authority at the commencement of the winding-up or bankruptcy, having become due and payable within three years next before that date.

(2) Debts having priority shall rank as follows—

(*a*) firstly, the debts referred to in subsection (1) (*a*);

(*b*) secondly, the debts referred to in subsection (1) (*b*) and (*c*);

(*c*) thirdly, the debts referred to in subsection (1) (*d*) and (*e*); and

(*d*) fourthly, the debts referred to in subsection (1) (*f*).

(3) Debts having the same priority shall rank equally between themselves, and shall be paid in full, unless the property of the company or bankrupt is insufficient to meet them, in which case they shall abate in equal proportions between themselves.

(4) Where any payment has been paid to an employee of the company or bankrupt on account of wages or salary out of money advanced by a person for that purpose, the person by whom the money was advanced shall, in a winding-up or bankruptcy, have a right of priority in respect of the money so advanced and paid, up to the amount by which the sum in respect of which the employee would have been entitled to priority in the winding-up or bankruptcy has been diminished by reason of the payment, and shall have the same right of priority in respect of that amount as the employee would have had if the payment had not been made.

(5) So far as the assets of the company available for payment of general creditors are insufficient to meet any preferential debts specified in subsection (1) and any amount payable in priority by virtue of subsection (4), those debts shall have priority over the claims of the holders of security interests created over the assets of the company or the bankrupt, and shall be paid accordingly out of any property that constitutes such a security interest.

(6) Where the company or bankrupt is under a contract of insurance, entered into before the winding-up or the bankruptcy, insured against liability to third parties, then if any such liability is incurred by the company or the bankrupt, before or after the commencement of the winding-up or the bankruptcy, and an amount in respect of the liability is, or has been received by the company or the liquidator from the insurer, the amount shall, after deducting any expenses of, or incidental to, getting in such amount, be paid by the liquidator to the third party in respect of whom the liability was incurred to the extent necessary to discharge the liability or any part of the liability remaining undischarged in priority to all payments in respect of the debts referred to in subsection (1).

(7) Nothing in subsection (5) shall limit the rights of the third party in respect of the balance if the liability of the insurer to the company is less than the liability of the company to the third party.

(8) The provisions of subsections (6) and (7) shall have effect notwithstanding any agreement to the contrary.

(9) Notwithstanding anything in subsection (1)—

(*a*) subsection (1) (*d*) shall not apply in relation to the winding-up of a company in any case where the company is being wound-up voluntarily merely for the purpose of reconstruction or amalgamation with another company the right to compensation has on the reconstruction or amalgamation been preserved to the person entitled thereto, or where the company has entered into a contract with an insurer in respect of any liability under any law relating to workmen's compensation; and

(*b*) where the company has given security for the payment or repayment of any amount to which paragraphs (*e*), (*f*) or (*g*) of that subsection relates, that paragraph shall apply only in relation to the balance of any such amount remaining due after deducting therefrom the net amount realized from such security.

(10) Where, in any winding-up or bankruptcy, assets have been recovered under an indemnity for costs of litigation given by certain creditors, or have been protected or preserved by the payment of moneys or the giving of indemnity by creditors, or where expenses in relation to which a creditor has indemnified a liquidator have been recovered, the Court may make such order as it deems just with respect to the distribution of those assets and the amount of those expenses so recovered with a view to giving those creditors an advantage over others in consideration of the risk run by them in so doing.

(11) Subject to the provisions of this Act, all debts proved in the winding-up shall be paid *pari passu*.

Priority of payments for distribution of debtor's assets

298.—(1) The Official Receiver or a liquidator shall pay, out of the money received by him by the realization of the property of a debtor, the preferential claims set out in section 297 to the extent and in the order of priority specified in that section.

(2) After paying the preferential claims in accordance with subsection (1), the Official Receiver or the liquidator shall pay any remaining money to the general creditors.

(3) After paying the general creditors in accordance with subsection (2), the Official Receiver or the liquidator shall pay any remaining money to the debtor.

(4) In the case of a company in winding-up the liquidator, after paying the general creditors in accordance with subsection (2), shall distribute the company's surplus assets—

(*a*) in accordance with the provisions of the company's memorandum and articles of association; or

(*b*) where the company's memorandum and articles of association does not contain provision for the distribution of surplus assets or the company does not have a memorandum and articles of association, to shareholders rateably.

(5) Any money received by the Official Receiver or liquidator by the realization of the property of the debtor that cannot be paid in accordance with subsections (1) to (4) shall be paid into the Insolvency Surplus Account.

(6) A secured creditor shall—

(*a*) pursuant to sections 158 (2) and 213 (4) have power to take possession of, realize and otherwise deal with property over which the secured creditor has a security interest; and

(*b*) hold and retain from any property or proceeds of realization of property sufficient funds, or value of property, to discharge any prior claims under section 297, such funds or property to be held on trust under the Trustees Act or otherwise for the benefit of the Official Receiver or liquidator, and the secured creditor shall pay the amount of any such prior claims to the Official Receiver or liquidator. Cap. 5:02

(7) For the avoidance of doubt, it is declared that except as expressly provided in this Act, nothing in this Act shall affect the power of the holder of a security interest to realize or otherwise deal with his security outside of bankruptcy or winding-up in the same manner as he would be entitled to realize and deal with it apart from under this Act.

Right of personal creditors of partners

299.—(1) The personal estate of every partner of a partnership shall accrue and be paid to the personal creditors of the partner, and the creditors of the partnership shall not receive any dividend out of the separate estate of the partner, until all the creditors of the partnership have received the full amount of their respective debts.

(2) The joint estate of the partnership shall be applicable in the first instance in payment of their joint debts, and the separate estate of each partner shall be applicable in the first instance in payment of his separate debts.

(3) Where there is a surplus of the separate estates, it shall be dealt with as part of the respective separate estates in proportion to the right and interest of each partner in the joint estate.

(4) Where there is a surplus of the joint estate, it shall be dealt with as part of the respective separate estates in proportion to the right and interest of each partner in the joint estate.

(5) For the purposes of this section, the respective estates of the partnership and of each partner shall be administered together by the Official Receiver (the joint estate):

Provided that separate accounts shall be kept by the Official Receiver in relation to each estate.

(6) This section shall also apply to unincorporated associations where there is joint and several liability.

Right of creditor who has proved debt late

300. Any creditor who has not proved his debt before the declaration of any dividend shall be entitled to be paid out of any money for the time being in the hands of the Official Receiver or liquidator any dividend he may have failed to receive before the money is made applicable to the payment of any future dividend:

Provided that he shall not be entitled to disturb the distribution of any dividend declared before his debt was proved on the ground that he has not participated in it.

Final dividend

301.—(1) Where the Official Receiver or a liquidator has converted into money all the property of a debtor, or so much of it as can, in the joint opinion of himself and of any liquidation committee, be realized without needlessly protracting the bankruptcy or liquidation, he shall declare a final dividend, and give notice to the creditors whose claims have been rejected by him, that if such claims are not admitted by the Court within such period as may be fixed by the Court, he will proceed to declare a final dividend without regard to their claims.

(2) After the expiry of the period referred to in subsection (1), or where the Court, on application by any creditor, grants him further time for establishing his claim, then on the expiry of such further time, the final dividend shall be distributed among the creditors who have proved, without regard to the claim of any other person.

(3) Where the Court admits any claim which may have been rejected by the Official Receiver or a liquidator, the holder of the claim shall be entitled to be paid out of all available property in the hands of the Official Receiver or liquidator, any dividend to which he would have been entitled if his claim had not been rejected by the Official Receiver or liquidator.

(4) No action or suit for a dividend shall lie against the Official Receiver or a liquidator:

Provided that if the Official Receiver or liquidator refuses to pay any dividend, the Court may, if it thinks fit, order the Official Receiver or liquidator to pay the dividend, and also to pay out of his

own money interest on it for the time that it is withheld, and the costs of the application.

Definition of undistributed money

302. In sections 303 and 304, "undistributed money" means any money that—

(*a*) was received by the Official Receiver or a liquidator by the realization of the property of a debtor; and

(*b*) is required to be paid to any person under sections 297, 298, 299, 300 and 301:

Provided that it cannot be distributed for any reason.

Undistributed money

303.—(1) The Official Receiver or a liquidator shall on termination of the bankruptcy or liquidation pay any undistributed money into the Insolvency Surplus Account.

(2) The Official Receiver or a liquidator shall hold any undistributed money paid into the Insolvency Surplus Account subject to the claim of any person who appears to be entitled to that money.

(3) After the expiry of twelve months from the date on which undistributed money is paid into the Insolvency Surplus Account, the Official Receiver or liquidator shall, notwithstanding any other written law, transfer any undistributed money that has not been claimed by a person into the general fund of the Insolvency Surplus Account.

(4) Undistributed money transferred into the general fund of the Insolvency Surplus Account—

(*a*) shall be deemed to be one common and general fund; and

(*b*) may be applied without discrimination in accordance with section 304.

Application of general fund

304.—(1) Funds held in the general fund of the Insolvency Surplus Account may be used—

(*a*) for distribution, in relation to the bankruptcy or liquidation from which the undistributed money came, to any person who remains to be paid as set out in section 303 (2);

(*b*) for the purposes of this Act, to the extent and in the manner allowed by this Act;

(*c*) to replace, to the extent of the deficiency, any money misappropriated by an Official Receiver or liquidator or any person employed under the provisions of this Act; and

(*d*) to meet the costs of any investigation into the circumstances of the insolvency, or of any Court proceedings, obtaining legal advice, or employing an accountant or other expert in circumstances where the Official Receiver determines that the creditors of a bankrupt or company are unable to pay those costs, or it would be unfair or inequitable that they should do so and it is in the interest of creditors and the public interest to meet these costs from the Insolvency Surplus Account.

(2) The allocation of funds for the purposes of subsection (1) (*d*) shall be in the discretion of the Official Receiver and application may be made to him by any liquidator for that purpose.

(3) The Official Receiver may appoint a committee formed from experienced insolvency practitioners to assist him in the administration of the Insolvency Surplus Account.

PART IX

Insolvency Practitioners and Their Qualifications

Disqualification from appointment

305.—(1) A person, other than the Official Receiver, who is appointed provisional liquidator, liquidator, administrator or receiver shall not be qualified for appointment where he is—

(*a*) or has been an officer or auditor or employee of the company or any related corporation during the preceding two years;

(*b*) a minor, or a person under any legal disability;

(*c*) any person who has at any time been convicted of an offence involving fraud or dishonesty;

(*d*) a body corporate;

(*e*) not qualified to be appointed to be an insolvency practitioner in terms of any of the provisions of this Act.

(2) Where a person other than the Official Receiver is appointed provisional liquidator or liquidator, the person—

(*a*) shall not act as such until he has given—

(i) written notice of appointment to the Director;

(ii) security to the satisfaction of the Official Receiver; and

(iii) satisfactory evidence to the Official Receiver that he holds professional indemnity insurance to the satisfaction of the Official Receiver; and

(*b*) shall give the Official Receiver such information and such access to, and facilities for inspecting, the books of the company, and generally such assistance as may be required for enabling the officer to perform his duties under this Act.

(3) For the purposes of this section, "auditor" means the auditor or partner of the audit firm that has been appointed auditor of the company.

Control of liquidator by Official Receiver

306.—(1) Where a person, other than the Official Receiver, is a provisional liquidator or liquidator, the Official Receiver—

(*a*) shall take cognizance of his conduct and, if the liquidator does not faithfully perform his duties and duly observe all the requirements imposed on him, or if a complaint is made to the Official Receiver by a creditor or member in that behalf, inquire into the matter and take such action as he thinks fit;

(*b*) may require the liquidator to answer any inquiry and provide any information or documents in relation to any winding-up in which he is engaged;

(*c*) may apply to the Court to examine him or any other person on oath concerning the winding-up of the company;

(*d*) may direct an examination to be made of the books and vouchers of the liquidator; and

(*e*) may refer the matter to the Director.

Remuneration of insolvency practitioner

307. The insolvency practitioner may be paid such remuneration as may be prescribed in the Rules.

Acting as insolvency practitioner

308.—(1) A person shall act as an insolvency practitioner in relation to a company by acting as its liquidator, provisional liquidator, administrator or receiver.

(2) A person shall act as an insolvency practitioner in relation to an individual by acting—

(*a*) as his trustee in bankruptcy; or

(*b*) where a voluntary arrangement in relation to the individual is proposed or approved, as nominee or supervisor.

Qualifications of an insolvency practitioner

309.—(1) A person who is not a natural person shall not be qualified to act as an insolvency practitioner.

(2) A person shall not be qualified to act as an insolvency practitioner at any time unless at that time—

(*a*) he is authorized so to act by virtue of membership of a professional body recognized under section 311, being permitted so to act by or under the rules of that body; or

(*b*) he holds an authorization granted by a competent authority under section 312.

(3) A person is not qualified to act as an insolvency practitioner in relation to another person at any time unless there is in force at that time security for the proper performance of his functions.

(4) Notwithstanding any other provision of this Act, a person is not qualified to act as an insolvency practitioner at any time if at that time—

(*a*) he has been adjudged bankrupt and he has not been discharged; or

(*b*) he is subject to a director's disqualification order made or a director's disqualification undertaking accepted.

Authority and further qualification to act as insolvency practitioner

310.—(1) A person shall not be qualified to act as an insolvency practitioner at any time unless at that time—

(*a*) he is authorized so to act by virtue of membership of a professional body recognized under section 311, being permitted so to act by or under the rules of that body; or

(*b*) he holds an authorization granted by a competent authority under section 311.

(2) A person shall not be qualified to act as an insolvency practitioner in relation to another person at any time unless—

(*a*) there is in force at that time security for the proper performance of his functions in accordance with the Rules; and

(*b*) that security meets the prescribed requirements with respect to his so acting in relation to that other person.

(3) Notwithstanding any other provision of this Act, a person shall not be qualified to act as an insolvency practitioner at any time if at that time—

(*a*) he has been adjudged bankrupt and he has not been discharged; or

(*b*) he is subject to a director's disqualification order made or a director's disqualification undertaking accepted under the provisions of this Act.

Recognition of bodies or persons and qualifications

311.—(1) The Minister may—

(*a*) by order, published in the *Gazette*, declare a body which appears to him to fall within subsection (2) to be a recognized professional body for the purposes of this section; and

(*b*) prescribe the minimum qualifications, if any, to be obtained by an insolvency practitioner before being allowed to act as such.

(2) A body may be recognized under subsection (1) if it regulates the practice of a profession and maintains and enforces rules for securing that such of its members as are permitted by or under the rules to act as insolvency practitioners—

(*a*) are fit and proper persons so to act; and

(*b*) meet acceptable requirements as to education, practical training and experience.

(3) References to members of a recognized professional body are to persons who, whether members of the body or not, are subject to its rules in the practice of the profession in question and the reference in subsection (2) to membership of a professional body recognized under this section is to be read accordingly.

(4) An order made under subsection (1) (*a*), in relation to a professional body, may be revoked by a further order if it appears to the Minister that the body no longer falls within subsection (2).

(5) An order of the Minister under this section has effect from such date as is specified in the order; and any such order revoking a previous order may make provision whereby members of the body in question continue to be treated as authorized to act as insolvency practitioners for a prescribed period after the revocation takes effect.

Application to competent authority

312.—(1) Application may be made to a competent authority for authorization to act as an insolvency practitioner.

(2) In subsection (1), "competent authority" means—

(*a*) in relation to a case of any description specified in directions given by the Minister, the body or person so specified in relation to cases of the description; and

(*b*) in relation to a case not falling within paragraph (*a*), the Minister.

(3) The application shall—

(*a*) be made in such manner as the competent authority may direct;

(*b*) contain or be accompanied by such information as the competent authority may reasonably require for the purpose of determining the application; and

(*c*) be accompanied by the prescribed fee, and the authority may direct that notice of the making of the application shall be published in such manner as may be specified in the direction.

(4) At any time after receiving the application and before determining it, the competent authority may require the applicant to furnish additional information.

(5) Directions and requirements given or imposed under subsection (3) or (4) may differ as between different applications.

(6) Any information to be furnished to the competent authority under this section shall, if the competent authority so requires, be in such form or verified in such manner as it may specify.

(7) An application may be withdrawn before it is granted or refused.

(8) Any sums received under this section by a competent authority other than the Ministry may be retained by the authority; and any sums so received by the Ministry shall be paid into the Consolidated Fund.

(9) Subsection (3) (*c*) shall not have effect in respect of an application made to the Minister.

Grant or refusal of application

313.—(1) The competent authority may, on an application duly made in accordance with section 312 and after being furnished with all such information as it may require under the section, grant or refuse the application.

(2) The competent authority shall grant the application if it appears to it from the information furnished by the applicant and having regard to such other information, if any, as it may have, that the applicant—

(*a*) is a fit and proper person to act as an insolvency practitioner; and

(*b*) meets the prescribed requirements with respect to education, qualifications and practical training and experience.

(3) An authorization granted under this section, if not previously withdrawn, shall continue in force for one year.

(4) Notwithstanding subsection (3), where an authorization is granted under this section, the competent authority shall, before its expiry, and without a further application made in accordance with section 312, grant a further authorization under this section taking effect immediately after the expiry of the previous authorization, unless it appears to the competent authority that the subject of the authorization no longer complies with subsection (2) (*a*) and (*b*).

(5) An authorization granted under this section may be withdrawn by the competent authority if it appears to it—

(*a*) that the holder of the authorization is no longer a fit and proper person to act as an insolvency practitioner; or

(*b*) without prejudice to paragraph (*a*), that the holder has failed to comply with any provision of this Act or of any regulations made under this Act, or in purported compliance with any such provision, has furnished the competent authority with false, inaccurate or misleading information.

(6) An authorization granted under this section may be withdrawn by the competent authority at the request or with the consent of the holder of the authorization.

(7) Where an authorization granted under this section is withdrawn—

(*a*) subsection (4) does not require a further authorization to be granted; or

(*b*) if a further authorization has already been granted at the time of the withdrawal, the further authorization is also withdrawn.

Notice of authorization

314.—(1) Where a competent authority grants an authorization under section 313, it shall give written notice of that fact to the applicant, specifying the date on which the authorization will take effect.

(2) Where the authority proposes to refuse an application, or to withdraw an authorization under section 313 (5), it shall give the applicant or holder of the authorization written notice of its intention to do so, setting out particulars of the grounds on which it proposes to act.

(3) In the case of a proposed withdrawal the notice shall state the date on which it is proposed that the withdrawal should take effect.

(4) A notice under subsection (2) shall give particulars of the rights exercisable under section 315 by a person on whom the notice is served.

Written representations where application refused

315.—(1) A person on whom a notice is served under section 314 (2) may within the prescribed period after the date of service make written representations to the competent authority.

(2) The competent authority shall have regard to any representations so made in determining whether to refuse the application or withdraw the authorization, as the case may be.

PART X

Cross-Border Insolvency

Division I—General Provisions

Purpose of this Part

316. The purpose of this Part is to provide effective mechanisms for dealing with cases of cross-border insolvency so as to promote the objectives of—

(*a*) cooperation between the Court and other competent authorities of Malaŵi and foreign states involved in cases of cross-border insolvency;

(*b*) greater legal certainty for trade and investment;

(*c*) fair and efficient administration of cross-border insolvencies that protects the interests of all creditors and other interested persons, including the debtor;

(*d*) protection and maximization of the value of the debtor's assets; and

(*e*) facilitation of the rescue of financially troubled businesses, thereby protecting investment and preserving employment.

Scope of application

317. This Part shall apply where—

(*a*) assistance is sought in Malaŵi by a foreign court or a foreign representative in connexion with a foreign proceeding;

(*b*) assistance is sought in a foreign state in connexion with a proceeding under this Act;

(*c*) a foreign proceeding and a proceeding under this Act in respect of the same debtor are taking place concurrently; or

(*d*) creditors or other interested persons in a foreign state have an interest in requesting the commencement of, or participating in, a proceeding under this Act.

Interpretation

318.—(1) For the purposes of this Part—

(*a*) "centre of main interest" means the debtor's registered office, or habitual residence in the case of an individual;

(*b*) "debtor" means any company, individual, partnership, sole proprietorship or other entity that may be wound-up, placed under company reorganization or declared bankrupt under the provisions of this Act;

(*c*) "establishment" means any place of operations where the debtor carries out a non-transitory economic activity with human means and goods or services;

(*d*) "foreign proceeding" means a collective judicial or administrative proceeding in a foreign state, including an interim proceeding, pursuant to a law relating to insolvency in which proceeding the assets and affairs of the debtor are subject to control or supervision by a foreign court, for the purpose of reorganization or liquidation;

(*e*) "foreign main proceeding" means a foreign proceeding taking place in the state where the debtor has the centre of its main interests;

(*f*) "foreign non-main proceeding" means a foreign proceeding, other than a foreign main proceeding, taking place in a state where the debtor has an establishment;

(*g*) "foreign representative" means a person or body, including one appointed on an interim basis, authorized in a foreign proceeding to administer the reorganization or the liquidation of the debtor's assets or affairs or to act as a representative of the foreign proceeding;

(*h*) "foreign court" means a judicial or other authority competent to control or supervise a foreign proceeding;

(*i*) "Malaŵi insolvency practitioner" means—

(i) the Official Receiver; and

(ii) an insolvency practitioner appointed in terms of the provisions of this Act,

but shall not include a person acting as a receiver under Part IV.

(2) In the interpretation of this Part, the Court may make reference to—

(*a*) *travaux preparatoires* and any practice guides dealing with how courts can cooperate originating from the United Nations Commission on International Trade Law; and

(*b*) the Guide to Enactment of the UNCITRAL Model Law (UNCITRAL document A/CN.9/442) prepared at the request of

the United Nations Commission on International Trade Law made in May 1997, as updated from time to time by UNCITRAL.

International obligations of Malaŵi

319. To the extent that this Act conflicts with an obligation of Malaŵi arising out of any treaty or other form of agreement to which it is a party with one or more other States, the provisions of section 211 of the Constitution shall apply.

Competent court

320. The functions referred to in this Act relating to recognition of foreign proceedings and cooperation with foreign courts shall be performed by the Court.

Authorization of insolvency practitioner to act in a foreign state

321. A Malaŵi insolvency practitioner shall be authorized to act in a foreign state on behalf of a proceeding under this Act, as permitted by the applicable foreign law.

Public policy exception

322. Nothing in this Act shall prevent the Court from refusing to take an action governed by this Act if the action would be manifestly contrary to the public policy of Malaŵi.

Additional assistance under other laws

323. Nothing in this Act shall limit the power of a Court or an insolvency practitioner to provide additional assistance to a foreign representative under the other laws of Malaŵi.

Factors to consider in the interpretation of this Part

324. In the interpretation of this Part, regard shall be had to its international origin and to the need to promote uniformity in its application and the observance of good faith.

Division II—Access of Foreign Representatives and Creditors to Courts in Malaŵi

Right of direct access

325. A foreign representative shall be entitled to apply directly to the Court.

Limited jurisdiction

326. The mere fact that an application pursuant to this Act is made to the Court by a foreign representative, shall not subject the foreign representative or the foreign assets and affairs of the debtor to the jurisdiction of the Court for any purpose other than the application.

Application by a foreign representative to commence proceedings

327. A foreign representative shall be entitled to apply to commence a proceeding under this Act if the conditions for commencing such a proceeding are otherwise met.

Participation of a foreign representative in a proceeding under this Act

328. Upon recognition of a foreign proceeding, the foreign representative shall be entitled to participate in a proceeding regarding the debtor under this Act.

Access of foreign creditors to a proceeding under this Act

329.—(1) Subject to subsection (2), foreign creditors shall have the same rights regarding the commencement of, and participation in, a proceeding under this Act as creditors in Malaŵi.

(2) Subsection (1) shall not affect the ranking of claims in a proceeding under this Act, except that the claim of a foreign creditor shall not be given a lower priority than that of the general unsecured creditors solely because the holder of such a claim is a foreign creditor.

(3) A claim shall not be challenged solely on the ground that it is a claim by a foreign tax or social security authority, but such a claim may be challenged—

(*a*) on the ground that it is in whole or in part a penalty; or

(*b*) on any other ground that a claim might be rejected in a proceeding under this Act.

Notification to foreign creditors of a proceeding under this Act

330.—(1) Whenever under this Act, notification is to be given to creditors in Malaŵi, such notification shall also be given to the known creditors that do not have addresses in Malaŵi.

(2) The Court may order that appropriate steps be taken with a view to notifying any creditor whose address is not yet known.

(3) Notification referred to in subsection (1) shall be made to the foreign creditors individually, unless the Court considers that, under the circumstances, some other form of notification would be more appropriate.

(4) When notification of a right to file a claim is to be given to foreign creditors, the notification shall—

(*a*) indicate a reasonable time period for filing claims and specify the place for their filing;

(*b*) indicate whether secured creditors need to file their secured claims; and

(*c*) contain any other information required to be included in such a notification to creditors pursuant to the laws of Malaŵi and the orders of the Court.

Division III—Recognition of a Foreign Proceeding and Relief

Application for recognition of a foreign proceeding

331.—(1) A foreign representative may apply to the Court for recognition of the foreign proceeding in which the foreign representative has been appointed.

(2) An application for recognition shall be accompanied by—

(*a*) a certified copy of the decision commencing the foreign proceeding and appointing the foreign representative; or

(*b*) a certificate from the foreign court affirming the existence of the foreign proceeding and of the appointment of the foreign representative; or

(*c*) in the absence of evidence referred to in paragraphs (*a*) and (*b*), any other evidence acceptable to the Court of the existence of the foreign proceeding and of the appointment of the foreign representative.

(3) An application for recognition shall also be accompanied by a statement identifying all foreign proceedings and proceedings under this Act in respect of the debtor that are known to the foreign representative.

(4) The Court may require a translation of documents supplied in support of the application for recognition into an official language of Malaŵi.

Presumptions concerning recognition

332.—(1) If the decision or certificate referred to in section 331 (2) indicates that the foreign proceeding is a proceeding within the meaning of section 318 (*h*) and that the foreign representative is a person or body within the meaning of section 318 (1) (*g*), the Court is entitled to so presume.

(2) The Court is entitled to presume that documents submitted in support of the application for recognition are authentic, whether or not they have been legalized.

(3) In the absence of proof to the contrary, the debtor's registered office, or habitual residence in the case of an individual, is presumed to be the centre of the debtor's main interests.

Decision to recognize a foreign proceeding

333.—(1) Subject to section 322, a foreign proceeding shall be recognized if—

(*a*) the foreign proceeding is a proceeding within the meaning of paragraph (*e*) of section 318 (1);

(*b*) the foreign representative applying for recognition is a person or body within the meaning of paragraph (*h*) of section 318 (1);

(*c*) the application meets the requirements of section 331 (2) and (3); and

(*d*) the application has been submitted to the Court referred to in section 320.

(2) The foreign proceeding shall be recognized—

(*a*) as a foreign main proceeding if it is taking place in the state where the debtor has the centre of its main interests; or

(*b*) as a foreign non-main proceeding if the debtor has an establishment within the meaning of section 318 (1) (*c*) in the foreign state.

(3) An application for recognition of a foreign proceeding shall be decided upon at the earliest possible time.

(4) Sections 331, 332 and 334 shall not prevent modification or termination of recognition if it is shown that the grounds for granting it were fully or partially lacking or have fully or partially ceased to exist and in such a case, the Court may, on the application of the foreign representative or a person affected by recognition, or of its own motion, modify or terminate recognition, altogether, or for a limited time, on such terms and conditions as the Court thinks fit.

Subsequent information

334. From the time of filing the application for recognition of the foreign proceeding, the foreign representative shall inform the Court promptly of—

(*a*) any substantial change in the status of the recognized foreign proceeding or the status of the foreign representative's appointment; and

(*b*) any other foreign proceeding regarding the same debtor that becomes known to the foreign representative.

Provisional relief that may be granted upon application for recognition of a foreign proceeding

335.—(1) From the time of filing an application for recognition until the application is decided upon, the Court may, at the request of the foreign representative, where relief is urgently needed to protect the assets of the debtor or the interests of the creditors, grant relief of a provisional nature, including—

(*a*) staying execution against the debtor's assets;

(*b*) entrusting the administration or realization of all or part of the debtor's assets located in Malaŵi to the foreign representative or another person designated by the Court, in order to protect and preserve the value of assets that, by their nature or because of other circumstances, are perishable, susceptible to devaluation or otherwise in jeopardy; and

(*c*) any relief mentioned in section 337 (1) (*c*), (*d*) or (*g*).

(2) Unless extended under section 337 (1) (*f*), the relief granted under this section shall terminate when the application for recognition is decided upon.

(3) The Court may refuse to grant relief under this section if such relief would interfere with the administration of a foreign main proceeding.

Effects of recognition of a foreign main proceeding

336.—(1) Subject to subsection (2), upon recognition of a foreign proceeding that is a foreign main proceeding—

(*a*) commencement or continuation of individual actions or individual proceedings concerning the debtor's assets, rights, obligations or liabilities shall be stayed;

(*b*) execution against the debtor's assets shall be stayed; and

(*c*) the right to transfer, encumber or otherwise dispose of any assets of the debtor is suspended.

(2) The stay and suspension referred to in subsection (1) shall be—

(*a*) the same in scope and effect as if the debtor, in the case of an individual, had been adjudged bankrupt under this Act, or, in the case of a debtor other than an individual, had been made the subject of a winding-up order under this Act; and

(*b*) subject to the same powers of the Court and the same prohibitions, limitations, exceptions and conditions as would apply under the law of Malaŵi in such a case,

and the provisions of subsection (1) shall be interpreted accordingly.

(3) Without prejudice to subsection (2), the stay and suspension referred to in subsection (1) shall not affect any right—

(*a*) to take any steps to enforce security over the debtor's property; or

(*b*) of a creditor to set-off its claim against a claim of the debtor,

being a right which would have been exercisable if the debtor, in the case of an individual, had been adjudged bankrupt under the provisions of this Act, or, in the case of a debtor other than an individual, had been made the subject of a winding-up order under the provisions of this Act.

(4) Subsection (1) (*a*) shall not affect the right to—

(*a*) commence individual actions or proceedings to the extent necessary to preserve a claim against the debtor; or

(*b*) commence or continue any criminal proceedings or any action or proceedings by a person or body having regulatory, supervisory or investigative functions of a public nature, being an action or proceedings brought in the exercise of those functions.

(5) Subsection (1) shall not affect the right to request the commencement of a proceeding under this Act or the right to file claims in such a proceeding.

(6) In addition to and without prejudice to any powers of the Court under or by virtue of subsection (2), the Court may, on the application of the foreign representative or a person affected by the stay and suspension referred to in subsection (1) of this section, or of its own motion, modify or terminate such stay and suspension or any part of it, altogether or for a limited time, on such terms and conditions as the Court thinks fit.

Relief that may be granted upon recognition of a foreign proceeding

337.—(1) Upon recognition of a foreign proceeding, whether main or non-main, where necessary to protect the assets of the debtor or the interests of the creditors, the Court may, at the request of the foreign representative, grant any appropriate relief, including—

(*a*) staying the commencement or continuation of individual actions or individual proceedings concerning the debtor's assets, rights, obligations or liabilities, to the extent they have not been stayed under section 336 (1) (*a*);

(*b*) staying execution against the debtor's assets to the extent it has not been stayed under section 336 (1) (*b*);

(*c*) suspending the right to transfer, encumber or otherwise dispose of any assets of the debtor to the extent this right has not been suspended under section 336 (1) (*c*);

(*d*) providing for the examination of witnesses, the taking of evidence or the delivery of information concerning the debtor's assets, affairs, rights, obligations or liabilities;

(*e*) entrusting the administration or realization of all or part of the debtor's assets located in this State to the foreign representative or another person designated by the Court;

(*f*) extending relief granted under section 336 (1); and

(*g*) granting any additional relief that may be available to insolvency practitioners under the laws of Malaŵi.

(2) Upon recognition of a foreign proceeding, whether main or non-main, the Court may, at the request of the foreign representative,

entrust the distribution of all or part of the debtor's assets located in Malaŵi to the foreign representative or another person designated by the Court, provided that the Court is satisfied that the interests of creditors in Malaŵi are adequately protected.

(3) The Court shall not grant relief under this section to a representative of a foreign non-main proceeding unless it is satisfied that the relief relates to assets that, under the law of Malaŵi, should be administered in the foreign non-main proceeding or concerns information required in that proceeding.

(4) No stay under subsection (1) (*a*) shall affect the right to commence or continue any criminal proceedings or any action or proceedings by a person or body having regulatory, supervisory or investigative functions of a public nature, being an action or proceedings brought in the exercise of those functions.

Protection of creditors and other interested persons

338.—(1) In granting or denying relief under section 335 or 337 or in modifying or terminating relief under subsection (3) or section 335 (6), the Court shall satisfy itself that the interests of the creditors and other interested persons, including the debtor, are adequately protected.

(2) The Court may subject relief granted under section 334 or 336 to conditions it considers appropriate, including the provision by the foreign representative of security or caution for the proper performance of his functions.

(3) The Court may, at the request of the foreign representative or a person affected by relief granted under section 335 or 337 or at its own motion, modify or terminate the relief.

Actions to avoid acts detrimental to creditors

339.—(1) Subject to the limitations and modifications set out in the Rules, upon recognition of a foreign proceeding, the foreign representative shall have standing to make application to the Court for an order under or in connexion with sections 186,187, 282, 283, 288, 289 and 293.

(2) When the foreign proceeding is a foreign non-main proceeding, the Court shall satisfy itself that an application under this section relates to assets that, under the law of Malaŵi, should be administered in the foreign non-main proceeding.

(3) At any time when a proceeding under this Act is taking place regarding the debtor the foreign representative shall not make an application under this section except with the permission of the Court.

(4) On making an order on an application under this section, the Court may give such directions regarding the distribution of any proceeds of the claim by the foreign representative, as it thinks fit to ensure that the interests of creditors in Malaŵi are adequately protected.

(5) Nothing in this section affects the right of a Malaŵi insolvency practitioner to make an application under or in connexion with any of the provisions referred to in subsection (1).

(6) Nothing in subsection (1) shall apply in respect of any preference given, security interest created, alienation or assignment made or other transaction entered into before the date on which this Part comes into force.

Intervention by a foreign representative in proceedings in Malaŵi

340. Upon recognition of a foreign proceeding, the foreign representative may, provided the requirements of the law of Malaŵi are met, intervene in any proceedings in which the debtor is a party.

Division IV—Cooperation with Foreign Courts and Foreign Representatives

Cooperation between the Court and foreign courts or foreign representatives

341.—(1) In matters referred to in section 317, the Court shall cooperate to the maximum extent possible with foreign courts or foreign representatives, directly or through the insolvency practitioner.

(2) The Court shall be entitled to communicate directly with, or to request information or assistance directly from, foreign courts or foreign representatives.

Cooperation between insolvency practitioner and foreign courts or foreign representatives

342.—(1) In matters referred to in section 317, the insolvency practitioner shall cooperate to the maximum extent possible with foreign courts or foreign representatives.

(2) The insolvency practitioner shall be entitled, in the exercise of their functions and subject to the supervision of the Court, to communicate directly with foreign courts or foreign representatives.

Forms of cooperation

343.—(1) Cooperation referred to in sections 341 and 342 may be implemented by any appropriate means, including—

(*a*) appointment of a person or body to act at the direction of the Court;

(*b*) communication of information by any means considered appropriate by the Court;

(*c*) coordination of the administration and supervision of the debtor's assets and affairs;

(*d*) approval or implementation by courts of agreements concerning the coordination of proceedings;

(*e*) coordination of concurrent proceedings regarding the same debtor.

Division V—Concurrent Proceedings

Commencement of proceedings under this Act after recognition of foreign main proceeding

344. After recognition of a foreign main proceeding, a proceeding under this Act may be commenced only if—

(*a*) the debtor has assets in Malaŵi;

(*b*) the effects of that proceeding shall be restricted to the assets of the debtor that are located in Malaŵi; and

(*c*) to the extent necessary to implement cooperation and coordination under sections 341, 342 and 343, to other assets of the debtor that, under the law of Malaŵi, should be administered in that proceeding.

Coordination of a proceeding under this Act and a foreign proceeding

345. Where a foreign proceeding and a proceeding under this Act are taking place concurrently regarding the same debtor, the Court shall seek cooperation and coordination under sections 341, 342 and 343, and the following paragraphs shall apply—

(*a*) when the proceeding in Malaŵi is taking place at the time the application for recognition of the foreign proceeding is filed—

(i) any relief granted under section 335 or 337 shall be consistent with the proceeding in Malaŵi; and

(ii) if the foreign proceeding is recognized in Malaŵi as a foreign main proceeding, section 336 shall not apply;

(*b*) when the proceeding in Malaŵi commences after recognition, or after the filing of the application for recognition, of the foreign proceeding—

(i) any relief in effect under section 335 or 336 shall be reviewed by the Court and shall be modified or terminated if inconsistent with the proceeding in Malaŵi; and

(ii) if the foreign proceeding is a foreign main proceeding, the stay and suspension referred to in section 336 (1) shall be modified or terminated pursuant to section 336 (2) if inconsistent with the proceeding in Malaŵi;

(*c*) in granting, extending or modifying relief granted to a representative of a foreign non-main proceeding, the Court has

to be satisfied that the relief relates to assets that, under the law of Malaŵi, should be administered in the foreign non-main proceeding or concerns information required in that proceeding.

Coordination of more than one foreign proceeding

346. In matters referred to in section 317, in respect of more than one foreign proceeding regarding the same debtor, the Court shall seek cooperation and coordination under sections 341, 342 and 343 and the following paragraphs shall apply—

(*a*) any relief granted under section 335 or 337 to a representative of a foreign non-main proceeding after recognition of a foreign main proceeding must be consistent with the foreign main proceeding;

(*b*) if a foreign main proceeding is recognized after recognition, or after the filing of an application for recognition, of a foreign non-main proceeding, any relief in effect under section 335 or 337 shall be reviewed by the Court and shall be modified or terminated if inconsistent with the foreign main proceeding;

(*c*) if, after recognition of a foreign non-main proceeding, another foreign non-main proceeding is recognized, the Court shall grant, modify or terminate relief for the purpose of facilitating coordination of the proceedings.

Presumption of insolvency based on recognition of a foreign main proceeding

347. In the absence of evidence to the contrary, recognition of a foreign main proceeding is, for the purpose of commencing a proceeding under this Act, proof that the debtor is insolvent.

Rule of payment in concurrent proceedings

348. Without prejudice to secured claims or rights *in rem*, a creditor who has received part payment in respect of its claim in a proceeding pursuant to a law relating to insolvency in a foreign state may not receive a payment for the same claim in a proceeding under this Act regarding the same debtor, so long as the payment to the other creditors of the same class is proportionately less than the payment the creditor has already received.

PART XI

Miscellaneous Provisions

General offence and penalty

349.—(1) Any person who contravenes any provision of this Act for which no offence is specifically provided commits an offence.

(2) Any person who commits an offence under this Act for which no penalty is specifically provided shall be liable to a fine of K50,000.

Administrative penalties

350. The Director may, if satisfied that a person has committed an offence under this Act, accept from the person a sum of money not exceeding the amount of the fine to which the person would have been liable if he had been prosecuted and convicted of the offence:

Provided that—

(*a*) the power provided under this section shall be exercised only where the person admits in writing to have committed the offence;

(*b*) the person exercising the power conferred by this section shall give the person from whom he receives the money a receipt therefor; and

(*c*) the person may not be prosecuted based on the same evidence.

Regulations

351.—(1) The Minister may make regulations for the carrying out of the purposes of this Act.

(2) Without prejudice to the generality of the powers conferred by subsection (1), such regulations may prescribe—

(*a*) the forms for the purposes of this Act, including the form of registers to be kept and the places at which the registers are to be kept;

(*b*) the fees to be charged in respect of anything done under or by virtue of this Act, and the method of payment of such fees; and

(*c*) all matters and things which are required or permitted to be prescribed under or for the purposes of this Act.

Rules of Court

352. The Chief Justice may make rules of Court governing practice and procedure for the winding-up of businesses in Malaŵi and with respect to procedure in any application to the Court under the provisions of this Act, and enabling all or any of the powers and duties conferred and imposed on the Court in respect of the winding-up of businesses to be exercised or performed by the Director or by the Official Receiver, or by the liquidator as an officer of the Court and subject to the control of the Court.

Maximum penalty for offences under subsidiary legislation Cap. 1:01

353. Notwithstanding the provisions of section 21 of the General Interpretation Act, a person who commits an offence against any provision of subsidiary legislation made under subsection (1) shall, on conviction, be liable to a fine of up to K200,000 and to imprisonment for one year.

Repeals and savings
Cap. 11:01
Cap. 11:02

354.—(1) The Bankruptcy Act and Deeds of Arrangement Act are repealed.

(2) Any subsidiary legislation made under the written laws repealed by subsection (1), in force immediately before the commencement of this Act—

(*a*) shall, unless in conflict with this Act, remain in force and be deemed to be subsidiary legislation made under this Act; and

(*b*) may be replaced, amended or repealed by subsidiary legislation made under this Act.

Transitional provisions
Cap. 11:01
Cap. 11:02

355.—(1) All proceedings commenced under the Bankruptcy Act or the Deeds of Arrangement Act and penalty before the commencement of the Act shall continue in accordance with the procedure provided under the related Acts.

(2) A person may continue to act as trustee in bankruptcy, liquidator or receiver or manager of the property of a company, if his appointment was validly made before the commencement of this Act for a period of six months after which he shall be required to comply with Part IX of this Act.

(3) Any register, fund and account kept under any written law repealed by this Act shall be deemed to be part of the register, fund and account kept under the corresponding provisions of this Act.

SUBSIDIARY LEGISLATION

INSOLVENCY RULES

ARRANGEMENT OF RULES

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SCHEDULE

INSOLVENCY RULES

G.N. 12A/2017

under s. 352

PART I
PRELIMINARY PROVISIONS

1. These Rules may be cited as the Insolvency Rules. Citation

2. In these Rules, unless the context otherwise requires— Interpretation

"business day" means any of the days from a Monday to a Friday of a working week, excluding a public holiday;

"Judge" means a Judge of the High Court and includes the Chief Justice;

"pre-company reorganization costs" means fees charged, and expenses incurred by the person who was appointed the administrator, or other person qualified to act as an insolvency practitioner, before the company entered company reorganization but with a view to its doing so;

"proof of debt" means all debts whether payable on contingency and all claims against a debtor, present or future, certain or contingent, ascertained or sounding only in damages or a just estimate made of claims that some other reason do not bear a certain value provable against a debtor;

"proxy" is a document which is given by a creditor, member or contributory to another person ("the proxy-holder") authorizing

the proxy-holder to attend, and to speak and vote at, a meeting as the representative of the creditor, member or contributory, and either directs the proxy-holder to vote or abstain, or to propose resolutions, as directed, or authorizes the proxy-holder to do so in accordance with the proxy-holder's discretion;

"Registrar" means the Registrar of the High Court and includes a Deputy or an Assistant Registrar of the High Court;

"seal" includes an official stamp;

"standard contents" means particulars set out in rule 12, 13, 14, 15, 16, 17, 18 or 19 of these Rules; and

"unpaid pre-company reorganization costs" means pre-company reorganization costs which had not been paid when the company entered company reorganization.

Performance of functions by the Court and the Registrar

Cap. 3:02

3.—(1) Anything to be done under or by virtue of the Act or these Rules by, to or before the Court may be done by, to or before a Judge.

(2) Subject to the Act, these Rules and the Courts Act, the Judge may direct the Registrar to carry out such functions and duties in relation to any procedure as the Judge may deem fit.

(3) The rules of civil procedure and practice shall apply to proceedings under these Rules, unless inconsistent with these Rules or expressly excluded by these Rules.

General principles

4. The Court shall, in exercise of its powers conferred under these Rules, ensure that—

(*a*) all measures are taken in the interests of the body of creditors as a whole and subject to the provisions of the Act, as to the payment of costs and preferential payments, the property of the debtor is applied *pari passu*;

(*b*) every procedure under the Act or these Rules is conducted in a cost effective manner and that such costs and expenses of the proceedings that are incurred are proportional to the tasks required to be undertaken and the value of assets; and

(*c*) every procedure is conducted expeditiously and, where possible, avoid the depreciation of assets.

Calculation of time

5. The rules of procedure that apply in the High Court in calculating time shall also be applicable under these Rules.

Determination of the beginning and end of period expressed in months, etc

6.—(1) The beginning and the end of a period expressed in months in these Rules are to be determined as follows—

(*a*) if the beginning of the period is specified, the month in which the period ends is the specified number of months after the month in which it begins, and the date in the month on which the period ends is the date corresponding to the date in the month on which it begins, or if there is no such date in the month in which it ends, the last day of that month; and

(*b*) if the end of the period is specified, the month in which the period begins is the specified number of months before the month in which it ends, and the date in the month on which the period begins is the date corresponding to the date in the month on which it ends, or if there is no such date in the month in which it begins, the last day of that month.

(2) The Court may extend or shorten the time for compliance with anything required or authorized to be done by these Rules where the interests of justice so require.

Documents required to be in writing

7. A notice or statement shall be in writing unless the Act or these Rules provide otherwise.

Standard contents of notice in *Gazette* or newspaper

8.—(1) A notice which the Act or these Rules requires to be published in the *Gazette* or in a newspaper shall contain the standard contents set out in this rule, in addition to any content specifically required by the Act or any other provision of these Rules, as follows—

(*a*) the identity of the office-holder;

(*b*) the office-holder's address and contact details;

(*c*) the office-holder's Insolvency Practitioner (IP) number;

(*d*) the name of any person, other than the office-holder, if any, who may be contacted about the proceedings;

(*e*) the date of the office-holder's appointment;

(*f*) the Court name, Registry and any number assigned to the proceedings by the Court; and

(*g*) the reference assigned to the proceedings by the adjudicator, where applicable.

(2) Information which this rule requires to be included in the *Gazette* or newspaper notice may be omitted if it is not reasonably practicable to obtain it.

Gazette or newspaper notices relating to company

9. A notice published in the *Gazette* or a newspaper relating to liquidation of a company shall identify the company and specify—

(*a*) its registered office, or if an unregistered company, the postal address of its principal place of business;

(*b*) any principal trading address if this is different from its registered office;

(*c*) any name under which it was registered in the twelve months before the date of the commencement of the proceedings which are the subject of the *Gazette* or newspaper notice; and

(*d*) any name or style, other than its registered name, under which the company carried on business when any debt owed to a creditor was incurred.

Gazette or newspaper notices relating to bankruptcy

10. A notice published in the *Gazette* or a newspaper relating to a bankruptcy shall identify the bankrupt and specify—

(*a*) any other place at which the bankrupt has resided in the period of twelve months preceding the making of the bankruptcy order;

(*b*) any principal trading place, if this is different from the bankrupt's residential place;

(*c*) the bankrupt's date of birth, if known;

(*d*) the bankrupt's occupation;

(*e*) any other name by which the bankrupt has been known; and

(*f*) any name or style, other than the bankrupt's own name, under which the bankrupt carried on business when any debt owed to a creditor was incurred.

Gazette or newspaper as evidence

11.—(1) A copy of the *Gazette* or any newspaper containing a notice required by the Act or these Rules to be published as such is evidence of any facts stated in the notice.

(2) Where the Act or these Rules require notice of an order of the Court to be published in the *Gazette* or in a newspaper, a copy of the *Gazette* or the newspaper containing the notice may be produced in any proceedings as conclusive evidence that the order was made on the date specified in the notice.

(3) Where an order of the Court or of an adjudicator has been varied, or any matter has been erroneously or inaccurately published in the *Gazette* or newspaper, the person whose responsibility it was to publish the order or other matter shall, as soon as it is reasonably practicable, cause the variation to be published or a further entry to be made in the *Gazette* or newspaper for the purpose of correcting the error or inaccuracy.

Standard contents of documents to be delivered to the Registrar of Companies or the Director

12. A document to be delivered to the Registrar of Companies or the Director shall—

(*a*) identify the company;

(*b*) specify—

(i) the nature of the document;

(ii) the section of the Act, or the rule under which the document is delivered;

(iii) the date of the document;

(iv) the name and postal address of the person delivering the document; and

(v) the capacity in which that person is acting in relation to the company; and

(*c*) be signed by the person delivering the document.

Standard contents of documents relating to the office of office-holder

13. A document relating to the office of the office-holder shall identify the office-holder by name and specify—

(*a*) the date of the event of which notice is delivered;

(*b*) where the document relates to an appointment, the person, body or Court making the appointment;

(*c*) where the document relates to the termination of an appointment, the reason for that termination; and

(*d*) the contact details of the office-holder.

Standard contents of documents relating to other documents

14. A document relating to another document shall specify—

(*a*) the nature of the other document;

(*b*) the date of the other document; and

(*c*) where necessary, the period of time to which it relates.

Standard contents of documents relating to Court orders

15. A document relating to a Court order shall specify—

(*a*) the nature of the order; and

(*b*) the date of the order.

Standard contents of returns or reports of meetings

16. A return or report of a meeting shall also specify—

(*a*) the purpose of the meeting, including the section of the Act or the rule under which it took place and venue for the meeting;

(*b*) whether a required *quorum* was in attendance for the meeting to take place;

(*c*) if the meeting took place, the outcome of the meeting, including any resolutions passed; and

(*d*) if the meeting was adjourned, the time and place to which the meeting was adjourned.

Standard contents of returns or reports of matters considered by correspondence

17. A return or report of matters the consideration of which has been sought by correspondence shall specify—

(*a*) the purpose of the consideration; and

(*b*) the outcome of the consideration, including any resolutions passed or deemed to be passed.

Standard contents of documents relating to other events

18. A document relating to any other event shall specify—

(*a*) the nature of the event, including the section of the Act or the rule under which it took place; and

(*b*) the date on which the event occurred.

Standard contents and authentication of applications to Court

19.—(1) An application to the Court shall state—

(*a*) that the application is made under the Act or these Rules;

(*b*) the section or rule under which it is made;

(*c*) the names of the parties;

(*d*) the name of the debtor or company which is the subject of the insolvency proceedings to which the application relates;

(*e*) the Court, and where applicable, the division or district registry of the Court, in which the application is made;

(*f*) where the Court has previously allocated a number to the insolvency proceedings within which the application is made, that number;

(*g*) the nature of the remedy or order applied for or the directions sought from the Court;

(*h*) the names and addresses of the persons on whom it is intended to serve the application or that no person is intended to be served;

(*i*) where the Act or these Rules require that notice of the application is to be delivered to specified persons, the names and addresses of all those persons, so far as known to the applicant; and

(*j*) the applicant's address for service.

(2) The application shall be signed by or on behalf of the applicant or the applicant's legal practitioner.

Delivery of documents to joint office-holders

20. Where there are joint office-holders in insolvency proceedings, delivery of a document to one of them is to be treated as delivery to all of them.

Right to copy documents

21. Where the Act or these Rules gives a person the right to inspect documents, that person has a right to be supplied on request with copies of those documents on payment of the standard fee for copies.

Right to be provided with list of creditors

22.—(1) This rule applies in the following proceedings—

(*a*) company reorganization;

(*b*) insolvent or compulsory winding-up of the company; and

(*c*) bankruptcy.

(2) A creditor has the right to require the office-holder to provide a list of the creditors and the amounts of their respective claims unless—

(*a*) a statement of affairs has been delivered to the Registrar of Companies, in a winding-up of the company or company reorganization;

(*b*) the list has been filed with the Court, in bankruptcy proceedings; or

(*c*) the information is available for inspection on the bankruptcy file.

(3) The office-holder on being required to provide such a list—

(*a*) shall deliver it to the person requiring the list, as soon as it is reasonably practicable; and

(*b*) may charge the standard fee for copies for a hard copy.

(4) The office-holder may omit the name and address of a creditor if the office-holder thinks its disclosure would be prejudicial to the conduct of the proceedings or might reasonably be expected to lead to violence or oppressive conduct against any person.

(5) In such a case, the list shall include—

(*a*) the amount of that creditor's claim; and

(*b*) a statement that the name and address of the creditor has been omitted for that debt.

Confidentiality

23.—(1) Where an office-holder considers that a document forming part of the records of the insolvency proceedings should be treated as confidential, or is of such a nature that its disclosure would be prejudicial to the interests of creditors or the conduct of the proceedings or might reasonably be expected to lead to violence or oppressive conduct against any person, the office-holder may decline to allow it to be inspected by a person who would otherwise be entitled to inspect it.

(2) The persons to whom the office-holder may refuse inspection include members of a liquidation committee.

(3) Where the office-holder refuses inspection of a document, the person wishing to inspect it may appeal to the Court.

(4) The Court's decision may be subject to such conditions, if any, as it considers just.

PART II

Company Reorganization

Proposed administrator's statement and consent to act

24.—(1) References in this Part to "a consent to act" are to a statement by a proposed administrator headed "Proposed Administrator's Statement and Consent to Act".

(2) A consent to act shall—

(*a*) identify the company immediately below the heading;

(*b*) certify that the proposed administrator is authorized under Part IX of the Act to act as an insolvency practitioner;

(*c*) state the proposed administrator's IP number;

(*d*) state the source of the proposed administrator's authorization being—

(i) the name of the relevant recognized professional body of which the proposed administrator is a member; or

(ii) the authority which granted the authorization held by the proposed administrator;

(*e*) state that the proposed administrator consents to act as administrator of the company;

(*f*) identify the person by whom the appointment is to be made or the applicant in the case of an application to the Court for an appointment;

(*g*) state that the proposed administrator is of the opinion that the purpose of company reorganization is reasonably likely to be achieved in the particular case; and

(*h*) be signed and dated by the proposed administrator.

(3) Where a number of persons are proposed to be appointed to act jointly or concurrently as administrators of a company, each shall make a separate statement and consent to act.

Administrator's security

25.—(1) A person proposing an administrator under the Act shall be satisfied that the proposed person has security for the proper performance of the office.

(2) It is the duty of the creditors' committee, if established, to review from time to time the adequacy of the security.

(3) In cases where a creditors' committee has not been established, security has to be to provided to the satisfaction of the Court.

(4) The cost of the security is an expense of the company reorganization.

Company reorganization application

26.—(1) An application for company reorganization, in relation to a company, shall—

(*a*) be headed "Company Reorganization Application";

(*b*) identify the company immediately below the heading;

(*c*) state the name and status of the applicant;

(*d*) state whether the company reorganization application is being made by—

(i) the company under section 18 (1) (*a*) of the Act;

(ii) the directors of the company under section 18 (2) (*b*) of the Act;

(iii) a single creditor under section 18 (1) (*c*) of the Act;

(iv) a creditor under section 18 (1) (*c*) of the Act on behalf of that creditor and others; or

(v) the holder of a qualifying security interest under section 20 or 22 of the Act;

(*e*) if the company reorganization application is made by a creditor on behalf of the creditor and other person, the names of the other persons;

(*f*) if the company reorganization application is made by the holder of a security interest, state details of the debt due to the holder of the security interest, the assets secured by the security interest, the date upon which it was perfected and any maximum amount for which it is enforceable;

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(*g*) if the company is registered under the Companies Act, state—

(i) its nominal capital, the number of shares into which the capital is divided, the nominal value of each share and the amount of capital paid up or treated as paid up; or

(ii) that it is a company limited by guarantee; and

(iii) the principal business carried on by the company;

(*h*) except where the applicant is the holder of a qualifying security interest and is making the company reorganization application under section 20 of the Act, state that the applicant believes, for the reasons set out in the witness statement in support of the company reorganization application that the company is, or is likely to become, unable to pay its debts;

(*i*) state the name and address of the proposed administrator;

(*j*) the address for service of the applicant or the applicant's legal practitioner;

(*k*) that the applicant requests the Court to—

(i) make a company reorganization order in relation to the company;

(ii) appoint the proposed person to be administrator; and

(iii) make such ancillary order as the applicant may request, and such other order as the Court considers appropriate; and

(*l*) be signed by the applicant or the applicant's legal practitioner and dated.

(2) Where the company which is the subject of the application is registered under the Companies Act, its address for service shall be that of the company's registered office or the company's legal practitioner. Cap. 46:03

(3) Once a company reorganization application has been made by the directors of the company it shall be treated for all purposes as an application by the company.

(4) A company reorganization application made by a creditor on his own behalf and on behalf of other creditors shall be treated for all purposes as an application by only that creditor.

Sworn statement in support of company reorganization application

27.—(1) Where a company reorganization application is to be made by—

(*a*) the company, a sworn statement shall be made by one of the directors or the secretary of the company stating that he is making the statement on behalf of the company;

(*b*) the company's directors, a sworn statement shall be made by one of the directors or the secretary of the company stating that he is making the statement on behalf of the directors;

(*c*) a single creditor, a sworn statement shall be made by the single creditor or a person acting under the single creditor's authority; or

(*d*) two or more creditors, a sworn statement shall be made by a person acting under the authority of them all, whether or not he is one of their number.

(2) In a case where a person is acting under the authority of a single creditor or two or more creditors, the sworn statement shall state the nature of the authority of the person making it and the

means of that person's knowledge of the matters to which the sworn statement relates.

(3) The sworn statement shall contain—

(*a*) a statement of the company's financial position, specifying, to the best of the applicant's knowledge and belief, the company's assets and liabilities, including contingent and prospective liabilities;

(*b*) details of any security known or believed to be held by creditors of the company and whether, in any case, the security is such as to confer power on the holder to appoint a receiver or to propose an appointment of an administrator under section 20 of the Act;

(*c*) if a receiver has been appointed, a statement to that effect;

(*d*) details of any insolvency proceedings in relation to the company, including any petition that has been presented for the winding-up of the company of the company or any other application for the appointment of administrators so far as it is known to the applicant;

(*e*) a statement as to whether, in the applicant's opinion, the proceedings will be foreign main proceeding or foreign non-main proceeding under Part X of the Act and the reasons for the opinion; and

(*f*) any other matters which, in the applicant's opinion, will assist the Court in deciding whether to make such an order.

(4) Where a company reorganization application is made by the holder of a qualifying security interest under section 20 or 22 of the Act, the sworn statement shall give sufficient details to satisfy the Court that the applicant is entitled to propose the appointment of an administrator.

(5) Where a company reorganization application is made under section 22 of the Act in relation to a company in liquidation, the sworn statement shall contain—

(*a*) details of the existing insolvency proceedings, the name and address of the liquidator, the date the liquidator was appointed and by whom;

(*b*) the reasons why it has subsequently been considered appropriate that a company reorganization application should be made; and

(*c*) any other matters that would, in the applicant's opinion, assist the Court in deciding whether to make the order requested and to make any provision in relation to matters arising in connexion with the liquidation.

Filing of company reorganization application

28.—(1) The company reorganization application shall be filed with the Court together with the sworn statement and the proposed administrator's consent to act.

(2) The Court shall fix a date, time and venue for the hearing of the company reorganization application.

(3) There shall also be filed, at the same time as the company reorganization application or at any subsequent time, a sufficient number of copies of the company reorganization application.

(4) Each of the copies filed shall—

(*a*) have applied to it the seal of the Court and be endorsed with—

(i) the date and time of filing; and

(ii) the date, time and venue fixed by the Court; and

(*b*) be delivered by the Court to the applicant.

Service of company reorganization application

29.—(1) In this rule, references to the company reorganization application are to a copy of the company reorganization application and sworn statement delivered by the Court to the applicant under rule 28.

(2) Notification for the purposes of section 18 (2) of the Act shall be by service of the company reorganization application and the sworn statement.

(3) The company reorganization application shall, in addition to service on the persons referred to in section 18 (2) (*a*) and (*b*) of the Act, be served on the following—

(*a*) any receiver;

(*b*) if a petition is pending for the winding-up of the company, on—

(i) the petitioner; and

(ii) any provisional liquidator or liquidator;

(*c*) the proposed administrator; and

(*d*) the company, if the company reorganization application is made by any person other than the company.

Notice to officers charged with execution or other legal process

30. The applicant shall, as soon as it is reasonably practicable, after filing the company reorganization application deliver a notice of its being made to—

(*a*) any enforcement officer or other officer who to the knowledge of the applicant is charged with an execution or other legal process against the company; and

(*b*) any person who to the knowledge of the applicant has distrained against the company.

Notice of other insolvency proceedings

31.—(1) After the company reorganization application has been filed, it is the duty of the applicant to file with the Court notice of the existence of any insolvency proceedings in relation to the company.

(2) The applicant shall file the notice under subrule (1), as soon as he becomes aware of the proceedings.

Hearing

32.—(1) At the hearing of the company reorganization application, any of the following persons may appear or be represented—

(*a*) the applicant;

(*b*) the company, its liquidator or provisional liquidator;

(*c*) one or more of the directors;

(*d*) any receiver;

(*e*) any person who has presented a petition for the winding-up of the company;

(*f*) the proposed administrator;

(*g*) the holder of any qualifying security interest; or

(*h*) with the permission of the Court, any other person who appears to have an interest which justifies his appearance.

(2) Where the Court makes a company reorganization order, the costs of the applicant, and of any other person whose costs are allowed by the Court, are payable as an expense of the company reorganization.

Order

33.—(1) Where the Court makes a company reorganization order, that order shall be headed "Company Reorganization Order" and shall—

(*a*) state the name of the Court in which the order is made;

(*b*) state the name and title of the person making the order;

(*c*) identify the company;

(*d*) state the name and postal address of the applicant;

(*e*) contain details of any other parties appearing and by whom represented;

(*f*) state that upon consideration of the evidence it is ordered that during the period the order is in force the affairs, business and property of the company be managed by the administrator;

(*g*) state the name of the person appointed as administrator;

(*h*) order that the person be appointed as administrator of the company; and

(*i*) state the date and time of making the order.

(2) Where two or more administrators are appointed, the order shall additionally specify—

(*a*) which functions, if any, are to be exercised by those persons acting jointly; and

(*b*) which functions, if any, are to be exercised by any or all of those persons.

(3) The Court shall deliver a sealed copy of the order to the administrator.

(4) The appointment of the administrator shall take effect from the date of the order.

(5) Where the Court makes a company reorganization order in relation to a company on an application under section 22 of the Act, the Court shall also include in the order—

(*a*) in the case of a liquidator appointed in a voluntary winding-up of the company, the removal of that liquidator from office;

(*b*) provision for payment of the expenses of the winding-up of the company; and

(*c*) such provision as the Court considers just relating to—

(i) any indemnity given to the liquidator;

(ii) the release of the liquidator;

(iii) the handling or realization of any of the company's assets in the hands of, or under the control of, the liquidator;

(iv) other matters arising in connexion with the winding-up of the company; and

(v) such other provisions, if any, as the Court considers just.

Notice of company reorganization order

34.—(1) Where the Court makes a company reorganization order, it shall, as soon as it is reasonably practicable, deliver two sealed copies of the order to the applicant.

(2) The applicant shall, as soon as it is reasonably practicable, deliver a sealed copy of the company reorganization order to the person appointed as administrator.

(3) Where the Court makes an interim order under section 19 (1) (*d*) of the Act or any other order under section 19 (1) (*f*) of the Act, the Court shall give directions as to the persons to whom, and how, notice of that order is to be delivered.

Publication of administrator's appointment

35.—(1) The notice of appointment under section 30 (2) (*b*) of the Act shall be published in the *Gazette* and in at least two daily newspapers of wide circulation or may be advertised in such other manner as the administrator thinks fit.

(2) In addition to the standard contents, the notice of appointment shall state—

(*a*) that an administrator has been appointed;

(*b*) the date of the appointment; and

(*c*) the nature of the business of the company.

(3) The date for the purpose of section 30 (4) and (5) of the Act shall be seven days within the date of the company reorganization order.

(4) The administrator shall, as soon as it is reasonably practicable, after the date specified in subrule (3), deliver the notice of the appointment—

(*a*) if a receiver has been appointed, to that person;

(*b*) if there is pending a petition for the winding-up of the company, to the petitioner, and to the provisional liquidator, if any;

(*c*) to any enforcement officer or other officer who, to the administrator's knowledge, is charged with execution or other legal process against the company; or

(*d*) to any person who, to the administrator's knowledge, has distrained against the company.

(5) Where, under the Act or these Rules, the administrator is required to deliver a notice of the appointment to any person, other than the Registrar of Companies, the notice shall be headed "Notice of Administrator's Appointment" and, in addition to the standard contents—

(*a*) state the administrator's name and address and that the administrator has been appointed as administrator of the company;

(*b*) be signed and dated by the administrator; and

(*c*) set out the administrator's IP number.

Notice of requirement to provide a statement of affairs

36.—(1) A requirement under section 31 (1) of the Act for one or more relevant persons to provide the administrator with a statement of the affairs of the company shall be made by a notice delivered to each of such persons within fourteen days of the administrator's appointment.

(2) The notice shall be headed "Notice Requiring Statement of Affairs" and in addition to the standard contents shall—

(*a*) require each relevant person to whom the notice is delivered to prepare and submit to the administrator a statement of the affairs of the company; and

(*b*) inform each relevant person of—

(i) the names and addresses of all other persons, if any, to whom the same notice has been delivered; and

(ii) the date by which the statement shall be delivered to the administrator.

(3) The administrator shall inform each relevant person to whom notice is delivered that a document for the preparation of the statement of affairs capable of completion can be supplied if requested.

(4) The document for preparation of the statement of affairs to be supplied under subrule (3) shall be in such manner as to be capable of completion.

Statement of affairs: content and submission of copy

37.—(1) The statement of the company's affairs shall—

(*a*) be headed "Statement of Affairs" and identify the company immediately below the heading;

(*b*) state that it is a statement of the affairs of the company on a specified date, being the date on which it entered company reorganization;

(*c*) contain, in addition to the matters required by section 31 (2) of the Act, a summary of the assets of the company;

(*d*) state customers claiming amounts paid in advance for the supply of goods or services; and

(*e*) contain the name and address of each member of the company and the number, nominal value, if any, and other details of the shares held by each member.

(2) The summary of assets of the company referred to in subrule (1) (*c*) shall set out—

(*a*) the book value and the estimated realizable value of—

(i) the assets subject to a security interest;

(ii) the unencumbered assets; and

(iii) the total value of all the assets;

(*b*) a summary of the liabilities of the company, setting out—

(i) the amount of preferential debts;

(ii) an estimate of the deficiency with respect to preferential debts or the surplus available after paying the preferential debts; and

(iii) the amount of secured debts;

(*c*) an estimate of the total assets available to pay secured debts;

(*d*) an estimate of the deficiency with respect to debts secured by a security interest or the surplus available after paying the debts secured by security interests;

(*e*) the amount of unsecured debts, excluding preferential debts;

(*f*) an estimate of the deficiency with respect to unsecured debts or the surplus available after paying unsecured debts;

(*g*) the issued and called-up capital or stated capital, as the case may be;

(*h*) an estimate of the deficiency with respect to, or surplus available to, members of the company; and

(*i*) the amount of the debt owed to each creditor with the further particulars required by subrule (1) identifying all creditors with security interests.

(3) The particulars required by section 31 (2) (*d*), (*e*) and (*f*) of the Act relating to each creditor shall be given in the following order—

(*a*) the name of the creditor;

(*b*) the address of the creditor;

(*c*) the amount of the debts owed to the creditor;

(*d*) details of any security held by the creditor;

(*e*) the date on which any such security was given; and

(*f*) the value of any such security.

(4) Each person submitting a statement of affairs to the administrator shall deliver with it—

(*a*) a copy of the statement; and

(*b*) a copy of a sworn statement verifying the statement.

Statement of affairs: concurrence

38.—(1) The administrator may require a relevant person to deliver a statement of concurrence with the statement of affairs submitted by another relevant person.

(2) Where the administrator decides to resort to subrule (1), he shall inform the person submitting the statement of affairs that a statement of concurrence has been required from a relevant person.

(3) The person submitting the statement of affairs shall deliver a copy to every relevant person who has been required to submit a statement of concurrence.

(4) A person required to deliver a statement of concurrence shall do so before the end of the period of five business days or such other period as the administrator may determine beginning with the day on which that person receives the statement of affairs.

(5) A statement of concurrence—

(*a*) shall identify the company; and

(*b*) may be qualified in relation to matters dealt with in the statement of affairs where the maker of the statement of concurrence—

(i) is not in agreement with the person submitting the statement of affairs;

(ii) considers the statement of affairs to be erroneous or misleading; or

(iii) is without the direct knowledge necessary for concurring with it.

(6) A person who makes a statement of concurrence shall—

(*a*) verify it by a sworn statement; and

(*b*) deliver the statement of concurrence and the statement of affairs to the administrator.

(7) A copy of the statement of concurrence and the statement of affairs shall be delivered to the administrator in duplicate.

Statement of affairs: filing

39.—(1) The administrator shall, as soon as it is reasonably practicable, deliver to the Registrar of Companies a copy of—

(*a*) the verified statement of affairs; and

(*b*) any verified statement of concurrence.

(2) The administrator shall retain the original documents as part of the records of the company reorganization.

(3) The requirement to deliver the statement of affairs is subject to any order of the Court made under rule 23 that the statement of affairs or a specified part shall not be delivered to the Registrar of Companies.

Statement of affairs: release from requirement and extension of time

40.—(1) The power of the administrator under section 32 (2) of the Act to revoke a requirement to provide a statement of affairs or to extend the period within which it shall be submitted may be exercised upon the administrator's own initiative or at the request of the relevant person who has been required to provide it.

(2) Where a relevant person requests a revocation or extension but the administrator refuses it, the relevant person may apply to the Court.

(3) Where the Court considers that no sufficient cause is shown for the application, it shall deliver to the applicant a notice to that effect, and—

(*a*) if, within five business days of delivery of that notice, the applicant applies to the Court to fix a date, time and venue for a hearing, without notice to any other party, as to whether sufficient cause is shown, the Court shall do so; and

(*b*) if the applicant does not deliver such a notice to the Court, the Court may dismiss the application without a hearing.

(4) Unless the application is dismissed without a hearing, the Court will fix a date, time and venue for it to be heard, and deliver notice to the applicant accordingly.

(5) The applicant shall, at least fourteen days before the hearing, deliver to the administrator a notice which states the date, time and venue of the hearing and that notice shall be accompanied by a copy of the application and of any evidence which the applicant intends to provide in support of it.

(6) The administrator may do one or both of the following—

(*a*) appear and be heard on the application; or

(*b*) file a report of any matters which the administrator considers ought to be drawn to the Court's attention.

(7) Where the administrator files a report, then the administrator shall deliver a copy of it to the applicant not later than five business days before the hearing.

(8) Sealed copies of any order made on the application will be delivered by the Court to the applicant and the administrator.

(9) Subject to subrule 10, the applicant's costs shall be paid by the applicant in any event.

(10) The Court may order that an allowance towards the applicant's costs be made as an expense of the company reorganization.

(11) For purposes of section 32 (1) of the Act, the prescribed period shall be eight weeks.

Statement of affairs: expenses

41.—(1) The expenses of a relevant person which the administrator considers to have been reasonably incurred in making a statement of

affairs or statement of concurrence shall be paid by the administrator as an expense of the company reorganization.

(2) A decision by the administrator that expenses were not reasonably incurred, and shall not be payable as an expense of the company reorganization, may be appealed to the Court.

Administrator's proposals: additional content

42.—(1) A statement of proposals made under section 33 of the Act shall identify the proceedings and, in addition to the matters set out in section 33 of the Act, include—

(*a*) any other trading names of the company;

(*b*) details of the administrator's appointment, including—

(i) the date of appointment;

(ii) the person making the application or appointment; and

(iii) where a number of persons have been appointed as administrators, details of matters set out in relation to the exercise of their functions;

(*c*) the names of the directors and the secretary of the company and details of any shareholdings in the company which they may have;

(*d*) an account of the circumstances giving rise to the appointment of the administrator;

(*e*) if a statement of the company's affairs has been submitted—

(i) a copy or summary of it, except so far as an order under rule 23 limits its disclosure;

(ii) any comments which the administrator may have upon the statement of affairs;

(iii) if an order under rule 23 has been made, a statement of that fact and the date of the order; and

(iv) details of who provided the statement of affairs;

(*f*) where no statement of affairs has been submitted—

(i) details of the financial position of the company at the latest practicable date, which shall, unless the Court otherwise orders, be a date not earlier than that on which the company entered company reorganization; and

(ii) an explanation as to why there is no statement of affairs;

(*g*) a full list of the company's creditors, with their names and addresses and details of their debts, including if no statement of affairs has been submitted or, a statement of affairs has been submitted but it does not include such a list, or includes such a list but it is less than full, any security held;

(*h*) a statement of—

(i) how it is envisaged the purpose of the company reorganization will be achieved; and

(ii) how it is proposed that the company reorganization will end, including, where it is proposed that the company reorganization will end by the company moving to a creditors' voluntary winding-up of the company, details of the proposed liquidator and a statement that the creditors may, before the proposals are approved, nominate a different person as liquidator;

(*i*) whether the administrator has decided to seek approval for the proposals by correspondence or by calling a meeting of creditors;

(*j*) the manner in which the affairs and business of the company—

(i) have, since the date of the administrator's appointment, been managed and financed, including, where any assets have been disposed of, the reasons for the disposal and the terms upon which the disposal was made; and

(ii) shall, if the administrator's proposals are approved, continue to be managed and financed;

(*k*) whether the proceedings are foreign main proceeding or foreign non-main proceeding; and

(*l*) any other information that the administrator thinks necessary to enable creditors to decide whether or not to vote for the adoption of the proposals.

(2) The document containing the statement of proposals shall also include, but not as part of the proposals—

(*a*) the basis on which it is proposed that the administrator's remuneration shall be fixed under the Insolvency (Practitioners) Regulations; and

(*b*) a statement of any pre-company reorganization costs charged or incurred by the administrator or, to the administrator's

knowledge, by any other person qualified to act as an insolvency practitioner.

Administrator's proposals: statement of pre-company reorganization costs

43. A statement of pre-company reorganization costs shall include—

(*a*) details of any agreement under which the fees were charged and expenses incurred, including the parties to the agreement and the date on which the agreement was made;

(*b*) details of the work done for which the fees were charged and expenses incurred;

(*c*) an explanation of why the work was done before the company entered company reorganization and how it had been intended to further the achievement of an objective in section 14 (1) of the Act in accordance with subsections (2) to (4) of the section;

(*d*) a statement of the amount of the pre-company reorganization costs, setting out separately—

(i) the fees charged by the administrator;

(ii) the expenses incurred by the administrator;

(iii) the fees charged, to the administrator's knowledge, by any other person qualified to act as an insolvency practitioner and, if more than one, by each separately; and

(iv) the expenses incurred to the administrator's knowledge by any other person qualified to act as an insolvency practitioner and, if more than one, by each separately;

(*e*) a statement of the amounts of pre-company reorganization costs which have already been paid;

(*f*) the identity of the person who made the payment or, if more than one person made the payment, the identity of each such person and of the amounts paid by each such person set out separately as under paragraph (*d*);

(*g*) a statement of the amounts of unpaid pre-company reorganization costs, set out separately as under paragraph (*d*); and

(*h*) a statement that the payment of unpaid pre-company reorganization costs as an expense of the company reorganization is—

(i) subject to approval in accordance with Insolvency (Practitioners) Regulations; and

(ii) not part of the proposals subject to approval under section 36 of the Act.

Administrator's proposals: ancillary provisions about delivery

44.—(1) Where upon an application by the administrator under section 72 of the Act, the Court orders an extension of the period in section 33 (5) (*b*) of the Act, the administrator shall, as soon as it is reasonably practicable, after the making of the order, deliver a notice of the extension containing the standard contents to—

(*a*) every creditor of the company;

(*b*) every member of the company whose address the administrator is aware of;

(*c*) the Registrar of Companies; and

(*d*) the Director.

(2) The notice shall identity the company.

(3) The administrator is deemed to have complied with subrule (1) (*b*) if the administrator publishes a notice complying with subrule (4).

(4) A notice under section 33 (6) of the Act or under subrule (1) shall—

(*a*) be published by advertisement;

(*b*) contain the standard contents;

(*c*) state—

(i) that members can request in writing for a copy of the statement of proposals or notice of the extension; and

(ii) the address to which the request may be sent, in writing; and

(*d*) subject to subrule (5), be published, as soon as it is reasonably practicable, after the administrator has delivered the statement of proposals or notice of the extension to the company's creditors.

(5) In the case of the statement of proposals, publication shall be not later than twelve weeks or such other period as may be agreed by the creditors or as the Court may order from the date on which the company entered reorganization.

Approval of administrator's proposals

45.—(1) The administrator shall seek approval of the statement of proposals made under section 36 of the Act or a statement of revised

proposals made under section 37 of the Act by convening a meeting of creditors or under section 41 of the Act by correspondence.

(2) Where the administrator is seeking approval by correspondence, the statement of proposals sent out shall be accompanied by a notice to the creditors that the proposals will be deemed to have been approved in the absence of objections by ten per cent or more of the creditors by number or by value.

(3) The notice to creditors under subrule (2) shall state—

(*a*) that a creditor who wishes to object to the proposals shall deliver a notice of that objection to the administrator;

(*b*) that the notice of objection shall be accompanied by details of the creditor's claim;

(*c*) the deadline for objections and the accompanying details of the creditor's claim to be delivered to the administrator;

(*d*) the administrator's contact details; and

(*e*) that, unless objections are received from ten per cent or more of the creditors by number or by value by the deadline date, the proposals will be deemed to be approved on that date.

(4) Where the administrator has delivered a notice to creditors under subrule (2) and has not received objections from ten per cent or more of the creditors by number or by value by the deadline date, the administrator's statement of proposals or statement of revised proposals is deemed to have been approved on that date.

(5) Where the administrator has received objections from ten per cent or more of the creditors by number or by value, and the statement of proposals or statement of revised proposals is deemed as not approved, the administrator may convene a meeting of creditors to seek their approval or seek approval of a revised statement by correspondence.

(6) A notice of the meeting of creditors shall be sent to all creditors.

(7) Nominations for membership of the creditors' committee shall be delivered to the administrator with details of each creditor's claim by a deadline date.

(8) The deadline date shall be at least fourteen days after the date on which the administrator delivers the notice.

(9) A revised statement of proposals shall include a revised statement of proposals which is further revised.

(10) The costs of a meeting of the creditors shall be part of the expenses of the company reorganization.

Notice of deemed approval of administrator's proposals or revised proposals

46.—(1) As soon as it is reasonably practicable, after the date on which the administrator's statement of proposals or statement of revised proposals is deemed approved under rule 45 the administrator shall deliver a notice that the proposals or revised proposals were deemed to be approved on that date to—

(*a*) the Registrar of Companies;

(*b*) the Court;

(*c*) the Director; and

(*d*) the creditors.

(2) A copy of the statement of proposals shall accompany the notices to the Court and to any creditor who has not previously received the proposals.

Notice of result of creditors' meeting to consider proposals

47.—(1) As soon as it is reasonably practicable, after the conclusion of a meeting of creditors to consider the statement of proposals, the administrator shall, in addition to reporting to the Court and the Registrar of Companies and the Director as required by section 36 (4) of the Act, deliver notice of the result of the meeting to every creditor and to every other person who received a copy of the statement of proposals.

(2) The administrator shall file with the Court a copy of the statement of proposals considered at the meeting.

(3) The notice under section 36 (4) of the Act or under this rule shall contain details of any modifications to the proposals which were approved at the meeting, in addition to the standard contents required for notices delivered to the Registrar of Companies or to other persons.

(4) The administrator shall also deliver a copy of the statement of proposals to any creditor who did not receive notice of the meeting but whose claim the administrator has subsequently become aware of.

Administrator's proposals: revision

48.—(1) Where section 37 of the Act applies, the statement of the proposed revision which is required to be sent to creditors and members shall identify the proceedings and include—

(*a*) any other trading names of the company;

(*b*) details of the administrator's appointment, including—

(i) the date of appointment; and

(ii) the person making the application or appointment;

(*c*) the names of the directors and secretary of the company and details of any shareholding in the company which they have;

(*d*) a summary of the original proposals and the reason(s) for proposing a revision;

(*e*) details of the proposed revision, including details of the administrator's assessment of the likely impact of the proposed revision upon creditors generally or upon each class of creditors;

(*f*) where the proposed revision relates to the ending of the company reorganization by a creditors' voluntary winding-up of the company and the nomination of a person to be the proposed liquidator of the company—

(i) details of the proposed liquidator;

(ii) where applicable, the declaration required by the Act; and

(iii) a statement that the creditors may, before the proposals are approved, nominate a different person as liquidator; and

(*g*) any other information that the administrator thinks necessary to enable creditors to decide whether or not to vote for the proposed revisions.

(2) As soon as it is reasonably practicable, after sending the statement of the proposed revisions to the creditors, the administrators shall deliver a copy of the statement to the Registrar of Companies.

(3) Subject to section 37 (3) of the Act, the period within which the administrator shall send a copy of the statement to every member of the company whose address the administrator is aware of shall be five business days after sending the statement of the proposed revision to each creditor.

(4) A notice under section 37 (3) and (4) of the Act shall—

(*a*) be published by advertisement, as soon as it is reasonably practicable, after the administrator has sent the statement to the creditors;

(*b*) contain the standard contents; and

(*c*) state that members can request, in writing, for a copy of the statement of proposed revision with the address to which to send the request, in writing.

Notice of result of creditors' meeting to consider revised proposals

49.—(1) As soon as it is reasonably practicable, after the conclusion of a meeting of creditors to consider the statement of the administrator's revised proposals, the administrator shall, in addition to reporting to the Court and the Registrar of Companies, as required by section 37 (6) of the Act, deliver a notice of the result of the meeting to every creditor and to every other person who received a copy of the original proposals.

(2) The administrator shall file with the Court a copy of the statement of revised proposals considered at the meeting.

(3) The notices under section 37 (6) of the Act or under this rule shall contain details of any modifications to the proposals which were approved at the meeting, in addition to the standard contents required for notice delivered to the Registrar of Companies or to other persons.

(4) The administrator shall also deliver a copy of both the original and the revised statement of proposals to any creditors who did not receive notice of the meeting but whose claim the administrator has subsequently become aware of.

Disposal of charged property

50.—(1) The administrator may apply to the Court under section 47 of the Act for authority to dispose of property of the company which—

(*a*) is subject to a security interest; or

(*b*) consists of goods in the possession of the company under a lease.

(2) The Court shall fix a date, time and venue for the hearing of the application.

(3) As soon as it is reasonably practicable, after the Court has fixed the date, time and venue of hearing under subrule (2), the administrator shall deliver notice of the date, time and venue to the holder of the security or the owner of the goods.

(4) Where an order is made under section 47 of the Act, the Court shall deliver two sealed copies of that order to the administrator.

(5) The administrator shall deliver—

(*a*) one of the sealed copies to the holder of the security interest or the owner of the goods; and

(*b*) a copy of the sealed order to the Registrar of Companies.

Expenses

51. All fees, costs, charges and other expenses incurred in the course of the company reorganization are to be treated as part of the expenses of the company reorganization.

Order of priority

52.—(1) Subject to an order of the Court under subrule (2), the expenses of company reorganization are payable in the following order of priority—

(*a*) expenses properly incurred by the administrator in performing the administrator's functions;

(*b*) the cost of any security provided by the administrator in accordance with the Act or these Rules;

(*c*) the costs of the applicant and any person appearing on the hearing of the application for a company reorganization order;

(*d*) any amount payable to a person in respect of assistance in the preparation of a statement of affairs or statement of concurrence;

(*e*) any allowance made by order of the Court towards costs on an application for release from the obligation to submit a statement of affairs or deliver a statement of concurrence;

(*f*) any necessary disbursements by the administrator in the course of the company reorganization, including any expenses incurred by members of the creditors' committee or their representatives and allowed for by the administrator, but not including any payment of tax in circumstances referred to in paragraph (i);

(*g*) the remuneration or emoluments of any person who has been employed by the administrator to perform any services for the company, as required or authorized under the Act or these Rules;

(*h*) the administrator's remuneration the basis of which has been fixed under the Insolvency (Practitioners) Regulations and unpaid pre-company reorganization costs;

(*i*) the amount of any tax on chargeable gains accruing on the realization of any asset of the company, irrespective of the person by whom the realization is effected.

(2) Where the assets are insufficient to satisfy the liabilities, the Court may make an order as to the payment out of the assets of the expenses incurred in the company reorganization in such order of priority as the Court considers just.

(3) The former administrator's remuneration and expenses comprise all the items in subrule (1).

Pre-company reorganization costs

53.—(1) Where the administrator has made a statement of pre-company reorganization costs, the creditors' committee may determine whether and to what extent the unpaid pre-company reorganization costs set out in the statement are approved for payment.

(2) Subrule (3) applies where—

(*a*) there is no creditors' committee;

(*b*) there is a creditors' committee but it does not make the necessary determination; or

(*c*) the creditors' committee makes the necessary determination but the administrator or other insolvency practitioner who has charged fees or incurred expenses as pre-company reorganization costs considers the amount determined to be insufficient.

(3) Where this rule applies, determination of whether and to what extent the unpaid pre-company reorganization costs are approved for payment shall be—

(*a*) by resolution of a meeting of creditors other than in a case falling in paragraph (*b*); or

(*b*) in a case where the administrator has made a statement under section 35 (5) (*b*) of the Act—

(i) by the approval of each secured creditor of the company; or

(ii) if the administrator has made, or intends to make, a distribution to preferential creditors, by the approval of each—

(AA) secured creditor of the company; and

(BB) preferential creditors whose debts amount to more than fifty per cent of the preferential debts of the company,

disregarding debts of any creditor who does not respond to an invitation to give or withhold approval.

(4) The administrator shall call a meeting of the creditors' committee or of creditors if so requested for the purposes of rules (1), (2) and (3) by another insolvency practitioner who has charged fees or incurred expenses as pre-company reorganization costs and the administrator shall deliver notice of the meeting within twenty-eight days of receipt of the request.

(5) The administrator, where the fees were charged or expenses incurred by the administrator, or other insolvency practitioner, where the fees were charged or expenses incurred by that practitioner, may apply to the Court for a determination of whether and to what extent the unpaid pre-company reorganization costs are approved for payment if—

(*a*) there is no determination under subrule (1) or (3); or

(*b*) there is such a determination but the administrator or other insolvency practitioner who has charged fees or incurred expenses as pre-company reorganization costs considers the amount determined to be insufficient.

(6) The administrator or other insolvency practitioner shall deliver at least fourteen days' notice of the application to the members of the creditors' committee and the committee may nominate one or more members to appear, or be represented, and to be heard on the application.

(7) Where there is no creditors' committee, notice of the application shall be delivered to such one or more of the company's creditors as the Court may direct, and those creditors may nominate one or more of their number to appear or be represented.

(8) The Court may, if it appears to be a proper case, order the costs of the application, including the costs of any member of the creditors' committee appearing or being represented on it, or of any creditor so appearing or being represented, to be paid as an expense of the company reorganization.

(9) Where the administrator fails to call a meeting of the creditors' committee or of creditors in accordance with subrule (4), the other insolvency practitioner may apply to the Court for an order requiring the administrator to do so.

Final progress reports

54. "Final progress report" means a progress report which includes a summary of—

(*a*) the administrator's original proposals;

(*b*) any revised proposals;

(*c*) the steps taken during the company reorganization; and

(*d*) the outcome.

Application to extend a company reorganization and extension by consent

55.—(1) Where the administrator applies to Court for an order to, or requests the consent of creditors to, extend the administrator's term of office under section 51 (2) of the Act, the application or request shall be accompanied by a progress report for the period since—

(*a*) the last progress report, if any; or

(*b*) if there has been no previous progress report, the date on which the company entered company reorganization.

(2) Where the Court makes an order extending the administrator's term of office, the administrator shall, as soon as it is reasonably practicable, deliver to the creditors notice of the order together with a copy of the progress report which accompanied the application to the Court.

(3) Where the administrator's term of office has been extended with the consent of creditors, the administrator shall, as soon as it is reasonably practicable, deliver to the creditors notice of the extension.

Notice of automatic end of company reorganization

56.—(1) This rule applies where—

(*a*) the appointment of an administrator has ceased to have effect; and

(*b*) the administrator is not required by any other rule to give notice of that fact.

(2) The administrator shall, as soon as it is reasonably practicable, and in any event within five business days of the date on which the appointment has ceased, file with the Court a notice accompanied by a final progress report.

(3) The notice shall—

(*a*) be headed "Notice of Automatic End of Company Reorganization" and identify the company immediately below the heading;

(*b*) state—

(i) the administrator's name and address;

(ii) that that person has been appointed administrator of the company;

(iii) the date of the appointment;

(iv) the name of the person who made the appointment or the company reorganization application, as the case may be;

(v) that the appointment has ceased to have effect;

(vi) the date on which the appointment ceased to have effect;

(vii) that a copy of the final progress report accompanies the notice; and

(viii) be signed by the administrator and dated.

(4) A copy of the notice and an accompanying final progress report shall be delivered, as soon as it is reasonably practicable, to—

(*a*) the Registrar of Companies;

(*b*) the Director;

(*c*) the directors of the company; and

(*d*) all other persons to whom notice of the administrator's appointment was delivered.

(5) An administrator who fails to comply with this rule commits an offence and shall be liable to a fine of—

(*a*) K50,000 and to imprisonment for six months; and

(*b*) K25,000 for every day during which the default continues.

Notice of end of company reorganization when purposes achieved

57.—(1) Where an administrator who was appointed under section 18 or 20 of the Act thinks that the purpose of company reorganization has been sufficiently achieved, he may file with the Court a notice ("Notice of End of Company Reorganization") under section 53 of the Act which shall—

(*a*) be headed "Notice of End of Company Reorganization" and identify the company immediately below the heading;

(*b*) state—

(i) the administrator's name and address;

(ii) that that person has been appointed administrator of the company;

(iii) the date of the appointment;

(iv) the name of the person who made the appointment or the company reorganization application, as the case may be;

(v) that the administrator thinks that the purpose of the company reorganization has been sufficiently achieved;

(vi) that a copy of the final progress report accompanies the notice;

(vii) that the administrator is filing the notice with the Registrar of Companies; and

(viii) be signed by the administrator and dated.

(2) The notice of end of company reorganization shall be accompanied by a final progress report.

(3) The notice of end of company reorganization filed with the Court shall also be accompanied by a copy of the notice.

(4) The Court shall endorse the notice and the copy of the notice with the date and time of filing, seal the copy and deliver it to the administrator.

(5) The period within which the administrator shall, under section 53 (3) of the Act, send a copy of the notice to every creditor of whose name and address the administrator is aware of is five business days.

(6) The copy notice sent to creditors shall be accompanied by the final progress report.

(7) The administrator shall also, within five business days, deliver a copy of the notice and the accompanying report to—

(*a*) the Director;

(*b*) the directors of the company; and

(*c*) all other persons, other than the creditors, members and the Registrar of Companies, to whom notice of the administrator's appointment was delivered.

(8) The administrator shall be deemed to have complied with section 53 (3) of the Act if, within five business days of filing with the

Court the notice of end of company reorganization, the administrator publishes in the *Gazette*, a notice which—

(*a*) contains the standard contents;

(*b*) states—

(i) that the company reorganization has ended;

(ii) the date on which the company reorganization ended;

(iii) undertakes that the administrator will provide a copy of the notice of end of company reorganization to any creditor or member of the company who applies in writing; and

(iv) specifies the address to which to write to.

(9) The notice published in the *Gazette* under this rule shall also be advertised in such other manner as the administrator thinks fit.

Administrator's application for order ending company reorganization

58.—(1) An application to Court by the administrator under section 52 of the Act for an order ending a company reorganization shall be accompanied by—

(*a*) a progress report for the period since the last progress report, if any, or if there has been no previous progress report, the date on which the company entered company reorganization;

(*b*) a statement indicating what the administrator thinks should be the next steps for the company, if applicable; and

(*c*) where the administrator makes the application because of a requirement by a creditors' meeting, a statement indicating with reasons whether or not the administrator agrees with the requirement.

(2) Where the application is made other than because of a requirement by a creditors' meeting—

(*a*) the administrator shall, at least five business days before the application is made, deliver a notice of the administrator's intention to apply to Court to the person who applied for the company reorganization and the creditors; and

(*b*) the application shall be accompanied by—

(i) a statement that a notice has been delivered to the creditors; and

(ii) copies of any response from creditors to that notice.

(3) Where the application is in conjunction with a petition under section 107 of the Act for an order to wind-up the company, the administrator shall, at least five business days before the application is made, deliver a notice to the creditors as to whether the administrator intends to seek appointment as liquidator.

Notice by administrator of Court order

59. Where the Court makes an order ending the company reorganization, the administrator shall, as soon as it is reasonably practicable, deliver a copy of the order and of the final progress report to—

(*a*) the Registrar of Companies;

(*b*) the Director;

(*c*) the directors of the company; and

(*d*) all other persons to whom notice of the administrator's appointment was delivered.

Grounds for resignation

60.—(1) The administrator may resign—

(*a*) on grounds of his ill health;

(*b*) if he intends to cease to practise as an insolvency practitioner; or

(*c*) if there is a conflict of interest, or a change of personal circumstances, which in either case prevents or makes the further discharge of the duties of administrator impracticable.

(2) The administrator may, with the permission of the Court, resign on other grounds.

Notice of intention to resign

61.—(1) The administrator shall give at least five business days' notice of intention to resign in a case falling within rule 60 (1), or to apply for the Court's permission to resign in a case falling within rule 60 (2).

(2) The notice shall be delivered to—

(*a*) the continuing administrator of the company, if any;

(*b*) the creditors' committee, if any;

(*c*) the company and the company's creditors, if there is neither a continuing administrator nor a creditors' committee; and

(*d*) the Director.

Notice of resignation

62.—(1) A notice of resignation shall be effected by filing the notice with the Court.

(2) A resigning administrator shall, within five business days of delivering notice, file a copy of the notice with the Court, and deliver a copy of it to—

(*a*) the Registrar of Companies;

(*b*) the Director; and

(*c*) all persons, other than the person who made the appointment, to whom notice of intention to resign was delivered.

(3) The notice shall—

(*a*) identify the company; and

(*b*) state—

(i) the date from which the resignation is to have effect; and

(ii) where the resignation is with the permission of the Court, the date on which permission was given.

Application to Court to remove administrator from office

63.—(1) An application for an order that the administrator be removed from office shall state the grounds on which the order is sought.

(2) A copy of the application shall be delivered, not less than five business days before the date fixed for the hearing, to—

(*a*) the administrator;

(*b*) the person who made the application for the company reorganization order;

(*c*) the creditors' committee, if any;

(*d*) any other administrator appointed to act jointly or concurrently;

(*e*) the Director; and

(*f*) the company and all the creditors, where there is neither a creditors' committee nor another administrator appointed to act jointly or concurrently.

(3) The Court shall deliver to the applicant a copy of an order removing the administrator.

(4) The applicant shall, as soon as it is reasonably practicable, and in any event within five business days of the copy of the order being delivered, deliver a copy of the order to—

(*a*) the administrator;

(*b*) all other persons to whom notice of the application was delivered;

(*c*) the Registrar of Companies; and

(*d*) the Director.

Notice of vacation of office when administrator ceases to be qualified to act

64. An administrator who has ceased to be qualified to act as an insolvency practitioner in relation to the company shall give notice to the Director and the Registrar of Companies.

Deceased administrator

65.—(1) Whenever an administrator dies, a notice of the fact and date of death shall be filed with the Court.

(2) The notice shall be filed, as soon as it is reasonably practicable, by one of the following persons—

(*a*) a partner in the deceased administrator's firm, where the deceased administrator was a partner in, or an employee of, the firm; or

(*b*) a personal representative of the deceased administrator.

(3) Where a notice has not been filed within twenty-eight days following the administrator's death, then any other person may file the notice.

(4) The person who files the notice shall also deliver a notice containing the fact and date of death and the standard contents to the Registrar of Companies.

Application to replace an administrator

66.—(1) Where an application to Court is made to appoint a replacement administrator, the application shall be accompanied by the proposed replacement administrator's consent to act.

(2) A copy of the application shall be delivered to—

(*a*) the person who made the application for the company reorganization order;

(*b*) any person who has appointed a receiver of the company;

(*c*) any person who is or may be entitled to appoint a receiver of the company;

(*d*) the petitioner and any provisional liquidator, if there is a pending petition for the winding-up of the company;

(*e*) the company, if the application is made by anyone other than the company; and

(*f*) the proposed administrator.

Appointment of replacement or additional administrator

67.—(1) Where a replacement administrator is appointed or an additional administrator is appointed to act jointly or concurrently, the replacement or additional administrator shall deliver a notice of the appointment to the Registrar of Companies.

(2) All documents subsequent to the delivery of the notice of appointment under subrule (1) shall clearly state the appointment of a person as that of a replacement administrator or an additional administrator appointed to act jointly or concurrently.

PART III

Receivership

Receivers or managers: acceptance of appointment

68.—(1) This Part applies where a secured party's interest—

(*a*) relates to the whole or substantially the whole of the debtor's property;

(*b*) by a number of security interests which together relate to the whole or substantially the whole of the debtor's property; or

(*c*) by charges and other forms of security interest which together relate to the whole or substantially the whole of the debtor's property.

(2) Where two or more persons are appointed as joint receivers or managers of a company's property under powers contained in an instrument—

(*a*) each of them shall accept the appointment in accordance with section 75 of the Act as if each were a sole appointee;

(*b*) the joint appointment takes effect only when all of them have accepted the appointment; and

(*c*) the joint appointment is deemed to have been made at the time at which the instrument of appointment was received by or on behalf of each of them.

(3) A person who is appointed as the sole or joint receiver or manager of a company's property under powers contained

in an instrument and accepts the appointment, but not in writing, shall confirm the acceptance in writing to the person making the appointment within five business days.

(4) The confirmation shall state the time and date of—

(*a*) receipt of the instrument of appointment; and

(*b*) the acceptance of the appointment.

(5) Acceptance or confirmation of acceptance of appointment as a receiver or manager of a company's property, whether under the Act or these Rules, may be given by any person, including, in the case of a joint appointment, any joint appointee duly authorized for that purpose on behalf of the receiver or manager.

Receiver's security

69.—(1) A person appointing a receiver shall be satisfied that the appointee has security for the proper performance of the office.

(2) The creditors' committee shall review the adequacy of the security from time to time.

(3) The cost of the security shall be an expense of the receivership.

Publication of appointment of receiver

70.—(1) The notice which a receiver is required by section 79 of the Act to send to the company, Registrar of Companies, the Director and creditors on being appointed, shall identify the company within seven days of appointment and state—

(*a*) any other registered name of the company in the twelve months preceding the date of the appointment;

(*b*) any name under which the company has traded at any time in those twelve months, if substantially different from its then registered name;

(*c*) the name and address of the person appointed;

(*d*) the date of the appointment;

(*e*) the name of the person who made the appointment; and

(*f*) the date of the instrument conferring the power under which the appointment was made and a brief description of—

(i) the instrument itself; and

(ii) any assets of the company in relation to which the appointment is not made.

(2) The notice which a receiver is required to give under section 79 of the Act—

(*a*) shall be published in the *Gazette*;

(*b*) may be advertised in such other manner as the receiver thinks fit; and

(*c*) shall state, in addition to the standard contents—

(i) that a receiver or receiver and manager has been appointed;

(ii) the date of the appointment;

(iii) the name of the person who made the appointment; and

(iv) the nature of the business of the company.

Requirement to provide a statement of affairs

71.—(1) A requirement under section 84 (1) of the Act for a nominated person to provide the receiver with a statement of affairs of the company shall be made by a notice delivered to such a person within fourteen days after the appointment of the receiver.

(2) The notice shall be headed "Notice Requiring Statement of Affairs" and shall—

(*a*) identify the company immediately below the heading;

(*b*) require the recipient to prepare and submit to the receiver a statement of affairs of the company; and

(*c*) inform each recipient of—

(i) the name and address of any other nominated person to whom a notice has been delivered; and

(ii) the date by which the statement shall be delivered to the receiver.

(3) The receiver shall inform each nominated person that a document for the preparation of the statement of affairs capable of completion may be supplied, if requested.

Statement of affairs: concurrence and retention by receiver

72.—(1) The receiver may require any of the persons mentioned in section 84 (1) of the Act to deliver a statement of concurrence.

(2) A statement of concurrence may be qualified in relation to matters dealt with in the statement of affairs where the maker of the statement of concurrence—

(*a*) is not in agreement with the nominated person submitting the statement of affairs;

(*b*) considers the statement to be erroneous or misleading; or

(*c*) is without the direct knowledge necessary for concurring with it.

(3) A person who makes a statement of concurrence shall—

(*a*) verify it by a sworn statement; and

(*b*) deliver both the statement of concurrence and the statement of affairs to the receiver together with copy of them.

(4) The receiver shall retain the verified statement of affairs and each statement of concurrence as part of the records of the receivership.

Statement of affairs: release from requirement and extension of time

73.—(1) The receiver may, on his own initiative or at the request of any nominated person, exercise the powers under section 84 (1) of the Act to—

(*a*) release a person from an obligation imposed under section 84 (1) or (2) of the Act; or

(*b*) concur in an application to Court seeking to extend the period for submitting a statement of affairs.

(2) Where a nominated person requests a release or extension, the nominated person may apply to the Court.

(3) Where the Court considers that no sufficient cause is shown for the application, it shall deliver to the applicant a notice to that effect and where—

(*a*) within five business days of delivery of that notice, the applicant applies to the Court to fix a date, time and venue for a hearing, without notice to any other party, as to whether sufficient cause is shown, the Court shall fix the date, time and venue of the hearing; and

(*b*) the applicant does not deliver notice in accordance with paragraph (*a*), the Court may dismiss the application without a hearing.

(4) Unless the application is dismissed under subrule (3), the Court shall fix a date, time and venue for it to be heard, and deliver notice to the applicant accordingly.

(5) The applicant shall, at least fourteen days before the hearing, deliver to the receiver a notice stating the date, time and venue and accompanied by a copy of the application and of any evidence which the applicant intends to provide in support of it.

(6) The receiver may—

(*a*) appear and be heard on the application;

(*b*) file a report of any matters which the receiver considers that they ought to be drawn to the Court's attention; or

(*c*) appear and be heard on the application and file a report of any matters which the receiver considers that they ought to be drawn to the Court's attention.

(7) Where a report is filed, the receiver shall deliver a copy of it to the applicant not later than five business days before the hearing.

(8) Sealed copies of any order made on the application shall be delivered by the Court to the applicant and the receiver.

(9) On any application under this rule, the applicant's costs shall be paid by the applicant in any event, however, the Court may order that allowance towards them may be made out of the assets under the receiver's control.

Limited disclosure

74.—(1) Where the receiver thinks that disclosure of the whole or part of the statement of affairs may likely prejudice the conduct of the receivership or might reasonably be expected to lead to violence against any person, the receiver may apply to the Court for an order that the statement of affairs or any specified part of it may not be open to inspection, except with permission of the Court.

(2) The Court order referred to in subrule (1), may include directions regarding the delivery of documents to the Registrar of Companies and the disclosure of relevant information to other persons.

Report delivered to Registrar of Companies and the Director

75.—(1) The report which under section 91 (4) of the Act a receiver is required to send or deliver to the Registrar of Companies and the Director shall be accompanied by a copy of any statement of affairs under section 84 (1) (*c*) of the Act.

(2) The duty to send a copy of the report to the Registrar of Companies and the Director is subject to any order for limited disclosure made under rule 74.

(3) Where a statement of affairs is submitted or statement of concurrence is delivered to the receiver after the report is sent to the Registrar of Companies and the Director, the receiver shall, as soon as it is reasonably practicable after its receipt, deliver a copy of it to the Registrar of Companies and the Director.

(4) The report under section 88 (1) of the Act shall state, to the best of the receiver's knowledge and belief, and in addition to the matters required by section 88 (1) of the Act, an estimate of the value of the company's net property.

(5) The receiver may exclude, from the estimates under subrule (3), information the disclosure of which could seriously prejudice the commercial interests of the company, but in that case, the estimates shall be accompanied by a statement to that effect.

Copy of report for unsecured creditors

76. A notice stating an address to which unsecured creditors shall request in writing for copies of a receiver's report may be advertised in such manner as the receiver considers fit.

Invitation by correspondence to creditors to form a creditors' committee

77.—(1) A receiver who decides not to convene a creditors' meeting shall deliver to the creditors a notice inviting the creditors to vote on whether a creditors' committee should be established if sufficient creditors are willing to be members of the committee.

(2) The notice shall state that votes and nominations for membership of a creditors' committee shall be—

(*a*) delivered to the receiver with details of the creditor's claim by the deadline; and

(*b*) accepted if accompanied by such details.

(3) The deadline shall be at least fourteen days after the date on which the receiver delivers the notice.

(4) The notice under subrule (1) shall be accompanied by the report under section 88 (1) of the Act.

Summary of receipts and payments

78.—(1) The receiver shall deliver a summary of receipts and payments as receiver to the Registrar of Companies, the Director, the company and to the person who made the appointment, and to each member of the creditors' committee.

(2) The summary shall be delivered to the persons mentioned in subrule (1) within two months after the following—

(*a*) the period of six months from the date of being appointed;

(*b*) the end of every subsequent period of six months; and

(*c*) ceasing to act as receiver.

(3) The summary shall show receipts and payments—

(*a*) during the relevant period of twelve months; or

(*b*) where the receiver has ceased to act, during the period—

(i) from the end of the last six month period to the time when the receiver so ceased; or

(ii) if there has been no previous summary, since being appointed.

(4) This rule is without prejudice to the receiver's duty to produce proper accounts otherwise than as stated in subrules (1), (2) and (3).

Resignation of receiver

79.—(1) A receiver shall deliver a notice of intention to resign, at least five business days before the date the resignation is intended to take effect, to—

(*a*) the person by whom the appointment was made;

(*b*) the company or, if it is in liquidation, the liquidator; and

(*c*) the members of the creditors' committee.

(2) The notice given under subrule (1) shall specify the date on which the receiver intends the resignation to take effect.

Deceased receiver

80.—(1) Where the receiver dies, a notice of the fact and date of death shall be delivered, as soon as it is reasonably practicable, to—

(*a*) the person by whom the appointment was made;

(*b*) the Registrar of Companies;

(*c*) the Director;

(*d*) the company or, if it is in liquidation, the liquidator; and

(*e*) the creditors' committee or a member of that committee.

(2) The notice shall be delivered by one of the following persons—

(*a*) a partner in the deceased receiver's firm, if the deceased was a partner in, or an employee of, a firm; or

(*b*) a personal representative of the deceased receiver.

(3) Where the notice has not been delivered within twenty-eight days following the receiver's death, then any other person may deliver the notice.

Vacation of office in other cases

81. A receiver, on vacating office on completion of the receivership, or in consequence of ceasing to be qualified as an insolvency practitioner, shall, as soon as it is reasonably practicable, deliver notice of doing so to—

(*a*) the company or, if it is in liquidation, the liquidator; and

(*b*) the members of the creditors' committee.

PART IV

Winding-up of the Company

Division I—Winding-up of the Company by the Court

Application of this Division

82. This Division applies to winding-up of the company by the Court whether the petition for winding-up of the company is presented under the Act or under any written law enabling the presentation of a winding-up of the company petition.

Statutory demand (s. 184 of the Act)

83.—(1) A statutory demand shall—

(*a*) identify the company;

(*b*) state the registered office of the company;

(*c*) state the name and address of the creditor;

(*d*) specify the section of the Act under which it is made;

(*e*) state the amount of the debt not being less than K100,000 and the consideration for it, or, if there is no consideration, the nature of the claim;

(*f*) give details of the judgment or order, if the demand is founded on a judgment or order of a Court;

(*g*) details of the original creditor and any intermediary assignees, if the creditor is entitled to the debt by way of assignment; and

(*h*) be dated, and signed by the creditor or a person authorized to make the demand on the creditor's behalf.

(2) A demand which is signed by an authorized person shall state that—

(*a*) that person is authorized to make the demand on the creditor's behalf; and

(*b*) person's relationship to the creditor.

(3) Where the amount claimed in the demand includes—

(*a*) any charge by way of interest of which notice had not previously been delivered to the company as included in its liability; or

(*b*) any other charge accruing from time to time, the amount or rate of the charge shall be separately identified, and the grounds on which payment of it is claimed shall be stated.

(4) The amount claimed for charges mentioned in subrule (3) shall be limited to the amount which has accrued and due at the date of the demand.

Contents of petition

84.—(1) The petition shall—

(*a*) contain the name of the Court and the Registry;

(*b*) state the name and postal address of the petitioner;

(*c*) identify the company which is the subject of the petition;

(*d*) state the date on which the company was incorporated;

(*e*) state the nominal capital of the company, if applicable;

(*f*) state the number of shares the capital of the company is divided into and the value of each share;

(*g*) state the amount of capital of the company;

(*h*) state the principal objects for which the company was established or the nature of the company's business, if known;

(*i*) provide details of any other objects stated in the company's articles of association;

(*j*) state the grounds on which the winding-up of the company order is sought;

(*k*) state whether the company is limited by guarantee;

(*l*) state whether, in the opinion of the person making the statement, the proceedings will be foreign main proceedings or foreign non-main proceedings under Part X of the Act and that the reasons are given in the sworn statement;

(*m*) state that in the circumstances it is just and reasonable that the company be wound-up;

(*n*) state that the petitioner applies for an order that the company be wound-up by the Court under the Act, or that such other order be made as the Court considers just;

(*o*) state the name and postal address of any person on whom the petitioner intends to serve the petition; and

(*p*) state the contact details of the petitioner's legal practitioners, if any.

(2) A petition filed by an administrator of a company under company reorganization shall—

(*a*) be expressed to be the petition of the company by its administrator;

(*b*) state the name of the administrator, the Court case number and the date that the company entered company reorganization; and

(*c*) where applicable, requesting that the appointment of the administrator should cease to have effect.

(3) The petition shall also contain space for the Court to complete with the details for hearing the petition.

Request to appoint administrator or receiver as liquidator

85.—(1) This rule applies where a petition requests the appointment of an administrator or a receiver as liquidator.

(2) The person whose appointment is sought ("the appointee") shall, not less than two business days before the date appointed for hearing the petition, file with the Court a report including particulars of—

(*a*) the date on which the appointee delivered notice to creditors of the company, either in writing or at a meeting of creditors, of the intention to seek that person's appointment as liquidator, such date to be at least seven business days before the day on which the report is filed; and

(*b*) details of any response from creditors to that notice, including any objections to the proposed appointment.

Verification of petition

86.—(1) The petition shall be verified by a sworn statement.

(2) Where the petition is in respect of debts due to different creditors, then the debt to each creditor shall be verified separately.

(3) A sworn statement which is not contained in or endorsed upon the petition shall identify the petition and shall—

(*a*) identify the company;

(*b*) state the name of the petitioner; and

(*c*) state the name of the Court and the Registry in which the petition is to be presented.

(4) The sworn statement shall be signed and dated—

(*a*) by the petitioner, or if there are two or more petitioners, any one of them;

(*b*) by some person such as a director, company secretary or similar company officer, or a legal practitioner, who has been involved in the matters giving rise to the presentation of the petition; or

(*c*) by some responsible person who is duly authorized to sign the sworn statement and has the requisite knowledge of those matters.

(5) Where the person swearing the sworn statement is not the petitioner, or one of the petitioners, the swom statement shall state—

(*a*) the name and postal address of the person making the statement;

(*b*) the capacity in which, and the authority by which, that person signs the statement; and

(*c*) the means of that person's knowledge of the matters verified in the sworn statement.

(6) A sworn statement verifying more than one petition shall—

(*a*) include, in its title, the names of the companies to which it relates; and

(*b*) set out, in relation to each company, the statements relied on by the petitioner, and a clear and legible photocopy of the sworn statement shall be filed with each petition which it verifies.

(7) The sworn statement shall give the reasons why the person making the statement considers the proceedings will be foreign main proceeding or foreign non-main proceeding under Part X of the Act.

Copies of petition to be served on company or delivered to other persons

87.—(1) Where this rule requires the petitioner to serve a copy of the petition on the company or deliver a copy to another person the petitioner shall, when filing the petition with the Court, file an additional copy with the Court for each such person.

(2) Where to the petitioner's knowledge—

(*a*) the company is in the course of being wound-up voluntarily, the petitioner shall deliver a copy of the petition to the liquidator; or

(*b*) a receiver has been appointed in relation to the company, or the company is in company reorganization, the petitioner shall deliver a copy of the petition to the receiver or the administrator.

(3) Where the Act or this rule requires the petitioner to deliver a copy of the petition, the copy shall be delivered within three business days after the day on which the petition is served on the company.

Notice of petition

88.—(1) Unless the Court otherwise directs, the petitioner shall give notice of the petition.

(2) In addition to the standard contents for a notice to be published in the *Gazette*, the notice shall state—

(*a*) that a petition has been presented for the winding-up of the company;

(*b*) in the case of a foreign company, the address at which service of the petition was effected;

(*c*) the name and address of the petitioner;

(*d*) the date on which the petition was presented;

(*e*) the date, time and venue fixed for the hearing of the petition;

(*f*) the name and address of the petitioner's legal practitioner, if any; and

(*g*) that any person intending to appear at the hearing, whether to support or oppose the petition, shall give notice of that intention.

(3) The notice shall be published in at least two daily newspapers of wide circulation.

(4) The notice shall be made to appear—

(*a*) if the petitioner is the company itself, not less than seven business days before the day appointed for the hearing; and

(*b*) otherwise, not less than seven business days after service of the petition on the company, nor less than seven business days before the day so appointed.

(5) The Court may adjourn the hearing of the petition or dismiss the petition if notice of the hearing is not given in accordance with this rule.

Persons entitled to request a copy of petition

89. Where a director, contributory or creditor requests a copy of the petition from the legal practitioner for the petitioner, or the petitioner, if acting in person, and pays the prescribed fee for copies, the legal practitioner or petitioner shall deliver the copy within two business days.

Certificate of compliance

90.—(1) The petitioner or the petitioner's legal practitioner shall, at least five business days before the hearing of the petition, file with the Court a certificate of compliance relating to service and notice of the petition.

(2) The certificate shall be signed and dated by the petitioner or the petitioner's legal practitioner and shall state—

(*a*) the date of presentation of the petition;

(*b*) the date fixed for the hearing; and

(*c*) the date or dates on which the petition was served and notice of it was given in compliance with these Rules.

(3) Subject to subrule (4), a copy of any notice given shall be filed with the Court with the certificate.

(4) Where it is not reasonably practicable to file a copy of the notice, a statement of the content of the notice shall be filed with the Court with the certificate.

(5) The Court may, if it considers just, adjourn the hearing of the petition or dismiss the petition if this rule is not complied with.

Permission for the petitioner to withdraw

91.—(1) Where at least five business days before the hearing the petitioner, on an application without notice to any other party, satisfies the Court that—

(*a*) notice of the petition has not been given as required by rule 88;

(*b*) no notices in support or in opposition to the petition have been received by the petitioner; and

(*c*) the company consents to an order being made under this rule,

the Court may allow the petitioner to withdraw the petition on such terms as to costs.

(2) The order shall—

(*a*) state the date on which the petition for the winding-up of the company was presented;

(*b*) state the name and postal address of the applicant;

(*c*) identify the company;

(*d*) state, that upon the application without notice to any other party by the applicant named in the order and upon considering the evidence the Court is satisfied that—

(i) the notice of the petition has not been given;

(ii) no notices in support of or in opposition to the petition have been received by the petitioner; and

(iii) the company consents to this order.

Notice by persons intending to appear

92.—(1) A creditor or contributory who intends to appear on the hearing of the petition shall deliver a notice of intention to appear to the petitioner.

(2) The notice shall contain the following—

(*a*) the name and address of the creditor or contributory, and any telephone number and reference which may be required for communication with that person or with any other person, also to be specified in the notice, authorized to speak or act on the creditor's or contributory's behalf;

(*b*) the date of the presentation of the petition and a statement that the notice relates to the matter of that petition;

(*c*) the date of the hearing of the petition;

(*d*) for a creditor the amount and nature of the debt due from the company to the creditor;

(*e*) for a contributory, the number of shares held in the company;

(*f*) whether the creditor or contributory intends to support or oppose the petition;

(*g*) where the creditor or contributory is represented by a legal practitioner or other agent, the name, postal address, telephone number and any contact detail of that person and details of that person's position with, or relationship to, the creditor or contributory; and

(*h*) the name and postal address of the petitioner.

(3) The notice shall be signed and dated by the person delivering it.

(4) The notice shall be delivered to the petitioner or the petitioner's legal practitioner at the address shown in the Court records, or in the notice of the petition required by rule 88.

(5) The notice shall be delivered so as to reach the petitioner, or the petitioner's legal practitioner, not later than 4:00 pm on the business day before that which is appointed for the hearing, or, where the hearing has been adjourned, for the adjourned hearing.

(6) A person who fails to comply with this rule may appear on the hearing of the petition only with the permission of the Court.

List of appearances

93.—(1) The petitioner shall prepare for the Court a list of the creditors and contributories who have given notice under rule 88.

(2) The list of the creditors and contributories shall contain—

(*a*) the date of the presentation of the petition;

(*b*) the date of the hearing of the petition;

(*c*) a statement that the creditors and contributories listed have delivered notice that they intend to appear at the hearing of the petition;

(*d*) their names and addresses;

(*e*) the amount owed to each creditor;

(*f*) the number of shares held by each contributory;

(*g*) the name and postal address of any legal practitioner for a person listed; and

(*h*) whether each person listed intends to support or oppose the petition.

(3) On the day appointed for the hearing of the petition, a copy of the list of the creditors and contributories shall be filed with the Court before the hearing commences.

(4) Where the Court gives a person permission to appear, then the petitioner shall add the person to the list of the creditors and contributories and complete in respect of the person the particulars in subrule (2).

Sworn statement in opposition

94.—(1) Where the company intends to oppose the petition, it shall not later than five business days before the date fixed for the hearing—

(*a*) file with the Court, a sworn statement in opposition; and

(*b*) deliver a copy of the sworn statement to the petitioner or his legal practitioner.

(2) The sworn statement shall—

(*a*) identify the proceedings;

(*b*) state that the company intends to oppose the winding-up of the company petition; and

(*c*) state the grounds on which the company opposes the petition.

Substitution of creditor or contributory for petitioner

95.—(1) This rule applies where the petitioner—

(*a*) is subsequently found not to have been entitled to present the petition;

(*b*) fails to give notice of the petition in accordance with rule 88;

(*c*) consents to withdraw the petition, or to allow it to be dismissed, consents to an adjournment, or fails to appear in support of the petition when it is called in Court on the day originally fixed for the hearing, or on a day to which it is adjourned; or

(*d*) appears, but does not apply for an order in the terms of the prayer in the petition.

(2) The Court may, on such terms as it considers just, substitute as petitioner any creditor or contributory who, in its opinion, would have a right to present a petition and who wishes to prosecute it.

Order for substitution

96.—(1) An order for substitution of a petitioner shall identify the proceedings and contain—

(*a*) date of hearing of the petition;

(*b*) name of the original petitioning creditor;

(*c*) name of the creditor or member who is willing to be substituted as petitioner;

(*d*) statement that the evidence has been considered;

(*e*) the following orders—

(i) that the named creditor be substituted for the original petitioning creditor and that the named creditor may amend the petition accordingly;

(ii) that the named creditor shall within five business days from the date of the order file a sworn statement in the petition;

(iii) that, at least fourteen days before the date of the adjourned hearing of the petition, the substituted petitioner shall serve a sealed copy of the amended petition on the company and deliver a copy to any other person to whom the original petition was delivered;

(iv) that the hearing of the amended petition be adjourned to the date, time and venue specified in the order; and

(v) that the question of the costs of the original petitioning creditor be reserved until the final determination of the amended petition;

(*f*) the date, time and venue of the adjourned hearing; and

(*g*) the date of the making of the order.

Adjournment of hearing of petition

97.—(1) Where the Court adjourns the hearing of the petition, the petitioner shall, as soon as it is reasonably practicable, deliver notice of the making of the order of adjournment and of the date, time and venue for the adjourned hearing to—

(*a*) the company; and

(*b*) any creditor or contributory who has given notice under rule 88 but was not present at the hearing.

(2) The notice shall identify the proceedings.

(3) The requirement to deliver such notices applies unless the Court otherwise directs.

Order for winding-up by the Court

98.—(1) An order for winding-up of the company by the Court shall—

(*a*) identify the company;

(*b*) state the name and postal address of the petitioner;

(*c*) state that the petitioner is—

(i) the company;

(ii) a creditor of the company; or

(iii) a contributory of the company;

(*d*) state the date of presentation of the petition;

(*e*) state, that upon consideration of the evidence, it is ordered that the company be wound-up by the Court under the Act;

(*f*) state whether the proceedings are foreign main proceedings or foreign non-main proceedings under Part X of the Act;

(*g*) order that the costs of certain persons specified in the order of the petition be paid out of the assets of the company; and

(*h*) state the date of the making of the order.

(2) The order may contain such additional terms concerning costs as the Court considers just.

Order for winding-up by the Court following the cessation of the appointment of an administrator

99.—(1) An order for winding-up of the company by the Court following the cessation of the appointment of an administrator shall—

(*a*) identify the company;

(*b*) state the name and postal address of the administrator of the company;

(*c*) state the date of the administrator's appointment;

(*d*) state the date of presentation of the petition by the administrator;

(*e*) order that upon consideration of the evidence—

(i) the appointment of the administrator ceases to have effect; and

(ii) the company is wound-up by the Court under the Act;

(*f*) state the name and postal address of the person to be appointed as liquidator of the company, if applicable;

(*g*) order, if applicable, that the person specified in the order is appointed liquidator of the company;

(*h*) state whether the proceedings are foreign main proceedings or foreign non-main proceedings under Part X of the Act; and

(*i*) state the date of the making of the order.

(2) The order may contain such additional terms as the Court considers just.

Notice to Official Receiver of winding-up order

100.—(1) When a winding-up of the company order has been made, the Court shall, as soon as it is reasonably practicable, deliver a notice to that effect to the Official Receiver.

(2) The notice shall be headed "Notice to Official Receiver of Winding-up of the Company Order" and shall—

(*a*) identify the company the subject of the order;

(*b*) state the date of presentation of the petition;

(*c*) state the date of the winding-up of the company order; and

(*d*) state the name and postal address of the petitioner or the petitioner's legal practitioner.

Division II—Shareholders' Voluntary Winding-up of the Company

Statutory declaration of solvency

101.—(1) The statutory declaration of solvency required by section 143 of the Act shall identify the company and state the name and postal address of each director making the declaration—

(*a*) that all of the directors, or a majority of the directors, have made a full inquiry into the affairs of the company and have formed the opinion that the company will be able to pay its debts in full together with interest within a specified period, which shall not exceed twelve months, from the commencement of the winding-up of the company;

(*b*) that the declaration is accompanied by a statement of the company's assets and liabilities as at a given date; and

(*c*) of that date, which shall be the latest practicable date, before the making of the declaration.

(2) The statement of the company's assets and liabilities shall contain—

(*a*) the date of the statement;

(*b*) a statement that the statement shows the assets of the company at estimated realizable values and liabilities of the company expected to rank as at the date referred to in paragraph (*a*);

(*c*) the estimated realizable value of each of the following assets of the company—

(i) balance at bank;

(ii) cash in hand;

(iii) marketable securities;

(iv) bills receivable;

(v) trade debtors;

(vi) loans and advances;

(vii) unpaid calls;

(viii) stock in trade;

(ix) work in progress;

(x) freehold property;

(xi) leasehold property;

(xii) machinery, plant and equipment;

(xiii) furniture, fittings and utensils;

(xiv) patents, trademarks and any other intellectual property;

(xv) investments other than marketable securities; and

(xvi) any other property;

(*d*) the total of the estimated realizable value of the company's assets;

(*e*) the value of each secured liability;

(*f*) the estimated costs of the winding-up of the company and other expenses including interest accruing until payment of debts in full;

(*g*) the value of unsecured liabilities of the company divided among—

(i) trade accounts;

(ii) bills payable;

(iii) accrued expenses;

(iv) other liabilities; and

(v) contingent liabilities; and

(*h*) the value of the estimated surplus after paying debts, costs and interest in full.

Division III—Liquidators

Appointment of liquidator by the company

102.—(1) This rule applies where the liquidator is appointed by a meeting of the company.

(2) The chairperson of the meeting shall certify the appointment when—

(*a*) the appointee has provided the chairperson with a statement to the effect that the appointee is an insolvency practitioner qualified under the Act to be the liquidator and consents to act such as; and

(*b*) the chairperson is satisfied that the appointee has security for the proper performance of the office.

(3) The cost of the security is an expense of the liquidation.

(4) The certificate shall be signed and dated by the chairperson and shall—

(*a*) identify the company;

(*b*) identify and provide contact details for the person appointed as liquidator;

(*c*) state the date of the meeting of the company when the liquidator was appointed; and

(*d*) state that at the meeting, the appointee—

(i) provided a statement of his being qualified to act as an insolvency practitioner in relation to the company under the Act;

(ii) consented to act; and

(iii) was appointed as liquidator of the company.

(5) Where two or more liquidators are appointed, the certificate shall also specify—

(*a*) which functions are to be exercised jointly; and

(*b*) which may be exercised by any of them.

(6) The chairperson shall deliver the certificate, as soon as it is reasonably practicable, to the liquidator, who shall keep it as part of the records of the winding-up of the company.

(7) Not later than twenty-eight days from the liquidator's appointment, the liquidator shall deliver notice of the appointment to all creditors of the company.

Appointment of liquidator by the Court

103.—(1) This rule applies where the liquidator is appointed by the Court under section 151 of the Act.

(2) The Court's order shall not be issued until the appointee has filed with the Court a statement to the effect that the appointee is an insolvency practitioner qualified under the Act to be the liquidator and consents to act as such.

(3) The order of the Court shall—

(*a*) state the name of the Court and the Registry in which the order is made;

(*b*) state the name and title of the person making the order;

(*c*) identify the company;

(*d*) state the name and postal address of the applicant;

(*e*) state the capacity in which the applicant is making the application;

(*f*) identify the liquidator;

(*g*) state, that upon consideration of the evidence, it is ordered that the liquidator, having filed a statement of being qualified to act as an insolvency practitioner in relation to the company under the Act and of consenting to act as such, is appointed liquidator of the company; and

(*h*) state the date of the making of the order.

(4) Where two or more liquidators are appointed, the order shall also specify—

(*a*) which functions are to be exercised jointly; and

(*h*) which may be exercised by any of them.

(5) The Court shall deliver a sealed copy of the order to the liquidator, whose appointment takes effect from the date of the order.

(6) The liquidator shall deliver the notice of the appointment to all creditors of the company, not later than twenty-eight days from the appointment.

Authentication of liquidator's appointment

104. A copy of the certificate of the liquidator's appointment, or a sealed copy of the Court's order appointing the liquidator, may be provided in any proceedings as proof that the person appointed is authorized to exercise the powers and perform the duties of liquidator in the company's winding-up of the company.

Liquidator's resignation

105.—(1) A liquidator may resign—

(*a*) on grounds of his ill health;

(*b*) if he ceases to practise as an insolvency practitioner;

(*c*) if there is some conflict of interest or change of personal circumstances which precludes or makes it impracticable for him to further discharge the duties of a liquidator; or

(*d*) where two or more persons are acting as liquidator jointly and it is the opinion of both or all of them that it is no longer expedient that there should continue to be that number of joint liquidators.

(2) Before the liquidator resigns, he shall deliver a notice to the members of the company either inviting them to consider by correspondence or calling a meeting for them to consider whether a replacement should be appointed.

(3) The notice—

(*a*) shall state the liquidator's intention to resign;

(*b*) shall state the purpose of the notice; and

(*c*) may suggest the name of a replacement liquidator.

(4) The notice shall be accompanied by an account of the liquidator's administration of the winding-up of the company, including a progress report for the period—

(*a*) commencing with the later of the date of the liquidator's appointment, and the day after the end of the period of the last progress report; and

(*b*) ending with the day of the deadline for voting by correspondence or the date of the meeting.

(5) The date of the deadline or the meeting shall be not more than five business days before the date on which the liquidator intends to give notice.

(6) A new liquidator appointed in place of the liquidator who has resigned shall, in delivering the notice of appointment, also state that the previous liquidator has resigned.

(7) The liquidator who has resigned shall deliver the notice of resignation to the Registrar of Companies and the Director.

(8) The release of the liquidator who has resigned shall be effective from the date on which the liquidator delivers the notice of resignation to the Registrar of Companies and the Director.

Removal of liquidator by the Court

106.—(1) This rule applies where an application is made to the Court for the removal of a liquidator, or for an order directing a liquidator to summon a company meeting for the purpose of removing the liquidator.

(2) Where the Court considers that no sufficient cause is shown for the application, it shall deliver a notice to that effect to the applicant.

(3) Upon the delivery of the notice under subrule (2), the applicant may, by notice, within five business days of delivery of the Court's notice, request for a date, time and venue to be fixed for a hearing as to whether sufficient cause is shown, and the Court shall do so without notice to any other party.

(4) Where the applicant gives no notice under subrule (3), the Court may dismiss the application without a hearing.

(5) Unless the application is dismissed, the Court shall fix a date, time and venue for it to be heard.

(6) The Court may require the applicant to make a deposit or give security for the costs to be incurred by the liquidator on the application.

(7) The applicant shall, at least fourteen days before the hearing, deliver to the liquidator a notice stating the date, time and venue and accompanied by a copy of the application and of any evidence which the applicant intends to provide in support of it.

(8) The costs of the application shall not be payable as an expense of the winding-up of the company unless the Court orders otherwise.

(9) On a successful application, the Court's order shall—

(*a*) state the name of the Court and the Registry in which the order is made;

(*b*) state the name and title of the person making the order;

(*c*) state the name and postal address of the applicant;

(*d*) state the capacity in which the applicant is making the application;

(*e*) identify and provide contact details for the liquidator;

(*f*) identify the company;

(*g*) state that, upon consideration of the evidence, it is ordered that—

(i) the liquidator be removed from office; or

(ii) the liquidator shall summon a meeting of the company's creditors on or before a date stated in the order for the purpose of considering the liquidator's removal from office; and

(*h*) state the date the order is made.

(10) The order of the Court may include such provision as the Court considers just relating to matters arising in connexion with the removal.

(11) Where the Court removes the liquidator—

(*a*) it shall deliver three copies of the order of removal to the former liquidator; and

(*b*) the former liquidator shall, as soon as reasonably practicable, deliver one copy of the order to the Registrar of Companies and the Director.

(12) Where the Court appoints a new liquidator, the provisions of rule 103 shall apply, *mutatis mutandis*.

Removal of liquidator by company meeting

107. A liquidator removed by a meeting of the company shall, as soon as it is reasonably practicable, deliver the notice of the removal to the Registrar of Companies and the Director.

Vacation of office of liquidator on completion of winding-up

108.—(1) The liquidator shall not deliver a notice under section 155 (3) of the Act to the Director, the Official Receiver and the Registrar of Companies until at least eight weeks after the final report on the winding-up of the company and the notice of the liquidator's intention to vacate office has been delivered to the members of the company.

(2) In addition to the standard contents, the notice shall state—

(*a*) that the liquidator has delivered the notice of intention to vacate office and the copy of the final report to all members; and

(*b*) the date of that notice.

(3) The notice shall be signed and dated by the liquidator.

(4) The notice to the Director, the Official Receiver and the Registrar of Companies shall be accompanied by the copy of the final report.

(5) Where a member has applied to the Court under rule 106 and delivered a copy of the application to the liquidator, the liquidator shall not deliver the notice of vacation of office under section 155 (3) of the Act until the application, including any appeal, has been disposed of and the liquidator has complied with any order of the Court.

Deceased liquidator

109.—(1) Where the liquidator dies, a notice of the fact and date of death shall be delivered, as soon as it is reasonably practicable, to—

(*a*) one of the company's directors; and

(*b*) the Director, the Official Receiver and the Registrar of Companies.

(2) The notice shall be delivered by one of the following—

(*a*) a partner in the deceased liquidator's firm if the deceased was a partner in, or an employee of, a firm; or

(*b*) a personal representative of the deceased liquidator.

(3) Where the notice has not been delivered within twenty-eight days following the liquidator's death, then any other person may deliver the notice.

Liquidator's loss of qualification as insolvency practitioner

110.—(1) This rule applies where the liquidator vacates office on ceasing to be qualified to act as an insolvency practitioner.

(2) The liquidator shall, upon ceasing to be qualified to act as an insolvency practitioner, or as soon as it is reasonably practicable, give notice to vacate the office of the liquidator of a company to the Director, the Official Receiver and the Registrar of Companies.

(3) The notice shall—

(*a*) identify and provide contact details for the former liquidator;

(*b*) identify the company;

(*c*) state that the former liquidator ceased to be a qualified insolvency practitioner with effect from the date stated in the notice; and

(*d*) be signed and dated by the former liquidator.

Power of the Court to set aside certain transactions entered into by liquidator

111.—(1) Where in dealing with a company a liquidator enters into any transaction with a person who is his associate, the Court may, on the application of any person interested, set the transaction aside and order the liquidator to compensate the company for any loss suffered in consequence of it.

(2) Subrule (1) does not apply if the transaction was entered into with the prior approval of the Court.

(3) Nothing in this rule shall be taken as the proscription of any written law, common law or principles of equity relating to a liquidator's dealings with trust property or the fiduciary obligations of any person.

Rule against solicitation by, or on behalf of, liquidator

112.—(1) Where the Court is satisfied that any improper solicitation has been used by, or on behalf of, the liquidator in obtaining proxies or procuring the liquidator's appointment, it may order that no remuneration be allowed as an expense of the winding-up of the company to any person by whom, or on whose behalf, the solicitation was exercised.

(2) An order of the Court under this rule overrides any resolution of the members, or any other provision of these Rules relating to the liquidator's remuneration.

Disclaimer

113.—(1) The liquidator may, by the giving of a notice to interested parties, disclaim any onerous property and may do so notwithstanding that—

(*a*) he has taken possession of it;

(*b*) endeavoured to sell it; or

(*c*) otherwise exercised rights of ownership in relation to it.

(2) The following is onerous property for the purposes of this rule—

(*a*) any unprofitable contract; or

(*b*) any other property of the company which is un-saleable, not readily saleable or is such that it may give rise to a liability to pay money or perform any other onerous act.

(3) A disclaimer under this rule—

(*a*) operates so as to determine, as from the date of the disclaimer, the rights, interests and liabilities of the company in, or in respect of, the property disclaimed; and

(*b*) does not, except as is necessary for the purpose of releasing the company from any liability, affect the rights or liabilities of any other person.

(4) A notice of disclaimer shall not be given under this rule in respect of any property if—

(*a*) a person interested in the property has applied in writing to the liquidator or one of his predecessors as liquidator requiring the liquidator or that predecessor to decide whether he will disclaim or not; and

(*b*) the period of twenty-eight days beginning with the day on which that application was made, or such longer period as the Court may allow, has expired without a notice of disclaimer having been given under this rule in respect of that property.

(5) Any person sustaining loss or damage in consequence of the operation of a disclaimer under this rule shall be deemed a creditor of the company to the extent of the loss or damage and accordingly may prove the loss or damage in the winding-up of the company.

Notice of disclaimer

114.—(1) A liquidator's notice of disclaimer of property under rule 113 shall be headed "Notice of Disclaimer under Rule 113 of the Insolvency Rules" and shall—

(*a*) identify the company;

(*b*) contain such particulars of the property disclaimed as to enable it to be easily identified;

(*c*) identify and provide contact details for the liquidator;

(*d*) state that the liquidator of the company disclaims all the company's interest in the property; and

(*e*) be signed and dated by the liquidator.

(2) Where the property consists of land or buildings, the nature of the interest shall be stated in the notice.

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(3) Where the property consists of land under the Registered Land Act, the notice shall state the registered title number and the registration area.

(4) The liquidator shall, as soon as it is reasonably practicable, after authenticating the notice of disclaimer, deliver a copy of the notice to—

(*a*) the Registrar of Companies; and

(*b*) the Chief Land Registrar or the Deeds Registrar, as the case may be, in the case of land.

Communication of disclaimer to interested persons

115.—(1) The liquidator shall serve any copies of a notice of disclaimer in respect of any interest in land within seven business days after the date of the notice of disclaimer.

(2) The liquidator shall, within seven business days after the date of a notice of disclaimer, deliver copies of the notice to every person who, to the liquidator's knowledge—

(*a*) claims an interest in the disclaimed property;

(*b*) is under any liability in relation to the property, not being a liability discharged by the disclaimer; or

(*c*) is a party to an unprofitable contract or has an interest under it and the disclaimer relates to such contract.

(3) Where it subsequently comes to the liquidator's knowledge that a person has such an interest in the disclaimed property as to be entitled to receive a copy of the notice of disclaimer, then the liquidator shall deliver a copy of the notice to that person, as soon as it is reasonably practicable.

(4) The liquidator is not required to deliver a copy of the notice under subrule (3) in the following circumstances—

(*a*) if the liquidator is satisfied that the person has already been made aware of the disclaimer and its date; or

(*b*) if the Court, on the liquidator's application, orders that delivery of a copy of the notice is not required in that particular case.

Powers of the Court

116.—(1) An application under this rule may be made to the Court by—

(*a*) any person who claims an interest in the disclaimed property; or

(*b*) any person who is under any liability in respect of the disclaimed property, not being a liability discharged by the disclaimer.

(2) Subject to subrules (3), (4) and (5), the Court may on the application make an order, on such terms as it considers fit, for the vesting of the disclaimed property in, or for, its delivery to—

(*a*) a person entitled to it or a trustee for such a person; or

(*b*) a person subject to such a liability as is mentioned in subrule (1) (*b*) or a trustee for such a person.

(3) The Court shall not make an order under subrule (2) (*b*) except where it appears to the Court that it would be just to do so for the purpose of compensating the person subject to the liability in respect of the disclaimer.

(4) The effect of any order under this rule shall be taken into account in assessing for the purpose of rule 113 (5) the extent of any loss or damage sustained by any person in consequence of the disclaimer.

(5) An order under this rule vesting property in any person confers on that person interest in the property in equity pending the completion of a conveyance, an assignment or a transfer.

Application for exercise of the Court's powers under r. 116

117.—(1) Where a person becomes aware of a liquidator's notice of disclaimer or upon receiving a copy of the notice, he shall make an application under rule 116 within three months of becoming aware of, or receiving, the notice, whichever is the earlier.

(2) The applicant shall file with the application a sworn statement stating—

(*a*) whether the application is made as a claim of interest in the property or liability not discharged;

(*b*) the date on which the applicant received a copy of the liquidator's notice of disclaimer, or otherwise became aware of the disclaimer; and

(*c*) the grounds of the application and the order sought.

(3) On hearing the application, the Court may give directions as to any other persons to whom notice of the application and the grounds on which it is made should be delivered.

(4) The Court shall deliver sealed copies of any order made on the application to the applicant and the liquidator.

Application for, and appointment of, special manager

118.—(1) An application by the liquidator under section 132 of the Act for the appointment of a special manager shall be supported by a report setting out the reasons for the application verified by a sworn statement.

(2) The report shall include the applicant's estimate of the value of the business or property in relation to which the special manager is to be appointed.

(3) The Court's order appointing a special manager shall—

(*a*) identify the proceedings;

(*b*) state the name and postal address of the applicant;

(*c*) state the name and postal address of the appointee as special manager;

(*d*) state that the evidence has been considered;

(*e*) order that the appointee is appointed as special manager of the company;

(*f*) give details of the special manager's responsibility over the company's business or property;

(*g*) specify the powers to be entrusted to the special manager;

(*h*) specify the time allowed for the special manager to give the required security for the appointment;

(*i*) state the duration of the special manager's appointment, being one of the following—

(i) for a fixed period stated in the order;

(ii) until the occurrence of a specified event; or

(iii) until the Court makes a further order;

(*j*) specify the special manager's remuneration; and

(*k*) state the date of the making of the order.

(4) The appointment of the special manager may be renewed or varied by order of the Court.

(5) The special manager's remuneration shall be fixed from time to time by the Court.

(6) The acts of the special manager shall be valid notwithstanding any defect in the special manager's appointment or qualifications.

(7) This rule shall apply, *mutatis mutandis*, to voluntary winding-up of the company.

Security

119.—(1) The appointment of the special manager shall not take effect until the person appointed has given, or if the Court allows undertaken to give, security to the applicant for the appointment.

(2) A person appointed as special manager may give security specifically for a particular winding-up of the company or generally for any winding-up of the company in relation to which that person may be appointed as special manager.

(3) The amount of the security—

(*a*) shall be not less than the value of the business or property in relation to which the special manager is appointed, as estimated in the applicant's report which accompanied the application for appointment; and

(*b*) may need to be varied in the course of the special manager's appointment, depending on the value of the assets under management.

(4) When the special manager has given security to the applicant, the applicant shall file with the Court a certificate as to the adequacy of the security.

(5) The cost of providing the security shall be paid in the first instance by the special manager, but the special manager is entitled to be reimbursed as an expense of the winding-up of the company, in the prescribed order of priority.

(6) This rule shall apply, *mutatis mutandis*, to voluntary winding-up of the company.

Failure to give, or keep up, security

120.—(1) Where the special manager fails to give the required security within the time stated in the order of appointment, or any extension of that time that may be allowed, the liquidator shall report the failure to the Court, which may discharge the order appointing the special manager.

(2) Where the special manager fails to keep up the security, the liquidator shall report the failure to the Court, which may remove the special manager, and make such an order as to costs, as it considers just.

(3) Where the Court discharges the order appointing the special manager, or makes an order removing the special manager, the Court shall give directions as to whether any, and if so what, steps shall be taken for the appointment of another special manager.

(4) This rule shall apply, *mutatis mutandis*, to voluntary winding-up of the company.

Special manager's accounts

121.—(1) The special manager shall produce accounts, containing details of the special manager's receipts and payments, for the approval of the liquidator.

(2) The accounts shall be for—

(*a*) each three month period for the duration of the special manager's appointment; or

(*b*) any shorter period ending with the termination of the special manager's appointment.

(3) When the accounts have been approved, the special manager's receipts and payments shall be added to those of the liquidator.

(4) This rule shall apply, *mutatis mutandis*, to voluntary winding-up of the company.

Termination of appointment of special manager

122.—(1) Where the liquidator thinks that the appointment of the special manager is no longer necessary or beneficial, the liquidator shall apply to the Court for directions, and the Court may order the special manager's appointment to be terminated.

(2) The liquidator shall also make such an application if the creditors pass a resolution requesting that the appointment of the special manager be terminated.

(3) This rule shall apply, *mutatis mutandis*, to voluntary winding-up of the company.

Arrangements

123.—(1) Where there has been an arrangement under section 153 of the Act and a distribution to members has taken place, the liquidator shall comply with subrule (2) in relation to any account or report to the company which the liquidator is required to prepare.

(2) In any account or summary of receipts and payments which is required to be included in the account or report, the liquidator shall—

(*a*) state the estimated value of the following during the period to which the account or report relates—

(i) the property transferred to the transferee;

(ii) the property received from the transferee; and

(iii) the property distributed to members; and

(*b*) provide details of the basis of the valuation as a note to the account or summary of receipts and payments.

(3) For the purposes of section 153 (2) of the Act, the prescribed period shall be fourteen days.

Other distributions to members

124.—(1) Where there has been a distribution of property to members in its existing form other than under an arrangement under section 153 of the Act, the liquidator shall comply with subrule (2) in relation to any account or report which the liquidator is required to prepare.

(2) The liquidator shall in any account or summary of receipts and payments which is required to be included in the account or report—

(*a*) state the estimated value of the property distributed amongst the members of the company during the period to which the account or report relates; and

(*b*) provide details of the basis of the valuation as a note to the account or summary of receipts and payments.

Division IV—Creditors' Voluntary Winding-up of the Company

Statement of affairs made out by the liquidator

125.—(1) This rule applies to the statement of affairs made by the liquidator under section 145 (1) of the Act.

(2) The statement of affairs shall be headed "Statement of Affairs" and shall—

(*a*) identify the company;

(*b*) state that it is a statement of the affairs of the company on a date which is stated, being the date of the opinion formed by the liquidator under section 145 (1) of the Act;

(*c*) state that as at that date, the liquidator formed the opinion that the company would be unable to pay its debts in full, together with interest, within the period stated in the directors' declaration of solvency made under section 143 of the Act; and

(*d*) be verified by a sworn statement made by the liquidator and dated.

(3) The statement of affairs shall be delivered by the liquidator to the Director, the Official Receiver and the Registrar of Companies within five business days after the meeting of creditors summoned under section 145 (1) (*a*) of the Act, or if there is no meeting, as soon as it is reasonably practicable.

Statement of affairs made by the directors

126.—(1) This rule applies to the statement of affairs made by the directors under section 143 of the Act.

(2) The statement of affairs shall be headed "Statement of Affairs" and shall—

(*a*) identify the company;

(*b*) state that it is a statement of the affairs of the company on a specified date, being a date not more than fourteen days before the date of the resolution for winding-up of the company; and

(*c*) be verified by a sworn statement by the directors and dated.

(3) The directors shall deliver the statement of affairs to the liquidator at the company meeting at which the liquidator was appointed or as soon as it is reasonably practicable.

(4) The liquidator shall deliver the statement of affairs to the Director, the Official Receiver and the Registrar of Companies within five business days after the meeting of creditors under section 146 of the Act, or if there is no meeting as soon as it is reasonably practicable.

(5) The liquidator may require a director to deliver to the liquidator a statement of concurrence, verified by a sworn statement, stating that the director concurs with the statement of affairs.

(6) The director may make a qualified statement of concurrence where the director—

(*a*) is not in agreement with the statement of affairs;

(*b*) considers the statement to be erroneous or misleading; or

(*c*) is without the direct knowledge necessary for concurring with the statement.

(7) The liquidator shall deliver a copy of any statement of concurrence to the Director, the Official Receiver and the Registrar of Companies.

Additional requirements as to statements of affairs

127. A statement of affairs under section 143 or 145 of the Act shall also contain—

(*a*) a list of the company's shareholders, with the following details about each shareholder—

(i) name and postal address;

(ii) the type of shares held;

(iii) the nominal amount of the shares held, if any;

(iv) the number of shares held;

(v) the amount per share called up;

(vi) the total amount of shares called up; and

(vii) the total amount of shares held by all shareholders;

(*b*) a summary of the assets of the company, setting out the book value and estimated realizable value of each of—

(i) the surplus of assets subject to a security interest over the amount required to discharge the security interest;

(ii) the uncharged assets; and

(iii) the total value of all the assets available for preferential creditors;

(*c*) a summary of the liabilities of the company, setting out—

(i) the amount of preferential debts;

(ii) an estimate of the deficiency with respect to preferential debts or the surplus available after paying the preferential debts;

(iii) the amount of debts secured by a security interest to the extent that the value of the security is insufficient to discharge the security interest;

(iv) the amount of unsecured debts, excluding preferential debts;

(v) an estimate of the deficiency with respect to unsecured debts or the surplus available after paying unsecured debts;

(vi) issued and called up capital; and

(vii) an estimate of the deficiency with respect to, or surplus available to, members of the company; and

(*d*) a list of the company's creditors under a security interest, with the following details about each listed creditor—

(i) name and postal address of the creditor;

(ii) amount of the debt owed to the creditor;

(iii) details of any security held by the creditor;

(iv) the date the security interest was perfected; and

(v) the value of the security held by the creditor.

Expenses of statement of affairs

128.—(1) Any reasonable and necessary expenses of preparing the statement of affairs under section 143 of the Act may be paid out of the company's assets, before or after the commencement of the winding-up of the company, as an expense or the winding-up of the company.

(2) Where the payment is made before the commencement of the winding-up of the company, the director presiding at the meeting of creditors held under section 146 of the Act shall inform the meeting of the amount of the payment and the identity of the person to whom it was made.

(3) The liquidator appointed under section 151 of the Act may make such a payment, but if there is a creditors' committee, the liquidator shall deliver to the committee at least five business days' notice of the intention to make it.

(4) A payment shall not be made to the liquidator, or to any associate of the liquidator, otherwise than with the approval of the creditors' committee, the creditors, or the Court.

(5) Subrules (1), (2), (3) and (4) are without prejudice to the Court's powers under voluntary winding-up of the company followed by winding-up of the company by the Court.

Expenses for assistance in preparing accounts

129.—(1) Where the liquidator requires a person to deliver accounts, the liquidator may, with the approval of the creditors' committee, if there is one, and as an expense of the winding-up of the company, employ someone to assist that person in the preparation of the accounts.

(2) The person who is required to deliver accounts may request an allowance towards the expenses to be incurred in employing others to assist in preparing the accounts.

(3) A request for an allowance shall be accompanied by an estimate of the expenses involved.

(4) The liquidator may, with the approval of the creditors' committee, if there is one, authorize such an allowance, payable as an expense of the winding-up of the company.

Notice to creditors in a creditors' voluntary winding-up of the company

130.—(1) A liquidator who decides not to convene a creditors' meeting under section 146 of the Act, shall deliver a notice to all the creditors within fourteen days of being appointed by the company.

(2) The notice shall inform the creditors that the liquidator will remain in office unless ten per cent or more in value or in number of creditors vote against the liquidator continuing in office.

(3) The notice may also seek nominations for members of a creditors' committee.

(4) The deadline for voting shall be at least fourteen days after the date of the notice.

(5) The notice shall be accompanied by a copy of the statement of affairs or a summary and a statement by the liquidator of any material transactions relating to the company occurring between the date of the making of the statement of affairs and the date of the notice.

(6) The expenses of calling a meeting shall be expenses of the liquidation.

Information to creditors and contributories

131.—(1) The liquidator shall deliver to all the creditors and contributories within twenty-eight days of the deadline of a meeting of creditors, a notice which, in addition to the standard contents, shall—

(*a*) be accompanied by a statement of affairs or a summary when the notice is delivered to any creditor or contributory; and

(*b*) contain particulars of any objections to the liquidator remaining in office received in response to the notice under rule 130 and a report of the proceedings at any meeting which took place under section 146 of the Act.

(2) The liquidator may exclude from the estimates information the disclosure of which could seriously prejudice the commercial interests of the company.

(3) Where such information is excluded, then the estimates shall be accompanied by a statement to that effect.

Report by director, etc.

132.—(1) At a meeting held under section 146 of the Act, where the statement of affairs laid before the meeting does not state the company's affairs as at the date of the meeting, the directors of the company shall cause a report, written or oral, to be made to the meeting on any material transactions relating to the company

occurring between the date of the making of the statement of affairs and the date of the meeting.

(2) The report shall be made by the director presiding at the meeting or by another person with knowledge of the relevant matters.

Resolutions in respect of appointment of liquidator

133.—(1) In the case of a resolution for the appointment of a liquidator—

(*a*) if on any vote there are two nominees for appointment, the person who obtains the most votes is appointed;

(*b*) if there are three or more nominees, and one of them has a clear majority over both or all the others together, that person is appointed; and

(*c*) in any other case, the chairperson of the meeting shall continue to take votes, disregarding at each vote any nominee who has withdrawn and, if no nominee has withdrawn, the nominee who obtained the least support at the last time of voting, until a clear majority is obtained for any one nominee.

(2) The chairperson of the meeting may at any time put to the meeting a resolution for the joint appointment of any two or more nominees.

Appointment of liquidator by creditors or by the company

134.—(1) This rule applies where a person is appointed as liquidator by a meeting of creditors or by a meeting of the company.

(2) The chairperson of the meeting shall only certify the appointment of the liquidator, where—

(*a*) the proposed liquidator ("the appointee") has provided the chairperson with evidence that he qualifies as an insolvency practitioner under the Act and he consents to act as the liquidator; and

(*b*) the appointee has provided evidence, to the satisfaction of the chairperson, that he has security for the proper performance of the office.

(3) The liquidator's appointment shall take effect upon the passing of a resolution for his appointment by the meeting of creditors or the meeting of the company.

(4) The certificate shall be signed and dated by the chairperson and shall—

(*a*) identify the company;

(*b*) identify and provide contact details for the person appointed as liquidator;

(*c*) state the date of the meeting of the company when the liquidator was appointed; and

(*d*) state that at the meeting, the proposed liquidator, having provided evidence that he qualifies as an insolvency practitioner under the Act to be the liquidator of the company and having consented to act such, was appointed liquidator of the company.

(5) Where two or more liquidators are appointed, the certificate shall also—

(*a*) identify and provide contact details for each person appointed as the liquidator; and

(*b*) specify the circumstances, if any, in which the joint liquidators shall act together.

(6) The chairperson shall deliver the certificate, as soon as it is reasonably practicable, to the liquidator, who shall keep it as part of the records of the winding-up of the company.

(7) It shall be the duty of the creditors' committee to review from time to time the adequacy of the liquidator's security for the proper performance of the office.

(8) The cost of the liquidator's security shall be an expense of the liquidation.

Appointment of liquidator by the Court

135.—(1) This rule applies where the liquidator is appointed by the Court under section 151 (1) and (2) of the Act.

(2) The Court shall only make an order where the proposed liquidator has filed with the Court evidence that he is a qualified insolvency practitioner under the Act and he consents to act as the liquidator.

(3) The order of the Court shall—

(*a*) state the name of the Court and the Registry in which the order is made;

(*b*) state the date on which it is made;

(*c*) identify the company;

(*d*) state the name and postal address of the applicant;

(*e*) state the capacity in which the applicant is making the application;

(*f*) identify the proposed liquidator; and

(*g*) state that, upon consideration of the evidence, it is ordered that the proposed liquidator, having filed with the Court evidence that he is a qualified insolvency practitioner under the Act and he consents to act as the liquidator, is appointed liquidator of the company.

(4) Where two or more liquidators are appointed, the order shall additionally specify the circumstances, if any, in which the joint liquidators shall act together.

(5) The Court shall deliver a sealed copy of the order to the liquidator, whose appointment takes effect from the date of the order.

(6) Within twenty-eight days from appointment, the liquidator shall—

(*a*) deliver the notice of appointment to all creditors of the company; or

(*b*) advertise the notice of appointment in accordance with any directions given by the Court.

Authentication of the liquidator's appointment

136. The following may be provided as proof in any proceedings that the person appointed is duly authorized to exercise the powers and perform the duties of a liquidator in the company's winding-up of the company—

(*a*) a copy of the certificate of the liquidator's appointment; or

(*b*) a sealed copy of the Court's order.

Appointment of liquidator to be advertised

137.—(1) A liquidator appointed in a voluntary winding-up of the company, in addition to giving notice of the appointment in accordance with section 161 of the Act, may advertise the notice in such other manner as the liquidator thinks fit.

(2) In addition to the standard contents, the notice shall state—

(*a*) that a liquidator has been appointed; and

(*b*) the date of the appointment.

(3) The liquidator shall initially bear the expense of giving the notice under this rule and shall be entitled to be reimbursed for the expenditure as an expense of the winding-up of the company.

Liquidator's resignation and replacement

138.—(1) Where a liquidator intends to resign, rule 105 shall apply, *mutatis mutandis*, to his intention to resign.

(2) The date of the deadline or of the meeting under subrule (1) shall be not more than five business days before the date on which the liquidator intends to give notice to the Director, and a copy of the notice to the Registrar of Companies and the Official Receiver as required under section 161 of the Act.

(3) The resigning liquidator's release is effective from the date of delivery of the notice of resignation to the Director, and a copy of that notice to the Registrar of Companies and the Official Receiver.

Removal of liquidator by creditors' meeting

139.—(1) Where a creditors' meeting resolves that the liquidator be removed, the chairperson of the meeting shall, as soon as it is reasonably practicable, deliver the certificate of the liquidator's removal—

(*a*) to the new liquidator; or

(*b*) to the Director, the Official Receiver and the Registrar of Companies if another liquidator was not appointed at the meeting.

(2) The new liquidator shall deliver the certificate to the Director, the Official Receiver and the Registrar General, as soon as it is reasonably practicable.

Advertisement of resignation or removal of liquidator

140. A new liquidator, who is appointed in place of the person who has resigned or been removed, shall, in giving notice of the appointment, state whether the liquidator's predecessor has resigned or been removed and, if it be the case, has been released.

Removal of liquidator by the Court

141.—(1) This rule applies where an application is made to the Court for the removal of a liquidator, or for an order directing the liquidator to summon a meeting of creditors for the purpose of removing the liquidator.

(2) Where the Court considers that no sufficient cause is shown for the application, it shall deliver a notice to that effect to the applicant.

(3) Upon delivery of the notice under subrule (2), the applicant may, by notice, within five business days of delivery of the Court's notice, request for a date, time and venue to be fixed for a hearing as to whether sufficient cause is shown, and the Court shall do so without notice to any other party.

(4) Where the applicant gives no notice under subrule (3), the Court may dismiss the application without a hearing.

(5) The Court may require the applicant to make a deposit or give security for the costs to be incurred by the liquidator on the application.

(6) The applicant shall, at least fourteen days before the hearing, deliver to the liquidator a notice stating the date, time and venue and with a copy of the application, and of any evidence which the applicant intends to provide in support of the application.

(7) The costs of the application are not payable as an expense of the winding-up of the company, unless the Court orders otherwise.

(8) On a successful application, the Court's order shall—

(*a*) state the name of the Court and the Registry in which the order is made;

(*b*) state the name and title of the person making the order;

(*c*) state the name and postal address of the applicant;

(*d*) state the capacity in which the applicant is making the application;

(*e*) identify and provide the contact details for the liquidator;

(*f*) identify the company; and

(*g*) state that, upon consideration of the evidence, it is ordered that—

(i) the liquidator be removed from office; or

(ii) the liquidator shall summon a meeting of the company's creditors on or before a date stated in the order for the purpose of considering the liquidator's removal from office; and

(*h*) state the date the order is made.

(9) The Court shall deliver two sealed copies of the order to the liquidator.

Deceased liquidator

142.—(1) Where a liquidator dies, a notice to the fact and date of death shall be delivered, as soon as it is reasonably practicable, to—

(*a*) the creditors' committee or a member of that committee; and

(*b*) the Director;

(*c*) the Official Receiver; and

(*d*) the Registrar of Companies.

(2) The notice shall be delivered by one of the following persons—

(*a*) a partner in the deceased liquidator's firm, if the deceased was a partner in, or an employee of, a firm;

(*b*) a personal representative of the deceased liquidator.

(3) Where such a notice has not been delivered within twenty-eight days following the liquidator's death, then any other person may deliver the notice.

Liquidator's duties on vacating office

143. A liquidator who ceases to be in office in consequence of removal, resignation or loss of qualification as an insolvency practitioner shall, as soon as it is reasonably practicable, deliver to the successor liquidator—

(*a*) the assets, after deduction of any expenses properly incurred and distributions made by the previous liquidator;

(*b*) the records of the winding-up of the company, including correspondence, proofs and other documents relating to the company reorganization while it was within the liquidator's responsibility; and

(*c*) the company's documents and other records.

Application by liquidator for release

144.—(1) A liquidator's application to the Court for release under section 125 of the Act shall—

(*a*) identify and provide contact details for the liquidator;

(*b*) identify the company;

(*c*) provide details of the circumstances under which the liquidator has ceased to act as liquidator and any other information required by the Act;

(*d*) state that the liquidator of the company is applying to the Court for a certificate of release as liquidator as a result of the circumstances specified in the application; and

(*e*) be signed and dated by the liquidator.

(2) The Court shall deliver a copy of the order for release to the Director, the Registrar of Companies and the Official Receiver within seven days of the making of the order of release.

(3) When the Court releases the liquidator, the Director shall certify the release and deliver the certificate to the Registrar of Companies and the Official Receiver.

Court's powers to set aside certain transactions

145. Rule 111 shall apply, *mutatis mutandis*, to the creditors' voluntary winding-up of a company.

Rule against solicitation

146. Rule 112 shall apply, *mutatis mutandis*, to the creditors' voluntary winding-up of a company.

General powers of liquidator

147.—(1) A permission given by—

(*a*) the creditors' committee, or if there is no such committee, a meeting of the company's creditors; or

(*b*) under these Rules,

shall not be a general permission but shall relate to a particular proposed exercise of the liquidator's power.

(2) A person dealing with the liquidator in good faith and for value need not enquire whether permission under subrule (1) has been given.

(3) Where the liquidator has done anything without such permission, the Court or the creditors' committee may ratify what the liquidator has done, but neither shall do so unless satisfied that the liquidator has acted in a case of urgency and has sought ratification without undue delay.

General rule as to priority

148.—(1) All fees, costs, charges and other expenses incurred in the course of the winding-up of a company are to be treated as expenses of the winding-up.

(2) The expenses of the winding-up of the company are payable out of—

(*a*) assets of the company available for the payment of general creditors, including proceeds of any legal action which the liquidator has power to bring in the liquidator's own name or in the name of the company;

(*b*) proceeds arising from any award made under any arbitration or other dispute resolution procedure which the liquidator has power to bring in the liquidator's own name or in the name of the company;

(*c*) any payments made under any compromise or other agreement intended to avoid legal action or recourse to arbitration or to any other dispute resolution procedure; and

(*d*) payments made as a result of a settlement of any such action, arrangement or procedure *in lieu* of, or before, any judgment being given or award being made.

(3) Unless provided otherwise, the expenses shall be payable in the following order of priority—

(*a*) expenses which are properly chargeable or incurred by the liquidator in preserving, realizing or getting in any of the assets of the company or otherwise in the preparation or conduct of any legal proceedings, arbitration or other dispute resolution procedures, which the liquidator has power to bring in the liquidator's own name or bring or defend in the name of the company or in the preparation or conduct of any negotiations intended to lead or leading to a settlement or compromise of any legal action or dispute to which the proceedings or procedures relate;

(*b*) the cost of any security provided by the liquidator or special manager under the Act or these Rules;

(*c*) the remuneration of the special manager, if any;

(*d*) any amount payable to a person employed or authorized to assist in the preparation of a statement of affairs or of accounts;

(*e*) the costs of employing a secretary, on the application of the liquidator;

(*f*) any necessary disbursements by the liquidator in the course of the company reorganization, including any expenses incurred by members of the creditors' committee or their representatives and allowed by the liquidator;

(*g*) the remuneration or emoluments of any person who has been employed by the liquidator to perform any services for the company, as required or authorized by or under the Act or these Rules;

(*h*) the remuneration of the liquidator;

(*i*) the amount of any tax on chargeable gains accruing on the realization of any asset of the company, irrespective of the person by whom the realization is effected; and

(*j*) any other expenses properly chargeable by the liquidator in carrying out the liquidator's functions in the winding-up of the company.

Division V—Examination of Company Officers and Others

Application and order for examination

149.—(1) This rule applies to an application by a liquidator to the Court under section 159 (3) of the Act for the examination of any person.

(2) An application relating to a person falling within section 159 (3) of the Act shall be accompanied by a report by the liquidator indicating—

(*a*) the grounds on which the person is supposed to fall within section 159 (3) of the Act; and

(*b*) whether the liquidator thinks it is likely that the order can be served on the person at a known address and, if so, by what means.

(3) The order shall be headed "Order of Examination" and shall—

(*a*) identify the proceedings;

(*b*) state that, upon the application of the liquidator and upon consideration of the evidence, it is ordered that the person specified in the order do attend the venue specified in the order for the purpose of being examined;

(*c*) state the name and postal address of the person to be examined;

(*d*) state the date, time and venue for the examination;

(*e*) state the date of the making of the order; and

(*f*) contain a warning to the person to be examined stating that if the person fails, without reasonable excuse, to attend the examination at the time and place specified in the order, the person shall be in contempt of Court and liable to be committed to prison or fined.

(4) As soon as it is reasonably practicable, after the Court makes the order, the Official Receiver shall serve a copy of the Court's order on the person to be examined.

(5) Where the report accompanying an application relating to a person falling within section 159 (3) of the Act states that the liquidator

thinks that there is no reasonable certainty that the order can be served at a known address, the Court may direct that the order be served by some alternative means other than, or in addition to, such service.

(6) The Court shall rescind an order for examination made on an application to which subrule (3) relates if the Court is satisfied that the person does not fall within section 159 (3) of the Act.

Notice of hearing

150.—(1) The liquidator shall give at least fourteen days' notice of the hearing—

(*a*) to the Official Receiver and the Director;

(*b*) to the special manager, if a special manager has been appointed; and

(*c*) to every creditor and contributory of the company who is known to the Official Receiver subject to any contrary direction of the Court.

(2) Where the liquidator thinks fit, the notice of the hearing—

(*a*) shall be published in the *Gazette*;

(*b*) shall be advertised in two daily newspapers of wide circulation; and

(*c*) may be advertised in such other manner as the liquidator thinks fit, not less than fourteen days before the date fixed for the hearing.

(3) In addition to the standard contents, the notice of the hearing shall state—

(*a*) the purpose of the hearing; and

(*b*) the venue, date and time for the hearing.

(4) Where the notice of hearing relates to a person falling within section 159 (3) of the Act, unless the Court directs otherwise, the notice shall not be published under subrule (3) until at least five business days have elapsed since the examinee was served with the notice.

Request by creditors or contributories for a public examination

151.—(1) This rule applies to a request made to the liquidator by a creditor or contributory for the public examination of a person.

(2) A request by a creditor shall be accompanied by—

(*a*) a list of the creditors concurring with the request and the amounts of their respective claims in the winding-up of the company, with their respective values; and

(*b*) from each concurring creditor, confirmation of the concurrence.

(3) A request by a creditor shall—

(*a*) identify the company;

(*b*) state the name and postal address of the creditor;

(*c*) state the name and postal address of the proposed examinee;

(*d*) describe the relationship which the proposed examinee has, or has had, with the company;

(*e*) state that the creditor requests the Official Receiver to apply to the Court for a public examination of the proposed examinee under section 159 (3) of the Act;

(*f*) state the amount of the creditor's claim in the winding-up of the company;

(*g*) state that the total amount of the creditors and the concurring creditors' claims is believed to represent not less than one-half in value of the debts of the company in relation to total debts;

(*h*) state that the creditor understands the requirement to deposit with the liquidator such sum as the Official Receiver may determine to be appropriate by way of security for the expenses of holding a public examination;

(*i*) state that the creditor believes that a public examination is required for the reason stated in the request; and

(*j*) be signed and dated by the creditor.

(4) A request by a contributory shall be accompanied by—

(*a*) a list of the contributories concurring with the request and the number of shares and votes each holds in the company; and

(*b*) from each concurring contributory, confirmation of the concurrence and of the number of shares and votes held in the company.

(5) A request by a contributory shall—

(*a*) identify the company;

(*b*) state the name and postal address of the contributory;

(*c*) state the name and postal address of the proposed examinee;

(*d*) describe the relationship which the proposed examinee has, or has had, with the company;

(*e*) state that the requisitioning contributory requests the Official Receiver to apply to the Court for an examination of the proposed examinee under section 159 (3) of the Act;

(*f*) state the number of shares held in the company by the requisitioning contributory;

(*g*) state the number of votes to which the requisitioning contributory is entitled to;

(*h*) state that the total amount of the contributories and concurring contributories' shares and votes is believed to represent not less than three-quarters in value of the company's contributories;

(*i*) state that the requisitioning contributory understands the requirement to deposit with the Official Receiver, such sum as the Official Receiver may determine to be appropriate, by way of security for the expenses of holding a public examination;

(*j*) state that the requisitioning contributory believes that a public examination is required for the reason specified in the request; and

(*k*) be signed and dated by the requisitioning contributory.

(6) A request for an examination does not require the support of concurring creditors or contributories if the requisitioning creditor's debt or, as the case may be, requisitioning contributory's shareholding, is, by itself, sufficient.

(7) Before an application to the Court is made on the request, the requisitioning contributory shall deposit with the liquidator such sum of money, as the liquidator may determine to be appropriate, by way of security for the expenses of the hearing of an examination, if ordered.

(8) The liquidator shall make the application to the Court required by section 159 (3) of the Act within twenty-eight days of receiving the request, unless the liquidator thinks the request is unreasonable in the circumstances.

(9) Where the liquidator applies without notice to any other party to be relieved of the obligation and the Court makes such an

order, then the liquidator shall give notice of the order, as soon as it is reasonably practicable, to the creditors or contributories who requested the examination.

(10) Where the Court dismisses the liquidator's application, the Official Receiver shall make the application under section 160 of the Act, as soon as it is reasonably practicable.

Examinee unfit for examination

152.—(1) Where the examinee is a person who lacks capacity or is unfit to undergo or attend for examination, the Court may—

(*a*) stay the order for the examinee's examination; or

(*b*) direct that it shall be conducted in such manner and at such place as it considers just.

(2) An application shall be made by—

(*a*) a person who has been appointed by a Court in Malaŵi or elsewhere to manage the affairs of, or to represent, the examinee;

(*b*) a person who appears to the Court to be a suitable person to make the application; or

(*c*) the liquidator.

(3) Where the application is made by a person other than the liquidator, then—

(*a*) the application shall, unless the examinee is a person who lacks capacity, be supported by a sworn statement of a registered medical practitioner as to the examinee's mental and physical condition;

(*b*) at least five business days' notice of the application shall be given to the liquidator; and

(*c*) before any order is made on the application, the applicant shall deposit with the liquidator such sum of money, as the liquidator certifies to be necessary for the additional expenses of an examination.

(4) The order shall—

(*a*) identify the proceedings;

(*b*) state the name and postal address of the applicant;

(*c*) state name and postal address of the examinee;

(*d*) state the date of the order for the examinee's examination ("the original order");

(*e*) state that, upon consideration of the evidence, the Court is satisfied that the examinee specified in the order lacks capacity to manage and administer the examinee's property and affairs or is unfit to undergo a public examination;

(*f*) order that—

(i) the original order be stayed on the grounds that the examinee is unfit to undergo a public examination; or

(ii) the original order be varied, as specified in this order, on the grounds that the examinee is unfit to attend the public examination fixed by the original order; and

(*g*) state the date of the making of the order.

(5) Where a person other than the liquidator makes the application, the Court may order that some or all of the expenses of the examination shall be payable out of the deposit, instead of as an expense of the winding-up of the company.

(6) Where the application is made by the Official Receiver, it may be made without notice to any other party, and may be supported by evidence set out in a report by the Official Receiver to the Court.

Procedure at hearing

153.—(1) The examinee shall at the hearing—

(*a*) be examined on oath; and

(*b*) answer all such questions as the Court may put, or allow to be put, to the examinee.

(2) The examinee may, at the examinee's own expense, engage a legal practitioner, who may put to the examinee such questions as the Court may allow for the purpose of enabling the examinee to explain or qualify any answers given by the examinee, and may make representations on behalf of the examinee.

(3) The Court shall have a record made of the examination such as the Court considers appropriate.

(4) The record may, in any proceedings, whether under the Act or otherwise, be used as evidence of any statement made by the examinee in the course of the examination.

(5) Where criminal proceedings have been instituted against the examinee, and the Court is of the opinion that the continuation of the hearing would prejudice a fair trial of those proceedings, the hearing may be adjourned.

Adjournment of examination

154.—(1) The Court may adjourn the examination from time to time, to a fixed date or generally.

(2) Where the examination has been adjourned generally, the Court may at any time on the application of the Official Receiver, or of the examinee, give directions as to the manner in which, and the time within which, notice of the resumed examination is to be given to persons entitled to take part in it.

(3) An order adjourning the examination to a fixed date will contain a warning to the person being examined stating that if the person fails without reasonable excuse to attend the public examination at the venue, date and time specified in the order, the person shall be in contempt of court and liable to be committed to prison or fined.

(4) Where an application to resume an examination is made by the examinee, the Court may grant the resumption on terms that the examinee shall pay the expenses of giving the notices required by subrule (2) and that, before the venue, date and time for the resumed public examination is fixed, the examinee shall deposit with the liquidator such sum of money, as the liquidator considers necessary, to cover those expenses.

Expenses of examination

155. Where an examination of the examinee has been ordered by the Court on a creditor's or contributory's requisition, the Court may order that some or all of the expenses of the examination shall be paid out of the deposit, instead of as an expense of the winding-up of the company.

Division VI—Miscellaneous Provisions

Application to Court for order authorizing return

156.—(1) This rule applies where the liquidator intends to apply to the Court for an order authorizing a return of capital.

(2) The application shall be accompanied by a list of the persons to whom the return is to be made.

(3) The list shall include the same details of those persons as appears in the settled list of contributories, with any necessary alterations to take account of matters after settlement of the list, and the amount to be paid to each person.

(4) Where the Court makes an order authorizing the return of capital, it shall deliver a sealed copy of the order to the liquidator.

Procedure for return of capital

157.—(1) The liquidator shall inform each person to whom a return of capital is made of the rate of return of capital per share, and whether it is expected that any further return of capital shall be made.

(2) Any payments made by the liquidator by way of the return of capital may be delivered by post, unless for any reason, another method of making the payment has been agreed with the payee.

PART V

Bankruptcy and Alternatives

Division I—Bankruptcy Process

Statutory demand

158.—(1) A statutory demand under section 190 of the Act shall—

(*a*) identify the debtor;

(*b*) state the name and address of the creditor;

(*c*) state the amount of the debt, being not less than K100,000 and the consideration for it, or, if there is no consideration, the way in which it arises;

(*d*) if founded on a judgment or order of the Court, it shall give details of the judgment or order;

(*e*) state the grounds on which it is alleged that the debtor appears to have no reasonable prospect of paying the debt; and

(*f*) be dated and signed by the creditor or a person who is authorized to make the statutory demand on the creditor's behalf.

(2) A statutory demand which is signed by an authorized person shall state that the person is authorized to make the demand on the creditor's behalf.

(3) Where the amount claimed in the statutory demand includes—

(*a*) any charge by way of interest of which notice had not previously been delivered to the debtor as a liability of the debtor; or

(*b*) any other charge accruing from time to time, the amount or rate of the charge shall be separately identified, and the grounds on which payment of it is claimed shall be stated.

(4) The amount claimed in the statutory demand for charges referred to in subrule (3) shall be limited to the amount which has accrued and due at the date of the demand.

(5) Where the creditor holds any security in respect of the debt, the full amount of the debt shall be specified, but the statutory demand shall—

(*a*) specify the nature of the security, and the value which the creditor puts upon it at the date of the statutory demand; and

(*b*) claim payment of the full amount of the debt, less the specified value of the security.

(6) For the purposes of—

(*a*) section 192 (4) of the Act, the number of days shall be twenty-one days; and

(*b*) section 192 (2) (*a*) of the Act, the number of days shall be forty-two days.

Further information to be given in the statutory demand

159.—(1) The statutory demand shall explain the following matters to the debtor—

(*a*) the purpose of the demand;

(*b*) that if the debtor does not comply with the demand, bankruptcy proceedings may be commenced;

(*c*) the date by which the debtor shall comply with the demand, if that consequence is to be avoided;

(*d*) the methods of compliance which are open to the debtor;

(*e*) the debtor's right to apply to the Court for the demand to be set aside;

(*f*) that any application to set aside the demand shall be made within eighteen days of service of the demand on the debtor; and

(*g*) that if the debtor does not apply to set aside the demand within eighteen days or otherwise deal with the demand within twenty-one days after its service on the debtor, the debtor may be made bankrupt and the debtor's property and goods taken away.

(2) A demand shall name one or more individuals with whom the debtor may communicate with a view to—

(*a*) securing or compounding for the debt to the satisfaction of the creditor; or

(*b*) establishing to the creditor's satisfaction that there is a reasonable prospect that the debt will be paid when it falls due.

(3) The postal address and telephone number, if any, of the named individual shall be given to the creditor.

(4) The prescribed amount for the purposes of section 188 (4) of the Act shall be K100,000.

Service of statutory demand

160. Unless the Court directs otherwise, a statutory demand shall be served personally.

Proof of service of statutory demand

161.—(1) Where section 188 of the Act requires a statutory demand to be served before the petition, a certificate proving service of the demand shall be filed with the Court together with the petition.

(2) The certificate shall be verified by a sworn statement and be accompanied by a copy of the statutory demand served.

(3) Where the statutory demand has been served personally on the debtor, the certificate shall be signed by the person who served it unless service has been acknowledged in writing by the debtor or a person authorized to accept service of the statutory demand on behalf of the debtor.

(4) Where service of the statutory demand has been acknowledged in writing by—

(*a*) the debtor; or

(*b*) a person who is authorized to accept service of the statutory demand on behalf of the debtor and who has stated that this is the case in the acknowledgement of service,

then the certificate shall be signed by the creditor or by a person acting on behalf of the creditor, and the acknowledgement of service shall accompany the certificate.

(5) Where the Court has directed that the statutory demand be served other than personally and there is no acknowledgement of service, the certificate shall be signed by a person or persons having direct personal knowledge of the means adopted for serving the statutory demand, and shall contain the following information—

(*a*) particulars of the Court's direction for alternative service;

(*b*) the steps taken to serve the statutory demand in accordance with the Court's direction; and

(*c*) a date by which, to the best of the knowledge and belief of the person authenticating the certificate, the statutory demand shall have come to the debtor's attention.

(6) Where the certificate referred to in subrule 5 (*c*) specifies such a date then, unless the Court orders otherwise, the statutory demand is deemed to have been served on the debtor on that date for the purposes of these Rules.

Application to set aside statutory demand

162.—(1) The debtor may apply to the Court for an order setting aside a statutory demand.

(2) The application shall be made within eighteen days from the date of the service of the statutory demand.

(3) The application shall—

(*a*) identify the debtor;

(*b*) state that the application is for an order that the statutory demand be set aside;

(*c*) state the date of the statutory demand; and

(*d*) be dated and signed by the debtor, or by a person authorized to act on behalf of the debtor.

(4) The time within which the debtor shall comply with the statutory demand ceases to run starting from the date on which the application to set aside the statutory demand is filed with the Court, subject to any order of the Court.

(5) The debtor's application shall be accompanied by a copy of the statutory demand, where it is in the debtor's possession, and supported by a sworn statement containing the following—

(*a*) the date on which the debtor became aware of the statutory demand;

(*b*) the grounds on which the debtor claims that it should be set aside; and

(*c*) any evidence in support of the application.

Hearing of application to set aside statutory demand

163.—(1) On receipt of an application to set aside a statutory demand, the Court may, if satisfied that no sufficient cause is shown for the demand, dismiss the demand without giving notice to the creditor.

(2) Where the application to set aside the statutory demand has been dismissed by the Court, the time for complying with the demand

runs again starting from the date on which the application has been dismissed.

(3) Unless the application is dismissed for no sufficient cause, the Court shall fix the date, time and venue for it to be heard, and shall give at least five business days' notice to—

(*a*) the debtor or, if the debtor's application was made by a legal practitioner acting on behalf of the debtor, to the legal practitioner;

(*b*) the creditor; and

(*c*) whoever is named in the statutory demand as the person with whom the debtor may communicate about the demand.

(4) The Court may grant the application if—

(*a*) the debtor appears to have a counterclaim, set-off or cross-demand which equals or exceeds the amount of the debt specified in the statutory demand;

(*b*) the debt is disputed on grounds which appear to the Court to be substantiated;

(*c*) it appears that the creditor holds security in relation to the debt claimed by the statutory demand, and the Court is satisfied that the value of the security equals or exceeds the full amount of the debt; or

(*d*) the Court is satisfied, on other grounds, that the statutory demand ought to be set aside.

(5) An order setting aside a statutory demand shall—

(*a*) identify the debtor;

(*b*) state the date of the hearing of the application;

(*c*) state that the evidence has been considered;

(*d*) state the date of the statutory demand;

(*e*) order that the statutory demand be set aside;

(*f*) contain details of any further order in the matter; and

(*g*) state the date of the making of the order.

(6) Where the creditor holds some security in relation to the debt, but the Court is satisfied that the statutory demand undervalues the

security, the creditor may be required to amend the demand without prejudice to the creditor's right to represent the bankruptcy petition by reference to the statutory demand as amended.

(7) Where the Court dismisses the application to set aside the statutory demand, it shall make an order authorizing the creditor to present a bankruptcy petition, as soon as it is reasonably practicable, or on, or after, a date specified in the order.

(8) The Court shall deliver a copy of the order to the creditor, as soon as it is reasonably practicable.

Contents of petition

164. The petition shall state—

(*a*) the name and postal address of the petitioner;

(*b*) where the petitioner is represented by a legal practitioner, the name, postal address and telephone number of the legal practitioner;

(*c*) that the petitioner requests that the Court make a bankruptcy order against the debtor; and

(*d*) any other matter prescribed by the Act.

Identification of debtor

165.—(1) The petition shall state the following matters about the debtor, so far as they are within the petitioner's knowledge—

(*a*) the debtor's identity information;

(*b*) the occupation of the debtor, if any;

(*c*) the name or names in which the debtor carries on business, if other than the name of the debtor, and whether, in the case of any business of a specified nature, the debtor carries it on alone or with others;

(*d*) the nature of the debtor's business, and the address or addresses at which it is carried on;

(*e*) any name or names, other than the name of the debtor, in which the debtor has carried on business at, or after, the time when the debt was incurred, and whether the debtor has done so alone or with others;

(*f*) any address or addresses at which the debtor has resided or carried on business at or after that time, and the nature of that business; and

(*g*) whether the debtor's centre of main business interests is in or outside Malaŵi.

(2) The particulars of the debtor given under this rule shall determine the title of the proceedings.

(3) Where to the petitioner's knowledge, the debtor has used any name other than the one specified under subrule (1) (*a*), that fact shall be stated in the petition.

Identification of debt

166.—(1) The petition shall, for each debt in relation to which it is presented, state—

(*a*) the amount of the debt, the consideration for it, or, if there is no consideration, the way in which it arises, and the fact that it is owed to the petitioner;

(*b*) when the debt was incurred and became due for payment;

(*c*) if the amount of the debt includes any charge by way of interest not previously notified to the debtor as a liability of the debtor, the amount and rate of the charge, separately identified;

(*d*) if the amount of the debt includes any other charge accruing from time to time, the amount and rate of the charge, separately identified;

(*e*) the grounds on which any such a charge is claimed to form part of the debt, provided that the amount or rate shall, in the case of a petition based on a statutory demand, be limited to that claimed in the demand;

(*f*) that the debt is unsecured or that where the claim is secured, the amount of the claim and the estimated value of the security; and

(*g*) that the debt is for a liquidated sum payable—

(i) immediately, and the debtor appears to be unable to pay it; or

(ii) at some certain, future time, that time to be specified, and the debtor appears to have no reasonable prospect of being able to pay it.

(2) Where the debt is one for which a statutory demand has been served on the debtor under section 190 of the Act, the petition shall—

(*a*) specify the date and manner of service of the statutory demand; and

(*b*) state that, to the best of the creditor's knowledge and belief—

(i) the demand has been neither complied with nor set aside in accordance with these Rules; and

(ii) no application to set aside the demand is outstanding.

(3) Where the case is one of an unsatisfied execution or process in respect of a judgment debt, a warrant of distress, a garnishee order, a charging order or any other means of enforcement of judgment, the petition shall state which Court and the Registry issued the execution or other process and give particulars of the return.

Verification of petition

167.—(1) The petition shall be verified by a sworn statement.

(2) Where the petition relates to debts to different creditors, the debt to each creditor shall be separately verified.

(3) A sworn statement which is not contained in, or endorsed upon, the petition which it verifies, shall identify the petition to which it refers and shall contain—

(*a*) the name of the debtor;

(*b*) the name of the petitioner; and

(*c*) the Court and the Registry in which the petition is to be presented.

(4) The sworn statement shall be sworn by—

(*a*) the petitioner or, if there are two or more petitioners, any one of them;

(*b*) a person such as a director, company secretary or similar company officer, or a legal practitioner, who has been concerned with the matters giving rise to the presentation of the petition; or

(*c*) a responsible person who is duly authorized to swear the sworn statement and has the requisite knowledge of those matters.

(5) Where the person swearing the sworn statement is not the petitioner, or one of the petitioners, the sworn statement shall state—

(*a*) the name and postal address of the person swearing the sworn statement;

(*b*) the capacity in which, and the authority by which, the person swears the sworn statement; and

(*c*) the means of the authenticating person's knowledge of the matters verified.

(6) Where the petition is based on a statutory demand and more than forty-two days have elapsed between the service of the demand and the presentation of the petition, the sworn statement shall explain the reasons for the delay.

Court in which petition is to be presented

168.—(1) Where there is in force for the debtor an individual voluntary arrangement under the Act, the petition shall be presented to the Court to which—

(*a*) the nominee's report under section 256 of the Act was submitted; or

(*b*) where a nominee has made a report under section 257 of the Act, an application has been made.

(2) The petition shall contain sufficient information to establish that it is presented in the appropriate Court.

Procedure for presentation and filing

169.—(1) The following copies of the petition shall also be filed with the Court with the petition—

(*a*) one copy for service on the debtor;

(*b*) one copy for service on the Director;

(*c*) one copy for service on the Official Receiver; and

(*d*) if there is in force for the debtor an individual voluntary arrangement under the Act, and the petitioner is not the supervisor of the individual voluntary arrangement, one copy for the supervisor.

(2) The date and time of filing the petition shall be endorsed on the petition and on the copies.

(3) The Court shall fix the date, time and venue for hearing the petition, and the date, time and venue shall also be endorsed on the petition and the copies.

(4) Each copy of the petition shall have the seal of the Court applied to it and shall be delivered to the petitioner.

Death of debtor before service

170. Where the debtor dies before service of the petition, the Court may order service to be effected on the debtor's personal representative, or on such other person as it considers just.

Amendment of petition

171. The petition may, with the Court's permission, be amended at any time after presentation.

Security for costs

172.—(1) This rule applies where the debt is a liquidated sum payable at some future time, where the petitioner claims that the debtor appears to have no reasonable prospect of being able to pay the debt.

(2) The debtor may apply for an order that the petitioning creditor gives security for the debtor's costs.

(3) The nature and amount of the security to be ordered shall be in the Court's discretion.

(4) Where an order for security is made, then the petition shall not be heard until the whole amount of the security has been given to the satisfaction of the Court.

Debtor's notice of opposition to petition

173.—(1) A debtor who intends to oppose the making of a bankruptcy order shall not less than five business days before the day fixed for the hearing—

(*a*) file a notice with the Court; and

(*b*) deliver a copy of the notice to the petitioning creditor or his legal practitioner.

(2) The notice shall—

(*a*) identify the proceedings;

(*b*) state that the debtor intends to oppose the making of a bankruptcy order;

(*c*) state the grounds on which the debtor opposes the making of the order; and

(*d*) be signed and dated by the debtor or by a person authorized to act on behalf of the debtor.

Notice by creditors intending to appear

174.—(1) A creditor who intends to appear on the hearing of the petition shall deliver a notice of intention to appear to the petitioner.

(2) The notice shall contain the following—

(*a*) the name and postal address of the creditor, and any telephone number and reference which may be required for communication with that creditor or with any other person specified in the notice as authorized to speak or act on behalf of the creditor;

(*b*) the date of the presentation of the bankruptcy petition and a statement that the notice relates to that petition;

(*c*) the date of the hearing of the petition;

(*d*) the amount and nature of the debt due from the debtor to the creditor;

(*e*) whether the creditor intends to support or oppose the petition;

(*f*) where the creditor is represented by a legal practitioner or other agent, the name, postal address, telephone number and reference number if any, of that person and details of that person's position with, or relationship to, the creditor; and

(*g*) the name and postal address of the petitioner.

(3) The notice shall be signed and dated by the person delivering it.

(4) The notice shall be delivered to the petitioner or his legal practitioner at the address provided by the petitioner or his legal practitioner as the address for service.

(5) The notice shall be delivered so as to reach the petitioner or his legal practitioner not later than 4:00 pm on the business day before that which is appointed for the hearing, or, where the hearing has been adjourned, for the adjourned hearing.

(6) A person who fails to comply with this rule may appear on the hearing of the petition only with the permission of the Court.

List of appearances

175.—(1) The petitioner shall prepare for the Court a list of the creditors who have delivered a notice of their intention to appear.

(2) The list shall contain—

(*a*) the date of the presentation of the bankruptcy petition;

(*b*) the date of the hearing of the petition;

(*c*) a statement that the creditors listed have delivered notice that they intend to appear at the hearing of the petition;

(*d*) the name and address of each creditor who has delivered notice of intention to appear;

(*e*) the amount owed to each such creditor;

(*f*) the name and postal address of any legal practitioner for a creditor listed; and

(*g*) whether each creditor listed intends to support the petition, or to oppose it.

(3) On the day appointed for hearing the petition, a copy of the list shall be handed to the Court before the hearing commences.

(4) Where the Court gives a creditor permission to appear, the petitioner shall add that creditor to the list with the same particulars.

Hearing of petition

176.—(1) Subject to subrule (2), the petition shall not be heard until at least fourteen days have elapsed since it was served on the debtor.

(2) The Court may, on such terms as it considers just, hear the petition at an earlier date, if it appears that the debtor has absconded, or the Court is satisfied that it is a proper case for an expedited hearing, or the debtor consents to a hearing within the fourteen days.

(3) The following persons may appear and be heard—

(*a*) the petitioning creditor;

(*b*) the debtor;

(*c*) the supervisor of any individual voluntary arrangement in force for the debtor; and

(*d*) any creditor who has delivered notice to be heard.

Postponement of hearing

177.—(1) The petitioner may, if the petition has not been served, apply to the Court to appoint another day for the hearing.

(2) The application shall state the reasons why the petition has not been served.

(3) No costs of the application shall be allowed in the proceedings except by order of the Court.

(4) Where the Court appoints another day for the hearing, the petitioner shall, as soon as it is reasonably practicable, deliver notice of that day to any creditor who delivered notice of intention to appear.

Adjournment of the hearing

178.—(1) This rule applies where the Court adjourns the hearing of a bankruptcy petition.

(2) The order of adjournment shall identify the proceedings and contain—

(*a*) the date of the presentation of the petition;

(*b*) a statement that the evidence has been considered;

(*c*) an order that the further hearing of the petition be adjourned to the date, time; and

(*d*) the date of the making of the order.

(3) Unless the Court otherwise directs, the petitioner shall, as soon as it is reasonably practicable, deliver a notice of the order of adjournment to—

(*a*) the debtor; and

(*b*) any creditor who has delivered a notice of intention to appear but was not present at the hearing.

(4) The notice of the order of adjournment shall identify the proceedings and contain—

(*a*) the date of the presentation of the petition;

(*b*) the date the order of adjournment was made; and

(*c*) the date, time and venue for the adjourned hearing.

Decision on the hearing

179.—(1) On the hearing of the petition, the Court may make a bankruptcy order if satisfied that the statements in the petition are true, and that the debt on which it is founded has not been paid, secured or compounded for.

(2) Where the petition is brought in relation to a judgment debt, or a sum ordered by any Court to be paid, the Court may stay or dismiss the petition on the ground that an appeal is pending from the judgment or order, or that execution of the judgment has been stayed.

(3) An order dismissing a bankruptcy petition shall contain—

(*a*) the name of the Court and the Registry;

(*b*) the date of the presentation of the bankruptcy petition;

(*c*) the name, postal address and description of the applicant;

(*d*) a statement that the petition has been heard;

(*e*) a statement that the evidence has been considered;

(*f*) an order that the petition be dismissed or that the petitioner has permission to withdraw the petition;

(*g*) details of any further terms of the order; and

(*h*) the date of the making of the order.

Non-appearance of creditor

180. A petitioning creditor who fails to appear on the hearing of the petition shall not present a petition alone or jointly with any other person against the same debtor in respect of the same debt

without the permission of the Court to which the previous petition was presented.

Petitioner seeking permission to withdraw

181.—(1) Where the petitioner applies to the Court for permission to withdraw the petition, the petitioner shall file with the Court a sworn statement specifying the grounds of the application and the circumstances in which it is made if—

(*a*) a creditor of the debtor has delivered notice of intention to appear at the hearing of the petition; or

(*b*) the Court so orders.

(2) Where any payment has been made to the petitioner since the petition was filed by way of settlement, in whole or in part, of the debt or any arrangement has been entered into for securing or compounding the debt, the sworn statement shall also state—

(*a*) what dispositions of property have been made for the purposes of the settlement or arrangement;

(*b*) whether, in the case of any disposition, it was property of the debtor, or of some other person; and

(*c*) whether, if it was property of the debtor, the disposition was made with the approval of, or has been ratified by, the Court, and if so specifying the relevant Court order.

(3) No order giving permission to withdraw a petition shall be given before the petition has been heard.

(4) The order of permission to withdraw a bankruptcy petition shall contain—

(*a*) the name of the Court and the Registry;

(*b*) the date of the filing of the bankruptcy petition;

(*c*) the name, postal address and description of the applicant;

(*d*) a statement that the petition has been heard;

(*e*) a statement that the evidence has been considered;

(*f*) an order that the petitioner has permission to withdraw the petition;

(*g*) details of any further terms of the order; and

(*h*) the date of the making of the order.

Contents of bankruptcy order

182. The bankruptcy order shall identify the proceedings and state—

(*a*) the name and address of the petitioning creditor;

(*b*) the date of the presentation of the petition;

(*c*) the description of the debtor as set out in the petition;

(*d*) that upon reading the evidence it is ordered that the person named be adjudged bankrupt; and

(*e*) the date and time of the making of the order.

Delivery and notice of bankruptcy order

183.—(1) As soon as it is reasonably practicable, after making a bankruptcy order, the Court shall deliver two sealed copies of the order to the Official Receiver.

(2) The Official Receiver shall, as soon as it is reasonably practicable, deliver a sealed copy of the order to the bankrupt.

(3) On receipt of the sealed copies of the bankruptcy order, the Official Receiver shall, as soon as it is reasonably practicable—

(*a*) cause notice of the order to be published in the *Gazette*; and

(*b*) may cause a notice of the order to be advertised in such other manner as the Official Receiver thinks fit.

(4) In addition to the standard contents, the notice to be published in the *Gazette* and any notice to be advertised shall state—

(*a*) that a bankruptcy order has been made against the bankrupt;

(*b*) the date and time of making of the bankruptcy order;

(*c*) the name and address of the petitioning creditor; and

(*d*) the date of presentation of the petition.

(5) The Court may, on the application of the bankrupt or a creditor, order the Official Receiver to suspend action under subrule (3) pending a further order of the Court.

(6) An application under subrule (5) shall be supported by a sworn statement stating the grounds on which it is made.

(7) Where an order to suspend an action under subrule (3) is made, the applicant shall deliver a copy of the order to the Official Receiver, as soon as it is reasonably practicable.

Expenses of individual voluntary arrangement

184. Where a bankruptcy order is made on a debtor's application and there is in force at the time of the application an individual voluntary arrangement under the Act, any expenses properly incurred as expenses of the company reorganization of the individual voluntary arrangement in question shall be a first charge on the bankrupt's estate.

Official Receiver and trustee in bankruptcy

185.—(1) A qualified insolvency practitioner may perform any functions of the Official Receiver and shall be designated "Trustee of a Bankrupt Estate".

(2) The Court or creditors may appoint a trustee in bankruptcy in place of the Official Receiver.

Remuneration of interim receiver

186.—(1) The remuneration of an interim receiver, other than the Official Receiver, shall be fixed by the Court from time to time on application of the interim receiver.

(2) In fixing the remuneration of the interim receiver, the Court shall take into account—

(*a*) the time properly given by the interim receiver and staff of the interim receiver in attending to the debtor's affairs;

(*b*) the complexity of the case;

(*c*) any respects in which, in connexion with the debtor's affairs, there falls on the interim receiver any responsibility of an exceptional kind or degree;

(*d*) the effectiveness with which the interim receiver appears to be carrying out, or to have carried out, the duties of the interim receiver; and

(*e*) the value and nature of the property which the interim receiver has to deal with.

(3) Without prejudice to any order the Court may make as to costs, the interim receiver's remuneration shall be paid to the interim receiver, and the amount of any expenses incurred by the interim receiver—

(*a*) if a bankruptcy order is not made, out of the property of the debtor; and

(*b*) if a bankruptcy order is made, out of the bankrupt's estate in the prescribed order of priority, or in either case, the relevant funds being insufficient, out of any deposit.

(4) Unless the Court otherwise directs, if a bankruptcy order is not made the interim receiver may retain out of the debtor's property such sums or property as are, or may be, required for meeting the remuneration and expenses of the interim receiver.

(5) Where a person, other than the Official Receiver, has been appointed interim receiver, and the Official Receiver has taken any steps for the purpose of obtaining a statement of affairs, or has performed any other duty under these Rules, the interim receiver shall pay the Official Receiver such sum, if any, as the Court may direct.

Statement of affairs (s. 209 of the Act)

187.—(1) The Official Receiver shall deliver to the bankrupt instructions for the preparation of the bankrupt's statement of affairs.

(2) The statement of affairs shall—

(*a*) state the name of the Court and the Registry that made the bankruptcy order;

(*b*) identify the bankrupt;

(*c*) state the date of the bankruptcy order;

(*d*) contain a list of the bankrupt's secured creditors, giving in relation to each—

(i) the name and postal address;

(ii) the amount owed to the creditor; and

(iii) particulars of the property of the bankrupt which is claimed by the creditor to secure the creditor's claim and the value of that property;

(*e*) contain a list of unsecured creditors, giving in relation to each—

(i) the name and postal address of the creditor;

(ii) the amount the creditor claims the bankrupt owes to that creditor; and

(iii) the amount the bankrupt thinks is owed by the bankrupt to that creditor;

(*f*) contain a list of the bankrupt's total assets divided into the following categories and giving the value of each asset listed—

(i) cash in hand or at a financial institution;

(ii) household furniture and belongings;

(iii) life policies or other investments;

(iv) money owed to the bankrupt;

(v) stock in trade and work in progress;

(vi) motor vehicles;

(vii) real estate; and

(viii) other property; and

(*g*) the total value of the assets listed under paragraph (*f*).

(3) The bankrupt shall sign and date each page of the statement of affairs.

(4) The statement of affairs shall be verified by a sworn statement and delivered to the Official Receiver and the Director, together with one copy.

(5) The Official Receiver shall file with the Court the statement by the bankrupt verified by a sworn statement.

(6) For the purposes of section 209 (4) of the Act, the prescribed time shall be twenty-eight days.

Limited disclosure

188. Where the Official Receiver thinks that disclosure of the whole or part of the statement of affairs would be likely to prejudice the conduct of the bankruptcy or might reasonably be expected to lead to violence against any person, the Official Receiver may apply to the Court for an order that the statement of affairs or any specified part of it—

(*a*) shall not be filed with the Court; or

(*b*) shall be filed separately and not be open to inspection otherwise than with permission of the Court.

Release from duty to submit statement of affairs and extension of time

189.—(1) The Official Receiver may release the bankrupt from the duty to submit a statement of affairs where the debtor has filed a statement of affairs under section 199 of the Act, or to grant an extension of time, at the Official Receiver's own discretion, or at the bankrupt's request.

(2) The bankrupt may apply to the Court for a release or extension of time if the Official Receiver refuses the bankrupt's request.

(3) The Court may dismiss the application if it considers that no sufficient cause is shown, but shall not do so, unless the bankrupt has had an opportunity to attend the Court for a hearing, of which the bankrupt has been delivered at least five business days' notice but which is without notice to any other party.

(4) The bankrupt shall, at least fourteen days before the hearing, deliver to the Official Receiver a notice stating the date, time and venue and accompanied by a copy of the application, and of any evidence which the bankrupt intends to provide in support of it.

(5) The Official Receiver may appear and be heard on the application and, whether or not the Official Receiver appears, the Official Receiver may file with the Court a report of any matters which the Official Receiver considers ought to be drawn to the Court's attention.

(6) Where such a report is filed, a copy shall be delivered by the Official Receiver to the bankrupt, not later than five business days before the hearing.

(7) Sealed copies of any order on the application shall be delivered by the Court to the bankrupt and the Official Receiver.

(8) The bankrupt shall pay the costs of any application under this rule and, unless the Court otherwise orders, no allowance towards them shall be made out of the bankrupt's estate.

Expenses of assisting bankrupt to prepare statement of affairs

190.—(1) Where the bankrupt cannot personally prepare a proper statement of affairs, the Official Receiver may, at the expense of the bankrupt's estate, employ a person or firm to assist in the preparation of the statement of affairs.

(2) At the request of the bankrupt, made on the grounds that the bankrupt cannot personally prepare a proper statement of affairs, the Official Receiver may authorize an allowance payable out of the bankrupt's estate, in accordance with the prescribed order of priority, towards expenses to be incurred by the bankrupt in employing a person or firm to assist the bankrupt in preparing the statement.

(3) The bankrupt's request shall be accompanied by an estimate of the expenses involved, and the Official Receiver shall only authorize the employment of a named person or a named firm, being in either case approved by the Official Receiver.

(4) The Official Receiver may make the authorization subject to such conditions, if any, as the Official Receiver thinks fit relating to the manner in which any person may obtain access to relevant documents and other records.

(5) Nothing in this rule shall relieve the bankrupt from any obligation relating to the preparation, verification and submission of a statement of affairs, or to the provision of information to the Official Receiver or the trustee.

Delivery of accounts to Official Receiver

191.—(1) The bankrupt shall, at the request of the Official Receiver, deliver to the Official Receiver accounts relating to the bankrupt's affairs of such nature, as at such date and for such period, as the Official Receiver may specify.

(2) The period specified may begin from a date up to three years preceding the date of the presentation of the bankruptcy petition.

(3) The Court may, on the Official Receiver's application, require accounts for any earlier period.

(4) The accounts shall be verified by a sworn statement, and, whether or not so verified, delivered to the Official Receiver and the Director within twenty-one days of the request, or such longer period as the Official Receiver may allow.

Further disclosure

192.—(1) The Official Receiver may, at any time, require the bankrupt to deliver in writing further information amplifying, modifying or explaining any matter contained in the bankrupt's statement of affairs, or in the accounts delivered under the Act or these Rules.

(2) The information shall be verified by a sworn statement, and, whether or not verified, delivered to the Official Receiver and the Director within twenty-one days from the date of the requirement, or such longer period as the Official Receiver may allow.

Appointment of trustee by creditors' meeting

193.—(1) This rule applies where a person is appointed as trustee by a meeting of creditors.

(2) The chairperson of the meeting shall only certify the appointment, where the appointee has—

(*a*) delivered, to the chairperson, evidence to the effect that he—

(i) is qualified as an insolvency practitioner under the Act;

(ii) is entitled to act as trustee in relation to the bankrupt; and

(iii) consents to act as trustee; and

(*b*) provided evidence, to the satisfaction of the chairperson, that he has security for the proper performance of the office.

(3) The certificate shall be signed and dated by the chairperson and shall also—

(*a*) identify the bankrupt;

(*b*) identify and provide contact details for the person appointed as trustee;

(*c*) state the date of the meeting of creditors at which the trustee was appointed; and

(*d*) state that at the meeting, the appointee having provided evidence of qualification to act as an insolvency practitioner in relation to the bankrupt under the Act and having consented to act as the trustee, was appointed trustee of the bankrupt's estate.

(4) Where two or more trustees are appointed, the certificate shall also—

(*a*) identify and provide contact details for each person appointed as trustee; and

(*b*) specify the circumstances, if any, in which the joint trustees shall act together or whether one or more of them act for other persons.

(5) The trustee's appointment shall be effective from the date on which the appointment has been certified.

(6) The chairperson of the meeting shall deliver the certificate to—

(*a*) the Director; and

(*b*) the Official Receiver, if he is not the Official Receiver.

(7) The Official Receiver shall in any case deliver the certificate to the trustee.

(8) It shall be the duty of the creditors' committee to review from time to time the adequacy of the trustee's security.

(9) The cost of the security shall be an expense of the bankruptcy.

Creditors' meetings: resolution to appoint trustee

194.—(1) In the case of a resolution for the appointment of a trustee—

(*a*) if on a vote there are two nominees for appointment, the nominee who obtains the most votes shall be appointed;

(*b*) if there are three or more nominees, and one of them has a clear majority over both or all the other nominees together, the nominee with a clear majority shall be appointed; and

(*c*) in any other case the chairperson shall continue to take votes, disregarding at each vote any nominee who has withdrawn and, if no nominee has withdrawn, the nominee who obtained the least support at the last time of voting, until a clear majority is obtained for any one nominee.

(2) The chairperson may at any time put to the meeting a resolution for the joint appointment of any two or more nominees.

Appointment of trustee by the Court

195.—(1) This rule applies where the Court appoints a trustee.

(2) The Court's order appointing a trustee shall only be made where the person appointed has filed with the Court evidence to the effect that the person is qualified to act as an insolvency practitioner under the Act, and that he consents to act as the trustee.

(3) The order of the Court shall—

(*a*) identify the proceedings;

(*b*) state the name and title of the person making the order;

(*c*) state the name and postal address of the applicant;

(*d*) state the capacity in which the applicant is making the application;

(*e*) identify and provide contact details for the person appointed as trustee;

(*f*) state that upon consideration of the evidence, it is ordered that the person appointed, having filed evidence of qualification to act as an insolvency practitioner in relation to the bankrupt under the Act and having consented to act as the trustee, he was appointed trustee of the bankrupt's estate; and

(*g*) state the date on which the order is made.

(4) Where two or more trustees are appointed, the order shall also specify the circumstances, if any, in which the joint trustees shall act together.

(5) The Court shall deliver three copies of the order to be sealed, to the Official Receiver and the Director.

(6) The Official Receiver shall deliver the sealed copy of the order to the person appointed as trustee.

(7) The trustee's appointment takes effect from the date of the order.

Authentication of trustee's appointment

196. A copy of the certificate of the trustee's appointment, or as the case may be, a sealed copy of the order of appointment may be provided in any proceedings as proof that the person appointed is duly authorized to exercise the powers and perform the duties of the trustee of the bankrupt's estate.

Appointment to be advertised

197.—(1) As soon as it is reasonably practicable, after appointment of a trustee, a trustee appointed by a meeting of creditors—

(*a*) shall publish a notice of his appointment in the *Gazette*; and

(*b*) may advertise that notice in such other manner as the trustee thinks fit.

(2) In addition to the standard contents, the notice shall state—

(*a*) that a trustee has been appointed by a meeting of creditors; and

(*b*) the date of the appointment.

Hand over of bankrupt's estate by Official Receiver to trustee

198.—(1) This rule applies where the trustee is appointed in succession to the Official Receiver acting as trustee.

(2) When the trustee's appointment takes effect, the Official Receiver shall, as soon as it is reasonably practicable, do all that is required for putting the trustee into possession of the bankrupt's estate.

(3) On taking possession of the bankrupt's estate, the trustee shall discharge any balance due to the Official Receiver on account of—

(*a*) expenses properly incurred by the Official Receiver and payable under the Act or these Rules; and

(*b*) any advances made by the Official Receiver in respect of the bankrupt's estate together with interest on the date of the bankruptcy order or subsequently.

(4) As an alternative to subrule (3), the trustee may, before taking office, deliver to the Official Receiver a written undertaking to discharge any such balance out of the first realization of assets.

(5) The Official Receiver shall have a charge on the bankrupt's estate in respect of any sums due under subrule (3) until they have been discharged, subject only to the deduction from realizations by the trustee of the costs and expenses of such realizations.

(6) The trustee shall, from time to time out of the realization of assets, discharge all guarantees properly given by the Official Receiver for the benefit of the bankrupt's estate, and shall pay all the Official Receiver's expenses.

(7) The Official Receiver shall give to the trustee all the information relating to the affairs of the bankrupt and the course of the bankruptcy which the Official Receiver considers to be reasonably required for the effective discharge by the trustee of the trustee's duties in relation to the estate.

Trustee's resignation and appointment of replacement

199.—(1) Rule 105 shall apply, *mutatis mutandis*, to the resignation of the trustee of a bankrupt's estate.

(2) The trustee of a bankrupt's estate shall deliver a copy of his notice of resignation to the Official Receiver and the bankrupt.

(3) A new trustee appointed in place of one who has resigned shall, when delivering his notice of appointment, also deliver the notice of the previous trustee's resignation.

(4) The resigning trustee's release shall be effective from the date on which the notice of resignation is filed—

(*a*) with the Court and the Registry, where the debtor was declared bankrupt by the Court; or

(*b*) with the Official Receiver, where the debtor was declared bankrupt based on a debtor's application.

Meeting of creditors to remove trustee

200.—(1) Where the chairperson of a meeting of creditors is other than the Official Receiver, and a resolution is passed to remove the trustee, the chairperson shall, within three business days of the passing of the resolution, deliver a certificate to that effect to the Official Receiver.

(2) Where the creditors have resolved to appoint a new trustee, the certificate of the new trustee's appointment shall also be delivered to the Official Receiver within that time.

(3) The certificate of the trustee's removal shall be signed and dated by the chairperson and—

(*a*) identify the bankrupt;

(*b*) identify and provide the contact details for the trustee;

(*c*) state that at a meeting of the creditors of the bankrupt held on the date specified in the certificate, it was resolved that the trustee specified in the certificate be removed from office as trustee of the bankrupt's estate;

(*d*) state the date of the meeting; and

(*e*) state that the meeting—

(i) did not pass any resolution against the trustee being released; or

(ii) resolved that the trustee should not be released.

(4) The trustee's removal shall be effective from the date of the certificate of removal.

Procedure on removal by creditors

201.—(1) Where the creditors have resolved that the trustee be removed, the Official Receiver shall, in the case where the debtor was declared bankrupt—

(*a*) by the Court, following a creditor's petition, file the certificate of removal with the Court; or

(*b*) following a debtor's application, place the certificate of removal on the bankrupt's file.

(2) The Official Receiver shall deliver a copy of the certificate to—

(*a*) the removed trustee;

(*b*) the new trustee, if appointed; and

(*c*) the Director.

Removal of trustee by the Court

202.—(1) This rule applies where an application is made to the Court for the removal of the trustee, or for an order directing the trustee to summon a meeting of creditors for the purpose of considering a motion removing the trustee.

(2) Where the Court considers that no sufficient cause is shown for the application it shall deliver a notice to that effect to the applicant.

(3) Unless the application is dismissed, the Court will fix the date, time and venue for it to be heard.

(4) The Court may require the applicant to make a deposit or give security for the costs to be incurred by the trustee on the application.

(5) The applicant shall, at least fourteen days before the hearing, deliver to the trustee and the Official Receiver and the Director a notice stating the date, time and venue of the hearing, accompanied by a copy of the application, and of any evidence which the applicant intends to provide in support of the application.

(6) On a successful application, the Court's order shall—

(*a*) identify the proceedings;

(*b*) state the name and title of the person making the order;

(*c*) state the name and postal address of the applicant;

(*d*) state the capacity in which the applicant is making the application;

(*e*) identify and provide the contact details for the trustee;

(*f*) state that, upon consideration of the evidence, it is ordered that—

(i) the trustee be removed from office; or

(ii) the trustee shall summon a meeting of the bankrupt's creditors on or before the date specified in the order for the purposes of considering the trustee's removal from office;

(*g*) provide details of any further order in the matter; and

(*h*) state the date of the making of the order.

(7) The costs of the application shall not be payable as an expense of the bankruptcy, unless the Court orders otherwise.

(8) Where the Court removes the trustee, the Court shall deliver a copy of the order of removal to the trustee, the Director and the Official Receiver.

Advertisement of removal

203. A new trustee who has been appointed in place of a trustee who has been removed shall, in giving notice of his appointment,

state that the previous trustee has been removed and, if it be the case, has been released.

Release of removed trustee

204. Where a trustee is removed by a meeting of creditors, the certificate of removal shall state whether or not the meeting resolved for, or against, the trustee's release.

Deceased trustee

205.—(1) Where the trustee, not being an Official Receiver, dies, a notice to that effect and the date of death shall be delivered, as soon as it is reasonably practicable, to the Official Receiver and the Director by one of the following—

(*a*) a partner in the deceased trustee's firm, if the deceased was a partner in, or an employee of, a firm; or

(*b*) a personal representative of the deceased trustee.

(2) Where such a notice has not been delivered within twenty-eight days following the trustee's death, then any other person may deliver the notice.

(3) The Official Receiver shall file the notice of the death with the Court.

Loss of qualification as insolvency practitioner

206.—(1) This rule applies where the trustee vacates office on ceasing to be qualified to act as an insolvency practitioner in relation to the bankrupt.

(2) The trustee shall, as soon as it is reasonably practicable, deliver a notice stating his loss of qualification referred to in subrule (1) to the Official Receiver.

(3) The notice shall—

(*a*) identify and provide contact details for the trustee;

(*b*) identify the bankrupt;

(*c*) state that the trustee ceased to be a qualified insolvency practitioner with effect from the date specified in the notice;

(*d*) specify the date; and

(*e*) be signed and dated by the trustee.

(4) On receiving the notice, the Official Receiver shall deliver a copy of the notice to the Director.

Vacation of office on completion of bankruptcy

207.—(1) The trustee shall not deliver a notice under rule 206 that the administration of the bankrupt's estate is complete until at

least eight weeks after the final report on the bankruptcy and the notice of the trustee's intention to vacate office has been delivered to all the creditors.

(2) In addition to the standard contents, the notice under rule 206 shall—

(*a*) state that the trustee has delivered the notice of intention to vacate office and a copy of the final report to the directors, all the creditors and the bankrupt;

(*b*) state the date of the notice;

(*c*) state whether—

(i) the trustee shall be released on vacating office; or

(ii) more than ten per cent in value of the creditors objected to the trustee's release, who shall apply to the Director for his release;

(*d*) be signed and dated by the trustee; and

(*e*) be accompanied by a copy of the final report.

(3) The trustee shall deliver a copy of the notice to the Director and the Official Receiver.

Trustee's duties on vacating office

208. A trustee who ceases to be in office in consequence of removal, resignation or loss of qualification as an insolvency practitioner, shall as soon as it is reasonably practicable, deliver to the successor as trustee—

(*a*) the assets of the estate, after deduction of any expenses properly incurred, and distributions made, by the trustee;

(*b*) the records of the bankruptcy, including correspondence, proofs and other documents relating to the bankruptcy while it was within the trustee's responsibility; and

(*c*) the bankrupt's documents and other records.

Rule against solicitation by, or on behalf of, trustee

209. Rule 112 shall apply, *mutatis mutandis*, to the proscription against solicitation by the trustee or a person acting on his behalf.

Order for public examination

210.—(1) The Court shall hold a public examination of a bankrupt under section 235 of the Act.

(2) The Official Receiver shall deliver a notice of the public examination to a bankrupt fourteen days after the statement of the

Official Receiver is filed with the Court, or the ordinary resolution of the meeting of creditors has been certified by the Official Receiver or the chairperson of the meeting.

(3) The notice shall appoint the date, time and venue for the public examination, and direct the bankrupt's attendance at the examination.

(4) The notice shall contain a warning to the bankrupt stating that if the bankrupt fails, without reasonable excuse, to attend the bankrupt's public examination at the date, time and venue set out in the notice, the bankrupt commits contempt of court.

(5) The Official Receiver shall deliver the notice of the public examination at least fourteen days from the date of the examination—

(*a*) to the trustee; and

(*b*) subject to any contrary direction of the Court, to every creditor of the bankrupt who is known to the Official Receiver.

(6) Where the Official Receiver thinks fit, a notice of the public examination shall be advertised, not less than fourteen days before the date of the examination, in two daily newspapers of wide circulation or in such other manner.

(7) The notice of public examination shall include the standard contents.

Order on public examination requested by creditors

211.—(1) A notice by a creditor to the Official Receiver requesting the bankrupt to be publicly examined shall be accompanied by—

(*a*) a list of the creditors concurring with the request with the name and postal address of each of the creditors and the amount of their respective claims in the bankruptcy;

(*b*) confirmation by each creditor of that creditor's concurrence; and

(*c*) a statement of the reasons why the public examination is requested.

(2) The request shall be signed and dated by the creditor giving the notice.

(3) A list of concurring creditors is not required if the requisitioning creditor's debt alone holds more than twenty per cent of the debt without the concurrence of the other creditors.

(4) Before the Official Receiver makes an application to the Court on the request, the creditor requesting the examination shall deposit with the Official Receiver, such sum as the latter may determine to be, by way of security for the expenses of the hearing of a public examination, if so ordered.

(5) Subject to subrule (4), the Official Receiver shall make the application to the Court within twenty-eight days of receiving the request for public examination.

(6) Where the Official Receiver is of the opinion that the request is unreasonable, the Official Receiver may apply to the Court for an order relieving him from the obligation to make the application.

(7) Where the Court orders that the Official Receiver need not make the application for the order, and the application for the order was made without notice to any other party, the Official Receiver shall deliver a notice of the order, as soon as it is reasonably practicable, to the person making the request.

Bankrupt unfit for examination

212.—(1) Where the bankrupt is a person who lacks capacity or is unfit to attend the public examination, the Court may—

(*a*) stay the order for the bankrupt's public examination; or

(*b*) direct that it shall be conducted in a manner and place it considers just.

(2) An application shall be made by—

(*a*) a person who has been appointed by a Court in Malaŵi or elsewhere to manage the affairs of, or to represent, the bankrupt;

(*b*) a person who appears to the Court to be a suitable person to make the application; or

(*c*) the Official Receiver.

(3) Where an application for public examination is made by a person other than the Official Receiver, then—

(*a*) the application shall, unless the bankrupt is a person who lacks capacity, be supported by a sworn statement by a registered medical practitioner as to the bankrupt's mental and physical condition;

(*b*) at least five business days' notice of the application shall be delivered to the Director, Official Receiver and the trustee; and

(*c*) before any order is made on the application, the applicant shall deposit with the Official Receiver such sum as the Official Receiver determines is necessary for the additional expenses of the public examination.

(4) The Court may order that some or all of the expenses of the public examination are to be payable out of the deposit under subrule (3) (*c*), instead of out of the estate.

(5) The order shall—

(*a*) identify the proceedings;

(*b*) state the date of the original order for the public examination of the bankrupt;

(*c*) state the name and postal address of the applicant;

(*d*) state the capacity in which the applicant, other than the Official Receiver, is making the application;

(*e*) state the name and postal address of the debtor or the bankrupt;

(*f*) state that upon consideration of the evidence, the Court is satisfied that the bankrupt lacks capacity to manage and administer the bankrupt's property and affairs or is unfit to attend a public examination;

(*g*) order that—

(i) the original order be stayed on the grounds that the bankrupt is unfit to attend a public examination; or

(ii) the original order be varied on the grounds that the bankrupt is unfit to attend the public examination fixed by the original order.

(6) Where the original order is varied, the order shall contain a warning to the bankrupt stating that if the bankrupt fails, without reasonable excuse, to attend his public examination on the date, time and venue set out in the order, he commits contempt of court.

(7) Where the application is made by the Official Receiver, it may be made without notice to any other party, and may be supported by evidence set out in a report by the Official Receiver to the Court.

Procedure at hearing of bankrupt's public examination

213.—(1) At the hearing of the public examination, the bankrupt shall be examined under oath or affirmation and shall answer the questions put to him.

(2) A person allowed to question the bankrupt may, with the approval of the Court, appear by counsel or may authorize in writing another person to question the bankrupt on that person's behalf.

(3) The bankrupt may, at his expense employ, counsel who may put such questions as the Court may allow to be put to the bankrupt for the purpose of enabling the bankrupt to explain or qualify any answers given by the bankrupt, and may make representations on the bankrupt's behalf.

(4) The Court shall have a record made of the public examination, as it considers fit.

(5) The record may, in any proceedings, whether under the Act or otherwise, be used as evidence of any statement made by the bankrupt in the course of the bankrupt's public examination.

(6) Where criminal proceedings have been instituted against the bankrupt, and the Court is of the opinion that the continuation of the hearing of the public examination may prejudice a fair trial of those proceedings, the hearing may be adjourned until the conclusion of the proceedings.

Adjournment of public examination

214.—(1) The Court may adjourn the public examination to a fixed date or generally.

(2) The order of adjournment of the public examination to a fixed date shall contain a warning to the bankrupt, stating that if the bankrupt fails without reasonable excuse to attend the public examination on the date, time and venue set out in the order, the bankrupt commits contempt of court and liable to be fined or be sent to prison.

(3) Where the public examination has been adjourned generally, the Court may at any time on the application of the Official Receiver or the bankrupt—

(*a*) fix the date, time and venue for the resumption of the examination; and

(*b*) give directions as to the manner in which, and the time within which, the notice of the examination to be resumed is to be given to persons entitled to take part in it.

(4) Where the application to adjourn the public examination is made by the bankrupt, the Court may grant it on condition that—

(*a*) the expenses of giving the notice under subrule (3) shall be paid by the bankrupt; and

(*b*) before the date, time and venue for the hearing of the examination to be resumed is fixed, the bankrupt shall deposit with the Official Receiver such sum as the Official Receiver considers necessary to cover those expenses.

Expenses of public examination

215.—(1) Where a public examination of the bankrupt has been ordered by the Court on a creditor's request, the Court may order that some or all of the expenses of the examination are to be paid out of the deposit made under rule 214 (4) (*b*), instead of out of the bankruptcy estate.

(2) The expenses of a public examination shall not fall on the Official Receiver personally.

Disclaimer

216.—(1) Subject to subrules (2) and (3), the trustee may, by notice, disclaim any onerous property and may do so notwithstanding that he has—

(*a*) taken possession of it;

(*b*) endeavoured to sell it; or

(*c*) otherwise, exercised rights of ownership in relation to it.

(2) The following is "onerous property" for the purposes of this rule—

(*a*) any unprofitable contract; or

(*b*) any other property under the bankruptcy estate which is un-saleable or not readily saleable, or is such that it may give rise to a liability to pay money or perform any other onerous act.

(3) A disclaimer under this rule—

(*a*) operates so as to determine, as from the date of the disclaimer, the rights, interests and liabilities of the bankrupt and his estate in or in respect of the property disclaimed; and

(*b*) discharges the trustee from all personal liability in respect of that property as from the commencement of his trusteeship, but does not, except so far as is necessary for the purpose of releasing the bankrupt, the bankrupt's estate and the trustee from any liability, affect the rights or liabilities of any other person.

Trustee's notice of disclaimer

217.—(1) A trustee's notice of disclaimer under rule 216 shall have the title "Notice of Disclaimer under Rule 216 of the Insolvency Rules" and shall—

(*a*) identify the bankrupt;

(*b*) contain such particulars of the property as shall enable it to be easily identified;

(*c*) identify and provide contact details of the trustee;

(*d*) state that the trustee of the bankrupt's estate disclaims all interest in the property specified in the notice;

(*e*) state the name and postal address of each person to be sent a copy of the notice under these Rules; and

(*f*) be signed and dated by the trustee.

(2) Where the property consists of land or buildings, the nature of the interest under subrule 1 (*d*) shall be stated in the notice.

(3) The trustee shall, as soon as it is reasonably practicable, after authenticating the notice of disclaimer—

(*a*) file a copy of the notice with the Court; and

(*b*) deliver a copy of the notice to the Chief Land Registrar or the Deeds Registrar, as the case may be.

(4) For the purposes of rule 216, the date of the disclaimer shall be the date on which the trustee signs the notice.

Communication of disclaimer to interested persons

218.—(1) The trustee shall serve any copies of a notice of disclaimer in respect of leasehold property within seven business days after the date of the notice of disclaimer.

(2) The trustee shall, within seven business days after the date of a notice of disclaimer, deliver copies of the notice to every person who to the trustee's knowledge—

(*a*) claims an interest in the disclaimed property;

(*b*) is under any liability in relation to the property, not being a liability discharged by the disclaimer;

(*c*) if the disclaimer is of an unprofitable contract, is a party to the contract or has an interest under it; or

(*d*) if the disclaimer is of property in a dwelling-house, is in occupation of, or claims a right to occupy, the house.

(3) Where the trustee becomes aware that a person has such an interest in the disclaimed property as to be entitled to receive a copy of the notice of disclaimer, then the trustee shall deliver a copy of the notice to the person, as soon as it is reasonably practicable.

(4) The trustee is not required to deliver a copy of the notice under subrule (3) where—

(*a*) the trustee is satisfied that the person has already been made aware of the disclaimer and its date; or

(*b*) the Court, on the trustee's application, orders that delivery of a copy is not required in the particular case.

Delivery of copies of trustee's notice of disclaimer

219. The trustee disclaiming property may at any time deliver copies of the notice of disclaimer to any other person whom the trustee thinks ought, in the public interest or otherwise, to be informed of the disclaimer.

Second bankruptcy

220. Rules 221, 222 and 223, relate to the manner in which, in the case of a second bankruptcy, the existing trustee is to deal with property and money to which section 222 (3) of the Act, apply until there is a trustee of the estate in the later bankruptcy.

General duty of existing trustee

221.—(1) The existing trustee shall take into custody or under control all of the property and money, so far as the existing trustee has not already done so as trustee in the earlier bankruptcy.

(2) Where any of the property taken into custody consists of perishable goods, or goods the value of which is likely to diminish if they are not disposed of, the existing trustee may sell or otherwise dispose of the goods.

(3) The proceeds of a sale or disposal of goods under subrule (2) shall be held, under the existing trustee's control, with the other property and money comprised in the bankruptcy estate.

Delivery up to later trustee

222. The existing trustee shall, if requested by the later trustee for the purposes of the later bankruptcy, deliver to the later trustee, as soon as it is reasonably practicable, all the property and money in the existing trustee's custody or under his control.

Existing trustee's expenses

223. Any expenses incurred by the existing trustee in compliance with section 222 of the Act and this Part shall be paid out of, and are a charge on, all of the property and money referred to in section 222 of the Act, whether in the hands of the existing trustee or the later trustee for the purposes of the later bankruptcy.

Division II—Individual Voluntary Arrangement

Interpretation

224. In this Division, unless the context otherwise requires—

"nominee" includes the proposed insolvency practitioner nominee in relation to a proposal;

"proposal" means a proposal for an individual voluntary arrangement; and

"supervisor" includes the proposed insolvency practitioner supervisor of an individual voluntary arrangement.

Contents of proposal

225.—(1) The proposal shall—

(*a*) explain briefly why the debtor is making the proposal; and

(*b*) explain why the creditors are being invited to agree to an individual voluntary arrangement.

(2) The proposal shall be signed and dated by the debtor.

(3) The proposal may be amended with the nominee's agreement, in writing, at any time up to the filing of the nominee's report with the Court, or the submission of the nominee's report to the creditors.

(4) The following matters shall be stated, or otherwise dealt with, in the proposal, so far as within the debtor's knowledge, in relation to—

(*a*) assets—

(i) the nature of the debtor's assets, with an estimate of their respective realizable values;

(ii) which assets are subject to an encumbrance and the extent of the encumbrance;

(iii) which assets are to be excluded from the individual voluntary arrangement; and

(iv) particulars of any property to be included in the individual voluntary arrangement which is not owned by the debtor, including details of who owns the property and the conditions under which it may be available for inclusion;

(*b*) liabilities—

(i) the nature and amount of the debtor's liabilities;

(ii) how the debtor's liabilities shall be met, modified, postponed or otherwise dealt with under the individual voluntary arrangement and, in particular—

(AA) how preferential creditors and creditors who are, or claim to be, secured will be dealt with; and

(BB) how creditors who are associates of the debtor will be dealt with;

(iii) if the debtor is an undischarged bankrupt, whether any claim has been made under section 290 of the Act or section 293 of the Act and, if he has, whether, and if so, what provision is being made to indemnify the insolvent estate in respect of such a claim; and

(iv) if the debtor is not an undischarged bankrupt, whether there are circumstances which might give rise to a claim referred to in paragraph (iii) if the debtor were made bankrupt and, where there are such circumstances, whether, and if so, what provision will be made to indemnify the insolvent estate in respect of such a claim;

(*c*) nominee's fees and expenses, the amount proposed to be paid to the nominee as fees and expenses;

(*d*) supervisor—

(i) the name, address and qualification of the supervisor and confirmation that that person is qualified to act as an insolvency practitioner, or is an authorized person, in relation to the debtor;

(ii) how the fees and expenses of the supervisor of the individual voluntary arrangement shall be paid; and

(iii) the tasks to be undertaken by the supervisor;

(*e*) guarantees and proposed guarantees—

(i) details of any guarantees of the debtor's debts that have been given by other persons, specifying which of the guarantors are associates of the debtor; and

(ii) whether, for the purposes of the individual voluntary arrangement, any guarantees are to be offered and, if so, by whom and whether security is to be given or sought;

(*f*) timing—

(i) the period that the individual voluntary arrangement is expected to last; and

(ii) the proposed dates of distribution of proceeds to creditors, with estimates of their amounts;

(*g*) type of proceedings, whether the proceedings will be foreign main or foreign non-main;

(*h*) conduct of business, if the debtor has any continuing business, how that business will be conducted during the course of the individual voluntary arrangement;

(*i*) further credit facilities, details of any further credit facilities or liabilities the debtor proposes to incur during the period of the individual voluntary arrangement and how the debts so arising are to be paid;

(*j*) handling of funds arising—

(i) the manner in which funds held for the purposes of the individual voluntary arrangement are to be banked, invested or otherwise dealt with pending distribution of proceeds to creditors;

(ii) how funds held for the purpose of payment to creditors and may not have been paid on the termination of the individual voluntary arrangement shall be dealt with; and

(iii) how the claim of any person bound by the individual voluntary arrangement under section 261 (2) (*b*) (ii) of the Act shall be dealt with; and

(*k*) other proposals, whether any other proposal in relation to the debtor has been submitted within the twenty-four months preceding the submission of this proposal to the nominee—

(i) for approval by the creditors and, if so—

(AA) whether that proposal was approved or rejected;

(BB) whether, if approved, the individual voluntary arrangement was completed or was terminated; and

(CC) in what respects such a proposal, where rejected, differs from the current proposal; and

(ii) to the Court in connexion with an application for an interim order under section 252 of the Act and, if so, whether the interim order was made.

Notice of nominee's consent

226.—(1) Where the nominee consents to act, the nominee shall, as soon as it is reasonably practicable, after submission of the proposal to the nominee, deliver a notice of that consent to the debtor.

(2) The notice shall state the date the nominee received the proposal.

Statement of affairs

227.—(1) Where the debtor is an undischarged bankrupt and has already delivered a statement of affairs under section 209 of the Act, a statement of affairs need not be submitted to the nominee under section 256 (2) or 257 (2) of the Act, unless the nominee requires a further statement of affairs to supplement or amplify the earlier one.

(2) The statement of affairs shall contain—

(*a*) a list of the debtor's assets, divided into such categories as are appropriate for easy identification, and an estimated value of each category;

(*b*) in the case of any property on which a claim against the debtor is wholly or partly secured, particulars of the claim, how and when the security was created;

(*c*) the names and addresses of the preferential creditors, with the amounts of their respective claims;

(*d*) the names and addresses of the unsecured creditors, with the amounts of their respective claims;

(*e*) particulars of any debts owed by, or to the debtor, to or by persons who are associates of the debtor; and

(*f*) such other particulars, if any, as the nominee may, in writing, require to be provided for the purposes of making the nominee's report on the proposal to the Court or to the creditors, as the case may be.

(3) Subject to subrule (4), the statement shall be made up to a date not earlier than two weeks before the date of the proposal.

(4) The nominee may allow the statement to be made up to a date that is earlier than two weeks, but not earlier than two months, before the date of the proposal, where that is more practicable.

(5) Where the statement is made up to an earlier date, the nominee's report shall explain why an earlier date was allowed.

(6) The statement shall be verified by a sworn statement by the debtor.

Limited disclosure of statement of affairs

228. The nominee, the debtor or any person appearing to the Court to have an interest may, if any information in the statement of affairs would be likely to prejudice the conduct of the individual voluntary arrangement or might reasonably be expected to lead to violence

against any person, apply to the Court for an order that specified information be omitted from any statement of affairs required to be delivered to creditors.

Additional disclosure for assistance of nominee

229.—(1) Where it appears to the nominee that the report to the Court or the creditors cannot properly be prepared on the basis of information in the proposal and statement of affairs, the nominee may require the debtor to provide—

(*a*) more information about the circumstances in which, and the reasons why, the debtor is insolvent or is threatened with insolvency;

(*b*) information about any proposals which have, at any time, been made by the debtor; and

(*c*) any further information relating to the debtor's affairs which the nominee thinks necessary for the purposes of the report.

(2) The nominee may require the debtor to inform the nominee whether, and in what circumstances, the debtor has at any time—

(*a*) been concerned in the affairs of a company, wherever incorporated, which has become insolvent;

(*b*) been made bankrupt; or

(*c*) entered into an arrangement with creditors.

(3) The debtor shall give the nominee such access to the debtor's accounts and records as the nominee requires to enable the nominee to consider the debtor's proposal and prepare the report on it.

Application for interim order (cases within s. 257 of the Act)

230.—(1) An application to the Court for an interim order shall be accompanied by a sworn statement containing—

(*a*) the reasons for making the application;

(*b*) information about any action, execution, other legal process or the levying of any distress which, to the debtor's knowledge, has been commenced against the debtor or the debtor's property;

(*c*) a statement that the debtor is an undischarged bankrupt or is able to make a bankruptcy application;

(*d*) a statement that no previous application for an interim order has been made by or in relation to the debtor in the period of twelve months ending with the date of the sworn statement; and

(*e*) a statement that a person named in the sworn statement is willing to act as nominee in relation to the proposal and is qualified to act as an insolvency practitioner or is authorized person in relation to the debtor.

(2) For the purposes of section 257 (3) of the Act, the prescribed period shall be twenty-one days.

(3) The sworn statement shall be accompanied by a copy of—

(*a*) the proposal; and

(*b*) the notice of the nominee's consent to act as such.

(4) When the application and the sworn statement have been filed, the Court shall fix the date, time and venue for the hearing of the application.

(5) The applicant shall deliver a notice of the hearing at least two business days before the hearing to the nominee and—

(*a*) the debtor, the Official Receiver or the trustee, whichever is not the applicant, where the debtor is an undischarged bankrupt; or

(*b*) any creditor who, to the debtor's knowledge, has presented a bankruptcy petition against the debtor where the debtor is not an undischarged bankrupt.

(6) An application under section 257 (4) of the Act shall contain the name and address of the nominee.

Court in which application to be made

231. An application shall be made—

(*a*) to the Court which heard the bankruptcy proceedings, where the debtor is an undischarged bankrupt; or

(*b*) to the Court having jurisdiction over bankruptcy matters.

Order granting stay

232. A court order under section 254 (1) (*b*) of the Act granting a stay of an action, execution or other legal process pending the hearing of an application for an interim order under section 253 of the Act shall identify the proceedings and contain—

(*a*) the section number of the Act under which it is made;

(*b*) a statement that the evidence has been considered;

(*c*) details of the action, execution or other legal process which is stayed;

(*d*) the date, time and venue for the hearing of the application for the interim order; and

(*e*) the date on which the order granting the stay is made.

Hearing of application for interim order

233.—(1) A person to whom a notice of the hearing of the application for an interim order was delivered, or should have been delivered, may appear or be represented at the hearing.

(2) The Court shall take into account any representations made by, or on behalf of, such a person, in particular, as to whether an order should contain such provision as is referred to in section 255 (3) and (4) of the Act.

(3) Where the Court makes an interim order, it shall fix the date, time and venue for consideration of the nominee's report for a date no later than the date on which the order ceases to have effect.

Interim order

234. An interim order shall identify the proceedings and contain—

(*a*) the section number of the Act under which it is made;

(*b*) a statement that the evidence has been considered;

(*c*) a statement that the order has effect from its making until the end of the period of fourteen days beginning on the day after the date on which it is made;

(*d*) particulars of the effect of the order under section 252 (2) of the Act;

(*e*) an order that the report of the nominee be delivered to the Court, not later than a specified date which shall not be later than two business days before the interim order ceases to have effect;

(*f*) particulars of any orders made under section 255 (3) and (4) of the Act;

(*g*) where the debtor is an undischarged bankrupt and the applicant is not the Official Receiver, an order that the applicant delivers, as soon as it is reasonably practicable, a copy of the interim order to the Official Receiver;

(*h*) the date, time and venue for the Court's consideration of the report; and

(*i*) the date of the order.

Action to follow making of order

235.—(1) The Court shall deliver at least two sealed copies of the interim order to the applicant.

(2) As soon as it is reasonably practicable, the applicant shall deliver—

(*a*) one copy of the interim order to the nominee and, where the debtor is an undischarged bankrupt, another copy to the Official Receiver, unless the Official Receiver was the applicant; and

(*b*) a notice that the order has been made to any other person to whom a notice of the hearing of the application for an interim order was, or should have been, delivered and who was not in attendance or represented at the hearing.

Order extending period of interim order

236. An order under section 256 (4) of the Act extending the period for which an interim order has effect shall identify the proceedings and contain—

(*a*) the section number of the Act under which it is made;

(*b*) a statement that the evidence has been considered;

(*c*) a statement that the application is that of the nominee for an extension of the period under section 256 (4) of the Act for which an interim order is to have effect;

(*d*) a statement that the period for which the interim order has effect is extended to a specified date;

(*e*) particulars of the effect under section 252 (2) of the Act of the interim order;

(*f*) an order that the report of the nominee be delivered to the Court not later than a specified date which shall not be later than two business days before the day on which the Court is to consider the nominee's report;

(*g*) particulars of any orders made under section 255 (3) or (4) of the Act;

(*h*) where the debtor is an undischarged bankrupt and the applicant is not the Official Receiver, an order that the applicant delivers, as soon as it is reasonably practicable, a copy of the order to the Official Receiver;

(*i*) the date, time and venue for the Court's consideration of the report; and

(*j*) the date of the order.

Nominee's report on the proposal

237.—(1) The nominee's report under section 256 of the Act shall be filed with the Court not less than two business days before the interim order ceases to have effect and it shall be accompanied by—

(*a*) a copy of the report;

(*b*) a copy of the proposal, as amended, if applicable; and

(*c*) a copy of any statement of affairs or a summary of the statement.

(2) The nominee's report shall explain why the nominee considers that the proposal does or does not have a reasonable prospect of being approved and implemented and why creditors should or should not be invited to consider the proposal.

(3) The Court shall endorse the nominee's report and the copy of it with the date on which they were filed and return the copy to the nominee.

(4) Where the debtor is an undischarged bankrupt, the nominee shall deliver to the Official Receiver and any trustee a copy of—

(*a*) the proposal;

(*b*) the nominee's report; and

(*c*) any statement of affairs or summary of such statement.

(5) Where the debtor is not an undischarged bankrupt, the nominee shall deliver a copy of each of the documents referred to in subrule (4) to any person who has presented a bankruptcy petition against the debtor.

Order extending period of interim order

238. An order under section 256 (5) of the Act extending the period for which an interim order has effect to enable creditors to consider the proposal shall identify the proceedings and contain—

(*a*) the section number of the Act under which it is made;

(*b*) a statement that the evidence has been considered;

(*c*) a statement that the Court has considered the nominee's report filed under section 256 of the Act;

(*d*) the date that the nominee's report was filed;

(*e*) a statement that for the purpose of enabling the creditors to consider the proposal, the period for which the interim order has effect is extended to a specified date;

(*f*) a statement that the nominee will be inviting the creditors to consider the proposal and if the nominee has decided that the proposal should be considered at a meeting, the date, time and venue for the meeting; and

(*g*) the date of the order.

Replacement of nominee

239.—(1) A debtor, who intends to apply under section 256 (3) (*a*) or (*b*) of the Act for the nominee to be replaced, shall deliver a notice to the nominee, at least five business days before making an application, that such application will be made.

(2) A nominee, who intends to apply under section 256 (3) (*b*) of the Act to be replaced, shall deliver a notice to the debtor at least five business days before making an application, that such application will be made.

(3) The Court shall not appoint a replacement nominee unless the replacement nominee has filed with the Court a statement confirming—

(*a*) his consent to act as such; and

(*b*) that he is qualified to act as an insolvency practitioner in relation to the debtor.

Appearance at consideration of nominee's report

240. A person to whom a notice was or should have been delivered may appear in person or be represented and appear by a legal practitioner at the Court's hearing to consider the nominee's report.

Nominee's report

241.—(1) The nominee's report under section 257 (3) of the Act shall explain why the nominee considers that the proposal does or does not have a reasonable prospect of being approved and implemented and why the creditors should or should not be invited to consider the proposal.

(2) The nominee shall deliver a copy of the report to the debtor.

(3) Where the nominee gives an opinion in the affirmative on the matters referred to in section 257 (3) (*a*) and (*b*) of the Act, the copy of the report delivered by the nominee to each of the creditors shall be accompanied by—

(*a*) a statement that an application for an interim order under section 253 of the Act is not being made;

(*b*) a copy of the proposal as amended, if applicable;

(*c*) a copy of any statement of affairs or a summary of such statement; and

(*d*) a copy of the notice of the nominee's consent to act as such.

(4) The nominee shall also deliver the documents referred to in subrule (3) to—

(*a*) the Official Receiver and any trustee, where the debtor is an undischarged bankrupt; and

(*b*) any person who has presented a bankruptcy petition against the debtor,

within fourteen days or such longer period, as the Court may allow of receipt of the documents and statement referred to in section 257 (2) of the Act.

Applications to the Court

242.—(1) This rule applies where the nominee has made a report under section 257 (3) of the Act.

(2) An application under section 263 of the Act may not be made after the period of twenty-eight days beginning with the first day on which the nominee gave notice of the result of consideration of the proposal under section 260 (1) of the Act.

(3) The twenty-eight day time limit for making an application shall not apply to an application by a person who was not invited to consider the proposal.

(4) An application relating to a proposal or an individual voluntary arrangement shall be made to—

(*a*) the Court which heard the bankruptcy proceedings, where the debtor is an undischarged bankrupt; or

(*b*) the Court having jurisdiction over bankruptcy matters.

(5) Where an application relates to a matter relating to a proposal or an individual voluntary arrangement, the applicant shall file with the Court, in addition to the documents in support of the application, such other documents required by these Rules as the applicant considers may assist the Court in determining the application.

Replacement of the nominee

243.—(1) A debtor who intends to apply under section 257 (4) (*a*) or (*b*) of the Act for the nominee to be replaced shall deliver a notice to the nominee at least five business days before making the application that such an application is being made.

(2) A nominee, who intends to apply under section 257 (4) (*b*) of the Act to be replaced, shall deliver a notice to the debtor at least five business days before making the application, that such an application is being made.

(3) The Court will not appoint a replacement nominee, unless the replacement nominee has filed with the Court a statement confirming—

(*a*) his consent to act as such; and

(*b*) that he is qualified to act as an insolvency practitioner or is an authorized person in relation to the debtor.

Consideration of proposal: common requirements

244.—(1) The nominee may invite the creditors to consider a proposal by correspondence or by summoning a meeting of the creditors.

(2) The nominee shall deliver to each creditor a notice which, in addition to the standard contents, shall—

(*a*) identify the proceedings;

(*b*) state—

(i) in a case where an interim order has not been obtained, the Court to which the application shall be made; or

(ii) in a case where an interim order is in force, the Court in which the nominee's report on the debtor's proposal has been filed under section 256 of the Act;

(*c*) state the effect of the following—

(i) creditors' voting rights;

(ii) the calculation of creditors' voting rights; and

(iii) the requisite majorities of creditors for passing resolutions; and

(*d*) unless they have been delivered already, be accompanied by—

(i) a copy of the proposal;

(ii) a copy of the statement of affairs, or, if the nominee thinks fit, a summary of the statement, including a list of creditors with the amounts of their debts;

(iii) a copy of the nominee's report on the proposal; and

(iv) a copy of the resolution to be voted on.

Consideration by correspondence

245.—(1) Where the nominee invites the creditors to consider the proposal by correspondence, the notice shall, in addition to the requirements under rule 237—

(*a*) invite the creditor to vote for or against each resolution; and

(*b*) state that in order to be counted—

(i) a vote shall be received by the deadline stated in the notice;

(ii) that written details of the creditor's claim shall have been received by the nominee before the deadline;

(iii) require any person who signs the vote on behalf of a creditor to state the capacity in which the person signs the vote; and

(iv) state how any proposals by those creditors entitled to vote for modifications to the proposals can be made, and how they will be dealt with by the nominee.

(2) The deadline referred to in subrule (1) (*b*) (i) shall be 12 noon on a date which shall be not less than fourteen days from the date of delivery of the notice and not more than twenty-eight days from the date on which—

(*a*) the nominee received the document and statement of affairs referred to in section 257 (2) of the Act in a case where an interim order has not been obtained; or

(*b*) the nominee's report was considered by the Court in a case where an interim order is in force.

Consideration at a meeting

246.—(1) Where the nominee invites the creditors to consider the proposal at a meeting, the notice shall in addition to the requirements of these Rules—

(*a*) specify the date, time and venue for the meeting;

(*b*) specify the purpose of the meeting;

(*c*) state that a creditor may only vote at the meeting if details of the claim are delivered to the nominee or to the chairperson of the meeting, before or at the meeting; and

(*d*) be accompanied by a blank proxy.

(2) The nominee shall have regard to the convenience of those invited to attend when fixing the date, time and venue for a meeting, including the resumption of an adjourned meeting.

(3) The date of the meeting shall not be more than twenty-eight days from the date on which—

(*a*) the nominee received the document and statement of affairs referred to in section 257 (2) of the Act in a case where an interim order has not been obtained; or

(*b*) on which the nominee's report was considered by the Court in a case where an interim order is in force.

Notice of meeting: when and to whom delivered

247. A notice summoning a meeting shall be delivered to all the creditors at least fourteen days before the day fixed for the meeting.

Non-receipt of notice of meeting

248. Where under the Act or these Rules consideration of a proposal is invited by correspondence or at a meeting, the consideration is presumed to have duly taken place even if not everyone to whom the notice was delivered responded in writing or attended the meeting.

Quorum at meeting of creditors

249.—(1) A meeting of creditors is not competent to act unless at least one creditor entitled to vote is in attendance.

(2) The start of a meeting shall be delayed by at least fifteen minutes if—

(*a*) the *quorum* consists of the chairperson, with or without one other person; and

(*b*) the chairperson is aware that one or more additional persons would, if attending, be entitled to vote.

Chairperson at meetings

250. The chairperson of a meeting of creditors shall be the nominee or his appointee.

Adjournment of meeting by chairperson

251.—(1) The chairperson may, and if the meeting so resolves shall, adjourn a meeting for not more than fourteen days.

(2) A meeting shall be concluded not later than fourteen days after the date on which the meeting was originally held.

Suspension of meeting

252. The chairperson may suspend a meeting for one or more periods not exceeding one hour in total without adjourning the meeting.

Creditors' voting rights

253.—(1) For the purposes of section 261 (2) of the Act, every creditor, secured or unsecured, is entitled to vote in respect of the debt due from the debtor, but whether a creditor may cast a vote is determined by these Rules.

(2) A creditor may only vote if details of his claim are delivered—

(*a*) before or by the deadline in the notice where the proposal is being considered by correspondence; or

(*b*) to the nominee or chairperson at or before the meeting where the proposal is being considered at a meeting.

Calculation of voting rights

254.—(1) Votes are to be calculated according to the amount of each creditor's claim—

(*a*) at the date of the interim order, where the debtor is not an undischarged bankrupt and an interim order is in force;

(*b*) at the date of the meeting, or the deadline in the notice inviting consideration by correspondence, where the debtor is not an undischarged bankrupt and an interim order is not in force; and

(*c*) at the date of the bankruptcy order, where the debtor is an undischarged bankrupt.

(2) A creditor may vote in respect of a debt for a liquidated amount, including a debt for an unliquidated amount or of an unascertained value.

(3) For the purposes of voting but not otherwise, a debt referred to in subrule (2) is to be valued at K1000 unless the nominee, an appointee or the chairperson of a meeting decides to put a higher value on it.

(4) A creditor whose claim is wholly secured may not vote.

(5) A creditor whose claim is partly secured may vote in respect of the unsecured balance.

Procedure for admitting creditors' claims for voting

255.—(1) The nominee or his appointee shall ascertain both entitlement to vote, and whether votes may be cast, and admit or reject claims them accordingly.

(2) A claim may be rejected in whole or in part.

(3) Where the nominee or his appointee is in any doubt whether a claim should be admitted or rejected, the nominee or the appointee shall mark it as objected to and allow votes to be cast in respect of

it, subject to such votes being subsequently declared invalid if the objection to the claim is sustained.

Requisite majorities of creditors

256.—(1) A resolution other than a resolution approving a proposal or modification is passed by creditors by correspondence or by a creditors' meeting when a majority in value of those voting have voted in favour of it.

(2) Subject to subrule (3), a resolution approving a proposal or a modification is passed by creditors by correspondence or by a creditors' meeting when a majority of three-quarters or more in value of those voting have voted in favour of it.

(3) A resolution is not passed by correspondence, unless at least one creditor votes in favour of it.

(4) A resolution is not passed if those voting against it include more than half in value of all the qualifying votes of unassociated creditors, whether or not actually cast.

(5) A creditor is unassociated unless the nominee, and appointed person or the chairperson decides that the creditor is an associate of the debtor.

(6) In deciding whether a creditor is an associate, reliance may be placed on the information provided by the debtor's statement of affairs or otherwise under these Rules.

(7) For the purposes of subrule (4), a vote is a qualifying vote except to the extent that by or under these Rules it is not permitted to be cast.

Appeals against decisions

257.—(1) A creditor or the debtor may appeal against a decision of a creditors' meeting to the Court.

(2) An appeal may not be made after the end of the period of twenty-eight days beginning with the day on which—

(*a*) where an interim order has not been obtained, the notice of the result of the consideration of the proposal required by section 260 (1) of the Act has been given; or

(*b*) where an interim order has been obtained, the report required by section 260 (1) of the Act is made to the Court.

(3) Whether the decision is reversed or varied, or votes are declared invalid, the Court may order the nominee to review a decision taken by correspondence or to summon another meeting or may make such order as it considers just, but only if it considers

that the circumstances which led to the appeal give rise to unfair prejudice or material irregularity.

(4) The nominee or his appointee who took the decision shall not be personally liable for expenses incurred by a person appealing.

Report of creditors' consideration of proposal

258.—(1) A report of the creditors' consideration of a proposal shall be prepared by the nominee or his appointee, in the case of consideration by correspondence or the chairperson, in the case of consideration at a meeting.

(2) The report shall—

(*a*) state whether the proposal was approved or rejected and, if approved, with what, if any, modifications;

(*b*) list the creditors who voted by correspondence or attended the meeting, setting out with their respective values how they voted on each resolution;

(*c*) if the proposal was approved, state whether, in the opinion of the supervisor, the proceedings are foreign main or foreign non-main proceedings;

(*d*) state the reasons for the supervisor's opinion; and

(*e*) include such further information as the nominee, the appointed person or the chairperson thinks appropriate.

(3) Where an interim order was obtained, a copy of the report shall be filed with the Court, within four business days of—

(*a*) the deadline, if the proposal was considered by correspondence; or

(*b*) the date of the meeting of creditors.

(4) The Court shall endorse the copy of the report with the date of filing.

(5) The nominee, the appointee or the chairperson shall give notice of the result of the consideration to—

(*a*) everyone who was invited to consider the proposal by correspondence or to whom notice of a meeting was delivered;

(*b*) any other creditor; and

(*c*) where the debtor is an undischarged bankrupt, the Official Receiver and any trustee.

(6) The notice shall be given—

(*a*) where an interim order was obtained, as soon as it is reasonably practicable, after a copy of the chairperson's report is filed with the Court; or

(*b*) where an interim order was not obtained—

(i) within four business days of the deadline, if the proposal was considered by correspondence; or

(ii) on the date of the meeting of creditors.

Appointment of proxy-holders

259.—(1) A proxy-holder shall be an individual who is at least eighteen years of age.

(2) A proxy may be given for use only at a particular meeting.

(3) A principal may appoint more than one person to be proxy-holder at a particular meeting, but if so—

(*a*) their appointment is as alternates;

(*b*) the order in which they are authorized to be proxy-holder shall be specified in the appointment; and

(*c*) only one of them may act as proxy-holder for that principal at the meeting.

(4) A proxy may be given to the chairperson of the meeting in question, and the chairperson may not refuse it.

Blank proxies

260.—(1) Blank proxies delivered under these Rules shall not have inserted in them the name or description of any person as proxy.

(2) A proxy shall be signed and dated by the creditor or by a person authorized by the creditor.

(3) Where a proxy is signed by a person, other than the principal, the nature of the person's authority shall be stated.

Use of proxies

261.—(1) A signed proxy given for a meeting shall be delivered to the chairperson before the meeting begins.

(2) Subject to subrule (3), a proxy given for a meeting may be used at the resumption of the meeting after an adjournment, and need not be delivered again to the chairperson at the resumed meeting whether or not the chairperson is the same person.

(3) Where a different proxy is given for use at a resumed meeting, the signed proxy shall be delivered to the chairperson before the beginning of the resumed meeting.

(4) Where the nominee holds proxies for use as chairperson of a meeting but another person acts as chairperson, that other person may use the proxies as if the person were the proxy-holder.

(5) Where a proxy directs a proxy-holder to vote for or against a resolution for the appointment of a person as the supervisor, the proxy-holder may, unless the proxy states otherwise, vote for or against, as the proxy-holder thinks fit, any resolution for the appointment of the person jointly with another or other persons.

(6) A proxy-holder may propose any resolution which the proxy could vote for if someone else proposed it.

(7) Where a proxy gives specific directions as to voting, this shall not, unless the proxy states otherwise, prohibit the proxy-holder from voting at the discretion of the proxy-holder on resolutions put to the meeting which are not dealt with in the proxy.

Retention of proxies

262. The chairperson of a meeting shall—

(*a*) retain the proxies used for voting at the meeting where the chairperson is the nominee; or

(*b*) deliver them, as soon as it is reasonably practicable, after the meeting to the nominee.

Right of inspection

263.—(1) The nominee shall allow a creditor or the debtor to inspect proxies at all reasonable times on a business day, so long as the proxies remain in the nominee's possession, custody or power.

(2) A creditor in subrule (1) is a person who has delivered a written claim to be a creditor of the debtor, but does not include a person whose claim has been wholly rejected.

(3) A person attending a meeting is entitled, immediately before or in the course of the meeting, to inspect proxies and associated documents delivered by a creditor to the nominee, the chairperson or any other person in accordance with the notice convening the meeting.

(4) The right of inspection in subrule (3) shall be subject to the rules governing confidentiality of documents and the breach of those rules shall be the ground for refusing inspection.

Proxy-holder with financial interest

264.—(1) Subject to subrule (2), a proxy-holder, including the chairperson of the meeting, using a proxy shall not vote in favour of a resolution which would—

(*a*) directly or indirectly place the proxy-holder or an associate in a position to receive any payment from the debtor; or

(*b*) increase or reduce the amount of remuneration or expenses receivable by the proxy-holder or an associate out of the debtor's assets.

(2) A proxy-holder may vote for a resolution referred to in subrule (1) if the principal specifically directs the proxy-holder to vote in that way.

(3) Where—

(*a*) a principal has signed the proxy stating that the proxy-holder is authorized to do so; and

(*b*) the proxy specifically directs the proxy-holder to vote as mentioned in subrule (1),

the proxy-holder shall nevertheless not vote in that way without having produced to the chairperson the authorization from the principal sufficient to show that the proxy-holder was entitled so to vote.

Corporate representation

265.—(1) A person authorized to represent a company at a meeting, other than as a proxy, shall produce to the chairperson—

(*a*) the instrument conferring the authority; or

(*b*) a copy of the instrument certified as a true copy by—

(i) two directors;

(ii) a director and the secretary; or

(iii) a managing director in the presence of a witness who attests the managing director's signature.

(2) The instrument conferring the authority shall have been executed in accordance with the Companies Act. Cap. 46:03

Resolutions to follow approval

266.—(1) Where two or more supervisors are appointed, the creditors shall decide, at the same time when approving the individual voluntary arrangement, whether acts done in connexion with the individual voluntary arrangement may be done by any one or more of them, or shall be done by all of them.

(2) Where in response to a notice inviting consideration of the proposal by correspondence a creditor proposes that a person other than the nominee be appointed as supervisor, the person's consent to act and confirmation of being qualified to act as an insolvency practitioner or being an authorized person in relation to the debtor shall be delivered to the nominee.

(3) Where at the creditors' meeting a resolution is moved for the appointment of a person other than the nominee to be supervisor, the person shall produce to the chairperson at or before the meeting—

(*a*) confirmation of being qualified to act as an insolvency practitioner or being an authorized person in relation to the debtor; and

(*b*) written consent to act as such, unless the person is present at the meeting and signifies consent.

Hand over of property, etc., to supervisor

267.—(1) As soon as it is reasonably practicable after the individual voluntary arrangement is approved, the debtor or, where the debtor is an undischarged bankrupt, the Official Receiver or any trustee shall do all that is required to put the supervisor in possession of the assets included in the individual voluntary arrangement.

(2) Where the debtor is an undischarged bankrupt, the supervisor shall—

(*a*) before taking possession of the assets included in the individual voluntary arrangement deliver to the Official Receiver or any trustee an undertaking to discharge the balance due to the Official Receiver or trustee out of the first realization of the assets; or

(*b*) upon taking possession of the assets included in the individual voluntary arrangement discharge such balance.

(3) The balance is any balance due to the Official Receiver or any trustee—

(*a*) by way of fees or expenses properly incurred and payable under the Act or these Rules; or

(*b*) on account of any advances made in respect of the insolvent estate, together with interest on such advances at the base lending rate at the date of the bankruptcy order.

(4) Where the debtor is an undischarged bankrupt, the Official Receiver and any trustee have a charge on the assets included in the individual voluntary arrangement in respect of any sums comprising such balance, subject only to the deduction from realizations by the supervisor of the proper expenses of realization.

(5) Any sums due to the Official Receiver shall take priority over those due to any trustee.

(6) The supervisor shall, from time to time, out of the realization of assets—

(*a*) discharge all guarantees properly given by the Official Receiver or any trustee for the benefit of the estate; and

(*b*) pay the expenses of the Official Receiver and any trustee.

Report to the Director of the approval of individual voluntary arrangement

268.—(1) After the creditors approve an individual voluntary arrangement, the nominee, his appointee or the chairperson of the creditors' meeting shall deliver a report containing the required information to the Director.

(2) The report shall be delivered, as soon as it is reasonably practicable, and in any event within fourteen days after the report that the creditors have approved the individual voluntary arrangement has been filed with the Court or sent to the creditors, as the case may be.

(3) The required information shall be—

(*a*) information identifying the debtor and his business or occupation, if any;

(*b*) the debtor's gender;

(*c*) the debtor's date of birth;

(*d*) any name by which the debtor was, or is, known, not being the name in which the debtor has entered the individual voluntary arrangement;

(*e*) the date on which the individual voluntary arrangement was approved by the creditors; and

(*f*) the name and address of the supervisor.

(4) Where the proposal was approved by correspondence, the deadline for voting shall be taken as the date when the individual voluntary arrangement was approved.

(5) A person who is appointed to act as a supervisor, including as a replacement of another person, or who vacates that office, shall deliver a notice of the fact to the Director, as soon as it is reasonably practicable.

Revocation or suspension of an individual voluntary arrangement

269.—(1) This rule applies where the Court makes an order of revocation or suspension under section 263 of the Act.

(2) The applicant for the order referred to in subrule (1), shall deliver a sealed copy of it to—

(*a*) the debtor, if different to the applicant;

(*b*) the supervisor; and

(*c*) where the debtor is an undischarged bankrupt, the Official Receiver and any trustee, if different to the applicant.

(3) Where the order includes a direction by the Court under section 263 (4) (*b*) of the Act for a matter to be considered further by correspondence or by a meeting, the applicant for the order shall deliver a notice that the order has been made to the person who is directed to take such action.

(4) The debtor, the trustee, if the debtor is an undischarged bankrupt, or the Official Receiver, if there is no trustee, shall—

(*a*) as soon as it is reasonably practicable, deliver a notice that the order has been made to everyone to whom a notice to consider the matter by correspondence or at a creditors' meeting was delivered or who appear to be affected by the order; and

(*b*) within five business days of delivery of a copy of the order, or within such longer period as the Court may allow, deliver, if applicable, a notice to the Court advising that it is intended to make a revised proposal to the creditors, or to invite re-consideration of the original proposal.

(5) The applicant for the order shall, within five business days of the making of the order, give notice of the order to the Director.

(6) The applicant for the order shall, within five business days of the expiry of any order of suspension, give notice of the expiry to the Director.

Supervisor's accounts, records and reports

270.—(1) The supervisor shall keep accounts and records where the individual voluntary arrangement authorizes or requires the supervisor—

(*a*) to carry on the business of the debtor or trade on behalf of, or in the name of, the debtor;

(*b*) to realize assets of the debtor or, in a case where the debtor is an undischarged bankrupt, belonging to the estate; or

(*c*) otherwise, to administer or dispose of any funds of the debtor or the estate.

(2) The accounts and records which shall be kept are of the supervisor's acts and dealings in and in connexion with the individual voluntary arrangement, including in particular records of all receipts and payments of money.

(3) The supervisor shall preserve any such accounts and records which were kept by any other person who has acted as supervisor of the individual voluntary arrangement and are in the supervisor's possession.

(4) The supervisor shall deliver reports on the progress and prospects for the full implementation of the individual voluntary arrangement to—

(*a*) the debtor;

(*b*) all the creditors bound by the individual voluntary arrangement; and

(*c*) the Director.

(5) Each report shall cover a twelve month period ending with the anniversary of the commencement of the individual voluntary arrangement and shall be delivered within two months of the end of that period.

(6) A report referred to in subrule (5) shall not be required if an obligation to deliver a final report arises in the two months' period referred in subrule (5).

(7) Where the supervisor is authorized or required to do any of the things mentioned in subrule (1), the report shall include or be accompanied by—

(*a*) a summary of receipts and payments which subrule (2) requires to be kept; or

(*b*) where there have been no such receipts and payments, a statement to that effect.

Production of accounts and records to the Director

271.—(1) The Director may during the individual voluntary arrangement or after its completion or termination require the supervisor to produce for inspection, at the supervisor's premises or elsewhere—

(*a*) the supervisor's accounts and records in relation to the individual voluntary arrangement; and

(*b*) copies of reports and summaries prepared in compliance with rule 270.

(2) The Director may require any accounts and records produced under this rule to be audited and, if so, the supervisor shall provide such further information and assistance as the Director requests for the purposes of the audit.

Fees and expenses

272. The fees and expenses that may be paid or incurred for the purposes of the individual voluntary arrangement are—

(*a*) fees for the nominee's services agreed with the debtor, the Official Receiver or any trustee;

(*b*) disbursements made by the nominee before the approval of the individual voluntary arrangement; and

(*c*) fees and expenses which—

(i) are sanctioned by the terms of the individual voluntary arrangement; or

(ii) would be payable or correspond to those which would be payable in the debtor's bankruptcy.

Termination or full implementation of the individual voluntary arrangement

273.—(1) The supervisor shall deliver a notice that the individual voluntary arrangement has been terminated or fully implemented to the debtor and the creditors bound by the individual voluntary arrangement not more than twenty-eight days after the termination or full implementation of the individual voluntary arrangement.

(2) The notice shall be accompanied by a copy of a report by the supervisor which—

(*a*) summarizes all receipts and payments in relation to the individual voluntary arrangement;

(*b*) explains any departure from the terms of the individual voluntary arrangement as approved by the creditors; and

(*c*) sets out the reasons why the individual voluntary arrangement has been terminated, if that is the case.

(3) Not more than twenty-eight days after the termination or full implementation of the individual voluntary arrangement, the supervisor shall deliver to the Director and, if the creditors were invited to consider the proposal following a report under section 257 of the Act, file with the Court a copy of the notice and report.

(4) The supervisor shall not vacate office until the notice and report have been delivered to the Director.

Application

274.—(1) An application to the Court under section 250 (1) of the Act shall be supported by a sworn statement stating—

(*a*) that the individual voluntary arrangement has been approved by the creditors; and

(*b*) the date of the approval.

(2) The application and a sworn statement shall be filed with the Court and the Court shall deliver a notice of the date, time and venue for the hearing to the bankrupt.

(3) Not less than five business days before the date of the hearing, the bankrupt shall deliver the notice of the date, time and venue, with a copy of the application and the sworn statement, to—

(*a*) the Official Receiver;

(*b*) where the trustee is not the same person as the Official Receiver, the trustee; and

(*c*) the supervisor.

(4) The Official Receiver, the trustee or the supervisor may attend the hearing in person or be represented and appear by a legal practitioner and draw the attention of the Court to any matter which seem to him to be relevant.

Notice of order

275.—(1) An Official Receiver, who has delivered a notice of the debtor's bankruptcy to creditors, shall, as soon as it is reasonably practicable, deliver to the creditors a notice of an annulment under section 250 of the Act.

(2) Upon delivering the notice under subrule (1), the expenses incurred by the Official Receiver in delivering of the notice under subrule (1) shall be a charge in the Official Receiver's favour on the property of the former bankrupt, whether or not the property is in the possession, custody or power of the former bankrupt.

(3) Where any property is in the possession, custody or power of a person other than the former bankrupt, the Official Receiver's charge is valid subject only to any expenses that may be incurred by the person in effecting realization of the property for the purpose of satisfying the charge.

Advertisement of order

276.—(1) The former bankrupt may, in writing within twenty-eight days of the date of an order under section 250 of the Act, require the Official Receiver to—

(*a*) cause a notice of the order to be published in the *Gazette*; and

(*b*) advertise the notice in such manner as he thinks fit.

(2) The Official Receiver shall comply with any such requirement, as soon as it is reasonably practicable.

(3) In addition to the standard contents, the notice shall state—

(*a*) the name of the former bankrupt;

(*b*) the date on which the bankruptcy order was made;

(*c*) that the bankruptcy order has been annulled;

(*d*) the date of the annulling order; and

(*e*) the grounds of the annulment.

(4) Where the former bankrupt has died, or is a person lacking capacity to manage his affairs, the reference to the former bankrupt in subrule (1) shall be read as reference to the personal representative of the former bankrupt or, as the case may be, a person appointed by the Court to represent, or act for, the former bankrupt.

Trustee's final account

277.—(1) The making of an order under section 250 of the Act shall not of itself release the trustee from any duty or obligation, imposed by or under the Act or these Rules, to account for all of the trustee's transactions in connexion with the former bankrupt's estate.

(2) As soon as it is reasonably practicable, after the making of an order, the trustee shall—

(*a*) deliver a copy of the final account of the trustee to the Director; and

(*b*) file a copy of that account with the Court.

(3) The final account shall include a summary of the trustee's receipts and payments in the administration of the former bankrupt's estate.

(4) The trustee shall be released from such time as the Court may determine, having regard to whether subrule (2) has been complied with.

Application for suspension of automatic discharge

278.—(1) A bankrupt shall be automatically discharged two years after adjudication under section 240 of the Act, unless the Court orders otherwise under section 244 of the Act.

(2) Subrules (3) to (10) apply where the Official Receiver or the trustee applies to the Court for an order for suspension of automatic discharge.

(3) The Official Receiver or the trustee shall file with the application, a sworn statement setting out the reasons why it appears that an order for suspension of automatic discharge should be made.

(4) The Court shall fix the date, time and venue for the hearing of the application, and shall deliver the notice of the hearing to the Official Receiver, the trustee and the bankrupt.

(5) The Official Receiver shall deliver copies of his report to the bankrupt and any trustee who is not the Official Receiver, so as to reach them at least twenty-one days before the date fixed for the hearing.

(6) Copies of the trustee's sworn statement shall be delivered by the trustee to the Official Receiver and the bankrupt at least twenty-one days before the date fixed for the hearing.

(7) The bankrupt may, not later than five business days before the date of the hearing, file with the Court a notice specifying any statements in the Official Receiver's or trustee's sworn statement which the bankrupt intends to dispute.

(8) Where the bankrupt files such a notice under subrule (6), the bankrupt shall deliver copies of the notice, not less than three business days before the date of the hearing, to the Official Receiver and any trustee who is not the Official Receiver.

(9) Where the Court makes an order suspending the bankrupt's discharge, copies of the order shall be delivered by the Court to the Official Receiver, any trustee who is not the Official Receiver and the bankrupt.

(10) An order of the suspension of automatic discharge shall—

(*a*) state the name of the Court and the Registry;

(*b*) identify and provide contact details for the applicant who will be the Official Receiver or the trustee;

(*c*) identify the bankrupt;

(*d*) state the date of the bankruptcy order;

(*e*) state that upon considering the evidence it appears to the Court that the bankrupt has failed or is failing to comply with the bankrupt's obligations under the Act for the reasons specified in the order;

(*f*) state in what respect the bankrupt has failed to comply with his obligations under the Act;

(*g*) order that the relevant period for the purpose of section 279 of the Act will cease to run for the period specified in the order until the conditions specified in the order have been fulfilled;

(*h*) state the period and conditions referred to in paragraph (*g*); and

(*i*) state the date of the making of the order.

Certificate of discharge from bankruptcy

279.—(1) A bankrupt shall apply to the Court for a certificate of discharge whether the discharge is on account of expiration of time or otherwise.

(2) Where it appears to the Court that the bankrupt is discharged, whether by expiration of time or otherwise, the Court shall deliver a certificate of discharge to the former bankrupt.

(3) The certificate of discharge shall—

(*a*) state the name of the Court and the Registry;

(*b*) identify the former bankrupt;

(*c*) state the date of the bankruptcy order;

(*d*) certify that the former bankrupt was discharged from bankruptcy;

(*e*) state the date of discharge from bankruptcy; and

(*f*) state the date of the certificate.

(4) The certificate shall also state that—

(*a*) the former bankrupt may request notice of the discharge to be published in the *Gazette* and advertised in the same manner as the bankruptcy order is to be advertised under rule 183; and

(*b*) such a request shall be delivered to the Official Receiver within twenty-eight days of the making of the certificate of discharge.

(5) As soon as it is reasonably practicable, after delivery of such a request to the Official Receiver, the notice of discharge shall be published in the *Gazette* and advertised in the same manner as the bankruptcy order is to be advertised under rule 183.

(6) In addition to the standard contents, the notice shall state—

(*a*) the name of the former bankrupt;

(*b*) the date of the bankruptcy order;

(*c*) that a certificate of discharge has been delivered to the former bankrupt;

(*d*) the date of the certificate; and

(*e*) the date from which the discharge is effective.

(7) An application for a notice of discharge and a request for the notice to be published in the *Gazette* and advertised may be made by the former bankrupt's personal representative or, as the case may be, a person appointed by the Court to represent or act for the former bankrupt where the former bankrupt—

(*a*) has died; or

(*b*) is a person lacking capacity to manage his affairs.

Deferment of issue of order pending appeal

280. An order made by the Court on an application by the bankrupt for discharge under section 240 of the Act shall not be drawn up or published in the *Gazette* until the time allowed for appealing has expired or, if an appeal is entered, until the appeal has been determined.

Bankruptcy restrictions register

281.—(1) Where any of the following orders are made against a bankrupt or a debtor, the Director shall enter on the bankruptcy restrictions register the specified information—

(*a*) a bankruptcy order; and

(*b*) a bankruptcy restrictions order, if any.

(2) The specified information shall be—

(*a*) the bankrupt's or debtor's identity information;

(*b*) the bankrupt's or debtor's gender;

(*c*) the bankrupt's or debtor's occupation, if any;

(*d*) a statement that a bankruptcy order has been made against the bankrupt or debtor;

(*e*) the date of the making of the order;

(*f*) the Court and the Registry in which the order was made and the Court or order reference number; and

(*g*) the duration of the order, if any.

(3) In proceedings, the bankruptcy restrictions register shall be conclusive proof of the matters in the register.

PART VI

Insolvency Proceedings

Division I—General Provisions

Formal defects

282. No insolvency proceedings shall be invalidated by any formal defect or any irregularity, unless the Court before which an objection is made considers that substantial injustice has been caused by the defect or irregularity and that the injustice cannot be remedied by any order of the Court.

Requirement to assess costs by the detailed procedure

283.—(1) Where the costs of any person are payable as an expense out of the insolvent estate, the amount payable shall be decided by detailed assessment unless agreed between the office-holder and the person entitled to payment.

(2) In the absence of an agreement, the office-holder—

(*a*) may serve a notice requiring the person entitled to payment to commence detailed assessment proceedings under the rules of civil procedure; and

(*b*) except in a receivership, shall serve such notice where a liquidation or creditors' committee formed in relation to the insolvency proceedings resolves that the amount of the costs shall be decided by detailed assessment.

(3) Detailed assessment proceedings shall be commenced in the Court and the Registry to which the insolvency proceedings are allocated or, where in relation to a company there is no such Court, any Court having jurisdiction to wind-up the company.

(4) Where the costs of any person employed by an office-holder in insolvency proceedings are required to be decided by detailed assessment or fixed by order of the Court, the office-holder may make payments on account to such person in respect of those costs if that person undertakes in writing—

(*a*) to repay, as soon as it is reasonably practicable, any money which may, when detailed assessment is made, prove to have been overpaid; and

(*b*) to pay interest on any such sum as is mentioned in paragraph (*a*) at the rate specified in the Courts Act on the date payment was made and for the period beginning with the date of payment and ending with the date of repayment. Cap. 3:02

(5) In any proceedings before the Court, including proceedings on a petition, the Court may order costs to be decided by detailed assessment.

(6) Unless otherwise directed or authorized, the costs of a trustee in bankruptcy or a liquidator shall be allowed on the standard basis under the rules of civil procedure.

Procedure where detailed assessment is required

284.—(1) Before making a detailed assessment of the costs of any person employed in insolvency proceedings by the office-holder, the Court shall require a certificate of employment, which shall be endorsed on the bill and signed by the office-holder.

(2) The certificate shall include—

(*a*) the name and address of the person employed;

(*b*) details of the tasks to be carried out under the employment; and

(*c*) a note of any special terms of remuneration which have been agreed.

(3) Every person whose costs in insolvency proceedings are required to be decided by detailed assessment shall, on being required in writing to do so by the office-holder, commence detailed assessment proceedings under the rules of civil procedure.

(4) Where a person referred to in subrule (3) does not commence detailed assessment proceedings within three months of being required to do so under that subrule, or within such further time as the Court, on application, may allow, the office-holder may deal with the

insolvent estate without regard to any claim for costs by the person, whose claim is forfeited by such failure to commence proceedings.

(5) In any case falling within subrule (4), a claim for costs shall—

(*a*) lie against an office-holder in the office-holder's official and personal capacities; and

(*b*) be forfeited by the failure to commence proceedings.

Enforcement

285. A judgment of the Court in insolvency proceedings shall be enforced as any other civil judgment of the Court.

Procedure on appeal

286.—(1) An appeal against a decision of the Court at first instance may be brought—

(*a*) with the permission of the Court which made the decision; or

(*b*) with the permission of the Court which has jurisdiction to hear the appeal where the Court which made the decision refused to grant the permission.

(2) An appellant shall file a notice of appeal within thirty days after the date of the decision of the Court, stating the appellant's intention to appeal.

Official Receiver's expenses

287.—(1) Any expenses, including damages, incurred by the Official Receiver, in whatever capacity the Official Receiver may be acting, in connexion with proceedings taken against the Official Receiver in insolvency proceedings are to be treated as expenses of the insolvency proceedings.

(2) In respect of any sums due to the Official Receiver under subrule (1) in connexion with insolvency proceedings, the Official Receiver shall have a charge on the insolvent estate.

Division II—Provisions Applicable to all Debtors

Interpretation

288.—(1) In this Division—

"debt", in relation to winding-up of the company, means, subject to subrule (2), one or more of the following—

(*a*) a provable debt or liability to which the company is subject at the relevant date;

(*b*) a debt or liability to which the company may become subject after the relevant date by reason of any obligation incurred before that date; and

(*c*) interest provable;

"dividend", in its application to a members' voluntary winding-up of the company, includes a distribution to members;

"relevant date" means—

(*a*) in the case of a company reorganization which was not immediately preceded by a winding-up of the company, the date on which the company entered company reorganization;

(*b*) in the case of a company reorganization which was immediately preceded by a winding-up of the company, the date on which the company went into liquidation;

(*c*) in the case of a winding-up of the company which was not immediately preceded by a company reorganization, the date on which the company went into liquidation;

(*d*) in the case of a winding-up of the company which was immediately preceded by a company reorganization, the date on which the company entered company reorganization; and

(*e*) in the case of a bankruptcy, the date of the bankruptcy order.

(2) For the purposes of any provision of the Act or these Rules about winding-up of the company, a liability in tort is a debt provable in a winding-up of the company, if—

(*a*) the cause of action has accrued at the relevant date; or

(*b*) all the elements necessary to establish the cause of action exist at that date except for actionable damage.

(3) For the purposes of references, in any provisions of the Act or these Rules about winding-up of the company, to a debt or liability, it is immaterial whether the debt or liability is present or future, whether it is certain or contingent, or whether its amount is liquidated or unliquidated, or is capable of being ascertained by fixed rules or as a matter of opinion, and references in any such provision to owing a debt are to be read accordingly.

(4) In any provision of the Act or these Rules about winding-up of the company, "liability" means, subject to subrule (3), a liability to pay money or money's worth, including any liability—

(*a*) under an enactment;

(*b*) for breach of trust;

(*c*) in contract, tort or bailment; and

(*d*) arising out of an obligation to make restitution.

(5) This rule applies where a company is in company reorganization and shall be read as if—

(*a*) references to winding-up of the company were references to company reorganization of the company;

(*b*) references to company reorganization of the company were references to winding-up of the company;

(*c*) references to going into liquidation of the company were references to entering company reorganization of the company; and

(*d*) references to entering company reorganization of the company were references to going into liquidation of the company.

Provable debts

289.—(1) All claims by creditors in insolvency proceedings are provable as debts against the company or the bankrupt, whether they are present or future, certain or contingent, ascertained or sounding in damages.

(2) Nothing in subrule (1) shall prejudice any law under which a particular kind of debt is not provable, whether on grounds of public policy or otherwise.

Proving debt

290.—(1) Proofs of debt in insolvency proceedings, except in shareholders' voluntary winding-up of the company, shall be delivered to the office-holder unless—

(*a*) the Court orders otherwise;

(*b*) in a winding-up of the company immediately preceded by a company reorganization of the company, the creditor has already proved in the company reorganization; or

(*c*) in a company reorganization of the company immediately preceded by a winding-up of the company, the creditor has already proved in the winding-up.

(2) In a shareholders' voluntary winding-up of the company, the liquidator may require proofs of debt to be delivered to him.

Requirements for proof of debt

291.—(1) A proof of debt shall—

(*a*) be made out by, or under the direction of, the creditor and authorized by the creditor or a person authorized in that behalf;

(*b*) state the creditor's name and address;

(*c*) if the creditor is a company, state its unique identifiers under the Companies Act; Cap. 46:03

(*d*) state the total amount of the creditor's claim, including value added tax, as at the relevant date, less any payments made after that date in relation to the claim, any adjustment by way of set-off under section 280 of the Act;

(*e*) state whether or not the claim includes an uncapitalized interest;

(*f*) contain particulars of how and when the debt was incurred by the company or the bankrupt;

(*g*) contain particulars of any security held, the date on which it was given and the value which the creditor attaches on it;

(*h*) provide details of any security interest in relation to goods to which the debt refers;

(*i*) provide details of any document by reference to which the debt can be substantiated, but the document shall accompany the proof of debt only if called for under subrule (2); and

(*j*) state the name, postal address and authority of the person authorizing the proof of debt, if it is someone other than the creditor.

(2) The office-holder may call for any document or other evidence to be produced to the office-holder if the office-holder considers it necessary for the purpose of substantiating the whole or any part of a claim.

Creditor bears own costs of proof of debt

292.—(1) Unless the Court otherwise orders, each creditor bears the cost of proving that creditor's own claim, including costs incurred in providing documents or evidence under rule 289 (2).

(2) In a company reorganization or winding-up of the company, costs incurred by the office-holder in estimating the value of a debt are payable out of the assets as an expense of the company reorganization or winding-up.

(3) In a bankruptcy, costs incurred by the office-holder in estimating the value of a debt fall on the estate as an expense of the bankruptcy.

Allowing inspection of proofs of debt

293. The office-holder shall, as long as proofs of debt delivered to the office-holder are in the possession of the office-holder, allow them to be inspected, at all reasonable times on any business day, by any of the following persons—

(*a*) any creditor who has delivered a proof of debt, unless the proof has been wholly rejected for purposes of dividend or otherwise;

(*b*) any member or contributory of the company or, in the case of a bankruptcy, the bankrupt; and

(*c*) any person acting on behalf of the persons mentioned in paragraphs (*a*) and (*b*).

Transmission of proofs: appointment or replacement of office-holder

294.—(1) Where an office-holder is first appointed, or is appointed in succession to the Official Receiver or to replace another office-holder, ("the appointee") the former office-holder or, where it is the case, the Official Receiver, shall, as soon as it is reasonably practicable, after the appointment, deliver to the appointee all proofs of debt which the former office-holder or the Official Receiver has received, together with an itemized list of them.

(2) The appointee shall sign the list and return it to the former office-holder or the Official Receiver.

Admission and rejection of proofs of debt for dividend

295.—(1) A proof of debt may be admitted for dividend for the whole amount claimed by the creditor or for part of that amount.

(2) Where the office-holder rejects a proof of debt in whole or in part, the office-holder shall prepare a statement of his reasons for doing so, and deliver the statement, as soon as it is reasonably practicable, to the creditor.

Appeal against decision on proof of debt

296.—(1) Where a creditor is dissatisfied with the office-holder's decision in relation to the creditor's proof of debt, including any decision on the question of priority, the creditor may apply to the Court for the decision to be reversed or varied.

(2) A member, a contributory, any other creditor or, in a bankruptcy, a bankrupt, may, if dissatisfied with the office-holder's decision admitting or rejecting the whole or any part of a proof of debt, make such an application within twenty-one days of being notified of the office-holder's decision.

(3) The Court shall fix the date, time and venue for the application to be heard, a notice of which shall be sent by the applicant to the

creditor in question, if the applicant is not the creditor who delivered the proof of debt in question and the office-holder.

(4) The office-holder shall, on receipt of the notice, file with the Court the relevant proof of debt, together with relevant documents.

(5) Where the application is made by a member or a contributory, the Court shall not disallow the proof of debt, in whole or in part, unless the member or the contributory shows that there is, or would be but for the amount claimed in the proof of debt, or that it is likely that there shall be, or would be but for the amount claimed in the proof of debt, a surplus of assets to which the company would be entitled.

(6) After the application has been heard and determined the proof of debt shall be returned by the Court to the office-holder.

Withdrawal or variation of proof of debt

297. A creditor's proof of debt may, at any time, by agreement between the creditor and the office-holder, be withdrawn or varied as to the amount claimed.

Exclusion of proof of debt by the Court

298.—(1) The Court may exclude a proof of debt or reduce the amount claimed—

(*a*) on the office-holder's application where he proves that the proof of debt has been improperly admitted or ought to be reduced; or

(*b*) on the application of a creditor, a member or a contributory if the office-holder declines to exclude a proof of debt or reduce the amount claimed.

(2) Where the application is made by a member or a contributory, the Court shall not exclude a proof of debt or reduce the amount claimed, in whole or in part, unless the member or the contributory shows that there is, or would be but for the amount claimed in the proof of debt, or that there will be, or would be but for the amount claimed in the proof of debt, a surplus of assets to which the company would be entitled.

(3) Where an application is made under subrule (1), the Court shall fix the date, time and venue for the application to be heard, a notice of which shall be sent by the applicant—

(*a*) in the case of an application by the office-holder, to the creditor who made the proof of debt; and

(*b*) in the case of an application by a creditor, a member or a contributory, to the office-holder and to the creditor who made the proof of debt, if the applicant is not the creditor who made the proof of debt.

Debts of insolvent company to rank equally

299.—(1) Subrule (2) apply in cases of—

(*a*) company reorganization; and

(*b*) winding-up of the company.

(2) Debts, other than preferential debts, rank equally between themselves and, after the preferential debts, shall be paid in full, unless the assets are insufficient to satisfy them in full, in which case they abate in equal proportions.

Division of unsold assets

300. In a company reorganization or in a winding-up of the company, the office-holder may, with the permission—

(*a*) in a company reorganization, of the creditors' committee, or, if there is no creditors' committee, the creditors; or

(*b*) in a winding-up of the company, without prejudice to provisions about disclaimer, of the creditors' committee, or, the liquidation committee, or, if there is no creditors committee or liquidation committee, the creditors,

divide in its existing form amongst the company's creditors, according to its estimated value, any property which from its peculiar nature or other special circumstances cannot be readily or advantageously sold.

Estimate of value of debt

301.—(1) In a company reorganization or in a winding-up of the company, the office-holder shall estimate the value of a creditor's claim which, by reason of its being subject to any contingency or for any other reason, does not bear a certain value.

(2) The office-holder may revise an estimate previously made under subrule (1), if he thinks fit by reference to a change of circumstances or to information becoming available to him.

(3) The office-holder shall inform the creditor his estimate and any revision of the estimate.

(4) Where the value of a creditor's claim is estimated under this rule or by the Court under section 278 of the Act, the amount provable in the case of that claim is that of the estimate for the time being.

Negotiable instruments, etc.

302. Unless otherwise allowed by an office-holder, a proof of debt in respect of money owed on a bill of exchange, promissory note, cheque or other negotiable instrument or security shall not be admitted, unless the instrument or security itself, or a copy of the instrument or security is produced, certified by the creditor or the creditor's authorized representative to be a true copy.

Secured creditors

303. A secured creditor who—

(*a*) realizes a security, may prove for the balance of the debt owed to him, after deducting the amount realized; or

(*b*) voluntarily surrenders a security for the general benefit of creditors, may prove for the whole debt owed to that secured creditor, as if it were unsecured.

Secured creditor: value of security

304.—(1) Except where subrule (2) applies, a secured creditor may, with the permission of the Court or with the agreement of the office-holder, at any time alter the value which that creditor has attached to a security in a proof of debt.

(2) Where a secured creditor—

(*a*) is the applicant for a company reorganization order and has in the application or the notice of appointment attached a value on a security;

(*b*) has voted in a company reorganization, winding-up of the company by the Court or a bankruptcy in relation to the unsecured balance of the secured creditor's debt; or

(*c*) is the petitioner in a winding-up of the company by the Court or a bankruptcy and has in the petition attached a value on a security,

he may only alter the value of a security with the permission of the Court.

Secured creditor: surrender for non-disclosure

305.—(1) Subject to subrule (2), where a secured creditor omits to disclose a security in a proof of debt, the secured creditor shall surrender that security for the general benefit of creditors.

(2) On application by the secured creditor, the Court may relieve the secured creditor from surrendering his security for the general benefit of creditors on the ground that the omission referred to in subrule (1) was inadvertent or the result of an honest mistake.

(3) Where the Court grants the relief under subrule (2), it may require or allow the creditor's proof of debt to be amended on such terms as the Court considers just.

Secured creditor: redemption by office-holder

306.—(1) The office-holder may, at any time, deliver a notice to a creditor whose debt is secured that the office-holder proposes, at the expiration of twenty-eight days from the date of the notice, to redeem the security at the value attached to it in the creditor's proof of debt.

(2) The creditor shall have twenty-one days, or such longer period as the office-holder may allow, in which to exercise the right to alter the value of a security with the permission of the Court, where rule 304 applies but otherwise without the need for the agreement of the office-holder or the permission of the Court.

(3) Where the creditor alters the value of the security, the office-holder may only redeem at the new value.

(4) Where the office-holder redeems the security, the cost of transferring it is—

(*a*) in the case of a company reorganization or a winding-up of the company, payable out of the assets; and

(*b*) in the case of a bankruptcy, borne by the bankruptcy estate.

(5) A secured creditor may, at any time, by notice, call upon the office-holder to choose whether the office-holder shall or shall not exercise his power to redeem the security at the value attached to it, and the office-holder shall have three months within which to exercise or not exercise his power to redeem.

Secured creditor: potential sale of security

307.—(1) Where the office-holder is dissatisfied with the value which a secured creditor attaches to a security, whether in the proof or by way of alteration of value under rule 304 (1), the office-holder may require the security to be offered for sale.

(2) The terms of sale shall be as agreed between office-holder and the secured creditor or as the Court may direct.

(3) Where the sale is by auction, the office-holder, on behalf of the company or the bankruptcy estate, and the creditor may bid.

(4) This rule shall not apply if the value of the security has been altered with the permission of the Court.

Realization of security by creditor

308. Where a creditor who has valued a security subsequently realizes the security, whether or not at the instance of the office-holder—

(*a*) the net amount realized shall be substituted for the value previously attached by the creditor to the security; and

(*b*) that amount shall be treated in all respects as an amended valuation made by the creditor.

Discounts

309. All trade and other discounts, except a discount for immediate or early settlement, which would have been available but for the insolvency proceedings shall be deducted from the claim.

Company reorganization: mutual dealings and set-off

310.—(1) This rule applies in a company reorganization where the administrator proposes to make a distribution and has delivered a notice to that effect.

(2) An account shall be taken as at the date of the notice of what is due from the company and a creditor to each other from their mutual dealings and the sums due from the one shall be set-off against the sums due from the other.

(3) Where there is a balance owed to the creditor, then only that balance is provable in the company reorganization.

(4) Subject to subrule (5), if there is a balance owed to the company, such balance shall be paid to the administrator as part of the assets.

(5) Where all or part of the balance owed to the company results from a contingent or prospective debt owed by the creditor, the balance, or that part of the balance which results from the contingent or prospective debt, shall be paid in full when the debt becomes due and payable.

(6) In this rule—

"obligation" means an obligation however arising, whether by virtue of an agreement, law or otherwise; and

"mutual dealings" means mutual credits, mutual debts or other mutual dealings between the company and a creditor proving for a debt in the company reorganization of the company but does not include any of the following—

(*a*) a debt arising out of an obligation incurred at a time when the creditor had notice that—

(i) an application for a company reorganization order was pending; or

(ii) a person had delivered a notice of intention to appoint an administrator;

(*b*) a debt which has been acquired by a creditor by assignment or otherwise, under an agreement between the creditor and another party where that agreement was entered into at a time when the creditor had notice that—

(i) an application for a company reorganization order was pending; or

(ii) a person had delivered a notice of intention to appoint an administrator;

(*c*) a debt arising out of an obligation incurred after the company entered company reorganization;

(*d*) a debt which has been acquired by a creditor by assignment or otherwise, under an agreement between the creditor and another party where that agreement was entered into after the company entered company reorganization;

(*e*) a debt arising out of an obligation where—

(i) at the time the obligation was incurred the creditor had notice that a creditors' meeting had been summoned under section 146 of the Act or a winding-up petition was pending; and

(ii) the winding-up of the company immediately preceded the company reorganization of the company;

(*f*) a debt which has been acquired by a creditor by assignment under an agreement between the creditor and another party where that agreement was entered into—

(i) at a time when the creditor had notice that a creditors' meeting had been summoned under section 146 of the Act or that a winding-up petition was pending; and

(ii) where the winding-up of the company immediately preceded the company reorganization of the company;

(*g*) a debt arising out of an obligation incurred during the winding-up of the company which immediately preceded the company reorganization of the company; or

(*h*) a debt which has been acquired by a creditor by assignment under an agreement between the creditor and another party where that agreement was entered into during the winding-up of the company which immediately preceded the company reorganization of the company.

(7) A sum shall be treated as being due to, or from, the company for the purposes of subrule (3) whether—

(*a*) it is payable at present or in future;

(*b*) the obligation by virtue of which it is payable is certain or contingent; or

(*c*) its amount is liquidated, unliquidated or is capable of being ascertained by fixed rules or as a matter of opinion.

Winding-up of the company: mutual dealings and set-off

311.—(1) This rule applies in the winding-up of the company where, before the company goes into liquidation, there have been mutual dealings between the company and a creditor of the company proving for a debt in the liquidation.

(2) An account shall be taken of what is due from the company and the creditor to each other from their mutual dealings and the sums due from the one shall be set-off against the sums due from the other.

(3) Where there is a balance owed to the creditor, only that balance is provable in the winding-up of the company.

(4) Where there is a balance owed to the company, such balance shall be paid to the liquidator as part of the assets.

(5) Notwithstanding subrules (3) and (4), if all or part of the balance owed to the company results from a contingent or prospective debt owed by the creditor, the balance, or that part of the balance which results from the contingent or prospective debt, shall be paid in full when the debt becomes due and payable.

(6) In this rule—

"obligation" means an obligation however arising, whether by virtue of an agreement, law or otherwise; and

"mutual dealings" means mutual credits, mutual debts or other mutual dealings between the company and a creditor proving for a debt in the winding-up of the company but does not include any of the following—

(*a*) a debt arising out of an obligation incurred at a time when the creditor had notice that—

(i) a creditors' meeting had been summoned under section 171 of the Act; or

(ii) a winding-up petition was pending;

(*b*) a debt which has been acquired by a creditor by assignment or otherwise, under an agreement between the creditor and another party where that agreement was entered into at a time when the creditor had notice that—

(i) a creditors' meeting had been summoned under section 171 of the Act; or

(ii) a winding-up petition was pending;

(*c*) a debt arising out of an obligation where—

(i) at the time the obligation was incurred the creditor had notice that a company reorganization application was pending or a person had delivered a notice of intention to appoint an administrator; and

(ii) a company reorganization immediately preceded the winding-up of the company;

(*d*) a debt which has been acquired by a creditor by assignment under an agreement between the creditor and another party where that agreement was entered into—

(i) at a time when the creditor had notice that a company reorganization application was pending or a person had delivered a notice of intention to appoint an administrator; and

(ii) a company reorganization immediately preceded the winding-up of the company;

(*e*) a debt arising out of an obligation incurred during a company reorganization of the company which immediately preceded the winding-up of the company;

(*f*) a debt which has been acquired by a creditor by assignment under an agreement between the creditor and another party where that agreement was entered into during a company reorganization of the company which immediately preceded the winding-up of the company; or

(*g*) a debt which has been acquired by a creditor by assignment under an agreement between the creditor and another party where that agreement was entered into after the company went into liquidation.

(8) A sum shall be treated as being due to, or from, the company for the purposes of subrules (3) and (4) whether—

(*a*) it is payable at present or in future;

(*b*) the obligation by virtue of which it is payable is certain or contingent; or

(*c*) its amount is liquidated, unliquidated or is capable of being ascertained by fixed rules or as a matter of opinion.

Debt in foreign currency

312.—(1) For the purpose of proving for a debt incurred or payable in a foreign currency, the amount of the debt shall be converted into Malaŵi Kwacha at a single foreign currency exchange rate for the foreign currency determined by the office-holder with reference to the foreign currency exchange rate prevailing on the relevant date.

(2) Where the office-holder receives any objections from the creditors to the foreign currency exchange rate determined under subrule (1), he shall apply to the Court to determine the rate.

Payments of periodic nature

313.—(1) In the case of rent and other payments of a periodic nature, the creditor may prove for any amounts due and unpaid up to the relevant date.

(2) Where at the relevant date any payment shall have been accruing and becomes due, the creditor may prove for the payment as would have been due at the date, if the payment shall have been accruing from day-to-day.

Interest

314.—(1) Where a debt proved in insolvency proceedings bears interest, the interest is provable as part of the debt except in so far as it is payable in respect of any period after the relevant date.

(2) The creditor's claim may include interest on the debt for periods before the relevant date although not previously reserved or agreed if the debt is due by virtue of a written instrument and payable at a certain time, in which case interest may be claimed for the period from that time to the relevant date.

(3) Where the debt is due otherwise, interest may only be claimed if, before—

(*a*) the date on which the company—

(i) entered company reorganization or, if the company reorganization of the company was immediately preceded by the winding-up of the company, the date on which the company went into liquidation; or

(ii) went into liquidation or, if the winding-up of the company was immediately preceded by the company reorganization of

the company, the date on which the company entered company reorganization; or

(*b*) the presentation of the bankruptcy petition or the bankruptcy application, a demand for payment of the debt was made in writing by, or on behalf of the creditor, and a notice delivered that interest would be payable from the date of the demand to the date of the payment.

(4) Interest under subrule (3) may only be claimed from the date of the demand to the relevant date and for all the purposes of the Act and these Rules shall be charged at a rate not exceeding the rate under section 65 of the Courts Act on the relevant date.

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(5) In a company reorganization—

(*a*) any surplus remaining after payment of the debts proved shall, before being applied for any purpose, be applied in paying interest on those debts in respect of the periods during which they have been outstanding since the relevant date;

(*b*) all interest payable under paragraph (*a*) shall rank equally whether or not the debts on which the interest is payable rank equally; and

(*c*) the rate of interest payable under paragraph (*a*) is whichever is the greater of the rate specified under subrule (4) and the rate applicable to the debt apart from the company reorganization.

Intention to declare and distribute dividend

315.—(1) In a company reorganization and in the winding-up of the company, the office-holder shall deliver notice to the creditors of his intention to declare and distribute a dividend.

(2) In the winding-up of the company, whenever the liquidator has funds available, he shall, subject to the retention of such funds as may be necessary for the expenses of the winding-up of the company, declare and distribute dividends among the creditors in respect of the debts which they have proved.

Notice of intention to declare dividend

316.—(1) Where an office-holder intends to declare a dividend, he shall deliver a notice of his intention to declare a dividend to all creditors who have not proved their debts.

(2) Before declaring a dividend, the office-holder shall, by a notice, invite the creditors to prove their debts, unless he has previously done so by a notice which has been published in the *Gazette* or otherwise advertised.

(3) The notice—

(*a*) shall be published in the *Gazette*; and

(*b*) may be advertised in such other manner as the office-holder thinks fit.

(4) Where a dividend is to be declared for preferential creditors—

(*a*) a notice under subrule (1) need only be delivered to creditors whose debts the office-holder has reason to believe are preferential; and

(*b*) a notice under subrule (3) need only be delivered if the office-holder thinks fit.

Content of notice

317. A notice under rule 316 (1) or (4) shall, in addition to the standard contents—

(*a*) specify a date ("the last date for proving"), by which proofs of debt shall be delivered, and which shall be—

(i) the same date for all creditors; and

(ii) not less than twenty-one days from the date of notice;

(*b*) state that it is the intention of the office-holder to make a distribution to creditors within two months from the last date for proving;

(*c*) specify whether the proposed dividend is interim or final;

(*d*) specify the place to which proofs of debt shall be delivered;

(*e*) in the ease of a company reorganization, state that it is the intention of the administrator to make a distribution to creditors within two months from the last date for proving;

(*f*) in the case of the winding-up of the company or bankruptcy, state that it is the intention of the office-holder to declare a dividend within two months from the last date for proving; and

(*g*) in the case of a members' voluntary winding-up of the company, where the distribution is to be a sole or final distribution, state that the dividend may be distributed without regard to the claim of any person in respect of a debt not proved.

Postponement or cancellation of dividend

318. Where within the two months referred to in rule 317 (*b*)—

(*a*) the office-holder has rejected a proof of debt in whole or in part and an application is made to the Court for that decision to be reversed or varied; or

(*b*) an application is made to the Court for the office-holder's decision on a proof of debt to be reversed or varied, or for a proof of debt to be excluded, or for a reduction of the amount claimed, the office-holder may postpone or cancel the dividend.

Declaration of dividend

319.—(1) Where the office-holder has not had cause to postpone or cancel the dividend in the two months referred to in rule 317 (*e*) or (*f*), he shall within that period proceed to declare the dividend to one or more classes of creditors to which he gave notice.

(2) Except with the permission of the Court, the office-holder shall not declare a dividend as long as there is pending any application to the Court to reverse or vary his decision on a proof of debt, or to exclude a proof of debt or to reduce the amount claimed.

(3) Where the Court gives permission under subrule (2), the office-holder shall make such provision in relation to the proof of debt as the Court may direct.

Notice of declaration of dividend

320.—(1) Subject to subrule (3), where the office-holder declares a dividend, he shall deliver a notice of such declaration to all creditors who have proved their debts.

(2) The notice under subrule (1) shall include the following particulars relating to the insolvency proceedings—

(*a*) amounts raised from the sale of assets, indicating, as far as it is reasonably practicable, amounts raised by the sale of the particular assets;

(*b*) payments made by the office-holder in carrying out his functions in relation to the insolvency proceedings;

(*c*) provision, if any, made for unsettled claims, and funds, if any, retained for particular purposes;

(*d*) the total amount to be distributed and the rate of dividend; and

(*e*) whether, and if so, when, any further dividend shall be declared.

(3) Where the office-holder declares a dividend for preferential creditors only, the notice under subrule (1) shall be delivered to those preferential creditors who have proved their claims.

Payment of dividends and related matters

321.—(1) The office-holder may distribute a dividend simultaneously with the notice declaring the distribution of a dividend.

(2) The office-holder may pay a dividend to the creditor by post, or with the agreement of the creditor, arrange for the dividend to be paid to the creditor by any other means or in any form, or hold for the creditor's collection.

(3) Where a dividend is paid on a bill of exchange or other negotiable instrument, the amount of the dividend shall be endorsed on the instrument, or on a certified copy of the instrument, if required to be produced by the holder for that purpose.

(4) In the declaration of a dividend, no payment shall be made more than once by virtue of the same debt.

Notice of no dividend, or no further dividend

322. Where the office-holder delivers a notice to the creditors that he is unable to declare any dividend or further dividend, the notice shall contain a statement to the effect that—

(*a*) no funds have been realized; or

(*b*) the funds realized have already been distributed, used or allocated for defraying the expenses of conducting the insolvency proceedings.

Declaration of sole or final dividend

323.—(1) When the liquidator in the winding-up of the company has realized all the company's assets or so much of them as can, in the liquidator's opinion, be realized without needlessly prolonging the winding-up of the company, he shall deliver a notice—

(*a*) of the intention to declare a final dividend; or

(*b*) that no dividend or further dividend shall be declared.

(2) The notice under subrule (1) shall contain such particulars as are required by these Rules and shall require claims against the assets to be established by a date set out in the notice.

(3) Where, in a company reorganization or the winding-up of the company, it is intended that the distribution is to be a sole or final dividend, after the date specified as the last date for proving in the notice under these Rules, the office-holder—

(*a*) in the winding-up of the company, shall defray any outstanding expenses of the winding-up out of the assets;

(*b*) in a company reorganization, shall—

(i) pay any outstanding expenses of the winding-up of the company or provisional winding-up of the company that immediately preceded the company reorganization;

(ii) pay any items payable under section 65 of the Act; and

(iii) pay any amounts, including any debts or liabilities and the administrator's own remuneration and expenses, which would, if the administrator were to cease to be the administrator of the company, be payable out of the property of which the administrator had custody, possession or control under section 65 of the Act; and

(*c*) in a members' voluntary winding-up of the company may, and in every other case shall, declare and distribute that dividend without regard to the claim of any person whose debt not already proved.

(4) The Court may, on the application of any person whose debt is not already proved, postpone the date specified in the notice.

Admission or rejection of proofs of debt

324.—(1) Unless the office-holder has already dealt with them, he shall, within five business days of the last date for proving—

(*a*) admit or reject, in whole or in part, proofs of debt delivered to him; or

(*b*) make such provision in relation to proofs of debt as he thinks fit.

(2) The office-holder shall not be obliged to deal with proofs delivered after the last date for proving, but he may do so, if he thinks fit.

Company reorganization and winding-up: provisions on dividends

325. In a company reorganization or the winding-up of the company, in the calculation and distribution of a dividend, the office-holder shall make provision for—

(*a*) any debts which appear to him to be due to persons who, by reason of the distance of their place of residence, may not have had sufficient time to deliver their proofs of debt;

(*b*) any debts which are the subject of claims which have not yet been determined; and

(*c*) disputed proofs of debt and claims.

Supplementary provisions on dividends

326.—(1) Subject to subrule (2), a creditor shall not interfere with the payment of any dividend or making of any distribution on the ground that—

(*a*) the amount claimed in the creditor's proof of debt is increased after payment of the dividend;

(*b*) in a company reorganization, insolvency proceedings or a compulsory winding-up of the company, the creditor failed to prove for a debt before the declaration of the dividend; or

(*c*) in a members' voluntary winding-up of the company, the creditor failed to prove for a debt before the last date for proving or increases the claim in proof of debt after that date.

(2) A creditor shall be entitled to be paid a dividend or receive a distribution which he has failed to receive out of any money for the time being available for the payment of a further dividend or making a further distribution.

(3) The dividend under subrule (2) shall be paid or distributed before that money is applied to the payment of any further dividend or making of any further distribution.

(4) Where, after a creditor's proof of debt has been admitted, the proof of debt is withdrawn or excluded, or the amount of the proof is reduced, the creditor shall be liable to repay to the office-holder, for the credit of the insolvency proceedings, any amount overpaid by way of dividend.

Secured creditors

327.—(1) Subrules (2) and (3) shall apply where a creditor alters the value of a security after a dividend has been declared.

(2) Where the alteration reduces the creditor's unsecured claim ranking for dividend, the creditor shall, as soon as it is reasonably practicable, repay to the office-holder, for the credit of the administration or of the insolvent estate, any amount received by the creditor as dividend in excess of that to which the creditor would be entitled, having regard to the alteration of the value of the security.

(3) Where the alteration increases the creditor's unsecured claim, the creditor shall be entitled to receive from the office-holder, out of any money for the time being available for the payment of a further dividend, before any such further dividend is paid, any dividend or dividends which the creditor has failed to receive, having regard to the alteration of the value of the security.

(4) The creditor shall not interfere with any dividend that has been declared, whether or not the dividend has been distributed, before the date of the alteration.

Disqualification from participation in dividend

328. Where a creditor contravenes the Act or these Rules in relation to the valuation of securities, the Court may, on the application of the office-holder, order that the creditor be wholly or partly disqualified from participation in any dividend.

Assignment of right to dividend

329.—(1) Where a person who is entitled to a dividend ("the entitled person") delivers a notice to the office-holder that the entitled person wishes the dividend to be paid to another person, or that the entitled person has assigned his entitlement to another person, the office-holder shall pay the dividend to that other person.

(2) The notice delivered under subrule (1) shall specify the name and address of the person to whom payment is to be made.

Debt payable in future

330. Where a creditor has proved for a debt of which payment is not due at the date of the declaration of a dividend, he shall be entitled to the dividend equally with other creditors, but subject as follows—

For the purpose of the dividend, the amount of the creditor's admitted proof of debt or, if a distribution has previously been made to the creditor, the amount remaining outstanding under the creditor's admitted proof of debt, shall be reduced by applying the following formula—

$$\frac{X}{1.05}^{n}$$

where—

"X" is the value of the admitted proof of debt; and

"n" is the period beginning with the relevant date and ending with the date on which the payment of the creditor's debt would have been due, expressed in years, part of a year being expressed as a decimal fraction of a year.

Non-payment of dividend

331.—(1) In a company reorganization or the winding-up of the company, where the office-holder refuses to pay a dividend that has been declared, the Court may, if it considers it just, order the office-holder to pay the dividend.

(2) The Court shall order the office-holder to pay, out of his personal money—

(*a*) interest on the dividend, at the rate under section of the Courts Act, from the time when it was withheld; and

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(*b*) the costs of the proceedings in which the order to pay the interest shall have been made.

Division III—Committees and Meetings

Functions of committee

332. In addition to any functions conferred on a committee by any provision of the Act, the committee shall assist the office-holder in discharging his functions and act in relation to him in such manner as may from time to time be agreed.

Composition of committee

333. A committee shall have at least three members but not more than five members.

Eligibility to be member of committee

334. A person claiming to be a creditor shall be eligible to be a member of the creditors' or liquidation committee—

(*a*) in a company reorganization or a receivership if the person's claim—

(i) has neither been wholly disallowed for voting purposes, nor wholly rejected for the purpose of distribution or payment of a dividend; and

(ii) is not fully secured; or

(*b*) in a creditors' voluntary winding-up of the company, a winding-up of the company by the Court or a bankruptcy, if—

(i) the person has delivered a proof of debt;

(ii) the proof of debt has neither been wholly disallowed for voting purposes, nor wholly rejected for the purpose of distribution or payment of a dividend; and

(iii) the debt is not fully secured.

Eligibility of body corporate to be member of committee

335. A body corporate may be a member of a creditors' committee, but it cannot act otherwise than by a representative duly appointed.

Cessation of creditors' committee when creditors are paid in full

336.—(1) Where the creditors have been paid in full together with interest, if applicable, the liquidator shall—

(*a*) issue a certificate to that effect; and

(*b*) deliver to the Registrar of Companies and the Director a notice to that effect together with a copy of the certificate referred to in paragraph (*a*).

(2) On the issue of the certificate, the creditors' committee shall cease to exist.

(3) The certificate shall—

(*a*) identify the liquidator;

(*b*) contain a statement by the liquidator certifying that the creditors of the company have been paid in full with interest, if applicable; and

(*c*) be signed and dated by the liquidator.

Filling vacancy in creditors' committee

337.—(1) This rule applies if there is a vacancy in the membership of a creditors' committee.

(2) The vacancy may not be filled if—

(*a*) the office-holder and a majority of the remaining committee members agree; and

(*b*) the number of members does not fall below three.

(3) The office-holder may appoint a creditor, who is qualified to be a member of the committee, to fill the vacancy, if—

(*a*) a majority of the members of the committee agree to the nomination; and

(*b*) the creditor consents to act as such.

(4) Alternatively to subrule (3), a meeting of creditors may resolve that a creditor be appointed, with the creditor's consent, to fill the vacancy.

(5) Where the vacancy is filled by an appointment made by a creditors' meeting which the office-holder does not attend, the chairperson of the meeting shall report the appointment to the office-holder.

Resignation of committee member

338. A member of a committee may resign from his office by a notice delivered to the office-holder.

Termination of membership of committee

339. A person's membership of a committee shall automatically terminate if the person—

(*a*) becomes bankrupt, in which case the person's trustee in bankruptcy shall replace the bankrupt as a member of the committee;

(*b*) neither attends nor is represented at three consecutive meetings, unless it has been resolved at the third of those meetings that this rule shall not be applicable in that person's case;

(*c*) has ceased to be eligible to be a member of the committee under these Rules;

(*d*) ceases to be a creditor and three months have elapsed from the date that the member ceased to be a creditor; or

(*e*) is found never to have been a creditor.

Removal of member of committee

340. A member of a committee may be removed by a resolution at a creditors' meeting.

Formalities of establishment of committee: certificate of due constitution

341.—(1) A committee shall not come into being until the office-holder has issued a certificate of its due constitution.

(2) The certificate of due constitution shall—

(*a*) identify the proceedings;

(*b*) identify and provide contact details for the office-holder;

(*c*) state that the committee has been duly constituted;

(*d*) identify each company that is a member of the committee;

(*e*) give the full name and address of a member which is not a company; and

(*f*) be signed and dated by the office-holder.

(3) Where the office-holder is not the chairperson of the creditors' meeting which resolves to establish the committee, the chairperson shall, as soon as it is reasonably practicable, deliver a notice of the resolution to the office-holder or the person the meeting appoints as office-holder, and inform the office-holder of the names and addresses of the persons elected to be members of the committee.

(4) A person shall not act as a member of the committee, unless he consents to act as such.

(5) A person's consent to act as a member of a committee may be given by his proxy-holder attending the meeting establishing the committee or, in the case of a body corporate, by its duly appointed representative, unless the relevant proxy or authorization does not allow the provision of consent to act as such.

(6) The certificate of due constitution shall be issued, as soon as it is reasonably practicable, after the minimum number of persons have agreed to act as members of a committee.

(7) The office-holder shall, as soon as it is reasonably practicable—

(*a*) in bankruptcy proceedings based on a petition, file the certificate with the Court;

(*b*) in bankruptcy proceedings based on a bankruptcy application, deliver the certificate to the Official Receiver; and

(*c*) in other proceedings, deliver the certificate to the Registrar of Companies and the Director.

Issue of an amended certificate of due constitution

342.—(1) The office-holder shall issue an amended certificate of due constitution if there is a change in membership of the committee.

(2) The amended certificate shall—

(*a*) identify the proceedings;

(*b*) identify and provide contact details for the office-holder;

(*c*) state the date of the original certificate of due constitution and the date of the last amended certificate, if any;

(*d*) state that this amended certificate replaces the previous certificate;

(*e*) identify each company that is a member of the committee;

(*f*) give the full name and address of a member which is not a company;

(*g*) state whether any member has become a member since the issue of the previous certificate;

(*h*) give the full name and address of any member named on the previous certificate who is no longer a member and the date when such membership ended; and

(*i*) be signed and dated by the office-holder.

(3) The office-holder shall, as soon as it is reasonably practicable—

(*a*) in bankruptcy proceedings based on a petition, file the amended certificate with the Court;

(*b*) in bankruptcy proceedings based on a bankruptcy application, deliver the amended certificate to the Official Receiver; and

(*c*) in other proceedings, deliver the amended certificate to the Registrar of Companies and the Director.

Convening committee meeting

343. The convener shall have regard to the convenience of those invited to attend when fixing the date, time and venue for a committee meeting, including the resumption of an adjourned meeting.

Notice of meeting: content and accompanying documents

344.—(1) A notice summoning a meeting shall specify the purpose of, the date, time and venue for the meeting and—

(*a*) in case of a creditors' meeting, state that claims, proofs of debt, if not already delivered, and proxies shall be delivered to a specified place not later than 12:00 noon on the business day before the date fixed for the meeting in order for creditors to be entitled to vote at the meeting;

(*b*) in the case of a meeting of contributories, state that proxies shall be delivered to a specified place not later than 12:00 noon on the business day before the date fixed for the meeting in order for contributories to be entitled to vote at the meeting;

(*c*) in the case of a meeting to remove a liquidator in an insolvent or compulsory winding-up of the company, draw the attention of creditors to provisions which relate to the release of the liquidator and provisional liquidator, as the case may be; and

(*d*) in the case of a meeting to remove a trustee in a bankruptcy, draw the attention of creditors to rules which relate to the release of the trustee.

(2) Blank proxies complying with these Rules shall be delivered with every notice summoning a meeting.

(3) This rule shall not apply if the Court orders that a notice of a meeting be given by advertisement only.

Non-receipt of notice of meeting

345. Where a meeting is summoned by a notice under the Act or these Rules, the meeting shall be presumed to have been duly summoned and held, even if not everyone of all those persons to whom the notice was delivered responded in writing or attended the meeting.

Requisitioned meetings

346.—(1) In the case of a company reorganization, a request for a meeting under the Act or these Rules shall be delivered within eight business days from the date on which the administrator's statement of proposals shall have been delivered.

(2) The request for the meeting under subrule (1) shall include a statement of the purpose of the proposed meeting and—

(*a*) a statement of the requesting creditor's claim or contributory's claim;

(*b*) a list of the creditors or contributories concurring with the request and the amounts of their respective claims or values; and

(*c*) a confirmation of concurrence from each creditor or contributory concurring or a statement of the requesting creditor's claim or contributory's claim and that amount alone is sufficient without the concurrence of other creditors or contributories.

(3) In subrule (2), a contributory's value shall be the amount which the contributory may vote at any meeting.

(4) A requisitioned meeting shall be held within twenty-eight days from the date of the request.

Expenses of requisitioned meetings

347.—(1) The convener shall, not later than twenty-one days from the receipt of a request for a meeting, inform the requesting creditor or contributory of the sum to be deposited as security for payment of the expenses of summoning and holding the meeting.

(2) The convener shall not be obliged to summon a requisitioned meeting under subrule (1) unless—

(*a*) the convener has received the required sum; or

(*b*) twenty-one days have expired from receipt of the request for a meeting without the convener having informed the requesting creditor or contributory of the sum required to be deposited as security.

(3) The expenses of the requisitioned meeting shall be paid out of the deposit under subrule (1), if any, unless—

(*a*) the meeting resolves that the expenses shall be payable out of the assets of the company as an expense of the company reorganization of the company, winding-up of the company or bankruptcy; and

(*b*) in the case of a meeting of contributories, the creditors are first paid in full and, if applicable, with interest.

(4) Where there is no resolution under subrule (3) (*a*), the expenses shall be paid by the requesting creditor or contributory to the extent that the deposit, if any, is not sufficient.

(5) To the extent that the deposit, if any, shall not be required for payment of the expenses, it shall be repaid to the requesting creditor or contributory, as soon as it is reasonably practicable.

Quorum at meeting of creditors or contributories

348.—(1) A meeting of creditors or contributories shall not be competent to transact any business unless a *quorum* shall have been satisfied.

(2) A *quorum* shall be—

(*a*) in the case of a meeting of creditors, at least one creditor entitled to vote; and

(*b*) in the case of a meeting of contributories, at least two contributories entitled to vote, or all the contributories, if their number does not exceed two.

(3) A meeting of creditors or contributories shall not commence, unless at least the expiry of fifteen minutes after the time appointed for its commencement where—

(*a*) the provisions of this rule as to a *quorum* attending are satisfied by the attendance of the chairperson alone, or one other person in addition to the chairperson; and

(*b*) the chairperson is aware, by virtue of claims or proofs of debt and proxies received or otherwise, that one or more additional persons would, if attending, be entitled to vote.

Chairperson at meetings

349.—(1) The chairperson of a creditors' meeting or contributories or a meeting to remove the liquidator or trustee in an insolvent or compulsory winding-up of the company or bankruptcy shall be the convener or an appointee.

(2) Where the convener is the Official Receiver or the Director, the appointment need not be in writing if the appointee is another Official Receiver.

Adjournment by chairperson

350.—(1) The chairperson may, and shall, if it is so resolved, adjourn for not more than fourteen days any meeting of creditors

in company reorganization, but subject to the direction of the Court—

(*a*) any meeting in an insolvent or compulsory winding-up of the company or bankruptcy where the adjournment is with a view to obtaining the attendance of the bankrupt; or

(*b*) any other meeting in an insolvent or compulsory winding-up of the company or bankruptcy.

(2) Further adjournment under this rule shall not be to a day later than fourteen days after the date on which the meeting was originally held.

(3) Where a meeting is adjourned, the chairperson shall, as soon as it is reasonably practicable, unless for any reason the chairperson thinks it unnecessary or impracticable, deliver a notice of the adjournment in an insolvent or compulsory winding-up of the company, to any person—

(*a*) who did not attend the meeting as the chairperson thinks fit; or

(*b*) in a bankruptcy, to the bankrupt if not in attendance at the meeting.

Administrator's proposals: lack of majority at initial creditors' meeting

351. Where an initial creditors' meeting has failed to satisfy the requisite majority for approval of the administrator's proposals for a company reorganization, the chairperson may, and if a resolution is passed to that effect shall, adjourn the meeting for not more than fourteen days.

Adjournment of meetings to remove liquidator or trustee

352. Where the chairperson of a meeting to remove the liquidator or trustee in an insolvent or compulsory winding-up of the company or bankruptcy is the liquidator or trustee, or the liquidator's or trustee's nominee, and a resolution has been proposed for the liquidator's or trustee's removal, the chairperson shall not adjourn the meeting without the consent of at least one-half, in value, of the creditors attending and entitled to vote.

Adjournment in absence of chairperson

353.—(1) This rule applies to meetings in a company reorganization, an insolvent or compulsory winding-up of the company or a bankruptcy.

(2) Where the chairperson fails to attend a meeting within thirty minutes of the time fixed for the meeting to start, the meeting shall

be adjourned to the same time and place in the following week or, if that is not a business day, to the business day immediately following.

(3) Where on the second adjournment the chairperson fails to attend the meeting within thirty minutes of the time fixed for the meeting to start and no person is available to act as a chairperson in place of the chairperson, the meeting shall come to an end.

Proofs of debt and proxies on adjournment

354. Where a meeting in a company reorganization, insolvent or compulsory winding-up of the company or bankruptcy is adjourned, claims, proofs of debt and proxies may be used if delivered at any time up to 12:00 noon on the business day immediately before resumption of the adjourned meeting.

Adjournment in receivership

355. A creditors' meeting in a receivership shall not be adjourned, even if no *quorum* is satisfied, except where the chairperson thinks it fit that the meeting may be adjourned to another date, time and venue.

Suspension of meeting

356. In the course of a meeting, the chairperson may, without an adjournment, declare the meeting suspended for one or more periods not exceeding one hour in total.

Creditors' voting rights at meetings

357.—(1) A creditor shall be entitled to vote at a creditors' meeting only if—

(*a*) there has been delivered to the convener—

(i) in a company reorganization or receivership, details of the debt; or

(ii) in an insolvent or compulsory winding-up of the company or bankruptcy, a proof of debt, claimed under subrule (2), including any calculation; and

(*b*) the details of the debt were, or a proof of debt was, delivered to the convener—

(i) not later than 12:00 noon on the business day before the day fixed for the meeting; or

(ii) later than the time in subparagraph (i) but the chairperson of the meeting is satisfied that the delay was due to circumstances beyond that person's control; and

(*c*) the claim has been admitted for the purposes of entitlement to vote; or

(*d*) there has been delivered to the convener any proxy intended to be used on behalf of that person.

(2) A debt shall be claimed under this rule if it is claimed as due from the company or bankrupt to the person seeking to be entitled to vote.

(3) The details of the debt delivered to the convener in a receivership shall state—

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(*a*) the creditor's name and address, and, if a company, its unique identifiers under the Companies Act;

(*b*) the total amount of the claim, including any value added tax, as at the date of the appointment of the receiver, less all trade and other discounts available to the company, or which would have been available to the company but for the appointment, except for any discount for immediate or early settlement;

(*c*) whether or not that amount includes uncapitalized interest;

(*d*) particulars of how and when the debt was incurred by the company;

(*e*) particulars of any security held, the date when it was given and the value which the creditor attaches to it;

(*f*) details of any reservation of title in relation to goods to which the debt refers; and

(*g*) the name, and address and authority of the person making out the claim, if other than the creditor.

(4) The chairperson of a creditors' meeting may call for any document or other evidence to be produced if he thinks it necessary for the purpose of substantiating the whole or any part of a claim.

Calculation of voting rights

358.—(1) Votes shall be calculated according to the amount of each creditor's claim—

(*a*) in a company reorganization, as at the date on which the company entered company reorganization, less—

(i) any payments that have been made to the creditor after that date in respect of the claim; and

(ii) any adjustment by way of set-off under these Rules—

(AA) as if that rule were applied on the date on which the votes are counted if a notice of declaration of a dividend has not been delivered; or

(BB) which has actually been made in calculating the dividend to be paid to the creditor if the notice of declaration of a dividend has been delivered;

(*b*) in a receivership, as at the date of the appointment of the receiver, less any payment that has been made to the creditor after that date in respect of the claim; and

(*c*) in an insolvent or compulsory winding-up of the company or bankruptcy, as set out in the creditor's proof of debt to the extent that it has been admitted.

(2) A creditor may vote in respect of a debt which is for an unliquidated amount or the value of which is not ascertained if the chairperson decides to attach to the debt an estimated minimum value for the purpose of entitlement to vote and admits the claim for that purpose.

(3) A creditor may not vote in respect of any claim or part of a claim where the claim or its part is secured, except where the vote is cast—

(*a*) in a company reorganization, in respect of—

(i) the balance, if any, of the debt after deduction of the value of the security as estimated by the creditor; or

(ii) the full value of the debt without deduction of the value of the security in a case where the administrator has made a statement under section 35 (5) (*b*) of the Act and an initial creditors' meeting has been requisitioned under section 35 (6) of the Act; and

(*b*) in a receivership, insolvent or compulsory winding-up of the company or bankruptcy, in respect of the balance, if any, of the debt after deduction of the value of the security as estimated by the creditor.

(4) A vote may not be cast by virtue of a claim more than once on any resolution put to the meeting; and for this purpose, the claim of a creditor and of any member in relation to the same debt are a single claim.

Procedure for admitting creditors' claims for voting at meetings

359.—(1) At a creditors' meeting, the chairperson shall ascertain a creditor's claim of entitlement to vote and shall admit or reject such claims.

(2) The chairperson may admit or reject a creditor's claim of entitlement to vote in whole or in part.

(3) Where the chairperson is in any doubt whether a creditor's claim of entitlement to vote may be admitted or rejected, he shall mark the claim as objected to, and allow votes to be cast in respect of the claim, subject to such of the creditor's votes being subsequently declared invalid if the objection to the claim is sustained.

Procedure for admitting creditors' claims for voting by correspondence

360.—(1) Where a matter is being voted on by correspondence, the office-holder or appointee shall ascertain a creditor's claim of entitlement to vote and shall admit or reject such claim.

(2) The office-holder or appointee may admit or reject a creditor's claim of entitlement to vote in whole or in part.

(3) Where the office-holder or appointee is in any doubt whether a creditor's claim of entitlement to vote may be admitted or rejected, the office-holder or appointee shall mark the claim as objected to and allow votes to be cast in respect of the claim, subject to such of the creditor's votes being subsequently declared invalid if the objection to the claim is sustained.

Requisite majorities

361. A resolution shall be passed by creditors when a majority in value of those voting by correspondence or attending and voting at a meeting have voted in favour of the resolution.

Appeals against decisions of meetings

362.—(1) The decision of the office-holder or appointee, in respect of matters considered by correspondence, or the chairperson's decision, in respect of matters considered at a meeting, under these Rules are subject to appeal to the Court by a creditor, a contributory or a bankrupt.

(2) Where the chairperson's decision shall have been reversed or varied, or a creditor's votes shall have been declared invalid, the Court may order another meeting to be summoned or make such order as it considers just.

(3) An appeal under this rule shall not be made later than twenty-one days after the date of the meeting.

(4) The chairperson shall not be personally liable for costs incurred by any person in relation to an appeal under this rule unless the Court makes an order to that effect.

(5) The Court may not make an order under subrule (4) if the chairperson in the winding-up of the company by the Court or a

bankruptcy is the Official Receiver or a person nominated by the Official Receiver to be the chairperson.

Voting rights and requisite majorities at contributories' meetings

363. At a meeting of contributories—

(*a*) voting rights shall be as at a general meeting of the company, subject to any provision of the articles affecting entitlement to vote, either generally or at a time when the company is in liquidation; and

(*b*) a resolution shall be passed if more than one-half of the votes cast by contributories attending shall have been in favour of the resolution.

PART VII

Cross-Border Insolvency

Division I—Application to the Court for Recognition of Foreign Proceedings

Application and sworn statement in support of recognition application *Schedule*

364. A recognition application shall be in Form 1 in the Schedule and shall be supported by a sworn statement sworn by the foreign representative complying with rule 366.

Form and content of recognition application

365. The recognition application under rule 364 shall state the following matters—

(*a*) the name of the applicant and his address for service within Malaŵi;

(*b*) the name of the debtor in respect of which the foreign proceeding is taking place;

(*c*) the name or names in which the debtor carries on business in the country where the foreign proceeding is taking place and in this country, if other than the name given under paragraph (*b*);

(*d*) the principal or last known place of business of the debtor in Malaŵi, if any, and, in the case of an individual, his usual or last known place of residence in Malaŵi, if any;

(*e*) any unique identifiers allocated to the debtor under the Companies Act or Business Names Registration Act, as the case may be;

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Cap. 46:02

(*f*) brief particulars of the foreign proceeding in respect of which recognition is applied for, including the country in which it is taking place and the nature of the proceeding;

(*g*) that the foreign proceeding is a proceeding within the meaning of Part X of the Act;

(*h*) that the applicant is a foreign representative within the meaning of Part X of the Act;

(*i*) the address of the debtor's centre of main interest; and

(*j*) where the debtor does not have its centre of main interests in the country where the foreign proceeding is taking place, whether the debtor has an establishment within the meaning of the equivalent of Part X of the Act in that country, and if so, its address.

Contents of sworn statement

366.—(1) There shall be attached to the application a sworn statement in support which shall contain or have exhibited to it—

(*a*) the evidence and statement required under section 331 (2) and (3) of the Act;

(*b*) any other evidence which in the opinion of the applicant will assist the Court in deciding whether the proceeding, the subject of the application, is a foreign proceeding and whether the applicant is a foreign representative within the meaning of section 318 of the Act;

(*c*) evidence that the debtor has its centre of main interest or an establishment within the country where the foreign proceeding is taking place; and

(*d*) any other matter which in the opinion of the applicant may assist the Court in deciding whether to make a recognition order.

(2) The sworn statement shall also have exhibited to it the translations required under section 331 (4) of the Act and a translation in English of any other document exhibited to the sworn statement which is in a language other than English.

(3) All translations referred to in subrule (2) shall be certified by the translator as a correct translation.

Hearing and powers of the Court

367.—(1) On hearing a recognition application, the Court may in addition to its powers under the Act to make a recognition order—

(*a*) dismiss the application;

(*b*) adjourn the hearing conditionally or unconditionally; or

(*c*) make any other order which the Court considers appropriate.

(2) Where the Court makes a recognition order under this rule, it shall be in Form 2 in the Schedule. *Schedule*

Notification of subsequent information *Schedule*

368.—(1) The foreign representative shall set out any subsequent information required to be given to the Court under section 334 of the Act in a statement which shall be attached to Form 3 in the Schedule and filed with the Court.

(2) The statement shall include details of the information required to be given under section 334 of the Act.

(3) The foreign representative shall send a copy of Form 3, including the statement attached to it, filed with the Court to the following—

(*a*) a debtor; and

(*b*) persons referred to in rule 387 (3).

Division II—Applications for Relief under the Act

Application for interim relief

369. An application for interim relief must be supported by a sworn statement sworn by the foreign representative stating—

(*a*) the grounds on which it is proposed that the interim relief applied for should be granted;

(*b*) details of any proceeding under the Act taking place in relation to the debtor;

(*c*) whether, to the foreign representative's knowledge, receiver or manager of the debtor's property is acting in relation to the debtor;

(*d*) an estimate of the value of the assets of the debtor in Malaŵi in respect of which relief is applied for;

(*e*) whether, to the foreign representative's best knowledge and belief, the interests of the debtor's creditors, including any secured creditors, and any other interested parties, including, if appropriate, the debtor, will be adequately protected;

(*f*) whether, to the foreign representative's best knowledge and belief, the grant of any of the relief applied for would interfere with the administration of a foreign main proceeding; and

(*g*) any other matter that in the opinion of the foreign representative may assist the Court in deciding whether or not it is appropriate to grant the relief applied for.

Service of application for interim relief not required

370. Unless the Court otherwise directs, it shall not be necessary to serve the application for interim relief on, or give notice of it to, any person.

Hearing by, and powers of the Court

371. On hearing an application for interim relief, the Court may in addition to its powers under section 335 of the Act to make an order granting interim relief—

(*a*) dismiss the application;

(*b*) adjourn the hearing conditionally or unconditionally; or

(*c*) make any other order which the Court considers appropriate.

Application for provisional relief

372. An application for provisional relief under section 335 of the Act shall be supported by a sworn statement of the foreign representative stating—

(*a*) the grounds on which it is proposed that the relief applied for should be granted;

(*b*) an estimate of the value of the assets of the debtor in Malaŵi in respect of which relief is applied for;

(*c*) in the case of an application by a foreign representative who is, or believes that he is, a representative of a foreign non-main proceeding, the reasons why the applicant believes that the relief relates to assets that, under the Act, should be administered in the foreign non-main proceeding or concerns information required in that proceeding;

(*d*) whether, to the foreign representative's best knowledge and belief, the interests of the debtor's creditors, including any secured creditors, and any other interested parties, including if appropriate the debtor, shall be adequately protected; and

(*e*) any other matter that in the opinion of the foreign representative may assist the Court in deciding whether or not it is appropriate to grant the relief applied for.

Division III—Replacement of Foreign Representative

Application for confirmation of status of replacement foreign representative

373.—(1) This rule shall apply where following the making of a recognition order the foreign representative dies or for any other reason ceases to be the foreign representative in the foreign proceeding in relation to the debtor.

(2) Where a person has succeeded the former foreign representative or is otherwise holding office as foreign representative in the foreign proceeding in relation to the debtor, the person may apply to the Court for an order confirming his status as replacement foreign representative for the purpose of proceedings under these Rules.

(3) In subrule (2), "the former foreign representative" means the foreign representative referred to in subrule (1).

Contents of application and sworn statement

374.—(1) An application under rule 373 (2) shall, in addition to the matters required to be stated by rule 365, state the following matters—

(*a*) the name of the replacement foreign representative and his address for service within Malaŵi;

(*b*) details of the circumstances in which the former foreign representative ceased to be foreign representative in the foreign proceeding in relation to the debtor, including the date on which he ceased to be the foreign representative; and

(*c*) details of his own appointment as replacement foreign representative in the foreign proceeding, including the date of that appointment.

(2) The application shall be accompanied by an sworn statement of the applicant which shall contain or have attached to it—

(*a*) a certificate from the foreign court affirming—

(i) the cessation of the appointment of the former foreign representative as foreign representative; and

(ii) the appointment of the applicant as the foreign representative in the foreign proceeding;

(*b*) in the absence of such a certificate, any other evidence acceptable to the Court of the matters referred to in paragraph (*a*); and

(*c*) a translation in English of any document exhibited to the sworn statement which is in a language other than English.

(3) A translation referred to in subrule 2 (*c*) shall be certified by the translator as a correct translation.

Hearing by, and powers of, the Court

375.—(1) On hearing an application under rule 373 (2), the Court may—

(*a*) make an order confirming the status of the replacement foreign representative as the foreign representative for the purpose of proceedings under these Rules;

(*b*) dismiss the application;

(*c*) adjourn the hearing conditionally or unconditionally;

(*d*) make an interim order; or

(*e*) make any other order which the Court considers appropriate, including in particular an order making such provision as the Court considers fit with respect to matters arising in connexion with the replacement of the foreign representative.

(2) Where the Court dismisses the application, it may also, if it considers it fit, make an order terminating recognition of the foreign proceeding and such an order may include such provision as the Court considers fit with respect to matters arising in connexion with the termination.

(3) Rule 376 shall not apply to an order made under subrule (2).

Division IV—Reviews of Court Orders

Reviews of Court orders: where Court makes order of its own motion

376.—(1) The Court shall not, on its own motion, make a modification or termination order, unless the foreign representative and the debtor have—

(*a*) had an opportunity of being heard on the question; or

(*b*) consented in writing to such an order.

(2) Where the foreign representative or the debtor desires to be heard on the question of such an order, the Court shall give all relevant parties a notice of the date, time and venue at which the question shall be considered and may give directions as to the issues on which the Court requires evidence.

(3) Where the Court makes a modification or termination order, the order may include such provision as the Court considers fit with respect to matters arising in connexion with the modification or termination.

(4) For the purposes of subrule (2), all "relevant parties" means the foreign representative, the debtor and any other person who

appears to the Court to have an interest justifying his being given notice of the hearing.

Application for review: sworn statement

377. An application for review shall be supported by a sworn statement sworn by the applicant stating—

(*a*) the grounds on which it is proposed that the relief applied for should be granted;

(*b*) whether, to the best of his knowledge and belief, the interests of the debtor's creditors including any secured creditors or parties to hire-purchase agreements, and any other interested parties, including, if appropriate, the debtor, shall be adequately protected; and

(*c*) any other matter that in his opinion may assist the Court in deciding whether or not to grant the relief applied for.

Hearing of application for review by, and powers of, the Court

378. On hearing an application for review, the Court may, in addition to its powers under the Act to make a modification or termination order—

(*a*) dismiss the application;

(*b*) adjourn the hearing conditionally or unconditionally;

(*c*) make an interim order; or

(*d*) make any other order which the Court considers appropriate, including an order making such provision as the Court considers fit with respect to matters arising in connexion with the modification or termination.

Division V—Court Procedure and Practice with regard to Principal Applications and Orders

Preliminary and interpretation

379. This Division shall apply to—

(*a*) any of the following applications made to the Court under these Rules—

(i) a recognition application;

(ii) an application for provisional relief under section 335 of the Act;

(iii) an application under rule 366 for an order confirming the status of a replacement foreign representative; and

(iv) an application for review;

(*b*) any of the following orders made by the Court under these Rules—

(i) a recognition order;

(ii) an order granting provisional relief under section 335 of the Act;

(iii) an order granting relief under section 337 of the Act;

(iv) an order confirming the status of a replacement foreign representative; and

(v) a modification or termination order.

Form and contents of application *Schedule*

380.—(1) Subject to subrule (4), every application to which this Division applies shall be an ordinary application and shall be in Form 4 in the Schedule.

(2) Each application shall be in writing and shall state—

(*a*) the names of the parties;

(*b*) the nature of the relief or order applied for, or the directions sought, from the Court;

(*c*) the names and addresses of the persons, if any, on whom it is intended to serve the application;

(*d*) the names and addresses of all those persons on whom these Rules require the application to be served, as far as it is known to the applicant; and

(*e*) the applicant's address for service.

(3) The application shall be signed by the applicant if he is acting in person, or, when he is not so acting, on his behalf by his legal practitioner.

(4) This rule shall not apply to a recognition application.

Filing of application

381.—(1) An application and all supporting documents shall be filed with the Court, with a sufficient number of copies for service and use as provided by rule 382 (1).

(2) Each of the copies filed shall have affixed to each copy, the seal of the Court and be issued to the applicants, and on each copy there shall be endorsed the date and time of filing.

(3) The Court shall fix the date, time and venue for the hearing of the application and the date, time and venue shall be endorsed on each copy of the application issued under subrule (2).

Service of application

382.—(1) Unless the Court otherwise directs, the application shall be served on the following persons, unless they are the applicant—

(*a*) on the foreign representative;

(*b*) on the debtor;

(*c*) if a Malaŵi insolvency office-holder is acting in relation to the debtor, on him;

(*d*) if any person has been appointed a receiver or receiver and manager of the debtor or, to the knowledge of the foreign representative, as a receiver or manager of the property of the debtor in Malaŵi, on him;

(*e*) if to the knowledge of the foreign representative a foreign representative has been appointed in any other foreign proceeding regarding the debtor, on him;

(*f*) if there is pending in Malaŵi a petition for the winding-up of the company or bankruptcy of the debtor, on the petitioner; and

(*g*) on any person who to the knowledge of the foreign representative is or may be entitled to appoint an administrator of the company reorganization of the debtor under Part II of the Act.

(2) In subrule (1), references to the application are to a sealed copy of the application issued by the Court together with a sworn statement and any documents exhibited to the sworn statement.

Manner in which service is to be effected

383.—(1) Service of the documents in an application under rule 382 (1) shall be effected by the applicant, or his legal practitioner, or by a person instructed by him or his legal practitioner, not less than five business days before the date fixed for the hearing.

(2) Service shall be effected by delivering the documents to a person's proper address or in such other manner as the Court may direct.

(3) A person's proper address shall be any which he has previously notified as his address for service within Malaŵi, but if he has not

notified any such address or if for any reason service at such address is not practicable, service may be effected as follows—

(*a*) subject to subrule (4), in the case of a company incorporated in Malaŵi, by delivery to its registered office; and

(*b*) in the case of any other person, by delivery to his usual or last known address or principal place of business in Malaŵi.

(4) Where delivery to a company's registered office is not practicable, service may be effected by delivery to the company's last known principal place of business in Malaŵi.

(5) Delivery of documents to any place or address may be made by leaving the documents at the place or address or by sending the documents by courier.

Proof of service

Schedule

384.—(1) Service of the documents in the application under rule 382 (1) shall be verified by an sworn statement in Form 5 in the Schedule, specifying the date on which, and the manner in which, service was effected and the statement shall be filed with the Court.

(2) The sealed copy of the application, which shall have been served on the other party, shall be returned to the Court, as soon as it is reasonably practicable after service, and in any event not less than three business days before the hearing of the application.

Urgent applications

385. Where the case is one of urgency, the Court may, without prejudice to its general power to extend or abridge time limits—

(*a*) hear the application immediately, with or without notice to, or the attendance of, other parties; or

(*b*) authorize a shorter period of service than the period under rule 383,

and any such application may be heard on terms providing for the filing or service of documents, or the carrying out of other formalities, as the Court considers fit.

Hearing

386. At the hearing of the application, the applicant and any of the following persons, not being the applicant, may appear in person or be represented by a legal practitioner—

(*a*) the foreign representative;

(*b*) the debtor and, in the case of any debtor other than an individual, any one or more directors or other officers of the debtor, including—

(i) if a Malaŵi insolvency office-holder is acting in relation to the debtor, that person;

(ii) if any person has been appointed a receiver of the debtor or as a receiver or manager of the property of the debtor in Malaŵi, that person;

(iii) if a foreign representative has been appointed in any other foreign proceeding regarding the debtor, that person;

(iv) any person who has presented a petition for the winding-up of the company or bankruptcy of the debtor in Malaŵi;

(v) any person who is or may be entitled to appoint an administrator of a company reorganization of the debtor under Part II of the Act; and

(vi) with the permission of the Court, any other person who appears to have an interest justifying his appearance.

Notification and advertisement of order

387.—(1) Where the Court makes any of the orders referred to in rule 379 (*b*), it shall, as soon as it is reasonably practicable, send sealed copies of the order in duplicate to the foreign representative.

(2) The foreign representative shall send a sealed copy of the order, as soon as it is reasonably practicable, to the debtor.

(3) The foreign representative shall, as soon as it is reasonably practicable, after the date of the order, give a notice of the making of the order—

(*a*) if a Malaŵi insolvency office-holder is acting in relation to the debtor, to him;

(*b*) if any person has been appointed a receiver of the debtor or, to the knowledge of the foreign representative, as a receiver or manager of the property of the debtor, to him;

(*c*) if to his knowledge a foreign representative has been appointed in any other foreign proceeding regarding the debtor, that person;

(*d*) if there is pending in Malaŵi a petition for the winding-up of the company or bankruptcy of the debtor, to the petitioner;

(*e*) to any person who to his knowledge is, or may be entitled to appoint, an administrator of the company reorganization of the debtor; and

(*f*) to any other person as the Court may direct.

(4) In the case of an order recognizing a foreign proceeding in relation to the debtor as a foreign proceeding, or an order under section 335 or 337 of the Act staying execution, distress or other legal process against the debtor's assets, the foreign representative shall also, as soon as it is reasonably practicable, after the date of the order, give notice of the making of the order—

(*a*) to any enforcement officer or other officer who to his knowledge is charged with an execution or other legal process against the debtor or its property; and

(*b*) to any person who to his knowledge is distraining against the debtor or its property.

(5) Where the debtor is a company registered under the Companies Act, the foreign representative shall send a notice of the making of the order to the Registrar of Companies before the end of the period of five business days beginning with the date of the order.

Cap. 46:03

(6) The notice to the Registrar of Companies under subrule (5) shall be in Form 6 in the Schedule.

Schedule

(7) The foreign representative shall advertise the making of the following orders once it has been published in the *Gazette* and in a newspaper with wide circulation for ensuring that the making of the order comes to the notice of the debtor's creditors—

(*a*) a recognition order;

(*b*) an order confirming the status of a replacement foreign representative; and

(*c*) a modification or termination order which modifies or terminates recognition of a foreign proceeding, and the advertisement shall be in Form 7 in the Schedule.

Schedule

(8) In the application of subrules (3) and (4), the references to property shall be taken as references to property situated within Malaŵi.

Adjournment of hearing: directions

388.—(1) This rule shall apply in any case where the Court exercises its power to adjourn the hearing of the application under rule 382.

(2) The Court may, at any time, give such directions as it considers fit as to—

(*a*) service or notice of the application on or to any person, whether in connexion with the date, time and venue of a resumed hearing or for any other purpose;

(*b*) the procedure on the application;

(*c*) the manner in which any evidence is to be adduced at a resumed hearing and, in particular, as to—

(i) the taking of evidence wholly or in part by an sworn statement or orally; or

(ii) the cross-examination on the hearing in Court or in chambers, of a deponent to an sworn statement; and

(*d*) any matter to be dealt with in evidence.

Division VI—Applications to the Chief Land Registrar or Deeds Registrar

Applications following Court orders

Cap. 58:01

389.—(1) Where the Court makes any order in proceedings under this Division which is capable of giving rise to an application or applications under the Registered Land Act, the foreign representative shall, as soon as it is reasonably practicable, after the making of the order or at the appropriate time, make the appropriate application or applications to the Chief Lands Registrar or the Deeds Registrar under the Deeds Registration Act.

Cap. 58:02

(2) In subrule (1), an appropriate application shall be—

(*a*) in any case where—

(i) a recognition order in respect of a foreign main proceeding or an order suspending the right to transfer, encumber or otherwise dispose of any assets of the debtor is made; and

(ii) the debtor is the registered proprietor of a registered land or registered charge and holds it for his sole benefit and an application under Part VII of the Registered Land Act as appropriate to be entered in the relevant registered title is made,

Cap. 58:01

Cap. 58:02 or an application under section 11 of the Deeds Registration Act is made; and

Cap. 58:01
Cap. 58:02 (*b*) in any other case, an application under the Registered Land Act or the Deeds Registration Act for such an entry in the register as shall be necessary to reflect the effect of the Court order under this Division is made.

(3) The entry referred to in subrule (2) (*a*) shall restrict any dealings except under a further order of the Court.

Division VII—Misfeasance by Foreign Representative

Examination of conduct of foreign representative: misfeasance

390. The Court may examine the conduct of a person who—

(*a*) is or purports to be the foreign representative in relation to a debtor; or

(*b*) has been or has purported to be the foreign representative in relation to a debtor.

(2) An examination under this rule shall be held only on the application of—

(*a*) a Malaŵi insolvency office-holder acting in relation to the debtor;

(*b*) a creditor of the debtor; or

(*c*) with the permission of the Court, any other person who appears to have an interest justifying an application.

(3) An application under subrule (2) shall allege that the foreign representative—

(*a*) has misapplied or retained money or other property of the debtor;

(*b*) has become accountable for money or other property of the debtor;

(*c*) has breached a fiduciary or other duty in relation to the debtor; or

(*d*) has been guilty of misfeasance.

(4) On an examination under this rule into a person's conduct, the Court may order him—

(*a*) to repay, restore or account for money or property;

(*b*) to pay interest; or

(*c*) to contribute a sum to the debtor's property by way of compensation for breach of duty or misfeasance.

(5) In subrule (3), "foreign representative" includes a person who purports or has purported to be a foreign representative in relation to a debtor.

PART VIII

Miscellaneous Provisions

Rules of practice and procedure to apply with modification

391. The rules of practice and procedure of the High Court or the Supreme Court of Appeal shall apply to proceedings under these Rules in the High Court or the Supreme Court of Appeal with such modification as may be necessary for the purpose of giving effect to these Rules and in the case of any conflict between the rules of practice and procedure of the High Court or the Supreme Court of Appeal and these Rules, these Rules shall prevail.

Appeals in interlocutory matters

392. No appeal shall lie against the decision of a Judge in an interlocutory matter, unless the decision has the effect of completely disposing of the matter.

Revocation of Rules

393. The Companies (Winding-Up of the Company) Rules and the Bankruptcy Rules are revoked.

SCHEDULE

FORM 1 r. 364

IN THE HIGH COURT OF MALAŴI

COMMERCIAL DIVISION REGISTRY

IN THE MATTER OF THE INSOLVENCY ACT

AND

IN THE MATTER OF ..... ("the Debtor")

..... APPLICANT

AND

..... RESPONDENT

RECOGNITION APPLICATION

1. The application of ..... being the foreign representative(s) appointed in relation to the above named debtor in a foreign proceeding, under section 331 (1) of the Insolvency Act dated the ..... day of ....., 20.....

2. The proceeding is in relation to foreign proceeding in relation to ..... ("the debtor") lately carrying on business in ..... as ..... and lately carrying on business in Malaŵi.

3. The debtor's principal/last known place of business in Malaŵi is .....

4. The debtor was incorporated on ..... under the Companies Act and the unique identifier of the debtor is .....

5. The principal business lately carried on in Malaŵi is ....

6. The foreign proceeding in which recognition is applied for is taking place in ..... about .....

7. The foreign proceeding in respect of which recognition is applied for is a proceeding within the meaning of section 318 (1) of the Insolvency Act, and the applicant is the foreign representative of the debtor within the meaning of section 318 (1) of the Insolvency Act in relation to that proceeding, and the evidence referred to in section 331 (2) of the Insolvency Act is contained in or exhibited to the sworn statement in support attached to this application.

8. The address of the debtor's centre of main interest is .....

   OR

   the address of the debtor's registered office or habitual residence is

   .....

9. An sworn statement in support of this application is attached.

10. The statement referred to in section 331 (3) of the Insolvency Act is exhibited to the sworn statement in support attached to this application.

11. Messrs ....., a duly registered insolvency practitioner, will act with the applicant in accordance with the Insolvency (Practitioners) Regulations.

12. The applicant therefore prays as follows:

    (*a*) that the Court make an order recognizing the foreign proceeding the subject of this application as a foreign main or non-main* proceeding.

    (*b*) state any other ancillary relief.

(signed)

.....
Applicant/Legal Practitioner for the Applicant

NB: Attach a notice of hearing.

*Delete as appropriate

FORM 2 r. 367 (2)

IN THE HIGH COURT OF MALAŴI

COMMERCIAL DIVISION

..... REGISTRY

IN THE MATTER OF THE INSOLVENCY ACT

AND

IN THE MATTER OF ..... ("the Debtor")

..... APPLICANT

AND

..... RESPONDENT

RECOGNITION ORDER

UPON APPLICATION OF .....

Presented to the Court on ..... in respect of .....

AND UPON HEARING counsel

AND UPON reading the evidence filed in this application

IT IS ORDERED THAT .....

(i) be recognized as a foreign main proceeding/foreign non-main proceeding* in accordance with section 331 of the Insolvency Act;

(ii) state any other reliefs granted;

(iii) that costs of this application be .....

THIS ORDER TAKES EFFECT FROM .....

Dated the ..... day of ....., 20.....

.....
Judge

*Delete as appropriate

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r. 368

FORM 3

IN THE HIGH COURT OF MALAŴI

COMMERCIAL DIVISION

..... REGISTRY

IN THE MATTER OF THE INSOLVENCY ACT

AND

IN THE MATTER OF ..... ("the Debtor")

..... APPLICANT

AND

..... RESPONDENT

STATEMENT OF SUBSEQUENT INFORMATION

I/WE .....

attach a statement providing information under section 334 of the Insolvency Act, as set out in rule 368 of the Insolvency Rules.

Dated the ..... day of ....., 20.....

.....

(Signed)

.....

REPRESENTATIVES

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r. 380

FORM 4

IN THE HIGH COURT OF MALAŴI

COMMERCIAL DIVISION

..... REGISTRY

IN THE MATTER OF THE INSOLVENCY ACT

AND

IN THE MATTER OF ..... ("the Debtor")

..... APPLICANT

AND

..... RESPONDENT

APPLICATION

..... RELET ALL PARTIES concerned attend before the Judge on ..... day of ....., 20..... in the ..... noon at the High Court Commercial Division, ... Registry, on the hearing of an application on the part of the applicant for an order in the following terms:

.....

The grounds on which the applicant claims to be entitled to the order are:

.....

The name and addresses of the persons on whom it is intended to serve this application are:

.....

OR

It is not intended to serve any person with this application.

(signed)

.....

Applicant/Legal Practitioner for the Applicant

FORM 5 r. 384 (1)

IN THE HIGH COURT OF MALAŴI

COMMERCIAL DIVISION

..... REGISTRY

IN THE MATTER OF THE INSOLVENCY ACT

AND

IN THE MATTER OF ..... ("the Debtor")

..... APPLICANT

AND

..... RESPONDENT

SWORN STATEMENT VERIFYING SERVICE

I, ... acting on behalf of the applicant make oath and say as follows:

1. That I did on the ..... day of ....., 20..... serve the above named debtor with a copy of the application for ..... ("the application") duly sealed with the seal of the Court and its supporting documents by leaving the same at the debtor's address at ..... OR by sending the same on the ..... day of ....., 20..... by courier in an envelope duly prepaid and properly addressed to the said debtor at .....
2. That I did on the ..... day of ....., 20..... serve, ... the foreign representatives* (change as applicable) by leaving the same at the debtor's address at ..... OR by sending the same on the ..... day of ....., 20..... by courier in an envelope duly prepaid and properly addressed to the said debtor at .....

3. That the same has not been returned to me.

Sworn by

This ..... day of ....., 20.....

Before me:

.....

COMMISSIONER FOR OATHS

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r. 387 (6)

FORM 6

IN THE HIGH COURT OF MALAŴI

COMMERCIAL DIVISION

..... REGISTRY

IN THE MATTER OF THE INSOLVENCY ACT

AND

IN THE MATTER OF ..... ("the Debtor")

..... APPLICANT

AND

..... RESPONDENT

NOTIFICATION OF ORDER

The following order has been made in relation to the above debtor under Part IX of the Insolvency Act.

Order made on .....

Name and addresses for foreign representatives: .....

.....

---

r. 387 (7)

FORM 7

IN THE HIGH COURT OF MALAŴI

COMMERCIAL DIVISION

..... REGISTRY

IN THE MATTER OF THE INSOLVENCY ACT

AND

IN THE MATTER OF ..... ("the Debtor")

..... APPLICANT

AND

..... RESPONDENT

Modification or termination order which modifies or terminates recognition of a foreign proceeding, and the advertisement of order* (change as applicable)

Order made on .....

Name and addresses for foreign representatives: .....

.....

INSOLVENCY (PRACTITIONERS) REGULATIONS

ARRANGEMENT OF REGULATIONS

REGULATION

PART I
Preliminary Provisions

1. Citation
2 Interpretation

PART II
Registration of Insolvency Practitioners

3. Matters to consider in determining whether an applicant is a fit and proper person
4. Application to act as insolvency practitioner
5. Registration of insolvency practitioners
6. Refusal to register
7. Duties of recognized professional bodies
8. Qualifications obtained outside Malaŵi, language, etc
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PART III
Remuneration

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INSOLVENCY (PRACTITIONERS) REGULATIONS

G.N. 13/2017

under s. 351

PART I
PRELIMINARY PROVISIONS

1. These Regulations may be cited as the Insolvency (Practitioners) Regulations. Citation

2. In these Regulations, unless the context otherwise requires— Interpretation

"business" includes the carrying on of any trade, profession or vocation and the discharge of the functions relating to any office or employment;

"insolvency legislation" includes the Insolvency Act and the Companies Act; Cap. 11:01 Cap. 46:03

"insolvency practice" means the carrying on of the business of acting as an insolvency practitioner or in a corresponding capacity under the law of any country or territory outside Malaŵi, and for this

purpose acting as an insolvency practitioner shall include acting as a trustee in sequestration or a judicial factor on the bankrupt estate of a deceased person, receiver, receiver and manager, administrator or liquidator;

"insolvency work experience" means engagement in work related to the administration of the estates of persons in respect of which an office-holder has been appointed;

"office-holder" means a person who acts or has acted as an insolvency practitioner, receiver, a trustee in bankruptcy, provisional liquidator, or liquidator, supervisor on an individual voluntary arrangement, a nominee, an administrator of a company reorganization or in a corresponding capacity under the law of any country outside Malaŵi;

"professional legislation" means any enactment governing any profession recognized in terms of the Act and these Regulations;

"register" means the register of insolvency practitioners referred to in section 8 of the Act;

"recognized professional body" means a professional body declared as such by the Minister in accordance with section 311 of the Act; and

"relevant time" in relation to an individual making an application, means the time of making the application.

PART II

Registration of Insolvency Practitioners

Matters to consider in determining whether an applicant is a fit and proper person

3.—(1) A person shall not be allowed to act as an insolvency practitioner, unless he—

(*a*) is a member of a recognized professional body;

(*b*) meets the education, practical training and experience requirements as set out under these Regulations; and

(*c*) is a fit and proper person to so act in terms of the Act and these Regulations.

(2) Notwithstanding subregulation (1) (*a*) and (*b*), a person shall be deemed qualified under section 311 (1) (*a*) of the Act, if he has been admitted to the practice of insolvency in any jurisdiction that regulates such practice, to at least the standards obtaining in Malaŵi.

(3) The matters to be taken into account in determining whether an applicant is a fit and proper person to act as an insolvency practitioner shall include—

(*a*) whether the applicant has been convicted of any offence involving fraud, dishonesty or violence;

(*b*) whether the applicant has contravened any insolvency legislation, professional legislation or any other written law in Malaŵi or of any country outside Malaŵi, which corresponds to such pieces of legislation;

(*c*) whether the applicant has ever been suspended or removed from the practice of a recognized professional body in Malaŵi or by a comparable professional body outside Malaŵi;

(*d*) whether the applicant has engaged in any practices in the course of carrying on business appearing to be deceitful or oppressive or otherwise unfair or improper, whether unlawful or not, or which otherwise cast doubt upon his probity or competence for discharging the duties of an insolvency practitioner;

(*e*) whether, in respect of any insolvency practice carried on by the applicant at the date of, or at any time prior to, the making of the application, there were established adequate systems of control of the practice and adequate records relating to the practice, including accounting records, and whether such systems of control and records have been or were maintained on an adequate basis;

(*f*) whether the insolvency practice of the applicant is being carried on, or where the applicant is not yet carrying on such a practice, with the independence, integrity and the professional skills appropriate to the range and scale of the practice and the proper performance of the duties of an insolvency practitioner; or

(*g*) whether the applicant, in any case where he has acted as an insolvency practitioner, has failed to disclose fully to such persons as might reasonably be expected to be affected thereby circumstances where there is, or appears to be, a conflict of interest between his so acting and any interest of his own, whether personal, financial or otherwise.

(4) An insolvency practitioner who is suspended or removed from the practice of a recognized professional body in Malaŵi or by a comparable professional body outside, shall give notice of that fact

First Schedule

to the Director, in the form specified in the First Schedule, within seven days of the insolvency practitioner receiving notice of the suspension or removal from the practice.

Application to act as insolvency practitioner

First Schedule

4.—(1) For the purposes of the Act, every person who intends to practice as an insolvency practitioner shall submit an application to the Director or the Minister, as the case may be, in the form specified in the First Schedule, for the registration of his name to be entered in the register pursuant to the Act.

Second Schedule

(2) An application for registration to practice as an insolvency practitioner shall be accompanied by prescribed fees, as set out in the Second Schedule.

(3) Fees paid under subregulation (2) shall not be refundable regardless of the outcome of the application.

Second Schedule

(4) On issuance of a certificate of registration to practice as an insolvency practitioner, an applicant shall pay fees as set out in the Second Schedule.

(5) The Director shall inform an applicant of the outcome of the application within twenty-eight days of his receipt of a complete application and the application fee.

(6) An application that is required to be made to the Minister under section 312 of the Act, shall be channeled to the Minister through the Director.

(7) For the purposes of section 312 (2) (*a*) of the Act, the competent authority shall be the Director.

Registration of insolvency practitioners

5. For the purpose of an application for registration as an insolvency practitioner, the Director or the Minister, as the case may be—

(*a*) may register a person subject to such conditions, not inconsistent with Act and these Rules, as he may deem expedient; and

(*b*) shall inform a person in writing of his registration in such manner as he may determine.

Refusal to register

6.—(1) The Director or the Minister, as the case may be, may refuse to register a person as an insolvency practitioner where the person does not satisfy the requirements of the Act or these Regulations.

(2) Where the Director or the Minister, as the case may be, refuses to register a person as an insolvency practitioner, he shall inform

the person, in writing, of the refusal, including the reasons for the refusal, within twenty-eight days of receipt of the application and any documents in support of that application by the Director or the Minister, as the case may be.

Duties of recognized professional bodies

7.—(1) A recognized professional body shall provide to its members who wish to register under the Act, such training and examinations relating to the law and practice of insolvency as the Director may, in writing, determine.

(2) Within three years after commencement of the Act, an application for registration as an insolvency practitioner shall be accepted, if the applicant can demonstrate to the Director, in writing, his experience in the practice of insolvency without the need to undergo such training and examinations as may be required by subregulation (1).

(3) On every renewal of registration under the Act, an insolvency practitioner shall provide evidence of any continuing professional education related to the practice of insolvency provided or recognized by a recognized professional body undertaken during the two years immediately preceding the application for renewal of registration.

(4) The Director may exempt any person from the examination requirement under these Regulations if the person has pursued, successfully, a course in insolvency at an accredited institution in the country of qualification at tertiary level.

Qualifications obtained outside Malaŵi, language, etc

8.—(1) The Director may accept for registration an insolvency practitioner who is qualified to act in any jurisdiction outside Malaŵi, where such jurisdiction regulates its insolvency practice to at least the standards obtaining in Malaŵi.

(2) Where the insolvency practitioner is not from an English speaking country or background, he shall provide evidence of his ability to speak and write in English language, as the Director may determine.

(3) Language requirements in subregulation (2) shall not apply in cases of cross-border insolvency, except that the applicant for registration in a case of cross-border insolvency shall provide translations of documents in accordance with the Authentication of Documents Act, that would entitle the applicant to practice as an insolvency practitioner to the Director. Cap. 4:06

(4) On ceasing to practice, an insolvency practitioner shall complete Form 2 in the First Schedule and submit it to the Director. *First Schedule*

Ethics

9. In addition to any rules of ethics to which an insolvency practitioner may be subject to in his recognized professional body, he shall also be subject to the ethical guidelines as provided in the Third Schedule hereto.

Third Schedule

PART III

Remuneration

Remuneration: principles

10.—(1) An administrator of a company reorganization, a receiver, a liquidator, including in a members' voluntary winding-up, or a trustee in bankruptcy is entitled to receive remuneration for services as an office-holder.

(2) The basis of remuneration shall be fixed—

(*a*) not to exceed five percentage of the value of—

(i) the property with which the administrator of a company reorganization has to deal with; or

(ii) the assets which are realized, distributed or both realized and distributed by the liquidator or trustee; and

(*b*) by reference to the time properly given by the office-holder and the office-holder's staff in attending to matters arising in the company reorganization, winding-up or bankruptcy, as a set amount or any combination of them and different bases may be fixed in respect of different things done by the office-holder.

(3) Where the basis of remuneration is fixed as in subregulation (2) (*a*) (ii), different percentages may be fixed in respect of different things done by the office-holder not exceeding the aforesaid five per cent.

(4) In arriving at a determination, regard shall be had to the following matters—

(*a*) the complexity or otherwise, of the case;

(*b*) any respects in which, in connexion with the company's or bankrupt's affairs, there falls on the office-holder, any responsibility of an exceptional kind or degree;

(*c*) the effectiveness with which the office-holder appears to be carrying out, or to have carried out, the office-holder's duties as such; and

(*d*) the value and nature of the property with which the office-holder has to deal.

(5) Where the office-holder is a legal practitioner and employs his firm, or any partner in it, to act on behalf of the company, profit costs shall not be paid to his firm, unless expressly authorized in the determination by the creditors' committee or, where one is not available, the Court.

Remuneration: procedure for initial determination

11.—(1) Except in a shareholders' voluntary winding-up, the creditors' committee shall, subject to subregulation (4), determine the basis of remuneration.

(2) Where there is no committee, or the committee does not make the requisite determination, and—

(*a*) in a company reorganization, the case does not fall within subregulation (3); or

(*b*) in a creditors' voluntary winding-up or a winding-up by the Court, subject to subregulation (4),

the basis of remuneration may be fixed by a resolution of a meeting of the creditors.

(3) Where the administrator has made a statement under section 35 (5) (*b*) of the Act and there is no creditors' committee, or the committee does not make the requisite determination, the basis of the administrator's remuneration may be fixed by the approval of—

(*a*) each secured creditor of the company; or

(*b*) preferential creditors whose debts amount to more than fifty per cent of the preferential debts of the company, disregarding debts of any creditor who does not respond to an invitation to give or withhold the approval.

(4) In a shareholders' voluntary winding-up, the company in a general meeting shall determine the basis of the remuneration.

(5) Where the basis of the administrator's remuneration or liquidator's remuneration in a voluntary winding-up, including a shareholders' voluntary winding-up, is not fixed as provided in subregulation (1), (2), (3) or (4), it shall, on application by the administrator or liquidator, be fixed by the Court.

(6) An application under subregulation (5) may not be made by the administrator or liquidator without having first sought fixing of the basis in accordance with subregulation (1), (2), (3) or (4), as the case may be, and in any event may not be made more than eighteen months after the date of the administrator's or liquidator's appointment.

(7) In a shareholders' voluntary winding-up, the liquidator shall deliver at least fourteen days' notice of an application under subregulation (6) to the company's contributories, or such one or more of them as the Court may direct, and the contributories may nominate one or more of their number to appear, or be represented, and to be heard on the application.

(8) Where, in a winding-up by the Court or bankruptcy, the basis of remuneration is not fixed as above after the liquidator or trustee has requested the creditors to fix the basis in accordance with subregulation (2), or in any event within eighteen months after the date of the liquidator's or trustee's appointment, the liquidator or trustee is entitled to such sum as is arrived at after taking into account all matters referred to in this regulation.

(9) That part of the trustee's remuneration calculated under subregulation (8) by reference to the Court shall not exceed five per cent of the bankruptcy estate.

(10) Where a number of persons are appointed as administrators or joint liquidators or trustees, they shall agree between themselves as to how the remuneration payable should be apportioned, and any dispute arising between them may be referred to—

(*a*) the Court, for settlement by order; or

(*b*) the creditors' committee, a meeting of creditors or in a members' voluntary winding-up, the company in general meeting, for settlement by resolution.

(11) For the purposes of this regulation, a joint appointment shall be regarded as one insolvency practitioner.

Remuneration: recourse to administrator, liquidator or trustee to creditor

12.—(1) Where the basis of—

(*a*) the administrator's or trustee's remuneration has been fixed by the creditors' committee;

(*b*) the liquidator's remuneration has been fixed by the creditors' committee;

(*c*) the liquidator's remuneration had been fixed by the creditors' committee in a preceding company reorganization and the administrator had not subsequently requested an increase under this rule; or

(*d*) the remuneration fixed is considered inappropriate or the amount fixed is considered insufficient by an office-holder,

the office-holder may request that the amount be increased or the basis changed by resolution of the creditors.

(2) Where—

(*a*) the administrator has made a statement under section 35 (5) (*b*) of the Act;

(*b*) the basis of the administrator's remuneration has been fixed by the creditors' committee; and

(*c*) the administrator considers an amount fixed to be insufficient or the basis fixed to be inappropriate, the administrator may request that the amount be increased or the basis changed by the approval of—

(i) each secured creditor of the company;

(ii) if the administrator has made or intends to make a distribution to preferential creditors; and

(iii) preferential creditors whose debts amount to more than fifty per cent of the preferential debts of the company, disregarding debts of any creditor who does not respond to an invitation to give or withhold approval.

Remuneration: recourse by administrator, liquidator or trustee to the Court

13. (1) Where the basis of—

(*a*) the administrator's remuneration has been fixed—

(i) by the creditors' committee, and the administrator has requested that the amount be increased or the basis changed by resolution of the creditors, but the creditors have not changed it; or

(ii) by resolution of the creditors;

(*b*) the liquidator's remuneration has been fixed—

(i) by the creditors' committee, and the liquidator has requested that the amount be increased or the basis changed by resolution of the creditors, but the creditors have not changed it; or

(ii) by resolution of the creditors, in a members' voluntary winding-up, by the company in general meeting; or

(*c*) the trustee's remuneration has been fixed—

(i) by the creditors' committee, and the trustee has requested that the amount be increased or the basis changed by resolution of the creditors, but the creditors have not changed it; or

(ii) by resolution of the creditors, or and the office-holder considers an amount fixed to be insufficient or basis fixed to be inappropriate,

the office-holder may apply to the Court for an order increasing the amount or changing the basis.

(2) Where the administrator has made a statement under section 35 (5) (*b*) of the Act, that the basis of the administrator's remuneration has been fixed by the approval of creditors in accordance with these Regulations and the administrator considers an amount fixed to be insufficient or basis fixed to be inappropriate, the administrator may apply to the Court for an order increasing the amount or changing the basis.

(3) Where an application is made under subregulation (2), the administrator shall deliver notice to each of the creditors whose approval was sought.

(4) The administrator, liquidator, except in a members' voluntary winding-up, or trustee shall deliver at least fourteen days' notice of the application to the members of the creditors' committee and the committee may nominate one or more members to appear, or be represented, and to be heard on the application.

(5) Where there is no creditors' committee, the office-holder's notice of the application shall, except in a members' voluntary winding-up, be delivered to such one or more of the company's creditors as the Court may direct, and those creditors may nominate one or more of their number to appear or be represented.

(6) In a members' voluntary winding-up, the liquidator shall deliver at least fourteen days' notice of the application to the company's contributories, or such one or more of them, as the Court may direct and the contributories may nominate one or more of their number to appear, or be represented, and to be heard on the application.

(7) The Court may, if it appears to be a proper case, including in a members' voluntary winding-up, order the costs of the office-holder's application, including the costs of any member of the creditors' committee appearing or being represented on it, or of any creditor or contributory so appearing or being represented, to be paid as an expense of the administration or liquidation or out of the bankruptcy estate.

Remuneration: review at request of administrator, liquidator or trustee

14.—(1) Where, after the basis of the office-holder's remuneration has been fixed, there is a material or substantial change in the circumstances which were taken into account in fixing it, the office-holder may request that it be changed.

(2) The request shall be made—

(*a*) where the creditors' committee fixed the basis, to the committee;

(*b*) where the creditors fixed the basis, to the creditors;

(*c*) where the Court fixed the basis, by application to the Court; or

(*d*) where, in a winding-up or bankruptcy, the remuneration was determined by the liquidator or creditors' committee if there is one and otherwise, to the creditors,

and regulations 11, 12, 13 and 14 shall also apply, as the case may be.

(3) Any change in the basis for remuneration applies from the date of the request under subregulation (2) and not for any earlier period.

Remuneration: new administrator, liquidator or trustee

15. Where a new administrator, liquidator, including in a members' voluntary winding-up, or trustee is appointed in place of another, any determination, resolution or Court order in effect under regulations 11, 12, 13 and 14, immediately before the former office-holder ceased to hold office, continues to apply in relation to the remuneration of the new office-holder until a further determination, resolution or Court order is made in accordance with regulations 11, 12, 13 and 14.

Remuneration: apportionment of set aside fees

16.—(1) In a case, including in a members' voluntary winding-up, in which the basis of the office-holder's remuneration is a set amount and the former office-holder ceases, for whatever reason, to hold office before the time has elapsed or the work has been completed in respect of which the amount was set, application may be made for determination of what portion of the amount should be paid to the former office-holder or the former office-holder's personal representative in respect of the time which has actually elapsed or the work which has actually been done.

(2) An application may be made by—

(*a*) the former office-holder or the former office-holder's personal representative within the period of ninety days beginning

with the date upon which the former office-holder ceased to hold office; or

(*b*) the office-holder for the time being in office if the former office-holder or the former office-holder's personal representative has not applied by the end of that period.

(3) An application shall be made—

(*a*) where the creditors' committee fixed the basis, to the committee;

(*b*) where the creditors fixed the basis, to the creditors for a resolution determining the portion;

(*c*) where the company in general meeting fixed the basis, to the company for a resolution determining the portion; or

(*d*) where the Court fixed the basis, to the Court for an order determining the portion.

(4) The applicant shall deliver a copy of the application to the office-holder for the time being or to the former office-holder or the former office-holder's personal representative, as the case may be ("the recipient").

(5) The recipient may, within twenty-eight days of receipt of the copy of the application, deliver a notice of intent to—

(*a*) make representations to—

(i) the creditors' committee;

(ii) the creditors; or

(iii) the company in general meeting; or

(*b*) appear or be represented before the Court, as the case may be.

(6) A determination may not be made upon the application until expiry of the twenty-one days referred to in subregulation (5), or if the recipient does deliver a notice of intent in accordance with subregulation (5), until the recipient has been afforded the opportunity to make representations or to appear or be represented, as the case may be.

(7) Where the former office-holder or the former office-holder's personal representative, whether or not the original applicant,

considers that the portion determined upon application to the creditors' or committee or the creditors is insufficient, that person may apply—

(*a*) in the case of a determination by the committee, to the creditors for a resolution increasing the portion; and

(*b*) in the case of a resolution of—

(i) the creditors, whether under subregulation (3) (*b*) or under paragraph (*a*); or

(ii) the company in general meeting,

to the Court for an order increasing the portion, and subregulations (4), (5) and (6) shall apply, as appropriate.

Creditors', contributories' or bankrupt's claim that remuneration, etc., is, or other expenses are, excessive

17.—(1) The following persons may apply to the Court for one or more of the orders provided in subregulation (11)—

(*a*) a secured creditor;

(*b*) an unsecured creditor with either—

(i) the concurrence of at least ten per cent in value of the unsecured creditors, including that creditor; or

(ii) the permission of the Court;

(*c*) in a shareholders' voluntary winding-up—

(i) members of the company with at least ten per cent of the members having the right to vote at general meetings of the company; or

(ii) a member of the company with the permission of the Court; or

(*d*) the bankrupt.

(2) An application may be made on the grounds that—

(*a*) the remuneration charged by the office-holder;

(*b*) the basis fixed for the office-holder's remuneration under these Regulations; or

(*c*) expenses incurred by the office-holder,

is or are, in all the circumstances, excessive or, in the case of an application under paragraph (*b*), inappropriate.

(3) The application by a creditor or member shall be made no later than four weeks after receipt by the applicant of the progress report, or the final report, which first reports are the basis of the charging of the remuneration or the incurring of the expenses in question ("the relevant report").

(4) An application by the bankrupt may be made only on one or both of the grounds in subregulation (2) (*a*) and (*c*) and no later than—

(*a*) four weeks after receipt by the bankrupt of the report under these Regulations; or

(*b*) in all other cases, four weeks after receipt by the bankrupt of notice.

(5) Where the Court considers that no sufficient cause is shown for a reduction, it shall deliver to the applicant notice to that effect, and—

(*a*) if, within five business days of delivery of the notice, the applicant applies to the Court to fix time and venue for a hearing, without notice to any other party, as to whether sufficient cause is shown, the Court shall do so; and

(*b*) if the applicant does not deliver notice in accordance with paragraph (*a*), the Court may dismiss the application without a hearing.

(6) The bankrupt may only make an application, under this regulation, with the permission of the Court.

(7) Without prejudice to the generality of the matters which the Court may take into account, permission shall not be given, unless the bankrupt shows that—

(*a*) there is, or would be; or

(*b*) it is likely that there shall be, or would be,

but for the remuneration or expenses in question, a surplus of assets to which the bankrupt would be entitled.

(8) The Court shall fix the date, time and venue for the application to be heard and deliver notice to the applicant if—

(*a*) the application is not dismissed;

(*b*) after a hearing under subregulation (5) (*a*);

(*c*) without a hearing in accordance with subregulation (5) (*b*); or

(*d*) the bankrupt is given permission under subregulation (6).

(9) The time fixed under subregulation (8) shall be not less than twenty-eight days, after delivery to the applicant of the notice under subregulation (7).

(10) The applicant shall, at least fourteen days before the hearing, deliver to the office-holder a notice stating the date, time and venue, and accompanied by a copy of the application and of any evidence which the applicant intends to provide in support of it.

(11) Where the Court considers the application to be well-founded, it shall make one or more of the following orders—

(*a*) an order reducing the amount of remuneration which the office-holder is entitled to charge;

(*b*) an order reducing any fixed amount;

(*c*) an order changing the basis of remuneration;

(*d*) an order that some or all of the remuneration or expenses in question be treated as not being expenses of the administration or winding-up or bankruptcy expenses;

(*e*) an order that—

(i) the administrator or liquidator or the administrator's or liquidator's personal representative pay to the insolvent debtor, the amount of the excess of remuneration or expenses or such part of the excess as the Court may specify; or

(ii) the trustee or the trustee's personal representative pay to such person as the Court may specify as property comprised in the bankrupt's estate; or

(*f*) any other order that it considers just.

(12) An order under subregulation 11 (*b*) or (*c*) may be made only in respect of periods after the period covered by the relevant report.

(13) Unless the Court orders otherwise under subregulation (11), the costs of the application shall be paid by the applicant, and are not payable as an expense of the administration or as winding-up or bankruptcy expenses.

(14) The Court may order that the costs may be payable by the applicant, the respondent or as an expense.

Voting on remuneration

18. Where a resolution is proposed in an insolvent or compulsory winding-up or bankruptcy which affects a person in relation to that person's remuneration or conduct as liquidator or trustee, actual, proposed or former, the person and the associates of the person shall not vote on it, whether as creditor, contributory, proxy-holder or corporate representative, except so far as permitted by these Regulations.

Fees for Official Receiver

19. The provisions of this Part in relation to fees shall apply to the Official Receiver.

PART IV

The Register of Insolvency Practitioners

Operation and access to register

20.—(1) In accordance with section 8 of the Act, the Director shall keep and maintain a register of insolvency practitioners, in an electronic form or in any other manner as he may determine.

(2) Subject to subregulation (3), the register shall be available for access and searching by members of the public at all times.

(3) The Director may refuse access to the Register or suspend its operation, in whole or in part, if the Director determines that it is not practical to provide access to the Register.

Purposes of the register

21. The purposes of the register shall be to—

(*a*) enable members of the public to—

(i) determine whether a person is a registered insolvency practitioner;

(ii) choose an insolvency practitioner from a list of registered insolvency practitioners; and

(iii) have access to contact details of their preferred insolvency practitioner; and

(*b*) assist any person in the exercise of the person's powers, or the performance of the person's functions, under the Act or any other written law.

Contents of the register

22.—(1) The register shall contain the following information about each registered insolvency practitioner—

(*a*) the person's full name;

(*b*) the person's business address, both physical and postal;

(*c*) the name and contact details of any recognized professional bodies of which the person is a member; and

(*d*) any other information or documents prescribed by the Act or these Regulations.

Director may amend, omit, remove or restrict access to information in the register

23. The Director may make any amendment to the register that is necessary to—

(*a*) reflect any changes in the information that is contained in the register;

(*b*) correct a mistake caused by any error or omission on the part of the Director; or

(*c*) comply with a Court order.

PART V

Miscellaneous Provisions

Insolvency practitioners in cross-border cases

24. Where an insolvency practitioner is appointed in a cross-border insolvency under regulation 9, he shall only be appointed jointly with an insolvency practitioner resident in Malaŵi.

Professional indemnity

25. An insolvency practitioner shall not be appointed by the Court, in any case, if he is not in possession of professional indemnity insurance applicable to the negligent performance or non-performance of his duties as an insolvency practitioner generally, or as the Court may determine in accordance with the insolvency rules governing such appointments.

Prohibition period

26. For the purposes of section 180 of the Act, the prescribed period shall be five years.

Revocation

27. The Companies (Liquidator's Fees) Regulations are hereby revoked.

FIRST SCHEDULE

reg. 4 (1)

FORM 1

APPLICATION FOR REGISTRATION
AS AN INSOLVENCY PRACTITIONER

PART I
PERSONAL DETAILS

Name .....

Date of birth .....

Nationality .....

Form of Identification and number .....

Cellphone number .....

Office address .....

Residential address .....

Details of residence (for the last five years if not Malaŵi) .....

.....

PART II
PROFESSIONAL EXPERIENCE

Qualifications held .....

Name of institution .....

Country of institution .....

Date of qualification .....

Membership of professional body .....

..... None ..... Accountancy ..... Law ..... Neither (Tick as appropriate)

Other professional qualifications and/or membership of international insolvency associations

.....

.....

Experience as an insolvency practitioner (include dates, names of firms and roles)

.....

.....

.....

Enclosures to attach to this form:

(1) Certified copies of professional qualifications (insert names of certificates)

.....

(2) Certified copies of professional body memberships (insert names of professional bodies)

.....

(3) Schedule of cases in which you acted as an insolvency practitioner and the values of assets involved (insert extra pages as necessary)

.....

On signing this form I declare that—

(*a*) The particulars given in this form are true, accurate and complete to the best of my knowledge and belief and I will provide such further information as the Director of Insolvency may request.

(*b*) I am a fit and proper person and I am not under any suspension.

(*c*) I have taken out professional indemnity insurance of at least K20,000,000 for at least two years coterminous with any registration that may be granted.

(*d*) I undertake to abide by the provisions of the Insolvency Act and related pieces of legislation.

(*e*) I understand that a false declaration will invalidate this application or any registration granted and that I may be liable to prosecution.

(*f*) I authorize the Director to use, verify and make any inquiries relating to the information provided on this form and in relation to any other matter concerning this application.

(*g*) I undertake to notify the Director in the event of any change in the above.

Signature ..... Date .....

Before me:

.....
Commissioner of Oaths

regs. 3 (4) and 8 (4)

FORM 2

NOTICE OF CEASING TO HOLD OFFICE
AS AN INSOLVENCY PRACTITIONER

TO: The Director of Insolvency

TAKE NOTICE that I have ceased to hold office as an insolvency practitioner for a period of six months.

Full name of insolvency practitioner . …….....

[*surname first, in block letters*]

Date of ceasing to hold any office as an insolvency practitioner .....

State the nature of the office the insolvency practitioner last held and has now ceased to hold

.....

.....

(State whether liquidator, trustee of a bankrupt estate, supervisor on an individual voluntary arrangement, receiver or administrator in a company reorganization)

Dated this ..... day of ....., 20 .....

.....
Signature of Insolvency Practitioner

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regs. 4 (2) and 4 (4)

SECOND SCHEDULE

FEES

	Matter	*Amount*	
		K	t
1.	Application fees for registration to practice as an insolvency practitioner	20,000	00
2.	On issuance of certificate of registration	500,000	00

THIRD SCHEDULE reg. 9

INSOLVENCY PRACTITIONER'S ETHICAL GUIDELINES

GENERAL APPLICATION OF THE GUIDELINES

PART A
INTRODUCTION

1. These guidelines are intended to assist insolvency practitioners meet the obligations expected of them by providing professional and ethical guidance. Unless otherwise stated, the following definitions shall apply—

"authorizing body" means a professional body to which the insolvency practitioner belongs;

"close or immediate family" means a spouse or equivalent, dependant, parent, brother, sister, child or sibling;

"entity" means a body corporate;

"individual within the practice" means the insolvency practitioner, any principals in the practice or any employees within the practice;

"insolvency practitioner" means the receivers or receiver and manager, liquidator, including provisional liquidator, or trustee in bankruptcy under the Insolvency Act;

"insolvency practitioner's team" means any person under the control of the insolvency practitioner, whether as a partner, employee, consultant or associate;

"practice" means the organization in which the insolvency practitioner practices;

"Insolvency practitioner appointment" means a formal appointment under the terms of a charge, secured debenture, or the Insolvency Act; and

"principal" means in respect of a partnership, a partner, in respect of a sole practitioner, or that person or any person who is held out as being a partner.

2. These guidelines shall apply to all insolvency practitioners. Insolvency practitioners should take steps to ensure that the guidelines are applied in all professional work relating to an insolvency practitioner appointment and to any professional work that may lead to such an appointment. While an insolvency practitioner appointment will be of the insolvency practitioner personally, the insolvency practitioner should ensure that the standards set out in these guidelines are applied by all members of the insolvency practitioner's team.

3. It is these guidelines and the spirit that underlies it, that shall govern the conduct of insolvency practitioners. Failure to observe these guidelines may not, of itself, constitute professional misconduct, but will be taken into account in assessing the conduct of an insolvency practitioner.

PART B
Fundamental Principles

4. An insolvency practitioner is required to comply with the following fundamental principles—

(*a*) Integrity

An insolvency practitioner should be straightforward and honest in all professional and business relationships.

(*b*) Objectivity

An insolvency practitioner should not allow bias, conflict of interest or undue influence of others to override professional or business judgment.

(*c*) Professional competence and due care

An insolvency practitioner has a continuing duty to maintain professional knowledge and skill at the level required to ensure that every assignment receives competent professional service based on current developments in practice, legislation and techniques, including international best practices. An insolvency practitioner should act diligently and in accordance with applicable technical and professional standards when providing professional services.

(*d*) Confidentiality

An insolvency practitioner should respect the confidentiality of information acquired as a result of professional and business relationships and should not disclose any such information to third parties without proper and specific authority, unless there is a legal or professional right or duty to disclose. Confidential information acquired as a result of professional and business relationships should not be used for the personal advantage of the insolvency practitioner or third parties.

(*e*) Professional behaviour

An insolvency practitioner should comply with relevant laws and regulations and should avoid any action that discredits the profession. Insolvency practitioners should conduct themselves with courtesy and consideration towards all with whom they come into contact when performing their work.

PART C
Framework Approach

5. The framework approach is a method which insolvency practitioners can use to identify actual or potential threats to the fundamental principles and determine whether there are any safeguards that might be available to offset them. The framework approach requires an insolvency practitioner to—

(*a*) take reasonable steps to identify any threats to compliance with the fundamental principles;

(*b*) evaluate any such threats; and

(*c*) respond in an appropriate manner to those threats.

Throughout these guidelines, there are examples of threats and possible safeguards. These examples are illustrative and should not be considered as exhaustive lists of all relevant threats or safeguards. It is impossible to define every situation that creates a threat to compliance with the fundamental principles or to specify the safeguards that may be available.

Identification of threats to the fundamental principles

6. An insolvency practitioner should take reasonable steps to identify the existence of any threats to compliance with the fundamental principles which arise during the course of his professional work.

7. An insolvency practitioner should take particular care to identify the existence of threats which exist prior to, or at the time of, taking an insolvency practitioner appointment or which, at that stage, it may reasonably be expected might arise during the course of such an insolvency practitioner appointment. The insolvency practitioner should take these threats into account when deciding whether to accept an insolvency practitioner appointment.

8. In identifying the existence of any threats, an insolvency practitioner should have regard to relationships whereby the practice is held out as being part of a national or an international association. Many threats fall into one or more of five categories—

(*a*) Self-interest threats: which may occur as a result of the financial or other interests of a practice or an insolvency practitioner or of a close or immediate family member of an individual within the practice;

(*b*) Self-review threats: which may occur when a previous judgment made by an individual within the practice needs to be re-evaluated by the insolvency practitioner;

(*c*) Advocacy threats: which may occur when an individual within the practice promotes a position or opinion to the point that subsequent objectivity may be compromised;

(*d*) Familiarity threats: which may occur when, because of a close relationship, an individual within the practice becomes too sympathetic or antagonistic to the interests of others; and

(*e*) Intimidation threats: which may occur when an insolvency practitioner may be deterred from acting objectively by threats, actual or perceived.

Self-interest threats

9. The following paragraphs give examples of the possible threats that an insolvency practitioner may face. Examples of circumstances that may create self-interest threats for an insolvency practitioner include—

(*a*) an individual within the practice having an interest in a creditor or potential creditor with a claim which requires subjective adjudication;

(*b*) concern about the possibility of damaging a business relationship; or

(*c*) concerns about potential future employment.

Self-review threats

10. Examples of circumstances that may create self-review threats include—

(*a*) the acceptance of an insolvency practitioner appointment in respect of an entity where an individual within the practice has recently been employed by, or seconded to, that entity; or

(*b*) an insolvency practitioner or the practice has carried out professional work of any description, including sequential insolvency practitioner appointments for that entity.

Such self-review threats may diminish over the passage of time.

Advocacy threats

11. Examples of circumstances that may create advocacy threats include—

(*a*) acting in an advisory capacity for a creditor of an entity; or

(*b*) acting as an advocate for a client in litigation or dispute with an entity.

Familiarity threats

12. Examples of circumstances that may create familiarity threats include—

(*a*) an individual within the practice having a close relationship with any individual having a financial interest in the insolvent entity; or

(*b*) an individual within the practice having a close relationship with a potential purchaser of an insolvent's assets and/or business.

In this regard a close relationship includes both a close professional relationship and a close personal relationship.

Intimidation threats

13. Examples of circumstances that may create intimidation threats include—

(*a*) the threat of dismissal or replacement being used to—

(i) apply pressure not to follow regulations, these guidelines, any other applicable guidelines, technical or professional standards; or

(ii) exert influence over an insolvency practitioner appointment where the insolvency practitioner is an employee rather than a principal of the practice;

(*b*) being threatened with litigation; or

(*c*) the threat of a complaint being made to the insolvency practitioner's authorizing body.

Evaluation of threats

14. An insolvency practitioner should take reasonable steps to evaluate any threats to compliance with the fundamental principles that he has identified.

15. In particular, an insolvency practitioner should consider what a reasonable and informed third party, having knowledge of all relevant information, including the significance of the threat, would conclude to be acceptable.

Possible safeguards

16. Having identified and evaluated a threat to the fundamental principles an insolvency practitioner should consider whether there are any safeguards that may be available to reduce the threat to an acceptable level.

17. The relevant safeguards will vary depending on the circumstances. Generally safeguards fall into two broad categories—

(*a*) firstly, safeguards created by the profession, legislation or regulation; and

(*b*) secondly, safeguards in the work environment. In the insolvency context, safeguards in the work environment can include safeguards specific to an insolvency practitioner appointment. These safeguards seek to create a work environment in which threats are identified and the introduction of appropriate safeguards is encouraged.

18. Some examples include—

(*a*) leadership that stresses the importance of compliance with the fundamental principles;

(*b*) policies and procedures to implement and monitor quality control of engagements;

(*c*) documented policies regarding the identification of threats to compliance with the fundamental principles, the evaluation of the significance of these threats and the identification and the application of safeguards to eliminate or reduce the threats, other than those that are trivial, to an acceptable level;

(*d*) documented internal policies and procedures requiring compliance with the fundamental principles;

(*e*) policies and procedures to consider the fundamental principles of these guidelines before the acceptance of an insolvency practitioner appointment;

(*f*) policies and procedures regarding the identification of interests or relationships between individuals within the practice and third parties;

(*g*) policies and procedures to prohibit individuals who are not members of the insolvency practitioner's team from inappropriately influencing the outcome of an insolvency practitioner appointment;

(*h*) timely communication of a practice's policies and procedures, including any changes to them, to all individuals within the practice, and appropriate training and education on such policies and procedures;

(*i*) designating a member of the senior management to be responsible for overseeing the adequate functioning of the safeguarding system;

(*j*) a disciplinary mechanism to promote compliance with policies and procedures; and

(*k*) published policies and procedures to encourage and empower individuals within the practice to communicate to senior levels within the practice or the insolvency practitioner any issue relating to compliance with the fundamental principles that concern them.

PART D

Specific Application of the Guidelines

Insolvency practitioner appointments

19. The practice of insolvency is principally governed by primary and subsidiary legislation and in many cases is subject ultimately to the control of the Court. Where circumstances are dealt with by primary or secondary legislation, an insolvency practitioner must comply with such provisions.

An insolvency practitioner must also comply with any relevant authority relating to his conduct such as the Official Receiver and the Director and any directions given by the Court.

20. An insolvency practitioner should act in a manner appropriate to his position as an officer of the Court, where applicable, and in accordance with any quasi-judicial, fiduciary or other duties that he may be under.

21. Before agreeing to accept any insolvency practitioner appointment, including a joint appointment, an insolvency practitioner should consider whether acceptance would create any threats to compliance with the fundamental principles, of particular importance will be any threats to the fundamental principle of objectivity created by conflicts of interest or by any significant professional or personal relationships.

22. In considering whether objectivity or integrity may be threatened, an insolvency practitioner should identify and evaluate any professional or personal relationship which may affect compliance with the fundamental principles. The appropriate response to the threats arising from any such relationships should then be considered, together with the introduction of any possible safeguards. Generally, it will be inappropriate for an insolvency practitioner to accept an insolvency practitioner appointment where a threat to the fundamental principles exists or may reasonably be expected to arise during the course of the insolvency practitioner appointment unless—

(*a*) disclosure is made, prior to the insolvency practitioner appointment, of the existence of such a threat to the Court or to the creditors, on whose behalf the insolvency practitioner would be appointed to act and no objection is made to the insolvency practitioner being appointed; and

(*b*) safeguards are or will be available to eliminate or reduce that threat to an acceptable level. Where the threat is other than trivial, safeguards should be considered and applied as necessary to reduce them to an acceptable level, where possible.

23. The following safeguards may be considered—

(*a*) involving or consulting another insolvency practitioner from within the practice to review the work done;

(*b*) consulting an independent third party, such as a committee of creditors, an authorizing body or another insolvency practitioner;

(*c*) involving another insolvency practitioner to perform part of the work, which may include another insolvency practitioner taking a joint appointment where the conflict arises during the course of the insolvency practitioner appointment;

(*d*) obtaining legal advice from a legal practitioner with appropriate experience and expertise;

(*e*) changing the members of the insolvency practitioner's team;

(*f*) using separate insolvency practitioners or staff;

(*g*) procedures to prevent access to information by the use of information barriers, for instance, strict physical separation of such teams, confidential and secure data filing;

(*h*) clear guidelines for individuals within the practice on issues of security and confidentiality;

(*i*) using confidentiality agreements signed by individuals within the practice;

(*j*) regular reviewing of the application of safeguards by a senior individual within the practice not involved with the insolvency practitioner appointment;

(*k*) terminating the financial or business relationship that gives rise to the threat; and

(*l*) seeking directions from the Court.

24. As regards joint appointments, where an insolvency practitioner is specifically precluded by these guidelines from accepting an insolvency practitioner appointment as an individual, a joint appointment will not be an appropriate safeguard and will not make accepting the insolvency practitioner appointment appropriate.

25. In deciding whether to take an insolvency practitioner appointment in circumstances where a threat to the fundamental principles has been identified, the insolvency practitioner should consider, whether the interests of those on whose behalf he would be appointed to act would best be served, by the appointment of another insolvency practitioner who did not face the same threat and, if so, whether any such appropriately qualified and experienced other insolvency practitioner is likely to be available to be appointed.

26. An insolvency practitioner will encounter situations where no safeguards can reduce a threat to an acceptable level. Where this is the case, an insolvency practitioner should conclude that it is not appropriate to accept an insolvency practitioner appointment.

27. Following acceptance, any threats should continue to be kept under appropriate review and an insolvency practitioner should be mindful that other threats may come to light or arise. There may be occasions when the insolvency practitioner is no longer in compliance with these guidelines because of changed circumstances or something which has been inadvertently overlooked. This would generally not be an issue provided the insolvency practitioner has appropriate quality control policies and procedures in place to deal with such matters and, once discovered, the matter is corrected promptly and any necessary safeguards are applied. In

deciding whether to continue an insolvency practitioner appointment, the insolvency practitioner may take into account the wishes of the creditors, who after full disclosure has been made have the right to retain or replace the insolvency practitioner.

28. In all cases an insolvency practitioner will need to exercise his judgment to determine how best to deal with an identified threat. In exercising his judgment, an insolvency practitioner should consider what a reasonable and informed third party, having knowledge of all relevant information, including the significance of the threat and the safeguards applied, would conclude to be acceptable. This consideration will be affected by matters such as the significance of the threat, the nature of the work and the structure of the practice.

Conflicts of interest

29. An insolvency practitioner should take reasonable steps to identify circumstances that could pose a conflict of interest. Such circumstances may give rise to threats to compliance with the fundamental principles.

30. Examples of where a conflict of interest may arise are where—

(*a*) an insolvency practitioner has to deal with claims between the separate and conflicting interests of entities over whom he is appointed;

(*b*) there is a succession of, or sequential, insolvency practitioner appointments; or

(*c*) a significant relationship has existed with the entity or someone connected with the entity.

31. Where a conflict of interest arises, the preservation of confidentiality will be of paramount importance, therefore, the safeguards used should generally include the use of effective information barriers.

Practice mergers

32. Where practices merge, they should subsequently be treated as one for the purposes of assessing threats to the fundamental principles. At the time of the merger, existing insolvency practitioner appointments should be reviewed and any threats identified. Principals and employees of the merged practice become subject to common ethical constraints in relation to accepting new insolvency practitioner appointments to clients of either of the former practices. However, existing insolvency practitioner appointments which are rendered in apparent breach of the guidelines by such a merger need not be determined automatically, provided that a considered review of the situation by the practice discloses no obvious and immediate ethical conflict.

33. Where an individual within the practice has, in any former practice, undertaken work upon the affairs of an entity in a capacity that is incompatible with an insolvency practitioner appointment of the

new practice, the individual should not work or be employed on that assignment.

Transparency

34. Both before and during an insolvency practitioner appointment, an insolvency practitioner may acquire personal information that is not directly relevant to the insolvency or confidential commercial information relating to the affairs of third parties. The information may be such that others might expect that confidentiality would be maintained.

35. Nevertheless, an insolvency practitioner in the role as office-holder, has a professional duty to report openly to those with an interest in the outcome of the insolvency. An insolvency practitioner should always report on his acts and dealings as fully as possible given the circumstances of the case, in a way that is transparent and understandable. An insolvency practitioner should bear in mind the expectations of others and what a reasonable and informed third party would consider appropriate.

Professional competence and due care

36. Prior to accepting an insolvency practitioner appointment, an insolvency practitioner should ensure that he is satisfied that the following matters have been considered—

(*a*) obtaining knowledge and understanding of the entity, its owners, managers and those responsible for its governance and business activities;

(*b*) acquiring an appropriate understanding of the nature of the entity's business, the complexity of its operations, the specific requirements of the engagement and the purpose, nature and scope of the work to be performed;

(*c*) acquiring knowledge of relevant industries or subject matters;

(*d*) possessing or obtaining experience with relevant regulatory or reporting requirements;

(*e*) assigning sufficient staff with the necessary competencies;

(*f*) using experts where necessary; and

(*g*) complying with quality control policies and procedures designed to provide reasonable assurance that specific engagements are accepted only when they can be performed competently.

37. The fundamental principle of professional competence and due care requires that an insolvency practitioner should only accept an insolvency practitioner appointment when the insolvency practitioner has sufficient expertise. For example, a self-interest threat to the fundamental principle of professional competence and due care is created, if the insolvency practitioner or the insolvency practitioner's team does not possess or cannot acquire the competencies necessary to carry out the insolvency practitioner

appointment. Expertise will include appropriate training, technical knowledge, knowledge of the entity and the business with which the entity is concerned.

38. Maintaining and acquiring professional competence requires a continuing awareness and understanding of relevant technical and professional developments, including—

(*a*) developments in insolvency legislation;

(*b*) the regulations of their professional body, including any continuing professional development requirements;

(*c*) guidance issued by their professional body or any other relevant authority; and

(*d*) technical issues being discussed within the profession, locally and internationally.

Professional and personal relationships

39. The environment in which insolvency practitioners work and the relationships formed in their professional and personal lives can lead to threats to the fundamental principle of objectivity.

Identifying relationships

40. In particular, the principle of objectivity may be threatened if any individual within the practice, or the close or immediate family of an individual within the practice or the practice itself, has, or has had, a professional or personal relationship which relates to the insolvency practitioner appointment being considered.

41. Professional or personal relationships may include, but are not restricted to, relationships with—

(*a*) the entity;

(*b*) any director or shadow director or former director or shadow director of the entity;

(*c*) shareholders of the entity;

(*d*) any principal or employee of the entity;

(*e*) business partners of the entity;

(*f*) companies or entities controlled by the entity;

(*g*) companies which are under common control;

(*h*) creditors, including debenture holders, of the entity;

(*i*) debtors of the entity;

(*j*) close or immediate family of the officers of the entity; or

(*k*) others with commercial relationships with the practice.

Safeguards within the practice should include policies and procedures to identify relationships between individuals within the practice and third parties in a way that is proportionate and reasonable in relation to the insolvency practitioner appointment being considered.

Is the relationship significant to the conduct of the insolvency practitioner appointment?

42. Where a professional or personal relationship of the type described in paragraph 41 has been identified, the insolvency practitioner should evaluate the impact of the relationship in the context of the insolvency practitioner appointment being sought or considered. Issues to consider in evaluating whether a relationship creates a threat to the fundamental principles may include the following—

(*a*) the nature of the previous duties undertaken by a practice during an earlier relationship with the entity;

(*b*) the impact of the work conducted by the practice on the financial state and/or the financial stability of the entity in respect of which the insolvency practitioner appointment is being considered;

(*c*) whether the fee received for the work by the practice is, or was, significant to the practice itself or is, or was, substantial;

(*d*) how recently any professional work was carried out? It is likely that greater threats will arise, or may be seen to arise, where work has been carried out within the previous three years. However, there may still be instances where, in respect of non-audit work, any threat is at an acceptable level. Conversely, there may be situations whereby the nature of the work carried out was such that a considerably longer period should elapse before any threat can be reduced to an acceptable level;

(*e*) whether the insolvency practitioner appointment being considered involves consideration of any work previously undertaken by the practice for that entity;

(*f*) the nature of any personal relationship and the proximity of the insolvency practitioner to the individual with whom the relationship exists and, where appropriate, the proximity of that individual to the entity in relation to which the insolvency practitioner appointment relates;

(*g*) whether any reporting obligations will arise in respect of the relevant individual with whom the relationship exists, for instance, an obligation to report on the conduct of directors and shadow directors of a company to which the insolvency practitioner appointment relates;

(*h*) the nature of any previous duties undertaken by an individual within the practice during any earlier relationship with the entity; and

(*i*) the extent of the insolvency practitioner and his team/team's familiarity with the individuals connected with the entity.

Having identified and evaluated a relationship that may create a threat to the fundamental principles, the insolvency practitioner should consider his response including the introduction of any possible safeguards to reduce the threat to an acceptable level.

43. Some of the safeguards which may be considered to reduce the threat created by a professional or personal relationship to an acceptable level are considered above in paragraph 41. Other safeguards may include—

(*a*) withdrawing from the insolvency practitioner's team;

(*b*) terminating, where possible, the financial or business relationship giving rise to the threat; and

(*c*) disclosure of the relationship and any financial benefit received by the practice, whether directly or indirectly, to the entity or to those on whose behalf the insolvency practitioner would be appointed to act.

44. An insolvency practitioner may encounter situations where no, or no reasonable safeguards can be introduced to eliminate a threat arising from a professional or personal relationship, or to reduce it to an acceptable level. In such situations, the relationship in question will constitute a significant professional relationship ("significant professional relationship") or a significant personal relationship ("significant personal relationship"). Where this is the case, the insolvency practitioner should conclude that it is not appropriate to take the insolvency practitioner appointment.

Consideration should always be given to the perception of others when deciding whether to accept an insolvency practitioner appointment. Whilst an insolvency practitioner may regard a relationship as not being significant to the insolvency practitioner appointment, the perception of others may differ and this may in some circumstances be sufficient to make the relationship significant.

Dealing with the assets of an entity

45. Actual or perceived threats, for example self-interest threats, to the fundamental principles may arise when during an insolvency practitioner appointment, an insolvency practitioner realizes assets.

46. Save in circumstances which clearly do not impair the insolvency practitioner's objectivity, insolvency practitioners appointed to any insolvency practitioner appointment in relation to an entity, should not themselves acquire, directly or indirectly, any of the assets of an entity, nor knowingly permit any individual within the practice, or any close or immediate family member of the insolvency practitioner or of an individual within the practice, directly or indirectly, to do so.

47. Where the assets and business of an insolvent company are sold by an insolvency practitioner shortly after appointment on pre-agreed terms, this could lead to an actual or perceived threat to objectivity. The sale may also be seen as a threat to objectivity by creditors or others not involved in the prior agreement. The threat to objectivity may be eliminated or reduced to an acceptable level by safeguards such as obtaining an independent valuation of the assets or business being sold, or the consideration of other potential purchasers.

48. It is also particularly important for an insolvency practitioner to take care to ensure that, where doing so will not conflict with any legal or professional obligation, his decision-making processes are transparent, understandable and readily identifiable to all third parties who may be affected by the sale or proposed sale.

Obtaining specialist advice and services

49. When an insolvency practitioner intends to rely on the advice or work of another, the insolvency practitioner should evaluate whether such reliance is warranted. The insolvency practitioner should consider factors such as reputation, expertise, and resources available and applicable professional and ethical standards. Any payment to the third party should reflect the value of the work undertaken.

Threats to the fundamental principles, for example familiarity threats and self-interest threats, can arise if services are provided by a regular source independent of the practice.

50. Safeguards should be introduced to reduce such threats to an acceptable level. These safeguards should ensure that a proper business relationship is maintained between the parties and that such relationships are reviewed periodically to ensure that best value and service is being obtained in relation to each insolvency practitioner appointment. Additional safeguards may include clear guidelines and policies within the practice on such relationships. An insolvency practitioner should also consider disclosure of the existence of such business relationships to the general body of creditors or the creditor's committee, if one exists.

51. Threats to the fundamental principles can also arise where services are provided from within the practice or by a party with whom the practice, or an individual within the practice, has a business or personal relationship. An insolvency practitioner should take particular care in such circumstances to ensure that the best value and service is being provided.

Fees and other types of remuneration

52. The following applies prior to accepting an insolvency practitioner appointment—

(*a*) where an engagement may lead to an insolvency practitioner appointment, an insolvency practitioner should make any party to the

work aware of the terms of the work and, in particular, the basis on which any fees are charged and which services are covered by those fees;

(*b*) where an engagement may lead to an insolvency practitioner appointment, insolvency practitioners should not accept referral fees or commissions, unless they have established safeguards to reduce the threats created by such fees or commissions to an acceptable level; and

(*c*) safeguards may include disclosure in advance of any arrangements. If after receiving any such payments, an insolvency practitioner accepts an insolvency practitioner appointment, the amount and source of any fees or commissions received should be disclosed to creditors.

53. The following applies after accepting an insolvency practitioner appointment—

(*a*) during an insolvency practitioner appointment, accepting referral fees or commissions represents a significant threat to objectivity. Such fees or commissions should not therefore be accepted other than where to do so is for the benefit of the insolvent estate;

(*b*) if such fees or commissions are accepted they should only be accepted for the benefit of the estate; not for the benefit of the insolvency practitioner or the practice; and

(*c*) further, where such fees or commissions are accepted an insolvency practitioner should consider making disclosure to creditors.

Obtaining insolvency practitioner appointments

54. The special nature of insolvency practitioner appointments makes the payment or offer of any commission for, or the furnishing of, any valuable consideration towards the introduction of insolvency practitioner appointments inappropriate. This does not, however, preclude an arrangement between an insolvency practitioner and an employee whereby the employee's remuneration is based in whole or in part on introductions obtained for the insolvency practitioner through the efforts of the employee.

55. When an insolvency practitioner seeks an insolvency practitioner appointment or work that may lead to an insolvency practitioner appointment through advertising or other forms of marketing, there may be threats to compliance with the fundamental principles.

56. When considering whether to accept an insolvency practitioner appointment, an insolvency practitioner should satisfy himself that any advertising or other form of marketing pursuant to which the insolvency practitioner appointment may have been obtained is, or has been—

(*a*) fair and not misleading;

(*b*) substantiated and avoids disparaging statements; and

(*c*) compliant with relevant guidelines of practice and guidance in relation to advertising.

57. Advertisements and other forms of marketing should be clearly distinguishable as such and be legal, decent, honest and truthful.

58. Where reference is made in advertisements or other forms of marketing to fees or to the cost of the services to be provided, the basis of calculation and the range of services that the reference is intended to cover should be provided. Care should be taken to ensure that such references do not mislead as to the precise range of services and the time commitment that the reference is intended to cover.

59. An insolvency practitioner should never promote or seek to promote his services, or the services of another insolvency practitioner, in such a way, or to such an extent as to amount to harassment.

60. Where an insolvency practitioner or the practice advertises for work via a third party, the insolvency practitioner is responsible for ensuring that the third party follows the above guidance.

Gifts and hospitality

61. An insolvency practitioner, or a close or immediate family member, may be offered gifts and hospitality. In relation to an insolvency practitioner appointment, such an offer will give rise to threats to compliance with the fundamental principles. For example, self-interest threats may arise if a gift is accepted and intimidation threats may arise from the possibility of such offers being made public.

62. The significance of such threats will depend on the nature, value and intent behind the offer. In deciding whether to accept any offer of a gift or hospitality, the insolvency practitioner should have regard to what a reasonable and informed third party having knowledge of all relevant information would consider to be appropriate. Where such a reasonable and informed third party would consider the gift to be made in the normal course of business without the specific intent to influence decision-making or obtain information, the insolvency practitioner may generally conclude that there is no significant threat to compliance with the fundamental principles.

63. Where appropriate, safeguards should be considered and applied as necessary to eliminate any threats to the fundamental principles or reduce them to an acceptable level. Where an insolvency practitioner encounters a situation in which no, or no reasonable, safeguards can be introduced to reduce a threat arising from offers of gifts or hospitality to an acceptable level, he should conclude that it is not appropriate to accept the offer.

64. An insolvency practitioner should also not offer or provide gifts or hospitality where this would give rise to an unacceptable threat to compliance with the fundamental principles.

Record keeping

65. It will always be for the insolvency practitioner to justify his actions. An insolvency practitioner will be expected to be able to demonstrate the steps that he took and the conclusions that he reached in identifying, evaluating and responding to any threats, both leading up to, and during, an insolvency practitioner appointment, by reference to written contemporaneous records.

66. The records which an insolvency practitioner maintains, in relation to the steps that he took and the conclusions that he reached, should be sufficient to enable a reasonable and informed third party to reach a view on the appropriateness of his actions.

Timeliness

67. Administrations which are conducted in a timely manner will generally be more efficient and effective. In the interests of minimizing costs, administrations should be conducted in a timely manner. To ensure that statutory requirements are met, insolvency practitioners should use and maintain a checklist or other systems which alert them to critical dates such as—

(*a*) statutory obligations and notifications;

(*b*) meetings; and

(*c*) reporting.

68. Where an extension of time is required, the insolvency practitioner will need to—

(*a*) apply to the Court or other approving body; and

(*b*) give reasons for the need for additional time, for instance, in cases where the issue being addressed is complex.

69. An insolvency practitioner may claim remuneration and costs of applying for an extension of time from the administration, subject to any order from the Court. An insolvency practitioner may not claim remuneration and costs for applying for an extension of time, if the reason for the failure to meet the deadline was attributable to his poor conduct, such as—

(*a*) inattention to the passage of time;

(*b*) lack of knowledge of the time limits;

(*c*) poor processes; or

(*d*) inadequately trained or supervised staff.

70. Insolvency practitioners must ensure that stakeholders are clearly advised of time limits that impact on them and the consequences of not meeting those time limits.

PART E

The Application of the Framework to Specific Situations

Introduction

71. The following examples describe specific circumstances and relationships that will create threats to compliance with the fundamental principles. The examples may assist an insolvency practitioner and the members of the insolvency practitioner's team to assess the implications of similar, but different, circumstances and relationships.

The examples are divided into two parts. Part 1 contains examples which do not relate to a previous or existing insolvency practitioner appointment. Part 2 contains examples that do relate to a previous or existing insolvency practitioner appointment. The examples are not intended to be exhaustive.

Examples that do not relate to a previous or existing insolvency practitioner appointment

72. The following situations involve a professional relationship which does not consist of a previous insolvency practitioner appointment:

A. Insolvency practitioner appointment following audit related work

Relationship: The practice or an individual within the practice has previously carried out audit related work within the previous three years.

Response: A significant professional relationship will arise; an insolvency practitioner should conclude that it is not appropriate to take the insolvency practitioner appointment.

Where audit related work was carried out more than three years before the proposed date of the appointment of the insolvency practitioner, a threat to compliance with the fundamental principles may still arise. The insolvency practitioner should evaluate any such threat and consider whether the threat can be eliminated or reduced to an acceptable level by the existence or introduction of safeguards.

This restriction does not apply where the insolvency practitioner appointment is in a members' voluntary liquidation. An insolvency practitioner may normally take such an appointment as insolvency practitioner. However, the insolvency practitioner should consider whether there are any other circumstances that give rise to an unacceptable threat, to compliance with the fundamental principles. Further, the insolvency practitioner should satisfy himself that the directors' declaration of solvency is likely to be substantiated by events.

B. Appointment as investigating accountant at the instigation of a creditor

Previous relationship; The practice or an individual within the practice was instructed by, or at the instigation of, a creditor or other party having a financial interest in an entity to investigate, monitor or advise on its affairs.

Response: A significant professional relationship would not normally arise in these circumstances, provided that—

(*a*) there has not been a direct involvement by an individual within the practice in the management of the entity;

(*b*) the practice had its principal client relationship with the creditor or other party, rather than with the company or proprietor of the business; and

(*c*) the entity was aware of this.

An insolvency practitioner should, however, consider all the circumstances before accepting an insolvency practitioner appointment, including the effect of any discussions or lack of discussions about the financial affairs of the company with its directors, and whether such circumstances give rise to an unacceptable threat to compliance with the fundamental principles.

Where such an investigation was conducted at the request, or at the instigation, of a secured creditor, who then requests an insolvency practitioner to accept an insolvency practitioner appointment as an administrator, receiver or receiver and manager, the insolvency practitioner should satisfy himself that the company, acting by its board of directors, does not object to him taking such an insolvency practitioner appointment. If the secured creditor does not give prior warning of the insolvency practitioner's appointment to the company or if such warning is given and the company objects, but the secured creditor still wishes to appoint the insolvency practitioner, he should consider whether the circumstances give rise to an unacceptable threat to compliance with the fundamental principles.

Examples relating to previous or existing insolvency practitioner appointments

73. The following situations involve a prior professional relationship that involves a previous or existing insolvency practitioner appointment—

A. Insolvency practitioner appointment following an appointment as receiver or receiver and manager

Previous appointment; An individual within the practice has been a receiver or receiver and manager.

Proposed appointment: Any insolvency practitioner appointment.

Response: An insolvency practitioner should not accept any insolvency practitioner appointment.

This restriction does not, however, apply where the individual within the practice was appointed a receiver by the Court. In such circumstances, the insolvency practitioner should however consider whether any other circumstances which give rise to an unacceptable threat to compliance with the fundamental principles.

B. Conversion of members' voluntary liquidation into creditors' voluntary liquidation

Previous appointment: An individual within the practice has been the insolvency practitioner of a company in a members' voluntary liquidation.

Proposed appointment: Insolvency practitioner in a creditors' voluntary liquidation, where it has been necessary to convene a creditors' meeting.

Response: Where there has been a significant professional relationship, an insolvency practitioner may continue or accept an appointment, subject to creditors' approval, only if he concludes that the company will eventually be able to pay its debts in full, together with interest.

However, the insolvency practitioner should consider whether there are any other circumstances that give rise to an unacceptable threat to compliance with the fundamental principles.

G.N. 14/2017

INSOLVENCY (FEES) REGULATIONS

under s. 351

Citation

1. These Regulations may be cited as the Insolvency (Fees) Regulations.

Fees
Schedule

2. Unless otherwise prescribed under the Act, the fees set out in the Schedule hereto shall be payable to the Director or the Official Receiver, as the case may be, in respect of filing of documents.

Fees payable where a person holds more offices

3. Where a person holds more than one office under the Act, fees shall only be payable once, and the document shall be stamped accordingly with official stamps from those relevant offices, as required under the Act.

SCHEDULE

reg. 2

Matter	*Fee* K	t
1. Filing any document with the Director or Official Receiver, in relation to company reorganization . .	15,000	00
2. Filing any document with the Director or Official Receiver in relation to receiverships	15,000	00
3. Filing any document with the Director or Official Receiver under winding-up of companies	10,000	00
4. Filing any document with the Director or Official Receiver in relation to bankruptcy and alternatives to bankruptcy	5,000	00
5. Filing any document with the Director or Official Receiver in relation to cross-border insolvency . .	15,000	00
6. Filing any document with the Director or Official Receiver which has not specifically provided for . .	10,000	00

[Subsidiary] *Insolvency* (*Recognized Professional Bodies*) *Order*

G.N. 15/2017

INSOLVENCY (RECOGNIZED PROFESSIONAL BODIES) ORDER

under s. 311 (1) (*a*)

Citation

1. This Order may be cited as the Insolvency (Recognized Professional Bodies) Order.

Declaration of recognized professional bodies
Schedule

2. For the purposes of section 311 of the Act, the professional bodies set out in the Schedule hereto are hereby declared recognized professional bodies.

SCHEDULE

1. Malaŵi Law Society
2. Institute of Chartered Accountants in Malaŵi

LAWS OF MALAŴI

VOL III

L.R.O. 1/2018

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DEFENCE FORCE

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11 of 2004
G.N. 25/2004

An Act to provide for the establishment, administration, recruitment, conditions of service, training, command and discipline of the Defence Force of Malaŵi and for connected matters

[1ST SEPTEMBER, 2004]

PART I
PRELIMINARY

Short title

1. This Act may be cited as the Defence Force Act.

Interpretation

2.—(1) In this Act, unless the context otherwise requires—

"acting rank" means rank of any description (however called) such that under regulations made under section 190 a commanding officer has power to order the holder to revert from that rank; and "acting warrant officer" and acting non-commissioned officer" shall be construed accordingly;

"active service" shall be construed in accordance with section 3;

"aircraft" means any machine for flying, whether propelled by mechanical means or not, and includes balloons of any description;

"aircraft material" includes—

(*a*) parts or components of, or accessories for aircraft, whether for the time being in the aircraft or not;

(*b*) engines, armaments, ammunition and bombs and other missiles of any description in, or for use in, aircraft;

(*c*) any other gear, apparatus or instruments in, or for use in, aircraft;

(*d*) any fuel used for the propulsion of aircraft and any material used as a lubricant for aircraft or aircraft material;

"air signal" means any message, signal or indication given, by any means whatsoever, for the guidance of aircraft or a particular aircraft;

"appropriate superior authority" means the commander or such officer, not below the rank of lieutenant colonel or corresponding rank as may be prescribed;

"arrest" includes open arrest;

"before the enemy", in relation to a person, means that he is in action against the enemy or about to go into action against the enemy, or is under attack or threat of imminent attack by the enemy;

"Board of Inquiry Rules" means rules made under section 13;

"civil court" means a court of ordinary criminal jurisdiction, but does not, except where otherwise expressly provided, include any such court outside Malaŵi;

"civil offence" has the meaning assigned to it in section 80 (2);

"colour service" means service in the Regular Force under this Act;

"Commander" means the person appointed as the Commander of the Defence Force under section 161 of the Constitution;

"commanding officer", in relation to a member of the Defence Force, means the prescribed officer having powers of command over that member;

"competent military authority" means the Defence Council or any officer as may be prescribed;

"corps" means such body of the Defence Force as may from time to time be declared by the Defence Council to be a corps for the purposes of this Act and regulations made thereunder;

"cooperating forces" means the military forces of another country acting in cooperation with the Defence Force under this Act;

"corresponding civil offence" has the meaning assigned to it in section 80 (2);

"corresponding rank", in relation to—

(*a*) the Defence Force and any cooperating force means such rank in the Defence Force as may be declared by the Defence Council to correspond to a rank in the cooperating force;

(*b*) services within the Defence Force means such rank in one service as may be declared by the Defence Council to correspond to a rank in another service;

"court-martial", except where it is expressed to be under service law, means a court-martial under this Act;

"court of appeal" means the Supreme Court of Appeal for Malaŵi established under the Constitution;

"damage" includes destruction;

"date of attestation", in relation to any person, means the date on which he is attested in accordance with the provisions of this Act;

"decoration" includes medal, medal ribbon, clasp and good conduct badge;

"Defence Council" means the Defence Council constituted under section 10;

"Defence Force" means the Defence Force of Malaŵi established under Chapter XV of the Constitution;

"Deputy Commander" means a person appointed as the Deputy Commander of the Defence Force under section 191 (2);

"desertion" shall be construed in accordance with section 46 (2);

"detachment" means a part of a unit which is so separated from the unit to which it belongs that the officer commanding that unit cannot effectively exercise his disciplinary powers as commanding officer over it;

"enemy" includes all persons engaged in armed operations against the Defence Force or any cooperating forces and also includes all armed mutineers, armed rebels and armed rioters;

"field rank" means the rank of major and any higher rank, and "field officer" means a person holding a filed rank;

"Imprisonment and Detention Regulations" means Regulations made by the Defence Council under section 137;

"inland waters" has the meaning assigned thereto in the Inland Waters Shipping Act; Cap. 71:01

"Medical Board" means a medical board established under regulations made under this Act;

"member" includes an officer and a soldier;

"military police" means the police unit within the Defence Force established under section 191;

"Militia" means persons, other than members of the Regular Force or Reserve Force, trained for military service but called to serve only on emergencies and forming part of the Defence Force as referred to in section 4 (1);

"officer" means a person granted a commission in the Defence Force, but does not include any person who is—

(*a*) appointed to honorary commissioned rank;

(*b*) a holder of an honorary appointment;

"oath" includes affirmation and references to swearing shall be construed also as references to affirmations;

"provost officer" means a provost marshal or officer subject to service law appointed to exercise the functions conferred by or under service law on provost officers;

"public property" means any property belonging to any department of the Government or held for the purposes of any such department;

"recruiting officer" means a person authorized as such under section 18;

"Regular Force" means the Regular Force component of the Defence Force referred to in section 4 (1);

"Reserve Force" means the Reserve Force component of the Defence Force referred to in section 4 (1);

"Rules of Procedure" means the Rules of procedure made under section 136;

"service", when used adjectivally, means belonging to or connected with the Defence Force or any part of the Defence Force or any cooperating forces;

"service law" means this Act;

"soldier" does not include an officer but, with the modifications contained in this Act in relation to warrant officers, includes a warrant officer and a non-commissioned officer;

"steals" has the meaning assigned to it in section 271 of the Penal Code; Cap. 7:01

"stoppages" means the recovery, by deductions from the pay of the offender, of a specified sum by way of compensation for any expense, loss or damage occasioned by the offence;

"unit" means—

(*a*) any independent portion of the Defence Force which is not higher in the organization of the Defence Force than a battalion or any equivalent body of troops; or

(*b*) any other body of the Defence Force declared by the Defence Council to be a unit;

"vessel" means any water craft, of whatever description and by whatever name or term called, used or capable of being used as means of transport;

"visiting force" means any body of the forces of a designated country, which for the time being is lawfully present in Malaŵi in time of peace under a treaty, agreement or arrangement to which the Government is a party.

(2) References in this Act to officers and soldiers of the Defence Force shall, except in Part VII, be construed as including references to officers and soldiers attached or seconded to the Defence Force.

Active service

3.—(1) In this Act the expression "on active service", in relation to any unit, means that it is engaged in operations against an enemy or during a state of emergency, and, in relation to a person, means that he is serving in or with a unit which is on active service.

(2) Subject to Chapter XVI of the Constitution, where it appears to the President that, by reason of the imminence of active service, it is necessary in the public interest that a unit should be deemed to be on active service, he may declare that for such period, not exceeding three months, beginning with the coming into force of the declaration, as may be specified therein, that unit shall be deemed to be on active service.

(3) Subject to section 45 of the Constitution, where it appears to the President that it is necessary in the public interest that the period specified in a declaration under subsection (2) should be prolonged or, if previously prolonged under this section, should be further prolonged, he may declare that such period shall be prolonged by such time, not exceeding three months, as may be specified in the declaration under this subsection.

(4) If at any time while any unit is deemed to be on active service by virtue of the foregoing provisions of this section it appears to the President that there is no longer necessity for the unit to continue to be treated as being on active service, he may declare that as from the coming into force of the declaration the unit shall cease to be deemed to be on active service.

(5) Any declaration under this section shall be by proclamation, which shall be published in the *Gazette*.

Establishment and maintenance of the Defence Force

4.—(1) There shall be established and maintained in Malaŵi a Defence Force to be known as the Malaŵi Defence Force (in this Act referred to as the "Defence Force") which shall consist of the following components—

(*a*) the Regular Force;

(*b*) the Reserve Force; and

(*c*) the Militia.

(2) Each of the components of the Defence Force specified in subsection (1) includes the army, the air-wing and the marine.

(3) Subject to Chapter XVI of the Constitution, the components specified in subsection (1) may be formed into units as the Defence Council may from time to time determine.

Employment of the Defence Force

5. The Defence Force shall be charged with the defence of, and maintenance of order in, Malaŵi and with such other duties as are in accordance with the Constitution and this Act.

Employment of the Defence Force outside Malaŵi

6. The President may in accordance with Chapter XVI of the Constitution order that the whole or any of the Defence Force be employed out of or beyond Malaŵi.

Co-operation with other forces

7.—(1) If the whole or any part of the Defence Force is required to act in cooperation with any cooperating force, the President may place the Defence Force or that part of the Defence Force under the command of the officer commanding the cooperating force if that officer is senior in rank to all the officers of the Defence Force or of that part of the Defence Force.

(2) Where any part of the Defence Force is acting in cooperation with any cooperating force, the commander or an appropriate superior authority of that part of the Defence Force may, in agreement with the commander or an appropriate superior authority of the cooperating force, define the powers of command and order of precedence of any officer or non-commissioned officer of that part of the Defence Force in relation to an officer or non-commissioned officer of the cooperating force who is of the equivalent rank.

(3) In so far as powers of command depend on rank, any member of any cooperating force—

(*a*) who is acting in cooperation with any unit of the Defence Force; or

(*b*) whose unit is acting in cooperation with a unit of the Defence Force,

shall have the same powers as a member of the Defence Force of corresponding rank, and for the purposes of sections 42 and 83 any such member of the cooperating force shall be treated as if he were a member of the Defence Force of corresponding rank.

Visiting forces

8. The President may, on the advice of the Defence Council, permit the presence in Malaŵi of visiting forces in accordance with the relevant treaty, agreement or arrangement to which the Government is a party.

External training and attachments

9.—(1) The Commander may order that any officer or soldier of the Regular Force or, with his consent, any officer or soldier of the Reserve Force, shall proceed to any place outside Malaŵi for the purpose of undergoing instruction or training or for duty or employment.

(2) The Commander may, if the consent of the officer or soldier concerned is first obtained, place any officer or soldier of the Defence Force at the disposal of the military authorities of any other country or territory for the purpose of his being attached to the military forces of that country or territory.

PART II
Defence Council

Constitution of the Defence Council

10.—(1) The Defence Council shall, subject to the powers of command of the President as Commander-in-chief of the Defence Force and subject to this Act, be responsible for the overall control of the Defence Force, and shall perform other functions conferred on it by the Constitution and by this Act.

(2) The members of the Defence Council shall be—

(*a*) the Minister who shall be Chairman of the Defence Council;

(*b*) the Secretary for Defence;

(*c*) the Secretary to the President and Cabinet;

(*d*) the Commander;

(*e*) the Deputy Commander; and

(*f*) the Chief of Staff.

(3) The Defence Council shall have power to co-opt any other person as a member of the Defence Council from time to time as the Council may decide.

(4) In the event of any member being for any reason unable to perform his duties as a member, he may, with the approval of the Chairman, nominate a person to perform such duties during his inability.

(5) The Chairman may nominate any person to perform the duties of the Chairman at any meeting of the Defence Council at which the Chairman is absent.

(6) The majority of the members of the Defence Council shall form a quorum at any meeting of the Defence Council.

Performance of functions of the Defence Council

11. Without prejudice to any other power which may be conferred upon the Defence Council under this Act, the Defence Council may provide for all or any of the following matters—

(*a*) the organization of the work of the Defence Council and the manner in which it shall perform its functions, duties and responsibilities of the several members thereof;

(*b*) the procedure to be followed by the Defence Council in conducting its business; and

(*c*) any other matter which the Defence Council may consider necessary or desirable to provide in order to secure the better performance of the functions of the Defence Council.

PART III
Officers

Commissions Board

12. No person shall be granted a commission in the Defence Force unless he has been recommended by a commissions board, which shall be established for this purpose by the Defence Council.

Grant of commission

13.—(1) The power to grant commissions in the Defence Force is vested in and shall be exercised only by the President.

(2) A commission may be granted either for an indefinite period or for a specified time.

(3) Every officer on being granted a commission shall be issued with a commission signed by the President in the form set out in the First Schedule.

Compulsory resignation

14.—(1) An officer may be required by the Defence Council to resign from the Force in any of the following circumstances—

(*a*) if he is found guilty of conduct unbecoming of an officer;

(*b*) if he is sentenced by a civil court to a term of imprisonment, in which case his resignation shall be deemed to have effect from the date of his conviction by that court, or in the event of his appealing against conviction or the sentence, or both, from the date of the dismissal of the appeal, or

(*c*) if, after due inquiry being made, he is, in the opinion of the Commander, so inefficient as an officer as to be unfit to remain in the Defence Force.

(2) An officer who is required to resign from the Force under subsection (1) shall have a right of appeal to the President under section 196.

Compulsory retirement and discharge

15.—(1) An officer shall be required to retire from his employment in the Defence Force—

(*a*) on being given three month's notice in writing by the Commander should there be no establishment for him in his present rank and no reasonable future prospects of promotion for him;

(*b*) if he is found by a Medical Board to be mentally or physically unfit for further service;

(*c*) on completion of his term of engagement except where further engagement from year to year is authorized by the Minister upon recommendation by the Commander; or

(*d*) whatever the length of his pensionable service, on attaining the age of 55 years.

(2) Notwithstanding subsection (1) (*d*), an officer may, not less than three months before he attains the age of 55 years, apply in writing to his commanding officer for the grant of permission to continue in his employment in the Force for a further period to be specified in the application not exceeding five years.

(3) Upon receipt of an application under subsection (2), the commanding officer shall—

(*a*) order the officer to present himself for, and to submit to a medical examination;

(*b*) obtain a report as to whether the applicant is presently mentally and physically fit to continue his employment for the period so specified; and

(*c*) forward the application and the report to the appropriate superior authority for a decision as to whether the application is granted or rejected.

Appointment and transfer of officers

16.—(1) Every officer upon being granted a commission shall be appointed to one of the components of the Defence Force referred to in section 4 (1).

(2) The Defence council may, upon such terms and conditions as it may prescribe, transfer any officer from the Regular Force to the Reserve Force.

Power to make regulations for this Part

17.—(1) Subject to the provisions of this Act, the Minister may with the advice of the Defence Council, make regulations for the better carrying out of this Part.

(2) The appointment, transfer, substantive promotion, retirement, resignation or removal from office of any officer shall be notified in the *Gazette*.

PART IV

Enlistment and Terms of Services of Soldiers in the Regular Force

Division 1—Enlistment

Recruiting officers

18. Any person authorized in that behalf by regulations, in this Act referred to as a "recruiting officer", may enlist recruits in the Regular Force in the prescribed manner.

Enlistment

19.—(1) A person offering to enlist in the Regular Force shall be given a notice in the prescribed form setting out the questions to be answered on attestation and stating the general conditions of the engagement to be entered into by him; and a recruiting officer shall not enlist any person in the Regular Force unless satisfied by that person that he has been given such a notice, understands it and wishes to be enlisted.

(2) A recruiting officer shall not enlist a person under the age of eighteen years or over the age of twenty-four years.

Terms of enlistment

20. The term for which a person enlisting in the Regular Force may be enlisted shall be seven years colour service and five years from the date of his attestation.

Re-engagement and continuation in service

21.—(1) Any soldier of the Regular Force who at any time has completed or is within one year before completing the term of his service with the Regular Force may, with the approval of the competent military authority, re-engage for such further period or periods of service with the Regular Force and service in the Reserve Force as may be prescribed.

(2) Any soldier of the Regular Force who has completed seven years of service but is not re-engaged, shall be paid a gratuity as may be prescribed.

Prolongation of service

22. Any soldier of the Regular Force whose service expires during a state of national defence, insurrection, hostilities or public emergency may be retained in the Regular Force and his service prolonged for such period as the competent military authority may direct.

Division 2—Discharge and Transfer to Reserve Force

Discharge

23.—(1) Save as otherwise provided in this Act, every soldier of the Regular Force, upon becoming entitled to be discharged, shall be discharged with all convenient speed, but until discharged shall remain subject to military law under this Act.

(2) Where a soldier of the Regular Force who is entitled to be discharged is serving outside Malaŵi, then—

(*a*) if he requires to be discharged in Malaŵi he shall be sent to Malaŵi free of cost with all convenient speed and shall be discharged on his arrival or, if he consents to his discharge being delayed, within six months from his arrival; but

(*b*) if at his request he is discharged at the place where he is serving, he shall have no claim to be sent to Malaŵi or elsewhere.

(3) Except in pursuance of the sentence of a court-martial, a soldier of the Regular Force shall not be discharged unless his discharge has been authorized by order of the competent military authority.

(4) Every soldier of the Regular Force shall on his discharge be given a certificate of discharge containing such particulars as may be prescribed.

Transfer to Reserve Force

24.—(1) Every soldier of the Regular Force upon falling to be transferred to the Reserve Force shall be so transferred but, until so transferred, shall remain subject to military law under this Act.

(2) Where a soldier of the Regular Force when falling to be transferred to the Reserve Force, is serving outside Malaŵi, he shall be sent to Malaŵi free of cost with all convenient speed and shall be transferred to the Reserve Force on his arrival, or, if he consents to his transfer being delayed, within six months from his arrival.

(3) Notwithstanding subsections (1) and (2), the competent military authority may, when a soldier of the Regular Force falls to be transferred to the Reserve Force, discharge him forthwith and in any such case section 23 shall apply.

Postponement of discharge or transfer pending proceedings for offences, etc.

25.—(1) Notwithstanding anything in this part, a soldier of the Regular Force shall not be entitled to be discharged or transferred to the Reserve Force at a time when he has become liable to be proceeded against for an offence against any of the provisions of this Act; but if it is determined that the offence shall not be tried by court-martial this subsection shall cease to apply.

(2) Notwithstanding anything in this part, a soldier of the Regular Force who is serving a sentence of imprisonment or detention awarded by a court-martial or by his commanding officer shall not be entitled to be discharged or transferred to the Reserve Force during the currency of the sentence.

Discharge upon prescribed grounds

26. An officer or a soldier of the Regular Force may be discharged by the appropriate superior authority, at any time during the currency of any term of engagement—

(*a*) if within two years after the date of his attestation, his commanding officer considers that he is unlikely to be an efficient member of the Defence Force;

(*b*) for activities or behavior likely to be prejudicial to the preservation of public security;

(*c*) if he is convicted of a civil offence for which he is not given the option of a fine;

(*d*) if he is pronounced by, the Medical Board to be mentally or physically unfit for further service;

(*e*) on reduction of establishment;

(*f*) at his own request on compassionate grounds;

(*g*) if for any reason given to him in writing his services are no longer required;

(*h*) if he is granted a commission;

(*i*) if he is sentenced by court-martial to be dismissed from the Defence Force;

(*j*) if he marries another member of the Defence Force in disobedience to standing orders for peace;

(*k*) if, in the case of an unmarried female member, she becomes pregnant contrary to standing orders for peace; or

(*l*) if, in the case of a male member, he is responsible for the pregnancy of a female member contrary to standing orders for peace.

Right of soldier to purchase discharge

27.—(1) Subject to this section, a soldier of the Regular Force shall be entitled to claim his discharge—

(*a*) at any time within three months after the date of his first attestation upon payment of a sum not exceeding the equivalent of ninety days pay; or

(*b*) at any time during his initial engagement with the consent of the Commander upon payment of one half of one month pay for each uncompleted year of service with the Regular Force;

(*c*) if on continuous service, at any time provided the requirements prescribed in the Defence Force (Regular Force) (Other Ranks) Regulations are complied with, and shall be discharged with all convenient speed, but until discharged shall remain subject to military law under this Act.

(2) Notwithstanding subsection (1), a soldier of the Regular Force shall not be entitled to claim his discharge pursuant to this

section while he is required to continue with his colour service under section 22.

(3) For the purposes of subsection (1) (*b*)—

(*a*) "pay" means the basic rate of pay plus service pay and pay of rank, but does not include marriage allowance and trade pay; and

(*b*) "one half of one month's pay" shall be the equivalent of fifteen days pay.

Restrictions on reduction in rank of warrant officers and non-commissioned officers

28. A warrant officer or non-commissioned officer of the Force, other than a lance-corporal, shall not be reduced in rank except by order of a court-martial or the Defence Council or of an officer not below the rank of lieutenant colonel authorized by Regulations made under this Act to act for the purpose of this subsection.

(2) An authorization under subsection (1) may be given generally or subject to such limitations as may be prescribed.

(3) For the purposes of this section, a "reduction in rank" does not include reversion from acting rank to substantive rank.

Right of warrant officer to discharge on reduction to ranks

29. A warrant officer of the Regular Force who is reduced to the ranks may thereupon claim to be discharged unless a state of national defence, insurrection, hostilities or public emergency exists.

Division 3—Miscellaneous and Supplementary Provisions

Rules for reckoning service

30. In reckoning the service of any soldier of the Regular Force towards discharge or re-engagement or transfer to the Reserve Force, there shall be excluded therefrom—

(*a*) all periods during which he has been absent from his duty for any of the following causes—

(i) imprisonment;

(ii) desertion;

(iii) absence without leave exceeding twenty-eight days; and

(*b*) any period ordered by a court-martial to be forfeited.

Validity of attestation and enlistment

31.—(1) Where a person has made such declaration upon his attestation as may be prescribed and has thereafter received pay as a soldier of the Regular Force—

(*a*) the validity of his enlistment shall not be called in question on the ground of any error or omission in his attestation paper;

(*b*) after the expiration of a period of three months from the date from which he made the declaration he shall be deemed to

have been validly enlisted notwithstanding any non-compliance with the requirements of this Act or any regulation made as to enlistment or attestation or any other ground whatsoever (not being an error or omission in his attestation paper) and he shall be deemed to be a soldier of that Force until his discharge.

(2) Where a person has received pay as a solider of the Regular Force without having previously made such declaration as may be prescribed then—

(*a*) he shall be deemed to be a soldier of that Force until discharged;

(*b*) he may claim his discharge at any time and, if he makes such claim, the claim shall be submitted as soon as may be to the appropriate superior authority who shall, if the claim is well founded, cause him to be discharged with all convenient speed.

(3) Nothing in subsection (1) or (2) shall be construed as prejudicing the determination of any question as to the term for which a person was enlisted or as preventing the discharge of a person who has not claimed his discharge.

False answers in attestation papers

32.—(1) If a person appearing before a recruiting officer for the purpose of being enlisted in the Regular Force knowingly makes a false answer to any question contained in the attestation paper and put to him by, or by the direction of, the recruiting officer, he shall be guilty of an offence and shall be liable to a fine of K10,000 and to imprisonment for three months.

(2) For the avoidance of doubt it is hereby declared that a person may be proceeded against for an offence under subsection (1) notwithstanding that he has since become subject to military law under this Act.

PART V

Discipline, Trial and Punishment of Military Offences

Division 1—Treachery, Cowardice and Other Offences Arising out of Military Service

Aiding the enemy

33.—(1) Any person subject to military law under this Act who, with intent to assist the enemy—

(*a*) abandons or delivers up any place or post which it is his duty to defend, or induces any person to abandon or deliver up any place or post which it is that person's duty to defend; or

(*b*) does any act calculated to imperil the success of operations of the Defence Force, or of any cooperating forces or any part of the Defence Force or of those forces; or

(*c*) having been made a pensioner of war, serves with or aids the enemy in the prosecution of hostilities or of measures calculated to influence morale, or in any other manner whatsoever not authorized by international usage; or

(*d*) furnishes the enemy with arms or ammunition or with supplies of any description or with anything likely to assist the enemy (whether similar to any of the other things mentioned in this subsection or not), or

(*e*) harbours or protects the enemy not being a prisoner of war; or

(*f*) gives any false air signal or alters or interferes with any air signal or any apparatus for giving an air signal; or

(*g*) when ordered by a superior officer, or otherwise under orders, to carry out any warlike operations in the air fails to use his utmost exertion to carry such orders into effect; or

(*h*) causes the capture or destruction by the enemy of any aircraft belonging to the Defence Force,

shall be guilty of an offence and shall, on conviction by court-martial or by the High Court, be liable to suffer death or life imprisonment.

(2) Any person subject to the military law under this Act who knowingly and without lawful excuse does any of the acts specified in subsection (1) (*a*) to (*g*) inclusive shall, where it is not proved that he acted with intent to assist the enemy, on conviction by court-martial or by the High Court, be guilty of an offence and liable to imprisonment of any less punishment provided by this Act.

(3) Any person subject to military law under this Act who negligently causes the capture or destruction by the enemy of any aircraft belonging to the Defence Force, or any forces cooperating therewith shall be guilty of an offence and shall, on conviction by court-martial or by the High Court, be liable to imprisonment or any less punishment provided by this Act.

Communication with the enemy

34.—(1) Any person subject to military law under this Act who, with intent to assist the enemy, communicates with or gives intelligence to the enemy shall be guilty of an offence and shall, on conviction by court-martial or by the High Court, be liable to suffer death or life imprisonment.

(2) Any person subject to military law under this Act who, without authority, communicates with or gives intelligence to the enemy shall be guilty of an offence and shall, on conviction by court-martial or by the High Court, be liable to life imprisonment.

(3) In this section, the expression "intelligence" means information which is or purports to be information as to any matter such that information about it would or might be directly or indirectly useful to the enemy, and in particular (but without prejudice to the generality of the foregoing provisions of this subsection) information as to any matter falling within the following paragraphs, being a matter such that information as to it would or might be directly or indirectly useful to the enemy, that is to say—

(*a*) the number, description, armament, equipment, disposition, movement or condition of the Defence Force or of any cooperating forces, or any aircraft of the Defence Force or aircraft of any cooperating forces;

(*b*) any operation or projected operation of the Defence Force or of any cooperating forces, or aircraft as aforesaid;

(*c*) any code, cipher, call-sign, password or countersign;

(*d*) any measure for the defence or fortification of any place;

(*e*) the number, description or location of any prisoner of war;

(*f*) munitions of war.

Cowardly behavior

35.—(1) Any person subject to military law under this Act who when before the enemy—

(*a*) leaves his post position or other place where it is his duty to be; or

(*b*) throws away his arms, ammunition or tools; or

(*c*) does any of the acts specified in section 29 (1) (*f*) to (*h*) inclusive, in such a manner as to show cowardice, or otherwise behaves in such a manner as to show cowardice, shall be guilty of an offence.

(2) Any person subject to military law under this Act who when before the enemy induces other persons subject to service law to commit an offence under subsection (1), shall be guilty of an offence.

(3) Any person guilty of an offence against this section shall, on conviction by court-martial or by the High Court, be liable to imprisonment or any less punishment provided by this Act.

Offences against morale

36. Any person subject to military law under this Act who—

(*a*) spreads (whether orally, in writing, by signal or otherwise) reports containing any matter or information relating to operations of the Defence Force or of any cooperating forces, or of any part of the Defence Force or any of those forces, being reports calculated to create despondency or unnecessary alarm, or

(*b*) when before the enemy uses words calculated to spread despondency or unnecessary alarm,

shall be guilty of an offence and shall, on conviction by court-martial or by the High Court, be liable to imprisonment or any less punishment provided by this Act.

Becoming prisoner of war through disobedience or willful neglect and failing to rejoin force

37.—(1) Any person subject to military law under this Act who, through disobedience to orders or willful neglect of his duty, is captured by the enemy shall be guilty of an offence.

(2) Any person subject to military law under this Act who—

(*a*) having been captured by the enemy, fails to take any reasonable steps to rejoin the Defence Force or any cooperating forces which is available to him; or

(*b*) prevents or discourages any other person subject to military law captured by the enemy from taking any reasonable steps to rejoin the Defence Force or any cooperating forces which is available to him or, as the case may be, to that other person,

shall be guilty of an offence.

(3) Any person guilty of an offence against this section shall, on conviction by court-martial or by the High Court, be liable to imprisonment or any less punishment provided by this Act.

Offences by or in relation to sentries, etc.

38.—(1) Any person subject to military law under this Act who, while on guard duty—

(*a*) sleeps at his post; or

(*b*) when not on duty at his post, is asleep at a time when he is not allowed to be asleep; or

(*c*) is drunk; or

(*d*) leaves his post without having been regularly relieved, or otherwise absents himself from any place where it is his duty to be,

shall be guilty of an offence.

(2) For the purposes of subsection (1), a person is drunk if, owing to the influence of alcohol or any intoxicating drug or other substance, whether alone or in combination with any other substance or circumstance, he is unfit to be entrusted with his duty or with any duty which he may be called upon to perform, or behaves in a disorderly manner or in a manner likely to bring discredit to the Defence Force.

(3) Any person subject to military law under this Act who strikes, or otherwise uses force against, any person on guard duty, being a member of the Defence Force or of any cooperating forces

or who, by the threat of force, compels any such person to let him or any other person pass, shall be guilty of an offence.

(4) Any person guilty of an offence against this section shall, on conviction by court-martial or by the High Court, be liable to imprisonment or any less punishment provided by this Act:

Provided that if the offence is not committed on active service he shall not be liable to imprisonment for more than two years.

(5) Reference in this section to a person on guard duty is reference to a person who—

(*a*) is posted or ordered to patrol; or

(*b*) is a member of a guard or other party mounted or ordered to patrol,

for the purpose of protecting any person; premises or place.

(6) The foregoing provisions of this section shall apply in relation to persons posted or ordered to patrol, or members of a party mounted or ordered to patrol, for the purposes of preventing or controlling access to or egress from any premises or place, or regulating traffic by road, by rail or on any inland navigation, as they apply to persons on guard duty.

Looting

39. Any person subject to military law under this Act who—

(*a*) steals from, or with intent to steal searches the person of, anyone killed or wounded in the course of warlike operations; or

(*b*) steals any property which has been left exposed or unprotected in consequence of warlike operations; or

(*c*) takes otherwise than for the public service any vehicle, equipment or stores abandoned by the enemy,

shall be guilty of looting and liable, on conviction by court-martial or by the High Court, to imprisonment or any less punishment provided by this Act.

Division 2—Mutiny and Insubordination

Mutiny

40.—(1) Any person subject to military law under this Act who—

(*a*) takes part in mutiny involving the use of violence or the threat of the use of violence, or having as its object or one of its objects the refusal or avoidance of any duty or service against, or in connexion with operations against, the enemy, or the impeding of the performance of any such duty or service; or

(*b*) incites any person subject to service law to take part in such mutiny, whether actual or intended,

shall be guilty of an offence and shall, on conviction by court-martial or by the High Court, be liable to suffer death or any other punishment provided by this Act.

(2) Any person subject to military law under this Act who, in a case not falling within subsection (1), takes part in a mutiny, or incites any person subject to service law to take part in a mutiny, whether actual or intended, shall be guilty of an offence and shall, on conviction by court-martial or by the High Court, be liable to imprisonment or any less punishment provided by this Act.

(3) In this Act, "mutiny" means a combination between two or more persons subject to service law, or between persons at least two of whom are subject to service law—

(*a*) to overthrow or resist lawful authority in the Defence Force or any cooperating forces or in any part of the Defence Force or of those forces; or

(*b*) to disobey such authority in such circumstances as to make the disobedience subversive of discipline, or with the object of avoiding any duty or service against, or in connexion with operations against, the enemy; or

(*c*) to impede the performance of any duty or service in the Defence Force or in any cooperating forces or in any part of the Defence Force or of those forces.

Failure to suppress mutiny

41. Any person subject to military law under this Act who, knowing that a mutiny is taking place or is intended fails to use his utmost endeavours to suppress or prevent it or fails to report without delay that the mutiny is taking place or is intended shall, on conviction by court-martial or by the High Court—

(*a*) if his offence was committed with intent to assist the enemy, be liable to suffer death or life imprisonment; and

(*b*) in any other case, be liable to life imprisonment.

Insubordinate behavior

42.—(1) Any person subject to military law under this Act who—

(*a*) strikes or otherwise uses violence to a superior officer; or

(*b*) uses threatening or insubordinate language to a superior officer,

shall be guilty of an offence and shall, on conviction by court-martial or by the High Court, be liable to imprisonment or any less punishment provided by this Act.

(2) If the offence under subsection (1) was not committed on active service and did not involve the striking or other use of violence, or offering of violence, to a superior officer exercising authority as such, the offender shall not be liable to be imprisoned for more than two years.

(3) In this section the expression "superior officer", in relation to a person, means an officer, warrant officer or non-commissioned officer subject to service law of superior rank, and includes an officer, warrant officer or non-commissioned officer of equal rank but greater seniority while exercising authority as that person's superior.

Disobedience to particular orders

43.—(1) Any person subject to military law under this Act who, in such manner as to show a willful defiance of authority, disobeys any lawful command given or sent to him personally shall be guilty of an offence and shall, on conviction by court-martial or by the High Court, be liable to imprisonment or any less punishment provided by this Act.

(2) Any person subject to military law under this Act who, whether willfully or through neglect, disobeys any lawful command, shall be guilty of an offence and shall, on conviction by court-martial or by the High Court, be liable to imprisonment or any less punishment provided by this Act.

(3) If the offence under this section was not committed on active service the offender shall not be liable to be imprisoned for more than two years.

Obstruction of provost officers

44. Any person subject to military law under this Act who—

(*a*) obstructs; or

(*b*) when called on, refuses to assist,

any person known to him to be a provost officer, or to be a person (whether subject to military law under this Act or not) legally exercising authority under or on behalf of a provost officer shall be guilty of an offence and shall, on conviction by court-martial or by the High Court, be liable to imprisonment for two years or any less punishment provided by this Act.

Disobedience to standing orders

45.—(1) Any person subject to military law under this Act who contravenes or fails to comply with any provision of standing orders to which this section applies, being a provision known to him, or which he might reasonably be expected to know, shall be guilty of an offence and shall, on conviction by court-martial or by the High Court, be liable to imprisonment for two years or any less punishment provided by this Act.

(2) This section applies to standing orders or other routine orders of a continuing nature that may be made by the appropriate superior authority for any formation or unit or body of troops, or for any command or other areas, garrison or place, or for any vessel, train or aircraft.

Division 3—Desertion, Absence Without Leave, etc.

Desertion

46.—(1) Any person subject to military law under this Act who—

(*a*) deserts; or

(*b*) persuades or procures any person subject to service law to desert shall be guilty of an offence and shall,

on conviction by court-martial or by the High Court, be liable to imprisonment or any less punishment provided by this Act.

(2) A person shall not be liable to be imprisoned for more than two years unless—

(*a*) if the offence was against paragraph (*a*) of subsection (1), he was on active service or under orders for active service at the time it was committed, or

(*b*) if the offence was an offence against paragraph (*b*) of subsection (1), the person in relation to whom it was committed was on active service or under orders for active service at that time.

(3) For the purposes of this Act, a person deserts who—

(*a*) leaves the Defence Force or, when it is his duty to do so, fails to join or rejoin the Defence Force, with (in either case) the intention, subsisting at the time of leaving or failure or formed thereafter, of remaining permanently absent from his duty; or

(*b*) being an officer, enlists in or enters any part of the Defence Force or other forces without having resigned his commission; or

(*c*) being a soldier, enlists in or enters any part of the Defence Force or other forces without having been discharged from his previous enlistment; or

(*d*) absents himself without leave with intention to avoid serving at any place outside Malaŵi or to avoid service or any particular service when before the enemy, and references in this Act to "desertion" and to desert" shall be construed accordingly.

(4) In addition to or in lieu of any punishment authorized by subsection (1), the court-martial or the High Court by which a soldier of the Regular Force is convicted of desertion may direct that the whole or any part of his service previous to the period in respect of which he is convicted of having been a deserter shall be forfeited.

Absence without leave

47. Any person subject to military law under this Act who—

(*a*) absents himself without leave; or

(*b*) persuades or procures any person subject to service law to absent himself without leave,

shall be guilty of an offence and shall, on conviction by court-martial or by the High Court, be liable to imprisonment for two years or any less punishment provided by this Act.

Assisting and concealing desertion and absence without leave

48. Any person subject to military law under this Act who—

(*a*) knowingly assists any person subject to service law to desert or absent himself without leave, or

(*b*) knowing that any person subject to service law has deserted or absented himself without leave, or is attempting to desert or absent himself without leave, fails to report that fact without delay, or fails to take any steps in his power to cause that person to be apprehended,

shall be guilty of an offence and shall, on conviction by court-martial or by the High Court, be liable to imprisonment for two years or any less punishment provided by this Act.

Falsely obtaining or prolonging leave

49. Any person subject to military law under this Act who, for the purpose of obtaining leave or prolonging his leave, knowingly makes any false statement shall be guilty of an offence and shall, on conviction by court-martial or by the High Court, be liable to imprisonment for two years or any less punishment provided by this Act.

Failure to perform military duties

50. Any person subject to military law under this Act who, without reasonable excuse, fails to attend for any, parade or any military duty of any description or leaves any such parade or duty before he is permitted to do so shall be guilty of an offence and shall, on conviction by court-martial or by the High Court, be liable to imprisonment for two years or any less punishment provided by this Act.

Division 4—Malingering and Drunkenness

Malingering

51.—(1) Any person subject to military law under this Act who—

(*a*) falsely pretends to be suffering from sickness or disability; or

(*b*) injures himself with intent thereby to render himself unfit for service, or causes himself to be injured by any person with that intent; or

(*c*) injures another person subject to service law, at the instance of that person, with intent thereby to render that person unfit for service; or

(*d*) with intent to render or keep himself unfit for service, does or fails to do anything (whether at the time of the act or omission he is in hospital or not) whereby he produces, or prolongs or aggravates, any sickness or disability,

shall be guilty of malingering and shall, on conviction by court-martial or by the High Court, be liable to imprisonment for two years or any less punishment provided by this Act.

(2) In this section the expression "unfit" includes temporarily unfit.

Drunkenness

52.—(1) Any person subject to military law under this Act who is guilty of drunkenness, whether on duty or not, shall, on conviction by court-martial or by the High Court, be liable to imprisonment for two years or any less punishment provided by this Act.

(2) If the offence under subsection (1) is committed by a soldier neither on active service nor on duty the sentence imposed shall not exceed detention for a period of six months.

(3) For the purposes of subsection (1) a person is drunk if owing to the influence of alcohol or any intoxicating drug or other substance, whether alone or in combination with any other substance or circumstances, he is unfit to be entrusted with his duty or with any duty which he may be called upon to perform, or behaves in a disorderly manner or in a manner likely to bring discredit to the Defence Force.

Division 5—Offences Relating to Property

Offences relating to public and service property

53.—(1) Any person subject to military law under this Act who—

(*a*) steals or fraudulently misapplies any public or service property, or is concerned in or connives at stealing or fraudulent misapplication of any public or service property; or

(*b*) receives any public or service property knowing it to have been stolen or to have been fraudulently misapplied; or

(*c*) willfully damages, or is concerned in the willful damage of, any public or service property; or

(*d*) by willful neglect causes damage by fire to and public or service property,

shall be guilty of an offence and shall, on conviction by court-martial or by the High Court, be liable to imprisonment for fourteen years.

(2) Without prejudice to the generality of subsection (1), any person subject to military law under this Act who—

(*a*) willfully damages, or is concerned in the willful damage of any aircraft, vessel or vehicle or any aircraft material, vessel material or vehicle material of the Defence Force or of any cooperating forces; or

(*b*) by willful neglect causes damage to, or the loss of, any aircraft, vessel or vehicle or any aircraft material, vessel material or vehicle material of the Defence Force or of any cooperating forces; or

(*c*) without lawful authority disposes of any aircraft, vessel or vehicle or any aircraft material, vessel material or vehicle material of the Defence Force or of any cooperating forces,

shall be guilty of an offence and shall, on conviction by court-martial or by the High Court, be liable to imprisonment for fourteen years.

(3) Any person subject to military law under this Act who, during the active service, willfully and without proper occasion or negligently causes the sequestration by or under the authority of a neutral state or the destruction in a neutral state of any aircraft of the Defence Force or of any cooperating forces shall be guilty of an offence and shall, on conviction by court-martial or the High Court, be liable to imprisonment for life.

(4) If the offender, in committing the offence under subsection (3), did not act willfully or with willful neglect, he shall be liable to imprisonment for not more than two years.

Offences in relation to property of members subject to service law

54. Any person subject to military law under this Act who—

(*a*) steals or fraudulently misapplies any property belonging to a person subject to service law, or is concerned in or connives at the stealing or fraudulent misapplication of any such property; or

(*b*) receives any property belonging to a person subject to service law, knowing it to have been stolen or to have been fraudulently misapplied; or

(*c*) willfully damages, or is concerned in the willful damage of, any property belonging to a person subject to service law,

shall be guilty of an offence and shall, on conviction by court-martial or by the High Court, be liable to imprisonment for two years or any less punishment provided by this Act.

Miscellaneous offences relating to property

55.—(1) Any person subject to military law under this Act who—

(*a*) loses, or by negligence damages, any public or service property of which he had the charge or which has been entrusted to his care or which forms part of property of which he has the charge or which has been entrusted to his care; or

(*b*) by negligence loses or damages any aircraft, vessel or vehicle or any aircraft material, vessel material or vehicle material of the Defence Force or of any cooperating forces;

(*c*) does any act of neglect likely to cause damage or loss of any aircraft, vessel or vehicle or any aircraft material, vessel material or vehicle material of the Defence Force or any forces cooperating therewith; or

(*d*) by negligence causes damage by fire to any public or service property; or

(*e*) loses, or by negligence damages, any clothing, arms, ammunition or other equipment issued to him for his use for military purposes; or

(*f*) fails to take proper care of any animal or bird used in the public service which is in his charge; or

(*g*) makes away (whether by pawning, selling, destruction or in any other way) with any service decoration granted to him, or any clothing, arms, ammunition or other equipment issued to him for his use for military purposes,

shall be guilty of an offence and shall, on conviction by court-martial or by the High Court, be liable to imprisonment for two years or any less punishment provided by this Act.

(2) It shall be a defence for any person charged under subsection (1) with the offence of losing any property, clothing, arms, ammunition or other equipment that he took reasonable steps for the care and preservation thereof.

Loss and hazarding of aircraft, vessel or vehicle of the Defence Force

56.—(1) Any person subject to military law under this Act who, either willfully or by negligence, causes or allows any aircraft, vessel or vehicle of the Defence Force to be captured, lost, destroyed, damaged, stranded or hazarded shall be guilty of an offence and liable to imprisonment for life or any less punishment provided by this Act.

(2) If the offender, in committing the offence under subsection (1) did not act willfully or with willful neglect, he shall be liable to imprisonment for not more than two years.

Improper carriage of goods

57. Any person subject to military law under this Act who, being in command of any aircraft, vessel or vehicle of the Defence Force or being a member of its crew, without lawful authority—

(*a*) receives or permits to be received on board the aircraft vessel or vehicle any goods or merchandise (not being goods or merchandise received in the course of salvage) intended for disposal or delivery by way of, trade or business, whether on his own account or on account of any other person; and

(*b*) agrees to carry any goods or merchandise on board the aircraft, vessel or vehicle in consideration of the payment of freight, or demands or receives any payment in respect of such carriage,

shall be guilty of an offence and shall, on conviction by court-martial or by the High Court, be liable to imprisonment for two years or any less punishment provided by this Act.

Division 6—Offences Relating to Billeting and Requisitioning of Vehicles, Aircraft or Vessels

Billeting offences

58. Any person subject to military law under this Act who—

(*a*) knowing that no billeting requisition is in force under Part VIII authorizing him to demand any billets, or that he is otherwise not authorized to demand them, obtains those billets or orders or procures another person to obtain them; or

(*b*) takes or agrees to take, or demands, from a person on whom he or any other person or any vehicle, aircraft or vessel is or is to be billeted in pursuance of a billeting requisition under Part VIII any money or thing as consideration for not requiring, or ceasing to require, the accommodation for himself or the said other person or standing room for the vehicle, aircraft or vessel; or

(*c*) commits any offence or any wrongful act against the personal property of the occupier of premises in which he is billeted in pursuance of a billeting requisition under Part VIII or of any other person being in those premises, or against any other property in those premises, or willfully or by willful neglect damages those premises or any such property, shall be guilty of an offence and shall, on conviction by court-martial or the High Court, be liable to imprisonment for two years or any less punishment provided by this Act.

Offences in relation to requisitioning of vehicles, aircraft or vessel

59.—(1) Any person subject to military law under this Act who—

(*a*) knowing that no requisitioning order is in force under Part VIII authorizing him to give directions for the provision of any vehicle, aircraft or vessel, or that he is otherwise not authorized to give such directions, gives directions for the provision of the vehicle, aircraft or vessel or orders or procures another person to give such directions; or

(*b*) in purported exercise of powers conferred by a requisitioning order under Part VIII takes, or orders or procures any other person to take possession of a vehicle, aircraft or vessel, knowing that no requisitioning order is in force under Part VIII

under which the taking possession of the vehicle, aircraft or vessel could be authorized, or that the taking possession thereof is otherwise not authorized under such order; or

(*c*) takes or agrees to take, or demands, from any person any money or thing as consideration for directions, or any particular directions, for the provision of a vehicle, an aircraft or vessel not being given, or not being retained, under a requisitioning order under Part VIII,

shall be guilty of an offence and shall, on conviction by court-martial or by the High Court, be liable to imprisonment for two years or any less punishment provided by this Act.

(2) Subsection (1) shall apply in relation to animals, food, forage and stores (within the meaning of Part VIII) as it applies in relation to vehicles, aircraft and vessels.

Dangerous flying

60.—(1) Any person subject to military law under this Act who, either willfully or by negligence, does any act or makes any omission in flying an aircraft of the Defence Force or in the use of such aircraft or in relation to such aircraft or any material of such aircraft, which act or omission causes or is likely to cause loss of the life of or to cause bodily injury to, any person shall be guilty of an offence and shall, on conviction by court-martial or by the High Court, be liable to imprisonment for life or any less punishment provided by this Act.

(2) If, in committing the offence under subsection (1), the offender did not act willfully or with willful neglect, he shall be liable to imprisonment for not more than two years.

Low flying

61. Any person subject to military law under this Act who, being the pilot of an aircraft of the Defence Force, flies the aircraft at a height less than the prescribed height, except—

(*a*) while taking off or landing; or

(*b*) in such other circumstances as may be prescribed,

shall be guilty of an offence and shall, on conviction by court-martial or by the High Court, be liable to imprisonment for two years or any less punishment provided by this Act.

Annoyance by flying

62. Any person subject to military law under this Act who, being the pilot of an aircraft of the Defence Force, flies the aircraft so as to cause or likely to cause unnecessary annoyance to any person shall be guilty of an offence and shall, on conviction by court-martial or by the High Court, be liable to imprisonment for two years or any less punishment provided by this Act.

Division 7—Offences Relating To, and By, Persons in Custody

Irregular arrest and confinement

63.—(1) Any person subject to military law under this Act who, when another person also subject to military law under this Act is under arrest—

(*a*) unnecessarily delays the taking of such steps as it is his duty to take for investigating the allegations against that other person or for having the allegation against that other person investigated by his commanding officer or the appropriate superior authority or, as the case may be, tried by court-martial or by the High Court; or

(*b*) fails to release, or effect the release of, that other person when it is his duty to do so,

shall be guilty of an offence.

(2) Any person subject to military law under this Act who, having committed a person (hereinafter referred to as "the prisoner") to the custody of any provost officer or other officer, or any warrant officer or non-commissioned officer, fails without reasonable cause to deliver—

(*a*) at the time of the committal; or

(*b*) if it is not practicable so to do at the time of the committal, then within twenty-four hours thereafter,

to the person to whose custody the prisoner was committed a report in writing signed by himself of the offence which the prisoner is alleged to have committed, shall be guilty of an offence.

(3) Where any person (hereinafter referred to as "the prisoner") is committed to the charge of a person subject to military law under this Act who is in command of a guard, then if without reasonable cause that person does not as soon as he is relieved from his guard and any further duty, or if he is not sooner relieved, within twenty-four hours after the committal, give to the officer to whom it is his duty to report—

(*a*) a written statement containing so far as known to him the prisoner's name and alleged offence and the name and rank or other description of the officer or other person by whom the prisoner is alleged to have committed the offence; and

(*b*) if he has received it, the report required by subsection (2) he shall be guilty of an offence.

(4) Any person guilty of an offence against this section shall, on conviction by court-martial or by the High Court, be liable to imprisonment for two years or any less punishment provided by this Act.

Permitting escape and unlawful release of prisoners

64.—(1) Any person subject to military law under this Act who willfully allows to escape any person who is committed to his charge, or whom it is his duty to guard, shall, on conviction by court-martial or by the High Court, be liable to imprisonment or any less punishment provided by this Act.

(2) Any person subject to military law under this Act who—

(*a*) without proper authority releases any person who is committed to his charge; or

(*b*) without reasonable excuse allows to escape any person who is committed to his charge, or whom it is his duty to guard,

shall be guilty of an offence and shall, on conviction by court-martial or by the High Court, be liable to imprisonment for two years or any less punishment provided by this Act.

Resistance to arrest

65.—(1) Any person subject to military law under this Act who, being concerned in any quarrel or disorder, refuses to obey any officer subject to service law who orders him into arrest, or strikes or otherwise uses violence to, or offers violence to, any such officer, shall be guilty of an offence whether or not the officer is his superior officer.

(2) Any person subject to military law under this Act who strikes or otherwise uses violence to, or offers violence to, any person, whether subject to military law under this Act or not, whose duty is to apprehend him or in whose custody he is, shall be guilty of an offence.

(3) Any person guilty of an offence against this section shall, on conviction by court-martial or by the High court, be liable to imprisonment for two years or any less punishment provided by this Act.

Escape from confinement

66. Any person subject to military law under this Act who escapes from arrest, prison or other lawful custody (whether military or not), shall, on conviction by court-martial or the High court, be liable to imprisonment for two years or any less punishment provided for by this Act.

Division 8—Offences in Relation to Courts-martial

Offences in relation to courts-martial

67.—(1) Any person subject to military law under this Act who—

(*a*) having been duly summoned or ordered to attend as a witness before a court-martial, fails to comply with the summons or order; or

(*b*) refuses to swear an oath when duly required by a court-martial to do so; or

(*c*) refuses to produce any document in his custody or under his control which a court-martial has lawfully required him to produce, or

(*d*) when a witness, refuses to answer any questions which court-martial has lawfully required him to answer; or

(*e*) willfully insults any person, being a member of a court-martial or a witness or any other person whose duty it is to attend on or before the court, while that person is acting as a member thereof or is so attending, or willfully insults any such person while such person is going to or returning from the proceedings, of the court; or

(*f*) willfully interrupts the proceedings of a court-martial or otherwise misbehaves before the court,

shall be guilty of an offence and shall, on conviction by court-martial, other than the court in relation to which the offence was committed or by the High Court, be liable to imprisonment for two years or any less punishment provided by this Act.

(2) Notwithstanding anything in subsection (1) where an offence against paragraph (*e*) or (*f*) of that subsection is committed in relation to any court-martial held in pursuance of this Act, that court, if of opinion that it is expedient that the offender should be dealt with summarily by the court instead of being brought to trial before another court-martial or by the High Court, may by order under the hand of the presiding officer order the offender to be imprisoned for a period not exceeding twenty-one days, or, in the case of a soldier, either to be imprisoned for such a period or to undergo detention for such a period.

(3) Reference in subsection (1) (*a*) to (*f*), inclusive, to a court-martial shall include references to a court-martial held in pursuance of service law.

False evidence

68.—(1) Any person subject to military law under this Act who having been lawfully sworn as a witness or as an interpreter in proceedings before a court-martial or before any board or person having power by virtue of this Act to administer oaths, makes a statement material in those proceedings which he knows to be false or does not believe to be true shall be guilty of an offence and shall, on conviction by court-martial or the High Court, be liable to imprisonment for two years or any less punishment provided by this Act.

(2) A person shall not be liable to be convicted of an offence against this section solely on the evidence of one witness as to the falsity of any statement alleged to be false.

Division 9—Miscellaneous Offences

Injurious disclosures

69.—(1) Any person subject to military law under this Act who without authority, discloses, whether orally, in writing, by signal or by any other means whatsoever, any information which is or purports to be information useful to the enemy shall be guilty of an offence and shall, on conviction by court-martial or the High Court, be liable to imprisonment for ten years or any less punishment Provided by this Act.

(2) In this section, the expression "information useful to the enemy" means information as to any matter such that information as to it would or might be directly or indirectly useful to the enemy and in particular (but without prejudice to the generality of the foregoing provisions of this subsection) information as to any matter falling within the following paragraphs, being a matter such that information as to it would or might be directly or indirectly useful to the enemy, that is to say—

(*a*) the number, description, armament, equipment disposition, movement or conditions of any part of the Defence Force or of any cooperating forces, or any aircraft of the Defence Force or aircraft of those forces;

(*b*) any operations or projected operations of the Defence Force or of any cooperating forces or any aircraft of the Defence Force or of those forces;

(*c*) any code, cipher call-sign, password or countersign;

(*d*) any measures for the defence or fortification of any place;

(*e*) the number, description or location of any prisoners of war; and

(*f*) any munitions of war.

Making of false statement on enlistment

70. Any person who, when before a recruiting officer for the purpose of being attested in pursuance of Part IV, has knowingly made a false answer to any question contained in the attestation paper and put to him by the direction of the recruiting officer shall, if he has since become and remains subject to military law under this Act, be guilty of an offence and shall, on conviction by court-martial or by the High Court, be liable to imprisonment for three months or to any less punishment provided by this Act.

Making of false documents

71. Any person subject to military law under this Act who—

(*a*) makes, signs or makes an entry in any service report, return, pay list or certificate or other service document, being a document or entry which is to his knowledge false in a material particular; or

(*b*) alters any service report, return, pay list or certificate or other service document, or alters any entry in such document, so that the document or entry is to his knowledge false in a material particular, or suppresses, defaces or makes away with any such document or entry which is his duty to preserve or produce; or

(*c*) with intent to defraud, fails to make an entry in any such document; or

(*d*) aids, abets, commands, counsels, procures or connives at the commission by another person subject to service law of an offence against this section or the corresponding section of the applicable service law (whether or not he knows the nature of the document in relation to which that offence will be committed),

shall be guilty of an offence and shall, on conviction by court-martial or by the High Court, be liable to imprisonment for two years or any less punishment provided by this Act.

Scandalous conduct of an officer

72. Every officer subject to military law under this Act who behaves in a scandalous manner, unbecoming the character of an officer, shall be guilty of the offence and shall, on conviction by court-martial or by the High Court, be cashiered:

Provided that the scandalous behavior is such as to demonstrate that the accused is unfit to remain an officer and it is necessary in the interest of discipline and the good name of the service that the accused should be dismissed from the service.

Ill-treatment of officers or men of inferior rank

73. If—

(*a*) any officer subject to military law under this Act strikes or otherwise ill-treats any officer subject to service law of inferior rank or less seniority, or any soldier subject to service law; or

(*b*) any warrant officer or non-commissioned officer subject to military law under this Act strikes or otherwise ill-treats any person subject to service law, being a warrant officer or non-commissioned officer of inferior rank or less seniority or a private soldier,

he shall be guilty of an offence and shall, on conviction by court-martial or by the High Court, be liable to imprisonment for two years or any less punishment provided by this Act.

Disgraceful conduct

74. Any person subject to military law under this Act who is guilty of disgraceful conduct of a cruel, indecent or unnatural kind shall, on conviction by court-martial or by the High Court, be liable to imprisonment for two years or any less punishment provided by this Act.

False accusation, etc.

75. Any person subject to military law under this Act who—

(*a*) makes an accusation against any officer or soldier subject to service law, which he knows to be false or does not believe to be true, or

(*b*) in making a complaint in which he thinks himself wronged, makes a statement affecting the character of an officer or soldier subject to service law, which he knows to be false or does not believe to be true; or willfully suppresses any material facts,

shall be guilty of an offence and shall, on conviction by court-martial or by the High Court, be liable to imprisonment for two years or any less punishment provided by this Act.

Attempts to commit military offences

76. Any person subject to military law under this Act who attempts to commit an offence against any of the foregoing provisions of this Part shall be guilty of an offence and shall, on conviction by court-martial or by the High Court, be liable to the like punishment as for that offence:

Provided that if the offence is one punishable by death he shall not be liable to any greater punishment than imprisonment.

Conduct to the prejudice of military discipline

77. Any person subject to military law under this Act who is guilty of any act, conduct or neglect to the prejudice of good order and military discipline shall be guilty of an offence and shall, on conviction by court-martial or by the High Court be liable to imprisonment for two years or any less punishment provided by this Act.

Political activities

78.—(1) Any person subject to military law under this Act who—

(*a*) promotes, or is a member of, or takes part in the activities of, any political association;

(*b*) expresses political views in a public place or in the media; or

(*c*) addresses any meeting or joins in any demonstration, the purpose of which is to express support for a political association or object, or for a candidate, in a parliamentary, presidential or local authority election or a by-election thereof or in a referendum,

shall be guilty of an offence and shall, on conviction by court-martial or by the High Court, be liable to imprisonment for two years or any less punishment provided by this Act:

Provided that this section shall not prevent any person from voting in a parliamentary, presidential or local authority election or a by-election thereof or in a referendum.

(2) Voting in a parliamentary, presidential or local authority election or a by-election thereof or in a referendum shall not take place within the premises of the Defence Force and no person shall be permitted to campaign for such vote within such premises.

Prize offences

79.—(1) Any person subject to military law under this Act who is in command of an aircraft or a vessel and who—

(*a*) having taken such aircraft or vessel as prize, fails to send to the High Court or to some other prize court having jurisdiction in the case all the documents found on board, and relating to, such aircraft or vessel;

(*b*) unlawfully makes any agreement for the ransoming of such aircraft or vessel or any goods taken as prize; or

(*c*) in pursuance of an agreement referred to in paragraph (*b*), or otherwise by collusion, restores or abandons such aircraft or vessel or any goods taken as prize,

shall be guilty of an offence and shall, on conviction by court-martial or by the High Court, be liable to imprisonment for five years or any less punishment provided by this Act.

(2) Any person subject to military law under this Act who—

(*a*) strikes or otherwise ill-treats any person who is on board an aircraft or a vessel taken as prize, or who unlawfully takes from such person anything in his possession;

(*b*) removes out of any aircraft or vessel taken as prize (otherwise than for safekeeping or for some necessary use by the Defence Force) any goods not previously adjudged by a prize court to be lawful prize; or

(*c*) breaks bulk on board any aircraft or vessel taken as prize, or detained in exercise of any belligerent right or under any law, with intent to embezzle or fraudulently misapply anything therein,

shall be guilty of an offence and shall, on conviction by court-martial or by the High Court, be liable to imprisonment for five years or any less punishment provided by this Act.

Division 10—Civil Offences

Civil offences

80.—(1) Any person subject to military law under this Act who commits a civil offence, whether in Malaŵi or elsewhere, shall be guilty of an offence.

(2) In this Act, the expression—

(*a*) "civil offence" means any act or omission punishable by the law of Malaŵi or which, if committed in Malaŵi, would be punishable by that law; and

(*b*) "the corresponding civil offence" means the civil offence the commission of which constitutes the offence against this section.

(3) A person convicted by court-martial or by the High Court of an offence against this section shall—

(*a*) if the corresponding civil offence is treason or murder, be liable to suffer death; or

(*b*) in any other case, be liable to suffer any punishment or punishments which the civil court could award for the corresponding civil offence, if committed in Malaŵi, being a punishment or punishments provided by this Act, or such punishment, less than the maximum punishment which a civil court could so award, as is so provided:

Provided that where a civil court could not so award imprisonment, a person so convicted shall be liable to suffer such punishment, less than cashiering in the case of an officer, or detention in the case of a soldier, as is so provided.

(4) A person shall not be charged with an offence against this section committed in Malaŵi if the corresponding civil offence is treason, murder, manslaughter, treason-felony or rape.

(5) Where the corresponding civil offence is murder or manslaughter, an offence against this section shall be deemed for the purposes of subsection (4) to have been committed at the place of the commission of the act or occurrence of the neglect which caused the death, irrespective of the place of death.

(6) Proceedings for an offence against this section shall be instituted only with the consent of the Director of public Prosecutions.

Division 11—Punishments

Punishment of officers

81.—(1) The punishments which may be awarded under this Act to an officer by sentence of court-martial or by the High Court are those set out in the scale in subsection (2); and in relation to an officer references in this Act to punishments provided by this Act are references to those punishments.

(2) The scale referred to in subsection (1) is—

(*a*) death;

(*b*) imprisonment;

(*c*) cashiering;

(*d*) dismissal from the Defence Force;

(*e*) forfeiture in the prescribed manner of seniority of rank in the Defence Force or in the corps to which the offender belongs, or in both;

(*f*) fine of a sum not exceeding the equivalent of ninety days pay;

(*g*) severe reprimand;

(*h*) reprimand;

(*i*) admonition; or

(*j*) stoppages of pay, where the offence has occasioned any expense, loss or damage.

(3) For the purposes of this Part, a punishment specified in any paragraph of the scale in subsection (2) shall be treated as less than the punishment specified in the preceding paragraphs, and greater than those specified in the following paragraphs, of the scale.

(4) Save as expressly provided in this Act, not more than one punishment shall be awarded by court-martial or by the High Court for one offence.

(5) Stoppages (of pay) may be awarded by court-martial or by the High Court either in addition to or without any other punishment.

(6) A severe reprimand or reprimand may be awarded by court-martial or by the High Court in addition to forfeiture of seniority of rank or a fine.

(7) Where an officer is sentenced by court-martial or by the High Court to imprisonment he shall also be sentenced to be cashiered:

Provided that if the court-martial or the High Court fails to sentence him to be cashiered, the sentence of imprisonment shall not be invalid but shall be deemed to include a sentence of cashiering.

Punishment of soldiers

82.—(1) The punishment which may be awarded to a soldier by a sentence of a court-martial under this Act are those set out in the scale in subsection (2); and in relation to a soldier reference in this Act to punishments provided by this Act are references to those punishments.

(2) The scale referred to in subsection (1) is—

(*a*) death;

(*b*) imprisonment;

(*c*) discharge with ignominy from the Defence Force;

(*d*) in the case of the warrant officer, dismissal from the Defence Force;

(*e*) detention for a term not exceeding two years;

(*f*) where the offender is on active service on the day of the sentence, field punishment for a period not exceeding ninety days;

(*g*) in the case of a warrant officer or non-commissioned officer, reduction to the ranks or any less reduction in rank;

(*h*) in the case of a warrant officer or non-commissioned officer forfeiture in the prescribed manner seniority of rank;

(*i*) where the offence is desertion, forfeiture of service;

(*j*) fine of a sum not exceeding the equivalent of ninety days' pay;

(*k*) in the case of warrant officer or non-commissioned officer, reprimand or admonition; and

(*l*) stoppages (of pay), where an offence has occasioned any expense, loss or damage;

(3) For the purposes of this Part, a punishment specified in any paragraph in the scale in subsection (2) shall be treated as less than the punishment specified in the preceding paragraphs, and greater than those specified in the following paragraphs, of the scale:

Provided that detention shall not be deemed to be a less punishment than imprisonment if the term of detention is longer than the term of imprisonment.

(4) Save as expressly provided in this Act, not more than one punishment shall be awarded by a court-martial for any one offence.

(5) A soldier sentenced by a court-martial to imprisonment may, in addition thereto, be sentenced to be discharged with ignominy from the Defence Force, and a warrant officer sentenced by court-martial to imprisonment may, in addition thereto, be sentenced to dismissal from the Defence Force.

(6) Where a warrant officer or non-commissioned officer is sentenced by a court-martial to imprisonment, detention or field punishment, he shall also be sentenced to be reduced to the rank:

Provided that if the court-martial failed to sentence him to be so reduced, the sentence shall not be invalid but shall be deemed to include a sentence of reduction to the ranks.

(7) In the case of a warrant officer or non-commissioned officer a reprimand or admonition may be awarded by court-martial in addition to forfeiture of seniority of rank or a fine.

(8) Where an offender is on active service when sentence of a court-martial is announced, a fine may be awarded in addition to field punishment.

(9) Stoppages (of pay) may be awarded by a court-martial either in addition to or without any other punishment.

(10) Where an offender has been sentenced by a court-martial to detention, then if he is subsequently sentenced by a court-martial to imprisonment any part of the sentence of detention which has not been served shall thereupon be remitted by virtue of this subsection.

(11) Without prejudice to the validity of any award, an offender shall not be kept continuously in detention under this Act for more than two years.

Field punishment

83. Field punishment shall consist of such duties or drills, in addition to those which the offender might be required to perform if he were not undergoing punishment, and such loss of privileges, as may be provided by or under regulations to be made by the Defence Council, and may include confinement in such place or manner as may be so provided and such personal restraint as may be necessary to prevent the escape of the offender and as may be so provided.

Division 12—Arrest

Power to arrest offenders

84.—(1) Any person subject to military law under this Act found committing an offence against any provision of this Act or alleged to have committed or reasonably suspected of having committed any such offence may be arrested in accordance with the following provisions of this section.

(2) An officer may be arrested by an officer subject to service law of superior rank, or, if engaged in a quarrel or disorder, by an officer subject to service law of any rank.

(3) A soldier may be arrested by any officer, warrant officer or non-commissioned officer subject to service law:

Provided that a person shall not be arrested by virtue of this subsection except by a person of superior rank.

(4) A provost officer, or any officer, warrant officer or non-commissioned officer subject to service law lawfully exercising authority under a provost officer or on his behalf, may arrest any officer or soldier:

Provided that an officer shall not be arrested by virtue of this subsection except on the order of another officer.

(5) The power of arrest given to any person by this section may be exercised either personally or by ordering into arrest the person to be arrested or by giving orders for that person's arrest.

Avoiding delay after arrest

85.—(1) The allegations against any person subject to military law under this Act who is under arrest shall be duly investigated without unnecessary delay and, as soon as may be practicable, either proceedings shall be taken to deal with the alleged offence or the person shall be released from arrest.

(2) Where any person subject to military law under this Act, having been taken into military custody, remains under arrest for a longer period than eight days without either a court-martial for his trial being assembled or the date for his trial by the High Court having been fixed, a special report on the necessity for further delay shall be made by his commanding officer to the Defence Council and the Director of Public Prosecutions in the prescribed manner, and a similar report will be made to those like authorities and in the like manner every eight days until either a court-martial is assembled or the trial by the High Court is commenced or the offence is dealt with summarily or he is released from arrest:

Provided that in the case of a person on active service compliance with this subsection shall be excused in so far as it is not reasonably practicable having regard to the exigencies of military operations.

(3) For the purposes of section 63 (1), the question as to whether there has been unnecessary delay in the taking of any steps for the investigation of allegations against a person under arrest shall be determined without regard to subsection (2).

Division 13—Investigation of, and Summary Dealings With, Charges

Investigation of charges by commanding officer

86. Before an allegation against a person subject to military law under this Act (hereinafter referred to as "the accused") that he has committed an offence against any provision of this Part is further proceeded with, the allegation shall be reported, in the form of a charge, to the accused's commanding officer and the commanding officer shall investigate the charge in the prescribed manner.

Charges to be dealt with summarily or by court-martial

87.—(1) After investigation, a charge against an officer below the rank of colonel or against a warrant officer may be dealt with summarily by the appropriate superior authority in accordance with this Part.

(2) After investigation, a charge against a non-commissioned officer or private soldier may be dealt with summarily by his

commanding officer, subject to, and in accordance with, the following provisions of this Part.

(3) Any charge not dealt with summarily by the appropriate superior authority shall, after investigation—

(*a*) in the case of an officer of the rank of colonel or above, be remanded for trial by the High Court; or

(*b*) in any other case, be remanded for trial by court-martial.

(4) Notwithstanding the other provisions of this section, where a commanding officer has investigated a charge against—

(*a*) an officer or warrant officer; or

(*b*) a non-commissioned officer or private soldier,

which is not one which can be dealt with summarily, the commanding officer may dismiss the charge if he is of opinion that it ought not to be further proceeded with.

(5) References in this Act to dealing summarily with a charge are references to the taking by the commanding officer or appropriate superior authority of the accused, as the case may require, of the following action, that is to say, determining whether the accused is guilty and, dismissing the charge or recording a finding of guilty accordingly, and awarding punishment.

(6) A remand for trial by the High Court referred to in subsection (3) (*a*) shall be deemed to constitute a committal by a magistrate for trial to the High Court for the purpose of section 262 of the Criminal Procedure and Evidence Code. Cap. 8:01

Further proceedings on charges against non-commissioned officers and soldiers

88.—(1) The following provisions of this section shall have effect where the commanding officer has investigated a charge against a non-commissioned or private soldier.

(2) If the charge is not one which can be dealt with summarily and the commanding officer is of opinion that it should not be so dealt with, he shall take the prescribed steps with a view to the charge being tried by court-martial.

(3) If, the commanding officer shall proceed to deal with the charge summarily, and he records a finding of guilty he may award on, or more of the following punishments, that is to say—

(*a*) if the accused is a non-commissioned officer—

(i) a fine of a sum not exceeding the equivalent of twenty-eight days pay;

(ii) severe reprimand;

(iii) reprimand;

(iv) stoppages (of pay), where the offence has occasioned any expense, loss or damage; and

(v) admonition;

(*b*) if the accused is a private soldier—

(i) detention for a period not exceeding forty-two days, or if the accused is on active service, field punishment for a period not exceeding forty-two days;

(ii) a fine of a sum not exceeding the equivalent of twenty-eight days pay;

(iii) stoppages (of pay), where the offence has occasioned any expense, loss or damage;

(iv) confinement to barracks for a period not exceeding fourteen days;

(v) extra guards or pickets, and

(vi) admonition.

(4) Where the accused is an acting warrant officer or an acting non-commissioned officer, and the commanding officer finds him guilty, the commanding officer may, if he awards no other punishment except stoppages (of pay), order the accused to revert to his permanent rank or to assume an acting rank lower than that held by him but higher than his permanent rank.

(5) Notwithstanding subsection (4), where the accused is a corporal or lance-corporal and the commanding officer finds him guilty, the commanding officer may, if he awards no other punishment except stoppages (of pay), order the accused to be reduced to a lower rank.

(6) No fine or severe reprimand or reprimand, confinement to barracks, extra guards or pickets, or admonition shall be awarded for an offence for which detention is awarded.

(7) A fine shall not be awarded for an offence for which stoppages (of pay) have been awarded.

(8) Notwithstanding subsection (3), where a commanding officer has determined that the accused is guilty and if the charge is dealt with summarily will award a punishment other than severe reprimand, reprimand or admonition, confinement to barracks, extra guards or pickets, or where a finding of guilty (whatever the punishment awarded) will involve a forfeiture of pay, the commanding officer shall not record a finding until after affording the accused an opportunity of electing to be tried by court-martial; and if the accused so elects and does not subsequently in accordance with regulations withdraw his election, the commanding officer shall not record a finding but shall take the prescribed steps with a view to the charge being tried by court-martial.

(9) Where a charge is one which can be dealt with summarily, but the commanding officer has taken steps with a view to its being

tried by court-martial, the Commander may refer the charge back to the commanding officer to be dealt with summarily; and on any such reference subsections (3), (4), (5), (6), (7) and (8) shall apply as if the commanding officer had originally been of opinion that the charge should be dealt with summarily:

Provided that a charge shall not be referred back where the accused has elected to be tried by court-martial and has not withdrawn his election.

Further proceedings on charges against officers and warrant officers

89.—(1) After investigating a charge against an officer or warrant officer, the commanding officer shall, unless he has dismissed the charge, submit it in the prescribed manner to the appropriate superior authority, who shall determine how the charge is to be proceeded under subsections (2) and (3) of this section.

(2) If the charge is one which can be dealt with summarily, it may be so dealt with by the appropriate superior authority.

(3) If the charge is not one which can be dealt with summarily or the charge is one which can be dealt with summarily but the appropriate superior authority is of opinion that it should not be so dealt with, the prescribed steps shall be taken with a view to its being tried—

(*a*) by the High Court in the case of members who are officers of the rank of colonel and above; or

(*b*) by court-martial in the case of members who are below the rank of colonel.

(4) Where the charge is dealt with summarily by the appropriate superior authority, he shall investigate the charge in the prescribed manner and if, upon such investigation, he determines that—

(*a*) the accused is guilty of the charge, he shall record a finding of guilty; and

(*b*) the accused is not guilty of the charge, he shall record a finding of not guilty and accordingly dismiss the charge.

(5) If the appropriate superior authority records a finding of guilty, he may award one or more of the following punishments, that is to say—

(*a*) forfeiture in the prescribed manner of seniority of rank;

(*b*) a fine of a sum not exceeding the equivalent of twenty-eight days pay;

(*c*) severe reprimand;

(*d*) reprimand;

(*e*) stoppages (of pay), where the offence has occasioned any expense, loss or damage; and

(*f*) admonition:

Provided that the appropriate superior authority may not award both forfeiture of seniority of rank and a fine.

(6) Notwithstanding the provisions of subsection (4)—

(*a*) where the appropriate superior authority has determined that the accused is guilty and if the charge is dealt with summarily he may award forfeiture of seniority, a fine or stoppages (of pay); or

(*b*) where a finding of guilty will involve a forfeiture of pay, the appropriate superior authority shall not record a finding until affording the accused an opportunity of electing to be tried by court-martial, and if the accused so elects, the appropriate superior authority shall not record a finding but shall take the prescribed steps with a view to the charge being tried by court-martial.

(7) If the charge is one which can be dealt with summarily, it may be referred to the Commander for guidance.

Dismissal of charges referred to the Commander

90.—(1) Notwithstanding the provisions of sections 88 and 89, where a charge—

(*a*) has been referred to the Commander with a view to its being tried by court-martial, or

(*b*) has been referred to the Commander for determination of how it is to be proceeded with,

he may, subject to this section, refer the charge back to the commanding officer of the accused with a direction that it shall be dismissed and in any such case the commanding officer shall dismiss the charge.

(2) The reference back of a charge in pursuance of this section shall be without prejudice to the preferring of another charge if the Commander has so directed or the commanding officer thinks fit.

Power of commanding officers to delegate powers

91. Regulations made under this Act may confer on commanding officers power to delegate the powers of commanding officers, in such cases and to such extent and to such officer or class of officers as may be specified in the regulations.

Limitations of powers to summary dealing with charges

92.—(1) The charges which may be dealt with summarily by a commanding officer, and the charges which may be dealt with summarily by the Commander, shall be such as may be specified by regulations made under this Act.

(2) In such cases as may be specified in that behalf by regulations made under this Act, the powers of a commanding officer to award punishment shall be subject to such limitations as may be so specified.

Division 14—Court-martial: General Provisions

Trial by and powers of, court-martial

93. Subject to this Act, a court-martial convened under this Act shall have power to try any person subject to military law under this Act for any offence which under this Act is triable by court-martial and to award for any such offence any punishment authorized by this Act for that offence.

Officers having power to convene court-martial

94.—(1) A court-martial may be convened by the Commander or by any officer not below field rank authorized by Commander to convene courts-martial.

(2) Any authorization under subsection (1) to convene courts-martial—

(*a*) may be made subject to restrictions, reservations, exceptions or conditions;

(*b*) may be addressed to officers by name or by designation of their offices, and may be issued or given to a named or designated officer and to the person for the time being performing the duties of his office, or to a named or designated officer and his successor in that office or to a named or designated officer and such person and successors; and

(*c*) may be varied or may be revoked either wholly or in part by the officer by whom it was given or his successor in office.

Constitution of court-martial

95.—(1) Every court-martial shall consist of—

(*a*) an officer designated as the presiding officer appointed by the appropriate superior authority; and

(*b*) not less than four other members who shall—

(i) all be officers if the accused is an officer;

(ii) include at least one non-commissioned officer if the accused is a non-commissioned officer or a private soldier.

(2) A person officer shall not be appointed to be the presiding officer or a member of a court-martial unless he has served in the Defence Force for—

(*a*) a period of not less than five years, in the case of an officer; or

(*b*) a period of not less than seven years, in the case of a non-commissioned officer or a private soldier.

(3) The presiding officer of a court-martial shall be appointed by order of the convening officer and shall not be below the field rank unless in the opinion of the convening officer an officer of field rank having suitable qualifications is not, with due regard to the public service, available; and in any event the presiding officer of a court-martial shall not be below the rank of major.

(4) The members of a court-martial shall be appointed by order of the convening officer or in such other manner as may be prescribed.

Supplementary provisions as to constitution of court-martial

96.—(1) The officer who convenes a court-martial shall not be a member of that court-martial.

(2) An officer who, at any time between the date on which the accused was charged with the offence and the date of the trial, has been the commanding officer of the accused, and any other officer who has investigated the charge against the accused, or who, under service law, has held, or has acted as one of the persons holding, an inquiry into matters relating to the subject matter of the charge against the accused, shall not be the presiding officer or sit as a member of the court-martial or act as judge advocate at such a court-martial.

(3) Where the officer convening a court-martial appoints a captain to be presiding officer, being of opinion that a field officer having suitable qualifications is not, with due regard to the public service, available, the order convening the court-martial shall contain a statement of such opinion, and that statement shall be conclusive.

Place for sitting of court-martial and adjournment to other places

97.—(1) Subject to this section, a court-martial shall sit at such place, whether within or outside Malaŵi, as may be specified in the order convening the court.

(2) A court-martial sitting at any place shall, if the convening officer directs it to sit at some other place, and may without any such direction if it appears to the court requisite in the interest of justice to sit at some other place, adjourn for the purpose of sitting at that other place.

Division 15—Court-martial: Provisions Relating to Trial

Challenges by accused

98.—(1) An accused about to be tried by court-martial shall be entitled to object on any reasonable grounds, to any member of the court, whether appointed originally or in lieu of another member.

(2) For the purposes of enabling the accused to avail himself of the right conferred by subsection (1), the names of the members of the court shall be read over in the presence of the accused before they are sworn, and he shall be asked whether he objects to any of those members.

(3) Every objection made by the accused to any member shall be considered by the other members of the court.

(4) If objection is made to the presiding officer, and not less than one-third of the other members of the court allow it, the court shall adjourn and the convening officer shall appoint another presiding officer.

(5) If objection is made to a member of the court other than the presiding officer, and not less than one-half of the members of the court allow it, the member objected to shall retire and the vacancy may, and if otherwise the number of members would be reduced to below the legal minimum shall, be filled in the prescribed manner by another member.

Administration of oaths or affirmations

99.—(1) Subject to this section, an oath shall be administered to every member of a court-martial and to any person in attendance on the court-martial as a judge advocate, officer under instruction, shorthand writer or interpreter.

(2) Every witness before a court-martial shall be examined on oath except that where a child of tender years called as a witness does not in the opinion of the court understand the nature of an oath, his evidence may be received, though not given upon oath, if in the opinion of the court—

(*a*) he is possessed of sufficient intelligence to justify the reception of the evidence; and

(*b*) he understands the duty of speaking the truth.

(3) Where the evidence is given on behalf of the prosecution under subsection (2) the accused is not liable to be convicted unless it is corroborated try some other material evidence in support thereof implicating the accused.

(4) The unsworn evidence of a child of tender years may not be corroborated by the unsworn evidence of another child of tender years.

(5) For the purposes of this section, a child of tender years is a child under fourteen years of age but not under eight years of age.

(6) If—

(*a*) a person required by virtue of this Act to take an oath for the purposes of proceedings before a court-martial objects to be sworn, and states as the ground of his objection either that he has no religious belief or that the taking of an oath is contrary to his religious belief; or

(*b*) it is not reasonably practicable to administer an oath to such a person in the manner appropriate to his religious belief,

he shall be permitted to make a solemn affirmation in the prescribed form instead of taking an oath.

(7) An oath or affirmation required to be administered under this section shall be in the prescribed form, and shall be administered at the time and by the person and in the manner prescribed.

(8) For the purposes of this section—

"reasonably practicable" means reasonably practicable without inconvenience or delay; and

"officer under instruction" includes a non-commissioned officer.

Court-martial to sit in open court`

100.—(1) Subject to this section, a court-martial shall sit in open court and in the presence of the accused.

(2) Nothing in subsection (1) shall affect the power of a court-martial to sit in camera on the ground that it is necessary or expedient in the interest of the administration of justice so to do; and without prejudice to that power a court-martial may order that, subject to any exceptions the court may specify, the public shall be excluded from all or any part of the proceedings of the court if it appears to the court that any evidence to be given or statement to be made in the course of the proceedings or that part, as the case may be, might otherwise lead to the disclosure of any information which would or might be directly or indirectly useful to an enemy.

(3) A court-martial shall sit in closed court while deliberating on their finding or sentence on any, charge.

(4) A court-martial may sit in closed court on any other deliberation amongst the members.

(5) Where a court-martial sits in closed court no person shall be present except the members of the court and such other persons as may be prescribed.

Dissolution of court-martial

101.—(1) Where, whether before or after the commencement of the trial, it appears to the convening officer necessary or expedient in the interest of the administration of justice that a court-martial should be dissolved, the convening officer may by order dissolve the court-martial.

(2) Without prejudice to the generality of subsection (1), if after the commencement of a trial a court-martial is, by reason of the death of one of the members or for any other reason, reduced below the legal minimum, it shall be dissolved.

(3) If after the commencement of the trial the presiding officer dies or is otherwise unable to attend and the court is not reduced below the legal minimum, then, if the senior member of the court is of the rank of captain or is of higher rank the convening officer may appoint him presiding officer and the trial shall proceed accordingly, but if he is not, the court shall be dissolved.

(4) Without prejudice to the generality of subsection (1), if after the commencement of the trial it is represented to the convening officer that owing to the sickness or other incapacity of the accused

it is impracticable, having regard to all the circumstances, to continue the trial within a reasonable time, the convening officer may dissolve the court.

(5) Where a court-martial is dissolved under the foregoing provisions of this section the accused may be tried by another court-martial.

Decisions of court-martial

102.—(1) Subject to this section, every question to be determined on a trial by court-martial shall be determined by a majority of votes of the members of the court.

(2) In the case of an equality of votes on the finding, the court shall acquit the accused.

(3) A finding of guilty where the only punishment which the court can award is death shall not have effect unless it is reached with the concurrence of all the members of the court; and, where on such a finding being come to by the majority of the members there is no such concurrence, the court shall be dissolved and the accused may be tried by another court.

(4) Where the accused is found guilty and the court has power to sentence him either to death or to some less punishment, sentence of death shall not be passed without the concurrence of all the members of the court.

(5) In the case of an equality of votes on the sentence, or on any question arising after the commencement of a trial, except the finding, the presiding officer shall have a second or casting vote.

Finding and sentence

103.—(1) Without prejudice to section 100, the finding of a court-martial on each charge shall be announced in open court.

(2) Any finding of guilty shall be, and be announced as being, subject to confirmation.

(3) Any sentence of a court-martial, together with any recommendation to mercy, shall be announced in open court and a sentence of a court-martial shall be, and be announced as being, subject to confirmation.

Power to convict of an offence other than that charged

104.—(1) An accused charged before a court-martial with an offence under this Act may, on failure of proof of the offence having been committed under circumstances involving a higher degree of punishment, be found guilty of the offence as having been committed under circumstances involving a less degree of punishment.

(2) An accused charged before a court-martial with any offence may be found guilty of attempting to commit that offence.

(3) An accused charged before a court-martial with attempting to commit an offence may be convicted on that charge notwithstanding that it is proved that he actually committed that offence.

(4) Where an accused is charged before a court-martial under section 80 in respect of attempting to commit a civil offence, he may be convicted on that charge notwithstanding that it is proved that he actually committed that civil offence.

(5) Where an accused is charged before a court-martial with an offence against section 80, and the corresponding civil offence is one in proceedings for which, if he had been tried by a civil court for committing the offence in Malaŵi, he might have been found guilty of another civil offence, then, if the court finds that he has committed that other civil offence, he may be convicted of an offence against section 80 in respect of the commission of that other civil offence.

(6) An accused charged before a court-martial with an offence specified in the first column of the Second Schedule may be found guilty of an offence specified in relation thereto in the second column of that Schedule.

Rules or evidence

105.—(1) Subject to this Act, the rules as to the admissibility of evidence to be observed in proceedings before courts-martial shall be the same as those observed in civil courts in Malaŵi, and no person shall be required in proceedings before a court-martial to answer any question or to produce any document which he could not be required to answer or produce in similar proceedings before civil courts in Malaŵi.

(2) Despite the provisions of subsection (1), a statutory declaration shall, in a trial by a court-martial, be admissible as evidence of the facts stated in the declaration in a case where, and to the extent to which, oral evidence to the like effect would be admissible in that trial:

Provided that a statutory declaration shall not be admitted in evidence in any such trial on behalf either of the prosecution or of the defence—

(*a*) where the declaration is put forward on behalf of the prosecution, unless a copy of the declaration has, not less than seven days before the commencement of the trial, been served on the accused;

(*b*) where the declaration is put forward on behalf of the defence, unless a copy of the declaration has, not less than seven days before the commencement of the trial, been served on the commanding officer of the accused, or the commanding officer

of the accused has given his agreement in writing to its admission;

(*c*) in any case, if not later than three days before the commencement of the trial or within such further time as the court-martial may in special circumstances allow, the accused or, as the case may be, the commanding officer of the accused serves a notice in the prescribed form on the commanding officer or accused requiring oral evidence to be given in lieu of the declaration; and

(*d*) in any case, if the court-martial is of opinion that it is desirable in the interest of justice that oral evidence should be given in lieu of the declaration and declares that it is of that opinion.

(3) A court-martial shall take judicial notice of all matters of notoriety including all matters within the general service knowledge of the court, and of all other matters of which judicial notice would be taken in a civil court in Malaŵi.

Privileges of witnesses and others at court-martial

106. A witness before a court-martial or any other person whose duty it is to attend on or before the court shall be entitled to the same immunities and privileges as a witness before the High Court.

Offences by civilians in relation to court-martial

107. Where in Malaŵi any person not subject to military law, under this Act—

(*a*) having been duly summoned to attend as a witness before a court-martial, fails to comply with the summons; or

(*b*) refuses to swear an oath or make solemn affirmation when duly required by a court-martial to do so; or

(*c*) refuses to produce any document in his custody or under his control, which a court-martial has lawfully required him to produce; or

(*d*) when a witness refuses to answer any question which a court-martial has lawfully required him to answer; or

(*e*) willfully insults any person, being a member of a court-martial or a witness or any other parson whose duty it is to attend on or before the court, while that person is acting as a member thereof or is so attending, or willfully insults any such person as aforesaid while that person is going to or returning from the proceedings of the court; or

(*f*) willfully interrupts the proceedings of a court-martial or otherwise misbehaves before the court; or

(*g*) does any other thing which would, if the court-martial had been a court of law having power to commit for contempt, have been contempt of that court,

the presiding officer of the court-martial may certify, the offence of that person under his hand to the High Court, and the High Court may thereupon inquire into the alleged offence and, after hearing any witnesses who may be produced against or on behalf of the parson charged with the offence, and after hearing any statement that may be offered in defence, punish or take steps for the punishment of that person in like manner as if he had been guilty of contempt of the High Court.

Division 16—Confirmation, Revision and Review of Proceedings of Court-Martial

Confirmation of proceedings of court-martial

108.—(1) Where a court-martial finds the accused guilty on any charge, the record of the proceedings of the court-martial shall be transmitted to the Defence Council for confirmation of the finding and sentence of the court on that charge.

(2) A finding of guilty, or sentence of a court-martial shall not be treated as a finding or sentence of the court until confirmed:

Provided that this subsection shall not affect the keeping of the accused in custody pending confirmation or the operation of sections 109 and 110 or the provisions of this Act as to confirmation or approval.

Petition against finding or sentence

109. At any time after a court-martial has sentenced the accused, but not later than the prescribed time after confirmation is completed the accused may in the prescribed manner present a petition against the finding or sentence or both.

Revision of findings of court-martial

110.—(1) The Defence Council may direct that a court-martial shall revise any findings of guilty come to by the court in any case where it appears to the Defence Council—

(*a*) that the finding was against the weight of evidence; or

(*b*) that some question of law determined at the trial and relevant to the finding was wrongly determined.

(2) Any direction of the Defence Council under subsection (1) shall be accompanied by the necessary directions for the reassembly of the court, and shall contain a statement of the reason for the direction.

(3) On any revision of a finding the court shall reconsider the finding, and unless the court adheres to the finding, may substitute the finding with either a finding of not guilty or any other finding to which the court could originally have come at the trial in lieu of the finding under revision.

(4) On any revision of finding the court shall not have power to receive further evidence.

(5) Where on any revision of a finding the court either adheres to the original finding or substitutes the finding with a finding of guilty of another offence, or of the same offence in different circumstances, the court may substitute a different sentence for the original sentence:

Provided that the court shall not have power to substitute a sentence of a punishment greater than the punishment or greatest of the punishments awarded by the original sentence, or to substitute a sentence which in the opinion of the court is more severe than the original sentence.

(6) The Defence Council shall not have power to direct the revision of any substituted finding come to by the court on a previous direction of the Defence Council, or the revision of the original finding if adhered to by the court on such a previous direction; but save as aforesaid, this Act shall apply to the proceedings of the court on any such revision as it applies to the deliberations of the court on the original finding or sentence, and any substituted finding or sentence shall be treated for all purposes as an original finding or sentence of the court:

Provided that the decision of the court on the revision shall not be required to be announced in open court.

Powers of the Defence Council on confirmation

111.—(1) Subject to section 110 and to the provisions of this section, the Defence Council shall deal with the finding or sentence of a court-martial either by withholding confirmation, if of opinion that the finding of the court is unreasonable or cannot be supported having regard to the evidence or involves a wrong decision on a question of law or that, on any ground, there was a miscarriage of justice, or by confirming the finding or sentence or referring the finding or sentence, or both, for confirmation to the President.

(2) In lieu of withholding confirmation of the finding of a court-martial, the Defence Council may, if—

(*a*) some other finding of guilty could have been validly made by the court-martial on the charge before it; and

(*b*) the Defence Council is of opinion that the court-martial must have been satisfied of the facts necessary to justify that other finding,

substitute that other finding, and if the Defence Council does so it shall consider in what manner, if at all, the powers conferred by subsection (4) should be exercised.

(3) Where it appears to the Defence Council that a sentence of a court-martial is invalid, it may, in lieu of withholding confirmation of the sentence, substitute the sentence with a sentence of any

punishment or punishments which could have been awarded by the court, not being greater than the punishment or greatest of the punishments awarded by the court and not in its opinion more severe than that punishment or those punishments.

(4) In confirming the sentence of a court-martial, the Defence Council may—

(*a*) remit in whole or in part any punishment passed by the court; or

(*b*) commute any such punishment for one or more punishment or punishments provided by this Act, being less than the punishment commuted.

(5) In confirming any sentence, the Defence Council may postpone the carrying out of the sentence for such time as seems expedient, and the Defence Council may extend or terminate any postponement ordered under this subsection.

(6) A finding or sentence substituted by the Defence Council, or any sentence having effect after the Defence Council has remitted or commuted punishment, shall be treated for all purposes as a finding or sentence of the court duly confirmed.

(7) The confirmation of a finding or sentence shall not be deemed to be completed until the finding or sentence has been promulgated, and in the event of any such substitution, remission or commutation as aforesaid the finding or sentence shall be promulgated as it has effect after the substitution, remission or commutation.

(8) Where the Defence Council determines to withhold confirmation, the determination shall be promulgated and shall have effect as from the promulgation thereof.

Approval of death sentence by President

112. Subject to the proviso to section 150, a sentence of death shall not be carried into effect unless it has been approved by the President.

Review of finding and sentence of court-martial`

113.—(1) A finding or sentence which has been confirmed may at any time be reviewed by the President and if, after confirmation of a finding or sentence, a petition is duly presented under section 109 against the finding or sentence, then, subject to this section, the finding or sentence shall be so reviewed as soon as may be after the presentation of the petition and after consideration of the matters alleged therein.

(2) If an application for leave to appeal is received by the Registrar of the court of appeal under Part VI of this Act, so much of subsection (1) as requires the review of a finding or sentence against which a petition has been presented shall thereupon cease

to apply to the finding to which the appeal or the application for leave to appeal relates and to the sentence passed in consequence of that finding.

(3) On a review under this section the President may—

(*a*) in so far as the review is of a finding, quash the finding and, if the sentence relates only to the finding quashed, the sentence; or

(*b*) in so far as the review is of a sentence, quash the sentence; or

(*c*) in any case, exercise the like powers of substituting findings, substituting valid for invalid sentences and remitting or commuting a punishment as are conferred on the Defence Council by section 111 (2), (3), and (4),

and any substituted finding or sentence, or sentence having effect after the remission or commutation of punishment, shall be treated for all purposes as a finding or sentence of the court duly confirmed.

(4) Where the President exercises any of the powers conferred by subsection (3), the determination shall be promulgated and shall have effect as from the promulgation thereof.

Reconsideration of sentences of imprisonment and detention

114.—(1) Sentence of imprisonment and detention passed by courts-martial may be reconsidered by the Defence Council, and if on any such reconsideration it appears that the conduct of the offender since his conviction has been such as to justify remission of the sentence, whether in part or in whole, it shall be remitted accordingly.

(2) The power to reconsider a sentence may be exercised at any time after confirmation, and where after review a sentence remains effective it shall be reconsidered at intervals of six months:

Provided that delay in complying with this subsection shall not invalidate the sentence.

Division 17—Review of Summary Findings and Awards

Review of summary findings and awards

115.—(1) Where a charge has been dealt with summarily, otherwise than by the dismissal thereof, the authority mentioned in subsection (2) may at any time review the findings or awards.

(2) The authority for purposes of subsection (1) is—

(*a*) the Defence Council; or

(*b*) any officer superior in command to the officer who dealt summarily with the charge.

(3) Where on review under this section it appears to the authority expedient so to do by reason of any mistake of law in the

proceedings on the summary dealings with the charge or of anything occurring in those proceedings which in the opinion of the authority involved substantial injustice to the accused, the authority may quash the finding.

(4) If a finding in any proceedings is quashed under subsection (3) and the award made in those proceedings relates only to the finding quashed, the authority shall also quash the award; and if the award relates also to any other findings and it appears to the authority that the award was not warranted by this Act in respect of that other finding, the authority may vary the award by substituting such punishment or punishments with another punishment or other punishments as the authority may think proper, being a punishment or punishments which could have been included in the original award in relation to that other finding, and not being in the opinion of the authority more severe than the punishment or punishments included in the original award.

(5) Where on a review under this section it appears to the authority that a punishment awarded was invalid, or too severe, or, where the award included two or more punishment, that those punishments or some of them could not validly have been awarded in combination or are, taken together, too severe, the authority may vary the award by substituting such punishment or punishments with another punishment or other punishments as the authority may think proper, being a punishment or punishments which could have been included in the original award and not being in the opinion of the authority more severe than the punishment or punishments included in the original award.

Division 18—Findings of Insanity

Provisions where accused found insane

116.—(1) Where, on the trial of a person by court-martial, it appears to the court that the accused is by reason of insanity unfit to stand his trial, the court shall so find; and if the finding is confirmed in accordance with the following provisions of this section the accused shall be kept in custody in such a manner as may be provided by or under regulations made under this Part until the directions of the President are known or until any earlier time at which the accused is fit to stand his trial.

(2) Where, on the trial of a person by court-martial, it appears to the court that the evidence is such as, apart from any question of insanity, to support a finding that the accused was guilty of any offence, but at the time of the acts or omissions constituting that offence the accused was insane, the court shall find that the accused was guilty of that offence but was insane at the time, and thereupon the accused shall be kept in custody in such manner as may be provided by or under regulations made under this Part until the directions of the President are known.

(3) In the case of any such findings as in subsection (1) or (2) the President may give orders for the safe custody of the accused during his pleasure in such place and in such manner as the President thinks it fit.

(4) A finding under subsection (1) shall not have effect unless and until the finding has been confirmed by the Defence Council and has been promulgated.

(5) Where the court or the Defence Council come to or substitute a finding of guilty but insane the Defence Council or, as the case may be, the President shall not have power to substitute a finding of guilty; but save as aforesaid the provisions of this Act as to revision, confirmation and review, and in particular the provisions of this Act which confer power to substitute for any finding, any other finding which could have been come to by the court-martial in question, apply in relation to such findings as are provided for by subsection (2) as those provisions apply in relation to other findings of guilty.

Division 19—Commencement and Duration of Sentences

Commencement of sentences

117. —(1) A military sentence of imprisonment or detention or a sentence of field punishment shall, subject to section 142 (4) (which empowers the court of appeal in certain cases to direct that a sentence shall begin to run from the day on which the court dismisses an application for leave to appeal), begin to run from the beginning of the day on which sentence was originally pronounced by the court-martial trying the offender or, as the case may be, was originally awarded by his commanding officer.

(2) A sentence of imprisonment or detention passed by a court-martial on a soldier which is suspended in pursuance of section 119 before he has been committed to prison or a military establishment shall not begin to run until the beginning of the day on which the suspension is determined:

Provided that where the sentence is suspended by the Defence Council and the President determines the suspension, the President may direct that the sentence shall run from such earlier date, not earlier than the day on which sentence was originally pronounced by the court-martial, as the President may specify.

Duration of imprisonment and detention

118.—(1) Where a soldier has been sentenced to imprisonment or detention by a court-martial, and the sentence is suspended in pursuance of section 119 after he has been committed to prison or a military establishment, the currency of the sentence shall be suspended from the beginning of the day after the day on which he is released in accordance with that section until the beginning of the day on which the suspension is determined.

(2) Where any person serving a military sentence of imprisonment or detention becomes unlawfully at large during the currency of the sentence, then, in calculating the period for which he is liable to be imprisoned or detained in pursuance of the sentence, no account shall be taken of time elapsing during the period beginning with the day on which, as a person having become unlawfully at large, he is taken into military custody or the custody of a civil authority or, not having been taken into such custody, returns to the place in which he was imprisoned or detained before he became unlawfully at large:

Provided that if he satisfies such authority as may be specified in that behalf by or under Imprisonment and Detention Regulations made by the Defence Council, that during any time during the last-mentioned period he was in the custody of a civil authority, otherwise than on account of an offence committed by him while unlawfully at large, the last-mentioned time shall not be disregarded in calculating the period for which he is liable to be imprisoned or detained in pursuance of the military sentence.

(3) In subsection (2), the expression "civil authority" means a civil authority authorized by law to detain persons, and includes a police officer.

(4) Without prejudice to subsection (2), where any person serving a military sentence of imprisonment or detention has in accordance with Imprisonment and Detention Regulations been temporally released on compassionate grounds, then, in calculating the period for which he is liable to be imprisoned or detained in pursuance of the sentence, no account shall be taken of time elapsing during the period beginning with the day after that on which he is released and ending with the day on which he is required to return to custody.

(5) A person who for any period is released as mentioned in subsection (4) or who is otherwise allowed, in pursuance of Imprisonment and Detention Regulations, out of any military establishment or otherwise out of military custody for any, period or subject to any condition shall, on failure to return at the expiration of the period or to comply with the condition, be treated for the purposes of subsection (2) as being unlawfully at large.

(6) A person serving a military sentence of imprisonment or detention in civil custody who, after being temporarily released under civil law, is at large at any time during the period for which he is liable to be detained in civil custody in pursuance of his sentence shall be deemed to be unlawfully at large if the period for which he was temporarily released has expired or if an order recalling him has been made in pursuance of civil law.

(7) References in subsection (6) to release or recall under civil law are references to release or recall under the Prisons Act. Cap. 9:02

Suspension of sentences

119.—(1) The following provisions of this section shall have effect with regard to the suspension of a sentence of imprisonment or detention passed by a court-martial on a soldier.

(2) Without prejudice to section 111 (5), in confirming such a sentence the Defence Council may order that the sentence shall be suspended.

(3) Any such sentence which is not for the time being suspended may, on the review or reconsideration of the sentence, be suspended by order of the Defence Council or the President, as the case may be.

(4) The suspension of any such sentence may, without prejudice to its again being suspended, be determined on the review or reconsideration of the sentence by an order of the Defence Council or the President, as the case may be, committing the person sentenced to imprisonment or detention, as the case may be.

(5) Where, while any such sentence is suspended, the person sentenced is sentenced by court-martial to imprisonment or detention for a fresh offence, then, unless the balance of the earlier sentence is remitted by virtue of section 82 (1)—

(*a*) the court may determine the suspension of the earlier sentence by an order committing the person sentenced to imprisonment or detention, as the case may be, and if so the court shall direct whether the two sentences are to run concurrently or consecutively;

(*b*) if the court does not exercise the powers under paragraph (*a*), the Defence council may exercise those powers on the confirmation of the later sentence;

(*c*) if neither the court nor the Defence Council exercises the powers under paragraph (*a*) or (*b*), the President may exercise those powers on the review of the later sentence;

(*d*) where the powers under paragraphs (*a*), (*b*) or (*c*) are exercised, whether by the court, the Defence Council or the President, any power of suspension or remission exercisable in relation to the later sentence shall be exercisable also in relation to the earlier sentence:

Provided that this subsection has effect to section 82 (11).

(6) Without prejudice to the further suspension of the earlier sentence, an order under subsection (5) directing that the suspension of that sentence shall be determined shall not be affected by the later sentence not being confirmed or by its being quashed.

(7) Where the sentence of a person in custody is suspended, he shall thereupon be released.

(8) The maximum intervals for the reconsideration, under section 114 (2), of a sentence of imprisonment and detention which is suspended shall be three months, and not as specified under that subsection.

Restriction on serving of sentences of detention in prisons

120. A person shall not be required to serve any part of a military sentence of detention in a military or civil prison:

Provided that in such cases and subject to such conditions as may be specified by or under Imprisonment and Detention Regulations he shall, while in that prison, be confined and otherwise dealt with in the same manner as a person confined therein under like sentence of a civil court.

Special provision as to civil prisons in Malaŵi

121. A person sentenced to death or imprisonment and committed or transferred to a civil prison in pursuance of regulations made under section 140 or Imprisonment and Detention Regulations shall, while in that prison, be confined and otherwise dealt with in the same manner as a person confined therein under a like sentence of a civil court.

Special provisions as to carrying out or serving sentences outside Malaŵi

122. The President may from time to time make arrangements with the authorities of any country or territory outside Malaŵi whereby sentences of death passed by courts-martial may in accordance with regulations made under this Act be carried out in establishments under the control of those authorities, and military sentences of imprisonment or detention may, in accordance with regulations under this Act, be served wholly or partly in such establishments.

Country in which sentence of imprisonment or detention to be served

123.—(1) A person who is serving a military sentence of imprisonment or detention in Malaŵi, (in so far as may be specified by or under Imprisonment and Detention Regulations) be removed out of Malaŵi to any place where the unit or any part thereof to which for the time being he belongs is serving or is under orders to serve, but not to any other place.

(2) Subject to the following provisions of this section, a person sentenced under this Act by a court-martial held out of Malaŵi to imprisonment or detention for more than twelve months shall as soon as practicable after the confirmation of the sentence is completed be removed to Malaŵi.

(3) Where a person has been sentenced under this Act by a court-martial held out of Malaŵi to imprisonment or detention for more than twelve months, the Defence Council or the President may, notwithstanding anything in subsection (2), direct that he

shall not be required to be removed to Malaŵi until he has served such part of his sentence, not exceeding, in the case of a sentence of more than two years imprisonment, two years, as may be specified in the direction; and in determining whether or not to exercise the powers conferred by this subsection the Defence Council or the President shall have regard to any recommendation in that behalf made by the court-martial.

(4) Any direction of the Defence Council under this section may at any time be revoked by the Defence Council or by the President, or superseded by any direction of the Defence Council or the President which the Defence Council or the President could have given under subsection (3); and any direction of the President under this section may at any time be revoked by him or superseded as aforesaid.

(5) Any direction given under this section, and the revocation of any such direction, shall be promulgated.

(6) In ascertaining at any time for the purposes of this section the nature or length of a sentence, regard shall be had to any commutation or remission of the sentence previously directed.

Duties of officers in charge of prisons and others to receive prisoners

124.—(1) It shall be the duty, in so far as regulations made under this Part or Imprisonment and Detention Regulations so provide, of the superintendent or other person in charge of a prison, not being a military prison, to receive any person duly sent to that prison in pursuance of such regulations and to confine him until execution of the sentence is completed or the prisoner is discharged or delivered over in due course of law.

(2) Where a person is in military custody in pursuance of a military sentence of imprisonment or detention, then, on receipt of a written order in that behalf purporting to be signed by that person's commanding officer, it shall be the duty of any superintendent or other person mentioned in subsection (1) or the police officer in charge of a police station or of any person in charge of any other place in which prisoners may be lawfully confined to keep that person in custody for a period not exceeding seven days unless the person is earlier discharged or delivered over in due course of law.

Division 20—Trial of Persons Ceasing to be Subject to Military Law under this Act and Time Limits for Trials

Trial and punishment of offences under this Act not-withstanding offender ceasing to be subject thereto

125.—(1) Where an offence under this Act triable by court-marital has been committed, or is reasonably suspected of having been committed by any person while subject to military law under this Act, then in relation to that offence he shall be treated, for the purposes of the provisions of this Act relating to arrest, keeping in

custody, investigation of charges, trial and punishment by court-martial (including confirmation, review and reconsideration and suspension) and execution of sentences, as continuing subject to military law under this Act notwithstanding his ceasing at any time to be subject thereto.

(2) Where, while a person is in military custody by virtue of this section (whether before, during or after trial) he commits, or is reasonably suspected of having committed, an offence which if he were subject to military law under this Act would be an offence under this Act triable by court-martial, then in relation to that offence or suspected offence he shall be treated, for the purposes of the provisions of the Act mentioned in subsection (1) and the provisions of this Act thereof as to the summary dealing with charges, as having been subject to military law under this Act when the offence was committed or is suspected as having been committed and as continuing subject thereto thereafter.

(3) Where, by virtue of either subsection (1) or subsection (2), a person is treated as being at any time subject to military law under this Act for the purpose of any provision of this Act, that provision shall apply to him—

(*a*) if he holds any military rank, as to a person having that rank; or

(*b*) if otherwise, as to a person having the rank which he had when last actually subject to military law under this Act:

Provided that as respects any time after he has been sentenced for the offence in question and the sentence has been confirmed the provision shall apply to him, in any case, as to a private soldier.

(4) Where, apart from this subsection, any provision of this Act would under subsection (3) apply to a person, in relation to different offences, as to a person having different ranks, it shall apply to him as to a person having the lower or lowest of those ranks.

Division 21—Relation between Military and Civil Courts and Finality of Trials

Powers of civil courts

126.—(1) Save as provided in section 151, nothing in this Act shall restrict the offences for which persons may be tried by any civil court, or the jurisdiction of any civil court to try a person subject to military law under this Act for any offence.

(2) Where a person is tried by a civil court for any offence, and he has previously been sentenced by court-martial held under service law to punishment for any act constituting (whether wholly or in part) that offence, or in pursuance of this Act has been punished for any such act by his commanding officer or an

appropriate superior authority, the civil court shall, in awarding punishment, have regard to his punishment in pursuance of service law.

Persons not to be tried under this Act for offences already disposed of

127.—(1) Where a person subject to military law under this Act—

(*a*) has been tried for an offence by a competent civil court or a court-martial under service law;

(*b*) has been charged with an offence under service law, and has had the charge dismissed, or has been found guilty on the charge, by his commanding officer or the appropriate superior authority; and

(*c*) has had the offence condoned by his commanding officer,

he shall not be liable in respect of that offence to be tried by court-martial or to have the case dealt with summarily by his commanding officer or the appropriate superior authority.

(2) For the purposes of this section—

(*a*) a person shall not be deemed to have been tried by a court-martial if confirmation is withheld of a finding by the court-martial that he is guilty of the offence;

(*b*) a person shall not be deemed to have had an offence taken into consideration by a court-martial in sentencing him if confirmation of the sentence of the court is withheld or the sentence is quashed;

(*c*) a case shall be deemed to have been dealt with summarily by the commanding officer or appropriate superior authority notwithstanding that the finding of that officer or of the appropriate superior authority has been quashed or that the award of that officer or of the appropriate superior authority has been quashed or varied, on the review of such finding or awards;

(*d*) an offence shall be deemed to have been condoned by the commanding officer of a person alleged to have committed the offence if, and only if, that officer or any officer authorized by him to act in relation to the alleged offence has with knowledge of all relevant circumstances informed him that he will not be charged with the offence; and

(*e*) a person ordered under section 67 (2), or the corresponding provision of any service law, to be imprisoned or to undergo detention for an offence against that section or provision shall be deemed to have been tried by court-martial for the offence.

(3) Subject to section 143 (2) where confirmation of a finding of guilty of an offence is withheld the accused shall not be tried again

by court-martial for that offence unless the order convening the later court-martial is issued not later than twenty-eight days after the promulgation of the decision to withhold confirmation.

(4) Save as provided in the foregoing provisions of this section, proceedings for an offence against this Act, whether before a commanding officer or the appropriate superior authority or before a court-martial, shall not be barred on the grounds of condemnation.

Resolution of conflicts of jurisdiction

128.—(1) The decision as to whether an offence shall be dealt with by the military authorities under this Act or by the civil authorities shall be determined by the Attorney General in accordance with the following subsections.

(2) The civil authorities shall exercise jurisdiction in respect of offences committed in Malaŵi where the offence is one of those referred to in section 80 (4).

(3) The civil authorities shall have the primary right to exercise jurisdiction in respect of offences committed in Malaŵi not referred to in subsections (4) and (5).

(4) The military authorities shall have the right to exercise jurisdiction in relation to offences under this Act at all times when the person alleged to have committed an offence against this Act is serving outside Malaŵi.

(5) The military authorities shall have the primary right to exercise jurisdiction in respect of offences committed in Malaŵi—

(*a*) if the offence is against the property or security of the Defence; or

(*b*) if the offence is against the property or person of a person subject to service law; or

(*c*) if the offence is against the property or person of a dependant of a person subject to service law when such dependant is residing with such person; or

(*d*) if the offence arises out of an act or omission in the course of official duty.

(6) In cases where the civil authorities and military authorities have primary right to jurisdiction in relation to specific or general offences such authority shall give sympathetic consideration to any request from such other authority for a waiver by that authority of jurisdiction in any particular case or general class of cases; and in particular the civil authorities shall consider waiving their rights of jurisdiction in the case of minor offences where the military authorities can impose a suitable punishment by disciplinary action under this Act without recourse to a civil court.

Division 22— Inquiries

Boards of inquiry

129.—(1) Subject to and in accordance with rules made under section 138 (in this Act referred to as "Board of Inquiry Rules"), the Defence Council, or any officer empowered by or under such rules so to do, may convene a board of inquiry to investigate and report on the facts relating to—

(*a*) the absence of any person subject to military law under this Act;

(*b*) the capture of any such person by the enemy;

(*c*) the death of any person where any inquiry into the death is not required to be held by any civil authority;

(*d*) any other matter of a class specified in such rules or referred to such a board by the Defence Council or any such officer,

and a board of inquiry shall, if directed so to do by the Defence Council or by such officer, express its opinion on any question arising out of any matters referred to the board.

(2) A board of inquiry shall consist of such number of persons as may be provided for by the Board of Inquiry Rules who shall be persons subject to service law and the presiding officer of a board of inquiry shall be an officer not below the rank of lieutenant.

(3) Evidence given before a board of inquiry shall not be admissible against any person in proceedings before a court-martial, commanding officer or the appropriate superior authority, other than proceedings for an offence against section 68 or for an offence against section 80 where the corresponding civil offence is perjury.

Inquiries into absence

130.—(1) Where a board of inquiry inquiring into the absence of an officer or soldier of the Defence Force reports that he has been absent without leave or other sufficient cause for a period specified in the report, not being less than twenty-one days, a record of the report shall in accordance with the Board of Inquiry Rules be entered in the service books.

(2) A record entered in pursuance of subsection (1) shall, unless the absentee subsequently surrenders or is arrested, or the report of the board of inquiry is annulled by the Defence Council or by a subsequent board of inquiry, have the like effect as a conviction by a court-martial for desertion.

Division 23— Miscellaneous Provisions

Restitution or compensation for theft, etc.

131.—(1) The following provisions shall have effect where a person has been convicted by court-martial of unlawfully

obtaining any property, whether by stealing it, receiving it knowing it to have been stolen, fraudulently misapplying it or otherwise.

(2) If any of the property unlawfully obtained has been found in the possession of the offender, it may be ordered to be delivered to the person appearing to be the owner of the property or the offender may be ordered to pay to such person such sum as may represent a reasonable value of the property.

(3) If there has been found in the possession of the offender any property (other than money) appearing to have been obtained by him by the conversion or exchange of any of the property unlawfully obtained, the property may be ordered to be delivered to the person appearing to be the owner of the property unlawfully, obtained.

(4) Where money is found in the possession of the offender, then whether or not it appears to have been obtained by him by the conversion or exchange of any property and unlawfully obtained, an order may be made that there shall be paid out of that money to the person appearing to be the owner of the property unlawfully obtained such sum as may be specified in the order as or towards compensation for the loss caused to that person by the offence in so far as not otherwise made good under this Act or by the recovery of the property unlawfully obtained.

(5) Where any of the property unlawfully obtained has been sold or given in pawn to some other person who did not then know it to have been unlawfully obtained, an order may be made that, subject to the restitution to the owner thereof of the property so sold or given, there shall be paid to that other person, out of any money found in the possession of the offender (whether or not the money appears to be proceeds of the sale or giving in pawn), such sum as may be specified in the order as or towards compensation for the loss caused to him in consequence of the sale or giving in pawn.

(6) Where any of the property unlawfully obtained has been given in exchange to some other person who did not then know it to have been unlawfully obtained, an order may be made that, subject to the restitution to the order thereof of the property so given, there shall be restored to that other person the property taken in exchange for the property unlawfully, obtained.

(7) An order under this section may be made by the court-martial by which the offender is convicted, by the Defence Council or by the President and in this section the expression "appearing" means appearing to the court, Defence Council or President, as the case may be.

(8) An order under this section made by a court-martial shall not have effect until confirmed by the Defence Council and the provisions of this Part as to the confirmation and review of the proceedings of courts-martial shall apply to an order under this section as they apply to a sentence.

(9) The operation of any order under this section shall be suspended—

(*a*) in any case, until the expiration of any period prescribed under Part VI as the period within which an application for leave to appeal to the court of appeal against the conviction must be lodged; and

(*b*) if such an application is duly lodged, until either the application is finally refused or is withdrawn or the appeal is determined or abandoned.

(10) Where the operation of an order under this section as aforesaid is suspended under subsection (9)—

(*a*) it shall not take effect if the conviction is quashed on appeal;

(*b*) the court of appeal may by order annul or vary the order although the conviction is not quashed; and

(*c*) such steps shall be taken for the safe custody, during the period which the operation of the order is suspended, of the property ordered to be restored or handed over or the money to which the order relates as may be provided by rules of court.

(11) Notwithstanding anything in subsection (9), an order under this section shall not, so far as it relates to the delivery of property to the person appearing to be the owner of the property, be suspended if the court, the Defence Council or President, in making the order directs to the contrary in any case in which, in the opinion of the court, Defence Council or President, the title to the property is not in dispute.

(12) An order under this section shall not bar the right of any person, other than the offender or a person claiming through him, to recover any property delivered or paid in pursuance of such an order from the person to whom it is delivered or paid.

Appointment of judge advocate

132.—(1) A judge of the High Court may be appointed as judge advocate to serve at any court-martial.

(2) The appointment of a judge advocate under subsection (1) shall be made by the Chief Justice upon request by the convening officer.

Promulgation

133. Any finding, sentence, determination or other thing required by this Act to be promulgated shall be promulgated

either by being communicated to the accused or in such other manner as may be prescribed or as the Defence Council or the President, as the case may be, may direct.

Custody of proceedings of court-martial and right of accused to copy thereof

134.—(1) The record of the proceedings of a court-martial shall be kept in the custody of the Defence Council for not less than the prescribed period, being a period sufficient to ensure that the rights conferred by subsections (2) and (3) shall be capable of being exercised.

(2) Subject to this section, any person tried by court-martial shall be entitled to obtain from the Defence Council on demand at any time within the relevant period, and on payment therefor of such sum as may be prescribed, a copy of the record of the proceedings of the court.

(3) Where a person tried by court-martial dies within the relevant period, his personal representatives or any person who in the opinion of the Defence Council ought to be treated for the purposes of this subsection as his personal representative shall, subject to this section, be entitled to obtain from the Defence Council on demand at any time within the period of twelve months from the death, and on payment therefor of such fees as may be prescribed, a copy of the record of the proceedings of the court.

(4) If, on an application in pursuance of either subsection (2) or subsection (3) for a copy of the record of any proceedings, the Defence Council certifies that it is requisite for reasons of security that the proceedings or any part thereof should not be disclosed, the applicant shall not be entitled to a copy of the proceedings or part to which the certificate relates.

(5) In this section, the expression "the relevant period", in relation to any person tried by court-martial, means the period of five years beginning with the date of his acquittal or, when he was convicted, of the promulgation of the findings and sentence or, where a finding of guilty was not confirmed, of the promulgation of the withholding of confirmation:

Provided that where the proceedings related to two or more charges and the person tried was acquitted on one or more of the charges and convicted on another or others, the relevant period shall be the period of five years beginning with the date of the promulgation of the finding or findings of guilty and the sentence thereon or of the withholding of confirmation of that finding or those findings.

(6) Any reference in this section to the record of the proceedings of a court-martial includes a reference to a record of the proceedings with respect to the confirmation or revision of the findings and sentence of the court-martial.

135. No action shall lie in respect of anything done by any person in pursuance of a military sentence of imprisonment or detention if the doing thereof would have been lawful but for a defeat in a warrant or other instrument made for the purposes of that sentence. Indemnity for prison officers, etc.

Division 24—Rules of Procedure, etc.

136.—(1) Subject to this section, the Minister may, with the advice of the Defence Council, make Rules (in this Act referred to as "Rules of Procedure") with respect to the investigation and trial of, and awarding of punishment for offences cognizable by courts-martial, commanding officers and the Commander and with respect to the confirmation and revision of findings and sentences of courts-martial. Rules of procedure

(2) Without prejudice to the generality of subsection (1), Rules of Procedure may make provision with respect to all or any of the following matters, that is to say—

(*a*) the procedure to be observed in the bringing of charges before the Commander and commanding officers;

(*b*) the manner in which charges so brought are to be investigated, and the taking of evidence (whether orally or in writing, whether or not on oath and whether in full or in summary or abstract form) for the purposes of investigating or dealing summarily with such charges or otherwise as a preliminary to the trial thereof by court-martial, so however that the Rules shall make provision for the application of section 99 in any ease where the accused requires that evidence shall be taken on oath;

(*c*) in addition to, or in substitution for, a charge which has been investigated of a new charge for an offence disclosed by evidence taken on the investigation and the treating of the investigation as the investigation of the new charge;

(*d*) the convening and constitution of court-martial;

(*e*) the sittings, adjournment and dissolution of courts-martial;

(*f*) the procedure to be observed in trials by courts-martial;

(*g*) the representation of the accused at such trials;

(*h*) procuring the attendance of witnesses before courts-martial and at the taking of evidence in pursuance of Rules of Procedure;

(*i*) applying in relation to proceedings before the Commander and commanding officers and otherwise in relation to proceedings prior to trial by courts-martial all or any of the provisions of sections 99, 105, 106 and 107;

(*j*) empowering a court-martial or the convening officer, in such cases and to such extent as may be prescribed, to amend a charge which is being tried by the court;

(*k*) empowering a court-martial, where the particulars proved or admitted at the trial differ from those alleged in the charge but are sufficient to support a finding of guilty of the like offence as that charged, to make a finding of guilty subject to exceptions or vacations specified in the finding if it appears to the court that the difference is not so material as to have prejudiced the accused in his defence; and

(*l*) the forms of orders and other documents to be made for the purposes of any provision of this Act or Rules of Procedure.

(3) Rules of Procedure shall secure that the power to amend charges referred to in subsection (2) (*j*) shall not be exercisable in circumstances substantially different from those in which charges or informations are amendable by a civil court in Malaŵi, or otherwise than subject to the like conditions, as nearly as circumstances admit, as those subject to which charges or informations are so amendable, and shall not be exercisable by a court-martial (otherwise than for the purpose only of correcting a mistake in the name or description of the accused or a clerical error or omission) unless there is a judge advocate present at the trial.

(4) Rules of Procedure may make provision as to the exercise by a judge advocate of his functions at a trial by court-martial, and without prejudice to the generality of this provision may make provision—

(*a*) as to the effect of advice or ruling given to the court by a judge advocate on questions of law;

(*b*) for requiring or authorizing the presiding officer of a court-martial, in such cases as may be specified in the rules, to direct that questions of law shall be determined by a judge advocate in the absence of the presiding officer and other members of the court and any officer under instruction, and for applying to the judge advocate and his proceedings on any such determination such of the provisions of this Act relating to the court or its members and the proceedings thereof as may be specified in the Rules.

(5) In subsection (4) reference to questions of law include references to questions as to the joinder of charges and as to the trial of persons jointly or separately charged.

(6) Rules of Procedure may make provision for determining the cases in which and the extent to which court-martial may, in sentencing an accused for any offence of which he is convicted, at

the request of the accused take into consideration other offences against this Act committed by him.

(7) Where Rules of Procedure make such provision as provided by subsection (6), those Rules may also make provision for conferring on the court taking one or more offences into consideration power to direct the making of such deductions from the offender's pay as the court would have had power to direct if he had been found guilty of the offence or offences taken into consideration as well as of the offence of which he was in fact found guilty.

Imprisonment and Detention Regulations

137. The Minister may, with the advice of the Defence Council, make regulations (in this Act referred to as "Imprisonment and Detention Regulations") with respect to all or any of the following matters, that is to say—

(*a*) the places in which and the establishment or forms of custody (whether military or not) in which persons may be required to serve the whole or any part of military sentences of imprisonment and detention passed on them under this Act;

(*b*) the committal of persons under military sentences of imprisonment or detention to the appropriate establishment or form of custody, their removal from one country or place to another and from one establishment or form of custody to another and their release on the coming to an end of any term of imprisonment or detention;

(*c*) the provision, classification, regulation and management of military establishments;

(*d*) the classification, treatment, employment, discipline and control of persons serving military sentences of imprisonment or detention in military establishment or otherwise in military custody;

(*e*) the temporary release on compassionate grounds of persons serving such sentence in such establishment or custody as aforesaid, the cases in which, periods for which and conditions subject to which they may be allowed out of any such sentence for good conduct and industry; and

(*f*) the appointment, powers and duties of inspectors, visitors and superintendents, and of officers and other members of the staff of military establishments.

Board of Inquiry Rules

138.—(1) The Minister may, with the advice of the Defence Council, make rules with respect to the convening, constitution and procedure of boards of inquiry.

(2) Without prejudice to the generality of subsection (1), Board of Inquiry Rules may make provision with respect to all or any of the following matters, that is to say—

(*a*) the rules of evidence to be observed by boards of inquiry and the taking of evidence before such boards, so however that the Rules shall provide for the taking of evidence on oath or affirmation except in circumstances such that if the evidence were being taken at a court-martial an oath or affirmation could be dispensed with; and

(*b*) without prejudice to the provisions of section 130, the making in service books of records of findings of boards of inquiry in such cases as may be provided by the Rules.

(3) Board of Inquiry Rules shall contain provision for securing that any witness or other person who may be affected by the findings of a board of inquiry shall have an opportunity of being present, and represented, at the sittings of the board or such part thereof as may be specified by or under the Rules.

Miscellaneous regulations

139. The Minister may, on the advice of the Defence Council, make regulations with respect to all or any of the following matters, that is to say—

(*a*) the execution of sentences of death under this Act, including the manner and place where such executions are to be carried out and the custody, treatment and removal of persons under sentence of death;

(*b*) field punishment;

(*c*) any matter which by this Part is required or authorized to be prescribed or for which regulations may be made; and

(*d*) such incidental and supplementary matters as appear requisite for any of the purposes set out in sections 136, 137 and 138, and in this section.

Division 25—Interpretation of Part V

Interpretation of Part V

140.—(1) In this Part—

"civil prison" means a prison in Malaŵi in which a person sentenced by a civil court to imprisonment can for the time being be confined;

"convening officer", in relation to a court-martial, means the officer convening that court-martial and includes his successor or any person for the time being exercising his or his successor's functions;

"Judge advocate" means the person appointed under section 132 to serve as judge advocate at a court-martial;

"military establishment" means a military prison or any other establishment under the control of the Defence Council where persons may be required to serve military sentences of imprisonment or detention;

"military prison" means separate premises designated by the Defence Council for persons serving military sentences of imprisonment;

"prison" means a civil prison or a military prison;

"private soldier" means a soldier who is not a warrant officer or a non-commissioned officer.

(2) References in this Part to a military sentence of imprisonment are references to a sentence of imprisonment passed by a court-martial.

(3) References in this Part to a military sentence of detention are references to a sentence of detention passed by a court-martial or awarded by the offender's commanding officer or the appropriate superior authority.

(4) References in this Part to warrant officers do not include references to acting warrant officers.

(5) References in this Part to non-commissioned officers include references to acting non-commissioned officers and also to acting warrant officers.

PART VI

Appeals from Courts-Martial

Right of appeal

141.—(1) Subject to this Part, where a person has been convicted by a court-martial—

(*a*) the person convicted may, with the leave of the court-martial given pursuant to section 142, appeal to the court of appeal against the conviction, or against the sentence, or against both;

(*b*) the convicted person shall have the right, without leave, to appeal to the court of appeal against any conviction involving a sentence of death; and

(*c*) the Director of Public Prosecutions may, in any case, within forty days of the promulgation of the conviction, appeal to the court of appeal against the sentence.

(2) Subject to this Part, where a person has been acquitted of a charge by a court-martial, the Director of Public Prosecutions may, within forty days of the acquittal, appeal to the court of appeal against the acquittal on a point of law.

Application for leave to appeal

142.—(1) Leave to appeal to the court of appeal shall not be given except in pursuance of an application in that behalf made by or on behalf of the person convicted, and lodged within forty days of the date of promulgation of the finding of the court-martial in respect of which the appeal is brought, with the registrar of the court of appeal, being an application in the prescribed form and specifying the grounds on which leave to appeal is sought and such other particulars, if any, as may be prescribed.

(2) An appeal against a conviction involving a sentence of death shall not be entertained by the court of appeal unless the appeal is lodged with the registrar of the court of appeal in the presented manner by or on behalf of the appellant within forty days of the date of promulgation of the finding of the court-martial in respect of which the appeal is brought.

(3) The court of appeal may extend the period within which an application for leave to appeal is required by subsection (1) to be lodged whether that period has expired or not, and may similarly extend the period for lodging the appeal provided by subsection (2), if, owing to the fact that the appellant is outside Malaŵi or otherwise, he has not had a reasonable opportunity of lodging his appeal within forty days.

(4) Where the court of appeal dismisses an application for leave to appeal it may, if it considers the application to have been frivolous or vexatious, order that any sentence passed upon the applicant in the proceedings from which it was sought to bring the appeal shall begin to run from the day on which the court dismisses the application.

Determination of appeals in ordinary cases

143.—(1) Subject to section 144, on an appeal under this Part against a conviction, the court of appeal shall allow the appeal if it thinks that the finding of the court-martial is unreasonable or cannot be supported having regard to the evidence or involves a wrong decision on a question of law or that, on any ground, there was a miscarriage of justice, and in any other case shall dismiss the appeal:

Provided that the court of appeal may, notwithstanding that it is of the opinion that the point raised in the appeal might be decided in favour of the appellant, dismiss the appeal if it considers that no substantial miscarriage of justice has actually occurred.

(2) If the court of appeal allows an appeal under this Part, it shall either quash the conviction or direct that the finding of the court-martial shall be treated as if confirmation thereof had been withheld and, in the latter event, notwithstanding the provisions of section 127 (3), a new trial by court-martial may be held within such time as the court may order.

Powers of court of appeal in special cases

144.—(1) If it appears to the court of appeal that an appellant, though not properly convicted on some charge preferred against him before the court-martial by which he was tried, was properly convicted on some other charge, then, if the sentence passed by the court-martial on the appellant was not one that could lawfully be passed by the court-martial for the offence for which he was convicted on the other charge, the court shall pass on the appellant, in substitution for the sentence passed on him by the court-martial, such sentence as it thinks proper, being a sentence which might lawfully be passed in respect of the charge on which the appellant was properly convicted, but not being a sentence of greater severity.

(2) Where an appellant has been convicted of an offence and the court-martial by which he was tried could lawfully have found him guilty of some other offence, and it appears to the court of appeal that the court-martial must have been satisfied with the facts which proved him guilty, of that other offence, the court may, instead of allowing or dismissing the appeal, substitute for the finding of the court-martial a finding of guilty of the other offence and pass on the appellant, in substitution for the sentence passed on him by the court-martial, such sentence as it thinks proper, being a sentence which could lawfully have been passed for that other offence but not being a sentence of greater severity.

(3) Where—

(*a*) an appellant has been convicted of an offence committed under circumstances involving the higher of two degrees of punishment, and it appears to the court of appeal that the court-martial by which he was tried ought to have found him guilty of the offence as being committed under circumstances involving the lower degree of punishment; or

(*b*) an appellant has been convicted of an offence and it appears to the court of appeal that the court-martial by which he was tried ought to have found him guilty of the offence subject to exceptions or vacations,

the court of appeal may, instead of allowing or dismissing the appeal, substitute for the finding of the court-martial a finding of guilty of the offence as being committed under circumstances involving the lower degree of punishment or, as the case may be, on the appellant, in substitution for the sentence passed on him by the court-martial, such sentence as it thinks proper, being a sentence which could lawfully have been passed for the offence specified or involved in the substituted finding, but not being a sentence of greater severity.

(4) If, on an appeal it appears to the court of appeal that although the appellant was guilty of the act or omission charged against him, he was insane at the time the act was done or the omission was made so as not to be responsible according to law for his actions, the court of appeal may quash the sentence passed at the trial and order the appellant to be kept in custody under section 116 of this Act in like manner as on a special finding of insanity by the court-martial by which the appellant was convicted.

Commencement of sentence

145. The term of any sentence passed by the court of appeal under any of the provisions of section 144 shall, unless the court otherwise directs, begin to run from the time from which it would have begun to run if it had been passed in the proceedings from which the appeal is brought, and a sentence passed by the court of appeal shall be deemed for the purposes of this Act to be a sentence passed by the court-martial, being a sentence that has been confirmed.

Appeals to be final

146. Any determination by the court of appeal of any appeal or other matter which it has power to determine under this Part shall be final, and no appeal shall lie from the court of appeal to any other court.

Proceedings may be heard in absence of appellants

147. An appellant shall not be entitled to be present at the hearing of an appeal to the court of appeal under this Part or to any proceedings preliminary or incidental to such an appeal except where rules of court provide that he shall have the right to be present or the court of appeal gives him leave to be present, and accordingly any power of the court under this Part to pass a sentence may be exercised despite the absence of the appellant.

Defence of appeals

148. It shall be the duty of the Director of Public Prosecutions on an appeal against conviction by court-martial to undertake the defence of the appeal.

Right of appellant to present his case in writing

149. An appellant may if he so desires, instead of presenting his case orally, present it in writing in the prescribed form.

Suspension of death sentence

150. Where a conviction by court-martial involves sentence of death—

(*a*) the sentence shall not in any case be executed until the expiration of the period within which the appeal to the court of appeal against the conviction shall be lodged; and

(*b*) if such an appeal is duly lodged or if application is made for the extension of the period for lodging the appeal the sentence shall not be executed until the appeal or application is determined or abandoned:

Provided that, where a sentence of death passed on a person on active service by a court-martial is confirmed and the Defence Council, in confirming that sentence certifies that it is essential in the interests of discipline and for the purposes of securing the safety of the Force with which that person is present that the sentence should be carried out forthwith, the foregoing provisions of this section shall not apply to the sentence.

Person not to be tried again where conviction quashed

151. Where the conviction of a person by a court-martial for an offence has been quashed under this Part, he shall not be liable to be tried again for that offence by a court-martial or by any other court.

Removal of prisoners for purposes of this Part

152. Imprisonment and Detention Regulations may provide in what manner an appellant, when in custody, is to be taken to, kept in custody and brought back from any place at which he is entitled to be present for the purposes of this Part or any place to which the court of appeal or a judge thereof may order him to be taken for the purpose of any proceedings of the court of appeal.

Furnishing on appeal, of documents relating to trial

153. In the case of every appeal, or application for leave to appeal, under this Part to the court of appeal against a conviction by court-martial, it shall be the duty of the secretary of the Defence Council to furnish to the registrar of the court of appeal, in accordance with rules of court, the proceedings of the court-martial (including any proceedings with respect to the revision of the findings or sentence of the court-martial in pursuance of section 110 (1)) the proceedings with respect to the confirmation of the findings and sentence of the court-martial and any petition presented by the person convicted.

Duties of registrar of court of appeal with respect to appeals, etc.

154.—(1) The registrar of the court of appeal shall take all necessary steps for obtaining the determination of an appeal or application under this Part and shall obtain and lay before the court of appeal in proper form all documents, exhibits and other things relating to the proceedings in the court-martial before which the appellant or applicant was tried which appear necessary for the proper determination of the appeal or application.

(2) The Registrar of the court of appeal shall furnish the necessary forms and instructions relating to appeals or applications for leave to appeal under this Part—

(*a*) to any person who demands such forms or instructions;

(*b*) to persons in charge of places where persons sentenced by a court-martial may lawfully be confined for the purpose of serving their sentences; or

(*c*) to such other persons as he thinks fit.

(3) Every person in charge of such a place of confinement mentioned in subsection (2) shall cause the forms and instructions to be placed at the disposal of persons confined in that place who desire to lodge an appeal or make an application for leave to appeal under this Part.

Saving of powers of reviewing authorities

155. Nothing in this Part shall affect the exercise by the President of the powers conferred by section 113 in respect of a conviction by a court-martial so far as regards the exercise thereof at a time before the lodging with the registrar of the court of appeal of an appeal or an application for leave to appeal to that court against the conviction, and nothing in this Part shall affect the exercise by the President of the prerogative of mercy.

Composition of court of appeal

156. At the hearing of any appeal from any court-martial, the court of appeal shall consist of an uneven number of judges, not being less than three.

Exercise of certain powers of court of appeal by a judge

157. Any judge of the court of appeal may—

(*a*) give leave to appeal; or

(*b*) extend the period within which an application for leave to appeal or an appeal is required by section 142 (1) or (2) to be lodged; or

(*c*) allow, the applicant or appellant to be present at any proceedings under this Part,

but if the judge refuses an application on the part of an applicant or appellant to exercise in his favour any of the powers mentioned in paragraphs (*a*), (*b*), and (*c*), the applicant or appellant, upon making a requisition in that behalf within the prescribed period and in the prescribed manner, shall be entitled to have the application determined by the court of appeal, which shall consist of an uneven number of judges, not being less than three.

General provisions as to procedure

158.—(1) Subject to the provisions of this Part, any rules of court in force relating to the hearing of criminal appeals by the court of appeal shall apply to the hearing and determination of an appeal by the court under this Part.

(2) Where under this Part anything is required or authorized to be prescribed it shall be prescribed by rules of court.

PART VII
Forfeitures and Deductions and Enforcement of Maintenance Liabilities

Forfeitures and deductions; general provisions

159.—(1) No forfeiture of the pay of an officer or a soldier of the Defence Force shall be imposed unless authorized by this Act, other service law or any other law and no deduction from such pay shall be made unless so authorized by regulations.

(2) Regulations shall not authorize the making of any penal deductions, that is to say, a deduction to be made by reason of the commission of any offence or other wrongful act or in consequence of any negligence.

(3) Subsections (1) and (2) shall not prevent the making of regulations providing for the imposition of any forfeiture authorized by this Act or the making of any deduction so authorized, or for the time at which and manner in which sums may be deducted from pay to give effect to authorized deductions or the manner in which amounts may be so deducted in order to recover any fine imposed in pursuance of this Act, or as to the appropriation of any such amount when deducted, or of providing for the determination of questions relating to forfeitures or deductions.

(4) Notwithstanding any deduction from the pay of an officer or a soldier of the Defence Force, he shall, subject to any forfeiture, remain in receipt of pay at not less than such minimum rate as may be prescribed.

(5) Notwithstanding that forfeiture of pay of an officer or a soldier of the Defence Force .for any period has been ordered in pursuance of this Act, he shall remain in receipt of pay at such minimum rate as may be prescribed, but the amount received for that period may be recovered from him by deduction from pay.

(6) Any amount authorized to be deducted from the pay of an officer or a soldier of the Defence Force may be deducted from any balance, whether or not presenting pay, which may be due to him as an officer or a soldier, and references in this Act to the making of deductions from pay shall be construed accordingly and the whole or any part of any sum forfeited from the pay of an officer or a soldier may be recovered by deductions from any such balance.

Forfeiture of pay for absence from duty

160.—(1) The pay of an officer or a soldier of the Defence Force may be forfeited—

(*a*) for any day of absence in such circumstances as to constitute an offence under section 46 or 47, if the Defence Council so directs, or for any day of other absence without leave;

(*b*) for any day of imprisonment, detention or field punishment awarded under service law by a court-martial, appropriate superior authority or commanding officer, or for any day of imprisonment or detention of any description to which he is liable in consequence of an order or sentence of a civil court;

(*c*) where he is found guilty, whether by court-martial under service law, the appropriate superior authority or his commanding officer, of an offence under service law for any day, whether before or after he is found guilty, on which he is in hospital on account of sickness or injury certified by the proper medical officer to have been occasioned by the offence.

(2) The pay of an officer or a soldier of the Defence Force may be forfeited for any day of absence by reason of his having been made a prisoner of war if the Defence Council or an officer authorized by the Defence Council is satisfied—

(*a*) that he was made a prisoner of war through disobedience to orders or willful neglect of his duty; or

(*b*) that having been made a prisoner of war he failed to take any reasonable steps available to him to rejoin the Defence Force or any cooperating forces; or

(*c*) that having been made a prisoner of war he served with or aided the enemy in the prosecution of hostilities or measures calculated to influence morale or in any other manner whatsoever not authorized by international usage,

but, save as so provided, nothing in subsection (1) (*a*) shall apply to absence by reason of having been made a prisoner of war.

(3) Regulations under this Act, or orders of the Defence Council, may make provision as to the computation of time for the purpose of this section and in particular as to the counting or disregarding of parts of days.

(4) For purposes of this section "a day" shall be deemed to be any period over six hours but not more than twenty-four hours.

Deductions for payment of civil penalties

161. Where a person sentenced or ordered by a civil court, whether within or outside Malaŵi, to pay a sum by way of fine, penalty, damages, compensation or costs in consequence of being charged before the court with an offence is at the time of the sentence or order, or subsequently becomes, an officer or a soldier of the Defence Force, then, if the whole or any part of that sum is met by a payment made by or on behalf of any military authority, the amount of the payment may be deducted from his pay.

Compensation for loss occasioned by wrongful act or negligence

162.—(1) Without prejudice to the provisions of this Act as to the position of stoppages (of pay) as a punishment, the following provisions shall have effect where, after such investigation as may be prescribed by regulations made under this Act, it appears to the Defence Council or an officer authorized by the Defence Council that any loss of, or damage to, public or service property has been occasioned by any wrongful act or negligence of an officer or a soldier of the Defence Force (hereinafter referred to as "the person responsible").

(2) The Defence Council or authorized officer, as the case may be, may order the person responsible to pay, as or towards compensation for the loss or damage, such sum as may be specified in the order; and any such sum, in so far as not otherwise paid by the person responsible, may be deducted from his pay.

(3) No order shall be made under the provisions of subsection (2) if, in proceedings before a court-martial under service law, the appropriate superior authority or commanding officer of the person responsible, that person—

(*a*) has been acquitted in circumstances involving a finding that he was guilty of the wrongful act or negligence in question, or

(*b*) has been awarded stoppages (of pay) in respect of the same loss or damage, but save as so provided, the fact that any such proceedings have been brought in respect of the wrongful act or negligence in question shall not prevent the making of an order or deductions under subsection (2).

Deductions for barracks damage

163.—(1) When damage occurs to any premises in which one or more units or parts of such units of the Defence Force are quartered or billeted or any fixtures, furniture or effects in or belonging to such premises are damaged or lost, then, if it appears, on investigation in accordance with regulations made under this Act, that the damage or loss was occasioned by the wrongful act or negligence of persons belonging to any of the units or parts of the units in occupation of the premises and was so occasioned at a time when they were in occupation thereof but that the persons cannot be identified, any person belonging to any such units or parts of the units may be required to contribute towards compensation for the damage or loss such amount as may, in accordance with such regulations, be determined to be just, and the amount may be deducted from his pay.

(2) Subsection (1) shall extend to vessels, trains, motor vehicles and aircraft in which units or parts of units are being transported, and reference to premises, quartering and occupation shall be construed accordingly.

Remission of forfeitures and deductions

164. Any forfeiture or deduction imposed under this Part or under regulations made under this Act may be remitted by the Defence Council or in such manner or by such authority as may be provided by such regulations.

Enforcement of maintenance and affiliation orders by deduction from pay

165.—(1) Where any court in Malaŵi has made an order against any person (in this section referred to as "the defendant") for the payment of any periodical or other sum specified in the order for or in respect of—

(*a*) the maintenance of spouse or child of that person; or

(*b*) any costs incurred in obtaining the order; or

(*c*) any costs incurred in proceedings on appeal against, or for the variation, revocation or revival of, any such order,

and the defendant is an officer or a soldier of the Defence Force, then, whether or not he was a member of the Defence Force when the order was made, the Defence Council or an officer authorized by the Defence Council may order such sum to be deducted from the pay of the defendant and appropriated in or towards satisfaction of the payment due under the order of the court as the Defence Council or authorized officer may think fit.

(2) Where to the knowledge of the court making any order as mentioned in subsection (1), or an order varying, revoking or reviving any such order, the defendant is an officer or a soldier of the Defence Force the court shall send a copy of the order to the Defence Council or to an officer authorized by the Defence Force.

(3) Where a like order as is mentioned in subsection (1) has been made by a court of a country outside Malaŵi, and the Defence Council or an officer authorized by the Defence Council is satisfied that the defendant has a reasonable opportunity of appearing in person, or has appeared by a duty authorized legal representative, to defend the case before the court by which the order was made, the Defence Council or the authorized officer shall have the like power under subsection (1) as if the order had been made by such a court in Malaŵi.

(4) The Defence Council or an officer authorized by the Defence Council may by order vary or revoke any order previously made under this section, and may treat any order made under this section as being in suspense at any time while the person against whom the order was made is absent in circumstances mentioned in section 160 (1) (*a*).

(5) In this section—

(*a*) references to a spouse or child include, in relation to an order made in proceedings in connexion with the dissolution or annulment of a marriage, references to a person who would have been the spouse or child of the defendant if the marriage had subsisted; and

(*b*) references to a child of a person include references to a child of the spouse of that person, and to a child of that person born out of wedlock or to an adopted child of that person or of the spouse, and in this paragraph "adopted child" means a child adopted, whether alone or jointly, in pursuance of an adoption order made under the Adoption of Children Act.

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Deductions from pay for maintenance of spouse or child

166.—(1) Where the Defence Council or an officer authorized by the Defence Council is satisfied that an officer or a soldier of the Defence Force is neglecting, without any reasonable cause, to maintain the spouse or child under the age of sixteen, the Defence Council or the authorized officer may order such sum to be deducted from his pay and appropriated towards the maintenance of the spouse or child as the Defence Council or the authorized officer thinks fit.

(2) On an application made to the Defence Council or an officer authorized by the Defence Council for an order under subsection (1), the Defence Council or the authorized officer, if satisfied that a *prima facie* case has been made out for the making of such an order may make an interim order for such deduction and appropriation as is mentioned in subsection (1) to take effect pending the further examination of the case.

(3) Where an order is in force under section 165 (1) or (3) for the making of deductions in favour of any person from the pay of an officer or a soldier of the Defence Force, no deductions from his pay in favour of the same person shall be ordered under the foregoing provisions of this section unless the officer or the soldier is in a place where process cannot be served on him in connexion with proceedings for the variation of the order of the court in consequence of which the order under section 165 was made.

(4) The Defence Council or an officer authorized by the Defence Council may by order vary or revoke any order previously made under this section, and may treat any order made under this section as being in suspense at any time while the person against whom the order was made is absent as mentioned in section 160 (1) (*a*).

Limit of deductions from pay for maintenance of spouse or child

167.—(1) The sums deducted under sections 165 and 166 shall not together exceed one half of the defendant's pay.

(2) Where any deductions have been ordered under either section 165 or 166 from a person's pay and, whether before or after the deductions have been ordered, he incurs a forfeiture of pay by or in consequence of the finding or sentence of a court-martial or the finding or award of the Commander or his commanding officer, it shall apply only to so much of his pay as remains after the deductions have been made.

Service of process in maintenance proceedings

168.—(1) Any process to be served on an officer or soldier of the Defence Force (in this section referred to as "the defendant") in connexion with proceedings for any such order of a court in Malaŵi as is mentioned in section 165 (1), or for the variation, revocation or revival of such an order, shall be deemed to be duly

served on him if served either on him or on his commanding officer, and may, without prejudice to any other method of service, be so served by registered post.

(2) Where any such process as is mentioned in subsection (1) is serviced in Malaŵi and the defendant will be required to appear in person at the hearing, then, if his commanding officer certifies to the court by which the process was issued that the defendant is under orders for service out of Malaŵi and that in the commanding officer's opinion it would not be possible for the defendant to attend the hearing and return in time to embark for that service, the service of the process shall be deemed not to have been effected.

PART VIII

Billeting and Requisitioning of Vehicles, Aircraft or Vessels

Division 1—Billeting

Billeting requisitions

169. At any time when this section is in operation the Defence Council or any officer authorized by the Defence Council in that behalf not below field rank in Malaŵi may issue a billeting requisition requiring the officer-in-charge of police for any area in Malaŵi specified in the requisition to provide billets at such places in that area, for such numbers or members of the Defence Force and, if the requisition so provides, for such number of vehicles, aircraft or vessels in use for the purpose of the Defence Force being vehicles, aircraft or vessels of any kind specified in the requisition, as may be so specified.

Premises in which billets may be provided

170.—(1) Billets, other than for vehicles, aircraft or vessels, may be provided in pursuance of a billeting requisition—

(*a*) in any inn or hotel, whether licensed or not, or in any other premises occupied for the purposes of a business consisting of or including the provision of sleeping accommodation for reward;

(*b*) in any building not falling within paragraph (*a*), being a building to which the public habitually have access, whether on payment or otherwise, or which is wholly or partly provided or maintained out of rates; or

(*c*) in any dwelling, outhouse, warehouse, barn or stables, but not in any, other premises.

(2) Billets for vehicles, aircraft or vessels may be provided under this section in any building or on any land.

Provisions of billets

171.—(1) Where a billeting requisition has been produced to the officer-in-charge of police for the area specified in the requisition

he shall, on the demand of the officer commanding any part of the Defence Force or on the demand of an officer or a soldier of the Defence Force authorized in writing by such an officer commanding, billet on the occupiers of premises falling within section 170, being premises at such place in that area as may be specified by the officer or soldier by whom the demand is made, such number of persons or vehicles, aircraft or vessels as may be required by the officer or soldier by whom the demand is made, not exceeding the number specified in the requisition.

(2) Without prejudice to section 172, the officer-in-charge of police for the area specified shall exercise his functions under this section in such manner as in his opinion will cause least hardship to persons on whom the billeting may take place.

(3) The officer-in-charge of police for the area specified in the requisition may, to such extent and subject to such restrictions as he thinks proper, authorize any police officer to exercise his said functions on his behalf, and the provisions of subsections (1) and (2) shall apply accordingly.

Billeting schemes

172.—(1) A local authority may make a scheme for the provision of billets in its area in pursuance of billeting requisitions, and where such a scheme is in force the officer-in-charge of police for such area shall so far as the scheme extends exercise his functions under section 171 in accordance with the scheme.

(2) Any scheme under this section may be revoked by the local authority by which it was made, or may be varied by that local authority by a subsequent scheme under this section, where a local authority makes a scheme under this section it shall furnish the officer-in-charge of police for the area to which the scheme relates with a copy of the scheme.

(3) A scheme under this section shall not come into force until approved by the Minister responsible for local government; and that Minister may require the local authority to revoke any scheme in force under this section and in substitution therefor to submit for his approval a further scheme under this section.

Accommodation to be provided and payment therefor

173.—(1) Where persons are billeted in pursuance of a billeting requisition, the occupier of the premises on which they are billeted shall furnish such accommodation (including meals) as the officer or soldier demanding the billets may require, not exceeding such accommodation as may be prescribed by regulations made under this Act.

(2) Where vehicles, aircraft or vessels are billeted in pursuance of a billeting requisition, the occupier of the premises shall furnish standing room for the vehicles, aircraft or vessels.

(3) Where persons or vehicles, aircraft or vessels have been billeted in pursuance of a billeting requisition they may continue to be billeted, so long as section 169 continues in operation, for such period as may be required, and the allotments of billets among the persons or vehicles, aircraft or vessels in question may be varied from time to time.

(4) The occupier on whose premises any person or vehicle, aircraft or vessel is billeted in pursuance of a billeting requisition shall be entitled to receive for the billeting such payment as may be prescribed by regulations made under this Act:

Provided that no payment shall be required in respect of vehicles, aircraft or vessels billeted otherwise than in a building unless the land on which they are billeted—

(*a*) has its surface made up for the passage or parking of vehicles, aircraft or vessels; and

(*b*) is not land where vehicles, aircraft or vessels are normally allowed to stand free of charge irrespective of the person by whom they are owned or driven.

(5) Subject to subsection (6), payment for billeting—

(*a*) shall be made before the persons billeted finally leave, or the vehicles, aircraft or vessels are finally removed from, the premises where they are billeted; and

(*b*) where the billeting continues for more than seven days shall be made at least once in every seven days.

(6) If for any reason payment for billeting cannot be made, or fully made, as required by subsection (5) (*a*), there shall be made up with the occupier an account, in such form as may be prescribed by the Defence Council, of the amount due to him; and—

(*a*) on presentation of the account the local authority for the area in which the premises are situated shall pay to the occupier the amount stated in the account to be due; and

(*b*) any sums paid by a local authority under paragraph (*a*) shall be recoverable by them from the Defence Council.

(7) In relation to premises of which there is no occupier the foregoing provisions of this section shall apply as if the person entitled to possession of the premises were the occupier thereof.

Appeals against billeting

174.—(1) Any person who—

(*a*) is aggrieved by having an undue number of persons billeted upon him in pursuance of a billeting requisition, or

(*b*) claims that by reason of special circumstances he should be exempted from having persons so billeted on him, either generally or on a particular occasion,

may apply to a person or persons appointed on behalf of the local authority in accordance with arrangements made by the Minister responsible for Local Government.

(2) On any application on grounds mentioned in subsection (1) (*a*) the person or persons to whom the application is made may direct the billeting elsewhere of such number of the persons billeted as may seem just or may dismiss the application.

(3) On application on the grounds mentioned in subsection (1) (*b*) the person or persons to whom the application is made may grant such exemption as may seem just or may dismiss the application.

(4) An application under this section shall not affect billeting pending the determination of the application.

Compensation for damage

175.—(1) Where any damage is caused to any premises by the billeting of persons or vehicles in pursuance of a billeting requisition, the occupier of the premises, or if there is no occupier the person entitled to possession thereof, may recover from the Defence Council compensation of an amount equal to the depreciation caused by the damage in the value of the premises.

(2) Where any person other than the recipient of compensation under subsection (1) has any interest in the premises, being an interest the value of which is depreciated by the damage, he shall be entitled to recover from the recipient such part of the compensation as may be just.

(3) A subordinate court shall have jurisdiction to deal with any claim arising under either subsection (1) or (2) irrespective of the amount of the claim.

Refusal to receive persons billeted, etc.

176. Any person who—

(*a*) refuses to receive any person billeted upon him in pursuance of a billeting requisition or without reasonable excuse fails to furnish him with the accommodation properly required for him;

(*b*) gives or agrees to give to any person billeted upon him in pursuance of a billeting requisition any money or reward in lieu of receiving any person or vehicle or of furnishing accommodation properly required for him; or

(*c*) obstructs the billeting in his building or on his land of any vehicle,

shall be guilty of an offence and shall be liable to a fine of K10,000 and to imprisonment for three months.

Application to civilians employed with the Defence Force

177. In relation to persons employed with any body of the Defence Force not entitled under the provisions of this Part to be billeted, being persons of such descriptions as may be prescribed by regulations made under this Act, those provisions shall apply as they apply in relation to members of the Defence Force.

Suspension of laws against billeting

178. While section 169 is in operation, any part of a law that prohibits, restricts or regulates quartering or billeting on any inhabitants of Malaŵi shall not apply to such billeting in pursuance of a billeting requisition.

Division 2—Requisitioning of vehicles, aircraft or vessels

Requisitioning orders

179.—(1) At any time when this section is in operation the Defence Council or any officer authorized by the Defence Council in that behalf not below field rank in Malaŵi may issue a requisitioning order authorizing the requisitioning, from among vehicles, aircraft or vessels in any area in Malaŵi specified in the order, of such vehicles, aircraft or vessels or such number of vehicles, aircraft or vessels of such description, as may be specified in the order.

Provisions of ssvehicles, aircraft or vessels

180.—(1) A requisitioning order may be issued to the officer commanding any part of the Defence Force, or any officer or soldier authorized by him in writing, may give directions for the provision—

(*a*) in so far as the requisitioning order authorizes the requisitioning of particular vehicles, aircraft or vessels, of all or any of those vehicles, aircraft or vessels; and

(*b*) in so far as the order authorizes the requisitioning of vehicles, aircraft or vessels of a specified description, of the number of vehicles, aircraft or vessels of that description specified in the order or any lesser number of such vehicles, aircraft or vessels.

(2) A direction under subsection (1) given as respects any vehicle, aircraft or vessel shall be either—

(*a*) a direction given to the person having possession thereof to furnish it immediately at the place where it is; or

(*b*) a direction given to the person having procession thereof to furnish it at such place within one hundred and sixty kilometers from the premises of that person and at such time as may be specified by the officer or soldier by whom the direction is given:

Provided that no direction shall be given under paragraph (*b*) as respects a vehicle, aircraft or vessel which is neither

mechanically propelled nor a trailer normally drawn by a mechanically propelled vehicle, aircraft or vessel.

(3) If the officer to whom the requisitioning order was issued, or any officer or soldier authorized by him in writing, is satisfied that the person having possession thereof has refused or neglected to furnish a vehicle, aircraft or vessel in accordance with a direction under any of the provisions of subsection (2), or has reasonable grounds for believing that it is not practicable without undue delay to give a direction to that person, he may take, or authorize any officer or soldier to take, possession of the vehicle, aircraft or vessel; and where possession is taken of a vehicle, aircraft or vessel had been furnished by the person having possession of the vehicle, aircraft or vessel in accordance with a direction to furnish it immediately at the place where it is, and, in particular, payment shall be made therefor as if it had been so furnished.

Assistance of police authorities

181. The officer-in-charge of police for any area specified in a requisitioning order shall, on a request to that effect made by or on behalf of the officer to whom the order is issued, give instructions for securing that so far as is practicable police officers will be available, if required, for accompanying officers or soldiers requisitioning vehicles, aircraft or vessels in pursuance of the order.

Period for which vehicles, aircraft or vessels to be furnished

182. Where a vehicle, aircraft or vessel has been furnished in pursuance of a requisitioning order it may be retained, so long as section 178 is in operation, for any period for which it is required for the purpose specified in the order or for any other purposes connected with the needs of any part of the Defence Force.

Payment for vehicles, aircraft or vessels furnished

183.—(1) The person by whom a vehicle, aircraft or vessel is furnished in pursuance of a requisitioning order, and is so furnished otherwise than for the purpose of being purchased, shall be entitled to be paid—

(*a*) a sum for the use of the vehicle, aircraft or vessel calculated, by reference to the period for which possession of the vehicle, aircraft or vessel is retained, at the rate of payment commonly recognized or generally prevailing in the district at the time at which the vehicle, aircraft or vessel is furnished, or, in default of such a rate, such rate as may be just;

(*b*) a sum equal to the cost of making good any damage to the vehicle, aircraft or vessel not being damage resulting in a total loss thereof or damage attributable to fair wear and tear, which may have occurred during the period for which possession of the vehicle, aircraft or vessel is retained and which has not been made good during that period by a person acting on behalf of

the Government, and in this paragraph, reference to fair wear and tear shall be construed as reference to such fair wear and tear as might have been expected to occur but for the fact that the vehicle, aircraft or vessel was requisitioned, and

(*c*) if, during the period for which possession of the vehicle, aircraft or vessel is retained a total loss of the vehicle, air craft or vessel occurs, a sum equal to the value of the vehicle, aircraft or vessel immediately before the occurrence of the damage which caused the loss.

(2) The person by whom a vehicle, aircraft or vessel is furnished in pursuance of a requisitioning order for the purpose of being purchased shall be entitled to be paid the value of the vehicle, aircraft or vessel at the time at which it is furnished.

(3) Where a vehicle, aircraft or vessel is furnished in pursuance of a direction under section 180 (1) (*b*), then—

(*a*) for the purposes of subsection (1) (*c*) and (*b*) (if that subsection applies) the vehicle, aircraft or vessel shall be deemed to have been furnished at the time; and

(*b*) in addition to the payments provided for by subsections (1) or (2), the person by whom the vehicle, aircraft or vessel is furnished shall be entitled to be paid the amount of any expenditure reasonably incurred by him in complying with the direction.

(4) Where a direction to furnish a vehicle, aircraft or vessel is given under section 180 (2) (*b*), and after the giving of the direction any damage occurs to the vehicle, aircraft or vessel, whether or not resulting in a total loss thereof, then, if the damage prevents the furnishing of the vehicle, aircraft or vessel in pursuance of the requisitioning order the foregoing provisions of this section shall apply as if the vehicle, aircraft or vessel had been furnished, and, notwithstanding that it may have been required to be furnished for the purpose of being purchased, had been furnished otherwise than for that purpose, subject however to the following modifications, that is to say—

(*a*) subsection (1) (*a*), (*b*) and (*c*) shall have effect as if for the period therein mentioned there were substituted the period beginning with the giving of the direction and ending immediately after the occurrence of the damage; and

(*b*) subsection (3) (*b*) shall have effect as if for the words "in complying with" there were substituted the words "by reason of anything done for the purpose of complying with".

(5) Where any person (hereinafter referred to as "a person interested") other than the person by whom a vehicle, aircraft or

vessel is required to be furnished has an interest in the vehicle, aircraft or vessel—

(*a*) the person by whom the vehicle, aircraft or vessel is required to be furnished shall notify any person known to him to be a person interested that the vehicle, aircraft or vessel has been requisitioned; and

(*b*) any person interested shall be entitled to recover from the person by whom the vehicle, aircraft or vessel was required to be furnished such part, if any of the payment received by him for the vehicle, aircraft or vessel as may be just.

(6) Where, during the period for which possession of a vehicle aircraft or vessel is retained, a total loss of the vehicle, aircraft or vessel occurs, then—

(*a*) for the purposes of subsection (1) (*a*) and (*b*) that period shall be deemed to have come to an end immediately after the occurrence of the loss; and

(*b*) no claim shall be made for the return of the vehicle, aircraft or vessel, if it still exists, or for payment in respect thereof other than such as is provided for by subsection (1).

Avoidance of hardship in requisitioning of vehicles, aircraft or vessels

184. In deciding which of alternative vehicles, aircraft or vessels is to be specified in an order under section 179, or is to be the subject of a direction under section 180 (1) (*b*), the officer or soldier by whom the order is issued or direction given shall act in such manner as in his opinion will cause least hardship.

Record and inspection of mechanically propelled vehicles, aircraft or vessels

185. The Defence Council may, by general notice published in the *Gazette* require persons having in their possession in Malaŵi mechanically propelled vehicles, aircraft or vessels or trailers normally drawn by mechanically propelled vehicles, aircraft or vessels, if required so to do by such authority or person as may be specified in the notice—

(*a*) to furnish such authority or person as may be so specified in a return containing such particulars as to the vehicles, aircraft or vessels as may be required in the notice; and

(*b*) to afford all reasonable facilities for enabling any such vehicle, aircraft or vessel in his possession to be inspected and examined, at such times as may be specified in the notice, by such authority or person as may be so specified.

Enforcement of provisions as to requisitioning

186.—(1) If any person—

(*a*) fails to furnish any vehicle, aircraft or vessel which he is directed to furnish in pursuance of a requisitioning order, or fails to furnish any such vehicle, aircraft or vessel at the time and place at which he is directed to furnish it;

(*b*) fails to comply with any notice of the Defence Council under section 185; or

(*c*) obstructs any officer or other person in the exercise of his function under this Part of this Act in relation to the inspection or requisitioning of vehicles,

he shall be guilty of an offence and shall be liable to a fine of K10,000 and to imprisonment for three months.

(2) without prejudice to any penalty under subsection (1), if any person is obstructed in the exercise of powers of inspection conferred on him by the notice under section 185, a magistrate may, if satisfied by information on oath that the person has been so obstructed, issue a search warrant authorizing a police officer named therein, accompanied by that person, to enter the premises in respect of which the obstruction took place at any time between six o'clock in the morning and nine o'clock in the evening and to inspect any vehicles, aircraft or vessels which may be found therein.

Application to horses, food, forage and stores

187.—(1) Subject to this section, the foregoing provisions of this Part, except such of those provisions as relate only to mechanically propelled vehicles, aircraft or vessels and trailers normally drawn thereby, shall apply to horses, food, forage and stores as they apply to vehicles, aircraft or vessels.

(2) Where stores are required for and can be conveyed with, a vehicle with respect to which a direction is given under section 180 (2) (*b*), such a direction may be given as well in relation to the stores as in relation to the vehicle, aircraft or vessel, and the foregoing provisions of this Part shall apply accordingly:

Provided that section 183 (4) shall not apply, but if after the giving of the direction the furnishing of the stores is prevented by damage to them or to the vehicle, aircraft or vessel such payment, if any, shall be made in respect of the stores as may be just in all the circumstances.

(3) Notwithstanding the provisions of section 182, food, forage or stores to be furnished in pursuance of a requisitioning order at any time may be required to be furnished for purchase by the Government.

(4) Section 185 shall apply in relation to horses as it applies in relation to mechanically propelled vehicles, aircraft or vessels.

(5) In this section the expression "stores" means any chattel, other than a horse, a vehicle, aircraft or vessel, food or forage, being a chattel required for, or for use in connexion with—

(*a*) persons or vehicles, aircraft or vessels billeted or to be billeted in pursuance of a billeting requisition or otherwise temporarily accommodated or to be so accommodated; or

(*b*) vehicles, aircraft or vessels or horses furnished or to be furnished in pursuance of a requisitioning order.

Damage by vehicles, aircraft or vessels being delivered for requisitioning

188. The person using a vehicle, aircraft or vessel for the purpose of its being furnished in pursuance of a direction under section 180 (2) (*b*) shall be deemed as respects any claim in respect of injury or damage to any other person or property, to be so using the vehicle, aircraft or vessel as a servant of the Government.

Bringing into operation of sections 169 and 179

189.—(1) Wherever it appears to the Minister that the public interest so requires, he may by order which shall be published in the *Gazette* direct that section 169 or 179, or both those sections, shall come into operation either generally or as respects such area in Malaŵi as may be specified in the order; and that section or those sections, as the case may be, shall come into operation either generally or as respects such area in Malaŵi as may be specified in the order; and that section or those sections, as the case may be, shall thereupon come into operation and remain in operation so long as the order has effect.

(2) As soon as may be after either of the said sections has been brought into operation on any occasion, the Minister shall report that fact to the Cabinet and National Assembly.

(3) An order under this section shall, subject to any revocation or variation thereof, continue to have effect for the period of one month from the making thereof:

Provided that where, before the expiration of the period for which the order has effect (whether by virtue of the other provisions of this subsection or of this proviso), it is determined by the Minister that the public interest requires that the operation of the order should be extended for such further period as may be specified in the resolution, it shall be extended accordingly.

PART IX

Government and General Provisions

Division 1—Command

Command and precedence

190.—(1) Officers and soldiers of the Defence Force shall stand with each other in such order of precedence as may be prescribed by the Defence Council.

(2) Officers and soldiers of the armed forces of a friendly country raised outside Malaŵi may be attached or seconded to the Defence Force with the approval of the Defence Council.

Command of Defence Force

191.—(1) The command of the Defence Force shall vest in the Commander appointed under section 161 of the Constitution.

(2) The President shall, in accordance with section 161 of the Constitution, appoint an officer to be the Deputy Commander of the Defence Force.

(3) The Commander and Deputy Commander shall have such rank and title and fulfil such duties and functions as may be determined by the President.

(4) The Commander may delegate to any officer under his command such duties, functions and powers other than such power of delegation, as he may from time to time deem expedient.

(5) The office of the Commander shall, unless the holder is sooner removed, become vacant after the holder has served for a period of four years, but the person holding that office may be appointed for a further period not exceeding two years as the President may consider appropriate.

Powers of command of members of cooperating forces

192.—(1) In so far as powers of command depend on rank, a member of the armed forces of a friendly country who—

(*a*) is acting with; or

(*b*) is a member of a body of those forces which is acting with,

any body of the Defence Force shall have the like such powers as a member of the Defence Force of corresponding rank; and for the purposes of sections 42 and 84 any such member of those forces shall be treated as if he were a member of the Defence Force of corresponding rank.

(2) If the whole or any part of the Defence Force is required to act with any other military naval or air force, the President may place the Defence Force or such part thereof under the command of the officer commanding such other force.

(3) Where any part of the Defence Force is acting in cooperation with any other force, the Commander or the officer commanding that part of the Defence Force may, in agreement with the officer commanding that other force, define the powers of command and the order of precedence of the officers, warrant officers and non-commissioned officers of the Defence Force in relation to the officers, warrant officers and non-commissioned officers of such other force.

Military police

193.—(1) There is hereby established a unit, to be known as military police, which shall be part of the Regular Force, and which shall consist of a provost marshal and such other members as the Commander may determine.

(2) Every member of the military police shall on joining the unit make an oath of allegiance in the form set out in the Third Schedule.

(3) The functions of the military police shall be—

(*a*) to maintain military discipline;

(*b*) to maintain the security and orderly regulation as well as ensure protection (including protection against fire and other damages of—

(i) all public establishments; and

(ii) all public property under the charge of the Defence Force.

(4) In the exercise of their functions under this Act, all members of the military police shall have the same powers and privileges as are by law accorded to civil police, including the power to carry arms; but such powers and privileges shall not apply in relation to a member of the military police when he is beyond the limits of a public establishment except when that member—

(*a*) is performing his functions in respect of public property under the charge of the Defence Force; or

(*b*) is in charge of fresh pursuit of a person who is reasonably suspected of having committed an offence—

(i) in or on such establishment;

(ii) in relation to public property under the control of the Defence Force; or

(iii) in relation to a member of the military police, or to a member of the Defence Force, or to a person employed in the service of a unit of the Defence Force.

(5) For the purposes of this section "public establishment" means—

(*a*) any establishment of the Defence Force; and

(*b*) any building or other premises belonging to, or in the occupation of, the Government which the Minister, after consultation with the Minister responsible for matters relating to internal security, may, by order published in the *Gazette*, declare to be a public establishment for the purposes of this section.

Provost marshal

194.—(1) There shall be a provost marshal who shall be appointed by the Commander from among the officers of the Defence Force.

(2) The provost marshal shall—

(*a*) be responsible for the enforcement of discipline within the Defence Force; and

(*b*) carry out such other duties as the Commander may assign to him in accordance with this Act.

Directorate of Legal Services

195.—(1) There shall be a Directorate of Legal Services within the Defence Force.

(2) The Commander shall appoint an officer to be the Director of Legal Services within the Defence Force.

(3) The Director of Legal Services shall, in relation to service law—

(*a*) advise the Commander on all legal matters affecting the Defence Force;

(*b*) prosecute and defend charges before a court-martial;

(*c*) defend a member of the Defence Force in a civil court or other tribunal in matters pertaining to performance of military duties; and

(*d*) perform such other duties as the Commander may assign to him in accordance with this Act.

Division 2—Redress of Complaints

Complaints by officers

196.—(1) If an officer of the Defence Force thinks himself wronged in any matter by a superior officer and on application to his commanding officer does not obtain the redress to which he thinks he is entitled, he may make a complaint with respect to that matter to the Defence Council.

(2) On receiving any such complaint, it shall be the duty of the Defence Council to investigate the complaint and to grant any redress which appears to it to be necessary or, if the complainant so requires, the Defence Council shall make its report on the complaint to the President in order to receive the directions of the President.

Complaints by soldiers

197.—(1) If a soldier of the Defence Force thinks himself wronged in any matter by any officer, other than his commanding officer, or by any soldier, he may make a complaint with respect to that matter to his commanding officer.

(2) If a soldier of the Defence Force thinks himself wronged in any matter by his commanding officer, either by reason of redress not being given to his satisfaction on a complaint under subsection (1) or for any other reason, he may make a complaint with respect thereto to the Defence Council.

(3) It shall be the duty of a commanding officer or the Defence Council to have any complaint received under this section investigated and to take any steps for redress in the matter complained of which appear to be necessary.

Division 3— Exemption for Officers and Soldiers

198. An officer or a soldier of the Regular Force shall be exempted from serving as an assessor in any civil court:

Exemption from service as assessor

Provided that an officer of the rank of captain or above may serve as an assessor in a civil court during any trial for an offence against this Act.

199.—(1) Duties or tolls for passing over any road, ferry or bridge in Malaŵi shall not be payable in respect of—

Exemption from tolls, etc.

(*a*) members of the Defence Force on duty;

(*b*) vehicles in military service, being vehicles belonging to the Government or other vehicles driven by persons, whether members of the Defence Force or not, in the service of the Government;

(*c*) goods carried in such vehicles; and

(*d*) animals in military service.

(2) In subsection (1) the expression "in military service" means employed under proper military authority for the purposes of any body of the Defence Force or accompanying any body of the Defence Force.

200. No judgment, decree or order given or made against an officer or a soldier of the Defence Force by any court in Malaŵi shall be enforced by the levying of execution on any service property, nor shall any distress be made thereon.

Exemption from taking in execution of property used for military purposes

Division 4—Provisions Relating to Deserters and Absentees Without Leave

201.—(1) A police officer may arrest any person whom he has reasonable cause to suspect of being an officer or a soldier of the Defence Force who has deserted or is absent without leave.

Arrest of deserters and absentees without leave

(2) Where no police officer is available any person may arrest any person whom he has reasonable, cause to suspect of being an officer or a soldier of the Defence Force who has deserted or is absent without leave.

(3) Any person having authority to issue a warrant for the arrest of a person charged with crime, if satisfied by evidence on oath that there is, or is reasonably suspected of being, within his jurisdiction an officer or a soldier of the Defence Force who has deserted or is absent without leave or is reasonably suspected of having deserted or of being absent without leave, may issue a warrant authorizing his arrest.

(4) Any person in custody in pursuance of this section shall as soon as practicable be brought before a subordinate court.

(5) Notwithstanding any other law to the contrary, a person arrested and brought before a subordinate court under this section or section 202 or 203 shall not be admitted to bail.

Proceedings before a civil court, where persons suspected of illegal absence

202.—(1) Where a person who is brought before a subordinate court is alleged to be an officer or a soldier of the Defence Force who has deserted or is absent without leave, the provisions under this section shall have effect.

(2) If the person mentioned in subsection (1) admits that he is illegally absent from the Defence Force and the court is satisfied of the truth of the admission, then—

(*a*) unless he is in custody for some other cause the court shall; and

(*b*) notwithstanding that he is in custody for some other cause, the court may,

forthwith either cause him to be delivered into military custody in such manner as the court may think fit or commit him to some prison, police station or other place provided for the confinement of persons in custody, to be kept there for such reasonable time as the court may specify, not exceeding such time as appears to the court reasonably necessary for the purpose of enabling him to be delivered into military custody, or until sooner delivered into such custody.

(3) Any time specified by the court under subsection (1) may be extended by the court from time to time if it appears to the court reasonably necessary so to do for the purpose specified in that subsection.

(4) If a person mentioned in subsection (1) does not admit that he is illegally absent from the Defence Force, or the court is not satisfied of the truth of the admission, the court shall consider the evidence and any statement of the accused, and if satisfied that he is subject to service law and if of opinion that there is sufficient evidence to justify his being tried under service law for an offence of desertion or absence without leave, then, unless he is in custody for some other cause, the court shall cause him to be delivered into military custody or commit him as provided in subsection (2), but otherwise shall discharge him:

Provided that if he is in custody for some other cause, the court shall have power, but shall not be required, to act in accordance with this subsection.

Deserters and absentees without leave surrendering to police

203.—(1) Where a person surrenders himself to a police officer as being illegally absent from the Defence Force, the police officer shall, unless that person surrenders himself at a police station, bring him to a police station.

(2) The police officer in charge of a police station at which a person has surrendered himself, or to which a person who has so surrendered himself is brought, shall forthwith inquire into the case, and if it appears to that officer that the person is illegally absent from the Defence Force, he may cause him to be delivered into military custody without bringing him before a subordinate court or may bring him before such a court.

Certificates of arrest or surrender of deserters and absentees

204.—(1) Where a subordinate court in pursuance of section 202 deals with a person as illegally absent, then when that person is delivered into military custody there shall be handed over with him a certificate in the prescribed form, signed by a magistrate, containing the prescribed particulars as to his arrest or surrender and the Proceedings before the court.

(2) Where a person is delivered into military custody without being brought before a court, whether under section 203 or under any other lawful power, there shall be handed over a certificate in the prescribed form signed by the police officer who causes him to be delivered into military custody, containing the prescribed participation relating to his surrender.

(3) In any proceedings for an offence against section 46 or 47—

(*a*) a document purporting to be a certificate under either of subsections (1) or (2) of this section, or under the corresponding provisions of any service law, other than this Act, and to be signed as thereby required, shall be evidence of the matters stated in the document; and

(*b*) where the proceedings are against a person who has been taken into military custody on arrest or surrender, a certificate in the prescribed form purporting to be signed by a provost officer or by any officer in charge of the guardroom or other place where that person, as confined on being taken into custody stating the fact, date, time and place of arrest or surrender shall be evidence of the matter in the certificate.

Duties of superintendents of prisons and others to receive deserters and absentees

205.—(1) It shall be the duty of the superintendent or other person in charge of a civil prison to receive any person duly committed to that prison by a subordinate court as illegally absent under service law and to detain him in accordance with the directions of the court under which he is delivered into military custody.

(2) Subsection (1) shall apply to the person having charge of any police station or other place, not being a prison, provided for the confinement of persons in custody as it applies to the superintendent of a prison.

Division 5—Offences Relating to Military Matters Punishable by Civil Courts

Punishment for pretending to be a deserter

206. Any person who falsely represents himself to any military or civil authority to be a deserter from the Defence Force shall be guilty of an offence and shall be liable to a fine of K10,000 and to imprisonment for three months.

Punishment for procuring and assisting desertion

207. Any person who—

(*a*) procures or persuades any officer or soldier of the Defence Force to desert or to absent himself without leave;

(*b*) knowing that any officer or soldier of the Defence Force is about to desert or absent himself without leave, assists him in so doing; or

(*c*) knowing any person to be a deserter or absentee without leave from the Defence Force, conceals him or assists him in concealing himself or assists in his rescue from custody,

shall be guilty of an offence and shall be liable to a fine of K20,000 and to imprisonment for six months.

Punishment for obstructing officers or soldiers in execution of duty

208. Any person who willfully obstructs or otherwise interferes with any officer or soldier of the Defence Force, acting in the execution of his duty, shall be guilty of an offence and shall be liable to a fine of K10,000 and to imprisonment for three months.

Punishment for aiding malingering

209. Any person who—

(*a*) produces in an officer or soldier of the Defence Force any sickness or disability; or

(*b*) supplies to or for him any drug or preparation calculated or likely to render him, or lead to the belief that he is, permanently or temporarily unfit for service,

with a view to enabling him to avoid military service, whether permanently or temporarily, shall be guilty of an offence and shall be liable to a fine of K20,000 and to imprisonment for six months.

Unlawful purchase, etc., of military stores

210.—(1) Any person who acquires any military stores or solicits or procures any person to dispose of any military stores, or acts for any person in the disposing of any military stores, shall, unless he proves either—

(*a*) that he did not know, and could not reasonably be expected to know, that the chattels in question were military stores; or

(*b*) that those chattels had (by the transaction with which he is charged or some earlier transaction) been disposed of by order or with the consent of some person or authority who had, or whom he had reasonable cause to believe had, power to give the order or consent; or

(*c*) that those chattels had become the property of an officer of the Defence Force who had retired or ceased to be an officer, or of a soldier of the Defence Force who had been discharged or of the personal representatives of a person who had died,

shall be guilty of an offence and shall be liable to a fine of K100,000 and to imprisonment for two years.

(2) A police officer may arrest without warrant any person whom he has reasonable grounds for suspecting of having committed any offence against this section and may seize any property which he has reasonable grounds for suspecting of having been the subject of the offence.

(3) Any person having authority to issue a warrant for the arrest of a person charged with crime may if satisfied by evidence on oath that a person within his jurisdiction has, or is reasonably suspected of having in his possession any property which has been the subject of an offence against this section, grant a warrant to search for such property as in the case of stolen goods, and any property suspected of having been the subject of such an offence which is found on such a search shall be seized by the officer charged with the execution of the warrant, and that officer shall bring the person in whose possession or keeping the property is found before a subordinate court.

(4) In this section the expression—

"acquire" means buy, take in exchange, take in pawn or otherwise receive (whether apart from this section the receiving is lawful or not);

"dispose" means sell, give in exchange, pledge or otherwise hand over whether, apart from this section, the handing over is lawful or not;

"military stores" means any chattel of any description belonging to the Government which has been issued for use for military purposes or is held in store for the purpose of being so issued when required, and includes any chattel which had so belonged, and had been so issued or held, at some past time.

(5) For the purposes of subsection (3), property shall be deemed to be in the possession of a person if he has it under his control, and whether he has it for his own use or benefit or for the use or benefit of another person.

Illegal dealing in documents relating to pay, pension, mobilization, etc.

211.—(1) Any person who—

(*a*) as a pledge or a security for a debt; or

(*b*) with a view to obtaining payment from the person entitled thereto of a debt due either to himself or to any other person,

receives, detains or has in his possession any official document issued in connexion with the payment to any person of any pay, pension, allowance, gratuity or other payment payable in respect of his or any other person's military service shall be guilty of an offence.

(2) Any person who has in his possession without lawful authority or excuse, the proof of which shall lie on him, any such document as mentioned in subsection (1) or any official document issued in connexion with the mobilization or demobilization of the Defence Force or any member of the Defence Force, shall be guilty of an offence and shall be liable to a fine of K20,000 and to imprisonment for six months.

(3) For the purposes of this section a document shall be deemed to be in the possession of a person if he has it under his control and whether he has it for his own use or benefit or for the use or benefit of another person.

Unauthorized use of and dealing in decorations, etc.

212.—(1) Any person who—

(*a*) being a person who is not serving in the Defence Force or any cooperating forces without authority wears in a public place the uniform of any part of the Defence Force or of those forces or any dress having the appearance or bearing any of the regimental or other distinctive marks of any such uniform;

(*b*) without authority uses or wears any naval, military or air force decoration, or any badge, wound stripe or any emblem supplied or authorized by the Defence Council or by the Government of the country of any cooperating forces;

(*c*) uses or wears any decoration, badge, wound stripe or emblem so nearly resembling any decoration, badge, wound stripe or emblem, as to be calculated to deceive; or

(*d*) falsely represents himself to be a person who is or has been entitled to use or wear any such decoration, badge, wound stripe or emblem as is mentioned in paragraph (*b*),

shall be guilty of an offence:

Provided that nothing in this subsection shall—

(i) prevent any person from wearing any uniforms or dress in the course of a stage play performed in a place duly licensed or authorized for the public performance of stage plays or in the case of a musical or circus performance, or in the course of any *bona fide* military representation; or

(ii) prohibit the use and wearing of ordinary regimental badges or of brooches or of ornaments representing them.

(2) Any person who purchases or takes in pawn any naval, military or air force decoration awarded to any member of the Defence Force or cooperating forces, or solicits or procures any person to sell or pledge any such decoration, or acts for any person in the sale or pledging thereof, shall be guilty of an offence unless he proves that at the time of the alleged offence the person to whom the decoration was awarded was dead or had ceased to be a member of the Defence Forces or of those forces.

(3) Any person who is guilty of an offence under this section shall be guilty of an offence and shall be liable to a fine of K10,000 and to imprisonment for three months.

Division 6—Provisions as to Evidence

General provisions as to evidence

213.—(1) The following provisions shall have effect with respect to evidence in proceedings under this Act, whether before a court-martial, a civil court or otherwise.

(2) A document purporting to be a copy of the attestation paper signed by any person and to be certified to be a true copy by a person stated in the certificate to have the custody of the attestation paper shall be evidence of the enlistment of the person attested.

(3) The attestation paper purporting to be signed by a person on his enlistment shall be evidence of his having given the answers to questions which he is therein recorded as having given.

(4) A letter, return or other document stating that any person—

(*a*) was or was not serving at any specified time or during any specified period in any part of the Defence Force or in any part of cooperating forces or was discharged from any part of the Defence Force or of those forces at or before any specified time;

(*b*) held or did not hold at any specified time any specified rank or appointment in any part of the Defence Force or of those forces or had at or before any specified time been attached to any part of the Defence Force or of those forces, or at any specified time or during any specified period was or was not

serving or held or did not hold any rank or appointment in any particular country or place; or

(*c*) was or was not at any specified time authorized to use or wear any decoration, badge, wound stripe or emblem,

shall, if purporting to be issued by or on behalf of the Defence Council, or a person authorized by the Defence Council, be evidence of the matters stated in the document.

(5) A record made in any prescribed service book or any other prescribed document, being a record made in pursuance of service law or regulations, or otherwise in pursuance of military duty, and purporting to be signed by the commanding officer or by any person whose duty it was to make the record, shall be evidence of the facts stated therein; and a copy of a record (including the signature thereto) in any such book or other document purporting to be certified to be a true copy by a person stated in the certificate to have the custody of the book or other document, shall be evidence of the record.

(6) A document purporting to be issued by order of the Defence Council and to contain instructions or orders given or made by the Defence Council shall be evidence of the giving of the instructions or making of the orders and of their contents.

(7) A certificate purporting to be issued by or on behalf of the Defence Council, or by a person authorized by the Defence Council, and stating—

(*a*) that a decoration of a description specified in or annexed to the certificate is a military decoration; or

(*b*) that a badge, wound stripe or emblem of a decoration specified in or annexed to the certificate is one supplied or authorized by the Defence Council or by the cooperating forces,

shall be evidence of the matters stated in the certificate.

(8) A certificate purporting to be signed by a person's commanding officer or any officer authorized by him to give the certificate, and stating the contents of, or any part of, standing orders or other routine orders of a continuing nature made for—

(*a*) any formation or unit or body of troops;

(*b*) any command or other area, garrison or place; or

(*c*) any vessel, train or aircraft,

shall, in proceedings against a person, be evidence of the matters stated in the certificate.

Proof of outcome of civil trial

214.—(1) Where a person subject to military law under this Act has been tried before a civil court, whether at the time of the trial

he was so subject or not, a certificate signed by the clerk of the court or by a judge or a magistrate and stating all or any of the following matters—

(*a*) that the said person has been tried before the court for an offence specified in the certificate;

(*b*) the result of the trial;

(*c*) what judgment or order was given or made by the court; or

(*d*) that other offences specified in the certificate were taken into consideration at the trial,

shall, for the purposes of this Act, be evidence of the matters stated in the certificate.

(2) A document purporting to be a certificate under this section and to be signed by the clerk of the court, a judge or a magistrate shall, unless the contrary is shown, be deemed to be such a certificate.

(3) The clerk of the court shall, if required by the commanding officer of the person in question or any other officer authorized by him, furnish a certificate under this section.

(4) References in this section to the clerk of the court include references to his deputy, to the registrar of the High Court and to any other person having the custody of the records of a court.

Evidence of proceedings of court-marshal

215.—(1) The original record of the proceedings of a court-martial under service law purporting to be signed by the presiding officer of the court and being in the custody of any person having the lawful custody thereof shall be admissible in evidence on production from that custody.

(2) A document purporting to be a copy of the original record of the proceedings of a court-martial under service law or any part thereof and to be certified by the person having the lawful custody of the proceedings to be a true copy shall be evidence of the contents of the proceedings or the part to which the document relates, as the case may be.

(3) This section applies to evidence given in any court, whether civil or criminal.

Division 7—Miscellaneous Provisions

Temporary reception in civil custody of persons under escort

216.—(1) Where a person is in military custody when charged with, or with a view to his being charged with, an offence against Part V or the corresponding provisions of any other service law, it shall be the duty of the superintendent or other person in charge of a civil prison or of the person having charge of any police station

or other place in which prisoners may be lawfully detained, upon delivery to him of a written order purporting to be signed by the commanding officer of the person in custody to receive him into his custody for a period not exceeding seven days.

(2) In subsection (1), "civil prison" has the meaning ascribed to it in section 140.

Avoidance or assignment of, or charge on, military pay, pension, etc.

217.—(1) Every assignment of or charge on, and every agreement to assign or charge, any pay, award, grant, pension or allowance payable to any person in respect of his or any other person's service in the Defence Force or the armed forces of a friendly country shall be void.

(2) Save as expressly provided by this Act, no order shall be made by any court the effect of which would be to restrain any person from receiving anything which, by virtue of this section, he is precluded from assigning and to direct payment thereof to another person.

(3) Nothing in this section shall prejudice any law providing for the payment of any sum to a bankruptcy trustee in bankruptcy for distribution among creditors.

Power of certain officers to make statutory declarations

218.—(1) An officer of the Defence Force or of the armed forces of a friendly country not below field rank (hereinafter referred to as an "authorized officer") may, outside Malaŵi, take statutory declarations from persons subject to military law under this Act.

(2) A document purporting to have subscribed thereto the signature of an authorized officer in testimony of a statutory declaration being taken before him in pursuance of this section and containing in the jurat or attestation a statement of the date on which and the place at which the declaration was taken and of the full name and rank of that officer, shall be admitted in evidence without proof of the signature being the signature of that officer or of the facts so stated.

PART X

Militia

Composition, discipline and functions of the Militia

219.—(1) The Militia shall consist of citizens of Malaŵi between eighteen years and sixty years of age who have elected to render part-time service in the Defence Force and are accepted by the Defence Council.

(2) Every member of the Militia shall be subjected to the provisions of this Act for the discipline and administration during training and active service.

(3) Units of the Militia or parts thereof shall train for and undertake military service either independently of, or jointly with, other components of the Defence Force.

(4) A member of the Militia shall at all times be liable to serve anywhere within or outside Malaŵi, save that a member shall be liable to serve outside Malaŵi only with the approval of the President.

Procedure for enlistment

220.—(1) The term for which a person enlisting in the Militia may be enlisted shall be such term beginning with the date of his attestation as may be prescribed.

(2) A person enlisting in the Militia shall be attested in the same manner as a recruit in the Regular Force and the following provisions of Part IV that is to say—

(*a*) section 18 (which relates to the mode of enlistment and attestation;

(*b*) section 31 (which relates to the validity of attestation and enlistment), but omitting the references in that section to the receipt of pay; and

(*c*) section 32 (which makes recruits punishable for false answers),

shall apply in like manner as if they were re-enacted in this Part of this Act with substitution for the expression "Regular Force" of expression "Militia".

(3) A person enlisting in the Militia may be attested by any officer and the provisions of Part IV mentioned in subsection (2), together also with section 70 (which relates to false answers on enlistment), shall in their application to the Militia be construed as if the expression "recruiting officer" included an officer of the Defence Force.

Training

221.—(1) Subject to this section, a member of the Militia shall receive initial and subsequent military training at such place or places and for such periods as may be determined by the Defence Council and shall fulfil such conditions relating to training as may be prescribed.

(2) The requirement of subsection (1) may be dispensed with in whole or in part with respect to the Militia or any part thereof by the Defence Council and with respect to any individual member of the Militia by his commanding officer subject to any general directions of the Defence Council.

Embodiment

222.—(1) Wherever it appears to the President necessary or desirable in the public interest he may by notice published in the *Gazette* or otherwise—

(*a*) order the employment of the whole or any part of the Militia; and

(*b*) order the employment of any member of the Militia for service within or, with his consent, outside Malaŵi.

(2) Any member of the Militia employed under subsection (1) by reason of an order issued by the President shall remain so employed until released by order of the President.

(3) Every member of the Militia may, when undergoing training under section 221, or when employed under subsection (1), be posted or attached to any unit of the Regular Force or the Reserve Force.

Discharge

223.—(1) A member of the Militia shall, save as otherwise provided in this section, be entitled to be discharged before the end of his current term of service on complying with the following conditions—

(*a*) giving to his commanding officer one month's notice in writing, or such less notices as may be prescribed, of his desire to be discharged; and

(*b*) delivering up in good order, fair wear and tear only excepted, all arms, clothing and appointments, being public property issued to him, or, in cases where for any good or, sufficient cause the delivery of such property is impossible, paying the value thereof:

Provided that it shall be lawful for the commanding officer, in any case in which it appears that the reasons for which the discharge is claimed are of sufficient urgency or weight, to dispense either wholly or in part with any of the conditions in paragraph (*a*) or (*b*).

(2) A member of the Militia may be discharged by his commanding officer—

(*a*) for disobedience to orders by him while doing any military duty, or for neglect of such duty, or for misconduct by him as a member of the Militia, or for other sufficient cause, the existence and sufficiency of such cause to be judged by the commanding officer; or

(*b*) within one year of the date of his enlistment if, in the opinion of his commanding officer, he is considered to be either—

(i) unlikely to make an efficient soldier; or

(ii) likely to bring discredit upon the Defence Force.

Postponement of discharge

224. Where the time at which a member of the Militia would otherwise be entitled to be discharged occurs at a time when the

Militia or any part thereof is employed under section 222, he may be required to prolong his service for such further term as the President may order.

Failure to attend on embodiment or training

225.—(1) Any member of the Militia who, without leave lawfully granted or such sickness or other reasonable excuse as may be allowed in the prescribed manner, fails to appear at the time and place appointed for assembly on embodiment in accordance with directions given under section 222 shall be guilty, according to the circumstances, of desertion or absence without leave, and on conviction by court-martial shall be punishable as for an offence under section 46 or, as the case may be, section 47.

(2) Sections 201 and 202 shall apply to a deserter or absentee without leave contrary to subsection (1).

(3) Any person who, knowing any member of the Militia to be a deserter within the meaning of this Act, employs or continues to employ him shall be deemed to aid him in concealing himself within the meaning of section 207 (*c*) (which provides, among other things, for the punishment of persons concealing deserters from the Defence Force).

(4) Where a member of the Militia deserts contrary to subsection (1), the time which elapsed between the time of his desertion and the time of his apprehension or voluntary surrender shall not be taken into account in reckoning his service for the purpose of discharge.

Failure to fulfil training obligations

226. Where a member of the Militia, without leave lawfully granted, or such sickness or other reasonable cause as may be allowed in the prescribed manner, fails to appear at the time and place appointed for preliminary training or for annual training, or fails to attend the number of drills or instructional parades or to fulfil the other conditions relating to preliminary or annual training which may be prescribed, he shall be guilty of an offence and shall be liable to a fine of K10,000.

Power to make regulations under this Part

227. Subject to the foregoing provisions of this Part, the Minister may with the advice of the Defence Council, make regulations for the better carrying out of this Part and generally for the good government and organization of the Militia and for providing for matters required by this Part to be prescribed and without prejudice to the generality, of the foregoing such regulations may make provision with respect to all or any of the following matters, that is to say—

(*a*) the constitution, powers and functions of the Militia or any part thereof;

(*b*) the enlistment of persons into, and the discharge of persons from, the Militia;

(*c*) the pay, allowances, pensions and gratuities of members of the Militia and of their dependants surviving them and the deduction therefrom and the forfeiture thereof;

(*d*) the calling out of members of the Militia on service in accordance with section 222 and for training, including prescribing the manner in which notification of the places and times appointed for training is to be given;

(*e*) requiring members of the Militia to report themselves from time to time; and

(*f*) the attachment of members of the Regular Force to the Militia.

PART XI

Reserve Force

Composition

228.—(1) The Reserve Force shall consist of such officers and soldiers who shall be appointed therein under sections 16 (2) and 24.

(2) Retired officers and soldiers of the Defence Force, not exceeding 55 years of age, shall be members of the Reserve Force.

Discharge from Reserve Force

229.—(1) An officer or soldier of the Reserve Force may be discharged by the appropriate superior authority at any time during the currency of any term of engagement—

(*a*) for disobedience to orders issued to him while doing any military duty, or for neglect of such duty, or for misconduct by him as a member of the Reserve Force, or for other sufficient or reasonable cause as may be determined by the commanding officer or appropriate superior authority;

(*b*) if, in the opinion of his commanding officer or appropriate superior authority, he is considered to be either—

(i) unlikely to make an efficient officer or soldier; or

(ii) likely to bring discredit upon the Defence Force.

(2) A member of the Reserve Force who is discharged from service shall deliver up in good order, fair wear and tear only excepted, all arms, clothing and accoutrements, being public property issued to him, or in cases where for any good or sufficient cause the delivery of the property mentioned is impossible, paying the value of the property.

(3) The commanding officer or approbate superior authority may, if it appears to him that the reasons for which the discharge is

claimed are of sufficient urgency or weight, dispense either wholly or in part with all or any of the requirements specified in subsection (2).

Reporting of Reserve Force

230. Officers and soldiers of the Reserve Force shall be required to report to such authority and to attend such examinations before a medical board as may be directed by the Defence Council.

Embodiment

231.—(1) The President may, in accordance with chapter XVI of the Constitution, by notice published in the *Gazette* or otherwise, order the employment of the whole or any part of the Reserve Force.

(2) Where the President has made an order under subsection (1) the Defence Council may order employment of any officer or soldier from the Reserve Force for service within or outside Malaŵi.

(3) Any officer or soldier of the Reserve Force employed by reason of an order issued pursuant to subsections (1) and (2) shall remain so employed until released by the Defence Council.

(4) Every officer and soldier of the Reserve Force may, when called out for service under this section, be posted or attached to any unit of the Regular Force or the Militia or the Reserve Force.

Training of Reserve Force

232.—(1) Subject to subsection (2), officers and soldiers of the Reserve Force shall receive continuing military training at such places and for such periods as may be determined by the Defence Council and shall fulfill such conditions relating to training as may be prescribed.

(2) The requirements of subsection (1) may be dispensed, with in whole or in part with respect to the Reserve Force or any part thereof by the Defence Council and with respect to any individual member of the Reserve Force by his commanding officer or appropriate superior authority subject to any general directions of the Defence Council.

Failure to fulfil training obligations

233. Where a member of the Reserve Force, without leave lawfully granted, or such sickness or other reasonable cause as may be allowed in the prescribed manner, fails to appear at the time and place appointed for training or fails to attend the number of drills or instructional parades or to fulfil the other conditions relating to training which may be prescribed, he shall be guilty of an offence and he shall be liable to a fine of K10,000.

Postponement of discharge

234. Where the time at which a member of the Reserve Force would otherwise be entitled to be discharged occurs at a time when the Reserve Force, or any part thereof, is employed under section

231, he may be required to prolong his service for such further term as the Defence Council may order.

Failure to attend on embodiment

235.—(1) Any officer or soldier of the Reserve Force who without leave lawfully granted or such sickness or other reasonable excuse as may be allowed in the prescribed manner, fails to appear at the time and place appointed for assembly on embodiment in accordance with directions given under section 231, shall be guilty, according to the circumstances, of desertion or absence without leave, and on conviction, shall be punishable as for an offence under section 46 or, as the case may be, section 47.

(2) Any person who, by any means whatsoever—

(*a*) procures or persuades any officer or soldier of the Reserve Force to commit an offence of desertion contrary to subsection (1), or attempts to procure or persuade any such officer or soldier to commit such an offence;

(*b*) knowing that any such officer or soldier is about to commit such an offence aids or assists him in so doing; or

(*c*) knowing any such officer or soldier to be a deserter contrary to subsection (1), conceals the soldier, or aids or assists him in concealing himself or employs or continues to employ him, or aids or assists in his rescue,

shall be guilty of an offence and shall be liable to a fine of K10,000 and to imprisonment for six months.

(3) Sections 201 and 202 shall apply to a deserter or an absentee without leave contrary to subsection (1).

(4) Any person who, knowing any officer or soldier of the Reserve Force to be a deserter within the meaning of this Act, employs or continues to employ the officer, or soldier, shall be deemed to aid him in concealing himself within the meaning of section 207 (*c*) (which provides, among other things, for the punishment of persons concealing deserters from the Regular Force).

(5) Where an officer or soldier of the Reserve Force deserts contrary to subsection (1), the time which elapsed between the time of his desertion and the time of his apprehension or voluntary surrender shall not be taken into account in reckoning his service for the purpose of retirement or discharge.

Power to make regulations under this Part

236. Subject to the foregoing provisions of this Part, the Minister may with the advice of the Defence Council, make regulation for the better carrying out of this Part and generally for the good government and "organization of the Reserve Force and for providing for matters required by this Part to be prescribed

and, without prejudice to the generality of the foregoing, such regulations may make provision with respect to all or any of the following matters, that is to say—

(*a*) the transfer of persons to, and the discharge of persons from, the Reserve Force;

(*b*) the pay, allowances, pensions and gratuities of officers and soldiers of the Reserve Force and of their dependants surviving them and the deductions therefrom and the forfeiture thereof;

(*c*) the calling out of officers and soldiers of the Reserve Force on service in accordance with section 231, including prescribing the manner in which notification of the places and time appointed is to be given; and

(*d*) requiring officers and soldiers of the Reserve Force to report themselves from time to time.

PART XII

Application of Act and Supplementary Provisions

Division 1—Persons subject to Military Law

Persons subject to military law

237.—(1) Subject to sections 239 and 240, the following persons are subject to military law under this Act—

(*a*) officers and soldiers of the Regular Force;

(*b*) officers and soldiers when attached to the Defence Force or any part thereof;

(*c*) officers and soldiers of the Reserve Force when employed under section 231; and

(*d*) members of the Militia.

(2) This Act shall apply to the persons subject thereto—

(*a*) as well outside as within Malaŵi; and

(*b*) notwithstanding their attachment under section 7 or 9.

Application of Act to civilians

238.—(1) Subject to the modification hereinafter specified, where any part of the Defence Force is on active service, Part V shall apply to any person who is employed in the service of that part of the Defence Force or a member thereof, or accompanies that part of the Defence Force, and is not subject to service law, as it applies to soldiers subject to military law under this Act.

(2) The modifications referred to in subsection (1) are the following—

(*a*) the punishment which may be awarded by a court-martial shall include a fine, but shall not include any other punishment less than imprisonment;

(*b*) the punishment which may be imposed where a charge is dealt with summarily shall, in the use of any offence, be a fine not exceeding K5,000 but no other punishment;

(*c*) the following provision shall have effect in substitution for section 84 (2), (3) and (4), that is to say, that a person may be arrested by a provost officer, by any warrant officer or non-commissioned officer legally exercising authority under a provost officer or on his behalf, or by order of any officer, subject to service law;

(*d*) where a charge is being dealt with summarily and it has been determined that the accused is guilty, a finding shall not be recorded until after the accused has been afforded an opportunity of electing to be tried by court-martial, and if the accused so elects a finding shall not be recorded but such steps shall be taken with a view to the charge being tried by court-martial as may be prescribed by Rules of Procedure;

(*e*) the provisions of this Act relating to the investigation of, and summary dealing with, offences shall, save as otherwise expressly provided, apply as they apply to soldiers;

(*f*) for the purposes of the provisions of this Act relating to the investigation of offences, the commanding officer of a civilian to whom this section applies shall be the officer for the time being commanding the unit or detachment in which the person is employed or which he accompanies; and

(*g*) for references in section 125 to being, continuing or ceasing to be subject to this Act, there shall be substituted references to being, continuing to be or ceasing to be in such circumstances that Part V applies and section 125 (3) shall not apply.

(3) Any fine awarded by military law under this Act, whether by a court-martial or the commanding officer, shall be recoverable summarily on complaint by any officer of the Defence Force before a subordinate court as a debt due to the Government.

Application of Act to members of friendly forces

239.—(1) Officers, warrant officers and non-commissioned officers who, being members of the armed forces of a friendly country, are subject to military law of that country and are seconded to serve with the Defence Force or any part of the Defence Force shall not be subject to military law under this Act.

(2) In the event of a person referred to in subsection (1) committing an offence against the military law of the country from where he is seconded he may be held, tried and punished in Malaŵi under the military law of that country for the offence.

Application of Act to Militia and Reserve Force

240. The provisions of Part V relating to the award of fines and stoppages, and Part VII, shall not apply to members of the Militia except when undergoing training either voluntary or as may be prescribed by section 221, or when employed under section 222, or to officers and soldiers of the Reserve Force except when reporting under section 231 or employed under section 231 or section 232.

Power to make regulations

241. Subject to the provisions of this Act, the Minister may, with the advice of the Defence Council, make regulations for the better carrying out of this Act and generally for the good government and organization of the Defence Force and for providing matters required by this Act to be prescribed and, without prejudice to the generality of the foregoing, such regulations may make provision with respect to all or any of the following matters, that is to say—

(*a*) the enlistment of persons into, and the discharge of persons from, the Regular Force and generally for the carrying into effect of Part IV, including the prescribing of the necessary forms and the administration of oaths and affirmations;

(*b*) the compensation of persons subject to military law under this Act for total or partial incapacity caused by personal injury sustained by accident arising out of or in the course of discharging military duties under this Act;

(*c*) the pay, allowances, pensions and gratuities of soldiers and their dependants surviving them, and the deductions therefrom and the forfeiture thereof;

(*d*) the description, supply, use and disposal of arms, accoutrements, clothing and other stores;

(*e*) prohibiting, restricting and regulating the holding of meetings, within the limits of any camp or other military establishment and the admission thereto of civilians for the purpose of holding, addressing or attending any such meeting;

(*f*) the award of medals to service members, and where appropriate, to civilians for an act or acts done in support of military duties; and

(*g*) in respect of matters for which regulations may be made under the foregoing provisions of this Act, other than under Part III and Part IV.

Powers exercisable in subsidiary legislation

242.—(1) Any power conferred by this Act to make regulations, rules, orders or other instrument shall include power to make provision for specified cases or any class of cases, and to make different provisions for different cases or any class of cases, and for the purposes of any such instrument, cases or any class of cases may be defined by reference to any circumstances specified in the instrument.

(2) Any such regulations, rules or orders or other instruments as mentioned in subsection (1), may impose conditions, require acts or things to be performed or done to the satisfaction of any persons named therein, whether or not such persons are members of the Defence Force or armed forces of a friendly country, empower such persons to issue orders orally or in writing requiring such acts or things to be performed or done or prohibiting acts or things from being performed or done, and prescribe periods or dates upon, within or before which such acts or things shall be performed or done or such conditions shall be fulfilled and provide for appeal against any such order, requirement or direction.

Defence Council to act with Solicitor General's advice in certain cases

243. Notwithstanding the powers conferred upon the Defence Council by sections 108, 110, 111, 115 and 196, those powers shall not be exercised except upon advice of the Solicitor General.

Execution of orders, instruments, etc.

244.—(1) Save as expressly provided by any regulations, any order, determination, direction or appointment required or authorized to be made under this Act, by any military officer or authority may be signified under the hand of any officer authorized on that behalf, and any instrument signifying such an order, determination, direction or appointment and purporting to be signed by an officer stated therein to be so authorized shall, unless the contrary is proved, be deemed to be signed by an officer so authorized.

Repeal Cap. 12:01

245. The Army Act is repealed.

FIRST SCHEDULE

Commission

under s. 13(3)

By His Excellency

The President of the Republic of Malaŵi and Commander-in-chief of the Malaŵi Defence Force.

To:

Greetings!

..... Know you that by these Presents, I ..... reposing especial Trust and Confidence in your Loyalty, Courage and Good Conduct, do, by these Presents, constitute and appoint you to be an officer in the Malaŵi Defence Force from the ..... day of ....., 20..... You are therefore to carefully and diligently discharge your duty as such in the Rank of ..... or in such higher Ranks as I may from time to time hereafter be pleased to promote or to appoint you, and you are at all times to exercise fairness in dealing and disciplining Officers, Men and Women, serving under you and use your best endeavours to ensure that their discipline is maintained at high standard at all times. And I do hereby

command them to obey you as their Superior Officer, and you to observe and follow such Orders and Directions as from time to time you shall receive from me or the Defence Force Council in accordance with the provisions of the Defence Force Act, and the Regulations and Rules made hereunder.

Presented on the ..... day of ....., 20.....

.....

President

SECOND SCHEDULE

under s. 104

Offences of Which Accused May Be Convicted By Court-Martial

Offence Charged	*Alternative Offence*
1. Any offence against section 33 (1)	1. Any offence against section 33 (2)
2. Any offence against section 34 (1)	2. Any offence against section 34 (2)
3. Any offence against section 40 (1)	3. Any offence against section 40 (2)
4. Communicating with or giving intelligence to the enemy either with intent to assist the enemy or without authority	4. Disclosing information without authority
5. Striking a superior officer	5. (*a*) using violence to a superior officer otherwise than by striking him (*b*) offering violence to a superior officer
6. Using violence to a superior officer otherwise than striking him	6. Offering violence to a superior officer
7. Using threatening language to a superior officer	7. Using insubordinate language to a superior officer
8. Disobeying, in such manner as to show willful defiance of authority, a lawful command given or sent to him personally	8. Disobeying a lawful command
9. Desertion	9. Absence without leave
10. Attempting to desert	10. Absence without leave
11. Stealing any property	11. Fraudulently misapplying the property
12. Any offence against section 64 (1)	12. Any offence against section 64 (2)
13. Any offence against section 65 (1) involving striking	13. (*a*) The corresponding offence involving the use of violence other than striking (*b*) The corresponding offence involving the offering of violence
14. Any offence against section 65 involving the use of violence other than striking	14. The corresponding offence involving the offering of violence

THIRD SCHEDULE

Oath of Allegiance

I, ... do hereby swear by the Almighty God [or do hereby solemnly and sincerely affirm] that—

(*a*) I will be faithful and bear true allegiance to the Republic of Malaŵi;

(*b*) I will faithfully serve the people and the Republic of Malaŵi as a member of the military police;

(*c*) I will obey all laws, and all orders, regulations, directions and instructions, concerning the military police; and

(*d*) I will discharge all the duties of a member of the military police according to the law, without fear, favour, affection or ill-will.

Sworn [or affirmed] by the said

.....

after the oath had been read over and

explained to him in the .....

.....

language, which he acknowledged to

understand, at ..... this

..... day of ....., 20.....

.....

Signature or thumb-print of person making the oath

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RULES OF PROCEDURE (DEFENCE FORCE)

G.N. 43/2004

under s. 136

PART I
Preliminary

1. These Rules may be cited as the Rules of Procedure (Defence Force). Citation

2. In these Rules, except where the context otherwise requires— Interpretation

"convening a fresh court" includes dissolving the existing court;

"member" when used in relation to a court-martial does not include the presiding officer;

"special finding" means when used in relation to—

(*a*) section 104 of the Act, any finding which a court-martial may make in accordance with that section;

(*b*) section 116 of the Act, a finding in accordance with subsection (2) of that section that the accused is guilty but insane;

(*c*) rule 65(3) of these Rules, a finding that the accused is guilty of the charge subject to the exception or variation specified in the finding.

PART II
Arrest and Avoidance of Delay

3.—(1) When a person is detained by military authority in arrest, his commanding officer shall, unless it is impracticable, within 48 hours of becoming aware that he is so detained have such person brought before him, inform him of the charge against him and begin to investigate it. Avoidance of delay by commanding officers in investigating charges

(2) Every case of such a person being detained in arrest beyond the period of 48 hours referred to in this rule without such investigation having begun and the reason therefor shall be reported by his commanding officer to the appropriate superior authority.

4. The report required by section 85 (2) of the Act with regard to the necessity for further delay in bringing an accused to trial shall be in the form set out in the First Schedule and shall be signed by his commanding officer. The report shall be sent to the appropriate superior authority and a copy thereof shall be sent both to the Defence Council and to the Director of Public Prosecutions. Eight day delay report

Arrest not to exceed 72 days without permission from higher authority

5. An accused shall not be held in arrest for more than 72 consecutive days without a court-martial being convened for his trial, unless the officer who would be responsible for convening the court-martial directs in writing that he shall not be released from arrest. When giving such a direction such officer shall state his reasons for giving it.

PART III

Investigation of Charges by Commanding Officers

Methods of investigating charges

6.—(1) Subject to subrule (3), when a commanding officer investigates a charge he shall first read, and if necessary, explain the charge to the accused and shall then—

(*a*) hear the evidence himself in accordance with rule 7; or

(*b*) cause the evidence to be reduced to writing in accordance with subrule (2), and read and consider it:

Provided that—

(i) notwithstanding that he has heard all or part of the evidence himself, he may cause the evidence to be reduced to writing;

(ii) after the evidence has been reduced to writing and he has considered it, he may himself hear evidence in accordance with rule 7; and

(iii) before he submits to the appropriate superior authority a charge against an officer or warrant officer or remands a non-commissioned officer, private soldier or civilian for trail by court-martial he shall cause the evidence to be reduced into writing.

(2) Evidence may be reduced into writing in the form of a summary of evidence taken in accordance with rule 8 or an abstract of evidence made in accordance with rule 9:

Provided that a summary of evidence must be taken if—

(*a*) the maximum punishment for the offence with which the accused is charged is death; or

(*b*) the accused, at any time before the charge against him is referred to the appropriate superior authority in accordance with rule 12, requires in writing that a summary of evidence be taken; or

(*c*) the commanding officer is of opinion that the interests of justice require that a summary of evidence be taken.

(3) Where the evidence taken in accordance with subrule (1) discloses an offence other than the offence which is the subject of

the investigation, a new charge alleging that offence may be preferred against the accused in addition to, or in substitution for, the original charge and the investigation of the original charge may be treated, for the purposes of these Rules, as the investigation of the added or substituted charge.

Hearing of evidence by commanding officer

7. When a commanding officer investigates a charge by hearing the evidence himself—

(*a*) each prosecution witness shall give his evidence orally in the presence of the accused, or the commanding officer shall read to the accused a written statement made by the witness:

Provided that a written statement of a prosecution witness shall not be used if the accused requires that the witness shall give his evidence orally;

(*b*) the accused shall be allowed to cross-examine any prosecution witness;

(*c*) the accused may, on his own behalf, give evidence on oath or may make a statement without being sworn;

(*d*) the accused may call witnesses in his defence, who shall give evidence orally and in his presence;

(*e*) the evidence shall not be given on oath unless the commanding officer so directs or accused so demands;

(*f*) if the evidence is given on oath, the commanding officer shall, subject to the accused's right to make a statement without being sworn, administer the oath to each witness and to any interpreter in accordance with rule 33.

Summary of evidence

8. A summary of evidence shall be taken in the following manner and shall be in accordance with the form set out in the First Schedule—

(*a*) it shall be taken in the presence of the accused by the commanding officer or by another officer on the direction of the commanding officer;

(*b*) the prosecution witnesses shall give their evidence orally and the accused shall be allowed to cross-examine any prosecution witness:

Provided that, if a person cannot be compelled to testify as a prosecution witness or if, owing to the exigencies of the service or on other grounds (including the expense and loss of time involved), the attendance of any prosecution witness cannot, in the opinion of the officer taking the summary (to be certified by him in writing), be readily procured, a written statement of his evidence, purporting to be signed by him, may be read to the

accused and included in the summary of evidence; but, if such witness can be compelled to attend, the accused may insist that he shall attend for cross-examination;

(*c*) after all the evidence against the accused has been given, the accused shall be asked—

"Do you wish to say anything? You are not obliged to do so, but, if you wish, you may give evidence on oath, or you may make a statement without being sworn. Any evidence you give or statement you make will be taken down in writing and may be given in evidence".

Any evidence given or statement made by the accused shall be recorded in writing and, immediately thereafter, the record of his evidence or statement shall be read over to him and corrected where necessary, and he shall sign it;

(*d*) the accused may call witnesses in his defence, who shall give their evidence orally;

(*e*) neither the accused nor the witnesses for the defence shall be subject to cross-examination;

(*f*) the evidence of each witness who gives evidence orally shall be recorded in writing and, immediately thereafter, the record of his evidence shall be read over to him, corrected where necessary and signed by him;

(*g*) the record of the evidence may be in narrative form, save that any question put to a witness in cross-examination by the accused, and the answer thereto, shall be recorded verbatim if the accused so requires;

(*h*) the oath shall be administered in accordance with rule 33 by the officer taking the summary of evidence to each witness, before he gives his evidence, and to any interpreter:

Provided that where any child of tender years called as a witness does not, in the opinion of the officer taking the summary, understand the nature of an oath, his evidence may be received, though not given upon oath, if, in the opinion of the officer taking the summary, he is possessed of sufficient intelligence to justify the reception of the evidence and understands the duty of speaking the truth; and

(*i*) at the conclusion of the taking of the summary of evidence, the officer taking it shall certify thereon that he has complied with this rule.

Abstract of evidence

9.—(1) An abstract of evidence shall be made in the following way and shall be in accordance with the forms set out in the First Schedule—

(*a*) it shall be made by the commanding officer or by another officer on the direction of the commanding officer;

(*b*) the accused should not be present while the abstract is being made;

(*c*) it shall consist of signed statements by such witnesses as are necessary to prove the charge:

Provided that if, in the case of any witness, a signed statement is not readily procurable, a precis of the evidence to be given by the witness may be included instead of a signed statement; and

(*d*) an oath shall not be administered to a witness making a statement for inclusion in an abstract of evidence but use may be made, where necessary, of sworn statements which are already in existence.

(2) When an abstract of evidence has been made in accordance with this subrule, a copy of it shall be handed to the accused and he shall then be cautioned in the following terms—

"This is a copy of the abstract of evidence in your case; you are not obliged to say any thing with regard to it unless you wish to do so, but you should read it and, when you have read it, if you wish to say anything, what you say will be taken down in writing and may be given as evidence".

Any statement made by the accused after he has read the abstract of evidence shall be taken down in writing and he shall be asked to sign it. This statement, and a certificate signed by the person who recorded the statement stating that the accused was duly cautioned in accordance with this rule, shall be attached to the abstract of evidence and shall thereafter form part of it. This certificate shall be in the form set out in the First Schedule.

Investigation before summary dealing by commanding officer

10. Before a commanding officer deals summarily with a charge after the evidence has been reduced to writing—

(*a*) any prosecution witness who has not given his evidence orally shall do so if the accused requires it; and

(*b*) the commanding officer shall give the accused a further opportunity to give evidence on oath or to make a statement without being sworn and to call witnesses in his defence.

Dismissal of charge by commanding officer

11.—(1) A commanding officer may dismiss a charge at any time during his investigation if he is of the opinion that it ought not to be proceeded with further.

(2) After a commanding officer has referred a charge to the appropriate superior authority in accordance with rule 12, he shall not dismiss it unless it has been referred back to him.

Reference of charges to the appropriate superior authority

12. When a commanding officer submits to the appropriate superior authority a charge against an officer or warrant officer or has remanded a non-commissioned officer, a private soldier or a civilian for trial by court-martial, he shall send to the appropriate superior authority—

(*a*) a copy of the charge on which the accused is held;

(*b*) a draft charge-sheet containing the charges upon which the commanding officer considers that the accused should be dealt with summarily or tried by court-martial;

(*c*) the summary or abstract of evidence;

(*d*) a statement of the character and service record of the accused; and

(*e*) a recommendation as to how the charges should be proceeded with.

PART IV

Preparation of Charge-Sheets and Framing of Charges

Charge-sheets

13.—(1) A charge-sheet shall contain the whole of the issue or issues to be tried at one time and may contain more than one charge if the charges are founded on the same facts or form or are part of a series of offences of the same or similar character:

Provided that charges under section 46 (1) (*a*), section 47 (*a*), section 55 (*a*) and (c) (where the charge is connected with a charge under either of the before-mentioned paragraphs) or section 66 of the Act may be included in any charge-sheet, notwithstanding that other charges in that charge-sheet are not founded on the same facts and do not form or are not part of a series of offences of the same or similar character.

(2) Every charge-sheet shall in its layout follow the appropriate illustration given in the Second Schedule.

(3) The commencement of each charge-sheet shall be in the appropriate form set out in the Second Schedule and shall state the number, rank, name and unit of the accused and show by the description of the accused or directly by an express averment that he is subject to military law under the Act or otherwise liable to trial by court-martial.

Charges

14.—(1) Each charge shall state one offence only.

(2) Offences may be charged in the alternative in separate charges, but in no case shall they be charged in the alternative in the same charge. When charges are laid in the alternative they should be set out in order of gravity commencing with the most serious.

(3) Each shall consist of two parts, namely—

(*a*) the statement of the offence; and

(*b*) the particulars of the act, neglect or omission constituting the offence.

(4) The statement of an offence, if it is not a civil offence, shall be in the appropriate form set out in the Second Schedule; if it is a civil offence in such words as sufficiently describe that offence.

(5) The particulars shall state—

(*a*) such circumstances respecting the alleged offences as will enable the accused to know every act, neglect or omission which it is intended to prove against him as constituting the offence; and

(*b*) when the offence charged is one which can be committed either in circumstances involving a higher degree of punishment or in circumstances involving a lesser degree of punishment, facts which it is intended to prove as rendering the accused liable to the higher degree of punishment if convicted.

Joint charges

15.—(1) Any number of accused may be charged jointly in one charge for an offence committed by them jointly.

(2) When so charged any one or more of such accused may at the same time be charged on the same charge-sheet with any other offence alleged to have been committed by him or them individually or jointly:

Provided that such charges could, if the accused to whom they relate had been tried separately, have been included under rule 13 (1) in the same charge-sheet as the other charges against him.

Construction of charge-sheets and charges

16. In the construction of a charge-sheet or charge there shall be presumed in favour of supporting it every proposition which may reasonably be presumed to be impliedly included, though not expressed therein, and the statement of the offence and the particulars of the offence shall be read and construed together.

PART V

Action by the Appropriate Superior Authority on Receipt of a Charge

Action by appropriate superior authority on receipt of a charge

17. When the appropriate superior authority receives a charge against an accused, he shall, if he does not refer it back to the commanding officer—

(*a*) deal summarily with it himself, if he has power so to do; or

(*b*) convene a court-martial to try the accused; or

(*c*) remand the accused for trial by the High Court.

PART VI

Investigation of and Summary Dealing with A Charge

Documents to be given to officers and warrant officers dealt with summarily

18. The appropriate superior authority shall ensure before investigating and dealing summarily with a charge that the accused is given, not less than 24 hours before the charge is so investigated and dealt with, a copy of the charge-sheet containing the charge on which he will be so dealt with and a copy of the summary or abstract of evidence.

Investigation of and summary dealing with charges against officers and warrant officers

19. When the appropriate superior authority investigates and deals summarily with a charge—

(*a*) he shall first read the charge to the accused;

(*b*) the witnesses against the accused need not give their evidence orally if the accused has so agreed in writing, but if the accused has not so agreed they shall give their evidence orally in his presence and he shall be allowed to cross-examine them. If the witnesses against the accused do not give their evidence orally, the appropriate superior authority shall read the summary of abstract of evidence to the accused if he so requires;

(*c*) the accused in his defence may produce evidence as to the facts of the case and as to his character and in mitigation of punishment;

(*d*) every witness who gives evidence shall give it on oath and the oath shall be administered by the appropriate superior authority to every witness and to any interpreter in accordance with rule 33;

(*e*) when the appropriate superior authority awards the punishment of forfeiture of the seniority of rank the award shall be in the appropriate form set out in the Fifth Schedule; and

(*f*) a record shall be made of the proceedings in accordance with the form set out in the Third Schedule.

Alternative courses open to the appropriate superior authority

20. The appropriate superior authority shall, if an accused elects to be tried by a court-martial or if the appropriate superior authority in the course of investigating a charge determines that it is desirable that the charge should be tried by court-martial, convene a court-martial.

PART VII

Convening of Courts-Martial

Duties of convening officer when convening courts-marshal

21. When an officer convenes a court-martial he shall—

(*a*) issue a convening order in the appropriate form set out in the Fourth Schedule;

(*b*) direct upon what charges the accused is to be tried and ensure that the accused has been remanded for trial by court-martial upon those charges either by his commanding officer or by the appropriate superior authority;

(*c*) if he is of opinion that charges should be put in separate charge-sheets, so direct and direct the order in which they are to be tried;

(*d*) direct, if there is more than one accused, whether the accused are to be tried jointly or separately;

(*e*) appoint the presiding officer and members of the court and any waiting members in accordance with rule 22;

(*f*) if convening a court-martial for the trial of an officer or any court-martial at which he considers there should be a judge advocate, take all necessary steps to procure the appointment of a judge advocate by request to the Chief Justice, and failing such appointment, himself appoint a suitable person so to act;

(*g*) appoint an officer subject to service law, or counsel assisted by such an officer, to prosecute or detail a commanding officer to appoint an officer subject to service law to prosecute:

Provided that the convening officer may appoint two such officers to prosecute if he thinks fit;

(*h*) appoint the date, time and place of the trial;

(*i*) send to the presiding officer the charge-sheet, the convening order and a copy of the summary or abstract of evidence from which any evidence which in his opinion would be inadmissible under the Act at the court-martial has been expurgated;

(*j*) send to each member of the court and to each waiting member a copy of the charge-sheet;

(*k*) send to the prosecutor copies of the charge-sheet and convening order and the original summary or abstract of

evidence together with an unexpurgated copy thereof showing the passages (if any) which have been expurgated in the copy sent to the presiding officer;

(*l*) send to the judge advocate (if any) copies of the charge-sheet, and convening order and an unexpurgated copy of the summary or abstract of evidence showing the passages (if any) which have been expurgated in the copy sent to the presiding officer;

(*m*) ensure that the accused is given a proper opportunity to prepare his defence in accordance with rule 24; and

(*n*) take steps in accordance with rule 90 to procure the attendance at the court-martial of all witnesses to be called for the prosecution and all witnesses whose attendance the accused has reasonably requested in accordance with rule 24:

Provided that the convening officer may require the accused to defray or to undertake to defray, as the convening officer thinks fit, the cost of the attendance of a witness whose attendance he has requested, and if the accused refuses to defray or to undertake to defray, as the case may be, such costs, the convening officer shall not be obliged to take any further steps to procure the attendance of that witness.

Appointment of presiding officer and members

22. The convening officer shall—

(*a*) appoint the presiding officer of a court-martial by name and appoint the members either by name or by detailing a commanding officer to appoint a member of a specific rank; and

(*b*) appoint such waiting members as he thinks expedient either by name or by detailing a commanding officer to appoint a member of specified rank.

Officers under instruction

23.—(1) Subject to rule 80, any member subject to service law may, by direction of the convening officer or at any discretion of the presiding officer, remain with a court-martial throughout the proceedings as an officer under instruction.

(2) A member under instruction, although allowed to be present in closed court, shall take no part in any of the deliberations or decisions of the court.

Preparation of defence

24. The following provisions shall apply to the defence of the accused—

(*a*) an accused who has been remanded for trial by court-martial shall be afforded a proper opportunity for preparing his

defence and shall be allowed proper communication with his defending officer or counsel of his choice and with his witness;

(*b*) a defending officer or counsel shall be appointed by the convening officer to defend an accused who has been remanded for trial by court-martial unless the accused states in writing that he does not wish such an appointment to be made;

(*c*) if the prosecution is to be undertaken by a legally qualified officer or by counsel, the accused shall be notified of this fact in sufficient time to enable him, if he so desires and it is practicable, to make arrangements for a legally qualified officer or counsel to defend him at his own expense;

(*d*) as soon as practicable after an accused has been remanded for trial by court-martial and in any case not less than twenty-four hours before his trial he shall be given—

(i) a copy of the charge-sheet;

(ii) an unexpurgated copy of the summary or abstract of evidence showing the passages (if any) which have been expurgated in the copies sent to the presiding officer;

(iii) notice of any additional evidence which the prosecution intends to adduce;

(iv) if the accused so requires, a list of the ranks, names and units of the presiding officer and members who are to form the court and of any waiting members;

(*e*) when an accused is given a copy of the charge-sheet and of the summary or abstract of evidence in accordance with this rule, shall—

(i) if necessary have the charge explained to him; and

(ii) be informed that, upon his making a written request to his commanding officer not less than 24 hours before his trial requiring the attendance at his trial of any witness (other than a witness for the prosecution) whom he desires to call in his defence (such witness to be named by him), reasonable steps will be taken in accordance with these Rules to procure the attendance of any such witness at his trial;

(*f*) when an accused is served with a copy of a statutory declaration which the prosecutor proposes to hand to the court in accordance with section 105 (2) of the Act and rule 56 he shall be informed of his right under the said subsection to require that oral evidence shall be given in lieu of such statutory declaration;

(*g*) when it is intended to try two or more accused jointly notice of this fact shall be given to every such accused when he is given a copy of the charge-sheet. Any such accused may, before

trial, by written notice to the convening officer claim to be tried separately on the ground that he would be prejudiced in his defence if he were not tried separately. In such case the convening officer shall, if he is of opinion that the interests of justice so require, direct that the accused who has so claimed shall be tried separately;

(*h*) when a charge-sheet contains more than one charge, the accused may, before trial, by written notice to the convening officer claim to be tried separately on any charge in that charge-sheet on the grounds that he would be prejudiced in his defence if he were not tried separately on that charge, and in such case the convening officer shall, if he is of opinion that the interests of justice so require, direct that the accused shall be tried separately on that charge.

PART VIII
Assembly and Swearing of Court

Preliminary matters to be considered by court and beginning of trial

25.—(1) Upon a court-martial assembling, the court shall, before beginning the trial, satisfy themselves in closed court—

(*a*) that the court has been convened in accordance with the Act and these Rules;

(*b*) that the court consist of not less than the legal minimum number of members;

(*c*) that the presiding officer and members are of the required rank;

(*d*) that the presiding officer and members have been duly appointed and are not disqualified under the Act;

(*e*) if there is a judge advocate, that he has been duly appointed;

(*f*) that the accused appears from the charge-sheet to be subject to military law under the Act or otherwise liable to trial by court-martial and to be subject to the jurisdiction of the court; and

(*g*) that each charge is on its face correct in law and framed in accordance with these Rules.

(2) The presiding officer may—

(*a*) where a vacancy occurs through a member of the court being disqualified under the Act or being absent when the court assembles, appoint a duly qualified waiting member to fill that vacancy; and

(*b*) if the interests of justice so require, substitute a duly qualified waiting member in the place of a member appointed by the convening officer.

(3) If the court is not satisfied on any of the matters mentioned in subrule (1) and is not competent to rectify such matter itself under the Act or these Rules, it shall, before commencing the trial, report to the convening officer thereon.

(4) When the court has complied with this rule and is ready to proceed with the trial the presiding officer shall open the court and the trial shall begin.

Objections to the court

26.—(1) The order convening the court and the names of the members appointed to try the accused shall be read at the hearing of the accused, who shall be given an opportunity to object to any of those members in accordance with section 98 of the Act.

(2) When a court is convened to try more than one accused, whether separately or jointly, every such accused shall be given an opportunity to object to any member on the court in accordance with the preceding subrule and shall be asked separately whether he has any such objection.

(3) An accused shall state the names of all the members to whom he objects before any objection is disposed of.

(4) If more than one member is objected to, the objection to each officer shall be disposed of separately and the objection to the lowest in rank shall be disposed of first, except where the presiding officer is objected to, in which case the objection to him shall be disposed of before the objection to any other member.

(5) An accused may make a statement and call any person to make a statement in support of his objection.

(6) A member to whom the accused has objected may state in open court anything relevant to the accused's objection whether in support or in rebuttal thereof.

(7) An objection to a member shall be considered in closed court by all the other members on the court including any member who has been appointed by the presiding officer in accordance with subrule (9) in place of any member who has retired.

(8) When an objection to a member is allowed that member shall forthwith retire and take no further part in the proceedings.

(9) When a member objected to (other than the presiding officer) retires and there is a duly qualified waiting member in attendance the presiding officer should immediately appoint him to take the place of the member who has retired.

(10) The court shall satisfy itself that a waiting member who takes the place of a member of the court is of the required rank and not disqualified under the Act and shall give the accused an opportunity to object to him and shall deal with any such objection in accordance with this rule.

(11) If an objection to the presiding officer is allowed the court shall report to the convening officer without proceeding further with the trial.

(12) If as the result of the allowance of an objection to a member there are insufficient members available to form a court in compliance with this Act, the court shall report to the convening officer without proceeding further with the trial and the convening officer may either appoint a waiting member to fill the vacancy or convene a fresh court to try the accused.

Swearing of court

27.—(1) Immediately after rule 26 has been complied with, an oath shall be administered to the presiding officer and each member of the court in accordance with rule 33 and in the presence of the accused.

(2) If there is a judge advocate, the oath shall be administered by him to the presiding officer first and afterwards to each member of the court. If there is no judge advocate, the oath shall be first administered by the presiding officer to the members of the court and then to the presiding officer by any member of the court already sworn.

(3) A court may be sworn at any time to try any number of accused then present before it, whether they are to be tried jointly or separately.

(4) When a court is convened to try two or more accused separately and one accused objects to the presiding officer or to any member of the court, the court may, if they think fit, proceed to determine that objection in accordance with rule 26, or postpone the trial of that accused and swear the court for the trial of the other accused only.

Swearing of judge advocate

28. After the court has been sworn, an oath shall be administered to the judge advocate (if any) in accordance with rule 33 and in the presence of the accused.

Swearing of officers under instruction

29. After the court and judge advocate (if any) have been sworn, an oath shall be administered to any officer under instruction in accordance with rule 33 and in the presence of the accused.

Appointment and swearing of, and objections to, interpreters and shorthand writers

30.—(1) A competent and impartial person may be appointed at any time to act as an interpreter or shorthand writer at a trial by court-martial and before he so acts an oath shall be administered to him in accordance with rule 33 and in the presence of the accused.

(2) Before a person is sworn as an interpreter or as a shorthand writer, the accused shall be given an opportunity to object to him in the same manner as an objection may be taken to a member of the court and, if the court thinks that the objection is reasonable, that person shall not act as interpreter or shorthand writer.

No right of objections to judge advocate, prosecutor and member under instruction

31. The accused shall have no right to object to a judge advocate, prosecutor or member under instruction.

Orders of trials

32.—(1) When a court has been convened to try two or more accused separately and have been sworn in accordance with rule 27 (3), the court shall try them in the order indicated by the convening officer or, where he has given no such indication, then in such order as they think fit.

(2) When a court has been convened to try an accused on charges which are included in more than one charge-sheet the court shall take the charge-sheets in the order indicated by the convening officer or, where he has given no such indication, in such order as they think fit.

Oaths and solemn affirmations

33.—(1) An oath which is required to be administered under these Rules shall be administered in the appropriate form and in the manner set out in the Sixth Schedule:

Provided that—

(*a*) if any person shall desire to swear with uplifted hand in the form and manner prescribed by the Oaths, Affirmations and Declarations Act, he shall be permitted to do so; Cap. 4:07

(*b*) the opening words of the oath may be varied to such words and the oath may be administered in such manner as the person taking the oath declares to be binding on his conscience in accordance with his religious beliefs.

(2) Subject to rule 27 (2) every oath shall be administered at a court-martial by the presiding officer, a member of the court or the judge advocate.

(3) Where a person is permitted to make a solemn affirmation instead of swearing an oath, the affirmation shall be in the appropriate form set out in the Sixth Schedule.

(4) Section 99 of the Act shall apply to proceedings before a commanding officer, the taking of summaries of evidence and proceedings before the appropriate superior authority as they apply to proceedings before a court-martial.

PART IX

Arraignment of Accused

Arraignment of accused

34.—(1) When the court and judge advocate (if any) have been sworn the accused shall be arraigned.

(2) If there be more than one charge against the accused before the court he shall be required to plead separately to each charge.

(3) If there be more than one charge-sheet against the accused before the court, the court shall arraign and try the accused upon the charge or charges contained in the first of such charge-sheets and shall announce their findings thereon and if the accused has pleaded guilty, comply with rule 44 (1) and (2) before they arraign him upon the charge or charges contained in any subsequent charge-sheet.

Plea to the jurisdiction of the court

35.—(1) The accused, before pleading to the charge, may offer a plea to the jurisdiction of the court. If he does so—

(*a*) the accused may adduce evidence in support of the plea and the prosecutor may adduce evidence in answer thereto; and

(*b*) the prosecutor may address the court in answer to the plea and the accused may reply to the prosecutor's address.

(2) If the court allows the plea they shall adjourn and report to the convening officer.

(3) When a court reports to the convening officer under this rule, the convening officer shall—

(*a*) if he approves the decision of the court to allow the plea, dissolve the court;

(*b*) if he disapproves the decision of the court—

(i) refer the matter back to the court and direct them to proceed with the trial; or

(ii) convene a fresh court to try the accused.

Objection to charge

36.—(1) An accused before pleading to a charge may object to it on the grounds that it is not correct in law or is not framed in

accordance with these Rules, and if he does so, the prosecutor may address the court in answer to the objection and the accused may reply to the prosecutor's address.

(2) If the court uphold the objection, they shall either amend the charge, if permissible under rule 82, or adjourn and report to the convening officer:

Provided that if there is another charge or another charge-sheet before the court may, before adjourning under this rule, proceed with the trial of the accused on such other charge or charge-sheet.

(3) Where a court reports to the convening officer under this rule the convening officer shall—

(*a*) if he approves the decision of the court to allow the objection—

(i) dissolve the court; or

(ii) where there is another charge or another charge-sheet before the court to which the objection does not relate and which the court has not tried, direct the court to proceed with the trial of the accused on such other charge or charge-sheet only; or

(iii) amend the charge to which the objection relates if permissible under rule 83, and direct the court to try the accused on the charge as amended;

(*b*) if he approves the decision of the court to allow the objection—

(i) direct the court to try the accused on the charge;

(ii) where there is another charge or charge-sheet before the court to which the objection does not relate and which the court has not tried, direct the court to proceed with the trial of the accused on such other charge or charge-sheet only; or

(iii) convene a fresh court to try the accused.

Plea in bar of trial

37.—(1) An accused before pleading to a charge may offer a plea in bar of trial in reliance upon section 126 of the Act. If he does so—

(*a*) the accused may adduce evidence in supporting the plea and the prosecutor may adduce evidence in answer thereto; and

(*b*) the prosecutor may address the court in answer to the plea and the accused may reply to the prosecutor's address.

(2) If the court allows the plea they shall adjourn and report to the convening officer:

Provided that if there is another charge or another charge-sheet before the court, the court may, before adjourning under this rule, proceed with the trial of such other charge or other charge-sheet.

(3) When a court reports to the convening officer under this rule, the convening officer shall—

(*a*) if he approves the decision of the court to allow the plea—

(i) dissolve the court; or

(ii) where there is another charge or another charge-sheet before the court to which the plea does not relate and which the court has not tried, direct the court to proceed with the trial of such other charge or charge-sheet only;

(*b*) if he disapproves the decision of the court to allow the plea—

(i) direct the court to try the charge; or

(ii) where there is another charge or another charge-sheet before the court to which the plea does not relate and which the court has not tried, direct the court to proceed with the trial of such other charge or charge-sheet only; or

(iii) convene a fresh court to try the accused.

Application by an accused at joint trial to be tried separately

38. Where two or more accused are charged jointly, any one of the accused may, before pleading to the charge, apply to the court to be tried separately on the ground that he would be prejudiced in his defence if he were not tried separately. If the accused makes such an application the prosecutor may address the court in answer thereto and the accused may reply to the prosecutor's address. If the courts are of opinion that the interests of justice so require they shall allow the application and try separately the accused who made it.

Application by an accused at a trial to have a charge tried separately

39. Where a charge-sheet contains more than one charge the accused may, before pleading to the charges, apply to the court to be tried separately on any charge in that charge-sheet on the ground that he would be prejudiced in his defence if he were not tried separately on that charge. If the accused makes such an application the prosecutor may address the court in answer thereto and the accused may reply to the prosecutor's address. If the courts are of opinion that the interest of justice so require they shall allow the application and try the accused separately on the charge to which it relates as if that charge had been inserted in a separate charge-sheet.

Pleas to the charge

40.—(1) After any pleas under rule 35 or 37, any objection under rule 36, and any application under rule 38 or 39, have been dealt with, the accused shall be required (subject to subrule (2), to plead either guilty or not guilty to each charge on which he is arraigned.

(2) Where a court is empowered by section 104 of the Act to find an accused guilty of an offence other than that charged or guilty of committing the offence in circumstances involving a less degree of punishment or where they could, after hearing the evidence, make a special finding of guilty subject to exceptions or variations in accordance with rule 65, the accused may plead guilty to such other offence or to the offence charged as having been committed in circumstances involving a less degree of punishment or to the offence charged subject to such exceptions or variations.

Acceptance of pleas of guilty

41.—(1) If an accused pleads guilty to a charge under either rule 40 (1) or (2), the presiding officer or judge advocate shall, before the court decide to accept the plea, explain to the accused the nature of the charge and the general effect of his plea and in particular the difference in procedure when an accused pleads guilty and when an accused pleads not guilty.

(2) A court shall not accept a plea of guilty under either rule 40 (1) or (2) if—

(*a*) the courts are not satisfied that the accused understands the nature of the charge or the effect of his plea;

(*b*) the presiding officer, having regard to all the circumstances, considers that the accused should plead not guilty; or

(*c*) the accused is liable if convicted to be sentenced to death.

(3) In the case of a plea of guilty under rule 40 (2) a court shall also not accept the plea unless the convening officer concurs and they are satisfied of the justice of such course. The concurrence of the convening officer may be signified by the prosecutor.

(4) Where a plea of guilty under either rule 40 (1) or (2) is not accepted by the court, or the accused either refuses to plead to the charge or does not plead to it intelligibly, the court shall enter a plea of not guilty.

(5) When courts are satisfied that they can properly accept a plea of guilty under either rule 40 (1) or (2), they shall record a finding of guilty in respect thereof.

Pleas on alternative charges

42.—(1) When an accused pleads guilty to the first of two or more alternative charges, the courts, if they accept the accused's plea of guilty, shall record a finding of guilty in respect of the first charge and the prosecutor shall withdraw any alternative charge before the accused is arraigned on it.

(2) When an accused pleads guilty to one of two or more charges which are laid in the alternative other than the first of such charges, the court may—

(*a*) proceed as if the accused had pleaded not guilty to all the charges;

(*b*) with the concurrence of the convening officer (which may be signified by the prosecutor) record a finding of guilty on the charge to which the accused has pleaded guilty and a finding of not guilty on any alternative charge which is placed before it in the charge-sheet. Where the court record such findings, the prosecutor shall, before the accused is arraigned on it withdraw any charge which is alternative to the charge of which the courts have found the accused guilty and which is placed after it in the charge-sheet.

PART X

Procedure After Recording a Finding of Guilty

Order of trial where plea of guilty and a finding of not guilty

43. After the courts have recorded a finding of guilty, if there is no other charge in the same charge-sheet to which the accused has pleaded guilty and a finding of not guilty on any alternative charge which is placed before it in the charge-sheets, where the court record such findings, the prosecutor shall before the accused is arraigned on it withdraw any charge which is alternative to the charge of which the court have found the accused guilty and which is placed after it in the charge-sheet.

Procedure on finding of guilty after a plea of not guilty

44.—(1) After the courts have recorded a finding of guilty in respect of a charge to which an accused pleaded guilty, the prosecutor shall, subject to rule 43, read the summary or abstract of evidence to the court or inform the court of the facts contained therein:

Provided that if an expurgated copy of the summary or abstract was sent to the presiding officer, the prosecutor shall not read to the court those parts of the summary or abstract which have been expurgated or inform the court of the facts contained in those parts, and shall not hand the original summary or abstract to the court until the trial is concluded.

(2) If there is no summary or abstract of evidence or the summary or abstract is, in the opinion of the court, inadequate or incomplete, the court shall hear the record in accordance with these Rules sufficient evidence to enable them to determine the sentence.

(3) After subrules (1) and (2) have been complied with, the accused may—

(*a*) adduce evidence of character and in mitigation of punishment; and

(*b*) address the court in mitigation of punishment.

(4) After subrule (3) has been complied with, the court shall proceed as directed in rule 70 (1), (2), (3) and (4).

PART XI

Changes of Plea

Changes of plea

45.—(1) An accused who has pleaded not guilty may at any time before the court close to deliberate on their findings withdraw his plea of not guilty and substitute a plea of guilty (including a plea of guilty under rule 40(2)) and in such case the court shall, if they are satisfied that they can accept the accused's changed plea under these Rules, record a finding in accordance with the accused's changed plea and so far as is necessary proceed as directed by rule 44.

(2) If at any time during the trial it appears to the court that an accused who has pleaded guilty does not understand the effect of his plea or the nature of the charge, the court shall enter a plea of not guilty and proceed with the trial accordingly.

(3) Where courts enter a plea of not guilty in respect of any charge under subrule (2), they shall, if there was a charge laid in the alternative thereto which the prosecutor withdrew under rule 42, reinstate such alternative charge, arraign the accused thereon and proceed with the trial as if it had been withdrawn.

PART XII

Procedure of Pleas of Not Guilty

Application for adjournment of trial after plea of not guilty

46. After a plea of not guilty to any charge has been entered—

(*a*) the court shall ask the accused whether he wishes to apply for an adjournment on the ground that any of these Rules relating to procedure before trial has not been complied with and that he has been prejudiced thereby or on the ground that he has not had sufficient opportunity for preparing his defence;

(*b*) if the accused applies for an adjournment—

(i) the accused may adduce evidence in support of his application and the prosecutor may adduce evidence in answer thereto; and

(ii) the prosecutor may address the court in answer to the application and the accused may reply to the prosecutor's address.

(*c*) the court may grant an adjournment if they think the interest of justice so require.

Case for the prosecution

47.—(1) The prosecutor may, if he desires, and shall, if so required by the court, make an opening address explaining the charge, where necessary and the nature and general effect of the evidence which he proposes to adduce.

(2) The witnesses for the prosecution shall then be called and give their evidence.

Calling of witnesses whose evidence is not contained in the summary or abstract of evidence

48. If the prosecutor intends to adduce evidence which is not contained in any summary or abstract of evidence given to the accused a reasonable time shall be given before the evidence is adduced. If such evidence is adduced without such notice or particulars having been given, the court may, if the accused so desires, either adjourn after receiving the evidence or allow any cross-examination arising out of that evidence or allow any cross-examination arising out of that evidence to be postponed, and the court shall inform the accused of his right to apply for such an adjournment or postponement.

Notice to an accused that a witness will not be called by the prosecutor

49. The Prosecutor shall not be bound to call all the witnesses against the accused whose evidence is contained in the summary or abstract of evidence nor a witness whom he has notified the accused that he intends to call under rule 48, but if the prosecutor does not intend to call such a witness to give evidence he shall either tender him for cross-examination by the accused, or give the accused reasonable notice that he does not intend to call the witness and that the accused will be allowed to communicate with him and to call him as a witness for the defence, if he so desires and if the witness is available.

PART XIII

Calling and Examination of Witnesses

Swearing of witnesses

50. Save as is otherwise provided by the Act, an oath shall be administered to every witness in accordance with rule 33 before he gives evidence and in the presence of the accused.

Exclusion of witnesses from court

51. During a trial, a witness other than the prosecutor or accused shall not, except by leave of the court, be in court while not under examination, and if while he is under examination a discussion arises as to the allowance of a question or otherwise with regard to the evidence the court may direct the witness to withdraw during such discussion.

Examination of witnesses

52.—(1) A witness may be examined by the person calling him and may be cross-examined by the opposite party to the proceedings and on the conclusion of any such cross-examination

may be re-examined by the person who called him on matters arising out of the cross-examination.

(2) The person examining a witness shall put his question to the witness orally and, unless an objection is made by the witness, court, judge advocate, prosecutor or by the accused, the witness shall reply forthwith. If such an objection is made, the witness shall not reply until the objection has been disposed of.

(3) The court may allow the cross-examination or re-examination of a witness to be postponed.

Examination of witnesses by court

53.—(1) The presiding officer, the judge advocate and, with permission of the presiding officer, any member of the court may put question to a witness.

(2) Upon any such question being answered, the prosecutor and the accused may put to the witness such questions arising from the answer which he has given as seem proper to the court.

54.—(1) The record which has been made of the evidence given by a witness shall be read back to him before he leaves the court and when this is done he may ask for the record to be corrected or explain the evidence which he has given. If any such correction is made or explanation given, the prosecutor and the accused may put such question to the witness respecting the correction or explanation as seem proper to the court.

(2) When a shorthand writer is employed it shall not be necessary to comply with subrule (1), if, in the opinion of the court and the judge advocate (if any), it is unnecessary to do so:

Provided that if any witness so demands subrule (1) shall be complied with.

Calling of witnesses by court and recalling of witnesses

55.—(1) The Courts may, at any time before they close to deliberate on their finding or if there is a judge advocate before he begins to sum up, call a witness or recall a witness, if in the opinion of the court it is in the interest of justice to do so. If the court call a witness under this rule, the prosecutor and the accused may put such questions to the witness as seem proper to the court.

(2) The prosecutor and the accused may, at any time before the courts close to deliberate on their finding or if there is a judge advocate before he begins to sum up, recall a witness by leave of the court and the prosecutor and the accused may put such questions to the witness as seem proper to the court.

Statutory declarations

56. A statutory declaration which is admissible in accordance with section 106 of the Act may be handed to the court by the

prosecutor or the accused, as the case may be, without being produced by a witness.

PART XIV

Submission of No Case to Answer and Stopping of Cases

Submission of no case to answer and power of court to stop a case

57.—(1) At the close of the case for the prosecution the accused may submit to the court in respect of any charge that the prosecution has failed to establish a *prima facie* case for him to answer and that he should not be called upon to make his defence to that charge. If the accused makes such a submission, the prosecutor may address the court in answer thereto and the accused may reply to the prosecutor's address.

(2) The court shall not allow the submission unless they are satisfied that—

(*a*) the prosecutor has not established a *prima facie* case on the charge as laid; and

(*b*) it is not open to them on the evidence adduced to make a special finding under either section 104 of the Act or rule 65 (3).

(3) If the court allow the submission they shall find the accused not guilty of the charge to which it relates and announce this finding in open court forthwith; if the court disallow the submission they shall proceed with the trial of the offence as charged.

(4) Irrespective of whether there has been a submission under this rule of not, the court may at any time after the close of the hearing of the case for the prosecution, and after hearing the prosecutor, find the accused not guilty of a charge, and if they do so they shall also announce such finding in open court forthwith.

PART XV

Case for the defence

Explanation to accused of his rights when making his defence

58.—(1) After the close of the case for the prosecution, the presiding officer or judge advocate (if any) should explain to the accused that—

(*a*) if he wishes, he may give evidence on oath as a witness or make a statement without being sworn, but that he is not obliged to do either;

(*b*) if he gives evidence on oath, he will be liable to be cross-examined by the prosecutor and to be questioned by the court and the judge advocate (if any), but that, if he makes a statement without being sworn, no one will be entitled to ask him any questions;

(*c*) whether he gives evidence or makes a statement or remains silent, he may call witnesses on his behalf both to the facts of the case and to his character.

(2) After the presiding officer or judge advocate has complied with paragraph (1), he shall ask the accused if he intends to give evidence on oath or to make a statement without being sworn and if he intends to call any witness on his behalf and, if so, whether he is a witness to fact or to character only.

(3) If the accused intends to call a witness to the facts of the case other than himself he may make an opening address outlining the case for the defence before the evidence for the defence is given.

Evidence for the defence

59.—(1) After rule 58 has been complied with, the witnesses for the Defence (if any) shall be called and give their evidence.

(2) Rules 50, 51, 52, 53, 54, 55 and 56 shall apply as well to the witnesses and the evidence for the defence as they apply to the witnesses and the evidence for the prosecution.

Evidence in rebuttal

60. After the witnesses for the defence have given their evidence the prosecutor may, by leave of the court, call a witness or recall a witness to give evidence on any matter raised by the accused in his defence which the prosecution could not properly have mentioned to the court before the accused disclosed his defence or which the prosecution could not reasonably have foreseen.

Closing address

61.—(1) After all the evidence has been given the prosecutor and the accused may each make a closing address to the court.

(2) The accused shall be entitled to make his closing address after the closing address by the prosecutor unless the accused has called a witness to fact other than himself, in which case the prosecutor shall be entitled subject to subrules (3) and (4), to make his closing address after the closing address by the accused.

(3) Where two or more accused are tried jointly, any one of them who has called a witness to fact other than himself shall make his closing address before the closing address by the prosecutor, and any one of them who has called no such witness shall be entitled to make his closing address after the closing address by the prosecutor.

Handing in of a statutory declaration by the accused

62. For the purposes of rules 58 and 61 the handing in by the accused of a statutory declaration shall be treated as the calling of a witness by him.

PART XVI

Summing up by Judge Advocate

Summing up by judge advocate

63. After the closing address, if there is a judge advocate, he shall sum up the evidence and advise the court on the law relating to the case in open court.

PART XVII

Deliberation on, and Announcement of Finding on the Charge

Deliberation on finding on the charge

64.—(1) After the closing address, or if there is a judge advocate after his summing up, the court shall close to deliberate on their finding on the charge.

(2) While the courts are deliberating on their finding on the charge no person shall be present except the presiding officer and members of the court and any officer under instruction.

(3) If there is a judge advocate and the court, while deliberating on their finding on the charge require further advice from him, the court shall suspend their deliberation and ask and be given such advice in open court.

Expression of opinions on, and form of finding

65.—(1) The opinion of the presiding officer and each member as to the finding shall be given in closed court, orally, and on each charge separately and their opinions shall be given in order of seniority commencing with the junior in rank.

(2) Save as is otherwise provided in subrule (4) the court shall record on every charge on which a plea of not guilty has been recorded—

(*a*) a finding of guilty or a special finding in accordance with section 104 or section 116 (2) of the Act or subrule (3); or

(*b*) a finding of not guilty, and honourably acquitted of the charge.

(3) Where the courts are of the opinion as regards any charge that the facts which they find to be proved in evidence differ from the facts alleged in the particulars of the charge, but are nevertheless sufficient to prove the offence stated in the charge and that the difference is not so material as to have prejudiced the accused in his defence, the court may, instead of recording a finding of not guilty, record a finding that the accused is guilty of the charge subject to any exception or variation which they shall specify in the finding.

(4) Where the courts have recorded a finding of guilty on a charge which is laid in the alternative they shall find the accused not guilty of any charge alternative thereto which is placed before

it in the charge-sheet and record no finding on any charge alternative thereto which is placed after it in the charge-sheet.

Announcement of finding

66.—(1) The finding on each charge shall be announced in open court forthwith.

(2) Every finding which requires confirmation shall be announced as being subject to confirmation.

(3) The finding shall be in the appropriate form set out in the Fourth Schedule.

PART XVIII

Procedure after Announcement of Finding

Completion of procedure on plea of guilty before deliberation on sentence

67. After the courts have announced their finding on any charge on which the courts have entered a plea of not guilty, if there is another charge in the same charge-sheet on which the courts have accepted a plea of guilty the court shall comply with rule 44 (1) and (2) in respect of that charge before proceeding further with the trial.

Trial charges in other charge-sheets before deliberation on sentence

68. Where there is another charge-sheet against the accused before the court, the court shall not comply with rules 69, 70 and 71 until they have arraigned and tried the accused and have complied with rule 66 and, if necessary, with rule 67, in respect of each charge in such other charge-sheet unless that charge-sheet is withdrawn under rule 81.

Release of the accused

69. If the findings on all charges against the accused are not guilty, the court shall order the accused to be released and the presiding officer and judge advocate (if any) shall date and sign the record of the proceedings. The presiding officer or the judge advocate shall then forward it as directed in the convening order.

Accused's record and plea in mitigation

70.—(1) If the finding on a charge against the accused is guilty, or the court makes a special finding in accordance with section 104 of the Act or with rule 65 (3), the court before deliberating on their sentence shall whenever possible take evidence of his age, rank and service record. Such service record shall include—

(*a*) any recognized acts of gallantry of distinguished conduct on the part of the accused and any decoration to which he is entitled; and

(*b*) particulars of any offence of which the accused has been found guilty during his service and which is recorded in the service books relating to the accused and of the length of time he has been under arrest awaiting trial or in confinement under a current sentence.

(2) Evidence of the matters referred to in subrule (1) may be given a witness producing to the court a written statement containing a summary of the entries in the service books relating to the accused, after the witness has in court verified such statement and identified the accused as the person to whom it relates. Such statement shall be in the form set out in the Fourth Schedule.

(3) In addition to the evidence contained in the statement referred to in subrule (2), it shall be the duty of the prosecutor whenever possible to call as a witness an officer to give to the court any information in the possession of the military authorities regarding—

(*a*) the accused's family background and responsibilities and any other circumstances which may have made him more susceptible to the commission of the offence charged;

(*b*) his general conduct in the service; and

(*c*) particulars of offences which do not appear in the statement above referred to of which the accused has been found guilty by a civil court and which are of the same general nature as that of which the accused has been found guilty by the court-martial:

Provided that the court shall not be informed of any such civil offence unless the finding is proved in accordance with section 214 of the Act, or the accused has admitted, after the purpose for which such admission is required has been explained to him, that he has been found guilty of the offence.

(4) The accused may cross-examine any witness who gives evidence in accordance with subrules (2) and (3) and, if the accused so requires, the service books, or a duly certified copy of the material entries therein, shall be produced, and if the contents of the form are in any respect not in accordance with the service books of such certified copy, the court shall cause the form to be corrected accordingly.

(5) After subrules (1), (2), (3) and (4) have been complied with the accused may—

(*a*) give evidence on oath and call witnesses in mitigation of punishment and to his character; and

(*b*) address the court in mitigation of punishment.

Request by accused for other offences to be taken into considerations

71.—(1) Before the court close to deliberate on their sentence, the accused may request the court to take into consideration any other offence against the Act committed by him of a similar nature to that of which he has been found guilty, and, upon such a request

being made, the court may agree to take into consideration any of such other offences as to the court seems proper.

(2) A list of the offences which the court agree to take into consideration shall be read to the accused by the presiding officer or judge advocate, who shall ask the accused if he admits having committed them. The accused shall sign a list of the offences which he admits having committed and the court shall take the offences in this list into consideration. This list shall be signed by the presiding officer and be attached to the record of the proceedings as an exhibit.

Persons entitled to be present during deliberations

72. While the courts are deliberating on their sentence no person shall be present except the presiding officer, members, judge advocate (if any) and any officer under instruction.

Sentence and recommendation to mercy

73.—(1) The court shall award a sentence in respect of each offence of which the accused is found guilty. The sentence shall be in the appropriate form set out in the Fifth Schedule.

(2) The opinion of the presiding officer and each member as to the sentence shall be given orally and in closed court and their opinions shall be given in order of seniority commencing with the junior in rank.

(3) When the courts have agreed to take into consideration an offence which is not included in the charge-sheet, the court shall award a sentence appropriate both to the offence of which they are taking into consideration, but not greater than the maximum sentence which may be awarded under the Act for the offence of which the accused has been found guilty, save that they may be included in their sentence a direction that such deductions shall be made from the pay of the accused as they would have had the power to direct to be made if the accused had been found guilty of the offence taken into consideration as well as of the offence of which he has been found guilty.

(4) The court may make recommendation to mercy and if they do so shall record in the proceedings their reasons for making it.

Postponement of deliberation

74. Where two or more accused are tried separately by the same court upon charges arising out of the same transaction, the court may, if they think that the interests of justice so require, postpone their deliberation upon the sentence to be awarded to any one or more of such accused until they have recorded and announced their findings in respect of all of such accused.

PART XIX

Announcement of Sentence and Conclusion of Trial

Announcement of sentence and conclusion of trial

75.—(1) The sentence, and any recommendation to mercy together with the reasons for making it, shall be announced in open court. The sentence shall also be announced as being subject to confirmation.

(2) When subrule (1) has been complied with the presiding officer shall announce in open court that the trial is concluded.

(3) Immediately after the conclusion of the trial the presiding officer and judge advocate (if any) shall date and sign the record of the proceedings, the presiding officer or the judge advocate shall then forward it as directed in the convening order.

PART XX

General Duties of the Presiding Officer, Prosecutor and the Defending Officer or Counsel

General duties of the presiding officer

76. It shall be the duty of the presiding officer to ensure that the trial is conducted in accordance with the Act and these Rules and in a manner befitting a court of justice and in particular—

(*a*) to ensure that the prosecutor and the defending officer or counsel conduct themselves in accordance with these Rules;

(*b*) to ensure that the accused does not suffer any disadvantage in a consequence of his position as such or of his ignorance or of his incapacity to examine or cross-examine witness or to make his own evidence clear and intelligible, or otherwise;

(*c*) to ensure that an officer under instruction, does not express an opinion to the court on any matter relating to the trial before the courts have come to their finding, nor on sentence before the courts have decided upon the sentence;

(*d*) when there is no judge advocate present, to ensure that a proper record of the proceedings is made in accordance with rule 91 and that the record of the proceedings and exhibits are properly safeguarded in accordance with rule 93.

General duties of the prosecutor and defending officer or counsel

77.—(1) It shall be the duty of the prosecutor and of the defending officer or counsel to assist the court in the administration of justice, to treat the court and judge advocate with due respect and to present their cases fairly and in particular—

(*a*) to conform with these Rules and the practice of the civil courts in Malaŵi relating to the direct examination, cross-examination and re-examination of witnesses;

(*b*) not to refer to any matter not relevant to the charge before the court; and

(*c*) not to state as a matter of fact any matter which is not proved or which they do not intend to prove by evidence.

(2) Without prejudice to the generality of any of the provisions of subrule (1), it shall be the duty of the prosecutor to bring the whole of the transaction before the court and not to take any unfair advantage of, or to withhold any evidence in favour of, the accused.

Counsel

78.—(1) Subject to these Rules, any person entitled under the law for the time being in force to practice as a legal practitioner shall be allowed to appear as counsel at a court-martial.

(2) Any right granted by these Rules to the accused at a court-martial to call or examine witnesses or to address the court, any right of the accused to object to the admissibility of evidence at a court-martial and any right granted to the accused by rules 24 (*e*), (*g*) and (*h*), 26, 30, 35, 36, 37, 38, 39, 46, 57, 71, 79 (2) and 93 (2) may be exercised by his defending officer or his counsel on his behalf, and any reference in these Rules to any address, request, application, claim, submission, objection or plea to the jurisdiction or in bar of trial made, taken, or offered at a court-martial by the accused shall be construed as including any address, request, application, claim, submission, objection or plea to the jurisdiction or in bar of trial made, taken or offered at a court-martial by his defending officer or counsel on his behalf.

(3) If the accused is to be defended at his trial by counsel not nominated by the convening officer the accused shall give the convening officer notice of this fact not less than twenty-four hours before his trial.

PART XXI

Powers and Duties of the Judge Advocate

General duties of judge advocate

79.—(1) The judge advocate shall be responsible to the Chief Justice for the proper discharge of his functions.

(2) The prosecutor and the accused respectively, are at all times after the judge advocate is named to act at the trial entitled to his opinion on any question of law or procedure relative to the charge or trial whether he is in or out of court, subject when he is in court to the permission of the court.

(3) On the assembly of the court the judge advocate shall advise the court of any defect in the constitution of the court or in the charge-sheet, and during the trial he shall advise the court upon all

questions of law or procedure which may arise. The court shall accept his advice on all such matters unless they have weighty reasons for not doing so, and if the court do not accept it their reasons for not doing so shall he recorded in the proceedings.

(4) After the closing address the judge advocate shall sum up the evidence and advise the court upon the law relating to the case before the court close to deliberate on their finding. If in the course of deliberating on their finding the court require further advice from the judge advocate, they shall suspend their deliberation and ask and be given such advice in open court.

(5) If when the court announced a finding of guilty or a special finding under either section 104 of the Act or rule 65 (3), the judge advocate is of the opinion that such finding or special finding is contrary to the law relating to the case, he shall once more but not more than once more, advise the court what findings are, in his opinion, open to him. The court shall then reconsider their finding in closed court. The record of proceedings relating to such reconsideration shall be in the form set out in the Fourth Schedule.

(6) The judge advocate shall be present whenever the court is sitting whether in open or closed court, except when the court is deliberating on the finding on the charge or on a revision thereof.

(7) The judge advocate has equally with the presiding officer the duty of ensuring that the accused does not suffer any disadvantage in consequence of his position as such or of his ignorance or of his incapacity to examine or cross-examine witnesses, or to make his own evidence clear and intelligible, or otherwise.

(8) The judge advocate shall be responsible for seeing that a proper record of the proceedings is made in accordance with rule 91 and responsible for the safe custody of the record of the proceedings under rule 93.

Judge advocate sitting alone

80.—(1) Where there is a judge advocate and—

(*a*) during the course of a trial any question as to the admissibility of evidence arises; or

(*b*) during a joint trial an application is made by any of the accused for a separate trial; or

(*c*) an application is made by an accused that a charge should be tried separately, the presiding officer may direct that the point at issue shall be determined by the judge advocate in the absence of the presiding officer and the members of the court and of any officer under instruction. Where the presiding officer so directs he, the members of the court and any officer under instruction shall withdraw from the court.

(2) The judge advocate shall, when the presiding officer and members of the court and any officer under instruction have withdrawn in accordance with subrule (1), hear the arguments and evidence relevant to the point at issue and shall give his ruling upon this point and such reasons therefor as he may consider necessary. After the judge advocate has given his ruling, the presiding officer and members of the court and any officer under instruction shall return to the court room and the judge advocate shall announce his ruling to them and the court shall follow his ruling.

(3) When a judge advocate sits alone in accordance with this rule the proceedings before him shall form part of the proceedings of the court, and sections 67 (1), 68, 99, 100 (1) and (2), 101, 105, 106 and 107 of the Act and rules 33, 50, 51, 52, 53, 54, 55, 56, 77, 78, 79, 84, 85, 86, 90, 91, 92, 93, 96, 97 and 105 shall apply to proceedings before the judge advocate sitting alone as they apply to proceedings before the presiding officer and members of the court, and anything which is authorized by those sections and those rules to be done by the court or by the presiding officer may be done by the judge advocate when sitting alone.

(4) When a judge advocate is sitting alone in accordance with this rule and a person subject to military law commits an offence against section 67 (1) of the Act, the judge advocate shall report the occurrence to the presiding officer, who shall take such action as he considers appropriate.

(5) The judge advocate shall be responsible for ensuring that the presiding officer and members do not see the record of the proceedings before the judge advocate when sitting alone until after the court has announced its finding.

PART XXII

Withdrawal and Amendment of Charge-Sheets and Charges

Withdrawal of charge-sheets and charges

81. A court may with the concurrence of the convening officer (which may be signified by the prosecutor) allow the prosecutor to withdraw a charge before the accused is arraigned thereon, or a charge-sheet before the accused is arraigned on any charge therein.

Amendment of charge-sheets and charges by the court

82.—(1) At any time during a trial if it appears to the court that there is in the charge-sheet—

(*a*) a mistake in the name or description of the accused;

(*b*) a mistake in which is attributable to a clerical error or omission, the court may amend the charge-sheet so as to correct the mistake.

(2) If at any time during a trial at which there is a judge advocate, it appears to the court, before they close to deliberate on their finding, that it is desirable in the interests of justice to make any addition to, omission from or alteration in, a charge which cannot be made under subrule (1) they may, if such addition, omission or alteration can be made without unfairness to the accused, so amend the charge if the judge advocate concurs.

(3) If at any time during a trial at which there is no judge advocate it appears to the court, before they close to deliberate on their finding, that in the interests of justice it is desirable to make any addition to, omission from or alteration in a charge which cannot be made under subrule (1), they may adjourn and report their opinion to the convening officer, who may—

(*a*) amend the charge if permissible under rule 83 and direct the court to try the accused on the charge as amended after due notice of the amendment has been given to the accused; or

(*b*) direct the court to proceed with the trial of the accused on the charge without amending it; or

(*c*) convene a fresh court to try the accused.

Amendment of charges by convening officer

83. When a court report to the convening officer under either rule 36 (2) or rule 82 (3), he may amend the charge in respect of which they have reported to him by making any addition to, omission from or alteration in the charge which, in his opinion, is desirable in the interests of justice and which he is satisfied can be made without unfairness to the accused.

PART XXIII

Sittings and Adjournment of the Court

Sittings of the court

84. Subject to the provisions of the Act and of these Rules relating to adjournment, a trial shall be continued from day to day and the court shall sit for such time each day as may be reasonable in the circumstances:

Provided that the court shall not sit on Saturday, Sunday, or any public holiday, unless in the opinion of the court or of the convening officer the exigencies of the service make it necessary to do so.

Adjournment

85.—(1) During a trial the court may adjourn from time to time and from place to place as the interests of justice require.

(2) A court may adjourn at any time to consult on a point of law.

(3) If during a trial any reason emerges which makes it advisable that the court should not continue to hear the case, the court shall adjourn and report thereon to the convening officer.

(4) If at any time during a trial the accused becomes ill and it appears to the court that the illness is such that it will be impracticable to continue the trial, the court shall ascertain the facts of the illness and shall then adjourn and report to the convening officer.

View by court

86. If at any time during a trial before the court close to deliberate on their finding it appears to the court that they should, in the interests of justice, view any place or thing, they may adjourn for this purpose. When the court view any place or thing the presiding officer, members of the court, judge advocate (if any), prosecutor, accused and defending officer or counsel (if any) shall be present.

Absence of presiding officer, members or judge advocate

87.—(1) If after the commencement of a trial the presiding officer dies or is otherwise unable to attend, the court shall adjourn and the senior member shall report to the convening officer.

(2) If after the commencement of a trial any member of the court dies or is otherwise unable to attend, the court, if not thereby reduced below the legal minimum number of members, shall continue with the trial, but if reduced below the legal minimum number of members the court shall adjourn and the presiding officer shall report to the convening officer.

(3) If a judge advocate who has been appointed to act at a trial dies or is otherwise unable to attend, the court shall adjourn and report to the convening officer.

(4) If the presiding officer or a member of the court is absent during any part of a trial, he shall take no further part in it and the like steps shall be taken as if the presiding officer or member, as the case may be, had died.

(5) An officer cannot be added to the court after the accused has been arraigned.

PART XXIV

Insanity

Insanity

88.—(1) If not at any time during a trial it appears to the court that the accused may be unfit to stand his trial by reason of insanity, they shall take evidence as to his mental condition. If the court after considering the evidence are of the opinion that the accused is fit to stand his trial they shall proceed with the trial; but

if they are of the opinion that the accused is unfit to stand his trial by reason of insanity they shall so find and their findings shall be announced in open court forthwith and as being subject to confirmation.

(2) If a court, in the course of their deliberation on their finding on a charge find pursuant to section 116 (2) of the Act that the accused was guilty of the offence but was insane at the time of the act or omission which constituted it, their finding shall be announced in open court forthwith and as being subject to confirmation.

(3) Immediately after a finding has been announced under either subrule (1) or subrule (2) the presiding officer shall announce in open court that the proceedings are terminated and thereupon the presiding officer, and the judge advocate (if any) shall date and sign the record of the proceedings. The presiding officer or judge advocate shall then forward it as directed in the convening order.

PART XXV

Interviewing and Attendance of Witnesses

Interviewing of witnesses

89.—(1) The prosecution shall not without the consent of the convening officer, or, after the trial has begun, without the consent of the presiding officer, interview any witness who was called for the defence at the taking of the summary of evidence or whose attendance at the trial the accused has requested in accordance with rule 24 (e), or who has made a statutory declaration, a copy of which the accused has served on the prosecution in accordance with section 105 of the Act.

(2) Except as provided in rule 49, neither the accused nor any person on his behalf shall without the consent of the convening officer, or, after the trial has begun, without the consent of the presiding officer, interview any witness who was called for the prosecution at the taking of the summary evidence or whose evidence is included in the abstract of evidence, or in respect of whom the prosecution has given the accused notice under rule 48 that they intend to call him as a witness at the trial or who has made a statutory declaration a copy of which the prosecution have served on the accused in accordance with section 105 of the Act.

Procuring attendance of witnesses

90.—(1) A witness who is subject to service law may be ordered by the Commander to attend at the taking of a summary of evidence or a trial by court-martial.

(2) A witness who is not subject to service law may be summoned to attend—

(*a*) the taking of a summary of evidence by an order under the hand of the commanding officer of the accused; or

(*b*) a trial by court-martial by an order under the hand of an officer authorized to convene a court-martial or of a staff officer on his behalf, or, after the assembly of the court, of the presiding officer.

(3) The summons referred to in subrule (2) shall when it relates to the taking of a summary of evidence, be in the appropriate form set out in the First Schedule, and, when it relates to a trial by court-martial, be in the appropriate form set out in the Fourth Schedule, and shall be served on the witness either personally or by leaving it with some other person at the witness's normal place of abode.

(4) At the time of service of the summons referred to in subrule (2) there shall be paid or tendered any expenses which by regulation made by the Defence Council are payable to a witness in respect of his journey to, attendance at and return from the taking of the summary of evidence or the trial, as the case may be:

Provided that for the purpose of this subrule—

(*a*) the tender of a warrant or voucher entitling the witness to travel free of charge shall be deemed to constitute tender of his expenses in respect of any travelling authorized by the warrant or voucher; and

(*b*) the tender of a written undertaking on behalf of the Defence Council to defray at the taking of the summary of evidence or the trial, as the case may be, any other expenses payable under such regulations in respect of the witness's attendance shall be deemed to constitute tender of these expenses.

(5) The provisions of section 107 of the Act shall apply in relation to proceedings at the taking of a summary of evidence as they apply in relation to proceedings at a court-martial and when so applied they shall be construed as though the words "officer taking the summary of evidence" were substituted for the words "presiding officer of the court-martial".

PART XXVI

Record of Proceedings

Record of proceedings

91. The proceedings of courts-martial shall be recorded in accordance with the following provisions—

(*a*) the proceedings of a court-martial shall be recorded in writing in accordance with the appropriate form set out in the

Fourth Schedule and in sufficient detail to enable the confirming officer to follow the course of the proceedings and to judge of the merits of the case;

(*b*) when there is no shorthand writer present the evidence should be taken down in narrative form as nearly as possible in the words used:

Provided that if the court, judge advocate, prosecutor or accused consider it necessary, any particular question and answer shall be taken down verbatim;

(*c*) when an objection, submission or application is made during a trial at which there is no shorthand writer, a record shall be made of the proceedings relating to such objection, submission or application if and in such detail as the court or judge advocate thinks fit:

Provided that if the prosecutor or accused so requests a note shall be made of the objection, submission or application, the grounds therefor, the advice of the judge advocate (if any) thereon and the decision of the court;

(*d*) when any address by the prosecutor or the accused or summing up of the judge advocate is not in writing and there is no shorthand writer present, it shall only be necessary to record so much of such address or summing up as the court or judge advocate thinks proper:

Provided that if the prosecutor or accused so requests a note shall be made of any particular point in such address or summing up;

(*e*) there shall not be recorded in the record of the proceedings any matter not forming part of the trial; but, if any comment or report seems to the court to be necessary, the presiding officer may forward it to the proper military authority in a separate document.

Exhibits

92.—(1) Subject to subrule (2), any documents or thing admitted in evidence shall be made an exhibit.

(2) When an original document or book is produced to the court by a witness, the court may at the request of the witness compare a copy of it or an extract of the relevant parts therefrom with the original, and after they have satisfied themselves that such copy or extract is correct and the presiding officer or the judge advocate has certified thereon that the court has compared it with the original and found it correct, the court may return the document or book to the witness and attach the copy or extract to the record of the proceedings as an exhibit.

(3) Every exhibit shall—

(*a*) be marked with a number or letter and be signed by the presiding officer or have a label bearing a number or letter and signature of the presiding officer affixed to it;

(*b*) be attached to or kept with the record of the proceedings, unless in the opinion of the court having regard to the nature of the exhibit or for other good reason it is not expedient to attach it to or keep it with the record.

(4) When an exhibit is not attached to or kept with the record of the proceedings under subrule (3) (*b*), the presiding officer shall ensure that proper steps are taken for its safe custody.

Custody and inspection of record during trial

93.—(1) During a trial at which there is no judge advocate, the record of the proceedings and the exhibits shall be deemed to be of proceedings in the custody of the presiding officer. During a trial at which there is a judge advocate the record and the exhibits shall he deemed to be in the custody of the judge advocate, save when he is not present in closed court, when they shall be deemed to be in the custody of the presiding officer.

(2) With the permission of the court, the prosecutor or the accused may at any reasonable time before the trial is concluded have a particular part of the record of the proceedings read to him, and, if proper precautions are taken for its safety, inspect any exhibit.

PART XXVII

Confirmation, Revision and Promulgation

Confirmation and promulgation

94.—(1) When the Defence Council receives the record of the proceedings of a court-martial and the finding of the court requires confirmation, they shall record their decision thereon and on any sentence and any order which the court may have made under section 131 of the Act, on the record of the proceedings in the appropriate form set out in the Fourth Schedule, and such record of their decision shall form part of the record of the proceedings.

(2) When a court have accepted a plea of guilty made under rule 40 (2), the Defence Council may confirm their finding notwithstanding that the courts have accepted the plea without the concurrence of the convening officer if, in the opinion of the Defence Council, it is in the interest of justice to do so.

(3) When a court have rejected a plea to the jurisdiction of the court or plea in bar of trial or have overruled an objection to a charge, it shall not be necessary for the Defence Council to

approve specifically the decision of the court, but their approval shall be implied from their confirming the finding on the charge to which the plea or objection relates.

(4) The Defence Council may state their reasons for withholding confirmation in any case, but if they withhold confirmation where a court have rejected a plea to the jurisdiction, or a plea in bar of trial or have overruled an objection to the charge, because they disapprove this decision of the court, they shall, when recording their decision under subrule (1) state that they have withheld confirmation for this reason.

(5) If the sentence of the court-martial is informally expressed, the Defence Council may in confirming the sentence vary the form thereof so that it shall be properly expressed.

(6) Wherever it appears that there is sufficient evidence or a plea of guilty under either rule 40 (1) or (2) to justify the finding of the court, such finding and any lawful sentence consequent thereon may be confirmed, and if confirmed shall be valid, notwithstanding any deviation from these Rules, if the accused has not been prejudiced by such deviation.

(7) When the Defence Council have confirmed a finding and sentence of a court or have withheld confirmation thereof, they shall send the record of the proceedings to the commanding officer of the accused for the promulgation to the accused of the finding and sentence, or of the fact that confirmation has been withheld, as the case may be. The fact of the promulgation shall be recorded on the record of the proceedings in the form set out in the Fourth Schedule. If confirmation has been withheld because the Defence Council disapproves the court's decision to reject a plea to the jurisdiction or a plea in bar of trial or to overrule an objection to the charge, the accused shall be so informed.

Revision

95.—(1) The proceedings and decision of a court on revision shall be recorded on the record of the proceedings in the appropriate form set out in the Fourth Schedule, and the presiding officer shall date and sign such record and decision and return it to the Defence Council, after it has been signed by the judge advocate (if any).

(2) When an accused is acquitted on revision the revised finding shall be communicated to the accused in such manner as may be specified by the Defence Council.

PART XXVIII

Loss of Proceedings

Loss of original record of proceedings before confirmation

96.—(1) If before confirmation the whole or any part of the original record of the proceedings of a court-martial is lost and a copy exists, such copy may, if the presiding officer or the judge advocate certifies it to be correct, be accepted and used in lieu of the original.

(2) If before confirmation the whole or any part of the original record of the proceedings of a court-martial is lost and no copy thereof exists, but evidence of the proceedings of the court can be procured to enable the record or part thereof which has been lost to be reconstituted sufficiently to permit the Defence Council to follow the course of the proceedings and to judge of the merits of the case, the record as so reconstituted may, with the consent of the accused, be accepted and used in lieu of the original:

Provided that where part only of the original record of the proceedings of a court-martial has been lost, and the part which remains is sufficient to enable the Defence Council to follow the course of the proceedings and judge of the merits of the case, such remaining part may, with the consent of the accused, be accepted and used as if it were the complete record, and in such case it shall not be necessary to reconstitute the part of the record which has been lost.

(3) If before confirmation the whole or any part of the original record of the proceedings of a court-martial is lost and such loss cannot be made good under either subrule (1) or subrule (2) the Defence Council shall withhold confirmation and shall record their decision in the appropriate form set out in the Fourth Schedule.

Loss of original record of proceedings after confirmation

97. If after confirmation the whole or any part of the original record of the proceedings of a court-martial is lost and a copy thereof is certified by the presiding officer or the judge advocate to be correct, or a sufficient record of the charge, finding, sentence and proceedings before the court and of the confirmation of the finding and sentence remains or can be constituted to permit of the case being reviewed or the sentence reconsidered, such copy or reconstituted record or remaining part of the record may be accepted and used in lieu of the original.

PART XXIX

Custody of Records after Confirmation and Cost of Copies Thereof

Custody and preservation of record of proceedings after confirmation

98. For the purposes of section 134 (1) of the Act the prescribed period during which the record of the proceedings of a court-martial proceedings shall be kept in custody of the Defence Council shall be six years from the conclusion of the trial.

Cost of copies of record of proceedings

99. The rate at which copies of the record of the proceedings of a court-martial shall be supplied in accordance with section 134 (2) and (3) of the Act shall be estimated at such cost as the Minister may prescribe from time to time on the advice of the Defence Council.

PART XXX

Petitions

Petitions

100.—(1) If an accused who has been sentenced by a court-martial wishes to petition before confirmation against the finding or sentence or both, he shall present a petition to the Defence Council in the appropriate form set out in the Seventh Schedule.

(2) If an accused who has been sentenced by court-martial wishes to petition after promulgation against the finding he shall present a petition to the President at any time within six months of promulgation in the appropriate form set out in the Seventh Schedule.

(3) If an accused who has been sentenced by a court-martial wishes to petition after promulgation against the sentence, he shall present a petition to the Defence Council at any time within six months of promulgation in the appropriate form set out in the Seventh Schedule.

PART XXXI

Miscellaneous Provisions

Notice requiring oral evidence in lieu of statutory declaration

101. A notice under provision (*c*) of section 105 (2) of the Act requiring that oral evidence shall be given in lieu of a statutory declaration in appropriate form set out in the Fourth Schedule.

Exceptions from rules on account of the exigencies of the service

102.—(1) Where in the opinion of the appropriate superior authority the exigencies of the service render compliance with all or of the service any of the provisions of the rules mentioned in subrule (3) impracticable, the appropriate superior authority may make a declaration to that effect in the appropriate form set out in the Fourth Schedule.

(2) When a declaration has been made under subrule (1) it shall not be necessary to comply with any provision of these Rules which is mentioned in such declaration and these Rules shall be construed accordingly.

(3) The provisions of these Rules in respect of which a declaration may be made under subrule (1)—

(*a*) provisions (*a*) and (*b*) to rule 6 (2);

(*b*) rule 8 (*b*) insofar as it relates to the accused's right to insist that a witness shall be compelled to attend the taking of a summary of evidence for cross-examination;

(*c*) rule 18 insofar as it provides that the documents specified therein must be given to the accused not less than 24 hours before the appropriate superior authority investigates and deals summarily with the charge;

(*d*) rule 24, paragraphs (*b*) and (*c*), and paragraph (*d*) insofar as it provides that the documents specified therein shall be given to the accused not less than 24 hours before his trial.

(4) If an accused is brought to trial by court-martial or is dealt with summarily by an appropriate superior authority, any declaration which has been made in his case under subrule (1) shall be attached to the record of the proceedings of the court-martial or to the record made by the appropriate superior authority, as the case may be.

Exceptions from rules in the interest of security

103.—(1) When in the opinion of the appropriate superior authority a charge-sheet summary or abstract of evidence or other document which, or a copy of which, is required under these Rules to be given to an accused contains information the disclosure of which would or might be directly or indirectly useful to an enemy, the appropriate superior authority may make a declaration to that effect in the appropriate form set out in the Fourth Schedule specifying the document concerned.

(2) When a declaration has been made under subrule (1) it shall not be necessary to give to the accused any documents mentioned in that declaration, or any copy of such a document, and it shall be a sufficient compliance with these Rules if the accused is given a

proper opportunity to inspect such document while preparing and making his defence.

(3) If an accused is brought to trial by court-martial or is dealt with summarily by the Commander, any declaration which has been made in his case under subrule (1) shall be attached to the record of the proceedings of the court-martial or to the record made by the appropriate superior authority, as the case may be.

Deviations from the forms in the Schedules

104. A deviation or omission from a form or form of words set out in a Schedule shall not, by reason only of such deviation or omission, render any document, act or proceeding invalid.

Cases not covered by rules

105. In any case not provided for by these Rules such course shall be adopted as appears best calculated to do justice.

FIRST SCHEDULE

Forms for Commanding Officers

1. Heading for all Forms
2. Delay Report
3. Summary of Evidence
4. Abstract of Evidence
5. Certificate to be attached to Abstract of Evidence after it has been handed to the Accused
6. Summons to a Witness to attend the taking of a Summary of Evidence

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Form 1—Heading for all Forms in this Schedule

THE DEFENCE FORCE ACT

THE RULES OF PROCEDURE (DEFENCE FORCE)

Form 2—Delay Report

Rule 4

Unit Address:

.....

Tel.: .....

To: The Commander, Defence Force;

and The Director of Public Prosecutions.

* ..... EIGHT DAY DELAY REPORT

Pursuant to the Defence Force Act, section 85 (2)

Number, rank name of accused ....

Alleged Offence(s) Date of alleged offences

....

† The accused is in close/open arrest.

The reasons for his retention in arrest are .....

† The abstract/summary of evidence {was taken on ....., 20..... {has not yet been

{taken because .....

{was made on ....., 20.....

† Application for trial {has not yet been

{made because .....

† The Director of Public Prosecutions		{was consulted on ....., 20..... {has not yet been {consulted because .....
† The Director of Public Prosecutions' advice		{was received on ....., 20..... {has not yet been {received
† Action	{is being taken} { } {has been taken}	on Director of ..... Public Prosecutions' ..... advice as ..... follows .....
† Date of trial	{has not yet been fixed } { {has been fixed as ....., 20.....	

Reasons for delay since last report .....

Date ....., 20..... .....

Officer commanding accused's unit
(*To be signed personally by the C.O.*)

*Insert "1st", "2nd", "3rd", "Final" or as the case may be.

†Strike out words not applicable.

FORM 3—SUMMARY OF EVIDENCE Rule 8

Summary of evidence in the case of ..... (number, rank, name, unit or other description)

Taken by (the commanding officer of the accused).

..... (rank, name, unit, or other description), having been duly sworn states—

(cross-examined by the accused)

Question 1 .....

Answer 1 .....

or

(The accused declines to cross-examine this witness)

.....
(*Signature and rank* (*if any*) *of witness*)

or

Witness of the prosecution ..... (number, rank, name, unit, or other description).

A written statement of this witness's evidence purporting to be signed by him has been read to the accused and is included in this summary page ..... Having regard to ..... (insert grounds for non-attendance of witness — *see* rule 8 (*b*) the attendance of this witness cannot in my opinion be readily procured.

(The accused does not demand the attendance of this witness for cross-examination.) (The accused demand the attendance of this witness for cross-examination but the witness is not compellable and has refused to attend.)

.....

(*Signature of officer taking the summary of evidence*)

The accused having been duly cautioned in accordance with rule 8(*c*) reserves his defence

or

The accused having been duly cautioned in accordance with rule 8(*c*) elects (to give evidence on oath) (to make a statement without being sworn) and to call a witness(s).

Witness for the defence

The accused ..... (number, rank, name, unit, or other description) having been duly sworn states—

.....

(*Signature and rank* (*if any*) *of accused, if he signs*)

Witness for the defence

..... (number, rank, name, unit, or other description) having been duly sworn states—

.....

(*Signature and rank* (*if any of witness*)

Certified that rule 8 has been complied with.

This summary of evidence was taken by me at ..... in the presence and hearing of the accused on the ..... day (s) ..... of ....., 20.....

.....

(*Signature and rank of officer taking the summary of evidence*)

FORM 4—ABSTRACT OF EVIDENCE Rule 9

Abstract of evidence in the case of ..... (number, rank, name, unit or other description) consisting of the ..... (insert the number of statements) attached statements and ..... (insert the number of precis) precis of evidence of witnesses for the prosecution and compiled by me (the commanding officer of the accused) (..... on the direction of the commanding officer of the accused).

Date ....., 20.....

.....
(*Signature and rank*)

FORM 5—CERTIFICATE TO BE ATTACHED TO ABSTRACT OF EVIDENCE AFTER IT HAS BEEN HANDED TO THE ACCUSED Rule 9 (2)

Certified that I ..... today handed to the accused ..... the abstract of evidence relating to him dated the ..... day of ....., 20..... and duly cautioned him in accordance with rule 9 (2) and that he (elected to make and sign the statement dated the ..... day of ....., 20..... which is marked ..... and attached to this certificate) (did not make a statement).

Dated ....., 20.....

.....
(*Signature of certifying officer*)

FORM 6—SUMMONS TO A WITNESS TO ATTEND THE TAKING OF A SUMMARY OF EVIDENCE Rule 90 (3)

To .....

WHEREAS a charge has been preferred against

.....

AND WHEREAS I have directed a summary of the evidence to be taken at .....

..... on the ..... day of ....., 20.....

YOU ARE, PURSUANT TO SECTION 136 OF THE DEFENCE FORCE ACT AND RULE 90 OF THE RULES OF PROCEDURE (DEFENCE FORCE), MADE THEREUNDER, HEREBY SUMMONED and required to attend as a witness on the taking of the said summary of evidence at ..... on the ..... day of ....., 20..... at ..... o'clock in the ..... noon, and to bring with you the documents hereinafter mentioned, viz:

.....

.....

.....

Whereof you shall fail at your peril.

Given under my hand at ..... on the ..... day of ....., 20.....

.....
(*Signature, rank and unit*)
Commanding Officer of the accused

SECOND SCHEDULE
CHARGE-SHEETS

1. Heading for all Forms in this Schedule
2. Commencement of Charge-Sheets
3. Statement of offences
4. Illustrations of Charge-Sheets

FORM 1—HEADING FOR ALL FORMS IN THIS SCHEDULE
THE DEFENCE FORCE ACT
THE RULES OF PROCEDURE (DEFENCE FORCE)
FORM 2—COMMENCEMENT OF CHARGE-SHEETS
SECTION 237

(1)—(*a*) The accused ..... (Number, rank, name and unit) { an officer / a warrant officer / a non-commissioned officer / a private soldier } of the regular force charged with—

(2)—(*b*) The accused ..... (number (if any), rank, name, service, former unit and unit to which attached) being subject to military law under section 237 (1) (*b*) of the Act is charged with—

(3)—(*c*) The accused ..... (number, rank, name and unit) (Defence Force Reserve) { an officer / a warrant officer / a non-commissioned officer / a private soldier } of the { when employed in terms of section 231 of the Act {is charged with—

SECTION 238

The accused ..... (name and brief description) being liable to trial by court-martial under section 238 (1) of the Act is charged with—

SECTION 125

(1) } The accused..... (name) formerly
} .....
} (former military description including the manner in which the accused was
} formerly subject to military law set out in accordance with the appropriate
} form in this Schedule) and now liable to trial by court-martial under section
} 125 (1) and (2) of the Act is charged with—
(2) }

FORM 3—STATEMENT OF OFFENCES

TREACHERY, COWARDICE AND OFFENCES ARISING OUT OF MILITARY SERVICE

SECTION 33

(1)	{(*a*)} {(*b*)} {(*c*)} {(*d*)} {(*e*)} {(*f*)} {(*g*)} {(*h*)}	Aiding the enemy with intent	{(*a*)} {(*b*)} {(*c*)} {(*d*)} {(*e*)} {(*f*)} {(*g*)} {(*h*)} contrary to section 33 (1) of the Act
(2)	Knowingly and without lawful excuse doing an act specified in paragraph (*b*)		{(*a*)} {(*b*)} {(*c*)} {(*d*)} {(*e*)} {(*f*)} {(*g*)} of section 33 (1) of the Act contrary to section 33 (2) of the said Act
(3)	Negligently causing the		{capture } { } {destruction } by the enemy of aircraft contrary to section 11 (3) of the Act

SECTION 34

(1)	{Communicating } {with } {Giving intelligence to}	the enemy	{(1)} { } {(2)} contrary to section 34 of the Act

SECTION 35

(1) Cowardice before the enemy contrary to section 35 (1) of the Act.
(2) Inducing cowardice before the enemy contrary to section 35 (2) of the Act.

SECTION 36

(*a*) Spreading reports relating to operations calculated to create despondency or unnecessary alarm contrary to section 36(*a*) of the Act.

(*b*) When before the enemy using words calculated to create despondency or unnecessary alarm contrary to section 36(*b*) of the Act.

SECTION 37

(1) Being captured through disobedience or willful neglect contrary to section 37 of the Act.

(2) {Failing to } {reasonable steps after capture, } {contrary to section 37}
{take } { } {(2) of the Act }
{ } { to rejoin } { }
{ } { The Defence } { }
{Preventing } a person { Force } { }
{ } from taking { of the country to } {
{ } { which the officer } { }
{ Discouraging } { or soldier } { }
{ is attached
{

SECTION 38

{guard duty }
{Sleeping at his {duty controlling }contrary to section 38 (1) (*a*) of
{post when on {movement }the Act
{ {guard duty }
{Sleeping when {duty controlling }contrary to section 38 (1) (*a*) of
{on {movement }the Act
{ { }
(1) { {guard duty }
{Drunkenness {duty controlling }contrary to section 38 (1) (*a*) of
{when on {movement }the Act
{ { }
{Leaving } {guard duty }
{his post } when {duty controlling }contrary to section 38 (1) (*a*) of
{Absenting } on {movement }the Act
{himself } { }
{Striking { } }
{ {a }guard duty }
{Using force {person }duty controlling }contrary to section 38 (1) (*a*) of
{against {on }movement }the Act
{ { } }

(3)	{compelling {a person on }	{guard duty {duty controlling {movement }	to let a person pass }	contrary to section 38 (3) of the Act }

SECTION 39

(*a*)} {(*a*)}
(*b*)} Looting, contrary to section 39 {(*b*)} of the Act.
(*c*)} {(*c*)}

MUTINY AND INSUBORDINATION

SECTION 40

(1)	(*a*)	Mutiny	{with violence {relating to the enemy {	contrary to section 40 (1) (*a*) of the Act.
	(*b*)	Incitement to mutiny	{with violence {relating to the enemy	contrary to section 40 (1) (*b*) of the Act.

(2) {Mutiny {Incitement to {mutiny } contrary to section 40 (2) of the Act.

SECTION 41

(*a*) Failing to suppress or prevent mutiny contrary to section 41 (*a*) of the Act.
(*b*) Failing to report mutiny contrary to section 41 (*b*) of the Act.

SECTION 42

(1)	(*a*)	{Striking {Using { {Offering	violence to a superior officer contrary to section 42 (1) (*a*) of the Act;	
	(*b*)	Using	{threatening {insubordinate	language to a superior officer contrary to section 42 (1) (*b*) of the Act.

SECTION 43

(1) Disobeying a lawful command with willful defiance of authority contrary to section 43 (1) of the Act.
(2) Disobeying a lawful command contrary to section 43 (2) of the Act.

SECTION 44

(*a*)	Obstructing a	{provost officer, {person exercising {authority under {or on behalf of a {provost officer	} contrary to section 44 } (*a*) of the Act; }
(*b*)	Refusing to assist a	{person exercising {authority under {or on behalf of a {provost officer	} contrary to section } 44 (*b*) of the Act. }

SECTION 45

(1) Disobedience to standing orders contrary to section 45 (1) of the Act.

DESERTION, ABSENCE WITHOUT LEAVE, ETC.

SECTION 46

(1)—(*a*) Desertion contrary to section 46 (1) (*a*) of the Act.

(*b*) {Persuading }a person to desert contrary to section 46 (1) (*b*) of the Act.
{Procuring }

SECTION 47

(*a*) Absence without leave contrary to section 47 (*a*) of the Act.

(*b*) {Persuading }a person to absent himself without leave contrary to
{Procuring }section 47 (*b*) of the Act.

SECTION 48

(*a*) Assisting a person to desert or absent himself contrary to section 48 (*a*) of the Act.

(*b*)	Failing to	{report without {delay {take steps {to cause the {apprehending {of {	{a deserter {or absentee {a person {attempting {to desert or {absent {himself	} } }contrary to section }48 (*b*) of the Act. } } }

SECTION 49

Making a false statement to {obtain } leave contrary to section 49
{ } of the Act.
{prolong }

SECTION 50

Failing to attend for military duty }contrary to section 50 of the
Leaving a military duty without permission }Act.

MALINGERING AND DRUNKENNESS
SECTION 51

	{(*a*)}		{(*a*)}
	{(*b*)}		{(*b*)}
(1)	{(*c*)}	Malingering contrary to	{(*c*)} of the Act.
	{(*d*)}	section 59(1)	{(*d*)}

SECTION 52

Drunkenness contrary to section 52 (1) of the Act.

OFFENCES RELATING TO PROPERTY
SECTION 53

		{Stealing,	}	}	{ }
		{Fraudulently misapplying		}	{public
		{	}	{	}property }contrary to
(1)—(*a*)	{Being}	{fraudulent	}stealing or	}	{section 53
	{concerned	}the	{misapplication	}service	}(1) (*a*) of the
	{in	}	{of	}	}Act;
	{Conniving	}	{	}	}
	{at	}	{	}	}
		{public	}property contrary to section 53 (1) (*b*)		
(*b*)	Receiving	{service	}of the Act		
	{Willfully damaging	}	{public	}	
	{Being concerned	}	{service	}property contrary	
(*c*)	{in the willful	}	{	}to section 53 (1)	
	{damage of	}	{	}(*c*) of the Act;	
			{	}	
			{	}property by fire contrary to	
(*d*)	By willful neglect		{public	}section 53 (1) (*d*) of the	
	damaging		{service	}Act.	
	{Willfully		{	}	
	{Damaging		{aircraft	}	
(2)—(*a*)	{Being concerned		{	}contrary to section	
	{in the willful		{material	}53 (2) (*a*) of the	
	{damage of		{	}Act;	
(*b*)	By willful	{damage	}	{aircraft	}contrary to section
	neglect	{to the	}	{	}53 (2) (*b*)
	causing	{loss of	}	{material	}of the Act;
				{aircraft	}contrary to section
(*c*)	Without lawful authority			{	} 53 (2) (*c*) of the
	disposing of			{material	}Act.

(3) Causing the {sequestration by / destruction in / } a neutral state of aircraft contrary to section 53 (3) of the Act.

SECTION 54

(*a*) {Stealing / fraudulently / misapplying / Being / concerned in / Conniving at} the {stealing of / fraudulent / misapplication of} property contrary to section 54 (*a*) of the Act;

(*b*) Receiving property contrary to section 54 (*b*) of the Act.

(*c*) {Willfully damaging / Being concerned in the / willful damage of} property contrary to section 54 (c) of the Act.

SECTION 55

(*a*) {Losing / Negligently damaging} {public / service} property contrary to section 55 (*a*) of the Act;

(*b*) By negligence {losing / damaging} {aircraft / material} contrary to section 55 (*b*) of the Act;

(c) Being guilty of {an act / neglect / } likely to cause damage or the loss of {aircraft / aircraft / material} contrary to section 55 (c) of the Act;

(*d*) Negligently damaging {public / service} property by fire contrary to section 55 (*d*) of the Act;

(*e*) {Losing / Negligently damaging} his equipment contrary to section 55 (*e*) of the Act

(*f*) Neglect of {an animal / a bird} contrary to section 55 (*f*) of the Act;

(*g*) Making away with {a decoration / granted to him / his equipment} contrary to section 55 (*g*) of the Act.

Offences Relating to Billeting and Requisitioning of Vehicles

Section 58

(*a*) {Obtaining / Ordering / Procuring} a person to obtain billets contrary to section 58 (*a*) of the Act.

(*b*) Corruption in relation to a billeting requisition contrary to section 58 (*b*) of the Act.

(*c*) {Committing an offence against / Damaging / Damaging property in} a person / property in his billets contrary to section 58 (*c*) of the Act.

Section 59

(1) {(*a*)} Unlawful requisitioning contrary of the Defence Force {(*b*)} to section 59(1) {(*a*)} {(*b*)} Act.

(*c*) Corruption in relation to a requisitioning order contrary to section 59 (1) (*c*) of the Act.

Offences Relating to and by Persons in Custody

Section 63

(1) (*a*) Delaying {an investigation / a trial} contrary to section 63 (1) (*a*) of the Act.

(*b*) Failing to release a person in arrest contrary to section 63 (1) (*b*) of the Act.

(2) Failing to report the offence for which a person has been placed in custody contrary to section 63 (2) of the Act.

(3) (*a*) Failing to give in writing information relating to a person committed to his charge as a guard commander contrary to section 63 (3) (*a*) of the Act.

(*b*) Failing to hand in a report relating to a person in custody received by him as guard commander contrary to section 63 (3) (*b*) of the Act.

Section 64

(1) Willfully allowing a person to escape contrary to section 64 (1) of the Act.

(2) (*a*) Releasing a person without authority contrary to section 64 (2) (*a*) of the Act.

(2) (*b*) Allowing a person to escape contrary to section 64 (2) (*b*) of the Act.

SECTION 65

	{Refusing to obey				
	{Striking				}an officer who orders him into arrest
(1)	{Using	}violence to			}contrary to section 65 (1) of the
	{Offering	}			}Act.
				{whose duty	}
				{is to	}contrary to
	{Striking	}		{apprehend	}section 65
(2)	{Using	}violence to	}a person	{him	}(2) of the
	{Offering	}	}	{in whose	}Act.
				{custody he	}
				{is	}

SECTION 66

Escaping from custody contrary to section 66 of the Defence Force Act.

OFFENCES IN RELATION TO COURTS-MARTIAL

SECTION 67

	{(*a*)}	{(*a*)} contrary to
	{(*b*)}	{(*b*)} section 67 (1)
(1)	{(*c*)} Contempt of a court-martial	{(*c*)} of the Act.
	{(*d*)}	{(*d*)}
	{(*e*)}	{(*e*)}
	{(*f*)}	{(*f*)}

SECTION 68

(1) Making a false statement contrary to section 68 (1) of the Act.

SECTION 69

(2) Disclosing information contrary to section 69 (1) of the Act.

SECTION 70

Making a false answer on enlistment contrary to section 70 of the Act.

SECTION 71

	{Making	}	}
(*a*)	{Signing	}a false	}service document contrary to section
	{Making a false entry in a		}71 (*a*) of the Act.
	{Altering		}
	{Altering on entry in		}
(*b*)	{Making away with		}a service document contrary to section
	{Suppressing		}71 (*b*) of the Act.
	{Defacing		}

(*c*) Failing to make an entry in a service document with intent to defraud contrary to section 71 (c) of the Act.

	{Making	}	}
	{signing	}a false}	
	{making a false entry}		
	{in a		}
	{altering a		}
	{altering an entry	}service	}
(*a*)	{Being part to	{in a	}document }
	{making away	}	}
	{with a	}	}
	{suppressing a	}	}contrary to section
	{defacing a	}	)71 (*d*) of the
	{failing to make an entry in a		}Act.
	{service document with intent		}
	{to defraud		}

SECTION 72

Scandalous conduct unbecoming the character of an officer contrary to section 72 of the Defence Force Act.

SECTION 73

	{Striking	{an officer of inferior rank	}contrary to section
(*a*)	{	{an officer of less seniority	}73 (*a*) of the
	{Ill-treating	{a soldier	}Act.
		{a warrant officer of inferior	}
		{rank	}
		{a warrant officer of less	}
		{seniority	}
	{Striking	{a non-commissioned officer	}
(*b*)	{	{of inferior rank	}contrary to section
	{Ill-treating	{a non-commissioned officer	}73 (*b*) of the
		{of less seniority	}Act.
		{a private soldier	}

SECTION 74

	{a cruel	}
Disgraceful conduct of	{an indecent	}kind contrary to section 74
	{an unnatural	}of the Act.

SECTION 75

(*a*) Making a false accusation contrary to section 75 (*a*) of the Act.

(*b*)	{Making a false statement	}in a complaint contrary to
	{Willfully suppressing a material fact	}section 75 (*b*) of the
		}Act.

SECTION 76

Attempting to commit a military offence contrary to section 76 of the Act that is to say (set out the offence).

SECTION 77

An act	}
Conduct	}to the prejudice of good order and military discipline
Neglect	}contrary to section 77 of the Act.

CIVIL OFFENCES
SECTION 80

Committing a civil offence contrary to section 80 of the Act, that is to say .... (here describe the civil offence in such words as sufficiently describe the offence).

MILITIA
SECTION 225

	{Desertion	}contrary to section 225 of the
(1)	{Absence without leave	}Act.

RESERVE FORCE
SECTION 225

	{Desertion	}contrary to section 225 (1) of the
(1)	{Absence without leave	}Act.

FORM 4—ILLUSTRATION OF CHARGE-SHEETS
CHARGE-SHEET

The accused, No. 4567 Private John Bandawe, C Company Detachment, 1st Battalion, the Malaŵi Rifles (K.A.R.), a private soldier of the regular force, is charged with—

1st charge

STEALING PUBLIC PROPERTY CONTRARY TO SECTION 53 (1) (*a*) OF THE ACT

in that he
at Lilongwe on 1st August, 2000, stole a pair of binoculars, public property.

2nd charge (alternative to the 1st charge)

RECEIVING PUBLIC PROPERTY CONTRARY TO SECTION 53 (1) (*b*) OF ACT

in that he
at Lilongwe on 1st August, 2000, did receive a pair of binoculars, public property, knowing them to have been stolen or fraudulently misapplied.

ZOMBA, 12th August, 2000.

MAJOR A. PHIRI
Commanding C Company Detachment,
1st Battalion, The Malaŵi Rifles (*K.A.R.*)
Commanding Officer of the accused

To be tried by Court-Martial

ZOMBA, 16th August, 2000.

B. Banda
Colonel, Commander
Malaŵi Defence Force

Charge-Sheet

The accused, No. 2572 Corporal John Mbera, a non-commissioned officer, and No. 6789 Private Thomas Chingana, a private soldier of the Defence Force Reserve, when employed in terms of section 231 of the Defence Force Act, both of Headquarters, Malaŵi Defence Force, are charged with—

Both accused jointly

1st Charge

Committing a civil Offence Contrary to section 80 of the Defence Force Act, that is to say Common Assault Contrary to section 253 of The Penal Code

in that they

at Zomba on 1st August, 2000, assaulted Evans Kalua.

Corporal Mbera only

Striking a Superior Officer Contrary to section 42 (1) (*a*) of The Act

in that he

when on active service at Zomba on 1st August, 2000, struck No. 1234 Sergeant V. Namame, 1st Battalion, the Malaŵi Rifles (K.A.R.)

Private Chingana only

Using Insubordinate Langauge to a Superior Officer Contrary to section 42 (1) (*b*) of The Act

in that he

when on active service at Zomba on 1st August, 2000, when asked by Captain J. Bloggs, Royal Army Service Corps, for his particulars replied, ''Don't be nosy'', or similar words.

ZOMBA, 30th October, 2000

Major C. Hara
Officer Commanding, Headquarters Detail,
Malaŵi Defence Force
Commanding Officer of the accused

To be tried by Court-Martial
ZOMBA, 1st November, 2000.

MAJOR L. MHANGO
Authorized to sign for Commander
Malaŵi Defence Force

THIRD SCHEDULE

RULES OF PROCEDURE (DEFENCE FORCE)

RECORD OF PROCEEDINGS BEFORE THE APPROPRIATE SUPERIOR AUTHORITY

ACCUSED'S NUMBER, RANK AND NAME .....

UNIT .....

1. Question to be put to the accused by the appropriate superior authority before the charge is read.

Q. Have you received a copy of the charge-sheet and (summary) (abstract) of evidence not less than 24 hours ago?

A. .....

Q. Have you had sufficient time to prepare your defence?

A. .....

2. The appropriate superior authority shall then read the charge(s) to the accused and ask the following question—

Q. Have you agreed in writing that the witnesses against you need not give their evidence in person?

A. .....

3. If the accused has agreed in writing that the witnesses against him need not give their evidence in person the appropriate superior authority shall read the summary or abstract of evidence to the accused if the accused so requires but, if the accused has not so agreed, the witnesses against him shall give their evidence in person and it shall be recorded on a separate sheet and be attached to this record.

4. After the summary of abstract of evidence has been read or the witnesses against the accused have given their evidence, as the case may be, the appropriate superior authority shall say to the accused—

Q. Do you wish to give evidence on oath or to make or hand in a statement without being sworn? Your evidence or statement may deal with the facts of the case, with your character and with matters in mitigation of punishment.

A. .....

Q. Do you wish to adduce any other evidence in your defence?

A. .....

5. If the accused elects to give evidence or to make a statement or to call witnesses the evidence for the defence including any statement made by the accused himself shall be recorded on a separate sheet and attached to this record. The appropriate superior authority shall then:

(i) consider all the evidence and determine whether the accused is guilty of the offence or not; and

(ii) if he determines that the accused is guilty, examine and consider the accused's record of service. If he intends to award the punishment of forfeiture of seniority of rank or of a fine or of stoppages or the finding will involve a forfeiture of pay, he shall not announce and record his finding unless the accused says in answer to the following question that he will accept his award.

Q. Will you accept my award or do you elect to be tried by court-martial?

A. .....

6. FINDING .....

AWARD .....

Date ....., 20.....

.....

Signature

FOURTH SCHEDULE
COURT-MARTIAL FORMS

1. General heading for all Forms in this Schedule
2. Convening orders
3. Declarations under rules 102 and 103
4. Summons to a Witness to Attend a Court-Martial
5. Notices Requiring Oral Evidence to be Given in lieu of a Statutory Declaration
6. Record of Proceedings of a Court-Martial
7. Findings
8. Record of Reconsideration of Finding under rule 79
9. Service Record of Accused
10. Record of proceedings on Revision under section 110 of the Act
11. Confirmation
12. Determination by a Confirming Officer or Reviewing Authority of a Suspended Sentence and Direction that Sentences are to Run Concurrently or Consecutively

13. Direction under section 123 (3) of the Act
14. Restitution order
15. Promulgation

FORM 1—GENERAL HEADING FOR ALL FORMS IN THIS SCHEDULE

RULES OF PROCEDURE (DEFENCE FORCE)

FORM 2—CONVENING ORDERS Rule 21

CONVENING ORDERS FOR A COURT-MARTIAL

Orders by .....

Commanding Officer or Appropriate Superior Authority

(Place and date) .....

The details of officers as mentioned below will assemble at ..... at .... hours on the ..... day of ....., 20..... for the purpose of holding a court-martial to try the accused persons named in the margin.

Name, etc., of accused.
.....
.....
.....
.....

PRESIDING OFFICER

.....

MEMBERS

.....

.....

.....

WAITING MEMBER(S)

.....

.....

JUDGE ADVOCATE

The judge advocate is a Judge of the High Court of Malaŵi and has been appointed by the Chief Justice. An officer of the rank of major or above having suitable qualifications is not in the opinion of the convening officer available with due regard to the public service.

The record of the proceedings will be forwarded in an envelope marked confidential to .....

Signed this ..... day of ....., 20.....

.....

(*Signature, rank and appointment of the convening officer*)

or

.....

(*Signature, rank and appointment of the appropriate staff officer*) *An officer authorized to sign for*

.....

(*Appointment held by the convening officer*)

FORM 3—DECLARATION UNDER RULES 102 AND 103 rule 102

Declaration under rule 102

In the case of .....

I hereby declare that in my opinion the following exigencies of the service, namely

.....

.....

.....

render compliance with the following provisions of the Rules of Procedure

.....

.....

.....

..... impracticable.

Signed at ..... this ..... day of ....., 20.....

.....

Signature

Declaration under rule 103 rule 103

In the case of .....

I hereby declare that in my opinion he ..... contain(s) information the disclosure of which would or might be directly or indirectly useful to an enemy.

Signed at ..... this ..... day of ....., 20.....

.....

Signature

FORM 4—SUMMONS TO A WITNESS TO ATTEND A COURT-MARTIAL rule 90 (3)

To .....

WHEREAS a court-martial (has been ordered to assemble at ....) (Has assembled at .....) on the ..... day of ..... , 20..... for the trial of .....

YOU ARE, PURSUANT TO SECTION 136 OF THE ACT AND RULE 90 (3) OF THE RULES OF PROCEDURE (DEFENCE FORCE), MADE THEREUNDER, SUMMONED and required to attend as a witness at the sitting of the said court at ..... on the ..... day of ....., 20..... at ..... o'clock in the .....noon and bring with you the documents hereinafter mentioned, viz. ....and so to attend from day to day until you shall be duly discharged: whereof you shall fail at your peril.

Given under your hand at ..... on the ..... day of ....., 20.....

.....

(*Signature*)

*Presiding Officer of the Court**

Authorized to sign for Commander, Malaŵi Defence Force.

*Strike out if not applicable.

FORM 5—NOTICES UNDER SECTION 105 OF THE ACT, REQUIRING ORAL EVIDENCE TO BE GIVEN IN LIEU OF A STATUTORY DECLARATION

Notices by a commanding officer

To .....

I ..... commanding ..... hereby give notice that I require that ..... shall give oral evidence in lieu of (his) (her) statutory Declaration dated ..... at your forthcoming trial by court-martial.

Dated ....., 20.....

.....

(*Signature and rank*)

Commanding officer of the accused

Notice by an accused

To ..... commanding .....

I ..... hereby give notice that I require that ..... shall give oral evidence in lieu of (his) (her) statutory declaration dated ..... at my forthcoming trial by court-martial.

Dated ....., 20.....

.....

(*Signature*)

FORM 6—RECORD OF PROCEEDINGS OF A COURT-MARTIAL rule 91

A PAGE 1

RECORD OF PROCEEDINGS OF A COURT-MARTIAL

Proceedings of a ..... court-martial held at ..... on the ..... day of ..... , 20..... by order of ..... convening officer ..... dated the ..... day of ....., 20.....

PRESIDING OFFICER
MEMBERS
JUDGE ADVOCATE

Trial of .....
The court comply with rule 25 .....
.....not being available owing to .....the presiding officer appoints.....a qualified waiting member to take his place.
The accused is brought before the court.
Prosecutor .....
Defending (officer) (counsel) .....
At ..... hours the trial begins.

The convening order is read in the hearing of the accused, marked ..... signed by the presiding officer and attached to the record.

The names of the presiding officer and members of the court are read in the hearing of the accused and they severally answer to their names.

Q. Do you object to being tried by me as presiding officer, or by any of the officers whose names you have heard read?

A. .....

The proceedings relating to the objection(s) are recorded on .....

B PAGE 2

SWEARING

The presiding officer, members of the court and judge advocate are duly sworn.

The (following) officers under instruction (listed on page .....) are duly sworn

Q. Do you object to ..... as shorthand writer?

A. .....
.....is duly sworn as interpreter.

SPECIAL PLEAS AND OBJECTIONS

The accused offers a plea to the jurisdiction under rule 35. The proceedings relating to his plea are recorded on page .....

The accused objects to the ..... charge(s) under rule 36. The proceedings relating to his plea are recorded on page .....

The accused objects to the ..... charge(s) under rule 36. The proceedings relating to his objection(s) are recorded on page .....

The accused offers (*a*) plea(s) in bar of trial under rule 37 in respect of the ..... charge(s). The proceedings relating to his plea(s) are recorded on page .....

The accused ..... applies under rule 38 to be tried separately. The proceedings relating to his application are recorded on page .....

The accused applies rule 39 to have charges ..... and ..... tried separately. The proceedings relating to his application are recorded on page .....

C1 PAGE .....

ARRAIGNMENT

The charge-sheet is read to the accused and he is arraigned on each charge.

The charge-sheet is signed by the presiding officer and inserted in the record immediately before this page as page(*s*) .....

Q Are you guilty or not guilty of the first charge against you which you have heard read?

A. .....

Q. Are you guilty or not guilty of the second charge against you which you have heard read?

A. .....

Q. Are you guilty or not guilty of the third charge against you which you have heard read?

A. .....

Q. Are you guilty or not guilty of the fourth charge against you which you have heard read?

A. .....

Q. Are you guilty or not guilty of the fifth charge against you which you have heard read?

A. .....

Q. Are you guilty or not guilty of the sixth charge against you which you have heard read?

A. .....

The accused having pleaded guilty to the ..... charge(s) rule 41 is duly complied with in respect of (this) (these) charge(s).

The accused's pleas to the remaining charges are recorded overleaf.

C2 PAGE .....

Q. Are your guilty or not guilty of the seventh charge against you which you have heard read?

A. .....

Q. Are you guilty or not guilty of the eighth charge against you which you have heard read?

A. .....

Q. Are you guilty or not guilty of the ninth charge against you which you have heard read?

A. .....

Q. Are you guilty or not guilty of the tenth charge against you which you have heard read?

A. .....

Q. Are you guilty or not guilty of the eleventh charge against you which you have heard read?

A. .....

Q. Are you guilty or not guilty of the twelfth charge against you which you have heard read?

A. .....

D1 PAGE .....

PROCEEDINGS ON PLEA(S) OF NOT GUILTY

Q. Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?

A. .....

The prosecutor (makes an opening address shortly outlining the facts) (makes an opening address which is summarized below) (hands in a written address which is read signed by the presiding officer marked ..... and attached to the record).

D2 PAGE .....

The witness for the prosecution is called .... being duly sworn says: First witness for the Prosecution

(continued on page .....)

D3 PAGE .....

PROCEEDINGS ON PLEA(S) OF NOT GUILTY (*continued*)

The prosecution is closed.

The accused submits under rule 57 that there is no case for him to answer in respect of the ..... charge(s). The proceedings relating to this submission are recorded on pages .....

DEFENCE

Rule 58 is complied with.

Q. Do you apply to give evidence yourself on oath or do you wish to make a statement without being sworn?

A. .....

Q. Do you intend to call any other person as a witness in your defence?

A. .....

Q. Is he a witness as to fact or to character only?

A. .....

Q. Do you wish to make an opening address?

*A. .....

The accused (makes an opening address which is summarized below) (hands in a written address which is read, signed by the presiding officer marked ..... and attached to the record).

*Strike out if accused does not intend to call witnesses as to fact, other than himself.

D4 PAGE .....

(Where the accused makes a statement without being sworn)

The accused (makes a statement, which is recorded on page .....) (hands in a written statement which is read, marked ..... and signed by the presiding officer, and attached to the record).

(Where evidence on oath is given for the defence).

The witnesses for the defence (including the accused if sworn) are called for the ..... being duly sworn says— First witness for the defence

(*continued on page* .....)

D5 PAGE .....

PROCEEDINGS ON PLEA(S) OF NOT GUILTY (*continued*)

The ..... (make a closing address which is summarized on page .....) (Hands in a closing address which is read, marked ..... signed by the presiding officer and attached to the record).

The note of the summing-up of the judge advocate is recorded on page .....

FINDING(S)

The court close to deliberate on their finding(s).

The court find that the accused ..... is:

(*see Fourth Schedule*)

ANNOUNCEMENT OF FINDINGS

The court being reopened the accused is again brought before it.

The finding(s) (is) (are) read and (with the exception of the finding(s) of "not guilty") (is) (are) announced as being subject to confirmation.

PROCEEDINGS ON ACQUITTAL ON ALL CHARGES

The accused is released

Signed at ..... this ..... day of ....., 20.....

....

Judge Advocate *Presiding Officer*

E PAGE .....

PROCEEDINGS ON PLEA(S) OF NOT GUILTY

The accused ....is found guilty of the charge(s).

The finding(s) (is) (are) read in open court and (is) (are) announced as being subject to confirmation.

The (summary) (abstract) of evidence is read to the court by the prosecutor, marked ....., signed by the presiding officer and attached to the record.

or

The prosecutor informs the court of the facts contained in the (summary) (abstract) of evidence which is marked ..... signed by the presiding officer and attached to the record.

F1 PAGE .....

PROCEEDINGS ON CONVICTION

(NOTE—F2 should be completed before F1 if the accused has pleaded not guilty to all charges. F1 should normally be completed before F2 if the accused has pleaded guilty to any charge but the presiding officer may in his discretion complete F2 before F1 if there is no danger of the accused making an inconsistent plea.)

Q. Do you wish to give evidence yourself or to call other witnesses as to your character or in mitigation of punishment?

A. .....

The evidence for the defence as to the accused's character and in mitigation of punishment is recorded on pages .....

Q. Do you wish to address the court in mitigation of punishment?

A. .....

The ..... (makes an address in mitigation of punishment, which is summarized (*b*elow) (on page .....) (hands in an address to the presiding officer and attached to the record)).

The list of offences which the court have, at the request of the accused, agreed to take into consideration is read to the accused, signed by him, marked ..... signed by the presiding officer and attached to the record.

Final question addressed to the accused personally.

Q. Is there anything further that you wish to say to the court?

A. .....

The accused makes a statement which is recorded on page .....

The court close to deliberate on sentence.

* Strike out if F1 is completed before F2.

F2 PAGE .....

PROCEEDINGS ON CONVICTION

(NOTE—F2 should be completed before F1 if the accused has pleaded not guilty to all charges).

The prosecutor calls evidence as to the accused's character and record.

..... is duly sworn.

Q. Do you produce the service record of the accused?

A. I produce .....

Q. Have you compared it with the service books?

A. .....

Q. Do the entries on it correspond with the entries in the service books?

A. .....

The ..... is read, marked ..... , signed by the presiding officer and attached to the record.

The accused (declines) (elects) to cross-examine this witness (and the cross-examination is recorded on pages .....)

The prosecutor adduces evidence under Rule of Procedure 70 (3) which is recorded on pages .....

Final question addressed to the accused personally.

Q. Is there anything further that you wish to say to the court?

A. .....

The accused makes a statement which is recorded on page .....

The court close to deliberate on sentence.

* Strike out if F2 is completed before F1.

G PAGE .....

The court sentence the accused .....

..... to .....

ANNOUNCEMENT OF SENTENCE

The court reopened, the accused is again brought before it.

The sentence (and recommendation to mercy) (is) (are) announced in open court; the sentence is announced as being subject to confirmation.

The presiding officer announces that the trial is concluded.

Signed at ..... this ..... day of ....., 20.....

....

Judge Advocate *Presiding Officer*

H PAGE .....

CONFIRMATION

1. For minutes of confirmation *see* Fourth Schedule to the Rules of Procedure. Promulgation should be recorded immediately below the minute of confirmation in accordance with rule 94 (7).

FORM 7—FINDINGS rule 65 and 66

Acquittal on all charges

not guilty of (the charge) (all the charges)

---

not guilty of (the charge) (all the charges), and honourably acquit him thereof

acquittal on some but not all charges

not guilty of the ..... charge(s) but is guilty of the .....

..... charge(s).

not guilty of the ..... charge(s) and honourably acquit him thereof but is guilty of the ..... charge(s).

Conviction on all charges

guilty of (the charge) (all the charges)

Special findings

guilty of the ..... charge (with the exception of the words .....)
(with the exception that .....).

No finding on alternative charge

guilty of the ..... charge; the court record no finding on the .....(alternative) charge.

Where the accused is unfit to stand his trial by reasons of insanity unfit to stand his trial.

Accused guilty but insane at the time when the offence was committed guilty but insane.

FORM 8—RECORD OF RECONSIDERATION OF FINDING UNDER RULE79 (5) rule 79 (5)

The judge advocate advises the court that the finding(s) on the ..... charge(s) (is) (are) contrary to the law relating to the case, and that in his opinion the following finding(s) (is) (are) open to them—

The court is closed for reconsideration of finding

The court on reconsideration find that the accused is .....

The finding(s) on reconsideration (is) (are) read in open court and (with the exception of the finding(s) of "not guilty") (is) (are) announced as being subject to confirmation.

FORM 9—SERVICE OF ACCUSED
SERVICE RECORD OF ACCUSED

Number	Rank	Name	Regiment
.....			

1. He was enlisted on ..... 20..... and commissioned on ..... 20.....
2. He is serving a .....
3. His age is.....years.
4. He is single/married/divorced/widowed and has .....
   .....children under the age of 16 years.
5. His gross rate of pay is ..... per day, but he is .....
6. His recognizable service towards discharge or transfer to the service is ..... years.

7. His recognizable service towards pension, gratuity, etc., is ..... years.
8. (*a*) He is entitled to the following decorations and awards—
   (*b*) The following acts of gallantry or distinguished conduct are recorded in his conduct sheet—
9. He holds the substantive rank of ..... with seniority from ..... 20..... and has held the acting rank of ..... continuously since 20.....
10. He has been awaiting trial for ..... days since he was first, in connexion with the matters for which he is before the court charged or placed in arrest, of which ..... days were spent in civil custody, ... days were spent in open arrest.
11. (He is not now under sentence) (He is now under sentence) of ..... beginning on ..... 20..... but suspected on ..... 20..... and not yet put into operation again/put into operation on ..... 20.....
12. According to his conduct sheets, he has been found guilty by his commanding officer or by the commandment of a military establishment of the following offences—

	In the last 12 months	*During his service*
For	times	times
For	times	times
For	times	times
For	times	times
For	times	times

13. The detail, according to his conduct sheets, of offences of which he has been convicted by court-martial or of which he has been found guilty during his service by a civil court, offences taken into consideration by such courts and offences of which he has been found guilty by the appropriate superior authority, are set out in the Schedule hereto.

Form 10—Record of Proceedings on Section 110 of the Act

rule 95 (1)

At ..... on the ..... day of ..... at ..... hours the court reassembled by order of the Defence Council for the purpose of reconsidering their finding(s) on the ..... charge(s).

Present .....
.....

The order directing the reassembly of the court and giving the reasons therefor is read, marked ..... , signed by the presiding officer and attached to the record.

The court having considered the observations of the Defence Council and the whole of the record of the proceedings do now revoke their finding(s) on the ..... charge(s) and find that the accused ..... is ..... and (*a*dhere to their sentence) (sentence the accused to ..... in substitution for the original sentence).

or

The court having considered the observations of the Defence Council respectfully adhere to their finding (s) on the ..... charge(s) and to their sentence) (but sentence the accused ..... to ..... in substitution for the original sentence).

or

The court having considered the observation of the Defence Council and the whole of the record of the proceedings do now revoke their finding(s) on the ..... charge(s) and find the accused ..... not guilty of (that) (those) charge(s).

Signed at ..... this ..... day of ....., 20.....

....

Judge Advocate *Presiding Officer*

FORM 11—CONFIRMATION

NOTE—These forms are for guidance only and do not constitute an exhaustive list of all the possible variations and should be adapted to the circumstances of each case.

Confirmed

We confirm the court's finding(s), sentence and order under section 131 of the Defence Force Act but (remit .....) (commute .....).

We confirm the court's finding(s), sentence and order under section 131 of the Defence Force Act but mitigate the sentence so that it shall be as follows—

We vary the sentence so that it shall be as follows .... and confirm the findings and sentence as so varied.

We confirm the finding(s) and sentence but (postpone the carrying out of the sentence of ..... until ..... suspend the sentence of ....).

We confirm the finding(s) but substitute the sentence of .... for the sentence of the court.

We substitute a finding of ..... for the finding of the court and confirm the sentence but (remit .....) (commute .....)

We substitute a finding of ..... for the finding of the court on the ..... charge(s) and confirm the finding(s) for the court on the ..... charge(s) and the sentence.

Not confirmed (on the grounds that .....)

We confirm the finding(s) of the court on the ..... charge(s) but do not confirm their findings(s) on the ..... charge(s) (on the grounds that .....).

We confirm the sentence but (remit .....) (commute .....).

(The record) (Part of the record) of the proceedings of the .... court-martial which tried ..... at ..... on the ..... day of ..... , 20..... having been lost, we do not confirm the finding(s) of the court.

Signed at ..... this ..... day of ..... , 20.....

.....
Signature, rank or title of person signing for Defence Council

---

Form 12—Determination Under section 119 by the Defence Council or President of a Suspended Sentence and Direction that Sentences are to Run Concurrently or Consecutively

(The Defence Council) (President) hereby order(s) the accused to be committed to (imprisonment) (detention) under the sentence passed on him by the court-martial held at ..... on the ..... day of ....., 20..... and direct(s) that that sentence and the sentence passed on the accused by (this court-martial) (the court-martial held at ..... on ..... day of ....., 20.....) shall run (concurrently) (consecutively).

..... (Date) .....

(*Signature*) (*for the Defence Council*) (*President*)

FORM 13—DIRECTION UNDER SECTION 23 (3) OF THE ACT

(The Defence Council) (President) hereby direct(s) that the accused .... (number, rank, name or other description) shall not be required to be returned to Malaŵi until he has served (..... months) (..... years) of the sentence of (imprisonment) (detention) passed on him.

Dated ..... 20.....

.....
(*Signature*) (*for the Defence Council*) (*President*)

FORM 14—RESTITUTION ORDER

In accordance with subsection ..... of section 131 of the Act I ..... hereby order that .....

Dated ....., 20.....

.....
(*Signature*) (*for the Defence Council*) (*President*)

FORM 15—PROMULGATION UNDER SECTION 133 OF THE ACT

Promulgated and extracts taken at ..... (place) this ..... day of ....., 20.....

.....
(*Signature, rank and appointment of officer making the promulgation*)

THE SCHEDULE HEREINBEFORE REFERRED TO IN FORM 9

No.	Rank	Name	of	Regiment or Corps
Appropriate superior authority or description of Court	*Date and place of trial or summary dealing*	*Charges on which convicted or found guilty and offences taken into consideration*	*Sentence or order of the court as confirmed or award of appropriate superior authority*	*Punishment remitted on review or reconsideration*
.....	.....	.....	.....	.....
.....	.....	.....	.....	.....
.....	.....	.....	.....	.....
.....	.....	.....	.....	.....
.....	.....	.....	.....	.....
.....	.....	.....	.....	.....
.....	.....	.....	.....	.....
.....	.....	.....	.....	.....

I HEREBY CERTIFY that this form and schedule contain a summary of entries in the service books relating to the accused.

Signed this ..... day of ....., 20.....

.....

(*Name, rank and appointment of officer signing*)

FIFTH SCHEDULE
Sentences

(1) Sentences.

(2) Forfeiture of seniority of rank.

(3) Determination of a suspended sentence and direction that sentences are to run concurrently or consecutively

---

(1) Sentences

(Note—The words in the margin should be entered in the right-hand margin of the record of the proceedings of a court-martial opposite the record of the sentence).

Officers

To suffer death	Death
To be imprisoned for ..... and to be cashiered.	Imprisonment and cashiering
To be cashiered.	Cashiering
To be dismissed with disgrace from the Defence Force.	Dismissal with disgrace
To be dismissed from the Defence Force.	Dismissal
(For form of sentence see (2) below).	Forfeiture of seniority of rank
To forfeit ..... from his pay.	Forfeiture of a sum from pay
To be (severely reprimanded) (reprimanded).	(Severe Reprimand) (Reprimanded)
To be put under stoppages of pay until he has made good the sum of ..... in respect of	Stoppages

Warrant Officers and Non-Commissioned Officers

Death	To suffer death.
Imprisonment and reduction to the ranks	To be imprisoned for ..... and to be reduced to ranks.
Discharge with ignominy	To be discharged with ignominy from the Defence Force.
Dismissal with disgrace	To be dismissed with disgrace.
Dismissal	To be dismissed from the Defence Force.
Detention and reduced to the ranks	To undergo detention for ..... and to be reduced to the ranks.
Field punishment and reduced to the ranks	To undergo field punishment for ..... days and to be reduced to the ranks.
Dismissal from the Militia	To be dismissed from the Militia (non-commissioned officers to the Militia only).
(Reduction to the ranks) (Reduction to .....)	To be reduced (to the ranks) (to the rank of .....).
Forfeiture of seniority of rank	(For forms of sentence see (2) below).
Forfeiture of service	To forfeit ..... service.
Forfeiture of pay	To forfeit ..... days pay.

To forfeit ..... from his pay. — Forfeiture a sum of from pay

To be (severely reprimanded) (reprimanded). — (Severe reprimand) (reprimand)

To be fined ..... — Fine

To be put under stoppages of pay until he has made good the sum of ..... in respect of ..... — Stoppages

SOLDIERS

To suffer death — Death

To be imprisoned for ..... — Imprisonment

To be discharged with ignominy from the Defence Force. — Discharge with ignominy

To be dismissed with disgrace. — Dismissal with disgrace

To undergo detention for ..... — Detention

To undergo field punishment for ..... days — Field punishment

To be dismissed from the Militia (members of Militia only). — Dismissal from the Militia

To forfeit ..... Service. — Forfeiture of service

To forfeit ..... days pay. — Forfeiture of pay

To forfeit ..... from his pay. — Forfeiture of a sum from pay

To be fined ..... — Fine

Stoppages

To be put under stoppages of pay until he has made good the sum of .....[1] in respect of .....[2]

[1]Insert the amount which has to be made good by stoppages in respect of the charge or article specified.

[2]Specify the charge or article in respect of which the stoppages are to be imposed. If stoppages are being imposed in respect of more than one charge or article the amount which has to be made good in respect of each charge or article must be stated separately.

(2) Forfeiture of Seniority of Rank
Defence Force Officers

To take seniority in the rank of ..... in the Defence Force as if his appointment to that rank bore date the ..... day of ..... , 20.....

Warrant Officers and Non-Commissioned
Officers in the Defence Force

To take seniority in the rank of ..... as if his appointment to that rank bore date the ..... day of ..... 20.....

or

To take seniority in the rank of ..... as if his name appeared next below ..... [1] in the promotion roll ..... dated the ..... day of ....., 20.....

(3) Determination of a Suspended Sentence and Direction that Sentences are to Run Concurrently or Consecutively[2].

The court hereby order the accused to be committed to (imprisonment) (detention) under the sentence passed on him by the court-martial held at .... on the ..... day of ....., 20....., and direct that that sentence and the sentence passed on the accused by this court-martial shall run (concurrently) (consecutively).

[1]Insert name having immediate precedence.

[2]This form of words should be inserted in the record of the proceedings of the court-martial in the sentence passed by the court.

SIXTH SCHEDULE
Oaths and Affirmations

(1) Oaths at investigations by commanding officers and appropriate superior authorities.
(2) Oaths at courts-martial.
(3) Manner of administering oaths.
(4) Solemn affirmation.

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(1) Oaths at Investigation by Commanding Officers and Appropriate Superior Authorities*

Interpreter

I swear by Almighty God that I will to the best of my ability truly interpret and translate as I shall be required to do touching the matter being investigated.

Witness

I swear by Almighty God that the evidence which I shall give at this investigation shall be the truth, the whole truth and nothing but the truth.

(2) Oaths at Courts-Martial

Presiding Officer and members

I swear by Almighty God that I will well and truly try the (accused) (accused persons) before the court according to the evidence, and that I will duly administer justice according to the Defence Force Act without partiality, favour or affection, and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion to the presiding officer or any member of this court-martial, unless thereunto required in due course of law.

Judge Advocate

I swear by Almighty God that I will to the best of my ability carry out the duties of judge advocate in accordance with the Defence Force Act and the rules made thereunder and without partiality, favour or affection, and I do further swear that I will not on any account at any time whatsoever discover the vote or opinion on any matter of the presiding officer or any member of this court-martial, unless thereunto required in due course of law.

Officer under instruction

I swear by Almighty God that I will not on any account at any time whatsoever disclose or discover the vote or opinion of the presiding officer or any member of this court-martial unless thereunto required in due course of law.

Shorthand writer

I swear by Almighty God that I will truly take down to the best of my power the evidence to be given before this court-martial and such other matters as may be required and will, when required, deliver to the court a true transcript of the same.

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*These forms of oaths are appropriate also at a summary of evidence, board of inquiry and a regimental inquiry where the evidence is ordered to be taken on oath.

Interpreter

I swear by Almighty God that I will to the best of my ability truly interpret and translate, as I shall be required to do, touching the matter before this court-martial.

Witness

I swear by Almighty God that the evidence which I shall give before this court-martial shall be the truth, the whole truth, and nothing but the truth.

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(3) Manner of Administering Oaths

Christians taking the oath shall, remove their head-dress and, holding the Bible or New Testament in their right hand, say to or repeat after the person administering the oath the words of the oath. Members of any other religion to make an oath binding upon their conscience.

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(4) Soleman Affirmation

The person making a solemn affirmation shall say to or repeat after the person administering the solemn affirmation the words of the appropriate form of oath except that for the words "I swear by Almighty God" he shall substitute the words "I (name in full) do solemnly, sincerely and truly declare and affirm" and for the word "swear" wherever it occurs the words "solemnly, sincerely and truly declare and affirm".

Rule 100

SEVENTH SCHEDULE

PETITIONS

(1) Petitions

Petitions to confirming officer (before confirmation)

To the confirming officer.

I .....[1] having been convicted by court-martial on .....[2] at .....[3] and having been sentenced to ..... [4] hereby petition against the finding(s) on the ..... charge(s)[5] and the sentence [6] on the following grounds—

.....

.....

Signed .....

Dated .....

Appeal petition to the Defence Council (after promulgation)

To the Defence Council.

I ..... [1] having been convicted by court-martial on ..... [2] at ..... [3] and having had the finding(s) and sentence promulgated to me on ..... [8] hereby petition against the finding(s) on the ..... charge(s) (and the sentence) on the following grounds:

.....

.....

Signed .....[7]

Dated .....

Petition to reviewing authority (after promulgation)

To .....

I .....[1] having been convicted by court-martial on .....[2] at .....[3] and having been sentence to .....[4] and having had the finding(s) and sentence promulgated to me on .....[8] hereby petition against the finding(s) on the ..... charge(s)[5] and sentence[6] on the following grounds—

.....

.....

Signed .....[7]

Dated .....

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[1] Insert the accused's number, rank, unit or other description.

[2] Insert the date when accused was convicted.

[3] Insert the place where the trial was held.

[4] Insert details of the sentence.

[5] The words "the finding(s) on the ..... charge(s)" should be omitted if the accused is only petitioning against sentence.

[6] The words "and the sentence" should be omitted if the accused is not petitioning against the sentence.

[7] Petitions should be signed by the accused personally but may, if necessary, be signed on his behalf by his representative.

[8] Insert the date when the findings and sentence were promulgated.

[9] The accused may combine a petition against sentence with his "appeal petition" and if he wishes to do so he should include in his "appeal petition" the words "and the sentence". Otherwise any reference to the sentence should be omitted from the "appeal petition".

DEFENCE FORCE (CAMPAIGN MEDAL) REGULATIONS

ARRANGEMENT OF REGULATIONS

REGULATION

1. Citation
2. Description
3. Eligibility for the award of the medal
4. Recommendation
5. Loss and replacement
6. Grant

G.N. 44/2004

DEFENCE FORCE (CAMPAIGN MEDAL) REGULATIONS

under s. 241

Citation

1. These Regulations may be cited as the Defence Force (Campaign Medal) Regulations.

Description

2.—(1) The medal shall be designated the "Campaign Medal" and is hereinafter referred to as "the medal".

(2) The medal shall be of bronze, bearing crossed rifles positioned upright and on the reverse the inscription "FOR CAMPAIGN" circumscribing the badge of the Defence Force, and the name of the campaign shall be inscribed on the bar of the ribbon.

(3) The medal shall be worn suspended on the left breast by a ribbon 2.5 cm in width which shall in colour be maroon with two stripes in the centre.

Eligibility for the award of the medal

3.—(1) The medal shall be awarded to officers, warrant officers, non-commissioned officers and private soldiers, and where appropriate to civilians, who actively participate in a designated campaign against the enemy or hostile force or forces in any act or acts against the enemy or hostile force or forces in any theatre of operation:

Provided that such campaign shall have been sanctioned by the State as provided for in Chapter XVI of the Constitution to protect national interest vital to national integrity.

(2) A clasp shall be awarded for any subsequent operation in the same campaign.

Recommendation

4.—(1) Recommendation for the medal shall be made by the commanding officer or appropriate superior authority and, in writing to the Commander.

(2) The Commander shall recommend to the President only those officers, warrant officers, non-commissioned officers and private soldiers who are in every way worthy of the award of the medal.

(3) The medal shall be awarded on the authority of the President and notice of each award shall be published in the *Gazette*.

(4) A register of the names of those to whom the medal has been awarded shall be kept by the Commander.

5.—(1) When a medal has been lost and it is desired to replace it, a sworn affidavit shall be made stating the circumstances under which the loss occurred and the number, rank, name and unit of the person to whom the medal belonged, and the affidavit shall be forwarded to the Commander. Loss and replacement

(2) When a medal has been lost through carelessness or neglect, replacement may be recommended at holder's expense but, in the case where loss occurred through no fault or neglect of the holder, the Commander may recommend to the Minister that replacement be made at the expense of the Government.

(3) Replacement of a lost medal shall not be made until a period of six months has elapsed after the date on which the loss was reported.

6. There shall be no grant awarded to any recipient of the medal. Grant

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DEFENCE FORCE (EFFICIENCY MEDAL) REGULATIONS

ARRANGEMENT OF REGULATIONS

REGULATION

1. Citation
2. Description
3. Eligibility for the award of the medal or clasp
4. Double qualifying service
5. Single qualifying service
6. Certain breaks not to interfere with continuity of service
7. Medal may be worn with or without clasps
8. Application for the medal or clasp
9. Authority for the award of the medal or clasp
10. Loss and replacement of the medal or clasp
11. Forfeiture and restoration of the medal or clasp

DEFENCE FORCE (EFFICIENCY MEDAL) REGULATIONS G.N. 45/2004

under s. 241

1. These Regulations may be cited as the Defence Force (Efficiency Medal) Regulations. Citation

Description

2.—(1) The medal shall be designated as the "Efficiency Medal" and is hereinafter referred to as "the medal".

(2) The medal shall be of silver and shall be oval in shape and shall bear a relief on obverse the Presidential Effigy and on the reverse the inscription "FOR EFFICIENT SERVICE".

(3) The medal shall be worn suspended on the left breast by a green ribbon 3.2 cm with yellow stripes down the edges.

(4) There shall be inscribed on the amount of the medal the words "MALAŴI DEFENCE FORCE" to denote that, at the time the recipient qualified for the award, he was serving in the Defence Force of the Republic of Malaŵi.

Eligibility for the award of the medal or clasp

3.—(1) The medal and the clasp to the medal shall be rewards to officers, warrant officers, non-commissioned officers and soldiers of proven capacity in the Defence Force.

(2) To be eligible for the award of the medal, officers, warrant officers, non-commissioned officers and soldiers shall fulfill the following conditions—

(*a*) in the case of those in the Regular Force, they shall have completed sixteen years continuous efficient service; and

(*b*) in the case of those in the Militia, they shall have attended a minimum of ten training periods or double qualifying service,

and in either case shall have been certified throughout their service as efficient by the commanding officers of their respective units.

(3) To be eligible for the award of the clasp to the medal, officers, warrant officers, non-commissioned officers and soldiers shall fulfil the following conditions—

(*a*) further to completion of the qualifying service for the medal under subregulation (2)—

(i) in the case of those in Regular Force, they shall have completed another five years of continuous efficient service;

(ii) in the case of those in the Militia, they shall have attended a minimum of five periods of training and double qualifying service referred to regulation 4,

and in either case they have been throughout such further service as efficient by the commanding officers of their units;

(*b*) be serving in the Defence Force at the time the qualifying period is completed.

(4) Additional clasps may be awarded for every subsequent period of five years continuous efficiency service completed.

Double Qualifying Service

4. Officers, warrant officers, non-commissioned officers and soldiers in the Militia in which training in peace time is a prescribed condition of service and who were embodied or called

out for service shall count such embodied service subsequent (including any emergency service and any period, with the Defence Force) as double qualifying service towards the award of the medal or clasp, but such embodied service shall count double only between the dates on which the member was embodied or called out for service and the date of his demobilization.

Single Qualifying Service

5. Officers, warrant officers, non-commissioned officers and soldiers shall be reckoned as single qualifying service if it is—

(*a*) service in the Militia, in which training in peace time is a prescribed condition of service;

(*b*) service in the Regular Force;

(*c*) service in the Regular Force or in the Militia and any break in such service is due to no fault of the member and does not exceed six months.

Certain breaks not to interfere with continuity of service

6. The following shall not be regarded as breaking continuity of service—

(*a*) periods of desertion or absence without leave of officers, warrant officers, non-commissioned officers or soldiers of the Militia during embodiment or training either in camp or barracks, if after the offence has been dealt with they continue to serve; and

(*b*) periods of detention or imprisonment during period of continuous training or embodiment.

Medal may be worn with or without clasps

7. The medal may be worn with or without clasps only if the full qualifying service for each award was completed separately.

Application for the medal or clasp

8.—(1) Application for the medal or clasp shall be made in writing and shall be forwarded to the Commander.

(2) The Commander shall recommend to the President only such officers, warrant officers, non-commissioned officers and soldiers as are in every way worth of the award of the medal or clasp.

Authority for the award of the medal or clasp

9.—(1) The medal or clasp shall be awarded on the authority of the President and notice of each award shall be published in the *Gazette*.

(2) A register of the names of those to whom the medal or clasp has been awarded shall be kept by the Commander.

Loss and replacement of the medal or clasp

10.—(1) When a medal or clasp has been lost it is desired to replace it, a sworn affidavit shall be made stating the circumstances under which the loss occurred and the rank, name and unit of the

person to whom the medal or clasp belonged, and the affidavit shall be forwarded to the Commander.

(2) When a medal or clasp has been lost through careless or neglect, replacement may be recommended at the holder's expense, but, in the case where loss occurred through no fault or neglect of the holder, the Commander may recommend to the Minister that replacement be made at the expense of the Government.

(3) Replacement of a lost medal or clasp shall not be made until a period of six months has elapsed after the date on which the loss was reported.

Forfeiture and restoration of the medal or clasp

11.—(1) The President may cancel and annul the award of the medal or clasp to any officer, warrant officer, non-commissioned officer or soldier who suffers death by sentence of a court-martial, or is dismissed or discharged from the Defence Force for misconduct, or is convicted by a civil court of any offence of a disgraceful or fraudulent nature.

(2) Notice of cancellation and annulment of the award of a medal or clasp shall, in every case, be published in the *Gazette*.

(3) The President may restore a medal or clasp cancelled or annulled under the provision of subregulation (1).

(4) Notice of restoration of a medal or clasp shall, in every case, be published in the *Gazette*.

DEFENCE FORCE (BRAVERY MEDAL) REGULATIONS

ARRANGEMENT OF REGULATIONS

REGULATION

1. Citation
2. Description
3. Eligibility for the award of the medal
4. Recommendation
5. Loss and replacement
6. Grant

G.N. 46/2004

DEFENCE FORCE (BRAVERY MEDAL) REGULATIONS

under s. 241

Citation

1. These Regulations may be cited as the Defence Force (Bravery Medal) Regulations.

Description

2.—(1) The medal shall be designated the "Bravery Medal" and as hereinafter referred to as "the medal".

(2) The medal shall be of silver, bearing a lion charging for a prey and on the reverse the inscription "FOR BRAVERY" circumscribing the badge of the Defence Force.

(3) The medal shall be worn suspended on the left breast by a ribbon 2.5 cm in width which shall in colour be green on the left and right marked with black stripes on either side and the centre marked with a red stripe 0.5 cm in width.

Eligibility for the award of the medal

3.—(1) The medal shall be awarded to an officer, warrant officer, non-commissioned officer and a private soldier who—

(*a*) shows courage in action and sets an example of bravery, gallantry and devotion to duty; or

(*b*) renders bravery action during active service.

(2) A clasp shall be awarded for any subsequent act or acts.

Recommendation

4.—(1) Recommendation for the award of the medal shall be by the commanding officer or appropriate superior authority and in writing to the Commander.

(2) The Commander shall recommend to the President only those officers, warrant officers, non-commissioned officers and private soldiers who are in every way worthy of the award of the medal.

(3) The medal shall be awarded on the authority of the President and notice of each award shall be published in the *Gazette*.

(4) A register of the names of those to whom the medal has been awarded shall be kept by the Commander.

Loss and replacement

5.—(1) When a medal has been lost and it is desired to replace it a sworn affidavit shall be made stating the circumstances under which the loss occurred and the number, rank, name and unit of the person to whom the medal belonged, and the affidavit shall be forwarded to the Commander.

(2) When a medal has been lost through carelessness or neglect, replacement may be recommended at holder's expense but, in the case where loss occurred through no fault or neglect of the holder, the Commander may recommend to the Minister that replacement be made at the expense of the Government.

(3) Replacement of a lost medal shall not be made until a period of six months has elapsed after the date on which the loss was reported.

Grant

6. Every recipient of the medal shall be awarded an amount to be determined by the President.

DEFENCE FORCE (COMMENDABLE ACT MEDAL) REGULATIONS

ARRANGEMENT OF REGULATIONS

REGULATION

1. Citation
2. Description
3. Eligibility for the award of medal
4. Recommendation
5. Loss and replacement
6. Grant

G.N. 47/2004

DEFENCE FORCE (COMMENDABLE ACT MEDAL) REGULATIONS

under s. 241

Citation

1. These Regulations may be cited as the Defence Force (Commendable Act Medal) Regulations.

Description

2.—(1) The medal shall be designated the "Commendable Act Medal" hereinafter referred to as "the medal".

(2) The medal shall be of silver, bearing a lion charging for a prey and on the reverse the inscription "FOR COMMENDABLE ACT" circumscribing the badge of the Defence Force.

(3) The medal shall be worn suspended on the left breast by a ribbon 2.5 cm in width which shall in colour be black, red and green with white stripes in between the other colours.

Eligibility for the award of medal

3.—(1) The medal shall be awarded to officers, warrant officers, non-commissioned officers and private soldiers for exceptionally diligent, courageous, and outstanding act or acts in peace-time.

(2) A clasp shall be awarded for subsequent act or acts.

Recommendation

4.—(1) Recommendation for the award of the medal shall be by the commanding officer or appropriate superior authority and in writing to the Commander.

(2) The Commander shall recommend to the President only those officers, warrant officers, non-commissioned officers and private soldiers, who are in every way worthy of the award of the medal.

(3) The medal shall be awarded on the authority of the President and notice of each award shall be published in the *Gazette*.

(4) A register of the names of those to whom the medal has been awarded shall be kept by the Commander.

Loss and replacement

5.—(1) When a medal has been lost and it is desired to replace it, a sworn affidavit shall be made stating the circumstances under which the loss occurred and the number, rank, name and unit of the person to whom the medal belonged, and the affidavit shall be forwarded to the Commander.

(2) When a medal has been lost through carelessness or neglect, replacement may be recommended at holder's expense but, in the case where loss occurred through no fault or neglect of the holder, the Commander may recommend to the Minister that replacement be made at the expense of the Government.

(3) Replacement of a lost medal shall not be made until a period of six months has elapsed after the date on which the loss was reported.

Grant

6. There shall be no grant awarded to any recipient of the medal.

DEFENCE FORCE (REGULAR FORCE) (OFFICERS) REGULATIONS

ARRANGEMENT OF REGULATIONS

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20. Professional allowance
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23. Uniform upkeep allowance
24. Sanitary services
25. Batman allowance
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27. Married quarters
28. No pay or allowance in certain circumstances
29. Family allowances when service outside Malaŵi
30. Special training allowance
31. Free rations
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33. Travelling and baggage allowance
34. Subsistence allowance
35. Warm clothing allowance
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37. Risk allowance
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DEFENCE FORCE (REGULAR FORCE) (OFFICERS) REGULATIONS

G.N. 48/2004
6/2010

under s. 17

PART I
Preliminary

1. These Regulations may be cited as the Defence Force (Regular Force) (Officers) Regulations. Citation

2. In these Regulations, unless the context otherwise requires— Interpretation

"chaplain" means an officer appointed as chaplain in the Defence Force;

"child", in relation to an officer, means an unmarried son or daughter under the age of eighteen years of that officer by a recognized spouse;

"commissioned service" means service as an officer in the Force;

"commandant" means the Commander or the commanding officer of a military training institution or other military establishment as determined by the Commander;

"dependant", in relation to a living or deceased officer or other person, means any person, who, in the opinion of the Minister is or was financially dependent on that officer or person;

"disabled officer" means an officer, or a person who was an officer, who is suffering from disablement which is attributable to, or which has been aggravated by, military service without any misconduct or serious negligence on the part of the disabled officer;

"dental officer" means a person appointed as a dental officer in the Force;

"gratuity" in relation to a disabled officer means a lump sum payment calculated in accordance with regulation 76;

"medical board" means a medical board constituted under regulation 3 of the Defence Force (Medical and Pensions Board) Regulations;

"medical officer" means an officer appointed as a medical officer in the Force;

"the Force" means the Regular of the Defence Force;

"leave", in relation to an officer, means leave of absence from his duties;

"legal officer" means an officer appointed as a legal officer in the Force;

"officer" means a person granted a commission in the Force, but does not include any person who is—

(*a*) appointed to honorary commissioned rank; or

(*b*) the holder of an honorary appointment;

"official quarters" means quarters provided by the Government;

"other employment in the service of the Government or a co-operating force" means pensionable employment, otherwise than as a member of the Force under the Government or the government of such cooperating force;

"pensionable emoluments", in relation to an officer, means the pay due to that officer under these Regulations;

"private medical practitioner" means any medical practitioner other than a medical officer;

"recognized spouse" means a person who is recognized by the Commander as a spouse of the officer;

"resignation", in relation to an officer, means resignation from the Force under regulation 6 and "resign" shall be construed accordingly;

"retirement", in relation to an officer, means retirement from the Force under regulation 7 and "retire" shall be construed accordingly;

"Selection Board" means the Selection Board appointed under regulation 12;

"service" means service in the Defence Force and "serve" shall be construed accordingly;

"service property" means any property of the Defence Force or of any mess or other institution, organization or association whatsoever of members of the Defence Force;

"surviving spouse", in relation to a deceased officer means a recognized spouse of the officer, but does not include a person who was separated, whether by order of court or otherwise, from the officer at the date of his death.

"training" means a course of (raining within or outside Malaŵi approved by the Defence Force.

"unit", in relation to an officer, means the unit of the Force in which that officer is serving.

Non-application of regulations

3.—(1) These regulations shall not apply to—

(*a*) an officer who is attached or seconded lo any other military force outside Malaŵi by virtue of section 9 of the Act, unless the terms and conditions of his attachment or secondment as fixed or approved by the Commander provided that these Regulations or any of them shall apply;

(*b*) any officer of any military force of any country other than Malaŵi who has been loaned for service with the Force by virtue of the provisions of an agreement for that purpose entered into between the Government of Malaŵi and the Government of the other country concerned unless the agreement provides that these Regulations or any of them shall apply; or

(*c*) an officer serving with the Force by virtue of a contract of service entered into between that member and the Government for service with the Force, unless the contract provides that these Regulations or any of them shall apply.

(2) Notwithstanding anything in these Regulations, the Minister may on the advice of the Defence Council, order any or all of these Regulations to be waived in any specific case.

Application of Malaŵi Public Service Regulations

4. Where no provision is contained in these Regulations in Malaŵi Public Service Regulations in respect of any matter for which provision is made and in force in the Malaŵi Public Service Regulations, shall, in respect of such matter apply *mutatis mutandis* to such persons as are subject to these Regulations and shall so apply in like manner and extent as if it were a provision of these Regulations.

PART II
Engagement, Period of Service and Termination

Engagement of officers

5.—(1) A person shall only be granted a commission in the Force if he is over eighteen years and not more than twenty-four years of age on the date he is commissioned or accepted for enlistment as a cadet officer whichever is applicable:

Provided that no person shall be eligible to be granted a commission if he has served as a member of the militia.

(2) Every person who is granted a commission shall before taking office take an oath of allegiance in the form set out in the First Schedule to these Regulations.

First Schedule

(3) There shall be one class of engagement of officers in the Force which shall be in accordance with these Regulations.

(4) Subject to these Regulations, the period of engagement of an officer in the Force shall be twenty years from the date of his attestation in the Force; and upon completion of such period of engagement, the Minister may, on the recommendation of the Commander, extend an officer's period of engagement from year to year until the officer attains the age of fifty-five years.

(5) When the officer has completed his period of engagement the following reserve obligations shall apply to him—

(*a*) if he completed less than twenty years of service he shall have reserve obligations for seven years;

(*b*) if he completed twenty or more years of service, he shall have reserve obligations for five years.

(6) The reserve obligations of an officer under sub-regulation (5) shall cease upon the officer attaining the age of—

(*a*) fifty-five years, in the case of an officer of the rank of colonel or corresponding rank or above;

(*b*) fifty years, in the case of an officer of the rank of lieutenant colonel or corresponding rank and below.

Term of commission

6. A commission may be either—

(*a*) a regular commission; or

(*b*) a short service commission, that is to say, a commission for a term of years not exceeding five years in the first instance, but which may be extended by a period or periods not exceeding five years.

Oath of allegiance

7. Every person who is granted a commission shall, before taking the office, take an oath of allegiance in the form set out in the First Schedule to these Regulations.

Resignation

8.—(1) An officer who is not entitled or required to retire from his employment in the Force under regulation 7 may resign from his employment in the Force during his engagement if—

(*a*) he gives six months notice in writing to the Commander of his intention to do so; and

(*b*) he pays to the Government any amount which he is liable to pay to the Government under these Regulations:

Provided that if such notice is given while the officer is on active service or while he is under the orders of a superior officer to hold himself in readiness for such service, his resignation shall not take effect until a period of one month has elapsed from the date on which such active service is completed or on which such orders are rescinded, as the case may be.

(2) Notwithstanding subregulation (1)—

(*a*) an officer who has attended an approved course of training lasting more than one year shall not, without the special permission of the Defence Council, be entitled to resign from the Force unless he has served for a period of not less than five years in the Force since being granted his commission;

(*b*) an officer who has attended an approved course of training lasting less than one year shall not, without the special permission of the Defence Council, be entitled to resign from the Force unless he has served for a period of not less than four years in the Force since being granted his commission.

(3) An officer who resigns from the Force during the first seven years of his period of engagement as an officer shall be liable to repay to the Government a sum calculated as follows—

(*a*) if his resignation takes effect before the expiry of one year from the date of his commission, his clothing grant and, in addition, twelve months pay;

(*b*) if his resignation takes effect after the expiry of one year but before the expiry of two years from the date of his commission, two-thirds of his clothing grant and, in addition, ten months pay;

(*c*) if his resignation takes effect after the expiry of two years but before the expiry of three years from the date of his commission, one-third of his clothing grant, and in addition, eight months pay;

(*d*) if his resignation takes effect after the expiry of three years but before the expiry of four years from the date of his commission, six months pay;

(*e*) if his resignation takes effect after the expiry of five years but before the expiry of seven years from the date of his commission, four months pay;

(*f*) if his resignation takes effect after the expiry of five years but before the expiry of six years from the date of his commission, three months pay; and

(*g*) if his resignation takes effect after the expiry of six years but before the expiry of seven years from the date of his commission, two month's pay.

(4) In addition to the foregoing provisions of this regulation, an officer who is given special permission by the Defence Council to resign from the Force and who has attended training for more than one year and who resigns from the Force shall repay the following additional amounts—

(*a*) if he comes within subregulation (3) (*a*), four months pay;

(*b*) if he comes within subregulation (3) (*b*), three months pay;

(*c*) if he comes within subregulation (3) (*c*), two months pay;

(*d*) if he comes within subregulation (3) (*d*) to (*g*), one month's pay.

(5) Any period in respect of which no pay or allowances are paid to an officer by virtue of regulation 26 shall, for the purposes of subregulations (3) and (4), be deemed not to form part of that officer's period of engagement.

(6) An officer who has attended training and who, within three years of the date of termination of such course, resigns from the Force under subregulation (2) shall be liable to repay to the Government in addition to any sums which he is liable to repay under subregulations (3) and (4)—

(*a*) if his resignation takes effect before the expiry of one year from the date of termination of such courses, one year salary calculated as at the date of his resignation;

(*b*) if his resignation takes effect after the expiry of two years from the date of termination of such course, two-thirds of one year salary calculated as at the date of his resignation;

(*c*) if his resignation takes effect after the expiry of two years but before the expiry of three years from the date of termination of such course, one-third of one year salary calculated as at the date of his resignation.

Retirement

9.—(1) An officer whose pensionable service amounts to ten or more years may retire from his employment in the Force on giving six months notice in writing to the Commander of his intention to do so and on repaying to the Government any amount which he is liable to repay to the Government under these Regulations:

Provided that if such notice is given while the officer is on active service or while he is under orders of a superior officer to hold himself in readiness for such service his resignation shall not take effect until a period of one month has elapsed from the date on which such active service is completed or on which such orders are rescinded, as the case may be.

(2) Notwithstanding the provisions of subregulation (1), an officer who has attended a course of training outside Malaŵi shall not be entitled to retire from the Force within three years of the date of termination of such training unless he repays to the Government an amount at the rate prescribed in regulation 6 (6).

PART III
Promotion, Seniority, Pay and General Allowances

Appointment to commissioned rank and subsequent promotion in case of direct entries G.N. 6/2010

10.—(1) This regulation shall apply to officers who are enlisted directly into the Force as cadet officers.

(2) An officer to whom this regulation applies shall, on first being granted a commission, be appointed to the rank of second lieutenant:

Provided that an officer may be commissioned to a higher rank upon being recommended for such rank by the Commander, based on a special condition, or circumstances, pertaining to such an officer.

(3) In the case of an officer appointed to the rank of second lieutenant, promotion to the rank of lieutenant shall be made not less than three years after the date of enlistment as a cadet officer.

(4) Promotion to the rank of captain shall be made after not less than four years satisfactory service in the substantive rank of lieutenant and—

(*a*) after the officer has passed the examination provided for promotion from lieutenant to captain;

(*b*) after the officer has received an up-to-date recommendation for promotion to captain;

(*c*) after selection by a Selection Board; and

(*d*) provided there is a vacancy in the establishment for a captain.

(5) Promotion to the rank of major shall be made after not less than seven years satisfactory service in the substantive rank of captain and—

(*a*) after the officer has passed the examination provided for promotion from captain to major;

(*b*) after the officer has received an up-to-date recommendation for promotion to major;

(*c*) after selection by a Selection Board; and

(*d*) provided there is a vacancy in the establishment for a major.

(6) Promotion to the rank of lieutenant colonel or colonel shall be made—

(*a*) after the officer has successfully completed a Grade II staff course;

(*b*) after the officer has commanded a company size, unit or staff appointment at Grade II level;

(*c*) after the officer has received an up-to-date recommendation for promotion to lieutenant colonel or colonel;

(*d*) after selection by a Selection Board;

(*e*) provided that there is a vacancy in the establishment for lieutenant colonel or colonel; and

(*f*) provided that the officer is physically fit.

(7) Promotion to the rank of brigadier general and major general shall be made—

(*a*) after the officer has successfully completed an approved strategic military training;

(*b*) after the officer has received an up-to-date recommendation for promotion to generalship; and

(*c*) upon approval by the Defence Council after recommendation by the Commander.

(8) Promotion to any higher rank than that of major general shall be by the President.

(9) For the avoidance of doubt, nothing in the foregoing subregulations of this regulation shall be construed as affecting the validity of the promotion of any person to the relevant ranks before the commencement of those subregulations.

Appointment to commissioned rank and subsequent promotion in the case of officers who have served in the ranks

11.—(1) This regulation shall apply to officers who have served in the ranks and are subsequently commissioned.

(2) For the purpose of this regulation "reckonable service" shall be service in the Force other than as an officer computed in accordance with the following—

(*a*) in the case of a warrant officer, the whole of any service spent on full pay as a warrant officer after a minimum period of service spent on full pay;

(*b*) in the case of any other rank (other than a warrant officer), half of any period of service spent on full pay;

(*c*) the whole of any period of service spent on full pay as a cadet officer.

(3) A member of the Force granted a commission after less than two years reckonable service shall be appointed to the rank of second lieutenant, and a member of the Force granted a commission after two or more years' reckonable service shall be appointed to the rank of lieutenant.

(4) Promotion from second lieutenant shall be made when the total of the officer's reckonable service and commissioned service amounts to two or more years.

(5) Promotion from lieutenant to captain shall be made after the total of the officer's reckonable service and commissioned service amounts to seven or more years, of which one year shall have been service as a lieutenant; and—

(*a*) after the officer has passed the examination provided for promotion from lieutenant to captain, unless exempted therefrom under this regulation;

(*b*) after receiving an up-to-date recommendation for promotion to captain;

(*c*) after selection by a Selection Board; and

(*d*) provided there is a vacancy in the establishment for a captain.

(6) Promotion to the rank of major shall be made after the total of the officer's reckonable service and commissioned service amounts to thirteen or more years, of which one year shall have been service as a captain and—

(*a*) after the officer has passed the examination provided for promotion from captain to major, unless exempted therefrom under this regulation;

(*b*) after the officer has received an up-to-date recommendation for promotion to major;

(*c*) after selection by a Selection Board; and

(*d*) provided there is a vacancy in the establishment for a major.

(7) Promotion to any rank higher than that of major shall be by selection.

(8) An officer otherwise eligible for promotion—

(*a*) from lieutenant to captain, may be exempted by the Defence Council at its discretion from the necessity of taking or passing the examination provided for promotion from lieutenant to captain; or

(*b*) from captain to major and whose commissioned service amounts to less than four years, may be exempted by the Defence Council at its discretion from the necessity of taking or passing the examination provided for promotion from captain to major.

Selection Board

12.—(1) There shall be a board to be known as the Selection Board which shall have the function of selecting suitable officers for promotion and which shall consist of—

(*a*) the Deputy Commander who shall be the chairperson;

(*b*) the Chief of Staff who shall be the secretary;

(*c*) the Director of Personnel;

(*d*) the Director of Training; and

(*e*) the Director of Medical Services.

(2) For the purposes of subregulation (1), the Selection Board shall submit its recommendation to the Commander.

(3) The Selection Board may co-opt any person as its member if necessary for the proper performance of its functions.

Temporary rank

13.—(1) The Commander may, in his discretion, appoint an officer to a temporary rank next higher to the substantive rank held by that officer if there is a vacancy in the establishment of officers of the higher rank.

(2) An officer appointed to temporary rank under this regulation shall relinquish that rank when an officer of a higher substantive rank becomes available for the appointment.

(3) An officer appointed to a temporary rank shall be entitled to the pay and allowances appropriate to that rank.

(4) Any period of time spent by an officer in a temporary rank shall not be taken into account as qualifying that officer for increments of service pay in such temporary rank.

Acting rank

14.—(1) The Commander may, in his discretion, appoint an officer to act in a rank next higher to the substantive or temporary rank held by that officer if there is a vacancy in the establishment of officers of that higher rank.

(2) An officer appointed to act in a higher rank under this regulation shall cease to act in that rank when an officer of substantive or temporary rank equivalent to the acting rank becomes available for the appointment.

(3) An officer appointed to act in a higher rank shall be entitled to receive the acting allowances prescribed by these Regulations.

(4) Any period of time spent by an officer in an acting rank shall not be taken into account as qualifying that officer for increments of service pay in the rank in which he is acting.

(5) The appointment of an officer to act in a higher rank shall not affect the annual rate of pay applicable to that officer in his substantive or temporary rank under these Regulations.

Local rank

15.—(1) The Commander may, in his discretion, appoint an officer to a local rank higher than the substantive rank held by that officer, if there is a vacancy in any employment for officers of that higher rank.

(2) An officer appointed to a local rank shall cease to hold that rank on the date that he ceases to fulfil the functions for which the local rank was granted.

(3) An officer appointed to a local rank shall not receive the pay or allowances for that rank.

Seniority

16.—(1) Officers of the same rank shall take seniority from the date of their appointment or promotion to that rank, or in the case of officers appointed or promoted to that rank on the same date, from the date of their enlistment in the Force or their personal number.

(2) Seniority among officers by rank, shall be in the following order with the rank of the General being the most senior—

General;
Lieutenant General;
Major General;
Brigadier General;
Colonel;
Lieutenant Colonel;
Major;
Captain;
Lieutenant;
Second Lieutenant.

Pay

17. Subject to these Regulations, an officer shall be paid at such basic rate of pay as may be prescribed by the Minister for an officer holding the rank and appointment applicable to him.

Acting allowance

18.—(1) Subject to this regulation, an officer who is appointed to act for the Commander shall, during the subsistence of his acting appointment, be paid an acting allowance at the rate of five per cent of the officer's basic pay per month.

(2) Subject to this regulation, an officer who is appointed to act in a rank which is higher than his temporary or substantive rank shall, during the subsistence of his acting appointment, be paid acting allowance at the rate of five per cent of the officer's basic pay per month.

(3) No acting allowance shall be paid to an officer if the officer for whom he is appointed to act has himself been appointed to act in a higher rank or appointment:

Provided that this subregulation shall not apply to an officer appointed to act for an officer holding the rank of—

(*a*) Brigadier General, Colonel or Lieutenant Colonel or any higher rank; or

(*b*) major and who commands a unit which is on detachment.

(4) If the rate of acting allowance together with the rate of pay due to an officer in his temporary or substantive rank exceeds—

(*a*) if he is appointed to act for an officer, the rate of pay applicable to that officer; or

(*b*) if he is appointed to act in a vacancy in a unit, the lowest rate of pay prescribed for the rank carried by that vacancy, the acting allowance payable under this regulation shall be reduced by the amount of the excess.

(5) No acting allowance shall be paid under this regulation to an officer whose acting appointment subsists for a period of less than thirty consecutive days.

Entertainment allowance

19.—(1) The Commander, appropriate superior authority, commandant, commanding officers and principal staff officers who regularly receive distinguished guests shall, in respect of the period during which they perform entertainment functions, be allowed a refund of expenses arising from official entertainment which directly results from such functions and duties.

(2) An officer who performs the functions and, as the case may be, duties of a detachment commander shall be entitled to a refund of expenses arising from entertainment which directly results from such functions and duties.

(3) For the avoidance of doubt, it is hereby declared that an officer who performs functions and duties which qualify him for the payment of more than one entertainment allowance under this regulation shall be paid every entertainment allowance for which he so qualifies, so, however, that the aggregate of such allowance paid to any one officer shall be determined by the Minister from time to time.

Professional allowance

20.—(1) Subject to these Regulations—

(*a*) a medical officer, a dental officer and a legal officer;

(*b*) any other officer classified by the Commander as being professionally qualified,

shall be paid a professional allowance at the rates specified in subregulation (2).

(2) The rate of professional allowance payable to an officer under subregulation (1) shall be—

(*a*) if he holds the appointment of Director, twenty per cent of his basic pay;

(*b*) if he holds the appointment of Deputy Director, eighteen per cent of his basic pay;

(*c*) if he does not hold the appointment specified in sub-paragraphs (*a*) and (*b*) seventeen per cent of his basic pay:

Provided that in no case shall the amount of any of such allowance be less than the amount of professional allowance, if any, payable to an officer of equivalent grade in the Public Service.

Technical allowance

21.—(1) An officer who is classified by the Commander as being technically qualified, shall be paid a technician allowance at the rates specified in subregulation (2); and, for the purposes of this regulation, officers of the following classes shall be considered to be technically qualified—

(*a*) pilots;

(*b*) flight engineers;

(*c*) inspectors;

(*d*) technicians;

(*e*) naval officers;

(*f*) air traffic controllers;

(*g*) clinical officers; and

(*h*) any other officers classified by the Commander as being technically qualified.

(2) The rate of technician allowance for officers specified in subregulation (1) shall be seventeen per cent of basic pay.

Clothing grant

22. Upon first being granted a commission, an officer shall be entitled to a clothing grant equivalent to his one month pay.

Uniform upkeep allowance

23. Every officer shall be entitled to receive in every year on the anniversary of the date of his first being granted a commission, a uniform upkeep allowance equivalent to one thirtieth ($\frac{1}{30}$th) of his basic pay per annum or as may be determined by the Minister from time to time.

Sanitary Services

24. An officer who is married and who resides with his family in official quarters shall be provided free of charge with sanitary services.

Batman allowance

25. An officer who is not provided with a batman shall be paid monthly a servant allowance as the Minister may, from time to time, determine:

Provided that no such allowance shall be paid in respect of any period during which the officer is on leave.

Other allowances

26. The Minister may from time to time on the recommendation of the Defence Council establish any other allowances payable to officers and may determine the rates of such allowances.

Married quarters

27.—(1) An officer who is married and who resides with his family shall be provided with furnished married quarters provided there are such quarters available.

(2) An officer provided with furnished married quarters, or who is eligible, to be provided with furnished married quarters but for the fact that there are none available is accommodated otherwise than in such quarters, shall be entitled to be paid monthly a barracks allowance equivalent to twenty-four per cent of the annual basic pay.

No pay or allowance in certain circumstance

28. Notwithstanding any other provision of these Regulations, an officer shall not be paid any pay or allowances in respect of any period during which—

(*a*) he is undergoing a sentence of imprisonment imposed by a court-martial or by a civil court; or

(*b*) he is being treated as an in-patient at a hospital for an illness or injury if—

(i) he has been convicted by a court-martial, a commanding officer or an appropriate superior authority of an offence under the Act or by a civil court; and

(ii) a medical officer certifies that his illness or injury has been occasioned by or arises out of such offence; or

(*c*) he is absent in circumstances constituting the offence of deserting or absenting himself without leave.

Family allowances when serving outside Malaŵi

29. When serving on duty or when attending a course outside Malaŵi for a consecutive period longer than one month, an officer who is married shall be entitled to receive a family allowance in respect of a recognized spouse and children at the rates as may be determined by the Minister from time to time.

Special training allowance

30. When attending an approved course of instruction within or outside Malaŵian officer shall be entitled to a special training

allowance determined by the Minister on the recommendation of the Defence Council.

Free rations

31. An officer may be issued with free rations, at the approved officers' scale, when on active service or when engaged upon exercises whose duration exceeds twenty-four hours, or for such periods and in such circumstances as the Minister may from time to time determine.

Disturbance allowance

32.—(1) A married officer who is posted on transfer not at his own request shall be entitled, where he is a householder and is obliged to transfer his household effects, to an allowance not exceeding one thirtieth ($\frac{1}{30}$th) of annual basic pay per annum.

(2) In the case of a local transfer, a married officer shall be entitled to an allowance equivalent to one sixtieth ($\frac{1}{60}$th) of his basic pay per annum.

Travelling and baggage allowance

33.—(1) An officer travelling on duty or for the purposes of attending a course of instruction outside Malaŵi shall be entitled—

(*a*) if he is an officer of the rank of Colonel and below, to economy class air passage to and from Malaŵi;

(*b*) if he is an officer of the rank of Brigadier General, and above, to business class passage to and from Malaŵi;

(*c*) in the case of the Commander and Deputy Commander, to first class air passage to and from Malaŵi.

(2) In addition to the accompanied baggage allowance to which his air ticket entitles him, namely 20 kilos (44 lb.) in weight, an officer shall be entitled to an allowance of a further 20 kilos (44 lb.) of baggage at air freight rates; and if an officer should decide to forward all or any of his baggage by sea, he shall be entitled to an allowance equivalent to the value of transporting 20 Kilos of baggage at air freight rates.

Subsistence allowance

34. Subject to regulation 56, an officer who is required to travel on duty within Malaŵi shall be paid subsistence allowance at the rate applicable to an officer of equivalent grade in the Civil Service.

Warm clothing allowance

35.—(1) An officer proceeding on a course of instruction or on duty to a cold climate country shall be entitled to be paid a warm clothing allowance as may be determined by the Minister from time to time:

Provided that a period of three years shall elapse before the officer qualifies for another entitlement to such allowance.

(2) For the purposes of this Regulation, a cold climate country is one which lies wholly or principally outside the latitude of 30 degrees north or south of the Equator.

Field allowance

36. An officer shall, in respect of any period during which he serves on active duty and any such other period as the Minister may determine, be paid a field allowance at the rate as determined by the Minister from time to time.

Risk allowance

37. Paratroopers and divers shall, during the period of active duty and such other period as the Minister may determine, be paid risk allowance at the rate determined by the Minister from time to time.

Deductions from pay and allowances

38.—(1) The commanding officer or appropriate superior authority may authorize the deduction from the pay and allowances due to an officer under these regulations of—

(*a*) any liquidated amount which that officer is liable to pay to Government or to any mess, institution, organization or association whatsoever of members of the Defence Force; and

(*b*) any amount which that officer has previously been paid in pay or allowances in excess of the amount which is due to him under these or any other Regulations.

(2) If, after perusing the proceedings of any board of enquiry, the commanding officer or appropriate superior authority is satisfied—

(*a*) that loss or destruction of or damage to Government property or service property has been occasioned by the deliberate or negligent act of an officer; and

(*b*) that such officer will not be charged before court-martial, a commanding officer, an appropriate superior authority or civil court with an offence arising out of such loss, destruction or damage,

he may authorize the deduction from the pay and allowances due to such officer under these or any other Regulations of such amount not exceeding the value of the loss, destruction or damage or not withstanding a maximum of twenty per cent of the officer's one month pay, whichever is the less, as in the circumstances he may deem to be equitable compensation for the loss, destruction or damage.

(3) Any officer from whose pay and allowances a deduction has been made under subregulation (2) may, within the period of fourteen days immediately following the date when the deduction was made, appeal in writing to the next higher authority against such deductions and such authority may confirm, modify or set

aside the deductions; and the officer shall have the right to make further appeals against the decision of the higher authority within fourteen days of the date of the decision.

PART IV
Leave And Benefits

Classification of leave

39. For the purposes of this Part, leave shall be divided into the following classes—

(*a*) annual leave;
(*b*) sick leave;
(*c*) compassionate leave;
(*d*) embarkation leave;
(*e*) disembarkation leave;
(*f*) study leave; and
(*g*) maternity leave.

Persons empowered to grant leave

40. The commanding officer or appropriate superior authority may, in accordance with this Part, grant an officer under his command leave of any class.

Pay and allowances during leave

41.—(1) The commanding officer or appropriate superior authority may authorize the payment in advance of the pay and allowances due to an officer in respect of a period of leave granted to him in accordance with the following provisions—

(*a*) if the officer has been granted a period of annual leave which immediately precedes the date on which his retirement or resignation takes effect, the pay and allowances due in respect of the whole of that period;

(*b*) if the officer has been granted a period of sick leave, or a period of annual leave which does not immediately precede the date on which his retirement or resignation takes effect, the pay and allowances due in respect of—

(i) a period of 30 days or the period of the leave, whichever is the less; and

(ii) the month in which his leave commences.

(2) Where a period of leave with pay is granted to an officer under this Part, the officer shall, in respect of such period, be paid the amount of his pensionable emoluments and of any other allowance for which he is eligible under these Regulations.

(3) Where a period of leave with half-pay is granted to an officer under this Part, the officer shall, in respect of such period, be paid

half the amount of his pay and the full amount of any allowances for which he is eligible under these Regulations.

Qualifying service

42.—(1) In this regulation, "qualifying service" means—

(*a*) in the case of an officer who has previously taken annual leave under these Regulations, the period that has elapsed since the date on which he returned from his last annual leave;

(*b*) in the case of an officer who has not previously taken annual leave under these Regulations, the period that has elapsed since the date of commencement of these Regulations or the date on which he was granted a commission, whichever is later,

less in either case, the period of any sick leave occasioned by his own misconduct or compassionate leave taken during such period and any period after that date in respect of which, by virtue of these Regulations, no pay or allowances were paid to him.

(2) Subject to this regulation, annual leave shall accrue to an officer at the following rates—

(*a*) for every period of qualifying service amounting to 365 days, 30 days;

(*b*) for every period of qualifying service amounting to less than 365 days, 2½ days per month.

(3) Where a member of the Force is granted a commission on or after the commencement of these Regulations, any annual leave which, immediately before the date of his commission, had accrued, or was deemed to have accrued to him under the provisions of the law then applicable to him, and had not been taken by him, shall be deemed to have accrued under the provisions of this Regulation.

(4) Where a member of the Force is granted a commission, any leave then accrued due to him as an other rank, shall be deemed to have accrued to him under these Regulations up to a maximum leave period of 30 days.

(5) Time spent in travelling within Malaŵi to, or from a place of leave, shall not be counted against a period of leave due.

Grant of annual leave

43.—(1) An officer may be granted annual leave with pay for any period or part thereof which has accrued to him under regulation 40, but not exceeding 30 days in respect of any one calendar year.

(2) No annual leave shall, unless the Minister otherwise directs, be granted to an officer who has been discharged or dismissed from the Force under section 14 of the Act.

(3) Any Sunday or Saturday or any public holiday during the period of the officer's annual leave shall count as part of the officer's annual leave days.

Sick leave

44.—(1) An officer may at any time be granted sick leave with full pay for a period not exceeding 365 days on the following conditions—

(*a*) when the period exceeds 90 days, the officer shall furnish a medical certificate as to the state of his health to the Commander at the end of every month;

(*b*) after 180 days a medical board shall be convened for the purpose of assessing his suitability to continue in the service.

(2) If an officer is absent from duty or is detained in hospital on the orders of a medical officer and, in the opinion of the commanding officer or appropriate superior authority, such absence or detention is rendered necessary by the misconduct of the officer, the commanding officer or appropriate superior authority may direct that the period of such absence or detention be taken as annual leave or, if the officer is not eligible for the grant of any annual leave which is insufficient for the purpose, that such period be deducted from any period of annual leave which may subsequently accrue to the officer.

Compassionate leave

45.—(1) An officer wishing to absent himself from duty on compassionate grounds who—

(*a*) is not eligible for the grant of any period of annual leave; or

(*b*) is eligible for the grant of a period of annual leave which is insufficient for the purpose,

may be granted compassionate leave on full pay for such period as the commanding officer or appropriate superior authority may determine.

Embarkation and disembarkation leave

46.—(1) An officer may be granted fourteen days' embarkation leave with pay immediately prior to proceedings on active service, or other duty outside Malaŵi, provided in the case of such other duty, he is due to be out of Malaŵi for a minimum period of six months.

(2) An officer may be granted fourteen days disembarkation leave with pay immediately after his return from active service, or other duty outside Malaŵi, provided that in the case of such other duty, he has been out of Malaŵi for a minimum period of six months.

Study leave

47. An officer may be granted study leave with full pay for a period not exceeding two years for the purpose of pursuing further studies at a recognized institution within or outside Malaŵi:

Provided that in the case of a course outside Malaŵi, regulation 30 shall apply with respect to the officer's pay during the period of the course.

Maternity leave

48.—(1) A female officer may be granted maternity leave with full pay for ninety consecutive days from the expected date of confinement, except that an officer may return to work at any time before the expiry of the period of confinement.

(2) In this regulation, "date of confinement" means the date of birth of a child, whether living or not, after thirty-four weeks of pregnancy but in the event of still birth occurring during the first thirty-four weeks of pregnancy maternity leave, in accordance with subregulation (1) shall apply.

Travelling facilities on leave

49.—(1) An officer who has been granted—

(*a*) annual leave;

(*b*) embarkation leave;

(*c*) disembarkation leave;

(*d*) compassionate leave;

(*e*) study leave;

(*f*) maternity leave,

shall be granted free travelling facilities, or the equivalent in money, to and from his leave destination on one occasion per year except in relation to embarkation, disembarkation, compassionate leave and maternity leave when travelling facilities may be granted at the discretion of the commanding officer:

Provided that if his leave destination is outside Malaŵi, such facilities shall only be granted to and from the point on the borders of Malaŵi which is nearest to his leave destination.

(2) Free travelling facilities shall be—

(*a*) a first class rail, road or lake steamer warrant; and

(*b*) an economy class air travel warrant; or

(*c*) warrants under both paragraph (*a*) and (*b*).

Grant of free travel fares or equivalent on retirement

50.—(1) Subject to this regulation, an officer who proceeds on annual leave pending retirement on pension, shall be granted in respect of himself and each of his dependants, the benefits specified in subregulation (2) for a journey within the borders of Malaŵi.

(2) The benefits referred to in subregulation (1), shall be an amount equal to the cost of a single first class rail, road or lake steamer fare, or an economy class air fare from his last place of duty to his destination.

(3) The recognized spouse of a deceased officer and his children dependent upon the spouse, may be granted the benefits conferred by this regulation if such officer—

(*a*) died before retirement on pension; or

(*b*) having retired on pension, died within twelve months of so retiring without having availed himself of the benefits to which he was entitled under this regulation.

(4) A person who receives the benefits conferred by regulation 47, when proceeding on annual leave pending retirement, shall not be entitled to the benefits conferred by this regulation.

(5) Nothing in this regulation shall entitle a person or his dependants to be granted the benefits conferred by this regulation on more than one occasion.

(6) No claim for the benefits conferred by this regulation shall be granted, unless it is supported by a certificate that the benefits will be used for the journey in respect of which the claim was made and, in the case of a claim made in respect of a person's dependents, particulars are given.

(7) For the purpose of this regulation, "dependant", in relation to an officer referred to in subregulation (1), means—

(*a*) the recognized spouse of that officer;

(*b*) any child of that officer who was, at the date on which he retired, under the age of eighteen years and wholly dependent on him,

who precedes him, accompanies him or follows him on any journey with respect to which a benefit may be granted under this regulation.

PART V
Medical Benefits

Medical examination

51. The Commander may at any time order an officer to present himself for and to submit to a medical examination at the expense of the Government by—

(*a*) a medical officer;

(*b*) a private medical practitioner;

(*c*) a medical board.

Medical and hospital treatment

52.—(1) An officer shall, while stationed or on leave within Malaŵi or while outside Malaŵi on active service or other duty, be entitled to receive the following benefits free of charge in respect of himself and his dependants—

(*a*) attendance and treatment by a medical officer;

(*b*) such medical treatment by persons other than medical officers as is, before the commencement of such treatment, authorized by a medical officer.

(2) If, while an officer is stationed or on leave within Malaŵi or is outside Malaŵi on active service or other duty, a medical officer authorizes the admission to a Government hospital of such officer or of any of his dependants, such officer shall not be required to pay any of the hospital fees which would normally be incurred during the period the officer or any such dependant is kept at the hospital and shall be entitled, in addition, to have the patient transported to the hospital free of charge.

(3) If the Secretary for Health is satisfied that no medical officer was available to authorize—

(*a*) the medical treatment of an officer or his dependant referred to in subregulation (1) (*b*); or

(*b*) the admission to a Government hospital of an officer or his dependant referred to in subregulation (2),

and that such treatment or admission was necessary in the circumstances, he may authorize such treatment or admission and thereupon the officer shall be entitled to the benefits conferred by subregulation (1) or (2) as if the treatment or admission had been authorized by a medical officer.

(4) If an officer on leave outside Malaŵi requires medical or hospital treatment for himself in respect of an illness, injury or disability which is attributable to his service within Malaŵi, the Secretary for Health shall authorize him to be provided, free of charge, with such medical or hospital treatment (including transport to a hospital) as the Secretary for Health considers necessary in the circumstances.

(5) If while an officer is stationed or on leave within Malaŵi or is outside on active service or other duty, it is necessary for him or any of his dependants to be admitted to a hospital and no Government hospital is available for the purpose, the Secretary for Health shall authorize the admission of such officer or dependant to such other hospital or institution as may be named by him, and thereupon the officer shall be entitled to have the amount of any

hospital fees and the cost of transporting the patients to the hospital or other institution paid by the Government.

(6) If, while an officer is stationed or on leave within Malaŵi or is outside Malaŵi on active service or other duty, it is necessary for any dependant of such officer to receive medical treatment which a medical officer certifies is not available at the place where such officer is stationed, the officer shall be granted a refund of the transport expenses incurred by him in respect of his dependant and—

(*a*) if a medical officer certifies that the dependant is unfit to travel alone to the place where the medical treatment is available and such dependant is accompanied by the officer or by an escort, the officer or the escort, as the case may be, shall be—

(i) granted a refund of the transport expenses incurred by him; and

(ii) paid a subsistence allowance at the rates authorized under regulation 34; or

(*b*) if the Secretary for Health certifies in the case of a dependant who is a child that it is necessary on medical grounds for the officer and the spouse to accompany such dependant to the place where the medical treatment is available, the officer and the spouse shall each be—

(i) granted a refund of the transport expenses referred to in subregulation (6) (*a*) (i); and

(ii) paid the subsistence allowance at the rates authorized under regulation 34.

(7) An officer admitted to hospital abroad for medical treatment shall be entitled to receive an allowance equivalent to US$50 for each day actually spent in the hospital subject to a maximum of thirty days.

Additional medical services

53. Without derogation from the provisions of regulation 52—

(*a*) the Secretary for Defence may authorize the payment to an officer of any medical or surgical expenses incurred by the officer within Malaŵi in respect of himself or any of his dependants;

(*b*) if the Secretary for Health certifies that specialist medical or surgical advice or treatment is required by an officer and that such advice or treatment is not available within Malaŵi, the Minister may authorize the payment of any or all of the expenses incurred by the officer in obtaining such advice or treatment outside Malaŵi.

Dental treatment

54. An officer and any of his dependants shall, while stationed or on leave within Malaŵi or while outside Malaŵi on active service or other duty, be entitled to free dental treatment by a dental officer in respect of himself or such dependant.

Treatment by oculists, etc.

55. If the examination and treatment of the eyes of an officer or of any of his dependants by an oculist is authorized by a medical officer, any costs thereby incurred shall be paid by the Government, including the provision of free spectacles.

PART VI

Transfers and Travelling on Duty

Allowance for subsistence and travelling expenses in Malaŵi

56. An officer who is required to travel on duty within Malaŵi shall be paid a daily subsistence allowance at the rates authorized under regulation 34:

Provided that—

(*a*) where an officer is provided with overnight accommodation without expense to himself he will only be eligible for payment of half the allowance authorized under regulation 34 (*b*);

(*b*) where an officer is provided with meals and overnight accommodation without expense to himself no subsistence allowance is payable.

Allowances for subsistence and travelling expenses outside Malaŵi

57. An officer who is required to travel on duty outside Malaŵi shall be paid a daily subsistence allowance at the rates prescribed for an officer of equivalent grade in the Civil Service.

Allowance for relieving or special duty

58. The Minister may authorize the payment to an officer, who is required to undertake relieving or special duty, of an allowance sufficient to cover reasonable expenses thereby incurred by the officer.

Expenses on transfer at the request of an officer

59. An officer who is posted on transfer at his own request shall not be entitled to a refund of any expenses incurred thereby.

Expenses on transfer other than at the request of an officer

60.—(1) An officer who is posted on transfer other than at his own request shall be entitled—

(*a*) to be paid, in respect of himself, whilst travelling to his new station subsistence allowance at the rates authorized in regulation 34 (*b*):

Provided that the proviso to regulation 56 shall apply to officers so travelling as it applies to officers travelling under that regulation;

(*b*) to be paid, in respect of his spouse and all his children under the age of eighteen years, whilst travelling to the officer's new station subsistence allowance at the rates authorized in respect of the spouse or children of an officer of equivalent grade in the Civil Service:

Provided that the proviso to regulation 56 shall apply to any such spouse or child so travelling as it applies to officers travelling under that regulation;

(*c*) to have his personal baggage transported at Government expense to his new station;

(*d*) to be paid a disturbance allowance at the rate authorized in regulation 32;

(*e*) to free travel facilities to the officer's new station in respect of the officer, the spouse and all officer's children under the age of eighteen years.

(2) In this regulation "free travel facilities" shall mean—

(*a*) a first class rail, road or lake steamer warrant;

(*b*) an economy class air travel warrant;

(*c*) by military transport; or

(*d*) facilities and any or all of paragraphs (*a*), (*b*), and (*c*).

Travel by private motor vehicle

61.—(1) A commanding officer may authorize an officer, who is posted on transfer other than at his own request, to use his own motor vehicle in which case the officer shall be entitled to full motor vehicle mileage allowance at the rates prescribed under the Malaŵi Public Service Regulations; and if due to the nature of the motor vehicle concerned, it is not possible for the officer to take with him all the members of his family eligible under regulation 60, those eligible members who cannot travel with the officer may travel by military transport or such other means as may be decided by a commanding officer at Government expense.

(2) In cases where an officer is permitted to use his own motor vehicle and he qualifies for any subsistence allowance under regulation 60, allowance shall be paid only in respect of those nights necessarily spent in transit by the most direct route; and for the purpose of this regulation "Nights necessarily spent in transit" means nights that would have been spent if the officer had travelled not less than 320 kilometres per day.

Advances of allowances and other benefits payable under this Part

62. An officer may be paid in advance the full amount of any allowances which it is estimated will be payable to him under this Part in respect of any posting on transfer or travelling on duty, but any payment so made shall, immediately following the termination

of the period in respect of which the payment has been made, be adjusted to the actual amount of the allowances which are payable to him.

PART VII
Dress and Equipment

Clothing and equipment

63.—(1) An officer shall provide himself with such clothing and personal equipment as will enable him to appear in all orders of dress, and shall maintain it in a serviceable condition.

(2) On first appointment to commissioned rank of officer, an officer shall be paid a grant at the rate authorized under regulation 22 for the purpose of providing himself with such clothing and personal equipment as will enable him to appear in all orders of dress.

(3) If a new or altered order of dress is adopted after the first appointment of an officer to commissioned rank, he shall be entitled to be granted a free issue of any additional clothing and personal equipment required to enable him to appear in the new or altered order of dress or, in lieu thereof, to be paid the amount of any expenses necessarily incurred by him in providing himself with such clothing and equipment.

(4) An officer shall, on every anniversary of the date of his appointment to commissioned rank, be paid an allowance at the rate authorized under regulation 23 for the purposes of maintaining his clothing and personal equipment in a serviceable condition.

(5) An officer shall be provided free of charge with such items of uniform and equipment as are required for service in the field; and after the initial issue of such items of uniform and equipment, they shall be exchanged or replaced, from time to time, when they become unserviceable due to fair wear and tear at Government expense.

Wearing of uniform

64.—(1) An officer shall not wear any article forming part of the uniform of the Regular Force which he is not authorized to wear.

(2) Any officer who contravenes this regulation shall be guilty of an offence punishable under section 210 of the Act.

PART VIII
Disablement Benefits

Functions of Pensions Board and Pensions Appeal Board

65.—(1) The right of any person to an award under this Part and the amount of such award shall be determined by the Pensions Board in accordance with this Part.

(2) Within six months after the date on which any decision of the Pensions Board has been communicated to a claimant under this Part such claimant may, by notice in writing to the Pensions Board, appeal to the Pensions Appeal Board.

(3) On any such appeal under subregulation (2), the Pensions Appeal Board may confirm the decision of the Pensions Board or may, subject to the provisions of these Regulations, vary such decision and the decision of the Pensions Appeal Board shall be given effect to by the Pensions Board.

Review of awards

66. The Pensions Board may at any time review, amend or withdraw any award made under this Part which—

(*a*) has been incorrectly made by error in interpretation or fact; or

(*b*) it has reasons to believe has been obtained by improper means.

Administration of awards

67. Any award payable to or in respect of any person under this Part may, in the discretion of the Pensions Board and for reasons deemed by it to be sufficient, be administered under such conditions as the Pensions Board may determine instead of being paid to the grantee.

Benefits on discharge for ill-health in certain circumstances

68. If the unfitness for further service of a disabled officer is due to ill-health, physical or mental incapacity or personal injury occasioned without any misconduct or serious negligence on his part, he shall be awarded—

(*a*) if his pensionable service amounts to less than ten years, a gratuity at the rate prescribed in regulation 78;

(*b*) if his pensionable service amounts to ten or more years, a pension at the rate prescribed in regulation 78.

Compensation in respect of ill-health occasioned by the discharge of duty

69.—(1) Subject to this section, if the unfitness for further service of a disabled officer is due to ill-health, physical or mental unfitness physical or mental incapacity, or personal incapacity, or personal injury—

(*a*) which was occasioned in and by the discharge of his duties but which was without any misconduct or serious negligence on his part;

(*b*) aggravated to a material extent in and by the discharge of his duties,

he shall be awarded a compensation payable and calculated in accordance with the Defence Force (Compensation for Injuries) Regulations.

(2) If an officer who is suffering from ill-health, physical or mental unfitness, physical or mental incapacity, or personal injury—

(*a*) which was occasioned in and by the discharge of his duties without any misconduct or serious negligence on his part; or

(*b*) which was not occasioned initially in and by the discharge of his duties but which was, without any misconduct or serious negligence on his part, aggravated to a material extent in and by the discharge of his duties,

is not discharged and if, the date on which he resigns or retires or is, under the provisions of the Act, discharged or dismissed from the Defence Force, he is still suffering from such ill-health, physical or mental incapacity or personal injury, he shall be awarded a compensation calculated in accordance with the Defence Force (Compensation for Injuries) Regulations and based upon the annual rate of his pensionable emoluments at the date of his disablement.

(3) For the purposes of subregulation (2), the date of disablement of a member means the date on which the ill-health, physical or mental unfitness, or physical or mental incapacity commenced or on which the personal injury was received or on which the ill-health, physical or mental unfitness, physical or mental incapacity or personal injury was first aggravated to a material extent, as the case may be, or if such date cannot be ascertained, the date fixed by the Pensions Board as the date of disablement.

(4) If an officer resumes duty in the Defence Force as provided by regulation 72 and if, at the date on which he resigns or retires or is, under the provisions of the Act, finally discharged or dismissed from the Defence Force, he is still suffering from the ill-health, physical or mental unfitness, physical incapacity or personal injury in respect of which he was previously awarded a compensation under this section, he shall be awarded a compensation calculated in accordance with subregulation (2).

(5) Any compensation payable under this regulation shall be in addition to any pension or other benefit payable under these regulations.

(6) An officer who is participating in any regimental sport, recreational training, display or competition authorized by the commanding officer of his unit shall be deemed, for the purpose of this section, to be discharging his duties while he is so participating.

Free medical attention for disabled officers

70.—(1) In this regulation—

"free medical attention" means—

(*a*) attention by a medical officer;

(*b*) treatment in a department of a Government hospital or institution; and

(*c*) accommodation in a ward of a Government hospital or institution,

and includes drugs, dressings, proprietary preparations and surgical appliances and, in special cases authorized by the Pensions Board, attention and treatment by a person recommended by the Board and accommodation at a hospital or institution other than a Government hospital or institution.

(2) A disabled officer who has been awarded a compensation under regulation 69 shall be entitled to free medical attention in respect of ill-health, physical or mental unfitness, physical or mental incapacity or personal injury which occasioned the award.

(3) Subject to subregulations (4) and (5), when a disabled officer is required by the Pensions Board to make a journey in order to be medically examined or to undergo medical treatment or for any other purpose, he shall be entitled—

(*a*) to travel at the expense of the Government in such class of travel as the Minister may determine; and

(*b*) to be paid such subsistence allowance as the Minister may determine.

(4) A disabled officer shall not be entitled to an allowance under subregulation (3) (*b*)—

(*a*) for any period during which he is being maintained at a hospital or institution; or

(*b*) if the period of his absence from home is less than four hours.

(5) If a disabled officer is, owing to his own misconduct, unfit to undergo a medical examination at the appointed time and place and in consequence thereof is required by the Pensions Board to undergo a further medical examination, he shall not be entitled to any allowance under subregulation (3) (*b*) for any period during which he is necessarily absent from his home for the purpose of undergoing such further medical examination.

Medical examination or treatment of disabled officers

71.—(1) Any officer who has been awarded a compensation under this Part may at any time be required by the Pensions Board to submit to a medical examination or to undergo medical or surgical treatment involving no appreciable risk to his life.

(2) If any officer referred to in subregulation (1) fails to submit himself to the examination or to undergo the treatment required by the Pensions Board, his right to any compensation awarded to him under this Part shall cease as from the date on which he fails to do so:

Provided that if at any time thereafter such person submits to the examination or undergoes the treatment required by the Pensions Board, such compensation shall be revived with effect from the date on which he submits himself to that examination or undergoes that treatment.

Resumption of duty by disabled officer

72.—(1) If a disabled officer who has been awarded a compensation under this Part is, within two years of the date of his discharge, certified by the medical board to be fit for duty in the Force and has not completed his period of engagement as provided by regulation 5 (4), he may, subject to subregulation (3), be required by the Minister to resume duty in the Defence Force.

(2) If an officer who is required under subregulation (1) to resume duty in the Defence Force refuses without reasonable cause to do so, his right to any compensation awarded to him under this Part shall cease as from the date on which he is required to resume such duty.

(3) The following provisions shall apply in relation to any officer required under subregulation (1) to resume duty in the Defence Force—

(*a*) the pensionable emoluments which he is paid shall not, without his consent, be less than the pensionable emoluments received by him immediately before the date of his discharge;

(*b*) the rank in which he is required to resume duty shall not be lower than the rank held by him immediately before the date of his discharge;

(*c*) his right to any compensation awarded to him under this Part shall cease as from the date of his resumption of duty;

(*d*) his pensionable service shall not be deemed to have been interrupted by the period during which he was receiving a compensation under this Part.

Benefits to surviving spouse and children in respect of death in the course of duty

73.—(1) if—

(*a*) an officer dies owing to—

(i) an injury received or from an illness contracted in and by the discharge of his duties without any misconduct or serious negligence on his part; or

(ii) illness, which was not contracted initially in and by the discharge of his duties but which was, without any misconduct or serious negligence on his part, aggravated to a material extent in and by the discharge of his duties;

(*b*) an officer who has been awarded a compensation under regulation 69 dies owing to ill-health, physical or mental unfitness, physical or mental incapacity or personal injury in respect of which he was awarded that compensation,

there shall be awarded to the surviving spouse, children and dependants, if any, a compensation calculated in accordance with the Second Schedule.

Second Schedule

(2) The right of any spouse to a compensation awarded under subregulation (1) shall cease as from the date on which he or she remarries.

(3) Any compensation awarded under this regulation in respect of a child shall be paid to such person or persons as shall from time to time be determined by the Pensions Board and shall, in accordance with the determination of that Board, be paid in respect of one child or apportioned between any two or more of the children.

(4) If a child dies or ceases to be a child, the compensation awarded under this regulation in respect of the child shall cease or, if there are other children, shall be adjusted accordingly.

(5) Any compensation awarded under this regulation shall be in addition to any other pension or benefit payable under these Regulations.

(6) An officer who is participating in any regimental sport, recreational training, display or competition authorized by the commanding officer of his unit shall be deemed, for the purposes of this section, to be discharging his duties while he is so participating.

(7) Upon certification by the Board of Inquiry, an officer whose service is less than twenty years and who dies on active duty in or outside Malaŵi—

(*a*) during a state of national defence;

(*b*) in a peace-support operation under the international or regional body sanctioned by the Government;

(*c*) in any military operation in support of civil authorities; or

(*d*) in any military operation in respect of a state of disaster or emergency,

shall be entitled to full benefits as if he had served for a period of twenty years at the rank that he held at the time of his death regardless of the length of service actually completed.

Vocational training

74.—(1) The Pensions Board may in its discretion refer the case of any disabled officer to a vocational board to consider the needs of the officer for vocational training.

(2) A vocational board shall investigate any case or application referred to it under subregulation (1) and shall submit a report thereon to the Pensions Board.

(3) If the Pensions Board, after considering the report of a vocational board, considers that the disabled officer should, in consequence of his disablement, receive vocational training, it may order him to undergo such training and may award him, in addition to any other benefits to which he may be entitled under these Regulations, a temporary allowance in respect of the period during which he undergoes such training at a rate not exceeding the rate of additional compensation which he would have been awarded had he had no earning capacity.

(4) A temporary allowance awarded under subregulation (3) shall be paid for such period and subject to such conditions and such deductions in respect of the earnings of the disabled officer while he is undergoing vocational training as the Pensions Board may determine.

(5) The whole or any part of any charges, fees or expenses incurred in respect of the vocational training of a disabled officer may be paid under such conditions as the Pensions Board may determine.

(6) At the termination of any period of vocational training under this regulation, the Pensions Board may award the disabled officer a sum determined by the vocational board for the purchase of tools required by him in the vocation in which he has been trained.

(7) If a disabled officer refuses to undergo any vocational training ordered under this regulation the Pensions Board may reduce or withdraw any additional compensation awarded to him.

Travelling and subsistence allowance payable to a disabled officer

75.—(1) When a disabled officer is required by the Pensions Board to make a journey in order to submit to a medical examination or to undergo medical treatment or vocational training he shall be entitled to travel at the expense of the Government.

(2) Subject to subregulations (3) and (4), when a disabled officer is required by the Pensions Board to make a journey for the purposes mentioned in subregulation (1), he shall be entitled, during the period of necessary absence from home, to a subsistence allowance at the rate determined by the Minister from time to time.

(3) A disabled officer shall not be entitled to any subsistence allowance under subregulation (2)—

(*a*) in respect of any period during which he is receiving free maintenance as an in-patient at a hospital or other institution; or

(*b*) if the period of absence from home is less than four hours.

(4) If a disabled officer is unfit owing to his own misconduct or serious negligence to undergo a medical examination and in consequence thereof is required by the Pensions Board to undergo a further medical examination, he shall not be entitled to any subsistence allowance under subregulation (2) in respect of any period during which he is necessarily absent from home for the purpose of undergoing such further medical examination.

Further disablement of a disabled officer

76. If a disabled officer who has been awarded a disablement compensation continues to undergo military service and suffers a further disablement attributable to, or aggravated by, military service without any misconduct or serious negligence on his part, the Pensions Board shall award him a supplementary compensation, based on his rank and class, appropriate to his case in respect of the further disablement represented by the difference between the degree of disablement due to his combined disablements and that from his earlier disablement or disablements alone.

Allowance in respect of nursing attendants

77. Where a disabled officer has been awarded a disablement compensation for one hundred per centum disablement and the Pensions Board is satisfied that his disablement necessitates the constant and continuous attendance of a nurse or other attendant, it may award such officer, in addition to any other benefits to which he may be entitled under these Regulations, an allowance not exceeding the reasonable expenditure actually incurred.

PART IX
General Provisions Relating to Pensions, Gratuities and Other Benefits

Calculations of pensions and gratuities

78. Subject to these Regulations—

(*a*) a pension payable to an officer under this Part or regulation 66 shall be calculated at the rate of one three-hundred sixtieth of his retiring pensionable emoluments in respect of each completed month of his pensionable service;

(*b*) a gratuity payable to an officer under this Part or regulation 66 shall be calculated at the rate of one-twelfth of his retiring pensionable emoluments for each completed year of his pensionable service.

Pensionable service

79.—(1) Subject to these Regulations, the pensionable service with reference to which any pension, gratuity or other benefit is to be calculated shall be continuous from the date of enlistment.

(2) Pensionable service shall include—

(*a*) time spent on duty;

(*b*) time spent on leave;

(*c*) time spent on attachment or secondment to any other forces or any organization in accordance with this Act; and

(*d*) in the case of a person who, immediately before the date of commencement of these Regulations, was a member, the period of employment which, immediately before that date, could, under the law then applicable to him, have been taken into account in computing his pension.

(3) Where any person who has had previous service in the Regular Force is later engaged for service in the Regular Force under section 16 of the Act then, if—

(*a*) such person is not a disabled officer who is required to resume duty in the Regular Force under regulation 72 (1);

(*b*) the previous service terminated not more than two years prior to the date of such later engagement for service in the Regular Force; and

(*c*) no gratuity or pension or any terminal benefits were paid to such person in respect of the previous service,

the period of the previous service shall be reckoned as pensionable service.

(4) Pensionable service shall not include any period of service by an officer—

(*a*) while he is or was under the age of eighteen years, in the case of an officer enlisted—

(i) before the commencement of this Act; or

(ii) after the commencement of this Act and who is subsequently discovered to been enlisted while he was under that age contrary to section 19 (2); or

(*b*) in respect of which, by virtue of regulation 26, no pay was paid to him:

Provided that the pensionable service of an officer shall not be deemed to have been interrupted by the exclusion therefrom of any period of service referred to in paragraph (*b*).

(5) The period of pensionable service shall be calculated by the month, but fractions of a month shall be taken to the nearest whole month.

Benefits on resignation or compulsory retirement for ill-health

80.—(1) An officer who resigns under regulation 6, if his pensionable service amounts to five or more years but less than ten years, or who is compulsorily retired for reasons of ill-health under section 15 of the Act if his pensionable service amounts to five or more years but less than seven years, shall be entitled to be paid the following benefits—

(*a*) a clothing grant of $\frac{1}{30}$th of his basic pay per annum;

(*b*) a gratuity equivalent to three times his annual pay; and

(*c*) a sum equivalent to one day's pay at the rate applicable to him immediately before the date of his resignation or discharge for every complete period of thirty days' service spent on active service outside Malaŵi.

(2) In the calculation of complete periods of thirty days' service for the purposes of paragraph (c) of subregulation (1), all periods of service spent on active service outside Malaŵi shall be aggregated.

Benefits on retirement

81. An officer who retires shall be entitled to—

(*a*) if his pensionable service amounts to twenty or more years, or if he is compulsorily retired under section 15 of the Act having completed seven or more years' service but less than fourteen years, a gratuity at the rate prescribed in this Part;

(*b*) if his pensionable service amounts to twenty or more years or if he is compulsorily retired under section 15 of the Act having completed fourteen years' service or more, a pension at the rate prescribed in this Part.

Free medical attention in special cases

82.—(1) In this regulation, "free medical attention" means—

(*a*) attention by a medical officer;

(*b*) treatment in a department of a Government hospital or institution; and

(*c*) accommodation in a ward of a Government hospital or institution,

and includes drugs and dressings but not surgical appliances other than splints.

(2) An officer who is in receipt of military pension shall be entitled to free medical attention.

(3) If any travelling by a medical officer or by a member who has retired is entailed in respect of such free medical attention, the cost of travelling shall not be borne by Government.

(4) This regulation shall not apply to the dependants of an officer who has retired.

Benefits on discharge or dismissal on prescribed grounds

83. An officer who is discharged or dismissed from the Force under section 14 or section 81 of the Act, and whose pensionable service amounts to ten or more years may be paid such gratuity and pension as the Defence Council may determine.

Benefits to dependants on death of a member or pensioner

84.—(1) If an officer whose pensionable service amounts to fifteen or more years dies, there shall be paid to his dependants the amount of the gratuity which such officer would have been entitled to had he retired on the day immediately before the date of his death.

(2) If an officer whose pensionable service amounts to less than fifteen years dies, there shall be paid to his dependants a gratuity equivalent to three times his annual basic pay at the time of his death.

(3) If an officer who is receiving a pension under regulation 69 dies after the date of his retirement, the pension shall be paid to his dependants.

Commutation of pensions

85.—(1) In this regulation, unless the context otherwise require—

"applicant" means an officer about to become entitled to a pension under regulation 66, 67, 79 or 81 who has applied under this regulation for the commutation of the whole or a portion of the pension to which he is about to become entitled;

(2) Subject to this regulation, an officer about to become entitled to a pension under of regulation 66, 67, 79 or 81 may apply to the Minister for the commutation of up to two-thirds of the pension to which he is about to become entitled.

(3) The Minister may, where an applicant is about to become entitled to a pension commute up to two-thirds of his total annual pension by single cash payment determined in accordance with subregulation (5).

Third Schedule

(4) An application for the commutation of any portion of a pension up to one-third shall be made in Form No. 1 in the Third Schedule and shall be submitted to the Commander.

Fourth Schedule

(5) The amount of the single cash payment to be made on the commutation of a pension shall be computed by multiplying the annual rate of pension to be commuted by the commutation factor shown in the Fourth Schedule in relation to the age of the applicant, calculated to the nearest half-year, or, where his age is midway between the half-years, to the half-year nearest above his age, at the date of his application for commutation:

Provided that where the age of the applicant at the date of his application for commutation is under 29 years and 6 months, the cash payment to be made shall be computed by multiplying the annual rate of pension to be commuted by such commutation factor as applicable to those whose nearest half age is 30 years.

(6) The commutation of a pension shall be effected on the date the applicant becomes entitled to his pension.

(7) For the purposes of this Part, Form 1 set out in Third Schedule and the Table set out in the Fourth Schedule shall, with such adaptations or modifications as the circumstances may require, be used and applied.

Third Schedule

Fourth Schedule

Benefits not to be pledged or ceded

86. No pension, gratuity or other benefit payable under these Regulations or right to such pension, gratuity or benefit shall be capable of being assigned or transferred or otherwise ceded, or of being pledged or hypothecated, and, in the event of the recipient attempting to assign, transfer or otherwise cede or pledge or hypothecate any pension, gratuity or other benefit payable under these Regulations or right to such pension, gratuity or other benefit, payment of the pension, gratuity or other benefit, may be withheld, suspended or entirely discontinued if the Minister so determines:

Provided that the Minister may direct the payment of the pension, gratuity or other benefit or part thereof to any one or more of the dependants of the recipient during such period as he may determine.

Conviction of pensioner

87. If an officer in receipt of a pension under those Regulations is convicted of any offence and is required to undergo a period of imprisonment exceeding three months, payment of his pension shall, in accordance with the directions, if any, of the Minister, be discontinued during the whole or part of the period of imprisonment:

Provided that the Minister may authorize payment of the whole or any portion of the pension in respect of the period during which it has been so discontinued to or for the benefit of any dependant of the pensioner as the Minister may determine.

Forfeiture of pension

88. If any officer becoming entitled to or actually in receipt of a pension under these Regulations—

(*a*) is found guilty by a civil court—

(i) of misappropriating public moneys or property of the Government;

(ii) of making a false statement for the purpose of obtaining a pension, knowing the statement to be false or not believing it to be true; or

(*b*) makes use of or discloses in an improper manner any information which he may have obtained in the course of his duties; or

(*c*) solicits or, without the consent of the Minister, accepts directly or indirectly any testimonial or gift of a pecuniary value in connexion with his service,

his right to his pension, shall, in accordance with the directions, if any, of the Minister be suspended, reduced or forfeited, as the case may be.

Deductions from pension, gratuity or other benefits

89.—(1) The Minister may authorize the deduction from any pension, gratuity or other benefit to which an officer in receipt of a pension under these Regulations or his estate is entitled under this Part or Part VIII, any liquidated amount which that officer is liable to pay to the Government.

(2) No deduction shall be authorized under this regulation of a liquidated amount which the appropriate superior authority has, under regulation 36, authorized to be deducted from the pay and allowances due to an officer.

Proof of age, etc.

90.—(1) An officer shall, if required, submit proof of the date of his birth.

(2) No payment of any gratuity to a widow shall be made until proof of marriage to and date of the death of the husband have been furnished.

(3) No gratuity in respect of a dependant shall be paid until proof has been furnished of the eligibility of that dependant for a pension under these Regulations.

(4) The proof required under this regulation shall be to the satisfaction of the Minister.

PART X
Miscellaneous Provisions

Marriage

91. No officer shall marry without obtaining the consent of the Commander.

Occupation of official quarters

92. An officer shall, if required by the Commander to do so, reside in official quarters.

Engagement for profit in trade or business

93. Except with the written consent of the Minister and in accordance with such directions, if any, as the Minister may from time to time give, an officer shall not—

(*a*) engage for profit in any business or occupation other than official duties; and

(*b*) be or become a director or engage directly or indirectly in the management or directions of any public company or syndicate.

Active participation in politics

94.—(1) No officer shall commit any act which is prescribed by this regulation as being an act constituting active participation in politics.

(2) Subject to subregulation (3), the following acts in relation to an officer are prescribed as being acts constituting active participation in politics—

(*a*) joining or being associated with an organization or movement of a political character;

(*b*) canvassing any person in support of or otherwise actively assisting an organization or a movement of a political character;

(*c*) displaying or wearing rosettes, favours, symbols, posters, placards or like articles having a political significance;

(*d*) attending a political meeting or assembly when wearing Defence Force uniform or any part thereof, likely to identify him with the Defence Force;

(*e*) asking questions from the floor at a political meeting;

(*f*) publishing views of a political character or causing them to be published in speeches, broadcasts, letters to the press, articles, leaflets, posters, placards, books or otherwise; and

(*g*) any other act or conduct whatever of an officer whereby the public might reasonably be induced to associate or identify him with an organization or movement of a political character.

(3) Nothing in subregulation (2) shall be construed as precluding an officer from—

(*a*) asking question from the floor at a political meeting held with the permission of the Minister at which the audience consists only of persons in the employment of the Government;

(*b*) explaining Government policy relating to the Defence Force in the course of his duties;

(*c*) performing the duties of a returning officer, polling officer or like officer in a parliamentary, presidential or local authority election or a referendum;

(*d*) voting in parliamentary, presidential or local authority elections or participating in a referendum; and

(*e*) performing duties of his office at a political meeting or assembly.

(4) A trade union or employers' organization shall, for the purposes of subregulation (2) (*a*) and (*b*) be deemed to be an organization or movement of a political character.

Sale of effects of deserter

95.—(1) If an officer deserts and there is no likelihood of his immediate arrest, the Commander may, on the expiration of one month after the date of promulgation of desertion, authorize the sale by auction of any private effects or personal property left by the officer.

(2) The proceeds of any sale of private effects or personal property of an officer who has deserted, together with the amount of any pay and allowances due to him at the date of desertion, shall be applied firstly to the liquidation of any sums due by that officer to the Government and the balance to be paid to the surviving spouse, children or dependants as the Commander may direct and, if none surviving, to the Government.

Funeral expenses

96. The amount of any reasonable expenses incurred in burying an officer including a pensioner shall be paid by the Government.

Messes and other institutions

97. Where any mess or other institution, organization or association of officers has been constituted at a station, the Commander may order all the officers at the station to be members of that mess, institution, organization or association and to pay such subscriptions as are due by the members thereof.

FIRST SCHEDULE reg. 5

Oath of Allegiance

I, ... having been granted a commission in the Regular Force of the Malaŵi Defence Force, do swear that I will be faithful and bear true allegiance to the Republic of Malaŵi. So help me God.

SECOND SCHEDULE reg. 73

Rates of Pension or Other Benefits Payable in Respect of Surviving Spouses, Children and Dependants

1. If the officer entitled to a pension or other benefits dies intestate and unmarried such pension or other benefits should be distributed equally between his parents, and if he was an orphan, be paid to the next of kin.

2. If the officer entitled to a pension or other benefits dies intestate and there is a surviving spouse without children, such pension or other benefits should be distributed as follows—

(*a*) one half should be paid to the surviving spouse;

(*b*) one half should be distributed equally to the parents; or paid to the next of kin if he was an orphan at the time of his death.

3. If the officer entitled to a pension or other benefits dies intestate and there is a surviving spouse and children, such pension or other benefits should be distributed as follows—

(*a*) six eighths should be distributed equally to the children;

(*b*) one eighth should be distributed to the surviving spouse or equally to the surviving spouses;

(*c*) one eighth should be distributed equally between the parents or if there is no parent, be paid to the next of kin.

4. If the officer entitled to a pension or other benefits dies intestate and leaves children and no spouse such pension or other benefits should be distributed as follows—

(*a*) seven eighths should be distributed equally to the children;

(*b*) one eighth should be distributed equally to the parents or if there is no parent be paid to the next of kin; and

(*c*) one eighth should be paid to any person who, being a relation, undertakes to be guardian of the said children.

5. Any share of pension or other benefits that remains undistributed shall be distributed equally to the children or, where there are no children, to the other beneficiaries.

THIRD SCHEDULE reg. 85 (4) and (7)
PRESCRIBED FORMS Form No. 1

APPLICATION FOR COMMUTATION OF PENSION

The Commander
Headquarters, Malaŵi Defence Force
LILONGWE

1. Full name of applicant (in block letters):
   Surname: .....
   Forenames: .....
2. Date of Birth: .....
   (*if not already produced, proof of this date is required*)
3. Gross rate of pension per annum, K.....
4. Date of pension to commence: .....
5. Portion of pension up to one-third it is desired to commute: .....
   .....
   .....
   .....
6. Reasons for desiring to commute: .....
   .....
   .....
   .....
   .....
   .....
   .....
   .....
7. Give particulars of any income or earnings other than pension:
   .....
   .....

Solemn Declaration

8. I do solemnly and sincerely declare that I am not insolvent, and that no part of my pension has been assigned, ceded or otherwise transferred or pledged or hypothecated.

Date of application: .....
Signature of application: .....
Declared before me this: ..... day of ..... , 20.....

.....
Commanding Officer/Appropriate Superior Authority

FOURTH SCHEDULE reg. 83 (5) and (7)

Commutation Factor for Commutation of Pension

Nearest half age	*Commutation factor*	*Nearest half age*	*Commutation factor*
30	23-38	53	19-09
30½	23-31	53½	18-96
31	23-25	54	18-83
31½	23-18	54½	18-70
32	23-12	55	18-57
32½	23-05	55½	18-43
33	22-98	56	18-30
33½	22-91	56½	18-16
34	22-84	57	18-03
34½	22-77	57½	17-89
35	22-70	58	17-76
35½	22-62	58½	17-62
36	22-55	59	17-48
36½	22-47	59½	17-34
37	22-40	60	17-20
37½	22-32	60½	17-06
38	22-24	61	16-92
38½	22-16	61½	16-72
39	22-07	62	16-64
39½	21-99	62½	16-49
40	21-91	63	16-35
40½	21-82	63½	16-21
41	21-73	64	16-06
41½	21-64	64½	15-92
42	21-55	65	15-78
42½	21-46	65½	15-63
43	21-36	66	15-48
43½	21-26	66½	15-34
44	21-17	67	15-19
44½	21-07	67½	15-05
45	20-97	68	14-90
45½	20-86	68½	14-75
46	20-76	69	14-60
46½	20-65	69½	14-46
47	20-54	70	14-31
47½	20-43	70½	14-16
48	20-32	71	14-01
48½	20-20	71½	13-86
49	20-08	72	13-71
49½	19-96	72½	13-56
50	19-84	73	13-41
50½	19-72	73½	13-27
51	19-59	74	13-12
51½	19-47	74½	12-98
52	19-34	75	12-84
52½	19-21		

DEFENCE FORCE (REGULAR FORCE) (CADET OFFICERS) REGULATIONS

ARRANGEMENT OF REGULATIONS

REGULATION

1. Citation
2. Interpretation
3. Engagement
4. Application of other Regulations
5. Selection Board
6. Qualification for selection
7. Grant of travel warrant and subsistence allowance while travelling
8. Subsistence allowance while attending Selection Board
9. Pay
10. Special training allowance
11. Classification of leave
12. Person empowered to grant leave
13. Pay and allowance during leave
14. Mid-course leave
15. Sick leave
16. Compassionate leave
17. Discharge of a cadet officer

G.N. 49/2004

DEFENCE FORCE (REGULAR FORCE) (CADET OFFICERS) REGULATIONS

under s. 17

Citation

1. These Regulations may be cited as the Defence Force (Regular Force) (Cadet Officers) Regulations.

Interpretation

2. In these Regulations, unless where the context otherwise requires—

"cadet officer" means a person engaged for training as a cadet officer in the Regular Force;

"candidate" means a person seeking appointment as a cadet officer;

"commandant" means the commanding officer of a military training institution;

"mid-course leave" means leave granted to a cadet officer during training as a cadet officer other than sick leave or compassionate leave;

"Other Ranks Regulations" means the Defence Force (Regular Force) (Other Ranks) Regulations;

"Selection Board" means the Board appointed under regulation 5;

"service" means service in the Regular Force and "serve" shall be construed accordingly;

"temporary engagement" means an engagement of no fixed period of time.

Engagement

3. The Commander may, in accordance with these Regulations, engage persons for service as cadet officers in the Regular Force on temporary engagement.

Application of other Regulations

4. To the extent that they are not inconsistent with these Regulations, the Other Ranks Regulations shall apply with any necessary modifications to a cadet officer as they apply in relation to a member, as defined in the Other Ranks Regulations, who has been engaged for service on an initial engagement.

Selection Board

5.—(1) There shall be a board to be known as the Selection Board which shall have the function of selecting suitable persons for appointment as cadet officers and which shall consist of—

(*a*) the Director of Personnel who shall be the Chairperson;

(*b*) the Director of Training;

(*c*) the Commandant;

(*d*) Chief of Staff;

(*e*) Director of Medical Services;

(*f*) Head of Chaplaincy;

(*g*) Director of Legal Services; and

(*h*) Head of Education Services.

(2) The Selection Board shall have power to regulate its own procedure and to co-opt any person which it considers suitably qualified to assist it with its deliberations and other business.

Qualification for selection

6.—(1) Where a candidate is seeking appointment as a cadet officer direct from the civil life he must be eighteen years or over, but under twenty-five years of age.

(2) Where a candidate is already a member of the Regular Force, the upper age limit for engagement as a cadet officer shall, except in exceptional case, be thirty years.

(3) The minimum education requirements for a candidate shall be a Malaŵi School Certificate of Education, or its equivalent, with credit passes in six subjects, one of which shall be the English language.

Grant of travel warrant and subsistence allowance while travelling

7. Where a candidate is called to attend an interview by the Selection Board, he shall—

(*a*) be issued with transport refund in respect of the journey for the cheapest and most direct mode of transport;

(*b*) for the period while travelling to the place appointed for the interview, and while returning to his place of residence, be paid a subsistence allowance at the rate as may be determined by the Minister from time to time.

Subsistence allowance while attending Selection Board

8. While a candidate is attending for an interview by the Selection Board at the place appointed, he shall be paid a subsistence allowance at the rate to be determined by the Minister from time to time.

Pay

9.—(1) Upon appointment as a cadet officer, the cadet officer shall be paid at the annual rate of pay as may be determined by the Minister from time to time.

(2) Where, immediately prior to his appointment as a cadet officer the cadet was a member of the Regular Force in receipt of an annual rate of pay higher than that prescribed for a cadet officer, the initial annual rate of pay applicable to him on such appointment shall, until such time as he becomes entitled under these Regulations to be paid at a higher rate, be his former rate of pay.

Special training allowance

10.—(1) When attending an approved course of instruction within or outside Malaŵi a cadet officer shall be entitled to special training allowance determined by the Minister on the recommendation of the Defence Council.

(2) In the case of training outside Malaŵi, the training allowance shall be so determined as to cover expenses of the cadet while on holiday during the training period.

Classification of leave

11. For the purpose of these Regulations, leave shall be divided into the following classes—

(*a*) mid-course leave;

(*b*) sick leave; and

(*c*) compassionate leave.

Person empowered to grant leave

12. The commandant may, in accordance with these Regulations, grant mid-course leave, sick leave or compassionate leave to a cadet officer.

Pay and allowance during leave

13.—(1) Where a period of leave with pay is granted to a cadet officer under these Regulations, the cadet officer shall, in respect of such period be entitled to his pay and any other allowances for which he is eligible.

(2) Where a period of leave with half pay is granted to a cadet officer under these Regulations, the cadet officer shall, in respect of such period, entitled to be paid half the amount of his pay and the full amount of any allowances for which he is eligible.

Mid-course lease

14. A cadet officer may, during any year of his period of training as a cadet officer, be granted mid-course leave with pay for a period or periods not exceeding in the aggregate fourteen days.

Sick leave

15. A cadet officer may at any time be granted sick leave for a period not exceeding thirty days provided that when the period exceeds fourteen days, the cadet officer shall furnish a medical certificate as to the state of his health to the commandant at the end of every month.

Compassionate leave

16. A cadet officer may be granted compassionate leave with full pay for a period or periods not exceeding in the aggregate ten days during his period of training as a cadet officer.

Discharge of a cadet officer

17. A cadet officer may be discharged by an appropriate superior authority at any time during the course of training—

(*a*) on the ground of any act of indiscipline;

(*b*) for unsatisfactory performance; or

(*c*) if for any reason given to him in writing, he is considered to be unfit to be a member of the Defence Force.

DEFENCE FORCE (IMPRISONMENT AND DETENTION) REGULATIONS

ARRANGEMENT OF REGULATIONS

REGULATION

1. Citation
2. Interpretation
3. Control of detention barracks
4. Appointment of commandants
5. General duties
6. Offences against detention barracks discipline
7. Power to try offences against detention barracks discipline

REGULATION

8. Punishment of offences against detention barracks discipline
9. Punishment book
10. Review
11. Smoking
12. Cleanliness
13. Clothing
14. Diet
15. Accommodation
16. Visitors
17. Illness and medical attention
18. Award of marks for good conduct and attention to military instruction
19. Forfeiture of marks on conviction by court-martial, prescribed officer or civil court
20. Remission of sentence
21. Temporary release from detention
22. Release from detention
23. Declaration of detention barracks
24. Issue of warrant for imprisonment

G.N. 50/2004

DEFENCE FORCE (IMPRISONMENT AND DETENTION) REGULATIONS

under s. 137

Citation

1. These Regulations may be cited as the Defence Force (Imprisonment and Detention) Regulations.

Interpretation

2. In these Regulations, unless inconsistent with the context—

"commandant" means the officer appointed as the commandant of a detention barracks in terms of regulation 4 (1);

"detention barracks" means the detention cells for the detention of members under sentence, declared to be detention barracks in accordance with regulation 23;

"member under sentence" means a member of the Defence Force undergoing a sentence of detention in any detention barracks.

Control of detention barracks

3. Subject to these Regulations, the control of all detention barracks is hereby vested in the Commander.

Appointment of commandants

4.—(1) The Commander shall appoint an officer of the Regular Force to be the commandant of a detention barracks.

(2) The commandant shall be the officer in charge of that barracks and shall be responsible for the management, in accordance with these Regulations, of the barracks.

General duties

5.—(1) The commandant shall—

(*a*) subject to these Regulations, enforce such daily routine for members under sentence in the detention barracks as may be specified by the Commander;

(*b*) be responsible for the efficiency of all members of the staff of the detention barracks; and

(*c*) keep a journal and record therein any occurrence of importance relating to the management of the detention barracks, not being a matter entered in the punishment book referred to in regulation 9.

(2) The commandant or an officer, warrant officer of non-commissioned officer authorized by him in that behalf shall visit every member under sentence each day at intervals of not less than three hours.

Offences against detention barracks discipline
First Schedule

6. The acts specified in the First Schedule shall be offences against detention barracks discipline when committed by a member under sentence.

Power to try offences against detention barracks discipline

7.—(1) Subject to this regulation, the commandant may, within the detention barracks, hear and determine a charge against a member under sentence in respect of any offence against barracks discipline.

(2) No member under sentence shall be found guilty of an offence against detention barracks discipline unless he has had an opportunity of hearing the charge and evidence against him and of making his defence.

(3) Any evidence given against a member under sentence charged with an offence against detention barracks discipline shall be given on oath:

Provided that—

(*a*) any person objects to taking an oath, and states as the grounds of his objection either that he has no religious belief or that the taking of an oath is contrary to his religious belief; or

(*b*) it is not reasonably practicable without inconvenience or without delaying the proceedings to administer an oath to a person in the manner appropriate to his religious belief,

he shall be permitted to make a solemn affirmation instead of taking an oath.

Punishment of offences against detention barracks discipline

8.—(1) The commandant may impose any one or more of the following punishments on a member under sentence who has been found guilty of an offence against detention barracks discipline—

(*a*) solitary confinement for a period not exceeding three days;

(*b*) spare diet for a period not exceeding three days;

(*c*) forfeiture of any or all of the marks awarded under regulation 18; and

(*d*) extra military instruction.

(2) Spare diet shall consist of such food and drink as the commandant, in consultation with a medical officer, may in each case determine.

(3) A member under sentence on whom the punishment of spare diet has been imposed shall, during the period that he is undergoing such punishment, be visited daily by a medical officer.

(4) Subject to this regulation, the commandant shall report his decision, and any action in respect of the decision, to the appropriate superior authority.

Punishment book

9. The commandant shall keep a punishment book in which shall be entered—

(*a*) the name, number and rank of any member under sentence who has been found guilty of an offence against detention barracks discipline;

(*b*) the date on which such offence was committed and the nature of the offence; and

(*c*) the punishment imposed for such offence.

Review

10.—(1) Where the commandant has found a member under sentence guilty of an offence against barracks discipline and has imposed any punishment on him, the finding and punishment may be reviewed by the appropriate superior authority.

(2) Where on review under this regulation it appears to the Commander expedient so to do by reason of any mistake of law or of any thing occurring in the proceedings which, in the opinion of the appropriate superior authority, involved substantial injustice

to the member under sentence, the appropriate superior authority may quash the finding and punishment.

(3) Where, on review under this regulation, it appears to the appropriate superior authority that a punishment imposed was invalid or too severe or, if two or more punishments were imposed, that those punishments taken together were too severe, the appropriate superior authority may quash the punishment or punishments imposed by the commandant and may substitute in place thereof such punishment or punishments as he may think proper, being a punishment or punishments which could have been imposed under regulation 8 and not being more severe than the punishment or punishments imposed by the commandant.

Smoking

11. A member under sentence shall be permitted to smoke at such times and in such places as may be specified by the commandant.

Cleanliness

12. A member under sentence shall keep himself clean and decent in his person and shall carry out such orders as the commandant may give regarding washing, hair-cutting and shaving.

Clothing

13. A member under sentence shall be issued with a sufficient supply of clothing, bed-clothes, and towels and during severe weather and in any special case recommended by a medical officer, shall be issued with additional clothing and bed-clothes.

Diet

14. Except in the case of a member under sentence on whom the punishment of spare diet has been imposed under regulation 8, the diet for members under sentence shall be on the same scale as for other members of the Regular Force of equivalent rank.

Accommodation

15.—(1) No room in a detention barracks shall be used for confining members under sentence unless it is—

(*a*) furnished with a means of enabling such members to communicate at any time with a member of the detention barracks staff; and

(*b*) certified by a medical officer to be of such size and to be lighted, warmed, ventilated and fitted in such a manner as may be requisite for the health of members under sentence.

(2) Members under sentence shall be confined either in separate rooms or with at least three such members in one room.

Visitors

16. Persons wishing to visit a member under sentence shall be permitted to do so at such times, for such periods and at such places as the commandant may arrange, but the commandant may

for sufficient cause refuse to permit a person to visit a member under sentence.

Illness and medical attention

17. The commandant shall without delay call the attention of a medical officer to any member under sentence who appears to require medical attention and shall carry into effect any written directions which a medical officer may give him respecting alterations to the treatment of a member under sentence.

Award of marks for good conduct and attention to military instruction

18.—(1) The commandant or an officer authorized by him in that behalf may award marks to a member under sentence proportionate to his good conduct and attention to military instruction in accordance with the following provisions—

(*a*) in respect of each day on which such member undergoes military instruction, one mark may be awarded for good conduct and one mark for attention to military instruction;

(*b*) in respect of each day on which such member does not undergo military instruction for a reason other than a reason mentioned in paragraph (*c*) or (*d*), one mark may be awarded for good conduct;

(*c*) in respect of each day on which such member does not undergo military instruction by reason of a punishment having been imposed upon him under regulation 8, no marks shall be awarded; and

(*d*) in respect of each day on which such member does not undergo military instruction by reason of illness, and a medical officer certifies that such illness has not been brought about by the misconduct of such member, marks may be awarded according to his previous good conduct and attention to military instruction.

(2) In awarding marks under subregulation (1), the capability of the member under sentence shall be taken into account.

(3) All marks awarded to a member under sentence shall be recorded in a book kept for that purpose.

(4) Nothing contained in these Regulations shall be construed as prohibiting the award of marks under subregulation (1) to a member under sentence—

(*a*) on whom the punishment of forfeiture of marks has been imposed under regulation 8; or

(*b*) who has been convicted of an offence under the Act and has thereby forfeited the marks awarded to him under subregulation (1) which were standing to his credit on the date of his conviction.

Forfeiture of marks on conviction by court-martial, prescribed officer or civil court

19. If, after the date on which he commences to undergo his sentence of detention, a member under sentence commits an offence under the Act and is convicted thereof by a court-martial, prescribed officer or civil court, any marks awarded to him under regulation 18 which are standing to his credit on the date of his conviction shall be forfeited.

Remission of sentence

20.—(1) A member under sentence who has been awarded the maximum number of marks for which he is eligible under regulation 18 shall be entitled—

(*a*) if the period of his sentence is twenty-eight days or more, to a remission of one-quarter of the whole sentence;

Second Schedule

(*b*) if the period of his sentence is less than twenty-eight days, to a remission of the number of days specified in the second column of the Second Schedule which are set out opposite the total number of days specified in the second column of the Second Schedule which are set out opposite the total number of days of his sentence specified in the first column of the said Schedule.

(2) A member under sentence who has been awarded less than the maximum number of marks for which he is eligible under regulation 18 shall be entitled to a remission of his sentence proportionate to the number of marks which he has been awarded.

(3) In the calculation of the period of remission to which a member under sentence is entitled under this regulation, periods of less than one day shall be disregarded.

Temporary release from detention

Third Schedule

21.—(1) If the appropriate superior authority is satisfied that special circumstances exist which justify the temporary release of a member under sentence, he may, by warrant under his hand in the form prescribed in the Third Schedule, authorize the release of such member from the detention barracks in which he is undergoing detention for such period as is specified in the warrant.

(2) Subject to these Regulations, a member under sentence shall, on the expiry of the period specified in the warrant authorizing his temporary release, undergo that portion of the sentence of detention imposed on him which, at the date of his temporary release, he was liable to undergo.

Release from detention

22. The commandant shall release a member under sentence from detention—

(*a*) in accordance with the terms of any warrant issued by the appropriate superior authority under regulation 21; and

(*b*) on the expiration of the period of detention to which he has been sentenced, less any remission of sentence to which he is entitled under regulation 20.

Declaration of detention barracks *Fourth Schedule*

23. The detention cells erected at each of the places mentioned in the Fourth Schedule are declared to be detention barracks for the purpose of these Regulations.

Issue of warrant for imprisonment

24.—(1) The appropriate superior authority will issue a warrant for the imprisonment in civil prison of a member sentenced to imprisonment by a court-martial under the Act provided that such sentence has been confirmed and promulgated.

Fifth Schedule

(2) A warrant issued in terms of subregulation (1) shall be in the form prescribed in the Fifth Schedule.

FIRST SCHEDULE reg. 6

Offences Against Detention Barracks Discipline

1. Treating with disrespect the commandant or any other member of the detention barracks staff.
2. Failing to return to the detention barracks on the termination of a period of temporary release.
3. Without the permission of the commandant or of any other member of the detention barracks staff—
   (*a*) absenting himself from any parade;
   (*b*) leaving his room or place of work;
   (*c*) giving to or receiving from any other member under sentence any article whatsoever;
   (*d*) conversing with any other member under sentence.
4. Swearing, cursing or using abusive, insolent, threatening or indecent language.
5. Committing an indecent act or gesture.
6. Signing, whistling or creating any unnecessary noise or disturbance.
7. Committing any nuisance.
8. Failing to be attentive during instruction.
9. Having in his possession any article which he is not authorized to be in possession of in the detention barracks.
10. Smoking at a time or in a place not specified by the commandant in terms of regulation 11.

SECOND SCHEDULE reg. 20

Maximum Remission of Sentence for Member under Sentence Undergoing Less than Twenty-Eight Days Detention

Total sentence reckoned in days	*Maximum number of days remission*
27	6
26	6
25	6
24	6
23	5
22	5
21	4
20	4
19	3
18	3
17	2
16	2
15	1
14 *and under*	*Nil*

THIRD SCHEDULE reg. 21

Defence Force Act
(Cap. 12:01)

Warrant Issued in Terms of regulation 21 of the Defence Force (Imprisonment and Detention) Regulations

To the commandant of the detention barracks at

WHEREAS (No.) ..... (rank) ..... (name) ..... (unit) ..... a member of the Regular Force, is at present undergoing a sentence of detention in the detention barracks at .....

AND WHEREAS I am satisfied that special circumstances exist which justify the temporary release of the said member:

NOW, THEREFORE, under and by virtue of the powers vested in me by regulation 21 of the Defence Force (Imprisonment and Detention) Regulations, I do hereby require and authorize you to release the said member from the said detention barracks for a period of ..... commencing on the ..... day of ....., 20.....

FOR WHICH THIS SHALL BE YOUR WARRANT

Given under my hand at ..... on the ..... day of ....., 20.....

.....
Appropriate Superior Authority

FOURTH SCHEDULE reg. 23

Detention Barracks

1. Cobbe Barracks, Zomba
2. Moyale Barracks, Mzuzu
3. Kamuzu Barracks, Lilongwe
4. Marine Unit, Monkey Bay
5. Support Battalion, Mvera
6. Chilumba Garrison
7. Malaŵi Defence Force College, Salima
8. Zomba Air Base
9. Lilongwe Air Base
10. Parachute Battalion, Senga Bay, Salima
11. Bakili Muluzi 9th Battalion

FIFTH SCHEDULE reg. 24

Defence Force Act

(Cap. 12:01)

Warrant Issued in Terms of Regulation 24 of the Defence Force (Imprisonment and Detention) Regulations

To: The officer in charge, civil prison at

WHEREAS (No.) ..... (rank) ..... (name) ..... (unit) ..... a member of the Regular Force, was by court-martial under the Defence Force Act convicted of the offence of .....and by a sentence promulgated on the ..... day of ..... , 20....., sentenced to be imprisoned for .... commencing on the aforesaid day, and such sentence has been confirmed.

NOW THEREFORE, I do hereby, in pursuance of regulation 24 of the Defence Force (Imprisonment and Detention) Regulations require you to receive the said member into your custody and to detain him to undergo his sentence according to the law relating in civil prisons.

Given under my hand at ..... on the ..... day of ....., 20.....

.....

Appropriate Superior Authority

DEFENCE FORCE (BOARDS OF INQUIRY) RULES

ARRANGEMENT OF RULES

RULE

1. Citation
2. Interpretation
3. Duties of boards
4. Matters for reference to boards
5. Deferring and staying of proceedings
6. Convening of board
7. Constitution of board
8. Assembly and procedure
9. Adjournment and reassembly
10. Witnesses
11. Persons who may be affected by the findings
12. Evidence
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DEFENCE FORCE (BOARDS OF INQUIRY) RULES

G.N. 51/2004

under s. 138

Citation

1. These Rules may be cited as the Defence Force (Boards of Inquiry) Rules.

Interpretation

2. In these Rules, except where the context otherwise requires—

"the authority", in relation to the board, means the Defence Council or any Defence Force officer empowered by or under these Rules to convene a board;

"board" means board of inquiry appointed under rule 7;

"chairperson" means chairperson of a board appointed under rule 7;

"civilian witness" means a person, not subject to service law, who gives evidence before a board;

"record of the proceedings", in relation to a board, includes the report of the board and any declaration or recommendation made, or opinion expressed, by the board in accordance with any directions given by the authority;

"represented" means represented by an officer or by counsel (any person entitled under the law for the time being in force to

practice as a legal practitioner in Malaŵi) and includes in the case of a civilian employee in the service of the Government representation by such person's trade union or staff association representative; and the term representative shall be construed accordingly.

Duties of boards

3. It shall be the duty of a board to investigate and report on the facts relating to any matter referred to the board under these Rules and, if directed so to do, make such declaration or recommendation or to express their opinion on any question out of any such matter.

Matters for reference to boards

4.—(1) Subject to these Rules, a board shall be convened with reference to—

(*a*) the absence of any person subject to military law under the Act who has been continually absent without leave for a period of not less than 21 days and the deficiency (if any) in the clothing, arms, ammunition or other equipment or any other public or service property issued to him for his use;

(*b*) the capture of any person subject to military law under the Act by the enemy and his conduct in captivity if, on his return from captivity, the authority considers that there are reasonable grounds for suspecting—

(i) that he was made a prisoner of war through disobedience to orders or wilful neglect of his duty;

(ii) that, having been made a prisoner of war, he failed to take any reasonable steps available to him to rejoin the Defence Force;

(iii) that, having been made a prisoner of war, he served with or aided the enemy in the prosecution of active hostilities or in the execution or furtherance of measures calculated to influence morale or in any other manner whatsoever not authorized by international conventions or usage; or

(*c*) the circumstances causing or attending the death of any person, where an injury into the cause of death, or the circumstances attending it, is not required to be held by any civil authority.

(2) A board may be convened with reference to any matter which the authority decides to refer to the board.

Deferring and staying of proceedings

5.—(1) Subject to subrule (2) where any matter is the subject of investigation under service law, or by a civil authority, or of an inquiry under service law, or of proceedings under service law, or

of proceedings in a civil court (whether within or outside Malaŵi), and if—

(*a*) a board has not been convened with reference thereto, the authority may defer the convening of a board until the completion of such investigation, inquiry or proceedings as aforesaid, and, upon completion thereof, the authority shall not be required to convene a board, if satisfied that a board is not necessary in relation to that matter; or

(*b*) a board has already been convened with reference thereto, the authority may stay the proceedings of the board until such investigation, inquiry or proceedings as aforesaid have been completed, and shall then dissolve the board, if satisfied that a board is not necessary in relation to that matter.

(2) Subrule (1) shall not apply to the convening of a board with reference to such absence or such deficiency (if any) as are mentioned in rule 4 (1) (*a*) but, where the authority is satisfied that the absence has terminated, or where the absentee is attached to other legally constituted military forces, and the authority is satisfied that an inquiry into the absence is being or will be held under service law, then—

(*a*) if a board has not yet been convened with reference to such absence or deficiency (if any), the authority shall not be required to convene a board; or

(*b*) if a board has already been convened with reference thereto, the authority may forthwith dissolve the board.

Convening of board

6.—(1) A board of inquiry may be convened by order of—

(*a*) the Defence Council;

(*b*) any officer not below the rank of lieutenant colonel;

(*c*) any officer who is acting for the time being in place of such an officer; or

(*d*) any officer commanding a unit or detachment of the Defence Force, with reference to such absence or such deficiency (if any) as are mentioned in rule 4 (1) (*a*); or if so authorized by the Defence Council or by any such officer as is mentioned in paragraph (*b*) or (c), with reference to any particular matter or to matters of any specified class or description.

(2) The following provisions shall apply in relation to the order of convening a board—

(*a*) the order shall specify the composition of the board and the place and time at which the board shall assemble;

(*b*) the order shall specify the terms of reference of the board, and where the matter referred to the board is that mentioned in rule 4 (1) (*a*) the order shall be published in military orders;

(*c*) the order may direct the board to make a declaration or recommendation or express their opinion on any question arising out of any matter referred to the board; and

(*d*) the authority may at any time revoke, vary or suspend the order.

Constitution of board

7.—(1) Subject to subrule (2), a board shall consist of a chairperson who shall be an officer subject to service law not below the rank of lieutenant. In addition such other officers or warrant officers subject to service law may be appointed as members of the board as the authority convening the board may determine and appoint in the order convening the board.

(2) Where a board is convened with reference to such absence or deficiency (if any) as are mentioned in rule 4 (1) (*a*), the board shall consist of a chairperson who shall be an officer not below the rank of captain subject to service law, and two members subject to service law, one of whom may be a warrant officer.

(3) The authority shall appoint the chairperson by name and the other members of the board (if any), either by name, or by detailing a commanding officer to appoint from persons under his command an officer or warrant officer of a specified rank.

Assembly and procedure

8.—(1) A board shall assemble at the time and place specified in the order convening the board.

(2) The chairperson shall lay the terms of reference before the board and the board shall proceed to hear and record the evidence in accordance with these Rules.

Adjournment and reassembly

9.—(1) The chairperson may from time to time adjourn the board which shall sit on such occasions and in such places as he may from time to time direct.

(2) Without prejudice to subrule (1), the authority may at any time, if it appears necessary or desirable, direct that the board shall reassemble for such purpose or purposes (in relation to the matter that is the subject of the inquiry) as may be specified by the authority.

Witnesses

10.—(1) A board shall hear the evidence of the witnesses who have been made available by the authority and may hear the evidence of such other persons as they think fit.

(2) While a civilian witness is giving evidence before a board he may be represented, but, subject to rule 11, his representative shall not be entitled to be present at any other time.

(3) A civilian witness shall be entitled to receive the reasonable expenses of his attendance and a reasonable allowance in respect of loss of time.

Persons who may be affected by the findings

11.—(1) Where it appears to the authority or, if a board has been convened, either to the authority or to the chairperson, that any witness or other person, being a witness or other person subject to service law, may be affected by the findings of the board, the authority or, as the case may be, the chairperson shall take such steps as are in his view reasonable and necessary to secure that such witness or such other person has notice of the proceedings and, if he so desires, has an opportunity of being present, and represented, at the sittings of the board, or at such part of the proceedings thereof as the authority or, as the case may be, the chairperson may specify.

(2) Any such witness or other person as is referred to in subrule (1) may give evidence, cross-examine witnesses, or produce any witness to give evidence on the matters which may affect him and, if he is represented, his representative may cross-examine witnesses, but a representative shall not address the board except with the permission of the chairperson.

(3) This rule shall also apply to a witness or other person who, though not subject to service law, is in the service of the Government and who may be affected in his character or professional reputation by the findings of the board.

(4) If any such witnesses, or other person as is referred to in subrule (1) and subrule (3), does not avail himself of his right to be present, or to be represented at the sittings of the board, the chairperson may, and shall if requested by such a person as aforesaid, take all necessary measures to ensure that, upon the conclusion of the proceedings of the board, such person as aforesaid is supplied with a copy of the record of the proceedings before such record is forwarded to the authority who convened the board; and in such event, the chairperson shall request such person as aforesaid to furnish in writing his comments thereon within a reasonable time to be fixed by the chairperson. Such comments shall then be attached to the record of the proceedings.

Evidence

12. A board may receive any evidence which they consider relevant to the matter referred to the board, whether oral or written, and whether or not it would be admissible in proceedings in a court of law in Malaŵi.

Oaths and affirmations

13.—(1) Subject to subrule (4) every witness before a board convened under rule 4 (1) shall be examined on oath in accordance with rule 33 of the Defence Force (Rules of Procedure).

(2) Subject to subrule (4) every witness before a board shall be examined on oath where the convening authority so directs:

Provided that where a child of tender years called as a witness does not in the opinion of the board understand the nature of an oath, his evidence may be received, though not given on oath, if in the opinion of the board he is possessed of sufficient intelligence to justify the reception of the evidence, and understands the duty of speaking the truth.

(3) Subject to subrule (4), an oath shall be administered to a person in attendance on a board as interpreter where a witness is examined on oath.

(4) If—

(*a*) any person objects to taking an oath, and states as the ground of his objection either that he has no religious belief or that the taking of an oath is contrary to his religious belief;

(*b*) it is not reasonably practicable without inconvenience or without delaying the proceedings to administer an oath to a person in the manner appropriate to his religious belief,

he shall he permitted to make a solemn affirmation instead of taking an oath.

(5) An oath shall he administered, or an affirmation shall be made, before a board in the form and manner prescribed by the Defence Force (Rules of Procedure).

Exhibits

14.—(1) Subject to subrule (2), any document or thing produced to a board by a witness when giving his evidence shall be made an exhibit in the proceedings.

(2) Where an original document or book is produced to a board by a witness, the board may at the request of the witness compare a copy of it or an extract therefrom of the relevant parts with the original and, after they have satisfied themselves that such copy or extract is correct and the chairperson has certified thereon that the board has compared it with the original and found it correct, the board may return the document or book to the witness and attach the copy or extract to the record of the proceedings as an exhibit.

(3) Every exhibit shall—

(*a*) be marked with a distinguishing reference number or letter and be signed by the chairperson, or have a label affixed to it

bearing a distinguishing reference number or letter and the signature of the chairperson; and

(*b*) be attached or kept with the record of the proceedings unless in the opinion of the board it is not expedient to attach it to or keep it with the record.

(4) When an exhibit is not attached to or kept with the record of the proceedings under subrule (3) (*b*), the chairperson shall ensure that proper steps are taken for its safe custody.

Record of proceedings

15.—(1) The chairperson shall record in writing, or cause to be so recorded, the proceedings of the board and in sufficient detail as to constitute a true, full and correct record as will follow the course, tenor and effect of the proceedings.

(2) Where there is no shorthand writer present, the evidence shall be taken down in narrative form recording as nearly as possible the words used:

Provided that, if the board consider it necessary, any particular question and answer shall be taken down verbatim.

(3) The evidence of each witness, as soon as it has been taken down in accordance with subrule (2), shall be read over to him and shall be signed by him.

(4) A record of proceedings shall be signed by the chairperson and other members of the board and forwarded to the authority.

Entries of reports in service books

16. Where a board reports that a person subject to military law has been absent without leave or other sufficient cause for a period specified in the report, not being less than twenty-one days, and that there is deficiency in any clothing, arms, ammunition or other equipment or any other public or service property issued to him for his use, a record of the report of such deficiency shall, in addition to a record of the report of such absence required under section 130 (1) of the Act, be entered in accordance with Defence Council instructions in the service books.

Free copy of proceedings

17. A person remanded for trial by court-martial in respect of any matter which has been investigated by a board shall be entitled to a free copy of the record of the proceedings of the board, but not including any report, declaration, opinion or recommendation made therein.

G.N. 52/2004

DEFENCE FORCE (MEDICAL AND PENSIONS BOARDS) REGULATIONS

under s. 241

Citation

1. These Regulations may be cited as the Defence Force (Medical and Pensions Boards) Regulations.

Interpretation

2. In these Regulations, unless inconsistent with the context—

"medical practitioner" means a person registered as a medical practitioner under any law having effect in Malaŵi;

"Pensions Appeal Board" means the Defence Force Pensions Appeal Board established by regulation 5 (1);

"Pensions Board" means the Defence Force Pensions Board established by regulation 4 (1);

"private medical practitioner" means any medical practitioner other than a medical officer in the Regular Force or Militia or a medical officer of the Ministry of Health;

"Secretary for Defence" means the person who is for the time being the Principal Secretary of the Ministry of Defence;

Medical boards

3.—(1) The Secretary for Defence may from time to time, at the request of the Commander, constitute a medical board for the purpose of examining and reporting upon the state of health of one or more members of the Defence Force.

(2) A medical board constituted under subregulation (1) shall consist of the Director of Medical Services and two other medical practitioners appointed by the Secretary for Defence in consultation with the Secretary for Health.

(3) A medical board for the purpose of making a finding on the question whether a member of the Defence Force is mentally or physically unfit for further service shall be constituted in the manner prescribed in subregulations (1) and (2).

(4) The Commander may at any time order a member of the Defence Force to present himself for and to submit to a medical examination by a medical board.

Defence Force pensions Board

4.—(1) There shall be established the Defence Force Pensions Board.

(2) The Pensions Board shall consist of not less than three members who shall be appointed by the Secretary for Defence and representing—

(*a*) the Ministry of Defence who shall be the chairperson;

(*b*) the Defence Force;

(*c*) the department of Human Resource Management and Development; and

(*d*) the Accountant General's department.

(3) In the absence of the chairperson at any meeting of the Board, the members present shall elect one of their number to be the chairperson for that meeting.

(4) A majority of the members shall form a quorum at any meeting of the Pensions Board.

(5) On any question before the Pensions Board the chairperson shall have a deliberative vote and, in the event of an equality of votes, shall also have a casting vote.

(6) The Pensions Board may co-opt any person to be a member of the Board with regard to certain matters but such person shall have no power to vote.

(7) The Pensions Board shall have power to determine its own procedure for the conduct of its business.

Defence Force Pensions Appeal Board

5.—(1) There shall be established the Defence Force Pensions Appeal Board.

(2) The Pensions Appeals Board shall consist of not less than three members who shall be appointed by the Defence Council and may include persons who are not members of the Defence Force or who are not members of the Ministry of Defence.

(3) The Defence Council shall appoint one of the members of the Pensions Appeals Board to be the chairperson of the Board.

(4) In the absence of the chairperson at any meeting of the Pensions Appeal Board, the members present shall elect one of their number to be the chairperson for that meeting.

(5) A majority of the members shall form a quorum at any meeting of the Pensions Appeal Board.

(6) On any question before the Pensions Appeal Board the chairperson shall have a deliberative vote and, in the event of an equality of votes, shall also have a casting vote.

(7) If a member of the Pensions Appeal Board is prevented by illness, absence from Malaŵi or any other reason whatsoever from exercising his functions on that Board, the Defence Council may appoint another person to act for such member during his absence.

(8) The Pensions Appeal Board shall have power to determine its own procedure for the conduct of its business.

Vocational Boards

6.—(1) The Secretary for Defence may from time to time, at the request of the Commander, constitute a vocational board for the purposes of considering a case referred to it by the Pensions Board in respect of a disabled member of the Defence Force.

(2) A vocational board shall consist of—

(*a*) a representative of the Ministry of Defence who shall be the chairperson;

(*b*) a medical practitioner appointed by the Secretary for Health;

(*c*) the Director of Personnel in the Defence Force; and

(*d*) a vocational training specialist appointed by the Secretary for Labour.

(3) A vocational board shall investigate any case or application referred to it under subregulation (1) and shall submit a report thereon to the Pensions Board for the purposes of determining whether a disabled member should undergo vocational training and receive additional pension or allowance.

(4) A majority of the members shall form a quorum at any meeting of the vocational board.

(5) A vocational board shall have power to determine its own procedure and to co-opt any person to assist it in its deliberations.

Functions of the Boards

7. A board established or constituted by or under these Regulations shall have such powers as are conferred and shall perform such duties as are imposed upon it by the Act or by regulation.

DEFENCE FORCE (SUMMARY JURISDICTION) REGULATIONS

ARRANGEMENT OF REGULATIONS

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2. Interpretation
3. Commanding officer when more than one unit is placed under the command of one officer
4. Delegation of his powers by commanding officer
5. Status of officers to whom the commanding officer has delegated powers
6. Charges with which a commanding officer may deal summarily

REGULATION

7. Restriction on power of punishment of commanding officer
8. Limitation of punishment of acting ranks, etc.
9. Charges with which the Commander or appropriate superior authority may deal summarily
10. Limitation of powers of commanding officer of field rank
11. Limitation of powers of commanding officer below field rank
12. Limitation of powers of subordinate commanders
13. Limitation of powers of detachment commanders
14. Punishment of stoppages
15. Powers of appropriate superior authority to reduce in rank

DEFENCE FORCE (SUMMARY JURISDICTION) REGULATIONS

G.N. 53/2004

under s. 241

Citation

1. These Regulations may be cited as the Defence Force (Summary Jurisdiction) Regulations.

Interpretation

2. In these Regulations, unless the context otherwise requires—

"pay" means basic rate of pay plus allowances other than marriage allowance, housing allowance and ration allowance;

"subordinate commander" means, except where otherwise expressly provided, the officer commanding a company or equivalent sub-unit.

Commanding officer when more than one unit is placed under the command of one officer

3. When a unit or a detachment is placed for disciplinary purposes under the command of the commanding officer of another unit or detachment, that officer is the commanding officer of a member of the unit or detachment so placed under his command who is charged with an offence, and the officer commanding the latter unit or detachment is a subordinate commander for the purposes of these Regulations.

Delegation of his powers by commanding officer

4.—(1) Subject to regulation 11, a commanding officer may delegate to a subordinate commander, whatever his rank may be, who is under his command and directly responsible to him in relation to disciplinary matters, the power to investigate and deal summarily with charges with which he himself may so deal:

Provided that such delegation shall not include—

(*a*) the power to remand the accused for trial by court-martial; or

(*b*) the power to order the taking of a summary of evidence or the making of an abstract of evidence.

(2) When a commanding officer delegates the power to investigate and deal summarily with charges in accordance with subregulation (1) he may, in addition to the restrictions imposed by the said regulation 11, impose such further restrictions as seem to him to be proper upon the exercise of that power by the officer to whom it is delegated.

Status of officers to whom the commanding officer has delegated powers

5. An officer who has had delegated to him by his commanding officer under regulation 4 (1) power to investigate and deal summarily with charges, is, while exercising such power in respect of any person, the commanding officer of that person for the purposes of the Act.

Charges with which a commanding officer may deal summarily

6. A commanding officer may deal summarily with a charge under any of the following sections of the Act: 38; 39 (*c*); 42; 43 (2); 44; 45; 47; 48; 49; 50; 51 (1) (*a*); 52; 53 (1) (*a*), (*c*), (*d*), (2); 54 (*a*), (*c*); 55; 63; 64 (2); 65; 66; 69; 70; 71; 73; 76 (where the principal offence can be dealt with summarily by virtue of this regulation); 77 and 80 (where the civil offence is one which is specified in the Schedule to these Regulations).

Restriction on power of punishment of commanding officer

7. A commanding officer shall not award—

(*a*) punishment of detention where the charge is laid under section 80 of the Act and the civil offence is one of those referred to in items (3), (4) or (5) of the Schedule; or

(*b*) the punishment of stoppages exceeding one-half of a month's pay in case of a warrant officer or any lower rank than a warrant officer without written permission from the appropriate superior authority.

Limitation of punishment of acting ranks, etc.

8.—(1) After a corporal or lance-corporal has been reduced to a lower rank in accordance with section 88 (5) of the Act, his commanding officer shall not, without the written permission of the appropriate superior authority, award him any punishment in respect of an offence which he had committed before he was so reduced.

(2) After an acting warrant officer or acting non-commissioned officer has been converted to his permanent rank or ordered to assume an acting rank lower than that held by him but higher than his permanent rank in accordance with section 88 (4) of the Act,

his commanding officer shall not, without the written permission of the appropriate superior authority, award him any punishment in respect of an offence which he had committed before he was so reverted, or, as the case may be, ordered to assume a lower acting rank.

Charges with which the Commander or appropriate superior authority may deal summarily

9. The Commander may deal summarily with a charge against an officer of the rank of colonel and above, and an appropriate superior authority may deal summarily with a charge against an officer below the rank of colonel or against a warrant officer under any of the following sections of the Act—

38; 39 (*c*); 42; 43 (2); 44; 45; 47; 48; 49; 50; 51 (1) (*a*); 52; 53 (1) (*a*) (where the subject matter does not exceed in value two thousand Kwacha); 55; 63; 64 (2); 65; 66; 69; 70; 71; 73; 76 (where the principal offence can be dealt with summarily by virtue of this regulation); 77 and 80 (where the civil offence is one which is specified in the Schedule).

Limitation of powers of commanding officer of field rank

10. A commanding officer of field rank may award any of the following punishments—

(*a*) to a second lieutenant or lieutenant—

(i) a fine of a sum not exceeding the equivalent of one month pay;

(ii) severe reprimand;

(iii) reprimand; and

(iv) stoppages (of pay) not exceeding seven days pay.

(*b*) to a soldier—

(i) imprisonment for a period not exceeding forty-two days;

(ii) a fine not exceeding a quarter of month pay;

(iii) admonition;

(iv) stoppages (of pay) not exceeding seven days pay; and

(v) any other minor field punishment.

Limitation of powers of commanding officer below field rank

11. A commanding officer of the rank of captain or of corresponding rank may only award the following punishments to a private soldier—

(*a*) imprisonment for a period of not exceeding twenty-eight days;

(*b*) a fine not exceeding a quarter of one month pay;

(*c*) admonition;

(*d*) stoppages (of pay) up to four days pay;

(*e*) any other minor field punishment.

Limitation of powers of subordinate commanders

12. A subordinate commander of the rank of major or of a corresponding rank to whom the power to investigate and deal summarily with charges has been delegated under regulation 4 may only award the following punishments—

(*a*) to a non-commissioned officer—

(i) a fine not exceeding the equivalent of one month pay;

(ii) severe reprimand;

(iii) reprimand;

(iv) admonition;

(*b*) to a private soldier—

(i) imprisonment for a period not exceeding twenty-one days;

(ii) a fine not exceeding the equivalent of one-half of one month pay;

(iii) admonition; and

(iv) other minor field punishment.

(2) A subordinate commander of the rank of captain or corresponding rank to whom the power to investigate and deal summarily with charges has been delegated under regulation 4 may only award the following punishments—

(*a*) to a staff sergeant or sergeant—

(i) reprimand;

(ii) admonition;

(*b*) to a corporal or lance-corporal—

(i) a fine not exceeding the equivalent of a quarter of one month pay;

(ii) severe reprimand;

(iii) reprimand;

(iv) admonition;

(*c*) to a private soldier—

(i) imprisonment for a period not exceeding fourteen days;

(ii) a fine not exceeding the equivalent of a quarter of one month pay;

(iii) admonition; and

(iv) any other minor field punishment.

Limitation of powers of detachment commanders

13.—(1) The officer commanding a detachment may be restricted from exercising all or any of his powers as commanding officer under these Regulations by the Commander if it appears necessary to do so, having regard to the rank and experience of the officer commanding the detachment.

(2) Where an officer commanding a detachment has had his powers restricted in accordance with subregulation (1), he may, notwithstanding such restricted powers, exercise his full and unrestricted powers as a commanding officer if it becomes necessary for him to do so for the maintenance of discipline, but if he does so use such full and unrestricted powers, he shall immediately report his action to the Commander or appropriate superior authority.

Punishment of stoppages

14. The appropriate superior authority shall not award the punishment of stoppages (of pay)—

(*a*) exceeding one-half of a month's pay in the case of an officer below the rank of colonel; and

(*b*) exceeding one-third of a month's pay in the case of a warrant officer, non-commissioned officer or private soldier.

Powers of appropriate superior authority to reduce in rank

15. For the purposes of section 28 of the Act, the appropriate superior authority is authorized to order a reduction in rank in respect of any warrant officer or any non-commissioned officer.

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4. Reckless or negligent driving of a vehicle contrary to section 126 of the Road Traffic Act. Cap. 69:01
5. Unauthorized acts in relation to a vehicle without the consent of the owner, operator or person in lawful charge of a vehicle contrary to section 129 of the Road Traffic Act.

DEFENCE FORCE (REGULAR FORCE) (OTHER RANKS) REGULATIONS

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DEFENCE FORCE (REGULAR FORCE) (OTHER RANKS) REGULATIONS

G.N. 54/2004

under s. 241

PART I
Preliminary

1. These Regulations may be cued as the Defence Force (Regular Force) (Other Ranks) Regulations. Citation

2. In these Regulations except where the context requires— Interpretation

"catechist" means a member appointed as a catechist in the Defence Force.

"child", in relation to a member, means an unmarried son or daughter, under the age of eighteen years, of that member with a recognized spouse;

"colour service" means service in the Regular Force;

"dental officer" means—

(*a*) an officer appointed as a dental officer in the Regular Force;

(*b*) a dental surgeon of the Ministry of Health; or

(*c*) any other person registered in Malaŵi as a dentist and authorized by the Minister to carry out the functions of a dental officer under these Regulations.

"dependant", in relation to a living or deceased member or other person, means such persons as, in the opinion of the Minister, are or were financially dependent on that member or person;

"disabled member" means a member or person who was a member, who is suffering from disablement which is attributable to, or which has been aggravated by military service without any misconduct or serious negligence on the part of the member;

"the Force" means the Regular Force of the Defence Force;

"the Government" means the Government of Malaŵi;

"gratuity" means a lump sum payment calculated in accordance with regulation 60;

"leave", in relation to a member, means leave of absence from the duties of that matter;

"medical board" means a medical board constituted under regulation 3 of the Defence Force (Regular Force) (Other Ranks) Regulations;

"medical officer" means—

(*a*) an officer appointed as a medical officer in the Force;

(*b*) a medical officer of the Ministry of Health;

(*c*) any other person registered in Malaŵi as a medical practitioner and authorized by the Minister to carry out the functions of a medical officer under these Regulations;

"medical practitioner" means a person registered as a medical practitioner in Malaŵi under any law;

"member" means a warrant officer, a non-commissioned officer or soldier attested in the Force;

"officer" means an officer commissioned or attested in or attached or seconded or loaned to or serving with the Force, but does not include any person who is—

(*a*) appointed to honorary commissioned rank; or

(*b*) the holder of an honorary appointment;

"official quarters" means quarters provided by the Government;

"other employment in the service of the Government or a cooperating force" means pensionable employment, otherwise than as a member of the Defence Force, under the Government of a cooperating force;

"pay" means the basic rate of pay plus service and rank increments;

"pension" means an annual pension payable during the lifetime of the recipient unless, in terms of these Regulations, it is payable for a shorter period;

"pensionable emoluments", in relation to a member, means the pay due to that member under these Regulations, together with any cash allowance paid to him in lieu of rations or the value of such rations;

"pensionable service" means pensionable service in accordance with regulation 61;

"Pensions Appeal Board" means the Defence Force Pensions Appeal Board established by regulation 5 of the Defence Force (Medical and Pensions Boards) Regulations;

"Pensions Board" means the Defence Force Pensions Board established by regulation 4 of the Defence Force (Regular Force) (Other Ranks) Regulations;

"private medical practitioner" means any medical practitioner other than a medical officer;

"recognized spouse", in relation to a member, means a spouse of that member recognized for the purposes of these Regulations by the commanding officer of his unit;

"resignation", in relation to a member, means resignation from his employment in the Defence Force under regulation 8 and "resign" shall be construed accordingly;

"retirement", in relation to a member, means retirement from his employment in the Defence Force under regulation 9 and "retire" shall be construed accordingly;

"retiring pensionable emoluments", in relation to a member who retires, is discharged or dies, means the annual rate of pensionable emoluments receivable by him at the date on which his retirement or discharge takes effect or on which he dies, as the case may be;

"service" means service in the Defence Force, and "serve" shall be construed accordingly;

"service property" means any property of the Defence Force or of any mess or other institution, organization or association whatsoever of officers or members of the Defence Force;

"surviving spouse", in relation to a deceased member, means a recognized spouse of the member, but does not include a person who was separated, whether by order of court or otherwise, from the member at the date of his death;

"training" means a course of training within or outside Malaŵi approved by the Defence Force.

"unit", in relation to a member, means the unit in which that member is serving.

Non-application of these Regulations

3. These Regulations shall not apply to—

(*a*) a member who is attached or seconded to any other military forces outside Malaŵi by virtue of section 9 of the Act, unless the terms and conditions of his attachment or secondment as fixed or approved by the Minister provide that these Regulations, or any of them, shall apply;

(*b*) any member of any other military force who has been loaned or seconded for service with the Force by virtue of an agreement for that purpose entered into between the Government and the Government of the other country concerned, or between the Government and any international organization, unless the agreement provides that these Regulations, or any of them, shall apply: or

(*c*) a member serving with the Force by virtue of a contract of service entered into between that member and the Government for service with the force, unless the contract provides that these Regulations, or any of them, shall apply.

Application of M.P.S.R.

4. Where no provision is contained in these Regulations in respect of any matter for which provision is made and in force in the Malaŵi Public Service Regulations, the said provision of the Malaŵi Public Service Regulations shall, in respect of such matter, apply *mutatis mutandis* to such persons as are subject to these Regulations, and shall so apply in like manner and extent as if the said provision of the Malaŵi Public Service Regulations were a provision of these Regulations.

PART II
Engagement, Promotion and Discharge

Classes of engagement

5. For the purposes of these Regulations, there shall be the following classes of engagement of members in the Force—

(*a*) initial engagement;

(*b*) permanent engagement; and

(*c*) short service engagement.

Engagement of members

6.—(1) The Commander may, on the terms and conditions prescribed by these Regulations, engage persons for service as members on initial engagements.

(2) On the application of a person engaged for service as a member on an initial engagement who has completed the period of his engagement the Commander may, on the terms and conditions prescribed by these Regulations, engage such person for service as a member on a permanent engagement.

(3) A person engaged for service as a member under this regulation may be appointed by the Commander to such rank, other than commissioned rank, as he determines.

(4) Every member who, immediately prior to the date of commencement of these Regulations was serving—

(*a*) on an unexpired engagement of seven years or five years shall be deemed to have been engaged under subregulation (1) for service on an initial engagement;

(*b*) on an unexpired continuous engagement shall be deemed to have been engaged under subregulation (2) for service on a permanent engagement.

(5) Members of the same rank shall take seniority from the date of their enlistment. Seniority among them by rank shall be in the following order—

(*a*) Sergeant Major (WO Class I)

(*b*) Sergeant Major (WO Class II)

(*c*) Staff Sergeant

(*d*) Sergeant;

(*e*) Corporal;

(*f*) Lance corporal

(*g*) Private

(6) Notwithstanding other provisions of this regulation, no person shall be eligible to be engaged as a member under these Regulations if he has served as a member of the Militia.

Period of engagement

7. Subject to these Regulations, the period of engagement of a member who is engaged for service—

(*a*) on an initial engagement shall be seven years colour service and five years with the Reserve Force;

(*b*) on a short service engagement shall be a period of up to five years;

(*c*) on a permanent engagement, shall be continuous until the member attains the age of fifty-five years.

Restriction of right to resign or retire from Regular Force

8. No member shall be at liberty to resign or retire from his employment in the Force during his period of engagement except as provided by regulation 9 or 10.

Resignation and right of soldier to purchase discharge

9.—(1) A member engaged for service on an initial engagement may, with the consent of the Commander, resign or purchase his discharge from his employment in the Force during his period of engagement—

(*a*) at any time within three months after the date of his first attestation upon payment of a seven days pay for each uncompleted year of service with the Force;

(*b*) at any time during his initial engagement after the first three months with the consent of the Commander upon payment of fifteen days pay for each uncompleted year of service with the Regular Force.

(2) The Commander shall not consent to the resignation of a member in terms of subregulation (1) where section 22 of the Act applies.

(3) A member engaged for service on a permanent engagement who is not entitled or required to retire from his employment in the Force in terms of regulation 10 may resign from his employment in the Force during his period of engagement if—

(*a*) he gives three months' notice in writing to the Commander of his intention to do so, or any shorter period of such notice

which the Commander, having due regard to the best interests of the Force, may deem proper to accept; and

(*b*) he pays to the Government any amount which he is liable to pay thereto under these Regulations—

Provided that no such notice shall be valid if it is given while the member is—

(*a*) on leave;

(*b*) on active service; or

(*c*) where section 22 of the Act applies.

Retirement

10.—(1) A member whose pensionable service amounts to fifteen years may retire; from his employment in the Force on giving three months' notice in writing to the Commander of his intention to do so and on paying to the Government any amount which he is liable to pay to the Government in terms of these Regulations:

Provided that no such notice shall be valid if it is given while the member is—

(*a*) on leave;

(*b*) on active service; or

(*c*) where section 22 of the Act applies.

(2) The Minister may, on notice of twelve months, require a member whose pensionable service amounts to fifteen years to retire from his employment in the Force.

(3) A member shall, whatever the length of his pensionable service, retire from his employment in the Force on attaining the age of fifty-five years.

Re-engagement gratuity

11.—(1) A member who, after completing the period of his initial engagement, is engaged for service on a permanent engagement and agrees, at the date on which he is engaged for service on a permanent engagement or within three years thereof, to serve for a period of three years calculated from the date on which he so agrees shall be paid a gratuity equal to—

(*a*) ninety days' pay at the daily rate of pay which was applicable to him on the last day of his initial engagement; and

(*b*) if he was, on the last day of his initial engagement, in receipt of a marriage allowance, ninety days' marriage allowance.

(2) A member who has been paid a gratuity under subregulation (1) and who resigns or retires from his employment in the Force before the expiry of the period for which he has agreed to serve

shall be liable to pay to the Government a sum calculated in accordance with the following provisions—

(*a*) if his resignation or retirement takes effect before the expiry of one year of the period for which he has agreed to serve, the whole amount of the gratuity;

(*b*) if his resignation or retirement takes effect after the expiry of one year but before the expiry of two years of the period for which he has agreed to serve, two-thirds of the amount of the gratuity; and

(*c*) if his resignation or retirement takes effect after the expiry of two years but before the expiry of the whole period for which he has agreed to serve, one-third of the amount of the gratuity.

Gratuity on non-re-engagement

12. A member who, after completing the period of his initial engagement, is not re-engaged for service, shall be entitled to a gratuity calculated at one month's basic pay at the time of discharge for each year completed.

Promotions and making of appointments

13. The Commander may—

(*a*) promote or temporarily appoint a member to any rank other than Commissioned rank; and

(*b*) appoint a member to act in any higher rank other than commissioned rank.

Discharge certificate

14.—(1) If—

(*a*) the period of engagement of a member has expired and he is not re-engaged for further service; or

(*b*) a member resigns under these Regulations or is, under section 26 or 82 of the Act, discharged or dismissed from the Force,

he shall be issued with a discharge certificate signed by the Commander setting forth the following particulars—

(i) his name;

(ii) the length of his service in the Force;

(iii) his rank and character at the date of resignation, discharge or dismissal as the case may be:

Provided that no character assessment shall be made for members discharged for disciplinary reasons under section 22 or 71 of the Act.

(2) In no circumstances shall a duplicate of a discharge certificate be issued, but a certified copy of a discharge certificate alleged to have been lost or destroyed may be supplied to the

person to whom it relates on production of adequate proof of its loss or destruction, as the case may be.

Discharge of recruits

15. A person undergoing basic military training as a recruit may be discharged by the appropriate superior authority at any time during the course of training—

(*a*) on the ground of any act of indiscipline;

(*b*) for unsatisfactory performance; or

(*c*) if for any reason given to him in writing, he is considered to be unfit to be a member of the Defence Force.

PART III
Pay and Allowances

Pay

16. Subject to these Regulations, a member shall be entitled to receive pay at such rates as may be determined by the Minister.

Pay on promotion

17.—(1) When a member is temporarily appointed to higher rank, the rate of pay applicable to him shall, during the subsistence of his temporary appointment, be the rate prescribed for that higher rank.

(2) When a member is appointed to act in a higher rank, the rate of pay applicable to him shall be that which was applicable to him immediately before he was appointed.

(3) For the purpose of this regulation an appointment to higher rank includes an appointment to a higher class within the same rank.

Trade pay allowances

18.—(1) The Commander may institute such tests as he may consider necessary for the purpose of classifying members in trade groups according to their standards of efficiency in a trade.

(2) A member who is successful in passing a test instituted in terms of subregulation (1) shall be classified accordingly and shall, if he is thereafter employed as a tradesman, be paid a trade pay allowance at the rate prescribed in the First Schedule for a member classified in the trade group which is applicable to him.

First Schedule

Marriage allowance

19.—(1) A married member who is maintaining a recognized spouse shall be paid a marriage allowance at the rate of twenty-four per cent of one month basic pay.

(2) If the recognized spouse of a member dies and that member is maintaining a child, the member shall be paid a marriage allowance at the rate of twenty-four per cent of one month basic pay.

(3) The Commander may direct that an allowance payable under subregulation (1) shall instead of being paid to the member, be paid to his recognized spouse.

Special marriage allowance when serving on duty outside Malaŵi

20.—(1) A married member who has unrecognized spouse shall be paid a special marriage allowance in respect, of the spouse and each child when serving on duty outside Malaŵi or when outside Malaŵi for the purpose of attending an approved course of study, training or instruction, or for any other approved purposes connected with the duties of his employment.

(2) The special marriage allowance under subregulation (1) shall be paid at such rates as the Minister shall determine in respect of the spouse and each child.

(3) A special marriage allowance shall not be paid—

(*a*) in addition to marriage allowance;

(*b*) in respect of either spouse who is a member and is on such duty or course at the same time as the other spouse;

Warm clothing allowance

21.—(1) A member proceeding on training or a course of instruction or on duty to a cold climate country shall be entitled to be paid a warm clothing allowance as may be determined by the Minister from time to time:

Provided that a period of three years shall elapse before the member qualifies for another entitlement to such allowance.

(2) For the purposes of this regulation, cold climate country is one which lies wholly or principally outside the latitude of 30 degrees north or south of the Equator.

Field allowance

22. A member shall, in respect of any period during which he serves on active duty and any such other period as the Minister may determine, be paid field allowance as the Minister may determine from time to time.

Disturbance allowance

23. A member who is posted on transfer not at his own request shall be entitled, where he is a house-holder and he is obliged to transfer his household effects, to an allowance equivalent to—

(*a*) $\frac{1}{30}$th of his monthly pay if the transfer is from one station to another; and

(*b*) $\frac{1}{60}$th of his monthly pay if the transfer is local.

Rations

24. A member shall be issued with free rations or be paid a cash allowance in lieu thereof as determined by the Minister.

Regimental sergeant-major's allowance

25. A Member who holds—

(*a*) the appointment of Defence Force sergeant-major shall be paid an allowance at the rate of twenty per cent of one month basic pay;

(*b*) the appointment of brigade sergeant-major shall be paid an allowance at the rate of eighteen per cent of one month basic pay;

(*c*) the appointment of—

(i) regimental sergeant-major;

(ii) garrison sergeant-major,

shall be paid an allowance at the rate of fifteen per cent of one month basic pay; and

(*d*) the appointment of company sergeant-major or equivalent appointment, shall be paid an allowance at the rate of twelve per cent of one month basic pay.

No pay or allowances in certain circumstances

26. Notwithstanding these Regulations, a member shall not be paid any pay or allowances in respect of any period which—

(*a*) he is undergoing a sentence of imprisonment, detention or field punishment imposed under the Act by a court-martial, prescribed officer or civil court; or

(*b*) he is being treated as an in-patient at a hospital for an illness or injury if—

(i) he has been convicted by a court-martial, prescribed officer or civil court of an offence under the Act; and

(ii) a medical officer certifies that his illness or injury has been occasioned by such offence; or

(*c*) he is absent in circumstances constituting the offence of deserting or absenting himself without leave:

Provided that a marriage allowance payable under regulation 19 or 20 shall be paid in respect of—

(i) the first twenty-eight days of any period during which the member is undergoing any such sentence of imprisonment, detention or field punishment;

(ii) the first twenty-eight days of any period during which the member is being so treated as an in-patient at a hospital;

(iii) the first seven days of any period during which the member is so absent.

Deductions from pay and allowances

27.—(1) The commanding officer or appropriate superior authority may authorize the deduction from the pay and allowances due to a member in terms of these Regulations of—

(*a*) any liquidated amount which that member is liable to pay to the Government or to any mess, institution, organization or association whatsoever of members of the Defence Force;

(*b*) any amount which that member has previously been paid in pay and allowances in excess of the amount which is due to him in terms of these or any other Regulations.

(2) If, after examining the proceedings of any board of inquiry, the commanding officer or appropriate superior authority is satisfied—

(*a*) that loss or destruction of or damage to Government property or service property has been occasioned by the deliberate or negligent act of a member; and

(*b*) that such member will not be charged before a court-martial, appropriate superior authority or civil court with an offence under the Act arising out of such loss, destruction or damage,

he may authorize the deduction from the pay and allowance due to such member in terms of these or any other Regulations of such amount, not exceeding—

(i) the value of the loss, destruction or damage; or

(ii) 10 per cent of his monthly pay,

whichever is the less, as in the circumstances he may deem equitable compensation for the loss, destruction or damage.

(3) Any member from whose pay and allowance a deduction has been made in terms of subregulation (2) may, within the period of fourteen days immediately following the date when the deduction was made, appeal in writing to the Minister through his commanding officer or appropriate superior authority, against such deduction and the Minister may confirm, modify or set aside the deduction.

PART IV
Leave

Classification of leave

28. For the purposes of this Part, leave shall be divided into the following classes—

(*a*) study leave;

(*b*) vacation leave;

(*c*) sick leave;

(*d*) compassionate leave;

(*e*) embarkation leave;

(*f*) disembarkation leave;

(*g*) travel leave; and

(*h*) maternity leave.

Persons empowered to grant leave, pay and allowances during leave

29.—(1) The commanding officer or appropriate superior authority, may in accordance with this Part, grant that member leave of any class other than compassionate leave.

(2) Where the commanding officer or appropriate superior authority of a member's unit has granted leave to the member under subregulation (1), he may authorize the payment in advance of the whole or any part of the pay and allowances due to the member in respect of a period of leave granted to him.

(3) Where a period of leave with pay is granted to a member under this Part, the member shall, in respect of such period, be paid the amount of his pensionable emoluments and of any other allowances for which he is eligible under these Regulations.

(4) Where a period of leave with half pay is granted to a member under this Part, the member shall in respect of such period, be paid half the amount of his pay and the full amount of any allowances for which he is eligible under these Regulations.

Study leave and special training allowance

30.—(1) A member may be granted a study leave with full pay for a period not exceeding two years for the purpose of pursuing further studies at a recognized institution within or outside Malaŵi.

(2) When attending an approved course of instruction within or outside Malaŵi a member shall be entitled to a special training allowance as determined by the Minister on the recommendation of the Defence Council.

Accrual of vacation leave

31.—(1) The vacation leave year shall be the same as the financial year of the Government.

(2) Vacation leave shall accrue to a member at the rate of twenty-eight days for each leave year. If a member attests during a leave year, he shall, at the discretion of the commanding officer, be granted a proportion of the vacation leave for that year.

(3) Vacation leave shall not accrue to a member under this regulation in excess of fifty-six days.

Grant of vacation leave

32.—(1) A member may be granted vacation leave with pay for any period or part thereof which has accrued to him under regulation 28.

(2) If a member is granted only a portion of the total vacation leave which has accrued to him, he may be granted the remaining portion at a later date, together with any further vacation leave

which has accrued to him at that date up to a maximum of fifty-six days.

Sick leave

33.—(1) A member may at any time be granted sick leave with full pay on the following conditions—

(*a*) when the period exceeds ninety days, the member shall furnish a medical certificate as to the state of his health to his commanding officer or appropriate superior authority at the end of every month; and

(*b*) after one hundred and eighty days a medical board shall be convened for the purpose of assessing his suitability to continue in the service.

(2) If a member is absent from duty or detained in hospital on the orders of a medical officer, and, in the opinion of the commanding officer or appropriate superior authority, such absence or detention is rendered necessary by the misconduct of the member, the commanding officer or appropriate superior authority may direct that the period of such absence or detention be taken as vacation leave, or, if the member is not eligible for the grant of any vacation leave or is eligible for the grant of a period of vacation leave which is insufficient for the purpose, that such period be deducted from any period of vacation leave which may subsequently accrue to the member.

Compassionate leave

34.—(1) A member wishing to absent himself from duty on compassionate grounds who—

(*a*) is not eligible for the grant of any period of vacation leave; or

(*b*) is eligible for the grant of a period of vacation leave which is insufficient for the purpose,

may be granted compassionate leave with pay for such period as the commanding officer or appropriate superior authority may determine.

(2) A member shall only be granted compassionate leave if all periods of vacation leave which he is eligible to be granted are taken in conjunction therewith.

Embarkation and disembarkation leave

35.—(1) A member may be granted fourteen days embarkation leave with pay immediately prior to proceeding on active service or other duty outside Malaŵi provided in the case of other duty he is out of Malaŵi for a minimum of six months.

(2) A member may be granted fourteen days disembarkation leave with pay immediately after his return from active service or

other duty outside Malaŵi provided that in the case of other duty he is out of Malaŵi for a minimum of six months.

Travel leave

36. A member who has been granted vacation leave for a period of not less than twenty-eight days may be granted travel leave with pay for the period during which he is travelling to and from his leave destination.

Maternity leave

37.—(1) A female member may be granted maternity leave with full pay for ninety days from the expected date of confinement; but the member granted maternity leave may return to work at any time before the expiry of the period of confinement.

(2) In this regulation, "date of confinement" means the date of birth of a child, whether living or not, after thirty-four weeks of pregnancy, but in the event of still birth occurring during the first thirty-four weeks of pregnancy the maternity leave in accordance with subregulation (1) shall apply.

PART V
Free Traveling Facilities

Traveling facilities on engagement or discharge

38.—(1) A person engaged for service on an initial engagement shall be granted free traveling facilities from his place of residence to the place where he is required to report:

Provided that if his place of residence is outside Malaŵi, such facilities shall only be granted from the place on the borders of Malaŵi which is nearest to his place of residence.

(2) A member who—

(*a*) is discharged or dismissed from the Defence Force under the Act; or

(*b*) completes the period of his initial engagement and is not engaged for service on a permanent engagement; or

(*c*) resigns or retires during the period of his engagement,

shall be granted free traveling facilities to his place of residence in Malaŵi or, if he resides outside Malaŵi, to the place on the borders of Malaŵi nearest to his place of residence.

Traveling facilities on leave

39. A member who has been granted—

(*a*) vacation leave for a period of not less than twenty-eight days; or

(*b*) embarkation leave; or

(*c*) disembarkation leave; or

(*d*) compassionate leave; or

(*e*) study leave; or

(*f*) maternity leave,

shall be granted free traveling facilities to and from his leave destination on one occasion per year except in relation to embarkation, disembarkation and compassionate leave when free travelling facilities may be granted at the discretion of the commanding officer:

Provided that if his leave destination is outside Malaŵi such facilities shall only be granted to and from the point on the borders of Malaŵi which is nearest to his leave destination.

Traveling facilities for dependants

40.—(1) If the commanding officer of a member's unit is satisfied that the recognized spouse and children of that member are suitable for accommodation in official quarters, he may grant such spouse and children free traveling facilities from their place of residence to the place where the member is stationed and back to their place of residence:

Provided that if their place of residence is outside Malaŵi, such facilities shall only be granted to and from the place on the borders of Malaŵi which is nearest to their place of residence.

(2) The free travelling facilities mentioned in subregulation (1) shall be granted only once during the period of engagement of a member:

Provided that—

(*a*) if the member is separated from the recognized spouse and children owing to the exigencies of service and the spouse and children are ordered to leave official quarters, such facilities may at the discretion of the commanding officer of the member's unit be granted more than once;

(*b*) if a member is transferred to another station within Malaŵi and the commanding officer of the member's unit approves of his recognized spouse and children being transferred with him they may be granted free travelling facilities to the station to which he is transferred.

(3) If a member dies while the recognized spouse and children are occupying official quarters, they shall be granted free traveling facilities to their home:

Provided that if their home is outside Malaŵi such facilities shall only be granted to the place on the borders of Malaŵi which is nearest to their home.

PART VI
Medical Benefits

Medical examination

41. The commanding officer or appropriate superior authority may at anytime order a member to present himself for and to submit to a medical examination at the expense of the Government by—

(*a*) a medical officer;

(*b*) a private medical practitioner; or

(*c*) a medical board.

Medical treatment

42.—(1) A member shall, while stationed or on leave within Malaŵi, and while outside Malaŵi on active service or other duty, be entitled to receive medical treatment by a medical officer free of charge.

(2) If the recognized spouse and any child of a member resides with him in official quarters, they shall be entitled to receive medical treatment by a medical officer free of charge.

Dental treatment

43. A member shall, while stationed or on leave within Malaŵi and while outside Malaŵi on active service or other duty, be entitled to free dental treatment by a dental officer in respect of himself.

Treatment by oculists, etc.

44. If in the examination and treatment of a member's eyes by an oculist is authorized by a medical officer, any costs thereby incurred shall be paid by the Government.

PART VII
Dress and Equipment

Clothing and personal equipment

45.—(1) An issue of clothing and personal equipment shall be made to a member from time to time.

(2) Any clothing and personal equipment issued to a member shall remain the property of the Government and the member may at any time be ordered by the commanding officer of his unit to return all or any items thereof.

(3) A member who fails when ordered to do so, to return any item of clothing or personal equipment issued to him shall be liable to pay an amount equal to the cost thereof to the Government, unless he can show that such item was stolen, lost or destroyed and that he took all reasonable precautions to prevent its theft, loss or destruction.

(4) Any item of clothing or personal equipment issued to a member which is rendered unserviceable through fair wear and tear shall be replaced or repaired, as necessary, at the expenses of the Government.

(5) A member shall be entitled to receive a clothing and upkeep allowance as may be determined by the Minister from time to time.

Wearing of uniform

46.—(1) A member shall not wear any article of uniform which he is not authorized.

(2) Any member who contravenes subregulation (1) shall be guilty of an offence punishable under the Act.

PART VIII
Disablement Benefits

Functions of Pensions Board and Pensions Appeal Board

47.—(1) The right of any person to an award under this Part and the amount of such award shall be determined by the Pensions Board in accordance with this Part.

(2) Within six months after the date on which any decision of the Pensions Board has been communicated to a claimant under this Part such claimant may, by notice in writing to the Pensions Board, appeal to the Pensions Appeal Board.

(3) On any such appeal, the Pensions Appeal Board may confirm the decision of the Pensions Board or may, subject to these Regulations, vary such decision and the decision of the Pensions Appeal Board shall be given effect to by the Pensions Board.

Review of awards

48. The Pensions Board may at any time review, amend or withdraw any award made under this Part which—

(*a*) has been incorrectly made by error in interpretation or fact; or

(*b*) it has reason to believe has been obtained by improper means.

Administration of awards

49. Any award payable to or in respect of any person under this Part may, in the discretion of the Pensions Board and for reasons deemed by it to be sufficient, be administered under such conditions as the Pensions Board may determine instead of being paid to the grantee.

Benefits on discharge for ill-health in certain circumstances

50. If the unfitness for further service of a disabled member is due for ill-health, physical or mental incapacity or personal injury occasioned without any misconduct or serious negligence on his part, he shall be awarded—

(*a*) if his pensionable service amounts to less than ten years, a gratuity at the rate prescribed in regulation 60; and

(*b*) if his pensionable service amounts to ten or more years, a pension at the rate prescribed in regulation 60.

Compensation in respect of ill-health occasioned by the discharge of duty

51.—(1) Subject to this regulation, if the unfitness for further service of a disabled member is due to ill-health, physical or mental unfitness, physical or mental incapacity, or personal incapacity or personal injury—

(*a*) which was occasioned in and by the discharge of his duties without any misconduct or serious negligence on his part; or

(*b*) which was not occasioned initially in and by the discharge of his duties but which was, without any misconduct or serious negligence on his part, aggravated to a material extent in and by the discharge of his duties,

he shall be awarded a compensation payable and calculated in accordance with the Defence Force (Compensation for Injuries Regulations).

(2) If a member who is suffering from ill-health, physical or mental unfitness, physical or mental incapacity, or personal injury—

(*a*) which was occasioned in and by the discharge of his duties without any misconduct or serious negligence on his part; or

(*b*) which was not occasioned initially in and by the discharge of his duties but which was, without any misconduct or serious negligence on his part, aggravated to a material extent in and by the discharge of his duties,

is not discharged and if, at the date on which he resigns or retires or is under the Act, discharged or dismissed from the Defence Force, he is still suffering from such ill-health, physical or mental unfitness, physical or mental incapacity or personal injury, he shall be awarded a compensation calculated in accordance with subregulation (1) (ii), and based upon the annual rate of his pensionable emoluments at the date of his disablement.

(3) For the purposes of subregulation (1), the date of disablement of a member means the date on which the ill-health, physical or mental unfitness, or physical or mental incapacity commenced or on which the personal injury was received or on which the ill-health, physical or mental unfitness, physical or mental incapacity or personal injury was first aggravated to a material extent, as the case may be, or if such date cannot be ascertained, the date fixed by the Pensions Board as the date of disablement.

(4) If a person resumes duty in the Defence Force in terms of regulation 54 and if, at the date on which he resigns or retires or is, under the Act, finally discharged or dismissed from the Defence Force he is still suffering from ill-health, physical or mental unfitness, physical or mental incapacity or personal injury in respect of which he was previously awarded a compensation under this section, he shall be awarded a compensation calculated in accordance with subregulation (2).

(5) Any compensation payable under this regulation shall be in addition to any compensation or other benefit payable under these Regulations.

(6) A member who is participating in any regimental sport, recreational training, display or competition authorized by the commanding officer of his unit shall be deemed, for the purpose of this regulation, to be discharging his duties while he is so participating.

Free medical attention and other benefits

52.—(1) In this regulation—

"free medical attention" means—

(*a*) attention by a medical officer;

(*b*) treatment in a department of a Government hospital or institution; and

(*c*) accommodation in a ward of a Government hospital or institution,

and include drugs, dressings, proprietary preparations and surgical appliances and, in special cases authorized by the Pensions Board, attention and treatment by a person recommended by the Board and accommodation at a hospital or institution other than a Government hospital or institution.

(2) A disabled member who has been awarded a compensation under regulation 51 shall be entitled to free medical attention in respect of ill-health, physical or mental unfitness, physical or mental incapacity or personal injury which occasioned the award.

(3) Subject to subregulations (4) and (5), when a disabled member is required by the Pensions Board to make a journey in order to be medically examined or to undergo medical treatment or for any other purpose, he shall be entitled—

(*a*) to travel at the expense of the Government in such class of travel as the Minister may determine; and

(*b*) to be paid such subsistence allowance as the Minister may determine.

(4) A disabled member shall not be entitled to an allowance under subregulation (3) (*b*)—

(*a*) for any period during which he is being maintained at a hospital or institution; or

(*b*) if the period of his absence from home is less than four hours.

(5) If a disabled member is, owing to his own misconduct, unfit to undergo a medical examination at the appointed time and place and in consequence thereof is required by the Pensions Board to undergo a further medical examination, he shall not be entitled to any allowance under regulation, (3) (*b*) for any period during which he is necessarily absent from his home for the purpose of undergoing such further medical examination.

Medical examination or treatment of disabled member

53.—(1) Any person who has been awarded a compensation under this Part may at any time be required by the Pension Board to submit a medical examination or undergo medical or surgical treatment involving no appreciable risk to his life.

(2) If any person referred to in subregulation (1) fails to submit himself to the examination or to undergo treatment required by the Pensions Board his right to any pension awarded to him under this Part shall cease as from the date on which he fails to do so:

Provided that if at any time thereafter such person submits to the examination or undergoes the treatment required by the Pensions Board such pension shall be revived with effect from the date on which he submits himself to that examination or undergoes that treatment.

Resumption of duly by disabled member

54.—(1) If a disabled member who has been awarded a compensation is within two years of the date of his discharge, certified by a special medical board to be fit for duty in the Force and has not attained the age of fifty years, he may, subject to subregulation (3), be required by the Minister to resume duty in the Defence Force.

(2) If a person required to resume duty in the Defence Force in terms of subregulation (1) refuses without reasonable cause to do so, his right to any compensation awarded to him under these Regulations shall cease as from the date on which he is required to resume such duty.

(3) The following provisions shall apply in relation to any person required to resume duty in the Defence Force under subregulation (1)—

(*a*) the pensionable emoluments which he is paid shall not, without his consent, be less than the pensionable emoluments received by him immediately before the date of his discharge;

(*b*) the rank in which he is required to resume duty shall not be lower than the rank held by him immediately before the date of discharge;

(*c*) his right to any compensation awarded to him under this Part shall cease as from the date of his resumption of duty; and

(*d*) his pensionable service shall not be deemed to have been interrupted by the period during which he was receiving a compensation under this Part, but that period shall not form part of his pensionable service.

Benefits to surviving spouse and children in respect of death in the course of duty

55.—(1) If—

(*a*) a member dies owing to—

(i) an injury received or from an illness contracted in and by the discharge of his duties without any misconduct or serious negligence on his part; or

(ii) illness, which was not contracted initially in and by the discharge of his duties but which was, without any misconduct or serious negligence on his part, aggravated to a material extent in and by the discharge of his duties;

(*b*) a member who has been awarded a compensation under regulation 51, dies owing to the ill-health, physical or mental unfitness, physical or mental incapacity or personal injury in respect of which he was awarded that compensation,

there shall be awarded to the surviving spouse, children and dependants, if any, a compensation calculated in accordance with the Second Schedule.

Second Schedule

(2) The right of any spouse to a compensation awarded to that spouse under subregulation (1) shall cease as from the date on which he or she remarries.

(3) Any compensation awarded under this regulation in respect of a child shall be paid to such person or persons as shall from time to time be determined by the Pensions Board and shall, in accordance with the determination of such Board, be paid in respect of one child or apportioned between any two or more of the children.

(4) If a child dies or ceases to be a child, the compensation awarded under this regulation in respect of the child shall cease or, if there are other children, shall be adjusted accordingly.

(5) Any compensation awarded under this regulation shall be in addition to any other compensation or benefit payable under these Regulations.

(6) A member who is participating in any regimental sport, recreational training, display or competition authorized by the commanding officer of his unit shall be deemed, for the purposes of this Part, to be discharging his duties while he is so participating.

(7) Upon certification by the Board of Inquiry, any officer who dies—

(*a*) during a state of national defence;

(*b*) in a peace-support operation under an international or a regional body sanctioned by the Government;

(*c*) in any military operation in support of civil authorities; or

(*d*) in any military operation in respect of a disaster,

shall be entitled to full benefits as if he had served for a period of twenty years at the rank that he held at the time of his death regardless of the length of service actually completed.

Vocational training for disabled member

56.—(1) The Pensions Board may in its discretion refer the case of training for any disabled member to a vocational board for the member's vocational training.

(2) A vocational board shall investigate any case or application referred to it under subregulation (1) and shall submit a report thereon to the Pensions Board.

(3) If the Pensions Board, after considering the report of a vocational board, considers that the disabled member should, in consequence of his disablement, receive vocational training, it may order him to undergo such training and may award him, in addition to any other benefits to which he may be entitled under these Regulations, a temporary allowance in respect of the period during which he undergoes such training at a rate not exceeding the rate of additional compensation which he would have been awarded had he had no earning capacity.

(4) A temporary allowance awarded under subregulation (3) shall be paid for such period and subject to such conditions and such deductions in respect of the earnings of the disabled member while he is undergoing vocational training as the Pensions Board may determine.

(5) The whole or any part of any charges, fees or expenses incurred in respect of the vocational training of a disabled member may be paid under such conditions as the Pensions Board may determine.

(6) At the termination of any period of vocational training under this regulation, the Pensions Board may award the disabled member an amount determined by the vocational board for the purchase of tools required by him in the vocation in which he has been trained.

(7) If a disabled member refuses to undergo any vocational training ordered under this regulation the Pensions Board may reduce or withdraw any additional compensation awarded to him.

Traveling and subsistence allowance payable to a disabled member

57.—(1) When a disabled member is required by the Pensions Board to make a journey in order to submit to a medical examination or to undergo medical treatment or vocational training he shall be entitled to travel at the expense of the Government.

(2) Subject to sub-regulations (3) and (4), when a disabled member is required by the Pensions Board to make a journey for the purposes mentioned in subregulation (1), he shall be entitled, during the period of necessary absence from home, to a subsistence allowance at the rate determined by the Minister from time to time.

(3) Except as otherwise provided under the Act, a disabled member shall not be entitled to any subsistence allowance under subregulation (2)—

(*a*) in respect of any period during which he is receiving free maintenance as an in-patient at a hospital or other institution; or

(*b*) if the period of absence from home is less than four hours.

(4) If a disabled member is unfit owing to his own misconduct or serious negligence to undergo a medical examination and in consequence thereof he is required by the Pensions Board to undergo a further medical examination, he shall not be entitled to any subsistence allowance under subregulation (2) in respect of any period during which he is necessarily absent from home for the purpose of undergoing such further medical examination.

Further disablement of a disabled member

58. If a disabled member who has been awarded a disablement compensation continues to undergo military service and suffers a further disablement attributable to, or aggravated by, military service without any misconduct or serious negligence on his part, the Pensions Board shall award him a supplementary compensation, based on his rank and class, appropriate to his case in respect of the further disablement represented by the difference between the degree of disablement due to his combined disablements and that from his earlier disablement or disablements alone.

Allowance in respect of nursing attendants

59. Where a disabled member has been awarded a disablement compensation for one hundred per centum disablement and the Pensions Board is satisfied that his disablement necessitates the constant and continuous attendance of a nurse or other attendant, it may award such member, in addition to any other benefits to which he may be entitled under these Regulations, an allowance not exceeding the reasonable expenditure actually incurred.

PART IX
General Provisions Relating to Pensions, Gratuities and Other Benefits

Calculation of pensions and gratuities

60.—(1) Subject to these Regulations—

(*a*) a pension payable to a member under this Part or regulation 50 shall be calculated at the rate of one six hundredth of his retiring pensionable emoluments in respect of each completed month of his pensionable service; and

(*b*) a gratuity payable to a member under this Part or regulation 50 shall be calculated at the rate of one-twelfth of his retiring pensionable emoluments for each completed year of his pensionable service.

(2) The minimum entitlement of any member in respect of any pension or the aggregate of any pensions to which he is entitled under any one or more of regulations 50, 51, 63 and 66 shall be five per cent of his annual basic pay at the time of his retirement.

Pensionable service

61.—(1) Subject to these Regulations, the pensionable service with reference to which any pension, gratuity or other benefit is to be calculated shall be continuous from the date of enlistment.

(2) Pensionable service shall include—

(*a*) time spent on duty;

(*b*) time spent on leave;

(*c*) time spent on attachment or secondment to any other force or organization in accordance with the Act; and

(*d*) in the case of a person who, immediately before the date of commencement of these Regulations, was a member, the period of employment which, immediately before that date, could, in terms of the law then applicable to him, have been taken into account in computing his pension.

(3) Where any person who has had previous service in the Regular Force is later engaged for service in the Regular Force under section 5 of the Act, then, if—

(*a*) such person is not a disabled member who is required to resume duty in the Regular Force under regulation 54 (1);

(*b*) the previous service terminated not more than two years prior to the date of such later engagement for service in the Regular Force; and

(*c*) no gratuity or pension or any terminal benefits were paid to such person in respect of the previous service,

the period of the previous service shall be reckoned as pensionable service.

(4) Pensionable service shall not include any period of service by a member in respect of which, by virtue of regulation 26, no pay was paid to him:

Provided that the pensionable service of a member shall not be deemed to have been interrupted by the exclusion therefrom of any period of service referred to in this paragraph.

(5) The period of pensionable service shall be calculated by the month, but fractions of a month shall be taken to the nearest whole month.

Benefits on resignation or discharge for ill-health

62.—(1) A member who resigns or who is discharged under section 26 of the Act for reasons of ill-health shall, if his pensionable service amounts to five or more years but less than ten years, be entitled to be paid the following benefits—

(*a*) an upkeep allowance;

(*b*) a sum equivalent to his pensionable emoluments for a period of twenty-eight days at the rate applicable to him immediately before the date of his resignation or discharge; and

(*c*) a sum equivalent to one day's pay at the rate applicable to him immediately before the date of his resignation or discharge for every complete period of thirty days' service spent on active service outside Malaŵi.

(2) In the calculation of complete periods of thirty days' service for the purposes of subregulation (1) (*c*), all periods of service spent on active service outside Malaŵi shall be aggregated.

Benefits on retirement

63. A member who retires shall be entitled to—

(*a*) if his pensionable service amounts to ten or more years but less than twenty years, a gratuity at the rate prescribed in this Part less any benefits paid to him in terms of regulation 62;

(*b*) if his pensionable service amounts to twenty or more years, or if, whatever the length of his service, he is compulsorily

retired in terms of regulation 10 (2) or (3), a pension at the rate prescribed in this Part.

Free medical attention on retirement

64.—(1) In this regulation—

"free medical attention" means—

(*a*) attention by a medical officer;

(*b*) treatment in a department of a Government hospital; and

(*c*) accommodation in a ward of a Government hospital, and includes drugs, dressings, surgical appliances, and splints.

(2) A member who has retired in terms of regulation 10 (2) or (3) shall be entitled to free medical attention.

(3) If any travelling by a medical officer or by a member who has retired is entailed in respect of such free medical attention the cost of such travelling will not be borne by the Government.

(4) This regulation shall not apply to the dependants of a member who has retired.

Free medical attention in special cases

65.—(1) In this regulation—

"free medical attention" means—

(*a*) attention by a medical officer;

(*b*) treatment in a department of a Government hospital; and

(*c*) accommodation in a ward of a government hospital, and includes drugs and dressings but not surgical appliances other than splints.

(2) A member who—

(*a*) had served for 20 or more years; and

(*b*) has retired in terms of regulation 10 (2) or (3),

shall be entitled to free medical attention.

(3) If any travelling by a medical officer or by a member who has retired is entailed in respect of such free medical attention, the cost of travelling shall not be borne by the Government.

(4) This regulation shall not apply to the dependants of a member who has retired.

Benefits on discharge or dismissal on prescribed grounds

66. A member who, under section 26 of the Act (other than on the grounds of medical or physical unfitness occasioned without any misconduct or serious negligence on his part) or under section 82 of the Act, is discharged or dismissed from the Regular Force may be—

(*a*) if his pensionable service amounts to ten or more years but less than twenty years, such gratuity as the Defence Council may determine;

(*b*) if his pensionable service amounts to twenty or more years, such pension subject to regulation 60 (2) or gratuity as the Defence Council may determine.

Benefits to dependants on death of a member or a pensioner

67.—(1) If a member whose pensionable service amounts to fifteen or more years dies, there shall be paid to his dependants the amount of the pension which such member would have been entitled to had he retired on the day immediately before the date of his death.

(2) If a member whose pensionable service amounts to five or more years but less than fifteen years dies, there shall be paid to his dependants the benefits which he would have been entitled to under regulation 62 had he resigned on the day immediately before the date of his death.

(3) If a member who is receiving a pension under regulation 63 dies, there shall be paid to his dependants a gratuity equal to the aggregate of the pension which would have been payable to such person had he not died, for the period from the day following the date of his death to the expiry of ten years from the date of his retirement.

Commutation of pensions

68.—(1) In this regulation, unless inconsistent with the context—

"applicant" means a member entitled or about to become entitled to a pension in terms of regulation 50, 51, 63 or 66 who has applied under this regulation for the commutation of the whole or a portion of the pension to which he is or is about to become entitled;

"Form" means the appropriate form set out in the Third Schedule; *Third Schedule*

"Medical Board" means a board of two or more medical practitioners appointed by the Minister for the purposes of this section.

(2) Subject to this regulation and regulation 61 (2), a member entitled or about to become entitled to a pension or pensions under any one or more of regulations 50, 51, 63 or 66 may apply to the Minister for the commutation of up to two-thirds of the pension or of the aggregate of the pensions to which he is or about to become entitled.

(3) The Minister may, on application by a member under subregulation (2) commute up to two-thirds of such member's annual pension or of the aggregate of such member's annual

pensions for a cash payment determined in accordance with subregulation (10).

(4) An application for the commutation of any portion of a pension up to one-third shall be made in Form No. 1 and shall be submitted to the Commander.

(5) The Minister may—

(*a*) in the case of an applicant who is about to retire in terms of regulation 10 (2) or (3) and applies for commutation before the date of his retirement, grant, subject to subregulation (3) the commutation applied for; and

(*b*) in the case of an applicant not referred to in paragraph (*a*) grant provisional approval of the application for commutation.

(6) Where provisional approval of an application for commutation has been granted in terms of subregulation (5) (*b*) the applicant shall have completed a declaration of health in Form No. 2 and shall hand the completed declaration to, and submit to examination by, a medical board.

(7) The medical board shall, after examining the applicant under subregulation (6), forward to the Minister a report on that applicant in Form No. 3.

(8) If the medical board certifies in the report forwarded under subregulation (7), that the applicant is not suffering from, nor in their opinion is specially liable to suffer from, any disease or physical disability likely to affect adversely his normal expectation of life, which they consider to be fully up to the average for persons of the applicant's age, the Minister may grant, subject to subregulation (3), the commutation applied for.

(9) If the medical board certifies in the report forwarded under subregulation (7), that they consider that the application of the applicant should be rejected on health grounds, the Minister shall refuse to grant the commutation applied for.

(10) The amount of the single cash payment to be made on the commutation of a pension shall be computed by multiplying the annual rate of pension to be commuted by the commutation factor shown in the Fourth Schedule in relation to the age of the applicant, calculated to the nearest half-year, or, where his age is midway between the half-years, to the half-year nearest above his age, at the date of his application for commutation:

Fourth Schedule

Provided that where the age of the applicant at the date of his application for commutation is under twenty-nine years and six months or over seventy-five years and six months, the cash payment to be made shall be computed by multiplying the annual

rate of pension to be commuted by such commutation factor as applicable to those whose nearest half age is thirty years.

(11) The commutation of a pension shall be effected—

(*a*) in the case of an applicant referred to in subregulation (5) (*a*), on the date he becomes entitled to his pension under regulation 63; and

(*b*) in the case of an applicant not referred to in subregulation (5) (*a*), on the first day of the month following that in which the commutation is granted by the Minister.

(12) For the purposes of this Part, the forms and table respectively set out in the Fourth and Fifth Schedules shall, with such adaptations or modifications as the circumstances may require, be used and applied.

Benefits not to be pledged or ceded

69.—(1) Save as is otherwise provided in subregulation (2), no pension, gratuity or other benefit payable under these Regulations or right to such a pension, gratuity or benefit shall be capable of being assigned or transferred or otherwise ceded, or of being pledged or hypothecated, and, in the event of the recipient attempting to assign, transfer or otherwise cede or pledge or hypothecate a pension, gratuity or other benefit payable under these Regulation or right to such a pension, gratuity or other benefit, payment of the pension, gratuity or other benefit may be withheld, suspended or entirely discontinued if the Minister so determines:

Provided that the Minister may direct the payment of the pension, gratuity or other benefit or part thereof to any one or more of the dependants of the recipient during such period as he may determine.

(2) If no portion of a pension has been commuted under regulation 68, the Minister may permit the recipient of such pension to cede a portion thereof, not exceeding the portion thereof which may be commuted in terms of that regulation, and in the event of the cession being made, the provisions of that regulation shall not apply in relation to the balance of the pension.

(3) Nothing contained in this regulation shall authorize the cession of any pension or part of a pension payable under these Regulations to a surviving spouse or in respect of a child.

Conviction of pensioner

70. If a member in receipt of a pension under these Regulations is convicted of any offence and is required to undergo a period of imprisonment exceeding three months, the payment of his pension shall, in accordance with the direction, if any, of the Minister, be

discontinued during the whole or part of the period of imprisonment:

Provided that the Minister may authorize the payment of the whole or any portion of the pension in respect of the period during which it has been so discontinued to or for the benefit of any dependant of the pensioner as the Minister may determine.

Forfeiture of pension

71. If any member becoming entitled to or actually in receipt of a pension under these Regulations—

(*a*) is found guilty by a civil court—

(i) of misappropriating public moneys or property of the Government;

(ii) of making a false statement for the purpose of obtaining a pension, knowing the statement to be false or not believing it to be true; or

(*b*) makes use of or discloses in an improper manner any information which he may have obtained in the course of his duties; or

(*c*) solicits or, without the consent of the Minister, accepts directly or indirectly any testimonial or gift of a pecuniary value in connexion with his service,

his right to any pension or his pension, as the case may be, shall, in accordance with the directions, if any, of the Minister be suspended, reduced or forfeited, as the case may be.

Deductions from pension, gratuity or other benefits

72.—(1) The Minister may authorize the deduction from any pension, gratuity or other benefit to which a member or person in receipt of a pension under these Regulations or his estate is entitled under this Part or Part VII of any liquidated amount which that member or person is liable to pay to the Government.

(2) No deduction shall be authorized under this regulation of a liquidated amount which the commanding officer or appropriate superior authority has, under regulation 27, authorized to be deducted from the pay and allowances due to a member.

Proof of age, etc.

73.—(1) A member shall, if required, submit proof of the date of his birth.

(2) No payment of any pension to a spouse shall be made until proof of marriage to and date of the death of the husband have been furnished.

(3) No pension in respect of a child shall be paid until proof has been furnished of the eligibility of that child for a pension under these Regulations.

(4) The proof required under this regulation shall be to the satisfaction of the Minister.

PART X
Miscellaneous Provisions

Occupation of official quarters

74.—(1) A member shall, if required by the commanding officer of his unit to do so, reside in official quarters.

(2) Where a member is required to reside in official quarters, his recognized spouse and children may, at the discretion of the commanding officer of his unit, be provided with free accommodation in official quarters.

Engagement for profit on trade or business

75. Except with the written consent of the Minister and in accordance with such directions, if any, as the Minister may from time to time give him, a member other than a member who proceeds on leave pending retirement, shall not—

(*a*) engage for profit in any business or occupation other than his official duties; or

(*b*) be or become a director or engage directly or indirectly in the management or direction of any public company or syndicate.

Active participation in politics

76.—(1) No member shall commit any act which is prescribed by this regulation as being an act constituting active participation in politics.

(2) Subject to subregulation (3), the following acts in relation to a member are prescribed as being acts constituting active participation in politics—

(*a*) joining or being associated with an organization or movement of a political character;

(*b*) canvassing any person in support of or otherwise actively assisting an organization or movement of a political character;

(*c*) displaying or wearing rosettes, favours, symbols, posters, placards or like articles having a political significance;

(*d*) attending a political meeting or assembly when wearing Defence Force uniform or any part thereof, likely to identify him with the Defence Force;

(*e*) asking questions from the floor at a political meeting;

(*f*) publishing views of a political character or causing them to be published in speeches, broadcasts, letters to the press, articles, leaflets, posters, placards, books or otherwise; and

(*g*) any other act or conduct whatever of a member whereby the public might reasonably be induced to associate or identify him with an organization or movement of a political character.

(3) Nothing in subregulation (2) shall be construed as precluding a member from—

(*a*) asking questions from the floor at a political meeting held with the permission of the Minister at which the audience consists only of persons in the employment of the Government;

(*b*) explaining Government policy relating to the Defence Force in the course of his duties;

(*c*) performing the duties of a returning officer, polling officer or like officer at a Parliamentary or local authority election; and

(*d*) voting in a parliamentary, presidential or local authority election or in a referendum.

(4) A trade union or employers' organization shall, for the purposes of subregulation (2) (*a*) and (*b*), be deemed to be an organization or movement of a political character.

Funeral expenses

77. The amount of any reasonable expenses incurred in burying—

(*a*) a member;

(*b*) a pensioner who held the rank of Warrant Officer Class I and above,

shall be paid by the Government.

FIRST SCHEDULE reg. 18

RATES OF TRADE PAY ALLOWANCES

Trade Group	*Rate per Day*					
	Class 1		*Class 2*		*Class 3*	
	K	t	K	t	K	t
GROUP A	0	90	0	80	0	70
GROUP B	0	70	0	65	0	60
GROUP C	0	60	0	55	0	50
GROUP X	2	15	1	85	1	55
GROUP XIA	2	35	—		—	
GROUP T	3	10	2	75	2	45
GROUP TIA	3	25	—		—	

SECOND SCHEDULE reg. 55

Rates of Pension or Other Benefits Payable in Respect of Surviving Spouses, Children and Dependants

1. If a member entitled to a pension or other benefits dies intestate and unmarried such pension or other benefits should be distributed equally between his parents, and if he was an orphan, be paid to the next of kin.
2. If a member entitled to a pension or other benefits dies intestate and there is a surviving spouse without children, such pension or other benefits should be distributed as follows—

   (*a*) one-half should be paid to the surviving spouse;

   (*b*) one-half should be distributed equally to the parents; or paid to the next of kin if he was an orphan at the time of his death.
3. If a member entitled to a pension or other benefits dies intestate and there is a surviving spouse and children, such pension or other benefits should be distributed as follows—

   (*a*) six-eighths should be distributed equally to the children;

   (*b*) one-eighth should be distributed to the surviving spouse or equally to the surviving spouses;

   (*c*) one-eighth should be distributed equally between the parents or if there is no parent, be paid to the next of kin.
4. If a member entitled to a pension or other benefits dies intestate and leaves children and no spouse such pension or other benefits should be distributed as follows—

   (*a*) seven-eighths should be distributed equally to the children;

   (*b*) one-eighth should be distributed equally to the parents or if there is no parent be paid to the next of kin; and

   (*c*) one-eighth should be paid to any person who, being a relation, undertakes to be guardian of the said children.
5. Any share of pension or other benefits that remains undistributed shall be distributed equally to the children or, where there are no children, to the other beneficiaries.

THIRD SCHEDULE reg. 68

PRESCRIBED FORMS

Form No. 1

APPLICATION FOR COMMUTATION OF PENSION

The Commander
Headquarters, Defence Force
Lilongwe

A. Full name of applicant (in block letters)—

Surname: .....

Forenames: .....

B. Date of Birth: .....

(*If not already produced, proof of this date required*)

C. Gross rate of pension per annum, K.....

D. Date pension commenced or to commence: .....

E. Portion of pension up to one-third it is desired to commute: .....

F. Reason for desiring to commute: .....

.....

.....

.....

.....

G. Give particulars of any income or earnings other than pension: .....

.....

.....

Solemn Declaration

H. I do solemnly and sincerely declare that I am not insolvent, and that no part of my pension has been assigned, ceded or otherwise transferred or pledged or hypothecated.

Date of application: .....

Signature of applicant: .....

Declared before me this ..... day of ....., 20 .....

.....

Commanding Officer or appropriate superior authority

Form No. 2

DECLARATION OF HEALTH BY AN APPLICANT FOR COMMUTATION OF PENSION

Full names of applicant (in block letters)—

Surname: …….....

Forenames: …….....

Date of birth: …….....

Whether single, married or widowed: …….....

	Questions	*Answers*
1.	Are you now in good health and, if so, for how long have you been in good health?	.....
2.	What are your habits as regards activity or exercise?	.....
3.	(*a*) What kind and amount of intoxicating liquor do you ordinarily consume daily?	.....
	(*b*) Have your habits as regards liquor always been temperate sober?	.....
4.	What are your habits as regards tobacco?	.....
5.	Have you ever been in the habit of taking opium or other habit-forming drugs?	.....
6.	Have you at any time suffered from or had symptoms of—	.....
	(*a*) spitting of blood, asthma, persistent cough, pleurisy, pneumonia, or any affection of the lungs or throat?	.....
	(*b*) fits of any kind, mental or nervous disease?	.....
	(*c*) palpitation, fainting or any affection of the heart?	.....
	(*d*) becoming short of breath after any mild exertion?	.....
	(*e*) getting pain in the chest after exertion?	.....
	(*f*) appendicitis, fistula, or any other affection of the stomach, liver, gall bladder or bowels?	.....

(*g*) any affection of the kidneys, bladder or other urinary organs? .....

(*h*) malaria or blackwater fever? .....

(*i*) rheumatism, gout or rheumatic fever? .....

(*j*) discharge from the ears. If so state date of last discharge .....

(*k*) cancer or tumor, any tubercular affection or suppurating glands? .....

(*l*) any venereal disease? .....

7. How frequently do you pass water—

(*a*) by day? .....

(*b*) by night? .....

8. Have you suffered from any disease or illness other than those mentioned .....

9. Have you—

(*a*) met with any accident or undergone any surgical operation? .....

(*b*) any ruptures, varicose veins or physical defects? .....

10. Have any of your relatives suffered from consumption or other form of tuberculosis, asthma, gout, diabetes, epilepsy or insanity? .....

11. Is there any other circumstance or information relative to yourself or your family history of a kind which may affect your future health or expectation of life? .....

12. Have you ever been the subject of a medical board, if so when and for what complaint? .....

I declare that the above answers are true and correct to the best of my knowledge and that in making them I have not concealed or withheld information regarding any a matter or circumstance having a bearing on my present or future health or expectation of life.

I further agree that if any statement made the Minister to have been false, recovery of any commutation paid as a result of this application may be made from any pension payable to me.

Date ..... Signature .....

Witness ....

Counter signature and status of Person completing form

Form No. 3

REPORT OF MEDICAL BOARD ON AN APPLICATION FOR COMMUTATION OF PENSION

1. Name in full (block letters): .....
2. Date of birth: .....
3. Address: .....

Questions	*Answers*
4. Cardio-Vascular System—	
(i) Is there any evidence of—	
(*a*) abnormality?	.....
(*b*) arterio-sclerosis?	.....
(*c*) valvular disease?	.....
(*d*) other disease of the blood vessels?	.....
(ii) Record—	
(*a*) rate of heart	.....
(*b*) rhythm of heart	.....
(*c*) size of heart	.....
(*d*) position of apex beat	.....
(*e*) pulse	.....
(*f*) systolic blood pressure	.....
(*g*) diastolic blood pressure	.....
5. Respiratory System—	
Is there any evidence of disease of—	
(*a*) larynx?	.....
(*b*) trachea?	.....
(*c*) lungs?	.....
6. Abdominal Organs—	
(i) Is there any evidence of disease of—	
(*a*) alimentary tract	
(*b*) other abdominal organs—	.....
(ii) Is a hernia present?	.....
(iii) Is any hernia well controlled by a truss?	.....

7. Genito-Urinaty System—
   (i) Is there any evidence of—
      (*a*) urinary bilharziasis? .....
      (*b*) other renal disease? .....
      (*c*) prostatic disease? .....
      (*d*) other genito-urinary disease? .....
   (ii) Record urine—
      (*a*) frequency .....
      (*b*) specific gravity .....
      (*c*) albumen .....
      (*d*) sugar
8. Nervous System—
   Is there any evidence of disease? .....
9. Endocrine System—
   Is there any evidence of disease? .....
10. Skeletal System—
   Is there any evidence of disease of—
   (*a*) bones? .....
   (*b*) joints? .....
11. Eyes—
   Is there any evidence of disease? .....
12. Ears—
   Is there any evidence of disease? .....
13. Nose, mouth, gums and teeth
   Is there any evidence of disease? .....
14. Remarks—
   (*a*) Personal medical history .....
   (*b*) Family medical history .....
   .....
   .....
   .....
   (*c*) General .....
   .....
   .....

A. Certificate of First-Class Life

We certify that we have examined the above-named person; that we consider his health to be good; that is constitution is sound; and that he is not suffering from nor in our opinion is he specially liable to suffer from, any disease of physical disability likely to affect adversely his normal expectation of life, which we consider is fully up to the average for persons of his age.

We are satisfied that the above-named person is the person examined by us.

(1) .....

(*Signature of Chairman of the Board*)

.....

(*Name in block letters and post held*)

(2) .....

(*Signature of Member of the Board*)

.....

(*Name in block letters and post held*)

Place .....

Date .....

B. Certificate of Impaired Health

We certify that we have examined the above-named person and that we consider that his application should be rejected on health grounds for the following reasons:

(Summarize the reasons for the opinion arrived at)

.....

.....

.....

.....

(1) .....

(*Signature of Chairman of the Board*)

.....

(*Name in block letters and post held*)

FOURTH SCHEDULE reg. 68

Commutation Factor for Commutation of Pension

Nearest half age	*Commutation factor*	*Nearest half age*	*Commutation factor*
30	23–38	49	20–08
30½	23–31	49½	19–96
31	23–25	50	19–84
31½	23–18	50½	19–72
32	23–12	51	19–59
32½	23–05	51½	19–47
33	22–98	52	19–34
33½	22–91	52½	19–21
34	22–84	53	19–09
34½	22–77	53½	18–96
35	22–70	54	18–83
35½	22–62	54½	18–70
36	22–55	55	18–57
36½	22–47	55½	18–43
37	22–40	56	18–30
37½	22–32	56½	18–16
38	22–24	57	18–03
38½	22–16	57½	17–89
39	22–07	58	17–76
39½	21–99	58½	17–62
40	21–91	59	17–48
40½	21–82	59½	17–34
41	21–73	60	17–20
41½	21–64	60½	17–06
42	21–55	61	16–92
42½	21–46	61½	16–72
43	21–36	62	16–64
43½	21–26	62½	16–49
44	21–17	63	16–35
44½	21–07	63½	16–21
45	20–97	64	16–06
45½	20–86	64½	15–92
46	20–76	65	15–78
46½	20–65	65½	15–63
47	20–54	66	15–48
47½	20–43	66.½	15–34
48	20–32	67	15–19
48½	20–20	67½	15–05
68	14–90	72	13–71
68½	14–75	72½	13–56
69	14–60	73	13–41
69½	14–46	73½	13–27
70	14–31	74	13–12
70½	14–16	74½	12–98
71	14–01	75	12–84
71½	13–86		

DEFENCE FORCE (RECRUITMENT) REGULATIONS

ARRANGEMENT OF REGULATIONS

REGULATION

1. Citation
2. Pay between date one offers to enlist and enlistment
3. Refund upon withdrawal of offer to enlist
4. Traveling facilities for one rejected
5. Privileges and duties prior to enlistment

DEFENCE FORCE (RECRUITMENT) REGULATIONS

G.N. 55/2004

under s. 241

Citation

1. These Regulations may be cited as the Defence Force (Recruitment) Regulations.

Pay between date one offers to enlist and enlistment

2. A person offering to enlist in the Regular Force under section 19 of the Act may, if he is accepted by the recruiting officer and during the period concerned occupies official quarters provided by the Defence Force, be given pay and rations or allowances in lieu thereof at the rates or on the scales set out in regulations 16 and 24 of the Defence Force (Regular Force) (Other Ranks) Regulations from the date of so offering to enlist until the date of his enlistment.

Refund upon withdrawal of offer to enlist

3. A person who offers to enlist in the Regular Force under section 19 of the Act, and is accepted by the recruiting officer, but who subsequently withdrawals his offer to enlist may be required to refund an amount equivalent to—

(*a*) any pay, rations or allowances in lieu thereto received by him under regulation 2;

(*b*) the cost of any public or service property lost or damaged by him; and

(*c*) the cost of any travelling allowances or facilities granted to him by the Defence Force.

Traveling facilities for one rejected

4. A person who offers to enlist in the Regular Force under section 19 of the Act, and is subsequently refused enlistment due to no fault or action on his part shall be granted free traveling facilities to return to his place of residence in Malaŵi. He may however be required to refund an amount equivalent to the cost of any public or service property lost or damaged by him.

Privileges and duties prior to enlistment

5. A person who offers to enlist in the Regular Force under section 19 of the Act and is accepted by the recruiting officer shall not, until he is enlisted, be—

(*a*) entitled to be clothed at Government expense; or

(*b*) required to undertake any military duties other than those necessary for the interior economy or cleanliness of the military quarters in which he is housed.

DEFENCE FORCE (MEDAL FOR LONG SERVICE AND GOOD CONDUCT) REGULATIONS

ARRANGEMENT OF REGULATIONS

REGULATIONS

1. Citation
2. Description of medal
3. Qualifying service for the medal
4. Recommendation and award of the medal or clasp
5. Loss or replacement of the medal
6. Grant
7. Forfeiture and restoration of the medal or clasp

G.N. 56/2004

DEFENCE FORCE (MEDAL FOR LONG SERVICE AND GOOD CONDUCT) REGULATIONS

under s. 227

Citation

1. These Regulations may be cited as the Defence Force (Medal for Long Service and Good Conduct) Regulations.

Description of medal

2.—(1) The medal shall be designated the "Medal for Long Service and Good Conduct (Military)" and is hereinafter referred to as "the medal".

(2) The medal shall be of cupro-nickel and shall bear in relief on the obverse the Presidential Effigy and on the reverse the inscription "FOR LONG SERVICE AND GOOD CONDUCT" circumscribing the badge of the Defence Force.

(3) There shall be inscribed on the bar attached to the amount of the medal the words "REGULAR DEFENCE FORCE".

(4) The medal shall be worn suspended on the left breast by a crimson ribbon, edged white, one inch and a quarter in width.

(5) The clasp shall be of silver and shall bear in relief, in the centre, the badge of the Defence Force.

(6) The medal or the clasp shall be presented on parade and shall be worn by the recipient as an honourable testimonial of the President's approbation of his conduct.

Qualifying service for the medal

3.—(1) Subject to subregulations (2) and (3) the medal shall be awarded to non-commissioned officers of the Regular Force who complete eighteen years service and whose character and conduct have been exemplary and who are recommended by their commanding officers. Non-commissioned officers who complete a further eighteen years of service, as defined in these Regulations, reckoned from the qualifying date of the award of the medal and whose character and conduct have been exemplary and who are specially recommended by their commanding officers, shall be awarded a clasp to be attached to the ribbon by which the medal is suspended. Such additional award shall be without pecuniary benefit or gain.

(2) Service requisite to qualify for the medal may be spent wholly in the Regular Force and partly in that Force.

(3) Service in a Reserve, Militia or any other force or organization not involving whole time military service shall not be reckoned to qualify for the medal except when such force is mobilized in an emergency. Any period during which a member of such reserve militia or force is actually employed on full time service shall be reckoned as qualifying service, if such service has not been reckoned towards the award of any other long service or efficiency medal.

(4) Service requisite to qualify for the medal need not be continuous.

Recommendation and award of the medal or clasp

4.—(1) Recommendations for the medal or clasp shall be made to the commanding officers and forwarded in writing to the Commander.

(2) The Commander shall recommend to the President only those officers and non-commissioned officers who are in every way worthy of the award of the medal or clasp.

(3) The medal or clasp shall be awarded on the authority of the President and notice of each award shall be published in the *Gazette.*

(4) A register of the names of those to whom the medal or clasp has been awarded shall be kept by the Commander.

Loss or replacement of the medal or clasp

5.—(1) When a medal or clasp has been lost and it is desired to replace it, a sworn affidavit shall be made stating the circumstances under which the loss occurred, and the rank, name and unit of the

person to whom the medal belonged. This affidavit shall be forwarded to the Commander.

(2) When a medal or clasp has been lost through carelessness or neglect, replacement may be recommended at the holders expense, but, in the case where loss occurred through no fault or neglect of the holder, the Commander may authorize that the replacement be made at the expense of the Government.

(3) Replacement of a lost medal shall not be made until a period of six months has elapsed after the date on which the loss was reported.

Grant

6. An amount equivalent to ten per cent of annual basic pay shall be granted to every recipient of the medal.

Forfeiture and restoration of the medal or clasp

7.—(1) When the conduct of a recipient of the medal or clasp ceases to be exemplary, the President may cancel and annul the award of the medal or clasp to that recipient, and thereupon his name shall be erased from the register.

(2) Notice of forfeiture shall in every case be published in the *Gazette*.

(3) The President may restore a medal or clasp forfeited under subregulation (1).

(4) Notice of restoration shall in every case be published in the *Gazette*.

DEFENCE FORCE (MERITORIOUS SERVICE MEDAL) REGULATIONS

ARRANGEMENT OF REGULATIONS

REGULATION

1. Citation
2. Description of medal
3. Eligibility for the award of the medal
4. Recommendation and award of the medal
5. Loss or replacement of the medal
6. Grant

DEFENCE FORCE (MERITORIOUS SERVICE MEDAL) REGULATIONS

G.N. 57/2004

under s. 241

Citation

1. These Regulations may be cited as the Defence Force (Meritorious Service Medal) Regulations.

Description of medal

2.—(1) The medal shall be designated the "Meritorius Service Medal" and is hereinafter referred to as "the medal".

(2) The medal shall be of cupro-nickel and shall bear on the obverse the Presidential Effigy and on the reverse the words "FOR MERITORIOUS SERVICE" circumscribing the badge of the Malaŵi Defence Force.

(3) The medal shall be worn suspended on the left breast by a ribbon one inch and a quarter in width, which shall in colour be crimson with white edges and a white stripe down the centre.

Eligibility for the award of the medal

3.—(1) The medal shall be awarded only to those members of the Regular Force who have performed services of conspicuous merit.

(2) The medal shall be open to all ranks of the Regular Force.

(3) The qualifications for the medal shall be valuable service characterized by resource and devotion to duty, including prolonged service marked by exceptional ability, merit and exemplary conduct.

(4) Service requisite to qualify for the medal may be spent wholly in the Regular Force or partly in that Force and partly in a cooperating force up to an aggregate of twenty-three years.

Recommendation and award of the medal

4.—(1) Recommendations for the award of the medal shall be submitted by commanding officers to the Commander when the

conditions prescribed in regulation 3 have been fulfilled. Such recommendations shall be in letter form setting forth the special circumstances that warrant the recommendation for the award.

(2) The Commander shall recommend to the President only those officers, warrant officers, non-commissioned officers and private soldiers who are in every way worthy of the award of the medal.

(3) The medal shall be awarded on the authority of the President and notice of each award shall be published in the *Gazette*.

(4) A register of the names of those to whom the medal has been awarded shall be kept by the Commander.

Loss or replacement of the medal

5.—(1) When a medal has been lost and it is desired to replace it, a sworn affidavit shall be made stating the circumstances under which the loss occurred, and the rank, name and unit of the person to whom the medal belonged. This affidavit shall be forwarded to the Commander.

(2) When a medal has been lost through carelessness or neglect, replacement may be recommended at the holder's expense, but, in the case where loss occurred through no fault or neglect of the holder the Commander may authorize that the replacement be made at the expense of the Government.

(3) Replacement of a lost medal shall not be made until a period of six months has elapsed after the date on which the loss was reported.

Grant

6. An amount equivalent to one month basic pay shall be granted to every recipient of the medal.

DEFENCE FORCE (RE-ENGAGEMENT AND CONTINUOUS SERVICE MEDAL) REGULATIONS

ARRANGEMENT OF REGULATIONS

REGULATIONS

1. Citation
2. Description
3. Eligibility for the award of the medal
4. Recommendation for the medal
5. Loss and replacement
6. Grant

DEFENCE FORCE (RE-ENGAGEMENT AND CONTINUOUS SERVICE MEDAL) REGULATIONS

G.N. 58/2004

under s. 241

Citation

1. These Regulations may be cited as the Defence Force (Re-engagement and Continuous Service Medal) Regulations.

Description

2.—(1) The medal shall be designated the "Re-engagement and Continuous Service Medal" and is hereinafter referred to as "the Medal".

(2) The Medal shall be of silver, bearing Malaŵi Government Court of Arms and on the reverse the inscription "FOR RE-ENGAGEMENT AND CONTINUOUS SERVICE" circumscribing the badge of the Defence Force.

(3) The medal shall be worn suspended on the left breast by a ribbon 2.5 cm in width which shall in colour be black with red and green stripes marked diagonally on the main colour black.

Eligibility for the award of the medal

3. The medal shall be awarded to a warrant officer, non-commissioned officer and private soldier who has completed seven years initial engagement and has offered himself for continuous service.

Recommendation for the medal

4.—(1) Recommendations for the medal shall be by the commanding officer or appropriate superior authority and forwarded in writing to the Commander.

(2) The Commander shall recommend to the President only those warrant officers, non-commissioned officers and private soldiers who are in every way worthy of the award of the medal.

(3) The medal shall be awarded on the authority of the President and notice of each award shall be published in the *Gazette*.

(4) A register of the names of those to whom the medal has been awarded shall be kept by the Commander.

Loss and replacement

5.—(1) When a medal has been lost and it is desired to replace it, a sworn affidavit shall be made stating the circumstances under which the loss occurred and the number, rank, name and unit of the person to whom the medal belonged, and the affidavit shall be forwarded to the Commander.

(2) When a medal has been lost through carelessness or neglect, replacement may be recommended at the holder's expense but, in the case where loss occurred through no fault or neglect of the holder, the Commander may recommend to the Minister that replacement be made at the expense of the Government.

(3) Replacement of a lost medal shall not be made until a period of six months has elapsed after the date on which the loss was reported.

Grant

6. There shall be no grant awarded to any recipient of the medal.

DEFENCE FORCE (COMMAND MEDAL) REGULATIONS

ARRANGEMENT OF REGULATIONS

REGULATION

1. Citation
2. Description
3. Eligibility for the award of medal
4. Recommendation
5. Loss and replacement
6. Grant

G.N. 59/2004

DEFENCE FORCE (COMMAND MEDAL) REGULATIONS

under s. 241

Citation

1. These Regulations may be cited as the Defence Force (Command Medal) Regulations.

Description

2.—(1) The medal shall be designated the "Command Medal" and is hereinafter referred to as "the medal".

(2) The medal shall be of silver star, bearing letters MDF and on the reverse the inscription "FOR COMMAND" circumscribing the badge of the Defence Force.

(3) The medal shall be worn suspended on the left breast by a ribbon 2.5 cm in width which shall in colour be gold marked with black stripes on either side.

Eligibility for the award of medal

3.—(1) The medal shall be awarded to an officer who, during service with the Defence Force—

(*a*) has attained the rank of Brigadier General; or

(*b*) in the case of an officer who has not attained the rank of Brigadier General, has commanded a brigade and passed a staff course or its equivalent.

Recommendation

4.—(1) The Commander shall recommend to the President only those officers who are in every way worthy of the award of the medal.

(2) The medal shall be awarded on the authority of the President and notice of each award shall be published in the *Gazette*.

(3) A register of the names of those to whom the medal has been awarded shall be kept by the Commander.

Loss and replacement

5.—(1) When a medal has been lost and it is desired to replace it a sworn affidavit shall be made stating the circumstances under which the loss occurred and the number, rank, name and unit of the person to whom the medal belonged, and the affidavit shall be forwarded to the Commander.

(2) When a medal has been lost through carelessness or neglect, replacement may be recommended at holder's expense but, in the case where loss occurred through no fault or neglect of the holder, the Commander may recommend to the Minister that replacement be made at the expense of the Government.

(3) Replacement of a lost medal shall not be made until a period of six months has elapsed after the date on which the loss was reported.

Grant

6. There shall be no grant awarded to any recipient of the medal.

[Subsidiary] *Defence Force (Compensation for Injuries) Regulations/ Defence Force (Identity Cards Regulations*

G.N. 60/2004

DEFENCE FORCE (COMPENSATION FOR INJURIES) REGULATIONS

under s. 241

Citation

1. These Regulations may be cited as the Defence Force (Compensation for Injuries) Regulations.

Right to compensation for injury

2. Unless otherwise provided under the Act or under any regulations made under the Act, a person subject to military law under this Act shall be entitled to be paid compensation for total or partial incapacity caused by personal injury sustained in the course of discharging military duties, and the compensation shall be payable and calculated on the basis of the percentage of incapacity specified in relation to such injury on the Workers' Compensation Act.

Cap. 55:03

G.N. 61/2004

DEFENCE FORCE (IDENTITY CARDS) REGULATIONS

under s. 241

Citation

1. These Regulations may be cited as the Defence Force (Identity Cards) Regulations.

Members etc., to be identified by identity cards

2.—(1) Every person subject to military law under the Act shall, for personal identity, be provided with an identity card in the form set out in the Schedule appropriate to the status of such person.

(2) Every identity card shall bear the insignia of the Defence Force and shall also bear—

(*a*) in the case of an identity card issued to a member, or to the spouse or child of a member, the signature of the Commander-in-Chief of the Malaŵi Defence Force;

(*b*) in the case of a relative or servant of a member, the signature of the commanding officer of the unit in which the member is serving with such general or special endorsements as the Commander-in-Chief or the commanding officer of the unit, as the case may be, considers appropriate in relation to the status enjoyed by the holder in terms of military law.

SCHEDULE reg. 2

IDENTITY CARDS

1. *A member's identity card*

No. .....

Name: .....

Rank: .....

Date issued: .....

Counter signature of Commanding Officer: .....

(Endorsements, if any)

President

Commander-in-Chief

Overleaf

(Photograph of member)

Name: .....

Village: .....

T.A.: .....

District: .....

Height: ..... m ..... cm

Weight: ..... kg

Date of Birth: .....

Blood Group: .....

.....

Signature of member

2. *Member's wife identity card*

Member's No.: .....

Rank of member: .....

Name of member: ..... Wife's name: .....

Company: .....

(Endorsements, if any)

President

Commander-in-Chief

3. *Member's child identity card*

Member's No. .....

Rank of member: .....

Name of member: ..... Child's name: .....

Company: .....

(Endorsements, if any)
President
Commander-in-Chief

4. *Member's relative or servant identity card*

Member's name: ..... Holder's name: .....

Unit: ..... Relationship: .....

(Endorsements, if any)

.....
Signature of Unit Commanding Officer

DEFENCE FORCE (MILITIA) REGULATIONS

ARRANGEMENT OF REGULATIONS

REGULATION

PART I
PRELIMINARY

1. Citation
2. Interpretation

PART II
GENERAL

3. Composition of the Militia
4. Functions of the Militia
5. Enlistment in the Militia
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G.N. 62/2004

DEFENCE FORCE (MILITIA) REGULATIONS

under s. 241

PART I
Preliminary

Citation

1. These Regulations may be cited as the Defence Force (Militia) Regulations.

Interpretation

2. In these Regulations, unless the context otherwise requires—

"child", in relation to a member, means an unmarried son or daughter, under the age of eighteen years of that member with a recognized spouse;

"commanding officer" means an officer commanding a unit;

"Director of Medical Service" means the person appointed as Director of Medical Services for the Defence Force;

"exemption board" means a board appointed under regulation 46;

"leave", in relation to a member, means leave of absence from the duties of that member;

"Medical Board" means a medical board constituted under the (Regular Force) (Other Ranks) Regulations;

"medical officer" means—

(*a*) a medical officer in the Regular Force;

(*b*) an officer appointed as a medical officer in the Militia;

"medical practitioner" means a person registered as a medical practitioner under the provisions of any law, including military law;

"member" means a member of the Militia including a commissioned officer in the Militia;

"private medical practitioner" means a medical practitioner other than a medical officer or a medical officer serving as such in the public service;

"service" means service in the Militia, and "serve" shall be construed accordingly;

"unit", in relation to a member, means the unit in which that member is serving.

PART II
General

Composition of the Militia

3.—(1) The Militia shall consist of citizens of Malaŵi between eighteen and sixty years of age who volunteer for service and are accepted by the commanding and discipline officer of the unit of the Defence Force in which they wish to serve:

Provided that no person who has served in the regular force shall be eligible to serve in the Militia.

(2) A member of the Militia shall be subject to the provisions of the Act for discipline administration during training and active service.

Functions of the Militia

4.—(1) Units of the Militia or parts thereof shall train for and undertake military service either jointly with the Regular Force or independently.

(2) Members of the Militia shall at all times be liable to serve anywhere within or outside Malaŵi, save that members shall be liable to serve outside Malaŵi only with the approval of the President.

Enlistment in the Militia

5.—(1) No person shall be enlisted in the Militia if he is less than eighteen years or more than forty years of age.

(2) The terms of enlistment of a member of the Militia shall be from the date of his attestation to the date he attains the age of sixty years.

(3) A person offering to enlist in the Militia shall be given notice in the prescribed form—

(*a*) setting out the questions to be answered by that person on attestation; and

(*b*) stating the general conditions of the engagement to be entered into by that person,

and a recruiting officer shall not enlist any person in the Militia unless such person satisfies the officer that he has been given such notice, understands it and wishes to be enlisted.

Allocation of numbers

6. The number of a member other than a commissioned officer shall be the number allocated to him on attestation.

Promotion

7. A member may be promoted or appointed to any higher rank as the appropriate superior authority may decide.

Discharge

8. A member of the Militia shall be discharged in accordance with section 223 of the Act.

Pay

9.—(1) A member shall, in respect of the initial or any subsequent period of training or any period of active service, be paid at the daily rates of pay as follows—

(*a*) for the initial period of training, the equivalent of the basic pay of a recruit in the Regular Force;

(*b*) for any subsequent period of training or active service the equivalent of the basic pay of a soldier in the Regular Force,

where he is appointed to higher rank, the rate of pay applicable to him shall be that applicable to a member of similar rank in the Regular Force.

Marriage allowance

10. A marriage allowance at the rate determined by the Minister shall be paid to any member of the Militia who is maintaining or contributing towards the maintenance of his spouse or, being a surviving spouse or being divorced, is maintaining or contributing towards the maintenance of a child in any period during which he undergoes continuous training or he is on active service.

Rations

11. A member of the Militia who is undergoing initial or subsequent training or is transferred to the Reserve Force in time of war or emergency shall be provided with free rations or be paid cash allowance in lieu thereof.

No pay or allowances in certain circumstances

12.—(1) Notwithstanding other provisions of these Regulations but subregulation (2), a member shall not receive any pay or allowances in respect of any period during which—

(*a*) he is undergoing a sentence of imprisonment, detention or field punishment imposed under the Act by a court-martial, a prescribed officer or a civil court;

(*b*) he is being treated as an in-patient at a hospital for an illness or injury which is certified by a medical officer as being attributable to an offence under the Act for which he has been convicted by a court-martial, a prescribed officer or a civil court; or

(*c*) he is absent in circumstances constituting the offence of deserting or absenting himself without leave.

(2) A marriage allowance payable under regulation 10 shall continue to be paid for—

(*a*) the first twenty-eight days of any period during which the member is undergoing any such sentence of imprisonment, detention or field punishment;

(*b*) the first twenty-eight days of any period during which the member is being so treated as an in-patient at a hospital;

(*c*) the first twenty-five days of any period during which the member is so absent.

Deductions from pay

13. The commanding officer or appropriate superior authority may authorize the deductions from any pay due to a member under these Regulations—

(*a*) any liquidated amount which that member is liable to pay to the Government or to any mess, institution, organization or association of members of the Defence Force; and

(*b*) any amount which that member has previously been paid in pay or allowances in excess of the amount which was due to him under these Regulations.

Leave

14.—(1) A member who is a commanding officer of any unit may be granted leave by the Commander.

(2) An officer in the Militia, other than a commanding officer, may be granted leave—

(*a*) for a period not exceeding thirty days, by the Commanding officer of his unit; and

(*b*) for a period not exceeding thirty days, by the Commander.

(3) A member other than an officer may be granted leave not exceeding twenty-eight days by the commanding officer of his unit.

Travelling on duty

15. The Minister may authorize the payment to a member, in respect of any period during which the member is required to travel on duty, of—

(*a*) an allowance sufficient to cover the reasonable expenses incurred by the member on travelling and subsistence; and

(*b*) an amount sufficient to cover other reasonable out-of-pocket expenses incurred by the member.

Travelling facilities on leave

16. A member who has been granted leave under regulation 14 shall be granted free travelling facilities to and from his leave destination; but, if his leave destination is outside Malaŵi such facilities shall only be granted to and from the point on the borders of Malaŵi which is the nearest to his leave destination.

Issue of arms, clothing and personal equipment to members

17.—(1) A member shall be entitled to be issued, from time to time, arms, clothing and personal equipment for his military service.

(2) Any arms, clothing and personal equipment issued to a member other than an officer shall remain the property of the Government and the member may, at any time, be ordered by the

commanding officer or appropriate superior authority to return all or any of such items.

(3) A member other than an officer who, when ordered to do so, fails to return any item of arms, clothing or personal equipment issued to him, shall be liable to pay to the Government an amount equal to the cost thereof, unless he can show that such item was stolen, lost or destroyed and that he took all reasonable precautions to prevent its theft, loss or destruction.

(4) Any item of arms, clothing or personal equipment issued to a member other than an officer which is rendered unserviceable through normal wear and tear shall be replaced or repaired as necessary at the expense of the Government.

(5) When a member other than an officer is granted leave, he shall, before proceeding on leave, hand in to the commanding officer of his unit any arms which have been issued to him.

Wearing of uniforms

18.—(1) Except with the permission of the commanding officer or appropriate superior authority, a member shall not wear any article of uniform at a time when he is not—

(*a*) on duty; or

(*b*) proceeding to or returning from a camp or place of assembly at which he is ordered to report for the purpose of training or employment.

(2) A member shall not wear any article of uniform which he is not authorized to wear.

Medical boards and medical examinations

19. The Commander may at any time order a member to present himself for, and to submit to, a medical examination at the expense of the Government by a medical officer or a private medical practitioner or a medical board.

Illness and the injury in the course of duty

20.—(1) An illness contracted or injury sustained by a member in course of his duties shall be immediately reported to a medical officer.

(2) A member who, in the course of his duties, contracts an illness or sustains an injury which is not due to misconduct or serious negligence on his part shall—

(*a*) be entitled to receive such free medical attention and treatment as is authorized by a medical officer; and

(*b*) be paid the pay and allowances applicable to him in respect of any period that he is thereby incapacitated from carrying out his civil occupation.

(3) Any expenses incurred in the treatment of a member referred to in subregulation (2) by a private medical practitioner shall only be paid by the Government if the treatment has been authorized by the Director of Medical Services.

(4) Any injury sustained by a member while participating in any regimental sport, recreational training, display or competition authorized by the commanding officer or appropriate superior authority shall be deemed, for the purposes of this regulation, to have been sustained by the member in the course of his duties.

Death in the course of duty

21.—(1) If a member dies as a result of an illness contracted or injury sustained in the course of his duties, the amount of any reasonable expenses incurred in burying him shall be paid by the Government.

(2) An injury resulting in the death of a member sustained by the member while participating in any regimental sport, recreational training, display or competition authorized by the commanding officer or appropriate superior authority shall be deemed, for the purposes of this regulation, to have been sustained by the member while in the course of his duties.

Participation in political activities

22. No member shall—

(*a*) attend any political meeting or assembly when in military uniform;

(*b*) make any address on political matters to any meeting, assembly, parade or group of members in a training institution or area when that member or any of the members he is addressing is present in that area for the purposes of undergoing training.

PART III
Administration of Disablement Benefits

Interpretation of terms in Parts III and IV

23.—(1) In this Part III and in Part IV, unless the context otherwise requires—

"certified", in relation to a disabled member, means certified by a medical officer or a medical board or by any other medical practitioner appointed or recognized for the purpose by the Pensions Board;

"civil earnings", in relation to a disabled or deceased member, means such amount, as being not more than K2,400 as is fixed by the Pensions Board as the annual earnings of that member in his normal trade or occupation;

"compensation" means compensation payable under these Regulations;

"deceased member" means a person who was a member and who—

(*a*) is killed on military service;

(*b*) dies of wounds or injuries received on military service;

(*c*) dies of a disease attributable to or aggravated by military service;

"dependant", in relation to the deceased member, means any person (other than a child of that member as defined in these Regulations or a parent or widow of that member) who was wholly or partly maintained by that member up to the time of his death and for a reasonable period before the date on which he received the wound or injury which caused his death or he was first removed from duty on account of the disease which caused his death:

Provided that if, after the date on which the deceased member was first removed from duty, he underwent further military service and during, and as a result of, such service suffered a material aggravation of his disablement which persisted until his death, the date shall, for the purposes of paragraph (*b*), be the date on which he was later removed from duty on account of the disablement;

"disabled member" means a member, or a person who was a member, who is suffering from a disablement which is attributable to, or which has been aggravated by, military service without any misconduct or serious negligence on the part of the disabled member;

"disablement compensation" means a compensation awarded to a disabled member under these Regulations whether it is awarded as a temporary or as a permanent disablement compensation;

"medical treatment" means medical, surgical or hospital treatment, skilled nursing services, the supply of medicines and the supply and repair of artificial limbs and apparatus or any device certified to be necessitated by reason of the disablement of a disabled member;

"military service" means—

(*a*) military, marine or air service in the Defence Force;

(*b*) participation in regimental sport, recreational training, display or competition authorized by the commanding officer or appropriate superior authority;

"pensionable disablement" means the disablement in respect of which a disabled member has been awarded a disablement pension;

"Pensions Appeal Board" and "Pensions Board" means, respectively, the Pensions Appeal Board and the Pensions Board established under the Defence Force (Regular Force) (Other Ranks) Regulations;

"surviving spouse", in relation to a deceased member, means a spouse of that member, but, save as specifically provided in these Regulations, does not include a person who was separated, whether by order of court or otherwise, from the member at the date of his or her death.

(2) For the purpose of any award under these Regulations—

(*a*) the rank of a disabled or deceased member shall be the rank held by that member at the date on which he sustained the wound or injury or was first removed from duty on account of the disease which caused his disablement or death:

Provided that—

(i) if after the date on which the member was first removed from duty, he underwent further military service and during, and as a result of, such service suffered a material aggravation of his disablement, his rank shall be the rank which he held at the date on which he was later removed from duty on account of the disablement;

(ii) if the member sustained two or more disablements to which different ranks would apply under the foregoing provisions, the award in respect of the combined disablements shall be at a composite rate, having regard to each disablement and the rank appropriate thereto;

(*b*) where the rank of a disabled or deceased member is not a military rank mentioned in these Regulations, his rank shall, for the purpose of these Regulations, be the rank mentioned in these Regulations which is the equivalent to his actual rank.

Functions of the Pensions Board and the Pensions Appeal Board

24.—(1) The right of any person to an award under these Regulations and the amount of such award shall be determined by the Pensions Board in accordance with these Regulations.

(2) Within six months after the date on which any decision of the Pensions Board has been communicated to a claimant under these Regulations, such claimant may, by notice in writing to the Pensions Board, appeal to the Pensions Appeal Board.

(3) On any such appeal, the Pensions Appeal Board may confirm the decision of the Pensions Board or may, subject to these Regulations, vary such decision and the decision of the Pension Appeal Board shall be given effect by the Pensions Board.

Review, suspension or cancellation of awards

25.—(1) The Pensions Board may at any time review, amend or withdraw any award made under these Regulations which—

(*a*) has been incorrectly made by error in interpretation or fact; or

(*b*) the Pensions Board has reason to believe has been obtained by improper means.

(2) The minister may suspend or cancel in whole or in part any award made under these Regulations if he considers that the recipient is an unworthy person.

(3) If a member in receipt of an award made under these Regulations is convicted of any offence and is required to undergo a period of imprisonment exceeding three months, payment of the award shall, during the term of imprisonment, be made to, or for the benefit of, a spouse, children or dependants of such member.

Administration of awards

26. Any award payable to or in respect of any person under these Regulations may, at the discretion of the Pensions Board and for reasons deemed by it to be sufficient, be administered under such conditions as the Pensions Board may determine instead of being paid to the grantee.

PART IV
Benefits Payable to Disabled Members

Disablement compensation

First Schedule

27.—(1) A disabled member shall be awarded a disablement compensation according to his rank and class based on the percentage of his disablement and related to the rates of disablement compensation for one hundred per centum disablement set out in the First Schedule:

Provided that the Pensions Board may, where in its opinion the disablement of such member is of a minor degree, award such member tree medical treatment in lieu of a disablement compensation and, if it does so, the member shall be entitled to any other benefits conferred by these Regulations on a disabled member who has been awarded a disablement compensation.

(2) A disablement compensation shall, in the first instance, be awarded temporarily unless the disablement has, in the opinion of the Pensions Board, reached its final condition. A disablement

compensation awarded temporarily shall be reviewed from time to time until a permanent award is made or the award ceases.

(3) When a permanent disablement compensation has been awarded to a disabled member, it shall not, save as is provided in Regulation 29, be altered unless the Pensions Board, on application by such member for an increase in the award, is of the opinion that there has been a substantial permanent increase in the degree of disablement of such member.

(4) It shall be accepted that there has been a substantial permanent increase in the degree of disablement of a disabled member—

(*a*) in a case where the original degree of disablement of the member was twenty per centum or less, if his condition has deteriorated permanently by five per centum of one hundred per centum disablement or by one-half of the original degree of disablement, whichever is the greater; and

(*b*) in any other case, if the member's condition has deteriorated permanently by at least ten per centum of one hundred per centum disablement.

(5) If the Pensions Board is of the opinion that there has been a substantial temporary increase in the degree of disablement of a disabled member to whom a permanent disablement compensation has been awarded, it shall award such member a further temporary disablement compensation in respect of such increase.

(6) A temporary disablement compensation awarded under the provisions of subregulation (5) shall be subject to review from time to time until a permanent award is made or until the award ceases.

Additional compensation

28.—(1) If the Pensions Board is satisfied that the civil earnings of a disabled member who has been awarded a disablement compensation exceed the amount arrived at by adding together the annual rate of his disablement compensation and his average annual earnings, it may award him a compensation not exceeding the amount of such excess (in these Regulations referred to as "additional compensation").

(2) For the purposes of this regulation, the average annual earnings of a disabled member referred to in subregulation (1) shall be such amount as the Pensions Board, having regard to the reduced earning capacity of the disabled member owing to his disablement, considers to fairly represent the earning capacity of such member during a period of one year.

(3) An additional compensation may be reviewed and altered from time to time according to any change in the circumstances of

the disabled member, but so, however, that no increase shall be made which would have the effect of nullifying any reduction or withdrawal ordered under regulation 33.

Degree of disablement

29.—(1) The degree of disablement of a disabled member shall be the measure of disablement (expressed by way of a percentage, one hundred per centum representing total disablement) which is certified as being suffered by such member by a comparison of his condition as disabled with the condition of a normal healthy person of the same age and sex, without taking into account the earning capacity of such member in his disabled condition in his own or any other trade or occupation.

(2) In a case of disablement suffered by reason of two or more disablements attributable to, or aggravated by, military service without any misconduct or serious negligence on the part of the disabled member, his degree of disablement shall be assessed in relation to the combined disablements and shall in no case exceed one hundred per centum.

(3) If a disabled member is suffering from disablement which was aggravated by military service but is not attributable to military service and the aggravated condition is not due to any misconduct or serious negligence on his part, his degree of disablement for the purpose of these Regulations shall be the degree of disablement resulting from the aggravation only.

(4) Where a disabled member considers that his assessed degree of disablement is incorrect, he may request the Pensions Board to refer his case to a special medical board and the Pensions Board may in its discretion accede to that request or refuse it.

(5) A special medical board shall investigate and make a finding on any case referred to it under subregulation (4) and shall submit its findings to the Pensions Board.

(6) If the finding of a special medical board is that the disablement in question is of a degree higher or lower than the degree at which it was previously assessed, the Pensions Board shall alter the assessment to conform with such finding.

Allowance in respect of spouse and children of a disabled member

30.—(1) Subject to the provisions of this regulation, a disabled member who has been awarded a disablement compensation may be awarded an allowance in respect of the spouse and each of the children payable during the continuance of the compensation at such of the annual rates specified in subregulation (2) as corresponds to the degree of disablement at which such member is assessed for compensation.

(2) The annual rates for the purposes of subregulation (1) shall be—

(*a*) in respect of the spouse of a disabled member—

(i) if the member is an officer, K3,600;

(ii) if the member is not an officer, K1,800;

(*b*) in respect of the first child of a disabled member—

(i) if the member is an officer, K3,600;

(ii) if the member is not an officer, K1,800; and

(*c*) in respect of each additional child of a disabled member—

(i) if the member is an officer, K2,160;

(ii) if the member is not an officer, K1,080.

(3) Where a disabled member marries after the date of the award to him of a disablement compensation, the allowance awarded to him in respect of the spouse shall be paid—

(*a*) if proof of the marriage is furnished to the Pensions Board within three months after the date thereof, as from the date on which such proof is furnished; and

(*b*) if proof of the marriage is not furnished to the Pensions Board within three months after the date thereof, as from the date on which such proof is furnished.

(4) Where a child of a disabled member is born after the date of award of a disablement compensation to the member, the allowance awarded to him in respect of such child shall be paid—

(*a*) if proof of the date of birth is furnished to the Pensions Board within three months after the date thereof, as from the date of birth of the child; and

(*b*) if proof of the date of birth is not furnished to the Pensions Board within three months after the date thereof, as from the date on which such proof is furnished.

(5) The award and continuance of an allowance in respect of a spouse who is living apart from the disabled member shall be at the discretion of the Pensions Board.

Payment of medical expenses

31.—(1) A disabled member shall in respect of his disablement, be entitled, at the expense of the Government, to—

(*a*) medical treatment in a Government hospital by a medical officer or a medical officer in the Ministry of Health;

(*b*) such other medical treatment, if any, as may be authorized by the Pensions Board.

(2) Where a disabled member incurs medical expenses in respect of a disablement which has been aggravated by military service but is not attributable to military service, the sum payable under subregulation (1) in respect of such expenses shall not exceed an amount equal to the same proportion of such expenses as the actual degree of disablement of the disabled member due to the aggravated condition bears to the degree of disablement which would have been applicable to him had the whole of his disablement been attributable to military service.

Temporary allowance in connexion with medical examination

32.—(1) If it is certified that it is necessary for a disabled member to submit to a medical examination or to undergo medical treatment in a hospital or elsewhere, the Pensions Board may, subject to the other provisions of this regulation, award a temporary allowance to such member, in addition to any other benefits to which he may be entitled under these Regulations, for the period during which he submits to such examination or undergo such treatment.

(2) A temporary allowance awarded under subregulation (1) shall be at the rate not exceeding the rate of additional compensation which could have been awarded to the disabled member if he had no annual compensation.

(3) No temporary allowance shall be awarded under subregulation (1), where the disabled member suffers no loss of income by reason of submitting to the medical examination or undergoing the medical treatment.

Medical examination of disabled member

33.—(1) A disabled member who has been awarded a temporary disablement compensation may at any time be required by the Pensions Board, by letter sent by registered post to the registered address of such member, to submit to a medical examination at the expense of the Government at such date, time and place as may be specified in the letter.

(2) If within a period of six weeks after a letter has been sent to a disabled member under subregulation (1), he fails to acknowledge receipt of such letter or fails to submit himself to the required medical examination, his temporary disablement compensation shall be suspended.

(3) If a disabled member whose temporary disablement compensation has been suspended under subregulation (2) is subsequently medically examined and found to be still suffering from the disablement for which he was originally awarded a temporary disablement compensation, the Pensions Board shall restore his compensation from the date on which it was suspended

and may, after obtaining an explanation for his default, order that—

(*a*) where there is a reduction in the degree of disablement, such reduction shall apply from the date on which the award was suspended; and

(*b*) where there is an increase in the degree of disablement, such increase shall apply from the date on which the award was suspended.

(4) For the purpose of this regulation, the registered address of a disabled member shall be the address notified in writing by him to the Pensions Board as being his permanent address or any change in his address likewise notified.

Medical treatment of disabled member

34.—(1) A disabled member who has been awarded a disablement compensation, additional compensation or an allowance under these Regulations may at any time be required by the Pensions Board to undergo medical treatment of a reasonable nature.

(2) If a disabled member referred to in subregulation (1) refuses to undergo the treatment required by the Pensions Board, the Pensions Board may—

(*a*) reduce or withdraw any temporary disablement compensation, additional compensation or allowance awarded to him under these Regulations; and

(*b*) refuse to increase the amount of any permanent disablement compensation awarded to him, notwithstanding that there has been a substantial permanent increase in his degree of disablement.

(3) A disabled member referred to in subregulation (1) who is dissatisfied with any action taken by the Pensions Board under subregulation (2) may claim an independent medical examination to decide whether the medical treatment which he was required to undergo was of a reasonable nature.

(4) Where the independent medical examination establishes that the medical treatment which the disabled member was required to undergo was not of a reasonable nature—

(*a*) any temporary disablement compensation, additional compensation or allowance awarded to him which was reduced or withdrawn shall be restored in full as from the date on which it was so reduced or withdrawn;

(*b*) any increase in the amount of the permanent disablement compensation awarded to him which was refused shall be granted as from the date on which it was so refused.

(5) Where a disabled member referred to in subregulation (1) is, owing to his misconduct, discharged from an institution in which he was undergoing medical treatment in accordance with the requirements of the Pensions Board, the Pensions Board may reduce or withdraw any temporary disablement compensation, additional compensation or allowance awarded to him under these Regulations.

Vocational training

35.—(1) The Pensions Board may in its discretion refer the case of any disabled member to a vocational board for the member's vocational training.

(2) A vocational board shall investigate any case or application referred to it under subregulation (1) and shall submit a report thereon to the Pensions Board.

(3) If the Pensions Board, after considering the report of a vocational board, considers that a disabled member should, in consequence of his disablement, receive vocational training, it may order him to undergo such training and may award him, in addition to any other benefits to which he may be entitled under these Regulations, a temporary allowance in respect of the period during which he undergoes such training at a rate not exceeding the rate of additional compensation which he would have been awarded had he had no earning capacity.

(4) A temporary allowance awarded under subregulation (3) shall be paid for such period and subject to such conditions and such deductions in respect of the earnings of the disabled member while he is undergoing vocational training as the Pensions Board may determine.

(5) The whole or any part of any charges, fees or expenses incurred in respect of the vocational training of a disabled member may be paid under such conditions as the Pensions Board may determine.

(6) At the termination of any period of vocational training under this Regulation, the Pensions Board shall determine the sum to be awarded to the disabled member for the purchase of tools required by him in the vocation in which he has been trained.

(7) If a disabled member refuses to undergo any vocational training ordered under this regulation the Pensions Board may reduce or withdraw any additional compensation awarded to him.

Travelling and subsistence allowance payable to a disabled member

36.—(1) When a disabled member is required by the Pensions Board to make a journey in order to submit to a medical examination or to undergo treatment or vocational training he shall be entitled to travel at the expense of the Government.

(2) Subject to the subregulations (3) and (4), when a disabled member is required by the Pensions Board to make a journey for the purposes mentioned in subregulation (1), he shall be entitled, during the period of necessary absence from home, to a subsistence allowance at the rate applicable to a member of similar rank in the Regular Force.

(3) A disabled member shall not be entitled to any subsistence allowance under subregulation (2)—

(*a*) in respect of any period during which he is receiving free maintenance as an in-patient at a hospital or other institution; or

(*b*) if the period of absence from home is less than four hours.

(4) If a disabled member is unfit owing to his own misconduct or serious negligence to undergo a medical examination and in consequence thereof is required by the Pensions Board to undergo a further medical examination, he shall not be entitled to any subsistence allowance under subregulation (2) in respect of any period during which he is necessarily absent from home for the purpose of undergoing such further medical examination.

Further disablement of disabled member

37. If a disabled member who has been awarded a disablement compensation continues to undergo military service and suffers a further disablement attributable to, or aggravated by, military service without any misconduct or serious negligence on his part, he shall be awarded a supplementary compensation based on the scale set out in the First Schedule appropriate to his case in respect of the further disablement represented by the difference between the degree of disablement due to his combined disablements and that from his earlier disablement or disablements alone.

First Schedule

Allowance in respect of nursing attendants

38. Where a disabled member has been awarded a disablement compensation for one hundred per centum disablement and the Pensions Board is satisfied that his disablement necessitates the constant and continuous attendance of a nurse or other attendant, it may award such member, in addition to any other benefits to which he may be entitled under these Regulations, an allowance not exceeding the reasonable expenditure actually incurred.

PART V

Training and Embodiment

Initial and subsequent training

39. A person who has volunteered for the Militia shall receive initial military training for a period not exceeding twelve weeks and, thereafter, subsequent training pursuant to a call-up under regulation 40.

Call-up for training

40.—(1) Notice in writing of the date of call-up for training shall be delivered at the address of the volunteer—

(2) Any member of the Militia who has received a notice under subregulation (1) may appeal against his call-up for training to the appropriate exemption board, giving grounds for his appeal.

(3) Every person who before the fixed date had been called up for training and who immediately before the fixed date was liable to undergo training or had not completed training shall be deemed to have been called up for training under these regulations.

(4) Any member of the Militia who—

(*a*) has received a notice referred to in subsection (1);

(*b*) has not been exempted from training under this Part; and

(*c*) fails to present himself for training at the date specified in that notice,

shall be guilty of an offence.

Certificate of service

41. Every member of the Militia shall, on completion of the initial and any subsequent training, be entitled to be provided with a certificate in the form approved by the Minister giving particulars of his service in the Militia.

Notification of change of address *Second Schedule*

42. Every member of the Militia shall give notification in the form set out in the Second Schedule of any change of his address through the District Commissioner or the nearest military institution within a period of fourteen days after his address has been changed, and any member who fails to do so shall be guilty of an offence.

Classification on training

43. A member called up or deemed to have been called up for training under these Regulations shall be classified by the appropriate training authority as efficient or inefficient in accordance with such provisions as may be prescribed.

Absent without leave and evasion of training

44. A member who—

(*a*) without leave or permission, absents himself during any period of continuous training to which he is liable under these regulations; or

(*b*) evades or fails to perform duty and with proper zeal for the full course of—

(i) his initial period of training; or

(ii) training allotted to him in respect of any period succeeding his initial period of training,

shall be guilty of an offence.

Medical examination

45.—(1) Every member who has been notified—

(*a*) before the fixed date that he has been called up for training and has not been medically examined; or

(*b*) on or after the fixed date that he has been called up for training,

shall present himself for, and submit to, medical examination when called upon to do so.

(2) Any member who has been medically examined under subregulation (1) and has been pronounced unfit for military service in any capacity whatever shall be released from the call-up in relation to which he was medically examined, and shall receive from the appropriate registering officer a certificate to that effect in the form approved by the Minister.

Exemption boards

46.—(1) The Minister may appoint exemption boards at such places in Malaŵi as he may deem expedient.

(2) An exemption board shall consist of such persons, including officers or other authorities, as the Minister may appoint.

(3) Functions of an exemption board shall be to—

(*a*) consider applications for exemption from training under these regulations; and

(*b*) carry out such other duties as may be prescribed or assigned to it by the Minister.

(4) The exemption board shall have power to determine the procedure for the conduct of its business.

(5) The decision of an exemption board on any application for exemption shall be final and shall not be subject to any appeal.

Transfer to the Reserve Force

47. A member of the Militia shall not, except in time of war or under regulation 48, be transferred to the Reserve Force.

Embodiment

48.—(1) Whenever it appears to the President necessary or desirable in the public interest, he may by notice published in the *Gazette* or otherwise—

(*a*) order the employment of the whole or any part of the Militia;

(*b*) order the employment of any member of the Militia for service within or, with his consent, outside Malaŵi.

(2) Any member of the Militia employed under subregulation (1) by reason of an order issued by the President shall remain so employed until released by order of the President.

(3) Any member of the Militia employed under subregulation (1) may be posted or attached to any unit of the Regular Force or the Reserve Force.

Reporting from time to time by members

49. The President may, by notice in the *Gazette*, order the whole or any part of the Militia to report from time to time at such places as he may see fit.

Punishment for offences under these Regulations

50. Offences under these Regulations shall be punishable in accordance with the punishment provisions in the Act.

FIRST SCHEDULE

regs. 27 and 37

Rates of Disablement Compensation

	Rank and class	*Rate Per annum*
1.	Disabled member holding rank—	
	(*a*) Lieutenant Colonel, Wing Commander or higher rank	K18,900
	(*b*) Major or Squadron Leader	K15,120
	Captain or Flight Lieutenant	K15,120
	(*c*) Lieutenant, Second Lieutenant, Flying Officer or Pilot officer	K13,092
2.	Disabled member not holding commissioned rank	K13,092

SECOND SCHEDULE reg. 42

NOTIFICATION OF CHANGE OF ADDRESS

I, ...

(*registered number, rank and name*)

of ..... late of .....

(unit)

hereby give notice that my addresses now are—

Residential: .....

.....

.....

.....

Business: .....

.....

.....

Occupation: .....

My place of residence is ..... kilometres, from ..... Post Office

Place: .....

Date: .....

.....

Signature

NATIONAL SERVICE

CHAPTER 12:02

Containing Pages 1–7

CHAPTER 12:02

NATIONAL SERVICE

ARRANGEMENT OF SECTIONS

SECTION
1. Short title
2. Appointment of director of Manpower
3. Proclamations and notices subjecting persons to Act
4. Exemption
5. Registration for National Service
6. Medical examination
7. Notice requiring registered persons to serve
8. Constitution and powers of National Service Tribunal
9. Appeals against obligation to serve
10. Appeals before the Tribunal
11. Remuneration of Tribunal and witnesses and costs
12. Nature of service under this Act
13. Transfer from one form of service to another
14. Employers to give particulars of employees
15. Co-operation of employers
16. Reinstatement in employment
17. False statement and forgery
18. Penalty
19. Rules

An Act to Make Provision for Securing and Controlling the Enlistment of Persons for National Service during an Emergency and for Purposes connected therewith

15 of 1951
G.N. 22/1963
16/1964(M)
73/1964(M)
1/1965
137/1966
166/1967

[10th April, 1951]

Short title

1.—(1) This Act may be cited as the National Service Act.

(2) This Act shall come into operation and shall remain in operation during the existence in force of any Order made by the Minister under section 3.

Appointment of Director of Manpower

2. The Minister may by notice published in the *Gazette* appoint a person to be Director of Manpower for the purposes of this Act.

Order subjecting citizens to the Act

3. The Minister may from time to time, by Order published in the *Gazette*, direct that, subject to section 4, every citizen of Malaŵi—

(*a*) who is at the date of that Order in Malaŵi or who thereafter enters Malaŵi; and

(*b*) who was born in such year or years as may be specified in the Order,

shall, on the date of the Order, or, as the case may be, on the date on which he first enters Malaŵi after the date of the Order, become liable to be called up for national service under this Act.

Exemption

4. No person shall be liable for service under this Act if he is under the age of 18 years or over the age of 60 years.

Registration for National Service

5.—(1) The Director of Manpower may by notice and in such other manner as he shall deem sufficient require such classes of persons who have become liable for service under this Act as he shall specify in such notice to furnish at such time and place in such manner and to such authority or person as shall be specified in such notice such particulars as shall be specified.

(2) Any person who fails to comply with the requirements of any notice issued under subsection (1) shall be guilty of an offence against this Act.

(3) Every person who furnishes the particulars required by subsection (1) shall be registered by the Director of Manpower, together with the particulars relating to such person, in a Service Register which shall be kept by the Director of Manpower.

(4) A person registered under this section shall be supplied with a Certificate of Registration which shall be in such form as the Director of Manpower shall determine.

(5) A person registered under this section shall so long as he remains liable to service under this Act whenever requested by a police officer produce his Certificate of Registration:

Provided that if such person is not, at the time when he is requested to produce such Certificate, in possession thereof, he shall produce the same within seven days of being requested as aforesaid at such police station as the police officer may specify.

(6) A person registered under this Act shall within seven days notify the Director of Manpower in writing of any change in his name, marital status, address or occupation.

(7) Any person who fails to produce his Certificate of Registration as required in subsection (5), or who fails to notify a change of name, marital status, address or occupation as required by subsection (6), shall be guilty of an offence against this Act.

Medical examination

6.—(1) The Director of Manpower may require any person registered under section 5 to present himself for and submit to medical examination at such time and place as may be notified.

(2) Any person who fails to present himself for, or submit himself to, medical examination when required to do so in accordance with subsection (1) shall be guilty of an offence against this Act.

Notice requiring registered persons to serve

7.—(1) The Director of Manpower may, by notice in writing (hereinafter referred to as a "duty notice") require any person registered under section 5 and passed medically fit for service to report for duty on such date and at such time and place and to such authority or person as may in such duty notice be specified.

(2) The duty notice shall specify whether the service to be performed is full time or part time service. The Director of Manpower may by a further notice require any person performing part time service to perform full time service.

(3) Subject to section 9, a person upon whom a duty notice is served shall be deemed, as from the date specified in the notice, to have been taken for service for a term beginning on that day and ending on such date as the state of public emergency proclaimed under section 1 (2) has passed:

Provided that the Minister may by order extend the period of service of any persons or classes of persons specified in such order to a date fixed in such order.

Constitution and powers of National Service Tribunal

8.—(1) The Minister may by notice published in the *Gazette* provide for the constitution of a National Service Tribunal (hereinafter referred to as "the Tribunal"), which shall consist of not less than five members to be nominated by the Minister.

(2) The powers of the Tribunal may be exercised at any meeting at which not less than three members are present.

(3) The Tribunal shall have the same powers as the High Court for compelling the attendance of persons before it, and to take evidence on oath.

(4) Parties to proceedings before the Tribunal may be represented by a legal practitioner.

Appeals against obligation to serve

9.—(1) A person upon whom a duty notice has been served, or his employer (if any), may within 14 days of the date of receipt of the notice appeal to the Tribunal against the obligation to perform full or part time service under this Act.

(2) Pending the hearing of the appeal the duty notice shall be of no effect.

Appeals before the Tribunal

10.—(1) On the hearing of any appeal the Tribunal may—

(*a*) reject the appeal, in which case the Tribunal may make such orders as may be necessary to secure the services of the person to whom the appeal relates;

(*b*) uphold the appeal and grant to such person a certificate of exemption from service for such period and subject to such conditions as may be deemed fit; or

(*c*) make such order as shall appear to it to be just.

(2) The determination of the Tribunal shall not be called in question in any court of law.

Remuneration of Tribunal and witnesses and costs

11.—(1) Members of the Tribunal shall receive such remuneration as the Minister may approve.

(2) A witness whose attendance has been required by the Tribunal shall receive the same travelling and subsistence allowances as a witness before the High Court.

(3) Costs in any proceedings before the Tribunal shall be at the complete discretion of the Tribunal.

Nature of service under this Act

12.—(1) Any person registered under section 5 and liable for and not exempted from service under this Act may be required to serve in such place and in such manner, other than in the armed forces of Malaŵi, as the Director of Manpower may require:

Provided that this subsection shall not apply to any person who has volunteered and been accepted for service with the armed forces of Malaŵi, or, who being on a reserve, has been called up for such service.

(2) All persons required to serve under subsection (1) shall if required to serve as an employee of a private individual or company receive from such individual or company the same privileges, pay and allowances as are usually afforded or paid in respect of the services being performed.

(3) A person serving under this Act shall diligently and faithfully perform the services required of him. Any person who contravenes this subsection shall be liable to a fine of £100 and to imprisonment for six months.

Transfer from one form of service to another

13.—(1) Any person serving under this Act may be required by the Director of Manpower to serve in such other capacity, not being service with the armed forces of Malaŵi, as the Director of Manpower may specify in writing.

(2) Any person who fails to comply with a requirement made by the Director of Manpower under subsection (1) shall be liable to a fine of £100 and to imprisonment for six months.

Employers to give particulars of employees

14.—(1) Every person who employs in Malaŵi any person between the ages of 18 and 60 years shall, on or before a date to be specified by the Director of Manpower by notice published in the *Gazette*, send to the Director of Manpower particulars in writing of—

(*a*) the full name and age of every such employee; and

(*b*) the full name and age of every person who, prior to being required to perform full time service under this Act or being enlisted for full time service in the armed forces of Malaŵi, was employed by him.

(2) Every person who after the said specified date takes into his employment any person between the ages of 18 and 60 years, or dismisses or releases or loses from his employment any such employee, shall within seven days of such event send written notice thereof to the Director of Manpower, giving full particulars of every person so entering or leaving his employment.

(3) Any person who fails to comply with the requirements of subsection (1) or (2) shall be guilty of an offence against this Act.

Co-operation of employers

15.—(1) It shall be the duty of every employer to give all proper facilities to any person in his employ to enter upon and carry out any service for which he is liable under this Act.

(2) An employer shall be liable to a fine not exceeding £100 if he—

(*a*) terminates the employment of any person employed by him by reason of any duties or liabilities which that person is or may become liable to perform or discharge by virtue of this Act, or in order to evade the obligation of section 16;

(*b*) by words, conduct or otherwise directly or indirectly compels, induces or prevails upon, or attempts so to do, any person in or seeking his employment to refrain from doing any service for which he is liable under this Act.

(3) In any prosecution under this section if the Court is of opinion that there is reasonable cause to believe that the duties or liabilities aforesaid caused or contributed to the termination of the employment or other alleged penalization, or that the employment was terminated in order to evade the obligation aforesaid, the employment shall be deemed to have been terminated or the penalization effected by reason of such duties or liabilities or in order to evade such obligation, unless the employer proves the contrary.

(4) In addition to any other penalty the Court may order an employer convicted of an offence against this section to pay to the person whose employment has been terminated a sum not exceeding an amount equal to three months' remuneration at the rate last payable by the employer.

(5) Where an employee has been taken or accepted for full

time service under this Act his employment shall not be deemed to have been terminated by his employer within the meaning of this section.

Reinstatement in employment

16.—(1) It shall be the duty of every employer of—

(*a*) any person required to serve under this Act;or

(*b*) any person who, being on any Reserve of the armed forces of Malaŵi, has been called up for full time service in such armed forces,

to reinstate such person in his employment at the termination of his service under this Act or in the armed forces of Malaŵi as the case may be, under conditions which are not less favourable to such persons than those under which he would have been employed had he not been required to serve under this Act or in the armed forces of Malaŵi.

(2) If any employer fails to comply with this section he shall be liable to a fine of £100 and in addition the court may order him to pay to the person whom he has failed to reinstate a sum not exceeding an amount equal to three months' remuneration at the rate at which his remuneration was last payable to him by the employer:

Provided that it shall be a defence for the employer to prove that the person formerly employed by him did not before the expiration of one month after the termination of such service as aforesaid, apply to the employer for reinstatement, or that having been offered reinstatement by him, he failed, without reasonable excuse to present himself for employment at the time and place notified to him by the employer or that by reason of a change of circumstances (other than the engagement of some other person to replace him)—

(*a*) it was not reasonably practicable to reinstate him;or

(*b*) his reinstatement in an occupation and under conditions not less favourable to him than those which would have been applicable to him had he not been called from his employment for any service referred to in subsection (1) was impracticable, and that the employer has offered to reinstate him in the most favourable occupation and under the most favourable conditions reasonably practicable.

(3) For the purpose of securing the fair adjustment of contracts of service or apprenticeship in force between employer and employees when the employees are or were called from their employment for any service referred to in subsection (1), the Minister may make Regulations relieving the parties to such contracts of all or any of their obligations thereunder in respect of the period of that service, and may also make Regulations modifying

such contracts by extending the period of service or apprenticeship thereunder by a period not exceeding the period of the said service, and adapting the terms of the contracts in relation to any such extension.

(4) In relation to any person called from his employment for any service referred to in subsection (1), references in this section to an employer shall be construed as including references to any person for the time being carrying on the undertaking or service in which he was employed when so called as aforesaid, or carrying on any undertaking or service with which that undertaking or service has been amalgamated or in which it was comprised on the date on which he was so called as aforesaid.

(5) This section shall bind the Government.

False statement and forgery

17.—Any person who—

(*a*) in giving any information for the purposes of this Act knowingly or recklessly makes any statement which is false in a material particular;or

(*b*) with intent to deceive—

(i) forges or uses, or lends or allows to be used by any other person, any certificate under this Act;or

(ii) makes or has in his possession any document so closely resembling any certificate under this Act as to be calculated to deceive,

shall be liable to a fine of £50 and to imprisonment for three months.

Penalty

18. Any person guilty of an offence against this Act for which no special penalty is provided shall be liable to a fine of £50 and to imprisonment for three months.

Rules

19.—(1) The Minister may make Rules for carrying this Act into effect.

(2) In particular, and without prejudice to the generality of the foregoing power, such Rules may provide that persons employed or engaging in the occupations specified in such Rules (to be known as "reserved occupations") shall, subject to such conditions and exceptions as may be prescribed, continue in such occupations.

(3) In making Rules under this section the Minister may provide that any contravention thereof shall be an offence punishable with a fine of £200 and imprisonment for twelve months.

GENEVA CONVENTIONS

CHAPTER 12:03

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CHAPTER 12:03

GENEVA CONVENTIONS

ARRANGEMENT OF SECTIONS

SECTION

1. Short title
2. Interpretation
3. Ratification
4. Grave breach of Conventions
5. Notice of trial of protected persons
6. Legal representation of certain persons
7. Appeal by protected persons
8. Reduction of sentence and custody of protected persons

SCHEDULES

An Act to enable effect to be given to certain International Conventions done at Geneva on the Twelfth Day of August, one thousand nine hundred and forty-nine and for purposes connected therewith 18 of 1967

[9TH AUGUST, 1967]

1. This Act may be cited as the Geneva Conventions Act. Short title

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

"Conventions" means the Conventions set out in the Schedules;

"court" does not include a court-martial;

"legal practitioner" means a person entitled to practise as a legal practitioner in Malaŵi under the Legal Education and Legal Practitioners Act; Cap. 3:04

"prisoner's representative" means, in relation to a protected prisoner of war at a particular time, the person by whom the functions of a prisoner's representative within the meaning of Article 79 of the Convention set out in the Third Schedule were exercisable in relation to that prisoner at the camp or place at which the prisoner was, at or last before that time, detained as a protected prisoner of war;

"protected internee" means a person protected by the Convention set out in the Fourth Schedule and interned in Malaŵi;

"protected prisoner of war" means a person protected by the Convention set out in the Third Schedule;

"protecting power" means, in relation to a protected prisoner of war or a protected internee, the power or organization which is carrying out, in the interests of the power of which he is a national, or of whose forces he is, or was at any

material time, a member, the duties assigned to the protecting power under the Convention set out in the Third Schedule or, as the case may be, in the Fourth Schedule.

Ratification

3. The accession of the Government to the Conventions is hereby approved and ratified.

Grave breach of Conventions

4.—(1) Any person, whatever his nationality, who, whether within or without Malaŵi commits or aids, abets or procures the commission by any other person of any such grave breach of any of the Conventions as is referred to in the following articles respectively of those Conventions, that is to say—

(*a*) Article 50 of the Convention set out in the First Schedule;

(*b*) Article 51 of the Convention set out in the Second Schedule;

(*c*) Article 130 of the Convention set out in the Third Schedule;

(*d*) Article 147 of the Convention set out in the Fourth Schedule,

shall, without prejudice to his liability under any other written law, be guilty of an offence and—

(i) in the case of a grave breach causing or resulting in or contributing to the death of the person protected by the Convention in question, shall be liable to imprisonment for life;

(ii) in the case of any other grave breach, shall be liable to imprisonment for fourteen years.

(2) Where an offence under this section is committed without Malaŵi a person may be proceeded against, tried and punished therefor in any place in Malaŵi as if the offence had been committed in that place, and the offence shall, for all purposes incidental to or consequential on the trial or punishment thereof, be deemed to have been committed in that place.

(3) Proceedings for an offence under this section shall not be instituted except by or on behalf of the Director of Public Prosecutions.

(4) Where in any proceedings under this section in respect of a grave breach of any of the Conventions any question arises under Article 2 of that Convention, that question shall be determined by the Minister, and a certificate purporting to set out such determination and to be signed by or on behalf of the Minister shall be received in evidence and be deemed to be so signed without further proof, unless the contrary is shown.

(5) Any written law relating to the trial by court-martial of persons who commit civil offences shall have effect for the purposes of the jurisdiction of courts-martial convened in Malaŵi as if this section had not been passed.

Notice of trial of protected persons

5.—(1) The court before which—

(*a*) a protected prisoner of war is brought up for trial for an offence; or

(*b*) a protected internee is brought up for trial for an offence for which that court has power to sentence him to death or to imprisonment for a term of two years or more,

shall not proceed with the trial unless it is proved to the satisfaction of the court that a notice containing the particulars mentioned in subsection (2) so far as they are known to the prosecutor, has been served not less than three weeks previously on the protecting power and, if the accused is a protected prisoner of war, on the accused (in a language which he understands) and on the prisoner's representative.

(2) The particulars referred to in subsection (1) are—

(*a*) the full name and description of the accused, including the date of his birth and his profession or trade, if any, and, if the accused is a protected prisoner of war, his rank and army, regimental, personal or serial number;

(*b*) his place of detention, internment or residence;

(*c*) the statement and particulars of the offence with which he is charged; and

(*d*) the court before which the trial is to take place and the time and place appointed for the first hearing or trial.

(3) For the purposes of this section a document purporting—

(*a*) to be signed on behalf of the protecting power or by the prisoner's representative or by the person accused, as the case may be; and

(*b*) to be an acknowledgment of the receipt-by that power, representative or person on a specified day of a notice described therein as a notice under this section,

shall, unless the contrary is shown, be sufficient evidence that the notice required by subsection (1) was served on that power, representative or person on that day.

(4) Any court which adjourns a trial for the purpose of enabling the requirements of this section to be complied with may, notwithstanding any thing in any other written law, remand the accused for the period of the adjournment.

Legal representation of certain persons

6.—(1) The court before which—

(*a*) any person is brought up for trial for an offence under section 4; or

(*b*) a protected prisoner of war is brought up for trial for any offence,

shall not proceed with the trial, unless—

(i) the accused is represented by a legal practitioner; and

(ii) it is proved to the satisfaction of the court that a period of not less than fourteen days has elapsed since instructions for the representation of the accused at the trial were first given to the legal practitioner,

and if the court adjourns the trial for the purpose of enabling the requirements of this subsection to be complied with, then, notwithstanding any thing in any other written law, the court may remand the accused for the period of the adjournment.

(2) Where the accused is a protected prisoner of war, in the absence of a legal practitioner accepted by the accused as representing him, a legal practitioner instructed for the purpose on behalf of the protecting power shall, without prejudice to the requirements of subsection (1) (ii), be regarded for the purposes of that subsection as representing the accused.

(3) Where the court adjourns the trial in pursuance of subsection (1) by reason that the accused is not represented by a legal practitioner, the court shall direct that a legal practitioner be assigned to watch over the interests of the accused at any further proceedings in connection with the offence, and at any such further proceedings, in the absence of a legal practitioner, either accepted by the accused as representing him or instructed as mentioned in subsection (2) a legal practitioner assigned in pursuance of this subsection shall, without prejudice to the requirements of subsection (1) (ii), be regarded for the purposes of that subsection as representing the accused.

(4) A legal practitioner shall be assigned in pursuance of subsection (3) in such manner as the Minister may, by order, prescribe and any legal practitioner so assigned shall be entitled to be paid by the Minister out of moneys provided by Parliament such sums in respect of fees and disbursements as the Minister may direct.

Appeal by protected persons

7. Where a protected prisoner of war or a protected internee has been sentenced to death or to imprisonment for a term of two years or more, the time within which he may give notice of appeal or notice of his application for leave to appeal to the High Court or the Supreme Court of Appeal, as the case may be, shall, notwithstanding anything contained in any written law relating to such appeals, be the period from the date of his conviction or, in the case of an appeal against sentence, of his sentence to the expiration of ten days after the date on which he receives a notice given—

(*a*) in the case of a protected prisoner of war, by an officer of the armed forces of Malaŵi;

(*b*) in the case of a protected internee, by or on behalf of the superintendent of the prison in which he is confined,

that the protecting power has been notified of his conviction and sentence.

Reduction of sentence and custody of protected persons

8.—(1) The Minister may, in any case in which a protected prisoner of war or a protected internee is convicted of an offence and sentenced to a term of imprisonment, direct that there shall be deducted from that term a period not exceeding the period, if any, during which that person was in custody in connection with that offence, either on remand or after committal for trial (including the period of the trial), before the sentence began, or is deemed to have begun, to run.

(2) The Minister may, in a case where he is satisfied that a protected prisoner of war accused of an offence has been in custody in connection with that offence, either on remand or after committal for trial (including the period of trial) for an aggregate period of not less than three months, direct that the prisoner shall be transferred from that custody to the custody of an officer of the armed forces of Malaŵi and thereafter remain in military custody at a camp or place in which protected prisoners of war are detained, and be brought before the court at the time appointed by the remand or committal order.

SCHEDULES

FIRST SCHEDULE

GENEVA CONVENTION FOR THE AMELIORATION OF THE CONDITION OF THE WOUNDED AND SICK IN ARMED FORCES IN THE FIELD

Geneva, 12*th August,* 1949

The undersigned Plenipotentiaries of the Governments represented at the Diplomatic Conference held at Geneva from 21st April to 12th August, 1949, for the purpose of revising the Geneva Convention for the Relief of the Wounded and Sick in Armies in the Field of 27th July, 1929, have agreed as follows:

CHAPTER I.—GENERAL PROVISIONS

Article 1

The High Contracting Parties undertake to respect and to ensure respect for the present Convention in all circumstances.

Article 2

In addition to the provisions which shall be implemented in peace time, the present Convention shall apply to all cases of declared war or of any other armed conflict which may arise between two or more of the High Contracting Parties, even if the state of war is not recognised by one of them.

The Convention shall also apply to all cases of partial or total occupation of the territory of a High Contracting Party, even if the said occupation meets with no armed resistance.

Although one of the Powers in conflict may not be a party to the present Convention, the Powers who are parties thereto shall remain bound by it in their mutual relations. They shall furthermore be bound by the Convention in relation to the said Power, if the latter accepts and applies the provisions thereof.

ARTICLE 3

In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply as a minimun, the following provisions:

(1) Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed *hors de combat* by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria.

To this end, the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above mentioned persons:

(*a*) violence to life and person, in particular, murder of all kinds, mutilation, cruel treatment and torture;

(*b*) taking of hostages;

(*c*) outrages upon personal dignity, in particular, humiliating and degrading treatment;

(*d*) the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognised as indispensable by civilised peoples.

(2) The wounded and sick shall be collected and cared for.

An impartial humanitarian body, such as the International Committee of the Red Cross, may offer its services to the Parties to the conflict.

The Parties to the conflict should further endeavour to bring into force, by means of special agreements, all or part of the other provisions of the present Convention.

The application of the preceding provisions shall not affect the legal status of the Parties to the conflict.

ARTICLE 4

Neutral Powers shall apply by analogy the provisions of the present Convention to the wounded and sick, and to members of the

medical personnel and to chaplains to the armed forces of the Parties to the conflict, received or interned in their territory, as well as to dead persons found.

ARTICLE 5

For the protected persons who have fallen into the hands of the enemy, the present Convention shall apply until their final repatriation.

ARTICLE 6

In addition to the agreements expressly provided for in Articles 10, 15, 23, 28, 31, 36, 37 and 52 the High Contracting Parties may conclude other special agreements for all matters concerning which they may deem it suitable to make separate provision. No special agreement shall adversely affect the situation of the wounded and sick, of members of the medical personnel or of chaplains, as defined by the present Convention, nor restrict the rights which it confers upon them.

Wounded and sick, as well as medical personnel and chaplains, shall continue to have the benefit of such agreements as long as the Convention is applicable to them, except where express provisions to the contrary are contained in the aforesaid or in subsequent agreements, or where more favourable measures have been taken with regard to them by one or other of the Parties to the conflict.

ARTICLE 7

Wounded and sick, as well as members of the medical personnel and chaplains, may in no circumstances renounce in part or in entirety the rights secured to them by the present Convention, and by the special agreements referred to in the foregoing Article, if such there be.

ARTICLE 8

The present Convention shall be applied with the co-operation and under the scrutiny of the Protecting Powers whose duty it is to safeguard the interests of the Parties to the conflict. For this purpose, the Protecting Powers may appoint, apart from their diplomatic or consular staff, delegates from amongst their own nationals or the nationals of other neutral Powers. The said delegates shall be subject to the approval of the Power with which they are to carry out their duties.

The Parties to the conflict shall facilitate to the greatest extent possible the task of the representatives or delegates of the Protecting Powers.

The representatives or delegates of the Protecting Powers shall not in any case exceed their mission under the present Convention. They shall, in particular, take account of the imperative necessities of security of the State wherein they carry out their duties. Their activities shall only be restricted as an exceptional and temporary measure when this is rendered necessary by imperative military necessities.

ARTICLE 9

The provisions of the present Convention constitute no obstacle to the humanitarian activities which the International Committee of the Red Cross or any other impartial humanitarian organization may, subject to the consent of the Parties to the conflict concerned, undertake for the protection of wounded and sick, medical personnel and chaplains, and for their relief.

ARTICLE 10

The High Contracting Parties may at any time agree to entrust to an organization which offers all guarantees of impartiality and efficacy the duties incumbent on the Protecting Powers by virtue of the present Convention.

When wounded and sick or medical personnel and chaplains do not benefit or cease to benefit, no matter for what reason, by the activities of a Protecting Power or of an organization provided for in the first paragraph above, the Detaining Power shall request a neutral State, or such an organization, to undertake the functions performed under the present Convention by a Protecting Power designated by the Parties to a conflict.

If protection cannot be arranged accordingly, the Detaining Power shall request or shall accept, subject to the provisions of this Article, the offer of the services of a humanitarian organization, such as the International Committee of the Red Cross, to assume the humanitarian functions performed by Protecting Powers under the present Convention.

Any neutral Power, or any organization invited by the Power concerned or offering itself for these purposes, shall be required to act with a sense of responsibility towards the Party to the conflict on which persons protected by the present Convention depend, and shall be required to furnish sufficient assurances that it is in a position to undertake the appropriate functions and to discharge them impartially.

No derogation from the preceding provisions shall be made by special agreements between Powers one of which is restricted, even temporarily, in its freedom to negotiate with the other Power or its allies by reason of military events, more particularly where the whole, or a substantial part, of the territory of the said Power is occupied.

Whenever in the present Convention mention is made of a Protecting Power, such mention also applies to substitute organizations in the sense of the present Article.

ARTICLE 11

In cases where they deem it advisable in the interest of protected persons, particularly in cases of disagreement between the Parties to the conflict as to the application or interpretation of the provisions of the present Convention, the Protecting Powers shall lend their good offices with a view to settling the disagreement.

For this purpose, each of the Protecting Powers may, either at the invitation of one Party or on its own initiative, propose to the Parties

to the conflict a meeting of their representatives, in particular of the authorities responsible for the wounded and sick, members of medical personnel and chaplains, possibly on neutral territory suitably chosen. The Parties to the conflict shall be bound to give effect to the proposals made to them for this purpose. The Protecting Powers may, if necessary, propose for approval by the Parties to the conflict a person belonging to a neutral Power, or delegated by the International Committee of the Red Cross, who shall be invited to take part in such a meeting.

CHAPTER II.—WOUNDED AND SICK

Article 12

Members of the armed forces and other persons mentioned in the following Article who are wounded or sick shall be respected and protected in all circumstances.

They shall be treated humanely and cared for by the Party to the conflict in whose power they may be, without any adverse distinction founded on sex, race, nationality, religion, political opinions, or any other similar criteria. Any attempts upon their lives, or violence to their persons, shall be strictly prohibited; in particular, they shall not be murdered or exterminated, subjected to torture or to biological experiments; they shall not wilfully be left without medical assistance and care, nor shall conditions exposing them to contagion or infection be created.

Only urgent medical reasons will authorize priority in the order of treatment to be administered.

Women shall be treated with all consideration due to their sex.

The Party to the conflict which is compelled to abandon wounded or sick to the enemy shall, as far as military considerations permit, leave with them a part of its medical personnel and material to assist in their care.

Article 13

The present Convention shall apply to the wounded and sick belonging to the following categories:

(1) Members of the armed forces of a Party to the conflict, as well as members of militias or volunteer corps forming part of such armed forces;

(2) Members of other militias and members of other volunteer corps, including those of organized resistance movements, belonging to a Party to the conflict and operating in or outside their own territory, even if this territory is occupied, provided that such militias or volunteer corps, including such organized resistance movements, fulfil the following conditions:

(*a*) That of being commanded by a person responsible for his subordinates;

(*b*) that of having a fixed distinctive sign recognisable at a distance;

(*c*) that of carrying arms openly;

(*d*) that of conducting their operations in accordance with the laws and customs of war.

(3) Members of regular armed forces who profess allegiance to a Government or an authority not recognised by the Detaining Power;

(4) Persons who accompany the armed forces without actually being members thereof, such as civil members of military aircraft crews, war correspondents, supply contractors, members of labour units or of services responsible for the welfare of the armed forces, provided that they have received authorization from the armed forces which they accompany;

(5) Members of crews including masters, pilots and apprentices, of the merchant marine and the crews of civil aircraft of the Parties to the conflict, who do not benefit by more favourable treatment under any other provisions in international law;

(6) Inhabitants of a non-occupied territory who on the approach of the enemy spontaneously take up arms to resist the invading forces, without having had time to form themselves into regular armed units, provided they carry arms openly and respect the laws and customs of war.

ARTICLE14

Subject to the provisions of Article 12, the wounded and sick of a belligerent who fall into enemy hands shall be prisoners of war, and the provisions of international law concerning prisoners of war shall apply to them.

ARTICLE 15

At all times, and particularly after an engagement, Parties to the conflict shall, without delay, take all possible measures to search for and collect the wounded and sick, to protect them against pillage and ill-treatment, to ensure their adequate care, and to search for the dead and prevent their being despoiled.

Whenever circumstances permit, an armistice or a suspension of fire shall be arranged, or local arrangements made, to permit the removal, exchange and transport of the wounded left on the battlefield.

Likewise, local arrangements may be concluded between Parties to the conflict for the removal or exchange of wounded and sick from a besieged or encircled area, and for the passage of medical and religious personnel and equipment on their way to that area.

ARTICLE 16

Parties to the conflict shall record as soon as possible, in respect of each wounded, sick or dead person of the adverse Party falling into their hands, any particulars which may assist in his identification.

These records should if possible include:

(*a*) designation of the Power on which he depends;
(*b*) army, regimental, personal or serial number;
(*c*) surname;
(*d*) first name or names;
(*e*) date of birth;
(*f*) any other particulars shown on his identity card or disc;
(*g*) date and place of capture or death;
(*h*) particulars concerning wounds or illness, or cause of death.

As soon as possible the above mentioned information shall be forwarded to the Information Bureau described in Article 122 of the Geneva Convention of 12th August, 1949, relative to the Treatment of Prisoners of War which shall transmit this information to the Power on which these persons depend through the intermediary of the Protecting Power and of the Central Prisoners of War Agency. Below p. 41

Parties to the conflict shall prepare and forward to each other through the same bureau certificates of death or duly authenticated lists of the dead. They shall likewise collect and forward through the same bureau one half of a double identity disc, last wills or other documents of importance to the next of kin, money and in general all articles of an intrinsic or sentimental value, which are found on the dead. These articles, together with unidentified articles, shall be sent in sealed packets, accompanied by statements giving all particulars necessary for the identification of the deceased owners, as well as by a complete list of the contents of the parcel.

ARTICLE 17

Parties to the conflict shall ensure that burial or cremation of the dead, carried out individually as far as circumstances permit, is preceded by a careful examination, and if possible by a medical examination, of the bodies, with a view to confirming death, establishing identity and enabling a report to be made. One half of the double identity disc, or the identity disc itself if it is a single disc, should remain on the body.

Bodies shall not be cremated except for imperative reasons of hygiene or for motives based on the religion of the deceased. In case of cremation the circumstances and reasons for cremation shall be stated in detail in the death certificate or on the authenticated list of the dead.

They shall further ensure that the dead are honourably interred, if possible according to the rites of the religion to which they belonged, that their graves are respected, grouped if possible according to the nationality of the deceased, properly maintained and marked so that they may always be found. For this purpose, they shall organize at the commencement of hostilities an Official Graves Registration Service, to allow subsequent exhumations and to ensure the identification of bodies, whatever the site of the graves, and their possible

transportation to the home country. These provisions shall likewise apply to the ashes, which shall be kept by the Graves Registration Service until proper disposal thereof in accordance with the wishes of the home country.

As soon as circumstances permit, and at latest at the end of hostilities, these Services shall exchange, through the Information Bureau mentioned in the second paragraph of Article 16, lists showing the exact location and markings of the graves, together with particulars of the dead interred therein.

ARTICLE 18

The military authorities may appeal to the charity of the inhabitants voluntarily to collect and care for, under their direction, the wounded and sick, granting persons who have responded to this appeal the necessary protection and facilities. Should the adverse party take or retake control of the area, he shall likewise grant these persons the same protection and the same facilities.

The military authorities shall permit the inhabitants and relief societies, even in invaded or occupied areas, spontaneously to collect and care for wounded or sick of whatever nationality. The civilian population shall respect these wounded and sick, and in particular abstain from offering them violence.

No one may ever be molested or convicted for having nursed the wounded or sick.

The provisions of the present Article do not relieve the occupying Power of its obligations to give both physical and moral care to the wounded and sick.

CHAPTER III.—MEDICAL UNITS AND ESTABLISHMENTS

ARTICLE 19

Fixed establishments and mobile medical units of the Medical Service may in no circumstances be attacked, but shall at all times be respected and protected by the Parties to the conflict. Should they fall into the hands of the adverse Party, their personnel shall be free to pursue their duties, as long as the capturing Power has not itself ensured the necessary care of the wounded and sick found in such establishments and units.

The responsible authorities shall ensure that the said medical establishments and units are, as far as possible, situated in such a manner that attacks against military objectives cannot imperil their safety.

ARTICLE 20

Below p. 24

Hospitals ships entitled to the protection of the Geneva Convention of 12th August, 1949, for the amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, shall not be attacked from the land.

ARTICLE 21

The protection to which fixed establishments and mobile medical units of the Medical Service are entitled shall not cease unless they

are used to commit, outside their humanitarian duties, acts harmful to the enemy. Protection may, however, cease only after a due warning has been given, naming, in all appropriate cases, a reasonable time-limit and after such warning has remained unheeded.

Article 22

The following conditions shall not be considered as depriving a medical unit or establishment of the protection guaranteed by Article 19:

(1) That the personnel of the unit or establishment are armed, and that they use the arms in their own defence, or in that of the wounded and sick in their charge.

(2) That in the absence of armed orderlies, the unit or establishment is protected by a picket or by sentries or by an escort.

(3) That small arms and ammunition taken from the wounded and sick, and not yet handed to the proper service, are found in the unit or establishment.

(4) That personnel and material of the veterinary service are found in the unit or establishment, without forming an integral part thereof.

(5) That the humanitarian activities of medical units and establishments or of their personnel extend to the care of civilian wounded or sick.

Article 23

In time of peace, the High Contracting Parties and, after the outbreak of hostilities, the Parties thereto, may establish in their own territory and, if the need arises, in occupied areas, hospital zones and localities so organized as to protect the wounded and sick from the effects of war, as well as the personnel entrusted with the organization and administration of these zones and localities and with the care of the persons therein assembled.

Upon the outbreak and during the course of hostilities, the Parties concerned may conclude agreements on mutual recognition of the hospital zones and localities they have created. They may for this purpose implement the provisions of the Draft Agreement annexed to the present Convention, with such amendments as they may consider necessary.

The Protecting Powers and the International Committee of the Red Cross are invited to lend their good offices in order to facilitate the institution and recognition of these hospital zones and localities.

CHAPTER IV.—PERSONNEL

Article 24

Medical personnel exclusively engaged in the search for, or the collection, transport or treatment of the wounded or sick, or in the prevention of disease, staff exclusively engaged in the administration of medical units and establishments, as well as chaplains attached to the armed forces, shall be respected and protected in all circumstances.

ARTICLE 25

Members of the armed forces specially trained for employment, should the need arise, as hospital orderlies, nurses or auxiliary stretcher-bearers, in the search for or the collection, transport or treatment of the wounded and sick shall likewise be respected and protected if they are carrying out these duties at the time when they come into contact with the enemy or fall into his hands.

ARTICLE 26

The staff of national Red Cross societies and that of other voluntary aid societies, duly recognised and authorized by their Governments, who may be employed on the same duties as the personnel named in Article 24, are placed on the same footing as the personnel named in the said Article, provided that the staff of such societies are subject to military laws and regulations.

Each High Contracting Party shall notify to the other, either in time of peace or at the commencement of, or during hostilities, but in any case before actually employing them, the names of the societies which it has authorized, under its responsibility, to render assistance to the regular medical service of its armed forces.

ARTICLE 27

A recognised society of a neutral country can only lend the assistance of its medical personnel and units to a Party to the conflict with the previous consent of its own Government and the authorization of the Party to the conflict concerned. That personnel and those units shall be placed under the control of that Party to the conflict.

The neutral Government shall notify this consent to the adversary of the State which accepts such assistance. The Party to the conflict who accepts such assistance is bound to notify the adverse Party thereof before making any use of it.

In no circumstances shall this assistance be considered as interference in the conflict.

The members of the personnel named in the first paragraph shall be duly furnished with the identity cards provided for in Article 40 before leaving the neutral country to which they belong.

ARTICLE 28

Personnel designated in Articles 24 and 26 who fall into the hands of the adverse Party, shall be retained only in so far as the state of health, the spiritual needs and the number of prisoners of war require.

Below p. 41

Personnel thus retained shall not be deemed prisoners of war. Nevertheless they shall at least benefit by all the provisions of the Geneva Convention of 12th August, 1949, relative to the Treatment of Prisoners of War. Within the framwork of the military laws and regulations of the Detaining Power, and under the authority of its competent service, they shall continue to carry out, in accordance with their professional ethics, their medical and spiritual duties on behalf of prisoners of war, preferably those of the armed forces to which they themselves belong. They shall further enjoy the following facilities for carrying out their medical or spiritual duties:

(*a*) They shall be authorized to visit periodically the prisoners of war in labour units or hospitals outside the camp. The Detaining Power shall put at their disposal the means of transport required.

(*b*) In each camp the senior medical officer of the highest rank shall be responsible to the military authorities of the camp for the professional activity of the retained medical personnel. For this purpose, from the outbreak of hostilities, the Parties to the conflict shall agree regarding the corresponding seniority of the ranks of their medical personnel, including those of the societies designated in Article 26. In all questions arising out of their duties, this medical officer, and the chaplains, shall have direct access to the military and medical authorities of the camp, who shall grant them the facilities they may require for correspondence relating to these questions.

(*c*) Although retained personnel in a camp shall be subject to its internal discipline, they shall not, however, be required to perform any work outside their medical or religious duties.

During hostilities the Parties to the conflict shall make arrangements for relieving where possible retained personnel, and shall settle the procedure of such relief.

None of the preceding provisions shall relieve the Detaining Power of the obligations imposed upon it with regard to the medical and spiritual welfare of the prisoners of war.

Article 29

Members of the personnel designated in Article 25 who have fallen into the hands of the enemy, shall be prisoners of war, but shall be employed on their medical duties in so far as the need arises.

Article 30

Personnel whose retention is not indispensable by virtue of the provisions of Article 28 shall be returned to the Party to the conflict to whom they belong, as soon as a road is open for their return and military requirements permit.

Pending their return, they shall not be deemed prisoners of war. Nevertheless they shall at least benefit by all the provisions of the Geneva Convention relative to the Treatment of Prisoners of War of 12th August, 1949. They shall continue to fulfil their duties under the orders of the adverse Party and shall preferably be engaged in the care of the wounded and sick of the Party to the conflict to which they themselves belong.

Below p. 41

On their departure, they shall take with them the effects, personal belongings, valuables and instruments belonging to them.

Article 31

The selection of personnel for return under Article 30 shall be made irrespective of any consideration of race, religion or political opinion, but preferably according to the chronological order of their capture and their state of health.

As from the outbreak of hostilities, Parties to the conflict may determine by special agreement the percentage of personnel to be retained, in proportion to the number of prisoners and the distribution of the said personnel in the camps.

Article 32

Persons designated in Article 27 who have fallen into the hands of the adverse Party may not be detained.

Unless otherwise agreed, they shall have permission to return to their country, or, if this is not possible, to the territory of the Party to the conflict in whose service they were, as soon as a route for their return is open and military considerations permit.

Pending their release, they shall continue their work under the direction of the adverse Party; they shall preferably be engaged in the care of the wounded and sick of the Party to the conflict in whose service they were.

On their departure, they shall take with them their effects, personal articles and valuables and the instruments, arms and if possible the means of transport belonging to them.

The Parties to the conflict shall secure to this personnel, while in their power, the same food, lodging, allowances and pay as are granted to the corresponding personnel of their armed forces. The food shall in any case be sufficient as regards quantity, quality and variety to keep the said personnel in a normal state of health.

CHAPTER V.—BUILDINGS AND MATERIAL

Article 33

The material of mobile medical units of the armed forces which fall into the hands of the enemy, shall be reserved for the care of wounded and sick.

The buildings, material and stores of fixed medical establishments of the armed forces shall remain subject to the laws of war, but may not be diverted from their purpose as long as they are required for the care of wounded and sick. Nevertheless, the commanders of forces in the field may make use of them, in case of urgent military necessity, provided that they make previous arrangements for the welfare of the wounded and sick who are nursed in them.

The material and stores defined in the present Article shall not be intentionally destroyed.

Article 34

The real and personal property of aid societies which are admitted to the privileges of the Convention shall be regarded as private property.

The right of requisition recognised for belligerents by the laws and customs of war shall not be exercised except in case of urgent necessity, and only after the welfare of the wounded and sick has been ensured.

CHAPTER VI.—MEDICAL TRANSPORTS

Article 35

Transports of wounded and sick or of medical equipment shall be respected and protected in the same way as mobile medical units.

Should such transports or vehicles fall into the hands of the adverse Party, they shall be subject to the laws of war, on condition that the Party to the conflict who captures them shall in all cases ensure the care of the wounded and sick they contain.

The civilian personnel and all means of transport obtained by requisition shall be subject to the general rules of international law.

Article 36

Medical aircraft, that is to say, aircraft exclusively employed for the removal of wounded and sick and for the transport of medical personnel and equipment, shall not be attacked, but shall be respected by the belligerents, while flying at heights, times and on routes specifically agreed upon between the belligerents concerned.

They shall bear, clearly marked, the distinctive emblem prescribed in Article 38, together with their national colours, on their lower, upper and lateral surfaces. They shall be provided with any other markings or means of identification that may be agreed upon between the belligerents upon the outbreak or during the course of hostilities.

Unless agreed otherwise, flights over enemy or enemy-occupied territory are prohibited.

Medical aircraft shall obey every summons to land. In the event of a landing thus imposed, the aircraft with its occupants may continue its flight after examination, if any.

In the event of an involuntary landing in enemy or enemy-occupied territory, the wounded and sick, as well as the crew of the aircraft, shall be prisoners of war. The medical personnel shall be treated according to Article 24 and the Articles following.

Article 37

Subject to the provisions of the second paragraph, medical aircraft of Parties to the conflict may fly over the territory of neutral Powers, land on it in case of necessity, or use it as a port of call. They shall give the neutral Powers previous notice of their passage over the said territory and obey every summons to alight, on land or water. They will be immune from attack only when flying on routes, at heights and at times specifically agreed upon between the Parties to the conflict and the neutral Power concerned.

The neutral Powers may, however, place conditions or restrictions on the passage or landing of medical aircraft on their territory. Such possible conditions or restrictions shall be applied equally to all Parties to the conflict.

Unless agreed otherwise between the neutral Power and the Parties

to the conflict, the wounded and sick who are disembarked, with the consent of the local authorities, on neutral territory by medical aircraft, shall be detained by the neutral Power, where so required by international law, in such a manner that they cannot again take part in operations of war. The cost of their accommodation and internment shall be borne by the Power on which they depend.

CHAPTER VII.—THE DISTINCTIVE EMBLEM

Article 38

As a compliment to Switzerland, the heraldic emblem of the red cross on a white ground, formed by reversing the Federal colours, is retained as the emblem and distinctive sign of the Medical Service of armed forces.

Nevertheless, in the case of countries which already use as emblem, in place of the red cross, the red crescent or the red lion and sun on a white ground, those emblems are also recognised by the terms of the present Convention.

Article 39

Under the direction the competent military authority, the emblem shall be displayed on the flags, armlets and on all equipment employed in the Medical Service.

Article 40

The personnel designated in Article 24 and in Articles 26 and 27 shall wear, affixed to the left arm, a water-resistant armlet bearing the distinctive emblem, issued and stamped by the military authority.

Such personnel, in addition to the identity disc mentioned in Article 16, shall also carry a special identity card bearing the distinctive emblem. This card shall be water-resistant and of such size that it can be carried in the pocket. It shall be worded in the national language, shall mention at least the surname and first names, the date of birth, the rank and the service number of the bearer, and shall state in what capacity he is entitled to the protection of the present Convention. The card shall bear the photograph of the owner and also either his signature or his finger-prints or both. It shall be embossed with the stamp of the military authority.

The identity card shall be uniform throughout the same armed forces and, as far as possible, of a similar type in the armed forces of the High Contracting Parties. The Parties to the conflict may be guided by the model which is annexed, by way of example, to the present Convention. They shall inform each other, at the outbreak of hostilities, of the model they are using. Identity cards should be made out, if possible, at least in duplicate, one copy being kept by the home country.

In no circumstances may the said personnel be deprived of their insignia or identity cards nor of the right to wear the armlet. In case of loss, they shall be entitled to receive duplicates of the cards and to have the insignia replaced.

ARTICLE 41

The personnel designated in Article 25 shall wear, but only while carrying out medical duties, a white armlet bearing in its centre the distinctive sign in miniature; the armlet shall be issued and stamped by the military authority.

Military identity documents to be carried by this type of personnel shall specify what special training they have received, the temporary character of the duties they are engaged upon, and their authority for wearing the armlet.

ARTICLE 42

The distinctive flag of the Convention shall be hoisted only over such medical units and establishments as are entitled to be respected under the Convention, and only with the consent of the military authorities.

In mobile units, as in fixed establishments, it may be accompanied by the national flag of the Party to the conflict to which the unit or establishment belongs.

Nevertheless, medical units which have fallen into the hands of the enemy shall not fly any flag other than that of the Convention.

Parties to the conflict shall take the necessary steps, in so far as military considerations permit, to make the distinctive emblems indicating medical units and establishments clearly visible to the enemy land, air or naval forces, in order to obviate the possibility of any hostile action.

ARTICLE 43

The medical units belonging to neutral countries, which may have been authorized to lend their services to a belligerent under the conditions laid down in Article 27, shall fly, along with the flag of the Convention, the national flag of that belligerent, wherever the latter makes use of the faculty conferred on him by Article 42.

Subject to orders to the contrary by the responsible military authorities, they may, on all occasions, fly their national flag, even if they fall into the hands of the adverse Party.

ARTICLE 44

With the exception of the cases mentioned in the following paragraphs of the present Article, the emblem of the Red Cross on a white ground and the words "Red Cross", or "Geneva Cross" may not be employed, either in time of peace or in time of war, except to indicate or to protect the medical units and establishments, the personnel and material protected by the present Convention and other Conventions dealing with similar matters. The same shall apply to the emblems mentioned in Article 38, second paragraph, in respect of the countries which use them. The national Red Cross societies and other societies designated in Article 26 shall have the right to use the distinctive emblem conferring the protection of the Convention only within the framework of the present paragraph.

Furthermore, national Red Cross (Red Crescent, Red Lion and Sun) societies may, in time of peace, in accordance with their national

legislation, make use of the name and emblem of the Red Cross for their other activities which are in conformity with the principles laid down by the International Red Cross Conferences. When those activities are carried out in time of war, the conditions for the use of the emblem shall be such that it cannot be considered as conferring the protection of the Convention; the emblem shall be comparatively small in size and may not be placed on armlets or on the roofs of buildings.

The international Red Cross organizations and their duly authorized personnel shall be permitted to make use, at all times, of the emblem of the Red Cross on a white ground.

As an exceptional measure, in conformity with national legislation and with the express permission of one of the national Red Cross (Red Crescent, Red Lion and Sun) societies, the emblem of the Convention may be employed in time of peace to identify vehicles used as ambulances and to mark the position of aid stations exclusively assigned to the purpose of giving free treatment to the wounded or sick.

CHAPTER VIII.—EXECUTION OF THE CONVENTION

Article 45

Each Party to the conflict, acting through its commanders-in-chief, shall ensure the detailed execution of the preceding Articles, and provide for unforeseen cases, in conf ormity with the general principles of the present Convention.

Article 46

Reprisals against the wounded, sick, personnel, buildings or equipment protected by the Convention are prohibited.

Article 47

The High Contracting Parties undertake, in time of peace as in time of war, to disseminate the text of the present Convention as widely as possible in their respective countries, and, in particular, to include the study thereof in their programmes of military and, if possible, civil instruction, so that the principles thereof may become known to the entire population, in particular to the armed fighting forces, the medical personnel and the chaplains.

Article 48

The High Contracting Parties shall communicate to one another through the Swiss Federal Council, and during hostilities, through the Protecting Powers, the official translations of the present Convention, as well as the laws and regulations which they may adopt to ensure the application thereof.

CHAPTER IX.—REPRESSION OF ABUSES AND INFRACTIONS

Article 49

The High Contracting Parties undertake to enact any legislation necessary to provide effective penal sanctions for persons committing,

or ordering to be committed, any of the grave breaches of the present Convention defined in the following Article.

Each High Contracting Party shall be under the obligation to search for persons alleged to have committed, or to have ordered to be committed, such grave breaches, and shall bring such persons, regardless of their nationality, before its own courts. It may also, if it prefers, and in accordance with the provisions of its own legislation, hand such persons over for trial to another High Contracting Party concerned, provided such High Contracting Party has made out a *prima facie* case.

Each High Contracting Party shall take measures necessary for the suppression of all acts contrary to the provisions of the present Convention other than the grave breaches defined in the following Article.

In all circumstances, the accused persons shall benefit by safeguards of proper trial and defence, which shall not be less favourable than those provided by Article 105 and those following of the Geneva Convention relative to the Treatment of Prisoners of War of 12th August, 1949. Below p. 41

ARTICLE 50

Grave breaches to which the preceding Article relates shall be those involving any of the following acts, if committed against persons or property protected by the Convention: wilful killing, torture or inhuman treatment, including biological experiments, wilfully causing great suffering or serious injury to body or health, and extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly.

ARTICLE 51

No High Contracting Party shall be allowed to absolve itself or any other High Contracting Party of any liability incurred by itself or by another High Contracting Party in respect of breaches referred to in the preceding Article.

ARTICLE 52

At the request of a Party to the conflict, an enquiry shall be instituted, in a manner to be decided between the interested Parties, concerning any alleged violation of the Convention.

If agreement has not been reached concerning the procedure for the enquiry, the Parties should agree on the choice of an umpire who will decide upon the procedure to be followed.

Once the violation has been established, the Parties to the conflict shall put an end to it and shall repress it with the least possible delay.

ARTICLE 53

The use by individuals, societies, firms, or companies, either public or private, other than those entitled thereto under the present Con-

vention, of the emblem or the designation "Red Cross" or "Geneva Cross," or any sign or designation constituting an imitation thereof, whatever the object of such use, and irrespective of the date of its adoption, shall be prohibited at all times.

By reason of the tribute paid to Switzerland by the adoption of the reversed Federal colours, and of the confusion which may arise between the arms of Switzerland and the distinctive emblem of the Convention, the use by private individuals, societies or firms, of the arms of the Swiss Confederation, or of marks constituting an imitation, whether as trade-marks or commercial marks, or as parts of such marks, or for a purpose contrary to commercial honesty, or in circumstances capable of wounding Swiss national sentiment, shall be prohibited at all times.

Nevertheless, such High Contracting Parties as were not party to the Geneva Convention of 27th July, 1929, may grant to prior users of the emblems, designations, signs or marks designated in the first paragraph, a time limit not to exceed three years from the coming into force of the present Convention to discontinue such use, provided that the said use shall not be such as would appear, in time of war, to confer the protection of the Convention.

The prohibition laid down in the first paragraph of the present Article shall also apply, without effect on any rights acquired through prior use, to the emblems and marks mentioned in the second paragraph of Article 38.

Article 54

The High Contracting Parties shall, if their legislation is not already adequate, take measures necessary for the prevention and repression, at all times, of the abuses referred to under Article 53.

FINAL PROVISIONS

Article 55

The present Convention is established in English and in French. Both texts are equally authentic.

The Swiss Federal Council shall arrange for official translations of the Convention to be made in the Russian and Spanish languages.

Article 56

The present Convention, which bears the date of this day, is open to signature until 12th February, 1950, in the name of the Powers represented at the Conference which opened at Geneva on 21st April, 1949; furthermore, by Powers not represented at that Conference but which are parties to the Geneva Conventions of 1864, 1906 or 1929 for the Relief of the Wounded and Sick of Armies in the Field.

Article 57

The present Convention shall be ratified as soon as possible and the ratifications shall be deposited at Berne.

A record shall be drawn up of the deposit of each instrument of ratification and certified copies of this record shall be transmitted by the Swiss Federal Council to all the Powers in whose name the Convention has been signed, or whose accession has been notified.

ARTICLE 58

The present Convention shall come into force six months after not less than two instruments of ratification have been deposited.

Thereafter, it shall come into force for each High Contracting Party six months after the deposit of the instrument of ratification.

ARTICLE 59

The present Convention replaces the Conventions of 22nd August, 1864, 6th July, 1906, and 27th July, 1929, in relations between the High Contracting Parties.

ARTICLE 60

From the date of its coming into force, it shall be open to any Power in whose name the present Convention has not been signed, to accede to this Convention.

ARTICLE 61

Accessions shall be notified in writing to the Swiss Federal Council, and shall take effect six months after the date on which they are received.

The Swiss Federal Council shall communicate the accessions to all the Powers in whose name the Convention has been signed, or whose accession has been notified.

ARTICLE 62

The situations provided for in Articles 2 and 3 shall give immediate effect to ratifications deposited and accessions notified by the Parties to the conflict before or after the beginning of hostilities or occupation. The Swiss Federal Council shall communicate by the quickest method any ratifications or accessions received from Parties to the conflict.

ARTICLE 63

Each of the High Contracting Parties shall be at liberty to denounce the present Convention.

The denunciation shall be notified in writing to the Swiss Federal Council, which shall transmit it to the Governments of all the High Contracting Parties.

The denunciation shall take effect one year after the notification thereof has been made to the Swiss Federal Council. However, a denunciation of which notification has been made at a time when the denouncing Power is involved in a conflict shall not take effect until peace has been concluded, and until after operations connected with release and repatriation of the persons protected by the present Convention have been terminated.

The denunciation shall have effect only in respect of the denouncing Power. It shall in no way impair the obligations which the Parties to the conflict shall remain bound to fulfil by virtue of the principles of the law of nations, as they result from the usages established among civilised peoples, from the laws of humanity and the dictates of the public conscience.

ARTICLE 64

The Swiss Federal Council shall register the present Convention with the Secretariat of the United Nations. The Swiss Federal Council shall also inform the Secretariat of the United Nations of all ratifications, accessions and denunciations received by it with respect to the present Convention.

In witness whereof the undersigned, having deposited their respective full powers, have signed the present Convention.

Done at Geneva this Twelfth day of August, 1949, in the English and French languages. The original shall be deposited in the archives of the Swiss Confederation. The Swiss Federal Council shall transmit certified copies thereof to each of the signatory and acceding States.

[Here follow the signatures and Annexes.]

SECOND SCHEDULE

GENEVA CONVENTION FOR THE AMELIORATION OF THE CONDITION OF WOUNDED, SICK AND SHIPWRECKED MEMBERS OF ARMED FORCES AT SEA

Geneva, 12*th August,* 1949

The undersigned Plenipotentiaries of the Governments represented at the Diplomatic Conference held at Geneva from 21st April to 12th August, 1949, for the purpose of revising the Xth Hague Convention of 18th October, 1907, for the Adaptation to Maritime Warfare of the Principles of the Geneva Convention of 1906, have agreed as follows:

CHAPTER I.—GENERAL PROVISIONS

ARTICLE 1

The High Contracting Parties undertake to respect and to ensure respect for the present Convention in all circumstances.

ARTICLE 2

In addition to the provisions which shall be implemented in peace time, the present Convention shall apply to all cases of declared war or of any other armed conflict which may arise between two or more of the High Contracting Parties, even if the state of war is not recognised by one of them.

The Convention shall also apply to all cases of partial or total occupation of the territory of a High Contracting Party, even if the said occupation meets with no armed resistance.

Although one of the Powers in conflict may not be a party to the present Convention, the Powers who are parties thereto shall remain bound by it in their mutual relations. They shall furthermore be

bound by the Convention in relation to the said Power, if the latter accepts and applies the provisions thereof.

ARTICLE 3

In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions:

(1) Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed *hors de combat*, by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria.

To this end, the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:

(*a*) violence to life and person, in particular, murder of all kinds, mutilation, cruel treatment and torture;

(*b*) taking of hostages;

(*c*) outrages upon personal dignity, in particular, humiliating and degrading treatment;

(*d*) the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognised as indispensable by civilised peoples.

(2) The wounded, sick and shipwrecked shall be collected and cared for.

An impartial humanitarian body, such as the International Committee of the Red Cross, may offer its services to the Parties to the conflict.

The Parties to the conflict should further endeavour to bring into force, by means of special agreements, all or part of the other provisions of the present Convention.

The application of the preceding provisions shall not affect the legal status of the Parties to the conflict.

ARTICLE 4

In case of hostilities between land and naval forces of Parties to the conflict, the provisions of the present Convention shall apply only to forces on board ship.

Forces put ashore shall immediately become subject to the provisions of the Geneva Convention of 12th August, 1949, for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field.

ARTICLE 5

Neutral Powers shall apply by analogy the provisions of the present Convention to the wounded, sick and shipwrecked, and to members of the medical personnel and to chaplains of the armed forces of the Parties to the conflict received or interned in their territory, as well as to dead persons found.

ARTICLE 6

In addition to the agreements expressly provided for in Articles 10, 18, 31, 38, 39, 40, 43 and 53, the High Contracting Parties may conclude other special agreements for all matters concerning which they may deem it suitable to make separate provision. No special agreement shall adversely affect the situation of wounded, sick and shipwrecked persons, of members of the medical personnel or of chaplains, as defined by the present Convention, nor restrict the rights which it confers upon them.

Wounded, sick and shipwrecked persons, as well as medical personnel and chaplains, shall continue to have the benefit of such agreements as long as the Convention is applicable to them, except where express provisions to the contrary are contained in the aforesaid or in subsequent agreements, or where more favourable measures have been taken with regard to them by one or other of the Parties to the conflict.

ARTICLE 7

Wounded, sick and shipwrecked persons, as well as members of the medical personnel and chaplains, may in no circumstances renounce in part or in entirety the rights secured to them by the present Convention, and by the special agreements referred to in the foregoing Article, if such there be.

ARTICLE 8

The present Convention shall be applied with the co-operation and under the scrutiny of the Protecting Powers whose duty it is to safeguard the interests of the Parties to the conflict. For this purpose, the Protecting Powers may appoint, apart from their diplomatic or consular staff, delegates from amongst their own nationals or the nationals of other neutral Powers. The said delegates shall be subject to the approval of the Power with which they are to carry out their duties.

The Parties to the conflict shall facilitate to the greatest extent possible the task of the representatives or delegates of the Protecting Powers.

The representatives or delegates of the Protecting Powers shall not in any case exceed their mission under the present Convention. They shall, in particular, take account of the imperative necessities of security of the State wherein they carry out their duties. Their activities shall only be restricted as an exceptional and temporary measure when this is rendered necessary by imperative military necessities.

ARTICLE 9

The provisions of the present Convention constitute no obstacle to the humanitarian activities which the International Committee of the Red Cross or any other impartial humanitarian organization may, subject to the consent of the Parties to the conflict concerned, undertake for the protection of wounded, sick and shipwrecked persons, medical personnel and chaplains, and for their relief.

ARTICLE 10

The High Contracting Parties may at any time agree to entrust to air organization which offers all guarantees of impartiality and efficacy the duties incumbent on the Protecting Powers by virtue of the present Convention.

When wounded, sick and shipwrecked, or medical personnel and chaplains do not benefit or cease to benefit, no matter for what reason, by the activities of a Protecting Power or of an organization provided for in the first paragraph above, the Detaining Power shall request a neutral State, or such an organization, to undertake the functions performed under the present Convention by a Protecting Power designated by the Parties to a conflict.

If protection cannot be arranged accordingly, the Detaining Power shall request or shall accept, subject to the provisions of this Article, the offer of the services of a humanitarian organization, such as the International Committee of the Red Cross, to assume the humanitarian functions performed by Protecting Powers under the present Convention.

Any neutral Power, or any organization invited by the Power concerned or offering itself for these purposes, shall be required to act with a sense of responsibility towards the Party to the conflict on which persons protected by the present Convention depend, and shall be required to furnish sufficient assurances that it is in a position to undertake the appropriate functions and to discharge them impartially.

No derogation from the preceding provisions shall be made by special agreements between Powers one of which is restricted, even temporarily, in its freedom to negotiate with the other Power or its allies by reason of military events, more particularly where the whole, or a substantial part, of the territory of the said Power is occupied.

Whenever in the present Convention mention is made of a Protecting Power, such mention also applies to substitute organizations in the sense of the present Article.

ARTICLE 11

In cases where they deem it advisable in the interest of protected persons, particularly in cases of disagreement between the Parties to the conflict as to the application or interpretation of the provisions of the present Convention, the Protecting Powers shall lend their good offices with a view to settling the disagreement.

For this purpose, each of the Protecting Powers may, either at the invitation of one Party or on its own initiative, propose to the Parties

to the conflict a meeting of their representatives, in particular of the authorities responsible for the wounded, sick and shipwrecked, medical personnel and chaplains, possibly on neutral territory suitably chosen. The Parties to the conflict shall be bound to give effect to the proposals made to them for this purpose. The Protecting Powers may, if necessary, propose for approval by the Parties to the conflict, a person belonging to a neutral Power or delegated by the International Committee of the Red Cross, who shall be invited to take part in such a meeting.

CHAPTER II.—WOUNDED, SICK AND SHIPWRECKED

Article 12

Members of the armed forces and other persons mentioned in the following Article, who are at sea and who are wounded, sick or shipwrecked, shall be respected and protected in all circumstances, it being understood that the term "shipwrecked" means shipwreck from any cause and includes forced landings at sea by or from aircraft.

Such persons shall be treated humanely and cared for by the Parties to the conflict in whose power they may be, without any adverse distinction founded on sex, race, nationality, religion, political opinions, or any other similar criteria. Any attempts upon their lives, or violence to their persons, shall be strictly prohibited; in particular, they shall not be murdered or exterminated, subjected to torture or to biological experiments; they shall not wilfully be left without medical assistance and care, nor shall conditions exposing them to contagion or infection be created.

Only urgent medical reasons will authorize priority in the order of treatment to be administered.

Women shall be treated with all consideration due to their sex.

Article 13

The present Convention shall apply to the wounded, sick and shipwrecked at sea belonging to the following categories:

(1) Members of the armed forces of a Party to the conflict as well as members of militias or volunteer corps forming part of such armed forces;

(2) Members of other militias and members of other volunteer corps, including those of organized resistance movements, belonging to a Party to the conflict and operating in or outside their own territory, even if this territory is occupied, provided that such militias or volunteer corps, including such organized resistance movements, fulfil the following conditions:

(*a*) that of being commanded by a person responsible for his subordinates;

(*b*) that of having a fixed distinctive sign recognisable at a distance;

(*c*) that of carrying arms openly;

(*d*) that of conducting their operations in accordance with the laws and customs of war;

(3) Members of regular armed forces who profess allegiance to a Government or an authority not recognised by the Detaining Power;

(4) Persons who accompany the armed forces without actually being members thereof, such as civil members of military aircraft crews, war correspondents, supply contractors, members of labour units or of services responsible for the welfare of the armed forces, provided that they have received authorization from the armed forces which they accompany;

(5) Members of crews, including masters, pilots and apprentices, of the merchant marine and the crews of civil aircraft of the Parties to the conflict, who do not benefit by more favourable treatment under any other provisions of international law;

(6) Inhabitants of a non-occupied territory who, on the approach of the enemy, spontaneously take up arms to resist the invading forces, without having had time to form themselves into regular armed units, provided they carry arms openly and respect the laws and customs of war.

ARTICLE 14

All warships of a belligerent Party shall have the right to demand that the wounded, sick or shipwrecked on board military hospital ships, and hospital ships belonging to relief societies or to private individuals, as well as merchant vessels, yachts and other craft shall be surrendered, whatever their nationality, provided that the wounded and sick are in a fit state to be moved and that the warship can provide adequate facilities for necessary medical treatment.

ARTICLE 15

If wounded, sick or shipwrecked persons are taken on board a neutral warship or a neutral military aircraft, it shall be ensured, where so required by international law, that they can take no further part in operations of war.

ARTICLE 16

Subject to the provisions of Article 12, the wounded, sick and shipwrecked of a belligerent who fall into enemy hands shall be prisoners of war, and the provisions of international law concerning prisoners of war shall apply to them. The captor may decide, according to circumstances, whether it is expedient to hold them, or to convey them to a port in the captor's own country, to a neutral port or even to a port in enemy territory. In the last case, prisoners of war thus returned to their home country may not serve for the duration of the war.

ARTICLE 17

Wounded, sick or shipwrecked persons who are landed in neutral ports with the consent of the local authorities, shall, failing arrange-

ments to the contrary between the neutral and the belligerent Powers, be so guarded by the neutral Power, where so required by international law, that the said persons cannot again take part in operations of war.

The cost of hospital accommodation and internment shall be borne by the Power on whom the wounded, sick or shipwrecked persons depend.

ARTICLE 18

After each engagement, Parties to the conflict shall, without delay, take all possible measures to search for and collect the shipwrecked, wounded and sick, to protect them against pillage and ill-treatment, to ensure their adequate care, and to search for the dead and prevent their being despoiled.

Whenever circumstances permit, the Parties to the conflict shall conclude local arrangements for the removal of the wounded and sick by sea from a besieged or encircled area and for the passage of medical and religious personnel and equipment on their way to that area.

ARTICLE 19

The Parties to the conflict shall record as soon as possible, in respect of each shipwrecked, wounded, sick or dead person of the adverse Party falling into their hands, any particulars which may assist in his identification. These records should if possible include:

(*a*) designation of the Power on which he depends;
(*b*) army, regimental, personal or serial number;
(*c*) surname;
(*d*) first name or names;
(*e*) date of birth;
(*f*) any other particulars shown on his identity card or disc;
(*g*) date and place of capture or death;
(*h*) particulars concerning wounds or illness, or cause of death.

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As soon as possible the above mentioned information shall be forwarded to the information bureau described in Article 122 of the Geneva Convention relative to the Treatment of Prisoners of War of 12th August, 1949, which shall transmit this information to the Power on which these persons depend through the intermediary of the Protecting Power and of the Central Prisoners of War Agency.

Parties to the conflict shall prepare and forward to each other through the same bureau, certificates of death or duly authenticated lists of the dead. They shall likewise collect and forward through the same bureau one half of the double identity disc, or the identity disc itself if it is a single disc, last wills or other documents of importance to the next of kin, money and in general all articles of an intrinsic or sentimental value, which are found on the dead. These articles, together with unidentified articles, shall be sent in sealed packets, accompanied by statements giving all particulars necessary for the identification of the deceased owners, as well as by a complete list of the contents of the parcel.

ARTICLE 20

Parties to the conflict shall ensure that burial at sea of the dead, carried out individually as far as circumstances permit, is preceded by a careful examination, if possible by a medical examination, of the bodies, with a view to confirming death, establishing identity and enabling a report to be made. Where a double identity disc is used, one half of the disc should remain on the body.

If dead persons are landed, the provisions of the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of 12th August, 1949, shall be applicable. Above p. 5

ARTICLE 21

The Parties to the conflict may appeal to the charity of commanders of neutral merchant vessels, yachts or other craft, to take on board and care for wounded, sick or shipwrecked persons, and to collect the dead.

Vessels of any kind responding to this appeal, and those having of their own accord collected wounded, sick or shipwrecked persons, shall enjoy special protection and facilities to carry out such assistance.

They may, in no case, be captured on account of any such transport; but, in the absence of any promise to the contrary, they shall remain liable to capture for any violations of neutrality they may have committed.

CHAPTER III.—HOSPITAL SHIPS

ARTICLE 22

Military hospital ships, that is to say, ships built or equipped by the Powers specially and solely with a view to assisting the wounded, sick and shipwrecked, to treating them and to transporting them, may in no circumstances be attacked or captured, but shall at all times be respected and protected, on condition that their names and descriptions have been notified to the Parties to the conflict ten days before those ships are employed.

The characteristics which must appear in the notification shall include registered gross tonnage, the length from stem to stem and the number of masts and funnels.

ARTICLE 23

Establishments ashore entitled to the protection of the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of 12th August, 1949, shall be protected from bombardment or attack from the sea.

ARTICLE 24

Hospital ships utilised by national Red Cross societies, by officially recognised relief societies or by private persons shall have the same protection as military hospital ships and shall be exempt from capture, if the Party to the conflict on which they depend has given

them an official commission and in so far as the provisions of Article 22 concerning notification have been complied with.

These ships must be provided with certificates of the responsible authorities, stating that the vessels have been under their control while fitting out and on departure.

ARTICLE 25

Hospital ships utilised by national Red Cross societies, officially recognised relief societies, or private persons of neutral countries shall have the same protection as military hospital ships and shall be exempt from capture, on condition that they have placed themselves under the control of one of the Parties to the conflict, with the previous consent of their own governments and with the authorization of the Party to the conflict concerned, in so far as the provisions of Article 22 concerning notification have been complied with.

ARTICLE 26

The protection mentioned in Articles 22, 24 and 25 shall apply to hospital ships of any tonnage and to their lifeboats, wherever they are operating. Nevertheless, to ensure the maximum comfort and security, the Parties to the conflict shall endeavour to utilise, for the transport of wounded, sick and shipwrecked over long distances and on the high seas only hospital ships of over 2,000 tons gross.

ARTICLE 27

Under the same conditions as those provided for in Articles 22 and 24 small craft, employed by the State or by the officially recognised lifeboat institutions for coastal rescue operations, shall also be respected and protected, so far as operational requirements permit.

The same shall apply so far as possible to fixed coastal installations used exclusively by these craft for their humanitarian missions.

ARTICLE 28

Should fighting occur on board a warship, the sick-bays shall be respected and spared as far as possible. Sick-bays and their equipment shall remain subject to the laws of warfare, but may not be diverted from their purpose so long as they are required for the wounded and sick. Nevertheless, the commander into whose power they have fallen may, after ensuring the proper care of the wounded and sick who are accommodated therein, apply them to other purposes in case of urgent military necessity.

ARTICLE 29

Any hospital ship in a port which falls into the hands of the enemy shall be authorized to leave the said port.

ARTICLE 30

The vessels described in Articles 22, 24, 25 and 27 shall afford relief and assistance to the wounded, sick and shipwrecked without distinction of nationality.

The High Contracting Parties undertake not to use these vessels for any military purpose.

Such vessels shall in no wise hamper the movements of the combatants.

During and after an engagement, they will act at their own risk.

ARTICLE 31

The Parties to the conflict shall have the right to control and search the vessels mentioned in Articles 22, 24, 25 and 27. They can refuse assistance from these vessels, order them off, make them take a certain course, control the use of their wireless and other means of communication, and even detain them for a period not exceeding seven days from the time of interception, if the gravity of the circumstances so requires.

They may put a commissioner temporarily on board whose sole task shall be to see that orders given in virtue of the provisions of the preceding paragraph shall be carried out.

As far as possible, the Parties to the conflict shall enter in the log of the hospital ship, in a language he can understand, the orders they have given the captain of the vessel.

Parties to the conflict may, either unilaterally or by particular agreements, put on board their ships neutral observers who shall verify the strict observation of the provisions contained in the present Convention.

ARTICLE 32

Vessels described in Articles 22, 24, 25 and 27 are not assimilated to warships as regards their stay in a neutral port.

ARTICLE 33

Merchant vessels which have been transformed into hospital ships cannot be put to any other use throughout the duration of hostilities.

ARTICLE 34

The protection to which hospital ships and sick-bays are entitled shall not cease unless they are used to commit, outside their humanitarian duties, acts harmful to the enemy. Protection may, however, cease only after due warning has been given, naming in all appropriate cases a reasonable time limit, and after such warning has remained unheeded.

In particular, hospital ships may not possess or use a secret code for their wireless or other means of communication.

ARTICLE 35

The following conditions shall not be considered as depriving hospital ships or sick-bays of vessels of the protection due to them:

(1) The fact that the crews of ships or sick-bays are armed for the maintenance of order, for their own defence or that of the sick and wounded.

(2) The presence on board of apparatus exclusively intended to facilitate navigation or communication.

(3) The discovery on board hospital ships or in sick-bays of portable arms and ammunition taken from the wounded, sick and shipwrecked and not yet handed to the proper service.

(4) The fact that the humanitarian activities of hospital ships and sick-bays of vessels or of the crews extend to the care of wounded sick or shipwrecked civilians.

(5) The transport of equipment and of personnel intended exclusively for medical duties, over and above the normal requirements.

CHAPTER IV.—PERSONNEL

Article 36

The religious, medical and hospital personnel of hospital ships and their crews shall be respected and protected; they may not be captured during the time they are in the service of the hospital ship whether or not there are wounded and sick on board.

Article 37

The religious, medical and hospital personnel assigned to the medical or spiritual care of the persons designated in Articles 12 and 13 shall, if they fall into the hands of the enemy, be respected and protected; they may continue to carry out their duties as long as this is necessary for the care of the wounded and sick. They shall afterwards be sent back as soon as the Commander-in-Chief, under whose authority they are, considers it practicable. They may take with them on leaving the ship, their personal property.

If, however, it prove necessary to retain some of this personnel owing to the medical or spiritual needs of prisoners of war, everything possible shall be done for their earliest possible landing.

Retained personnel shall be subject, on landing, to the provisions of the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of the 12th August, 1949.

Above p. 5

CHAPTER V.—MEDICAL TRANSPORTS

Article 38

Ships chartered for that purpose shall be authorized to transport equipment exclusively intended for the treatment of wounded and sick members of armed forces or for the prevention of disease, provided that the particulars regarding their voyage have been notified to the adverse Power and approved by the latter. The adverse Power shall preserve the right to board the carrier ships but not to capture them nor to seize the equipment carried.

By agreement amongst the Parties to the conflict, neutral observers may be placed on board such ships to verify the equipment carried. For this purpose, free access to the equipment shall be given.

ARTICLE 39

Medical aircraft, that is to say, aircraft exclusively employed for the removal of wounded, sick and shipwrecked, and for the transport of medical personnel and equipment, may not be the object of attack, but shall be respected by the Parties to the conflict, while flying at heights, at times and on routes specifically agreed upon between the Parties to the conflict concerned.

They shall be clearly marked with the distinctive emblems prescribed in Article 41, together with their national colours, on their lower, upper and lateral surfaces. They shall be provided with any other markings or means of identification which may be agreed upon between the Parties to the conflict upon the outbreak or during the course of hostilities.

Unless agreed otherwise, flights over enemy or enemy-occupied territory are prohibited.

Medical aircraft shall obey every summons to alight on land or water. In the event of having thus to alight, the aircraft with its occupants may continue its flight after examination, if any.

In the event of alighting involuntarily on land or water in enemy or enemy-occupied territory, the wounded, sick and shipwrecked, as well as the crew of the aircraft shall be prisoners of war. The medical personnel shall be treated according to Articles 36 and 37.

ARTICLE 40

Subject to the provisions of the second paragraph, medical aircraft of Parties to the conflict may fly over the territory of neutral Powers, land thereon in case of necessity, or use it as a port of call. They shall give neutral Powers prior notice of their passage over the said territory, and obey every summons to alight, on land or water. They will be immune from attack only when flying on routes at heights and at times specifically agreed upon between the Parties to the conflict and the neutral Power concerned.

The neutral Powers may, however, place conditions or restrictions on the passage or landing of medical aircraft on their territory. Such possible conditions or restrictions shall be applied equally to all Parties to the conflict.

Unless otherwise agreed between the neutral Powers and the Parties to the conflict, the wounded, sick or shipwrecked who are disembarked with the consent of the local authorities on neutral territory by medical aircraft shall be detained by the neutral Power, where so required by international law, so that they cannot again take part in operations of war. The cost of their accommodation and internment shall be borne by the Power on which they depend.

CHAPTER VI.—THE DISTINCTIVE EMBLEM

ARTICLE 41

Under the direction of the competent military authority, the emblem of the red cross on white ground shall be displayed on the

flags, armlets and on all equipment employed in the Medical Service.

Nevertheless, in the case of countries which already use as emblem, in place of the red cross, the red crescent or the red lion and sun on a white ground, these emblems are also recognised by the terms of the present Convention.

ARTICLE 42

The personnel designated in Articles 36 and 37 shall wear, affixed to the left arm, a water-resistant armlet bearing the distinctive emblem, issued and stamped by the military authority.

Such personnel, in addition to the identity disc mentioned in Article 19, shall also carry a special identity card bearing the distinctive emblem. This card shall be water-resistant and of such size that it can be carried in the pocket. It shall be worded in the national language, shall mention at least the full name, the date of birth, the rank and the service number of the bearer, and shall state in what capacity he is entitled to the protection of the present Convention. The card shall bear the photograph of the owner and also either his signature or his finger-prints or both. It shall be embossed with the stamp of the military authority.

The identity card shall be uniform throughout the same armed forces and, as far as possible, of a similar type in the armed forces of the High Contracting Parties. The Parties to the conflict may be guided by the model which is annexed, by way of example, to the present Convention. They shall inform each other, at the outbreak of hostilities, of the model they are using. Identity cards should be made out, if possible, at least in duplicate, one copy being kept by the home country.

In no circumstances may the said personnel be deprived of their insignia or identity cards nor of the right to wear the armlet. In case of loss they shall be entitled to receive duplicates of the cards and to have the insignia replaced.

ARTICLE 43

The ships designated in Articles 22, 24, 25 and 27 shall be distinctively marked as follows:

(*a*) All exterior surfaces shall be white.

(*b*) One or more dark red crosses as large as possible shall be painted and displayed on each side of the hull and on the horizontal surfaces, so placed as to afford the greatest possible visibility from the sea and from the air.

All hospital ships shall make themselves known by hoisting their national flag and further, if they belong to a neutral state, the flag of the Party to the conflict whose direction they have accepted. A white flag with a red cross shall be flown at the mainmast as high as possible.

Lifeboats of hospital ships, coastal lifeboats and all small craft used by the Medical Service shall be painted white with dark red crosses prominently displayed and shall, in general, comply with the identification system prescribed above for hospital ships.

The above-mentioned ships and craft which may wish to ensure by night and in times of reduced visibility the protection to which they are entitled must, subject to the assent of the Party to the conflict under whose power they are, take the necessary measures to render their painting and distinctive emblems sufficiently apparent.

Hospital ships which, in accordance with Article 31 are provisionally detained by the enemy, must haul down the flag of the Party to the conflict in whose service they are or whose direction they have accepted.

Coastal lifeboats, if they continue to operate with the consent of the Occupying Power from a base which is occupied, may be allowed to continue to fly their own national colours along with a flag carrying a red cross on a white ground, when away from their base, subject to prior notification to all the Parties to the conflict concerned.

All the provisions in this Article relating to the red cross shall apply equally to the other emblems mentioned in Article 41.

Parties to the conflict shall at all times endeavour to conclude mutual agreements in order to use the most modern methods available to facilitate the identification of hospital ships.

Article 44

The distinguishing signs referred to in Article 43 can only be used, whether in time of peace or war, for indicating or protecting the ships therein mentioned, except as may be provided in any other international Convention or by agreement between all the Parties to the conflict concerned.

Article 45

The High Contracting Parties shall, if their legislation is not already adequate, take measures necessary for the prevention and repression, at all times, of any abuse of the distinctive signs provided for under Article 43.

CHAPTER VII.—EXECUTION OF THE CONVENTION

Article 46

Each Party to the conflict, acting through its Commanders-in-Chief, shall ensure the detailed execution of the preceding Articles, and provide for unforeseen cases, in conformity with the general principles of the present Convention.

Article 47

Reprisals against the wounded, sick and shipwrecked persons, the personnel, the vessels or the equipment protected by the Convention are prohibited.

Article 48

The High Contracting Parties undertake, in time of peace as in time of war, to disseminate the text of the present Convention as widely as possible in their respective countries, and, in particular, to

include the study thereof in their programmes of military and, if possible, civil instruction, so that the principles thereof may become known to the entire population, in particular to the armed fighting forces, the medical personnel and the chaplains.

Article 49

The High Contracting Parties shall communicate to one another through the Swiss Federal Council and, during hostilities through the Protecting Powers, the official translations of the present Convention, as well as the laws and regulations which they may adopt to ensure the application thereof.

CHAPTER VIII.—REPRESSION OF ABUSES AND INFRACTIONS

Article 50

The High Contracting Parties undertake to enact any legislation necessary to provide effective penal sanctions for persons committing, or ordering to be committed, any of the grave breaches of the present Convention defined in the following Article.

Each High Contracting Party shall be under the obligation to search for persons alleged to have committed, or to have ordered to be committed, such grave breaches, and shall bring such persons, regardless of their nationality, before its own courts. It may also, if it prefers, and in accordance with the provisions of its own legislation, hand such persons over for trial to another High Contracting Party concerned, provided such High Contracting Party has made out a *prima facie* case.

Each High Contracting Party shall take measures necessary for the suppression of all acts contrary to the provisions of the present Convention other than the grave breaches defined in the following Article.

In all circumstances the accused persons shall benefit by safeguards of proper trial and defence, which shall not be less favourable than those provided by Article 105 and those following of the Geneva Convention of 12th August, 1949, relative to the Treatment of Prisoners of War.

Below p. 41

Article 51

Grave breaches to which the preceding Article relates shall be those involving any of the following acts, if committed against persons or property protected by the Convention: wilful killing, torture or inhuman treatment, including biological experiments, wilfully causing great suffering or serious injury to body or health, and extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly.

Article 52

No High Contracting Party shall be allowed to absolve itself or any other High Contracting Party of any liability incurred by itself or by another High Contracting Party in respect of breaches referred to in the preceding Article.

ARTICLE 53

At the request of a Party to the conflict, an enquiry shall be instituted, in a manner to be decided between the interested Parties, concerning any alleged violation of the Convention.

If agreement has not been reached concerning the procedure for the enquiry, the Parties should agree on the choice of an umpire, who will decide upon the procedure to be followed.

Once the violation has been established, the Parties to the conflict shall put an end to it and shall repress it with the least possible delay.

FINAL PROVISIONS

ARTICLE 54

The present Convention is established in English and in French. Both texts are equally authentic.

The Swiss Federal Council shall arrange for official translations of the Convention to be made in the Russian and Spanish languages.

ARTICLE 55

The present Convention, which bears the date of this day, is open to signature until 12th February, 1950, in the name of the Powers represented at the Conference which opened at Geneva on 21st April, 1949; furthermore, by Powers not represented at that Conference, but which are parties to the Xth Hague Convention of 18th October, 1907 for the adaptation to Maritime Warfare of the principles of the Geneva Convention of 1906, or to the Geneva Conventions of 1864, 1906 or 1929 for the Relief of the Wounded and Sick of Armies in the Field.

ARTICLE 56

The present Convention shall be ratified as soon as possible and the ratifications shall be deposited at Berne.

A record shall be drawn up of the deposit of each instrument of ratification and certified copies of this record shall be transmitted by the Swiss Federal Council to all the Powers in whose name the Convention has been signed, or whose accession has been notified.

ARTICLE 57

The present Convention shall come into force six months after not less than two instruments of ratification have been deposited.

Thereafter, it shall come into force for each High Contracting Party six months after the deposit of the instrument of ratification.

ARTICLE 58

The present Convention replaces the Xth Hague Convention of 18th October, 1907 for the adaptation to Maritime Warfare of the principles of the Geneva Convention of 1906, in relations between the High Contracting Parties.

ARTICLE 59

From the date of its coming into force, it shall be open to any Power, in whose name the present Convention has not been signed, to accede to this Convention.

ARTICLE 60

Accessions shall be notified in writing to the Swiss Federal Council, and shall take effect six months after the date on which they are received.

The Swiss Federal Council shall communicate the accessions to all the Powers in whose name the Convention has been signed, or whose accession has been notified.

ARTICLE 61

The situations provided for in Articles 2 and 3 shall give immediate effect to ratifications deposited and accessions notified by the parties to the conflict before or after the beginning of hostilities or occupation. The Swiss Federal Council shall communicate by the quickest method any ratifications or accessions received from Parties to the conflict.

ARTICLE 62

Each of the High Contracting Parties shall be at liberty to denounce the present Convention.

The denunciation shall be notified in writing to the Swiss Federal Council which shall transmit it to the Governments of all the High Contracting Parties.

The denunciation shall take effect one year after the notification thereof has been made to the Swiss Federal Council. However, a denunciation of which notification has been made at a time when the denouncing Power is involved in a conflict shall not take effect until peace has been concluded, and until after operations connected with release and repatriation of the persons protected by the present Convention have been terminated.

The denunciation shall have effect only in respect of the denouncing Power. It shall in no way impair the obligations which the Parties to the conflict shall remain bound to fulfil by virtue of the principles of the law of nations, as they result from the usages established among civilised peoples, from the laws of humanity and the dictates of the public conscience.

ARTICLE 63

The Swiss Federal Council shall register the present Convention with the Secretariat of the United Nations. The Swiss Federal Council shall also inform the Secretariat of the United Nations of all ratifications, accessions and denunciations received by it with respect to the present Convention.

In witness whereof the undersigned, having deposited their respective full powers, have signed the present Convention.

Done at Geneva this twelfth day of August, 1949, in the English and French languages. The original shall be deposited in the archives of the Swiss Confederation. The Swiss Federal Council shall transmit certified copies thereof to each of the signatory and acceding States.

[Here follow the signatures and Annex.]

THIRD SCHEDULE

GENEVA CONVENTION RELATIVE TO THE TREATMENT OF PRISONERS OF WAR

Geneva, 12*th August,* 1949

The undersigned Plenipotentiaries of the Governments represented at the Diplomatic Conference held at Geneva from 21st April to 12th August, 1949, for the purpose of revising the Convention concluded at Geneva on 27th July, 1929, relative to the Treatment of Prisoners of War, have agreed as follows:

PART I.—GENERAL PROVISIONS

Article 1

The High Contracting Parties undertake to respect and to ensure respect for the present Convention in all circumstances.

Article 2

In addition to the provisions which shall be implemented in peace time, the present Convention shall apply to all cases of declared war or of any other armed conflict which may arise between two or more of the High Contracting Parties, even if the state of war is not recognised by one of them.

The Convention shall also apply to all cases of partial or total occupation of the territory of a High Contracting Party, even if the said occupation meets with no armed resistance.

Although one of the Powers in conflict may not be a party to the present Convention, the Powers who are parties thereto shall remain bound by it in their mutual relations. They shall furthermore be bound by the Convention in relation to the said Power, if the latter accepts and applies the provisions thereof.

Article 3

In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions:

(1) Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those

placed *hors de combat* by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria.

To this end the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:

(*a*) violence to life and person, in particular, murder of all kinds, mutilation, cruel treatment and torture;

(*b*) taking of hostages;

(*c*) outrages upon personal dignity, in particular, humiliating and degrading treatment;

(*d*) the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court affording all the judicial guarantees which are recognised as indispensable by civilised peoples.

(2) The wounded and sick shall be collected and cared for.

An impartial humanitarian body, such as the International Committee of the Red Cross, may offer its services to the Parties to the conflict.

The Parties to the conflict should further endeavour to bring into force, by means of special agreements, all or part of the other provisions of the present Convention.

The application of the preceding provisions shall not affect the legal status of the Parties to the conflict.

ARTICLE 4

A. Prisoners of war, in the sense of the present Convention, are persons belonging to one of the following categories, who have fallen into the power of the enemy:

(1) Members of the armed forces of a Party to the conflict as well as members of militias or volunteer corps forming part of such armed forces;

(2) Members of other militias and members of other volunteer corps, including those of organized resistance movements, belonging to a Party to the conflict and operating in or outside their own territory, even if this territory is occupied, provided that such militias or volunteer corps, including such organized resistance movements, fulfil the following conditions :

(*a*) that of being commanded by a person responsible for his subordinates;

(*b*) that of having a fixed distinctive sign recognisable at a distance;

(*c*) that of carrying arms openly;

(*d*) that of conducting their operations in accordance with the laws and customs of war;

(3) Members of regular armed forces who profess allegiance to a government or an authority not recognised by the Detaining Power;

(4) Persons who accompany the armed forces without actually being members thereof, such as civil members of military aircraft crews, war correspondents, supply contractors, members of labour units or of services responsible for the welfare of the armed forces, provided that they have received authorization from the armed forces which they accompany, who shall provide them for that purpose with an identity card similar to the annexed model;

(5) Members of crews, including masters, pilots and apprentices of the merchant marine and the crews of civil aircraft of the Parties to the conflict, who do not benefit by more favourable treatment under any other provisions of international law;

(6) Inhabitants of a non-occupied territory, who on the approach of the enemy spontaneously take up arms to resist the invading forces, without having had time to form themselves into regular armed units, provided they carry arms openly and respect the laws and customs of war.

B. The following shall likewise be treated as prisoners of war under the present Convention:

(1) Persons belonging, or having belonged, to the armed forces of the occupied country, if the occupying Power considers it necessary by reason of such allegiance to intern them, even though it had originally liberated them while hostilities were going on outside the territory it occupies, in particular where such persons have made an unsuccessful attempt to rejoin the armed forces to which they belong and which are engaged in combat, or where they fail to comply with a summons made to them with a view to internments.

(2) The persons belonging to one of the categories enumerated in the present Article, who have been received by neutral or non-belligerent Powers on their territory and whom these Powers are required to intern under international law, without prejudice to any more favourable treatment which these Powers may choose to give and with the exception of Articles 8, 10, 15, 30, fifth paragraph, 58—67, 92, 126 and, where diplomatic relations exist between the Parties to the conflict and the neutral or non-belligerent Power concerned, those Articles concerning the Protecting Power. Where such diplomatic relations exist, the Parties to a conflict on whom these persons depend shall be allowed to perform towards them the functions of a Protecting Power as provided in the present Convention, without prejudice to the functions which these Parties normally exercise in conformity with diplomatic and consular usage and treaties.

C. This Article shall in no way affect the status of medical personnel and chaplains as provided for in Article 33 of the present Convention.

ARTICLE 5

The present Convention shall apply to the persons referred to in Article 4 from the time they fall into the power of the enemy and until their final release and repatriation.

Should any doubt arise as to whether persons, having committed a belligerent act and having fallen into the hands of the enemy, belong to any of the categories enumerated in Article 4, such persons shall enjoy the protection of the present Convention until such time as their status has been determined by a competent tribunal.

ARTICLE 6

In addition to the agreements expressly provided for in Articles 10, 23, 28, 33, 60, 65, 66, 67, 72, 73, 75, 109, 110, 118, 119, 122 and 132, the High Contracting Parties may conclude other special agreements for all matters concerning which they deem it suitable to make separate provision. No special agreement shall adversely affect the situation of prisoners of war, as defined by the present Convention, nor restrict the rights which it confers upon them.

Prisoners of war shall continue to have the benefit of such agreements as long as the Convention is applicable to them, except where express provisions to the contrary are contained in the aforesaid or in subsequent agreements, or where more favourable measures have been taken with regard to them by one or other of the Parties to the conflict.

ARTICLE 7

Prisoners of war may in no circumstances renounce in part or in entirety the rights secured to them by the present Convention, and by the special agreements referred to in the foregoing Article, if such there be.

ARTICLE 8

The present Convention shall be applied with the co-operation and under the scrutiny of the Protecting Powers whose duty it is to safeguard the interests of the Parties to the conflict. For this purpose, the Protecting Powers may appoint, apart from their diplomatic or consular staff, delegates from amongst their own nationals or the nationals of other neutral Powers. The said Delegates shall be subject to the approval of the Power with which they are to carry out their duties.

The Parties to the conflict shall facilitate to the greatest extent possible the task of the representatives or delegates of the Protecting Powers.

The representatives or delegates of the Protecting Powers shall not in any case exceed their mission under the present Convention. They shall, in particular, take account of the imperative necessities of security of the State wherein they carry out their duties.

ARTICLE 9

The provisions of the present Convention constitute no obstacle to the humanitarian activities which the International Committee of the

Red Cross or any other impartial humanitarian organization may, subject to the consent of the Parties to the conflict concerned, undertake for the protection of prisoners of war and for their relief.

ARTICLE 10

The High Contracting Parties may at any time agree to entrust to an organization which offers all guarantees of impartiality and efficacy the duties incumbent on the Protecting Powers by virtue of the present Convention.

When prisoners of war do not benefit or cease to benefit, no matter for what reason, by the activities of a Protecting Power or of an organization provided for in the first paragraph above, the Detaining Power shall request a neutral State, or such an organization, to undertake the functions performed under the present Convention by a Protecting Power designated by the Parties to a conflict.

If protection cannot be arranged accordingly, the Detaining Power shall request or shall accept, subject to the provisions of this Article, the offer of the services of a humanitarian organization, such as the International Committee of the Red Cross, to assume the humanitarian functions performed by Protecting Powers under the present Convention.

Any neutral Power or any organization invited by the Power concerned or offering itself for these purposes, shall be required to act with a sense of responsibility towards the Party to the conflict on which persons protected by the present Convention depend, and shall be required to furnish sufficient assurances that it is in a position to undertake the appropriate functions and to discharge them impartially.

No derogation from the preceding provisions shall be made by special agreements between Powers one of which is restricted, even temporarily, in its freedom to negotiate with the other Power or its allies by reason of military events, more particularly where the whole, or a substantial part, of the territory of the said Power is occupied.

Whenever in the present Convention mention is made of a Protecting Power, such mention applies to substitute organizations in the sense of the present Article.

ARTICLE 11

In cases where they deem it advisable in the interest of protected persons, particularly in cases of disagreement between the Parties to the conflict as to the application or interpretation of the provisions of the present Convention, the Protecting Powers shall lend their good offices with a view to settling the disagreement.

For this purpose, each of the Protecting Powers may, either at the invitation of one Party or on its own initiative, propose to the Parties to the conflict a meeting of their representatives, and in particular of the authorities responsible for prisoners of war, possibly on neutral territory suitably chosen. The Parties to the conflict shall be bound to give effect to the proposals made to them for this purpose. The Protecting Powers may, if necessary, propose for approval by the

Parties to the conflict a person belonging to a neutral Power, or delegated by the International Committee of the Red Cross, who shall be invited to take part in such a meeting.

PART II.—GENERAL PROTECTION OF PRISONERS OF WAR

Article 12

Prisoners of war are in the hands of the enemy Power, but not of the individuals or military units who have captured them. Irrespective of the individual responsibilities that may exist, the Detaining Power is responsible for the treatment given them.

Prisoners of war may only be transferred by the Detaining Power to a Power which is a party to the Convention and after the Detaining Power has satisfied itself of the willingness and ability of such transferee Power to apply the Convention. When prisoners of war are transferred under such circumstances, responsibility for the application of the Convention rests on the Power accepting them while they are in its custody.

Nevertheless, if that Power fails to carry out the provisions of the Convention in any important respect, the Power by whom the prisoners of war were transferred shall, upon being notified by the Protecting Power, take effective measures to correct the situation or shall request the return of the prisoners of war. Such requests must be complied with.

Article 13

Prisoners of war must at all times be humanely treated. Any unlawful act or omission by the Detaining Power causing death or seriously endangering the health of a prisoner of war in its custody is prohibited, and will be regarded as a serious breach of the present Convention. In particular, no prisoner of war may be subjected to physical mutilation or to medical or scientific experiments of any kind which are not justified by the medical, dental or hospital treatment of the prisoner concerned and carried out in his interest.

Likewise, prisoners of war must at all times be protected, particularly against acts of violence or intimidation and against insults and public curiosity.

Measures of reprisal against prisoners of war are prohibited.

Article 14

Prisoners of war are entitled in all circumstances to respect for their persons and their honour.

Women shall be treated with all the regard due to their sex and shall in all cases benefit by treatment as favourable as that granted to men.

Prisoners of war shall retain the full civil capacity which they enjoyed at the time of their capture. The Detaining Power may not restrict the exercise, either within or without its own territory, of the rights such capacity confers except in so far as the captivity requires.

ARTICLE 15

The Power detaining prisoners of war shall be bound to provide free of charge for their maintenance and for the medical attention required by their state of health.

ARTICLE 16

Taking into consideration the provisions of the present Convention relating to rank and sex, and subject to any privileged treatment which may be accorded to them by reason of their state of health, age or professional qualifications, all prisoners of war shall be treated alike by the Detaining Power, without any adverse distinction based on race, nationality, religious belief or political opinions, or any other distinction founded on similar criteria.

PART III.—CAPTIVITY

SECTION I.—BEGINNING OF CAPTIVITY

ARTICLE 17

Every prisoner of war, when questioned on the subject, is bound to give only his surname, first names and rank, date of birth, and army, regimental, personal or serial number, or failing this, equivalent information.

If he wilfully infringes this rule, he may render himself liable to a restriction of the privileges accorded to his rank or status.

Each Party to a conflict is required to furnish the persons under its jurisdiction who are liable to become prisoners of war, with an identity card showing the owner's surname, first names, rank, army, regimental, personal or serial number or equivalent information, and date of birth. The identity card may, furthermore, bear the signature or the fingerprints or both of the owner, and may bear, as well, any other information the Party to the conflict may wish to add concerning persons belonging to its armed forces. As far as possible the card shall measure 6.5 × 10 cm. and shall be issued in duplicate. The identity card shall be shown by the prisoner of war upon demand, but may in no case be taken away from him.

No physical or mental torture, nor any other form of coercion, may be inflicted on prisoners of war to secure from them information of any kind whatever. Prisoners of war who refuse to answer may not be threatened, insulted, or exposed to any unpleasant or disadvantageous treatment of any kind.

Prisoners of war, who owing to their physical or mental condition are unable to state their identity, shall be handed over to the medical service. The identity of such prisoners shall be established by all possible means, subject to the provisions of the preceding paragraph.

The questioning of prisoners of war shall be carried out in a language which they understand.

ARTICLE 18

All effects and articles of personal use, except arms, horses, military equipment and military documents, shall remain in the possession of prisoners of war, likewise their metal helmets and gas masks and like articles issued for personal protection. Effects and articles used for their clothing or feeding shall likewise remain in their possession, even if such effects and articles belong to their regulation military equipment.

At no time should prisoners of war be without identity documents. The Detaining Power shall supply such documents to prisoners of war who possess none.

Badges of rank and nationality, decorations and articles having above all a personal or sentimental value may not be taken away from prisoners of war.

Sums of money carried by prisoners of war may not be taken away from them except by order of an officer, and after the amount and particulars of the owner have been recorded in a special register and an itemized receipt has been given, legibly inscribed with the name, rank and unit of the person issuing the said receipt. Sums in the currency of the Detaining Power, or which are changed into such currency at the prisoner's request, shall be placed to the credit of the prisoner's account as provided in Article 64.

The Detaining Power may withdraw articles of value from prisoners of war only for reasons of security; when such articles are withdrawn, the procedure laid down for sums of money impounded shall apply.

Such objects, likewise sums taken away in any currency other than that of the Detaining Power and the conversion of which has not been asked for by the owners, shall be kept in the custody of the Detaining Power and shall be returned in their initial shape to prisoners of war at the end of their captivity.

ARTICLE 19

Prisoners of war shall be evacuated, as soon as possible after their capture, to camps situated in an area far enough from the combat zone for them to be out of danger.

Only those prisoners of war, who, owing to wounds or sickness, would run greater risks by being evacuated than by remaining where they are, may be temporarily kept back in a danger zone.

Prisoners of war shall not be unnecessarily exposed to danger while awaiting evacuation from a fighting zone.

ARTICLE 20

The evacuation of prisoners of war shall always be effected humanely and in conditions similar to those for the forces of the Detaining Power in their changes of station.

The Detaining Power shall supply prisoners of war who are being evacuated with sufficient food and potable water, and with the

necessary clothing and medical attention. The Detaining Power shall take all suitable precautions to ensure their safety during evacuation, and shall establish as soon as possible a list of the prisoners of war who are evacuated.

If prisoners of war must, during evacuation, pass through transit camps, their stay in such camps shall be as brief as possible.

Section II. — Internment of Prisoners of War

Chapter I.—General Observations

Article 21

The Detaining Power may subject prisoners of war to internment. It may impose on them the obligation of not leaving, beyond certain limits, the camp where they are interned, or if the said camp is fenced in, of not going outside its perimeter. Subject to the provisions of the present Convention relative to penal and disciplinary sanctions, prisoners of war may not be held in close confinement except where necessary to safeguard their health and then only during the continuation of the circumstances which make such confinement necessary.

Prisoners of war may be partially or wholly released on parole or promise, in so far as is allowed by the laws of the Power on which they depend. Such measures shall be taken particularly in cases where this may contribute to the improvement of their state of health. No prisoner of war shall be compelled to accept liberty on parole or promise.

Upon the outbreak of hostilities, each Party to the conflict shall notify the adverse Party of the laws and regulations allowing or prohibiting its own nationals to accept liberty on parole or promise. Prisoners of war who are paroled or who have given their promise in conformity with the laws and regulations so notified are bound on their personal honour scrupulously to fulfil both towards the Power on which they depend and the Power which has captured them, the engagements of their paroles or promises. In such cases, the Power on which they depend is bound neither to require nor to accept from them any service incompatible with the parole or promise given.

Article 22

Prisoners of war may be interned only in premises located on land and affording every guarantee of hygiene and healthfulness. Except in particular cases which are justified by the interest of the prisoners themselves, they shall not be interned in penitentiaries.

Prisoners of war interned in unhealthy areas, or where the climate is injurious for them, shall be removed as soon as possible to a more favourable climate.

The Detaining Power shall assemble prisoners of war in camps or camp compounds according to their nationality, language and customs, provided that these prisoners shall not be separated from prisoners of war belonging to the armed forces with which they were serving at the time of their capture, except with their consent.

ARTICLE 23

No prisoner of war may at any time be sent to or detained in areas where he may be exposed to the fire of the combat zone, nor may his presence be used to render certain points or areas immune from military operations.

Prisoners of war shall have shelters against air bombardment and other hazards of war, to the same extent as the local civilian population. With the exception of those engaged in the protection of their quarters against the aforesaid hazards, they may enter such shelters as soon as possible after the giving of the alarm. Any other protective measure taken in favour of the population shall also apply to them.

Detaining Powers shall give the Powers concerned, through the intermediary of the Protecting Powers, all useful information regarding the geographical location of prisoner of war camps.

Whenever military considerations permit, prisoner of war camps shall be indicated in the day-time by the letters PW or PG, placed so as to be clearly visible from the air. The Powers concerned may, however, agree upon any other system of marking. Only prisoner of war camps shall be marked as such.

ARTICLE 24

Transit or screening camps of a permanent kind shall be fitted out under conditions similar to those described in the present Section, and the prisoners therein shall have the same treatment as in other camps.

Chapter II.—Quarters, Food and Clothing of Prisoners of War

ARTICLE 25

Prisoners of war shall be quartered under conditions as favourable as those for the forces of the Detaining Power who are billeted in the same area. The said conditions shall make allowance for the habits and customs of the prisoners and shall in no case be prejudicial to their health.

The foregoing provisions shall apply in particular to the dormitories of prisoners of war as regards both total surface and minimum cubic space, and the general installations, bedding and blankets.

The premises provided for the use of prisoners of war, individually or collectively, shall be entirely protected from dampness and adequately heated and lighted, in particular between dusk and lights out. All precautions must be taken against the danger of fire.

In any camps in which women prisoners of war, as well as men, are accommodated, separate dormitories shall be provided for them.

ARTICLE 26

The basic daily food rations shall be sufficient in quantity, quality and variety to keep prisoners of war in good health and to prevent loss of weight or the development of nutritional deficiencies. Account shall also be taken of the habitual diet of the prisoners.

The Detaining Power shall supply prisoners of war who work with such additional rations as are necessary for the labour on which they are employed.

Sufficient drinking water shall be supplied to prisoners of war. The use of tobacco shall be permitted.

Prisoners of war shall, as far as possible, be associated with the preparation of their meals; they may be employed for that purpose in the kitchens. Furthermore, they shall be given the means of preparing, themselves, the additional food in their possession.

Adequate premises shall be provided for messing.

Collective disciplinary measures affecting food are prohibited.

ARTICLE 27

Clothing, underwear and footwear shall be supplied to prisoners of war in sufficient quantities by the Detaining Power, which shall make allowance for the climate of the region where the prisoners are detained. Uniforms of enemy armed forces captured by the Detaining Power should, if suitable for the climate, be made available to clothe prisoners of war.

The regular replacement and repair of the above articles shall be assured by the Detaining Power. In addition, prisoners of war who work shall receive appropriate clothing, wherever the nature of the work demands.

ARTICLE 28

Canteens shall be installed in all camps, where prisoners of war may procure foodstuffs, soap and tobacco and ordinary articles in daily use. The tariff shall never be in excess of local market prices.

The profits made by camp canteens shall be used for the benefit of the prisoners; a special fund shall be created for this purpose. The prisoners' representative shall have the right to collaborate in the management of the canteen and of this fund.

When a camp is closed down, the credit balance of the special fund shall be handed to an international welfare organization, to be employed for the benefit of prisoners of war of the same nationality as those who have contributed to the fund. In case of a general repatriation, such profits shall be kept by the Detaining Power, subject to any agreement to the contrary between the Powers concerned.

Chapter III.—Hygiene and Medical Attention

ARTICLE 29

The Detaining Power shall be bound to take all sanitary measures necessary to ensure the cleanliness and healthfulness of camps and to prevent epidemics.

Prisoners of war shall have for their use, day and night, conveniences which conform to the rules of hygiene and are maintained

in a constant state of cleanliness. In any camps in which women prisoners of war are accommodated, separate conveniences shall be provided for them.

Also, apart from the baths and showers with which the camps shall be furnished, prisoners of war shall be provided with sufficient water and soap for their personal toilet and for washing their personal laundry; the necessary installations, facilities and time shall be granted them for that purpose.

ARTICLE 30

Every camp shall have an adequate infirmary where prisoners of war may have the attention they require, as well as appropriate diet. Isolation wards shall, if necessary, be set aside for cases of contagious or mental disease.

Prisoners of war suffering from serious disease, or whose condition necessitates special treatment, a surgical operation or hospital care, must be admitted to any military or civil medical unit where such treatment can be given, even if their repatriation is contemplated in the near future. Special facilities shall be afforded for the care to be given to the disabled, in particular to the blind, and for their rehabilitation, pending repatriation.

Prisoners of war shall have the attention, preferably of medical personnel of the Power on which they depend and, if possible, of their nationality.

Prisoners of war may not be prevented from presenting themselves to the medical authorities for examination. The detaining authorities shall, upon request, issue to every prisoner who has undergone treatment, an official certificate indicating the nature of his illness or injury, and the duration and kind of treatment received. A duplicate of this certificate shall be forwarded to the Central Prisoners of War Agency.

The costs of treatment, including those of any apparatus necessary for the maintenance of prisoners of war in good health, particularly dentures and other artificial appliances, and spectacles, shall be borne by the Detaining Power.

ARTICLE 31

Medical inspections of prisoners of war shall be made at least once a month. They shall include the checking and the recording of the weight of each prisoner of war. Their purpose shall be, in particular, to supervise the general state of health, nutrition and cleanliness of prisoners and to detect contagious diseases, especially tuberculosis, malaria and venereal disease. For this purpose the most efficient methods available shall be employed, e.g. periodic mass miniature radiography for the early detection of tuberculosis.

ARTICLE 32

Prisoners of war who, though not attached to the medical service of their armed forces, are physicians, surgeons, dentists, nurses or medical orderlies, may be required by the Detaining Power to

exercise their medical functions in the interests of prisoners of war dependent on the same Power. In that case they shall continue to be prisoners of war, but shall receive the same treatment as corresponding medical personnel retained by the Detaining Power. They shall be exempted from any other work under Article 49.

Chapter IV.—Medical Personnel and Chaplains Retained to Assist Prisoners of War

ARTICLE 33

Members of the medical personnel and chaplains, while retained by the Detaining Power with a view to assisting prisoners of war, shall not be considered as prisoners of war. They shall, however, receive as a minimum the benefits and protection of the present Convention, and shall also be granted all facilities necessary to provide for the medical care of, and religious ministration to, prisoners of war.

They shall continue to exercise their medical and spiritual functions for the benefit of prisoners of war, preferably those belonging to the armed forces upon which they depend, within the scope of the military laws and regulations of the Detaining Power and under the control of its competent services, in accordance with their professional etiquette. They shall also benefit by the following facilities in the exercise of their medical or spiritual functions:

(*a*) They shall be authorized to visit periodically prisoners of war situated in working detachments or in hospitals outside the camp. For this purpose, the Detaining Power shall place at their disposal the necessary means of transport.

(*b*) The senior medical officer in each camp shall be responsible to the camp military authorities for everything connected with the activities of retained medical personnel. For this purpose, Parties to the conflict shall agree at the outbreak of hostilities on the subject of the corresponding ranks of the medical personnel, including that of societies mentioned in Article 26 of the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of 12th August, 1949. This senior medical officer, as well as chaplains, shall have the right to deal with the competent authorities of the camp on all questions relating to their duties. Such authorities shall afford them all necessary facilities for correspondence relating to these questions.

Above p. 5

(*c*) Although they shall be subject to the internal discipline of the camp in which they are retained such personnel may not be compelled to carry out any work other than that concerned with their medical or religious duties.

During hostilities, the Parties to the conflict shall agree concerning the possible relief of retained personnel and shall settle the procedure to be followed.

None of the preceding provisions shall relieve the Detaining Power of its obligations with regard to prisoners of war from the medical or spiritual point of view.

Chapter V.—Religious, Intellectual and Physical Activities

ARTICLE 34

Prisoners of war shall enjoy complete latitude in the exercise of their religious duties, including attendance at the service of their faith, on condition that they comply with the disciplinary routine prescribed by the military authorities.

Adequate premises shall be provided where religious services may be held.

ARTICLE 35

Chaplains who fall into the hands of the enemy Power and who remain or are retained with a view to assisting prisoners of war, shall be allowed to minister to them and to exercise freely their ministry amongst prisoners of war of the same religion, in accordance with their religious conscience. They shall be allocated among the various camps and labour detachments containing prisoners of war belonging to the same forces, speaking the same language or practising the same religion. They shall enjoy the necessary facilities, including the means of transport provided for in Article 33, for visiting the prisoners of war outside their camp. They shall be free to correspond, subject to censorship, on matters concerning their religious duties with the ecclesiastical authorities in the country of detention and with international religious organizations. Letters and cards which they may send for this purpose shall be in addition to the quota provided for in Article 71.

ARTICLE 36

Prisoners of war who are ministers of religion, without having officiated as chaplains to their own forces, shall be at liberty, whatever their denomination, to minister freely to the members of their community. For this purpose, they shall receive the same treatment as the chaplains retained by the Detaining Power. They shall not be obliged to do any other work.

ARTICLE 37

When prisoners of war have not the assistance of a retained chaplain or of a prisoner of war minister of their faith, a minister belonging to the prisoners' or a similar denomination, or in his absence a qualified layman, if such a course is feasible from a confessional point of view, shall be appointed at the request of the prisoners concerned to fill this office. This appointment, subject to the approval of the Detaining Power, shall take place with the agreement of the community of prisoners concerned and, wherever necessary, with the approval of the local religious authorities of the same faith. The person thus appointed shall comply with all regulations established by the Detaining Power in the interests of discipline and military security.

ARTICLE 38

While respecting the individual preferences of every prisoner, the Detaining Power shall encourage the practice of intellectual, educational, and recreational pursuits, sports and games amongst prisoners, and shall take the measures necessary to ensure the exercise

thereof by providing them with adequate premises and necessary equipment.

Prisoners shall have opportunities for taking physical exercise including sports and games, and being out of doors. Sufficient open spaces shall be provided for this purpose in all camps.

Chapter VI.—Discipline

ARTICLE 39

Every prisoner of war camp shall be put under the immediate authority of a responsible commissioned officer belonging to the regular armed forces of the Detaining Power. Such officer shall have in his possession a copy of the present Convention; he shall ensure that its provisions are known to the camp staff and the guard and shall be responsible, under the direction of his government, for its application.

Prisoners of war, with the exception of officers, must salute and show to all officers of the Detaining Power the external marks of respect provided for by the regulations applying in their own forces.

Officer prisoners of war are bound to salute only officers of a higher rank of the Detaining Power; they must, however, salute the camp commander regardless of his rank.

ARTICLE 40

The wearing of badges of rank and nationality, as well as of decorations, shall be permitted.

ARTICLE 41

In every camp the text of the present Convention and its Annexes and the contents of any special agreement provided for in Article 6, shall be posted, in the prisoners' own language, at places where all may read them. Copies shall be supplied, on request, to the prisoners who cannot have access to the copy which has been posted.

Regulations, orders notices and publications of every kind relating to the conduct of prisoners of war shall be issued to them in a language which they understand. Such regulations, orders and publications shall be posted in the manner described above and copies shall be handed to the prisoners' representative. Every order and command addressed to prisoners of war individually must likewise be given in a language which they understand.

ARTICLE 42

The use of weapons against prisoners of war, especially against those who are escaping or attempting to escape, shall constitute an extreme measure, which shall always be preceded by warnings appropriate to the circumstances.

Chapter VII.—Rank of Prisoner of War

ARTICLE 43

Upon the outbreak of hostilities, the Parties to the conflict shall communicate to one another the titles and ranks of all the persons

mentioned in Article 4 of the present Convention, in order to ensure equality of treatment between prisoners of equivalent rank. Titles and ranks which are subsequently created shall form the subject of similar communications.

The Detaining Power shall recognise promotions in rank which have been accorded to prisoners of war and which have been duly notified by the Power on which these prisoners depend.

ARTICLE 44

Officers and prisoners of equivalent rank shall be treated with the regard due to their rank and age.

In order to ensure service in officers' camps, other ranks of the same armed forces who, as far as possible, speak the same language, shall be assigned in sufficient numbers, account being taken of the rank of officers and prisoners of equivalent status. Such orderlies shall not be required to perform any other work.

Supervision of the mess by the officers themselves shall be facilitated in every way.

ARTICLE 45

Prisoners of war other than officers and prisoners of equivalent status shall be treated with the regard due to their rank and age.

Supervision of the mess by the prisoners themselves shall be facilitated in every way.

Chapter VIII.—Transfer of Prisoners of War after their arrival in camp

ARTICLE 46

The Detaining Power, when deciding upon the transfer of prisoners of war, shall take into account the interests of the prisoners themselves, more especially so as not to increase the difficulty of their repatriation.

The transfer of prisoners of war shall always be effected humanely and in conditions not less favourable than those under which the forces of the Detaining Power are transferred. Account shall always be taken of the climatic conditions to which the prisoners of war are accustomed and the conditions of transfer shall in no case be prejudicial to their health.

The Detaining Power shall supply prisoners of war during transfer with sufficient food and drinking water to keep them in good health, likewise with the necessary clothing, shelter and medical attention. The Detaining Power shall take adequate precautions especially in case of transport by sea or by air, to ensure their safety during transfer, and shall draw up a complete list of all transferred prisoners before their departure.

ARTICLE 47

Sick or wounded prisoners of war shall not be transferred as long as their recovery may be endangered by the journey, unless their safety imperatively demands it.

If the combat zone draws closer to a camp, the prisoners of war in the said camp shall not be transferred unless their transfer can be carried out in adequate conditions of safety, or unless they are exposed to greater risks by remaining of the spot than by being transferred.

ARTICLE 48

In the event of transfer, prisoners of war shall be officially advised of their departure and of their new postal address. Such notifications shall be given in time for them to pack their luggage and inform their next of kin.

They shall be allowed to take with them their personal effects, and the correspondence and parcels which have arrived for them. The weight of such baggage may be limited, if the conditions of transfer so require, to what each prisoner can reasonably carry, which shall in no case be more than twenty-five kilograms per head.

Mail and parcels addressed to their former camp shall be forwarded to them without delay. The camp commander shall take, in agreement with the prisoners' representative, any measures needed to ensure the transport of the prisoners' community property and of the luggage they are unable to take with them in consequence of restrictions imposed by virtue of the second paragraph of this Article.

The costs of transfers shall be borne by the Detaining Power.

SECTION III.—LABOUR OF PRISONERS OF WAR

ARTICLE 49

The detaining Power may utilise the labour of prisoners of war who are physically fit, taking into account their age, sex, rank and physical aptitude, and with a view particularly to maintaining them in a good state of physical and mental health.

Non-commissioned officers who are prisoners of war shall only be required to do supervisory work. Those not so required may ask for other suitable work which shall, so far as possible, be found for them.

If officers or persons of equivalent status ask for suitable work, it shall be found for them, so far as possible, but they may in no circumstances be compelled to work.

ARTICLE 50

Besides work connected with camp administration, installation or maintenance, prisoners of war may be compelled to do only such work as is included in the following classes:

(*a*) agriculture;

(*b*) industries connected with the production or the extraction of raw materials, and manufacturing industries, with the exception of metallurgical, machinery and chemical industries; public works and building operations which have no military character or purpose;

(*c*) transport and handling of stores which are not military in character or purpose;

(*d*) commercial business, and arts and crafts;

(*e*) domestic service;

(*f*) public utility services having no military character or purpose.

Should the above provisions be infringed, prisoners of war shall be allowed to exercise their right of complaint, in conformity with Article 78

ARTICLE 51

Prisoners of war must be granted suitable working conditions, especially as regards accommodation, food, clothing and equipment; such conditions shall not be inferior to those enjoyed by nationals of the Detaining Power employed in similar work; account shall also be taken of climatic conditions.

The Detaining Power, in utilising the labour of prisoners of war, shall ensure that in areas in which prisoners are employed, the national legislation concerning the protection of labour, and, more particularly, the regulations for the safety of workers, are duly applied.

Prisoners of war shall receive training and be provided with the means of protection suitable to the work they will have to do and similar to those accorded to the nationals of the Detaining Power. Subject to the provisions of Article 52, prisoners may be submitted to the normal risks run by these civilian workers.

Conditions of labour shall in no case be rendered more arduous by disciplinary measures.

ARTICLE 52

Unless he be a volunteer, no prisoner of war may be employed on labour which is of an unhealthy, or dangerous nature.

No prisoner of war shall be assigned to labour which would be looked upon as humiliating for a member of the Detaining Power's own forces.

The removal of mines or similar devices shall be considered as dangerous labour.

ARTICLE 53

The duration of the daily labour of prisoners of war, including the time of the journey to and fro, shall not be excessive, and must in no case exceed that permitted for civilian workers in the district, who are nationals of the Detaining Power and employed on the same work.

Prisoners of war must be allowed, in the middle of the day's work, a rest of not less than one hour. This rest will be the same as that to which workers of the Detaining Power are entitled, if the latter is of longer duration. They shall be allowed in addition a rest of twenty-four consecutive hours every week, preferably on Sunday or the day of rest in their country of origin. Furthermore, every prisoner who has worked for one year shall be granted a rest of eight consecutive days, during which his working pay shall be paid him.

If methods of labour such as piece work are employed, the length of the working period shall not be rendered excessive thereby.

ARTICLE 54

The working pay due to prisoners of war shall be fixed in accordance with the provisions of Article 62 of the present Convention.

Prisoners of war who sustain accidents in connection with work, or who contract a disease in the course, or in consequence of their work, shall receive all the care their condition may require. The Detaining Power shall furthermore deliver to such prisoners of war a medical certificate enabling them to submit their claims to the Power on which they depend, and shall send a duplicate to the Central Prisoners of War Agency provided for in Article 123.

ARTICLE 55

The fitness of prisoners of war for work shall be periodically verified by medical examinations, at least once a month. The examinations shall have particular regard to the nature of the work which prisoners of war are required to do.

If any prisoner of war considers himself incapable of working, he shall be permitted to appear before the medical authorities of his camp. Physicians or surgeons may recommend that the prisoners who are, in their opinion, unfit for work, be exempted therefrom.

ARTICLE 56

The organization and administration of labour detachments shall be similar to those of prisoner of war camps.

Every labour detachment shall remain under the control of and administratively part of a prisoner of war camp. The military authorities and the commander of the said camp shall be responsible, under the direction of their Government, for the observance of the provisions of the present Convention in labour detachments.

The camp commander shall keep an up-to-date record of the labour detachments dependent on his camp, and shall communicate it to the delegates of the Protecting Power, of the International Committee of the Red Cross, or of other agencies giving relief to prisoners of war, who may visit the camp.

ARTICLE 57

The treatment of prisoners of war who work for private persons, even if the latter are responsible for guarding and protecting them, shall not be inferior to that which is provided for by the present Convention. The Detaining Power, the military authorities and the commander of the camp to which such prisoners belong shall be entirely responsible for the maintenance, care, treatment, and payment of the working pay of such prisoners of war.

Such prisoners of war shall have the right to remain in communication with the prisoners' representatives in the camps on which they depend.

Section IV.—Financial Resources of Prisoners of War

Article 58

Upon the outbreak of hostilities, and pending an arrangement on this matter with the protecting Power, the Detaining Power may determine the maximum amount of money in cash or in any similar form that prisoners may have in their possession. Any amount in excess, which was properly in their possession and which has been taken or withheld from them, shall be placed to their account, together with any moneys deposited by them, and shall not be converted into any other currency without their consent.

If prisoners of war are permitted to purchase services or commodities outside the camp against payment in cash, such payments shall be made by the prisoner himself or the camp administration and charged to the accounts of the prisoners concerned. The Detaining Power will establish the necessary rules in this respect.

Article 59

Cash which was taken from prisoners of war, in accordance with Article 18, at the time of their capture, and which is in the currency of the Detaining Power, shall be placed to their separate accounts, in accordance with the provisions of Article 64 of the present Section.

The amounts, in the currency of the Detaining Power, due to the conversion of sums in other currencies that are taken from the prisoners of war at the same time, shall also be credited to their separate accounts.

Article 60

The Detaining Power shall grant all prisoners of war a monthly advance of pay, the amount of which shall be fixed by conversion, into the currency of the said Power, of the following amounts:

Category I: Prisoners ranking below sergeants: eight Swiss francs.

Category II: Sergeants and other non-commissioned officers, or prisoners of equivalent rank: twelve Swiss f rancs.

Category III: Warrant officers and commissioned officers below the rank of major or prisoners of equivalent rank: fifty Swiss francs.

Category IV: Majors, lieutenant-colonels, colonels or prisoners of equivalent rank: sixty Swiss francs.

Category V: General officers or prisoners of war of equivalent rank: seventy-five Swiss francs.

However, the Parties to the conflict concerned may by special agreement modify the amount of advances of pay due to prisoners of the preceding categories.

Furthermore, if the amounts indicated in the first paragraph above would be unduly high compared with the pay of the Detaining Power's armed forces or would, for any reason, seriously embarrass the Detaining Power, then, pending the conclusion of a special

agreement with the Power on which the prisoners depend to vary the amounts indicated above, the Detaining Power:

(*a*) shall continue to credit the accounts of the prisoners with the amounts indicated in the first paragraph above;

(*b*) may temporarily limit the amount made available from these advances of pay to prisoners of war for their own use, to sums which are reasonable, but which, for Category I, shall never be inferior to the amount that the Detaining Power gives to the members of its own armed forces.

The reasons for any limitation will be given without delay to the Protecting Power.

ARTICLE 61

The Detaining Power shall accept for distribution as supplementary pay to prisoners of war sums which the Power on which the prisoners depend may forward to them, on condition that the sums to be paid shall be the same for each prisoner of the same category, shall be payable to all prisoners of that category depending on that Power, and shall be placed in their separate accounts, at the earliest opportunity, in accordance with the provisions of Article 64. Such supplementary pay shall not relieve the Detaining Power of any obligation under this Convention.

ARTICLE 62

Prisoners of war shall be paid a fair working rate of pay by the detaining authorities direct. The rate shall be fixed by the said authorities, but shall at no time be less than one-fourth of one Swiss france for a full working day. The Detaining Power shall inform prisoners of war, as well as the Power on which they depend, through the intermediary of the Protecting Power, of the rate of daily working pay that it has fixed.

Working pay shall likewise be paid by the detaining authorities to prisoners of war permanently detailed to duties or to a skilled or semi-skilled occupation in connection with the administration, installation or maintenance of camps, and to the prisoners who are required to carry out spiritual or medical duties on behalf of their comrades.

The working pay of the prisoners' representative, of his advisers, if any, and of his assistants, shall be paid out of the fund maintained be canteen profits. The scale of this working pay shall be fixed by the prisoners' representative and approved by the camp commander. If there is no such fund, the detaining authorities shall pay these prisoners a fair working rate of pay.

ARTICLE 63

Prisoners of war shall be permitted to receive remittances of money addressed to them individually or collectively.

Every prisoner of war shall have at his disposal the credit balance of his account as provided for in the following Article, within the limits fixed by the Detaining Power, which shall make such payments as are requested. Subject to financial or monetary restrictions which

the Detaining Power regards as essential, prisoners of war may also have payments made abroad. In this case payments addressed by prisoners of war to dependants shall be given priority.

In any event, and subject to the consent of the Power on which they depend, prisoners may have payments made in their own country, as follows: the Detaining Power shall send to the aforesaid Power through the Protecting Power, a notification giving all the necessary particulars concerning the prisoners of war, the beneficiaries of the payments, and the amount of the sums to be paid, expressed in the Detaining Power's currency. The said notification shall be signed by the prisoners and countersigned by the camp commander. The Detaining Power shall debit the prisoners' account by a corresponding amount; the sum thus debited shall be placed by it to the credit of the power on which the prisoners depend.

To apply the foregoing provisions, the Detaining Power may usefully consult the Model Regulations in Annex V of the present Convention.

Article 64

The Detaining Power shall hold an account for each prisoner of war, showing at least the following:

(1) The amounts due to the prisoner or received by him as advances of pay, as working pay or derived from any other source; the sums in the currency of the Detaining Power which were taken from him; the sums taken from him and converted at his request into the currency of the said Power.

(2) The payments made to the prisoner in cash, or in any other similar form; the payments made on his behalf and at his request; the sums transferred under Article 63, third paragraph.

Article 65

Every item entered in the account of a prisoner of war shall be countersigned or initialled by him, or by the prisoners' representative acting on his behalf.

Prisoners of war shall at all times be afforded reasonable facilities for consulting and obtaining copies of their accounts, which may likewise be inspected by the representatives of the Protecting Powers at the time of visits to the camp.

When prisoners of war are transferred from one camp to another, their personal accounts will follow them. In case of transfer from one Detaining Power to another, the moneys which are their property and are not in the currency of the Detaining Power will follow them. They shall be given certificates for any other moneys standing to the credit of their accounts.

The Parties to the conflict concerned may agree to notify to each other at specific intervals through the Protecting Power the amount of the accounts of the prisoners of war.

Article 66

On the termination of captivity, through the release of a prisoner of war or his repatriation, the Detaining Power shall give him a

statement, signed by an authorized officer of that Power, showing the credit balance then due to him. The Detaining Power shall also send through the Protecting Power to the government upon which the prisoner of war depends, lists giving all appropriate particulars of all prisoners of war whose captivity has been terminated by repatriation, release, escape, death or any other means, and showing the amount of their credit balances. Such lists shall be certified on each sheet by an authorized representative of the Detaining Power.

Any of the above provisions of this Article may be varied by mutual agreement between any two Parties to the conflict.

The Power on which the prisoner of war depends shall be responsible for settling with him any credit balance due to him from the Detaining Power on the termination of his captivity.

Article 67

Advances of pay, issued to prisoners of war in conformity with Article 60 shall be considered as made on behalf of the Power on which they depend. Such advances of pay, as well as all payments made by the said Power under Article 63, third paragraph, and Article 68, shall form the subject of arrangements between the Powers concerned, at the close of hostilities.

Article 68

Any claim by a prisoner of war for compensation in respect of any injury or other disability arising out of work shall be referred to the Power on which he depends, through the Protecting Power. In accordance with Article 54, the Detaining Power will, in all cases, provide the prisoner of war concerned with a statement showing the nature of the injury or disability, the circumstances in which it arose and particulars of medical or hospital treatment given for it. This statement will be signed by a responsible officer of the Detaining Power and the medical particulars certified by a medical officer.

Any claim from a prisoner of war for compensation in respect of personal effects, moneys or valuables impounded by the Detaining Power under Article 18 and not forthcoming on his repatriation, or in respect of loss alleged to be due to the fault of the Detaining Power or any of its servants shall likewise be referred to the Power on which he depends. Nevertheless, any such personal effects required for use by the prisoners of war whilst in captivity shall be replaced at the expense of the Detaining Power. The Detaining Power will, in all cases, provide the prisoner of war with a statement, signed by a responsible officer, showing all available information regarding the reasons why such effects, moneys or valuables have not been restored to him. A copy of this statement will be forwarded to the Power on which he depends through the Central Prisoners of War Agency provided for in Article 123.

SECTION V.—RELATIONS OF PRISONERS OF WAR WITH THE EXTERIOR

ARTICLE 69

Immediately upon prisoners of war falling into its power, the Detaining Power shall inform them and the Powers on which they depend, through the Protecting Power, of the measures taken to carry out the provisions of the present Section. They shall likewise inform the parties concerned of any subsequent modifications of such measures.

ARTICLE 70

Immediately upon capture, or not more than one week after arrival at a camp, even if it is a transit camp, likewise in case of sickness or transfer to hospital or another camp, every prisoner of war shall be enabled to write direct to his family, on the one hand, and to the Central Prisoners of War Agency provided for in Article 123, on the other hand, a card similar, if possible, to the model annexed to the present Convention, informing his relatives of his capture, address and state of health. The said cards shall be forwarded as rapidly as possible and may not be delayed in any manner.

ARTICLE 71

Prisoners of war shall be allowed to send and receive letters and cards. If the Detaining Power deems it necessary to limit the number of letters and cards sent by each prisoner of war, the said number shall not be less than two letters and four cards monthly, exclusive of the capture cards provided for in Article 70, and conforming as closely as possible to the models annexed to the present Convention. Further limitations may be imposed only if the Protecting Power is satisfied that it would be in the interests of the prisoners of war concerned to do so owing to difficulties of translation caused by the Detaining Power's inability to find sufficient qualified linguists to carry out the necessary censorship. If limitations must be placed on the correspondence addressed to prisoners of war, they may be ordered only by the Power on which the prisoners depend, possibly at the request of the Detaining Power. Such letters and cards must be conveyed by the most rapid method at the disposal of the Detaining Power; they may not be delayed or retained for disciplinary reasons.

Prisoners of war who have been without news for a long period, or who are unable to receive news from their next of kin or to give them news by the ordinary postal route, as well as those who are at a great distance from their homes, shall be permitted to send telegrams, the fees being charged against the prisoners of war's accounts with the Detaining Power or paid in the currency at their disposal. They shall likewise benefit by this measure in cases of urgency.

As a general rule, the correspondence of prisoners of war shall be written in their native language. The Parties to the conflict may allow correspondence in other languages.

Sacks containing prisoner of war mail must be securely sealed and labelled so as clearly to indicate their contents, and must be addressed to offices of destination.

ARTICLE 72

Prisoners of war shall be allowed to receive by post or by any other means individual parcels or collective shipments containing, in particular, foodstuffs, clothing, medical supplies and articles of a religious, educational or recreational character which may meet their needs, including books, devotional articles, scientific equipment, examination papers, musical instruments, sports outfits and materials allowing prisoners of war to pursue their studies or their cultural activities.

Such shipments shall in no way free the Detaining Power from the obligations imposed upon it by virtue of the present Convention.

The only limits which may be placed on these shipments shall be those proposed by the Protecting Power in the interest of the prisoners themselves, or by the International Committee of the Red Cross or any other organization giving assistance to the prisoners, in respect of their own shipments only, on account of exceptional strain on transport or communications.

The conditions for the sending of individual parcels and collective relief shall, if necessary, be the subject of special agreements between the Powers concerned, which may in no case delay the receipt by the prisoners of relief supplies. Books may not be included in parcels of clothing and foodstuffs. Medical supplies shall, as a rule, be sent in collective parcels.

ARTICLE 73

In the absence of special agreements between the Powers concerned on the conditions for the receipt and distribution of collective relief shipments, the rules and regulations concerning collective shipments, which are annexed to the present Convention, shall be applied.

The special agreements referred to above shall in no case restrict the right of prisoners' representatives to take possession of collective relief shipments intended for prisoners of war, to proceed to their distribution or to dispose of them in the interest of the prisoners.

Nor shall such agreements restrict the right of representatives of the Protecting Power, the International Committee of the Red Cross or any other organization giving assistance to prisoners of war and responsible for the forwarding of collective shipments, to supervise their distribution to the recipients.

ARTICLE 74

All relief shipments for prisoners of war shall be exempt from import, customs and other dues.

Correspondence, relief shipments and authorized remittances of money addressed to prisoners of war or despatched by them through the post office, either direct or through the Information Bureaux provided for in Article 122 and the Central Prisoners of War Agency provided for in Article 123, shall be exempt from any postal dues, both in the countries of origin and destination, and in intermediate countries.

If relief shipments intended for prisoners of war cannot be sent through the post office by reason of weight or for any other cause, the cost of transportation shall be borne by the Detaining Power in all the territories under its control. The other Powers party to the Convention shall bear the cost of transport in their respective territories.

In the absence of special agreements between the Parties concerned, the costs connected with transport of such shipments, other than costs covered by the above exemption, shall be charged to the senders.

The High Contracting Parties shall endeavour to reduce, so far as possible, the rates charged for telegrams sent by prisoners of war or addressed to them.

Article 75

Should military operations prevent the Powers concerned from fulfilling their obligation to assure the transport of the shipments referred to in Articles 70, 71, 72 and 77, the Protecting Powers concerned, the International Committee of the Red Cross or any other organization duly approved by the Parties to the conflict may undertake to ensure the conveyance of such shipments by suitable means (railway wagons, motor vehicles, vessels, or aircraft, etc.). For this purpose, the High Contracting Parties shall endeavour to supply them with such transport and to allow its circulation, especially by granting the necessary safe-conducts.

Such transport may also be used to convey:

(*a*) correspondence, lists and reports exchanged between the Central Information Agency referred to in Article 123 and the National Bureaux referred to in Article 122;

(*b*) correspondence and reports relating to prisoners of war which the Protecting Powers, the International Committee of the Red Cross or any other body assisting the prisoners, exchange either with their own delegate or with the Parties to the conflict.

These provisions in no way detract from the right of any Party to the conflict to arrange other means of transport, if it should so prefer, nor preclude the granting of safe-conducts, under mutually agreed conditions, to such means of transport.

In the absence of special agreements, the costs occasioned by the use of such means of transport shall be borne proportionally by the Parties to the conflict whose nationals are benefited thereby.

Article 76

The censoring of correspondence addressed to prisoners of war or despatched by them shall be done as quickly as possible. Mail shall be censored only by the despatching State and the receiving State, and once only by each.

The examination of consignments intended for prisoners of war shall not be carried out under conditions that will expose the goods contained in them to deterioration; except in the case of written or printed matter, it shall be done in the presence of the addressee, or of

a fellow-prisoner duly delegated by him. The delivery to prisoners of individual or collective consignments shall not be delayed under the pretext of difficulties of censorship.

Any prohibition of correspondence ordered by Parties to the conflict, either for military or political reasons, shall be only temporary and its duration shall be as short as possible.

Article 77

The Detaining Powers shall provide all facilities for the transmission, through the Protecting Power or the Central Prisoners of War Agency provided for in Article 123, of instruments, papers or documents intended for prisoners of war or despatched by them, especially powers of attorney and wills.

In all cases they shall facilitate the preparation and execution of such documents on behalf of prisoners of war; in particular, they shall allow them to consult a lawyer and shall take what measures are necessary for the authentication of their signatures.

Section VI.—Relations between Prisoners of War and the Authorities

Chapter I.—Complaints of Prisoners of War respecting the Conditions of Captivity

Article 78

Prisoners of war shall have the right to make known to the military authorities in whose power they are their requests regarding the conditions of captivity to which they are subjected.

They shall also have the unrestricted right to apply to the representatives of the Protecting Powers either through their prisoners' representative or, if they consider it necessary, direct, in order to draw their attention to any points on which they may have complaints to make regarding their conditions of captivity.

These requests and complaints shall not be limited not considered to be a part of the correspondence quota referred to in Article 71. They must be transmitted immediately. Even if they are recognised to be unfounded, they may not give rise to any punishment.

Prisoners' representatives may send periodic reports on the situation in the camps and the needs of the prisoners of war to the representatives of the Protecting Powers.

Chapter II.—Prisoners of War Representatives

Article 79

In all places where there are prisoners of war, except in those where there are officers, the prisoners shall freely elect by secret ballot, every six months, and also in case of vacancies, prisoners' representatives entrusted with representing them before the military authorities, the Protecting Powers, the International Committee of the Red Cross and any other organization which may assist them. These prisoners' representatives shall be eligible for re-election.

In camps for officers and persons of equivalent status or in mixed camps, the senior officer among the prisoners of war shall be recognised as the camp prisoners' representative. In camps for officers, he shall be assisted by one or more advisers chosen by the officers; in mixed camps, his assistants shall be chosen from among the prisoners of war who are not officers and shall be elected by them.

Officer prisoners of war of the same nationality shall be stationed in labour camps for prisoners of war, for the purpose of carrying out the camp administration duties for which the prisoners of war are responsible. These officers may be elected as prisoners' representatives under the first paragraph of this Article. In such a case the assistants to the prisoners' representatives shall be chosen from among those prisoners of war who are not officers.

Every representative elected must be approved by the Detaining Power before he has the right to commence his duties. Where the Detaining Power refuses to approve a prisoner of war elected by his fellow prisoners of war, it must inform the Protecting Power of the reason for such refusal.

In all cases the prisoners' representative must have the same nationality, language and customs as the prisoners of war whom he represents. Thus, prisoners of war distributed in different sections of a camp, according to their nationality, language or customs, shall have for each section their own prisoners' representative, in accordance with the foregoing paragraphs.

Article 80

Prisoners' representatives shall further the physical, spiritual and intellectual well-being of prisoners of war.

In particular, where the prisoners decide to organize amongst themselves a system of mutual assistance, this organization will be within the province of the prisoners' representative, in addition to the special duties entrusted to him by other provisions of the present Convention.

Prisoners' representatives shall not be held responsible, simply by reason of their duties, for any offences committed by prisoners of war.

Article 81

Prisoners' representatives shall not be required to perform any other work, if the accomplishment of their duties is thereby made more difficult.

Prisoners' representatives may appoint from amongst the prisoners such assistants as they may require. All material facilities shall be granted them, particularly a certain freedom of movement necessary for the accomplishment of their duties (inspection of labour detachments, receipt of supplies, etc.).

Prisoners' representatives shall be permitted to visit premises where prisoners of war are detained, and every prisoner of war shall have the right to consult freely his prisoners' representative.

All facilities shall likewise be accorded to the prisoners' representa-

tives for communication by post and telegraph with the detaining authorities, the Protecting Powers, the International Committee of the Red Cross and their delegates, the Mixed Medical Commissions and with the bodies which give assistance to prisoners of war. Prisoners' representatives of labour detachments shall enjoy the same facilities for communication with the prisoners' representatives of the principal camp. Such communications shall not be restricted, nor considered as forming a part of the quota mentioned in Article 71.

Prisoners' representatives who are transferred shall be allowed a reasonable time to acquaint their successors with current affairs.

In case of dismissal, the reason therefor shall be communicated to the Protecting Power.

Chapter III.—Penal and Disciplinary Sanctions

I. General Provisions

ARTICLE 82

A prisoner of war shall be subject to the laws, regulations and orders in force in the armed forces of the Detaining Power; the Detaining Power shall be justified in taking judicial or disciplinary measures in respect of any offence committed by a prisoner of war against such laws, regulations or orders. However, no proceedings or punishment contrary to the provisions of this Chapter shall be allowed.

If any law, regulation or order of the Detaining Power shall declare acts committed by a prisoner of war to be punishable, whereas the same acts would not be punishable if committed by a member of the forces of the Detaining Power, such acts shall entail disciplinary punishments only.

ARTICLE 83

In deciding whether proceedings in respect of an offence alleged to have been committed by a prisoner of war shall be judicial or disciplinary, the Detaining Power shall ensure that the competent authorities exercise the greatest leniency and adopt wherever possible disciplinary rather than judicial measures.

ARTICLE 84

A prisoner of war shall be tried only by a military court, unless the existing laws of the Detaining Power expressly permit the civil courts to try a member of the armed forces of the Detaining Power in respect of the particular offence alleged to have been committed by the prisoner of war.

In no circumstances whatever shall a prisoner of war be tried by a court of any kind which does not offer the essential guarantees of independence and impartiality as generally recognised, and, in particular, the procedure of which does not afford the accused the rights and means of defence provided for in Article 105.

ARTICLE 85

Prisoners of war prosecuted under the laws of the Detaining Power for acts committed prior to capture shall retain, even if convicted, the benefits of the present Convention.

ARTICLE 86

No prisoner of war may be punished more than once for the same act or on the same charge.

ARTICLE 87

Prisoners of war may not be sentenced by the military authorities and courts of the Detaining Power to any penalties except those provided for in respect of members of the armed forces of the said Power who have committed the same acts.

When fixing the penalty, the courts or authorities of the Detaining Power shall take into consideration, to the widest extent possible, the fact that the accused, not being a national of the Detaining Power, is not bound to it by any duty of allegiance, and that he is in its power as the result of circumstances independent of his own will. The said courts or authorities shall be at liberty to reduce the penalty provided for the violation of which the prisoner of war is accused, and shall therefore not be bound to apply the minimum penalty prescribed.

Collective punishment for individual acts, corporal punishment, imprisonment in premises without daylight and, in general, any form of torture or cruelty, are forbidden.

No prisoner of war may be deprived of his rank by the Detaining Power, or prevented from wearing his badges.

ARTICLE 88

Officers, non-commissioned officers and men who are prisoners of war undergoing a disciplinary or judicial punishment shall not be subjected to more severe treatment than that applied in respect of the same punishment to members of the armed forces of the Detaining Power of equivalent rank.

A woman prisoner of war shall not be awarded or sentenced to a punishment more severe, or treated whilst undergoing punishment more severely, than a woman member of the armed forces of the Detaining Power dealt with for a similar offence.

In no case may a woman prisoner of war be awarded or sentenced to a punishment more severe, or treated whilst undergoing punishment more severely, than a male member of the armed forces of the Detaining Power dealt with for a similar offence.

Prisoners of war who have served disciplinary or judicial sentences may not be treated differently from other prisoners of war.

II. Disciplinary Sanctions

ARTICLE 89

The disciplinary punishments applicable to prisoners of war are the following:

(1) a fine which shall not exceed 50 per cent, of the advances of pay and working pay which the prisoner of war would otherwise receive under the provisions of Articles 60 and 62 during a period of not more than thirty days;

(2) discontinuance of privileges granted over and above the treatment provided for by the present Convention;

(3) fatigue duties not exceeding two hours daily;

(4) confinement.

The punishment referred to under (3) shall not be applied to officers.

In no case shall disciplinary punishments be inhuman, brutal or dangerous to the health of prisoners of war.

ARTICLE 90

The duration of any single punishment shall in no case exceed thirty days. Any period of confinement awaiting the hearing of a disciplinary offence or the award of disciplinary punishment shall be deducted from an award pronounced against a prisoner of war.

The maximum of thirty days provided above may not be exceeded, even if the prisoner of war is answerable for several acts at the same time when he is awarded punishment, whether such acts are related or not.

The period between the pronouncing of an award of disciplinary punishment and its execution shall not exceed one month.

When a prisoner of war is awarded a further disciplinary punishment, a period of at least three days shall elapse between the execution of any two of the punishments, if the duration of one of these is ten days or more.

ARTICLE 91

The escape of a prisoner of war shall be deemed to have succeeded when:

(1) he has joined the armed forces of the Power on which he depends, or those of an allied Power;

(2) he has left the territory under the control of the Detaining Power, or of an ally of the said Power;

(3) he has joined a ship flying the flag of the Power on which he depends, or of an allied Power in the territorial waters of the Detaining Power, the said ship not being under the control of the last named Power.

Prisoners of war who have made good their escape in the sense of this Article and who are recaptured, shall not be liable to any punishment in respect of their previous escape.

ARTICLE 92

A prisoner of war who attempts to escape and is recaptured before having made good his escape in the sense of Article 91 shall be liable only to a disciplinary punishment in respect of this act, even if it is a repeated offence.

A prisoner of war who is recaptured shall be handed over without delay to the competent military authority.

Article 88, fourth paragraph, notwithstanding, prisoners of war punished as a result of an unsuccessful escape may be subject to special surveillance. Such surveillance must not affect the state of their health, must be undergone in a prisoner of war camp, and must not entail the suppression of any of the safeguards granted them by the present Convention.

ARTICLE 93

Escape or attempt to escape, even if it is a repeated offence, shall not be deemed an aggravating circumstance if the prisoner of war is subjected to trial by judicial proceedings in respect of an offence committed during his escape or attempt to escape.

In conformity with the principle stated in Article 83, offences committed by prisoners of war with the sole intention of facilitating their escape and which do not entail any violence against life or limb, such as offences against public property, theft without intention of self-enrichment, the drawing up or use of false papers, or the wearing of civilian clothing, shall occasion disciplinary punishment only.

Prisoners of war who aid or abet an escape or an attempt to escape shall be liable on this count to disciplinary punishment only.

ARTICLE 94

If an escaped prisoner of war is recaptured, the Power on which he depends shall be notified thereof in the manner defined in Article 122, provided notification of his escape has been made.

ARTICLE 95

A prisoner of war accused of an offence against discipline shall not be kept in confinement pending the hearing unless a member of the armed forces of the Detaining Power would be so kept if he were accused of a similar offence, or if it is essential in the interests of camp order and discipline.

Any period spent by a prisoner of war in confinement awaiting the disposal of an offence against discipline shall be reduced to an absolute minimum and shall not exceed fourteen days.

The provisions of Articles 97 and 98 of this Chapter shall apply to prisoners of war who are in confinement awaiting the disposal of offences against discipline.

ARTICLE 96

Acts which constitute offences against discipline shall be investigated immediately.

Without prejudice to the competence of courts and superior military authorities, disciplinary punishment may be ordered only by an officer having disciplinary powers in his capacity as camp commander, or by a responsible officer who replaces him or to whom he has delegated his disciplinary powers.

In no case may such powers be delegated to a prisoner of war or be exercised by a prisoner of war.

Before any disciplinary award is pronounced, the accused shall be given precise information regarding the offences of which he is accused, and given an opportunity of explaining his conduct and of defending himself. He shall be permitted, in particular, to call witnesses and to have recourse, if necessary, to the services of a qualified interpreter. The decision shall be announced to the accused prisoner of war and to the prisoners' representative.

A record of diciplinary punishments shall be maintained by the camp commander and shall be open to inspection by representatives of the Protecting Power.

ARTICLE 97

Prisoners of war shall not in any case be transferred to penitentiary establishments (prisons, penitentiaries, convict prisons, etc.) to undergo disciplinary punishment therein.

All premises in which disciplinary punishments are undergone shall conform to the sanitary requirements set forth in Article 25. A prisoner of war undergoing punishment shall be enabled to keep himself in a state of cleanliness, in conformity with Article 29.

Officers and persons of equivalent status shall not be lodged in the same quarters as non-commissioned officers or men.

Women prisoners of war undergoing disciplinary punishment shall be confined in separate quarters from male prisoners of war and shall be under the immediate supervision of women.

ARTICLE 98

A prisoner of war undergoing confinement as a disciplinary punishment, shall continue to enjoy the benefits of the provisions of this Convention except in so far as these are necessarily rendered inapplicable by the mere fact that he is confined. In no case may he be deprived of the benefits of the provisions of Articles 78 and 126.

A prisoner of war awarded disciplinary punishment may not be deprived of the prerogatives attached to his rank.

Prisoners of war awarded disciplinary punishment shall be allowed to exercise and to stay in the open air at least two hours daily.

They shall be allowed, on their request, to be present at the daily medical inspections. They shall receive the attention which their state of health requires and, if necessary, shall be removed to the camp infirmary or to a hospital.

They shall have permission to read and write, likewise to send and receive letters. Parcels and remittances of money, however, may be withheld from them until the completion of the punishment; they shall meanwhile be entrusted to the prisoners' representative, who will hand over to the infirmary the perishable goods contained in such parcels.

III. Judicial Proceedings

ARTICLE 99

No prisoner of war may be tried or sentenced for an act which is not forbidden by the law of the Detaining Power or by international law, in force at the time the said act was committed.

No moral or physical coercion may be exerted on a prisoner of war in order to induce him to admit himself guilty of the act of which he is accused.

No prisoner of war may be convicted without having had an opportunity to present his defence and the assistance of a qualified advocate or counsel.

Article 100

Prisoners of war and the Protecting Powers shall be informed as soon as possible of the offences which are punishable by the death sentence under the laws of the Detaining Power.

Other offences shall not thereafter be made punishable by the death penalty without the concurrence of the Power upon which the prisoners of war depend.

The death sentence cannot be pronounced against a prisoner of war unless the attention of the court has, in accordance with Article 87, second paragraph, been particularly called to the fact that since the accused is not a national of the Detaining Power, he is not bound to it by any duty of allegiance, and that he is in its power as the result of circumstances independent of his own will.

Article 101

If the death penalty is pronounced on a prisoner of war, the sentence shall not be executed before the expiration of a period of at least six months from the date when the Protecting Power receives, at an indicated address, the detailed communication provided for in Article 107.

Article 102

A prisoner of war can be validly sentenced only if the sentence has been pronounced by the same courts according to the same procedure as in the case of members of the armed forces of the Detaining Power, and if, furthermore, the provisions of the present Chapter have been observed.

Article 103

Judicial investigations relating to a prisoner of war shall be conducted as rapidly as circumstances permit and so that his trial shall take place as soon as possible. A prisoner of war shall not be confined while awaiting trial unless a member of the armed forces of the Detaining Power would be so confined if he were accused of a similar offence, or if it is essential to do so in the interests of national security. In no circumstances shall this confinement exceed three months.

Any period spent by a prisoner of war in confinement awaiting trial shall be deducted from any sentence of imprisonment passed upon him and taken into account in fixing any penalty.

The provisions of Articles 97 and 98 of this Chapter shall apply to a prisoner of war whilst in confinement awaiting trial.

ARTICLE 104

In any case in which the Detaining Power has decided to institute judicial proceedings against a prisoner of war, it shall notify the Protecting Power as soon as possible and at least three weeks before the opening of the trial. This period of three weeks shall run as from the day on which such notification reaches the Protecting Power at the address previously indicated by the latter to the Detaining Power.

The said notification shall contain the following information:

(1) surname and first names of the prisoner of war, his rank, his army, regimental, personal or serial number, his date of birth, and his profession or trade, if any;

(2) place of internment or confinement;

(3) specification of the charge or charges on which the prisoner of war is to be arraigned, giving the legal provisions applicable;

(4) designation of the court which will try the case, likewise the date and place fixed for the opening of the trial.

The same communication shall be made by the Detaining Power to the prisoners' representative.

If no evidence is submitted, at the opening of a trial, that the notification referred to above was received by the Protecting Power, by the prisoner of war and by the prisoners' representative concerned, at least three weeks before the opening of the trial, then the latter cannot take place and must be adjourned.

ARTICLE 105

The prisoner of war shall be entitled to assistance by one of his prisoner comrades, to defence by a qualified advocate or counsel of his own choice, to the calling of witnesses and, if he deems necessary, to the services of a competent interpreter. He shall be advised of these rights by the Detaining Power in due time before the trial.

Failing a choice by the prisoner of war, the Protecting Power shall find him an advocate or counsel, and shall have at least one week at its disposal for the purpose. The Detaining Power shall deliver to the said Power, on request, a list of persons qualified to present the defence. Failing a choice of an advocate or counsel by the prisoner of war or the Protecting Power, the Detaining Power shall appoint a competent advocate or counsel to conduct the defence.

The advocate or counsel conducting the defence on behalf of the prisoner of war shall have at his disposal a period of two weeks at least before the opening of the trial, as well as the necessary facilities to prepare the defence of the accused. He may, in particular, freely visit the accused and interview him in private. He may also confer with any witnesses for the defence, including prisoners of war. He shall have the benefit of these facilities until the term of appeal or petition has expired.

Particulars of the charge or charges on which the prisoner of war is to be arraigned, as well as the documents which are generally communicated to the accused by virtue of the laws in force in the armed forces of the Detaining Power, shall be communicated to the accused prisoner of war in a language which he understands, and in

good time before the opening of the trial. The same communication in the same circumstances shall be made to the advocate or counsel conducting the defence on behalf of the prisoner of war.

The representatives of the Protecting Power shall be entitled to attend the trial of the case, unless, exceptionally, this is held *in camera* in the interest of State security. In such a case the Detaining Power shall advise the Protecting Power accordingly.

Article 106

Every prisoner of war shall have, in the same manner as the members of the armed forces of the Detaining Power, the right of appeal or petition from any sentence pronounced upon him, with a view to the quashing or revising of the sentence or the reopening of the trial. He shall be fully informed of his right to appeal or petition and of the time limit within which he may do so.

Article 107

Any judgment and sentence pronounced upon a prisoner of war shall be immediately reported to the Protecting Power in the form of a summary communication, which shall also indicate whether he has the right of appeal with a view to the quashing of the sentence or the reopening of the trial. This communication shall likewise be sent to the prisoners' representative concerned. It shall also be sent to the accused prisoner of war in a language he understands, if the sentence was not pronounced in his presence. The Detaining Power shall also immediately communicate to the Protecting Power the decision of the prisoner of war to use or to waive his right of appeal.

Furthermore, if a prisoner of war is finally convicted or if a sentence pronounced on a prisoner of war in the first instance is a death sentence, the Detaining Power shall as soon as possible address to the Protecting Power a detailed communication containing:

(1) the precise wording of the finding and sentence;

(2) a summarised report of any preliminary investigation and of the trial, emphasising in particular the elements of the prosecution and the defence;

(3) notification, where applicable, of the establishment where the sentence will be served.

The communications provided for in the foregoing subparagraphs shall be sent to the Protecting Power at the address previously made known to the Detaining Power.

Article 108

Sentences pronounced on prisoners of war after a conviction has become duly enforceable, shall be served in the same establishments and under the same conditions as in the case of members of the armed forces of the Detaining Power. These conditions shall in all cases conform to the requirements of health and humanity.

A woman prisoner of war on whom such a sentence has been pronounced shall be confined in separate quarters and shall be under the supervision of women.

In any case, prisoners of war sentenced to a penalty depriving them of their liberty shall retain the benefit of the provisions of Articles 78 and 126 of the present Convention. Furthermore, they shall be entitled to receive and despatch correspondence, to receive at least one relief parcel monthly, to take regular exercise in the open air, to have the medical care required by their state of health, and the spiritual assistance they may desire. Penalties to which they may be subjected shall be in accordance with the provisions of Article 87, third paragraph.

PART IV.—TERMINATION OF CAPTIVITY

SECTION I.—DIRECT REPATRIATION AND ACCOMMODATION IN NEUTRAL COUNTRIES

ARTICLE 109

Subject to the provisions of the third paragraph of this Article, Parties to the conflict are bound to send back to their own country, regardless of number or rank, seriously wounded and seriously sick prisoners of war, after having cared for them until they are fit to travel, in accordance with the first paragraph of the following Article.

Throughout the duration of hostilities, Parties to the conflict shall endeavour, with the co-operation of the neutral Powers concerned, to make arrangements for the accommodation in neutral countries of the sick and wounded prisoners of war referred to in the second paragraph of the following Article. They may, in addition, conclude agreements with a view to the direct repatriation or internment in a neutral country of able-bodied prisoners of war who have undergone a long period of captivity.

No sick or injured prisoner of war who is eligible for repatriation under the first paragraph of this Article, may be repatriated against his will during hostilities.

ARTICLE 110

The following shall be repatriated direct:

(1) incurably wounded and sick whose mental or physical fitness seems to have been gravely diminished.

(2) wounded and sick who, according to medical opinion, are not likely to recover within one year, whose condition requires treatment and whose mental or physical fitness seems to have been gravely diminished.

(3) wounded and sick who have recovered, but whose mental or physical fitness seems to have been gravely and permanently diminished.

The following may be accommodated in a neutral country:

(1) wounded and sick whose recovery may be expected within one year of the date of the wound or the beginning of the illness, if treatment in a neutral country might increase the prospects of a more certain and speedy recovery.

(2) prisoners of war whose mental or physical health, according to medical opinion, is seriously threatened by continued captivity, but whose accommodation in a neutral country might remove such a threat.

The conditions which prisoners of war accommodated in a neutral country must fulfil in order to permit their repatriation shall be fixed, as shall likewise their status, by agreement between the Powers concerned. In general, prisoners of war who have been accommodated in a neutral country, and who belong to the following categories, should be repatriated:

(1) those whose state of health has deteriorated so as to fulfil the conditions laid down for direct repatriation;

(2) those whose mental or physical powers remain, even after treatment, considerably impaired.

If no special agreements are concluded between the Parties to the conflict concerned, to determine the cases of disablement or sickness entailing direct repatriation or accommodation in a neutral country, such cases shall be settled in accordance with the principles laid down in the Model Agreement concerning direct repatriation and accommodation in neutral countries of wounded and sick prisoners of war and in the Regulations concerning Mixed Medical Commissions annexed to the present Convention.

ARTICLE 111

The Detaining Power, the Power on which the prisoners of war depend, and a neutral Power agreed upon by these two Powers, shall endeavour to conclude agreements which will enable prisoners of war to be interned in the territory of the said neutral Power until the close of hostilities.

ARTICLE 112

Upon the outbreak of hostilities, Mixed Medical Commissions shall be appointed to examine sick and wounded prisoners of war, and to make all appropriate decisions regarding them. The appointment, duties and functions of these Commissions shall be in conformity with the provisions of the Regulations annexed to the present Convention.

However, prisoners of war who, in the opinion of the medical authorities of the Detaining Power, are manifestly seriously injured or seriously sick, may be repatriated without having to be examined by a Mixed Medical Commission.

ARTICLE 113

Besides those who are designated by the medical authorities of the Detaining Power, wounded or sick prisoners of war belonging to the categories listed below shall be entitled to present themselves for examination by the Mixed Medical Commissions provided for in the foregoing Article:

(1) wounded and sick proposed by a physician or surgeon who is of the same nationality, or a national of a Party to the conflict

allied with the Power on which the said prisoners depend, and who exercises his functions in the camp;

(2) wounded and sick proposed by their prisoners' representative;

(3) wounded and sick proposed by the Power on which they depend, or by an organization duly recognised by the said Power and giving assistance to the prisoners.

Prisoners of war who do not belong to one of the three foregoing categories may nevertheless present themselves for examination by Mixed Medical Commissions, but shall be examined only after those belonging to the said categories.

The physician or surgeon of the same nationality as the prisoners who present themselves for examination by the Mixed Medical Commission, likewise the prisoners' representative of the said prisoners, shall have permission to be present at the examination.

Article 114

Prisoners of war who meet with accidents shall, unless the injury is self-inflicted, have the benefit of the provisions of this Convention as regards repatriation or accommodation in a neutral country.

Article 115

No prisoner of war on whom a disciplinary punishment has been imposed and who is eligible for repatriation or for accommodation in a neutral country, may be kept back on the plea that he has not undergone his punishment.

Prisoners of war detained in connexion with a judicial prosecution or conviction and who are designated for repatriation or accommodation in a neutral country, may benefit by such measures before the end of the proceedings or the completion of the punishment, if the Detaining Power consents.

Parties to the conflict shall communicate to each other the names of those who will be detained until the end of the proceedings or the completion of the punishment.

Article 116

The costs of repatriating prisoners of war or of transporting them to a neutral country shall be borne, from the frontiers of the Detaining Power, by the Power on which the said prisoners depend.

Article 117

No repatriated person may be employed on active military service.

Section II—Release and Repatriatiion of Prisoners of War at the close of Hostilities

Article 118

Prisoners of war shall be released and repatriated without delay after the cessation of active hostilities.

In the absence of stipulations to the above effect in any agreement concluded between the Parties to the conflict with a view to the cessation

of hostilities, or failing any such agreement, each of the Detaining Powers shall itself establish and execute without delay a plan of repatriation in conformity with the principle laid down in the foregoing paragraph.

In either case, the measures adopted shall be brought to the knowledge of the prisoners of war.

The costs of repatriation of prisoners of war shall in all cases be equitably apportioned between the Detaining Power and the Power on which the prisoners depend. This apportionment shall be carried out on the following basis:

(*a*) If the two Powers are contiguous, the Power on which the prisoners of war depend shall bear the costs of repatriation from the frontiers of the Detaining Power.

(*b*) If the two Powers are not contiguous, the Detaining Power shall bear the costs of transport of prisoners of war over its own territory as far as its frontier or its port of embarkation nearest to the territory of the Power on which the prisoners of war depend. The Parties concerned shall agree between themselves as to the equitable apportionment of the remaining costs of the repatriation. The conclusion of this agreement shall in no circumstances justify any delay in the repatriation of the prisoners of war.

Article 119

Repatriation shall be effected in conditions similar to those laid down in Articles 46 to 48 inclusive of the present Convention for the transfer of prisoners of war, having regard to the provisions of Article 118 and to those of the following paragraphs.

On repatriation, any articles of value impounded from prisoners of war under Article 18, and any foreign currency which has not been converted into the currency of the Detaining Power, shall be restored to them. Articles of value and foreign currency which, for any reason whatever, are not restored to prisoners of war on repatriation, shall be despatched to the Information Bureau set up under Article 122.

Prisoners of war shall be allowed to take with them their personal effects, and any correspondence and parcels which have arrived for them. The weight of such baggage may be limited, if the conditions of repatriation so require, to what each prisoner can reasonably carry. Each prisoner shall in all cases be authorized to carry at least twenty-five kilograms.

The other personal effects of the repatriated prisoner shall be left in the charge of the Detaining Power which shall have them forwarded to him as soon as it has concluded an agreement to this effect, regulating the conditions of transport and the payment of the costs involved, with the Power on which the prisoner depends.

Prisoners of war against whom criminal proceedings for an indictable offence are pending may be detained until the end of such proceedings, and, if necessary, until the completion of the punish-

ment. The same shall apply to prisoners of war already convicted for an indictable offence.

Parties to the conflict shall communicate to each other the names of any prisoners of war who are detained until the end of proceedings or until punishment has been completed.

By agreement between the Parties to the conflict, commissions shall be established for the purpose of searching for dispersed prisoners of war and of assuring their repatriation with the least possible delay.

Section III—Death of Prisoners of War

Article 120

Wills of prisoners of war shall be drawn up so as to satisfy the conditions of validity required by the legislation of their country of origin, which will take steps to inform the Detaining Power of its requirements in this respect. At the request of the prisoner of war and, in all cases, after death, the will shall be transmitted without delay to the Protecting Power; a certified copy shall be sent to the Central Agency.

Death certificates, in the form annexed to the present Convention, or lists certified by a responsible officer, of all persons who die as prisoners of war shall be forwarded as rapidly as possible to the Prisoner of War Information Bureau established in accordance with Article 122. The death certificates or certified lists shall show particulars of identity as set out in the third paragraph of Article 17, and also the date and place of death, the cause of death, the date and place of burial and all particulars necessary to identify the graves.

The burial or cremation of a prisoner of war shall be preceded by a medical examination of the body with a view to confirming death and enabling a report to be made and, where necessary, establishing identity.

The detaining authorities shall ensure that prisoners of war who have died in captivity, are honourably buried, if possible according to the rites of the religion to which they belonged, and that their graves are respected, suitably maintained and marked so as to be found at any time. Wherever possible, deceased prisoners of war who depended on the same Power shall be interred in the same place.

Deceased prisoners of war shall be buried in individual graves unless unavoidable circumstances require the use of collective graves. Bodies may be cremated only for imperative reasons of hygiene, on account of the religion of the deceased or in accordance with his express wish to this effect. In case of cremation, the fact shall be stated and the reasons given in the death certificate of the deceased.

In order that graves may always be found, all particulars of burials and graves shall be recorded with a Graves Registration Service established by the Detaining Power. Lists of graves and particulars of the prisoners of war interred in cemeteries and elsewhere shall be transmitted to the Power on which such prisoners of war depended. Responsibility for the care of these graves and for records of any

subsequent moves of the bodies shall rest on the Power controlling the territory, if a Party to the present Convention. These provisions shall also apply to the ashes, which shall be kept by the Graves Registration Service until proper disposal thereof in accordance with the wishes of the home country.

ARTICLE 121

Every death or serious injury of a prisoner of war caused or suspected to have been caused by a sentry, another prisoner of war, or any other person as well as any death the cause of which is unknown, shall be immediately followed by an official enquiry by the Detaining Power.

A communication on this subject shall be sent immediately to the Protecting Power. Statements shall be taken from witnesses, especially from those who are prisoners of war, and a report including such statements shall be forwarded to the Protecting Power.

If the enquiry indicates the guilt of one or more persons, the Detaining Power shall take all measures for the prosecution of the person or persons responsible.

PART V.—INFORMATION BUREAUX AND RELIEF SOCIETIES FOR PRISONERS OF WAR

ARTICLE 122

Upon the outbreak of a conflict and in all cases of occupation, each of the Parties to the conflict shall institute an official Information Bureau for prisoners of war who are in its power. Neutral or non-belligerent Powers who may have received within their territory persons belonging to one of the categories referred to in Article 4, shall take the same action with respect to such persons. The Power concerned shall ensure that the Prisoners of War Information Bureau is provided with the necessary accommodation, equipment and staff to ensure its efficient working. It shall be at liberty to employ prisoners of war in such a Bureau under the conditions laid down in the Section of the present Convention dealing with work by prisoners of war.

Within the shortest possible period, each of the Parties to the conflict shall give its Bureau the information referred to in the fourth, fifth and sixth paragraphs of this Article regarding any enemy person belonging to one of the categories referred to in Article 4, who has fallen into its power. Neutral or non-belligerent Powers shall take the same action with regard to persons belonging to such categories whom they have received within their territory.

The Bureau shall immediately forward such information by the most rapid means to the Powers concerned, through the intermediary of the Protecting Powers and likewise the Central Agency provided for in Article 123.

This information shall make it possible quickly to advise the next of kin concerned. Subject to the provisions of Article 17, the information shall include, in so far as available to the Information Bureau, in respect of each prisoner of war, his surname, first names,

rank, army, regimental, personal or serial number, place and full date of birth, indication of the Power on which he depends, first name of the father and maiden name of the mother, name and address of the person to be informed and the address to which correspondence for the prisoner may be sent.

The Information Bureau shall receive from the various departments concerned information regarding transfers, releases, repatriations, escapes, admissions to hospital, and deaths, and shall transmit such information in the manner described in the third paragraph above.

Likewise, information regarding the state of health of prisoners of war who are seriously ill or seriously wounded shall be supplied regularly, every week if possible.

The Information Bureau shall also be responsible for replying to all enquiries sent to it concerning prisoners of war, including those who have died in captivity; it will make any enquiries necessary to obtain the information which is asked for if this is not in its possession.

All written communications made by the Bureau shall be authenticated by a signature or a seal.

The Information Bureau shall furthermore be charged with collecting all personal valuables, including sums in currencies other than that of the Detaining Power and documents of importance to the next of kin, left by prisoners of war who have been repatriated or released, or who have escaped or died, and shall forward the said valuables to the Powers concerned. Such articles shall be sent by the Bureau in sealed packets which shall be accompanied by statements giving clear and full particulars of the identity of the person to whom the articles belonged, and by a complete list of the contents of the parcel. Other personal effects of such prisoners of war shall be transmitted under arrangements agreed upon between the Parties to the conflict concerned.

Article 123

A Central Prisoners of War Information Agency shall be created in a neutral country. The International Committee of the Red Cross shall, if it deems necessary, propose to the Powers concerned the organization of such an Agency.

The function of the Agency shall be to collect all information it may obtain through official or private channels respecting prisoners of war, and to transmit it as rapidly as possible to the country of origin of the prisoners of war or to the Power on which they depend. It shall receive from the Parties to the conflict all facilities for effecting such transmissions.

The High Contracting Parties, and in particular those whose nationals benefit by the services of the Central Agency, are requested to give the said Agency the financial aid it may require.

The foregoing provisions shall in no way be interpreted as restricting the humanitarian activities of the International Committee of the Red Cross, or of the relief societies provided for in Article 125.

ARTICLE 124

The national Information Bureaux and the Central Information Agency shall enjoy free postage for mail, likewise all the exemptions provided for in Article 74, and further, so far as possible, exemption from telegraphic charges or, at least, greatly reduced rates.

ARTICLE 125

Subject to the measures which the Detaining Powers may consider essential to ensure their security or to meet any other reasonable need the representatives of religious organizations, relief societies, or any other organization assisting prisoners of war, shall receive from the said Powers, for themselves and their duly accredited agents, all necessary facilities for visiting the prisoners, for distributing relief supplies and material, from any source, intended for religious, educational or recreative purposes, and for assisting them in organizing their leisure time within the camps. Such societies or organizations may be constituted in the territory of the Detaining Power or in any other country, or they may have an international character.

The Detaining Power may limit the number of societies and organizations whose delegates are allowed to carry out their activities in its territory and under its supervision, on condition, however, that such limitation shall not hinder the effective operation of adequate relief to all prisoners of war.

The special position of the International Committee of the Red Cross in this field shall be recognised and respected at all times.

As soon as relief supplies or material intended for the above-mentioned purposes are handed over to prisoners of war, or very shortly afterwards, receipts for each consignment, signed by the prisoners' representative, shall be forwarded to the relief society or organization making the shipment. At the same time, receipts for these consignments shall be supplied by the administrative authorities responsible for guarding the prisoners.

PART VI.—EXECUTION OF THE CONVENTION

SECTION I.—GENERAL PROVISIONS

ARTICLE 126

Representatives or delegates of the Protecting Powers shall have permission to go to all places where prisoners of war may be, particularly to places of internment, imprisonment and labour, and shall have access to all premises occupied by prisoners of war; they shall also be allowed to go to the places of departure, passage and arrival of prisoners who are being transferred. They shall be able to interview the prisoners, and in particular the prisoners' representatives, without witnesses, either personally or through an interpreter.

Representatives and delegates of the Protecting Powers shall have full liberty to select the places they wish to visit. The duration and frequency of these visits shall not be restricted. Visits may not be prohibited except for reasons of imperative military necessity, and then only as an exceptional and temporary measure.

The Detaining Power and the Power on which the said prisoners of war depend may agree, if necessary that compatriots of these prisoners of war be permitted to participate in the visits.

The delegates of the International Committee of the Red Cross shall enjoy the same prerogatives. The appointment of such delegates shall be submitted to the approval of the Power detaining the prisoners of war to be visited.

Article 127

The High Contracting Parties undertake, in time of peace as in time of war, to disseminate the text of the present Convention as widely as possible in their respective countries, and, in particular, to include the study thereof in their programmes of military and, if possible, civil instruction, so that the principles thereof may become known to all their armed forces and to the entire population.

Any military or other authorities, who in time of war assume responsibilities in respect of prisoners of war, must possess the text of the Convention and be specially instructed as to its provisions.

Article 128

The High Contracting Parties shall communicate to one another through the Swiss Federal Council and, during hostilities, through the Protecting Powers, the official translations of the present Convention, as well as the laws and regulations which they may adopt to ensure the application thereof.

Article 129

The High Contracting Parties undertake to enact any legislation necessary to provide effective penal sanctions for persons committing, or ordering to be committed, any of the grave breaches of the present Convention defined in the following Article.

Each High Contracting Party shall be under the obligation to search for persons alleged to have committed, or to have ordered to be committed, such grave breaches, and shall bring such persons, regardless of their nationality, before its own courts. It may also, if it prefers, and in accordance with the provisions of its own legislation, hand such persons over for trial to another High Contracting Party concerned, provided such High Contracting Party has made out a *prima facie* case.

Each High Contracting Party shall take measures necessary for the suppression of all acts contrary to the provisions of the present Convention other than the grave breaches defined in the following Article.

In all circumstances, the accused persons shall benefit by safeguards of proper trial and defence, which shall not be less favourable than those provided by Article 105 and those following of the present Convention.

Article 130

Grave breaches to which the preceding Article relates shall be those involving any of the following acts, if committed against

persons or property protected by the Convention: wilful killing, torture or inhuman treatment, including biological experiments, wilfully causing of great suffering or serious injury to body or health, compelling a prisoner of war to serve in the forces of the hostile Power, or wilfully depriving a prisoner of war of the rights of fair and regular trial prescribed in this Convention.

Article 131

No High Contracting Party shall be allowed to absolve itself or any other High Contracting Party of any liability incurred by itself or by another High Contracting Party in respect of breaches referred to in the preceding Article.

Article 132

At the request of a Party to the conflict, an enquiry shall be instituted, in a manner to be decided between the interested Parties, concerning any alleged violation of the Convention.

If agreement has not been reached concerning the procedure for the enquiry, the Parties should agree on the choice of an umpire who will decide upon the procedure to be followed.

Once the violation has been established, the Parties to the conflict shall put an end to it and shall repress it with the least possible delay.

Section II.—Final Provisions

Article 133

The present Convention is established in English and in French. Both texts are equally authentic.

The Swiss Federal Council shall arrange for official translations of the Convention to be made in the Russian and Spanish languages.

Article 134

The present Convention replaces the Convention of 27th July, 1929, in relations between the High Contracting Parties.

Article 135

In the relations between the Powers which are bound by the Hague Convention relative to the Laws and Customs of War on Land, whether that of 29th July, 1899, or that of 18th October, 1907, and which are parties to the present Convention, this last Convention shall be complementary to Chapter II of the Regulations annexed to the above-mentioned Conventions of the Hague.

Article 136

The present Convention, which bears the date of this day, is open to signature until 12th February, 1950, in the name of the Powers represented at the Conference which opened at Geneva on 21st April, 1949; furthermore, by Powers not represented at that Conference, but which are parties to the Convention of 27th July, 1929.

ARTICLE 137

The present Convention shall be ratified as soon as possible and the ratifications shall be deposited at Berne.

A record shall be drawn up of the deposit of each instrument of ratification and certified copies of this record shall be transmitted by the Swiss Federal Council to all the Powers in whose name the Convention has been signed, or whose accession has been notified.

ARTICLE 138

The present Convention shall come into force six months after not less than two instruments of ratification have been deposited.

Thereafter, it shall come into force for each High Contracting Party six months after the deposit of the instrument of ratification.

ARTICLE 139

From the date of its coming into force, it shall be open to any Power in whose name the present Convention has not been signed, to accede to this Convention.

ARTICLE 140

Accessions shall be notified in writing to the Swiss Federal Council and shall take effect six months after the date on which they are received.

The Swiss Federal Council shall communicate the accessions to all the Powers in whose name the Convention has been signed, or whose accession has been notified.

ARTICLE 141

The situations provided for in Articles 2 and 3 shall give immediate effect to ratifications deposited and accessions notified by the Parties to the conflict before or after the beginning of hostilities or occupation. The Swiss Federal Council shall communicate by the quickest method any ratifications or accessions received from Parties to the conflict.

ARTICLE 142

Each of the High Contracting Parties shall be at liberty to denounce the present Convention.

The denunciation shall be notified in writing to the Swiss Federal Council, which shall transmit it to the Governments of all the High Contracting Parties.

The denunciation shall take effect one year after the notification thereof has been made to the Swiss Federal Council. However, a denunciation of which notification has been made at a time when the denouncing Power is involved in a conflict shall not take effect until peace has been concluded, and until after operations connected with release and repatriation of the persons protected by the present Convention have been terminated.

The denunciation shall have effect only in respect of the denouncing Power. It shall in no way impair the obligations which the Parties to the conflict shall remain bound to fulfil by virtue of the principles of the law of nations, as they result from the usages established among civilised peoples, from the laws of humanity and the dictates of the public conscience.

ARTICLE 143

The Swiss Federal Council shall register the present Convention with the Secretariat of the United Nations. The Swiss Federal Council shall also inform the Secretariat of the United Nations of all ratifications, accessions and denunciations received by it with respect to the present Convention.

In witness whereof the undersigned, having deposited their respective full powers, have signed the present Convention.

Done at Geneva this Twelfth day of August, 1949, in the English and French languages. The original shall be deposited in the archives of the Swiss Confederation. The Swiss Federal Council shall transmit certified copies thereof to each of the signatory and acceding States.

[Here follow the signatures and Annexes.]

FOURTH SCHEDULE

GENEVA CONVENTION RELATIVE TO THE PROTECTION OF CIVILIAN PERSONS IN TIME OF WAR

Geneva, 12*th August,* 1949

The undersigned Plenipotentiaries of the Governments represented at the Diplomatic Conference held at Geneva from 21st April to 12th August, 1949, for the purpose of establishing a Convention for the Protection of Civilian Persons in Time of War, have agreed as follows:

PART I.—GENERAL PROVISIONS

ARTICLE 1

The High Contracting Parties undertake to respect and to ensure respect for the present Convention in all circumstances.

ARTICLE 2

In addition to the provisions which shall be implemented in peace time, the present Convention shall apply to all cases of declared war or of any other armed conflict which may arise between two or more of the High Contracting Parties, even if the state of war is not recognised by one of them.

The Convention shall also apply to all cases of partial or total occupation of the territory of a High Contracting Party, even if the said occupation meets with no armed resistance.

Although one of the Powers in conflict may not be a party to the present Convention, the Powers who are parties thereto shall remain bound by it in their mutual relations. They shall furthermore be bound by the Convention in relation to the said Power, if the latter accepts and applies the provisions thereof.

ARTICLE 3

In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions:

(1) Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed *hors de combat* by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded or race, colour, religion or faith, sex, birth or wealth, or any other similar criteria.

To this end, the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:

(*a*) violence to life and person, in particular, murder of all kinds, mutilation, cruel treatment and torture;

(*b*) taking of hostages;

(*c*) outrages upon personal dignity, in particular, humiliating and degrading treatment;

(*d*) the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognised as indispensable by civilised peoples.

(2) The wounded and sick shall be collected and cared for.

An impartial humanitarian body, such as the International Committee of the Red Cross, may offer its services to the Parties to the conflict.

The Parties to the conflict should further endeavour to bring into force, by means of special agreements, all or part of the other provisions of the present Convention.

The application of the preceding provisions shall not affect the legal status of the Parties to the conflict.

ARTICLE 4

Persons protected by the Convention are those who, at a given moment and in any manner whatsoever, find themselves, in case of a conflict or occupation, in the hands of a Party to the conflict or Occupying Power of which they are not nationals.

Nationals of a State which is not bound by the Convention are not protected by it. Nationals of a neutral State who find themselves in the territory of a belligerent State, and nationals of a co-belligerent

State, shall not be regarded as protected persons while the State of which they are nationals has normal diplomatic representation in the State in whose hands they are.

The provisions of Part II are, however, wider in application, as defined in Article 13.

Above p. 24

Persons protected by the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of 12th August, 1949, or by the Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea of 12th August, 1949, or by the Geneva Convention relative to the Treatment of Prisoners of War of 12th August, 1949, shall not be considered as protected persons within the meaning of the present Convention.

Article 5

Where, in the territory of a Party to the conflict, the latter is satisfied that an individual protected person is definitely suspected of or engaged in activities hostile to the security of the State, such individual person shall not be entitled to claim such rights and privileges under the present Convention as would, if exercised in the favour of such individual person, be prejudicial to the security of such State.

Where in occupied territory an individual protected person is detained as a spy or saboteur, or as a person under definite suspicion of activity hostile to the security of the Occupying Power, such person shall, in those cases where absolute military security so requires, be regarded as having forfeited rights of communication under the present Convention.

In each case, such persons shall nevertheless be treated with humanity, and in case of trial, shall not be deprived of the rights of fair and regular trial prescribed by the present Convention. They shall also be granted the full rights and privileges of a protected person under the present Convention at the earliest date consistent with the security of the State or Occupying Power, as the case may be.

Article 6

The present Convention shall apply from the outset of any conflict or occupation mentioned in Article 2.

In the territory of Parties to the conflict, the application of the present Convention shall cease on the general close of military operations.

In the case of occupied territory, the application of the present Convention shall cease one year after the general close of military operations; however, the Occupying Power shall be bound, for the duration of the occupation, to the extent that such Power exercises the functions of government in such territory, by the provisions of the following Articles of the present Convention: 1 to 12, 27, 29 to 34, 47, 49, 51, 52, 53, 59, 61 to 77, 143.

Protected persons whose release, repatriation or re-establishment may take place after such dates shall meanwhile continue to benefit by the present Convention.

ARTICLE 7

In addition to the agreements expressly provided for in Articles 11, 14, 15, 17, 36, 108, 109, 132, 133 and 149, the High Contracting Parties may conclude other special agreements for all matters concerning which they may deem it suitable to make separate provision. No special agreement shall adversely affect the situation of protected persons, as defined by the present Convention, nor restrict the rights which it confers upon them.

Protected persons shall continue to have the benefit of such agreements as long as the Convention is applicable to them, except where express provisions to the contrary are contained in the aforesaid or in subsequent agreements, or where more favourable measures have been taken with regard to them by one or other of the Parties to the conflict.

ARTICLE 8

Protected persons may in no circumstances renounce in part or in entirety the rights secured to them by the present Convention, and by the special agreements referred to in the foregoing Article, if such there be.

ARTICLE 9

The present Convention shall be applied with the co-operation and under the scrutiny of the Protecting Powers whose duty it is to safeguard the interests of the parties to the conflict. For this purpose, the Protecting Powers may appoint, apart from their diplomatic or consular staff, delegates from amongst their own nationals or the nationals of other neutral Powers. The said delegates shall be subject to the approval of the Power with which they are to carry out their duties.

The Parties to the conflict shall facilitate to the greatest extent possible the task of the representatives or delegates of the Protecting Powers.

The representatives or delegates of the Protecting Powers shall not in any case exceed their mission under the present Convention. They shall, in particular, take account of the imperative necessities of security of the State wherein they carry out their duties.

ARTICLE 10

The provision of the present Convention constitute no obstacle to the humanitarian activities which the International Committee of the Red Cross or any other impartial humanitarian organization may, subject to the consent of the Parties to the conflict concerned, undertake for the protection of civilian persons and for their relief.

ARTICLE 11

The High Contracting Parties may at any time agree to entrust to an organization which offers all guarantees of impartiality and efficacy the duties incumbent on the Protecting Powers by virtue of the present Convention.

When persons protected by the present Convention do not benefit or cease to benefit, no matter for what reason, by the activities of a

Protecting Power or of an organization provided for in the first paragraph above, the Detaining Power shall request a neutral State, or such an organization, to undertake the functions performed under the present Convention by a Protecting Power designated by the Parties to a conflict.

If protection cannot be arranged accordingly, the Detaining Power shall request or shall accept, subject to the provisions of this Article, the offer of the services of a humanitarian organization, such as the International Committee of the Red Cross, to assume the humanitarian functions performed by Protecting Powers under the present Convention.

Any neutral Power, or any organization invited by the Power concerned or offering itself for these purposes, shall be required to act with a sense of responsiblility towards the Party to the conflict on which persons protected by the present Convention depend, and shall be required to furnish sufficient assurances that it is in a position to undertake the appropriate functions and to discharge them impartially.

No derogation from the preceding provisions shall be made by special agreements between Powers one of which is restricted, even temporarily, in its freedom to negotiate with the other Power or its allies by reason of military events, more particularly where the whole, or a substantial part, of the territory of the said Power is occupied.

Whenever in the present Convention mention is made of a Protecting Power, such mention applies to substitute organizations in the sense of the present Article.

The provisions of this Article shall extend and be adapted to cases of nationals of a neutral State who are in occupied territory or who find themselves in the territory of a belligerent State in which the State of which they are nationals has not normal diplomatic representation.

Article 12

In cases where they deem it advisable in the interest of protected persons, particularly in cases of disagreement between the Parties to the conflict as to the application or interpretation of the provisions of the present Convention, the Protecting Powers shall lend their good offices with a view to settling the disagreement.

For this purpose each of the Protecting Powers may, either at the invitation of one Party or on its own initiative, propose to the Parties to the conflict a meeting of their representatives, and in particular of the authorities responsible for protected persons, possibly on neutral territory suitable chosen. The Parties to the conflict shall be bound to give effect to the proposals made to them for this purpose. The Protecting Powers may, if necessary, propose for approval by the Parties to the conflict, a person belonging to a neutral Power or delegated by the International Committee of the Red Cross, who shall be invited to take part in such a meeting.

PART II.—GENERAL PROTECTION OF POPULATIONS AGAINST CERTAIN CONSEQUENCES OF WAR

Article 13

The provisions of Part II cover the whole of the populations of the countries in conflict, without any adverse distinction based, in particular, on race, nationality, religion or political opinion, and are intended to alleviate the sufferings caused by war.

Article 14

In time of peace, the High Contracting Parties and, after the outbreak of hostilities the Parties thereto, may establish in their own territory and, if the need arises, in occupied areas, hospital and safety zones and localities so organized as to protect from the effects of war, wounded, sick and aged persons, children under fifteen, expectant mothers and mothers of children under seven.

Upon the outbreak and during the course of hostilities, the Parties concerned may conclude agreements on mutual recognition of the zones and localities they have created. They may for this purpose implement the provisions of the Draft Agreement annexed to the present Convention, with such amendments as they may consider necessary.

The Protecting Powers and the International Committee of the Red Cross are invited to lend their good offices in order to facilitate the institution and recognition of these hospital and safety zones and localities.

Article 15

Any Party to the conflict may, either direct or through a neutral State or some humanitarian organization, propose to the adverse Party to establish, in the regions where fighting is taking place, neutralised zones intended to shelter from the effects of war the following persons, without distinction:

(*a*) wounded and sick combatants or non-combatants;

(*b*) civilian persons who take no part in hostilities, and who, while they reside in the zones, perform no work of a military character.

When the Parties concerned have agreed upon the geographical position, administration, food supply and supervision of the proposed neutralised zone, a written agreement shall be concluded and signed by the representatives of the Parties to the conflict. The agreement shall fix the beginning and the duration of the neutralisation of the zone.

Article 16

The wounded and sick, as well as the infirm, and expectant mothers, shall be the object of particular protection and respect.

As far as military considerations allow, each Party to the conflict shall facilitate the steps taken to search for the killed and wounded, to assist the shipwrecked and other persons exposed to grave danger, and to protect them against pillage and ill-treatment.

ARTICLE 17

The Parties to the conflict shall endeavour to conclude local agreements for the removal from besieged or encircled areas of wounded, sick, infirm, and aged persons, children and maternity cases, and for the passage of ministers of all religions, medical personnel and medical equipment on their way to such areas.

ARTICLE 18

Civilian hospitals organized to give care to the wounded and sick, the infirm and maternity cases, may in no circumstances be the object of attack, but shall at all times be respected and protected by the Parties to the conflict.

States which are Parties to a conflict shall provide all civilian hospitals with certificates showing that they are civilian hospitals and that the buildings which they occupy are not used for any purpose which would deprive these hospitals of protection in accordance with Article 19.

Above p. 5

Civilian hospitals shall be marked by means of the emblem provided for in Article 38 of the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of 12th August, 1949, but only if so authorized by the State.

The Parties to the conflict shall, in so far as military considerations permit, take the necessary steps to make the distinctive emblems indicating civilian hospitals clearly visible to the enemy land, air and naval forces in order to obviate the possibility of any hostile action.

In view of the dangers to which hospitals may be exposed by being close to military objectives, it is recommended that such hospitals be situated as far as possible from such objectives.

ARTICLE 19

The protection to which civilian hospitals are entitled shall not cease unless they are used to commit, outside their humanitarian duties, acts harmful to the enemy. Protection may, however, cease only after due warning has been given, naming, in all appropriate cases, a reasonable time limit and after such warning has remained unheeded.

The fact that sick or wounded members of the armed forces are nursed in these hospitals, or the presence of small arms and ammunition taken from such combatants and not yet handed to the proper service, shall not be considered to be acts harmful to the enemy.

ARTICLE 20

Persons regularly and solely engaged in the operation and administration of civilian hospitals, including the personnel engaged in the search for, removal and transporting of and caring for wounded and sick civilians, the infirm and maternity cases, shall be respected and protected.

In occupied territory and in zones of military operations, the above personnel shall be recognisable by means of an identity card certifying their status, bearing the photograph of the holder and embossed with the stamp of the responsible authority, and also by means of a stamped, water-resistant armlet which they shall wear on the left arm while carrying out their duties. This armlet shall be issued by the State and shall bear the emblem provided for in Article 38 of the Geneva Convention of the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of 12th August, 1949. Above p. 5

Other personnel who are engaged in the operation and administration of civilian hospitals shall be entitled to respect and protection and to wear the armlet, as provided in and under the conditions prescribed in this Article, while they are employed on such duties. The identity card shall state the duties on which they are engaged.

The management of each hospital shall at all times hold at the disposal of the competent national or occupying authorities an up-to-date list of such personnel.

Article 21

Convoys of vehicles or hospital trains on land or specially provided vessels on sea, conveying wounded and sick civilians, the infirm and maternity cases shall be respected and protected in the same manner as the hospitals provided for in Article 18, and shall be marked, with the consent of the State, by the display of the distinctive emblem provided for in Article 38 of the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of 12th August, 1949.

Article 22

Aircraft exclusively employed for the removal of wounded and sick civilians, the infirm and maternity cases, or for the transport of medical personnel and equipment, shall not be attacked, but shall be respected while flying at heights, times and on routes specifically agreed upon between all the Parties to the conflict concerned.

They may be marked with the distinctive emblem provided for in Article 38 of the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of 12th August, 1949.

Unless agreed otherwise, flights over enemy or enemy-occupied territory are prohibited.

Such aircraft shall obey every summons to land. In the event of a landing thus imposed, the aircraft with its occupants may continue its flight after examination, if any.

Article 23

Each High Contracting Party shall allow the free passage of all consignments of medical and hospital stores and objects necessary for religious worship intended only for civilians of another High Contracting Party, even if the latter is its adversary. It shall likewise permit the free passage of all consignments of essential foodstuffs,

clothing and tonics intended for children under fifteen, expectant mothers and maternity cases.

The obligation of a High Contracting Party to allow the free passage of the consignments indicated in the preceding paragraph is subject to the condition that this Party is satisfied that there are no serious reasons for fearing:

(*a*) that the consignments may be diverted from their destination,

(*b*) that the control may not be effective,or

(*c*) that a definite advantage may accrue to the military efforts or economy of the enemy through the substitution of the above-mentioned consignments for goods which would otherwise be provided or produced by the enemy or through the release of such material, services or facilities as would otherwise be required for the production of such goods.

The Power which allows the passage of the consignments indicated in the first paragraph of this Article may make such permission conditional on the distribution to the persons benefited thereby being made under the local supervision of the Protecting Powers.

Such consignments shall be forwarded as rapidly as possible, and the Power which permits their free passage shall have the right to prescribe the technical arrangements under which such passage is allowed.

Article 24

The Parties to the conflict shall take the necessary measures to ensure that children under fifteen, who are orphaned or are separated from their families as a result of the war, are not left to their own resources, and that their maintenance, the exercise of their religion and their education are facilitated in all circumstances. Their education shall, as far as possible, be entrusted to persons of a similar cultural tradition.

The Parties to the conflict shall facilitate the reception of such children in a neutral country for the duration of the conflict with the consent of the Protecting Power, if any, and under due safeguards for the observance of the principles stated in the first paragraph.

They shall, furthermore, endeavour to arrange for all children under twelve to be identified by the wearing of identity discs, or by some other means.

Article 25

All persons in the territory of a Party to the conflict, or in a territory occupied by it, shall be enabled to give news of a strictly personal nature to members of their families, wherever they may be, and to receive news from them. This correspondence shall be forwarded speedily and without undue delay.

If, as a result of circumstances, it becomes difficult or impossible to exchange family correspondence by the ordinary post, the Parties to the conflict concerned shall apply to a neutral intermediary, such as the Central Agency provided for in Article 140, and shall decide in consultation with it how to ensure the fulfilment of their obligations

under the best possible conditions, in particular with the co-operation of the national Red Cross (Red Crescent, Red Lion and Sun) societies.

If the Parties to the conflict deem it necessary to restrict family correspondence, such restrictions shall be confined to the compulsory use of standard forms containing twenty-five freely chosen words, and to the limitation of the number of these forms despatched to one each month.

Article 26

Each Party to the conflict shall facilitate enquiries made by members of families dispersed owing to the war, with the object of renewing contact with one another and of meeting, if possible. It shall encourage, in particular, the work of organizations engaged on this task provided they are acceptable to it and conform to its security regulations.

PART III.—STATUS AND TREATMENT OF PROTECTED PERSONS

Section I.—Provisions Common to the Territories of the Parties to the Conflict and to Occupied Territories

Article 27

Protected persons are entitled, in all circumstances, to respect for their persons, their honour, their family rights, their religious convictions and practices, and their manners and customs. They shall at all times be humanely treated, and shall be protected especially against all acts of violence or threats thereof and against insults and public curiosity.

Women shall be especially protected against any attack on their honour, in particular against rape, enforced prostitution or any form of indecent assault.

Without prejudice to the provisions relating to their state of health, age and sex, all protected persons shall be treated with the same consideration by the Party to the conflict in whose power they are, without any adverse distinction, based, in particular, on race, religion or political opinion.

However, the Parties to the conflict may take such measures of control and security in regard to protected persons as may be necessary as a result of the war.

Article 28

The presence of a protected person may not be used to render certain points or areas immune from military operations.

Article 29

The Party to the conflict in whose hands protected persons may be is responsible for the treatment accorded to them by its agents, irrespective of any individual responsibility which may be incurred.

Article 30

Protected persons shall have every facility for making application to the Protecting Powers, the International Committee of the Red Cross, the national Red Cross (Red Crescent, Red Lion and Sun)

society of the country where they may be, as well as to any organization that might assist them.

These several organizations shall be granted all facilities for that purpose by the authorities, within the bounds set by military or security considerations.

Apart from the visits of the delegates of the Protecting Powers and of the International Committee of the Red Cross, provided for by Article 143, the Detaining or Occupying Powers shall facilitate as much as possible visits to protected persons by the representatives of other organizations whose object is to give spiritual aid or material relief to such persons.

ARTICLE 31

No physical or moral coercion shall be exercised against protected persons, in particular to obtain information from them or from third parties.

ARTICLE 32

The High Contracting Parties specifically agree that each of them is prohibited from taking any measure of such a character as to cause the physical suffering or extermination of protected persons in their hands. This prohibition applies not only to murder, torture, corporal punishment, mutilation and medical or scientific experiments not necessitated by the medical treatment of a protected person, but also to any other measures of brutality whether applied by civilian or military agents.

ARTICLE 33

No protected person may be punished for an offence he or she has not personally committed. Collective penalties and likewise all measures of intimidation or of terrorism are prohibited.

Pillage is prohibited.

Reprisals against protected persons and their property are prohibited.

ARTICLE 34

The taking of hostages if prohibited.

SECTION II.—ALIENS IN THE TERRITORY OF A PARTY TO THE CONFLICT

ARTICLE 35

All protected persons who may desire to leave the territory at the outset of, or during a conflict, shall be entitled to do so, unless their departure is contrary to the national interests of the State. The applications of such persons to leave shall be determined in accordance with regularly established procedures and the decision shall be taken as rapidly as possible. Those persons permitted to leave may provide themselves with the necessary funds for their journey and take with them a reasonable amount of their effects and articles of personal use.

If any such person is refused permission to leave the territory, he

shall be entitled to have such refusal reconsidered as soon as possible by an appropriate court or administrative board designated by the Detaining Power for that purpose.

Upon request, representatives of the Protecting Power shall, unless reasons of security prevent it, or the persons concerned object, be furnished with the reasons for refusal of any request for permission to leave the territory and be given, as expeditiously as possible, the names of all persons who have been denied permission to leave.

ARTICLE 36

Departures permitted under the foregoing Article shall be carried out in satisfactory conditions as regards safety, hygiene, sanitation and food. All costs in connexion therewith, from the point of exit in the territory of the Detaining Power, shall be borne by the country of destination, or, in the case of accommodation in a neutral country, by the Power whose nationals are benefited. The practical details of such movements may, if necessary, be settled by special agreements between the Powers concerned.

The foregoing shall not prejudice such special agreements as may be concluded between Parties to the conflict concerning the exchange and repatriation of their nationals in enemy hands.

ARTICLE 37

Protected persons who are confined pending proceedings or serving a sentence involving loss of liberty, shall during their confinement be humanely treated.

As soon as they are released, they may ask to leave the territory in conformity with the foregoing Articles.

ARTICLE 38

With the exception of special measures authorized by the present Convention, in particular by Articles 27 and 41 thereof, the situation of protected persons shall continue to be regulated, in principle, by the provisions concerning aliens in time of peace. In any case, the following rights shall be granted to them:

(1) they shall be enabled to receive the individual or collective relief that may be sent to them;

(2) they shall, if their state of health so requires, receive medical attention and hospital treatment to the same extent as the nationals of the State concerned;

(3) they shall be allowed to practise their religion and to receive spiritual assistance from ministers of their faith;

(4) if they reside in an area particularly exposed to the dangers of war, they shall be authorized to move from that area to the same extent as the nationals of the State concerned;

(5) children under fifteen years, pregnant women and mothers of children under seven years shall benefit from any preferential treatment to the same extent as the nationals of the State concerned.

ARTICLE 39

Protected persons who, as a result of the war, have lost their gainful employment, shall be granted the opportunity to find paid employment. That opportunity shall, subject to security considerations and to the provisions of Article 40, be equal to that enjoyed by the nationals of the Power in whose territory they are.

Where a Party to the conflict applies to a protected person methods of control which result in his being unable to support himself, and especially if such a person is prevented for reasons of security from finding paid employment of reasonable conditions, the said Party shall ensure his support and that of his dependants.

Protected persons may in any case receive allowances from their home country, the Protecting Power, or the relief societies referred to in Article 30.

ARTICLE 40

Protected persons may be compelled to work only to the same extent as nationals of the Party to the conflict in whose territory they are.

If protected persons are of enemy nationality, they may only be compelled to do work which is normally necessary to ensure the feeding, sheltering, clothing, transport and health of human beings and which is not directly related to the conduct of military operations.

In the cases mentioned in the two preceding paragraphs protected persons compelled to work shall have the benefit of the same working conditions and of the same safeguards as national workers, in particular as regards wages, hours of labour, clothing and equipment, previous training and compensation for occupational accidents and diseases.

If the above provisions are infringed, protected persons shall be allowed to exercise their right of complaint in accordance with Article 30.

ARTICLE 41

Should the Power in whose hands protected persons may be consider the measures of control mentioned in the present Convention to be inadequate, it may not have recourse to any other measure of control more severe than that of assigned residence or internment, in accordance with the provisions of Articles 42 and 43.

In applying the provisions of Article 39, second paragraph, to the cases of persons required to leave their usual places of residence by virtue of a decision placing them in assigned residence elsewhere, the Detaining Power shall be guided as closely as possible by the standards of welfare set forth in Part III, Section IV of this Convention.

ARTICLE 42

The internment or placing in assigned residence of protected persons may be ordered only if the security of the Detaining Power makes it absolutely necessary.

If any person, acting through the representatives of the Protecting Power, voluntarily demands internment, and if his situation renders this step necessary, he shall be interned by the Power in whose hands he may be.

ARTICLE 43

Any protected person who has been interned or placed in assigned residence shall be entitled to have such action reconsidered as soon as possible by an appropriate court or administrative board designated by the Detaining Power for that purpose. If the internment or placing in assigned residence is maintained, the court or administrative board shall periodically, and at least twice yearly, give consideration to his or her case, with a view to the favourable amendment of the initial decision, if circumstances permit.

Unless the protected persons concerned object, the Detaining Power shall, as rapidly as possible, give the Protecting Power the names of any protected persons who have been interned or subjected to assigned residence, or who have been released from internment or assigned residence. The decisions of the courts or boards mentioned in the first paragraph of the present Article shall also, subject to the same conditions, be notified as rapidly as possible to the Protecting Power.

ARTICLE 44

In applying the measures of control mentioned in the present Convention, the Detaining Power shall not treat as enemy aliens exclusively on the basis of their nationality *de jure* of an enemy State, refugees who do not, in fact, enjoy the protection of any Government.

ARTICLE 45

Protected persons shall not be transferred to a Power which is not a party to the Convention.

This provision shall in no way constitute an obstacle to the repatriation of protected persons, or to their return to their country of residence after the cessation of hostilities.

Protected persons may be transferred by the Detaining Power only to a Power which is a party to the present Convention and after the Detaining Power has satisfied itself of the willingness and ability of such transferee Power to apply the present Convention. If protected persons are transferred under such circumstances, responsibility for the application of the present Convention rests on the Power accepting them, while they are in its custody. Nevertheless, if that Power fails to carry out the provisions of the present Convention in any important respect, the Power by which the protected persons were transferred shall, upon being so notified by the Protecting Power, take effective measures to correct the situation or shall request the return of the protected persons. Such request must be complied with.

In no circumstances shall a protected person be transferred to a country where he or she may have reason to fear persecution for his or her political opinions or religious beliefs.

The provisions of this Article do not constitute an obstacle to the extradition, in pursuance of extradition treaties concluded before the outbreak of hostilities, of protected persons accused of offences against ordinary criminal law.

ARTICLE 46

In so far as they have not been previously withdrawn, restrictive measures taken regarding protected persons shall be cancelled as soon as possible after the close of hostilities.

Restrictive measures affecting their property shall be cancelled, in accordance with the law of the Detaining Power, as soon as possible after the close of hostilities.

SECTION III.—OCCUPIED TERRITORIES

ARTICLE 47

Protected persons who are in occupied territory shall not be deprived, in any case or in any manner whatsoever, of the benefits of the present Convention by any change introduced, as the result of the occupation of a territory, into the institutions or government of the said territory, nor by any agreement concluded between the authorities of the occupied territories and the Occupying Power, nor by any annexation by the latter of the whole or part of the occupied territory.

ARTICLE 48

Protected persons who are not nationals of the Power whose territory is occupied, may avail themselves of the right to leave the territory subject to the provisions of Article 35, and decisions thereon shall be taken according to the procedure which the Occupying Power shall establish in accordance with the said Article.

ARTICLE 49

Individual or mass forcible transfers, as well as deportations of protected persons from occupied territory to the territory of the Occupying Power or to that of any other country, occupied or not, are prohibited, regardless of their motive.

Nevertheless, the Occupying Power may undertake total or partial evacuation of a given area if the security of the population or imperative military reasons so demand. Such evacuations may not involve the displacement of protected persons outside the bounds of the occupied territory except when for material reasons it is impossible to avoid such displacement. Persons thus evacuated shall be transferred back to their homes as soon as hostilities in the area in question have ceased.

The occupying Power undertaking such transfers or evacuations shall ensure, to the greatest practicable extent, that proper accommodation is provided to receive the protected persons, that the removals are effected in satisfactory conditions of hygiene, health, safety and nutrition, and that members of the same family are not separated.

The Protecting Power shall be informed of any transfers and evacuations as soon as they have taken place.

The Occupying Power shall not detain protected persons in an area particularly exposed to the dangers of war unless the security of the population or imperative military reasons so demand.

The Occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies.

ARTICLE 50

The Occupying Power shall, with the co-operation of the national and local authorities, facilitate the proper working of all institutions devoted to the care and education of children.

The Occupying Power shall take all necessary steps to facilitate the identification of children and the registration of their parentage. It may not, in any case, change their personal status, nor enlist them in formations or organizations subordinate to it.

Should the local institutions be inadequate for the purpose, the Occupying Power shall make arrangements for the maintenance and education, if possible by persons of their own nationality, language and religion, of children who are orphaned or separated from their parents as a result of the war and who cannot be adequately cared for by a near relative or friend.

A special section of the Bureau set up in accordance with Article 136 shall be responsible for taking all necessary steps to identify children whose identity is in doubt. Particulars of their parents or other near relatives should always be recorded if available.

The Occupying Power shall not hinder the application of any preferential measures in regard to food, medical care and protection against the effects of war, which may have been adopted prior to the occupation in favour of children under fifteen years, expectant mothers, and mothers of children under seven years.

ARTICLE 51

The Occupying Power may not compel protected persons to serve in its armed or auxiliary forces. No pressure or propaganda which aims at securing voluntary enlistment is permitted.

The Occupying Power may not compel protected persons to work unless they are over eighteen years of age, and then only on work which is necessary either for the needs of the army of occupation, or for the public utility services, or for the feeding, sheltering, clothing, transportation or health of the population of the occupied country. Protected persons may not be compelled to undertake any work which would involve them in the obligation of taking part in military operations. The Occupying Power may not compel protected persons to employ forcible means to ensure the security of the installations where they are performing compulsory labour.

The work shall be carried out only in the occupied territory where the persons whose services have been requisitioned are. Every such person shall, so far as possible, be kept in his usual place of employment. Workers shall be paid a fair wage and the work shall be proportionate to their physical and intellectual capacities. The legislation in force in the occupied country concerning working conditions, and safeguards as regards, in particular, such matter as wages, hours of work, equipment, preliminary training and compensation for occupational accidents and diseases, shall be applicable to the protected persons assigned to the work referred to in this Article.

In no case shall requisition of labour lead to a mobilisation of workers in an organization of a military or semi-military character.

ARTICLE 52

No contract, agreement or regulation shall impair the right of any worker, whether voluntary or not and wherever he may be, to apply to the representatives of the Protecting Power in order to request the said Power's intervention.

All measures aiming at creating unemployment or at restricting the opportunities offered to workers in an occupied territory, in order to induce them to work for the Occupying Power, are prohibited.

ARTICLE 53

Any destruction by the Occupying Power of real or personal property belonging individually or collectively to private persons, or to the State, or to other public authorities, or to social or co-operative organizations, is prohibited, except where such destruction is rendered absolutely necessary by military operations.

ARTICLE 54

The Occupying Power may not alter the status of public officials or judges in the occupied territories, or in any way apply sanctions to or take any measures of coercion or discrimination against them, should they abstain from fulfilling their functions for reasons of conscience.

This prohibition does not prejudice the application of the second paragraph of Article 51. It does not affect the right of the Occupying Power to remove public officials from their posts.

ARTICLE 55

To the fullest extent of the means available to it, the Occupying Power has the duty of ensuring the food and medical supplies of the population; it should, in particular, bring in the necessary foodstuffs, medical stores and other articles if the resources of the occupied territory are inadequate.

The Occupying Power may not requisition foodstuffs, articles or medical supplies available in the occupied territory, except for use by the occupation forces and administration personnel, and then only if the requirements of the civilian population have been taken into account. Subject to the provisions of other international Conventions, the Occupying Power shall make arrangements to ensure that fair value is paid for any requisitioned goods.

The Protecting Power shall, at any time, be at liberty to verify the state of the food and medical supplies in occupied territories, except where temporary restrictions are made necessary by imperative military requirements.

ARTICLE 56

To the fullest extent of the means available to it, the Occupying Power has the duty of ensuring and maintaining, with the co-operation of national and local authorities, the medical and hospital establishments and services, public health and hygiene in the occupied territory, with particular reference to the adoption and application of the prophylactic and preventive measures necessary to combat the spread of contagious diseases and epidemics. Medical personnel of all categories shall be allowed to carry out their duties.

If new hospitals are set up in occupied territory and if the competent organs of the occupied State are not operating there, the occupying authorities shall, if necessary, grant them the recognition provided for in Article 18. In similar circumstances, the occupying authorities shall also grant recognition to hospital personnel and transport vehicles under the provisions of Articles 20 and 21.

In adopting measures of health and hygiene and in their implementation, the Occupying Power shall take into consideration the moral and ethical susceptibilities of the population of the occupied territory.

ARTICLE 57

The Occupying Power may requisition civilian hospitals only temporarily and only in cases of urgent necessity for the care of military wounded and sick, and then on condition that suitable arrangements are made in due time for the care and treatment of the patients and for the needs of the civilian population for hospital accommodation.

The material and stores of civilian hospitals cannot be requisitioned so long as they are necessary for the needs of the civilian population.

ARTICLE 58

The Occupying Power shall permit ministers of religion to give spiritual assistance to the members of their religious communities.

The Occupying Power shall also accept consignments of books and articles required for religious needs and shall facilitate their distribution in occupied territory.

ARTICLE 59

If the whole or part of the population of an occupied territory is inadequately supplied, the Occupying Power shall agree to relief schemes on behalf of the said population, and shall facilitate them by all the means at its disposal.

Such schemes, which may be undertaken either by States or by impartial humanitarian organizations such as the International Committee of the Red Cross, shall consist, in particular, of the provision of consignments of foodstuffs, medical supplies and clothing.

All Contracting Parties shall permit the free passage of these consignments and shall guarantee their protection.

A Power granting free passage to consignments on their way to territory occupied by an adverse Party to the conflict shall, however, have the right to search the consignments, to regulate their passage according to prescribed times and routes, and to be reasonably satisfied through the Protecting Power that these consignments are to be used for the relief of the needy population and are not to be used for the benefit of the Occupying Power.

ARTICLE 60

Relief consignments shall in no way relieve the Occupying Power of any of its responsibilities under Articles 55, 56 and 59. The Occupying Power shall in no way whatsoever divert relief

consignments from the purpose for which they are intended, except in cases of urgent necessity, in the interests of the population of the occupied territory and with the consent of the Protecting Power.

ARTICLE 61

The distribution of the relief consignments referred to in the foregoing Articles shall be carried out with the co-operation and under the supervision of the Protecting Power. This duty may also be delegated, by agreement between the Occupying Power and the Protecting Power, to a neutral Power, to the International Committee of the Red Cross or to any other impartial humanitarian body.

Such consignments shall be exempt in occupied territory from all charges, taxes or customs duties unless these are necessary in the interests of the economy of the territory. The Occupying Power shall facilitate the rapid distribution of these consignments.

All Contracting Parties shall endeavour to permit the transit and transport, free of charge, of such relief consignments on their way to occupied territories.

ARTICLE 62

Subject to imperative reasons of security, protected persons in occupied territories shall be permitted to receive the individual relief consignments sent to them.

ARTICLE 63

Subject to temporary and exceptional measures imposed for urgent reasons of security by the Occupying Power:

(*a*) recognised national Red Cross (Red Crescent, Red Lion and Sun) societies shall be able to pursue their activities in accordance with Red Cross principles, as defined by the International Red Cross Conferences. Other relief societies shall be permitted to continue their humanitarian activities under similar conditions;

(*b*) the Occupying Power may not require any changes in the personnel or structure of these societies, which would prejudice the aforesaid activities.

The same principles shall apply to the activities and personnel of special organizations of a non-military character, which already exist or which may be established for the purpose of ensuring the living conditions of the civilian population by the maintenance of the essential public utility services, by the distribution of relief and by the organization of rescues.

ARTICLE 64

The penal laws of the occupied territory shall remain in force, with the exception that they may be repealed or suspended by the Occupying Power in cases where they constitute a threat to its security or an obstacle to the application of the present Convention. Subject to the latter consideration and to the necessity for ensuring the effective administration of justice, the tribunals of the occupied territory shall continue to function in respect of all offences covered by the said laws.

The Occupying Power may, however, subject the population of the occupied territory to provisions which are essential to enable the Occupying Power to fulfil its obligations under the present Convention, to maintain the orderly government of the territory, and to ensure the security of the Occupying Power, of the members and property of the occupying forces or administration, and likewise of the establishments and lines of communication used by them.

Article 65

The penal provisions enacted by the Occupying Power shall not come into force before they have been published and brought to the knowledge of the inhabitants in their own language. The effect of these penal provisions shall not be retroactive.

Article 66

In case of a breach of the penal provisions promulgated by it by virtue of the second paragraph of Article 64, the Occupying Power may hand over the accused to its properly constituted, non-political military courts, on condition that the said courts sit in the occupied country. Courts of appeal shall preferably sit in the occupied country.

Article 67

The courts shall apply only those provisions of law which were applicable prior to the offence, and which are in accordance with general principles of law, in particular the principle that the penalty shall be proportionate to the offence. They shall take into consideration the fact that the accused is not a national of the Occupying Power.

Article 68

Protected persons who commit an offence which is solely intended to harm the Occupying Power, but which does not constitute an attempt on the life or limb of members of the occupying forces or administration, nor a grave collective danger, nor seriously damage the property of the occupying forces or administration or the installations used by them, shall be liable to internment or simple imprisonment, provided the duration of such internment or imprisonment is proportionate to the offence committed. Furthermore, internment or imprisonment shall, for such offences, be the only measure adopted for depriving protected persons of liberty. The courts provided for under Article 66 of the present Convention may at their discretion convert a sentence of imprisonment to one of internment for the same period.

The penal provisions promulgated by the Occupying Power in accordance with Articles 64 and 65 may impose the death penalty on a protected person only in cases where the person is guilty of espionage, of serious acts of sabotage against the military installations of the Occupying Power or of intentional offences which have caused the death of one or more persons, provided that such offences were punishable by death under the law of the occupied territory in force before the occupation began.

The death penalty may not be pronounced against a protected person unless the attention of the court has been particularly called to the fact that, since the accused is not a national of the Occupying Power, he is not bound to it by any duty of allegiance.

In any case, the death penalty may not be pronounced against a protected person who was under eighteen years of age at the time of the offence.

ARTICLE 69

In all cases, the duration of the period during which a protected person accused of an offence is under arrest awaiting trial or punishment shall be deducted from any period of imprisonment awarded.

ARTICLE 70

Protected persons shall not be arrested, prosecuted or convicted by the Occupying Power for acts committed or for opinions expressed before the occupation, or during a temporary interruption thereof, with the exception of breaches of the laws and customs of war.

Nationals of the Occupying Power who, before the outbreak of hostilities, have sought refuge in the territory of the occupied State, shall not be arrested, prosecuted, convicted or deported from the occupied territory, except for offences committed after the outbreak of hostilities, or for offences under common law committed before the outbreak of hostilities which, according to the law of the occupied State, would have justified extradition in time of peace.

ARTICLE 71

No sentence shall be pronounced by the competent courts of the Occupying Power except after a regular trial.

Accused persons who are prosecuted by the Occupying Power shall be promptly informed, in writing, in a language which they understand, of the particulars of the charges preferred against them, and shall be brought to trial as rapidly as possible. The Protecting Power shall be informed of all proceedings instituted by the Occupying Power against protected persons in respect of charges involving the death penalty or imprisonment for two years or more; it shall be enabled, at any time, to obtain information regarding the state of such proceedings. Furthermore, the Protecting Power shall be entitled, on request, to be furnished with all particulars of these and of any other proceedings instituted by the Occupying Power against protected persons.

The notification to the Protecting Power, as provided for in the second paragraph above, shall be sent immediately, and shall in any case reach the Protecting Power three weeks before the date of the first hearing. Unless, at the opening of the trial, evidence is submitted that the provisions of this Article are fully complied with, the trial shall not proceed. The notification shall include the following particulars:

(*a*) description of the accused;

(*b*) place of residence or detention;

(*c*) specification of the charge or charges (with mention of the penal provisions under which it is brought);

(*d*) designation of the court which will hear the case;

(*e*) place and date of the first hearing.

ARTICLE 72

Accused persons shall have the right to present evidence necessary to their defence and may, in particular, call witnesses. They shall have the right to be assisted by a qualified advocate or counsel of their own choice, who shall be able to visit them freely and shall enjoy the necessary facilities for preparing the defence.

Failing a choice by the accused, the Protecting Power may provide him with an advocate or counsel. When an accused person has to meet a serious charge and the Protecting Power is not functioning, the Occupying Power, subject to the consent of the accused, shall provide an advocate or counsel.

Accused persons shall, unless they freely waive such assistance, be aided by an interpreter, both during preliminary investigation and during the hearing in court. They shall have at any time the right to object to the interpreter and to ask for his replacement.

ARTICLE 73

A convicted person shall have the right of appeal provided for by the laws applied by the court. He shall be fully informed of his right to appeal or petition and of the time-limit within which he may do so.

The penal procedure provided in the present Section shall apply, as far as it is applicable, to appeals. Where the laws applied by the Court make no provision for appeals, the convicted person shall have the right to petition against the finding and sentence to the competent authority of the Occupying Power.

ARTICLE 74

Representatives of the Protecting Power shall have the right to attend the trial of any protected person, unless the hearing has, as an exceptional measure, to be held *in camera* in the interests of the security of the Occupying Power, which shall then notify the Protecting Power. A notification in respect of the date and place of trial shall be sent to the Protecting Power.

Any judgment involving a sentence of death, or imprisonment for two years or more, shall be communicated, with the relevant grounds, as rapidly as possible to the Protecting Power. The notification shall contain a reference to the notification made under Article 71, and, in the case of sentences of imprisonment, the name of the place where the sentence is to be served. A record of judgments other than those referred to above shall be kept by the court and shall be open to inspection by representatives of the Protecting Power. Any period allowed for appeal in the case of sentences involving the death penalty or imprisonment of two years or more, shall not run until notification of judgment has been received by the Protecting Power.

ARTICLE 75

In no case shall persons condemned to death be deprived of the right of petition for pardon or reprieve.

No death sentence shall be carried out before the expiration of a period of at least six months from the date of receipt by the Protecting Power of the notification of the final judgment confirming such death sentence, or of an order denying pardon or reprieve.

The six months period of suspension of the death sentence herein prescribed may be reduced in individual cases in circumstances of grave emergency involving an organized threat to the security of the Occupying Power or its forces, provided always that the Protecting Power is notified of such reduction and is given reasonable time and opportunity to make representations to the competent occupying authorities in respect of such death sentences.

ARTICLE 76

Protected persons accused of offences shall be detained in the occupied country, and if convicted they shall serve their sentences therein. They shall, if possible, be separated from other detainees and shall enjoy conditions of food and hygiene which will be sufficient to keep them in good health, and which will be at least equal to those obtaining in prisons in the occupied country.

They shall receive the medical attention required by their state of health.

They shall also have the right to receive any spiritual assistance which they may require.

Women shall be confined in separate quarters and shall be under the direct supervision of women.

Proper regard shall be paid to the special treatment due to minors.

Protected persons who are detained shall have the right to be visited by delegates of the Protecting Power and of the International Committee of the Red Cross, in accordance with the provisions of Article 143.

Such persons shall have the right to receive at least one relief parcel monthly.

ARTICLE 77

Protected persons who have been accused of offences or convicted by the courts in occupied territory, shall be handed over at the close of occupation, with the relevant records, to the authorities of the liberated territory.

ARTICLE 78

If the Occupying Power considers it necessary, for imperative reasons of security, to take safety measures concerning protected persons, it may, at the most, subject them to assigned residence or to internment.

Decisions regarding such assigned residence or internment shall be made according to a regular procedure to be prescribed by the Occupying Power in accordance with the provisions of the present

Convention. This procedure shall include the right of appeal for the parties concerned. Appeals shall be decided with the least possible delay. In the event of the decision being upheld, it shall be subject to periodical review, if possible every six months, by a competent body set up by the said Power.

Protected persons made subject to assigned residence and thus required to leave their homes shall enjoy the full benefit of Article 39 of the present Convention.

Section IV.—Regulations for the Treatment of Internees

Chapter I.—General Provisions

Article 79

The Parties to the conflict shall not intern protected persons, except in accordance with the provisions of Articles 41, 42, 43, 68 and 78.

Article 80

Internees shall retain their full civil capacity and shall exercise such attendant rights as may be compatible with their status.

Article 81

Parties to the conflict who intern protected persons shall be bound to provide free of charge for their maintenance, and to grant them also the medical attention required by their state of health.

No deduction from the allowances, salaries or credits due to the internees shall be made for the repayment of these costs.

The Detaining Power shall provide for the support of those dependent on the internees, if such dependants are without adequate means of support or are unable to earn a living.

Article 82

The Detaining Power shall, as far as possible, accommodate the internees according to their nationality, language and customs. Internees who are nationals of the same country shall not be separated merely because they have different languages.

Throughout the duration of their internment, members of the same family, and in particular parents and children, shall be lodged together in the same place of internment, except when separation of a temporary nature is necessitated for reasons of employment or health or for the purposes of enforcement of the provisions of Chapter IX of the present Section. Internees may request that their children who are left at liberty without parental care shall be interned with them.

Wherever possible, interned members of the same family shall be housed in the same premises and given separate accommodation from other internees, together with facilities for leading a proper family life.

Chapter II.—Places of Internment

ARTICLE 83

The Detaining Power shall not set up places of internment in areas particularly exposed to the dangers of war.

The Detaining Power shall give the enemy Powers, through the intermediary of the Protecting Powers, all useful information regarding the geographical location of places of internment.

Whenever military considerations permit, internment camps shall be indicated by the letters IC, placed so as to be clearly visible in the daytime from the air. The powers concerned may, however, agree upon any other system of marking. No place other than an internment camp shall be marked as such.

ARTICLE 84

Internees shall be accommodated and administered separately from prisoners of war and from persons deprived of liberty for any other reason.

ARTICLE 85

The Detaining Power is bound to take all necessary and possible measures to ensure that protected persons shall, from the outset of their internment, be accommodated in buildings or quarters which afford every possible safeguard as regards hygiene and health, and provide efficient protection against the rigours of the climate and the effects of the war. In no case shall permanent places of internment be situated in unhealthy areas, or in districts the climate of which is injurious to the internees. In all cases where the district, in which a protected person is temporarily interned, is in an unhealthy area or has a climate which is harmful to his health, he shall be removed to a more suitable place of internment as rapidly as circumstances permit.

The premises shall be fully protected from dampness, adequately heated and lighted, in particular between dusk and lights out. The sleeping quarters shall be sufficiently spacious and well ventilated, and the internees shall have suitable bedding and sufficient blankets, account being taken of the climate, and the age, sex, and state of health of the internees.

Internees shall have for their use, day and night, sanitary conveniences which conform to the rules of hygiene and are constantly maintained in a state of cleanliness. They shall be provided with sufficient water and soap for their daily personal toilet and for washing their personal laundry; installations and facilities necessary for this purpose shall be granted to them. Showers or baths shall also be available. The necessary time shall be set aside for washing and for cleaning.

Whenever it is necessary, as an exceptional and temporary measure, to accommodate women internees who are not members of a family unit in the same place of internment as men, the provision of separate sleeping quarters and sanitary conveniences for the use of such women internees shall be obligatory.

ARTICLE 86

The Detaining Power shall place at the disposal of interned persons, of whatever denomination, premises suitable for the holding of their religious services.

ARTICLE 87

Canteens shall be installed in every place of internment, except where other suitable facilities are available. The purpose shall be to enable internees to make purchases, at prices not higher than local market prices, of foodstuffs and articles of everyday use, including soap and tobacco, such as would increase their personal well-being and comfort.

Profits made by canteens shall be credited to a welfare fund to be set up for each place of internment, and administered for the benefit of the internees attached to such place of internment. The Internee Committee provided for in Article 102 shall have the right to check the management of the canteen and of the said fund.

When a place of internment is closed down, the balance of the welfare fund shall be transferred to the welfare fund of a place of internment for internees of the same nationality, or, if such a place does not exist, to a central welfare fund which shall be administered for the benefit of all internees remaining in the custody of the Detaining Power. In case of a general release, the said profits shall be kept by the Detaining Power, subject to any agreement to the contrary between the Powers concerned.

ARTICLE 88

In all places of internment exposed to air raids and other hazards of war, shelters adequate in number and structure to ensure the necessary protection shall be installed. In case of alarms, the internees shall be free to enter such shelters as quickly as possible, excepting those who remain for the protection of their quarters against the aforesaid hazards. Any protective measures taken in favour of the population shall also apply to them.

All due precautions must be taken in places of internment against the danger of fire.

Chapter III.—Food and Clothing

ARTICLE 89

Daily food rations for internees shall be sufficient in quantity, quality and variety to keep internees in a good state of health and prevent the development of nutritional deficiencies. Account shall also be taken of the customary diet of the internees.

Internees shall also be given the means by which they can prepare for themselves any additional food in their possession.

Sufficient drinking water shall be supplied to internees. The use of tobacco shall be permitted.

Internees who work shall receive additional rations in proportion to the kind of labour which they perform.

Expectant and nursing mothers and children under fifteen years of age shall be given additional food, in proportion to their physiological needs.

ARTICLE 90

When taken into custody, internees shall be given all facilities to provide themselves with the necessary clothing, footwear and change of underwear, and later on, to procure further supplies if required. Should any internees not have sufficient clothing, account being taken of the climate, and be unable to procure any, it shall be provided free of charge to them by the Detaining Power.

The clothing supplied by the Detaining Power to internees and the outward markings placed on their own clothes shall not be ignominious nor expose them to ridicule.

Workers shall receive suitable working outfits, including protective clothing, whenever the nature of their work so requires.

Chapter IV.—Hygiene and Medical Attention

ARTICLE 91

Every place of internment shall have an adequate infirmary, under the direction of a qualified doctor, where internees may have the attention they require, as well as an appropriate diet. Isolation wards shall be set aside for cases of contagious or mental diseases.

Maternity cases and internees suffering from serious diseases, or whose condition requires special treatment, a surgical operation or hospital care, must be admitted to any institution where adequate treatment can be given and shall receive care not inferior to that provided for the general population.

Internees shall, for preference, have the attention of medical personnel of their own nationality.

Internees may not be prevented from presenting themselves to the medical authorities for examination. The medical authorities of the Detaining Power shall, upon request, issue to every internee who has undergone treatment an official certificate showing the nature of his illness or injury, and the duration and nature of the treatment given. A duplicate of this certificate shall be forwarded to the Central Agency provided for in Article 140.

Treatment, including the provision of any apparatus necessary for the maintenance of internees in good health, particularly dentures and other artificial appliances and spectacles, shall be free of charge to the internee.

ARTICLE 92

Medical inspections of internees shall be made at least once a month. Their purpose shall be, in particular, to supervise the general state of health, nutrition and cleanliness of internees, and to detect contagious diseases, especially tuberculosis, malaria, and venereal diseases. Such inspections shall include, in particular, the checking of weight of each internee and, at least once a year, radioscopic examination.

Chapter V.—Religious, Intellectual and Physical Activities

ARTICLE 93

Internees shall enjoy complete latitude in the exercise of their religious duties, including attendance at the services of their faith, on condition that they comply with the disciplinary routine prescribed by the detaining authorities.

Ministers of religion who are interned shall be allowed to minister freely to the members of their community. For this purpose, the Detaining Power shall ensure their equitable allocation amongst the various places of internment in which there are internees speaking the same language and belonging to the same religion. Should such ministers be too few in number, the Detaining Power shall provide them with the necessary facilities, including means of transport, for moving from one place to another, and they shall be authorized to visit any internees who are in hospital. Ministers of religion shall be at liberty to correspond on matters concerning their ministry with the religious authorities in the country of detention and, as far as possible, with the international religious organizations of their faith. Such correspondence shall not be considered as forming a part of the quota mentioned in Article 107. It shall, however, be subject to the provisions of Article 112.

When internees do not have at their disposal the assistance of ministers of their faith, or should these latter be too few in number, the local religious authorities of the same faith may appoint, in agreement with the Detaining Power, a minister of the internees' faith or, if such a course is feasible from a denominational point of view, a minister of similar religion or a qualified layman. The latter shall enjoy the facilities granted to the ministry he has assumed. Persons so appointed shall comply with all regulations laid down by the Detaining Power in the interests of discipline and security.

ARTICLE 94

The Detaining Power shall encourage intellectual, educational and recreational pursuits, sports and games amongst internees, whilst leaving them free to take part in them or not. It shall take all practicable measures to ensure the exercise thereof, in particular by providing suitable premises.

All possible facilities shall be granted to internees to continue their studies or to take up new subjects. The education of children and young people shall be ensured; they shall be allowed to attend schools either within the place of internment or outside.

Internees shall be given opportunities for physical exercise, sports and outdoor games. For this purpose, sufficient open spaces shall be set aside in all places of internment. Special playgrounds shall be reserved for children and young people.

ARTICLE 95

The Detaining Power shall not employ internees as workers, unless they so desire. Employment which, if undertaken under compulsion by a protected person not in internment, would involve a breach of Article 40 or 51 of the present Convention, and employment on work which is of a degrading or humiliating character are in any case prohibited.

After a working period of six weeks, internees shall be free to give up work at any moment, subject to eight days' notice.

These provisions constitute no obstacle to the right of the Detaining Power to employ interned doctors, dentists and other medical personnel in their professional capacity on behalf of their fellow internees, or to employ internees for administrative and maintenance work in places of internment and to detail such persons for work in the kitchens or for other domestic tasks, or to require such persons to undertake duties connected with the protection of internees against aerial bombardment or other war risks. No internee may, however, be required to perform tasks for which he is, in the opinion of a medical officer, physically unsuited.

The Detaining Power shall take entire responsibility for all working conditions, for medical attention, for the payment of wages, and for ensuring that all employed internees receive compensation for occupational accidents and diseases. The standards prescribed for the said working conditions and for compensation shall be in accordance with the national laws and regulations, and with the existing practice; they shall in no case be inferior to those obtaining for work of the same nature in the same district. Wages for work done shall be determined on an equitable basis by special agreements between the internees, the Detaining Power, and, if the case arises, employers other than the Detaining Power, due regard being paid to the obligation of the Detaining Power to provide for free maintenance of internees and for the medical attention which their state of health may require. Internees permanently detailed for categories of work mentioned in the third paragraph of this Article, shall be paid fair wages by the Detaining Power. The working conditions and the scale of compensation for occupational accidents and diseases to internees, thus detailed, shall not be inferior to those applicable to work of the same nature in the same district.

Article 96

All labour detachments shall remain part of and dependent upon a place of internment. The competent authorities of the Detaining Power and the commandant of a place of internment shall be responsible for the observance in a labour detachment of the provisions of the present Convention. The commandant shall keep an up-to-date list of the labour detachments subordinate to him and shall communicate it to the delegates of the Protecting Power, of the International Committee of the Red Cross and of other humanitarian organizations who may visit the places of internment.

Chapter VI.—Personal Property and Financial Resources

Article 97

Internees shall be permitted to retain articles of personal use. Moneys, cheques, bonds, etc., and valuables in their possession may not be taken from them except in accordance with established procedure. Detailed receipts shall be given therefor.

The amounts shall be paid into the account of every internee as provided for in Article 98. Such amounts may not be converted into any other currency unless legislation in force in the territory in which the owner is interned so requires or the internee gives his consent.

Articles which have above all a personal or sentimental value may not be taken away.

A woman internee shall not be searched except by a woman.

On release or repatriation, internees shall be given all articles, moneys or other valuables taken from them during internment and shall receive in currency the balance of any credit to their accounts kept in accordance with Article 98, with the exception of any articles or amounts withheld by the Detaining Power by virtue of its legislation in force. If the property of an internee is so withheld, the owner shall receive a detailed receipt.

Family or identity documents in the possession of internees may not be taken away without a receipt being given. At no time shall internees be left without identity documents. If they have none, they shall be issued with special documents drawn up by the detaining authorities, which will serve as their identity papers until the end of their internments.

Internees may keep on their persons a certain amount of money, in cash or in the shape of purchase coupons, to enable them to make purchases.

ARTICLE 98

All internees shall receive regular allowances, sufficient to enable them to purchase goods and articles, such as tobacco, toilet requisites, etc. Such allowances may take the form of credits or purchase coupons.

Furthermore, internees may receive allowances from the Power to which they owe allegiance, the Protecting Powers, the organizations which may assist them, or their families, as well as the income on their property in accordance with the law of the Detaining Power. The amount of allowances granted by the Power to which they owe allegiance shall be the same for each category of internees (infirm, sick, pregnant women, etc.), but may not be allocated by that Power or distributed by the Detaining Power on the basis of discriminations between internees which are prohibited by Article 27 of the present Convention.

The Detaining Power shall open a regular account for every internee, to which shall be credited the allowances named in the present Article, the wages earned and the remittances received, together with such sums taken from him as may be available under the legislation in force in the territory in which he is interned. Internees shall be granted all facilities consistent with the legislation in force in such territory to make remittances to their families and to other dependants. They may draw from their accounts the amounts necessary for their personal expenses, within the limits fixed by the Detaining Power. They shall at all times be afforded reasonable facilities for consulting and obtaining copies of their accounts. A statement of accounts shall be furnished to the Protecting Power on request, and shall accompany the internee in case of transfer.

Chapter VII.—Administration and Discipline

ARTICLE 99

Every place of internment shall be put under the authority of a responsible officer, chosen from the regular military forces or the

regular civil administration of the Detaining Power. The officer in charge of the place of internment must have in his possession a copy of the present Convention in the official language, or one of the official languages, of his country and shall be responsible for its application. The staff in control of internees shall be instructed in the provisions of the present Convention and of the administrative measures adopted to ensure its application.

The text of the present Convention and the texts of special agreements concluded under the said Convention shall be posted inside the place of internment, in a language which the internees understand, or shall be in the possession of the Internee Committee.

Regulations, orders, notices and publications of every kind shall be communicated to the internees and posted inside the places of internment, in a language which they understand.

Every order and command addressed to internees individually must likewise be given in a language which they understand.

Article 100

The disciplinary regime in places of internment shall be consistent with humanitarian principles, and shall in no circumstances include regulations imposing on internees any physical exertion dangerous to their health or involving physical or moral victimisation. Identification by tattooing or imprinting signs or markings on the body, is prohibited.

In particular, prolonged standing and roll-calls, punishment drill, military drill and manoeuvres, or the reduction of food rations, are prohibited.

Article 101

Internees shall have the right to present to the authorities in whose power they are, any petition with regard to the conditions of internment to which they are subjected.

They shall also have the right to apply without restriction through the Internee Committee or, if they consider it necessary, direct to the representatives of the Protecting Power, in order to indicate to them any points on which they may have complaints to make with regard to the conditions of internment.

Such petitions and complaints shall be transmitted forthwith and without alteration, and even if the latter are recognised to be unfounded, they may not occasion any punishment.

Periodic reports on the situation in places of internment and as to the needs of the internees, may be sent by the Internee Committees to the representatives of the Protecting Powers.

Article 102

In every place of internment, the internees shall freely elect by secret ballot every six months the members of a Committee empowered to represent them before the Detaining and the Protecting Powers, the International Committee of the Red Cross and any other

organization which may assist them. The members of the Committee shall be eligible for re-election.

Internees so elected shall enter upon their duties after their election has been approved by the detaining authorities. The reasons for any refusals or dismissals shall be communicated to the Protecting Powers concerned.

ARTICLE 103

The Internee Committees shall further the physical, spiritual and intellectual well-being of the internees.

In case the internees decide, in particular, to organize a system of mutual assistance amongst themselves, this organization would be within the competence of the Committees in addition to the special duties entrusted to them under other provisions of the present Convention.

ARTICLE 104

Members of Internee Committees shall not be required to perform any other work, if the accomplishment of their duties is rendered more difficult thereby.

Members of Internee Committees may appoint from amongst the internees such assistants as they may require. All material facilities shall be granted to them, particularly a certain freedom of movement necessary for the accomplishment of their duties (visits to labour detachments, receipt of supplies, etc.).

All facilities shall likewise be accorded to members of Internee Committees for communication by post and telegraph with the detaining authorities, the Protecting Powers, the International Committee of the Red Cross and their delegates, and with the organizations which give assistance to internees. Committee members in labour detachments shall enjoy similar facilities for communication with their Internee Committee in the principal place on internment. Such communications shall not be limited, nor considered as forming a part of the quota mentioned in Article 107.

Members of Internee Committees who are transferred shall be allowed a reasonable time to acquaint their successors with current affairs.

Chapter VIII.—Relations with the Exterior

ARTICLE 105

Immediately upon interning protected persons, the Detaining Powers shall inform them, the Power to which they owe allegiance and their Protecting Power of the measures taken for executing the provisions of the present Chapter. The Detaining Powers shall likewise inform the Parties concerned of any subsequent modifications of such measures.

ARTICLE 106

As soon as he is interned, or at the latest not more than one week after his arrival in a place of internment, and likewise in cases of sickness or transfer to another place of internment or to a hospital,

every internee shall be enabled to send direct to his family, on the one hand, and to the Central Agency provided for by Article 140, on the other, an internment card similar, if possible, to the model annexed to the present Convention, informing his relatives of his detention, address and state of health. The said cards shall be forwarded as rapidly as possible and may not be delayed in any way.

Article 107

Internees shall be allowed to send and receive letters and cards. If the Detaining Power deems it necessary to limit the number of letters and cards sent by each internee, the said number shall not be less than two letters and four cards monthly; these shall be drawn up so as to conform as closely as possible to the models annexed to the present Convention. If limitations must be placed on the correspondence addressed to internees, they may be ordered only by the Power to which such internees owe allegiance, possibly at the request of the Detaining Power. Such letters and cards must be conveyed with reasonable despatch; they may not be delayed or retained for disciplinary reasons.

Internees who have been a long time without news, or who find it impossible to receive news from their relatives, or to give them news by the ordinary postal route, as well as those who are at a considerable distance from their homes, shall be allowed to send telegrams, the charges being paid by them in the currency at their disposal. They shall likewise benefit by this provision in cases which are recognised to be urgent.

As a rule, internees' mail shall be written in their own language. The Parties to the conflict may authorize correspondence in other languages.

Article 108

Internees shall be allowed to receive, by post or by any other means, individual parcels or collective shipments containing in particular foodstuffs, clothing, medical supplies, as well as books and objects of a devotional, educational or recreational character which may meet their needs. Such shipments shall in no way free the Detaining Power from the obligations imposed upon it by virtue of the present Convention.

Should military necessity require the quantity of such shipments to be limited, due notice thereof shall be given to the Protecting Power and to the International Committee of the Red Cross, or to any other organization giving assistance to the internees and responsible for the forwarding of such shipments.

The conditions for the sending of individual parcels and collective shipments shall, if necessary, be the subject of special agreements between the Powers concerned, which may in no case delay the receipt by the internees of relief supplies. Parcels of clothing and foodstuffs may not include books. Medical relief supplies shall, as a rule, be sent in collective parcels.

Article 109

In the absence of special agreements between Parties to the conflict regarding the conditions for the receipt and distribution of collective

relief shipments, the regulations concerning collective relief which are annexed to the present Convention shall be applied.

The special agreements provided for above shall in no case restrict the right of Internee Committees to take possession of collective relief shipments intended for internees, to undertake their distribution and to dispose of them in the interests of the recipients.

Nor shall such agreements restrict the right of representatives of the Protecting Powers, the International Committee of the Red Cross, or any other organization giving assistance to internees and responsible for the forwarding of collective shipments, to supervise their distribution to the recipients.

Article 110

All relief shipments for internees shall be exempt from import, customs and other dues.

All matter sent by mail, including relief parcels sent by parcel post and remittances of money, addressed from other countries to internees or despatched by them through the post office, either direct or through the Information Bureaux provided for in Article 136 and the Central Information Agency provided for in Article 140, shall be exempt from all postal dues both in the countries of origin and destination and in intermediate countries. To this effect, in particular, the exemption provided by the Universal Postal Convention of 1947 and by the agreements of the Universal Postal Union in favour of civilians of enemy nationality detained in camps or civilian prisons, shall be extended to the other interned persons protected by the present Convention. The countries not signatory to the above-mentioned agreements shall be bound to grant freedom from charges in the same circumstances.

The cost of transporting relief shipments which are intended for internees and which, by reason of their weight or any other cause, cannot be sent through the post office, shall be borne by the Detaining Power in all the territories under its control. Other Powers which are Parties to the present Convention shall bear the cost of transport in their respective territories.

Costs connected with the transport of such shipments, which are not covered by the above paragraphs, shall be charged to the senders.

The High Contracting Parties shall endeavour to reduce, so far as possible, the charges for telegrams sent by internees, or addressed to them.

Article 111

Should military operations prevent the Powers concerned from fulfilling their obligation to ensure the conveyance of the mail and relief shipments provided for in Articles 106, 107, 108 and 113, the Protecting Powers concerned, the International Committee of the Red Cross or any other organization duly approved by the Parties to the conflict may undertake to ensure the conveyance of such shipments by suitable means (rail, motor vehicles, vessels or aircraft, etc.). For this purpose, the High Contracting Parties shall endeavour to supply them with such transport, and to allow its circulation, especially by granting the necessary safe-conducts.

Such transport may also be used to convey:

(*a*) correspondence, lists and reports exchanged between the Central Information Agency referred to in Article 140 and the National Bureaux referred to in Article 136;

(*b*) correspondence and reports relating to internees which the Protecting Powers, the International Committee of the Red Cross or any other organization assisting the internees exchange either with their own delegates or with the Parties to the conflict.

These provisions in no way detract from the right of any Party to the conflict to arrange other means of transport if it should so prefer, nor preclude the granting of safe-conducts, under mutually agreed conditions, to such means of transport.

The costs occasioned by the use of such means of transport shall be borne, in proportion to the importance of the shipments, by the Parties to the conflict whose nationals are benefited thereby.

ARTICLE 112

The censoring of correspondence addressed to internees or despatched by them shall be done as quickly as possible.

The examination of consignments intended for internees shall not be carried out under conditions that will expose the goods contained in them to deterioration. It shall be done in the presence of the addressee, or of a fellow-internee duly delegated by him. The delivery to internees of individual or collective consignments shall not be delayed under the pretext of difficulties of censorship.

Any prohibition of correspondence ordered by the Parties to the conflict either for military or political reasons, shall be only temporary and its duration shall be as short as possible.

ARTICLE 113

The Detaining Powers shall provide all reasonable facilities for the transmission, through the Protecting Powers or the Central Agency provided for in Article 140, or as otherwise required, of wills, powers of attorney, letters of authority, or any other documents intended for internees or despatched by them.

In all cases the Detaining Powers shall facilitate the execution and authentication in due legal form of such documents on behalf of internees, in particular by allowing them to consult a lawyer.

ARTICLE 114

The Detaining Power shall afford internees all facilities to enable them to manage their property, provided this is not incompatible with the conditions of internment and the law which is applicable. For this purpose, the said Power may give them permission to leave the place of internment in urgent cases and if circumstances allow.

ARTICLE 115

In all cases where an internee is a party to proceedings in any court, the Detaining Power shall, if he so requests, cause the court to be informed of his detention and shall, within legal limits, ensure that

all necessary steps are taken to prevent him from being in any way prejudiced, by reason of his internment, as regards the preparation and conduct of his case or as regards the execution of any judgment of the court.

ARTICLE 116

Every internee shall be allowed to receive visitors, especially near relatives, at regular intervals and as frequently as possible.

As far as is possible, internees shall be permitted to visit their homes in urgent cases, particularly in cases of death or serious illness of relatives.

Chapter IX.—Penal and Disciplinary Sanctions

ARTICLE 117

Subject to the provisions of the present Chapter, the laws in force in the territory in which they are detained will continue to apply to internees who commit offences during internment.

If general laws, regulations or orders declare acts committed by internees to be punishable, whereas the same acts are not punishable when committed by persons who are not internees, such acts shall entail disciplinary punishments only.

No internee may be punished more than once for the same act, or on the same count.

ARTICLE 118

The courts or authorities shall in passing sentence take as far as possible into account the fact that the defendant is not a national of the Detaining Power. They shall be free to reduce the penalty prescribed for the offence with which the internee is charged and shall not be obliged, to this end, to apply the minimum sentence prescribed.

Imprisonment in premises without daylight and, in general, all forms of cruelty without exception are forbidden.

Internees who have served disciplinary or judicial sentences shall not be treated differently from other internees.

The duration of preventive detention undergone by an internee shall be deducted from any disciplinary or judicial penalty involving confinement to which he may be sentenced.

Internee Committees shall be informed of all judicial proceedings instituted against internees whom they represent, and of their result.

ARTICLE 119

The disciplinary punishments applicable to internees shall be the following:

(1) a fine which shall not exceed 50 per cent, of the wages which the internee would otherwise receive under the provisions of Article 95 during a period of not more than thirty days;

(2) discontinuance of privileges granted over and above the treatment provided for by the present Convention;

(3) fatigue duties, not exceeding two hours daily, in connexion with the maintenance of the place of interment;

(4) confinement.

In no case shall disciplinary penalties be inhuman, brutal or dangerous for the health of internees. Account shall be taken of the internee's age, sex and state of health.

The duration of any single punishment shall in no case exceed a maximum of thirty consecutive days, even if the internee is answerable for several breaches of discipline when his case is dealt with, whether such breaches are connected or not.

ARTICLE 120

Internees who are recaptured after having escaped or when attempting to escape, shall be liable only to disciplinary punishment in respect of this act, even if it is a repeated offence.

Article 118, paragraph 3, notwithstanding, internees punished as a result of escape or attempt to escape, may be subjected to special surveillance, on condition that such surveillance does not affect the state of their health, that it is exercised in a place of internment and that it does not entail the abolition of any of the safeguards granted by the present Convention.

Internees who aid and abet an escape or attempt to escape shall be liable on this count to disciplinary punishment only.

ARTICLE 121

Escape, or attempt to escape, even if it is a repeated offence, shall not be deemed an aggravating circumstance in cases where an internee is prosecuted for offences committed during his escape.

The Parties to the conflict shall ensure that the competent authorities exercise leniency in deciding whether punishment inflicted for an offence shall be of a disciplinary or judicial nature, especially in respect of acts committed in connexion with an escape, whether successful or not.

ARTICLE 122

Acts which constitute offences against discipline shall be investigated immediately. This rule shall be applied, in particular, in cases of escape or attempt to escape. Recaptured internees shall be handed over to the competent authorities as soon as possible.

In cases of offences against discipline, confinement awaiting trial shall be reduced to an absolute minimum for all internees, and shall not exceed fourteen days. Its duration shall in any case be deducted from any sentence of confinement.

The provisions of Articles 124 and 125 shall apply to internees who are in confinement awaiting trial for offences against discipline.

ARTICLE 123

Without prejudice to the competence of courts and higher authorities, disciplinary punishment may be ordered only by the commandant of the place of internment, or by a responsible officer or official who replaces him, or to whom he has delegated his disciplinary powers.

Before any disciplinary punishment is awarded, the accused internee shall be given precise information regarding the offences of which he is accused, and given an opportunity of explaining his conduct and of defending himself. He shall be permitted, in particular, to call witnesses and to have recourse, if necessary, to the services of a qualified interpreter. The decision shall be announced in the presence of the accused and of a member of the Internee Committee.

The period elapsing between the time of award of a disciplinary punishment and its execution shall not exceed one month.

When an internee is awarded a further disciplinary punishment, a period of at least three days shall elapse between the execution of any two of the punishments, if the duration of one of these is ten days or more.

A record of disciplinary punishments shall be maintained by the commandant of the place of internment and shall be open to inspection by representatives of the Protecting Power.

Article 124

Internees shall not in any case be transferred to penitentiary establishments (prisons, penitentiaries, convict prisons, etc.) to undergo disciplinary punishment therein.

The premises in which disciplinary punishments are undergone shall conform to sanitary requirements; they shall in particular be provided with adequate bedding. Internees undergoing punishment shall be enabled to keep themselves in a state of cleanliness.

Women internees undergoing disciplinary punishment shall be confined in separate quarters from male internees and shall be under the immediate supervision of women.

Article 125

Internees awarded disciplinary punishment shall be allowed to exercise and to stay in the open air at least two hours daily.

They shall be allowed, if they so request, to be present at the daily medical inspections. They shall receive the attention which their state of health requires and, if necessary, shall be removed to the infirmary of the place of internment or to a hospital.

They shall have permission to read and write, likewise to send and receive letters. Parcels and remittances of money, however, may be withheld from them until the completion of their punishment; such consignments shall meanwhile be entrusted to the Internee Committee, who will hand over to the infirmary the perishable goods contained in the parcels.

No internees given a disciplinary punishment may be deprived of the benefit of the provisions of Articles 107 and 143 of the present Convention.

Article 126

The provisions of Articles 71 to 76 inclusive shall apply, by analogy, to proceedings against internees who are in the national territory of the Detaining Power.

Chapter X.—Transfers of Internees

ARTICLE 127

The transfer of internees shall always be effected humanely. As a general rule, it shall be carried out by rail or other means of transport, and under conditions at least equal to those obtaining for the forces of the Detaining Power in their changes of station. If, as an exceptional measure, such removals have to be effected on foot, they may not take place unless the internees are in a fit state of health, and may not in any case expose them to excessive fatigue.

The Detaining Power shall supply internees during transfer with drinking water and food sufficient in quantity, quality and variety to maintain them in good health, and also with the necessary clothing, adequate shelter and the necessary medical attention. The Detaining Power shall take all suitable precautions to ensure their safety during transfer, and shall establish before their departure a complete list of all internees transferred.

Sick, wounded or infirm internees and maternity cases shall not be transferred if the journey would be seriously detrimental to them, unless their safety imperatively so demands.

If the combat zone draws close to a place of internment, the internees in the said place shall not be transferred, unless their removal can be carried out in adequate conditions of safety, or unless they are exposed to greater risks by remaining on the spot than by being transferred.

When making decisions regarding the transfer of internees, the Detaining Power shall take their interests into account and, in particular, shall not do anything to increase the difficulties of repatriating them or returning them to their own homes.

ARTICLE 128

In the event of transfer, internees shall be officially advised of their departure and of their new postal address. Such notification shall be given in time for them to pack their luggage and inform their next of kin.

They shall be allowed to take with them their personal effects, and the correspondence and parcels which have arrived for them. The weight of such baggage may be limited if the conditions of transfer so require, but in no case to less than twenty-five kilograms per internee.

Mail and parcels addressed to their former place of internment shall be forwarded to them without delay.

The commandant of the place of internment shall take, in agreement with the Internee Committee, any measures needed to ensure the transport of the internees' community property and of the luggage the internees are unable to take with them in consequence of restrictions imposed by virtue of the second paragraph.

Chapter XI.—Deaths

ARTICLE 129

The wills of internees shall be received for safe-keeping by the responsible authorities; and in the event of the death of an internee his will shall be transmitted without delay to a person whom he has previously designated.

Deaths of internees shall be certified in every case by a doctor, and a death certificate shall be made out, showing the causes of death and the conditions under which it occurred.

An official record of the death, duly registered, shall be drawn up in accordance with the procedure relating thereto in force in the territory where the place of internment is situated, and a duly certified copy of such record shall be transmitted without delay to the Protecting Power as well as to the Central Agency referred to in Article 140.

ARTICLE 130

The detaining authorities shall ensure that internees who die while interned are honourably buried, if possible according to the rites of the religion to which they belonged, and that their graves are respected, properly maintained, and marked in such a way that they can always be recognised.

Deceased internees shall be buried in individual graves unless unavoidable circumstances require the use of collective graves. Bodies may be cremated only for imperative reasons of hygiene, on account of the religion of the deceased or in accordance with his expressed wish to this effect. In case of cremation, the fact shall be stated and the reasons given in the death certificate of the deceased. The ashes shall be retained for safe-keeping by the detaining authorities and shall be transferred as soon as possible to the next of kin on their request.

As soon as circumstances permit, and not later than the close of hostilities, the Detaining Power shall forward lists of graves of deceased internees to the Powers on whom deceased internees depended through the Information Bureaux provided for in Article 136. Such lists shall include all particulars necessary for the identification of the deceased internees, as well as the exact location of their graves.

ARTICLE 131

Every death or serious injury of an internee, caused or suspected to have been caused by a sentry, another internee or any other person, as well as any death the cause of which is unknown, shall be immediately followed by an official enquiry by the Detaining Power.

A communication on this subject shall be sent immediately to the Protecting Power. The evidence of any witnesses shall be taken, and a report including such evidence shall be prepared and forwarded to the said Protecting Power.

If the enquiry indicates the guilt of one or more persons, the Detaining Power shall take all necessary steps to ensure the prosecution of the person or persons responsible.

Chapter XII.—Release, Repatriation and Accommodation in Neutral Countries

ARTICLE 132

Each interned person shall be released by the Detaining Power as soon as the reasons which necessitated his internment no longer exist.

The Parties to the conflict shall, moreover, endeavour during the course of hostilities, to conclude agreements for the release, the repatriation, the return to places of residence or the accommodation in a neutral country of certain classes of internees, in particular children, pregnant women and mothers with infants and young children, wounded and sick, and internees who have been detained for a long time.

ARTICLE 133

Internment shall cease as soon as possible after the close of hostilities.

Internees in the territory of a Party to the conflict against whom penal proceedings are pending for offences not exclusively subject to disciplinary penalties, may be detained until the close of such proceedings and, if circumstances require, until the completion of the penalty. The same shall apply to internees who have been previously sentenced to a punishment depriving them of liberty.

By agreement between the Detaining Power and the Powers concerned, committees may be set up after the close of hostilities, or of the occupation of territories, to search for dispersed internees.

ARTICLE 134

The High Contracting Parties shall endeavour, upon the close of hostilities or occupation, to ensure the return of all internees to their last place of residence, or to facilitate their repatriation.

ARTICLE 135

The Detaining Power shall bear the expense of returning released internees to the places where they were residing when interned, or, if it took them into custody while they were in transit or on the high seas, the cost of completing their journey or of their return to their point of departure.

Where a Detaining Power refuses permission to reside in its territory to a released internee who previously had his permanent domicile therein, such Detaining Power shall pay the cost of the said internee's repatriation. If, however, the internee elects to return to his country on his own responsibility or in obedience to the Government of the Power to which he owes allegiance, the Detaining Power need not pay the expenses of his journey beyond the point of his departure from its territory. The Detaining Power need not pay the costs of repatriation of an internee who was interned at his own request.

If internees are transferred in accordance with Article 45, the transferring and receiving Powers shall agree on the portion of the above costs to be borne by each.

The foregoing shall not prejudice such special agreements as may be concluded between Parties to the conflict concerning the exchange and repatriation of their nationals in enemy hands.

SECTION V.—INFORMATION BUREAUX AND CENTRAL AGENCY

ARTICLE 136

Upon the outbreak of a conflict and in all cases of occupation, each of the Parties to the conflict shall establish an official Information Bureau responsible for receiving and transmitting information in respect of the protected persons who are in its power.

Each of the Parties to the conflict shall, within the shortest possible period, give its Bureau information of any measure taken by it concerning any protected persons who are kept in custody for more than two weeks, who are subjected to assigned residence or who are interned. It shall, furthermore, require its various departments concerned with such matters to provide the aforesaid Bureau promptly with information concerning all changes pertaining to these protected persons, as, for example, transfers, releases, repatriations, escapes, admittances to hospitals, births and deaths.

ARTICLE 137

Each national Bureau shall immediately forward information concerning protected persons by the most rapid means to the Powers of whom the aforesaid persons are nationals, or to Powers in whose territory they resided, through the intermediary of the Protecting Powers and likewise through the Central Agency provided for in Article 140. The Bureaux shall also reply to all enquiries which may be received regarding protected persons.

Information Bureaux shall transmit information concerning a protected person unless its transmission might be detrimental to the person concerned or to his or her relatives. Even in such a case, the information may not be withheld from the Central Agency which, upon being notified of the circumstances, will take the necessary precautions indicated in Article 140.

All communications in writing made by any Bureau shall be authenticated by a signature or a seal.

ARTICLE 138

The information received by the national Bureau and transmitted by it shall be of such a character as to make it possible to identify the protected person exactly and to advise his next of kin quickly. The information in respect of each person shall include at least his surname, first names, place and date of birth, nationality, last residence and distinguishing characteristics, the first name of the father and the maiden name of the mother, the date, place and nature of the action taken with regard to the individual, the address at which correspondence may be sent to him and the name and address of the person to be informed.

Likewise, information regarding the state of health of internees who are seriously ill or seriously wounded shall be supplied regularly and if possible every week.

ARTICLE 139

Each national Information Bureau shall, furthermore, be responsible for collecting all personal valuables left by protected persons mentioned in Article 136, in particular those who have been re-

patriated or released, or who have escaped or died; it shall forward the said valuables to those concerned, either direct, or, if necessary, through the Central Agency. Such articles shall be sent by the Bureau in sealed packets which shall be accompanied by statements giving clear and full identity particulars of the person to whom the articles belonged, and by a complete list of the contents of the parcel. Detailed records shall be maintained of the receipt and despatch of all such valuables.

Article 140

A Central Information Agency for protected persons, in particular for internees, shall be created in a neutral country. The International Committee of the Red Cross shall, if it deems necessary, propose to the Powers concerned the organization of such an Agency, which may be the same as that provided for in Article 123 of the Geneva Convention relative to the Treatment of Prisoners of War of 12th August, 1949.

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The function of the Agency shall be to collect all information of the type set forth in Article 136 which it may obtain through official or private channels and to transmit it as rapidly as possible to the countries of origin or of residence of the persons concerned, except in cases where such transmissions might be detrimental to the persons whom the said information concerns, or to their relatives. It shall receive from the Parties to the conflict all reasonable facilities for effecting such transmissions.

The High Contracting Parties, and in particular those whose nationals benefit by the services of the Central Agency, are requested to give the said Agency the financial aid it may require.

The foregoing provisions shall in no way be interpreted as restricting the humanitarian activities of the International Committee of the Red Cross and of the relief societies described in Article 142.

Article 141

The national Information Bureaux and the Central Information Agency shall enjoy free postage for all mail, likewise the exemptions provided for in Article 110, and further, so far as possible, exemption from telegraphic charges or, at least, greatly reduced rates.

PART IV.—EXECUTION OF THE CONVENTION

Section I.—General Provisions

Article 142

Subject to the measures which the Detaining Powers may consider essential to ensure their security or to meet any other reasonable need, the representatives of religious organizations, relief societies, or any other organizations assisting the protected persons, shall receive from these Powers, for themselves or their duly accredited agents, all facilities for visiting the protected persons, for distributing relief supplies and material from any source, intended for educational, recreational or religious purposes, or for assisting them in organizing their leisure time within the places of internment. Such societies or

organizations may be constituted in the territory of the Detaining Power, or in any other country, or they may have an international character.

The Detaining Power may limit the number of societies and organizations whose delegates are allowed to carry out their activities in its territory and under its supervision, on condition, however, that such limitation shall not hinder the supply of effective and adequate relief to all protected persons.

The special position of the International Committee of the Red Cross in this field shall be recognised and respected at all times.

Article 143

Representatives or delegates of the Protecting Powers shall have permission to go to all places where protected persons are, particularly to places of internment, detention and work.

They shall have access to all premises occupied by protected persons and shall be able to interview the latter without witnesses, personally or through an interpreter.

Such visits may not be prohibited except for reasons of imperative military necessity, and then only as an exceptional and temporary measure. Their duration and frequency shall not be restricted.

Such representatives and delegates shall have full liberty to select the places they wish to visit. The Detaining or Occupying Power, the Protecting Power and when occasion arises the Power of origin of the persons to be visited, may agree that compatriots of the internees shall be permitted to participate in the visits.

The delegates of the International Committee of the Red Cross shall also enjoy the above prerogatives. The appointment of such delegates shall be submitted to the approval of the Power governing the territories where they will carry out their duties.

Article 144

The High Contracting Parties undertake, in time of peace as in time of war, to disseminate the text of the present Convention as widely as possible in their respective countries, and, in particular, to include the study thereof in their programmes of military and, if possible, civil instruction, so that the principles thereof may become known to the entire population.

Any civilian, military, police or other authorities, who in time of war assume responsibilities in respect of protected persons, must possess the text of the Convention and be specially instructed as to its provisions.

Article 145

The High Contracting Parties shall communicate to one another through the Swiss Federal Council and, during hostilities, through the Protecting Powers, the official translations of the present Convention, as well as the laws and regulations which they may adopt to ensure the application thereof.

ARTICLE 146

The High Contracting Parties undertake to enact any legislation necessary to provide effective penal sanctions for persons committing, or ordering to be committed, any of the grave breaches of the present Convention defined in the following Article.

Each High Contracting Party shall be under the obligation to search for persons alleged to have committed, or to have ordered to be committed, such grave breaches, and shall bring such persons, regardless of their nationality, before its own courts. It may also, if it prefers, and in accordance with the provisions of its own legislation, hand such persons over for trial to another High Contracting Party concerned, provided such High Contracting Party has made out a *prima facie* case.

Each High Contracting Party shall take measures necessary for the suppression of all acts contrary to the provisions of the present Convention other than the grave breaches defined in the following Article.

In all circumstances, the accused person shall benefit by safeguards of proper trial and defence, which shall not be less favourable than those provided by Article 105 and those following of the Geneva Convention relative to the Treatment of Prisoners of War of 12th August, 1949.

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ARTICLE 147

Grave breaches to which the preceding Article relates shall be those involving any of the following acts, if committed against persons or property protected by the present Convention: wilful killing, torture or inhuman treatment, including biological experiments, wilfully causing great suffering or serious injury to body or health, unlawful deportation or transfer or unlawful confinement of a protected person, compelling a protected person to serve in the forces of a hostile Power, or wilfully depriving a protected person of the rights of fair and regular trial prescribed in the present Convention, taking of hostages and extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly.

ARTICLE 148

No High Contracting Party shall be allowed to absolve itself or any other High Contracting Party of any liability incurred by itself or by another High Contracting Party in respect of breaches referred to in the preceding Article.

ARTICLE 149

At the request of a Party to the conflict, an enquiry shall be instituted, in a manner to be decided between the interested Parties, concerning any alleged violation of the Convention.

If agreement has not been reached concerning the procedure for the enquiry, the Parties should agree on the choice of an umpire who will decide upon the procedure to be followed.

Once the violation has been established, the Parties to the conflict shall put an end to it and shall repress it with the least possible delay.

Section II.—Final Provisions

Article 150

The present Convention is established in English and in French. Both texts are equally authentic.

The Swiss Federal Council shall arrange for official translations of the Convention to be made in the Russian and Spanish languages.

Article 151

The present Convention, which bears the date of this day, is open to signature until 12th February, 1950, in the name of the Powers represented at the Conference which opened at Geneva on 21st April, 1949.

Article 152

The present Convention shall be ratified as soon as possible and the ratifications shall be deposited at Berne.

A record shall be drawn up of the deposit of each instrument of ratification and certified copies of this record shall be transmitted by the Swiss Federal Council to all the Powers in whose name the Convention has been signed, or whose accession has been notified.

Article 153

The present Convention shall come into force six months after not less than two instruments of ratification have been deposited.

Thereafter, it shall come into force for each High Contracting Party six months after the deposit of the instrument of ratification.

Article 154

In the relations between the Powers who are bound by the The Hague Conventions relative to the Laws and Customs of War on Land, whether that of 29th July, 1899, or that of 18th October, 1907, and who are parties to the present Convention, this last Convention shall be supplementary to Sections II and III of the Regulations annexed to the above-mentioned Conventions of The Hague.

Article 155

From the date of its coming into force, it shall be open to any Power in whose name the present Convention has not been signed, to accede to this Convention.

Article 156

Accessions shall be notified in writing to the Swiss Federal Council, and shall take effect six months after the date on which they are received.

The Swiss Federal Council shall communicate the accession to all the Powers in whose name the Convention has been signed, or whose accession has been notified.

ARTICLE 157

The situations provided for in Articles 2 and 3 shall give immediate effect to ratifications deposited and accessions notified by the Parties to the conflict before or after the beginning of hostilities or occupation. The Swiss Federal Council shall communicate by the quickest method any ratifications or accessions received from Parties to the conflict.

ARTICLE 158

Each of the High Contracting Parties shall be at liberty to denounce the present Convention.

The denunciation shall be notified in writing to the Swiss Federal Council, which shall transmit it to the Governments of all the High Contracting Parties.

The denunciation shall take effect one year after the notification thereof has been made to the Swiss Federal Council. However, a denunciation of which notification has been made at a time when the denouncing Power is involved in a conflict shall not take effect until peace has been concluded, and until after operations connected with the release, repatriation and re-establishment of the persons protected by the present Convention have been terminated.

The denunciation shall have effect only in respect of the denouncing Power. It shall in no way impair the obligations which the Parties to the conflict shall remain bound to fulfil by virtue of the principles of the law of nations, as they result from the usages established among civilised peoples, from the laws of humanity and the dictates of the public conscience.

ARTICLE 159

The Swiss Federal Council shall register the present Convention with the Secretariat of the United Nations. The Swiss Federal Council shall also inform the Secretariat of the United Nations of all ratifications, accessions and denunciations received by it with respect to the present Convention.

In witness whereof the undersigned, having deposited their respective full powers, have signed the present Convention.

Done at Geneva this twelfth day of August, 1949, in the English and French languages. The original shall be deposited in the archives of the Swiss Confederation. The Swiss Federal Council shall transmit certified copies thereof to each of the signatory and acceding States.

[Here follow the signatures and Annexes.]

POLICE

CHAPTER 13:01

Containing Pages 1–70

CHAPTER 13:01

POLICE

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SCHEDULE

12 of 2010
G.N. 10/2010

An Act to provide for the organization, administration and the general powers, duties and functions of the Malaŵi Police Service; to make provision for the functioning of the Police Service Commission and for the recruitment, appointment, promotion and discipline of police officers; to establish an Independent Complaints Commission as a specialized body to receive and hear complaints by the public against police officers and make recommendations thereon; to make provision for the regulation of public order in relation to public assemblies, processions and demonstrations and at football matches; to make provision for community policing; to provide for a lay visitors scheme to enable lay persons in the community make inspection visits to police stations to check conditions of persons there detained; and further to provide for connected and ancillary matters

[1st August, 2010]

PART I

Preliminary

Short title

1. This Act may be cited as the Police Act.

Interpretation

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

"assistant commissioner" includes a senior assistant commissioner of police;

"Code" or "Disciplinary Code" means the Disciplinary Code of Conduct established by section 52 and set out in the Schedule;

"community police forum" means a community policing forum established under Part XI, and includes any sub-forum thereof;

"criminal offence", in relation to matters of disciplinary control of police officers, means any offence, tribal by a court of criminal jurisdiction prescribed under any written law, including this Act;

"Inspector General" means the Inspector General of Police appointed under section 154 of the Constitution;

"Independent Complaints Commission" means the body established under Part XIII;

"Independent Complaints Commissioner" means the public officer appointed under section 132;

"junior rank" means the rank of a police officer of or below sub-inspector, and "junior police officer" shall be construed accordingly;

"lay visitors scheme" means the lay visitors scheme established under Part XII;

"National Police Disciplinary Committee" means the National Police Disciplinary Committee established under section 55;

"offence against discipline" means a disciplinary offence prescribed in the Code of Conduct or otherwise prescribed in this Act;

"officer in-charge of police" means a police officer appointed by the Inspector General to be in-charge of the police stationed in any area;

"the Police", "the Police Service" or "the Service" means the Malaŵi Police Service established under Chapter XV of the Constitution;

"police disciplinary committee" includes the National Police Disciplinary Committee and a subordinate police disciplinary committee;

"police officer" means any member of the Police Service;

"Police Reserve" means the Malaŵi Police Service Reserve established under Part VIII;

"Police Rewards and Fines Fund" means the fund established under Part VII;

"Police Service Commission" means the body by that name established under section 155 of the Constitution and provided for under Part III of this Act;

"police station" means any place appointed by the Inspector General to be a police station and, where appropriate, includes the police formation constituting the national headquarters or a regional headquarters of the Police;

"public place" or "place of public resort" includes any premises or place to which, at the material time, the public have, or are permitted to have, access, whether upon a payment or otherwise;

"region" means any part of Malaŵi designated under section 11 to constitute a region for the purposes of the administration of the Police Service;

"senior rank" means the rank of a police officer of or above inspector, and "senior police officer" shall be construed accordingly;

"service", in relation to service in the Malaŵi Police Service, does not include service as a member or an officer of the Police Service Commission or the Independent Complaints Commission or as a member of a community police forum or as a lay visitor under the

lay visitors scheme, except for a police officer who is a member thereof;

"subordinate police disciplinary committee" means a police disciplinary committee established under section 55, subordinate to the National Police Disciplinary Committee;

"superintendent" includes a senior superintendent and an assistant superintendent;

"superior police officer" means any police officer of or above the rank of assistant superintendent.

PART II

Constitution and Administration of the Malaŵi Police Service

The Malaŵi Police Service

3. The Malaŵi Police Service established under Chapter XV of the Constitution shall operate and function in accordance with the provisions of this Act, in addition to the provisions of that Chapter.

General functions of the Police Service

4.—(1) The Police Service shall be employed in and throughout Malaŵi for—

(*a*) the prevention, investigation and detection of crime;

(*b*) the apprehension and prosecution of offenders;

(*c*) the preservation of law and order;

(*d*) the protection of life, property, fundamental freedoms and rights of individuals;

(*e*) the due enforcement of all laws with which the Police are directly charged;

(*f*) the exercise or performance of such other powers, functions and duties as are conferred on the Police by or under this Act or any other written law or as may by law be exercised, performed or otherwise discharged by the Police.

(2) For the performance of any of the functions under subsection (1), the Police shall be entitled to carry and to use arms, but shall so use such arms only as authorized by this Act or by any other law.

Constitution of the Police Service

5. The Police Service shall comprise the Inspector General, any Deputy Inspector General, Commissioners, Deputy Commissioners, Senior Assistant Commissioners, Assistant Commissioners, Senior Superintendents, Superintendents, Assistant Superintendents, Inspectors, Sub-Inspectors, Sergeants and Constables.

Order of precedence, command and seniority among officers

6.—(1) The ranks of the Police Service shall have precedence and command in the order set out in section 5, with the rank of Inspector General as the most senior.

(2) Police officers holding the same rank shall stand in order of precedence and command according to their seniority reckoned by the date of appointment to that rank in the Service or, where the date of appointment to that rank in the Service is the same, by the date of their enlistment or, where the date of enlistment is the same, by their service number.

(3) Where a police officer, other than a superior police officer, has been seconded to any branch, the word denoting the designation of the branch shall precede the title of the rank held, but the seniority of such police officer shall be the same as if he had not been so seconded.

General powers of the Inspector General

7. The Inspector General shall, subject to the general directions of the Minister, have the command, superintendence and direction of the Police Service, and may, subject to this Act and to any regulations or rules made thereunder, make such appointments, promotions, and reductions in ranks and grades, other than those of superior police officers and police officers of the rank of inspector, as may be delegated by the Police Service Commission in accordance with this Act.

Police standing orders

8.—(1) The Inspector General may, subject to this Act and to the general directions of the Minister, from time to time, make standing orders for observance by all police officers.

(2) Any police standing orders in force at the commencement of this Act shall be deemed to have been made under subsection (1) and shall continue to apply until revoked or amended or replaced by any other standing orders made under subsection (1).

High Command of the Police Service

9.—(1) There shall be a High Command of the Police Service which shall comprise the Inspector General, who shall be the head and chairperson of the High Command, every Deputy Inspector General and officers of the rank of Commissioner.

(2) The functions and duties of the High Command shall be the formulation of organizational policy and the development of strategic and operational directives for the Police Service.

(3) The High Command shall have power to determine its own procedure for the conduct of its proceedings.

Delegation by Inspector General

10. The Inspector General may delegate his powers under this Act to a Deputy Inspector General, Commissioner, Deputy Commissioner,

Senior Assistant Commissioner or an Assistant Commissioner except the power granted under section 8 to make standing orders.

Administration of the Police Service

11.—(1) The Minister may, on the recommendation of the Inspector General, designate any part of Malaŵi as constituting a region of Malaŵi for the purposes of the administration of the Police Service and shall give notification of such designation in the *Gazette*.

(2) The Command of the Police in any region shall be vested in such police officer as may be appointed by the Inspector General to be in charge of the region and such officer shall carry out the orders of the Inspector General in all matters connected with the duties, discipline, interior economy and training of the officers under him.

(3) The control of the police in any area or place within a region shall be vested in such police officer as may be appointed by the Inspector General to be in charge of the area or place and such officer shall, subject to the orders and directions of the Inspector General, carry out the orders of the officer in-charge of the region in all matters connected with the duties, discipline, interior economy and training of the officers under him.

Officer in-charge of police to keep prescribed books and to be responsible for stores

12.—(1) Every officer in-charge of a police station shall keep a general diary or an occurrence book and such other books and records, and shall render such returns as the Inspector General may, from time to time direct.

(2) Every officer in-charge of a police station shall be responsible for all public stores and public moneys issued and delivered for the use of the detachment under his command and shall account for such public stores and public moneys to the Inspector General.

PART III

Police Service Commission

Functions

13. The Police Service Commission established by section 155 of the Constitution shall have, in addition to the functions conferred on it by the Constitution, the following functions—

(*a*) to formulate schemes of recruitment in the Police Service;

(*b*) to provide for and determine the principles to be followed in making promotions in the Police Service for the purpose of ensuring uniformity of treatment of, and the standards to be attained by, police officers of each rank to qualify for promotion;

(*c*) to provide for all matters relating to the procedure for the exercise, and the delegation, of its powers of appointment, dismissal and disciplinary control of police officers;

(*d*) to adopt general measures necessary to guarantee efficiency and transparency in relation to appointments, promotions and disciplinary control in the Police Service; and

(*e*) to do or perform such other functions as are conferred on it by or under this Act or any other written law.

Powers

14. The Police Service Commission shall have power—

(*a*) as conferred on it by the Constitution, to—

(i) appoint persons to hold or act in offices in the Police Service other than that of Inspector General;

(ii) confirm appointments and remove from office any persons so appointed;

(iii) exercise disciplinary control in accordance with this Act over persons so appointed;

(*b*) by notice in the *Gazette*, to declare any additional ranks in the Police Service, fix the precedence of such ranks and declare that any such additional rank shall be deemed to be included in any existing rank for the purposes of the interpretation of this Act;

(*c*) to delegate by directions in writing any of its powers conferred by the Constitution or by this Act or by any other written law, to any member of the Commission or to any public officer or public body being part of the Malaŵi Police Service;

(*d*) to hear such complaints or appeals from aggrieved police officers relating to the exercise of powers delegated under this section; and

(*e*) to do and perform all such acts or things as are necessary or expedient for the performance or exercise of its functions and powers.

Privilege of members

15. Every member of the Police Service Commission shall have such protection and privilege, in case of any action or suit brought against him for any act done or attempted to be done in the *bona fide* execution of his duties, as is by law given in respect of acts done or words spoken by a judge of the High Court in the exercise of his judicial office.

Enforcement of attendance, etc.

16. The Police Service Commission may require any person to attend and give evidence before it concerning any matter which it may properly consider in the exercise of its functions and powers and may require the production of any documents relating to any such matter by any person attending before it.

Failure to appear or to produce documents before the Commission

17. Any person, other than a person who is notified to appear before the Police Service Commission solely in connection with his application for appointment to a post in the Police Service, who without reasonable cause fails to appear before the Commission when notified to do so by

the Commission, or who willfully fails to produce any document in his possession when requested to do so by the Commission, commits an offence and shall, upon conviction, be liable to a fine of K20,000 and to imprisonment for six months.

Improper disclosure

18.—(1) No member of the Police Service Commission or any member of the staff of the Commission shall publish or disclose to any person, otherwise than in the exercise of his official functions, the contents of any document, communication or information whatsoever which has come to his notice in the course of his duties.

(2) Any person who contravenes subsection (1) commits an offence and shall, upon conviction, be liable to a fine of K20,000 and to imprisonment for six months.

Improper influence and false information

19.—(1) Any person who directly or indirectly, otherwise than in the course of his duties, by himself or by any other person in any manner whatsoever attempts to improperly influence the Police Service Commission in the exercise of its functions or powers commits an offence and shall, upon conviction, be liable to a fine of K20,000 and to imprisonment for six months.

(2) Any person who, in connexion with the exercise by the Police Service Commission of its functions and powers, willfully gives to the Commission any information which he knows to be false or does not believe to be true or which he knows to be false by reason of the omission of any material particular commits an offence and shall, upon conviction, be liable to a fine of K20,000 and to imprisonment for six months.

(3) For the purposes of subsections (1) and (2), "Commission" includes the Commission, any member of the Commission, any member of the staff of the Commission or any person or body of persons appointed or engaged to assist the Commission in the exercise of its functions and powers.

Secretary and staff

20.—(1) The Police Service Commission shall appoint a Secretary to the Police Service Commission who shall be a public officer and the chief executive officer of the Police Service Commission.

(2) The Police Service Commission shall appoint such other staff as it may, from time to time, consider necessary and who shall be public officers.

(3) The Secretary and other staff of the Police Service Commission shall be subject to the direction of the Police Service Commission.

(4) The Police Service Commission may be served by officers in the public service in common with other public service commissions established under the Constitution or under an Act of Parliament, and such officers shall be deemed to have been duly appointed for the purposes of this section.

Meetings of the Police Service Commission

21.—(1) The Police Service Commission shall meet as often as business requires and, in any event, at least three times a year.

(2) A quorum for meetings of the Police Service Commission shall be formed by the presence of any three members.

(3) Meetings of the Police Service Commission shall be presided over by the Chairman or, in his absence, by a member elected in that behalf by the members attending the meeting.

(4) The Police Service Commission shall have power, subject to this Act, to determine its own procedures for the conduct of its business.

Decisions of the Police Service Commission

22.—(1) Subject to subsection (2), at every meeting of the Police Service Commission decisions of the Police Service Commission shall be determined by the majority of the members present and voting at the meeting.

(2) The Police Service Commission may make decisions without a meeting by the circulation of the relevant papers among the members and the expression of their views in writing, and if there is any disagreement as to the decision to be made, or if any member expresses a desire for the decision to be deferred, the matter shall be considered at a meeting of the Police Service Commission.

Dissent

23. Any member of the Police Service Commission shall be entitled to dissent from a decision of the Commission and to have his dissent and his reasons therefore recorded in the minutes of the Police Service Commission.

Minutes

24. The Secretary shall keep minutes of every meeting of the Police Service Commission, which shall include a record of the members present.

Attendance expenses and allowances

25. Any person attending before the Police Service Commission at the request of the Police Service Commission, other than a public officer or a person who is applying for appointment to the Police Service, shall be entitled to be paid by the Police Service Commission expenses and allowances as may be determined by the Minister, from time to time, on the recommendation of the Police Service Commission.

Commission to hear Inspector General

26. At the request of the Inspector General to be heard personally, the Police Service Commission shall hear him or his designated representative personally in connexion with any recommendation made by the Inspector General to the Police Service Commission.

Irregular representations

27. In carrying out its functions and duties under the Constitution, this Act and regulations made under this Act, the Police Service Commission shall not take into account any representations made to it otherwise than in accordance with the Constitution, the Act or such Regulations.

Oath of office

28.—(1) Every member of the Police Service Commission, and the Secretary of the Police Service Commission and such other members of staff of the Police Service Commission as the Police Service Commission may require, shall, on appointment, take an oath of office in the prescribed form.

(2) A person who is required under subsection (1) to take an oath may instead make a solemn affirmation in the prescribed form for the due performance of the duties of his office.

(3) An oath or affirmation taken by a member of the Police Service Commission shall be administered by the Chief Justice, and every oath or affirmation taken by the Secretary or any other member of the staff of the Police Service Commission shall be administered by the Chairman of the Police Service Commission.

Character of Police Service as part of public service Cap. 1:03

29. For the avoidance of doubt, the fundamental principles contained in the Public Service Act, for the administration of the public service shall be applied to the management and administration of the Police Service.

Regulations in relation to the powers and functions of the Police Service Commission

30. The Minister may, on the recommendation of the Police Service Commission, make regulations for the better carrying out of the provisions of this Part, and regulations made under this section shall be cited as the Police Service Commission Regulations.

PART IV

Appointment and Termination of Appointment of Police Officers

Appointment of police officers

31.—(1) Police officers of or above the rank of inspector, other than the Inspector General, shall be appointed by the Police Service Commission.

(2) Police officers below the rank of inspector shall be appointed by the Inspector General in such manner as the Police Service Commission

may direct and subject to such conditions as the Commission may prescribe.

Arms and accoutrements to be delivered up on ceasing to belong to the Police Service

32.—(1) When a police officer ceases to belong to the Police Service, he shall forthwith deliver up to the person appointed by the Inspector General for that purpose, or to the officer in-charge of police at the place at which he was last stationed, all arms, ammunition, accoutrements, uniforms and other appointments which have been supplied to him and which are the property of the Government.

(2) Any police officer who, having ceased to belong to the Police Service, fails to deliver up any such arms, ammunition, accoutrements, uniforms or other appointments as required by subsection (1) commits an offence and shall, on conviction, be liable to a fine of K10,000 and to imprisonment for three months, and the court may issue a warrant to search for and to seize all such arms, ammunition, accoutrements, uniforms and other appointments which shall not have been so delivered up.

Police officers not to engage in other employment

33. No police officer shall, without the consent of the Inspector General, engage in any employment or office other than in accordance with his duties under this Act.

PART V

Powers, Duties and Privileges of Police Officers

General powers and duties of police officers

34.—(1) Every police officer shall exercise such powers and perform such duties as are conferred or imposed on a police officer by or under this Act or any other written law and as are by law conferred or imposed on police officers.

(2) Every police officer shall—

(*a*) obey all lawful directions in respect of the execution of his office which he may from time to time receive from any competent authority;

(*b*) serve, and be willing to serve, at any station to which he may be assigned; and

(*c*) promptly obey and execute all orders and warrants lawfully issued by a competent authority.

(3) It shall be the duty of every police officer to—

(*a*) collect and communicate intelligence affecting the functions, powers and duties of the Police;

(*b*) prevent the commission of offences and public nuisances;

(*c*) detect crime and bring offenders to justice; and

(*d*) apprehend all persons whom he is legally authorized to apprehend and for whose apprehension sufficient grounds exist.

(4) Every police officer shall be deemed to be on duty at all times and may at any time be detailed for duty in any part of Malaŵi.

Cap. 50:07

(5) A police officer may, without warrant, enter at any hour of the day or night any premises licensed under the Liquor Act or any place in which he has reasonable grounds to suspect that illegal drinking or illegal gambling is taking place or to which dissolute or disorderly persons are resorting.

(6) A police officer may, for the purposes of his duties under this section, without a warrant, enter at any hour of the day or night any premises or place in which he has reasonable grounds to suspect that an illegal act is taking place.

Cap. 8:01

(7) Except as otherwise provided by this Act or by the Criminal Procedure and Evidence Code, every police officer shall have all such rights, powers, authorities, privileges and immunities, and shall be liable to all such duties and responsibilities as any police officer of or below the rank of sub-inspector duly appointed has or is subject or liable to, either by common law or by virtue of any law in force in Malaŵi.

Search by police officers

35.—(1) Where a police officer of or above the rank of sub-inspector has reasonable grounds for believing that any thing necessary for purposes of an investigation into an offence which he is authorized to investigate may be found in any place and that such thing cannot in his opinion be otherwise obtained without undue delay, such officer may, after recording in writing the grounds of his belief and specifying in such writing, so far as is possible, the thing for which search is to be made, after giving the copy of a record thereof to the owner or occupant of the place to be searched, search without a warrant, or cause search without a warrant to be made, for such thing in any place and, if such thing be found, seize it and carry it before the nearest magistrate empowered to take cognizance of the offence to be dealt with according to law.

(2) A police officer proceeding under subsection (1) shall, if practicable, conduct the search in person.

(3) If a police officer of the rank referred to in subsection (1) is unable to conduct a search in person as required by subsection (2), and there is no other competent officer present to make the search at the time, he may, after recording in writing his reasons for so doing, require any officer subordinate to him not below the rank of sergeant to make

the search; and he shall deliver to such subordinate officer an order in writing specifying the place to be searched and, in so far as it is possible, the thing for which search is to be made, and such subordinate officer may thereupon search for such thing in such place without a warrant.

(4) Except as otherwise provided in this section, the provisions of the Criminal Procedure and Evidence Code as to search warrants shall, so far as may be, apply to a search made under this section. Cap. 8:01

(5) Copies of any record made under subsection (1) or subsection (3) shall forthwith be sent to the nearest magistrate empowered to take cognizance of the offence and to the owner or occupier of the place searched.

(6) The occupier of the place searched, or some other person in his behalf, shall, in every instance, be permitted to attend during the search.

(7) A search under this section shall be conducted in a humane manner and unnecessary damage or destruction to property and humiliation or any harassment of individuals shall be avoided.

Power to take measurements, photographs, footprints and casts thereof

36.—(1) Any police officer in-charge of a police station may take, or cause to be taken, in his presence, for the purposes of records and identification, the measurements, photographs, footprints and casts thereof of any person in lawful custody or who is subject to police supervision for any offence punishable by imprisonment without the option of a fine, whether as an accused or a convicted person.

(2) In the case of footprints, they shall be taken on a prescribed form, which shall contain directions for taking footprints, and the police officer taking such footprints shall certify on such form that such footprints have been taken by him or caused to be taken in his presence in accordance with the directions contained on such form, and that the particulars entered on the form are to the best of his knowledge and belief accurate and true.

(3) Where a person whose measurements, photographs, footprints and casts thereof have been taken under subsection (1) is not charged with an offence punishable by imprisonment or is discharged or acquitted by a court, and has not previously been convicted of an offence so punishable, all records of such measurements, photographs, footprints and casts thereof, and any negatives and copies thereof, shall forthwith be destroyed or handed over to such person.

(4) If any person, when required to do so by a police officer refuses to permit his measurements, photographs, footprints and casts thereof

to be taken under subsection (1), reasonable force may be used by the police to enable such measurements, photographs, footprints and casts thereof to be taken.

(5) Any person who refuses to permit his measurements, photographs, footprints and casts to be taken under subsection (1) commits an offence and shall, upon conviction, be liable to a fine of K10,000 and to imprisonment for one month.

Power to lay information

37. Any police officer may lay information before a magistrate and may apply for a summons, a warrant or other legal process as may by law issue against any person.

No fee to be chargeable on bail bonds taken by police

38. Notwithstanding any other written law or any rule to the contrary, no fee or duty shall be chargeable upon bonds in criminal cases recognizances to prosecute or give evidence or recognizances for personal appearance or otherwise issued or taken by a police officer, nor shall such bonds or recognizances require to be sealed.

Power of police officers to inspect licences, permits and other authorizations, and inspect vehicles

39.—(1) Any police officer may—

(*a*) stop and detain any person whom he—

(i) sees doing any act or thing;

(ii) sees in possession of any thing; or

(iii) suspects of doing any act or thing or of being in possession of any thing, for which a licence, permit or other authorization is required under any Act and may require such person to produce such licence, permit or authorization; or

(*b*) stop, search and inspect any vehicle which the police officer has reasonable grounds for suspecting—

(i) is being used in the commission of any offence against any Act; or

(ii) to have been stolen, whether in Malaŵi or outside Malaŵi and whether such vehicle may be with the person suspected to have stolen it or with any other person.

(2) Any person who fails to produce a licence, permit or other authorization when called upon to do so by a police officer may be arrested without a warrant, unless he gives his name and address to the police officer and otherwise satisfies the police officer that he will duly answer any summons or other proceedings which may be taken against him.

(3) Any person who fails to obey any reasonable signal of a police officer, requiring such person to stop any vehicle or who obstructs any police officer in the execution of his duty being exercised under this section commits an offence and shall, upon conviction, be liable to a fine of K20,000 and to imprisonment for six months; and any police officer may arrest such person without a warrant, unless he gives his name and address to the police officer and otherwise satisfies the police officer that he will duly answer any summons or other proceedings which may be taken against him.

(4) Any police officer may cause any vehicle found or suspected on reasonable grounds—

(*a*) to have been used for the commission of an offence against any Act; or

(*b*) to have been stolen whether in Malaŵi or outside Malaŵi, to be moved to the nearest police station and there to be detained until released by the officer in-charge of such police station.

Duty to keep order on public roads

40.—(1) Subject to this Act, it shall be the duty of the Police to regulate and control traffic and to divert all or any particular kind of traffic when, in the opinion of an officer in-charge of police, it is in the public interest to do so.

(2) In pursuance of the duty conferred under subsection (1) but without prejudice to the generality of that duty, the police may—

(*a*) stop, direct or otherwise regulate the course of traffic;

(*b*) close any street in the vicinity of the National Assembly or the High Court or any other court for purposes of preventing the interruption of the proceedings of the Assembly, the High Court or such other court by the noise of the street traffic;

(*c*) keep order on public roads, streets, thoroughfares, airports, aerodromes and other landing places and at other places of public resort;

(*d*) prevent obstructions on the occasion of public assemblies, processions or demonstrations on the public roads and streets, or in the neighbourhood of places of public worship during the time of worship and in any case when any road, street, thoroughfare, airport or aerodrome or other landing place may be thronged or may be liable to be obstructed.

(3) Any person who opposes or disobeys any lawful order given by a police officer in the performance of his duty under this section commits an offence and shall, upon conviction, be liable to a fine of K10,000 and to imprisonment for three months.

(4) Any person who opposes or disobeys any lawful order given by a police officer in the performance of his duty under this section may be arrested without a warrant unless he gives his name and address or otherwise satisfies the police officer or the officer in-charge of the nearest police station that he will duly answer any summons or other proceedings which may be taken against him.

Road barriers

41.—(1) Notwithstanding any other law in force in Malaŵi, any superior police officer or any police officer of the rank of inspector stationed in any area may, if on reasonable grounds he considers it necessary so to do for the maintenance and preservation of law and order or for the prevention or detection of crime or for the protection of the rights and freedoms of individuals—

(*a*) erect or place barriers, or cause barriers to be erected or placed or a cordon to be formed, in or across any road, street or any other public place within Malaŵi in such manner as he may think fit:

Provided that the safety of road users shall at all times be of paramount consideration;

(*b*) cause a cordon to be formed in, across or around any private property in such manner as he may think fit, and for that purpose it shall be lawful for the members forming the cordon, without the consent of any person, to enter upon any property and do any act or thing necessary for the effective formation of the cordon.

(2) Any police officer may take all reasonable steps to prevent any vehicle being driven past any barrier or cordon erected, placed or formed under subsection (1) and any driver of any vehicle who fails to comply with any reasonable signal of a police officer, requiring such person to stop such vehicle before reaching any such barrier or cordon, shall be guilty of an offence and shall be liable to a fine of K50,000 and to imprisonment for twelve months.

(3) No police officer shall be liable for any loss or damage resulting to any vehicle or property or for any injury to the driver or any other occupant of such vehicle or to any other persons as a result of the driver of such vehicle failing to obey any police officer acting under subsection (2).

Prohibition or restriction of traffic

42.—(1) Notwithstanding any other law in force in Malaŵi, the Inspector General may, if on reasonable grounds he considers it necessary so to do for the maintenance and preservation of law and order, or for the prevention or detection of crime, or for the protection of rights and freedoms of individuals, by order published in the *Gazette*, prohibit or restrict the driving or use of motor vehicles or any class of

motor vehicles on specified roads or specified parts of roads or in any specified areas either generally or in such circumstances or subject to such conditions as may be specified.

(2) Any order made under subsection (1) may—

(*a*) make different provision for different roads or parts of roads and for different areas and for different days or hours;

(*b*) provide for the issue by the Inspector General, or by any person authorized by him, of a written permit exempting any motor vehicle or class of motor vehicles or any person or class of persons from the order or any part thereof either generally or in such circumstances or subject to such conditions as may be specified in any such permit.

(3) Any order made under this section may be revoked, modified or rescinded by any subsequent order made under this section and shall have effect, after publication in the *Gazette*, from such date and for such period or periods as may be specified in the order.

(4) Any person who drives or knowingly uses, or causes or permits to be driven or used, any motor vehicle in contravention of the terms or conditions of any order made under this section commits an offence and may be arrested without a warrant and shall, upon conviction, be liable to a fine of K20,000 and to imprisonment for six months.

(5) For the purposes of this section the expressions "motor vehicle" and "road" shall have the meanings assigned to them in the Road Traffic Act. Cap. 69:01

Imposition of curfews

43.—(1) The Minister may, if on reasonable grounds he considers it expedient so to do in the interests of preservation and maintenance of law and order, at any time, by order published in the *Gazette*, or in such other manner as he may consider sufficient to bring the order to the knowledge of the general public in the area to which it relates, direct that no person in the area or areas specified in the order shall be out of doors between such hours as may be prescribed by the order except under the authority of a written permit granted by an officer in-charge of police.

Provided that the Minister may—

(*a*) exempt from the order such persons or class or classes of persons as may be specified in the order;

(*b*) authorize any person specified in the order to suspend the operation of the order in any specified area, or in any part thereof, and similarly to terminate such suspension and to declare the order to be in operation.

(3) Any person who contravenes any of the provisions of an order made under subsection (1) commits an offence and may be arrested without a warrant and shall, upon conviction, be liable to a fine of K50,000 and to imprisonment for twelve months.

Power to use firearms

44.—(1) Subject to subsection (2), any police officer may use any firearm against—

(*a*) any person in lawful custody charged with or convicted of a felony when such person is escaping or attempting to escape;

(*b*) any person who by force rescues or attempts to rescue any other person from lawful custody; or

(*c*) any person who by force prevents or attempts to prevent the lawful arrest of himself or of any other person.

(2) For the purposes of subsection (1)—

(*a*) resort shall not be had to any firearm as authorized under paragraph (*a*) of that subsection unless the police officer has reasonable ground to believe that he cannot otherwise prevent the escape and unless he has given warning to such person that he is about to use such firearm against the person and such warning is unheeded;

(*b*) resort shall not be had to any firearms as authorized under paragraphs (*b*) and (*c*) of that subsection unless the police officer has reasonable ground to believe that he or any other person is in danger of grievous bodily harm and that he cannot otherwise effect such arrest or prevent such rescue;

(*c*) no police officer shall, in the presence of his superior officer, use such firearms as authorized by that subsection against any person except under the orders of such superior officer; and

(*d*) the use of firearms as authorized under subsection (1) shall as far as possible be to disable and not to kill.

(3) The authority vested in a police officer by subsection (1) shall be in addition to and not in substitution for any authority to use firearms vested in a police officer by any other law.

(4) Any police officer, after using any firearm, shall make a report in writing or in the prescribed form to the officer in-charge of his police station.

Power to seize weapons

45.—(1) Any police officer may seize and destroy any weapon carried by any person in public without lawful authority or excuse, or with lawful authority or excuse but in such manner as to cause or be likely to cause terror to any person.

(2) Where the weapon seized is a firearm, it shall be handed over to the officer in-charge of the nearest police station.

(3) For the purposes of this section, "weapon" means any weapon or other thing which is calculated or is likely to cause harm to any person.

Attendance of witnesses

46.—(1) Any officer in-charge of a police station carrying out an investigation into any offence may, in writing, require the attendance before himself of any person who he has reason to believe has any knowledge which will assist in such investigation, and such attendance may be required at any police station situate within the District in which that person resides or, for the time being, is or is found.

(2) Any person who has been notified to attend, as provided in subsection (1), who fails to attend as required, or who, having attended, refuses to give his correct name and address or to answer truly all questions that may be lawfully put to him, commits an offence and shall, upon conviction, be liable to a fine of K10,000 and to imprisonment for three months:

Provided that no person may be required to answer any question, the answer to which may tend to expose him to any criminal charge, penalty or forfeiture.

(3) Any police officer may record any statement made to him by any person under this section, whether such person is suspected of having committed an offence against any law in force in Malaŵi or not, but before recording any statement from a person whom such police officer has decided to charge, or who has been charged with committing any such offence, such police officer shall warn such person that any statement which may be recorded may be used in evidence:

Provided that any such statement shall, whenever possible, be recorded in writing and signed by the person making it after it has been read to him in a language which he understands and if he has been invited to make any correction he may wish.

Disposal of unclaimed property

47.—(1) It shall be the duty of every police officer to take charge of unclaimed movable property handed to him by any other person (hereinafter in this section referred to as the "finder") or found by such police officer to be unclaimed, and deliver the property to the officer in-charge of the nearest police station (hereinafter in this section referred to as the officer in-charge).

(2) Where the finder is not a police officer, the police officer to whom he hands the property shall ask him whether, in the event of no right to the property being established superior to his right as finder, he himself

claims it and his claim, or his refusal or failure to claim, as the case may be, shall be recorded by the police officer and reported by such officer to the officer in-charge at the time of the delivery of the property.

(3) Subject to subsection (4), the officer in-charge shall detain the property and cause a notice to be posted in a conspicuous place at the police station specifying such property and calling upon any person who may have any claim thereto to appear and establish his claim within six months of such notice.

(4) If the property is of a perishable nature or its immediate sale would, in the opinion of such officer, be for the benefit of the owner, he may cause it to be sold forthwith; and the proceeds of such sale, after deduction of any expenses reasonably incurred, shall be dealt with in the same manner as unsold property is to be dealt with under the provisions hereinafter in this section set forth, pending which they shall be deposited in such place and manner as the Inspector General may direct.

(5) The officer in-charge shall forward a copy of the notice under subsection (3) to the Inspector General who shall cause particulars thereof to be communicated to police officers in Malaŵi generally.

(6) If, within six months of the posting of the notice under subsection (3), any person establishes to the reasonable satisfaction of the Inspector General a claim superior to that of the finder and such person is willing and able to take delivery of the property at such reasonable place and time as the Inspector General may decide, it shall be delivered to him.

(7) If, within six months of the posting of the notice under subsection (3), no person establishes a superior claim to that of the finder or, having so established a claim, does not take delivery as specified in subsection (6), the right to take proceedings for the recovery of such property shall cease and the property shall be delivered to the finder, if he then confirms his claim and is willing and able to take delivery of the property at such reasonable place and time as the Inspector General may decide.

(8) If the finder does not so claim any such property or does not take delivery thereof as specified, the property may, if not already in monetary form, be sold, destroyed or otherwise disposed of in such manner as the Inspector General may direct.

(9) If the property is sold, the proceeds of any such sale shall, after deduction of any expenses reasonably incurred in such sale, be apportioned in the following manner—

(*a*) one half shall be paid into the Police Rewards and Fines Fund;

(*b*) such proportion of the remaining one half as the magistrate may direct shall be paid to the finder of the property; and

(*c*) the balance shall be paid into the Consolidated Fund.

(10) Where the unclaimed movable property consists of money, it shall be dealt with in all respects as if it were the proceeds of sale under subsection (9).

(11) Any police officer who purchases any property sold under this section shall be deemed to have committed an offence against discipline of conduct prejudicial to the good order of the Service.

(12) In this section, "movable property" does not include any property which is of such a nature that—

(*a*) a police officer cannot transport it manually;

(*b*) it is valueless.

Non-liability for act done under authority of warrant

48.—(1) Where the defence to any suit instituted against a police officer is that the act complained of was done in obedience to a warrant purporting to be issued by a judge or magistrate, the court shall, upon production of the warrant containing the signature of the judge or magistrate and upon proof that the act complained of was done in obedience to such warrant, enter judgment in favour of such police officer.

(2) No proof of the signature of such judge or magistrate as mentioned in subsection (1) shall be required unless the court has reason to doubt the genuineness thereof; but where it shall be proved that such signature is not genuine, judgment shall nevertheless be given in favour of the police officer if it is proved that at the time the act complained of was committed, he believed on reasonable grounds that such signature was genuine.

Notice of action or prosecution against a police officer

49.—(1) No action shall be commenced or prosecution instituted against any police officer in respect of any thing done or purported to be done by him under this Act, unless notice in writing of such action or prosecution, and particulars thereof, shall have been given to such police officer, and to the officer in-charge of police in the place where the act complained of was committed, at least one month before the commencement of such action or the institution of such action.

(2) No police officer shall be made a defendant in any civil suit in respect of any act for which he has been convicted.

Salary, benefits, etc., of a police officer not to be attached for money

50. No salary, benefit or allowance payable to any police officer shall, by a court order, be liable to be attached, sequestered or money levied in respect of any debt or claim for any money borrowed by him or by any person on his behalf, or any goods supplied to him or to any person on his behalf, unless such court order is made pursuant to any written law authorizing the attachment, sequestration or levy on a person's salary or other employment benefit or allowance.

PART VI

Discipline

Disciplinary Code of Conduct — offences by police officers triable by criminal courts

51.—(1) Any police officer who—

(*a*) being cognizant of any mutiny or sedition amongst the police, does not use his utmost endeavours to suppress such mutiny or sedition;

(*b*) being cognizant of any intended mutiny or sedition amongst the police, does not give information thereof to his superior officer without delay;

(*c*) being present at any assemblage tending to riot, does not use his utmost endeavours to suppress such assemblage;

(*d*) deserts, as defined in subsection (2);

(*e*) persuades, procures, assists or attempts to persuade, procure or assist any police officer to desert;

(*f*) knowing that any police officer has deserted or intends to desert, does not, without delay, give information to his superior officer; or

(*g*) strikes, or offers violence to, his superior officer, commits an offence and shall, upon conviction, be liable to imprisonment for twelve months.

(2) A police officer deserts if—

(*a*) he absents himself without authority from his police station or from the place where his duty requires him to be, with the intention of not returning to that police station or place;

(*b*) while absent with authority from his police station or the place where his duty requires him to be, he does or omits to do an act the natural and probable consequence of doing or omitting to do such act is to preclude his return to that police station or place at the time required; or

(*c*) he is absent without authority for a continuous period of twenty-one days or more.

(3) No police officer shall be found guilty of the offence of desertion unless the court is satisfied that there was an intention on the part of such officer not to return to the Service.

(4) Upon reasonable suspicion that any person is a deserter any police officer may, notwithstanding subsection (1) of section 66 (requiring the arrest of a police officer without a warrant to be effected by a superior officer), apprehend such person without a warrant and forthwith bring him before a court having jurisdiction in the place where he was found, and such court may deal with the suspected deserter or remit him to a court having jurisdiction in the place in which he deserted.

Disciplinary Code of Conduct — offences against discipline by police officer

52.—(1) The Disciplinary Code of Conduct set out in the Schedule, prescribing offences against discipline by police officers, shall apply for the regulation and control of disciplinary conduct of all police officers and other persons employed in the Police Service in addition to other provisions of this Act.

(2) The acts and other forms of conduct, behaviour or demeanour specified in the Code shall constitute offences against discipline by police officers.

(3) The Minister may, on the recommendation of the Inspector General, by order published in the *Gazette*, amend the Disciplinary Code of Conduct.

Exercise of disciplinary powers over police officers

53.—(1) The power to discipline any police officer, other than the Inspector General, for an offence against discipline shall—

(*a*) in the case of a superior police officer and a police officer of or above the rank of inspector, be exercised by the Police Service Commission;

(*b*) in the case of a police officer of or below the rank of sub-inspector and any other person who accepts to perform duties in the Police Service as a police officer, be exercised by the Inspector General acting through police disciplinary committees.

(2) Nothing in subsection (1) shall prevent the Police Service Commission from directly exercising disciplinary powers over any police officer other than the Inspector General.

Methods of dealing with offences against discipline

54.—(1) An offence against discipline committed by a police officer shall be inquired into, tried and determined through disciplinary proceedings before the Police Service Commission or before a police disciplinary committee, as the case may be, in accordance with this Act and with the Police Service Commission Regulations made under section 30.

(2) It shall be the duty of the Inspector General to investigate a superior police officer or a police officer of the rank of inspector for, and to charge such officer with, any offence against discipline for the purpose of forwarding such charge to the Police Service Commission for disciplinary proceedings.

(3) It shall be the duty of the officer in-charge or the relevant superior police officer to investigate a police officer of or below the rank of sub-inspector for, and to charge such officer with, any offence against discipline for the purpose of forwarding such charge to the relevant police disciplinary committee for disciplinary proceedings.

Establishment of disciplinary committees

55.—(1) There shall be established—

(*a*) a standing National Police Disciplinary Committee; and

(*b*) other police disciplinary committees, subordinate to the National Police Disciplinary Committee.

(2) A subordinate police disciplinary committee may be appointed whenever a breach of discipline occurs at any place and time within the jurisdiction of the following formations—

(*a*) regional police headquarters;

(*b*) district police stations;

(*c*) police stations or substations or detach; or

(*d*) National Police Headquarters.

Functions, composition and procedure of the National Police Disciplinary Committee

56.—(1) The functions of the National Police Disciplinary Committee shall be—

(*a*) to hear and determine appeals against decisions of a subordinate police disciplinary committee;

(*b*) generally to review decisions of subordinate disciplinary committees; and

(*c*) to do or perform such functions relating to the disciplinary conduct of police officers as are conferred on it by or under this Act.

(2) The National Police Disciplinary Committee shall consist of—

(*a*) a presiding Chairperson who shall be a police officer of or above the rank of Commissioner of Police;

(*b*) one senior police officer;

(*c*) a police legal officer;

(*d*) the police chaplain or his representative; and

(*e*) one junior police officer.

(3) Members of the National Police Disciplinary Committee shall be appointed by the Inspector General with the approval of the Police Service Commission.

(4) The quorum of the National Police Disciplinary Committee shall be three members including the Chairperson.

(5) In conducting its proceedings, the National Police Disciplinary Committee may sit at any time or place within Malaŵi as it considers appropriate.

(6) The National Police Disciplinary Committee, on its own motion or on application by the police officer charged or by the police prosecutor, may direct that any person subject to a disciplinary process by the Committee should be tried by the Police Service Commission.

(7) The National Police Disciplinary Committee shall have power, subject to the provisions of this Act or regulations or rules made under this Act, to determine its own procedure for the conduct of its proceedings.

Functions, composition and procedure of a subordinate police disciplinary committee

57.—(1) A subordinate police disciplinary committee shall hear and determine any disciplinary matter involving—

(*a*) officers of or below the rank of inspector;

(*b*) a member of the Police Reserve; or

(*c*) any other person who accepts to perform duties in the Police Service as a police officer, but not otherwise.

(2) A subordinate police disciplinary committee shall consist of—

(*a*) presiding Chairperson who shall be a police officer of or above the rank of inspector;

(*b*) three other officers above the rank held by the police officer who is charged;

(*c*) one officer of the rank held by the police officer who is charged.

(3) Members of a subordinate disciplinary committee shall be appointed by the officer in-charge of the relevant police station or other police formation.

(4) The quorum of a subordinate disciplinary committee shall be three, including the Chairperson.

(5) A subordinate disciplinary committee shall have power, subject to the provisions of this Act, to determine its own procedure for the conduct of its proceedings.

Independence of police disciplinary committees

58.—(1) Members of any police disciplinary committee and all persons participating in the hearing of disciplinary matters shall exercise their duties, functions and powers impartially and independent of the interference or directions of any person or body.

(2) No member of a disciplinary police committee or other person participating in the hearing of a disciplinary matter shall be compelled in any cause, proceeding or other matter to answer any question as to his own conduct at the hearing or as to anything which came to his knowledge at the hearing or in the course of his duties as a member of the committee.

Power to summon and examine witnesses and to adjourn inquiry

59.—(1) The Police Service Commission or a police disciplinary committee may, in relation to any disciplinary matter before it, summon and examine witnesses on oath or affirmation and require the production of relevant documents in any matter it is inquiring into and may adjourn any such inquiry from time to time as it deems fit.

(2) Any person summoned as a witness under subsection (1) who fails to attend at the time and place mentioned in the summons without proper reasons or having attended refuses to answer all questions that may be lawfully put to him commits an offence and shall, upon conviction, be liable to a fine of K10,000 and to imprisonment for three months.

(3) Notwithstanding subsection (2), no person shall be required to answer any question the answer to which may tend to expose him to any criminal charge, penalty or forfeiture.

Punishments for offences against discipline

60.—(1) A police officer who, upon disciplinary proceedings, is found guilty of an offence against discipline shall be liable to suffer punishment, as specified in this section, according to the degree and nature of the offence.

(2) Subject to the other provisions of this section, the punishments specified in subsections (3) and (4) may be imposed by the Police Service Commission and by a police disciplinary committee, respectively, on a police officer found guilty, upon disciplinary proceedings under this Part, of an offence against discipline and the Police Service Commission or the committee may impose on such police officer one or more of such punishments.

(3) The Police Service Commission may impose the following punishments—

(*a*) reprimand;

(*b*) severe reprimand;

(*c*) stoppage of increment of salary;

(*d*) reduction in rank or grade; and

(*e*) dismissal.

(4) A police disciplinary committee may impose the following punishments—

(*a*) reprimand;

(*b*) severe reprimand;

(*c*) fine not exceeding seven days pay;

(*d*) stoppage of increment of salary;

(*e*) confinement to quarters for any period not exceeding fourteen days with or without drill, guards, fatigues or other duty; and

(*f*) reduction in rank or grade.

(5) Where, after disciplinary proceedings held by it, a police disciplinary committee is of the view that dismissal is the fitting punishment to be imposed on a police officer, it shall make a recommendation to that effect to the Police Service Commission.

(6) Upon considering the recommendation of a police disciplinary committee submitted under subsection (5), the Police Service Commission may direct that the police officer concerned be dismissed or may make such other determination, or give such other directions as to punishment or otherwise, as it sees fit.

(7) Notwithstanding that every police officer is deemed by section 34 (4) to be on duty at all times, where the commission by a police officer of an offence against discipline is in relation to him being on duty, the officer shall not be found guilty of the offence unless it shall be proved that, at the time when the offence was committed, he was on a specific duty for which he was specially detailed.

Summary dealing in certain cases

61.—(1) The Inspector General may summarily administer a reprimand or a severe reprimand to a superior police officer or a police officer of the rank of inspector in minor cases of offences against discipline or in any other minor cases of misconduct.

(2) A superior police officer or the officer in-charge of police may deal summarily with any offence against discipline in the case of any police officer of or below the rank of sub-inspector and shall have power to impose the following punishments—

(*a*) reprimand;

(*b*) extra drill, guards, fatigues or other duty, but such proceedings and the results thereof shall not be entered in the personal record of the police officer who has offended.

Suspended punishment

62.—(1) Where a punishment other than dismissal is imposed on a police officer in respect of an offence against discipline, the authority imposing the punishment may order that such punishment be suspended for a period not exceeding six months and if during such period of suspension the offender commits no further offence against discipline the committee may remit the punishment.

(2) Where any punishment has been suspended under subsection (1) and the offender is found guilty, during the period of the suspension, of any further offence against discipline, the suspended punishment may forthwith be carried into effect.

Appeals from a police disciplinary committee

63.—(1) Any person aggrieved by a decision of a police disciplinary committee may, within fourteen days after being informed of the decision, appeal—

(*a*) in the case of a decision of a subordinate disciplinary committee, to the National Police Disciplinary Committee;

(*b*) in the case of a decision of the National Police Disciplinary Committee, to the Police Service Commission.

(2) An appellant shall submit his appeal to the officer in-charge of his police station.

(3) The officer in-charge on receiving an appeal submitted under subsection (2), shall transmit the appeal to the National Police Disciplinary Committee or to the Police Service Commission, as the case may be, within fourteen days of receiving the appeal and shall so transit it together with the record of the police disciplinary committee which shall be supplied to him for the purpose.

(4) An appeal shall be properly lodged to the National Police Disciplinary Committee or to the Police Service Commission, as the case may be, if based on one or more of the following grounds—

(*a*) erroneous findings;

(*b*) illegality of punishment;

(*c*) any miscarriage of justice;

(*d*) a point of law; or

(*e*) severity of punishment.

Decisions of the National Police Disciplinary Committee and the Police Service Commission on appeal

64.—(1) Upon the hearing of an appeal, the National Police Disciplinary Committee or the Police Service Commission, as the case may be, may—

(*a*) allow the appeal and quash the finding and set aside the punishment;

(*b*) dismiss the appeal and affirm the finding and punishment;

(*c*) affirm the finding of guilty but vary the sentence as it considers fit, but no punishment shall be increased or any punishment added on appeal unless the offender is first given a further opportunity of being heard; and

(*d*) direct a rehearing on the charge in which case the appellant shall be heard again as if no hearing on the charge has been held.

(2) An appeal may be summarily dismissed by the National Police Disciplinary Committee or the Police Service Commission, as the case may be, if, in its opinion—

(*a*) it is vexatious;

(*b*) it is frivolous;

(*c*) it is an abuse of process; and

(*d*) there has been no substantial miscarriage of justice.

Appeals to the High Court

65. Any police officer who is found guilty of an offence against discipline and is aggrieved by the decision of the Police Service Commission to dismiss him from the Police Service or otherwise punish him may, within thirty days after receiving notification of the decision, appeal to the High Court against the decision.

Power of arrest and remand for offences

66.—(1) Any police officer who commits a criminal offence or an offence against discipline may be arrested without a warrant by a superior officer.

(2) A police officer effecting an arrest under this section shall forthwith bring the accused before an officer in-charge of the police station or any other competent officer without undue delay and in any event within forty-eight hours of the arrest.

(3) Where the arrest is for a criminal offence, the officer in-charge or the competent officer, as the case may be, shall cause the case to be brought before a court of criminal jurisdiction within forty-eight hours of the arrest, failing which the arrested police officer shall forthwith be released from arrest.

(4) All police officers arrested for any offence against discipline, if remanded in custody, shall be confined in a place set apart as a guardroom or cell for the detention of such police officers.

(5) A police officer arrested in respect of any criminal offence or any offence against discipline, shall be informed at the time of his arrest, or as soon as is practicable thereafter, of the nature of the offence.

Criminal proceedings to take precedence over disciplinary proceedings

67.—(1) If criminal proceedings are instituted against a person, no disciplinary proceedings under this Act shall be taken against that person until the conclusion of the criminal proceedings and the determination of appeal from those proceedings.

(2) For the purposes of subsection (1), criminal proceedings against an officer shall be deemed to have concluded on the acquittal, conviction or discharge of the officer.

Power of interdiction

68.—(1) The Inspector General may at any time in the interest of discipline interdict from duty any police officer who is charged with a criminal offence or an offence against discipline.

(2) Any police officer interdicted from duty shall receive such proportion of his pay not being less than half, as the Inspector General shall direct:

Provided that where the officer is interdicted for misappropriation of public funds or that he obtained his appointment by means of false representation he shall receive no salary during the period of his interdiction.

(3) An interdiction under this section, if it relates to a disciplinary offence, shall not exceed a period of three months; and after the expiry of that period the officer, if not brought before a police disciplinary committee shall be deemed to have been re-instated.

(4) If the officer is not subsequently dismissed from the Service he shall receive for the period of his interdiction the proportion of his pay that was withheld, except the amount adjudged to be forfeited as punishment.

(5) A police officer shall not by reason of being interdicted from office cease to be a police officer, but during the period of such interdiction the powers, functions and privileges vested in him as a police officer shall be in abeyance but he shall continue to be subject to the same responsibilities, discipline and penalties, and to the same authorities, as if he had not been interdicted.

(6) Where the officer interdicted under this section is a superior police officer or an officer of or above the rank of inspector, the Inspector General shall make a report of the interdiction to the Police Service Commission.

(7) An officer interdicted under this section may not leave Malaŵi without the permission of the Inspector General.

Dismissal of a police officer convicted of a criminal offence

69.—(1) The Inspector General shall notify the Police Service Commission of the case of any police officer who has been convicted of a criminal offence by a court of competent jurisdiction and the Police Service Commission may dismiss such officer from the Police Service.

(2) Any police officer dismissed under this section may, within thirty days of the notification of his dismissal, appeal to the High Court against the dismissal.

Pay not to accrue during absence without leave or imprisonment

70. No pay shall accrue to any police officer in respect of any day during which he is absent from duty without leave or is undergoing any sentence of imprisonment:

Provided that in any case the Inspector General may, in his discretion, authorize the payment of such proportion of pay, not being more than one-half, as he may think fit.

Fines to be recovered by stoppage of pay

71.—(1) All fines imposed on a police officer as punishment in respect of an offence against discipline shall be recovered by stoppage of the officer's pay or by deductions from any benefits due to the officer, including benefits due upon his death.

(2) The amount of any stoppage in respect of any fine shall be at the discretion of the officer in-charge of police in the place where the officer is stationed, but in no case shall such amount exceed one-third of the officer's monthly pay.

(3) Where more than one order of stoppage is in force against the same officer so much only of his pay shall be stopped as shall leave him a residue of at least two-thirds of his monthly pay, save for other authorized deductions or stoppages.

(4) Where more than one order of stoppage is made upon the same officer, the orders later in date shall, if necessary, be postponed as to their enforcement until the earlier orders have been discharged.

Damage to or loss of equipment

72. If any police officer pawns, sells, loses by neglect, makes away with or willfully damages any arms, ammunition, accoutrements, clothing or appointment supplied to him or any Government property or any exhibit or any lost, stolen or unclaimed property committed to his charge he may, in addition to or in lieu of any other punishment,

be ordered by the Inspector General or any appropriate superior police officer or by his officer in-charge to make good the amount of such loss or damage, and such amount may be recovered by stoppage from his pay in the same manner as provided for the recovery of fine by stoppage of pay under section 71.

Pension rights lost by dismissal

73.—(1) Subject to subsection (2) and to the provisions of any law for the time being in force in Malaŵi, a police officer who is dismissed from the Police Service shall forfeit all rights and claims to—

(*a*) any pension, gratuity or other terminal benefits;

(*b*) any benefits in respect of any passages at public expense;

(*c*) any leave or any unpaid leave grant.

(2) Where an officer liable to be dismissed has attained qualifying service for retirement under any prescribed circumstances, he may instead be retired from the Police Service if the Inspector General so recommends and subsection (1) shall not apply, unless the charge proved against him involves misappropriation of, or failure to account for, public funds or public stores committed to his charge or under his control.

Membership of trade union prohibited

74.—(1) It shall not be lawful for any police officer to be or to become a member of—

(*a*) any trade union or any body or association affiliated to a trade union;

(*b*) any body or association, the objects or one of the objects of which is to control or influence conditions of employment in any trade or profession; or

(*c*) any body or association, the objects or one of the objects of which is to control or influence the pay, pension or conditions of service other than—

(i) any police association constituted and regulated pursuant to rules made under this Act;

(ii) or any body or association which the Inspector General may in his discretion permit any police officer to join.

(2) Any police officer who contravenes this section commits an offence against discipline and shall be liable to be dismissed from the Service and, subject to section 73 (2), to forfeit all rights to any pension or gratuity.

(3) If any question arises as to whether any body is a trade union or association to which this section applies, the question shall administratively be decided in accordance with the legal opinion of the Attorney General.

Mode of complaint by a police officer

75.—(1) Where any police officer thinks himself wronged—

(*a*) in any matter by any police officer of a lower rank than the officer in-charge of police in the place where he is stationed, he may complain to the officer in-charge of police;

(*b*) by his officer in-charge of police or any officer of the same rank as his or of higher rank, not being the Inspector General, either in respect of his complaint not being redressed or in respect of any other matter, he may complain to his regional police commissioner or the Inspector General, as appropriate;

(*c*) by the Inspector General either in respect of his complaint not being redressed or in respect of any other matter, he may complain to the Police Service Commission.

(2) The officer in-charge, the regional police commissioner, the Inspector General or the Police Service Commission, as the case may be, upon receiving a complaint under this section shall cause such complaint to be inquired into, and shall, if on inquiry it is determined that there is some merit to the complaint, take such steps as may be necessary for giving such redress to the complainant, in respect of the matter complained of as the case requires.

(3) Every complaint shall be made in the manner prescribed by standing orders or rules or regulations made under this Act.

Evidence to prove a disciplinary charge to be presented by police prosecutors

76. Evidence to prove a charge for an offence against discipline in any hearing before a police disciplinary committee shall be presented by members of the police prosecution department.

Jurisdiction of ordinary courts not affected

77. Nothing in this Part shall affect the jurisdiction of any ordinary court to try and punish any person for an offence triable by a police disciplinary committee.

PART VII

Police Rewards and Fines Fund

Establishment of the Police Rewards and Fines Fund

78.—(1) All fines imposed under this Act or under Regulations or Rules made under this Act for any offence against discipline, and all fines levied for assaults on police officers, and such part of the proceeds of the sale of unclaimed property as is authorized under section 47 shall be paid to a fund to be called the "Police Rewards and Fines Fund".

(2) The Police Rewards and Fines Fund shall be administered by a special committee to be called the "Police Rewards and Fines Fund Committee" (hereinafter in this section referred to as the "Committee"), which shall consist of the Inspector General, two senior police officers and two junior police officers.

(3) The Committee may, in its discretion, sanction payments from the Police Rewards and Fines Fund for any of the following purposes—

(*a*) assistance to the spouses or families of deceased police officers, or to any officers discharged from the police as medically unfit for further service;

(*b*) contributions towards prizes to be given at athletic meetings, assaults-arms and similar events organized by or for the benefit of the Police Service;

(*c*) the purchase of ammunition for the encouragement of range practice among police officers;

(*d*) payments to police officers as rewards for meritorious acts or service in the execution of duty, if such payments are not authorized to be met out of moneys provided by Parliament;

(*e*) expenditure for the advancement of education, recreation sport, welfare or other similar activities organized within the Police Service.

Rewards to police officers as informers payable to the Fund

79. All rewards, forfeitures and penalties, which by law are payable to informers shall, when the information is laid by a police officer, be paid into the Police Rewards and Fines Fund.

PART VIII

Malaŵi Police Reserve

Establishment of Police Reserve

80. There shall be established in Malaŵi a reserve Police Service to be known as the Malaŵi Police Reserve (in this Act otherwise referred to as the "Police Reserve") which shall consist of former police officers of good character to the satisfaction of the Inspector General—

(*a*) who have retired from the Service on reaching retirement age; or

(*b*) whose contracts with the Police Service have expired; or

(*c*) who have been allowed to terminate their service before the expiration thereof, and who offer themselves for service in the Police Reserve.

Engagement and declaration

81. Every member of the Police Reserve upon joining shall sign an engagement in the prescribed form and shall on his admission to the Police Reserve, make and sign an oath or a declaration in the prescribed form.

82. The Inspector General shall have the command, superintendence and direction of the Police Reserve, and may make such appointments as he may see fit.

Inspector General to have command

83. The Inspector General may, by order, call up the whole or any part of the Police Reserve for service whenever it appears to him expedient to do so in the interest of the Police Service, and such calling up order shall be promulgated in such manner as the Inspector General shall think fit in order to bring it to the notice of all the members of the Reserve concerned and shall also be published in the *Gazette*.

Calling up

84.—(1) All members of the Police Reserve shall undergo a course of training and instruction for a period of not less than one week in every year.

Annual training

(2) The times of the courses and the content of the training and instruction to be given to members of the Police Reserve shall be the subject of such directions as the Inspector General may, form time to time, give in that behalf.

85.—(1) Where any member of the Police Reserve is called-up for service or is undergoing a course of training and instruction, such member shall, during the period of such calling-up or course—

Disciplinary powers over pay of reserve members on calling-up and training

(*a*) be subject in all respects to the provisions of the Constitution and this Act as if he were a member of the Police Service;

(*b*) have and exercise all the powers, duties and privileges conferred upon a member of the Police Service by this Act and any other law in force in Malaŵi; and

(*c*) be paid at the current rates of pay appropriate to the rank held by him on completion or termination of his engagement in the Police Service.

(2) Where any member of the Police Reserve attends any training or instruction in addition to the annual course under this Part, then for the period of such attendance, the provisions of paragraphs (*a*) and (*b*) of subsection (1) shall apply to such member but he shall be paid at such rates of pay as the Minister shall determine from time to time.

86.—(1) Without prejudice to any gratuity or other benefit which any member of the Police Reserve has been paid or to which he may be entitled in respect of his service in the Police Service, every member who undergoes and completes his course of training under this Part shall be paid an annual retainer of an amount equal to one month basic salary calculated at the rate appropriate to the rank held by him on completion or termination of his engagement in the Police Service or such higher amount as the Minister may determine from time to time.

Annual retainer

(2) The annual retainer payable under subsection (1) shall be paid in such manner and at such time as the Inspector General may direct.

(3) If in any year any member of the Police Reserve is called-up for service and for any reason is not required to undergo the course of training and instruction, then for the purposes of subsection (1) he shall be deemed to have undergone and completed his course of training and instruction.

Discharge

87.—(1) Any member of the Police Reserve may at any time claim his discharge at the expiry of three months after he has given notice in writing to the Inspector General of his wish to be discharged.

(2) The Inspector General may, if at any time he sees it fit so to do, by giving three months notice in writing, discharge any member of the Police Reserve.

(3) No member of the Police Reserve while called-up for service shall be entitled to obtain a discharge therefrom during the continuance of such service.

Uniforms, equipment, arms, etc.

88.—(1) The Inspector General may provide at the public expense for the use of members of the Police Reserve, uniforms, equipment, arms and other necessary articles for the purpose of carrying out their duties while called-up for service or undergoing a course of training and instruction.

(2) At the conclusion of the service or course, every member of the Police Reserve shall deliver up in good order, fair wear and tear only excepted, to the Inspector General or to a police officer authorized by the Inspector General in that behalf the uniform, equipment, arms or other necessary articles which may have been provided to him under this section.

(3) Any member of the Police Reserve who refuses or neglects to make delivery of uniforms, equipment, arms or other necessary articles provided to him under this section commits an offence and shall, upon conviction, be liable to a fine of K10,000 and to imprisonment for three months.

(4) Any court may issue a warrant to search for and seize any uniform, equipment, arm or other necessary article, which has not been delivered under subsection (2).

Notification of change of address

89. Every member of the Police Reserve shall notify the police station nearest to his place of residence for the time being of any change or intended change in his address.

90. Any member of the Police Reserve who, without reasonable cause, neglects or refuses to— General offences

(*a*) notify any change of address;

(*b*) attend any course of training and instruction; or

(*c*) obey any calling up notice,

commits an offence and shall, upon conviction, be liable to a fine of K20,000 and to imprisonment for six months.

91. Any member of the Police Reserve who is convicted under this Part shall be liable to be discharged forthwith. Discharge on conviction

PART IX

Regulation of Assemblies and Demonstrations

92. In this Part, unless the context otherwise requires— Interpretation

"assembly" means any assembly, meeting, rally, gathering, concourse or procession of more than fifteen persons in or on any public place or premises or on any public road—

(*a*) at which the views, principles, policies, actions or failure to act of the Government or any other government, or of a political party or political organization, whether or not that party or organization is registered under any applicable law, are publicly discussed, attacked, criticized, promoted or propagated; or

(*b*) held to publicly hand over petitions to any person or to mobilize or demonstrate support for or opposition to the views, principles, policies, actions or failure to act of any person or of anybody of persons or any institution, including the Government or any other government or any governmental institution;

"branch", in relation to an organization, includes—

(*a*) any section or committee of the organization; or

(*b*) any local, regional or subsidiary body forming part of the organization;

"convener" means—

(*a*) any person who, of his own accord, convenes an assembly; or

(*b*) in relation to any organization or branch of any organization, any person appointed by such organization or branch under section 93;

"demonstration" means any demonstration, whether by way of a procession, march or otherwise, in or on any public place or premises or on any public road, whether by one or more persons,

for or against any person, organization, cause, action or failure to take action, which is organized to be publicly held for the same purposes as in the case of an assembly;

"marshal" means any person appointed as such under section 104;

"organization" includes a branch thereof;

Cap. 69:01 "public road" has the meaning assigned thereto by the Road Traffic Act;

"riot damage" means any loss suffered as a result of—

(*a*) any injury to, or the death of, any person;

(*b*) or any damage to, or destruction of, any property,

caused directly or indirectly by, and immediately before, during or after, the holding of an assembly or a demonstration.

Appointment of convener and authorized persons

93.—(1) Any organization which intends to hold an assembly or demonstration shall appoint—

(*a*) a convener for that assembly or demonstration; and

(*b*) a deputy to the convener appointed under paragraph (*a*).

(2) The organization shall forthwith notify the District Commissioner of the area, in writing, of the names and addresses of the persons appointed under subsection (1).

(3) Upon receipt of a notice under subsection (2), the District Commissioner shall in turn notify the officer in-charge of the police station concerned.

(4) If any person appointed under subsection (1) as a convener or a deputy to the convener is or becomes unable to perform or to continue to perform the functions for which he is appointed, the organization shall forthwith appoint another person in his stead, and shall give particulars of such other person as required under subsection (2) to the District Commissioner who shall in turn notify the officer in-charge of the police station concerned and a person so appointed shall be deemed to have been appointed under subsection (1).

(5) No further appointment shall be made after the appointment of a person under subsection (4), except with the approval of the District Commissioner concerned.

(6) The police officer in-charge, or another police officer authorized by him in that behalf, shall represent the police at consultations or negotiations to be conducted under section 98.

Functions and duties of a convener

94. The convener shall—

(*a*) give notice under section 98 (1);

(*b*) be responsible for the arrangements of any intended assembly or demonstration;

(*c*) act on behalf of his organization at any consultations or negotiations to be conducted under section 98, or in connexion with any other procedure provided for in this Act at which his presence is required;

(*d*) appoint marshals of his organization for the assembly or demonstration; and

(*e*) be present at such assembly or demonstration.

Functions and duties of a District Commissioner or persons authorized by him

95. The District Commissioner, or persons authorized by him in that behalf, and within whose area an assembly or a demonstration is to take place, shall perform the functions, exercise the powers and discharge the duties assigned to that office under this Act independent of the direction or interference of any other person or authority and with impartiality.

Notice of assembly or demonstration

96.—(1) Where it is intended to hold an assembly or a demonstration the convener shall give notice, in writing, of not less than forty-eight hours and not more than fourteen days to the District Commissioner concerned with a copy to the officer in-charge of the police station concerned.

(2) The District Commissioner shall stamp every notice received under subsection (1) with his official stamp, and shall indicate the date and the time the notice was received by him.

(3) Where the District Commissioner receives two or more notices under subsection (1) for assemblies or demonstrations on or at the same place and time, the convener, or the organization of the convener, whose notice was first received by the District Commissioner shall be the one entitled to hold the assembly or demonstration at such place and lime.

(4) Where two or more notices are received by the District Commissioner on the same day and time, the District Commissioner's determination as to which notice was received earlier shall be *prima facie* evidence of that fact.

(5) For the purposes of this section a convener who has given notice to the District Commissioner shall be entitled, if he so requests, to receive back a stamped copy of the notice as acknowledgment by the District Commissioner of his receipt of the notice.

(6) Where it is not reasonably possible for the convener to give the notice of a period required under subsection (1), he shall give such notice at the earliest opportunity and if such notice is given less than twenty-four hours before the commencement of the assembly or demonstration, the District Commissioner may by notice to the convener prohibit the assembly or demonstration.

(7) The notice under subsection (1) shall be in the prescribed form, if any be prescribed, and shall contain the following information—

(*a*) the names and addresses and, if any, the telephone and facsimile numbers of the convener and his deputy;

(*b*) the name of the organization on behalf of which the assembly or demonstration is convened or, if it is so convened, a statement that it is convened by the convener;

(*c*) the purpose of the assembly or demonstration;

(*d*) the time, duration and date of the assembly or demonstration;

(*e*) the place where the assembly or demonstration is to be held;

(*f*) the anticipated number of participants;

(*g*) the proposed number and, where possible, the names of the marshals who will be appointed by the convener, and how the marshals will be distinguished from the other participants in the assembly or demonstration;

(*h*) in the case of an assembly in the form of a procession or a march—

(i) the exact and complete route of the procession;

(ii) the time when and the place at which participants in the procession are to assemble, and the time when and the place from which the procession is to commence;

(iii) the time when and the place where the procession is to end and the participants are to disperse;

(iv) the manner in which participants will be transported to the place of assembly and from the point of dispersal;

(*i*) the number and types of vehicles, if any, which are to form part of the procession;

(*j*) if notice is given less than forty-eight before the date on which the assembly or demonstration is to be held, the reason why it was not given timely; and

(*k*) if a petition or any other document is to be handed over to any person, the place where and the person to whom it is to be handed over.

Information regarding a proposed assembly or demonstration of which notice has not been given

97.—(1) Where a police officer receives information regarding a proposed assembly and he has reason to believe that notice under section 96 has not yet been given to the District Commissioner concerned, he shall forthwith inform such District Commissioner.

(2) Where the District Commissioner receives information, other than information from a police officer under subsection (1) regarding a proposed assembly or demonstration of which no notice has been given to him, he shall forthwith inform the officer in-charge of police concerned regarding the proposed assembly or demonstration.

(3) Without derogation from the functions and duties imposed on a convener by section 94, the District Commissioner shall on receipt of such information take such steps as may be deemed necessary, including the obtaining of assistance from the police, to establish the identity of the convener of such assembly or demonstration, and shall request the convener to comply with the provisions of this Act, failing which the assembly or demonstration shall not take place.

Consultations, negotiations, and amendments of notices

98.—(1) If the District Commissioner receives notice in accordance with section 96 or other information regarding a proposed assembly or demonstration comes to his attention, he shall forthwith consult with the officer in-charge of police concerned regarding the necessity for negotiations on any aspect of the conduct of, or any condition with regard to, the proposed assembly or demonstration.

(2) If, after consultation under subsection (1), the District Commissioner is of the opinion that—

(*a*) negotiations are not necessary and that the assembly or demonstration may take place as specified in the notice or with such amendments of the contents of the notice as may have been agreed upon by him and the convener, he shall notify the convener accordingly;

(*b*) negotiations are necessary, he shall forthwith call a meeting between himself and the convener, the officer in-charge of police and representatives of such other persons or bodies as in the opinion of the District Commissioner ought to be present at such meeting, in order to discuss any amendments of the contents of the notice and such conditions regarding the conduct of the assembly as he may consider necessary, and the District Commissioner shall endeavour to ensure that such discussions take place in good faith.

(3) If the convener or the officer in-charge of police fails to attend the meeting convened under subsection (2) (*b*) without reasonable excuse, consultations or negotiations or other proceedings may be conducted in

the absence of such convener or officer in-charge, and the organization or the police, as the case may be, shall be bound by the result of such consultations, negotiations or proceedings as if they had agreed to the result.

(4) If a convener has been notified under subsection (2) (*a*) or has not been called to a meeting in accordance with subsection (2) (*b*) within forty-eight hours after the notice under section 96, the assembly or demonstration may take place in accordance with the contents of the notice and in accordance with section 104 but subject to sections 101 and 102.

(5) Where agreement is reached at a meeting convened under subsection 2 (*b*), the assembly or demonstration may take place in accordance with the contents of the notice, including amendments, to such contents, on which agreement was reached.

Refusal of, and conditions regarding, an assembly or a demonstration

99.—(1) Where agreement is not reached on the contents of the notice, or on the conditions regarding the conduct, of an assembly or a demonstration, the District Commissioner may, if there are reasonable grounds, of his own accord or at the request of the officer in-charge of police, refuse a request for the assembly or demonstration or impose conditions with regard to the holding of the assembly or demonstration to ensure that—

(*a*) vehicle traffic or movement of pedestrians on public roads, especially during traffic rush hours, is least impeded;

(*b*) an appropriate distance is maintained between participants in the assembly or demonstration and a rival or other assembly or demonstration;

(*c*) access to property and workplaces is least impeded;

(*d*) injury to persons or damage to property is prevented.

(2) A District Commissioner who refuses a request for an assembly or demonstration or imposes any condition under subsection (1) shall give to the convener reasons in writing for his decision.

(3) The District Commissioner shall ensure as soon as possible that a written copy of his decision made under subsection (1) is handed to the convener, the officer in-charge of police and to every person who attended the meeting convened under section 98 (2) (*b*).

(4) Where the identity of the convener is unknown, or if in view of the urgency of the case it is not practicable to deliver a written copy of his decision and the reasons to the convener, the District Commissioner

shall, notwithstanding any provision to the contrary in any other law, publish a notice in one or more of the following manner—

(*a*) in a newspaper circulating where the assembly or demonstration is to be held;

(*b*) by means of the public radio or public television;

(*c*) by the distribution of the notice among the public and the affixing of the notice in public or prominent places where the assembly or demonstration is to be held; or

(*d*) by the announcement of the notice orally at the place or in the area where the assembly or demonstration is to be held; or

(*e*) by affixing the notice in a prominent place at the address the convener specified in the notice of assembly or demonstration under section 96.

(5) The convener and the officer in-charge of police shall, respectively, ensure that every marshal and every police officer at the assembly or demonstration knows the contents of the notice, including any amendments and any conditions that are imposed.

Procedure on postponement or cancellation of an assembly or demonstration

100.—(1) If an assembly or a demonstration is postponed or delayed, the convener shall forthwith notify the District Commissioner and the District Commissioner may call a meeting under section 98 (2) (*b*), and thereupon subsections (3), (4) and (5) of section 98 shall apply to the assembly or demonstration in question.

(2) Where an assembly or a demonstration is cancelled, the convener shall forthwith notify the District Commissioner of the cancellation and the notice given under section 96 shall lapse.

(3) If the District Commissioner is notified under this section of the postponement or delay of an assembly or a demonstration he shall forthwith notify the officer in-charge of police accordingly.

Prevention and prohibition of an assembly or a demonstration

101.—(1) When credible information on oath is brought to the attention of a District Commissioner that there is a threat that a proposed assembly or demonstration will result in serious disruption of traffic, or in injury to participants in the assembly or demonstration or to other persons, or in extensive damage to property, and that the Police may not be able to contain such threat, he shall forthwith meet or, if time does not allow it, otherwise consult with the convener and the officer in-charge of police and, if possible, any other person with whom, he believes, he should meet or consult in order to consider the prohibition of the assembly or demonstration.

(2) If, after the meeting or consultation referred to in subsection (1), the District Commissioner is on reasonable grounds, convinced that no amendment under section 98 and no condition under section 99 (1) would prevent the occurrence of any of the circumstances specified in subsection (1) of this section, he may prohibit the proposed assembly or demonstration.

(3) If the District Commissioner decides to prohibit the assembly or demonstration he shall, in a manner specified in section 99, notify the convener, the officer in-charge of police and every other person with whom he has so met or consulted of the decision and the reasons therefor.

Review and appeals

102.—(1) Where a condition is imposed in respect of an assembly or a demonstration or when an assembly or a demonstration is prohibited in accordance with section 101, the convener of such assembly or demonstration may apply to the High Court for the setting aside or amendment of such condition or for the setting aside of such prohibition.

(2) An application under subsection (1) shall be made within, and under any circumstances not later than, twenty-four hours after the District Commissioner has given notice in accordance with section 101 of the imposition of, or the refusal to impose the condition in question or the prohibition of, or the refusal to prohibit, the assembly or demonstration in question; and such condition or prohibition shall, subject to any amendment, remain in force until set aside.

(3) A convener may appeal against any order made by the High Court under this section.

(4) No order as to costs shall be made by any court in respect of an application under subsection (1).

(5) Notwithstanding the other provisions of this section, the convener or any person whose rights may be affected by—

(*a*) the holding of the assembly or demonstration;

(*b*) the prohibition of the assembly or demonstration;

(*c*) any term in a notice; and

(*d*) failure to impose any condition in relation to the assembly or demonstration, may apply to the High Court for the striking out or amendment of any such term or condition or for the imposition of any other condition or for permission to hold, or for a prohibition of, the assembly or demonstration, and the High Court may strike out, amend or impose any such term or condition or grant such permission or prohibit the assembly as it considers to be just in the circumstances.

(6) If the District Commissioner or the High Court, on application, has prohibited an assembly or a demonstration at any place, or if the High Court has upheld the prohibition of an assembly at any place, or in the case of a demonstration or assembly or demonstration provided for under section 105, the officer in-charge of police shall—

(*a*) at the entrance to or vicinity of the place or area in question, give notice that the place or area is closed or inaccessible to members of the public for purposes of that assembly or demonstration;

(*b*) take such steps to uphold the prohibition as are in the circumstances reasonable and appropriate.

Assembly or demonstration and assembly in the vicinity of Parliament, State Residences and courts

103. All assemblies and demonstrations within the precincts of any building which is being used as Parliament, a State Residence or a court, or at an open air place within a radius of one hundred metres from such building, are prohibited unless authorized by the Speaker, the President, or the Chief Justice, as the case may be.

Conduct of assemblies and demonstrations, and appointment of marshals

104.—(1) This section, in addition to any other provisions of this Part, apply to the conduct of assemblies and demonstrations.

(2) The convener shall appoint such number of marshals as is mentioned in the notice of assembly or demonstration or, if it was amended under section 98, in the amended notice, whose role or function shall be—

(*a*) to control the participants in the assembly or demonstration;

(*b*) to take the necessary steps to ensure that the assembly or demonstration at all times proceeds peacefully; and

(*c*) to ensure that the requirements of this section and the applicable notice and conditions, if any, are complied with.

(3) The marshals shall wear distinguishable clothing as approved by agreement of the District Commissioner so as to be easily identified by participants and the police.

(4) The convener shall take all reasonable steps to ensure that all marshals of the assembly or demonstration and participants in the assembly or demonstration are informed properly and in good time of the conditions to which the holding of the assembly or demonstration is subject.

(5) The assembly or demonstration shall proceed and take place at the locality or on the route and in the manner and during the times specified in the notice or, if the notice was amended, in the amended notice, and in accordance with the contents of such notice and any conditions imposed.

(6) Participants at an assembly or a demonstration shall abide by any law in respect of the carrying of dangerous weapons, and the convener and marshal, shall take all reasonable steps to ensure that such laws are complied with.

(7) No person present at or participating in an assembly or a demonstration shall—

(*a*) by way of a banner, placard, speech or singing or in any other manner incite hatred of other persons or any group of other persons on account of difference in culture, race, gender, language, religion or political affiliation;

(*b*) use abusive or insulting language in making or delivering a speech or by way of a banner, placard or singing; or

(*c*) perform any act or utter any words which are calculated or likely to cause or encourage violence against any person or group of persons.

(8) No person shall at any assembly or demonstration wear a disguise or mask or any other apparel or item, which obscures his facial features and prevents his identification unless the identity of such person is disclosed before hand.

(9) No person shall at any assembly or demonstration wear any form of apparel that resembles any uniforms worn by members of the Police Service or members of the Defence Force of Malaŵi.

(10) The marshals at an assembly shall take all reasonable steps to ensure that—

(*a*) no entrance to any building or premises is barred by participants so that reasonable access to or exit from such building or premises is denied to any person;

(*b*) no entrance to any building or premises in or on which is situated a hospital, a fire station or an ambulance station or other emergency service is barred by the participants.

(11) No person shall compel or attempt to compel any person to attend, join or participate in an assembly or a demonstration either before or during the assembly or demonstration, and the convener and marshals shall take all reasonable steps to prevent any person from being so compelled.

Powers of a police officer in relation to assemblies and demonstrations

105.—(1) Where an assembly or a demonstration is to take place in compliance with the provisions of this Part, a police officer—

(*a*) if he has reasonable grounds to believe that the police will not be able to provide adequate protection for the persons participating

in such an assembly or a demonstration, may notify the convener and such persons accordingly and shall give them the grounds in writing;

(*b*) may prevent persons participating in the assembly or demonstration from proceeding to a different place or deviating from the route specified in the notice or in the amended notice or from disobeying any condition to which, in accordance with this Act, the holding of the assembly or a demonstration is subject;

(*c*) in a case where the District Commissioner has not received a notice pursuant to section 96 or has received such notice but not more than forty-eight hours before the assembly or demonstration, may restrict the assembly or demonstration to a place, or guide the participants along a route, to ensure that—

(i) vehicle traffic or movement of pedestrian on public roads, especially during rush hours, is least impeded;

(ii) an appropriate distance is maintained between participants in the assembly or demonstration and rival assembly or demonstration;

(iii) access to property and to work places is not impeded, or injury to persons or damage to property is prevented;

(*d*) may order any person or group of persons interfering or attempting to interfere with an assembly or a demonstration to cease such conduct and to remain at a distance, specified by him, from such assembly or demonstration;

(*e*) where an incident, whether or not resulting from the assembly or demonstration, may cause persons to gather at any public place, may by notice in accordance with section 99 (4) specify an area considered by him to be necessary for the—

(i) movement and operation of emergency personnel and vehicles;

(ii) passage of an assembly or a demonstration;

(iii) movement of traffic;

(iv) exclusion of the public from the vicinity; or

(v) protection of property;

(*f*) shall take such steps, including negotiations with the relevant persons, as are in the circumstances reasonable and appropriate to protect property and persons, whether or not such persons are participating in the assembly or demonstration.

(2) Where a District Commissioner has prohibited an assembly or a demonstration at any place and the High Court has upheld such prohibition or where a police officer of or above the rank of inspector

has reasonable grounds to believe that danger to persons or property, as a result of the assembly or demonstration, cannot be averted by the steps referred to in subsection (1) if the assembly or demonstration proceeds, any police officer of or above the rank of inspector, as the case may be, may—

(*a*) make or cause to be made a proclamation, commencing with the President's name, in such form as may be prescribed or, if no form be prescribed, in such form as he thinks fit to enable the persons participating in the assembly or demonstration to disperse; and

(*b*) in a loud voice in the English language or in a language understood by the majority of the persons present, order the persons to disperse and to depart from the place of the assembly or demonstration within a time specified by him, which shall be reasonable.

(3) Where, pursuant to subsection (2), a police officer orders persons gathered to disperse and such persons have not dispersed or have made no preparations to disperse, the police officer may order the members of police under his command to disperse the persons concerned and such members of police may for that purpose use such force as may be reasonably necessary and as shall be appropriate to the circumstances of the case.

(4) If any person who participates in an assembly or demonstration or any person who hinders, obstructs or interferes with persons who participate in an assembly or a demonstration—

(*a*) kills or seriously injures, or attempts to kill or seriously injure, or shows a manifest intention of killing or seriously injuring, any person; or

(*b*) destroys, does serious damage to, or attempts to destroy or to do serious damage to, or shows a manifest intention of destroying or doing serious damage to, any property considered to be valuable, a police officer of or above the rank of inspector may order the members of police under his command to take necessary steps to prevent such action and may for that purpose, if he finds other methods to be ineffective or inappropriate, order the use of force, including the use of firearms and other weapons.

(5) The degree of force which may be used under this section shall not be greater that is necessary for the prevention of the concerned actions and shall be appropriate to the circumstances of the case.

Liability for damage arising from assemblies and demonstrations

106.—(1) If any riot damage occurs as a result of an assembly or a demonstration, every organization on behalf of or under the auspices of which the assembly or demonstration was held, the convener, and every person participating in the assembly or demonstration, as the case may

be, shall be liable for that damage as a joint wrongdoer together with any other person who unlawfully caused or contributed to such riot damage.

(2) Any person or organization held liable for riot damage under subsection (1) shall, notwithstanding that subsection, be deemed to be liable in any civil claim in respect of—

(*a*) recourse against, or contribution by, that person or organization for intentionally and unlawfully causing or contributing to the cause of the riot damage; or

(*b*) contribution by the other person who, or the other organization which, is jointly liable for the riot damage.

(3) This section shall not in any way affect the right, under the common law or any other written law, of a person or body to recover the full amount of damages arising from the negligence, intentional act or omission committed by or at the behest of any person or body.

Prohibition of weapons at assemblies and demonstrations

107.—(1) Any person who, while present at or taking part in any assembly or demonstration which takes place in or on a road or street or at any place of public resort, whether such assembly or demonstration has been lawfully convened or not, has with him any weapon otherwise than in pursuance of lawful authority, commits an offence and may be arrested without a warrant and shall, on conviction be liable to a fine of K100,000 and to imprisonment for two years.

(2) For the purposes of subsection (1), a person shall be deemed to be acting in lawful authority if he is acting in his capacity as a police officer or a member of the Defence Force of Malaŵi deployed to assist the police in the particular instance or as a member of a fire brigade.

(3) For the purposes of this section, "weapon" means a firearm as defined in the Firearms Act, a knife, an axe, or a matchet, or any object, article or thing made or adapted or suitable or suited for causing injury to a person or intended by the person having it with him for such use by him or by any other person.

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General offence for contravening this Part

108. Any person who does any act or thing in contravention of any provision of this Part, not made an offence under any other provision of this Part commits an offence and may be arrested without a warrant.

General punishment for offences against this Part

109. A person guilty of an offence under this Part shall, if no other punishment is prescribed, be liable to a fine of K50,000 and to imprisonment for twelve months.

Spontaneous assembly or demonstration

110. It shall be a defence to a charge of convening an assembly or a demonstration in contravention of this Part that the relevant assembly or demonstration took place spontaneously.

Regulations in relation to assemblies and demonstrations

111. The Minister may make regulations for any of the purposes of this Part and may, in such regulations, provide for—

(*a*) any further procedure to be followed when dispersing an assembly or demonstration;

(*b*) the use of force by police officers, and the further procedure to be followed before the use of force against participants in an assembly or demonstration; and

(*c*) any other matter in regard to which it may be necessary to make regulations in order to achieve the purposes of this Part.

PART X

Public Order at Football Matches

Application of this Part

112. This Part shall apply to all categories of football matches.

Disorderly conduct at football matches

113.—(1) Any person who, at a football match—

(*a*) uses or threatens violence towards another person;

(*b*) uses or threatens violence towards property;

(*c*) uses threatening, abusive or insulting words or displays disorderly behaviour;

(*d*) displays any written sign, or other visible representation which is threatening, abusive or insulting;

(*e*) is found drunk or drinking alcohol on the premises;

(*f*) is found in possession of alcohol on the premises;

(*g*) without authority, enters the playing surface, perimeter track or the tunnel or corridor for players and officials; or

(*h*) throws any thing at or towards the playing area or adjacent to the playing area, or an area where spectators or others may be present,

commits an offence and shall, on conviction, be liable to a fine of K20,000 and to an order to perform community service.

(2) A person found guilty under subsection (1) may be liable to a banning order.

(3) A banning order shall specify the venues and the number of matches which the offender is prohibited from attending and shall

require the offender to report and remain at the nearest police station during those matches.

(4) Any person who breaches a banning order commits an offence and shall, on conviction, be liable to a fine of K10,000 and to imprisonment for three months.

(5) A police officer may arrest without a warrant a person who—

(*a*) commits an offence under subsection (1); or

(*b*) he reasonably suspects of breaching a banning order.

Use of force to disperse disorderly crowds at football matches

114.—(1) In the dispersal of a disorderly crowd at a football match, a police officer of or above the rank of inspector may authorize the use of force by the police to prevent breach of peace.

(2) Where every effort to disperse the crowd by persuasive measures has failed, force may be used under subsection (1) as a last resort, and any such measure of last resort shall be used only where escape routes are available.

(3) No firearms shall be used to disperse crowds under subsection (1) unless persuasive measures are not practicable; and the use of firearms in this case shall be subject to the conditions laid down in section 44 (2) notwithstanding that the circumstances may not be similar.

Football clubs to appoint marshals

115.—(1) Every club participating in a football match shall appoint a specified number of marshals to control the supporters of that club and to take the necessary steps to ensure that the football match proceeds peacefully.

(2) For the purposes of subsection (1), every club shall submit the names of persons appointed as marshals to the officer in-charge of the nearest police station at least forty-eight hours before the date of the match.

(3) The marshals shall wear distinguishable clothing as approved by agreement of the national body responsible for football administration so as to be easily identified by the supporters and the police.

Role of national body responsible for football administration

116.—(1) The national body responsible for football administration shall, from time to time, and in liaison with football clubs, owners of football match venues, and the police, issue guidelines outlining the role of football clubs and the owners of football match venues, respectively, in ensuring public order at football matches.

(2) The guidelines issued under subsection (1) shall, among other things, specify the minimum number of marshals to be appointed by each club participating in a football match.

Liability of football clubs for actions of supporters and players

117.—(1) Where violence erupts at a football match causing damage to property or injury to a person, a football club shall be jointly and severally liable for the damage and injury caused by the supporters or players of that club.

(2) Subsection (1) shall apply whether the damage or injury is caused while the supporters or players were on the way to or from the football match.

(3) Where it is not possible to ascertain which club whose supporters or players caused the damage or injury, both clubs participating in the football match shall be jointly and severally liable.

Extension to other designated sporting events

118.—(1) The Minister may, by Order published in the *Gazette*, extend the application of this Part to other designated sporting events.

(2) An Order under subsection (1) may make such modifications of the provisions of this Part as are necessary and applicable by virtue of the Order.

PART XI
Community Policing

Objectives of community policing

119. The Malaŵi Police Service shall liaise with communities, through community police forums, with a view to—

(*a*) establishing and maintaining a partnership between the police and the community;

(*b*) promoting communication between the police and the community;

(*c*) promoting cooperation between the police and the community in fulfilling the needs of the community regarding policing;

(*d*) improving the rendering of police services to the community at national, regional, district and local levels;

(*e*) improving transparency in the Police Service and accountability of the police to the community; and

(*f*) promoting joint identification of problems and solutions to such problems by the police and the community.

Establishment of community police forums

120.—(1) Subject to the directions of the Inspector General, the officer in-charge of a police station may, in liaison with local community leaders, establish a community police forum for the area of his police station which shall be broadly representative of the local community.

(2) A community police forum may establish community police sub-forums.

Membership of a community police forum

121.—(1) A community police forum or sub-forum shall consist of—

(*a*) the officer in-charge of a police station or his representative;

(*b*) one police officer designated by the officer in-charge of the police station for that purpose; and

(*c*) at least five other persons from the local community who are independent and of good character, identified through liaison between the officer in-charge of the police station and the community leaders.

(2) In establishing a community police forum, the officer in-charge shall ensure that women and the youth are represented.

(3) A member of a community police forum or sub-forum under subsection (1) (*c*) shall serve for a period of two years and shall be eligible for reappointment to serve a second term at the expiry of the first term.

(4) Service as a member of a community police forum shall be on voluntary basis and shall be understood by all persons to be such.

Functions of a community police forum

122. The functions of a community police forum shall be to—

(*a*) collect and report information on crime in the local area;

(*b*) organize neighbourhood watch groups at local level;

(*c*) report on common crimes affecting the community so that the police can re-direct their resources as appropriate;

(*d*) encourage ordinary citizens to report suspicious behaviour by individuals;

(*e*) ensure regular visible police patrols in the local area;

(*f*) ensure that the local police communicates to the people of the local community on activities by the police on crime prevention in the area;

(*g*) determine the way the police may make their presence felt in the community;

(*h*) assess the way the police use resources in dealing with crime in the local community;

(*i*) raise public awareness and disseminate information on how community policing works in the community concerned; and

(*j*) perform any other function that may be necessary and appropriate to advance the objectives of community policing specified in section 119.

Discharge on conviction

123. Any member of a police forum who is convicted of any offence shall be liable to be discharged forthwith.

PART XII

Lay Visitors to Police Station

Establishment and objectives of the scheme of lay visitors

124. There is hereby established a scheme to be known as the Lay Visitors Scheme (in this Act otherwise referred to as the "Scheme"), the objective of which is to enable members of the local community—

(*a*) to observe, and comment and report on, the conditions under which persons are detained at police stations; and

(*b*) to observe the operation and implementation in practice of constitutional, international, statutory or other rules governing the welfare of persons detained at police stations,

with a view to ensuring observance by police officers of the human rights of the detained persons and securing greater public understanding and confidence in policing matters.

Appointment

125.—(1) Subject to subsections (2) and (3), the Minister may, in consultation with the relevant community police forums, appoint persons who are independent and of good character to be lay visitors for the purpose of the Scheme.

(2) The Minister shall appoint a panel of at least eight lay visitors for each police station in Malaŵi.

(3) In appointing each panel of lay visitors the Minister shall ensure that women are represented and shall consider the ethnic diversity and age range of the community.

(4) A person appointed as a lay visitor shall serve for a period of two years from the date of appointment, and shall be eligible for reappointment to serve a second term at the expiry of the first term.

(5) Service as a lay visitor shall be on voluntary basis and shall be understood by all persons to be such.

Disqualification

126. A person shall be disqualified from being appointed on a panel of lay visitors if he—

(*a*) is under twenty-one years or is over sixty-five years of age;

(*b*) does not reside or work in the locality for which the panel is to be appointed;

(*c*) has been convicted of an offence punishable with imprisonment within five years of the proposed date of appointment; or

(*d*) holds or is acting in judicial office or is a police officer or a former police officer.

Guidelines for lay visitors

127. The Minister may issue guidelines regarding the operation of the Lay Visitor Scheme under this Part.

PART XIII
Independent Police Complaints Commission

Establishment of the Independent Complaints Commission

128. There is hereby established a body to be known as the Independent Complaints Commission (in this Part otherwise referred to as the "Commission") with power to do or perform all such acts and things as it may be authorized by or under this Act and any other written law.

Functions of the Commission

129. The functions of the Commission shall be—

(*a*) to receive and investigate complaints by the public against police officers and the Police Service;

(*b*) to investigate death or injury as a result of police action; and

(*c*) to investigate all deaths and injuries which occur in police custody.

Powers of the Commission

130.—(1) For the purpose of carrying out its functions, the Commission shall have power—

(*a*) upon receipt of a complaint, to investigate any misconduct or offence allegedly committed by a police officer;

(*b*) upon receipt of a complaint, to investigate any death or injury in police custody or as a result of police action;

(*c*) to investigate any matter referred to it by the Minister;

(*d*) on its own initiative, to investigate any complaints against a police officer or against the Police Service;

(*e*) to obtain information from the Inspector General, any police officer or any other person or authority as may be necessary for conducting an investigation under this Part;

(*f*) to obtain the cooperation of any person as may be necessary for the performance of its functions;

(*g*) to commence an investigation on any matter as specified in this subsection, notwithstanding that an investigation regarding the same matter has been submitted to any other authority for any purpose.

(2) The Commission shall—

(*a*) make recommendations to the Minister, the Police Service Commission, the Inspector General or any other appropriate authority

on any findings pursuant to an investigation it has conducted under this Part;

(*b*) make recommendations to the Minister which it deems necessary regarding any matter investigated by it or relating to the performance of its functions.

Independence of the Commission

131.—(1) The Commission shall function independently of the Malaŵi Police Service.

(2) No organ of State and no member or an employee of an organ of State or any other person shall interfere with the Commission or any of its personnel in the exercise and performance of its powers and functions.

(3) All organs of State shall accord such assistance as may be reasonably required for the protection of the independence, impartiality, dignity and effectiveness of the Commission in the exercise and performance of its powers and functions.

Composition of the Commission

132. The Commission shall consist of the Independent Complaints Commissioner and other personnel in the service of the Commission.

The Independent Complaints Commissioner

133.—(1) The office of the Independent Complaints Commissioner shall be a public office.

(2) Nominations for appointment to the office of the Independent Complaints Commissioner shall be received from the public following a public advertisement and the successful candidate, who shall be qualified as a legal practitioner, shall be appointed by the Public Appointments Committee of the National Assembly.

(3) The Independent Complaints Commissioner shall hold office for a term of five years on first being appointed to that office and shall be eligible for reappointment for one more term not exceeding five years.

Removal of the Independent Complaints Commissioner

134. The Independent Complaints Commissioner may be removed from his office by the Public Appointments Committee on the following grounds—

(*a*) incompetence;

(*b*) incapacity; or

(*c*) where he is compromised to the extent that his ability to impartially exercise the duties of his office is seriously in question.

Functions of the Independent Complaints Commissioner

135.—(1) The Independent Complaints Commissioner shall—

(*a*) be responsible for the performance and exercise of the functions and powers of the Commission;

(*b*) be responsible for the management and administration of the Commission;

(2) The Independent Complaints Commissioner may delegate any of his powers to any members of the personnel of the Commission as he may see fit.

Other personnel of the Commission

136. The other personnel of the Commission shall be officers of subordinate to the Independent Complaints Commissioner and whom he shall appoint as officers in the public service and such other persons as may be seconded or transferred to the service of the Commission with his agreement.

Terms and conditions of service

137. The terms and conditions of service of the Independent Complaints Commissioner and the other personnel of the Commission shall be determined by Parliament on the recommendation of the Independent Complaints Commissioner made after he has consulted with the officer for the time being responsible for the public service.

Funds of the Commission

138.—(1) The funds of the Commission shall consist of such sums as may be appropriated by Parliament for the purposes of the Commission.

(2) The Commission may receive any donation of funds, materials and any other form of assistance for the purposes of its functions and powers:

Provided that no such donation shall jeopardize or compromise the independence and impartiality of the Commission.

Accounts

139.—(1) The Independent Complaints Commissioner shall cause to be kept proper books of accounts and other records relating to the accounts of the Commission.

(2) The accounts of the Commission shall be subject to audit by the Auditor General.

Offences of obstructing officers of the Commission

140. Any person who interferes or fails to cooperate with, or otherwise obstructs, the Independent Complaints Commissioner or any employee of the Commission or other person in the service of the Commission in the discharge of the functions and powers of the Commission commits an offence and shall, on conviction, be liable to a fine of K50,000 and to imprisonment for twelve months.

Immunities and privileges

141. The Independent Complaints Commissioner and the other personnel of the Commission and other persons in the service of the Commission shall have such immunities and privileges as are by law necessary in order to ensure the proper exercise and performance of their duties.

Identity document

142. Every person working for the Commission shall be issued with a document, in a prescribed form, identifying him that he is an employee of the Commission or is working for the Commission and has been authorized to perform duties in the discharge of the functions and powers of the Commission as specified in this Part.

Disclosure of information an offence

143. Any person working for the Commission, whether as an employee or otherwise, who discloses any information in circumstances in which he knows or could reasonably be expected to know that such disclosure would or may prejudicially affect the performance or exercise of the functions or powers of the Commission or of the Police Service commits an offence and shall, on conviction, be liable to a fine of K50,000 and to imprisonment for twelve months.

Operational instructions

144. The Independent Complaints Commissioner shall issue instructions in writing for the operations of the Commission regarding—

(*a*) the lodging, receiving and processing of complaints;

(*b*) recording and safe-guarding of information and evidence;

(*c*) disclosure of information;

(*d*) the making of findings and recommendations;

(*e*) procedures for the protection of the identity and integrity of complainants; and

(*f*) all matters incidental to the matters specified in paragraphs (*a*) to (*e*).

Officer in-charge of police to report deaths or injury in police custody or action

145. The officer in-charge of police shall inform the Commission immediately of all cases of death or injury in police custody or as a result of police action.

Annual Reports

146.—(1) Within three months after the expiry of each year, the Commission shall submit to Parliament a report of its activities during that year.

(2) The report of the Commission shall be tabled in Parliament within fourteen days after it has been submitted or if Parliament is not then meeting within fourteen days after the commencement of the next meeting.

(3) The Independent Complaints Commissioner shall, at any time when requested to do so by a competent Committee of the National Assembly submit a report on the activities of the Commission to that Committee and appear before such Committee to answer questions on the content of such report.

Powers, etc., under any other written law

147. Nothing in this Part shall preclude any person or authority from exercising the rights, powers, functions or duties conferred on such person or authority by or under any written law in respect of any matter otherwise provided under this Part.

Regulations in relation to the Commission

148. The Minister may, on the advice of the Commission, make regulations for the proper implementation of this Part.

PART XIV
MISCELLANEOUS

Powers to prosecute under other law not to be affected

149. Nothing in this Act shall exempt any person from being prosecuted under any other Act for the time being in force for any offence made punishable by this Act or from being liable under any other Act to any other or higher penalty or punishment than is provided for such offence by this Act:

Provided that no person shall be tried twice for the same offence.

Harbouring on licensed premises police officers while on duty

150. Any keeper of a house, store or place in which intoxicating liquor is sold who, himself or by any person in his employment, knowingly harbours or entertains any police officer or permits any police officer to remain in such house, store or place, during any part of the time in which such officer has been detailed for duty, commits an offence and shall, on conviction, be liable to a fine of K10,000 or to imprisonment for three months.

Unlawful possession of articles supplied to police officers

151. Any person, not being a police officer, who is found in possession of any article whatsoever which has been supplied to any police officer for the execution of his duty or any medal or decoration granted to any such officer for service or good conduct and who fails to account satisfactorily for the possession thereof or who, without due authority,

purchases or receives any such article, medal or decoration from a police officer, or who aids or abets any police officer to sell or dispose of any such article, medal or decoration, commits an offence and shall, on conviction, be liable to a fine of K10,000 and to imprisonment for three months.

Persons causing disaffection, etc.

152.—(1) Any person who—

(*a*) causes, or attempts to cause, or does any act calculated to cause disaffection amongst police officers; or

(*b*) induces, or attempts to induce or does any act calculated to induce, any police officer to withhold his services or to commit a disciplinary offence,

commits an offence and shall, on conviction, be liable to a fine of K100,000 and to imprisonment for two years.

(2) Where the person under subsection (1) is a police officer, he shall be liable to dismissal.

Disorderly conduct in courts, police stations, etc.

153.—(1) Any person who, in any court, police station, police office lock-up, is guilty of any riotous, indecent, disorderly or insulting behaviour commits an offence and shall, on conviction, be liable to a fine of K50,000 and to imprisonment for twelve months.

(2) Any police officer may arrest without a warrant any person, who, in his presence or within his view, commits any offence under subsection (1).

(3) Any superior police officer in-charge of the police in any area, if he is satisfied that any person has committed an offence under subsection (1), may accept from such person a sum of money by way of compensation for any damage caused by such person during the commission of the offence:

Provided that in no case shall the amount of compensation exceed the value of the estimated damage.

(4) In any proceedings brought against any person under subsection (1), it shall be a good defence if such person proves to the satisfaction of the court that he has compounded the offence under this section.

Being found upon police premises without lawful authority

154.—(1) Any person who at any time is found in or upon police premises without lawful authority, the proof of which shall lie on him, commits an offence.

(2) Any person who shall have been lawful in or upon police premises and who is thereafter found at any place in such police premises, other

than on one of the principal roadways within such premises or at the office or premises of the person with whom he has business, and who fails satisfactorily to account for his presence at that part of such police premises commits an offence.

(3) Any person guilty of offence against subsection (1) or (2) shall be liable to a fine of K10,000 and to imprisonment for three months.

(4) In this section, "police premises" means any police station or other premises for the time being in the occupation of the police.

Regulations and rules

155.—(1) The Minister may make regulations or rules for the purposes of this Act respecting any matter for which the power to make regulations or rules has not been specially conferred under any other Part of this Act.

(2) Without derogation from the generality of subsection (1), regulations and rules made under this section may provide for—

(*a*) anything which by this Act may or is to be prescribed and generally for the effective administration of this Act;

(*b*) the enlistment, terms of conditions of service and discipline of police officers;

(*c*) the training of police officers;

(*d*) the awarding of good conduct medals and badges and the grant to be paid in respect thereof;

(*e*) the establishment, constitution, functions and procedure of Police Associations and for matters incidental thereto; and

(*f*) the prevention and regulation of access of persons to police stations or any premises in the occupation of the police.

SCHEDULE

s. 52

Code of Disciplinary Conduct for Police Officers

Disrespectful conduct and disobedience

1. A police officer commits an offence against discipline who—

(*a*) is disrespectful in word, act or demeanour to his superior in rank;

(*b*) willfully disobeys any lawful order given to him by his superior in rank.

Drunkenness

2. A police officer commits an offence against discipline who—

(*a*) is guilty of drunkenness;

(*b*) drinks intoxicating liquor when on duty;

(*c*) enters any place licensed for the sale of intoxicating liquor when on duty, except when his presence is required there in the execution of his duty.

Being idle, etc.

3. A police officer commits an offence against discipline who—

(*a*) sleeps when on duty;

(*b*) idles or gossips or leaves his post without authority, express or implied, when on duty;

(*c*) smokes on duty;

(*d*) removes his armlet or duty badge when on duty or endeavours at any time to conceal or disguise his number;

(*e*) absents himself without leave; and

(*f*) neglects his duty.

Escaping from arrest, etc.

4. A police officer commits an offence against discipline who—

(*a*) being under arrest or in confinement, leaves or escapes from his arrest or confinement without authority, express or implied;

(*b*) neglects or refuses to assist in the apprehension of any police officer charged with any offence;

(*c*) allows to escape any prisoner who is committed to his charge or whom it is his duty to keep or guard.

Being violent, etc.

5. A police officer commits an offence against discipline who—

(*a*) offers or uses unwarrantable personal violence to any person in his custody;

(*b*) ill-uses or ill-treats any person in his custody.

Cowardice

6. A police officer commits an offence against discipline who is guilty of cowardice.

Unlawful discharge of firearm

7. A police officer commits an offence against discipline who discharges his firearm without just orders or cause.

Offences relating to parades

8. A police officer commits an offence against discipline who—

(*a*) without proper cause, fails to appear or appears late at any parade;

(*b*) talks or is inattentive or otherwise misbehaves himself on parade.

Being untidy, etc.

9. A police officer commits an offence against discipline who—

(*a*) parades or reports for duty dirty or untidy on his person, arms, clothing or accoutrements;

(*b*) is slovenly.

Uncivil behaviour and bullying

10. A police officer commits an offence against discipline who—

(*a*) is uncivil or quarrelsome;

(*b*) bullies an inferior in rank;

(*c*) forces a sentry.

Pawning, etc., of articles supplied to police officers or damages, or items committed to their charge

11. A police officer commits an offence against discipline who pawns, sells, loses by neglect, makes away with, willfully fail to report any damage to—

(*a*) any of the articles of arms, ammunition, clothing, accoutrements or necessaries supplied to him;

(*b*) any medal or decoration granted to him for service or good conduct;

(*c*) any Government property or any exhibit or any lost, stolen or unclaimed property committed to his charge.

Accepting gifts, etc.

12. A police officer commits an offence against discipline who, without the knowledge and permission of the Inspector General, accepts directly or indirectly any gift, gratuity, present or reward from any member of the public in respect of any thing done by him in the discharge of the duties of his office.

Unauthorized disclosure of information

13. A police officer commits an offence against discipline who, without due authority discloses or conveys any information concerning any investigation or other police or departmental matter to any unauthorized person.

Malingering, etc.

14. A police officer commits an offence against discipline who—

(*a*) malingers or feigns sickness;

(*b*) conceals any venereal or contagious disease;

(*c*) neglects or fails to report the fact if he is suffering from any venereal or contagious disease.

Contracting or aggravating disease by willful misconduct

15. A police officer commits an offence against discipline who is guilty of willful misconduct, or who willfully disobeys, whether in hospital or elsewhere, any orders, by which misconduct or disobedience he contracts or aggravates any disease or infirmity or delays its cure.

Exacting

16. A police officer commits an offence against discipline who, without proper authority, exacts from any person carriage, porterage or provisions.

Resisting an escort

17. A police officer commits an offence against discipline who resists an escort whose duty it is to apprehend such police officer or to have such police officer in his charge.

Breaking out of police lines

18. A police officer commits an offence against discipline who breaks out of, or leaves without lawful excuse, any police lines, camp or quarters.

False reports

19. A police officer commits an offence against discipline who makes or signs any false report or statement in any official record or document knowing or having reasonable grounds to believe that such report or statement is false.

False accusation against police officers

20. A police officer commits an offence against discipline who makes a false accusation against any police officer knowing or having reasonable grounds to believe that such accusation is false.

Anonymous or frivolous complaints

21. A police officer commits an offence against discipline who—

(*a*) makes or joins in making any anonymous complaint to a superior officer;

(*b*) makes any frivolous or vexatious complaint or makes a complaint in an irregular manner.

Engaging in other employment

22. A police officer commits an offence against discipline who engages without the authority of the Inspector General in any employment, occupation or office other than his police duties.

Other conduct prejudicial of good order Service in the Police

23. A police officer commits an offence against discipline who guilty of any other act, conduct, disorder or neglect to the prejudice of good order or discipline in the Police Service.

SUBSIDIARY LEGISLATION

POLICE (SPECIAL SERVICES CHARGES) REGULATIONS

G.N. 11/2010

ARRANGEMENT OF REGULATIONS

REGULATION
1. Citation
2. Interpretation
3. Special Service Charges
Schedule

POLICE (SPECIAL SERVICES CHARGES) REGULATIONS

under s. 155

1. These Regulations may be cited as the Police (Special Services Charges) Regulations. Citation

2. In these Regulations, unless the context otherwise requires— Interpretation

"special service charges" means charges on special services rendered to the Public by the Police Service;

3. The special service charges contained in the Schedule shall be payable to the Police Service in addition to the services specified in the Schedule. Special Service Charges

SCHEDULE reg. 3

POLICE SPECIAL SERVICE CHARGES

	Services	*Charges*
1.	Abstract reports—	
	(*a*) for residents	K3,000
	(*b*) for non-residents	US$100
2.	Accident Reports—	
	(*a*) for residents	K3,000
	(*b*) for non-residents	US$50
3.	(*a*) Police clearance certificate issued within Malaŵi for residents	K5,000
	(*b*) Police clearance certificate issued within Malaŵi for non-residents	US$200
	(*c*) Police clearance certificate sent outside Malaŵi for Malaŵians	US$300

	(*d*) Police clearance certificate sent outside Malaŵi for non-Malaŵians	US$300
	(*e*) general fingerprint enquire for prospective employees	K2,000
4.	Motor vehicle clearance certificate—	
	(*a*) other vehicles	K5,000
	(*b*) trucks—15 tonnes	K10,000
5.	Police Investigation reports—	
	(*a*) for loss of passport	K1,000
	(*b*) for loss of a Pass Book (Post Office and Bank Savings), Driving Licences	K1,000
	(*c*) photographs for scenes of crime	K3,000
	(*d*) Police investigation reports for non-residents ..	US$50
	(*e*) Police statement	K2,000
6.	Application for clearance of Private Security Companies (non-refundable whether licence is granted or not) for residents—	
	(*a*) for local companies	K10,000
	(*b*) for International companies	US$500
7.	Band activities—	
	(*a*) full band hire	K80,000
	(*b*) big band hire	K40,000
	(*c*) dance band	K80,000
	(*d*) transport charges per km (based on the market rate)	PVHO rate
8.	Police Cottages and Officers Messes—	
	(*a*) accommodation per night with breakfast ..	K6,000
	(*b*) lunch and supper	K2,000
9.	Hire charges for motor vehicle—	
	(*a*) lorry per km	PVHO rate
	(*b*) pick-up per km	PVHO rate
	(*c*) private car per km	PVHO rate

OFFICIAL SECRETS

CHAPTER 14:01

Containing Pages 1–11

L.R.O. 1/1968

CHAPTER 14:01

OFFICIAL SECRETS

ARRANGEMENT OF SECTIONS

SECTION

1. Short title
2. Interpretation
3. Penalties for spying
4. Wrongful communication, etc., of information
5. Definition of prohibited place
6. Unauthorized use of uniforms; falsification of reports, forgery, personation and false documents
7. Evidence of espionage
8. Interfering with officers of the police or members of the armed forces of Malaŵi
9. Power to require the production of telegrams
10. Registration and regulation of persons carrying on the business of receiving postal packets
11. Duty of giving information as to commission of offences
12. Attempts, incitements, etc.
13. Penalties for harbouring spies
14. Power to arrest
15. Appointment of additional officers of police
16. Power to convict person charged with felony under Act of misdemeanour under Act
17. Provisions as to trial and punishment of offences
18. Restriction on prosecution
19. Search warrants
20. Trial of offences

An Act to provide against the Publication of Official Secrets

[16th May, 1913]

3 of 1913
13 of 1922
6 of 1923
1 of 1957
s. 6 and 2nd Sch.
G.N. 22/1963
73/1964(M)
137/1966

1. This Act may be cited as the Official Secrets Act. Short title

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

Any reference to a place belonging to the Government includes a place belonging to any department of the Government whether the place is or is not actually vested in the Government;

expressions referring to communicating or receiving include any communicating or receiving, whether in whole or in part, and whether the sketch, plan, model, article, note, document, or information itself or the substance, effect, or description thereof only be communicated or received; expressions referring to obtaining or retaining any sketch, plan, model, article, note, or document, include the copying or causing to be copied the whole or any part of any sketch, plan, model, article, note, or document, and expressions referring to the communication of any sketch, plan, model, article, note or document include the transfer or transmission of the sketch, plan, model, article, note or document;

"document" includes part of a document;

"model" includes design, pattern, and specimen;

"munitions of war" includes the whole or any part of any ship, submarine, aircraft, tank or similar engine, arms and ammunition, torpedo, or mine, intended or adapted for use in war, and any other article, material, or device, whether actual or proposed, intended for such use;

"offence under this Act" includes any act, omission, or other thing which is punishable under this Act;

"office under the Government" includes any office or employment in or under any department of the Government;

"sketch" includes any photograph or other mode of representing any place or thing;

"superintendent of police" includes the person charged with the command, direction and superintendence of the police in any District.

Penalties for spying

3.—(1) If any person for any purpose prejudicial to the safety or interests of the State—

(*a*) approaches, inspects, passes over, or is in the neighbourhood of, or enters any prohibited place in Malaŵi within the meaning of this Act; or

(*b*) makes any sketch, plan, model, or note which is calculated to be or might be or is intended to be directly or indirectly useful to an enemy; or

(*c*) obtains, collects, records, or publishes or communicates to any person any secret official code, word, or pass word, or any sketch, plan, model, article, or note, or other document or information which is calculated to be or might be or is intended to be directly or indirectly useful to an enemy, he shall be guilty of felony.

(2) On a prosecution under this section, it shall not be necessary to show that the accused person was guilty of any particular act tending to show a purpose prejudicial to the safety or interests of the State, and, notwithstanding that no such act is proved against him, he may be convicted if, from the circumstances of the case, or his conduct, or his known character as proved, it appears that his purpose was a purpose prejudicial to the safety or interests of the State; and if any sketch, plan, model, article, note, document, or information relating to or used in any prohibited place within the meaning of this Act, or anything in such a place, or any secret official code word or pass word is made, obtained, collected, recorded, published, or communicated by any person other than a person acting under lawful authority, it shall be deemed to have been made, obtained, collected, recorded, published, or communicated for a purpose prejudicial to the safety or interests of the State unless the contrary is proved.

Wrongful communication, etc., of information

4.—(1) If any person having in his possession or control any secret official code word, or pass word, or any sketch, plan, model, article, note, document, or information which relates to or is used in a prohibited place or anything in such a place, or which has been made or obtained in contravention of this Act, or which has been entrusted in confidence to him by any person holding office under the Government or which he has obtained or to which he has had access owing to his position as a person who holds or has held office under the Government, or as a person who holds or has held a contract made on behalf of the Government, or as a person who is or has been employed under a person who holds or has held such an office or contract—

(*a*) communicates the code word, pass word, sketch, plan, model, article, note, document or information to any person, other than a person to whom he is authorized to communicate it, or a person to whom it is in the interest of the State his duty to communicate it; or

(*b*) uses the information in his possession for the benefit of any foreign power or in any other manner prejudicial to the safety or interests of the State; or

(*c*) retains the sketch, plan, model, article, note, or document in his possession or control when he has no right to retain it or when it is contrary to his duty to retain it, or fails to comply with all directions issued by lawful authority with regard to the return or disposal thereof; or

(*d*) fails to take reasonable care of, or so conducts himself as to endanger the safety of the sketch, plan, model, article, note, document, secret official code or pass word or information,

that person shall be guilty of a misdemeanour.

(2) If any person having in his possession or control any sketch, plan, model, article, note, document, or information which relates to munitions of war, communicates it directly or indirectly to any foreign power, or in any other manner prejudicial to the safety or interests of the State that person shall be guilty of a misdemeanour.

(3) If any person receives any secret official code word, or pass word, or sketch, plan, model, article, note, document or information, knowing, or having reasonable ground to believe, at the time when he receives it, that the code word, pass word, sketch, plan, model, article, note, document, or information is communicated to him in contravention of this Act, he shall be guilty of a misdemeanour, unless he proves that the communication to him of the code word, pass word, sketch, plan, article, note, model, document, or information was contrary to his desire.

Definition of prohibited place

5. For the purpose of this Act, the expression "prohibited place" means—

(*a*) any work of defence, arsenal, naval, military or air force establishment or station, factory, dockyard, mine, mine-field, camp, ship, or aircraft belonging to or occupied by or on behalf of the Government, or any telegraph, telephone, wireless or signal station, or office so belonging or occupied, and any place belonging to or occupied by or on behalf of the Government and used for the purpose of building, repairing, making, or storing any munitions of war, or any sketches, plans, models, or documents relating thereto, or for the purpose of getting any metals, oil, or minerals of use in time of war; and

(*b*) any place within Malaŵi not belonging to the Government where any munitions of war, or any sketches, models, plans or documents relating thereto are being made, repaired, gotten, or stored under contract with, or with any person on behalf of, the Government or otherwise on behalf of the Government; and

(*c*) any place belonging to or used for the purposes of the Government which is for the time being declared by order of the Minister to be a prohibited place for the purposes of this section on the ground that information with respect thereto, or damage thereto, would be useful to an enemy; and

(*d*) any railway, road, way, or channel, or other means of communication by land or water within Malaŵi (including any works or structures being part thereof or connected therewith), or any place within Malaŵi used for gas, water, or electricity works or other works for purposes of a public character, or any place within Malaŵi where any munitions of war, or any sketches, models, plans or documents relating thereto, are being made, repaired, or stored otherwise than on behalf of

the Government, which is for the time being declared by order of the Minister to be a prohibited place for the purposes of this section, on the ground that information with respect thereto, or the destruction or obstruction thereof, or interference therewith, would be useful to an enemy.

Unauthorized use of uniforms; falsification of reports, forgery, personation and false documents

6.—(1) If any person for the purpose of gaining admission, or of assisting any other person to gain admission to a prohibited place, or for any other purpose prejudicial to the safety or interests of the State within the meaning of the said Act—

(*a*) uses or wears, without lawful authority, any naval, military, air-force, police, or other official uniform, or any uniform so nearly resembling the same as to be calculated to deceive, or falsely represents himself to be a person who is or has been entitled to use or wear any such uniform; or

(*b*) orally, or in writing in any declaration or application, or in any document signed by him or on his behalf, knowingly makes or connives at the making of any false statement or any omission; or

(*c*) forges, alters or tampers with any passport or any naval, military, air-force, police or official pass, permit, certificate, licence, or other document of a similar character (hereinafter in this section referred to as an official document), or uses or has in his possession any such forged, altered, or irregular official document; or

(*d*) personates, or falsely represents himself to be a person holding, or in the employment of a person holding office under the Government, or to be or not to be a person to whom an official document or secret official code word or pass word has been duly issued or communicated, or with intent to obtain an official document, secret official code word or pass word, whether for himself or any other person, knowingly makes any false statement; or

(*e*) uses, or has in his possession or under his control, without the authority of the Government Department or the authority concerned, any die, seal, or stamp of or belonging to, or used, made or provided by any Government Department, or by any diplomatic, naval, military, or air-force authority appointed by or acting under the authority of the Government, or any die, seal or stamp so nearly resembling any such die, seal or stamp as to be calculated to deceive, or counterfeits any such die, seal or stamp, or uses, or has in his possession, or under his control, any such counterfeited die, seal or stamp,

he shall be guilty of a misdemeanour.

(2) If any person—

(*a*) retains for any purpose prejudicial to the safety or

interest of the State any official document whether or not completed or issued for use, when he has no right to retain it, or when it is contrary to his duty to retain it, or fails to comply with any directions issued by any Government Department or any person authorized by such department with regard to the return or disposal thereof; or

(*b*) allows any other person to have possession of any official document issued for his use alone, or communicates any secret official code word or pass word so issued, or, without lawful authority or excuse, has in his possession any official document or secret official code word or pass word issued for the use of some person other than himself, or on obtaining possession of any official document by finding or otherwise, neglects or fails to restore it to the person or authority by whom or for whose use it was issued, or to a police constable; or

(*c*) without lawful authority or excuse, manufactures or sells, or has in his possession for sale any such die, seal or stamp as aforesaid,

he shall be guilty of a misdemeanour.

(3) In the case of any prosecution involving the proof of a purpose prejudicial to the safety or interests of the State, section 3 (2) shall apply in like manner as it applies to prosecutions under that section.

Evidence of espionage

7.—(1) In any proceedings against a person for an offence under section 3, the fact that he has been in communication with, or attempted to communicate with, a foreign agent, whether within or without Malaŵi, shall be evidence that he has for a purpose prejudicial to the safety or interests of the State, obtained or attempted to obtain information which is calculated to be or might be or is intended to be directly or indirectly useful to an enemy.

(2) For the purpose of this section, but without prejudice to the generality of the foregoing provision—

(*a*) a person shall, unless he proves to the contrary, be deemed to have been in communication with a foreign agent if—

(i) he has, either within or without Malaŵi, visited the address of a foreign agent or consorted or associated with a foreign agent; or

(ii) either within or without Malaŵi, the name or address of, or any other information regarding a foreign agent, has been found in his possession, or has been supplied by him to any other person, or has been obtained by him from any other person;

(*b*) the expression "foreign agent" includes any person who is or has been or is reasonably suspected of being or having been employed by a foreign power either directly or indirectly for the purpose of committing an act either within or without Malaŵi, prejudicial to the safety or interests of the State, or who has or is reasonably suspected of having, either within or without Malaŵi, committed, or attempted to commit, such an act in the interests of a foreign power;

(*c*) any address, whether within or without Malaŵi, reasonably suspected of being an address used for the receipt of communications intended for a foreign agent, or any address at which a foreign agent resides, or to which he resorts for the purpose of giving or receiving communications, or at which he carries on any business, shall be deemed to be the address of a foreign agent, and communications addressed to such address to be communications with a foreign agent.

Interfering with officers of the police or members of the armed forces of Malaŵi

8. No person in the vicinity of any prohibited place shall obstruct, knowingly mislead or otherwise interfere with or impede, the Commissioner of Police or police officer, or any member of the armed forces of Malaŵi engaged on guard, sentry, patrol, or other similar duty in relation to the prohibited place, and, if any person acts in contravention of, or fails to comply with, this provision, he shall be guilty of a misdemeanour.

Power to require the production of telegrams

9.—(1) Where it appears to the Minister that such a course is expedient in the public interest, he may, by warrant under his hand, require any person who owns or controls any telegraphic cable or wire, or any apparatus for wireless telegraphy, used for the sending or receipt of telegrams to or from any place out of Malaŵi, to produce to him, or to any person named in the warrant, the originals and transcripts, either of all telegrams, or of telegrams of any specified class or description, or of telegrams sent from or addressed to any specified person or place, sent or received to or from any place out of Malaŵi by means of any such cable, wire, or apparatus, and all other papers relating to any such telegram as aforesaid.

(2) Any person who, on being required to produce any such original or transcript or paper as aforesaid, refuses or neglects to do so shall be guilty of an offence under this Act, and shall, for each offence, be liable to a fine of £50 and to imprisonment for three months.

(3) In this section, the expression "telegram" shall have the same meaning as in the Posts and Telegraphs Act. Cap. 68:01

Registration and regulation of persons carrying on the business of receiving postal packets

10.—(1) Every person who carries on, whether alone or in conjunction with any other business, the business of receiving for reward letters, telegrams, or other postal packets for delivery or forwarding to the persons for whom they are intended, shall as soon as may be send to the Commissioner of Police, for registration by him, notice of the fact together with the address or addresses where the business is carried on, and the Commissioner of Police shall keep a register of the names and addresses of such persons, and shall, if required by any person who sends such a notice, furnish him on payment of a fee of one shilling with a certificate of registration, and every person so registered shall from time to time furnish to the Commissioner of Police notice of any change of address or new address at which the business is carried on, and such other information as may be necessary for maintaining the correctness of the particulars entered in the register.

(2) Every person who carries on such a business as aforesaid shall cause to be entered in a book kept for the purpose the following particulars—

(*a*) the name and address of every person for whom any postal packet is received, or who has requested that postal packets received may be delivered or forwarded to him;

(*b*) any instructions that may have been received as to the delivery or forwarding of postal packets;

(*c*) in the case of every postal packet received, the place from which the postal packet comes, and the date of posting (as shown by the post-mark) and the date of receipt, and the name and address of the sender if shown on the outside of the packet, and, in the case of a registered packet, the date and office of registration and the number of the registered packet;

(*d*) in the case of every postal packet delivered, the date of delivery and the name and address of the person to whom it is delivered;

(*e*) in the case of every postal packet forwarded the name and address to which and the date on which it is forwarded,

and shall not deliver a letter to any person until that person has signed a receipt for the same in such book as aforesaid, nor, if that person is not the person to whom the postal packet is addressed, unless there is left with him instructions signed by the last-mentioned person as to the delivery thereof, and shall not forward any postal packet to another address unless there is left with him written instructions to that effect signed by the addressee.

(3) The books so kept and all postal packets received by a person carrying on any such business, and any instructions as to

the delivery or forwarding of postal packets received by any such person, shall be kept at all reasonable times open to inspection by any superintendent of police or other officer of police not below the rank of inspector.

(4) If any person contravenes or fails to comply with any of the provisions of this section, or furnishes any false information or makes any false entry, he shall be guilty of an offence under this Act, and shall, for each offence, be liable to a fine of £10 and to imprisonment for one month.

(5) Nothing in this section shall apply to postal packets addressed to any office where any newspaper or periodical is published, being postal packets in reply to advertisements appearing in such newspaper or periodical.

(6) Nothing in this section shall be construed as rendering legal anything which would be in contravention of the exclusive privilege of the Ministry of Transport and Communications under the Posts and Telegraphs Act. Cap. 68:01

Duty of giving information as to commission of offences

11. It shall be the duty of every person to give on demand to the Commissioner of Police, or to a superintendent of police, or to any member of the armed forces of Malaŵi engaged on guard, sentry, patrol, or other similar duty, any information in his power relating to an offence or suspected offence under this Act, and, if so required, and upon tender of his reasonable expenses to attend at such reasonable time and place as may be specified for the purpose of furnishing such information, and, if any person fails to give any such information or to attend as aforesaid, he shall be guilty of a misdemeanour.

Attempts, incitements, etc

12. Any person who attempts to commit any offence under this Act, or solicits or incites or endeavours to persuade another person to commit an offence, or aids or abets or does any act preparatory to the commission of an offence under this Act, shall be guilty of a felony or a misdemeanour according as the offence in question is a felony or a misdemeanour and shall be liable to the same punishment, and to be proceeded against in the same manner, as if he had committed the offence.

Penalties for harbouring spies

13. If any person knowingly harbours any person whom he knows, or has reasonable grounds for supposing, to be a person who is about to commit or who has committed an offence under this Act, or knowingly permits to meet or assemble in any premises in his occupation or under his control any such persons, or if any person having harboured any such person, or permitted to meet or assemble in any premises in his occupation or under his control any such persons, wilfully omits or refuses to disclose to a superintendent of police any information which it is in his

power to give in relation to any such person he shall be guilty of a misdemeanour.

Power to arrest

14. Any person who is found committing an offence under this Act whether that offence is a felony or not, or who is reasonably suspected of having committed, or having attempted to commit, or being about to commit, such an offence, may be apprehended and detained in the same manner as a person who is found committing a felony.

Appointment of additional officers of police

15. The Minister may for the purpose of this Act confer on any person the powers and rank of an officer of police.

Power to convict person charged with felony under Act of misdemeanour under Act

16. Any person charged with an offence which is a felony under this Act may, if the circumstances warrant such a finding, be found guilty of an offence which is a misdemeanour under this Act.

Provisions as to trial and punishment of offences

17.—(1) Any person who is guilty of a felony under this Act shall be liable to imprisonment for a term of not less than three years and not exceeding fourteen years.

(2) Any person who is guilty of a misdemeanour under this Act shall be liable to a fine of £50 and to imprisonment for two years.

(3) For the purposes of the trial of a person for an offence under section 3, 4 or 13, the offence shall be deemed to have been committed either at a place in which the same actually was committed, or at any place in Malaŵi in which the offender may be found.

(4) In addition and without prejudice to any powers which a Court may possess to order the exclusion of the public from any proceedings if, in the course of proceedings before a Court against any person for an offence under this Act or the proceedings on appeal, or in the course of the trial of a person for felony or misdemeanour under this Act, application is made by the prosecution, on the ground that the publication of any evidence to be given or of any statement to be made in the course of the proceedings would be prejudicial to the national safety, that all or any portion of the public shall be excluded during any part of the hearing, the Court may make an order to that effect, but the passing of sentence shall in any case take place in public.

(5) Where the person guilty of an offence under this Act is a company or corporation, every director and officer of the company or corporation shall be guilty of the like offence unless he

proves that the act or omission constituting the offence took place without his knowledge or consent.

Restriction on prosecution

18. A prosecution for an offence under this Act shall not be instituted except by, or with the consent of, the Director of Public Prosecutions:

Provided that a person charged with such an offence may be arrested, or a warrant for his arrest may be issued and executed, and any such person may be remanded in custody or on bail, notwithstanding that the consent of the Director of Public Prosecutions to the institution of a prosecution of the offence has not been obtained, but no further or other proceedings shall be taken until that consent has been obtained.

Search warrants

19. If a magistrate is satisfied by information on oath that there is reasonable ground for suspecting that an offence under this Act has been or is about to be committed, he may grant a search warrant authorizing any constable named therein to enter at any time any premises or place named in the warrant, if necessary, by force, and to search the premises or place and every person found therein, and to seize any sketch, plan, model, article, note or document or anything of a like nature or anything which is evidence of an offence under this Act having been or being about to be committed, which he may find on the premises or place or on any such person, and with regard to or in connexion with which he has reasonable ground for suspecting that an offence under this Act has been or is about to be committed.

Trial of offences

20.—(1) An offence under this Act, may be inquired of, heard, and determined by the High Court.

(2) An offence under this Act shall not be tried by any subordinate court.

PRESERVATION OF PUBLIC SECURITY

CHAPTER 14:02

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CHAPTER 14:02

PRESERVATION OF PUBLIC SECURITY

ARRANGEMENT OF SECTIONS

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3. Public security regulations
4. Incidental and supplementary provisions in regulations
5. Application and effect of regulations
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CHAPTER 14:02

PRESERVATION OF PUBLIC SECURITY

An Act to make provision for the Preservation of Public Security and for matters incidental thereto

1 of 1960
3 of 1965
17 of 1992
12 of 1993
21 of 1993
G.N. 22/1963
73/1964(M)

[15TH JUNE, 1960]

Short title

1. This Act may be cited as the Preservation of Public Security Act.

Interpretation
17 of 1992
21 of 1993

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

"public security" includes the securing of the safety of persons and property, the maintenance of supplies and services essential to the life of the community, the prevention and suppression of violence, intimidation, disorder and crime, the maintenance of the administration of justice and the prevention and suppression of mutiny, rebellion and concerted defiance of and disobedience to lawfully constituted authority and the laws in force in Malaŵi;

Public security regulations
17 of 1992
21 of 1993

3.—(1) If at any time the Minister is satisfied that it is necessary for the preservation of public security so to do, he may, by notice published in the *Gazette*, declare that the provisions of subsection (2) shall come into operation and thereupon those provisions shall come into operation accordingly; and they shall continue in operation until the Minister, by further notice published in the *Gazette*, directs that they shall cease to have effect, whereupon they shall cease to have effect except as respects things previously done or omitted to be done.

(2) The Minister may, for the preservation of public security by regulations—

(*a*) make provision for the prohibition of the publication and dissemination of matter which appears to him to be prejudicial to public security, and, to the extent which appears to him to be necessary for that purpose, for the regulation and control of the production, publishing, sale, supply, distribution and possession of publications;

(*b*) make provision for the prohibition, restriction and control of assemblies;

(*c*) make provision for the prohibition, restriction and control of residence, movement and transport of persons, the possession, acquisition, use and transport of movable property, and the entry to, egress from, occupation and use of immovable property;

(*d*) make provision for the regulation, control and maintenance of supplies and services;

(*e*) make provision requiring persons to do work and render services;

(*f*) make provision for, and authorize the doing of, such other things as appear to him to be strictly required by the exigencies of the situation in Malaŵi.

Incidental and supplementary provisions in regulations

4. Regulations made under section 3 may—

(*a*) make provision for the payment of compensation and remuneration to persons affected by the regulations;

(*b*) make provision for the apprehension and trial of persons offending against the regulations, and, notwithstanding section 21 (*e*) of the General Interpretation Act, for such penalties as the Minister may think fit for offences thereunder;

Cap. 1:01

(*c*) make provision for amending or for suspending the operation of any law other than the Constitution;

(*d*) make provision for empowering such authorities and persons as may be specified in the regulations to make orders and rules for any of the purposes for which such regulations may be made;

(*e*) make provision for the delegation and transfer of powers and duties conferred and imposed by or under the regulations;

(*f*) contain such other incidental and supplementary provisions as appear to the Minister to be necessary or desirable for the purposes of such regulations:

Provided that nothing in the foregoing provisions of this section or in section 3 shall authorize the making of any regulations providing for the trial of persons by military courts.

Application and effect of regulations

5.—(1) Any regulation made under this Act may be made to apply to Malaŵi or to any part thereof, and to any person or class of persons or to the public generally.

(2) Any regulation made under this Act, and any order or rule made under any such regulation, shall have effect notwithstanding anything inconsistent therewith contained in any law other than the Constitution, and to the extent of any such inconsistency and such law as aforesaid shall have no effect so long as such regulation, order or rule shall remain in force.

Proof of documents

6. Every document purporting to be an order, licence, permit, certificate, direction, authority, or other document made, granted or issued by the Minister or any other authority or person in pursuance of this Act or any regulation made under this Act or any order or rule made under any such regulation, and purporting to be signed by or on behalf of the Minister or such other authority or person, shall be received in evidence, and shall, until the contrary is proved, be deemed to have been made, granted or issued by the Minister or that authority or person.

7-11. [*Repealed by Act No*. 21 *of* 1993.]

G.N. 70/1964(M)

SUBSIDIARY LEGISLATION
DECLARATION

under s. 3

The Minister has declared that section 3 (2) of the Act shall come into operation.

ARRANGEMENT OF REGULATIONS

REGULATION
1. Citation
2. Interpretation
3. Control orders
4. Acts, words or writings prejudicial to public safety or public order
5. Control of firearms, ammunition and explosives
6. Illegal possession of firearms
7. Special areas
8. Power to disconnect telephones
9. Power to obtain information
10. Consorting with and harbouring suspected persons
11. Control of vessels and vehicles
12. Obligation to do work to render services
13. Powers of search
14. Penalties

G.N. 43/1965
70/1965
127/1965
38/1966
15/1977
6/1994

THE PUBLIC SECURITY REGULATIONS

under s. 3

Citation

1. These Regulations may be cited as the Public Security Regulations.

Interpretation

2. In these Regulations, unless the context otherwise requires—

"authorized officer" includes a police officer not below the rank of Inspector, a person holding a commission in the armed forces of Malaŵi and any person duly authorized in writing as an authorized officer for the purpose of these Regulations by the Minister or by the Commissioner of Police;

"firearm" means any barrelled weapon of any description from which any shot, bullet or other missile can be discharged or which can be adapted for the discharge of any such shot, bullet or other missile, and any weapon of whatever description designed or adapted for the discharge of any noxious liquid, gas or other thing dangerous to human

beings, and includes any component part of any such weapon as aforesaid and any accessory to any such weapon designed or adapted to eliminate or diminish the noise or flash caused by firing any such weapon, but does not include any antique firearm which has been rendered incapable of use a s a firearm.

Control orders
G. N. 6/1994

3.—(1) The Minister may, if he considers it to be necessary for the preservation of public order so to do, make a control order against any person (hereinafter referred to as "a controlled person").

(2) A control order may be made for all or any of the following purposes, that is to say—

(*a*) for prohibiting, except insofar as may be permitted by the order or by a written permit issued by the Minister, the controlled person from entering, leaving or remaining in any such place or area in Malaŵi as may be specified in the order;

(*b*) for requiring the controlled person to notify his movements in such manner, at such times and to such persons as may be specified in the order; and

(*c*) for requiring the controlled person to report to such persons, at such times and at such places as may be specified in the order.

(3) Any permit issued under subregulation (2) (*a*) shall specify the purpose for which it is issued and may be issued subject to such terms and conditions as may appear expedient to the Minister.

(4) A control order shall come into force upon the date thereof and the controlled person shall forthwith remove or be removed from any place from which he is prohibited from entering or remaining in or to any place which he is prohibited from leaving by an authorized officer, police officer or any person acting on behalf of the Minister. Any controlled person, whilst being so removed, shall be deemed to be in lawful custody.

(5) A controlled person who contravenes any of the provisions of the control order made against him or who fails to comply with any of the terms and conditions of any permit issued under subregulation (2) (*a*) shall be guilty of an offence.

(6) Any controlled person who is at any time in any place or area in contravention of the provisions of a control order or of the terms or conditions of any permit issued under subregulation (2) (*a*) may be removed from that place or area by any authorized officer, police officer or any person acting on behalf of the Minister, and for such purpose

such force as may be reasonably necessary may be used. Any controlled person,whilst being so removed, shall be deemed to be in lawful custody.

(7) In every case where a control order has been made under this regulation, the Minister, or other such person as may be appointed by the Minister for this purpose, shall, at the end of a period of six months from the date of the making of such order, and thereafter at the end of every ensuing three months, review such order and shall consider whether such order should be revoked or amended having regard to all the circumstances.

(8) Any authorized officer may, without warrant, arrest any person in respect of whom he has reason to believe that there are grounds which would justify the making of a control order against him under this regulation, and any such person may be detained in custody for a period not exceeding 28 days pending a decision whether a control order should be made against him.

Acts, words or writings prejudicial to public safety or public order G.N. 6/1994

4.—(1) No person shall do any act or publish anything likely—

(*a*) to be prejudicial to public security;

(*b*) to undermine the authority of, or the public confidence in, the Government;

(*c*) to promote feeling of ill-will or hostility between any sections or classes or races of the inhabitants of Malaŵi; or

(*d*) to promote, or shall attempt to promote, industrial unrest in any industry in Malaŵi in which he has not been *bona fide* engaged for at least two years immediately preceding.

(2) Any person who contravenes this regulation shall be guilty of an offence.

(3) For the purposes of this regulation, the word "publish" includes any publication by means of words written or spoken, pictorial representations, gramophone records and cinema films, including sound tracks.

Control of firearms, ammunition and explosives G.N. 6/1994

5.—(1) Subject to the general and special directions of the Minister, the Commissioner of Police may by order—

(*a*) prohibit, restrict or regulate the buying, selling or otherwise dealing in firearms, ammunition or explosive substance, either in Malaŵi generally or in any area specified in such order;

(*b*) direct all persons having in their possession or custody, either in Malaŵi generally or in such area as may be specified in the order, any firearms, ammunition or explosive substance

to surrender the same forthwith to an authorized officer or to any police station, or to keep or deposit the same in a place approved by the Commissioner of Police or in a place specified in the order:

Provided that an order under this paragraph may exempt therefrom such persons or classes of persons as may be specified therein;

(*c*) cancel or suspend any licence, permit or certificate issued in relation to any firearms under any law in force in Malaŵi or direct that any such licence, permit or certificate shall have effect subject to such conditions as may be specified in the order.

(2) Any person who contravenes any order made under subregulation (1) shall be liable to a fine of £500 and to imprisonment for ten years.

Illegal possession of firearms G.N. 6/1994

6. Any person who carries or has in his possession or under his control any firearm, ammunition or explosive substance without lawful authority shall be liable to a fine of £500 and to imprisonment for ten years.

Special areas G.N. 6/1994

7.—(1) If, as respects any area, it appears to the Minister to be necessary that special precautions should be taken for the preservation of public order, he may by order declare such area to be a special area for the purpose of this regulation.

(2) It shall be the duty of any person in a special area to stop and submit to search when called upon so to do by any administrative officer, police officer or any member of the armed forces of Malaŵi, and, if any person fails to stop when challenged or called upon to stop by any such officer or member, he shall be guilty of an offence and may be arrested by any such officer or member without warrant.

(3) It shall be lawful for any administrative officer, police officer or any member of the armed forces of Malaŵi in order—

(*a*) to effect an arrest under subregulation (2); or

(*b*) to overcome forcible resistance offered by any person to such arrest; or

(*c*) to prevent evasion or escape from arrest or the rescue of any person arrested as aforesaid,

to use such force as, in the circumstances of the case, may be reasonably necessary, which force may extend to the use of lethal weapons.

Power to disconnect telephones G.N. 6/1994

8. Subject to the general and special directions of the Minister, the Postmaster-General may, if he considers it to be necessary for the preservation of public order, disconnect any telephone service in Malaŵi.

Power to obtain information G.N. 6/1994

9.—(1) Any person shall, on being requested by an authorized officer or police officer, furnish or produce to an authorized officer or police officer any information, article, book or document in his possession or power which the authorized officer or police officer making the request considers it necessary for the preservation of public security to obtain or examine, and if any person fails to furnish or produce any such information, article, book or document in pursuance of a request duly made to him under this regulation, he shall be liable to imprisonment for seven years.

(2) Where any person fails to furnish or produce any article, book or document in pursuance of a request duly made to him by an authorized officer or police officer under subregulation (1) such authorized officer or police officer may himself take possession thereof.

Consorting with and harbouring suspected persons G.N. 6/1994

10.—(1) Any person who consorts with any other person whom he knows or has reasonable cause to believe to be a person who intends or is about to act, or has recently acted, in a manner prejudicial to the preservation of public order, shall be liable to imprisonment for seven years

(2) Any person who harbours any other person whom he knows or has reasonable cause to believe to be a person who intends or is about to act, or has recently acted, in a manner prejudicial to the preservation of public order, shall be liable to imprisonment for seven years:

Provided that, save in respect of supplying any other person with shelter or assisting any other person to evade apprehension, no person shall be convicted of an offence against this subregulation if he proves that, prior to being charged with or accused of such offence, he voluntarily gave full information of the offence to a police officer.

(3) For the purpose of this regulation, "harbour" includes the supplying of a person with shelter, food, drink, money, clothing or other valuable commodity, any medicine or drug or other medical supplies, or any material or instrument or part thereof for printing, typewriting or duplicating words or objects in visible form, or means of conveyance, or assisting a person in any way to evade apprehension.

(4) Where any authorized officer reasonably suspects that any building, hut or other structure is being used or is intended to be used for the purpose of harbouring or otherwise assisting any person who intends to act, or who has recently acted, in a manner prejudicial to the preservation of public order, such authorized officer may, if he is satisfied that it is in the interests of public order so to do, order that such building, hut or other structure shall be dismantled or destroyed.

Control of vessels and vehicles G.N. 6/1994

11.—(1) Any authorized officer may, if it is necessary for the preservation of public order so to do, issue orders for the prohibition, control or regulation of movement or use of any vessel or road vehicle.

(2) Any person who fails to comply with any order made under subregulation (1) shall be guilty of an offence, and may be arrested without warrant.

(3) Where any person is charged with an offence contrary to subregulation (2), it shall be competent for any authorized officer to seize any vessel or vehicle in respect of which the offence was committed pending the hearing of the charge concerned.

Obligation to do work or render services G.N. 6/1994

12. Where any authorized officer is satisfied that the exigencies of the situation so require, such authorized officer may order, either in writing or verbally, any person to perform any such work or to render such services as the authorized officer may deem to be necessary.

Powers of search G.N. 6/1994

13. Any authorized officer, and any person acting under the direction of an authorized officer, may, for the purpose of exercising or performing any powers or duties conferred or imposed upon him by these Regulations or any order made thereunder, or if he suspects that any evidence of the commission of an offence against these Regulations or against the Penal Code or any other law relating to public security is likely to be found, without warrant enter and search any premises, vessel, aircraft, train, vehicle or individual, and may seize anything found therein or on such individual as the case may be.

Penalties G.N. 6/1994

14. Any person who commits an offence against these Regulations for which no penalty is specially provided shall be liable to a fine of K 1000 and to imprisonment for five years.

ORDER

G.N. 196/1967 88/1971

under regulation 6 (1) (*b*)
of the Public Security Regulations

The Commissioner of Police has directed that all persons, other than police officers and members of the armed forces of Malaŵi acting in the performance of their duties, who have in their possession or custody any firearms, ammunition or explosive substances, with the exception of shot guns, muzzleloading guns and air guns, within the area set out in the Schedule should surrender all such firearms, ammunition and explosive substances forthwith to a police officer, an officer of the armed forces of Malaŵi, or to the nearest police station.

SCHEDULE

The whole of the Districts of Mangochi, Machinga, Karonga, Chitipa, Rumphi, Nkhata Bay and Mzimba.

ORDER

under reg. 8 (1)
of the Public Security Regulations

G.N. 55/1965
251/1965
88/1971

The Minister has declared that the area set out in the Schedule hereto shall be a special area for the purpose of regulation 8 of the Public Security Regulations.

SCHEDULE

The whole of the Districts of Mangochi, Machinga, Karonga, Chitipa, Rumphi, Nkhata Bay and Mzimba.

PRESERVATION OF PUBLIC SECURITY (AIR SERVICES) REGULATIONS

G.N. 111/1966

under s. 3

1. These Regulations may be cited as the Preservation of Public Security (Air Services) Regulations. Citation

2. In these Regulations, unless the context otherwise requires— Interpretation

"air service" shall have the meaning assigned thereto in section 2 of the Act;

"Minister" means the Minister of Transport and Communications;

"permit" means a permit issued by the Minister under these Regulations authorizing the holder thereof to provide an air service to, from or within Malaŵi;

"the Act" means the Air Services Act. Cap. 70:02

3. Notwithstanding the Act, no person shall provide an air service to, from or within Malaŵi— No air service to be provided without permit

(*a*) otherwise than in accordance with the conditions of a permit; or

(*b*) while the permit authorizing the provision of the air service is suspended,

whether or not such person holds a permit issued under and in accordance with the Act.

4.—(1) An application for the issue, renewal, transfer or amendment of a permit shall be made to the Minister in such manner as the Minister may direct. Application for permit

(2) Section 5 (2) and (3) of the Act and, if the Minister so directs, such of the provisions of sections 6 and 7 of the Act as the Minister may specify, shall, *mutatis mutandis*, apply in relation to an application under and in accordance with subregulation (1).

(3) If the Minister wishes to refer an application under and in accordance with subregulation (1) to a tribunal, sections 9 to 12 inclusive of the Act in relation to matters referred to a tribunal by the Minister shall, *mutatis mutandis*, apply.

(4) Where the Minister—

(*a*) has directed under subregulation (2) that any of the provisions of sections 6 and 7 of the Act shall apply in relation to any application; or

(*b*) wishes to refer the application to a tribunal under sub-regulation (3),

the fee that would have been payable under section 20 of the Act, had the application been made under the Act, shall be payable.

Rejection of application

5.—(1) The Minister may, with or without the recommendation of a tribunal, reject an application made under and in accordance with regulation 4 (1) or grant, revoke, suspend, transfer, renew or vary a permit, whether or not application therefor has been made, and include such conditions to a permit as he thinks necessary or expedient.

(2) Where the Minister has granted a permit to any person he may suspend the application of the Act in respect of the holder of such permit.

Renewal of permit

6. If a holder of a permit applies for the renewal of the permit before the lapse of the period of its validity, the permit shall be treated as being in force until the holder is notified in writing on behalf of the Minister that the Minister has refused his application or has renewed the permit.

Offences and penalties

7. A person who—

(*a*) procures or attempts to procure for himself or another a permit by means of fraud, a false representation or the concealment of a material fact;

(*b*) makes or causes to be made in connexion with an application a false declaration in a document used for the purposes of the application;

(*c*) forges or utters, knowing the same to be forged, a document purporting to be a permit; or

(*d*) contravenes regulation 3,

shall be liable to a fine of £500 and to imprisonment for two years.

PRESERVATION OF PUBLIC SECURITY (CONSERVATION OF MOTOR FUEL) REGULATIONS

G.N. 74/1979 16/1980 162/1980 22/1981

under s. 3

Citation

1. These Regulations may be cited as the Preservation of Public Security (Conservation of Motor Fuel) Regulations.

Interpretation

2. In these Regulations unless the context otherwise requires—

"container" means any receptacle other than a tank to which the Petroleum (Storage) Regulations apply and the fuel tank of a vehicle with which that vehicle was equipped at the time of manufacture and any necessary replacement thereof;

"diesel oil" means any hydrocarbon oil ordinarily supplied or used as fuel for any diesel engine;

"fuel" means petroleum spirit, diesel oil, illuminating paraffin oil, gas oil and furnace fuel, but does not include aviation spirit;

"fuel station" means a petrol filling station where fuel is sold by retail direct to the consumer;

"vehicle" means a mechanically propelled conveyance constructed or adapted or intended for use or capable of being used on the road.

Prohibited fuel transactions G.N. 22/1981

3.—(1) Subject to subregulation (2), no person shall obtain and no person shall supply, at a fuel station, any fuel—

(*a*) between 0600 hours and 1800 hours on a Saturday or Sunday;

(*b*) at any time during the period between 1800 hours and 0600 hours,

otherwise than in accordance with the provisions of regulation 4.

(2) The Minister has power, by Order, to suspend the operation of the provisions of subregulation (1) or any of them and may, from time to time, delegate the exercise of such power to a public officer.

(3) No person at a fuel station shall obtain, or supply to any other person, in a container—

(*a*) any gas oil or furnace fuel otherwise than in accordance with the provisions of regulation 4;

(*b*) petroleum spirit in a quantity greater than 20 litres;

(*c*) illuminating paraffin oil in a quantity greater than 20 litres;

(*d*) diesel oil in a quantity greater than 200 litres.

(4) Any person who contravenes any provision of this regulation shall be guilty of an offence.

Permits

4.—(1) A District Commissioner, and in the absence of the District Commissioner an Assistant District Commissioner, has power to issue under his hand a permit authorizing, subject to such conditions as shall be specified therein, the delivery of petroleum spirit or diesel oil into the fuel tank of a specified vehicle or container.

(2) A permit shall be issued in such form as is appropriate from among those set out in the First Schedule.

(3) Notwithstanding the provisions of regulation 3 (1), the holder of a permit may lawfully obtain, and a person may lawfully supply to the holder, fuel by delivery thereof into the fuel tank of a vehicle or container in compliance with the conditions specified in the permit.

(4) Any person who obtains or supplies fuel otherwise than in accordance with the conditions of any permit shall be guilty of an offence.

Purchase of fuel restricted to cash transactions

5.—(1) Any person who, at any fuel station, buys or sells any fuel otherwise than for cash shall be guilty of an offence.

(2) For the purposes of this regulation, "cash" means payment in full in Malaŵian currency contemporaneously with the delivery of the relevant fuel, or payment by requisition order in the form specified in the First Schedule.

Application

6.—(1) These Regulations do not apply with respect to the obtaining or supply of fuel direct into the fuel tank of any vehicle or class of vehicles owned or operated exclusively by any person or organization listed in the Second Schedule.

(2) Save as is otherwise expressly provided under these Regulations the said Regulations shall apply to the Government.

Penalties

7. Any person who commits an offence against these Regulations shall be liable to a fine of K2,000 and to imprisonment for a term of two years.

FIRST SCHEDULE FORM I

FORMS

PRESERVATION OF PUBLIC SECURITY ACT

(CAP. 14:02)

PRESERVATION OF PUBLIC SECURITY (CONSERVATION OF MOTOR FUEL) REGULATIONS

(REGULATION 4)

PERMIT TO PURCHASE PETROL/DIESEL* (ONE PURCHASE ONLY)

This permit must be surrendered to the Filling Station Attendant at time of purchase of Petrol/Diesel .*

To .....

(*Name*)

Address .....
Registration mark of vehicle/capacity of container .....
.....
Make (*where applicable*) .....

On the grounds stated below, the owner of the container or vehicle bearing the registration mark quoted above is hereby exempted from the application of regulation 3 of the Preservation of Public Security (Conservation of Motor Fuel) Regulations and is permitted to purchase Petrol/Diesel * at any fuel station, AND any person who, at any fuel station, sells to the above-named vehicle owner any such motor fuel, by delivery thereof into the fuel tank of the said motor vehicle, is, for the purpose of such sale and delivery, also exempt from the aforementioned regulation .....
.....
Place .....
Date of issue .....

.....
District Commissioner

(To be completed in triplicate)
*Delete whichever is inapplicable

FORM 2

PRESERVATION OF PUBLIC SECURITY ACT
(CAP. 14:02)

PRESERVATION OF PUBLIC SECURITY (CONSERVATION OF MOTOR FUEL) REGULATIONS

(REGULATION 4)

PERMIT TO PURCHASE PETROL/DIESEL* (MULTIPLE PURCHASES)

Upon expiry this permit should be surrendered to the issuing District Commissioner

To .....
(*Name*)
Address .....
Registration mark of vehicle/capacity of container .....
Make (*where applicable*) .....

On the grounds stated below, the owner of the container or vehicle bearing the registration mark quoted above is hereby exempted from the application of regulation 3 of the Preservation of Public Security (Conservation of Motor Fuel) Regulations and is permitted to purchase Petrol/Diesel * at any fuel station, AND any person who, at any fuel station, sells to the above-named vehicle owner any such motor fuel, by delivery thereof into the fuel tank of the said motor vehicle, is, for the purpose of such sale and delivery, also exempt from the aforesaid regulation .....
.....
This permit shall be valid from .....
to and including .....

Date	Amount of Petrol/ Diesel* delivered in litres	Name of filling station	Signature or thumbprint of Attendant

Place .....
Date of issue .....

.....
District Commissioner

(To be completed in triplicate)
*Delete whichever is inapplicable

FORM 3

TRIPLICATE MALAŴI GOVERNMENT G.P. 90 B

REQUISITION FOR PETROL AND OIL SUPPLIES

B .....

Vehicle No. .....

Please supply the bearer with the supplies shown below for account of the ..... Department ....., 19 .....

.....
(*Signature of Requisitioning Officer*)

Station ....
(*Title*)

	Litres/kg	Quantities (IN WORDS)
Petrol		
Lubricating Oil, Grade ..		
Paraffin, Power ..		
Paraffin, Illuminating ..		
Diesel Fuel		
Grease, Type		

Requisitioning Officers must strike out spaces not used above.

To be completed by Requisitioning Officer:	To be completed by Officer taking delivery:
1. Office to which account is to be rendered:	RECEIVED
2. Estimated cost of purchase (in words):	Petrol ..... litres
..... Kwacha	Lubricating Oil ..... ”
..... tambala	Paraffin, Power ..... ”
	Paraffin, Illuminating ..... ”
	Diesel Fuel ..... ”
3. Head Sub-head to be charged.	Grease ..... kg
4. Certified (i) that funds are available to meet the cost of this purchase, on Warrant No. ..... held by me; and (ii) that the estimated cost has been entered in my Votes Ledger as a commitment.	..... (*Signature*)
Signature	..... (*Title*)
	DISTRIBUTION:
	Original—to supplier, to be sent by him to office indicated for payment at end of month.
	Duplicate—to supplier, for retention by him.
	Triplicate—to remain in book.

TRIPLICATE

FORM 4

REQUISITION FOR PETROL AND OIL SUPPLIES TO VEHICLES OWNED BY A STATUTORY BODY

No. .....

Vehicle No. .....

Please supply the bearer with the supplies shown below for account of the (*Name of Statutory Body*)

.....

....., 19 .....

.....

(*Signature of Requisitioning Officer*)

Station .....

.....

(*Title*)

	Litres/kg	Quantities (IN WORDS)
Petrol		
Lubricating Oil, Grade ..		
Paraffin, Power ..		
Paraffin, Illuminating ..		
Diesel Fuel		
Grease, Type		

Requisitioning Officers must strike out spaces not used above.

To be completed by Requisitioning Officer:	To be completed by Officer taking delivery:
1. Office to which account is to be rendered: 2. Estimated cost of purchase (in words): ..... Kwacha ..... tambala 3. Head Sub-head to be charged. 4. Certified (i) that funds are available to meet the cost of this purchase, on Warrant No. ..... held by me; and (ii) that the estimated cost has been entered in my Votes Ledger as a commitment. *Signatur*e	RECEIVED Petrol ..... litres Lub. Oil .....” Paraffin, Power ..... ” Paraffin Illum. ..... ” Diesel fuel ..... ” Grease ..... kg ..... (*Signature*) ..... (*Title*) DISTRIBUTION: Original—to supplier, to be sent by him to office indicated for payment at end of month. Duplicate—to supplier, for retention by him. Triplicate—to remain in book.

SECOND SCHEDULE

Owner of Vehicle

1. State Residences
2. Malaŵi Army
3. Malaŵi Police Force
4. Malaŵi Young Pioneers (excluding Spearhead Enterpises) acting pursuant to section 9 of the Young Pioneers Act
5. Air Malaŵi
6. Heads and Deputy Heads of Diplomatic Missions
7. Vehicles owned by the following statutory bodies—
   (*a*) Electricity Supply Commission
   (*b*) Lilongwe Water Board
   (*c*) Blantyre Water Board
8. Malaŵi Railways

Type of Vehicle

1. Hospital Ambulances
2. Bulk fuel delivery vehicles
3. Fire Service vehicles
4. "Motor omnibuses" as defined in regulation 2 of the Road Traffic (Public Service Vehicles) (Operation) Regulations (Cap. 69:01 sub. leg. p. 227)

PRESERVATION OF PUBLIC SECURITY (PHALOMBE LANDSLIDES AND FLOODS) REGULATIONS

G.N. 29/1991

under s. 3

Citation

1. These Regulations may be cited as the Preservation of Public Security (Phalombe Landslides and Floods) Regulations.

Interpretation

2. In these Regulations—

"affected areas" means the areas specified in the Schedule hereto;

"affected persons" means persons registered under regulation 4.

Safety and protection of persons, etc., in affected areas

3. For securing the safety and protection of persons and property and the maintenance of supplies and services essential to the life of the community in the areas specified in the Schedule hereto, being the areas affected by the natural calamities of landslides and floods which occurred in those areas in the month of March 1991—

(*a*) the Secretary to the President and Cabinet shall cause to be assessed and ascertained the degree of damage and the scale of calamity occasioned by the landslides and floods in the affected areas;

(*b*) every Ministry and Department of the Government shall make all due effort for, and accord priority to, the provision of such supplies and services as are within the scope of its responsibility essential for the restoration of the normal life of the community in the affected areas;

(*c*) the Secretary to the President and Cabinet shall establish procedures as he deems expedient for the receiving, administration and distribution of food, materials, funds and other items of assistance for the relief of affected persons and may, for the implementation of such procedures, establish task forces consisting of officers in the civil service, the Army, the Police and persons in other organizations or members of the general public;

(*d*) the Secretary to the President and Cabinet or such other public officers as he may designate, may make appeals to the general public or to any non-governmental agency in Malaŵi or to any government or international agency for donations of medical supplies, materials, food, funds and other forms of assistance to be channelled to, or applied for the relief of, affected persons and shall cause to be kept proper records of all donations received from any source for the purpose of these Regulations;

(*e*) the Minister may make such arrangements as he considers expedient for the resettlement or rehabilitation of affected persons and may, for that purpose, direct the acquisition of any land under the Land Acquisition Act or by other lawful means.

Cap. 58:04

Registration of affected persons

4.—(1) The Secretary to the President and Cabinet shall cause to be registered names and particulars of all persons adversely affected by the occurrence of landslides and floods in the affected areas.

(2) The persons registered under subregulation (1) shall be the persons eligible under these Regulations to receive such assistance as the Secretary to the President and Cabinet or other public officers duly designated by him in that behalf may determine in relation to each of such persons.

Orders and rules

5. The Secretary to the President and Cabinet may make such orders or rules as he considers expedient for the carrying out of these Regulations.

Continuation in force of these Regulations

6.—(1) These Regulations shall cease to have effect upon notice to that effect made by the Minister under section 3 (1) of the Act and published in the *Gazette*.

(2) After publication of a notice under subregulation (1) the Minister shall cause to be produced a written report of the operation of these Regulations and shall lay such report before the National Assembly during a meeting thereof commencing next after the publication of such notice.

SCHEDULE (reg. 2)

The whole area comprising the area of jurisdiction of—

(*a*) Chief Mkhumba

(*b*) Chief Nazombe

(*c*) Chief Mkanda

PRESERVATION OF PUBLIC SECURITY (PHALOMBE LANDSLIDES AND FLOODS) (DECLARATION) NOTICE

G.N. 30/1991

under s. 3

[*Revoked By G.N.* 4/1994]

RESTRICTION AND SECURITY ORDERS

CHAPTER 14:03

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CHAPTER 14:03

RESTRICTION AND SECURITY ORDERS

ARRANGEMENT OF SECTIONS

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An Act to Regulate the Making of Restriction and Security Orders in Respect of Undesirable and Convicted Persons

32 of 1954
G.N. 22/1963
73/1964(M)
166/1967

[1st November, 1954]

Short title

1. This Act may be cited as the Restriction and Security Orders Act.

Interpretation

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

"convicted person" means a person in respect of whom any court certifies to the Minister that he has been convicted, either by that court or by any inferior court from which his case has been brought by way of appeal, of any offence punishable with imprisonment otherwise than only in default of payment of a fine;

"judge" means a Judge of the High Court;

"magistrate" means, subject to section 6 (2) and (3), a person

appointed to be a magistrate for the purpose of this Act under section 21;

"person charged" means a person in respect of whom it is alleged that there are grounds for making a restriction order or security order under this Act and includes a person in respect of whom such an order has been made;

"restriction order" means an order prohibiting the person in respect of whom it is made from entering or from leaving an area within Malaŵi without the consent of the officer specified in the order;

"security order" means an order requiring the person in respect of whom it is made to give security in two or more sureties in such amount and for such time as may be therein specified to keep the peace and to be of good behaviour, or for indemnifying public funds for all costs, charges and expenses incurred in his regard, or for both such purposes, as may be appropriate in the case;

"undesirable person" means a person who is or has been conducting himself so as to be dangerous to peace, good order, good government or public morals, or who is or has been attempting, or conducting himself in a manner calculated, to raise discontent or disaffection among the citizens or the inhabitants of Malaŵi, or to promote feelings of ill-will and hostility between different races or classes of the population of Malaŵi.

Power to make restriction orders

3. Subject to this Act, the Minister may, if he thinks fit, make a restriction order in respect of any person who is—

(*a*) a convicted person in respect of whom the court certifying to the Minister that he has been convicted recommends that a restriction order should be made in his case, either in addition to or in lieu of sentence;or

(*b*) an undesirable person.

Power to make security orders

4.—(1) Subject to this Act, the Minister may, if he thinks fit, either in addition to making a restriction order under section 3 or separately, make a security order in respect of any person who is—

(*a*) a convicted person in respect of whom the court certifying to the Minister that he has been convicted recommends that a restriction order or a security order or both should be made in his case, either in addition to or in lieu of sentence;or

(*b*) an undesirable person.

(2) Where a security order is made as aforesaid, a restriction

order shall be made in conjunction therewith to come into force upon default of compliance with the security order within a time therein fixed.

(3) Where a security order has been complied with, the order shall, for the purposes of this Act, be deemed to remain in force so long as the security given thereunder subsists, and where a security order is revoked the said security shall cease to have effect.

Procedure for making orders

5. Except where a court has, in accordance with this Act, given a certificate recommending that an order should be made, no restriction order or security order shall be made under this Act except where a judge or magistrate has, in accordance with section 7, made a report on the case and the Minister is satisfied, having regard to the findings of fact and any conclusions of law as stated in the report, that such order may lawfully be made.

Service of notice and arrest

6.—(1) A notice in the prescribed form shall be served upon the person charged specifying, with sufficient particulars to give him reasonable information as to the nature of the facts alleged against him, the grounds upon which it is proposed that an order may be made against him under this Act, and requiring him to show cause, before a judge or magistrate at a place and time to be stated in the notice, why such order should not be made in respect of him.

(2) In any case where it is intended to take proceedings against any person under this Act on the ground that he is an undesirable person, and it is represented on oath or affidavit to a judge or to a Resident Magistrate or a magistrate of the first or second grade that that person is an undesirable person, such judge or magistrate may issue a warrant for his arrest, and if the notice mentioned in subsection (1) shall not already have been served upon him, it shall be so served not later than twenty-four hours after his apprehension.

(3) In any case where it is intended to take proceedings against any person under this Act on the ground that he is an undesirable person, and it is represented on oath or affidavit to a judge or to a magistrate of the first or second grade that, in fact or according to a reasonable suspicion, anything which is necessary to the conduct of the proceedings or tending to throw light on the question of whether or not the person is an undesirable person, is in any building, ship, aircraft, vehicle, box, receptacle or place, such judge or magistrate may by warrant (called a search warrant) authorize a police officer, or other person therein named, to search the building, ship, aircraft, vehicle, box, receptacle or place (which shall be named or described in the warrant) for any such thing, and if any thing searched for be

found, to seize it and carry it before the judge or magistrate who is to take or consider evidence in accordance with section 7.

Cap 8:01

(4) Sections 114 and 115 of the Criminal Procedure and Evidence Code shall apply to search warrants issued under subsection (3) and any magistrate issuing a search warrant under that subsection shall be deemed to have jurisdiction throughout Malaŵi. When any thing is seized and brought before a judge or magistrate, it may be detained until the conclusion of the investigation, reasonable care being taken for its preservation and, after the order of the Minister is known, it shall be returned to the person in whose possession it was found, or otherwise dealt with as the Minister may direct or, in default of such direction, as the judge or magistrate shall direct.

(5) Notwithstanding section 71 of the Criminal Procedure and Evidence Code, the Attorney General may request the judge or magistrate to direct that any proceedings under this Act in respect of a person charged with being an undesirable person, or any part of such proceedings shall be held *in camera;* and, if the Attorney General shall certify to the judge or magistrate that it is in his opinion desirable in the public interest that the proceedings, or such part thereof as the Attorney General may specify, shall be held *in camera,* the public generally or any particular person or class of persons specified by the Attorney General shall not have access to, or be or remain in, any room or building in which such proceedings are held during such proceedings or part thereof.

Powers of judges or magistrates

7.—(1) At the time appointed in the notice served under section 6, or as soon as practicable thereafter, or at any adjournment of the hearing, the judge or magistrate shall take or consider such evidence upon oath or, subject to subsection (3), upon affidavit as is tendered in support of the allegations contained in the notice, and where the evidence is on affidavit, the person charged shall be informed of the general nature of such evidence, and where the evidence of witnesses is taken orally at the hearing, the witnesses may be cross-examined by the person charged or his legal practitioner, and the person charged may on his own behalf call such witnesses and tender such other evidence as may be relevant upon the question at issue.

(2) The judge or magistrate, after considering the evidence adduced before him and making any further investigations which he may consider to be desirable, shall make a report to the Minister setting out his findings of fact and his conclusions on any questions of law involved, and, if he thinks fit, making a recommendation as to the issue in the case of any order or orders under this Act.

(3) Notwithstanding subsection (1), a judge or magistrate may, before permitting evidence to be given on affidavit, require

production, by the party tendering such evidence, of a certificate signed by the Director of Public Prosecutions that it is, in his opinion, necessary that the evidence be given on affidavit, and upon production of any such certificate the evidence on affidavit shall be received.

(4) A judge or magistrate in taking or considering evidence under this section shall not be bound by any rules of evidence which may pertain to civil or criminal proceedings, but any witness who objects to answering any question on the ground that it will tend to incriminate him shall not be required to answer the question nor be liable to any penalty for refusing so to answer.

Detention in custody pending decision

8. Where a judge, magistrate or a court recommends the making of a restriction order or security order on the grounds that the person charged is an undesirable person or a convicted person, the person charged may, if the judge, magistrate or court, as the case may be, shall so order, be detained in such manner as the judge, magistrate or court may direct pending the decision of the Minister for a period not exceeding twenty-eight days, and shall be deemed to be in lawful custody while so detained.

Contents of orders

9.—(1) Every security order shall be in the prescribed form.

(2) Every restriction order shall be in the prescribed form and shall state the area or areas which the person to whom it relates is prohibited from entering or leaving.

(3) A restriction order may be expressed to be in force for a time limited therein or for an unlimited time, and, when the person charged is not taken into custody pending the execution thereof, shall prescribe a time within which the person charged may of his own volition comply therewith.

Execution of orders

10.—(1) As soon as practicable after a restriction order or security order is made, a copy thereof shall be served upon the person charged.

(2) A person with respect to whom a security order has been made may be detained in such manner as may be directed by the Minister until such order shall have been complied with:

Provided that, without prejudice to subsection (3), where the security order is not complied with, no person shall be detained under this subsection for a period exceeding twenty-eight days.

(3) Subject to subsection (4), a person with respect to whom a restriction order is in force may be detained in such manner as may be directed by the Minister so far as necessary for the purpose of removing him from any place which he is prohibited from entering or to any place which he is prohibited from leav-

ing and shall be deemed to be in lawful custody while so detained.

(4) No person shall be detained under subsection (3) for a period exceeding ninety days and, if at the expiration of such period he has not been removed as aforesaid, the restriction order shall cease to have effect.

Expenses

11.—(1) Where a restriction order is made, the Minister may, if he thinks fit, apply any money of the person charged, and may sell any of his property and apply the proceeds of such sale, in payment of the whole or any part of the expenses of or incidental to the removal of that person to any place in pursuance of that order and, if necessary, the maintenance of that person while the order is in force.

(2) Any sale or disposal of any property by a person in respect of whom a restriction order has been made shall be void and ineffectual to pass any title to such property, unless the expenses mentioned in subsection (1) have been paid or the Minister has consented in writing to such sale or disposal:

Provided that a sale of any property by a person in respect of whom a restriction order has been made shall pass a good title in such property to the purchaser if he proves that he is a purchaser for value and that, at the time of such purchase, he had no knowledge that such a restriction order had been made.

(3) Except so far as they are defrayed under subsection (1), any such expenses shall be payable out of public funds.

Persons undergoing sentence

12. If a person in respect of whom a security order or restriction order is made under this Act has been sentenced to any term of imprisonment, such sentence shall be served before the order is carried into effect unless the Minister otherwise directs.

Revocation and variation of orders

13.—(1) The Minister by order may at any time vary or revoke any restriction order or security order.

(2) Without prejudice to the generality of subsection (1) the Minister may vary any restriction order so as to permit the person therein mentioned to enter or leave any area which he is prohibited from entering or leaving, or to permit him to leave Malaŵi and may attach to the permission a condition suspending the operation of the order during the absence of such person from any such area or from Malaŵi or conditions as to security for good behaviour or otherwise, and may also vary, cancel or add a condition requiring such person to report himself.

(3) Any order made under subsection (2) may be expressed to have effect for the duration of the order thereby varied or for any lesser period.

(4) As soon as practicable after an order has been made under this section a copy thereof shall be served upon or sent to the person in respect of whom it is made.

Penalties for breach of order

14.—(1) If a person in respect of whom a restriction order is in force leaves or attempts to leave or enters or attempts to enter any area in contravention of the order, or having, in pursuance of permission given as hereinbefore provided, left or entered any place, wilfully fails to observe any condition attached to such permission, he shall be liable to a fine of £250 and to imprisonment for twelve months, and to be again removed under the original order.

(2) Nothing in this section shall prevent the making of a restriction order in accordance with this Act in consequence of a conviction for an offence against this Act.

Penalty for harbouring

15. Any person who, without lawful excuse, knowingly harbours or conceals any person who—

(*a*) is within any area of Malaŵi in contravention of the terms of a restriction order;or

(*b*) having entered any area of Malaŵi in pursuance of permission given as hereinbefore provided has wilfully failed to observe any condition attached to such permission,

shall be liable to a fine of £250.

Institution of proceedings

16. No proceedings shall be instituted under this Act except by the Director of Public Prosecutions or with his previous sanction in writing.

Evidence

17. In any proceedings under this Act—

(*a*) a document purporting to be an order made under this Act shall, until the contrary is proved, be presumed to be such an order;

(*b*) any order made under this Act shall be presumed, until the contrary is proved, to have been validly made and to have been made on the date upon which it purports to have been made; and

(*c*) any certificate made under section 7 (3) and purporting to be signed by the Director of Public Prosecutions shall, until the contrary is proved, be deemed to have been so signed.

Minister may make orders in relation to persons subject to restriction orders

18.—(1) The Minister may by order impose, in relation to persons in respect of whom restriction orders are in force, and, either generally or in any specific case, such restrictions as to residence within the area specified in the order, reporting to the police, registration, occupation, employment, visitors, censorship and receipt or despatch of communications, use or possession of any vehicle, boat, aircraft, machine, radio or other apparatus, camera, arms and explosives, or other article, or such other like restrictions as he may deem necessary in the public interest, and any person in relation to whom any such order is made shall comply with the terms of the order.

(2) If any person in respect of whom a restriction order is in force shall fail to comply with the terms of any order made under subsection (1), he shall be liable to a fine of £25 and to imprisonment for six months.

Arrest without warrant

19. Any police officer may arrest without a warrant any person reasonably suspected by him of having committed or of attempting to commit an offence under this Act.

Rules

20.—(1) The Minister may make Rules for the better carrying out of this Act.

(2) In particular and without prejudice to the generality of the foregoing subsection, the Minister may make Rules—

(*a*) prescribing the form of certificate to be used by a court certifying a conviction and recommending the making of a restriction order or security order under section 3 or 4;

(*b*) prescribing the form of notice to be served under section 6;

(*c*) regulating the procedure at inquiries by a judge or magistrate under section 7; and

(*d*) prescribing forms of restriction orders and security orders.

Appointment of magistrates

21. The Minister may, by notice published in the *Gazette* or by writing under his hand, appoint any Resident Magistrate to be a magistrate for the purposes of this Act.

SUBSIDIARY LEGISLATION

RESTRICTION AND SECURITY ORDERS RULES

G.N. 148/1954 22/1963 166/1967

under s. 20

Citation

1. These Rules may be cited as the Restriction and Security Orders Rules.

Certificate of conviction and recommendation of order

2. The form of certificate to be used by a court certifying a conviction and recommending the making of a restriction order or security order under section 3 or 4 of the Act shall be as in Form I in the Schedule with such variations as the circumstances may require.

Notice under section 6

3.—(1) A notice under section 6 of the Act shall be in the form set out in Form II of the Schedule with such variations as circumstances may require.

(2) An application to a judge or magistrate for a warrant to issue under section 6 (2) of the Act may be made orally and *ex parte* to the judge or magistrate in chambers and shall be supported by evidence on oath or affidavit.

Restriction or security order

4. A restriction order or security order, made by the Minister under section 3 or 4 of the Act, may be made in such one of Forms III, IV, V or VI, in the said Schedule, as shall be appropriate to the case, with such variations as the circumstances may require.

Procedure in proceedings under section 7 Cap 8:01

5.—(1) Subject to the Act and these Rules, section 127, 128, 129, 130, 132, 194, 195, 196, 200, 203, 204, 205, 220, 221, and 222 of the Criminal Procedure and Evidence Code and the specified rules shall, *mutatis mutandis*, and to the extent that they can conveniently be applied, regulate the procedure in the proceedings under section 7 of the Act, whether such proceedings be before a judge or a magistrate; and any judge or magistrate in any proceedings under the Act shall have all such powers as to compelling attendance of witnesses and production of documents and the taking of evidence as he would have under the Criminal Procedure and Evidence Code:

Provided that references in the said sections to acquittal, conviction or sentence shall be deemed to be references to the report required to be made to the Minister under section 7 (2) of the Act.

(2) The "specified rules" shall mean any rules made under section 245 of the Criminal Procedure and Evidence Code re-

lating to the method of proving a previous conviction or acquittal, fingerprints, palmprints, footprints, records, statistics, photographs or other documents.

SCHEDULE

r. 2

Form I

(*Section* 3 *or* 4)

In the Court of the .....
at .....
Criminal Case No. ..... of 19 ....

The Republic versus .....

Certificate and recommendation for a Restriction Order or Security Order* under section 3 (or section 4†) of the Restriction and Security Orders Act.

I, ..., Judge/magistrate of ..... Court at ..... hereby certify that on the ..... day of ....., 19 ....., ... was convicted by this Court of the offence of ..... under section ..... of the Penal Code (or other Act), being an offence punishable with imprisonment otherwise than only in default of payment of a fine and was sentenced to‡ .....

And I recommend that a Restriction Order or Security Order* should be made in the case of the said person in addition to / in lieu of* the said sentence.

Dated at ..... this ..... day of ..... 19 .....

.....
Judge / magistrate

---

* Strike out words not required or applicable.
† Strike out section not required.
‡ Omit these words if no sentence was imposed.

---

r. 3

Form II
THE RESTRICTION AND SECURITY ORDERS ACT

(*Section* 6)

In the High Court of Malaŵi at ..... (or in the Subordinate Court of the Resident Magistrate/..... Grade* at .....).

Miscellaneous Criminal Application No ..... of 19 .....

IN THE MATTER OF THE RESTRICTION AND SECURITY ORDERS ACT

AND

IN THE MATTER OF ..... †

Notice to Person to be Charged Before a Judge or Magistrate.

TAKE NOTICE that the ..... Court at ..... will be moved on the ..... day of ..... 19...., at ..... o'clock in the ..... noon, or as soon thereafter as Counsel can be heard, by (or on behalf of) the Minister (or by Counsel for ..... of .....) that a report to the Minister under section 7 (2) of the above Act be made with a recommendation that a Restriction Order or a Security Order or both such Orders should be made against you pursuant to the said Act on the grounds that you are an undesirable person within the meaning of the said Act. Particulars as to the nature of the facts alleged against you are appended (or contained in the Affidavit of ..... sworn and filed herein on the ..... day of ..... 19....., a copy whereof is annexed to this notice).

You are therefore required to attend before the said Court at the time and place aforesaid or as soon thereafter as the matter may be heard and at any adjourned hearing, and then and there to show cause why a recommendation for such an Order should not be made.

And if you fail so to attend, the matter will be heard and dealt with in your absence.

.....

Magistrate / Registrar

This notice of motion was taken out by the Director of Public Prosecutions (or by .....).

To .....

(*Person charged*)

This notice was served by me personally on the above-named ..... on the ..... day of ..... 19....., at ..... by tendering to him a copy thereof.

---

* Strike out if not required.

† Insert name of person to be charged.

FORM III

THE RESTRICTION AND SECURITY ORDERS ACT

RESTRICTION ORDER IN THE CASE OF A CONVICTED PERSON

(*Section* 3)

WHEREAS—

(1) ..... Judge/magistrate* of the ..... Court at ..... did on the ..... day of ..... 19 ...., certify that ..... was, on the ..... day of ..... 19 ...., convicted by the said Court of the offence(s)* of ..... under section ..... of the Penal Code (or other Act),* being an offence/offences* punishable with imprisonment otherwise than only in default of payment of a fine and was sentenced to† .....

(2) The said Court recommended that a Restriction Order should be made in the case of the said person in addition to the said sentence /in lieu of sentence*:

NOW THEREFORE, in exercise of the powers conferred by section 3 of the Restriction and Security Orders Act, I hereby order that the said ..... be and he is hereby prohibited from entering/leaving* the area(s)* within Malaŵi mentioned in the Schedule hereto without the consent of the Commissioner of Police (or other officer to be specified)*:

And this Order shall remain in force for an unlimited time (or for a period of ..... from the ..... day of ..... 19 .....)* pursuant to the said Act.

And this Order shall remain in force for an unlimited time (or for a period of ..... from the ..... day of ..... 19 ....)* pursuant to the said Act.

And the above-named‡ ..... may of his own volition comply with this Order within ..... days from the date hereof.

Given under my hand at Zomba this ..... day of ..... 19 .....

.....

Minister

THE SCHEDULE

(*Particulars of the area or areas*)

*Strike out, or adapt, as required.

†Strike out if no sentence imposed.

‡This paragraph is only applicable when the person restricted is not taken into custody.

FORM IV r. 4

THE RESTRICTION AND SECURITY ORDERS ACT

RESTRICTION ORDER IN CASE OF UNDESIRABLE PERSON

(*Section* 3)

WHEREAS—

(1) ..... Judge (or magistrate appointed under section 21 of the Restriction and Security Orders Act)* has in accordance with section 7 made a report in the case of .....:

(2) The matter has been considered by me having regard to the findings of fact and conclusions of law stated in the said report and I am satisfied that a Restriction Order may lawfully be made and that it is expedient to make such an Order:

NOW THEREFORE, in exercise of the powers conferred by section 3 of the said Act I hereby order that the said ..... be and he is hereby prohibited from entering/leaving* the area(s)* within Malaŵi mentioned in the Schedule hereto without the consent of the Commissioner of Police (or other officer to be specified)*:

This Order shall remain in force for an unlimited time (or for a period of ..... from the .... day of ..... 19 ....)* pursuant to the said Act.

And the above-named† ..... may of his own volition comply with this Order within ..... days from the date hereof.

Given under my hand at Zomba this ..... day of ..... 19 .....

.....
Minister

THE SCHEDULE
(*Particulars of the area or areas*)

*Strike out, or adapt, as required.
†This paragraph is only applicable when the person restricted is not taken into custody.

FORM V

THE RESTRICTION AND SECURITY ORDERS ACT

SECURITY ORDER IN THE CASE OF A CONVICTED PERSON

(*Section* 4)

WHEREAS—

(1) ..... Judge/magistrate* of the ..... Court at ..... did on the ..... day of ..... 19 .... certify that ..... was, on the ..... day of ..... 19 .... convicted by the said Court of the offence/offences* of ..... under section ..... of the Penal Code (or other Act),* being an offence/offences* punishable with imprisonment otherwise than only in default of payment of a fine and was sentenced to .....†:

(2) The said Court recommended that a Security Order should be made in the case of the said person in addition to the said sentence/ in lieu of sentence*:

NOW THEREFORE, in exercise of the powers conferred by section 4 of the Restriction and Security Orders Act, I hereby order that the said ..... do give security in two (or more)* sureties acceptable to the Registrar of the High Court in the sum of £ ..... for the period of ..... from the date of giving such security to keep the peace and be of good behaviour (and/or* for indemnifying public funds for all costs, charges and expenses incurred in his regard):

And if the said ..... shall make default in complying with the above Order, it is hereby ordered that the said ..... be prohibited from entering/leaving* the area(s)* mentioned in the Schedule hereto for an unlimited time (or for a period of ..... from the date hereof)* and the above-named ....., shall comply with this Order within ..... days from the date hereof.

Given under my hand at Zomba this ..... day of ..... 19 ....

.....
Minister

(*Insert Schedule of areas, if required*)

*Strike out, or adapt, as required.
†Strike out if no sentence imposed

FORM VI r. 4

THE RESTRICTION AND SECURITY ORDERS ACT

SECURITY ORDER IN THE CASE OF AN UNDESIRABLE PERSON

(*Section* 4)

WHEREAS—

(1) ..... Judge (or magistrate appointed under section 22 of the Restriction and Security Orders Act)* has in accordance with section 7 made a report in the case of .....;

(2) The matter has been considered by me having regard to the findings of fact and conclusions of law stated in the said report and I am satisfied that a Security Order may lawfully be made and that it is expedient to make such an Order:

NOW THEREFORE, in exercise of the powers conferred by section 4 of the said Act, I hereby order that the said ..... do give security in two (or more)† sureties acceptable to the Registrar of the High Court in the sum of £ ....., for the period of ..... from the date of giving such security to keep the peace and be of good behaviour (and/or† for indemnifying public funds for all costs, charges and expenses incurred in his regard).

And if the said ..... shall make default in complying with the above Order, it is hereby ordered that the said .... be prohibited from entering/leaving* the area(s)* mentioned in the Schedule hereto for an unlimited time (or for a period of ..... from the date hereof)* and the above-named ..... shall comply with this Order within ..... days from the date hereof.

Given under my hand at Zomba this ..... day of ..... 19 ....

.....
Minister

(*Insert Schedule of areas, if required*)

*Strike out, or adapt, as required.
†State number of sureties.

PROTECTED PLACES AND AREAS

CHAPTER 14:04

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CHAPTER 14:04

PROTECTED PLACES AND AREAS

ARRANGEMENT OF SECTIONS

SECTION

1. Short title
2. Interpretation
3. Authorization of guards and watchmen
4. Protected places
5. Protected areas
6. Publication of orders
7. Measures for protection of protected place or area
8. Safeguarding of information
9. Regulations
10. Powers of arrest
11. Application to Government

An Act to Make Provision for the Control of the Entry of Persons into Certain Places and for the Control of the Movements and Conduct of Persons within Certain Areas and to Provide for Matters Connected Therewith

6 of 1960
G.N. 22/1963
16/1964(M)
137/1966

[15TH JUNE, 1960]

Short title

1. This Act may be cited as the Protected Places and Areas Act.

Interpretation

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

"authorized officer" means—

(*a*) any police officer of or above the rank of Inspector Grade II;

(*b*) any administrative officer;

(*c*) any person performing the duties of a guard or watchman in a protected place or a protected area authorized in that behalf under section 3;

(*d*) any other person or class of persons declared by the Minister, in his discretion, by notice published in the *Gazette* to be such either generally or in respect of any specified place or area or classes of place or area;

"premises" includes any land in Malaŵi and any building or structure on such land;

"protected area" means any area declared to be a protected area under section 5 and includes any building or structure on any land within such area;

"protected place" means any premises declared to be a protected place under section 4.

Authorization of guards and watchmen

3. Any administrative officer or any police officer of or above the rank of Assistant Superintendent may authorize in writing any person performing the duties of a guard or a watchman in a protected place or a protected area to exercise the powers of an authorized officer in such place or area.

Protected places

4.—(1) If, in regard to any premises, it appears to the Minister to be necessary or expedient that special precautions should be taken to prevent the entry of unauthorized persons, he may, in his discretion, by order declare those premises to be a protected place for the purposes of this Act; and so long as the order is in force no person shall be in those premises unless he is in possession of a permit issued by such authority or person as may be specified in the order, or has received the permission of an authorized officer on duty at those premises to enter them.

(2) Where under this section any person is granted permission to be in a protected place, that person shall, while acting under such permission, comply with such directions for regulating his conduct as may be given by the authority or person granting the permission, and an authorized officer or any person authorized in that behalf by the occupier of the premises may search any person entering, or seeking to enter, or being in a protected place, and may detain any such person for the purpose of searching him.

(3) If any person is in a protected place in contravention of this section or, while in such place, fails to comply with any directions given under this section, he shall be liable to a fine of £1,000 and to imprisonment for five years, and he may in addition be removed from the place by an authorized officer or by any person authorized in that behalf by the occupier of the premises.

(4) Permits issued under subsection (1) shall be in such form as the authority or other person issuing them may determine.

(5) An authorized officer may exempt any person or any class of persons from complying with this section.

Protected areas

5.—(1) If, in regard to any area it appears to the Minister to be necessary or expedient that special measures should be taken to control the movements and conduct of persons, he may, in his discretion, by order declare such area to be a protected area.

(2) Any person who is in any protected area shall comply with such directions regulating his movements and conduct as may be given by an authorized officer, and an authorized officer may search any person entering, or seeking to enter, or being in a

protected area, and may detain any such person for the purpose of searching him.

(3) If any person while in a protected area fails to comply with any direction given under subsection (2), he shall be liable to a fine of £1,000 and to imprisonment for five years, and he may in addition be removed from the area by an authorized officer.

Publication of orders

6. An order made under this Act shall come into force upon the date of its publication in the *Gazette* and, within seven days of such publication, it shall also be published in a newspaper circulating in Malaŵi:

Provided that failure to publish an order in a newspaper shall not invalidate such order nor shall it be a defence to any charge under section 4 or section 5.

Measures for protection of protected place or area

7.—(1) The Permanent Secretary may, by notice in writing to the occupier of any protected place or protected area, direct such occupier at his own expense to take such measures for the better protection of the place or area as the Permanent Secretary may consider reasonably necessary.

(2) Any occupier aggrieved by directions given by the Permanent Secretary under subsection (1) may, within fourteen days next after receiving such directions, appeal to the Minister. On any such appeal the Minister may revoke or vary the directions given by the Permanent Secretary, and notice in writing of such revocation or variation shall be given by the Permanent Secretary to the occupier concerned.

(3) If an occupier fails or refuses within a reasonable time to comply with directions given under subsection (1), or where such directions have been varied by the Minister, with the directions as so varied, the Permanent Secretary may cause such measures to be taken and may recover the expenses incurred in so doing from the occupier concerned.

Safeguarding of information

8.—(1) The Minister, in his discretion, may, by notice in writing, require an occupier of any protected place or area to take such steps as the Minister, in his discretion, may deem necessary in the public interest for the safeguarding of information relating to such place or area, or for the security of any classified information or document which may be furnished to such occupier in his capacity as such, by any public officer.

(2) Any person who fails to comply with any of the requirements of a notice issued to him under subsection (1) shall be liable to a fine of £50 and to imprisonment for six months.

Regulations

9.—(1) The Minister, in his discretion, may make regulations requiring the erection by persons specified in such regulations or in any order made thereunder of warning notices at or near the site of protected places and protected areas, and such other regulations as may be necessary or expedient for carrying out the objects of this Act.

(2) Any person who contravenes or fails to comply with any regulations made under this section shall be liable to a fine of £25 and to imprisonment for three months.

Powers of arrest

10. A police officer may arrest without warrant any person reasonably suspected of committing an offence contrary to any of the provisions of this Act or any regulations made thereunder.

Application to Government

11. The provisions of this Act, other than sections 7, 8 and 9, shall bind the Government.

SUBSIDIARY LEGISLATION

G.N. 137/1964(N) 124/1965 109/1966 88/1967 65/1968 47/1969 216/1969 256/1969 88/1971

PROTECTED PLACES AND AREAS (MALAŴI BROADCASTING CORPORATION) ORDER

under s. 4

Citation

1. This Order may be cited as the Protected Places and Areas (Malaŵi Broadcasting Corporation) Order.

Protected places

2. The premises described in the Schedule shall be protected places and the Protected Places and Areas Act shall apply in respect of those premises.

Permits

3.—(1) A permit to enter on any premises specified as a protected place by this Order shall be in writing and shall be issued only by the Director-General of the Malaŵi Broadcasting Corporation.

(2)—The said Director-General may grant different kinds of permits in respect of different classes of persons or in respect of the different premises described in the Schedule.

SCHEDULE

1. The whole area enclosed by the wire fence at present surrounding Chichiri House, Blantyre, including the whole interior of Chichiri House itself.

2. The Malaŵi Broadcasting Corporation Transmitter Sites—

(*a*) at Lilongwe, situated two miles south-west from the centre of the Township of Lilongwe on the north side of the Likuni Road being two thousand square feet in area;

(*b*) at Ngumbe on the east side of the Matope Road one and one-sixth miles from the junction of that road with the Chileka Road and being thirty acres more or less in area;

(*c*) at Mangochi, situated 3.5 miles north-west from the Township of Mangochi on the east side of the Monkey Bay Road being 12.578 acres in area;

(*d*) at Karonga, situated two miles north-west from the Karonga District Headquarters, on the west side of the Karonga/Chirumba Road being 22.04 acres in area; G.N. 65/1968

(*e*) at Bangula, situated some three miles south of Chiromo on the east side of the Chiromo-Nsanje Main Road, being 11.24 acres in area and more particularly delineated on Survey Departments sketch plan No. 169/68. G.N. 47/1969

G.N. 257/1969

PROTECTED PLACES AND AREAS (POST OFFICE) ORDER

under s. 4

Citation

1. This Order may be cited as the Protected Places and Areas (Post Office) Order.

Protected places

2. The premises described in the Schedule shall be protected places and the Protected Places and Areas Act shall apply in respect of those premises.

Permits

3.—(1) A permit to enter on any premises specified as a protected place by this Order shall be in writing and shall be issued only by the Postmaster General.

(2) The said Postmaster General may grant different kinds of permits in respect of different classes of persons or in respect of the different premises described in the Schedule.

SCHEDULE

1. The Post Office automatic telephone exchanges and surrounding fenced areas—

(*a*) at Dunduzu Road, Limbe and known as plot H13/2;

(*b*) at Ginnery Corner, Chichiri, Blantyre and known as plot BL69.

2. The Post Office receiving station at Kanjedza including the surrounding fenced area and known as plot BL4.

3. The Post Office transmitter sites—

(*a*) at Hynde Dam, Limbe, including the surrounding fenced area and aerial field and known as plot BL3;

(*b*) at Lilongwe, including the microwave station and surrounding area, and known as plot 3434.

GENERAL AMNESTY

CHAPTER 14:05

Containing Pages 1–5

CHAPTER 14:05

GENERAL AMNESTY

ARRANGEMENT OF SECTIONS

SECTION

PART I

PRELIMINARY

1. Short title
2. Interpretation

PART II

GENERAL AMNESTY

3. General Amnesty
4. Acts to which this Act applies
5. Discontinuance of proceedings, release from custody and remission of imprisonment
6. Validity of convictions

PART III

RETURNEES

7. Establishment of the Returnees Committees
8. Secretariat
9. Functions of the Committee
10. Meetings of the Committee
11. Funds of the Committee
12. Questions as to who is a returnee
13. Duration of the mandate of the Committee
14. Regulations

CHAPTER 14:05

GENERAL AMNESTY

An Act to grant general amnesty to citizens of Malaŵi resident in or outside Malaŵi , in respect of certain activities of a political nature whether or not constituting offences under the Laws of Malaŵi and for matters incidental thereto and connected therewith 16 of 1993 26 of 1993

[15TH JULY, 1993]

PART I

PRELIMINARY

1. This Act may be cited as the General Amnesty Act. Short title

2. In this Act, unless the context otherwise requires— Interpretation 26 of 1993

"act", in relation to any act to which this Act applies; includes a statement or a publication made in any form;

26 of 1993 "Committee" means the Returnees Committee established under section 7;

26 of 1993 "returnee" means a citizen of Malaŵi coming or returning to Malaŵi, to permanently reside in Malaŵi, under amnesty granted under this Act.

PART II

General Amnesty

General amnesty

3.—(1) Any person, being a citizen of Malaŵi resident in or outside Malaŵi, whether in political exile or otherwise, who, at any time before the commencement of this Act, within or outside Malaŵi, severally or jointly with others, committed or did, or was privy to the commission or doing of any act, being an act to which this Act applies as specified in section 4, is hereby granted general amnesty and shall not be liable—

(*a*) to be prosecuted for an offence constituted by such act, or

(*b*) to be detained under a detention order or arrested pending a detention order under the Preservation of Public Security Act.

Cap. 14:02

(2) A person who at the commencement of this Act is being held in police custody or in a prison in Malaŵi otherwise than for an offence under any written law or other lawful ground shall be deemed to be so held for an act to which this Act applies and is hereby granted amnesty and shall be released from such custody without further procedure.

Acts to which this Act applies

4. This Act shall apply in respect of any act, whether or not constituting an offence under any written law, committed or done—

(*a*) for purposes of—

(i) promoting or furthering the objective or the interests of any political party, pressure group or movement however called or described; or

(ii) promoting or furthering any objective whatsoever for the purpose of advocating change to, or reform of, the form of government, or the mode of governance, of the Republic;

(*b*) in pursuit of religious or political convictions.

Discontinuance of proceedings, release from custody and remission of imprisonment

5.—(1) Any proceedings pending before any court against any person in respect of any act to which this Act applies shall, without further procedure, be discontinued.

(2) Any person who at the commencement of this Act is under arrest for an offence constituted by an act to which this Act applies, whether or not court proceedings in respect thereof have commenced, shall forthwith be released without further procedure.

(3) Any person who at the commencement of this Act is serving a term of imprisonment in respect of an offence constituted by an act to which this Act applies, is hereby granted a remission of the remainder of his sentence.

Validity of convictions

6. Nothing in this Act shall affect the validity of the conviction of any person by a court before the commencement of this Act of an offence constituted by an act to which this Act applies, but so however, that such conviction shall—

(*a*) henceforth cease to have effect, or to count as a previous conviction for purposes of any prosecution of such person for any offence;

(*b*) not operate as a bar or an incapacity for such person to hold any office or to enter into any contractual, fiduciary or other relationship with another person nor operate against him as any incapacity whatsoever.

PART III

Returnees

Establishment of the Returnee Committee

7.—(1) There is hereby established a committee to be known as the Returnees Committee (in this Act referred to as the "Committee") which shall consist of the following members—

(*a*) the Commissioner for Disaster Preparedness and Relief, or his designated representative who shall be the Chairman of the Committee;

(*b*) The Secretary for Women and Children Affairs and Community Services, or his designated representative who shall be the Vice-Chairman of the Committee;

(*c*) the Secretary for Education, or his designated representative;

(*d*) the Secretary for External Affairs, or his designated representative;

(*e*) the Attorney General, or his designated representative;

(*f*) the Secretary for Treasury, or his designated representative;

(*g*) the Secretary for Health, or his designated representative;

(*h*) the Secretary for Home Affairs, or his designated representative;

(*i*) the Secretary for Labour, or his designated representative;

(*j*) each of the Regional Administrators in the Office of the President and Cabinet, or their designated representatives;

(*k*) the Controller of Immigration Services, or his designated representative;

(*l*) the Controller of Customs and Excise, or his designated representative;

(*m*) the Executive Secretary of the Malaŵi Red Cross Society, or his designated representative;

(*n*) the Executive Secretary of the Council for Non-Governmental Organizations of Malaŵi, or his designated representative;

(*o*) three persons nominated by the National Consultative Council, (a body established by the National Consultative Council Act, 1993), and appointed by the Minister; and

(*p*) such number of Chiefs as the Minister may appoint.

(2) The Representative of the United Nations High Commissioner for Refugees, or his designated representative or, in his absence, a representative of the Resident Representative of the United Nations Development Programme in Malaŵi shall be invited by the Committee to attend every meeting of the Committee as an observer and shall be entitled to participate in the deliberations of the meeting, but shall not have the right to vote.

Secretariat

8. The Commissioner for Disaster Preparedness and Relief shall designate an officer or officers in his office to serve as Secretariat to the Committee.

Functions of the Committee

9. The Committee shall—

(*a*) establish and examine arrangements for the return, reception, resettlement and, as necessary, rehabilitation of returnees; and

(*b*) seek financial and material assistance from internal and external sources, including any government, non-governmental organization, international agencies and individual persons as the Committee considers is required in providing assistance to the returnees.

Meetings of the Committee

10.—(1) The Committee shall meet at such times and places as the Chairman shall determine.

(2) The quorum at meetings of the Committee shall be formed by a single majority of the members.

(3) The Chairman or, in his absence, the Vice-Chairman of the Committee shall preside over meetings of the Committee, but in the absence of both the Chairman or the Vice-Chairman the members present and forming a quorum shall elect one of their number to preside over the meeting.

(4) Save as otherwise provided in this section the Committee shall have power to determine its own procedure.

Funds of the Committee

11.—(1) The funds of the Committee shall consist of—

(*a*) such sums as may be payable to the Committee from moneys appropriated by Parliament;

(*b*) such sums as may be received by the Committee by way of donations or gifts.

(2) The funds of the Committee shall be held in such bank account as the Minister of Finance shall approve and such bank account shall be kept and maintained in accordance with the standing instructions of the Minister of Finance.

12. Any question as to whether or not a person is a returnee within the meaning of this Act shall be determined by the Committee. Questions as to who is a returnee

13. The Committee shall cease to function twelve months after the commencement of this part: Duration of the mandate of the Committee

Provided that the Minister may, by notice published in the *Gazette,* from time to time extend the period by not more than twelve months at a time.

PART IV

General

14. The Minister may make regulations for giving effect to the provisions of this Act. Regulations

SUPPLIES CONTROL

CHAPTER 14:07

Containing Pages 1–3

L.R.O. 1/1968

CHAPTER 14:07

SUPPLIES CONTROL

ARRANGEMENT OF SECTIONS

SECTION

1. Short title
2. Interpretation
3. Obtaining of supplies by certain organizations etc.
4. Rendering supplies to certain organizations etc.
5. Powers of inspection
6. Liability to forfeiture and powers of seizure
7. Offences and penalties

An Act to provide for the control of supplies to certain associations and organizations, and for other matters connected therewith 19 of 1966 47 of 1966

[23rd April, 1966]

1. This Act may be cited as the Supplies Control Act. Short title

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

"officer" means any police officer or any person authorized by the Minister to perform duties under this Act;

"supplies" includes any form of cash, goods, arms, travel voucher, ticket or other property whatsoever, whether by way of gift, loan or otherwise.

3.—(1) Subject to subsection (2), no association, organization or body of persons, whether corporate or unincorporate, and no person acting on behalf of such association, organization or body of persons, shall obtain, receive or accept supplies from any source outside Malaŵi, without the prior written consent of the Minister. Obtaining of supplies by certain organizations etc.

(2) Subsection (1) shall not apply—

(*a*) to any association, organization or body of persons *bona fide* carrying on any lawful trade or business in Malaŵi, provided that the supplies concerned are obtained solely for the purpose of such trade or business;

(*b*) to persons, associations or organizations obtaining, receiving or accepting supplies solely for legitimate social or domestic purposes;

(*c*) to such other associations, organizations or bodies of persons, or classes thereof, as may be specified by the Minister by notice published in the *Gazette*.

Rendering supplies to certain organizations etc.

4.—(1) Subject to subsection (2), no person shall render supplies to, or for the purposes of, any association, organization or body to which section 3 (1) applies, without the prior written consent of the Minister.

(2) The Minister may exempt from subsection (1) such persons and such supplies as he may specify by notice published in the *Gazette*.

Powers of inspection

5. Any officer who has reasonable grounds for believing that any offence has been or is being committed under this Act may require from any person the production for inspection of any book, document, record or paper which such officer considers may relate to or contain information regarding such offence.

Liability to forfeiture and powers of seizure

6. Any supplies obtained, received or accepted in contravention of section 3 or any supplies rendered in contravention of section 4 shall be liable to forfeiture and may be seized by any officer.

Offences and penalties

7.—(1) Any person who contravenes any of the provisions of sections 3 or 4 shall be liable to a fine of £1,000 and to imprisonment for five years.

(2) Any person who in any way obstructs the exercise of the powers of inspection under section 5 or the powers of seizure under section 6 shall be liable to a fine of £500 and to imprisonment for three years.

[Subsidiary]

SUBSIDIARY LEGISLATION

EXEMPTION NOTICE

G.N. 15/1967
16/1967

under s. 3 (2)

The President has exempted the following bodies or organizations from section 3 (1) of the Act: —

The University of Malaŵi.

All bona fide religious organizations other than those otherwise from time to time specified by the President:

Provided that this exemption shall apply to supplies obtained or otherwise received for the legitimate purposes of the organization concerned.

FIREARMS

CHAPTER 14:08

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CHAPTER 14:08

FIREARMS

ARRANGEMENT OF SECTIONS

SECTION

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An Act for regulating, licensing and controlling the manufacture, importation, transportation, dealing in and possession of firearms and ammunition and for matters connected therewith and incidental thereto

43 of 1967
25 of 1968
35 of 1971
13 of 1974

[29TH DECEMBER, 1967]

Short title

1. This Act may be cited as the Firearms Act.

Application of Act

2. Nothing in this Act shall apply to—

(*a*) a person serving in or with the armed forces of Malaŵi or the police or any other person in the service of the Government acting in accordance with his duties as such;

(*b*) pyrotechnics used or intended for use solely in firework displays;

(*c*) any slaughtering instrument purchased by or in the possession of a person authorized by a local authority to conduct an abattoir or by a veterinary officer of the Government.

Interpretation

3. In this Act, unless the context otherwise requires—

"acquire" includes hire, accept as a gift or inheritance, borrow or otherwise obtain possession of;

"ammunition" includes—

(*a*) gunpowder, cartridges, percussion caps and any other material used or intended or adapted for use with a firearm as a means of projecting any missile or a noxious liquid, gas or other thing;

(*b*) bullets or shots composed of any metal or substance used, intended or adapted for use as missiles;

"annual licence" means an annual licence issued under section 11;

"authorized officer" means a District Commissioner or a police officer of or above the rank of inspector;

"automatic weapon" means a firearm, weapon or contrivance which is so designed or adapted that if pressure is applied to the trigger missiles continue to be discharged until the pressure is released or until the magazine containing missiles is empty;

"firearm" includes any lethal barrelled weapon of any description from which any shot, bullet or other missile can be discharged or which can be adapted for the discharge of any such shot, bullet or missile and any weapon or contrivance of whatever description designed or adapted for the discharge of any noxious liquid, gas or other thing, any component part of any such weapon or contrivance and any accessory to any such weapon or contrivance designed or adapted to diminish the noise or flash caused by the discharge thereof and a bomb, grenade and other like missile whether capable of use with such a weapon or not;

"firearm permit" means a written permit to acquire or transfer a firearm or ammunition granted under section 10;

"licensed dealer" means the holder of a valid licence granted under section 6;

"prohibited weapon" means an automatic weapon, bomb, grenade or any other type of firearm which the Minister may, by order made under section 16, prescribe;

"proper officer" means any class of public officer which the Minister may prescribe;

"Registrar of Firearms" means the police officer nominated by the Commissioner of Police to carry out the functions of Registrar of Firearms;

"slaughtering instrument" means a firearm which is specially designed or adapted for the instantaneous stunning of animals with a view to slaughtering them and which in every case is fitted with a captive bolt which remains attached to the instrument upon discharge;

"transfer" includes let on hire, give, lend and part with possession of.

Importation and exportation of firearms and ammunition

4.—(1) No person shall import or export any firearm or ammunition save under and in accordance with the terms of an import or export permit as the case may be, issued by the Registrar of Firearms:

Provided that this subsection shall not apply—

(*a*) where a person entering Malaŵi in transit for a place outside Malaŵi does not leave the airport;

(*b*) where any firearm or ammunition, other than a prohibited weapon, is imported for a personal use of the owner thereof and such firearm or ammunition immediately on importation is left in customs control until an import permit is obtained in respect of the importation thereof.

(2) Any person who imports or exports or attempts to import or export any firearm or ammunition in contravention of subsection (1) shall be liable to a fine of K400 and to imprisonment for 12 months.

Dealing in firearms and ammunition
25 of 1968

5.—(1) No person shall, by way of trade or business—

(*a*) manufacture, sell, transfer, repair, test or prove; or

(*b*) expose for sale or transfer, or have in his possession for manufacture, sale, transfer, repair, test or proof,

any firearm or ammunition unless he is the holder of a valid dealer's licence issued under section 6:

Provided that it shall be lawful for an auctioneer to sell by auction and have in his possession for sale by auction a firearm or ammunition if he has obtained from the officer in charge of the police of the District in which he intends to keep and sell such firearm or ammunition written permission to do so and complies with the conditions of such permission.

(2) Any person who contravenes any of the provisions of subsection (1) shall be liable to a fine of K200 and to imprisonment for 6 months.

Dealer's licences

6.—(1) With the approval of the Minister, a dealer's licence may be granted by the Registrar of Firearms.

(2) A dealer's licence shall expire on the 31st December of the year in which it is granted and shall not be transferable.

(3) An application for a dealer's licence shall be made in writing in the prescribed form to the officer in charge of police of the District in which the applicant intends to trade or carry on business in firearms or ammunition. Subject to the approval of the Minister required by subsection (1), such application may be granted or refused in the discretion of the Registrar of Firearms.

(4) Subject to the approval of the Minister, the Registrar of Firearms, acting in his discretion, may at any time revoke or suspend a dealer's licence.

Duty of dealer

7.—(1) In this section the word "transaction" includes acquisition, transfer, manufacture, repair, test and proof.

(2) Every licensed dealer shall provide and keep a register of transactions and shall enter or cause to be entered therein such particulars as may be prescribed.

(3) Every such entry shall be made within twenty-four hours after the transaction to which it relates took place and in case of a sale or transfer, every dealer shall at the time of the transaction require the purchaser or transferee to produce his permit to acquire and shall immediately enter the particulars of such permit in the register.

(4) Every licensed dealer shall deliver to the Registrar of Firearms on the 1st January and 1st July in each year a return in the prescribed form showing the prescribed particulars of all transactions entered into by him during the preceding six months.

(5) Every licensed dealer shall on demand allow any police officer or authorized officer to enter and inspect all stock in hand and shall on request by any such police officer or authorized officer produce for inspection the register required to be kept by him under this section.

(6) Every licensed dealer shall keep his licence prominently displayed on his business premises.

Offences by dealers and penalties

8. Any licensed dealer who—

(*a*) fails to comply with any of the provisions of section 7;

(*b*) knowingly makes any false entry in the register;

(*c*) knowingly makes any false return; or

(*d*) knowingly furnishes any false particular of identification of himself or any other person,

shall be liable to a fine of K200 and to imprisonment for six months.

Written permits authorizing the acquisition and transfer of firearms and ammunition; offences and penalties
35 of 1971

9.—(1) Any person who—

(*a*) acquires from or transfers to any other person any firearm or ammunition without having first obtained a permit in writing under section 10 authorizing such acquisition or transfer, as the case may be;

(*b*) acquires from or transfers to any other person any firearm or ammunition without having first had produced to him a permit in writing under section 10 authorizing the transfer from, or acquisition by, such other person, as the case may be; or

(*c*) fails to comply with any condition to which any permit in writing issued under section 10 is subject,

shall commit an offence against this section and be liable to a fine of K400 and to imprisonment for twelve months.

(2) For the purposes of this section a currently valid dealer's licence shall be deemed to be a permit in writing under section 10 authorizing the acquisition and transfer generally by the holder thereof of firearms and ammunition.

Application for permits to acquire or transfer firearms or ammunition, etc.
35 of 1971
13 of 1974

10.—(1) Any person desiring to obtain a permit in writing authorizing the acquisition from, or the transfer to, any other person of a firearm shall duly complete the prescribed form of application therefor and forward it to the officer in charge of the Police of the District in which the applicant resides.

(2) Every application received under subsection (1) shall be forwarded by the officer receiving it to the District Commissioner of the District in which the applicant resides who shall forward it to the Registrar of Firearms.

(3) With the approval of the Minister, the Registrar of Firearms may grant a permit in writing authorizing the person to whom it is issued to acquire or transfer, as the case may be, the firearm to which it relates.

(4) Any person desiring to obtain a permit in writing authorizing the acquisition from, or the transfer to, any other person of any ammunition shall duly complete the prescribed form of application therefor and forward it to the District Commissioner for the District in which the applicant resides.

(5) Subject to subsection (7), every application received under subsection (4) shall be forwarded by the District Commissioner receiving it to the Registrar of Firearms.

(6) With the approval of the Minister, the Registrar of Firearms may grant a permit in writing authorizing the person to whom it is issued to acquire or transfer the ammunition to which it relates.

(7) Subject to any directions whether special or general, of the Minister, the Registrar of Firearms may, by notice published in

the *Gazette*, in respect of any District in Malaŵi, delegate the powers conferred upon him by subsection (6) to the District Commissioner of such District. Such delegation may be either general, or in relation to such types or quantities of ammunition as may be specified, and shall be subject to such conditions as the Registrar of Firearms may see fit to stipulate, in such notice. Subject to any such condition stipulated as aforesaid, where a District Commissioner is able, by virtue of any delegation made under this subsection, to grant any application received by him for a permit to acquire, or transfer, ammunition, subsection (5) shall not apply to such application.

(8) A permit in writing to acquire a firearm or ammunition may be issued under subsection (3) or subsection (6) if, and only if, the Registrar of Firearms, or his delegate, as the case may be, is satisfied that the applicant therefor—

(*a*) has good reason for acquiring and having in his possession the firearm or ammunition to which the permit relates;

(*b*) can be permitted to have in his possession such firearm or ammunition without danger to the public safety or peace;

(*c*) is not a person prohibited under this Act from possessing firearms or ammunition;

(*d*) is not a person of intemperate habits or unsound mind;

(*e*) is not a person for any reason unfitted to be entrusted with such firearm and ammunition;

(*f*) will at all times keep such firearm or ammunition securely in safe custody in a safe condition and in a safe place; and

(*g*) will at all times take all reasonable precautions to ensure that such firearm or ammunition is not lost or stolen and is not at any time available to any person not lawfully entitled thereto.

(9) The provisions of subsection (8) notwithstanding, the Minister, acting in his discretion, may decide to grant or refuse to grant any such approval, and his decision thereon shall be final and shall not be subject to appeal to, or question by any court of law, and the Minister shall not be required to assign any reason for any such decision.

Annual licence

11.—(1) Every person, other than a licensed dealer or a person exempted from section 12, having in his possession or custody any firearm shall within thirty days of acquiring such firearm apply to a District Commissioner for an annual licence therefor and shall pay the prescribed fee in respect of such licence:

Provided that in the case of a person who held an annual licence in respect of such firearm valid for the previous year, application for such annual licence may be made at any time

prior to the 1st March in any year or such later date as the Minister may by notice published in the *Gazette* appoint.

(2) An annual licence shall be in such form and may contain such conditions as may be prescribed.

(3) This section shall not apply to any person who acquirel any apparatus intended for use solely for the purpose of lawful signalling in relation to public transport.

Carrying and possession of firearms and ammunition

12.—(1) No person may, otherwise than in accordance with the conditions of a firearm permit or an annual licence, carry or have in his possession or under his control any firearm or ammunition:

Provided that the following persons shall be exempt from this section—

(*a*) a person who at an aerodrome with the authority of the owner thereof removes any signalling apparatus or ammunition therefor being part of the equipment of an aircraft from one aircraft to another or from or to an aircraft to or from a place appointed for the storage thereof in safe custody or who keeps such apparatus or ammunition in a place of safe custody;

(*b*) a person who, with the authority of the owner thereof, removes any signalling apparatus or ammunition therefor being part of the equipment of a ship from one ship to another or from or to a ship to or from a place appointed for the

storage thereof in safe custody or who keeps such apparatus or ammunition in a place of safe custody;

(*c*) a person carrying a firearm or ammunition belonging to the holder of an annual licence relating thereto for the use and under the instructions of the holder of that licence for sporting purposes only;

(*d*) a member of a rifle club, miniature rifle club or other association approved by the Commissioner of Police when engaged as such a member in, or in connection with, drill or target practice and using a firearm belonging to such club or association;

(*e*) any person requiring a firearm and ammunition for the purpose of starting races at an athletic or other sporting meeting;

(*f*) a person carrying a firearm or ammunition under and in accordance with a special written authority granted for a limited period by the Commissioner of Police for the sole purpose of the protection of persons or property during a journey specified in such authority;

(*g*) a person carrying, solely in his capacity as a night watchman, and in accordance with written permission given by the Commissioner of Police, a firearm or ammunition included in an annual licence obtained by the owner, occupier or person in charge of the property to be guarded;

(*h*) a person carrying a firearm or ammunition for the purpose of depositing the same for safe custody under this Act;

(*i*) a person carrying a firearm or ammunition in the ordinary course of his trade or business as a common carrier.

(2) A person who contravenes any of the provisions of subsection (1) shall be liable to a fine of £100 and imprisonment for six months.

(3) A person who has obtained from the Registrar of Firearms a permit for the purpose in the prescribed form may, without himself holding an annual licence, have in his possession, in accordance with the terms of the permit, a firearm or ammunition described in the permit and which belongs to another person who holds an annual licence relating thereto. Such permit shall not be granted in respect of a period exceeding one year but may be renewed by the Registrar of Firearms for a further period not exceeding one year and so on from time to time.

Matters to be reported

13.—(1) A person having possession of a firearm or ammunition, whether or not he holds a licence or permit in respect thereof shall, if such firearm or ammunition is lost, stolen or destroyed, report such loss, theft or destruction forthwith to the

officer in charge of the nearest police station, and if he fails to do so shall be liable to a fine of £100 and to imprisonment for six months.

(2) A person who has a licence or permit relating to a firearm or ammunition shall, if he changes his address, notify such change forthwith to the officer in charge of the nearest police station, and if he fails to do so shall be liable to a fine of £5.

Inheritance

14. A person who on the death of the owner of a firearm or ammunition comes into possession or control thereof shall within one month after such death deposit the firearm or ammunition for safe custody with the officer in charge of the Police of the District in which he resides; and may thereafter apply for a permit to transfer or acquire the same.

Finding a firearm or ammunition

15.—(1) A person who finds a firearm or ammunition which appears to have been abandoned or to be without an owner shall report the find to the officer in charge of the nearest police station.

(2) A person who takes possession of any firearm or ammunition which he finds shall take it forthwith to the officer in charge of the nearest police station and deposit it with such officer for safe custody.

(3) A person who contravenes subsection (1) shall be liable to a fine of £20.

Prohibited weapons

16.—(1) The Minister may at any time make an order prohibiting the carrying or possession by any person of any type of weapon which he considers an undesirable weapon in the public interest.

(2) A person who carries or has in his possession a prohibited weapon shall be liable to imprisonment for fourteen years.

Carrying firearm while drunk or disorderly

17. Any person who is drunk, or who behaves in a disorderly manner while carrying a firearm shall be liable to a fine of £50 and to imprisonment for three months.

Firearm or ammunition in container

18. A person carrying or in possession of any bag, sack, box or other container whatsoever in which there is a firearm or ammunition shall be deemed to be carrying or in possession of such firearm or ammunition.

Licence or permit to be produced on demand

19.—(1) A proper officer may demand from any person who is carrying or in possession of a firearm the production of a permit or licence or other authority issued to such person in relation to such firearm.

(2) If any person upon whom a demand is made under subsection (1) neglects or refuses to produce a licence, permit or other authority relating to such firearm the proper officer may

seize and detain the firearm and any ammunition in the possession of such person and may require the person to declare immediately his name and address.

(3) A proper officer may arrest without warrant any person who refuses to declare his name and address under subsection (2) or whom he suspects of giving a false name or address or of intending to abscond.

(4) A person who refuses or neglects to produce a licence, permit or authority relating to a firearm upon a demand made under subsection (2) or who refuses to declare his name and address or who gives a false name and address shall be liable to a fine of £50 and to imprisonment for three months:

Provided that a person who within forty-eight hours produces such licence, permit or authority at the nearest police station to his place of abode or the place at which the demand was made on him under this section shall be liable to a fine of £5 only.

Power to enter premises

20. A proper officer may enter and remain so long as may be necessary on any land or premises for the purpose of making the demand specified in the last preceding section.

Penalty for false statements

21. Any person who knowingly makes any false statement for the purpose of obtaining any permit, licence or other authority under this Act, either for himself or any other person, shall be liable to a fine of £100 and to imprisonment for six months.

Powers of court

22. Where any person is convicted of an offence under this Act the court before whom such person is convicted may—

(*a*) order that such person shall not, at any time during such period not exceeding ten years from the date of his conviction as may be specified in the order, have in his possession any firearm or ammunition or, as the case may be, any firearm or ammunition of a class or description specified in the order;

(*b*) make such order as to forfeiture or disposal of any firearm or ammunition, which was found in his possession or in respect of which the offence of which he was convicted has been committed or which was used in the commission of such offence, as the court may think fit and may direct the cancellation of any permit or licence granted or issued under this Act held by the convicted person.

Power to make rules

23. The Minister may from time to time make rules for all or any of the following purposes—

(*a*) prescribing the form of permits, licences and other authorities and the conditions to be attached thereto and the manner in which application may be made therefor;

(*b*) prescribing the fees to be paid for anything done or any permit, licence or other authority issued or granted under this Act;

(*c*) prescribing the reports and returns to be made and the records to be kept by dealers relating to the purchase, sale, stocks, repair or proving of firearms or ammunition;

(*d*) the marking of firearms with an identification mark;

(*e*) the storage of firearms and ammunition and the safety precautions to be taken in relation thereto;

(*f*) the quantity of firearms and ammunition which may be sold to or held by any one person;

(*g*) the conditions under which a firearms licence issued in another country may be recognized in Malaŵi;

(*h*) the persons or classes of person who may carry or be in possession of firearms without an annual licence and the conditions under which they may do so;

(*i*) the classes of air guns or toys to which sections 6 and 11 shall not apply;

(*j*) the classes of public officer to whom this Act shall not apply and the classes of public officer who shall be proper officers for the purposes of this Act;

(*k*) the conditions under which any annual licence or permit may be cancelled or renewal thereof be refused;

(*l*) generally for carrying this Act into effect.

Saving
Cap 14:02

24. This Act shall be in addition to and not in derogation of any of the provisions of the Preservation of Public Security Act relating to or affecting firearms and ammunition.

SUBSIDIARY LEGISLATION

NOTICE OF DELEGATION OF POWERS

G.N. 58/1972

under s. 10 (7)

With the approval of the Minister, the Registrar of Firearms has delegated all the powers to grant permits authorizing the acquisition or transfer of ammunition conferred upon him by subsection (6) of section 10 of the Act in respect of each District in Malaŵi to the District Commissioner for the time being of each such District respectively upon and subject to the condition that no such District Commissioner shall under the powers so delegated to him grant to any one person authority enabling him to acquire in any one year more than 100 rounds of shotgun ammunition or more than 200 rounds of airgun ammunition.

FIREARMS (PROHIBITED WEAPONS) ORDER

G.N. 210/1969

under s. 16

Citation

1. This Order may be cited as the Firearms (Prohibited Weapons) Order.

Prohibited weapons

2. The types of weapons listed in the Schedule hereto are considered to be undesirable in the public interest and the carrying or possession by any person of such types of weapons is hereby prohibited.

SCHEDULE

Any shotgun with a barrel length of less than 20 inches.

Any shotgun which is capable of firing more than two rounds without reloading.

Any rifle of .303 calibre other than a bolt-action rifle licensed for target shooting under regulation 10 of the Firearms Rules.

G.N. 49/1968

Any rifle of 7.62 mm. calibre other than a bolt-action rifle licensed for target shooting under regulation 10 of the Firearms Rules.

[Subsidiary] *Firearms Rules*

G.N. 49/1968
209/1969
24/1972
145/1981
30/2011

FIREARMS RULES

under s. 23

PART I
Preliminary

Citation

1. These Rules may be cited as the Firearms Rules.

Interpretation

2. In these Rules, unless the context otherwise requires—

"approved" means approved in writing by the Registrar of Firearms;

"magazine" means a building approved for the storage of firearms or ammunition;

"officer in charge of police" bears the meaning ascribed to that term by section 2 of the Police Act; Cap. 13:01

"Pistol Club" means any approved body of persons associated for the purpose of target shooting with pistols and licensed as a dealer under section 6 of the Act;

"Rifle Club" means any approved body of persons associated for the purpose of target shooting with rifles, or with rifles and pistols, and licensed as a dealer under section 6 of the Act;

"tourist" means any person, not being a permanent resident of Malaŵi, who enters Malaŵi for a period not exceeding six calendar months.

Fees

3. The fees set out in the First Schedule shall be payable for the respective matters therein specified:

Provided that the Minister may, in his discretion, exempt any person from any fee payable under these Rules.

Forms

4. The forms set out in the Second Schedule shall be used for those purposes of the Act, or of these Rules, indicated thereon.

PART II
Importation and Exportation of Firearms and Ammunition

Permit to import firearms, when issued

5.—(1) No permit to import any firearm or ammunition shall be granted to any person, other than a tourist or a licensed firearms dealer, unless such person is in possession of a valid firearm permit to acquire such firearm or ammunition issued under section 10 of the Act.

(2) A permit to import a firearm or ammunition may be granted to a tourist if the Registrar of Firearms is satisfied that—

(*a*) such person was duly authorized by law to possess such firearm or ammunition in his country of residence or in the country from which he has imported them; and

(*b*) that the arms or ammunition are for the personal use of such tourist while he is touring in Malaŵi.

(3) A permit issued to a tourist under subrule (2) shall be deemed to be permission by the Registrar of Firearms for such tourist to acquire or have transferred to him the firearm and ammunition therein specified.

PART III

Identification and Storage of Firearms and Ammunition

Identification marks

6.—(1) No licensed dealer shall transfer to any person any firearm unless such firearm bears a mark of identification.

(2) Every licensed dealer shall maintain equipment for the purpose of stamping marks of identification on firearms in accordance with this rule.

(3) If any licensed dealer comes into possession of any firearm which does not bear an identifying mark made under this rule, he shall forthwith stamp such mark on the firearm causing no more injury to the firearm than is unavoidable.

(4) Every licensed dealer shall maintain a register of marks of identification in the form prescribed in which he will enter particulars of the marks of identification stamped by him, together with the make, type and calibre of the firearm stamped, the name and address of the person to whom such firearm or part is transferred and the mark of identification of the firearm to which a part so stamped is affixed.

(5) Every licensed dealer shall, in affixing marks of identification under this rule, comply with any directions the Registrar of Firearms shall give as to the marks to be used and the manner in which they are to be affixed.

(6) Nothing in this rule shall apply to any firearm which has been rendered unserviceable and which is accompanied by the certificate of the Registrar of Firearms that it is of value as an antique.

(7) Any licensed dealer who fails to comply with this rule or with any directions of the Registrar of Firearms under subrule (5) shall be liable to a fine of K50.

Storage of firearms and ammunition

7.—(1) No licensed dealer shall store any firearm or ammunition in any place other than an approved magazine.

(2) No building shall be approved for the purposes of this rule as a magazine unless—

(*a*) it is constructed of stone, concrete, burnt brick or corrugated iron, or any combination of any thereof;

(*b*) it contains a concrete floor rendered with cement and equipped with a number of movable duckboards sufficient for placing on the floor under the ammunition and between each row of the ammunition stored there;

(*c*) it is fitted with an efficient lightning conductor;

(*d*) it has only one means of entry thereto which is fitted with two locks, the master keys of which shall be delivered to, and retained by, the officer in charge of the police of the District in which the building is situated;

(*e*) the licensed dealer's keys to the building are held by a responsible officer during hours of business and are locked in a safe or other secure place at all other times;

(*f*) there is a watchman on duty at the building at all times whilst firearms and ammunition are stored therein;

(*g*) it complies with any other requirements that the Registrar of Firearms may impose to ensure the public safety and the security of the firearms and ammunition contained therein.

(3) This rule shall apply to any person, other than a licensed dealer, who has in his possesion firearms or ammunition in excess of the following quantities—

(*a*) 500 rounds of shotgun ammunition; or

(*b*) 250 rounds of ammunition not being shotgun ammunition or .22 calibre ammunition;

(*c*) 600 rounds of .22 calibre ammunition;

(*d*) 10 firearms of any description.

(4) Any person who fails to comply with any provision of this rule shall be liable to a fine of £100 and to imprisonment for six months.

PART IV

Deposit of Firearms and Ammunition for Safe-Custody and Destruction

Deposit of firearms for safe-custody or destruction

8.—(1) Any person in possession of a firearm may, on payment of such fee as the Minister may prescribe, deposit such firearm and ammunition therefor for safe-custody during the whole of the then current licensing period with such department or authority

concerned of the Government as the Minister may from time to time approve for the purposes of this rule:

Provided that—

(i) a deposit under this rule may be made only in a case where the department or authority of Government concerned is able and willing to accept the deposit of the firearm or ammunition concerned and to afford reasonable facilities for safe-custody thereof;

(ii) nothing in this rule shall be construed as making such department or authority of Government liable for any loss, deterioration, damage or diminution in quality or value suffered by or to such firearm or ammunition so deposited.

(2) Any person in possession of any firearm or ammunition may surrender for the purpose of destruction such firearm or ammunition to any officer in charge of police.

PART V

Use of Firearms and Ammunition by Members of Clubs

Rifle and Pistol Clubs

9.—(1) Every Rifle Club or Pistol Club shall maintain a register in the form prescribed in which shall be recorded the names and addresses of all members and the firearms owned by each of them and used under rule 10 (1).

(2) No Rifle Club or Pistol Club shall conduct any target shooting at any place other than at a rifle range approved in writing by the officer in charge of police in the District in which the range is situated and shall comply with any directions that such officer may give in the interests of public safety.

Licensing of firearms in possession of members of Rifle and Pistol Clubs
G.N. 209/1969

10.—(1) A member of a Rifle Club or a Pistol Club may, on payment of the prescribed fee, possess a firearm to be used solely for target shooting under the directions of the Club.

(2) Such firearm shall be of a .303 calibre bolt-action type, a 7.62 mm. calibre bolt-action type, a .22 calibre miniature rifle or a .22 calibre target pistol and shall be kept in the magazine of the Club, or at such other place as may be approved, at all times when not in use on a rifle range:

Provided that nothing in this rule shall be construed as exempting the owner of such firearm from holding a permit to acquire issued under section 9 of the Act.

Annual licences for tourists

11. Upon application by him in the prescribed form, an annual licence may be issued to a tourist in respect of any firearm or ammunition for which a permit has been issued to him under rule 5 (2). Such annual licence shall cease to be of force and

effect when such firearm or ammunition are exported from Malaŵi or upon the expiration of six months from the date of the issue thereof, whichever date be the sooner. No fee shall be payable for an annual licence issued under this rule.

FIRST SCHEDULE

r. 3
G.N. 145/1981
30/2011

Fees

Category A

	K t
1. Application Form for a permit to acquire a firearm ..	1,000 00
2. Finger Print Form	1,000 00
3. Processing fee for a permit to acquire a firearm and ammunition issued for the first time to a firearm holder (renewable every five years)	5,000 00
4. Temporary permit to acquire a firearm and ammunition	5,000 00
5. Permit to acquire ammunition	1,500 00
6. Import or export permit for a firearm or ammunition to an individual	5,000 00
7. Import or export permit for firearm or ammunition to a dealer	10,000 00
8. Replacement for lost firearm documents	3,000 00
9. Replacement of approval letter	2,000 00
10. Annual import or export of explosives permit	10,000 00
11. Dealers licence in firearm or ammunition	10,000 00
12. Scrap metal dealers licence	5,000 00

Category B

Fee Charges on Firearm Annual Licence under the Control of the Treasury Cashier

1. Shotguns: Any caliber (i.e. 12 bore, 16 bore or 20 bore)	5,000 00
2. Rifles: Any caliber (i.e. 22.243.357, 10.06 or 30.08) . .	7,500 00
3. Handguns: which includes pistols, revolvers and air guns of any caliber (i.e. 7.65 mm, 9 mm, 8 mm or 177 mm) . .	10,000 00

SECOND SCHEDULE

r. 4

FORMS

Form 1
Permit No.

FIREARMS ACT
(Cap. 14:08)
(Section 4 (1))
IMPORT/EXPORT PERMIT

Mr./Mrs./Miss .....
of: .....
is hereby authorized to import/export the following firearms and

ammunition into/from the Republic of Malaŵi—

Firearms				*Ammunition*	
Type:	Calibre:	Marker:	Maker's No.:	Regn. No.:	Calibre: Quantity:
1.					
2.					
3.					
4.					
5.					
6.					
7.					
8.					
9.					
10.					

Subject to the following special conditions—

.....

.....

.....

This permit must be surrendered to the Customs authorities at the point of entry/departure.

Date: ....

Registrar of Firearms; Police Headquarters, Lilongwe

FORM 2

FIREARMS ACT

(CAP. 14:08)

(Front)

(SECTION 6 (3))

APPLICATION FOR A LICENCE TO DEAL IN FIREARMS AND AMMUNITION

NOTE: It is an offence under section 21 of the Act for any person to make any statement which he knows to be false for the purpose of obtaining a licence to deal in firearms and ammunition.

PART A. TO BE COMPLETED BY THE APPLICANT

To: The Officer i/c Police .....

I, (full name) .....
holding the position of .....
in the firm or organization of .....
situatedat(address).....
apply on behalf of the above firm or organization for a licence to deal in firearms and ammunition at their premises situated at:

Name under which operating: .....
Postal Address: .....
Location: .....

Nature of dealing (manufacture, repair, sale, whether to be limited to any type of firearm and/or ammunition) .....

Other business (if any to be carried on at the premises) .....

Description of the arrangement for the storage and security of firearms and ammunition. It is further intended to deal in firearms and ammunition at the following premises of the firm or organization in addition to that described above:

Name under which operating: *Address*:

NOTE: One licence will permit dealing at all premises named, but separate application forms must be submitted for each to the Officer i/c Police of the District in which they are situated.

1.
2.
3.
4.
5.

Period of licence applied for: 1st January to 31st December, ...

Proof of payment:

General Receipt No.: ..... issued by ..... on ..... attached hereto/attached to application for premises number ..... above.

DECLARATION: I declare that the statements made above are true and complete in all respects.

Date: ..... *Signature of Applicant* .....

FORM 2
(Back)

PART B—To be completed by the Officer i/c Police of the District in which the premises described overleaf are situated.

File Ref: ..... Police Station: .....

I have examined the premises described and report as follows on their suitability and security arrangements: .....

I make the following recommendations regarding the suitability of the applicant to deal in firearms and ammunition:

Date: ..... *Signature and rank*: .....

PART C—FOR USE BY THE CENTRAL FIREARMS REGISTRY

Application approved/not approved.

Date: ....

Registrar of Firearms

Permit No.: ..... Date of Issue: .....

FIREARMS ACT — FORM 3

(CAP. 14:08) — Permit No:

(SECTION 6 (1))

LICENCE TO DEAL IN FIREARMS AND AMMUNITION

This is to certify that: .....
carrying on business at: .....
under the name of: .....
is licensed to deal in firearms and ammunition at each of the following places of business—

Subject to the following special conditions — (to include maximum quantities permitted to be held)

This licence shall expire on the 31st December, 19 .....

Date: ..... *Signature:* .....
Registrar of Firearms

FIREARMS ACT FORM 4
(CAP. 14:08)
(SECTION 7 (2))
DEALER'S REGISTER OF TRANSACTIONS
FIREARMS

NOTE: A separate folio must be used for each type of firearm, i.e. pistols, revolvers, shotguns, rifles, combinations, others.
Firearm Type: .....

Entry No. and date:	Full name and address of person or firm from whom acquired:	Import Permit or Permit to transfer:	Malaŵi Registration Number:	Make:	Calibre:	Maker's Number:	Full name and address of person or firm to whom transferred:	Permit to acquire or other authority details:

FIREARMS ACT FORM 5
(CAP. 14:08)
(SECTION 7 (2))
DEALER'S REGISTER OF TRANSACTIONS
AMMUNITION

NOTE: A separate folio must be used for each calibre of ammunition.
Calibre of Ammunition: .....

Entry No. and date:	Full name and address of person or firm from whom acquired:	Import Permit or Permit to transfer:	Quantity acquired:	Full name and address of person or firm to whom transferred:	Permit to acquire or other authority details:	Quantity transferred:	Balance in stock:

FIREARMS ACT FORM 6
(CAP. 14:08)
(SECTION 7 (2))
DEALER'S REGISTER OF TRANSACTIONS
COMPONENT PARTS

NOTE: A separate folio must be used for each type, i.e. barrels, bolts, chambers, magazines.

Type: .....

Entry No. and date:	Full name and address of person or firm from whom acquired:	Import Permit or Permit to transfer details:	Make:	Calibre:	Identification Marks:	Full name and address of person or firm to whom transferred:	Permit to acquire or other authority:

FIREARMS ACT FORM 7
(CAP. 14:08)
(SECTION 7 (2))
DEALER'S REGISTER OF TRANSACTIONS
REPAIRS, ALTERATIONS, STORAGE, TESTING ETC.

Entry No. and date:	Full name and address of person from whom acquired:	Reason for acquiring:	Malaŵi Registration Number:	Make: Calibre: Number:	Date removed:	Full name and address of person or firm to whom transferred:	Permit to acquire or other authority:

FIREARMS ACT — FORM 8

(CAP. 14:08)

FIREARMS RULES

(RULE 6)

DEALER'S REGISTER OF IDENTIFICATION MARKS

Entry No. and date:	Full name and address of person from whom acquired:	Reason for acquiring:	Malaŵi Registration Number:	Description of firearm or part:	Identification mark stamped:	Date transferred:	Full name and address of person to whom transferred:	Authority for transfer:

FIREARMS ACT — FORM 9

(CAP. 14:08)

(SECTION 7 (4))

BI-ANNUAL RETURN OF TRANSACTIONS BY LICENSED DEALERS

To be submitted in the manner set out in Forms 4 to 7 inclusive.

FORM 10

FIREARMS ACT

(CAP. 14:08) (Front)

(SECTION 10)

APPLICATION FOR A PERMIT TO TRANSFER A FIREARM

(To be completed in duplicate for each firearm)

NOTE: It is an offence under section 21 of the Act for any person to make any statement which he knows to be false for the purpose of obtaining a permit to transfer a firearm.

PART A—TO BE COMPLETED BY THE APPLICANT

To: The Officer i/c Police

1. Full name .....
2. Address .....
   .....
3. Age ..... 4. Nationality .....
5. Occupation .....
6. Period of residence in Malaŵi .....
7. Details of firearm for which permit is applied .....
   Type ..... Calibre .....
   Make ..... Maker's No .....
   Malaŵi Registered No. (if any) .....
8. To whom firearm is to be transferred .....
9. Reasons for transferring the firearm .....
   .....
10. Applicant recommended by .....
    (1) Name .....
        Address .....
        Occupation .....
        Signature .....
    (2) Name .....
        Address .....
        Occupation .....
        Signature .....

Recommenders should be persons of some status in the community, e.g. Senior Government Officials, Chiefs, Village Headmen, Members of Parliament, Ministers of Religion, etc.

DECLARATION:

I hereby apply for a permit to transfer the firearm detailed in paragraph 7 above, and I declare that the statements made above are true and complete in all respects.

Date ..... Signature .....

TO BE COMPLETED BY THE LOCAL OFFICER i/c POLICE (Back)

1. Comments on applicant's suitability to transfer the firearm described:
2. I $\frac{\text{do}}{\text{do not}}$ recommend issue of the permit

Station Serial No ..... *Signature* .....

Date .....

PART C—TO BE COMPLETED BY DISTRICT COMMISSIONER

1. Comments on applicant's suitability to transfer the firearm described:

2. I $\frac{\text{do}}{\text{do not}}$ recommend issue of the permit.

Boma Reg. No ..... *Signature*.....
Date .....

PART D—FOR USE AT POLICE HEADQUARTERS

Comments of Firearms Registry:

FROM: SECRETARY TO THE PRESIDENT AND CABINET

To: REGISTRAR OF FIREARMS, P.O. BOX 41, ZOMBA.

Approval is given for the issue of a permit to transfer the firearm. The application is not approved.

Date ..... *Signature* .....
Permit No ..... *Date* .....

FORM 11

FIREARMS ACT
(CAP. 14:08)
PERMIT TO TRANSFER A FIREARM

This is to certify that: (full name and address) .....
.....
.....
is authorized to transfer the following firearm:
Type ..... Calibre .....
Make ..... Maker's No. .....
Malaŵi Registered No. .....
To: .....
.....
subject to the person to whom the firearm is transferred being in possession of a currently valid dealer's licence or a currently valid permit to acquire such firearm.

Date ....
Registrar of Firearms

FORM 12

FIREARMS ACT
(CAP. 14:08)
(SECTION 10)
APPLICATION FOR A PERMIT TO ACQUIRE A FIREARM
(To be completed in duplicate for each firearm)

NOTE: It is an offence under section 21 of the Act for any person to make any statement which he knows to be false for the purpose of obtaining a permit to acquire a firearm.

PART A—TO BE COMPLETED BY THE APPLICANT

To: The Officer i/c Police

1. Full name .....
2. Address .....
3. Age ..... 4. Nationality .....
5. Occupation .....
6. Period of residence in Malaŵi .....
7. Details of firearm for which permit is applied .....
   Type .... Calibre .....
   Make ..... Maker's No. .....
   Malaŵi Registered No. (if any) .....
8. From whom firearm is to be acquired .....
   .....
9. Reasons for acquiring the firearm .....
   .....
10. Details of firearms already possessed:
    Type ..... Calibre ..... Make .....
    Maker's No. ..... Malaŵi Reg. No. .....
11. Applicant recommended by:
    (1) Name .....
        Address .....
        Occupation .....
        Signature .....
    (2) Name .....
        Address .....
        Occupation .....
        Signature .....

Recommenders should be persons of some status in the community, e.g. Senior Government Officials, Chiefs, Village Headmen, Members of Parliament, Ministers of Religion, etc.

DECLARATION:

I hereby apply for a permit to acquire the firearm detailed in paragraph 7 above, and I declare that the statements made above are true and complete in all respects.

Date ..... Signature .....

TO BE COMPLETED BY THE LOCAL OFFICER i/c POLICE (Back)

1. Comments on applicant's suitability to acquire the firearm described:
2. I $\frac{\text{do}}{\text{do not}}$ recommend issue of the permit.

Station Serial No. .....

Signature ..... *Date* .....

PART C—TO BE COMPLETED BY DISTRICT COMMISSIONER

1. Comments on applicant's suitability to acquire the firearm described:
2. I $\frac{\text{do}}{\text{do not}}$ recommend issue of the permit.

Boma Reg. No. ..... *Signature* .....

Date .....

PART D—FOR USE AT POLICE HEADQUARTERS

Comments of Firearms Registry:

FROM: SECRETARY TO THE PRESIDENT AND CABINET

TO: REGISTRAR OF FIREARMS, P.O. BOX 41, ZOMBA

Approval is given for the issue of a permit to acquire the firearm.

The application is not approved.

Date ..... *Signature* .....

Permit No. ..... Date .....

FORM 13

FIREARMS ACT

(CAP. 14:08)

(SECTION 10)

PERMIT TO ACQUIRE A FIREARM

Permit No. .....

This is to certify that: (full name and address) .....

.....

is authorized to acquire the following firearm:

Type ..... Calibre .....

Make ..... Maker's No. .....

Malaŵi Registered No. .....

From .....

.....

subject to the following special conditions:

.....

.....

.....

Date ....

Registrar of Firearms

FORM 14

FIREARMS ACT

(CAP. 14:08)

(SECTION 10)

APPLICATION FOR A PERMIT TO TRANSFER AMMUNITION

(To be completed in duplicate)

NOTE: It is an offence under section 21 of the Act for any person to make any statement which he knows to be false for the purpose of obtaining a permit to transfer ammunition.

PART A—TO BE COMPLETED BY THE APPLICANT

To: The District Commissioner, ... District

1. Full name .....
2. Address .....
3. Age ..... 4. Nationality .....

5. Occupation .....
6. Period of residence in Malaŵi .....
7. Details of ammunition for which permit is applied .....
   Type ..... Calibre .....
   Quantity .....
8. To whom ammunition is to be transferred .....
   .....
9. Reasons for transferring the ammunition .....
   .....

DECLARATION:

I hereby apply for a permit to transfer the ammunition detailed in paragraph 7 above, and I declare that the statements made above are true and complete in all respects.

Date ..... *Signature* .....

(Back)

PART B— TO BE COMPLETED BY DISTRICT COMMISSIONER WHERE APPLICATION IS FORWARDED TO REGISTRAR OF FIREARMS

1. Comments on applicant's suitability to transfer the ammunition described:
2. I $\frac{\text{do}}{\text{do not}}$ recommend issue of the permit.

Boma Reg. No. ..... *Signature* .....

Date .....

Permit No. ..... Date .....

FORM 15

FIREARMS ACT

(CAP. 14:08)

(SECTION 10)

PERMIT TO TRANSFER AMMUNITION

Permit No. .....

This is to certify that: (full name and address) .....

.....

is authorized to transfer the following ammunition:

Type .....

Calibre .....

Quantity .....

To .....

.....

subject to the following special conditions:

1. That such transfer be completed on or before the 31st of December next.
2. .....
   .....

Date ....

**Registrar of Firearms*
**District Commissioner*
..... District

*Delete if inapplicable

FORM 16

FIREARMS ACT

(CAP. 14:08)

(SECTION 10)

APPLICATION FOR A PERMIT TO ACQUIRE AMMUNITION

(To be completed in duplicate)

NOTE: It is an offence under section 21 of the Act for any person to make any statement which he knows to be false for the purpose of obtaining a permit to acquire ammunition.

PART A—TO BE COMPLETED BY THE APPLICANT

To: The District Commissioner, ... District .....

1. Full name .....
2. Address .....
   .....
3. Age ..... 4. Nationality .....
5. Occupation .....
6. Period of residence in Malaŵi .....
7. Details of ammunition for which permit is applied .....
   Type ..... Calibre .....
   Quantity .....
8. From whom ammunition is to be acquired .....
   .....
9. Reasons for acquiring the ammunition .....
   .....
10. Details of ammunition already possessed:
    Type ..... Calibre ..... Quantity .....

DECLARATION:

I hereby apply for a permit to acquire the ammunition detailed in paragraph 7 above, and I declare that the statements made above are true and complete in all respects.

Date ..... Signature .....

(Back)

PART B—TO BE COMPLETED BY DISTRICT COMMISSIONER WHERE APPLICATION IS FORWARDED TO REGISTRAR OF FIREARMS

1. Comments on applicant's suitability to acquire the ammunition described:
2. I $\frac{\text{do}}{\text{do not}}$ recommend issue of the permit.

Boma Reg. No. ..... *Signature* .....
Date .....
Permit No. ..... *Date* .....

FORM 17

FIREARMS ACT
(CAP. 14:08)
(SECTION 10)
PERMIT TO ACQUIRE AMMUNITION

Permit No. .....

This is to certify that: (full name and address).....
.....
is authorized to acquire the following ammunition:
Type: .....
Calibre: ..... Quantity: .....
From: .....
subject to the following special condition(s):

1. That such acquisition take place on or before the 31st of December next.
2. That under no circumstances shall any quantity of ammunition acquired under this permit, and any quantity of similar ammunition in the possession of the person to whom this permit is granted at the time of such acquisition together exceed .....
.....
.....

**Registrar of Firearms/*District Commissioner*
..... District

*Delete if Applicable

FORM 18

FIREARMS ACT
(CAP. 14:08)
(SECTION 11 (2))
ANNUAL FIREARMS LICENCE

No. .....

This is to certify that: (full name and address).....
is authorized to have in his possession or custody the under-mentioned firearm:
Type: ..... Calibre: .....
Make: ..... Maker's No.: .....
Malaŵi Registered No.: .....
for the period from the date hereof to the 31st December next.
Fee paid K t
Date: ....
District Commissioner
..... District

FORM 19

FIREARMS ACT
(CAP. 14:08)
TOURIST'S ANNUAL LICENCE

No. .....

This is to certify that: (full name and address) .....
.....
a tourist visiting Malaŵi for a period not exceeding six months, is hereby authorized to have in his possession or custody the under-mentioned firearm and ammunition therefor—

FIREARM
Type: ....Calibre: .....
Make: .... Maker's No.: .....
Identifying marks: .....
Where registered: .....

AMMUNITION

Calibre: ..... Quantity: .....

NO FEE IS PAYABLE FOR THIS LICENCE

THIS LICENCE EXPIRES upon the expiration of six months from the date hereof or upon the exportation of the abovementioned firearm and ammunition whichever be the sooner.

Date: ....
Registrar of Firearms / District Commissioner

FIREARMS (PRESCRIPTION OF PROPER OFFICERS) RULES G.N. 211/1969
under s. 23

1. These Rules may be cited as the Firearms (Prescription of Proper Officers) Rules. Citation

2. The classes of persons being public officers listed in the Schedule hereto are hereby prescribed to be proper officers for the purposes of the Act. Prescription of proper officers

SCHEDULE

All serving officers of the Malaŵi Police Force.

All officers of the Department of Forestry and Game of the rank of Technical Assistant or higher.

All Customs Officers.

All officers of the Immigration Department of the rank of Immigration Officer (Grade I) or higher.

All members of the Young Pioneers while such members are serving in support of the Security Forces.

EXPLOSIVES

CHAPTER 14:09

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CHAPTER 14:09

EXPLOSIVES

ARRANGEMENT OF SECTIONS

SECTION

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2. Interpretation
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4. Appointment and duties of Inspectors
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19. Penalty for obstructing Inspector
20. Revocation of permits and licences
21. Appeal against refusal to grant a permit or licence or revocation thereof
22. Penalties for endangering safety or causing loss of life
23. Power to make regulations

An Act to provide for the regulation and control of the acquisition, manufacture, sale and use of explosives and for matters incidental thereto and connected therewith

61 of 1966
25 of 1968
8 of 2002

[1st June, 1968]

Short title

1. This Act may be cited as the Explosives Act.

Interpretation

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

"acquire" includes hire, purchase and accept as an inheritance, gift, loan or on approval;

"Chief Inspector" means Chief Inspector of Eplosives appointed under this Act;

"explosive" means—

(*a*) nitro-glycerine, dynamite, gun-cotton, blasting powder,

gunpowder, and any other substance or mixture capable of being used for the purpose of producing an explosion;

(*b*) any detonating fuse, igniter cord, safety fuse, fuse igniter, detonator or percussion cap and every adaptation or preparation of any explosive;

(*c*) any other substance which the Minister may from time to time, by notice published in the *Gazette*, declare to be an explosive;

"Inspector" means the Chief Inspector of Explosives and an Inspector of Explosives appointed under this Act;

"manufacture" includes to make and divide any explosive from or into its component parts by any process, to convert an explosive into an explosive of another kind, and to alter or fit for use any explosive.

Application

3. Nothing in this Act shall apply to—

(*a*) the import, storage, acquisition or use of any explosive by the armed forces of Malaŵi, the Police or any other armed force constituted by or under any written law;

(*b*) any ammunition for which a licence to possess or deal is held under the Firearms Act;

Cap. 14:08

(*c*) the possession or conveyance of any explosive by an Inspector or any other duly authorized person, for the purposes of this Act or any regulations made thereunder, provided that the quantity is not more than is reasonably necessary for the purpose required, and that it is kept and conveyed with all due precaution;

(*d*) any explosive or class of explosives which the Minister may, by notice published in the *Gazette*, exempt for such special purpose or purposes and in accordance with such conditions as shall be specified in such notice.

Appointment and duties of Inspectors

4.—(1) There may be appointed a Chief Inspector of Explosives and as many public officers to be Inspectors of Explosives as is deemed necessary.

(2) It shall be the duty of the Chief Inspector of Explosives and Inspectors of Explosives to control the purchase, sale, dealing in, storage, use and disposal of explosives so as to minimize the danger of accidental explosion and damage to the public or to persons handling, storing or using explosives.

(3) Every Inspector of Explosives shall, in the excercise of his powers and performance of his duties under this Act, be subject

to any general or special directions of the Chief Inspector of Explosives.

(4) The Chief Inspector of Explosives and every Inspector of Explosives shall in the exercise of every power and duty conferred upon them under any provision of this Act be at all times subject to the general or special directions of the Minister.

Prohibition on acquisition or possession of explosives without licence or permit

5. Except as may otherwise be provided under this Act, no person shall acquire or have in his possession or use any explosive unless he holds a valid licence or permit in respect thereof issued under this Act by the Chief Inspector, or by an Inspector authorized by him in writing in that behalf.

Type of licence and permit

6.—(1) The Chief Inspector or an Inspector authorized by him in writing in that behalf may, in relation to explosives issue—

(*a*) a storage licence;

(*b*) a dealer's licence;

(*c*) a permit to possess;

(*d*) a blasting licence,

for such period and subject to such conditions as he may consider appropriate in the circumstances.

(2) A storage licence shall authorize the holder thereof to store explosives in the premises described in the licence.

(3) A dealer's licence shall authorize the holder thereof to purchase, sell and deal in explosives.

(4) A permit to possess shall authorize the holder thereof to purchase and possess explosives.

(5) a blasting licence shall authorize the holder thereof to use explosives for the purpose of blasting operations.

When storage licence may be issued

7.—(1) A person who desires to store explosives shall apply in the prescribed manner to the Chief Inspector specifying the premises where it is desired to store explosives and the purpose of such storage.

(2) A storage licence shall not be issued unless satisfactory evidence is given that—

(*a*) the applicant genuinely requires to store explosives for the purpose of trade or use and holds or has applied for a dealer's licence or a permit to possess;

(*b*) the premises where it is proposed to store explosives are suitably constructed for the purpose and are situated at a safe

distance from any place where persons habitually live, work, congregate or pass.

When dealer's licence may be issued

8.—(1) A person who desires to deal in explosives shall apply in the prescribed manner to the Chief Inspector specifying his experience in the handling of explosives and the nature of the trade which he anticipates.

(2) A dealer's licence shall not be issued unless satisfactory evidence is given that—

(*a*) there is a genuine need for a dealer in explosives in the area in which the applicant intends to operate;

(*b*) that the applicant is a suitable person to deal in explosives.

When permit to possess may be issued

9.—(1) A person who desires to possess explosives otherwise than as a dealer shall apply in the prescribed manner to the Chief Inspector specifying the purpose for which he desires to possess explosives.

(2) A permit to possess shall not be issued unless satisfactory evidence is given that—

(*a*) the applicant genuinely requires explosives for a lawful and proper purpose;

(*b*) that the applicant or a person in his employment is sufficiently expert in the use of explosives.

When blasting licence may be issued

10.—(1) A person who desires to carry out blasting operations shall apply in the prescribed manner to the Chief Inspector specifying the nature of the operations which he proposes to carry out and the training or experience in the use of explosives which he possesses.

(2) A blasting licence shall not be issued to any applicant unless he produces satisfactory evidence that he has adequate experience or training in the use of explosives and is a suitable person to hold a blasting permit.

Exemption of employees

11. A person who is employed by the holder of a licence or permit issued under section 7, 8, or 9 may have in his possession any explosive to which his employer's licence or permit relates for the purpose of carrying out his duties in accordance with the terms and conditions of the licence or permit.

Exemption of carriers

12. A person carrying on the business of a carrier or a servant of a carrier may have in his possession any explosive for the purpose of conveying such explosive to the holder of the licence or permit issued under section 7, 8, or 9.

13. Subject to sections 11 and 12, a person who acquires or has in his possession or under his control or who uses any explosive otherwise than in accordance with the terms and conditions of a licence or permit to do so issued under this Act, shall be liable to a fine of K50,000 and to imprisonment for one year.

Penalty for acquisition or possession of explosives without licence or permit
8 of 2002

14.—(1) In any proceedings under this Act an accused person shall be presumed not to be the holder of any licence or permit unless he proves the contrary.

Burden of proof

(2) The burden of proving that this Act does not apply to any substance capable of producing an explosion shall be on the person making such an allegation.

15.—(1) No person shall manufacture any explosive unless he is the holder of a licence to manufacture granted by the Chief Inspector or otherwise than in accordance with the terms and conditions of such licence:

Manufacture of explosives
8 of 2002

Provided that a licence to manufacture shall not be necessary where the only process of manufacture is the mixing of carbonaceous or metallic diluents with ammonium nitrate, when such mixing is carried out on the site where blasting operations are to take place.

25 of 1968

(2) A person who contravenes any of the provisions of subsection (1) shall be liable to a fine of K200,000 and to imprisonment for five years.

8 of 2002

16.—(1) An Inspector may declare any explosive to be unsafe and may destroy or cause to be destroyed such explosive, or may order the destruction of such explosive by the owner or by the person having custody or control thereof or by the person in occupation of the place where such explosive may be.

Destruction of explosives
8 of 2002

(2) A declaration that an explosive is unsafe may be made whenever an Inspector considers that there is a danger of accident in relation thereto.

(3) No claim whatsoever shall lie against the Government or an Inspector in respect of anything done as a result of an order given under subsection (1).

(4) A person who fails, within a reasonable time, to comply with an order given to him under subsection (1) shall be liable to a fine of K50,000 and to imprisonment for one year.

8 of 2002

17.—(1) Every person having in his possession or under his control any explosive, shall take all reasonable precautions to ensure that such explosive is not lost, stolen, or at any time available to any person not lawfully entitled to possess the same, and if any loss, theft or disappearance of any such explosive occurs shall forthwith report the same to the officer in charge of the nearest police station.

Precaution against and reporting loss of explosives

8 of 2002

(2) Any person who fails to comply with any of the provisions of subsection (1) shall be liable to a fine of K50,000, and to imprisonment for one year.

(3) In any prosecution for an offence under this section the onus shall be on the accused to prove that he took all reasonable precautions required to be taken under subsection (1).

Search of persons, vehicles, vessels and premises
8 of 2002

18.—(1) In this section "officer" includes an administrative officer, a police officer of or above the rank of police Inspector and an Inspector duly appointed under this Act.

(2) An officer may, without warrant, stop, search and detain any vehicle or vessel in or upon which there is reason to suspect that any explosive is being unlawfully conveyed and may also stop, search or cause to be searched, and detain any person who may be reasonably suspected of unlawfully having in his possession or unlawfully conveying in any manner any explosive.

(3) An officer may, without warrant, enter, with or without permission and using force for the purpose if necessary, any place or premises in which he has reason to suspect that any explosive is being unlawfully stored, kept or manufactured and may search or cause to be searched such place or premises and any person found therein.

(4) Where, as a result of any search made under this section, any explosive is found and no valid permit or licence is produced by any person in respect thereof the officer effecting the search may seize such explosive and shall thereupon dispose thereof in such manner as the Minister may prescribe.

8 of 2002

(5) Any person who wilfully obstructs or resists an officer in the lawful exercise of any power conferred upon such officer by this section shall be liable to a fine of K50,000 and to imprisonment for one year.

Penalty for obstructing Inspector
8 of 2002

19. Any person who wilfully obstructs or hinders an Inspector in the exercise of any of the powers or duties conferred or imposed upon him by this Act, or who disobeys any lawful order of an Inspector, or who, upon demand, fails to answer as well as he is able, any question lawfully put to him by an Inspector, or who gives false information to an Inspector, whether in answer to any such question or not, shall be liable to a fine of K50,000 and to imprisonment for one year.

Revocation of permits and licences

20.—(1) Any permit or licence granted under this Act may be revoked by the Chief Inspector if the holder thereof fails to comply with any condition attached thereto or is convicted of an offence under this Act or any regulations made thereunder.

8 of 2002

(2) Where a permit or licence is revoked, the Chief Inspector shall by notice in writing require the holder thereof to surrender it, and if the holder fails to surrender it within fourteen days from the date of such notice, he shall be liable to a fine of K10,000:

Provided that where an appeal is brought against the revocation, this section shall not apply to that revocation unless the appeal is abandoned or dismissed and shall in that case have effect as if for the reference to the date of the notice there were substituted a reference to the date on which the appeal was abandoned or dismissed.

Appeal against refusal to grant a permit or licence or revocation thereof

21. An appeal against the refusal to grant a permit or licence or the revocation thereof shall lie in the prescribed manner to the Minister, whose decision shall be final and shall not be questioned in any court, but no appeal shall lie against the result of any test or examination which, in terms of any regulations made under this Act, any person may be required to undergo in order to obtain a licence or permit.

Penalties for endangering safety or causing loss of life
8 of 2002

22.—(1) Any person who negligently causes an explosion whereby—

(*a*) property is endangered or damage to property is caused by such explosion shall be liable to a fine of K50,000 and to imprisonment for twelve months; and

8 of 2002

(*b*) the life of any person is endangered or injury to any person is caused by such explosion shall be liable to a fine of K500,000 and to imprisonment for five years.

(2) Any person who by a wilful act or omission causes an explosion whereby life or property is endangered or whereby injury to any person or damage to property results shall be liable to imprisonment for a period of ten years.

(3) Nothing in this section shall be construed as exempting any person from being charged and punished under any other written law in respect of any act or omission such as is described in this section.

(4) For the purpose of this section "explosion" includes a fire caused by an explosion.

Power to make regulations
8 of 2002

23.—(1) The Minister may make regulations for the better carrying into effect of the purposes and provisions of this Act, and in particular and without derogation from the generality of the foregoing, may make regulations for all or any of the following purposes—

(*a*) regulating the storage of explosives;

(*b*) regulating the sale of and any dealings in explosives;

(*c*) prohibiting or regulating the possession of explosives;

(*d*) regulating the use of explosives;

(*e*) prohibiting or regulating the manufacture of explosives;

8 of 2002

(*f*) regulating the importation, exportation and transportation of explosives load;

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(*g*) providing for the examination and inspection of explosives, the places in which they are stored, kept or used and any place at which any accident, of whatsoever nature, may be liable to be caused by an explosive;

(*h*) requiring the reporting of accidents to persons, or damage to property, caused by an explosive;

(*i*) prescribing the fees to be paid for any licence or permit issued, or examination or inspection made under or in pursuance of this Act or of any regulations made under this Act;

(*j*) providing for the issue, suspension and cancellation of blasting licences;

(*k*) providing for the issue, suspension and cancellation of permits or licences to possess, manufacture, store or deal in explosives;

(*l*) prescribing the forms, books and records to be used or kept for the purposes of this Act;

(*m*) providing for the seizure and forfeiture of any explosives in respect of which any offence against this Act or any regulations made thereunder has been committed;

(*n*) prohibiting the introduction of explosives into any specified area;

(*o*) providing for the investigation and reporting of accidents;

(*p*) providing for the destruction of explosives and mode of destruction;

(*q*) providing for the classification of explosives;

(*r*) prescribing the time within which an appeal may be brought under section 21 and the procedure to be followed in relation to such an appeal;

(*s*) the information to be supplied by any person to an Inspector and the reports to be made from time to time; and

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(*t*) any other matter which requires to be or may be prescribed for the purposes of this Act

(2) Any regulation made under this Act may, notwithstanding the provisions of section 21 of the General Interpretation Act, prescribe a fine of up to K20,000 and imprisonment for up to one year for an offence committed against any provision of such regulation.

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EXPLOSIVES REGULATIONS

under s. 23

G.N. 285/1971 82/1978 113/1982 107/1985

Citation

1. These Regulations may be cited as the Explosives Regulations.

Interpretation

2. In these Regulations, unless the context otherwise requires—

"capped fuse" means a length of safety fuse to one end of which a detonator has been attached;

"detonating fuse" means a cord-like device used in blasting operations containing an explosive which will explode at high velocity when suitably initiated by a detonator, such explosion initiating explosions in other lengths of detonating fuses or other explosives in close proximity;

"direct supervision" means that the person being supervised is within normal sight or hearing of the person supervising;

"Form" means one of the forms set out in the First Schedule;

"magazine" means any building or structure used or intended to be used for the storage of explosives;

"manager" means the person responsible for the management of the site at which any blasting operations are carried out;

"misfire" means a drill hole or part thereof in which the blasting material, or any portion thereof, charged into the hole has failed to explode;

"primer" means a cartridge into which the detonator of a capped fuse, or electric detonator has been inserted;

"Registrar of Firearms" means the Registrar of Firearms appointed under the Firearms Act;

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"safety fuse" means a fuse for blasting which burns and does not explode, and which does not contain its own means of ignition, and which is of such strength and construction, and contains an explosive in such quantity that the burning of such fuse will not communicate laterally with other like fuses;

"shot firer" means a person who is the holder of a valid blasting licence issued by the Chief Inspector, and who has been authorized in writing by his employer to undertake blasting operations;

"socket" means any portion of a hole which may remain after all the blasting materials charged into the hole have exploded and which is proved by examination not to be a misfire;

"stemming" means any inert material described in regulation 54 (1) used as a filling in blast holes;

"tamping" means the consolidation of stemming and explosives in a blast hole.

Exceptions

3. Except as may otherwise be provided, the provisions of these Regulations shall not apply to the import, manufacture, sale, purchase, acquisition, possession, storage and use of coloured fires, fireworks or rockets.

PART I

Responsibility for Observance

Observance of Regulations

4. Except where herein otherwise expressly provided to the contrary the responsibility for the due observance of these Regulations shall be upon the holder of the appropriate licence or permit issued under the Act or these Regulations, or the person in official charge of the site or premises, or the particular operation where explosives are stored or used or otherwise dealt with, and where the provisions of these Regulations are not duly observed such holder or person shall be guilty of an offence unless he can prove that all reasonable means of enforcing the provisions of such Act and Regulations were taken by him.

Appointment of competent persons

5.—(1) The holder or person referred to in regulation 4 may appoint one or more competent persons to assist him in enforcing the provisions of these Regulations and such persons shall without prejudice to the appointor's own personal responsibilities under these Regulations have the same responsibility under the Regulations as the appointor for such duties as his letter of appointment shall specify, and shall be similarly guilty of an offence in the event of non-observance of the provisions of these Regulations.

(2) Any appointment made under subregulation (1) of this regulation shall be in writing and shall clearly define the duties assigned to the person so appointed. The appointment, to be valid, shall also be accepted by the appointee in writing. A copy of such letter of appointment shall be forwarded forthwith to the Chief Inspector.

PART II

Permits and Licences

Import permits Form A

6.—(1) No person shall import any explosives into Malaŵi save under, and in accordance with the terms of, an import permit issued by the Registrar of Firearms. Such permit shall be in Form A and may contain such conditions as the Registrar thinks fit.

Form B

(2) No permit to import any explosives shall be issued to any person, other than the holder of a permit to possess (which shall be in Form B) issued by the Chief Inspector under section 6 of the Act.

Applications for import permits

7. An application for an import permit shall contain—

(*a*) the full name and address of the applicant;

(*b*) the name, exact description and quantity of explosive to be imported;

(*c*) the country from which the explosive is to be imported;

(*d*) the name and address of the manufacturer of the explosive;

(*e*) the address and storage licence number of the magazine or store in which the explosive is to be stored; and

(*f*) the purpose for which the explosive is to be used.

Licences to manufacture Form C

8.—(1) A licence to manufacture explosives shall be issued by the Chief Inspector in Form C, and may be issued subject to such conditions as the Chief Inspector deems necessary or desirable in the interests of safety of life and property:

Provided that a licence to manufacture shall not be necessary where the only process of manufacture is the mixing of carbonaceous or metallic diluents with ammonium nitrate, when such mixing is carried out on the site where blasting operations are to take place.

(2) The fee payable for the issue of a licence to manufacture shall be K10, and the licence shall not be transferable.

Dealers' licences Form D

9.—(1) A dealer's licence issued under section 8 of the Act shall be in Form D, shall take effect on the day on which it is issued, shall expire on the 31st December next following, and shall not be transferable. The fee payable for the issue of a dealers' licence shall be K10.

G.N. 82/1978 107/1985

(2) The issue of a dealer's licence shall not entitle the holder thereof to store explosives unless he is also the holder of a storage licence issued under regulation 15.

Applications for dealers' licences

10. An application for a dealer's licence shall be made in writing to the Chief Inspector, and shall contain—

(*a*) the full name of the applicant and the name under which dealing in explosives is to be carried on;

(*b*) the full name(s) of the directors, partners or proprietor(s) of a company, partnership or other business;

(*c*) the experience in the handling of explosives of the applicant and, where appropriate, of the persons referred to in paragraph (*b*);

(*d*) the types of explosives it is desired to deal in, and the nature of the trade anticipated;

(*e*) the full address at which such dealing is to be carried on; and

(*f*) such other information as the Chief Inspector may require.

Sale limited to persons with permit to possess

11. A holder of a dealer's licence shall not supply explosives to any person who is not in possession of a permit to possess explosives or a dealer's licence issued under section 8 of the Act.

Register of explosives

12. A holder of a dealer's licence shall keep a register in the form approved by the Chief Inspector in which he shall record details of all sales and dealings in explosives. Such register shall be kept available for inspection at any time and shall not be destroyed until after the lapse of two years from the date of the last entry in the register. No erasures shall be made in the register and any alteration shall be initialled by the person making it.

Records and returns

13. Every holder of a dealer's licence shall keep such other records in a manner and form approved by the Chief Inspector and shall make such returns as may be required by the Chief Inspector.

Prohibition of sale of defective explosives

14.—(1) The holder of a dealer's licence shall not sell any explosives which are in any way damaged or defective.

(2) Where any explosives in such licence holder's possession are found to be damp, to exude liquid, or, for any reason whatsoever, are suspected of being defective, the explosives shall not be sold but the circumstances shall be forthwith reported to the Chief Inspector and the explosives shall be disposed of as the Chief Inspector directs.

Storage licences Form E G.N. 82/1978

15.—(1) No magazine or other place shall be used for the storage of explosives unless such magazine or place has been authorized under a storage licence issued for that purpose by the Chief Inspector. A storage licence shall be in Form E and shall

specify the nature and maximum amount of explosives which may be stored, and may contain such special conditions as the Chief Inspector thinks necessary.

(2) A storage licence issued under this regulation may be cancelled by the Chief Inspector if the licence holder or the magazine master appointed in accordance with regulation 21 is convicted of an offence under the Act or these Regulations.

(3) For the purposes of a storage licence, the magazine or other place provided for storing explosives, and the magazine or other place provided for storing detonators on the same site shall be regarded as one magazine.

(4) The fee payable for the initial issue of a storage licence shall be K20, and the storage licence shall be valid for one year from the date of issue. The renewal fee shall be K10, and storage licences shall not be transferable. G.N. 82/1978

(5) Any person who stores any explosives otherwise than under the authority of or in accordance with the terms and conditions of a storage licence shall be guilty of an offence.

Suspension of storage licence

16.—(1) A storage licence issued under regulation 15 may be suspended by an Inspector if the magazine or other place used for the storage of explosives does not conform with these Regulations or if in the opinion of an inspector the storage of explosives in such magazine or other place is likely to be dangerous to life or property.

(2) The licence holder shall be informed in writing of such suspension and of the reason therefor and of the steps to be taken before the suspension will be revoked. The licence holder shall thereupon surrender the licence to the Chief Inspector.

(3) Explosives held under a suspended storage licence shall be disposed of in such manner as the Chief Inspector may direct provided that he shall not direct their destruction unless in his opinion they are so damaged or defective that they are dangerous.

(4) The licence holder shall have the right of appeal to the Minister. Notice of appeal shall be made within 7 days after receiving notice that the licence has been suspended by filing with the Chief Inspector a written statement setting out the grounds upon which the appeal is made.

Authorized storage boxes G.N. 113/1982 Form F

17.—(1) Where the applicant for a storage licence wishes to store a small quantity of explosives the Chief Inspector may sanction the use of an authorized storage box or authorized storage boxes for such storage in accordance with the conditions set out in Form F, and such other conditions as the Chief Inspector considers desirable. No greater amounts than 500 detonators or 50 kilograms of other explosives shall be stored in any one authorized storage box. Application shall be made to the Chief

Form F

Inspector for the authorization of the use of such storage boxes specifying that the boxes have been constructed in accordance with the requirements of Form F. The Chief Inspector may at any time cancel any authorization given under this regulation.

G.N. 82/1978 107/1985

(2) An annual fee of K10 shall be payable on permission being granted for the use of an authorized storage box.

(3) Any licence holder who fails to comply with or contravenes any of the conditions attached to an authorization issued to him under this regulation shall be guilty of an offence.

Temporary storage G.N. 113/1982

18.—(1) Notwithstanding anything contained in the previous regulations of this Part, the holder of a storage licence may, unless the Chief Inspector otherwise directs, for the period of one month only, keep on or in the neighbourhood of his premises, for private use and not for sale or trade, not more than the undermentioned quantities of explosives—

(*a*) 100 detonators (all types);

(*b*) 5 kilograms of other explosives.

(2) Such detonators and other explosives shall be kept locked in separate wooden boxes in separate places and not less than 25 metres from any inhabited building or public road.

PART III

Construction of Magazines

Approval to be obtained before construction

19.—(1) Before the construction of any magazine is started approval shall be obtained from the Chief Inspector.

(2) Written application shall be made for such approval and it shall be accompanied by—

(*a*) a statement of the types of explosives and the maximum quantity of each required to be stored;

(*b*) detailed drawings and specifications of the magazine and mounds;

(*c*) a site-plan of the magazine showing—

(i) its location in sufficient detail to enable it to be found easily; and

Second schedule

(ii) the minimum distances from the magazine of each of the classes of structures and places described in the Second Schedule to these Regulations.

Construction of magazine G. N. 113/1982

20. Except when exempted by the Chief Inspector in writing in any particular case every magazine shall conform with the following—

(*a*) if constructed after the date of coming into force of these Regulations it shall be separated from the structures specified in the Second Schedule by distances not less than those set out in that Schedule and the manager shall forthwith report to the Chief Inspector in writing the erection of any structure by reason of which the magazine does not comply with such Schedule whether or not such structure is within his control;

(*b*) its walls and roof shall be constructed of either concrete or of brick or masonry laid in good quality cement mortar all not less than 150 millimetres thick and finished with an impervious cement plaster or other approved finish on the inside;

(*c*) no ferrous metal shall be exposed internally;

(*d*) the floor shall be surfaced with smooth impervious material and shall be at least 150 millimetres above the level of the ground outside the magazine;

(*e*) its ceiling, if provided, shall be constructed of insulating and fire resisting material;

(*f*) it shall have no windows;

(*g*) it shall be provided with ventilators which in the opinion of the Chief Inspector are capable of adequately ventilating the interior of the magazine including any space between the ceiling and the roof;

(*h*) the ventilators shall be constructed in such a manner that no substance can be introduced into the magazine from the outside of the magazine;

(*i*) every door shall—

(i) open outwards;

(ii) be hung in a substantial steel frame securely set in the concrete of the building;

(iii) be recessed not less than 50 millimetres from the outer side of the wall;

(iv) be faced on the outside with steel not less than 3 millimetres thick adequately stiffened to prevent forcible bending;

(v) be faced on the inside with timber or similar material;

(vi) close on the inside against a stop not less than 25 millimetres wide as measured parallel with the door;

(vii) be fitted with one lock on a door with a side of 1.2 metres or less and with two locks on a door with a side of over 1.2 metres, such locks being heavy duty concealed and protected deadlocks with not less than five levers, and no two locks shall have the same key;

(viii) be fitted with concealed butt hinges;

(ix) be fitted on the hinged side with internal dog bolts or lugs at a distance of not more than 300 millimetres between each and engaging the frame when shut;

(x) have the words "Explosives Magazine" conspicuously marked on it;

(*j*) shelves shall be made of timber so constructed as not to interfere with the vertical circulation of air and so that containers of explosives can not touch the wall of the magazine;

(*k*) it shall be provided with a lightning conductor of a type approved by the Chief Inspector;

(*l*) (i) all electrical wiring shall be installed in a rigid conduit with screwed waterproof joints and such conduit shall be permanently earthed;

(ii) the switches and fuses for the lighting circuits shall be installed in a fire-proof cabinet on the outside of the building; such fuses for lighting shall not exceed 10 ampere capacity;

(iii) no power line either above or below ground other than for carrying light to a magazine shall be permitted within a distance of 30 metres from the magazine;

(*m*) it shall be surrounded by an earth mound which shall be—

(i) at least as high as the eaves of the tallest building;

(ii) not less than 1 metre wide on the top;

(iii) at the natural slope of the earth on all sides;

(iv) not less than 1 metre away at the toe of the slope from any building;

(v) made with such an entrance gap that no building inside it shall be visible to a person standing at ground level outside it; and

(*n*) it shall be adequately drained in the area enclosed by the earth mound.

PART IV
Management of Magazine

Magazine masters

21.—(1) The holder of a storage licence shall appoint in writing a trustworthy person as magazine master, who shall be in sole charge of each magazine and be responsible for compliance with these Regulations. The appointment, to be valid, shall also be accepted by the appointee in writing. A copy of such letter of appointment with the appointee's acceptance in writing thereon shall be forwarded forthwith to the Chief Inspector.

(2) In the event of failure to appoint such a magazine master, the licence holder shall be deemed to be the magazine master.

(3) Where the requirements of this Part are not complied with or are contravened in respect of a magazine or the storage of explosives, the licence holder and the magazine master concerned shall, unless otherwise provided, be guilty of an offence.

Articles which shall be kept in a magazine

22. In every magazine shall be kept—

(*a*) tools necessary for opening cases of explosives, which shall be of wood, copper or brass only; and

(*b*) a soft brush or broom with no metal fittings, for cleaning out the magazine.

Articles which may not be kept in a magazine

23.—(1) A magazine shall not be used for the storage of any goods or articles not mentioned in the licence, except that the tools and equipment necessary to comply with regulation 22 may be kept in the magazine.

(2) A larger quantity of explosives than that stipulated on the licence shall not be stored in a magazine.

(3) Detonators shall not be stored with detonating fuses or with any other explosives except safety fuses, igniter cords and fuse igniters.

Forms to be kept in or near a magazine

24. In, or near to every magazine, in a place where they can be conveniently seen or read, the following shall be kept posted up—

(*a*) a copy of the abstract of these Regulations in the form approved by the Minister;

(*b*) the storage licence issued in respect of the magazine; and

(*c*) a copy of the letter of appointment of the magazine master.

Floors to be kept clean

25. The floor of a magazine shall at all times be kept scrupulously clean and dry, and free from grit or dirt likely to give rise to sparks. Loose explosives or broken portions of cartridges shall not be left lying on the floor of any magazine or in close proximity to any storage box.

Protection from fires

26.—(1) Efficient means of extinguishing fire shall be maintained near every magazine.

(2) Every magazine shall be effectively protected from fires, and to this end, grass surrounding a magazine shall be kept as short as practicable, and this area shall be kept free of combustible material such as timber, bush, dry grass, newspapers, boxes, cartons and the like.

(3) Boxes, cartons and bags which have contained explosives shall not be used for any purpose, but shall be destroyed, by burning if possible, as soon as possible after being emptied of their explosives contents.

Restrictions on persons entering magazine

27.—(1) A magazine shall be kept locked at all times save only when necessary to place explosives in or remove explosives from the magazine or to perform any other necessary operation.

(2) No person shall take a naked light into any magazine and no person shall smoke or carry or have about him any fire, matches, or any substance or article likely to cause fire or explosion while in or near any part of a magazine or authorized storage box.

(3) No person entering a magazine shall wear boots or shoes containing any exposed metal.

(4) Any person who contravene or fails to comply with the provisions of this regulation shall be guilty of an offence and in the event of such contravention or failure the licence holder and the magazine master shall also be guilty of an offence.

Stacking explosives

28.—(1) The explosives shall, as far as practicable, be kept in a magazine in the original packing as received from the supplier.

(2) The cases, cartons or containers shall not be stacked more than two metres high, and shall be stored in such manner as to admit of inspection and extraction of the explosives in rotation.

(3) Wooden gratings, or gratings of approved non-ferrous material, shall be placed between the floor and the bottom layer of explosives cases, to permit of adequate ventilation of the bottom cases.

(4) Any explosives, for the storage of which provision is not made in these Regulations, shall be stored only in such place and manner as may be prescribed in writing by the Chief Inspector.

Care in handling explosives

29. Care shall be taken to prevent concussion in the storage of explosives in any magazine or storage box.

Loitering near magazine

30. No unauthorized person shall loiter or be permitted to loiter in the vicinity of a magazine, and the holder of a storage licence or any employee of such licence holder may order any such person to leave the vicinity of the magazine, and any such person who fails to comply with any such order shall be guilty of an offence.

Illegal entry into magazine

31. Whenever a magazine has been broken into or been interfered with in any way the matter shall be reported immediately to the nearest police station and to the Chief Inspector.

Closing down magazine

32. Whenever the holder of a storage licence ceases to use explosives, the licence holder shall immediately notify the Chief Inspector of this fact, and shall render a return of all explosives, if any, in the magazine. Such explosives shall be disposed of in a manner approved by the Chief Inspector.

Duties of licence holder

33. The holder of a storage licence, shall—

(*a*) ensure that at all times the magazine, including the mound, drainage system and lightning protection system is kept in good condition;

(*b*) provide the tools and equipment necessary to enable the magazine master to comply with these Regulations;

(*c*) provide two sets of keys for all magazine doors, one set for use by the magazine master and the other set to be kept in a secure place so as to be immediately available at any time for emergency use or for inspection of the magazine;

(*d*) ensure that whenever it is necessary to carry out major repairs on any magazine, the explosives shall be removed to a safe distance therefrom until the repairs are completed;

(*e*) cause all explosives which are liable to deterioration to be inspected not less than once in each month by a person having experience in the handling of explosives;

(*f*) ensure that any explosives found to be damp, to exude liquid or which, for any reason whatsoever, are suspected of being defective are not removed from the magazine and shall report the circumstances forthwith to the Chief Inspector and shall dispose of the explosives as the Chief Inspector directs; and

(*g*) whenever the appointed magazine master is necessarily away from his place of work for any reason whatsoever, ensure that another competent person is appointed in accordance with regulation 21 to act as magazine master.

PART V
Ammonium Nitrate

Application and definition

34.—(1) Notwithstanding anything to the contrary elsewhere in these Regulations this Part shall apply in relation to ammonium nitrate.

(2) For the purposes of regulations 36, 37, 38 and 39, "ammonium nitrate" means ammonium nitrate containing less than 10 per cent inert admixed material as a diluent and for this purpose other ammonium salts or other nitrates shall be deemed not to be inert materials.

No permit or licence required for certain purposes

35.—(1) No licence or permit under this Act or these Regulations shall be necessary nor shall this Part apply in respect of ammonium nitrate where such ammonium nitrate is to be used exclusively—

(*a*) as a fertilizer;or

(*b*) for analytical purposes in a *bona fide* laboratory;or

(*c*) by pharmacists for dispensing under a doctor's prescription;or

(*d*) by *bona fide* manufacturers for further processing, or where the ammonium nitrate does not conform with the definition referred to in regulation 34 (2).

Records to be kept

36.—(1) Every person who supplies ammonium nitrate to another person for any purpose shall keep a record as follows—

(*a*) the name and address of the person supplied;

(*b*) the quantity supplied;

(*c*) the purpose for which the ammonium nitrate is to be used;

(*d*) the address where the ammonium nitrate is to be used or stored; and

(*e*) the number and date of any licence or permit under the Act or these Regulations held by the person supplied.

(2) It shall be the duty of all persons obtaining ammonium nitrate to provide the supplier in writing with the information required to comply with subregulation (1).

Construction of stores for ammonium nitrate G.N. 113/1982

37.—(1) Ammonium nitrate shall be kept in a store exclusively reserved for the purpose, which shall comply with the following—

(*a*) the store shall at all times be kept clean, dry and well ventilated;

(*b*) no timber or similar material shall be used in its construction;

(*c*) the floor shall be surfaced with smooth, impervious material and shall be at least 150 millimetres above the level of the ground outside the magazine;

(*d*) the walls shall be constructed of brick, masonry or concrete finished with an impervious cement plaster or similar finish on the inside and shall be pierced at not less than two places at floor-level to allow the escape of water used for dissolving loose ammonium nitrate;

(*e*) the roof shall be constructed of impervious materials;

(*f*) where a ceiling is provided it shall be constructed of heat insulating and fire resisting material, with adequate roof ventilation above it; and

(*g*) doors and door frames shall be made of metal.

(2) Notwithstanding the provisions of subregulation (1) of this regulation ammonium nitrate explosive not exceeding five kilograms in weight which has been manufactured in the manner described in the proviso to regulation 8 (1) and which is contained in securely fastened water-tight bags made of a polyvinyl plastic or similar material may be stored in a magazine containing explosives other than detonators.

Method of storage G.N. 113/1982

38. Except when exempted by the Chief Inspector in writing in a particular case ammonium nitrate shall be stored as follows—

(*a*) it shall be contained in water-tight bags made of a polyvinyl plastic or similar material;

(*b*) no stack of bags shall contain more than nine thousand kilograms of ammonium nitrate or be higher than two metres;

(*c*) stacks shall rest on sheets of polyvinyl plastic or similar material;

(*d*) there shall be a space of not less than 300 millimetres between any bag and the wall of the store; and

(*e*) there shall be a space of not less than one metre between stacks.

Storage precautions

39.—(1) Sacks containing ammonium nitrate damaged in any way shall immediately be placed in a clean slipover bag and for this purpose an adequate supply of such slipover bags shall be kept on hand.

(2) No loose ammonium nitrate shall be kept or left lying around in the store, spillages shall be swept up immediately and put to waste by dissolving in a large excess of water and washing away.

(3) No smoking, open lights or flames shall be allowed in any store containing ammonium nitrate.

PART VI

Blasting Licences

Appointment of shot firers

40.—(1) All shot firers shall be appointed in writing by the manager, who shall appoint only such persons as hold valid blasting licences issued under regulation 42.

(2) All appointments made under subregulation (1) shall—

(*a*) quote the name of the person appointed and the number of his blasting licence;

(*b*) be accepted in writing by the person appointed; and

(*c*) be notified to the Chief Inspector by a copy of the document of appointment, accepted in writing by the person appointed.

(3) When a person ceases to be employed as a shot firer his employer shall notify the Chief Inspector of the fact in writing and shall state the date on which such employment ceased.

Applications for blasting licences Form G

41.—(1) An application for a blasting licence shall be made in Form G and sent, together with two recent passport size head and shoulders photographs of the applicant, to the Chief Inspector who may examine the applicant on all matters relevant to the application.

(2) Any such applicant who is required to submit to an examination relevant to his application for a blasting licence shall—

(*a*) produce satisfactory evidence of previous experience in the use of blasting materials and knowledge of the applicable regulations and of blasting practice; and

G.N. 107/1985

(*b*) pay an examination fee of K3, which shall not in any event be returnable to him.

Issue of blasting licences Form H G.N. 82/1978 107/1985

42.—(1) If the Chief Inspector is satisfied that the applicant has the necessary knowledge and experience to use blasting materials correctly and safely, he may issue to the applicant a blasting licence which shall—

(*a*) be in Form H set out in the First Schedule;

(*b*) be valid for a period of three years from the date of issue or renewal;

(*c*) be subject to payment of a fee of K5 upon issue and upon each renewal.

(2) A blasting licence shall not be valid unless and until it is signed by the licensee.

Suspension of blasting licence

43. If at any time the holder of a blasting licence shall in the opinion of the Chief Inspector be guilty of an act of negligence or a contravention of the Act or of these Regulations or has a disability rendering him unfit to conduct blasting operations, the Chief Inspector may immediately cancel such licence. In the event of cancellation, such holder of a blasting licence shall have the right of appeal to the Minister. Notice of appeal shall be made within 7 days after receiving notice that his licence has been cancelled by filing with the Chief Inspector a written statement setting out the grounds upon which the appeal is made.

Custody of blasting licence

44. Whilst engaged upon any work for which a blasting licence is required under these Regulations, the licence holder shall ensure that his licence is kept available for inspection at the site.

Blasting licence not transferable

45. It shall be an offence for any person to transfer or accept transference of any blasting licence.

PART VII
Handling Explosives

Safe transport and handling of explosives G.N. 113/1982

46.—(1) No explosives shall be moved from any magazine except under the direct supervision of a blasting licence holder:

Provided that explosives may be moved from a magazine for sale by the holder of a dealer's licence without the personal supervision of a blasting licence holder.

(2) No person shall smoke or have a naked light within 16 metres of any place where explosives are being kept, conveyed, handled or used.

(3) No person shall convey or cause or permit to be conveyed any explosives, other than safety fuses and fuse igniters, unless the explosives are contained in unopened cases or in receptacles of a

design and construction approved for the purpose by the Chief Inspector.

(4) When removing explosives from a magazine, detonators and fuses shall not be carried in the same container as other explosives.

(5) Any explosive not used or destroyed shall be returned to the magazine on completion of the blasting, except those explosives covered by regulation 56 (3).

Secretion of explosives

47.—(1) No person shall bury, submerge or otherwise hide or abandon any blasting material or store or leave blasting materials unattended in such a manner and for such a period that it will be possible for other persons to have access thereto.

(2) No person shall take away or attempt to take way from a working any explosives without the written permission of the manager.

Persons allowed to assist shot firer

48. The holder of a blasting licence may be assisted in the preparation of primers and the conducting of blasting operations by reliable persons who are not holders of blasting licences but are acting under his direct supervision provided always that he shall take all reasonable measures to prevent any accident occurring to such persons.

Primers and charges

49.—(1) No person shall fasten detonators to fuses except by means of crimping pliers of a pattern approved by the Chief Inspector.

(2) No person shall make up primers or charges in a magazine and all primers and charges shall be made up in a safe place.

(3) Primers shall be made only as required for immediate use and in their making the detonator shall not be pressed into the explosive without first having made a hole of sufficient diameter and depth in the cartridge with a sharpened wooden stick or pricker of non-ferrous material. The detonator shall be securely fastened to the cartridge in such manner that it cannot pull out from the cartridge. No ferrous materials shall be used in such fastenings.

Drill holes G.N. 113/1982

50.—(1) Immediately a hole has been drilled to the desired depth it shall be closed by means of a suitable plug and no such plug shall again be removed except temporarily for the purpose of inspection until the hole is required to be charged.

(2) No person shall drill or cause or permit to be drilled a hole nearer than 150 millimetres to any socket or in such a direction as to approach nearer than 150 millimetres to any socket, nor shall any person deepen or cause or permit to be deepened any hole which has been left unplugged, and any person contravening the provisions of this regulation shall be guilty of an offence.

(3) No person shall deepen any hole which has contained explosives, or extract or attempt to extract explosives from a hole which has once been charged.

Thunder-storms

51. On the approach of or during a thunderstorm, the short firer shall suspend all blasting operations and no person shall remain or be caused or permitted to remain within an area where he may be injured by the accidental detonation of explosives.

Persons allowed to assist shot firer during charging

52. During the operation of charging blast holes the shot firer shall have at least one and not more than two reliable persons to help him, acting under his direct supervision.

Tamping rods

53. Tamping rods shall be of non-ferrous material and shall be cut off square at the ends. The rods shall be an easy fit in the holes to be charged and shall be kept clean and free from grit. No undue force shall be used during tamping operations and cartridges shall not be subjected to blows.

Stemming

54.—(1) All holes charged with explosives shall be stemmed. Only clay, fine sand, sifted earth or water shall be used as stemming.

(2) Stemming shall not be allowed to come between blasting cartridges charged into a blast hole except when a detonating fuse is used to initiate the charge.

(3) No person shall remove the stemming from a hole than has been charged except as provided in regulation 63 (*b*).

Preparation of charges G.N. 113/1982

55. A shot firer shall prepare only such charges at one time as he intends exploding at the next blast and he shall not commence to prepare the charges until all persons not needed to assist him in this work have been removed to a safe place at least 16 metres away. The charges shall be exploded as soon as possible after being completed.

Use of blasting cartridges

56.—(1) All drill holes shall be sufficiently large to admit freely the insertion of the blasting cartridges.

(2) The wrapping shall not be removed from blasting cartridges, except when necessary for destruction purposes, and unwrapped cartridges shall not be inserted into drill holes.

(3) No person shall use for charging a hole any explosives that have been blown out or otherwise extracted from a hole. Any person finding any explosives blown out or otherwise extracted from a hole or loose explosives of any description lying about, shall collect or deliver the same to a shot firer for safe storage prior to destruction.

PART VIII
Firing and Misfires

Shot firers and foremen shot firers

57.—(1) At workings where more than one shot firer is employed, the manager shall appoint one of the shot firers to act as foreman over the other shot firers.

(2) The foreman shot firer shall, whenever practicable, personally supervise the lighting or firing of all explosives charges and be responsible for compliance with regulation 60 (*a*), (*d*) and (*e*).

(3) Where, in connexion with any blasting operation, the provisions of this Part are not complied with or are contravened the shot firer, or foreman shot firer responsible for the particular blasting operation shall be guilty of an offence.

Precautions before firing

58.—(1) Before firing a charge the shot firer shall—

(*a*) take every precaution to prevent possible injury to persons or damage to property;

(*b*) station a competent person carrying a red flag at each avenue of approach at a point well beyond the probable range of flying material projected by the blast, to stop persons from approaching;

(*c*) personally examine the danger zone to make certain that all persons have retired therefrom to a place beyond the probable range of flying debris from the blast, or to a safe shelter; and

(*d*) give audible warning at least one minute and not more than three minutes before the blast is fired.

(2) The shot firer shall not fire a charge whilst any person is within the probable danger zone from the blast.

(3) Every person within the danger zone shall retire to a place beyond the probable range of flying debris from the blast or to a safe shelter immediately upon hearing the warning referred to in subregulation (1) (*d*).

(4) Any person who, after the commencement of the warning signals referred to in subregulation (1) (*d*), enters or, on request being made to him by the competent person referred to in subregulation (1) (*b*), or any official or person engaged in the blasting, refuses to leave the blasting area shall be guilty of an offence.

Electrical firing apparatus

59. When electric detonators are used the shot firer shall use only the following equipment of a pattern approved by the Chief Inspector which shall be provided and kept in good working order—

(*a*) an efficient electric exploder fitted with a detachable handle or key or other locking arrangement designed to prevent unauthorized use;

(*b*) an efficient galvanometer or other apparatus for testing the continuity and resistance of circuits; and

(*c*) a firing cable which is of sufficient length to provide for the firing of charges from a safe distance, and the shot firer shall also ensure that the cable cannot come into contact with any other cable or electrical apparatus.

Precautions in electrical firing

60. When using electric detonators the shot firer shall—

(*a*) when any hole has been charged, keep on his person the operating handle or key of the shotfiring apparatus;

(*b*) not connect the firing cable to detonator wires of any charge or charges until he has completed all firing preparations other than those referred to in paragraphs (*c*) and (*d*);

(*c*) except when a photo-electric type of tester is used, not apply any electrical test to the firing circuit otherwise than through the firing cable and from a place of safety;

(*d*) not connect the firing cable to the terminals of the shot—exploder or other firing apparatus until immediately before firing or attempting to fire; and

(*e*) immediately after firing or attempting to fire disconnect both leads of the firing cable from the shot exploder or other firing apparatus and there and then remove the operating handle or key of the shot-exploder or secure the locking arrangement of the shotfiring apparatus and remove the key, as the case may be.

Precautions after firing

61. After firing the shot firer shall—

(*a*) except in the case of firing by electricity or with detonating fuse count, in conjuction with at least one other person, the number of shots exploding, and unless both he and such other person are certain that all the shots have been exploded shall not enter or allow any person to enter the places in which the shots have been fired until the expiration of thirty minutes from the time of lighting the fuses;

(*b*) not approach a charge fired by an electric current which has misfired until after an interval of ten minutes, provided that the conducting wires have first been disconnected;

(*c*) not enter, or permit or instruct any person to enter a place where charges have been fired until the fumes caused by the explosion have been dispelled;

(*d*) personally examine the working place for misfires and dangerous ground and until he has done so and has taken all reasonable steps to make the place safe, shall not allow any person except those necessary to assist him in making safe, to enter or approach such place;

(*e*) examine every visible drill hole for unexploded explosives, using a copper scraper or wooden stick; and after such examination shall plug such holes with wooden plugs painted red; such

plugs shall not again be removed except by himself and temporarily for the purpose of inspection, until he has charged the drill holes in the immediate vicinity; and

(*f*) deal immediately with misfires as described in regulation 63.

Suspected misfires

62. Where there is not a good reason to believe that all the charges have fired—

(*a*) if the firing was effected electrically the circuit shall be tested again and an attempt made to refire the charge before it is approached by any person, and if the attempt fails, the leads shall be disconnected from the exploder and ten minutes shall be allowed to elapse before the charge is approached;

(*b*) if the firing was effected by safety fuse, the charge shall not be approached by any person until not less than thirty minutes has elapsed since the lighting of the fuse.

Misfires G.N. 113/1982

63. In the case of a misfire the shot firer shall be responsible for taking the following action—

(*a*) no explosives, detonator, detonator wire or fuse shall be withdrawn from the hole;

(*b*) if the bore-hole is stemmed and undamaged the stemming only shall be washed out by means of water under pressure or by compressed air and water applied through a blowpipe of a pattern approved by the Chief Inspector and a new primer inserted and the hole re-stemmed and blasted or, where water under adequate pressure is not available the stemming only may be carefully scraped out by means of an instrument made of wood or copper and a new primer inserted and the hole re-stemmed and blasted: or

(*c*) a new hole shall be drilled paralleled to, at least 150 millimetres deeper than and not nearer than one metre to the misfired hole and such new hole shall be charged and fired and the explosives liberated from the misfired hole:

Provided that if the direction of the bore-hole can not be accurately ascertained, a surface charge may be used.

All clear signal

64. The shot firer shall give audible signal after the blasting operation is completed and the period of danger is past. Such signal shall be distinctive and easily distinguished from the warning signal made under regulation 58 (1) (*d*).

PART IX
Special Underground Regulations

This Part to prevail

65. The regulations in this Part shall prevail in any case of conflict between them and any other regulation in these Regulations, to prevail in respect of any underground working.

Definition

66. "Underground working" includes shafts and pits.

Foreman

67. The manager shall appoint for each underground working which is not connected underground to another underground working a foreman to be in charge of each shift and such foreman shall as well as manager be responsible for compliance with those Regulations.

Return after blasting G.N. 113/1982

68. No person shall enter an underground working in which blasting has taken place until—

(*a*) a water-blast of a type approved by the Chief Inspector and situated not more than 16 metres from the place blasted has been in operation for not less than thirty minutes; and

(*b*) there is no perceptible dust, smoke or fumes in the underground working.

Safety of working place

69. Before work is started underground in any place which it is reasonable to consider might have been affected by a blast the foreman shall water down the face and shall examine and make safe such place, and no person other than those needed to help him in this work shall enter or be permitted to enter such place until it has been so examined and found to be safe or has been made safe.

Examination before drilling G.N. 113/1982

70. Before drilling is started in a shaft or pit the foreman shall thoroughly wash over with water under a pressure of not less than two kilograms per square centimetre all the ground within two metres of any hole to be drilled, or, if the ground to be examined is under water, blow over such ground with compressed air so as to expose the presence of all misfires and sockets.

Explosives storage

71. No explosives shall be underground unless stored in a magazine authorized by a storage licence issued under regulation 15 (1):

Provided that not more than the explosives required for one shift may, if they are under the immediate control of a shot firer, be conveyed and held during that shift hi the manner laid down in regulation 46 (3).

Smoking and lights G.N. 113/1982

72. There shall be no smoking or naked light nearer than 16 metres from any explosives underground except that any naked light necessary for igniting fuses may be at the face immediately before igniting them.

Restrictions on transport and charging G.N. 113/1982

73. No explosives shall be brought into an underground working place until drilling operations there have been completed and no charging of holes shall be started until all persons in excess of the number permitted by regulation 52 have been moved out of the shaft or pit, or in the case of other places, are at least 46 metres from the face.

74. While explosives are at the face no electrical cable except a cable for electrical firing shall be nearer than 46 metres from the face. Electric cables G.N. 113/1982

75. Any cable used for electrical firing shall be on the opposite side of an underground working from all other electrical cables. Position of firing cable

76. Before charging holes they shall be cleaned out either by washing with water or by scraping. They shall not be blown out by compressed air. Cleaning holes

77. The water-blast required by regulation 68 shall be tested shortly before firing and no firing shall take place unless the water-blast is in order. Testing water-blast

78. The water-blast referred to in regulation 77 shall be put into operation immediately before firing and shall be in operation for not less than thirty minutes after firing. Operating water-blast

PART X
Dangerous Practices and Accidents

79.—(1) An Inspector may by notification in writing draw the attention of the licence or permit holder or the person responsible to any practice in connexion with explosives which appear to be of a dangerous or defective character and he may issue such orders with regard to the cessation or modification of such practice as he thinks fit, and the licence or permit holder or person responsible shall comply therewith. Dangerous practices

(2) It shall be competent for the licence or permit holder or person responsible, on receiving such orders, to submit his objections in writing to the Minister within a period of 7 days from the receipt of such orders. The Minister may confirm the orders, give such other decision as in his opinion ought to have been given, or withdraw the orders.

80. During the manufacture, conveyance, handling, storing, guarding or using of explosives, all persons so engaged shall take all due precautions for the prevention of accidents by fire, explosion or concussion and for preventing unauthorized or incompetent or unfit persons from having access to explosives, and shall abstain from any act which tends to cause fire, explosion or concussion and is not reasonably necessary in connexion with such operations and shall use every reasonable endeavour to prevent any other person from committing such act, and any other person who, after being warned, commits any such act shall be guilty of an offence. Precautions to prevent accidents

81.—(1) Whenever an accident occurs— Reporting accidents

(*a*) at an explosives factory resulting in injury to persons or damage to property;

(*b*) at an explosives magazine;

(*c*) in any tunnel, quarry, mine or excavation in which explosives are being used, and resulting in injury to persons or damage to property;

(*d*) by fire or explosion in or about any premises occupied by the holder of a dealer's licence;

(*e*) as a result of the use of explosives; or

(*f*) in connexion with the ignition or detonation of explosives, in any other circumstances,

the person in official charge of the factory or magazine, or at the tunnel, quarry, mine or excavation, the licence holder or the person using the explosives, as the case may be, shall forthwith inform the Chief Inspector by telephone or telegram and shall also forward to the Chief Inspector in writing full particulars regarding such accident.

(2) Whether injury to persons or damage to propery is caused or not every accident or occurrence in connexion with the accidental ignition or detonation of explosives or their ingredients shall be reported forthwith to the Chief Inspector by the person in official charge of the place where the accident occurred, the licence holder or the person using the explosives.

(3) Whenever an accident occurs in connexion with the accidental ignition or detonation of explosives or their ingredients, or as a result of the use of explosives and in connexion with every other accident reportable under these Regulations, causing death or grievous bodily harm to any person, the place where the accident occurred shall not be disturbed or altered before the arrival or without the consent of an Inspector, unless such interference is unavoidable to prevent further accidents, to remove dead and injured persons, or to rescue persons from danger:

Provided that work may be resumed if an Inspector has not visited the scene within 72 hours after the accident.

(4) Where injury results in the death of the person injured after the official report has been forwarded, the person using the explosives or the licence holder, or the person in official charge of the place where the accident occurred shall forthwith give notice thereof to the Chief Inspector.

PART XI
Penalties

General penalty

82. Any person offending against any of the provisions of these Regulations for which a penalty is not provided in the Act shall be liable to a fine of K200 and to imprisonment for three months.

FIRST SCHEDULE

FORM EXP/A

G.N. 107/1985

MALAŴI GOVERNMENT
EXPLOSIVES REGULATIONS, 1972
FORM A. REGULATION 6 (1)
PERMIT TO IMPORT EXPLOSIVES

(Not Transferable)

Permit No. .....

Permission is hereby granted to—

Name (*in full*) .....

Address .....

.....

To import the following explosives into the Republic of Malaŵi—

Exact description of Explosives	Quantity
.....	.....
.....	.....
.....	.....
.....	.....
.....	.....
.....	.....
.....	.....

Subject to the following special conditions—

.....

.....

.....

Country from which explosives are to be imported

Name and address of manufacturer of explosives

.....

.....

Purpose for which explosives are to be used—

Address of licensed magazine in which the explosives are to be stored

.....

.....

Permit to Possess No. ……..	Official Stamp
*Dealer's Licence No. ……..	
	…….
*Delete if not applicable	*Registrar of Firearms*

MALAŴI GOVERNMENT FORM EXP/B

EXPLOSIVES REGULATIONS

FORM B. REGULATION 6 (2)

PERMIT TO POSSESS EXPLOSIVES

(Not Transferable)

Permit No. ……..

Permission is hereby granted to—

Name .....

Address .....

To acquire the following quantities of explosives—

Description of Explosives	Quantity
……	……
……	……
……	……
……	……
……	……

Subject to the following special conditions

.....

.....

.....

.....

Address and Storage Licence Number of the magazine in which the above explosives are to be stored

.....

.....

Purpose for which explosives are to be used .....

.....

Application received ……..	Date and Stamp
Approved ……	
Forwarded to Registrar of Firearms	
……..	
……..	……
	Chief Inspector of Explosives

MALAŴI GOVERNMENT FORM EXP/C

EXPLOSIVES REGULATIONS, 1972

FORM C. REGULATION 8 (1)

LICENCE TO MANUFACTURE EXPLOSIVES

(Not Transferable)

Licence is hereby granted to—

Name .....

Address .....

.....

To manufacture the following kinds of explosives—

.....

.....

.....

.....

At .....

Subject to any conditions hereunder set forth or attached hereto

Licence Number .....

Issued at ..... Date .....

.....

Chief Inspector of Explosives

CONDITIONS

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FEE PAID: K10

MALAŴI GOVERNMENT FORM EXP/D

EXPLOSIVES REGULATIONS, 1972

FORM D. REGULATION 9 (1)

DEALER'S LICENCE

(Not Transferable)

Licence No. .....

Licence is hereby granted to—

Name of Firm .....

Address .....
.....
To purchase, sell and deal in the following types of explosives—
.....
.....
.....
.....
.....
.....
.....
Address at which explosives will be stored .....
.....
.....
Magazine or Storage Licence Number .....
Issued at ..... Date .....
Dealer's Licence Issued at ..... Date .....

.....
Chief Inspector of Explosives

CONDITIONS

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.....
.....
.....
.....

MALAŴI GOVERNMENT FORM EXP/E

EXPLOSIVES REGULATIONS, 1972

FORM D. REGULATION 15 (1)

STORAGE LICENCE

(Not Transferable)

Licence No. .....

Licence is hereby granted to—

Name .....

Address .....
.....

To use a bulding situate at

.....

approved by the Chief Inspector of Explosives for use as a magazine and for the storage of explosives not exceeding the following quantities, subject to any conditions hereunder set forth or attached hereto—

Type of Explosives	Quantity
.....	.....
.....	.....
.....	.....
.....	.....
.....	.....
.....	.....
.....	.....

Licence Issued at ..... Date .....

.....

Chief Inspector of Explosives

CONDITIONS

.....

.....

.....

.....

FEE PAID : K20

MALAŴI GOVERNMENT FORM EXP/F

EXPLOSIVES REGULATIONS, 1972

FORM D. REGULATION 17 (1)

AUTHORIZED STORAGE BOXES

Storage Licence No.....

Authorization for box storage for conveyance and storage of explosives is hereby granted to—

Name .....

Address .....

.....

who has applied by letter dated ..... certifying that he has constructed such boxes in accordance with the following requirements—

BOXES

(1) Boxes shall be of antproof and waterproof material.

(2) Boxes shall be rigidly constructed.

(3) Hasps, staples and hinges shall be affixed in such manner that the screws or bolts used cannot be unscrewed whilst the lid is shut.

(4) Boxes shall be fitted with handles for conveyance.

(5) Lids shall be clearly marked "EXPLOSIVES."

STORAGE

shall be in accordance with the following conditions—

G.N. 113/1982

(1) Amount not more than:
* 50 kilograms of explosives.
* 500 detonators.

(2) Explosives shall be kept from shifting about by means of suitable packing. No other material, implements or tools shall be placed in such boxes.

(3) Boxes shall be kept off the ground when used for storage.

(4) The box containing explosives shall be stored as far as possible the box containing detonators.

(5) This authorization permit shall be affixed inside the lid of the box.

Period for which authorization is valid

Date .....

.....

*Delete line not required *Chief Inspector of Explosives*

FEE PAID: K10

MALAŴI GOVERNMENT FORM EXP/G

EXPLOSIVES REGULATIONS, 1972

FORM G. REGULATION 41

APPLICATION FOR A BLASTING LICENCE

PART I TO BE COMPLETED BY APPLICANT

Applicants Full Name .....

Address .....

.....

I hereby apply for a blasting licence and am prepared to present myself for examination, as being thoroughly acquainted with blasting operations and with the Government regulations applying thereto. I enclose two recent passport head and shoulders photographs of myself.

Signature ..... Date .....

(Give details in the space below of any previous experience in blasting and the number and country of issue of any blasting certificates held by you).

.....

.....

.....

.....

.....

PART II TO BE COMPLETED BY THE HOLDER OF A PERMIT TO POSSESS EXPLOSIVES

I, ... the holder of a permit to possess explosives, and employer of the above applicant do hereby declare—

* (*a*) That I have been shown the blasting certificates described above.
* (*b*) That to the best of my knowledge and belief the applicant is a person competent to carry out blasting operations.
* (*c*) That he has sufficient knowledge of the Regulations and experience of blasting operations to present himself for examination for a blasting licence.
* (*d*) That he is a responsible person.

.....
Signature of holder of permit to possess

Date .....

* Delete passages not applicable.

FOR OFFICIAL USE

Application received .....
Photographs received .....
Called for interview .....
Result of interview .....
Numbers of Certificates ..... Dated .....
.....

MALAŴI GOVERNMENT FORM EXP/H G.N. 107/1985

EXPLOSIVES REGULATIONS

FORM H. REGULATION 42 (1)

BLASTING LICENCE

Licence No .....
This is to certify that .....
is licensed to conduct blasting operations for the purpose of .....
for a period of three years from the date of issue or from the date of each renewal

PHOTOGRAPH OF LICENSEE

.....
Signature of Licensee

Issued at ..... this ..... day of .....
19 .....

FEE PAID K .....

.....
Chief Inspector of Explosives

Official Stamp

RENEWALS

Renewed for a further period of three years from—

1. …….. to ……..
   Renewal fee paid K …….. Signed: …….
   Chief Inspector of Explosives
   Official stamp

2. …….. to ……..
   Renewal fee paid K …….. Signed: …….
   Chief Inspector of Explosives
   Official stamp

3. …….. to ……..
   Renewal fee paid K …….. Signed: …….
   Chief Inspector of Explosives
   Official stamp

SECOND SCHEDULE

REGULATION 19 (2) (*c*)

Table showing the minimum distances in feet by which magazines must be separated from other structures and places according to the class into which such structures and places fall, as set out hereunder—

A. Other magazines, overhead power lines.

B. Public railways, roads and aerodromes. Structures owned by the holder of the storage licence for the magazine. Areas where the public is accustomed to assemble. Private roads which are the principal means of access to buildings in which meetings of ten or more persons habitually occur, hospitals or factories. Electrical sub-stations.

C. Structures not owned by the holder of the Storage Licence for the magazine and areas in which petroleum as defined in the Petroleum Act is likely to be stored in excess of nine thousand litres.

Cap. 50:03

G.N. 113/1982

G.N. 113/1982

Quantity of Explosives in kg		*Distances in metres*		
		A	B	C
Up to	225	15	30	55
	450	20	45	90
	900	25	70	140
	2,250	30	120	240
	4,500	40	175	345
	9,000	50	230	450
	18,000	60	290	575

Provided that the Chief Inspector may in any particular instance place a structure or place in any class which he considers fitting and that for quantities of explosives in excess of 18,000 kg he shall lay down the minimum distances for the above classes:

Provided further that for weights of explosives between 225 kg and 18,000 kg not stated in the above table the distances shall be obtained by interpolation.

RIOT DAMAGES

CHAPTER 14:10

Containing Pages 1–5

L.R.O. 1/1968

CHAPTER 14:10

RIOT DAMAGES

ARRANGEMENT OF SECTIONS

SECTION
1. Short title
2. Interpretation
3. Restricted areas
4. Powers in restricted areas
5. Restriction on change of residence
6. Declaration of riot damage area
7. Riot Damage Commissioner
8. Imposition and collection of levy
9. Payment from the Riot Damage Fund
10. Penalty

An Act to Provide Compensation for Losses by Riots and of Matters Incidental Thereto

5 of 1959
G.N. 229/1963
219/1964(N)
166/1967

[15TH JULY, 1959]

Short title

1. This Act may be cited as the Riot Damages Act.

Interpretation

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

"Commissioner" means a Riot Damage Commissioner appointed under section 7 (1);

"District Commissioner" shall, at any time when a District Commissioner is absent from the administrative headquarters of his District, mean the senior administrative officer present at such headquarters;

"levy" means a levy imposed under section 8;

"restricted area" means any area declared to be a restricted area under section 3;

"riot" includes an unlawful assembly, and "riotously assembled" includes unlawfully assembled;

"riot damage area" means an area so declared under section 6.

Restricted areas

3.—(1) Where any riot has occurred and by reason thereof any shop, house or other building has been damaged or destroyed, or any property or article has been damaged or destroyed, or any

personal injury has been caused, the District Commissioner of the District in which such riot occurred may define any area in which, in his opinion—

(*a*) the riot occurred;

(*b*) the persons reported to have taken part in such riot were residing at the time of such riot,

and may declare such area or areas to be a restricted area for the purposes of this Act.

(2) The District Commissioner shall cause the declaration of a restricted area to be published in such manner as he may think necessary in order to bring it to the notice of all persons who, in his opinion, ought to have notice thereof.

(3) Where any area has been declared under subsection (1), sections 4 and 5 shall apply thereto for such period, not exceeding twenty-eight days, as the District Commissioner concerned shall specify:

Provided that the Minister may at any time terminate such period as aforesaid.

(4) Whenever a District Commissioner exercises any of the powers conferred by this section he shall forthwith make a report to the Minister.

Powers in restricted areas

4.—(1) A District Commissioner may, subject to any general or special directions of the Minister, take such steps as may appear to him to be necessary to prevent or regulate ingress to and egress from any restricted area for such period as may be reasonably required to enable authorized officers to obtain the names, addresses and identifying particulars of all persons found within such area.

(2) Any person who—

(*a*) uses force to enter or leave, or to attempt to enter or leave, any restricted area; or

(*b*) obstructs any authorized officer in the performance of his duties; or

(*c*) fails to obey any reasonable order given to him by an authorized officer for the purposes of this section; or

(*d*) fails to answer any question put to him by an authorized officer for the purposes of this section, or returns an untruthful answer to any such question,

shall be guilty of an offence and may be arrested by an authorized officer without warrant.

(3) For the purposes of this section, "authorized officer" means any administrative officer, police officer, or such other person, or class of persons, as the Minister may, by notice published in the *Gazette*, appoint.

Restriction on change of residence

5.—(1) No person residing within a restricted area shall change his residence, within or without such area, without the written permission of the District Commissioner, or of any person authorized by the District Commissioner in that behalf.

(2) The District Commissioner may, before written permission is given under subsection (1), require any person or class of persons who wishes to change his residence without a restricted area to deposit with such District Commissioner a sum not exceeding £5 to be used to defray any levy which may be imposed upon such persons.

(3) Any portion of such deposit remaining after the payment of any levy imposed under section 8, or, if no such levy be imposed, the whole of such deposit shall be repaid to the person making the same upon application being made to the office of the District Commissioner in that behalf.

Declaration of riot damage area

6.—(1) Where any riot has occurred and by reason thereof any shop, house or other building has been damaged or destroyed, or any property or article has been damaged or destroyed, or any personal injury has been caused, the Minister may define the area in which, or in the neighbourhood of which, the riot occurred and the area or areas in which he has reason to believe that substantial numbers of persons who were present at the riot were resident at the date thereof and may, by notice published in the *Gazette*, declare such area or areas to be a riot damage area for the purposes of this Act.

(2) The Minister may, by notice published in the *Gazette*, direct that section 5 shall apply *mutatis mutandis to* any riot damage area for such period as may be specified in such notice.

Riot Damage Commissioner

7.—(1) The Minister may appoint any person to be a Riot Damage Commissioner in respect of any riot damage area.

(2) It shall be the duty of a Commissioner to ascertain, in respect of the riot which resulted in the declaration of the riot damage area concerned and in so far as is practicable—

(*a*) the total monetary value of the damage or destruction caused by, or the expenses incurred by reason of any personal injury received in, such riot;

(*b*) the total expenses which have been or may be incurred in connexion with such riot and the collection of any levy;

(*c*) the numbers of persons over the apparent age of seventeen years present or resident in such riot damage area at the time of such riot, with their names, addresses and identifying particulars;

(*d*) the number of persons who were present at such riot and the number of persons who were resident in such area at such time;

(*e*) the extent to which persons in the riot damage area failed to prevent the riot or failed to assist in the apprehension of those persons who were riotously assembled;

(*f*) the names of persons in the riot damage area who endeavoured, in the course of such riot, to prevent damage, destruction or personal injury or to apprehend persons riotously assembled;

(*g*) such other matters as the Minister may direct or the Commissioner may consider expedient.

Cap. 18:01

(3) Sections 9, 10, 11, 12, 13 and 15 of the Commissions of Inquiry Act shall apply to a Commissioner and the proceedings before him as if he had been appointed under that Act.

(4) Any proceedings before a Commissioner shall be held in public but he may exclude any person or persons if he deems it expedient in the interests of public order, justice or for any other sufficient reason.

(5) Upon completion of his inquiry, a Commissioner shall forthwith make a full report of his findings to the Minister.

Imposition and collection of levy

8.—(1) The Minister may direct the imposition of a direct levy of such amount as he may think fit upon each person whose name has been ascertained by the Commissioner under section 7 (2) (*c*), and may specify a date before which such levy shall be paid and the person or authority by whom it may be collected:

Provided that—

(*a*) the Minister may exempt any such person from the payment of such levy;

(*b*) the aggregate amount of the levies imposed in respect of any riot shall not exceed the total of the amounts ascertained by the Commissioner under section 7 (2) (*a*) and (*b*) in respect of such riot.

(2) All monies collected as a result of the imposition of levies under this section shall be paid into a fund to be known as the Riot Damage Fund.

(3) Any person who fails to pay a levy imposed under subsec-

tion (1) shall be guilty of an offence and upon conviction, or upon the making of an order under section 29 of the Penal Code in respect of such person, the court shall, in addition to or in lieu of any penalty imposed, make an order for the recovery of the amount of the levy from such person by distress failing the payment of such amount within three days after the date of such order. Cap. 7:01

(4) In any proceedings under subsection (3), the production of a document purporting to be signed by the Minister—

(*a*) showing the names and other particulars of any person or persons upon whom a levy has been imposed under this section;

(*b*) setting forth the amount of such levy;

(*c*) specifying the date by which such levy should have been paid by such person or persons;

(*d*) specifying the person or authority by whom such levy was to have been collected,

shall be *prima facie* evidence that a levy of such amount has been imposed upon any such person or persons and of the other matters appearing therein.

Payment from the Riot Damage Fund

9.—(1) The Minister may direct that such sum as he thinks fit shall be paid from the Riot Damage Fund to any person who, before such date as the Minister may specify, satisfies any public officer nominated by the Minister in that behalf that he has suffered damage to property or has incurred expenses by reason of any personal injury received in a riot damage area as a direct result of the riot which resulted in the declaration of such riot damage area, or into the Consolidated Fund:

Provided that in fixing any such sum regard shall be had to the conduct of the said person, whether as respects the precautions taken by him or as respects his being a party or accessory to such riotous assembly, or as regards any provocation offered to the persons assembled or otherwise.

(2) Any sum paid to any person under subsection (1) shall be taken into account, in any claim before a court, for the purpose of assessing the amount of damages, if any, to be awarded in any civil action arising out of the riot in respect of which such sum was paid.

Penalty

10. Any person guilty of an offence under this Act shall be liable to a fine of £10 and to imprisonment for three months.

MALAŴI CITIZENSHIP

CHAPTER 15:01

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CHAPTER 15:01

MALAŴI CITIZENSHIP

ARRANGEMENT OF SECTIONS

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CHAPTER 15:01

MALAŴI CITIZENSHIP

28 of 1966
37 of 1967
5 of 1971
22 of 1992
G.N.
139/1966
223/1966
284/1966
56/1968
170/1968
216/1970

An Act to repeal and replace the Malaŵi Citizenship Act, 1964, so as to make provision, consequent upon the enactment of a Republican form of Constitution in Malaŵi, for the acquisition of citizenship of Malaŵi by birth or descent, or by registration in certain cases; to regulate the manner and circumstances in which aliens may be naturalized as citizens of Malaŵi and in which citizens of Malaŵi may renounce or be deprived of their citizenship; and to make provision for certain other matters relating to citizenship of Malaŵi and for matters incidental thereto and connected therewith

[6TH JULY, 1966]

PART I

PRELIMINARY

Short title

1. This Act may be cited as the Malaŵi Citizenship Act.

Interpretation
22 of 1992

2.—(1) In this Act, unless the context otherwise requires—

"alien" means a person who is not a Commonwealth citizen;

11& 12 Geo. 6, c. 56

"British protected person" means a person who is a British protected person for the purpose of the British Nationality Act, 1948, of the United Kingdom;

"certificate of naturalization" means a certificate of naturalization granted under this Act;

"Commonwealth country" means Malaŵi, any other country for the time being included in the First Schedule, and any colony, protectorate, trust territory, or other dependency of any such country;

"foreign country" means any country that is not a Commonwealth country;

"Malaŵi consulate" means an office of a diplomatic or consular officer of the Government of Malaŵi where a register of births or residents is kept or, where there is no such office, such office as may be prescribed;

"minor" means a person who has not attained the age of twenty-one years;

"oath of allegiance" means the oath prescribed in the Second Schedule.

(2) A person shall, for the purposes of this Act, be of full age if he has attained the age of 21 years or if, being a woman under that age, she has been married, and shall be of full capacity if he or she is not of unsound mind.

(3) (*a*) Any reference in this Act to the national status of the father of a person at the time of that person's birth shall, in relation to a person born after the death of his father, be construed as a reference to the national status of the father at the time of the father's death.

(*b*) Where the death referred to in paragraph (*a*) occurred before the 6th July, 1966, and the birth occurred after the 5th July, 1966, the national status that the father would have had if he had died on the 6th July, 1966, shall be deemed to be his national status at the time of his death.

(4) For the purposes of this Act, a person born aboard a registered ship or aircraft, or aboard an unregistered ship or aircraft of the Government of any country, shall be deemed to have been born in the place in which the ship or aircraft was registered or, as the case may be, in that country.

(5) Where after the commencement of this Act a newborn infant is found abandoned within Malaŵi that infant shall, unless the contrary is shown, be deemed to have been born within Malaŵi of parents possessing citizenship of Malaŵi.

(6) Where an Oath of Allegiance is required to be taken under this Act, any person may, instead of taking the oath, make a solemn Affirmation in the form of the oath hereby appointed,

substituting the words "solemnly, sincerely and truly declare and affirm" for the word "swear", and omitting the words "so help me God".

PART II
Citizenship by Birth and Descent

Citizens on 5th July, 1966

3. Every person who on the 5th day of July, 1966, was under any existing law a citizen of Malaŵi, shall continue to be a citizen of Malaŵi after that date.

Citizenship by birth
5 of 1971
22 of 1992

4. Every person born in Malaŵi after the 5th day of July, 1966, shall become a citizen of Malaŵi on the date of his birth if one of his parents is a citizen of Malaŵi:

Provided that this subsection shall not apply to a person whose father is a citizen of a country with which Malaŵi is at war and the birth occurs at a place then under occupation by the enemy.

Citizenship by descent
22 of 1992

5. A person born outside Malaŵi after the 5th day of July, 1966, shall become a citizen of Malaŵi on the date of his birth if his father or mother is a citizen of Malaŵi by birth.

PART III
Dual Citizenship

Dual citizenship of persons of full age not permitted

6.—(1) No citizen of Malaŵi, being a person of full age and capacity, shall be entitled to be also a citizen of any other country.

(2) A citizen of Malaŵi, being a person of full age and capacity, who is also to his own knowledge a citizen of any other country, shall be liable to deprivation of citizenship of Malaŵi in accordance with section 24.

(3) For the purposes of subsection (2) such knowledge shall be presumed from the possession by that person of a passport or

document of the like nature of any country, or the exercise in relation to any other country of any other right or privilege accorded exclusively to citizens of that country.

Dual citizenship of minors

7.—(1) Any person who upon the attainment of twenty-one years of age is a citizen of Malaŵi and also, to his own knowledge, a citizen of some other country shall upon his twenty-second birthday cease to be a citizen of Malaŵi unless before that day he has—

(*a*) taken an oath of allegiance in the form specified in the Second Schedule; and

(*b*) made a declaration in writing in the form specified in the Third Schedule of his intention to retain citizenship of Malaŵi; and

(*c*) made a declaration in writing in the form specified in the Fourth Schedule renouncing, so far as it lies within his power, citizenship of that other country, and

(*d*) made a declaration in writing in the form specified in the Fifth Schedule of his intention to reside permanently in Malaŵi.

(2) For the purposes of subsection (1) section 6 (2) shall apply.

Acquisition of other citizenship by voluntary act

8. A citizen of Malaŵi, being a person of full age and capacity, who acquires by voluntary act other than marriage the citizenship of some country other than Malaŵi shall cease, on the day upon which he acquires such other citizenship, to be a citizen of Malaŵi.

Acquisition of other citizenship by marriage

9. A citizen of Malaŵi, being a woman, who acquires by marriage the citizenship of some country other than Malaŵi shall cease on the first anniversary of the date of that marriage to be a citizen of Malaŵi unless, before that anniversary, she has made a declaration in writing—

(*a*) in the form specified in the Third Schedule, of her intention to retain citizenship of Malaŵi; and

(*b*) in the form specified in the Fourth Schedule, renouncing, so far as it lies within her power, citizenship of that other country.

Acquisition of other citizenship by any other means

10.—(1) A citizen of Malaŵi, being a person of full age, who acquires by any means other than by voluntary act or by marriage the citizenship of some country other than Malaŵi shall cease on the first anniversary of the date of such acquisition to be a citizen of Malaŵi unless, before that anniversary, he has made a declaration in writing—

(*a*) in the form specified in the Third Schedule, of his intention to retain citizenship of Malaŵi; and

(*b*) in the form specified in the Fourth Schedule, renouncing so far as it lies within his power citizenship of that other country.

(2) A citizen of Malaŵi who is not of full age who acquires by any means other than by voluntary act or by marriage the citizenship of some country other than Malaŵi shall upon his twenty-second birthday cease to be a citizen of Malaŵi unless before that day he had made the declaration required by subsection (1).

Period allowed for exercise of option as to citizenship

11. The following provisions shall apply in relation to the period prescribed in section 7, 9 or 10 whereby, at the expiration of the specified period a person shall cease to be a citizen of Malaŵi unless he has complied with the further provisions of such section—

(*a*) Where any person to whom section 7, 9, or 10 applies is of unsound mind at the beginning of the period prescribed by the section, or becomes of unsound mind during that period, the period prescribed shall be reckoned from the date upon which that person ceases to be of unsound mind;

(*b*) Where the Minister, or any public officer so authorized by the Minister, is satisfied that any person to whom section 7, 9 or 10 applies, failed by reason of any circumstances not attributable to such person's own misconduct, default or wilful neglect, within the period prescribed by the relevant section to comply with that section, he may direct that such longer period shall be allowed in relation to that person as will permit that person an opportunity of complying with that section.

PART IV
Citizenship by Registration and Naturalization

Common-wealth citizens

12.—(1) Every person who under the Constitution, or under this Act is a citizen of Malaŵi, or under any enactment for the time being in force in any country to which this section applies is a citizen of that country shall, by virtue of that citizenship, have the status of a Commonwealth citizen.

11 & 12 Geo.6, c. 56

(2) Every person who under the British Nationality Act, 1948, of the United Kingdom, is a citizen of the United Kingdom and Colonies, a British protected person, a British subject, or a British subject without citizenship shall, by virtue of that status, have the status of a Commonwealth citizen.

(3) The countries to which this section applies shall be those Commonwealth countries for the time being listed in the First Schedule.

(4) The Minister may by order published in the *Gazette* add the name of a country to, or delete the name of a country from, the list of Commonwealth countries referred to in subsection (3).

Registration of Common-wealth citizens

13.—(1) Subject to subsection (2), any Commonwealth citizen, being a person of full age and capacity, on making application therefor in the manner prescribed by section 28, may be registered as a citizen of Malaŵi if he satisfies the Minister—

(*a*) that he is ordinarily resident in Malaŵi, and has been so resident for a period of five years; and

(*b*) that he has an adequate knowledge of a prescribed vernacular language or of the English language; and

(*c*) that he is of good character; and

(*d*) that he would be a suitable citizen of Malaŵi.

(2) A person shall not be registered as a citizen of Malaŵi under this section unless, at the time of application, he makes a declaration in writing—

(*a*) of his willingness to take an oath of allegiance in the form specified in the Second Schedule;

(*b*) of his willingness to renounce any other nationality or citizenship he may possess; and

(*c*) of his intention to continue to reside permanently in Malaŵi.

Registration of citizens of certain African states

14.—(1) Subject to subsection (2), a person of a class to which this section applies, being a person of full age and capacity, on making application therefor to the Minister in the manner prescribed by section 28, may be registered as a citizen of Malaŵi if he satisfies the Minister in respect of all the requirements specified in section 13 (1) (*a*), (*b*), (*c*) and (*d*).

(2) A person shall not be registered as a citizen of Malaŵi under this section unless at the time of application he makes a declaration in writing in respect of all the matters specified in section 13 (2) (*a*), (*b*) and (*c*).

(3) The Minister may, where he is satisfied that it is desirable so to do, by order published in the *Gazette* declare that citizens or residents, or any class of citizens or residents, of any State or territory, or any part thereof, on the continent of Africa shall be persons of a class to which this section applies.

Registration of persons with close connexion with Malaŵi

15.—(1) Subject to subsections (2) and (3), any person who satisfies the Minister that he has a close connexion with Malaŵi (as defined in subsection (2)) and who is not otherwise qualified under this Act to be registered as a citizen of Malaŵi may be so registered on making application therefor to the Minister in the manner prescribed by section 28:

Provided that a person who has not attained the age of 21 years (other than a woman who is or has been married) may not himself make an application under this section, but an application may be made on his behalf by his parents or guardian.

(2) For the purposes of subsection (1), a person has a close connexion with Malaŵi if, and shall not be regarded as having such a connexion unless, he satisfies the Minister that—

(*a*) (i) he was born in Malaŵi; or

(ii) that he has been ordinarily resident in Malaŵi for a period of not less than 20 years; or

(iii) that he is permanently resident in Malaŵi and was born in Malaŵi or in Mozambique north of the Zambesi River and that both his parents were born in either Mozambique north of the Zambesi River or in Malaŵi; and

(*b*) in addition he fulfils all the requirements specified in section 13 (1) (*a*), (*b*), (*c*) and (*d*).

(3) A person of full age shall not be registered as a citizen of Malaŵi under this section unless at the time of application he makes a declaration in writing in respect of all the matters specified in section 13 (2) (*a*), (*b*) and (*c*).

(4) Registration under this section, in accordance with the proviso to subsection (1), shall not exempt any person from compliance with the requirements, of section 7, relating to dual citizenship.

Registration of wives of Malaŵi citizens

16.—(1) Subject to subsection (2), any woman, being a person of full capacity, who has been married to a citizen of Malaŵi or to a person who would but for his death have become a citizen of Malaŵi on 6th July, 1966, may be registered as a citizen of Malaŵi, notwithstanding that she is an alien, on making application therefor to the Minister in the manner prescribed by section 28, if she satisfies the Minister that she fulfils all the requirements specified in section 13 (1) (*a*), (*b*), (*c*) and (*d*).

(2) A woman shall not be registered as a citizen of Malaŵi under this section unless at the time of application she makes a declaration in writing—

(*a*) of her willingness to take an oath of allegiance in the form specified in the Second Schedule; and

(*b*) of her willingness to renounce any other nationality or citizenship she may possess; and

(*c*) in the case of a woman who is widowed, divorced or separated from her husband, of her intention to continue to reside permanently in Malaŵi.

Registration of minor children of Malaŵi citizens

17.—(1) Subject to subsections (2) and (3), the minor child of any citizen of Malaŵi may, upon application made in the manner prescribed by section 28 by a parent or guardian of that child, be registered as a citizen of Malaŵi, provided the Minister is satisfied that the minor child—

(*a*) is ordinarily resident in Malaŵi; and

(*b*) has an adequate knowledge of a prescribed vernacular language or the English language; and

(*c*) is of good character; and

(*d*) would be a suitable citizen of Malaŵi.

(2) A minor child shall not be registered as a citizen of Malaŵi under this section unless at the time of application the parent or guardian making application on the child's behalf makes on his own behalf a declaration in writing of his intention to continue to reside permanently in Malaŵi.

(3) Registration under this section shall not exempt a minor child, who after registration as a citizen of Malaŵi retains under the law of some other country citizenship of that country, from compliance with the requirements of section 7, relating to dual citizenship.

Registration of stateless persons

18.—(1) Subject to subsection (2) a person shall be entitled on making application therefor in the manner prescribed by section 28 to be registered as a citizen of Malaŵi if he satisfies the Minister—

(*a*) that he is and always has been stateless; and

(*b*) that he was born within Malaŵi or that one of his parents was a citizen of Malaŵi at the time when he was born; and

(*c*) that he is ordinarily resident in Malaŵi, and has been so resident for a period of three years immediately preceding the application; and

(*d*) that he has neither been convicted of an offence, or detained for behaviour, prejudicial to public security, nor has been sentenced to imprisonment for a term of five years or more on any criminal charge.

(2) A person shall not be registered as a citizen of Malaŵi under this section unless, at the time of application, he makes a declaration in writing—

(*a*) of his willingness to take an oath of allegiance in the form specified in the Second Schedule; and

(*b*) of his intention to continue to reside permanently in Malaŵi.

(3) Subsection (1) shall apply to persons born before as well as to persons born after the commencement of this Act, and paragraph (*b*) of that subsection shall apply to persons born illegitimate as well as to persons born legitimate.

(4) A person who has not attained the age of 21 years (other than a woman who is or has been married) may not himself make an application under this section, but an application may be made on his behalf by his parent or guardian.

Conferment of citizenship in special circumstances

19. Notwithstanding any other provisions in this Act contained the Minister may, in such special circumstances as he in his discretion thinks fit, confer upon any person citizenship of Malaŵi, and thereupon that person shall become a citizen of Malaŵi.

Effect of registration

20.—(1) Subject to subsection (2), any person registered as a citizen of Malaŵi under this Act shall become a citizen of Malaŵi by registration on the date on which he is so registered.

(2) If a person of full age who is registered as a citizen of Malaŵi under this Act other than a person upon whom citizenship has been conferred in accordance with section 19 does not produce to such officer as the Minister may appoint in that behalf, within three months of being so registered, or within such further period as the Minister or such officer may allow, evidence sufficient to satisfy such officer—

(*a*) that he has renounced any other nationality or citizenship which he may have possessed; and

(*b*) that he has taken an oath of allegiance in the form specified in the Second Schedule; and

(*c*) if the circumstances of the case so require, that he has made a declaration, in the form specified in the Fifth Schedule, of his intention to reside permanently in Malaŵi,

the registration of that person as a citizen of Malaŵi shall be cancelled and he shall be deemed never to have been so registered.

Naturalization of aliens

21.—(1) Subject to subsection (2), any alien, being a person of full age and capacity, on making application therefor to the Minister in the manner prescribed in section 28, may be granted a certificate of naturalization as a citizen of Malaŵi if he satisfies the Minister—

(*a*) that he is ordinarily resident in Malaŵi and has been so resident for a period of seven years immediately preceding the application; and

(*b*) that he has an adequate knowledge of a prescribed vernacular language or of the English language; and

(*c*) that he is of good character; and

(*d*) that he is financially solvent; and

(*e*) that he would be a suitable citizen of Malaŵi.

(2) An alien shall not be granted a certificate of naturalization as a citizen of Malaŵi under this section unless at the time of application he makes a declaration in writing in respect of all the matters specified in section 13 (2) (*a*), (*b*) and (*c*).

Effect of naturalization

22.—(1) Subject to subsection (2), an alien to whom a certificate of naturalization as a citizen of Malaŵi is granted under this Act shall become a citizen of Malaŵi by naturalization from the date of the grant of the certificate.

(2) If a person to whom a certificate of naturalization as a citizen of Malaŵi has been granted under this section does not produce to such officer as the Minister may appoint in that behalf, within three months of such certificate being granted, or within such further period as the Minister or such officer may allow, evidence sufficient to satisfy such officer—

(*a*) that he has renounced any other nationality or citizenship which he may have possessed; and

(*b*) that he has taken an oath of allegiance in the form specified in the Second Schedule; and

(*c*) that he has made declaration, in the form specified in the Fifth Schedule of his intention to reside permanently in Malaŵi,

the naturalization of that person as a citizen of Malaŵi shall be cancelled and he shall be deemed never to have been so naturalized.

PART V

Renunciation and Deprivation of Citizenship

Renunciation of citizenship

23.—(1) If any citizen of Malaŵi of full age and capacity, who is a citizen of any other country, or who satisfies the Minister that he will become a citizen of any other country, makes a declaration in the form set forth in the Sixth Schedule of his renunciation of citizenship of Malaŵi, the Minister may cause the

declaration to be registered and, upon its being so registered that person shall cease to be a citizen of Malaŵi:

Provided that if a person who has made a declaration of renunciation in accordance with this section does not become a citizen of any other country as aforesaid within three months of the date of his making such declaration of renunciation, he shall be deemed to be, and to have remained, a citizen of Malaŵi, notwithstanding the making by him of such declaration:

Provided further that forthwith upon his being restored to citizenship of Malaŵi, any such person shall take an oath of allegiance in the form specified in the Second Schedule, and if that person declines, neglects or omits to take the said oath of allegiance his citizenship of Malaŵi shall not be restored to him.

(2) The Minister may refuse to register any such declaration of renunciation of citizenship of Malaŵi if it is made during any war in which Malaŵi is engaged or if, in his opinion, it is otherwise contrary to public policy to register the declaration.

Deprivation of citizenship of persons who exercise certain rights in other countries

24. The Minister may by order deprive any citizen of Malaŵi, other than a citizen of Malaŵi by birth or descent, of his citizenship if the Minister is satisfied that that person has at any time while a citizen of Malaŵi and of full age and capacity voluntarily claimed and exercised in any other country any right available to him under the law of that country, being a right accorded exclusively to its own citizens, and that it is not conducive to the public good that he should continue to be a citizen of Malaŵi.

Deprivation of citizenship in other cases

25.—(1) Subject to this section, the Minister may by order deprive of his citizenship any citizen of Malaŵi, other than a citizen of Malaŵi by birth or descent, if he is satisfied that such citizenship was acquired, wholly or partially, by means of or as a result of fraud, false representation or the concealment of any material fact.

(2) Subject to this section, the Minister may by order deprive of his citizenship any citizen of Malaŵi other than a citizen of Malaŵi by birth or descent, if he is satisfied that that citizen—

(*a*) has shown himself by act or speech to be disloyal or disaffected towards the Government of Malaŵi;

(*b*) has, during any war in which Malaŵi was engaged, unlawfully traded or communicated with any enemy or been engaged in or associated with any business that was to his knowledge carried on in such a manner as to assist an enemy in that war; or

(*c*) has, within seven years after becoming naturalized, been

sentenced in any country to imprisonment for a term of not less than twelve months; or

(*d*) has been ordinarily resident outside Malaŵi for a continuous period of seven years and during that period has not registered annually in the prescribed manner with a Malaŵi diplomatic or consular office abroad, or has not notified the Minister in writing of his intention to retain his citizenship of Malaŵi.

(3) The Minister shall not deprive a person of citizenship under this section unless he is satisfied that it is not conducive to the public good that that person should continue to be a citizen of Malaŵi.

(4) Before making an order under this section, the Minister shall give the person against whom the order is proposed to be made notice in writing informing him of the ground on which it is proposed to make, and of his right to, an inquiry under this section; and, if that person applies for an inquiry, the Minister shall refer the case to a committee of inquiry consisting of a chairman, being a person possessing judicial experience, appointed by the Minister and of such other members appointed by the Minister as he thinks proper.

Effect of renunciation or deprivation

26.—(1) A citizen of Malaŵi who is deprived of his citizenship by an order of the Minister under this Act shall, upon making of the order, cease to be a citizen of Malaŵi.

(2) The renunciation by any person of his Malaŵi citizenship or the deprivation of any person's Malaŵi citizenship under this Act shall not affect the liability of that person for any offence committed by him before the renunciation or deprivation of his citizenship.

Restoration of citizenship

27.—(1) Subject to subsection (2), the Minister, may, if he considers it desirable on taking into account all the circumstances of a case, restore citizenship of Malaŵi to a person who has lost such citizenship whether voluntarily by a declaration of renunciation of citizenship under section 23, or involuntarily by reason of Part III of this Act.

(2) If a person to whom restoration of citizenship of Malaŵi has been granted under this section does not produce to such officers as the Minister may appoint in that behalf, within three months or within such further period as the Minister or such officer may allow, evidence sufficient to satisfy such officer—

(*a*) that he has renounced any other nationality or citizenship which he may have possessed; and

(*b*) that he has taken an oath of allegiance in the form specified in the Second Schedule,

(notwithstanding that such person may at some previous time already have taken the oath of allegiance or made a declaration of renunciation or other citizenship), the restoration of citizenship of Malaŵi to that person shall be cancelled.

PART VI
Supplemental

Manner of making applications

28. Every application under this Act—

(*a*) shall be made to the Minister;

(*b*) shall be accompanied by the prescribed fee (if any);

(*c*) where the form of any such application is prescribed, shall be made in such form, with such variations as the circumstances require and the Minister accepts;

(*d*) shall be supported by such evidence of the statements made therein as may be prescribed under this Act or as the Minister may require; and

(*e*) shall be verified by a declaration made before a magistrate or commissioner for oaths.

Decision of Minister to be final

29. The Minister shall not be required to assign any reason for the grant or refusal of any application under this Act and the decision of the Minister on any such application shall not be subject to appeal to or review in any court.

Certificate of citizenship in cases of doubt

30. The Minister may in such cases as he thinks fit, on the application of any person with respect to whose citizenship of Malaŵi a doubt exists, whether on a question of fact or law, certify that that person is a citizen of Malaŵi, and a certificate issued under this section shall, unless it is proved that it was obtained by means of fraud, false representation or concealment of any material fact, be conclusive evidence that that person was such a citizen on the date thereof but without prejudice to any evidence that he was such a citizen at an earlier date.

Renunciation of citizenship of other countries

31. Where, under this Act, a person is required to renounce the nationality or citizenship of any country other than Malaŵi and the law of that country makes no provision for the renunciation of nationality or citizenship, that person shall make the declaration specified in the Third Schedule, or the declaration specified in the Fourth Schedule, as the circumstances of the case may require, and a person who makes any such declaration shall be treated as having complied with any such requirement.

Evidence

32.—(1) Every document purporting to be a notice, certificate, order or declaration, or any entry in a register, or subscription of an oath of allegiance or declaration of renunciation, given,

granted or made under this Act, shall be received in evidence, and shall, unless the contrary is proved, be deemed to have been given, granted or made by or on behalf of the person by whom or on whose behalf it purports to have been given, granted or made.

(2) *Prima facie* evidence of any document of the kind mentioned in subsection (1) may be given by production of a document purporting to be certified as a true copy thereof by such person and in such manner as may be prescribed.

(3) Any entry in a register made under this Act shall be received as evidence of the matters stated in the entry.

Offences

33.—(1) Any person who, for the purpose of procuring any thing to be done or not to be done under this Act, makes any statement which he knows to be false in a material particular, or recklessly makes any statement which is false in a material particular, shall be liable to a fine of £500 and to imprisonment for three years.

(2) Any person who fails to comply with any requirement imposed on him by regulations made under this Act with respect to the delivering up of certificates of citizenship, naturalization or registration shall be liable to a fine of £100 and to imprisonment for six months.

Regulations

34. The Minister may make regulations—

(*a*) for prescribing any matter which is to be prescribed under this Act;

(*b*) for the registration of anything required or authorized under this Act to be registered;

(*c*) for the administration and taking of oaths of allegiance under this Act, for the time within which oaths of allegiance shall be taken and for the registration of oaths of allegiance;

(*d*) for the giving of any notice required or authorized to be given to any person under this Act;

(*e*) for the cancellation of the registration of, and the cancellation or amendment of certificates of naturalization relating to, persons deprived of citizenship under this Act, and for requiring such certificates of registration to be delivered up for those purposes;

(*f*) for the registration of the births and deaths of persons of any class or description born or dying elsewhere than in Malaŵi, and for annual registration at Malaŵi diplomatic or consular offices abroad;

(*g*) for enabling the births and deaths of citizens of Malaŵi born or dying in any country in which the Government of Malaŵi has for the time being no diplomatic or consular

representative to be registered by persons serving in the diplomatic, consular or other foreign service of any country which by arrangement with the Government of Malaŵi, has undertaken to represent that Government's interest in that country, or by a person authorized in that behalf by the Minister, and for the registration thereby of citizens of Malaŵi ordinarily resident outside Malaŵi;

(*h*) prescribing forms;

(*i*) providing for the imposition and recovery of fees, in respect of any application made to the Minister or in respect of any registration, or the making of any declaration, or the grant of any certificate, or the taking of any oath of allegiance, authorized to be made, granted or taken under this Act, and in respect of supplying a certified or other copy of any notice, certificate, order, declaration or entry given, granted or made under this Act;

(*j*) for matters incidental to and connected with the matters mentioned in the preceding paragraphs of this section.

Delegation of powers

35. The Minister may, by Order made under his hand and published in the *Gazette*, delegate to any public officer such powers or duties as are conferred upon him by this Act as may appear to him to be expedient or desirable.

Saving

2 of 1964(M)

36. All certificates, renunciations, declarations, orders or oaths purported to be granted, made or taken pursuant to the Malaŵi Citizenship Act, 1964 (now repealed) or any Regulations purported to be made thereunder, shall be of as full force and effect as if they were granted, made or taken in accordance with the corresponding provisions of this Act.

ss. 2 and 12
G.N.
56/1968
170/1968
216/1970

FIRST SCHEDULE

Commonwealth Countries

The following shall be Commonwealth countries for the purposes, of this Act—

Australia
Barbados
Botswana
Canada
Ceylon
Cyprus
Fiji
Gambia
Ghana
Guyana
India
Jamaica
Kenya
Lesotho
Malaysia
Malta
Mauritius
New Zealand
Nigeria
Pakistan
Rhodesia
Sierra Leone
Singapore
Swaziland
Tanzania
Trinidad and Tobago
Uganda
United Kingdom of Great Britain and Northern Ireland
Zambia

SECOND SCHEDULE

ss. 2, 7, 13, 16, 18, 20, 22, 23 and 27

Oath of Allegiance

I, ..., swear that I will be faithful and bear true allegiance to the Republic of Malaŵi, and that I will preserve, protect and defend the Constitution of Malaŵi, as by law established. So help me God.

THIRD SCHEDULE

ss. 7, 9, 10 and 31

Declaration of Intention to retain Citizenship of Malaŵi

I, ... (full name in block capitals), do solemnly and sincerely declare—

1. That I was born at ..... in *Malaŵi/ ..... (insert name of country and am of or over the age of 21 years.

2. That I am a citizen of Malaŵi by *birth/descent/registration/naturalization and am also a national of ..... (insert name of country) by *birth/descent/registration/naturalization/marriage.

3. That as I am desirous of retaining my status as a citizen of Malaŵi I hereby renounce so far as it lies within my power my status as a citizen/national of ..... (insert name of country) and any claim I have to the protection of that country.

…….
Signature of Applicant

Declared at ....., this ..... day ..... of ....., 19 ..... before me.

…….
**Magistrate / Commissioner for Oaths*

*Delete as applicable.

FOURTH SCHEDULE

ss. 7, 9, 10 and 31

Declaration of Renunciation of Citizenship of Another Country

I, ... (full name in block capitals), do solemnly and sincerely declare—

1. That I was born at ..... in ..... (insert name of country) and am of or over the age of 21 years.

2. That I have been granted Malaŵi citizenship by *registration/naturalization on condition that I renounce my citizenship/nationality of ..... (insert name of country).

3. I hereby renounce so far as it lies within my power my status as a citizen/national of ..... (insert name of country) and any claim I have to the protection of that country.

……..
Signature of Applicant

Declared at ....., this ..... day of ....., 19 ....., before me.

.....
* *Magistrate/Commissioner for Oaths*

* Delete as applicable.

---

ss. 7 and 22

FIFTH SCHEDULE

Declaration of Intention to reside Permanently in Malaŵi

I, ... (full name in block capitals), do solemnly and sincerely declare—

1. That I am of or over the age of 21 years.

2. *That so far as it lies within my power, I have renounced my citizenship/nationality of ..... (insert name of country) and intend to reside permanently in Malaŵi.

OR

That although I have renounced my citizenship/nationality of ..... (insert name of country) and intend my domicile of choice to be Malaŵi it may be necessary in the course of my employment as ..... / as self-employed to be absent from time to time from Malaŵi.

……..
Signature of Applicant

Declared at ....., this ..... day of ....., 19 ..... before me.

.....
* *Magistrate/Commissioner for Oaths*

*Delete paragraphs or words not applicable.

---

s. 23

SIXTH SCHEDULE

Declaration of Renunciation of Citizenship of Malaŵi

1. I, ... (full name and address in block capitals) of ..... am of full age and legal capacity and I was born at ..... (place) in ..... (country) on the day of ....., 19 .....

2. I*am/*am not/* have been formerly/*have not been formerly married.

3A. I am a *citizen/national of ..... under the law of that country.

OR

3B. I intend to become a *citizen/national of ..... after renouncing my citizenship of Malaŵi.

4. I hereby renounce my citizenship of, and divest myself of my allegiance to Malaŵi, and enjoyment of its protection.

I, the above-named ..... do solemnly and sincerely declare that the foregoing particulars stated in this Declaration are true and correct in all respects, and I make this solemn Declaration conscientiously believing the same to be true in all respects.

.....
Signature of Applicant

Made and subscribed before me this ..... day of ....., 19.....

.....
**Magistrate or Commissioner for Oaths*

*Delete whichever is inapplicable.

G.N. 222/1966
206/1968

SUBSIDIARY LEGISLATION

MALAŴI CITIZENSHIP (PRESCRIBED LANGUAGES) REGULATIONS

under s. 34

Citation

1. These Regulations may be cited as the Malaŵi Citizenship (Prescribed Languages) Regulations.

Prescribed languages

2. The vernacular languages prescribed for the purposes of section 13 (1) (*b*), section 17 (1) (*b*) and section 21 (1) (*b*) of the Act shall be any one or more of the languages named in the Schedule.

SCHEDULE

Chichewa
Chitumbuka
Chiyao
Chinkhonde
Chitonga

G.N. 221/1966
19/2011
21/2014

MALAŴI CITIZENSHIP (FORMS AND FEES) REGULATIONS

under s. 34

Citation

1. These Regulations may be cited as the Malaŵi Citizenship (Forms and Fees) Regulations.

Forms

2. The forms set out in the First Schedule shall be used for the purposes for which they are designed with such variations as the circumstances of a particular case may require.

Supporting evidence

3. Every application shall be supported by such evidence of the statements made therein as may be required on the application form or in the Malaŵi Citizenship Act.

Fees

4. The fees set out in the Second Schedule shall be paid for the matters respectively specified therein:

Provided that the Deputy Chief Immigration Officer may in his discretion refund fees if an application cannot be considered.

FIRST SCHEDULE

FORM A

GOVERNMENT OF MALAŴI
MALAŴI CITIZENSHIP ACT
(Cap. 15:01)

APPLICATION BY A COMMONWEALTH CITIZEN OR
A DECLARED CITIZEN OR RESIDENT FOR REGISTRATION AS
A CITIZEN OF MALAŴI
(UNDER SECTION 13 OR 14)

PART I

APPLICATION

1. I, ... of ..... hereby apply for registration as a citizen of Malaŵi under section 13/14* of the Malaŵi Citizenship Act on the grounds that I am a citizen/resident* of ....., of full age and capacity, and that—

Full names and address in block capitals

(*a*) I am ordinarily resident in Malaŵi, and have been so resident for a period of five years; and
(*b*) I have an adequate knowledge of a prescribed vernacular language/of the English language*; and
(*c*) I am of good character; and
(*d*) I would be a suitable citizen of Malaŵi.

Dated at ..... this ..... day of ..... 19 .....

……..
Signature of Applicant

*Delete whichever is inapplicable.

PART II

PARTICULARS RELATING TO APPLICATION

2. Full names .....
3. Address .....
4. Place and date of birth .....
5. Profession or occupation .....
6. Present nationality or citizenship .....
.....
7. Date of entry in Malaŵi to take up ordinary residence .....
.....
8. Present Passport: Issued at ..... No. .....
9. (*a*) Marital status (never married, now married, widowed, divorced) .....
   (*b*) If divorced give place and date of decree.....
10. (*a*) Name of wife or husband .....
   (*b*) Address (if dead, give place and date of death) .....
   .....

(*c*) Nationality (if dead, give nationality at time of death) .....

11. (*a*) Father's full name ..... living/dead* .....
(*b*) Address (if dead, give last address) ....
(*c*) Nationality (if dead, give nationality at time of death) .....

12. (*a*) Mother's full name ..... living/dead* .....
(*b*) Address (if dead, give last address) ....
(*c*) Nationality (if dead, give nationality at time of death) .....

13. Evidence submitted of citizenship of Commonwealth country or evidence submitted of declared citizenship or residence ....

14. Evidence submitted of previous residence in Malaŵi ....

15. Languages known ....

16. Particulars of any criminal proceedings taken against the applicant at any time in any country ....

PART III

Certificates of Sponsors

Full names and address in block capitals

17. I, ... of ..... being a citizen of Malaŵi otherwise than by naturalization, hereby certify that the applicant herein is a person known to me and of good character, that in my opinion he would be a suitable citizen of Malaŵi and that the particulars in this application are correct in all respects to the best of my knowledge and belief. I am not the legal practitioner or agent of the applicant. I have known the applicant for .... months/years.*

Dated at ..... this ..... day of ..... 19 ....

Witness to signature *Signature of Sponsor*

Address ..... *Occupation* .....

Occupation .....

(NOTE.—The sponsor in the case of paragraph 17 must be an Administrative Officer, Legal Practitioner, Bank Official, Member of a District Council, Municipal Council or Town Council, Magistrate, Mayor, Member of Parliament, Minister of Religion, Notary Public, Physician or Surgeon.)

18. I, ... of ..... being a citizen of Malaŵi otherwise than by naturalization, hereby certify that the applicant herein is a person known to me and of good character, that in my opinion he would be a suitable citizen of Malaŵi and that the particulars in this application are correct in all respects to the best of my knowledge and belief. I am not the legal practitioner or agent of the applicant. I have known the applicant for ..... months/years.*

Full names and address in block capitals

Dated at ..... this ..... day of 19 .....

....

Witness to signature *Signature of Sponsor*

Address ..... *Occupation* .....

Occupation .....

(Note.—The sponsor in the case of paragraph 18 need not be in a class mentioned in the note to paragraph 17.)

PART IV

Declaration by Applicant

19. I, ... do solemnly and sincerely declare—

Full names in block capitals

(*a*) that to the best of my knowledge and belief the particulars stated in this application are true and correct in all respects; and

(*b*) that I shall inform the Minister immediately if, before the registration herein applied for is granted, any particular given herein requires amendment; and

(*c*) that I am willing to—

(i) take the Oath of Allegiance to the Republic of Malaŵi; and

(ii) renounce any other nationality or citizenship I may possess; and

(*d*) that I intend to continue to reside permanently in Malaŵi.

.....

Signature of Applicant

Declared at ..... this ..... day of ..... 19 .....

Before me, ...

Magistrate / Commissioner for Oaths

FORM B

GOVERNMENT OF MALAŴI

MALAŴI CITIZENSHIP ACT
(Cap. 15:01)

APPLICATION BY A PERSON HAVING A CLOSE CONNEXION WITH MALAŴI FOR REGISTRATION AS A CITIZEN OF MALAŴI

(UNDER SECTION 15)

PART I

APPLICATION

Full names and address in block capitals

1. I, ...
of .....
hereby apply for registration as a Citizen of Malaŵi under section 15 of the Malaŵi Citizenship Act on the grounds that—

(X the appropriate)

☐ I was born in Malaŵi;

☐ I have been ordinarily resident in Malaŵi for a period of not less than 20 years;

☐ I am permanently resident in Malaŵi and was born in Malaŵi/in Mozambique north of the Zambesi river and that both my parents were born in either Mozambique north of the Zambesi river or in Malaŵi,*

and that I am not otherwise qualified under the Malaŵi Citizenship Act to be registered as a citizen of Malaŵi, and on the further grounds that—

(*a*) I am ordinarily resident in Malaŵi, and have been so resident for a period of five years; and

(*b*) I have an adequate knowledge of a prescribed vernacular language/of the English language *; and

(*c*) I am of good character; and

(*d*) I would be a suitable citizen of Malaŵi.

Dated at ..... this ..... day of ..... 19 .....

.....
Signature of Applicant

(*Delete whichever is inapplicable.)

PART II

Particulars relating to Application

2. Full names .....
3. Address .....
4. Place and date of birth .....
5. Profession or occupation .....
6. Present nationality or citizenship .....

.....

.....

7. Date of entry in Malaŵi to take up ordinary residence .....
8. Present Passport: Issued at ..... No. .....
9. (*a*) Marital status (never married, now married, widowed, divorced).....
   (*b*) if divorced give place and date of decree .....
   .....
10. (*a*) Name of wife or husband .....
    (*b*) Address (if dead, give place and date of death) .....
    .....
    (*c*) Nationality (if dead, give nationality at time of death) .....
    .....
11. (*a*) Father's full name ..... living/dead.*
    (*b*) Address (if dead, give last address) .....
    .....
    (*c*) Nationality (if dead, give nationality at time of death) .....
    .....
12. (*a*) Mother's full name ..... living/dead.*
    (*b*) Address (if dead, give last address) .....
    .....
    (*c*) Nationality (if dead, give nationality at time of death) .....
    .....
13. Evidence submitted of applicant's claim to his and his parents' place of birth, as appropriate .....

.....

14. Evidence submitted of previous residence in Malaŵi .....

.....

15. Languages known .....

.....

16. Particulars of any criminal proceedings taken against the applicant at any time in any country .....

.....

PART III
Certificates of Sponsors

Full names and address in block capitals

17. I, ...
of .....
being a citizen of Malaŵi otherwise than by naturalization hereby certify that the applicant herein is a person known to me and of good character, that in my opinion he would be a suitable citizen of Malaŵi and that the particulars in this application are correct in all respects to the best of my knowledge and belief. I am not the legal practitioner or agent of the applicant. I have known the applicant for ..... months/years.*

Dated at ..... this ..... day of ..... 19 .....

....
Witness to signature *Signature of Sponsor*
Address ..... *Occupation* .....
.....
Occupation .....

(Note.—The sponsor in the case of paragraph 17 must be an Administrative Officer, Legal Practitioner, Bank Official, Member of a District Council. Municipal Council or Town Council, Magistrate, Mayor, Member of Parliament, Minister of Religion, Notary Public, Physician or Surgeon.)

Full names and address in block capitals

18. I, ...
of .....
being a citizen of Malaŵi otherwise than by naturalization, hereby certify that the applicant herein is a person known to me and of good character, that in my opinion he would be a suitable citizen of Malaŵi and that the particulars in this application are correct in all respects to the best of my knowledge and belief. I am not the legal practitioner or agent of the applicant. I have known the applicant for ..... months/years.*

Dated at ..... this ..... day of ..... 19 .....

....
Witness to signature *Signature of Sponsor*
Address ..... *Occupation* .....
.....
Occupation .....

(Note.—The sponsor in the case, of paragraph 18 need not be in a class mentioned in the note to paragraph 17.)

PART IV
Declaration by Applicant

Full names and address in block capitals

19. I, ...
do solemnly and sincerely declare—

(*a*) that to the best of my knowledge and belief the particulars stated in this application are true and correct in all respects; and

(*b*) that I shall inform the Minister immediately if, before the registration herein applied for is granted, any particular given herein requires amendment; and

(*c*) that I am willing to—

(i) take the Oath of Allegiance to the Republic of Malaŵi; and

(ii) renounce any other nationality or citizenship I may possess; and

(*d*) that I intend to continue to reside permanently in Malaŵi.

.....

Signature of Applicant

Declared at ..... this ..... day of ..... 19 .....

Before me,

.....

Magistrate / Commissioner for Oaths

FORM C

GOVERNMENT OF MALAŴI

MALAŴI CITIZENSHIP ACT

(CAP. 15:01)

APPLICATION BY A MARRIED WOMAN FOR REGISTRATION AS A CITIZEN OF MALAŴI

(UNDER SECTION 16)

PART I

APPLICATION

1. I, ... of ..... hereby apply for registration as a citizen of Malaŵi under section 16 of the Malaŵi Citizenship Act on the grounds that I am of full capacity and that I am or have been married to—

Full names and address in block capitals

(X the appropriate)

☐ a citizen of Malaŵi;

☐ a person who would but for his death have become a citizen of Malaŵi on 6th July, 1966,

and on the further grounds that—

(*a*) I am ordinarily resident in Malaŵi, and have been so resident for a period of five years; and

(*b*) I have an adequate knowledge of a prescribed vernacular language / of the English language*;

(*c*) I am of good character; and

(*d*) I would be a suitable citizen of Malaŵi.

Dated at ..... this ..... day of ..... 19 .....

.....

Signature of Applicant

(*Delete whichever is inapplicable.)

PART II
Particulars Relating To Application

2. Full names .....
3. Address .....
4. Place and date of birth .....
5. Profession or occupation .....
6. Present nationality or citizenship .....
.....
7. Date of entry in Malaŵi to take up ordinary residence .....
8. Present Passport: Issued at ..... No. .....
9. (*a*) Marital status (never married, now married, widowed, divorced) .....
   (*b*) if divorced give place and date of decree .....
   .....
10. (*a*) Name of husband .....
   (*b*) Place and date of birth .....
   (*c*) Present address (if dead, give place and date of death)
   .....
   (*d*) Nationality (if dead, give nationality at time of death)
   .....
   (*e*) How husband's Malaŵi Citizenship was acquired (i.e. by birth, descent, registration, naturalization)
   .....
11. Particulars of any previous marriage .....
.....
12. (*a*) Father's full name ..... living/dead.*
   (*b*) Address (if dead, give last address) .....
   .....
   (*c*) Nationality (if dead, give nationality at time of death)
   .....
13. (*a*) Mother's full name ..... living/dead.*
   (*b*) Address (if dead, give last address) .....
   .....
   (*c*) Nationality (if dead, give nationality at time of death)
   .....

14. Evidence submitted of marriage .....
.....
.....

15. Evidence submitted of husband's Malaŵi citizenship .....
.....
.....

16. Evidence submitted of previous residence in Malaŵi .....
.....
.....

17. Languages known .....

18. Particulars of any criminal proceedings taken against the applicant at any time in any country .....
.....

PART III

Certificates of Sponsors

19. I, ... of ..... being a citizen of Malaŵi otherwise than by naturalization hereby certify that the applicant herein is a person known to me and of good character, that in my opinion he would be a suitable citizen of Malaŵi and that the particulars in this application are correct in all respects to the best of my knowledge and belief. I am not the legal practitioner or agent of the applicant. I have known the applicant for .... months/years.*

Full names and address in block capitals

Dated at ..... this ..... day of ..... 19 .....

.....	.....
Witness to signature	*Signature of Sponsor*
Address	*Occupation* .....
.....	
Occupation	

(Note.—The sponsor in the case of paragraph 19 must be an Administrative Officer, Legal Practitioner, Bank Official, Member of a District Council, Municipal Council or Town Council, Magistrate, Mayor, Member of Parliament, Minister of Religion, Notary Public, Physician or Surgeon.)

20. I, ... of ..... being a citizen of Malaŵi otherwise than by naturalization hereby certify that the applicant herein is a person known to me and of good character, that in my opinion he would be a suitable citizen of Malaŵi and that the particulars in this application are correct in all

Full names and address in block capitals

respects to the best of my knowledge and belief. I am not the legal practitioner or agent of the applicant. I have known the applicant for ..... months/years.*

Dated at ..... this ..... day of ..... 19 .....

....

Witness to signature *Signature of Sponsor*

Address ..... *Occupation* .....

.....

Occupation .....

(NOTE.—The sponsor in the case of paragraph 20 need not be in a class mentioned in the note to paragraph 19.)

PART IV

DECLARATION BY APPLICANT

Full names and address in block capitals

21. I, ... do solemnly and sincerely declare—

(*a*) that to the best of my knowledge and belief the particulars stated in this application are true and correct in all respects; and

(*b*) that I shall inform the Minister immediately if, before the registration herein applied for is granted, any particular given herein requires amendment; and

(*c*) that I am willing to—

(i) take the Oath of Allegiance to the Republic of Malaŵi; and

(ii) renounce any other nationality or citizenship I may possess; and

(*d*) that I intend to continue to reside permanently in Malaŵi.

.....

Signature of Applicant

Declared at ..... this ..... day of ..... 19 .....

Before me,

.....

Magistrate / Commissioner for Oaths

FORM D

GOVERNMENT OF MALAŴI

MALAŴI CITIZENSHIP ACT

(CAP. 15:01)

APPLICATION OF A MINOR CHILD OF A MALAŴI CITIZEN FOR REGISTRATION AS A CITIZEN OF MALAŴI

(UNDER SECTION 17)

PART I

APPLICATION

(Complete either (*a*) or (*b*) of this part.)

1. (*a*) Application by parent of minor child—

I, ... Full names and address in block capitals
of .....
hereby apply on behalf of my child .....
to whom the following particulars relate for his/her* registration as a citizen of Malaŵi under section 17 of the Malaŵi Citizenship Act on the grounds that he/she* is the minor child of a citizen of Malaŵi and that he/she*—

(i) is ordinarily resident in Malaŵi; and
(ii) has an adequate knowledge of a prescribed vernacular language/ the English language;* and
(iii) is of good character; and
(iv) would be a suitable citizen of Malaŵi.

Dated at ..... this ..... day of ..... 19 .....

……..
Signature of Parent

(*b*) Application by guardian of minor child—

I, ... Full names and address in block capitals
of .....
the guardian of .....
to whom the following particulars relate, who has no living parent/ whose parent or parents are living and resident in .....,* am duly authorised by a court of competent jurisdiction/by the minor child's father (or mother in the event of his death)* whose authority or consent is attached, and I hereby apply on behalf of said .....
..... for his/her* registration as a citizen of Malaŵi under section 17 of the Malaŵi Citizenship Act on the grounds that he/she* is the minor child of a citizen of Malaŵi and that he/she*—

(i) is ordinarily resident in Malaŵi; and
(ii) has an adequate knowledge of a prescribed vernacular language/the English language;* and
(iii) is of good character; and
(iv) would be a suitable citizen of Malaŵi.

Dated at ..... this ..... day of ..... 19 .....

……..
Signature of Guardian

(*Delete whichever is inapplicable.)

PART II

Particulars relating to Application

2. Full names of minor child .....
3. Address .....
4. Place and date of birth .....
5. Profession or occupation .....
6. Present nationality or citizenship .....
7. Date of entry in Malaŵi to take up ordinary residence .....
.....

8. Present Passport: Issued at ..... No. .....

9. (*a*) Marital status (never married, now married, widowed, divorced) .....

(*b*) if divorced give place and date of decree .....
.....

10. (*a*) Name of wife or husband .....

(*b*) Address (if dead, give place and date of death) .....
.....

(*c*) Nationality (if dead, give nationality at time of death)
.....
.....

11. (*a*) Father's full name ..... living/dead*

(*b*) Address (if dead, give last address) .....
.....

(*c*) Nationality (if dead, give nationality at time of death) .....
.....

12. (*a*) Mother's full name ..... living/dead*

(*b*) Address (if dead, give last address)
.....

(*c*) Nationality (if dead, give nationality at time of death)
.....

13. Evidence submitted of guardianship (if applicable)
.....

14. Details of minor child's residence in Malaŵi and other countries since birth—

Malaŵi (with addresses)	Dates		Years	Months
	From	To		
Other countries (with addresses)				

15. Minor's knowledge of English/the prescribed vernacular language of ..... * is slight/fair/good/excellent*

16. Particulars of any criminal proceedings taken against the applicant at any time in any country .....
.....

PART III

Certificates of Sponsors

17. I, ... of ..... being a citizen of Malaŵi otherwise than by naturalization, hereby certify that the applicant herein is a person known to me and of good character, that in my opinion he would be a suitable citizen of Malaŵi and that the particulars in this application are correct in all respects to the best of my knowledge and belief. I am not the legal practitioner or agent of the applicant. I have known the applicant for ..... months/years.*

Full names and address in block capitals

Dated at ..... this ..... day of ..... 19 .....

....

Witness to signature *Signature of Sponsor*

Address ..... *Occupation* .....

Occupation .....

(Note.—The sponsor in the case of paragraph 17 must be an Administrative Officer, Legal Practitioner, Bank Official, Member of a District Council, Municipal Council or Town Council, Magistrate, Mayor, Member of Parliament, Minister of Religion, Notary Public, Physician or Surgeon.)

18. I, ... of ..... being a citizen of Malaŵi otherwise than by naturalization hereby certify that the applicant herein is a person known to me and of good character, that in my opinion he would be a suitable citizen of Malaŵi and that the particulars in this application are correct in all respects to the best of my knowledge and belief. I am not the legal practitioner or agent of the applicant. I have known the applicant for ..... months/years.*

Full names and address in block capitals

Dated at ..... this ..... day of ..... 19 .....

....

Witness to signature *Signature of Sponsor*

Address ..... *Occupation* .....

Occupation .....

(Note.—The sponsor in the case of paragraph 18 need not be in a class mentioned in the note to paragraph 17.)

PART IV

Declaration by Parent or Guardian

19. I, ... do solemnly and sincerely declare—

Full names and address in block capitals

(*a*) that to the best of my knowledge and belief the particulars stated in this application are true and correct in all respects; and

(*b*) that I shall inform the Minister immediately if, before the registration herein applied for is granted, any particular given herein requires amendment; and

(*c*) that I intend to continue to reside permanently in Malaŵi.

.....
Signature of Parent/Guardian

Declared at ..... this ..... day of ..... 19 .....
Before me,

.....
Magistrate / Commissioner for Oaths

FORM E

GOVERNMENT OF MALAŴI

MALAŴI CITIZENSHIP ACT

(Cap. 15:01)

APPLICATION BY A STATELESS PERSON FOR REGISTRATION AS A CITIZEN OF MALAŴI

(UNDER SECTION 18)

PART I

APPLICATION

Full names and address in block capitals

1. I,..... of ..... hereby apply for registration as a citizen of Malaŵi under section 18 of the Malaŵi Citizenship Act on the grounds that—

(*a*) I am and always have been stateless; and

(*b*) I was born within Malaŵi/one of my parents was a citizen of Malaŵi at the time when I was born;* and

(*c*) I am ordinarily resident in Malaŵi, and have been so resident for a period of three years immediately preceding this application; and

(*d*) I have neither been convicted of an offence, or detained for behaviour, prejudicial to public security, nor have been sentenced to imprisonment for a term of five years or more on any criminal charge.

Dated at ..... this ..... day of ..... 19 .....

…….
Signature of Applicant

(*Delete whichever is inapplicable.)

PART II

Particulars Relating to Application

2. Full names .....
3. Address .....
4. Place and date of birth .....
5. Profession or occupation .....
6. Date of entry in Malaŵi to take up ordinary residence .....
.....
7. (*a*) Marital status (never married, now married, widowed, divorced) .....
   (*b*) If divorced give place and date of decree .....
.....
8. (*a*) Name of wife or husband .....
   (*b*) Address (if dead, give place and date of death) .....
.....
   (*c*) Nationality (if dead, give nationality at time of death) .....
.....
9. (*a*) Father's full name ..... living/dead*
   (*b*) Address (if dead, give last address) .....
.....
   (*c*) Nationality at time of applicant's birth .....
.....
10. (*a*) Mother's full name ..... living/dead*
   (*b*) Address (if dead, give last address) .....
.....
   (*c*) Nationality at time of applicant's birth .....
.....

11. Evidence submitted of statelessness .....
....

12. Evidence submitted of place of birth or citizenship of parents at time of birth .....
.....
.....

13. Evidence submitted of previous residence in Malaŵi .....
....

14. Particulars of any criminal or detention proceedings taken against the applicant at any time in any country .....
.....
.....

PART III
Certificates of Sponsors

Full names and address in block capitals

15. I, ... of ..... being a citizen of Malaŵi otherwise than by naturalization, hereby certify that the applicant herein is a person known to me and of good character, that in my opinion he would be a suitable citizen of Malaŵi and that the particulars in this application are correct in all respects to the best of my knowledge and belief. I am not the legal practitioner or agent of the applicant. I have known the applicant for .... months /years.*

Dated at ..... this ..... day of ..... 19 .....

....

Witness to signature *Signature of Sponsor*

Address ..... *Occupation* .....

Occupation .....

(Note.—The sponsor in the case of paragraph 15 must be an Administrative Officer, Legal Practitioner, Bank Official, Member of a District Council, Municipal Council or Town Council, Magistrate, Mayor, Member of Parliament, Minister of Religion, Notary Public, Physician or Surgeon.)

Full names and address in block capitals

16. I,..... of ..... being a citizen of Malaŵi otherwise than by naturalization, hereby certify that the applicant herein is a person known to me and of good character, that in my opinion he would be a suitable citizen of Malaŵi and that the particulars in this application are correct in all respects to the best of my knowledge and belief. I am not the legal practitioner or agent of the applicant. I have known the applicant for .... months / years.*

Dated at ..... this ..... day of ..... 19 .....

....

Witness to signature *Signature of Sponsor*

Address ..... *Occupation* .....

Occupation .....

(Note.—The sponsor in the case of paragraph 16 need not be in a class mentioned in the note to paragraph 15.)

PART IV
Declaration by Applicant

Full names and address in block capitals

17. I, ... do solemnly and sincerely declare—

(*a*) that to the best of my knowledge and belief the particulars stated in this application are true and correct in all respects; and

(*b*) that I shall inform the Minister immediately if, before the registration herein applied for is granted, any particular given herein requires amendment; and

(*c*) that I am willing to take the Oath of Allegiance to the Republic of Malaŵi; and

(*d*) that I intend to continue to reside permanently in Malaŵi.

.....
Signature of Applicant

Declared at ..... this ..... day of ..... 19 .....
Before me,

.....
Magistrate / Commissioner for Oaths

FORM F

GOVERNMENT OF MALAŴI

MALAŴI CITIZENSHIP ACT

(Cap. 15:01)

APPLICATION BY AN ALIEN FOR NATURALIZATION AS A CITIZEN OF MALAŴI

(UNDER SECTION 21)

PART I

APPLICATION

1. I, ... of ..... hereby apply for naturalization as a citizen of Malaŵi under section 21 of the Malaŵi Citizenship Act on the grounds that I am an alien of full age and capacity and that—

Full names and address in block capitals

(*a*) I am ordinarily resident in Malaŵi and have been so resident for a period of seven years immediately preceding this application; and

(*b*) I have an adequate knowledge of a prescribed vernacular language/of the English language;* and

(*c*) I am of good character; and

(*d*) I am financially solvent; and

(*e*) I would be a suitable citizen of Malaŵi.

Dated at ..... this ..... day of ..... 19 .....

……..
Signature of Applicant

(*Delete whichever is inapplicable.)

PART II

Particulars relating to Application

2. Full names .....
3. Address .....
4. Place and date of birth .....
5. Nationality or citizenship at birth .....
6. Present nationality or citizenship (if now different) .....
.....
7. Profession or occupation .....
8. Date of entry in Malaŵi to take up ordinary residence .....
.....
9. Present Passport: Issued at ..... No. .....
10. (*a*) Marital status (never married, now married, widowed, divorced) .....
(*b*) If divorced give place and date of decree .....
.....
11. (*a*) Name of wife or husband .....
(*b*) Address (if dead, give place and date of death) .....
.....
(*c*) Nationality before marriage .....
(*d*) Present nationality (if dead, give nationality at time of death) .....
12. (*a*) Father's full name ..... living/dead*
(*b*) Address (if dead, give last address) .....
.....
(*c*) Nationality (if dead, give nationality at time of death) .....
.....
13. (*a*) Mother's full name ..... living/dead*
(*b*) Address (if dead, give last address) .....
.....
(*c*) Nationality (if dead, give nationality at time of death) .....
.....
14. Date of any previous application for registration or naturalization .....
15. If original name has been changed give particulars .....
.....
.....
16. If nationality or citizenship has been changed since birth give particulars .....
.....

17. If now of no nationality or citizenship give circumstances in which nationality or citizenship was lost .....

18. Give details, with dates, of foreign countries visited during the past eight years .....

.....

19. Particulars of applicant's children (if any)—

Full name of every child	Date of birth	Place of birth	Where now resident
.....	.....	.....	.....
.....	.....	.....	.....
.....	.....	.....	.....
.....	.....	.....	.....
.....	.....	.....	.....
.....	.....	.....	.....
.....	.....	.....	.....

20. Names of any minor children whom you desire to be registered as citizens of Malaŵi in the event that this application is approved .....

.....

.....

.....

21. Details of previous residence in Malaŵi—

Address	Dates		Years	Months
	From	To		

22. Evidence submitted of previous residence in Malaŵi .....

.....

23. Languages known .....

24. Bank or other institution which can speak for applicant's financial solvency .....

25. Particulars of any criminal proceedings taken against the applicant at any time in any country .....

.....

PART III

Certificate of Sponsors

Full names and address in block capitals

26. I, ... of ..... being a citizen of Malaŵi, otherwise than by naturalization, hereby certify that the applicant herein is a person known to me and of good character, that in my opinion he would be a suitable citizen of Malaŵi and that the particulars in this application are correct in all respects to the best of my knowledge and belief. I am not the legal practitioner or agent of the applicant. I have known the applicant for ..... months/years.*

Dated at ..... this ..... day of ..... 19 .....

....

Witness to signature *Signature of Sponsor*

Address ..... *Occupation* .....

Occupation .....

Full names and address in block capitals

27. I, ... of ..... being a citizen of Malaŵi, otherwise than by naturalization, hereby certify that the applicant herein is a person known to me and of good character, that in my opinion he would be a suitable citizen of Malaŵi and that the particulars in this application are correct in all respects to the best of my knowledge and belief. I am not the legal practitioner or agent of the applicant. I have known the applicant for ..... months/years.*

Dated at ..... this ..... day of ..... 19 .....

....

Witness to signature *Signature of Sponsor*

Address ..... *Occupation* .....

Occupation .....

(Note.—The sponsors in the case of paragraphs 26 and 27 must be an Administrative Officer, Legal Practitioner, Bank Official, Member of a District Council, Municipal Council or Town Council, Magistrate, Mayor, Member of Parliament, Minister of Religion, Notary Public, Physician or Surgeon.)

Full names and address in block capitals

28. I, ... being a citizen of Malaŵi, otherwise than by naturalization, hereby certify that the applicant herein is a person known to me and of good character, that in my opinion he would be a suitable citizen of Malaŵi and that the particulars in this application are correct in all respects to the best of my knowledge and belief. I am not the legal practitioner or agent of the applicant. I have known the applicant for ..... months/years.*

Dated at ..... this ..... day of ..... 19 .....

....

Witness to signature *Signature of Sponsor*

Address ..... *Occupation* .....

Occupation .....

29. I, ... Full names and address in block capitals

of .....

being a citizen of Malaŵi, otherwise than by naturalization, hereby certify that the applicant herein is a person known to me and of good character, that in my opinion he would be a suitable citizen of Malaŵi and that the particulars in this application are correct in all respects to the best of my knowledge and belief. I am not the legal practitioner or agent of the applicant. I have known the applicant for ..... months/years.*

Dated at ..... this ..... day of ..... 19 .....

....

Witness to signature *Signature of Sponsor*

Address ..... *Occupation* .....

Occupation .....

(NOTE.—The sponsors in the case of paragraphs 28 and 29 need not be in a class mentioned in the note to paragraphs 26 and 27.)

PART IV

DECLARATION BY APPLICANT

30. I, ... Full names and address in block capitals

do solemnly and sincerely declare—

(*a*) that to the best of my knowledge and belief the particulars stated in this application are true and correct in all respects; and

(*b*) that I shall inform the Minister immediately if, before the registration herein applied for is granted, any particular given herein requires amendment; and

(*c*) that I am willing to—

(i) take the Oath of Allegiance of the Republic of Malaŵi; and

(ii) renounce any other nationality or citizenship I may possess; and

(*d*) that I intend to continue to reside permanently in Malaŵi.

..... .

Signature of Applicant

Declared at ..... this ..... day of ..... 19 .....

Before me,

.....

Magistrate / Commissioner for Oaths

FORM G

GOVERNMENT OF MALAŴI

MALAŴI CITIZENSHIP ACT

(Cap. 15:01)

CERTIFICATE OF REGISTRATION AS A CITIZEN OF MALAŴI

Certificate No .....

WHEREAS .....
of .....
has applied to the Minister under section ..... of the Malaŵi Citizenship Act to be registered as a citizen of Malaŵi, and has satisfied the Minister that the necessary conditions for registration under that Act have been fulfilled:

NOW, THEREFORE, the Minister, in exercise of the powers conferred upon him by the said Act, hereby grants to the said .... this certificate of registration as a citizen of Malaŵi and declares that subject to section 20 (2) of the said Act, he/she shall be a citizen of Malaŵi with effect from the date of this Certificate.

IN WITNESS whereof I have hereunto set my hand this ..... day of ..... 19 ..... at .....
.....
Minister

FORM H

GOVERNMENT OF MALAŴI

MALAŴI CITIZENSHIP ACT

(Cap. 15:01)

CERTIFICATE OF REGISTRATION AS A CITIZEN OF MALAŴI

Certificate No .....

WHEREAS .....
of .....
has applied to the Minister under section 21 of the Malaŵi Citizenship Act for a certificate of naturalization as a citizen of Malaŵi, and has satisfied the Minister that the necessary conditions for naturalization under that Act have been fulfilled:

NOW, THEREFORE, the Minister, in exercise of the powers conferred upon him by the said Act, hereby grants to the said .....
.....
this certificate of naturalization as a citizen of Malaŵi and declares that subject to section 22 (2) of the said Act, he/she shall be a citizen of Malaŵi with effect from the date of this certificate.

IN WITNESS whereof I have hereunto set my hand this ..... day of ..... 19 ..... at .....

.....

Minister

SECOND SCHEDULE

reg. 4
G.N. 19/2011
21/2014

Matter in which fee may be taken	*Fee*
1. Application by a Commonwealth citizen for registration as a citizen of Malaŵi	US$ 5,000
2. Application by a spouse of a Malaŵian citizen by registration	US$ 5,000
3. Application by a minor of a Malaŵian citizen . .	US$ 5,000
4. Application by a stateless person for registration	US$ 5,000
5. Application by an alien for naturalization	US$ 5,000
6. Application by a spouse of an indigenous Malaŵian	US$ 250 or its equivalent in Malaŵi Kwacha
7. Application to renounce Malaŵian citizenship . .	US$ 100 or its equivalent in Malaŵi Kwacha
8. Application to restore Malaŵian citizenship . .	US$ 700
9. Application to certify dual citizenship of a minor . .	US$ 50
10. Application for registration of citizenship by third generation	US$ 700
11. Non-refundable processing fee for all applications . .	US$ 100

IMMIGRATION

CHAPTER 15:03

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CHAPTER 15:03

IMMIGRATION

ARRANGEMENT OF SECTIONS

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2. Interpretation
3. Appointment of immigration officers

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IMMIGRATION GENERALLY

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14. Detention of suspected prohibited immigrant
15. Detention of prohibited immigrant pending deportation
16. Prohibited immigrant subject to the Act despite entry into Malaŵi
17. Temporary permits
18. Powers of search, etc.
19. Evidence
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22. Permanent residence permits
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24. Temporary residence permits
24A. Business residence permit
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PART III

GENERAL

SECTION

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G.N.
219/1964(N)
155/1964(M)
147/1987

An Act to regulate the entry of persons into Malaŵi, to prohibit the entry into Malaŵi of undesirable persons, to make provision for the deportation from Malaŵi of undesirable persons and to provide for matters incidental to the foregoing

[1st January, 1964]

PRELIMINARY

Short title

1. This Act may be cited as the Immigration Act.

Interpretation

2. In this Act, unless inconsistent with the context—

"Chief Immigration Officer" means any person appointed as a Chief Immigration Officer in terms of section 3;

"dependent relative", in relation to any person, means his child, step-child, adopted child, grandchild, father, mother, grandfather, grandmother, brother, sister, uncle, aunt, nephew, niece, greatnephew, or greatniece, or any such relative of his spouse, who by reason of infirmity of mind or body, is wholly dependent upon such person, and is living with such person;

"Deputy Chief Immigration Officer" means any person appointed as a Deputy Chief Immigration Officer in terms of section 4;

"immigration officer" means any person appointed as an immigration officer in terms of section 3 and includes a

Chief Immigration Officer and Deputy Chief Immigration Officer;

"magistrate" means a Resident Magistrate or a magistrate of the first or second grade;

"magistrate's Court" means a court of a Resident Magistrate or a court of a magistrate of the first or second grade;

"police officer" means a member of the Malaŵi Police Force established under the Police Act; Cap. 13:01

"police force" means the Malaŵi Police Force established under the Police Act; Cap. 13:01

"prison" means a prison established under the Prisons Act. Cap. 9:02

Appointment of immigration officers

24 of 1972
30 of 1991
12 of 1992
19 of 1992
19 of 1995

3.—(1) The Minister may appoint any person in the public service of Malaŵi to be a Chief Immigration Officer, Deputy Chief Immigration Officer or an immigration officer, by whatever suitable title designated, for the purposes of this Act.

(2) The Minister may confer all or any of the powers and impose all or any of the duties of an immigration officer upon any person in the public service of Malaŵi or upon any police officer.

(3) Any immigration officer shall, in the discharge of his functions, the exercise of his powers or the performance of his duties under this Act, be subject to the general or special directions of the Minister.

PART I
Immigration Generally

Disciplinary regulations
27 of 1990

3A. The Minister may make regulations for the disciplinary control of immigration officers and such regulations may be made to apply generally, or may make separate provisions for different ranks of immigration officers.

Prohibited immigrants

4.—(1) Subject to this Act, the following persons shall be prohibited immigrants and their entry into or presence within Malaŵi shall be unlawful—

(*a*) any person deemed by the Minister on economic grounds, or on account of standard or habits of life, to be an undesirable inhabitant or to be unsuited to the requirements of Malaŵi;

(*b*) any person who is unable, by reason of deficient education, to read and write any one of any class of language as may be prescribed by the Minister by regulation to the satisfaction of an immigration officer;

(*c*) any person who at the time of his entry is likely to become a public charge by reason of infirmity of mind or

body, or because he is not in possession, for his own use, of sufficient means to support himself and such of his dependants as he brings or has brought with him into Malaŵi;

(*d*) any idiot or epileptic, or any person who is insane or mentally deficient, or any person who is deaf and dump, or deaf and blind, or dumb and blind, or otherwise physically afflicted, unless in any such case he or a person accompanying him or some other person gives security to the satisfaction of the Minister for his permanent support in Malaŵi, or for his removal therefrom whenever required by the Minister;

(*e*) any person who is infected, afflicted with or suffering from a prescribed disease, unless he is in possession of a permit issued by the Minister, or any person authorized by the Minister, to enter and remain in Malaŵi issued upon prescribed conditions and complies with such conditions;

(*f*) any person who, not having received a free pardon, has been convicted of any offence prescribed by the Minister as an offence for the purposes of this section;

(*g*) any prostitute or homosexual, or any person, male or female, who lives or has lived on or knowingly receives or has received any part of the earnings of prostitution or homosexuality, or has procured men or women for immoral purposes;

(*h*) any person who, from information received through any official or diplomatic channels, is deemed by the Minister to be an undesirable inhabitant of or visitor to Malaŵi;

(*i*) any person who, after the date of commencement of this Act, has been deported from or ordered to leave Malaŵi; or

(*j*) the wife and the children under the age of eighteen years and any other dependants of a prohibited immigrant.

(2) This section shall not apply to any person who is a citizen of Malaŵi.

(3) If an immigration officer is of the opinion that any person who has entered Malaŵi, including any person who entered Malaŵi before the date of commencement of this Act, and who is not a citizen of Malaŵi, has become or is likely to become a public charge by reason of infirmity of mind or body, or because he is not in possession, for his own use, of sufficient means to support himself and such of his dependants as he has brought into Malaŵi, including dependants brought into Malaŵi by him before the date of commencement of this Act, the Chief Immigration Officer may apply to the Minister for a declaration that such person is a prohibited immigrant.

(4) Before making any application in terms of subsection (3), the Chief Immigration Officer shall notify the person concerned of his intention to do so, and shall enquire of him as to whether or not he has any representation which he wishes to make to the Minister. Any such representations shall be reduced to writing and signed by the person concerned. The Chief Immigration Officer shall then make application to the Minister for a declaration and shall forward with the application any such representations as may have been made. On such application the Minister may declare the person concerned to be a prohibited immigrant and the decision of the Minister shall be final and conclusive and not subject to appeal to any Court.

(5) Whenever the Minister exercises any power conferred upon him by this section, he shall cause written notice of that fact to be transmitted to the Chief Immigration Officer who shall notify the immigration officer and the person concerned.

Production of identity documents

5. Any person entering Malaŵi who fails on demand by an immigration officer to produce to him an unexpired passport or

other valid document of identity of a class recognized by the Minister—

(*a*) which was issued to him on behalf of the Government of Malaŵi or of any other Government recognized by the Government of Malaŵi; and

(*b*) which contains a personal description of him, the name of the country in which he was born and the date of his birth and containing such other information as the Minister may from time to time require by regulation. The Minister may by regulation require different information from different classes of persons; and

(*c*) which, except when a visa is dispensed with in pursuance of an arrangement to which the Government of Malaŵi is a party, bears the visa or endorsement of a person authorized by the Government of Malaŵi to place visas or such endorsements upon passports or such other documents,

shall be a prohibited immigrant unless he is proved to be a citizen of Malaŵi.

Exemptions by Minister

6.—(1) Notwithstanding anything to the contrary contained in this Act, the Minister may in his discretion and on such terms as may be prescribed by him—

(*a*) exempt any person, or any class of person, from section 4 (1) (*a*), (*b*), (*c*), (*d*) or (*f*) or any two or more of the said paragraphs; or

(*b*) direct an immigration officer to issue a temporary permit to any such person as is described in the aforesaid paragraphs.

(2) If any person exempted by the Minister from all or any of the provisions specified in subsection (1) (*a*) fails to comply with the prescribed conditions of his exemption, the Minister may withdraw such exemption and thereafter section 8 shall apply in relation to such person.

Prohibition of entry of prohibited immigrant

7. Subject to this Act, no prohibited immigrant shall be allowed to enter or remain in Malaŵi and any immigration officer may cause any prohibited immigrant entering or found within Malaŵi to be removed therefrom.

Appeals

8.—(1) Whenever leave to enter Malaŵi is withheld by an immigration officer, or whenever any person is detained, restricted or arrested as a prohibited immigrant, notice of that fact and the grounds of refusal, detention, restriction or arrest shall be given by the immigration officer in writing to such person.

(2) Every person to whom such notice has been given may appeal to the nearest magistrate's court, and such appeal shall be heard by the magistrate presiding at such court. Notice of any such appeal shall be filed not later than three days after such notice has been given.

(3) Pending the hearing of any appeal, no warrant shall be issued for the removal of any person as a prohibited immigrant, but if any appeal is dismissed the magistrate shall forthwith issue a warrant for the removal of the prohibited immigrant.

(4) A magistrate's court may, of its own motion, and shall, at the request of the appellant or of an immigration officer, reserve for the decision of a judge of the High Court any question of law which arises upon an appeal heard before such magistrate's court, and shall state such question in the form of a case stated for the opinion of such Court by transmitting such case stated to the registrar thereof. For the purposes of this subsection a question of law includes a question as to whether or not a person is a citizen of Malaŵi or is a person deemed to belong to Malaŵi.

(5) The case stated in the manner described in subsection (4) may be heard by and argued before a judge of the High Court at any convenient time, and such judge may call for further information to be supplied by the magistrate if he deems such information necessary, and may give such answer on such case, supplemented by such information, if any, and may make such order as to the cost of the proceedings as he may think fit.

Jurisdiction of courts

9.—(1) Notwithstanding section 8 and subject to this section, no appeal shall lie against a decision made by the Minister under section 4 (1) (*a*) or (*h*) or section 4 (4) unless such appeal is directed solely to the identity of the person affected by the decision.

(2) Any person affected by a decision made under section 4 (1) (*h*) may, within twenty-four hours of being served with the notice referred to in section 9 (1) make representations in writing addressed to the Minister against such decision, who may confirm or reverse that decision.

(3) No person referred to in subsection (2) shall be given any information or have the right to demand any information as to the grounds for any decision referred to therein or for the confirmation of any such decision if the Minister certifies it is not in the public interest to give such information.

(4) A certificate issued by the Minister under subsection (3) shall be conclusive.

(5) No person shall have the right to be heard before or after a decision is made under section 4 (1) (*a*) and no person affected by any such decision shall have the right to be furnished with any information as to the grounds for such decision.

(6) No information on which a decision under section 4 was made shall be required to be disclosed in any court if the Minister certifies that its disclosure is not in the public interest, and the adequacy of the grounds for any decision under section 4 (1) (*a*) or (*h*) or section 4 (4) shall not be questioned in any court.

Removal of prohibited immigrants

10.—(1) If notice of appeal is not filed against the orders of an immigration officer within three days from the day that such orders shall have been given, and if any prohibited immigrant refuses to obey the directions of an immigration officer to leave Malaŵi, section 15 shall apply in relation to the prohibited immigrant.

(2) Where a prohibited immigrant has been ordered to leave Malaŵi and is removed therefrom the following provisions shall have effect—

(*a*) the prohibited immigrant shall pay all the costs and expenses (if any) of, or occasioned by, his removal;

(*b*) where a person wishing to enter Malaŵi is, on arrival, refused entry because he is a prohibited immigrant or for any other reason, the airline, shipping company, transport company or other carrier, conveyor or transporter by which such person was carried, conveyed or transported to Malaŵi shall as soon as may be, on the direction of an immigration officer to that effect, carry, convey or transport such person out of Malaŵi, at the expense of such airline, shipping company, or other carrier, conveyor or transporter.

Place of entry by prohibited immigrant

11. No prohibited immigrant who is permitted by or under this Act to enter or re-enter Malaŵi shall enter or re-enter Malaŵi at any port of entry other than that through which his entry or re-entry has been authorized by an immigration officer.

Persons who are not prohibited immigrants

12. The following persons or classes of persons shall not be prohibited immigrants for the purpose of this Act—

(*a*) any member of any regular naval, military or air forces while on duty in the service of the Government of Malaŵi; or

(*b*) any person duly accredited to the Republic of Malaŵi by or under the authority of the Government of any sovereign state, or any person employed in the legation chancellery or office of any such first mentioned person, or the wife or infant child of any such first mentioned person or of any such persons employed, provided that the name of any such person is included in the list compiled by the Minister under the Immunities and Privileges Act; or

Cap. 16:01

(*c*) any person, other than a person described in section 4 (1) (*d*), (*e*), (*f*), (*g*) or (*h*) who enters Malaŵi—

(i) under any convention with the Government of a neighbouring territory or state; or

(ii) in accordance with any scheme of recruitment and repatriation approved by the Minister,

and who complies with such conditions as may be fixed by the Minister.

Persons required to appear before immigration officer

13.—(1) Any person who wishes to enter Malaŵi shall, on arrival at the border or, if travelling by air, on arrival at an airport within Malaŵi, present himself immediately to the nearest immigration officer, or if it is impracticable so to present himself immediately on arrival by reason of the distance of the nearest immigration officer from the border or airport, as the case may be, such person shall present himself to the nearest immigration officer within twenty-four hours of such arrival.

(2) The immigration officer may require every such person—

(*a*) to make and sign a declaration in the prescribed form; and

(*b*) to produce documentary or other evidence relative to his claim to enter or remain in Malaŵi; and

(*c*) to submit to any examination or test to which he may lawfully be subjected under this Act; and

(*d*) if he is suspected of being infected or afflicted with any physical infirmity which under this Act would render him a prohibited immigrant, to submit to examination by a Government medical officer or such other medical practitioner as may be designated by the Minister.

(3) Any person found in Malaŵi who is suspected of being a prohibited immigrant or to have entered Malaŵi in contravention of this Act may be required to appear before an immigration officer and to submit to an examination as is described in subsection (2).

Detention of suspected prohibited immigrant

14.—(1) Any person suspected of being a prohibited immigrant may be detained by an immigration officer for such reasonable period, not exceeding fourteen days, as may be required for the purpose of making enquiries as to such person's identity or antecedents.

(2) Such person may during such period be detained in the nearest convenient prison or gaol unless he or such sureties as may be approved by the Chief Immigration Officer enter into a recognizance for an amount so approved and deposits such sum, if any, as may be fixed by the Chief Immigration Officer to satisfy any judgment which may be given on the recognizance.

The conditions of the recognizance shall be that such person shall appear within such period and before such person as may be prescribed in the recognizance and shall report himself to an immigration officer at such times as may be fixed in the recognizance, and the recognizance may contain such other conditions, in relation to such appearance and reporting, as the Chief Immigration Officer deems fit to impose.

(3) Upon breach of any conditions of the recognizance any court of competent jurisdiction may, upon application by the Minister, give judgment against such person or his sureties in

accordance with the recognizance, and such person may be arrested and detained in the nearest convenient prison or gaol until such enquiries have been completed or, if he is found to be a prohibited immigrant, until he is removed from Malaŵi.

Detention of prohibited immigrant pending deportation

15.—(1) Any prohibited immigrant who has been ordered to leave Malaŵi may be detained in the nearest convenient prison or such other place of custody as may be authorized by the Minister as a place of custody for the purposes of this section pending the completion of arrangements for his removal from Malaŵi.

(2) The officer in charge of any prison or such other place of custody as may be authorized by the Minister as a place of custody for the purposes of this section shall receive into custody any prohibited immigrant or suspected prohibited immigrant when required in writing by an immigration officer so to do.

(3) Any person so detained and not serving a sentence of imprisonment shall be treated as a person awaiting trial.

Prohibited immigrant subject to the Act despite entry into Malaŵi

16. No person shall be exempt from this Act or be allowed to remain in Malaŵi—

(*a*) by reason only that he had not been informed that he could not enter or remain in Malaŵi; or

(*b*) by reason only that he had been allowed to enter or remain in Malaŵi through oversight, misrepresentation, or a contravention of this Act; or

(*c*) owing to the fact that it had not then been discovered that he was a prohibited immigrant or not a citizen of Malaŵi.

Temporary permits

17.—(1) An immigration officer may issue a temporary permit to any prohibited immigrant, other than a prohibited immigrant as described in section 4 (1) (*a*) or (*h*), and shall, if so directed by the Minister, issue a temporary permit to any prohibited immigrant authorizing him to enter Malaŵi for temporary residence therein or to travel through Malaŵi upon such conditions as may be prescribed by the Minister.

(2) The Chief Immigration Officer may cancel a temporary permit—

(*a*) if the holder thereof fails to comply with any of the prescribed conditions under which the permit was issued; or

(*b*) if in his opinion the object of entry into Malaŵi as declared by the holder thereof when the permit was issued has been completed or is not being or can no longer be pursued; or

(*c*) if, in his opinion, the holder thereof has become, or is likely to become, a charge upon the public funds,

and shall, if he does cancel the permit, notify the holder thereof accordingly.

(3) Upon notification of cancellation of a temporary permit the holder of such permit shall no longer be authorized to remain in Malaŵi and the Chief Immigration Officer shall cause that person to be removed therefrom, and any deposit made as a condition of issue of the permit may be confiscated by the Chief Immigration Officer.

Powers of search, etc.

18. For the purpose of exercising his powers and carrying out his duties under this Act, an immigration officer may—

(*a*) without a search warrant, enter upon and search any aircraft, ship, train, or vehicle in Malaŵi;

(*b*) question, within the scope of his functions under this Act, any person who desires to enter or leave Malaŵi or who he believes is a prohibited immigrant;

(*c*) require the captain, or other officer in charge, of an aircraft, the master of a ship, the guard or conductor of a train, or the person in charge of a vehicle arriving from any place outside Malaŵi to furnish a list of all persons in the aircraft, ship, train, or vehicle, as the case may be, together with such other information as may be prescribed, and the person concerned shall comply with such requirements.

Evidence

19.—(1) The burden of proving that a person is a citizen of Malaŵi or that he has not entered or remained in Malaŵi in contravention of this Act shall lie upon such person.

(2) A certificate or written statement under the hand of an immigration officer shall, in any proceedings under this Act or in any criminal proceedings in respect of a contravention of this Act be *prima facie* evidence of the facts stated therein, and it shall not be necessary to tender oral evidence of such facts, unless the court before which the proceedings are held so directs; in which event an adjournment shall be allowed sufficient to enable the officer whose oral evidence is required to attend.

(3) Any order, warrant, permit, certificate or other document which may be issued under this Act shall be valid and effectual if signed by an immigration officer or any officer in the public service authorized by the Minister by notice published in the *Gazette* so to do, and, when so signed, shall be accepted for all purposes as having been issued in accordance with this Act.

Certificates of identity

20. The Chief Immigration Officer may issue a certificate of identity to any person who is lawfully resident in Malaŵi and who, desiring to proceed thereout with the intention of returning thereto, is for any reason apprehensive that he will be unable to prove on his return that he is not a prohibited immigrant.

PART II

Residence And Other Permits

Restrictions on immigration 21 of 1987

21.—(1) Notwithstanding anything contained in Part I and subject to the exemptions provided in subsection (2), and to the powers to exempt conferred by section 23, no person shall enter, be or remain in Malaŵi unless he is in possession of a current permanent residence permit, or a current temporary residence permit, a current business residence permit or a current temporary employment permit. 21 of 1987

(2) Subsection (1) shall not apply to a person who— 21 of 1987

(*a*) is in possession of a valid visitor's permit issued to him under section 26;

(*b*) is in possession of a valid student's permit issued to him under section 31;

(*c*) is such a person as is described in section 12 (*a*), (*b*) or (*c*);

(*d*) passes through Malaŵi in direct transit to a destination outside Malaŵi if the period of transit does not exceed seven days; and

(*e*) on the date of commencement of this Act is the holder of a valid temporary permit or other authority, issued under any law in force at that time, but the exemption by the section conferred shall subsist only during the period of the validity of such permit or other authority.

(3) Any person who contravenes subsection (1) may, whether he is prosecuted for such contravention or not, be treated as a prohibited immigrant.

(4) Any person who is convicted of a contravention of subsection (1) and is not treated as a prohibited immigrant shall leave Malaŵi within fourteen days of the conviction or, if he undergoes imprisonment in respect of such contravention, within fourteen days of his release. Any person who by failing to leave Malaŵi fails to comply with this subsection shall, if such failure be due to his own neglect, omission, refusal or default, be liable to further prosecution for contravention of subsection (1).

Permanent residence permit

22.—(1) An application for a permanent residence permit shall be made to the Minister in such form as the Minister may prescribe.

(2) The Minister shall consider and deliberate upon every application made to him and may take into consideration any additional information relating to an applicant as he may have obtained from any other source, and shall take into account the reputed reliability of such source.

(3) The Minister may, in his discretion, issue a permanent residence permit to any person who has applied therefor and who is in the opinion of the Minister a desirable immigrant.

(4) A permanent residence permit may be issued to a person who is already within Malaŵi.

(5) A permanent residence permit shall be issued in such form as the Minister may prescribe.

(6) A permanent residence permit shall cease to be valid if the person to whom it was issued has remained outside Malaŵi for a continuous period of twelve months or more since the date of issue of such permanent residence permit.

Exemptions from section 21 (1) 21 of 1987

23.—(1) The Minister may, by order, exempt any person, subject to such conditions as in his discretion he may deem fit to impose, from all or any of the provisions of section 21 (1).

(2) Any order made under this section may be proved in any court by the production of a copy of such order certified under the hand of the Minister, and the court shall take judicial notice of such signature.

Temporary residence permit

24.—(1) An immigration officer may, on the application of a person who has complied with all the prescribed requirements, issue to such person a temporary residence permit which shall be subject to such conditions as the Minister may prescribe and shall be valid for such period as may be stated therein but which shall not in any event exceed six months.

(2) A person to whom a temporary residence permit is issued in terms of subsection (1) and who is accompanied by his wife and any of his children under the age of eighteen years, may be issued with a single permit in respect of himself, his wife and such children.

(3) A person who is refused a temporary residence permit by an immigration officer shall have the right of appeal to the Minister, and the Minister in his discretion may issue or refuse such permit, and the Minister's decision in such circumstances shall be final and conclusive.

(4) The Minister may extend by renewal the period of validity of a temporary residence permit, or vary or amend the conditions relating to such permit:

Provided that any extension of a temporary residence permit authorized under the terms of this subsection shall not extend the validity of such permit beyond a period of twelve months from the date of its original issue.

(5) Except with the permission of the Minister, an immigration officer shall not issue a temporary residence permit to any

person who is a prohibited immigrant, or to any person who fails to produce to him an unexpired passport or other document of identity which complies with section 5.

(6) In circumstances which the Minister may deem appropriate a temporary residence permit may be issued to a person who is already in Malaŵi.

Business residence permit 21 of 1987

24A.—(1) The Chief Immigration Officer or such other immigration officer as may be authorized by him in that behalf, if he is so authorized generally or specially by the Minister, may, on the application of a person who wishes to reside in Malaŵi for the purpose of carrying on a business, practising a profession or engaging in an occupation, for gain, profit or reward, as a self-employed person or a partner or a proprietor of that business, professional practice or occupation, issue to that person a business residence permit authorizing him, together with his wife and children under the age of eighteen years and dependant relatives, and subject to such conditions as may be prescribed, to reside in Malaŵi, within such area as the Minister may specify, for the purpose of carrying on, practising or engaging in such business, profession or occupation.

(2) A business residence permit shall—

(*a*) be valid for a period of five years from the date of issue and thereafter may, on the application of the holder, be renewed from time to time for successive periods of five years;

(*b*) be in such form as may be prescribed;

(*c*) be subject to payment by the applicant of the fee prescribed to be payable for the issue or renewal of such permit; and

(*d*) be subject to such other conditions as may be prescribed.

(3) The Minister may, without assigning any reason, refuse to issue to any person a business residence permit or to renew the business residence permit issued to any person.

(4) Where the Minister refuses to issue or renew a business permit in respect of a person who is resident in Malaŵi then, unless that person is otherwise entitled under this Act to reside in Malaŵi, he shall not be entitled to remain in Malaŵi for a period longer than six months after such refusal or the expiry of his permit.

(5) A holder of a business residence permit shall not, during the validity of his permit be eligible for a temporary residence permit.

Temporary employment permit 13 of 1974

25.—(1) The Chief Immigration Officer or such other immigration officer as may be authorized by him in that behalf, may, if he is so authorized generally or specially by the Minister,

issue on the application of a person who wishes to reside within an area of Malaŵi specified by the Minister, for the purpose of engaging in an occupation specified by the Minister, a temporary employment permit authorizing him, together with his wife and children under the age of eighteen years and dependent relatives, and subject to such conditions as may be prescribed, to reside within that area for the purpose of engaging in that occupation for a period of not less than six months or more than two years.

(2) The Minister may, from time to time, upon application, renew a temporary employment permit issued under subsection (1) for a similar period or similar periods if he is satisfied that the holder of the permit is still engaged in the employment for which the permit was issued at the date of expiry of such permit.

(3) The Chief Immigration Officer may cancel a temporary employment permit (whether renewed or not) if the holder thereof—

(*a*) engages in an occupation other than the occupation specified in such permit;

(*b*) whilst engaging in the occupation specified in such permit changes employment without the prior permission of the Chief Immigration Officer;

(*c*) without the prior permission of the Chief Immigration Officer resides in Malaŵi elsewhere than within the area specified in such permit; or

9 of 1970

(*d*) ceases to be engaged or employed in the occupation specified in the permit.

Visitor's permit

26.—(1) An immigration officer may, on the application of a person who wishes to enter Malaŵi as a *bona fide* tourist or visitor, issue to such a person a visitor's permit which shall be in such form and subject to such conditions as the Minister may prescribe and which shall be valid for a period not exceeding three months.

(2) Section 25 shall, with the necessary adaptations or modifications, apply to the issue, extension and amendment of a visitor's permit.

Permit holders not exempted from provisions of other Parts

21 of 1987

27. Neither a permanent residence permit, a temporary residence permit, a business residence permit nor a temporary employment permit shall exempt the holder thereof from compliance with any other provisions of this Act or with any regulations made hereunder.

Cancellation of permit

21 of 1987

28.—(1) The Minister may cancel a permanent residence permit in any of the following circumstances—

(*a*) if the application for the permit contained any information which is false in any material particular;

(*b*) if the holder of the permit, or his agent, furnished any information in connexion with the application for the permit which is false in any material particular;

(*c*) if, without the permission of the Minister, the holder of the permit engages in Malaŵi in any occupation other than the occupation stated in his permit;

(*d*) if the holder of the permit does not take up his residence in Malaŵi within six months of the date of issue of the permit;

(*e*) if the holder of the permit absents himself from Malaŵi for a longer continuous period than six months before becoming a person deemed to belong to Malaŵi,

and shall cancel any such permit if the holder thereof becomes a prohibited immigrant.

(2) The Minister shall state to the holder thereof the reasons for the cancellation of any permanent residence permit.

(3) The Minister may at any time cancel a temporary residence permit or a business residence permit. 21 of 1987

(4) If a permit is cancelled in terms of this section, the Minister shall cause written notice of such cancellation to be served on the holder of the permit, and shall state in such notice the date upon which such permit shall become void and shall be surrendered.

Production of document 21 of 1987

29.—(1) A police officer or an immigration officer may demand from any person whom he suspects on reasonable grounds of living or being in Malaŵi illegally the production of his permanent residence permit, temporary residence permit, business residence permit or temporary employment permit.

(2) If such person fails to produce any such permit or to satisfy such officer that he is not required to be in possession of any such permit in terms of this Part, such officer may arrest such person without warrant. 21 of 1987

(3) Any person arrested under subsection (2) may, without prejudice to any prosecution under this Act, be detained pending the making of enquiries as to his national status and identity, and while so detained shall be deemed to be in legal custody.

(4) If any person to whom a permanent residence permit, a temporary residence permit, a business residence permit or a temporary employment permit has been issued fails or neglects to produce such permit within seventy-two hours of such officer demanding its production, he shall be guilty of an offence. 21 of 1987

Presumptions 21 of 1987

30. In any proceedings for an offence under this Part against a person alleged in the charge to be a person who requires to be in possession of a permanent residence permit, a temporary residence permit, a business residence permit or a temporary

employment permit, that person shall be deemed not to be in possession of such permit unless he proves the contrary.

Permit to attend educational institutions

31.—(1) The Chief Immigration Officer may issue to any person who by reason of this Part cannot lawfully enter or remain in Malaŵi, a temporary permit (in this section referred to as a "student's permit") authorizing him, upon prescribed conditions, to enter and reside in Malaŵi for the purpose of attending any educational institution approved by the Minister.

(2) Section 17 (2) shall, *mutatis mutandis*, apply in relation to a student's permit issued in terms of subsection (1).

(3) Upon notification of the cancellation of a student's permit, section 18 (3) shall apply to the person concerned, and any deposit made as a condition of issue of the permit may be confiscated.

Power to delegate

32.—(1) The Minister may from time to time, by order in writing, delegate to any public officer all or any of the functions conferred upon him under this Part.

(2) Any person to whom any function is delegated under subsection (1) shall exercise such function subject—

(*a*) to such conditions as the Minister may impose;

(*b*) to such general or special directions as may be given by the Minister; and

(*c*) to any regulations made in that behalf by the Minister.

PART III
General

Re-entry of prohibited immigrant

33.—(1) If any person after being restricted from entering or having been removed from or ordered to leave Malaŵi, if found within Malaŵi, he may be arrested without warrant and shall be liable—

(*a*) to imprisonment with hard labour for three months; and

(*b*) to be removed at any time from Malaŵi by warrant issued by the Chief Immigration Officer.

(2) If a person has been sentenced to imprisonment for a contravention of subsection (1), he may be removed from Malaŵi before the expiration of his sentence and upon removal the said sentence shall terminate.

(3) The serving of any such sentence or the removal of any prohibited immigrant from Malaŵi shall not relieve the prohibited immigrant from the operation of this Act and if he returns to Malaŵi after any such removal he shall be subject to subsection (1).

Misuse of documents 21 of 1987

34. Any person who—

(*a*) is in unlawful possession of or makes use of any permanent residence permit, temporary residence permit, business residence permit, temporary employment permit, student's permit, passport or other document of identity belonging to another; or

(*b*) delivers his permanent residence permit, temporary residence permit, temporary employment permit, student's permit, passport or other document of identity to any other person for use by such other person,

shall be liable to a fine of K500 or to imprisonment for twelve months.

Forgery of documents 21 of 1987

35. If any person forges or unlawfully alters any permanent residence permit, temporary residence permit, business residence permit, temporary employment permit, student's permit, passport or other document of identity, he shall be liable to imprisonment for five years.

Aiding and abetting unlawful entry

36.—(1) Any person who—

(*a*) aids or abets any person whose entry into or presence within Malaŵi is contrary to this Act to enter or remain within Malaŵi; or

(*b*) aids or abets any person who has been ordered to be removed from Malaŵi in terms of this Act to evade the order; or

(*c*) harbours any person who has been ordered to be removed from Malaŵi in terms of this Act,

shall, whether or not the person so aided, abetted or harboured as aforesaid is under the age of seven years, be liable to a fine of K500 or to imprisonment for twelve months.

(2) Any person who commits any fraudulent act or makes any false representation by conduct, statement or otherwise for the purpose of facilitating or assisting the entry of himself or any other person into Malaŵi, contrary to this Act, shall be liable to the penalties prescribed in subsection (1).

Other offences

37. Any person who—

(*a*) for the purposes of entering Malaŵi or of remaining therein in contravention of this Act or any other law or of assisting any other person so to enter or remain, whether or not such person is under the age of seven years—

(i) makes a false statement verbally or in writing or in any declaration on a prescribed form;

(ii) forges any permit, certificate or document, other than any document mentioned in section 35, or who uses any such permit, certificate or document knowing it to be forged;

(iii) utters or uses any permit, certificate or document, other than any document mentioned in section 35, which has not been issued by any lawful authority, or which he is not entitled to use;

(*b*) fails to comply with or contravenes the conditions under which any permit, certificate or other document has been issued to him under this Act;

(*c*) hinders or obstructs any police or immigration officer in the execution of his duties under this Act;

(*d*) contravenes or fails to comply with any provisions of this Act for the contravention whereof or failure to comply wherewith no penalty is specially provided,

shall be guilty of an offence and liable to a fine of K500 or to imprisonment for twelve months.

Saving

38. Every permit, warrant, direction, certificate, notice or other document and every order of deportation and every security that was issued, made, granted or given under any law in force prior to the date of commencement of this Act, and was valid immediately prior to that date, shall be given effect as if issued, made, granted or given under this Act:

Provided that any permit issued by a former Government that granted permanent residence to a person who is not a citizen of Malaŵi or a Commonwealth citizen, shall cease to be valid on the 6th July, 1967, but may, on application by the holder, be replaced by a permanent residence permit issued under this Act.

Deportation

39.—(1) The Minister may, if he thinks fit, in any such case as is mentioned in subsection (2), make an order (in this Act referred to as a "deportation order") requiring any person (not being a citizen of Malaŵi) to leave and to remain thereafter out of Malaŵi.

(2) A deportation order may be made in the case of a person not being a citizen of Malaŵi in the following circumstances, that is to say—

(*a*) if any court certifies to the Minister that that person has been convicted either by that court, or by an inferior court from which the case of that person has been referred for sentence or brought by way of appeal, of any offence for which the court has power to impose a sentence of imprisonment and that the court recommends that a deportation order be made in the case of that person; or

(*b*) if the Minister is satisfied that it is in the interests of defence, public safety, public order, public morality or public health to make a deportation order against that person.

(3) Where any case in which a court has made a recommendation for deportation is brought by way of appeal against conviction or sentence before any higher court and that court certifies to the Minister that it does not concur in the recommendation, that recommendation shall be of no effect, but without prejudice to the power of the Minister to make a deportation order under subsection (2) (*b*).

Regulations

40.—(1) The Minister may make regulations for any matter which may be prescribed and generally for the better carrying out of the objects and purposes of this Act.

(2) Without derogation from the generality of the foregoing, such regulations may prescribe—

(*a*) the powers and duties of an immigration officer;

(*b*) the steps to be taken to prevent the entrance of prohibited immigrants into Malaŵi;

(*c*) the ports of entry and the times, places and conduct of the enquiry or examination, medical or otherwise, of persons entering or desiring to enter Malaŵi or who, being found in Malaŵi, are suspected of being prohibited immigrants;

(*d*) the procedure for and the manner of detention of prohibited immigrants and unlawful residents pending their removal from Malaŵi, and the procedure for and the manner of such removal;

(*e*) further certificates and permits which may be issued for the purposes of this Act and—

(i) the conditions upon which any such ceritificate permit may be used;

(ii) the circumstances under which it may be cancelled or withdrawn;

(iii) the fees payable therefore;

(*f*) the conditions under which prohibited immigrants may be allowed to pass through Malaŵi while journeying or being conveyed to a place outside Malaŵi;

(*g*) the form of warrants, permits, certificates or other documents issued or used or of declarations to be made or of the records to be kept for the purposes of this Act and the particulars to be inserted in any such document or declaration;

(*h*) the procedure for the deportation of persons in respect of whom a deportation order has been made, and the manner of detention of such persons pending their removal from Malaŵi, and the procedure for and the manner of such removal.

(3) Any such regulations may prescribe penalties for a contravention thereof or failure to comply therewith not exceeding a fine of K200 or, in default of payment, imprisonment for a period not exceeding twelve months or such imprisonment without the option of a fine.

Delegation of powers

41. The Chief Immigration Officer may, subject to the prior approval of the Minister in each case, delegate in writing to the Deputy Chief Immigration Officer any or all of the powers conferred upon the Chief Immigration Officer by this Act.

Repatriation of alien women

42.—(1) Where any woman who is not a citizen of Malaŵi becomes married to or cohabits with a man in Malaŵi, and such marriage or cohabitation comes to an end, it shall be the duty of the man concerned, and any other person responsible for bringing such woman into Malaŵi, to repatriate the woman to the country from which she was brought.

(2) In any case in which a man shall fail to repatriate a woman in accordance with subsection (1), such man may be ordered by an immigration officer, or by any other person authorized by the Minister, to repatriate the woman within such period as may be specified by such immigration officer or other authorized person.

(3) Any person who has been ordered to repatriate a woman under subsection (2) and who has failed to do so within the time specified in the order shall be liable to a fine of K40 and to imprisonment for three months.

(4) Any person convicted under subsection (3) may be required, in addition to any other penalty, to pay to the Government such expenses as may be incurred by the Government in repatriating the woman concerned, and any such sum shall be a civil debt recoverable in the Courts.

(5) An immigration officer may, as a condition of entry, require a deposit from any person bringing an alien woman into Malaŵi against the possible cost of repatriating her to her place of origin.

Person absent from Malaŵi for two years to report return
23 of 1986

43.—(1) Where any person, whether or not he is a citizen of Malaŵi or a student, returns to Malaŵi after having been absent therefrom for a continuous period of two years or more, he shall report the fact of his absence and his return to an immigration officer, or to the District Commissioner or Chief of the area in which he normally resides or intends to reside.

(2) It shall be the duty of every Chief, Sub-Chief and Village Headman or, in the absence of the Village Headman the person performing the duties of the Village Headman, to report within

24 hours to the District Commissioner or, in the case of a Sub-Chief, Village Headman or acting Village Headman, to the Chief, having jurisdiction in his area, the name of every person residing or taking up residence in his area, who to his knowledge, or who he has reason to believe, has returned to Malaŵi after an absence of two years or more.

(3) Any Chief or other person who fails to comply with the requirements of subsection (1) or subsection (2) shall be liable to a fine of K40 and to imprisonment for three months.

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PART I

PRELIMINARY

Citation

1. These Regulations may be cited as the Immigration Regulations.

Interpretation

2. In these Regulations, unless the context otherwise requires—

First Schedule

"Form" means the appropriate form prescribed by these Regulations and set out in the First Schedule.

G.N. 61/1991

"Visa" means an endorsement or entry in a passport or other travel document made by an immigration officer or any official of the Government authorized to do so to indicate that the bearer there has been granted permission to enter or re-enter the country concerned.

PART II

Immigration Procedure

Visas
G.N. 148/1987 61/1991 46/1997 29/1999 33/2000 6/2008 18/2011 15/2015

Second Schedule

3.—(1) In pursuance of the arrangements made in accordance with section 5 (*c*) of the Act, visas are dispensed with in respect of the persons or classes of persons set out in the Second Schedule.

(2) Any person, not being a national of Malaŵi, may, upon entry into Malaŵi and depending on the nature of his business, be given any one of the following visas—

(*a*) tourist visa enabling the holder thereof to enter Malaŵi for purposes of visit, residence or business;

(*b*) transit visa enabling the holder thereof to enter Malaŵi for purposes of transiting through to another country and to stay in Malaŵi for a period not exceeding seven days;

(*c*) official visa, issued to a person holding an official or service passport, enabling the holder thereof to enter Malaŵi for purpose of carrying out or conducting official business in Malaŵi;

(*d*) courtesy visa, issued to a person visiting Malaŵi following an invitation by the Government, but who is not entitled to a diplomatic visa, enabling him to enter Malaŵi for purposes of paying courtesy calls; and

(*e*) diplomatic visa, issued to a person holding a diplomatic passport, enabling the holder thereof to enter Malaŵi either on official or diplomatic mission.

Second Schedule

(3) Any person being a national of any country other than a country specified in the Second Schedule, may, on application and depending on the nature of his business and the circumstances of his visit be issued with a single entry visa enabling him to stay in Malaŵi for a period not exceeding three months or a multiple entry visa enabling him to enter Malaŵi several times provided that such entries are made within the period of and not exceeding twelve months.

(4) The fees payable on visas, other than official, courtesy and diplomatic visas, shall be as follows— G.N. 29/1999 6/2008 18/2011 15/2015

Type of Visa	*Place of issue*	*Fee*
Transit visa	Malaŵi	US$50
Transit visa	Malaŵi mission	US$70
Single entry visa	Malaŵi	US$75
Single entry visa	Malaŵi mission	US$100
Multiple entry visa up to six months	Malaŵi	US$150
Multiple entry visa up to six months	Malaŵi mission	US$220
Multiple entry visa up to twelve months	Malaŵi	US$250
Multiple entry visa up to twelve months	Malaŵi mission	US$300

(5) Application for a visa to enter a commonwealth country for which Malaŵi is the visa issuing Authority shall be in Form No. 28. G.N. 29/1999

Examinations or tests required G.N. 148/1987

4.—(1) Any examination or test required by an immigration officer under section 13 of the Act may be conducted on any train, vessel, aircraft, vehicle or other conveyance or at any other place which such officer considers to be convenient for the purpose, and if necessary, affords sufficient privacy.

(2) The immigration officer requiring such an examination or test may, in his discretion, determine the sequence in which persons wishing to enter or re-enter Malaŵi shall be so examined or tested.

(3) Every person who has entered Malaŵi and who desires to remain in Malaŵi for a longer period than that stated by him at the time of his arrival in Malaŵi shall report in person to an immigration officer and shall submit to such examinations and tests in accordance with section 13 of the Act, as may be required notwithstanding that he is already within Malaŵi.

(4) On completion of any examination or test required under section 13 of the Act, the immigration officer may make an appropriate endorsement on the person's passport or other document of identity.

Medical Examinations G.N. 148/1987

5.—(1) A medical practitioner shall, where necessary and required, be present at any examination or test required under section 13 of the Act and shall indicate to an immigration officer any person who ought, in his opinion, to be medically examined. An immigration officer may require a medical practitioner to make a medical examination of any such person, and of any other person

entering or found within Malaŵi who is required to submit to such medical examinations.

(2) The medical examination of any such person entering or found within Malaŵi shall take place at such place as may be convenient and as soon as possible after the arrival or discovery of such person, and a report as to the result of such examination shall be rendered to the immigration officer and shall, if such person is found to be a prohibited immigrant, accompany that officer's record of proceedings furnished to the Chief Immigration Officer.

Declarations by persons wishing to enter Malaŵi G.N. 148/1987

6.—(1) The declarations which any person wishing to enter Malaŵi may be required to make and sign under section 13 (2) (*a*) of the Act shall be in Form No. 1 and shall be written in English.

(2) An immigration officer may require such person to make and sign such declaration in his presence, and shall satisfy himself that such person understands the declaration.

(3) If such person is unable to read or write or to understand the declaration, the immigration officer may question him, if necessary through an interpreter, and shall himself fill in the declaration or cause it to be filled in and shall thereupon require such person to attach his signature.

(4) On receipt of any such declaration an immigration officer may make an appropriate endorsement on the passport or other document of identity of the person concerned.

Evidence by persons wishing to enter Malaŵi G.N. 148/1987

7. In order to satisfy an immigration officer that he is not a prohibited immigrant under section 4 (1) (*c*) of the Act a person may be required to produce evidence of any or all of the following—

(*a*) that he is on a temporary visit to Malaŵi for a stated period;

(*b*) that he is permanently resident elsewhere and intends to return thereto;

(*c*) that he will be re-admitted into his country of domicile, or country of last permanent residence at the expiration of his visit to Malaŵi;

(*d*) that he has in his possession for his own use such sum of money as is sufficient to support himself and his dependants whilst in Malaŵi, or that he has such sum of money immediately available in Malaŵi, or that he has friends or relatives in Malaŵi able and willing to support him and his dependants.

Security G.N. 168/1983

8.—(1) An immigration officer may, when he deems it necessary, require security to be furnished in respect of any person or his dependants who enter Malaŵi.

(2) Such security shall be in the form of a cash deposit or a guarantee or a general security covenant acceptable to the immigration officer concerned and shall be in such sum, being not more than K2,000 in respect of each person or dependant as such immigration officer may determine.

G.N. 168/1983

(3) A guarantee given under subregulation (2) shall be in Form No. 2 and shall be—

(*a*) given by the employer or by such other person as may be approved by the Chief Immigration Officer;

(*b*) supported by an undertaking by a bank, or some other body approved by the Chief Immigration Officer that the sum specified will be paid to the Government of Malaŵi on demand at any time during the period for which the guarantee is given; and

(*c*) given for a period not exceeding seven years calculated from the date of entry into Malaŵi of the person for whom the guarantee is given or, if such person is already within Malaŵi, for a period of seven years calculated from the date upon which the guarantee is given:

Provided that the Chief Immigration Officer may in exceptional circumstances dispense with the undertaking mentioned in paragraph (*b*).

(4) Where any employer enters or intends to enter into a contract for employment within Malaŵi of a person in respect of whom, together with that person's dependants, the Chief Immigration Officer deems it necessary to require security, the Chief Immigration Officer may in lieu of a deposit or guarantee in respect of such employee and his dependants, if any, permit the employer

to enter into a covenant to provide a general security in respect of all such employees and their dependants, if any. Every such general security covenant shall be in Form No. 3.

(5) It shall be a condition of any security furnished under this regulation that the sum deposited or guaranteed, as the case may be, may be applied by the Government of Malaŵi to meet any expenditure which may be incurred in connexion with the care, treatment or maintenance in, or the repatriation or deportation from, Malaŵi of the person concerned and additionally or alternatively any of his dependants in respect of whom the security is furnished.

(6) Security shall only be refunded or released upon—

(*a*) the principal's leaving Malaŵi; or

(*b*) the satisfaction of the Chief Immigration Officer that such security is no longer necessary for the purposes of this regulation.

Requirements for married women and children

9.—(1) In the case of an application by a married woman or in respect of a child to enter Malaŵi, an immigration officer may require the production of a duly authenticated copy of the marriage certificate or birth certificate as the case may be.

(2) If no such copy of the marriage certificate or birth certificate can be produced, the immigration officer may require—

(*a*) the production of an official certificate under the hand of a person acceptable to the immigration officer stating that, to his personal knowledge, the woman was married to a stated man on a date or in circumstances stated, or that the child was born on a date and at a place set out and of parents named in such certificate, as the case may be; or

(*b*) the production of a certificate under the hand of a person acceptable to the immigration officer stating that he has taken sworn testimony or other evidence as to the circumstances and date of and the parties to the marriage, or the date of birth and parentage of the child, as the case may be, and that such testimony and evidence is attached to the certificate together with any conclusions of such person in respect thereof.

(3) An immigration officer may require any certificate mentioned in this regulation to be supplemented by satisfactory evidence as to the identity of the person or persons referred to in the certificate and may, in any case of doubt, require such further evidence as may be necessary to satisfy him that the wife or child who is the subject of the application is the wife or child referred to in the certificate and is not a prohibited immigrant under the Act.

Order to report

10.—(1) Where a person wishing to enter Malaŵi, or who has entered Malaŵi, cannot satisfy an immigration officer that he is not a prohibited immigrant, or that he is lawfully entitled to enter or be in Malaŵi, an immigration officer may for the purpose of making inquiries into such person's identity or antecedents, or to enable such person to comply with any requirements of the immigration officer, serve on such person a notice in writing valid for such period as may be specified in the notice.

(2) Such notice shall be in Form No. 4, shall require such person to report to an immigration officer at such place and at such time, or at such intervals as may be specified in the notice, and to comply with such other conditions or restrictions as may be specified therein.

(3) Such notice shall not, save only for the purpose of, and to the extent necessary for complying with the terms and conditions thereof, and for the period of the validity thereof, be deemed to be a permit or authority to enter or remain in Malaŵi, and shall be surrendered to an immigration officer when required or when the person concerned leaves Malaŵi.

PART III
Prohibited Immigrants

Prescribed diseases G.N. 148/1987

11. The following diseases shall be the diseases prescribed for the purposes of section 4 (1) (*e*) of the Act—

(*a*) tuberculosis;

(*b*) trachoma;

(*c*) favus;

(*d*) framboesia or yaws;

(*e*) syphilis or gonorrhea;

(*f*) scabies;and

(*g*) leprosy.

Prescribed offences G.N. 148/1987

12. The offences set out in the Third Schedule shall be the offences prescribed for the purposes of section 4 (1) (*f*).

Photographs, fingerprints, etc.

13. Any person who is—

(*a*) or is suspected of being a prohibited immigrant; or

(*b*) detained under the Act in any prison, gaol, lock-up or detention cell in Malaŵi

shall, on demand made by the gaoler, officer in charge of the prison or other place of detention, a police officer or an immigration officer, submit to having his photograph and his fingerprints or palm-print impressions taken by such officer or by any person appointed for the purpose.

Warrants of detention and removal G.N. 148/1987

14.—(1) A warrant of detention issued under sections 14 and 16 of the Act shall be in Form No. 5, and a warrant of removal from Malaŵi shall be in Form No. 6.

(2) Upon receipt of a warrant of detention issued by an immigration officer, the gaoler or officer in charge of the prison or other place of detention to whom the warrant is addressed shall accept custody of the person against whom the warrant is issued.

(3) No such person shall be so detained in custody for any longer period than is necessary for the purposes of any prescribed inquiry or for the completion by an immigration officer of arrangements for the removal of such person from Malaŵi at the first reasonable opportunity.

(4) The production of a warrant of removal issued by a magistrate or by the Chief Immigration Officer shall be sufficient authority to the gaoler or officer in charge of the prison or other place of detention to whom the warrant is addressed to deliver the person named therein to the proper escort appointed to bring such person to any place for the purpose of removal under such warrant.

(5) The duplicate copy of a warrant of removal shall be endorsed with the name and rank, if any, of the person executing it, the number of the aircraft, vessel, train or vehicle used for the purpose and the time and date on which it departed from Malaŵi. The copy of the warrant shall then be returned to the magistrate or to the Chief Immigration Officer, as the case may be, who issued it.

Action after criminal proceedings

15. If a prohibited immigrant or a person suspected of being a prohibited immigrant is arrested upon a criminal charge he shall be handed over to the custody of an immigration officer at the conclusion of the criminal proceedings or at the expiration of any sentence of imprisonment imposed upon him, as the case may be, and may thereafter be detained or dealt with under and subject to the Act.

Records concerning prohibited immigrants

16. An immigration officer shall, in the case of every person who is or is suspected of being a prohibited immigrant under the Act, make a full record of his inquiry or examination and shall forthwith transmit the record to the Chief Immigration Officer, together with all documents relating thereto. The Chief Immigration Officer may thereupon make such further inquiry or examination as he deems necessary.

PART IV

Appeals

Preliminary appeal procedure G.N. 148/1987

17.—(1) The notice which an immigration officer shall give under section 8 (1) of the Act shall be in Form No. 7.

(2) An immigration officer shall, after notifying a person that he has been declared to be a prohibited immigrant, inform him, verbally or in writing, of his right of appeal to a magistrate's court and supply to such person, should he wish to appeal, a notice of appeal in Form No. 8.

G.N. 148/1987

(3) If the person declared to be a prohibited immigrant is under detention when he completes his notice of appeal, he may, within the time provided for appeals under section 8 (2) of the Act, deliver his notice of appeal and a copy thereof to the gaoler or officer in charge of the prison, or other place of detention, charged with his custody, who shall thereupon endorse such notice and copy with the date of receipt and arrange for their delivery with all possible despatch respectively to the court of the magistrate having jurisdiction in the matter and to the immigration officer concerned.

(4) An immigration officer to whom a copy of the notice of appeal has been handed or delivered shall forthwith send such copy to the Chief Immigration Officer.

Procedure where no court sitting locally

18. If there is no court which ordinarily sits or is sitting or about to sit at his station, an immigration officer shall communicate with the Chief Immigration Officer by telegraph, and shall inform the appellant that if he desires to be present at the hearing of the appeal he will, if under detention, be taken under escort to the place where the court is to sit.

PART V

Removal Of Prohibited Immigrant

Removal of prohibited immigrant G.N. 148/1987

19.—(1) An immigration officer may order a prohibited immigrant who has not appealed or made representations under section 8 or section 9 of the Act, or whose appeal or representations have been rejected, to leave Malaŵi forthwith and, if such prohibited immigrant fails or refuses to obey such order an immigration officer may, if authorized by a warrant issued by a magistrate under section 8 (3), or in any other case by the Chief Immigration Officer, take such steps and use such force as he considers necessary to remove such prohibited immigrant from Malaŵi.

(2) Where the conditions specified in section 10 (2) (*b*) of the Act apply, an immigration officer may serve the airline, shipping company, transport company or other carrier, conveyor or transporter concerned with a notice in Form No. 9 directing it to remove the prohibited immigrant from Malaŵi.

PART VI

Permits And Certificates Of Identity

Permit relating to prescribed diseases G.N. 148/1987

20.—(1) A permit issued under section 4 (1) (*e*) of the Act in respect of a prescribed disease shall be in Form No. 10 and shall be issued by the Chief Immigration Officer.

(2) The following conditions may be imposed in any such permit—

(*a*) the place of residence and every change of residence of the holder of the permit and his manner of transport shall be subject to the approval of the Chief Immigration Officer;

(*b*) the holder of the permit shall not at any time use or occupy any bedroom or other sleeping accommodation used by any other person;

(*c*) the holder of the permit shall observe and carry out such directions as to residence, disposal of sputum, disinfection and generally as to the prevention of the spread of infection as may be given by the medical officer of health of the local authority in whose area he resides, or, where there is no such medical officer of health, by the nearest Government medical officer;

(*d*) the holder of the permit, as soon as possible after it has been issued, shall report in person to the medical officer of health of the local authority in whose area he resides or, where there is no such medical officer of health, to the nearest Government medical officer and shall notify him his residential address and any change of such address; and

(*e*) the holder of the permit shall present himself at such time and place as may be required for medical examination by a Government medical officer or other medical practitioner and shall defray the cost of such examination.

Temporary permit G.N. 148/1987

21.—(1) A temporary permit issued under section 17 (1) of the Act shall be in Form No. 11.

(2) No such temporary permit shall be issued, renewed or extended—

(*a*) for a total period exceeding thirty days without the approval of the Chief Immigration Officer; or

(*b*) for a total period exceeding twelve months without the approval of the Minister.

(3) The following conditions shall be imposed upon any person to whom such a temporary permit is issued—

(*a*) the holder of the permit shall give his address in Malaŵi to an immigration officer and shall immediately notify an immigration officer of any change of address;

(*b*) the holder of the permit shall report to such officer at such place and at such time or at such intervals as may be specified in the permit and shall keep such officer duly advised of his whereabouts;

(*c*) the holder of the permit shall leave Malaŵi within the period specified in the permit and without expense to the Government and shall surrender the permit to an immigration officer before leaving Malaŵi;

(*d*) the holder of the permit shall give to the Chief Immigration Officer or to the immigration officer at the nearest port of entry or departure at least twenty-four hours' notice (excluding Sundays and public holidays) of the date of his intended departure from Malaŵi;

(*e*) the holder of the permit shall obtain the proper endorsement by an immigration officer on such permit of any renewal or extension of the permit;

(*f*) the permit shall be invalidated and the security found by the holder shall be forfeited to the Government if any false declaration or false representation has been made by the person to whom the permit is issued or by any other person on his behalf;

(*g*) the holder of the permit shall not engage in any work, occupation or activity which is not necessary for or incidental to the purpose for which he was permitted to enter Malaŵi unless he has first obtained the permission of the Chief Immigration Officer;

(*h*) the holder of the permit shall at any time on demand by an immigration officer forthwith surrender the permit to such officer;

(*i*) the holder of the permit shall enter and leave Malaŵi through such ports of entry and departure as may be specified in the permit;

(*j*) the holder of the permit shall travel by such route, such mode of conveyance and at such time as may be specified in the permit;

(*k*) the holder of the permit shall visit only such areas of Malaŵi as may be specified in the permit; and

(*l*) the holder of the permit while in Malaŵi shall not engage in such activities as may be specified in the permit.

Certificate of identity G.N. 148/1987

22.—(1) Application for a certificate of identity under section 20 of the Act shall be made in Form No. 12 and shall be supported by documentary evidence as to the identity of the applicant and as to the fact that he is lawfully resident in Malaŵi.

(2) A certificate of identity shall be issued in Form No. 13 and signed by the Chief Immigration Officer and shall be subject to the following conditions—

(*a*) on the return to Malaŵi of the person to whom the certificate is issued the certificate shall be surrendered to an immigration officer; and

(*b*) the certificate shall be invalidated if it has been obtained by means of any false statement or declaration.

(3) Every certificate shall contain such particulars as may be necessary to identify the holder, together with a full face photograph of the holder, and, if it is considered necessary for the purpose of identification, his thumb-print impressions.

Permanent residence permit

23.—(1) Application for a permanent residence permit shall be—

(*a*) made in duplicate in Form No. 14 in the English language;

(*b*) accompanied by—

(i) a medical certificate in Form No. 15;

(ii) a police certificate in Form No. 16 or, where this is not obtainable, a certificate of character in Form No. 17;

(iii) such other certificates or documents as are specified in Form No. 14; and

(*c*) submitted in the manner stated on Form No. 14.

G.N. 148/1987

(2) A permanent residence permit issued under section 22 of the Act shall be in Form No. 18.

(3) A permanent residence permit may be cancelled if the holder of the permit does not take up residence in Malaŵi within six months of the date of the issue of the permit.

Temporary residence permit G.N. 148/1987

24.—(1) Application for a temporary residence permit shall be made in Form No. 19.

(2) A temporary residence permit issued under section 24 of the Act shall be in Form No. 20, and the holder of such permit shall be subject to the following conditions—

(*a*) he shall give his address in Malaŵi to an immigration officer and notify any change of address to such an officer;

(*b*) he shall not, without the permission of the Chief Immigration Officer, commit any act or conduct himself in any manner which is inconsistent with or contrary to the purpose for which he was permitted to enter Malaŵi;

(*c*) he shall, without expense to the Government, leave Malaŵi on or before the date stated on the permit unless an extension of the validity of the permit has been endorsed thereon by an immigration officer; and

(*d*) he shall surrender the permit to an immigration officer immediately before leaving Malaŵi.

Business residence permit G.N. 148/1987

24A.—(1) An application for a business residence permit shall be made in Form No. 19A.

(2) A business residence permit issued under section 24A of the Act shall be in Form No. 20A.

(3) The holder of a business residence permit shall, within a reasonable time, notify the Chief Immigration Officer of every change, occurring during the currency of his permit, in any material particulars stated in his application and where such change requires an endorsement on his permit, the appropriate fee specified in the Fourth Schedule shall be payable in respect of every endorsement made on the permit.

Temporary employment permit G.N. 148/1987

25.—(1) An application for a temporary employment permit shall be made in Form No. 21.

(2) A temporary employment permit issued under section 25 of the Act shall be in Form No. 22, and the holder of such permit shall be subject to the following conditions—

(*a*) he shall not engage in any occupation other than the occupation specified in the permit;

(*b*) he shall not take up employment with any employer other than the employer, if any, who completed Part A of Form No. 21;

(*c*) he shall not reside in Malaŵi other than within the area of Malaŵi specified in the permit;

(*d*) he and all persons authorized to enter Malaŵi with him under the permit shall leave Malaŵi on or before the expiry of the period stated in the permit;

(*e*) he shall surrender the permit to an immigration officer before leaving Malaŵi; and

(*f*) he shall surrender the permit to the Chief Immigration Officer on ceasing to be engaged in the occupation specified in the permit.

(3) A temporary employment permit may be renewed by the Minister upon application.

Visitor's permit G.N. 148/1987

26.—(1) A visitor's permit under section 26 of the Act shall be issued by an immigration officer by endorsing under the immigration entry stamp in the person's travel document the permit serial number together with the period of validity and shall be signed by such immigration officer.

(2) The holder of a visitor's permit shall be subject to the following conditions—

(*a*) he shall give his address in Malaŵi to an immigration officer;

(*b*) he shall not take up any employment, work, occupation or activity for gain for which, in the opinion of the Chief Immigration Officer, he would be required to be in possession of a temporary employment permit or a temporary residence permit; and

(*c*) he shall, without expense to the Government, leave Malaŵi on or before the date stated on the permit unless an extension of the validity of the permit has been endorsed thereunder by an immigration officer.

Student's permit G.N. 148/1987

27.—(1) An application for a student's permit shall be made in Form No. 23.

(2) A student's permit issued under section 31 of the Act shall be in Form No. 24 and shall be subject to the following conditions—

(*a*) the permit shall remain valid for a period of one year from the date of issue;

(*b*) the validity of such permit may be extended by an endorsement of the permit by the Chief Immigration Officer for a further period or periods each not exceeding one year, on production of written evidence of the holder's admittance by an educational institution approved by the Minister for a further period of study; and

(*c*) the holder of such permit shall not engage in any gainful occupation except during a period of vacation permitted by such institution.

Loss or destruction of permit G.N. 148/1987

28. If a permit or certificate issued under the Act or these Regulations is lost or destroyed, the Chief Immigration Officer may in his discretion issue a copy thereof, subject to payment by the permit or certificate holder of the appropriate replacement fee specified in the Fourth Schedule.

29. The Chief Immigration Officer may cancel any certificate or permit, other than a permanent residence permit or copy thereof, issued under the Act or these Regulations on being satisfied that the holder thereof has failed to comply with, or has committed a breach of, any of the conditions of such certificate of permit, or that it was obtained by a false declaration or by misrepresentation.

Cancellation of permit and certificate

30. If the Chief Immigration Officer is satisfied that a person who is the holder of a temporary permit has ceased to be a prohibited immigrant under the Act, he may authorize the issue of an appropriate permit to such person in accordance with the Act:

Holder of temporary permit ceasing to be prohibited immigrant

Provided that if in any case the Minister has directed the issue of a temporary permit the Chief Immigration Officer shall not authorize the issue of any other permit without the approval of the Minister.

31. A person leaving Malaŵi shall be required to complete the declaration in Form No. 25.

Exit declarations
G.N. 106/1970
60/1972

PART VII
Deportation

32.—(1) A deportation order issued under section 39 of the Act shall be in Form No. 26, under the hand of the Minister, and shall direct the person to whom it is addressed to leave Malaŵi within such period after service of the order as may be specified therein.

Deportation order
G.N. 148/1987

(2) The police officer or immigration officer detailed to enforce the order shall serve it by reading it over to the person who is the subject of the deportation order. The police officer or immigration officer shall leave the original order in the possession of the person to be deported but this action shall not constitute an essential part of the service of the order.

(3) Any person to whom a deportation order is addressed who fails to leave Malaŵi within such period after service of the order as may be specified therein may, whether or not he is prosecuted for an offence under the Act, be removed from Malaŵi by an immigration officer without any further warrant or authority. An immigration officer may take such steps and use such force as he considers necessary to remove such person from Malaŵi.

33.—(1) The duplicate copy of a deportation order shall be endorsed with the name and rank of the police officer effecting

Deportation procedure

the deportation, the number of the aircraft, vessel, train or vehicle used for the purpose and the time and date on which it departed from Malaŵi. The copy of the order shall then be returned to the Chief Immigration Officer who shall inform the Minister as soon as possible.

(2) If the name of the deportee is spelt on the passport or any other travel document in a way which is at variance with the deportation order, the particulars of any variation shall be given in full when the copy of the deportation order is returned to the Chief Immigration Officer.

(3) A deportee may be placed on board any train, aircraft, vessel or vehicle which is about to leave Malaŵi and the guard of the train or commander of the aircraft or vessel, or conductor or driver of the vehicle, shall, if so required by an immigration officer, take whatever steps may be necessary to prevent the deportee from landing from the train, aircraft, vessel or vehicle before it leaves Malaŵi and he may, for that purpose, detain a deportee in custody on board the train, aircraft, vessel or vehicle and use any force necessary to ensure his retention in custody.

PART VIII
General

Use of telegraph or wireless

34. Any order or warrant issued under the Act or these Regulations may be effected by telegraph or wireless, and a copy thereof, served and executed as required by the law relating to criminal procedures, shall be of force and effect as if the original had been so served or executed.

Fees
G.N. 25/1987

35. In respect of the issue of any permit or certificate prescribed under these Regulations the fees (if any) stated in the Fourth Schedule shall be payable:

G.N. 25/1987

Provided that the Minister may by writing under his hand—

(*a*) exempt any person or any class of persons from payment of any of the prescribed fees, and where the Minister grants such exemption he shall cause notice thereof to be published in the *Gazette*; or

(*b*) remit or reduce any of the prescribed fees in respect of any person or any class of persons.

Delegation of powers

36. The Chief Immigration Officer may delegate in writing to the Deputy Chief Immigration Officer any or all of the powers conferred upon the Chief Immigration Officer under these Regulations.

FIRST SCHEDULE

List of Prescribed Forms

			G.N.
			148/1987
FORM No. 1	..	Entry/Exit Card	168/1983
FORM No. 2	..	Guarantee by Employer or Other Person	61/1991
FORM No. 3	..	General Security Covenant	35/1998
FORM No. 4	..	Provisional Restriction Notice	69/1998
FORM No. 5	..	Warrant of Detention	
FORM No. 6	..	Warrant for the Removal of a Person	
FORM No. 7	..	Notice of Prohibited Immigrant	
FORM No. 8	..	Notice of Appeal	
FORM No. 9	..	Notice of Direction to a Carrier	
FORM No. 10	..	Permit for Person Suffering from a Prescribed Disease to Enter Malaŵi	
FORM No. 11	..	Temporary Permit	
FORM No. 12	..	Application for Certificate of Identity	
FORM No. 13	..	Certificate of Identity	
FORM No. 14	..	Application for Permanent Residence Permit	
FORM No. 15	..	Medical Certificate Required of an Applicant for a Permanent Residence Permit	
FORM No. 16	..	Police Certificate Required of an Applicant for a Permanent Residence Permit	
FORM No. 17	..	Certificate of Character Required of an Applicant for a Permanent Residence Permit (to be used when, under the Regulations of a Police Force, a Police Certificate on Form No. 16 may not be issued)	
FORM No. 18	..	Permanent Residence Permit	
FORM No. 19	..	Application for Temporary Residence Permit	
FORM No. 19A	..	Application for a Business Residence Permit	G.N.
FORM No. 20	..	Temporary Residence Permit	148/1987
FORM No. 20A	..	Business Residence Permit	
FORM No. 21	..	Application for Temporary Employment Permit	G.N.
FORM No. 22	..	Temporary Employment Permit	148/1987
FORM No. 23	..	Application for a Student's Permit	
FORM No. 24	..	Student's Permit	
FORM No. 25	..	Exit Card	
FORM No. 26	..	Deportation Order	
FORM No. 27	..	Application for a visa to enter Malaŵi	G.N.
FORM No. 28	..	Application for a visa to enter an independent commonwealth country for which Malaŵi is the visa issuing Authority	61/1991

FORM NO. 1 (M.P. 259)

SERIAL .....
REGULATION 6

REPUBLIC OF MALAŴI
IMMIGRATION ACT
ENTRY/EXIT CARD

1. (*Please Print*) Mr. / Mrs. / Miss .....
.....
(*Surname*)

.....
(*Maiden names*)

.....
(*First names*)

2. Date of birth .....
Day *Month* *Year*
3. Place of birth .....
4. Nationality .....
5. Occupation .....
6. (For visitors only) Reason for entry .....
.....
7. Last residential address .....
.....
8. Address travelling to .....
Passport Number .....
Place and date of issue .....

I hereby declare that I have answered all the relevant questions correctly and truthfully. } .....
Signature of Traveller

FOR OFFICIAL USE

File ref.	
Status (sec.)	
Permit (type)	
Expiry (date)	
Passport endorsement	Cancelled/not cancelled

Permit	Attached/not attached
Visitor's security	
V.P. serial number	

Visa number ..... Authority .....

Date ..... Place of issue .....

Remarks .....

.....
Immigration Officer

DATE STAMP

M.P. 259

FORM NO. 1 H.Q. SERIAL .....
(*Continuation*)

REPUBLIC OF MALAŴI

ENTRY DECLARATION (CONTINUATION FORM)

(To be completed in block capitals)

1.	SURNAME Mr./Mrs./Miss:	OTHER NAMES
2.	How many times have you visited Malaŵi in the last twelve months ? (Visitors only.)	
3.	Have you ever been convicted of a criminal offence? If so, give full details below—	

	Country	*Offence*	*Sentence*
	....	....	....

4.	Have you ever been declared a Prohibited Immigrant or been deported from any country? If so, please give the reason and the country in which this happened and the date— ....
5.	If you are travelling by road please state whether you are a passenger, the hirer or the owner of the vehicle in which you are travelling by placing a tick in the appropriate section— PASSENGER HIRER OWNER

6.	If you own or are hiring your vehicle please give the following particulars—			
	Make	*Type*	*Model*	*Registration No.*
	.....	.....	.....	.....
7.	DECLARATION: I hereby declare that I have answered all the above questions correctly and truthfully. Date .... *Signature of Traveller*			

FOR OFFICIAL USE

IM.

T/I.

C/R.

F/S—r/d.

Date ....
Responsible Officer

reg. 8 (3) FORM No. 2 (POL. 182)

GOVERNMENT OF MALAŴI

IMMIGRATION ACT

(CAP. 15:03)

GUARANTEE BY EMPLOYER OR OTHER PERSON

I, (*a*) ..... the undersigned, hereby undertake full responsibility in regard to (*b*) ..... and I undertake to pay to the Government of Malaŵi all expenses (not exceeding .....) incurred or to be incurred by it in respect of or arising out of—

(1) the care, treatment or maintenance in Malaŵi of the said person and/or his dependants by the said Government and/or a Local Authority and/or other public body;

(2) the repatriation or deportation of the said person and/or his dependants from Malaŵi.

The Chief Immigration Officer shall in his sole discretion determine the time of payment by me of all the said expenses (either before or after they have actually been incurred) and the amount thereof (subject to the above limitation):

Provided that he shall not demand payment of the amount after seven years from the date of arrival of the said person in Malaŵi, or if the said person is already in Malaŵi, after two years from the date of this guarantee.

Dated at ..... on this ..... day of ..... 19 .....

Signature .....
Address .....

AS WITNESSES:

1. Signature .....
   Address .....
2. Signature .....
   Address .....

NOTE—If the amount paid by the guarantor is in excess of the expenses actually incurred by the Government the difference will be refunded.

(*a*) Full name of person giving undertaking (in BLOCK LETTERS)

(*b*) Full name of intending immigrant or visitor (in BLOCK LETTERS)

TO BE COMPLETED BY A BANK OFFICIAL

We, ... undertake to hold at the disposal of the Department of Immigration a sum not exceeding ..... Kwacha (.....) which amount will be paid on demand should ..... fail to comply with the terms of the Form of Undertaking given above.

The Bank's liability under this undertaking shall not exceed ..... Kwacha (.....) and shall expire on the ..... or upon payment being effected, whichever is the earlier.

Sub-Manager .....

Sub-Accountant .....

Witness: 1 .....

Witness: 2 .....

(Stamp according to value)

FORM No. 3

GOVERNMENT OF MALAŴI

IMMIGRATION ACT

(Cap. 15:03)

reg. 8 (4)
G.N.
168/1983

GENERAL SECURITY COVENANT

WHEREAS WE, the said ..... of ..... (hereinafter referred to as the Employer) from time to time enter into contracts for the employment within Malaŵi of persons (hereinafter referred to as the employees) who require temporary residence permits, temporary employment permits or permanent residence permits:

AND WHEREAS the Chief Immigration Officer, as a condition precedent to the issue of any temporary residence permit, temporary employment permit or permanent residence permit, has required that we the said Employer shall give a general security in respect of all such employees and their wives, children and other dependants if any:

AND WHEREAS we, the said Employer desire to give such a general security in order to enable temporary residence permits, temporary employment permits or permanent residence permits to be issued.

NOW THESE PRESENTS WITNESS that in consideration of the issue from time to time of temporary residence permits, temporary employment permits or permanent residence permits to the said employees, their wives, children and other dependants, we, the said Employer do hereby Covenant with the Government of Malaŵi that we, the said

Employer will on demand forthwith pay to the said Government any expenses incurred or likely to be incurred by the said Government in connexion with the care, treatment or maintenance in, of the repatriation or deportation from, Malaŵi of each such employee, his wife, children or other dependants, but in no case exceeding two thousand Kwacha in respect of each such employee, wife, child, or dependant.

168/1983

IN WITNESS WHEREOF the said Employer has set his hand this .... day of ....., 19 .....

Signed by the said Employer:

....
in the presence of: (*Employer*)

(Witness) .....
(Address of Witness) .....

Cap. 43:01 G.N. 168/1983

N.B.—This document must be stamped in accordance with the Stamp Duties Act.

reg. 10 (2)

FORM No. 4

GOVERNMENT OF MALAŴI
IMMIGRATION ACT
(CAP. 15:03)
PROVISIONAL RESTRICTION NOTICE

To: .....

Take notice that your entry to Malaŵi is provisionally restricted in terms of section 14 of the Immigration Act, as read with regulation 10 (1) of the Immigration Regulations and you are required to report to the Immigration Department at: ..... within ..... days of the date hereof for the purpose of producing—

(1) National Passport
(2) Permanent Residence Permit
(3) Temporary Residence Permit
(4) Cash Deposit Guarantee
(5) Evidence of Means
(6) Evidence of Residential Status
(7) Student's Permit
(8) Temporary Permit
(9) Evidence of Employment
(10) Temporary Employment Permit
(11) Full address at destination
(12) Visa.

DATE STAMP

.....
Immigration Officer

Acknowledged .....

WARNING : If you fail to comply with the terms of this notice you are liable to be removed from Malaŵi.

Passport No. .....

Vehicle No. .....

Address in Malaŵi .....

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reg. 14 (1)

FORM No. 5
(POL. 191)

GOVERNMENT OF MALAŴI

IMMIGRATION ACT

(CAP. 15:03)

WARRANT OF DETENTION

(*Issued under sections* 15 *and* 16 *of the Immigration Act*)

The Gaoler (or officer in charge of prison or other place of detention).

By virtue of powers conferred on me under sections 15 and 16 of the Immigration Act, this is to authorize you to take into your custody .... who—

(*a*) *is suspected of being a prohibited immigrant and who has failed to provide the necessary bond for his appearance within fourteen days; or

(*b*) *is a prohibited immigrant and has been ordered to leave Malaŵi.

Dated at ..... this ..... day of ....., 19 .....

*(*a*) or (*b*) Delete whichever is inapplicable.

.....
Immigration Officer

---

reg. 14 FORM No. 6

(POL. 209) GOVERNMENT OF MALAŴI

IMMIGRATION ACT

(CAP. 15:03)

WARRANT FOR THE REMOVAL OF A PERSON

(*Issued under sections* 9 *and* 35 *of the Immigration Act*)

To .....

.....

Whereas ..... who—

(*a*) *having been declared to be a prohibited immigrant; or

(*b*) *having been the subject of an order to leave Malaŵi and having failed to comply with the terms of such order;

is liable to be removed from Malaŵi by warrant issued under the Act, you are hereby authorized to cause the said .... to be removed from Malaŵi under proper escort and subject to necessary detention as provided under the Act.

Dated at ..... this ..... day of ....., 19 .....

.....

Magistrate or Chief Immigration Officer

*(*a*) or (*b*) Delete whichever is inapplicable.

I, ... hereby certify that in accordance with the instructions contained in Warrant for Removal of ..... dated ..... have escorted ..... to the border of Malaŵi at ..... on ..... (date) at ..... (time) and saw him cross the border into .....

Signed .....

No. .....

Rank .....

Name .....

Date .....

FORM No. 7
(M.P. 183) reg. 17 (1)

GOVERNMENT OF MALAŴI

IMMIGRATION ACT

(Cap. 15:03)

NOTICE TO PROHIBITED IMMIGRANT

File No. .....
To .....
at .....

Take notice that permission to enter Malaŵi or to remain therein is refused to you on the ground that you are a Prohibited Immigrant by reason of the operation of—

*(*a*) paragraph ( ) of subsection (1) of section 5 of the Immigration Act;
*(*b*) section 5 (3) of the Immigration Act;
*(*c*) section 6 of the Immigration Act;
*(*d*) section 23 of the Immigration Act in that you have *entered/remained in Malaŵi

in contravention of subsection .....

You are notified that, under the Act you may appeal to the nearest Magistrate's Court—

(*a*) on the grounds of identity, as provided in section 10 (1) of the Act if you have been alleged to be a Prohibited Immigrant by reason of operation of section 5 (1) (*a*) or (*h*) or section 5 (3) of the Act; or

(*b*) to determine whether or not you are a Prohibited Immigrant if you have been alleged to be a Prohibited Immigrant by reason of the operation of any other provision of the Act.

Such appeal must be noted within three days after this notice has been given and shall be made on Form No. 8 which may be obtained from any Immigration Officer.

You are hereby ordered to leave Malaŵi within ..... days of the service of this Notice and Order on you unless you sooner appeal to a Magistrate, that is by (time)
..... on (date) .....
Date .....
Place .....

.....
Immigration Officer

I hereby acknowledge receipt of the notice of which this is a copy, declaring me to be a Prohibited Immigrant to Malaŵi on the grounds stated therein.

Signature .....
Date .....

*Immigration officer to delete and complete as appropriate.

reg. 17 (2) FORM No. 8
(POL. 184)

GOVERNMENT OF MALAŴI

IMMIGRATION ACT

(CAP. 15:03)

NOTICE OF APPEAL

The Magistrate,

I, ... hereby notify my intention to appeal on grounds set out below against the declaration of the Immigration Officer at ..... that I am a Prohibited Immigrant within the meaning of the Immigration Act, as notified to me in Immigration Form No. 7, dated .....

GROUNDS OF APPEAL

.....
.....
.....

Date ..... 19 ..... *Signature*.....
Place .....

NOTE— If the person declared to be a Prohibited Immigrant is under detention when he completes his notice of appeal, he may deliver his notice of appeal and a copy thereof to the officer in charge of the prison, gaoler or person charged with his custody, who shall thereupon endorse such notice and copy with the date of receipt and arrange for their delivery with all possible despatch respectively to the Court of the Magistrate having jurisdiction in the matter and to the Immigration Officer concerned.

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reg. 19 (2) FORM No. 9

GOVERNMENT OF MALAŴI

IMMIGRATION ACT

(CAP. 15:03)

Original to "Carrier" Immigration Officer
Duplicate to Immigration H.Q., Blantyre P.O. Box
Triplicate retained by Office of issue *.....
Date .....

To:
**The Manager, Air Malaŵi .....
**The Station Master, Malaŵi Railways .....
**The Conductor, Bus No. ..... United Transport (Malaŵi) Ltd.
**The Driver, Car No. ..... Lorry No. ..... (Name of Firm or Company).

Dear Sir,

NOTICE OF DIRECTION TO A CARRIER

(Issued under section 11 (2) (*b*) of the Immigration Act)

This is to advise you that† .....
.....
conveyed to the border of Malaŵi at* ..... on (date) .....
in **Aircraft, Train, Bus, Lorry, Car No. .....
does not comply with the Immigration requirements because¶ .....
.....
and you are hereby directed to convey the said†.....
.....
prohibited immigrants, out of Malaŵi at no cost to the Government of Malaŵi.

Yours faithfully,

Signed ..... Immigration Officer

..... Rank

..... Immigration Date Stamp

**Delete as necessary

¶Insert reasons

†Insert name or names

*Insert Immigration Post

---

reg. 20 (1)

FORM No. 10
(POL. 187)

GOVERNMENT OF MALAŴI

IMMIGRATION ACT

(CAP. 15:03)

PERMIT FOR PERSON SUFFERING FROM A PRESCRIBED DISEASE TO ENTER MALAŴI

(Issued under section 5 (1) (*e*) of the Immigration Act)

Permission is hereby granted to .....
who is suffering from ..... to enter and remain in Malaŵi, subject to the conditions mentioned below.

.....
Chief Immigration Officer

CONDITIONS

I agree to accept this permit on the abovementioned conditions.

.....
Immigrant

Witness ..... Date .....

---

reg. 21 (1) FORM No. 11
(POL. 185)

GOVERNMENT OF MALAŴI

IMMIGRATION ACT

(CAP. 15:03)

TEMPORARY PERMIT

(Issued under section 18 of the Immigration Act)

File No. .....

Serial No. .....

Sum deposited £ ..... (..... pounds)
Deposited by .....
Receipt No. .....(Sum to be refunded on production of this permit when leaving Malaŵi, and on fulfilment of the other conditions imposed hereunder).

It shall be a condition of any security furnished that it may be applied to meet any expenditure which may be incurred in connection with the care, treatment or maintenance in or repatriation or deportation from Malaŵi of the person to whom the permit is issued and additionally or alternatively any of his dependants mentioned or included in such permit.

The deposit shall only be refunded upon the due carrying out of the conditions by the person to whom the permit is issued and his leaving Malaŵi within the period for which the permit was issued, or upon the cancellation of the conditions by an Immigration Officer.

Subject to the conditions stated hereunder, the holder, ... of ..... is permitted to enter Malaŵi at ..... for the ..... purpose of .....
.....

(DATE STAMP) .....
Immigration Officer

CONDITIONS

This permit is issued subject to the following conditions and requirements and to the Immigration Act, and the regulations thereunder:—

(1) The holder of this permit registers his address as—
(*a*) Postal address .....
(*b*) Residential address .....
and shall immediately notify an Immigration Officer of any change of address.

(2) The holder of this permit shall report to the .... at ..... at intervals of ..... and shall keep that Officer duly advised of his whereabouts.

(3) The holder of this permit shall leave Malaŵi within .... from the date hereof, that is to say, on or before the ..... day of ....., ... 19 ....., without expense to the Government and shall surrender this permit to an Immigration Officer before leaving Malaŵi.

(4) The holder of this permit shall give to the Chief Immigration Officer or the Immigration Officer at the nearest port of entry and departure at least twenty-four hours' notice (excluding Sundays and public holidays) of his intended departure from Malaŵi.

(5) The holder of this permit shall obtain the proper endorsement hereunder of any extension of the validity of this permit from a duly authorized Immigration Officer.

(6) This permit shall be invalidated and the security found by the holder shall be forfeited to the Government if any false declaration or false representation has been made by the person to whom the permit is issued or by any other person on his behalf.

(7) The holder of this permit shall not engage in any work, occupation or activity which is not necessary for or incidental to the purpose for which he was permitted to enter Malaŵi unless he has first obtained the permission of the Chief Immigration Officer.

(8) The holder of this permit shall at any time on demand by an Immigration Officer forthwith surrender the permit to such officer.

(9) The holder of this permit shall enter and leave Malaŵi through such ports of entry and departure as may be specified in the permit.

(10) The holder of this permit shall travel by such route, such mode of conveyance and at such times as may be specified in the permit.

(11) The holder of this permit shall visit only such areas of Malaŵi as may be specified in the permit.

(12) The holder of this permit while in Malaŵi shall not engage in such activities as may be specified in the permit.

I/WE, ... agree to the above conditions, and I/we clearly understand that any breach of such will involve the forfeiture of the above deposit and will render the holder liable to be further dealt with according to law.

Signature of Holder .....

Signature of Depositor .....

Right thumb-print of holder (if required)

As Witness:

.....

Place .....

EXTENSIONS AND REPORTS

.....
.....
.....
.....

DATE STAMP

reg. 22 (1) FORM No. 12
(M.P. 188)

GOVERNMENT OF MALAŴI

IMMIGRATION ACT

(Cap. 15:03)

APPLICATION FOR CERTIFICATE OF IDENTITY

Serial No. .....

FiIe No. .....

If any question is not applicable or if any reply thereto is in the negative this should in each case be clearly stated.

1. Name of applicant in full .....
2. Address of applicant .....
.....
3. Date of applicant's birth .....
4 Place and country of applicant's birth .....
5. Date and place of applicant's first entry into Malaŵi .....
6. Applicant's occupation or other means of subsistence .....
7. Has applicant ever been refused permission to enter or been expelled from Malaŵi? .....
8. State whether applicant is or has been married. If married, give full name and address of wife/husband .....
.....
.....

9. Period for which certificate required .....
10. Passport No. ..... Issued at ..... on expiring .....
11. Identification marks. Height ..... Colour of eyes Colour of hair .....
12. Record of previous foreign exchange for travelling expenses:— Date ..... Amount Issued £ ..... Date ..... Amount Issued £ .....

I, ... having been duly cautioned, hereby solemnly and sincerely declare that I fully understand the above questions, and that I have answered them truthfully.

Signature or mark of applicant .....

I hereby certify that I acted as Interpreter for the purpose of this application.

Signature .....

Address .....
.....

Thumb impressions where required

LEFT	RIGHT

Declared before me at .....
.....
this ..... day of
..... 19 .....

.....
Immigration Officer

Title, number and date of document, if any, on the authority of which the applicant is legally in Malaŵi .....
.....

FORM No. 13
(POL. 189) reg. 22 (2)

GOVERNMENT OF MALAŴI
IMMIGRATION ACT
(Cap. 15:03)

Not valid as a receipt. An official receipt should be obtained for all monies paid to Government.

CERTIFICATE OF IDENTITY

(Issued under section 21 of the Immigration Act)

Serial No. .....

File No. .....

G.R. No. .....

It is certified that ..... having appeared before ..... for the purpose of supplying the means of identification which are now specified herein, and having intimated that he/she is about to absent himself/herself from Malaŵi for a period of ..... on a visit to .... this document is issued to the said .... and, subject to the conditions enumerated below and to the verification of the marks of identification, will be accepted by the examining Immigration Officer without further evidence as proof of the identity of the said ..... on his/her return.

.....
Chief Immigration Officer

Date .....
Place .....

CONDITIONS UNDER WHICH THIS CERTIFICATE IS ISSUED

1. On return to Malaŵi of the person to whom this certificate is issued, the certificate shall be surrendered to the Immigration Officer.

2. This certificate shall be invalidated if it has been obtained by means of any false statement or declaration.

Identification (*a*) height ..... (*b*) build ..... (*c*) any distinguishing physical characteristics ....

Record of previous exchange for travelling purposes:—
Date ..... amount issued £ .....
Date ..... amount issued £ .....

Photograph of Holder		Right Thumb-print of Holder if required
	..... *Signature of Holder*	

Embossed Stamp

FORM No. 14
(POL. 192)

reg. 23 G.N. 35/1998
69/1998

GOVERNMENT OF MALAŴI

IMMIGRATION ACT

(Cap. 15:03)

File No. .....
Serial No. .....

APPLICATION FOR A PERMANENT RESIDENCE PERMIT

NOTES AND INSTRUCTIONS. Please read carefully as incomplete applications cannot be considered by the Minister. All questions must be answered in full.

This form must be declared before a Magistrate, Commissioner for Oaths or Notary Public and forwarded to the Chief Immigration Officer, P.O. Box 331, Blantyre, Malaŵi.

The official before whom the form is declared is referred to throughout these notes and instructions as the "attesting officer".

1. This form is to be completed IN DUPLICATE in English and all documents annexed to it, where not originally issued in the English language, must be accompanied by an accurate certified English translation. Except where otherwise specified, only one copy of each of the annexed documents is required.

2. One form may be used for a husband, wife and children under the age of 18 years. Every other person must submit a separate application.

3.—(1) The undermentioned documents must be attached to this application—

(*a*) three identical copies of a recent full-faced photograph of each person included in the application, made on thin paper, size 1½ x 2½ in., on which the features are clearly and correctly depicted. One copy for each person must be certified on the back by the attesting officer to be a true likeness of the person concerned;

(*b*) one copy of the birth certificate of the applicant certified by the attesting officer to be a true copy of an original seen by him, or a sworn statement by the applicant giving date and place of birth and names and nationality of parents;

(*c*) one copy of marriage certificate certified by the attesting officer to be a true copy of an original seen by him, or a sworn statement by the applicant giving date and place of marriage;

(*d*) one medical certificate on the prescribed form (Form No. 15) for each person;

(*e*) police certificates on the prescribed form (Form No. 16) covering a minimum period of the last five years if over 16 years of age; or, where a police certificate is not issued, a certificate of character on Form No. 17;

(*f*) proof of financial circumstances if over 18 years of age;

G.N. 35/1998

(*g*) documentary evidence in English of qualifications and experience in the proposed self-employment. This should be in the form of copies of diplomas, certificates or testimonials certified by the attesting officer to be true copies of the original seen by him or a sworn statement by the applicant of his educational qualifications and occupational history.

(2) The original documents should not be submitted but copies certified and translated into English, as required above, are essential. These copies will not be returned.

4. If an applicant considers himself to be stateless, a statement in English giving full particulars of the reasons for loss of nationality must be attached to his application.

5. With reference to the answer to question 15 within, and not 3 (*f*) above, the applicant should supply a statement from a bank or similar organization as to his financial status.

6. A Permanent Residence Permit may be cancelled if the holder of the permit does not take up residence in Malaŵi within six months of the date of issue of the permit.

G.N. 35/1998
69/1998

7. Permanent Residence Permits are issued subject, *inter alia*, to the conditions that the holder—

(*a*) shall comply with the Immigration Act;

(*b*) may engage in paid employment, including self employment.

8. A Permanent Residence Permit ceases to be valid if the holder is absent from Malaŵi for more than 12 months.

9. If the application is successful, the duplicate copy, suitably endorsed by the Chief Immigration Officer, will be sent to you and should be produced by you with your passport to the Immigration Officer on arrival in Malaŵi. The actual permit will be endorsed in your passport and those of your dependants, if any, on receipt of the appropriate fee after your arrival in Malaŵi. G.N. 35/1998

1. Surname (*block letters*) .....
   Other names (*block letters*) .....
2. Present address in full (*block letters*) (The result of the application will be sent to this address) .....
3. Date of birth . ..... 4. Sex .....
5. Town and country of birth .....
6. Present nationality: Self ..... Wife .....
7. Race (e.g. African, Asian, European, etc.) Self .....
   Wife .....
8. Countries of residence during past 10 years giving dates of residence in each country .....
   .....
   .....
9. Specify any physical or mental disabilities of yourself or any dependant .....
   .....
10. (*a*) Number of years at school, college or university and standard of education reached .....
    .....
    (*b*) Place and country where highest standard of education was reached .....
    .....
11. (*a*) Present occupation ..... G.N. 35/1998
    (*b*) Occupation to be followed in Malaŵi (answer must be definite) 69/1998
    .....
    (*c*) Qualifications and experience in this occupation .....
    .....
    (*d*) If to be employed, employer's name and address .....
    .....
    (*e*) Salary and wages offered .....
    (*f*) If to be self-employed, give particulars of intended business on separate sheet
12. (*a*) Married, single, widowed or divorced .....
    .....
    (*b*) If legally separated or divorced submit a copy of the court order in question certified as being correct by an official of the court which made it.
13. If you are a wife applying for a Permanent Residence Permit for yourself, state—
    (*a*) Your husband's full name .....
    .....
    (*b*) Your husband's occupation .....
    (*c*) Your husband's nationality .....

(*d*) Your husband's passport number .....
Date of issue ..... Place of issue .....
(*e*) Your husband's present address .....
.....

14. (*a*) Full name of wife .....
(*b*) Wife's maiden name .....
(*c*) Town, country and date of birth .....
(*d*) Is wife applying for entry to Malaŵi? .....
(*e*) Particulars of all children under the age of 18 years by any marriage.

Name	Race	Nationality	Sex	Town, country, date of birth	Whether applying for entry to Malaŵi (Yes or No)
1	.....	.....	.....	.....	.....
2	.....	.....	.....	.....	.....
3	.....	.....	.....	.....	.....
4	.....	.....	.....	.....	.....

(*f*) Particulars of other dependants who wish to emigrate to Malaŵi. Separate application must be submitted by each such dependant and should accompany this application.
(*g*) Particulars of relations (if any) already resident in Malaŵi.

Name	Date of birth	Sex	Relationship to Applicant
1	.....	.....	.....
2	.....	.....	.....
3	.....	.....	.....
4	.....	.....	.....

Full Names	Address in Malaŵi	Relationship to Applicant	Approximate date entered Malaŵi
1	.....	.....	.....
2	.....	.....	.....
3	.....	.....	.....
4	.....	.....	.....

15. Financial circumstances supported by documentary proof.
(*a*) Sterling value of money immediately available on arrival in Malaŵi .....
(*b*) Other assets, their value and extent to which they will be available in Malaŵi .....
.....

(*c*) If of independent means, give details .....
.....

16. Languages applicant is able to read and write .....
.....

17. Address to which proceeding in Malaŵi .....
.....

18. Have you or any of your dependants ever been convicted of any crime or offence in any country? If "Yes" give particulars and dates. (Every conviction under any law must be shown) .....
.....

19. Have you or any of your dependants ever been restricted from entering any country or deported from any country?
If "Yes" give particulars and dates .....
.....

20. Have you or your wife previously resided in or visited Malaŵi? ..
.....
If so, state circumstances and dates .....
.....

21. Passport particulars of applicant and each dependant included in this application form—

Name	Passport No.	Place of Issue	Date of Issue	Date of Expiry
.....	.....	.....	.....	.....
.....	.....	.....	.....	.....
.....	.....	.....	.....	.....

I hereby declare that the information furnished by me in this application is true and correct.

(Signed) .....

Declared before me at ..... this .....
day of ....., 20.....

.....
Signature, Qualification and stamp of Attesting Officer

FOR USE OF IMMIGRATION AUTHORITY ONLY

TO: The Immigration Officer,
Port Of Entry,
Malaŵi

The applicant named on this form and whose photograph is attached has been granted a Permanent Residence Permit for Malaŵi under authority ..... dated .....

This form is to be retained by the Immigration Officer to whom it is presented and forwarded to the Chief Immigration Officer with the Immigration Declaration Forms of all those included in this application.

The applicant is to be instructed to call at the office of the Chief Immigration Officer with his passport and the passports of his dependants or to forward them by registered post with the fee of £5 so that the actual permits may be endorsed in them. There are no fees for dependants.

Signed .....
Chief Immigration Officer

THIS AUTHORITY TO ENTER
MALAŴI WILL EXPIRE SIX
MONTHS FROM THE DATE
STAMP SHOWN ABOVE.

Entered Malaŵi on ..... Port of entry .....
G.R. No. for permit fee ..... Date .....

PHOTOGRAPH OF APPLICANT AND DEPENDANTS

FORM No. 15
(M.P. 193)

GOVERNMENT OF MALAŴI

IMMIGRATION ACT reg. 23 (1) (*b*) (i)

(CAP. 15:03)

MEDICAL CERTIFICATE REQUIRED OF AN APPLICANT
FOR A PERMANENT RESIDENCE PERMIT

Place .....
Date .....

I hereby certify that I have examined .... and find him/her to be mentally and physically sound and that he/she is not affected with tuberculosis in any form or with any disease except as set out below and that he/she is not suffering from favus, leprosy, framboesia or yaws, trachoma, syphilis, gonorrhea or scabies.
.....
.....
(*Signed*) .....

(Qualification of certifying Medical Officer) .....

NOTE:

Mentally unsound persons include—

(*a*) Idiots
(*b*) Epileptics
(*c*) Insane persons
(*d*) Mentally deficient persons.

FORM No. 16
(POL. 199)

reg. 23 (1) (*b*) (ii)

GOVERNMENT OF MALAŴI

IMMIGRATION ACT

(Cap. 15:03)

POLICE CERTIFICATE REQUIRED OF AN APPLICANT FOR A PERMANENT RESIDENCE PERMIT

Place ..... Date .....

TO WHOM IT MAY CONCERN

This is to certify that from enquiries made .....
(Name) .....
who has resided within the jurisdiction of this Police Force from (date) ..... to (date) .....
has not been convicted of any crime or misdemeanour.

(Signed) .....

Official Stamp and Designation of Police Officer

This certificate must be completed by a Police Headquarters or Office of a district in which the applicant resides or has resided for a period of years and franked with office stamp, date of issue and country.

FORM No. 17
(POL. 210)

reg. 23 (1) (*b*) (ii)

GOVERNMENT OF MALAŴI

IMMIGRATION ACT

(Cap. 15:03)

CERTIFICATE OF CHARACTER REQUIRED OF AN APPLICANT FOR A PERMANENT RESIDENCE PERMIT

(To be used when, under the regulations of a police force, a police certificate on Form No. 16 may not be used)

Place ..... Date .....

To the Chief Immigration Officer of Malaŵi—

THIS IS TO CERTIFY that I have personally known .... whose address is .... for a period of ..... years, and that during this time he/she has not, to the best of my belief, been convicted of any crime or misdemeanour.

I recommend him/her to be person of good character to whom a Permanent Residence Permit might properly be issued.

Address ..... *Signed* .....

..... *Qualification* .....

To be signed by a Minister of Religion, Magistrate, Medical or Legal Practitioner, Senior Civil Servant or Bank Official.

FORM No. 18
reg. 23 (2)

G.N. 35/1998
69/1998

GOVERNMENT OF MALAŴI
IMMIGRATION ACT
(Cap. 15:03)

Ref ..... Date .....

PERMANENT RESIDENCE PERMIT

The bearer is authorized to enter Malaŵi for the purpose of taking up paid employment .....
.....
and to reside in Malaŵi subject to compliance with the Immigration Act.

.....
Chief Immigration Officer

This permit will cease to be valid if the holder remains outside Malaŵi continuously for more than 12 months.
Fee K ..... G.R. No. .....
Authority ..... of .....

FORM No. 19 (M.P. 194A)

GOVERNMENT OF MALAŴI reg. 24

IMMIGRATION ACT

(Cap. 15:03)

APPLICATION FOR TEMPORARY RESIDENCE PERMIT

(*Note: A Temporary Residence Permit is valid for not more than 6 months and the fee is K2*)

For Official Use
Serial No. .....
File No. .....
G.R. No. .....

1. Name of Applicant in full .....
2. Nationality .....
3. Date of Birth .....
4. Place of Birth .....
5. Passport Number .....
   Date of Issue .....
   Place of Issue .....
   Date of Expiry .....
6. The reason for your visit to Malaŵi .....
7. Permanent address outside Malaŵi .....
8. Intended Address during temporary residence in Malaŵi .....
   .....
9. Address to which permit is to be sent .....
10. Who will pay fee of K2? .....
11. *Intended Port of entry .....
12. *Port by which entry was made .....
13. *Date of intended entry .....
14. *Date entered .....
15. I will be admitted to ..... (country) after my visit to Malaŵi because—
    * ☐ I have a National Passport of that country.
    * ☐ have been granted a Visa for that country.

    Date .....
    Place .....
    Signed .....

*Delete if not applicable.

G.N. 148/1987

FORM No. 19A

GOVERNMENT OF MALAŴI

IMMIGRATION ACT

(Cap. 15:03)

APPLICATION FOR A BUSINESS RESIDENCE PERMIT

(*Under section* 24A *of the Immigration Act*)

NOTE: 1. A business residence permit is valid for a period of 5 years and is renewable for successive periods of 5 years. The fee both upon issue and renewal is K500.

2. This form is for an application both for issue and for renewal of a business residence permit and the application must be submitted in duplicate to the Chief Immigration Officer, P.O. Box 331, Blantyre, Malaŵi. Two passport-size photographs of the applicant must accompany the application.

3. Every change, occurring during the currency of a business residence permit, in any material particulars stated in this application must be notified to the Chief Immigration Officer within a reasonable time of its occurrence. A fee of K50 is payable in respect of every resulting endorsement made on the permit.

For Official Use
Serial No. .....
File No. .....
G.R. No. .....

1. Name of applicant (*in full*) .....
.....

2. Nationality .....

3. Date of Birth .....

4. Place of Birth .....

5. Passport details—

Number .....
Place of Issue .....
Date of Issue .....
Date of Expiry .....

6. Address—
(*a*) Present or intended postal address in Malaŵi .....
.....

(*b*) Present or inteded residential address in Malaŵi .....
.....

*(*c*) Address outside Malaŵi at which you now, or did last, reside
.....

*7. Arrival details—
(*a*) (i) Intended date of arrival .....
(ii) Intended place of entry .....

(*b*) (i) Date arrived .....
(ii) Place of entry .....

(**Complete if applicable*)

* 8. Particulars of wife and children (if any)—

Wife: Name .....
.....
Nationality .....

Children:	*Name*	*Date of birth*
1.	.....	.....
	.....	.....
2.	.....	.....
	.....	.....
3.	.....	.....
	.....	.....
4.	.....	.....
	.....	.....
5.	.....	.....
	.....	.....
6.	.....	.....
	.....	.....

* 9. Particulars of dependent relatives accompanying, or living with, the Applicant—

	Name	*Country of birth*	*Date of birth*	*Relationship with the applicant*
1.	.....	.....	.....	.....
	.....	.....	.....	.....
2.	.....	.....	.....	.....
	.....	.....	.....	.....
3.	.....	.....	.....	.....
	.....	.....	.....	.....
4.	.....	.....	.....	.....
	.....	.....	.....	.....

(**Attach separate sheet as necessary*)

10. Have you ever been convicted of a criminal (other than a motoring) offence.? Yes [ ] No [ ] (*tick whichever applies*).
If yes, give details .....
.....
.....

11 Description of business, etc. Describe the business, profession or occupation in respect of which you are making this application — (If more than one different type of business, profession or occupation, give separate details in respect of each, attaching separate sheet(s) as necessary as follows)—

(*a*) (i) Business name .....
.....

(ii) Location of principal place or branches, if any—
Principal place .....
.....
.....

Branches
1. .....
.....
2. .....
.....
3. .....
.....

(*b*) Is the business a partnership ?
Yes [ ] No [ ] (*tick whichever applies*). If yes, state particulars of other partners as follows—

	Name	*Address*	*Nationality*	*Type and number of immigration permit held (if any)*
1.	.....	.....	.....	.....
	.....	.....	.....	.....
2.	.....	.....	.....	.....
	.....	.....	.....	.....
3.	.....	.....	.....	.....
	.....	.....	.....	.....
4.	.....	.....	.....	.....
	.....	.....	.....	.....

(*c*) Is the business a company ?
Yes [ ] No [ ] (*tick whichever applies*). If yes, state particulars of other shareholders—

	Name	*Address*	*Nationality*	*Type and number of immigration permit held (if any)*
1.	.....	.....	.....	.....
	.....	.....	.....	.....
2.	.....	.....	.....	.....
	.....	.....	.....	.....
3.	.....	.....	.....	.....
	.....	.....	.....	.....
4.	.....	.....	.....	.....
	.....	.....	.....	.....

(*d*) Are you self-employed ? Yes [ ] No [ ] (*tick whichever applies*).

[Note: In support of the above particulars you are required to attach a copy of the Certificate of Incorporation under the Companies Act, (Cap. 46:03) or a copy of the Certificate of Registration under the Business Names Registration Act (Cap. 46:02)].

12. Employment particulars:
State number of persons employed or estimated to be employed—
Total number—
(*a*) of Malaŵi nationals .....
(*b*) of foreign nationals, with particulars as follows—

	Name	*Position held or nature of duties*	*Type and number of immigration permit held*
1.	.....	.....	.....
	.....	.....	.....
2.	.....	.....	.....
	.....	.....	.....
3.	.....	.....	.....
	.....	.....	.....
4.	.....	.....	.....
	.....	.....	.....
5.	.....	.....	.....
	.....	.....	.....
6.	.....	.....	.....
	.....	.....	.....

(*continue on separate sheet as necessary*)

13. Financial details:
(*a*) Give details of financial means (supported by bank statement(s) and a letter from the manager of your bank) immediately available in Malaŵi or on arrival in Malaŵi: .....
.....
.....
.....
.....
.....
.....
.....

[NOTE: In the case of applicants who have been operating their businesses, etc., for more than one year, the above financial details should relate to a period of not less than three months.]

(*b*) Give details of other assets, their value and extent to which they are or will be available for your use or at your disposal in Malaŵi: .....
.....
.....
.....
.....
.....
.....
.....
.....

DECLARATION

I (full names of the applicant), ...
.....
.....

hereby declare that the information furnished in this Application is true and correct and that I clearly understand that if I have stated in it anything which I know to be false or which I believe not to be true, the permit, if issued may be cancelled.

Date ....

Signature of Applicant

or

Right thumbprint
(if required)

FORM No. 20
(POL. 194)

GOVERNMENT OF MALAŴI reg. 24(2)

IMMIGRATION ACT

(Cap. 15:03)

Not valid as a receipt. An official receipt should be obtained for all moneys paid to Government.

TEMPORARY RESIDENCE PERMIT

Particulars of Passport: .....
No.....
Place of Issue .....
Date of Issue. .....
Date of Expiry.....

For Official Use
Serial No. .....
File No. .....
G.R. No. .....

This permit is granted to .....
..... of .....
nationality, to enter Malaŵi for the purpose of .....
..... and is subject to section 24 of the Immigration Act, and to the following conditions, namely that the holder of this permit—

(*a*) registers his address in Malaŵi as follows:

(i) Postal Address .....

(ii) Residential Address .....

and shall notify any change of address to an immigration officer;

(*b*) shall not, without the permission of the Chief Immigration Officer, commit any act or conduct himself in any manner which is inconsistent with or contrary to the purpose for which he was permitted to enter;

(*c*) shall, without expense to the Government, depart from Malaŵi on or before ..... (date) or such later date as duly authorized immigration officer may have endorsed on this permit for the purpose of renewing the period of its validity; and

(*d*) SHALL, IMMEDIATELY BEFORE SO DEPARTING SURRENDER THIS PERMIT TO AN IMMIGRATION OFFICER.

Place ....
Date ..... *Immigration Officer*

WARNING

Under section 37 of the Immigration Act the holder of a Temporary Residence Permit who fails to comply with or contravenes the conditions under which the permit is issued shall be liable to a fine of K500 or to imprisonment for twelve months.

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reg. 24A
G.N.
148/1987

FORM NO. 20A

GOVERNMENT OF Malaŵi

IMMIGRATION ACT
(Cap. 15:03)

HOLDER'S PHOTOGRAPH

Not valid as a receipt. An official receipt should be obtained for all moneys paid to Government.

BUSINESS RESIDENCE PERMIT

(*Issued under section 24A of the Immigration Act*)

For Official Use
Serial No. .....
File No. .....
G.R. No. .....

Subject to the provisions of the Immigration Act and to the Immigration Regulations, the holder (*name in full*) .....
Passport No. .....issued at .....
on ..... expiring on .....
Nationality .....

Accompanied by—
Wife (*state name*):.....
Children (*state names*):
1. .....
2. .....
3. .....
4. .....
5. .....
6. .....

Dependant relatives (*state names*):

1. .....
2. .....
3. .....
4. .....
5. .....

is permitted to enter Malaŵi and to reside in Malaŵi for the purpose of engaging in the business, professional practice or occupation specified below for a period of FIVE YEARS from .....
to .....

Nature of business, profession or occupation:
1. .....
2. .....
3. .....

RENEWALS

Renewed for a further period of 5 years from—
1. ..... to .....

Official Stamp

Signature .....
Chief Immigration Officer

Fee paid K.....
G.R. No. .....
2. ..... to .....
Official Stamp

Signature .....
Chief Immigration Officer

Fee paid K .....
G.R. No. .....
3. ..... to .....
Official Stamp

Signature .....
Chief Immigration Officer

Fee paid K .....
G.R. No. .....

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reg. 25 (1)
G.N. 94/1982

FORM NO. 21

GOVERNMENT OF MALAŴI

IMMIGRATION ACT
(Cap. 15:03)

APPLICATION FOR TEMPORARY EMPLOYMENT PERMIT
(for issue under section 25 of the Immigration Act)

(PART A to be completed by an employer on behalf of an employee, PART B to be completed by the employee; BOTH PARTS to be completed by the applicant if he is self-employed).

(NOTE: A Temporary Employment Permit is valid for at least 6 months and not more than 2 years in the first instance. The fee on issue is K100. Return this application *in duplicate* to the Deputy Chief Immigration Officer, P.O. Box 331, Blantyre, Malaŵi. Two passport-size photographs must accompany the application.)

For Official Use
Serial No. .....
File No. .....
G.R. No. .....

PART A

PARTICULARS TO BE SUPPLIED BY THE EMPLOYER OR BY THE APPLICANT IF HE IS SELF-EMPLOYED

1. Name of Employer.....
2. Address of Employer .....
3. Nature of Employer's Business .....

4. Period of which Permit is required .....
5. Give a summary of the Job Description of the employment being offered, including particulars of the responsibility to be undertaken by the Applicant .....
   .....
   .....
6. (*a*) State the title of the post in Malaŵi for which the Applicant is being considered .....
   .....
   (*b*) Give details of previous experience which you consider qualifies the Applicant for the post .....
   .....
   (*c*) State the title of any post in Malaŵi held by the Applicant when first appointed.....
   .....
   (*d*) State the title of the post presently held by the Applicant
   .....
7. Attach to this Application a *curriculum vitae* of the Applicant, including details of his education and professional qualifications together with photocopies of all relevant certificates, etc.
8. (*In the case of a married female Applicant only*)
   Give details of your husband's present employment in Malaŵi and the reference number of his current Temporary Employment Permit
   .....
   .....
9. Has the vacancy for the post to be filled by the Applicant been advertised in Malaŵi ? YES/NO
   (*a*) If YES—
   (i) Give details of the placement, with dates, of all advertisements for the vacancy, and attach copies or photocopies thereof (if applicable).....
   .....
   .....
   .....
   (ii) Attach a copy of every application received from a Malaŵian in response to your advertisement(s);
   (*b*) If NO, please explain why it was considered unnecessary to advertise the vacancy .....
   .....
   .....

10. Give details of the Applicant's previous/current Temporary Employment Permit—
    (*a*) Date of issue of first Permit held.....
    (*b*) Dates of issue of every subsequent Renewal .....
    .....
11. Salary details (*as applicable*)—
    (*a*) Annual, salary of Applicant on first appointment by you .....
    .....
    (*b*) Present annual salary of Applicant.....
    (*c*) Annual salary proposed to be paid to the Applicant if a Temporary Employment Permit is issued.....
    .....
    (*d*) Give details of all "fringe benefits" offered with the post (e.g. car, housing, passages, education allowances, etc.) .....
    .....
12. Is it intended that the applicant shall have a Malaŵian understudy? YES/NO
    (*a*) If YES—
        (i) Attach details of the understudy (i.e. name, age, qualifications experience, etc.);
        (ii) When is it anticipated that the understudy will be in a position to fill the post?
    (*b*) If NO, state your proposals (if any) for the future localization of the post.....
13. Give any other relevant information in support of this application
    .....

Date ..... *Signature* .....
Official Capacity .....

PART B

PARTICULARS OF THE PROPOSED EMPLOYEE OR THE APPLICANT IF HE IS SELF-EMPLOYED

14. Name of Applicant (*in full*).....
    .....
15. Nationality .....
16. Date and Place of birth.....
17. Passport details—
    Number .....
    Date and Place of Issue .....
    .....
    Date of expiry .....
18. Particulars of wife and children (if any) accompanying the applicant (including the nationality of wife and the date of birth of each child)
    .....
    .....
    .....

19. (*a*) Present or intended postal address in Malaŵi
.....
(*b*) Present or intended residential address in Malaŵi.....
.....

* 20. Intended Date of Arrival in Malaŵi ....
Place of Entry.....

* 21. Date arrived ..... Place of Entry .....
.....

(* *Delete Whichever is not applicable*)

22. Have you ever been convicted of a criminal (other than a motoring) offence? YES/NO.
If YES, give details.....
.....
.....
.....

23. Address outside Malaŵi at which you now, or did last, reside.....
.....

CONDITIONS UNDER WHICH A TEMPORARY EMPLOYMENT PERMIT WILL BE ISSUED

The permit, if issued, will be subject to the following conditions and to the provisions of the Immigration Act and the Immigration Regulations—

1. The holder of the Permit shall not engage in an occupation other than the occupation specified in the Permit without the permission of the Chief Immigration Officer.
2. The holder of the Permit shall not take up employment with any employer other than the employer, if any, who completed PART A of this Form.
3. The holder of the Permit shall not reside in Malaŵi other than within the area of Malaŵi specified in the Permit.
4. The holder of the Permit and all persons authorized to enter Malaŵi with him under the Permit shall leave Malaŵi on or before the expiry of the period stated in the Permit.
5. The holder of the Permit shall surrender the Permit to an Immigration Officer before leaving Malaŵi.
6. The Chief Immigration Officer may cancel a Temporary Employment Permit, whether renewed or not, if the holder of the Permit—
   (*a*) engages in any occupation other than the occupation specified in the Permit;
   (*b*) whilst engaged in the occupation specified in the Permit, changes his employment without the prior permission of the Chief Immigration Officer;
   (*c*) without the prior permission of the Chief Immigration Officer, resides in Malaŵi elsewhere than within the area of Malaŵi specified in the Permit;
   (*d*) ceases to be engaged in the occupation specified in the Permit.

7. Persons requiring visas must acquire them before entering Malaŵi.

8. The holder may, before the expiry date, apply for renewal of the Permit.

DECLARATION

I, (*full names of Applicant*) .....
.....
agree to the foregoing conditions and I clearly understand that any breach of those conditions may result in my removal from Malaŵi.

Right thumbprint
(if required)

.....
Signature of Employee or Self-Employed Applicant

FOR OFFICIAL USE

FORM NO. 22

(POL. 197) GOVERNMENT OF MALAŴI reg. 25 (2)

IMMIGRATION ACT

(CAP. 15:03)

Not valid as a receipt. An official receipt should be obtained for all moneys paid to the Government.

TEMPORARY EMPLOYMENT PERMIT
(*Issued under section 25 of the Immigration Act*)

For Official Use
Serial No. .....
File No. .....
G.R. No. .....

Subject to the conditions stated hereunder
the holder, ...
Passport, Registration or Identification Certificate No. .....
..... issued at ..... on .....
..... expiring on ..... Nationality .....
Accompanied by
Wife .....
Children .....
.....
is permitted to enter Malaŵi and to reside .....
..... (state area) for the purpose of engaging
in the occupation of ..... with .....
.....(state employer, if applicable) for a
period of ..... from ..... to .....
.....

Date Stamp .....
Chief Immigration Officer

CONDITIONS

This permit is issued subject to the following conditions and to the Immigration Act and Regulations—

1. The holder of this permit shall not engage in an occupation other than the occupation specified in the permit.

2. The holder shall not take up employment with an employer other than the employer, if any, who completed part A of the application form for this permit.

3. The holder of this permit shall not reside in Malaŵi other than within the area of Malaŵi specified in the permit.

4. The holder of this permit and all persons authorized to enter Malaŵi with him under the permit shall leave Malaŵi on or before the expiry of the period stated in the permit.

5. The holder of this permit shall surrender the permit to an immigration officer before leaving Malaŵi.

6. The Chief Immigration Officer may cancel a Temporary Employment Permit whether renewed or not if the holder of the permit—

(*a*) engages in an occupation other than the occupation specified in the permit;

(*b*) while engaged in the occupation specified in this permit changes his employment without the prior permission of the Chief Immigration Officer;

(*c*) resides in Malaŵi elsewhere than within the area specified in the permit; and

(*d*) ceases to be engaged in the occupation specified in the permit.

7. Persons requiring visas must acquire them before entering Malaŵi.

8. The holder may apply for a renewal of this permit before its expiry date.

EXTENSIONS

9. If the holder wishes to extend this permit beyond the expiry date, application by letter should be made before the permit expires. This permit, together with the holder's passport, and the appropriate fee of K2 for each year of extension must be enclosed. Extensions will not normally be made for more than 2 years at a time.

G.R. No. .....for K ..... Permit extended to .....

DATE STAMP	..... *for Deputy Chief Immigration Officer*

G.R. No. .....for K ..... Permit extended to .....

DATE STAMP

.....
for Deputy Chief Immigration Officer

G.R. No. .....for K ..... Permit extended to .....

DATE STAMP

.....
for Deputy Chief Immigration Officer

---

reg. 27

FORM NO. 23
(M.P. 195A)

GOVERNMENT OF MALAŴI

IMMIGRATION ACT
(CAP. 15:03)
APPLICATION FOR A STUDENT'S PERMIT

FOR OFFICIAL USE
Serial No. .....
File No. .....

1. Full Name of Holder .....
2. Nationality .....
3. Place of Birth .....
4. Date of Birth .....
5. Permanent Address outside Malaŵi .....
6. Intended Address in Malaŵi .....
7. Type of Travel document (whether Passport, Certificate of Identity, etc.) .....

8. Particulars of Travel Document—

No. ..... Place of Issue .....

Date of Issue ..... Date of Expiry .....

Signature of Applicant .....

TO BE COMPLETED BY THE PRINCIPAL OF THE EDUCATION INSTITUTION

I certify that ..... has been given a place in ..... (Education Institution) and that his/her admission in no way contravenes the requirements of the Ministry of Education. The course of study is ..... and is expected to last from ..... to .....

Date ..... Signature of Principal .....

Official Stamp of the Education Institution

CONDITIONS

The permit, if issued, will be subject to the following conditions and to the Immigration Act and Regulations made thereunder—

(1) The permit shall remain valid for a period of one year from the date of issue.

(2) The validity of the permit may be extended by an endorsement of the permit by the Deputy Chief Immigration Officer for a further period or periods, each not exceeding one year, on production of written evidence of the holder's admittance for a further period of study at the education institution mentioned above.

(3) The holder of the permit shall not engage in any gainful occupation except during a period of vacation permitted by such institution.

In addition to the permit, the holder must produce to the examining immigration officer, on arrival in Malaŵi, a valid passport or certificate of identity which bears a photograph of the holder and confers right of re-entry to the country which issued the passport or certificate. Where a visa for Malaŵi is required, it must be obtained before arrival in Malaŵi and be placed in the passport or certificate of identity.

The Chief Immigration Officer may cancel a Student's Permit—

(*a*) if the holder thereof fails to comply with any of the prescribed conditions under which the permit was issued;

(*b*) if in his opinion the object of entry into Malaŵi, as declared by the holder thereof when the permit was issued, has been completed or is not being or can no longer be pursued;

(*c*) if in his opinion the holder thereof has become or is likely to become a charge upon the public,

and shall, if he does cancel the permit, notify the holder thereof accordingly.

---

reg. 27 (2) FORM No. 24
(POL. 195)

GOVERNMENT OF MALAŴI

IMMIGRATION ACT

(CAP. 15:03)

STUDENT'S PERMIT

(*Issued under section 31 of the Immigration Act*)

For Official Use
Serial No. .....
File No. .....

Subject to the conditions stated hereunder, the holder of this permit is authorized to enter and reside in Malaŵi for the purpose of attending .... as a student.

Name of Holder .....

Nationality .....

Place of Birth ..... Date of Birth .....

Home Address .....

.....

Course of Study .....

CONDITIONS

This permit is issued subject to the following conditions and to the Immigration Act and Regulations made thereunder—

(1) This permit shall remain valid for a period of one year from the date of issue.

(2) The validity of this permit may be extended by an endorsement of the permit by an immigration officer for a further period or periods, each not exceeding one year, on production of written evidence of the holder's admittance for a further period of study at the education institution mentioned above.

(3) The holder of this permit will not engage in any gainful occupation except during a period of vacation permitted by such institution.

NOTE:

(1) In addition to this permit, the holder must produce to the examining Immigration Officer, on arrival in Malaŵi a valid passport, bearing a visa, where required.

(2) The Chief Immigration Officer may cancel a Student's Permit—

(*a*) if the holder thereof fails to comply with any of the prescribed conditions under which the permit was issued;

(*b*) if in his opinion the object of entry into Malaŵi, as declared by the holder thereof when the permit was issued, has been completed or is not being or can no longer be pursued;

(*c*) if in his opinion the holder thereof has become or is likely to become a public charge,

and shall, if he does cancel the permit, notify the holder thereof accordingly.

.....
Chief Immigration Officer

Date .....

Place of Issue .....

EXTENSIONS

FORM NO. 25

(M.P. 219 New) REPUBLIC OF MALAŴI
IMMIGRATION ACT

For Official Use Only

Regulation 31

EXIT CARD

1. (*Please Print*) Mr. .....
   Mrs. (*surname*)
   Miss .....
   (*first names*)
2. Passport Number .....
3. Place and date of issue .....
4. Place and date of birth .....
5. Enter number of persons travelling on your passport (including self) in appropriate age group box(es):

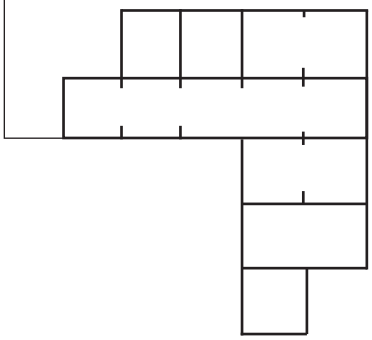

Age:	15 or younger	16–24	25–34	35–49	50 or older
Male:	☐	☐	☐	☐	☐
Female:	☐	☐	☐	☐	☐

6. Nationally .....
7. Occupation ..... ☐☐
8. Address travelling to ..... ☐☐
   .....
9. Last address in Malaŵi .....
   .....

For visitors only (Non residents): ☐☐

10. Country of residence .....
11. Main reason for visit (Please tick ONE box):
    Holiday/ vacation ☐ Work/ business ☐ Visit friends/ relatives ☐
12. What type of accommodation did you use in Malaŵi:
    Hotel/Inn/ Lodge ☐ Private House ☐
    Rest House ☐ Caravan/ Camping ☐ None ☐
13. Number of nights spent in Malaŵi ..... ☐☐☐
14. Were you on a prepaid holiday? Yes ☐ No ☐
15. Approximate expenditure in Malaŵi of all persons included on this card. Exclude amounts for prepaid holidays
    .....
    (Please state currency in which you are reporting expenditure) ☐☐☐

I hereby declare that I have answered all the relevant questions correctly and truthfully } .....

Signature

FOR OFFICIAL USE

File ref.	
Status (sec.)	
Permit (type)	
Expiry (date)	
Passport endorsement	Cancelled/not cancelled
Permit	Attached/not attached
V.P Serial number	
Number of persons	

.....

Immigration Officer

DATE STAMP

M.P. 219 New

FORM No. 26

GOVERNMENT OF MALAŴI reg. 32

IMMIGRATION ACT
(CAP. 15:03)

DEPORTATION ORDER

To .....
of .....
.....
.....

WHEREAS I, ..., Minister responsible for public security, acting in accordance with the powers conferred upon me by section 41 of the Immigration Act, am satisfied that it is in the interests of defence, public safety, public order, public morality or public health that you, the said .....
.....
be deported from Malaŵi:

Now THEREFORE I, order you to leave Malaŵi within ..... days after the service of this order on you.

.....day of ....., 19 .....

Minister

FORM No. 27

Serial .....

REPUBLIC OF MALAŴI reg. 3 (6)
G.N. 61/1991

IMMIGRATION ACT
(CAP. 15:03)

APPLICATION FORM FOR A VISA TO ENTER MALAŴI

(*To be completed in block letters*)

SINGLE/MULTIPLE/TRANSIT VISA (*delete as necessary*)

Name (*in full*) .....
Married or Single (*if married woman give maiden name*) .....
.....
Address in the country of application .....
.....
.....
Address in country of domicile (*if different from above*)... .....
.....
.....
Date and Place of Birth .....

Sex ..... Profession .....
Passport Number ..... Date of issue .....
Place of issue ..... Valid until .....
Nationality (*if stateless show original visa in addition to the application*)
.....
.....
.....
Date of arrival in country of application .....
.....
From .....
Final destination ..... and
Address to which applicant is proceeding .....
.....
Reasons in full for proposed visit (*Satisfactory evidence will be required for the object and purpose of the journey. Employees of firms or persons acting on behalf of firms must produce certificates from their employers as to the nature of the business for which they are travelling*)
.....
.....
.....
.....
Duration of proposed visit ..... Proposed means of travel ..... Leaving on
.....
Onward passage booked for .....
Means at applicant's disposal (*evidence may be required*) .....
.....
Dates of previous visits to .....
In what capacity .....
Previous address(es) in .....
.....
.....
.....
PARTICULARS OF MINOR CHILDREN who will accompany the applicant and who are included in the applicant's passport.

Name	*Place of birth*	*Date of birth*
.....	.....	.....
.....	.....	.....
.....	.....	.....
.....	.....	.....

SUPPLEMENTARY INFORMATION
Name and Address of Sponsor
.....
.....

I declare that the above particulars given by me are true in substance and fact.

Date ....
Signature of Applicant

THIS SPACE TO BE LEFT BLANK FOR OFFICIAL USE

Endorsement ..... Prepared by .....

Onward visa ..... Fee paid .....

Ref. No. ..... Receipt No. .....

Date .....

FORM No. 28

Serial: .....

REPUBLIC OF MALAŴI
IMMIGRATION ACT
(CAP. 15:03)

APPLICATION FOR A VISA TO ENTER AN INDEPENDENT COMMONWEALTH COUNTRY FOR WHICH MALAŴI IS THE VISA ISSUING AUTHORITY

(To be completed in block letters)

1. Name (*in full*) .....
2. Country for which visa is required .....
3. Type of visa required .....
4. Nationality of applicant .....
5. Age, place and date of birth and whether married or single .....
6. If married woman give maiden name .....
7. Address in Malaŵi and expected date of first arrival (*in full*) .....
8. Address in country of domicile if other than Malaŵi (*in full*) .....
9. Occupation .....
10. Destination and address to which applicant is proceeding .....
11. Proposed length of stay, or whether travelling in transit without break of journey .....

12. Reasons in full for wishing to travel to the country which visa is applied for and means of travelling to the country. (*Sufficient evidence will be required as to the object of the proposed journey. Employees of firms or person acting on behalf of firms must produce certificates from their employers as to the nature of business on which they are proceeding abroad. Bankers reference may be required.*)

    .....

    .....

    .....

    .....

13. Date of departure .....

14. Particulars of passport or other travel document which should be submitted with this application.

    Number ..... Place of Issue .....

    Date of issue ..... Date of Expiry .....

    I DECLARE that the above particulars given by me are true in substance and in fact.

Date: ....

Signature of Applicant

Application should be made to the Department of Immigration, P.O. Box 331, Blantyre, Malaŵi.

AT LEAST FOURTEEN DAYS' NOTICE should be given for each application.

NOTE: Any visa granted on this application will be subject to compliance with the Immigration Regulations of the Independent Commonwealth Country concerned.

G.N. 61/1991 5/2010 38/2011 15/2015 reg. 3

SECOND SCHEDULE

VISA ARRANGEMENT

Visas for entry into Malaŵi are required by nationals of all countries, except the following—

(1) Nationals from the Southern African Development Community (SADC) countries, except Angola;

(2) Nationals from the Common Market for Eastern and Southern Africa (COMESA) countries;

(3) Diplomats and Government officials; and

(4) Nationals from all counties that do not require Malaŵian nationals to pay Visa fees when travelling to such countries.

The validity of multiple entry visas in Malaŵi (6 months and 12 months) shall reciprocate to the validity of multiple entry visas in the corresponding country.

THIRD SCHEDULE

reg. 12 G.N. 5/2010 38/2011

Prescribed Offences

(i) Murder, manslaughter or culpable homicide;

(ii) any offence against company law or any law relating to bankruptcy or insolvency;

(iii) selling, bartering, giving or otherwise supplying intoxicating liquor to any person not lawfully permitted to obtain or be in possession thereof;

(iv) selling, bartering, giving or otherwise supplying firearms to any person not lawfully permitted to obtain or be in possession thereof;

(v) dealing in, or being in possession of, unwrought precious metals or rough or uncut precious stones in contravention of any law;

(vi) any offence relating to dangerous drugs or narcotics;

(vii) piracy;

(viii) perjury or subornation of perjury or conspiring to defeat the course of justice;

(ix) bribery;

(x) rape;

(xi) procuring, or trafficking in, women or young persons for immoral purposes;

(xii) incest, sodomy, bestiality, indecent assault or any unnatural offence;

(xiii) contravention of any law forbidding carnal knowledge of, or indecent or immoral acts with, a girl under a specified age or with an imbecile or idiot;

(xiv) performing abortion;

(xv) indecent exposure or public indecency;

(xvi) arson or fire raising;

(xvii) maliciously or wilfully wounding or inflicting grievous bodily harm;

(xviii) stealing, embezzlement, fraudulent conversion, fraudulent false accounting, obtaining property or credit by false pretences, receiving stolen property or any other offence in respect of property involving fraud;

(xix) counterfeiting coin or currency, or uttering coins or currency knowing the same to be counterfeit;

(xx) burglary or house-breaking or any similar offence;

(xxi) robbery, robbery with violence or extortion;

(xxii) revolt against the authority of the master of a ship or commander of an aircraft;

Cap. 7:03 (xxiii) contravention of the Hijacking Act or of any other law which makes punishable any offence similar in nature to any offence made punishable under that Act;

Cap. 7:01 (xxiv) any offence against section 179 of the Penal Code;

Cap. 7:01 (xxv) any offence against section 180 (*g*) of the Penal Code;

(xxvi) attempt or conspiracy to commit any offence specified in this Schedule, or being an accessory after the fact to the commission of such an offence;

(xxvii) any offence against the Immigration Act or any law relating to residence of foreigners in Malaŵi;

(xxviii) any offence against Citizenship law or any law relating to nationality;

(xxix) any offence against section 327 of the Penal Code; Cap. 7:01

(xxx) any offence under the Money Laundering, Proceeds of Serious Crimes and Terrorist Financing Act. Cap. 8:07

FOURTH SCHEDULE reg. 35

G.N. 148/1987 1/1994 46/1997 29/1999 33/2000 6/2008 18/2011 20/2014

	Classification of Permit	*Fee*
1.	TEMPORARY EMPLOYMENT PERMITS —	
	(*a*) Non-Governmental organizations . .	US$ 500
	(*b*) religious organizations	US$ 100
	(*c*) in all other cases	US$ 1,000
2.	BUSINESS RESIDENCE PERMITS —	
	(*a*) normal (Investment in Government priority sectors)	US$ 2,000
	(*b*) for other areas	US$ 3,500
3.	PERMANENT RESIDENCE PERMIT —	
	(*a*) spouse of a Malaŵian citizen	US$ 250 or its equivalent in Malaŵi Kwacha
	(*b*) in all other cases	US$ 2,500
4.	TEMPORARY RESIDENCE PERMIT —	
	(*a*) for visitors	US$ 100
	(*b*) on any gainful activity (i.e. business, research and consultancy)	US$ 100
5.	STUDENT PERMITS —	
	Student Permit	US$ 100
6.	INCLUSION ON A PERMIT OF DEPENDANTS OF PERMIT HOLDERS	
	inclusion on a permit of dependants of permit holders	US$ 100

7.	EMERGENCY TRAVEL DOCUMENTS —		
	(*a*) emergency certificate	US$	50
	(*b*) one way travel document	US$	50
	(*c*) aliens emergency certificate	US$	50
8.	Non-refundable processing fee for all permits	US$	100

EXEMPTION FROM FEES

deemed to be under regulation 35 of the Immigration Regulations
[*made under regulation 54 of the Immigration Regulations*
G.N. 287/1963 (*now revoked*)]

It has been directed that the fees set out in the Schedule, prescribed under the Immigration Regulations, shall not be payable by—

(*a*) persons appointed to serve in Malaŵi by the British Leprosy Relief Association;

(*b*) persons appointed to serve in Malaŵi by the University of Malaŵi; and

(*c*) persons appointed to serve in Malaŵi by the Malaŵi Polytechnic Joint Board of Governors.

SCHEDULE

Fee for the issue of a Temporary Residence Permit.

Fee for the issue of a Temporary Employment Permit.

Fee for the issue of a Permanent Residence Permit.

IMMIGRATION (DISCIPLINARY) REGULATIONS

under s. 3A

1. These Regulations may be cited as the Immigration (Disciplinary) Regulations. Citation G.N. 42/1991

2. In these Regulations, unless the context otherwise requires— Interpretation

"disciplinary offence" means an act of disciplinary misconduct specified in regulation 3;

"Senior Immigration Officer" means any immigration officer above the rank of Assistant Immigration Officer.

3.—(1) An immigration officer shall be guilty of a disciplinary offence and liable to punishment under these Regulations if he does any of the following acts, that is to say, if he— Disciplinary offences

(*a*) is in any way disrespectful to his senior officer in rank;

(*b*) disobeys any order lawfully given to him by his senior officer in rank;

(*c*) is drunk;

(*d*) drinks intoxicating liquor whilst on duty;

(*e*) sleeps while on duty;

(*f*) idles or gossips or leaves or absents himself from duties of his post without the express or implied authority of his senior officer;

(*g*) smokes in a public place whilst on duty;

(*h*) removes his armlet or duty badge whilst on duty;

(*i*) allows to escape any deportee who is committed to his charge or whom it is his duty to keep or guard;

(*j*) uses unwarrantable personal violence to or ill-treats any person in his custody or otherwise committed to his charge;

(*k*) is unable to carry out his duties because of cowardice;

(*l*) uses any weapon without orders from his senior officer in rank or without any reasonable cause;

(*m*) without proper cause, fails to appear or appears late at any parade;

(*n*) reports for duty or for parade dirty or untidy in his person, clothing, or accoutrements;

(*o*) pawns, sells, loses by neglect, makes away with, wilfully damages or fails to report any damage to any of the articles of arms, ammunition, clothing, accoutrements or necessaries supplied to him, or any medal or decoration granted to him for service or for good conduct, or any property of the Government

or any exhibit or any lost, stolen, or unclaimed property committed to his charge;

(*p*) without the knowledge and permission of the Chief Immigration Officer, accepts directly or indirectly any gratuity, present, or reward from any member of the public;

(*q*) is slovenly inattentive, uncivil or quarrelsome;

(*r*) bullies any officer junior in rank;

(*s*) forces a sentry to do or omit to do anything contrary to these Regulations;

(*t*) neglects his duties;

(*u*) discloses or conveys any information concerning any investigation or other immigration or departmental matter to any unauthorized person;

(*v*) malingers or feigns sickness, or conceals any venereal or contagious disease or neglects or fails to report the fact if he is suffering from any such disease;

(*w*) leaves, without permission or valid excuse, any immigration lines, camp or quarters;

(*x*) makes or signs any report or statement in any official record or document knowing or having reasonable grounds to believe that such a report or statement is false;

(*y*) makes a false accusation against any other immigration officer knowing that such accusation is false;

(*z*) makes any frivolous or vexatious complaint, or makes a complaint in a disrespectful manner;

(*aa*) makes or joins in making any anonymous complaint to a senior officer;

(*bb*) engages, without authority, in any employment or other occupation than his immigration duties;

(*cc*) being a member of a committee appointed under subregulation 3, fails to conduct an inquiry into an alleged disciplinary offence in accordance with that regulation; and

(*dd*) otherwise conducts himself in a manner which in the opinion of the Minister, is prejudicial to the good order and discipline of the Immigration Department.

(2) Where an immigration officer is suspected to having committed a disciplinary offence under these regulations, any immigration officer, senior to that officer may direct that an inquiry into the alleged offence be conducted by any other immigration officer.

(3) An immigration officer who is directed to conduct an inquiry pursuant to subregulation (2) shall, without delay, conduct the inquiry and report his findings to the officer who directed the inquiry and when he is satisfied that a disciplinary offence has been committed he shall, in his report, make a recommendation as to the appropriate punishment to be given to the offending officer.

Power of arrest and remand

4.—(1) Any immigration officer who commits a disciplinary offence may be arrested without warrant by an officer senior to him.

(2) An immigration officer effecting an arrest under this regulation shall forthwith bring the accused before the officer-in-charge of the immigration station or before any other competent immigration officer who shall cause the case to be heard without undue delay and may order the remand of the accused in custody for so long as may reasonably be necessary.

Inquiry and awarding of punishments

5.—(1) A Senior Immigration Officer may inquire into the truth of any charge under regulation 3 against any immigration officer of or below the rank of Assistant Immigration Officer and if he finds the accused guilty of the charge he shall convict him and may impose on him any one or more of the following punishments—

(*a*) in the case of any Assistant Immigration Officer or Senior Immigration Assistant—

(i) reprimand;

(ii) severe reprimand;

(iii) fine not exceeding seven days' pay:

Provided that any such punishment awarded shall be subject to confirmation by the Chief Immigration Officer;

(*b*) in the case of any immigration officer below the rank of Senior Immigration Assistant—

(i) reprimand;

(ii) severe reprimand;

(iii) fine not exceeding seven days' pay;

(iv) reduction in rank or grade;'

(v) dismissal:

Provided that any punishment under subparagraph (iii), (iv) or (v) shall be subject to confirmation by the Chief Immigration Officer.

(2) An officer-in-charge of immigration, not being a Senior Immigration Officer, may inquire into the truth of any charge under regulation 3 against any immigration officer below the

rank of Senior Immigration Assistant, and if he finds the accused person guilty of the charge, he shall convict him and may impose on him any one or more of the following punishments—

(*a*) reprimand;

(*b*) severe reprimand;

(*c*) fine not exceeding seven days' pay;

(*d*) dismissal:

Provided that any such punishment awarded shall be subject to confirmation by the Chief Immigration Officer.

(3) The Chief Immigration Officer may vary or remit any punishment imposed on any Immigration Officer under this regulation whether such punishment requires his confirmation or not:

Provided that no punishment shall be increased or any punishment added unless the accused has been given a further opportunity of being heard, nor shall the punishment so varied exceed the maximum punishment or punishments which the officer hearing the case might have imposed under this regulation.

(4) Notwithstanding the powers conferred by subregulations (1) and (2) of this regulation, a Senior Immigration Officer or Officer-in-Charge of immigration, not being a Senior Immigration Officer, may deal summarily with any disciplinary offence and shall have power to reprimand any officer below the rank of Senior Immigration Assistant:

Provided such proceedings and the result thereof shall not be entered in the offender's personal record.

Appeals to the Chief Immigration Officer

6.—(1) Any immigration officer who has been tried under these regulations and convicted of any disciplinary offence, if he deems himself aggrieved either in respect of such conviction or of the punishment imposed upon him (not being a punishment which the Chief Immigration Officer has confirmed, or imposed under regulation 5 (3)), may appeal to the Chief Immigration Officer within seven days from the date of such conviction or the imposition of such punishment.

(2) Upon receiving any appeal, the Chief Immigration Officer shall have power to—

(*a*) return the proceedings for the taking of further evidence;

(*b*) whether further evidence is taken or not, quash the proceedings and rehear the case himself *de novo* under regulation 7 or order the case to be heard *de novo* by some other officer under regulation 5;

(*c*) reverse or vary any finding; and

(*d*) revoke, vary or add any punishment.

(3) In exercising his powers under subregulation (2) (*d*), the Chief Immigration Officer may impose any punishment or punishments which he might have imposed under regulation 7 if he had tried the case himself:

Provided that no punishment shall be increased or any punishment added on appeal unless the accused is first given a further opportunity of being heard.

Special powers of Chief Immigration Officer

7. The Chief Immigration Officer may inquire into the truth of any charge under regulation 3 against any immigration officer of or below the rank of Assistant Immigration Officer, and if he finds the accused guilty he shall convict him and may impose any one or more of the following punishments—

(*a*) in the case of any Assistant Immigration Officer—

(i) reprimand;

(ii) severe reprimand;

(iii) fine not exceeding half a month's pay;

(*b*) in the case of any Senior Immigration Assistant—

(i) reprimand;

(ii) severe reprimand;

(iii) fine not exceeding half a month's pay;

(iv) stoppage of increment;

(v) reduction in rank or grade; or

(vi) dismissal;

(*c*) in the case of any immigration officer below the rank of Senior Immigration Assistant—

(i) reprimand;

(ii) severe reprimand;

(iii) fine not exceeding half a month's pay;

(iv) reduction in rank or grade; or

(v) dismissal.

Suspended punishment

8.—(1) Where any immigration officer empowered to inquire into a disciplinary offence awards any punishment to any immigration officer in respect of any offence, the officer awarding such punishment may order that such punishment be suspended for a period not exceeding six months and if during such period of suspension the offender commits no further disciplinary offence, the officer awarding such punishment may remit it.

(2) Where any punishment has been suspended under subregulation (1) and the offender is found guilty during the period of suspension of any further disciplinary offence the suspended punishment shall forthwith be carried into effect.

Power to summon witnesses

9.—(1) Every immigration officer empowered to inquire into a disciplinary offence may summon and examine witnesses on oath or affirmation and require the production of relevant documents in any matter he is inquiring into and may adjourn any such inquiry, from time to time, as he may deem fit.

(2) Any person summoned as a witness under subregulation (1) who fails to attend at the time and place mentioned in the summons, or having attended, refuses to answer all questions that may be lawfully put to him, except questions which may incriminate him, shall be liable to a fine of K50 and to imprisonment for three months.

Appeal to Minister

10. Any immigration officer who is dismissed from the Department, or is sentenced under regulation 5 to a fine exceeding four days' pay or any Senior Immigration Assistant who is reduced in rank may within seven days after the decision of the Chief Immigration Officer has been communicated to him appeal to the Minister, whose decision shall be final.

Procedure in cases of grave or repeated offences

11.—(1) In every case where it shall appear to the officer investigating any charge of a disciplinary offence that such offence, by reason of its gravity, or by reason of previous disciplinary offences by the immigration officer charged, or for any other reason, could not be adequately punished by the imposition of any of the punishments prescribed in regulations 5 and 6, such investigating officer shall defer imposing any punishment and shall report the proceedings to the Chief Immigration Officer, who may return the report for further inquiry as he may deem necessary, rehear the case, or, by order in writing require the immigration officer charged to be taken before a magistrate to be dealt with under subregulation (2).

(2) Where an immigration officer is taken before a magistrate under subregulation (1) the presiding magistrate may impose against the offending officer a fine of three months' pay and imprisonment for six months:

Provided that no proceedings shall be taken against any immigration officer under this regulation in respect of any disciplinary offence which he has already been punished.

(3) Any order purporting to be an order of the Chief Immigration Officer made under subregulation (1) shall be accepted

by any court as *prima facie* evidence of the lawful making thereof, and no proof of the signature of the Chief Immigration Officer on any such order shall be required unless the court has reason to doubt the genuineness of such signature.

Power of interdiction

12.—(1) The Chief Immigration Officer may at any time in the interests of discipline interdict from duty any immigration officer of or below the rank of Senior Immigration Officer who is charged with a disciplinary offence.

(2) Any immigration officer so interdicted shall receive a proportion of his pay not being less than half as the Chief Immigration Officer shall direct.

(3) If the accused is not dismissed from the Department he shall receive for the period of his interdiction—

(*a*) in the case of acquittal, his full pay;

(*b*) in any other case, such proportion of his pay as the Chief Immigration Officer thinks fit.

(4) An immigration officer shall not by reason of being interdicted from office cease to be an immigration officer. During the term of such interdiction the powers, functions and privileges vested in him as an immigration officer shall be in abeyance but he shall continue to be subject to the same responsibilities, discipline and penalties, and to the same authorities, as if he had not been interdicted.

Dismissal of Immigration Officers below the rank of Senior Immigration Assistant

13.—(1) The Chief Immigration Officer may dismiss from service any immigration officer of or below the rank of Senior Immigration Assistant convicted of a criminal offence by a court of competent jurisdiction.

(2) Any immigration officer dismissed under this regulation may within seven days of the notification of his dismissal appeal to the Minister.

Fines to be recovered from salary

14.—(1) All fines imposed on any immigration officer in respect of offences under these Regulations shall be recovered by stoppage of the offender's salary due at the time of committing such offence and thereafter accruing due.

(2) The amount of any stoppage in respect of any fine or for any other cause authorized by these Regulations shall be in the discretion of the officer by whom the fine was imposed or of the officer-in-charge of immigration in the place where the person concerned is stationed, but shall in no case exceed one third of the monthly salary of the offender; and whenever more than one order of stoppage is in force against the same person

so much only of his salary shall be stopped as shall leave him a residue of at least two-thirds of his monthly salary.

(3) Where more than one order of stoppage is made upon the same person, the orders later in date shall, if necessary, be postponed as to their enforcement until the earlier orders have been discharged.

Damage to, or loss of equipment, etc.

15. If any immigration officer of, or below the rank of Assistant Immigration Officer pawns, sells, loses by neglect, makes away with or wilfully damages any arms, ammunition, accoutrements, clothing or appointment supplied to him or any Government property or any exhibit or any lost, stolen or unclaimed property committed to his charge, he may, in addition to or in lieu of any other punishment, be ordered to make good the amount of such loss or damage, and such amount may be recovered by stoppage from his salary.

Salary not accrue during absence without leave or imprisonment

16. No salary shall accrue to any immigration officer in respect of any day during which he is absent from duty without leave or is undergoing any sentence of imprisonment:

Provided that in any case the Chief Immigration Officer may in his discretion authorize the payment of such proportion of salary, not being more than one-half, as he may think fit.

Model of complaint by Immigration Officers

17. If any immigration officer thinks himself wronged in any matter by an immigration officer of lower rank than the officer-in-charge of immigration in the place where he is stationed, he may complain thereof to the officer-in-charge of immigration, and if he thinks himself wronged by such officer-in-charge of immigration, or any officer of the same or higher rank, not being the Chief Immigration Officer either in respect of his complaint not being redressed or in respect of any other matter, he may complain thereof to the Chief Immigration Officer; and if he thinks himself wronged by the Chief Immigration Officer either in respect of his complaint not being redressed or in respect of any other matter, he may complain thereof to the Minister. The officer-in-charge of immigration or the Chief Immigration Officer, as the case may be, upon any complaint being so made shall cause such complaint to be inquired into, and shall, if on inquiry he is satisfied of the justice of the complaint, take such steps as may be necessary for giving such redress to the complainant in respect of the matter complained of, as the case requires.

Prohibition against immigration officer being a member of trade union

18.—(1) It shall not be lawful for any immigration officer to become a member of—

(*a*) any trade union or any body or association affiliated to a trade union;

(*b*) any body or association, the object of which or one of the objects of which is to control or influence the salaries, pensions or conditions of service other than any immigration association constituted and regulated under these Regulations or any body or association which the Chief Immigration Officer may in his discretion permit any immigration officer to join.

(2) Any immigration officer who contravenes this regulation shall be liable to dismissal from service and to forfeit all rights to any pension or gratuity.

(3) If any question arises as to whether any body is a trade union or an association to which this section applies, the question shall be decided by the Attorney General whose decision shall be final and conclusive.

REFUGEES

CHAPTER 15:04

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CHAPTER 15:04

REFUGEES

ARRANGEMENT OF SECTIONS

SECTION
1. Short title
2. Interpretation
3. Establishment of Refugee Committee
4. Chairman and Vice-Chairman of the Committee
5. Meetings of the Committee
6. Functions of the Committee
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8. Persons not to be considered as refugees
9. Obligations of refugees
10. Prohibition of expulsion or return of refugees
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13. Regulations

An Act to give effect to refugee conventions as defined in the Act; to make provision relating to refugees; and to provide for matters incidental thereto or connected therewith 3 of 1989 30 of 1991

[26th April, 1989]

Short title

1. This Act may be cited as the Refugees Act.

Interpretation

2.—(1) In this Act, unless the context otherwise requires—

"border" includes any point of entry into Malaŵi, whether by air, land or water;

"competent officer" means any immigration officer, border officer, police officer or security officer;

"country of nationality", in relation to a person who has more than one nationality, means each of the countries of which that person is a national;

"family member" means any spouse or spouses, unmarried children under the age of twenty-one and any other dependant relatives of the refugee;

"refugee" means a person who—

(*a*) owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events is unable or, owing to such fear, is unwilling to return to that country; or

(*b*) owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality, is

compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality;

"Committee" means the Refugee Committee established under section 3;

"refugee conventions" means—

(*a*) the Convention relating to the Status of Refugees, done at Geneva on 28th July, 1951;

(*b*) the Protocol relating to the Status of Refugees of 13 January, 1967; and

(*c*) the Organization of African Unity Convention Governing the Specific Aspects of Refugee Problems in Africa, adopted at Addis Ababa on 10 September, 1969.

(2) A person who has several nationalities shall not be considered to be lacking the protection of the nationality of the country of which he is a national if, without any valid reason based on well-founded fear, he has not availed himself of the protection of one of the countries of which he is a national.

Establishment of Refugee Committee 30 of 1991

3.—(1) There is hereby established a committee to be known as the Refugee Committee consisting of the following members—

(*a*) the Secretary to the President and Cabinet, or his designated representative;

(*b*) the Attorney General, or his designated representative;

(*c*) the Chief Immigration Officer, or his designated representative;

(*d*) the Inspector General of Police, or his designated representative;

(*e*) the Secretary for Community Services, or his designated representative;

(*f*) the Secretary for External Affairs, or his designated representative; and

30 of 1991

(*g*) the Secretary for Health, or his designated representative.

(2) The Representative of the United Nations High Commissioner for Refugees in Malaŵi or his designated representative or, in his absence, a representative of the Resident Representative of the United Nations Development Programme in Malaŵi shall be invited by the Committee to attend every meeting of the Committee as an observer but shall not have the right to vote.

(3) The Minister may appoint to the Committee, for such period as the Minister may determine, such other persons, not exceeding three in number, as the Minister considers suitably qualified to assist the Committee in its work and deliberations and such persons shall not have the right to vote at any meeting of the Committee.

4.—(1) The Minister shall designate one member of the Committee to be Chairman thereof. Chairman and Vice-Chairman of the Committee

(2) The Committee shall elect a Vice-Chairman from amongst its members, who shall discharge the functions of the Chairman whenever the Chairman is absent or is for any reason unable to discharge the functions of his office.

5. The Committee shall meet at such times and places as the Chairman shall determine and shall have power to determine its own procedure. Meetings of the Committee

6.—(1) The Committee shall receive and hear applications for refugee status and may— Functions of the Committee

(*a*) grant refugee status;

(*b*) deny the grant of refugee status; and

(*c*) cancel or revoke its decision granting status.

(2) The Committee may, subject to sections 8 and 12, review cases of persons granted refugee status under this Act.

7.—(1) In the discharge of its functions the Committee shall be competent to administer oaths in accordance with the Oaths, Affirmations and Declarations Act and shall apply such rules of evidence and procedure as may be prescribed. Evidence and procedure Cap 4:07

(2) Where a decision has been made under section 6 (1) (*b*), (*c*) and (2), the Committee shall record its reasons for such decisions and in all cases the Committee shall in writing notify its decision to the applicant.

(3) The Minister may, by notice published in the *Gazette*, direct that, with respect to any group of foreign nationals specified in the notice, seeking refugee status in Malaŵi, the Committee shall apply such group determination procedure as may be prescribed.

8. A person shall not be considered to be a refugee under this Act if the Committee has serious reasons for considering that— Persons not to be considered as refugees

(*a*) he has committed a crime against peace, a war crime, a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;

(*b*) he has committed a serious non-political crime outside Malaŵi prior to his entry; or

(*c*) he has been guilty of acts contrary to the purposes and principles of the Organization of African Unity; and

(*d*) he has been guilty of acts contrary to the purposes and principles of the United Nations Organization.

9. Any person granted refugee status under this Act shall be subject to the laws of Malaŵi, jurisdiction of courts in Malaŵi and to all measures taken for the maintenance of public order. Obligations of a refugee

Prohibition of expulsion on return of refugees

10.—(1) A refugee shall not be expelled or returned to the borders of a country where his life or freedom will be threatened on account of—

(*a*) his race, religion, nationality or membership of a particular social group or political opinion; or

(*b*) external aggression, occupation, foreign domination or events seriously disturbing the public order in either part or the whole of that country.

(2) A person claiming to be a refugee shall be permitted to enter and remain in Malaŵi for such period as the Committee may require to process his application for refugee status.

(3) A person who presents himself to a competent officer at a border and applies for admission into Malaŵi for the purpose of proceeding to another country where he intends to seek asylum as a refugee shall be permitted entry in Malaŵi upon such conditions as may be determined by the Committee either generally or specially.

(4) A person who has illegally entered Malaŵi for the purpose of seeking asylum as a refugee shall present himself to a competent officer within twenty hours of his entry or within such longer period as the competent officer may consider acceptable in the circumstances and such person shall not be detained, imprisoned, declared prohibited immigrant or otherwise penalized by reason only of his illegal entry or presence in Malaŵi unless and until the Committee has considered and made a decision on his application for refugee status.

(5) A person who has legally entered Malaŵi and wishes to remain in Malaŵi on the ground that he is a refugee shall not be deported from Malaŵi unless and until he has found a third country of refugee willing to admit him.

(6) The benefit of this section shall not be claimable by a person in respect of whom there are reasonable grounds for regarding him or any aspect of the matter as a danger to the security of Malaŵi or who, having been convicted of a serious crime, constitutes a real danger to the community of Malaŵi.

Appeals to the Minister

11.—(1) Any person who is dissatisfied with a decision of the Committee in regard to—

(*a*) his application for refugee status; and

(*b*) revocation by the Committee of its decision granting to that person refugee status,

may, within fourteen days of the date of the decision of the Committee, or within such longer period as may be accepted by the Minister, appeal to the Minister and the Minister may confirm, set aside or vary the decision.

(2) The decision of the Minister made pursuant to subsection (1) shall be final and shall not be subject to appeal to, or review or question by, any court and the Minister shall not be required to assign any reasons for such decision.

(3) Subject to section 10 (5), upon the decision of the Minister confirming the decision of the Committee, the person seeking refugee status concerned may be deported.

Cessation of refugee status

12. A person shall cease to be a refugee under this Act if—

(*a*) he has voluntarily re-availed himself of the protection of a country of his nationality; or

(*b*) having lost his nationality, he has voluntarily re-acquired it; or

(*c*) he has acquired a new nationality and enjoys the protection of the country of his new nationality; or

(*d*) he has voluntarily re-established himself in the country which he left or outside which he remained owing to fear of persecution; or

(*e*) he can no longer, because the circumstances in connexion with which he has been recognized as a refugee have ceased to exist, continue to refuse to avail himself of the protection of the country of his nationality; or

(*f*) being a person who has no nationality he is, because the circumstances in connexion with which he has been recognized as a refugee have ceased to exist, able to return to the country of his former habitual residence; or

(*g*) being a person recognized as a refugee on account of that person having fled from external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin, such circumstances or events have ceased to exist:

Provided that paragraphs (*e*) and (*f*) shall not apply to a person who is able to invoke compelling reasons arising out of previous persecution for refusing to avail himself of the protection of his country of nationality or return to the country of his former habitual residence, respectively.

Regulations

13. The Minister may make regulations for carrying out or giving effect to the provisions of this Act and without prejudice to the generality of the foregoing such regulations may—

(*a*) prescribe anything required to be prescribed under this Act;

(*b*) make provision for—

(i) procedure to be followed by competent officers for the purpose of facilitating the entry of refugees and their family members;

(ii) co-operation between governmental and non-governmental organizations respecting the affairs of refugees;

(iii) relief assistance to be accorded to recognized refugees pending the Committee's decision;

(iv) the welfare of refugees and their family members generally;

(v) registration of refugees; and

(vi) the travelling or movement of refugees within and outside Malaŵi.

SUBSIDIARY LEGISLATION
REFUGEE REGULATIONS

G.N. 51/1990

*under s.*13

Citation

1. These Regulations may be cited as the Refugee Regulations.

Procedure on application for refugee status in Malaŵi

2.—(1) Subject to subregulation (3), a person seeking refugee status in Malaŵi shall make his application therefor in Form I set out in the Schedule.

(2) An applicant for refugee status shall provide the Committee with any further information that the Committee may require in his particular case.

(3) Subregulation (1) shall not apply to any group of foreign nationals seeking refugee status in Malaŵi, in respect of whom the Minister has, under section 7 (3) of the Act, directed that a group determination procedure shall apply.

Processing of applications

3.—(1) On receipt of an application for refugee status, the Committee shall, within thirty days of the date on which the application is received by the Committee, consider the application and make such inquiry or investigation respecting the applicant as the Committee considers necessary and thereafter grant refugee status or deny the grant of refugee status to the applicant and, without undue delay, notify the applicant of its decision in writing.

(2) The Committee shall not make a decision denying the grant of refugee status to any applicant without first giving to the applicant an opportunity of being heard and of presenting evidence.

(3) Where the Committee has decided to deny a grant of refugee status it shall forthwith inform the applicant of the right of appeal to the Minister against the decision of the Committee.

Cancellation or revocation of decision granting refugee status

4.—(1) The Committee shall not cancel or revoke its decision granting refugee status to any person without first giving that person an opportunity of being heard and of presenting evidence.

(2) Where the Committee has decided to cancel or revoke its decision granting refugee status to any person, it shall forthwith inform that person of the right of appeal to the Minister against the decision of the Committee.

Procedures for appeal to the Minister

5.—(1) An appeal to the Minister against a decision of the Committee shall be brought by giving notice of appeal in Form II set out in the Schedule.

(2) On receipt of the notice of appeal against a decision of the Committee, the Minister shall—

(*a*) consider and determine the appeal; or

(*b*) require the attendance of the person making the appeal before the Minister or order such person to provide to the Minister in writing such further information as the Minister may require and thereafter determine the appeal.

Quorum and decisions at meetings of the Committee

6. At any meeting of the Committee—

(*a*) a quorum shall be formed by any four members; and

(*b*) a decision of the Committee on any matter shall be that of the majority of the members present and voting and in the event of an equality of votes, the Chairman or the Vice-Chairman, as the case may be, shall have a casting vote in addition to his deliberative vote.

Convention travel document

7.—(1) A person enjoying refugee status in Malaŵi, who desires to travel abroad, may apply in writing in Form III set out in the Schedule to the Chief Immigration Officer for a convention travel document to be issued to him.

(2) On receipt of an application for a convention travel document, the Chief Immigration Officer may, after consulting the Representative of the United Nations High Commissioner for Refugees in Malaŵi, issue to the applicant a convention travel document in Form IV set out in the Schedule.

Assistance to applicants for refugee status in Malaŵi

8.—(1) The immigration officer or other competent officer shall, at a place and time a person crosses the border into Malaŵi for the purpose of seeking refugee status, inform that person of the right to approach the Representative of the United Nations High Commissioner for Refugees in Malaŵi for assistance.

(2) Subject to subregulation (3), the Committee shall inform the Representative of the United Nations High Commissioner for Refugees in Malaŵi of the persons who have entered Malaŵi and have submitted applications for refugee status and the Committee shall do so within thirty days of the date of receipt of each application.

(3) In case of persons who have entered Malaŵi as refugees in accordance with a group determination procedure, the Committee and the Representative of the United Nations High Commissioner for Refugees shall jointly ascertain the numbers and particulars of such persons in accordance with a procedure therefor to be determined by the Committee.

reg. 2 (1); 5 (1); and 7 (1) and (2)

SCHEDULE

FORM I

(reg. 2 (1))

REPUBLIC OF MALAŴI
REFUGEE ACT
(CAP. 15:04)

REFUGEE REGULATIONS

APPLICATION FOR REFUGEE STATUS IN MALAŴI

(To be submitted to the Chairman, Refugee Committee, Private Bag 301, Capital City, Lilongwe 3, Malaŵi.)

Photograph of applicant

1. (*a*) Family name (*in block letters*).....
   (*b*) In the case of a married woman, maiden name .....
   (*c*) Forename(s) .....
   (*d*) Any other name or names used .....
2. Present address .....
   .....
3. Religion .....
4. Family status (*single, married, widow/widower*) .....
5. Date of birth (*day, month and year*) .....
6. Place of birth (*country and locality*) .....
7. Nationality:
   (*a*) At birth .....
   (*b*) Any subsequent change of nationality (*state reason*) .....
   .....
   (*c*) Present nationality .....
   (*If different from* (*a*) *or* (*b*) *above, state reason*)
   .....
   (*d*) If you are stateless, how did you become stateless ?
   .....
8. Ethnic group to which you belong .....
   .....
9. Education:
   (*a*) Schools attended (*indicate dates and standards reached*) .....
   .....
   .....
   (*b*) Higher education (*university, college, etc., attended—indicate dates and degrees or diplomas obtained*) .....
   .....
   .....
10. Occupation:
    (*a*) Profession or skill .....
    (*b*) Present occupation .....
    (*c*) Any further occupation .....
11. Family members living with applicant:

Name	*Forename*	*sex*	*Relation to Head of Family*	*Date and Place of Birth*	*Nationality*	*Education/ or Professional Qualifications or other Educational Skill*
.....	.....	.....	.....	.....	.....	.....
.....	.....	.....	.....	.....	.....	.....
.....	.....	.....	.....	.....	.....	.....
.....	.....	.....	.....	.....	.....	.....

12. Former place of residence:
    (*a*) Country of ordinary residence prior to displacement .....
    .....

(*b*) Last place of residence in that country .....
.....

(*c*) Any other countries in which you have resided (*specify dates, if possible*).....
.....

(*d*) Have you applied for asylum or refugee status in any other country? If so, give details .....
.....
.....

13. Languages:
(*a*) Mother tongue .....
(*b*) What other languages do you speak?.....
.....

14. Were you ever registered with any international agency dealing with refugees? If so, give details as follows—
(*a*) Name of agency .....
(*b*) For what services were you declared eligible? .....
.....
(*c*) What assistance did you receive from such agency? .....
.....

15. Do you at present receive material assistance? If so, from who? .....

16. Do you own any moveable or immoveable property in your country of origin or elsewhere? If so, give brief details .....
.....
.....

17. Are you entitled to any pension rights in your country of origin or elsewhere? If so, give details .....
.....
.....

18. What documents do you possess?
(*a*) Passport: Number ..... Date of issue .....
Authority and place of issue .....
Valid from ..... until .....
(*b*) Any travel document other than passport:
Specify title .....
Number .....
Date of issue .....
Authority and place of issue .....
.....
Valid from ..... until .....
(*c*) Are you entitled to return to the country of issue of your passport or travel documents ? If so, state until what date .....
.....
(*d*) In the absence of a passport or travel document, indicate any other document you hold certifying your identity .....
.....
(*e*) Have you been issued with a certificate by any international agency dealing with refugees (e.g. the International Red Cross or the United Nations High Commission for Refugees?) If so, give details .....
.....

19. (*a*) State any political, military, religious, ethnic or social organization or grouping to which you or any members of your family belong or previously belonged (or which you actively supported) in your home country .....
.....

(*b*) Describe your (or your family members') activities and responsibilities in any organizations mentioned in subparagraph (*a*) hereof .....
.....
.....

(*c*) Were you ever involved in incident(s) involving physical violence? If so, describe the nature of the incident(s) and your involvement: .....
.....
.....

20. (*a*) When did you leave your home country? .....
.....

(*b*) In what manner did you leave, with or without authorization?
.....

(*c*) What means of transport did you use?.....

(*d*) Which countries and towns did you transit?.....

(*e*) What was the duration of your in each place in subparagraph (*d*) hereof? .....
.....

21. Entry into the Republic of Malaŵi:

(*a*) Date and place of entry .....

(*b*) In what manner did your enter? (clandestinely, with authorization, did you have a passport, travel document, visa or work contract?)
.....
.....
.....
.....

22. Why did you leave your home country? .....
.....
.....

If you do not wish to return there, explain reasons (Please give a detailed reply to this question and add an extra sheet, if necessary)
.....
.....
.....
.....

23. Are you registered with a consulate or any other authority of your home country? If so, give details. If not, why not?.....
.....
.....

24. (*a*) Have you ever been convicted for an offence other than a traffic offence? If so, give details of charges and sentences:
.....
.....

If sentenced, what sentence served?.....
.....

(*b*) Have you ever been arrested or detained? If so, give reasons, date(s) and place(s) .....
.....

25. What is your residential status in Malaŵi? .....
.....

26. Any other details you think will assist in determining whether you are entitled to refugee status: .....
.....
.....
.....

I hereby declare that the statements made in this application are, to the best of my knowledge, true, complete and accurate.

Date ....
Signature of Applicant

FORM II

REPUBLIC OF MALAŴI
REFUGEE ACT
(reg. 5(1)) (CAP 15:04)
REFUGEE REGULATIONS

FORM OF APPEAL

TAKE NOTICE that I ....., being dissatisfied with the decision of the Committee given on the ..... day of ....., 19 .....; appeal to the Minister against the whole of the said decision which decides that .....
.....
.....
and the following are my grounds of appeal:
1. .....
2. .....
3. .....

Dated this ..... day of ....., 19 .....

.....
Signature of Applicant

To: The Chairman
Refugee Committee
Private Bag 301
Capital City
Lilongwe 3

*Additional paper should be used if necessary.

FORM III

REPUBLIC OF MALAŴI
REFUGEE ACT (reg. 7(1))
(CAP. 15:04)
REFUGEE REGULATIONS

APPLICATION FOR A CONVENTION TRAVEL DOCUMENT

(Two forms to be completed for each person and to be sent to the Deputy Chief Immigration Officer, P.O. Box 331, Blantyre, Malaŵi.)

Surname (*in block capitals*) .....

Other names (*in block capitals*) .....

Maiden names for married women (*in block capitals*) .....

.....

1. I apply for (*cross out* (*a*) or (*b*))
   (*a*) A Convention Travel document for myself, or
   (*b*) A duplicate Convention Travel Document because the original is lost/stolen/damaged/filled up/ time expired and/or is hereby surrendered and

   Its number was/is .....

FOR OFFICIAL USE ONLY
File No. .....
CTC No. .....
Date issued .....
G.R. No. .....
of .....

2. I enclose with this application:
   (*a*) The fee of K5.00;
   (*b*) Three passport-size photographs;
   (*c*) Marriage certificate (for married women);
   (*d*) My birth certificate (*cross out if not enclosed*);
   (*e*) My child's or children's birth certificates (*cross out if not enclosed*); and
   (*f*) Letter or recommendation by United Nations High Commissioner for Refugees Representative in Malaŵi Ref. No. .... dated .....

NOTE: Items 2 (*c*), (*d*) and (*e*) may only be submitted if available and in certified copies by a Commissioner for Oaths.

3. I was born at the following address:

....
Village/Town *T.A./Chief* *Area/Province/District* *Country*

on ..... (*date of birth*)

.....

4. (*a*) My height is ..... mm, my eyes are ..... colour, my hair is ..... colour, the shape of face is .... and the shape of my nose .....
   (*b*) My occupation is .....
   (*c*) Special peculiarities (deformities) or other marks .....

5. (*a*) I require a travel document to travel to ..... for the following reason .....
for a period of (*duration of absence from Malaŵi*) .....

(*b*) Proceeding to .....
(*Specify, whether for resettlement / education / family reunion, etc.*)

6. My father was born at:

(*a*) ....
Village/Town *T.A./Chief* *Area/Province/District* *Country*

(*b*) If different from above indicate address .....
.....

(*c*) His nationality is/was .....

7. My mother was born at:

(*a*) ....
Village/Town *T.A./Chief* *Area/Province/District* *Country*

(*b*) If different from above indicate address .....
.....

(*c*) Her nationality is/was .....

8. (*a*) I originally entered Malaŵi on (date) .....
through ..... Border Post/unchartered path in ..... Area/District of Malaŵi.

(*b*) Indicate particulars of passport/travel document held at the time of entry into Malaŵi (*if any*)
....
(*Number*) (*Place and Date of Issue*) (*Expiry*)

(*c*) Nationality prior to entry into Malaŵi .....

9. I want the following minor children (under the age of 16 years) to be included on my Convention Travel Document, (*birth certificates, if available, to be attached for each child or sworn affidavit of birth instead*)

Full Names	Male or Female	Birth Particulars			Relationship to Applicant
		Date	Place	Country	

10. DECLARATION BY APPLICANT

I, (*full name*) .....
of (*present address*) .....
.....
do solemnly and sincerely declare that to the best of my knowledge and belief the information given above is true and correct in all respects.

Date ..... *Signature of Applicant* .....

11. RECOMMENDATION BY THE UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES OFFICE IN MALAŴI

I, the undersigned (*full names*) .....
hereby certify that the applicant, namely, ...
.....
is officially known by this office as a registered refugee under the terms of United Nations Conventions and have no objection in recommending him/her for the issuance of a Convention Travel Document for the purpose of .....
.....
and that the particulars given in this application are true and correct to the best of my knowledge and belief.

Signature ..... *Date* .....
(*Official Stamp*)

Position .....
Ref. No. .....

12. FOR OFFICIAL USE ONLY

(*a*) Refugee status granted under Authority No. .....
Date .....

(*b*) Or specify .....

(*c*) Issue of Convention Travel Document Approved/Not Approved.

Date ..... *Signature* .....
for Chief Immigration Officer
(*Official Stamp*)

FORM IV

REPUBLIC OF MALAŴI
REFUGEE ACT
(CAP. 15:04)
REFUGEE REGULATIONS (reg. 7(2))
FORM OF CONVENTION TRAVEL DOCUMENT

No. .....

TRAVEL DOCUMENT TITRE DE VOYAGE
(Convention of 28 July 1951) (Convention du 28 Juillet 1951)

This document expires on .....
unless its validity is extended or renewed.

Ce document expire le .....
sauf prorogation de validité.

Name }
Nom } .....

Forename(s)
Prénom(s) .....

Accompanied by ..... child (children)
Accompagné de ..... enfant(s).

1. This document is issued solely with a view to providing the holder with a travel document which can serve in lieu of national passport. It is without prejudice to and in no way affects the holder s nationality.
   Ce titre est délivré uniquement en vue de fournir au titulaire un document de voyage pouvant tenir lieu de passport national. Il ne préjuge pas de la nationalité du titulaire et est sans sur celle-ci.
2. The holder is authorized to return to
   Le titulaire est autorisé à retourner en .....

   [state here the country whose authorities are issuing the document]
   [indication du pays dont les autorités délivrent le titre]
   on or before
   jusqu'au .....

   unless some later date is hereafter specified. [The period during which the holder is allowed to return must not be less than three months.]
   sauf mention ci-aprés d'une date ultérieure. [La période pendant laquelle le titulaire est autorisé à retourner ne doit pas étre inférieure à trois mois.]
3. Should the holder take up residence in a country other than that which issued the present document, he must, if he wishes to travel again, apply to the competent authorities of his country of residence for a new document. [The old travel document shall be withdrawn by the authority issuing the new document and returned to the authority which issued it.]
   En cas d'établissement dans un autre pays que celui où le présent titre a été délivré, le titulaire doit, s'il veut se déplacer à nouveau, faire la demande d'un nouveau titre aux autorités compétentes du pays de sa résidence. [L'ancien titre de voyage sera remis à l'autorité qui délivré le nouveau titre pour être renvoyé à l'autorité qui l'a délivré.]
   This document contains 32 pages, exclusive of cover.
   Ce titre contient 32 pages, non compris la couverture.

Place and date of birth
Lieu et date de naissance .....

Occupation
Profession .....

Present residence
Résidence actuelle .....

* Maiden name and forename(s) of wife
* Nom (avant le mariage) et prénom(s) de l'épouse .....

* Name and forename(s) of husband
* Nom et prénom(s) du mari .....

* Strike out whichever does not apply. * Biffer la mention inutile.

Description Signalement

Height / Taille } .....

Hair / Cheveux } .....

Colour of eyes / Couleur des yeux } .....

Nose / Nez } .....

Shape of face / Forme du visage } .....

Complexion / Teint } .....

Special peculiarities / Signes particuliers } .....

Children accompanying holder
Enfants accompagnant le titulaire

Name Nom	Forename(s) Prénom(s)	Place and date of birth Lieu et date de naissance	Sex Sexe
.....	.....	.....	.....
.....	.....	.....	.....
.....	.....	.....	.....
.....	.....	.....	.....

This document contains 32 pages, exclusive of cover.
Ce titre contient 32 pages, non compris la couverture.

Photograph of holder and stamp of issuing authority
Photographie du titulaire et cachet de l'autorité qui délivré le titre

Finger-prints of holder (if required)
Empreintes digitales du titulaire (facultatif)

Signature of holder / Signature du titulaire } .....

This document contains 32 pages, exclusive of cover.
Ce titre contient 32 pages, non compris la couverture.

1. This document is valid for the following countries:
   Ce titre est délivré pour les pays suivants:
   .....
   .....
   .....

2. Document or documents on the basis of which the present document is issued:
   Document ou documents sur la base duquel ou desquels le présent titre est délivré:
   .....
   .....
   .....

Issued at / Délivré à } .....

Date .....

Signature and stamp of authority issuing the document:
Signature et cachet de 1'autorité qui délivré le titre:
Fee paid:
Taxe percue:

This document contains 32 pages, exclusive of cover.
Ce titre contient 32 pages, non compris la couverture.

Extension or renewal of validity
Prorogation de validité

Fee paid:
Taxe percue:

From / du } .....

To / au } .....

Done at / Fait à } ..... Date / le } .....

Signature and stamp of authority extending or renewing the validity of the document:
Signature et cachet de l'autorité qui proroge la validité du titre:

Extension or renewal of validity
Prorogation de validité

Fee paid:
Taxe percue:

From / du } .....

To / au } .....

Done at / Fait à } ..... Date / le } .....

Signature and stamp of authority extending or renewing the validity of the document:
Signature et cachet de l'autorité qui proroge la validité du titre:

This document contains 32 pages, exclusive of cover.
Ce titre contient 32 pages, non compris la couverture.

Extension or renewal of validity
Prorogation de validité

Fee paid: From .....
Taxe perçue: du

To .....
au

Done at ..... Date .....
Fait à le

Signature and stamp of authority extending or renewing the validity of the document:
Signature et cachet de l'autorité qui proroge la validité du titre:

Extension or renewal of validity
Prorogation de validité

Fee paid: From .....
Taxe perçue: du

To .....
au

Done at ..... Date .....
Fait à le

Signature and stamp of authority extending or renewing the validity of the document:
Signature et cachet de l'autorité qui proroge la validité du titre:

This document contains 32 pages, exclusive of cover.
Ce titre contient 32 pages, non compris la couverture.

Visas

The name of the holder of the document must be repeated in each visa.
Reproduire dans chaque visa le nom du titulaire.

This document contains 32 pages, exclusive of cover.
Ce titre contient 32 pages, non compris la couverture.

IMMUNITIES AND PRIVILEGES

CHAPTER 16:01

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CHAPTER 16:01

IMMUNITIES AND PRIVILEGES

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FIFTH SCHEDULE

Immunities and Privileges of an Organization and Officers Thereof

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16 of 1984
G.N. 78/1986
70/1996
102/1996
17/1999
14/2001
11/2002
28/2003
29/2003
27/2007
31/2007

An Act to determine the extent of the immunity of foreign states from the jurisdiction of the courts of Malaŵi; to provide for diplomatic and consular privileges and immunities by giving effect to certain international conventions and otherwise and for privileges and immunities of international organizations; and for connected purposes

[17th April, 1984]

PART I

Preliminary

Short title

1. This Act may be cited as the Immunities and Privileges Act.

Interpretation

2.—(1) In this Act—

"commercial purposes" means purposes of any commercial transaction as defined in section 5 (3);

"consular officer" means any person, including the head of a consular post, entrusted in that capacity with the exercise of consular functions and any person in the service of the government of a Commonwealth country performing any such functions;

"consular post" means any consulate-general, consulate, vice-consulate or consular agency;

"diplomatic agent" has the meaning assigned to it in Article 1 in the First Schedule.

(2) In the Articles set out in the First and Second Schedules— *First and Second Schedules*

"agent of the receiving State" or "authorities of the receiving State" shall be construed as including a police officer and any person exercising a power of entry into or upon premises under any written law;

"grave crime" shall be construed as meaning any offence which, on first conviction, is punishable with imprisonment for a term which may extend to five years or with a more severe sentence;

"national of the receiving State" shall be construed as meaning a citizen of Malaŵi.

Part II
State Immunity

General immunity from jurisdiction

3.—(1) A State is immune from the jurisdiction of the courts of Malaŵi except as provided in this Part of this Act.

(2) A court shall give effect to the immunity conferred by this section even though the State does not appear in the proceedings in question.

Submission to jurisdiction

4.—(1) A State is not immune as respects proceedings in respect of which it has submitted to the jursidiction of the courts of Malaŵi.

(2) A State may submit after the dispute giving rise to the proceedings has arisen or by a prior written agreement; but a provision in an agreement that it is to be governed by the law of Malaŵi is not to be regarded as a submission.

(3) A State is deemed to have submitted—

(*a*) if it has instituted the proceedings; or

(*b*) subject to subsection (4), if it has intervened or taken any step in the proceedings.

(4) Subsection 3 (*b*) does not apply to intervention or any step taken for the purpose only of—

(*a*) claiming immunity; or

(*b*) asserting an interest in property in circumstances such that the State would have been entitled to immunity if the proceedings had been brought against it.

(5) A submission in respect of any proceedings extends to any appeal but not to any counter-claim unless it arises out of the same legal relationship or facts as the claim.

(6) The head of a State's diplomatic mission in Malaŵi, or the person for the time being performing his functions, shall be deemed to have authority to submit on behalf of the State in respect of any proceedings; and any person who has entered into a contract on behalf of or with the authority of a State shall be deemed to have authority to submit on its behalf in proceedings arising out of contract.

Commercial transactions

5.—(1) A State is not immune as respects proceedings relating to—

(*a*) a commercial transaction entered into by the State; or

(*b*) an obligation of the State which by virtue of a contract (whether a commercial transaction or not) falls to be performed wholly or partly in Malaŵi.

(2) Subsection (1) does not apply if the parties to the dispute are States or have otherwise agreed in writing.

(3) In subsection (1) "commercial transaction" means—

(*a*) any contract for the supply of goods and services;

(*b*) any loan or other transaction for the provision of finance and any guarantee or indemnity in respect of such transaction or of any other financial obligation; and

(*c*) any other transaction or activity of a commercial, industrial, financial, professional or other similar character into which a State enters or in which it engages otherwise than in the exercise of sovereign authority,

but does not include a contract of employment between a State and an individual.

Contracts of employment

6.—(1) A State is not immune as respects proceedings relating to a contract of employment between the State and an individual if—

(*a*) the contract was entered into in Malaŵi of the work is to be performed wholly or partly in Malaŵi; and

(*b*) at the time when the contract was entered into the individual was a citizen of Malaŵi or was ordinarily resident in Malaŵi; and

(*c*) at the time when the proceedings are brought the individual is not a citizen of the State concerned.

(2) Subsection (1) does not apply if the parties to the contract have otherwise agreed in writing unless the law of Malaŵi requires the proceedings to be brought in Malaŵi.

Personal injuries and damage to property

7. A State is not immune as respects proceedings relating to—

(*a*) the death or injury of any person; or

(*b*) damage to or loss of tangible property, caused by an act or omission in Malaŵi.

Ownership, possession and use of property

8. A State is not immune as respects proceedings relating to—

(*a*) any interest of the State in, or its possession or use of immoveable property in Malaŵi;

(*b*) any obligation of the State arising out of its interest in, or its possession or use of, such property; or

(*c*) any interest of the State in moveable or immoveable property, being an interest arising by way of succession, gift or *bona vacantia*.

Patents, trade-marks, etc.

9. A State is not immune as respects proceedings relating to—

(*a*) any patent, trade-mark, design or plant breeder's right belonging to the State and registered or protected in Malaŵi or for which the State has applied in Malaŵi; or

(*b*) an alleged infringement by the State in Malaŵi of any patent, trade-mark, design, plant breeder's right or copyright; or

(*c*) the right to use a trade or business name in Malaŵi.

Membership of corporate bodies

10.—(1) A State is not immune as respects proceedings relating to its membership of a body corporate, an unincorporated body or a partnership which—

(*a*) has members other than States; and

(*b*) is incorporated or constituted under the law of Malaŵi or is controlled from or has its principal place of business in Malaŵi,

being proceedings arising between the State and the body or its other members or, as the case may be, between the State and the other partners.

(2) This section does not apply if provision to the contrary has been made by an agreement in writing between the parties to the dispute or by the constitution or other instrument establishing or regulating the body or partnership in question.

Arbitration

11.—(1) Where a State has agreed in writing to submit a dispute which has arisen, or may arise, to arbitration, the State is not immune as respects proceedings in the courts of Malaŵi which relate to the arbitration.

(2) This section has effect subject to any contrary provision in the arbitration agreement and does not apply to any arbitration agreement between States.

Proceedings against ships used for commercial purposes

12.—(1) A State is not immune as respects—

(*a*) an action *in rem* against a ship belonging to that State;or

(*b*) an action *in personam* for enforcing a claim in connexion with such a ship,

if, at the time when the cause of action arose, the ship was in use or intended for use for commercial purposes.

(2) A State is not immune as respects—

(*a*) an action *in rem* against a cargo belonging to that State if both the cargo and the ship carrying it were, at the time when the cause of action arose, in use or intended for use for commercial purposes; or

(*b*) an action *in personam* for enforcing a claim in connexion with such a cargo if the ship carrying it was then in use or intended for use for commercial purposes.

(3) References in this section to a ship or cargo belonging to a State include references to a ship or cargo in its possession or control or in which it claims an interest; and subject to subsection (2) subsection (1) applies to property other than a ship as it applies to a ship.

Duties and rates

13. A State is not immune as respects proceedings relating to its liability for—

(*a*) any duty of customs or excise;or

(*b*) rates in respect of premises occupied by it for commercial purposes.

Service of process and default judgments

14.—(1) Any process or other document required to be served for instituting proceedings against a State shall be served by being transmitted through the Ministry of External Affairs to the Ministry of Foreign Affairs of that State and service shall be deemed to have been effected when the process or other document is received at that State's Ministry.

(2) Any time for entering an appearance (whether prescribed by rules of court or otherwise) shall begin to run two months after the date on which the process or document is received at the State's Ministry.

(3) A State which appears in proceedings cannot thereafter raise any objection on the ground that subsection (1) has not been complied with in the case of those proceedings.

(4) No judgment in default of appearance shall be given against a State except on proof that subsection (1) has been complied with and that the time for entering an appearance as extended by subsection (2) has expired.

(5) A copy of any judgment given against a State in default of appearance shall be transmitted through the Ministry of External Affairs to the Ministry of Foreign Affairs of that State and any time for applying to have the judgment set aside (whether prescribed by rules of court or otherwise) shall begin to run two months after the date on which the copy of the judgment is received at that State's Ministry.

(6) Subsection (1) does not prevent the service of a process or other document in any manner to which the State has agreed and subsections (2) and (4) do not apply where service is effected in any such manner.

(7) This section shall not be construed as applying to proceedings against a State by way of counter-claim or to an action *in rem*, and subsection (1) shall not be construed as affecting any rules of court whereby leave is required for the service of process outside the jurisdiction

Other procedural privileges

15.—(1) Subject to subsections (2) and (3)—

(*a*) relief shall not be given against a State by way of injunction or order for specific performance or for the recovery of land or other property; and

(*b*) the property of a State shall not be subject to any process for the enforcement of a judgment or an arbitration award or, in an action *in rem*, for its arrest, detention or sale.

(2) Subsection (1) does not prevent the giving of any relief or the issue of any process with the written consent of the State concerned; and any such consent (which may be contained in a prior agreement) may be expressed so as to apply to a limited extent or generally; but a provision merely submitting to the jurisdiction of the courts is not to be regarded as a consent for the purposes of this subsection.

(3) Subsection (1) (*b*) shall not prevent the issue of any process in respect of property which is for the time being in use or intended for use for commercial purposes.

States entitled to immunities and privileges

16.—(1) The immunities and privileges conferred by this Part apply to any foreign or Commonwealth State other than Malaŵi; and references to a State include references to—

(*a*) the sovereign or other head of that State in his public capacity;

(*b*) the government of that State; and

(*c*) any department of that government,

but not to any entity (hereinafter referred to as a "separate entity") which is distinct from the executive organs of the government of the State and capable of suing or being sued.

(2) A separate entity is immune from the jurisdiction of the courts of Malaŵi if, and only if—

(*a*) the proceedings relate to anything done by it in the exercise of sovereign authority; and

(*b*) the circumstances are such that a State would have been so immune.

(3) If a separate entity (not being a State's central bank or other monetary authority) submits to the jurisdiction in respect of proceedings in the case of which it is entitled to immunity by virtue of subsection (2), section 15 shall apply to it in respect of those proceedings as if references to a State were references to that entity.

(4) Property of a State's central bank or other monetary authority shall not be regarded for the purposes of section 15 (3) as in use or intended for use for commercial purposes; and where any such bank or authority is a separate entity section 15 (1) and (2) shall apply to it as if references to a State were references to the bank or authority.

(5) This section applies to a territory forming a constituent part of a federal State as if such territory were a separate entity of that State.

Heads of State

17.—(1) Subject to this section and to any necessary modifications, Part III shall apply to—

(*a*) a sovereign or other head of State;

(*b*) members of his family forming part of his household; and

(*c*) his private servants,

as it applies to the head of a diplomatic mission, to members of his family forming part of his household and to his private servants.

(2) The immunities and privileges conferred by virtue of subsection (1) (*a*) and (*b*) shall not be subject to the restrictions by reference to nationality or residence mentioned in Article 37 (1) or 38 in the First Schedule.

(3) This section applies to the sovereign or other head of any State on which immunities and privileges are conferred by the other relevant sections of this Part and is without prejudice to the application of those sections to any such sovereign or head of State in his public capacity.

Excluded matters

18.—(1) This Part of the Act does not affect any immunity or privilege conferred by Part III or Part IV; and—

(*a*) section 6 does not apply to proceedings concerning the employment of the members of a mission within the meaning of Article 1 of the Convention in the First Schedule or of the members of a consular post within the meaning of Article 1 of the Convention in the Second Schedule:

(*b*) section 8 (1) does not apply to proceedings concerning a State's title to or its possession of property used for the purposes of diplomatic mission.

(2) This Part does not apply to criminal proceedings.

Evidence by certificate

19. A certificate by or on behalf of the Minister of External Affairs shall be conclusive evidence on any question—

(*a*) whether any country is a State for the purposes of this Part;

(*b*) whether any territory is a constituent part of a federal State for those same purposes;

(*c*) as to the person or persons to be regarded for the purposes of this Part as the head or government of a State;

(*d*) whether, and if so when, a document has been served or received as mentioned in section 14 (1) or (5).

Part III
Diplomatic Immunities and Privileges

Application of Convention on Diplomatic Relations

20.—(1) Subject to section 29 (2), the Articles set out in the First Schedule (being Articles of the Vienna Convention on Diplomatic Relations signed in 1961) have the force of law in Malaŵi and shall for that purpose be construed in accordance with subsections (2) to (5).

(2) For the purposes of Article 32 a waiver by the head of the mission of any State or any person for the time being performing his functions shall be deemed to be a waiver by that State.

(3) Articles 35, 36 and 40 shall be construed as granting any immunity or privilege which they require to be granted.

(4) The references in Articles 37 and 38 to the extent to which any immunities and privileges are admitted by the receiving State and to additional immunities and privileges which may be granted by the receiving State shall be construed as referring respectively to the extent to which any immunities or privileges are specified by the Minister by order and to any additional immunities and privileges which may be so specified.

(5) In its application to the immunity granted by paragraphs 2, 3 and 4 of Article 37 the expression "permanent resident" in Article 38 shall be deemed to extend to any individual other than one who is resident in Malaŵi solely for the purpose of performing the duties of his office for a mission.

Part IV
Consular Immunities and Privileges

Application of Convention on Consular Relations

21.—(1) Subject to sections 22 (2) and 29 (2), the Articles set out in the Second Schedule (being Articles of the Vienna Convention on Consular Relations signed in 1963) have the force of law in Malaŵi and shall for that purpose be construed in accordance with subsections (2) to (9).

(2) The reference in paragraph 2 of Article 17 to any privileges and immunities accorded by customary international law or by international agreements shall be construed as a reference to any immunities and privileges conferred under Part V.

(3) The references in Article 44 to matters connected with the exercise of the functions of members of a consular post shall be construed as matters connected with the exercise of consular functions by consular officers or consular employees.

(4) For the purposes of Article 45 and that Article as applied by Article 58, a waiver shall be deemed to have been expressed by a State if it has been expressed by the head, or any person for the time being performing the functions of head, of the diplomatic mission of that State or, if there is no such mission, of the consular post concerned.

(5) Articles 50, 51, 52, 54, 62 and 67 shall be construed as granting any immunity or privilege which they require to be granted.

(6) The reference in Article 57 to the immunities and privileges provided in Chapter II shall be construed as references to those provided in section II of that Chapter.

(7) The reference in Article 70 to the rules of international law concerning diplomatic relations shall be construed as a reference to Part III of, and of the First Schedule to, this Act.

First Schedule

(8) The reference in Article 71 to additional immunities and privileges which may be granted by the receiving State or to immunities and privileges so far as these are granted by the receiving State shall be construed as referring to such immunities and privileges as may be specified by the Minister by order.

(9) In its application to the immunity granted by Article 49 the expression "permanent resident" in Article 71 shall be deemed to extend to any individual other than one who is resident in Malaŵi solely for the purpose of performing his duties for a consular post.

Agreements to accord immunities and privileges

Third Schedule

22.—(1) Where any agreement made, whether before or after the commencement of this Act, between Malaŵi and any other State provides for according to consular posts and persons connected with them immunities and privileges not accorded to them by this Act, the Minister may, by order, exercise with respect to the consular posts of that State and persons connected with them the powers specified in the Third Schedule so far as may be necessary to give effect to that Agreement.

(2) Where any agreement made, whether before or after the commencement of this Act, between Malaŵi and any other State provides for according to consular posts and persons connected with them some but not all of the immunities and privileges accorded to them by this Act, the Minister may, by order, provide for excluding with respect to consular posts of that State and persons connected with them any of the immunities and privileges which are not provided for by that agreement.

Common-wealth representatives

23.—(1) The Minister may, by order, confer—

(*a*) on persons in the service of the government of a Commonwealth country who hold such offices or classes of offices which appear to the Minister to involve the performance of duties substantially corresponding to those which, in the case of foreign sovereign power, would be performed by a consular officer;

(*b*) on a person for the time being recognized by the Government as the chief representative of any State or province of a Commonwealth country (in this section referred to as a state representative);

(*c*) on members of the staff of any such person as is mentioned in paragraph (*a*) or (*b*),

any immunities or privileges which are conferred by or may be conferred under this Part, and any such order may provide for extending, in relation to premises, official archives, communications, documents and personal property of persons on whom any immunities and privileges are or may be conferred under this subsection, and in relation to any fees and charges levied by them Articles 31, 32, 33, 35, 39 and 51 in the Second Schedule.

(2) An order under subsection (1) may exclude from any immunities and privileges conferred by it any persons who are permanently resident in Malaŵi, or who are citizens of Malaŵi, or any class of such persons.

(3) Notwithstanding anything in this section—

(*a*) a person for the time being recognized by the Government as the chief representative in Malaŵi of a Commonwealth country may waive any immunity conferred under this section on a person in the service of the government of the country which he represents;

(*b*) a state representative may waive any immunity conferred by subsection (1) on himself or a member of his staff.

Part V
International Organizations, etc.

Immunities and privileges of certain international organizations and persons connected therewith

Fifth Schedule

24.—(1) The Minister may, by order—

(*a*) provide that any organization specified in the Fourth Schedule (hereinafter referred to as the organization) shall, to such extent as may be specified in the order, have the immunities and privileges set out in Part I of the Fifth Schedule, and shall also have the legal capacities of a body corporate;

(*b*) confer upon—

(i) any persons who are representatives (whether of governments or not) on any organ of the organization or are members of any committee of the organization or of an organ thereof;

(ii) such number of officers of the organization as may be specified in the order, being the holders of such high offices in the organization as may be so specified; and

(iii) such persons employed on missions on behalf of the organization as may be so specified,

to such extent as may be specified in the order, the immunities and privileges set out in Part II of the Fifth Schedule;

(*c*) confer upon such other classes of officers and servants of the organization as may be specified in the order, to such extent as may be so specified, the immunities and privileges set out in Part III of the Fifth Schedule,

and Part IV of the Fifth Schedule shall have effect for the purpose of extending to the staffs of such representatives and members as are mentioned in subparagraph (i) of paragraph (*b*) and to the families of officers of the organization, any immunities and privileges conferred on the representatives, members or officers under that paragraph, except in so far as the operation of Part IV of that Schedule is excluded by the order conferring the immunities and privileges.

(2) An order under subsection (1) shall be so framed as to secure that there are not conferred upon any person any immunities or privileges greater in extent than those which, at the time of the making of the order, are required to be conferred on that person in order to give effect to any international agreement in that behalf, and that no immunity or privilege is conferred upon any person as the representative of the Government or as a member of the staff of such representative.

Fourth Schedule

(3) The Minister may, by order, amend the Fourth Schedule.

Representatives of sovereign governments at international conferences

25. Where a conference is held in Malaŵi and is attended by representatives of the Government and the government or governments of one or more other States and it appears to the Minister that doubts may arise as to the extent to which the representatives of those States and members of their official staffs are entitled to diplomatic immunities and privileges, he may, by notice in the *Gazette* specify those persons and the Articles in the First Schedule which shall apply to them and, for the purposes of those Articles, every representative of a State who is named in the notice shall be deemed to be a head of mission and every member of his official staff named in the notice shall be deemed to be a member of the diplomatic staff.

External agencies which provide co-operation or co-assistance

26.—(1) Where the Government has, whether before or after the commencement of this Act, entered into any agreement with an external agency under which, in return for co-operation or assistance in works executed in, or services rendered to, Malaŵi by such agency, the Government has agreed that such agency or person in its service should enjoy any immunities or privileges, the Minister may, by Order—

(*a*) declare that such agency is one to which this section applies;

(*b*) provide that, to such extent as may be specified in the Order, such agency shall have the immunities and privileges set out in Part I of the Fifth Schedule;

(*c*) confer upon such classes of officers and servants of such agency as may be specified in the Order, to such extent as may be so specified, the immunities and privileges set out in Part III of the Fifth Schedule,

and for the purposes of any such Order references in the Fifth Schedule to the organization shall be construed as references to the external agency named in the Order.

(2) An Order under subsection (1) shall be so framed as to secure that there are not conferred on any person any immunities or privileges greater in extent than those which are required to be conferred on that person by the agreement concerned and that no immunity or privilege is conferred on any person who is a citizen of, or permanently resident in, Malaŵi.

(3) For the purposes of this section, "external agency" means—

(*a*) the government of a foreign State;

(*b*) any recognized agency of such a government;

(*c*) any internationally recognized foundation or other body.

Modifications with respect to the United Nations Organization

27. In its application to the United Nations Organization established by Charter at San Francisco on 25th June, 1945, this Part has effect subject to the following modifications—

(*a*) any reference to the governing body or any committee of the organization shall be construed as referring to the General Assembly or any council or other organ of the United Nations Organization; and

(*b*) the powers conferred upon the Minister by section 24 (1) shall include power to confer upon the judges and registrars of the International Court set up under the Charter and on suitors to that Court and their agents, counsel and advocates, such immunities, privileges and facilities as may be required to give effect to any resolution of, or convention approved by, the General Assembly.

Reciprocal treatment

28. Notwithstanding anything in this Part, the Minister may decline to accord immunities and privileges to, and may withdraw immunities and privileges from, nationals or representatives of any State on the ground that such State is failing to accord corresponding immunities and privileges to citizens or representatives of Malaŵi.

Part VI
General Provisions

Restriction and extension of privileges, immunities or powers

29. (1) Where the immunities and privileges conferred by Part II in relation to a State—

(*a*) exceed or are less than those accorded by the law of that State in relation to Malaŵi; or

(*b*) are less than those required by any treaty, convention or other international agreement to which that State and Malaŵi are parties,

the Minister may, by order, restrict or, as the case may be, extend those immunities and privileges to such extent as appears to him to be appropriate.

(2) Where the immunities, privileges or powers accorded in the territory of any State to a diplomatic mission or consular post of Malaŵi or to persons connected with that mission or post are less than those accorded by Part III or IV to the diplomatic mission or consular post of that State or to the persons connected therewith, the Minister may, by order, withdraw such of the immunities, privileges or powers accorded by Part III or IV from the diplomatic mission or consular post of that State or from persons connected therewith, as appears to him to be proper.

Admiralty jurisdiction of High Court

30. The High Court is declared to be a court of admiralty jurisdiction and shall, over the waters of Lake Malaŵi and other waters bordering partly upon Malaŵi and partly upon another State, have the same jurisdiction in respect of persons, matters or things thereon as the High Court in England has over the high seas and waters within its admiralty jurisdiction.

Special provisions relating to customs duty

31.—(1) If goods which have been imported or taken out of bond without payment of customs duty by a person in pursuance of any diplomatic immunity or privilege or other immunity or privilege conferred or granted by or under this Act, are sold or disposed of to a person who is not entitled to customs franchise privileges, the Controller of Customs and Excise may call upon the person selling or disposing of the goods or upon the person buying or receiving the goods to pay the duty thereon at the rate leviable at the date of the sale or disposal.

(2) For the purpose of determining the amount of duty payable on goods sold or disposed of after use, the Controller of Customs and Excise shall take into consideration the depreciation in value of such goods since their importation or removal from bond and shall, except in the case of motor vehicles, remit the duty if the sale or disposal is effected more than two years after the date of importation or removal from bond.

Evidence

32. If in any proceedings any question arises whether or not a person is entitled to the benefit of any privilege or immunity, or to exercise any power, under this Act, a certificate given by the Minister stating any fact relating to that question shall be conclusive evidence of that fact, and any certificate purporting to be signed by the Minister shall be presumed to have been signed by him until the contrary is proved.

Oaths and notarial acts

33. A diplomatic agent or consular officer of any State may, if authorized to do so under the laws of that State, administer oaths, take affidavits, and do notarial acts—

(*a*) required by any person for use in that State or under the laws thereof; or

(*b*) otherwise required by a national of that State but not for use in Malaŵi except under the laws of some other country.

FIRST SCHEDULE (ss. 20 and 25)

ARTICLES OF VIENNA CONVENTION ON DIPLOMATIC RELATIONS HAVING THE FORCE OF LAW IN MALAŴI

ARTICLE 1

For the purpose of the present Convention, the following expressions shall have the meanings hereunder assigned to them—

(*a*) the "head of the mission" is the person charged by the sending State with the duty of acting in that capacity;

(*b*) the "members of the mission" are the head of the mission and the members of the staff of the mission;

(*c*) the "members of the staff of the mission" are the members of the diplomatic staff, of the administrative and technical staff and of the service staff of the mission;

(*d*) the "members of the diplomatic staff" are the members of the mission having diplomatic rank;

(*e*) a "diplomatic agent" is the head of the mission or a member of the diplomatic staff of the mission;

(*f*) the "members of the administrative and technical staff" are the members of the staff of the mission employed in the administrative and technical service of the mission;

(*g*) the "members of the service staff" are the members of the staff on the mission in the domestic service of the mission;

(*h*) a "private servant" is a person who is in the domestic service of a member of the mission and who is not an employee of the sending State;

(*i*) the "premises of the mission" are the buildings or parts of the buildings and the land ancillary thereto, irrespective of ownership, used for the purposes of the mission including the residence of the head of the mission.

ARTICLE 22

1. The premises of the mission shall be inviolable. The agents of the receiving State may not enter them, except with the consent of the head of the mission.

2. The receiving State is under a special duty to take all appropriate steps to protect the premises of the mission against any intrusion or damage and to prevent any disturbance of the peace of the mission or impairment of its dignity.

3. The premises of the mission, their furnishings and other property thereon and the means of transport of the mission shall be immune from search, requisition, attachment or execution.

ARTICLE 23

1. The sending State and the head of the mission shall be exempt from all national, regional or municipal dues and taxes in respect of the premises of the mission, whether owned or leased, other than such as represent payment for specific services rendered.

2. The exemption from taxation referred to in this Article shall not apply to such dues and taxes payable under the law of the receiving State by persons contracting with the sending State or the head of the mission.

ARTICLE 24

The archives and documents of the mission shall be inviolable at any time and wherever they may be.

ARTICLE 27

1. The receiving State shall permit and protect free communication on the part of the mission for all official purposes. In communicating with the Government and other missions and consulates of the sending State, wherever situated, the mission may employ all appropriate means, including diplomatic couriers and messages in code or cipher. However, the mission may install and use a wireless transmitter only with the consent of the receiving State.

2. The official correspondence of the mission shall be inviolable. Official correspondence means all correspondence relating to the mission and its functions.

3. The diplomatic bag shall not be opened or detained.

4. The packages constituting the diplomatic bag must bear visible external marks of their character and may contain only diplomatic documents or articles intended for official use.

5. The diplomatic courier, who shall be provided with an official document indicating his status and the number of packages constituting the diplomatic bag, shall be protected by the receiving State in the performance of his functions. He shall enjoy personal inviolability and shall not be liable to any form of arrest or detention.

6. The sending State or the mission may designate diplomatic couriers *ad hoc*. In such cases the provisions of paragraph 5 of this Article shall also apply, except that the immunities therein mentioned shall cease to apply when such a courier has delivered to the consignee the diplomatic bag in his charge.

7. A diplomatic bag may be entrusted to the captain of a commercial aircraft scheduled to land at an authorized port of entry. He shall be provided with an official document indicating the number of packages constituting the bag but shall not be considered to be a diplomatic courier. The mission may send one of its members to take possession of the diplomatic bag directly and freely from the captain of the aircraft.

ARTICLE 28

The fees and charges levied by the mission in the course of its official duties shall be exempt from all dues and taxes.

ARTICLE 29

The person of a diplomatic agent shall be inviolable. He shall not be liable to any form of arrest or detention. The receiving State shall treat him with due respect and take all appropriate steps to prevent any attack on his person, freedom or dignity.

ARTICLE 30

1. The private residence of a diplomatic agent shall enjoy the same inviolability and protection as the premises of the mission.

2. His papers, correspondence and, except as provided in paragraph 3 of Article 31, his property, shall likewise enjoy inviolability.

ARTICLE 31

1. A diplomatic agent shall enjoy immunity from the criminal jurisdiction of the receiving State. He shall also enjoy immunity from its civil and administrative jurisdiction, except in the case of—

(*a*) a real action relating to private immoveable property situated in the territory of the receiving State, unless he holds it on behalf of the sending State for the purposes of the mission;

(*b*) an action relating to succession in which the diplomatic agent is involved as executor, administrator, heir or legatee as a private person and not on behalf of the sending State;

(*c*) an action relating to any professional or commercial activity exercised by the diplomatic agent in the receiving State outside his official functions.

2. A diplomatic agent is not obliged to give evidence as a witness.

3. No measures of execution may be taken in respect of a diplomatic agent except in the cases coming under subparagraphs (*a*), (*b*) and (*c*) of paragraph 1 of this Article, and provided that the measures concerned can be taken without infringing the inviolability of his person or of his residence.

4. The immunity of a diplomatic agent from the jurisdiction of the receiving State does not exempt him from the jurisdiction of the sending State.

ARTICLE 32

1. The immunity from jurisdiction of diplomatic agents and of persons enjoying immunity under Article 37 may be waived by the sending State.

2. The waiver must always be express.

3. The initiation of proceedings by a diplomatic agent or by a person enjoying immunity from jurisdiction under Article 37 shall preclude him from invoking immunity from jurisdiction in respect of any counterclaim directly connected with the principal claim.

4. Waiver of immunity from jurisdiction in respect of civil or administrative proceedings shall not be held to imply waiver of immunity in respect of the execution of the judgment, for which a separate waiver shall be necessary.

ARTICLE 33

1. Subject to the provisions of paragraph 3 of this Article, a diplomatic agent shall with respect to services rendered for the sending State be exempt from social security provisions which may be in force in the receiving State.

2. The exemption provided for in paragraph 1 of this Article shall also apply to private servants who are in the sole employ of a diplomatic agent, on condition—

(*a*) that they are not nationals of or permanently resident in the receiving State; and

(*b*) that they are covered by the social security provisions which may be in force in the sending State or a third State.

3. A diplomatic agent who employs persons to whom the exemption provided for in paragraph 2 of this Article does not apply shall observe the obligations which the social security provisions of the receiving State impose upon employers.

4. The exemption provided for in paragraphs 1 and 2 of this Article shall not preclude voluntary participation in the social security system of the receiving State provided that such participation is permitted by that State.

5. The provisions of this Article shall not affect bilateral or multilateral agreements concerning social security concluded previously and shall not prevent the conclusion of such agreements in the future.

ARTICLE 34

A diplomatic agent shall be exempt from all dues and taxes, personal or real, national, regional or municipal, except—

(*a*) indirect taxes of a kind which are normally incorporated in the price of goods or services;

(*b*) dues and taxes on private immovable property situated in the territory of the receiving State, unless he holds it on behalf of the sending State for the purposes of the mission;

(*c*) estate, succession or inheritance, duties levied by the receiving State, subject to the provisions of paragraph 4 of Article 39;

(*d*) dues and taxes on private income having its source in the receiving State and capital taxes on investments made in commercial undertakings in the receiving State;

(*e*) charges levied for specific services rendered;

(*f*) registration, court or record fees, mortgage dues and stamp duty, with respect to immovable property subject to the provisions of Article 23.

ARTICLE 35

The receiving State shall exempt diplomatic agents from all services, from all public service of any kind whatsoever, and from military obligations such as those connected with requisitioning, military contributions and billeting.

ARTICLE 36

1. The receiving State shall, in accordance with such laws and regulations as it may adopt, permit entry of and grant exemption from all customs duties, taxes, and related charges other than charges

for storage, cartage and similar services on—

(*a*) articles for the official use of the mission;

(*b*) articles for the personal use of a diplomatic agent or members of his family forming part of his household, including articles intended for his establishment.

2. The personal baggage of a diplomatic agent shall be exempt from inspection, unless there are serious grounds for presuming that it contains articles not covered by the exemptions mentioned in paragraph 1 of this Article, or articles the import or export of which is prohibited by the law or controlled by the quarantine regulations of the receiving State. Such inspection shall be conducted only in the presence of the diplomatic agent or of his authorized representative.

ARTICLE 37

1. The members of the family of a diplomatic agent forming part of his household shall, if they are not nationals of the receiving State, enjoy the privileges and immunities specified in Articles 29 to 36.

2. Members of the administrative and technical staff of the mission, together with members of their families forming part of their respective households, shall, if they are not nationals of or permanently resident in the receiving State, enjoy the privileges and immunities specified in Articles 29 to 35, except that the immunity from civil and administrative jurisdiction of the receiving State specified in paragraph 1 of Article 31 shall not extend to acts performed outside the course of their duties. They shall also enjoy the privileges specified in Article 36, paragraph 1, in respect of articles imported at the time of first installation.

3. Members of the service staff of the mission who are not nationals of or permanently resident in the receiving State shall enjoy immunity in respect of acts performed in the course of their duties, exemption from dues and taxes on the emoluments they receive by reason of their employment and the exemption contained in Article 33.

4. Private servants of members of the mission shall, if they are not nationals of or permanently resident in the receiving State, be exempt from dues and taxes on the emoluments they receive by reason of their employment. In other respects, they may enjoy privileges and immunities only to the extent admitted by the receiving State. However, the receiving State must exercise its jurisdiction over those persons in such a manner as not to interfere unduly with the performance of the functions of the mission.

ARTICLE 38

1. Except in so far as additional privileges and immunities may be granted by the receiving State, a diplomatic agent who is a national of or permanently resident in that State shall enjoy only immunity from jurisdiction, and inviolability, in respect of official acts performed in the exercise of his functions.

2. Other members of the staff of the mission and private servants who are nationals of or permanently resident in the receiving State shall enjoy privileges and immunities only to the extent admitted by the receiving State. However, the receiving State must exercise its jurisdiction over those persons in such a manner as not to interfere unduly with the performance of the functions of the mission.

ARTICLE 39

1. Every person entitled to privileges and immunities shall enjoy them from the moment he enters the territory of the receiving State on proceeding to take up his post, or if already in its territory, from the moment when his appointment is notified to the Ministry for Foreign Affairs or such other ministry as may be agreed.

2. When the functions of a person enjoying privileges and immunities have come to an end, such privileges and immunities shall normally cease at the moment when he leaves the country, or on expiry of a reasonable period in which to do so, but shall subsist until that time, even in case of armed conflict. However, with respect to acts performed by such a person in the exercise of his functions as a member of the mission, immunity shall continue to subsist.

3. In case of the death of a member of the mission, the members of his family shall continue to enjoy the privileges and immunities to which they are entitled until the expiry of a reasonable period in which to leave the country.

4. In the event of the death of a member of the mission not a national of or permanently resident in the receiving State or a member of his family forming part of his household, the receiving State shall permit the withdrawal of the moveable property of the deceased, with the exception of any property acquired in the country the export of which was prohibited at the time of his death. Estate, succession and inheritance duties shall not be levied on moveable property the presence of which in the receiving State was due solely to the presence there of the deceased as a member of the mission or as a member of the family or a member of the mission.

ARTICLE 40

1. If a diplomatic agent passes through or is in the territory of a third State, which has granted him a passport visa if such visa was necessary, while proceeding to take up or to return to his post, or when returning to his own country, the third State shall accord him inviolability and such other immunities as may be required to ensure his transit or return. The same shall apply in the case of any members of his family enjoying privileges or immunities who are accompanying the diplomatic agent, or travelling separately to join him or to return to their country.

2. In circumstances similar to those specified in paragraph 1 of this Article, third State shall not hinder the passage of members of the administrative and technical or service staff of a mission, and of members of their families, through their territories.

3. Third States shall accord to official correspondence and other official communications in transit, including messages in code or cipher, the same freedom and protection as is accorded by the receiving State. They shall accord to diplomatic couriers, who have been granted a passport visa if such visa was necessary, and diplomatic bags in transit the same inviolability and protection as the receiving State is bound to accord.

4. The obligations of third States under paragraphs 1, 2 and 3 of this Article shall also apply to the persons mentioned respectively in those paragraphs, and to official communications and diplomatic bags, whose presence in the territory of the third State is due to *force majeure*

SECOND SCHEDULE (ss. 21 and 23)

ARTICLES OF VIENNA CONVENTION ON CONSULAR RELATIONS HAVING THE FORCE OF LAW IN MALAŴI

ARTICLE 1

Definitions

1. For the purposes of the present Convention, the following expressions shall have the meanings hereunder assigned to them—

(*a*) "consular post", means any consulate-general, consulate, vice-consulate or consular agency;

(*b*) "consular district" means the area assigned to a consular post for the exercise of consular functions;

(*c*) "head of consular post" means the person charged with the duty of acting in that capacity;

(*d*) "consular officer" means any person, including the head of a consular post, entrusted in that capacity with the exercise of consular functions;

(*e*) "consular employee" means any person employed in the administrative or technical service of a consular post;

(*f*) "member of the service staff" means any person employed in the domestic service of consular post;

(*g*) "members of the consular post" means any consular officers, consular employees and members of the service staff;

(*h*) "members of the consular staff" means consular officers, other than the head of a consular post, consular employees and members of the service staff;

(i) "members of the private staff" means a person who is employed exclusively in the private service of a member of the consular post;

(*j*) "consular premises" means the buildings or parts of buildings and the land ancillary thereto, irrespective of ownership, used exclusively for the purposes of the consular post;

(*k*) "consular archives" includes all the papers, documents, correspondence, books, films, tapes and registers of the consular post, together with the ciphers and codes, the card-indexes and any article of furniture intended for their protection or safe-keeping.

2. Consular officers are of two categories, namely career consular officers and honorary consular officers. The provisions of Chapter II of the present Convention apply to consular posts headed by career consular officers; the provisions of Chapter III govern consular posts headed by honorary consular officers.

3. The particular status of members of the consular posts who are nationals or permanent residents of the receiving State is governed by Article 71 of the present Convention.

Chapter I—Consular Relations in General

Article 5

Consular Functions

Consular functions consist in—

(*a*) protecting in the receiving State the interests of the sending State and of its nationals, both individuals and bodies corporate, within the limits permitted by international law;

(*b*) furthering the development of commercial, economic, cultural and scientific relations between the sending State and the receiving State and otherwise promoting friendly relations between them in accordance with the provisions of the present Convention;

(*c*) ascertaining by all lawful means conditions and developments in the commercial, economic, cultural and scientific life of the receiving State, reporting thereon to the Government of the sending State and giving information to persons interested;

(*d*) issuing passports and travel documents to nationals of the sending State, and visas or appropriate documents to persons wishing to travel to the sending State;

(*e*) helping and assisting nationals, both individuals and bodies corporate, of the sending State;

(*f*) acting as notary and civil registrar and in capacities of a similar kind, and performing certain functions of an administrative nature, provided that there is nothing contrary thereto in the laws and regulations of the receiving State;

(*g*) safeguarding the interests of nationals, both individuals and bodies corporate, of the sending State in cases of succession *mortis causae* in the territory of the receiving State, in accordance with the laws and regulations of the receiving State;

(*h*) safeguarding, within the limits imposed by the laws and regulations of the receiving State, the interests of minors and other persons lacking full capacity who are nationals of the sending State, particularly where any guardianship or trusteeship is required with respect to such persons;

(*i*) subject to the practices and procedures obtaining in the receiving State, representing or arranging appropriate representation for nationals of the sending State before the tribunals and other authorities of the receiving State, for the purpose of obtaining, in accordance with the laws and regulations of the receiving State, provisional measures for the preservation of the rights and interests of these nationals, where, because of absence or any other reason, such nationals are unable at the proper time to assume the defence of their rights and interests;

(*j*) transmitting judicial and extra-judicial documents or executing letters rogatory or commissions to take evidence for the courts of the sending State in accordance with international agreements in force or, in the absence of such international agreements, in any other manner compatible with the laws and regulations of the receiving State;

(*k*) exercising rights of supervision and inspection provided for in the laws and regulations of the sending State in respect of vessels having the nationality of the sending State, and of aircraft registered in that State, and in respect of their crews;

(*l*) extending assistance to vessels and aircraft mentioned in subparagraph (*k*) of this Article, and to their crews, taking statements regarding the voyage of a vessel, examining and stamping the ship's papers, and, without prejudice to the powers of the authorities of the receiving State, conducting investigations into any incidents which occurred during the voyage, and settling disputes of any kind between the master, the officers and the seamen in so far as this may be authorized by the laws and regulations of the sending State;

(*m*) performing any other functions entrusted to a consular post by the sending State which are not prohibited by the laws and regulations of the receiving State or to which no objection is taken by the receiving State or which are referred to in the international agreements in force between the sending State and the receiving State.

Article 17

Performance of Diplomatic Acts by Consular Officers

1. In a State where the sending State has no diplomatic mission and is not represented by a diplomatic mission of a third State, a consular officer may, with the consent of the receiving State, and without affecting his consular status, be authorized to perform diplomatic acts. The performance of such acts by a consular officer shall not confer upon him any right to claim diplomatic privileges and immunities.

2. A consular officer may, after notification addressed to the receiving State, act as representative of the sending State to any inter-governmental organization. When so acting, he shall be entitled to enjoy any privileges and immunities accorded to such a representative by customary international law or by international agreements; however, in respect of the performance by him of any consular function, he shall not be entitled to any greater immunity from jurisdiction than that to which a consular officer is entitled under the present Convention.

Chapter II—Facilities, Privileges and Immunities Relating to Consular Posts, Career Consular Officers and Other Members of a Consular Post

Section I—Facilities, Privileges and Immunities Relating to a Consular Post

Article 31

Inviolability of the Consular Premises

1. Consular premises shall be inviolable to the extent provided in this Article.

2. The authorities of the receiving State shall not enter that part of the consular premises which is used exclusively for the purpose of the work of the consular post except with the consent of the head of the consular post or of his designee or of the head of the diplomatic mission

of the sending State. The consent of the head of the consular post may, however, be assumed in case of fire or other disaster requiring prompt protective action.

3. Subject to the provisions of paragraph 2 of this Article, the receiving State is under a special duty to take all appropriate steps to protect the consular premises against any intrusion or damage and to prevent any disturbance of the peace of the consular post or impairment of its dignity.

4. The consular premises, their furnishings, the property of the consular post and its means of transport shall be immune from any form of requisition for purposes of national defence or public utility. If expropriation is necessary for such purposes, all possible steps shall be taken to avoid impeding the performance of consular functions, and prompt, adequate and effective compensation shall be paid to the sending State.

ARTICLE 32

Exemption from Taxation of Consular Premises

1. Consular premises and the residence of the career head of consular post of which the sending State or any person acting on its behalf is the owner or lessee shall be exempt from all national, regional or municipal dues and taxes whatsoever, other than such as represent payment for specific services rendered.

2. The exemption from taxation referred to in paragraph 1 of this Article shall not apply to such dues and taxes if, under the law of the receiving State, they are payable by the person who contracted with the sending State or with the person acting on its behalf.

ARTICLE 33

Inviolability of the Consular Archives and Documents

The consular archives and documents shall be inviolable at all times and wherever they may be.

ARTICLE 34

Freedom of Movement

Subject to its laws and regulations concerning zones entry into which is prohibited or regulated for reasons of national security, the receiving State shall ensure freedom of movement and travel in its territory to all members of the consular post.

ARTICLE 35

Freedom of Communication

1. The receiving State shall permit and protect freedom of communication on the part of the consular post for all official purposes. In communicating with the Government, the diplomatic missions and other consular posts, wherever situated, of the sending State, the consular post may employ all appropriate means, including diplomatic or consular couriers, diplomatic or consular bags and messages in code or cipher. However, the consular post may install and use a wireless transmitter only with the consent of the receiving State.

2. The official correspondence of the consular post shall be inviolable. Official correspondence means all correspondence relating to the consular post and its functions.

3. The consular bag shall be neither opened nor detained. Nevertheless, if the competent authorities of the receiving State have serious reason to believe that the bag contains something other than the correspondence, documents or articles referred to in paragraph 4 of this Article, they may request that the bag be opened in their presence by an authorized representative of the sending State. If this request is refused by the authorities of the sending State, the bag shall be returned to its place of origin.

4. The packages constituting the consular bag shall bear visible external marks of their character and may contain only official correspondence and documents or articles intended exclusively for official use.

5. The consular courier shall be provided with an official document indicating his status and the number of packages constituting the consular bag. Except with the consent of the receiving State he shall be neither a national of the receiving State, nor, unless he is a national of the sending State, a permanent resident of the receiving State. In the performance of his functions he shall be protected by the receiving State. He shall enjoy personal inviolability and shall not be liable to any form of arrest or detention.

6. The sending State, its diplomatic missions and its consular posts may designate consular couriers *ad hoc*. In such cases the provisions of paragraph 5 of this Article shall also apply except that the immunities therein mentioned shall cease to apply when such a courier has delivered to the consignee the consular bag in his charge.

7. A consular bag may be entrusted to the captain of a ship or of a commercial aircraft scheduled to land at an authorized port of entry. He shall be provided with an official document indicating the number of packages constituting the bag, but he shall not be considered to be a consular courier. By arrangement with the appropriate local authorities, the consular post may send one of its members to take possession of the bag directly and freely from the captain of the ship or of the aircraft.

Article 36

Communication and Contact With Nationals of the Sending State

1. With a view to facilitating the exercise of consular functions relating to nationals of the sending State—

(*a*) consular officers shall be free to communicate with nationals of the sending State and to have access to them. Nationals of the sending State shall have the same freedom with respect to communication with and access to consular officers of the sending State;

(*b*) if he so requests, the competent authorities of the receiving State shall, without delay, inform the consular post of the sending State if, within its consular district, a national of that State is arrested or committed to prison or to custody pending trial or is detained in any other manner. Any communication addressed to the consular

post by the person arrested, in prison, custody or detention shall also be forwarded by the said authorities without delay. The said authorities shall inform the person concerned without delay of his rights under this subparagraph;

(*c*) consular officers shall have the right to visit a national of the sending State who is in prison, custody or detention, to converse and correspond with him and to arrange for his legal representation. They shall also have the right to visit any national of the sending State who is in prison, custody or detention in their district in pursuance of a judgment. Nevertheless, consular officers shall refrain from taking action on behalf of a national who is in prison, custody or detention if he expressly opposes such action.

2. The rights referred to in paragraph 1 of this Article shall be exercised in conformity with the laws and regulations of the receiving State, subject to the proviso, however, that the said laws and regulations must enable full effect to be given to the purposes for which the rights accorded under this Article are intended.

ARTICLE 38

Communication with the Authorities of the Receiving State

In the exercise of their functions, consular officers may address—

(*a*) the competent local authorities of their consular district;

(*b*) the competent central authorities of the receiving State if and to the extent that this is allowed by the laws, regulations and usages of the receiving State or by the relevant international agreements.

ARTICLE 39

Consular Fees and Charges

1. The consular post may levy in the territory of the receiving State the fees and charges provided by the laws and regulations of the sending State for consular acts.

2. The sums collected in the form of the fees and charges referred to in paragraph 1 of this Article, and the receipts for such fees and charges, shall be exempt from all dues and taxes in the receiving State.

SECTION II—FACILITIES, PRIVILEGES AND IMMUNITIES RELATING TO CAREER CONSULAR OFFICERS AND OTHER MEMBERS OF A CONSULAR POST

ARTICLE 41

Personal Inviolability of Consular Officers

1. Consular officers shall not be liable to arrest or detention pending trial, except in the case of a grave crime and pursuant to a decision by the competent judicial authority.

2. Except in the case specified in paragraph 1 of this Article, consular officers shall not be committed to prison or liable to any other form of restriction on their personal freedom save in execution of a judicial decision of final effect.

3. If criminal proceedings are instituted against a consular officer, he must appear before the competent authorities. Nevertheless, the proceedings shall be conducted with the respect due to him by reason

of his official position and, except in the case specified in paragraph 1 of this Article, in a manner which will hamper the exercise of consular functions as little as possible. When, in the circumstances mentioned in paragraph 1 of this Article, it has become necessary to detain a consular officer, the proceedings against him shall be instituted with the minimum of delay.

ARTICLE 43

Immunity from Jurisdiction

1. Consular officers and consular employees shall not be amenable to the jurisdiction of the judicial or administrative authorities of the receiving State in respect of acts performed in the exercise of consular functions.

2. The provisions of paragraph 1 of this Article shall not, however, apply in respect of a civil action either—

(*a*) arising out of a contract concluded by a consular officer or a consular employee in which he did not contract expressly or impliedly as an agent of the sending State; or

(*b*) by a third party for damage arising from an accident in the receiving State caused by a vehicle, vessel or aircraft.

ARTICLE 44

Liability to give evidence

1. Members of a consular post may be called upon to attend as witnesses in the course of judicial or administrative proceedings. A consular employee or a member of the service staff shall not, except in the cases mentioned in paragraph 3 of this Article, decline to give evidence. If a consular officer should decline to do so, no coercive measure or penalty may be applied to him.

2. The authority requiring the evidence of a consular officer shall avoid interference with the performance of his functions. It may, when possible, take such evidence at his residence or at the consular post or accept a statement from him in writing.

3. Members of a consular post are under no obligations to give evidence concerning matters connected with the exercise of their functions or to produce official correspondence and documents relating thereto. They are also entitled to decline to give evidence as expert witnesses with regard to the law of the sending State.

ARTICLE 45

Waiver of Privileges and Immunities

1. The sending State may waive, with regard to a member of the consular post, any of the privileges and immunities provided for in Articles 41, 43 and 44.

2. The waiver shall in all cases be express, except as provided in paragraph 3 of this Article, and shall be communicated to the receiving State in writing.

3. The initiation of proceedings by a consular officer or a consular employee in a matter where he might enjoy immunity from jurisdiction under Article 43, shall preclude him from invoking immunity from jurisdiction in respect of any counterclaim directly connected with the principal claim.

4. The waiver of immunity for jurisdiction for the purposes of civil or administrative proceedings shall not be deemed to imply the waiver of immunity from the measures of execution resulting from the judicial decision; in respect of such measures, a separate waiver shall be necessary.

ARTICLE 46

Exemption from Registration of Aliens and Residence Permits

1. Consular officers and consular employees and members of their families forming part of their households shall be exempt from all obligations under the laws and regulations of the receiving State in regard to the registration of aliens and residence permits.

2. The provisions of paragraph 1 of this Article shall not, however, apply to any consular employee who is not a permanent employee of the sending State or who carries on any private gainful occupation in the receiving State or to any member of the family of any such employee.

ARTICLE 47

Exemption from Work Permits

1. Members of the consular post shall, with respect to services rendered for the sending State, be exempt from any obligations in regard to work permits imposed by the laws and regulations of the receiving State concerning the employment of foreign labour.

2. Members of the private staff of consular officers and of consular employees shall, if they do not carry on any other gainful occupation in the receiving State, be exempt from the obligations referred to in paragraph 1 of this Article.

ARTICLE 48

Social Security Exemption

1. Subject to the provisions of paragraph 3 of this Article, members of the consular post with respect to services rendered by them for the sending State, and members of their families forming part of their households, shall be exempt from social security provisions which may be in force in the receiving State.

2. The exemption provided for in paragraph 1 of this Article shall apply also to members of the private staff who are in the sole employ of members of the consular post, on condition—

(*a*) that they are not nationals of or permanently resident in the receiving State; and

(*b*) that they are covered by the social security provisions which are in force in the sending State or a third State.

3. Members of the consular post who employ persons to whom the exemption provided for in paragraph 2 of this Article does not apply shall observe the obligations which the social security provisions of the receiving State impose upon employers.

4. The exemption provided for in paragraphs 1 and 2 of this Article shall not preclude voluntary participation in the social security system of the receiving State, provided that such participation is permitted by that State.

ARTICLE 49

Exemption from Taxation

1. Consular officers and consular employees and members of their families forming part of their households shall be exempt from all dues and taxes, personal or real, national, regional or municipal, except—

(*a*) indirect taxes of a kind which are normally incorporated in the price of goods or services;

(*b*) dues or taxes on private immoveable property situated in the territory of the receiving State, subject to the provisions of Article 32;

(*c*) estate, succession or inheritance duties, and duties on transfers, levied by the receiving State, subject to the provisions of paragraph (*b*) of Article 51;

(*d*) dues and taxes on private income, including capital gains, having its source in the receiving State and capital taxes relating to investments made in commercial or financial undertakings in the receiving State;

(*e*) charges levied for specific services rendered;

(*f*) registration, court or record fees, mortgage dues and stamp duties, subject to the provisions of Article 32.

2. Members of the service staff shall be exempt from dues and taxes on the wages which they receive for their services.

3. Members of the consular post who employ persons whose wages or salaries are not exempt from income tax in the receiving State shall observe the obligations which the laws and regulations of that State impose upon employers concerning the levying of income tax.

ARTICLE 50

Exemption from Customs Duties and Inspection

1. The receiving State shall, in accordance with such laws and regulations as it may adopt, permit entry of and grant exemption from all customs duties, taxes, and related charges other than charges for storage, cartage and similar services, on—

(*a*) articles for the official use of the consular post;

(*b*) articles for the personal use of a consular officer or member of his family forming part of his household, including articles intended for his establishment. The articles intended for consumption shall not exceed the quantities necessary for direct utilization by the persons concerned.

2. Consular employees shall enjoy the privileges and exemptions specified in paragraph 1 of this Article in respect of articles imported at the time of first installation.

3. Personal baggage accompanying consular officers and members of their families forming part of their households shall be exempt from inspection. It may be inspected only if there is serious reason to believe that it contains articles other than those referred to in subparagraph (*b*) of paragraph 1 of this Article, or articles the import or export of which is prohibited by the laws and regulations of the

receiving State or which are subject to its quarantine laws and regulations. Such inspection shall be carried out in the presence of the consular officer or member of his family concerned.

ARTICLE 51

Estate of a Member of the Consular Post or of a Member of his Family

In the event of the death of a member of the consular post or of a member of his family forming part of his household, the receiving State—

(*a*) shall permit the export of the moveable property of the deceased, with the exception of any such property acquired in the receiving State the export of which was prohibited at the time of his death;

(*b*) shall not levy national, regional or municipal estate, succession of inheritance duties, and duties on transfers, on moveable property the presence of which in the receiving State was due solely to the presence in that State of the deceased as a member of the consular post or as a member of the family of a member of the consular post.

ARTICLE 52

Exemption from Personal Services and Contributions

The receiving State shall exempt members of the consular post and members of their families forming part of their households from all personal services, from all public service of any kind whatsoever, and from military obligations such as those connected with requisitioning military contributions and billeting.

ARTICLE 53

Beginning and End of Consular Privileges and Immunities

1. Every member of the consular post shall enjoy the privileges and immunities provided in the present Convention from the moment he enters the territory of the receiving State on proceeding to take up his post or, if already in its territory, from the moment when he enters on his duties with the consular post.

2. Members of the family of a member of the consular post forming part of his household and members of his private staff shall receive the privileges and immunities provided in the present Convention from the date from which he enjoys privileges and immunities in accordance with paragraph 1 of this Article or from the date of their entry into the territory of the receiving State or from the date of their becoming a member of such family or private staff, whichever is the latest.

3. When the functions of a member of the consular post have come to an end, his privileges and immunities and those of a member of his family forming part of his household or a member of his private staff shall normally cease at the moment when the person concerned leaves the receiving State or on the expiry of a reasonable period in which to do so, whichever is the sooner, but shall subsist until that time, even in case of armed conflict. In the case of the persons referred to in paragraph 2 of this Article, their privileges and immunities shall come to an end

when they cease to belong to the household or to be in the service of a member of the consular post provided, however, that if such persons intend leaving the receiving State within a reasonable period thereafter, their privileges and immunities shall subsist until the time of their departure.

4. However, with respect to acts performed by a consular officer or a consular employee in the exercise of his functions, immunity from jurisdiction shall continue to subsist without limitation of time.

5. In the event of the death of a member of the consular post, the members of his family forming part of his household shall continue to enjoy the privileges and immunites accorded to them until they leave the receiving State or until the expiry or a reasonable period enabling them to do so whichever is the sooner.

Article 54

Obligations of Third States

1. If a consular officer passes through or is in the territory of a third State, which has granted him a visa if a visa was necessary, while proceeding to take up or return to his post or when returning to the sending State, the third State shall accord to him all immunities provided for by the other Articles of the present Convention as may be required to ensure his transit or return. The same shall apply in the case of any member of his family forming part of his household enjoying such privileges and immunities who are accompanying the consular officer or travelling separately to join him or to return to the sending State.

2. In circumstances similar to those specified in paragraph 1 of this Article, third States shall not hinder the transit through their territory of other members of the consular post or of members of their families forming part of their households.

3. Third States shall accord to official correspondence and to other official communications in transit, including messages in code or cipher, the same freedom and protection as the receiving State is bound to accord under the present Convention. They shall accord to consular couriers who have been granted a visa, if a visa was necessary, and to consular bags in transit, the same inviolability and protection as the receiving State is bound to accord under the present Convention.

4. The obligations of third States under paragraphs 1, 2 and 3 of this Article shall also apply to the persons mentioned respectively in those paragraphs, and to official communications and to consular bags, whose presence in the territory of the third State is due to *force majeure*

Article 55

Respect for the Laws and Regulations of the Receiving State

1. Without prejudice to their privileges and immunities, it is the duty of all persons enjoying such privileges and immunities to respect the laws and regulations of the receiving State. They also have a duty not to interfere in the international affairs of that State.

2. The consular premises shall not be used in any manner incompatible with the exercise of consular functions.

3. The provisions of paragraph 2 of this Article shall not exclude the possibility of offices of other institutions or agencies being installed in part of the building in which the consular premises are situated, provided that the premises assigned to them are separate from those used by the consular post. In that event, the said officers shall not for the purposes of the present Convention, be considered to form part of the consular premises.

Article 56

Insurance Against Third Party Risks

Members of the consular post shall comply with any requirement imposed by the laws and regulations of the receiving State in respect of insurance against third party risks arising from the use of any vehicle, vessel or aircraft.

Article 57

Special Provisions Concerning Private Gainful Occupation

1. Career consular officers shall not carry on for personal profit any professional or commercial activity in the receiving State.

2. Privileges and immunities provided in this Chapter shall not be accorded—

(*a*) to consular employees or to members of the service staff who carry on any private gainful occupation in the receiving State;

(*b*) to members of the family of a person referred to in subparagraph (*a*) of this paragraph to members of his private staff;

(*c*) to members of the family of a member of a consular post who themselves carry on any private gainful occupation in the receiving State.

Chapter III—Regime Relating to Honorary Consular Officers and Consular Posts Headed by such Officers

Article 58

General Provisions Relating to Facilities, Privileges and Immunities

1. Articles 28, 29, 30, 34, 35, 36, 37, 38, and 39 paragraph 3 of Article 54 and paragraphs 2 and 3 of Article 55 shall apply to consular posts headed by an honorary consular officer. In addition, the facilities, privileges and immunities of such consular posts shall be governed by Articles, 59, 60, 61 and 62.

2. Articles 42 and 43, paragraph 3 of Article 44, Articles 45 and 53 and paragraph 1 of Article 55 shall apply to honorary consular officers. In addition, the facilities, privileges and immunities of such consular officers shall be governmed by Articles 63, 64, 65, 66 and 67.

3. Privileges and immunities provided in the present Convention shall not be accorded to members of the family of an honorary consular officer or of a consular employee employed at a consular post headed by an honorary consular officer.

4. The exchange of consular bags between two consular posts headed by honorary consular officers in different States shall not be allowed without the consent of the two receiving States concerned.

ARTICLE 59

Protection of the Consular Premises

The receiving State shall take such steps as may be necessary to protect the consular premises of a consular post headed by an honorary consular officer against any intrusion or damage and to prevent any disturbance of the peace of the consular post or impairment of its dignity.

ARTICLE 60

Exemption from Taxation of Consular Premises

1. Consular premises of a consular post headed by an honorary consular officer of which the sending State is the owner or lessee shall be exempt from all national, regional or municipal dues and taxes whatsoever, other than such as represent payment for specific services rendered.

2. The exemption from taxation referred to in paragraph 1 of this Article shall not apply to such dues and taxes if, under the laws and regulations of the receiving State, they are payable by the person who contracted with the sending State.

ARTICLE 61

Inviolability for Consular Archives and Documents

The consular archives and documents of a consular post headed by an honorary consular officer shall be inviolable at all times and wherever they may be, provided that they are kept separate from other papers and documents and, in particular, from the private correspondence of the head of a consular post and of any person working with him, and from the materials, books or documents relating to their profession or trade.

ARTICLE 62

Exemption from Customs Duties

The receiving State shall, in accordance with such laws and regulations as it may adopt, permit entry of, and grant exemption from all customs duties, taxes, and related charges other than charges for storage, cartage and similar services on the following articles, provided that they are for the official use of a consular post headed by an honorary consular officer: coat of arms, flags, signboards, seals and stamps, books, official printed matter, office furniture, office equipment and similar articles supplied by or at the instance of the sending State to the consular post.

ARTICLE 63

Criminal Proceedings

If criminal proceedings are instituted against an honorary consular officer, he must appear before the competent authorities. Nevertheless, the proceedings shall be conducted with the respect due to him by reason of his official position and, except when he is under arrest or

detention, in a manner which will hamper the exercise of consular functions as little as possible. When it has become necessary to detain an honorary consular officer, the proceedings against him shall be instituted with the minimum of delay.

ARTICLE 65

Exemption from Registration of Aliens and Residence Permits

Honorary consular officers, with the exception of those who carry on for personal profit any professional or commercial activity in the receiving State, shall be exempt from all obligations under the laws and regulations of the receiving State in regard to the registration of aliens and residence permits.

ARTICLE 66

Exemption from Taxation

An honorary consular officer shall be exempt from all dues and taxes on the remuneration and emoluments which he receives from the sending State in respect of the exercise of consular functions.

ARTICLE 67

Exemption from Personal Services and Contributions

The receiving State shall exempt honorary consular officers from all personal services and from all public services of any kind whatsoever and from military obligations such as those connected with requisitioning, military contributions and billeting.

CHAPTER IV—GENERAL PROVISIONS

ARTICLE 70

Exercise of Consular Functions by Diplomatic Missions

1. The provisions of the present Convention apply also, so far as the context permits, to the exercise of consular functions by a diplomatic mission.

2. The names of members of a diplomatic mission assigned to the consular section or otherwise charged with the exercise of the consular functions of the mission shall be notified to the Ministry for Foreign Affairs of the receiving State or to the authority designated by that Ministry.

3. In the exercise of consular functions a diplomatic mission may address—

(*a*) the local authorities of the consular district;

(*b*) the central authorities of the receiving State if this is allowed by the laws, regulations and usages of the receiving State or by relevant international agreements.

4. The privileges and immunities of the members of a diplomatic mission referred to in paragraph 2 of this Article shall continue to be governed by the rules of international law concerning diplomatic relations.

ARTICLE 71

Nationals or Permanent Residents of the Receiving State

1. Except in so far as additional facilities, privileges and immunities may be granted by the receiving State, consular officers who are nationals of or permanently resident in the receiving State shall enjoy only immunity from jurisdiction and personal inviolability in respect of official acts performed in the exercise of their functions, and the privilege provided in paragraph 3 of Article 44. So far as these consular officers are concerned, the receiving State shall likewise be bound by the obligation laid down in Article 42. If criminal proceedings are instituted against such a consular officer, the proceedings shall, except when he is under arrest or detention, be conducted in a manner which will hamper the exercise of consular functions as little as possible.

2. Other members of the consular post who are nationals of or permanently resident in the receiving State and members of their families, as well as members of the families of consular officers referred to in paragraph 1 of this Article, shall enjoy facilities, privileges and immunities only in so far as these are granted to them by the receiving State. Those members of the families of members of the consular post and those members of the private staff who are themselves nationals of or permanently resident in the receiving State shall likewise enjoy facilities, privileges and immunities only in so far as these are granted to them by the receiving State. The receiving State shall, however, exercise its jurisdiction over those persons in such a way as not to hinder unduly the performance of the functions of the consular post.

THIRD SCHEDULE s. 22

PROVISIONS FOR GIVING EFFECT TO OTHER AGREEMENTS

1. The like exemption from dues and taxes may be extended to the residence of any member of a consular post as is accorded under Article 32 in the Second Schedule to this Act to the residence of a career head of a consular post.

2. Paragraph 1 of Article 49 in the said Second Schedule may be extended to members of the service staff.

3. Paragraph 2 of Article 50 in the said Second Schedule may be applied as if it were among the Articles mentioned in paragraph 2 of Article 58 in that Schedule, as if the reference to consular employees included members of the service staff and also such members of the families of consular employees or of members of the service staff as form part of their households, and as if the words "in respect of articles imported at the time of first installation" were omitted.

4. Articles 29 and 31 in the First Schedule to this Act may be extended to members of a consular post and members of their families forming part of their households.

5. Article 22 in the said First Schedule may be extended to consular premises, and paragraph 1 of Article 30 in that Schedule may be extended to the residences of consular officers.

6. Article 27 in the said First Schedule may be extended to the communications of a consular post.

FOURTH SCHEDULE s. 24

Organization

G.N. 78/1986
41/1987
132/1987
53/1988
12/1989
96/1989
70/1996
102/1996
17/1999
14/2001
11/2002
28/2003

1. The United Nations
2. The International Court of Justice
3. The International Labour Organization
4. The Food and Agriculture Organization
5. The International Civil Aviation Organization
6. The United Nations Educational, Scientific and Cultural Organization
7. The World Health Organization
8. The United Nations International Children's Emergency Fund
9. The Inter-Governmental Maritime Consultative Organization
10. The International Atomic Energy Agency
11. The International Refugee Organization
12. The International Telecommunication Union
13. The Universal Postal Union
14. The World Meteorological Organization
15. The Organization of African Unity
16. The Commonwealth Secretariat
17. The International Red Locust Control Organization for Central and Southern Africa
18. The Regional Testing Resource and Training Centre
19. The Southern African Regional Tourism Council
20. The Delegation of the Commission of the European Economic Community in Malaŵi (E.E.C. Commission Delegation)
21. The African Development Fund
22. The International Bank for Reconstruction and Development (otherwise known as the World Bank)
23. The United States Agency for International Development (otherwise referred to as "USAID")
24. The Multi-Country Posts and Telecommunications Training Centre
25. The International Council for Research in Agroforestry (otherwise referred to as "ICRAF")
26. The Southern African Development Coordination Conference (otherwise referred to as "SADCC")
27. The Eastern and Southern African Trade and Development Bank (otherwise referred to as "PTA Bank")
28. The Centro Internacional De Agricultura Tropical (otherwise referred to as "CIAT")
29. The African Foundation for Research and Development (otherwise referred to as "AFRAND")
30. The Malaŵi-Canada Programme Support Unit
31. Guidance, Counselling and Youth Development Centre for Africa
32. Southern African Development Parliamentary Forum (otherwise referred to as SADC Parliamentary Forum)
33. African Union Centre for Ticks and Tick-Borne Diseases (otherwise referred to as the "Centre")

FIFTH SCHEDULE ss. 21 and 22

Immunities and Privileges of an Organization and Officers Thereof

PART I

Immunities and Privileges of the Organization

1. Immunity from suit and legal process.

2. The like inviolability of premises occupied as offices and of official archives as is accorded by Articles 22 and 24 of the First Schedule to this Act.

3. The like exemption from rates and taxes, other than taxes on the importation of goods, as is accorded to a mission by the said First Schedule.

4. Exemption from taxes on the importation of goods directly imported by the organization for its official use in Malaŵi or for exportation, or on the importation of any publication of the organization directly imported by it, such exemption to be the subject to compliance with such conditions as any written law relating to customs and excise may prescribe.

5. Exemption from prohibitions and restrictions on importation or exportation in the case of goods directly imported or exported by the organization for its official use and in the case of any publications of the organization directly imported or exported by it.

6. The right to avail itself, for telegraphic communications sent by it and containing only matter intended for publication by the Press or for wireless broadcasting (including communications addressed to, or despatched from places outside Malaŵi), of any reduced rates applicable for the corresponding service in the case of Press telegrams.

PART II

Immunities and Privileges of Representatives, Members of Committees, High Officers and Persons on Missions

1. The like immunity from suit and legal process as is accorded to a diplomatic agent under the First Schedule to this Act.

2. The like inviolability of residence as is so accorded to such agent.

3. The like exemption or relief from taxes as is so accorded to such agent.

PART III

Immunities and Privileges of Other Officers and Servants

1. Immunity from suit and legal process in respect of things done or omitted to be done in the course of the performance of official duties.

2. Exemption from direct taxes upon the emoluments received as an officer or servant of the organization.

3. Immunity from national service obligations.

4. Immunity from immigration restrictions and alien registration in respect of the officers and servants and their spouses and dependent relatives.

5. The like privileges in respect of exchange control facilities as are accorded to officials of equivalent status forming part of a diplomatic mission.

6. The like facilities, for the officers and servants and their spouses and dependent relatives, for repatriation in times of international crises as are afforded to diplomatic missions.

7. Exemption from tax or duty on the importation of furniture, personal property and household effects of an officer or servant first arriving to take up his post in Malaŵi.

PART IV

Immunities and Privileges of Official Staffs and of the Families of High Officers

1. Where any person is entitled to any such immunities and privileges as are mentioned in Part II of this Schedule as a representative of any organ of the organization or as a member of any committee of the organization or of any organ thereof, his official staff accompanying him as such a representative or member shall also be entitled to those immunities and privileges, to the same extent, as are accorded to the members of the diplomatic staff of a mission by or under the First Schedule to this Act.

2. Where any person is entitled to any such immunities and privileges as are mentioned in Part II of this Schedule as an officer of the organization, that person's spouse and children under the age of twenty-one shall be entitled to the immunities and privileges accorded to the family of a diplomatic agent by or under the First Schedule to this Act.

SUBSIDIARY LEGISLATION

IMMUNITIES AND PRIVILEGES (UNITED STATES AGENCY FOR INTERNATIONAL DEVELOPMENT) ORDER

G.N. 40/1987

under s. 24 (1)

Citation

1. This Order may be cited as the Immunities and Privileges (United States Agency for International Development) Order.

Interpretation

2. In this Order—

"United States Agency for International Development" (hereinafter referred to as "USAID") means a Mission in Malaŵi of USAID, an Organization specified in the Fourth Schedule to the Act.

Immunities, privileges and legal capacities of USAID

3. USAID shall have all the immunities and privileges set out in Part I of the Fifth Schedule to the Act and shall also have all the legal capacities of a body corporate.

Immunities and privileges of representatives and staff of USAID

4. There are hereby conferred upon such persons, not being citizens of, or permanently resident in, Malaŵi, as USAID may in writing to the Minister of External Affairs designate by name as being—

(*a*) representatives of USAID or holders of such high offices of USAID as shall be specified in such writing, all the immunities and privileges set out in Part II of the Fifth Schedule to the Act;

(*b*) officers or servants of USAID of such class as shall be specified in such writing, all the immunities and privileges set out in Part III of the Fifth Schedule to the Act.

IMMUNITIES AND PRIVILEGES (MULTI-COUNTRY POSTS AND TELECOMMUNICATIONS TRAINING CENTRE) ORDER

G.N. 131/1987

under s. 24 (1)

Citation

1. This Order may be cited as the Immunities and Privileges (Multi-Country Posts and Telecommunications Training Centre) Order.

Immunities, privileges and legal capacities of the Centre

2. The Multi-country Posts and Telecommunications Training Centre (hereinafter referred to as the "Centre") shall have all the immunities and privileges set out in Part I of the Fifth Schedule to the Act and shall also have all the legal capacities of a body corporate.

Immunities and privileges of representatives and staff of the Centre G.N. 77/1989

3. There are hereby conferred upon such persons as the Centre may in writing to the Minister of External Affairs designate by name as being—

(*a*) representatives of the Centre or holders of such high offices of the Centre as shall be specified in such writing, all the immunities and privileges set out in Part II of the Fifth Schedule to the Act;

(*b*) officers or servants of the Centre of such class as shall be specified in such writing, all the immunities and privileges set out in Part III of the Fifth Schedule to the Act.

G.N. 77/1986

IMMUNITIES AND PRIVILEGES (WORLD BANK RESIDENT MISSION) ORDER

under s. 24 (3)

Citation

1. This Order may be cited as the Immunities and Privileges (World Bank Resident Mission) Order.

Interpretation

2. In this Order—

"Resident Mission" means the Resident Mission in Malaŵi of the World Bank, an organization specified in the Fourth Schedule to the Act."

Immunities, privileges and legal capacities of the Resident Mission

3. The Resident Mission shall have all the immunities and privileges set out in Part I of the Fifth Schedule to the Act, and shall also have all the legal capacities of a body corporate.

Immunities and privileges of representatives and staff of the Resident Mission

4. There are hereby conferred upon such persons, not being citizens of, or permanently resident in, Malaŵi, as the World Bank may in writing to the Minister of Finance designate by name as being—

(*a*) representatives of the Resident Mission or holders of such high offices of the Resident Mission as shall be specified in such writing, all the immunities and privileges set out in Part II of the Fifth Schedule to the Act;

(*b*) officers or servants of the Resident Mission of such class as shall be specified in such writing, all the immunities and privileges set out in Part III of the Fifth Schedule to the Act.

Immigration and Privileges (*International Council for Research in Agroforestry*) *Order/Immunities and Privileges* (*Southern African Development Co-ordination Conference*) *Order* **[Subsidiary]**

IMMUNITIES AND PRIVILEGES (INTERNATIONAL COUNCIL FOR RESEARCH IN AGROFORESTRY) ORDER

G.N. 52/1988

under s. 24 (1)

1. This Order may be cited as the Immunities and Privileges (International Council For Research in Agroforestry) Order. Citation

2. In this Order— Interpretation

"International Council for Research in Agroforestry" (hereinafter referred to as "ICRAF") means Mission in Malaŵi of ICRAF, an Organization specified in the Fourth Schedule to the Act.

3. ICRAF shall have all the immunities and privileges set out in Part I of the Fifth Schedule to the Act and shall also have all the capacities of a body corporate. Immunities, privileges and legal capacities of ICRAF

4. There are hereby conferred upon such persons, not being citizens of, or permanently resident in Malaŵi, as ICRAF may in writing to the Minister of External Affairs designate by name as being— Immunities and privileges of representatives and staff of ICRAF

(*a*) representatives of ICRAF or holders of such high offices of ICRAF as shall be specified in such writing, all the immunities and privileges set out in Part II of the Fifth Schedule to the Act;

(*b*) officers or servants of ICRAF of such class as shall be specified in such writing, all the immunities and privileges set out in Part II of the Fifth Schedule to the Act.

IMMUNITIES AND PRIVILEGES (SOUTHERN AFRICAN DEVELOPMENT CO-ORDINATION CONFERENCE) ORDER

G.N. 13/1989

1. This Order may be cited as the Immunities and Privileges (Southern African Development Co-ordination Conference) Order. Citation

2. The Southern African Development Co-ordination Conference (hereinafter referred to as "SADCC") shall have all the immunities and privileges set out in Part I of the Fifth Schedule to the Act and shall also have all the legal capacities of a body corporate. Immunities and privileges of SADCC

Immunities and privileges of representatives and staff of SADCC

3. There are conferred upon such persons, not being citizens of, or permanent residents in, Malaŵi, as SADCC may in writing to the Minister of External Affairs designate by name as being—

(*a*) representatives of SADCC or holders of such high offices of SADCC as shall be specified in such writing, all the immunities and privileges set out in Part II of the Fifth Schedule to the Act;

(*b*) officers or servants of SADCC of such class as shall be specified in such writing, all the immunities and privileges set out in Part III of the Fifth Schedule to the Act.

IMMUNITIES AND PRIVILEGES (EASTERN AND SOUTHERN AFRICAN TRADE AND DEVELOPMENT BANK) ORDER

Citation

1. This Order may be cited as the Immunities and Privileges (Eastern and Southern African Trade and Development Bank) Order.

Immunities and Privileges of PTA Bank

2. The Eastern and Southern African Trade and Development Bank (hereinafter referred to as "PTA Bank") shall have all the immunities and privileges set out in Part I of the Fifth Schedule to the Act and shall also have all the legal capacities of a body corporate.

Immunities and privileges of the representatives and staff of PTA Bank

3. There are conferred upon such persons as the PTA Bank may in writing to the Minister of External Affairs designate by name as being—

(*a*) representatives of PTA Bank or holders of such high offices of PTA Bank as shall be specified in such writing, all the immunities and privileges set out in Part II of the Fifth Schedule to the Act;

(*b*) officers or servants of PTA Bank of such class as shall be specified in such writing, all the immunities and privileges set out in Part III of the Fifth Schedule to the Act.

IMMUNITIES AND PRIVILEGES (CENTRO INTERNACIONAL DE AGRICULTURAL TROPICAL) ORDER

G.N. 69/1996

Citation

1. The Order may be cited as the Immunities and Privileges (Centro Internacional De Agricultura Tropical) Order.

Immunities, Privileges and legal capacities of CIAT

2. The Centro Intemacional De Agricultural Tropical (hereinafter referred to as "CIAT", being an organization specified in the Fourth Schedule to the Act, shall have all the immunities and privileges set out in Part I of the Fifth Schedule to the Act and shall also have all the legal capacities of a body corporate.

Immunities and privileges of representatives and staff of CIAT

3. There is hereby conferred upon such persons, not being citizens of, or permanently resident in Malaŵi, as CIAT may in writing to the Minister of Foreign Affairs designate by name as being—

(*a*) representatives of CIAT or holders of such high offices of CIAT as shall be specified in such writing, all the immunities and privileges set out in Part II of the Fifth Schedule to the Act; and

(*b*) officers and servants of CIAT of such class as shall be specified in such writing, all the immunities and privileges set out in Part III of the Fifth Schedule to the Act.

IMMUNITIES AND PRIVILEGES (AFRICAN FOUNDATION FOR RESEARCH AND DEVELOPMENT) ORDER

G.N. 71/1996

Citation

1. This Order may be cited as the Immunities and Privileges (African Foundation for Research and Development) Order.

Immunities, privileges and legal capacities of AFRAND

2. The African Foundation for Research and Development (hereinafter referred to as "AFRAND"), being an organization specified in the Fourth Schedule to the Act, shall have all the immunities and privileges set out in Part I of the Fifth Schedule to the Act and shall also have the legal capacities of a body corporate.

Immunities and privileges of representatives and staff of AFRAND

3. There is hereby conferred upon such persons, not being citizens of, or permanently resident in Malaŵi, as AFRAND may in writing to the Minister of Foreign Affairs designate by name as being—

(*a*) representatives of AFRAND or holders of such high offices of AFRAND as shall be specified in such writing, all the immunities and privileges set out in Part II of the Fifth Schedule to the Act; and

(*b*) officers and servants of AFRAND of such class as shall be specified in such writing, all the immunities and privileges set out in Part III of the Fifth Schedule to the Act.

G.N. 18/1999

IMMUNITIES AND PRIVILEGES (MALAŴI-CANADA PROGRAMME SUPPORT UNIT) ORDER

under s. 24 (1)

Citation

1. This Order may be cited as the Immunities and Privileges (Malaŵi-Canada Programme Support Unit) Order.

Immunities, privileges and legal capacities of the Unit

2. The Malaŵi-Canada Programme Support Unit (hereinafter referred to as "Unit"), being an organization specified in the Fourth Schedule to the Act, shall have all the immunities and privileges set out in Part I of the Fifth Schedule to the Act and shall also have all the legal capacities of a body corporate.

Immunities and privileges of representatives and staff of the Unit

3. There is hereby conferred upon such persons, not being citizen of Malaŵi, or permanently resident in Malaŵi, as Unit may in writing to the Minister of Foreign Affairs designate by name as being—

(*a*) representatives of Unit or holders of such high offices of Unit as shall be specified in such writing, all the immunities and privileges set out in Part II of the Fifth Schedule to the Act; and

(*b*) officers and servants of Unit of such class as shall be specified in such writing, all the immunities and privileges set out in Part III of the Fifth Schedule to the Act.

G.N. 13/2001

IMMUNITIES AND PRIVILEGES (GUIDANCE, COUNSELLING AND YOUTH DEVELOPMENT CENTRE FOR AFRICA) ORDER

under s. 24 (1)

Citation

1. This Order may be cited as the Immunities and Privileges (Guidance, Counselling and Youth Development Centre for Africa) Order.

Immunities, privileges and legal capacities of the Centre

2. The Guidance, Counselling and Youth Development Centre for Africa (hereinafter referred to as "Centre"), being an organization specified in the Fourth Schedule to the Act, shall have all the immunities and privileges set out in Part I of the Fifth Schedule to the Act and shall also have also the legal capacities of a body corporate.

Immunities and privileges of representatives and staff of the centre

3. There is hereby conferred upon such persons, not being citizens of Malaŵi, not permanently resident in Malaŵi, as the Centre may in writing to the Minister designate by name as being—

(*a*) representatives of the Centre or holder of such high offices of the Centre as shall be specified in such writing, all the immunities and privileges set out in Part II of the First Schedule to the Act; and

(*b*) officers and servants of the Centre of such class as shall be specified in such writing; all the immunities and privileges set out in Part III of the Fifth Schedule to the Act.

IMMUNITIES AND PRIVILEGES (SOUTHERN AFRICAN DEVELOPMENT COMMUNITY PARLIAMENTARY FORUM) ORDER

G.N. 10/2002

under s. 24 (3)

Citation

1. This Order may be cited as the Immunities and Privileges (Southern African Development Community Parliamentary Forum) Order.

Immunities, privileges and legal capacities of the SADC Parliamentary Forum

2. The Southern African Development Community Parliamentary Forum (hereinafter referred to as SADC Parliamentary Forum shall have all the immunities and privileges set out in Part I of the Fifth Schedule to the Act, and also have all the legal capacities of a body corporate.

Immunities, privileges and legal capacities of the SADC Parliamentary Forum

3. There are conferred upon such persons, not being citizens of, or permanent residents in Malaŵi, as the SADC Parliamentary Forum may in writing to the Minister of Foreign Affairs and International Cooperation designate by name being—

(*a*) representatives of the SADC Parliamentary Forum or holders of such high offices of the SADC Parliamentary Forum as shall be specified in writing, all immunities and privileges set out in Part II of the Fifth Schedule to the Act; and

(*b*) officers or servants of the SADC Parliamentary Forum of such class as shall be specified in such writing, all immunities and privileges set out in Part III of the Fifth Schedule to the Act.

G.N. 29/2003

IMMUNITIES AND PRIVILEGES (AFRICAN UNION CENTRE FOR TICKS AND TICK-BORNE DISEASES) ORDER

under s. 24 (3)

Citation

1. This Order may be cited as the Immunities and Privileges (African Union Centre for Ticks and Tick-Borne Diseases) Order.

Immunities and privileges and capacities of the centre

2. This African Union Centre for Ticks and Tick-Borne Diseases (hereinafter referred to as "the Centre") shall have all immunities and privileges set out in Part I of the Fifth Schedule to the Act, and also have all the legal capacities of a body corporate.

Immunities and privileges of representatives and staff of the centre

3. There are conferred upon such persons, not being citizens of, or permanent residents in Malaŵi, as the Centre may in writing to the Minister of Foreign Affairs and International Cooperation designate by name being—

(*a*) representatives of the Centre or holders of such high offices of the Centre as shall be specified in such writing, all immunities and privileges set out in Part II of the Fifth Schedule to the Act; and

(*b*) officers or servants of the Centre of such class as shall be specified in such writing, all immunities and privileges set out in Part III of the Fifth Schedule to the Act.

G.N. 27/2007

IMMUNITIES AND PRIVILEGES (AFRICAN DEVELOPMENT BANK) ORDER

under s. 24 (3)

Citation

1. This Order may be cited as the Immunities and Privileges (African Development Bank) Order.

Immunities and privileges and capacities of ADB

2. The African Development Bank (hereinafter referred to as the "Bank") shall have all immunities and privileges set out in Part I of the Fifth Schedule to the Act, and also have all the legal capacities of a body corporate.

Immunities and privileges of representatives and staff of ADB

3. There are conferred upon such persons, not being citizens of, or permanent residents in Malaŵi, as the Bank may in writing to the Minister of Foreign Affairs designate by name being—

(*a*) representatives of the Bank or holders of such high offices of as shall be specified in such writing, all immunities and privileges set in Part II of the Fifth Schedule to the Act; and

(*b*) officers or servants of the Bank of such class as shall be specified in such writing, all immunities and privileges set out in Part III of the Fifth Schedule to the Act.

IMMUNITIES AND PRIVILEGES (COMMONWEALTH SECRETARIAT) ORDER

G.N. 31/2007

under s. 24 (3)

Citation

1. This Order may be cited as the Immunities and Privileges (Commonwealth Secretariat) Order.

Immunities and privileges and legal capacities of the Secretariat

2. The Commonwealth Secretariat (hereinafter referred to as the "Secretariat") shall have all the immunities and privileges set out in Part I of the Fifth Schedule to the Act, and further shall have all the legal capacities of a body corporate.

Immunities and privileges of representatives and staff of the Secretariat

3. There are hereby conferred upon such persons, not being citizens of, or permanent residents in Malaŵi, as the Secretariat may in writing to the Minister of Foreign Affairs designate by name as being—

(*a*) representatives of the Secretariat or holders of such high offices of the Secretariat as shall be specified in such writing, all the immunities and privileges set out in Part II of the Fifth Schedule to the Act; and

(*b*) officers or servants of the Secretariat of such class as shall be specified in such writing, all the immunities and privileges set out in Part III of the Fifth Schedule to the Act.

G.N. 34/2011

IMMUNITIES AND PRIVILEGES (INTERNATIONAL CROPS INSTITUTE FOR THE SEMI-ARID TROPICS) ORDER

under s. 24 (1)

Citation

1. This Order may be cited as the Immunities and Privileges (International Crops Institute for the Semi-Arid Tropics) Order.

Immunities and privileges and capacity

2. International Crops Institute for the Semi-Arid Tropics (hereinafter referred to as "ICRISAT" shall have all the immunities and privileges set out in Part I of the Fifth Schedule of the Act and shall have all the legal capacities of a body corporate.

Immunities and privileges of representatives and staff of ICRISAT

3. There are hereby conferred upon such persons, not being citizens of, or permanently resident in, Malaŵi, as ICRISAT may, in writing to the Minister of Foreign Affairs, designate by name as being—

(*a*) representatives of ICRISAT or holders of such high offices of ICRISAT as shall be specifies in such writing, all the immunities and privileges set out in Part II of the Fifth Schedule to the Act; and

(*b*) officers or servants of ICRISAT of such class as shall be specified in such writing, all the immunities and privileges set out in Part II of the Fifth Schedule to the Act.

IMMUNITIES AND PRIVILEGES (MEDICINES SANS FRONTIERS) ORDER

G.N. 10/2016

Citation

1. This Order may be cited as the Immunities and Privileges (Medicines Sans Frontiers) Order.

Immunities and privileges and legal capacity of MSF

2. The Medicines Sans Frontiers (hereinafter referred to as "MSF"), being an organization specified in the Fourth Schedule to the Act, shall have all the immunities and privileges set out in Part 1 of the Fifth Schedule of the Act and shall also have all the legal capacities of a body corporate.

Immunities and privileges of representatives and staff of MSF

3. There are hereby conferred upon such persons, not being citizens of, or permanently resident in Malaŵi, as MSF may in writing to the Minister of Foreign Affairs and International Cooperation designate by name as being—

(*a*) representatives of MSF or holders of such high offices of MSF as shall be specified in such writing, all the immunities and privileges set out in Part II of the Fifth Schedule to the Act;

(*b*) officers or servants of MSF of such class as shall be specified in such writing, all the immunities and privileges set out in Part II of the Fifth Schedule to the Act.

IMMUNITIES AND PRIVILEGES (INTERNATIONAL POTATO CENTRE) ORDER

G.N. 11/2016

Citation

1. This Order may be cited as the Immunities and Privileges (International Potato Centre) Order.

Immunities and privileges and legal capacity of CIP

2. The International Potato Centre (hereinafter referred to as "CIP"), being an organization specified in the Fourth Schedule to the Act, shall have all the immunities and privileges set out in Part 1 of the Fifth Schedule of the Act and shall also have all the legal capacities of a body corporate.

Immunities and privileges of representatives and staff of CIP

3. There are hereby conferred upon such persons, not being citizens of, or permanently resident in Malaŵi, as CIP may in writing to the Minister of Foreign Affairs and International Cooperation designate by name as being—

(*a*) representatives of CIP or holders of such high offices of CIP as shall be specified in such writing, all the immunities and privileges set out in Part II of the Fifth Schedule to the Act;

(*b*) officers or servants of CIP of such class as shall be specified in such writing, all the immunities and privileges set out in Part II of the Fifth Schedule to the Act.

TREATIES AND CONVENTIONS PUBLICATION

CHAPTER 16:02

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CHAPTER 16:02
TREATIES AND CONVENTIONS PUBLICATION

ARRANGEMENT OF SECTIONS

SECTION

1. Short title
2. Publication of treaties, conventions and agreements, etc.
3. Version published to be in the English language and *prima facie* evidence
4. Publication deemed not to be a sufficient substitute if, for implementation, an Act or any subsidiary legislation is required

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An Act to enable the publication of certain international treaties, conventions and agreements to which the Government has acceded or become signatory, or of any article, term, covenant or provision contained therein, and to provide for matters incidental thereto and connected therewith 15 of 1984

[17TH APRIL, 1984]

1. This Act may be cited as the Treaties and Conventions Publication Act. Short title

2. Whenever the Minister is of opinion that an international treaty, convention or agreement to which the Government has acceded or become signatory, or any article, term, covenant or provision of any such treaty, convention or agreement, relates to or may in any manner affect any obligation or right, or the status, of any person ordinarily resident in Malaŵi, or any right of property in Malaŵi, or any commercial or other dealing or transaction between persons ordinarily so resident and residents or citizens of any foreign country, he may by Order cause to be published— Publication of treaties, conventions and agreements, etc.

(*a*) the whole of such treaty, convention or agreement; or

(*b*) such article, term, covenant or provision, or (as the case may be) such part, thereof as he deems to be relevant,

and in like manner he may amend any such Order.

3. The version of the whole or any part of an international treaty, convention or agreement or, as the case may be, of an article, term, covenant or provision thereof published pursuant to section 2 shall be in the English language and shall be *prima facie* evidence of the authentic English language version of such treaty, convention or agreement or part thereof, or of such article, term, covenant or provision thereof. Version published to be in the English language and *prima facie* evidence

Publication deemed not to be a sufficient substitute if, for implementation, an Act, or any subsidiary legislation is required

4. Where the whole or part of an international treaty, convention or agreement or any article, term, covenant or provision thereof either expressly or by reason of its subject matter impliedly requires for the purpose of its implementation or the giving to it of force or effect in Malaŵi, the enactment of an Act of Parliament or any subsidiary legislation, the publication thereof pursuant to section 2 shall not be deemed to be a sufficient substitute for that requirement or for such Act of Parliament or subsidiary legislation.

SUBSIDIARY LEGISLATION

G.N. 58/1987
74/1994
45/1995
19/1996
105/1996

TREATIES AND CONVENTIONS PUBLICATION (INTERNATIONAL AGREEMENTS) ORDER

under s. 2

1. This Order may be cited as the Treaties and Conventions Publication (International Agreements) Order. Citation

2. The Agreements set out in th e Schedule, being agreements entered into by the Government and other Governments, are hereby published pursuant to section 2 of the Act. Agreements entered into by Malaŵi and other Governments G.N. 58/1987

SCHEDULE para. 2 G.N. 58/1987

MALAŴI/ISRAEL

VISA ABOLITION AGREEMENT

(*Date entered into force:* 7th *November*, 1984)

ARTICLE 1

For the purposes of this Agreement—

"passport" means a regular national passport.

ARTICLE 2

Nationals of Malaŵi, holders of valid national passport, shall be exempt from the obligation of obtaining visas for a stay in Israel not exceeding three months.

ARTICLE 3

Israel nationals, holders of valid national passports, shall be exempt from the obligation of obtaining visitors' visas for a stay in Malaŵi not exceeding three months.

ARTICLE 4

Nationals of Malaŵi and Israel, who wish to stay in Israel or Malaŵi, respectively, for a period exceeding three months, shall obtain the necessary authorization from the competent authorities of the country concerned.

ARTICLE 5

Subject to the foregoing provisions, persons benefiting under this Agreement shall, while in Malaŵi or Israel, comply with the laws and regulations applicable to foreigners in respect of entry and residence, temporary or permanent, and shall not take up any employment, whether paid or unpaid, nor practise for personal profit any professional or commercial activity unless proper authority has been given by the respective Government.

ARTICLE 6

The Governments of Malaŵi and Israel reserve the right to refuse admission to persons not possessing a valid national passport or lacking adequate means of subsistence or otherwise ineligible under the general policy of the respective Governments relating to the entry of aliens.

ARTICLE 7

Each of the two Contracting parties undertakes to read-mit without formality, into its territory, any of its nationals.

ARTICLE 8

The Government of Israel and the Government of Malaŵi each reserves the right temporarily to suspend the application of this Agreement, except Article 7 thereof, for reasons of public order or national security, by giving the other Government immediate notice through diplomatic channels.

ARTICLE 9

This Agreement shall be subject to termination by either Government upon six months notice given in writing to the other Government.

G.N. 58/1987

MALAŴI/ZIMBABWE TRADE AGREEMENT (PARA. 2)

(*Date entered into force:* 1st *October*, 1986)

The Government of the Republic of Malaŵi and the Government of the Republic of Zimbabwe (hereinafter referred to as the "Contracting Parties"):

DESIROUS of promoting friendly relations and of development and facilitating trade and economic relations on the basis of equality and mutual advantage between their two countries;

CONVINCED that cooperation in trade is essential for achieving maximum development in their respective countries;

BEING Parties to the Treaty for the Establishment of the Preferential Trade Area for the Eastern and Southern African States done at Lusaka on 21st December, 1981,

HAVE AGREED as follows—

ARTICLE 1

1. The Contracting Parties shall grant each other the most favoured nation treatment in all matters relating to goods originating in and supplied directly from the territory of the other party. In particular, the most favoured nation treatment shall apply with respect to—

(*a*) customs duties and all other duties and taxes connected with the exportation and importation of goods;

(*b*) regulations and formalities;

(*c*) the issuance of export and import licences; and

(*d*) payment permits.

2. The provisions of clause (1) of this Article shall, however, not apply to advantages, concessions and exemptions which—

(*a*) either Contracting Party has granted or may grant to neighbouring countries in order to facilitate frontier traffic; and

(*b*) either Contracting Party has granted or may grant under a trade agreement or arrangement or to fellow member countries of a Customs Union, Free Trade Area, Monetary Zone or Economic Community already established or which may be established.

ARTICLE 2

1. The Contracting Parties shall make efforts to increase the volume of trade between them and, in accordance with the laws and regulations in force in their respective countries, grant each other within a reasonable time all requisite permits for the importation and exportation between their respective countries of commodities or goods specified in Annexes A and B.

2. The said Annexes "A" and "B" are, however, not exhaustive or limitative of the commodities or goods which may be exchanged by way of trade between the Contracting Parties, and may be updated from time to time.

3. The said Annexes "A" and "B" shall form an integral part of the Agreement.

ARTICLE 3

1. The Contracting Parties reserve the right to subject the importation of any commodities or goods to the submission of certificates of origin by an organization authorized in that behalf by the Government of the country of origin.

2. For the purpose of clause (1) of this Article, no goods shall be regarded as having been grown, produced or manufactured in the country of the Contracting Party supplying them unless at least twenty-five per cent, or such other percentage as may, from time to time be agreed upon between the Contracting Parties in respect of any specified goods, of the production costs of such goods is represented by materials wholly produced, or labour performed, in Malaŵi or Zimbabwe and the last process in the production or manufacture of such goods has taken place in such country.

ARTICLE 4

1. The exchange of goods and commodities between the Contracting Parties shall, under this Agreement, be subject to the laws and regulations relating to importation and exportation in force in their respective countries.

2. Commercial transactions under this Agreement shall be effected on the basis of contracts to be concluded between natural and juridical persons of the Contracting Parties. The natural and juridical persons referred to in this paragraph shall carry out their commercial transactions in their own capacities.

ARTICLE 5

1. The Contracting Parties shall, subject to the laws and regulations in force in their respective countries and on conditions agreed upon by the competent authorities of both parties, permit the importation and exportation, free of customs duties, taxes and other similar levies or charges not related to the payment for services, the following—

(*a*) samples of goods or commodities and publicity materials required only for obtaining orders and for advertising purposes of trade are not for sale and are of no commercial value;

(*b*) goods or commodities imported temporarily for the purposes of trade fair and exhibitions;

(*c*) goods or commodities imported temporarily for repair and re-exportation; and

(*d*) goods or commodities originating in or from a third country and transported through the country of one of the Contracting Parties destined for the country of the other Contracting Party.

2. Any goods or commodities imported pursuant to the provisions of clause (1) of this Article—

(*a*) shall not be sold, leased, lent or otherwise exchanged unless customs duties and all other duties and taxes connected with importation have been paid; and

(*b*) shall, unless sold, leased, lent or otherwise exchanged, be reexported on or before such date as shall be agreed upon between the Contracting Parties.

ARTICLE 6

To facilitate and promote the development of trade and commercial transactions under this Agreement, the Contracting Parties agree—

(*a*) to allow the organization of trade fairs and exhibitions in their respective countries in accordance with their laws and regulations; and

(*b*) to furnish each other, on request, with all necessary information concerning the possibilities of supplying goods originating from their respective countries.

ARTICLE 7

In order to facilitate transit traffic of commercial goods and commodities under this Agreement, the Contracting Parties agree—

(*a*) to facilitate freedom of transit of commodities or goods originating from the countries of either of them and destined for the country of a third party; and

(*b*) to facilitate freedom of transit of commodities of goods originating from the country of a third party and destined for the country of either of the Contracting Parties.

ARTICLE 8

Both Contracting Parties shall take measures as may be necessary to ensure that the prices for the commodities and goods to be exchanged under this Agreement shall be established on the basis of

world market prices. For the commodities and goods for which no world market prices can be established, competitive prices for similar goods and commodities of analogous quality shall apply.

ARTICLE 9

All payments between the Contracting Parties in pursuance of this Agreement shall be effected in accordance with the foreign exchange laws and regulations in force in their respective countries.

ARTICLE 10

Nothing in this Agreement shall be construed as affecting any rights and obligations arising from any existing international agreements or treaties already entered into by either of the Contracting Parties prior to the conclusion of this Agreement.

ARTICLE 11

1. The Government of the Republic of Zimbabwe hereby designates its Ministry of Trade and Commerce and the Government of the Republic of Malaŵi hereby designates its Ministry of Trade and Industry as their respective organs for the purpose of implementing this Agreement and other matters relating thereto.

2. Each Contracting Party shall have the right to designate in writing at any time, any other appropriate body, organization or Ministry in place of the one already designated in clause (1) of this Article.

ARTICLE 12

1. With the aim of ensuring the full and effective implementation of the provisions of this Agreement, a Joint Consultative Committee shall be established consisting of representatives from both Contracting Parties.

2. The Joint Consultative Committee shall meet, alternating between the capitals of both countries, at the request of one of the Contracting Parties.

3. The Joint Consultative Committee shall meet at such intervals as shall be agreed upon between the Contracting Parties, and the Contracting Party hosting meeting of the Joint Consultative Committee shall provide the Chairman of that meeting from its representatives.

4. The Joint Consultative Committee shall recommend to Contracting Parties all the measures it might deem necessary for the improvement of trade relations between them.

ARTICLE 13

The Contracting Parties shall strive to settle any problems, disputes or differences between them arising from this Agreement through mutual negotiation.

ARTICLE 14

Either Contracting Party may, by written notice through normal diplomatic channels, present to the other Party a request for modification or revision of this Agreement.

ARTICLE 15

On the coming into force of this Agreement, the provisions of any previous agreement or arrangement relating to trade between the countries of the Contracting Parties shall cease to have force or effect.

ARTICLE 16

1. This Agreement shall come into force on a date to be fixed by an exchange of diplomatic notes and shall remain in force for a period of 2 years thereafter.

2. This Agreement shall automatically be extended for additional two-year periods, unless either of the Contracting Parties notifies the other in writing of the intention to terminate the Agreement 180 days prior to its expiration.

3. At the termination of this Agreement, its provision and the provision of any separate contracts or agreements made in respect thereof shall continue to govern any unexpired and existing obligations assumed or commenced thereunder until they are fully executed.

DONE AT BLANTYRE in two originals each in the English language, both texts being equally authentic, on this 9th day of May, 1986.

ANNEX A

EXPORTS FROM MALAŴI

1. Accounting machines, calculating machines and similar machines incorporating a calculating device, statistical and data processing machines
2. Hardboard
3. Handicrafts
4. fishing flies
5. Fishing nets and sport nets
6. Candles
7. Brush ware

ANNEX B

EXPORTS FROM ZIMBABWE

1. Compound lard
2. Vermouth
3. Parquet blocks
4. Veneer sheets
5. Plywood and blockboard
6. Gramophone records
7. Brush ware

INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS G.N. 74/1994

(*Date entered into force:* 22nd *March*, 1994)

PREAMBLE

The States Parties to the present Covenant,

CONSIDERING that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world;

RECOGNIZING that these rights derive from the inherent dignity of the human person;

RECOGNIZING that, in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying civil and political freedom and freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his civil and political rights, as well as his economic, social and cultural rights;

CONSIDERING the obligation of States under the Charter of the United Nations to promote universal respect for, and observance of, human rights and freedoms;

REALIZING that the individual, having duties to other individuals and to the community to which he belongs, is under a responsibility to strive for the promotion and observance of the rights recognized in the present Covenant;

AGREE upon the following Articles—

PART I

ARTICLE 1

1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic cooperation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.

3. The States Parties to the present Covenant, including those having responsibility for the administration of Non-self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.

PART II

ARTICLE 2

1. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its

jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

2. Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such legislative or other measures as may be necessary to give effect to the rights recognized in the present Covenant.

3. Each State Party to the present Covenant undertakes—

(*a*) to ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;

(*b*) to ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy; and

(*c*) to ensure that the competent authorities shall enforce such remedies when granted.

ARTICLE 3

The State Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant.

ARTICLE 4

1. In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.

2. No derogation from Articles 6, 7, 8 (paragraphs 1 and 2), 11, 15, 16 and 18 may be made under this provision.

3. Any State Party to the present Covenant availing itself of the right of derogation shall immediately inform the other States Parties to the present Covenant, through the intermediary of the Secretary-General of the United Nations, of the provisions from which it has derogated and of the reasons by which it was actuated. A further communication shall be made, through the same intermediary, on the date on which it terminates such derogation.

ARTICLE 5

1. Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and

freedoms recognized herein or at their limitation to a greater extent than is provided for in the present Covenant.

2. There shall be no restriction upon or derogation from any of the fundamental human rights recognized or existing in any State Party to the present Covenant pursuant to law, conventions, regulations or custom on the pretext that the present Covenant does not recognize such rights or that it recognizes them to a lesser extent.

PART III

Article 6

1. Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.

2. In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgment rendered by a competent court.

3. When deprivation of life constitutes the crime of genocide, it is understood that nothing in this Article shall authorize any State Party to the present Covenant to derogate in any way from any obligation assumed under the provisions of the Convention on the Prevention and Punishment of the Crime of Genocide.

4. Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases.

5. Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women.

6. Nothing in this Article shall be invoked to delay or to prevent the abolition of capital punishment by any State Party to the present Covenant.

Article 7

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.

Article 8

1. No one shall be held in slavery; slavery and the slave trade in all their forms shall be prohibited.

2. No one shall be held in servitude.

3.—(*a*) No one shall be required to perform forced or compulsory labour.

(*b*) paragraph 3 (*a*) shall not be held to preclude, in countries where imprisonment with hard labour may be imposed as a punishment for a crime, the performance of hard labour in pursuance of a sentence to such punishment by a competent court;

(*c*) for the purpose of this paragraph the term "forced or compulsory labour" shall not include—

(i) any work or service, not referred to in sub-paragraph (*b*), normally required of a person who is under detention in consequence of a lawful order of a court, or of a person during conditional release from such detention;

(ii) any service of a military character and, in countries where conscientious objection is recognized, any national service required by law of conscientious objectors;

(iii) any service exacted in cases of emergency or calamity threatening the life or well-being of the community; and

(iv) any work or service which forms part of normal civil obligations.

ARTICLE 9

1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty, except on such grounds and in accordance with such procedures as are established by law.

2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.

3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgment.

4. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.

5. Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.

ARTICLE 10

1. All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.

2.—(*a*) Accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons.

(*b*) Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication.

3. The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation. Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status.

ARTICLE 11

No one shall be imprisoned merely on the ground of inability to fulfill a contractual obligation.

ARTICLE 12

1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.

2. Everyone shall be free to leave any country, including his own.

3. The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order, public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant.

4. No one shall be arbitrarily deprived of the right to enter his own country.

ARTICLE 13

An alien lawfully in the territory of a State Party to the present Covenant may be expelled therefrom only in pursuance of a decision reached in accordance with law and shall, except where compelling reasons of national security otherwise require, be allowed to submit the reasons against his expulsion and to have his case reviewed by, and be represented for the purpose before, the competent authority or a person or persons especially designated by the competent authority.

ARTICLE 14

1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The press and the public may be excluded from all or part of a trial for reasons of morals, public order or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgment rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.

2. Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.

3. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality—

(*a*) to be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;

(*b*) to have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;

(*c*) to be tried without undue delay;

(*d*) to be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;

(*e*) to examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

(*f*) to have the free assistance of an interpreter if he cannot understand or speak the language used in court; and

(*g*) not to be compelled to testify against himself or to confess guilt.

4. In the case of juvenile persons, the procedure shall be such as will take account of their age and desirability of promoting their rehabilitation.

5. Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.

6. When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him.

7. No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country.

ARTICLE 15

1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offence was committed. If, subsequent to the commission of the offence, provision is made by law for the imposition of the lighter penalty, the offender shall benefit thereby.

2. Nothing in this Article shall prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognized by the community of nations.

ARTICLE 16

Everyone shall have the right to recognition everywhere as a person before the law.

ARTICLE 17

1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.

2. Everyone has the right to the protection of the law against such interference or attacks.

ARTICLE 18

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.

2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.

3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.

4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religion and moral education of their children in conformity with their own convictions.

ARTICLE 19

1. Everyone shall have the right to hold opinions without interference.

2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

3. The exercise of the rights provided for in paragraph 2 of this Article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary—

(*a*) for respect of the rights or reputations of others; and

(*b*) for the protection of national security or of public order (*ordre public*), or of public health or morals.

ARTICLE 20

1. Any propaganda for war shall be prohibited by law.

2. Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.

ARTICLE 21

The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others.

ARTICLE 22

1. Everyone shall have the right to freedom of association with others, including the right to form and join unions for the protection of his interests.

2. No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right.

3. Nothing in this Article shall authorize States Parties to the International Labour Organization Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or to apply the law in such a manner as to prejudice, the guarantees provided for in that Convention.

ARTICLE 23

1. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

2. The right of men and women of marriageable age to marry and to found a family shall be recognized.

3. No marriage shall be entered into without the free and full consent of the intending spouses.

4. States Parties to the present Covenant shall take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution. In the case of dissolution, provision shall be made for the necessary protection of any children.

ARTICLE 24

1. Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State.

2. Every child shall be registered immediately after birth and shall have a name.

3. Every child has the right to acquire a nationality.

ARTICLE 25

Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in Article 2 and without unreasonable restrictions—

(*a*) to take part in the conduct of public affairs, directly or through freely chosen representatives;

(*b*) to vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors; and

(*c*) to have access, on general terms of equality, to public service in his country.

ARTICLE 26

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

ARTICLE 27

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.

PART IV

ARTICLE 28

1. There shall be established a Human Rights Committee (hereafter referred to in the present covenant as the Committee). It shall consist of eighteen members and shall carry out the functions hereinafter provided.

2. The Committee shall be composed of nationals of the States Parties to the present Covenant who shall be persons of high moral character and recognized competence in the field of human rights, consideration being given to the usefulness of the participation of some persons having legal experience.

3. The members of the Committee shall be elected and shall serve in their personal capacity.

ARTICLE 29

1. The members of the Committee shall be elected by secret ballot from a list of persons possessing the qualifications prescribed in Article 28 and nominated for the purpose by the States Parties to the present Covenant.

2. Each State Party to the present Covenant may nominate not more than two persons. These persons shall be nationals of the nominating State.

3. A person shall be eligible for renomination.

ARTICLE 30

1. The initial election shall be held no later than six months after the date of the entry into force of the present Covenant.

2. At least four months before the date of each election to the Committee, other than an election to fill a vacancy declared in accordance with Article 34, the Secretary-General of the United Nations shall address a written invitation to the State Parties to the present Covenant to submit their nominations for membership of the Committee within three months.

3. The Secretary-General of the United Nations shall prepare a list in alphabetical order of all the persons thus nominated, with an indication of the State Parties which have nominated them, and shall submit it to the States Parties to the present Covenant no later than one month before the date of each election.

4. Elections of the members of the Committee shall be held at a meeting of the State Parties to the present Covenant convened by the Secretary-General of the United Nations at the Headquarters of the United nations. At that meeting, for which two-thirds of the State Parties to the present Covenant shall constitute a quorum, the persons elected to the Committee shall be those nominees who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.

ARTICLE 31

1. The Committee may not include more than one national of the same State.

2. In the election of the Committee, consideration shall be given to equitable geographical distribution of membership and to the representation of the different forms of civilization and of the principal legal systems.

ARTICLE 32

1. The members of the Committee shall be elected for a term of four years. They shall be eligible for re-election if renominated. However, the terms of nine of the members elected at the first election shall expire at the end of two years; immediately after the first election, the names of these nine members shall be chosen by lot by the Chairman of the meeting referred to in Article 30, paragraph 4.

2. Elections at the expiry of office shall be held in accordance with the preceding Articles of this part of the present Covenant.

ARTICLE 33

1. If, in the unanimous opinion of the other members, a member of the Committee has ceased to carry out his functions for any cause other than absence of a temporary character, the Chairman of the Committee shall notify the Secretary-General of the United Nations, who shall then declare the seat of that member to be vacant.

2. In the event of the death or the resignation of a member of the Committee, the chairman shall immediately notify the Secretary-General of the United Nations, who shall declare the seat vacant from the date of death or the date on which the resignation takes effect.

ARTICLE 34

1. When a vacancy is declared in accordance with Article 33 and if the term of office of the member to be replaced does not expire within six months of the declaration of the vacancy, the Secretary-General of the United Nations shall notify each of the States Parties to the present Covenant, which may within two months submit nominations in accordance with Article 29 for the purpose of filling the vacancy.

2. The Secretary-General of the United Nations shall prepare a list in alphabetical order of the persons thus nominated and shall submit it to the States Parties to the present Covenant.

3. A member of the Committee elected to fill a vacancy declared in accordance with Article 33 shall hold office for the remainder of the term of the member who vacated the seat on the Committee under the provisions of that Article.

ARTICLE 35

The members of the Committee shall, with the approval of the General Assembly of the United Nations, receive emoluments from United Nations resources on such terms and conditions as the General Assembly may decide, having regard to the importance of the Committee's responsibilities.

ARTICLE 36

The Secretary-General of the United Nations shall provide the necessary staff and facilities of the effective performance of the functions of the Committee under the present Covenant.

ARTICLE 37

1. The Secretary-General of the United Nations shall convene the initial meeting of the Committee at the Headquarters of the United Nations.

2. After its initial meeting, the Committee shall meet at such times as shall be provided in its rules of procedure.

3. The Committee shall normally meet at the Headquarters of the United Nations or at the United Nations office at Geneva.

ARTICLE 38

Every member of the Committee shall, before taking up his duties, make a solemn declaration in open committee that he will perform his functions impartially and conscientiously.

ARTICLE 39

1. The Committee shall elect its officers for a term of two years. They may be reelected.

2. The Committee shall establish its own rules of procedure, but these rules shall provide, *inter alia*, that—

(*a*) twelve members shall constitute a quorum;

(*b*) decisions of the Committee shall be made by a majority vote of the members present.

ARTICLE 40

1. The State Parties to the present Covenant undertake to submit report on the measures they have adopted which give effect to the rights recognized herein and on the progress made in the enjoyment of those rights—

(*a*) within one year of the entry into force of the present Covenant for the States Parties concerned;

(*b*) thereafter whenever the Committee so requests.

2. All reports shall be submitted to the Secretary-General of the United Nations, who shall transmit them to the Committee for consideration. Reports shall indicate the factor and difficulties, if any, affecting the implementation of the present Covenant.

3. The Secretary-General of the United Nations may, after consultations with the Committee, transmit to the specialized agencies concerned copies of such parts of the reports as may fall within their field of competence.

4. The Committee shall study the reports submitted by the States Parties to the present Covenant. It shall transmit its reports, and such general comments as it may consider appropriate, to the States Parties. The Committee may also transmit to the Economic and Social Council these comments along with the copies of the reports it has received from States Parties to the present Covenant.

5. The States Parties to the present Covenant may submit to the Committee observations on any comments that may be made in accordance with paragraph 4 of this Article.

ARTICLE 41

1. A State Party to the present Covenant may at any time declare under this Article that it recognizes the competence of the Committee to receive and consider communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under the present Covenant. Communications under this article may be received and considered only if submitted by a State Party which has made a declaration recognizing in regard to itself the competence of the Committee. Communication shall be received by the Committee if it concerns a State Party which has not made such a declaration. Communications received under the Article shall be dealt with in accordance with the following procedure—

(*a*) if a State Party to the present Covenant considers that another State Party is not giving effect to the provisions of the present Covenant, it may, by written communication, bring the matter to the attention of the State Party. Within three months after the receipt of the communication the receiving State shall afford the State which sent the communication an explanation, or any other statement in writing clarifying the matter which should include, to the extent possible and pertinent, reference to domestic procedures and remedies taken, pending, or available in the matter;

(*b*) if the matter is not adjusted to the satisfaction of both States Parties concerned within six months after the receipt by the receiving State of the initial communication, either State shall have the right to refer the matter to the Committee, by notice given to the Committee and to the other State;

(*c*) the Committee shall deal with a matter referred to it only after it has ascertained that all available domestic remedies have

been invoked and exhausted in the matter, in conformity with the generally recognized principles of international law. This shall not be the rule where the application of the remedies is unreasonably prolonged;

(*d*) the Committee shall hold closed meetings when examining communications under this Article;

(*e*) subject to the provisions of sub-paragraph (*c*), the Committee shall make available its good offices to the State Parties concerned with a view to a friendly solution of the matter on the basis of respect of human rights and fundamental freedoms as recognized in the present Covenant;

(*f*) in any matter referred to it, the Committee may call upon the States Parties concerned, referred to in sub-paragraph (*b*), to supply any relevant information;

(*g*) the State Parties concerned, referred to in sub-paragraph (*b*), shall have the right to be represented when the matter is being considered in the Committee and to make submission orally and/or in writing;

(*h*) the Committee shall, within twelve months after the date of receipt of notice under sub-paragraph (*b*), submit a report—

(i) if a solution within the terms of sub-paragraph (*e*) is reached, the Committee shall confine its report to a brief statement of the facts and of the solution reached;

(ii) if a solution within the terms of sub-paragraph (*e*) is not reached, the Committee shall confine its report to a brief statement of the facts; the written submissions and record of the oral submissions made by the States Parties concerned shall be attached to the report.

In every matter, the report shall be communicated to the States Parties concerned.

2. The provisions of this Article shall come into force when ten States Parties to the present Covenant have made declaration under paragraph 1 of this Article. Such declaration shall be deposited by the States Parties with the Secretary-General of the United Nations, who shall transmit copies thereof to the other States Parties. A declaration may be withdrawn at any time by notification to the Secretary-General. Such a withdrawal shall not prejudice the consideration of any matter which is the subject of a communication already transmitted under this Article; no further communication by any State Party shall be received after the notification of withdrawal of the declaration has been received by the Secretary-General, unless the State Party concerned has made a new declaration.

ARTICLE 42

1.—(*a*) If a matter referred to the Committee in accordance with Article 41 is not resolved to the satisfaction of the State Parties concerned, the Committee may, with the prior consent of the States Parties concerned, appoint an ad hoc Conciliation Commission (hereinafter referred to as the Commission). The good offices of the Commission shall be made available to the States parties concerned with a view to an amicable solution of the matter on the basis of respect for the present Covenant.

(*b*) The Commission shall consist of five persons acceptable to the States Parties concerned. If the States Parties concerned fail to reach agreement within three months on all or part of the composition of the members of the Commission, the members of the Commission concerning whom no agreement has been reached shall be elected by secret ballot by a two-thirds majority vote of the Committee from among its members.

2. The members of the Commission shall serve in their personal capacity. They shall not be nationals of the States Parties concerned, or of a State not Party to the present Covenant, or of a State Party which has not made a declaration under Article 41.

3. The Commission shall elect its own Chairman and adopt its own rules of procedure.

4. The meetings of the Commission shall normally be held at the Headquarters of the United Nations or at the United Nations Office at Geneva. However, they may be held at such other convenient places as the Commission may determine in consultation with the Secretary-General of the United Nations and the States Parties concerned.

5. The secretariat provided in accordance with Article 36 shall also service commissions appointed under this Article.

6. The information received and collated by the Committee shall be made available to the Commission and the Commission may call upon the States Parties concerned to supply any other relevant information.

7. When the Commission has fully considered the matter, but in any event not later than twelve months after having been seized of the matter, it shall submit to the Chairman of the Committee a report for communication to the States Parties concerned—

(*a*) if the Commission is unable to complete its consideration of the matter within twelve months, it shall confine its report to a brief statement of the status of its consideration of the matter;

(*b*) if an amicable solution to the matter on the basis of respect for human rights as recognized in the present Covenant is reached, the Commission shall confine its report to a brief statement of the facts and of the solution reached;

(*c*) if a solution within the terms of sub-paragraph (*b*) is not reached, the Commission's report shall embody its findings on all questions of fact relevant to the issues between the States Parties concerned, and its views on the possibilities of an amicable solution of the matter. This report shall also contain the written submissions and a record of the oral submissions made by the States Parties concerned; and

(*d*) if the Commission's report is submitted under sub-paragraph (*c*), the States Parties concerned shall, within three months of the report, notify the Chairman of the receipt of the Committee whether or not they accept the contents of the report of the Commission.

8. The provisions of this Article are without prejudice to the responsibilities of the Committee under Article 41.

9. The States Parties concerned shall share equally all the expenses of the members of the Commission in accordance with estimates to be provided by the Secretary-General of the United Nations.

10. The Secretary-General of the United Nations shall be empowered to pay the expenses of the members of the Commission, if necessary, before reimbursement by the States Parties concerned, in accordance with paragraph 9 of this Article.

ARTICLE 43

The members of the Committee, and of the ad hoc conciliation commissions which may be appointed under Article 42, shall be entitled to the facilities, privileges and immunities of experts on mission for the United Nations as laid down in the relevant sections of the Convention on the Privileges and Immunities of the United Nations.

ARTICLE 44

The provisions for the implementation of the present Covenant shall apply without prejudice to the procedures prescribed in the field of human rights by or under the constituent instruments and the conventions of the United Nations and of the specialized agencies and shall not prevent the State Parties to the present Covenant from having recourse to other procedures for settling a dispute in accordance with general or special international agreements in force between them.

ARTICLE 45

The Committee shall submit to the General Assembly of the United Nations, through the Economic and Social Council, an annual report on its activities.

PART V

ARTICLE 46

Nothing in the present Covenant shall be interpreted as impairing the provisions of the Charter of the United Nations and of the constitutions of the specialized agencies which define the respective responsibilities of the various organs of the United Nations and of the specialized agencies in regard to the matters dealt with in the present Covenant.

ARTICLE 47

Nothing in the present Covenant shall be interpreted as impairing the inherent right of all peoples to enjoy and utilize fully and freely their natural wealth and resources.

PART VI

ARTICLE 48

1. The present Covenant is open for signature by any State Member of the United Nations or member of any of its specialized agencies, by any State Party to the Statute of the International Court

of Justice, and by any other State which has been invited by the General Assembly of the United Nations to become a Party to the present Covenant.

2. The present Covenant is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

3. The present Covenant shall be open to accession by any State referred to in paragraph 1 of this Article.

4. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

5. The Secretary-General of the United Nations shall inform all States which have signed this Covenant or acceded to it of the deposit of each instrument of ratification or accession.

ARTICLE 49

1. The present Covenant shall enter into force three months after the date of the deposit with the Secretary-General of the United Nations of the thirty-fifth instrument of ratification or instrument of accession.

2. For each State ratifying the present Covenant or acceding to it after the deposit of the thirty-fifth instrument of ratification or instrument of accession, the present Covenant shall enter into force three months after the date of the deposit of its own instrument of ratification or instrument of accession.

ARTICLE 50

The provisions of the present Covenant shall extend to all parts of federal States without any limitations or exceptions.

ARTICLE 51

1. Any State Party to the present Covenant may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General of the United Nations shall thereupon communicate any proposed amendments to the States Parties to the present Covenant with a request that they notify him whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that at least one-third of the States Parties favours such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of the States Parties present and voting at the conference shall be submitted to the General Assembly of the United Nations for approval.

2. Amendments shall come into force when they have been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of the States Parties to the present Covenant in accordance with their respective constitutional processes.

3. When amendments come into force, they shall be binding on those States Parties which have accepted them, other States Parties still being bound by the provisions of the present Covenant and any earlier amendment which they have accepted.

ARTICLE 52

Irrespective of the notifications made under Article 48, paragraph 5, the Secretary-General of the United Nations shall inform all States referred to in paragraph 1 of the same Article of the following particulars—

(*a*) signatures, ratification and accessions under Article 48;

(*b*) the date of the entry into force of the present Covenant under Article 49 and the date of the entry into force of any amendments under Article 51.

ARTICLE 53

1. The present Covenant, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.

2. The Secretary-General of the United Nations shall transmit certified copies of the present Covenant to all States referred to in Article 48.

INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

(*Date entered into force:* 24th *March*, 1994)

PREAMBLE

The States Parties to the present Covenant,

CONSIDERING that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world;

RECOGNIZING that these rights derive from the inherent dignity of the human person;

RECOGNIZING that, in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his economic, social and cultural rights, as well as his civil and political rights;

CONSIDERING the obligation of States under the Charter of the United Nations to promote universal respect for, and observance of, human rights and freedoms;

REALIZING that the individual, having duties to other individuals and to the community to which he belongs, is under a responsibility to strive for the promotion and observance of the rights recognized in the present Covenant;

AGREE upon the following Articles—

PART I

ARTICLE 1

1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic cooperation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.

3. The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.

PART II

Article 2

1. Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and cooperation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.

2. The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

3. Developing countries, with due regard to human rights and their national economy, may determine to what extent they would guarantee the economic rights recognized in the present Covenant to non-nationals.

Article 3

The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant.

Article 4

The States Parties to the present Covenant recognize that, in the enjoyment of those rights provided by the State in conformity with the present Covenant, the State may subject such rights only to such limitations as are determined by law only in so far as this may be compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society.

Article 5

1. Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights or freedoms recognized herein, or at their limitation to a greater extent than is provided for in the present Covenant.

2. No restriction upon or derogation from any of the fundamental human rights recognized or existing in any country in virtue of law,

conventions, regulations or custom shall be admitted on the pretext that the present Covenant does not recognize such rights or that it recognizes them to a less extent.

PART III

Article 6

1. The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.

2. The steps to be taken by a State Party to the present Covenant to achieve the full realization of this right shall include technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual.

Article 7

The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular—

(*a*) remuneration which provides all workers, as a minimum, with—

(i) fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;

(ii) a decent living for themselves and their families in accordance with the provisions of the present Covenant;

(*b*) safe and healthy working conditions;

(*c*) equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence; and

(*d*) rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays.

Article 8

1. The States Parties to the present Covenant undertake to ensure—

(*a*) the right of everyone to form trade unions and join the trade union of his choice, subject only to the rules of the organization concerned, for the promotion and protection of his economic and social interests. No restrictions may be placed on the exercise of this right other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;

(*b*) the right of trade unions to establish national federations or confederations and the right of the latter to form or join international trade union organizations;

(*c*) the right of trade unions to function freely subject to no limitations other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;

(*d*) the right to strike, provided that it is exercised in conformity with the laws of the particular country.

2. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces or of the police or of the administration of the State.

3. Nothing in this Article shall authorize States Parties to the International Labour Organization Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or apply the law in such a manner as would prejudice, the guarantees provided for in that Convention.

ARTICLE 9

The States Parties to the present Covenant recognize the right of everyone to social security, including social insurance.

ARTICLE 10

The States Parties to the present Covenant recognize that—

1. The widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, particularly for its establishment and while it is responsible for the care and education of dependent children. Marriage must be entered into with the free consent of the intending spouses.

2. Special protection should be accorded to mothers during a reasonable period before and after childbirth. During such period working mothers should be accorded paid leave or leave with adequate social security benefits.

3. Special measures of protection and assistance should be taken on behalf of all children and young persons without any discrimination for reason of parentage or other conditions. Children and young persons should be protected from economic and social exploitation. Their employment in work harmful to their morals or health or dangerous to life or likely to hamper their normal development should be punishable by law. States should also set age limits below which the paid employment of child labour should be prohibited and punishable by law.

ARTICLE 11

1. The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international cooperation based on free consent.

2. The States Parties to the present Covenant, recognizing the fundamental right of everyone to be free from hunger, shall take, individually and through international cooperation, the measures, including specific programmes, which are needed—

(*a*) to improve methods of production, conservation and distribution of food by making full use of technical and scientific knowledge, by disseminating knowledge of the principles of nutrition and by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources; and

(*b*) taking into account the problems of both food-importing and far-exporting countries, to ensure an equitable distribution of world food supplies in relation to need.

ARTICLE 12

1. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for—

(*a*) the provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child;

(*b*) the improvement of all aspects of environmental and industrial hygiene;

(*c*) the prevention, treatment and control of epidemic, endemic, occupational and other diseases; and

(*d*) the creation of conditions which would assure to all medical service and medical attention in the event of sickness.

ARTICLE 13

1. The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.

2. The States Parties to the present Covenant recognize that, with a view to achieving the full realization of this right—

(*a*) primary education shall be compulsory and available free to all;

(*b*) secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education;

(*c*) higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education;

(*d*) fundamental education shall be encouraged or intensified as far as possible for those persons who have not received or completed the whole period of their primary education; and

(*e*) the development of a system of schools at all levels shall be actively pursued, an adequate fellowship system shall be established, and the material conditions of teaching staff shall be continuously improved.

3. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to choose for their children schools, other than those established by the public authorities, which confirm to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions.

4. No part of this Article shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principles set forth in paragraph 1 of this Article and to the requirement that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

ARTICLE 14

Each State Party to the present Covenant which, at the time of becoming a Party, has not been able to secure in its metropolitan territory or other territories under its jurisdiction compulsory primary education, free of charge, undertakes, within two years, to work out and adopt a detailed plan of action for the progressive implementation, within a reasonable number of years, to be fixed in the plan, of the principle of compulsory education free of charge for all.

ARTICLE 15

1. The State Parties to the present Covenant recognize the right of everyone—

(*a*) to take part in cultural life;

(*b*) to enjoy the benefits of scientific progress and its applications;

(*c*) to benefit from the protection of the moral and material interests resulting from any scientific, literacy or artistic production of which he is the author.

2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for the conservation, the development and the diffusion of science and culture.

3. The States Parties to the present Covenant undertake to respect the freedom indispensable for scientific research and creative activity.

4. The States Parties to the present Covenant recognize the benefits to be derived from the encouragement and development of international contacts and cooperation in the scientific and cultural fields.

PART IV

ARTICLE 16

1. The State Parties to the present Covenant undertake to submit in conformity with this part of the Covenant reports on the measures which they have adopted and the progress made in achieving the observance of the rights recognized herein.

2.—(*a*) All reports shall be submitted to the Secretary-General of the United Nations, who shall transmit copies to the Economic and Social Council for consideration in accordance with the provisions of the present Covenant;

(*b*) The Secretary-General of the United Nations shall also transmit to the specialized agencies copies of the reports, or any relevant parts therefrom, from States Parties to the present Covenant which are also members of these specialized agencies in so far as these reports, or parts therefrom relate to any matters which fall within the responsibilities of the said agencies in accordance with their constitutional instruments.

ARTICLE 17

1. The States Parties to the present Covenant shall furnish their reports in stages, in accordance with a programme to be established by the Economic and Social Council within one year of the entry into force of the present Covenant after consultation with the States Parties and specialized agencies concerned.

2. Reports may indicate factors and difficulties affecting the degree of fulfilment of obligations under the present Covenant.

3. Where relevant information has previously been furnished to the United Nations or to any specialized agency by any State Party to the present Covenant, it will not be necessary to reproduce that information, but a precise reference to the information so furnished will suffice.

ARTICLE 18

Pursuant to its responsibilities under the Charter of the United Nations in the field of human rights and fundamental freedoms, the Economic and Social Council may make arrangements with the specialized agencies in respect of their reporting to it on the progress made in achieving the observance of the provisions of the present Covenant falling within the scope of their activities. These reports may include particulars of decisions and recommendations on such implementation adopted by their competent organs.

ARTICLE 19

The Economic and Social Council may transmit to the Commission on Human Rights for study and general recommendation or, as appropriate, for information the report concerning human rights submitted by States in accordance with Articles 16 and 17, and those concerning human rights submitted by the specialized agencies in accordance with Article 18.

ARTICLE 20

The States Parties to the present Covenant and the specialized agencies concerned may submit comments to the Economic and Social Council on any general recommendation under Article 19 or reference to such general recommendation in any report of the Commission on Human Rights or any documentation referred to therein.

ARTICLE 21

The Economic and Social Council may submit from time to time to the General Assembly reports with recommendations of a general nature and a summary of the information received from the States Parties to the present Covenant and the specialized agencies on the measures taken and the progress made in achieving general observance of the rights recognized in the present Covenant.

ARTICLE 22

The Economic and Social Council may bring to the attention of other organs of the United Nations, their subsidiary organs and specialized agencies concerned with furnishing technical assistance any matters arising out of the reports referred to in this part of the present Covenant which may assist such bodies in deciding, each within its field of competence, on the advisability of international measures likely to contribute to the effective progressive implementation of the present Covenant.

ARTICLE 23

The States Parties to the present Covenant agree that international action for the achievement of the rights recognized in the present Covenant includes such methods as the conclusion of conventions, the adoption of recommendations, the furnishing of technical assistance and the holding of regional meetings for the purpose of consultation and study organized in conjunction with the Governments concerned.

ARTICLE 24

Nothing in the present Covenant shall be interpreted as impairing the provisions of the Charter of the United Nations and of the constitutions of the specialized agencies which define the respective responsibilities of the various organs of the United Nations and of the specialized agencies in regard to the matters dealt with in the present Covenant.

ARTICLE 25

Nothing in the present Covenant shall be interpreted as impairing the inherent right of all peoples to enjoy and utilize fully and freely their natural wealth and resources.

PART V

ARTICLE 26

1. The present Covenant is open for signature by any State Member of the United Nations or member of any of its specialized

agencies, by any State Party to the Statute of the International Court of Justice, and by any other State which has been invited by the General Assembly of the United Nations to become a party to the present Covenant.

2. The present Covenant is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

3. The present Covenant shall be open to accession by any State referred to in paragraph 1 of this Article.

4. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

5. The Secretary-General of the United Nations shall inform all States which have signed the present Covenant or acceded to it of the deposit of each instrument of ratification or accession.

ARTICLE 27

1. The present Covenant shall enter into force three months after the date of the deposit with the Secretary-General of the United Nations of the thirty-fifth instrument of ratification or instrument of accession.

2. For each State ratifying the present Covenant or acceding to it after the deposit of the thirty-fifth instrument of ratification or instrument of accession, the present Covenant shall enter into force three months after the date of the deposit of its own instrument of ratification or instrument of accession.

ARTICLE 28

The provisions of the present Covenant shall extend to all parts of federal States without any limitations or exceptions.

ARTICLE 29

1. Any State Party to the present Covenant may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate any proposed amendments to the States Parties to the present Covenant with a request that they notify him whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that at least one-third of the States Parties favours such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of the States Parties present and voting at the conference shall be submitted to the General Assembly of the United Nations for approval.

2. Amendments shall come into force when they have been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of the States Parties to the present Covenant in accordance with their respective constitutional processes.

3. When amendments come into force they shall be binding on those States Parties which have accepted them, other States Parties still being bound by the provisions of the present Covenant and any earlier amendment which they have accepted.

ARTICLE 30

Irrespective of the notifications made under Article 26, paragraph 5, the Secretary-General of the United Nations shall inform all States referred to in paragraph 1 of the same Article of the following particulars—

(*a*) signatures, ratifications and accessions under Article 26; and

(*b*) the date of the entry into force of the present Covenant under Article 27 and the date of the entry into force of any amendments under Article 29.

ARTICLE 31

1. The present Covenant, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.

2. The Secretary-General of the United Nations shall transmit certified copies of the present Covenant to all States referred to in Article 26.

G.N. 45/1995

PREFERENTIAL TRADE AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF ZIMBABWE AND THE GOVERNMENT OF THE REPUBLIC OF MALAŴI

(*Date entered into force: 5*th *May*, *1995*)

The Government of the Republic of Zimbabwe and the Government of the Republic of Malaŵi (hereinafter referred to as "the Contracting Parties"):

DETERMINED to facilitate economic activity through Cross Border Initiatives (CBI) for the Southern and Eastern Africa Region;

RECOGNIZING that they have a common interest in the further expansion of trade between their respective countries on the basis of fairness, equity and mutuality of benefits;

RECOGNIZING that the Trade Agreement entered into on the 1st day of October, 1986, is deficient in several respects;

AWARE of the need to liberalize their bilateral trade through the simultaneous elimination of tariff and non-tariff barriers;

DESIROUS of establishing effective procedures for the joint administration of the Trade Agreement;

AGREE on the following arrangements which are designed to ensure that the trade between their respective countries shall be as free and uninterrupted as possible.

ARTICLE 1
DEFINITIONS

1. In this Agreement, unless inconsistent with the context—

"Zimbabwe" means the area in respect of which the Government of the Republic of Zimbabwe is a contracting party to the General Agreement on Tariffs and Trade (GATT);

"Malaŵi" means the area in respect of which the Government of the Republic of Malaŵi is a contracting party to the General Agreement on Tariffs and Trade (GATT);

"Contracting Party" means a party to this Agreement;

"customs duty" means any tax or surtax levied on imported goods and any other charges of equivalent effect, but does not include sales tax, excise duty or similar tax as levied both on internal transactions and on imported goods in each country;

"imported goods" means goods which are treated as originating in either country;

"dumping" means the introduction of products of a Party into the commerce of the other at lower than the normal domestic value of the products;

"quantitative restrictions" means prohibitions or restrictions on imports into, or exports from, any other Member States, as the case may be, whether made effective through quotas, import licences, foreign exchange allocation practices or other measures with equivalent effect, including administrative measures and requirements restricting imports or exports.

2. The Annexure to this Agreement shall be read with and form an integral part hereof.

ARTICLE 2
IMPORT DUTIES

1. Goods grown, produced or manufactured in the territory of a Contracting Party shall be imported into the territory of the other free of customs duty.

2. Notwithstanding the provision of this Article, a Contracting Party may impose an equivalent duty or tax where this is countervailing duty or tax.

3. To qualify for such duty free treatment, the goods shall be accompanied by a certificate of origin issued in accordance with Article III hereof by a body authorized by the country of origin.

ARTICLE 3
RULES OF ORIGIN

For the purpose of this Agreement—

(*a*) the following categories of goods shall be considered as grown or produced in the territory of a Contracting Party—

(i) mineral products extracted from its soil;

(ii) agricultural produce harvested or gathered therein;

(iii) live animals born and raised therein;

(iv) products obtained therein from live animals;

(v) forest products harvested therein;

(vi) fish and other fish products gathered therein or from its marine economic zone;

(vii) scrap and waste resulting from manufacturing operations within the Contracting Parties; and

(viii) products obtained therein exclusively from products specified in (i) and (vii) above.

(*b*) goods shall be considered as manufactured in the territory of a Contracting Party if they qualify under the Rules of Origin contained in the Annexure.

ARTICLE 4
COMPLIANCE WITH STANDARDS

If so required, goods grown, produced or manufactured in the territory of a Contracting Party shall, when exported to the territory of the other, comply with national standards.

ARTICLE 5
QUANTITATIVE IMPORT AND EXPORT RESTRICTIONS

1. Subject to the provisions of paragraph 2 of this Article and the provisions of paragraph 2 of Article 2 of this Agreement, goods grown, produced or manufactured in the country of either Contracting Party shall be exempt from the imposition by either Contracting Party of any quantitative or administrative import or export restrictions whether imposed directly or indirectly.

2. After consultation with each other, either Contracting Party may impose—

(*a*) export restrictions temporarily applied to prevent or relieve critical shortages of foodstuffs or other products essential to the exporting Contracting Party;

(*b*) import and export restrictions necessary to the application of standards or regulations for the classification, grading or marketing of commodities;

(*c*) import restrictions that do not discriminate among exporting countries on agricultural products necessary to the enforcement of Government measures which operate—

(i) to restrict the quantities of the like domestic products permitted to be marketed or produced; or

(ii) to remove a temporary surplus of the like domestic products;

(*d*) import and export restrictions on wild animals, wild animal trophies and wild animal products;

(*e*) import and export restrictions necessary for the protection of the life and health of humans, animals and plants;

(*f*) import and export restrictions on gold and other precious metals in any form, currency, rough and uncut precious stones provided that existing arrangements on gold refining are respected;

(*g*) import and export restrictions taken in time of war or any other emergency; and

(*h*) measures for the protection of—

(i) public morals;

(ii) national treasures of artistic, historical or ecological value;

(iii) essential security interests; and

(iv) strategic materials.

Article 6
Cooperation in Trade and Customs Administration

1. Customs officials of the Contracting Parties shall regularly consult on matters concerning the documentation and procedures relating to the certificates of origin issued under this Agreement.

2. Each Contracting Party's Customs Authority shall be the competent authority to verify and issue the certificates of origin for goods that are exported to the territory of the other Contracting Party.

Article 7
Goods in Transit, for Exhibition and Samples

The Contracting Parties shall, subject to the laws and regulations in force in their respective countries and on conditions agreed upon by the competent authorities of both Contracting Parties, permit the import and export, free of customs duties, taxes and other similar levies or charges, not related to the payment for services, of the following—

(*a*) samples of goods and publicity materials required only for obtaining orders and for advertising purposes, which are not for sale and/or of no commercial value;

(*b*) goods imported temporarily for experiments and research activities;

(*c*) goods imported temporarily for the purpose of trade fairs and exhibitions;

(*d*) goods imported temporarily for effecting repairs and which are re-exported; and

(*e*) goods originating in or from a third country and transported through the country of one of the Contracting Parties destined for the country of the other Contracting Part.

Article 8
Trade Promotions of and Facilitation Measures

To facilitate and promote the development of trade and commercial transactions under this Agreement, the Contracting Parties agree—

(*a*) to allow the organization of trade promotion activities in their respective countries in accordance with their laws and regulations; and

(*b*) to furnish each other, on request, with all necessary information concerning the possibilities of supplying goods originating from their respective countries.

Article 9
Facilitation of Transit Trade

The Contracting Parties agree to facilitate, in accordance with their respective laws and regulations, freedom of transit through their respective territories, of goods originating from—

(*a*) the countries of either of them and destined for a third country;

(*b*) the country of a third party and destined for the country of either of them: Provided that—

(i) both parties shall continue to comply with provisions of the existing Transport Agreement between them; and

(ii) such transit or movement of goods complies with the laws and regulations in force in either of the Contracting Parties.

Article 10
Modes of Payment

All payments between the Contracting Parties in pursuance of this Agreement shall be effected through normal banking channels, including regional payment arrangements in accordance with the foreign exchange laws and regulations in force in their respective countries.

Article 11
Anti-Dumping and Countervailing Duties

1. A party may impose countervailing duties to offset subsidies granted directly or indirectly in respect of goods imported from the other country.

2. The Contracting Parties shall cooperate with each other in preventing dumping and other trade malpractice and shall, on request, provide all possible assistance concerning inquiries relating to—

(*a*) allegations of dumping and the granting of bounties of subsidies; and

(*b*) the country of origin of goods.

3. Notwithstanding the provisions of this Agreement, goods exported to the territory of the other Contracting Party that are priced below and fair market value of such goods in the exporting territory of the other Contracting Party, as determined in accordance with GATT rules, and inflict material damage on the economy of that Contracting Party will be subjected to countervailing or anti-dumping duties.

4. Rates of countervailing or anti-dumping duties shall be established in such a way that the prices of such goods in the importing country are raised to the extent necessary to offset the advantage that would otherwise accrue to the benefit of the exporting country.

5. Notwithstanding the provisions of paragraph (3) of this Article, the Contracting Part of the exporting territory undertake not to introduce counter measures that would have as one of their purposes the enhancement of exports of other types of goods to the territory of the other Contracting Party.

Article 12
Safeguards

1. If any product which is the subject of a concession in terms of the provisions of this Agreement is being imported into the territory of

a Contracting Party in such increased quantities and under such conditions as to cause or threaten serious injury to domestic producers in such territory of like or directly competitive products, the Party into whose territory the products are imported shall, subject to paragraph (2), be free to suspend the relevant concession in whole or in part or to withdraw or modify the concession.

2. Before a Contracting Party shall take action pursuant to the provisions of paragraph (1), it shall give notice in writing to the other Party as far in advance as may be practicable and shall afford such other Party an opportunity to consult with it in respect of the proposed action. In critical circumstances, where delay in acting pursuant to paragraph (1) would cause damage which would be difficult to repair, proof of which shall be furnished by the Party taking such action, action pursuant to paragraph (1) may be taken provisionally without prior consultation, provided that consultations shall be conducted immediately after such action.

3. If agreement between the Parties with respect to action pursuant to paragraph (1), is not reached, the Party which proposes to take or continue such action shall, nevertheless be free to do so.

Article 13
International Obligations

Nothing in this Agreement shall be construed as affecting any rights and obligations arising from any international agreement already entered into by either Party.

Article 14
Consultations

The Contracting Parties, having regard to the objectives to be drawn up in this Agreement and recognizing that difficulties or problems may arise as a result of the operation of the Agreement, agree that—

(*a*) a party which proposes to take or authorize action which it considers may affect any benefit accruing to the other party under this Agreement shall, whenever possible, consult in advance with, and give sympathetic consideration to any representation by, or proposals received from the other party; and

(*b*) a party shall be free at all times to approach the other party for consultations with a view to findings ways and means to solve any difficulty or problem in the operations of this Agreement.

Article 15
Trade Committee

1. With the aim of securing the full and effective implementation of the provisions of this Agreement, a Joint Trade Committee shall be established consisting of representatives from both Contracting Parties.

2. The Joint Trade Committee shall meet at least once a year or at the request of either of the Contracting Parties.

3. The Joint Trade Committee shall be able to recommend to the Contracting Parties any measures it might deem necessary or desirable for the improvement of trade between the two countries.

Article 16
Dispute Settlement

1. If a Contracting Party should consider that any benefit accruing to it directly or indirectly under this Agreement is being nullified or impaired or that the attainment of any objective of the Agreement is being impeded as the result of—

(*a*) the failure of the other Party to carry out its obligations under this Agreement; or

(*b*) the application by the other Party of any measure, whether or not it conflicts with the provisions of this Agreement; or

(*c*) the existence of any other situation,

the aggrieved party may initiate discussion and consultation directly with the other party.

2. If no satisfactory solution of the matter is effected between the Parties within a reasonable time, the matter may be referred to the Joint Trade Committee consisting of representatives from both Parties for investigation and appropriate recommendation or ruling.

3. In exception and serious circumstances, the Joint Trade Committee may authorize a Party to suspend the application, on to the other Party, of such concessions or obligations under the Agreement as are determined to be appropriate.

Article 17
Implementation Mechanism

1. The Government of the Republic of Malaŵi hereby designates its Ministry of Commerce and Industry, and the Government of the Republic of Zimbabwe hereby designates its Ministry of Industry and Commerce as their respective organs for the purpose of implementing this Agreement and other matters relating thereto.

2. Each Contracting Party shall have the right to designate in writing at any time any other appropriate body, organization of Ministry in place of the one already designated.

Article 18
Entry into Force, Extension and Termination

1. This Agreement shall come into force on a date to be fixed by an exchange of diplomatic notes indicating that each Party complied with its constitutional requirements and shall remain in force for a period of five (5) years thereafter. It shall be automatically extended for additional period of two (2) years each.

2. This Agreement, or any extension thereof, may be terminated by either Party upon six (6) months written notice.

3. At the termination of this Agreement, its provisions and the provisions of any separate contracts or agreements made in respect

thereof, shall continue to govern any unexpired and existing obligations assumed or commenced thereunder until they are fully executed.

4. The Trade Agreement between Malaŵi and Zimbabwe which came into force on the said 1st October, 1986, is hereby abrogated and superseded by this Agreement.

DONE at Lilongwe on this first day of November, 1994, in two originals in the English language both texts being equally authentic.

H. I. Thomson	S. K. Moyo
for the Government of the Republic of Malaŵi	*for the Government of the Republic of Zimbabwe*

ANNEXURE TO THE TRADE AGREEMENT BETWEEN THE REPUBLIC OF MALAŴI AND THE REPUBLIC OF ZIMBABWE

1. For the purpose of Article 3 of the Agreement, goods shall be regarded as having been manufactured in the territory of a Contracting Party when at least 25 per cent of the manufacturing costs of these goods, as determined herein, which shall constitute "local content", is represented by materials produced and direct labour performed in that territory and the last process in the manufacture of those goods has taken place in that territory, provided that—

(*a*) the last process of manufacture is substantial and sufficient to change the nature of the product and give it new, essential and distinct characteristics and it was performed in an enterprise equipped for that purpose;

(*b*) the final product represents a completely new product or at least an important state in the manufacturing process; and

(*c*) each type of article or set shall qualify separately in its own right.

2. For the purposes of this Annexure the following operations shall *not* be regarded as manufacturing—

(*a*) packing, bottling, placing in flasks, bags, cases, boxes, fixing on cards or boards and all other simple packing operations;

(*b*)—(i) assembly, where this involves the construction of an article by putting together finished components which may require slight modifications such as painting or trimming before assembly. Such assembly can involve gluing, screwing, nailing, sewing and minor welding and riverting operations with or without the addition of local parts or components of minor importance such as screws, nuts and bolts; and

(ii) simple mixing or blending of important ingredients which does not result in the formation of a different product;

(*c*) operations to ensure the preservation of merchandise in good condition during transportation and storage such as ventilation, spreading out, drying, freezing, placing in brine, sulphur dioxide or other aqueous solutions, removal of damaged parts, cleaning and similar operations;

(*d*) changes of packing and breaking up of a disassembly of consignments;

(*e*) printing, marking, labelling or affixing other like distinguishing signs on products or other packages;

(*f*) simple operations consisting of removal of dust, sifting or screening, sorting, grading, classifying and matching, including the making up of sets of goods;

(*g*) washing, painting, dyeing, bleaching, texturising of textile goods and impregnating or mercerising operations;

(*h*) etching, decorating, calibration, painting, polishing, cutting up, reinforcing of an otherwise finished article;

(*i*) diluting, drying, steaming, heating, salting which does not result in the permanent change in the shape, form or nature of the article;

(*j*) repair, remodelling or alteration;

(*k*) the addition of parts or components of minor importance for example screws, nuts and bolts, minor additives or colourants to foodstuffs;

(*l*) a combination of two or more operations specified in subparagraphs (*a*) to (*k*) of this paragraph;

(*m*) slaughter of animals; and

(*n*) tanning of hides.

3. "Local content", in relation to goods manufactured in the territory of either Contracting Party, means such percentage of the manufacturing costs of such goods in their finished conditions as is represented by the cost of—

(*a*) any materials which were grown, produced or manufactured in the country concerned and which were used in the manufacture of the goods; and

(*b*) the direct labour involved in the manufacture of the goods.

4. In the calculation of the costs of materials produced and direct labour performed in respect of the manufacture of any goods in any territory, for the purpose of this Annexure, only the following items may be included—

(*a*) the cost of local materials, including the cost of waste materials and materials lost in the process of manufacture as represented by their delivered price at the factory and used directly in the manufacture of such goods.

Where materials which are not wholly produced in the territory concerned are used directly in the manufacture, such goods will count to the extent of their prorated local content as determined in accordance with this Annexure.

Locally manufactured materials or components which have been temporarily exported for further manufacture shall on return to the country of final manufacture be taken as 100 per cent imported content for the purpose of calculating local content.

The following, *inter alia*, shall not be regarded as direct materials—water (provided it is not part of the finished product), electricity, consumable items, items for staff benefits such as tea, protective garments and uniforms.

(*b*) the cost of labour directly employed in the manufacture of such goods, where in addition to the wages and salaries paid to direct labour, the following costs will be included in the calculation of direct labour costs—

(i) leave, except cash in lieu of leave;

(ii) salaries for foremen and supervisors related to the manufacturing processes;

(iii) overtime payment at normal rates; and

(iv) incentives and bonus if pre-determined.

The term "direct labour" shall be taken to refer to those procedures applied to the input materials from which the product is manufactured from the time they first come into the hands of the workforce which actually manufactures the product to the time the finished article is put in retail package. It excludes such functions as design, pattern making and dye making. The following shall, *inter alia*, be excluded from direct labour costs—pensions contributions, overtime payments at above normal rates, cash in lieu of leave, maintenance costs, incentive bonus not determined, the portion of salaries of foremen and supervisors not related to the manufacturing process, fringe benefits, business overheads, administration expenses and salaries, or profit.

5—(*a*) The manufacturing cost of goods shall be calculated in accordance with the provisions of this Annexure and shall be representative of the cost arising from normal business practices, operating procedures and levels of production in the industry concerned as incurred over a period of not less than three months, such cost of the goods in their finished condition based on factual costs, charges and expenses incurred in their manufacture, including the cost of putting the goods up in their retail packages, and the cost of such retail packages:

Provided that, if in the opinion of the verifying authority, any cost, charge or expense has not been incurred by the manufacturer at the normal open market price, the verifying authority may assess the amount of that cost, charge or expense on the basis of the normal open market price, and the manufacturing cost shall be calculated in accordance with that assessment.

(*b*) for the purpose of determining the local content of any goods manufactured either wholly or partly from locally produced or manufactured materials or components, the local content of such locally produced or manufactured materials or components shall be determined and apportioned as herein provided;

(*c*) for the purposes of determining the local content of any goods manufactured either wholly or partly from imported materials, the origin of any charges incidental to the delivery of the imported materials shall be deemed to be that of the imported materials; and

(*d*) any information which the verifying authority of a Contracting Party may require for the purpose of ascertaining the local content of the manufacturing cost of any goods shall be provided in such form and certified in such manner as may be agreed by the Contracting Parties to ensure accuracy and clarity;

6. For the purpose of this Annexure, the following costs, charges and expenses shall be included in the manufacturing cost of the goods—

(*a*) the cost of imported materials, including the cost of waste materials and materials lost in the process of manufacture, as represented by the landed cost of those materials at the factory, including any charges incidental to the delivery of such materials to the factory but excluding any duty thereon paid by the manufacturer:

Provided that the cost of imported materials not imported by the manufacturer shall be the delivered price at the factory;

(*b*) the cost of local materials, including the cost of waste materials and materials lost in the process of manufacture, as represented by their delivered price at the factory;

(*c*) the cost of direct labour as represented by the wages paid to the operatives responsible for the manufacture of the goods as qualified herein;

(*d*) the cost of direct manufacturing expenses as represented by—

(i) the operating costs of the machine used to manufacture the goods;

(ii) the expenses incurred in the cleaning, drying, polishing, pressing or any other process, as may be necessary for the finishing of the goods; and

(iii) the cost of putting the goods up in their retail packages and the cost of such retail packages, but excluding any extra cost of packing the goods for transportation or export and the cost of any extra package;

(*e*) manufacturing overhead costs, as represented by—

(i) rent, rates and insurance charges directly attributable to the factory;

(ii) indirect labour charges, including salaries paid to factory managers, wages paid to foremen, examiners and testers of the goods and fees paid to efficient advisors;

(iii) power, light, water and other service charges directly attributable to the cost of the manufacture of the goods;

(iv) consumable stores, including minor tools, grease, oil and other incidental items and materials used in the manufacture of the goods;

(v) depreciation and maintenance of factory buildings, plant, machinery, tools and other items used in the manufacture of the goods; and

(vi) the cost of food supplied to factory workers, workers' compensation, insurance and contributions to manufacturer's association.

7. The following costs, charges and expenses shall be excluded from the manufacturing cost of the goods—

(*a*) administration expenses as represented by:

(i) office expenses, office rent and salaries paid to accountants, clerks, managers and other executive personnel;

(ii) directors' fees, other than salaries paid to directors who act in the capacity of factory managers;

(iii) statistical and costing expenses in respect of the manufactured goods; and

(iv) investigation and experimental expenses;

(*b*) selling expenses as represented by:

(i) the cost of soliciting and securing of orders, including such expenses as advertising charges and agents or salesmen's commission or salaries; and

(ii) expenses incurred in the making of designs, estimates and tenders;

(*c*) distribution expenses, other than those provided for in paragraph (*a*) or (*b*), as represented by all the expenditure incurred after the goods have left the factory including—

(i) the cost of any materials and payment of wages incurred in the packaging of the goods for export;

(ii) warehousing expenses incurred in the storage of the finished goods; and

(iii) the cost of transporting the goods to their destination;

(*d*) charges not directly attributable to the manufacture of the goods, including—

(i) any import duty paid on the imported raw materials;

(ii) any excise duty paid on raw materials produced in the country where the finished goods are manufactured; and

(iii) any royalties paid in respect of patents, special machinery or designs.

AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF MALAŴI AND THE GOVERNMENT OF THE REPUBLIC OF NAMIBIA TO EASE TRAVEL RESTRICTIONS ON NATIONALS OF THE REPUBLIC OF MALAŴI AND THE REPUBLIC OF NAMIBIA

G.N. 19/1996

(Date entered into force: 10th *April*, 1995)

Note No. 1

The Ministry of Foreign Affairs of the Republic of Malaŵi presents its compliments to the Ministry of Foreign Affairs of the Republic of Namibia and has the honour to propose the conclusion of an Agreement to ease travel restrictions on nationals of the Republic of Namibia on the following terms and conditions—

Article 1

Visa Exemption to Malaŵi Nationals

Nationals of Malaŵi who are holders of valid passports shall be exempt from the obligation of obtaining visas for any entry and stay in Namibia for a period not exceeding three months.

ARTICLE 2

VISA EXEMPTION TO NAMIBIAN NATIONALS

Nationals of Namibia who are holders of valid passports shall be exempt from the obligation of obtaining visas for any entry and stay in Malaŵi for a period not exceeding three months.

ARTICLE 3

AUTHORITY TO STAY FOR MORE THAN THREE MONTHS

Nationals of Malaŵi and Namibia who wish to stay in Namibia or Malaŵi, respectively, for any period exceeding three months shall obtain the necessary authorization from the competent authorities of the Government concerned.

ARTICLE 4

COMPLIANCE WITH NECESSARY FORMALITIES

Nationals of either Malaŵi or Namibia shall enter into, exit from or transit through the territory of either Namibia or Malaŵi through points of entry to international travellers and shall complete the necessary formalities in accordance with the relevant regulations of the country concerned.

ARTICLE 5

COMPLIANCE WITH LAWS AND REGULATIONS

The waiver of visa requirements does not exempt persons benefitting under this Agreement from the requirement of complying with the laws and regulations in force in the territories of Malaŵi or Namibia concerning entry, residence (temporary or permanent), work and exit.

ARTICLE 6

REFUSAL TO ENTER AND STAY

The authorities for immigration of either Malaŵi or Namibia may refuse entry and stay of any person considered and declared a prohibited immigrant, or for reasons of public order, security and health and may terminate the period of his or her stay for any of these reasons.

ARTICLE 7

EXCHANGE OF PASSPORTS

Malaŵi and Namibia shall exchange, through diplomatic channels, samples of their passports before this Agreement enters into force. In case of changes in the design of passports, the country making the changes shall provide to the other, through diplomatic channels, at least thirty days in advance, samples of the new passports as well as technical information about them and data concerning their coming into force.

ARTICLE 8

AMENDMENT

This Agreement may be amended through an exchange of diplomatic notes.

ARTICLE 9

TERMINATION

This Agreement may be terminated by either Malaŵi or Namibia by giving six months notice in writing through diplomatic channels.

The Ministry of Foreign Affairs of the Republic of Malaŵi further proposes that this Note and the affirmative reply thereto of the Ministry of Foreign Affairs of the Republic of Namibia shall constitute an Agreement between the Government of the Republic of Malaŵi and the Government of the Republic of Namibia, ease travel restrictions on nationals of the Republic of Malaŵi and the Republic of Namibia which shall enter into force on the date of the affirmative reply of the Ministry of Foreign Affairs of the Republic of Namibia.

The Ministry of Foreign Affairs of the Republic of Malaŵi avails itself of this opportunity to renew to the Ministry of Foreign Affairs of the Republic of Namibia the assurances of its highest consideration.

Lilongwe 3
9th March, 1996.

Ministry of Foreign Affairs
of the Republic of Namibia
Windhoek Ref. 4/1/3/4/95

The Ministry of Foreign Affairs of the Republic of Namibia presents its complements to the Ministry of Foreign Affairs of the Republic of Malaŵi and with reference to the latter's Note No. 1, dated 9th March, 1996, has the honour to confirm, on behalf of the Government of the Republic of Namibia, the following Agreement to ease travel restrictions on nationals of the Republic of Namibia and the Republic of Malaŵi on the following conditions—

(*Articles 1 to 9 of Note No. 1 Repeated*)

The Ministry finally wishes to inform the esteemed Ministry of Foreign Affairs that the Government of the Republic of Namibia is in agreement with all the provisions set out above, and therefore reaffirms that this reply together with the Note of the Ministry of Foreign Affairs shall constitute an Agreement between the Republic of Namibia and the Republic of Malaŵi, which enters into force on the date of this reply.

The Ministry of Foreign Affairs of the Republic of Namibia avails itself of this opportunity to renew to the Ministry of Foreign Affairs of the Republic of Malaŵi the assurances of its highest consideration.

INTERNATIONAL CONVENTION ON THE ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION

G.N. 105/1996

(*Date entered into force:* 11th *July*, 1996)

The State Parties to this Convention:

CONSIDERING that the Charter of the United Nations is based on the principles of the dignity and equality inherent in all human

beings, and that all Member States have pledged themselves to take joint and separate action, in cooperation with the Organization, for the achievement of one of the purposes of the United Nations which is to promote and encourage universal respect for the observance of human rights and fundamental freedoms for all, without distinction as to race, sex, language or religion;

CONSIDERING that the Universal Declaration of Human Rights proclaims that all human beings are born free and equal in dignity and rights and that everyone is entitled to all the rights and freedoms set out therein, without distinction of any kind, in particular as to race, colour or national origin;

CONSIDERING that all human beings are equal before the law and are entitled to equal protection of the law against any discrimination and against any incitement to discrimination;

CONSIDERING that the United Nations has condemned colonialism and all practices of segregation and discrimination associated therewith, in whatever form and wherever they exist, and that the Declaration on the Granting of Independence to Colonial Countries and Peoples of 14 December, 1960 (General Assembly resolution 1514) (XV) has affirmed and solemnly proclaimed the necessity of bringing them to speedy and unconditional end;

CONSIDERING that the United Nations Declaration on the Elimination of All forms of Racial Discrimination of 20 November, 1963 (General Assembly Resolution 1904) (XVIII) solemnly affirms the necessity of speedily eliminating racial discrimination throughout the world in all its forms and manifestations and of securing understanding of and respect for the dignity of the human person;

CONVINCED that any doctrine of superiority based on racial differentiation is scientifically false, morally condemnable, socially unjust and dangerous, and that there is no justification for racial discrimination, in theory or in practice anywhere;

REAFFIRMING that discrimination between human beings on the grounds of race, colour or ethnic origin is an obstacle to friendly and peaceful relations among nations and is capable of disturbing peace and security among peoples and harmony of persons living side by side even within one and the same State;

CONVINCED that the existence of racial barriers is repugnant to the ideas of any human society;

ALARMED by manifestations of racial discrimination still in evidence in some areas of the world and by governmental policies based on racial superiority or hatred, such as policies of apartheid, segregation or separation;

RESOLVED to adopt all necessary measures for speedily eliminating racial discrimination in all its forms and manifestations, and to prevent and combat racist doctrines and practices in order to promote understanding between races and to build an international community free from all forms of racial segregation and racial discrimination;

BEARING IN MIND the Convention concerning Discrimination in respect of Employment and Occupation adopted by the International Labour Organization in 1958, and the Convention against

Discrimination in Education adopted by the United Nations Educational, Scientific and Cultural Organization in 1960;

DESIRING to implement the principles embodied in the United Nations Declaration on the Elimination of All Forms of Racial Discrimination and to secure the earliest adoption of practical measures to that end;

HAVE AGREED as follows—

PART I

ARTICLE 1

1. In this Convention, the term "racial discrimination" shall mean any distinction, exclusion, restriction, or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.

2. This Convention shall not apply to distinctions, exclusions, restrictions or preferences made by a State Party to this Convention between citizens and non-citizens.

3. Nothing in this Convention may be interpreted as affecting in any way the legal provisions of States Parties concerning nationality, citizenship or naturalization, provided that such provisions do not discriminate against any particular nationality.

4. Special measures taken for the sole purpose of securing adequate advancement of certain racial or ethnic groups or individuals requiring such protection as may be necessary in order to ensure such groups or individuals equal enjoyment or exercise of human rights and fundamental freedoms shall not be deemed racial discrimination, provided, however, that such measures do not, as a consequence, lead to the maintenance of separate rights for different racial groups and that they shall not be continued after the objectives for which they were taken have been achieved.

ARTICLE 2

1. States Parties condemn racial discrimination and undertake to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms and promoting understanding among all races, and, to this end—

(*a*) each State Party undertakes to engage in no act or practice of racial discrimination against persons, groups of persons or institutions and to ensure that all public authorities and public institutions, national and local, shall act in conformity with this obligation;

(*b*) each State Party undertakes not to sponsor, defend or support racial discrimination by any persons or organizations;

(*c*) each State Party shall take effective measures to review governmental, national and local policies, and to amend, rescind or nullify any laws and regulations which have the effect of creating or prepetuating racial discrimination wherever it exists;

(*d*) each State Party shall prohibit and bring to an end, by all appropriate means, including legislation as required by circum-

stances, racial discrimination by any persons, group or organizations; and

(*e*) each State Party undertakes to encourage, where appropriate, integrationist multiracial organizations and movements and other means of eliminating barriers between races, and to discourage anything which tends to strengthen racial division.

2. States Parties shall, when the circumstances so warrant, take, in the social, economic, cultural and other fields, special and concrete measures to ensure the adequate development and protection of certain racial groups or individuals belonging to them, for the purpose of guaranteeing them the full and equal enjoyment of human rights and fundamental freedoms. These measures shall in no case entail as a consequence the maintenance of unequal or separate rights for different racial groups after the objectives for which they were taken have been achieved.

ARTICLE 3

States Parties particularly condemn racial segregation and apartheid and undertake to prevent, prohibit and eradicate all practices of this nature in territories under their jurisdiction.

ARTICLE 4

States Parties condemn all propaganda and all organizations which are based on ideas or theories of superiority of one race or group of persons of one colour or ethnic origin, or which attempt to justify or promote racial hatred and discrimination in any form, and undertake to adopt immediate and positive measures designed to eradicate all incitement to, or acts of, such discrimination and, to this end, with due regard to the principles embodied in the Universal Declaration of Human Rights and the rights expressly set forth in article 5 of this Convention, *inter alia*—

(*a*) shall declare an offence punishable by law all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as all acts of violence or incitement to such acts against any race or group of persons of another colour or ethnic origin, and also the provision of any assistance to racist activities, including the financing thereof;

(*b*) shall declare illegal and prohibit organizations, and also organized and all other propaganda activities, which promote and incite racial discrimination, and shall recognize participation in such organizations or activities as an offence punishable by law; and

(*c*) shall not permit public authorities or public institutions, national or local, to promote or incite racial discrimination.

ARTICLE 5

In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights—

(*a*) the right to equal treatment before the tribunals and all other organs administering justice;

(*b*) the right to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual group or institution;

(*c*) political rights, in particular the right to participate in elections—to vote and to stand for election—on the basis of universal and equal suffrage, to take part in the Government as well as in the conduct of public affairs at any level and to have equal access to public service;

(*d*) other civil rights, in particular—

(i) the right to freedom of movement and residence within the border of the State;

(ii) the right to leave any country, including one's own, and to return to one's country;

(iii) the right to nationality;

(iv) the right to marriage and choice of spouse;

(v) the right to own property alone as well as in association with others;

(vi) the right to inherit;

(vii) the right to freedom of thought, conscience and religion;

(viii) the right to freedom of opinion and expression;

(ix) the right to freedom of peaceful assembly and association;

(*e*) economic, social and cultural rights, in particular—

(i) the rights to work, to free choice of employment, to just and favourable conditions of work, to protection against unemployment, to equal pay for equal work, to just and favourable remuneration;

(ii) the right to form and join trade unions;

(iii) the right to housing;

(iv) the right to public health, medical care, social security and social services;

(v) the right to education and training;

(vi) the right to equal participation in cultural activities;

(*f*) the right of access to any place or service intended for use by the general public, such as transport, hotels, restaurants, cafes, theatres and parks.

ARTICLE 6

States Parties shall assure to everyone within their jurisdiction effective protection and remedies, through the competent national tribunals and other State institutions, against any acts of racial discrimination which violates his human rights and fundamental freedoms contrary to this Convention, as well as the right to seek from such tribunals just and adequate reparation or satisfaction for any damage suffered as a result of such discrimination.

ARTICLE 7

States Parties undertake to adopt immediate and effective measures particularly in the fields of teaching, education, culture and informa-

tion, with a view to combating prejudices which lead to racial discrimination and to promoting understanding, tolerance and friendship among nations and racial or ethnical groups, as well as to propagating the purposes and principles of the Charter of the United Nations, the Universal Declaration of Human Rights, the United Nations Declaration on the Elimination of All Forms of Racial Discrimination, and this Convention.

PART II

Article 8

1. There shall be established a Committee on the Elimination of Racial Discrimination (hereinafter referred to as the Committee) consisting of eighteen experts of high moral standing and acknowledged impartially elected by States Parties from among their nationals, who shall serve in their personal capacity, consideration being given to equitable geographical distribution and to the representation of the different forms of civilization as well as of the principal legal systems.

2. The members of the Committee shall be elected by secret ballot from a list of persons nominated by the States Parties. Each State Party may nominate one person from among its own nationals.

3. The initial election shall be held six months after the date of the entry into force of this Convention. At least three months before the date of each election the Secretary-General of the United Nations shall address a letter to the States Parties inviting them to submit their nominations within two months. The Secretary-General shall prepare a list in alphabetical order of all persons thus nominated, indicating the States Parties which have nominated them, and shall submit it to the States Parties.

4. Elections of the members of the Committee shall be held at a meeting of States Parties convened by the Secretary-General at United Nations Headquarters. At that meeting, for which two-thirds of the States Parties shall constitute a quorum, the persons elected to the Committee shall be nominees who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.

5.—(*a*) The members of the Committee shall be elected for a term of four years. However, the terms of nine of the members elected at the first election shall expire at the end of two years; immediately after the first election the names of these nine members shall be chosen by lot by the Chairman of the Committee;

(*b*) for the filling of casual vacancies, the State Party whose expert has ceased to function as a member of the Committee shall appoint another expert from among its nationals, subject to the approval of the Committee.

6. States Parties shall be responsible for the expenses of the members of the Committee while they are in performance of Committee duties.

Article 9

1. States Parties undertake to submit to the Secretary-General of the United Nations, for consideration by the Committee, a report on

the legislative, judicial, administrative or other measures which they have adopted and which give effect to the provisions of this Convention—

(*a*) within one year after the entry into force of the Convention for the State concerned; and

(*b*) thereafter every two years and whenever the Committee so requests. The Committee may request further information from the States Parties.

2. The Committee shall report annually, through the Secretary-General, to the General Assembly of the United Nations on its activities and may make suggestions and general recommendations based on the examination of the reports and information received from the States Parties. Such suggestions and general recommendations shall be reported to the General Assembly together with comments, if any, from States Parties.

ARTICLE 10

1. The Committee shall adopt its own rules of procedure.

2. The Committee shall elect its officers for a term of two years.

3. The secretariat of the Committee shall be provided by the Secretary-General of the United Nations.

4. The meetings of the Committee shall normally be held at United Nations Headquarters.

ARTICLE 11

1. If a State Party considers that another State Party is not giving effect to the provisions of this Convention, it may bring the matter to the attention of the Committee. The Committee shall then transmit the communication to the State Party concerned. Within three months, the receiving State shall submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that may have been taken by that State.

2. If the matter is not adjusted to the satisfaction of both parties, either by bilateral negotiations or by any other procedure open to them, within six months after the receipt by the receiving State of the initial communication, either State shall have the right to refer the matter again to the Committee by notifying the Committee and also the other State.

3. The Committee shall deal with a matter referred to it in accordance with paragraph 2 of this article after it has ascertained that all available domestic remedies have been invoked and exhausted in the case, in conformity with the generally recognized principles of international law. This shall not be the rule where the application of the remedies is unreasonably prolonged.

4. In any matter referred to it, the Committee may call upon the States Parties concerned to supply any other relevant information.

5. When any matter arising out of this article is being considered by the Committee, the States Parties concerned shall be entitled to send a representative to take part in the proceedings of the Committee, without voting rights, while the matter is under consideration.

ARTICLE 12

1.—(*a*) After the Committee has obtained and collated all the information it deems necessary, the Chairman shall appoint an ad hoc Conciliation Commission (hereinafter referred to as the Commission) comprising five persons who may or may not be members of the Committee. The members of the Commission shall be appointed with the unanimous consent of the parties to the dispute, and its good officers shall be made available to the States concerned with a view to an amicable solution of the matter on the basis of respect for this Convention;

(*b*) If the States Parties to the dispute fail to reach agreement within three months on all or part of the composition of the Commission, the members of the Commission not agreed upon by the States Parties to the dispute shall be elected by secret ballot by a two-thirds majority vote of the Committee from among its own members.

2. The members of the Commission shall serve in their personal capacity. They shall not be nationals of the States Parties to the dispute or of a State not party to this Convention.

3. The Commission shall elect its own Chairman and adopt its own rules of procedure.

4. The meetings of the Commission shall normally be held at United Nations Headquarters or at any other convenient place as determined by the Commission.

5. The Secretariat provided in accordance with article 10, paragraph 3, of this Convention shall also service the Commission whenever a dispute among States Parties brings the Commission into being.

6. The States Parties to the dispute shall share equally all the expenses of the members of the Commission in accordance with estimates to be provided by the Secretary-General of the United Nations.

7. The Secretary-General shall be empowered to pay the expenses of the members of the Commission, if necessary, before reimbursement by the States Parties to the dispute in accordance with paragraph 6 of this article.

8. The information obtained and collated by the Committee shall be made available to the Commission, and the Commission may call upon the States concerned to supply any other relevant information.

ARTICLE 13

1. When the Commission has fully considered the matter, it shall prepare and submit to the Chairman of the Committee a report embodying its findings on all questions of fact relevant to the issue between the parties and containing such recommendations as it may think proper for the amicable solution of the dispute.

2. The Chairman of the Committee shall communicate the report of the Commission to each of the States Parties to dispute. These States shall, within three months, inform the Chairman of the Committee whether or not they accept the recommendations contained in the report of the Commission.

3. After the period provided for in paragraph 2 of this article the Chairman of the Committee shall communicate the report of the

Commission and the declarations of the States Parties concerned to the other States Parties to this Convention.

ARTICLE 14

1. A State Party may at any time declare that it recognizes the competence of the Committee to receive and consider communications from individuals or groups of individuals within its jurisdiction claiming to be victims of a violation by that State Party of any of the rights set forth in this Convention. No communication shall be received by the Committee if it concerns a State Party which has not made such a declaration.

2. Any State Party which makes a declaration as provided for in paragraph 1 of this article may establish or indicate a body within its national legal order which shall be competent to receive and consider petitions from individuals and groups of individuals within its jurisdiction who claim to be victims of a violation of any of the rights set forth in this Convention and who have exhausted other available local remedies.

3. A declaration made in accordance with paragraph 1 of this article and the name of any body established or indicated in accordance with paragraph 2 of this article shall be deposited by the State Party concerned with the Secretary-General of the United Nations, who shall transmit copies thereof to the other States Parties. A declaration may be withdrawn at any time by notification to the Secretary-General, but such a withdrawal shall not affect communications pending before the Committee.

4. A register of petitions shall be kept by the body established or indicated in accordance with paragraph 2 of this article, and certified copies of the register shall be filed annually through appropriate channels with the Secretary-General on the understanding that the contents shall not be publicly disclosed.

5. In the event of failure to obtain satisfaction from the body established or indicated in accordance with paragraph 2 of this article, the petitioner shall have the right to communicate the matter to the Committee within six months.

6.—(*a*) The Committee shall confidentially bring any communication referred to it to the attention of the State Party alleged to be violating any provision of this Convention, but the identity of the individual or groups of individuals concerned shall not be revealed without his or their express consent. The Committee shall not receive anonymous communications;

(*b*) within three months, the receiving State shall submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that may have been taken by that State.

7.—(*a*) The Committee shall consider communications in the light of all information made available to it by the State Party concerned and by the petitioner. The Committee shall not consider any communication from a petitioner unless it has ascertained that the petitioner has exhausted all available domestic remedies. However, this shall not be the rule where the application of the remedies is unreasonably prolonged; and

(*b*) the Committee shall forward its suggestions and recommendations, if any, to the State Party concerned and to the petitioner.

8. The Committee shall include in its annual report a summary of such communications and, where appropriate, a summary of the explanations and statements of the States Parties concerned and of its own suggestions and recommendations.

9. The Committee shall be competent to exercise the functions provided for in this article only when at least ten States Parties to this Convention are bound by declarations in accordance with paragraph 1 of this article.

ARTICLE 15

1. Pending the achievement of the objectives of the Declaration on the Granting of Independence to Colonial Countries and Peoples, contained in General Assembly resolution 1514 (XV) of 14 December, 1960, the provisions of this Convention shall in no way limit the right of petition granted to these peoples by other international instruments or by the United Nations and its specialized agencies.

2.—(*a*) The Committee established under article 8, paragraph 1, of this Convention shall receive copies of the petitions from, and submit expressions of opinion and recommendations on these petitions to, the bodies of the United Nations which deal with matters directly related to the principles and objectives of this Convention in their consideration of petitions from the inhabitants of Trust and Non-self-Governing Territories and all other territories to which General Assembly resolution 1514 (XV) applies, relating to matters covered by this Convention which are before these bodies;

(*b*) the Committee shall receive from the competent bodies of the United Nations copies of the reports concerning the legislative, judicial, administrative or other measures directly related to the principles and objectives of this Convention applied by the administering Powers within the Territories mentioned in subparagraph (*a*) of this paragraph, and shall express opinions and make recommendations to these bodies.

3. The Committee shall include in its report to the General Assembly a summary of the petitions and reports it has received from United Nations bodies, and the expressions of opinion and recommendations of the Committee relating to the said petitions and reports.

4. The Committee shall request from the Secretary-General of the United Nations all information relevant to the objectives of this Convention and available to him regarding the Territories mentioned in paragraph 2 (*a*) of this article.

ARTICLE16

The provisions of this Convention concerning the settlement of disputes or complaints shall be applied without prejudice to other procedures for settling disputes or complaints in the field of discrimination laid down in the constituent instruments of, or

conventions adopted by, the United Nations and its specialized agencies, and shall not prevent the States Parties from having recourse to other procedures for settling a dispute in accordance with general or special international agreements in force between them.

PART III

ARTICLE 17

1. This Convention is open for signature by any State Member of the United Nations or member of any of its specialized agencies, by any State Party to the Statute of the International Court of Justice, and by any other State which has been invited by the General Assembly of the United Nations to become a Party to this Convention.

2. This Convention is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

ARTICLE18

1. This Convention shall be open to accession by any State referred to in article 17, paragraph 1, of the Convention.

2. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

ARTICLE19

1. This Convention shall enter into force on the thirtieth day after the date of the deposit with the Secretary-General of the United Nations of the twenty-seventh instrument of ratification or instrument of accession.

2. For each State ratifying this Convention or acceding to it after the deposit of the twenty-seventh instrument of ratification or instrument of accession, the Convention shall enter into force on the thirtieth day after the date of the deposit of its own instrument of ratification or instrument of accession.

ARTICLE 20

1. The Secretary-General of the United Nations shall receive and circulate to all States which are or may become Parties to this Convention reservations made by States at the time of ratification or accession. Any State which objects to the reservation shall, within a period of ninety days from the date of the said communication, notify the Secretary-General that it does not accept it.

2. A reservation incompatible with the object and purpose of this Convention shall not be permitted, nor shall a reservation the effect of which would inhibit the operation of any of the bodies established by this Convention be allowed. A reservation shall be considered incompatible or inhibitive if at least two-thirds of the States Parties to this Convention object to it.

3. Reservations may be withdrawn at any time by notification to this effect addressed to the Secretary-General. Such notification shall take effect on the date on which it is received.

ARTICLE 21

A State Party may denounce this Convention by written notification to the Secretary-General of the United Nations. Denunciation shall take effect one year after the date of receipt of the notification by the Secretary-General.

ARTICLE 22

Any dispute between two or more States Parties with respect to the interpretation or application of this Convention, which is not settled by negotiation or by the procedures expressly provided for in this Convention, shall, at the request of any of the parties to the dispute, be referred to the International Court of Justice for decision, unless the disputants agree to another mode of settlement.

ARTICLE 23

1. A request for the revision of this Convention may be made at any time by any State Party by means of a notification in writing addressed to the Secretary-General of the United Nations.

2. The General Assembly of the United Nations shall decide upon the steps, if any, to be taken in respect of such a request.

ARTICLE 24

The Secretary-General of the United Nations shall inform all States referred to in article 17, paragraph 1, of this Convention of the following particulars—

(*a*) signatures, ratification and accessions under articles 17 and 18;

(*b*) the date of entry into force of this Convention under article 19;

(*c*) communications and declarations received under articles 14, 20 and 23; and

(*d*) denunciations under article 21.

ARTICLE 25

1. This Convention, of which the Chinese, English, French, Russian and Spanish texts equally authentic, shall be deposited in the archives of the United Nations.

2. The Secretary-General of the United Nations shall transmit certified copies of this Convention to all States belonging to any of the categories mentioned in article 17, paragraph 1, of the Convention.

CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

(*Date entered into force*: 11th *July*, 1996)

The States Parties to This Convention:

CONSIDERING that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the equal

and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world;

RECOGNIZING that those rights derive from the inherent dignity of the human person;

CONSIDERING the obligation of States under the Charter, in particular Article 55, to promote universal respect for, and observance of, human rights and fundamental freedoms;

HAVING REGARD to article 5 of the Universal Declaration of Human Rights and article 7 of the International Covenant on Civil and Political Rights both of which provide that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment;

HAVING REGARD ALSO to the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by the General Assembly on 9th December, 1975;

DESIRING to make more effective the struggle against torture and other cruel, inhuman or degrading treatment or punishment throughout the world.

HAVE AGREED as follows—

PART I

Article 1

1. For the purposes of this Convention, the term "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

2. This article is without prejudice to any international instrument or national legislation which does or may contain provisions of wider application.

Article 2

1. Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.

2. No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture.

3. An order from a superior officer or a public authority may not be invoked as a justification of torture.

Article 3

1. No State Party shall expel, return ("refouler") or extradite a person to another State where there are substantial grounds

for believing that he would be in danger of being subjected to torture.

2. For the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights.

ARTICLE 4

1. Each State Party shall ensure that all acts of torture are offences under its criminal law. The same shall apply to an attempt to commit torture and to an act by any person which constitutes complicity or participation in torture.

2. Each State Party shall make these offences punishable by appropriate penalties which take into account their grave nature.

ARTICLE 5

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences referred to in article 4 in the following cases—

(*a*) when the offences are committed in any territory under its jurisdiction or on board a ship or aircraft registered in that state;

(*b*) when the alleged offender is a national of that State; and

(*c*) when the victim is a national of that State if that State considers it appropriate.

2. Each State Party shall likewise take such measures as may be necessary to establish its jurisdiction over such offences in cases where the alleged offender is present in any territory under its jurisdiction and it does not extradite him pursuant to article 8 to any of the States mentioned in paragraph 1 of this article.

3. This Convention does not exclude any criminal jurisdiction exercised in accordance with internal law.

ARTICLE 6

1. Upon being satisfied, after an examination of information available to it, that the circumstances so warrant, any State Party in whose territory a person alleged to have committed any offence referred to in article 4 is present shall take him into custody or take other legal measures to ensure his presence. The custody and other legal measures shall be as provided in the law of that State but may be continued only for such time as is necessary to enable any criminal or extradition proceedings to be instituted.

2. Such State shall immediately make a preliminary inquiry into the facts.

3. Any person in custody pursuant to paragraph 1 of this article shall be assisted in communicating immediately with the nearest appropriate representative of the State of which he is a national, or, if he is a stateless person, with the representative of the State where he usually resides.

4. When a State, pursuant to this article, has taken a person into custody, it shall immediately notify the States referred to in article 5, paragraph 1, of the fact that such person is in custody and of the circumstances which warrant his detention. The State which makes the preliminary inquiry contemplated in paragraph 2 of this article shall promptly report its findings to the said States and shall indicate whether it intends to exercise jurisdiction.

Article 7

1. The State Party in the territory under whose jurisdiction a person alleged to have committed any offence referred to in article 4 is found shall in the cases contemplated in article 5 if it does not extradite him, submit the case to its competent authorities for the purpose of prosecution.

2. These authorities shall take their decision in the same manner as in the case of any ordinary offence of a serious nature under the law of that State. In the cases referred to in article 5, paragraph 2, the standards of evidence required for prosecution and conviction shall in no way be less stringent than those which apply in the cases referred to in article 5, paragraph 1.

3. Any person regarding whom proceedings are brought in connexion with any of the offences referred to in article 4 shall be guaranteed fair treatment at all stages of the proceedings.

Article 8

1. The offences referred to in article 4 shall be deemed to be included as extraditable offences in any extradition treaty existing between States Parties. States Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them.

2. If a State Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may consider this Convention as the legal basis for extradition in respect of such offences. Extradition shall be subject to the other conditions provided by the law of the requested State.

3. States Parties which do not make extradition conditional on the existence of a treaty shall recognize such offences as extraditable offences between themselves subject to the conditions provided by the law of the requested State.

4. Such offences shall be treated, for the purpose of extradition between States Parties, as if they had been committed not only in the place in which they occurred but also in the territories of the States required to establish their jurisdiction in accordance with article 5, paragraph 1.

Article 9

1. States Parties shall afford one another the greatest measure of assistance in connexion with criminal proceedings brought in respect of any of the offences referred to in article 4, including the supply of all evidence at their disposal necessary for the proceedings.

2. States Parties shall carry out their obligations under paragraph 1 of this article in conformity with any treaties on mutual judicial assistance that may exist between them.

ARTICLE10

1. Each State Party shall ensure that education and information regarding the prohibition against torture are fully included in the training of law enforcement personnel, civil or military, medical personnel, public officials and other persons who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment.

2. Each State Party shall include this prohibition in the rules or instructions issued in regard to the duties and functions of any such persons.

ARTICLE 11

Each State Party shall keep under systematic review interrogation rules, instructions, methods and practices as well as arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment in any territory under its jurisdiction, with a view to preventing any cases of torture.

ARTICLE 12

Each State Party shall ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction.

ARTICLE 13

Each State Party shall ensure that any individual who alleges he has been subjected to torture in any territory under its jurisdiction has the right to complain to, and to have his case promptly impartially examined by, its competent authorities. Steps shall be taken to ensure that the complainant and witnesses are protected against all ill-treatment or intimidation as a consequence of his complaint or any evidence given.

ARTICLE 14

1. Each State Party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for a full rehabilitation as possible. In the event of the death of the victim as a result of an act of torture, his dependants shall be entitled to compensation.

2. Nothing in this article shall affect any right of the victim or other persons to compensation which may exist under national law.

ARTICLE 15

Each State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made.

ARTICLE 16

1. Each State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in article 1, when such acts are committed by or at the instigation of or with the consent of acquiescence of a public official or other person acting in an official capacity. In particular, the obligations contained in articles 10, 11, 12 and 13 shall apply with the substitution for references to torture of references to other forms of cruel, inhuman or degrading treatment or punishment.

2. The provisions of the Convention are without prejudice to the provisions of any other international instrument or national law which prohibits cruel, inhuman or degrading treatment or punishment or which relates to extradition or expulsion.

PART II

ARTICLE 17

1. There shall be established a Committee against Torture (hereinafter referred to as the Committee) which shall carry out the functions hereinafter provided. The Committee shall consist of ten experts of high moral standing and recognized competence in the field of human rights, who shall serve in their personal capacity. The experts shall be elected by the States Parties, consideration being given to equitable geographical distribution and to the usefulness of the participation of some persons having legal experience.

2. The members of the Committee shall be elected by secret ballot from a list of persons nominated by States Parties. Each State Party may nominate one person from among its own nationals. States Parties shall bear in mind the usefulness of nominating persons who are also members of the Human Rights Committee established under the International Covenant on Civil and Political Rights and who are willing to serve on the Committee against Torture.

3. Elections of the members of the Committee shall be held at biennial meetings of States Parties convened by the Secretary-General of the United Nations. At those meetings, for which two-thirds of the States Parties shall constitute a quorum, the persons elected to the Committee shall be those who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.

4. The initial election shall be held no later than six months after the date of the entry into force of this Convention. At least four months before the date of each election, the Secretary-General of the United Nations shall address a letter to the States Parties inviting them to submit their nominations within three months. The Secretary-General shall prepare a list in alphabetical order of all persons thus nominated, indicating the States Parties which have nominated them, and shall submit it to the States Parties.

5. The members of the Committee shall be elected for a term of four years. They shall be eligible for re-election if renominated. However, the term of five of the members elected at the first election shall expire at the end of two years; immediately after the first election

the names of these five members shall be chosen by lot by the chairman of the meeting referred to in paragraph 3 of this article.

6. If a member of the Committee dies or resigns or for any other cause can no longer perform his Committee duties, the State Party which nominated him shall appoint another expert from among its nationals to serve for the remainder of his term, subject to the approval of the majority of the States Parties. The approval shall be considered given unless half or more of the States Parties respond negatively within six weeks after having been informed by the Secretary-General to the United Nations of the proposed appointment.

7. States Parties shall be responsible for the expenses of the members of the Committee while they are in performance of Committee duties.

ARTICLE 18

1. The Committee shall elect its officers for a term of two years. They may be re-elected.

2. The Committee shall establish its own rules of procedure, but these rules shall provide, *inter alia*, that—

(*a*) six members shall constitute a quorum; and

(*b*) decisions of the Committee shall be made by a majority vote of the members present.

3. The Secretary-General of the United Nations shall provide the necessary staff facilities for the effective performance of the functions of the Committee under this Convention.

4. The Secretary-General of the United Nations shall convene the initial meeting of the Committee. After its initial meeting, the Committee shall meet at such times as shall be provided in its rules of procedure.

5. The States Parties shall be responsible for expenses incurred in connexion with the holding of meetings of the States Parties and of the Committee, including reimbursement to the United Nations for any expenses, such as the cost of staff and facilities, incurred by the United Nations pursuant to paragraph 3 of this article.

ARTICLE 19

1. The States Parties shall submit to the Committee, through the Secretary-General of the United Nations, reports on the measures they have taken to give effect to their undertakings under this Convention, within one year after the entry into force of the Convention for the State Party concerned. Thereafter the States Parties shall submit supplementary reports every four years on any new measures taken and such other reports as the committee may request.

2. The Secretary-General of the United Nations shall transmit the reports to all States Parties.

3. Each report shall be considered by the Committee which may make such general comments on the report as it may consider appropriate and shall forward these to the State Party concerned. That State Party may respond with any observations it chooses to the Committee.

4. The Committee may, at its discretion, decide to include any comments made by it in accordance with paragraph 3 of this article, together with the observations thereon received from the State Party concerned, in its annual report made in accordance with article 24. If so requested by the State Party concerned, the Committee may also include a copy of the report submitted under paragraph 1 of this article.

ARTICLE 20

1. If the Committee receives information which appears to it to contain well-founded indications that torture is being systematically practised in the territory of a State Party, the Committee shall invite that State Party to cooperate in the examination of the information and to this end to submit observations with regard to the information concerned.

2. Taking into account any observations which may have been submitted by the State Party concerned, as well as any other relevant information available to it, the Committee may, if it decides that this is warranted, designate one or more of its members to make a confidential inquiry and to report to the Committee urgently.

3. If an inquiry is made in accordance with paragraph 2 of this article, the Committee shall seek the cooperation of the State Party concerned. In agreement with that State Party, such an inquiry may include a visit to its territory.

4. After examining the findings of its member or members submitted in accordance with paragraph 2 of this article, the Commission shall transmit these findings to the State Party concerned together with any comments or suggestions which seem appropriate in view of the situation.

5. All proceedings of the Committee referred to in paragraphs 1 to 4 of this article shall be confidential, and at all stages of the proceedings the cooperation of the State Party shall be sought. After such proceedings have been completed with regard to an inquiry made in accordance with paragraph 2, the Committee may, after consultations with the State Party concerned, decide to include a summary account of the results of the proceedings in its annual report made in accordance with article 24.

ARTICLE 21

1. A State Party to this Convention may at any time declare under this article that it recognizes the competence of the Committee to receive and consider communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under this Convention. Such communications may be received and considered according to the procedures laid down in this article only if submitted by a State Party which has made a declaration recognizing in regard to itself the competence of the Committee. No communication shall be dealt with by the Committee under this article if it concerns a State Party which has not made such a declaration. Communications received under this article shall be dealt with in accordance with the following procedure—

(*a*) if a State Party considers that another State Party is not giving effect to the provisions of this Convention, it may, by written communication, bring the matter to the attention of that State Party. Within three months after the receipt of the communication the receiving State shall afford the State which sent the communication an explanation or any other statement in writing clarifying the matter, which should include, to the extent possible and pertinent, reference to domestic procedures and remedies taken, pending or available in the matter;

(*b*) if the matter is not adjusted to the satisfaction of both States Parties concerned within six months after the receipt by the receiving State of the initial communication, either State shall have the right to refer the matter to the Committee, by notice given to the Committee and to the other State;

(*c*) the Committee shall deal with a matter referred to it under this article only after it has ascertained that all domestic remedies have been invoked and exhausted in the matter, in conformity with the generally recognized principles of international law. This shall not be the rule where the application of the remedies is unreasonably prolonged or is unlikely to bring effective relief to the person who is the victim of the violation of this Convention;

(*d*) the Committee shall hold closed meetings when examining communications under this article;

(*e*) subject to the provisions of sub-paragraph (*c*), the Committee shall make available its good offices to the States Parties concerned with a view to a friendly solution of the matter on the basis of respect for the obligations provided for in this Convention. For this purpose, the Committee may, when appropriate, set up an ad hoc conciliation commission;

(*f*) in any matter referred to it under this article, the Committee may call upon the States Parties concerned, referred to in sub-paragraph (*b*), to supply any relevant information;

(*g*) the States Parties concerned, referred to in sub-paragraph (*b*), shall have the right to be represented when the matter is being considered by the Committee and to make submissions orally and/or in writing;

(*h*) the Committee shall, within twelve months after the date of receipt of notice under sub-paragraph (*b*), submit a report—

(i) if a solution within the terms of sub-paragraph (*e*) is reached, the Committee shall confine its report to a brief statement of the facts and of the solution reached; and

(ii) if a solution within the terms of sub-paragraph (*e*) is not reached the Committee shall confine its report to a brief statement of the facts; the written submissions and record of the oral submissions made by the States Parties concerned shall be attached to the report. In every matter, the report shall be communicated to the States Parties concerned.

2. The provisions of this article shall come into force when five States Parties to this Convention have made declarations under paragraph 1 of this article. Such declarations shall be deposited by the States Parties with the Secretary-General of the United Nations, who shall transmit copies therein to the other States Parties. A declaration

may be withdrawn at any time by notification to the Secretary-General. Such a withdrawal shall not prejudice the consideration of any matter which is the subject of a communication already transmitted under this article; no further communication by any State Party shall be received under this article after the notification of withdrawal of the declaration has been received by the Secretary-General, unless the State Party concerned has made a new declaration.

ARTICLE 22

1. A State Party to this Convention may at any time declare under this article that it recognizes the competence of the Committee to receive and consider communications from or on behalf of individuals subject to its jurisdiction who claim to be victims of a violation by a State Party of the provisions of the Convention. No communication shall be received by the Committee if it concerns a State Party which has not made such a declaration.

2. The Committee shall consider inadmissible any communication under this article which is anonymous or which it considers to be an abuse of the right of submission of such communications or to be incompatible with the provisions of this Convention.

3. Subject to the provisions of paragraph 2, the Committee shall bring any communications submitted to it under this article to the attention of the State Party to this Convention which has made a declaration under paragraph 1 and is alleged to be violating any provisions of the Convention. Within six months, the receiving State shall submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that may have been taken by that State.

4. The Committee shall consider communications received under this article in the light of all information made available to it by or on behalf of the individual and by the State Party concerned.

5. The Committee shall not consider any communications from an individual under this article unless it has ascertained that—

(*a*) the same matter has not been, and is not being, examined under another procedure of international investigation or settlement; and

(*b*) the individual has exhausted all available domestic remedies; this shall not be the rule where the application of the remedies is unreasonably prolonged or is unlikely to bring effective relief to the person who is the victim of the violation of this Convention.

6. The Committee shall hold closed meetings when examining communications under this article.

7. The Committee shall forward its views to the State Party concerned and to the individual.

8. The provisions of this article shall come into force when five States Parties to this Convention have made declarations under paragraph 1 of this article. Such declarations shall be deposited by the States Parties with the Secretary-General of the United Nations, who shall transmit copies thereof to the other States Parties. A declaration may be withdrawn at any time by notification to the

Secretary-General. Such a withdrawal shall not prejudice the consideration of any matter which is the subject of a communication already transmitted under this article; no further communication by or on behalf of an individual shall be received under this article after the notification of withdrawal of the declaration has been received by the Secretary-General, unless the State Party has made a new declaration.

ARTICLE 23

The members of the Committee and of the ad hoc conciliation commissions which may be appointed under article 21, paragraph (*e*), shall be entitled to the facilities, privileges and immunities of experts on mission for the United Nations as laid down in the relevant sections of the Convention on the Privileges and Immunities of the United Nations.

ARTICLE 24

The Committee shall submit an annual report on its activities under this Convention to the States parties and to the General Assembly of the United Nations.

PART III

ARTICLE 25

1. This Convention is open for signature by all States.

2. This Convention is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

ARTICLE 26

This Convention is open to accession by all States. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

ARTICLE 27

1. This Convention shall enter into force on the thirtieth day after the date of the deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession.

2. For each State ratifying this Convention or acceding to it after the deposit of the twentieth instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after the date of the deposit of its own instrument of ratification or accession.

ARTICLE 28

1. Each State may, at the time of signature or ratification of this Convention or accession thereto, declare that it does not recognize the competence of the Committee provided for in article 20.

2. Any State Party having made a reservation in accordance with paragraph 1 of this article may, at any time, withdraw this reservation by notifying to the Secretary-General of the United Nations.

ARTICLE 29

1. Any State Party to this Convention may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to the States Parties with a request that they notify him whether they favour a conference of States Parties for the purpose of considering and voting upon the proposal. In the event that within four months from the date of such communication at least one-third of the States Parties favours such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of the States Parties present and voting at the conference shall be submitted by the Secretary-General to all the States Parties for acceptance.

2. An amendment adopted in accordance with paragraph 1 of this article shall enter into force when two-thirds of the States Parties to this Convention have notified the Secretary-General of the United Nations that they have accepted it in accordance with their respective constitutional processes.

3. When amendments enter into force, they shall be binding on those States Parties which have accepted them, other States Parties still being bound by the provisions of this Convention and any earlier amendments which they have accepted.

ARTICLE 30

1. Any dispute between two or more States Parties concerning the interpretation or application of this Convention which cannot be settled through negotiation shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the Parties are unable to agree on the organization of the arbitration, any one of those Parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.

2. Each State may, at the time of signature or ratification of this Convention or accession thereto, declare that it does not consider itself bound by paragraph 1 of this article. The other States Parties shall not be bound by paragraph 1 of this article with respect to any State Party having made such a reservation.

3. Any State Party having made a reservation in accordance with paragraph 2 of this article may at any time withdraw this reservation by notification to the Secretary-General of the United Nations.

ARTICLE 31

1. A State Party may denounce this Convention by written notification to the Secretary-General of the United Nations. Denunciation becomes effective one year after the date of receipt of the notification by the Secretary-General.

2. Such a denunciation shall not have the effect of releasing the State Party from its obligations under this Convention in regard to any act or omission which occurs prior to the date at which the denunciation becomes effective, nor shall denunciation prejudice in

any way the continued consideration of any matter which is already under consideration by the Committee prior to the date at which the denunciation becomes effective.

3. Following the date at which the denunciation of a State Party becomes effective, the Committee shall not commence consideration of any new matter regarding that State.

ARTICLE 32

The Secretary-General of the United Nations shall inform all States Members of the United Nations and all States which have signed this Convention or acceded to it of the following—

(*a*) signatures, ratifications and accessions under articles 25 and 26;

(*b*) the date of entry into force of this Convention under article 27 and the date of the entry into force of any amendments under article 29; and

(*c*) denunciations under article 31.

ARTICLE 33

1. This Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

2. The Secretary-General of the United Nations shall transmit certified copies of this Convention to all States.

OPTIONAL PROTOCOL TO THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

(*Date entered into force*: 11th *September*, 1996)

The States Parties to the present Protocol:

CONSIDERING THAT in order further to achieve the purposes of the International Covenant on Civil and Political Rights (hereinafter referred to as the Covenant) and the implementation of its provisions it would be appropriate to enable the Human Rights Committee set up in Part IV of the Covenant (hereinafter referred to as the Committee) to receive and consider, as provided in the present Protocol, communications from individuals claiming to be victims of violations of any of the rights set forth in the Covenant.

HAVE AGREED as follows—

ARTICLE 1

A State Party to the Covenant that becomes a Party to the present Protocol recognizes the competence of the Committee to receive and consider communications from individuals subject to its jurisdiction who claim to be victims of a violation by that State Party of any of the rights set forth in the Covenant. No communication shall be received by the Committee if it concerns a State Party to the Covenant which is not a Party to the present Protocol.

ARTICLE 2

Subject to the provisions of article 1, individuals who claim that any of their rights enumerated in the Covenant have been violated and who have exhausted all available domestic remedies may submit a written communication to the Committee for consideration.

ARTICLE 3

The Committee shall consider inadmissible any communication under the present Protocol which is anonymous, or which it considers to be an abuse of the right of submission of such communications or to be incompatible with the provisions of the Covenant.

ARTICLE 4

1. Subject to the provisions of article 3, the Committee shall bring any communications submitted to it under the present Protocol to the attention of the State Party to the present Protocol alleged to be violating any provision of the Covenant.

2. Within six months, the receiving State shall submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that may have been taken by that State.

ARTICLE 5

1. The Committee shall consider communications received under the present Protocol in the light of all written information made available to it by the individual and by the State Party concerned.

2. The Committee shall not consider any communication from an individual unless it has ascertained that—

(*a*) the same matter is not being examined under another procedure of international investigation or settlement;

(*b*) the individual has exhausted all available domestic remedies. This shall not be the rule where the application of the remedies is unreasonably prolonged.

3. The Committee shall hold closed meetings when examining communications under the present Protocol.

4. The Committee shall forward its views to the State Party concerned and to the individual.

ARTICLE 6

The Committee shall include in its annual report under article 45 of the Covenant a summary of its activities under the present Protocol.

ARTICLE 7

Pending the achievement of the objectives of resolution 1514 (XV) adopted by the General Assembly of the United Nations on 14th December, 1960, concerning the Declaration on the Granting of Independence to Colonial Countries and Peoples, the provisions of the present Protocol shall be in no way limit the right of petition granted to these peoples by the Charter of the United Nations and other

international conventions and instruments under the United Nations and its specialized agencies.

ARTICLE 8

1. The present Protocol is open for signature by any State which has signed the Covenant.

2. The present Protocol is subject to ratification by any State which has ratified or acceded to the Covenant. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

3. The present Protocol shall be open to accession by any State which has ratified or acceded to the Covenant.

4. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

5. The Secretary-General of the United Nations shall inform all States which have signed the present Protocol or acceded to it of the deposit of each instrument of ratification or accession.

ARTICLE 9

1. Subject to the entry into force of the Covenant, the present Protocol shall enter into force three months after the date of the deposit with the Secretary-General of the United Nations of the tenth instrument of ratification or instrument of accession.

2. For each State ratifying the present Protocol or acceding to it after the deposit of the tenth instrument of ratification or instrument of accession, the present Protocol shall enter into force three months after the date of the deposit of its own instrument of ratification or instrument of accession.

ARTICLE 10

The provisions of the present Protocol shall extend to all parts of federal States without any limitations or exceptions.

ARTICLE 11

1. Any State Party to the present Protocol may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate any proposed amendments to the States Parties to the present Protocol with a request that they notify him whether they favour a conference of States Parties for the purpose of considering and voting upon the proposal. In the event that at least one-third of the States Parties favours such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of the States Parties present and voting at the conference shall be submitted to the General Assembly of the United Nations for approval.

2. Amendments shall come into force when they have been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of the States Parties to the present Protocol in accordance with their respective constitutional processes.

3. When amendments come into force, they shall be binding on those States Parties which have accepted them, other States Parties still being bound by the provisions of the present Protocol and any earlier amendment which they have accepted.

ARTICLE 12

1. Any State Party may denounce the present Protocol at any time by written notification addressed to the Secretary-General of the United Nations. Denunciation shall take effect three months after the date of receipt of the notification by the Secretary-General.

2. Denunciation shall be without prejudice to the continued application of the provisions of the present Protocol to any communication submitted under article 2 before the effective date of denunciation.

ARTICLE 13

Irrespective of the notifications made under article 8, paragraph 5, of the present Protocol, the Secretary-General of the United Nations shall inform all States referred to in article 48, paragraph 1, of the Covenant of the following particulars—

(*a*) signatures, ratifications and accessions under article 8;

(*b*) the date of the entry into force of the present Protocol under article 9 and the date of the entry into force of any amendments under article 11; and

(*c*) denunciations under article 12.

ARTICLE 14

1. The present Protocol, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.

2. The Secretary-General of the United Nations shall transmit certified copies of the present Protocol to all States referred to in article 48 of the Covenant.

PROMISSORY OATHS

CHAPTER 17:01

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CHAPTER 17:01

PROMISSORY OATHS

ARRANGEMENT OF SECTIONS

SECTIONS

1. Short title
2. Forms of oaths
3. Person to take and tender oaths
4. Avoidance of unnecessary repetition of oaths
5. Consequences of not taking prescribed oaths
6. Affirmation allowed in lieu of oath
7. Oaths to be recorded and attested
8. Saving

An Act to provide for Administration of Promissory Oaths 26 of 1966

[6TH JULY, 1966]

Short title

1. This Act may be cited as the Promissory Oaths Act.

Forms of oaths

2. The several oaths required to be taken under this Act shall be in the forms set forth in the First Schedule.

Persons to take and tender oaths

3. Subject to section 6 (1) of the Republic of Malaŵi (Constitution) Act, the several oaths set out in Column 1 of the Second Schedule shall be taken by the respective persons named in Column 2 of that Schedule, after their appointment to or acceptance of office, and shall be tendered by the respective persons specified in Column 3 of that Schedule.

Avoidance of unnecessary repetition of oaths

4. Notwithstanding section 3, no person shall be required, upon appointment to or acceptance of office, to take any oath if he shall on any previous occasion have taken such oath within Malaŵi, either in respect of the same or any other appointment or office, unless the President shall otherwise direct.

Consequences of not taking prescribed oaths

5. Nothing in this Act contained shall render, or be deemed to render or to have rendered invalid, any act done, or which may hereafter be done, by a person holding a public office in Malaŵi in the execution or intended execution of his official duties, by reason only of the omission by such person to take any oath which under this Act such person should take or have taken:

Provided that if any person declines, neglects, or omits, where any oath to be taken under this Act is duly tendered, to take such oath he shall, if he shall have already entered on his office, vacate the same, and if he shall not already have entered on his office be disqualified for entering on the same.

Affirmation allowed in lieu of oath

6. When an oath is required to be taken under this Act, any person may, instead of taking the oath, make a solemn affirmation in the form of the oath hereby appointed, substituting the words "solemnly, sincerely and truly declare and affirm" for the word "swear", and omitting the words "So help me God".

Oaths to be recorded and attested

7. Every oath taken in pursuance of this Act shall be recorded in a book kept for the purpose and the person taking the oath shall at the time thereof be required to place his signature in such book, and the person tendering the said oath shall attest the same in the book, and any such book shall be conclusive evidence for all purposes that any oath therein recorded has been duly taken and recorded.

Saving

8. Nothing in this Act shall affect any other oath required or authorized by law to be taken or made.

FIRST SCHEDULE

s. 2

FORMS OF OATHS

Form 1

Oath of Allegiance

I, ..., do swear that I will be faithful and bear true allegiance to the Republic of Malaŵi, and that I will preserve, protect and defend the Constitution of Malaŵi as by law established. So help me God.

Form 2

Oath of Member of a Presidential Council or Presidential Commission

I, ..., having been appointed a member of a *Presidential Council/Presidential Commission, do swear that I will well and truly serve the Republic of Malaŵi in that office, that I will at all times when so required to the best of my judgment, give my counsel and advice to the *Presidential Council/Presidential Commission, for the good management of the public affairs of Malaŵi, and that I will not directly or indirectly reveal such matters as shall be referred to me, come to my knowledge or committed to my secrecy by virtue of my holding that office. So help me God.

(* Delete whichever is inapplicable).

Form 3

OATH OF A CABINET MINISTER

I, ... being chosen and appointed as a Member of the Cabinet of Malaŵi, swear that I will, to the best of my judgment, at all times when thereto required freely give any counsel or advice to the President for the time being for the good management of the public affairs of Malaŵi, that I will well and truly serve the Republic of Malaŵi in the office of a Member of the Cabinet and that, except with the authority of the President, I will not directly or indirectly reveal the business or proceedings of the Cabinet or the nature or contents of any document communicated to me as a Member of the Cabinet, and that I will serve truly and faithfully as a Minister. So help me God.

Form 4

OATH OF MINISTER OR PARLIAMENTARY SECRETARY

I, ..., having been appointed a *Minister/Parliamentary Secretary, do swear that I will well and truly serve the Republic of Malaŵi in that office. So help me God.

Form 5

JUDICIAL OATH

I, ..., swear that I will well and truly serve the Republic of Malaŵi in the office of ....., and will do right and justice to all manner of people in accordance with the laws and usages of Malaŵi, without fear, favour, affection or ill-will. So help me God.

Form 6

OATH OF SECRETARY TO THE CABINET

I, ..., being called upon to exercise the functions of Secretary to the Cabinet of Malaŵi, swear that, except with the authority of the President, I will not directly or indirectly reveal the business or proceedings of the Cabinet, or the nature or contents of any document communicated to me as Secretary to the Cabinet, or any matter coming to my knowledge in my capacity as Secretary to the Cabinet, and that I will well and truly perform the functions of that office. So help me God.

Form 7

OATH OF CLERK TO THE CABINET

I, ..., being called upon to exercise the functions of Clerk to the Cabinet of Malaŵi, swear that except with the authority of the President, I will not

directly or indirectly reveal the business or proceedings of the Cabinet or the nature or contents of any document communicated to me as Clerk to the Cabinet, or any matter coming to my knowledge in my capacity as Clerk to the Cabinet, and that I will well and truly perform the functions of that office. So help me God.

Form 8

OATH FOR DUE EXECUTION OF OFFICE (GENERAL)

I, ..., having been appointed to the office of ....., do swear that I will well and truly serve the Republic of Malaŵi in that office. So help me God.

SECOND SCHEDULE s. 3

Column 1 *Nature of Oaths*	*Column* 2 *Persons to take Oaths*	*Column* 3 *Persons to tender Oaths*
Oath of Allegiance and Oath of Member of Presidential Council or Presidential Commission	Member of Presidential Council or Presidential Commission	The Chief Justice
Oath of Allegiance and Oath of Cabinet Minister, Minister, Parliamentary Secretary, Secretary to the Cabinet, or Clerk to the Cabinet	Cabinet Minister, Minister, Parliamentary Secretary, Secretary to the Cabinet, Clerk to the Cabinet	The President
Oath of Allegiance and Judicial Oath	1. The Chief Justice, Justices of Appeal and all Judges	The President
	2. Magistrates	The Chief Justice
Oath of Allegiance	1. The Speaker and Deputy Speaker	The President
	2. Members of the National Assembly, the Clerk and Clerk-Assistant to the National Assembly	The Speaker or Deputy Speaker
Oath of Allegiance and Oath for Due Execution of Office	Such other officers as may be designated by the President	The President or some person authorized by him

COMMISSIONS OF INQUIRY

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COMMISSIONS OF INQUIRY

ARRANGEMENT OF SECTIONS

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2. (1) Power to issue Commissions of inquiry into matters of public nature, etc.
   (2) Particulars of Commissions
3. Power to appoint fresh Commissioners and to alter and revoke Commissions
4. Commissions not affected by change of President
5. As to oath of office by Commissioners
6. Power to appoint Secretary—his duties
7. Duties of Commissioners defined
8. Division of opinion of Commissioners
9. Commissioners' power to regulate proceedings
10. Power to summon and examine witnesses and privilege of Commissioners from suit
11. False evidence
12. (1) Duty of witnesses summoned: Expenses of witnesses
    (2) Penalty for contumacy, insult or interruption of proceedings
13. Appearance of legal practitioner
14. Commissions, etc., to be published in *Gazette*
15. As to proceedings for penalties

Schedule

An Act to Enable the President to Issue Commissions of Inquiry with Special Powers

[27TH MARCH, 1914]

3 of 1914
G.N. 16/1964(M)
137/1966
166/1967

1. This Act may be cited as the Commissions of Inquiry Act.

Short title

2.—(1) The President may issue a Commission under his hand and the public seal of Malaŵi appointing one or more Commissioners and authorizing such Commissioner or Commissioners to inquire into any matter in which an inquiry would be for the public welfare.

Power to issue Commissions of inquiry into matters of public nature, etc.

(2) Every such Commission shall specify the subject, nature and extent of the inquiry, and may contain directions in the following matters—

Particulars of Commissions

(*a*) in what manner the Commission shall be executed;

(*b*) if there be more Commissioners than one which of them shall act as chairman;

(*c*) what number of them shall constitute a quorum;

(*d*) the place and time where and within which the inquiry shall be made and the report thereof rendered;

(*e*) whether or not the inquiry shall be held in public, with reservation nevertheless to the Commissioners to exclude any person or persons if they deem fit for the due conduct of the inquiry, the preservation of order or for any other reason;

(*f*) and generally for the better giving effect to the purpose of the inquiry.

Power to appoint fresh Commissioners and to alter and revoke Commissions

3. In case any Commissioner shall be or become unable or unwilling to act or shall die, the President may appoint another Commissioner in his place; and any Commission issued under this Act may be altered as the President may deem fit by any subsequent Commission issued by the President, or may be revoked altogether by a notification to that effect published in the *Gazette.*

Commissions not affected by change of President

4. No Commission issued under this Act shall lapse by reason of, or be otherwise affected by, the absence of the President issuing the same, or by his ceasing to hold office whether as a result of his death or for any other reason.

As to oath of office by Commissioners

5. It shall be the duty of the Commissioner appointed under this Act to make and subscribe an oath or affirmation in the form in the Schedule, which oath or affirmation may be taken before the President, or before such person as the President may appoint and shall be deposited by the Commissioner with the Registrar of the High Court.

Power to appoint Secretary—his duties

6. The President may appoint a Secretary to attend the sittings of the Commission, to record their proceedings, to keep their papers, summon witnesses and minute their testimony, and generally to perform such duties connected with such inquiry as the Commissioners shall prescribe.

Duties of Commissioners defined

7. It shall be the duty of the Commissioners, after taking such oath or making such affirmation, to make a full, faithful, and impartial inquiry into the matter specified in the Commission, to conduct such inquiry in accordance with the directions (if any) contained therein; to report in due course to the President, in writing, the result of such inquiry, and also, if required, to furnish to the President a full statement of the proceedings of the Commission, and of the reasons leading to the conclusions arrived at or reported.

8. If the Commissioners shall, in any case, be equally divided on any question that arises during the proceedings of the Commission, the Chairman of the Commission shall have a second or casting vote.

Division of opinion of Commissioners

9. The Commissioners acting under this Act may make such rules for their own guidance, and the conduct and management of proceedings before them, and as to the times and places for their sittings, not inconsistent with their Commission, as they may from time to time think fit, and may from time to time adjourn for such time and to such place as they may think fit, subject only to the terms of their Commission.

Commissioners' power to regulate proceedings

10. The Commissioners acting under this Act shall have the powers of the High Court to summon witnesses, and to call for the production of books, plans and documents and to examine witnesses, and parties concerned on oath, and no Commissioner shall be liable to any action or suit for any matter or thing done by him as such Commissioner. All summonses for the attendance of witnesses or other persons or the production of documents may be in the form given in the Schedule, and shall be signed by one of the Commissioners, and oaths and affirmations may be administered by one of the Commissioners or by their Secretary.

Power to summon and examine witnesses and privilege of Commissioners from suit

11. Any witness who shall wilfully give false evidence in any such inquiry concerning the subject matter of such inquiry shall be guilty of perjury, and be liable to be prosecuted and punished accordingly.

False evidence

12.—(1) All persons summoned to attend and give evidence, or to produce books, plans, or documents at any sitting of any such Commission, shall be bound to obey the summons served upon them as fully in all respects as witnesses are bound to obey a summons issued from the High Court, and shall be entitled to like expenses as if they had been summoned to attend at such Court on a criminal trial, if the same shall be allowed by the Commissioners, but the Commissioners may disallow the whole or any part of such expenses in any case if they think fit. Orders for the payment of such witnesses shall be made as nearly as may be as orders are made for the payment of witnesses in the High Court, and shall be paid in such manner as the President may direct.

Duty of witnesses summoned: Expenses of witnesses

(2) Every person refusing or omitting, without sufficient cause, to attend at the time and place mentioned in the summons served on him, and every person attending, but leaving the Commission without the permission of the Commissioners, or refusing without sufficient cause to answer, or to answer fully and satisfactorily, to the best of his knowledge and belief all questions

Penalty for contumacy, insult or interruption of proceedings

put to him by or with the concurrence of the Commissioners, or refusing or omitting without sufficient cause to produce any books, plans or documents in his possession or under his control, and mentioned or referred to in the summons served on him, and every person who shall at any sitting of the Commission wilfully insult any Commissioner, or the Secretary, or wilfully interrupt the proceedings of the Commission, shall be liable to a fine of £50:

Provided always, that no person giving evidence before the Commission shall be compellable to criminate himself, and every such person shall, in respect of any evidence given by him before the Commission, be entitled to all the privileges to which a witness giving evidence before the High Court is entitled in respect of evidence given by him before such Court.

Appearance of legal practitioner

13. Any person whose conduct is the subject of inquiry under this Act, or who is in any way implicated or concerned in the matter under inquiry, shall be entitled to be represented by a legal practitioner at the whole of the inquiry, and any other person who may consider it desirable that he should be so represented may, by leave of the Commission, be represented in manner aforesaid.

Commissions, etc., to be published in *Gazette*

14. Every Commission under this Act, and all alterations thereof or revocation of such Commission, shall be published in the *Gazette*, and shall take effect from the date of such publication.

As to proceedings for penalties

15. No proceedings shall be commenced for any penalty under this Act except by the direction of the Director of Public Prosecutions.

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s. 5

SCHEDULE

Form of Oath or Affirmation to be Taken by a Commissioner

I ..... having been appointed under a Commission issued by the President and dated the ..... day of ..... 19 .... to be a Commissioner to inquire into the matters specified in the said Commission, do swear (*or* do solemnly and sincerely affirm) that I will faithfully, fully, impartially, and to the best of my ability discharge the trust, and perform the duties devolving upon me by virtue of the said Commission.

(In the case of an oath here add)

So help me God.

.....
Commissioner

Taken before me this ..... day of ..... 19.....

SUMMONS TO A WITNESS

s. 10

To *A .B*. (*name of person summoned, and his calling and residence, if known*).

YOU ARE HEREBY summoned to appear before the Commissioners appointed by the President to inquire (*state briefly the subject of inquiry*) at (*place*) upon the ..... day of ..... 19....., at ..... o'clock, and to give evidence respecting such inquiry. (*If the person summoned is to produce any documents add*) And you are required to bring with you (*specify the books, plans and documents required*).

Given under the hand of ..... Commissioner, this ..... day of ..... 19.....

PROTECTED FLAG, EMBLEMS AND NAMES

CHAPTER 18:03

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CHAPTER 18:03

PROTECTED FLAG, EMBLEMS AND NAMES

ARRANGEMENT OF SECTIONS

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4. Insulting President, National Flag, etc., an offence
5. Prohibition of improper use of emblems, colours, etc.
6. Restriction on use of protected names
7. Power of seizure
8. Power to revoke, etc.
9. Regulations
10. Sanction to prosecute
11. Minister may amend Second Schedule

FIRST SCHEDULE

SECOND SCHEDULE

An Act to safeguard the dignity of the Head of State, the National Flag, the Armorial Ensigns and the Public Seal and to prevent the improper use of the National Flag, the Armorial Ensigns, the Public Seal and of certain emblems, colours, names, words and likenesses for professional, commercial and other purposes and for matters incidental thereto and connected therewith 10 of 1967 24 of 2010 10 of 2012

[28TH JULY, 1967]

1. This Act may be cited as the Protected Flag, Emblems and Names Act. Short title

2.—(1) In this Act— Interpretation

"National Flag" means the National Flag of Malaŵi declared in section 2 of the Constitution and of which the description and design are set out in Part I of the First Schedule; 24 of 2010

"Armorial Ensigns" means the Armorial Ensigns of Malaŵi (also known as the National Coat of Arms, or the Coat of Arms of Malaŵi), the heraldic device of which the blazon and design are set out in Part II of the First Schedule;

"Public Seal" means the Public Seal of Malaŵi as provided under section 3 of which the design is set out in Part III of the First Schedule;

"protected colours" means the colours of the National Flag, that is to say, black, red and green successively arranged in that order or arranged in any other order so nearly resembling that order as to 24 of 2010 10 of 2012

be liable or calculated to deceive, or any colours or combination of colours which the Minister may, by order published in *Gazette*, add to the Second Schedule;

"protected emblem" means the National Flag, the Armorial Ensigns, the Public Seal, or any emblem, seal, flag, pennant, insignia, ensign, design or coat of arms of a kind specified in Part I of the Second Schedule or any recognizable part of a protected emblem;

"protected likeness" means any photograph, drawing, painting, sculpture or other pictorial or visual representation of the person for the time being holding any of the offices or dignities specified in Part II of the Second Schedule;

"protected name" means the national name of Malaŵi, and any of the names or words specified in Part III of the Second Schedule, and includes any abbreviation of any such name or word.

(2) Any representation, or colourable imitation of any protected emblem or protected likeness, or any device or design or likeness which represents, purports to represent, or is capable of representing any protected emblem or protected likeness, or any device or design or likeness which so nearly resembles any protected emblem or protected likeness as to be calculated or likely to deceive shall be deemed to be a protected emblem or protected likeness as the case may be for the purposes of this Act.

The Public Seal

3.—(1) There shall be a Public Seal for Malaŵi which shall show the Armorial Ensigns with the words "Republic of Malaŵi" as circumscription.

(2) The President shall be the custodian of the Public Seal, and the manner in which it is to be kept and used shall be in accordance with the directions of the President.

Insulting President, National Flag, etc., an offence
24 of 2010

4. Any person who does any act or utters any words or publishes or utters any writing calculated to or liable to insult, ridicule or to show disrespect to or with reference to the President, the National Flag, the Armorial Ensigns, the Public Seal, or any protected emblem or protected likeness, shall be liable to a fine of K250,000 and to imprisonment for two years.

Prohibition of improper use of emblems, colours, etc.
24 of 2010

5.—(1) Notwithstanding anything contained in any written law, no person shall, except with the written permission of the Minister—

(*a*) use or permit to be used in connexion with or in furtherance of any trade, business, calling or profession any protected emblem, protected name, protected likeness or the protected colours;

(*b*) use or display, or permit to be used or displayed, any protected emblem, protected name, protected likeness or the protected colours as an advertisement for any trade, business, calling or profession;

(*c*) use any protected emblem, protected name, protected likeness or the protected colours in the title of any patent or in any trade mark or design;

(*d*) manufacture, import, sell, offer for sale, expose for sale, possess for the purpose of sale or with intent to sell or publish any article, thing, matter or substance being or bearing any protected emblem, protected name, protected likeness, or the protected colours, or any article, thing, matter or substance on which or in respect of which any title, trade mark or design is used in contravention of paragraph (*c*); or

(*e*) as a term or condition of, or in connexion with or in furtherance of, any collateral agreement or ancillary agreement for, or in connexion with, the sale of any article, thing, matter or substance, or of any service, donate, present, bestow or give to any other person any other article, thing, matter or substance which is, represents, purports to represent or is capable of representing any protected emblem, protected name, protected likeness or the protected colours.

(2) Nothing in subsection (1) shall apply or be deemed to apply to the publication of any *bona fide* news item (whether in a newspaper or by any other medium) or to the publication in a newspaper or other publication duly registered under the Printed Publications Act of any article connected with any *bona fide* news item, and not being an article in connexion with or in furtherance of, or as advertisement for, any trade, business, calling or profession. Cap. 19:01

(3) Any person who contravenes this section or who fails or neglects to comply with the conditions imposed by the Minister in respect of a permit issued to him under this section shall be liable to a fine of K250,000 and to imprisonment for one year, and if the offence is a continuing one shall be liable in addition to a fine of £100 and to imprisonment for one month in respect of each day on which the offence continues. 24 of 2010

(4) In addition to any penalty imposed under subsection (3), where the person convicted is the holder of a licence under the Businesses Licensing Act, the Intoxicating Liquor Ordinance, or the Hotels Act and the offence was committed in connexion with or in furtherance of the business or activity in respect of which the licence was issued, the court may order the forfeiture of such licence. Cap. 46:01 1 of 1932 Cap. 50:01

Restriction on use of protected names 24 of 2010

6.—(1) Notwithstanding anything contained in any written law, save under the authority of a written permit issued by the Minister no company, business, cooperative or other society, trade union, club or other association of persons, printer or publisher shall be registered by or purport to be registered by, or use for its own purposes, any protected name or any name or names of which any protected name forms part.

(2) The Minister may by order published in the *Gazette* extend this section to such other class or classes of persons or associations as may be specified in such order, and may in like manner exempt from this section such companies, businesses, cooperative or other societies, trade unions, clubs or other persons or associations as may be specified in such order, and to the extent or subject to such conditions as may be specified in such order.

(3) Any company, business, cooperative or other society, trade union, club, association, printer, publisher or person contravening this section, or who fails or neglects to comply with the conditions imposed by the Minister in respect of a permit issued to him under this section, and any director, partner, manager or officer of any such company, business, society, trade union, club or association shall be liable to a fine of K100,000 and to imprisonment for six months.

24 of 2010

Power of seizure

7.—(1) If a police officer has reasonable cause to believe that something which has been used, displayed, manufactured or imported contrary to this Act is to be found on any premises, he may require the person in charge or appearing to be in charge of the premises to allow him to enter the premises and to afford him all reasonable facilities for a search thereof, and if entry cannot within a reasonable period be so obtained the officer may without warrant enter the premises (using force if necessary) and search therein.

(2) If a police officer finds on any premises anything in respect of which he has reasonable cause to believe that an offence under this Act has been committed by any person, he may seize that thing, and where he does so shall bring it before a magistrate, who shall order it to be forfeited if he is satisfied that it has been used, displayed, manufactured or imported contrary to this Act, or else shall order it to be restored to the person from whom it was seized.

Power to revoke, etc.

8. Any permit issued by the Minister for the purposes of this Act may be given subject to such conditions as the Minister thinks fit, and the Minister may at any time at his discretion revoke any permit issued by him or vary the conditions thereof.

Regulations

9. The Minister may make regulations for the better carrying into effect of this Act and without prejudice to the generality of the foregoing may make regulations—

(*a*) prescribing the occasions upon which, the persons by whom and the manner in which the National Flag or the Armorial Ensigns or any protected likeness may be flown or displayed, as the case may be;

(*b*) prohibiting, controlling or restricting the use of any protected emblem, protected name, protected likeness or the protected colours;

(*c*) regulating the manner in which application may be made to him for his permission under this Act, prescribing the form of any permit by which such permission may be given and fixing any fee or any royalty to be paid in respect of such application and licence;

Sanction to prosecute

10. No prosecution for an offence under this Act shall be instituted without the previous sanction in writing of the Director of Public Prosecutions.

Minister may amend Second Schedule
s. 2
24 of 2010
10 of 2012

11. The Minister may, by order published in the *Gazette*, amend the Second Schedule to this Act.

FIRST SCHEDULE

PART I

National Flag

Description

From the top of the Flag to the bottom thereof, three equal horizontal stripes of black, red and green with a red rising sun superimposed in the centre of the black stripe.

Design

THE NATIONAL FLAG OF
THE REPUBLIC OF MALAŴI

Red Sunrise on Black

Red

Green

RATIO LENGTH TO BREADTH:

Three to two (e.g. 3 ft. × 2 ft., 6 ft. × 4 ft., 12 ft. × 8 ft.)

DESCRIPTION:

Three equal horizontal stripes of black, red and green, with a red rising sun superimposed in the centre of the black stripe.

SIGNIFICANCE:

BLACK represents the people of the Continent of Africa.

THE RISING SUN represents the dawn of hope and freedom for the whole Continent of Africa.

RED represents the blood of the martyrs of African freedom.

GREEN represents the ever green nature of Malaŵi.

SPECIFICATIONS:

RED—British Standard Shade Number 0-005

GREEN—British Standard Shade Number 0-010

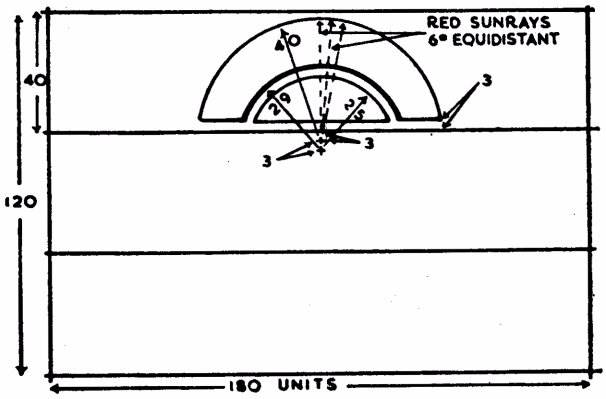

PART II

ARMORIAL ENSIGNS

Blazon

For Arms, per fess barry wavy Azure and Argent and Sable on a fess Gules a lion passant and in base a sun rising or: and for the Crest: On a wreath or and Gules on water barry wavy Azure and Argent in front of a sun rising or a fish eagle rising proper, and for Supporters: On the dexter side a lion and on the sinister side a leopard both guardant, upon a compartment representing the Mlanje mountain proper, together with this motto: Unity and Freedom.

Design

PART III

Public Seal

Design

s. 11
24 of 2010

SECOND SCHEDULE

PART I

Protected Emblems

1. The Personal Standard of the President, that is to say, a lion passant coloured gold upon a red ground, being the central portion of the Armorial Ensigns, above a scroll coloured gold bearing in black the word "Malaŵi".

2. Any orders, insignia, medals, badges, and decorations instituted by Presidential Proclamations or by or under an Act of Parliament.

PART II

Protected Likenesses

1. The President.

PART III

Protected Names

1. The word "President".
2. The names, styles or titles of the President.
3. The words "Unity and Freedom".
4. The word "National".
5. The word "Republic".
6. The word "University".

SUBSIDIARY LEGISLATION

PROTECTION OF NATIONAL NAMES (APPLICATIONS FOR PERMITS) REGULATIONS

G.N. 61/1964(N)

deemed to be made under s. 9

[*made under s.*3 *of the Protection of National Names Ordinance,* 1963 (*now repealed*)]

1. These Regulations may be cited as the Protection of National Names (Applications for Permits) Regulations. Citation

2. Every application for a permit under section 6 of the Act shall be in writing and signed by the applicant and shall set forth the following particulars— Application

(*a*) the proposed name which is to be registered;

(*b*) the nature of the enterprise involved;

(*c*) the address where the business will be carried on.

REGIONAL AND DISTRICT BOUNDARIES AND PLACE NAMES

CHAPTER 18:04

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CHAPTER 18:04

REGIONAL AND DISTRICT BOUNDARIES AND PLACE NAMES

ARRANGEMENT OF SECTIONS

SECTION
1. Short title
2. Division of Malaŵi into Regions and Districts
3. Power to amend First Schedule
4. Interpretation of laws
5. Alteration of place names, etc.
First Schedule
Second Schedule

An Act to provide for the division of Malaŵi into Regions and Districts and for alterations to such divisions to provide for the conferring and altering of place names and for matters connected therewith

[29TH DECEMBER, 1967]

G.N. 42 of 1967
96/1968
201/1968
3/1970
199/1970
268/1970
88/1971
109/1971
62/1972
161/1973
7/1979
8/1979

Short title

1. This Act may be cited as the Regional and District Boundaries and Place Names Act.

Division of Malaŵi into Regions and Districts

2.—(1) Malaŵi shall be divided into the Regions referred to in the First Schedule, each of which shall be comprised respectively of the Districts as set out in the First Schedule.

(2) Malaŵi shall be divided into the Districts specified in the First Schedule the boundaries of which shall be the boundaries appropriate to such Districts as set out in the First Schedule.

Power to amend First Schedule

3. The President may, from time to time, as he thinks convenient or expedient for the purposes of administration, amend any or all of the divisions of Malaŵi provided for under section 2, varying the number of divisions, altering the boundaries and the names thereof or providing new names, and for this purpose may, by Order published in the *Gazette*, amend the First Schedule.

Interpretation of laws

4.—(1) References in any written law to a Region or District by a name specified in the First Schedule shall, unless a contrary intention appears, be read and construed as references to the Region or District, as the case may be, the boundaries of which are described in such First Schedule.

(2) Where the President by Order under section 3 alters the number of Regions or Districts, or alters the name or boundaries of a Region or District, every written law shall be read and construed with such modifications and with such alterations of names as may be necessary to give effect to the President's Order.

Alteration of place names. etc.

5.—(1) The President may, from time to time, as he considers it convenient or expedient so to do, by Order published in the *Gazette*, confer a name on any Municipality, Township, village, lake, river, mountain, hill, valley, place, area or geographical feature or location which has no name, or may in like manner alter any name already conferred on the same, or by which the same may be known, and any such name conferred or substituted shall have effect for all purposes and all written laws.

(2) Where the President, by Order under this section, alters or substitutes any name, every written law shall be read and construed with such modifications and with such alterations of names as may be necessary to give effect to the President's Order.

(3) The place names specified in the second column of the Second Schedule shall be deemed to have been substituted for the place names specified in the first column of the Second Schedule with effect from the dates respectively specified in the third column of the Second Schedule as though substituted by virtue of an Order or Orders made under subsection (1) for the purposes of subsection (2) and may be altered or amended in like manner as an Order made under subsection (1).

s.2

FIRST SCHEDULE

1. THE NORTHERN REGION comprising—

G.N. 201/1968 161/1973

(*a*) *Karonga District*

Commencing on the Malaŵi-Tanzania international boundary at the confluence of the Manolo River and the Songwe River; thence by the Manolo River upstream to its confluence with the Kasongwe Stream; thence by the Kasongwe Stream upstream to its source in the Nambatata Hills; thence in a straight line in a westerly direction to the source of the Nalupanga Stream; thence by the Nalupanga Stream downstream to its confluence with the Ndamutakwa River; thence in a straight line in a southerly direction through the continuation of the Nambatata Hills to the source of the Kanuwiri Stream; thence by the Kanuwiri Stream downstream to its confluence with the Makeye River; thence by the Makeye River downstream to its confluence with the Kavira Stream; thence by the Kavira Stream upstream to its source in the Mwakalomba Hills; thence in a straight line in a southeasterly direction for a distance of approximately 2½ miles to Ndelema

Hill; thence in a straight line in a south-westerly direction for a distance of approximately $1\frac{1}{4}$ miles to the source of the Pinda Stream; thence by the Pinda Stream downstream to its confluence with the Lufira River; thence by the Lufira River upstream to its confluence with the Mbalizi River; thence by the Mbalizi River upstream to its confluence with the Bindi River; thence in a southerly direction following the crest of the Chilanga Hills to the source of the Mbuwu River; thence by the Mbuwu River downstream to its confluence with the Lutete River; thence by the Lutete River downstream to its confluence with the Lufira River; thence by the Lufira River upstream to its confluence with the Nyanja River; thence in an easterly direction for a distance of approximately $2\frac{1}{4}$ miles across the Kabunguzi Hills to the Ntowa Hills; thence by the crest of the Ntowa Hills in a south-easterly direction for approximately 5 miles; thence in a south-easterly direction for a distance of approximately $2\frac{3}{4}$ miles to the source of the Masongoni River; thence by the Masongoni River downstream to its confluence with the North Rukuru River; thence by the North Rukuru River upstream to a point which is on the continuation of a line from Kasanga Hill through Mpanda Hill; thence in a straight line in a south-easterly direction through Mpanda Hill to Kasanga Hill; thence in a straight line in a south-easterly direction to the source of the Chitimba Stream; thence by the Chitimba Stream downstream to its mouth; thence in a straight line due east to the eastern shore of Lake Malaŵi; thence by the eastern shore of Lake Malaŵi in a northerly direction to its most northerly extreme; thence by the western shore of Lake Malaŵi to the mouth of the Songwe River; thence by the Songwe River upstream to its confluence with the Manolo River being the point of commencement.

(*b*) *Chitipa District*

Commencing on the Malaŵi-Tanzania international boundary at the confluence of the Manolo River and the Songwe River; thence by the Manolo River upstream to its confluence with the Kasongwe Stream; thence by the Kasongwe Stream upstream to its source in the Nambatata Hill; thence in a straight line in a westerly direction to the source of the Nalupanga Stream; thence by the Nalupanga Stream downstream to its confluence with the Ndamutakwa River; thence in a straight line in a southerly direction through the continuation of the Nambatata Hills to the source of the Kanuwiri Stream; thence by the Kanuwiri Stream downstream to its confluence with the Makeye River; thence by the Makeye River downstream to its confluence with the Kivira Stream; thence by the Kivira Stream upstream to its source in the Mwakalomba Hills; thence in a straight line in a south-easterly direction for a distance of approximately $2\frac{1}{2}$ miles to Ndelema Hill; thence in a straight line in a south-westerly direction for a distance of approximately $1\frac{1}{4}$ miles to the source of the Pinda Stream; thence by the Pinda Stream downstream to its confluence with the Lufira River; thence by the Lufira River upstream to its confluence with the Mbalizi River; thence by the Mbalizi River upstream to its confluence with the Bindi River; thence in a southerly direction following the crest of the Chilanga Hills to the source of the Mbuwu River; thence by the Mbuwu River downstream to its confluence with the Lutete River; thence by the Lutete River downstream to its confluence with the Lufira River;

G.N. 201/1968 161/1973

thence by the Lufira River upstream to its confluence with the Nyanja River; thence in an easterly direction for a distance of approximately $2\frac{1}{4}$ miles across the Kabunguzi Hills to the Ntowa Hills; thence by the crest of the Ntowa Hills in a south-easterly direction for approximately 5 miles; thence in a south-easterly direction for a distance of approximately $2\frac{3}{4}$ miles to the source of the Masongoni River; thence by the Masongoni River downstream to its confluence with the North Rukuru River; thence by the North Rukuru River upstream to a point which is on a continuation of the line from Kasanga Hill through Mpanda Hill (grid reference 841 805 sheet 1033 B1); thence in a straight line in a south-easterly direction through Mpanda Hill to Kasanga Hill; thence in a straight line in a south-westerly direction to the source of the Ruwumbu River on the Malaŵi-Zambia international boundary; thence by the Malaŵi-Zambia international boundary in a northerly direction to the triune point on the Malaŵi-Zambia-Tanzania international boundary; thence by the Malaŵi-Tanzania international boundary in an easterly direction to the point of commencement.

(*c*) *Mzimba District*

Commencing at Chimaliro Hill in the northern Vipya Mountains; thence by a line following the Lake Malaŵi-Kasitu River watershed in a general southerly direction to a point where it meets the Ekwendeni-Nkhata Bay road; thence by the said road in an easterly direction for approximately 2.7 miles to the Kaning'ina Mountains watershed; thence following the said watershed for approximately 5 miles in a southerly direction to a point 0.5 miles due east of the right angled bend in the Mzuzu-Nkhata Bay road (Timbiri track); thence following a straight line due west until it meets the said road; thence following the said road in a westerly direction for approximately 1.3 miles until it meets the Mzuzu Township boundary at Beacon 67; thence following the Mzuzu Township boundary in a southerly and westerly and then northerly direction until it intersects the Mzuzu-Mzimba (Viphya) road in the vicinity of Beacon MD 35; thence following the said Mzuzu-Mzimba road in a westerly and southerly direction until it meets again the Lake Malaŵi-Kasitu River watershed; thence following the Lake Malaŵi-Kasitu River watershed, which is co-incident with the Mzuzu-Mzimba road for some 20 miles until it leaves the road near the Luwafwa Stream, in a general south-westerly direction to the source of the Dwambazi Stream; thence by the Dwambazi Stream downstream to its confluence with the Kaunga Stream; thence by the Kaunga Stream upstream to its confluence with an unnamed stream (grid reference 822 483, sheet 1233 B2); thence by the unnamed stream upstream to where it meets the Rupashe (Lipache)-Dwambazi watershed; thence by the Rupache-Dwambazi watershed in a south-westerly direction to the source of the Kasangadzi River; thence by the Kasangadzi River downstream to its confluence with the Rupashe River; thence by the Rupashe River downstream to its confluence with the Dwangwa River; thence by the Dwangwa River upstream to its confluence with the Luwelezi River; thence by the Luwelezi River upstream to its confluence with the Milenje Stream; thence by the Milenje Stream upstream to its confluence with the Mtabua Stream; thence by the Mtabua Stream upstream to its source; thence by a straight line in a north-westerly

direction to Mtenkamphande Hill; thence by a straight line in a westerly direction to the northern peak of Makungulu Hill; thence by a straight line in a northerly direction to the confluence of the Milenje and Kanjarume Stream; thence in a straight line in a north-westerly direction to Kanjazi Hill; thence by a straight line in a north-easterly direction to the confluence of the Kakwari and Msusu Streams; thence by the Kakwari Stream upstream to its source in Phazi Hill; thence by a straight line in an easterly direction to the summit of N'gombe Hill; thence by a straight line in a northerly direction to the western peak of Mavulamphanje Hill; thence by a straight line in a north-easterly direction to the summit of Kawendama Hill; thence by a straight line in a westerly direction to a point on the main Kasungu-Mzimba road approximately 2,000 yards south of the Embangweni turning which coincides with the Malaŵi-Zambia international boundary; thence following the Malaŵi-Zambia international boundary in a northerly direction to the source of the Chamawe Stream; thence by the Chamawe Stream downstream to its confluence with the Luwewe Stream; thence by the Luwewe Stream downstream to its confluence with the Njale Stream; thence by the Njale Stream upstream to its source; thence in a north-easterly direction to the source of the Mphangara Stream in the Kapata Hill; thence downstream by the Mphangara Stream to its confluence with the South Rukuru River; thence by the South Rukuru River downstream to its confluence with the Luzi Stream; thence by the Luzi Stream upstream to its source; thence by a straight line in a southerly direction to Chimaliro Hill, the point of commencement.

(*d*) *Rumphi District*

Commencing at the mouth of the Chitimba Stream the boundary follows a straight line due east to the eastern shore of Lake Malaŵi; thence by the eastern shore of Lake Malaŵi in a southerly direction to a point due east of the mouth of the Malangowe Stream; thence by the Malangowe Stream upstream to the point where it intersects the straight line joining the source of the Luzi Stream and Chimaliro Hill; thence by this straight line in a northerly direction to the source of the Luzi Stream; thence by the Luzi Stream downstream to its confluence with the South Rukuru River; thence by the South Rukuru River upstream to its confluence with the Mphangara Stream; thence by the Mphangara Stream upstream to its source in the Kapata Hill; thence in a south-westerly direction to the source of the Njale Stream; thence by the Njale Stream downstream to its confluence with the Luwewe Stream; thence by the Luwewe Stream upstream to its confluence with the Chamawe Stream; thence by the Chamawe Stream upstream to its source on the Malaŵi-Zambia international boundary; thence in

a general north-easterly direction by the said international boundary to the source of the Ruwumbu Stream which flows into Zambia; thence in a straight line in a north-easterly direction to Kasanga Hill; thence in a straight line in a south-easterly direction to the source of the Chitimba Stream; thence by the Chitimba Stream downstream to the point of commencement.

(*e*) *Nkhata Bay District*

Commencing at the mouth of the Malongowe Stream on the western shore of Lake Malaŵi by a straight line due east across Lake Malaŵi to its eastern shore; thence by the said eastern shore in a southerly direction to the junction of the Malaŵi-Tanzania Mozambique international boundary; then in a westerly and southerly direction along the Malaŵi-Mozambique international boundary and following the median line of Lake Malaŵi, but including the Islands of Chizumulu and Likoma and the territorial waters thereof, to a point due east of the mouth of the Dwambazi Stream; thence by a straight line due west across Lake Malaŵi to the mouth of the Dwambazi Stream; thence by the Dwambazi Stream upstream to its source; thence following the Lake Malaŵi-Kasitu River watershed in a general north-easterly direction to a point where it coincides with the Mzimba-Mzuzu road just north of the Luwafwa Stream; thence following the said road which is coincident with the Lake Malaŵi-Kasitu River watershed, for some 20 miles until it intersects the Mzuzu Township boundary in the vicinity of Beacon MD 35; thence following the Mzuzu Township boundary in a southerly and easterly and then northerly direction to Beacon 67 situated on the Mzuzu-Nkhata Bay road (Timbiri track); thence following the said Mzuzu-Nkhata Bay road in an easterly direction for approximately 1.3 miles to where it turns sharply south; thence in a straight line due east for approximately 0.5 miles to the watershed of the Kaning'ina Mountains; thence following the said watershed for approximately five miles in a northerly direction to where it meets the Ekwendeni-Nkhata Bay road; thence following the said Ekwendeni-Nkhata Bay road in a westerly direction for approximately 2.7 miles to the Lake Malaŵi-Kasitu River watershed; thence by a line following the Lake Malaŵi-Kasitu River watershed in a general northerly direction to Chimaliro Hill in the north Vipya Mountains; thence by a straight line in a northerly direction to the point where it intersects the Malongowe Stream; thence by the Malongowe Stream downstream to the point of commencement.

II The Central Regions *comprising—*

(*f*) *Nkhotakota District*

Commencing at the confluence of the Kaunga Stream and the Dwambazi Stream; thence by the Dwambazi Stream downstream to its mouth on the western shore of Lake Malaŵi; thence by a straight line due east to the Malaŵi-Mozambique international boundary on the median line of Lake Malaŵi; thence by the said international boundary in a southerly direction to a point due east of the Chirua River; thence by a straight line due west to the mouth of the Chirua River; thence by the Chirua River upstream to its confluence with

the Kachaje Stream; thence by a straight line in a northerly direction to the confluence of the Mbwetwe and Nkula Rivers; thence by a straight line in a northerly direction to the source of the Chamalire Stream; thence by the Chamalire Stream downstream to its confluence with the Ludzi Stream; thence by the Ludzi Stream downstream to its confluence with the Nankhaule Stream; thence by the Nankaule Stream upstream to its confluence with an unnamed stream (grid reference 196 246 Sheet No. 1334 A3/A4); thence by a straight line in a northerly direction to the confluence of the Kasangadzi River and Chiguluwindi Stream; thence by the Chiguluwindi Stream upstream to its source; thence by a straight line in a north-easterly direction to the source of the Chikoa Stream; thence by a straight line in a northerly direction to the confluence of the Mcholi Stream and an unnamed stream 250 yards south of the Mcholi and Chilijenzeru Streams; thence by the Mcholi Stream downstream to its confluence with the Chilijenzeru Stream; thence by the Chilijenzeru Stream upstream to its source in the Kaning'a Hill; thence in a north-westerly direction to the source of the Chamtapo Stream; thence by the Chamtapo Stream downstream to its confluence with the Lifuliza River; thence by the Lifuliza River downstream to its confluence with the Chafumbi River; thence by a straight line in a northerly direction to a point on the Cabwato Stream 1 1/4 miles east of the trigonometrical station on N'gombe Hill; thence by the Cabwato Stream upstream to its source, thence by a blazed track in a southwesterly direction for approximately 250 yards to an unnamed stream; thence by the unnamed stream downstream to its confluence with the Camsani Stream; thence by the Camsani Stream downstream to its confluence with the Likoa Stream; thence by the Likoa Stream upstream to its source on the eastern spur of the Fumbati Hill; thence across this spur in a westerly direction to the source of the Wephe Stream; thence by the Wephe Stream downstream to its confluence with the Kaombe Stream; thence by the Kaombe Stream upstream to its confluence with the Chivuma Stream; thence by the Chivuma Stream upstream to its source by the Ntchisi-Nkhotakota road; thence by the Ntchisi-Nkhotakota road in a northerly direction to its junction with the Kasungu-Nkhotakota road; thence by the Kasungu-Nkhotakota road for a distance of approximately 2 miles to the source of the Funga Stream; thence by the Funga Stream downstream to its confluence with the Bua River; thence by the Bua River downstream to its confluence with the Damba Stream; thence by the Damba Stream upstream to its confluence with the Kalulu Stream; thence by the Kalulu Stream upstream to its source; thence by a blazed track 200 yards in length and bearing 312° leading across a ridge to the source of the Chisatu Stream; thence by the Chisatu Stream downstream to its confluence with the Liwala Stream; thence by the Liwala Stream downstream to its confluence with the Dwangwa River; thence by the Dwangwa River downstream to its confluence with the Rupashe (Lipache) River; thence by the Rupashe (Lipache) River upstream to its confluence with the Kasangadzi River; thence by the Kasangadzi River upstream to its source; thence by the Rupashe (Lipache) River-Dwambazi watershed to where it meets an unnamed stream (grid reference 821 448 Sheet No. 1233 B4); thence by the said unnamed stream downstream to its confluence with the Kaunga Stream;

thence by the Kaunga Stream downstream to its confluence with the Dwambazi Stream; the point of commencement.

(*g*) *Ntchisi District*

Commencing at the confluence of the Kachaje Stream, and the Chirua River, by the Chirua River upstream to its source; thence in a straight line in a westerly direction to the confluence of the Gala Stream and Kasangadzi River; thence by the Kasangadzi River downstream to where it crosses the Mponela-Ntchisi District Road D87 just north of Mponela; thence by the Mponela-Ntchisi District Road D87 and District Roads D82 and D282 in a northerly direction until the latter meets the Kasangadzi River near Ngara Hill; thence by the Kasangadzi River downstream to its confluence with the Bua River; thence by the Bua River downstream to its confluence with the Funga Stream; thence by the Funga Stream upstream to its source on the Kasungu-Nkhotakota road; thence by the Kasungu-Nkhotakota road in an easterly direction for approximately 2 miles to its junction with the Ntchisi-Nkhotakota road; thence by the Ntchisi-Nkhotakota road in a southerly direction to the source of the Chivuma Stream; thence by the Chivuma Stream downstream to its confluence with the Kaombe Stream; thence by the Kaombe Stream downstream to its confluence with the Wephe Stream; thence by the Wephe Stream upstream to its source; thence across the spur of Fumba Hill in an easterly direction to the source of the Likoa Stream; thence by the Likoa Stream downstream to its confluence with the Camsani Stream; thence by the Camsani Stream upstream to its confluence with an unnamed stream; thence by the unnamed stream upstream to its source; thence by a blazed track for approximately 250 yards in a north-easterly direction to the source of the Cabwato Stream; thence by the Cabwato Stream downstream to a point 1 1/4 miles east of the trigonometrical station on N'gombe Hill; thence in a straight line in a southerly direction to the confluence of the Chafumbi and Lifuliza Rivers; thence by the Lifuliza River upstream to its confluence with the Chamtapo Stream; thence by the Chamtapo Stream upstream to its source in Kaning'a Hill; thence in a south-easterly direction across Kaning'a Hill to the source of the Chilijenzeru Stream; thence by the Chilijenzeru Stream downstream to its confluence with the Mcholi Stream; thence by the Mcholi Stream upstream for 250 yards approximately to an unnamed stream; thence in a straight line in a southerly direction to the source of the Chikoa Stream; thence in a straight line in a south-westerly direction to the source of the Chiguluwindi Stream; thence by the Chiguluwindi Stream downstream to its confluence with the Kasangadzi River; thence by a straight line in a southerly direction to the confluence of an unnamed stream with the Nankaule Stream (grid reference 196 246 Sheet No. 1334 A3/A4); thence by the Nankaule Stream downstream to its confluence with the Ludzi Stream; thence by the Ludzi Stream upstream to its confluence with the Chamalire Stream; thence by the Chamalire Stream upstream to its source; thence by a straight line in a southerly direction to the confluence of the Mbwetwe and Mkhula Rivers; thence in a straight line in a southerly direction to the confluence of the Kachaje Stream and Chirua River being the point of commencement.

(*h*) *Kasungu District*

Commencing at a point on the Kasungu-Mzimba main road where it joins the Malaŵi-Zambia international boundary approximately 2,000 yards south of the Embangweni turn off; thence by a straight line in an easterly direction to the summit of Kwendama Hill; thence by a straight line in a south-westerly direction to the western peak of Mavulamphanje Hill; thence by a straight line in a southerly direction to the summit of N'gombe Hill; thence by a straight line in a south-westerly direction to the source of the Kakwari Stream in Phazi Hill; thence by the Kakwari Stream downstream to its confluence with the Msusu Stream; thence by a straight line in a south-westerly direction to the eastern peak of Kanjazi Hill; thence by a straight line in a southerly direction to the confluence of the Milenji and Kanjarume Stream; thence by a straight line in a south-easterly direction to the northern peak of Makungulu Hill; thence by a straight line in an easterly direction to the summit of Mtenkamphande Hill; thence by a straight line in a south-easterly direction to the source of the Mtabua Stream; thence by the Mtabua Stream downstream to its confluence with the Milenje Stream; thence by the Milenje Stream downstream to its confluence with the Luwelezi River; thence by the Luwelezi River downstream to its confluence with the Dwangwa River; thence by the Dwangwa River downstream to its confluence with the Liwala Stream; thence by the Liwala Stream upstream to its confluence with the Chisatu Stream; thence by the Chisatu Stream upstream to its source; thence by a blazed track 200 yards in length and bearing 132° leading across a ridge to the source of the Kalulu Stream; thence by the Kalulu Stream downstream to its confluence with the Damba Stream; thence by the Damba Stream downstream to its confluence with the Bua River; thence by the Bua River upstream to its confluence with the Nkaladzi Dambo; thence by the Nkaladzi, Kasuzu, Susamwere, Mtombozi, Nkhono Dambos to the source of the Khono Dambo; thence by a straight line in a north-westerly direction to the source of the Mwanje Dambo; thence by the Mwanje Dambo dowsnstream in a general north-westerly direction to the Rusa River, thence by the Rusa River downstream to its confluence with Mavumbwe Stream; thence by the Mavumbwe upstream to its confluence with the Nkaladzi Stream; thence by a straight line in a westerly direction towards Nyauzi Hill to a point where this line cuts the Malaŵi-Zambia international boundary; thence by the Malaŵi-Zambia International boundary in a general north-easterly direction to the point of commencement.

(*i*) *Dowa District*

Commencing at the confluence of the Nambuma Stream with the Bua River by the Bua River downstream to its confluence with the Kasangadzi River; thence by the Kasangadzi River upstream to where it is crossed by the District Road D282 near Ngara Hill; thence by the District Roads D282, D82 and D87 in a southerly direction until the latter meets the Kasangadzi River just north of Mponela; thence by the Kasangadzi River upstream to its confluence with the Gala Stream; thence in a straight line in an easterly direction to the source of the Chirua River; thence by the Chirua River

downstream to a point approximately 2 1/4 miles west of its junction with the Benga-Chitala Secondary Road S 33; thence in a straight line in a southerly direction for approximately 16 miles to where it meets the northern tributary of the Chitala Stream; thence by the northern tributary of the Chitala Stream which flows parallel to the road and just south of it, downstream for approximately 4 1/2 miles to its confluence with the Chitala Stream; thence in a straight line in a south-easterly direction for approximately 3 1/4 miles to the Namanda Stream (or a tributary); thence by the Namanda Stream (or a tributary) upstream for approximately 3 1/4 miles to its source; thence by a straight line in a southerly direction to the source of an unnamed stream on the Lilongwe-Salima main road approximately 1 1/2 miles east of the Chitala turn off; thence by the unnamed stream downstream to its confluence with the Lilongwe River; thence by the Lilongwe River upstream to its confluence with the Lumbadzi River; thence by the Lumbadzi River upstream to the point where it is crossed by the Dowa-Khongoni road; thence by the Dowa-Khongoni road in a westerly direction to where it crosses the Nambuma Stream; thence by the Nambuma Stream downstream to its confluence with the Bua River being the point of commencement.

(*j*) *Salima District*

Commencing at a point on the western shore of Lake Malaŵi 1 1/2 miles south of the mouth of the Ngodzi River, by a line parallel to the Ngodzi River in a westerly direction to the edge of the Rift Escarpment; thence by the edge of the Rift Escarpment in general northerly and then north-westerly direction to a point on the Linthipe River opposite its confluence with the Kanjoka Stream approximately one mile above its confluence with the Kavunguti Stream; thence by the Kanjoka Stream upstream to its source on Tuma Hill approximately one mile north of the Secondary Triangulation Point 18/NYS; thence following the watershed in a north-easterly direction to the summit of Kalombe Hill; thence in a straight line in a northerly direction to the source of the Kalombe Stream; thence by the Kalombe Stream downstream to its confluence with the Lilongwe River; thence by the Lilongwe River downstream for a distance of approximately 5 miles to its confluence with an unnamed stream; thence by the unnamed stream in a northerly direction to its source on the Lilongwe-Salima main road approximately 1 1/2 miles east of the Chitala turn-off; thence in a straight line in a northerly direction to the source of the Namanda Stream (or a tributary); thence by the Namanda Stream (or tributary) downstream for approximately 3 1/4 miles; thence in a straight line in a north-westerly direction for approximately 3 1/4 miles to the Chitala Stream; thence by the northern tributary of the Chitala Stream which flows parallel to the road and just south of it, upstream for approximately 4 1/2 miles; thence in a straight line in a northerly direction for approximately 16 miles to where it meets the Chirua River; thence by the Chirua River downstream to its mouth on Lake Malaŵi; thence in a straight line due east until it meets the Malaŵi-Mozambique international boundary at a point on the median line of Lake Malaŵi; thence by the Malaŵi-Mozambique international boundary in a general southerly and easterly direction to Beacon No. 17; thence in a straight line in a

south-westerly direction to a point on Lake Malaŵi due north of the Nankholokolo River at approximately Latitude 14° 6'S and Longitude 34° 42 1/2'E; thence due west to a point on the western shore of Lake Malaŵi 1 1/2 miles south of the mouth of the Ngodzi River being the point of commencement.

(*k*) *Lilongwe District*

Commencing at the confluence of the Nambuma Stream with the Bua River, by the Nambuma Stream upstream to the Kongoni-Dowa road crossing which is nearest to Dowa; thence by the Kongoni-Dowa road in an easterly direction to the Lumbadzi River; thence by the Lumbadzi River downstream to its confluence with the Lilongwe River; thence by the Lilongwe River downstream to its confluence with the Kalombe Stream; thence by the Kalombe Stream upstream to its source on Kalombe Hill; thence by the watershed in a southwesterly direction to a point on Tuma Hill approximately one mile north of the Secondary Triangulation Point 18/NYS, being the source of the Kanjoka Stream; thence by the Kanjoka Stream downstream to its confluence with the Linthipe River; thence by the Linthipe River upstream to its confluence with the Diampwe River; thence by the Diampwe River upstream to its source on the Malaŵi-Mozambique international boundary; thence by the Malaŵi-Mozambique international boundary in a general north-westerly direction as far as the source of the Namitete River; thence by the Namitete River downstream to its confluence with the Bua River; thence by the Bua River downstream to its confluence with the Nambuma Stream, the point of commencement.

(*l*) *Mchinji District*

Commencing at a point on the Malaŵi-Zambia international boundary where it is intersected by the straight line joining the trigonometrical station 8 NRP on Nyauzi Hill and the confluence of the Mavumbwe and Nkaladzi Stream; thence by the said straight line in an easterly direction to the aforementioned confluence; thence by the Mavumbwe Stream downstream to its confluence with the Rusa River; thence by the Rusa River upstream to its confluence with the Mwanje Dambo; thence by the Mwanje Dambo upstream to its source; thence in a straight line in a south-easterly direction to the source of the Nkhono Dambo; thence by the Nkhono, Mtombozi Susamwere, Kasuzu and Nkaladzi Dambos downstream to the confluence with the Bua River; thence by the Bua River upstream to its confluence with the Namitete River; thence by the Namitete River upstream to its source on the Malaŵi-Mozambique international boundary; thence by the Malaŵi-Mozambique international boundary in a northerly direction to Boundary Beacon No. 38 on the Malaŵi-Zambia-Mozambique international boundary; thence by the Malaŵi-Zambia international boundary in a northerly direction to the point of commencement.

(*m*) *Dedza District*

Commencing at the source of the Diampwe River on the Malaŵi-Mozambique international boundary downstream to its confluence with the Linthipe River; thence by the Linthipe River downstream to

a point approximately one mile above its confluence with the Kavunguti Stream; thence by the edge of the Rift Escarpment in a general south-easterly then southerly direction to a point one and a half miles south of its intersection with the Ngodzi River; thence by a line parallel to the Ngodzi River in an easterly direction to a point on the western shore of Lake Malaŵi; thence on a straight line due east to a point on Lake Malaŵi due north of the Nankholokolo River at approximately Latitude 14° 6'S and Longitude 34° 42 1/2'E; thence in a straight line due south to the mouth of the Nankholokolo River on the shore of Lake Malaŵi; thence by the Nankholokolo River upstream for approximately 3 3/4 miles; thence in a straight line in a south-westerly direction through Kapiri Hill for approximately 12 miles to a point where the Livulezi River enters the plains; thence by the Livulezi River upstream to its confluence with the Linthumbule Stream; thence by the Linthumbule Stream upstream to the edge of the escarpment; thence by the edge of the escarpment in a northerly and then north-easterly direction to the Nankokwe Stream; thence by the Nankokwe Stream upstream for approximately one mile to its confluence with the Ziye Stream; thence by the Ziye Stream upstream to its confluence with the Tsanthi Stream; thence by the Tsanthi Stream upstream to its source on Nkhambo Hill; thence across the slopes of Nkhambo Hill to the source of the Nkhwali Stream; thence by the Nkhwali Stream downstream to its confluence with the Nankokwe Stream; thence by the Nankokwe Stream upstream to its confluence with the Malire Stream; thence by the Malire Stream upstream to its source on the Mlera Hill; thence across the slopes of Mlera Hill to the source of the Mwala-woyera Stream; thence by the Mwala-woyera Stream downstream to its confluence with the Nankokwe Stream; thence by the Nankokwe Stream upstream to its source on the Malaŵi-Mozambique international boundary; thence by the Malaŵi-Mozambique international boundary in a general westerly direction to the point of commencement.

(*n*) *Ncheu District*

Commencing at the source of the Nankokwe Stream on the Malaŵi-Mozambique international boundary downstream to its confluence with the Mwala-woyera Stream; thence by the Mwala-woyera Stream upstream to its source on Mlera Hill; thence across the slopes of Mlera Hill to the source of the Malire Stream; thence by the Malire Stream downstream to its confluence with the Nankokwe Stream; thence by the Nankokwe Stream downstream to its confluence with the Nkhwali Stream; thence by the Nkhwali Stream upstream to its source on Nkhambo Hill; thence across the slopes of Nkhambo Hill to the source of the Tsanthi Stream; thence by the Tsanthi Stream downstream to its confluence with the Ziye Stream; thence by the Ziye Stream downstream to its confluence with the Nankokwe Stream; thence by the Nankokwe Stream downstream for approximately one mile to the edge of the escarpment; thence by the edge of Linthumbule Stream; thence by the Linthumbule Stream downstream to its confluence with the Livulezi River; thence by the Livulezi River downstream to the point where it enters the plain; thence in a straight line in a north-easterly direction through Kapiri Hill for approximately 12 miles to where it meets the Nankholokolo River;

thence by the Nankholokolo River upstream to its source; thence by a straight line in a southerly direction to the summit of Namphiri Hill; thence by a straight line in a south-easterly direction through Nangulukuti Hill to the summit of Kaulatsitsi Hill; thence in a straight line in a south-westerly direction to the confluence of the Aunde and Muti Streams; thence by the Muti Stream downstream to its confluence with the Liwawadzi River; thence by the Liwawadzi River downstream to a beacon situate at a point where the Chigumukile Dambo enters the Liwawadzi River aforesaid; thence in a straight line on a true bearing of 309° 35' for a distance of 2.12 miles to a beacon situate on a footpath leading to and 0.5 miles east of Funsani Village and where the said footpath approaches near to the Linengwe Stream; thence in a straight line on a true bearing of 194° 20' for a distance of 2.61 miles to a beacon aligned with the telegraph line of the Blantyre-Salima railway at the 72.33 mile point from Blantyre; thence in a straight line on a true bearing of 210° 10' for a distance of 5.87 miles to a beacon situate at the junction of the Zomba-Ncheu road with the Blantyre branch road; thence in a straight line on a true bearing of 162° 35' for a distance of 3.09 miles to a beacon situate on the right bank of the Rivi-Rivi River immediately south of a hill situate on the left bank of this River; thence in a straight line on a true bearing of 194° 20' for a distance of 4.91 miles to a beacon situate on a footpath leading to and distant 2.1 miles from Senzani Village; thence continuing on a true bearing of 194° 20' for a distance of 5.06 miles to a point on the Biantyre-Ncheu road, which point bears 257° 30' true and is distant 2.75 miles, approximately, from the summit of Kangankunde Hill; thence continuing on a true bearing of 194° 20' for a distance of 6.25 miles to a beacon situate on the left bank of the most easterly point of the Lisungwe River; thence by the Lisungwe River downstream to its confluence with the Mwendang'ombe River; thence by the Mwendang'ombe River upstream to its confluence with the Fumfuli River; thence by the Fumfuli River upstream to its confluence with the Chule Stream; thence by the Chule Stream upstream to its source; thence on a bearing of 298° for a distance of approximately one mile to the confluence of the Chipanga and Tabva Stream; thence by the Tabva Stream upstream to a beacon on its right bank at the foot of Sunche Hill; thence on a bearing of 260° for a distance of approximately 0.6 miles to the Blantyre-Ncheu inter-district beacon, which beacon is situate on the eastern side of the Neno-Ncheu road and bears 250° and is distant approximately 5.7 miles from Nkokwe Primary Triangulation Beacon; thence continuing on a bearing of 260° to the Malaŵi-Mozambique international boundary; thence by the Malaŵi-Mozambique international boundary in a northerly direction to the point of commencement.

III. The Southern Region *comprising*—

(*o*) *Mangochi District*

Commencing at the Malaŵi-Mozambique international boundary Beacon No. 17 on the eastern shore of Lake Malaŵi, by the Malaŵi-Mozambique international boundary in a general south-easterly direction to the point where it is crossed by the Nyenyezi Stream between international boundary Beacons Nos. 13 and 12; thence by

the Nyenyezi Stream upstream to its confluence with the Nsuka Stream; thence by the Nsuka Stream upstream to the point where it is crossed by the footpath leading from Mlungu's Village to the old site of Chiwalo's Village; thence by the said footpath in a southerly then westerly direction to the point where it crosses the Masanje Stream; thence by the Masanje Stream downstream to its mouth on the eastern shore of Lake Malombe; thence following the eastern shore of Lake Malombe in a southerly direction to a point opposite Mvera at the mouth of the Shire River; thence due west across the Shire River to a point 250 yards south of the Mvera ferry; thence in a westerly direction to a beacon consisting of a cairn of stones on the Mpale Stream two miles upstream from the point where the Mangochi-Zomba road crosses the said Mpale Stream; thence in a westerly direction to the confluence of the Aunde and Muti Streams; thence in a straight line in a north-easterly direction to the summit of Kaulatsitsi Hill; thence in a straight line in a north-westerly direction through Nangulukuti Hill to the summit of Namphiri Hill; thence in a straight line in a northerly direction to the source of the Nankholokolo River; thence by the Nankholokolo River downstream to its mouth on Lake Malaŵi; thence due north to a point on Lake Malaŵi at approximately latitude 14° 6' S and longitude 34° 42 1/2' E; thence in a straight line in a north-easterly direction to the Malaŵi-Mozambique international boundary Beacon No. 17, the point of commencement.

(*p*) *Zomba District*

Commencing at a point between Beacons Nos. 7A and 7B on the Malaŵi-Mozambique international boundary which point lies due east of the mouth of the Phalombe River by a straight line due west across Lake Chilwa to the mouth of the Phalombe River; thence by the Phalombe River to its confluence with the Namadzi River; thence by the Namadzi River upstream to the north-eastern corner of Namadzi Estate as described in the tenth schedule of an Indenture of Conveyance dated the 22nd day of February, 1939, and registered as Deed 10939; thence following the northern boundary of the said Namadzi Estate in a westerly direction to Beacon A/13, which beacon is situate on the eastern side of Sharrers Road which is the eastern boundary of a block of Public Land comprising 12,087 acres known as Mzeze Estate being the subject of an Indenture of Conveyance dated the 17th day of December, 1952, and registered as Deed 17002 and is delineated on Survey Department Plan 2230; thence along the old Sharrers Road in a general southerly direction through Beacon A/14 to Beacon A/15 which is on the eastern bank of the Mlombozi River; thence by the Mlombozi River downstream to the southern boundary of the said block of Public Land; thence following the boundaries of the said block of Public Land through Beacons A/36, A/38, A/40 to the Primary Triangulation Beacon 7/NYP on Mwenje Hill; which beacon is also the most northerly beacon on the western boundary of the said block of Public Land; thence on a true bearing of 273° 18' 22' for a distance of 12,276 feet to the Government Survey Beacon on Chifumbe Hill; thence on a true bearing of 315° 14' 11' for a distance of 14,057 feet to the Government Triangulation Beacon on Mirale Hill; thence on a true bearing of 331° 05' 38' for a distance of 11,583 feet to the Government Survey Beacon No. 32 situate at the source of the Chia River; thence by the

Chia River downstream to its confluence with the Shire River; thence by the Shire River upstream to its confluence with the Chimbiya Stream; thence by the Chimbiya Stream upstream to its source; thence by a straight line in an easterly direction to the confluence of the Ntandangala and Lisanjala Streams; thence by the Lisanjala Stream upstream to its confluence with the Chagwandembo Stream; thence by the Chagwandembo Stream upstream to its source; thence in a straight line in a general north-easterly direction to the summit of Malosa Hill; thence in a straight line in a general north-easterly direction to the source of the Likwenu River; thence by the Likwenu River downstream to a point where it is crossed by the old Zomba-Liwonde road; thence by a straight line in an easterly direction to the confluence of the Makungulu Stream with the Lifani River; thence by the Lifani River downstream to its confluence with the Domasi River; thence by the Domasi River downstream to its mouth at Lake Chilwa; thence by a straight line due east across Lake Chilwa to a point on the Malaŵi-Mozambique international boundary between Beacons Nos. 7E and 7F; thence by the Malaŵi-Mozambique international boundary in a general southerly direction to the point of commencement.

G.N. 8/1979 (*q*) *Machinga District*

Commencing at the mouth of the Masanje Stream on the eastern shore of Lake Malombe by the Masanje Stream upstream to the footpath leading from Mlungu's Village to the old site of Chiwalo's Village; thence by the said footpath to a point where it crosses the Nsuka Stream; thence by the Nsuka Stream downstream to its confluence with the Nyenyezi Stream; thence by the Nyenyezi Stream downstream to a point where it crosses the Malaŵi-Mozambique international boundary; thence following the Malaŵi-Mozambique international boundary in a southerly direction to a point between Beacons Nos. 7E and 7F near the eastern shore of Lake Chilwa; thence by a straight line due west across Lake Chilwa to the mouth of the Domasi River; thence by the Domasi River upstream to its confluence with the Lifani River; thence by the Lifani River upstream to its confluence with the Makungulu Stream; thence by a straight line in a north-westerly direction to the point where the old Zomba-Liwonde road crosses the Likwenu River; thence by the Likwenu River upstream to its source; thence in a straight line to the summit of Malosa Hill; thence in a straight line in a general southwesterly direction to the source of the Chagwandembo Stream; thence down the Chagwandembo Stream to its confluence with the Lisanjala Stream; thence by the Lisanjala Stream downstream to its junction with the Ntandangala Stream; thence in a straight line in a westerly direction to the source of the Chimbiya Stream; thence by the Chimbiya Stream downstream to its confluence with the Shire River; thence by the Shire River downstream to a point due east of the confluence of the Mwendang'ombe and Lisungwe Rivers; thence in a straight line crossing the Shire River in a westerly direction to the confluence of the Mwendang'ombe and Lisungwe Rivers; thence by the Lisungwe River to its most easterly point marked by a beacon situate on its left bank; thence by a straight line on a true bearing of 14° 20' for a distance of 6.25 miles to a point on the Blantyre-Ntcheu

road which point bears 257° 30' true and is distant 2.75 miles approximately from the summit of Kangankunde Hill; thence continuing in a straight line on a true bearing of 14° 20' for a distance of 5.06 miles to a beacon situate on a footpath leading to and distant 2.1 miles from Senzani Village; thence continuing in a straight line on a true bearing of 14° 20' for a distance of 4.91 miles to a beacon situate on the right bank of the Rivi-Rivi River immediately south of a hill situate on the left bank of the river; thence in a straight line on a true bearing of 342° 35' for a distance of 3.09 miles to a beacon situate at the junction of the Zomba-Ncheu road with the Blantyre branch road; thence in a straight line on a true bearing of 30° 10' for a distance of 5.87 miles to a beacon aligned with the telegraph line of the Blantyre-Salima railway at the 72.33 mile point from Blantyre; thence in a straight line on a true bearing of 14° 20' for a distance of 2.61 miles to a beacon situate on a footpath leading to and 0.5 miles distant from Funsani Village and where the said footpath approaches near the Linengwe Stream; thence in a straight line on a true bearing of 129° 35' for a distance of 2.12 miles to a beacon situate at a point where the Chigumukile Dambo enters the Liwawadzi River; thence by the Liwawadzi River to its confluence with the Muti Stream; thence by the Muti Stream upstream to its confluence with the Aunde Stream; thence in a straight line in an easterly direction to a beacon consisting of a cairn of stones on the Mpale Stream two miles upstream of the point where the Mangochi-Zomba road crosses the Mpale Stream; thence in an easterly direction to a point 250 yards south of the Mvera ferry, at the mouth of the Shire River; thence due east across the Shire River to its opposite bank; thence in a northerly direction following the eastern shore of Lake Malombe to the point of commencement.

(*r*) *Blantyre District*

Commencing at the confluence of the Shire-Chia Rivers G. R. YU 1402; thence upstream by the Chia River to Government Beacon No. 32 situate at the source of the said Chia River; thence on a true bearing of 151° 05' 38' for a distance of 11,583 feet to the Government Triangulation Beacon on Mirale Hill; thence on a true bearing of 135° 14' 11' for a distance of 14,057 feet to the Government Triangulation Beacon on Chifumbe Hill; thence on a true bearing of 93° 18' 22' for a distance of 12,276 feet to the Primary Triangulation Beacon 7/NYP on Mwenje Hill, which beacon is also the most northerly beacon on the western boundary of a block of Public Land comprising 12,087 acres known as Mzeze Estate, the subject of an Indenture of Conveyance dated 17th day of December, 1952 and registered as Deed 177002 and is delineated on Survey Department Plan 2230; thence following the boundaries of the said block of Public Land through Beacons A/40, A/39, A/38, A/36 to where the boundary crosses the Mlombozi River; thence by the Mlombozi River downstream to the foot of the escarpment; thence by the foot of the escarpment in a southerly direction to where it meets the Lirangwe River; thence by the Lirangwe River upstream to its confluence with the Chipande Stream; thence by the Chipande Stream upstream to its confluence with an un-named stream situate near Beacon R2X of Njuli Estate described on Survey Department Plan No. SD3711; thence by the un-named stream upstream to a point situate 140 feet south-east of the said Beacon R2X; thence in a straight line in a north-westerly direction through Beacons R2X and

Mid 3 to the old Zomba road; thence by the old Zomba road in a southwesterly direction to Beacon WB; thence in a south-easterly direction in a straight line to the point where it meets the Chipande Stream 320 feet from Beacon NJ11; thence by the Chipande Stream downstream to its confluence with the Saere Stream; thence by the Saere Stream upstream to its source in Chipande Estate; thence in a straight line in an easterly direction to Beacon P3 of the said Chipande Estate described on Survey Department Plan No. SD4163; thence in a straight line in a south-easterly direction to Beacon P2 on the Zomba-Limbe main road; thence by the Zomba-Limbe main road in a south-westerly direction to Beacon R1 of Lot 25 of Chipande Estate described on Survey Department Plan No. SD4414; thence along the southern boundary of Lot 1 of Chipande Estate in a south-westerly direction to Beacon E of Ntawira Estate described on Survey Department Plan No. SD1354; thence in a straight line in a south-easterly direction to Beacon D also situate on Mapanga Estate described on Survey Department Plan No. 1255; thence following the eastern boundary of the Mapanga Estate aforesaid in a south-easterly direction to the confluence of the Mikonga and Mombezi Streams; thence by the Mombezi Stream upstream to where it meets the northern boundary of Block 4, Sedi Estate; thence following the most easterly boundary of Blocks 4,5 and 8, Sedi Estate to where it meets the Chisombezi Stream; thence by the Chisombezi Stream downstream to Beacon A87 of Block 11, Bangwe Estate, described on Survey Department Plan No. SD2351; thence by the eastern boundary of the said Bangwe Estate in a southerly direction to Beacon A80 which beacon is also the most easterly beacon of the block of land described on Survey Department Plan No. SD3061; thence in a straight line in a southerly direction to Beacon RA250 near the Midima road; thence in a straight line to the north-easterly corner of Malabvi Estate described on Survey Department Plan No. SD3193; thence by the eastern boundary of the said estate in a southerly direction to the confluence of the Nachambo Stream with the Luchenza River; thence by the Luchenza River downstream to the confluence with the Nziwika Stream; thence by the Nziwika Stream upstream to the confluence with the Nantipwiri River; thence by the Nantipwiri River upstream to the source; thence by a straight line in a westerly direction across the Blantyre-Thyolo road to the source of the Chinguluwe River; thence by the Chinguluwe River downstream to the confluence with the Makungwa River; thence by the Makungwa River downstream to the confluence with the Limbe River; thence by a straight line in a westerly direction to the most easterly corner of the Mbami Estate held by the African Lakes Corporation Ltd., under Deed Registered No. 258; thence by the north-eastern boundary of the said Mbami Estate and its prolongation, in a straight line in a north-westerly direction to the Kadawako Stream; thence by the Kadawako Stream downstream to its confluence with the Nasunda Stream; thence by the Nasunda Stream upstream to the southern boundary of the Mpemba Estate; thence by the southern and western boundaries of the said Mpemba Estate in a westerly and northerly direction to its north-western corner; thence by a straight line in a westerly direction across the northern slopes of Mpemba Hill to the confluence of the Lower Mudi and Likabula Rivers; thence by the Likabula River upstream to the southern boundary of the Kumtaja-Njowe Estate held by the British South Africa Company Limited under the Certificate of Claim No. 40;

thence by the said southern boundary of the said Kumtaja-Njowe Estate in a straight line in a westerly direction to the confluence of the Mkurumadzi and Shire River; thence by the Shire River upstream through Mpatamanga, Nkula and Matope to its confluence with the Chia River, the point of commencement.

(*s*) *Chiradzulu District*

Commencing at Beacon D of Ntawira Estate described on Survey Department Plan No. SD1354 in a straight line in a north-westerly direction to Beacon E of the said Estate; thence in a north-easterly direction along the southern boundary of Lot 1 of Chipande Estate to Beacon R1 of Lot 25 of the said Chipande Estate described on Survey Department Plan No. SD4414 and situate on the Limbe-Zomba road; thence by the Limbe-Zomba road in a north-easterly direction to Beacon P2 of Chipande Estate described on Survey Department Plan No. SD4163; thence in a straight line in a north-westerly direction to Beacon P3; thence in a straight line in a westerly direction to the source of the Saere Stream; thence by the Saere Stream downstream to its confluence with the Chipande Stream; thence by the Chipande Steam downstream to a point 320 feet from Beacon NJ11 of Njuli Estate described on Survey Department Plan No. SD3711; thence in a straight line in a north-westerly direction to beacon WB on the old Zomba road; thence by the old Zomba road in a north-easterly direction to Beacon Mid 3; thence in a straight line in a south-easterly direction through Beacon R2X to where it meets an un-named stream; thence by the un-named stream downstream to its confluence with the Chipande Stream; thence by the Chipande Stream downstream to its confluence with the Lirangwe River; thence by the Lirangwe River downstream to the foot of the escarpment; thence by the foot of the escarpment in a northerly direction to the Mlombozi River; thence by the Mlombozi River upstream to Beacon A15 also situate on the old Sharrers Road and described on Survey Department Plan No. SD2230; thence by the old Sharrers Road in a northerly direction through Beacon A14 to Beacon A13 situate at the north-western corner of Namadzi Estate; thence following the northern boundary of the said Namadzi Estate in an easterly direction to its north-eastern corner on the Namadzi River; thence by the Namadzi River downstream to a point approximately 400 yards below its confluence with the Mwanje Stream; thence in a straight line on a bearing of 203° for approximately 5 miles thence in a straight line on a bearing of 174° for approximately 12.4 miles; thence in a straight line on a bearing of 179° for approximately 2 miles; thence following a footpath in a general south-westerly direction for approximately 3.5 miles to where it meets the Luchenza River; thence by the Luchenza River upstream to its confluence with the Nachambo Stream; thence by the eastern boundary of the Malabvi Estate described on Survey Department Plan No. 3193 in a northerly direction to its north-eastern corner on the Midima road; thence in a straight line across the Midima road to Beacon RA250 of a block of land described on Survey Department Plan No. SD3061; thence in a straight line in a northerly direction to Beacon A80 which also is a beacon of Block 11 Bangwe Estate described on Survey Department Plan No. 2351; thence following the eastern boundary of the said block of land in a northerly direction to Beacon A87 on the Chisombezi Stream; thence by the Chisombezi Stream upstream to where it meets

the eastern boundary of Block 8 of Sedi Estate; thence following the eastern boundary of Blocks 8, 5 and 4 of Sedi Estate to where it meets the Mombezi Stream; thence by the Mombezi Stream downstream to its confluence with the Mikonga Stream at the south-eastern corner of the Mapanga Estate as delineated on Survey Department Plan No. 1255; thence by the eastern boundary of the said estate in a northerly direction to the point of commencement.

(*t*) *Thyolo District*

Commencing at the confluence of the Mwamphanzi River with the Nkhami Stream by the Mwamphanzi River upstream to its confluence with the Limbe Stream; thence by the Limbe Stream upstream to the Makungwa River; thence by the Makungwa River upstream to the confluence with the Chinguluwe River; thence by the Chinguluwe River to its source; thence by a straight line in an easterly direction across the Blantyre-Thyolo road to the source of the Nantipwiri River; thence by the Nantipwiri River to its confluence with the Nziwika River; thence by the Nziwika River to its confluence with the Luchenza River; thence by the Luchenza River downstream to its confluence with the Thuchila River; thence by the Thuchila River downstream to its confluence with the Ruo River; thence by the Ruo River downstream to the confluence with the Palamanga River; thence by the Palamanga River upsteam to its source at M.R. 349889; thence by a straight line in a westerly direction to the peak of a hill at M.R. 337888; thence by a straight line in a westerly direction to the boundary of the Kalula Hills Forest Reserve at M.R. 331888; thence by the boundary of the Kalula Hills Forest Reserve in a north-westerly direction to the junction with the Chizimbe River; thence by the Chizimbe River downstream to the foot of the escarpment; thence along the foot of the escarpment in a north-westerly direction to the Livunzu River; thence by the Livunzu River upstream to its confluence with the Mbinini River; thence by a straight line in a north-westerly direction to the peak of Nansale Hill; thence by a straight line in a north-westerly direction to the peak of a hill at M.R. 094161; thence by a straight line in a north-westerly direction to the peak of Nzongwe Hill; thence by a straight line in a north-westerly direction to a point on the Nabukwi River at M.R. 076198; thence by the Nabukwi River downstream to the confluence with the Maperera River; thence by the Maperera River upstream to its confluence with the Ulawa River; thence by the Ulawa River upstream to a point at the foot of a minor escarpment at M.R. 060230; thence by the foot of the minor escarpment in a north-westerly direction to the confluence of the Nkuzi and Namikate Rivers; thence along the Namikate River upstream to a point at M.R. 045267; thence by a straight line in a north-westerly direction to the source of the Chidzala River at M.R. 038273; thence by the Chidzala River downstream to its confluence with the Mwamphanzi River; thence by the Mwamphanzi River upstream to the confluence of the Mwamphanzi and Nkhami Rivers, being the point of commencement.

(*u*) *Mulanje District*

Commencing at a point on the Namadzi River approximately 400 yards below its confluence with the Mwanje Stream; thence downstream to its confluence with the Phalombe River; thence by the

Phalombe River downstream to its mouth on the western shore of Lake Chilwa; thence by a straight line due east across Lake Chilwa to the Malaŵi-Mozambique international boundary; thence by the Malaŵi-Mozambique international boundary in a southerly direction to Beacon No. 1 on the Muloza River; thence by the Muloza River downstream to its confluence with the Ruo River; thence by the Ruo River downstream to its confluence with the Thuchila River; thence by the Thuchila River upstream to its confluence with the Luchenza River; thence by the Luchenza River upstream for approximately 200 yards to where it is joined by a footpath; thence by the footpath in a general north-easterly direction for approximately 3.5 miles; thence in a straight line on a bearing of 359° for approximately 2 miles; thence in a straight line on a bearing of 354° for approximately 12.4 miles; thence in a straight line on a bearing of 23° for approximately 5 miles to the point of commencement.

(*v*) *Chikwawa District*

Commencing at the Malaŵi-Mozambique international boundary Beacon No. 39 on Ngowo Hill; thence by a straight line in an easterly direction to the summit of Kapirimbewe (Kambewe) Hill; thence by a straight line in an easterly direction to the confluence of the Mkurumadzi and Shire River; thence continuing in an easterly direction by the southern boundary of the old Kumtaja-Njowe Estate described under Certificate of Claim No. 40 to the Likabula River; thence by the Likabula River downstream to its confluence with the Nswaswa River; thence by the Nswaswa River upstream to its source at M.R. 023326; thence by a straight line in a southerly direction across the Blantyre-Chikwawa road to the source of the Bilira River at M.R. 023323; thence by the Bilira River downstream to its confluence with the Mwamphanzi River; thence by the Mwamphanzi River to its confluence with the Chidzala River; thence by the Chidzala River upstream to its source at M.R. 038273; thence by a straight line in a south-easterly direction to a point on the Namikate River at M.R. 045267; thence by the Namikate River to its confluence with the Nkuzi River; thence along the foot of a minor escarpment in a south-easterly direction to a point on the Ulawa River at M.R. 060230; thence by the Ulawa River downstream to its confluence with the Maperera River; thence by the Maperera River downstream to its confluence with the Nabukwi River; thence by the Nabukwi River upstream to a point at M.R. 076198; thence in a straight line in a south-easterly direction to a hill at M.R. 094161; thence by a straight line in a south-easterly direction to the peak of Nansale Hill; thence by a straight line in a south-easterly direction to the confluence of the Livunzu and Mbinini Rivers; thence by the Livunzu River downstream to the foot of the escarpment; thence by the foot of the escarpment in a south-easterly direction to the Chizimbe River; thence by the Chizimbe River upstream to the boundary of the Kalula Hills Forest Reserve; thence by the boundary of the Kalula Hills Forest Reserve in a south-easterly direction to the Milole River; thence by the Milole River downstream to a point at M.R. 238918 where it enters the Elephant Marsh; thence by a straight line in a south-westerly direction across the Elephant Marsh to where the Lalanje River enters the Elephant Marsh on its south side; thence by the Lalanje River upstream to its source on the Malaŵi-Mozambique

international boundary; thence by the Malaŵi-Mozambique international boundary in a north-westerly direction to Beacon No. 39 on Ngowo Hill the point of commencement.

(*w*) *Nsanje District*

Commencing at the source of the Lalanje River on the Malaŵi-Mozambique international boundary by the Lalanje River downstream to the point where it enters the Elephant Marsh; thence in a straight line in a north-easterly direction across the Elephant Marsh to a point on the Milole River at M.R. 238918; thence by the Milole River upstream to the boundary of the Kalula Hills Forest Reserve; thence by the boundary of the Kalula Hills Forest Reserve in a southeasterly direction to a point at M.R. 331888; thence by a straight line in an easterly direction to a hill at M.R. 337888; thence by a straight line in an easterly direction across the Thyolo-Chiromo road to the source of the Palamanga River at M.R. 349889; thence by the Palamanga River downstream to the confluence with the Ruo River which marks the Malaŵi-Mozambique international boundary; thence by the Malaŵi-Mozambique international boundary in a southern then westerly and then northerly direction to the source of the Lalanje River, the point of commencement.

(*x*) *Mwanza District*

Commencing at a point on the Malaŵi-Mozambique international boundary, which point bears 260° from the inter-district beacon on the southern boundary of the Ntcheu District, which beacon is situate on the eastern side of the Neno-Ntcheu road and bears 250° and is distant approximately 5.7 miles from Nkokwe Primary Triangulation Beacon; thence on a bearing of 80° to the aforesaid inter-district beacon; thence on a bearing of 80° for a distance of approximately 0.6 miles to a beacon on the right bank of the Tabva Stream at the foot of Sunche Hill; thence by the Tabva Stream downstream to its confluence with the Chipanga Stream; thence on a bearing of 118° for a distance of approximately one mile to the source of the Chule Stream; thence by the Chule Stream downstream to its confluence with the Fumfuli River; thence by the Fumfuli River downstream to its confluence with the Mwendang'ombe River; thence by the Mwendang'ombe River downstream to its confluence with the Lisungwe River; thence by a straight line in an easterly direction to the Shire River at a point distant 5 miles upstream from the confluence of the Chia River; thence by the Shire River downstream through Matope, Nkula and Mpatamanga to its confluence with the Mkurumadzi River at G.R. XT8651; thence by a straight line in a westerly direction to the summit of Kapirimbewe Hill (also known as Kambewe Hill); thence by a straight line in a westerly direction to Ngowo Hill and Beacon No. 39 on the Malaŵi-Mozambique international boundary; thence by the Malaŵi-Mozambique international boundary in a general northerly direction to the point of commencement.

SECOND SCHEDULE

First Column	*Second Column*	*Third Column*
Lake Nyasa	Lake Malaŵi	19th February, 1965
Florence Bay	Chitimba	19th February, 1965
Deep Bay	Chirumba	19th February, 1965
Fort Hill	Chitipa	19th February, 1965
Fort Manning	Mchinji	19th February, 1965
Port Herald	Nsanje	19th February, 1965
Visanza	Ntchisi	19th February, 1965
Nkata Bay	Nkhata Bay	26th February, 1965
Kota-Kota	Nkhotakota	26th February, 1965
Mkhoma	Nkhoma	26th February, 1965
Kochira	Kochirira	15th April, 1965

SUBSIDIARY LEGISLATION

ALTERATION OF PLACE NAMES ORDER

under s. 5

Orders made under the powers contained in section 5 of the Act have substituted or conferred the place names set out in the Second Column hereunder for the place names set out respectively in the First Column with effect from the dates specified in each case—

G.N.	*First Column*	*Second Column*	*Date*
199/1970	Loudon	Embangweni	29th September, 1970
268/1970	Cholo	Thyolo	8th December, 1970
268/1970	Ntondwe	Thondwe	8th December, 1970
88/1971	Fort Johnston	Mangochi	17th March, 1971
88/1971	Malosa	Muloza	17th March, 1971
88/1971	Mlanje	Mulanje	17th March, 1971
88/1971	Ntakataka	Mtakataka	17th March, 1971
88/1971	Palombe	Phalombe	17th March, 1971
88/1971	Rumpi	Rumphi	17th March, 1971
88/1971	Tuchila	Thuchila	17th March, 1971
161/1973	Lodjwa	Lojwa (North Kasungu)	30th November, 1973
161/1973	Lufilya	Lufira (Karonga District)	30th November, 1973
161/1973	Mkhakama Mpasadzi	Nkhakama Mpasazi (North Kasungu)	30th November, 1973
8/1974	Vipya	Viphya	17th January, 1974
172/1974	Ncheu	Ntcheu	30th October, 1974
7/1979	Kasupe	Machinga	10th October, 1978

PUBLIC HOLIDAYS

CHAPTER 18:05

Containing Pages 1–2

CHAPTER 18:05

PUBLIC HOLIDAYS

ARRANGEMENT OF SECTIONS

SECTION

1. Short title
2. Public holidays
3. Alteration or addition of public holidays
4. Where public holiday falls on a Saturday or a Sunday
5. Right to open public offices and require attendance of Government employees

Schedule

An Act to make provision for Public Holidays

[28TH JULY, 1967]

11 of 1967
16 of 1983
9 of 1985
G.N. 99/1986
7/1994
4/1994
6/1997
41/2007

Short title

1. This Act may be cited as the Public Holidays Act.

Public holidays

2. The several days specified in the Schedule shall, in every year, be kept as public holidays by all public offices and all banks.

Alteration or addition of public holidays

3.—(1) The Minister may, by order published in the *Gazette,* amend the Schedule.

(2) The Minister may, in any year, by order published in the *Gazette*, declare any day to be a public holiday either in addition to the days mentioned in the Schedule or in substitution for any of such days, and either throughout Malaŵi or in any District, area or any part thereof, and thereupon any day so declared shall be a public holiday in all respects as if it were a day specified in the Schedule, either throughout Malaŵi or in the locality specified in such order; and where in any year, any day is so declared to be a public holiday in substitution for any of the days specified in the Schedule such latter day shall, in such year, cease to be a public holiday in Malaŵi or in the locality specified in the order.

Where public holiday falls on a Saturday or Sunday
16 of 1983

4. Where, in any year, a day specified in the Schedule, other than the Saturday following Good Friday, falls on a Saturday or Sunday, then the next succeeding day, not being itself a Sunday or public holiday shall in such year be a public holiday in all respects as if it were a day specified in the Schedule, and the day specified in the Schedule shall, in such year, cease to be a public holiday.

Right to open public offices and require attendance of Government employees

5. Notwithstanding anything contained in this Act, it shall be lawful for the head of any Government Department to open the offices and works thereof, and to call upon all or any persons employed in such Department to perform such of their duties on any public holiday as to such head of Department seems fit.

G.N. 99/1986
67/1994
84/1994
76/1997
41/2007

SCHEDULE

New Year's Day
John Chilembwe Day (15th January)
Martyrs' Day (3rd March)
Good Friday
Saturday following Good Friday
Easter Monday
Labour Day (1st May)
Kamuzu Day (14th May)
Independence Day (6th July)
Mothers' Day (15th October)
Eid al Fitri
Christmas Day

PUBLIC STORES

CHAPTER 18:06

Containing Pages 1–2

CHAPTER 18:06

PUBLIC STORES

ARRANGEMENT OF SECTIONS

SECTION

1. Short title
2. Interpretation
3. Marks in First Schedule appropriated for public stores
4. Marks in Schedules to be prima facie proof of ownership by Government
5. Obliteration with intent to conceal
6. Power to amend First Schedule

Schedules

An Act to make provision for the marking of stores the property of the Government, the proof of ownership of such stores, for offences in relation to the marking of stores and for matters connected therewith and incidental thereto 16 of 1966

[4TH MAY, 1966]

1. This Act may be cited as the Public Stores Act. Short title

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

"Government property" and "property of the Government" means any property of the Government of Malaŵi;

"stores" includes all goods and chattels and any single store or article.

3.—(1) The marks set forth in the First Schedule may be applied in or on stores therein described in order to denote the property of the Government in stores so marked. Marks in First Schedule appropriated for public stores

(2) Any person who, without lawful authority or excuse, (the proof of which authority or excuse shall lie upon the person accused) applies any of the said marks on any stores described in the First Schedule shall be guilty of a misdemeanour and shall be liable to imprisonment for two years.

4. Where in any proceedings, whether under this Act or under any other law and irrespective of whether such proceedings be of a criminal or of a civil nature, it is proved that any stores which are the subject matter of such proceedings have had applied thereto any of the marks described in the First or the Second Schedule, such proof shall be *prima facie* evidence that such stores are the property of the Government. Marks in Schedules to be prima facie proof of ownership by Government

Obliteration with intent to conceal

5. Any person who, with intent to conceal the property of the Government in any stores, takes out, destroys or obliterates, wholly or in part, any mark described in the First or the Second Schedule shall be guilty of a felony and shall be liable to imprisonment for seven years.

Power to amend First Schedule

6. The Minister may, by notice published in the *Gazette*, add to or delete from the stores and marks set forth in the First Schedule.

FIRST SCHEDULE

Marks Appropriated for Public Stores

Stores	*Marks*
Manilla Rope	A green coloured thread laid up with the yarn
Any stores other than those enumerated above	The letters "MG"

SECOND SCHEDULE

MG, NG, RNG, the coat of arms of the former Federation of Rhodesia and Nyasaland, the coat of arms of the former Nyasaland Protectorate.

STATUTORY BODIES (CONTROL OF CONTRACTS)

CHAPTER 18:07

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CHAPTER 18:07

STATUTORY BODIES (CONTROL OF CONTRACTS)

ARRANGEMENT OF SECTIONS

SECTION
1. Short title
2. Interpretation
3. Power of appropriate Minister to issue Orders
4. Duties of statutory bodies in respect of future contracts
5. Approval of contracts
6. Power of appropriate Minister to require information
7. Consequences of entering into contract without approval
8. Establishment of Councils of Inquiry
9. Functions of Council of Inquiry
10. Power of appropriate Minister to direct an inquiry
11. Scope of the inquiry
12. Matters to be included in report of Council of Inquiry
13. Powers of appropriate Minister on receipt of report
14. Penalty for violation of condition in Order
15. Application of certain sections of the Commissions of Inquiry Act to Councils of Inquiry
16. Regulations
Schedule

An Act to make provision for the control in the public interest of contracts entered into by statutory bodies and for matters connected therewith

[22ND JUNE, 1966]

29 of 1966
41 of 1966
4 of 1981
G.N.
137/1966
127/1973
114/1990
32/1995
86/1998

1. This Act may be cited as the Statutory Bodies (Control of Contracts) Act. Short title

2.—(1) Interpretation (1) In this Act, unless the context otherwise requires— Interpretation 4 of 1981

"Appropriate Minister", in relation to any statutory body, means the Minister for the time being charged by the President with responsibility for that body for the purposes of this Act;

"contract" means a contract for the supply of goods or services or for the construction of any building or other works, whether such contract is made or intended to be made within or outside Malaŵi;

"Council of Inquiry" means a Council of Inquiry established by the Minister under section 8;

"existing contract" means any contract made between a statutory body and any other person which has been

entered into at the date of the making by the Minister of an Order for the holding of an inquiry into that contract or into the class of contract to which it belongs;

"statutory body" includes—

(*a*) all local authorities, and all co-operative societies incorporated under the Cooperative Societies Act;

Cap. 47:02

(*b*) every other corporation, board, council or other body of persons, whether corporate or unincorporate, whether established or incorporated within or outside Malaŵi, the name or description of which is specified in the Schedule.

(2) The Minister may from time to time by notice published in the *Gazette* amend the Schedule by the addition of the name of any other body whether established or incorporated within or outside Malaŵi.

(3) In considering the public interest under any of the provisions of this Act, account shall be taken of the national economic interests of Malaŵi as a whole, including its future economic development, and of the financial welfare of the statutory body concerned.

Power of appropriate Minister to issue Orders

3.—(1) Where the appropriate Minister is satisfied that it is in the public interest that a statutory body should not enter into a contract or class of contract without his prior approval he may issue an Order in accordance with subsection (2).

(2) An Order under subsection (1) shall specify—

(*a*) the statutory body or bodies; and

(*b*) the contract or class of contract,

to which section 4 shall apply.

(3) Every Order issued under this section shall be published in the *Gazette* and shall take effect from the date of publication.

Duties of statutory bodies in respect of future contracts

4.—(1) A statutory body in respect of which an Order issued under section 3 has been published in the *Gazette* shall not enter into any contract referred to in such Order either specifically or by reference to a class of contract without the prior approval in writing of the appropriate Minister.

(2) A statutory body which desires to enter into a contract which requires the prior written approval of the appropriate Minister shall apply to such Minister for approval and shall furnish such information and documents relating to the subject matter and circumstances of the desired contract as that Minister shall require.

Approval of contracts

5.—(1) Upon receiving information under section 4 (2), the appropriate Minister may, if satisfied that it is in the public interest so to do, approve the making of a contract.

(2) The appropriate Minister may, to the extent that he is satisfied that it is in the public interest so to do, attach conditions to his approval of the making of any contract for which his written approval is required, which conditions may relate to the parties to or the period or other terms of the contract, and shall be expressed in writing.

Power of appropriate Minister to require information

6. The appropriate Minister may require any statutory body to furnish him with such information relating to its requirements with regard to the supply of goods or services as he considers desirable to enable him to carry out his functions under this Act.

Consequences of entering into contract without approval

7.—(1) Where a contract which under this Act requires the prior written approval of the appropriate Minister is entered into by a statutory body without such approval, such contract shall not be enforceable against the statutory body by any of the parties thereto, nor shall any goods or services supplied to the statutory body in pursuance of such contract be the subject of any claim in any court.

(2) Every member of the council, or of the board of management or other authority responsible for the conduct of the affairs of a statutory body shall, if such statutory body enters into a contract for which the appropriate Minister's written approval is required without having obtained such approval, be guilty of an offence unless he satisfies the court that he was in no way responsible for the making of the contract.

(3) A person guilty of an offence under subsection (2) shall be liable to a fine of K2,000 or to imprisonment for two years.

Establishment of Councils of Inquiry

8.—(1) The Minister may at any time by an Order under his hand and published in the *Gazette* establish such Councils of Inquiry as he may deem necessary for the purposes of this Act.

(2) An Order establishing a Council of Inquiry in accordance with this section shall specify—

(*a*) the area or areas in which the Council shall exercise the powers conferred upon it by or under this Act;

(*b*) the persons who shall be members of the Council;

(*c*) the chairman of the Council; and

(*d*) the contracts or classes of contract in respect of which the Council shall exercise its functions.

(3) Every Council of Inquiry shall consist of not less than three members, including the chairman.

Functions of Council of Inquiry

9. The functions of a Council of Inquiry shall be—

(*a*) to make a full and impartial inquiry into any contract referred to the Council by the appropriate Minister, including all the circumstances surrounding the making of the contract, the negotiations preceding it, and the procedure followed by the statutory body in relation to the contract;

(*b*) to conduct the inquiry in accordance with the directions, if any, contained in the Order appointing the Council or otherwise given by the appropriate Minister;

(*c*) to furnish to the appropriate Minister a report in writing of the result of the inquiry together with a record of the proceedings of the inquiry and the conclusions arrived at by the Council; and

(*d*) to make recommendations to the appropriate Minister in relation to the contract concerned.

Power of appropriate Minister to direct an inquiry

10.—(1) Where a statutory body has entered into an existing contract the appropriate Minister may, either of his own motion or as a result of representations made to him by any person, require the statutory body or any other party to the contract to furnish to him such documents or information relating to the contract as the appropriate Minister may deem necessary.

(2) Where after consideration of any representations or documents in relation to the contract the appropriate Minister considers it in the public interest so to do, he may refer the existing contract to a Council of Inquiry established under this Act for investigation.

(3) When referring a contract to a Council of Inquiry for investigation the appropriate Minister may give to the Council such directions in relation to the conduct of the investigation, the scope of the inquiry, and the matters to be reported on by the Council, as he may deem necessary.

Scope of inquiry

11. Where an existing contract is referred to a Council of Inquiry by the appropriate Minister under section 10, the Council of Inquiry shall investigate the circumstances in which the contract was entered into, and in particular shall inquire into—

(*a*) whether tenders for the contract were invited and if so, whether the tenders were adequately advertised;

(*b*) whether the goods or services were necessary and proper for the purposes of the statutory body or whether they or any of them could have been supplied by any other person upon more advantageous terms and with due regard to the public interest;

(*c*) where the existing contract provides for the supply of goods or performance of services over a period of time at

a fixed price or rate of remuneration whether the length of that period and the price or rate of remuneration could reasonably have been considered to be in the public interest at the time when the contract was entered into;

(*d*) whether the further performance or continuance of the contract is desirable having regard to the public interest, and having due regard to the importance of maintaining confidence in the inviolability of contracts;

(*e*) whether the existing contract should be terminated and, if so, on what date and on what terms as to compensation or damages; and

(*f*) such other matters as the appropriate Minister may direct.

Matters to be included in report of Council of Inquiry

12. The report of the Council of Inquiry to be furnished to the appropriate Minister in relation to an existing contract shall contain the committee's conclusions on the matters referred to in section 11 (*a*) to (*f*) inclusive and, in particular, shall express an opinion on the desirability or otherwise of the contract in the public interest, and the report shall include recommendations as to whether or not the contract should be terminated, varied or be continued, subject if necessary to terms and conditions to be imposed by the Minister, and in the latter event the report shall include the advice of the Council as to the terms and conditions, if any, which the appropriate Minister should impose.

Powers of appropriate Minister on receipt of report

13.—(1) Upon receipt of a report from the Council of Inquiry the appropriate Minister, after consideration of the report, and after making such further inquiries, if any, as he may deem fit, may make an Order terminating or varying the contract, or imposing conditions in relation to its future performance. The Order may include a direction for payment of compensation to or by the statutory body concerned by or to any of the other parties to the contract or for the repayment of all or any part of any moneys paid pursuant to the contract by or to such statutory body to or by any of the other parties to the contract.

(2) Where an Order made by the appropriate Minister under subsection (1) contains a direction for the payment of compensation, or the repayment of moneys, the amount of the compensation or the moneys, as the case may be, specified in the Order shall be recoverable as a civil debt in any court having jurisdiction.

(3) The appropriate Minister may by an Order made under subsection (1) prohibit the performance in Malaŵi of the contract concerned or any part thereof; and such Order may be enforced by the High Court as though it were an injunction granted by that Court.

Penalty for violation of condition in Order

14. Any person who violates a condition in an Order made under section 13 shall be liable to a fine of K2,000 or to imprisonment for two years.

Application of certain sections of the Commissions of Inquiry Act to Councils of Inquiry Cap. 18:01

15. Sections 9, 10, 11, 12, 13 and 15 of the Commissions of Inquiry Act shall apply to a Council of Inquiry and the members thereof as though the Council and the members had been appointed a Commission and Commissioners, respectively under that Act.

Regulations

16.—(1) The Minister may make such regulations as he may deem expedient to give force or effect to this Act or for its better administration.

(2) Without derogation from the generality of subsection (1), regulations may provide for the following matters—

(*a*) prescribing the forms of Orders to be made by the Minister in appointing a Council of Inquiry under section 8;

(*b*) prescribing the forms of Orders to be made by the appropriate Minister after consideration of the report of a Council of Inquiry in accordance with section 13;

(*c*) prescribing the forms of directions to a Council of Inquiry to hold an inquiry under section 10; and

(*d*) prescribing and regulating all such matters as are required to be prescribed by this Act, or as may conveniently be prescribed for its better implementation.

G.N. 114/1990 32/1995 86/1998

s. 2

SCHEDULE

Statutory Bodies to which Section 4 of the Act Applies

Agricultural Development and Marketing Corporation
Air Malaŵi Limited
Blantyre Water Board
Board of Censors
Central Tender Board
Chichewa Board
Copyright Society of Malaŵi
Development of Malaŵian Traders Trust
Kasungu Flue-Cured Tobacco Authority
Lilongwe Water Board
Malaŵi Accountancy Board
Malaŵi Book Service
Malaŵi Bureau of Standards
Malaŵi Broadcasting Corporation
Malaŵi College of Accountancy

Malaŵi Council for the Handicapped
Malaŵi Dairy Industries
Malaŵi Development Corporation
Malaŵi Export Promotion Council
Malaŵi Housing Corporation
Malaŵi Institute of Education
Malaŵi Institute of Management
Malaŵi National Council of Sports
Malaŵi National Examinations Board
Malaŵi Railway Holdings Company
Malaŵi Railways Limited
Medical Council of Malaŵi
Mining Investment and Development Corporation
National Celebrations Council
National Coffee Authority
National Herbarium and Botanic Gardens of Malaŵi
National Family Welfare Council of Malaŵi
National Library Service
National Road Safety Council
Nurses and Midwives Council
Petroleum Control Commission
Pharmacy, Medicines and Poisons Board
Reserve Bank of Malaŵi
Smallholder Coffee Authority
Smallholder Sugar Authority
Smallholder Tea Authority
Tobacco Control Commission
Tree Nut Authority
University of Malaŵi

SUBSIDIARY LEGISLATION

G.N. 31/1995

STATUTORY BODIES (CONTROL OF CONTRACTS) (GENERAL) ORDER

under s. 3

Citation

1. This Order may be cited as the Statutory Bodies (Control of Contracts) (General) Order.

Statutory Bodies and Contracts to which s. 4 of the Act shall apply
G.N. 31/1995

2. Section 4 of the Act shall apply to—

(*a*) every statutory body specified in the Schedule to the Act;

(*b*) the following contracts, that is to say—

(i) any contract for the construction of buildings or other works, the value of which is estimated to exceed K1,000,000;

(ii) any contract for the supply of goods (other than goods purchased solely for the purpose of re-sale in the ordinary course of business), the value of which is estimated to exceed K500,000;

(iii) any contract for the supply of services (including professional, technical or consultancy services, but excluding legal services) the value of which is estimated to exceed K200,000.

CONTROL OF GOODS

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Control of Goods (Price Control) (Hoes Prices) Order—G.N. 125/1985

Control of Goods (Price Control) (Medicine Prices) Order—G.N. 126/1985

Control of Goods (Price Control) (Motor Fuel Prices) Order—G.N. 79/1987

Control of Goods (Meat Prices) Order—G.N 48/1988

Control of Goods (Price Control) (Sugar Prices) Order—G.N. 58/1994

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CONTROL OF GOODS

CONTROL OF GOODS ACT, 1968

The Control of Goods Act, 1968, (28 of 1968) was assented to on the 28th of October, 1968, but only sections 4, 5 and 18 were in operation on 10th January, 1969. (See G.N. 189 of 1968). Those sections are set out below and, for convenience of reference, subsidiary legislation made under section 18 is set out immediately thereafter.

Registration

4.—(1) Any person wishing to be registered as an importer or an exporter under this Act shall make application in writing addressed to the Minister, and shall supply such additional information as the Minister may require.

(2) The Minister may, at his discretion, register the applicant as an importer or exporter, as the case may be, and if he does so register the applicant shall issue him with a certificate of registration in the prescribed form.

(3) The production of a certificate of registration as an importer or exporter, as the case may be, issued under subsection (2) shall be *prima facie* evidence that the person named therein is so registered.

(4) Certificates issued under subsection (2) shall not be transferable without the written approval of the Minister.

(5) In the case of a certificate issued to a company or firm, a transfer of the control of the company or firm shall terminate the validity of the certificate unless the Minister otherwise orders. The decision of the Minister as to whether any transfer of the control of a company or firm has taken place shall be final and shall no be questioned in any court.

Cancellation of registration

5. The Minister, if he is satisfied that a person registered under section 4 has acted in a manner harmful to the interests of the national economy or the security of the State, may without liability for compensation, cancel such registration.

Regulations

18. The Minister may make regulations for the better carrying out of the provisions of this Act and prescribing anything required to be prescribed under this Act, and without prejudice to the generality of the foregoing such regulations may prescribe fees for the registration of importers and exporters and for the issue of import and export licences.

[Subsidiary] *Control of Goods (Registration) Regulations*

SUBSIDIARY LEGISLATION

made under the Control of Goods Act, 1968
(28 of 1968)

G.N. 190/1968

CONTROL OF GOODS (REGISTRATION) REGULATIONS

Citation

1. These Regulations may be cited as the Control of Goods (Registration) Regulations.

Prescribed form of certificate

2. The certificate of registration issued under section 4 (2) of the Act shall be in the form in the Schedule hereto.

SCHEDULE

FORM I

CONTROL OF GOODS ACT, 1968

(28 OF 1968)

No. .....

CERTIFICATE OF REGISTRATION AS AN IMPORTER/EXPORTER

This is to Certify that I, ..., Minister of Trade and Industry, in exercise of the powers conferred by section 4 of the Control of Goods Act, 1968, (28 of 1968) have registered .... as an importer/exporter.

This Certificate is issued subject to the following conditions:

1. The holder shall produce this Certificate, upon request, to any officer of the Customs.

2. This Certificate does not exempt the holder from compliance with any law relating to, or controlling, the import into or export from Malaŵi of any goods.

3. This Certificate does not, per se, entitle the holder to the grant of any licence to import into or export from Malaŵi any goods.

4. The holder shall notify the Secretary for Trade and Industry immediately of any transfer of the control of the business in respect of which this Certificate is issued, or of any change in the partners or directors of the said business.

Given at this day of 19

Signed .....

Minister of Trade and Industry

CHAPTER 18:08

CONTROL OF GOODS

ARRANGEMENT OF SECTIONS

SECTION

1. Short title
2. Interpretation
3. Regulations for the control of goods
4. Rationing of commodities and animals
5. Evidence
6. Penalties

An Act to enable the Minister to provide by regulation for the control of the distribution, disposal, purchase, and sale, and the wholesale and retail prices of any manufactured or unmanufactured commodity or of any animal or poultry specified by the Minister by order or of any class of any such commodity, animal, or poultry, for the control of imports into and exports from Malaŵi, and for other purposes incidental and supplementary to the foregoing

12 of 1954(F)

G.N. 2/1964(N) 219/1964(N)

[26TH MARCH, 1954]

1. This Act may be cited as the Control of Goods Act.

Short title

2. In this Act, unless inconsistent with the context—

Interpretation

"animal" means any animal, poultry or fish or any class of animal, poultry or fish specified by the Minister by order published in the *Gazette* to be an animal for the purposes of this Act;

"commodity" means any manufactured and unmanufactured commodity or any class of a commodity specified by the Minister by order published in the *Gazette* to be a commodity for the purposes of this Act;

"goods" means anything capable of being imported or exported.

3.—(1) Whenever it appears to the Minister necessary or expedient to control—

Regulations for the control of goods

(*a*) the import into or export from Malaŵi of any goods;

(*b*) the distribution, disposal, purchase and sale, or the wholesale or retail prices of any commodity or animal and the charges which may be made—

(i) for services relating to the distribution, disposal, purchase, and sale of the commodity or animal, as the case may be; and

(ii) for delivery of any commodity or animal, the wholesale or retail prices of which are controlled under this section,

he may make such regulations as appear to him to be necessary or expedient for such purposes.

(2) Without prejudice to the generality of the powers conferred by subsection (1), such regulations may provide—

(*a*) for requiring persons carrying on or employed in connexion with any trade, business, undertaking, or enterprise specified in such regulations to produce to such person as may be so specified any books, accounts, or other documents relating to that trade, business, undertaking, or enterprise, and for requiring any persons to furnish to such person as may be so specified such estimates or returns as the Minister considers it desirable to obtain for the effectual exercise of any of his powers under this section;

(*b*) for any incidental and supplementary matters for which the Minister thinks it expedient for the purposes of the regulations to provide, including in particular the entering and inspection of premises to which the regulations relate by persons authorized in that behalf by the Minister with a view to securing compliance with the regulations.

(3) Regulations made under this section may provide for empowering the Minister or such other Minister as may be specified in such regulations to make orders—

(*a*) for the control to such extent as may be specified in such regulations of the import into or export from Malaŵi of such goods or classes of goods as may be specified in such regulations;

(*b*) in respect of such commodities and animals as may be specified in such regulations for any of the purposes specified in subsection (1) (*b*).

Any orders made in terms of this subsection may contain such incidental or supplementary provisions as appear to the specified Minister to be necessary or expedient for the purpose of such orders.

(4) Regulations and orders under this section may be made so as to apply generally or to any particular trade, business, undertaking, or enterprise, or class thereof, and either to the whole or to any part of any trade, business, undertaking, or enterprise, and so as to have effect either throughout Malaŵi or in any particular area therein.

(5) For the avoidance of doubt, it is hereby declared that section 4 shall not apply in relation to any order under this section.

4. Regulations made under section 3, in relation to the rationing of any commodity or animal, may— Rationing commodities and animals

(*a*) fix or provide for fixing different quantities of the commodity or animal to be obtainable in the aggregate or individually by different classes of persons;

(*b*) provide for methods of distribution of the commodity or animal which differentiate as between different classes of persons so far as appears to the Minister to be necessary in order to secure or permit such distribution through the usual channels and agencies through which such classes of persons normally obtain the commodity or animal.

5.—(1) In any proceedings under this Act against any person, any statement or entry contained in any book or document kept by him or any person in his employ, or by his agent, shall be admissible in evidence as an admission of the facts set forth in that statement or entry, unless it is proved that the statement or entry was not made by that person, by any person in his employ, or by his agent. Evidence

(2) Whenever the manager, agent, or servant of any person does or omits to do anything which it would be an offence under this Act for such person to do or omit to do, such person shall be deemed himself to have done or omitted to do such thing and be liable to the penalties therefor in terms of this Act unless he proves to the satisfaction of the court that all reasonable steps were taken by him to prevent any act or omission of the kind in question:

Provided that the fact that the person issued instructions forbidding in respect of his manager, agent, or servant any act or omission of the kind in question shall not by itself be accepted as sufficient proof that he took all reasonable steps to prevent the act or omission.

6. Any person who contravenes or fails to comply with any regulation or order made under this Act shall be liable— Penalties

(*a*) for a first offence, to a fine of K200 or in default of payment to imprisonment for six months;

(*b*) for a subsequent offence, to a fine of K400 and to imprisonment for one year.

SUBSIDIARY LEGISLATION

G.N. 23/1967
106/1991

CONTROL OF GOODS (IMPORT AND EXPORT) (COMMERCE) REGULATIONS

under s. 3

Citation

1. These Regulations may be cited as the Control of Goods (Import and Export) (Commerce) Regulations.

Interpretation

2. In these Regulations, unless the context otherwise requires—

"controlled goods" means any goods the import into or the export from Malaŵi of which is prohibited, restricted or otherwise controlled by an Order made under regulation 3.

Minister may make orders
G.N. 106/1991

3.—(1) The Minister responsible for Trade and Industry may make Orders prohibiting, restricting, or otherwise controlling—

(*a*) the import into Malaŵi of any goods;

(*b*) the export from Malaŵi of any goods.

(2) Without derogation from the generality of the powers conferred by subregulation (1), an Order made under this regulation may—

(*a*) prescribe the terms and conditions subject to which controlled goods or any class of such goods may be imported into or exported from Malaŵi;

(*b*) provide for empowering such person as may be prescribed by or under the Order—

(i) to issue licences authorizing, to such extent as may be prescribed by or under the Order, the import into or the export from Malaŵi of any controlled goods or any class of such goods;

(ii) to revoke any such licence issued by him in such circumstances and in such manner as may be prescribed by or under the Order.

G.N. 106/1991

(3) An Order made under this Regulation may make provision prohibiting, restricting or otherwise controlling the sale or distributing of, or other manner of dealing in, the goods the import or export of which is prohibited, restricted or otherwise controlled by such Order.

Revocation or amendment of a licence

4. The Minister may revoke or amend a licence issued under any Order made under these Regulations if he considers that such revocation or amendment is necessary in the national interest.

Saving G.N. 300/1958(F)

5. Any Orders made under the Control of Goods (Import and Export) (Commerce) Regulations, 1958 (now revoked) shall, in so far as the same are not repugnant to these Regulations, remain in force as though made under these Regulations until revoked or replaced by Orders made under these Regulations.

CONTROL OF GOODS (IMPORT AND EXPORT) (COMMERCE) ORDER

under reg. 3

Of the Control of Goods (*Import and Export*) (*Commerce*) *Regulations*

G.N. 22/1967
79/1967
214/1967
185/1968
133/1969
23/1970
52/1970
237/1970
37/1971
56/1971
97/1972
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70/1973
173/1974
181/1974
151/1980
53/1987
85/1988
21/1991
17/1996
30/2001
18/2006
35/2007
8/2008
11/2008
18/2008
21/2010
45/2013
43/2015

Citation

1. This Order may be cited as the Control of Goods (Import and Export) (Commerce) Order.

Interpretation

2. In this Order unless the context otherwise requires—"sterling territory" means a state or territory specified in the First Schedule.

Issue of open general import licences

3. The Minister may, by notice published in the Gazette, issue open general import licences authorizing, subject to any other law, the import into Malaŵi of any goods which are the product or manufacture of a state or territory which is not a sterling territory.

Issue of licences

4.—(1) The Principal Secretary may, with the approval of the Minister issue licences authorizing, subject to any other law and to any conditions endorsed on such licences—

(*a*) the import into Malaŵi—

(i) any goods which are the product or manufacture of a state or territory which is not a sterling territory, being goods in respect of which no open general import licence issued under paragraph 3 is in force;

(ii) any goods specified in the Second Schedule or any class of such goods; and

(*b*) the export from Malaŵi of any goods specified in the Third Schedule or any class of such goods.

(2) The Principal Secretary shall not issue licences authorizing the export from Malaŵi of any goods specified in item 1 of the Third Schedule unless he is satisfied that the import of such goods into the country of destination has been authorized by the appropriate authority of that country.

Prohibition of imports

5.—(1) No person shall import into Malaŵi—

(*a*) any goods which are the product or manufacture of a state or territory which is not a sterling territory; and

(*b*) any goods specified in the Second Schedule or any class of such goods,

except in accordance with a licence issued in terms of paragraph 3 or 4.

(2) No person shall export from Malaŵi any goods specified in the Third Schedule or any class of such goods except in accordance with a licence issued in terms of paragraph 4.

Revocation of licences

6.—(1) The Principal Secretary may revoke a licence issued by him in terms of paragraph 4 if the licensee has failed to comply with this Order or the conditions under which the licence was issued.

(2) A licence revoked in terms of subparagraph (1) shall be returned immediately to the issuing authority by whom such licence was issued.

Transfer of licence prohibited

7. A licence issued in terms of paragraph 4 shall not be transferred.

Other laws applicable

8. Nothing contained in this Order or in any licence issued thereunder shall exempt any person to whom such licence applies from complying with any other law controlling the import into or the export from Malaŵi of the goods to which such licence relates.

9. Any licences issued under the Control of Goods (Import and Export) (Commerce) Order, 1964 (now revoked) shall, in so far as the same are not repugnant to this Order, remain in force as though issued under this Order until cancelled under this Order. Saving G.N. 130/1964(N)

FIRST SCHEDULE

para. 2

Sterling Territories

1. Any Commonwealth country other than Canada, and any colony, protectorate or trust territory of such country.
2. Hashemite Kingdom of the Jordan.
3. Iceland.
4. Republic of Ireland.
5. United Kingdom of Libya.
6. Republic of South Africa.
7. State of Kuwait.
8. Western Samoa.

SECOND SCHEDULE

G.N. 53/1987
85/1988
21/1991
17/1996
30/2001
18/2006
35/2007
21/2010
43/2015

Goods for the Import of Which a Licence Issued Under Paragraph 4 is Required

1.—(1) Clothing and uniforms, designed for military, naval, air force or police use.

(2) Clothing, used, other than the personal effects of an individual.

(3) Bell-bottom trousers.

for the purposes of this sub-item the expression "bell-bottom trousers" means any flared trousers so made that the circumference of each leg thereof measured along the bottom edge is greater than six-fifths ($\frac{6}{5}$) of the circumference of such leg measured at its narrowest point parallel to the aforesaid bottom edge.

2. Gold, including—

(*a*) any unmanufactured gold in any form whatsoever;

(*b*) any article or substance containing such unmanufactured gold;

(*c*) any article consisting of or containing gold which, although manufactured, is, as such, not a gold coin, an article of commerce, a work of art or of archaeological interest;

(*d*) gold derived from the smelting or treatment of any manufactured article containing gold.

3. Sugar.

4. Any knife having a blade which—

(*a*) opens automatically by hand pressure applied to a button, spring or other device in or attached to the handle of the knife, sometimes known as a "flick knife" or "flick gun"; or

(*b*) is released from the handle or sheath thereof by the force of gravity or the application of centrifugal force and which, when released, is locked in place by means of a button, spring, lever or other device, sometimes known as a "gravity knife".

5. Mist nets designed or adapted, for the capture of wild birds.

6. Game traps of metal construction operated by springs.

7. The following goods originating in Zimbabwe—

(*a*) asbestos;
(*b*) iron ore;
(*c*) Pig iron;
(*d*) Chrome;
(*e*) Tobacco;
(*f*) Copper;
(*g*) Hides, skins and leather.

8. [*Deleted by G.N.* 17/1996.]
9. Dieldrin.
10. Aldrin.
11. Kitchen and table salt.
12. Beer.
13. Cane Sugar.
14. Ordinary Portland Cement.
15. Wheat flour.
16. Fertilizer.
17. Matches.
18. Cement.
19. Refined cooking oil.
20. Laundry soaps.
21. Liquor in sachets.
22. Fresh milk.

G.N.
185/1968
151/1980
85/1988
30/2001
8/2008
11/2008
18/2008
45/2013
43/2015

THIRD SCHEDULE

Goods for the Export of which a Licence Issued Under Paragraph 4 is Required

1. Implements of war (other than arms and ammunition), atomic energy materials of strategic value, and items of primary strategic significance used in the production of arms and ammunition and other implements of war, including the following metals—

(*a*) beryllium;
(*b*) cobalt;
(*c*) tantalam;
(*d*) uranium;
(*e*) lithium;
(*f*) columbite;
(*g*) niobium (columbium);
(*h*) thorium;
(*i*) germanium;
(*j*) titanium;
(*k*) nickel,

and any materials containing such metals.

2. Petroleum products.

3. The following gemstones in the unmanufactured state—

(*a*) Corundum
(*b*) Garnet
(*c*) Quartz
(*d*) Tourmaline
(*e*) Turquoise
(*f*) Beryl
(*g*) Zircon
(*h*) Jade
(*i*) Olivine
(*j*) Feldspar
(*k*) Topaz
(*l*) Opal
(*m*) Chrysoberyl
(*n*) Spinel
(*o*) Lazurite

4. Hides and skins in processed and non-processed form.

5. Scrap metal.

6. Living poultry, including day-old chicks.

7. Rice, including—

(*a*) rice meals;
(*b*) rice bran;
(*c*) rice residues.

9. Maize including—

(*a*) dried maize, on or off the cob;
(*b*) crushed maize; or
(*c*) samp.

10. Maize meal, including—

(*a*) maize grits;
(*b*) maize cones;
(*c*) maize offals;
(*d*) hominy chop; or
(*e*) processed maize meal with or without additives.

G.N. 31/1967
164/1967
158/1970
2/1972
154/1975
84/1988

OPEN GENERAL IMPORT LICENCE

under paragraph 3

of the Control of Goods (*Import and Export*) (*Commerce*) *Order*

The Minister has issued an open general import licence in respect of and in accordance with the following—

Citation
G.N. 84/1988

1. This Notice may be cited as the Control of Goods (Open General Import Licence) Notice.

Importation of goods

2. Subject to this Notice and any other written law, any person may import into Malaŵi—

(*a*) any goods listed in the First Schedule;

(*b*) any goods which are the product or manufacture of any state or territory specified in the Second Schedule; and

(*c*) any goods which are the product or manufacture of a state specified in Part II of the Third Schedule but excluding the goods specified in Part I of that Schedule.

Meaning of "State" and "territory"

3. In this Notice the expressions "State" and "territory" include a dependency of a State or territory.

Limited scope of this Notice

4. This Notice does not authorize the import into Malaŵi of any goods listed in the Second Schedule to the Control of Goods (Import and Export) (Commerce) Order.

G.N. 84/1988

FIRST SCHEDULE

1. Anti-friction and lubricating grease.
2. Motor spirit, including aviation fuels.
3. Lubricating oils.
4. Mineral oils and fuel, illuminating, transformer and insulating types: power and illuminating paraffin.
5. Exposed cinematograph film.
6. Goods in transit through Malaŵi.
7. Used personal and household effects, excluding motor vehicles, imported by a person arriving in Malaŵi to take up residence or employment herein.
8. Goods, including motor vehicles, temporarily imported into Malaŵi by a bona fide tourist for his own use.
9. Goods not exceeding a total value of K50 accompanying a person entering Malaŵi and intended for the private use of such person or his family.

10. Any bona fide unsolicited gift not exceeding K50 in value.

11. Any goods exported from Malaŵi for repair and return and in respect of which a certificate to that effect has been issued by an officer of the Department of Customs and Excise.

12. Samples and advertising material intended solely for use in the taking of orders and not for sale.

SECOND SCHEDULE

G.N. 158/1970
2/1972

Afghanistan
Algeria
Argentina
Austria
Belgium
Bhutan
Bolivia
Brazil
Burma
Burundi
Cambodia
Cameroun
Canada
Central African Republic
Chad
Chile
Colombia
Congo (Brazzaville)
Costa Rica
Cuba
Czechoslovakia
Dahomey
Denmark
Dominican Republic
El Salvador
Finland
France
Gabon
Germany, Federal Republic of
Greece
Guatemala
Guinea
Haiti
Honduras
Hungary
Indonesia
Iran
Iraq
Israel
Italy
Ivory Coast
Japan
Korea, Republic of
Laos Peoples' Democratic Republic
Lebanon
Liechtenstein, Principality of
Luxembourg
Malagasy Republic
Mali
Mauritania
Monaco, Principality of
Morocco, Sherifian Empire of
Nepal
Netherlands, Kingdom of the
Nicaragua
Niger
Norway
Panama
Paraguay
Peoples' Republic of China
Peru
Poland
Portugal
Romania
Rwanda
San Marino
Senegal
Somalia
Spain
Sudan
Sweden
Switzerland
Taiwan
Togo
Tunisia
Turkey
United Arab Republic of Egypt
United States of America
Upper Volta
Uruguay
Vatican City
Venezuela
Viet Nam
Yugoslavia
Zaire

[Subsidiary]

Open General Import Licence

THIRD SCHEDULE

G.N. 85/1988
17/1996

All goods falling within the class of goods described in each of the following headings set out in the customs tariff prescribed under section 83 of the Customs and Excise Act:

Provided that where the term "ex" appears in front of any heading the goods described opposite such heading, and not all the goods falling within the class described in such heading, are specified—

Heading	*Description of goods*
ex 32.13.01	Printing lithographic and ruling inks (including printers' bronzes and the like).
40.11.90	Tyres and tubes for bicycles, tricycles and the like.
ex 40.14.99	Erasers.
48.01.01	Newsprint.
48.01.96	Paper and paperboard not elsewhere specified in heading 48.01 put up for sale by retail.
48.01.97	Paper and paperboard not elsewhere specified in heading 48.01 not out up for sale by retail.
48.13.99	Carbon and copying papers (including duplicator stencils) and transfer papers, cut to size, whether or not put up in boxes, not elsewhere specified in heading 48.13.
48.15.03	Gummed strip, wrappers and wrapping paper, paper wool, paper and paperboard of a kind used in industry, not put up for sale by retail.
48.15.99	Paper and paperboard cut to size or shape (excluding toilet paper) not elsewhere specified in heading 48.15.
48.16	Boxes, bags and other packing containers, of paper or paperboard.
48.16.02	Single-ply self-opening rectangular base kraft and imitation kraft bags and other utility bags of a kind similarly used for general purposes, carrier bags and the like.
48.16.98	Other boxes, bags and other packing containers, of paper or paperboard not elsewhere specified in heading 48.16.
48.18	Exercise books.
48 19	Paper or paperboard labels, whether or not printed or gummed.
48.21.99	Articles of paper pulp, paper, paperboard or cellulose wadding not elsewhere specified in heading 48.21.
49.09	Picture postcards, Christmas and other picture greeting cards, printed by any process, with or without trimmings.

Open General Import Licence **[Subsidiary]**

49.10.99	Calendars of any kind, of paper or paperboard, including calendar blocks, not elsewhere specified in heading 49.10.
49.11.99	Printed matter, including printed pictures, photographs, forms and tickets, not elsewhere specified in heading 49.11
ex 50.09 55.09.02 56.07.02	Blanketing, blanket cloth and sheeting of a kind, commonly used as blankets or rugs.
ex 51.04 ex 54.05 ex 55.09.99 ex 56.07.99 ex 57.09.99	Woven canvas fabrics exceeding 10 oz. per sq. yd.
57.05	Paper twine.
ex 58.01	Carpets, carpeting, rugs, mats and matting; made up or not: of an f.o.b. value not exceeding K3 per sq. yd.
ex 60.04 ex 61.01	Boys', girls' and infants' outer and under garments (shirts, shorts, vests and other garments).
62.01	Travelling rugs and blankets except those containing more than 50 per centum of wool.
ex 62.02.99	Sheets of a kind commonly used as blankets or rugs, except those containing more than 50 per centum of wool.
ex 62.04.01	Tarpaulins.
ex 62.04.99	Tents, awnings, sunblinds
64.01.01 64.01.99 64.03	Footwear.
ex 68.12	Pipes, piping and tubes of asbestos-cement.
ex 69.11	Cups, saucers, plates.
ex 73.38.02	Enamelware.
ex 82.01	Hoes or mattocks of a weight not exceeding 4 lb. each.
ex 82.09	Knives and scissors of all kinds, excluding penknives and table knives of an f.o.b. value execeeding 50t each.
ex 82.09.99	Domestic forks and spoons, excluding those of an f.o.b. value exceeding 50t.
ex 83.05	Staples for office stapling machines.
ex 84.54	Office punches, office stapling machines.
ex 85.14.03	Broadcast receivers and equipment or appliances consisting of such receivers combined with other apparatus, with or without cabinets and whether assembled or not.

ex 98.07	Hand-operated numbering stamps.
ex 92.11.01	Electrical record players.
ex 92.11.99	
ex 96.00.99	Brushware excluding toothbrushes and paint brushes.

G.N. 64/1967

CONTROL OF GOODS (IMPORTATION OF SOAP) ORDER

under reg. 3

of the Control of Goods (*Import and Export*) (*Commerce*) *Regulations*

Citation

1. This Order may be cited as the Control of Goods (Importation of Soap) Order.

Interpretation

2. In this Order, unless the context otherwise requires—

"abrasive soap" means soap, whether in powder, paste, tablet, cake or block form, which is a mixture of soap with silica, sand, pumice-stone or other inert abrasive matter and which contains not less than twenty-five per centum of such silica, sand, pumice-stone or other inert abrasive matter as the case may be;

"Secretary" means the Secretary for Trade and Industry;

"soap" means the product which results from the process of saponification of fats and oils—

(*a*) with sodium hydroxide or potassium hydroxide; or

(*b*) by the neutralization of fatty acids with sodium hydroxide or potassium hydroxide or their carbonates or bicarbonates; or

(*c*) by the neutralization of fatty acids with ammonia or triethanolamine.

Soap content

3.—(1) Soap in the form of bars, tablets, flakes or chips for household, laundry or toilet purposes shall contain not less than forty-five per centum of fatty acids, of which not more than one-third may be replaced by resin acids, shall not contain more than one-quarter of one per centum of free caustic alkali (calculated for this purpose as sodium hydroxide), and shall be free from any harmful ingredients.

(2) Liquid soap shall contain not less than fifteen per centum of fatty acids, of which not more than one-quarter may be replaced by resin acids, shall contain not more than one-twentieth of one per centum of free caustic alkali (calculated for this purpose as sodium hydroxide), and shall be free from any harmful ingredients.

(3) Soft soap shall contain not less than thirty-five per centum of fatty acids, of which not more than one-third may be replaced by resin acids, and shall contain not more than three-quarters of one per centum of free caustic alkali (calculated for this purpose as sodium hydroxide).

(4) The words "pure", "purest", "best", "superior", "finest", "first grade", "first quality", "No. 1 quality", "A.1 quality", "highest grade", "highest quality", or any other words indicating or suggesting special grade or quality, shall not be printed or marked on, or on the container or wrapper of, any soap which contains less than sixty-two per centum of fatty acids, of which not more than one-quarter may be replaced by resin acids, or more than one-tenth of one per centum of free caustic alkali (calculated for this purpose as sodium hydroxide):

Provided that where soap contains naphtha or carbolic acid or both these substances, the limit of sixty-two per centum for fatty acids specified in this subsection may be reduced to sixty per centum.

(5) The container or wrapper of abrasive soap which is imported for sale shall at the time of importation have prominently displayed thereon words indicating, as may be appropriate, that it is "abrasive soap", "abrasive soap powder" or "pumice soap" or that it contains abrasive matter or is intended to be used for scouring or polishing, and if no such container or wrapper is used, then such words shall be clearly and legibly stamped or embossed on each tablet, cake or block, in which such soap is imported.

Limit on import

4.—(1) Except in accordance with a permit issued by the Secretary, no person shall import for sale any soap the composition of which, or the wrapping or marking of which, does not at the time when it is imported comply with paragraph 3.

(2) For the purposes of determining whether the composition of a bar of soap for household or laundry purposes complies with paragraph 3 (1) at the time when it is imported, a bar of soap for household or laundry purposes shall be deemed to weigh 2 lb. at the time when it is imported.

G.N. 59/1967
139/1971

CONTROL OF GOODS (PRICE CONTROL) REGULATIONS

under s. 3

Citation

1. These Regulations may be cited as the Control of Goods (Price Control) Regulations.

Interpretation

2.—(1) In these Regulations, unless the context otherwise requires—

"controlled goods" means any commodity in respect of which an Order is made;

"dealer" means any person who carries on the business of buying and selling controlled goods;

"hire purchase agreement" and "instalment sale agreement" have the meanings assigned to them in section 2 of the Hire Purchase Act; Cap. 48:05

"inspector" means a person appointed as an inspector under these Regulations;

"Order" means an Order made by the Minister under these Regulations;

"price" includes any form of consideration;

"sell" includes—

(*a*) to sell by auction; or

(*b*) to offer or attempt to sell; or

(*c*) to expose, display or advertise for sale; or

(*d*) to sell or hire under a hire-purchase or instalment sale agreement; or

(*e*) to exchange or dispose of controlled goods for any valuable consideration,

and the expressions "sale" and "seller" shall be construed accordingly.

(2) The date of sale of controlled goods which are the subject of a hire-purchase or instalment sale agreement shall be the date on which the agreement is signed by or on behalf of all the parties to the agreement and for the purposes of these Regulations the cash price shall be taken to be the price at which the seller has sold or agreed to sell such goods.

(3) For the purposes of these Regulations, the cost of controlled goods to the seller shall be determined in a manner prescribed by Order and the Minister may prescribe different methods of determining such cost in respect of different classes of controlled goods.

Appointment of inspectors and Price Control Board

3.—(1) The Minister may appoint inspectors for the purposes of these Regulations.

(2) Every inspector shall be furnished with a certificate signed by the Minister, which shall state that the inspector has been appointed as an inspector under these Regulations.

(3) An inspector exercising any power or performing any duty conferred or imposed upon him by these Regulations or about to exercise or perform any such power or duty shall, on demand by any person concerned, produce the certificate referred to in subregulation (2).

G.N. 139/1971

(4) (*a*) The Minister may establish a Price Control Board and may appoint thereto such persons as he thinks fit.

(*b*) Any person who sells or delivers any controlled goods and who is dissatisfied with any Order relating to such controlled goods or the delivery thereof, may apply to the Price Control Board for a review of such order.

(*c*) The Price Control Board shall—

(i) make a report and recommendations to the Minister on any Order reviewed under this paragraph;

(ii) when required by the Minister to do so, make recommendations on any other matter that may be referred to it by the Minister;

(iii) make recommendations to the Minister on such other matters relating to the prices of goods as, in its opinion, require particular attention.

Furnishing of information

4.—(1) The Minister may, by written notice, require any person who produces or has produced, manufactures or has manufactured, deals in or has dealt in, or handles or has handled, any commodity, to furnish to the Minister or his authorized representative, from time to time, any information whatsoever available to him relating to any such commodity which he or his servant or agent has or has had in his possession or custody or over which he has or has had any control or which he is capable of producing or manufacturing.

(2) Any such person as aforesaid shall, at the request of an inspector, produce to the inspector any book, record, list or document at his disposal which relates to any such commodity, and shall furnish the inspector with such other information or explanation, either in writing or verbally, relating to such commodity, as the inspector may demand from him.

Examination of records

5.—(1) An inspector may examine and make extracts from and copies of books, records, lists or documents relating to controlled goods, and may demand from any dealer or other person an explanation of any entries therein and may seize and remove any such books, records, lists or documents as, in his opinion, may afford evidence of any offence under these Regulations.

(2) An inspector may, for the purposes of examination or production as evidence, seize and remove without payment any sample or specimen of any controlled goods in the possession of any person referred to in subregulation (1).

(3) An inspector shall issue a receipt in respect of anything seized under this regulation.

(4) Anything seized in terms of this regulation shall, if circumstances permit, be returned to its owner at the conclusion of any proceedings taken or inquiry made in relation thereto.

Fixing of prices by Order

6.—(1) The Minister may, by Order—

(*a*) fix a maximum price, a minimum price or a specified price for the sale of any commodity by persons generally, by any specified person or by any person of a specified class or group either to persons generally or to a specified person or to a person of a specified class or group;

(*b*) prohibit any person, any specified person or any person of a specified class or group from increasing the price charged by him for any commodity sold by him above the price ordinarily charged by him on a specified date or during a specified period for similar goods sold under similar conditions regarding delivery or payment;

(*c*) fix the maximum, minimum or specified charge that may be made by any person for the delivery of any commodity.

(2) Without prejudice to the generality of the powers conferred by subregulation (1), the Minister may, by Order—

(*a*) fix the maximum, minimum or specified price of any commodity irrespective of the cost to the seller;

(*b*) prescribe that the maximum, minimum or specified price shall be a specified price less a specified discount or plus a specified premium;

(*c*) prescribe that the maximum, minimum or specified price of any commodity shall not exceed the cost to the seller plus a stated sum or a stated percentage of such cost;

(*d*) prescribe that the maximum, minimum or specified price of any commodity shall not exceed the price ordinarily charged for such commodity on a specified date or during a specified period plus a stated sum or a stated percentage of such price, or less a stated sum or a stated percentage of such price.

(3) The Minister may, by Order, direct that any person or any person of a specified class or group who deals in any commodity, shall display in such manner as may be prescribed by the Minister the price at which such person offers such commodity for sale.

Additional powers

7. In addition to the powers conferred by regulation 6 the Minister may, by Order—

(*a*) prescribe standards of quality, composition and condition and minimum standards, for different kinds of commodities and prohibit, regulate or restrict the sale of such commodities which do not conform with such prescribed standards;

(*b*) prescribe the specific designation under which any particular commodity may be sold and prohibit, regulate or restrict the sale of such commodity under designations other than the prescribed designation;

(*c*) prohibit, regulate or restrict the charge for delivery of any commodity to purchasers and the price of sacks and containers in which such commodity is sold or delivered;

(*d*) provide for the prevention of the evasion of any Order.

8. No person—

(*a*) who has purchased controlled goods from a dealer shall resell the said controlled goods or any portion thereof to another dealer or to a manufacturer at a price in excess of the price which the dealer who sold the controlled goods in the first instance was permitted by Order to sell such controlled goods;

(*b*) who has purchased any controlled goods from a dealer who ordinarily sells such controlled goods to persons who are not dealers in such controlled goods shall resell the said controlled goods or any portion thereof to any other person at a price in excess of the price at which such dealer would have been permitted by Order to sell the said controlled goods to such other person plus such charge as may be allowed by the Minister;

(*c*) who has re-purchased any controlled goods which have been sold by him shall resell the said controlled goods or any portion thereof to any person at a price in excess of the price at which he was permitted by Order to sell the said controlled goods in the first instance.

Charges for containers

9. The Minister may, by Order, prescribe—

(*a*) the amount of the deposit which any person selling any controlled goods, subject to the condition that the container of those goods is to be returned, may require in respect of any such container; and

(*b*) the amount which such person shall, on the return of the container, refund to the person by whom the container is returned and the conditions subject to which such refund shall become payable.

Furnishing of invoices

10. The Minister may, by Order, direct—

(*a*) that in respect of controlled goods the seller shall give to the purchaser at the time of the sale, or within a reasonable period thereafter, an invoice or memorandum giving, in respect of any such controlled goods, such particulars, in such manner, as may be prescribed by the Minister.

(*b*) that the seller shall retain a copy of such invoice or memorandum for such period as the Minister may prescribe; and

(*c*) that the purchaser of any controlled goods which are purchased with the object of resale, shall maintain and preserve, for such period as the Minister may prescribe, such records as will enable the cost to him of the said goods and the price at which he sold them to be readily and accurately ascertained.

Inducement to sell prohibited

11. No person shall, directly or indirectly, as an inducement to any other person to sell any controlled goods, offer, give or promise to such person any consideration in money or otherwise in addition to the price which such person is permitted by Order to charge for such controlled goods.

Conditional selling

12.—(1) Save as is provided in subregulation (2) no person shall sell any controlled goods to any other person on condition that such other person purchases or acquires from him or from any other person any other goods whatsoever in addition to such controlled goods.

(2) Nothing in this regulation shall apply to any sale described in subregulation (1) if the other goods referred to in that subregulation are—

(*a*) goods which, according to the custom of the trade, are not sold separately from the controlled goods referred to in subregulation (1); or

(*b*) goods forming part of the same set of goods as such controlled goods.

Exemptions

13. The Minister may exempt any person from all or any of the provisions of any Order and the Minister may at any time, without giving any reasons therefor, withdraw any such exemption granted.

Refunds

14. If any person has received in respect of the sale by him of any controlled goods a price in excess of the price permissible for such goods under any Order the Minister may, irrespective of any action which may have been taken or which may be taken against such person under regulation 16, order him to refund to the purchaser, or, if the identity or whereabouts of the purchaser cannot readily be ascertained, to pay into the Consolidated Fund, a sum not exceeding twice the amount by which the price at which he sold the goods exceeds the controlled price.

Evidence

15. In any prosecution for the contravention of any provision of these Regulations a certificate alleging—

(*a*) the cost of the controlled goods to the seller thereof;

(*b*) the maximum charge for delivery under regulation 6 (1) (*c*);

(*c*) the price at which it was or would have been permissible for any specified person to sell such controlled goods on any specified date or during any specified period and the method by which such price was arrived at;

(*d*) the contents of any Order made by the Minister and not published in the *Gazette*;

(*e*) the conditions imposed by the Minister in any permission or exemption granted under these Regulations;

(*f*) that any controlled goods which are alleged to have been sold or purchased, as the case may be, are controlled goods of a particular class, type or description,

shall, if purporting to have been signed by or on behalf of the Minister, be admissible as prima facie evidence of the facts therein stated.

Offences

16.—(1) Any person who—

(*a*) contravenes or fails to comply with any order or request or demand lawfully made under these Regulations;

(*b*) wilfully furnishes the Minister or an inspector with any incorrect or incomplete information or explanation;

(*c*) hinders or obstructs or delays an inspector in the performance of his duties or the exercise of his powers under these Regulations;

(*d*) refuses or fails to answer to the best of his knowledge any question lawfully put to him under these Regulations;

(*e*) fails to comply with any conditions lawfully imposed by the Minister in granting any permission or exemption under these Regulations;

(*f*) sells or agrees to sell any controlled goods at a price which exceeds, is less than or differs from, the appropriate price at which it is permissible for him to sell such controlled goods under any Order;

(*g*) renders, in respect of any controlled goods sold, an account specifying a price which exceeds the appropriate price at which it is permissible for him to sell such goods under these Regulations;

(*h*) makes a charge for delivery of controlled goods which exceeds the appropriate charge which it is permissible for him to make for such service under these Regulations;

(*i*) makes use of any art, device or contrivance which has the effect of evading these Regulations or any Order;

(*j*) gives to any other person in connection with any sale of controlled goods and the delivery thereof any invoice, statement of account or like document which is fictitious or false in any material particular;

(*k*) discloses, except to the Minister or to any person whose duty it is to deal with the subject matter of the disclosure, or when required to do so as a witness in a court of law, or for the purposes of these Regulations, any information in relation to any person or business acquired in the performance of his duties in carrying out, or in the exercise of his powers under, these Regulations;

(*l*) contravenes or fails to comply with any of these Regulations or any Order,

shall be guilty of an offence.

(2) Notwithstanding paragraph (1), no person who sells controlled goods under a hire-purchase agreement or instalment sale agreement shall be guilty of an offence by reason of the fact that the purchase price of the goods, as defined in the Hire-Purchase Act, exceeds, is less than or differs from, as the case may be, the appropriate price at which it is permissible to sell such controlled goods in term of any order. Cap. 48:05

17. It shall not be necessary to publish in the *Gazette* any Order which relates only to a particular person or persons named therein and any such Order may be conveyed to such person or persons by letter. Publication of Orders not necessary

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CONTROL OF GOODS (DETERMINATION OF COST) ORDER

G.N. 60/1967

under reg. 2
of the Control of Goods (*Price Control*)
Regulations

1. This Order may be cited as the Control of Goods (Determination of Cost) Order. Citation

2. The cost of controlled goods shall be determined in the manner prescribed in this Order. Determination of cost

3.—(1) Where any controlled goods which have been imported from overseas are sold by the importer thereof, the cost of any unit of such goods shall be the charges necessarily incurred per unit by such importer in respect of— Importer's costs

(*a*) the free-on-board price of such goods at the port of shipment, including the charges for cables confirming the purchase, the charges for storage pending shipment, and insurance whilst so stored;

(*b*) the freight from the port of shipment to the port of discharge;

(*c*) marine and transhipment insurance from the warehouse at the port of shipment to the warehouse of the importer;

(*d*) the buyer's and additionally or alternatively the shipper's commission, not exceeding five per centum of the charges incurred in subparagraphs (*a*), (*b*) and (*c*);

(*e*) bank charges and bank commission;

(*f*) customs duty and clearing charges;

(*g*) landing and handling charges at port of discharge;

(*h*) railage and carriage costs from the port of discharge to the premises of the importer;

(*i*) such other charge or charges as may be authorized by the Minister in writing.

(2) Where controlled goods have been imported from elsewhere than overseas and the importer thereof sells the goods, the cost of any unit of these goods shall be the charge necessarily incurred per unit by such importer in respect of—

(*a*) the free-on-rail price of such goods at the place of dispatch;

(*b*) railage and cartage costs to the premises of the importer;

(*c*) insurance;

(*d*) customs duty and clearing charges;

(*e*) such other charge or charges as may be authorized by the Minister in writing.

Dealer's costs

4. Where any controlled goods are sold by a dealer who is not the manufacturer or producer of such goods, the cost of any unit of such goods shall be the price, before deduction of cash discount not exceeding 2½ per centum paid to the seller for such unit of such goods by such dealer, plus the costs of transportation, if any, ordinarily incurred on such unit of such goods from the seller's to the buyer's premises.

Manufacturer's costs

5. When any controlled goods which have been manufactured in Malaŵi are sold by the manufacturer thereof, the cost to the seller of such goods shall be the cost of the materials, including packing materials, contained in such goods determined in accordance with paragraph 3 in so far as they may be applicable, plus the costs mentioned hereunder in respect of such goods—

(*a*) wages and salaries incurred in the manufacture of such goods, including costs of rations, board or lodging when supplied by the manufacturer;

(*b*) fuel and power used in the manufacture of such goods;

(*c*) insurance, rents, rates and taxes incurred on the premises or on plant used in the manufacture of such goods;

(*d*) plant and machinery maintenance incurred in the manufacture of such goods;

(*e*) depreciation of plant and machinery incurred in the manufacture of such goods at the rates accepted by the Commissioner of Taxes;

(*f*) such other charge or charges as may be allowed in writing by the Minister:

Provided that where such costs are not ascertainable by the direct allocation of the costs of these services, they shall be based

on manufacturing operations over a continuous period of at least six months ending on a date within twelve months of the date of sale.

Averaging of costs

6. Notwithstanding paragraphs 3 and 4 a dealer who has at one time stocks on hand of controlled goods of like quality, size and nature, the costs of which differ, may average such costs by dividing the aggregate cost of the whole stock of such goods by the total number of units of such goods on hand immediately after receiving the last consignment of such goods provided that he shall—

(*a*) keep a record which will show full particulars of the costs and quantities of the controlled goods upon which he determined the average cost;

(*b*) preserve all records and documents upon which he relied in making the entries referred to in paragraph (*a*) for a period of not less than twelve months;

(*c*) not alter his basis of determination of the cost of such goods without the written permission of the Minister; and

(*d*) not sell any such goods at a price based on an average cost until the entries in the record have been completed.

CONTROL OF GOODS (PRICE CONTROL) (BEER PRICES) ORDER

[*Revoked by G.N.* 6/1985.]

CONTROL OF GOODS (DISPLAY OF PRICES) ORDER

G.N. 71/1979

under reg. 6

of the Control of Goods (*Price Control*) *Regulations*

Citation

1. This Order may be cited as the Control of Goods (Display of Prices) Order.

Interpretation

2. In this Order, unless the context otherwise requires—

"dealer" means a person who in any premises carries on the business of selling goods by retail or by wholesale;

"premises" includes any display window, shop window or show case.

Display of prices

3. A dealer who in or upon the premises upon which he carries on business offers for sale any goods whatsoever shall display the prices at which such goods are so offered by placing such prices thereon in figures clearly legible to intending purchasers viewing the goods:

Provided that the individual prices of goods of an identical kind grouped together may be indicated by single ticket.

[Subsidiary] *Control of Goods* (*Price Control*) (*Hoes Prices*) *Order/Control of Goods* (*Price Control*) (*Matches Prices*) *Order/Control of Goods* (*Price Control*) (*Meat Prices*) *Order/Control of Goods* (*Price Control*) (*Medicine Prices*) *Order/Control of Goods* (*Price Control*) (*Milk Products and Infant Foods Products Prices*) *Order/Control of Goods* (*Price Control*) (*Motor Fuel Prices*) *Order/Control of Goods* (*Price Control*) (*Motor Vehicle Spare Parts Prices*) *Order*

CONTROL OF GOODS (PRICE CONTROL) (HOES PRICES) ORDER

[*Revoked by G.N.* 125/1985.]

CONTROL OF GOODS (PRICE CONTROL) (MATCHES PRICES) ORDER

[*Revoked by G.N.* 5/1985]

G.N. 45/1980
60/1981
69/1984
110/1985
127/1985
75/1987

CONTROL OF GOODS (PRICE CONTROL) (MEAT PRICES) ORDER

[*Revoked by G.N.* 48/1988.]

CONTROL OF GOODS (PRICE CONTROL) (MEDICINE PRICES) ORDER

[*Revoked by G.N.* 126/1985.]

G.N. 113/1981

CONTROL OF GOODS (PRICE CONTROL) (MILK PRODUCTS AND INFANT FOODS PRODUCTS PRICES) ORDER

[*Revoked by G.N.* 84/1958.]

CONTROL OF GOODS (PRICE CONTROL) (MOTOR FUEL PRICES) ORDER

[*Revoked by G.N.* 79/1987.]

G.N. 40/1982

CONTROL OF GOODS (PRICE CONTROL) (MOTOR VEHICLE SPARE PARTS PRICES) ORDER

under reg. 6

of the Control of Goods (*Price Control*) *Regulations*

[*Revoked by G.N.* 22/1996.]

CONTROL OF GOODS (PETROL PRICES) ORDER

under reg. 6

of the Control of Goods (*Price Control*) *Regulations*

1. This Order may be cited as the Control of Goods (Petrol Prices) Order. Citation

2. In this Order— Interpretation

"Petrol" means refined petroleum capable of being used as a motor spirit, but does not include aviation fuel supplied for use in aircraft, paraffin, distillate fuel, furnace oil or diesel oil;

"wholesale dealer" means—

(*a*) Caltex Oil (Malaŵi) Limited;

(*b*) Mobil Oil (Malaŵi) Pvt. Limited;

(*c*) Oil Company of Malaŵi Limited;

(*d*) Shell (Malaŵi) Limited; or

(*e*) Total (Malaŵi) Limited.

3. The maximum price at which petrol may be sold by a person other than a wholesale dealer shall be the price paid to the wholesale dealer for such petrol plus— Maximum price at which petrol is to be sold G.N. 80/1982

(*a*) the cost of transport, if any, ordinarily incurred by such person in respect of such petrol;

(*b*) the amount of customs duty, if any, actually paid by such person in respect of such petrol; and

(*c*) four and five-tenths tambala per litre:

Provided that the maximum price for quantities of less than one litre or one gallon, as the case may be, shall be proportional to that allowed respectively for one litre, or one gallon.

4. When the total price is calculated under this Order for a quantity of petrol, any fraction of one tambala outstanding which is less than half of one tambala shall be disregarded, and any fraction of one tambala which is equal or more than half of one tambala shall be taken as one tambala. Fractional prices

G.N. 79/1987
127/1987
16/1988
19/1990
74/1992
119/1992
78/1993
7/1994
28/1994
76/1994
1/1995
59/1995
19/1998
30/1999

CONTROL OF GOODS (PRICE CONTROL) (PETROLEUM FUEL PRICES) ORDER

under reg. 6

of the Control of Goods (*Price Control*) *Regulations*

[*Revoked by G.N.* 48/2000]

CONTROL OF GOODS (PRICE CONTROL) (SUGAR PRICES) ORDER

under reg. 6

of the Control of Goods (*Price Control*) *Regulations*

[*Revoked by G.N.* 58/1994]

CONTROL OF GOODS (FORM OF INVOICES) ORDER

G.N. 62/1986

under reg. 10

of the Control of Goods (*Price Control*) *Regulations*

Citation

1. This Order may be cited as the Control of Goods (Form of Invoices) Order.

Invoice of sales

2.—(1) Every dealer who sells controlled goods in any wholesale sale shall at the time of such sale, or within seven days, furnish the purchaser with an invoice in the English language in respect of such goods, giving the following particulars—

(*a*) the date of sale;

(*b*) the number of quantity of the goods sold;

(*c*) the type, grade, make or quality of the goods sold; and

(*d*) the purchase price of the goods sold.

(2) Every dealer who sells controlled goods in any retail sale shall, if required by the purchaser at the time of sale, give to the purchaser an invoice in respect of such goods giving the following particulars—

(*a*) the date of sale;

(*b*) the number of quantity of the goods sold;

(*c*) the type, make or quality of the goods sold; and

(*d*) the purchase price of the goods sold.

Retention of invoice copies

3. The seller of any goods, whether the transaction is wholesale or retail or for cash or on credit, shall retain a copy of the invoices mentioned in paragraph 2 for a period of not less than twelve months from the date of sale.

Purchase of controlled goods for resale

4. The purchaser of any controlled goods, which are purchased with the object of resale shall maintain and preserve for a period of not less than twelve months such records and documents as will enable the cost to him of the said goods and the price at which he sold them to be readily and accurately ascertained.

CONTROL OF GOODS (IMPORT AND EXPORT) (AGRICULTURE) REGULATIONS

G.N. 75/1967
126/1971
125/1972
150/1973
82/1988
45/1997

under s. 3

Citation

1. These Regulations may be cited as the Control of Goods (Import and Export) (Agriculture) Regulations.

Interpretation

2. In these Regulations, unless the context otherwise requires—

"controlled goods" means any goods specified in the Schedule or any class of such goods, the import into or the export from Malaŵi of which is prohibited, restricted or otherwise controlled by an Order made under regulation 3.

Orders controlling imports
G.N. 82/1988

3.—(1) The Minister, after consultation with the Minister responsible for Agriculture, or the Minister responsible for Natural Resources, as the case may be, may make Orders prohibiting, restricting or otherwise controlling the import into or the export from Malaŵi, of any goods specified in the Schedule or any class of such goods.

(2) Without derogation from the generality of the powers conferred by subregulation (1), an Order made under this regulation may—

(*a*) prescribe the terms and conditions subject to which controlled goods or any class of such goods may be imported into or exported from Malaŵi;

(*b*) provide for empowering such person as may be prescribed by the Order—

(i) to issue permits authorizing, to such extent as may be prescribed by the Order, the import into or the export from Malaŵi of any controlled goods or any class of such goods;

(ii) on the issue of any permit, to impose terms and conditions subject to which the controlled goods to which the permit relates or any class of such goods, may be imported into or exported from Malaŵi; and

(iii) to revoke any such permit issued by him in such circumstances and in such manner as may be prescribed by the Order.

G.N. 82/1988

(3) An Order made under this regulation may be administered by such other Minister or authority as the Minister may, in such Order, specify.

SCHEDULE G.N. 45/1997

1. Animal semen.
2. Barley; barley malt.
3. Bees, unmanufactured beeswax, foundation comb.
4. Bones; bone meal.
5. Carcasses, portions of carcasses and offal of animals (including poultry and other birds, but excluding reptiles) and the edible products manufactured therefrom, including beef, veal, mutton, lamb, pig meat, goat meat, and canned products.
6. Compound animal foodstuffs.
7. Dairy produce, including ice cream and ice cream mix.
8. Eggs of poultry and other birds, whether in shell, pulp or dried form.
9. Fish, whether fresh or dried, including fish meal.
10. Fodder; forage.
11. Grain of any variety, including barley, beans, groundnuts, and grain meals, flours and residues.
12. Hay; grass or straw in any variety.
13. Hides and skins.
14. Sorghums, sorghum meal, sorghum malt.
15. Live animals, including poultry and other birds, but excluding reptiles.
16. Manure.
17. Meat meal, blood meal, carcass meal.
18. Oil seeds, oil meal, oil cake, and offals and residues from oil seeds.
19. Potatoes.
20. Seeds for planting in quantities exceeding 200 lb.
21. Tea.
22. Tomatoes.
23. Tobacco.
24. Unprocessed poultry feathers, which are not part of a manufactured article.
25. Used beehives, used bee-keeping accessories and appliances.
26. Used poultry crates and incubators.
27. Vaccines, toxins, sera and analogous biological products used for the diagnosis or treatment of diseases in animals.
28. Vegetable oils.
29. Citrus fruits.
30. Bananas.
31. Live fish including the eggs and spawn thereof.
32. Wild animals, wild animal trophies and wild animal products.

33. Cassava.

34. Fruit and vegetables (including lettuce, cabbage, cauliflower, rape, turnips, Chinese cabbage, fresh beans, fresh peas, green pepper, fresh chillies, onions, carrots, beetroot, radishes, tomatoes, egg plants, irish potatoes and oranges).

G.N. 80/1967
124/1967
141/1967
269/1969
188/1971
136/1972
83/1988
12/1994
42/1995
18/1996

CONTROL OF GOODS (IMPORT AND EXPORT) (AGRICULTURE) ORDER

under reg. 3

of the Control of Goods (*Import and Export*) (*Agriculture*) *Regulations*

Citation

1. This Order may be cited as the Control of Goods (Import and Export)Agriculture)Order

Interpretation

2. In this Order, unless the context otherwise requires—

G. N. 83/1988 "bee-keeping accessories and appliances" does not include any container of honey;

"container of honey" means a bottle, can, jar or any other receptacle whatsoever which is used solely for storing or transporting honey;

"form" means a form prescribed in the Second Schedule;

"honey" includes unprocessed royal jelly;

G. N. 83/1988 "issuing authority" in relation to an application for the issue of a permit under the Order means the Secretary for Trade and Industry;

"southern country" means Angola, Lesotho, Botswana, Kenya, Mozambique, Rwanda, Burundi, Congo (Kinshasa), South-West Africa, Swaziland, Tanzania, Uganda, Republic of South Africa, Zambia and Zimbabwe.

Import and export permits

3.—(1) The issuing authority may issue a permit authorizing, subject to this Order and any other written law—

(*a*) the import into Malaŵi from any country, other than a southern country, of bees, honey or any container of honey, unmanufactured beeswax, foundation comb, used beehives and used bee-keeping accessories and appliances;

(*b*) the import into Malaŵi of any goods listed in Part I of the First Schedule;

(*c*) the export from Malaŵi of any goods listed in Part II of the First Schedule, on such terms and conditions as may be specified in the permit.

(2) A permit issued under this paragraph shall—

(*a*) if it relates to the import of goods into Malaŵi, be in Form No. 1;

(*b*) if it relates to the export of goods from Malaŵi, be in Form No. 2.

4. No person shall import any bees, honey or any container of honey, unmanufactured beeswax, foundation comb, used beehives or used bee-keeping accessories and appliances into Malaŵi from any country other than a southern country except under and in accordance with the terms and conditions of a permit issued under paragraph 3. Goods prohibited without a permit

5.—(1) Subject to subparagraph (2), no person shall import into Malaŵi any goods listed in Part I of the First Schedule except under and in accordance with the terms and conditions of a permit issued under paragraph 3. Scheduled goods require a permit

(2) Subparagraph (1) shall not apply in relation to—

(*a*) any goods which are in the course of transit through Malaŵi to a place beyond the borders thereof;

(*b*) any goods not exceeding 10 lb. in weight or K4 in value which are imported into Malaŵi by an individual residing in Malaŵi for his personal domestic consumption and not for sale or disposal to any other person;

(*c*) any goods not exceeding 10 lb. in weight or K4 in value which are imported into Malaŵi as a *bona fide* gift from a person residing outside Malaŵi to a person residing in Malaŵi.

6.—(1) Subject to subparagraph (2), no person shall export from Malaŵi any goods listed in Part II of the First Schedule except under and in accordance with the terms and conditions of a permit issued under paragraph 3. Limitation on exports

(2) Subparagraph (1) shall not apply in relation to any goods which are in the course of transit through Malaŵi to a place beyond the borders thereof.

7. An application for the issue of a permit under this Order shall be made in writing and, subject to paragraph 8, shall be addressed to: Application G. N. 83/1988

Secretary for Trade and Industry, P.O. Box 30366, Lilongwe 3.

8. Where a permit is required in accordance with this Order and also in accordance with any written law in force relating to the import of animals or infectious things pertaining to animals (hereinafter in this paragraph referred to as a specified law) to authorize the import into Malaŵi of the same goods— Issue of permit

(*a*) an application for the issue of a permit in terms of this Order shall be deemed to be an application for the issue of a permit in terms of a specified law;

(*b*) if the issuing authority issues a permit he shall thereupon forward the permit and the application to the appropriate person authorized to issue a permit in terms of a specified law to be dealt with by such person in accordance with such law unless—

(i) the issuing authority is satisfied that the person authorized to issue a permit in terms of a specified law has already issued a permit which is in force; or

(ii) the applicant specifically requests otherwise;

(*c*) the issuing authority shall not issue a permit under this Order if he is satisfied that the person authorized to issue a permit in terms of a specified law has already refused to issue a permit;

(*d*) if the issuing authority issues a permit under this Order after being furnished with a permit issued by the person authorized to issue a permit in terms of a specified law he shall thereupon forward both permits to the applicant.

Application of other laws

9. Nothing contained in this Order or in any permit issued thereunder shall exempt the holder of such permit from complying with any other written law controlling the import into or the export from Malaŵi of the goods to which such permit relates.

G.N. 83/1988
42/1995

FIRST SCHEDULE

PART I

Goods for the Import of Which a Permit Issued Under Paragraph 3 is Required

1. Beans, excluding—

(*a*) seed beans in quantities of less than 200 lb.;

(*b*) beans which are tinned, bottled or otherwise preserved.

2. Compound products containing flour, meal, residues and other preparations of a kind suitable only for use as animal feedstuffs, but excluding—

(*a*) chemical additions to animal feedstuffs;

(*b*) antibiotic growth stimulants;

(*c*) inert fillers;

(*d*) trace elements;

(*e*) synthetic animal feedstuffs;

(*f*) bird seed;

(*g*) cat and dog feeds; and

(*h*) salt lick for cattle.

3. Eggs of poultry, whether in shell, pulp or dried form; eggs of wild birds.

4. Groundnuts.

5. Maize, including—

(*a*) dried maize, on or off the cob;

(*b*) crushed maize; or

(*c*) samp;

but excluding green maize on the cob.

6. Maize meal, including—

(*a*) maize grits;

(*b*) maize cones;

(*c*) hominy chop;

(*d*) maize offals; or

(*e*) processed maize meal with or without additives.

7. Live poultry, including day-old chicks.

8. Rice, in the grain.

9. Live fish, including the eggs and spawn thereof.

10. Wild animals, wild animal trophies and wild animal product.

PART II

G.N. 12/1994
18/1996

Goods for the Export of Which a Permit Issued Under Paragraph 3 is Required

1. Peas, excluding dolichos beans, velvet beans, chick peas and cow peas.

2. Bean meal.

3. Sorghum meal or sorghum malt.

4. Maize, including—

(*a*) dried maize, on or off the cob;

(*b*) crushed maize; or

(*c*) samp;

but excluding green maize on the cob.

5. Maize meal, including—

(*a*) maize grits;

(*b*) maize cones;

(*c*) hominy chop; or

(*d*) maize offals.

6. Munga or munga meal (millets).

7. Rupoko meal and grams, excluding green grams and black grams

8. Oil meal, oil cake and oil seeds, excluding sesame seeds

9. Rice in the grain.

10. Seeds for planting in quantities of more than 200 lb.

11. Tobacco.
12. Live fish, including the eggs and spawn thereof.
13. Wild animals, wild animal trophies and wild animal products.
14. Tea.
15. Cassava.

SECOND SCHEDULE

FORM OF PERMITS FORM NO. 1

IMPORT PERMIT

ISSUED IN TERMS OF THE CONTROL OF GOODS (IMPORT AND EXPORT) (AGRICULTURE) ORDER

No .....

IN EXERCISE of the powers conferred upon the issuing authority by the Control of Goods (Import and Export) (Agriculture) Order (Cap. 18:08 p. 28) ..... is hereby authorized, subject to that Order and any other written law, to import into Malaŵi .... from ..... on the following terms and conditions—

1 .....

2. .....

This permit is valid until .....

Date ....

Issuing Authority

EXPORT PERMIT Form No. 2

ISSUED IN TERMS OF THE CONTROL OF GOODS (IMPORT AND EXPORT) (AGRICULTURE) ORDER

No .....

IN EXERCISE of the powers conferred upon the issuing authority by the Control of Goods (Import and Export) (Agriculture) Order (Cap. 18:08 p. 28) ..... is hereby authorized, subject to that Order and of any other written law, to export from Malaŵi ..... on the following terms and conditions—

1. .....

2. .....

This permit is valid until .....

Date ....

Issuing Authority

CONTROL OF GOODS (IMPORT OF RADIOACTIVE SUBSTANCES) REGULATIONS

G.N. 76/1967

under s. 3

Citation

1. These Regulations may be cited as the Control of Goods (Import of Radioactive Substances) Regulations.

Interpretation

2. In these Regulations, unless the context otherwise requires—

"radioactive substance" means any substance which consists of or contains any radioactive chemical element whether natural or artificial and whose specific activity exceeds 0.002 of a microcurie per gramme of parent radioactive chemical element of substance and which has a total activity of more than 0.1 microcurie;

"appropriate designation", in relation to a substance, constituent or ingredient, means the accepted scientific name or other name descriptive of the nature of the substance, constituent or ingredient.

Open import licences

3. The Minister may, by notice published in the *Gazette*, issue open import licences authorizing, subject to any other law, the import into Malaŵi of any radioactive substance.

Restriction on import of radioactive substance

4. No person shall import into Malaŵi any radioactive substance unless—

(*a*) he is authorized to do so in terms of an open import licence issued in terms of regulation 3; or

(*b*) he has obtained a licence to do so from the Secretary for Economic Affairs,

and there is clearly and legibly written on the container in which the substance is placed or on a label affixed thereto—

(i) the appropriate designation of the substance or of each of the active constituents thereof or of each of the ingredients of which it has been compounded; and

(ii) if the appropriate designation of each of the active constituents or the ingredients is written on the container or label, the appropriate quantitative particulars of such constituents or ingredients.

Application for licence

5. Applications for the issue of a licence in terms of regulation 4 (*b*) shall contain the following information—

(*a*) name and address of the importers;

(*b*) purpose for which the radioactive substance is to be used (medical, research, industrial or educational);

(*c*) description of use to be made of radioactive substance;

(*d*) name and address of person or persons responsible for using radioactive substance;

(*e*) qualifications of person or persons responsible for using radioactive substance;

(*f*) appropriate designation of radioactive substance;

(*g*) physical state of radioactive substance (liquid, gas or solid);

(*h*) activity in millicuries on arrival in Malaŵi;

(*i*) radiation at surface of the container;

(*j*) whether source of radiation is sealed or unsealed;

(*k*) type of radiation;

(*l*) half-life;

(*m*) place of origin, e.g. Harwell, etc.;

(*n*) port and date of arrival in Malaŵi;

(*o*) mode or transport and number of vehicle if by road;

(*p*) address of place where radioactive substance is to be used;

(*q*) proposed means of final disposal.

G.N. 107/1991

CONTROL OF GOODS (IMPORT AND EXPORT) (COMMERCE) REGULATIONS

CONTROL OF GOODS (IMPORT OF COSMETICS) ORDER

under reg. 3

of the Control of Goods (*Import and Export*) (*Commerce*) *Regulations*

Citation

1. This Order may be cited as the Control of Goods (Import of Cosmetics) Order.

Interpretation

2. In this Order—

"cosmetic" means any skin care or skin lightening preparation and any complexion creams.

Prohibition of imports of cosmetics

3. No person shall import into Malaŵi or sell or offer for sale or distribute or otherwise deal in—

(*a*) any cosmetic with a level of hydroquinone above 2 per cent mass to mass;

(*b*) any cosmetic the use of which is prohibited, restricted or otherwise controlled in the country or export or manufacture;

(*c*) any cosmetic, except in a properly sealed container on which there is marked, clearly and legibly in the English language—

(i) the ingredients contained in such cosmetic and the percentage or volume level of each of the ingredients;

(ii) a certificate of quality issued in respect of such cosmetic by a recognized standards board or similar authority of the country of export or manufacture;

(iii) the date of expiry of the quantity in the container.

CONTROL OF GOODS (CONTROL OF DISTRIBUTION OF COMMODITIES) REGULATIONS

G.N. 12A/1994

under s. 3(*b*)

Citation

1. These Regulations may be cited as the Control of Goods (Control of Distribution of Commodities) Regulations.

Control of distribution of commodities

2. The Minister of Trade and Industry may make orders for the control of the distribution of any commodity in Malaŵi.

CONTROL OF GOODS (CONTROL OF DISTRIBUTION OF COMMODITIES) REGULATIONS

G.N. 19/1994

CONTROL OF GOODS (DISTRIBUTION OF SUGAR) ORDER

under reg. 2

[*Revoked by G.N.* 33/1996]

MALAŴI RED CROSS SOCIETY

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CHAPTER 18:09

MALAŴI RED CROSS SOCIETY

ARRANGEMENT OF SECTIONS

SECTION

1. Short title
2. Interpretation
3. Establishment and constitution of Society, etc.
4. Incorporation of Society
5. Objects of Society
6. Recognition of Society as a voluntary aid society
7. Independence of Society to be respected
8. Protection of emblems, etc., offences and penalty
9. Council of Society
10. Rules

Schedule

An Act to Provide for the Incorporation of the Malaŵi Red Cross Society and for Matters Incidental Thereto and Connected Therewith 51 of 1966

[16TH FEBRUARY, 1968]

1. This Act may be cited as the Malaŵi Red Cross Society Act. Short title

2. In this Act, unless a contrary intention appears— Interpretation

"Branch" means the Malaŵi Branch of the British Red Cross Society that was in operation before the commencement of this Act;

"rules" means administrative rules made under section 10;

"Scheduled Conventions" means the conventions specified in the Schedule;

"Society" means the Malaŵi Red Cross Society.

3. On the commencement of this Act— Establishment and constitution of Society, etc.

(*a*) there shall be established and constituted the Malaŵi Red Cross Society which shall be the sole national Red Cross Society in Malaŵi;

(*b*) all the assets and liabilities of the Branch shall be transferred to and be vested in the Society by virtue of this section and without further assurance, and the Society shall have all the powers necessary to take possession of, recover and deal with such assets and discharge such liabilities;

(*c*) all deeds, bonds, instruments and contracts subsisting

immediately before the day on which this Act comes into operation to which the Branch is a party shall be of as full force and effect against or in favour of the Society and enforceable as fully and effectually as if, instead of the Branch, the Society were a party thereto;

(*d*) officers of the Branch shall hold corresponding appointments in the Society until other provision is made in accordance with rules made under this Act, and Life Associates and Associates of the Branch shall become corresponding Life Associates and Associates of the Society, but subject to any provision contained in the aforesaid rules.

Incorporation of Society

4. The Society shall be a body corporate under the name of the Malaŵi Red Cross Society, having perpetual succession and a common seal, with power to sue and be sued, purchase, acquire, hold, manage and dispose of movable and immovable property, and to enter into any such contracts as it may consider to be necessary or expedient for the purpose of performing its functions or achieving its objects under this Act.

Objects of Society

5.—(1) The objects of the Society shall be—

(*a*) to furnish volunteer aid to the sick and wounded in time of war and to non-belligerents and to prisoners of war and civilian sufferers from the effects of war;

(*b*) in the case of catastrophes or public disasters, to provide the victims thereof with relief;

(*c*) in time of peace or war to carry on and assist in work for the improvement of health, the prevention of diseases and the mitigation of suffering throughout the world;

(*d*) to promote the Junior Red Cross movement among the youth of all races; and

(*e*) to propagate the ideals and the humanitarian principles of the Red Cross with a view to developing a feeling of solidarity and mutual understanding among all men and all nations.

(2) In pursuing the objects referred to in subsection (1) the Society shall not make any adverse distinction founded on sex, race, nationality, religion or faith, political opinions or any other similar criteria and shall act in accordance with the spirit and principles of the Scheduled Conventions.

Recognition of Society as a voluntary aid society

6. The Society is hereby recognized by the Government as a voluntary aid society auxiliary to the public authorities both for the purpose of the Scheduled Conventions and otherwise, and shall have the right in conformity with the Scheduled Conventions to use the heraldic emblem of a red cross on a white

ground, formed by reversing the Swiss Federal colours, and the words "Red Cross".

Independence of Society to be respected

7. The independent and voluntary nature of the Society shall at all times be respected in accordance with the resolution relative to National Red Cross Societies adopted by the General Assembly of the United Nations on the 19th November, 1946.

Protection of emblems, etc., offences and penalty

8.—(1) No person, other than a person so authorized under the Scheduled Conventions, shall use for any purpose whatsoever any of the following emblems or designations—

(*a*) the emblem of a red cross with vertical and horizontal arms of the same length on, and completely surrounded by, a white ground, or the designation "Red Cross" or "Geneva Cross";

(*b*) the emblem of a red crescent moon on, and completely surrounded by, a white ground, or the designation "Red Crescent";

(*c*) the following emblem in red on, and completely surrounded by, a white ground, that is to say, a lion passing from right to left of, and with its face turned towards, the observer, holding erect in its raised right forepaw a scimitar, with, appearing above the lion's back, the upper half of the sun shooting forth rays, or the designation "Red Lion and Sun"; or

(*d*) any design or wording so nearly resembling any of the emblems or designations aforementioned as to be capable of being mistaken for, or, as the case may be, understood as referring to, one of those emblems or designations.

(2) Any person who contravenes subsection (1) shall be liable to a fine of £100 and to imprisonment for six months.

Council of Society

9.—(1) The governing body of the Society shall be a Council constituted in accordance with rules made under this Act. The Council may from time to time appoint an Executive Committee with such powers and duties as may be prescribed by rules made under this Act.

(2) The first members of the Council shall be those persons who, immediately before the coming into operation of this Act, were the members of the Committee of the Branch.

Rules

10.—(1) The Council shall as soon as possible after the coming into operation of this Act make administrative rules for the management of the affairs of the Society and the accomplishment of its objects, and without prejudice to the generality of the foregoing may make rules providing—

(*a*) that membership of the Society shall not be withheld from any citizen of Malaŵi on the grounds of race, class, sex, religion or faith or political opinions;

(*b*) that all members and Associates of the Society shall have representation on the Council.

(2) Rules made under this section may from time to time be altered, added to or repealed by the Council, and new rules may from time to time be made in like manner.

(3) Rules made under this section need not be published in the Gazette.

SCHEDULE

Geneva Convention for the amelioration of the condition of the wounded and sick of armed forces in the field, of the 12th August, 1949.

Geneva Convention for the amelioration of the condition of wounded, sick and shipwrecked members of armed forces at sea, of the 12th August, 1949.

Geneva Convention relative to the treatment of prisoners of war, of the 12th August, 1949.

Geneva Convention relative to the protection of civilian persons in time of war, of the 12th August, 1949.

LAWS OF MALAŴI

VOL IV

L.R.O. 1/2018

PRINTED PUBLICATIONS

CHAPTER 19:01

Containing Pages 1–4

CHAPTER 19:01

PRINTED PUBLICATIONS

ARRANGEMENT OF SECTIONS

SECTION

1. Short title
2. Interpretation
3. Particulars to be contained in books
4. Delivery of books published in Malaŵi to the Government Archivist
5. Registration of newspapers
6. Certified extracts from register to be received in evidence

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An Act to Make Provision for the Registration of Newspapers, the Printing and Publication of Books and the Preservation of Printed Works Published in Malaŵi.

[1st March, 1948]

18 of 1947
20 of 1956
G.N. 33/1964(N)
219/1964(N)

Short title

1. This Act may be cited as the Printed Publications Act.

Interpretation

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

"book" includes every part or division of a book, pamphlet, newspaper, sheet of letterpress, sheet of music, map, plan, chart or table separately published;

"editor" includes the person or persons actually responsible for the collation or inclusion in any newspaper of the contents thereof, whether such person or persons are expressly employed for such purposes or not;

"newspaper" means any periodical publication published at intervals of not more than one month and consisting wholly, or for the greater part, of political or other news or of articles relating thereto or to other current topics, with or without advertisements, and with or without illustrations, but shall not include any publication which is proved not to be intended for public sale or public dissemination;

expressions referring to printing shall be construed as including references to any other means of representing or reproducing words in visible form by impressing one material on another.

Particulars to be contained in books

3.—(1) Every book printed and published in Malaŵi shall bear an imprint in legible type showing—

(*a*) the full and correct name of the printer and the place where the book was printed;

(*b*) the full and correct name of the publisher and his place of business; and

(*c*) the year of publication.

(2) Any person who knowingly and wilfully prints or publishes or causes to be printed or published any book not containing the particulars required by this section shall be liable to a fine of £100.

(3) The Minister may make Rules excepting from this section such classes of printed matter used for the purposes of the Government, of courts of justice, of public authorities and of trade and business as may be specified in such Rules.

Delivery of books published in Malaŵi to the Government Archivist

4.—(1) The publisher of every book published in Malaŵi shall, within two months of the publication, deliver at his own expense a copy of the book to the Government Archivist, who shall give a written receipt for every copy received by him.

(2) Every copy delivered under the provisions of this section shall be a copy of the whole book with all maps and illustrations belonging thereto, finished and coloured in the same manner as the best copies of the book are published, and shall be bound, sewed or stitched together, and on the best paper on which the book is printed.

(3) If any publisher fails to comply with this section, he shall be liable to a fine of £20. When any person is convicted of such offence, the court may, in addition to imposing a penalty, order the person so convicted to comply with this section by delivering a copy of the book to the authority to whom delivery ought to have been made:

Provided always that the court may, instead of making the said order, impose a further fine not exceeding the amount of the published price of the book.

(4) This section shall not apply to any second or subsequent edition of a book unless such edition contains additions or alterations either in the letterpress or in the maps, prints or other illustrative material belonging thereto.

(5) The Minister may make Rules excepting from this section publications wholly or mainly in the nature of trade advertisements or such classes of such other publications as may be specified in the Rules, and thereupon it shall not be necessary for the publisher of any publication so excepted to deliver a copy of such publication to the authority mentioned in subsection (1) unless, as respects any particular publication, a written demand for the delivery thereof is made by such authority.

Registration of newspapers

5.—(1) No person shall print or publish or cause to be printed or published any newspaper until there has been registered at the office of the Government Archivist the full and correct title thereof and the full and correct names and places of abode of every person who is or is intended to be the proprietor, editor, printer or publisher of such newspaper, and the description of the premises where the same is to be published. Every alteration in the aforesaid particulars shall forthwith be registered in like manner.

(2) Any person who contravenes this section shall be liable to a fine of £100.

Certified extracts from register to be received in evidence

6.—(1) It shall be the duty of the Government Archivist to keep a register in which shall be entered the particulars mentioned in the last preceding section.

(2) Any person wishing to obtain an extract from such register, signed by the Government Archivist showing the particulars therein contained in regard to any newspaper, shall be entitled to obtain the same on application to the Government Archivist and on payment of a fee of two shillings and sixpence for every such extract.

(3) The production of any such extract, signed as aforesaid, in any proceedings, civil or criminal, in any court of justice shall be sufficient proof of the facts therein stated in regard to the names of the proprietors, editors, printers and publishers of the newspaper therein named.

(4) (*a*) At the trial of any person for an offence against section 4 (3) or section 5 (2) any document purporting to be a certificate under the hand of the Government Archivist that such person has failed to comply with the requirements of the subsection under which such person is charged may be used in evidence against him.

(*b*) When any certificate is so used the court may, if it thinks fit, summon and examine the Government Archivist as to the subject matter thereof.

SUBSIDIARY LEGISLATION

G.N. 50/1948

PRINTED PUBLICATIONS RULES

under s. 4

Citation

1. These Rules may be cited as the Printed Publications Rules.

Publications excepted from section 4

2. The following publications or classes of publications shall be excepted from section 4 of the Act—

(*a*) publications wholly in the nature of trade advertisements, cards, catalogues, circulars, coupons, designs, forms, labels, leaflets, plans, posters, price lists, prospectuses, show cards, wrappers and similar publications purely in the nature of trade advertisements;

(*b*) publications wholly in the nature of time tables or rate tariffs of transport services;

(*c*) publications wholly in the nature of calendars;

(*d*) publications wholly in the nature of blank forms of accounts or blank forms of receipts, or other blank forms of a similar character;

(*e*) wall sheets printed with alphabets, mottoes, religious texts or other matter for the purpose of elementary instruction.

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CHAPTER 21:01

CENSORSHIP AND CONTROL OF ENTERTAINMENTS

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CHAPTER 21:01

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CENSORSHIP AND CONTROL OF ENTERTAINMENTS

An Act to regulate and control the making and the exhibition of cinematograph pictures, the importation, production, dissemination of undesirable publications, pictures, statues and records, the performance or presentation of stage plays and public entertainments, the operation of theatres and like places for the performance or presentation of stage plays and public entertainments in the interest of safety, and to provide for matters incidental thereto or connected therewith

[2nd December, 1968]

PART I

Preliminary

Short title

1. This Act may be cited as the Censorship and Control of Entertainments Act.

Interpretation

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

"Board" means the Board of Censors established under section 3;

"cinematograph exhibition" means any exhibition of cinematograph pictures, whether with sound effects or not, presented by means of a cinematograph or other similar apparatus for presenting cinematograph pictures;

"cinematograph picture" means any film, picture or other visual image, or part thereof, whether with sound effect or not, made by means of a cinematograph camera or other similar apparatus for recording films, pictures, or visual images, and intended for public exhibition or for sale or hire either within or outside Malaŵi;

"licensing officer" means the Minister or such other person or persons as the Minister may appoint to be a licensing officer, whether for the whole of Malaŵi or such area thereof as may be specified in the appointment;

"picture", for the purposes of Part VII, includes—

(*a*) any drawing, illustration, painting, woodcut or similar presentation;

(*b*) any print, photograph, engraving, lithograph or similar presentation;

(*c*) any object in which a picture is contained;

(*d*) any exhibition for the purpose of advertising,

but does not include a cinematograph picture;

"place" includes a vehicle, vessel or aircraft;

"play", in relation to a record, means to render audible the sounds recorded thereon;

"public", in relation to the exhibition of any cinematograph picture, publication, picture or statue, the playing of any record, or the performance or presentation of any stage play or public entertainment, means the exhibition, playing, performance or presentation thereof, as the case may be—

(*a*) in public; or

(*b*) at any place to which admission is obtained—

(i) by membership of any association of persons;

(ii) for any consideration, direct or indirect; or

(iii) by virtue of any contribution towards any fund;

"public entertainment" includes any concert, animal or circus performance, zoo, waxworks, puppet performance, dancing exhibition, picture or art exhibition, game of skill or chance, acrobatic or other exhibition of skill, professional wrestling and boxing bout, to which the public are admitted either gratuitously or for reward, but does not include athletic games or sports;

"publication" includes—

(*a*) any newspaper, book, periodical, pamphlet, poster, playing card, calendar or other printed matter;

(*b*) any writing or typescript which has in any manner been duplicated or exhibited or made available to the public or any section of the public;

"record" means any contrivance or device in or on which sound has been recorded for reproduction;

"stage play" includes any tragedy, comedy, play, opera, farce, revue, variety, burlesque, interlude, melodrama, pantomime, dialogue, prologue, epilogue or other dramatic entertainment or any part thereof;

"statue" includes any figure, cast, carving, moulding or model;

"theatre" means any building, tent or other erection of whatever nature, or any premises, place or open space in which a cinematograph exhibition, stage play or public entertainment is presented or performed before the public either gratuitously or for reward.

PART II

Board of Censors

Establishment of Board of Censors
24 of 1972
3 of 1981
25 of 1983

3.—(1) There is hereby established a Board of Censors which shall consist of not less than six nor more than ten members appointed by the Minister as follows—

(*a*) one member, designated Chairman of the Board by the Minister;

(*b*) one member to represent the Ministry responsible for cultural affairs;

(*c*) not less than two nor more than eight other members.

(2) Members of the Board shall not, by virtue only of their appointments to the Board, be deemed to be officers in the public service.

Tenure of office of members of Board
8 of 1980

4.—(1) A member of the Board shall hold office for two years. All members whose appointments are terminated shall be eligible for reappointment.

(2) The Chairman of the Board may, by notice in writing to the Minister, resign his appointment, and any other member of the Board may resign by giving notice in writing to the Chairman, but no such resignation shall take effect until seven days after the receipt of the notice by the Minister or the Chairman, as the case may be.

Proceedings of Board
3 of 1981
25 of 1983

5.—(1) The Chairman of the Board shall preside at meetings of the Board, but in the absence of the Chairman the other members present shall elect one of their number to perform the functions of the Chairman at that meeting.

(2) The quorum of the Board shall be any three members thereof.

(3) Decisions of the Board shall be in accordance with the vote of the majority of members present and voting thereon, but in the event of an equality of votes the Chairman or the person performing the functions of Chairman at the meeting concerned, shall have a casting vote in addition to his deliberative vote.

(4) The Board shall meet at least once every three months, but the Chairman may, and upon application in writing by at least three members of the Board shall, convene an extraordinary meeting of the Board at any time.

(5) The Board shall cause minutes of all proceedings at meetings of the Board and at meetings of the committees appointed under section 7 to be entered in books kept for that purpose. Any such minutes, if purporting to be approved and signed by the Chairman of the next succeeding meeting of the Board or, as the case may be, the committee concerned, shall, unless the contrary is proved, be evidence of the proceedings at the meeting to which they relate and such meeting shall be deemed to have been duly convened and held and all proceedings thereat to have been duly transacted and all appointments of the members present at such meetings shall be deemed valid.

(6) Save as otherwise provided in this Act, the Board may—

(*a*) regulate its own procedures; and

(*b*) make administrative rules generally for the control, administration and management of the Board and its committees and for the conduct of its business.

Functions of Board

6.—(1) The functions of the Board shall be—

(*a*) to consider or examine any cinematograph picture, publication, picture, statue, record, stage play or public entertainment submitted to it for consideration or examination;

(*b*) to make such enquiries as it considers necessary in respect of any cinematograph picture, publication, picture, statue, record, stage play or public entertainment which is alleged to be, or which it has reason to believe is undesirable within the meaning used in section 23 (2).

(2) For the purposes of this section the Board may require that it, or any committee appointed under section 7, be given to examine and inspect, or has exhibited, performed, played or presented before it any cinematograph picture, publication, picture, statue, record, stage play or public entertainment intended for exhibition, performance or presentation to the public, whether gratuitously or for reward, at any time or place specified by the Board.

Committees of the Board
25 of 1983

7.—(1) For the purpose of carrying out its functions, the Board may, by resolution, appoint one or more committees, as it considers necessary, to inspect, examine and report on any cinematograph film, publication, picture, statue, record, stage play or public entertainment.

(2) The Board shall determine the powers, and regulate the procedure, of all committees appointed under subsection (1) and may, subject to such conditions, exceptions and qualifications as it may specify, delegate to such committees any of its functions.

(3) The membership of any committee appointed under this section may include persons who are not members of the Board.

Readers and viewers 3 of 1981

7A.—(1) There shall be such numbers of readers and viewers as the Board deem necessary for the purposes of this Act and who shall from time to time be appointed by the Board pursuant to this section.

(2) No person shall be appointed a reader or a viewer unless he has attained the Malaŵi Certificate of Education or possesses educational qualifications of a standard equivalent to or higher than such Certificate.

(3) The duties of a reader shall be to read and understand such books, magazines, newspapers, periodicals and other publications as are submitted to him for that purpose by the Board; to interpret the same in relation to the provisions of section 23 (2), and to furnish to the Board his unbiased opinion in writing as to whether or not such publication constitutes an undesirable publication within the meaning of section 23 (2) together with a statement of his reasons for such opinion.

(4) The duties of a viewer shall be—

(*a*) to view, hear and understand such cinematograph pictures, stage plays and public entertainments;

(*b*) to view and understand such pictures or statues; and

(*c*) to hear and understand such records,

as are submitted to him for viewing or hearing, or as he is directed to view or hear, by the Board;

(*d*) to interpret the same in relation to the provisions of section 23 (2); and

(*e*) to furnish to the Board his unbiased opinion in writing as to whether or not such cinematograph picture, stage play, public entertainment, picture, statue or record, as the case may be, constitutes an undesirable publication within the meaning of section 23 (2) together with a statement of his reasons for such opinion.

(5) Readers and viewers shall be appointed for a term not exceeding two years but shall be eligible for re-appointment.

(6) The appointment of any reader or viewer may be terminated after not less than one month's notice in writing given to him by the Board.

(7) Any reader or viewer may relinquish his appointment not less than one month after giving to the Board notice of his intention to do so.

Remuneration, etc., of Board and committee members, readers and viewers
3 of 1981

8. Members of the Board, committee members appointed under section 7 and readers and viewers appointed pursuant to section 7A, may be paid such remuneration and allowances out of moneys appropriated by Parliament for the purpose as may for the time being have been approved by the Minister.

PART III

Theatre Licences

Theatre licences
3 of 1981

9.—(1) Any person who uses or causes, permits or suffers to be used any building, tent, or other erection, or any premises, place or open space as a theatre, unless there has first been obtained from the appropriate licensing officer a licence in respect thereof (hereinafter referred to as a "theatre licence") or who uses such building, tent, erection, premises, place or open space as a theatre otherwise than in accordance with the terms and conditions of a theatre licence issued under this Act, shall be guilty of an offence.

(2) A licensing officer may refuse to grant a theatre licence or may grant it subject to such terms and conditions as the licensing officer thinks desirable for securing the safety, health and convenience of persons attending the theatre, or conformity of the theatre or any equipment or lighting therein with any rules made under this Act.

(3) A licensing officer may issue a theatre licence either generally or for cinematograph exhibitions only, or for stage plays only or for any specified type of public entertainment only or in respect of any specified cinematograph exhibition, stage play or public entertainment, or for such period not exceeding twelve months as the licensing officer thinks fit, or for any combination of the above.

(4) A licensing officer may revoke or suspend a theatre licence at any time if, in his opinion, the safety, health or convenience of persons attending the theatre is not adequately provided for, or if the structure, equipment or lighting has ceased to comply with any rules made under this Act.

(5) A licensing officer may issue a theatre licence upon condition that the theatre shall not be used for the purposes specified in the licence except under the superintendence of some officer or person specified in the licence, and in such case, it shall be lawful, at any time, for the officer or person so specified to order any cinematograph exhibition, stage play or public exhibition presented in the theatre to cease or to give any other directions which he thinks necessary for ensuring the safety of the theatre and of the audience.

(6) Any licensee or any owner or manager of a theatre, or other person responsible for the presentation of any cinematograph

exhibition, stage play or public entertainment who fails to comply with any order or direction given under subsection (5) shall be guilty of an offence.

3 of 1981

(7) A theatre licence may, on application made in writing, be transferred or amended by a licensing officer.

7 of 1986

PART IIIA

Premises Licence

Premises licence

9A.—(1) No person shall use or operate any premises for the purpose of letting to the public for gain or reward any cinematograph picture unless there is in respect of such premises a valid licence (hereinafter referred to as the "premises licence") issued under subregulation (3) or use or operate such premises for such purpose otherwise than in accordance with the terms and conditions of the premises licence.

(2) A person who contravenes subsection (1) shall be guilty of an offence, and liable to a fine of K1,000 or imprisonment for three months.

(3) A licensing officer may refuse to grant a premises licence or may grant it subject to such terms and conditions as he thinks desirable for ensuring compliance with the provisions of this Act or of any rules made thereunder relating to classification and exhibition of cinematograph pictures.

(4) Every premises licence shall expire on the 31st December following the date of its issue but may at any time before expiry and with the approval of the Board—

(*a*) be transferred to any other premises or licensee;

(*b*) be amended by a licensing officer.

(5) A premises licence shall be subject to payment by the licensee of such annual fee as the Minister may prescribe and where the period for which the licence is issued does not exceed nine months the fee payable shall be proportionately reduced.

PART IV

Cinematograph Exhibitions

Certificates of approval

10. No person shall present any cinematograph exhibition to which the public is admitted either gratuitously or for reward, except under the authority of and in accordance with a certificate of approval (hereinafter referred to as a "certificate") issued under this Act in respect of such cinematograph exhibition and every part thereof, and any person who contravenes this section shall be guilty of an offence.

Applications for certificates

11.—(1) An application for a certificate shall be made in writing to the Board, and shall be accompanied by a statement of the theatre or theatres where, and the time or times when, the cinematograph exhibition is intended to be presented (unless, for satisfactory

reasons given, these particulars cannot be specified), and such other particulars and descriptions as the Board may, from time to time require.

(2) Where the application for a certificate is made in respect of a cinematograph exhibition which is to be presented in a language other than English, it shall, if the Board so requires, be accompanied by a translation into English by an interpreter approved by the Board of all dialogue, titles and subtitles spoken or used in the cinematograph exhibition.

Issue of certificates
3 of 1981
25 of 1983

12.—(1) After considering an application for a certificate, the Board may refuse the application or may issue a certificate subject to such terms and conditions as may be specified in the certificate.

(2) The Board may, with the approval of the Minister, direct that a certificate shall be issued free in cases where the cinematograph exhibition is to be given for any charitable, educational or public purpose.

(3) A certificate shall be issued on behalf of the Board by the Chief Censoring Officer, or by such other officer of the Board as the Board may authorize, upon receipt by him of the prescribed fee, if any, and in accordance with such general or special direction as the Board may give.

Classification of and conditions attached to certificates 3 of 1981 25 of 1983

13.—(1) Where the Board decides to authorize the issue of a certificate in respect of any cinematograph exhibition it shall authorize such issue in accordance with the classifications and conditions specified in subsection (2), and may authorize the issue subject to any or all of the following conditions—

(*a*) that the cinematograph exhibitions may only be presented at such theatre or theatres as the Board may, in its discretion, specify;

(*b*) that the cinematograph exhibition may be presented only after any specified portion or portions have been excised therefrom.

3 of 1981 25 of 1983

(2) Certificates shall be issued in accordance with one or other of the following classifications—

(*a*) "U" certificate—suitable for exhibition to persons of any age;

(*b*) "A" certificate—suitable for exhibition to persons of any age provided that persons less than 14 years of age are accompanied by a person aged 18 years or more;

(*c*) "AA" certificate—suitable for exhibition to persons aged 14 years or more;

(*d*) "X" certificate—suitable for exhibition to persons aged 18 years or more.

PART V

Stage Plays and Public Entertainments

Entertainment permits

14. No person shall promote, present, cause, permit or suffer to be promoted or presented or shall direct, assist or take part in any performance or presentation of any stage play or public entertainment to which the public is admitted either gratuitously or for reward except under the authority of and in accordance with a permit, hereinafter referred to as an entertainment permit, issued in accordance with this Act, in respect of that performance or presentation, and any person who contravenes this section shall be guilty of an offence.

Applications for entertainment permits

15.—(1) An application for an entertainment permit shall be made in writing to the Board at least two weeks before the time when the stage play or public entertainment is intended to be first performed or presented, and shall be accompanied by a statement of the theatre or theatres where and the time or times when the stage play or public entertainment is to be performed or presented, together with the full text of the stage play or a sufficient description which the Board may from time to time require.

(2) Where the text of any stage play sent to the Board is not in the English language, the Board may, if it thinks fit, require the applicant to furnish a true translation of the text in English by an interpreter approved by the Board.

Issue of entertainment permits
3 of 1981
25 of 1983

16.—(1) After considering an application for an entertainment permit the Board may refuse the issue of such permit or may issue such permit either unconditionally or subject to such terms and conditions as the Board may think fit, including all or any of the following—

(*a*) that the stage play or public entertainment shall not be performed or presented before children of or under a specified age;

(*b*) that the stage play or public entertainment shall be performed or presented only at such theatre or theatres as the Board may in its discretion specify;

(*c*) that the stage play or public entertainment shall be performed or presented only after any specified portion or portions thereof have been excised.

(2) A permit shall be issued on behalf of the Board by the Chief Censoring Officer, or by such other officer of the Board as the Board may authorize, upon receipt by him of the prescribed fee, if any, and in accordance with such general or special directions as the Board may give.

(3) The Board may, with the approval of the Minister, direct that an entertainment permit shall be issued free in cases where the stage play or public entertainment is to be performed or presented for any charitable, educational or public purpose.

Additional entertainment permit required

17.—(1) Where an entertainment permit has been issued for any stage play or public entertainment, no material alteration or addition to such stage play or public entertainment may be made in any performance or presentation thereof to which the public is admitted, either gratuitously or for reward, except under the authority of and in accordance with an additional entertainment permit issued in the manner provided in sections 15 and 16 in respect of such alteration or addition.

(2) Any person who promotes, presents, causes, permits or suffers to be promoted or presented, or who directs, assists or takes part in any performance or presentation of any stage play or public entertainment or any part thereof in contravention of subsection (1) shall be guilty of an offence.

Cruelty to animals

18.—Any person who maltreats any animal taking part in any stage play or public entertainment shall be guilty of an offence.

PART VI

The Making of Cinematograph Pictures

Film permits

19.—(1) No person shall direct or assist or take part in the making of any cinematograph picture in Malaŵi unless a permit, hereinafter referred to as a film permit, has first been issued under this Act authorizing the making of such cinematograph picture.

(2) Any person who contravenes this section, or who directs, or assists or takes part in the making of any cinematograph picture otherwise than in accordance with any terms and conditions subject to which a film permit has been issued in respect of such cinematograph picture, shall be guilty of an offence.

Application for film permits

20.—(1) An application for a film permit shall be made in writing to the Board at least fourteen days before the making of the cinematograph picture is intended to be commenced.

(2) Every application for a film permit shall be accompanied by a full description of the scenes and the full text of the spoken parts (if any) of the cinematograph picture to which the application relates, and any other particulars or descriptions that the Board may require.

(3) Where a cinematograph picture is to include any scenes the making of which is likely to endanger the safety of any person or of any property (not being in the possession or disposition of the person responsible for, or directing or supervising the making of, the cinematograph picture), or in which animals are to be photographed, the applicant for a film permit in respect thereof shall state in the application the precautions proposed to be taken to preserve the safety of any such person or property, or to prevent cruelty or unnecessary suffering to such animals.

(4) Where any application for a film permit relates to a cinematograph picture of which the text, description, synopsis or any other part is in a language other than English, a translation thereof into the English language by an interpreter approved by the Board shall accompany the application:

Provided that the Board may in its discretion dispense with such translation and may submit the original text, description, synopsis to such person or persons as they may appoint for examination and report, and the Board may act upon such report in its discretion.

Issue of film permits
3 of 1981
25 of 1983

21.—(1) After considering an application for a film permit the Board may refuse the issue of such permit or may issue such permit subject to any conditions which may be prescribed or to any special conditions which may be specified in such permit.

(2) In addition to the powers conferred by subsection (1) the Board may, on or before issuing a film permit, require the applicant to enter into a bond with or without sureties in such sum not exceeding one thousand Kwacha as the Board shall determine, conditioned that the cinematograph picture will be made in accordance with the detailed descriptions supplied to the Board and subject to any special terms or conditions specified in the film permit.

(3) The Board may also require as a condition of the issue of a film permit that a public officer duly authorized in that behalf by the Board shall be present at the making of such scene or scenes of the cinematograph picture as may be specified by the Board, and further that such public officer may, in the exercise of his discretion, having regard to any special or general directions issued to him by the Board, intervene to stop the making of any scene which in his opinion is objectionable to be witnessed or endangers the safety of any person not performing in the scene or of any actor or property (not being in the possession or disposition of the person responsible for, or directing or supervising the making of, the cinematograph picture) or which is cruel or causes unnecessary suffering to any animal.

(4) In the event of any intervention under subsection (3), the person authorized may use such force as may be reasonably necessary to stop the making of any such scene, and any person who—

(*a*) resists, hinders or obstructs the person authorized when so intervening; or

(*b*) fails to desist from the making of any such scene when so required by the person authorized,

shall be guilty of an offence.

(5) A permit shall be issued on behalf of the Board by the Chief Censoring Officer, or by such other officer of the Board as the Board may authorize, upon receipt by him of the prescribed fee, if any, and in accordance with such general or special directions as the Board may give.

Additional film permits required

22. Where a film permit has been issued for the making of any cinematograph picture, no material alteration or addition may be made to the text, synopsis or scenes intended to be made except under the authority of and in accordance with an additional film permit issued in the manner provided in sections 20 and 21 in respect of such alteration or addition, and any person who directs or assists or takes part in the making of any cinematograph picture in contravention of this section shall be guilty of an offence.

PART VII

Publications, Pictures, Statues and Records

Prohibition of importation, etc., of undesirable publications, pictures, statues and records

23.—(1) Any person who—

(*a*) imports, prints, publishes, manufactures, makes or produces, distributes, displays, exhibits or sells or offers or keeps for sale any publication, picture, statue or record; or

(*b*) publicly plays any record,

which is undesirable or which has, under section 24 been declared by the Board to be undesirable, shall be guilty of an offence:

Provided that, where a person has imported such a publication, picture, statue or record, nothing in this section shall prevent him from returning it to the source whence he imported it.

(2) A publication, picture, statue or record shall be deemed to be undesirable if it or any part thereof—

(*a*) is indecent or obscene or is offensive or harmful to public morals; or

(*b*) is likely to—

(i) give offence to the religious convictions or feelings of any section of the public; or

(ii) bring any member or section of the public into contempt; or

(iii) harm relations between any sections of the public; or

(iv) be contrary to the interests of public safety or public order; or

(*c*) discloses, with reference to any judicial proceedings—

(i) any matter which is indecent or obscene or is offensive or harmful to public morals or any indecent or obscene medical, surgical or physiological details the disclosure of which is likely to be offensive or harmful to public morals;

(ii) for the dissolution or a declaration of nullity of a marriage or for judicial separation or for restitution of conjugal rights, any particulars other than—

A. the names, addresses and occupations of the parties and witnesses;

B. a concise statement of the allegations, defences and counter-allegations in support of which evidence has been given;

C. submissions on any point of law arising in the course of the proceedings, and the decision of the court thereon;

D. the judgment and the verdict of the court and any observations made by the judge in giving judgment.

(3) Subsection (2) (*c*) (ii) shall not be construed so as to permit the disclosure of anything contrary to subsection (2) (*c*) (i).

(4) This section shall not apply to—

(*a*) the printing of any pleading, transcript of evidence or other document for use in connexion with any judicial proceedings or the communication thereof to persons concerned in the proceedings;

(*b*) the printing, publishing or distribution of any notice or report in pursuance of the directions of any court;

(*c*) any separate volume or part of any *bona fide* series of law reports which does not form part of any other publication and consists solely of reports of proceedings in any court;

(*d*) any publication of a technical, scientific or professional nature *bona fide* intended for the advancement of or for use in any particular profession or branch of the arts, literature or science and approved for such purpose by the Minister;

(*e*) any publication of a *bona fide* religious character.

(5) The Board may, on such conditions as it deems fit, in writing exempt any person or institution from any provision of this section, either indefinitely or for a period determined by it, and may at any time by notice in writing to the person or institution concerned withdraw any exemption granted under this subsection.

(6) No prosecution in respect of an offence under subsection (1) shall be instituted without the authority in writing given under the hand of the Chief Public Prosecutor.

Power of Board to declare publications, pictures, statues and records undesirable

24.—(1) The Board shall have power to declare whether or not any publication, picture, statue or record is in the opinion of the Board undesirable within the meaning of section 23 (2).

(2) Whenever the Board has given any decision under subsection (1) declaring any publication or record to be undesirable, it shall without delay cause such decision to be notified in the *Gazette*.

(3) No prosecution shall be instituted under this Act in respect of any publication, picture, statue or record, if the Board has, under subsection (1), declared that in the Board's opinion it is not undesirable.

(4) Any publication, picture, statue or record imported after the Board has, under subsection (1), declared that in the Board's opinion it is undesirable, shall be liable to forfeiture and shall be disposed of as the Board may direct.

PART VIII

General

Duty of owner or manager, etc., of theatre

25. The owner, lessor, sub-lessor or occupier of, or any person who manages any theatre at which any cinematograph exhibition, stage play or public entertainment is or is intended to be performed or presented shall be responsible for ensuring that any licence or

Permit required under this Act has been issued, and if so that the terms and conditions subject to which it has been issued are complied with, and shall give notice to the Board or to the Inspector General of Police if and so soon as he has reason to believe that an offence under this Act or any rules made thereunder is being or is likely to be committed, and if he neglects or fails to give such notice he shall be guilty of an offence.

Power of entry
7 of 1986
22 of 1989

26.—(1) Any member of the Board, and any administrative officer, police officer of or above the rank of sub-inspector or licensing officer, or any person authorized in that behalf by the Board, may at all reasonable times enter upon any premises or place in which he has reason to believe that any cinematograph exhibition, stage play or public entertainment is being or is about to be presented or performed, or any cinematograph picture is being or is about to be made or which he has reason to believe is being used or operated as premises where cinematograph pictures are let to the public for gain or reward with a view to ascertaining whether the provisions of this Act or any rules made thereunder, and the terms and conditions of any licence or permit issued under this Act, are being complied with.

22 of 1989

(2) In the event of any of the persons referred to in subsection (1) being satisfied that a cinematograph exhibition, stage play or public entertainment is being or is about to be performed or presented or that a cinematograph picture is being or is about to be made in contravention of this Act or any rules made thereunder or of the terms and conditions of any licence or permit issued thereunder, he may order that such cinematograph exhibition, stage play or public entertainment, or the making of such cinematograph picture shall stop and, in the case of a cinematograph picture, he may seize such cinematograph picture.

(3) Any person who resists, obstructs or hinders the entry of the persons referred to in subsection (1) in the performance of their duties under that subsection or who refuses or fails to comply with an order given under subsection (2) shall be guilty of an offence.

Exhibition of posters
25 of 1983

27.—No person shall publicly exhibit any poster or advertisement containing any illustration or scenic description of any cinematograph exhibition, stage play or public entertainment unless such poster or advertisement has been approved by the Board or by a person appointed by the Board in that behalf, and any person who publicly displays any poster or advertisement in contravention of this section shall be guilty of an offence.

Private exhibitions, etc., in theatres

28. The Minister may at any time prohibit or restrict the private performance or presentation of any cinematograph exhibition, stage play or public entertainment in any theatre required to be licensed under this Act, and any person who promotes,

presents, causes, permits or suffers to be promoted or presented, or directs, assists or takes part in any such cinematograph exhibition, stage play or public entertainment in contravention of such prohibition or any restriction imposed under this section shall be guilty of an offence.

Board's power to order surrender of script, etc.
7 of 1986

29.—(1) The Board may, by order in writing, direct that any cinematograph picture or any script of, or text or synopsis of, or any poster or advertisement of, or any article used in, any cinematograph exhibition, stage play or public entertainment shall be surrendered to it, and any person to whom such order is directed who fails fully and promptly to comply with such order shall be guilty of an offence.

(2) On the surrender of such script, text, synopsis, poster, advertisement or thing to the Board under this section the Board may apply to the High Court for an order authorizing the forfeiture thereof or may release the same subject to such conditions as it deems fit.

Appeals
25 of 1983

30. Any person aggrieved by the refusal by the Board or by the Chief Censoring Officer, or any other person duly authorized in that behalf by the Board, to issue any certificate, entertainment permit, film permit or theatre licence under this Act or by the terms and conditions subject to which such certificate, permit or licence is issued may, within seven days, appeal to the Minister in writing, and the Minister's decision thereon shall be final and shall not be questioned in any court.

Minister may cancel any certificate, permit or licence

31. The Minister may at any time cancel any certificate, entertainment permit, film permit or theatre licence issued under this Act without assigning any reason therefor and without payment of compensation.

Penalties
3 of 1981
7 of 1986

32. Any person guilty of an offence under this Act for which no other penalty is prescribed shall be liable to a fine of K200 and to imprisonment for six months, and where the offence is a continuing one shall be liable in addition to a fine of K40 and imprisonment for one month for each day on which the offence continues.

Exemptions

33. The Minister may, by notice in the *Gazette*, and subject to such conditions, if any, as he may impose, exempt any publication, production, theatre, cinematograph exhibition, stage play, public entertainment or cinematograph picture, or any part thereof, or any person owning, managing, promoting, presenting, directing, assisting or taking part in any such theatre, cinematograph exhibition, stage play, public entertainment or cinematograph picture, as the case may be, from any of the provisions of this Act or of any rules made thereunder.

34. The Minister may make rules for the better carrying out of the purposes and provisions of this Act, and without derogation from the generality of the foregoing such rules may provide for— Rules 3 of 1981 25 of 1983

(*a*) the forms to be used for the purposes of this Act and the manner of making applications for certificates, licences or permits;

(*b*) the fees to be charged in respect of anything required to be done or any applications made or certificates, licences or permits issued under this Act;

(*c*) the conditions to be observed in reference to the erection, alteration, and equipment of any theatre; and

(*d*) the conditions to be observed in reference to the safety from fire or otherwise of any theatre or for the safety and control of persons attending such theatre.

SUBSIDIARY LEGISLATION

G.N. 204/1968 54/1984 63/1993

CENSORSHIP AND CONTROL OF ENTERTAINMENTS (MAKING OF CINEMATOGRAPH PICTURES) RULES

under s. 34

Citation

1. These Rules may be cited as the Censorship and Control of Entertainments (Making of Cinematograph Pictures) Rules.

Form of film permit

2. The form of film permit to be issued under section 21 of the Act, shall be as set forth in the Schedule.

Fees G.N. 63/1993

3. The fee payable upon issue of a film permit shall be—

(*a*) in the case of a documentary film K350 00

(*b*) in the case of a feature film K500 00

Saving

4. Sections 19, 20, 21 and 22 of the Act, shall not apply to Government Departments, *bona fide* tourists and residents taking cinematograph pictures for Government purpose or their own private use.

SCHEDULE r. 2

CENSORSHIP AND CONTROL OF ENTERTAINMENTS ACT

(Cap. 21:01)

Film Permit

(*section* 21)

Permission is hereby given to ..... of the

(*name in full*)

following address ..... to make a cinematograph picture according to the description contained in the attached memorandum, and subject to the requirements of sections 19, 20, 21 and 22 of the Censorship and Control of Entertainments Act.

Date .....

for: The Board of Censors

Signature: .....

Name: .....

Title: .....

CENSORSHIP AND CONTROL OF ENTERTAINMENTS (CONTROL OF THEATRES) RULES

G.N. 205/1968 93/1981 62/1993

under s. 34

1. These Rules may be cited as the Censorship and Control of Entertainments (Control of Theatres) Rules. Citation

2. The aisles in a theatre shall not be less than 1,065 millimetres in width and shall be widened to the full width of the exit for a distance of not less than 1,830 millimetres from such exit. Where seating is provided for more than 200 persons, the width of the aisles shall be increased over and above 1,065 millimetres by 40 millimetres for every 1,520 millimetres of the overall length of such aisles: Aisles G. N. 93/1993

Provided that where an exit door of 1,520 millimetres in width is used in accordance with rules 3 (10), aisles leading directly to such exit door shall be not less than 1,370 millimetres in width.

3.—(1) Entrance and exit doors of any theatre shall not be less than 1,065 millimetres in width. Doors G. N. 93/1981

(2) Doors used for exit purposes shall open outwards and shall be neither locked nor bolted during performances.

(3) External exit doors used by the public in any theatre seating more than 200 persons shall not be fitted with any locks or fastenings other than panic bolts of a type approved by the inspector. Such panic bolts shall be fixed on the inside of the external exit doors in such a manner as to be easily and immediately opened by pressure from the inside on a horizontal bar or panel.

(4) Internal doors used by the public for exit purposes shall have no locks, bolts or other fastenings except such as are used for holding them in an open position, but may be fitted with spring hinges.

(5) Separate entrances shall be provided for the stage and dressing rooms.

(6) Exit doors shall open directly on to the open air or on to a passage or landing leading by an unobstructed way directly to the open air. No exit door shall open directly on to a stairway.

(7) Exit points from a theatre shall be so placed as to give unobstructed and clear access to the street.

(8) (*a*) All exits shall be clearly marked on the inside with the word "EXIT" in letters of not less than 150 millimetres in height;

(*b*) in any theatre where the lights are dimmed or extinguished at any time whilst the public is present all "EXIT" signs shall be adequately illuminated by an approved means.

(9) Any theatre providing seating on more than one floor level shall have not less than two exits situated as far apart as practicable on each floor. In no case shall such exits be less than 6,100 millimetres apart on any floor level.

(10) Where more than two exits are required on any floor level one exit door of 1,520 millimetres in width may be provided in lieu of any two doors of 1,065 millimetres in width:

Provided that the maximum travel distance from any point in a theatre to the nearest door shall not be greater than 18,300 millimetres.

(11) In no case shall passages, landings or staircases leading from exit doors to the open air be less in width than the width of the exit door.

Staircases and passages G.N. 93/1981

4.—(1) The treads of each flight of stairs in any theatre shall be of uniform width, not less than 280 millimetres wide and with risers not more than 150 millimetres high.

(2) No staircase or passage required for public access shall be less than 1,370 millimetres wide and every such staircase or passage communicating with any portion of a theatre intended for the accommodation of more than 400 persons shall be increased in width by not less than 150 millimetres for every additional 100 persons to a maximum of not less than 2,740 millimetres.

(3) Staircases for public use over 1,830 millimetres in width shall be divided down the centre by a strong hand rail.

(4) (*a*) No flight of stairs intended for public use shall consist of more than 14 risers.

(*b*) Landings between flights shall not be shorter in length than the width of the stairs.

(*c*) Winder or spiral staircases intended for public use shall not be constructed or used in any theatre.

Seating

5.—(1) When seating accommodation for the public consists of chairs, such chairs shall be fastened to one another side by side and row by row in such a manner that such rows of chairs cannot be overturned. Any fastening used shall be so constructed as to prevent tripping.

(2) No seat in any theatre shall have more than six seats between it and an aisle.

Lighting

6. All entrance halls, passages, staircases and landings or other means of approach to an exit from any theatre shall be adequately lighted by an approved means during the whole time that members of the public are present in such theatre.

Freedom to leave theatre

7. The public shall be permitted to leave any theatre during or at the end of any performance by all the exit doors.

Freedom from obstruction

8. All aisles, passages and staircases shall be kept entirely free from any obstruction of any sort.

No standing

9. No person shall be permitted to stand or sit in any aisle in any theatre during any performance.

Equipment to be in good order

10. Exit doors, seating accommodation, fire-extinguishers and appliances and water installations shall be kept in good order and condition.

Inspection by licensing officer

11. A licensing officer may at any time visit and inspect any theatre to satisfy himself that these Rules are being complied with.

Inspection by qualified person G.N. 93/1981

12. A licensing officer may at any time call upon qualified persons to inspect and report upon the safety of the structure or erection, the electrical wiring, installation of appliances or the plumbing of a theatre.

Water to be available G.N. 93/1981

13.—(1) All theatres shall be provided with a piped water supply capable of serving hydrants of 65 millimetres diameter and shall be connected with the street main by a 100 millimetres diameter pipe.

Provided that—

(*a*) where the mains supply is insufficient to meet such requirements such hydrants and connexions of a lesser diameter as may be suitable may be installed;

(*b*) if there is no main water supply available a theatre may dispense with a piped water supply provided that one 900 litres capacity cistern is available for every 100 persons or part thereof. Every such cistern shall be kept filled with water during performances to which the public are admitted and not less than four buckets shall be provided for each cistern.

(2) Where a piped water supply is required in any theatre one or more fire hoses shall be provided which can reach to every part of the building. Such hoses need not be fitted to serve any part of a building which is equipped with approved automatic sprinklers.

(3) (*a*) Five hand-operated fire-extinguishers of an approved type each with a minimum capacity of 9 litres shall be provided in any theatre where the seating capacity exceeds 200 persons;

(*b*) where the capacity of any theatre is 200 persons or less three fire-extinguishers of an approved type shall be provided one of which shall be kept in the immediate vicinity of the screen or stage;

(*c*) in any theatre where the public is seated on two or more different levels, three fire-extinguishers of an approved type shall be provided on each level.

(4) In theatres where smoking is permitted ash trays shall be provided in the ratio of one per two seats.

Sanitary conveniences

14. Every theatre shall be provided with one lavatory in respect of each 200 persons:

Provided that a minimum of one such lavatory shall be provided for each sex.

Application for theatre licences

15. Applications for theatre licences shall be made to a licensing officer on Form I as set out in the Schedule.

Fees for theatre licences
G. N. 93/1981
62/1993

16. The fees payable for theatre licences are—

(*a*) for a licence valid for a period of not less than 12 months K50;

(*b*) for a licence valid for any period of less than 12 months, in respect of each month and any part of a month of its validity K2:

Provided that a licensing officer may, without payment of any fee, issue a licence in respect of any theatre which—

(i) forms part of or is situated upon the premises of a school for the time being entered in the Register of Schools maintained under Part VI of the Education Act, or the University of Malaŵi; or

Cap. 30:01

(ii) is owned, managed or controlled by a *bona fide* charitable organization,

on the condition that such theatre shall be used wholly and exclusively for educational or charitable purposes throughout the period of validity of the licence.

Form of licence

17. A theatre licence shall be in Form II as set out in the Schedule.

Saving
G. N. 93/1981

18.—(1) In the case of a theatre constructed before the 1st January, 1969, a licensing officer may, if satisfied that the provisions for safety and sanitation are reasonably adequate, issue a theatre licence in respect of such theatre notwithstanding that the theatre does not comply in all respects with the requirements of these Rules.

(2) In the case of a theatre constructed after 31st December, 1968, but before 1st January, 1982, a licensing officer, if satisfied that, in respect of its construction, the provisions relating to measurement contained in rules 2, 3, 4 and 13 in force on 1st January, 1969, are being complied with, may issue a theatre licence in respect of such theatre notwithstanding that the construction of the theatre does not exactly comply with the provisions relating to measurement in those rules in force after 1st January, 1982.

SCHEDULE

rr. 15 and 17
G. N. 93/1981

FORM I

REPUBLIC OF MALAŴI

CENSORSHIP AND CONTROL OF ENTERTAINMENTS ACT

(CAP. 21:01)

APPLICATION FOR THEATRE LICENCE

(*To be completed in BLOCK LETTERS*)

1.—(*a*) Name of owner or lessee of the theatre: .....
.....

(*b*) Full postal address (Box number, if any):.....
.....
.....

2.—(*a*) Under whose immediate control or charge will the theatre be:
.....

(*b*) Capacity in which employed:.....

(*c*) Full postal address (Box number, if any):.....
.....
.....

3. Situation of theatre: .....
.....

4. Name of theatre: .....

5. Capacity of theatre: .....

Date:..... *Signature of Applicant*:.....

FORM II

REPUBLIC OF MALAŴI

CENSORSHIP AND CONTROL OF ENTERTAINMENTS ACT

(CAP. 21:01)

THEATRE LICENCE No. .....

(*Section* 9)

Permission is hereby given to .....

(*Owner or lessee of theatre*)

to use the theatre known as the .....

(*Name by which the theatre is known*)

situated at .....

and under the immediate control or charge of .....

in his capacity as ..... for the presentation of the Censorship and Control of Entertainments (Control of Theatres) Rules having been complied with.

Capacity of theatre:.....

Fee paid: K .....

This licence expires on: .....

....

(Date and Place of Issue) *Licensing Officer*

N.B. Any change in the ownership or control of this theatre must be notified to the inspector within 7 days of such change.

G.N. 207/1968 51/1981 55/1984 58/1989 61/1993

CENSORSHIP AND CONTROL OF ENTERTAINMENTS (CENSORSHIP) RULES

under s. 34

Citation

1. These Rules may be cited as the Censorship and Control of Entertainments (Censorship) Rules.

Interpretation G. N. 55/1984

2. In these Rules—

"written authority", when used in relation to a member of the Board or of a committee thereof or any other authorized person, means a letter or card under the hand of the Chief Censoring Officer identifying him as a member of the Board or of a committee thereof or as a person so authorized.

PART I

Cinematograph Exhibitions

Applications for certificates of approval G.N. 51/1981 55/1984

3. Every application to the Board for a certificate of approval for the exhibition (whether by way of advertisement or otherwise) of a cinematograph picture shall be made in writing to the Board in the form approved by the Board and the appropriate fee prescribed in rule 10 shall be paid by the applicant upon the issue of every such certificate.

Opportunity to review G.N. 55/1984

4. The Board shall, in respect of every application where the Board may require to review the cinematograph picture concerned, notify the person making such application of the place and time at which it shall be shown to the Board, and such person shall at such place and time, and at his own expense, exhibit the cinematograph picture and provide the necessary apparatus and assistance for the showing thereof.

Issue of certificates G.N. 55/1984

5.—(1) Certificates of approval issued by the Board shall be in the appropriate form set out in the Schedule.

(2) Where the Board refuses to issue a certificate of approval in respect of any cinematograph picture a notice to this effect shall be delivered to the person submitting such cinematograph picture to the Board for approval.

(3) Every notice issued in accordance with subrule (2) shall be signed by the Chief Censoring Officer or other duly authorized officer of the Board, and shall be transmitted to the person who submitted the cinematograph picture to which the notice relates:

Provided that in the case of any certificate or notice under subrule (2) the attention of such person shall be directed to section 30 of the Act relating to appeals against decisions of the Board.

(4) If the approval of the Board is given subject to the making of any excisions from the cinematograph picture, the Board shall have authority to make such excisions and to retain in the possession of the Board such excised parts, or to return them to the person who submitted the cinematograph picture when it is transmitted to another country.

(5) Any person who is for the time being in charge of any theatre at which cinematograph pictures are exhibited, shall, at the request of a police officer on duty or any person holding a written authority from the Board, produce for inspection any certificate or notice issued in accordance with these Rules in respect of any cinematograph picture which is being exhibited or intended to be exhibited.

Certificate to be displayed G.N. 51/1981

6. Immediately before the commencement, of a performance at which there is to be shown any cinematograph picture which has been approved by the Board, the person who intends to exhibit such cinematograph picture shall display the certificate of approval issued in respect thereof, or facsimile of the certificate, or some other notice which includes the title of the cinematograph picture concerned and its classification, in a prominent position at or near the entrance to the premises where such performance is to be held so that it may be read by all persons attending that performance.

All cinematograph pictures to be approved

7. At a cinematograph exhibition consisting of a programme of different cinematograph pictures or slides, only cinematograph pictures or slides which have been approved by the Board, shall be included in the programme.

G.N. 51/1981

PART II

Publications, Pictures, Statues and Records

Submission to the Board

8. If a person considers that a publication, picture, statue or record is undesirable in terms of section 23 of the Act he may submit such publication, picture, statue or record to the Board for examination or may in writing invite the attention of the Board thereto.

Exhibitions G.N. 55/1984

9. The owner or occupier of every premises upon which it is intended to hold an exhibition of publications, pictures or statues, shall give not less than 28 days' notice of such intention in writing to the Board.

G.N. 51/1981

PART III

Public Entertainment

Form of entertainment permit G.N. 51/1998

10. An entertainment permit issued under section 16 or 17 of the Act shall be in the form set out in the Second Schedule.

PART IV

Fees

Fees for certificates of approval G.N. 58/1989 61/1993

11.—(1) The following fees are payable upon the issue of certificates of approval—

(*a*) for every cinematograph picture viewed by the Board (except as otherwise provided in this rule) of running-time—

(i) of 30 minutes or less K6 00

(ii) in excess of 30 minutes for each period of 15 minutes, and for any period of less than 15 minutes that remains K3 50

(*b*) for every cinematograph picture viewed by the Board—

(i) being a photographic slide advertisement to be exhibited for commercial purposes K2 50

(ii) being an illustration or description of any matter relating to a cinematograph slide advertisement to be exhibited for commercial purposes K2 50

(iii) being a video-tape of running-time of—

1 hour or less. K2 50

more than 1 hour. K5 00

(iv) being an uncensored video-tape seized by the Board K15 00

(*c*) for every cinematograph picture previously viewed by the Board and resubmitted to the Board for approval . . K12 00

(*d*) for every cinematograph picture approved without viewing by the Board—

(i) being a photographic slide advertisement to be exhibited for commercial purposes K2 50

(ii) being an illustration or description of any matter relating to a cinematograph picture to be exhibited. K2 50

(iii) being a video-tape K2 50

(iv) of a kind other than (i), (ii) or (iii) K5 50

(*e*) for every cinematograph picture previously viewed by the Board and resubmitted to the Board for certificate with cuts . . . . . K25 00 G.N. 58/1989

(2) The following fees are payable upon the issue of entertainment permits under section 16 or 17 of the Act—

(*a*) in respect of every exhibition of publications, pictures or statues. K25 00

(*b*) in respect of every other form of public entertainment K25 00

(*c*) in respect of every stage play K25 00

(3) Notwithstanding subrules (1) and (2) and without prejudice to the requirements of the Act to apply for and obtain the issue of certificates of approval and entertainment permits, the Board has power—

(*a*) in pursuance of sections 12 (2) and 16 (2) of the Act respectively to direct that a certificate of approval or an entertainment permit shall be issued free in any case where the cinematograph exhibition, stage play or public entertainment concerned is to be given, performed or presented by any school entered for the time being in the Register of Schools maintained under Part VI of the Education Act, by the University of Malaŵi, or by any *bona fide* charitable organization, for any charitable, educational or public purpose; and Cap. 30:01

(*b*) to waive the whole or part of any fee specified in subrules (1) and (2) if the Board is satisfied, on reasonable grounds, that the fee or part thereof ought, in the circumstances of a particular case, to be waived.

FIRST SCHEDULE

THE REPUBLIC OF MALAŴI

G.N. 55/1984
58/1989

CENSORSHIP AND CONTROL OF ENTERTAINMENTS ACT

(Cap. 21:01)

Certificate of Approval of a Cinematograph Picture (Other than Video-Tapes)

'A' Certificate

No. .....

This is to certify that the cinematograph picture entitled .....
.....
Produced or distributed by .....
.....
has been examined and passed by the Board of Censors as suitable for exhibition to persons of any age provided that persons less than 14 years of age are accompanied by a person aged 18 years or more.

Excisions

*No excisions have been made from this picture.
*Excisions have been made from this picture and these will, in due course, be replaced by the Board.

Conditions

1. .....
2. .....
3. .....
4. .....

Note: If you are aggrieved by the Board's decision, you may, under section 30 of the Act, appeal to the Minister against the decision of the Board.

Fee paid .....

Signed: ..... Date: ....., 19 .....
Name:.....
Title: .....

for: The Board of Censors
**Delete whichever is not applicable.*

The following CONDITIONS apply to this PERMIT—
1. .....

G.N. 58/1988

THE REPUBLIC OF MALAŴI

CENSORSHIP AND CONTROL OF ENTERTAINMENTS ACT

(CAP. 21:01)

CERTIFICATE OF APPROVAL OF A CINEMATOGRAPH PICTURE (OTHER THAN VIDEO-TAPES)

'U' CERTIFICATE

No. .....

This is to certify that the cinematograph picture entitled .....
.....
Produced or distributed by .....
.....
has been examined and passed by the Board of Censors as suitable for exhibition to persons of any age.

EXCISIONS

*No excisions have been made from this picture.
*Excisions have been made from this picture and these will, in due course, be replaced by the Board.

CONDITIONS

1. .....
2. .....
3. .....
4. .....

NOTE: If you are aggrieved by the Board's decision, you may, under section 30 of the Act, appeal to the Minister against the Board decision.

Fee paid .....

Signed: ..... Date: ....., 19 .....

Name:.....

Title: .....

for: The Board of Censors

**Delete whichever is not applicable.*

G.N. 55/1984
58/1988

THE REPUBLIC OF MALAŴI

CENSORSHIP AND CONTROL OF ENTERTAINMENTS ACT

(CAP. 21:01)

CERTIFICATE OF APPROVAL OF A CINEMATOGRAPH PICTURE (OTHER THAN VIDEO-TAPES)

'X' CERTIFICATE

No. .....

This is to certify that the cinematograph picture entitled .....
.....
Produced or distributed by .....
.....
has been examined and passed by the Board of Censors as suitable for exhibition to persons aged 18 year or more.

EXCISIONS

*No excisions have been made from this picture.
*Excisions have been made from this picture and these will, in due course, be replaced by the Board.

CONDITIONS

1. .....
2. .....
3. .....
4. .....

NOTE: If you are aggrieved by the Board's decision, you may, under section 30 of the Act, appeal to the Minister against the decision of the Board.

Fee paid .....

Signed: ..... Date: ....., 19 .....

Name:.....

Title: .....

for: The Board of Censors

**Delete whichever is not applicable.*

THE REPUBLIC OF MALAŴI

CENSORSHIP AND CONTROL OF ENTERTAINMENTS ACT
(CAP. 21:01)

G.N. 58/1989

CERTIFICATE OF APPROVAL OF A CINEMATOGRAPH PICTURE (OTHER THAN VIDEO-TAPES)
'AA' CERTIFICATE

No. .....

This is to certify that the cinematograph picture entitled .....
.....
Produced or distributed by .....
.....
has been examined and passed by the Board of Censors as suitable for exhibition to persons aged 14 years or more.

EXCISIONS

*No excisions have been made from this picture.
*Excisions have been made from this picture and these will, in due course, be replaced by the Board.

CONDITIONS

1. .....
2. .....
3. .....
4. .....

NOTE: If you are aggrieved by the Board's decision, you may, under section 30 of the Act, appeal to the Minister against the Board's decision.

Fee paid .....

Signed: ..... Date: ....., 19 .....

Name:.....

Title: .....

for: The Board of Censors

**Delete whichever is not applicable.*

SECOND SCHEDULE r. 10

THE REPUBLIC OF MALAŴI

CENSORSHIP AND CONTROL OF ENTERTAINMENTS ACT
(CAP. 21:01)

ENTERTAINMENT PERMIT

No. .....

This is to certify that the Public Entertainment.....

.....

.....

(*Describe the public entertainment and include title of it where appropriate*)

may be presented at .....

(*State name and location of premises*)

during the period from .....

to ....., 20 .....

The following CONDITIONS apply to this PERMIT—

1. .....
2. .....
3. .....
4. .....

Fee paid: ..... Date: ....., 20 .....

Signature.....

Name: .....

Title: .....

for: The Board of Censors

REPUBLIC OF MALAŴI

CENSORSHIP AND CONTROL OF ENTERTAINMENTS ACT
(CAP. 21:01)

CERTIFICATE OF APPROVAL OF VIDEO-TAPES

This is to certify that the video-tape(s) described hereunder recorded or distributed by has/have been examined and passed by the Board of Censors under the classification shown against each title. The tape(s) has/have to be exhibited in accordance with the notes on classification as shown below and subject to the conditions, if any, specified below—

Title of Video-Tape	*Number of Excisions*	*Details of the Excisions*	*Classification*
1.	.....	.....	.....
.....	.....	.....	.....
.....	.....	.....	.....
2.	.....	.....	.....
.....	.....	.....	.....
.....	.....	.....	.....
3.	.....	.....	.....
.....	.....	.....	.....
.....	.....	.....	.....
4.	.....	.....	.....
.....	.....	.....	.....
.....	.....	.....	.....

CONDITIONS

1. .....
2. .....
3. .....
4. .....

NOTE: If you are aggrieved by the Board's decision, you may, under section 30 of the Act, appeal to the Minister.

Fee paid: ..... Signed .....

Date: .....*for: The Board of Censors*

(*Official Stamp*)

NOTES: Classification of video-tapes—

"U" Suitable for exhibition to persons of all ages.

"A" Not suitable for exhibition to persons under 14 years of age unless accompanied by an adult.

"AA" Not suitable for exhibition to persons under 14 years of age.

"X" Not suitable for exhibition to persons under 18 years of age.

CENSORSHIP AND CONTROL OF ENTERTAINMENTS (PREMISES LICENCE) RULES

G.N. 75/1986
64/1993

under s. 34

Citation

1. These Rules may be cited as the Censorship and Control of Entertainments (Premises Licence) Rules.

Application for premises licence
First Schedule, Form PL I
Second Schedule

2. Every application for a premises licence pursuant to section 9A shall be made in Form PL I set out in the First Schedule and shall be accompanied with the fee prescribed in the Second Schedule.

Issue of premises licence

3.—(1) A premises licence shall not be issued unless a licensing officer is satisfied that the applicant has, in respect of the relevant premises, fulfilled the following conditions—

(*a*) that a written notice, indicating that the premises are for letting cinematograph pictures to the public for gain or reward, has been conspicuously displayed in front of such premises;

(*b*) that the applicant has displayed at a conspicuous place within the premises a statement, for the information of the public, indicating the following classification of cinematograph pictures—

(i) ''U''—suitable for exhibition to persons of any age;

(ii) ''A''—suitable for exhibition to persons of any age provided that persons less than 14 years of age are in the company of a person aged 18 years or more;

(iii) ''AA''—suitable for exhibition to persons aged 14 years or more; and

(iv) ''X''—suitable for exhibition to persons aged 18 years or more; and

(*c*) that every cinematograph picture kept at the premises for letting to the public shall have its title, its running-time and its classification clearly indicated on a special sticker issued by the Board and pasted on such cinematograph picture; and

(*d*) that such other conditions as may be imposed by the Board have been complied with.

(2) A licensing officer may, before issuing a premises licence, inspect the premises for the purpose of satisfying himself that the conditions specified in subrule (1) have been fulfilled.

First Schedule Form PL II

(3) A premises licence shall be in Form PL II set out in the First Schedule.

Duty of owner

4.—(1) An owner of the premises in relation to which a premises licence has been issued under these rules shall not—

(*a*) let or permit to be let to any person under the apparent age of 18 years any cinematograph picture with the classification of "X";

(*b*) keep or allow to be kept on such premises any cinematograph picture which has not been approved by the Board;

(*c*) display or allow to be displayed on such premises any cinematograph picture with a title or titles not corresponding to the actual programme or programmes on the cinematograph picture itself;

(*d*) display on such premises any poster or advertisement which has not been approved by the Board.

(2) In this rule, "owner", in relation to premises, means any person in actual occupation of the premises whether such occupation is under a tenancy agreement or otherwise.

FIRST SCHEDULE rr. 2 and 3

FORM PL I

THE REPUBLIC OF MALAŴI
CENSORSHIP AND CONTROL OF ENTERTAINMENTS ACT

(Cap. 21:01)

CENSORSHIP AND CONTROL OF ENTERTAINMENTS
(PREMISES LICENCE) RULES

Application for a Premises Licence

(*rule* 2)

To: The Licensing Officers at .....

I/We (name(s) of applicant(s)) .....

..... of (address) .....

hereby apply for a premises licence for the carrying on of the business of letting to the public cinematograph pictures at the premises situated at plot number ..... in the City/Municipality/Township/District of .....

and having the following postal address .....
.....

Made this ..... day of ....., 20.....

.....

Signature of or on behalf of Applicant

FORM PL II

THE REPUBLIC OF MALAŴI

CENSORSHIP AND CONTROL OF ENTERTAINMENTS ACT

(CAP. 21:01)

CENSORSHIP AND CONTROL OF ENTERTAINMENTS (PREMISES LICENCE) RULES

PREMISES LICENCE FOR THE LETTING TO THE PUBLIC CINEMATOGRAPH PICTURES

(*rule* 3 (3))

A premises licence for carrying on the business of letting to the public cinematograph pictures is hereby issued to ..... of ..... in respect of the premises situated at plot number ..... in the City/Municipality/Township/District of .....

This licence commences on ..... and expires on ..... and is issued subject to the Censorship and Control of Entertainments Act and to the Censorship and Control of Entertainments (Premises Licence) Rules and to such conditions as may, from time to time, be imposed by the Board.

Dated this ..... day of ..... , 20.....

Fee paid: K ....

Licensing Officer

(Official Stamp)

SECOND SCHEDULE r. 2

FEES

	Per annum
1. On issue of first licence	K330 00
2. On issue of each subsequent licence	K300 00

LOCAL GOVERNMENT

CHAPTER 22:01

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CHAPTER 22:01

LOCAL GOVERNMENT

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---

42 of 1998
5 of 2001
17 of 2010
10 of 2017
G.N. 8/1999
59/2000
67/2017

An Act to amend and consolidate the law relating to local government and to provide for the matters connected therewith or incidental thereto.

[8TH MARCH, 1999]

PART I

PRELIMINARY

Short title

1. This Act may be cited as the Local Government Act.

Interpretation
17 of 2010

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

"Council" means a Council specified in the second column of the First Schedule;

"Immediate family member", in relation to any person, means that person's spouse, child, parent, brother or sister;

"local government authority" means a District Council, Town Council, Municipal Council or City Council constituted under this Act; 10 of 2017

"Local government area" means an area under the jurisdiction of a District Council, Municipal Council or City Council.

PART II

LOCAL GOVERNMENT AREAS

Division 1—Objectives and Areas

Objectives of local government

3. The objectives of local government shall be to further the constitutional order based on democratic principles, accountability, transparency and participation of the people in decision-making and development processes.

Local government areas

4.—(1) For the administration of local government, there shall be local government areas which shall comprise the areas respectively described in the first column of the First Schedule.

(2) The Minister may, from time to time, by order published in the *Gazette* declare any local government area to be a township or a municipality.

(3) The President may, by order published in the *Gazette*, confer the title and dignity of "City" on any Municipality.

(4) The President may, by notice published in the *Gazette*, amend the First Schedule.

Division 2—Constitution and Functions

Composition of the Council 17 of 2010

5.—(1) For every local government area, there shall be a Council consisting of—

(*a*) one member elected from each ward within the local government area;

(*b*) Members of Parliament from the constituencies that fall within the local government area, as voting members, *ex officio*;

(*c*) Traditional Authorities from the local government area, as non-voting members, *ex officio*; and

(*d*) five persons, as non-voting members, to be appointed by the elected members to cater for the interests of such special interest groups as the Council may determine.

(2) Each Council shall be a body corporate by the name "The District Council of. . ." or "The Town Council of. . ." or "The City Council of. . ." or "The Municipal Council of. . ." as the case may

be, with the addition of the name of the particular district, town, municipality or city.

Functions of the Council 17 of 2010

6.—(1) The Council shall perform the following functions—

(*a*) to make policy and decisions on local governance and development for the local government area;

(*b*) to consolidate and promote local democratic institutions and democratic participation;

(*c*) to promote infrastructural and economic development through the formulation, approval and execution of district development plans within its jurisdiction;

(*d*) to mobilize resources within the local government area for governance and development;

(*e*) to maintain peace and security in the local government area in conjunction with the Malaŵi Police Service.

(*f*) to make by-laws for the good governance of the local government area;

(*g*) to appoint, develop, promote and discipline its staff;

(*h*) to cooperate with other Councils in order to learn from their experiences and exchange ideas; and

(*i*) to perform other functions including the registration of births and deaths and participate in the delivery of essential local services.

(2) In addition to the functions specified in subsection (1), the Council shall also perform the functions stated in the Second Schedule.

Second Schedule

(3) The Minister may, on the written request of a Council, exempt the Council from any of the functions specified in the Second Schedule.

Second Schedule

(4) The Minister may, by notice published in the *Gazette*, amend the Second Schedule.

Second Schedule

Chairman and Vice-Chairman of the Council 17 of 2010

7.—(1) Members of the Council shall, at their first meeting elect, from amongst their number other than members *ex officio*, a Chairman and a Vice-Chairman.

(2) The Chairman shall be the head of the Council.

(3) The Chairman shall be responsible for the observance of the provisions of this Act and shall provide leadership in the Council.

17 of 2010

(4) The Chairman and Vice Chairman shall each serve in their respective capacities for a period of one year, unless sooner replaced, and shall be eligible to be re-elected for one additional term; but so, however, that in the case of a City Council or a Municipal Council, the Chairman and Vice Chairman shall serve for a period of two and half years, unless sooner replaced and shall be eligible to be re-elected for one additional term.

(5) The Council shall pay the Chairman, the Vice-Chairman and other members of the Council such allowances as the Minister may, on the recommendation of the Local Government Finance Committee, determine.

Procedure at meetings of the Council

8.—(1) The procedure to be followed at meetings of the Council shall be as laid down in Standing Orders made by the Council under section 19.

(2) At a meeting of the Council, one-third of the elected members shall form a quorum.

Mayor and Deputy Mayor

9. The Chairman and Vice-Chairman of a City Council or Municipal Council may have the title of Mayor and Deputy Mayor, respectively and any reference in this Act to the Chairman or Vice-Chairman of the Council may be construed as including a reference to the Mayor and Deputy Mayor.

Elected members Cap. 22:02

10. A member of the Council referred to in section 5 (1) (*a*) shall be elected in accordance with the Local Government Elections Act.

Designation of head of the Council 5 of 2001 17 of 2010

11.—(1) There shall be in the Council an officer designated as Chief Executive Officer, in the case of a City, Municipal or Town Council, and as District Commissioner, in the case of a District Council, who shall be the head of the Secretariat of the Council.

(2) The Chief Executive Officer or the District Commissioner shall be appointed by the Minister.

(3) Any person holding a post of Director grade in the Council shall be appointed by the Local Government Service Commission.

(4) The Minister shall have power, on the recommendation of the Local Government Service Commission, to transfer from one Council to another any person holding the post of Chief Executive, District Commissioner or Director in a Council.

(5) The Chief Executive Officer or District Commissioner of the Council, as the case may be, shall, subject to the general or special direction of the Council, be responsible for—

(*a*) implementing the resolutions of the Council;

(*b*) the day to day performance of the executive and administrative functions of the Council;

(*c*) the supervision of the departments of the Council; and

(*d*) the proper management and discipline of the staff of the Council.

PART III
Proceedings of the Council

Disclosure of interest

12.—(1) If any member is present at a meeting of the Council or of any committee of the Council at which is the subject of consideration is a matter in which any that member or his immediate family member or his professional or business partner is directly or indirectly interested in a private or professional capacity, he shall, as soon as is practicable after the commencement of the meeting, disclose such interest and, unless the Council or committee otherwise directs, that member shall not take part in any consideration or discussion of, or vote on, any question touching on such matter.

(2) The Chairman may request a member who has declared an interest under subsection (1) to leave the meeting during the time the Council is considering the matter in respect of which the interest was declared.

(3) A disclosure of interest shall be recorded in the minutes of the meeting at which it is made.

Procedure

13. Subject to the other provisions of this Act, the Council may regulate its own procedure.

PART IV
Discharge of Functions

Service committees

14.—(1) The Council shall establish the following committees—

(*a*) the Finance Committee;

(*b*) the Development Committee;

(*c*) the Education Committee;

(*d*) the Works Committee;

(*e*) The Health and Environmental Committee; and

(*f*) The Appointments and Disciplinary Committee.

(2) The Council may establish other committees at local government area level.

(3) The Council may establish such other committees at ward, area or village level as it may determine.

(4) The composition of service committees and the committees established under subsections (2) and (3) shall be determined by the Council.

(5) A service committee or other committee established under subsections (2) and (3) may in its discretion at any time and for any period invite any person to attend any meeting of such committee and take part in the deliberations at the meeting, but such person shall not be entitled to vote at the meeting.

Delegation to committees, etc.
10 of 2017

15.—(1) Subject to any express provisions of this Act, the Council may arrange for the discharge of any of its functions by a committee, a sub-committee or an officer of the Council:

10 of 2017

Provided that the Council shall not delegate its powers to—

(*a*) make by-laws and Standing Orders;

(*b*) borrow money;

(*c*) levy a rate; and

(*d*) acquire and dispose of land.

(2) Where under this section any functions of the Council may be discharged by a committee of the Council, then, unless the Council otherwise directs, the Committee may arrange for the discharge of any of those functions by a sub-committee or an officer of the Council and where any functions of the Council may be discharged by a sub-committee of the Council, then unless the Council or the sub-committee otherwise directs, the sub-committee may arrange for the discharge of any of those functions by an officer of the Council.

(3) Any arrangement made by the Council or a committee for the discharge of any functions by a committee, sub-committee, officer of the assembly shall not prevent the Council by whom the arrangements are made from exercising those functions.

(4) Two or more Councils may discharge any of their functions jointly and, where arrangements are in force for them to do so, the Councils may also arrange for the discharge of those functions by a joint committee of theirs or by an officer of one of them and subsection (2) shall apply in relation to those functions as it applies in relation to the functions of the individual Councils.

Appointment of committees

16.—(1) For the purpose of discharging any functions in the pursuance of arrangements made under section 15—

(*a*) the Council may appoint a committee of the Council; or

(*b*) two or more Councils may appoint a joint committee of the Councils; or

(*c*) any such committee may appoint one or more sub-committees.

(2) The number of members of a committee appointed under subsection (1), their term of office, and the area within which

the committees may exercise their authority shall be fixed by the appointing Councils or, in the case of sub-committees, by the appointing committee.

(3) Every member of a committee appointed under this section who at the time of his appointment was a member of the appointing Council or one of the appointing Councils shall upon ceasing to be a member of that Council also cease to be a member of the committee.

(4) The Council may invite any person to attend a meeting of a committee:

Provided that such person shall not be entitled to vote.

Expenses of joint committees

17. The expenses incurred by a joint committee of two or more Councils shall be defrayed by those Councils in such proportions as the Councils may agree.

Disability from voting on account of pecuniary interests

18. Sections 12 and 15 shall apply in respect of members of a committee of the Council or of a joint committee of two or more Councils, including in either case a sub-committee, as they apply in respect of members of the Council subject to references to meetings of any such committee being substituted for references to meetings of the Council.

Standing Orders

19. The Council shall make Standing Orders for the regulation of such matters as may be necessary for the purposes of this Act.

Monitoring of Council decisions

20.—(1) It shall be the duty of the Chief Executive Officer of the Council if at any time it appears that any proposal, decision or omission by the Council or by any committee, sub-committee or officer of the Council has given rise to or is likely to give rise to—

(*a*) a contravention of this Act or any other written law, Standing Order, by-law or regulation; or

(*b*) any maladministration or injustice, to prepare a report to the Council with respect to that proposal, decision or omission.

(2) It shall be the duty of the Council to consider such report at a meeting held not more than fourteen days after copies of the report are first sent to the Council.

(3) The implementation of a proposal or decision to which a report under this section relates shall be suspended in consequence of the report until the end of the first business day on which consideration of that report has been concluded.

Prohibition orders

21.—(1) Where the Council—

(*a*) is about to make or has made a decision which involves or would involve the Council incurring expenditure which is unlawful; or

(*b*) is about to take or has taken a course of action which if pursued to its conclusion would be unlawful or likely to cause a loss or deficiency; or

(*c*) is about to take or has taken a course of action which if pursued to its conclusion would be unlawful or contrary to national policies, the Minister may issue an order requiring the Council to desist from making or implementing the decision or taking or continuing to take the course of action.

(2) Where the Council wilfully or negligently fails to comply with the order made by the Minister under subsection (1), the Minister may—

(*a*) surcharge the Council for the amount incurred as a result of the decision made; and

(*b*) surcharge the Council for the amount of loss or deficiency arising out of the course of action taken.

(3) Where the Council contravenes the provisions of section 21 (1) (*c*), the Minister may suspend the Council.

(4) Where the Council has been suspended under subsection (3), the Minister shall appoint a Commission which shall have the full powers to run the affairs of the Council until a decision of the High Court on whether the Council has acted unlawfully or contrary to national policies, or elections for a new Council are held, as the case may be.

(5) Where the Minister suspends the Council under subsection (3), the High Court shall, on the motion of the Minister or a member of the Council, determine whether the Council acted unlawfully or contrary to national policies.

(6) Where the High Court determines that a Council has acted unlawfully or contrary to national policies, the President shall dissolve the Council and elections for a new Council shall be held within ninety days from the date of dissolution.

Evidence of resolutions 5 of 2001

22. A document which—

(*a*) purports to be a copy of the resolution, order or report of the Council or the minutes of a meeting of the Council; or

(*b*) bears a signature purporting to be signed by the Chief Executive Officer or District Commissioner of the Council or a person authorized in that behalf by him or the Council, shall be *prima facie* evidence in any proceedings of the matters stated in the document.

Admission to meetings

23.—(1) The meetings of the Council including meetings of any committee, sub-committee or joint committee shall be open to the public and the press.

(2) The Council may by resolution exclude the public and the press whether during the whole or part of the proceedings whenever publicity would be prejudicial to the public interest by reason of the confidential nature of the business to be transacted or for other special reasons stated in the resolution and arising from the nature of that business or the proceedings and where such a motion is passed the meeting shall not be open to the public or the press during proceedings to which the resolution applies.

(3) Where a meeting of the Council is required to be open to the public and the press the following provisions shall apply—

(*a*) a notice of the time and the place of the meeting shall be given by posting it at the offices of the Council three clear days before the meeting; and.

(*b*) while the meeting is open to the public and the press, the Council shall not have power to exclude from the meeting members of the public, and duly accredited representatives of the press attending for the afforded reasonable facilities for making their report, including the provision of the agenda and reports to be considered at such meeting.

PART V

Powers of the Council

General powers

24.—(1) A Council shall have power to—

(*a*) subject to section 49, borrow or lend money; and

(*b*) acquire or dispose of any property or rights which is calculated to facilitate, or is conducive or incidental to, the discharge of any of the functions of the Council.

(2) The Council shall not by virtue of this section raise money, whether by means of rates or borrowing, or lend money except in accordance with the Finance and Audit Act.

Cap. 37:01

(3) The Council shall have power to appoint and employ such persons holding a post grade below that of Director as are necessary for the proper discharge by the Council of its functions.

(4) The Council shall have further powers and functions as contained in the Second Schedule to this Act.

Staff regulations

25. The Council shall make regulations determining the conditions of service of the officers of the Council.

Remuneration of officers
17 of 2010

26. The Council shall, subject to approval by the Minister, determine the salaries and allowances payable to its employees.

27. Upon the request of the Council, a public officer may be seconded to the Council for such periods and upon such terms and conditions as may be agreed between the Council and the organization from which that officer is seconded.

Secondment of public officers

28. The Council may enter into an agreement with another Council whether in Malaŵi or elsewhere for the secondment of any officer or exchange of officers for the purposes of their functions or for training on such terms as may be provided in the agreement.

Secondment and exchange of staff

29. The Council shall, in case of an officer entrusted with the custody or control of money or property, take such security, as the Council may consider necessary.

Security in relation to officers

30. Every appointment of staff to a paid office of the Council shall be on merit.

Appointment to be on merit

31. A member of the Council shall neither be an employee of the Council nor serve on full time basis.

Members not to be employees

32.—(1) An employee of the Council or a consultant in the service of the Council who, or whose immediate family member is directly interested in a private or professional or official capacity in any matter being considered by the Council, shall disclose such interest.

Disclosure of interest by employees, etc.
5 of 2001

(2) A disclosure of interest made under this section shall be made to the chief Executive Officer or District Commissioner of the Council who shall take such decision as he considers appropriate in each case and submit a report thereon to the Council.

33. Every—

Oath of secrecy

(*a*) member of the Council;

(*b*) member of a committee of the Council;

(*c*) employee of the Council; and

(*d*) consultant in the service of the Council,

shall, upon assumption of his office, take such oath of secrecy as may be approved by the Council or as may otherwise be prescribed under this Act.

34.—(1) For the purpose of—

Acquisition of land by agreement
10 of 2017

(*a*) any of its functions under this Act or any other written law; or

(*b*) the benefit, improvement or development of its area, the Council may acquire whether by way of purchase, lease, exchange or gift, any land, whether situated inside or outside its area.

10 of 2017
Cap. 58:04

(2) Subject to the provisions of the Lands Acquisition Act, the Council may acquire land for any purpose for which the Council is authorized by this Act to acquire land, notwithstanding that the land is not immediately required for that purpose; and until it is required for the purpose for which it was acquired under this subsection, the land may be used for the purpose of any of the Council's functions.

Disposal of land
10 of 2017
Cap. 57:01
Cap. 58:01

35. The Council may dispose of land held by it in accordance with the provisions of the Land Act and the Registered Land Act.

36. [*Repealed by* 10 *of* 2017]

Supply of goods and services

37. The Council may enter into an agreement with another person for all or any of the following—

(*a*) the supply by or to the Council of any goods and materials;

(*b*) the provision by or to the Council of any administrative, professional, or technical services;

(*c*) the use of any vehicle, plant, or apparatus and the services of persons employed to operate such vehicle, plant or apparatus; and

(*d*) the maintenance of any land or building.

Contracts

38.—(1) The Council may enter into contracts with any person for the provision or management of any service by that person which the Council is empowered by this Act to provide or manage.

(2) The procedure for the making of contracts by the Council shall be laid down in Standing Orders made under section 19.

Contributions to concurrent expenditure

39. Two or more Councils may make arrangements for defraying any expenditure incurred by one of them in exercising any functions exercisable by both or all Councils.

Power in respect of emergencies or disasters

40.—(1) Where an emergency or disaster involving destruction of or danger to life or property occurs or is imminent or there is reasonable ground for apprehending such an emergency or disaster, and the Council is of the opinion that it is likely to affect the whole or part of its area or all or some of its inhabitants, the Council may—

(*a*) incur such expenditure as the Council considers necessary in taking action either alone or jointly with any other person or body which is calculated to avert, alleviate or eradicate in its area or among its inhabitants the effects or potential effects of the event; and

(*b*) make grants or loans to other persons or bodies on conditions determined by the Council in respect of any such action taken by those persons or bodies.

(2) The Council shall be responsible for making disaster-preparedness plans in accordance or conformity with any written law relating to or likely to affect their area of jurisdiction.

Acceptance of gifts of property

41. Subject to the provisions of this section the Council may accept, hold and administer—

(*a*) for the purpose of discharging any of its functions, gifts of property, whether real or personal, made for that purpose; or

(*b*) for the benefit of the inhabitants of its area or of some part of its area gifts made for that purpose, and may execute any work including works of maintenance or improvement incidental to or consequential upon the exercise of the powers conferred by this section.

Provision of information

42.—(1) The Council shall arrange for the publications within its area, of information related to local government, and shall make or assist in making arrangements whereby the public may readily obtain, either at premises specially maintained for the purpose or otherwise, information concerning the services available within the area of the Council.

(2) The Council shall publish not later than six months after the end of each financial year an annual report of its work and of the local government affairs of its area for the preceding financial year, and a copy of such report shall be—

(*a*) delivered to the Minister;

(*b*) deposited at every public office of the Council and be made available for inspection free of charge by any interested person during normal hours of business; and

(*c*) supplied to any person or to the press or other news media upon application on payment of such fee, if any, as the Council may prescribe.

Subscriptions to associations

43. The Council may pay reasonable subscriptions to associations as it shall determine.

PART VI
Financial Provisions

Sources of revenue

44.—(1) The sources of revenue for the Council to finance its operations shall be those stated in the Third Schedule.

(2) The Minister may, in consultation with the Minister responsible for finance, amend the Third Schedule.

(3) The Minister may, subject to such terms and conditions as may be agreed upon with an appropriate public body, authorize that body to collect on behalf of the Council any revenue from the sources listed in the Third Schedule.

(4) The distribution of Government grants to the Council shall be done by the Government upon the recommendation of the Local Government Finance Committee in accordance with a formula approved by the National Assembly.

45. The Local Government Finance Committee shall have a permanent Secretariat which shall be headed by a Fund Administrator.

Secretariat of the Local Government Finance Committee

46.—(1) The Council shall establish and maintain a general fund and all monies received by the Council by way of revenue and grants shall be paid into such fund, and all expenses incurred by the Council in the execution of the powers and duties conferred upon the Council by or under this Act shall be defrayed out of such fund.

General fund and special funds

(2) The Council shall have power to create such special funds as it may deem necessary.

(3) The Council may, from time to time, issue instructions with regard to the general management, supervision and control of the funds established under subsections (1) and (2).

47. The Council shall open and maintain a bank account for all revenues and other monies raised or received by it under this Act or any other written law.

Council to open bank account

48. The Council may, subject to the Finance and Audit Act, obtain an advance from a bank by overdraft:

Overdrafts Cap. 37:01

Provided that the prior approval of the Council shall be obtained in any case where—

(*a*) the amount of the overdraft required will exceed one sixth of the previous years' recurrent revenue of the Council; and

(*b*) the overdraft is required for longer than six months.

49. The Council may, subject to the Finance and Audit Act, raise loans within Malaŵi of such amounts, from such sources, in such manner, for such purposes and upon such conditions as the Minister, in consultation with the Minister responsible for finance, may approve.

Power to borrow Cap. 37:01

50. The Council may invest any portion of its monies in Government Treasury Bills or in other investments as may be approved by the Council.

Investment of funds

51.—(1) The Council shall, not later than ninety days before the commencement of the financial year next ensuing, prepare detailed estimates of its revenue and expenditure for such financial year, and shall submit such estimates to the Local Government Finance Committee which may either approve the estimates as submitted or disallow such estimates in whole or in part or refer such estimates back to the Council for further consideration.

Annual and supplementary estimates

(2) The Council may in any year prepare and approve supplementary estimates of revenue and expenditure and such estimates shall be submitted for approval to the Local Government Finance Committee which may approve or disallow the estimates either wholly or in part.

Reallocation of approved estimates

52. The Council shall not, except with the approval of the Local Government Finance Committee, incur any expenditure which has not been included in the approved estimates of the Council, but may, with the approval of the Local Government Finance Committee, make reallocations of any sum contained in such approved estimates.

Accounts

53.—(1) The Council shall keep proper books of accounts and other records in relation thereto and shall balance its accounts for that year and produce statements of final accounts within six months from the end of each financial year.

(2) The Council shall submit the final accounts to the Local Government Finance Committee which shall forward a copy to the Auditor General.

Audit of accounts

54.—(1) The accounts of the Council shall be audited by the Auditor General or an auditor appointed by him.

(2) The Auditor General may carry out surprise audit, investigations or any other audit considered necessary.

(3) The Auditor General shall give his report of the audited accounts to—

(*a*) the Minister;

(*b*) the Local Government Finance Committee; and

(*c*) the Council.

(4) The Council shall have an Internal Audit Department.

Local Government Finance Committee may disallow or surcharge

55.—(1) After considering the report of the Auditor General, the Local Government Finance Committee shall have power to disallow any item of expenditure which is contrary to this Act and to surcharge—

(*a*) the amount of any expenditure disallowed on the person responsible for incurring or authorizing that expenditure;

(*b*) any sum which has not been duly brought into account by the person by whom the sum ought to have been brought into account; or

(*c*) the amount of any loss or deficiency upon any person by whose negligence or misconduct the loss or deficiency has been incurred.

(2) Any person aggrieved by a disallowance or surcharge made by the Local Government Finance Committee may appeal to the Minister.

(3) Any person aggrieved by a decision of the Minister may apply to the High Court for judicial review.

(4) Any sum surcharged on any person shall be payable to the Council within one month of written notification of the surcharge to such person or, in the case of an appeal under subsection (2) or an application under subsection (3), within one month of the decision of the Minister or the High Court if such decision confirms the surcharge, and shall be recoverable as a debt to the Council.

Power of Minister to give financial instructions

56. The Minister may, after consultation with the Minister responsible for finance, issue written instructions, not inconsistent with the provisions of this Act, for the better control and efficient management of the finances of the Council.

External assistance

57. All external assistance to the Council shall, except assistance from a sister city, be routed through the Ministry of Finance.

Assistance from Non-Governmental Organizations

58. Any assistance to the Council from a Non-Governmental Organization shall be approved by the Minister in consultation with the Council.

Financial year

59. The financial year of the Council shall be the period beginning from the 1st day of July and ending on the 30th day of June in the following year.

Superannuation and retirement provisions

60.—(1) The Council may establish a superannuation fund for the benefit of officers on their retirement from service of the Council and the dependants of deceased officers.

(2) The Council may establish a provident fund for the payment of gratuities to officers on their retirement from the service of the Council and to the dependants of deceased officers.

(3) No pension, provident fund payment, gratuity or other allowance or benefit payable under this section shall be assignable or transferable or liable to be attached or levied upon, for or in respect of any debt or claim except a debt due to or a claim made by the Council.

PART VII

Valuation and Rating

Application
10 of 2017

61. (1) This Part shall apply to areas or parts thereof which the Minister shall designate by notice published in the *Gazette* as rateable areas.

(2) The Minister shall, before designating an area as a rateable area, be satisfied that—

(*a*) the following aspects are such that they justify an area to be designated a rateable area—

(i) physical size of the area;

(ii) population size of the area;

(iii) economic activities;

(iv) available infrastructure; and

(v) potential to generate revenue locally;

(*b*) the Council has the capacity and ability to provide basic essential services; and

(*c*) there is rateable property in the area.

Definitions
10 of 2017

62. For the purpose of this Part—

"improvements" includes any building structure or works ancillary thereto of a permanent or semi-permanent nature and shall include any plant or machinery installed in any building structure or ancillary work for the purpose of heating, ventilation, safety, drainage, lighting, supplying water, protection from fire or movement of passengers or goods but shall exclude any machinery or plant which is installed mainly for the purpose of manufacturing operations or trade processes;

"owner" means the person, other than a mortgagor not in possession, entitled with or without the consent of any other person to dispose of an interest in the property;

"time of valuation" means the date of the passing of a resolution of the Council and shall be the date at which all valuations shall be deemed to have been made for the purpose of any valuation roll or supplementary valuation roll prepared during the continuance in force of such valuation roll;

10 of 2017

"Valuation Tribunal" means the Tribunal appointed under section 78A.

Assessable property
10 of 2017

63. All land within a local government area, together with all improvements of every description situated thereon shall be assessable property save the following—

(*a*) all streets;

(*b*) sewers and sewage disposal works;

(*c*) land and improvements used directly and exclusively as a cemetery, crematorium or burial ground, but shall not include those which are privately owned; 10 of 2017

(*d*) land and improvements used as a public open space; and

(*e*) public railway lines used for transit; 10 of 2017

(*f*) rivers, streams and buffer zones except those which are privately owned. 10 of 2017

Levy of fixed sums

64. In respect of any area which has not been designated by the Minister as a rateable area under this Act or which for any reason has not been assessed or is not assessable, the Council may levy—

(*a*) a fixed sum upon the owners of buildings which sum may be different in respect of buildings used for different purposes; and

(*b*) a fixed sum per unit of area of land or a fixed sum per unit of superficial area or both such fixed sums.

Preparation of valuation rolls

65.—(1) The Council shall continuously or from time to time and in any event not less than once in every five years, cause to be made and entered into a valuation roll for the local government area a valuation of all assessable property within such area.

(2) Such valuation roll shall take effect on the date of the commencement of the next rate period following the date of such roll:

Provided that, where the interval between such dates would be less than three months, if the Council so decides within the said interval, such valuation roll shall take effect on the date of the commencement of the next but one rate period following the date of the said valuation roll.

(3) A valuation roll shall cease to be current on the date on which a new valuation roll completed in pursuance of subsection (1) shall take effect.

Supplementary valuation 10 of 2017

66.—(1) The Council shall either continuously in any case not less than once in twelve months cause a valuation to be made—

(*a*) of any assessable property or part thereof discovered to have been omitted from the last preceding valuation;

(*b*) of any new building or structure or any improvements or part thereof erected, made or completed since the completion of the last preceding valuation roll;

(*c*) of any assessable property which, from any cause particular to such property arising since the time of valuation has materially increased or decreased in value;

(*d*) of any assessable property, the identity of which has, since the completion of the last preceding valuation roll been changed by subdivision, consolidation or alteration of boundaries by re-survey; and

(*e*) of any assessable property brought, subsequent to the completion of the last preceding valuation roll within the local government area by reason of an alteration in the boundaries of the local government areas and such valuation shall be entered in a supplementary valuation roll.

10 of 2017

(2) When any property included in any existing valuation roll has been demolished from the local government area, particulars of such property shall be included in a supplementary valuation roll and the valuation ascribed therein to such property shall be nil.

Cap. 23:01
10 of 2017

(3) Pending the inclusion of any supplementary valuation roll of any property referred to in subsection (1) (*b*) the Council on issuing a certificate of substantial completion or a certificate of occupation under any written law, or which is otherwise satisfied that the improvements are occupied or used or is capable of occupation or use, or upon any date upon which the improvements are deemed or stipulated to have been completed pursuant to any condition in any consent granted under the Town and Country Planning Act or a by-law or in terms of a condition in a building agreement, shall use the estimated value of the property for rating purposes and such rates shall become due and payable on the next date on which the general rate becomes due and payable.

Valuer
10 of 2017

Cap. 53:08

67.—(1) Each valuation and preparation of valuation rolls and supplementary valuation rolls shall be undertaken by a valuer registered under the Land Economy Surveyors, Valuers, Estate Agents and Auctioneers Act.

(2) A local government authority shall pay fees and expenses incurred by a valuer in respect of his duties under this Act together with remuneration and other expenses as may be agreed upon between the local government authority and the valuer.

Method of valuation
10 of 2017

68.—(1) Every valuation roll and supplementary valuation roll shall in respect of every assessable property included therein show separately—

(*a*) the total valuation of the assessable property;

(*b*) the value of the assessable land; and

(*c*) the value of the assessable improvements situated thereon,

and shall also show what are, to the best of the knowledge and belief of the valuer, the name and address of the owner and the situation and

area of the land and shall contain a description of the property in such a way as to provide adequate identification of the property and every supplementary valuation roll shall in addition show the valuation, if any, appearing in the valuation roll to which any entry in the supplementary valuation roll refers:

Provided that where in the opinion of the valuer the total value of any assessable property is less than a sum as may from time to time be prescribed by the Minister by notice published in the *Gazette*, the words "Minimum value" shall be inserted in the valuation roll or supplementary valuation roll as the case may be.

(2) The total valuation of an assessable property shall represent the fair amount of income in rental which the property is likely to realize at the time of the valuation if the property were in a reasonable state of repair, having regard to the type of property and the area in which it is situated. 10 of 2017

(3) The valuation of the land shall be made on the assumption that it was without improvements other than the clearing of the land of trees, undergrowth or rock or the levelling or draining of the land or works of a similar nature at the time of valuation:

Provided that account shall be taken—

(*a*) of the nature of any improvement on neighbouring land;

(*b*) of any public services available to the land; and

(*c*) of any provisions of or derived from any law relating to town planning as it affects the land or neighbouring land.

(4) The value of improvements shall be the difference between the total value of the assessable property and the value of the land.

Supplementary valuation roll to be part of main roll

69. Every supplementary valuation roll shall be deemed to be part of, and to be included in, the valuation roll last compiled in accordance with section 65 and where any entry relating to any assessable property appears in a valuation roll the former entry shall be deemed to have been deleted and superseded by the latter entry as from the effective date of the supplementary valuation roll:

Provided that where the entry is made in a supplementary valuation roll, the entries in relation to such property shall be deemed to be deleted from the valuation roll.

Alteration of valuation roll

70. The Council may, as often as it considers, cause a valuation roll or a supplementary valuation roll for the time being in force to be altered for any of the following purposes—

(*a*) to correct any clerical error not affecting any valuation;

(*b*) to correct any error as to, or to record any change in, the name or address of owner;

(*c*) to correct any error in the description of any assessable property provided that there is no alteration in value; and

(*d*) to correct the description of the situation of any assessable property in consequence of the naming or renaming of a street or through any other similar causes.

Correction of errors

71. The valuer may include in any supplementary roll an entry correcting any error in the valuation roll then in force and the effective date of the correction shall be that of the original entry.

Effective date of supplementary valuation roll

72.—(1) Any assessable property included in a supplementary valuation roll shall be liable to assessment upon the valuation shown therein from the date when the last proceeding valuation roll became effective.

(2) Any improvements or part thereof included in a supplementary valuation roll shall be liable to assessment upon the new valuation shown therein from the date that a certificate of occupation or completion was issued.

(3) Any improvements or part thereof included in a supplementary valuation roll shall be liable to assessment upon the new valuation shown therein from the date upon which the cause of the increase or decrease in value was effective.

(4) Any assessable property included in a supplementary valuation roll shall be liable for assessment upon the valuation shown therein from the date of the Deed of Conveyance or Registration of Title which affects the change of identity.

(5) Any assessable property included in a supplementary valuation roll shall be liable for assessment upon the valuation shown therein from the effective date of the alteration of boundaries under which the property was included in the local government area.

(6) Any property included in a supplementary valuation roll shall cease to be liable for assessment for rating from the date of alteration of the boundaries under which the property was excluded from the local government area.

Powers of entry

73.—(1) A valuer, duly authorized for the purpose of making a valuation, shall have power to enter at all reasonable times property within the local government area without being liable to any action or other proceeding on account thereof:

Provided that admission to any dwelling house shall not be demanded as a right unless forty eight hours notice of the intended entry has been given to the occupant.

(2) Any person who wilfully obstructs a valuer from exercising the powers conferred upon him by this section shall be liable upon conviction to a fine not exceeding K50,000 or to imprisonment for a term of six months or both such fine and imprisonment and where the offence continues, to a fine of K10,000 for each day that the offence continues. 10 of 2017

Provision of information to valuer

74.—(1) A valuer, may at any time serve a notice on any person in apparent occupant or charge of, or upon the owner of, any assessable property requiring such persons or owner to supply such information as may reasonably be required by the valuer to enable him correctly to value such property.

(2) Every person upon whom a notice has been served under subsection (1) shall, within twenty-eight days after the date of such service, supply such information in such form and in such manner as is required by such notice and for the purposes of this subsection a notice served by post shall be deemed to have been served within seven days of posting unless the contrary is proved.

(3) If any person on whom notice has been served fails, without reasonable excuse, to comply with the notice, or wilfully refuses to answer questions to the best of his knowledge and belief, or unknowingly makes or gives any false statement he shall be liable upon conviction to a fine not exceeding K5,000 both such fine and imprisonment for a term of six months or both such fine and imprisonment and, where the offence continues, to a fine of K1,000 for each day that the offence continues.

Deposit of valuation roll 5 of 2001

75.—(1) Upon the completion of a supplementary valuation roll the valuer shall—

(*a*) deliver to the Chief Executive Officer or District Commissioner of the Council the said valuation roll signed and dated by him;

(*b*) certify therein that the said valuation roll has been completed by him in accordance with this Act; and

(*c*) specify therein the time of valuation.

(2) As soon as possible after any valuation roll or supplementary valuation roll has been delivered to him in accordance with subsection (1) the Chief Executive or District Commissioner of the Council shall publish in the *Gazette* and at least two newspaper circulating in the local government area a notice and may cause an announcement to be made on broadcasting service that the Council, and such valuation roll shall be so open to inspection. 10 of 2017

(3) Any interested person may, without payment, at any time during which the offices of the Council are open for business, inspect such valuation roll and copy information therefrom.

Objection to valuation roll
10 of 2017

76.—(1) Any person who is aggrieved—

(*a*) by the inclusion of any property in, or by the omission of any property from, any valuation roll; or

10 of 2017

(*b*) by any rule ascribed in any valuation roll or supplementary valuation roll to any assessable property, or by any other entry made or omitted to be made in the same with respect to any assessable property, may object to the Council at any time before the expiration of twenty-eight days from the first day on which the rate is payable and the Council shall in turn advise the valuer of the objection.

(2) Any objection given under subsection (1) shall be in writing and shall specify the grounds of the objection.

(3) Upon receipt of an objection under subsection (1) the valuer—

(*a*) in the case of an objection to the inclusion or omission from the valuation roll of any property may if he thinks fit alter the valuation roll accordingly; and

(*b*) in the case of an objection to a valuation shall cause the property in question to be reassessed and may alter the valuation downwards or upwards or confirm the original valuation and shall set out in writing to the person objecting the reasons for such decision.

Valuation rolls to be conclusive evidence

77. The valuation on assessable property shown in an uncontested valuation roll or supplementary valuation roll or those valuations in respect of which the decision of a valuation court has been given shall, for the purposes of this Act, be conclusive evidence of the value of properties included in such valuation roll or supplementary valuation roll of properties.

Payment of rate pending the hearing of an objection or an appeal

78. The rates levied upon a property in respect of which an objection or appeal has been lodged shall be payable according to the valuation appearing in the valuation roll or supplementary roll pending the determination of the objection or appeal.

Valuation Tribunal
10 of 2017

78A.—(1) The Minister shall appoint a Valuation Tribunal which shall consist of—

(*a*) a Resident Magistrate or a legal practitioner of not less than five years' experience, who shall be the Chairperson of the Valuation Tribunal, recommended by the Judicial Service Commission;

(*b*) three valuers recommended by the Board of Registration of Land Economy Surveyors, Valuers, Estate Agents and Auctioneers; and

(*c*) a person conversant with issues of land economy.

(2) A local government authority having jurisdiction in the area where an issue arises for the consideration of the Valuation Tribunal shall be responsible for the payment of expenses, fees and allowances for the members of the Valuation Tribunal as may be prescribed.

(3) A member of the Valuation Tribunal shall not, by reason only of the payment to him of a fee or allowance under this Act, be deemed to be an officer of the local government authority or to have a pecuniary interest in any contract or proposed contract or other matter of the local government authority.

Proceedings of a valuation Tribunal
10 of 2017

78B.—(1) The Chief Executive Officer or other person appointed by a local government authority, shall act as clerk to the Valuation Tribunal.

(2) At each sitting of the Valuation Tribunal, three members present shall constitute a quorum, and a decision of the Valuation Tribunal shall be arrived at by a vote of a majority of the members present and voting; and, in case of an equality of votes, the Chairperson or a member acting as a Chairperson shall have a casting vote.

(3) A member of the Valuation Tribunal shall not sit on a hearing of a matter in which he is directly or indirectly interested or concerned as being liable to pay the rates or a part of the rates in question.

(4) In case of a vacancy in the Valuation Tribunal or incapacity to act by a member, so that a quorum cannot be formed, the local government authority may at once, appoint a suitable person temporarily or otherwise to fill up the vacancy or the place of a member incapable of sitting.

(5) The clerk shall publish notice of a sitting of the Valuation Tribunal not later than seven days before the fixed date of its first sitting.

(6) The Valuation Tribunal shall determine its own procedures.

(7) Proceedings before the Valuation Tribunal shall be deemed to be judicial proceedings as defined under section 4 of the Penal Code.

Consideration of objectives by the valuation Tribunal
10 of 2017

78C.—(1) An aggrieved person who is not satisfied with the decision of the valuer under section 76, may appeal against the decision of the Valuer to the Valuation Tribunal.

(2) The Valuation Tribunal shall, at a sitting duly called by the clerk, consider the appeal made under subsection (1).

(3) The clerk shall send a notice of the date to the persons mentioned in subsection (3) not less than seven days before the day fixed for the consideration by the Valuation Tribunal of the appeal; but

the Valuation Tribunal may hear the appeal at shorter notice if all the persons entitled to be heard on the appeal consent.

(4) On the consideration of the appeal, the local government authority, the person who lodged the appeal and a rateable owner of the property, which is the subject of the appeal, may appear and be heard, either in person or by legal practitioner or an accredited representative, and may call and examine witnesses before the Valuation Tribunal.

(5) After hearing the persons mentioned in subsection (3), or such of them as desire to be heard, the Valuation Tribunal shall confirm, or may amend the draft valuation roll or draft supplementary valuation roll, by way of reduction, increase, addition or omission, as it may consider appropriate.

(6) Where the Valuation Tribunal has amended a draft valuation roll or draft supplementary valuation roll in accordance with subsection (4), the Valuation Tribunal may make further amendments to the roll, as it may consider appropriate, in consequence of the first-mentioned amendment:

Provided that—

(*a*) the further amendment by way of increase or addition shall not be made unless the rateable owner concerned has been given at least fourteen days' prior notice of the proposed amendment and of the date of the sitting of the Valuation Tribunal at which such amendment will be considered; and

(*b*) the rateable owner may lodge an objection to such further amendment in writing, so as to reach the clerk not less than three days before the date of the sitting of the Valuation Tribunal at which such amendment will be considered.

(7) The Valuation Tribunal shall consider the objections made under paragraph (*b*) of the proviso to subsection (5), and the provisions of subsection (3) shall apply, *mutatis mutandis*, in respect of those objections.

Duty to levy rates
10 of 2017

79.—(1) In every financial year a rate shall be made and levied by the Council to meet some liabilities falling to be discharged out of the general fund for which provision is not otherwise made.

(2) Every rate shall be made and levied upon the assessments appearing in the valuation roll.

(3) Any rate may be made and levied separately upon the valuation of land and upon the valuation of improvements and such rate may, as regards such separate valuations, differ in the amounts made and levied thereon.

(4) Notwithstanding subsection (2), the Council may differentiate between areas and between classes of property within the local government area as regards the amount of such rate.

(5) A minimum charge in such sum as may be prescribed by the Minister for any financial year in respect of any rateable property in respect of any rate made and levied under this section shall be levied in respect of every property to which a minimum value has been ascribed.

Period of rate

80. Every rate shall be made in respect of a period commencing immediately after the expiration of the preceding period in respect of which a rate was made and terminating on such date as may be fixed by the Council and, in the case of the last rate to be made in any financial year, the date so fixed shall be the last day of such year.

Date on which rate is payable

81. Every rate shall become due on the first day of the rate period and shall become payable on the date in the financial year to which it relates as shall be fixed by the Council:

Provided that the Council may authorize the payment of any rate in arrears by instalments on such dates during the rate period as it may specify.

Notice of rate

82. Notice of the making of every rate shall be given by the Council not less than twenty-one days before the date on which it becomes payable in the *Gazette* and in a newspaper circulating in the local government area and in such other manner, if any, as the Council may direct and such notice shall specify the instalment dates, if any, upon which such rates may be paid, and the date of termination of the rate period in respect of which it is made.

Remission of rate
10 of 2017

83.—(1) The Council shall remit in full the payment of rates on—

(*a*) vacant and unalienated public land;

(*b*) land and improvements used exclusively for public religious worship;

(*c*) land and improvements used directly and exclusively as a public library or public museum;

(*d*) land and improvements owned by a hospital or other institution for the treatment of the sick that is not operating on a commercial basis; 10 of 2017

(*e*) land and improvements owned by an educational institution that is not operating on a commercial basis; and 10 of 2017

(*f*) land and improvements owned by a club, society or other institution for the purposes of the sport other than improvements used primarily for activities and directly connected with sport.

(2) This section shall not apply to any separate buildings used as residences for staff or the use of any premises or part thereof for profit or such other premises as the Minister may, by notice in the *Gazette*, specify.

Exempted properties 10 of 2017

84.—(1) A rate shall not be made or levied in respect of assessable property owned by a diplomatic mission as may be approved by the Minister responsible for foreign affairs.

(2) The decision of the Minister shall be based on existing reciprocal agreement with the State of the relevant diplomatic mission.

Government to pay rates

85. The Government shall pay to the Council fifty *per centum* of the amount of rates on its assessable property.

Payment of rates

86.—(1) Where the Council has given notice under section 82 of the day on which a rate levied or instalment thereof will become payable, it shall be the duty of every person liable to pay such rate, or instalment thereof, to pay the amount of such rate or instalment thereof to the Council as per the statement issued by the Council.

(2) The Council shall make a surcharge on any rate remaining unpaid sixty days after the date on which such rate becomes payable, such surcharge shall be payable from the date on which the rate first payable and may be recovered in the like manner.

(3) The surcharge made under subsection (2) shall be calculated at the rate of four *per centum* per month or part thereof.

Liability for rates

87.—(1) The person who at the date the rate becomes due is the owner of any assessable property and shall be liable for the payment of the rate:

Provided that joint owners of assessable property shall be jointly and severally liable for the payment of the rate.

(2) In the absence of any agreements to the contrary, the owner shall be entitled to recover from the former rateable owner any rate paid by or recovered from him in respect of ownership of the property by such former owner.

Rates records

88. All rates made and levied upon the value of assessable property shall be entered in a form of permanent record to be prepared and maintained by the Council and in addition to any other matters which

may be entered therein, shall show in respect of each assessable property—

(*a*) the plot or street number and situation or other identification;

(*b*) the name and address of the owner;

(*c*) the valuation shown in the valuation roll in force on the land and of improvements; and

(*d*) the amount of rates made and levied.

Evidence of rate
5 of 2001

89. In any proceedings to levy or recover rates or consequent on levying or recovering of any rates, the valuation rolls and rates records and all entries made therein and extracts or certified copies thereof signed by the Chief Executive Officer or District Commissioner of the Council and all copies of any notice required under this Part, shall upon production thereof, be evidence of the levying of such rate and the contents of such extracts, certified copies or notices.

Rate to be a charge upon the property
5 of 2001

90.—(1) Notwithstanding anything to be contrary contained in section 87 and in every case in which a rate has been made and levied upon any property, such rate shall without registration under any law relating to the registration of charges upon land, be a charge upon such property, and the whole amount thereof shall be recoverable from the person who was the owner of such

property at the time such rate was made and levied, or from any subsequent owner of such property:

Provided that a subsequent owner shall become liable for rates due for any period prior to the date of issue of a rate certificate only for the amount stated in the certificate or the amount due whichever is less.

(2) The Chief Executive Officer or District Commissioner of the Council shall on request by the owner and on payment of a fee to be fixed by the Council give a statement setting out in respect of any property the amount of the rates outstanding on the property at the date of issue and such statement shall be known as rates certificate.

Seizure of property in default

91.—(1) In addition to any remedy provided under Part VI relating to recovery of debt, if any sum due for any rate levied on any assessable property remains unpaid for a period of three years after the date upon which such sum became payable the Council shall publish a notice in the *Gazette* and a newspaper circulating in the local government area showing the name and address of the owner, the description of the property, the amount of rates outstanding, requiring the owner to pay the arrears within thirty days of the date of publication of the notice.

(2) If the arrears are not paid within the stated period in subsection (1) after notice to any mortgagee, the property shall be seized by the Council through a court of law and thereafter sold by public auction in satisfaction of the rate due.

(3) The Council shall give notice of the sale by advertisement in the *Gazette* and a newspaper circulating within the local government area.

(4) The owner may recover possession of the property by paying in full all arrears and expenses incurred by the Council at any time before the sale.

(5) In the event of sale the Council shall retain out of the proceeds the amount of arrears and surcharge and the costs of sale which shall have priority over any other registered or unregistered interest in the property and shall be charged as trustee to those who may be entitled to the balance, if any, of the proceeds of the sale.

(6) A sale of a property under the provisions of this section shall pass a good and sufficient title.

(7) Nothing in this section shall prevent the Council from taking proceedings for recovery by ordinary action in the court.

(8) No liability for error or irregularity shall attach to the Council or to any employee of the Council arising from the exercise by the Council of powers granted under this section.

PART VIII

General Provisions Relating to the Council

Legal proceedings

92. Where the Council considers it expedient for the promotion or protection of the interests of the inhabitants of the area, the Council—

(*a*) may prosecute or defend or appear for the proceedings and may institute legal proceedings in its own name; and

(*b*) may, in its own name, make representations in the interests of the inhabitants at any public inquiry under written law.

Documents and notices, etc.

93. The Council shall make proper arrangements with respect to keeping any documents and notices which belong to or are in the custody of the Council or any of its officers.

Inspection of documents

94.—(1) The minutes of proceedings of a meeting of the Council shall be open to the inspection of any person and any such person may make a copy of or extract from the minutes.

(2) Any person may inspect and make a copy of or an extract from an order for the payment of money made by the Council.

(3) The accounts or abstracts of accounts of the Council shall be open to the inspection of any member of the Council or any other person and any such member or other person may make a copy of the extract from the accounts or abstracts of accounts therefrom, and copies thereof shall be delivered to any such person on payment of a reasonable sum of each copy.

(4) A document directed by this section to be open to inspection shall be so open upon payment of a reasonable sum during the Council's normal hours of business.

(5) Any person having the custody of any such document who—

(*a*) obstructs any person entitled to inspect the document or to make a copy thereof or extracts therefrom in inspecting the document or making a copy or extract;

(*b*) refuses to give copies or extracts to any person entitled to obtain copies or extracts,

commits an offence and shall be liable on conviction to a fine not exceeding K1,000.

Copies of documents

95. Any requirement imposed by any written law that the Council shall keep a document of any description shall be satisfied by the Council keeping a copy of the document.

Reports and returns

96. The Council shall send to the Minister such reports and returns and give him such information with respect to their functions as he may require.

Service of notices on the Council

97. Any notice, order or other document required to be given to or served on the Council shall be given or served by addressing it to the Council.

Public notices

98. A public notice to be given by the Council may be given—

(*a*) by posting the notice in some conspicuous place or places within the area of the Council; and

(*b*) in such other manner, if any, as appears to the Council to be desirable for giving publicity to the notice.

Service of notices by the Council

99.—(1) Subsections (2), (3) and (4) shall have effect in relation to any notice, order or other document required or authorized by or under any written law to be given to or served on any person by or on behalf of the Council or by an officer of the Council.

(2) Any such document may be given to or served on the person in question either by delivering it to him, or by leaving it at his proper address, or by sending it by post to him at that address.

(3) Any such document may—

(*a*) in the case of a body corporate, be given to or served on the secretary of that body; and

(*b*) in the case of a partnership, be given to or served on a partner or a person having the control or management of the partnership business.

(4) For the purposes of this section the proper address of any person to or on whom a document is to be given or served shall be his last known address, except that—

(*a*) in case of a body corporate or their secretary, it shall be the address of the registered or principal office of that body corporate; and

(*b*) in the case of a partnership or a person having the control or management of the partnership business, it shall be that of the principal office of the partnership,

and for the purposes of this subsection the principal office of a company registered outside Malaŵi or for a partnership carrying on business outside Malaŵi shall be their principal office within Malaŵi.

(5) For the purpose of enabling any document to be given to or served on the owner or lessee of any premises, the Council may by notice in writing require the occupier of the premises to state the name and address of the owner or lessee, and if the occupier refuses or wilfully neglects to do so, or wilfully mistakes the name and address of the owner or lessee, he shall, unless in the case of a refusal he shows cause to the satisfaction of the court of his refusal, be liable on conviction in respect of each offence to a fine not exceeding K1,000.

(6) Where the name and address of the owner, lessee or occupier of land to or on whom any document mentioned in subsection (1) above is to be given or served cannot after reasonable inquiry be ascertained, the document may be given or served either by leaving it in the hands of a person who is or appears to be resident or employed on the land or by leaving it conspicuously affixed to some building or object on the land.

(7) The foregoing provisions of this section shall apply to a document, which is to be given or served in any proceedings in the land.

Authentication of documents
5 of 2001

100.—(1) Any notice, order or other document which the Council is authorized or required to give, make or issue may be signed on behalf of the Council by the Chief Executive Officer or District Commissioner of the Council.

(2) Any documents purporting to bear the signature of the Chief Executive Officer or District Commissioner of the Council shall be deemed, until the contrary is proved, to have been duly given, made or issued by the authority of the Council.

Powers of entry

101. Subject to the Constitution, any person duly authorized in writing for the purpose by the Council may at all reasonable times enter any premises within the local government area for the purpose of the performance of the functions of the Council specified in such authorization:

Provided that admission to any dwelling house shall not be demanded as of right unless forty-eight hours' notice of the intended entry has been given to the occupant.

Obstruction of officers on duty

102. Any person who—

(*a*) willfully obstructs any officer of the Council in the execution of his duty as such; or

(*b*) being the occupier of premises, prevents the owner of such premises from complying with any lawful requirement of the Council; or

(*c*) being the occupier of premises, on demand refuses or willfully mistakes the name of the owner of such premises or of the person receiving or authorized to receive the rents of such premises,

shall be guilty of an offence and be liable on summary conviction to a fine of K1,000 or to imprisonment for a term of three months or to both such fine and imprisonment.

By-laws

103. The Council may make by-laws for the good rule and government of the whole or any part of the local government area or, as the case may be for the prevention and suppression of nuisances therein and for any other purpose.

Procedure for by-laws

104.—(1) The by-laws shall be made under the common seal of the Council and shall not have effect until they are approved by the Minister.

(2) At least fourteen days before application for approval of the by-laws is made, notice of the intention to apply for approval shall be published in the *Gazette* and in one or more local newspapers circulating in the area to which the by-laws are to apply and such notice shall include representations in writing from any person wishing to make any observation upon or an objection to such proposed by-law. A copy of every such representation or objection shall be forwarded by the Council to the Minister.

(3) For at least fourteen days before application for approval is made, a copy of the by-laws are made, and shall be deposited at the offices of the Council by whom the by-laws are made, and shall be open to public inspection without payment of any fee during the Council's normal hours of business.

(4) The Council by whom the by-laws are made shall, on application, furnish to any person a copy of the by-laws, or of any part thereof, on payment of such sum as the Council may determine.

(5) The Minister may approve or refuse to approve any by-laws, and may fix the date on which the by-laws are to come into operation and if no date is so fixed the by-law shall come into operation at the expiration of fourteen days from the date of its approval.

(6) A copy of the by-laws, when approved, shall be published in the *Gazette* and shall be printed and deposited at the offices of the Council by whom the by-laws are made, and shall at all reasonable hours be open to public inspection without payment, and a copy thereof shall, on application, be furnished to any person on payment of such sum, for every copy, as the Council may determine.

Offences against by-laws

105. By-laws may provide that persons contravening the by-laws shall be liable on conviction to a fine not exceeding the sum of K2,000, and in the case of a continuing offence a further fine not exceeding K200 for each day during which the offence continues after conviction thereof or to a term of imprisonment not exceeding six months or to both such fine and imprisonment.

Evidence of by-laws
5 of 2001

106. The production of a printed copy of the by-law to be made by the Council upon which is endorsed a certificate purporting to be signed by the Chief Executive Officer or District Commissioner of the Council starting—

(*a*) that the by-law was made by the Council;

(*b*) that the copy is true copy of the by-law;

(*c*) that on a specified date the by-law was approved by the Minister; and

(*d*) the date, if any, fixed by the confirming authority for the coming into operation of the by-law,

shall be *prima facie* evidence of the facts stated in the certificate, and without proof of the handwriting or official position of any person purporting to sign the certificate.

Computation of time

107. Where the day or the last day on which any thing is required or permitted to be done by or virtue of any provision to which this section applies is a Saturday or Sunday, Christmas Eve, Christmas Day, Good Friday, Martyrs' Day or a public holiday or a day appointed for public mourning the requirement or permission shall be deemed to relate to the first day thereafter which is not one of the days specified in this section.

PART IX
Miscellaneous Provisions

Status

108.—(1) If, on a petition presented to the President by the Council praying for the grant of another status he may by the charter confer on that municipality the status, dignity and title of a city and thereupon the Council of the municipality shall bear the name of the Council of the city.

(2) A petition for a charter under subsection (1) shall not be presented except on a resolution passed by not less than two-thirds of the members voting thereon at a meeting of the Council specially convened for that purpose.

Honorary appointments
5 of 2001

109.—(1) The Council may confer such status, freedom, award or honour as the Council considers appropriate on any person, not being a member of the Council, who, or on any organization

which, renders or has rendered eminent service to the Council or its local government area.

(2) A receipt of the status, freedom, award or honour shall have the right to attend and take part in any civil ceremony or event of the Council but shall not have a right to attend meetings of the Council or any committee of the Council or to receive any allowance or other remuneration.

(3) The Council shall not confer any status, freedom, award or honour under this section except by resolution of the Council passed by two-thirds of the members of the Council voting thereon at the meeting of the Council convened specially for that purpose.

(4) The Chief Executive Officer or District Commissioner of the Council shall keep a register of every receipt of the status, freedom, award or honour conferred under this section.

(5) The Council may spend from its revenue such reasonable sums as it considers fit to meet the cost of conferring any status, freedom, award or honour under this section.

Inquiries

110.—(1) Where the Minister is authorized to hold an inquiry under this Act relating to the functions of the Council, he may cause a local inquiry to be held.

(2) For the purpose of any such local inquiry, the person appointed to hold the inquiry may by summons require any person to attend, at a time and place stated in the summons, to give evidence or to produce any documents in his custody or under his control which relate to any matter in question at the inquiry, and may take evidence on oath, and for that purpose administer oaths, or may, instead of administering an oath, require the person examined to make a solemn affirmation:

Provided that—

(*a*) no person shall be required, in obedience to such summons, to attend to give evidence or to produce any such documents, unless the necessary expenses of his attendance are paid or tendered to him; and

(*b*) nothing in this section shall empower the person holding the inquiry to require the production of the title or any instrument relating to the title of any land not being the property of the Council.

(3) Every person who refuses or deliberately fails to attend in obedience to summons issued under this section, or to give evidence to summons issued under this section, or to give evidence, or who deliberately alters, suppresses, conceals, destroys, or refuses to produce any book or other document which he is required or is liable to be required to produce for the purpose of

this section, shall be liable on conviction to a fine not exceeding K2,000 or to imprisonment for a term of three months or to both such fine and imprisonment.

(4) Where the Minister caused an inquiry to be held under this section, the costs incurred by him in relation to the inquiry including such reasonable sum as he may determine for the services of any officer engaged in the inquiry shall be defrayed under section 113 of this Act.

(5) The Minister causing an inquiry to be held under this section may make orders as to the costs of the parties at the inquiry.

Transfer of staff

111.—(1) The Minister may by order make provision for the transfer to the employment of a successor Council of any person who is the holder of any office or employment under the Council amalgamated with another Council for the protection of the interests of such persons.

(2) Any such order shall include such provision with respect to any person who is transferred under the order to a successor Council so as to secure that so long as he continues in the employment of the successor Council he enjoys terms and conditions not less favourable than those which he enjoyed immediately before the date of transfer.

(3) For the purpose of this section service with a successor Council shall be deemed to run from the date on which the officer was first employed by the Council and broken service shall be aggregated.

Penalties

112. Where no other penalty is specified for an offence under this Act the penalty shall be a fine not exceeding K2,000 and in the case of a continuing offence a further fine not exceeding K200 for each day that the offence continues after conviction or a term of imprisonment not exceeding two years or to both such fine and imprisonment.

Expenses

113. There shall be defrayed out of monies provided by Parliament—

(*a*) any expenses incurred by the Minister with respect to provision of this Act;

(*b*) any increase attributable to the provisions of this Act in the sum payable out of moneys so provided under any other written law.

Repeal and Savings

114.—(1) The following Acts are repealed—

Cap. 22:01 (*a*) the Local Government (Urban Areas) Act; and

Cap. 22:02 (*b*) the Local Government (District Councils) Act.

(2) Any subsidiary legislation made under the Acts repealed by subsection (1), in force immediately before the commencement of this Act—

(*a*) shall remain in force unless in conflict with this Act, and shall be deemed to be subsidiary legislation made under this Act; and

(*b*) may be replaced, amended or repealed by subsidiary legislation made under this Act.

(3) Any agreement or similar arrangement made pursuant to the provisions of the Acts repealed by subsection (1) shall continue in force until terminated in accordance with the terms and conditions thereof.

FIRST SCHEDULE

Local Government Areas

s. 4 17 of 2010
G.N. 59/2000

Local Government Area	*Council*
Blantyre City	Blantyre City Council
Lilongwe City	Lilongwe City Assembly
Mzuzu City	Mzuzu City Council
Zomba City	Zomba City Council
Kasungu Municipality	Kasungu Municipality Council
Luchenza Municipality	Luchenza Municipality Council
Balaka District	Balaka District Council
Blantyre District	Blantyre District Council
Chikhwawa District	Chikhwawa District Council
Chiradzulu District	Chiradzulu District Council
Chitipa District	Chitipa District Council
Dedza District	Dedza District Council
Dowa District	Dowa District Council
Karonga District	Karonga District Council
Kasungu District	Kasungu District Council
Likoma District	Likoma District Council
Lilongwe District	Lilongwe District Council
Machinga District	Machinga District Council
Mangochi District	Mangochi District Council
Mchinji District	Mchinji District Council
Mulanje District	Mulanje District Council
Mwanza District	Mwanza District Council
M'mbelwa District	M'mbelwa District Council
Local Government Area	*Council*
Neno District	Neno District Council

Nkhata Bay District	Nkhata Bay District Council
Nkhotakota District	Nkhotakota District Council
Nsanje District	Nsanje District Council
Ntcheu District	Ntcheu District Council
Ntchisi District	Ntchisi District Council
Phalombe District	Phalombe District Council
Rumphi District	Rumphi District Council
Salima District	Salima District Council
Thyolo District	Thyolo District Council
Zomba District	Zomba District Council

SECOND SCHEDULE

Additional Functions of the Council

Clinical health services

1. A Council may—

(*a*) provide, maintain, equip and manage either alone or jointly with another Council or body, clinics including maternity clinics, health centres, and dispensaries and may enter into scheme for the management of such facilities by the Ministry of Health or some other body upon such terms as to funding and otherwise as may be agreed between the parties; and

(*b*) employ such medical professional and ancillary staff as may be required.

Environmental protection

2.—(1) A Council may—

(*a*) establish, maintain and manage services for the collection and removal and treatment of solid and liquid waste, and the disposal thereof whether within or without its area and may compel the use of its services by any body of persons to whom the services are available;

(*b*) compel and regulate the provision, construction, use, maintenance and repair of drains, latrines and receptacles for solid and liquid waste and the connexion of any premises with any public sewer or drain;

(*c*) require the use of any sanitary service under its control and regulate the methods of dealing with night soil or solid or liquid waste of any description whatsoever:

Provided that nothing in this paragraph shall require a Council to accept for disposal any solid or liquid waste which in the opinion of the Council are hazardous or are likely to be deleterious

to the operations of any sewage treatment, plant or land fill site or which may contaminate any ground water.

(2) A Council may take necessary steps for the destruction and suppression of vermin or pests and for the fumigation and disinfestation of any premises or place.

(3) A Council may prohibit or control any noxious or offensive trade within the meaning of the Public Health Act and the use of premises which may be a source of nuisance, danger, discomfort or annoyance to the neighbourhood. Cap. 34:01

(4) A Council may seize and destroy any vicious, dangerous or apparently ownerless dog or a dog not vaccinated against rabies in accordance with the Control and Diseases of Animals Act. Cap. 66:02

(5) Subject to the provisions of the Public Health Act a Council— Cap. 34:01

(*a*) shall have power to inspect premises where articles of food or drink are manufactured or prepared for use or are sold whether for consumption on or off the premises or where meat, meat products, milk, milk products, fish and fish products are stored or processed and may control and license slaughter houses and the killing of livestock;

(*b*) may establish, maintain and manage abattoirs and cold storage facilities and premises for the processing of milk and milk products, meat and meat products and fish and fish products;

(*c*) may establish, maintain and manage public latrines, toilets, bathhouses, washing facilities and washhouses.

(6) Subject to the provisions of any other written law, a Council shall be responsible for the draining, cleansing and sanitation of its area and the prohibition and control of pollution of any water in any river or stream and for this purpose may prohibit or regulate the use of any of such river or stream and any riverbank or streambank including any cultivation therein or the extraction of any sand, gravel or other material therefrom.

(7) Subject to the provisions of the Public Health Act, a Council may seize and destroy without compensation any article of food or drink which is or may be intended for human consumption; and shall keep a register of all articles so seized which register shall be open to public inspection during the normal hours of business of the Council. Cap. 34:01

(8) Subject to the provisions of the Public Health Act, a Council shall take steps for the control and suppression and the prevention of the introduction of infectious diseases including the provision of isolation facilities. Cap. 34:01

(9) Subject to the provisions of any other written law, a Council may make provision for the supply of potable water by way of stand pipes, boreholes or other means and may, if it thinks fit, make reasonable charges to consumers and agree terms with any water undertaking or authority for the supply of water to any outlet or facility provided by the Council.

Burial of the dead
Cap. 34:01

3. Subject to the provisions of section 28 of the Public Health Act, a Council—

(*a*) may establish, maintain and manage cemeteries and crematoria and mortuaries and provide funeral facilities;

(*b*) shall prohibit the disposal of human bodies otherwise than by interment in any cemetery or cremation at any crematorium established or permitted under the Public Health Act; and

Cap. 34:01

(*c*) shall control the conveyance and disposal of any dead body within its area.

Control of nuisances
Cap. 34:01

4. Subject to the provisions of the Public Health Act, a Council shall—

(*a*) secure the prevention and abatement of nuisances;

(*b*) prohibit or control the keeping of any livestock or fowl or other animals, birds or insects so that their keeping shall not be a public nuisance or injurious to health or to the environment;

(*c*) control or prohibit, singing, dancing, the playing of musical instruments, fetes, exhibitions, public amusements or entertainments circuses and games and the making of any noise whatsoever likely to disturb any person; and

(*d*) require owners or occupiers to keep their premises free from offensive or unwholesome matter.

Roads and streets
Cap. 69:02
Cap. 66:07
Cap. 23:02

5.—(1) Without prejudice to the provisions of the Public Roads Act, the Roads Authority Act and the Urban Areas (Public and Private Streets) Act, a Council may—

(*a*) enter into agency arrangements for the construction, maintenance and repair of any road or street within the area under the jurisdiction of the Controller of Roads upon such terms as may be agreed between the parties;

(*b*) establish, maintain and manage lighting in any street, public place or area;

(*c*) lay out and adorn any street, square or open space the property of the Council, or of any other public body subject to agreement between the parties as to the cost thereof, and may maintain statues and other structures erected by the Council or

vested in the Council by any person or body under any architectural scheme required by the Council;

(*d*) provide and maintain bus shelters, vehicle parking places, including places specifically set aside and maintained for the parking of heavy vehicles and street furniture and may levy charges on any parking place by simple resolution as the Council shall think fit.

(2) Subject to the provisions of any other written law, a Council shall have power to construct, level, pave, drain, alter, repair or clean any street, road, highway or footpath and to name any street.

(3) Subject to the provisions of any other written law, a Council may—

(*a*) institute measures for the control of traffic and may close or divert any road or street, prohibit or restrict the use of any road or street either generally or with respect to any particular type or category of vehicle;

(*b*) restrict or prohibit the parking of vehicles or any type or category of vehicle.

Hazardous materials
Cap. 50:03
Cap. 14:09

6. Subject to the provisions of the Liquid Fuels and Gas (Production and Supply) Act and the Explosives Act, a Council may control and licence manufacture, storage, carriage and use of petroleum products, explosives, fireworks and other combustible or hazardous materials.

Emergency services

7.—(1) A Council may establish, maintain and manage ambulance and fire services including fire prevention services and may operate such services jointly with one or more Councils or public bodies, enter into reciprocal arrangements with other emergency services, authorities or operators, and provide, upon such terms as may be agreed between the parties, emergency services to another Council or public body.

(2) A Council shall take all reasonable measures for ensuring the provision of an adequate supply of water for fire fighting purposes and securing that it shall be available in case of fire and may enter into an agreement with a water undertaker therefor which the water undertaker shall not unreasonably refuse.

(3) A Council shall have power to secure for use in case of fire any water supply under the control of any person or body, to secure proper access to any such water and to lay and maintain pipes and carry out such other works as the Council may deem necessary.

(4) The Council's fire service shall have power to enter upon any premises and to use any water supply thereon to extinguish fire on

adjacent premises or to prevent the spread of fire and shall pay reasonable compensation for the use of such water supply.

Public amenities

8.—(1) For the promotion of recreation, leisure and culture and the provision of amenities in its area, a Council may either itself or jointly with any other body establish, maintain and manage—

(*a*) parks, gardens, recreation grounds, open spaces, horticultural nurseries, botanical gardens, forests, woodlands, nature reserves and areas or places of special historical, cultural or scientific interests;

(*b*) sports fields and facilities, apparatus and equipment for games, sports and other recreation together with building structures, apparatus, refreshment, toilet and other facilities either itself or in association with any person, club, association or other body.

(*c*) swimming baths, bathing establishments and camping grounds;

(*d*) amenity areas, including the planting of flowers, plants, shrubs and trees in any street or road reserve or public open space or any private open space by agreement with the owner thereof;

(*e*) theatres, concert halls, art galleries, museums, public libraries and facilities generally to preserve, promote and develop the cultural life of Malaŵi.

(2) A Council may—

(*a*) set aside any part of any public park, recreation ground, sports field or other facility for the purpose of any particular sport, game or recreation and may exclude the public therefrom; and

(*b*) reserve any part of any public park, recreation ground, sports field or other facility for any particular event and may permit any club, body, promoter or person exclusive use for that event upon payment of such fee as the Council may determine.

Buildings and structures
Cap. 34:01
Cap. 23:01

9. Subject to the provisions of the Public Health Act, the Town and Country Planning Act and any development plan or scheme made thereunder, a Council shall have power to—

(*a*) regulate the design, construction, alignment, elevation or siting of any new building or the alteration, refurbishment or improvement of any existing building, including the provision of access for disabled persons;

(*b*) require the demolition or rendering safe of any building or structure or part thereof which is dangerous or unfit for human

habitation or occupation for structural, sanitary or other reason or otherwise constitutes a nuisance;

(*c*) regulate the amount of space to be allowed in and about buildings for securing proper ventilation and the free circulation of air;

(*d*) require the closing of any building or part thereof which by reason of its sanitary or other considerations is unfit for human habitation or occupation and impose conditions for the reopening thereof;

(*e*) require the clearing of any obstruction in any sanitary lane and demolish or require the demolition at the expense of the owner of any building or structure erected therein.

Control and licensing of business and trades

10.—(1) Subject to the provisions of any other written law, a Council shall be the licensing authority with respect to the following—

(*a*) premises licensed for the consumption of alcohol whether on or off the premises;

(*b*) business premises and shops for trade in any commodity, whether by retail or wholesale;

(*c*) itinerant traders;

(*d*) creches and nursery schools;

(*e*) barbers, hairdressers and beauticians;

(*f*) lodging and boarding houses and hotels and motels;

(*g*) private hospitals, nursing homes and maternity clinics,

and shall have power to inspect, control, regulate and licence any premises used in connexion therewith.

Cap. 21:01

(2) Subject to the provisions of the Censorship and Control of Entertainments Act, a Council shall have power to licence, control, inspect and regulate premises or places used for entertainment, recreation or public resort.

(3) Subject to the provisions of paragraph (1) (*c*), a Council may prohibit or control the sale of any wares on any street or any public place for the purpose of carrying out any trade, business or profession.

Markets and retail facilities

11.—(1) A Council may establish, maintain and manage markets and market buildings and premises within its area and shall levy upon traders within a market such fees or charges as the Council may decide.

(2) No person may establish or operate any market within a local government area:

Provided that a Council may grant a licence for the operation of a private market at such a fee and upon such terms and conditions as the Council shall determine or may refuse such licence:

Provided further that where the Council refuses to grant the licence, it shall give reasons in writing for the refusal.

(3) Any person aggrieved by the decision of a Council made pursuant to subparagraph (2) may appeal to the Minister.

(4) Where the Minister dismisses an appeal made under subparagraph (3), the appellant may apply to the High Court for judicial review.

(5) A Council may establish, maintain and manage agencies for the provision of postal services upon such terms as may be agreed with any postal authority or organization.

Trading undertakings

12.—(1) A Council may establish, maintain and manage any ferry service, rest-house, hotel, motel, inn, restaurant, canteen, eating house, bar, agricultural store or farm:

Provided that no new undertaking shall be commenced until the Council shall have received a report from the Chief Executive Officer of the Council upon the financial viability and the business plan for the proposed enterprise.

(2) The accounts of every trading undertaking shall be kept separately and shall comprise a trading and profit and loss accounts or kept in such other form as the Council may direct.

(3) Where in any two successive years any trading undertaking has failed to return such reasonable net profit as the Minister may prescribe, the Minister may direct that the Council shall—

(*a*) contract out by competitive tender the management of such undertaking or;

(*b*) dispose of its interest upon such terms and conditions as may be recommended by the Council.

Fees and charges

13.—(1) A Council shall be empowered to levy any charge it may think fit for the provision of any service notwithstanding that the costs of such service shall ordinarily be a charge upon the general fund.

(2) A Council shall—

(*a*) levy such fees as it shall think fit with respect to any business trading or other licence for which it is entitled to levy a fee or for any occupation of a site in any market owned and managed by it but shall not be entitled to waive or reduce any fee in any individual case;

(*b*) review all its fees and charges by 31 December in any year and at any other time it deems appropriate and any revised fees and charges shall come into effect at any time the Council so decides but not later than 1 July the succeeding year.

(3) A Council may enter into an agreement for the collection of any charge or fee by another Council or by any body or person upon such terms as may be agreed between the parties with respect to the commission payable and other conditions.

(4) In determining charges to be levied for the collection or treatment of liquid wastes a Council may calculate such charges upon the quantities collected or treated, the rateable value of the premises or the quantity of water supplied to the premises as metered by the water undertaker or upon such other basis as the Council deems fair and equitable.

Power to grant money

14. A Council may make grants of money—

(*a*) towards the establishment and maintenance of clinics, hospitals, dispensaries, maternity, nursing and auxiliary health services within its area managed by another body or other person not for profit;

(*b*) to institutions and organizations established within its area for specific charitable, educational and welfare purposes where such purposes are available to and for the benefit of the general public in Malaŵi;

(*c*) to any committee, association or organization established for the carrying out of any function which the Council is empowered to carry out:

Provided that any application for a grant of money under this paragraph shall be accompanied by the audited accounts of the applicant and that the Council shall have considered a report thereon by the Chief Executive Officer of the Council prior to any grant of money being made.

Tourism and conference

15.—(1) A Council may either alone or jointly with any other person or body—

(*a*) promote tourism and otherwise encourage persons, by advertisement or otherwise, to visit their area for recreation and for health purposes, and hold conferences, trade fairs and exhibitions in the area; and

(*b*) provide or encourage any other person or body to provide facilities for tourism, conferences, trade fairs and exhibitions or improve or encourage any other person or body to improve, any existing facilities for those purposes.

(2) Without prejudice to subsection (1), a Council may contribute to any organization established for the purpose of encouraging persons to visit Malaŵi.

Civic offices, halls and public buildings

16. A Council may erect, acquire, or provide and furnish—

(*a*) offices and other buildings for the carrying out of any of the functions of the Council; and

(*b*) public halls, shelters and other structures for use as places for public assembly and public meetings.

Civic regalia, etc.

17. A Council may acquire, provide, adopt, use and maintain civic regalia, insignia, emblems, apparel and appurtenances appropriate to the status and dignity of the Council.

Housing

18.—(1) Subject to the directions of the Minister generally or in relation to any Council or class of Councils or in any particular case a Council shall have power to acquire land, lay out estates, provide or arrange for the provision of all necessary services thereto and to design, construct and manage housing or provide building land for the benefit of—

(*a*) residents of the local government area at such rentals and upon such other terms as the Council shall decide;

(*b*) full-time permanent employees of the Council:

Provided that every lease or other permission to occupy any land or housing shall stipulate that such land or building shall be occupied by the owner except with the prior written consent of the Council upon such terms and conditions as the Council shall think fit and that any breach thereof shall entitle the Council to forfeit the lease or other permission without liability to pay compensation:

Provided further that nothing in this subparagraph shall prevent the owner from disposing of his interest in the property subject to the same stipulations.

(2) For the purposes of this paragraph, a Council may lease housing from another Council or body or person upon such terms as may be agreed.

Miscellaneous

19.—(1) A Council shall have power to—

(*a*) compel the fencing or enclosing of plots and restrict or prohibit the use of barbed or razor wire, broken glass or any similar hazardous material on fences and walls;

(*b*) require the owner or occupier of any premises to remove, lower or trim any tree, shrub or hedge overhanging any road or street or interfering with or obstructing free passage of any wires, cables or works, or to remove any dilapidated or

dangerous fence, wall or structure abutting upon any public place; and

(*c*) prohibit any obstruction in any public place and provide for the removal of any obstruction at the owner's expense.

(2) Subject to the provisions of the Town and Country Planning Act, a Council shall have power to prohibit or control— Cap. 23:01

(*a*) the display of advertisements and advertising devices in or in the view of any street or public place which, in the opinion of the Council, would be likely to affect injuriously the amenities of or disfigure any neighbourhood or cause offence to the community or any section of it;

(*b*) the use of moveable advertising devices, flags, banners, lights or screens; and

(*c*) the playing of music or the use of any loudspeaker or amplifier for advertising purposes in any street or public place or from a shop or premises adjoining or abutting onto any street or public place.

(3) A Council may prohibit or control the cultivation by unauthorized person of any public land and land reserved for any public road and of unenclosed or unoccupied land in private ownership.

(4) "Public place" means any place to which the public has access whether or not the land is in private ownership.

Management of the Council's estates

20.—(1) A Council shall prepare a plan for the management of land and buildings and other real property assets owned by or in the possession or under the control of the Council, which in addition to any other information which the Minister may require under subclause (2) shall contain—

(*a*) a description of the property by reference to its plot number or location;

(*b*) the current use or uses;

(*c*) the planning designation under any District Physical Development Plan prepared or under preparation pursuant to the Town and Country Planning Act; Cap. 23:01

(*d*) the value of the assets according to the entry in the Valuation Roll or Supplementary Valuation Roll if any or the Council's Register of Fixed Assets whichever is the higher;

(*e*) if the property is occupied by a lessee or tenant, the name and address of the lessee or tenant, the date of commencement and expiry of the term, the amount of rent payable, the dates for review of the rent, and whether the rent is a rack rent or a ground rent;

(*f*) if the property is leased or rented by the Council, the name and address of the lessor or landlord and otherwise the same information as is required by subparagraph (*e*);

(*g*) the future intentions of the Council with respect to the property and, if the land is held by the Council for development purposes, the nature of the development and the planned date of commencement; and

(*h*) a description of the Council's general strategy for the management of its estates.

(2) The Council may prescribe the form of the Estates Management Plan which shall contain such information or explanations as it may think proper and may determine that the Plan shall be submitted to the Minister for his approval annually or at such other intervals as he may determine.

(3) A certificate of value issued by a registered valuer shall be *prima facie* evidence of the market value in any disposal of any interest in land including a short tenancy.

Development plans

21.—(1) A Council shall have a duty to draw up plans for the social, economic and environmental development of the area for such periods and in such form as the Minister may prescribe.

(2) Development plans shall be prepared in conjunction and consultation with other agencies having a public responsibility for or charged with producing plans for development whether generally or specifically and affecting the whole or a substantial part of the Council.

Other functions

22. The Council shall perform the following functions—

(*a*) education services, which cover nursery, primary and distance education;

(*b*) medical and health services including—

(i) hospitals, other than hospitals providing referral and medical training;

(ii) health centres, dispensaries, sub-dispensaries and first-aid posts;

(iii) maternity and child welfare services;

(iv) the control of communicable diseases, including HIV/AIDS, leprosy and tuberculosis;

(v) control of the spread of disease in the local government area;

(vi) ambulance services;

(vii) primary health care services;

(viii) vector control;

(ix) environment sanitation; and

(x) health education;

(*c*) the provision and maintenance of water supplies in liaison with the Ministry of Water Development, where applicable;

(*d*) subject to the Roads Authority Act, the construction, rehabilitation and maintenance of roads; Cap. 69:07

(*e*) taking charge of all decentralized services and activities which include but are not limited to—

(i) crop, animal and fisheries husbandry extension services;

(ii) entomological services and vermin control;

(iii) human resources management and development;

(iv) recurrent and development budget;

(v) district statistics services;

(vi) district project identification;

(vii) district planning;

(viii) local government development planning;

(ix) land administration;

(x) land surveying;

(xi) physical planning;

(xii) forests and wetlands;

(xiii) licensing of produce buying;

(xiv) trade licences;

(xv) trade development services;

(xvi) commercial inspectorate;

(xvii) community police;

(xviii) industrial relations;

(xix) social rehabilitation;

(xx) labour matters;

(xxi) probation and welfare;

(xxii) street children and orphans;

(xxiii) women in development;

(xxiv) community development;

(xxv) youth affairs;

(xxvi) cultural affairs;

(xxvii) district information services;

(*f*) regulate, control, manage, administer; promote and licence any of the things or services which the Council is empowered or required to do, and establish, maintain, carry on, control,

manage or administer and prescribe the forms in connexion therewith to fix fees or charges to be levied in that respect;

(*g*) aid and support the establishment and maintenance of schools, hospitals, libraries, art galleries, museums, tourist centres, homes for the aged, destitute or infirm or for the orphans, and to provide bursaries to assist in the education of children of persons residing in the local government area, to make donations to charitable and philanthropic, welfare, youth, persons with disabilities, women and sports organizations;

(*h*) preserve public decency, and to prevent offences against public order in public places and to prevent damage to property of the Central Government and the Council;

(*i*) undertake private works and services and to charge, recover the costs and contract out public services to the private sector;

(*j*) sell all by-products resulting from carrying on by, or on behalf of the Council, of any works or services;

(*k*) promote publicity for the Council;

(*l*) promote schemes of health, education and road safety sensitization;

(*m*) provide and manage—

(i) sporting and recreational facilities and programmes of informal education for both adults and young people including the running or provision of community centres;

(ii) the development of social work among adults;

(iii) remedial social welfare programmes aimed at the alleviation of social distress;

(iv) the welfare of children and the elderly; and

(v) public vehicular parking;

(*n*) the registration of marriages, births and deaths for transmission to the Registrar General;

(*o*) assist Government to preserve the environment through protection of forests, wetlands, lake shores, streams and prevention of environmental degradation;

(*p*) upon delegation by Government, identification and preservation of sites and objects or buildings of historical and architectural value; and

(*q*) any other service or function which the Government may delegate to the Council.

THIRD SCHEDULE

Sources of Revenue for the Council

1. Locally generated revenue which shall include but shall not be limited to—

(*a*) Property rates;

(*b*) Ground rent;

(*c*) Fees and licences;

(*d*) Commercial undertakings; and

(*e*) Service charges.

2. Government grants.

3. Ceded revenue.

SUBSIDIARY LEGISLATION

G.N. 4/2003

LOCAL GOVERNMENT (MZUZU CITY COUNCIL) (REGISTRATION OF CUSTOMARY MARRIAGES) BY-LAWS

under s. 103

Citation

1. These By-laws may be cited as the Local Government (Mzuzu City Council) (Registration of Customary Marriages) By-laws.

Interpretation

2. In these By-laws unless the context otherwise requires—

"Council" means Mzuzu City Council;

"customary marriage" means a marriage contracted in accordance with customary laws;

"marriage certificate" means a certificate issued to a married couple under by-law 6;

"register" means a book containing registration of customary marriages as set out in the Second Schedule to these By-laws; and

"registering officer" means the Chief Executive of the Council or any person appointed by the Council to register customary marriages.

Registration of customary marriages

3.—(1) The parties to a customary marriages contracted within the area of jurisdiction of the Council may voluntarily apply for the registration of their marriage to a registering officer.

(2) Upon receiving such application, the Registering Officer shall—

(*a*) enter in the marriage certificate, the form of which is set out in the First Schedule hereto, the details which may be required to be entered in the certificate; and

(*b*) enter in the marriage register, the details which may be required to be entered in the register:

Provided that the Registering Officer shall not enter the necessary details unless he has satisfied himself that all customary requirements prior to such a marriage have been complied with.

Declaration of marriage

4. The parties to a customary marriage shall, in the presence of a witness or relative and the Registering Officer, declare and sign or mark on the declaration form set out in the marriage certificate and the witness or relative, as the case may be, shall certify that the signatures or marks on the declaration form were made in his presence and were in order.

Certification by Registering officer

5. The Registering Officer shall certify in the marriage certificate that the entries made by the parties and witness or relative were made in his presence and he shall insert the date on which the registration was made.

Issue of marriage certificate

6. The Registering Officer shall cause a copy of the completed marriage certificate to be handed to the parties to the marriage.

Replacement of marriage certificate

7.—(1) Parties to a marriage registered in accordance with these By-laws may, jointly or severally, in the event of the original certificate being lost, apply to the Registering Officer for a replacement of the marriage certificate.

(2) Where an application for a replacement of a marriage certificate is made in accordance with the provisions of paragraph (1), the applicants shall be required to pay to the Council appropriate fees set out in the Third Schedule and such fees shall be paid at the time the application is being made.

Penalty

8. Any person who, knowingly makes a false statement or declaration for the purposes of effecting registration of a customary marriage shall be guilty of an offence and on conviction shall be liable to a fine of K2,000 or six months imprisonment with hard labour.

FIRST SCHEDULE

by-law 3

Marriage Certificate

Entry Number: .....

Place of Registration: .....

DECLARATION

We, the persons whose names, addresses, and signatures or marks appear below, declare that we were married at the place and on the date shown below:

Name of Husband: .....

Signature or Marks: .....

Village: .....

Chief: ..... District: .....

Name of Wife:.....

Signature or Marks: .....

Village: .....

Chief: ..... District: .....

Place of Marriage: .....

Date of Marriage: .....

Number of cattle and/or other consideration paid: .....
.....

I certify that the signatures or marks made above were entered in this marriage certificate in the presence of—

Name of witness (or relative): .....

Village: .....

Chief: .....

District: .....

Signature or mark of witness (or relative): .....
.....

I certify that these entries were made in this marriage certificate on the day of ..... 20..... in my presence.

Signature .....

Registering Officer

SECOND SCHEDULE by-law 3

Marriage Register

(A) Name of Husband: .....
Chief: .....
Village: .....
District: .....
Name of Witness (or relative): .....

(B) Name of Wife: .....
Chief: .....
Village: .....
District: .....
Name of Witness (or relative): .....

(C) Registration Fee: K .....

(D) Date Marriage Certificate issued: .....day of ....., 20 .....

THIRD SCHEDULE by-law 7

Fees	K	t
1. For the issue of customary marriage certificate	500	00
2. For replacement of customary marriage certificate	450	00

LOCAL GOVERNMENT (MZUZU CITY COUNCIL) (NURSERY SCHOOLS) BY-LAWS

G.N. 5/2003

under s. 103

Citation and application

1. These By-laws may be cited as the Local Government (Mzuzu City Council) (Nursery Schools) By-laws and shall apply within the jurisdiction of the Mzuzu City Council (hereinafter referred to as the "Council")

Interpretation

2. In these By-laws unless the context otherwise requires—

"authorized person" means a person authorized by the Council to inspect premises, examine persons or do any other act under its statutory powers;

"child" means a person who is under or appears to be under eight years of age;

"guardian" means any person who has, by reason of the death, illness, absence, incapacity or any other cause of a parent, the custody of a child;

"nursery school" means any premises where children are received to be looked after for reward for the day or a substantial part thereof or for any longer period for the purpose of some form of education instructions;

"occupier" means any person in actual occupation of premises without regard to the title under which he occupies such premises and, in case of premises sub-divided and let to tenants whether on his own account or as an agent for any person entitled thereto or interested therein;

"owner" means any person receiving the rent or profits of any premises from any tenant or occupier thereof, and the term includes any lessee;

"parent" means the father or mother of a child, whether legitimate or not;

"premises" means any building or structure together with the land on which it is situated and the adjoining land or other land or building used in connection therewith;

"proprietor" means any person in whom is vested the ownership, custody or control of—

(*a*) the premises at which the nursery school is carried on; and

(*b*) the buildings, equipment and other things provided for the children attending the nursery school,

and where such ownership, custody or control is vested in more than one person, includes both or all of them;

"relative" means any grandparent, brother, sister, uncle or aunt, whether by consanguinity or affinity, or in consequence of adoption; and in respect of an illegitimate child includes any person who would be so related if the child was legitimate.

Registration and licence for nursery schools

3.—(1) No person shall establish a nursery school unless he has first applied to the Council for registration and shall have obtained a licence from the Council thereof.

(2) An Application for registration shall be in the form specified in Part I of the First Schedule to these By-laws and shall state the situation or location of the premises, where it is sought to establish the nursery school, and the name and address of the proprietor.

(3) An Application for registration shall be accompanied by appropriate fees set out in Part II of the First Schedule to these By-laws and such fees shall be non-refundable where the application is refused.

Refusal to register

4. The Council may refuse to register any premises or proprietor if it is satisfied that the premises concerned are not fit and proper to be used for the purposes of a nursery school, or that the proprietor, or any other person employed or proposed to be employed by him to have the care of the children received or proposed to be received in such nursery school, is not a fit and proper person to have the care and control of children.

Power to impose conditions

5.—(1) The Council may, subject to paragraphs (2) and (3) of this by-law, determine that the premises or proprietor shall only be registered subject to any or all of the following conditions—

(*a*) that no greater number of children shall be received in the premises than specified in the licence;

(*b*) that the number of children received under the foregoing paragraph together with any other children resident on the premises shall not at any time exceed number as specified in the licence;

(*c*) that the children in any specified age group or age shall not be in the premises or exceed such number as may be specified in that behalf in the licence;

(*d*) that a person with such qualifications as specified in the licence shall be in charge of the premises and of the persons employed thereat;

(*e*) that the nursery school shall be adequately staffed in terms of the calibre, qualifications or experience of the persons employed thereat;

(*f*) that any repairs to be carried out on the premises or such alterations thereof or additions thereto shall be made as specified in the licence;

(*g*) that the premises shall be equipped in accordance with equipment specified in the Fifth Schedule and that such equipment shall be adequately maintained;

(*h*) that there shall be adequate arrangement for feeding the children received in the premises and that an adequate and suitable diet shall be provided for them;

(*i*) that the children received in the premises shall be under medical supervision;

(*j*) that the persons employed in the premises shall undergo medical examination at the time of granting a new licence or renewing a licence and any other time the Council may deem fit; and

(*k*) any other condition as the Council deems it necessary to impose.

(2) Before the Council imposes any condition, it shall give notice to the applicant of its intention and shall not proceed with the registration until the requirement of paragraph (3) of this by-law is satisfied.

(3) An applicant who receives a notice under paragraph (2) shall, within fourteen days of receipt thereof, inform the Council in writing whether—

(*a*) he agrees to such conditions;

(*b*) abandons his application; or

(*c*) he intends to appeal under by-law 11 of these By-laws:

Provided that if an applicant who has informed the Council of his intention to appeal does not enter such appeal within the time limited by by-law 11 of these By-laws, his application shall be deemed to have been abandoned.

(4) The Council may, by notice to the proprietor, vary, add to, or revoke any condition imposed either on registration or at any subsequent time.

(5) Any condition imposed under this by-law shall be in addition to the minimum standard requirements under by-law 14 of these By-laws.

Register of nursery schools

6. The Chief Executive Officer shall keep and maintain a register in the form specified in the Second Schedule to these By-laws in respect of every nursery school in the Council and the register shall be open to the public for inspection at all reasonable times.

Licence

7.—(1) Where any premises are registered as a nursery school, or a licence is renewed after its expiry under paragraph (5) of this by-law, the Council shall issue a licence in the form specified in the Third Schedule to these By-laws and such licence shall specify the situation or location of the premises, the name and address of the proprietor of the nursery school and any conditions imposed under the provisions of by-law 5 of these By-laws.

(2) A licence issued under paragraph (1) shall not be transferable to any other person or premises.

(3) A licence issued under paragraph (1) of this by-law shall be displayed in a prominent part of the building on the licensed premises and shall be available for inspection by any authorized person at any time when there are children on the premises.

(4) The Council may issue a replacement licence if—

(*a*) it is satisfied that the licence issued under this by-law is lost, destroyed or mutilated, where such licence would be valid at the time of the application or re-issue whichever is later; and

(*b*) the applicant pays replacement fees specified in Part II of the First Schedule to these By-laws.

(5) Every licence issued under the provisions of these By-laws shall expire on the thirtieth day of the financial year after the issue thereof:

Provided that the Council may, for reason of an epidemic or the carrying out of repairs, alteration or any work required by the Council to be done on the premises or for any other reason which, in the opinion of the Council, seems fit and appropriate, by notice to the occupier, owner or proprietor, temporarily suspend a licence either for the unexpired period of such licence or for the period of the epidemic, repairs, alteration or work, as the case may be.

Record of children

8. Where any premises is registered as a nursery school under by-law 7 of these By-laws, the proprietor shall keep records of the children received everyday at such nursery school in the form specified in the Fourth Schedule to these By-laws.

Powers of entry and inspection

9.—(1) An authorized person may, at all reasonable times, enter any premises which are used as a nursery school and inspect the premises, the children received therein, the arrangements for their

welfare and any records relating to the children kept in pursuance of by-law 8 of these By-laws.

(2) An authorized person who exercises any power conferred by this by-law shall, if so required, produce a duly authenticated document showing his authority to exercise such power.

(3) If an authorized person has reasonable cause to believe that children are being received in a person's home or in any other premises in contravention of these By-laws, the authorized person shall have powers to enter such home or such other premises and carry out any such inspections as stated in paragraph (1) of this by-law.

(4) Any person who refuses to admit an authorized person or who obstructs the exercise of any power conferred by this by-law shall be guilty of an offence.

Cancellation of registration and licence

10.—(1) Save as is otherwise provided by paragraphs (2) and (3) of this by-law where—

(*a*) there has been a contravention of or non-compliance with any condition imposed under these By-laws;

(*b*) it appears to the Council in respects of any premises or person registered under by-law 7 of these By-laws, that circumstances exist which would have justified a refusal under by-law 4 of these By-laws to register the premises of person;

(*c*) a licence issued under by-law 7 of these By-laws has been transferred to any other person or premises;

(*d*) any person has been convicted of an offence against these By-laws; or

(*e*) the Council is of the opinion that it is in the interest or welfare of the children attending a nursery school that it be closed,

the Council may cancel the registration of the nursery school concerned and the licence in that behalf shall cease to have effect forthwith.

(2) Before the Council cancels any registration of a nursery school under this by-law, it shall give fourteen days notice to the proprietor or to the occupier of the premises of its intention to make such cancellation.

(3) The notice shall state the ground on which the Council intends to make the cancellation and shall call upon the proprietor or occupier to show cause within fourteen days after the receipt of the notice why the registration should not be cancelled.

(4) Where the Council, after taking into consideration the presentations of the proprietor or occupier under paragraph (3), decides to cancel the registration, it shall inform the proprietor or occupier of its decision.

(5) Notwithstanding paragraphs 1, 2, 3 and 4 of this by-law, where in the opinion of the Council it is necessary on medical or other emergency grounds, to immediately close a nursery school, the Council may apply to a magistrate court for an order for the immediate closure of such nursery school.

Appeal against the decision of the Council

11.—(1) Any person aggrieved by any decision of the Council under these By-laws may within thirty days after receipt of the notification of such decision, appeal by summons to the High Court calling upon the Council to show cause why the said decision should not be set aside or varied and upon the hearing of the summons the magistrate may confirm, set aside or vary the decision so appealed against or may make such order as may seem just.

(2) Notwithstanding the right to appeal under paragraph (1) the decision of the Council shall take effect if it relates to refusal or cancellation of registration until set aside or varied by the Court but if the decision relates to the imposition of a condition it shall not be effected until abandonment or determination of the appeal.

Exemption of certain institution

12. Nothing in these By-laws shall apply to the reception of children—

(*a*) in any hospital, nursing home, convalescent home or any other such institution; or

(*b*) by a relative.

Minimum standard requirements

13. Notwithstanding any condition imposed by the Council under by-law 5 of these By-laws, the minimum standard requirements as to premises, staffing, health, medical care and control of a nursery school shall be as set out in the Fifth Schedule to these By-laws.

Existing nursery schools

14.—(1) Any person who, before the commencement of these By-laws, had established a nursery school or had received children into any premises in such circumstances that he would be required to comply with the provisions of these By-laws, shall be guilty of an offence, if, after three months of the commencement of these By-laws, he continues to receive children in similar circumstances without first registering such premises and obtaining a licence under by-law 7 of these By-laws.

(2) For the purpose of this By-law, the words "any person" shall include the proprietor, occupier and any person connected with the day to day affairs of such nursery school.

Offences and penalties

15. Any person who contravenes any of the provisions of these By-laws or who fails to comply with any of the conditions imposed by the Council thereof commits an offence and on conviction shall be liable to a fine of K2,000, and in the case of a continuing offence, to a further fine of K200 for each day during which the offence continues after conviction thereof or to six months imprisonment or to both such fine and imprisonment.

FIRST SCHEDULE

Part I

Application for Registration of a Nursery School

by-law 3

To: The Chief Executive Officer
City of Mzuzu
P.O. Box 1
Mzuzu

I/we apply for permission to establish a Nursery School and make application for registration under by-law 3 of the City of Mzuzu (Nursery Schools), By-laws.

A fee of K ..... accompanies this application.

Signed .....

Applicant/Proprietor

1.—(*a*) Name of applicant/proprietor .....
(in block letters)

(*b*) Postal Address .....

(*c*) Residential Telephone Number .....

2.—(*a*) Name of Nursery School (if any) .....

(*b*) Plot Number .....

(*c*) Road .....

(*d*) Postal Address .....

(*e*) Telephone Number .....

3.—(*a*) Age of applicant/proprietor .....

(*b*) Other occupation of applicant/proprietor .....
.....

(*c*) Full names of applicant's spouse.....

(*d*) Occupation of spouse .....

(*e*) Names and ages of applicant's/proprietor's children (if any) .....
.....
.....

(*f*) Is the applicant's/proprietor's residence different or the same as premises of the Nursery School? .....

(*g*) Other occupants of the premises of the Nursery School .....
.....
.....
.....

4.—(*a*) Details of any special qualification held by applicant/proprietor .....
.....
.....
.....

(*b*) Brief details of applicant's /proprietor's experience in the field of nursery school management (including number of children, place and year) .....
.....
.....
.....

5. Number of children for which proposed Nursery School is to cater:

(i) babies (0 to 2 years).....

(ii) children (2 to 5 years) .....

(iii) children (5 to 7 years) .....

6. Normal hours of business .....

Is Saturday included? .....

Is Sunday included? .....

7.—(*a*) Approximate size of rooms to be used by children (each room to be numbered and measured separately)
.....
.....
.....

(*b*) Office .....

(i) office .....

(ii) isolation of sick children .....

(iii) resting, eating, playing (delete as necessary) .....

(*c*) Description of outdoor play facilities:

(i) babies (0 to 2 years) .....

(ii) children (2 to 5 years) .....

(iii) children (5 to 7 years) .....

(iv) staff .....

9.—(*a*) Arrangement for regular examination of children .....

(*b*) Name of Medical Practitioner .....

(*c*) Address .....

(*d*) Telephone Number .....

10. Details of staff to be employed in running the Nursery School:

Name	Address	Age	Qualification	Experience

11. Any additional information (in particular, whether the applicant/proprietor or staff) has been convicted of any offence involving violence of children or against these By-laws .....

.....

..... Signed .....

Applicant/Proprietor

Part II

Fees Payable for Registration and Licence by-law 3

		K	t
1.	Fee payable on the registration of a Nursery School	100	00
2.	Fee payable on the issue of a licence to establish a Class A Nursery School	1,000	00
3.	Fee payable on the issue of a licence to establish a Class B Nursery School	500	00
4.	Fee payable on the issue of a licence to establish a Class C Nursery School	300	00
5.	Fee payable on replacement of lost, destroyed or mutilated licence, Class A	1,000	00

		K	t
6.	Fee payable on replacement of lost, destroyed or mutilated licence, Class B	500	00
7.	Fee payable on replacement of lost, destroyed or mutilated licence, Class C	300	00

SECOND SCHEDULE

by-law 6

Register to be kept by the Chief Executive

Date of Registration	Name of Nursery School	Plot No.	Road	Tel. No.	Name and Address of person to whom Licence was issued	Licence No.	Conditions (if any)

THIRD SCHEDULE

by-1aw 6

Registration and Licence of a Nursery School

..... of .....

..... is/are hereby registered as Proprietor and is/are licensed to establish/continue to run a Nursery School under the name and title of ..... at Plot Number ..... at .....

in the City of Mzuzu until the 31st March, 20.....

This licence is issued/renewed/replaced subject to the following conditions:

Fee paid ..... Kwacha

Previous licence No. (if any) ..... Year .....

Signed .....

Chief Executive

Dated this ..... day of ..... 20.....

FOURTH SCHEDULE by-law 8

Record of Children Admitted or to be Admitted at a Nursery School

Name .....

Address .....

Age .....

Date of Admission .....

Name of Parent or Guardian .....

Address .....

Telephone Number .....

Date of Medical Examination .....

Name of Medical Practitioner .....

Result of Medical Examination .....

HISTORY OF IMMUNIZATION

Small Pox Date	Polio Date	Diphtheria Date	Whooping Cough Date	B.C.G. Date	Tetanus Date

Any special remark .....

FIFTH SCHEDULE by-law 13

Standard Requirements

1. The building shall preferably be single storied, but where space on the site is limited, service rooms, such as resting and feeding rooms, etc. may be provided on an upper floor.
2. In any room, the minimum floor space per child shall be 12 feet and each room shall be measured separately for the purpose of calculating the number of children to be accommodated in the building.
3. The maximum number of children to be received in any Nursery School shall be determined by the amount of floor space in the rooms and the number of toilet facilities in the building.

4.—(*a*) Any room to be used by children shall have direct access to outdoor playing space or to an open and unoutdoor playing space or to an open and unobstructed verandah which shall have direct access to outdoor playing space.

(*b*) rooms shall be arranged in such a way as to enable children of the same age group to be accommodated together;

(*c*) at least one room shall be for infants and, if possible, older children's room should be placed next to one another;

(*d*) rooms shall be arranged so that various age groups can join up on occasion and so that it is possible to receive a wider range in any unit should the demand for admission vary;

(*e*) rooms may be separated by moveable partitions but no room used by children shall serve as a passage.

5. No room shall have a mean height of less than nine feet and, where ceiling follow the line of rafters, the minimum height at wall place level shall be not less than 8 feet 6 inches.

6. Every room shall be exposed to sufficient lighting and natural light and through or cross-ventilation either by openings into the external air or into an open and unobstructed verandah.

7. The windows provided for any room shall be equals to not less than one-fifth of the floor area of such room and such windows shall be made to open.

8. Floors shall be made of permanent material, safe for children and easy to clean.

9.—(*a*) There shall be an office for use by the proprietor or any person employed by him to have the care of the children received or proposed to be received;

(*b*) the office shall have a welcoming appearance and be large enough for several mothers and children to be received in it at any one time; and

(*c*) the office shall, where reasonably possible, have a connecting door to a room which shall be used for the medical examination or isolation of children.

10.—(*a*) For each unit of a maximum of 10 children of up to 2 years of age—

1 bathing sink;
1 rack for flannels;
1 lowest level water closet;
1 fixture for towels and flannels; and
1 wash basin and towel master fitment for staff;

(*b*) for each unit of a maximum of 20 children of 2 to 5 years of age—

1 bathing sink;
2 low level wash basins;
2 low level Water Closets;
2 fixtures for towels and flannels; and
1 wash basin and towel master fitment for staff;

(*c*) for each unit of a maximum of 12 children of 5 to 7 years of age—

1 water closet;
2 wash basins of varying heights;

1 fixture for towels and flannels; and

1 wash basin and towel master fitment for staff;

(*d*) the purpose of paragraphs (*a*), (*b*) and (*c*) above, is that children of varying ages shall have different cloakroom and toilet facilities suitable to their heights and requirement but, where it will not be convenient or advantageous to separate them according to age groups, the Council may, on the recommendation of the Medical Officer of Health approve either of (*a*), (*b*) or (*c*) above or a combination of them.

11.—(*a*) The staff cloakroom shall contain individual lockers with suitable hanging space and toilet facilities, and it should be large enough to be used for charging; and

(*b*) staff toilet facilities shall be separate from those of children and on no account must staff and children use the same toilet facilities.

12.—(*a*) The minimum size of kitchen shall be 85 square feet per place of staff, of which 40 square feet is for larder and 40 square feet (say 3.75 square feet) is for locked provision store.

(*b*) The kitchen shall be equipped with—

1 refrigerator;

1 oven/cooker;

1 18-inch sink for vegetable preparations;

1 24-inch x 12 sink for washing cooking pans;

1 table covered with laminated plastic;

cupboards for crockery and cooking utensils;

cupboards for stores;

locked shelves for storage of pre-packed food; and

satisfactory and adequate un-chipped crockery and clean eating and cooking utensils.

13. The furniture shall be light, easy to move and easy to keep clean moveable fitments could be used both for storing toys and smaller playthings, and for dividing the rooms in varied ways. Soft furnishings including rugs shall be of types that can be easily washed.

14.—(*a*) The open space for use as playground shall be 200 square feet per child, of which 40 square feet shall be paved and the remainder, grass. It shall be partly shaded by trees or other means from the sun.

(*b*) The playground must be enclosed by a strong fence with gate and high latches.

G.N. 6/2003

LOCAL GOVERNMENT (MZUZU CITY COUNCIL) (MARKET) BY-LAWS

under s. 103

Citation and application

1. These By-laws may be cited as the Local Government (Mzuzu City Council) (Market) By-laws, and shall apply to designated markets within the area of jurisdiction of the Mzuzu City Council (hereinafter referred to as "the Council").

Interpretation

2. In these By-laws unless the context otherwise requires—

"animal" includes any bull, cow, oxen, heifer, calf, sheep, goat, horse, mule, donkey, pig, dog, cat, poultry, game animal and any wild carnivore tamed and kept as a pet;

"bread" includes bread loaves, rolls, doughnuts, scones, cakes, pastries, and other items baked with flour;

"Chief Executive" means the person for the time being performing the duties of the Council in and for the Mzuzu City Council;

"cloth" includes new and used clothing fabric material, towels, linens, pillows, and other manufactured fabric items;

"craftsman" includes beautician, bicycle repairer, carpenter, chair maker, electrical repairer, hair styler, cutter, handcrafter, radio repairer, shoe repairer, tailor, tinsmith, watch repairer, weaver, and welder;

"designated market place" means an authorized marketing place as provided in the First Schedule of these By-laws;

"firewood" includes charcoal, firewood, mithiko and other solid fuels;

"flour" includes all ground cereal grains, maize, millet, rice, granular sugar and wheat;

"cooked food" includes fried chicken, fish, meat, potatoes;

"fruit" includes apples, bananas, coconuts, dried fruits, ground-nuts, guava, lemons, limes, mangoes, oranges, peanuts, pineapple, pawpaws, peaches, pears;

"groceries" include manufactured and processed items packaged for sale, such as canned soups, vegetables, soaps, candles, sugar packets, milk beverages, coffee and tea;

"hardware" includes axes, bolts, bottles, handles for tools, hoes, keys, knives, locks, nuts, screw, sundry manufactured wares of plastics, metal, and rubber;

"health inspector" means any person appointed as such by the Council or by the Government;

"infectious diseases" mean any disease which can be communicated directly or indirectly by any person suffering therefrom to any other person;

"livestock" includes cattle, sheep, goat and pig;

"market master" means the person appointed by the Council to be responsible for the management and control of a public market and for the maintenance of proper order and sanitary practices therein;

"market structure" means shelter, building or fence constructed to house vendors and their merchandise;

"market vendor" means any person undertaking the business of selling commodities at designated market places.

"medical officer of health" means any duly qualified medical practitioner registered under the Medical Practitioners' and Dentist Registration Act appointed by the Council or by the Government to carry out the duties of Medical Officer of Health; Cap. 36:01

"preserves" includes all canned or jarred jellies and jams, honey and syrups;

"private market" means any market other than a public market;

"public market" means any market named in the First Schedule of these By-laws;

"sell" includes barter, exchange, offer to sell, expose for sale and make any other disposition for money or money's worth and any cognate expression shall bear a corresponding meaning;

"spices" includes beans, broccoli, brussel sprouts, cassava, cabbages, carrots, collards, cucumbers garlic, ground beans, lettuce, maize (green or dry), mushrooms, *mchewere*, okra, onions, peas, pop corn, irish or sweet potatoes, pumpkins, rice, tomatoes, turnips, and yams;

"street vending" means trading or undertaking trading activities along undesignated streets/areas in the Council;

"unauthorized market place" means any marketing place not designated in these By-laws;

"wrappings" includes paper bags, plastic bags and other packaging material.

Establishments of markets

3. No person shall establish a market within the Council unless he has first obtained the written permission of the Council.

Market fees payable

4.—(1) No person shall sell any goods of any description in a market unless he has paid the appropriate market fees set out in the Second Schedule.

(2) Every fee payable under these By-laws shall be paid to the market master, who shall give the person who has paid the fee a receipt on behalf of the Council.

(3) Every fee paid to the market master under these By-laws shall be paid by the market master to the Council.

Hours of opening

5.—(1) Public markets shall be opened during such hours as the Council shall, from time to time, determine.

(2) No person shall sell any goods in a public market other than during such hours of opening as determined by the Council under paragraph (1).

(3) Vendors who operate lockup shops, or stalls with their own semi-permanent fixtures shall remain open during all regular market days and hours as determined to be official days and hours.

(4) No person shall enter or remain in any public market without the authority of the Chief Executive or of the market master of such market during any time it is closed.

Restriction of sales
Cap. 46:01

6.—(1) No person, other than a holder of an appropriate valid licence issued in the pursuance of the provision of the Business Licensing Act, exempted from holding such a valid licence, shall engage in the business of selling any of the items set out in the Second Schedule within the Council except at a designated market.

(2) Except in such public markets, or parts thereto as the Council shall specifically provide and allocate for the sale of goods by wholesale, all sales of goods in any public market shall be by retail.

(3) No person shall sell the following goods in any market—

Cap. 14:06

(*a*) any firearms or ammunition as defined in the Firearms Act;

Cap. 50:03

(*b*) any petroleum or other inflammable liquids as defined in the Liquid Fuels and Gas (Production and Supply) Act; and

Cap. 14:09

(*c*) any explosives as defined in the Explosives Act.

(4) The Council shall have power by order to prohibit the sale in any public market of any specific type of goods, and in particular, to prohibit the sale of any specific item or items of foods or produce in any public market in which reasonably adequate facilities are not available for the protection of such food or produce from contamination or deterioration.

Restriction on vending

7. No person shall be allowed to undertake vending activities along streets or a place not designated as a market.

Council structures

8. No person shall willfully destroy, remove or deface any market structure without authority from the Council.

Use of stall and shops

9.—(1) In any public market where stalls or shop have been provided, each stall or shop shall be numbered and the Council may let or hire out such stalls or shops upon payment of the fees specified in the Second Schedule.

(2) No person shall use a stall or shop for carrying out two or more different classes of business at any time or under the same permit or tenancy:

Provided that the Council may at its discretion permit the use of any shop in a public market for the sale of such general produce or goods as shall be specified in writing by the Council at the time of granting of any such permit or tenancy.

(3) A stallholder or shop tenant shall not transfer or sublet his stall or shop or part with possession thereof.

(4) A vendor who has taken a lockup shop or has made semi-permanent alterations to any stall or open area so that the space is not freely available on a daily rental basis during his absence, or who regularly occupies and leaves his wares at a particular stall shall pay a monthly rent in advance for the space in question.

Control of fire and cooking areas

10.—(1) No person shall light any open fire in any public market except with the approval of the Council and only in specifically designated area approved by the Council.

(2) No person shall carry out or permit to be carried out on or in any public market any cooking or any preparation of any cooked food for sale except under such conditions as the Council may prescribe.

Produce cleaning in specified areas

11. No person shall, wash, dress or clean any vegetables, meat, animal, fish, fruit or other produce in a public market otherwise than in such areas and basins, sinks or other receptacles as may be provided by the Council for the particular purpose in question.

Presence of diseased persons

12. No person suffering from infectious disease shall be employed or engaged in or enter any public market:

Provided that no person shall be guilty of an offence if it is proved that he did not know or suspect that he was suffering from such infectious disease.

Offences

13. Any person in public market who—

(*a*) commits any nuisance or expectorates;

(*b*) peddles any unauthorized goods;

(*c*) sells any goods other than from an authorized stall, selling space, shop, kiosk or other space approved by the Council;

(*d*) willfully or negligently prevents, obstructs, hinders or interrupts the free passage of another person within any market;

(*e*) causes any disturbance by quarrelling with any other person within sight or hearing of another person or by interfering with or molesting any such other person;

(*f*) uses any offensive or obscene language or makes excessive noise to the annoyance or irritation of another person;

(*g*) deposits or throws on the floor or ground any refuse, or any waste or offensive offal, fruit or vegetable substance or matter;

(*h*) damages, defaces, fouls, misuses or interferes with part of the, area or any equipment, fitting or fixtures therein; and

(*i*) plays any game, gambles or takes any bets,

commits an offence.

Slaughter of livestock

14.—(1) Livestock may be slaughtered in a market only—

(*a*) after payment of the appropriate slaughter fees set out in Part II of the Second Schedule; and

(*b*) at a slaughterhouse designated by a market master.

(2) No livestock shall be allowed in a slaughterhouse unless it is intended for human consumption and no animal shall be kept longer in a slaughterhouse than is necessary for preparing it for slaughter.

(3) Slaughterhouses shall be opened for the slaughter of animals from 6.00 a.m. to 5.00 p.m. every day.

(4) All carcasses and portions thereof shall be removed from a slaughterhouse within twelve hours after the slaughter of the animal, and if not so removed, shall be disposed of as the health inspector or his representatives shall direct.

(5) Diseased carcasses or any portions thereof shall be disposed of as the health inspector or his representative shall direct.

(6) No carcasses or portions thereof shall be removed from a slaughterhouse until permission to remove it has been given by the health inspector or his representative or a veterinary officer, and that the prescribed fees have been paid.

Sale of unwholesome food

15.—(1) No person shall sell, in any public market any article of food which is diseased, tainted, unwholesome or otherwise unfit for human consumption.

(2) The market master shall detain and take possession of any food which is suspected of being diseased, tainted, unwholesome or otherwise unfit for human consumption and which is offered or exposed for sale in a public market and shall handover such food to the medical officer of health, veterinary officer, health inspector or police officer of or above the rank of sub-inspector (hereinafter either or all referred to as "official") to whom he shall immediately report that he has detained such food.

(3) No compensation shall be payable by the Council in respect of any food which is detained in accordance with paragraph (2) and which has been found by the official to be diseased, tainted, unwholesome or unfit for human consumption.

Prohibition and obstruction of pathways

16. No person shall—

(*a*) exhibit goods for sale on the roadways, pathways, stairways, or passages, or over any drain within a public market; and

(*b*) leave a board, box basket, tin, sack, or other container in, over or upon such roadway, stairway, passage or drain,

within the precincts of a public market.

Erection of stalls in the public market

17.—(1) No person shall erect or construct any kiosk, shed, counter, stall or structure whatsoever within the precincts of any public market unless he has first obtained a written permission of the Council.

(2) Where the Council has provided permanent stalls or counters, no person shall alter or add thereto any other stall or counter.

Use of stalls ways and measures

18. Every shopkeeper or stall holder within a public market shall—

(*a*) keep his stall or shop and all fittings and utensils therein or thereon thoroughly clean and in good order to the satisfaction of the market master;

(*b*) dispose of all refuse, sweepings, garbage, offal and waste liquid or solid, form his stall or shop into the receptacles, channels or drains provided for that purpose; and

(*c*) when selling by weight or measure, use the prescribed standard weights and measures, and provide and maintain scales and measures at his own expense.

Compliance with directions

19. All persons within the precincts of any public market shall comply with all reasonable directions given by the market master.

Separate areas for specific items

20. The Council may set aside, allocate or provide an area within the market for the sale therein of such type of items, goods, foods or meat as the Council may specify and no goods other than those specified shall be sold in any such area.

Fees and rents for the use of any stall, shops etc.

21.—(1) For the use of a public market stall, shop, room or place therein or adjacent thereto for the purpose of selling goods, there shall be payable to the Council such charges, rents and fees as are set out in the Second Schedule.

(2) Every charge, rent, or fee payable under this By-law shall be paid to the Council in advance and no person shall sell any goods of any description in a public market unless he has paid the appropriate charge, fee or rent.

(3)—(a) All such monthly rentals shall be payable in full on or before the first working day of every month, all fees paid after that date but prior to the first day of each month will carry a 10 per cent penalty in addition to the rent charge;

(*b*) if fees is not paid by the 21st day of the month the market master shall lock up the shop and the vendor shall have no access to it, and if no fee is not settled in full by the end of the month the contents of the shop shall be removed and sold in settlement of the charges due.

(4) Where a person fails or refuses to pay the requisite charge, fee or rent, the market master shall have power to impound such goods, articles or produce in a public market, and shall be disposed of as if they were unclaimed or abandoned in a public market under the provisions of this By-law:

Provided that where a person pays the requisite charge, fee or produce are disposed off, he may have the chance to redeem them.

Display of By-laws, market fees and rent

22. The Council shall display and keep displayed at every public market a copy of these By-laws in both English and Chichewa languages and a list showing market fees, charges and rent charged therein.

Storage of goods

23.—(1) Except with the prior written permission of the Council, no person shall leave any goods in a public market, other than in pre-paid lockable storage room spaces, during any period when the market is closed to the public:

Provided that the granting of any such permission shall not render the Council liable for any loss of such goods from any cause whatsoever.

(2) No compensation shall be payable by the Council in respect of any loss of or damage to any goods left in a public market.

(3) Where goods are impounded, left unclaimed or abandoned on any stall in a public market for a period exceeding seven days, or left unclaimed or abandoned in a general storeroom in a public market for a period exceeding fourteen days, the Council shall have power to dispose of such goods either by public auction, or otherwise as the Council may determine.

Use of authorized entrances

24. A person entering or attempting to enter any public market for the purpose of selling any goods shall enter through such an entrance as specified, from time to time, for that purpose by the Council.

Behavior

25.—(1) Any person who is found contravening, or who is reasonably suspected of having contravened any provision of these By-laws shall be liable to eviction from a public market by the market master or by any police officer who are hereby authorized to take such action.

(2) Any person who has been convicted on two or more occasions of any offence under these By-laws shall not be admitted to any public market for the purpose of selling goods or produce by the Chief Executive, market master or any other duly authorized officer of the Council and the Council shall maintain a record of all such persons.

(3) No person who has been lawfully evicted from a public market or has been refused admittance thereto shall enter or attempt to enter any public for the purpose of selling any goods or produce.

Offences and penalties

26. Any person who contravenes or fails to comply with any provision of these By-laws commits an offence and on conviction shall be liable a fine of K2,000, and in the case of a continuing offence to a further fine of K200 for each day during which the offence continues after conviction thereof or to six months imprisonment or both such fine and imprisonment.

FIRST SCHEDULE

Markets

Mzuzu Main (Central) Market
Mzuzu Katawa Market
Craft Centre Market
Mzuzu Slaughterhouse Market
Mzuzu Cloth Centre Market
Luwinga Sub Market
Hospital Site Sub Market
Stansfield Market

SECOND SCHEDULE

Market Fees and Rents

PART I

Mzuzu Main (Central) Market. Stansfield Market and Freedom Market—

	K	t
Market fee, per space, per day	25	00
Slaughter fee, per carcass, per day	125	00
Toilet fee, per visit	7	00
Butchery fee, per carcass, per day	282	00
Restaurant fee, per day	45	00

Goods coming into the Markets: Entry fee—

	K	t
Each bag weighing up to 50 kg, per entry	20	00
Each bag weighing more than 50 kg, up to 90 kg, per entry	35	00
Each bag weighing more than 90 kg, per entry	65	00
Goods weighing one tonne, per entry	100	00
Goods weighing three tonnes, per entry	200	00
Goods weighing seven tonnes, per entry	300	00
Sofa set, per entry	50	00

Shop Rentals—

	K	t
Barbers, per month	150	00
Large shops, per month	938	00
Small shops, per month	125	00
Water bills recovery, per month	125	00
Electricity bill recovery, per month	250	00

PART II

Katawa and other Markets—

	K	t
Market fee, per space, per day	20	00
Short rental, per month	285	00
Water bills recovery, per month	688	00
Electricity bills recovery, per month	250	00

PART III

Office rentals, per month	1,500	00
Shop rentals, per month	938	00

Department fees—

Large minibuses, per departure	45	00
Other big buses, 36 seater, per departure	50	00
Small minibuses, per departure	45	00
Small bus lines, per departure	25	00

LOCAL GOVERNMENT (BLANTYRE CITY COUNCIL) (SANITARY ARRANGEMENTS) BY-LAWS

G.N. 13/2003

under s. 103

Citation

1. These By-laws may be cited as the Local Government (Blantyre City Council) (Sanitary Arrangements) By-laws.

Interpretation

2. In these By-laws unless the context otherwise requires—

"approved" means approved by the Council;

"Council" means the Blantyre City Council;

"building operation" means any operation of any kind relating to a building whether construction, demolition, reconstruction or erection and includes excavation operations and any work of a civil engineering nature on which workmen are employed;

"dwelling house" means any premises or part thereof used solely for the purpose of residential accommodation;

"occupier" means any person in actual occupation of land or premises and in the case of premises sub-divided and let to lodgers or various tenants includes the person receiving the rent payable whether on his own account or not;

"owner" means any person receiving the rent or profit of any land or premises from any tenant or occupier thereof or who would be entitled to receive such rent or profit if such land or premises were let;

"premises" includes any land, building, room, tent, vehicle, drain, ditch (open, covered or enclosed) whether built on or not and whether public or private;

"recreation ground" means any ground used for the purpose of any sport activities such as athletic, football, cricket or any other game and includes a public swimming pool provided by a club for the use of its members;

"urinal" means a single stall urinal or a 500 mm width of urinal trough.

Standards of sanitary accommodation to be provided

3.—(1) The sanitary accommodation in the second, third and fourth columns of the Schedule hereto shall be provided in respect of the types of premises accommodation stated in the first column of the said Schedule.

(2)—(*a*) Subject to paragraph (*b*) every type of premises referred to in the said Schedule shall be provided with separate sanitary accommodation for males and females and two-thirds of the latrines provided for males shall be urinals:

Provided that this requirement shall not apply to private dwellings or to any offices, shops, workshops, factories, warehouses or other premises in or about which less than six persons regularly work but not reside;

(*b*) in buildings where the numbers of persons of each sex cannot easily be determined, 40 per cent of the latrines provided shall be for females and 60 per cent for males of which two-thirds shall be urinals.

(3) Every recreation ground shall be provided with properly maintained urinals, pit or water-closets reasonably accessible from any part of the ground, clearly marked for separate use by males and female with a minimum of one for each sex, calculated on the average attendance at such ground as follows—

(*a*) one water-closet for every 200 persons or part thereof for each sex and one urinal for every 100 or part thereof for males; or

(*b*) two pit closets for every 100 persons of part thereof for each sex and two urinals for every 100 males or part thereof:

Provided that the Council may, in its absolute discretion, permit the provision, at any recreation ground, or sanitary accommodation less than the above requirements in consideration of a written undertaking by the owner of the recreation ground to provide an adequate amount of sanitary accommodation of a temporary nature for special functions, or on

occasions when a number of persons larger than the said average attendance is expected.

(4) For the purpose of this by-law "average" means such number of persons as is agreed between the Council and the owner or the occupier thereof.

(5) All urinals, latrines and water-closets prescribed in terms of these By-laws shall be properly, adequately and effectively lit and ventilated and pit latrines shall be effectively screened against the entry of flies.

(6) The situation of sanitary accommodation prescribed in terms of these By-laws shall be approved by the Council as being convenient for the persons for whose use it is intended.

(7) The owner of and every person who occupies, who lets or allows any other person to occupy premises, which are not provided with sanitary accommodation as prescribed in terms of these By-laws, commits an offence.

(8) Where any existing premises do not have reasonable and convenient access for the employees of the Council rendering sanitary services, the Council may, by written notice, to the owner or occupier require him to provide same within a time to be specified in the said notice.

Temporary sanitary accommodation required on building sites

4.—(1) Where workmen are employed in any building operation the contractor in-charge of the work on the site or any other person employing the workmen shall provide, on or near the building site or the place where such building operation is in progress, not less than one water-closet for every 20 persons or part thereof so employed:

Provided that where no connexion to a public sewer is possible, the Council may in its discretion permit the provision of water-closets or pit latrines.

(2) Any contractor or employer who does not provide sanitary accommodation as provided for under paragraph (1) commits an offence.

(3) On the completion of any building operation, any temporary sanitary conveniences which may have been erected in pursuance of this by-law, shall forthwith be demolished and removed.

Prohibition of water-closets and pit latrines dwelling, etc.

5. No water-closet or pit latrine may be provided, construction, fixed or otherwise arranged, or used inside or under any roof affixed to a building used or intended for use as a dwelling or for the storage inside preparation, manufacture of sale of foodstuff for human consumption.

Water-closets etc,

6. Any person who uses a pit latrine, water-closet or urinal for other purposes other than that for which it is intended commits an offence.

Siting of pit latrines and powers of the Council prohibit

7.—(1) No person shall construct a pit latrine within—

(*a*) 450 metres of any building;

(*b*) 1.5 metres of any plot boundary; or

(*c*) within 30 metres of any stream, pool, dam, well, borehole, spring or other underground water supply.

(2) The Council may, from time to time, by resolution, prohibit the construction of pit latrines in all or any part of the Council.

Offences and penalties

8. Any person who contravenes or fails to comply with the provisions of these By-laws and any person failing to comply with the items of any notice served upon him by the Council in terms of these By-laws commits an offence and upon conviction shall be liable to a fine of K2,000 and K200 for each day during which the offence continues after conviction thereof and to six months imprisonment or both such fine and imprisonment.

G.N. 14/2003

LOCAL GOVERNMENT (BLANTYRE CITY COUNCIL) (PLOT ALLOCATION IN TOWNSHIPS AND IMPROVEMENT AREAS) BY-LAWS

under s. 103

Citation and application

1. These By-laws may be cited as Local Government (Blantyre City Council) (Plot Allocation in Townships and Improvement Areas) By-Laws.

Interpretation

2. In these By-laws unless context otherwise requires—

"Council" means the Blantyre City Council;

"Committee" means the Plot Allocation Committee established under by-law 3;

"Improvement Area" means an area over the whole of which title has been vested in Blantyre City Council.

Establishment of the Committee

3. The Council shall establish a committee to be known as Plot Allocation Committee.

Functions of the Committee

4.—(1) The Committee shall perform such functions as may be assigned to it by the Council.

(2) Without prejudice to the generality of paragraph (1) of this by-law, the Committee shall—

(*a*) allocate plots in Townships and Improvement Areas;

(*b*) enforce allocation covenants in Townships and Improvement Areas; and

(*c*) hear and settle plot disputes in Townships and Improvement Areas.

Plot allocation criteria

5. In allocating a plot in a Township or an Improvement Area, the Committee shall take into consideration the following—

(*a*) the size of the applicant's family;

(*b*) the income level of the applicant;

(*c*) whether or not the applicant holds another plot in the Council;

(*d*) the social status of the applicant;

(*e*) the age of the applicant;

(*f*) whether the applicant is head of the household;

(*g*) the applicant's position on the waiting list;

(*h*) whether the applicant is a citizen of Malaŵi;

(*i*) the length of time the applicant has resided in the Council; and

(*j*) any other factor which, in the opinion of the committee may be relevant.

General procedures for allocation of plots

6.—(1) An application for a plot in a Township or an Improvement Area shall be made on such form as the Council may prescribe.

(2) An application for a plot in a Township or an Improvement Area, shall be accompanied by such application fee, as the Council may determine.

(3) Where new plots exist in a Township or an Improvement Area, the Council shall advertise the existence of such plots stating the options available and the closing date for receipt of applications.

(4) All applications for plots in Townships or Improvement Area, shall be made to the Chief Executive of the Council.

(5) On receipt of an application for a plot in Township or an Improvement Area, the Council shall—

(*a*) put a date stamp on the application; and

(*b*) register the application.

(6) The Council shall, in respect of an applicant who has been allocated a plot in a Township or an Improvement Area, prepare and register lease documents relating to the plot upon request.

Plot dispute management

7.—(1) Any plot dispute shall first be reported to the estate office of the relevant Township for resolution thereof and if the dispute is not resolved, it shall be referred to the Director of Town Planning and Establishment.

(2) Where a plot dispute is not resolved by the Director, he shall refer the dispute to the Plot Allocation Committee with recommendations as to how the dispute may be resolved.

Transfer of plots

8.—(1) A plot holder in a Township or in an Improvement Area who wishes to transfer the plot to another person, shall inform the Council in writing about the proposed transfer and shall, in addition, provide the Council with particulars of the proposed transferee and consideration, if any.

(2) The Council shall—

(*a*) verify the ownership of the plot;

(*b*) verify if the plot is developed;

(*c*) establish whether ground rent and city rates have been paid; and

(*d*) establish the nature of development that has taken place on the plot.

(3) Where the Council approves the transfer, the transferor shall surrender all documents of the plot to the Council and the Council shall thereafter issue new documents to the transferee, subject to such conditions as the Council may impose.

Transfer of deceased property

9.—(1) Where a plot holder in a Township or in an Improvement Area—

(*a*) dies intestate, the Council shall—

(i) if the plot was developed, refer the matter to the Administrator General or District Commissioner, as the case may be;

(ii) if the plot was undeveloped, repossess it;

(*b*) dies testate, the council shall—

(i) where an executor is named in the will, refer the matter to the Administrator General or District Commissioner, as the case may be.

Plot development

10.—(1) The development of plots in Townships and Improvement Areas shall involve the construction of habitable dwelling units, safe community services buildings or structures in compliance with the provisions of the Council's Building By-laws and the Public Health Act and any regulations made thereunder. Cap. 34:01

(2) A holder of a plot in a Township or an Improvement Area shall notify the Council prior to undertaking any plot development so that the Council may ensure that the developer complies with the provisions of paragraph (1).

Plot boundaries

11.—(1) The Council shall demarcate the boundaries of a plot allocation to any person in a Township or an Improvement Area.

(2) The Council shall ensure that plot areas in Townships and Improvement Areas are within the range of 224 square metres to 400 square metres and that minimum buildings lines are as follows—

(*a*) front ..... 4.5 metres;

(*b*) side ..... 2.5 metres to 3 metres; and

(*c*) rear ..... 3 metres.

(3) If the plot has been acquired for purpose other than residential, the size can be less or more.

(4) The maximum plot development shall not exceed 33 per cent of the plot area.

Temporary designs and plot development

12.—(1) Where the development of a plot in a Township or in an Improvement Area is of a temporary or semi-permanent design, the plot holder shall, within three months from the date of allocation of the plot, present his development proposals to the Council.

(2) A plot holder shall proceed with construction in compliance with the Town and Country Planning Act. Cap. 23:01

(3) The Council may, where requested and upon payment of such fee as the Council may determine, provide technical assistance on plot development.

(4) A plot holder shall be responsible for the maintenance and upkeep of sections of roads and drains on the immediate frontage of his plot.

(5) A plot holder shall take due care of infrastructure services in and around the plot during the construction period and where any damage is caused to such services, the plot holder shall be held responsible.

(6) A plot holder shall have a dustbin where there is a waste collection service, and where there is none he shall provide a composite pit.

(7) There shall be one household per plot.

Leasehold and certificate of title

13.—(1) The Council may give an applicant a lease title for a plot in a Township or an Improvement Area.

(2) The Council shall, for purposes of proper record keeping and registration of titles, issue leases to all holders in a Township and Improvement Areas upon request.

Layout of Plots

14.—(1) The Council shall produce Township and Improvement Areas layouts based on accurate base maps at 1:2,500 or 1:1,250 Scale in order to facilitate plot demarcation.

(2) After production of the layouts referred to in paragraph (1), engineering designs and infrastructure construction shall be implemented.

(3) The Council shall supply layouts to licensed surveyors for block perimeter cadastral survey for the purpose of title plans for title registration.

(4) The Council shall ensure that throughout the survey, a layout showing survey of plot numbers is produced in order for the Committee to allocate plots.

(5) The Council shall furnish an applicant who has been allocated a plot in a Township or an Improvement Area with all the details of the allocation.

Registration with land Registrar

15. The Council shall register the leasehold title with the Land Registrar.

Trees to be planted

16.—(1) Every plot holder shall plant trees around his plot and shall be responsible for the management of the trees.

(2) Where a plot holder does not comply with paragraph (1) the Council may plant the trees and recover from the plot holder the cost of the trees and labour costs.

Demolition of buildings

17.—(1) The Council may request a plot holder to demolish any building and part thereof constructed in contravention of these By-laws.

(2) The Council shall give the plot holder thirty (30) days notice to demolish the building or part thereof.

(3) The Council shall demolish the building or part thereof if the plot holder does not demolish the same within the time limit and the expenses incurred during the demolition exercise shall be recovered from the plot holder as a civil debt.

Transfer not effective

18. Any transfer done contrary to by-law 9 shall not be considered effective by the Council.

Council may withdraw

19. The Council may withdraw a plot from a plot holder who contravenes or fails to comply with these By-laws and allocate it to another applicant on the waiting list.

Offence and penalties

20. Any person who contravenes or fails to comply with any provision of these By-laws commits an offence and on conviction shall be liable to a fine of K2,000 and in the case of continuing offence, to a fine of K200 for each day the offence continues after conviction and six months imprisonment or to both fine and imprisonment.

G.N. 15/2005

LOCAL GOVERNMENT (BLANTYRE CITY COUNCIL) (PEDDLERS) BY-LAWS

Citation

1. These By-laws may be cited as the Local Government (Blantyre City Council) (Peddlers) By-laws.

Application

2. These By-laws shall apply within the area of Jurisdiction of the Blantyre City Council.

Interpretation

3. In these By-laws unless the context otherwise requires—

"Council" means the Blantyre City Council;

"foodstuffs" means any meat, fish or poultry whether alive, or dead, cooked or fresh and include bakery products, vegetables and fruits;

"goods" include books, flowers, articles of indigenous art, woven mats, household furniture or equipment, carving or curios but does not include newspapers or periodical news publications;

"licence" means a licence to peddle goods or foodstuffs issued by the Council;

"peddler" means any person who goes from place to place selling or exposing for immediate delivery any goods or foodstuffs which he carries with him or on a tricycle or handcart and the word "peddle" has a corresponding meaning;

"public place" means any public way or building and includes any street footpath, sanitary or service lane, open space, market, car park or other place or area the public is entitled or permitted to have access, either with or without any condition of making any payment.

Peddlers to be licensed

4.—(1) No person shall carry on the business as a peddler unless has a peddler's licence issued by the Council.

(2) Any person granted licence under paragraph (1) shall peddle his goods or foodstuffs in accordance with the conditions set out in the licence.

(3) No person shall carry on the business of peddler within the areas specified in the First Schedule.

Duration and form of licence

5. Every licence shall be valid for the period stated therein and shall be in a form prescribed by the Council and may contain conditions regulating—

(*a*) the nature, type or class of goods or foodstuffs to which the licence applies;

(*b*) the particular part of the area within the Council in which the goods or foodstuffs may be peddled; and

(*c*) such conditions as the Council may direct as being necessary for the maintenance of public health and the prevention of spreading of infectious or contagious diseases.

Restriction to the number of licences and areas of validity

6. The Council may at any time by order made under these By-laws restrict the number of licences which may be issued—

(*a*) under these By-laws;

(*b*) in respect of any particular foodstuff or goods; or

(*c*) in respect of any part of the Council,

for such period as may be specified in the order.

Use of stalls counters. etc., prohibited

7.—(1) No peddler shall display or deposit any goods or foodstuffs on the ground, a stall, bench, counter, in a kiosk shelter or other structure for the purpose of sale or display.

(2) Every peddler shall move himself together with any tricycle, bicycle, handcart, tray, box, basket or other receptacle used for the conveyance or carriage of the goods or foodstuffs at least once in every thirty minutes for a distance of at least one hundred yards.

(3) Any person who fails to comply with this by-law commits an offence.

By-Laws not applicable to sale in authorized markets

8. These By-laws shall not apply to any person selling goods or foodstuffs in any authorized market established under any written law.

Fee for Licence

9. A person applying for a peddler's licence shall pay the fee specified in the Second Schedule attached hereto.

Licence not transferable, etc.

10.—(1) A person who obtains a licence under these By-laws shall not lend, transfer or assign the licence to another person.

(2) A person who lends, transfers or assigns his licence and a person who uses a licence granted to another person commits an offence.

(3) A peddler shall have his licence with him while carrying on his business as a peddler and shall produce it to an officer of the Council or to a police officer on demand.

(4) Any person who fails to comply with the provisions of paragraph (3) commits an offence.

Use of term "licensed peddler" restricted

11. A person who does not have a valid licence issued under these By-laws shall not use the words "licensed peddler" or any words importing or implying that he is authorized to be a peddler.

Cancellation withdraw, etc. of licence

12.—(1) The Council may refuse to issue or cancel a licence.

(2) Any person who contravenes these By-laws may have his licence cancelled by the Council and in the event of a second or subsequent conviction for an offence under these By-laws, the Council shall withdraw his licence.

Confiscation of foodstuffs

13. The Council may, where necessary, confiscate the foodstuffs of a peddler who contravenes or fails to comply with these By-laws and dispose them as it deems fit.

Offences and penalties

14. Any person who contravenes any provision of these By-laws or fails to comply with any conditions imposed by the Council commits an offence and on conviction shall be liable to a fine of K2,000 and in the case of a continuing offence a further fine of K200 for each day during which the offence continues after conviction thereof or to six months imprisonment or both such fine and imprisonment.

FIRST SCHEDULE by-law 4 (3)

1. Peddler's licence is not valid for trading within the following areas—
   (*a*) 100 metres, in all directions, of the boundary of Blantyre Market:
   (*b*) 300 metres, in all directions, of the boundary of Limbe Market;
   (*c*) 300 metres, in all directions, of the boundary of Soche Market;
   (*d*) 300 metres, in all directions, of the boundary of Ndirande Market;
   (e) 300 metres of the Telephone Exchange at Ginnery Corner;
   (*f*) 300 metres radius of any site where one or more foodstalls have been erected by the Council;
   (*g*) 300 metres radius of the junction of Chipembere Highway with Kasungu, Crescent;
   (*h*) 300 metres radius of the Clock Tower situated at the junction of Chipembere Highway and Chileka Road; and
   (*i*) 300 metres, in all directions of the boundary of the Shire Highlands Hotel, Limbe.
2. The peddling of fruits and vegetables is prohibited in the following areas—
   (*a*) Victoria Avenue, Blantyre, from Mount Soche Hotel to the Town Hall;
   (*b*) Independence Drive, Blantyre, from Victoria Avenue to the District Commissioner's Office;
   (*c*) Churchill Road, Limbe, from the offices of Imperial Tobacco Group (ITG) to Partridge Avenue; and
   (*d*) within 20 metres of any of the above roads on any land, side road, lane or path.

3. The peddling of the following goods is totally prohibited within the area of the Council—
   (*a*) fresh meat;
   (*b*) fresh fish;
   (*c*) dressed poultry; and
   (*d*) any cooked or otherwise prepared or processed foodstuffs which has not been cooked, prepared or processed in premises licensed for such purpose by the Council.

SECOND SCHEDULE by-law 9

LICENCE FEES

	K t
Peddler's licence	168 75

LOCAL GOVERNMENT (BLANTYRE CITY COUNCIL) (GENERAL CLEANLINESS) (REFUSE AND RUBBLE DISPOSAL) BY-LAWS

G.N. 16/2003

Citation and application

1. These By-laws may be cited as the Local Government (Blantyre City Council) (General Cleanliness) (Refuse and Rubble Disposal) By-laws, and shall apply within the area of jurisdiction of Blantyre City Council (hereinafter referred to as the "Council").

Interpretation

2. In these By-laws unless the context otherwise requires—

"Health Officer" means a person appointed or designated as such under by-law 3;

"receptacle" means the approved refuse receptacle provided for the deposit of refuse and includes the lid of such receptacle and a sanitary plastic refuse bag;

"refuse" means garbage, tins, bottles, ashes and other sweepings, waste paper, and all other forms of non-liquid waste products from dwellings, offices, shops, warehouses or any other premises; but does not include rubble, liquid refuse, garden or stable refuse, grass, sand, tree toppings or hedges or waste products from factories or workshops;

"rubble" means all waste bricks, sand, earth, cement stone rock, pipes, and all such forms of non-liquid waste materials.

Health Officer

3. There shall be such number of Health Officers as the Council considers necessary appointed or designed to a Health Officer under these By-laws.

General cleanliness

4.—(1) Any person within the Council shall use receptacles, toilets or public convenience for sanitary purposes.

(2) No person shall defecate, urinate, spit, expectorate, blow nose, except when using a handkerchief or litter the streets anywhere in the Council other than in the sanitary, private or public conveniences mentioned above.

Owner to provide refuse receptacle

5.—(1) Every owner or occupier of premises shall provide and maintain for use at his premises at least one receptacle for depositing refuse.

(2) If in the opinion of a Health Officer it is necessary for more than one receptacle to be provided at any premises, he shall serve notice in Form 1 set out in the Schedule upon the owner or occupier of the premises requiring him to provide such number of the receptacles for reception of refuse as specified in the notice.

(3) Any owner or occupier of any premises upon whom a notice has been served under paragraph (2) shall within fourteen days of the service of the notice provide at his premises the required number of receptacles.

Approved type of receptacle

6.—(1) The approved type of receptacle is a cylindrical bin of galvanized iron or hard plastic about 450 mm in a diameter at the top, 350 mm at the bottom and 750 mm in height and which has a capacity of about 0.40 cubic metres and tight fitting lid which is capable of keeping out rain and persistent offensive odour and may include a sanitary plastic bag.

Deposition of refuse

7.—(1) Every occupier of premises shall cause all refuse from his premises to be deposited in his refuse receptacle and not elsewhere for collection by the Council's refuse collection service.

(2) No person shall place or cause to be placed in a receptacle any liquid or solid matter likely to cause injury to any person with whom it comes into contact.

(3) No person shall place in any receptacle any rubble, earth, grass, tree toppings and hedge, garden refuse, or stubble or matter or a thing, which is not refuse as defined in these By-laws.

Covering to refuse receptacle

8. Every occupier or premises shall—

(*a*) cause all receptacles thereon to be continuously covered with close fitting lid except when refuse is being deposited therein or discharged therefrom;

(*b*) except when the Council's refuse collection service is in attendance, cause any receptacle at his premises to be kept at a position approved by a Health Officer.

Refuse to remain that of occupier

9. Refuse deposited in a receptacle at any premises shall, until it is emptied by the Council's refuse collection service, remain that of the occupier of the premises.

Refuse receptacle to be kept clean

10. Every occupier of premises shall cause all receptacles and lids thereof upon his premises to be clean and to be maintained in satisfactory condition.

Prevention of fires

11. No person shall deposit or cause to be deposited in a receptacle an un-extinguished ashes or other material in a state that may cause fire.

Position of refuse receptacle for collection

12. The occupier of the premises shall ensure that a receptacle is placed at a convenient place or site for the Council's refuse collection services on such dates as are prescribed for collection of refuse in the area.

Refuse not to be deposited in a stream etc.

13. No person or organization shall deposit or cause to be deposited in a stream, river, or any water course or any public place—

(*a*) any refuse or rubble; or

(*b*) anything liquid or solid which is likely to be injurious to health.

Non-collection of refuse

14. No refuse shall be collected by Council's collection service unless it is deposited in an approved receptacle.

Removal of rubble

15.—(1) A Health Officer or any duly authorized officer of the Council may by notice in Form II set out in the Schedule require an owner or occupier of a plot, land or premises to remove or cause to be removed any rubble from such a plot, land or premises.

(2) Any owner or occupier of a plot, land or premises on whom a notice has been served under paragraph (1) shall within seven days of the service of the notice remove such rubble and cause it to be deposited or tipped at a place appointed for that purpose by the Council as specified in the notice and in a manner prescribed by the Council.

Deposit of rubble

16.—(1) No person shall deposit, tip or cause to be deposited or tipped any rubble in or upon—

(*a*) any street, public place, open space or vacant land;

(*b*) any plot, land or premises except with the written permission of the owner of such plot or land;

(*c*) any water course or reservoir; or

(*d*) any other place not appointed for that purpose by the Council.

(2) An officer of the Council may by notice in the Form set out in the Schedule, require a person who deposits or tips or causes to be deposited or tipped rubble on any plot, land or premises to produce to the Health Officer or any other officer duly appointed by the Council the written permission of the owner of plot, land or premises authorizing him to do so.

(3) A person on whom notice has been served under paragraph 2 shall within fourteen days of the service of the notice comply with the requirements of the notice.

(4) Any owner's permission given for the purpose of this by-law shall not in any way affect his own liability to comply with the requirement of notice served upon him under by-law 15.

Authority to enter

17. A Health Officer or any duly authorized officer may enter upon land or premises for purposes of ensuring that these By-laws are being complied with and no action shall lie against the Health Officer for anything done in the course of rendering his duties.

Offences and penalties

18. Any person who contravenes or fails to comply with any provision of these By-laws or who fails to comply with any notice or conditions imposed by the Council thereof commits an offence and on conviction shall be liable to a fine of K2,000, and in the case of a continuing offence, to a further fine of K200 for each day during which the offence continues after conviction thereof or to six months imprisonment or to both such fine and imprisonment.

Apprehension of suspects

19. For avoidance of doubt any employee of the Council or any member of the public who finds any person contravening by-law 4 may apprehend the same and bring him to a Police Officer or the Health Officer who shall take the person to police for prosecution.

BLANTYRE CITY COUNCIL

SCHEDULE I

FORM I

NOTICE TO REMOVE RUBBLE by-law 5 (1)

To: .....

of .....

WHEREAS you are the owner/occupier of plot number .....

situated on plot number ..... in the City of Blantyre and whereas rubble was found deposited on the said plot/premises.

You are hereby required within seven days of the service of this notice upon you to remove or cause to be removed from the said plot/premises and to deposit it at

.....

And further take notice if you fail to comply with this notice —

(*a*) The Council may remove the same and recover the costs from you thereby incurred by it.

(*b*) Such failure may render you to prosecution by the Council.

Made this ..... day of ..... 20.....

.....

Chief Executive

BLANTYRE CITY COUNCIL

SCHEDULE II

FORM I

NOTICE TO REMOVE RUBBLE by-law 5 (1)

To: .....

.....

Whereas you are the occupier of the premises situated on plot number.....

..... in the Blantyre City Council; and whereas in my opinion as Cleansing Officer, it is expedient for the proper regulation and control of refuse disposal from the said premises that more refuse receptacles be provided and whereas rubble was found deposited on the said plot/premises.

You are hereby required to provide ..... additional refuse receptacles within fourteen days of the service of this notice upon you.

And further take notice that failure to comply with this notice may render you liable to a fine and prosecution by the Council.

Made this ..... day of ..... 20.....

.....

Chief Executive

BLANTYRE CITY COUNCIL

SCHEDULE III

FORM I

NOTICE TO PRODUCE PERMISSION TO DEPOSIT RUBBLE by-law 5 (2)

To: .....

of .....

.....

Whereas you deposited rubble on plot number ..... premises situated at plot number ..... and whereas the Council has reason to believe that you are not owner of the said plot/premises:

You are hereby required within fourteen days of the service of this notice upon you to produce to the Health Officer the written permission of the owner of the said plot/premises authorizing you to deposit the said rubble at the said plot/premises.

And further take notice that your failure to comply with this notice may render you liable to prosecution by the Council.

Made this ..... day of ..... 20.....

.....

Chief Executive

LOCAL GOVERNMENT (BLANTYRE CITY COUNCIL) (TRADE AND BUSINESS) BY-LAWS

G.N. 17/2003

under s. 103

Citation

1. These By-laws may be cited as the Local Government (Blantyre City Council) (Trade and Business) By-laws, and shall apply within the area of jurisdiction of the Blantyre City Council (hereinafter referred to as the "Council").

Interpretation

2. In these By-laws unless the context otherwise requires—

"Licensing Officer" means the Chief Executive or any other officer of the Council duly authorized by the Council;

"trade licence" means a licence issued under to by-law 3;

"trade" means a skill for production;

"premises" means any land, with or without buildings thereon, or part of any such land or part of any building, within the area, being used by any person for the purpose of engaging in or pursuing, for gain or reward, any trade specified in the First Schedule, and includes any motor vehicles or other mobile unit being so used by any such person.

Trade licence

3.—(1) No person shall, for gain or reward, engage in or pursue, or hold himself out as engaging in or pursuing, within the Area, any of the trades specified in the First Schedule hereto unless he is the holder of a current valid trade licence authorizing him to do so.

(2) Every trade licence shall be in the form set out in the Third Schedule hereto.

Application for trade licence

4. Every application for a trade licence shall be made to a licensing officer, in writing and shall be accompanied with the prescribed fee specified, in relation to the relevant trade in the Second Schedule hereto.

Renewals

5. Every holder of a trade licence shall renew his licence annually upon payment of the prescribed fee in the Second Schedule hereto.

Licence not transferable

6. A licence holder shall not transfer his trade licence to any other person.

Showing of trade permit

7. The owner of the premises shall show his trade licence to the Health Officer or other duly authorized officer of the Council upon request.

Sanitation

8. Any holder of a trade licence shall at all times maintain in a clean and sanitary condition the premises where his licensed trade is being carried out.

Council may withdraw items

9. The Council may withdraw a licence from any holder of a trade licence who contravenes any of the conditions of the licence.

Council may confiscate items

10. The Council may confiscate any items being sold in contravention of these By-laws.

Offence

11. Any person who contravenes or fails to comply with any of the provisions of these By-laws commits an offence.

Penalty

12. Any person who contravenes these By-laws shall on conviction be liable to a fine of K2,000 and to six months imprisonment and in case of a continuing offence to a further fine not exceeding K200 for each day during which the offence continues after conviction.

FIRST SCHEDULE by-law 3 (3)

TRADE REQUIRING TRADE LICENCE

Basket maker
Blacksmith
Bicycle repairer
Carpenter
Charcoal sell
Curio maker
Firewood seller
Launderer
Mat maker
Miller
Mortal maker
Plumber
Photographer
Radio repairer
Shoe cleaner
Tailor
Tinsmith
Tyre puncture repairer
Watch repairer

SECOND SCHEDULE by-law 4

Occupation	*Fees per annum* K	t
Baskets maker	101	25
Battery charger	506	25
Blacksmith	130	50
Brick layer	832	50
Charcoal seller	168	75
Carpenter	525	00
Filling station, per pump (paraffin)	615	00

Local Government (*Blantyre City Council*) (*Trade and Business*) *By-laws* **[Subsidiary]**

Occupation	*Fees per annum* K t
Filling station, per pump (petrol and diesel)	353 25
Firewood seller	202 50
Garage (small scale)	877 50
Lamp repairer	168 75
Launderer	832 50
Maize seller	525 00
Mat maker	168 75
Mechanical electrician	353 25
Miller	495 00
Mortal maker	168 75
Mortar maker	877 50
Painter	506 25
Panel Beater and Welder	877 50
Peddlers mouth	165 75
Photographer	495 00
Plumber	877 50
Radio repairer	170 00
Rubber stamp maker	600 00
Shoe cleaner	168 75
Shoe repairer	168 75
Soft drinks/confectionery etc.	168 75
Tailor	168 75
Tinsmith	168 75
Trimmer	52 00
Tyre puncture repairer	168 75
Watch repairer	168 75
Amusement Machines	
Duplication/Replacements	168 75
Due boxes	506 25
Operational licence/renewal per machine	1,029 00
Registration	71 25
Video and cinema shows	1,029 00

THIRD SCHEDULE

Application for a Trading Licence

(To be filled in triplicate. White for Health, Yellow for Town Planning and Blue for Secretariat).

Issued under Blantyre City Assembly (Trade and Business) By-Laws

Part A

I, (name in full) .....
of (address) .....
Hereby apply for issue/renewal of (state type of business) .....
..... (refer to schedule overleaf) on Plot No. .....
..... situated at (state area) ..... on (road, Street, etc.) ..... for the year ending on.....
Signed ..... Date.....

Part B

Inspection Report

1. Town Planning Officer's findings and recommendations .....
   .....
   .....
   .....
   Name ..... Date .....
2. Health Officer's findings and recommendations .....
   .....
   .....
   .....
   Name ..... Date .....

Part C

Minute No .....
Dated .....
Licence No .....
Dated .....
Fee Paid .....
Dated .....
Licence expires on .....

.....
Licensing Officer

LOCAL GOVERNMENT (BLANTYRE CITY COUNCIL) (LIQUOR) BY-LAWS

G.N. 18/2003

under s. 103

Citation and application

1. These By-laws may be cited as the Local Government (Blantyre City Council) (Liquor) By-laws, and shall apply within the area of jurisdiction of Blantyre City Council (hereinafter referred to as the "Council").

Procedure on application for licence

Cap. 50:07

2.—(1) Any person who desires to sell liquor by retail sale shall apply to the Licensing Officer for a retail licence.

(2) Subject to section 68 of the Liquor Act, the licensing officer shall, after receipt of the application fee, issue to the applicant a licence in the form prescribed in Part C of the First Schedule authorizing the applicant to sell liquor by retail at such place and on such days as shall be specified therein.

Premises licence

3.—(1) Any owner or lessee of premises who desires to sell liquor by retail on his premises shall apply to the licensing officer for a premises licence.

(2) Application for a premises licence shall be made at least sixty days before the date upon which the applicant desires the licence to be issued.

Cap. 50:07

(3) Subject to section 65 of the Liquor Act, the licensing officer shall, after receipt of the appropriate fee, issue to the applicant a licence in the form prescribed in Part C of the Third Schedule authorizing the applicant to sell liquor by retail sale on the premises specified therein.

(4) Application for the renewal of a premises licence may be made by the holder to a licensing officer sixty days before the beginning of the Council's financial year.

(5) The Council shall immediately close and seal off any premises, where liquor is being sold whose owner does not have a valid premises licence.

Fees for licence

4. The fee payable for the issue of a licence shall be the fee prescribed in the Second Schedule hereto for the licence concerned.

Permitted hours

5. The permitted hours for the sell of liquor shall be as prescribed in the First Schedule.

Supply to or sell by young persons prohibited

6.—(1) No person shall supply liquor to any person who is or appears to be under the age of eighteen years.

(2) Any person under the age of eighteen years shall not sell liquor.

Supply of liquor

7. The licensee shall supply liquor to a purchaser only in exchange of money actually received before or at the time of supply of the liquor.

Provisions as to quality and hygiene

8.—(1) The licensee shall ensure that all liquor sold under the authority of the licence is sound and wholesome and is sold only in sealed containers.

(2) The holder of a premises shall—

(*a*) maintain the premises concerned and the furniture therein in a clean and sanitary condition and in good repair in accordance with requirements within the Council; and

(*b*) provide at least one separate toilet for use of each sex.

Licence not transferable etc.

9. The licensee shall not transfer his licence to another person and shall not permit any person to sell liquor on his behalf unless such person is the holder of, and has authority to do so under, and in possession of a licence.

Display of place permit

10. The licensee shall display the permit in a conspicuous place inside the premises to which it relates where the permit can be easily seen by persons entering the premises therein.

Weapons prohibited where liquor is being sold

11.—(1) The licensee shall ensure that no person who is in possession of a weapon or any instrument capable of being used to inflict bodily harm enters or remains in any place or premises where liquor is being sold.

(2) The licensee shall not suffer or permit a person to enter or remain in the place or premises to which the licensee relates while liquor is being sold if such person is in possession of any such weapon or instrument.

(3) This by-law shall not apply to any police officer or to any security personnel who is on duty.

Power of licensing officer and authorized person

12. A licensing officer, and any person duly authorized in writing by the Council, may at any time when liquor is being supplied enter or remain in any place or premises in order to ascertain whether the provision of the Act and of these By-laws are being, complied with and, in particular may inspect such place or premises, and any article used in connexion with such supply, and may require the production for examination any relevant permit.

Confiscation and destruction of liquor

13.—(1) Where a person contravenes or fails to comply with these By-laws, the Council may confiscate the liquor and destroy it instantly.

(2) If any person continues contravening by-law 8, the Council shall withdraw the licence.

Withdraw of licence

14. Where a person contravenes or fails to comply with these By-laws, the Council may withdraw his licence and close the premises instantly.

Offences and penalties

15. Any person who contravenes or fails to comply with any provision of these By-laws or who fails to comply with any notice or conditions imposed by the Council thereof commits an offence and on conviction shall be liable to a fine of K2,000, and in the case of a continuing offence, to a further fine of K200 for each day during which the offence continues after conviction thereof or to six months imprisonment or to both such fine and imprisonment.

FIRST SCHEDULE

Permitted Hours for Sales Licences

A.	*Wholesale Licence*		
	(1)	Wholesale Licence	No restriction
	(2)	Agent's Licence	7.00 a.m. to 6.30 p.m.
	1.	*Retail Licence*	
	(*a*)	Grade A (Bar)	8.00 a.m. to 12.00 midnight
	(*b*)	Grade B (off-licence business)	7.30 a.m. to 8.00 p.m.
	(*c*)	Grade C (Hotel) Sales to persons not lodging on the premises	8.00 a.m. to 12.00 midnight, otherwise no restrictions.
	(*d*)	Grade D (Restaurant)	Sales to persons consuming meals, no restrictions.
	(*e*)	Grade F (Club)	Sales to members only, no restrictions.
	(*f*)	Grade H (Limited off-licence)	7.30 a.m. to 10.00 p.m.
	(*g*)	Grade F (Cabaret)	Liquor sold from 5.00 p.m. to 30 minutes after last show.
	(*h*)	Grade G (Cinema and Theatre)	Sales permitted up to 30 minutes before and after the show.
	(*i*)	Grade H (Limited off-licence)	7.30 a.m. to 9.00 p.m
	(*j*)	Grade I (National Parks or Game Reserve)	No restrictions.

2. *Travel and Transit Licences*
   (*a*) Grade "TA" Airport and Air Terminal: No restrictions.
   (*b*) Grade "TB" Bus Terminal: 8.30 a.m. to 12.00 midnight.
   (*c*) Grade "TR" Railway Station or Railway Terminals: 8.00 a.m. to 12.00 midnight.
   (*d*) Grade TAV" flights—
      (i) while in flight: No restrictions;
      (ii) while not in flight: No sales permitted.
   (*e*) Grade "TRY" (Railway Restaurant Car): No restrictions.

B. *Temporary Sales Licence*
   (1) Auctioneer's Temporary Licence: 8.00 a.m. to 8.00 p.m.
   (2) Occassional Licence: As stated in the licence.

SECOND SCHEDULE

Fee Payable

Class of Licences	*Amount* K t
1. Grade "A" Bar	2,000 00
2. Grade "B" Retail Shops	1,500 00
3. Grade "C" Hotels	2,500 00
4. Grade "D" Restaurants	1,000 00
5. Grade "E" Club	1,500 00
6. Grade "F" Cabarets	750 00
7. Grade "G" Theatres	500 00
8. Grade "H" Bottle stores	1,000 00
9. Grade "I" Air Terminals	2,500 00
10. Grade "J" Railways and Bus Stations	1,000 00
11. Grade "K" Liquor Manufacturing	3,000 00
12. Grade "L" Liquor- Wholesale	2,000 00
13. Grade "M" Liquor Wholesale	1,300 00

THIRD SCHEDULE

Application for a Liquor Licence

To be filled quadruplicate, white for Health, yellow for Town Planning, blue for Police and pink for Secretariat.

Issued under the Liquor Act, (Cap. 57:07) and Blantyre City Council By-laws.

Premises Permit

Part A

I, (names) ..... of (address) .....
..... Trading as .....
On plot No ..... Street ..... Area .....
..... do hereby apply for Grade ..... Liquor Licence
(see schedule overleaf)

Part B

1. Health Officer's Findings and Recommendations

.....

.....

.....

Name: ..... Date: .....

LOCAL GOVERNMENT (BLANTYRE CITY COUNCIL) (MARKET) BY-LAWS

G.N. 19/2003

Citation and application

1. These By-laws may be cited as the Local Government (Blantyre City Council) (Market) By-laws, and shall apply within the area of jurisdiction of the Blantyre City Council (hereinafter referred to as the "Council").

Interpretation

2. In these By-laws unless the context otherwise requires—

"animal" bears the meaning ascribed to that term by section 2 of the Control and Diseases of Animal Act; Cap. 66:02

"goods" includes any fish, animals, produce, meat, provisions, merchandise and wares;

"infectious disease" means any disease which can be communicated directly or indirectly by any person or animal;

"market master" means the person appointed by the Council to be responsible for the management and control of a public market and for the maintenance of proper sanitary practices therein;

"markets superintendent" means the person appointed by the Council to have general supervision of all public markets;

"private market" means a market other than a public market;

"public market" means a market specified in the First Schedule;

"sell" includes barter, exchange, offer to sell, expose for sale and make any other disposition for money or money's worth and any cognate expression shall bear a corresponding meaning;

"Chief Executive" means the person for the time being performing the duties of Chief Executive in and for the Blantyre City Council under section 11 of the Act.

Establishment of markets

3. No person shall establish a private market or engage in street vending within the Council unless he has first obtained the written permission from the Council.

Market fees payable

4.—(1) No person shall sell any goods of any description in a public market unless he has paid the appropriate fees set out in the Second Schedule.

(2) No person shall, in any public market, engage in or carry on any occupation specified in the Second Schedule unless he has paid the appropriate fees specified in the schedule.

(3) Where a person does not pay the appropriate fees the Council may demand 100 per cent surcharge of the appropriate fees payable.

Hours of opening

5.—(1) Public markets shall be opened on such days and during such hours as the Council shall, from time to time, determine.

(2) No person shall sell any goods in a public market other than during such hours of opening as determined by the Council under paragraph (1) .

(3) No person shall enter or remain in any public market without the authority of the Markets Superintendent or the Market Master of such market during any time when it is closed:

Provided that Councillors, officers and employees of the Council may do so whilst engaged on Council duty.

(4) The Council may evict any person from a public market found selling goods contrary to paragraphs (2) and (3).

Restriction on sales

6.—(1) Except in such public markets, or parts thereof as of the Council shall specifically provide and allocate for the sale of goods by wholesale, all sales of goods in any public market shall be by retail.

(2) No person shall sell the following goods in any market—

(*a*) any firearms or ammunition as defined in the Firearms Act; Cap. 14:06

(*b*) any explosives as defined in the Explosives Act; and Cap. 14:09

(*c*) any petroleum or other inflammable liquids as defined in the Liquid Fuels and Gas (Production and Supply) Act. Cap. 50:03

(3) The Council shall have power by order to prohibit the sale in any public market of any specific type of goods, and in particular, to prohibit the sale of any specific item or items of food or produce in any public market in which reasonably adequate facilities are not available for the protection of such food or produce from contamination or deterioration.

Use of stalls

7.—(1) In any public market where stalls and shops have been provided, each stall or shop shall be numbered and the Council may let or hire out such stalls and shops upon such terms and conditions as it deems fit and upon payment of the fees specified in the Second Schedule.

(2) No person shall use any stall or shop for carrying on two or more different classes of business at any time or under the same permit or tenancy:

Provided that the Council may at its sole discretion permit the use of any shops in a public market for the sale of such general produce or goods as shall be specified in writing by the Council at the time of granting of any such permit or tenancy.

(3) A stall holder or shop tenant shall not transfer or sub-let his stall or shop or part with its possession thereof.

(4) The Council may terminate a tenancy agreement with any person who does not comply with the provisions of paragraphs (2) and (3) of this by-law.

Control of fires and cooking

8.—(1) No person shall light any open fire in any public market.

(2) No person shall carry out or permit to be carried out on or in any public market any cooking or any preparation of any cooked food for sale except in such places, rooms or areas and subject to such conditions as the Council shall prescribe.

Produce to be cleaned or prepared

9. No person shall wash, clean, or prepare for sale any vegetables, meat, animal, fish, fruit or other produce in a public market otherwise than in specified areas in such basins, sinks or

other receptacles as may be provided by the Council for the particular purpose in question.

Employment of diseased persons

10. No person suffering from any infectious disease shall be employed or engaged in or enter any public market:

Provided that it shall be a defence for a person charged with contravening this by-law if he proves that he did not know or suspect, and had no reasonable means of knowing or suspecting that he was suffering from an infectious disease.

Offences

11. Any person who in a public market—

(*a*) commits any nuisance or expectorates;

(*b*) peddles any goods;

(*c*) sells any goods other than from an authorized stall, selling space, shop, kiosk or other place approved by the Council;

(*d*) wilfully or negligently prevents, obstructs, hinders or interrupts the free passage of another person into, out of or within any public market;

(*e*) causes any disturbance by quarrelling with another person within sight or hearing of another person within any public market, or interferes with or molests such other person;

(*f*) uses an offensive or obscene language or make excessive noise to the annoyance or irritation of another person;

(*g*) deposits or throws on the floor or ground any refuse, or any waste or offensive offal, fruit or vegetable substance or matter;

(*h*) damages, defaces, fouls, misuses or interferes with part of a public market or any equipment, fitting or fixtures therein; or

(*i*) plays any game, gambles or takes any bets in any public market,

commits an offence.

Sale of unwholesome food

12.—(1) No person shall sell, in any public market any article of food which is diseased, tainted, unwholesome or otherwise unfit for human consumption.

(2) The Markets Superintendent, or any market master shall detain and take possession of any food which is suspected of being diseased, tainted, unwholesome or otherwise unfit for human consumption and which is offered or exposed for sale in a public market and shall hand over such food to the Medical Officer of Health, or a Veterinary Officer, or a Health Officer, or a Police Officer, or above the rank of Sub-Inspector to whom he shall immediately report that he has detained such food.

(3) No compensation shall be payable by the Council in respect of any food which is detained in accordance with paragraph (2) and which has been found by the Medical Officer of Health, or a Veterinary Officer or a Health Inspector to be diseased, unwholesome or otherwise unfit for human consumption.

(4) The Markets Superintendent or market master shall destroy any food impounded under paragraph (2) which has been found unwholesome or unfit for human consumption under paragraph (3).

Obstruction of pathways prohibited

13. No person shall—

(*a*) exhibit goods for sale on the roadways, pathways, stairways, or passages, or over any drain; or

(*b*) leave a board, box, basket, tin, sack, or other container over or upon such roadway, stairway, passage or drain,

within the precincts of a public market.

Erection of stalls and other structures in public markets

14.—(1) Subject to paragraph (2) no person shall erect, place or construct any kiosk, shed, counter, stall or other structure of any kind in, or within the precincts of a public market in which permanent structures are provided.

(2)—(*a*) Where permanent structures are not provided in a public market, the Council may allow a vendor to construct a kiosk or other structure to the specifications of the Council;

(*b*) the vendor shall pay the appropriate fee specified in the Second Schedule hereto for the use of such kiosk or other structures.

Livestock prohibited in public markets

15. No person shall bring an animal or bird, other than a domestic fowl, into a public market, or part thereof, which has not been set aside of the sale of such animal or bird.

Use of stalls weights and measures

16. Every shopkeeper or stall holder within a public market shall—

(*a*) keep his stall or shop and all fittings and utensils therein or thereon thoroughly clean and in good order to the satisfaction of Market Master; and

(*b*) dispose of all refuse, sweepings, garbage, offal and waste liquid or solid, from his stall or shop into the receptacles, channels or drains provided for that purpose; and

(*c*) when selling by weight or measure, use the prescribed standard weights and measures, provide and maintain scales and measures at his own expense.

Compliance with directions

17. All persons within the precincts of any public market shall comply with all reasonable directions given by the Markets Superintendent or a market master.

Separate areas for specified foods or goods

18. The Council may set aside, allocate or provide parts of a public market for the sale therein of such type of goods as specified only and no goods of any other type shall be sold in any such part.

Fees and rent for the use of markets stalls, shops etc.

19.—(1) Any person in a public market, using a stall, shop, room or place therein for the purpose of selling any goods shall pay to the Council such charges, rents and fees as set out in the Second Schedule.

(2) Every person shall pay a charge, fee or rent payable under paragraph (1) to the Council in advance and no person shall sell any goods of any description in a public market unless he has paid the appropriate charge, fee or rent.

(3) Where a person fails or refuses to pay the requisite charge, fee or rent, the Markets Superintendent or a market master shall have power to impound such goods, articles or produce in a public market, and which shall be disposed of as if they were unclaimed or abandoned in a public market under the provisions of by-law 21.

Display of By-laws, market fees and rent

20. The Council shall display and keep displayed at every public market a copy of these By-laws in both English and Chichewa languages and a list showing market fees, charges and rents charged therein.

Storage of goods

21.—(1) Except with the prior written permission of the Council, no person shall leave any goods in a public market during any period when the market is closed to the public:

Provided that the grant of any such permission shall not render the Council liable for any loss of such goods from any cause whatsoever.

(2) No compensation shall be payable by the Council in respect of any loss of or damage to any goods left in a public market contrary to the provision of paragraph (1).

(3) Where goods are—

(*a*) impounded, left unclaimed or abandoned in any place in a public market for a period exceeding seven days or, in case of perishable goods, for more than one day; or

(*b*) left unclaimed or abandoned in a general store room of a public market for a period exceeding twenty-one days or, in case of perishable goods, for more than one day, the Council shall

have power to dispose of such goods by auction sale or otherwise as the Council may determine.

Use of authorized entrances

22. A person entering or attempting to enter any public market for the purpose of selling any goods shall enter through such an entrance as specified for that purpose by Council.

Behaviour

23.—(1) Any person who is found contravening, or who is reasonably suspected of having contravened any of these By-laws shall be liable to eviction from a public market by the Markets Superintendent, a market master or by any police officer who are hereby authorized to take such action.

(2) Any person who has been convicted on two or more occasions of any offence under these By-laws shall not be admitted to any public market for the purposes of selling goods or produce by the Chief Executive and Markets Superintendent shall maintain a register of all such persons.

(3) No person who having been lawfully evicted from a public market or having been refused admittance thereto under paragraph (2) shall enter or attempt to enter any public for the purpose of selling any goods or produce.

Offences and penalties

24. Any person who contravenes or fails to comply with any provision of these By-laws commits an offence and on conviction shall be liable to a fine of K2,000, and in the case of a continuing offence to a further fine of K200 for each day during which the offence continues after conviction thereof or to six months imprisonment or both such fine and imprisonment.

FIRST SCHEDULE

Public Markets

Bangwe Market
Blantyre Market
Chigumula Market
Chirimba Market
Likhubula Market
Limbe Market
Kachere Market
Manase Market
Misesa Market
Mpingwe Market
Mulunguzi Market (Chilomoni Market)
Musa Magasa Market
Ndirande Market
Nkolokoti Market

Safarao Market (Ndirande Market)
Soche Market
South Lunzu Market
Thawale Market (Zingwangwa Market)
Zambia Market (Ndirande Market B)

SECOND SCHEDULE

PART I

Market Fees

1 *Market fees*	*Per day* K	t
Baskets/furniture	10	00
Cassava, sugarcane	10	00
Charcoal/wood	10	00
Clothing	12	00
Curios	10	00
Flour	10	00
Fish, dry	10	00
Fish, fresh	12	00
Fruits and vegetables	10	00
Goat, pig, sheep, per head	12	00
Groceries	12	00
Hardware	12	00
Medicines	10	00
Miscellaneous	10	00
Newspapers/second hand books	12	00
Poultry (live each)	2	00
Radio repair	10	00
Shoe repair	10	00
Scrap metal products	12	00
Tins	10	00
Tobacco	10	00
Wood	10	00

PART II

Storage fees

Bananas, per head	12	00
Cold room, per carcass, per night	12	00
Goods	12	00

Delivery of goods	*Per day* K	t
Bananas, fruits, sugarcane, wood—		
(i) 1 up to 4 tonnes	100	00
(ii) 5 to 7 tonnes and above	500	00
Fresh fish, per crate	12	00
Poultry	2	00
Tins, baskets, furniture	10	00
Other commodities, per bag	10	00

PART III
RENT

For the use of buildings—		
(*a*) Butcheries—Blantyre	1,125	00
Butcheries—Limbe	1,200	00
(*b*) Shops—Blantyre	570	00
Shops—Limbe (26-50)	600	00
Shops—Limbe (1-13)	825	00
Shops—Limbe (14-25, 55 and 56 (restaurants)	1,800	00
Lock up shops—Soche	240	00
Shops—Soche	1,255	00
Bar—Soche	1,800	00
Industrial Units		
Butcheries, Ndirande Market	733	50
Curios shops, PTC Blantyre	596	25
Food stall Ginnery Corner	596	25
Grain and Milling shop	596	25
Hairdressers, Blantyre	360	00
Hairdressers, Limbe	450	00
Offices/shops, Blantyre	472	50
Office, Limbe Bus Depot	1,200	50
Restaurant, Blantyre	1,200	00
Shops	596	25
Shops, Chilomoni	360	00
Shops, Queen Elizabeth Hospital	596	00
Bangwe Workshop	1,800	00
Kiosks		
Wenela	150	00
Blantyre Bus Stands	150	00
Blantyre Netting	150	00
David Whitehead	150	00
Queens Central Kiosk	150	00

G.N. 20/2003

LOCAL GOVERNMENT (BLANTYRE CITY COUNCIL) (PUBLIC AND PRIVATE CEMETERIES) BY-LAWS

Citation and application

1. These By-laws may be cited as the Local Government (Blantyre City Council) (Public and Private Cemeteries) By-laws, and shall apply within the area of jurisdiction of the Blantyre City Council (hereinafter referred to as the "Council").

Interpretation

2. In these By-laws unless the context otherwise requires—

"body" means a dead body of a human being;

"burial" means a burial in earth, interment or any other form of sepulchre;

"class 'A' public cemetery" means a public cemetery in the First Schedule of these By-laws;

"class 'B' public cemetery" means a public cemetery in the Second Schedule of these By-laws;

"grave space" means a plot of ground measuring 2.75 metres long and not less than 1.8 metres wide set apart for burial of one body or more bodies;

"private cemetery" means any cemetery established by a religious denomination and which has been declared to be cemetery in terms of section 114 of the Public Health Act;

Cap. 34:01

"public cemetery" means any cemetery established and maintained by the Council under section 75 of the Act and which has been declared to be a cemetery in terms of section 114 of the Public Health Act.

Cap. 34:01

Establishment of private cemeteries

3. No person shall establish a private cemetery unless he has first obtained a written permission from the Council and the Council has the right to impose any conditions regarding the location and use of the cemetery as it deems fit.

Portions of public cemeteries and each to be designated for various religious denominations

4. In every public cemetery the Council may designate portions for exclusive use by certain religious denominations each portion shall in so far as religious ceremonies connected with the burial of the dead are concerned be under the control of the religious denominations concerned subject to compliance with these By-laws and with terms of a burial permit, if any, issued under by-law 5 of these By-laws.

Burial permit required for class "A" or "B" public cemeteries

5.—(1) No person shall cause any burial to take place in any class "A" or "B" public cemetery without written permission from the Chief Executive or his duty authorized representative, or otherwise than in strict conformity with the terms of such permission which shall prescribe the position of the grave to be used for the burial.

(2) For the purpose of this by-law the Chief Executive or his authorized representative, shall have custody of a plan of every Class "A" and "B" public cemetery on which all grave spaces shall be marked and numbered and the permit shall prescribe the position of the grave by quoting the number of the grave space as shown on the plan.

Request for the Council to dig a grave

6.—(1) A person may request the Council to dig a grave in any cemetery whether private or public:

Provided that where the Council is requested to dig a grave, the request to that effect, shall be made to the Council at least twenty-four hours before the intended time for burial.

(2) The person who requests the Council to dig a grave shall pay the fees prescribed in the Fifth Schedule hereto.

Reservation of grave spaces

7.—(1) The Council may, at its discretion and upon payment of the fees prescribed in the Fifth Schedule hereto grant any person the right to reservation and use of a grave space as a private grave space in any Class "A" public cemetery.

(2) Any person who wishes to reserve a grave space under paragraph (1) of this by-law shall make an application in writing to the Chief Executive and upon payment of the prescribed fees, such a grave space shall be reserved and held for use by such a person:

Provided that no such grave space may be reserved for a longer period than five years from the date of the payment of the prescribed fee.

(3) No person shall sell, transfer or assign to any other person his right to the use of any private grave space granted under paragraph (1) of this by-law without the prior written consent of the Council.

Cancellation of reservation of grave space

8. A person who reserves a private grave space under by-law 7 hereto may relinquish his right to such a grave space by notifying the Chief Executive in writing of his intention to do so, and upon production of the original receipt of the fee paid for the reservation of the grave space he may obtain a refund of one-fifth of the fee for each un-expired year of the ordinal grant of five years.

Register of grave space in class "A" public cemeteries

9.—(1) The Chief Executive shall keep and maintain a register in the form specified in the Fourth Schedule of these By-laws in respect of every grave in every Class "A" public cemetery.

(2) The Chief Executive shall keep and maintain a record of every grave space.

Digging of graves

10. A person digging a grave shall ensure that the grave is dug only in the regular line of excavation and as near as may be possible in the middle of the grave space.

Depth of graves

11.—(1) Any person digging a grave in a private or public cemetery shall ensure that the grave is of a perpendicular depth of not less than 1.8 metres throughout its entire area:

Provided that a grave intended for the burial of a body of a child of 6 years or under shall be of a perpendicular depth of not less than 4 feet 6 inches throughout its entire area.

(2) Where more than one body are intended to be buried in one grave, the person digging such a grave shall ensure that the grave is of a perpendicular depth of not less than 7 feet 6 inches throughout its entire area.

Number of bodies in a grave and manner of burial

12.—(1) No person shall cause more than two bodies to be buried in one grave in any public or private cemetery, except with the special permission of the Council.

(2) No person shall cause a body or coffin, as the case may be, to be buried in any grave in such manner as to cause the top of the body or coffin to be at the depth of less than 3 feet 6 inches below normal ground level.

(3) Where two bodies or coffins, as the case may be, are buried in any one grave with permission of the Council, the second body or coffin shall be effectively separated from the other body or coffin in the grave by means of a layer of earth at least 0.3 m.

Filling of graves

13. Any person responsible for a burial shall ensure that immediately after the burial has taken place in any private or public cemetery, the grave is filled with earth to a height of not less than one foot.

Fees

14.—(1) The fees payable under these By-laws shall be exclusive of any additional costs or charges which the Council may, in its discretion, fix or levy in respect of other services such as the supply of a coffin or the use of a hearse.

(2) Notwithstanding paragraph (1) of this by-law the Council may, at its discretion, permit the burial of any body free of charge in a grave space in any public cemetery.

Hours of opening of public cemetery

15. Every public cemetery shall be open to the public between the hours of 6.00 a.m. and 6.00 p.m. every day and no person shall enter or remain in any public cemetery except during such hours of opening.

Unaccompanied child prohibited in cemeteries

16. No child of under 12 years of age may enter any private or public cemetery unless under the charge of a responsible person of not less than 18 years of age.

Erection of deposition of tombstone

17.—(1) No person shall erect or deposit in any public cemetery any tombstone, curb or other structure of whatever description without prior written permission of the Chief Executive or otherwise than in strict compliance with the terms of such permission.

(2) If any tombstone or other structure is erected in contravention of paragraph (1) of this by-law, or if any tombstone, curb or other structure is displaced, dilapidated, ruined or unsafe, the Council may order that the same be removed, replaced or repaired and any expenses thereby incurred may be recovered from the estate or next of kin of the deceased person.

Maintenance of graves, tombstones

18. The Council shall not be held liable for the care, or custody or maintenance of any grave space or of any tombstones, monument or other structure erected on any grave in any cemetery:

Provided that the Council may, where a grave has, in its opinion, become unsightly by reason of overgrown vegetation, carry out any necessary clearance work and recover the cost thereof from the estate or next of kin of the deceased person.

Detention of straying animals

19. Any animal found straying in any cemetery may be or removed and detained by an authorized officer of the Council and the owner of such animal shall be liable to repay any costs incurred by the Council by reason of such detention and removal.

Prohibited Acts in public cemeteries

20. A person shall not in any public cemetery—

(*a*) trespass upon any grave except for the purposes of placing flowers upon or otherwise tending such grave;

(*b*) enter or leave the cemetery except by proper entrance gates;

(*c*) commit any nuisance;

(*d*) bring into, or allow any dog, cat, fowl or any domestic animal or bird in his charge or control to be in or to wander inside the cemetery;

(*e*) injure, pluck, uproot or remove any flower, plant, shrub or tree;

(*f*) mark, deface or damage any tombstone, monument, railing, chain, decoration, ornament, structure or other improvement;

(*g*) create a disturbance or otherwise behave in an unseemly, indecent or irreverent manner;

(*h*) erect or place any advertisement or sign board or solicit any business order or exhibit, distribute or leave any tract, pamphlet or business card or sale of any road or path for the conveyance or sale of any goods or materials except such as are intended for use in a such a cemetery;

(*i*) hold or take part in any demonstration;

(*j*) willfully obstruct or impede any person employed by or on behalf of the Council in the performance of his duties.

Offence and penalties

21. Any person who contravenes or fails to comply with any provisions of these By-laws commits an offence and on conviction shall be liable to a fine of K2,000, and in the case of continuing offence, to a further fine of K200 for each day the offence continues after conviction and to imprisonment for six months or both such fine and imprisonment.

FIRST SCHEDULE

Class "A" Public Cemeteries

Blantyre:

All that area of land comprising 2.522 acres, and known as Plot No. TP. 434/44 situated off Chileka Road to the west of Kapeni College which said plot is bordered on the north-west by the Likhubula Stream, on the north-east by Plot No. TP. 434/46, on the south-east by Plot No. TP 434/45 (which is C.C.A.P. Private Cemetery as described in the Third Schedule) and on the south-west by Plot No. TP. 434.

Limbe:

All that area of land comprising 3.000 acres and known as Plot E. 5D, situated on the Thyolo Road, which said plot is bordered on the east by the Thyolo Road, on the South by Plot No. E. 5C/2 and on the west and north by the Imperial Tobacco Group Forest.

SECOND SCHEDULE

Class "B" Cemeteries

Bangwe:

All that area of land comprising 10.8750 hectares on Plot LE 806 situated on eastern side of Railway line to Nsanje and south of Midima Road.

Blantyre:

All that area of land comprising 2.904 acres and known as Plot No. TP 434/46,which is now closed.

Chilobwe:

All that area of land comprising 2 hectares situated in between east of Stella Maris Secondary Forest and west of Chilobwe Township.

Chitawira:

All that area of land comprising 3.008 acres and known as Plot No. BL. 26/597, the said plot is bordered on the north by the Naperi Stream and is situated north of Kenyatta Drive. All that area of land comprising 0.460 of an acre and known as plot No. BL 26/579/1, which is now closed.

Kanjedza:

All that area of land comprising 2.980 acres and known as Plot No. H. 39 which has been recently extended. The said plot is bordered on the west by Kanjedza Camp Road, on the north by Dalton Road, on the east by Plot No. H. 51 and on the south-east by H. 38.

Malabada:

All that area of land comprising 4.4020 hectares situated north-east of Malabada Stream and lying on the south-west corner of Ndirande Mountain.

Namalimwe:

All that area of land comprising 1.0025 hectares situated north-east of Blantyre Secondary School and south of Namalimwe Primary School.

Namatapa:

All that area of land comprising 3.124 hectares situated to the east of Assemblies of God Church (Bangwe) and south of Mpingwe Hill.

Namiwawa:

All that area of land comprising 1.8495 hectares on Plot No. LK 188 situated to the west of Namiwawa Avenue and east of Namiwawa Stream, which is now closed.

Naperi:

All that area of land comprising 3.210 acres and known as Plot No. BL 26/599, the said plot is bordered on the north-east by the Anglican Church, on the south by Marambala Stream, and is situated on the south of Chitawira Road.

Zingwangwa:

All that area of land comprising 2.3 hectares situated to the south-west of Soche Sewege Works and south of Naperi Stream, which is now closed.

THIRD SCHEDULE

Private Cemeteries

Catholic Cemetery, Blantyre
Catholic Cemetery, Limbe
Church of Central African Presbyterian Cemetery, Blantyre
Moslem Cemetery, Blantyre
Moslem Cemetery, Limbe

FOURTH SCHEDULE

Register of Graves in Class "A" Public Cemeteries

1. Cemetery: .....
2. Grave No.: .....
3. Surname: .....
4. Forename or other names: .....
5. Occupation: .....
6. Date of death: .....
7. Place of burial: .....
8. Date of burial: .....
9. Religion: .....
10. Age: .....
11. Sex: .....
12. Nationality: .....
13. Officiating Clergyman: .....
14. Next of Kin: .....
15. Legal Representative: .....
16. Remarks: .....

FIFTH SCHEDULE

Burial and Other Fees

Item	K	t
Burial for an adult in a class "A" public cemetery	300	00
Burial for a child of 6 years or under in a class "A" public cemetery	250	00
Digging for a grave in a private or public cemetery for an adult	470	00
Digging for a grave in a private or public cemetery for a child of 6 years or under	470	00
Reservation of a single grave space for an adult or a child in class "A" public cemetery	2,500	00
Renewal of reservation of a grave space per annum	200	00
Burial for an adult/child in a class "B" public cemetery	25	00

LOCAL GOVERNMENT (BLANTYRE CITY COUNCIL) (NURSERY SCHOOLS) BY-LAWS

G.N. 21/2003

under s. 103

Citation and application

1. These By-laws may be cited as Local Government (Blantyre City Council) (Nursery Schools) By-laws, and shall apply within the area of jurisdiction of the Blantyre City Council (hereinafter referred to as the "Council").

Interpretation

2. In these By-laws unless the context otherwise requires—

"authorized person" means a person authorized by the Council to inspect premises, examine persons or do any other act under its statutory powers;

"child" means a person who is under or appears to be eight years of age;

"guardian" means any person who has, by reason of the death, illness, absence or incapacity of a parent or any other cause, the custody of a child;

"nursery school" means any premises where children are received to be looked after for reward for the day or a substantial part thereof or for any longer period for the purpose of some form of education instructions;

"occupier" means any person in actual occupation of premises without regard to the title under which he occupies such premises and, in case of premises sub-divided and let to tenants

whether on his own account or as agent for any person entitled thereto or interested therein;

"owner" means any person receiving the rent or profits of any premises from any tenant or occupier thereof, and the term includes any lessee;

"parent" means the father or mother of a child, whether legitimate or not;

"premises" means any building or structure together with land on which it is situated and the adjoining land or other land or building used in connexion therewith;

"proprietor" means any person in whom is vested the ownership, custody or control of the premises at which the nursery school is carried on, and of the buildings, equipment and other things provided for the children attending the nursery school, and where such ownership, custody or control is vested in more than one person, includes both or all of them;

"relative" means any grandparent, brother, sister, uncle or aunt, whether by consanguinity or affinity, or in consequence of adoption; and in respect of an illegitimate child includes any person who would be so related if the child was legitimate.

Establishment, registration and licensing of nursery school

3.—(1) No person shall establish a nursery school unless he has first made an application to the Council for registration and shall have obtained a licence from the Council thereof.

(2) An application for registration shall be in the form specified in Part I of the First Schedule to these by-laws and shall state—

(*a*) the situation or location of the premises;

(*b*) where it is sought to establish the nursery school; and

(*c*) the name and address of the proprietor.

(3) An application for registration shall be accompanied by appropriate fees set out in Part II of the First Schedule to these by-laws and where the application is refused the fees shall not be refunded to the applicant.

Refusal to register

4. The Council may refuse to register any premises or proprietor if it is satisfied that the premises concerned are not suitable to be used for the purposes of a nursery school, or that the proprietor, or any other person employed or proposed to be employed by him to have the care the children received or proposed to be received in such nursery school, is not a fit and proper person to have the care and control of children.

Power to impose conditions on proprietor

5.—(1) The Council may, subject to paragraphs (2) and (3) of this by-law, determine that the premises shall only be registered subject to any or all the following conditions—

(*a*) that no greater number of children shall be received in the premises than specified in the licence;

(*b*) that the number of children received under the foregoing paragraph together with any other children resident on the premises shall not at any time exceed such number as may be specified in the licence;

(*c*) that the children in any specified age group or age groups shall not be received in the premises or exceed such as specified in that behalf in the licence;

(*d*) that a person with such qualifications as specified in the licence shall be in-charge of the premises and the persons employed thereat;

(*e*) that the nursery school shall be adequately staffed in terms of the calibre, qualifications or experience of the persons employed thereat;

(*f*) that any repairs to be carried out on the premises or such alterations thereof or additions thereto shall be made as specified in the licence;

(*g*) that the premises shall be equipped in accordance with the equipment specified in the Fifth Schedule and that such equipment shall be adequately maintained;

(*h*) that there shall be adequate arrangements for feeding the children received in the premises and that an adequate and suitable diet shall be provided for them;

(*i*) that the children received in the premises shall be under medical supervision;

(*j*) that the persons employed in the premises shall undergo medical examination at the time of granting a new licence or renewing a licence and any other time the Council may deem fit; and

(*k*) any other condition as the Council deems it necessary to impose.

(2) Before the Council imposes any condition, it shall give notice to the applicant of its intention and shall not proceed with registration until the requirement of paragraph (3) of this by-law is satisfied.

(3) An applicant who receives a notice under the foregoing paragraph shall, within fourteen days of the receipt thereof, inform the Council in writing whether he—

(*a*) agrees to such conditions;

(*b*) abandons his application; or

(*c*) intends to appeal under by-law 11 of these By-laws:

Provided that if any applicant who has informed the Council of his intention to appeal does not enter such appeal within the time limited by by-law 11 of these By-laws, his application shall be deemed to have been abandoned.

(4) The Council may, by notice to the proprietor, vary, add to or revoke any condition imposed either on registration or at any subsequent time.

(5) Any condition imposed under this by-law shall be in addition to the minimum standard requirements under by-law 14 of these By-laws.

Register of nursery school

6. The Chief Executive Officer shall keep and maintain a register in the form specified in the Second Schedule to these By-laws in respect of every nursery school in the Council and such register shall be open to the public for inspection at all reasonable time.

Licence

7.—(1) Where any premises are registered as a nursery school, or a licence is renewed after expiry under paragraph (5) of this by-law, the Council shall issue a licence in the form specified in the Third Schedule to these By-laws and such licence shall specify the situation or location of the premises, the name and address of the proprietor and any conditions imposed under the provisions of by-law 5 of these By-laws.

(2) A licence issued under paragraph (1) shall not be transferable to any other person or premises.

(3) A licence issued under paragraph (1) of this by-law shall be displayed in a prominent part of the building on the premises to which it relates and shall be available for inspection by any authorized person at any time when there are children on the premises.

(4) The Council may issue a replacement licence if—

(*a*) it is satisfied that the licence issued under this by-law is lost, destroyed or mutilated, where such licence would have been valid at the time of the application or re-issue, which ever is later; and

(*b*) the applicant has paid replacement fees specified in Part II of the First Schedule to these By-laws,

(5) Every licence issued under the provisions of these By-laws shall expire on the last day of the financial year after the issue thereof:

Provided that the Council may—

(*a*) for reason of any epidemic or the carrying out of repairs, alteration or any work required by the Council to be done on the premises; or

(*b*) for any reason which in the opinion of the Council, seems fit and appropriate,

by notice to the occupier, owner or proprietor, temporarily suspend a licence either for the unexpired period of such licence or for the period of the epidemic, repairs, alteration or work, as the case may be.

Record of children

8. Where any premises is registered as a nursery school under by-law 7 of these By-laws, the proprietor shall keep records of the children received from day-to-day at such nursery school in the form specified in the Fourth Schedule to these By-laws.

Power of entry and inspection

9.—(1) An authorized person may, at all reasonable times, enter any premises which are used as a nursery school and inspect the premises, the children received therein, the arrangements for their welfare and any records relating to the children kept in pursuance of by-law 8 of these By-laws.

(2) An authorized person exercising any power conferred by this by-law shall, if so required, produce a duly authenticated document showing his authority to exercise such power.

(3) If an authorized person has reasonable cause to believe that children are being received in a person's home or in any other premises in contravention of these By-laws, the authorized person shall have powers to enter such home or such other premises and carry out any such inspections as stated in paragraph (1) of this by-law.

(4) Any person who refuses to admit an authorized person or who obstructs the exercise of any power conferred by this by-law shall be guilty of an offence.

Cancellation of registration and licence

10.—(1) Subject to paragraphs (2) and (3) of this by-law where—

(*a*) there has been a contravention of or non-compliance with any condition imposed under these By-laws;

(*b*) it appears to the Council regarding any premises or person registered under by-law 7 of these By-laws, that circumstances exist which would have justified a refusal under by-law 4 of these By-laws to register the premises;

(*c*) a licence issued under by-law 7 of these By-laws has been transferred to any other person or premises;

(*d*) any person has been convicted of an offence against these By-laws; or

(*e*) the Council is of the opinion that it is in the interest or welfare of the children attending a nursery school that it be closed, the Council may cancel their registration of the nursery school concerned and the cancellation shall take effect forthwith.

(2) Before the Council cancels any registration of a nursery school under this by-law, it shall give 14 days' notice to the proprietor or to the occupier of the premises of its intention to make such cancellation.

(3) The notice shall state the ground on which the Council intends to make the cancellation and shall call upon the proprietor or occupier to show cause within fourteen days after the receipt of the notice why the registration should not be cancelled.

(4) Where the Council, after taking into consideration the presentations of the proprietor or occupier under paragraph (3), decides to cancel the registration, it shall inform the proprietor or occupier of its decision.

(5) Notwithstanding paragraphs (1), (2), (3) and (4) of this by-law, where in the opinion of the Council it is necessary on medical or other emergency grounds, to immediately close a nursery school, the Council shall immediately close such nursery school.

Exemption of certain institutions

11. Nothing in these By-laws shall apply to the reception of children—

(*a*) in any hospital, nursing home, convalescent home or any other such institution; or

(*b*) by a relative.

Minimum standard requirements

12. Notwithstanding any condition imposed by the Council under by-law 5 of these By-laws, the minimum standard requirements as to premises, staffing, health, medical care and control of a nursery school shall be as set out in the Fifth Schedule to these By-laws.

Existing nursery schools

13.—(1) Any person who, before the commencement of these By-laws, had established a nursery school or had received children into any premises in such circumstances that he would be required to comply with the provisions of these By-laws, shall be guilty of an offence, if after three months of the commencement of these

By-laws, he continues to receive children in similar circumstances without first registering such premises and obtaining a licence under by-law 7 of these By-laws.

(2) For the purpose of this by-law, the words "any person" includes the proprietor, occupier and any person connected with the day to day affairs of such nursery school.

Penalties

14. Any person who contravenes any of the provisions of these By-laws or who fails to comply with any of the conditions imposed by the Council thereof commits an offence and on conviction shall be liable to a fine of K2,000, and in the case of a continuing offence, to a further fine of K200 for each day during which the offence continues after conviction thereof or to six months imprisonment or to both such fine and imprisonment.

FIRST SCHEDULE

by-law 3

PART I

Application for Registration of a Nursery School

To: The Chief Executive
Blantyre City Council
P.O. Box 67
Blantyre

I/We apply for permission to establish a Nursery School and make application for registration under by-law 3 of the Blantyre City Council (Nursery Schools) By-laws.

A fee of K ..... accompanies this application.

Signed .....

1. (*a*) Application/proprietor .....
(*in block letters*)
(*b*) Postal address .....
(*c*) Residential telephone number .....
2. (*a*) Name of Nursery School (if any) .....
(*b*) Plot number ..... Road .....
(*c*) Postal address .....
(*d*) Telephone number .....
3. (*a*) Age of applicant/proprietor .....
(*b*) Other occupation of applicant/proprietor .....
.....

(*c*) Full names of applicant/proprietor's spouse .....
.....

(*d*) Occupation of spouse .....

(*e*) Names and ages of applicant's/proprietor's children (if any) .....
.....
.....

(*f*) Is the applicant's/proprietor's residence different or the same as premises of the Nursery School?

(*g*) Other occupants of the premises of the Nursery School .....
.....
.....
.....

4. (*a*) Details of any special qualification held by applicant/proprietor .....
.....
.....
.....

(*b*) Brief details of applicant's/proprietor's experience in the field of nursery school management (including number of children, place and year) .....
.....
.....
.....

5. (*a*) Number of children for which proposed Nursery School is to cater—

(i) babies (0 to 2 years) .....

(ii) children (2 to 5 years) .....

(iii) children (5 to 7 years) .....

6. Normal hours of business .....

Is Saturday included? .....

Is Sunday included? .....

7. (*a*) Approximate size of rooms to be used by children (each room to be numbered and measured separately)
.....
.....
.....

(*b*) Rooms to be used for other purposes—

(i) office .....

(ii) isolation of sick children .....

(iii) resting, eating, playing (delete as necessary) .....
.....

(*c*) Description of outdoor play facilities—

(i) babies (0 to 2 years) .....

(ii) children (2 to 5 years) .....

(iii) children (5 to 7 years) .....

(iv) staff .....

8. (*a*) Arrangement for regular examination of children .....

(*b*) Name of Medical Practitioner .....

(*c*) Address .....

(*d*) Telephone number .....

9. Details of staff to be employed in running the Nursery School—

Name	Address	Age	Qualifications	Experience

10. Any additional information (in particular, whether the applicant/proprietor or staff) has been convicted of any offence involving violence against children or against these By-laws .....

.....

..... Signed .....

Applicant/Proprietor

PART II by-law 3

FEES PAYABLE FOR REGISTRATION AND LICENCE

		Fee K	t
1.	Registration of a Nursery School	100	00
2.	Issue of a licence to establish a class A Nursery School	1,000	00
3.	Issue of a licence to establish a class B Nursery School	500	00
4.	Issue of a licence to establish a class C Nursery School	300	00
5.	Replacement of lost, destroyed or mutilated licence, class A . .	1,000	00
6.	Replacement of lost, destroyed or mutilated licence, class B . .	500	00
7.	Replacement of lost, destroyed or mutilated licence, class C . .	300	00

SECOND SCHEDULE By-law 6

REGISTER TO BE KEPT BY THE CHIEF EXECUTIVE

Date of Registration	Name of Nursery Schools	Plot No.	Road	Tel. No.	Name and Address of person to whom licence was issued	Licence No.	Conditions (if any)

THIRD SCHEDULE by-law 6

REGISTRATION AND LICENCE OF A NURSERY SCHOOL

..... of .....

..... is/are* hereby registered as Proprietor and is/are licensed to establish/continue* to run a Nursery School under the name and title of

.....

at Plot Number: ..... at ..... in the City of Blantyre until the 31st March, 20..... This licence is issued/renewed/replaced* subject to the following conditions:

Fee paid: ..... Kwacha

Previous Licence No. (if any) ..... Year .....

Signed .....

Chief Executive

Dated this ..... day of ..... 20.....

*Delete the non-applicable.

FOURTH SCHEDULE by-law 8

RECORD OF CHILDREN ADMITTED OR TO BE ADMITTED AT A NURSERY SCHOOL

Name: .....

Address: .....

Date of Admission: .....

Parent/Guardian's Name: .....

Address: .....

Telephone Number: .....

Date of Medical Examination: .....

Name of Medical Practitioner: .....

Result of Medical Examination: .....

HISTORY OF IMMUNIZATION

Small Pox Date	Polio Date	Diphtheria Date	Whooping Cough Date	B.C.G. Date	Tetanus Date

Any special remark .....

FIFTH SCHEDULE by-law 12

STANDARD REQUIREMENTS

Premises

1. The building shall preferably be single storied, but where space on the site is limited, service rooms, such as resting and feeding rooms, etc., may be provided on an upper floor.

Minimum floor space per child

2. In any room, the minimum floor space per child shall be 1.12 square metres and each room shall be measured separately for the purpose of calculating the number of children to be accommodated in the building.

Maximum number of children

3. The maximum number of children to be received in any nursery school shall be determined by the amount of floor space in the rooms and the number of toilet facilities in the building.

Position of rooms

4.—(*a*) Any room to be used by children shall have access to outdoor playing space or to an open and unobstructed veranda which shall have direct access to outdoor playing space;

(*b*) rooms shall be arranged in such a way to enable children of the same age group to be accommodated together;

(*c*) at least one room shall be for infants and, if possible, older children's rooms shall be placed next to one another;

(*d*) it is an advantage to arrange the rooms so that various age groups can join up on occasion and so that it is possible to received wider range in any unit if the demand for admission vary; and

(*e*) rooms can be separated by moveable partitions but no room used by children shall serve as a passage.

Height of rooms

5. Every room shall have a mean height of not less than 3 metres and, where ceiling follow the line of rafters, the minimum height at wall place level shall be not less than 2.6 metres.

Lighting and ventilation

6. Every room shall be exposed to sufficient lighting and natural light and through or cross-ventilation either by openings into the external air or into an open and unobstructed veranda.

Windows

7. The windows in any room shall be equal to not less than one-fifth of the floor area of such room and such windows shall be made to open.

Floors

8. Floors shall be made of permanent material that is safe for children and easy to clean.

Office

9.—(1) There shall be an office for use by the proprietor or any person employed by him to have the care of the children received or proposed to be received.

(2) The office shall have a welcoming appearance and be large enough for several mothers and children to be received in it at a time.

(3) The office shall, where reasonably possible have a connecting door to a room which shall be used for the medical examination or isolation of children.

Children's cloakrooms and toilets

10.—(1) For each unit of a maximum of 10 children of 0 to 2 years old there shall be—

(*a*) 1 bathing sink;
(*b*) 1 rack for chambers;
(*c*) 1 lower level water-closet;
(*d*) 1 fixture for towels and flannels; and
(*e*) 1 wash-basin and towel master fitment for staff.

(2) For each unit of a maximum of 20 Children of 2 to 5 years old there shall be—

(*a*) 1 bathing sink;
(*b*) 2 low level wash-basins;
(*c*) 2 low level water-closet;
(*d*) 2 fixtures for towels and flannels; and
(*e*) 1 wash-basin and towel master fitment for staff.

(3) For each unit of a maximum of 12 children of 5 to 7 years old there shall be—

(*a*) 1 water-closet;
(*b*) 2 wash-basins of varying heights;
(*c*) 1 fixture for towels and flannels; and
(*d*) 1 wash-basin and towel master fitment for staff.

(4) The purpose of paragraphs (*a*), (*b*) and (*c*) above, is that children of varying ages shall have different cloakrooms and toilet facilities suitable to their heights and requirements but, where it will not be convenient or advantageous to separate them

according to age groups, the Council may, on the recommendation of the Medical Officer of Health approve either of (1), (2) or (3) above or a combination of them.

Staff cloakroom and toilets

11. The staff cloakroom shall contain individual lockers with suitable hanging space and toilet facilities, and it should be large enough to be used for changing. The requirement for up to eight staff is—

(*a*) 1 water-closet; and

(*b*) wash-basin.

Kitchen

12.—(1) The minimum size of kitchen shall be 25 metres per place of staff, of which 3.75 square metres is for ladder and 3.71 metres (say 3.75 square metres) is for locked provision store.

(2) The kitchen equipped with—

(*a*) 1 refrigerator;

(*b*) 1 oven/cooker;

(*c*) 1,450 mm x 300 mm sink for vegetable preparations;

(*d*) 1,600 mm x 300 mm sink for washing utensils and cooking pans;

(*e*) 1 table covered with laminated plastic;

(*f*) cupboards for crockery and cooking utensils;

(*g*) cupboards for stores;

(*h*) locked shelves for storage of pre-packed food;

(*i*) satisfactory and adequate un-chipped crockery; and

(*j*) clean eating and cooking utensils.

Furnishing

13.—(1) The furniture shall be light, easy to move and easy to clean.

(2) Moveable fitments could be used both for storing toys and smaller playthings, and for dividing the rooms in varied ways.

(3) Soft furnishing including rugs shall be of types that can be easily washed.

Playground

14.—(1) The open space for use as playground shall be 18.50 square metres per child, of which 3.75 square metres shall be paved and the remainder grass and shall be partly shaded by trees or other means from the sun.

(2) The playground must be enclosed by a strong fence with gate and high latches.

LOCAL GOVERNMENT (BLANTYRE CITY COUNCIL) (FOOD) BY-LAWS

G.N. 22/2003

under s. 103

Citation

1. These By-laws may be cited as the Local Government (Blantyre City Council) (Food) By-laws.

PART I
Preliminary

Interpretation

2.—(1) In these By-laws unless the context otherwise requires—

"authorized officer" means any person authorized by the Council to inspect premises, examine food, take samples of food, examine any person engaged in the handling of food or do any other act under the statutory powers of the Council;

"contamination" means the infection, pollution or adulteration of food by extraneous matter, whether or not injurious or dangerous to health, and includes contamination of odour, liquid gases or radioactive particles;

"equipment" includes apparatus, furnishings and utensils;

"fish" means any vertebrate fish or aquatic crustacean, mollusc or other shell fish, or any other normal edible cold-blooded aquatic animal, whether alive or dead, and includes the eggs and any edible part thereof, but does not include any reptiles;

"food" means anything taken by mouth other than drugs and water but includes ice and any article which ordinarily enters into or is used in the position or preparation of human food, and includes flavouring matters, condiments, and such as items with a corresponding meaning;

"food business" includes grocery shops, milk shops, hotels, restaurants or eating houses, canteens, bars, refreshment or entertainment rooms, coffee rooms, and includes any food manufacturing, preparation, packing or repacking premises, ice cream bars, fish and chips shops and any food premises used or proposed for use for the purpose of carrying on any food business or trade;

"food premises" means any premises on or from which food business is carried on;

"food room" means any room in which food is handled for the purposes of food business;

"Environmental Health Officer" means Medical Officer of Health and Environmental Officer;

"handling of food" means the carrying out or assisting in carrying out any process or operation of food for the purpose of food business or the transportation, storage, packaging, wrapping or exposure for sale, or for service or delivery of food and includes the cleaning, of articles or equipment with which food comes into contact;

"latrine" includes urinal, earth-closet, pit latrine, chemical closet, water closet or similar appliances;

"meat" means the carcass, or offal or any part thereof or any product of the carcass or offal of any animal or poultry and includes the eggs thereof;

"Medical Officer of Health" means the Secretary for Health or any Medical Officer appointed by the Secretary for Health to act as such;

"occupier" includes any person in actual occupation of land or premises without regard to title under which he occupies and in case of premises subdivided and let to lodgers or various tenants whether on his own account or as an agent for any person entitled thereto or interested therein;

"open food" means food not wrapped in a container or not so closed as to exclude the risk of contamination;

"other qualified person" means any person, other than the Central Government, receiving the rent or profits of any land or premises from any tenants or occupier thereof or who would receive such rent or profits if such land or premises were let whether on his own account or as agent for any person other than the Government entitled thereto or interested therein.

(2) In determining whether any matter involves a risk of contamination to any food, the following shall be taken into consideration—

(*a*) the nature of the food;

(*b*) the manner in which the food is packed; or

(*c*) any process to which the food is or is to be subjected to before being sold to consumers.

Application for food licence

3.—(1) No person shall establish or carry on a food business unless he has a valid food licence issued by the Council.

(2) An application for a food licence, the renewal or transfer of food licence shall be in the forms prescribed in the First Schedule to these By-laws and shall, among other things, specify the name and address of the applicant and the location of the food premises.

(3) An application under paragraph (1) shall be accompanied by the fee set out in the Second Schedule to these By-laws.

Refusal, etc. of food licence

4. The Council may refuse to grant a food licence or may suspend or cancel food licence if it is satisfied that the premises concerned are not fit to be used for the purpose of a food business, or that the owner or proprietor of such food business or any person employed or proposed to be employed by him for the purposes of the food business is suffering from obvious infectious or contagious diseases.

Food licence conditions and expiry date

5.—(1) A licence issued under these By-laws shall be in the prescribed Form IV of the First Schedule to these By-laws and may be subject to such conditions as the Council may deem fit to impose.

(2) A licence issued under these By-laws shall expire on the last day of the financial year after the issue thereof.

Sale of meal and certification

6.—(1) No person shall sell or expose for sale any animal, carcass or meat intended for human consumption unless such animal, carcass or meat has been certified fit for human consumption by a Health Officer or any other authorized officer:

Provided that where meat is imported from a source outside Malaŵi and such meat has not been condemned, it shall be deemed to have been inspected and approved as fit for human consumption if it has in relation to it a certificate issued by a competent authority approved by the Council.

(2) No person shall sell or expose for sale meat in any place other than in a market place or other premises authorized in writing by the Council and such meat shall, while exposed for sale or in transit, be covered or protected from contamination to the satisfaction of the Council and shall not be transported at the same time in the same vehicle with other materials.

(3) No person shall sell or expose for sale any fish intended for human consumption anywhere other than in a market place or other premises, authorized in writing by the Council and all such fish shall, while exposed for sale or in transit, be covered or protected from contamination.

Power of entry and inspection of any food premises

7.—(1) Any Health Officer or other authorized officer may at reasonable times, enter any food premises and examine or inspect food business and if upon such examination or inspection he is of the opinion that the food is not fit for human consumption or that the continued presence of the person or existence of the thing is

likely to cause injury to health he may, in the case of food or meat, issue a certificate of unfitness to the owner, occupier, proprietor, employee or any person at that moment in possession of such food and cause the same to be destroyed, and in the case of a person or a thing, give such directions in writing as he deems fit.

(2) A Health Officer or an authorized officer may, upon payment of a reasonable price for any food, take samples of the same for the purpose of analysis and if upon such analysis the report discloses that such food is unfit for human consumption, issue a certificate of unfitness for the same and cause such food or meat to be destroyed.

(3) Where a Health Officer or any other authorized officer takes samples of food, the owner of the food shall not sell or expose for sale for the purpose of human consumption unless and until the report of such analysis shows the food to be fit for human consumption the Health Officer or other authorized officer otherwise directs. Where such samples are for bacteriological tests they shall be taken in accordance with the procedure specified in the Third Schedule to these By-laws but other samples or chemical or other tests shall be taken in the manner or form as the Health Officer or other authorized officer may consider appropriate.

(4) The power of a Health Officer or other authorized officer under this by-law shall *mutatis mutandis* apply to those food premises outside the City of Blantyre from which food prepared or processed therein is found to be contaminated when offered for sale within the Council.

(5) A Health Officer may enter and take any utensil from food premises for the purposes of carrying out bacteriological tests.

(6) Any person who refuses to admit any Health Officer or any other authorized officer or who obstructs the exercise of any power conferred by this by-law shall be guilty of an offence.

Unwholesome food

8. Any person who—

(*a*) sells, offers for sale, or has in his possession for the purpose of sale; or

(*b*) deposits with or consigns to any person for the purpose of sale; or

(*c*) manufactures, stores, packs, prepares, processes or otherwise does anything to food for human consumption which is unfit for that purpose,

shall be guilty of an offence.

PART II

Food Premises

Food premises

9.—(1) No person shall establish or carry on a food business in any premises which, for reason of its condition, structure, situation or unsanitary nature, is unfit for such purpose or is likely to expose food to the risk of contamination.

(2) Unless otherwise approved in writing by the Council, every owner of food premises shall include a food store with an internal superficial floor area of not less than 300 square feet (30 square metres).

(3) No person shall use or permit other persons to use a food room or food store as a sleeping or living place and the food room or food store shall not have a direct connexion with any sleeping or living place.

(4) The floor, walls, doors, windows, ceiling, woodwork, work surface or other parts of a food store or premises shall be made or constructed from such materials approved by the Council and shall be manufactured and—

(*a*) be in a clean state at all times;

(*b*) be rodent free; and

(*c*) prevent any risk of infestation by insects or vermin.

(5) Notwithstanding the generality of the foregoing paragraph, the walls immediately adjacent to or adjoining a cooker, sink, wash hand basins or any surface on which food is prepared shall either be tiled to a height of not less than 2 metres from the floor or be treated or coated with a material of non-absorbent material.

Ventilation and lighting

10.—(1) Every owner of food premises shall ensure that every food room or kitchen is exposed to or provided with through or cross ventilation either by means of window opening into the external air and equal to not less than one-tenth of the floor area of such room or kitchen, by means of both such window and extract fan of the type approved by the Council.

(2) Unless the construction of a food premises is such that this by-law will not apply in so far as it concerns hoods and flues, every owner of food premises shall construct immediately over every cooking stove or oven a hood of such size and height as to permit easy preparation or service of food and a chimney with a flue of not less than twelve inches in diameter and exhausting or discharging smoke or fume to the outer atmosphere at such height and in such position and manner as to prevent pollution, odour nuisance or annoyance to the neighbourhood.

(3) Every owner of food premises, room or kitchen shall ensure that the food premises, room or kitchen are exposed to sufficient natural light either by means of window opening into the external aid and equal to not less than one-tenth of the floor area of that apartment, room or kitchen, by means of both such window and electric or other lighting approved by the Council.

Water, sink and wash hand basin

11.—(1) Every owner of food premises shall provide an adequate supply of clean portable water at all times.

(2) Every owner of food, premises shall provide a sink for washing utensils, cooking pans, equipment and food, and the sink shall be connected to a continuous source of supply of hot and cold water together with trapped drainage for the discharge of used or waste water.

(3) Every owner of food premises shall provide—

(*a*) suitable supplies of soap or detergent for the washing of cooking pans, equipment, cloth and other materials connected with preparation of food;

(*b*) adequate towels and flannels for wiping or cleaning purposes; and

(*c*) fittings for the storage of such towels and flannels.

(4) Every owner of food premises shall provide wash-hand basins for use by persons engaged in the handling of food and the wash-hand basins shall be connected with hot and cold water together with trapped drainage and be supplied with soap, towels, and fitments in the manner required by paragraphs (2) and (3) of this by-law.

Sanitary accommodat-ion

12.—(1) The Blantyre City Council (Sanitary Arrangements) By-laws shall apply to food premises.

(2) An owner of food premises shall, in addition to complying with the provisions of the Blantyre City Council (Sanitary Arrangements) By-laws, ensure that every sanitary accommodation within the food premises is—

(*a*) kept clean and, in the case of water closet, flushed without overflow of water; and

(*b*) sited so as to prevent odour from affecting or penetrating any food room.

(3) An owner of food premises shall not use any sanitary accommodation for the storage, preparation, manufacture or sale of food.

(4) An owner of food premises shall affix in a prominent position nearest to the sanitary accommodation a hand basin for persons using the sanitary accommodation to wash their hands immediately after such use.

Cupboards etc. for staff

13.—(1) An owner of food premises shall provide cupboards and lockers for the storage of clothes, footwear, handbags and other personal items not being used during working hours by persons engaged in the food business.

(2) Any person who does not use or who prevents another person from using the cupboards or lockers provided shall be guilty of an offence.

Refuse bins

14.—(1) An owner of food premises shall provide such number of approved refuse bins as are sufficient to contain the quantity of refuse accumulated each day in such premises.

(2) The spilling over of a refuse from such bins is evidence that the number of refuse bins provided is insufficient.

(3) For the avoidance of doubt an approved type refuse bin is a cylindrical receptacle of galvanized iron or hard plastic, about 450 mm in diameter at the top, 350 mm in diameter at the bottom and 750 mm in height and has an effective capacity of about 0.4 cubic metres with a tight fitting lid which is capable of keeping out rain and preventing the escape of offensive odour.

First aid

15. An owner of food premises shall provide a first aid box in a place readily accessible to persons engaged in the food business and the box shall contain all necessary appliances and medicines for first aid.

PART IV

Persons Handling Food

Personal cleanliness

16.—(1) No person engaged in the handling or preparation of food or meat shall, while knowing that he is suffering from typhoid fever, paratyphoid fever, dysentery, venereal disease or any other disease which is contagious or likely to result in food poisoning, handle or prepare food or meat.

(2) No person shall employ, or continue to employ for the purpose of food business, any person suffering or convalescing from any of the disease referred to in paragraph (1).

(3) The owner, occupier or proprietor of a food business shall, upon knowledge that any person is suffering from any of the diseases in paragraph (1) notify the Medical Officer forthwith

describing the nature of the disease and the name and address of the person suffering from the same and any other information that may be required by the Medical Officer or Health.

(4)—(*a*) No person shall be employed in a food business unless such person has been examined and certified fit therefore by a Medical Officer.

(*b*) The Medical Officer shall issue a medical certificate after specimen such as urine and stool or such person has been examined.

(*c*) The Council shall not issue a food licence to any person unless the person has obtained or is in possession of a medical certificate of fitness obtained at least every three months.

(5) Every person engaged in the handling or preparation of food or meat shall, while so engaged—

(*a*) not place or expose food to the risk of contamination;

(*b*) wear clean washable head and neck covering and washable clothing;

(*c*) keep any open cut, abrasion or wound covered with water proof dressing;

(*d*) not smoke or snuff tobacco; or

(*e*) refrain from spitting.

PART V

Food Handling

Wrapped and unwrapped bread, etc.

17.—(1) Subject to provision to this by-law, no person shall sell, expose, delivers or distribute for sale the following food; bread, sweet, biscuit, cake or chocolate unless such food is wrapped in transparent greaseproof bread wrapping material or other material approved by the Council:

Provided that where any such food is unwrapped, no person shall layout or display the food on a road, path, lane or pavement or expose the food for sale except in a sealed container of which at least one side shall be constructed with transparent material.

(2) The seller of any bread shall ensure that the wrapper bears distinguishing marks of "white bread" or "brown bread" printed in English and Chichewa in letters each of which shall be of not less than one-quarter of 25.4 mm.

Cleanliness and protection of food

18. Every container, counter, shelf, tray, display cabinet, refrigerator and other equipment with which food or meat comes into contact during sale or display for sale of the same shall be kept clean and in a good state of repair.

Prohibition of animals

19. No person shall bring in, keep or allow any person to bring any animal, other than a fowl, duck, or other pheasant meat for immediate slaughter into any food premises.

Transportation of meat

20. The Council may, from time to time by notice in a newspaper circulating within the Council, prescribe the type, design and content of vehicle which may be, used for the transportation of meat within the Council.

PART VI

Miscellaneous

Offences and penalties

21. Any person who contravenes or fails to comply with any of the provisions of these By-laws and any person failing to comply with the terms of any notice served upon him by the Council in terms of these By-laws commits an offence and upon conviction shall be liable to a fine of K2,000 and in the case of a continuing offence, to a further fine of K200 for each day during which the offence continues after conviction thereof and to imprisonment for six months or to both such fine and imprisonment.

FIRST SCHEDULE

Form I

BLANTYRE CITY COUNCIL (FOOD) BY-LAWS

Application for Issue of Food Licence by-1aw 3 (2)

1. Name of applicant .....
2. Address .....
   Street ..... Area .....
3. Plot No. of Business Premises .....
4. Details of other food licences held or applied for .....
   .....
5. Nature of Business* Restaurant, Cafe, Grocery, Butchery, Bar, Bottle Store, Bakery, Hotel or Lodging House, Wholesaler, Dairy, Food Manufacturing or Processing Premises, other (give details) .....
   .....
   .....

6. Number of food handlers including waiters, to be employed:

Male .....

Female .....

Date ..... Signature .....

Date of Inspection .....

Requirements .....

.....

.....

.....

Letter sent on ..... Clerk

Approved on ..... Health Officer

Licence issued on ..... Clerk

* Delete the non-applicable.

FORM II

BLANTYRE CITY COUNCIL (FOOD) BY-LAWS

APPLICATION FOR ISSUE OF FOOD LICENCE by-law 3 (2)

I/we, the undersigned, being respectively the present holders(s) of the licence for the premises to which this application refers, hereby apply for the transfer of the licence from the present holder(s) to the transferee(s) stated therein

1. Name .....

   Business .....

2. Address .....

3. Plot No ..... Street .....

4. Name of present licence holder(s) .....

   Address .....

   Licence No. ..... Issued on .....

5. Name of Transferee(s) .....

   Address .....

   I/we, certify that the particulars of the premises are the same as those set out in the last application for a licence to be issued or renewed in respect of these premises.

   Signature of present holder(s) of licence .....

   .....

   Signature of transferee(s) .....

   .....

   .....

Date of Inspection: .....

Requirements: .....

.....

.....

Letter sent on: ..... Clerk

Approved on: ..... Health Officer

Licence issued on: ..... Clerk

FORM III

BLANTYRE CITY COUNCIL (FOOD) BY-LAWS

APPLICATION FOR ISSUE OF FOOD LICENCE by-1aw 3 (2)

1. Name of applicant: .....
2. Address: .....
   Street: ..... Area: .....
3. Plot No. of Business Premises: .....
   .....
4. Details of other food licences held or applied for .....
   .....
5. Nature of Business* Restaurant, Cafe, Grocery, Butchery, Bar, Bottle Store, Bakery, Hotel or Lodging House, Wholesaler, Dairy, Food Manufacturing or Processing Premises, other (give details) .....
   .....
   .....
6. Number of food handlers including waiters, to be employed:
   Male .....
   Female .....

Date ..... Signature .....

Date of Inspection: .....

Requirements: .....

.....

.....

.....

Letter sent on: ..... Clerk

Approved on: ..... Health Officer

Licence issued on: ..... Clerk

* Delete the non-applicable.

SECOND SCHEDULE

BLANTYRE CITY COUNCIL (FOOD) BY-LAWS

Fees Payable for Licence

by-law 3

Item		*Fee* K	t
1.— (*a*)	Food licence classified under Hotels and Tourism Act (Cap. 50:01)	2,000	00
(*b*)	Dairies, bakeries and food manufacturing	1,500	00
2.	Restaurants, inns. bars, superettes, wholesalers and supermarkets	1,000	00
3.	Fish and chips takeaways	650	00
4.	Eating houses and coffee shops	500	00
5.	Bottlestore Butchery	350	00
6.	Minishops hawkers	250	00
7.	Small confectionery manufacturing	200	00
8.	Milk permit	200	00
9.	Groceries—		
(*a*)	City Centre	500	00
(*b*)	Townships	350	00
10.—(*a*)	Nursery school	1000	00
	(i) class A	1,000	00
	(ii) class B	5.00	00
	(iii) class C	3.00	00
(*b*)	Registration of nursery school	300	00
11.	Opaque beer—		
(*a*)	manufacturing	3,000	00
(*b*)	taverns	1,000	00
(*c*)	retailers per month	40	00

THIRD SCHEDULE

BLANTYRE CITY COUNCIL (FOOD) BY-LAWS

Bacteriological Tests

by-law 3

1. Any Health Officer may, for the purpose of bacteriological tests take samples from any knife, fork, spoon, place, dish, cup, saucer or other implement or utensil on the food premises or from any cloth or water contaminated in a sink or other receptacle which cloth or water has been or is at the time being used in the drying or washing as the case may be, if any such articles as aforesaid, or from any receptacle in which food is stored or kept.

2. The average plate count for every utensil of any surface thereof sampled shall not exceed 100/bacteria CFU (colony forming units), and where the said count is exceeded the owner or the person at the materials time in control of the premises from which the article sampled was taken shall be guilty of an offence.

3. The procedure for taking samples for bacteriological tests is as follows—

   (1) A Health Officer shall take from the food premises a sample from any group of four articles of the same kind, and it shall not include a sample from any article such lesser number kind:

   Provided that—

   (*a*) if the number of the articles of one kind sampled is less than four, the sample shall be taken from such lesser number; and

   (*b*) this procedure shall not apply to the taking of samples from water or a cloth used for washing or drying.

   (2) A Health Officer who takes a sample with a sterile swab, shall immediately place it in a sterilized swab containing 2 ml of sterile saline or a strength or 0.85 per cent, and the sample or liquid shall at once be placed in any other form of suitable sterilized container.

   (3) A container in which a swab or other sample is placed shall bear its own number clearly marked on it or on an adhesive label firmly attached to it.

   (4) Before a Health Officer removes a sample from the premises he shall invite the owner of the food premises or the person for the time being in control of the premises and the Health Officer taking the sample shall append his signature to a document in duplicate in the form set out in Part I of this Schedule and he shall leave one of the two documents with the owner or the person in control of the food premises and take the other.

   (5) The owner or person for the time being in control of the premises shall sign in duplicate a document in the form set out in Part II of this Schedule as proof that the sample has been taken from his premises.

   (6) In the event that the owner or the person in-charge of the food premises refuses to sign the document, it shall, unless the contrary is proved, be presumed that a sample labelled and numbered in accordance with paragraph 3 of this Schedule is the sample to which the said document refers.

   (7) As soon as possible after taking a sample, the person who has taken it shall hand it for investigation to a person qualified who has a recognized degree or diploma in bacteriology and has competent knowledge, skill and experience.

   (8) The person who has carried out the investigation shall submit a report thereon to the Medical Officer of Health in the form set out in Part III to the Third Schedule, therein.

PART I

FORM TO BE COMPLETED AND SIGNED IN PURSUANCE OF PARAGRAPH 4 OF THE THIRD SCHEDULE

BLANTYRE CITY COUNCIL

SAMPLE NO. .....

This sample was taken from .....

(state articles(s) on ..... (date) at .....

(time) at the premises known as.....

in the presence of .....

stated that he was the (owner/person for the time in control) of the said premises by (name) in his capacity as

.....

Signature .....

Health Officer

The sample referred to above was taken and given the above-mentioned number in my presence.

Signature .....

Capacity .....

(State whether owner or person for the time being in-charge of the premises)

PART II

FORM TO BE COMPLETED BY THE PERSON TAKING A SAMPLE WHERE THE OWNER OR PERSON FOR THE TIME BEING IN CONTROL OF PREMISES REFUSES TO SIGN THE DOCUMENT IN PART I TO THE THIRD SCHEDULE

SAMPLE NO. .....

This sample was taken from .....

in the capacity as ..... from ..... at

..... (time) at the premises known as .....

..... (state name and capacity of witness).

I certify that the form set out in Part I of the Third Schedule to these By-laws was presented for signature by the person named therein.

Signature .....

Health Officer

PART III

BACTERIOLOGIST'S REPORT SUBMITTED IN TERMS OF PARAGRAPH B OF THE THIRD SCHEDULE TO THESE BY-LAWS

On ..... I, the undersigned examined the under-mentioned samples submitted to me by .....
My examination of the said samples yielded the place count specified opposite to each of them respectively.
Sample No. ..... Plate Count
.....
Signature and qualifications of examiners

The method of taking samples for bacteriological tests is as follows—

(1) In the case of cups, glasses and other drinking utensils, the samples shall be taken from the exterior surface to a depth of at least 1 cm from the top of the rim and shall be labelled as appropriate.

(2) In the case of spoons and ice-cream scoops, the sample shall be taken from the entire inner and outer surface of their bowls; in the case of plates, saucers, bowls and the like over an area of (as nearly as possible) four square inches of surface which come into contact with food: and in the case of all other articles and eating utensils except forks from all parts of the surface likely to come into contact with food.

(3) For the purpose of taking samples of articles mentioned in paragraphs, (1) and (2) above, use shall be made of moist, sterile swabs kept in millilitres of sterile saline solution of a strength of 0.85 per cent.

(4) Forks shall be in groups of four be so placed in a container holding 50 ml of sterile saline as aforesaid that their prongs are completely immersed and shall be left therein for one hour with the opening of the vessel so covered as to avoid contamination, after which they shall be withdrawn and the container be immediately reseated.

(5) For the purpose of calculating the number of bacteria present on any utensil of a type required by this Schedule to be sampled in groups of four, the total number of CFU bacteria determined by the plate count present in 50 ml, solution as above prescribed shall be divided by four.

(6) Immediately after each article of a group as mentioned in this Schedule has been swabbed, the swab shall be replaced in its container and be rotated in 3 ml of sterile water, and the excess of such water shall be pressed out of the swab against the side of the container before the swab is used to swab the next article of the group.

(7) Immediately after the swabbing of any utensil or group of utensils or the taking in any other manner of any sample as prescribed in this Schedule, the swab shall be placed in its container, and the container or other sample shall be delivered to a bacteriologist for examination within four hours of the taking of the sample:

Provided that there is reason to suppose that it will not be possible to deliver the sample to a bacteriologist within the said four hours the container containing the sample shall be replaced in ice immediately after it has been taken.

LOCAL GOVERNMENT ELECTIONS

CHAPTER 22:02

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CHAPTER 22:02

LOCAL GOVERNMENT ELECTIONS

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24 of 1996
7 of 1999
9 of 2013

An Act to provide for the conduct of local government elections and, to provide for matters incidental thereto or connected therewith

[5TH AUGUST, 1996]

PART I

PRELIMINARY

Short title

1. This Act may be cited as the Local Government Elections Act.

Interpretation

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

"candidate" means a person who has been nominated under this Act as a candidate for election as a councillor;

"Commission" means the Electoral Commission established under section 75 of the Constitution and appointed in accordance with the Electoral Commission Act;

Cap. 2:03

"by-election" means the election of a councillor to fill a seat on the council which has become vacant otherwise than by dissolution of the council;

"Chief Elections Officer" means the person appointed as such under section 4;

"councillor" means a person elected under this Act to the office of councillor of a council;

"election" means an election to the office of councillor of a council;

"election officer" means the Chief Elections Officer and any officer subordinate to him and any other officer in the service of the Commission, including an officer appointed or designated as a registration officer, polling station officer, presiding officer and returning officer;

"irregularity", in relation to the conduct of an election, means non-compliance with the requirements of this Act.

"nomination day" means the day appointed by the Commission for the receipt of nominations of candidates for an election under this Act;

"polling day" means any day appointed by the Commission under section 28 for the holding of a poll;

"polling station" means a place established as such under section 51;

"polling station officer" means a person appointed as such under section 52;

"presiding officer" means a polling station officer designated as such under section 52;

"registration" means the registration of voters in an election;

"voter" means a person registered to vote in an election;

"voter's register" means the register of voters established under section 13;

"voters' registration certificate" means a certificate issued to a voter under section 15;

"voting booth" means a compartment at a polling station for screening a voter from view when he is making his choice in the poll;

"ward" means an area delimited as such under section 3.

PART II

7 of 1999

Functions and Powers of the Commission

3–5 – [*Repealed by Act No. 7 of 1999*]

PART III

Registration of Voters

Eligibility

6. Any person residing in Malaŵi and who, on or before the polling day, shall have attained the age of eighteen years shall be eligible to register as a voter in an election.

Right and duty to register

7. It shall be the right and the civic duty of every eligible person residing in Malaŵi to present himself for registration as a voter and further he shall have the right to verify with the Commission or its officers that he has been registered and to request that any error or omission with respect to his registration be corrected.

Duty to promote registration

8. The Commission shall, in accordance with this Act, create the necessary conditions and take all necessary actions for promoting awareness amongst persons residing in Malaŵi of the need to register as a voter for the purpose of an election and of the need for their full participation in the election.

Single registration

9. A person eligible to register as a voter shall be registered only once.

Place of registration

10. A person shall be registered as a voter in the area where he ordinarily resides or was born or is employed or carries on business.

Temporary registration officers

11.—(1) The Commission may employ temporary staff, on such terms and conditions as it shall determine, as registration officers who shall register voters throughout Malaŵi.

(2) No person shall be employed as a registration officer with respect to any ward, unless—

(*a*) he is an eligible voter and has attained the age of eighteen years;

(*b*) he has attained the minimum educational qualification of Junior Certificate of Education or its equivalent; and

(*c*) he has knowledge of the language commonly spoken in the ward.

(3) Every registration officer shall, before commencing his duties, receive vocational training in the identification and registration of voters and generally in the requirements of this Act with respect to the registration of voters.

(4) In the performance of their duties, registration officers shall be under the supervision of the Chief Elections Officer and such of the other election officers as he or the Commission shall designate for the purpose.

Registration centres

12.—(1) The Commission shall establish centres throughout every ward in Malaŵi as places where voters are to be registered and for this purpose the Commission shall endeavour to adopt the centres established for the registration of voters in the last previously held poll in addition to establishing new centres.

(2) No form of campaign material shall be exhibited at a registration centre or within a radius of one hundred metres of a registration centre.

Voters registers

13. Voters registers shall be in the prescribed form and the Commission shall procure sufficient copies thereof for the registration of voters throughout Malaŵi and for distribution to registration officers at every registration centre and for that purpose may adopt existing voters registers which shall, as necessary, be updated by registration officers with new registrations.

Evidence of a person's eligibility to vote

14. An eligible person wishing to be registered as voter in an election shall in person state that he is not registered at any other registration centre and shall present to a registration officer sufficient and cogent proof of his eligibility and may do so by producing—

(*a*) a passport, driver's licence, even if expired, marriage certificate, an employment identity card or employment

discharge certificate or a birth certificate or a similarly authentic document of identity;

(*b*) written, verbal or visual testimony of—

(i) the chief, a village headman or a registered voter of the area; or

(ii) the registration officer.

Registration and issue of voters' registration certificate

15.—(1) Upon a registration officer being satisfied with proof of eligibility of a person to vote, he shall—

(*a*) issue to that person a voters' registration certificate in the prescribed form;

(*b*) register that person in the voters register by entering the particulars of that person as prescribed therein.

(2) If a voters registration certificate issued to a voter is lost, destroyed, defaced, torn or otherwise damaged, the voter shall notify the registration officer or other officer duly authorized in that behalf in writing giving proof thereof, and upon such officer being satisfied with such proof he shall issue to the voter a duplicate copy of that voter's original voters registration certificate with the word "DUPLICATE" clearly marked or printed thereon.

Updating of voters registers

16.—(1) In updating a voters register the registration officer shall do so by—

(*a*) adding the names and other prescribed particulars of the voters resulting from new registrations;

(*b*) drawing a line, without affecting legibility, over the particulars of the persons who are known to be deceased or who have lost eligibility to vote and indicating in the margin the reasons therefore.

(2) The registration officer making new entries in a voters register or deleting entries therefrom shall initial every such new entry or deletion.

(3) Upon the registration officer being satisfied with proof of loss of eligibility of a registered voter, he shall immediately update the voters register in accordance with the procedure under this section.

Initialling of pages in voters rolls

17. In the case of registration in a new voters register, the registration officer shall initial both sides of every page at a point where registration on the page ends.

Monitoring of registration by political parties

18.—(1) Every political party sponsoring a candidate in an election shall have the right to monitor the registration of voters and shall do so through its designated representatives assigned to a specified registration centre and whose names shall be notified in writing to the Commission, and in the absence of such notification by any political party it shall be presumed that such party does not desire to monitor the registration of voters at such registration centre.

(2) The Commission shall issue to every person designated as a representative under subsection (1) a document of identity which shall be in the prescribed form.

(3) There may be assigned to one registration centre more than one representative of a political party.

Rights and duties of representatives of political parties

19.—(1) Representatives of political parties shall have the following rights—

(*a*) to be treated with due respect and consideration by all persons administering the registration of voters and by the representatives of other political parties;

(*b*) to request and obtain information on activities relating to the registration of voters; and

(*c*) to submit to the Commission in writing complaints and appeals about any irregularities in the registration of voters.

(2) It shall be incumbent upon the representatives of political parties in exercising their rights under subsection (1)—

(*a*) to monitor the registration activities conscientiously and objectively;

(*b*) to co-operate with registration officers;

(*c*) to refrain from submitting complaints or appeals in bad faith or with the purpose of paralysing the registration process; and

(d) to refrain from divulging any information about a voter or prospective voter obtained as a consequence of acting as a representative and which is not relevant to the registration process.

(3) In addition to political parties and their representatives any person eligible to be registered as a voter and any registered voter may submit to the Commission in writing complaints and appeals about any irregularity in the registration of voters.

(4) The Commission shall endeavour to determine every complaint or appeal relating to registration of voters before the polling day and to remedy and confirmed irregularity.

Period for registration of voters

20. The period for the registration of voters shall be determined by the Commission and notified in the *Gazette*, being a period of not less than fourteen days expiring not less than twenty-one days before the first polling day.

Closing of registration

21. At the close of registration, every registration officer shall sign off the voters register assigned to him and shall forward it for custody to the Chief Elections Officer or to such other officer as is designated by the Commission for the purpose and shall submit to such officer a summary of the total number of voters registered in the area assigned to him.

22. A voters register shall be open to inspection, for purposes of verifying the entries therein, by voters, representatives of political parties and observers, and for this purpose the Commission shall make copies of voters registers and post them for inspection at appropriate public places made known to the public.

Voters register open to inspection

PART IV

Holding of Elections and By-Elections

Division 1—General

23.—(1) An election shall be held every five years.

Election and by-election 9 of 2013

(2) When a councillor dies or resigns, a new ward is created, or the Commission gives notice that a seat of a councillor has become vacant, a by-election shall be held.

(3) A candidate may stand for election as councillor either on the sponsorship of a political party or as an independent candidate, and the rights and duties conferred by this Act on political parties shall apply, *mutatis mutandis*, to an independent candidate as they apply to political parties.

24. When a councillor has been sentenced by a court to death or imprisonment for a term exceeding six months without the option of a fine, is adjudged or declared by court to be of unsound mind or bankrupt, or has been convicted of any offence prescribed under this Act, it shall not be necessary for the Commission to give notice that such member's seat has become vacant until the time for appeal against such decision has expired or, if there is an appeal, until the determination of that appeal.

Delay in publication of notice pending appeal

25.—(1) The Commission shall appoint a returning officer with respect to every ward who shall receive the nominations of candidates for election in that ward as councillor.

Appointment of returning officers

(2) For the purposes of subsection (1), the Commission may designate the chief executive officer of the Council as the returning officer in respect of every ward in his Council.

26. Every candidate may appoint one person to be his election representative and notify in writing the returning officer of the ward in which he is, or intends to be a candidate, of the name of the person so appointed.

Election representative

Division 2—Nomination of Councillors

27.—(1) A person shall not be qualified to be nominated or elected as a councillor unless that person—

Qualifications of councillors

(*a*) has, at the time of nomination, attained the age of twenty-one years;

(*b*) is able to speak and to read the English language well enough to take an active part in the proceedings of the Council; and

(*c*) is registered as a voter.

(2) Notwithstanding subsection (1), no person shall be qualified to be nominated or elected as a councillor who—

(*a*) owes allegiance to a foreign country;

(*b*) is, under any written law in force in Malaŵi, adjudged or otherwise declared to be of unsound mind;

(*c*) has, within the last seven years, been convicted by a competent court of a crime involving dishonesty or moral turpitude;

(*d*) is an undischarged bankrupt, having been adjudged or otherwise declared bankrupt under any law in force in Malaŵi;

(*e*) holds or acts in any public office or appointment;

(*f*) belongs to and is serving in the Defence Forces of Malaŵi, the Malaŵi Police Force or the Malaŵi Prison Service; and

(*g*) has, within the last seven years, been convicted by a competent court of any law relating to elections.

Procedure for commencing conduct of elections

28.—(1) Whenever an election or a by-election is to be held, the Commission shall issue an order, notice of which shall be published in the *Gazette*—

(*a*) declaring—

(i) that an election be held throughout Malaŵi;

(ii) in the case of a by-election or by-elections, the ward or wards in which an election is to be held;

(*b*) appointing the place, date and time for the receipt by the returning officer of the nominations of candidates, in respect of each such ward;

(*c*) appointing the day or days on which a poll shall be taken if a poll becomes necessary in accordance with this Act.

(2) The date appointed under subsection (1) (*b*) shall be not less than fourteen days after the publication of the order.

(3) The period appointed under subsection (1) (*c*) during which a poll shall be taken shall commence not less than fourteen days after the nomination of candidates.

(4) Upon receipt of a copy of the order required by this section, the returning officer for each ward named in the order shall proceed to hold an election in the manner prescribed by or under this Act.

Nomination of candidates

29.—(1) On the day or days and at the time or times and place fixed for the nomination of candidates the returning officer shall attend in the open court at the place notified to receive the nomination of candidates and shall receive such nomination

papers as may be tendered to him, and which appear to him to comply with this Act.

(2) Subject to subsection (7), the nomination of every candidate shall—

(*a*) be made by means of a nomination paper in the prescribed form;

(*b*) be made by at least ten voters registered in the ward in which the candidate intends to be a candidate, each of whom shall sign the nomination paper;

(*c*) be endorsed with the candidate's consent to nomination;

(*d*) if the candidate is to stand for, or to be sponsored by, a political party, specify that fact, together with the name of the political party and the name of the candidate or an abbreviation of the name of the candidate, and a distinctive symbol, which the candidate wishes to appear on the ballot paper together with his photograph; and

(*e*) in the case of an independent candidate, specify the name of the candidate or an abbreviation of the name of the candidate, and a distinctive symbol, which the candidate wishes to appear on the ballot paper together with his photograph.

(3) Every nominated candidate shall produce to the returning officer evidence, satisfactory to the returning officer, identifying him as the person nominated.

(4) Where a nomination paper specifies the matters referred to in paragraph (*d*) of subsection (1), the nomination paper shall be countersigned by a person who is an office-bearer of the political party concerned and has authority to certify that the candidate is sponsored by that political party.

(5) The fact that subsequent to nomination the name of any person who nominated a candidate under subsection (2) (*b*) is struck off the voters register shall not invalidate the nomination of the candidate.

(6) No candidate may be nominated for election in more than one ward or, in the case of a by-election, while he is a councillor.

(7) A voter shall not be entitled to subscribe to more than one nomination paper.

Nomination paper and supporting documents

30.—(1) Every candidate or his election representative shall at the time of his nomination deliver to the returning officer—

(*a*) a nomination paper completed and executed in the prescribed form;

(*b*) evidence, or a statutory declaration by the candidate made before a magistrate or a commissioner for oaths, that the candidate—

(i) is a citizen of Malaŵi and has attained the minimum age of twenty-one years; and

(ii) is able to speak and to read the English language well enough to take an active part in the proceedings of the council;

(*c*) evidence that he is registered as a voter.

(2) The returning officer shall, if the candidate or his election representative so requests, examine the nomination paper and supporting documents of the candidate before they are tendered and advise the candidate or his election representative whether in his opinion they are in order.

(3) The returning officer shall, at the earliest opportunity and in any case, before the close of the period allowed for nominations, advise the candidate or his election representative of any defect in the candidate's nomination paper or supporting documents and the candidate or his election representative may, before the close of such period, rectify the defect.

Invalid nominations

31. Where a nomination paper is delivered in conformity with this Part and it is not withdrawn, the candidate shall be deemed to stand nominated unless the returning officer is satisfied of the candidate's death or decides that the nomination paper is invalid on one of the following grounds, but on no other grounds, namely—

(*a*) that the description of the candidate is insufficient to identify him;

(*b*) that the nomination paper does not comply with this Act;

(*c*) that the nomination paper was not tendered within the time prescribed;

(*d*) that any supporting document required to accompany the nomination paper has not been lodged with the returning officer; or

(*e*) that the evidence delivered to the returning officer under section 29 (3) is insufficient.

Rejected nominations

32.—(1) If, after the close of the period allowed for nominations but before the polling day, the returning officer is of the opinion that—

(*a*) a candidate whose nomination paper has been lodged with him has not been duly nominated in accordance with this Act or is not qualified for election or has obtained nomination by fraud or false pretences;

(*b*) any symbol or abbreviation specified in respect of a candidate pursuant to paragraph (*d*) or (*e*) of section 29 (2) is indecent or obscene or is too complex or elaborate to be reproduced on a ballot paper or so closely resembles the symbol of any candidate contesting the election in the ward

concerned or the recognized symbol or abbreviation of another candidate or of any political party, other than the political party, if any, for which the candidate concerned is standing or which is sponsoring him as to be likely to cause confusion; or

(*c*) where the nomination paper states that a candidate is to be sponsored by a political party, there is reason to believe that fact is not true; or

(*d*) the deposit referred to in section 37 was not lodged with a candidate's nomination paper; or

(*e*) a candidate is not qualified for election in that election; or

(*f*) a candidate has been duly nominated for election for another ward,

the returning officer shall forthwith notify such candidate or his election representative giving the reasons for such opinion, and, if so requested by the candidate or his election representative, the returning officer shall draw up and sign a statement of the facts and his opinion based thereon and transmit it, together with the nomination paper and any certificate or affidavit which has been lodged with such nomination papers, to the Registrar of the High Court for hearing and decision by the High Court at the earliest opportunity; and a copy of the statement shall, at the same time, be delivered to the candidate or his election representative and to the Commission.

(2) If no request is made under subsection (1) the candidate shall be deemed not to have been duly nominated.

(3) The High Court may call for further information from the person making the request or from the returning officer.

(4) The High Court shall after determination of the matter direct the returning officer to accept or to reject the nomination and the returning officer shall comply with such direction.

(5) Where any nomination has been referred to the High Court under the provisions of this section, the proceedings under sections 33, 34 and 35 shall be suspended pending determination of the matter.

(6) Without derogation from subsection (1), the returning officer shall not take the action under that subsection solely on account of any minor variation between the name of any person as it appears on the nomination and as it appears on the voters register if the returning officer is reasonably satisfied that the variation is due to an error or is without significance.

No nomination of candidate

33. If at the end of the period allowed for nomination no candidate has been duly nominated for a ward, the Commission shall by notice published in the *Gazette*, extend the period for the receipt by the returning officer of nominations to a date not later than seven days before the polling day.

Publication of names of candidates for election as councillor 9 of 2013

33A. After receiving nominations of candidates for election as councillor under this Part, the Commission shall, within twenty-one days after receiving the nominations, cause to be published in the *Gazette* and on the radio and in at least two newspapers in general circulation in Malaŵi the names of all candidates who have been validly nominated for election as a councillor in alphabetical order of surnames.

Procedure for uncontested election

34. If at the end of the period allowed for nomination there shall be only one candidate duly nominated in a ward, the returning officer shall publicly declare that candidate to be elected and shall immediately thereafter inform the Commission of the name of the elected candidate and the ward for which he has been elected, and each candidate shall thereupon be a member of the council.

Procedure when poll to be held

35.—(1) When two or more persons have been duly nominated as candidates for election in any ward, the returning officer in such ward shall, as soon as practicable after the close of the period for nomination, declare and give notice that a poll is to be taken stating—

(*a*) the names of the candidates in alphabetical order of surnames;

(*b*) the day or days and times, as declared by the Commission under section 28, on which the poll shall be held; and

(*c*) the location of the polling station or stations.

(2) The returning officer may, with the consent of the Commission, alter the provisions of a public notice given under subsection (1) for the purpose of fulfilling the requirements of this Act and any such alteration shall be published in the same manner as the notice.

Special provisions with respect to by-elections

36.—(1) A vacancy in the membership of a council which exists otherwise than by reason of a dissolution of the Council shall be published by the Commission by notice in the *Gazette* stating the cause of the vacancy.

(2) If—

(*a*) within fourteen days of the publication of a notice referred to in subsection (1), the person to whom the notice relates has not presented a petition to the High Court seeking an order declaring that he has not ceased to be a member of the council; or

(*b*) after presenting a petition referred to in paragraph (*a*), the petitioner by his own default does not prosecute his petition within fourteen days of presenting the petition; and

(*c*) after hearing the petition, the High Court confirms the declaration of the Commission,

the Registrar of the High Court shall forthwith give notice of that fact to the Commission.

(3) If, after hearing a petition referred to in subsection (2), the High Court makes an order declaring that the petitioner has not ceased to be a member of the council, the Registrar of the High Court shall forthwith give notice of that fact to the Commission, who shall publish a notice in the *Gazette* stating the effect of the order of the High Court.

(4) The Commission shall be respondent on the hearing of a petition referred to in subsection (2).

Deposit on nomination
9 of 2013

37.—(1) At the same time as the nomination paper for a candidate is lodged, there shall be deposited with the returning officer by or on behalf of the person nominated, such sum as may be determined by the Commission, which shall not be refundable.

(2) If a poll for the ward concerned does not take place, the sum deposited under subsection (1) shall be refundable to the payee.

(3) The Commission shall, six months before the nomination day—

(*a*) determine the sum to be deposited under subsection (1); and

(*b*) publish in the *Gazette*, on the radio and in at least two newspapers in general circulation in Malaŵi, the sum determined under subsection (1).

Withdrawal of a candidate

38.—(1) Subject to this section, a duly nominated candidate for election for a ward may withdraw his nomination at any time before the polling day.

(2) A withdrawal of a candidate under subsection (1) shall be effected by means of a written notification to the returning officer, signed by the candidate personally, and the returning officer shall notify the Commission in writing.

(3) Where a candidate has withdrawn his nomination under this section the sum deposited by or on his behalf under section 37 shall be forfeited and paid into the Consolidated Fund.

(4) In the event of a candidate withdrawing his nomination under this section, the returning officer shall take all such steps as are reasonably practicable to ensure that—

(*a*) the withdrawal is brought to the attention of voters in the ward; and

(*b*) the name of the candidate who has withdrawn is either omitted or deleted from all ballot papers.

Death of candidate

39.—(1) If the returning officer of a ward is satisfied that a duly nominated candidate for election in that ward died before the close of the poll in that ward, he shall stop all proceedings relating to the election in that ward and forthwith notify the Commission of that fact.

(2) Where—

(*a*) the Commission is satisfied that a duly nominated candidate for election for a ward died before the poll commenced or, if the poll has commenced, before the close thereof;

(*b*) the proceedings relating to an election for a ward have been stopped under subsection (1), the Commission shall, so far as concerns that ward, declare that all proceedings relating to the election in that ward are void and that all proceedings relating to that election shall be commenced afresh in the same manner as if a vacancy had occurred:

Provided that no fresh nomination shall be necessary in the case of a candidate who was duly nominated at the time when the proceedings were declared void if such candidate or his election representative notified the returning officer of the ward in writing of his intention to remain a candidate.

PART V
Campaigning

Campaigning by candidates

40. All candidates shall have the right to campaign in an election.

Period of campaigning

41. For the purpose of this Act the period of campaigning by every candidate under this Part shall be a period of two months closing forty-eight hours before the opening of the poll on the first polling day:

Provided that in the case of the first election such period shall be of any duration closing forty-eight hours before the opening of the poll on the first polling day.

Equal treatment of candidates

42. Every public officer and public entity or authority shall give and be seen to give equal treatment to all candidates to enable each candidate to conduct his campaign freely.

Freedom of expression and information

43. Every candidate and every representative or supporter the candidate shall enjoy complete and unhindered freedom of expression and information in the exercise of the right to campaign under this Act and no person shall, during or after the period of campaigning, be subjected to any criminal prosecution for any statement he made or any opinion he held or any campaign material he produced, published or possessed while campaigning in the election:

Provided that no person shall in campaigning in an election use language which is inflammatory, defamatory or insulting or which constitutes incitement to public disorder, insurrection, hate, violence or war.

Freedom of assembly

44. Every candidate and any representative or supporter of the candidate shall, either alone or in common with others, enjoy complete and unhindered freedom of peaceful assembly in campaigning in any election.

Code of conduct

45. The Commission may prescribe a code of conduct to be complied with by every candidate in conducting his campaign in an election.

Prohibited places for campaigning

46. No person shall hold a campaign meeting under this Act in or within the premises of—

(*a*) military units or police stations;

(*b*) public institutions and workplaces during normal working hours;

(*c*) educational institutions during periods of classes.

47.—(1) Every candidate shall have the right to have the substance of his campaign propaganda reported on television news, radio news broadcasts of the Malaŵi Broadcasting Corporation and in any newspaper in circulation in Malaŵi: News broadcasts and reports

Provided that in the case of television news and news broadcasts by the Malaŵi Broadcasting Corporation—

(*a*) the content of the news shall be professionally determined by the television station and the Malaŵi Broadcasting Corporation;

(*b*) the television station and the Malaŵi Broadcasting Corporation shall maintain neutrality in the manner of reporting the news of the campaign propaganda of candidates and generally in their commentaries;

(*c*) the Commission shall monitor such news broadcasts and shall ensure equal news coverage of the campaigning by all candidates;

(*d*) a candidate shall be entitled to make commercial advertisement for his campaign.

(2) The Commission may, by arrangement with the Malaŵi Broadcasting Corporation, allocate time on the radio during which candidates may be allowed to speak in campaigning for an election and the Commission shall allocate equal time to every candidate.

(3) For the purposes of this section, "campaign propaganda" means any activity, statement or any other form of expression aiming directly or indirectly at promoting votes for any candidate contesting in an election.

48. During the campaign period any candidate may publish campaign materials in the form of books, booklets, pamphlets, leaflets, magazines or newspapers and shall, in any such publication, specify particulars sufficient to identify the candidate. Publication of books, pamphlets, etc.

49. The District Commissioner shall designate places or spaces in parts of his district on which may be posted or affixed campaign materials of candidates and every candidate shall be entitled to equal access to such place or space. Campaign posters

50. Every candidate may, for the purpose of financing his campaign, appeal for and receive voluntary contributions from any individual or any non-governmental organization or other private organization in or outside Malaŵi. Campaign financing

PART VI

Polling Stations

51.—(1) The Commission shall establish polling stations throughout the Republic and there shall be at least one polling station for every registered centre established under section 12. Polling stations

(2) All polling stations shall be established and located in public buildings, including schools, community or social halls, administrative offices of the Government or local authorities but not—

(*a*) at a military unit or police station;

(*b*) in a re sidential building;

(*c*) in a building occupied by a political party;

(*d*) in premises where alcoholic drinks are ordinarily sold or consumed;

(*e*) places of worship or dedicated to worship; and

(*f*) hospitals or other health centres.

(3) The Commission shall, before the polling day, publish in the *Gazette* and in more than one issue of a newspaper in general circulation in Malaŵi and by radio announcements and by any other appropriate means the names of all places throughout Malaŵi at which polling stations have been established.

Polling station officers

52.—(1) The Commission shall appoint polling station officers in its service whose duty shall be to administer the proceedings at polling stations, including more particularly the casting of votes, and to count the votes cast at polling stations.

(2) The Commission shall post at every polling station at least five polling station officers one of whom the Commission shall designate as the presiding officer for that polling station and at least one of whom shall be a person able to speak the language commonly spoken in the area of the polling station.

(3) Polling station officers may be appointed from amongst persons who served as registration officers and every person appointed as a polling station officer shall receive vocational training in his duties.

Working hours for polling station officers

53. Every polling station officer shall, on the polling day, report for work at the polling station not later than thirty minutes before the opening time for the casting of votes at that polling station and at any given time of the polling day there shall be a majority of polling station officers attending to their business at the polling station.

Work items for polling station officers

54. The Commission shall ensure, in due time, that polling station officers at every polling station are supplied with all necessary items, namely—

(*a*) an authenticated copy of the voters register of the voters registered at the centre served by the polling station;

(*b*) the ballot papers for use by voters in casting their votes;

(*c*) the ballot boxes;

(*d*) the seals, sealing wax and envelopes for the votes;

(*e*) indelible ink;

(*f*) record sheets for the record required under section 77;

(*g*) a special container to be positioned in the polling booth into which a voter shall deposit the ballot paper;

(*h*) a lamp or lamps to be lit and used for counting votes at the close of the poll;

(*i*) a log-book in which formal complaints under section 73 shall be recorded.

Security of work items at polling station

55. Presiding officers at polling stations and, in general, the Commission shall be responsible for creating and guaranteeing all necessary and indispensable conditions for the custody, conservation, security and inviolability of the items specified in section 54, including more particularly the ballot papers and ballot boxes.

Monitoring of voting by candidates

56.—(1) Every candidate shall have the right to monitor the voting process at polling stations and shall do so through his designated representatives who shall be notified to the Commission in writing specifying their names and the polling stations to which they are to be assigned and in the absence of such notification by any candidate it shall be presumed that the candidate does not desire to monitor the voting process at that polling station.

(2) The Commission shall issue to every person designated as a representative of a candidate under subsection (1) a document of identity in the prescribed form.

Rights and duties of representatives of candidates

57.—(1) Representatives of candidates shall have the right—

(*a*) to be present at the polling stations and to occupy the nearest seats or positions to the polling station officers so as to be able to monitor all the operations relating to the casting and counting of votes;

(*b*) to verify and inspect, before the beginning of the casting of the votes, the ballot boxes and the polling booths;

(*c*) to request and obtain from the polling station officers any information which they consider necessary relating to the voting process and the counting of the votes;

(*d*) to be consulted about any question raised on the operation of the polling station whether during the casting or the counting of the votes;

(*e*) to consult the voters registers at any time.

(2) Representatives of candidates shall have the following duties—

(*a*) to act conscientiously and objectively in the exercise of their rights under this section;

(*b*) to co-operate with polling station officers in the operations relating to the casting and counting of votes;

(*c*) to refrain from interfering unjustifiably and in bad faith with the duties of the polling station officers so as not to disturb the process of casting and counting the votes;

(*d*) to maintain the secrecy of the ballot.

PART VII

The Vote and the Voting Process

Characteristic of the vote

58.—(1) The right of a person to vote in the election shall be exercised individually by him and he shall be required to be physically present.

(2) Voting shall be by secret ballot.

(3) A voter shall be entitled to cast his vote only once and one person shall have one vote.

Place where to cast the vote

59.—(1) Subject to subsection (2), a person shall be allowed to exercise his right to vote at a polling station located at the registration centre where he is registered.

(2) If it is not possible for a person to vote at a polling station located at the registration centre where he is registered, the registration officer of that centre or other duly authorized officer may, on the request of such person, grant him written authorization in the prescribed form to vote at a polling station located in the place where he will be present on the polling day and in that case the polling station officers at such other polling station shall record in the manner prescribed by the Commission in writing his name, the number of his voters registration certificate and the place of his registration.

Ballot papers

60.—(1) The Commission shall arrange for the printing of sufficient quantities of ballot papers for candidates for election as a councillor on which shall be printed clearly and legibly, in respect of each candidate, his name or an abbreviation thereof and his election symbol, and such other particulars as the Commission may determine to identify him distinctly from other candidates.

Voting booths

61. The Commission shall establish one voting booth or more at each polling station and a voting booth shall be constructed in such a way as to screen a voter from observation when he is casting his vote according to his choice consistent with the doctrine of secret ballot.

Ballot boxes

62.—(1) The Commission shall procure ballot boxes of suitable material, specification and design for use in the casting of votes by voters.

(2) Subject to satisfying the requirements of this Act, on the polling day the presiding officer of a polling station shall position in respect of each voting booth at that polling station one ballot box in such a way that when voters cast their votes in the ballot box they shall do so in full view of the polling station officers and other officials present thereat.

Right of employees to be released for voting

63. Notwithstanding any provision to the contrary in any contract of employment, all persons in paid employment, including those working by shift, shall have the right to be released for the necessary time to exercise their right to vote.

Hours of voting

64. On the polling day voting shall begin at 6 o'clock in the morning and close at 6 o'clock in the evening, but before voting begins the presiding officer, together with the other polling station officers and representatives of candidates, shall verify that there are no irregularities with the voting booth and the working documents of the polling station officers and, shall, in particular, exhibit in front of all present the ballot box to verify that it is empty after which the ballot box shall be closed and sealed.

Order of voting

65. Upon verification in accordance with section 64 that there are no irregularities, the first persons to be allowed to vote shall be the presiding officer, the other polling station officers, representatives of candidates and all officers responsible for ensuring order and security at the polling station after whom all other persons shall vote according to the order of their arrival at the polling station and, to this end, they shall form a line; but subject thereto, the presiding officer shall exercise general powers for keeping order at the polling station and for regulating the number of persons to be admitted to vote at any time and may, if circumstances so require, use his discretion to allow certain persons to vote inconsistently with the order of priority required by this section.

Continuity of the voting process

66. Subject to section 67, voting at every polling station shall continue uninterrupted until closed.

Adjournment in certain cases

67.—(1) Voting at any polling station may be adjourned to another day to be fixed by the Commission if—

(*a*) the polling station officers are unable to assemble at that polling station in accordance with this Act;

(*b*) there occurs some commotion which causes voting to be interrupted for more than three hours; and

(*c*) in the area where the polling station is located there has occurred some public disaster or a serious disturbance of public order, not being the death of any person, which affects the voting.

(2) Where voting has been adjourned to another day under subsection (1)—

(*a*) the hours of voting on that day shall be the same as for the original day;

(*b*) the voting process shall be conducted afresh and not as continuing from the original day; and

(*c*) the votes cast on the original day shall be null and void and shall be classified as such in the records of that polling station prepared under section 77.

Prohibited presence, etc., at polling stations

68.—(1) No form of propaganda, campaign material or advertisement shall be exhibited inside a polling station or within a radius of one hundred metres outside a polling station.

(2) Unless his presence is otherwise permitted under this Act, no person shall be allowed while voting continues within the premises of a polling station or to remain within the premises of a polling station if—

(*a*) he is not a registered voter;

(*b*) he has already voted at that polling station or at any other polling station.

(3) An agent of a media organization shall be entitled to be present at a polling station during polling and for that purpose every such agent shall identify himself to the polling station officers by presenting his credentials from the organization he represents.

(4) No person shall be present at a polling station in the capacity of a member of the armed forces or the police or as a member of any paramilitary force or a uniformed organization, unless he is employed in the service of the Commission or has been invited by the presiding officer for purposes of keeping order.

(5) The presiding officer shall take all necessary steps to effectively bar or expel from within a radius of one hundred metres of a polling station any person who is evidently drunk and disorderly or is carrying a weapon of any kind or is disturbing the order or the peace at the polling station.

Requirements for exercising the right to vote

69. For a person to be allowed to vote he must first present to the polling station officers his voters registration certificate and must have not yet exercised his right to vote.

Manner of casting the vote

70.—(1) To be able to cast a vote at any polling station, a voter shall present himself to the polling station officers at the first desk as he approaches the polling station and hand to them his voters registration certificate whereupon the polling station officers shall proceed to verify his identity by examining the voters register.

(2) If the polling station officers are satisfied with the identity of a voter in accordance with subsection (1), they shall—

(*a*) mark his voters registration certificate and record his name and registration number and hand back the certificate to him;

(*b*) dip the right index finger of the voter in the indelible ink provided for the purpose to the polling station officers after which the presiding officer or other polling station officer authorized in that behalf shall hand to the voter a ballot paper for use by the voter in accordance with subsection (3), and direct the voter to the voting booth for the poll for election of a councillor.

(3) The voter shall then proceed to cast his vote in such a manner as the Commission may determine.

Voting by blind and disabled persons

71. A voter who is blind or is affected by disease or other physical disability may vote accompanied by another registered voter of his own choice or, failing such voter, by a polling station officer who shall assist such person in casting his vote and shall act faithfully to the wish expressed by such person and with absolute secrecy regarding the vote cast by such person.

Null and void votes

72.—(1) A vote cast is null and void if—

(*a*) the ballot paper has been torn into two or more parts; or

(*b*) it has been classified as such pursuant to section 67 (2) (*c*).

(2) A null and void vote shall not be regarded as valid and shall not be counted in determining the results of the elections.

Doubts and complaints

73.—(1) In addition to representatives of candidates any voter present at a polling station may raise doubts and present in writing complaints relating to the voting at the polling station and shall have the right to obtain information from the polling station officers and from relevant documents available at the polling station.

(2) No polling station officer shall refuse to receive a complaint presented to him under subsection (1) and shall initial every such presentation and annex it as part of the official record of the polling station.

(3) Any presentation received by polling station officers under this section shall be deliberated upon among, and be resolved by the polling officers who may, if necessary in their opinion, postpone such deliberation or resolution until the end of the voting process to enable the process to proceed.

PART VIII

Determination of Results of the Elections

Unused ballot papers

74. At the close of the poll at any polling station, the presiding officer shall proceed by first collecting together and separately all unused ballot papers and placing them in a separate envelope provided to him for the purpose and then

sealing the envelope and initialling or stamping it over the sealed area.

Classification of votes cast

75. For the purposes of determining the results of the elections at a polling station and, in particular, in counting the votes thereat, the votes cast at a polling station shall be separately classified into—

(*a*) null and void votes;

(*b*) votes for each of the candidates for election as councillors.

Opening of ballot box and counting of votes

76. After the close of the poll at any polling station, and only thereafter, the presiding officer shall, in the presence of other polling station officers and representatives of candidates if any be present, open the ballot box and order the counting of the votes to proceed separately according to a procedure entailing the polling station officers—

(*a*) picking out of the ballot box one ballot paper and displaying the ballot paper to all present and announcing aloud the classification of the vote as specified in section 75;

(*b*) recording on a sheet of paper provided to the polling station officers for the purpose, showing the classification of votes, the votes cast for each classification;

(*c*) displaying the already announced ballot papers and separating them into lots corresponding to each classification; and

(*d*) announcing, through the presiding officer, the number of votes cast at the polling station under each classification;

Record of the polling process

77.—(1) The presiding officer shall cause to be prepared by the polling station officers—

(*a*) a record of the entire polling process at his polling station containing—

(i) the full particulars of the polling station officers and representatives of candidates;

(ii) the total number of voters;

(iii) the total number of votes for or under each classification of votes;

(iv) the number of unused ballot papers;

(v) the number of ballot papers which have been the subject of complaints, if any;

(vi) the discrepancies, if any, between votes counted and the number of voters;

(vii) the number of complaints and responses thereto and decisions taken thereon by the polling station officers;

(viii) any other occurrence which the polling station officers consider to be important to record; and

(*b*) a brief summary of the final result,

and such record and summary shall be legibly signed by the presiding officer and each of the other polling station officers and, if any be present, at least one representative of each candidate.

(2) Representatives of candidates at a polling station shall be entitled to a copy of the duly signed summary of the final result of the poll at that polling station.

(3) The presiding officer shall post at the polling station a copy of the duly signed summary of the final result of the poll at that polling station.

Delivery of ballot papers, etc., from polling stations

78. The presiding officer of a polling station shall, with all dispatch, deliver to the office of the District Commissioner of his district under conditions of absolute security against loss, tampering or interference—

(*a*) the record prepared under section 77;

(*b*) all the ballot papers collected in separate lots corresponding to the classification under which they were counted;

(*c*) all unused ballot papers; and

(*d*) all voters registers and other work items provided to that polling station.

Compilation of the district result of the election

79.—(1) On receipt of records from polling stations, the District Commissioner or other officer of the Commission duly authorized in that behalf shall, at the office of the District Commissioner, compile the result of the elections in his district on the basis of the duly signed summaries received with such records and shall prepare, on the appropriate sheets in the prescribed form provided for the purpose by the Commission, a record in respect of each ward in the area of the council and also in respect of the area of the council showing—

(*a*) the total number of persons who registered as voters;

(*b*) the total number of persons who voted;

(*c*) the total number of votes for or under each classification of votes in accordance with section 75;

(*d*) the discrepancies, if any, between the votes counted and the number of persons who voted; and

(*e*) the complaints, if any, received by him and his decisions thereon.

(2) Representatives of candidates duly designated for the purpose shall be entitled to observe the entire procedure followed at the office of the District Commissioner in compiling the result of the election under subsection (1).

(3) The record prepared under subsection (1) shall be legibly signed by the District Commissioner or other officer supervising the compilation thereof and, if any be present, by at least one

representative of a candidate who shall, in addition, be entitled to receive a copy of the record.

(4) The District Commissioner or an officer of the Commission duly authorized in that behalf shall publicly announce the result of the election in each ward and in the entire area of the council in accordance with the record prepared under subsection (1);

(5) The District Commissioner or a duly authorized officer of the Commission shall, with all dispatch, deliver to the Chief Elections Officer under conditions of absolute security against loss, tampering or interference—

(*a*) the record prepared under subsection (1); and

(*b*) all items received from all polling stations in the district concerned.

Determination of the national result of the election

80.—(1) The Commission shall determine and publish the national result of the election based on the records delivered to it from the district and polling stations.

(2) The determination of the national result of the election shall begin immediately after the Commission has received records from all districts and shall, subject only to subsection (3), continue uninterrupted until concluded.

(3) If a record from any district or other element necessary for the continuation of the determination of the national result of the election is missing, the Chairman of the Commission shall take necessary steps to rectify the situation and may, in such case, suspend the determination for a period not exceeding twenty-four hours.

(4) Representatives of candidates designated in writing to the Commission shall be entitled to observe the determination of the national result of the election.

(5) Subject to this Act, in any election the candidate who has obtained a majority of the votes at the poll shall be declared by the Commission to have been duly elected.

Analysis of complaints, etc., prior to determination of the national result

81. At the beginning of determining the national result of an election, the Commission shall take a decision on any matter which has been a subject of a complaint and shall examine the votes which have been classified as null and void and may affirm or correct the determination thereof at the polling stations and at the offices of District Commissioners but without prejudice to the right of appeal conferred under section 97.

Records of the national result of the election

82. The Commission shall summarize its determination of the national result of an election in a written record indicating—

(*a*) the national result of the election as determined;

(*b*) the complaints and responses thereto and the decisions taken on them,

and the Chairman of the Commission shall legibly seal the national result of the election by signing the summary and every candidate shall be entitled to receive a signed copy of the summary.

Publication of the national result

83. The Commission shall publish in the *Gazette* and by radio broadcast and in at least one issue of a newspaper in general circulation in Malaŵi the national result of an election within eight days from the last polling day and not later than forty-eight hours from the conclusion of the determination thereof and shall, in such publication, specify—

(*a*) the total number of voters registered for the election;

(*b*) the total number of voters who voted;

(*c*) the total number of null and void votes; and

(*d*) the total number of valid votes cast for each classification of votes as specified in section 75.

PART IX

Observation

Meaning of observation

84. For the purposes of this Act, observation means the verification of the various stages of the election by international organizations, international and local non-governmental organizations, foreign governments and foreign and local personalities duly recognized for the purpose in accordance with this Part.

Scope of observation

85. Observation shall consist of the following activities—

(*a*) to verify and monitor the impartiality and the functioning of the Commission and its officers in conformity with this Act;

(*b*) to verify and monitor the impartiality and legality of the decisions taken by the Commission and its officers in settling disputes;

(*c*) to verify and monitor the registration of voters;

(*d*) to observe the course of the campaigning for election;

(*e*) to verify and monitor the voting process;

(*f*) to verify and monitor the determination of the results of the election at all stages of determination;

(*g*) to observe access to and the use of the media.

(2) Any irregularities noted by observers shall be reported to the Commission or to the competent officers of the Commission and the Commission or such officers shall examine the activities reported as irregularities and shall, where the irregularities are confirmed, take corrective measures necessary to bring the election into conformity with this Act.

Beginning and end of observation

86. Observation shall begin with the registration and end with the determination of the national result of the election or the settlement thereafter of all election disputes.

Collaboration by competent authorities

87. It shall be the duty of the Commission, every officer thereof and every competent public officer or other competent authority in Malaŵi to co-operate with observers in their role and to offer to them the guarantees and other facilities necessary to fulfil their role.

Invitation to observers

88. The Commission may send invitations for observation and may do so on its own initiative or on request by a candidate or by any government, organization or person competent under this Act to undertake observation.

Categories of observers

89.—(1) For purposes of recognition under this Act, observers shall be categorized as follows—

(*a*) observers from the United Nations Organization and its agencies, the Organization of African Unity and its agencies, the Commonwealth Secretariat and other international organizations;

(*b*) observers from non-governmental organizations constituted and operating in any foreign country;

(*c*) observers from non-governmental organizations constituted and operating in Malaŵi;

(*d*) observers from foreign governments; and

(*e*) individual observers;

(2) A person shall not be recognized as an observer unless—

(*a*) in the case of the first four categories specified in sub-subsection (1), he has been designated by the relevant organization or foreign government in writing to the Commission disclosing his particulars and credentials;

(*b*) in the case of the category of individual observers, he is a person of recognized experience and prestige.

Recognition and identification of observers

90. Recognition of observers on arrival in Malaŵi shall be granted by the Commission which, for that purpose, shall—

(*a*) establish adequate administrative procedures for the proper and timely recognition of the observers;

(*b*) devise an identity card for each category of observers and issue to every recognized observer the card corresponding to his category;

(*c*) devise a common and easily identifiable badge for all observers and issue the badge to every recognized observer.

Compulsory use of identity cards and the common badge

91. Every observer recognized under this Act shall, while exercising his functions, use the identity card and the badge issued to him.

Rights of observers

92. Observers shall have the right—

(*a*) to obtain a multiple entry visa to enter Malaŵi for the duration of the period of observation as specified in section 86;

(*b*) to have unimpeded access to all election events and to observe all aspects of the civic education programmes, the registration

of voters, the nomination of candidates, the campaign, the voting and the counting of votes at all stages;

(*c*) to enjoy freedom of circulation throughout Malaŵi;

(*d*) to seek and obtain information on the official organs involved in the conduct of an election and regarding the election itself;

(*e*) to communicate freely with any candidate and with any organization or person;

(*f*) to have access to information transmitted by or to the Commission and its officers;

(*g*) to have access to complaints and responses about any occurrence or matter relating to the conduct of the election;

(*h*) to open offices within Malaŵi for the performance of their functions;

(*i*) to communicate any specific concerns they may have to members and officers of the Commission; and

(*j*) to communicate to the local and international media.

Obligations of observers

93.—(1) Observers shall have the following obligations—

(*a*) to exercise their role with impartiality, independence and objectivity;

(*b*) to respect the Constitution and the laws of Malaŵi;

(*c*) not to interfere in, or to impede, the normal course of the election;

(*d*) to maintain the secrecy of the ballot;

(*e*) to provide to the Commission copies of written information and statements which they have produced; and

(*f*) to return the identity cards, the badge and any other identification materials issued to them by the Commission after the end of their mission as observers.

(2) The Commission may revoke the accreditation of any observer who persistently violates the obligations laid down in subsection (1) and thereupon his status as an observer shall cease.

Position of diplomats

94. Diplomats accredited to Malaŵi who are designated and recognized as observers under this Act shall exercise their functions as such observers without prejudice to their status and positions as such diplomats.

Separate and joint operation of observers

95. Observers may operate separately or jointly with other observers of the same or different categories.

PART X

Complaints and Appeals

Commission to decide on complaints

96. Save as otherwise provided in this Act, any complaint submitted in writing alleging any irregularity at any stage, if not satisfactorily resolved by the Chief Elections Officer or by the

Returning Officer, shall be examined and decided on by the Commission and where the irregularity is confirmed the Commission shall take necessary action to correct the irregularity and the effects thereof.

Appeals to the High Court
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97.—(1) An appeal shall lie to the High Court against a decision of the Commission confirming or rejecting the existence of an irregularity and such appeal shall be made by way of a petition, within seven days from the date the Commission made the decision, supported by affidavits of evidence, which shall clearly specify the declaration the High Court is being requested to make by order.

(2) On hearing a petition under subsection (1), the High Court—

(*a*) shall, subject to subsection 3, make such order or orders as it thinks fit;

(*b*) may, in its absolute discretion, condemn any party to pay costs in accordance with its own assessment of the merits of the complaint.

(3) An order of the High Court shall under subsection (2) not declare an election or the election of any candidate void except on the following grounds which are proved to the satisfaction of the court—

(*a*) that voters were corruptly influenced in their voting contrary to any provision of this Act, or had their ballot papers improperly rejected or voted more than once;

(*b*) that persons not entitled to them were improperly granted ballot papers; or

(*c*) that persons entitled to them were improperly refused ballot papers:

Provided that the court shall not declare an election void, after proof of any ground in paragraphs (*a*), (*b*) or (*c*), if it is satisfied that the number of votes involved could not have affected the result of the election;

(*d*) non-compliance with this Act in the conduct of the election:

Provided that, if the court is satisfied that any failure to comply with this Act did not affect the result of the election, it shall not declare the election void;

(*e*) that the candidate was at the time of his election a person not qualified for election or that he was not properly, nominated, or that a duly qualified candidate had his nomination improperly rejected by the returning officer.

(4) The court shall have power to direct scrutiny and recount of votes if it is satisfied, during proceedings on an election petition, that such scrutiny and recount are desirable.

(5) At the conclusion of the trial of an election petition the court shall determine whether the member whose nomination or election is complained of, or any other and what person was duly nominated or elected, or whether the election was void, and shall report such determination to the Commission, and upon such report being given such determination shall be final.

PART XI

Offences and Penalties

Offences

98.—(1) A person who—

(*a*) in relation to registration of voters—

(i) obtains his registration by giving false information;

(ii) gives false information to obtain his registration or the registration of another person;

(iii) obtains registration in more than one registration area;

(iv) registers another person knowing that that other person is not eligible for registration;

(v) prevents the registration of another person knowing that that person is eligible for registration;

(vi) having the authority to do so, does not delete a registration which he knows to be incorrect;

(vii) falsifies a register;

(viii) with fraudulent intent, modifies or substitutes a voters registration certificate;

(ix) through violence, threat or fraudulent intent, prevents the registration of another person;

(x) knowingly obstructs the detection of incorrect registration or the verification of voters rolls;

(*b*) in relation to campaigning for the election—

(i) prevents the holding or interrupts the proceedings of a meeting;

(ii) denies any candidate equal treatment with any other candidate;

(iii) destroys, defaces, tears or in any manner causes to be totally or partially useless or illegible any campaign material displayed in any place or superimposes thereon any other material concealing the earlier material;

(iv) being entrusted, by virtue of his office or functions, with displaying or depositing any campaign material, fails to display or deposit such campaign material or misplaces, steals, removes or destroys such material;

(v) because another person attended or did not attend any campaign meeting, directly or indirectly, dismisses that other person from any employment or other gainful

occupation or prevents or threatens to prevent that other person from obtaining any employment or other gainful occupation or from continuing in any gainful occupation or applies or threatens to apply any sanction whatsoever to that other person;

(*c*) in relation to voting—

(i) not being otherwise authorized to be present or not being a registered voter, knowingly presents himself at a polling station;

(ii) knowing that he is not eligible to vote, casts a vote at any polling station;

(iii) fraudulently uses the identity of another person in order to exercise the right to vote;

(iv) consciously allows the right to vote be exercised by a person who does not have that right;

(v) votes more than once;

(vi) accompanying a blind or a disabled person to vote, fraudulently and faithlessly expresses a vote not according to the wish of that person;

(vii) within a radius of one hundred metres of a polling station, reveals his vote or procures another person by force or deceit to reveal that other person's vote;

(viii) uses or threatens violence or uses false information or other fraudulent means to coerce or induce another person to vote for or against a particular candidate or to abstain from voting;

(ix) being a public officer, uses his office to coerce or induce another person to vote for or against a particular candidate or abstain from voting;

(x) directly or indirectly, dismisses or threatens to dismiss another person from any employment or other gainful occupation or prevents or threatens to prevent another person from obtaining any employment or other gainful occupation or from continuing in any gainful occupation or applies or threatens to apply any sanction whatsoever to another person in order to induce that other person to vote for, or because that other person voted or did not vote for a particular candidate or because that other person abstained from voting;

(xi) being a presiding officer of a polling station fails to display a ballot box in accordance with the requirements of this Act;

(xii) illicitly introduces ballot papers in a ballot box before, during or after the voting;

(xiii) fraudulently takes possession or conceals a ballot box with uncounted ballot paper or removes an uncounted ballot paper from a ballot box;

(xiv) being a polling station officer, purposely neglects his duty with a view to occasioning an irregularity;

(xv) being a polling station officer, unjustifiably refuses to receive a complaint, or a response to a complaint about the proceedings at his polling station or to examine and seek to resolve such a complaint;

(xvi) disturbs the regular functioning of a polling station;

(xvii) refuses to leave a polling station after being asked to do so by a polling station officer;

(xviii) being an officer-in-charge of police requested to assign police officers to keep order at a polling station, fails without justification to do so within a reasonable time;

(xix) being a police officer assigned to keep order at a polling station wilfully neglects his duties;

(*d*) uses or threatens to use any force or restraint to induce or compel another person to sign or refrain from signing any nomination paper;

(*e*) in any manner, fraudulently spoils, substitutes, conceals, destroys, amends or falsifies any document relating to the election;

(*f*) in bad faith, submits a complaint, or a response to a complaint or challenges or questions the decision thereon by a competent person or body; and

(*g*) without justification neglects to fulfil obligations imposed on him by or under this Act;

(*h*) induces the sale or surrender of a registration certificate;

(*i*) sales or surrenders or buys a registration certificate,

shall be guilty of an offence.

(2) Any person convicted of an offence under section 98 (1) (*h*) or (*i*) shall be liable to a sentence of three years without the option of a fine.

Maintenance of secrecy

99.—(1) Every election officer, candidate, election representative of a candidate or other person in attendance at a polling station shall maintain and aid in maintaining the secrecy of the voting at such station, and shall not communicate, except for some purpose authorized by law, to any person any information as to the name of any voter who has or has not applied for any ballot paper or voted at that station; and no such officer, candidate, representative or other person shall interfere with a voter after he has received a ballot paper and before he has placed a ballot paper in a ballot box.

(2) No person, other than a person aiding a blind or an incapacitated voter in accordance with this Act, shall attempt to obtain in the polling station information as to the candidate for whom any voter in such station is about to vote or has voted.

(3) Any person who contravenes subsection (1) or (2) shall be guilty of an offence.

Offences under this Act cognizable offences Cap. 8:01

100. Every offence under this Act shall be a cognizable offence within the meaning of the Criminal Procedure and Evidence Code.

General penalty 9 of 2013

101.—(1) A person guilty of an offence under this Act for which no other penalty has been specified shall be liable to a fine of K500,000 and to imprisonment for five years.

(2) In addition to the penalty under subsection (1), the court may make an order—

(*a*) where applicable, barring the convicted person from performing the duties of his office in connexion with the election;

(*b*) suspending the right of the convicted person to vote in the election or annulling the vote cast by such person; and

(*c*) having regard to the nature of the activity constituting the offence, giving such directions as the court considers to be warranted in the circumstances.

PART XII

General

Preservation of election documents

102. At the end of its functions, the Commission shall deposit all documents forming the official record of an election (including voters registers, ballot papers, records from council areas and polling stations and summaries thereof and the record and summary of the national result) with the Chief Elections Officer which shall retain and preserve such documents in safe and secure custody without destruction for a period of twelve months.

Failure to elect a councillor

103. If after the holding of an election no person has been elected in one or more wards, a session of the council may commence notwithstanding any such vacancy.

Regulations

104. The Minister may make regulations for carrying into effect the provision of this Act and for matters necessary or required to be prescribed or specified under this Act.

CHIEFS

CHAPTER 22:03

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CHAPTER 22:03

CHIEFS

ARRANGEMENT OF SECTIONS

SECTION

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An Act to make provision for the recognition, appointment and functions of Paramount Chiefs, Senior Chiefs, Chiefs, Sub-Chiefs, Councillors, Group Village Headmen and Village Headmen; and for certain aspects of District Administration and for matters incidental thereto or connected therewith

[29TH DECEMBER, 1967]

PART I

PRELIMINARY

Short title

1. This Act may be cited as the Chief's Act.

Interpretation

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

"Chief" means a person holding or acting in the office of Chief under this Act;

"Chief's Council" means a Council appointed under section 13;

"Chief's Messenger" means a Messenger appointed under section 18;

"District Commissioner" in relation to a Chief or Messenger means the District Commissioner of the District in which such Chief or Messenger holds office;

"Group Village Headman" means a person appointed to be a Group Village Headman under section 9 and holding office as such;

"Section" means a portion of a District assigned or declared to be the area of jurisdiction of a Chief under this Act;

"Sub-Chief" means a person holding or acting in the office of Sub-Chief under this Act;

"village" means a collection of adjacent huts in which reside at least 30 male Malaŵians aged 18 years or over;

"Village Headman" means a person appointed to be a Village Headman under section 9.

PART II

CHIEFS

Offices of Paramount Chief, Senior Chief, Chief and Sub-Chief and areas of their jurisdiction
39 of 1981
5 of 1999

3.—(1) There are hereby established the several offices of Paramount Chief, Senior Chief, Chief and Sub-Chief set out in the second, third and fourth columns respectively of the Schedule.

(2) The areas of jurisdiction of the several offices of Paramount Chief, Senior Chief, Chief and Sub-Chief shall be the Districts, Sections of Districts and Sub-Sections of Districts specified in the first column of the Schedule opposite each such office.

(3) The President may from time to time by Order declare or alter the boundaries of Sections and Sub-Sections and may create new offices of Paramount Chief, Senior Chief or Chief and assign to such offices such area of jurisdiction as he shall think proper and may, for those purposes, by such Order, amend the Schedule.

(4) The certificate in writing of a District Commissioner of the situation of the boundary of any Section or Sub-Section in his District shall unless such certificate is inconsistent with an order made under subsection (3) be conclusive evidence for all purposes of the situation of such boundary.

(5) No Paramount Chief, Senior Chief, Chief or Sub-Chief shall exercise jurisdiction within the area of a City, Municipality or Township except with the written approval of the appropriate Council established under the Local Government (Urban Areas) Act. Cap. 22:01

Appointments to the office of Paramount Chief, Senior Chief and Chief
5 of 1999

4.—(1) The President may by writing under his hand appoint to the office of Paramount Chief, Senior Chief or Chief such person as he shall recognize as being entitled to such office.

(2) No person shall be recognized under this section unless the President is satisfied that such person—

(*a*) is entitled to hold office under customary law;

(*b*) has the support of the majority of the people in the area of jurisdiction of the office in question; and

(*c*) in the case of the office of Senior Chief, is a chief and is recognized by all chiefs in his district as being entitled under customary law prevailing in that district to be appointed Senior Chief.

(3) The appointment of any person to the office of Senior Chief under subsection (1) shall not affect the status of the substantive office of Chief or in any way confer on that person additional jurisdiction to the jurisdiction which he had before being appointed Senior Chief.

Appointment of Sub-Chiefs

5. At the request of a Chief the President may, by writing under his hand appoint any person to the office of Sub-Chief and may in such appointment or subsequently specify the boundaries of the area of jurisdiction of such Sub-Chief and may from time to time alter such boundaries.

Functions of Paramount Chief

6. The functions of the office of Paramount Chief shall be such as the President may specify in the appointment of the holder of such office or subsequently by writing under his hand.

Functions of Chief

7. Subject to such authority as may have been conferred on a Paramount Chief under section 6 the functions of a Chief shall be—

(*a*) to preserve the public peace;

(*b*) to carry out the traditional functions of his office under customary law in so far as the discharge of such functions is not contrary to the Constitution or any written law and is not repugnant to natural justice or morality;

(*c*) to assist in the collection of tax;

(*d*) to assist in the general administration of the District in which his area of jurisdiction is situate and for such purpose to carry out such functions as the District Commissioner may require; and

(*e*) for any of the purposes mentioned in paragraphs (*a*), (*c*) and (*d*) to carry out and enforce any lawful directions of the District Commissioner.

Functions of Sub-Chief

8.—(1) The functions of a Sub-Chief shall be such of the functions of the Chief to whom he is subordinate as shall be delegated to him by such Chief and so far as the traditional functions of the office of Chief are so delegated shall not extend to any function which under customary law may not be exercised by a person other than a Chief.

(2) In carrying out such functions the Sub-Chief shall act in accordance with the general or special directions of the Chief to whom he is subordinate.

Appointment and functions of Group Village Headman and Village Headmen

9.—(1) A Chief may appoint such number of Group Village Headmen and Village Headmen as he may consider necessary to assist him in carrying out his functions.

(2) The functions of a Group Village Headman and a Village Headman shall be to assist the Chief or Sub-Chief by whom he is appointed in the performance of his functions and to bring to the notice of that Chief or Sub-Chief any matter in his village or group of villages which is relevant to such functions.

(3) The remuneration, if any, to be paid to a Group Village Headman or Village Headman shall be such sum as may be approved by the District Commissioner of the District in which the village or group of villages is situated.

Acting appointments 5 of 1999

10.—(1) If the President considers that through age, infirmity or any other reason the holder of an office of Paramount Chief, Senior Chief, Chief or Sub-Chief is unable to fulfil the functions of his office satisfactorily he may appoint such other person to act in that office as he may think fit and the person so appointed shall carry out all the functions of the office accordingly.

(2) During the period of such acting appointment the substantive holder of the office shall not carry out any of the functions of the office.

Removal and suspension of persons holding the office of Paramount Chief, Senior Chief, Chief and Sub-Chief 5 of 1999

11.—(1) The President may by writing under his hand remove any person from the office of Paramount Chief, Senior Chief, Chief or Sub-Chief if after due inquiry he is satisfied that—

(*a*) the person has ceased to be entitled under customary law to hold such office;

(*b*) the person has lost the confidence of the majority of the people residing in his area; or

(*c*) such removal is necessary in the interests of peace, order and good government.

(2) Where the President deems it expedient to cause inquiry to be made into the question of the removal of any person from the office of Paramount Chief, Senior Chief, Chief or Sub-Chief, he may by writing under his hand suspend such person from the performance of the functions of his office.

Inquiries 5 of 1999

12. The President may appoint persons to inquire into any question relating to the appointment to or removal from the office of Paramount Chief, Senior Chief, Chief or Sub-Chief of any person and to report and make recommendations thereon to the President.

Appointment of Chief's Council

13.—(1) Where the President has removed a person from the office of Chief and is of the opinion that no other person is suitable for appointment to such office, he may appoint, by writing under his hand, a Chief's Council to perform the functions of such office.

(2) A Chief's Council shall consist of a Chairman and three or more members all of whom shall be appointed by name. The President may, from time to time, terminate the appointment of any Chairman or member of a Council and appoint another person in place of the person whose appointment is terminated or in addition to the existing members of the Council.

(3) A Chief's Council shall perform all the functions of the office of Chief until a person is appointed to hold such office under section 4.

Appointment of advisers by Paramount Chiefs, Senior Chiefs, Chiefs and Sub-Chiefs
5 of 1999

14. A Paramount Chief, Senior Chief, Chief and Sub-Chief may, in accordance with customary law, appoint advisers to advise him in the exercise of his functions. Such advisers shall be known as Counsellors and shall serve in an honorary capacity and shall not be entitled to any remuneration.

Exclusion of former Paramount Chiefs, Senior Chiefs, Chiefs or Sub-Chiefs from specified area
5 of 1999

15.—(1) Where any Paramount Chief, Senior Chief, Chief or Sub-Chief has been removed from office and the President is satisfied that the presence of such person in any area would be prejudicial to the maintenance of public order in that area, the President may, by notice under his hand, prohibit such person from being within any area specified in the notice, except in such circumstances and on such conditions, if any, as may be specified in the notice.

(2) A notice under this section shall be served personally on the person to whom it relates or, if he cannot be found, shall be published in the *Gazette*.

(3) Any person who contravenes the provisions of a notice served or published under this section shall, for every such contravention, be liable to imprisonment for six months.

Emoluments and Pensions of Chiefs
5 of 1999

16.—(1) There shall be paid to every Paramount Chief, Senior Chief, Chief, Sub-Chief and Chairman of a Chief's Council for the purpose of enabling him to maintain the status and to carry out the functions of his office in a fit and proper manner such remuneration as the President may from time to time determine.

(2) There may be paid to any Paramount Chief, Senior Chief, Chief or Sub-Chief who may voluntarily have retired or who may have been removed from office, such pension as the President may determine.

PART III

Chiefs' Staff

Interpretation
5 of 1999

17. In this Part and in Part IV the word "Chief" shall be deemed to include a Paramount Chief, a Senior Chief, a Chief's Council and a Sub-Chief.

Tax Clerks and Messengers

18.—(1) There shall be appointed to serve every Chief in the discharge of the functions of his office, a tax clerk and such number of chief's messengers as the District Commissioner may determine.

(2) Power to appoint, suspend or remove any person to or from the office of tax clerk or chief's messenger and to exercise disciplinary control over the person holding any such office shall be vested in the District Commissioner of the district in which such person holds office.

19. The functions of a tax clerk shall be to assist the Chief whom he is appointed to serve in the discharge of the functions of his office and to carry out such duties in relation to the collection of tax and other administrative matters as a District Commissioner may direct. Functions of tax clerk

20.—(1) A Chief's Messenger shall assist the Chief whom he is appointed to serve in the performance of the functions of his office. Functions and duties of Chief's Messenger

(2) For the purposes specified in subsection (1) every Chief's Messenger shall have and may exercise all powers, rights, duties and protection for the time being conferred or imposed upon or afforded to police officers under the rank of Inspector by any written law. Where in connexion with any such power, right, duty or protection reference is made in any written law to the superior officer of a police officer, such reference shall be construed in relation to a Chief's Messenger as being a reference to the Chief to whom such messenger is attached or to the District Commissioner.

(3) In addition to any other duties imposed upon him by this Act or any other law, a Chief's Messenger shall—

(*a*) obey and execute promptly all orders, duties or instructions issued to or imposed upon him by a Chief or District Commissioner;

(*b*) report to the Chief to whom he is attached all matters which may directly or indirectly come to his knowledge affecting the general public interest of Malaŵi;

(*c*) at all times do, subject to the general or specific directions of a Chief or District Commissioner, all such things as are lawful and which it is necessary for him to do for the better administration of the area or to preserve the public peace and prevent the commission of an offence; and

(*d*) undergo such training as may be ordered by the District Commissioner.

PART IV

Preservation of Public Peace

21.—(1) Whenever a riot, affray or similar disorder occurs in any District, a Chief's Messenger, on the directions of the District Commissioner or of the Chief whom he is appointed to serve, may, when in uniform— Preservation of public peace

(*a*) require any male person in the vicinity to assist him in quelling the riot, affray or disorder;

(*b*) arrest, without warrant, any person upon reasonable suspicion of his having committed an offence in connexion

with the riot, affray or disorder and detain any person so arrested until he can be delivered into the custody of a police officer or brought before a court of competent jurisdiction to be dealt with according to law.

(2) Any person required under subsection (1) (*a*) to assist a messenger who, without reasonable excuse, refuses or fails to do so, shall be liable to a fine of £25 and to imprisonment for three months.

PART V

General

Offences and penalties
5 of 1999

22. Any person who—

(*a*) not being the holder of an office of Paramount Chief, Senior Chief, Chief or Sub-Chief holds himself out to be such or purports to discharge any of the functions of the office of Paramount Chief, Senior Chief, Chief or Sub-Chief;

(*b*) conspires against or in any manner attempts to undermine the lawful power or authority of a Paramount Chief, Senior Chief, Chief, Sub-Chief or Chief's Council;

(*c*) obstructs or interferes with the lawful discharge by a Paramount Chief, Senior Chief, Chief, Sub-Chief or Chief's Council of any of the functions of his office; or

(*d*) wilfully disobeys any lawful instruction or direction, whether written or verbal, of a Paramount Chief, Senior Chief, Chief, Sub-Chief or Chief's Council,

shall be liable—

(i) for a contravention of paragraph (*a*) or (*b*), to a fine of £100 and to imprisonment for one year;

(ii) for a contravention of paragraph (*c*) or (*d*) to a fine of £25 and to imprisonment for three months.

Arrest without warrant

23. Whenever any person is reasonably suspected of an offence against section 15, he may be arrested without warrant by a District Messenger or Chief's Messenger, and may be detained until he can be delivered into the custody of a police officer or brought before a court of competent jurisdiction to be dealt with according to law.

Emoluments and conditions of service of tax clerks and Chief's Messengers

24.—(1) The emoluments and conditions of service of tax clerks and Chief's Messengers shall be such as may be prescribed by the Minister.

(2) The Minister may from time to time make rules prescribing the emoluments and the terms and conditions of service of tax clerks and Chief's Messengers.

25. A District Commissioner may, by way of allowance, reimburse to a Paramount Chief, Senior Chief, Chief, Sub-Chief or Chairman of a Chief's Council any expenses incurred in the exercise of his functions under this Act which in the opinion of the District Commissioner were properly incurred and are in excess of the provision made in the amount of the emoluments of the holder of the office concerned.

Unusual expenses of Paramount Chiefs, Senior Chiefs, Chiefs and Sub-Chiefs
5 of 1999

26. All emoluments and allowances for expenses payable under this Act shall be paid out of moneys provided by Parliament for the purpose.

Payments under this Act

27.—(1) A person who, immediately before the commencement of this Act, was recognized as a Paramount Chief, Chief or Sub-Chief under the Native Authority Ordinance 1955 (now repealed) shall be deemed to have been appointed to the corresponding office under this Act.

Saving
13 of 1955

(2) A reference in any written law to a Native Authority or a Native Authority area shall be construed as a reference to the corresponding office of Chief or the area of jurisdiction of the corresponding office of Chief established by this Act.

(3) The boundaries assigned to a Section or Sub-Section prior to the coming into operation of this Act shall, until altered under this Act, continue to be the boundaries of the corresponding Section or Sub-Section established by this Act.

SCHEDULE

Areas	*Paramount Chiefs*	*Chiefs*	*Sub-Chiefs*
SOUTHERN REGION			
Nsanje District			
Section 1		Mlolo	
Section 2		Tengani	
Sub-Section 2A			Mbenje
Section 3		Chimombo	
Sub-Section 3A			Makoko
Section 4		Ndamera	
Section 5		Nyachikadza	
Section 6		Malemia	
Section 7		Ngabu	
Chikhwawa District	Lundu		
Section 1		Ngabu	
Sub-Section 1A			Masache
Section 2		Chapananga	
Sub-Section 2A			Ndakwera
Section 3		Makwira	

Areas	*Paramount Chiefs*	*Chiefs*	*Sub-Chiefs*
Section 4		Kasisi	
Section 5		Katunga	
Section 6		Masseah	
Section 7		Ngowe	
Thyolo District			
Section 1	Nsabwe		
Sub-Section 1A			Thukuta
Sub-Section 1B			Mbawela
Section 2		Changata	
Sub-Section 2B			Kwetemule
Section 3		Kapichi	
Section 4		Nchilamwela	
Section 5		Chimaliro	
Sub-Section 5A			Nanseta
Section 6		Bvumbwe	
Section 7		Thomas	
Section 8		Mphuka	
Mulanje District			
Section 1	Mabuka		
Sub-Section 1A			Laston Njema
Section 2		Chikumbu	
Section 3		Nthiramanja	
Sub-Section 3A			Juma
Section 4		Mkanda	
Section 5		Nkhumba	
Section 6		Nazombe	
Blantyre District			
Section 1		Lundu	
Section 2		Chigaru	
Section 3		Kunthembwe	
Section 4		Makata	
Section 5		Kapeni	
Section 6		Kuntaja	
Section 7		Machinjiri	
Section 8		Somba	
Chiradzulu District			
Section 1		Mpama	
Section 2		Nkalo	
Section 3		Kadewere	
Section 4		Nchema	
Section 5		Chitera	
Section 6		Likoswe	
Zomba District			
Section 1		Kumtumanji	
Section 2		Mwambo	

Areas	*Paramount Chiefs*	*Chiefs*	*Sub-Chiefs*
Section 3		Chikowi	
Sub-Section 3A			Mbiza
Sub-Section 3B			Ntholowa
Sub-Section 3C			Ngwelero
Section 4		Mlumbe	
Section 5		Malemia	
Section 6		Mkumbira	
Machinga District			
Section 1		Liwonde	
Sub-Section 1A		Sitola	
Section 2		Kawinga	
Sub-Section 2A			Mlomba
Sub-Section 2B			Chikwewo
Sub-Section 2C			Chiwalo
Sub-Section 2D			Ngokwe
Sub-Section 2E			Nkoola
Sub-Section 2F			Chamba
Section 3		Msamala	
Section 4		Kalembo	
Section 5		Nyambi	
Section 6		Mposa	
Mangochi District			
Section 1		Mponda	
Section 2		Nankumba	
Section 3		Jalasi	
Sub-Section 3A			Chowe
Sub-Section 3B			Mbwana Nyambi
Section 4		Katuli	
Section 5		Makanjila	
Sub-Section 5A			Namavi
Section 6		Chimwala	
Mwanza District			
Section 1		Dambe	
Section 2		Nthache	
Section 3		Simon Likongwe	
Section 4		Kanduku	
Section 5		Mlauli	
Section 6		Ngozi	
Neno District			
Section 4		Cheku Cheku	
CENTRAL REGION			
Lilongwe District			
Section 1		Khongoni	

Areas	*Paramount Chiefs*	*Chiefs*	*Sub-Chiefs*
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Section 2		Chitukula	
Section 3		Chimutu	
Section 4		Mazengera	
Sub-Section 4A			Chitekwere
Section 5		Kalumbu	
Sub-Section 5A			Tsabango
Section 6		Chadza-Mkwenda	
Section 7		Chiseka	
Section 8		Kalumba	
Sub-Section 8A			Njewa
Section 9		Kalolo	
Section 10		Kabudula	
Section 11		Malili	
Mchinji District			
Section 1		Mkanda	
Section 2		Zulu	
Sub-Section 2A			Mduwa
Section 3		Mlonyeni	
Sub-Section 3A			Mavwere
Section 4		Dambe	
Dedza District			
Section 1		Kachere	
Sub-Section 1A			Chilikumwendo
Section 2		Kaphuka	
Section 3		Tambala	
Sub-Section 3A			Chauma
Section 4		Kasumbu	
Section 5		Kachindamoto	
Sub-Section 5A			Kamenya
			Gwaza
Dowa District			
Section 1		Dzoole	
Sub-Section 1A			Kayembe
Sub-Section 1B			Chakaza
Section 2		Msakambewa	
Sub-Section 2A			Mponela
Section 3		Chiwere	
Sub-Section 3A			Mkukula
Salima District			
Section 1		Khombedza	
Sub-Section 1A			Mwanza
Section 2		Kuluunda	
Sub-Section 2A			Msosa
Section 3		Maganga	

Areas	*Paramount Chiefs*	*Chiefs*	*Sub-Chiefs*
Section 4		Karonga	
Section 5		Pemba	
Sub-Section 5A			Kambwiri
Section 6		Ndindi	
Sub-Section 6A			Kambalame
Ntcheu District	Gomani		
Section 1		Kwataine	
Section 2		Mambeya	
Section 3		Njolomole	
Section 4		Phambala	
Section 5		Mpando	
Section 6		Masasa	
Section 7		N'ganya	
Section 8		Makwangwala	
Section 9		Champiti	
Kasungu District			
Section 1		Kaluluma	
Sub-section 1A			Simlemba
Sub-section 1B			Maaanyanja
Sub-section 1C			Chisikwa
Section 2		Mwase	
Sub-section 2A			Kawamba
Sub-section 2B			Chilowa Matambe
Sub-section 2C			Njombwa
Section 3		Chulu	
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Section 5		Wimbe	
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Sub-section 1A			Kafuzila
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Section 1		Kasakula	
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NORTHERN REGION			
Karonga District			
Section 1		Kyungu	

Areas	*Paramount Chiefs*	*Chiefs*	*Sub-Chiefs*
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Section 2		Mwafulirwa	
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Chitipa District			
Section 1		Mwenemisuku	
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Rumphi District			
Section 1		Chikulamayembe	
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SUBSIDIARY LEGISLATION

CHIEFS (STAFF) (EMOLUMENTS, TERMS AND CONDITIONS OF SERVICE) RULES

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CHIEFS (STAFF) (EMOLUMENTS, TERMS AND CONDITIONS OF SERVICE) RULES

under s. 24

PART I

PRELIMINARY

Citation and application

1. These Rules may be cited as the Chiefs (Staff) (Emoluments, Terms and Conditions of Service) Rules and shall apply to all tax clerks and Chief's Messengers.

Interpretation

2. In these Rules, unless the context otherwise requires—

"employee" means a Chief's Messenger or a tax clerk appointed under section 18 of the Act but does not include any person holding any other public office, or employed by the Government as an Industrial Class Employee, who has been appointed as a Chief's Messenger or a tax clerk under section 18 of the Act on secondment terms;

"Salary Scale" means a Salary Scale in the First Schedule;

"temporary employee" means an employee appointed under the proviso to rule 4 (2).

PART II

Appointments and Salaries

Grades and salaries

3. Grades and Salary Scales of employees shall be as set out in the First Schedule.

Appointments G.N. 37/1982

4.—(1) All appointments of employees shall be made in writing in the form set out in the Second Schedule.

(2) Prior to appointing any employee a District Commissioner shall—

(*a*) satisfy himself as to the proposed employee's physical fitness;

(*b*) consult with the Paramount Chief, Chief, Chief's Council or Sub-Chief concerned:

Provided that, notwithstanding that paragraph (*a*) or (*b*) has not been complied with in the case of any proposed employee, a District Commissioner may employ him as a temporary employee on a day to day or week to week basis for any period or periods not exceeding six months in the aggregate.

(3) All employees shall at the commencement of their employment receive the salary specified at the initial point of the appropriate Salary Scale:

Provided that the District Commissioner may permit an employee to receive at the commencement of his employment an increment in his Salary Scale for every completed year of previous training or experience of a kind which provides qualifications required for the post in which he is employed.

Probation and confirmation

5.—(1) Every employee shall be deemed to be appointed upon probation in the first instance.

(2) Subrule (1) shall not apply to a temporary employee, but a temporary employee, who is, without break in service, appointed as an employee shall be deemed to have begun his period of probation on the date upon which he first took up his temporary employment.

(3) An employee who to the satisfaction of the District Commissioner completes a period of two years' employment on probation may be confirmed in his appointment. Such confirmation shall be made in writing in the form set out in the Third Schedule.

(4) An employee whose employment is not confirmed upon the expiration of two years' employment on probation may have his employment terminated.

Resignation, termination of appointment and retirement
G.N. 37/1982 143/1983

6.—(1) No employee shall resign, have his appointment terminated, or retire, without due notice in writing being given by, or to, such employee as the case may be.

(2) In this rule, "due notice" means—

(*a*) in the case of an employee who has been confirmed in his appointment, three months' notice;

(*b*) in the case of any other employee, one month's notice;

and in either case the period of notice may include any period of leave due:

Provided that the District Commissioner may permit retirement or resignation at an employee's request notwithstanding that due notice has not been given.

(3) If an employee wishes to resign he shall give notice to the District Commissioner of his intention so to do or pay to the Government in lieu of notice an amount equal to his salary for an equivalent period:

Provided that the District Commissioner may accept a shorter period of notice.

(4) The District Commissioner may at any time, with the approval of the Minister, terminate the services of an employee whether he has been confirmed in his appointment or otherwise, on giving the employee due notice or the appropriate salary in lieu of notice.

(5) The District Commissioner may require any employee to retire on attaining the age of 60 years or at any time thereafter:

Provided that—

(*a*) on attaining such age the employee shall not be required to retire on the sole ground of age until he has completed 10 year's service;

(*b*) any employee who wishes to continue his employment after attaining the age of 60 years shall, not less than three months prior to his attaining that age, apply to the District Commissioner concerned for permission so to continue his employment.

(6) An employee may himself retire from employment under these Rules—

(*a*) where he is suffering from infirmity of mind or body likely to be permanent which interferes with the performance of the duties of his office; or

(*b*) where he has both attained the age of 50 years and completed 10 years' service and has obtained the consent of the District Commissioner to retire.

(7) An employee may be required to retire at any time if the Minister, on the recommendation of the District Commissioner, so directs—

(*a*) on medical grounds;

(*b*) in case of redundancy;

(*c*) if he has attained the age of 50 years;

(*d*) on the grounds of incompetence or inefficiency beyond his control; or

(*e*) if the post which he holds is abolished.

Terminal benefits G.N. 37/1982 143/1983

7. When an employee retires from employment under these Rules in the following circumstances—

(*a*) suffering from infirmity of mind or body which is likely to be permanent and which interferes with the performance of his duties; or

(*b*) with the permission of the District Commissioner having attained the age of 50 years and also having completed 10 years' service; or

(*c*) having been required to retire—

(i) on medical grounds;

(ii) in case of redundancy;

(iii) on the Minister's direction after such employee has attained the age of 50 years and completed 10 years' service;

(iv) on grounds of incompetence or inefficiency beyond his control; or

(v) upon the abolition of the post held,

he shall be entitled in respect of such employment to a gratuity, pension or other terminal benefit equal to the gratuity, pension or other terminal benefit to which a public officer of equal grade and length of service in the Public Service would have been entitled under the Malaŵi Public Service Regulations in respect of service in the Public Service.

Overtime

8. The remuneration of employees is fixed on the basis that all of an employee's time is at the disposal of the Chief in whose service he is and no additional remuneration is payable for duties performed outside normal business hours.

Salary increments

9. Subject to rule 13, one incremental increase in salary may be granted to an employee by the District Commissioner concerned in each year upon the District Commissioner being satisfied that such employee has during the preceding twelve months, or such other period as may in the circumstances be appropriate, performed his duties with diligence, efficiency and fidelity.

Incremental date G.N. 37/1982

10. For all employees the incremental date for purposes of rule 9 shall be the first day of the month in which the employee was engaged.

Promotion and salary advancement G.N. 37/1982

11.—(1) Promotion from one grade to another shall be in the discretion of the District Commissioner and all promotions shall be made in accordance with merit and qualifications.

(2) On promotion an employee shall receive the salary specified as the initial salary on the Salary Scale appropriate to the post to which he is promoted.

(3) Where an employee appointed to the tax clerk grade subsequently obtains a Junior Certificate or its equivalent or a Malaŵi Certificate of Education or its equivalent while in the Salary Scale applicable to that grade, he may, with effect from the date of the certificate, advance to that point in the tax clerk Salary Scale to which he would have been entitled had he been in possession of the certificate on the date of his appointment.

PART III

Conduct and Discipline

Incompetence and inefficiency

12.—(1) Where a District Commissioner considers that an employee is incompetent or inefficient he shall warn the employee in writing and give a specific period within which the employee is to correct the incompetence or bring his standard of efficiency up to a satisfactory standard.

(2) If the District Commissioner considers that the employee has not corrected the incompetence nor brought his standard of efficiency to a satisfactory standard within the specified period, he shall inform the employee in writing in what respect it is considered that he has been incompetent or inefficient and that he is entitled to answer the allegations in writing within a specified reasonable period.

(3) At the expiration of the specified period the District Commissioner shall report the matter and make his recommendation to the Minister who may dismiss the employee or impose one of the punishments set out in rule 13 (2).

Misconduct

13.—(1) An employee who is considered by a District Commissioner to be guilty of an act of misconduct shall be informed by that District Commissioner in writing in what respect it is considered that he has misconducted himself and that he has the right within a specified reasonable period to reply in writing exculpating himself.

(2) If no reply is received within the specified period or if the District Commissioner is not satisfied with the reply he shall report the matter and make his recommendation to the Minister who may dismiss the employee or impose one of the following punishments—

(*a*) reduction in rank;

(*b*) withholding of increment;

(*c*) reduction of the employee's salary to a point not lower than that at which he was first appointed.

Acts of misconduct

14. Acts, which under the provisions of regulation 1:201 of the Malaŵi Public Service Regulations would be acts of misconduct in the case of persons subject thereto, shall be acts of misconduct in the case of employees.

Criminal conviction

15. An employee who is convicted of a criminal offence shall be liable to be dismissed by the Minister.

Suspension

16.—(1) A District Commissioner may, pending a decision in regard to an employee's dismissal under rule 13 suspend him from the duties of his appointment. At the time of suspension a District Commissioner may also direct that the employee's salary shall be withheld either wholly or in part, except that where misappropriation of public funds is suspected all salary shall be withheld:

Provided that if the employee is not dismissed the salary withheld during suspension shall be restored wholly or to such extent as the Minister considers just.

(2) An employee convicted of a criminal offence which may, in the opinion of the District Commissioner, necessitate his dismissal, shall not receive any emoluments from the date of conviction pending the final decision of his case, and if it is subsequently decided to dismiss him, he shall be deemed to have been dismissed as from the date of conviction.

Employees not to engage in certain activities

17. No employee may stand for election to, or serve as a Member of, Parliament or any City Council, Municipal Council, Town Council, or District Council, or be the holder of an office in a political organization.

Salary forfeited if absent from duty

18. Absence from duty without leave or unfitness for duty as the result of impropriety of conduct shall render an employee liable to forfeit his salary for the period of such absence or unfitness and may be considered as misconduct.

Sick leave

19.—(1) An employee shall as soon as practicable report to the District Commissioner any absence from duty due to ill-health and the District Commissioner may grant him sick leave if he is satisfied that such ill-health was due to no impropriety and was sufficient to justify absence from duty.

(2) Where an employee's sick leave continues for a period of three months or less he shall be entitled to full pay for the period of sick leave. Where such leave continues for more than three months the employee shall be entitled to half pay during the next period of three months of such leave and may thereafter be granted further leave with no pay.

Disability

20.—(1) Where the District Commissioner is satisfied that an employee is unable through physical or mental disability to perform the duties of his office and that such disability is likely to be of indefinite duration, he may by notice in writing call upon the employee to resign employment under these Rules. Upon receipt of such notice the employee may request the District Commissioner to arrange with the medical authorities for a suitable medical examination of the employee and a report thereon. If such report indicates that the employee is unlikely to be able to resume the duties of his office within a period of one month the District Commissioner may direct that the employee be discharged from employment under these Rules, and the employee shall be entitled to terminal benefits in accordance with rule 7.

(2) If the employee to whom notice is given under subrule (1) does not within fourteen days of receipt of the notice either resign or request a medical examination as provided in subrule (1) he shall be deemed to have been discharged from employment under these Rules with effect from the expiration of such fourteen days, and shall be entitled to terminal benefits in accordance with rule 7.

PART IV

Loans

Loans to employees

21.—(1) No employee is entitled as of right to any loan.

(2) Subject to rules 22, 23 and 24, loans may be granted to employees for the following purposes and no others—

(*a*) bicycle loan;

(*b*) motor cycle loan;

(*c*) holiday advance;

(*d*) emergency loan;

G.N. 76/1985

(*e*) insurance advance.

Bicycle loans G.N. 37/1982

22.—(1) A loan not exceeding four-fifths of an employee's annual salary or the actual cost of the cycle, whichever is the less, may be made on the authority of a District Commissioner to an employee, to enable him to purchase a bicycle:

Provided that such loan shall not be made to an employee unless he—

(*a*) has completed twelve months' satisfactory service; or

(*b*) requires the bicycle for the efficient performance of his duties.

(2) The borrower shall enter into an agreement, in the form in the Fourth Schedule, securing the loan and providing for its repayment. Such agreement shall contain particulars of the bicycle including the name of its manufacturer and its frame number.

(3) Interest on loans shall be payable at rates from time to time laid down by the Secretary to the Treasury.

(4) The loan plus, interest shall be repayable by equal monthly instalments which may be deducted from salary, starting in the month after that in which the loan was made. The period for repayment shall not exceed—

(*a*) for an employee on a salary not exceeding K480 per annum, thirty-six months;

(*b*) for an employee on a salary exceeding K480 but less than K834 per annum, twelve months;

(*c*) for an employee on a salary of K834 or more per annum, six months.

(5) In the event of a borrower ceasing to be employed under these Rules before completing repayment of a loan the District Commissioner may deduct any outstanding balance of the loan from such salary or gratuity as may be due to the borrower and may take such other steps to recover the balance as he thinks proper.

(6) Not more than one bicycle loan shall be made in any period of four years, except with the approval of the District Commissioner.

Motor cycle loans and insurance advance G.N. 76/1985

23.—(1) In exceptional circumstances and subject to the approval of the Secretary to the President and Cabinet, the District Commissioner may authorize a loan to an employee for the purchase of a motor cycle and such loan shall not exceed the employee's salary for eighteen months.

(2) For the purposes of subrule (1), an employee shall enter into an agreement in a form approved by the Secretary to the President and Cabinet, securing the loan and providing for its repayment.

(3) Any loan authorized under this rule and interest thereon shall be repayable by equal monthly instalments which shall be deducted from an employee's salary, and the period for such repayment shall not exceed seventy-two months.

Insurance advance G.N. 76/1985

23A.—(1) Any motor cycle purchased with a loan authorized under rule 23 shall be insured comprehensively with an approved insurance company, and an employee may, for that purpose, apply to the Secretary to the Treasury for an insurance advance.

(2) For the purposes of subrule (1), an employee shall enter into an agreement in a form approved by the Secretary to the President and Cabinet, securing the advance and providing for its repayment.

(3) Any advance authorized under this rule and interest thereon shall be repayable by equal monthly instalments which shall be deducted from an employee's salary, and the period for such repayment shall not exceed twelve months.

Holiday advances and emergency loans G.N. 37/1982

24.—(1) A District Commissioner may authorize an advance of an amount not exceeding one month's salary to an employee who is about to proceed on annual holiday. Such advance shall be deducted from the next salary payment.

(2) The Secretary to the President and Cabinet may authorize a loan of a sum not exceeding three months' salary to an employee where, some unforseeable emergency has caused extreme financial hardship.

(3) Any loan authorized under subrule (2) shall be repaid with interest by monthly instalments over the following periods—

(*a*) for a loan of a sum not exceeding one month's salary, over a period not exceeding four months;

(*b*) for a loan of a sum not exceeding two months' salary, over a period not exceeding eight months;

(*c*) for a loan of a sum not exceeding three months' salary, over a period not exceeding twelve months.

(4) The Secretary to the Treasury may, on the recommendation of the Secretary to the President and Cabinet, authorize an emergency advance to an employee—

(*a*) for a sum exceeding three months' salary; or

(*b*) repayable with or without interest or at a reduced rate of interest; or

(*c*) repayable over a period exceeding the period specified in subrule (3);

PART V

Annual Holidays

Holidays G.N. 189/1955

25.—(1) No employee shall have a right to any holiday.

(2) A District Commissioner may in every calendar year grant a holiday to an employee for a period not exceeding—

(*a*) twenty-one working days in the case of an employee who has received by way of salary during that calendar year less than K891;

(*b*) twenty-four working days in the case of an employee who has received by way of salary during that calendar year K891 or more.

No accumulation of holidays

26. Annual holidays may not normally be accumulated, and any part of an annual holiday not taken during the course of that calendar year will normally be forfeited, unless the District Commissioner otherwise directs.

Travel entitlement G.N. 37/1982

27.—(1) An employee who proceeds on holiday under rule 25 shall have the option either—

(*a*) to be provided with free transportation or, *in lieu* thereof, with travel entitlement from his place of duty to his approved destination within Malaŵi and return; or

(*b*) to receive a holiday grant at the following rates—

(i) for an employee whose salary is less than K891 per annum, K6;

(ii) for an employee whose salary is K891 or more per annum, K12.

(2) The travel entitlement referred to in subrule (1) shall be to transport warrants to pay the cost of transportation by approved surface carrier of—

(*a*) the employee;

(*b*) one wife living with him at his place of duty;

(*c*) not more than four dependent children under eighteen years of age;

(*d*) not more than 100 kilograms of baggage from his place of duty to or from the nearest point within Malaŵi.

(2) On first appointment, duty, posting, transfer or retirement, an employee shall be provided with transport warrants for his travel on such class of transport, and shall be entitled to travel with such amount of baggage, as is specified in the Eighth Schedule.

Incomplete holiday year

28.—(1) Subject to rule 29 an employee who joins or leaves the service during a calendar year may be granted a holiday for a duration of one-twelfth of the period prescribed in rule 25 in respect of each completed month of service in that year. A fraction of a day equal to one-half or more shall count as one day and any lesser fraction shall be ignored.

(2) Where it is known that an employee's service will terminate during a holiday he may be granted a holiday of the duration prescribed in subrule (1) so that the holiday expires not later than the last day of service.

Leaving and dismissal

29. An employee who leaves employment under these Rules without due notice or is dismissed from such employment shall not be granted any holiday or provided with any travel entitlement.

PART VI

General

Housing

30. Employees will normally be provided with rent-free quarters, but in the event of such quarters not being available will be responsible for obtaining their own housing at their own expense.

Subsistence allowance G.N. 72/1984

31. Employees required to travel on duty or attend a course of instruction approved by the District Commissioner shall be entitled to the subsistence allowance and occasional meal allowance set out in the Fifth Schedule.

Mileage allowance

32. Employees authorized by the District Commissioner to use their bicycles or motor-cycles for the performance of their duties shall be entitled to the mileage allowances set out in the Sixth Schedule.

Transport and baggage allowance

33. Employees taking up first appointment, travelling on duty, proceeding on transfer or returning to their homes on retirement, shall be eligible for transport and baggage allowance as though they were proceeding on annual holiday. Where Government transport cannot be provided the entitlement will be as set out in rule 27.

Uniform

34.—(1) Uniform shall be issued to Chief's Messengers in accordance with the scale set out in the Seventh Schedule.

(2) All Chief's Messengers to whom uniform has been issued shall wear such uniform on duty.

(3) Such uniform shall remain the property of the Government.

Transfer allowance

35. An employee who is required as a result of a change of station to move his household effects may receive from a District Commissioner transfer allowance at the rate of one-fifth of one month's salary. No transfer allowance shall be paid under this rule in respect of any transfer or posting which is of a temporary nature.

Minister's direction required for allowances, etc., not mentioned in Rules r.3

36. No allowances or privileges other than those set forth in these Rules shall be accorded to employees except on the specific direction of the Minister in writing.

FIRST SCHEDULE

Grades and Salaries of Employees

G.N. 48/1978 76/1982 104/1983 78/1987

Title of Post	*Salary Scale*
Tax Clerk	K576×K84—K660×K84—K744×K84—K828×K84—K912 ×K84—K996×K84—K1,080×K84—K1,164×K84—K1,248×K84—K1,332 (E.B.): K1,416×K84—K1,500×K84—K1,584×K84—K1,668 ×K84—K1,752×K84—K1,836×K84—K1,920×K84—K2,004×K84—K2,088×K84—K2,172 (E.B.): K2,256×K84—K2,340×K84—K2,424×K84—K2,508×K84—K2,592×K84—K2,676×K84—K2,760×K84—K2,844×K84—K2,928×K84—K3,012×K84—K3,094×K84—K3,180, per annum.

Senior Tax Clerk	..	K2,016×K108—K2,124×K108—K2,232×K108—K2,340×K108—K2,448×K108—K2,556×K108—K2,664×K108—K2,772×K108—K2,880×K108—K2,988×K108—K3,096×K108—K3,204×K108—K3,312×K108—K3,420×K108—K3,528×K108—K3,636, per annum.
Messenger (SC I)	..	K1,104×K48—K1,152×K48—K1,200×K48—K1,248×K48—K1,296×K48—K1,344×K48—K1,392×K48—K1,440×K48—K1,488×K48—K1,536×K48—K1,584×K48—K1,632, per annum.
Messenger (SC II)	..	K888×K36—K924×K36—K960×K36—K999×K36—K1,032×K36—K1,068×K36—K1,104×K36—K1,140×K36—K1,176×K36—K1,212×K36—K1,248×K36—K1,284×K36—K1,320×K36—K1,356, per annum.
Messenger (SC III)	..	K576×K36—K612×K36—K648×K36—K684×K36—K720×K36—K756×K36—K792×K36—K828×K36—K864×K36—K900×K36—K936×K36—K927×K36—K1,008×K36—K1,044, per annum.
Messenger (SC IV)	..	K396×K24—K420×K24—K444×K24—K468×K24—K492×K24—K516×K24—K540×K24—K564×K24—K588×K24—K612×K24—K636×K24—K660×K24—K684×K24—K708, per annum.

SECOND SCHEDULE

r. 4

Letter of Appointment on Probation

Ref.: ..... District Commissioner
.....
Date:..... 19 .....

To: .....
.....
.....

Sir,

I hereby offer you appointment to the service of Chief ..... as a ..... with effect from ..... faithfully and diligently to serve the said Chief on the following terms and conditions—

(1) You will be on probation for a period of two years, after which you will be considered for confirmation.

(2) While you are on probation, your appointment may be terminated by one month's notice on either side or payment of one month's salary in lieu of notice.

*(3) The commencing salary attached to the post will be ..... in the scale ..... and your incremental date is the 1st January of each year.

*(4) The commencing salary attached to the Chief's Messenger's post will be ..... and after completing ..... month's satisfactory service you will proceed to a salary of .....

(5) Your appointment will be subject to the Chiefs (Staff) (Emoluments, Terms and Conditions of Service) Rules from time to time in force.

(6) You are liable to be transferred at any time to the service of another Chief within this District at the discretion of the District Commissioner.

(7) This appointment shall not take effect until such time as you have been certified medically fit to serve by a Government Medical Practitioner.

I am, Sir,

Your obedient servant,

District Commissioner

I accept the appointment subject to the terms of this letter.

Signature: .....

Date: .....

* Delete whichever inappropriate.

THIRD SCHEDULE

r. 5

Letter of Confirmation in Appointment

Ref.: ..... District Commissioner,

.....

Date: ..... 19 .....

To: .....

.....

.....

Sir,

I am to inform you that you have been confirmed in your appointment as ..... in the Chief's Service with effect from ..... (date).

I am, Sir,

Your obedient servant,

District Commissioner

FOURTH SCHEDULE

Form of Agreement to be Entered into by an Employee Receiving an Advance for the Purpose of Purchasing a Bicycle

AGREEMENT made this ..... day of ..... one thousand nine hundred and ..... between ..... (hereinafter called "the Purchaser") of the one part and the Government of Malaŵi of the other part WHEREBY it is agreed as follows:—

(1) The Government of Malaŵi will make to the Purchaser an advance of £..... for the purpose of purchasing the (make of bicycle) ..... bicycle referred to in the Application signed by the Purchaser on the ..... day of ..... one thousand nine hundred and ..... the frame number of which bicycle is .....

(2) In consideration of such advance the Purchaser hereby agrees as follows:—

(*a*) to purchase the said bicycle forthwith;

(*b*) to repay the said advance together with the interest due thereon by equal monthly instalments to be paid on the ..... day of ..... one thousand nine hundred and .....;

(*c*) not to sell, pledge, mortgage, underlet, or otherwise dispose of the said bicycle without the authority in writing of the District Commissioner for the District concerned until the whole of the said advance together with the interest due thereon has been repaid;

(*d*) If the said bicycle is lost, destroyed or rendered unfit for use, to report the fact forthwith to the said District Commissioner and to abide by his directions as to the manner in which the balance of the advance and interest thereon then outstanding shall be repaid.

(3) If the Purchaser dies or leaves the Chief's Service before the sum advanced by the Government of Malaŵi and the interest due thereon is repaid in full or makes default in the punctual payment of any one instalment of the sum repayable under this Agreement or commits any breach of the terms and conditions of this Agreement and any Rules or Regulations applicable thereto then and in each and every such case the whole of the balance of the said advance and of the interest due thereon shall be payable forthwith by the Purchaser or his Executors or Administrators and in the event of his, or their, not repaying the balance then outstanding of the sum so advanced and of the interest due thereon, to take immediate possession of the said bicycle and to sell or otherwise dispose of the same and to deduct from the proceeds of such sale or other disposal the balance then outstanding of the amount so advanced and of the interest due thereon together with all costs and expenses incurred in connexion with such sale or other disposal; and the Purchaser (for himself, his Executors and Administrators) hereby agrees upon demand forthwith to take such steps as may be required by the said District Commissioner to carry this clause into effect.

WITNESS our hands the day and year above written

Signed by the said ..... } Signature over Revenue stamp as required
in the presence of;

Signature
of witness .....
Address .....
.....
Occupation .....

Signed by the District Commissioner for and on behalf of the Government of Malaŵi as aforesaid in the presence of; } .....

Signature
of witness .....
Address .....
.....
Occupation .....

Certificate to be signed by the District Commissioner or Assistant District Commissioner.

I certify that the contents of this Agreement and of the Rules governing the grant of advances have been explained by me to the Purchaser who appeared to understand the same before signing/putting his mark to the Agreement.

Witness ..... *Signed* .....

FIFTH SCHEDULE

Subsistence and Occasional Meal Allowances for Employees

r.31

G.N. 37/1982 72/1984

An employee authorized by the District Commissioner to travel on duty within Malaŵi may be paid subsistence allowance for every night he necessarily spent away from his normal duty station and occasional meal allowance in accordance with the following scale—

1. Subsistence Allowance

Salary per annum	*Rate per night*
(1) Less than K1,578	K5.00
(2) K1,578 up to K4,518	K7.00
(3) K4,722 upto K5,742	K9.00
(4) K5,997 up to K6,756	K11.50
(5) K6,861 up to K7,137	K13.50
(6) K7,278 and over	K15.50

2. Occasional Meal Allowance

	Rates of allowances per day		
Salary per annum	*Breakfast*	*Lunch*	*Dinner*
(1) less than K1,578	K2.00	K3.50	K4.00
(2) K1,578 up to K4,518	K3.00	K4.00	K4.50
(3) K4,722 up to K5,742	K4.00	K5.00	K5.50
(4) K5,997 up to K7,137	K5.00	K6.50	K7.00
(5) K7,278 and over	K5.50	K7.00	K8.00

G.N. 37/1982

SIXTH SCHEDULE

Travel Distance Allowances

Travel distance allowances for duty journeys by privately owned bicycles may be paid to any employee as follows—

(1) An allowance of 4t per kilometre may be paid for such occasional journeys on duty by bicycle as may be approved by the District Commissioner.

(2) A commuted bicycle allowance, with the approval of the District Commissioner, may be paid to a person who is required to travel regularly on duty by bicycle as follows—

(*a*) 240 kilometres or more per month .. K3.50 per month;

(*b*) 190 kilometres or more per month but less than 240 kilometres per month .. .. K2.50 per month;

(*c*) 140 kilometres but less than 190 kilometres per month .. .. .. K1.50 per month;

(*d*) 90 kilometres but less than 140 kilometres per month .. .. .. K1.00 per month.

(*e*) less than 90 kilometres .. .. Nil

(3) No commuted bicycle allowance may be paid except on the production each month of an honour certificate signed by the employee to the effect that he has kept his bicycle for the period in question, and that it was in good order and available for official duties.

G.N. 76/1985

(4) For the use of a motor cycle or a motor scooter on official journeys an allowance of 10t per kilometre shall be payable.

r. 34

SEVENTH SCHEDULE

G.N. 37/1982

Scale and Frequency of Issues of Uniform to Employees

Employees may be issued with uniform as under—

Post	*Uniform*	*Initial Issue*	*Rate of Replacement*
Head Chief's Messengers and Chief's Messengers	Khaki Tunic	2	2 each year
	Khaki Shorts	2	2 each year
	Black Fez and Tassel	1	1 in 2 years
	Brass Badge for Fez	1	As necessary
	Leather Belt	1	1 in 5 years
	Cape	2 pairs	1 in 3 years
	Khaki Socks	2 pairs	2 pairs each year
	Khaki Hosetops	2 pairs	2 pairs each year
	Black Boots	2 pairs	1 pair each year
	Anklets	2 pairs	1 pair in 2 years

EIGHTH SCHEDULE

RULE 27 (3)

G.N. 37/1982

CLASS OF TRANSPORT AND BAGGAGE ALLOWANCE FOR EMPLOYEES

Salary per annum	*Class of transport*	*Personal baggage allowance when travelling on duty*	*Personal baggage allowance when travelling on first appointment, posting, transfer or retirement*
Less than K420	Bus 3rd Lake (Deck) 3rd Rail	25kg	225kg
K420 but less than K891	Bus 2nd Lake (Bunk) 3rd Rail	25 kg	450 kg
K891 but less than K1,371	Bus 2nd Lake (Bunk) 2nd Rail	50 kg	700 kg
K1,371 or more	Bus 2nd Lake (Bunk) 2nd Rail	50 kg	1,350 kg

LOCAL GOVERNMENT SERVICE

CHAPTER 22:04

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CHAPTER 22:04

LOCAL GOVERNMENT SERVICE

ARRANGEMENT OF SECTIONS

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18. Books, accounts, audit and reports

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37 of 1981
19 of 1995
G.N. 13/1983

An Act to provide for the establishment, functions and powers of the Local Government Service Commission, for the unification of the local government services of all local authorities into a Local Government Service, to regulate the appointment and terms and conditions of service of persons joining the Service, and to make provision for matters connected therewith and incidental thereto

[1st February, 1983]

PART I

Preliminary

Short title

1. This Act may be cited as the Local Government Service Act.

Interpretation

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

"Commission" means the Local Government Service Commission established under section 9;

"contract officer" means an officer in the employment of a local authority under a written contract containing terms of service individual to such officer;

"employee" means a person employed by a local authority as an industrial class employee or as a temporary employee;

"local government officer" means a public officer employed by the Ministry of Local Government;

"officer" means a person employed by a local authority holding a rank higher than that of an industrial class employee.

Unification of all local government services of local authorities

3.—(1) On and after the commencement of, and to the extent provided by, this Act, the local government services of all local authorities in Malaŵi shall be unified into one consolidated service, to be known as the Local Government Service (hereinafter called the "Service").

(2) Subject to the provisions of this Act, every local government officer, officer and employee having elected pursuant to section 4 to join the Service shall be deemed to be an officer in, or employee of, the Service and shall thereafter at all times, and to the extent provided by this Act, be subject to the jurisdiction and control of the Service, and to all appropriate and relevant regulations and rules relating to officers or employees of the Service, as are from time to time made and in force under this Act.

(3) Subject to the provisions of this Act, no person other than an officer in the Service shall, after the date of commencement, be appointed to, or hold, any office on the permanent establishment of any local authority.

4. Any person who was a member of a local authority immediately prior to the commencement of this Act may, at any time within six months thereafter, by notice in writing to the Minister, elect to join the Service.

Election to join the Service

5. After the expiry of six months from the date of commencement, no person to whom section 4 of this Act applies shall be entitled to elect to join or to join the Service by virtue of that section.

No election to join the Service after six months

6. Any person who, pursuant to section 4, joins the Service shall enter the Service on such terms of employment and under such conditions of service applicable to the Service as are, at the time, made applicable to him by the relevant competent authority:

Terms and conditions upon entry into the Service

Provided that in no case shall such terms of employment or conditions of service be less favourable than the terms and conditions that he enjoyed, or were applicable to him, in the local authority immediately prior to the commencement of this Act.

7. In calculating the pension or gratuity payable upon the retirement from the Service of any person who has joined the Service under the provisions of this Act, such part of the pension or gratuity, as the case may be, as is attributable to the length of service of such person in the local authority shall be calculated in accordance with the relevant and applicable provisions of that local authority in force immediately prior to the date of commencement of this Act, and such part of the pension or gratuity, as the case may be, as is attributable to the length of service of such person in the Service shall be calculated in accordance with such regulations made under this Act as are relevant and applicable thereto on the date of such person's retirement.

Calculation of pensions and gratuities on retirement

8. Any person entitled to elect to join the Service pursuant to section 4 who does not do so within the time prescribed by that section, shall be deemed to have retired from his employment by a local authority on the day immediately before the date of commencement of this Act.

Effect of non-election to join the Service

PART II

Establishment of the Local Government Service Commission

9.—(1) There is hereby established a Commission to be known as the Local Government Service Commission (hereinafter called the "Commission").

Establishment and composition of the Service Commission

(2) The Commission shall be a body corporate with perpetual succession and a seal and shall consist of—

(*a*) one member, who shall be the Chairman, appointed by the President, on the recommendation of the Minister;

(*b*) one member, who shall have had at least six years experience in local government administration, appointed by the Minister;

(*c*) three other members, appointed by the Minister.

(3) The names of all members of the Commission as first constituted and every change of membership thereof shall be notified in the *Gazette*.

Disqualification from membership of Commission

10. Any person who—

(*a*) is a member of the Council of a local authority;

(*b*) is a local government officer;

(*c*) is an officer in the public service;

(*d*) is a member of any body or association of persons, corporate or unincorporate, or of any trade union, having as one of its objects the controlling or influencing of appointments to, or of the determination of the scales of salaries or wages or other terms or conditions of service of, any class of local government officers or employees;

(*e*) is a member of any body or association of persons, corporate or unincorporate, or of any trade union which, under its constitution, objects or rules, or which by virtue of any agreement, is affiliated with any such body, association or trade union as is referred to in paragraph (*d*);

(*f*) is an undischarged bankrupt;

(*g*) has, within the three years immediately preceding, been convicted of an offence by any court and sentenced therefor to a term of imprisonment of six months or more without the option of a fine;

(*h*) has, within the six years immediately preceding, been convicted of an offence involving fraud or dishonesty,

shall be disqualified from being appointed to, or from continuing to hold, office as a member of the Commission.

Tenure of office of members or office of Commission 19 of 1995

11.—(1) Subject to subsections (3) and (4), every member of the Commission shall hold office as such member for such period, not exceeding three years from the date of his appointment, as may be specified in the instrument of his appointment.

(2) Any retiring member of the Commission, other than a member who is disqualified under section 10, shall be eligible for re-appointment.

(3) Upon the expiry of the period for which a member is appointed he shall continue to hold office until his successor is appointed, but in no case shall such further period exceed three months.

(4) The office of a member of the Commission shall be vacated—

(*a*) upon his death;

(*b*) if, save through illness, he is absent from three consecutive meetings of the Commission without the permission of the Commission or the Minister;

(*c*) upon the expiry of one month's notice in writing of his intention to resign given by him to the Minister;

(*d*) upon his dismissal from the Commission by the Minister by notice given to him in writing:

Provided that, in the case of the Chairman, such notice of dismissal shall not be given without the prior approval of the President;

(*e*) if he becomes physically or mentally unfit, and the Minister and the Commission are of opinion that, by reason of such unfitness, he is no longer capable of performing his duties as a member of the Commission:

Provided that, in the case of the Chairman, this paragraph shall not apply if, upon the submission of the opinion of the Commission and the Minister to the President by the Minister, the President does not approve of its application;

(*f*) if he becomes disqualified from membership of the Commission under section 10.

Remuneration and allowances of members of Commission

12. The Chairman and other members of the Commission shall receive such remuneration and allowances as may, from time to time, be approved by the Minister.

PART III

Administration

Secretary to the Commission

13.—(1) There shall be a Secretary to the Commission (hereinafter called the Secretary) who shall be designated as Secretary by the Minister.

(2) The Secretary shall be the principal executive of the Commission and shall be responsible for the administration and management of the affairs of the Commission, and shall be in charge of all administrative, executive and other staff as may be assigned for service with the Commission by the Minister.

(3) The Secretary shall not be a member of the Commission, nor have any vote in its deliberations.

Deputy Secretary to the Commission

14. There shall be a Deputy Secretary to the Commission designated as such by the Minister who shall, in the absence of the Secretary, act in his place and stead.

PART IV

Functions and Powers of the Commission

Functions and powers of the Commission

15.—(1) Subject to subsection (2), the Commission has power to appoint persons to the Service.

(2) In the exercise of its power under subsection (1) the Commission shall pay regard to the maintenance of the high standard of efficiency necessary in the Service and, subject thereto, when considering the appointment of persons to the Service, shall—

(*a*) where, in the opinion of the Commission, an officer is qualified and suitable to fill a vacancy, give preference to that officer over any person not in the Service;

(*b*) where, in the opinion of the Commission, no serving officer is qualified and suitable to fill a vacancy, accept applications from outside the Service and give preference to the appointment of any applicant or other person who has been specially trained for the post; and

(*c*) where more than one officer may be suitable to fill a vacancy, take into account seniority in Government Service, qualifications, experience and merit and shall, unless there is reason to the contrary, give preference to a permanent officer over a contract officer.

(3) The Commission shall have the powers set out in the First Schedule.

(4) The Minister may, at any time, by notice published in the *Gazette*, amend the Schedule.

PART V

Funds of the Commission

Funds of the Commission

16. The funds of the Commission shall consist of—

(*a*) such sums as may be payable to the Commission from moneys appropriated by Parliament for the purpose;

(*b*) such sums or assets as may accrue to, or vest in, the Commission whether in the course of the exercise of its functions or powers, or otherwise;

(*c*) such sums or assets as may accrue to, or vest in, the Commission by way of grants, subsidies, bequests, donations, gifts, subscriptions, rents, interest or royalties, from the Government or any other person;

(*d*) such sums as are derived from the sale of any property, real or personal, by or on behalf of the Commission;

(*e*) such sums as are received by the Commission by way of voluntary contributions;

(*f*) such sums or assets as may be donated to the Commission by any foreign government, international agency or other such body.

Annual budget

17. The Commission shall draw up, in respect of each financial year, an annual budget showing the estimated expenditure on capital and revenue account, and shall submit the budget annually for the approval of the Minister.

Books, accounts, audit and reports

18.—(1) The Commission shall cause to be kept proper books of account and other books in relation thereto.

(2) The accounts of the Commission shall be audited annually by professional auditors appointed by the Commission with the approval of the Minister. The expenses of, and incidental to, any audit shall be paid from the funds of the Commission.

(3) The Commission shall, as soon as is practicable, but not later than six months after the end of each financial year, submit to the Minister an annual report upon its work and operations.

(4) Such report shall include a balance sheet, an income and expenditure account and the annual report of the auditors and shall be laid by the Minister before the National Assembly pursuant to section 32F of the Finance and Audit Act. Cap. 37:01

PART VI

Miscellaneous

Regulations

19. The Minister may, by notice published in the *Gazette* make regulations for the better carrying into effect of this Act.

Non-application of Act

20. The provisions of this Act shall not apply to—

(*a*) any Mayor, Deputy Mayor or Councillors who are elected or appointed, as the case may be, pursuant to Parts III and IV of the Local Government (Urban Areas) Act; Cap. 22:01

(*b*) any Chairman, Honorary Chairman, Vice-Chairman or Councillors who are elected or appointed, as the case may be, pursuant to Part III of the Local Government (District Councils) Act. Cap. 22:01

SCHEDULE (s. 15 (3))

Powers of the Commission

1. To appoint and employ, with the approval of the Minister, such professional, technical and administrative officers, clerks and other staff of the Commission as it may deem requisite.

2. To pay to persons in the employment of the Commission such salary, wages or other remuneration as it may deem fit, and to grant to those persons such leave as it may deem fit.

3. To provide for persons in the employment of the Commission or their dependants, by means of insurance with an insurance company or a pension or provident fund or in any other manner whatsoever, pecuniary benefits upon retirement, death or termination of service or in the event of any sickness or injury.

4. To make rules prescribing measures for the discipline of staff.

5. To do all things incidental or conducive to the performance of its powers or functions under this Act.

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CHAPTER 23:01

TOWN AND COUNTRY PLANNING

26 of 1988
G.N. 72/1991

An Act to make provision with respect to Town and Country Planning and to provide for matters connected therewith and incidental thereto

[1st September, 1991]

PART I

Preliminary

Short title

1. This Act may be cited as the Town and Country Planning Act.

Interpretation

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

"accelerated development area order" means an order made, and referred to as such, under Part VI;

"advertisement" means any word, letter, model, sign, placard, board, notice, poster, device or representation, whether illuminated or not, in the nature of and employed wholly or in part for the purposes of advertisement, announcement or direction (excluding any such thing employed wholly as a memorial or as a railway signal), and without prejudice to the foregoing includes any hoarding or similar structure used or adapted for use for the display of advertisements;

"authorized officer" means a person designated as such under section 5:

"Board" means the Town and Country Planning Board established under section 7;

"building" means any building, erection or structure erected on or made on, in or under any lands and includes the land on, in or under which the building, erection, structure is situated;

"building operations" includes any road or other works, preliminary or incidental to the erection or buildings;

"building preservation order" means an order made, and referred to as such, under Part VI;

"Chairman" means the Chairman of the Board;

"Commissioner" means the Commissioner for Town and Country Planning appointed under section 3;

"declared area" means an area declared by order to be a Planning Area or a Land Development Control Area;

"development" in relation to any land means any building, rebuilding, engineering or mining operations in, on, under or over land and any material change in the use of land or building;

"development permission" is permission granted under Part V;

"District Physical Development Plan" means the plan referred to in Division III of Part IV;

"enforcement notice" means a notice served under section 45;

"exempted development" means development exempted by section 33 from the operation of this Act;

"grant of development permission" means the grant under section 36, of permission by the Minister or a responsible authority to develop land in accordance with the terms and conditions of the grant;

"improvement area order" means an order made, and referred to as such, under Part VI;

"land" includes land covered with water, buildings and other things permanently affixed to land and any interest in land;

"land development control area order" means an order made, and referred to as such, under Part VI;

"Local Authority" has the meaning ascribed to that expression in the Local Government (Urban Areas) Act;

"Local Government Area" has the meaning ascribed to that expression in the Local Government (Urban Areas) Act;

"Local Physical Development Plan" means the plan referred to in *Division* IV of Part IV;

"National Physical Development Plan" means the plan referred to in *Division* II of Part IV;

"notice of revocation" means a notice served under section 42 of this Act revoking, to the extent set out in the notice, a grant of development permission;

"permitted development" means the development specified in the First Schedule;

"plan" means a plan made under this Act;

"Planning Area" means an area declared as such under Part IV;

"Planning Committee" means a Planning Committee appointed or declared under Part III;

"responsible authority" in relation to—

(*a*) a Planning Area, means the Planning Committee of that area; and

(*b*) any other area, means the Commissioner;

"stop notice" means a notice served under section 49;

"subdivision" means the division of any piece of land for the purpose of parting with possession or of disposing of any portion thereof, either by way of lease or sale or for the erection of a building upon any portion;

"subdivision control area order" means an order made, and referred to as such, under Part VI;

"subdivision agreement" includes any agreement whereby any person is given—

(*a*) any right whether vested or contingent to acquire, lease, or obtain possession of any portion of land, whether immediately or upon fulfilment of any condition or upon the happening of any event, or after the lapse of any time, or upon the exercise of any option or upon the payment of any sum, whether by instalments or otherwise; or

(*b*) a right to erect a building on any portion of land belonging to some other person;

"vacant land development area order" means an order made, and referred to as such, under Part VI.

PART II

Office and Duties of the Commissioner

Commissioner for Town and Country Planning

3. There shall be a Commissioner for Town and Country Planning who shall be a public officer.

Delegation of powers by the Minister to the Commissioner

4. The Minister may, subject to special or general directions, delegate all or any of the powers or duties conferred by this Act to the Commissioner.

5. Anything required or permitted by or under this Act to be done by the Commissioner may be done by any public officer who is authorized, either specially or generally, in that behalf in writing by the Commissioner.

Performance of Commissioner's functions, etc.

6. A public officer shall not incur any liability in respect of the exercise or performance, or purported exercise or performance, by him in good faith of any function under and for the purposes of this Act.

Indemnity of public officers

PART III

Planning Authorities

7. (1) There shall be established a Town and Country Planning Board which shall have the jurisdiction and powers conferred upon it by this Act.

Establishment of Town and Country Planning Board

(2) In addition to any specific powers conferred upon the Board by this Act, the Minister may, if he thinks fit, require the Board to make a report or give advice to him on any matter which he shall refer to it.

(3) The Board shall consist of a Chairman who shall be a person knowledgeable and experienced in town and country planning and such other members being not less than six nor more than eight as the Minister may, by notice published in the *Gazette*, appoint; and the Chairman and other members shall hold office—

(*a*) for a period of two years or such shorter period as the Minister may specify in the instrument of appointment; and

(*b*) upon such conditions as to remuneration and otherwise as the Minister may determine.

(4) The Minister shall appoint one of the members to be Vice-Chairman of the Board.

(5) In appointing the members of the Board, the Minister shall take into account the desirability of availing the Board of the services of persons having experience in, or knowledge of, the following matters—

(*a*) town and country planning;

(*b*) land management and valuation;

(*c*) economics;

(*d*) law;

(*e*) civil engineering;

(*f*) surveying;

(*g*) housing;

(*h*) architecture; and

(*i*) social welfare.

(6) The Chairman and any other member of the Board shall not incur any liability in respect of the exercise or performance or purported exercise or performance by him in good faith of any of the functions of the Board under this Act.

Proceedings of the Board

8.—(1) The Chairman or in his absence the Vice-Chairman shall preside at all meetings of the Board.

(2) The quorum at any meeting of the Board shall be constituted by any five members.

(3) The Board has power to regulate its own procedures.

(4) The proceedings of the Board shall be deemed to be judicial proceedings within the meaning ascribed to that expression in the Penal Code.

Cap. 7:01

Appointment of Planning Committees

9.—(1) Where a Planning Area has been declared by order under Part IV, the Minister shall appoint a Planning Committee which shall exercise any duties as are conferred upon it by this Act or any regulations and orders of the Minister under this Act.

(2) A Planning Committee under subsection (1) may be appointed to exercise powers and duties in respect of more than one Planning Area.

(3) Subject to subsections (4) and (5) the Minister shall appoint the chairman and other members of a Planning Committee.

(4) Where a Planning Area lies wholly or in part within the boundaries of a Local Government Area, the Minister shall appoint the chairman and not less than two members of the Planning Committee from amongst the members of the Local Authority having jurisdiction within that Local Government Area.

(5) Where a Planning Area—

(*a*) lies wholly within the boundaries of one district, the Minister shall appoint as members of the Planning Committee at least two persons from amongst members of the District Council having jurisdiction over that district;

(*b*) lies within the boundaries of more than one district, the Minister shall appoint as a member of the Planning Committee at least one person from amongst members of each District Council having jurisdiction over part of that Planning Area.

(6) A Planning Committee may delegate to one or more subcommittees or to any officer authorized by it in writing any of its functions under this Act other than the functions of granting or revoking a grant of development permission.

Planning Committee may be committee of a Local Authority or District Council

10.—(1) The Minister may, with the concurrence of the Minister for the time being responsible for Local Government, by order, published in the *Gazette* designate a Local Authority or a District Council as a Planning Committee.

(2) A Planning Committee established under subsection (1) may, in addition to performing the functions of a Planning Committee under this Act, administer the rules relating to building operations applicable within the area of the Local Authority of the District Council, as the case may be.

(3) The Minister may nominate not more than three persons to serve on the Planning Committee established under subsection (1) and such persons shall be deemed to be persons appointed to a committee in accordance with subsection (5) of section 56 of the Local Government (Urban Areas) Act or persons co-opted to a committee under subsection (3) of section 22 of the Local Government (District Councils) Act, as the case may be.

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Cap. 22:02

(4) A Planning Committee established under subsection (1) shall be subject to all the provisions applicable to committees of a Local Authority in the Local Government (Urban Areas) Act or of a District Council in the Local Government (District Councils) Act, as the case may be.

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(5) Any member of a Planning Committee established under subsection (1), or of a subcommittee thereof, who has any financial or proprietory interest in any matter coming before the Planning Committee or the subcommittee in respect of the exercise of any functions under this Act shall disclose such interest to the Committee or subcommittee and, if it is any matter on which a vote is to be taken, he shall not vote on such matter.

Powers of Minister to direct inquiries and seek advice

11. The Minister may, as he sees fit, cause inquiries to be made or seek advice from any person or body of persons established by him for that purpose on any matter concerning town and country planning in Malaŵi or any part thereof.

PART IV

Plans and Plan-making

Division I—*General*

Duties and powers of responsible authority with regard to plans generally

12.—(1) The responsible authority shall furnish the Minister with such particulars and information as the Minister may require concerning the preparation and content of any plan on the present and future planning needs and the probable direction and nature of development of any area in respect of which a plan may be prepared.

(2) The responsible authority may seek such information and opinions and consult with such persons and organizations as may be necessary to ensure the proper and expeditious preparation of a plan and all such persons and organizations shall, to the extent that they are able, comply with such requests for information and opinions.

(3) The responsible authority shall, during the preparation of a plan, other than a National Physical Development Plan, keep the District Council, the Local Authority and the District Commissioner having jurisdiction, in the area for which the plan is being prepared informed of the progress of the preparation and the likely content of the plan and seek and take into account the view of those authorities on the plan.

(4) Where a plan is being prepared which will or is likely to involve the movement or relocation of people from their homes and places of work or the acquisition of land in the area or the redistribution of land or the readjustment of the boundaries and areas of plots of land, the responsible authority shall, before reaching a decision on the matter, cause the substance of those proposals in the plan to be made known throughout the area of the plan in such manner as is likely to be effective for the purpose of bringing them to the attention of all persons affected by them and shall consider and take into account any representations made concerning the proposals.

Consideration of plans other than National Physical Development Plan

13.—(1) When a plan, other than a National Physical Development Plan, has been prepared a copy shall be placed on deposit at the offices of the District Commissioner and also at the offices—

(*a*) of District Council in the case of a plan prepared for an area within a District; or

(*b*) of the Local Authority in the case of a plan prepared for the whole or any part of the area of the Local Authority

and at such other places as the responsible authority shall see fit.

(2) Notice of such deposit and of the period in which any person may inspect and make representations on a plan shall be published in the *Gazette* and in at least one issue of a newspaper in general circulation in Malaŵi.

(3) The responsible authority shall cause the substance of the plan to be made known throughout the area for which it has been prepared in such manner as it considers to be most effective for the purpose of bringing it to the attention of the people residing and working in that area.

(4) The responsible authority may, and shall if so directed by the Minister or requested by a District Council or Local Authority, hold meetings with any organization or the requesting organizations and such other persons for the purpose of explaining the proposed plans and receiving representations and comments thereon.

(5) Any person may within sixty days of the notice of the deposit of a plan inspect and make representations on that plan.

(6) After the expiry of the period prescribed under subsection (5) for making representations on a plan, the responsible authority shall submit the plan to the Minister together with all such representations and comments and any recommendations made on them by the responsible authority for consideration by the Minister.

Approval of plans

14.—(1) The Minister may approve a plan with or without modification or reject it in whole or in part.

(2) Prior to making any decision on a plan which has been submitted to him, the Minister shall consider any representations and comments that have been made on that plan and may refer the plan and those representations and comments to the Board for its advice and may, as he sees fit, seek the advice of any other person on the plan as he may see fit.

Deposit of approved plan

15.—(1) When a plan has been approved by the Minister in respect of the whole or part of the area for which it has been prepared a copy of it shall be deposited in such places within the area and the substance of it shall be made known throughout the area in such manner as the Minister shall direct.

(2) Any approved plan shall be a public document and shall be available for inspection and use by members of the public at all reasonable times at the offices of the responsible authority

and at such other places within the area to which the plan applies as the Minister shall direct.

Review, amendment and modification of plans

16.—(1) The Minister may require the responsible authority to review, or prepare modifications and amendments to, any plan or any part thereof.

(2) The responsible authority may review, modify and amend any plan that has been prepared, whether or not it has been approved by the Minister, as is in the opinion of the responsible authority necessary to take account of the changing circumstances of the area to which the plan relates.

(3) The provisions of sections 12 and 13 shall apply to any review, amendment or modification of a plan.

(4) The responsible authority shall submit to the Minister any modifications and amendments to a plan for his approval and if the Minister is of the opinion that new substantial policies and proposals are being introduced into the plan he may, prior to the granting of his approval therefor, direct inquiries to be made under section 11.

Revocation of plans

17.—(1) The Minister may, by order published in the *Gazette*, revoke any plan or part of a plan but such revocation shall not render illegal any action that has been taken by a responsible authority or any other person under, or in pursuance of, a plan.

(2) Any action in the process of being taken by a responsible authority or by any other person under or in pursuance of a plan that has been revoked shall unless the order of revocation otherwise provides, cease to be taken and if continued thereafter shall have no effect.

(3) Upon revocation of a plan under subsection (1) the Minister shall cause the substance of the revocation order to be made known in the area to which the plan applies in such manner as the Minister shall direct.

Conflict between plans

18.—(1) Where there is any conflict or discrepancy between the policies and proposals of an approved District Physical Development Plan and an approved Local Physical Development Plan applicable to the same area or between two or more approved Local Physical Development Plans applicable to the same area, the policies and proposals of the approved Local Physical Development Plan or, as the case may be, the most recently approved Local Physical Development Plan shall prevail.

(2) Where there is a conflict between an approved plan and a plan that has been prepared but not yet approved, the policies and proposals of the approved plan shall prevail.

(3) Where there is a conflict between two or more plans applicable to the same area none of which have been approved, a Local Physical Development Plan shall prevail over any other plan or plans.

Advisory local development plans

19. Nothing in this Part shall be so construed as to prevent the preparation and use by the Commissioner of advisory local physical development plans for urban areas, rural centres and villages for the physical development, redevelopment and use of any land.

Division II—*National Physical Development Plan*

Purpose and content of National Physical Development Plan

20.—(1) The purpose of a National Physical Development Plan shall be—

(*a*) to provide a spatial framework for the co-ordination and implementation of programmes and projects of development;

(*b*) to assist with the development of an ordered hierarchy of urban and rural growth centres so as to contribute to a balanced pattern of development and an economical use of resources and facilities; and

(*c*) to provide guidelines for the development of services and facilities to desirable standards.

(2) A National Physical Development Plan shall consist of such statements of policies and principles and such background studies, reports, maps, plans and other materials containing such information and analysis of demographic, economic, energy, environmental, land use and tenure, physical, rural, social welfare, transportation, urban and other like matters as are necessary to enable the plan to achieve its purpose.

Responsibility for the preparation of National Physical Development Plan

21.—(1) The Commissioner shall be responsible for the preparation of a National Physical Development Plan.

(2) The Minister may require such information and such policies and proposals as he may see fit to be included in a National Physical Development Plan at the stage of its preparation.

Approval of National Physical Development Plan

22.—(1) When a National Physical Development Plan (in this section referred to as the "Plan") has been prepared it shall be submitted to the Minister for approval.

(2) The Minister may place the Plan or an official summary thereof before Parliament for its consideration, and where he does so, he shall not make any decision on the Plan until after Parliament has considered it.

(3) The Minister may seek such advice on, and give such publicity to, the Plan as he sees fit.

(4) The Minister may approve the Plan with or without amendments or reject it in whole or in part.

Status of National Physical Development Plan

23. Where the Minister approves a National Physical Development Plan or where a National Physical Development Plan has been prepared but has not yet been approved by the Minister, all District Physical Development Plans and all Local Physical Development Plans and any programme or project of development shall, as far as is practicable, be so formulated and prepared as to have regard, to and take into account, the policies and principles of the National Physical Development Plan so approved or prepared.

Division III—*District Physical Development Plans*

Purpose and content of District Physical Development Plans

24.—(1) The purpose of a District Physical Development Plan shall be—

(*a*) to elaborate on, and to apply, the principles and policies of the National Physical Development Plan, if any is in existence in so far as they are relevant to the district;

(*b*) to provide a survey of the conditions, resources and facilities within the district to which it relates;

(*c*) to identify the growth and service centres, the priorities and possible locations of major public investments and the communication and transportation facilities within the district; and

(*d*) to formulate a general land use plan for the district.

(2) A District Physical Development Plan may be made for—

(*a*) the whole or part of a district;

(*b*) more than one district; or

(*c*) parts of more than one district:

Provided that a District Physical Development Plan made for part of a district or parts of more than one district or more than one district shall be given a special name as appropriate other than that of the district or districts to which the plan relates.

(3) A District Physical Development Plan shall include—

(*a*) a technical report on the conditions, resources and facilities of the district;

(*b*) a statement of policies and proposals directed to assisting the making of decisions on the allocation of resources and the location of physical development within the district;

(c) such information about the description and analysis of the conditions of development in the district as may be necessary to explain and justify the statement of policies and proposals;

(*d*) background studies and reports;

(*e*) maps and plans showing present and future land uses and development; and

(*f*) such other matters as the District Planning Committee may request.

Responsibility for preparation of District Physical Development Plan

25.—(1) The Commissioner shall be responsible for the preparation of a District Physical Development Plan.

(2) The Commissioner may, with the consent of the Minister, delegate the responsibility for preparing a District Physical Development Plan to a Planning Committee.

Status of District Physical Development Plan

26.—(1) When a District Physical Development Plan has been approved by the Minister in respect of the whole or part of a district all Local Physical Development Plans and all programmes and projects of development proposed for the district or that part for which a District Physical Development Plan has been approved and all Local Physical Development Plans for areas bordering on or adjacent to the district shall, as far as is practicable, be so formulated and prepared as to have regard to, and take into account, the District Physical Development Plan.

(2) When a District Physical Development Plan has been prepared but not yet approved all Local Physical Development Plans and all programmes and projects for development within the district shall, as far as is practicable, be so formulated and prepared as to have regard to, and take into account, the District Physical Development Plan.

Division IV—*Local Physical Development Plans*

Types of Local Physical Development Plans

27.—(1) Local Physical Development Plans shall include the following, namely—

(*a*) an urban structure plan, which shall be a land use plan or outline zoning scheme or outline zoning plan for the whole of an urban area;

(*b*) an urban layout plan, which shall be a detailed land use plan of a part of an urban area in which significant physical development is planned or is likely to or has begun to take place or there is need for development, redevelopment or revision and upgrading;

(*c*) an urban civic plan, which shall be a more elaborate design of a special area or areas of an urban area showing layout of buildings, carparking lots and landscaping among other details; and

(*d*) a subject physical development plan, which shall be a plan concerned with a particular subject matter.

(2) A Local Physical Development Plan other than a subject physical development plan shall be named after the place or area to which it relates and the kind of plan it is.

(3) A subject physical development plan shall be named after the subject particular matter with which it is concerned.

(4) More than one Local Physical Development Plan may be applied to any one area or place at the same time and one Local Physical Development Plan may apply to more than one area at the same time.

Content of Local Physical Development Plans

28.—(1) A Local Physical Development Plan shall include—

(*a*) a summary of the principal features of the plan;

(*b*) a statement on the existing conditions of the place or area or subject matter with which the plan is concerned;

(*c*) a statement on planning policies and proposals;

(*d*) a statement on the relationship between the plan and the District Physical Development Plan to which it would relate and any other Local Physical Development Plans adjacent to it;

(*e*) maps and plans to show present and future land and transportation uses and the location of proposed developments; and

(*f*) guidance on land uses for purposes of making decisions on applications for development permission.

(2) The Minister may require any other matter to be included in any Local Physical Development plan.

Declaration of Planning Area for Local Physical Development Plan

29.—(1) Where the Minister, after such consultations as he thinks it appropriate to make, considers that there is need for development which is taking place or is likely to take place in any area to be properly planned, organized and guided or that there is need for development to be encouraged in any area and that such planning or development can be better achieved by the preparation of a Local Physical Development Plan, he may by order published in the *Gazette*, declare that area to be a Planning Area.

(2) Where a Planning Area is declared in respect of land which is or part of which is customary land, the Minister may request the Minister responsible for land matters to declare that customary land to be public land under section 27 of the Land Act. Cap. 57:01

(3) A District Council or a Local Authority may request the Minister to declare under subsection (1) any part of its area of jurisdiction to be a Planning Area.

(4) An order made under subsection (1) shall not be made so as to have retrospective effect.

(5) A copy of the order shall be deposited or displayed in such places within the Planning Area as the Minister may direct, and the Minister shall cause the substance of the order to be made known throughout the Planning Area in such manner as the Minister considers to be most effective for the purpose of bringing it to the attention of all persons likely to be affected by it.

Responsibility for preparation of Local Physical Development Plan

30.—(1) The Commissioner shall be responsible for the preparation of Local Physical Development Plans.

(2) The Commissioner may delegate the responsibility for the preparation of the plans referred to in subsection (1) to a Planning Committee.

(3) Where the Commissioner delegates to a Planning Committee the responsibility for the preparation of a Local Physical Development Plan, the Planning Committee shall consult with the Commissioner on the need, and the resources likely to be available, for the preparation of such a plan.

Status of Local Physical Development Plan

31.—(1) When a Local Physical Development Plan had been approved by the Minister—

(*a*) all Government Departments and all statutory bodies shall have due regard to the plan in formulating and preparing any project of public investment and development within the area to which the plan applies;

(*b*) the District Council, and the Local Authority having jurisdiction in the area to which the plan applies shall, so far as is practicable, comply with the plan in deciding or commenting on the location, priority and nature of any project of public investment or development; and

(*c*) the Planning Committee shall, in considering any application for development permission, have due regard to and, so far as is practicable, comply with the plan.

(2) When a Local Physical Development Plan is in course of preparation or has been prepared but not yet approved all Government Departments and statutory bodies, the District Council, the Local Authority and the Planning Committee having jurisdiction in the area for which the plan is being or has been prepared shall, so far as is practicable in respect of their proposals for public investment and development or their decisions on applications for development permission, have regard to such policies and proposals as have been or are likely to be included in the plan.

PART V

Development Control and Enforcement

Division I—*Development Control*

Application of this Part

32.—(1) This Part shall apply to—

(*a*) all proposals for development within a Planning Area other than development permitted or exempted under this Act;

(*b*) all proposals for development within a declared area other than development permitted by this Act;

(*c*) all proposals for the display of advertisements other than those permitted by this Act; and

(*d*) all proposals for subdivisions within a subdivision control area.

(2) The control of development, advertisements and subdivi-

sion activity on, or the proposed use of, land is to take place on private land, public land or customary land and no person or organization other than those provided for in this Act shall have any power or authority to grant permission for development or subdivision of land within a declared area or in respect of advertisements anywhere in Malaŵi.

Customary land Cap. 57:01

33.—(1) Nothing in this Part shall affect the right of a Chief under section 26 of the Land Act to authorize the use and occupation of any customary land within his area in accordance with customary law but where that area falls within a declared area such authorization shall not operate as a development permission and it shall be the duty of the occupant of the customary land to apply for development permission unless the proposed development is an exempted development under this Act.

(2) An exempted development under this section is—

(*a*) the erection of a building of a traditional nature within the recognized boundaries of a village;

(*b*) the erection of a traditional house outside the generally recognized boundaries of a village:

Provided that this shall not authorize or render the lawful erection of such a house within a road reservation or on land where all development is prohibited in a declared area.

Cap. 34:01 sub. leg. p. 75

(*c*) the erection of a house made with non-permanent materials but in such case the provisions of the Public Health (Minimum Building Standards for Traditional Housing Areas) Rules or any rules replacing those rules shall apply to such a house;

(*d*) the erection of houses and other buildings in accordance with a simple layout plan prepared by or approved by the Planning Committee for use by a Chief in his authorization of the use and occupation of customary land in his area;

(*e*) the use of customary land in accordance with an urban layout plan approved by the Planning Committee for use by a Chief in his authorization for small-scale commercial and manufacturing purposes in buildings made with non-permanent materials.

(3) Where a simple layout plan has been prepared or approved by the responsible authority it shall be explained to and discussed with the Chief to whose area the plan relates.

(4) Where a simple layout plan under subsection 2 (*d*) has been supplied to a Chief, the Chief shall, in any case where he intends to authorize the use and occupation of customary land for the erection of any building within a declared area, comply with the provisions of that plan.

(5) Where a Chief fails to comply with a layout plan in his authorization of use and occupation of customary land for the erection of any building within a declared area, the Minister may, after consultation with a Planning Committee where the customary land is in a Planning Area, request the Minister for the time being responsible for land matters, to declare that customary land to be public land under section 27 of the Land Act.

Cap. 57:01

(6) The Minister shall cause the substance of this section to be made known throughout those parts of any declared area where the land is customary land in such manner as he considers to be most effective for the purpose of bringing it to the attention of any Chief or other person having authority over customary land.

Permitted development *First Schedule*

34.—(1) The types and classes of development set out in the First Schedule shall, to the extent provided in that Schedule, be permitted development under this Act and shall be exempted from the requirement for development permission under this Part.

(2) The Minister may by order amend the First Schedule.

Types of development permission

35. The types of development permission that may be applied for under this Part are as follows, namely—

(*a*) an outline development permission and development permission for development within a declared area; and

(*b*) an advertisement permission for the display of advertisements anywhere in Malaŵi; and

(*c*) a subdivision permission for the subdivision of land within a subdivision control area.

Application for development permission

36.—(1) An application for development permission under this Part shall—

(*a*) be made to—

(i) the Planning Committee, in case of any development within a Planning Area;

(ii) the Commissioner, in every other case;

(*b*) be accompanied with a prescribed fee; and

(*c*) be in the prescribed form,

and shall include such other information as the Planning Committee or the Commissioner may require.

(2) The responsible authority may by written notice served on an applicant for the grant of a development permission require the applicant to do either or both of the following, namely—

(*a*) publish details of his application at a time or times in a place or places and in a manner specified in the notice;

(*b*) give details of his application to the persons and authorities and in a manner specified in the notice.

(3) A responsible authority shall in writing notify the applicant for a development permission of its decision on the application, giving, where it grants the permission, the conditions, if any, upon which it is granted and, where it refuses the permission, a brief statement of reasons for the refusal.

(4) The responsible authority shall within sixty days of the receipt of an application for development permission inform the applicant of the decision on the application, or where no decision has been taken, of the progress on the application and the likely date by which a decision will be taken.

Power to obtain information concerning applications

37.—(1) The responsible authority may by written notice served on the applicant for the grant of a development permission require the applicant—

(*a*) to furnish it, within such time as is specified in the notice, with such further information relevant to the application as may be specified in the notice;

(*b*) to permit it to enter on the land to which the application for the grant of development permission relates so as to enable it to view the site and the adjacent lands and developments.

(2) Where the applicant for the grant of development permission does not have such an interest in the land to which the application relates as would enable him to permit the responsible authority to enter the land, he shall obtain that permission from the person having such interest.

(3) The responsible authority may defer a decision on an application for the grant of development permission until it is satisfied on the matters in respect of which it requires information or entry onto the land to which the application relates.

Power of Minister concerning applications

38.—(1) The Minister may from time to time, by order published in the *Gazette*, or in any individual case, by directions or instructions in writing under his hand, withdraw an application or class of applications for development permission from the jurisdiction of the responsible authority and reserve the power to make a decision on that application or class of application to himself.

(2) The power of the Minister under subsection (1) may be exercised in respect of any application that has been made to the responsible authority and in such case the responsible authority shall cease to take any action in respect of the application and shall send it together with any information concerning it to the Minister.

(3) An application to which subsection (1) relates shall be made to the Minister and the Minister shall, in addition to any other powers conferred on him by this Act, have all the powers of a responsible authority under this Part in connexion with such application.

(4) The Minister may refer any application to which subsection (1) relates to the Board for its advice or decision.

Consultation in relation to application

39.—(1) The responsible authority may, on receipt of an application for development permission, consult with and seek information from such of the following persons and authorities as may be necessary for the satisfactory disposal of the application, namely—

(*a*) the Commissioner for Lands;

(*b*) the Controller of Roads;

(*c*) the Chief Inspector of Factories;

(*d*) the person or authority responsible for the provision of other basic infrastructural services to the land to which the application relates;

(*e*) the Electricity Supply Commission of Malaŵi;

(*f*) the District Council or Local Authority having jurisdiction in the area of the land to which the application relates; and

(*g*) such other persons and authorities as the responsible authority may see fit to consult or seek information from.

(2) The persons or authorities referred to in subsection (1) or their representatives may be invited to attend and speak, without a right to vote, at any meeting convened by the responsible authority to consider any application for development permission.

(3) The persons or authorities referred to in subsection (1) shall, where they are not invited, or are unable, to attend a meeting convened by the responsible authority to consider an application for development permission, provide the information or advice requested by the responsible authority within twenty-one days of the receipt of the request or where that is not practicable, they shall inform the responsible authority when they are likely to be able to provide that information or advice.

(4) The responsible authority shall not decide on any application for development permission in respect of which it has requested information or advice from any of the persons or authorities referred to in subsection (1) until after the receipt of that information or advice or twenty-one days have elapsed since such information or advice was requested whichever is the sooner.

Consideration of applications

40.—(1) In considering any application for development permission, the responsible authority shall, and subject to this Act, take such of the following matters into account as it considers necessary for the satisfactory disposal of the application, namely—

(*a*) any District Physical Development Plan or Local Physical Development Plan applicable to the area;

(*b*) such information and advice as it has received under section 39;

(*c*) the foreseeable impact of the proposed development on the natural or built environment and on adjacent uses of land;

(*d*) the quality and economy of the proposed development, its proposed layout and the quality of its architectural design;

(*e*) consideration of noise, air, water and ground pollution, and any other detrimental effect the proposed development may have on the amenity and built environment of the area and adjoining land uses;

(*f*) traffic considerations;

(*g*) the contribution the proposed development may make to economic and social facilities and welfare, including employment, within the area;

(*h*) the financial and other resources available to the person who has applied for development permission;

(*i*) whether the proposed development is desirable, convenient or necessary having regard to the public interest; and

(*j*) any other consideration which the Minister requires the responsible authority to have regard to.

(2) The responsible authority may in its discretion, grant an application for development permission either absolutely or subject to such conditions as it may think fit to impose or may refuse to grant an application for development permission.

(3) Without prejudice to the generality of subsection (2), the responsible authority may in respect of a grant of development permission impose such conditions as are likely to advance any of the matters referred to in subsection (1), including all or any of the following matters, namely—

(*a*) the timing and phasing of a development;

(*b*) the contribution including financial contribution which a developer will be required to make to the provision of infrastructure and car-parking in connexion with the development;

(*c*) landscaping and the preservation of trees and other natural resources on the land where the development is to take place;

(*d*) controlling the processes of development;

(*e*) land in the ownership or control of the developer which is contiguous to the land where the development is to take place;

(*f*) the duration of a development; and

(*g*) the nature of materials to be used in the construction of buildings and fences and the colour of external paintwork of buildings and fences.

Time and completion of development

41.—(1) A development permission shall lapse and shall cease to have any effect if the development to which it relates has not been commenced within two years of the date of the grant of that development permission.

(2) A responsible authority may by written notice served on a person who has commenced but has not within two years of the date of that commencement completed a development, for which he has obtained a grant of development permission, require that person to complete that development within the time specified in the notice.

(3) A responsible authority may on the request of an applicant for a grant of development permission, or a person who has obtained a grant of development permission, extend the time limits referred to in subsections (1) and (2).

(4) A grant of development permission may provide that the development to which it relates shall be permitted for a limited period only.

Revocation of grant of development permission

42.—(1) A responsible authority may, and on the directions of the Minister shall, by written notice served on a person who has obtained a grant of development permission, revoke in whole or in part that grant of development permission.

(2) A notice of revocation served under subsection (1) shall include—

(*a*) a statement of reasons for the revocation;

(*b*) such directions as the responsible authority shall consider necessary as to the cessation of any development that has been commenced in pursuance of the grant of development permission;

(*c*) information on any claim to compensation that may be made in respect of revocation; and

(*d*) such other matters as may be prescribed by regulations.

(3) A grant of development permission in respect of which a notice of revocation has been served on any person shall, to the extent of the revocation, cease to be valid or to have effect and any development to be affected by the revocation and which takes place after the service of the notice of revocation shall be unauthorized development.

(4) A person upon whom a notice of revocation has been served shall comply in all respects with that notice.

Development permission personal to applicant

43.—(1) A grant of development permission is personal to the person to whom it is made and where that person ceases to have an interest in the land which would entitle him without obtaining the permission of any person to enter and undertake building operations on the land, the grant of development permission shall lapse and, unless it is transferred in accordance with this section, shall cease to have effect.

(2) Where a person has transferred or has made a contract to transfer his interest in land which is the subject of an application for a grant of development permission or in respect of which a grant of development permission has been made, or in case of a company, where a controlling interest in the company which made the application for development permission or to which a grant of development permission has been made, is to be or has been transferred to another person or company, the person in whose name the application for or to whom a grant of development permission has been made shall inform the responsible authority of the name and address of the person to whom, or company to which the land or controlling interest in the company, is being or has been transferred.

(3) A transferee of land or a land controlling interest in a company referred to in subsection (2) shall, if he intends to continue with the development which is the subject of the application for a grant of development permission apply in writing to the responsible authority for a transfer of the development permission.

(4) Sections 36 to 42 of this Act shall apply to any application for a transfer of a development permission made under this section.

Division II—*Enforcement*

Development not to take place without permission

44.—(1) No person shall commence the development of any subdivision of any land or display any advertisement on any land or building to which this Part applies unless he has first obtained a grant of development permission or except where the development, subdivision or display of advertisement is permitted development under this Act.

Cap. 58:02

(2) Notwithstanding anything contained in the Deeds Registration Act, the Deeds Registrar shall refuse to accept for registration any document which effects or purports to effect a subdivision or which constitutes or purports to constitute a subdivision agreement to which subsection (1) applies, unless there is attached to such document a copy of the grant of development permission which permits such subdivision or subdivision agreement.

Cap. 57:01

(3) Notwithstanding anything contained in the Land Act, the Commissioner for Lands shall not sign, seal, execute or perfect any grant or lease of public land or customary land for the purpose of development to which this Part applies, unless the application for the grant or lease of public land or customary land is accompanied with a copy of a grant of development permission or a certificate from the responsible authority that such grant is not required for the development.

Enforcement notice

45.—(1) A responsible authority may, in any case where it considers that unauthorized development has taken place, by written notice (in this Act referred to as the "enforcement notice") a copy of which shall be served on the owner and occupier of the land or building to which the notice relates, require that person or those persons to take such action in such time, being not less than thirty days from the date of the service of a copy of the enforcement notice, in relation to that development as may be specified in that notice.

(2) An enforcement notice shall specify clearly and in a manner which may be easily understood—

(*a*) the development to which it relates;

(*b*) the activity on or in or the use of land or buildings alleged to constitute the unauthorized development;

(*c*) the person or persons to whom it is addressed;

(*d*) the time at which it comes into effect;

(*e*) the action which must be taken to rectify the alleged unauthorized development and the time, being not less than sixty days, within which such action must be taken;

(*f*) the powers of the responsible authority to enter the land and undertake the action specified in paragraph (e);

(*g*) the penalties which may be imposed if the action specified in paragraph (e) is not undertaken; and

(*h*) the right of the owner and occupier of the land or building, which is the subject of the enforcement notice, to object to or appeal against the enforcement notice.

(3) An enforcement notice shall continue to apply to development in respect of which it was served notwithstanding that it has been complied with.

(4) A person who has been served with an enforcement notice shall, subject to the provisions of this Act, be under a duty to comply with all the terms and conditions of the notice that has been served on him.

Reconsideration of enforcement notice

46.—(1) At any time within thirty days of the service of an enforcement notice, a person on whom such a notice has been served may by giving reasons in writing request the responsible authority to reconsider the enforcement notice.

(2) Where a written request in accordance with subsection (1) has been made to responsible authority, the enforcement notice shall continue in effect until varied, suspended or withdrawn under subsection (3) and, if varied, shall continue in effect in accordance with the variation.

(3) A responsible authority may, after reconsidering the case, either of his own volition or upon request made under subsection (1), confirm, vary, suspend or withdraw the enforcement notice.

(4) Where a request has been made under subsection (1), the responsible authority to whom the request is made shall, within thirty days of the receipt of the request, reconsider the enforcement notice and notify in writing the person who made the request of his decision thereon.

(5) A responsible authority may, but shall not be obliged to, give the person who has requested a reconsideration of an enforcement notice the opportunity to be heard orally by the responsible authority.

Matters to be taken into account on enforcement notice

47.—(1) A responsible authority shall, in considering whether to serve or in reconsidering an enforcement notice, take such of the following matters into account as it may consider necessary to determine the question before it satisfactorily, namely—

(*a*) the nature and extent of the unauthorized development;

(*b*) the harm to the natural and built environment and the degree of nuisance caused to adjacent development;

(*c*) the length of time the unauthorized development has existed;

(*d*) the likely expense to the person or persons who may be or have been served with an enforcement notice and their capacity to meet that expense;

(*e*) the benefits of the unauthorized development;

(*f*) the possible alternative measures which could be taken to rectify or regularize the unauthorized development;

(*g*) whether it is necessary, desirable or convenient, having regard to the public interest to serve or confirm an enforcement notice;

(*h*) any other material consideration; and

(*i*) any consideration which the responsible authority is directed by the Minister to take into account.

(2) A responsible authority may inspect or cause to be inspected on its behalf any development to determine whether, and if so, to what extent that development is unauthorized and may take into account the evidence obtained from such an inspection in any decision on whether to serve or confirm an enforcement notice.

(3) A responsible authority may seek and take into account any technical, professional and scientific advice which it considers to be necessary for a satisfactory decision to be made on an enforcement notice.

Action in pursuance of enforcement notice

48.—(1) The action which a responsible authority may require to be taken by a person on whom an enforcement notice has been served to rectify the unauthorized development to which the enforcement notice relates may be all or any of the following, namely—

(*a*) to pull down or remove a structure in whole or in part;

(*b*) to erect or re-erect a structure in whole or in part;

(*c*) to restore land as near as may be to the appearance and state which it had before the unauthorized development took place including the replanting of any vegetation;

(*d*) to display an advertisement in the place permitted by a development permission;

(*e*) to cease any use of land or buildings; and

(*f*) to do or take any action which in the opinion of the responsible authority will assist in the ending of the unauthorized development.

(2) Where a person on whom an enforcement notice has been served fails or refuses to take the action required by the enforcement notice to rectify the unauthorized development, the responsible authority may with all necessary workmen and other officers enter or authorize any other person to enter the land and take all such necessary action in respect of the unauthorized development and otherwise to enforce the notice as may seem fit.

(3) When the responsible authority has exercised the power under subsection (2) it may recover as a civil debt, in any court of competent jurisdiction, from the person or persons referred to in subsection (2) those expenses necessarily incurred by the responsible authority in the exercise of such power.

Stop notice

49.—(1) Where a responsible authority is of the opinion that a person is carrying out unauthorized development the responsible authority may serve a stop notice requiring that person to cease the activity or such portion of it as may be specified in the stop notice.

(2) If a person feels aggrieved by the stop notice issued pursuant to subsection (1), he may appeal to the Board within thirty days from the date of the service of the notice.

(3) The Board may confirm, vary or rescind the stop notice appealed from and in doing so the Board may take into account any matters provided for in section 44 respecting enforcement notices.

Development permission subsequent upon unauthorized development

50.—(1) A responsible authority may in any case where it considers that unauthorized development has taken place, by written notice served on the owner and occupier of the land or building in respect of which the unauthorized development has

taken place, require that person or those persons to apply for a grant of development permission.

(2) The provisions of sections 36 to 41, inclusive, shall apply to any application for a grant of development permission made under this section.

(3) Where a notice under subsection (1) has been served on any person the responsible authority shall refrain from serving an enforcement notice under section 45 (1) or stop notice under section 49 (1) on that person until after not less than thirty days from the date of the service of the notice under subsection (1).

(4) A grant of development permission issued under this section may be back-dated to the time at which the development to which it relates was commenced or is considered by the responsible authority to be likely to have commenced.

(5) A responsible authority may, if it sees fit in any case of unauthorized development of a minor nature, issue a grant of development permission after requiring an application from the owner and occupier of the land on which the unauthorized development has taken place.

Cleaning up land and buildings

51.—(1) A responsible authority may, in any case where it considers that—

(*a*) by reason of rubbish and other materials or goods left on land or of the general appearance of the land, that land is detrimental to the environment; or

(*b*) a building has become dilapidated, is run down or is in need of repair so that it detracts from the built environment, by written notice served on the owner of the land or building require the owner to take such action within such time, being not less than thirty days from the date of the notice, as may be specified in the notice, to clean up and thereafter maintain in a clean state the land or building.

(2) The action which a responsible authority may specify in the notice made under subsection (1), may be all or any of the following, namely—

(*a*) to remove rubbish and other material from the land;

(*b*) to fence the land;

(*c*) to cut down vegetation on the land to a reasonable height;

(*d*) to plant shrubs and flowers and thereafter maintain them;

(*e*) to paint or repaint the building in specified colours;

(*f*) to carry out minor repairs to the building;

(*g*) to tidy-up the land surrounding the building; and

(*h*) to take such other similar action as will contribute to the cleaning of the land.

(3) Where the owner of the land or building has not, within two months or such longer time as may be specified in the notice, cleaned up the land or building in the manner specified in the notice the responsible authority may with all necessary workmen and other officers enter, or authorize others to enter, on the land and carry out the actions specified in the notice.

(4) When the responsible authority has exercised the power under subsection (3) it may recover as a civil debt, in any court of competent jurisdiction, from the owner of the land or building those expenses necessarily incurred by the responsible authority in the exercise of such power.

PART VI

Special Areas

Declaration of special areas

52.—(1) Subject to this Act, the Minister may, from time to time by order published in the *Gazette*, declare any area of land (in this Act referred to as the "special area") to be subject to special powers of control and management of land as provided for in this Part.

(2) The following are the orders and their general purport which may be made by the Minister, namely—

(*a*) *a land development control area order*, for controlling the development of land other than land within a Planning Area;

(*b*) *an improvement area order*, for improving the physical layout, housing or other conditions of life of the inhabitants of the area;

(*c*) *a vacant land development order*, for empowering the Minister to bring about development in the public interest on vacant land;

(*d*) *a building preservation order*, for preserving individual or group of buildings which have special architectural, cultural or historical significance;

(*e*) *an accelerated development area order*, for assisting in the planned development of an area designated for or experiencing rapid physical growth, including any rural growth area; and

(*f*) a subdivision control area order, for restricting and controlling subdivisions or agreements to subdivide land.

(3) With the exception of land development control area order and subdivision control area orders, a special area may be declared in respect of land within a Planning Area.

(4) The powers contained in any special area order for regulating, managing, controlling and bringing about the development of land within the special area shall be in addition to all other powers over land and respecting its development contained in this Act.

Land development control area order

53.—(1) A land development control area order may be made in any case where the Minister is of the opinion that the development of land shall be controlled or where the Minister is requested by any other Minister to make an order.

(2) In particular, but without limiting the generality of subsection (1), an order made under subsection (1) may be for the purpose of—

(*a*) controlling ribbon development on either or both sides of a road or a line of rail;

(*b*) protecting the natural environment of land or water from the harmful effects of any or a particular class of development; and the proper cultivation of land in an area set aside for agricultural development;

(*c*) controlling and ordering development;

(*d*) facilitating the creation of planned village communities; and

(*e*) implementing a specific project involving major commercial, industrial, or mining development;

(3) A land development control area order may prohibit all or any or certain classes of development or use of land within the whole or any part of the area subject to the order, and may permit any development subject to such conditions as may be set out in the order.

(4) Where any development is permissible within a land development control area an application for development permission in respect of that development shall be submitted to the Commissioner.

(5) Subject to the provisions of the relevant land development control area order, the provisions of sections 36 to 43, inclusive, shall apply to any application for a grant of development permission made under this section.

(6) Where any land development control area order has been made for the purpose of controlling and regulating the cultivation or other agricultural uses of land the Commissioner shall, in considering any application for a grant of development permission, consult with the Secretary for Agriculture and have regard to and take into account any comments he may make on the application for a grant of development permission.

Improvement area order

54.—(1) An improvement area order may be made in respect of any area of land developed primarily for residential purposes to a high density or in an unplanned and unauthorized manner or in a manner which makes further development or redevelopment of that land or adjacent land difficult to carry out or in a manner detrimental to the environment of the area and the health of the residents of the area or adjacent areas.

(2) An improvement area order may make provision for the exercise of powers in respect of—

(*a*) the improvement of houses;

(*b*) the building or rebuilding of houses and other structures;

(*c*) the provision of roads, water and electricity in the area;

(*d*) the relocation of some or all of the residents of the area either within the area or elsewhere;

(*e*) the demolition of houses and other structures;

(*f*) the reallocation of land within the area to ensure a more beneficial occupation and a more suitable subdivision of the land;

(*g*) the demarcation of boundaries;

(*h*) the payment of compensation to residents of the area who suffer loss or inconvenience through the exercise of any of the powers of the order;

(*i*) the landscaping of the area; and

(*j*) such other matters as are in the opinion of the Minister conducive to the physical improvement of the residents of the area.

(3) Where the Minister wishes to make an improvement area order he may, prior to the making of such order, require the Commissioner or a Planning Committee to hold a meeting with the District Council or the Local Authority having jurisdiction over the area to which the proposed order relates and the residents of that area in order to explain to them the purport of the proposed order, to obtain any representations on the proposed order and to report the substance of the meeting to him.

(4) An improvement area order shall provide for the person who or authority which is to be responsible for implementing the order and such provision may establish a special committee of persons with relevant skills and knowledge to implement the order.

(5) When the Minister has made an improvement area order he shall cause the substance of the order to be made known throughout the improvement area in such manner as the Minister considers to be most effective for the purpose of bringing it to the attention of the residents of the area.

(6) The person or authority responsible for the implementation of the Order shall during the period of implementation keep the residents of the area informed of, and consider their representations on, the programme of implementation and in pursuance of their duty he or it shall consult with any existing committee of residents or may appoint a committee of residents to assist them generally in the implementation of the Order.

(7) Where an improvement area consists of or has within it customary land, the Minister may request the Minister for the time being responsible for land to declare the customary land to be public land in accordance with the provision of section 27 of the Land Act.

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Vacant land development order

55.—(1) A vacant land development order may be made in respect of any land in an urban area where the Minister, after making such inquiries as he sees fit, is satisfied that the person entitled to the land has either through absence from the country or otherwise unreasonably failed to develop the land.

(2) When a vacant land development order has been made the Minister shall have the power to lease the land in accordance with the Land Act as if it were public land being leased.

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(3) No land within a vacant land development area shall be leased in accordance with subsection (2) until a plan for the development of that land has been prepared by the Commissioner and approved by the Minister.

(4) Any person who obtains a lease of land in a vacant land development area shall develop it in accordance with the plan approved by the Minister under subsection (3).

(5) Any rent payable in respect of a lease granted under this section shall be paid to the Commissioner for Lands who shall, after making any deduction of any charges and necessary administrative costs, place such monies in a special account with

the Reserve Bank of Malaŵi in the name of the Minister as trustee for the person entitled to the land.

Building preservation order

56. (1) A building preservation order may be made in respect of any building or group of buildings the preservation of which is in the opinion of the Minister desirable for architectural, landscape, cultural or historical reasons.

(2) A responsible authority may, and shall if so directed by the Minister, cause a survey of the buildings in its area to be made with a view to determining whether any such buildings ought to be made the subject of a building preservation order.

(3) Where a responsible authority considers that a building preservation order may be made in respect of any building, it shall forward a draft of such an order to the Minister and cause a notice of the draft order to be affixed in a prominent place on each building to which the draft order relates.

(4) No person shall develop, demolish, alter or engage in any building operations other than essential repairs, or attempt so to do, in respect of any building which is subject to a building preservation order without first obtaining a grant of development permission from the responsible authority.

(5) In considering whether to grant, with or without conditions, or to refuse an application for development permission in respect of a building which is subject to a building preservation order, the responsible authority shall in addition to taking into account the matters contained in section 41 (1) have regard to the importance of preserving the architectural, cultural and historical heritage of Malaŵi.

Accelerated development area order

57.—(1) An accelerated development area order may be made in respect of any area of land designated for the purpose of effecting rapid physical development or which in the opinion of the Minister is undergoing or is likely to undergo rapid physical development.

(2) The Minister may, in connexion with the making of an accelerated development area order—

(*a*) request the Minister for the time being responsible for land to declare any customary land in the area to be public land under section 27 of the Land Act; Cap. 57:01

(*b*) require the Commissioner to prepare a plan for the area;

(*c*) require the responsible authority to expedite the consideration of any applications for development permission;

(*d*) establish with the concurrence of the Minister for the

time being responsible for land matters a committee (in this section referred to as the "task force") of officers from the Department of Town and Country Planning and the Department of Lands and Valuation to ensure the rapid processing of applications for plots of land within the area;

(*e*) invite other departments of the government and statutory bodies and other orgnizations to nominate officers to the task force with a view to ensuring a co-ordinated approach to development within the area; and

(*f*) take such other action as will in his opinion facilitate the planned and orderly development of the area.

(3) An accelerated development area order may provide that, subject to such conditions as may be specified in the order, certain developments or classes of developments shall not require a grant of development permission or that developments otherwise permitted under this Act shall require a development permission.

(4) When an accelerated development area order has been made, the Minister shall cause the substance of the order to be made known throughout the area to which it relates in such manner as the responsible authority shall consider to be most effective for the purpose of bringing it to the attention of all persons affected thereby.

(5) Where an accelerated development area order is made in an area which is not part of a Planning Area, the Commissioner shall be the responsible authority for the purpose of determining applications for development permission within the area and for this purpose sections 36 to 42, inclusive, shall apply to any application for a development permission made within an accelerated development area.

Subdivision control area orders

58.—(1) A subdivision control area order may be made in respect of any area of land outside a Planning Area or the area of jurisdiction of a Local Authority where the Minister is of the opinion that it is necessary, desirable or convenient in the public interest that the subdivision of land be controlled.

(2) An order shall not apply to the use, subdivision or occupation of customary land in accordance with customary law where such use, subdivision or occupation is for the purpose of—

(*a*) cultivation; and

(*b*) the building of a house or other structure with traditional or non permanent materials.

(3) Applications for permission to subdivide land within a subdivision control area shall be made to the Commissioner in a prescribed form.

(4) Subject to a subdivision control area order, Part IV shall apply to an application for a grant of development permission.

(5) No person shall subdivide or enter into any subdivision agreement in respect of any land within a subdivision control area unless the prior written permission of the Commissioner has been given to such subdivision and except upon the conditions, if any, which may be attached by the Commissioner to any such permission have been complied with by the person to whom permission is granted:

Provided that this subsection shall not apply where the size of each of the plots of land resulting from such subdivision or subdivision agreement exceeds such minimum area as may be prescribed.

PART VII

Development by Departments of Government

Application of this Part

59.—(1) This Part shall apply to—

(*a*) any proposal for development by any department of the Government; and

(*b*) any proposal for development of offices, diplomatic or cultural facilities by any international organization or foreign government which if made by any other person or organization would require a grant of development permission.

(2) For the avoidance of doubt, it is declared that any proposal for development by any public corporation established by law in Malaŵi shall not, for purposes of this Act, be treated as a proposal for development by a department of the Government.

Regard to be had to plans

60. In formulating any proposals for development, a department of the Government shall have regard—

(*a*) to the National Physical Development Plan or any plan applicable to the area in which the proposed development is to be located; and

(*b*) to section 40 (1) in so far as it is relevant.

Procedure on proposals for development by departments of the Government

61.—(1) The Minister responsible for the proposal for any development under this Part shall notify—

(*a*) where the proposed development is to be located in a Planning Area, the Planning Committee;

(*b*) where the proposed development is to be located in a land development control area, the Commissioner.

(2) The Minister or the responsible authority, as the case may be, shall forthwith cause the District Council and Local Authority having jurisdiction in the area where the proposed development is to be located to be notified of the proposed development.

(3) The responsible authority, the District Council and the Local Authority referred to in subsection (2) shall as soon as may be practicable and in any case not later than sixty days from the date of notification of the proposal for development send any representations they may have on that proposal to the Minister.

(4) The Minister may, with the concurrence of the Minister responsible for the proposal for development, refer that proposal to the Board for its advice, and the Board shall, not later than thirty days from the date of the reference of the proposal to it, give its advice to the Minister on that proposal.

(5) The Minister shall inform the Minister responsible for the proposal for the development concerned of the advice and representations he has received on that proposal.

(6) The Minister responsible for the proposal for the development concerned shall consider and take account of the advice and representations he has received from the Minister and shall not authorize the commencement of the development with or without modifications until he has received and considered that advice and those representations.

PART VIII

Acquisition of Land and compensation

No general right to compensation under this Act

62. Subject to the Constitution and to this Act, there shall be no general right to compensation in respect of any action, decision or plan taken or made under this Act which does not involve or amount to a taking or deprivation of property.

Acquisition of land

63.—(1) The Minister may, of his own motion or at the request of a responsible authority, whenever he is of the opinion that it is desirable or expedient in the interests of the implementation of any plan or of the proper control and furtherance of

development of any land under this Act, so to do, acquire any land, either compulsorily or by agreement, paying such compensation therefor as may be agreed or determined in accordance with the law.

(2) Any acquisition of land and any payment of compensation therefor under this Act shall be in accordance with the Lands Acquisition Act. Cap. 58:04

Occasions when compensation payable for planning actions

64.—(1) There shall be a right to the payment of compensation assessed, in accordance with the provisions of this Part in the following cases, namely—

(*a*) where, by reason of a refusal of a grant of development permission by the Minister or a responsible authority, the land which was the subject of the application for a grant of development permission has become incapable of any reasonable beneficial use;

(*b*) where a building has been destroyed in whole or in part by fire or other natural disaster and the Minister or a responsible authority refuses to allow a building of similar content to be erected on the same or adjacent site in the ownership or occupation of the owner of the destroyed building;

(*c*) where the Minister or a responsible authority requires a building to be demolished, altered, removed, relocated or to cease being built or being used or a use of land to cease, such building and use of land, being at the time authorized and in accordance with any law or in respect of which the Minister has approved that compensation should be paid in the interests of the implementation of a plan or the proper control of land or the exercise of powers under Part IV;

(*d*) where a person is required to move from his house either permanently or on a temporary basis and take up residence elsewhere in the exercise of powers under an improvement area order;

(*e*) where as a result of the reallocation of land to effect a more desirable subdivision thereof in an improvement area, a person has suffered a diminution in the value of his land;

(*f*) where a development permission has been revoked and the holder of that permission has incurred expense necessarily arising out of commencing to develop or developing in accordance with the permission; and

(*g*) any other case where the Minister certifies that it would be just and desirable to pay compensation.

(2) For the purposes of determining where compensation is, and assessing the amount of compensation which may be, payable in accordance with this Part, the expression "incapable of any reasonable beneficial use" shall mean that the land cannot be used for any lawful purpose in keeping with surrounding uses so as to enable any person derive an income or produce from the land.

(3) Where a right to compensation has arisen in the circumstances referred to in paragraphs (a) and (b) of subsection (1) a claimant may, instead of pursuing a claim for compensation, by written notice (hereinafter called a "purchase notice") addressed to the Minister, require the Minister to purchase the land.

(4) On receipt of a purchase notice the Minister may—

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(*a*) accept the notice and agree to purchase the land in accordance with the provisions of the Lands Acquisition Act as if it were a compulsory acquisition of land;

(b) reject the purchase notice but agree to pay compensation assessed in accordance with this Act;

(*c*) reject the purchase notice and direct the responsible authority to grant development permission for—

(i) the development in respect of which an application for development permission has been made; or

(ii) development as specified in the direction; and

(*d*) reject the purchase notice on the grounds that the land is not capable of yielding any reasonable beneficial use.

Assessment of compensation

65.—(1) Compensation shall be assessed by the Minister.

Second Schedule

(2) An assessment of compensation made by the Minister in respect of the cases set out in paragraphs (a) to (g) of section 64 (1) shall be made as set out in the Second Schedule.

(3) The Minister may, by order published in the *Gazette* amend the Second Schedule.

(4) In assessing compensation under this section, the Minister shall unless so to do would in his opinion cause injustice, set off against any compensation payable, any increase in the value of the land which is the subject of the claim for compensation or any other land of the claimant adjacent to that land brought about by or reasonably likely to have been or to be brought about by any action or decision by the Minister, a responsible authority or any person or authority exercising powers under Part VI.

(5) The Minister may refer any question of compensation arising under this Part to the Board for its advice and the Board shall give its advice in the form of a written report to the Minister.

(6) An assessment of compensation made by the Minister under this section shall be final and shall not be subject to any appeal to or review by any court.

Claim for compensation

66.—(1) A claim for compensation under this Part shall be made in a prescribed form—

(*a*) to the Minister; and

(*b*) within six months of the date on which the action or decision which gives rise to the claim was taken.

(2) The Minister may, by written notice served on a claimant, require the claimant to furnish him within such reasonable time as may be specified in the notice with such further information relevant to the claim as may be described in the notice to enable him to determine the claim satisfactorily and expeditiously.

(3) The Minister shall not be obliged to determine a claim in respect of which he has exercised the power contained in subsection (2) until he has received the information so required from the claimant.

PART IX

Appeals

Appeals to the Board

67.—(1) Any person—

(*a*) whose application for development permission has been refused, revoked or granted subject to conditions by a responsible authority;

(*b*) upon whom a completion notice has been served;

(*c*) upon whom an enforcement notice has been served and after reconsideration has been confirmed by a responsible authority;

(*d*) aggrieved by a decision directly applicable to him taken by any person or authority exercising powers under Part VI other than any powers exercised in respect of a vacant land, development order;

(*e*) who has been served with a stop notice,

may appeal to the Board against that notice or decision.

(2) Where a person wishes to appeal against any notice or decision referred to in subsection (1), he shall submit a notice

of appeal within thirty days of the receipt of the notice or decision to be appealed against, to the Board.

(3) The Minister may prescribe rules of procedure to be followed in the making and hearing of appeals under this Part.

Powers of Board on appeals

68.—(1) The Board shall have, in relation to the hearing of any appeal under section 67 (1)—

(*a*) all the powers which the Minister or responsible authority has in considering an application for a grant of development permission, whether to revoke a grant of development permission or serve or confirm after reconsideration an enforcement notice or serve a completion notice or stop notice and shall exercise those powers in accordance with sections 36 to 42 and 45 to 49;

(*b*) the power to order persons to attend and give evidence or to produce or give discovery and inspection of documents in like manner as in proceedings in the High Court:

Provided that the Board may in its absolute discretion admit evidence which would not be admissible in a court of law and may use evidence contained in any official record and may call evidence of its own motion.

(*c*) the power to award costs of any proceedings before it and to direct that such costs shall be taxed upon such scale and in such manner as may be prescribed; and

(*d*) the power to do all things which it is required or empowered to do by or under this Act.

(2) The Board may in the exercise of its powers of appeal under this Part, confirm, with or without modifications, vary, amend, alter, reverse or substitute its own decision or any decision which an appeal has been brought before it.

(3) The decision of the Board on any appeal shall be—

(*a*) made in writing;

(*b*) sent to all the parties to the appeal and, where he was not a party, to the Minister; and

(*c*) available for public inspection.

(4) Subject to subsection (5) the decision of the Board on any appeal or any other matter on which it may or is required by the Minister to give a decision shall be final and shall not be subject to any appeal to any court.

(5) A party to any proceedings before the Board may, within thirty days of the decision of the Board on those proceedings, apply to the High Court for those proceedings to be reviewed on the grounds that the written decision of the Board discloses an error of law or a failure to comply with procedural requirements and the High Court may, if satisfied that the written decision does disclose an error of law or a failure to comply with procedural requirements and that such error or failure has caused substantial injustice to one or more of the parties to the proceedings, quash that decision and refer the matter back to the Board for its reconsideration.

(6) An application to the High Court for the review of the decision of the Board may be made by or against the Attorney General in accordance with the Civil Procedure (Suits by or Against the Government or Public Officers) Act. Cap. 6:01

PART X

Miscellaneous

Powers of entry

69.—(1) For the purpose of this Act, the Commissioner or an authorized officer may, at all reasonable times, enter any land or building—

(*a*) to inspect or survey the land or building for the purpose of preparing a plan;

(*b*) to determine whether any unauthorized development is being or has been undertaken on the land or in the building;

(*c*) to determine whether an order under Part VI shall be made in respect of the land or to enter such land in exercise of the powers under any order so made;

(*d*) to assess compensation under Part VIII; and

(*e*) to obtain information relevant to the determination of an application for development permission.

(2) In—

(*a*) the case of—

(i) paragraph (a), (c), (d) or (e) of subsection (1); and

(ii) paragraph (b) of subsection (1) in respect only of entry to a dwelling house or any enclosed court or garden attached to a dwelling house,

the Commissioner or an authorized officer shall give not less than seven days notice of his intention to enter;

(*b*) the case of paragraph (b) of subsection (1) if the entry is to land or building other than a dwelling house or any enclosed court or garden attached to a dwelling house, it shall be sufficient if the Commissioner or an authorized officer gives not less than twenty-four hours notice of his intention to enter.

(3) Where the Commissioner or an authorized officer has entered upon any land or building under this section, he may make such examination and inquiries as are necessary to effect the purposes of the entry.

(4) Before exercising any powers under this section the Commissioner or an authorized officer shall identify himself to the person who is or appears to be in control of the land or building which is about to be or has been entered.

Registration of applications for development permission and enforcement notices

70.—(1) A responsible authority shall maintain a register in the prescribed form of all applications for development permission and all enforcement notices, made or served in the area of jurisdiction for which it is responsible.

(2) A register under this section shall be open to the public at all reasonable times at the offices of the responsible authority.

(3) A member of the public may with the permission of the responsible authority and on payment of the prescribed fee make a copy of any entry in the register.

Publication of information by Commissioner

71.—(1) The Commissioner may, with the approval of the Minister, publish such periodicals and reports as will in his opinion assist the citizens of Malaŵi and other persons to understand and comply with the purpose and practices of town and country planning.

(2) The approval of the Minister under this section may be given in general terms in respect of any particular publication or class of publications which the Commissioner wishes to publish.

(3) Any publication to which this section applies may be made available to the public with or without charge.

Offences

72.—(1) Any person who without lawful or reasonable excuse—

(*a*) fails to carry out any work or action required by an enforcement notice which has been served on him;

(*b*) obstructs or impedes any authorized officer or any member of the Board or any member of the Planning Committee, lawfully exercising a power of entry onto land or building, from entering any land or any building;

(*c*) fails to comply with any order, direction, notice or instruction lawfully given to him by an authorized officer exercising any powers conferred by this Act;

(*d*) fails to give information on any matter in respect of which he has been lawfully required so to do;

(*e*) tears down, defaces or otherwise marks or interferes with any notice lawfully affixed to any building or placed upon a board specially erected for that purpose in connection with the administration of this Act;

(*f*) fails to comply with a condition subject to which a grant of development permission was made;

(*g*) subdivides, or enters into any subdivision agreement with respect to any land or a portion thereof within any area in which such subdivision or subdivision agreement is prohibited;

(*h*) commences any development without a grant of development permission where such permission is required;

(*i*) displays an advertisement without a grant of development permission where such permission is required; or

(*j*) ignores a stop notice,

shall be guilty of an offence and liable to a fine of K5,000 or to imprisonment for a term of twelve months together with, in the case of a continuing offence, a further fine of K100 for every day during which the offence continues after conviction.

Act to bind Government

73. This Act shall bind the Government.

PART XI

Regulations

Regulations

74.—(1) The Minister may make regulations for carrying out or giving effect to the provisions of this Act and, without prejudice to the generality of the foregoing, such regulations may prescribe—

(*a*) the forms of plans;

(*b*) the forms of applications for a grant of development permission;

(*c*) the forms of enforcement notices;

(*d*) the forms to be used in connexion with claim for compensation;

(*e*) the procedures to be followed by a Planning Committee;

(*f*) forms of register of applications for development permission and of enforcement notices;

(*g*) fees payable under this Act;

(*h*) the remuneration of members of the Board and Planning Committee;

(*i*) the type of materials to be used in the construction of buildings and fences;

(*j*) the forms of notice of revocation; and

(*k*) the forms of purchase notices.

(2) The Minister may, with the concurrence of the Minister for the time being responsible for local government, make regulations providing for the exercise by District Councils and Local Authorities of any functions and duties conferred upon them by this Act.

PART XII

Repeals, Savings and Amendments

Repeals and savings
Cap. 23:01
Cap. 23:03
Cap. 59:04

75.—(1) The Town and Country Planning Act, the Advertisement Act and the Planning (Subdivision Control) Act are hereby repealed.

(2) Any subsidiary legislation made under the Acts repealed by subsection (1) in force immediately before the commencement of this Act—

(*a*) shall remain in force unless in conflict with this Act and be deemed to be subsidiary legislation made under this Act; and

(*b*) may be replaced, amended, or repealed by subsidiary legislation made under this Act.

Amendments to certain written laws

76. The written laws specified in the First Column of the Third Schedule are amended in relation to the provisions thereof specified in the Second Column of that Schedule in the manner respectively specified in the Third Column of that Schedule.

s. 34

FIRST SCHEDULE

Permitted Development

The following developments shall, subject to such conditions as may be imposed by a responsible authority be permitted developments within a Planning Area and a Land Development Control Area, namely—

(*a*) the building by the lessee or licensee of a house on a defined plot and in accordance with any conditions in the lease or licence

under which the plot is held and any rules regulating building operations within a traditional housing area and subject to the provisions of section 33 of this Act;

(*b*) minor repairs which do not result in any extension of the external dimensions of a building and which do not materially affect either the use of the building or its external appearance;

(*c*) any changes of use of land within the same class of uses;

(*d*) the display of an advertisement within a building or on land;

(*e*) the display of an advertisement on a building or on site which—

(i) merely discloses the name of any business or undertaking carried on in such building or on such site or the name of the proprietor or manager of such business or undertaking; or

(ii) relates solely to any business or undertaking carried on or to the goods sold or the services provided in such building or on such site:

Provided that the space which may be occupied by all such advertisements on any external face of any such building shall not exceed one square foot for each foot length of the building frontage of that face and provided also that the area occupied by any such advertisement, however affixed to a building, shall be computed as if the advertisement as a whole were displayed flat against the face of the building.

(*f*) the display of an advertisement which relates solely to—

(i) a form of recreation which is or will be available upon the land;

(ii) an agricultural show, entertainment, meeting or sale which is being or is to be held upon the land; or

(iii) the sale or lease of the land, or the sale or hire of livestock or implements or produce of the land, upon which the advertisement is displayed:

Provided that the advertisement shall only be displayed at any entrance to such land and that no more than one advertisement shall be displayed in respect of any one of such matters at any one entrance;

(*g*) the display of an advertisement which merely indicates—

(i) that a particular road or path is a private road or path or leads to a particular place; or

(ii) that a particular act is prohibited or permitted;

(*h*) the display of advertisements upon any railway station, yard, platform or station approach belonging to a railway company;

Cap. 69:01

(*i*) the display of any traffic sign as defined in section 2 of the Road Traffic Act, and placed on or near any road in accordance with that Act or any notice or warning lawfully erected in accordance with the Railways Act: and

Cap. 69:03

(*j*) the display of any advertisement of a class prescribed by the Minister if such advertisement conforms to specifications prescribed by him and is displayed in accordance with conditions prescribed by him.

s. 65

SECOND SCHEDULE

Calculation of Compensation

Compensation payable in respect of cases referred to in section 64 (1) (*a*) to (*g*) shall be calculated as follows—

(*a*) the difference between the value of land immediately prior to the application for the grant of development permission, ignoring the possibility of obtaining a grant of development permission, and the value of the land after the refusal of development permission;

(*b*) the difference between the value of the land with the building on it in its existing state and use immediately before the fire or other natural disaster whereby it was destroyed and the value of the land as a cleared site in respect of which the Minister has issued a certificate stating what, if any, development would be permitted on the site;

(*c*) the value of the building immediately before it was demolished, altered, removed, relocated or ceased to be used and the value of the land immediately before it ceased to be used together with the costs of relocation of the building and the activities that took place in the building or the land;

(*d*) the cost of moving and relocation elsewhere together with a reasonable sum to compensate for the loss of a home;

(*e*) the difference between the value of the land immediately before the reallocation of land and re-subdivision of plots and the value of the land after the reallocation of land and re-subdivision of plots taking into account the benefits accruing to the whole area which has been subject to such a process of reallocation and re-subdivision;

(*f*) the expense necessarily incurred in commencing to develop or in developing land in respect of which a development permission has been revoked; and

(*g*) such amount of compensation as the Minister shall consider just to provide.

SUBSIDIARY LEGISLATION

TOWN AND COUNTRY PLANNING (PLANNING COMMITTEES) RULES

G.N. 73/1991

under s. 74

Citation

1. These Rules may be cited as the Town and Country Planning (Planning Committees) Rules.

Application

2. These Rules shall apply to all Planning Committees appointed or designated under Part III of the Act.

Interpretation

3. In these Rules, unless the context otherwise requires—

"Chairman" means the Chairman of the committee;

"committee" means a committee to which these Rules apply;

"member" means a member of a committee;

"subcommittee" means a subcommittee of a committee.

Meetings of committees

4. Every committee shall hold its meetings at least once during each month for the dispatch of its business at such places and on such day and time as shall be determined by the Chairman.

Quorum at meetings of committees

5. The quorum at any meetings of a committee shall be constituted by the majority of the members.

Presiding at meetings of committees

6. At every meeting of the committee, the Chairman shall preside and in his absence the members present shall elect one of their number to preside at such meeting.

Voting

7. In the conduct of its business, every question before the committee shall be decided by a majority of the votes of the members present and the Chairman shall have a casting vote in addition to his deliberative vote.

Tenure of office of members of committees appointed under s. 9 of the Act

8.—(1) Where a committee is appointed under section 9 of the Act a member shall hold office for a period of two years from the date of his appointment and he may be reappointed at the expiry of such period; but so however, that if a member's appointment is by virtue of another office he holds he shall, subject to the Minister's power sooner to terminate his appointment, continue to serve as member as long as he holds that other office.

(2) A member shall vacate his office—

(*a*) if he resigns by notice in writing to the Minister;

(*b*) if he has been absent for three consecutive meetings of the committee of which he has had notice without leave of the Chairman or without valid excuse; or

(*c*) if he dies, or

(*d*) if the Minister so directs.

Records

9. Proper books and records shall be kept by every committee and shall include—

(*a*) a minute book, in which shall be entered a record of the proceedings of all meetings of the committee;

(*b*) an account book, in which shall be recorded a full statement of all receipts and expenditures;

(*c*) a register of plans;

(*d*) a register of enforcement notices;

(*e*) such other books and records as may from time to time be required.

Consultations

10. A committee shall have power to consult any technical or professional experts as may appear necessary to the committee for the proper discharge of its functions as required under the Act.

Composition of the subcommittees

11. A committee may establish subcommittees which shall consist of—

(*a*) the Chairman, or other member appointed by the committee, who shall be the Chairman of the subcommittee; and

(*b*) not less than four other members at least one of whom shall, where the Planning Area lies wholly or in part within the boundary of a Local Government Area, be a member of the Local Authority or District Council concerned.

Delegation of duties and powers

12.—(1) A committee may delegate to a subcommittee any or all of the following duties and powers—

(*a*) to grant subject to such conditions, other than conditions relating to compensation, as it may deem necessary to impose, applications to develop or to use land or any building thereon for a purpose which is different from the purpose for which the land or building is being used;

(*b*) to refuse the grant of development permission to any such application; and

(*c*) where a Planning Area lies wholly or in part within a Local Government Area or if the committee is a committee designated under section 10 (1) of the Act, to administer any rules relating to town planning and building operations made by the Local Authority or District Council concerned in so far as those rules affect any such applications.

(2) The powers and duties delegated under subrule (1) may be exercised by the subcommittee only at a meeting at which at least a simple majority of the entire membership of the subcommittee is present.

(3) Where a Planning Area lies wholly or in part within a Local Government Area or if a committee is a committee designated under section 10 (1) of the Act, it shall always be the duty of every subcommittee thereof, whenever it is reasonably practicable so to do, to secure the advice of a planning officer of the Local Authority or District Council before dealing with any planning matter submitted for its consideration and where such officer disagrees with the decision of the subcommittee, the subcommittee shall forthwith refer the matter for consideration by the committee.

(4) Unless the views of a subcommittee on any matter submitted for its consideration are unanimous, the matter shall be referred to the Committee for a decision.

(5) A subcommittee shall not have power to—

(*a*) refuse any application for development permission if such refusal may give rise to a claim for compensation; or

(*b*) grant any application for development permission where to do so would be in contravention of the Act or any plan made thereunder.

(6) A subcommittee may, in its discretion and for the purpose of securing technical advice or otherwise on any application, invite any technical or professional expert to attend any of its meetings.

Admission to meetings

13. Except as provided in rules 10 and 12 (6), no member of the public shall be admitted to any meeting of a committee or of a subcommittee without the consent of the Chairman of the committee or subcommittee, as the case may be, and such consent shall only be given in the case of a person who is to attend for the purpose of furnishing information on a matter coming for discussion before the committee or subcommittee. Any such person shall be present only when the matter with which he is concerned is under discussion and he shall be required by the Chairman to withdraw immediately the committee or subcommittee has obtained the information sought.

Disclosure of matters discussed

14. Information on any matter discussed at a meeting of a committee or subcommittee which the committee or subcommittee may decide to be confidential shall be treated as confidential and shall not without the approval of the committee or subcommittee, as the case may be, be disclosed to any person.

Minutes

15. Minutes of meetings of a committee or a subcommittee shall be marked "confidential" and, except with the approval of the Chairman of the committee, copies of those minutes shall be distributed only to members of the committee, the subcommittee, the Local Authority or District Council, the Principal Secretary responsible for the planning matters, Commissioner for Lands, and the District Commissioner of the District:

Provided that the committee or subcommittee may resolve that all or any part of the minutes shall not be marked "confidential" and, if so resolved, such minutes shall cease to be confidential or to be treated as such.

Revocation of certain rules

16. The rules specified in the Schedule are revoked.

rule 17

SCHEDULE

Balaka Town and Country Planning Committee Rules
Blantyre Town and Country Planning Committee Rules
Kasungu Town and Country Planning Committee Rules
Lilongwe Town and Country Planning Committee Rules
Liwonde Town and Country Planning Committee Rules
Mangochi Town and Country Planning Committee Rules
Mzuzu Town and Country Planning Committee Rules
Zomba Town and Country Planning Committee Rules

G.N. 74/1991

TOWN AND COUNTRY PLANNING BOARD RULES

under s. 74

Citation

1. These Rules may be cited as the Town and Country Planning Board Rules.

Interpretation

2. In these Rules, unless the context otherwise requires, "respondent" means the responsible authority against the decision of which appeal is made.

Meetings of Board

3. The Board shall meet at such times and places as the Chairman may appoint.

Quorum

4. The Chairman or Vice-Chairman and four other members of the Board shall constitute a quorum of the Board.

Presiding at meetings of Board

5. The Chairman shall preside at all meetings of the Board or, in his absence, the Vice-Chairman, who for the purposes of that meeting shall exercise all of the powers and perform all of the duties of the Chairman, shall preside.

Tenure of office

6.—(1) A member of the Board, including the Chairman and Vice-Chairman, shall, subject to other provisions of this rule, hold office for a period of two years or such a shorter period as may be specified in the instrument of his appointment.

(2) A member of the Board shall vacate his membership—

(*a*) upon the expiry of the period specified in the instrument of his appointment;

(*b*) upon his death;

(*c*) if he is sentenced for an offence against any written law to a term of imprisonment;

(*d*) if he is convicted of an offence involving fraud or dishonesty;

(*e*) if he is absent from three consecutive meetings of the Board of which he has notice, without leave of the Chairman or without valid excuse;

(*f*) upon the expiry of one month's notice in writing of his intention to resign his office given by him to the Minister; and

(*g*) upon his being given written notice by the Minister of the termination of his appointment.

(3) A member of the Board whose period of appointment has expired may be reappointed for a further term of office.

Notice of appeal

7.—(1) An appeal against a decision of a responsible authority shall be brought by sending to the Board three copies of a written notice of appeal, within thirty days of the receipt by the appellant of the notice or decision to be appealed against.

(2) A notice of appeal shall be in the form prescribed in the Schedule and shall contain a statement of the grounds upon which the appeal is made.

(3) There shall be attached to each copy of the notice of appeal a copy of the decision appealed against.

Duties of Board upon receipt of notice of appeal

8. Upon receiving a notice of appeal, the Board shall—

(*a*) enter particulars of the appeal in a register of appeals to be maintained by the Board;

(*b*) forthwith serve a copy of the notice upon the respondent;

(*c*) inform the appellant and the respondent of the number of the appeal, which shall thereafter constitute the title of the proceedings;

(*d*) inform the appellant of the date on which a copy of the notice of appeal was served on the respondent; and

(*e*) do any other lawful thing which will assist in the proceedings of the Board.

Hearing

9.—(1) The Board shall send to the appellant and respondent a notice informing them of the place and date of the hearing of the appeal, which shall not be earlier than fourteen days after the date on which the notice is sent.

(2) At the hearing before the Board, any party may appear either in person or by any person appointed by him in writing, including a legal practitioner.

(3) Any party to whom notice has been sent under subrule (1) may apply to the Chairman for an alteration of the place or date of the hearing.

Evidence

10.—(1) Either party to an appeal before the Board may call witnesses, who shall be subject to cross-examination and re-examination at the hearing of the appeal.

(2) If the parties to the appeal consent, or if the Board so orders, evidence may be given by affidavit, but the Board may at any stage of the proceedings make an order requiring the personal attendance of any deponent for examination and cross-examination.

Power of the Board to summon witnesses, etc.

11. The Board shall have power to order persons to attend and give evidence or to produce or give discovery and inspection of documents in the same manner as in civil proceedings in a Resident Magistrate Court.

Attendance of witness

12. A person summoned to give evidence in an appeal before the Board shall attend throughout the proceedings of the Board unless he is released by the Board.

Contempt

13.—(1) Where a person is duly served with summons to attend the proceedings of the Board—

(*a*) without sufficient reason shown, fails to attend the proceedings of the Board, whether on the first or any adjourned sessions; or

(*b*) refuses to be sworn or affirmed or give evidence or produce any document or answer any question allowed by the Board; or

(*c*) uses insulting language at the Board or any member thereof,

he shall be guilty of an offence of contempt of court.

(2) The Board may take cognizance of any contempt of court and may impose punishment for the same, not exceeding a fine of K500 or imprisonment for a term not exceeding thirty days.

Board proceedings in public

14. The proceedings of the Board shall be held in public.

Notice and summons

15. A notice or summons required by these Rules shall be in writing and signed by the Chairman or any person authorized by the Chairman and may be sent by post or served personally.

Default of appearance

16. (1) If, on any appeal, the appellant does not appear at the time and place appointed for the hearing, the Board may dismiss the appeal or may adjourn the hearing to such other time and place as it may think fit.

(2) If the respondent fails to appear at the hearing, the Board may determine the appeal notwithstanding such absence or may adjourn the hearing to such other time and place as it may think fit.

Appellant limited to grounds of appeal

17. On the hearing of an appeal, the appellant shall not be entitled to rely upon any grounds not stated in his notice of appeal unless the Board so directs in the circumstances, and on such terms as to costs or adjournment or otherwise as the Board may think fit to allow such additional grounds to be put forward.

Decision of the Board

18. (1) The decision of the majority of the Board sitting on an appeal shall be the decision of the Board and, if the number of members present is an even number, the Chairman shall have a second vote.

(2) The decision of the Board shall be in writing and signed by the Chairman and all members of the Board sitting on the appeal.

Costs

19. (1) The costs of all proceedings regarding any appeal shall be at the discretion of the Board.

(2) If the Board directs that the costs of a party to an appeal shall be paid by any other party thereto, the Board may settle the amount of the costs by fixing a specific sum or may direct that the costs shall be taxed by the Chairman on the scale of costs prescribed by the Subordinate Courts Rules.

Cap. 3:02 sub. leg. p. 34

Withdrawal

20. An appeal may be withdrawn by sending to the Chairman a written notice of withdrawal.

Revocation of Town Planning Court (Procedure) Rules Cap. 23:01 sub. leg p. 52 (b)

21. The Town Planning Court (Procedure) Rules are hereby revoked.

(rule 7 (2))

SCHEDULE

Form of Notice of Appeal

TOWN AND COUNTRY PLANNING ACT

(CAP. 23:01)

TOWN AND COUNTRY PLANNING BOARD RULES

NOTICE OF APPEAL

Before the Town and Country Planning Board Appeal No. ..... of 19 .....

BETWEEN

..... Appellant

AND

..... Planning Committee/Commissioner for Physical Planning } Respondent

Be it hereby known—

1. That I, ... (hereinafter referred to as the Appellant) of .....

(*Address of appellant*)

having been dissatisfied or aggrieved by .....

.....

(*state decision against which appeal is being made*)

dated the ..... day of ....., 19 .....

which decision has been duly served on me, do hereby give my notice of appeal against that decision to the Town and Country Planning Board.

2. That the grounds of appeal are as follows—

(*a*) .....

(*b*) .....

(*c*) .....

(*d*) .....

(*use extra paper if need be*)

3. That, wherefore the Appellant humbly prays that (state the relief sought)—

(*a*) .....

(*b*) .....

(*c*) .....

(*d*) .....

Dated this ..... day of ..... , 20.....

Signed: .....

Appellant

To: Town and Country Planning Board
P.O. Box 30385
Lilongwe 3

NOTE: Three copies of notice of appeal and a copy of the decision appealed against should be attached.

TOWN AND COUNTRY PLANNING (FEES AND FORMS) REGULATIONS

G.N. 75/1991
77/1996
1/2004
25/2007

under s. 74 (1)

Citation

1. These Regulations may be cited as the Town and Country Planning (Fees and Forms) Regulations.

Fees

2. The fees specified in the First Schedule shall be payable in respect of the matters correspondingly specified therein.

Forms

3. The forms set out in the Second Schedule shall be used for the purposes of the Act, and such particulars as are contained in these forms and not particularly prescribed by the Act are hereby prescribed as particulars required under the Act.

FIRST SCHEDULE reg. 2

G.N. 77/1996
1/2004
25/2007

Matter	*Fee* K t
1. On application for development permission for—	
(*a*) outline development and development within a declared area	3,000 00
(*b*) display of advertisements	2,500 00
(*c*) subdivision of land within a subdivision control area	2,500 00
2. On making a claim for compensation	2,500 00
3. On issuing a purchase notice	2,500 00
4. For a notice of appeal to the Board	4,000 00
5. Upon application to the High Court for the review of the decision of the Board	6,000 00
6. For making a copy of any entry in the register	1,000 00

SECOND SCHEDULE reg. 3

FORMS

Form of Notice of Deposit of a Plan

FORM NO. 1

TOWN AND COUNTRY PLANNING ACT
(CAP. 23:01)

TOWN AND COUNTRY PLANNING (FEES AND FORMS) REGULATIONS

NOTICE OF DEPOSIT OF A PLAN
(SECTION 13 (2))

Notice is hereby given that a plan entitled ..... has been prepared and placed on deposit at the offices of .....
.....
Any person wishing to do so may inspect and make representations and

comments thereon to the ..... within sixty days of the date of this notice.

Dated this ..... day of ..... , 20.....
Signed .....
Chairman, Planning Committee
Commissioner for Physical Planning

Form of Notice for Further Information concerning an Application for Development Permission

FORM NO. 2

TOWN AND COUNTRY PLANNING ACT
(CAP. 23:01)

TOWN AND COUNTRY PLANNING (FEES AND FORMS) REGULATIONS

NOTICE FOR FURTHER INFORMATION CONCERNING AN APPLICATION FOR DEVELOPMENT PERMISSION
(SECTION 37 (1))

Name and address of applicant (IN BLOCK LETTERS)
Surname (state Mr., Mrs., or Miss) .....
.....
Other names .....
Postal address .....

For Official use only
File No. .....
Notice No. .....

You are hereby informed that the *Planning Committee/Commissioner would require further information from you in order to enable it/him determine your application for the grant of development permission. You are therefore required, within ..... days from the date of this notice to furnish the *Planning Committee/Commissioner with the following information .... or to afford the *Planning Committee/Commissioner entry onto the land to which your application for the grant of development permission relates so as to enable the *Planning Committee/Commissioner view the site and the adjacent lands and developments.

Dated this ..... day of ....., 19 .....

Signed .....

**Chairman, Planning Committee/ Commissioner for Physical Planning*

*Delete as appropriate.

Form of Application for Development Permission

FORM NO. 3

TOWN AND COUNTRY PLANNING ACT

(CAP. 23:01)

TOWN AND COUNTRY PLANNING (FEES AND FORMS) REGULATIONS

APPLICATION FOR DEVELOPMENT PERMISSION

(SECTION 36 (1) (*c*))

THIS FORM, WHEN COMPLETED, SHOULD BE DELIVERED TO:	For official use only
(*a*) The Commissioner, if the proposed development is within any area other than a Planning Area (together with four copies of the plans);	File No. ..... Application No. ..... Date received .....
(*b*) the Planning Committee, if the proposed development is within a Planning Area (together with three copies of the plans).	

I/We hereby apply for permission to carry out the development described in this application and on the attached plans and drawings.

Signed: .....

If signed by an agent:

Name of agent .....

Profession .....

Address of agent .....

Telephone number ..... Date .....

* NOTE:—(1) "Development" in relation to any land means any building, rebuilding, engineering or mining operations in, on, under or over land and any material change in the use of land or building.

(2) An application in OUTLINE may be made if the applicant wishes to ascertain, before preparing detailed drawings, whether the proposed development will be acceptable in principle. In this case, the words "Outline Application" should be written in bold lettering at the top of page 2 of this Form, and no plans, other than a plan sufficient to identify the site, need be submitted at this stage.

(3) This application is only for planning permission under the Town and Country Planning Act, and does NOT include any additional sanctions which may be required by other authorities.

(4) It must be clearly understood that any action taken by applicants before receipt by them of the Planning Authority's written decision is entirely at their own risk, and that, in the event of operations proceeding without permission of the Authority, those responsible may make themselves liable to the penalties laid down in section 72 of the Town and Country Planning Act.

(5) Failure to submit full details of the proposed development, as required by the instructions contained in this Form, is likely to lead to unnecessary delay in dealing with the application.

1. Name and address of applicant (IN BLOCK LETTERS)
   Surname (state Mr., Mrs. or Miss) .....
   Other names .....
   Postal address .....
   Telephone number .....
2. (i) Interest in the land and/or buildings (e.g. owner, lessee, prospective purchaser, etc.).
   (ii) If lessee or prospective purchaser, has the lessor or vendor agreed to the proposed development?
   (iii) Deeds Registry No.(s) of title deed(s).
3. (i) Plot number
   Full address or title
   Deed description of the land
   (ii) Area of land,
   (iii) Name of local authority, if any.
4. (i) Purpose for which the land and/or buildings are now used. If for more than one purpose give details,
   (ii) Brief description of any existing buildings.
5. (i) Brief particulars of the proposed development, e.g.
   (a) new developments,
   (b) alterations,

(*c*) additions,

(*d*) change of use, etc.

(ii) if the site is within a layout plan for which permission has already been granted by the Planning Authority, give reference number and date of permission. If not, state the reference number of any previous correspondence;

(iii) is permission required for permanent development or use, or for a limited period? If the latter, state for what period;

(iv) estimated date for completion of the proposed development; and

(v) name of building contractor, if any.

6. (i) method of water supply;
   (ii) method of sewage disposal; and
   (iii) method of access.

7. State type and colour of materials to be used for—
   (i) walls; and
   (ii) roofs.

8. If the building is to be used wholly or partly for commercial or industrial purposes, state—
   (i) nature of proposed business or industry, including if for an industrial use a description of the type of processes to be carried on;
   (ii) brief description of any existing buildings, giving the present use, the ground floor area and total floor area;
   (iii) the ground floor area (new);
   (iv) the total floor area (new);
   (v) intended provisions for loading and unloading of vehicles; and
   (vi) if for industrial use, the means of disposal of any trade refuse or trade effluents.

9. If the application relates to the winning and working of surface or underground minerals, state—
   (i) types of minerals to be extracted;
   (ii) estimated quantity to be extracted;
   (iii) method, direction and estimated rate of working;
   (iv) how it is proposed to deal with over-burden, and proposals, if any, for the treatment of the land after extraction;
   (v) in case of surface working, the estimated maximum depths of excavations; (in place of the plans specified in paragraph 14 of this Form, plans should be attached to this application on a scale appropriate to the proposed development, showing the land to which the application relates, together with any adjoining land in the same ownership; the area, if any

already excavated; the sites of existing and proposed buildings, tips, and means of access; and any proposals for the planting or restoration of trees.)

10. If the application relates to the subdivison of land, the reasons for subdivision should be given and plans submitted as required under paragraph 14 (5) of this form.

11. If the application relates to any development, full details of which do not appear on this form so far, further details should be given here.

12. Estimated cost of development K

13. Application Fee paid G.R. No.

PLANS TO BE ATTACHED TO THIS APPLICATION

14.—(1) Plans and drawings in quadruplicate/triplicate should be submitted with this application in sufficient detail to enable the Planning Authority to determine the application. They should be drawn or reproduced in a clear and intelligible manner on suitable durable material, and should be signed on every sheet by the applicant or by his agent, all duplicates being true copies of the original plan or set of plans. One set of the drawings submitted will be returned to the applicant.

Site plan

(2) A Site Plan should be attached to all applications except an application relating to land included in a layout plan for which permission has already been granted by the Planning Authority, in which case the reference number and date of the permission should be given at paragraph 5 (ii) above.

Scale of Site plans, etc.

(3) The Site Plan should be drawn to a scale appropriate to the development (e.g. 1:5000, 1:1250, etc.) showing clearly the land to which the application relates, any adjoining land in the same ownership, and sufficient details for the site to be readily identified, including all existing roads and all existing buildings on the adjoining plots.

Block and building plans

(4) Block and Building Plans should be attached to all applications for the erection, rebuilding, alteration or extension of a building, and—

(*a*) block plans should be drawn to a scale of not less than 1:1250, and, where necessary, suitably dimensioned and there should be shown thereon—

(i) the boundaries of the land to which the application relates, and the existing and proposed layout thereof, including any proposed subdivision into plots;

(ii) the position of all existing and proposed buildings, roads, streets and carriageways including the widths of proposed roads;

(iii) the position and widths of all existing and proposed means of vehicular access to roads;

(iv) unless the land is flat, surface contours at no less than 3 metre vertical intervals;

(v) any existing and proposed drains, manholes, septic tanks, cesspools, etc., with reference to any services in the vicinity;

(vi) any trees or natural features to be preserved; and

(*b*) building plans should be drawn to a scale of not less than 1:200 and there should be shown thereon—

(i) the materials to be used;

(ii) the colour of external walls and roof;

(iii) a plan for the roof and for each floor;

(iv) typical sections; and

(v) elevations of all sides of buildings, except party walls.

Subdivision

(5) Where an application of subdivision is made under paragraph 10 plans of the proposed subdivision must be attached showing—

(*a*) existing buildings, physical features and sufficient information of surrounding development to enable the site to be easily identified.

(*b*) any existing survey information; and

(*c*) proposed method of access to all subdivisions including widths of all roads.

Factories

(6) If the application for development relates to a Factory, one further copy of the plans must be submitted with the application for the attention of the Chief Inspector of Factories.

Form of Completion Notice

FORM NO. 4

TOWN AND COUNTRY PLANNING ACT
(CAP. 23:01)
TOWN AND COUNTRY PLANNING (FEES AND FORMS) REGULATIONS
COMPLETION NOTICE
(SECTION 41 (2))

Surname (state Mr., Mrs. or Miss) .....
(*In Block Letters*)
Other names .....
Postal address .....
.....

For official use only
File No. .....
Notice No. .....

You are hereby informed by *the Planning Committee/Commissioner that you have not been able to complete your development on Plot No. ..... in ..... (state locality) within two years of the date on which you commenced the development following the grant to you, in respect of that development, of the development permission on ....., 19 .....

You are, therefore, required to complete your development within ..... days from the date of this notice.

Dated this ..... day of ....., 19 .....

Signed: .....
Chairman Planning Committee/
Commissioner for Physical Planning

CERTIFICATE OF SERVICE

Served on the person whose name is specified above (being owner/occupier of premises) by ..... (being authorized officer) of the ..... *Planning Committee/Commissioner for Physical Planning, this ..... day of ....., 19 .....

Signed: .....
(Owner/Occupier of Premises)

Form of Revocation of Grant of Development Permission

FORM NO. 5

TOWN AND COUNTRY PLANNING ACT

(CAP. 23:01)

TOWN AND COUNTRY PLANNING (FEES AND FORMS) REGULATIONS

REVOCATION OF GRANT OF DEVELOPMENT PERMISSION NOTICE

(SECTION 42 (1))

Surname (state Mr., Mrs. or Miss)	For official use only
(*In Block Letters*)	File No. .....
Other names	Notice No. .....
Postal address	
.....	

You are hereby informed by the *Planning Committee/Commissioner that the development permission granted to you on the ..... day of ....., 19 ..... for the purpose of ..... (state development permission granted) on Plot No. ..... in ..... (state locality) is revoked to the extent specified herein below.

1. Degree of revocation .....
.....
(*state degree of revocation, i.e. in whole or in part*)

2. Reasons for revocation are .....
.....

3. Directions .....
.....

(*state direction(s) required to be taken*)

4. You may claim compensation in respect of this revocation notice on the following grounds .....
.....

(*state grounds for compensation*)

5. Level of present development (state) .....
.....

NOTE: 1. Any further development after the service of this notice of revocation shall be unauthorized development and shall be subject to penalties as laid down under section 72 of this Act.

2. You may within thirty days of the receipt of this notice submit a notice of appeal to the Town and Country Planning Board as provided for by section 67 (1) of the Town and Country Planning Act.

Dated this ..... day of ....., 19 .....

Signed: .....
Chairman Planning Committee/
Commissioner for Physical Planning

CERTIFICATE OF SERVICE

Served on the person whose name is specified above (being owner/occupier of premises) by ..... (being authorized officer) of the ..... *Planning Committee/Commissioner for Physical Planning, this ..... day of ....., 19 .....

Signed: .....
(Owner/Occupier of Premises)

Form of Enforcement Notice

FORM NO. 6

TOWN AND COUNTRY PLANNING ACT

(CAP. 23:01)

TOWN AND COUNTRY PLANNING (FEES AND FORMS) REGULATIONS

ENFORCEMENT NOTICE

(SECTION 45 (1))

FROM ..... (Being the ..... Responsible ..... Authority)	For official use only File No. ..... Enforcement Notice No. .....

To: Surname (Mr., Mrs. or Miss) .....
(*In Block Letters*)

Other names .....

Postal Address .....
.....

You are hereby informed that—

(*a*) the development, subdivision of land or display of advertisement as described in paragraph 2 has been carried out by you without the grant of development permission as required by section 35 of the Act; or

(*b*) the following condition(s)—

(i) .....

(ii) .....

(iii).....

Subject to which permission for development, subdivision of land or display of advertisement as described in paragraph 2 was granted have not been complied with by you.

2. Description of development, subdivision of land or the display of advertisement to which this notice relates—

(*a*) .....

(*specify development, etc.*)

(*b*) Plot No. .....

(*specify Plot No. or place*)

(*c*) In .....

(*specify area or township*)

3. You are, in accordance with section 48 (1) of the Act, required to: (specify action to be taken) .....

.....

.....

within a period of ..... from the date of this notice or such extended period as the Committee/Commissioner for Physical Planning (being the Responsible Authority) may in writing allow.

4. Failure to comply with this notice within the period prescribed in paragraph 3 may cause the Responsible Authority, with all necessary workmen and other officers, to enter or authorize any other person to enter the land and take all such necessary action in

respect of the unauthorized development and otherwise to enforce the notice as may seem fit. Where the Responsible Authority exercises such power, he may recover as a civil debt, in any court of competent jurisdiction, from the person or persons to whom this notice relates, the expenses necessarily incurred by the Responsible Authority in the exercise of such power.

5. For avoidance of any doubt, if you fail to carry out any work or action required to be performed by you under paragraph 3 you shall be guilty of an offence under section 72 (b) of the Act.
6. This notice shall take effect on the ..... day of ....., 19 .....
7. If you are aggrieved by-this enforcement notice, you may, and in accordance with section 45 (2) (h) as read with section 67 (1) of the Act, object to or appeal against the enforcement notice and where an appeal is made this enforcement notice shall be suspended until the Board determines the appeal or until the appeal is withdrawn.

Dated this ..... day of ....., 19 .....

Signed: .....
Chairman Planning Committee/
Commissioner for Physical Planning

CERTIFICATE OF SERVICE

Served on the person whose name is specified above .... (being owner/occupier of premises) by ..... (being authorized officer) of the ..... *Planning Committee/Commissioner for Physical Planning, this ..... day of ....., 19 .....

Signed: .....
(Owner/Occupier of Premises)

Form of Stop Notice

FORM NO. 7

TOWN AND COUNTRY PLANNING ACT

(CAP. 23:01)

TOWN AND COUNTRY PLANNING (FEES AND FORMS) REGULATIONS

STOP NOTICE

(SECTION 49 (1))

FROM	(Being the	For official use only
.....	Responsible	File No. .....
.....	Authority)	Stop Notice No .....

To: Surname (Mr., Mrs. or Miss) .....
(*In Block Letters*)

Other names .....
Postal Address .....
.....

You are hereby informed that—

(*a*) the development, subdivision of land or display of advertisement as described in paragraph 2 has been carried out by you without the grant of development permission as required by section 35 of the Act; or

(*b*) the following condition(s)—

(i) .....
(ii) .....
(iii).....

Subject to which permission for development, subdivision of land or display of advertisement as described in paragraph 2 was granted have not been complied with by you.

2. Description of development, subdivision of land or the display of advertisement to which this notice relates—

(*a*) .....
(*Specify development, etc.*)

(*b*) Plot No. .....
(*Specify Plot No. or place*)

(*c*) In .....
(*Specify area or township*)

3. You are hereby, and in accordance with section 49 (1) of the Act, required to cease .....
4. If you are aggrieved by this stop notice you may appeal against it to the Board within thirty days from the date this notice is served on you.
5. For avoidance of any doubt, if you ignore this stop notice you will be guilty of an offence under section 72 (j) of the Act.

Dated this ..... day of ....., 19 .....

Signed: .....
Chairman Planning Committee/
Commissioner for Physical Planning

CERTIFICATE OF SERVICE

Served on the person whose name is specified above .... (being owner/occupier of premises) by ..... (being authorized officer) of the ..... *Planning Committee/Commissioner for Physical Planning, this ..... day of ....., 19 .....

Signed: .....
(Owner/Occupier of Premises)

Form of Notice to Require Application for Development Permission Subsequent upon Unauthorized Development.

FORM NO. 8

TOWN AND COUNTRY PLANNING ACT

(CAP. 23:01)

TOWN AND COUNTRY PLANNING (FEES AND FORMS) REGULATIONS

NOTICE TO REQUIRE APPLICATION FOR DEVELOPMENT PERMISSION SUBSEQUENT UPON UNAUTHORIZED DEVELOPMENT

(SECTION 50 (1))

FROM ..... (Being the For official use only

..... Responsible File No. .....

..... Authority) Notice No .....

To: Surname (Mr., Mrs. or Miss) .....

(*In Block Letters*)

Other names .....

Postal Address .....

You are hereby informed that the development, subdivision of land or display of advertisement as described in paragraph 2 has been carried out by you without the grant of development permission as required by section 35 of the Act;

2. Description of development, subdivision of land or the display of advertisement to which this notice relates—

   (*a*) .....

   (*Specify development, etc.*)

   (*b*) Plot No. .....

   (*Specify Plot No. or place*)

   (*c*) In .....

   (*Specify area or township*)

3. You are hereby required to apply for a grant of development permission for the development, subdivision of land or display of advertisement specified in paragraph 2 within thirty days of the date specified in paragraph 4 and your application should be made in conformity with the provisions of sections 36 to 41 of the Act.

4. This notice shall take effect on ..... day of ....., 19 .....

5. For avoidance of any doubt, if you fail to comply with this notice you shall be guilty of an offence under section 72 (c) (g) (h) and (*i*) of the Act.

Dated this ..... day of ....., 19 .....

Signed: .....
Chairman Planning Committee/
Commissioner for Physical Planning

CERTIFICATE OF SERVICE

Served on the person whose name is specified above .... (being owner/occupier of premises) by ..... (being authorized officer) of the ..... *Planning Committee/Commissioner for Physical Planning, this ..... day of ....., 19 .....

Signed: .....
(Owner/Occupier of Premises)

Form of Clearing up of Land Notice

FORM NO. 9

TOWN AND COUNTRY PLANNING ACT

(CAP. 23:01)

TOWN AND COUNTRY PLANNING (FEES AND FORMS) REGULATIONS

CLEANING UP OF LAND NOTICE

(SECTION 51)

FROM ..... (Being the ..... Responsible ..... Authority)

For official use only
File No. .....
Notice No .....

To: Surname (Mr., Mrs. or Miss) .....
(*In Block Letters*)

Other names .....
Postal Address .....

You are hereby informed that—

(*a*) *by reason of rubbish and other materials or goods left on land or of the general appearance of the land, specified in paragraph 2, the land is detrimental to the environment; or

(b) *a building, situated at a place specified in paragraph 2, has become dilapidated, is run down or is in need of repair and that it, therefore, detracts from the built environment.

2. Description of land or building to which this notice relates—

(*a*) Plot No. .....
(*Specify Plot No. or place*)

(*b*) In .....
(*Specify area or township*)

3. You are hereby required to take the following action(s) within ..... days (not being less than thirty days) from the date of this notice—

   (*a*) .....

   (*b*) .....

   (*c*) .....

   (*d*) .....

   to clean up and thereafter maintain in a clean state the land or building specified in paragraph 2.

4. Failure to comply with this notice within the period prescribed under paragraph 3 may cause the Responsible Authority, with all necessary workmen and other officers to enter, or authorize any other person to enter the land or building and take any or all the action(s) required under paragraph 3. Where the responsible authority has exercised such powers, he may recover as a civil debt, in any court of competent jurisdiction, from the person or persons to whom this notice relates, expenses necessarily incurred by the responsible authority in the exercise of such power.

5. For avoidance of any doubt, if you fail to comply with this notice you shall be guilty of an offence under section 72 (*c*) of the Act.

Dated this ..... day of ....., 19 .....

Signed: .....

Chairman Planning Committee/
Commissioner for Physical Planning

CERTIFICATE OF SERVICE

Served on the person whose name is specified above .... (being owner/occupier of premises) by ..... (being authorized officer) of the ..... *Planning Committee/Commissioner for Physical Planning, this ..... day of ....., 19 .....

Signed: .....

(Owner/Occupier of Premises)

Form of Claim for Compensation

FORM NO. 10

TOWN AND COUNTRY PLANNING ACT

(CAP. 23:01)

TOWN AND COUNTRY PLANNING (FEES AND FORMS) REGULATIONS

CLAIM FOR COMPENSATION

(SECTION 66 (1))

To: The Honourable Minister ..... For official use only
..... File No. .....
..... Claim No. .....
.....

Particulars of Claimant

Surname (Mr., Mrs. or Miss) .....

(*In Block Letters*)

Other names .....

Postal Address .....

1. I/We am/are the owner(s) or occupier(s) of the land or building situated at Plot No. ..... Area ..... Township .....
2. I/We claim payment to me/us in the sum of K..... as compensation in respect of matters specified in paragraph 3.
3. My/Our right to the payment of compensation in the sum claimed under paragraph 2, is derived from the provisions of section 64 of the Act, and in particular—

   (*a*) .....

   (*b*) .....

   (*c*) .....

   (*d*) .....

   Dated this ..... day of ....., 19 .....

   Signature of Claimant .....

(*Delete whatever is not applicable)

Form of Purchase Notice

FORM NO. 11

TOWN AND COUNTRY PLANNING ACT

(CAP. 23:01)

TOWN AND COUNTRY PLANNING (FEES AND FORMS) REGULATIONS

PURCHASE NOTICE

(SECTION 64 (3))

To: The Honourable Minister ..... For official use only
..... File No. .....
..... Notice No. .....
.....

Notice to Purchase Land or Building under section 64 (3) of the Act

1. *I/We *am/are the owner(s) or occupier(s) of the land or building situated at Plot No. ..... Area ..... Township ..... and that *I/We *am/are eligible for the making of a claim for payment of compensation to *me/us, under section 64 (1) (a) and (b) as read with section 66 (1) of the Act, in the sum of ..... Kwacha for the following reasons—

(i) .....

(ii) .....

(iii) .....

2. *I/We, instead of pursuing a claim for compensation as specified under paragraph (1), have elected to offer the said land or building for purchase by you, Honourable Minister, pursuant to the provisions of section 64 (3) of the Act.

Dated this ..... day of ....., 19 .....

Signed: .....

(*Owner or Occupier of land or building*)

(*Delete whatever is not applicable)

Form of Notice for further Information

FORM NO. 12

TOWN AND COUNTRY PLANNING ACT

(CAP. 23:01)

TOWN AND COUNTRY PLANNING (FEES AND FORMS) REGULATIONS

NOTICE FOR FURTHER INFORMATION ON A CLAIM FOR COMPENSATION

(SECTION 66 (2))

To: Surname (Mr., Mrs. or Miss)	For official use only
..... Claimant	File No. .....
(*In Block Letters*)	Notice No. .....

Other names .....

Postal address .....

Dated this ..... day of ....., 19 .....

NOTICE FOR FURTHER INFORMATION ON A CLAIM FOR COMPENSATION

Reference is made to your claim for compensation dated .....

2. You are required to furnish to the Honourable Minister further information relevant to your claim for compensation, within .....

(specify days) from the date of this notice, as follows—

(*a*) .....

(S*pecify information required*)

(*b*) .....

(*c*) .....

(*d*) .....

3. Take notice that the Honourable Minister shall not be obliged to determine your claim until he has received the information required from you as specified in paragraph 2 above.

Dated this ..... day of ....., 19 .....

Signed: .....

for the Honourable Minister

Form of Register of Application for Development Permission.

FORM NO. 13

TOWN AND COUNTRY PLANNING ACT

(CAP. 23:01)

TOWN AND COUNTRY PLANNING (FEES AND FORMS) REGULATIONS

REGISTER OF APPLICATION FOR DEVELOPMENT PERMISSION

(SECTION 70 (1))

1 Date Received	2 Name of address of applicant	3 Nature of proposed develop-ment	4 Plot No.	5 File No.	6 Plan No.	7 Estimated cost

Town Planning Committee

8 Plan fees	9 Receipt No.	10 Date submitted	11 Decision	12 Minute	13 Final	14	15

Form of Register of Enforcement Notices

FORM NO. 14

TOWN AND COUNTRY PLANNING ACT
(CAP. 23:01)

TOWN AND COUNTRY PLANNING (FEES AND FORMS) REGULATIONS

REGISTER OF ENFORCEMENT NOTICES
(SECTION 70 (1))

Committee Minute No.	Date sent	Name and address	Nature of enforcement notices	Sent by		
				Reg. Post No.	Post	Hand/ Signed

Plot No./Area	File No.	Remarks

TOWN AND COUNTRY PLANNING (PLANNING AREAS) (DECLARATION) ORDER

G.N. 29/2005

under s. 46

1. This Order may be cited as the Town and Country Planning (Planning Areas) (Declaration) Order. Citation

2. The areas of land, described in the Schedule hereto, are hereby declared to be planning areas for the purposes of the Act. Declaration of Planning Areas

SCHEDULE
PLANNING AREAS para. 2

LUCHENZA PLANNING AREA

All that piece or parcel of land containing an area of one thousand and eighteen decimal point five six (1,018.56) hectares or thereabouts, the boundary whereof is more particularly described and delineated on Physical Planning Division Sketch Plan No. LC/2A and thereon edged red.

DEDZA PLANNING AREA

All that piece or parcel of land containing an area of one thousand nine hundred and fifty-six decimal point nine three (1,956.93) hectares

or thereabouts, the boundary whereof is more particularly described and delineated on Physical Planning Sketch Plan No. DZ/12 and thereon edged red.

Salima Planning Area

All that piece or parcel of land containing an area of one thousand seven hundred and sixty decimal point seven one (1,760.71) hectares or thereabouts, the boundary whereof is more particularly described and delineated on Physical Planning Division Sketch Plan No. SAL/48 and thereon edged red.

Karonga Planning Area

All that piece or parcel of land containing an area of four thousand six hundred and forty decimal point five two (4,640.52) hectares or thereabouts, the boundary whereof is more particularly described and delineated on Physical Planning Division Sketch Plan No. K/14A and thereon edged red.

Nkhotakota Planning Area

All that piece of land containing an area of one thousand three hundred and eighty-eight (1,388) hectares or thereabouts, the boundary whereof is more particularly described and delineated on Physical Planning Department Sketch Plan No. NK/45 and thereon edged red.

Ntcheu Planning Area

All that piece of land containing an area of seven hundred and sixty-four (764) hectares or thereabouts, the boundary whereof is more particularly described and delineated on Physical Planning Department Sketch Plan No. NU/39 and thereon edged red.

Mzimba Planning Area

All that piece or parcel of land containing an area of nine hundred and ninety-six (996) hectares or thereabouts, the boundary whereof particularly described and delineated on Physical Planning Department Sketch Plan No. MZ/3 and thereon edged red.

Ntaja Planning Area

All that piece or parcel of land containing an area of two hundred ninety six (296) hectares or thereabouts, the boundary whereof is particularly described and delineated on Physical Planning Department Sketch Plan No. PP/NT/3 and thereon edged red.

RUMPHI PLANNING AREA G.N. 29/2005

All that piece or parcel of land containing an area of 1,650.528 hectares or thereabouts, the boundary whereof is particularly described and delineated on Physical Planning Department Sketch Plan No. PP/RU/3 and thereon edged in red.

VACANT LAND DEVELOPMENT ORDER G.N. 6/2006

under s. 55

1. This order may be cited as the Vacant Land Development Order.

2. The piece of Land described in the schedule hereto is hereby declared a special area to be subject to this Order for purposes of bringing about Development in the public interest in accordance with the Act.

SCHEDULE

All that piece of land containing an area of 3.260 hectares or thereabouts the boundary whereof is particularly delineated on Survey Drawing No. 190/72, known as Plot Number 40/1 thereon edged in red and situated in Area 40 at City Centre of the City of Lilongwe bounded by youth drive to the South, Convention Drive to the East, Kenyatta Drive to West and Plot No. 40/2 to the North has unreasonably remained vacant and is therefore declared public land and subject to leave in accordance to the Land Act. Cap. 57:01

[Subsidiary] *Town and Country Planning (Mzuzu Planning Extension Area)/Town and Country Planning (Special Areas) (Neno Development Control Area) By-Laws*

G.N. 2/2010

TOWN AND COUNTRY PLANNING (MZUZU PLANNING EXTENSION AREA) ORDER

under s. 29

Citation

1. This Order may be cited as the Town and Country Planning (Mzuzu Planning Extension Area) Order.

Extension of Mzuzu Planning Area Boundary

2. The area, the boundaries of which are described in the Schedule hereto, is hereby declared Mzuzu Planning Extension Area for purposes of the Act.

SCHEDULE

PLANNING AREA

MZUZU (EXTENSION) AREA para. 2

All that piece of land containing an area of 14,381.074 hectares or thereabouts, the boundary whereof is particularly described and delineated on Physical Planning Department sketch plan No. 66/2009 and thereon edged in red.

G.N. 3/2010

TOWN AND COUNTRY PLANNING (SPECIAL AREAS) (NENO DEVELOPMENT CONTROL AREA) ORDER

under s. 53 (1)

Citation

1. This Order may be cited as the Town and Country Planning (Special Areas) (Neno Development Control Area) Order.

Declaration of Neno Development Control Area

2. The area, the boundaries of which are described in the schedule hereto, is hereby declared Neno Development Control Area for purposes of the Act.

SCHEDULE

PLANNING AREA

NENO DEVELOPMENT CONTROL AREA para. 2

All that piece of land containing an area of 914.356 hectares or thereabouts, the boundary whereof is particularly described and delineated on Physical Planning Department sketch plan No. 64/2009 and thereon edged in red.

Town and Country Planning (Nsanje Accelerated Development Area) Order/ Town and Country Planning (Lilongwe City Council) (Minimum Building Height Standards for Development of Commercial Areas) By-Laws **[Subsidiary]**

TOWN AND COUNTRY PLANNING (NSANJE ACCELERATED DEVELOPMENT AREA) ORDER

G.N. 19/2010

under s. 57 (1)

1. This Order may be cited as the Town and Country Planning (Nsanje Accelerated Development Area) Order. Citation

2. The area of land described in the Schedule hereto is hereby declared Nsanje Accelerated Development Area for purposes of the Act. Declaration of Nsanje Accelerated Development Area

SCHEDULE

PLANNING AREA

Nsanje Accelerated Development Area para. 2

All that piece or parcel of land containing an area of 9,461.286 hectares or thereabouts, the boundary whereof is particularly described and delineated on Physical Planning Department Sketch Plan No. SP 196/2005 and thereon edged red.

TOWN AND COUNTRY PLANNING (LILONGWE CITY COUNCIL) (MINIMUM BUILDING HEIGHT STANDARDS FOR DEVELOPMENT OF COMMERCIAL AREAS) BY-LAWS

G.N. 2/2012

under s. 74 (2)

1. These By-laws may be cited as Town and Country Planning (Lilongwe City Council) (Minimum Building Standards Height for Development of Commercial Areas) By-laws. Citation

2. The minimum building height for development of commercial areas shall be as prescribed in the Schedule hereto— Minimum building height

SCHEDULE

Particulars of Standards

Minimum Building Height	*Commercial Area*
1. Ten floors and above	Area 32, between Kenyatta Drive, Mzimba Street, Paul Kagame Road up to Lingadzi Inn and Lingadzi River.
2. Eight floors and above	Area 19, between Presidential Drive, Conventional Drive, African Unity Road and Independence Drive.

Minimum Building Height	*Commercial Area*
3. Six floors and above	Areas 13 and 16, Presidential Drive, Lingadzi River, Youth Drive, Conventional Drive, African Unity Road and Independence Drive.
4. Four floors and above	Areas 2, 3 and 4 in Old Town along Kamuzu Procession Road, between Lilongwe River, Kenyatta Drive and Mzimba Street.

Development in other areas

3. Development of other areas of the City of Lilongwe shall continue to be guided by the Town and Country Planning Guidelines and Standards By-laws of the Council and conditions provided by the Planning Committee in accordance with the existing Local Physical Development Plan of the City.

URBAN AREAS
(PUBLIC AND PRIVATE STREETS)

CHAPTER 23:02

Current Pages

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3– 4	. .	. .	. .	. .	1/1968
5– 6	. .	. .	. .	. .	1/1992
6*a*	. .	. .	. .	. .	1/1992
7– 8	. .	. .	. .	. .	1/2015
9–10	. .	. .	. .	. .	1/1992
10*a*	. .	. .	. .	. .	1/1992
11–12	. .	. .	. .	. .	1/1972
13–16	. .	. .	. .	. .	1/1968
17–18	. .	. .	. .	. .	1/1972

CHAPTER 23:02

URBAN AREAS (PUBLIC AND PRIVATE STREETS)

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CHAPTER 23:02

URBAN AREAS (PUBLIC AND PRIVATE STREETS)

13 of 1956
8 of 1971
26 of 1988
G.N. 22/1963
16/1964(M)
137/1966

An Act to regulate the making and repair of Public Streets in Urban Areas, the construction of Private Streets in Urban Areas and their adoption by Municipal Councils and Town Councils and for other matters incidental thereto and connected therewith

[20TH JULY, 1956]

PART I

GENERAL

Short title

1. This Act may be cited as the Urban Areas (Public and Private Streets) Act.

Interpretation

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

"Council" means Municipal Council or Town Council within the meaning of the Local Government (Urban Areas) Act; Cap. 22:01

"court" means a Resident Magistrate or a magistrate of the first grade having jurisdiction in an Urban Area;

"owner" means—

(*a*) in relation to freehold property (excluding public land) the person owning such property; and

(*b*) in relation to leasehold or other immoveable property, the person holding such property directly from the Government or from the owner of the freehold estate or from a

Council as lessee or licensee,

and includes—

(i) any agent who receives rents or profits for any such person;

(ii) any superintendent, overseer or manager of any such person in respect of any holding on which he resides as superintendent, overseer or manager;

"Planning Area" means a Planning Area so declared under the Town and Country Planning Act, within which an Urban Area is included; Cap. 23:01

"Planning Committee" means a Planning Committee appointed under the Town and Country Planning Act; Cap. 23:01

"private street" means any street other than a public street;

"private street works" means the doing in relation to a private street of any of the following things, that is to say, the levelling, paving, flagging, metalling, macadamizing, asphalting, gravelling, kerbing, channelling or lighting thereof or the making of a sewer or drain, or the making of a carriage-way or footpath whether by the doing of any of the foregoing things or otherwise;

"public street" means any street declared to be a public street by a resolution passed under section 6 (1) subject to any amendment by the court made under this Act and any other street declared to be a public street under any of the other provisions of this Act;

"street" means any highway, road, lane, thoroughfare, footway, court, square or passage within the area of an Urban Area, used or intended to be used as a means of access to two or more premises or areas of land in different occupation, whether the public have a right of way thereover or not, and includes all channels, ditches, drains, sidewalks, bridges, culverts and other works appurtenant thereto;

"Urban Area" means a Municipality or a Township within the meaning of the Local Government (Urban Areas) Act. Cap. 22:01

Operation of the Act

3. The Minister may, from time to time, by order, apply all or any of the provisions of this Act to any Urban Area or part thereof and upon the publication of any such order the said provisions shall extend to and be in force in the Urban Area or such part thereof as may be specified in the order.

Borrowing powers

4. Any Council may, for the purpose of carrying out any works under this Act and with the sanction of the Minister, raise loans on such terms and conditions as the Minister may approve.

PART II

Public Streets

Responsibility for repair and maintenance of public streets

5. A Council shall bear the cost of and shall be responsible for the repair and maintenance of any public street in trust to keep and maintain the same in a reasonable state of repair for the use and benefit of the general public.

Council to declare public streets

6.—(1) A Council shall, within four calendar months of the publication of any order made under section 3 in respect of its Urban Area or any part thereof, by resolution declare which streets or parts thereof within the area in question are public streets and shall cause a copy of such resolution and a copy of subsections (2) and (3) to be published within one calendar month of the passing of such resolution in the *Gazette* and in two issues of a newspaper circulating in Malaŵi.

Objections to declaration

(2) Any person who may consider that he is or may be injured or aggrieved by such resolution either by the inclusion therein of any street or streets or any part or parts thereof or by the exclusion therefrom of any street or streets or any part or parts thereof may, within three calendar months of the date of the passing of the resolution or such extended time as the court may (whether before or after the said period for special reasons to be recorded by it) allow, lodge with the court an objection to the resolution stating in such objection his reasons for making it.

(3) Any person lodging an objection under subsection (2) shall within seven days of lodging such objection forward a copy thereof by registered post to the Council concerned.

(4) On receipt of any objection lodged pursuant to subsection (2) the court shall inform the Council and the objector in writing of the date of the hearing.

Powers of court

(5) On the hearing of an objection the court shall adjudicate thereon and may set aside the resolution or amend it in such manner as it shall think fit and shall in any event make such order as to costs as it considers just.

(6) If on the hearing of an objection the court is satisfied that any street or part thereof has for the period of one calendar year immediately preceding the date of a resolution made under subsection (1) been ordinarily repaired or ordinarily maintained by a Council or that the general public have enjoyed the use thereof without lawful interruption for the period of twelve calendar years immediately preceding the date of such resolution, where such street has not been declared a public street by such resolution, the court shall declare such street or part thereof as the case may be to be a public street.

(7) In hearing any objection, the court may take into consideration any matter it considers relevant notwithstanding that testimony regarding such matter would not be admissible under the law relating to evidence.

(8) The decision of the court on any objection shall be final and shall not be subject to any appeal.

Power to construct new streets and to acquire land for the purpose

7. A Council may make and construct new streets and may by agreement acquire land for such purpose, and may by resolution declare any such street to be a public street, giving notice thereof in accordance with section 28 (3).

Power to close public streets temporarily

8. A Council may, if it deems it necessary, temporarily close any public street.

Notice of intention to close

9. A Council shall, whenever practicable, give at least seven days' notice of its intention to close temporarily, any public street by notice published in the *Gazette* and in a newspaper circulating in Malaŵi and by posting up notices in or near the street to be closed.

Procedure for stopping up, diverting or turning public streets

10.—(1) Whenever a Council shall deem it expedient that any public street should be stopped up, diverted or turned, either entirely or reserving a footway along the whole or any part or parts thereof, the Council shall cause a notice, giving brief particulars of such proposed stopping up, diversion or turning, to be affixed in some conspicuous place at each end of such street and shall cause such notice to be inserted once in the *Gazette* and at least twice in a newspaper circulating in Malaŵi; every such notice shall be dated and shall be signed by a responsible official of the Council.

(2) The Council shall, for a period of four weeks from the date of such notice, make available at its offices for inspection by the public, full particulars of the proposals the subject of such notice.

(3) Any person who may consider that he would be injured or aggrieved by such stopping up, diverting or turning, may within four weeks of the date of the publication of such notice in the *Gazette*, lodge with the Council an objection to any such proposal stating in such objection his reasons for making it.

(4) The Council may, at any time after the expiration of six weeks from the date of such notice, apply to the court for an order that the public street shall be stopped up, diverted or turned either entirely or partly, as the case may be, and shall, with such application, deliver to the court a copy of such notice with evidence of publication thereof and a plan verified by a

competent surveyor delineating such public street together with sufficient copies of any objections lodged under subsection (3).

(5) The court may, if satisfied that the public street should be stopped up, diverted or turned in the terms of the proposals contained in the application, make an order accordingly, or it may refuse such application in whole or in part, making such order and awarding such costs in the proceedings as it may deem appropriate.

Application for order that a public street shall cease to be repairable by Council

11.—(1) Whenever a Council shall consider that a public street is unnecessary for public use but does not desire to have the same stopped up, the Council may, on affixing and publishing a notice of what is intended, in the manner prescribed in section 10 (1) and, on complying with the requirements of subsection (2) of that section, apply to the court after the period and in the manner prescribed in subsection (4) of that section, for an order that such public street is not required for public use and that it shall cease to be a public street repairable by the Council.

(2) Any person who may consider that he would be injured or aggrieved by any such order may, within four weeks of the date of such notice, lodge with the court an objection to the grant of such application stating in such objection his reasons for making it.

(3) The court may, if satisfied that the public street should cease to be a public street repairable by the Council, make an order accordingly, or it may refuse such application and may award such costs in the proceedings as it may deem appropriate.

Register of public streets to be kept and amended in terms of court's order

12. The Council shall keep a register of public streets and whenever, under the terms of an order of the court, a public street is stopped up, diverted or turned or ceases to be a public street repairable by the Council, the Council shall amend such register accordingly.

Planning approval necessary before construction, stopping up, diverting, turning or discontinuing use by public of public streets
26 of 1988

13.—(1) Any proposals by a Council for the construction in a Planning Area of new streets under section 7, or for the stopping up, diverting or turning of a public street under section 10, or that a public street shall cease to be repairable by the Council under section 11, shall first be submitted to the Planning Committee and no action shall be taken under the provisions of those sections by the Council to implement such proposals without the written approval of the Planning Committee being first obtained.

(2) Any proposal by a Council in respect of any area not being a Planning Area—

(*a*) for the construction of new streets; or

(*b*) for the stopping up, diverting or turning of a public street under section 10; or

(*c*) for a public street to cease to be repairable by the Council under section 11, shall first be submitted by the Council to the Commissioner for Town and Country Planning and the Council shall take no action towards the implementation of such proposal without the written approval of the Commissioner for Town and Country Planning being first obtained.

Planting of trees and laying out grass margins

14.—(1) A Council may cause trees or shrubs to be planted and grass margins to be laid out in any public street and may erect and maintain guards and fences and otherwise do anything expedient for the maintenance or protection of such trees, shrubs and grass margins.

(2) No such tree, shrub, grass margin, guard or fence shall be placed, laid out or allowed to remain in such a situation as to

hinder the reasonable use of the street by any person entitled to the use thereof or so as to be a nuisance or injurious to the owner or occupier of any land or premises adjacent to such street.

General offences

15. Any person who—

(*a*) leaves or places on or over any public street any timber, stones or other material so as to obstruct such public street or endanger persons using it;

(*b*) encroaches on any public street by making or erecting any building, fence, ditch or other thing or obstacle or by planting trees or in any other manner;

(*c*) digs up, removes or alters in any way the soil, surface or scraping of any public street;

(*d*) fills up, alters, or obstructs any ditch or drain which is constructed for the purpose of leading storm water from such public street;

(*e*) causes or allows any timber, stones or other heavy thing or material which is not wholly raised above the ground on wheels to be dragged on any public street;

(*f*) uses on a wheeled vehicle any locking or other device not being a skid-pan, calculated to cause the wheels to drag;

(*g*) operates a tracked vehicle without fitting proper street plates to the tracks,

shall be liable to a fine of K 200 or, in default of payment, to imprisonment for six months.

PART III

Private Street Works

Making of private streets or widening, etc., of existing private streets
8 of 1971

16.—(1) Any person who intends to form or lay out a private street, or materially to widen, extend or alter any existing private street shall make written application to the Council for sanction to do so and shall with every such application submit plans longitudinal and cross-section and specifications showing the following particulars—

(*a*) the mode of construction and the materials proposed to be used;

(*b*) the intended lines, levels, gradients and dimensions of any proposed sewers and drains or other means of sewerage or drainage;

(*c*) the intended levels and gradients of the street and of any sewers and drains;

(*d*) the means of drainage of the buildings erected or to be erected fronting or abutting thereon;

(*e*) if required by the Council, the estimated volume, expressed in cubic feet per second, of sewage and rain-water to

be conveyed by any proposed sewers and drains and the carrying capacity of such sewers and drains;

(*f*) the proposed method of the disposal of the sewage and rainwater conveyed by any proposed sewers and drains;

(*g*) the direction, width and alignment of the street and the building lines and the lines of carriage-ways and footways and, if any, the lines of spaces to be reserved for the planting of trees or shrubs;

(*h*) the relative level of the street with the adjacent land and the level of such adjacent land;

(*i*) the provision of suitable and convenient junctions with existing or other proposed streets and the provision of lanes or other secondary means of access to buildings for the purpose of removing refuse:

8 of 1971

Provided that any of the requirements of this subsection may be dispensed with or waived by the Council, in cases where application is made to form or lay out a private street in a non-permanent manner.

(2) Any person who makes application under subsection (1) shall furnish such additional plans, sections, specifications, and information as the Council, may require.

Conditions may be imposed by Councils and Planning Committees 8 of 1971

17.—(1) The conditions subject to which the Council may sanction and approve the formation and lay out of any private street or the widening, extension or alteration of any existing private street, shall in all respects be complied with by the person to whom such sanction and approval is granted or by his assigns:

Provided that the Council when sanctioning or approving the formation and layout of any private street or the widening, extension or alteration of any existing private street, shall not impose conditions which require any such proposed private street or part thereof or any such existing private street or part thereof to be constructed or maintained to a higher standard than the specification prescribed in the Schedule.

(2) Any person who fails to comply with subsection (1) shall be guilty of an offence.

Appeals by persons aggrieved

(3) Any person aggrieved by the conditions imposed under subsection (1) may, within one month of receipt of written notification from the Council of such conditions, appeal to the court, whose decision shall be final.

(4) The court may, upon any appeal under subsection (3), amend or set aside any conditions imposed under subsection (1), for any such reasons as the court may deem appropriate and in particular—

(*a*) if in the opinion of the court any such conditions require in any respect any proposed private street or any part thereof, or any existing private street or any part thereof, to be constructed or maintained to a higher standard than the specification prescribed in the schedule;

(*b*) in the case of an application to form or lay out a private street in a non-permanent manner and where the Council has imposed conditions requiring the formation or layout of such street in a permanent manner, if, in the opinion of the court, the standards of construction or maintenance prescribed by such conditions are too high taking into account the nature and volume of traffic which the private street is at that time required to bear.

Planning approval to be obtained
8 of 1971
26 of 1988

18.—(1) In respect of a private street or proposed private street within a Planning Area a Council shall not sanction any application made under section 16, nor waive any of the requirements of section 16 (1), nor impose any conditions under section 17 without first obtaining the written approval of the Planning Committee concerned.

26 of 1988

(2) In respect of a private street or proposed private street in any area not being a Planning Area, the Council shall not sanction any application made under section 16, nor waive any of the requirements of section 16 (1), nor impose any conditions under section 17 without first obtaining the written approval of the Commissioner for Town and Country Planning.

Approved plans, etc., to be complied with
8 of 1971

19.—(1) No person shall form, lay out or construct, or begin to form, lay out or construct, any private street or erect, or begin to erect, any buildings on any plots abutting thereon, or materially widen, extend or otherwise alter any existing private street or make any excavation for any of the aforementioned purposes otherwise than in accordance with plans, sections and specifications approved by the Council.

(2) If any proposed private street or any part thereof for the formation and layout of which sanction has been obtained is not formed or laid out within two years from the date of the sanction, such sanction shall lapse and no person shall thereafter form or lay out such street or any pan thereof without first submitting a new application and obtaining sanction thereon.

(3) Any person who acts in contravention of any of the provisions of tins section shall be guilty of an offence.

Power for Council to undertake private street works

20.—(1) If any private street or any part thereof is not constructed or maintained to the satisfaction of the Council, the Council may resolve with reference to such street or part thereof to undertake private street works and that part of the total ex-

penses incurred by the Council in the execution of such works as shall be incurred in order to bring such street or part thereof up to the standard of the specification prescribed in the Schedule, or such lesser part of such total expenses as may be deemed reasonable by the Council, shall be apportioned among the lands fronting, adjoining, abutting on or served by such street or part thereof and shall be recoverable by the Council from the owners of such lands. Any expenses incurred by the Council in bringing any such street or part thereof up to a standard higher than that of the specification prescribed in the Schedule shall be borne by the Council and shall be a charge upon the rates levied by the Council.

(2) Any such resolution may include several streets or parts of streets or may be limited to any part or parts of a street.

(3) Before making any such resolution the Council shall serve upon the owners of all lands affected by any proposed private street works a notice—

(*a*) stating the private street works proposed to be undertaken and the provisional apportionment of the costs thereof as it affects the recipient of the notice;

(*b*) stating the place at which the plans, specifications and estimated cost of the proposed private street works, together with the provisional apportionment of the cost thereof, may be inspected,

and shall afford an opportunity for the owner of any lands affected thereby to object, within two months of the service of such notice, to the proposed private street works or to the provisional apportionment of the cost thereof or to any specific matter contained in the plans, specifications and estimate of the cost thereof.

(4) In apportioning the expenses of any private street works the Council shall have regard to the frontage of the lands affected thereby, and to the amount and the value of works done by the owners or occupiers of such lands, and may, if the Council considers it just, have regard to the greater or lesser degree of benefit to be derived by any lands from any private street works so undertaken.

(5) The Council may include in any apportionment any lands which do not front, adjoin, or abut on the street or any part thereof but access to which is obtained from the street by means of a lane, passage or otherwise and which, in the opinion of the Council, would be benefited by any private street works so

undertaken and may fix the sum to be apportioned against any such lands accordingly.

(6) The Council may at any time resolve to contribute any proportion of the expenses of any private street works which would otherwise be recoverable from the owners of the lands affected thereby.

(7) Every resolution to do any private street works and every provisional apportionment made by the Council shall be published once, at least, in the *Gazette*, and in one newspaper circulating within Malaŵi.

(8) In determining, for the purposes of subsection (3), the total estimated cost of any private street works, an amount representing not more than ten per centum of such estimated expenses may be included in respect of expenses of administration.

(9) In the case of private streets or any part thereof on public land, the proposal by the Council for the construction of private street works and the apportionment of the costs thereof shall, in the first instance and before any resolution is passed under subsection (1), be submitted to the Minister and agreed between the Council and the Minister.

Appeals by persons aggrieved by resolution to do private street works or by provisional apportonment of costs thereof

21.—(1) Any person aggrieved by any resolution to do any private street works under section 20, or section 20 and section 26, or by any provisional apportionment of the costs thereof may, within one month of the publication in the *Gazette* of such resolution and provisional apportionment or such extended time as the court may, whether before or after the said period, allow, appeal to the court, whose decision shall be final.

(2) The court may, upon any appeal under this section, set aside or amend any resolution to do private street works or may direct that any such resolution or any plans, sections or specifications of such private street works or any provisional apportionment of the cost thereof be amended in such manner as to the court may seem proper.

(3) The court may set aside any resolution to do any private street works for any such reasons as the court may deem appropriate and, in particular, if the court is not satisfied with the extent to which the public has used and has need to continue to use the private street as a thoroughfare.

(4) The court may amend any resolution to do private street works or may direct that any such resolution or any plans, sections or specifications of such private street works or any provisional apportionment of the cost thereof shall be amended for any of the following reasons or for any other reason which the court may deem appropriate—

(*a*) if, in the opinion of the court, the private street is already constructed and maintained to a reasonable standard, taking into account the nature and volume of traffic which it is required to bear;

(*b*) if the private street works proposed to be undertaken are of an unnecessarily high standard, taking into account the nature and volume of traffic which the private street is then required to bear;

(*c*) if the provisional apportionment proposed would impose undue hardship on the persons appealing against it;

8 of 1971

(*d*) if, in the opinion of the court, the private street is proposed or planned by the Council, to become a major thoroughfare and if, in consequence, the court is of the opinion that the whole or a part, or a great part, of the expenses of the private street works proposed should be borne by the Council.

(5) The costs of any proceedings before the court shall be in the discretion of the court, and the court may, if it thinks fit, direct that the whole or any part of such costs ordered to be paid by an appellant shall be charged as part of the expenses of the private street works against the land of such appellant.

Power to amend proposals

22. The Council may, from time to time, amend the plans, sections, specifications, estimates and provisional apportionments of any private street works, but if the total amount of the estimate in respect of any street or part of a street is increased, such estimate and the provisional apportionment of the cost thereof shall be published in the manner prescribed in section 20 (7) and shall be open to inspection at a place to be notified in the *Gazette* and in such newspaper at all reasonable times, and copies thereof shall be served on the owners of the premises affected thereby; and objections may be made to the increase and apportionment, and, if made, shall be dealt with and determined in the like manner as objections to the original proposals.

Apportionment of expenses of private street works and objections and appeals in connexion therewith

23.—(1) When any private street works have been completed and the expenses thereof ascertained, the Council shall make a final apportionment of the expenses in the same proportion as that in which the estimated expenses were apportioned in the provisional apportionment, and shall serve a notice of such final apportionment upon the owners of the lands affected thereby and shall afford an opportunity for such owners to object to the Council, within one month of the service of such notice or such extended time as the court may, whether before or after the said period, allow, to such final apportionment on any of the following grounds—

(*a*) that the actual expenses have, without sufficient reason, exceeded the estimated expenses by more than fifteen per centum;

(*b*) that the final apportionment has not been made in accordance with this section;

(*c*) that there has been unreasonable departure from the plans, sections or specifications of the private street works undertaken.

(2) Any person who has objected to a final apportionment under this section and who is aggrieved by the decision of the Council in respect of such objection may, within one month of being notified by the Council of such decision, appeal to the court, whose decision shall be final.

Unpaid apportionments to be a charge on the land

44 & 45 Vict. c. 41
Cap. 58:03

24.—(1) Any sum, or any portion thereof remaining unpaid, apportioned against any land liable for the payment of a proportionate part of the expenses of any private street works undertaken by a Council, shall be a charge on such land and the Council shall, for the recovery of such sum, have and may exercise all the powers and remedies under the Conveyancing and Law of Property Act, 1881, of the United Kingdom and the Conveyancing Act, and otherwise as if it were a mortgagee having the powers of sale and to grant leases and of appointing a receiver. Such sum shall become payable as from the date that the account is rendered to the owner of the land affected.

(2) If any such sum is not paid within six months of becoming payable the Council may charge interest thereon from the date upon which the principal sum became payable, at such rate, not exceeding four pounds per centum per annum as the Council may fix and such interest shall be a charge on the said land and be recoverable in like manner as the principal sum.

(3) A charge against any land created by this section shall take priority over all encumbrances and charges (whether created prior thereto or not) except Government debts and Municipality or Township rates.

(4) The Council shall keep a register of charges created under this Act and of the payments made in satisfaction thereof and such register shall at all reasonable times be open to inspection by the public on payment of a fee of two shillings in respect of each search and the Council shall furnish copies of any part of such register to any person applying therefor upon payment of such reasonable sum as may be fixed by resolution by the Council.

(5) Any sum apportioned against any land by and under this Act may, if the Council by resolution so determine, be paid by instalments over a period not exceeding twenty years.

Recovery of expenses by action

25. If it thinks fit the Council may from time to time (in addition and without prejudice to any other remedy) recover, as a simple contract debt, by action in any court of competent jurisdiction, from the owner for the time being of any premises in respect of which any sum is due in respect of private street works, the whole or any portion of such sum, together with interest at a rate not exceeding four pounds per centum per annum from the date that the final apportionment is rendered to the owner until payment thereof.

Temporary construction of private street works

26.—(1) Where, in the opinion of a Council, the immediate construction of any private street works on any private street or part thereof, in a permanent manner, is not required, any resolution made under section 20 may provide for the construction of such works in a temporary manner.

(2) A Council shall, as from the date of the completion of any private street works in a temporary manner in any private street or part thereof, be responsible for the repair and maintenance of such street or any part thereof.

(3) The construction of temporary private street works shall not preclude a Council from resolving at a later date that such works shall be replaced by other private street works constructed in a permanent manner or that the works be extended or that new private street works on the same street be constructed :

Provided that a period of at least two years shall elapse before a new resolution in respect of the construction of such new works on the same street shall be passed.

(4) Sections 20, 21, 22, 23, 24 and 25 shall apply in the case of private street works which are carried out in accordance with subsections (1) and (3):

Provided that the whole of the expenses incurred by the Council in executing such private street works, or such part of the expenses as may be deemed reasonable by the Council, shall be apportioned and recoverable in accordance with section 20.

Incidental works

27.—A Council may include in any works to be done under this Part, with respect to any street or part of a street, any works which they think necessary for bringing the street or part of a street as regards sewerage, drainage, levels or other matters, into conformity with any other streets (whether repairable or not by the Council) including the provision of separate sewers for the reception of sewage and of surface water respectively:

Provided that in the case of any private street or part of any private street, the expenses only of such works so included as shall be required to be executed so as to bring any such street or part thereof up the standard of the specification prescribed in the Schedule shall be apportioned among the lands fronting, adjoining, abutting on or served by such street or part thereof and shall be recoverable by the Council from the owners of such lands.

Adoption of private streets as public streets

28.—(1) Whenever any works undertaken and completed in accordance with section 19 have been executed to the satisfaction of the Council in accordance with the standard of the specification prescribed in the Schedule, the Council may, and shall, if so requested by the owner or owners of seventy-five per centum of the frontage of such street, or the part thereof affected by the said works, or the Minister in the case of private streets on public land ordinarily repaired and maintained wholly by the Government, by resolution within three months of the date of such completion or request, whichever is the earlier, declare the same to be a public street, and thereupon such street or part thereof, as defined in the said resolution, shall become a public street and shall thereafter be repairable by the Council.

(2) Whenever all or any of private street works undertaken and completed in accordance with section 20 have been satisfactorily executed to the standard of the specification prescribed in the Schedule in any street or in any part thereof the Council shall, within three months of the completion of such works, by resolution declare such street or part thereof to be a public street and thereupon such street or part thereof as defined in the said resolution, shall become a public street and shall thereafter be repaired and maintained by and at the expense of the Council.

(3) A copy of the resolution made under subsection (1) or (2) shall be published once, at least, in the *Gazette* and in a newspaper circulating within Malaŵi and shall be publicly posted once, at least, in or near the street to which it relates.

(4) The name and a short description of the street or of any part thereof as defined in the resolution made under subsection (1) or (2) shall, following publication as aforesaid, be entered by the Council in the register of public streets.

Liability on change of ownership

29.—(1) Where the ownership of land charged with the expenses of private street works has changed between the date of a resolution charging such land, or of an order of the court arising out of any appeal under section 21, and the date on which any payment becomes due, the new owner shall be liable for the sum due.

(2) Where the land has been subdivided between the dates mentioned in subsection (1), the decision regarding the apportionment of the sum due or of any sums which may subsequently become due under the resolution or the order of the court as aforesaid between the owners of the subdivisions shall rest with the Council and shall be final.

Penalties

30. Any person who commits an offence against any of the provisions of this Part shall be liable to a fine of £100 or, in default of payment, to imprisonment for six months and the

Council may, at the expense of such person, take such steps as may be necessary to do anything omitted to be done in contravention of this Part or to remove or restore to its original condition any work or thing so done, and such expense shall be recoverable as a civil debt.

PART IV

Miscellaneous

Numbering of houses and naming of street

31.—(1) A Council may, from time to time, by notice in writing given to the owner, require any house, building or erection fronting upon any street or other public place to be marked with such number as it may think fit at the expense of such owner and may, at its own expense, cause the name by which any street or other public place is known, or to be known, to be put up or painted on a conspicuous part of any fence or wall fronting thereon, and may also, at its discretion, require any such number or cause any such name to be changed whether or not such number or name existed before the commencement of this Act.

(2) In the event of any owner failing to number his house, building or erection, as required by the Council, the Council may itself, at the expense of such owner, cause such house, building or erection to be marked with such number, and may recover the cost of such work as a simple contract debt in any court of competent jurisdiction.

(3) Any person who destroys, pulls down, or defaces any such number or name or fails to put up such number or, without the permission of the Council, puts up any number or name different from the number or name required to be put up or put up by the Council, shall be liable to a fine of £10.

Owner to have bridge over drain leading to his house

32. If the owner or occupier of any house or premises adjoining a street by the side of which a drain has been made or excavated requires a means of access to such house or premises from such street, he shall place over such drain a bridge, platform or arch which shall be constructed in a permanent form of material and which shall in no case cover less than four feet of the length of such drain and which, where there is a sidewalk or footpath to such street, shall extend to the side of such sidewalk or footpath nearest such house or premises and the Council, where any such owner or occupier has any access to any house or premises so situated without such bridge, platform or arch, may call upon such owner or occupier forthwith to construct the same, and, if he shall fail to do so within a reasonable time, may cause the same to be done and recover the cost incurred from such owner or occupier.

33. This Act shall bind the Government unless there is something in the subject or context inconsistent with its so doing. Application to Government

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SCHEDULE

ss. 17, 20. 27 and 28 8 of 1971

SPECIFICATION FOR A PRIVATE STREET FORMED OR LAID OUT IN A PERMANENT MANNER

A private street shall be constructed to the lines, levels, widths, general dimensions and character, and shall be paved, bituminized, channelled, kerbed, sewered, drained and lighted to such specifications as shall be approved by the Council.

SUBSIDIARY LEGISLATION

G.N.
64/1957
105/1960

APPLICATION OF ACT NOTICE

under s. 3

Cap. 23:02

All the provisions of the Urban Areas (Public and Private Streets) Act have been applied to the City of Blantyre.

NATIONAL REGISTRATION

CHAPTER 24:01

Containing Pages 1–66

CHAPTER 24:01

NATIONAL REGISTRATION

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CHAPTER 24:01

NATIONAL REGISTRATION

13 of 2010
G.N. 18/2015

An Act to provide for the registration of persons and registration of births, marriages and deaths of persons and to provide for matters connected therewith and incidental thereto

[1ST AUGUST, 2015]

PART I

PRELIMINARY

Short title

1. This Act may be cited as the National Registration Act.

Interpretation

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

"authorized person" means any person or class of persons prescribed by the Minister;

"birth report" means a report of birth containing the prescribed particulars and made in the prescribed form;

"death report" means a report of death containing the prescribed particulars and made in the prescribed form;

"district register" means the register maintained by each district registrar;

"Director" means the Director of National Registration appointed under section 4;

"identity card" means an identity card issued in accordance with the provisions of this Act;

"marriage report" means a report of marriage containing the prescribed particulars and made in the prescribed form;

"national register" means the register maintained by the Director under section 7;

"prescribed particulars" means—

(*a*) as to any birth, the sex, name, date and place of birth, the names, residence, occupations and nationality of the parents and such other particulars as the Minister may prescribe;

(*b*) as to any marriage, the names, nationality, conditions, occupations, ages, dwelling or place of abode of the bride groom and bride and such other particulars as the Minister may prescribe; and

(*c*) as to any death, the name, age, sex, place of residence, length of residence in Malaŵi, occupation and nationality of the deceased and the date, place and cause of death, and such other particulars as the Minister may prescribe;

"registered person" means a person registered under section 7 and section 9;

"specified area" means an area declared as such by the Director in accordance with section 10.

PART II

National Registration

Establishment of National Registration System

3.—(1) There shall be a National Registration System consisting of Population Register established under this Act.

(2) The Population Register shall comprise the Births, Marriages and Deaths Registers recorded at the village, traditional authority, district and national levels.

Appointment of Director and Deputy Director

4. There shall be a Director and Deputy Director of National Registration appointed by the Minister.

Appointment of district registrars

5.—(1) The Director may delegate any or all of his duties to be performed by a district registrar within the area of a district.

(2) Every District Commissioner or Chief Executive, as the case may be, shall be the registrar for the District over which he has authority as a District Commissioner or Chief Executive, as the case may be:

Provided that the Minister may appoint any other person to be the district registrar for a District, or a specified part of a district, in place of, or in addition to the District Commissioner or Chief Executive, as the case may be.

Appointment of district registrars abroad

6. The Minister may appoint a diplomatic or consular officer or a person attached to any Embassy Office, High Commission or Consulate or any other Malaŵi Government representative abroad or the representative of another government or any other suitable person to be a district registrar for the purpose of this Act in respect of a district outside Malaŵi to be specified in the instrument of his appointment.

National register

7.—(1) The Director shall keep or cause to be kept and maintained a national register of all persons—

(*a*) who are citizens of Malaŵi and of or above the age of sixteen years; or

(*b*) who are of or above the age of sixteen years and who, not being citizens of Malaŵi, have been granted permanent residence permit, temporary employment permit or business residence permit under the Immigration Act to reside in Malaŵi.

Cap. 15:03

(2) Every district registrar shall keep and maintain a district register of those persons who live within his district and who qualify for registration under paragraphs (*a*) and (*b*) of subsection (1) and to whom an identity card is issued.

Contents of national register

8.—(1) The national register and district register shall consist of two parts, of which Part I shall be a register of citizens of Malaŵi who meet the provisions of section 7 (1) (*a*) and Part II shall be a register of non-Malaŵian citizens, lawfully resident in Malaŵi, who meet the provisions of section 7 (1) (*b*).

(2) The national register shall consist of the following particulars relating to each applicant—

(*a*) the applicant's full name;

(*b*) the applicant's principal place of residence in Malaŵi;

(*c*) the names of the applicant's parents;

(*d*) the applicant's permanent home address (Village, T.A. and District; plot number, township and local authority);

(*e*) the applicant's sex;

(*f*) the applicant's date of birth;

(*g*) the applicant's place of birth;

(*h*) the applicant's marital status;

(*i*) the date of registration of the applicant and the registration number;

(*j*) in the case of an applicant who is not a citizen of Malaŵi, his nationality;

(*k*) height;

(*l*) colour of eyes;

(*m*) fingerprints;

(*n*) photograph;

(*o*) passport number, if any;

(*p*) special observations, if any; and

(*q*) such other particulars as the Minister may prescribe.

Registration

9.—(1) Subject to such regulations as shall be made by the Minister, every person of or above the age of sixteen years—

(*a*) who is a citizen of Malaŵi; or

(*b*) who, not being a citizen of Malaŵi, has been granted permanent residence permit, temporary employment permit or business residence permit under the Immigration Act to reside in Malaŵi,

Cap. 15:03

shall qualify to be registered under this Act and shall apply to the district registrar in the area in which he ordinarily resides, for registration within one month of his acquiring the relevant qualification as set out in this section.

(2) Every applicant shall submit to having his finger print and photograph taken by the district registrar or a person acting under his authority.

Registration requirement made through notice in the *Gazette*

10.—(1) The Director may, by notice in the *Gazette* and such other manner as he may consider suitable to bring the contents of the notice to persons affected, declare any area of Malaŵi to be a specified area and require all persons within such specified area to whom this Act applies to attend before a district registrar at such place and between such dates as he may specify in such notice.

(2) Every person so required shall attend before the district registrar and shall register himself by providing the particulars described in section 8 and shall permit his photograph and fingerprints to be taken in such manner as may be prescribed.

(3) Every unregistered person who—

(*a*) being a person to whom this Act applies, enters any specified area;

(*b*) being within any specified area, becomes a person to whom this Act applies,

shall within fourteen days, attend before the nearest district registrar and register himself in the manner prescribed in subsection (2).

Additional information

11. A district registrar may require any person applying for registration under this Act to provide such documentary information as shall, in the opinion of the district registrar, be necessary to establish the truth of the information stated in the application form.

Processing a qualified application

12.—(1) Every district registrar shall, where he is satisfied that the applicant qualifies for registration, forward the application, and the photograph and record of fingerprints relating to that application, to the Director.

(2) The Director shall, if he is satisfied that the applicant qualifies for registration, issue an identity card to the applicant.

Issue of identity card

13.—(1) Every person registered under this Act shall be issued with an identity card.

(2) An identity card issued to any person who is not a citizen of Malaŵi shall be valid for such period as is stated in the card which period shall be the period for which he is, at that time, entitled under the Immigration Act, and such person shall be issued with a new identity card to cover any period for which his stay is extended.

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(3) Where applicable, the identity card shall be renewed by issuing a new identity card with an up-to-date photograph and other particulars relating to the holder of the card.

Forms of identity card

14. The Minister may prescribe the size and description of the identity card and the particulars it shall contain, and further may prescribe different identity cards for the different categories of persons referred to under section 7.

Preservation of identity cards

15.—(1) Every person issued with an identity card under this Act shall, to the best of his ability, ensure the safety and preservation of that card.

(2) Where an identity card is lost, damaged or destroyed, the person concerned shall immediately inform the district registrar of the area in which he is registered and provide him with any information at his disposal to satisfy the district registrar that the identity card was in fact not lost, damaged or destroyed through the fault or neglect of the person concerned.

(3) The district registrar shall require the person whose identity card is lost, damaged or destroyed to execute an affidavit to the effect that it was not lost, damaged or destroyed through the fault or neglect of the person making the affidavit.

(4) The Minister may prescribe the form of an affidavit to be executed under subsection (3).

(5) Any person who finds or unlawfully comes into possession of an identity card which was not issued to him shall, without undue delay, return it to the person to whom it was issued or forward it to the nearest district registrar.

Replacement of lost, damaged or destroyed identity cards

16.—(1) Where a district registrar is satisfied that the loss, damage or destruction of an identity card occurred through no fault or neglect of the person concerned, he may recommend to the Director that a new identity card be issued without payment of any fee or penalty, and shall cancel the registration in respect of the identity card that was lost, damaged or destroyed but in all other cases he shall levy the prescribed fee.

(2) Where the Director issues a new identity card in place of a damaged identity card, he shall ensure that the damaged identity card is destroyed and the national register and the district register shall be amended accordingly.

(3) Where the Director issues a new identity card in place of an identity card that was lost, he shall inform all the district registrars

and such other authorities, as the Minister may prescribe, of the loss as soon as may be practicable.

Identity card *prima facie* proof of contents of national register

17. An identity card shall be *prima facie* proof of the particulars of an individual contained in the national register.

Change in particulars relating to a registered person

18. Where the particulars relating to any person, and to which he has sworn in his application for registration change after he has been issued with an identity card, such person shall, within thirty days of such change, inform the district registrar of the area in which he is registered, of the change.

Immaterial change

19. Where a district registrar is informed of any change in particulars relating to a registered person, he may, if he is of the opinion that the change does not materially affect registration, note the change in his register and cause the change to be recorded in the national register by the Director.

Material change

20.—(1) Where the district registrar is of the opinion that any change in the particulars relating to a registered person materially affect his registration, he shall record the change and notify the Director of the circumstances and recommend that the person concerned should be issued with a new identity card.

(2) The Director shall, if he is satisfied that the change materially affects the registration of a person, cancel the identity card issued to the person and issue a new identity card to him.

(3) Particulars relating to the new identity card and its holder shall be recorded in the national register and the district register of the area in which that person is registered.

Updating photographs

21.—(1) Every registered person may, whenever he is satisfied that his appearance has changed so as to make it likely that his identity as certified by the identity card may be questioned, apply to the district registrar of the area in which he is registered for the issue of a new card with a more recent photograph and shall, when issued with a new identity card by the Director, surrender his existing identity card to the district registrar to be cancelled and destroyed.

(2) The district registrar of the area in which the person is registered and the Director shall cause the change to be recorded in the relevant registers.

PART III

Registration of Births and Adopted Children

Register of births to be kept in every district

22. The district registrar of each district shall keep a register, and shall enter therein every birth of a child born alive within his district after the commencement of this Act, whereof the prescribed particulars are reported to him.

Mode of registration of births

23. Every person registering the birth of a child shall, to the best of his knowledge and ability, give the prescribed particulars, and shall certify to their correctness either by signing, or, if he be illiterate, by fixing his mark to the register or, if the registration is effected without personal attendance, by signing, or affixing his mark to, the prescribed form in which the prescribed particulars are reported to the district registrar.

Duty to register births

24.—(1) In the case of every child born alive after the commencement of this Act, it shall be the duty of the father and mother, and in default of the father and mother, of the occupier of the house in which to his knowledge such child is born, and of each person present at the birth, and of the person having charge of such child, to, register the birth within six weeks of the birth.

(2) Such registration shall be effected by completing a birth report in respect of such birth and by certifying its correctness by signing or, if unable to sign, by affixing the mark of the person effecting registration to the birth report and delivering it to the district registrar of the district where the birth occurred.

(3) No person shall be bound as father to register the birth of a child born out of wedlock, and no person shall be entered in the register as the father of such child except—

(*a*) where it is proven in court; or

(*b*) at his own request, and with the agreement of the mother of the child, upon his acknowledging himself to be the father of the child, and signing, or affixing his mark to the birth report as such.

Registration of birth after six weeks from birth

25. The district registrar shall not enter in the register the birth of any child after six weeks from the date of birth except upon payment of the prescribed fee.

Exposed child

26. If any living new-born child is found exposed, it shall be the duty of any person finding such child, and of any person in whose charge such child may be placed, to give such information

as the informant possesses for the purpose of registering such birth.

Change of name

27. Where the birth of any child has been registered before it has received a name, or the name by which it was registered is altered, the parent or guardian of such child may, within two years of the registration, on payment of the prescribed fee, and on providing such evidence as the district registrar may think necessary, register the name that has been given to the child.

Registration of an adopted child

28.—(1) The Director shall keep the Adopted Children Register and enter therein such entries as may be directed to be made therein by the adoption of a child order, but no other entries.

(2) Every adoption order shall contain a direction to the Director to make in the Adopted Children Register an entry recording the adoption of a child in the prescribed form.

PART IV

Registration of Marriages

Register of marriages to be kept in every district

29. The district registrar of each district shall keep a register and enter therein every marriage that occurs within his district after the commencement of this Act.

Mode of registration of marriages

30. Every person registering a marriage shall, to the best of his knowledge and ability give the prescribed particulars, and shall certify to their correctness, either by signing or, if he be illiterate, by affixing his mark to the register, or, if the registration be effected without personal attendance, by signing or affixing his mark to the prescribed form on which the prescribed particulars are reported to the district registrar.

Duty to register marriages

31.—(1) In the case of persons getting married after the commencement of this Act, it shall be the duty of the persons who get married to register their marriage within three months after the officiation of their marriage.

(2) Registration of the marriage shall be effected by completing a prescribed form or delivering a copy of the marriage certificate, as the case may be, to the district registrar.

Registration of marriage after three months from marriage

32. The district registrar shall not enter in the register any marriage after three months from the date of the officiation of the marriage except upon payment of the prescribed fee.

PART V

Registration of Deaths

Register of deaths to be kept in every district

33. The district registrar of each district shall keep a register, and shall enter therein every death occurring within his district after the commencement of this Act whereof the prescribed particulars are reported to him.

Mode of registration of deaths

34. Every person registering a death shall, to the best of his knowledge and ability, give the prescribed particulars, and shall certify to their correctness, either by signing, or, if he be illiterate, by affixing his mark to the register, or, if the registration be effected without personal attendance, by signing or affixing his mark to the prescribed form on which the prescribed particulars are reported to the district registrar.

Duty to register death

35.—(1) In the case of every person dying after the commencement of this Act, it shall be the duty of the nearest relatives of such person who were present at his death or in attendance during his last illness, and in default of such relatives, of every other relative dwelling within the district, and, in default of such relatives, of each person present at the death, and of the occupier of the house in which to his knowledge such death took place; and in default of the persons herein before mentioned, of any inmate of the house, or of any person finding or taking charge of the body of such person, or causing such person to be buried, to register the death within six weeks after the death or finding of the body, or where the district registrar is satisfied that from any other cause registration could not be effected within the said period, and that no undue delay has taken place, within six months after the death or finding of the body.

(2) Such registration shall be effected by completing a death report and by certifying its correctness by signing, or, if unable to sign, by affixing the mark of the person effecting registration to the death report and delivering it to the district registrar of the district where the death occurred.

(3) For the purposes of this section "nearest relatives" mean surviving spouse, if any, parents, child and siblings.

Registration of deaths after six weeks from death

36. The district registrar shall not enter in the register a death more than six weeks after the date of the death, except upon payment of the prescribed fee.

PART VI

Records and Returns of Births, Marriages and Deaths

Duties of Director in respect of births, etc.

37.—(1) The Director shall be responsible for registration of births, marriages and deaths.

(2) It shall be the duty of the Director to compile, after the close of each year, a summary of the births, marriages and deaths of such year, and a report on the increase or decrease of the population of Malaŵi, and on any special causes appearing to affect the same.

(3) The Director shall have the custody of all filled registers and of all monthly returns made by each district registrar.

(4) It shall be the duty of the Director to provide each district registrar with such books and forms as may be required, and with such instructions as he may consider necessary for the registration of births, marriages and deaths in his district.

Monthly and other returns

38.—(1) Every district registrar shall forward to the Director monthly returns in the prescribed form showing the births, marriages and deaths registered in his district during such month, and shall also forward to him all such registers as soon as the space in the registers for the registration has become exhausted.

(2) Notwithstanding subsection (1), the Director may direct that a district registrar whose district is outside Malaŵi need not maintain any register or that he shall furnish to the Director such returns or extracts at such intervals of time and verified in such manner as the Director may deem suitable, or shall carry out the duties of a district registrar with such variations as may be appropriate in the circumstances.

Indexes, searches and certified copies

39.—(1) The Director shall cause to be prepared from the returns made to him alphabetical indexes of the births, marriages and deaths registered.

(2) Any register, return or index in the custody of the Director shall, on payment of the prescribed fee, be open to inspection subject to such conditions as the Director may direct:

Provided that a person aggrieved by conditions imposed by the Director may apply to the High Court for Judicial review and the High Court may make such order regarding inspection as it deems proper.

(3) The Director shall, on payment of the prescribed fee, furnish a certified copy of any entry or any return in his custody:

Provided that any person shall, on payment of the prescribed fee, be entitled to obtain from the Director a short certificate of birth of any person in the prescribed form and containing such particulars as may be prescribed and such certificate shall not include any particulars relating to parentage or adoption.

(4) The copy of any entry in any register or return certified under the hand of the Director to be a correct copy shall be *prima facie* evidence in court of the dates and facts therein contained.

PART VII

Miscellaneous Provisions

Correction of errors in registers

40. The following provisions shall apply to errors in the national register and in any register of births, marriages and deaths—

(*a*) no alteration in any register shall be made except as authorized by this Act;

(*b*) any clerical error which may from time to time be discovered in any register may be corrected by any person authorized in that behalf by the Director;

(*c*) any error of fact or substance in any such register may be corrected by the Director by making an additional entry in the register (without any alteration of the original entry), upon payment of the prescribed fee and upon production to him by the person requiring such error to be corrected of a statutory declaration, setting forth the nature of the error and the true facts of the case, made by two credible persons having knowledge of the truth of the case.

Delivery of birth report, etc.

41. Delivery of a birth report, marriage report, or death report, as the case may be, to a person for the time being employed by the local authority of the area in which the birth, marriage or death occurred shall be deemed to constitute delivery of the report to the district registrar of the district in which such area is situated.

Offences and penalties

42.—(1) Any person who—

(*a*) is of or above the age of sixteen years and qualifies to be registered under this Act but who fails to register within the time prescribed by this Act;

(*b*) willfully obstructs the Director or district registrar in the execution of his duties under this Act;

(*c*) willfully destroys or mutilates or attempts to destroy or mutilate any identity card;

(*d*) unlawfully deprives or dispossesses any person of his identity card;

(*e*) uses any identity card other than the card issued to him intending that some other person shall be led to believe that he is the person shown on the card he is using;

(*f*) is knowingly in possession of an identity card in which any unlawful entry, alteration or erasure has been made or of any document so closely resembling an identity card as to be calculated to deceive;

(*g*) fails to register the birth of a child, a marriage or death, which is his duty to do so;

(*h*) is in possession of more than one identity card purporting to show his identity; or

(*i*) permits any other person to use the identity card issued to him,

commits an offence and upon conviction shall be liable to a fine of K1,000,000 and to imprisonment for five years.

Forgery, false information and undue influence

43. Any person, who—

(*a*) furnishes false information or makes any statement in his application for registration or in any affidavit sworn under this Act;

(*b*) forges any document for the purpose of obtaining registration under this Act;

(*c*) in any way seeks to illegally influence the decision of a district registrar;

(*d*) being already registered, applies for registration; or

(*e*) being in possession of any identity card, applies for a new card falsely alleging that his identity card was lost or destroyed,

commits an offence and upon conviction shall be liable to a fine of K1,000,000 and to imprisonment for five years.

Secrecy

44.—(1) Subject to subsection (2), no person shall disclose to any other person any information recorded in any register, document or proof of registration and which he acquired by virtue of his functions, except for purposes of this Act or any judicial proceedings or the performance of his functions in terms of any law, and no person to whom any such information has to his knowledge

been disclosed in contravention of this section shall disclose such information to any other person.

(2) The Minister may furnish any information in relation to any person whose name or particulars are registered under this Act to any Ministry, local authority or body established by or under any law for any purpose of that Ministry, local authority or body.

Evidence

45. Any document purporting to be signed by the Director or a district registrar or any officer authorized by him in writing, certifying a copy or extract of any record kept by the Director or district registrar under this Act shall, in any prosecution for an offence under this Act, be *prima facie* evidence of the facts stated therein, and, if stated to be signed by an officer authorized by the Director or district registrar, shall, unless the contrary be proved, be deemed to be signed by the officer so authorized without production of proof of such authorization.

Immunity

46. No claim shall lie against the Government, the Minister, the Director or any district registrar or public officer for anything done in good faith and without negligence under the powers conferred upon him by this Act.

Regulations

47.—(1) The Minister may make regulations for the better carrying out of the purposes of this Act.

(2) Without prejudice to the generality of subsection (1), the regulations may make provision for—

(*a*) the form of the application for registration;

(*b*) the additional particulars that may be required of an applicant for registration;

(*c*) the form of the identity card or cards that may be issued under this Act and the particulars each shall contain;

(*d*) the form of the affidavit to be executed by a person whose identity card has been lost, damaged or destroyed;

(*e*) the fees that may be levied under this Act;

(*f*) the authorities that shall be informed by the district registrar of the loss of an identity card;

(*g*) the procedures to be followed in correcting errors or issuing replacement identity cards;

(*h*) the persons who shall be authorized persons for the purposes of this Act;

(*i*) the place in each district and the hours at which births, marriages and deaths may be registered, and registers, returns and indexes kept open for inspection;

(*j*) the conditions under which, and the mode in which, registration may be effected without personal attendance;

(*k*) the duties of district registrars;

(*l*) the inspection of registers, returns, indexes and the provision of certified copies;

(*m*) the places at which and period within which shall be registered births and deaths occurring on board ships and aircraft, registered or unregistered, while within the territorial waters or air space of Malaŵi;

(*n*) reports of births or deaths to be made by the officer or other person in charge of a hospital, clinic or other place where medical service is provided;

(*o*) the role of local and traditional authorities in facilitating registration of persons and registration of births, marriages and deaths under this Act; and

(*p*) all other matters necessary for the carrying out of the provisions of this Act.

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(3) Any regulation made under this Act may, notwithstanding the provision of section 21 (*e*) of the General Interpretation Act, prescribe a fine of up to K100,000 and imprisonment for up to one year for an offence committed against any provision of such regulation.

Repeal and savings Cap. 24:01

48.—(1) The Births and Deaths Registration Act is repealed.

(2) Any subsidiary legislation made under the Births and Deaths Registration Act repealed by subsection (1) and in force immediately before the coming into force of this Act, shall so far as it is not inconsistent with the provisions of this Act, continue in force as if made under this Act.

(3) Any birth or death registered under the law repealed under subsection (1) shall, notwithstanding the repeal of the law, be deemed to have been registered under this Act.

(4) The Registrar General shall deliver or transmit to the Director any register, record or document in the custody or control of the Registrar General by virtue of the law repealed under subsection (1).

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NATIONAL REGISTRATION REGULATIONS

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NATIONAL REGISTRATION REGULATIONS

G.N. 38/2015

under s. 47

PART I

Preliminary

Citation

1. These Regulations, may be cited as the National Registration Regulations.

Interpretation

2. In these Regulations, unless the context otherwise requires—

"authorized person" means a person or class of persons appointed by the Minister by notice published in the *Gazette*, to perform the functions of a district registrar;

"birth report" means a report of birth, made pursuant to regulation 20, containing prescribed particulars;

"cleric" means a recognized cleric, Minister of a religion, religious body, denomination or sect, of a place of worship of a registered religious body;

"death report" means a report of death made pursuant to regulation 33 containing prescribed particulars;

"district register" means a register maintained by each district registrar;

"Director" means the Director of National Registration appointed under section 4 of the Act;

"identity card" means an identity card issued in accordance with section 13 of the Act;

"marriage report" means a report of marriage, made pursuant to regulation 42, containing the prescribed particulars;

"national register" means the register maintained by the Director under section 7 of the Act;

"prescribed particulars" means—

(*a*) with regard to a birth, the sex, name, date and place of birth, the names, residence, occupations and nationality of the parents and such other particulars as the Minister may prescribe;

(*b*) with regard to a marriage, the names, nationality, conditions, occupations, ages, dwelling or place of abode of the bridegroom and bride and such other particulars as the Minister may prescribe; and

(*c*) with regard to a death, the name, age, sex, place of residence, length of residence in Malaŵi, occupation and nationality of the deceased, the date, place and cause of death, and such other particulars as the Minister may prescribe.

PART II

Registration in the National Register

Application for registration in the national register

3.—(1) A person seeking to be registered in the national register shall submit an application to the district registrar.

(2) Where the applicant is a non-Malaŵian citizen or is a citizen of Malaŵi by naturalization or registration, he shall submit the application to the district registrar which shall be accompanied by an application fee in the Schedule hereto.

Schedule

(3) An application for national registration shall be in Form NR1 in the Schedule hereto for citizens of Malaŵi, and Form NR2 in the Schedule hereto.

Schedule

(4) An application for registration in the national register shall be submitted to the district registrar within thirty days of the applicant attaining the age of sixteen.

(5) An application made a month after an applicant attains the relevant qualifications for registration, without a valid excuse for the delay in application, shall be considered a late application and shall be accompanied by a late application penalty prescribed in the Schedule hereto.

Schedule

Particulars accompanying application

4. Every application for registration in the national register shall contain all the prescribed particulars.

Verification of particulars

5. The application form referred to in regulations 3 and 4 shall be signed by the applicant, and be witnessed and verified by—

(*a*) in the case of a citizen of Malaŵi, the village headman and one senior member of the village where the applicant hails from;

(*b*) in the case of an applicant who was an exposed child before attaining the age of sixteen years, the social welfare officer of the District in which the exposed child was found and a letter from that social welfare officer supporting the application;

(*c*) in the case of an adopted child where one or both adopting parents are citizens of Malaŵi, a certified copy of an adoption order issued by a court shall accompany the application;

(*d*) in the case of an adopted child whose adopting parents are non-Malaŵian Citizens, certified copies of an adoption order issued by a court and the relevant immigration permit of the adopting parents authorizing their stay in Malaŵi shall accompany the application;

(*e*) in the case of non-Malaŵian citizens, certified copies of the relevant permanent residence permit, business residence permit or temporary employment permit shall accompany the application:

Provided that dependents of the holder of a business resident permit, permanent residence permit or temporary employment permits shall use the said permits in their application but shall provide certified proof of their dependency to the said holder of those permits such as marriage certificate or birth certificate or adoption order and copies of passports;

(*f*) in the case of a citizen of Malaŵi who are naturalized citizens or citizens by registration in accordance with the Malaŵi Citizenship Act, certified copies of their passports and a Malaŵi Citizenship Registration Certificate shall accompany the application: Cap. 15:01

Provided that dependents of such citizen shall use the said passport and certificate in their application but shall provide proof of dependency to the said holder such as marriage certificate or birth certificate or adoption order and certified copies of passports, if any; and

(*g*) where the dependent referred to in regulation 5 (*f*) is a holder of a foreign passport, he shall be treated as a non-Malaŵian citizen and shall comply with regulation 5 (*e*).

Photographs

6. Every person who has attained the age of sixteen years shall present himself to the district registrar or any authorized person, to have his photograph taken when—

(*a*) he applies for registration into the national register in terms of the Act; or

(*b*) his identity card is required to be replaced in terms of the Act.

Fingerprints

7. Every person who has attained the age of sixteen years shall, when he applies for registration in the national register, have his fingerprints taken.

Investigations by the Director

8. The Director may—

(*a*) request any person furnishing any particulars pursuant to the Act or these Regulations, to furnish documentary evidence or other proof of the correctness of the particulars as is within the power of that person to furnish such documentary or other proof of the correctness of such particulars; and

(*b*) investigate or cause to be investigated, any matter in respect of which particulars are required to be recorded in the national register.

Proof of registration

9.—(1) The district registrar or an authorized person, may request any person reasonably presumed to have attained the age of sixteen years to prove his registration under the Act within one month, to that officer.

(2) If it comes to the attention of the district registrar or authorized person, that a person referred to in regulation 9 (1) who has attained the age of sixteen years has failed to apply for registration in the national register in terms of the Act, that officer shall take such steps as may be necessary under this Act to ensure that such person applies for registration into the national register.

Late application for registration in the national register

Schedule

10.—(1) An applicant who applies for registration in the national register after the expiry of the prescribed period shall, in addition to applying in Form NR1 or NR2 in the Schedule hereto, for citizens of Malaŵi, and non-Malaŵian citizens respectively, submit an affidavit in Form NR3 in the Schedule hereto, giving reasons why he did not apply for registration in the national register within the prescribed period.

Schedule

(2) In case of a non-Malaŵian citizen, the application under subregulation (1) shall be accompanied by application fee prescribed in the Schedule hereto.

(3) If the district registrar or the authorized person is satisfied with the reasons given, he may allow the registration to be made without payment of a penalty fee for late registration.

Schedule

(4) If the district registrar or the authorized person is not satisfied with the reasons given for the late application, he shall require the applicant to pay the penalty fees for late registration prescribed in Schedule hereto.

Assignment of identification number on an identity card

11.—(1) The Director shall, upon issuing an identity card, assign to the person to whom such card is issued, an identification number consisting of such numbers or figures or letters as the Director shall determine.

(2) The identification numbers for the identity cards issued to a citizen of Malaŵi shall have numbers different from those of non-Malaŵian citizens.

(3) In addition to the distinctive numbers as in subregulation (2), the background colour for the identity card for citizens of Malaŵi shall be different from that of non-Malaŵian citizens.

Issuance of identity cards

Schedule

12. The Director shall, upon receipt of an application for registration in the national register in the prescribed form and manner, register an applicant and issue an identity card in Form NR4 in the Schedule hereto, for citizens of Malaŵi or Form NR5 in the Schedule hereto, for non-Malaŵian citizens.

Particulars and size of an identity card

13.—(1) An identity card shall contain the following particulars in relation to the person to whom it is issued—

(*a*) identification number;

(*b*) full name and for married women, only the maiden name shall be registered;

(*c*) sex;

(*d*) date of birth;

(*e*) nationality;

(*f*) a photograph of the applicant; and

(*g*) such other particulars as the Minister may by notice published in the *Gazette*, authorize to be included in an identity card but subject to such conditions, exceptions or exemptions as may be prescribed in the notice.

(2) The size of an identity card shall be 55mm by 90mm.

Correction, cancellation and replacement of an identity card

14.—(1) If an identity card—

(*a*) does not reflect correctly the particulars of the person to whom it was issued;

(*b*) contains a photograph which is no longer a recognizable image of that person; or

(*c*) has expired,

the person concerned shall, within six weeks, hand over the identity card to the district registrar, and apply for a replacement of the identity card in Form NR1, in the case of citizens of Malaŵi, and Form NR2 in the case of non-Malaŵian citizens, accompanied by an affidavit in Form NR6 in the Schedule hereto.

Schedule

(2) If the identity card referred to in subregulation (1) is not handed over in accordance with this regulation, the Director may order the person concerned to restore it to him or cause it to be confiscated.

(3) If, pursuant to this regulation, the Director obtains possession of an identity card, he shall destroy the identity card and replace it with a new identity card upon payment of the fee prescribed in the Schedule hereto.

Schedule

(4) If the name of the person by which he was registered has changed and that person wants the particulars on the identity card to be changed or corrected, if it is a material change as per section 20 of the Act, such change of name shall not be registered until there is proof that the change of name has been authorized by the Minister under the Change of Name (Restriction) Act, or that such change is exempt under the said Act and the applicant has paid the fee prescribed in the Schedule hereto.

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Schedule

(5) When it comes to the attention of the Director that an identity card has been issued to a person whose name is not required, in terms of the Act to be included in the national register, the Director shall direct that person to return the identity card to him for cancellation.

Loss and replacement of an identity card

15.—(1) A person whose identity card has been lost, defaced or destroyed shall report the loss of the identity card to the district registrar.

(2) Upon receipt of notice of the loss of an identity card the district registrar shall in writing, inform the Director, the Malaŵi Police Service, the Malaŵi Electoral Commission, the Immigration Department, and other officials as the Minister shall specify by notice published in the *Gazette*.

(3) The district registrar shall issue the person with temporary identification documents in the case of the loss of an identity card.

(4) The person shall apply to the district registrar for replacement of the identity card in Form NR1 or NR2 in the Schedule hereto as

Schedule

the case may be, which shall be accompanied by an affidavit in Form NR6, in the Schedule hereto, showing how the identity card was lost defaced or destroyed, and proof that he was the owner of the lost identity card, and in the case of a non-Malaŵian citizen, the application shall be accompanied by a prescribed fee in the Schedule hereto. *Schedule*

(5) If the district registrar is satisfied that the identity card was lost, defaced or destroyed due to the negligence or fault of the owner, he shall order him to pay the penalty fee prescribed in the Schedule hereto. *Schedule*

(6) The district registrar, after satisfaction that the applicant was indeed the holder of the lost, defaced or destroyed identity card shall recommend to the Director for issuance of a new identity card.

Surrender or seizure of an identity card

16.—(1) Any person who has in his possession an identity card, without any lawful excuse, of a deceased person shall, if such identity card came into his possession—

(*a*) before such person's death, within three months after such death has come to his knowledge; or

(*b*) after such person's death, within three months after the identity card came into his possession, hand over such identity card for cancellation to the district registrar or authorized person or the Director.

(2) If a holder of an identity card has changed citizenship from Malaŵi to another country for any reason whatsoever, he shall immediately surrender the identity card to the district registrar, authorized person or the Director, for cancellation and if he does not surrender the identity card, the district registrar, authorized person or Director, as the case may be, shall seize the identity card from him and any such holder of the identity card shall then apply for a new identity card for non-Malaŵian citizens.

(3) An identity card handed over pursuant to subregulations (1) or (2), shall, upon receipt thereof, be destroyed by the Director.

(4) When it comes to the attention of the Director, district registrar or authorized person, that any person is in possession of a document being or purporting to be a cancelled identity card of a person who has died, the Director shall, without delay, cause the identity card to be seized, and thereafter cancel and destroy that identity card.

Secrecy

17.—(1) A person shall not disclose any information recorded in the national register, on an identity card or proof of registration which he acquired by virtue of his functions under this Act and pursuant to any law, except for the purposes of this Act, any judicial proceedings or the performance of his functions in terms of any other law.

(2) A person to whom any such information has, to his knowledge, been disclosed in contravention of the provisions of this regulation, shall disclose such information to the Director.

(3) Notwithstanding the provisions of subregulation (1), the Director may—

(*a*) upon written application, furnish any information in relation to a person whose name is included in the national register to any ministry, local authority, statutory institution or body established by or under any law, for any purposes of that ministry local authority, institution or body; or

(*b*) where the registered person consents in writing to his particulars being disclosed to any other specified body or organization or person.

Fingerprints to be proof of ownership of identity card

18.—(1) If, in any legal proceedings, a question arises with regard to an identity of a person whose identity card is purported to have been issued under the Act, the fingerprints on the card shall be used as proof of ownership of the identity card.

(2) In such proceedings under subsection (1), evidence confirming that the fingerprints on the identity card are those of the holder of that card shall be tendered by an authorized person with regard to taking of fingerprints or identification thereof, under the Act and these regulations, and the Fingerprints Act.

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National register

19. The national register referred shall be in Form NR7.

PART III

Registration of Birth and Adopted Children

Reporting of birth
Schedule

20.—(1) Every application for registration of birth under the Act shall be in Form NR8 in the Schedule hereto, (hereinafter referred to as a "birth report").

(2) Every birth report shall be made by the parents, guardian social welfare officer or foster parents to the district registrar or an authorized person, and contain prescribed particulars.

(3) In case of non-Malaŵian citizen, the birth report shall be accompanied by application fees prescribed in the Schedule hereto. *Schedule*

Particulars accompanying birth report

21.—(1) Every birth report shall be submitted within six weeks of the birth of a child.

(2) Any application submitted after six weeks from date of birth of a child shall be treated as late application and shall, where no valid reason for the delay in application is given, be accompanied by a fee for late application as prescribed in the Schedule hereto. *Schedule*

Signing of a birth report

22.—(1) A birth report shall be signed and verified as follows—

(*a*) where a child was born in wedlock, both the father and mother shall sign the birth report form:

Provided that any one of the parents may sign the form where the other is not available;

(*b*) where the child was born out of wedlock, the form may be signed by the mother only:

Provided that where the father does not deny paternity, both mother and father shall sign;

(*c*) in the case of a child found to have been exposed the birth report shall be signed by the social welfare officer of the district in which the child was found to be abandoned subject to providing proof of the particulars required herein; and

(*d*) a relative or guardian of the child in (*a*) or (*b*) herein, may sign the form subject to providing verified proof of the particulars required herein.

(2) A social welfare officer who gives a notice of birth in terms of subsection (1), will provide a name and surname to an abandoned child if the name and surname of the child is not known, for purposes of registration.

Verification of particulars of birth

23.—(1) The particulars in regulations 21 and 22 shall be verified as follows—

(*a*) in the case of a birth occurring outside a hospital, or late registration, the village headman and a senior member of the village where the parents hail from, or a cleric of the religious institution in which the parents or one of them is a member;

(*b*) in the case of an exposed child, the social welfare officer of the district in which the child was found exposed and a letter

from such social welfare officer supporting the application shall accompany the birth report;

(*c*) in the case of an adopted child, a certified copy of an adoption order issued by a court, shall accompany the birth report;

(*d*) in the case of an adopted child whose adopting parents are non-Malaŵian citizens, certified copies of an adoption order issued by a court, and the relevant immigration permit of the adopting parents authorizing their stay in Malaŵi, shall accompany the birth report;

(*e*) in the case of non-Malaŵian citizens, certified copies of the relevant Permanent Residence Permit, or Business Residence Permit or Temporary Employment Permit shall accompany the application; and

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(*f*) in the case of citizens of Malaŵi who are naturalized citizens or citizens by registration in accordance with the Malaŵi Citizenship Act, certified copies of their passports and Malaŵi Citizenship Registration Certificate shall accompany the application.

Schedule

(2) Where birth occurs in a hospital or health facility, the health personnel responsible shall assist in filling a birth report in Form NR8 in the Schedule hereto.

Birth reports to be forwarded to the Director

24. A district registrar, shall, after registration of a birth, forward a birth report to the Director.

Registration of births on board ships and aircrafts

25. Births on board ships or aircrafts within the territorial waters or airspace of Malaŵi shall be registered with the district registrar of the district of the next port of call within thirty days after arrival of the ship or aircraft.

Birth certificate *Schedule*

26.—(1) A certificate of birth shall be in Form NR9 in the Schedule hereto.

(2) Where the birth certificate is issued for an adopted child, the Director shall enter the name and surname indicated in an adoption order in the Adopted Children Register.

Monthly returns of birth

27.—(1) Every district registrar shall forward to the Director, a monthly return of births occurring within his district.

(2) A monthly return shall be made in such manner as the Director may require.

Birth of more than one child

28.—(1) Where a woman gives birth to more than one live child in one delivery, the information of each child shall be recorded in a separate birth report.

(2) Separate birth certificates shall be issued for each child.

Adopted children register

29. The Director shall keep an Adopted Children Register, in which shall be made such entries as may be directed to be made therein, by an adoption order issued by a court.

Notice of birth of child born out of wedlock

30.—(1) Where notice of birth is given in terms of regulation 20, the person who acknowledges that he is the father of a child whose birth is to be registered, shall enter his particulars as set out in Form NR8 in the Schedule hereto.

Schedule

(2) A person's name shall not be entered in the birth register as the father of the child except either at the joint request of the father and mother, or upon production of a court order confirming paternity of the person.

(3) The social welfare officer who gives a notice of birth in terms of regulations 20 and 22 (*c*), shall allocate a name and surname to a child who was exposed if a name and a surname has not already been given to the child.

Alteration of name of a child

Schedule

31.—(1) Where the name by which a child was registered has been altered, the parent or guardian of such child shall, within two years of the birth, on payment of the fee specified in the Schedule hereto, and upon providing such evidence as the district registrar may require, register the new name that has been given to the child and surrender the child's birth certificate.

(2) Where a child is registered with the maiden name of the mother, the name of the father may be added on payment of the fee specified in the Schedule hereto and upon submitting the required proof of paternity and surrender of the child's birth certificate.

Schedule

(3) The Director shall issue a new birth certificate after receipt of a surrendered birth certificate pursuant to subregulations (1) and (2).

Form of birth certificate

32. Upon being satisfied with the particulars of a birth report and evidence accompanying it, the Director shall issue a birth certificate to the applicant in Form NR9 in the Schedule hereto.

Schedule

PART IV

Registration of Deaths

Death registration *Schedule*

33.—(1) Every application for registration of death shall be in Form NR10, in the Schedule hereto (hereinafter referred to as a "death report").

(2) Every application for registration of death shall be made by—

(*a*) nearest relatives of a deceased person who were present at the time of his death or present during his last illness; or

(*b*) an authorized person.

(3) The application for registration of a death shall be submitted within six weeks of the occurrence of a death and signed by the person reporting the death:

Provided that where the application is made by a non-Malaŵian citizen, it shall be accompanied by an application fee prescribed in the Schedule hereto.

Schedule

(4) An application submitted after six weeks from date of an occurrence of a death, without a valid reason, shall be treated as late application and shall be accompanied by a fee for late application specified in the Schedule hereto.

Schedule

Particulars accompanying death report

34. Every death report shall be accompanied by prescribed particulars.

Verification of death particulars

35.—(1) Every report of a death shall be accompanied by a burial report in Form NR11 in the Schedule hereto.

(2) In the case where death occurred in a hospital or health facility, a Hospital Death Report in Form NR12 in the Schedule hereto, shall be issued by a medical personnel of the said hospital or health facility as the case may be.

Schedule

(3) The person reporting the death to the district registrar shall attach Form NR11 and Form NR12, to Form NR10.

(4) In the case where the death occurred as a result of a road accident, violent physical act or any other unnatural cause, the report shall be accompanied by a Police Report.

Return of identity card of a deceased person

36. Every person reporting the death of a person shall, together with death report, surrender the identity card of the deceased person, to the district registrar.

37. A Hospital death report shall be in Form NR12 in the Schedule hereto. Hospital Death Report *Schedule*

38. After registration of a death, the district registrar effecting the registration shall forward the death report to the Director. Death report to be forwarded to Director

39. Upon receipt of the death report pursuant to regulation 37, the Director shall issue a death certificate which shall be in Form NR 13 in the Schedule hereto. Death certificate *Schedule*

40.—(1) Every district registrar shall forward to the Director, monthly returns of deaths occurring within his District. Monthly returns of deaths

(2) Monthly returns shall be made in such manner as the Director may require.

PART V

Registration of Marriages

41.—(1) All marriages celebrated in Malaŵi shall be registered pursuant to the Act. Registration of marriages

(2) Every application for registration of marriage shall be made to the district registrar in Form NR14 in the Schedule hereto (hereinafter referred to as a "report of marriage") and be made within three months of the marriage taking place, and in the case of an application by a non-Malaŵian citizen, the application shall be accompanied by an application fee prescribed in the Schedule hereto. *Schedule* *Schedule*

(3) Every application for registration of marriage shall—

(*a*) be made jointly by a husband and wife;

(*b*) contain the prescribed particulars;

(*c*) be signed by both husband and wife; and

(*d*) be witnessed by the couples' respective marriage advocates.

(4) An application made three months after the date of celebration of a marriage without a valid reason for the delay in application, shall be treated as late application and shall be accompanied by a penalty fee for late application specified in the Schedule hereto. *Schedule*

Particulars accompanying report of marriage
Schedule

42. Every report of marriage shall be in Form NR 14 in the Schedule hereto.

Verification of particulars and supporting documents

43.—(1) The particulars in regulations 41 and 42 shall be verified in accordance with this regulation before a marriage is registered.

(2) In the case of a customary marriage which was not celebrated at a religious institution, the prescribed particulars shall be verified by the village headmen of the villages where the couple hail from, and their respective marriage advocates.

(3) Where a marriage was celebrated at a religious institution, a certified copy of the marriage certificate issued and signed by the cleric of that institution shall accompany the application.

(4) Where a marriage was officiated by the Registrar of marriages or authorized official, a certified copy of the marriage certificate signed by Registrar of marriages or authorized official, shall accompany the application.

Marriage report to be forwarded to the Director

44. After registration of a marriage, the district registrar effecting registration shall forward the marriage report to the Director in such manner as the Director may require.

Certificate of registration of marriage
Schedule

45. Upon being satisfied with the contents of a marriage report, and after verifying particulars therein, the Director shall issue a certificate of registration of marriage which shall be in Form NR15 in the Schedule hereto.

Monthly returns of marriage registration

46.—(1) Every district registrar shall forward to the Director, monthly returns of marriages occurring within his district.

(2) Monthly returns shall be made in such manner as the Director may require.

Cancellation of marriage registration

47.—(1) The Director shall cancel a certificate of registration of marriage where—

(*a*) a couple divorces; or

(*b*) one of the spouses of the registered marriage dies.

(2) Where a couple that registered their marriage divorces, cancellation shall be effected on production of a certified copy of a court judgment.

(3) For purposes of subregulation (2), documentary evidence of a divorce signed by marriage advocates who witnessed the registration and the respective village headmen of the spouses shall be submitted to the district registrar on application for cancellation of the certificate of marriage registration.

(4) In the case of death of one of the spouses, the cancellation shall be effected on production of a death certificate by the surviving spouse.

(5) A certificate of registration shall be surrendered to the district registrar who shall forward it to the Director for cancellation.

PART VI

Registration Abroad

Registration abroad

Schedule

48.—(1) A citizen of Malaŵi resident abroad, shall apply to the district registrar or authorized person abroad for registration in the national register in the Form NR1 in the Schedule hereto.

Verification of particulars and supporting documents

49.—(1) The application made pursuant to regulation 48 shall be accompanied by prescribed particulars.

(2) The particulars of the application made pursuant to regulation 48 shall be verified by the district registrar and have the following supporting documents—

(*a*) two passport sized photographs of the applicant, certified by the district registrar or authorized person abroad by signing and stamping at the back of the photographs;

(*b*) a certified copy of a document with all ten fingerprints of the applicant taken and certified by an authorized security official in the country of residence of the applicant; and

(*c*) a certified copy of the passport of the applicant certified by a commissioner for oaths, notary public or the district registrar of the area of residence of the applicant.

Registration of births, deaths and marriages abroad

50.—(1) The district registrar or authorized person outside Malaŵi shall maintain registers of births, deaths and marriages in which shall be recorded births, deaths or marriages within his area of jurisdiction.

(2) The birth of any child may be registered in a register maintained under subregulation (1) if that child's father or his mother is a citizen of Malaŵi.

(3) A death or marriage may be registered if the deceased person or in the case of marriage, one of the spouses is a citizen of Malaŵi.

(4) An application for registration shall be accompanied by—

(*a*) in the case of birth—

(i) a certified copy of the birth report or certificate;

(ii) certified copies of the parents' Malaŵi passports, and where applicable; and

(iii) marriage certificates certified by a Notary Public or district registrar in the country of residence of the applicant;

(*b*) in the case of death—

(i) a certified copy of the death report or certificate, or police report in respect of a road accident or death by violent physical act;

(ii) a copy of the passport of the deceased certified by a commissioner for oaths, Notary Public or district registrar of the country of residence of the deceased; and

(iii) a burial certificate or authorization, where this is mandatory, in the country of burial of the deceased; and

(*c*) in the case of marriage—

(i) a certified copy of a marriage certificate confirming the celebration of the marriage; and

(ii) certified copies of the couples' passports certified by a commissioner for oaths, notary public or district registrar of the country of residence of the couple.

PART VII

Roles and Responsibilities of the Traditional Leaders, District Registrars, the Director

Functions of the Director

51.—(1) The Director shall perform the following functions—

(*a*) ensure the efficient and effective implementation of the Act and these Regulations;

(*b*) ensure that all district registrars or authorized persons and traditional leaders are provided with adequate materials including registers, forms, equipment and facilities for them to carry out their respective functions;

(*c*) carry out monitoring and evaluation of the National Registration System and take corrective measures where necessary;

(*d*) make proposals to the Minister for changes in administrative and legal framework of the National Registration System;

(*e*) receive, analyze and vet applications from district registrars or authorized persons;

(*f*) issue identity cards or certificates of births, deaths or registration of marriages, and send these to the district registrars and authorized persons for onward delivery to the applicants;

(*g*) establish, maintain and update the national register;

(*h*) keep and update the Adopted Children Register;

(*i*) receive from, and ensure all district registrars submit monthly returns of registration of births, adults, deaths, and marriages;

(*j*) subject to payment of the prescribed fee, issue to any person certified copies of certificates or extracts of registered particulars from the national register or allow inspection thereof but only in accordance with the provisions of the Act and these regulations; and

(*k*) ensure that capacity building activities are undertaken at regular intervals for all registration officials and stakeholders.

Functions of district registrars or authorized persons

52.—(1) District registrars or authorized persons shall perform the following functions—

(*a*) mobilize traditional authorities, group village headmen and all people within their jurisdiction and all relevant stakeholders to actively participate in the National Registration System;

(*b*) carry out civic education and training programs on the National Registration System;

(*c*) distribute all necessary materials for national registration including registers, forms and equipment for the smooth implementation of the National Registration System to traditional authorities, group village headmen, village headmen, hospitals and health facilities and registered religious institutions within their jurisdiction;

(*d*) receive applications for registration in the national register for births, adults, deaths and marriages;

(*e*) ensure the adequacy and propriety of the information and particulars in applications, and acknowledge receipt of the applications;

(*f*) take photographs and fingerprints of applicants where these are required, before processing applications;

(*g*) forward applications to the Director and once the Director issues the relevant identification documents, facilitate delivery of the same to the applicants;

(*h*) receive from the traditional authorities, monthly reports of all registrations required by the Act and these Regulations;

(*i*) determine whether an application has been submitted outside the prescribed period and if so, determine whether reasons given in an accompanying affidavit are convincing enough to waive payment of a penalty fee by an applicant and if not, to collect the penalty fee from the applicant before processing the application;

(*j*) maintain and update the district register;

(*k*) submit monthly reports to the Director;

(*l*) receive applications for replacement or correction of identity cards;

(*m*) receive identification documents and forward them to the Director for destruction;

(*n*) seize all identification documents in possession of people who are not the owners of the said documents and forward them to the Director for destruction;

(*o*) receive from hospitals all birth and death reports, and forward them to the Director for processing of relevant certificates; and

(*p*) receive certificates of divorce and certificates of registration of marriage and forward them to the Director for cancellation.

Functions of Traditional Authorities

53. Traditional authorities shall perform the following functions—

(*a*) civic educate and mobilize all village headmen and group village headmen together with their subjects within their

jurisdiction to ensure they register all births, adults, deaths and marriages occurring in their jurisdiction in accordance with the Act; and

(*b*) monitor the effective and efficient implementation by the village headmen and group village headmen of their functions as provided in regulation 55.

Functions of village headmen and group village headmen

54.—(1) Village headmen and group village headmen shall perform the following functions—

(*a*) civic educate and mobilize their subjects to ensure registration of all births, adults, deaths and marriages occurring in their villages in accordance with the Act;

(*b*) assist their subjects to complete application forms prescribed herein;

(*c*) keep and issue registration forms on behalf of the district registrar to facilitate registration;

(*d*) facilitate the submission of application forms completed by their subjects to the district registrar of their District, through the office of their traditional authority and, obtain and keep confirmation of delivery of the forms;

(*e*) record the identity number of each registered person after issuance of the identity cards, in the village register;

(*f*) record registration number of births, marriage, and deaths in the village register;

(*g*) witness the execution of application forms and verify the particulars on the forms for their subjects;

(*h*) send monthly reports of births, adults, deaths and marriages to the district registrar through the office of their respective traditional authorities;

(*i*) ensure that on death of a subject, the family members of the deceased are issued with a death report and deliver completed forms to the district registrar through the office of their respective traditional authorities, to facilitate registration of death;

(*j*) complete and issue burial report to close relative of a deceased person or to a person who acts as informant for purposes of registration of a death;

(*k*) ensure that when sending a death report to the district registrar, the identity card or birth certificate of the deceased person is surrendered, through their respective traditional authorities, to the district registrar;

(*l*) record the death of a deceased person in the village register;

(*m*) obtain acknowledgment of delivery of a death report and an identity card of a deceased person from the office of the traditional authority;

(*n*) record the prescribed particulars of all births in the village register and issue a birth report to the father and mother of a new born baby and shall—

(i) witness the execution thereof;

(ii) certify the particulars thereon;

(iii) deliver the completed forms to their respective Traditional Authorities; and

(iv) record in the village register, a confirmation of receipt of the forms;

(*o*) record the prescribed particulars of all marriages in the village register and to issue registration of marriage forms to the spouses and shall—

(i) witness the completion of the relevant application forms; and

(ii) verify the particulars thereon.

(2) A group village headman shall perform the following functions—

(*a*) civic educate and mobilize village headmen and their subjects in his area to participate in national registration; and

(*b*) supervise all village headmen and ensure that the village headmen are performing their functions under this Act and the Regulations effectively and efficiently.

PART VIII

Miscellaneous Provisions

Acknowledgment of applications

55. All district registrars and authorized persons shall, on receipt of an application for registration of a person in the national register, or registration of a birth, death or marriage, issue an acknowledgment of receipt of the application pending the processing of the application.

Inspection of registers

56. Subject to the restrictions in section 44 of the Act, and these Regulations, all inspections of the national register or district register or applications for extracts of certified copies of entries shall take place on working days between the hours of 8:00 am and 12:00 noon and between 1:30 p.m. and 4:00 pm at the Director's offices or district registrars' offices.

Place and times for delivery of applications

57. Applications for registration under the Act shall be delivered at the district registrars' offices within the times specified in regulation 56.

Monthly reports by hospitals and health facilities

58.—(1) The Officer-in-Charge of a hospital, health facility, clinic or other place where medical services are provided and where birth or death occurs, shall submit monthly reports to the district registrar of the District in which the hospital, health facility or clinic is situated.

(2) The monthly reports referred to in subregulation (1) shall be in Form NR 17 in the Schedule hereto in respect of births, and Form NR18 in the Schedule hereto, in respect of deaths. *Schedule*

Transitional arrangements

59.—(1) All citizens of Malaŵi shall, within three years of coming into force of these Regulations, comply with requirements for registration in the national register, and register all births, marriages and deaths as the case may be.

(2) A person who, without good cause, submits an application for registration after the prescribed time frame, in subregulation (1), shall be liable to pay a late application fee prescribed in the Schedule hereto. *Schedule*

(3) The Minister, may extend the period for registration by notice published in the *Gazette*.

regs. 3, 10, 12, 14, 15, 20, 21, 23, 26, 30, 31, 32, 33, 35, 37, 39, 41, 42, 45 and 48

SCHEDULE

Application Fees for Non-Malaŵian Citizens

	K	*t*
Application for registration in the National Register . .	50,000	00
Application for registration of birth	30,000	00
Application for registration of death	30,000	00
Application for registration of marriage	30,000	00

Penalty Fees for all Applicants

1. For late application for Identity Card	2,000	00
2. For replacement of Identity Card	2,500	00
3. For change of name on Identity Card	5,000	00
4. For lost, defaced or destroyed Identity Card . .	2,500	00
5. For late birth report	2,000	00
6. For inspection of register	5,000	00
7. For verified extracts of particulars	5,000	00
8. For alteration of name of child within 2 years . .	1,000	00
9. For late reporting of death	2,000	00
10. For late registration of marriage	2,000	00

NATIONAL REGISTRATION ACT

APPLICATION FOR NATIONAL REGISTRATION FOR CITIZENS OF MALAŴI

FORM NR 1

WARNING – In terms of section 43 of the Act, any person, who furnishes false information or forges any document for the purpose of obtaining registration shall be guilty of committing an offence.

1. Surname: ..... First Name: ..... Other names: .....
2. Previous Registered Names (if any): .....
3. Home Address:
   Village: ..... T/A: ..... District: .....
4. Physical Address
   Village: ..... T/A: ..... District: .....
5. Nationality: .....
6. Date of birth: ..... 7. Sex: .....
8. Place of birth: ..... 9. Marital Status: .....
10. Full Names of Father: ..... 11. ID No. .....
12. Full Names of Mother: ..... 13. ID No. .....
14. Height (in cms): ..... 15. Colour of eyes: .....
16. Birth Certificate No. (if available): .....
17. Passport No. (if available): .....
18. Driver's Licence No. (if available): .....
19. Voter ID No. (if available): .....
20. In the case of an exposed child who is now 16 years or above
    - I attach hereto a letter from the Social Welfare Officer of the District in which I was found exposed.
21. In the case of an adopted child when one or both of the adopting parents are Malaŵian Citizens
    - I attach hereto a certified copy of my Adoption Order
22. In the case of naturalized citizen of Malaŵi or citizen by registration
    - I attach hereto a certified copy of my passport and certificate of Malaŵi citizenship Registration

23. In the case of a dependant of a naturalized citizen of Malaŵi or citizen by registration

- I attach hereto certified copies of evidence of dependency to the naturalized citizen of Malaŵi or citizen by registration e.g marriage certificate, birth certificate or Adoption Order and confirmation letter from the naturalized citizen plus passport and certificate of Malaŵi Citizenship Registration
(*delete where not applicable*)

WOMEN SHOULD USE ONLY MAIDEN SURNAME

I certify that the above information is correct and I am aware that I could face criminal prosecution if this information is incorrect in material respect.

Signed/Thumb impression: .....

Name: ..... Date: .....

I, Village Headman ..... hereby confirm that the information given above is correct. (*delete for naturalized citizen*)

Signed: .....

Date: ....
Village Headman Witness Name
(Senior Member of the Village)

(*Recommendation by District Registrar*)

I, ... District Registrar for ..... District hereby state that I have checked this Application and certify that the same has been duly completed and the particulars attached hereto are in accordance with the National Registration Act and the Regulations to the best of my knowledge and information

Signed: ..... Date: .....
District Registrar Official stamp

ACKNOWLEDGMENT OF RECEIPT

I, ... District Registrar for ..... District acknowledge receipt of the application for registration in the National Register by .....

Signed: ..... Date: .....
District Registrar Official stamp

APPLICATION FOR NATIONAL REGISTRATION FOR NON-MALAŴIAN CITIZENS

FORM NR 2

WARNING – In terms of section 43 of the Act, any person, who furnishes false information or forges any document for the purpose of obtaining registration shall be guilty of committing an offence.

1. Surname: ..... First Name: ..... Other names: .....
2. Malaŵi Physical Residential Address
   Village: ..... T/A: ..... District: .....
3. Home Country Physical Address: .....
4. Date of birth: ..... 5. Sex: .....
6. Country of birth: ..... 7. Marital Status: .....
8. Full Names of Father: .....
9. Full Names of Mother: .....
10. Height (in cms): ..... 11. Colour of eyes: .....
12. Malaŵi Birth Certificate No. (if any): .....
13. Passport No. .....
14. Driver's Licence No. (if available): .....
15. Voter ID No. (if available): .....
16. Nationality: .....
17. I certify that I am legally resident in Malaŵi as I was granted Business Residence Permit/Permanent Resident Permit/Temporary Employment Permit (delete where not applicable) which expires on .....
18. I attach hereto a certified copy of my passport and Business Residence Permit/Permanent Resident Permit/Temporary Employment Permit (delete where not applicable)
19. In the case of a dependent of a holder of Business Residence Permit/ Permanent Resident Permit/Temporary Employment Permit—

    (*a*) I certify that I am wife/husband/child of ..... who holds Business Residence Permit/Permanent Resident Permit/Temporary Employment Permit issued by the Malaŵian Department of Immigration and which expires on .....

    (*b*) I attach hereto certified copies of my husband/wife's/father's passport and Business Residence Permit/Permanent Resident Permit/Temporary Employment Permit and my passport/my Adoption Order/my birth certificate.

I certify that the above information is correct and I am aware that I could face criminal prosecution if this information is incorrect in material respect.

Signed/Thumb impression: .....

Name: ..... Date: .....

(*Recommendation by District Registrar*)

I, ... District Registrar for ..... hereby state that I have checked this Application and certify that the same has been duly completed and the particulars attached hereto are in accordance with the National Registration Act and the Regulations to the best of my knowledge and information.

Signed: ..... Date: .....
District Registrar Official stamp

ACKNOWLEDGMENT OF RECEIPT

I, ... District Registrar for ..... District acknowledge receipt of the application for registration in the National Register by .....

Signed: ..... Date: .....
District Registrar Official stamp

NATIONAL REGISTRATION ACT

FORM OF STATUTORY DECLARATION IN SUPPORT OF LATE APPLICATIONS AND CHANGE OF NAME OF CHILD

FORM NR 3

WARNING – In terms of section 43 of the Act, any person, who furnishes false information or forges any document for the purpose of obtaining registration shall be guilty of committing an offence.

I, ... resident of ..... declare and make oath as follows—

1. That I wish to apply for registration in the National Register and issuance of an identity card to me, the time for such registration having expired.
2. That I wish to apply for registration of birth/death of ..... the time for such registration having expired.
3. That we wish to apply for registration of marriage of ..... and ..... the time for such registration having expired*

*To be signed by both wife and husband

4. That we wish to apply for change of name of child ..... registered vide birth entry number .....**

   (*Delete whichever is not applicable*)

5. That the reasons for not applying within the prescribed period are (not ignorance of the law)—

   (*a*) .....

   (*b*) .....

   (*c*) .....

And I make this Oath conscientiously believing the same to be true and by virtue of the provisions of the Oaths Affirmation and Declarations Act, 1967.

Signed/Thumb Impression .....

Date: .....

**To be signed by both parents

Before me

.....

COMMISSIONER FOR OATHS

NATIONAL REGISTRATION ACT

FORM NR 4

NATIONAL IDENTITY CARD FOR MALAŴIAN CITIZEN

FRONT

REPUBLIC OF MALAŴI
NATIONAL IDENTITY CARD

Malaŵi flag

Photo

SURNAME: .....

GIVEN NAMES: .....

DATE OF BIRTH: .....

NATIONAL ID NUMBER: .....

Back ground and other security features

BACK

DATE OF ISSUE: .....

HOME ADDRESS

..... Village/Town T/A District

PHYSICAL RESIDENTIAL ADDRESS

.....

.....

Bar code

PROPERTY OF MALAŴI GOVERNMENT
(If found, deliver to the nearest District Commissioner or Police Station)

NATIONAL REGISTRATION ACT

FORM NR 5

IDENTITY CARD FOR NON-MALAŴIAN CITIZEN

FRONT

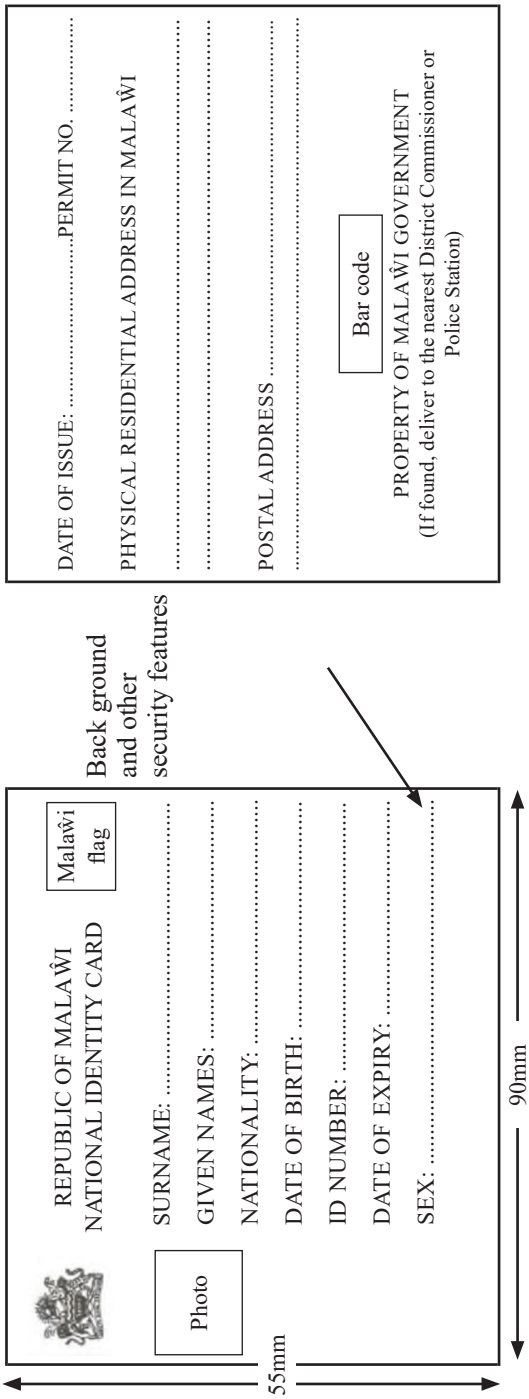

BACK

DATE OF ISSUE: .....PERMIT NO. .....

PHYSICAL RESIDENTIAL ADDRESS IN MALAŴI

.....

.....

POSTAL ADDRESS .....

.....

Bar code

PROPERTY OF MALAŴI GOVERNMENT
(If found, deliver to the nearest District Commissioner or Police Station)

NATIONAL REGISTRATION ACT

FORM OF STATUTORY DECLARATION IN SUPPORT OF APPLICATION FOR REPLACEMENT OF IDENTITY DOCUMENT

FORM NR 6

WARNING – In terms of section 43 of the Act, any person, who furnishes false information or forges any document for the purpose of obtaining registration shall be guilty of committing an offence.

I, ... resident of ..... declare and make oath as follows—

1. That my Identity Card No. ..... Issued on .....
2. That my said Identity Card was lost/destroyed/defaced/does not reflect correctly my particulars/contain a photograph which is no longer a recognizable image of me and I need a replacement Identity card.
3. That the circumstances in paragraph (2) above arose as a result of the following—

   (*a*) .....

   (*b*) .....

   (*c*) .....
4. That the circumstances in paragraph (2) and (3) herein were not due to any fault or negligence on my part.

And I make this Oath conscientiously believing the same to be true and by virtue of the provisions of the Oaths Affirmation and Declaration Act, 1967.

Signed : .....

Date : .....

Before me

.....

COMMISSIONER FOR OATHS

NATIONAL REGISTRATION ACT
NATIONAL REGISTER

FORM NR 7

PART I—MALAŴIAN CITIZENS

FULL NAMES	NATIONAL IDENTITY NUMBER			HOME ADDRESS					PHYSICAL RESIDENTIAL ADDRESS				SEX M/F	PLACE OF BIRTH	DATE OF BIRTH	
				VILLAGE/TOWN			TA	DISTRICT	VILLAGE/ TOWN		TA	DISTRICT				
MARITAL STATUS	FULL NAMES AND NATIONALITY OF FATHER AND ID			FULL NAMES AND NATIONALITY OF MOTHER AND ID			HEIGHT	COLOUR OF EYES	PASSPORT NO., BIRTH CERTIFICATE NO., DRIVER'S LICENCE NO., & VOTER ID NO.				SPECIAL OBSERV ATIONS	PHOTO-GRAPH	FINGER-PRINT	DATE OF DEATH
	NAME	NATIONALITY	ID	NAME	NATIONALITY	ID			PASSPORT NO.	B/CERTIFICATE NO.	D/LICENCE NO.	VOTER ID				

PART II—NON-MALAŴIAN CITIZENS

FULL NAMES	NATIONAL IDENTITY NUMBER	COUNTRY OF PERMANENT RESIDENCE	PHYSICAL RESIDENTIAL ADDRESS IN MALAŴI			SEX M/F	PLACE OF BIRTH	DATE OF BIRTH	MARITAL STATUS	
			VILLAGE/TOWN	TA	DISTRICT					
FULL NAMES OF FATHER	FULL NAMES OF MOTHER	HEIGHT	COLOUR OF EYES			PASSPORT NO., BIRTH CERTIFICATE NO., DRIVER'S LICENCE NO. & VOTER ID NO.	SPECIAL OBSERVATIONS	PHOTO-GRAPH	FINGER-PRINT	DATE OF DEATH
						PASSPORT NO. / B/CERTIFICATE NO. / D/LICENCE NO / VOTER ID NO.				

NATIONAL REGISTRATION ACT

BIRTH REPORT

FORM NR 8

WARNING – In terms of section 43 of the Act, any person, who furnishes false information or forges any document for the purpose of obtaining registration of birth of a person shall be guilty of committing an offence.

PART 1	1	Surname	First Name	Other names		
DETAILS OF CHILD	2	Date of Birth DD MM YY			3	Sex Male Female
	4	Place of birth (Tick the appropriate option and give details): (*a*) Hospital Name: ..... (*b*) Home Address: ..... District TA Village (*c*) Others Give details:				
	5	Birth weight (in Kilogrames)				
	6	Type of Birth: (*a*) Single (*b*) Twin (*c*) Triplet (*d*) Other (specify): ..... (Tick the appropriate option and for Twins write 1st of 2, 2nd of 2, 1st of 3 etc.)				
	7	Are the parents of the Child Married to each other? YES NO If yes, date of marriage DD ..... MM ..... YYYY				
PART 2	1	Maiden name	First name	Other name	2	ID No.
DETAILS OF MOTHER	3	Date of Birth DD	MM	YYYY	4	Nationality
	5	Physical residential address	District	TA	Village	
	6	Home address	District	TA	Village	
	7	Gestational age at birth	In weeks			
	8	Number of prenatal visits	9	Month of pregnancy prenatal care begun		
	10	Made of delivery: (*a*) SVD (*b*) Vacuum Extraction (*c*) Breech (*d*) Forceps (*e*) Caesarean Section				

	11	Number of children born alive to the mother, including this child			
	12	Number of children born alive to the mother, and still living			
	13	Level of education: (*a*) none (*b*) Primary (*c*) Secondary (*d*) higher education (Enter completed level of education)			
PART 3 DETAILS OF FATHER (if known)	1	Surname First name Other name	2	ID No.	
	3	Date of birth DD MM YYYY	4	Nationality	
	5	Physical residential address: District TA Village			
	6	Home address: District TA Village			
PART 4 AC-KNOWEDG-MENT OF PATERNITY: A CHILD BORN OUT OF WEDLOCK		Court Order attached Yes NO OR I hereby declare that I am the natural father of the above child Initials & Surname Signature I D No. Date: ..... Mother's permission to the (Acknowledgment) of Paternity Initials & Surname Signature I D No. Date:			
PART 5 INFOR-MANTS DETAILS	1	Surname First name Other name	2	ID No.	
	3	Relationship to child			
	4	Address District TA Village Postal Address Telephone No.			
	5	*I certify that the above information is correct and I am aware that I could face criminal prosecution if this information is incorrect material respect.* Date Signature/Thumb mark of Informant			

FOR OFFICIAL USE ONLY

RECOMMENDATION BY THE DISTRICT REGISTRAR

I hereby state that I have checked this application and certify that the same has been duly completed in accordance with the National Registration Act and the Regulations thereof to the best of my knowledge and information.

Signature with Stamp

Date of Registration:

Day ..... Month ..... 20.....

Birth Register entry number .....

VERIFICATION BY VILLAGE HEADMAN AND A SENIOR MEMBER OF THE VILLAGE

We, Village Headman ..... and ..... Senior Member, of the Village ..... T/A ....., ... District hereby certify that the information given above in relation to the Informant and the Child in question is correct to the best of my knowledge and belief.

Signed: ..... or Thumb print: ..... Date: .....
Village Headman

Signed: ..... or Thumb print: ..... Date: .....
Senior Member of the Village

VERIFICATION BY A RELIGIOUS INSTITUTION

I ..... Cleric of ..... (Institution) hereby certify that the information given above in relation to the Informant and the child in question is correct to the best of my knowledge and belief.

Signed: ..... Date: .....

Name: ..... Title .....

Specify Religious Body: .....

FOR OFFICIAL USE ONLY

RECOMMENDATION BY THE DISTRICT REGISTRAR

I hereby state that I have checked this application and certify that the same has been duly completed in accordance with the National Registration Act and the Regulations thereof to the best of my knowledge and information.

Signature with Stamp

Date of Registration: Day ..... Month ..... 20.....

Birth Register entry number .....

ACKNOWLEDGMENT OF RECEIPT

Acknowledge the receipt of Birth Report of:

...., on: .....
Surname First name Other names Date

as reported by: .....

Signature ..... Date: .....

Official stamp

MALAŴI LOGO
REPUBLIC OF MALAŴI

NATIONAL REGISTRATION ACT LINE BAR CODE
SERIAL NO.

CERTIFICATE OF BIRTH

reg. 26

FORM NR 9

1.	Birth Entry Number	01/2341002/2013
2.	Registration Number	00132176523
3.	Name	Aisha Bello
4.	Date of Birth	09th April, 2013
5.	Sex	Female
6.	Place of Birth	Bwaila Hospital, Lilongwe
7.	Name of Mother	Mary Banda
8.	Name of Father	Juma Bello
9.	Date of Registration	24th April, 2013

I hereby certify the above to be a true and correct extract from the Birth Register kept at NRB.

Dated this 15th day of May, 2013

Emboss seal .....
Signature of the designated person of NRB

NATIONAL REGISTRATION ACT
DEATH REPORT

FORM NR 10

WARNING – In terms of section 43 of the Act, any person, who furnishes false information or forges any document for the purpose of obtaining registration of birth of a person shall be guilty of committing an offence.

PART 1	1	Surname	First Name		Other names	
	2	ID No.	3	Nationality	4	Sex ☐ ☐ Male Female
PERSONAL DETAILS OF DECEASED	5	Date of Birth DD MM YY	6	Birth Certificate No.	7	Date of death
	8	Place of death (Tick the appropriate box and give details) ■ Hospital/Institution Name ..... ■ Home (Place of residence) Address ..... District TA Village/Town ■ Others				
	9	Cause of death (For Hospital death only) IMMEDIATE CAUSE (*a*) ..... (Final disease or condition resulting to death) Due to (or as a consequence of) Sequentially list conditions, if any, leading to (*b*) ..... immediate cause. Enter UNDERLYING CAUSE last. Due to (or as a consequence of) (*c*) ..... Due to (or as a consequence of)				
	10	Home address of the deceased				
	11	In case this is a female death, did the death occur while pregnant, at the time of delivery or within 6 weeks after the end of pregnancy? a) Yes b) No				
PART 2 DETAILS OF	1	Mother's name ..... Surname First name Other names			2	ID No. .....
	3	Father's Name			4	ID No. .....
PART 3	1	Name			2	ID No. .....
	3	Relationship to the deceased				
INFOR-MANTS DETAILS	4	Address District TA Village/Town Postal address Telephone Number				
	5	*I certify that the above information is correct and I am aware that I could face criminal prosecution if this information is incorrect material respect.* Date Signature/Thumb mark of Informant				

VERIFICATION BY VILLAGE HEADMAN AND A SENIOR MEMBER OF THE VILLAGE

We, Village Headman ..... and ..... Senior Member, of the Village ..... T/A ....., ... District hereby certify that the information given above in relation to the Informant and the Deceased in question is correct to the best of my knowledge and belief.

Signed: ..... or Thumb print: ..... Date: .....
Village Headman

Signed: ..... or Thumb print: ..... Date: .....
Senior Member of the Village

VERIFICATION BY A RELIGIOUS INSTITUTION

I ..... Cleric of ..... (Institution) hereby certify that the information given above in relation to the death of the deceased in question is correct to the best of my knowledge and belief.

Signed: ..... Date: .....

Name: ..... Title ..... Specify Religious Body: .....

FOR OFFICIAL USE ONLY

RECOMMENDATION BY THE DISTRICT REGISTRAR

I hereby state that I have checked this application and certify that the same has been duly completed in accordance with the National Registration Act and the Regulations thereof to the best of my knowledge and information.

Signature with Stamp

Date of Registration: Day ..... Month ..... 20.....

Birth Register entry number .....

ACKNOWLEDGMENT OF RECEIPT

Acknowledge the receipt of Birth Report of:

.....	.....	.....	on .....
Surname	First name	Other names	Date

as reported by .....

Signature ..... Date ..... Official stamp

NATIONAL IDENTITY CARD FOR MALAŴIAN CITIZEN

NATIONAL REGISTRATION ACT

BURIAL REPORT

FORM NR 11

Section 1

Name of deceased ..... with ID No. ..... date of birth ..... Sex ..... has died on ..... and the Burial Report has been issued vide entry No. ..... Report given to ..... with ID No. ..... residence of ..... Tel. No. .....

Dated .....

Warning – In terms of section 43 of the Act, any person, who furnishes false information or forges any document for the purpose of obtaining registration of Death of a person shall be guilty of committing an offence

Section 2

It is hereby certified that ..... with ID No. ..... date of birth ..... sex ..... has died on ..... at Home ..... name of village ..... TA ..... district, whose death details have been entered in the village Death Register vide entry No. .....

Date ..... Signature VHM .....

Section 3

I, the undersigned Headman of Village ..... TA ..... District ....., hereby certify that the body of ..... name of preson ..... with ID No. ..... date of birth ..... sex, ... who died on ..... at Home/Hospital ..... Name of village/Hospital, ... TA ..... district was interred at ..... name of the cemetry or exact place of burial ..... on ...../..... 20..... vide Death Register entry No. .....

Date .....

Signature VHM .....

NATIONAL REGISTRATION ACT

HOSPITAL DEATH REPORT

FORM NR 12

WARNING – In terms of section 43 of the Act, any person, who furnishes false information or forges any document for the purpose of obtaining registration of Death of a person shall be guilty of committing an offence

1. Name of Deceased: .....
   Surname First name Other name
2. ID No.: .....
3. Date of Birth of Deceased DD ..... MM ..... YYYY .....
4. Age (in years): .....
5. Sex (Male/female): .....
6. Details of Death: .....
   (*a*) Date ..... DD ..... MM ..... YYYY .....
   (*b*) Place .....
7. Cause of Death

IMMEDIATE CAUSE (Final disease or condition resulting to death)	(*a*)	..... Due to (or as a consequence of)
Sequentially list conditions, if any, leading to immediate cause. Enter	(*b*)	..... Due to (or as a consequence of)
UNDERLYING CAUSE, last. (disease or injury that initiated events resulting to death)	(*c*)	..... Due to (or as a consequence of)

8. Name and title of attending Doctor/Medical Official
9. Detail of Medical Officer/Hospital Official Registering the Death

   Name and Title .....

   Signature .....

   Hospital date and Stamp

MALAŴI LOGO

LINE BAR CODE
SERIAL NO.

REPUBLIC OF MALAŴI

NATIONAL REGISTRATION ACT

CERTIFICATE OF DEATH

FORM NR 13 reg. 39

1.	Death Entry Number	02/234023/2012
2.	Registration Number	0121623
3.	Name of Deceased	Tom Banda
4.	Date of Birth	29th March, 1963
5.	Sex	Male
6.	Date of Death	21st June, 2012
7.	Place of Death	K C Hospital, Lilongwe
7.	Name of Mother	Patricia Banda
8.	Name of Father	Gift Banda
9.	Date of Registration	24th July, 2013

I hereby certify the above to be a true and correct extract from the Death Register kept at NRB.

Dated this 29th day of July, 2013

Emboss seal Big NRB .....

Watermark Signature of the designated person of NRB

Hologram Quotation

It is an offence to falsify, to satisfy or alter a certificate and using or possessing a false certificate

NATIONAL REGISTRATION ACT

REPORT OF MARRIAGE

FORM NR 14

WARNING – In terms of section 43 of the Act, any person, who furnishes false information or forges any document for the purpose of obtaining registration of marriage shall be guilty of committing an offence.

PART A

(PARTICULARS OF PARTIES TO THE MARRIAGE)

1. Full Names of Husband: .....
   Surname First Name Other Names
2. Full Names of Wife: .....
   Surname First Name Other Names
3. Home or Physical address of Husband: .....
   Village Traditional Authority District
4. Home or Physical address of Wife: .....
   Village Traditional Authority District
5. Identity Card No. .....
   Husband Wife
6. Date of Birth .....
   Husband Wife
7. Nationality .....
   Husband Wife

8. Passport No. (If available) .....
Husband Wife

9. Citizenship No. for naturalized Citizen or citizen by registration
.....
Husband Wife

10. Type of marriage .....
Marriage Act Customary Christian
.....
Asiatic Other specify

11. In the case of marriage other than under Marriage Act
- We declare that our marriage is not within the prohibited degrees of consanguinity under the Laws of Malaŵi

12. In the case of Marriage other than under Customary Law
- We attach hereto certified copy of our marriage certificate

We certify that the above information is correct and we are aware that we could face criminal prosecution if this information is incorrect in material respect.

Signed .....
Husband Wife Date

Witnesses and verified by .....

Name..... Name .....
Marriage Advocate for husband Marriage Advocate for wife

PART B

(*Verification Certification by the Village Headman*)

We, Village Headmen ..... and ..... hereby certify that the information or particulars given above is correct in respect of the Applicants.

Signed/Thumb impression: ..... Signed/Thumb impression: .....

Date: ..... Date: .....

Village Headman of Husband ..... And Village Headman of Wife .....

PART C

(*Verification by Representative of Religious Institution*)

I ..... being ..... of registered religious Institution named ..... certify that the information above is correct.

Signed .....

Name .....

Official stamp .....

Title .....

Date: .....

PART D

(*Recommendation by District Registrar*)

I, ... District Registrar for ..... District, hereby state that I have checked this Application and certify that the same has been duly completed and the particulars attached hereto are in accordance with the National Registration Act and the Regulations to the best of my knowledge and information.

Signed: ..... Date: .....

District Registrar Official stamp

PART E

(*Acknowledgment of Receipt*)

I ..... District Registrar for ..... District acknowledge receipt of the application for registration of marriage of ..... and .....

Signed: ..... Date: .....

District Registrar Official stamp

MALAŴI LOGO

LINE BAR CODE
SERIAL NO

REPUBLIC OF MALAŴI

NATIONAL REGISTRATION ACT

CERTIFICATE OF REGISTRATION OF MARRIAGE

FORM NR 15 reg. 46

		Husband	Wife
1.	Name	John Mataya	Lilian Manda
2.	Date of Birth	09th April, 1973	09th April, 1985
3.	Nationality	Malaŵian	Malaŵian
4.	Date of Marriage	20th June, 2013	
5.	Place of Marriage	CCAP Church, Lilongwe	
6.	Marriage Entry Number	01/2341002/2013	
7.	Marriage Registration Number	001217623	

I hereby certify the above to be a true and correct extract from the Marriage Register kept at NRB.

Dated this 15th day of July, 2013

Emboss seal .....

Signature of the designated person of NRB

NATIONAL REGISTRATION ACT

VILLAGE REGISTER-NATIONAL REGISTRATION (KALEMBERA WA DZIKO)

FORM NR 16

Village: ..... Traditional Authority: ..... District: .....

Village Code : ..... Traditional Authority Code ..... District Code : .....

Mayina Onse (Full Names)	Mwamuna / Mkazi (Sex)	Tsiku Lobadwa	Malo obadwira (Place of Birth) (Date of Birth)	Mayina a makolo ndi nambala ya ziphaso za dziko (Names of Parents and Number of National identity Cards)	Malo okhala (Principal place of Residence)	Nambala ya satifiketi ya kubadwa /Chiphaso chadziko (Birth Certificate / ID Number
				Bambo (Father) : Mai (Mother) :		
				Bambo (Father) : Mai (Mother) :		
				Bambo (Father) : Mai (Mother) :		
				Bambo (Father) : Mai (Mother) :		

				Bambo (Father) : : Mai (Mother) : :		
				Bambo (Father) : : Mai (Mother) : :		
				Bambo (Father) : : Mai (Mother) : :		
				Bambo (Father) : : Mai (Mother) : :		
				Bambo (Father) : : Mai (Mother) : :		

NATIONAL REGISTRATION ACT

HOSPITAL MONTHLY REPORT OF BIRTHS

FORM NR 17

DISTRICT: .....

FOR THE MONTH OF: ....., 20.....

Name of Health Facility	Number of Births			Name and Title of Reporting Officer
	Males	Females	Total	

Signed: .....

Date: .....

Name: .....

Hospital Stamp: .....

Position: .....

NATIONAL REGISTRATION ACT

HOSPITAL MONTHLY REPORT OF BIRTHS

FORM NR 18

DISTRICT: .....

FOR THE MONTH OF: ....., 20.....

Name of Health Facility	Number of Births			Name and Title of Reporting Officer
	Males	Females	Total	

Signed: .....

Date: .....

Name: .....

Hospital Stamp: .....

Position: .....

CHANGE OF NAME (RESTRICTION)

CHAPTER 24:02

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CHAPTER 24:02

CHANGE OF NAME (RESTRICTION)

ARRANGEMENT OF SECTIONS

SECTION

1. Short title
2. Interpretation
3. Appointed day
4. No person to assume, etc. another name without approval of Minister
5. Application for approval of Minister to change of name and advertising such application
6. Precluded persons
7. Applicant may also seek approval to change of name for his wife and minor children
8. Powers of Minister with regard to applications
9. Minister's power to exempt
10. General exceptions
11. Validity of approved changes of name
12. Regulation making power

An Act to provide for certain restrictions on the assumption and use by persons of names other than those by which they are ordinarily known on certain stated days and for matters related or incidental to such purpose 30 of 1971

[1st February, 1972]

1. This Act may be cited as the Change of Name (Restriction) Act. Short title

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

"application" means an application to the Minister under section 5 for approval to assume or use a name other than that by which the person to whom the application relates was ordinarily known on the operative date;

"appointed day" has the meaning ascribed to that term by section 3;

"broadcasting service" bears the meaning ascribed to that term by section 2 of the Communications Act; Cap. 68:01

"child" includes remoter issue and an adopted child and his issue and remoter issue and cognate words shall be construed accordingly;

"cinematograph picture" bears the meaning ascribed to that term by section 2 of the Censorship and Control of Entertainment Act; Cap. 21:01

"operative date" means—

(*a*) in relation to any person or any member of any class of persons designated by the Minister by notice published in

the *Gazette* to be a person or a class, as the case may be, for the purposes of this section, such date as shall be specified in such notice in respect of such person or class;

(*b*) in relation to any person not within the scope of paragraph (*a*) living in Malaŵi on the appointed day, the appointed day;

(*c*) in relation to any person not within the scope of paragraph (*a*) born in Malaŵi after the appointed day, the date of the ninth anniversary of the birth of such person;

(*d*) in relation to any person not within the scope of paragraph (*a*), (*b*) or (*c*) who enters Malaŵi after the appointed day, the date of the first entry of such person;

"precluded person" means any person who, by virtue of section 6, is ineligible to apply for approval of change of name under this Act;

"stage play" bears the meaning ascribed to that term by section 2 of the Censorship and Control of Entertainment Act.

Cap. 21:01

Appointed day

3.—(1) Within one month after the date of the commencement of this Act, the Minister shall, by notice published in the *Gazette*, declare a date specified in such notice to be the appointed day for the purposes of this Act.

*(2) The date to be declared by the Minister under subsection (1) may be the said date of the commencement of this Act or it may be a date occurring before or after such date of commencement.

No person to assume, etc., another name without approval of Minister

4.—(1) Subject to the other provisions of this Act, no person shall, after the commencement of this Act, for any purpose assume or use or purport to assume or use, or continue the assumption or use of, any name other than that by which he was ordinarily known on the operative date unless he has first obtained in accordance with this Act the approval of the Minister under section 8 to such assumption or use and a notice giving particulars of such approval under that section has been published in the *Gazette*.

(2) Any person who fails to comply with any provision of subsection (1) shall commit an offence and be liable to imprisonment for six months or a fine of one hundred Kwacha.

Application for approval of Minister to change of name and advertising such application

5.—(1) Any person, not being a precluded person, who, after the date of the commencement of this Act, desires to change the name by which he was ordinarily known on the operative date, may make application in accordance with the provisions of this section to the Minister for approval of such change of name.

---

*Note:

The appointed day was declared to be the 1st of February, 1972: See G/N. 15/72

(2) Not less than two weeks before making his application to the Minister under this section, the applicant shall cause a notice, in the prescribed form, of his intention to apply for approval of such intended change of name to be published in one issue of a newspaper in general circulation in the area in Malaŵi in which he resides. Such notice shall, among other things, call upon any person wishing to object to the application to forward to the Minister, within two weeks of the date of such publication as aforesaid, particulars in writing of such objection and the reasons therefor.

(3) Every application pursuant to this section shall be made to the Minister in the prescribed form and shall be forwarded to the Minister not less than two weeks and not more than two months after the date of the publication of the relevant notice of intention referred to in subsection (2).

(4) Every such application shall be accompanied with—

(*a*) a statutory declaration in the prescribed form made and subscribed by the applicant supporting his application;

(*b*) a copy of the newspaper in which the notice of intention was published in accordance with subsection (2);

(*c*) the prescribed fee; and

(*d*) any further evidence prescribed to be furnished in support of the application.

Precluded persons

6. No person may apply for approval of a change of name under this Act if he—

(*a*) is less than twenty-one years of age;

(*b*) is an undischarged bankrupt; or

(*c*) has within the three years immediately preceding his application been convicted of an offence under any written law and sentenced therefor to imprisonment without the option of a fine for six months or more.

Applicant may also seek approval to change of name for his wife and minor children

7. When making any application, the applicant may seek approval for his wife or minor children to assume, use and be known by a name or names, as the case may be, other than those assumed or used by her or them, and by which she, or they, was or were ordinarily known on the respective operative dates applicable to them. Where any such applicant includes in the statutory declaration made and submitted under section 5 in support of his application particulars relating to, and undertakings on behalf of, any such wife or child, it shall not be necessary for any such wife or child to make, or file, any separate statutory declaration in support of the application in so far as it relates to her or him.

Powers of Minister with regard to applications

8.—(1) After considering such objections to an application, if any, forwarded to him as the result of the publication of a notice under section 5 (2) and after considering such other matters as to him appear relevant to such application, the Minister, in his discretion, shall decide whether it should be granted or refused and shall cause his decision to be notified to the applicant:

Provided that the Minister shall not approve any such application in so far as it relates to wife or to any child who is more than sixteen years of age unless the consent of such wife or child is first furnished to the Minister.

(2) When the Minister decides to grant any such application either in whole or in part he shall cause a separate notice in the prescribed form to be published in the *Gazette* in respect of each person to whom the application relates, and to whose change of name approval is granted, giving particulars of such approval.

(3) Any decision made by the Minister under subsection (2) shall be final and shall not be subject to appeal to, or question by, any court of law, and the Minister shall not be required to assign any reason for such decision.

Minister's power to exempt

9. The Minister may, by licence under his hand in the prescribed form, declare any person to be exempt from the provisions of this Act, and may, by writing under his hand, at any time, revoke any such licence.

General exceptions

10.—(1) Nothing in this Act shall apply to the assumption or use—

(*a*) by any person of the traditional name of the family of his father or his mother;

(*b*) by any married woman of her husband's name or part thereof;

(*c*) by any woman of her maiden name upon the dissolution of her marriage or upon widowhood;

Cap. 22:03

(*d*) by any person appointed to any office under the Chiefs Act of the name attaching to that office;

(*e*) by any person of any name solely for the purpose of portraying a character in any cinematograph picture, stage play or broadcasting service;

(*f*) by any person of any pen-name for any lawful purpose;

(*g*) of any name by any person in possession of a currently valid licence under the hand of the Minister issued pursuant to section 9; or

(*h*) of any name by any body corporate;

(*i*) by any person of any name assumed pursuant to any written law relating to the adoption of children;

(*j*) by any married woman of her maiden name at any time during the subsistence of her marriage.

(2) Nothing in this Act shall affect the assumption or use as a business name by any individual or firm carrying on business in Malaŵi of any name which is for the time being registered as the business name of such individual or firm under the Business Names Registration Act. In this subsection, the terms "business name", "firm" and "individual" bear the meanings respectively ascribed thereto in section 2 of the Business Names Registration Act. Cap. 46:02

11. A change of name effected after approval has been given under this Act to such change shall be valid for all purposes, any rule of law or any custom to the contrary notwithstanding. Validity of approved changes of name

12. The Minister may make regulations for the better carrying out of this Act and, without prejudice to the generality of the foregoing, such regulations may provide for— Regulation making power

(*a*) forms to be used for any application, notice or other document required for the purposes of this Act;

(*b*) the fees to be paid on any application, or in respect of any notice published, under this Act;

(*c*) the conditions to be satisfied, or evidence furnished, before the Minister gives consideration to applications generally, or to applications from any specified category of persons;

(*d*) any matter to be, or which may be, prescribed under this Act.

SUBSIDIARY LEGISLATION

CHANGE OF NAME (RESTRICTION) REGULATIONS

G.N. 20/1972

under s. 12

Citation

1. These Regulations may be cited as the Change of Name (Restriction) Regulations.

Form of notice advertising application

2. The form of notice of application to be published in an issue of a newspaper under section 5 of the Act shall be that set out in the First Schedule.

Form of application under section 5

3. The form of application to be made to the Minister under section 5 of the Act shall be that set out in the Second Schedule.

Form of statutory declaration in support of application

4. The form of statutory declaration required under section 5 of the Act to accompany and support an application under that section shall be that set out in the Third Schedule.

Form of *Gazette* notice giving particulars of Minister's approval

5. The form of the notice to be published in the *Gazette* giving particulars of the approval of the Minister of an application made to him under section 5 of the Act shall be that set out in the Fourth Schedule.

Applications by women

6. Any woman who applies under section 5 of the Act to the Minister shall describe herself in the relevant application as a spinster, married woman, unmarried woman or widow as the case may be. In the case of a woman whose marriage has been dissolved by a court order or decree, she shall describe herself as an unmarried woman and give particulars of the date on which, and the place at which, the court order was made and the court which made it. Where the applicant is a married woman she shall furnish with her application a written consent by her husband to her proposed change of name:

Provided that the Minister may dispense with such consent if he is satisfied that there is a good reason why such consent may not be obtained.

Fees

7. The fees set out in the second column of the Fifth Schedule shall be payable for the matters and things set out in the first column of such Schedule.

FIRST SCHEDULE
CHANGE OF NAME (RESTRICTION) ACT
(Cap. 24:02)

Change of Name (Restriction) Regulations
(Regulation 2)

NOTICE OF INTENDED APPLICATION FOR APPROVAL TO CHANGE OF NAME

I, presently ordinarily known by the name *.....
give notice that after the expiration of two weeks from the date of the

publication of this notice it is my intention to apply to the Minister under section 5 of the above mentioned Act for approval to change my name to*..... †and also for the following changes in the names of members of my family—

Relationship	*Present Name*	*Intended Name*
Wife	.....	.....
First born son	.....	.....
Adopted son	.....	.....

ANY PERSON WISHING TO OBJECT TO SUCH APPLICATION must within the said two weeks forward particulars in writing of such objection and the reasons for it to—

The Honourable the Minister responsible for applications under the Change of Name (Restriction) Act, Office of the President and Cabinet, Zomba.

Signed at ..... this ..... day of ..... 19 .....

*All names set out in this Notice must be printed in block capital letters.

†Delete if inapplicable or modify to enable particulars to be fully given as indicated for all persons included in the application

SECOND SCHEDULE

"A"

CHANGE OF NAME (RESTRICTION) ACT

(CAP. 24:02)

CHANGE OF NAME (RESTRICTION) REGULATIONS

(REGULATION 3)

FORM OF APPLICATION FOR APPROVAL TO CHANGE OF NAME

To: The Honourable the Minister responsible for Applications under the Change of Name (Restriction) Act, Office of the President and Cabinet, Zomba.

1. I, ordinarily known by the name .... on the operative date applicable to me under the Act (*and presently ordinarily known as ..... by virtue of the approval of the Minister responsible given under this Act on ..... and published as *Gazette* Notice No. .....) of ..... Village, Chief ....., ... District, hereby apply for the approval of the Minister responsible to my ceasing to use, and being known by, my said name and to my assuming, using and being known by the new name of ..... from such time as it may become lawful for me so to do.
2. The reasons for my wishing to change my name are as follows— ....
3. In addition to the approval aforesaid I apply for like approval to the following member(s) of my family ceasing to use, or being known by the names by which he/she/they were ordinarily known on the respective operative date(s) applicable to them, namely—

Relationship	*Names*	*Date of Birth*	
Wife	.....	.....	
First born son	.....	.....	
Second born son	.....	.....	
Third born son	.....	.....	
Adopted son	.....	.....	
First born daughter	.....	.....	
Second born daughter	.....	.....	
Third born daughter	.....	.....	
Adopted daughter	.....	.....	
			Relationship
Remoter issue	.....	.....	
	.....	.....	
	.....	.....	.....

and to his/her/their respectively assuming, using and being known by the following new names respectively—

Wife .....
First born son .....
Second born son .....
Third born son .....
Adopted son .....
First born daughter .....
Second born daughter .....
Third born daughter .....
Adopted daughter .....
Remoter issue ..... (Relationship) .....

from such time as it may become lawful for him/her/them so to do. Here insert particulars of any approval previously given by the Minister under the Act to any of the above-mentioned persons to the assumption or use of any name other than his/her/their name(s) at the respective operative date(s) applicable.

.....
.....
.....

4. I (*and the other person(s) to whom this application relates) comply with the conditions which must be satisfied before a person may make application for the aforesaid approval as is evidenced by a statutory declaration in the form set forth in the Third Schedule to the Change of Name (Restriction) Regulations, which said statutory declaration accompanies this application.
5. Notice in the prescribed form of this application was published in the ....., a newspaper circulating in the area in which I (*and my family) reside, at page ..... of the issue of the ..... day of ....., 19 ..... a copy of which issue accompanies this application.

Dated at this day of , 19

.....
Applicant

Witness: Name .....
Occupation .....
Address .....
.....

*Delete if inapplicable

FOR OFFICE USE

FEE OF K PAID: DATE G.R. Number

This is the application marked with the letter "A" referred to in the annexed declaration of ..... and produced and shown to him at the time of his making his said declaration before me this day of , 19

.....

A Commissioner for Oaths

THIRD SCHEDULE

CHANGE OF NAME (RESTRICTION) ACT

(CAP. 24:02)

CHANGE OF NAME (RESTRICTION) REGULATIONS

(REGULATION 4)

STATUTORY DECLARATION IN SUPPORT OF APPLICATION FOR APPROVAL TO CHANGE OF NAME

I, presently ordinarily known by the name

.....

do solemnly and sincerely declare as follows:

1. That I am the applicant referred to in the application attached hereto and marked with the letter "A" (hereinafter in this declaration referred to as my application).
2. That the particulars set out in my application are true and correct in each and every respect.
3. That if my application is granted, I, and any other person(s) referred to in my application in respect of whom the approval sought is granted, will as from the time it becomes lawful so to do absolutely and entirely renounce and relinquish the name(s) which I/we have prior thereto assumed, used and been known by and in lieu thereof respectively assume, use and be known by the following new names, that is to say, in respect of
   myself .....
   my wife .....
   my first born son .....
   my second born son .....
   my third born son .....
   my adopted son .....
   my first born daughter .....
   my second born daughter .....
   my third born daughter .....
   my adopted daughter .....
   remoter issue:
   my ....
4. That in pursuance of such change(s) of name as may be approved if my application is granted I shall at all times after it becomes lawful for me so to do in all records, deeds and instruments in writing and in all actions and proceedings and in all dealings and transactions and on all occasions whatsoever use, sign and subscribe the new name referred to in paragraph 3 of this my declaration in lieu of the name

renounced in such paragraph hereof to the intent that thereafter I may be known and distinguished, not by my present name, but by my new name aforesaid.

5. That I hereby authorize and require all persons at all times to designate and describe me and my wife, children and remoter issue by such new names as may be approved in respect of each respectively if my application is granted.
6. That I and all the other persons to whom the application relates are citizens of ..... and comply with the conditions of section 6 of the above-mentioned Act.

And I make this solemn declaration conscientiously believing the same to be true and by virtue of the Oaths, Affirmations and Declarations Act.

Declared at .....

this day of 19

Before me: .....

A Commissioner for Oaths

FOURTH SCHEDULE

CHANGE OF NAME (RESTRICTION) ACT

(Cap. 24:02)

CHANGE OF NAME (RESTRICTION) REGULATIONS

(Regulation 5)

NOTICE OF APPROVAL OF CHANGE OF NAME

Notice is hereby given that approval has been granted to the person who has hitherto assumed, used and been known by the name of ..... hereafter assuming, using and being known by the name of ..... and all persons are authorized and required at all times to designate, describe and address such person by the said last-mentioned name only.

Dated this ..... day of ..... 19 .....

.....

Minister of

(file reference .....)

FIFTH SCHEDULE

CHANGE OF NAME (RESTRICTION) ACT

(Cap. 24:02)

CHANGE OF NAME (RESTRICTION) REGULATIONS

(Regulation 7)

Fees

First Column	*Second Column* K	t
On forwarding an application to the Minister for approval under section 5 of the Act	10	00

First Column	*Second Column* K t
plus, in the case of an application seeking approval to the change of name of the applicant's wife, children or remoter issue, for each person other than the applicant . .	1 00
For each notice of approval published in the *Gazette* (each such fee to be paid in anticipation at the time of application and to be refunded if approval refused)	3 00

MARRIAGE, DIVORCE AND FAMILY RELATIONS

CHAPTER 25:01

Containing Pages 1–50

CHAPTER 25:01

MARRIAGE, DIVORCE AND FAMILY RELATIONS

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CHAPTER 25:01

MARRIAGE, DIVORCE AND FAMILY RELATIONS

An Act to make provision for marriage, divorce and family relations between spouses and between unmarried couples, their welfare and maintenance, and that of their children; and for connected matters 4 of 2015 G.N. 20/2015

[3rd July, 2015]

PART I

PRELIMINARY

1. This Act may be cited as the Marriage, Divorce and Family Relations Act. Short title

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

"adultery" means voluntary sexual intercourse by a married person with a person other than his or her spouse;

"certified copy", in relation to an order of a court, means a copy of the order certified by a proper officer of the court to be a true copy of the order;

"child" means a person who is below the age of eighteen years;

"civil marriage" means a marriage celebrated by a registrar in accordance with Part IV and Part VII, respectively;

"cleric" means a recognized cleric or minister of a religion, religious body, denomination or sect, belonging to a place of worship licensed as a place for the celebration of marriage under section 11;

"cohabitation" means the fact of a man and a woman, not married to each other in accordance with this Act, living together as, or as if they were, husband and wife;

"consortium" means the fact of a husband and wife living together, and includes a right to consummation, companionship, care, maintenance and rights and obligations commensurate with the status of marriage;

"country" includes any protected State and any trust territory administered by the Government of any country;

"court" means the High Court or other court having jurisdiction as specified under this Act and, in relation to any claim within its jurisdiction, includes a traditional or local court;

"customary marriage" means a marriage celebrated in accordance with rites under the customary law of one or both of the parties to the marriage;

"dependant", in relation to another person against whom there is a maintenance order by a court or tribunal of a foreign country, means such person as that other person is, according to the law in force in that foreign country, liable to maintain;

"habitual drunkard" includes a person whose excessive drinking of liquor or taking of habit forming substances prevents or otherwise makes him or her unable to provide reasonable maintenance for a spouse or any child of the marriage dependent on such person;

"irretrievable breakdown of marriage" means a situation where one or both of the spouses prove to the court that they can no longer live together in consortium as husband and wife;

"judicial separation" means the separation of a husband and wife by court decree;

"maintenance order" means an order for the payment in cash or of a specified cash value towards the maintenance of a spouse, a single pregnant woman, a child, a dependant, or a person entitled to maintenance under this Act;

"marriage notice" means the prescribed notice of marriage required under this Act;

"Marriage Register Book" means a book of register issued to every registrar for the registration of marriages under this Act;

"matrimonial property" includes—

(*a*) the matrimonial home or homes;

(*b*) household property in the matrimonial home or homes; and

(*c*) any other property whether movable or immovable acquired during the subsistence of a marriage which by express or implied agreement between the spouses or by their conduct is used, treated or otherwise regarded as matrimonial property;

"non-monetary contribution" means the contribution made by a spouse for the maintenance, welfare or advancement of the family other than by way of money, and includes—

(*a*) domestic work and management of the home;

(*b*) childcare;

(*c*) companionship;

(*d*) the endurance of the marriage; or

(*e*) any other manner or form of contribution as the court may consider appropriate;

"permit" means a certificate issued by the Registrar under section 24 or section 28, as the case may be, after the preliminary formalities of marriage have been completed permitting the parties to celebrate their marriage;

"registrar" means the Registrar of Marriages or other public officer or other person acting under his or her authority as specified under section 4 (3);

"Registrar of Marriages" means the public officer designated as such under section 4;

"religious marriage" means a marriage celebrated by a cleric in accordance with the recognized rites of a religion, religious body, denomination or sect to which one or both parties to the marriage belong;

"sex", in relation to the gender of a person, means the sex of that person at birth.

Application

3. This Act shall apply to marriages entered into on or after the day it comes into operation; but Part IX shall apply to all marriages regardless of the date they were celebrated.

PART II

General

Registrar of Marriages

4.—(1) There shall be the office of the Registrar of Marriages which shall be a public office.

(2) The officer for the time being holding or acting in the office of Registrar General shall be the Registrar of Marriages.

(3) The following offices shall perform the functions of the Registrar of Marriages subject to the general or special direction of the Registrar of Marriages (and are, in this Act, hereinafter referred to as "registrars")—

(*a*) the District Commissioner in respect of the district of his or her jurisdiction;

(*b*) a traditional authority with powers to register a marriage under the Act; and

(*c*) a cleric.

Publication of list of registrars

5. The Minister shall, by order published in the *Gazette*, publish a list of registrars of marriages under this Act.

Registrars to be provided with books of marriage certificates
First Schedule

6.—(1) The Registrar of Marriages shall deliver to the several registrars marriage register books in duplicate and with counterfoil in Form A in the First Schedule.

(2) The several registrars shall have custody of the books of marriage certificates delivered to them.

Registration of marriages

7. Every marriage celebrated in accordance with this Act shall be registered by a registrar.

Marriage Register Book
First Schedule

8.—(1) A registrar shall enter into the Marriage Register Book all particulars of certificates of marriage which have been filed in his or her office, place of worship or work in Form A in the First Schedule.

(2) An entry under subsection (1) shall be—

(*a*) made in its chronological order;

(*b*) signed by a registrar; and

(*c*) indexed in a manner that is best suited for easy reference.

(3) A registrar shall make the Marriage Register Book available for inspection during office hours and shall on application make certified copies from it upon payment of a fee prescribed in the Second Schedule.

Second Schedule

(4) Within ten days after the last day of each month, every registrar shall send to the Registrar of marriages a certified copy of all entries made by him or her in the Marriage Register Book during the preceding month, and the Registrar of marriages shall file the certified copy in his or her office.

Correction of clerical errors in marriage certificates

9.—(1) A registrar may correct a clerical error in any certificate of marriage filed in his or her office upon the production of the certificate delivered by any party to the marriage.

(2) A registrar shall authenticate any correction in a certificate of marriage by his or her signature, official stamp and the date of the correction.

Evidence of marriage

10. The following shall be admissible as evidence of a marriage to which it relates—

(*a*) a certificate of marriage filed in the office of a registrar;

(*b*) a copy of a certificate of marriage, signed and certified as a true copy by a registrar;

(*c*) an entry in a Marriage Register Book; or

(*d*) a signed and certified copy of an entry in a Marriage Register Book.

Minister to license places of worship to celebrate marriages

11.—(1) The Minister may, upon application, license any place of worship to be a place for the celebration of marriages under this Act.

(2) Notwithstanding subsection (1), a place of worship shall not be licensed unless the applicant or the person in charge of the place of worship has legal personality under the Trustees Incorporation Act or any other written law to operate the place of worship.

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(3) The Minister may, at any time, revoke the licence under subsection (1) if he or she satisfied upon reasonable grounds that a place is not fit for the celebration of marriages under this Act.

(4) The Minister shall give notice of the licensing of a place of worship or the revocation of the licence—

(*a*) in the *Gazette*; and

(*b*) to the person in charge of the place of worship.

Marriages recognized under the Act

12.—(1) A marriage recognized under this Act shall be either—

(*a*) a civil marriage;

(*b*) a customary marriage;

(*c*) a religious marriage; or

(*d*) a marriage by repute or permanent cohabitation.

(2) A marriage conducted in accordance with the laws of another country, where one or both of the parties is subject to the laws of that country, shall be recognized in Malaŵi as a valid marriage.

(3) All marriages recognized under this Act shall have the same legal status.

(4) Without prejudice to any procedures prescribed for marriage under this Act, any institution or procedure that traditionally facilitates the celebration of a customary marriage shall continue to be recognized as such under this Act.

Marriage by repute or permanent cohabitation

13. A marriage by repute or permanent cohabitation shall only be recognized under this Act upon a finding of a court of competent jurisdiction where that court considers—

(*a*) the length of the relationship, which, in any event, shall not be less than five years;

(*b*) the fact of cohabitation;

(*c*) the existence of a conjugal relationship;

(*d*) the degree of financial dependence or interdependence and any agreement for financial support between the parties;

(*e*) ownership, use and acquisition of property;

(*f*) the degree of mutual commitment to a shared life;

(*g*) whether the parties mutually have, care for, or support, children;

(*h*) the reputation of the parties in the community as being married and the public display of aspects of their shared relation; and

(*i*) any other factors that the court considers fit.

PART III

Essential Elements of Marriage

14. Subject to section 22 of the Constitution, two persons of the opposite sex who are both not below the age of eighteen years, and are of sound mind, may enter into marriage with each other.

Capacity to enter into a valid marriage

15. A marriage celebrated between—

(*a*) a man and any of the persons mentioned in the First Column of Parts I, II, and III of the Third Schedule; or

(*b*) a woman and any of the persons mentioned in the Second Column of Parts I, II, and III of the Third Schedule,

shall not be valid on the ground of kindred or affinity.

Marriages within prohibited degrees of kindred and affinity
Third Schedule

16. A registrar shall explain to the parties intending to marry the prohibited degrees of kindred or affinity, the prohibition on polygamy and the penalties which may be suffered for offences under this Act, and shall cause the parties to sign a prescribed form of acknowledgement of such explanation in Form K in the First Schedule.

Explanations to be given by a registrar
First Schedule

PART IV

Preliminaries to a Civil Marriage

17. A person entering into a marriage under this Part shall first prove, by way of declaration before a registrar, that he or she is single.

Declaration of marital status prior to marriage

18. A person who contracts a civil marriage shall be married to one spouse only.

Prohibition of polygamy in a civil marriage

19.—(1) A party to an intended marriage shall sign and give to the registrar a notice in Form B in the First Schedule.

Notice in a civil marriage
First Schedule

(2) Where the party to the intended marriage giving the notice desires the marriage to be celebrated in a district other than that in which he or she resides, that party shall so inform the registrar accordingly.

(3) If a marriage is intended to be celebrated in another district, the registrar of the original district shall forward a copy of the notice to the registrar of the other district, and immediately upon receiving the notice, the other registrar shall affix the notice onto the outer door of his or her office or place of worship or work.

Signature of notice by person unable to write or understand the English language

20.—(1) If the person giving notice under section 19 is unable to or understand the English language, it shall be sufficient if he or she places a mark or a cross as appropriate in the presence of a person literate in the English language and that person shall attest the marking or crossing.

First Schedule

(2) An attestation made under subsection (1) shall be in Form C in the First Schedule.

Registrars to supply forms of notice

21. Every registrar shall supply forms of the notice under section 19 without charge to any person applying for them.

Notice to be entered in Marriage Notice Book and published

22. A registrar shall enter the notice under section 19 in the Marriage Notice Book.

Publication of a marriage notice

23. After entering a notice of marriage in the Marriage Notice Book, the registrar shall publish the notice by affixing a copy of it onto the outer door to his or her office or place of worship or work, there to be kept exposed until he or she grants a permit, or until three months have elapsed, whichever is the sooner.

Issue of a registrar's permit in a civil marriage *First Schedule*

24. A registrar who receives the notice under section 19 shall at any time after the expiry of twenty-one days and before the expiry of three months from the date of the notice, issue a permit in Form D in the First Schedule if he or she is satisfied that—

(*a*) the parties have complied with sections 14, 15, 17 and 18;

(*b*) one or both of the parties has or have been resident within the district at least fifteen days preceding the granting of the permit;

(*c*) there is no caveat under section 30 lodged against the marriage or if a caveat has been lodged, it has been removed in accordance with the procedure set out in Part VI;

(*d*) the parties are not within the prohibited degrees of kindred or affinity; or

(*e*) neither of the parties to the intended marriage is married to another person.

Power of Minister to grant special licence to marry

First Schedule

25. The Minister, upon proof being made to him or her by affidavit that there is no lawful impediment to a proposed marriage, may, in his or her discretion, dispense with the giving of notice, and with the issue of the permit of registrar, and may grant a special licence, in Form E in the First Schedule, authorizing the celebration of a marriage between the parties named in the licence by a registrar.

PART V

Preliminaries to Religious and Customary Marriages

Marriages under this Part to accord with customs and rites of religious body, sect, denomination or ethnic groups

26. Subject to sections 14 and 15, the procedures preceding the celebration of a religious or customary marriage shall be governed by the customs or rites which are usual among the ethnic group, religion or sect under which the marriage is celebrated.

Notice of intention to marry *First Schedule*

27.—(1) A person intending to marry under this Part shall, in addition to the customs or rites referred to in section 26, give notice of intention to marry in writing to a registrar in Form B in the First Schedule.

(2) The registrar shall enter the notice in the Marriage Notice Book.

(3) The notice shall be displayed for twenty-one days in a conspicuous place on the premises of the office of the registrar.

Issue of a registrar's permit in a customary or religious marriage *First Schedule*

28.—(1) At the expiry of the twenty-one days referred to in section 27, the registrar shall issue a marriage permit in Form D in the First Schedule.

(2) A marriage permit under subsection (1) shall be issued if—

(*a*) the parties have complied with sections 14 and 15; and

(*b*) there is no caveat under section 30 lodged against the marriage or if a caveat was lodged, it has been removed in accordance with the procedure set out in Part VI.

PART VI

Objections to all Marriages Recognized under the Act

Marriage to take place within three months after date of notice

29.—(1) Except as provided in section 31 (5), a marriage shall take place within three months after the date of the notice.

(2) Failure to comply with subsection (1) shall render the notice and all the proceedings consequent upon it void, and a fresh notice shall be given before the parties can lawfully marry.

Caveat

30.—(1) A person who knows of any just cause why a marriage should not take place may enter a caveat against the issue of a permit, by—

(*a*) writing at any time before its issue the word "Forbidden", opposite to the entry of the notice in the Marriage Notice Book; and

(*b*) appending his or her name and address and the grounds upon which the claim to forbid the issue of the permit is made.

(2) A registrar shall not issue a permit until the caveat is removed as provided in sections 31 and 32.

Caveat to be referred to court

31.—(1) Where a caveat is lodged in accordance with section 30, a registrar shall refer the matter to a court of competent jurisdiction.

(2) The court to which a caveat is referred shall summon and hear the parties to the intended marriage and the person who made the objection to show cause why a permit should not be issued.

(3) The court shall determine the matter by summary procedure.

(4) If the court decides that the permit should be issued, it shall remove the caveat—

(*a*) by cancelling the word "Forbidden" in the Marriage Notice Book;

(*b*) by writing below the cancellation, the words "cancelled by order of the court";

(*c*) by appending the signature of the judicial officer and the court seal to the entry.

(5) The registrar shall proceed to issue a permit and the marriage shall proceed as if the caveat had not been entered, but the time that has elapsed between the entering and the removal of the caveat shall not be computed in the period of three months under section 29.

Compensation and costs for wrongful caveat

32. A court may, upon application, award compensation and costs to an injured party if it appears that a caveat was entered based on insufficient caveat grounds.

PART VII

Celebration of Civil Marriage

Marriage in a registrar's office

33. After the issue of a permit under section 24, or of a licence under section 25, the parties may contract a marriage before a registrar—

(*a*) with open doors, between the hours of 8 o'clock in the forenoon and 6 o'clock in the afternoon, and in the manner prescribed in section 34; and

(*b*) in the presence of two or more witnesses.

34. A registrar, after production to him or her of the permit or licence, shall administer the oath of marriage in Form F in the First Schedule.

Oath to be administered in civil marriages
First Schedule

35. Immediately after the celebration of a civil marriage, the Registrar shall—

Marriage certificate to be signed

(*a*) complete in duplicate a marriage certificate in Form G in the First Schedule;

First Schedule

(*b*) state and enter in the counterfoil, the number of the certificate, the date of the marriage, the names of the parties, and the names of the witnesses; and

(*c*) deliver one copy of the certificate to the parties and file the other in his office.

36. Where a special licence authorizes the celebration of marriage at a place other than the office of a registrar, the registrar shall, upon the production of the licence, deliver to the person producing it a blank certificate of marriage in duplicate and shall comply with section 35.

Marriage under special licence

PART VIII

Celebration of Customary and Religious Marriages

37. A customary or religious marriage shall be celebrated in accordance with the procedures and formalities under Part V.

Application of Part V to marriages under this Part

38. The Minister shall deliver to every Traditional Authority Marriage Register Books in which each Traditional Authority shall record particulars of all customary marriages celebrated in his or her area of authority.

Traditional Authority to register customary marriages

39.—(1) A religious marriage may be celebrated in a place of worship which has been duly licensed by the Minister under section 11 or in any place that the Minister may by special licence direct in accordance with the rites of a religion or religious body, denomination or sect to which one or both of the parties belong.

Marriage in a licensed place of worship

(2) A marriage celebrated under subsection (1) shall be celebrated—

(*a*) with open doors between the hours of 8 o'clock in the forenoon and 6 o'clock in the afternoon; and

(*b*) in the presence of two or more witnesses, who shall include the marriage advocates of the parties to the marriage recognized as such at custom, besides the registrar.

(3) A witness to a marriage shall be a person who is above eighteen years of age and of sound mind.

Oath to be administered in customary and religious marriages

40. A registrar celebrating a customary or religious marriage shall administer an oath, if any, as prescribed either by the religion or custom of one or both of the parties to the marriage.

Registrar not to celebrate marriage where there is impediment nor without permit

41. A registrar shall not celebrate any marriage if he or she knows of any just impediment to such marriage, nor until the parties deliver to him or her a permit under section 28.

Customary or religious marriages under special licence
First Schedule

42. Where a special licence authorizes the celebration of a customary or religious marriage other than at the office, place of worship or work of a registrar, the registrar shall, upon receipt of the licence, proceed to celebrate the marriage and complete the certificate of marriage in Form G in the First Schedule in duplicate after strictly observing all the formalities for customary and religious marriages prescribed under this Act.

Register of customary or religious marriages
First Schedule

43.—(1) A registrar who celebrates a customary or religious marriage under this Act shall keep a register of the celebration in Form H in the First Schedule, and shall make and sign in the Marriage Register Book an entry of every marriage celebrated by him or her.

(2) A registrar shall as soon as possible after the 31st December in each year, send to the Registrar of marriages a copy of the Register of all marriages celebrated during the past year by any person delegated by him or her to celebrate marriages.

Entries to be made in marriage certificate
First Schedule

44. Immediately after the celebration of a customary or religious marriage, a registrar shall complete in duplicate a marriage certificate in Form G in the First Schedule, and also state and enter in the counterfoil the number of the certificate, the date of the marriage, names of the parties, and the names of the witnesses.

Signature to marriage certificate

45. A registrar, the parties to a marriage, and two or more witnesses to the marriage shall sign the certificate of marriage in duplicate.

46. In addition to signing the certificate as required by section 45, a registrar celebrating a customary or religious marriage shall deliver the duplicate copy of the marriage certificate to the Registrar of Marriages.

Duplicate certificate to be sent to the Registrar

47. The Registrar of Marriages shall file the duplicate copy of the marriage certificate in the Marriage Register Book kept in his or her office.

Marriage certificate to be registered

PART IX

Rights and Obligations of Parties to a Marriage

48.—(1) A party to a marriage is entitled to equal rights as the other in their right to consortium.

Right to consortium

(2) A wife is entitled to retain her maiden name or to use the surname of her husband, or both, during the subsistence of the marriage.

(3) A wife is entitled to the continued use of the surname of her husband at the dissolution of the marriage, unless it is proved before a court that she used the name for an improper purpose or a fraudulent motive.

(4) Notwithstanding any other written law to the contrary in force at the commencement of this Act, a spouse has the right to retain his or her nationality or citizenship during the subsistence of the marriage.

(5) A spouse may severally, or jointly with the other, exercise responsibility towards the upbringing, nurturing and maintenance of the children of the marriage.

(6) Both spouses shall have the right to mutual custody of the children of the marriage during the subsistence of the marriage.

(7) Notwithstanding subsection (1), a spouse may deny the other spouse the right to consummation on reasonable grounds which may include—

(*a*) poor health;

(*b*) post-natal recuperation;

(*c*) post surgical convalescence;

(*d*) reasonable fear that engaging in sexual intercourse is likely to cause physical or psychological injury or harm to either spouse; or

(*e*) reasonable respect for custom.

Right to mutual marital confidences

49.—(1) A spouse is entitled to mutual trust and confidences during the subsistence of a marriage and, in the event of the dissolution of the marriage, after its dissolution.

(2) Notwithstanding subsection (1), a spouse may disclose information if the disclosure is in the interests of justice as required—

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(*a*) under the Criminal Procedure and Evidence Code or other written law; or

(*b*) in divorce proceedings.

Duty to maintain family

50.—(1) Subject to subsections (2) and (3), both spouses have a duty to maintain each other and any children of the marriage.

(2) The monetary contribution of each spouse shall be proportionate to his or her income.

(3) The non-monetary contribution of each spouse shall also be taken into account when determining the contribution of a spouse to the maintenance of the other spouse or children of the marriage.

PART X

Offences and Penalties Relating to Marriage

Polygamy and bigamy in a civil marriage

51. A person who contracts a civil marriage under Part VII and who subsequently is married or purports to be married, to more than one spouse, commits an offence, and is liable on conviction to a fine of K100,000 and imprisonment for five years.

Marriage ceremony with a married person

52. An unmarried person who goes through the ceremony of a civil marriage with a person whom he or she knows to be married to another person, commits an offence and is liable on conviction to a fine of K100,000 and imprisonment for twelve months.

Making false declarations in relation to marriage

53. A person who makes or issues a false declaration, certificate, permit, licence, document or statement by law for the purpose of marriage commits an offence and is liable on conviction to a fine of K100,000 and to imprisonment for twelve months.

Registrar unlawfully performing ceremony

54. A registrar who performs the ceremony of marriage knowing that any of the matters required by law for the validity of a marriage have not been fulfilled, so that the marriage is void on any of those matters, commits an offence and is liable on conviction to a fine of K100,000 and to imprisonment for five years.

55. A person who knowingly and willfully celebrates or purports to celebrate a marriage when he or she is not competent under this Act to do so commits an offence and is liable on conviction to a fine of K100,000 and to imprisonment for five years.

Unlawful performance of ceremony by person not legally competent

56. A person who is charged with the duty to complete the marriage certificate of a marriage celebrated by him or her, or its duplicate, or to deliver the certificate to the Registrar of Marriages, and who willfully fails to perform his or her duty, commits an offence and is liable on conviction to a fine of K100,000 and to imprisonment for five years.

Willful neglect of duty to fill up or transmit certificate of marriage

57. A person who—

Personation in marriage

(*a*) impersonates another person in entering into marriage; or

(*b*) marries under a false name or description with the intention to deceive the other party to the marriage,

commits an offence and is liable on conviction to a fine of K100,000 and to imprisonment for five years.

58. A person who goes through the ceremony of marriage, or any ceremony which he or she represents to be a ceremony of marriage, knowing that the marriage is void on any ground, and that the other person believes it to be valid, commits an offence and is liable on conviction to a fine of K100,000 and to imprisonment for five years.

Fictitious marriage

PART XI

Divorce, Judicial Separation and Nullity of Marriage

59.—(1) In exercising a function under this Part, a court shall have regard to the following general principles that—

General principles

(*a*) the institution of marriage is to be protected;

(*b*) the parties to a marriage which may have broken down are to take all practical steps, whether by counseling or otherwise, to save the marriage;

(*c*) a marriage which has broken down and is being dissolved should be brought to an end—

(i) with minimum distress to the parties and to any affected children;

(ii) with questions dealt with in a manner designed to promote as good a continuing relationship between the parties and any children affected as far as is possible in the circumstances;

(iii) without costs being unreasonably incurred in connexion with the procedure to be followed in bringing the marriage to an end; or

(*d*) any risk of violence to one of the parties and to any children shall, as far as is reasonably practicable, be removed and diminished.

Limitations of this Act

60.—(1) Nothing in this Act shall authorize—

(*a*) the making of any decree of dissolution of marriage unless the petitioner is domiciled in Malaŵi at the time when the petition is presented; or

(*b*) the making of any decree of nullity of marriage unless—

(i) the petitioner is domiciled in Malaŵi at the time when the petition is presented; or

(ii) the marriage was celebrated in Malaŵi.

Divorce and judicial separation

61.—(1) The court may, upon satisfying itself that a marriage has irretrievably broken down—

(*a*) grant a decree of judicial separation to provide for the separation of parties to a marriage; or

(*b*) grant a decree of divorce to dissolve the marriage.

(2) A decree of judicial separation shall come into force upon being made.

(3) A decree of judicial separation shall remain in force—

(*a*) while the marriage continues;

(*b*) until cancelled by the courts on the joint application of the parties; or

(*c*) a decree *nisi* of divorce is granted by a court.

(4) Where the court grants a decree of judicial separation, it shall no longer be obligatory for a spouse to exercise rights to consortium with the other spouse and a court shall have power to make ancillary orders to enforce the separation of the parties.

Rape during judicial separation

62. A husband commits the offence of rape during the subsistence of a decree for judicial separation if he has sexual intercourse with his wife without her consent.

Irretrievable breakdown of marriage

63.—(1) A petition for divorce may be brought by either party to a marriage on the sole ground that the marriage has irretrievably broken down.

(2) In deciding whether or not a marriage has irretrievably broken down, the court shall have regard to all the relevant facts regarding the conduct and circumstances of the parties and, in particular, shall refuse to grant a decree where a petition is founded exclusively on the petitioner's own wrongdoing.

Evidence of breakdown of marriage

64. In deciding whether or not a marriage has irretrievably broken down, the court may accept any one or more of the following facts as evidence that the marriage has irretrievably broken down—

(*a*) the respondent has committed adultery and the petitioner finds it intolerable to live with him or her;

(*b*) the respondent has been convicted of the offence of rape or of an offence under section 153 of the Penal Code; Cap. 7:01

(*c*) the respondent has deserted the petitioner without cause for a continuous period of at least one year immediately preceding the presentation of the petition for divorce;

(*d*) the respondent has since the celebration of the marriage treated the petitioner with cruelty;

(*e*) the respondent is of incurable unsound mind and has been under care and treatment for a continuous period of at least two years immediately preceding the presentation of the petition; or

(*f*) any other factors that the court considers relevant.

Circumstances in which decrees may be made

65. A court may upon application grant a decree *nisi* of divorce or a decree of judicial separation if—

(*a*) the court is satisfied that the marriage has irretrievably broken down;

(*b*) the parties have undergone marriage counseling; and

(*c*) the requirements of section 66 are satisfied.

Arrangements for the future in case of divorce or judicial separation

66. The court, in granting an order for decree *nisi* of divorce or an order for judicial separation, shall first be satisfied that the parties to the marriage have made arrangements for the future by producing one of the following—

(*a*) a court order, made by consent or otherwise, dealing with their financial arrangements;

(*b*) a negotiated settlement as to their financial arrangements;

(*c*) declaration by both parties that they have made their financial arrangements; or

(*d*) a declaration by the party, to which no objection has been notified to the court by the other party, that—

(i) he or she has no significant asset and does not intend to make an application for maintenance;

(ii) he or she believes that the other party has no significant assets and that the other party does not intend to apply for maintenance;

(iii) there are no financial provisions to be made; and

(iv) the parties do not desire to make any financial arrangement.

Rebuttable presumption of condonation of adultery

67. There is a rebuttable presumption that adultery has not been condoned unless consummation has been continued or subsequently resumed of the parties' free will.

Co-respondent

68. Where the petition is presented on the ground that the respondent has since the celebration of the marriage committed adultery, the petitioner shall make the person with whom the respondent committed the alleged adultery a co-respondent to the petition unless the petitioner is excused by the court from so doing on one of the following grounds—

(*a*) that he or she does not know the name of the alleged adulterer although he has made due efforts to discover the name; or

(*b*) that the alleged adulterer is dead.

Duty of the court on the presentation of a petition for divorce

69.—(1) On the presentation of a petition for divorce, the court shall inquire into the facts alleged to establish—

(*a*) whether there has been connivance or condonation by the petitioner;

(*b*) whether any collusion exists between the parties; or

(*c*) whether there is substance in any counter-charge made against the petitioner.

(2) If the court is satisfied on the evidence that—

(*a*) the case for the petitioner has been proved; and

(*b*) the petition is not presented or prosecuted in collusion with the respondent or either of the respondents, it shall pronounce a decree *nisi* of divorce.

(3) Where the court is not satisfied of the alleged matters, it shall dismiss the petition.

(4) The court shall not be bound to pronounce a decree *nisi* of divorce and may dismiss the petition if it finds that the petitioner has during the marriage, been guilty of—

(*a*) adultery;

(*b*) unreasonable delay in presenting or prosecuting the petition;

(*c*) cruelty towards the other party to the marriage;

(*d*) having without cause deserted or willfully separated himself or herself from the other party before the adultery or cruelty complained of;

(*e*) such willful neglect or misconduct as has contributed to the adultery or unsoundness of mind or desertion; or

(*f*) any other act or omission causing the marriage to irretrievably breakdown.

Proceedings for decree of presumption of death and dissolution of marriage

70.—(1) A married person who alleges that reasonable grounds exist for supposing that the other party to the marriage is dead may present a petition to the court to have it presumed that that other party is dead and to have the marriage dissolved.

(2) Where the court is satisfied that reasonable grounds exist, it may make a decree of presumption of death and of dissolution of the marriage.

(3) In proceedings for the decree of presumption of death, the fact that one party to the marriage has been continually absent from the petitioner for a period of seven or more years and the petitioner has no reason to believe that the other party is still alive, is evidence that he or she is dead until the contrary is proved.

Distribution of property during judicial separation

71.—(1) Where a judicial separation has been decreed under this Act, the spouses shall, from the date of the decree, and whilst the separation continues, be considered unmarried with respect to any property which each spouse may acquire individually during the period of separation and such property may be disposed of by each spouse individually in all respects as if he or she was not married to the other.

(2) Where one of the parties dies intestate during the subsistence of a decree of judicial separation, the property owned individually by the deceased shall devolve as if the parties were not married to each other.

(3) Subject to an agreement evidenced in writing or otherwise, where the parties to the marriage who were under judicial separation cohabit again with each other, all property to which either party acquired individually during the judicial separation shall be held to the separate ownership of that party.

(4) Subject to subsections (5) and (6), where a court grants a decree for judicial separation, the court may, in addition, make any one or more of the following orders—

(*a*) an order to make provision for the distribution of any or all of the matrimonial property as may be necessary to prevent undue hardship to either spouse;

(*b*) an order prohibiting alienation or distribution of the matrimonial property to any third party unless there is evidence of a mutual agreement between the parties permitting such alienation or distribution; and

(*c*) an order that either party shall pay to the other party a periodical payment or a lump sum or supply necessities in kind to the requisite cash value as may be specified in the order, either for the benefit of that other party or for the benefit of the children of the marriage.

(5) Where maintenance has been decreed or ordered to be paid to either party upon the decree of judicial separation, and such maintenance is not duly paid, the defaulting party shall be liable for the necessaries supplied for the use of the other party.

(6) Nothing in this section shall prevent either party from joining the other party, at any time during the separation, in the exercise of a joint power given to the parties.

Petition to reverse decree of judicial separation

72.—(1) A party to a marriage against whom a decree of judicial separation has been pronounced, may present a petition praying for a reversal of the decree on the ground that it was obtained in his or her absence, and that there was reasonable excuse for the conduct alleged as the ground for separation.

(2) The court may, on being satisfied of the truth of the grounds of the petition, reverse the decree of judicial separation.

Divorce proceedings after grant of judicial separation

73.—(1) A person shall not be prevented from presenting a petition for divorce, or the court from pronouncing a decree *nisi* of divorce, for the sole reason that such person has at any time been granted a judicial separation upon the same or substantially the same facts as those proved in support of the petition for divorce.

(2) On a petition for divorce, the court may treat the decree of judicial separation as sufficient proof of any ground on which it was granted, but the court shall not pronounce a decree *nisi* of divorce without receiving evidence from the petitioner.

(3) For the purpose of a petition for divorce, a period of desertion without cause immediately preceding the institution of proceedings for a decree of judicial separation, if the parties have not resumed cohabitation and the decree has been continuously in force since its granting, shall be deemed to precede the presentation of the petition for divorce.

Distribution of property upon dissolution of marriage

74. A court shall equitably divide and re-allocate property upon the dissolution of a marriage taking into account—

(*a*) the income of each spouse;

(*b*) the assets of each spouse;

(*c*) the financial needs of each spouse;

(*d*) the obligations of each spouse;

(*e*) the standard of living of the family during the subsistence of the marriage;

(*f*) the age and health of each spouse; or

(*g*) the direct and indirect contributions made by either spouse, including through the performance of domestic duties.

Effect of reversal or discharge of judicial separation or protection order

75.—(1) The reversal, discharge, or variation of a decree of judicial separation, or of a protection order, shall not affect any rights or remedies which a person would otherwise have had in respect of any contracts or acts of either spouse entered into or done between the dates of the decree or order and of the reversal, discharge or variation.

(2) A person who, in reliance on any decree or order, makes a payment to, or permits a transfer or act to be made or done by, the spouse, shall, notwithstanding—

(*a*) that the decree or order may then have been reversed, discharged or varied;

(*b*) that the separation of the wife from her husband may have ceased; or

(*c*) that at some time since the making of the decree or order, the separation may have been discontinued,

be protected and indemnified as if at the time of the payment, transfer or other act, the decree or order was valid and still subsisting without variation, and the separation had not ceased or been discontinued.

(3) Subsection (2) shall not apply where the person has at the time of payment, transfer or other act, known of the reversal, discharge or variation of the decree or order or of the cessation or discontinuance of the separation.

Costs against a co-respondent

76.—(1) A co-respondent may be ordered to pay the whole or any part of the costs of the proceedings if adultery with the spouse of the petitioner has been established against him or her.

(2) The co-respondent shall not be ordered to pay the costs of the petitioner—

(*a*) if at the time of the adultery, he or she had no reason to believe the respondent was married; or

(*b*) if the respondent was at the time of the adultery living apart from his or her spouse.

Grounds for decree of nullity

77.—(1) The following are grounds on which a decree of nullity of marriage may be made—

(*a*) that the respondent was permanently impotent at the time of the marriage;

(*b*) that the parties are within the prohibited degrees of kindred or affinity;

(*c*) that either party was of unsound mind at the time of the marriage;

(*d*) that the former husband or wife of either party was living at the time of the marriage, and the marriage with such former husband or wife was then in force;

(*e*) that the consent of either party to the marriage was obtained by force, duress, deceit or fraud;

(*f*) that the marriage has not been consummated owing to the willful refusal of the respondent to consummate the marriage;

(*g*) that the respondent was at the time of the marriage suffering from a sexually transmitted infection; or

(*h*) that the respondent was at the time of the marriage—

(i) pregnant by some person other than the petitioner; or

(ii) responsible for a pregnancy of some person other than the petitioner.

(2) If the court finds that the case for the petitioner has been proved, it shall announce a decree *nisi* declaring the marriage to be null and void.

(3) In the cases specified in subsection (1) (*c*), (*g*) and (*h*), the court shall not grant a decree *nisi* unless it is satisfied—

(*a*) that the petitioner was at the time of the marriage ignorant of the facts alleged;

(*b*) that the proceedings were instituted within a year from the date of marriage; and

(*c*) that sexual intercourse with the consent of the petitioner has not taken place since the discovery by the petitioner of the existence of the grounds for a decree.

(4) Nothing in this section shall be construed as validating any marriage which is by law void, but with respect to which a decree of nullity has not been granted.

PART XII

General Procedure on Divorce, Judicial Separation and Nullity of Marriage

Petitions

78.—(1) A petition shall state, as distinctly as the nature of the case permits, the facts on which the claim is based, and shall be verified as if it were a writ of summons or an originating summons, and may at the hearing be referred to as evidence.

(2) A petition for dissolution of marriage or for judicial separation or for nullity of marriage, shall state that there is no condonation or connivance on the part of the petitioner nor collusion between the petitioner and the respondent.

Service of petition

79.—(1) A petition shall be served on the party to be affected either within or outside Malaŵi, in a manner that the court may, by general or special order, from time to time direct.

(2) A court may dispense with the service under subsection (1) where it is necessary or expedient to do so.

Examination of witnesses

80.—(1) Subject to subsection (2), a witness in any proceedings shall be examined orally.

(2) Subsection (1) shall not apply where a party verifies his or her case by affidavit, but in such cases, a court shall allow the deponent to be orally cross-examined and re-examined either on application of the other party or by direction of the court.

Husband and wife compellable witnesses

81. On any petition presented by a spouse for the dissolution of the marriage on the ground of adultery coupled with cruelty or desertion without reasonable excuse, the husband and wife respectively shall be competent and compellable to give evidence relating to such cruelty or desertion.

Sittings *in camera*

82. The court may hear the whole or part of any proceedings under this Act behind closed doors.

Adjournment

83. The court may adjourn the hearing of any petition under this Act, and may require further evidence.

Making decree *nisi* absolute

84.—(1) No decree *nisi* of dissolution or nullity of marriage shall be made absolute until after the expiry of six weeks from the date it is granted or such longer period as the Chief Justice may by Rules prescribe.

(2) During the intervening period between a decree *nisi* and before that decree may be made absolute, any person may show cause why the decree should not be made absolute by reason of its having been obtained by collusion, or by reason of material facts not having been, or being brought before the court.

(3) On cause being shown the court shall—

(*a*) make the decree absolute;

(*b*) reverse the decree *nisi*; or

(*c*) otherwise deal with the case as the interests of justice demand.

(4) A court may order the costs arising from cause to be paid by the parties or whichever one of them the court considers fit.

(5) Where a petitioner fails to move within a reasonable time that the decree *nisi* must be made absolute, the court may dismiss the suit.

(6) Where no application for a decree *nisi* to be made absolute is made by the party who obtained it, the party against whom it is granted shall be at liberty to apply to the court at any time after the expiry of six weeks from the earliest date on which the other party could have made the application.

(7) Upon the application referred to in subsection (6), the court shall have the power to—

(*a*) make the decree absolute;

(*b*) reverse the decree *nisi*;

(*c*) order an inquiry; or

(*d*) otherwise deal with the matter as it considers fit.

Enforcement of orders for payment of money

85.—(1) An applicant may apply to a court deponing that a sum to be paid to him or her following an order of that court has not been paid.

(2) The court may, by warrant compel the respondent or any person against whom the order is made, to be brought before it, to be examined.

(3) If the court finds that the respondent or any other person brought before it neglects or refuses to pay the sum due together with any costs that may have been incurred, it may, by warrant, direct that all sums due be recovered by distress or sale of goods and chattels of that person, and may also order that the person be detained and kept in safe custody until return can be made to the warrant of distress.

(4) Where the person gives sufficient security by way of recognizance or otherwise to the satisfaction of the court for his or her appearance before the court, on a day which may be appointed for the return of the warrant of distress, within seven days of taking the security, that person need not be detained nor kept in safe custody.

(5) If at the time of making an order for maintenance, it is known to the satisfaction of the court that the spouse or person against whom the order for maintenance is made is employed and receives a salary, wage, benefit or other regular pecuniary employment benefit, the court may, if it considers fit, direct that the amount of maintenance so ordered shall be deducted by the employer from the salary, benefit or other employment benefit of the person against whom the order

is made and paid to the applicant in such manner as the court may direct having regard to—

(*a*) the regular or particular needs of the applicant and any dependent children;

(*b*) defaults or likelihood of default by the person against whom the order is made in making such payments;

(*c*) places where the parties reside; and

(*d*) any other relevant factors that the court considers fit.

(6) An employer who, having been served with an order of the court, fails to comply with the order commits an offence and is liable on conviction to a fine of up to K 100,000, the whole or part of which may, by order, be applied for the maintenance of the applicant or any children concerned.

Re-marriage of the parties

86. It is lawful for parties to a marriage which—

(*a*) is dissolved by a decree of nullity and the time limit for appealing against it expires but no appeal is presented; or

(*b*) is dissolved or annulled after an appeal,

to marry again as if the prior marriage had been dissolved by death.

Rules of court

87. The Chief Justice may make Rules regulating the procedure for petitions for divorce, judicial separation or nullity of marriage under this Act.

PART XIII

Maintenance During Subsistence of Marriage

Maintenance during subsistence of marriage

88.—(1) A party to a marriage, a child or person specified in subsection (3) may apply to a court for an order against the other party of marriage or a party to the marriage for maintenance in respect of the necessaries of life for a family member including shelter, food and education.

(2) In granting an order for maintenance under this section, the court shall consider—

(*a*) the standard of living enjoyed by the parties at the time of the application;

(*b*) the financial commitments of the party against whom the application is made;

(*c*) the ability of the person against whom the application is made to provide for the necessaries applied for;

(*d*) the income of the party making the application relative to the income of the party against whom the application is made; and

(*e*) any other consideration that the court considers relevant.

(3) An application under subsection (1) may also be made by a parent of a party to the marriage, a next of kin or other close relative or any other person on behalf of such party to the marriage or child.

Spouse may apply for order

89.—(1) A married person whose spouse—

(*a*) is convicted of an offence against her person under Chapters XXII or XXIV of the Penal Code; Cap. 7:01

(*b*) deserts him or her;

(*c*) is guilty of persistent cruelty to him or her or to his or her children;

(*d*) is guilty of willful neglect to provide reasonable maintenance for him or her or his or her children whom he or she is legally liable to maintain; or

(*e*) is a habitual drunkard,

may apply to the court where the conviction took place, or in which the cause or complaint wholly or partly arises, for an order for maintenance under the Act in Form I in the First Schedule. *First Schedule*

(2) A court shall upon receipt of an application under subsection (1) issue summons to the respondent in Form J in the First Schedule. *First Schedule*

Notifiable family misconduct

90.—(1) Where a party to a marriage neglects to maintain the other party or to provide the needs of the children to such an extent that the health, safety or security, nutrition and education of such other party or such children, as the case may be, is adversely affected, that neglect constitutes notifiable family misconduct and any of the persons named in section 88 (3) shall be under a duty to report the neglect to the Minister responsible for social welfare.

(2) Upon receipt of a report of notifiable family misconduct, the Minister responsible for social welfare shall, where appropriate, facilitate the separation of the parties and may make an application for maintenance under section 88.

PART XIV

Maintenance Following Divorce, Judicial Separation and Nullity of Marriage

Maintenance pending the suit

91.—(1) A spouse, whether or not he or she has obtained a protection order, may apply to the court, for an order of maintenance pending the suit.

(2) In granting the order of maintenance pending the suit, the court shall have regard to the financial resources of the party against whom the order is made, the conduct of the parties or any other factors it considers relevant.

(3) An order of maintenance pending the suit shall continue in the case of a decree *nisi* of divorce or nullity, until the decree is made absolute.

Permanent maintenance

92.—(1) On a decree absolute declaring a marriage to be dissolved, or on a decree of judicial separation obtained by the applicant, the court may order the respondent to secure to the applicant such sum of money as it thinks reasonable, having regard to—

(*a*) his or her income;

(*b*) the income of the respondent;

(*c*) the ability of the respondent; and

(*d*) the conduct of the parties.

(2) The court may direct the maintenance to be paid either in a lump sum or in yearly, monthly, or weekly payments for any period not exceeding the life of a spouse, and for that purpose may cause a proper instrument to be executed by all necessary parties.

(3) The court may direct the maintenance to be paid either to the spouse himself or herself or to a trustee to be approved on his or her behalf by the court, and may impose such terms and restrictions, and may direct the execution of the trust deeds as it considers fit, and may from time to time appoint a new trustee.

Discharge or alteration of order for maintenance

93.—(1) Where an order has been made for the payment of maintenance, and the respondent subsequently becomes unable to make the payments, the court may discharge, modify, or suspend the order in whole or in part.

(2) A court may revive the order in whole or in part, upon application, if there is a change in the circumstances of the respondent.

Power to vary settlements

94.—(1) Subject to subsection (2), after a decree absolute of divorce or of nullity of marriage, a court may inquire into the existence of ante-nuptial or post-nuptial settlements made by the parties whose marriage is the subject of the decree, and may make such orders with reference to the application of the whole or part of the settled property, whether for the benefit of the husband or wife or of the children, if any, or of both children and the parties, as the court considers appropriate.

(2) No order for the benefit of the parties, or either of them, shall be made at the expense of the children.

Welfare of children

95.—(1) In any proceedings for divorce or judicial separation or any proceedings brought by either party to the marriage, the court shall consider—

(*a*) whether there are any children of the marriage to whom this section applies; and

(*b*) if there are any children to which this section applies, whether, in light of the arrangements which have been, or are proposed to be, made for their upbringing and welfare the court should exercise any of its powers under the Child Care, Protection and Justice Act in respect to any of them. Cap. 26:03

(2) Where, in any case to which this section applies, it appears to the court that—

(*a*) the circumstances of the case require it to refer the child to the court exercising jurisdiction on children under the Child Care, Protection and Justice Act; and Cap. 26:03

(*b*) there are exceptional circumstances which make it desirable in the best interests of the child that the court exercising jurisdiction on children under the Child Care, Protection and Justice Act should give a direction under this section, the court may direct that the decree absolute of divorce or judicial separation is not granted until the court exercising jurisdiction on the children under that Act orders otherwise. Cap. 26:03

(3) In deciding whether the circumstances as mentioned in subsection (2) (*a*) exist, the court shall treat the welfare of the child as paramount and shall also have particular regard, on the evidence before it, to—

(*a*) the wishes and feelings of the child considered in relation to his or her age and level of understanding and the circumstances in which those wishes are expressed;

(*b*) the conduct of the parties in relation to the upbringing of the child;

(*c*) the general principle that, in the absence of evidence to the contrary, the welfare of the child will best be served—

(i) by his or her regular contact with those who have parental responsibility for him or her and with other members of his or her family and where siblings are brought up together in the same family; and

(ii) where the maintenance of a good continuing relationship with his or her parents is possible;

(*d*) any risk to the child attributable to—

(i) the place where the person with whom the child will reside, is residing or proposes to reside;

(ii) any person with whom that person is residing or with whom he or she proposes to reside with; or

(iii) any other arrangements for the care and upbringing of the child.

PART XV

Maintenance of Single Pregnant Woman

Maintenance during pregnancy of a single woman

96.—(1) Where a woman is pregnant and the alleged father does not dispute responsibility for the pregnancy or is adjudged by the court to be responsible for the pregnancy, he shall be liable to maintain the woman during the period of the pregnancy and to pay for or reimburse the attendant costs of delivery and the court may, on application by the woman, make an order for enforcement as the court may consider appropriate.

(2) An application for an order for enforcement under this section may be heard in like manner as an application under section 89.

(3) Where the alleged father is a child, liability shall lie against his parents or guardian, but the liability shall revert to him after he ceases to be a child or to be dependent on his parents or guardian.

PART XVI

General Provisions on Maintenance

Powers of the courts to make orders

97.—(1) Subject to subsection (2), notwithstanding that a marriage has been declared void by the court, the court shall have the power to make an order—

(*a*) for property settlement;

(*b*) for temporary or permanent maintenance; or

(*c*) for the award of custody of any children of the annulled marriage, in favour of either of the parties as may be deemed appropriate.

(2) Where an order for the maintenance or custody of a child is made, the court shall base its decision on the best interests of the child.

Court may vary or discharge orders

98. A court having jurisdiction in the place in which any order under this Act has been made may vary or discharge the order—

(*a*) on the application of either party;

(*b*) upon cause being shown; or

(*c*) upon fresh evidence given to the satisfaction of the court.

Mode of maintenance payments

99. A court may allow non-pecuniary payments amounting to the value of the sum ordered either at the request of either or both of the parties to the action or on its own motion where having regard to all the circumstances, the court considers the non-pecuniary payments to be appropriate.

Order for accommodation

100.—(1) Where an applicant is entitled to an order for maintenance following a decree of judicial separation, a court may, in addition to making an order for maintenance, also make an order—

(*a*) giving the applicant the right not to be evicted or excluded from the matrimonial home or any part of it by the respondent for such period as may be specified in the order; and

(*b*) prohibiting the respondent from evicting or excluding the applicant during the period.

(2) If the respondent is entitled to occupy the matrimonial home by virtue of a beneficial estate or interest or contract or any other legal entitlement but the applicant is not so entitled, the court may order the respondent to provide suitable accommodation for the applicant and any child who is entitled to be maintained.

(3) In making an order under this section, the court shall consider—

(*a*) the financial and other resources of each of the parties;

(*b*) the needs of each of the parties and any child who is entitled to be maintained;

(*c*) the likely effect of an order, refusing to grant an order for accommodation, on the health, safety or well-being of the parties or any child;

(*d*) the conduct of the parties in relation to each other;

(*e*) the state of the inter-personal relationship between the parties;

(*f*) the length of time the parties have lived together as husband and wife;

(*g*) whether there are or have been children who are children of both parties or for whom both parties have responsibilities;

(*h*) if the parties are separated, the length of time that has elapsed since the parties ceased to live together; or

(*i*) any other relevant factors.

Address to be provided to the court

101.—(1) A person obliged by order to make payments of maintenance, shall provide full details of his or her address in writing to the clerk of the court which made the order and shall notify the court of any change in his or her address.

(2) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine of K50,000 which shall be applied to the maintenance of the other party or child by order of the court.

Appeals against maintenance orders

102. For avoidance of doubt, an appeal from an order for maintenance or the refusal of an order by a court shall lie, in the case of a court subordinate to the High Court, to the High Court and in the case of the High Court, to the Supreme Court of Appeal.

PART XVII

Extra-Territorial Enforcement of Maintenance Orders

Registration of a maintenance order made in a foreign country

103.—(1) Where, before or after the commencement of this Act—

(*a*) a maintenance order is made against a person by a court in a foreign country; and

(*b*) a certified copy of the order has been transmitted to the Registrar of the High Court,

the Registrar of the High Court shall send a copy of the order to the office of a court, as specified in subsection (2), for registration of the order in Malaŵi.

(2) Where—

(*a*) the order was made in the court of superior jurisdiction in the foreign country, it shall be registered in the High Court; or

(*b*) the order was not made in a court of superior jurisdiction, it shall be registered in a court of a resident magistrate or a court of a magistrate of the first or second grade as the Registrar of the High Court shall consider appropriate in the circumstances.

Transmission of order made in Malaŵi

104. Where a court in Malaŵi has made a maintenance order against any person before or after the commencement of the Act, and it is proved to the court that the person against whom the order is made is resident in a foreign country, the court shall send a certified copy of the order to the appropriate authority in the foreign country.

Power to make order against a person resident in a foreign country

105.—(1) Where a maintenance order is made in a court in Malaŵi against any person who is proved to be resident in a foreign country, the court may make an order in his or her absence as if a summons had been duly served on that person and he or she failed to appear if, after hearing the evidence, the court is satisfied of the propriety of the application.

(2) The evidence of any witness who is examined on the application shall be put into writing, and the deposition shall be read over to and signed by him or her.

(3) Where the order is made, the court shall send to the appropriate authority in the foreign country—

(*a*) any deposition taken;

(*b*) a certified copy of the order;

(*c*) a statement of the grounds on which the making of the order might have been opposed if the person against whom the order is made had been duly served with summons and had appeared at the hearing; and

(*d*) any other information as the court possesses for facilitating the identification of that person, and ascertaining his or her whereabouts.

(4) It shall be permissible for the appropriate authority in a foreign country, which receives a provisional order for confirmation, to remit the order back to Malaŵi for purposes of taking further evidence.

(5) The court in Malaŵi shall after giving the prescribed notice proceed to take the evidence in the same manner and subject to the same conditions as evidence in support of the original application.

(6) Where upon the hearing of the evidence it appears to the court in Malaŵi that the order ought not to have been made, the court may rescind the order, and any depositions taken shall be dealt with in the same manner as an original deposition.

(7) Subject to subsection (9), the confirmation of an order made under this section shall not affect any power of a court to vary or rescind that order.

(8) On the making of a varying or rescinding order, the court shall send a certified copy of the order to the appropriate authority in the foreign country, and that in the case of an order varying the original order, the order shall not have any effect unless confirmed in the same way as the original order.

(9) The applicant shall have the same right of appeal, if any, against refusal to make a provisional order as he or she would have had against a refusal to make the order had a summons been duly served on the person against whom the order is sought to be made.

Chief Justice to make rules for facilitating communication

106. The Chief Justice may make Rules as to the manner in which a case may be remitted to a court authorized to confirm a provisional order, and generally for facilitating communication between a court in Malaŵi and an appropriate authority in a foreign country.

Mode of enforcing orders

107.—(1) A court—

(*a*) in which an order is registered under this Act;

(*b*) by which an order has been confirmed under this Act,

shall take all such steps for enforcing the orders as may be prescribed.

(2) An order registered or confirmed is enforceable in the same way as a civil debt and is recoverable summarily.

(3) A warrant of distress or commitment issued by a court for the purpose of enforcing any order so registered or confirmed under this Part may be executed in any part of Malaŵi in the same way as if the warrant had been originally issued or subsequently endorsed by a court having jurisdiction in the place where the warrant is executed.

Proof of documents

108.—(1) A document purporting to be signed by a judge or officer of a court in a foreign country shall, until the contrary is proved,

be deemed to have been signed accordingly without proof of the signature or judicial or official character of the person appearing to have signed it.

(2) The officer of a court by whom a document is signed shall, until the contrary is proved, be deemed to be the proper officer of the court to sign the document.

Depositions to be evidence

109. A deposition taken in a court in a foreign country for the purposes of this Act may be received in evidence in proceedings before a court under this Act.

Powers of President to extend the application of this Act to other countries

110. Where the President is satisfied that reciprocal provisions have been or are about to be made by the legislature of any foreign country for the enforcement within that country or part of it of maintenance orders made by courts in Malaŵi, he or she may, by proclamation extend the Act to a foreign country or part of it, and this Act shall apply accordingly in respect of that country or part so that the references to foreign country in this Act were references to that country.

PART XVIII

Miscellaneous

Establishment of Family Counseling Panels

111.—(1) The Minister may, by order published in the *Gazette*, or by directions in writing, establish Family Counselling Panel to counsel parties to a marriage to prevent or to address any case of notifiable family misconduct.

(2) A Family Counseling Panel may intervene in a case of neglect or abuse upon information it may receive from a party to the marriage or from any person.

(3) In any case of neglect or abuse coming before a court, the court shall inquire if the case was referred to a Family Counseling Panel and may itself refer the case to a Family Counseling Panel, but the intervention of a Family Counseling Panel, whether before or upon reference to it by a court, shall have no effect on any ensuing proceedings for maintenance before any court.

(4) The Minister may make rules for the regulation and functioning of Family Counseling Panels.

Conduct by third parties

112.—(1) A person who uses his or her influence, as a close relation to a party to a marriage, whether by conduct or language to—

(*a*) cause a breakdown of a marriage relationship between the parties to a marriage;

(*b*) instigate any conduct by either or both of the parties to the marriage likely to adversely affect their marriage relationship;

(*c*) cause one party of the marriage to withhold maintenance or support from the other; or

(*d*) in any way render a marriage relationship to deteriorate or fail,

commits an offence and is liable on conviction to a fine of K100,000 and to imprisonment for twelve months.

(2) The court may, upon application, make an order of restraint or compensation against a person convicted of an offence under subsection (1).

Forms and fees

113. The Chief Justice may prescribe the forms to be used and the fees to be paid by a person applying for an order of maintenance under this Act.

Repeals and savings
Cap. 25:01
Cap. 25:02
Cap. 25:03
Cap. 25:04
Cap. 25:05
Cap. 26:04

114.—(1) The Marriage Act, the African Marriage (Christian Rites) Registration Act, the Asiatics (Marriage, Divorce and Succession) Act, the Divorce Act, the Married Women (Maintenance) Act and the Maintenance Orders (Enforcement) Act are hereby repealed.

Cap. 25:01
Cap. 25:02
Cap. 25:03
Cap. 25:04
Cap. 25:05
Cap. 26:04

(2) A licence or certificate issued, notice published, registration effected, caveat entered or other thing done under the Marriage Act, the African Marriage (Christian Rites) Registration Act, the Asiatics (Marriage, Divorce and Succession) Act, the Divorce Act, the Married Women (Maintenance) Act and the Maintenance Orders (Enforcement) Act repealed by subsection (1) shall, if in force at the commencement of this Act, continue in force, and have effect as if issued, published, effected, entered or done under the corresponding provisions of this Act.

Cap. 25:01
Cap. 25:02
Cap. 25:03
Cap. 25:04
Cap. 25:05
Cap. 26:04

(3) Where a period of time specified in the Marriage Act, the African Marriage (Christian Rites) Registration Act, the Asiatics (Marriage, Divorce and Succession) Act, the Divorce Act, the Married Women (Maintenance) Act and the Maintenance Orders (Enforcement) Act repealed by subsection (1) is current at the commencement of this Act, this Act shall have effect as if the corresponding provisions of this Act had been in force when that period begun to run.

(4) A document referring to the Marriage Act, the African Marriage (Christian Rites) Registration Act, the Asiatics (Marriage, Divorce and Succession) Act, the Divorce Act, the Married Women (Maintenance) Act and the Maintenance Orders (Enforcement) Act repealed by subsection (1) shall be construed as referring to the corresponding provisions of this Act.

Cap. 25:01
Cap. 25:02
Cap. 25:03
Cap. 25:04
Cap. 25:05
Cap. 26:04

(5) Nothing in this Act shall affect the validity of any marriage celebrated before the commencement of this Act, under an enactment repealed by this Act.

(6) Any proceedings taken with reference to—

(*a*) a marriage celebrated or entered into;

(*b*) a register book kept; or

(*c*) any warrant issued,

under an enactment repealed by this Act, shall have effect as if taken with reference to the corresponding provisions of this Act.

FIRST SCHEDULE

FORMS

FORM A

ss. 6 and 8 MARRIAGE REGISTER BOOK

No.	Date when celebrated
Contracting Parties	(Man) ..... (Woman)
Age	(Man) ..... (Woman)
Nationality	(Man) ..... (Woman)
Village	(Man) ..... (Woman)
Traditional Authority	(Man) ..... (Woman)
District	(Man) ..... (Woman)
Occupation	(Man) ..... (Woman)
Residence	(Man) ..... (Woman)
Witness	(Man) ..... (Woman)
Signature	(1) ..... (2) ..... (registrar)

Celebrated under the above Act according to Rites of the .....
(religious body, sect, denomination or ethnic group)

Entered this..... day of ..... 20... at the Registry of Marriages at ..... District

Address .....

Date of signature .....
(*The register is in duplicate*)

FORM B

NOTICE OF MARRIAGE ss. 19 and 27

To the Registrar of Marriages for the ..... District of Malaŵi.

I HEREBY give you notice that a marriage is intended to be had within three months from this date between me, the undersigned, and the other party named at .....,.....

Name	*Status*	*Occupation, Rank or Profession*	*Age*	*Dwelling or Place of abode*

Witness my hand this ..... day of ..... 20...

.....
Signature

FORM C

FORM OF ATTESTATION s. 20

Signed by the said ....., at .... on the ..... day of ..... 20..., this notice having been first read over to him [her] [or, read over and truly interpreted to him [her] in the ..... Language] by ..... He [she] seemed to understand the same and made his [her] mark thereto in my presence.

.....
Signed

FORM D

REGISTRAR'S PERMIT ss. 24 and 28

I, ... Registrar of marriages in the ..... District in Malaŵi, do hereby certify that on the ..... day of ....., 20..., notice was duly entered in the Marriage Notice Book of this district of the marriage intended between the parties herein named and described, such notice being delivered under the hand of ..... one of the parties, that is to say—

Name	*Status*	*Occupation, Rank or Profession*	*Age*	*Residence*	*Length of Residence*

Date of notice entered ..... day of ..... 20...

Place of intended marriage as set out in the Notice of Marriage .....

Date of certificate given, ... day of ....., 20...

No caveat has been entered against the issue of this certificate; or

A caveat was entered against the issue of this certificate on the ..... day of ....., 20..., but it has been cancelled.

.....
Signed, A.B.

Registrar of Marriages ..... *District*

NOTE—This permit will be void unless the marriage is solemnised on or before the ..... day of ....., 20...

FORM E

s. 25 SPECIAL LICENCE

Whereas A.B. and C.D. desire to marry, and sufficient cause has been shown to me why the preliminaries required by the Marriage, Divorce and Family Relations Act should be dispensed with:

Now, therefore, in pursuance of the Act, I do dispense with the giving of notice and the issue of the prescribed permit, and do hereby authorize any registrar of marriages, to celebrate the marriage between the said A.B. and C.D. at [place of celebration], within ..... days from the date specified in this licence.

This marriage may be celebrated by a registrar of marriages between the hours of 8 o'clock in the forenoon and 6 o'clock in the afternoon.

Given under my hand this ..... day of ....., 20...

.....
Minister

FORM F

s. 34 OATH OF MARRIAGE

Registrar: "Do I understand that you A.B., and you C.D., have come here for the purpose of being husband and wife"?

If the answer is "Yes", the registrar shall proceed as follows—

"By the public declaration that you take each other as husband and wife made in my presence, and in the presence of persons now here, and by their subsequent attestation and by signing your names to that effect you become legally married to each other, although no other rite of a customary

or religious nature shall take place, and that this marriage cannot be dissolved during your lifetime except by a valid decree of divorce, and if either of you before the death of the other shall contract another marriage while this remains undissolved you commit an offence and shall be liable to punishment for that offence."

Each of the parties shall then say to the other—

"I call upon all persons present here to witness that I, A.B. takes C.D., to be my lawful wife (or husband)."

Form G

Certificate of Marriage

s. 35

MALAŴI

The Marriage, Divorce and Family Relations Act
Section 35

Marriages celebrated in the ..... at .....
..... in Malaŵi

Certificate of Marriage

No

Date

19

No.	When Married	Names and Surnames	Age	Status	Professions	Residence at time of Marriage	Parent(s) name	Occupation or profession of parent(s)
Name of Husband								
Name of wife								
Witnesses								

Married at ……..... by (or before) me
A.B.

Minister (or Registrar)
(as the case may be)

This marriage was celebrated between us A.B. C.D. in the presence of us E.F. G.H. Witnesses

MALAŴI

The Marriage, Divorce and Family Relations Act
Section 35

Marriages celebrated in the ..... at...
..... in Malaŵi

Certificate of Marriage

No

Date

19

No.	When Married	Names and Surnames	Age	Status	Professions	Residence at time of Marriage	Parent(s) name	Occupation or profession of parent(s)
Name of Husband								
Name of wife								
Witnesses								

Married at …….....…….. by (or before) me
A.B.

Minister (or Registrar)
(as the case may be)

This marriage was celebrated between us A.B. C.D. in the presence of us E.F. G.H. Witnesses

MARRIAGE, DIVORCE AND FAMILY RELATIONS ACT

Marriage celebrated in the ..... at ..... in Malaŵi.

CERTIFICATE OF MARRIAGE

DATE ..... 20...

	No.	When married	Name and Surnames	Full age or minor	Status	Rank or Profession	Residence at time of Marriage	Parent(s)	Rank or Profession of Parent(s)
Husband									
Wife									
Witness									
Witness									

Married at ..... by (or before) me ,..... (Signature of Cleric)

This marriage was celebrated between us — Signature of Husband..... Signature of Wife.....

in the presence of us — Signature of First Witness ..... Signature of Second Witness. .....

FORM H

s. 43 COPY OF REGISTER OF MARRIAGE

No	Date	Contracting Parties	Age	Nationality	Village	Traditional Authority	District	Witness	Signature of officiating minister, address and date of signature
		Man							
		Woman							

* religious body, sect, denomination or ethnic group

FORM I

s. 89 APPLICATION FOR MAINTENANCE

In the High Court of Malaŵi ..... Registry

In the Resident Magistrate's Court at .....

In the ..... Grade Subordinate Court

Matrimonial Cause No..... of 20...

..... *Applicant*

and

..... *Respondent*

The application of ..... of ..... (hereinafter called the "Applicant") who states that his or her spouse .....of ..... (hereinafter called the "Respondent"):

(*a*) On the ..... day of ..... 20... at ..... in the District of .....was convicted in the ..... Court of an offence against his or her person namely.....contrary to Section.....of the Penal Code and sentenced to pay a fine of K .....(or imprisonment for a term of .....).

(*b*) That legal custody of ....(child(ren)) of the marriage between the Applicant and the Respondent be committed to the Applicant until the age of 16 years.

(*c*) The Respondent pay to the Applicant personally, or for her use to any officer of the Court or third person on her behalf, such weekly sum as the Court shall, having regard to the means both of the Applicant and the Respondent, consider reasonable.

(*d*) That the costs of the Court and of the Applicant shall be paid by the Respondent.

.....
(*Applicant*)

1. Taken before me this ..... day of ..... 20... at .....

.....
Registrar/Magistrate

2. Filed on behalf of the Applicant this ..... day of ..... 20...

.....
Legal Practitioner for the Applicant

NOTE: If the Applicant is not represented by a Legal Practitioner, he or she must appear before the Magistrate in person and (2) should be deleted.

If the Application is filed by a Legal Practitioner on his or her behalf, (1) must be deleted. Fee of K10 is payable for filing.

FORM J

s. 89 SUMMONS

In the High Court of Malaŵi ..... Registry

In the Resident Magistrate's Court ..... at .....

In the ..... Grade Subordinate Court

Matrimonial Cause No..... of 20...

..... *Applicant*

and

..... *Respondent*

To:

Of:

TAKE NOTICE that you are required to attend before this Court by yourself or by your legal practitioner at ..... o'clock in the .... noon on the ..... day of .... 20... to show cause why an order should not be made against you pursuant to the application of .... made herein the .....day of ..... 20... (a copy of which application is attached to this Notice).

AND FUTHER TAKE NOTICE that in default of such appearance an order may be made in your absence.

Dated this ..... day of ..... 20... at .....

.....

(Seal) *Registrar/Magistrate*

FORM K

s. 18 ACKNOWLEDGEMENT OF REGISTRAR'S EXPLANATION

We.....and ..... acknowledge that the registrar at .... in ..... district has explained to us, in accordance with section 19 of the Act, the prohibited degrees of kindred affinity, the prohibition on polygamy and the penalties applicable for offences under this Act.

Signed: [AB]

Signed: [CD]

.....

Registrar

Date: .....

SECOND SCHEDULE

Fees

s. 8

	K t
Filing every notice and entering same	10 00
Issuing each certificate or certified copy or any certified copy of an extract from it	20 00
On each marriage in the Registrar's office	50 00
Special Licence	50 00
For each search of the Marriage Register Book	10 00
For each search of the Marriage Notice Book	10 00

THIRD SCHEDULE

Prohibited Degrees of Kindred and Affinity

s. 15

FIRST COLUMN	SECOND COLUMN
Part I	
Mother	Father
Adoptive mother or former adoptive mother	Adoptive father or former adoptive father
Daughter	Son
Adoptive daughter or former adoptive daughter	Adoptive son or former adoptive son
Father's mother	Father's father
Mother's mother	Mother's father
Son's daughter	Son's son
Daughter's daughter	Daughter's son
Sister	Brother
Father's sister	Father's brother
Mother's sister	Mother's brother
Brother's daughter	Brother's son
Sister's daughter	Sister's son
First cousin	First cousin
Daughter of former wife	Son of former husband

PART II

Former wife of father	Former husband of mother
Former wife of father's father	Former husband of father's mother
Former wife of mother's father	Former husband of mother's mother
Daughter of son of former wife	Son of son of former husband
Daughter of daughter of former wife	Son of daughter of former husband

PART III

Mother of former wife	Father of former husband
Former wife of son	Former husband of daughter

PART IV

Sister of deceased or divorced wife	Brother of deceased or divorced husband
Daughter of brother of deceased or divorced wife	Son of brother of deceased or husband
Daughter of sister of deceased or divorced wife	Son of sister of deceased or husband
Sister of father of deceased or divorced wife	Brother of father of deceased or husband
Sister of mother of wife	Brother of mother of deceased husband

GENDER EQUALITY

CHAPTER 25:06

Containing Pages 1–9

CHAPTER 25:06

GENDER EQUALITY

ARRANGEMENT OF SECTIONS

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3 of 2013
G.N. 9/2014

An Act to promote gender equality, equal integration, influence, empowerment, dignity and opportunities, for men and women in all functions of society, to prohibit and provide redress for sex discrimination, harmful practices and sexual harassment, to provide for public awareness on promotion of gender equality, and to provide for connected matters

[1ST APRIL, 2014]

PART I

PRELIMINARY

Short title

1. This Act may be cited as the Gender Equality Act.

Scope of application

2.—(1) Except where it is otherwise expressly provided for by any written law, this Act applies to all persons and to all matters.

(2) This Act binds the Government.

Interpretation

3. In this Act, unless the context otherwise requires—

"appointing or recruiting authority" means a public office in whose power the decision to appoint or recruit any person lies;

"educational institution" means a school, college, university or other institution at which education or training is provided;

"harmful practice" means a social, cultural, or religious practice which, on account of sex, gender or marital status, does or is likely to—

(*a*) undermine the dignity, health or liberty of any person; or

(*b*) result in physical, sexual, emotional, or psychological harm to any person; and

"public institution" means an institution that is part of the public service within the meaning of "public service" under the Public Service Act. Cap. 1:03

PART II

Sex Discrimination

Prohibition of sex discrimination

4.—(1) A person shall not—

(*a*) treat another person less favourably than he or she would treat a person of his or her own sex; or

(*b*) apply to the other person an exclusion, distinction or restriction which applies or would apply equally to both sexes but—

(i) which is such that the proportion of one sex who can comply with it is considerably smaller than the proportion of the opposite sex who can comply with it;

(ii) which he or she cannot show to be justifiable irrespective of the sex of the person to whom it is applied; and

(iii) which is to the detriment of the other person because he or she cannot comply with it,

with the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise of the rights and fundamental freedoms of that person.

(2) A person who contravenes subsection (1) commits an offence and is liable to a fine of K1,000,000 and to a term of imprisonment for five years.

Prohibition of harmful practices

5.—(1) A person shall not commit, engage in, subject another person to, or encourage the commission of any harmful practice.

(2) Any person who contravenes this section commits an offence and is liable to a fine of K1,000,000 and to a term of imprisonment for five years.

Sexual harassment

6.—(1) A person commits an act of sexual harassment if he or she engages in any form of unwanted verbal, non-verbal or physical conduct of a sexual nature in circumstances in which a reasonable person, having regard to all the circumstances, would have anticipated that the other person would be offended, humiliated or intimidated.

(2) A person who sexually harasses another in terms of subsection (1) commits an offence and is liable to a fine of K1,000,000 and to a term of imprisonment for five years.

Workplace policy for sexual harassment

7.—(1) The Government shall take active measures to ensure that employers have developed and are implementing appropriate policy and procedures aimed at eliminating sexual harassment in the workplace which shall—

(*a*) entitle all persons who have been subjected to sexual harassment in the workplace to raise a grievance about its occurrence and be guaranteed that appropriate disciplinary action shall be taken against perpetrators;

(*b*) entitle a non-employee who has been subjected to sexual harassment to lodge a grievance with the employer of the perpetrator where the conduct giving rise to the complaint has taken place at the work place or in the course of the perpetrator's employment;

(*c*) entitle all employees, job applicants and other persons who have dealings with the workplace to be treated with dignity; and

(*d*) oblige the person in charge of the work place to—

(i) implement the policy and procedures and impose disciplinary action against employees who do not comply;

(ii) deal seriously, expeditiously, sensitively and confidentially with all allegations of sexual harassment;

(iii) protect employees against victimization, retaliation for lodging grievances and from false accusations;

(iv) explain the procedure which shall be followed by persons who are victims of sexual harassment;

(v) communicate the sexual harassment policy and grievance procedures effectively to all employees; and

(vi) designate a person outside of line management whom a person who has been subjected to sexual harassment may approach for confidential advice and counselling.

(2) A person who has been subjected to sexual harassment need not have exhausted internal sexual harassment procedures before prosecution of the offence can be commenced or civil proceedings can be instituted.

PART III

Enforcement

Enforcement by the Human Rights Commission

8. The Human Rights Commission, hereinafter called "the Commission", shall be responsible for the enforcement of the provisions of this Act.

Powers of the Human Rights Commission in relation to gender equality Cap. 3:08

9.—(1) In addition to the powers conferred upon the Commission by the Constitution, the Human Rights Commission Act or any other written law, the Commission, shall protect and promote gender equality.

(2) The Commission shall perform the following functions in the exercise of its powers in relation to this Act—

(*a*) monitor and evaluate the policies and practices of—

(i) Government organs, Government agencies and public bodies; and

(ii) the private sector,

in order to promote gender equality and make any recommendations that the Commission deems necessary;

(*b*) carry out investigations and conduct searches in relation to any gender issues on receipt of a complaint or on its own accord;

(*c*) consider, deliberate on and make recommendations to the Minister on any gender issues;

(*d*) provide information to any party in a gender dispute on rights, remedies or obligations;

(*e*) promote and facilitate access to remedies for any dispute concerning gender issues;

(*f*) promote ratification by Malaŵi of any international gender instruments; and

(*g*) perform any other function as is necessary for the implementation of this Act.

Duties of the Human Rights Commission in relation to gender equality

10. The Commission may perform the following duties in the exercise of its powers in relation to this Act—

(*a*) collaborate with the Minister, in establishing mechanisms aimed at progressively realizing gender equality;

(*b*) develop working relationships with international partners, civil society organizations and non-governmental organizations devoted to protecting and promoting gender issues; and

(*c*) do or perform any other duties as are necessary for the implementation of this Act.

PART IV

Employment in the Public Service

Quotas in the public service Cap. 1:03

11.—(1) Notwithstanding anything contained in the Public Service Act and subject to subsection (2), an appointing or recruiting authority in the public service shall appoint no less than forty per cent and no more than sixty per cent of either sex in any department in the public service.

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

(*a*) a member of either sex applying for the post, does not hold the minimum relevant educational qualifications or experience for the post;

(*b*) a member of either sex offered the post has not accepted the offer; or

(*c*) a member of either sex with the relevant educational qualifications or experience required for the post was not available or could not be identified for the post.

Compliance order

12.—(1) Where an appointing or recruiting authority does not comply with section 11, the court shall, on application by the aggrieved person, make an order against the appointing or recruiting authority to ensure compliance.

(2) A compliance order issued by the court under subsection (1) shall be implemented by the appointing or recruiting authority against whom the order is made within such period as specified in the order.

(3) Where an appointing or recruiting authority fails to implement the terms of a compliance order, the authority commits an offence and is liable to a fine of K20,000 for every day the compliance order remains unimplemented.

Transparency in recruitment in the public service

13.—(1) A person who is interviewed for employment by a public institution, shall be entitled, upon request, to—

(*a*) be furnished with reasons, in writing, why that person was not recruited; or

(*b*) subject to subsection (2), view records of the recruitment process.

(2) Where a public institution—

(*a*) requires further information in order to locate the records requested; and

(*b*) has informed the applicant of that requirement,

it shall comply with subsection (1) only when it is supplied with that further information.

(3) The public institution referred to in subsection (1) and (2) shall comply with a request under subsection (1) (*a*) and (1) (*b*) within a period of twenty-eight days.

(4) For purposes of this section, "record" means information held at the time when the request is received.

PART V
Education and Training

Equality in access to education and training

14.—(1) Every person has the right to access education and training including vocational guidance at all levels.

(2) Except in the cases of special need, the Government shall take active measures to ensure that educational institutions provide equal access to girls and boys and women and men, to—

(*a*) the same curricula;

(*b*) the same examinations;

(*c*) teaching staff with qualifications of the same standard;

(*d*) institutional premises and equipment of the same quality, irrespective of sex of students at the same level; or

(*e*) provision of sanitary facilities that take into account the specific needs of the sex of the students.

Equal access to scholarships, etc.

15.—(1) Every person has the right to access a scholarship, grant, bursary, benefit or other scholastic endowment without regard to his or her sex.

(2) The Government shall take active measures to ensure that every educational institution has guidelines that facilitate compliance with subsection (1).

Tertiary education institutions

16. The Government shall take active measures to ensure the enrollment at tertiary education institutions of either sex to a minimum of forty per cent and a maximum of sixty per cent of students.

Exception for single sex establishments

17. Sections 15 and 16 shall not apply to equality in access to education, training, the grant of scholarships and bursaries where the educational institution admits students of one sex.

General duties in relation to curriculum

18.—(1) The Government shall take active measures to ensure that the curricula for all primary and secondary schools—

(*a*) integrates principles of gender equality within the spiritual, moral, cultural and mental development of students at the school, society and experience of life after completion of school with specifications on gender equality;

(*b*) integrates gender issues and human rights at all levels;

(*c*) addresses the special needs of female students by incorporating life skills, including sex education;

(*d*) addresses issues of environmental care and protection; and

(*e*) introduces subjects that enhance the integration of female students in disciplines that are traditionally male-dominated, including sustainable natural resource management.

PART VI

Sexual and Reproductive Health Rights

Right to sexual and reproductive health

19.—(1) Every person has a right to adequate sexual and reproductive health which includes the right to—

(*a*) access sexual and reproductive health services;

(*b*) access family planning services;

(*c*) be protected from sexually transmitted infection;

(*d*) self-protection from sexually transmitted infection;

(*e*) choose the number of children and when to bear those children;

(*f*) control fertility; and

(*g*) choose an appropriate method of contraception.

(2) Subject to any other written law, every person has the right to choose whether or not to have a child.

Duties of health officers in respect to sexual and reproductive health Cap. 34:01

20.—(1) In addition to the duties imposed or powers conferred on health officers by the Public Health Act or any other relevant law, every health officer shall—

(*a*) respect the sexual and reproductive health rights of every person without discrimination;

(*b*) respect the dignity and integrity of every person accessing sexual and reproductive health services;

(*c*) provide family planning services to any person demanding the services irrespective of marital status or whether that person is accompanied by a spouse;

(*d*) impart all information necessary for a person to make a decision regarding whether or not to undergo any procedure or to accept any service affecting his or her sexual and reproductive health;

(*e*) record the manner in which the information imparted to the person seeking reproductive health services was given and whether it was understood; and

(*f*) obtain the written consent of a person being offered sexual and reproductive health services or family planning services before performing any procedure or offering any service.

(2) Any person who contravenes this section commits an offence and is liable to a fine of K750,000 and to a term of imprisonment for three years.

PART VII

Civic Awareness

Civic awareness

21.—(1) The Minister shall design and implement programmes for the public awareness of this Act and, for that purpose, the Minister shall specifically—

(*a*) develop programmes aimed at promoting gender equality in all spheres of life;

(*b*) develop programmes that create awareness of fundamental human rights, equality and mutual understanding and respect;

(*c*) develop programmes that create awareness of sexual harassment and provide assistance and social support for victims of sexual harassment; and

(*d*) enlist the services of traditional leadership and non-governmental organizations in disseminating information and in the conduct of any other activities connected with such programmes.

(2) The Minister shall appoint, in the public service, officers required to carry out activities for the implementation of the programmes under subsection (1).

PART VIII

Miscellaneous

Powers of the Chief Justice

22.—(1) The Chief Justice may make rules for the purpose of regulating the practice and procedure of the court in proceedings under this Act.

(2) The Chief Justice may prescribe the forms to be used and the fees to be paid by a person applying for an order under this Act.

Regulations

23.—(1) The Minister may, make regulations for the effective carrying out of the provisions of this Act.

(2) Without prejudice to the generality of subsection (1), the regulations may provide for—

(*a*) the approval of services or programmes undertaken for the purpose of this Act;

(*b*) the certification of persons or organizations that may provide services under this Act;

(*c*) the prescribing of qualifications and experience for persons who may provide services under this Act; or

(*d*) the collection of data in incidences and causes of discrimination on account of gender and sexual harassment for purposes of policy reform and programming, and any other matter prescribed under this Act.

ADOPTION OF CHILDREN

CHAPTER 26:01

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CHAPTER 26:01

ADOPTION OF CHILDREN

ARRANGEMENT OF SECTIONS

SECTION

1. Short title
2. Power to make adoption orders
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12. Adopted Children Register
13. Revision of particulars in Adopted Children Register

Schedule

An Act to Provide for the Adoption of Children

13 of 1949
19 of 1957
22 of 1958
8 of 1963
21 of 1967

[16th June, 1949]

Short title

1. This Act may be cited as the Adoption of Children Act.

Power to make adoption orders

2.—(1) Upon an application in the prescribed manner by any person desirous of being authorized to adopt an infant who has never been married, the court may, subject to this Act, make an order (in this Act referred to as "an adoption order") authorizing the applicant to adopt that infant.

(2) A person so authorized to adopt the infant and an infant authorized to be adopted are in this Act referred to as an "adopter" and an "adopted child" respectively, and an "infant" means a person under the age of twenty-one.

(3) Where an application for an adoption order is made by two spouses jointly, the court may make the order authorizing the two spouses jointly to adopt, but save as aforesaid no adoption order shall be made authorizing more than one person to adopt an infant.

Restrictions on making adoption orders

3.—(1) An adoption order shall not be made in any case where—

(*a*) the applicant is under the age of twenty-five years; or

(*b*) the applicant is less than twenty-one years older than the infant in respect of whom the application is made:

Provided that, where the applicant and the infant are within the prohibited degrees of consanguinity, it shall be lawful for the court, if it thinks fit, to make an order notwithstanding that the applicant is less than twenty-one years older than the infant.

(2) An adoption order shall not be made in any case where the sole applicant is a male and the infant in respect of whom the application is made is a female unless the court is satisfied that there are special circumstances which justify as an exceptional measure the making of an adoption order.

(3) An adoption order shall not be made except with the consent of every person or body who is a parent or guardian of the infant in respect of whom the application is made or who has the actual custody of the infant or who is liable to contribute to the support of the infant:

Provided that the court may dispense with any consent required by this subsection if satisfied that the person whose consent is to be dispensed with has abandoned or deserted the infant or cannot be found or is incapable of giving such consent or, being a person liable to contribute to the support of the infant, either has persistently neglected or refused to contribute to such support or is a person whose consent ought, in the opinion of the court and in all the circumstances of the case, to be dispensed with.

(4) An adoption order shall not be made upon the application of one of two spouses without the consent of the other of them:

Provided that the court may dispense with any consent required by this subsection if satisfied that the person whose consent is to be dispensed with cannot be found or is incapable of giving such consent or that the spouses have separated and are living apart and that the separation is likely to be permanent.

(5) An adoption order shall not be made in favour of any applicant who is not resident in Malaŵi or in respect of any infant who is not so resident.

Matters with respect to which court to be satisfied

4. The court before making an adoption order shall be satisfied—

(*a*) that every person whose consent is necessary under this Act and whose consent is not dispensed with has consented to and understands the nature and effect of the adoption order for which application is made, and in particular in the case of any parent understands that the effect of the adoption order will be permanently to deprive him or her of his or her parental rights; and

(*b*) that the order if made will be for the welfare of the infant, due consideration being for this purpose given to the wishes of the infant, having regard to the age and understanding of the infant; and

(*c*) that the applicant has not received or agreed to receive, and that no person has made or given, or agreed to make or give to the applicant, any payment or other reward in consideration of the adoption except such as the court may sanction.

Terms and conditions of order

5. The court in an adoption order may impose such terms and conditions as the court may think fit and in particular may require the adopter by bond or otherwise to make for the adopted child such provision (if any) as in the opinion of the court is just and expedient.

Effect of adoption order

6.—(1) Upon an adoption order being made, all rights, duties, obligations and liabilities of the parent or parents, guardian or guardians of the adopted child, in relation to the future custody, maintenance and education of the adopted child, including all rights to appoint a guardian or to consent or give notice of dissent to marriage shall be extinguished, and all such rights, duties, obligations and liabilities shall vest in and be exercisable by and enforceable against the adopter as though the adopted child was a child born to the adopter in lawful wedlock, and in respect of the same matters and in respect of the liability of a child to maintain its parents the adopted child shall stand to the adopter exclusively in the position of a child born to the adopter in lawful wedlock:

Provided that, in any case where two spouses are the adopters, such spouses shall in respect of the matters aforesaid and for the purpose of the jurisdiction of any court to make orders as to the custody and maintenance of and right of access to children stand to each other and to the adopted child in the same relation as they would have stood if they had been the lawful father and mother of the adopted child, and the adopted child shall stand to them respectively in the same relation as a child would have stood to a lawful father and mother respectively.

(2) An adoption order shall not deprive the adopted child of any right to or interest in property to which, but for the order, the child would have been entitled under any intestacy or disposition, whether occurring or made before or after the making of the adoption order, or confer on the adopted child any right to or interest in property as a child of the adopter and the expressions "child", "children" and "issue", where used in any disposition whether made before or after the making of an adoption order, shall not, unless the contrary intention appears, include an adopted child or children or the issue of an adopted child.

(3) Where an adopted child or the spouse or issue of an adopted child takes any interest in real or personal property under a disposition by the adopter, or where an adopter takes any interest in real or personal property under a disposition by an adopted child or the spouse or issue of an adopted child, any succession, legacy or other duty which becomes leviable in respect thereof shall be payable at the same rate as if the adopted child had been a child born to the adopter in lawful wedlock.

(4) For the purposes of this section "disposition" means an assurance of any interest in property by any instrument whether *inter vivos* or by will including codicil.

(5) For the purposes of any enactments relating to friendly societies, collecting societies and industrial assurance companies, which enable such societies and companies to insure money to be paid for funeral expenses, and which restrict the persons to whom money may be paid on the death of a child under the age of ten, the adopter shall be deemed to be the parent of the child; and where before the adoption order was made any such insurance had been effected by the natural parent of the child, the rights and liabilities under the policy shall by virtue of the adoption order be transferred to the adopter, and the adopter shall, for the purposes of the said enactments be treated as the person who took out the policy.

Power to make interim orders

7.—(1) Upon any application for an adoption order, the court may postpone the determination of the application and may make an interim order (which shall not be an adoption order for the purposes of this Act) giving the custody of the infant to the applicant for a period not exceeding two years by way of a probationary period upon such terms as regards provision for the maintenance and education and supervision of the welfare of the infant and otherwise as the court may think fit.

(2) All such consents as are required to an adoption order shall be necessary to an interim order but subject to a like power on the part of the court to dispense with any such consent.

Power to make subsequent order in respect of infant already subject to an order

8. An adoption order or an interim order may be made in respect of an infant who has already been the subject of an adoption order, and, upon any application for such further adoption order, the adopter or adopters under the adoption order last previously made shall, if living, be deemed to be the parent or parents of the infant for all the purposes of this Act.

Jurisdiction and procedure

9.—(1) The court having jurisdiction to make adoption orders under this Act shall be the High Court, or, at the option of the applicant, but subject to any Rules under this section, a court of a Resident Magistrate or of a magistrate of the first grade.

(2) Rules in regard to any matter to be prescribed under this

Act and directing the manner in which applications to the court are to be made and dealing generally with all matters of procedure and incidental matters arising out of this Act and for carrying this Act into effect shall be made by the High Court.

Such Rules may provide for applications for adoption orders being heard and determined otherwise than in open court, and where the application is made to a subordinate court of the first grade, for the hearing and determination thereof in a juvenile court as defined by the Children and Young Persons Act. Cap. 26:03

(3) For the purpose of any application under this Act and subject to any Rules under this section the court shall appoint some person or body to act as guardian *ad litem* of the infant upon the hearing of the application with the duty of safeguarding the interests of the infant before the court.

Restriction on payments

10. It shall not be lawful for any adopter or for any parent or guardian except with the sanction of the court to receive any payment or other reward in consideration of the adoption of any infant under this Act or for any person to make or give or agree to make or give to any adopter or to any parent or guardian any such payment or reward.

Provisions as to existing *de facto* adoptions

11. Where at the date of the commencement of this Act any infant is in the custody of, and being brought up, maintained and educated by any person or two spouses jointly as his, her or their own child under any *de facto* adoption, and has for a period of not less than two years before such commencement been in such custody, and been so brought up, maintained and educated, the court may, upon the application of such person or spouses, and notwithstanding that the applicant is a male and the infant a female, make an adoption order authorizing him, her or them to adopt the infant without requiring the consent of any parent or guardian of the infant to be obtained, upon being satisfied that in all the circumstances of the case it is just and equitable and for the welfare of the infant that no such consent should be required and that an adoption order should be made.

Adopted Children Register

12.—(1) The Registrar General of Births and Deaths shall establish and maintain at his office a register to be called the Adopted Children Register, in which shall be made such entries as may be directed to be made therein by adoption orders, but no other entries.

(2) Every adoption order shall contain a direction to the Registrar General of Births and Deaths to make in the Adopted Children Register an entry recording the adoption in the form set out in the Schedule and (subject to the next following subsection) shall specify the particulars to be entered under the headings of that Schedule.

(3) For the purpose of complying with the requirements of the last preceding subsection—

(*a*) where the precise date of the infant's birth is not proved to the satisfaction of the court, the court shall determine the probable date of his birth and the date so determined shall be specified in the order as the date of his birth; and

(*b*) where the name or surname which the infant is to bear after the adoption differs from his original name or surname, the new name or surname shall be specified in the order instead of the original.

(4) If upon any application for an adoption order there is proved to the satisfaction of the court—

(*a*) the date of the birth of the infant; and

(*b*) the identity of the infant with a child to which any entry or entries in the Register of Births relates,

the adoption order shall contain a further direction to the Registrar General of Births and Deaths to cause such birth, entry or entries in the Register of Births, to be marked with the word ''Adopted'', and to include in the entry in the adoption register recording the adoption the date stated in the order of the adopted child's birth in the manner indicated in the Schedule.

(5) The prescribed officer of the court shall cause every adoption order to be communicated in the prescribed manner to the Registrar General of Births and Deaths, and upon receipt of such communication the Registrar General of Births and Deaths shall cause compliance to be made with the direction contained in such order in regard both to marking any entry in the Register of Births and Deaths with the word "Adopted", and in regard to making the appropriate entry in the Adopted Children Register.

(6) A certified copy of any entry in the Adopted Children Register if purporting to be sealed or stamped with the seal of the Registrar General of Births and Deaths' Office shall, without any further or other proof of such entry—

(*a*) where the entry does not contain any record of the date of the birth of the adopted child be received as evidence of the adoption to which the same relates; and

(*b*) where the entry contains a record of the date of the birth of the adopted child shall be received not only as evidence of the adoption to which the same relates but also as evidence of the date of the birth of the adopted child to which the same relates in all respects as though the same were a certified copy of an entry in the Register of Births and Deaths.

(7) The Registrar General of Births and Deaths shall cause an index of the Adopted Children Register to be made and

kept in his Office and every person shall be entitled to search such index and to have a certified copy of any entry in the Adopted Children Register in all respects upon, and subject to the same terms, conditions and regulations as to payment of fees and otherwise as are applicable under the Births and Deaths Registration Act in respect of searches in registers kept in the Registrar General of Births and Deaths' Office, and in respect of the supply from such office of certified copies of entries in the Register of Births and Deaths. Cap. 24:01

13. The court may, on application being made to it by, or on behalf of, a person in respect of whom an adoption order has been made prior to the coming into operation of the Adoption of Children (Amendment) Ordinance, 1958*, make an order directing that the particulars entered in the Adopted Children Register, and in the index thereto referred to in section 12 (7) relating to that person shall be amended to conform with the particulars which would have been entered therein if the adoption order had been made after the coming into operation of the said Ordinance, and the Registrar General of Births and Deaths shall comply with any such order. Revision of particulars in Adopted Children Register

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SCHEDULE s. 12

No. of Entry .....

Date of Entry .....

Name of Adopted Child. (Enter name as stated in Adoption Order.)

.....

Sex of Adopted Child. (Enter sex as stated in Adoption Order.) .....

Name and Surname, Address and Occupation of Adopter or Adopters

.....
(Enter name, address and occupation as stated in Adoption Order.)

Date of Birth of Child .....
(Enter date of birth (if any) directed by the Adoption Order to be entered, but otherwise no entry.)

Date of Adoption Order and description of Court by which made .....
(Entry to be made as appearing in the Adoption Order.)

Signature of Officer deputed by Registrar General to attest the Entry .....

SUBSIDIARY LEGISLATION

G.N.
136/1949
47/1968
75/1969
87/1980

ADOPTION OF CHILDREN (SUBORDINATE COURTS) RULES

under s. 9

Citation

1. These Rules may be cited as the Adoption of Children (Subordinate Courts) Rules.

Interpretation

2. In these Rules, unless the contrary intention appears—

"the Act" means the Adoption of Children Act;

"the court" means the subordinate court having jurisdiction under section 9 of the Act;

"the magistrate" means the magistrate of the court;

"the infant" means the child proposed for adoption;

"the petitioner" means the person or persons applying for the adoption.

Application to be by petition

3. An application for an adoption order shall be made by petition to the court intituled in the matter of the Act and in the matter of the infant. The proposed adopter shall be the petitioner. The petition shall be in accordance with Form No. 1 in the Schedule with such variations as the circumstances may require.

Who are to be served

4. The petition shall be served on—

(*a*) the parent or parents of the infant;

(*b*) the guardian or guardians of the infant;

(*c*) the person or persons having the actual custody of the infant;

(*d*) the person or persons liable to contribute to the support of the infant,

but the magistrate may in his discretion dispense with service on any of those persons, and may in his discretion order the petition to be served on any other person.

Consents in writing

5. Every consent required under section 3 (3) and (4) of the Act shall be in writing and shall be in accordance with Form No. 2 in the Schedule and shall be attested by one witness.

Mode of service

6. Every petition or other document shall be served by being posted in a prepaid registered envelope addressed to the person to be served, unless the court otherwise directs, and shall at the expiration of such period of time as may to the court seem proper from the time of posting be deemed to have been served, unless the contrary appears. The service of every petition, notice or other document not served by the court shall be verified by affidavit, unless the magistrate otherwise directs.

Verification by affidavit

7. The petition shall be verified by affidavit paragraph by paragraph. There shall be exhibited to the affidavit all certificates, consents and other documents proper for proving the allegations in the petition. Evidence shall be by affidavit, unless the magistrate thinks proper to direct evidence to be given orally, which he shall have power to do.

Guardian *ad litem*

8. The infant shall be a respondent to the petition. As soon as practicable after the filing of the petition, the magistrate shall appoint a guardian *ad litem* to the infant, and shall thereupon cause the petition to be served on the guardian *ad litem*.

Notice of hearing

9. When a guardian *ad litem* has been appointed, the magistrate shall appoint a day for the hearing of the petition, and shall give notice to all parties, including the guardian *ad litem*, of the day so appointed. The notice shall be served seven clear days before the day appointed for the hearing and shall be in accordance with Form No. 3 in the Schedule.

Secrecy

10. All documents filed in the court shall be confidential, and shall be kept secret. Every petition and every application shall be heard and determined *in camera*.

Copies of order

11. No copy or duplicate of any order made by the court shall be given to or served upon any person other than the petitioner and the Registrar General of Births and Deaths, unless the High Court or the magistrate otherwise directs.

Duty of guardian *ad litem*

12. It shall be the duty of the guardian *ad litem* to investigate as fully as possible all the circumstances of the infant and the petitioner, and all other matters relevant to the proposed adoption with a view to safeguarding the interests of the infant, and, in particular, it shall be his duty to include in his investigation the following questions:

(*a*) whether the statements in the petition are true;

(*b*) whether any payment or other reward in consideration of the adoption has been received or agreed upon and whether it is consistent with the welfare of the infant;

(*c*) whether the means and status of the petitioner are such as to enable him to maintain and bring up the infant suitably, and what right to or interest in property the infant has;

(*d*) what insurance, if any, has been effected on the life of the infant;

(*e*) whether it is desirable for the welfare of the infant that the court should be asked to make an interim order or to impose in making an adoption order any particular terms or conditions or to require the petitioner to make any particular provision for the infant.

Information to be confidential

13. The guardian *ad litem* and, where a body of persons is appointed guardian *ad litem*, any officer or agent of that body, shall regard all information obtained in the course of the investigation or otherwise in relation to the matter as confidential, and shall not divulge any part of it to any person save as may be necessary for the proper execution of his duty.

Presence of parties

14. The magistrate may refuse to make an adoption order or an interim order unless all parties including the infant attend before him, but he shall have power in his discretion to dispense with the attendance of any party including the infant, and the magistrate may direct that any of the parties shall attend separately and apart from the others.

Previous applications

15. If it appears that the petitioner has made a previous application under the Act in respect of the same infant and that such application has been refused, the court shall not make an adoption order or an interim order unless satisfied that there has been a substantial change in the circumstances since the previous application.

Cases more fit for High Court

16. If owing to special circumstances an application appears to the magistrate to be more fit to be dealt with by the High Court, the magistrate may, on that ground expressly, refuse to make an order.

Supervision of infant

17. An interim order may provide for the supervision of the infant by the guardian *ad litem* or otherwise as the magistrate may think advisable.

Sealed copy of order to Registrar General

18. Upon the making of an adoption order the magistrate shall forward a sealed copy thereof to the Registrar General of Births and Deaths in a registered postal envelope marked "Confidential".

19. The magistrate may make such orders as to costs as he shall think fit, and may direct that all the costs of a petition under the Act shall be borne and paid by the petitioner. Costs

20. The magistrate shall cause all petitions, consents and other documents relating to any application or order made under the Act to be kept in a place of special security. Safe custody of documents

21. Subject to these Rules, the practice and procedure for the time being obtaining in subordinate courts shall apply to proceedings under the Act, so far as they are applicable. Subordinate court practice to apply

22. The Forms in the Schedule shall be used in applications and for orders made under the Act, and, in any case where no Form is included in the Schedule, the Forms in use in the court may be adopted with such variations as may be necessary. Schedule Forms

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SCHEDULE G.N. 75/1969

Form No. 1 r. 3

PETITION

In the Surbordinate Court of .....

Holden at .....

In the Matter of the Adoption of Children Act, and

In the Matter of A.B. of ..... a (here state whether the child is male or female) infant.

To the Magistrate of the said Court.

The Petition of C.D., of .....(and E.D. his wife, of the same address)—

SHOWETH—

1. Your Petitioner(s) is(are) desirous of adopting the said A.B. under the provisions of the Adoption of Children Act.

2. Your Petitioner(s) is(are) resident at .....

3. Your Petitioner C.D. is unmarried (was married to your Petitioner E.D. at ..... on the ..... day of .....19 .....).

4. Your Petitioner C.D. is by occupation a .....

5. Your Petitioner C.D. is ..... years of age and your Petitioner E.D. is ..... years of age.

6. Your Petitioner(s) has(have) resident with him(them) the following persons, namely, ...

7. Your Petitioner(s) C.D. (and E.D.) is(are) related to the said A.B. as follows— ..... (or, Your Petitioner(s) is not (are not nor is either of them) related to the said A.B.).

8. The said A.B. is—

(*a*) of the ..... sex;

(*b*)unmarried;

(*c*) a child of ..... and ..... both of .....;

(*d*) a citizen of Malaŵi (or as the case may be) .....;

(*e*) ..... years of age, having been born on the ..... day of .....19 ....., Search has been made in the Register of Births of the Registrar General; the birth of the said A.B. was (not) registered (at entry No. ..... dated .....);

(*f*) resident at .....;

(*g*) now in the actual custody of ..... of .....;

(*h*) under the guardianship of ..... of .....;

(*i*) entitled to the following property, namely, ...

9. ..... of .....

(and ..... of .....) is(are) liable to contribute to the support of the said A.B.

10. The said A.B. has not been the subject of an adoption order or an application or petition for an adoption order, save that (state order and application or petition, if any).

11. Your Petitioner(s) undertakes(undertake), if an order is made on this Petition, to make for the said A.B. the following provision, namely, ...

Your Petitioner(s) will, if required, secure the above provision by bond or otherwise as the Court may require.

12. Consents to this Petition have been obtained from the following persons, namely—

(*a*) (parents).

(*b*) (guardian).

(*c*) (actual custodian of infant).

(*d*) (person or persons liable to contribute to support of infant).

(*e*) (spouse of petitioner).

13. Your Petitioner(s) has not (have not nor has either of them) received or agreed to receive and no person has made or given or agreed to make or give to the Petitioner(s) (or either of them) any payment or reward in consideration of the adoption of the said A.B. (except as follows, viz.—)

14. It is proposed that the costs of this Petition shall be provided for as follows, namely—

Your Petitioner(s) prays(pray)—

(1) That an order for the adoption of the said A.B. by your Petitioner(s) may be made in pursuance of the Adoption of Children Act, with all necessary directions;

(2) That the costs of this Petition may be provided for as above mentioned or otherwise as the Court may direct;

(3) Such further or other order as the nature of the case may require.

NOTE.—It is intended to serve this Petition on .....

Form No. 2 r. 5

CONSENT TO ADOPTION ORDER

(TITLE AS IN PETITION)

And

In the Matter of a Petition by ..... of ..... for an order for the adoption of .... the said infant.

I, the undersigned ..... of ..... being—

(*a*) the father of the said infant;

(*b*) the mother of the said infant;

(*c*) guardian of the said infant;

(*d*) a person having the actual custody of the said infant;

(*e*) a person liable to contribute to the support of the said infant;

(*f*) the spouse of the petitioner,

(Strike out all but such one of these descriptions as is applicable)

hereby state that I understand the nature and effect of the adoption for which application is made (and that in particular I understand that the effect of the order will be permanently to deprive me of my parental rights). And I hereby consent to the making of an adoption order in favour of the petitioner(s).

In Witness whereof I have signed this consent on the ..... day of .....19 ....., at .....

(*Signature*).....

Signed in the presence of—

(Signature of witness) .....
(Address) .....
(Description) .....

Form No. 3

r. 9

FORM OF NOTICE OF DAY APPOINTED FOR HEARING OF PETITION

(Title as in Petition)

To ..... of .....

Take notice that a Petition has been presented in the above matter praying that an order may be made for the adoption of the above-named ..... by ..... of .... and that ..... of ..... has been appointed guardian *ad litem* to the said infant, and that the said Petition will be heard at a court to be held at ..... on the ..... day of ..... 19 ....., at ..... o'clock in the ..... noon.

.....

Magistrate

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r. 22
G.N.
75/1969

Form No. 4

FORM OF ADOPTION ORDER

In the Subordinate Court of .....

Holden at .....

In the Matter of the Adoption of Children Act, and

In the Matter of A.B. of ..... a (here state whether the child is male or female) infant.

(to be used where the name or surname which the infant is to bear after the adoption does not differ from his original name or surname: section 12 (2A) (*b*)).

In the Matter of X.Y. (formerly A.B.) of ..... a (here state whether the child is male or female) infant.

(to be used where the name or surname which the infant is to bear after the adoption differs from his original name or surname).

Upon reading the Petition of ..... (here state the address and occupation of the petitioner), (and .....) and upon reading the affidavits of ..... and .... and the exhibits thereto (refer to the affidavits filed in the matter and the exhibits thereto) and upon hearing .... and the evidence of ..... (state names and addresses of witnesses examined orally).

And being satisfied that the allegations in the said Petition are true and being also satisfied with the undertaking of the said ..... (and .....) as to the provision to be made for the above-named infant and with the securing thereof and being further satisfied that it is for the benefit of the said infant that (s)he should be adopted by the said ..... and ..... and that all the requirements of the Adoption of Children Act have been complied with.

It is ordered that the said ..... (and .....) be authorized to adopt the said infant.

(And the following payment or reward is sanctioned, viz .....)

And it is ordered that the parties to these proceedings other than the said ..... (and .....) do recover their costs against the said .....(and .....), and that the said ..... (and .....) do pay the amount of the said costs to this Court within fourteen days hereof.

And it is directed that the Registrar General of Births and Deaths shall make an entry recording this adoption in The Adopted Children Register in the form set out in the Schedule to the said Act.

And it having been proved to the satisfaction of the Magistrate that the said infant was born on the ..... day of ..... 19 ....., and is identical with ..... to whom an entry numbered ..... and made on the .... day of ..... 19 ....., in the Register of Births for ..... relates, it is further directed that the Registrar General shall cause such birth entry or entries to be marked with the word "adopted" and shall include the above date of birth in the entry recording the adoption in the manner indicated in the Schedule to the said Act.

NOTE: An adoption order, or copy, sent to the Registrar General of Births and Deaths is required to be drawn up on paper of size A4 and to have a margin, to be left blank, not less than twenty-five millimetres wide on the left side of the face of the order, and a similar margin on the right side of the reverse, if any. G.N. 87/1980

Form No. 5 r. 22

Form of Interim Order

(Title as in Petition)

Upon reading, etc.
And upon reading, etc.
And upon hearing, etc.
And the evidence, etc.
} As in adoption order.

And being satisfied that the allegations in the said Petition are true and also being satisfied with the undertaking of the said ..... (and .....) as to the provision to be made for the above-named infant and with the security thereof and being further satisfied that it is for the benefit of the said infant that (s)he should for the present be in the custody of the said .....(and .....) and that all the requirements of the Adoption of Children Act have been complied with.

The following payment or reward is sanctioned, viz.—

And it is ordered that the determination of the Petition be postponed and that the custody of the said infant be given to the said ..... (and .....) for the period of ..... from the date of this order by way of a probationary period (and subject to the supervision of ..... of ..... who shall be at liberty at all reasonable times to visit and interview the infant alone and to make all necessary inquiries as to the comfort and well-being of the infant).

Guardian *ad litem*

And as regards costs it is ordered that ..... And any of the parties including the guardian *ad litem* of the said infant to be at liberty to apply as they may be advised.

G.N. 51/1968 93/1969

ADOPTION OF CHILDREN (HIGH COURT) RULES

under s. 9

Citation

1. These Rules may be cited as the Adoption of Children (High Court) Rules.

Interpretation

2. In these Rules, unless the contrary intention appears—

"the court" means the High Court;

"Form" means Form in the Schedule to these Rules;

"the infant" means the child proposed for adoption;

"the Judge" means any Judge of the High Court and includes the Chief Justice;

"the petitioner" means the person or persons applying for the adoption;

"the Registrar" means the Registrar of the High Court.

Application to be by petition

3. An application for an adoption order shall be made by petition to the court intituled in the matter of the Act and in the matter of the infant. The proposed adopter shall be the petitioner. The petition shall be in accordance with Form 1 with such variations as the circumstances may require.

Who are to be served

4. The petition shall be served on—

(*a*) the parent or parents of the infant;

(*b*) the guardian or guardians of the infant;

(*c*) the person or persons having the actual custody of the infant;

(*d*) the person or persons liable to contribute to the support of the infant,

but the Judge may in his discretion dispense with service on any of those persons, and may in his discretion order the petition to be served on any other person.

Consents in writing

5. Every consent required under section 3 (3) and (4) of the Act shall be in writing and shall be in accordance with Form 2 and shall be attested by one witness.

Mode of service

6. Every petition or other document shall be served by being posted in a prepaid registered envelope addressed to the person to be served, unless the court otherwise directs, and shall at the expiration of such period of time as may to the court seem proper

from the time of posting be deemed to have been served, unless the contrary appears. The service of every petition, notice or other document not served by the court shall be verified by affidavit, unless the Registrar otherwise directs.

Verification by affidavit

7. The petition shall be verified by affidavit paragraph by paragraph. There shall be exhibited to the affidavit all certificates, consents and other documents proper for proving the allegations in the petition. Evidence shall be by affidavit, unless the Judge thinks proper to direct evidence to be given orally, which he shall have power to do.

Guardian *ad litem*

8. The infant shall be a respondent to the petition. As soon as practicable after the filing of the petition, the Judge shall appoint a guardian *ad litem* to the infant, and shall thereupon cause the petition to be served on the guardian *ad litem*.

Notice of hearing

9. When a guardian *ad litem* has been appointed, the Registrar shall appoint a day for the hearing of the petition, and shall give notice to all persons who must be served in accordance with rule 4, the petitioner, and the guardian *ad litem*, of the day so appointed. The notice shall be served seven clear days before the day appointed for the hearing and shall be in accordance with the Form 3, unless the Registrar for good reason otherwise directs.

Secrecy

10. All documents filed in the court shall be confidential, and shall be kept secret. Every petition and every application shall be heard and determined in chambers.

Copies of order

11. No copy or duplicate of any order made by the court shall be given to or served upon any person other than the petitioner and the Registrar General of Births and Deaths, unless the Judge otherwise directs.

Duty of guardian *ad litem*

12. It shall be the duty of the guardian *ad litem* to investigate as fully as possible all the circumstances of the infant and the petitioner, and all other matters relevant to the proposed adoption with a view to safeguarding the interests of the infant, and, in particular, it shall be his duty to include in his investigation the following questions—

(*a*) whether the statements in the petition are true;

(*b*) whether any payment or other reward in consideration of the adoption has been received or agreed upon and whether it is consistent with the welfare of the infant;

(*c*) whether the means and status of the petitioner are such as to enable him to maintain and bring up the infant suitably, and what right to or interest in property the infant has;

(*d*) what insurance, if any, has been effected on the life of the infant;

(*e*) whether it is desirable for the welfare of the infant that the court should be asked to make an interim order or to impose in making an adoption order any particular terms or conditions or to require the petitioner to make any particular provision for the infant.

Information to be confidential

13. The guardian *ad litem* shall regard all information obtained in the course of the investigation or otherwise in relation to the matter as confidential, and shall not divulge any part of it to any person save as may be necessary for the proper execution of his duty.

Presence of parties

14. The Judge may refuse to make an adoption order or an interim order unless all persons who must be served in accordance with rule 4, the petitioner, and the infant attend before him, but he shall have power in his discretion to dispense with the attendance of any such person, and may direct that any such person shall attend separately and apart from the others.

Previous applications

15. If it appears that the petitioner has made a previous application under the Act in respect of the same infant and that such application has been refused the court shall not make an adoption order or an interim order unless satisfied that there has been a substantial change in the circumstances since the previous application.

Cases more fit for magistrate's court

16. If owing to special circumstances an application appears to the Judge to be more fit to be dealt with by a magistrate's court, the Judge may, on that ground expressly, refuse to make an order, and may transfer the hearing of the petition to a magistrate's court specified in the order of transfer.

Supervision of infant

17. An interim order may provide for the supervision of the infant by the guardian *ad litem* or otherwise as the Judge may think advisable.

Sealed copy of order to Registrar General

18. Upon the making of an adoption order the Registrar shall forward a sealed copy thereof to the Registrar General of Births and Deaths in a registered postal envelope marked "Confidential".

Costs

19. The Judge may make such orders as to costs as he shall think fit.

20. The Registrar shall cause all petitions, consents and other documents relating to any application or order made under the Act to be kept in a place of special security. Safe custody of documents

21. Subject to these Rules, the practice and procedure for the time being obtaining in the High Court shall apply to proceedings under the Act, so far as they are applicable. High Court practice to apply

22. The Forms in the Schedule shall be used in applications and for orders made under the Act, and, in any case where no Form is included in the Schedule, the Forms in use in the court may be adopted with such variations as may be necessary. Forms

SCHEDULE

Form 1 r.3 G.N. 93/1969

ADOPTION OF CHILDREN ACT
(Cap. 26:01)
PETITION

In the High Court of Malaŵi.

In the Matter of the Adoption of Children Act, and

In the Matter of A.B. of ..... a (here state whether the child is male or female) infant.

The Petition of C.D., of .....(and E.D. his wife, of the same address)

SHOWETH—

1. Your Petitioners) is(are) desirous of adopting the said A.B. under the provisions of the Adoption of Children Act.

2. Your Petitioner(s) is(are) resident at .....

3. Your Petitioner C.D. is unmarried (was married to your Petitioner E.D. at ..... on the ..... day of ..... 19 .....).

4. Your Petitioner C.D. is by occupation a .....

5. Your Petitioner C.D. is ..... years of age and your Petitioner E.D. is ..... years of age.

6. Your Petitioner(s) has(have) resident with him(them) the following persons, namely, ...
.....

7. Your Petitioner(s) C.D. (and E.D.) is(are) related to the said A.B. as follows— ..... (or, Your Petitioner(s) is not (are not nor is either of them) related to the said A.B.).

8. The said A.B. is—

(*a*) of the ..... sex;

(*b*) unmarried;

(*c*) a child of ..... and ..... both of .....;

(*d*) a citizen of Malaŵi (or as the case may be).....;

(*e*) ..... years of age, having been born on the ..... day of ..... 19 ....., Search has been made in the Register of Births of the Registrar General; the birth of the said A.B. was (not) registered (at entry No. ..... dated .....);

(*f*) resident at .....;

(*g*) now in the actual custody of ..... of .....;

(*h*) under the guardianship of ..... of .....;

(*i*) entitled to the following property, namely, ...

9. ..... of ..... (and ..... of .....) is(are) liable to contribute to the support of the said A.B.

10. The said A.B. has not been the subject of an adoption order or an application or petition for an adoption order, save that (state order and application or petition, if any).

11. Your Petitioner(s) undertakes(undertake), if an order is made on this Petition, to make for the said A.B. the following provision, namely, ...

Your Petitioner(s) will, if required, secure the above provision by bond or otherwise as the Court may require.

12. Consents to this Petition have been obtained from the following persons, namely—

(*a*) (parents).

(*b*) (guardian).

(*c*) (actual custodian of infant).

(*d*) (person or persons liable to contribute to support of infant).

(*e*) (spouse of Petitioner).

13. Your Petitioner(s) has not (have not nor has either of them) received or agreed to receive and no person has made or given or agreed to make or give to the Petitioner(s) (or either of them) any payment or reward in consideration of the adoption of the said A.B. (except as follows, viz.—)

14. It is proposed that the costs of this Petition shall be provided for as follows, namely—

Your Petitioner(s) prays(pray)—

(1) That an order for the adoption of the said A.B. by your Petitioner(s) may be made in pursuance of the Adoption of Children Act, with all necessary directions;

(2) That the costs of this Petition may be provided for as above mentioned or otherwise as the Court may direct;

(3) Such further or other order as the nature of the case may require.

NOTE:—It is intended to serve this Petition on ....

Form 2 ADOPTION OF CHILDREN ACT r. 5

(Cap. 26:01)

CONSENT TO ADOPTION ORDER

(Title as in Petition)

And

In the Matter of a Petition by ..... of ..... for an order for the adoption of ..... the said infant.

I, the undersigned ..... of ..... being—

(*a*) the father of the said infant;
(*b*) the mother of the said infant;
(*c*) guardian of the said infant;
(*d*) a person having the actual custody of the said infant;
(*e*) a person liable to contribute to the support of the said infant;
(*f*) the spouse of the petitioner,

(Strike out all but such one of these descriptions as is applicable)

hereby state that I understand the nature and effect of the adoption for which application is made (and that in particular I understand that the effect of the order will be permanently to deprive me of my parental rights). And I hereby consent to the making of an adoption order in favour of the petitioner(s).

In Witness whereof I have signed this consent on the ..... day of ..... 19 ....., at .....

(*Signature*) .....

Signed in the presence of—

(Signature of witness) .....
(Address) .....
(Description) .....

Form 3 ADOPTION OF CHILDREN ACT r. 9

(Cap. 26:01)

FORM OF NOTICE OF DAY APPOINTED FOR HEARING OF PETITION

(Title as in Petition)

To ..... of .....

Take notice that a petition has been presented in the above matter praying that an order may be made for the adoption of the above-named ..... by ..... of ..... and that ..... of ..... has been

appointed guardian *ad litem* to the said infant, and that the said petition will be heard in Chambers at the High Court at ..... on the ..... day of ..... 19 ..... at ..... o'clock in the ..... noon.

.....
Registrar

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r. 22
G.N.
93/1969

ADOPTION OF CHILDREN ACT Form 4

(Cap. 26:01)

FORM OF ADOPTION ORDER

In the High Court of Malaŵi.

In the Matter of the Adoption of Children Act, and

In the Matter of A. B. of ..... a (here state whether the child is male or female) infant.

(to be used where the name or surname which the infant is to bear after the adoption does not differ from his original name or surname: section 12 (2A) (b)).

In the Matter of X.Y. (formerly A.B.) of ..... a (here state whether the child is male or female) infant.

(to be used where the name or surname which the infant is to bear after the adoption differs from his original name or surname).

Upon reading the Petition of .....

(here state the address and occupation of the petitioner),

(and .....) and upon reading the affidavits of ..... and ..... and the exhibits thereto (refer to the affidavits filed in the matter and the exhibits thereto) and upon hearing ..... and the evidence of .... (state names and addresses of witnesses examined orally).

And being satisfied that the allegations in the said Petition are true and being also satisfied with the undertaking of the said ..... (and .....) as to the provision to be made for the above-named infant and with the securing thereof and being further satisfied that it is for the benefit of the said infant that (s)he should be adopted by the said ..... and .... and that all the requirements of the Adoption of Children Act have been complied with.

It is ordered that the said ..... (and .....) be authorized to adopt the said infant.

(And the following payment or reward is sanctioned, viz .....)

And it is ordered that the parties to these proceedings other than the said ..... (and .....) do recover their costs against the said ..... (and ....), and that the said .....(and ....) do pay the amount of the said costs to this Court within fourteen days hereof.

And it is directed that the Registrar General of Births and Deaths shall make an entry recording this adoption in The Adopted Children Register in the form set out in the Schedule to the said Act.

And it having been proved to the satisfaction of the Judge that the said infant was born on the ..... day of ..... 19 ....., and is identical with ..... to whom an entry numbered ..... and made on the ..... day of ..... 19 ....., in the Register of Births for ..... relates, it is further directed that the Registrar General shall cause such birth entry or entries to be marked with the word "adopted" and shall include the above date of birth in the entry recording the adoption in the manner indicated in the Schedule to the said Act.

NOTE: An adoption order, or copy, sent to the Registrar General of Births and Deaths is required to be drawn up on paper of foolscap folio size, thirteen inches by eight inches, and to have a margin, to be left blank, not less than one inch wide on the left side of the face of the order, and a similar margin on the right side of the reverse, if any.

ADOPTION OF CHILDREN ACT Form 5

FORM OF INTERIM ORDER

(Title as in Petition)

Upon reading, etc.
And upon reading, etc.
And upon hearing, etc.
And the evidence, etc. } As in adoption order.

And being satisfied that the allegations in the said petition are true and also being satisfied with the undertaking of the said ....(and .....) as to the provision to be made for the above-named infant and with the security thereof and being further satisfied that it is for the benefit of the said infant that (s)he should for the present be in the custody of the said ..... (and .....) and that all the requirements of the Adoption of Children Act have been complied with.

The following payment or reward is sanctioned, viz—

And it is ordered that the determination of the petition be postponed and that the custody of the said infant be given to the said ....(and .....) for the period of ..... from the date of this order by way of a

probationary period (and subject to the supervision of ..... of ..... who shall be at liberty at all reasonable times to visit and interview the infant alone and to make all necessary inquiries as to the comfort and well-being of the infant).

Guardian *ad litem*

And as regards costs it is ordered that ..... And any of the parties including the guardian *ad litem* of the said infant to be at liberty to apply as they may be advised.

CHILD CARE, PROTECTION AND JUSTICE

CHAPTER 26:03

Containing Pages 1–91

CHAPTER 26:03

CHILD CARE, PROTECTION AND JUSTICE

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22 of 2010
G.N. 48/2011

An Act to consolidate the law relating to children by making provision for child care and protection and for child justice; and for matters of social development of the child and for connected matters

[1st October, 2011]

PART I
PRELIMINARY

Short title

1. This Act may be cited as the Child Care, Protection and Justice Act.

Interpretation

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

"appropriate adult" means an adult relative or any adult who knows the child or is known to the child or any person appointed by the court, but shall not include—

(*a*) a police officer, investigator, prosecutor or any person working with the police in relation to the case;

(*b*) victim of the offence;

(*c*) a witness in the case whether for or against the child; or

(*d*) a person who has been convicted in relation to an offence involving child abuse;

"Board" means the Child Case Review Board established under section 150;

"child" means a person below the age of sixteen years;

"child" used in relation to proceedings before age determination shall, if the age is unknown, includes a person who appears to be below sixteen years of age;

"child justice court" means a subordinate court established under section 132;

"child panel" means a child panel established under section 116;

"court" in relation to proceedings relating to a child, includes any tribunal;

"diversion" means the referral of cases of child offenders away from formal court proceedings with or without conditions;

"diversion option" means a plan or a programme of diversion of a prescribed order and content and of specified duration;

"foster care" means the placement of a child in a foster home or with a foster parent;

"foster child" means a child placed in a foster home or with a foster parent;

"foster parent" means a person with whom a child is placed for foster care and protection under this Act;

"foster home" means a home approved by the Minister under section 46 or 47;

"guardian" means a person who has lawful or legitimate custody, care or control of a child in place of a parent;

"medical officer" means any person duly authorized to perform duties of a medical personnel and includes a health worker;

"parent" includes an adoptive parent, foster parent or any person acting in whatever way as parent;

"parent, guardian, or appropriate adult" used in relation to a child means a parent, guardian or appropriate adult of the child;

"place of detention" means a place of detention as provided under this Act;

"place of safety" means an appropriate place where a child in need of care and protection can be kept temporarily and includes a safety home or a foster home;

"private reformatory centre" means a reformatory centre established under section 158;

"private safety home" means a safety home established under section 158;

Cap. 9:01

"probation officer" means a person appointed as such under section 15 of the Probation of Offenders Act or any other qualified person whom the Minister may appoint to perform probation duties for the purposes of this Act;

"public reformatory centre" means a reformatory centre established under section 157;

"public safety home" means a safety home established under section 157;

"reformatory centre" means a home or institution or part thereof established for the purposes of—

(*a*) reception, education and vocational training; and

(*b*) counselling of children in accordance with this Act.

"restorative justice" means the promotion of reconciliation, reconstruction and sense of responsibility in respect of the offence committed by a child;

"safety home" means a place or part thereof for the purposes of reception, education, counseling and safety of children before conclusion of trial or in circumstances requiring placement of a child for care and protection.

Fourth Schedule

"serious offence" in relation to a child means any of the offences listed in the Fourth Schedule;

"vocational training" means training in some branch of useful industry, including agriculture.

PART II
Child Care and Protection

Division 1
Child Care and Protection by the Family

Duties and responsibilities of parents

3.—(1) In addition to the duties and responsibilities imposed by section 23 of the Constitution, a parent or guardian—

(*a*) shall not deprive a child of his or her welfare;

(*b*) has responsibilities whether imposed by law or otherwise towards the child which include the responsibility to—

(i) protect the child from neglect, discrimination, violence, abuse, exploitation, oppression and exposure to physical, mental, social and moral hazards;

(ii) provide proper guidance, care, assistance and maintenance for the child to ensure his or her survival and development, including in particular adequate diet, clothing, shelter and medical attention;

(iii) ensure that during the temporary absence of the parent or guardian, the child shall be cared for by a competent person;

(iv) exercise joint primary responsibility for raising their children,

except where the parent or guardian has forfeited or surrendered his or her rights and responsibilities in accordance with the law.

(2) A parent or guardian shall be responsible for the registration of the birth of his or her children.

(3) The fact that a parent or guardian has parental responsibility for a child shall not entitle him or her to act in any way which would be incompatible with any court order made in respect of the child.

(4) Subject to this Act, a person who does not have parental responsibility for a particular child but has care of the child may do what is reasonable in all the circumstances of the case for the purposes of safeguarding or promoting the welfare of the child.

(5) Where it is more than one person that have parental responsibility for a child, each of them may act alone and without the other or others in meeting that responsibility; but nothing in this *Division* shall affect the operation of any law which requires the consent of more than one person in a matter affecting the child.

Duties and responsibilities of children

4. In the application of the provisions of this Act, and in any matter concerning a child, due regard shall be had to duties and responsibilities of the child to—

(*a*) respect the parents, guardians, superiors and elders at all times and depending on the age of the child assist them in cases of need;

(*b*) serve the community by placing his or her physical and intellectual abilities at its service;

(*c*) preserve and strengthen social and national unity and character of Malaŵi;

(*d*) uphold the positive values of the community; and

(*e*) contribute towards the child's own development into being a useful member of the society,

but due regard shall be paid to the age and ability of the child and to such limitations as are contained in this Act.

Parentage

5.—(1) Where the parents of a child are not known or where parentage is disputed, the following persons may apply to a child justice court for an order to determine the parentage of a child—

(*a*) the child;

(*b*) the parent of the child;

(*c*) the guardian of the child;

(*d*) a probation officer;

(*e*) a social welfare officer; or

(*f*) any other interested person as the child justice court may deem fit.

(2) The application for parentage may be made—

(*a*) before the child is born; or

(*b*) before a child is sixteen years of age or after the child has attained that age but with special leave of a child justice court or the High Court.

(3) For the purposes of succession and inheritance, the application for parentage shall be made within three years after the death of the father or mother of a child.

Evidence of parentage

6.—(1) The following shall be considered by a child justice court as evidence of parentage—

(*a*) the name of the parent entered in the register of births;

(*b*) performance of a customary ceremony towards the child by the purported father of the child;

(*c*) refusal by the purported father to submit to medical test;

(*d*) public knowledge of parentage; and

(*e*) any other matter that the child justice court may consider relevant.

(2) The child justice court may order the putative father to submit to a medical test.

Determination of parentage

7. The child justice court shall, on the basis of the evidence under section 6 determine whether or not the alleged parent is the parent of the child.

Custody and access

8.—(1) A parent, a family member or any other appropriate person may apply to a child justice court for custody of a child.

(2) A family member or any other appropriate person may apply to a child justice court for periodic access to the child.

(3) The child justice court shall consider the best interests of the child and the importance of the child, on account of age, being with his mother when making an order for custody or access.

(4) In addition to the matters under subsection (3), a child justice court shall consider—

(*a*) the views of the child;

(*b*) that it is desirable to keep siblings together; and

(*c*) any other matter the child justice court may consider relevant.

(5) Upon application for custody or access under this section, the child justice court may make an order granting the applicant custody or the access to the child, and may attach such conditions as the court may consider appropriate.

Application for maintenance

9.—(1) Where a parent or any other person who is legally liable to maintain a child or to contribute towards the maintenance of the child, neglects to maintain the child, neglects to maintain the child or to make the contribution, the following persons may apply against such person to the child justice court for a maintenance order of the child—

(*a*) the child;

(*b*) the parent of the child;

(*c*) the guardian of the child;

(*d*) relatives of the child;

(*e*) a social welfare officer;

(*f*) a police officer;

(*g*) a teacher;

(*h*) a health officer; and

(*i*) any other appropriate person.

Consideration for maintenance

10. A child justice court shall consider the following when making a maintenance order—

(*a*) the income and wealth of both parents of the child or of the person legally liable to maintain the child;

(*b*) any impairment in the earning capacity of the person with a duty to maintain the child;

(*c*) the financial responsibility of the person with respect to the maintenance of other children;

(*d*) the cost of living in the area where the child resides;

(*e*) the rights of the child under this Act; and

(*f*) any other matter, which the child justice court may consider relevant.

Request for social inquiry report

11. A child justice court may request that a social welfare officer prepare a social inquiry report on the issue of maintenance and submit the report to the child justice court for consideration before the child justice court makes the maintenance order.

Maintenance order

12. A child justice court may award maintenance to the child and the maintenance order may include the following—

(*a*) periodic expenses for the child;

(*b*) a periodic allowance for the maintenance of the child; and

(*c*) the payment of a reasonable sum to be determined by the child justice court for the education of the child.

Attachment order

13.—(1) Where periodic payment or lump sum payment for the maintenance of a child has been ordered, the child justice court may order that the earnings, salary or property of the person liable, be attached.

(2) The attachment order shall be applicable in all cases of failure to pay maintenance.

(3) The attachment order may be directed to the employer to deduct the sum of the maintenance funds every time payment of the salary is made.

(4) If the maintenance order is made before the birth of the child or within two months after the birth of the child, such payment may, if the court thinks fit, be calculated from the birth of the child.

Persons entitled to receive maintenance funds

14.—(1) A person who has custody of a child who is the subject of a maintenance order under the Act is under a duty to receive and administer the funds on behalf of the child.

(2) A copy of the maintenance order shall be served on the public officer or the local government officer responsible for children welfare in the area.

(3) The public officer or the local government officer shall make quarterly reports to the child justice court that made the order on the way funds are being administered.

Duration of maintenance order

15.—(1) A maintenance order made in pursuance of this Act, shall, except for purposes only of recovering money previously due under such order, cease to be of any force or validity—

(*a*) after the death of the child;

(*b*) after the marriage of the child;

(*c*) after the child has attained the age of sixteen years.

(2) A maintenance order may lapse before the child attains the age of sixteen years if before that age the child is gainfully and permanently employed.

Continuation of maintenance order

16.—(1) Notwithstanding the provisions of section 15, a child justice court may continue or order a resumption of a maintenance order after the child has attained the age of sixteen years if the child is engaged in education or training after that age, up to obtaining his or her first university qualification where applicable.

(2) An application under this section may be brought by the child a parent or guardian, or any other person who has custody of the child.

Variation or discharge of orders

17. A child justice court may, if satisfied that the interests of the child will be better protected or will not be adversely affected, vary or discharge, as the case may be, a maintenance order on the application of the child, a parent, guardian, the person having custody of the child or any other person legally liable to maintain the child.

Enforcement of maintenance orders

18. Maintenance orders shall be enforced thirty days after the order is made, but a child justice court may in appropriate circumstances, make an order for a longer period.

Joint responsibility to maintain a child

19. Unless the child justice court orders otherwise, the responsibility to maintain a child as between parents and guardians shall be joint and several.

Maintenance during matrimonial proceedings

20. A child justice court or High Court shall have power to make a maintenance order against either parent or both parents where proceedings for nullity, judicial separation, divorce or any other matrimonial

proceedings are filed by either parent, and such order may be made during such proceedings or after a final decree is made in such proceedings.

Power to make maintenance funds to be paid to a person other than the applicant

21. Whenever a maintenance order is made under this Act, the child justice court may, at the time of making the order, or from time to time thereafter, on being satisfied that the person having custody of the child—

(*a*) is not or has ceased to be a fit and proper person to receive any maintenance funds specified in the order in respect of the child;

(*b*) has left the jurisdiction of the child justice court for an indefinite period;

(*c*) is dead or is incapacitated or has become of unsound mind;

(*d*) has been imprisoned or has been declared insolvent;

(*e*) has misappropriated, misapplied or mismanaged any maintenance funds paid to him for the benefit of the child;

(*f*) has otherwise committed an offence under this Act, appoint any other person it considers fit and responsible to receive and administer any maintenance funds required to be paid under a maintenance order, or order the person required to make a payment of the maintenance funds to invest the funds in whole or in part in trust for the benefit of the child.

Offences

22.—(1) A person who, being liable to maintain a child under a maintenance order, fails to maintain the child in respect of food, clothing, health, basic education and reasonable shelter, commits an offence and—

(*a*) on first conviction, shall be liable to pay the maintenance order;

(*b*) on the second or every subsequent conviction for continuous failure to maintain the child, shall be liable to imprisonment for one year.

(2) A person who misapplies funds paid under a maintenance order commits an offence and shall be liable to imprisonment for one year and a fine of K50,000.

Division 2
Children in Need of Care and Protection

Determination of children in need of care and protection

23.—(1) A child is in need of care and protection if—

(*a*) the child has been or there is substantial risk that the child will be physically, psychologically or emotionally injured or sexually abused by the parent or guardian or a member of the family or any other person;

(*b*) the child has been or there is substantial risk that the child will be physically injured or emotionally injured or sexually abused and the parent or guardian or any other person, knowing of such injury, risk or abuse, has not protected or is unlikely to protect the child from such injury, risk or abuse;

(*c*) the parent or guardian of the child is unfit or has neglected, or is unable, to exercise proper supervision and control over the child and the child is falling into undesirable association;

(*d*) the parent or guardian of the child has neglected or is unwilling to provide for the child's adequate care, food, clothing, shelter, education and health;

(*e*) the child—

(i) has no parent or guardian; or

(ii) has been abandoned by the parents or guardians and after reasonable inquiries the parents or guardians cannot be found, and no other suitable person is willing and able to care for the child;

(*f*) the child needs to be examined, investigated or treated for the purposes of restoring or preserving the health of the child and if the parents or guardians neglects or refuse to have the child so examined, investigated or treated;

(*g*) the child behaves in a manner that is, or is likely to be, harmful to the child or to any other person and the parents or guardians are unable or unwilling to take necessary measures to remedy the situation or the remedial measures taken by the parents or guardians have failed and as a result the child cannot be controlled by his parents or guardians;

(*h*) there is such a conflict between the child and the parents or guardians of the child, or between the parents or guardians, that family relationships are seriously disrupted, thereby causing the child emotional injury;

(*i*) the child is in the custody of a person who has been convicted of committing an offence in connexion with that child;

(*j*) the child frequents the company of immoral, vicious, or otherwise undesirable person or persons or is living in circumstances calculated to cause or induce the seduction, corruption or prostitution of the child;

(*k*) the child is allowed to be on a street, premises or any place for the purpose of—

(i) begging or receiving alms, whether or not there is any pretence of singing, playing, performing or offering anything for sale and as a result the child becomes a habitual beggar;

(ii) carrying out illegal hawking, illegal lotteries, gambling or other illegal activities detrimental to the health and welfare or retard the educational advancement of the child;

(*l*) the child cannot be controlled by his/her parent or guardian or the person in custody of the child; and

(*m*) if the child is assessed by the Social Welfare Officer to be in need of care and protection.

(2) For the purposes of this *Division*, a child is—

(*a*) physically injured if there is injury to any part of the body of the child as a result of the non-accidental application of force or agent to the child's body that is evidenced by, among other things, a laceration, a concussion, an abrasion, a scar, a fracture or other bone injury, a dislocation, a sprain, a haemorrhaging, a rupture, a burn, a scald, loss or alteration of consciousness or loss of hair or teeth;

(*b*) emotionally and psychologically injured if there is impairment of the mental or emotional functioning of the child that is evidenced by, amongst other things, a mental or behavioural disorder, including anxiety, depression, withdrawal, aggression or delayed development;

(*c*) sexually abused if the child has taken part, whether as a participant or an observer, in any activity which is sexual in nature for the purposes of—

(i) any pornographic or indecent material, photograph, recording, film, videotape or performance; or

(ii) sexual exploitation by any person for sexual gratification or for commercial gain.

Taking a child into place of safety

24. A police officer, social welfare officer, a chief or any member of the community, if satisfied on reasonable grounds that a child is in need of care and protection, may take the child and place him/her into his/her temporary custody or a place of safety.

Presentation before child justice court

25.—(1) Subject to section 26, a child who is taken into a place of safety under section 24 shall be brought before a child justice court within forty-eight hours.

(2) If it is not possible to bring a child before a child justice court within the time specified under subsection (1), the child shall be brought before any magistrate who may direct that the child be placed in—

(*a*) a place of safety; or

(*b*) the care of a fit and proper person,

until such time as the child can be brought before a child justice court.

(3) Where a child in need of care and protection is brought before a child justice court, the court shall, if the age of the child is not known, refer him/her to a probation officer for age estimation.

(4) If a child is in a place of safety or in the care of a fit and proper person under subsection (2)—

(*a*) the person in charge of the place of safety or such fit and proper person shall have like control over, and responsibility for the maintenance of, the child as the parent or guardian of the child would have had; and

(*b*) the child shall continue to be in the care of the person referred to in paragraph (*a*) notwithstanding that the child is claimed by the parent or guardian or any other person.

(5) A social welfare officer, police officer, chief or any member of the community who takes a child to a place of safety under this section shall, immediately upon such taking, cause the parent or guardian of the child to be notified of such taking if the parents are known and if it is practicable to do so.

(6) A police officer, chief or any member of the community who takes a child into temporary custody under this section shall, immediately upon such taking, notify the social welfare officer of such taking.

Child in need of medical examination

26.—(1) If a social welfare officer, police officer, chief or any member of the community is of the opinion that a child is in need of medical examination or treatment he may, instead of bringing the child before a child justice court present the child for medical care.

(2) If a social welfare officer, police officer or chief is satisfied on reasonable grounds that the child is in need of medical examination or treatment, he may direct either in writing or orally that the person keeping the child for the time being immediately present the child for medical care.

(3) If the person referred to under subsection (2) fails to comply within forty-eight (48) hours with a direction made under that subsection, the social welfare officer, police officer or chief may take the child into temporary custody for the purpose of taking the child for the medical care.

Medical examination and treatment

27.—(1) A medical officer before whom a child is presented under section 26 shall provide or cause to be provided such examination or treatment as the medical officer thinks necessary.

(2) The child who is presented before a medical officer under subsection (1) shall be exempted from medical fees with the authority of a District Social Welfare Officer.

(3) The medical officer shall upon completing the treatment present a report to the person who brought the child for the medical care.

Hospitalization

28. If the medical officer is of the opinion that hospitalization of the child is necessary, he/she shall cause the child to be so hospitalized.

Control over hospitalized children

29. If a child is hospitalized under section 28, the social welfare officer shall have the same control and responsibility over the maintenance of the child as the person in charge of a place of safety would have had if the child had been placed in a place of safety.

Authorization of medical treatment

30.—(1) If, in the opinion of the medical officer, the child referred to under section 28 is suffering from a minor illness, injury or condition, the treatment may be authorized by a social welfare officer.

(2) If, in the opinion of the medical officer, the child referred to in section 28 is suffering from a serious illness, injury or condition or requires surgery or psychiatric examination or treatment, a social welfare officer or police officer—

(*a*) shall immediately notify or take reasonable steps to notify and consult the parent or guardian of the child or any person having authority to consent to such examination or treatment; and

(*b*) may, with the written consent of the parents or guardians or such other appropriate person, authorize such medical or surgical or psychiatric examination or treatment as may be considered necessary by the health worker.

(3) If a medical officer has certified in writing that there is immediate risk to the health of a child, a social welfare officer or police officer may authorize, without obtaining the consent referred to in subsection (2), such medical or surgical or psychiatric examination or treatment as may be considered necessary by the medical officer but only under any of the following circumstances—

(*a*) that the parent or guardian of the child or any person having authority to consent to such examination or treatment has unreasonably refused to give, or abstained from giving, consent to such treatment;

(*b*) that the parent or guardian or the person having authority to consent to such examination or treatment is not available or cannot be found within a reasonable time; or

(*c*) the social welfare officer or the police officer believes on reasonable grounds that the parent or guardian or the person having authority to consent to such examination or treatment has ill-treated, neglected, abandoned, or exposed or sexually abused, the child.

Steps to be taken after medical examination or treatment

31.—(1) A child who is placed in a place of safety and is medically examined or treated shall be brought before a child justice court within forty-eight hours—

(*a*) of the completion of such examination or treatment; or

(*b*) if the child is hospitalized, of his/her discharge from the hospital.

(2) If it is not possible to bring the child before the child justice court within the time specified in subsection (1), the child shall be brought before any magistrate who may direct that the child be placed in—

(*a*) a place of safety; or

(*b*) the care of a fit and proper person,

until such time as the child can be brought before child justice court.

(3) A child who—

(*a*) is taken into custody under section 24; and

(*b*) subsequently undergoes medical examination or treatment, may be returned to the person from whose care the child was taken upon the completion of such examination or treatment or if the child is hospitalized, upon discharge from the hospital.

No liability incurred for giving authorization

32.—(1) If a child is examined or treated pursuant to section 27—

(*a*) the social welfare officer or police officer who authorizes such examination or treatment;

(*b*) the medical officer who examines or treats the child; and

(*c*) all persons acting in aid of the medical officer,

shall not incur any civil or criminal liability at law by reason only that a child is examined or treated pursuant to that section.

(2) Nothing contained in subsection (1) relieves a medical officer from liability in respect of any negligent medical examination or treatment of a child.

Duty of a medical officer

33.—(1) A medical officer shall, if he believes on reasonable grounds that a child being examined or treated is physically, psychologically or emotionally injured as a result of being ill-treated, neglected, abandoned or exposed, or is sexually abused, immediately inform a social welfare officer or police officer.

(2) A medical officer who fails to comply with subsection (1) commits an offence and shall be liable to a fine of K20,000 and to imprisonment for six months.

Duty of members of the family

34.—(1) If any member of the family of a child believes on reasonable grounds that the child is physically, psychologically or emotionally

injured as a result of being ill-treated, neglected, abandoned or exposed, or is sexually abused, he/she shall immediately inform a social welfare officer or a police officer.

(2) A member of the family who fails to comply with subsection (1) commits an offence and shall be released on a binding agreement on conditions to be determined by the court.

Duty of child care provider

35.—(1) If a child care provider believes on reasonable grounds that a child is physically, psychologically or emotionally injured as a result of being ill-treated, neglected, abandoned or exposed, or is sexually abused, he/she shall inform a social welfare officer or a police officer.

(2) If a child care provider fails to comply with subsection (1) commits an offence and shall be liable to a fine of K10,000 and to imprisonment for three months.

Duty of members of the community

36.—(1) If a member of the community believes on reasonable grounds that a child is physically, psychologically or emotionally injured, abandoned, or exposed, or is sexually abused, he/she shall immediately inform a chief, a police officer or a social welfare officer.

(2) A member of the community who fails to comply with subsection (1) commits an offence and shall be liable to a fine of K10,000 and to imprisonment for three months.

Functions of child justice courts in cases of children in need of care

37.—(1) If a child justice court is satisfied that any child brought before it under this *Division* is a child in need of care and protection, the court may—

(*a*) order the parents or guardians to enter into a binding agreement to exercise proper care and guardianship for a period specified by a child justice court;

(*b*) make an order placing the child in the custody of a fit and proper person for a period specified by the child justice court;

(*c*) without any other order or in addition to an order made under paragraph (*a*) or (*b*), make an order placing the child under the supervision of—

(i) a social welfare officer; or

(ii) some other person appointed for the purpose by the child justice court,

for a period specified by the child justice court.

Division 3
Guardianship

Appointment of guardian

38.—(1) A guardian may be appointed by—

(*a*) the testamentary will or choice of a parent;

(*b*) an order of the court; and

(*c*) the family of the child.

(2) A guardian may be appointed in respect of any child who is resident in Malaŵi.

(3) A guardian appointed under this Act shall be a person resident in Malaŵi.

(4) Where a guardian is appointed only in respect of the estate of the child, the guardian need not have actual custody of the child but shall, with the authority of the child justice court and with the assistance of a legal representative as the court may provide for the child, have—

(*a*) power and responsibility to administer the estate of the child, and in particular to receive or recover and invest the property of the child in his/her own name for the benefit of the child;

(*b*) the duty to take all reasonable steps to safeguard the estate of the child from loss or damage;

(*c*) the duty to produce and avail accounts or a written report to the child justice court in the prescribed form in the First Schedule. *First Schedule*

Appointment of a testamentary guardian

39.—(1) A parent of a child may by will or deed appoint any person to be a guardian of the child after that parent's death.

(2) A guardian of a child may by will appoint another individual to take his place as the guardian of the child in the event of his death.

Application for the appointment of a guardian by a child or family member

40.—(1) If a child, or any member of the family, considers that a surviving parent is unfit to have legal custody of the child, he may apply to the child justice court for the appointment of a guardian.

(2) The court, after considering the application, may—

(*a*) appoint the guardian;

(*b*) make an order that the guardian shall act jointly with the parent; or

(*c*) make any other order which the court considers appropriate in the circumstances.

(3) Where the child justice court makes an order that the guardian is the only guardian of the child, it may order the parent to pay the guardian

a financial provision towards the maintenance of the child, having regard to the means of the parent as the court may consider reasonable.

(4) A guardian who has been appointed to act jointly with the surviving parent under subsection (2), shall continue to act as a guardian after the death of the parent, but if the parent appointed a guardian by will, before his/her death the guardian appointed by the child justice court shall act jointly with the guardian appointed by the parent.

Application for the appointment of a guardian by other persons, other than a child or a family member

41.—(1) A child justice court may, in the best interest of a child, appoint a guardian on the application made by any person where—

(*a*) the child's parents are no longer living;

(*b*) the parents cannot be found;

(*c*) the child has no guardian and there is no other person having parental responsibility for the child; or

(*d*) where the parents of the child are no longer living together and it is necessary in the best interests of the child that a guardian be appointed for the child.

Extension of guardianship beyond a child's sixteenth birthday

42.—(1) An appointment for guardianship shall determine upon the child attaining the age of sixteen years, unless exceptional circumstances exist that require a child justice court to grant an order that the appointment be extended.

(2) An application for extension of guardianship shall be made within six months before or after the child's sixteenth birthday.

(3) A child justice court making an order under this section shall specify the duration of the order and the order may contain such conditions and directions as the court may see fit.

Power to revoke, modify or vary a guardians order

43.—(1) A child justice court may, on application by the child, parent, guardian, a family member or a social welfare officer, vary, modify or revoke a guardians order.

Disputes between guardians

44. Where two or more persons act as joint guardians to a child or where the surviving parent and a guardian act jointly and are unable to agree on any question affecting the welfare of the child, any of them may apply to a child justice court for its direction, and the child justice court may make orders regarding the differences as it may think proper.

Offences by guardians

45. A guardian of the estate of a child who—

(*a*) refuses or neglects to provide sufficient food, clothes and other necessaries for the child; or

(*b*) misapplies, misplaces, neglects to recover or to safeguard any asset forming part of the estate of the child, resulting in the loss or damage of such estate; or

(*c*) fails to produce to the child justice court or the parent or guardian of the child any account or inventory required by the child justice court; or

(*d*) produces any such inventory or account which is false,

commits an offence and shall be liable to a fine of K100,000 and to imprisonment for two years and in addition shall on that account be liable to make good any loss or damage occasioned to the estate.

Division 4
Fosterage

Public foster homes

46.—(1) The Minister shall establish places or institutions as public foster homes for the purposes of foster care placement.

(2) All institutions which at the commencement of this Act are operating as public foster homes shall be deemed to have been established under this Act.

(3) Public foster homes shall be managed by a person appointed by the Minister.

(4) The establishment of public foster homes under this section shall be by order published in the *Gazette*.

(5) The referred to in subsection (4) shall state whether the foster home is for female or male children or for both, and shall specify the number of children to be kept in that home.

Private foster homes

47.—(1) A person or an organization may apply to the Minister to appoint a home or place of that person or organization to be a foster home.

(2) The Minister, upon being satisfied that the application meets the necessary requirements in accordance with this Act, may designate the home or place as a private foster home for the purposes of foster-care placements.

(3) The establishment of a private foster home under this section shall be by order published in the *Gazette*.

(4) The referred to in subsection (3) shall state whether the home is for female or male children or for both, and shall specify the number of children to be kept in that home.

Management of foster homes

48. The provisions on management, inspection and closure of reformatory centers and safety homes shall apply to foster homes *mutatis mutandis*.

Foster home placement

49. A child justice court may, if satisfied that a child before it is in need of foster-care and protection, commit the child to a foster home for a period of time as the court sees fit.

Responsibilities of a manager of a foster home

50. A manager of a foster home in whose care a child is placed shall have the same rights and responsibilities in respect of the child as the parent of the child while the child remains in the foster home.

Commitment of a child to a foster parent

51.—(1) Where a child has been committed to a foster home under this Act, the District Social Welfare Officer, in conjunction with the manager of the foster home may place the child with a foster parent who is willing and has applied to take the care and maintenance of the child for a period not exceeding five years.

(2) A foster parent may, at the expiry of the period specified in subsection (1), apply to the District Social Welfare Officer for the extension of the period.

Application to foster a child

Second Schedule

52. An application to foster a child shall be made to the District Social Welfare Officer by completing the prescribed Form 1 in the, Second Schedule except that a relative of a child without a parent or guardian may foster the child without first applying to the District Social Welfare Officer.

Responsibilities of foster parents

53. A foster parent in whose care a child is committed shall, while the child remains in his care, have the same responsibilities in respect of the maintenance of the child as if such foster parent were the parent of the child.

Persons qualified to foster children

54.—(1) The following persons may apply to be foster parents—

(*a*) a husband and wife but if a man has more than one wife, the name of the wife who is to be the foster mother shall be clearly stated; and

(*b*) a single person not below the age of twenty-five years.

(2) A single person shall not foster a child of the opposite sex unless a District Social Welfare Officer certifies to the court that it is in the best interest of the child that the person fosters the child.

(3) Subject to subsections (1) and (2), a non-Malaŵian citizen residing in Malaŵi is qualified to apply to be a foster parent.

Procedure before placement

55.—(1) A child shall not be placed with a foster parent who is not a relative of the child, unless—

(*a*) a social welfare officer has interviewed the prospective foster parent and assessed that he or she is a suitable person to foster a child;

(*b*) a social welfare officer has visited the home of the prospective foster parent and has confirmed in writing that it is likely to meet the requirements of the particular child and that the conditions in it are satisfactory;

(*c*) two reputable persons who know the prospective foster parent have confirmed on his or her good character and suitability to care for the child;

(*d*) it has been established by a social welfare officer that no person in the household of the prospective foster parent is suffering from any physical or mental illness likely to affect the child adversely;

(*e*) it has been established from the officer-in-charge of a police station in the area that no person in the home has been convicted of a serious criminal offence rendering it undesirable for the child to associate with that person; and

(*f*) the wishes of the child so far as can be ascertained concerning the proposed fostering have been ascertained and have, so far as practicable, been taken into account.

(2) The social welfare officer concerned with the fostering shall make a written report which shall contain the following—

(*a*) the information required in subsection (1);

(*b*) details of the name, approximate age, religion and employment of the prospective foster parents; and

(*c*) the number and approximate ages of other persons living in the household of the prospective foster parent.

(3) The report shall be in Form 3 in the Second Schedule. *Second Schedule*

Religion

56.—(1) Where the religion of the child is known, the child shall be placed with a foster parent who is of the same religion as the foster child but where that is not possible, the foster parent shall undertake to bring up the child in accordance with the religious denomination of the child.

(2) Where a child's religion is not known, the child shall be placed with a foster parent who shall undertake to bring up the child in accordance with the religious denomination of the foster parent, but the child's choice of any other established religion shall be respected.

Cultural background

57. Wherever possible, a child shall be placed with a foster parent who has the same cultural background as the child's parents and who originates from the same area in Malaŵi as the parents of the child.

Undertaking by foster parents

58.—(1) Each foster parent shall, on the day on which the child is placed with him/her, sign the undertaking specified in Form 2 in the Second Schedule in the presence of a witness. *Second Schedule*

(2) Where the prospective foster parent cannot read the English language sufficiently to understand the nature of the undertaking, the social welfare officer concerned shall cause the undertaking to be explained to the prospective foster parent in a language which he/she understands and shall certify to that effect as prescribed in Form 2 in the Second Schedule.

Second Schedule

(3) Each foster parent shall be given a copy of the undertaking signed by him.

(4) A copy of the undertaking shall be sent to the District Social Welfare Officer and to the District Commissioner.

Medical arrangements

59.—(1) Except in the case of an emergency, a child shall not be placed with a foster parent unless the child has been examined by a medical officer, and has reported to the District Social Welfare Officer in writing on the physical and mental condition of the child.

(2) In the case of an emergency, the examination report required under subsection (1) shall be made within four weeks after the placement.

(3) A District Social Welfare Officer shall submit to the foster parent a list of immunizations carried out in respect of the child and indicate to the foster parent the list of other immunizations required to be effected in respect of the child in accordance with the Ministry of Health rules of immunizations and the foster parent shall ensure that those immunizations are carried out.

(4) The foster parent and the District Social Welfare Officer shall at all times keep a record of the immunizations in respect of the child.

(5) Where a child placed with a foster parent is under five years of age, the child shall be medically examined by a medical officer—

(*a*) within one month after the date of placement; and

(*b*) thereafter once every six months until the child attains the age of five years,

and the District Social Welfare Officer shall, so far as possible, assist the foster parent in ensuring the carrying out of the requirements of this provision.

(6) Where a child placed with a foster parent is above the age of five years, the child shall be medically examined by a medical officer once in every year.

(7) The medical officer who examines a child under subsection (5) or (6), shall report in writing to the District Social Welfare Officer by whom the child was placed, on the physical, mental and emotional condition of the child as found by such medical officer.

60. The District Social Welfare Officer shall be responsible for overseeing all aspects of the fostering and for ensuring that the provisions of this Act are complied with. Supervising officer

61.—(1) The District Social Welfare Officer shall visit the foster family and see the child— Visits during placement

(*a*) within two weeks after the date of placement of the child with the foster family where the child is under two years of age, and thereafter once every three months;

(*b*) within one month after the date of placement of the child with the foster family, where the child is above two years of age, and thereafter once every three months;

(*c*) within one month after receiving notification from a foster parent that he or she has changed his or her residence;

(*d*) immediately, and in any case not later than one week, after receipt of any information from the child, a foster parent or any other person which indicates the need for the District Social Welfare Officer to visit the child.

(2) The District Social Welfare Officer shall, after carrying out the visit under subsection (1) make a written report to be placed in the child's case record stating in detail his observations as to the child's welfare, progress and conduct or any changes which have occurred in the circumstances of the foster family.

(3) The report made under subsection (2) shall also include the child's views and feelings concerning placement and where there are any problems, they shall be discussed and resolved openly within the foster family.

62. No foster parent shall marry a child he or she is fostering and any such purported marriage shall be void. Marriages

63.—(1) A child shall not be allowed to remain with a foster parent where it appears that the placement is no longer in the best interests of the child, except that— Termination of placement

(*a*) the foster parent may appeal to the District Social Welfare Officer if it is sought to remove a child who has been in the care of the foster parent for more than twelve months; and

(*b*) the District Social Welfare Officer on any such appeal may prohibit or authorize the removal subject to such conditions as he/she thinks fit.

(2) A child shall not be required to remain in the care of a foster parent after the child has attained the age of sixteen years.

Surrendering a foster child

64. If at any time a foster parent intends to return a foster child, he or she shall bring the child before the District Social Welfare Officer and the District Social Welfare Officer shall place the child in a foster home.

Illness of foster child

65. If a foster child is seriously ill, the foster parent shall as soon as possible give notice to the District Social Welfare Officer who shall in turn notify the parents or guardians of the illness.

Death of foster child

66.—(1) If the foster child dies, the foster parent shall make every effort to obtain a medical certificate of death and post-mortem report and shall, within forty-eight hours, after the death notify the social welfare officer who shall, in turn notify the parents of the death.

(2) If the foster parent dies, in the case where a child is placed with a single foster parent, the child shall be returned to the social welfare office or to the manager of the foster home from which the child was received.

Records

Second Schedule

67.—(1) The District Social Welfare Officer shall maintain a register of foster parents, in which shall be stated a record set out in Form 3 in the Second Schedule.

(2) The register referred to in subsection (1) shall, in addition, contain—

(*a*) a statement of the name, sex, age, religion and address of each parent of the foster child if known; and

(*b*) the date of placement, the date of termination and the reason for termination.

(3) The District Social Welfare Officer shall also, in respect of each child placed by him in a foster home, maintain a foster child case record in the form set out in Form 4 in the Second Schedule.

Second Schedule

(4) The District Social Welfare Officer shall also keep with the foster child case record the following—

(*a*) a copy of the application form completed by the foster parent and a copy of the undertaking required by section 59; and

(*b*) reports made under section 62.

(5) The register prescribed by subsection (1) and the foster child case record made under subsection (3) may be inspected at any reasonable time by the Board.

(6) Every foster child case record made under this section shall be preserved for at least seven years after the child to whom it relates has

attained the age of sixteen years or has died or has returned to the care of his or her parents.

(7) The District Social Welfare Officer shall report to the Board within one month after each fostering effected by him, the fact of the fostering and stating the information in Form 3 in the Second Schedule. *Second Schedule*

(8) The District Social Welfare Officer shall also notify the Board within twenty-one days after its occurrence of any change in the information referred to in subsection (7).

68. A foster parent may at any time apply to adopt a foster child in accordance with the Adoption of Children Act. Application for adoption Cap. 26:01

69. A person who— Offences

(*a*) refuses to allow a foster child to be visited by persons authorized by either the District Social Welfare Office or the child justice court;

(*b*) fails, without reasonable excuse, to comply with any requirement under the Act;

(*c*) accommodates a foster child in undesirable premises;

(*d*) marries a child who is under foster care;

(*e*) runs a foster home without the approval of the Minister,

commits an offence and shall be liable to a fine of K50,000 and imprisonment for one year.

Division 5
Support for Children by Local Authorities

70.—(1) It is the general duty of every local government authority within its area of jurisdiction to— General functions of local government authorities

(*a*) safeguard and promote the welfare of children;

(*b*) mediate in any situation where the rights of a child are infringed, especially the child's right to succeed to property of his parents and all the rights accorded to the child by this Act;

(*c*) provide and maintain sufficient and appropriate recreational facilities;

(*d*) conduct inspection of child care facilities to ensure maintenance of standards; and

(*e*) inspect structures, places and activities that impose potential or actual harm to children.

(2) The power conferred by subsection (1) on a local government authority to protect the right of a child to succeed to property of his parents shall not be construed to authorize the authority to distribute such property.

Secretary for children affairs

71.—(1) A local government authority shall designate one of its officers to be the person responsible for the welfare of children and such officer shall be referred to as the Secretary for Children's Affairs.

(2) The Secretary for Children's Affairs shall, in the exercise of his or her functions in relation to the welfare of children, be assisted by such other officers of the local government authority as the local government authority may determine.

Registration of children with disabilities

72. A local government authority shall keep a register of children with disabilities within its area of jurisdiction and give assistance to them whenever possible in order to enable those children grow up with dignity among other children and to develop their potential and self-reliance.

Duty to provide accommodation to children in need

73. A local government authority shall provide accommodation for children within its area of jurisdiction who appear to the authority to be in need of the accommodation as a result of their being lost or abandoned or seeking refuge.

Tracing of parents or guardians

74. A local government authority shall make every effort, including publication through the mass media, to trace the parents or guardians of any lost or abandoned child or to return the child to the place where the child ordinarily resides; and, where the authority does not succeed, it shall refer the matter to a probation officer or social welfare officer or to the police.

Duty to report infringement of a child's rights

75.—(1) It shall be the duty of any member of the community who has evidence that a child's rights are being infringed or that a parent, guardian or any person having custody of a child, who is able to but refuses or neglects to provide the child with adequate food, shelter, clothing, medical care or education, to report the matter to the local government authority of the area.

(2) The Secretary for Children's Affairs may, upon receiving the report, summon the person against whom the report was made under subsection (1) to discuss the matter; and a decision shall be made by the Secretary for Children's Affairs in the best interests of the child.

(3) Where the person against whom the report was made refuses to comply with the decision made under subsection (2), the Secretary for

Children's Affairs shall refer the matter to child justice court which may make such orders as it may see fit.

Registration of births and deaths of children

76.—(1) Unless the duty to do so has been conferred on another authority, a local government authority shall keep and maintain a register of the births and deaths of children in the area of its jurisdiction.

(2) The registration of the birth or death of a child under this section shall be with sufficient particulars including in particular—

(*a*) the name and gender of the child;

(*b*) the name of the parents of the child;

(*c*) place of birth and the home of origin of the child; and

(*d*) in the case of death, the place of death and, where possible, the cause of the death of the child.

Registration of children affected by HIV and AIDS

77.—(1) A local government authority shall keep a register of children suffering from HIV and AIDS for the purposes of ensuring that children—

(*a*) are not discriminated against on the basis of their status;

(*b*) have equal access to social services including, health care services regardless of their status;

(*c*) are provided with the necessary material support if required; and

(*d*) in conjunction with the District Social Welfare Officer, they are provided with substitute care in the form of—

(i) care by relatives;

(ii) foster-care; or

(iii) adoption.

(2) For the purposes of this section, children affected by HIV and AIDS means children who are—

(*a*) infected by HIV;

(*b*) orphaned by AIDS;

(*c*) vulnerable to HIV infection; or

(*d*) from infected families and facing increased financial, physical and emotional burdens.

Division 6
Protection of Children from Undesirable Practices

Child abduction

78.—(1) A person who, unlawfully takes, retains or conceals a child without the consent of the parent or without the consent of any other person who has lawful custody of the child commits an offence and shall be liable to imprisonment for ten years.

(2) For the purposes of this section, lawful custody may be conferred on a person by—

(*a*) the operation of any written law;

(*b*) judicial or administrative decision; or

(*c*) a lawful agreement.

Child trafficking

79.—(1) A person who takes part in any transaction the object or one of the objects of which is child trafficking commits an offence and shall be liable to imprisonment for life.

(2) For the purposes of this section, child trafficking means the recruitment, transaction, transfer, harbouring or receipt of a child for the purposes of exploitation.

Harmful cultural practices

80. No person shall subject a child to a social or customary practice that is harmful to the health or general development of the child.

Forced marriage or betrothal

81. No person shall—

(*a*) force a child into marriage; or

(*b*) force a child to be betrothed.

Pledge of a child as security

82. No person shall—

(*a*) sell a child or use a child as a pledge to obtain credit;

(*b*) use a child as surety for a debt or mortgage; or

(*c*) force a child into providing labour for the income of a parent, guardian or any other person.

Offences

83. A person who contravenes sections 80, 81 and 82 commits an offence and shall be liable to imprisonment for ten years.

Inquiries and placements

84.—(1) A social welfare officer who has reasonable grounds to believe that a child—

(*a*) has been trafficked;

(*b*) has been abducted;

(*c*) has been subjected to a harmful cultural practice or any practice prohibited under sections 81 and 82; or

(*d*) is being used for the purposes of prostitution or immoral practices,

may remove and temporarily place the child in a place of safety.

(2) A child who is temporarily placed in a place of safety, under this *Division* shall be brought before a child justice court within forty-eight hours if it is practicable to do so.

(3) The child justice court may commit the child to a foster home or may place the child under the supervision of a social welfare officer until an inquiry into the circumstances of the case has been carried out and submitted to the child justice court by a social welfare officer.

(4) The social welfare officer shall complete the inquiry under subsection (3) and submit a report of the inquiry to the child justice court within one month from the date of placing the child into a place of safety.

(5) The child justice court may, after considering the report and if satisfied that the child is in need of protection and rehabilitation—

(*a*) commit the child to a foster home; and

(*b*) make an order placing the child under the supervision of a social welfare officer,

for such period as the court thinks fit.

(6) The child justice court may, in the best interests of the child, extend the period of the placement or the supervision, but such extension shall not go beyond the sixteenth birthday of the child.

(7) If the child justice court is not satisfied that the child is in need of protection or rehabilitation, it may order that the child be returned to the custody of the parent, guardian or any other person who had custody of the child.

Child recovery order

85.—(1) If it appears to a child justice court that there are reasonable grounds to believe that a child has been abducted or trafficked, it may make a child recovery order.

(2) A child recovery order may be made by a child justice court on the application by or on behalf of a person having lawful custody of the child.

(3) A child recovery order may—

(*a*) direct any person who is in a position to do so to take the child to a person specified in the order;

(*b*) authorize a person specified in the order to remove the child from the unlawful custody;

(*c*) require any person who has information that can assist in the recovery of the child to disclose that information to a person specified in the order; or

(*d*) authorize any police officer to enter premises specified in the order and search for the child.

(4) A person who knowingly obstructs an authorized person from exercising the power under subsection (3) commits an offence and shall be liable to imprisonment for three years.

PART III

Children Suspected to Have Committed Offences

Division 1

General Principles

Mode of pronouncing a finding against a child

86. The words "finding of guilty" "conviction" and "sentence" shall not be used in respect of any child in proceedings in a child justice court or any other court, but in pronouncing the conviction against the child, the court shall record that the child is found to be responsible for the offence charged and, instead of sentencing the child, the court shall proceed to make an order upon such a finding in accordance with this Act.

Non-effect of finding against a child

87. Save as provided in section 105 a finding of responsibility for an offence against a child shall have no effect whatsoever against the child for the purposes of any law except in respect only of the offence for which the child is found responsible and in respect of such offence, the finding shall elapse upon the child serving the order.

General consideration

88. A court, when dealing with a child who is brought before such court either as an offender or in need of care or protection, shall—

(*a*) in a proper case, take steps for removing him or her from undesirable surroundings and for securing that proper provision is made for his or her nutrition, education, and training; and

(*b*) give primary consideration to the rights of the child as recognized by the Convention on the Rights of the Child set out in the Third Schedule.

Third Schedule

Division 2

Methods of Bringing a Child Offender Before a Court or Other Inquiry

Arrest of a child Cap. 8:01

89. In addition to the provisions of the Criminal Procedure and Evidence Code or of any other written law relating to the arrest of a child, a police officer or any person arresting the child or the person who appears to be a child shall—

(*a*) have due regard to the observance of the principle of the best interests of the child as well as the general welfare of the child; and

(*b*) make the arrest in accordance with the guidelines set out under this *Division*.

Guidelines on arrest of children

90. A police officer or any person effecting the arrest of a child shall ensure that—

(*a*) the child has been informed of his or her rights in relation to the arrest or detention and the reasons for the arrest in a manner appropriate to the age and understanding of the child;

(*b*) there is no harassment or physical abuse of the child;

(*c*) the child is provided with medical attention where necessary;

(*d*) there is no use of handcuffs, except if the child is handcuffed to the arresting police officer or the person effecting the arrest;

(*e*) the child is not mixed with adults;

(*f*) the child is provided with nutritious food;

(*g*) child is accompanied by a parent, guardian or appropriate adult as far as it is practicable to do so;

(*h*) a parent, guardian or appropriate adult is informed immediately after the arrest if such parent, guardian or appropriate adult was not present at the time of the arrest;

(*i*) in serious offences, the child is provided with legal representation; and

(*j*) the child has been provided with counselling services where possible.

Summons

91. Where summons have been used for the purposes of bringing a child before a court, the summons shall—

(*a*) be issued by a court of competent jurisdiction;

(*b*) be served on the child, or parent, guardian or the next of kin of the child; and

(*c*) be served on a day and time that ensures due consideration of the best interests of the child.

Arrest of a child by a private person

92. Where an arrest of a child is made by a private person, that person shall present the child to a police officer or to the nearest police station or court as soon as it is practicable to do so, but no later than twenty-four hours after the arrest.

Reference to a probation officer

93.—(1) Where a child is arrested or summoned, the officer-in-charge of the police station shall as soon as it is practicable, refer the child to a probation officer.

(2) Where a police officer has reason to believe that a child suspected of having committed an offence is below the age of ten years, he or she shall not arrest the child, but shall refer such child to a probation officer for the estimation of age.

(3) Where a child has been referred to a probation officer under subsection (1), the probation officer shall assess the child for the purposes of—

(*a*) establishing the possibility of diverting the case;

(*b*) determining whether the child is in need of care and protection;

(*c*) age estimation, if the age is not known;

(*d*) formulating recommendations regarding—

(i) release of the child with or without bail;

(ii) release into the care of a parent, guardian or an appropriate adult; or

(iii) detention pending a preliminary inquiry.

(4) The probation officer shall submit the assessment report containing the recommendations in respect of the child to the prosecutor handling the matter.

(5) The prosecutor may, upon consideration of the recommendations—

(*a*) release the child with or without bail;

(*b*) release the child into the care of a parent, guardian or an appropriate adult; or

(*c*) detain the child.

(6) Where the charges have not been withdrawn, the prosecutor shall make arrangements for a preliminary inquiry.

(7) Where the probation officer estimates that the age of the child is below ten years, he or she shall recommend that the child be released for want of criminal responsibility.

(8) Where it is not possible to refer the child to a probation officer or where the reference may cause unnecessary delays, the prosecutor handling the matter may—

(*a*) take the child to a safety home and arrange for a preliminary inquiry within forty-eight hours; or

(*b*) release the child in accordance with section 15.

Police powers to caution and release

94.—(1) A police officer of the rank of sub-inspector and above may caution a child offender against the repetition of the crime and release the child with or without conditions if—

(*a*) the offence alleged to have been committed is not a serious offence;

(*b*) there is enough evidence to warrant prosecution in the case; and

(*c*) the child voluntarily admits responsibility for the offence.

(2) A police officer imposing a condition under this section shall take into account the best interests of the child and the condition shall not be penal in nature.

(3) The caution and release of a child shall be administered in the presence of a parent or guardian, or an appropriate adult or a probation officer, unless the police officer considers it to be in the best interests of the child to dispense with this requirement.

(4) A police officer shall, when cautioning and releasing a child, take into account—

(*a*) the circumstances in which the offence was committed;

(*b*) the views of the victim or complainant;

(*c*) personal conditions of the arrested child, including age, physical or mental infirmity, general character and family circumstances; and

(*d*) the views of the parent, guardian or appropriate adult of the child.

(5) The Chief Justice may, unless satisfied that the rules made under section 32 of the Criminal Procedure and Evidence Code are sufficient for the purposes of this Act, make rules prescribing guidelines for the police on the exercise of powers referred to in this section. Cap. 8:01

Division 3
Detention Before a Finding Against a Child

Restriction on detention before a finding against a child

95.—(1) No child shall be detained before a finding against him/her unless the Director of Public Prosecutions, in writing or upon hearing, satisfies the inquiry magistrate or court that—

(*a*) the prosecutor wishes to charge the child with a serious offence in respect of which there is sufficient evidence to prosecute;

(*b*) it is necessary in the interest of such child to remove him from undesirable circumstance; or

(*c*) the prosecutor has reason to believe that the release of such child would defeat the ends of justice.

(2) Where a child is detained pending a preliminary inquiry, the child shall as soon as it is reasonably possible, but not later than forty-eight hours after the arrest, or if the period of forty-eight hours expires outside ordinary court hours or on a day which is not a court day, the first court day after such expiry, be brought before an inquiry magistrate for

purposes of conducting a preliminary inquiry, failing which the child shall, subject to section 15, be released.

Places of detention before a finding against a child

96.—(1) Where a decision has been made to detain a child before a finding against the child, the child shall, subject to subsection (1), be detained in a safety home.

(2) Where a decision has been made to detain a child in accordance with subsection (1) and the officer-in-charge of a police station responsible for the child or the prosecutor is of the opinion that—

(*a*) it is impracticable to do so;

(*b*) the child is of unruly or depraved character that he or she cannot be safely so detained;

(*c*) by reason of the state of health or mental or physical condition of the child, it is not advisable so to detain the child; or

(*d*) the detention is not otherwise in the best interests of the child,

the officer-in-charge or prosecutor shall immediately apply to the inquiry magistrate, child justice court or any other court that made the order for any necessary alternative order.

(3) When making the alternative order under subsection (2), the inquiry magistrate or the court shall consider the following options—

(*a*) parenting order;

(*b*) hospital order;

(*c*) home confinement order; or

(*d*) reformatory centre order.

(4) An order made under this section may be varied or revoked by any court and if so revoked the provisions of this section shall apply.

Child not to associate with adult offenders

97. No child, while in detention in a safety home or reformatory centre or while being conveyed to or from any court or while awaiting before or after attending a criminal court, shall be permitted to associate with an adult, not being a relative, who is charged with an offence other than the offence with which the child is jointly charged with the adult.

Bail of children

98.—(1) Where a child or a person who appears to be a child is apprehended with or without a warrant and cannot be brought forthwith before an inquiry magistrate, the officer-in-charge of the police station to which such person is brought shall, unless—

(*a*) the charge is one of homicide or any offence punishable with imprisonment for a term exceeding seven years;

(*b*) it is necessary in the interest of such person to remove the person from undesirable circumstances; or

(*c*) the officer has reason to believe that the release of the person shall defeat the ends of justice,

release the person on a recognizance being entered into by the person or by his/her parent, guardian or appropriate adult with or without sureties to secure the attendance of the person upon the hearing of the charge.

(2) Where a child or a person who appears to be a child is released on bail under subsection (1), no monetary payments shall be attached or ordered as a condition for granting the bail.

(3) The provisions of the Bail (Guidelines) Act shall, in so far as they are consistent with the provisions of this Act, apply when granting bail under this section. Cap. 8:05

Division 4
Preliminary Inquiry

Nature and objectives of a preliminary inquiry

99.—(1) A preliminary inquiry shall be held in respect of a child suspected to be responsible for an offence prior to plea unless the child has been released on caution or the charge has been withdrawn.

(2) A magistrate of the second grade or above may preside over a preliminary inquiry and while so presiding shall be called an "inquiry magistrate" for the purposes of this Act.

(3) The appearance of a child before a preliminary inquiry shall be regarded as his or her first court appearance for the purposes of this Act.

(4) The objectives of a preliminary inquiry are to—

(*a*) ascertain whether a probation officer has made a social inquiry of the child and, if not, whether compelling reasons exist for not making such an inquiry;

(*b*) establish whether the matter can be diverted before plea;

(*c*) identify a suitable diversion option if the matter is to be diverted;

(*d*) ensure that all available information relevant to the child, his or her circumstances and the offence is considered in order to make a decision on diversion and placement of the child;

(*e*) establish whether the matter should be referred to the child justice court to be dealt with in accordance with the provisions of this Act;

(*f*) provide an opportunity for the prosecutor to assess whether there are sufficient grounds for the matter to proceed to trial;

(*g*) encourage participation of the child and his or her parent, guardian, or appropriate adult in decisions concerning the child;

(*h*) to ensure that views of persons concerned and present are considered before a decision is taken;

(*i*) determine release or placement of the child in accordance with the provisions of this Act pending conclusion of the preliminary inquiry or appearance of the child in a court; and

(*j*) take such other measures as may be necessary for the final disposition of the case.

(5) A preliminary inquiry shall be held in camera at any suitable place that the inquiry magistrate shall deem fit.

(6) The inquiry magistrate shall conduct the proceedings in an informal manner.

Persons who shall attend a preliminary inquiry

100.—(1) Subject to subsection (2), persons who shall attend a preliminary inquiry are—

(*a*) the inquiry magistrate;

(*b*) the prosecutor;

(*c*) the child;

(*d*) the parent or guardian of the child, if available;

(*e*) the probation officer;

(*f*) any other person served with a subpoena or requested by the inquiry magistrate to attend the preliminary inquiry; and

(*g*) an appropriate adult in the absence of a parent or guardian.

(2) In exceptional circumstances as determined by the inquiry magistrate, a preliminary inquiry may proceed in the absence of any of the persons referred to in subsection (1) (*d*), (*e*) and (*f*).

(3) Where a preliminary inquiry proceeds in the absence of a probation officer, the officer's social report must be available at the preliminary inquiry unless assessment has been dispensed with in accordance with section 103 (3).

(4) An inquiry magistrate may, if he considers it to be in the best interests of the child, exclude the persons referred to in subsection (1) (*d*) from attending a preliminary inquiry.

Persons who may attend a preliminary inquiry

101. Persons who may attend a preliminary inquiry are—

(*a*) the legal representative of the child if one has been appointed;

(*b*) the arresting police officer, the investigating police officer or any other police officer;

(*c*) an appropriate adult whether a parent is present or not; and

(*d*) any other persons permitted to attend the preliminary inquiry by the inquiry magistrate.

Procedure relating to holding of a preliminary inquiry

102.—(1) At the start of the preliminary inquiry, the inquiry magistrate shall—

(*a*) explain the purposes of the preliminary inquiry and the role of each person present in an official capacity;

(*b*) inform the child the nature of the allegations;

(*c*) inform the child of his or her rights in a manner appropriate to the age and understanding of the child; and

(*d*) explain to the child the immediate procedures to be followed in accordance with the provisions of this Act.

(2) At the start of the preliminary inquiry, the prosecutor shall ensure that the inquiry magistrate has the probation officer's social inquiry report and a completed age estimation form with all relevant documents attached.

(3) Where a child does not admit responsibility for the alleged offence, no further questions regarding the offence shall be put to the child and the inquiry magistrate shall set the matter down for plea and trial in a child justice court and the preliminary inquiry shall be closed.

(4) A record shall be kept of the proceedings of the preliminary inquiry.

(5) No decision taken at a preliminary inquiry shall be subject to appeal, save for a decision by the inquiry magistrate to detain a child in a safety home.

General powers and duties of an inquiry magistrate

103.—(1) The inquiry magistrate may—

(*a*) cause a subpoena to be served on any person whose presence is necessary for the conclusion of the preliminary inquiry;

(*b*) request or permit the attendance of any other person who may be able to contribute to the proceedings;

(*c*) request any further documentation or information which is relevant or necessary to the proceedings;

(*d*) make a determination of age in accordance with section 124;

(*e*) after consideration of the information contained in the social report, elicit any information from the persons attending the inquiry to supplement or clarify the information in the social report;

(*f*) take necessary steps to establish the truth of any statement or the correctness of any submission provided that such steps shall

not unduly influence the child to accept responsibility of the alleged offence; and

(*g*) perform any other duties necessary for the final disposition of the case.

(2) The inquiry magistrate may, where the conduct of the proceedings of the preliminary inquiry or any aspect is in dispute, rule on the conduct of the proceedings in a manner consistent with the provisions of this Act.

(3) If it is ascertained that a social inquiry has not yet been conducted, the inquiry magistrate may adjourn the preliminary inquiry in accordance with section 107 (1) (*f*) pending such social inquiry or may dispense with the social inquiry if it is in the best interests of the child to do so.

(4) The inquiry magistrate shall ensure that the persons present at the inquiry know of the recommendations in the probation officers social inquiry report.

(5) Where the probation officer is present at a preliminary inquiry, the inquiry magistrate may request the probation officer to explain, elaborate upon or justify any recommendation or statement made in the social inquiry report, or provide additional information.

(6) The inquiry magistrate shall permit any person present to challenge the correctness of any statement made in the social report of the probation officer.

(7) The inquiry magistrate shall ensure that the persons present at the preliminary inquiry are informed of diversion options available in the District or area.

(8) The inquiry magistrate shall consider reports regarding arrest and detention of the child.

Release or detention of a child by inquiry magistrate

104. The inquiry magistrate may make an order regarding the release or detention of the child pending further appearance of the child at a preliminary inquiry or court where—

(*a*) the preliminary inquiry is adjourned; or

(*b*) the matter is to be set down for plea and trial in a child justice court or in any other court.

Evidentiary matters

105.—(1) Where a child has admitted responsibility for the offence, information regarding a previous diversion or finding of a previous responsibility may be furnished at the preliminary inquiry by any person for the purpose only of assisting the inquiry magistrate to reach a proper decision regarding diversion.

(2) No self-incriminating information furnished at a preliminary inquiry by the child shall be admissible in any subsequent court proceedings.

Separation and joinder of proceedings of a preliminary inquiry

106.—(1) Subject to section 100 (1) (*f*), if a child in respect of whom a preliminary inquiry is held, is co-accused with an adult, the adult shall be excluded from the preliminary inquiry.

(2) If a child in respect of whom the holding of a preliminary inquiry is contemplated is a co-accused with one or more other children, a joint preliminary inquiry may be held.

(3) Where a joint preliminary inquiry is held, different decisions may be made in respect of each accused child.

Adjourning a preliminary inquiry

107.—(1) The inquiry magistrate may on his own motion or upon request, adjourn the proceedings of a preliminary inquiry for a period of not exceeding seven days for the purposes of—

(*a*) securing the attendance of a person necessary for the conclusion of the inquiry;

(*b*) obtaining information necessary for the conclusion of the inquiry;

(*c*) establishing the attitude of the victim to diversion or a diversion option;

(*d*) planning a diversion option;

(*e*) finding alternatives to pre-trial residential detention;

(*f*) conducting of a social inquiry of the child, where no social inquiry has previously been undertaken and it is found that such inquiry should not be dispensed with;

(*g*) conducting a further social inquiry of the child where the inquiry magistrate is satisfied that there are exceptional circumstances warranting the inquiry;

(*h*) holding an identification parade; and

(*i*) any other reason considered to be necessary by the inquiry magistrate.

(2) Where the preliminary inquiry is adjourned for the purposes of holding an identification parade, the inquiry magistrate shall inform the child of the need to have a parent, a guardian, an appropriate adult or legal representation during such proceedings.

(3) If the matter upon which the adjournment was granted has not been concluded upon the expiry of the period of seven days the preliminary inquiry shall be re-convened and section 110 shall apply.

Failure to comply with conditions pursuant to adjournment of a preliminary inquiry

108. A child or his parent, guardian or an appropriate adult who fails to comply with the conditions of the release of the child pursuant to an adjournment of a preliminary inquiry shall be liable to arrest upon a warrant issued by the court for such person to be brought before the court to show cause for failure to comply and the court shall make a necessary order.

Failure to appear at a preliminary inquiry

109. Where a child or his/her parent, guardian, or appropriate adult has been notified to appear at a preliminary inquiry by a police officer or by a probation officer and such child, parent, guardian or appropriate adult fails to attend, such person shall be compelled to attend as if he/she had been summoned by the inquiry magistrate.

Decisions regarding diversion, withdrawal of prosecution charges or transfer to a child justice court

110.—(1) After consideration of—

(*a*) the social inquiry report, unless the report has been dispensed with;

(*b*) the views of the persons at the preliminary inquiry;

(*c*) any further information provided by any person present at the preliminary inquiry;

(*d*) any further information requested or elicited; and

(*e*) the willingness of the child to admit responsibility for the offence,

the inquiry magistrate shall ascertain from the prosecutor whether the matter can be diverted.

(2) Where the prosecutor decides that the matter should be diverted, he or she shall withdraw the charge or charges against the child with or without conditions.

(3) Where the prosecutor decides that the matter be diverted, the inquiry magistrate shall—

(*a*) make an order regarding—

(i) an appropriate diversion option or options as set out in the Fifth Schedule; and

Fifth Schedule

(ii) implementation of the diversion option or options; or

(*b*) refer the matter to a child panel.

Fifth Schedule

(4) In addition to the diversion options set out in the Fifth Schedule, the inquiry magistrate may, after consultation with the persons present at the preliminary inquiry, develop an individual diversion option that meets the purposes and standards applicable to diversion set out under *Division 4* and the implementation thereof.

(5) Where the inquiry magistrate has reason to believe that the child is in need of care and protection, he or she may order that the preliminary inquiry be closed and the matter be dealt with in accordance with the provisions on care and protection under this Act.

(6) Where the prosecutor decides to proceed with the prosecution of the child, he/she shall inform the inquiry magistrate and the preliminary inquiry shall be closed and the matter shall be set down for plea and trial in a child justice court, or any other court of competent jurisdiction within fourteen days after conclusion of the preliminary inquiry.

(7) The prosecutor may withdraw the charge at any time during the preliminary inquiry.

Procedure upon referral of matter to court

111.—(1) Where the matter has been referred to court and the child has no legal representation, the inquiry magistrate shall explain to the child, parent, guardian or an appropriate adult the provisions on legal representation under this Act.

(2) Where the child, or any of the persons referred to in subsection (1) indicates an intention to apply for legal representation at State expense in accordance with section 127, the inquiry magistrate shall assist the child, as far as is reasonably possible to make an application for legal aid at State expense.

(3) Where the child is in a safety home, the inquiry magistrate shall—

(*a*) inform the child, his parent, guardian, or appropriate adult to attend such proceedings at the time and place as advised by the court or prosecutor; and

(*b*) direct the person in charge of the safety home to bring the child to court at the specified time and place, or may—

(i) direct the release of the child on bail;

(ii) make any other order in accordance with the provisions of this Act.

(4) Where the child is not in detention, the inquiry magistrate shall warn the child, his parent, guardian or the appropriate adult to appear in court at a specified place and time and may—

(*a*) alter or extend any conditions imposed before or during the preliminary inquiry;

(*b*) where necessary, order that the child be detained.

(5) Where the matter has been set down for plea and trial the prosecutor shall inform the child, parent, guardian or appropriate adult of the place and time.

(6) The inquiry magistrate who presides over a preliminary inquiry, shall not preside over any subsequent trial emanating from that inquiry.

Division 5
Diversion

Diversion to occur in certain circumstances

112. A child suspected of being responsible for an offence shall be considered for diversion if—

(*a*) such child admits responsibility for the alleged offence without undue influence;

(*b*) the child understands his right to remain silent;

(*c*) there is sufficient evidence to prosecute the child;

(*d*) the diversion process and options have been explained to the child, his/her parent, guardian or appropriate adult and such child or his parent, guardian or appropriate adult, if such person is available, consents to the diversion process; and

Fourth Schedule

(*e*) the offence is not one of the offences specified in the Fourth Schedule.

Diversion options
Fifth Schedule

113.—(1) For the purposes of this *Division* categories and the range of diversion options are set out in the Fifth Schedule.

(2) In selecting a specific diversion option for a particular child at a preliminary inquiry or in a court, consideration shall be given to—

Fifth Schedule

(*a*) the selection of a diversion option from an appropriate category in accordance with the Fifth Schedule;

(*b*) the cultural, religious and linguistic background of the child;

(*c*) the educational level, cognitive ability, domestic and environmental circumstances of the child;

(*d*) the proportionality to the offence of the option recommended or selected;

(*e*) the interest of society;

(*f*) the child's age and developmental needs;

(*g*) whether the child is a repeat offender; and

(*h*) any other peculiar circumstances relating to the child;

(3) The Minister may, on the recommendation of the Board, prescribe additional suitable diversion options consistent with the provisions of this *Division*.

Minimum standards applicable to diversion

114.—(1) No child shall be excluded from a diversion option on account of inability to pay a fee or charge required for such programme.

(2) A child shall not be required to perform community service or any other service other than service done in homes, vocational technical

schools or other training institutions,, as an element of diversion.

(3) Diversion options shall—

(*a*) promote the dignity and well-being of the child, and the development of his or her sense of self-worth and ability to contribute to society;

(*b*) not be exploitative, harmful or hazardous to the physical, mental, spiritual and social development of the child;

(*c*) be appropriate to the age and maturity of the child; and

(*d*) not interfere with the education of the child.

(4) diversion options shall, where reasonably possible—

(*a*) impart useful skills;

(*b*) include restorative justice element which aims to heal relationships, including the relationship with the victim;

(*c*) include an element which seeks to ensure that the child understands the impact of his behaviour on others, including the victims of the offence, and may include compensation or restoration; and

(*d*) be provided in a location reasonably accessible to the child, and a child who cannot afford transport in order to attend a selected diversion programme should, as far as is reasonably possible, be provided with the means to do so by an authority or person identified at a preliminary inquiry or identified by a child panel.

Registration of diversion programmes

115.—(1) Every institution that provides for diversion options in a predetermined and regular basis shall be registered with the Minister.

(2) For the purposes of subsection (1), every such institution shall specify the particulars of the diversion option provided at the institution and any variations of the option or any additional option shall be notified to the Minister for registration.

Establishment of child panels

116.—(1) There shall be a child panel within the jurisdiction of each second grade magistrate court which shall be responsible for—

(*a*) devising diversion option or diversion options; and

(*b*) implementing the diversion option or the diversion options, for child offenders in that area.

(2) A child panel shall be composed of persons nominated by the probation officer from amongst individuals in the community representing the following—

(*a*) the faith community;

(*b*) the local government;

(*c*) chiefs;

(*d*) teachers; and

(*e*) health workers.

(3) If an area is served by a chief, the probation officer shall consult the chief before nominating members of the child panel.

(4) Members of a child panel shall perform the functions on voluntary basis and shall hold the position for a period of three years subject to re-nomination.

(5) A person nominated to fill a vacancy on a child panel shall serve for the remainder of the term and shall be eligible for re-nomination.

(6) The probation officer shall act as secretary during the proceedings of a child panel.

(7) A child panel may co-opt any reputable person to assist in the proceedings.

Procedure of child panels

117.—(1) Subject to this section, a child panel shall regulate its own procedure and shall make diversionary plans as it deems fit.

(2) Where a child has been referred to a child panel, a probation officer shall be notified in writing of such referral by the inquiry magistrate or court responsible for the referral of the child.

(3) Upon receipt of the notice, the probation officer or a person designated by him shall convene a child panel within fourteen days after such receipt by—

(*a*) setting the time and place of the panel; and

(*b*) notifying all members of the child panel.

(4) Failure to notify any person under subsection (3) shall not affect the validity of the proceedings of the child panel unless the failure is likely to materially affect the outcome of the proceedings.

(5) Where proceedings of a child panel fail to take place, the probation officer shall arrange for an alternative date and shall notify all members of the child panel.

(6) The plan made by the child panel may include—

Fifth Schedule

(*a*) the application of any diversion option contained in the Fifth Schedule; and

(*b*) any other resolution appropriate to the child, his family and to the local circumstances which is consistent with the principles contained in this Act.

(7) A plan made by a child panel shall—

(*a*) specify the objectives of the plan and the period within which they are to be delivered;

(*b*) contain details of the services and assistance to be provided for the child and for a parent or a guardian;

(*c*) specify the persons or organizations to be provided with such services and assistance;

(*d*) state the responsibilities of the child and of the child's parent or guardian; and

(*e*) include such other matters relating to education, employment, recreation and welfare of the child, as may be relevant.

(8) The probation officer shall record, with reasons, any plan formulated at a child panel and shall furnish a copy of such record to—

(*a*) the child, parent, guardian or appropriate adult; and

(*b*) any person entrusted to monitor the implementation of the selected diversion option.

(9) A probation officer shall, within seven days, submit a record of the child panel proceedings to the inquiry magistrate or the court which referred the child to the panel.

(10) If no agreement on the plan is reached, the proceedings shall be closed and the probation officer shall, within forty-eight hours, refer the matter back to the inquiry magistrate or the court for further consideration.

(11) The proceedings of a child panel shall be confidential and statements made by any person shall not be used as evidence in any subsequent proceedings before any court.

Victim-offender mediation or other restorative justice

118.—(1) Where a victim-offender mediation or restorative justice process has been selected as a diversion option, a probation officer shall convene the mediation and shall regulate its procedure as he deems fit.

(2) If the process fails whether for the reason that the victim has not accepted the mediation or for any other reason, the probation officer shall refer the matter back to the preliminary inquiry, the court or the child panel as the case may be, for an alternative diversion option.

Failure to comply with diversion orders

119.—(1) If a child who has been referred to diversion fails to comply with any order relating to the diversion, the inquiry magistrate may, upon being notified in writing of the failure by the person entrusted to monitor the child or by a probation officer, issue a warrant of arrest or a written notice in respect of the child to appear before the inquiry magistrate or the court.

(2) When a child appears before an inquiry magistrate or court pursuant to a warrant of arrest or a written notice to appear issued under subsection (1), the inquiry magistrate or court shall inquire as to the reasons for the child's failure to comply with the diversion order.

(3) The inquiry magistrate may, after consideration of the views of any person present at the inquiry—

(*a*) apply the same option with altered conditions;

Fifth Schedule

(*b*) apply any other diversion option as described in the Fifth Schedule;

(*c*) make an appropriate order which shall assist the child or his or her parents, guardian or appropriate adult to comply with the diversion option initially applied; and

(*d*) recommend to the prosecutor that the matter be taken to trial, in which case the matter shall be set down for plea.

(4) The execution of a warrant of arrest under this section may be suspended by the inquiry magistrate or the court and the police officer required to execute the warrant may, instead of arresting a child, invite him with a written notice to appear before him for an assessment.

Monitoring programmes of diversion

120. Upon the selection of a diversion option in accordance with this section, an inquiry magistrate, a court or a child panel shall identify a probation officer or any suitable person to monitor the implementation of the selected diversion option.

Keeping of records

121. The Board shall keep and maintain a register of children diverted from prosecution.

PART IV

Determination of Age of a Child

Application of this Part

122. The provisions of this Part shall apply to the determination of age for the purposes of criminal responsibility under section 14 of the Penal Code and for the purposes of this Act.

Age estimation by a probation officer

123.—(1) For the purposes of determining the age of a child, a probation officer shall obtain any relevant information as regards the age of the child concerned and complete an age estimation form.

(2) If the age of a child brought before a probation officer is not known, the probation officer shall make an estimation of the age of that child.

(3) In making an estimation of the age of a child the information available shall be considered in the following order of cogency—

(*a*) a birth certificate;

(*b*) a previous determination of age under this Act;

(*c*) statements from a parent, guardian, or person likely to have direct knowledge of the age of the person;

(*d*) a baptismal certificate or other religious records, school registration forms, school reports, under-five clinic cards and other information or document of a similar nature if relevant to establishing a probable age:

(*e*) an estimation of age by a medical practitioner; and

(*f*) a statement by the person who is claiming to be a child.

(4) The form referred to in subsection (2) shall be available at the child's appearance at a preliminary inquiry for purposes of age determination by the inquiry magistrate in accordance with section 41.

Age determination at a preliminary inquiry

124.—(1) An inquiry magistrate shall on all the available information and with due regard to the provision of section 123 (3), make a determination, which shall be recorded as the age of the person.

(2) For the purposes of age determination, an inquiry magistrate may require any documentation, information or statements relevant to age determination from any person, body or institution to be furnished.

(3) If an inquiry magistrate determines that a person was, at the time of the alleged commission of the offence with which the person is being charged, over the age of sixteen years, the inquiring magistrate shall close the preliminary inquiry and direct that the matter be transferred to another court other than a child justice court.

(4) The age determined by the inquiry magistrate under this section shall be considered as the age of the person unless contrary information is placed before the inquiry magistrate or court.

Age assessment and determination by an officer presiding in a criminal court other than a child justice court

125.—(1) Where a person appearing in a criminal court other than a child justice court alleges, at any stage before sentence, that he was, at the time of the alleged commission of the offence with which he is being charged, below the age of sixteen years, or where it appears to the court that the person may be below the age of sixteen years, the person shall be referred, in the prescribed manner to a probation officer for estimation of age under section 123 which age estimation shall be submitted to the presiding officer of the court.

(2) A presiding officer referred to in subsection (1) shall make a determination of age on the same basis as an inquiry magistrate, under section 124.

(3) If the age of the person referred to in subsection (1) is found to be below the age of sixteen years and the trial has not yet commenced, the presiding officer shall transfer the matter to child justice court.

(4) If the age of the person referred to in subsection (1) is found to be below the age of sixteen years and the trial has commenced, the proceedings shall continue to be conducted before the presiding officer, but the remainder of the proceedings shall be conducted in accordance with the provisions of this Act.

(5) The presiding officer concluding a trial in accordance with subsection (4) may, after a finding of responsibility, refer the matter to a child justice court for an order, if to do so is in the best interests of the child.

(6) Where proceedings have started in accordance with the provisions of this Act in respect of a person who is alleged to have been below the age of sixteen years at the time of the alleged commission of the offence with which such person is being charged, and evidence is produced proving that such person was sixteen years of age or older at such time, the inquiry magistrate or court shall—

(*a*) if such person is appearing at a preliminary inquiry, close the inquiry and refer the matter to the prosecutor for arrangements to be made for that person to be tried as an adult;

(*b*) if a trial has not yet commenced, refer the matter to the prosecutor for arrangements to be made for that person to be tried as an adult;

(*c*) if a trial has commenced, adjourn the trial and proceed in an open court or transfer the matter to an appropriate court;

(*d*) if the trial has commenced and the offence is otherwise triable by jury, terminate the trial and re-commence the trial as an adult; and

(*e*) if the person has been convicted, transfer the matter to an appropriate court for that person to be sentenced as an adult.

PART V

Legal Representation

Access by a child to legal representation

126.—(1) A child has the right to legal representation.

(2) A child, parent, guardian or appropriate adult may appoint a legal representative of their choice to provide legal representation to the child.

(3) A person providing legal representation for a child shall be a person who is entitled to practice as a legal practitioner or any other person lawfully allowed to provide legal representation under written law.

(4) Where a legal representative for a child is appointed in accordance with subsection (2), liability for payment of fees for the legal representation rests on the parents, guardian, or the appropriate adult or where the interests of justice so require, on the State.

(5) A child, parent, guardian, or appropriate adult has the right to give instructions to a legal representative in the language of their choice, and, where necessary, with the assistance of an interpreter.

Child to be provided with legal representation at State expense Cap. 4:01

127.—(1) Where a child is subject to proceedings under this Act and no legal representative has been appointed, legal representation shall, upon conclusion of a preliminary inquiry, be provided at State expense in accordance with the Legal Aid Act if—

(*a*) the child is remanded in detention pending a plea and trial in court;

(*b*) it is likely that an order involving a residential requirement may be imposed;

(*c*) in the opinion of the inquiry magistrate, it is in the best interest of the child,

and the child, parent, guardian or the appropriate adult cannot afford to engage a legal representative.

(2) Where a child is subjected to care and protection proceedings under this Act, and no legal representative has been appointed, legal representation shall be provided at State expense in accordance with the Legal Aid Act if in the opinion of the court, it is in the best interests of the child, and the child, parent, guardian or appropriate adult cannot afford to engage the services of a legal representative. Cap. 4:01

(3) Where a child is charged with an offence contemplated in subsection (1) (*b*), a Plea may not be taken until a legal representative has been appointed.

(4) If the parent or guardian of a child who is granted legal representation at State expense under this Act is ineligible for legal representation at State expense due to the fact that the income of the parent or guardian exceeds the means test applied by the Legal Aid Act, the legal aid office may recover from the parent or guardian the whole or part of the costs of the legal representation afforded to the child. Cap. 4:01

Requirements to be complied with by legal representatives

128.—(1) A legal representative representing a child shall—

(*a*) explain the rights and responsibilities of the child in relation to any proceedings under this Act in a manner appropriate to the age and intellectual development of the child;

(*b*) allow the child, if capable of doing so, to give the legal representative independent instructions concerning the case;

(*c*) in matters of criminal proceedings, promote diversion where appropriate, whilst ensuring that the child is not unduly influenced to admit responsibility of the crime;

(*d*) ensure that all trials are concluded speedily.

Mode of seeking legal representation at State expense

129.—(1) Where a child requires legal representation at State expense, the inquiry magistrate or the court, shall immediately request the legal aid office to appoint a legal representative to represent the child.

(2) Where a child is remanded in detention, the legal representative shall, before the next court date, consult with the child at the place where the child is being detained.

Child may not waive legal representation

130.—(1) A child in need of legal representation in accordance with the provisions of section 127 shall not waive the right to legal representation.

(2) Where a child referred to in section 127 declines to give instructions to the legal representative, the probation officer shall bring this factor to the attention of the inquiry magistrate or the court, and the inquiry magistrate or the court, shall question the child to ascertain the reasons for so declining and the inquiry magistrate or the court shall note the reasons on the record of the proceedings.

(3) If, after questioning the child under subsection (2), the inquiry magistrate or the court is of the opinion that the reason for declining relates to the legal representative, the court or the inquiry magistrate may request the legal aid office to appoint another legal representative.

Legal assistance

131.—(1) If after questioning the child under subsection (2) of section 130 a child continues to decline the legal representation, the inquiry magistrate or the court may request the legal aid office to assist the child at State expense.

(2) A person legally assisting the child shall—

(*a*) attend all hearings pertaining to the case;

(*b*) address the court on the merits of the case;

(*c*) give notice of intention to appeal against a finding of the court or against an order following such finding; and

(*d*) have access to the affidavits, statements and any other materials of evidence relating to the case.

(3) A person assisting a child in accordance with this section may—

(*a*) cross-examine any witness; and

(*b*) raise objections to the introduction of evidence.

PART VI
Child Justice Courts: Establishment, Jurisdiction, Composition, Procedure and Powers

Establishment of a child justice courts

132. There shall be established child justice courts, which shall be subordinate to the High Court and shall exercise jurisdiction conferred on them by this Act or any other written law.

Composition of a child justice court

133.—(1) A child justice court shall be presided over by a professional magistrate or a magistrate of the first grade.

(2) The Chief Justice having been satisfied as to the competence of the presiding officer, may designate a court of magistrates of any grade to be a child justice court and shall publish a notice of the designation in the *Gazette*.

(3) A presiding magistrate shall, before commencement of proceedings in a child justice court, ensure that a probation officer of sufficient competence relevant to the requirements of this Act is present throughout the proceedings.

Jurisdiction of a child justice court

134.—(1) Subject to subsection (2), a child justice court shall have jurisdiction over children matters.

(2) Where a matter involving a child is otherwise liable to be heard by the High Court, it shall be heard by the High Court, but the High Court shall comply with the requirements of this Act in respect of the child.

Parent or guardian may be allowed to attend court

135.—(1) Where a child is brought before a child justice court, as an accused person or for care and protection proceedings, his parent or guardian may in any case, and, if such parent or guardian can be found and resides within a reasonable distance, shall be required to attend all stages of the proceedings, unless the child justice court is satisfied that—

(*a*) it is unreasonable or unnecessary to require the attendance of such parent or guardian; or

(*b*) it is in the best interests of the child that the parent or guardian should not attend the proceedings.

(2) Where it is unreasonable or unnecessary to require the attendance of a parent or guardian or where the attendance of a parent or guardian will be prejudicial to the fair disposal of the case, taking into account all

preliminary findings of the case, the court shall appoint an appropriate adult for purposes of subsection (1) to attend the proceedings in place of the parent or guardian.

Separation and joinder of trials involving children and adults

136.—(1) Where a child and an adult are jointly charged of an offence, the child shall be tried separately from the adult, unless there are compelling reasons for joinder of the trials.

(2) An application for such joinder shall be directed to the court after notice to the child, parent, guardian or the appropriate adult and the legal representative of the child if available.

(3) If the court grants an application for joinder of trials, the matter shall be transferred to the court, in which the adult is to appear.

(4) The court to which the matter has been transferred shall afford the child concerned all the benefits conferred upon a child by this Act.

Jury trials in children matters

137.—(1) A child shall not be tried by jury except where the child is jointly charged with an adult.

(2) The court may, on application or on its own motion, order trial by jury if it considers that trial by jury is necessary taking into account the circumstances and facts of the case, and shall institute all measures necessary to protect the best interests of the child.

(3) Where a child is charged with an offence which is otherwise triable by jury and that he shall be tried without a jury in accordance with subsection (1), the child shall be tried in camera by a High Court Judge sitting without a jury.

Places of sitting of child justice court and person who may attend the proceedings

138.—(1) A child justice court shall sit as often as is necessary for the purpose of exercising any jurisdiction conferred on it by or under this Act or under any other written law.

(2) A child justice court shall, save as otherwise provided in this section, sit either in a different building or room from that in which sittings of courts other than child justice courts are held, or on different days from those which sittings of such other courts are held.

(3) Where a child justice court sits in the same room, and on the same day as other courts, child cases shall take precedence.

(4) No person shall be present at any sitting of a child justice court, except—

(*a*) members and officers of the court;

(*b*) parties to the case before the court and their legal representatives and witnesses;

(*c*) probation officers, teachers and community leaders that are directly concerned in the matter;

(*d*) properly accredited reporters of newspapers and other media agencies as authorized by the court with or without conditions; and

(*e*) such other persons as the court may specially authorize to be present.

Restriction on media reports of proceedings in a child justice court

139.—(1) Subject to subsection (2), no media report of any proceedings in a child justice court shall reveal the name, address or school, or include any particulars calculated to lead to the identification of parties to the proceedings, or witnesses and no picture shall be published in any media report as being or including a picture of the child concerned in such proceedings.

(2) A court may, if satisfied that it is in the interests of justice so to do, by order dispense with the requirements of this section to such extent as may be specified in the order.

(3) Any person who reports any matter in contravention of this section commits an offence and is liable to—

(*a*) in the case of a company or organization, a fine of K100,000; and

(*b*) if such person is a reporter, a fine of K20,000 and imprisonment for six months.

(4) A court may in addition to ordering the company or organization to pay a fine, also order payment of compensation to the child who has been injured by the report.

(5) A complaint under this section may be lodged with the police or directly with the court by the injured child, or his parents, guardian, community representatives or any other person on behalf of the child.

Restrictions on punishment of children

140. No child shall be imprisoned for any offence.

Punishment of certain grave crimes
Sixth Schedule

141.—(1) Where a child is found responsible for offences listed in the Sixth Schedule, the court shall order him to be detained at a reformatory centre for such period as may be specified in the order.

(2) Where the court makes an order under subsection (1) the child shall, during that period, notwithstanding any other provisions of this Act, be liable to be detained under such conditions as the Board may generally and specially determine.

(3) A person detained in pursuance of the directions of the Board under this section shall, while so detained, be deemed to be in legal custody.

(4) A child detained in accordance with this section may be discharged by the order of the President unconditionally or on such conditions as the President, upon recommendations of the Board, may direct.

(5) Where the child is discharged with conditions, such order of discharge may, upon recommendations of the Board, be varied or revoked by the President if the child is in breach of the conditions.

(6) Where an order of discharge has been revoked, by the President the person to whom the order related shall proceed to such place as the Board may direct and if he fails to do so, may be apprehended without warrant and taken to that place.

(7) Where a person detained under this section attains the age of sixteen years while still in detention, he or she shall be separated from the rest of the children or sent to another place of detention other than a prison until the expiry of the remaining period of his or her detention.

Power to order parent or guardian to pay fine imposed instead of a child

142.—(1) Where a child is charged before a child justice court with the commission of an offence for which a fine may be imposed and compensation, damages and costs or any or all of them may be awarded, and the child justice court is of the opinion that justice would be best served by the imposition of all or any of those penalties, whether with or without any other punishment, the child justice court may order that the fine imposed and compensation, damages or costs awarded be paid by the parent or guardian of the child, unless the child justice court is satisfied that the parent or guardian cannot be found or does not have the means to meet the award, in which case the court may make such alternative order as the court may see fit.

(2) Where a child is charged with an offence, a child justice court may release the child and order his parent or guardian to give security for the good behaviour of the child.

(3) Where a child justice court thinks that a charge against a child is proved, the court may make an order against a parent or guardian for the payment of compensation, damages or costs or may make an order requiring the parent or guardian to give security for the good behaviour of the child without proceeding to record a finding of guilty against the child.

(4) An order under this section may be made against a parent or guardian who, having been required to attend, has failed to do so, but

otherwise, no such order shall be made without giving the parent an opportunity to be heard.

(5) Any sum imposed and ordered to be paid by a parent, or guardian, or on forfeiture of any security given by a parent or guardian under this section, may be recovered from the parent or guardian in like manner as if the order had been made on the conviction of the parent or guardian of the offence with which the child was charged.

Duty of other courts to remit children to a child justice court

143.—(1) Any court, other than the High Court, before which a child offender is found to be responsible for an offence shall, unless the best interests of the child require otherwise, remit the case to a child justice court.

(2) The child justice court to which the case of a child is remitted under subsection (1) shall deal with the child as if he had been tried and found to be responsible for the offence by that child justice court.

(3) No appeal shall be made against an order of remission made under this section, but nothing in this subsection shall affect any right of appeal against the verdict or finding on which such an order is founded, and a person aggrieved by the order of the child justice court to which the case is remitted may appeal therefrom to the High Court as if the child concerned had been tried by, or had pleaded guilty before that child justice court.

(4) A court making an order remitting a case of the child to a child justice court under this section may—

(*a*) direct that the child be detained in a reformatory centre or be released on bail until he can be brought before a child justice court;

(*b*) transmit to the child justice court to which the case has been remitted a certificate setting out the nature of the offence and stating that the case has been remitted for the purpose of being dealt with under this section; or

(*c*) make an order as the child justice court may make under section 142.

Criminal procedure in a child justice court

144.—(1) Where a child is brought before a child justice court charged with any offence it shall be the duty of the court as soon as possible to explain to the child in simple language suitable to his age and understanding the substance of the alleged offence.

(2) After explaining the substance of the alleged offence, the court shall ask the child whether he admits or does not admit the facts constituting the offence.

(3) If the child does not admit the facts constituting the offence the court shall then hear the evidence of witnesses in support thereof and at the close of the evidence in chief of each witness, the witness may be cross-examined by or on behalf of the child.

(4) The court shall, except in any case where the child has legal representation, allow the parents or guardian or, in their absence, any relative or other responsible person to assist the child in conducting his defence.

(5) If in any case where the child is not represented or assisted in his defence as provided in subsection (4), the child, instead of asking questions by way of cross-examination, makes assertions, the court shall then put to the witness such questions as it thinks necessary on behalf of the child and may for this purpose question the child in order to bring out or clear up any point arising out of such questions.

(6) If, when the evidence against the child has been heard, the court is of the opinion that a case is made out against the child sufficiently to require him to make a defence in respect of the offence charged or some other offence which the court is competent to try, they shall consider the charge against the child and decide whether it is sufficient and, if necessary, amend the charge.

(7) If the charge is amended the substance of the offence alleged in it as amended shall then be explained by the court to the child in simple language suitable to his age and understanding, and he shall be asked whether or not he admits the truth of the charge.

(8) If the child does not admit the truth of the charge as amended or if no amendment is made, the court shall explain to the child the substance of the evidence against him and, in particular, any points which are specifically against him or which require explanation and the court shall thereupon inform the child that he is required to give evidence and the child shall be asked whether he has any witness to examine or other evidence to adduce in his defence.

(9) The child shall give his evidence upon oath or affirmation if he or she is of an age to understand the nature and consequences of the oath or affirmation, and shall answer any question or produce anything lawfully put to or required of him by the court or in cross-examination.

(10) If the child refuses or neglects to—

(*a*) be sworn or affirmed, as the case may be;

(*b*) give evidence;

(*c*) answer any question lawfully put to him by the court or in cross-examination; or

(*d*) produce any document or thing which he is required to produce,

such refusal or neglect may be taken into account by the court in reaching its decisions.

(11) Where the child elects to call witnesses other than himself evidence shall be taken before that of such other witnesses.

(12) After the child, and his witnesses, if any, have given their evidence and after their examination, cross-examination and re-examination, if any, the court shall give its judgment.

(13) If the child admits the offence or the court is satisfied that it is proved that the child is responsible for the offence, the child and his parent, guardian or appropriate adult, if present, shall then be asked if he, and such parent, guardian, or appropriate adult, desires to say anything in extenuation or mitigation of the penalty or otherwise and before deciding how to deal with the child, the court shall obtain such information as to general conduct, character, home surroundings, school record and medical history, as may enable the court to deal with the case in the best interests of the child, and may put to the child any question arising out of such information which may include any written report of a probation officer or registered medical practitioner or other appropriate person which may be received and considered by the court without being read aloud.

(14) For the purpose of obtaining the information required under subsection (13), or for special medical examination or observation, the court may from time to time remand the child on bail or to a place of detention.

(15) Where the court has received and considered a written report of a probation officer, a registered medical practitioner or other appropriate person—

(*a*) the child shall be told the substance of any part of the report bearing on his character or conduct which the court considers to be material to the manner in which he should be dealt with;

(*b*) the parent, guardian, or appropriate adult, if present, shall be told the substance of any part of the report which the court considers to be material and which has reference to the character, conduct, home surroundings or health of the child; and

(*c*) if the child or the parent or guardian having been told the substance of any part of a report, desires to produce evidence with reference thereto, the court, if it thinks the evidence is material, shall adjourn the proceedings for the production of further evidence, and

shall, if necessary, require the attendance at the adjourned hearing of the person who made the report.

Proceedings of a child justice court to be informal

145. The proceedings of a child justice court shall be informal and in particular, the presiding officer shall ensure that—

(*a*) technical language is not used during hearing;

(*b*) no person puts on official uniform or professional robes or dress save only if it is strictly required to do so for the child to make an identification or for purposes of evidence as the court may authorize;

(*c*) there are regular breaks with such necessary provisions for the child as the Minister may prescribe by regulations; and

(*d*) children with disabilities are accorded assistance to meet their special needs where necessary.

Power of child justice court on proof of offence

146.—(1) Where a child admits the facts constituting the offence or where a child justice court is satisfied that an offence has been proved, the court shall, in addition to any other powers exercisable by virtue of this Act or any other written law, in so far as such law is consistent with this Act. have power—

(*a*) to discharge the child unconditionally;

(*b*) to discharge the child upon his entering into a bond to be of good behaviour and to comply with such conditions as the court may direct to be inserted in the bond;

(*c*) to commit the child to the care of a relative or other fit person willing to undertake the care of the child;

(*d*) to order the parent or guardian to execute a bond to exercise proper care and guardianship;

(*e*) to order the child to pay a fine, compensation, damages or costs;

(*f*) without making any other order, or in addition to an order under paragraphs (*b*), (*c*), (*d*) or (*e*), to make a probation order placing the child under the supervision of a probation officer or some person appointed for the purpose by the court, for a period of not less than one year and not more than three years from the date of the order as may be specified in the order, and to require the probation officer or the appointed person as the case may be to submit regular reports to the court on the development of the behaviour of the child;

(*g*) to commit the child to the High Court for an order where appropriate;

(*h*) to make a reformatory centre order; and

(*i*) to commit the child to a diversion programme.

(2) A court shall not make a reformatory centre order in relation to a child under the age of fourteen years, unless—

(*a*) there is no fit person willing to undertake the care of the child; or

(*b*) the court is satisfied that the child cannot suitably be dealt with otherwise.

(3) In arriving at its decision under this section, the court shall have regard to section 88 of this Act.

Reformatory centre orders and other orders for detention

147.—(1) A reformatory centre order or any other order of detention relating to a child shall be sufficient authority for the detention and rehabilitation of the child in a reformatory centre in accordance with this Act.

(2) The Board may at any time during the authorized period of detention exercise any of its powers in relation to the child under section 154.

(3) A reformatory centre order shall be in the form as set out in the Seventh Schedule.

Seventh Schedule

(4) The Chief Justice may by notice in the *Gazette* amend the Seventh Schedule.

Seventh Schedule

(5) A reformatory centre order or a warrant in pursuance of which a child is detained under this Act shall be delivered with the child to the person in charge of a reformatory centre and a copy of the order shall be delivered to the Registrar of the High Court for transmission to the Chairman of the Board.

(6) The manager of a reformatory centre shall assess the progress of each child under his control and shall submit the monthly assessment reports for each child to the Board for purposes of section 153.

Escape from custody or care and breach of court condition

148.—(1) A child in the custody and care of any person pursuant to an order of a court under this Act, while being conveyed between the court and a reformatory centre or safety home on remand or otherwise, or while being transferred by direction of the Board shall be deemed to be in lawful custody and if such child escapes he may be apprehended without warrant and brought back to the appropriate place but the escape shall not constitute a criminal offence.

(2) Where a court has committed a child to the care of any person under section 146 (1) (*c*) and it is reported to the court that the child has

escaped from the care of the person or that the person is unable or no longer willing to continue to undertake the care of the child, the court may, upon the child being brought before it, make such other order in replacement of its previous order as it could have made at the time of its previous order.

(3) Where a child has committed a breach of any condition upon which the child has been released by order of court or by the Board, the Chairman of the Board may direct any person, without warrant, to apprehend that child and to convey him to a reformatory centre for detention, and the provision of subsection (1) shall apply.

Appeal and review

149.—(1) Any child, his/her parent, guardian or appropriate adult dissatisfied with any judgment or order of a child justice court, may appeal to the High Court against such judgment or order in accordance with the provisions of any written law regulating appeals to the High Court from a subordinate court.

(2) Where a reformatory centre order or any other order for detention has been made by the child justice court under this Act, a copy of the order together with the proceedings, including the information obtained under section 144 (13) and the reasons of the court for making the order, shall be sent within seven days to the High Court which may confirm or set the order aside and substitute any other order which the child justice court might have made.

PART VII
Child Case Review Board

Establishment of Child Case Review Board

150.—(1) There is hereby established a Child Case Review Board (in this Act otherwise referred to as the "Board").

(2) The Board shall consist of members appointed by the Minister as follows—

(*a*) a chairperson of the Board, who shall be a judge of the High Court, nominated by the Chief Justice;

(*b*) a deputy chairperson who shall be a Resident Magistrate appointed by the Chief Justice.

(*c*) other members nominated by the relevant authority or organization each to represent—

(i) the Secretary for the Ministry responsible for health;

(ii) the Secretary for the Ministry responsible for education;

(iii) the Secretary for the Ministry responsible for labour;

(iv) the Secretary for the Ministry responsible for children affairs;

(v) the Secretary for the Ministry responsible for justice;

(vi) the Secretary for the Ministry responsible for youth;

(vii) the Secretary for the Ministry responsible for home affairs;

(viii) the Malaŵi Human Rights Commission;

(ix) a non-governmental organization that is directly concerned with children matters;

(x) the Malaŵi Police Service;

(xi) reformatory centres; and

(xii) religious organization

(2) The nominating authority of a member under subsection 1 (*c*) may, subject to the approval of the Minister, designate any duly qualified officer or other person to act for that member during the member's temporary inability to act by reason of sickness, absence or other causes.

(3) Members of the Board shall not, by reason of their appointment, be deemed to be officers in the public service.

(4) Members of the Board appointed under this section shall be paid such allowances for refundable costs and sundries out of the funds of the Board as the Minister may prescribe.

Tenure of office for members of the Board

151.—(1) Members of the Board shall hold office for a period of three years subject to re-appointment.

(2) A person appointed to fill a vacancy on the Board shall serve for the remainder of the term and shall be eligible for re-appointment.

(3) The Chairperson and Deputy Chairperson of the Board may, resign their appointment and the other members of the Board or their alternates may resign their appointments by giving notice in writing to the Chairperson, but no such resignation shall take effect until seven days after the receipt of the notice by the Chief Justice or the Chairperson, as the case may be.

Proceedings of the Board

152.—(1) The Chairperson of the Board shall preside at meetings of the Board and in his absence, the deputy Chairperson shall preside.

(2) In the absence of both the Chairperson and the Deputy Chairperson of the Board, and if the issue to be disposed of is urgent and non-judicial in nature, members of the Board present and forming a quorum shall elect one of their number to preside at that meeting.

(3) The quorum of the Board shall be formed by a simple majority of the members of the Board.

(4) Decisions of the Board shall be in accordance with the vote of the majority of members present and voting, but in the event of an equality of votes, the Chairperson or the person performing the functions of the Chairperson at the meeting concerned, shall, have a casting vote in addition to his deliberative vote.

(5) Meetings of the Board shall be held as often and at such times and places as the Chairperson shall determine but not less than four times in a calendar year.

(6) The Board shall determine its own procedure subject to the provisions of this Act.

Functions of the Board

153. The functions of the Board shall be—

(*a*) to consult with and advise on the administrators of reformatory centres, safety homes and foster homes;

(*b*) to undertake visits and to monitor reformatory centres, safety homes and foster homes to ensure compliance with this Act;

(*c*) to keep a register of detained children;

(*d*) to review cases of child offenders and matters of children kept for the purposes of care and protection;

(*e*) to facilitate the designing and implementation of rehabilitation programmes and curriculum for the proper re-integration of children into society;

(*f*) to coordinate with civil society organizations and other organizations dealing with children;

(*g*) to facilitate relations between communities and places of detention;

(*h*) to facilitate and supervise recruitment of staff in reformatory centres, safety homes and foster homes;

(*i*) to carry out any other duties imposed upon it under this Act; and

(*j*) to do all the functions that are necessary in order to promote the development of children.

Powers of the Board

154.—(1) The Board shall have the power—

(*a*) to specify the reformatory centre to which any child in respect of whom a reformatory centre order has been made is to be sent;

(*b*) to specify the foster home to which any child in respect of whom a foster home placement order has been made is to be sent;

(*c*) at any time to cancel a reformatory centre order or safety home order and order the absolute or conditional discharge of any child

from any reformatory centre or safety home or any other place of detention;

(*d*) to order any child to be transferred from one reformatory centre or safety home to another reformatory centre or safety home or to any other place of detention;

(*e*) to order any child to be released from any reformatory centre or safety home on condition that the child shall live under the charge of, and be supervised by, any fit person including a probation officer named in the order of release willing to receive, take charge of, supervise, educate and keep the child employed in some trade, occupation or calling as the Board may recommend from time to time;

(*f*) to attach such conditions as it thinks fit to any order discharging a child from a reformatory centre and to cancel the order of discharge if any such condition is not observed.

(2) Where the Board is satisfied, on the representations of the manager of a reformatory centre or safety home, that a child ordered to be detained in such reformatory centre or safety home is of unruly character that he is not a fit person to be detained, or is of depraved character that he is not a fit person to be so detained, the Board may upon assessing the child, order the child to be transferred to and be detained in another reformatory centre or safety home, which the Board considers more suitable for the child.

(3) Where a child having been transferred to another reformatory centre, safety home or any place of detention is again brought before the Board on the representations of the manager of the reformatory centre or safety home as being of unruly or depraved character, the Board shall make any necessary order as it thinks fit and proper.

(4) Any person who considers himself aggrieved by any order made by the Board under this section may appeal to the High Court.

(5) Any person, not being a child, who wilfully disobeys, obstructs, or fails to comply with any order made by the Board under this section commits an offence and shall be liable to a fine of K20,000.

Secretariat of the Board

155.—(1) An officer shall be appointed in the public service to act as Secretary to the Board.

(2) The Secretary shall—

(*a*) maintain records for the Board;

(*b*) perform administrative duties;

(*c*) prepare budgets;

(*d*) act as liaison officer for the Board; and

(*e*) perform such other duties as the Board may assign to him,

and shall be subject to the general and special direction of the Chairperson and the Board.

(3) In addition to the Secretary to the Board, there may be appointed in the public service other officers in the service of the Board subordinate to the Secretary.

Funding for the Board

156.—(1) The funds of the Board shall consist of such sums as Parliament shall appropriate for the purposes of the duties and the Board.

(2) In addition to any sums appropriated under subsection (1) the Board may receive donations of funds, materials and other forms of assistance from any person, body or organization.

PART VIII
Reformatory Centres and Safety Homes

Public reformatory centres and public safety homes

157.—(1) The Minister shall establish places or institutions as public reformatory centres or public safety homes for the purposes of this Act.

(2) All institutions which at commencement of this Act are operating as public reformatory centres shall be deemed to have been established under this Act.

(3) All public reformatory centres and safety homes shall be managed by a person appointed by the Minister.

(4) The establishment of public reformatory centres and public safety homes under this section shall be published in the *Gazette*.

(5) The publication shall state whether the public reformatory centre or public safety home is for female or male children or for both and shall specify the number of children to be detained in that centre.

Minister may appoint private reformatory centres and private safety homes

158.—(1) The manager or proprietor of a home or institution may apply to the Minister to appoint the home or the institution to be a private reformatory centre or private safety home.

(2) The Minister, upon being satisfied that the application meets the necessary requirements in accordance with this Act, may designate the institution as a private reformatory centre or a private safety home and shall issue a certificate to that effect to the manager or proprietor of the institution.

(3) The issue of the certificate by the Minister shall be notified in the *Gazette*.

(4) The certificate issued by the Minister shall state the number of children authorized to be kept at the centre or home at any one time and shall state whether the centre or home is for male children or female children or for both.

Reformatory Centres and Safety Homes (Management) Rules *Eighth Schedule*

159.—(1) A reformatory centre and a safety home shall be regulated and managed in accordance with the Reformatory Centre and Safety Home (Management) Rules as set out in the Eighth Schedule.

Eighth Schedule

(2) The Minister may, by order published in the *Gazette*, amend the Eighth Schedule.

Manager shall send monthly reports to the Board and allow inspection

160.—(1) The manager of a reformatory centre or a safety home shall send reports to the Board in the prescribed form containing such particulars as are required by the Reformatory Centre and Safety Home (Management) Rules at monthly intervals and such other intervals as the Board may direct.

(2) The Manager of a reformatory centre or a safety home shall at all reasonable times allow the centre or home to be inspected by any person or persons appointed by the Board in accordance with this Act.

Inspection of reformatory centres and safety homes

161.—(1) The Board may from time to time appoint a team of qualified persons for the purposes of—

(*a*) inspecting reformatory centres and safety homes;

(*b*) reporting to the Board on the management and state of condition, appearance and training of children detained at a centre or a home.

(2) The persons so appointed shall have authority to enter and inspect the premises and the detained children and to make all reasonable inquiries about the management of the centre or home and to promptly report the findings to the Board.

(3) If, in the opinion of the Board, the centre or home requires to be closed, it shall send the inspectors report together with its recommendation to the Minister.

(4) Where inspectors consider it necessary for the welfare and safety of the children held at a reformatory centre or safety home, they may direct immediate and temporary closure of the centre or home and shall include such decision in the report send to the Board and the Board shall forward the report and the recommendations to the Minister for final decision.

(5) The manager of a reformatory centre or a safety home may make submissions to the Minister in writing showing cause why the centre or home should not be permanently closed pending the Minister's final determination.

Powers of a Minister to direct closure of reformatory centres or safety homes

162.—(1) In all other circumstances not requiring immediate and temporary closure of a reformatory centre or safety home, the Minister, upon considering the report of inspectors and the Board's recommendations, may direct the closure of the centre or home by notice in writing.

(2) The Minister shall not close a reformatory centre or a safety home without giving the manager of the centre or the home an opportunity to be heard.

(3) Notice of the closure of a reformatory centre or a safety home shall be given to the manager of the centre or home and the centre or home shall cease to be a reformatory centre or a safety home from the time specified in the notice.

(4) The Minister shall publish the notice of the closure of a reformatory centre or safety home in the *Gazette*.

Application to review Minister's decision on closure of a reformatory centre or safety home

163. The manager of a reformatory centre or a safety home may apply to the Minister to review a decision to close the centre or home and the Minister may, upon considering the application, re-issue the certificate.

Manager, proprietor, his executor or administrator may apply for closure

164.—(1) The manager or proprietor of a private reformatory centre or a private safety home intending to close the centre or the home, may, upon giving notice of the intention to the Minister of not less than one month and not more than six months in writing, apply for the closure of the centre or the home.

(2) The executors or administrators of a deceased proprietor intending to close a private reformatory centre or a private safety home may, upon giving one month's notice in writing of their intention, apply for the closure of the centre or home.

(3) At the expiry of the period of the notice given under subsection (1) or (2), unless the notice has been withdrawn, the Minister may proceed with the closure and notification of such closure shall be published in the *Gazette*.

(4) A notice of the intention to close a reformatory centre or a safety home given under subsection (1) or (2) may be withdrawn before the close of the centre or home.

(5) Notwithstanding subsection (4), the Minister may, proceed with the closure if the condition of the centre or home requires that the centre or home be closed, but the Minister shall not so proceed unless he has been given the proprietor, executor, manager, or the administrator an opportunity to be heard.

Duty to receive children

165. The manager of a private reformatory centre or a private safety home shall, if there is a vacancy in the number of children authorized to be detained at the centre or home, be liable to receive any child sent to the centre or home under this Act, and shall undertake to educate, clothe, lodge and feed the child during the whole period for which the child is liable to be detained at the centre or home.

Effect of closure notice and cancellation of certificate

166. If a reformatory centre or a safety home has been closed under the provisions of this Act, no child shall be received into such centre or home under any of the provisions of this Act after the date of the receipt by the manager of the centre or home of the notice of the closure or after the date specified in the notice of the closure.

Discharge or transfer of children

167.—(1) When the closure of a private reformatory centre or private safety home takes effect, the persons resident shall be, by order of the Board and upon consultation with the Minister, either discharged or transferred to some other reformatory centre or safety home as the case may be.

(2) Where a reformatory centre or a safety home is temporarily closed by inspectors in accordance with section 161 (4), the Board shall make all necessary arrangements to transfer the children resident at the centre or home to an alternative suitable place.

(3) The period of stay for which any child was sent to a reformatory centre or a safety home shall not be increased by the transfer of such child to another place.

Review of cases of detained children

168. The manager of a reformatory centre or a safety home shall review all cases of children detained for twelve months, and may, after such review, recommend to the Board the conditional discharge of such children.

Reformatory centre, safety homes lawful places of detention

169. A reformatory centre or a safety home shall be a lawful place of detention for children in respect of whom a lawful order has been made or who may lawfully be transferred thereto.

Illness of children detained

170.—(1) Where a child who is detained in a reformatory centre or a safety home under the provision of this Act is seriously ill, and there is no suitable provision for the care of such illness, the manager or the person having control of the place where such child is detained may, on the certificate of a medical officer, make an order for the removal of the child to a hospital.

(2) So long as a child who has been removed to a hospital under the provisions of subsection (1) shall remain in hospital, the medical officer in charge of the hospital shall, at the end of every month, transmit to the manager or the person having control of the place where such child was detained a certificate signed by the medical officer that it is in the medical officer's opinion necessary that the child should remain in the hospital.

(3) The manager or the person having control of the reformatory centre or safety home concerned shall, if the illness is serious or recurrent, inform the parents or the guardian about such illness.

(4) In this section, "hospital" means a government hospital and any registered health centre, institution or facility.

Return after treatment

171.—(1) If, in the opinion of the medical officer, it is no longer necessary that the child should remain in the hospital, the medical officer shall issue a certificate to that effect to the manager or person having control of the place where the child was detained.

(2) The manager or the person having control of the place where the child was detained may, upon seeking the advice of the medial officer, recommend to the Board for the release of the child from the place of detention.

Duty to prevent escape

172. Every reasonable precaution shall be taken by medical officers or other officers of a hospital to prevent the escape of a child who may at any time be under medical care at the hospital.

Breaches of rules of discipline

173.—(1) Any child who, having been committed to the care or custody of a reformatory centre or a safety home, wilfully neglects or refuses to conform to the rules of discipline of the centre or home shall be disciplined in accordance with the disciplinary rules of the centre or home made under section 176.

(2) Where a child who has been committed to a reformatory centre or a safety home proves, in the opinion of the manager of such place, to be of so unruly or depraved a character as to render his retention in the reformatory centre or the safety home undesirable, the manager may make a report of the circumstances of the case in writing to the Board.

Penalties for assisting or inducing escape and for harbouring or concealing escaped children

174. Any person who—

(*a*) knowingly assists, directly or indirectly, or induces any child legally detained in a reformatory centre or a safety home or detained in a hospital to escape from such place;

(*b*) knowing that a child ordered to be detained or committed at a reformatory centre, safety home or hospital has escaped from the centre or home, or hospital, harbours or conceals, or assists in harbouring or concealing the child, or causes or induces the child not to return to centre, home, or hospital, commits an offence and shall be liable to imprisonment for six months and a fine of K50,000.

Presumption of evidence of identity

175. The production of the warrant or any other document, in pursuance of which a child is sent to a reformatory centre, safety home or hospital shall in all proceedings relating to the child be sufficient evidence of the identity and of the lawful detention or disposal of the child named in the warrant or document.

Disciplinary rules

176.—(1) The manager of a reformatory centre or a safety home may make rules not repugnant to, or inconsistent with, this Act for the maintenance of discipline at the centre or home.

(2) Disciplinary rules under this section shall not be enforced until they have been approved by the Minister.

(3) Rules approved by the Minister shall not be altered without the like approval.

(4) A copy of the disciplinary rules of a reformatory centre or safety home purporting to be signed by the manager of the centre or home shall be *prima facie* evidence of such rules for purposes of any legal proceedings.

PART IX
General

Contribution order

177.—(1) When a reformatory centre order, safety home order, a foster home placement order or an order committing a child to the care of a fit person has been made by a child justice court (hereinafter in this section referred to as a "committal order) the court may, at the same time or subsequently, make a contribution order requiring a parent or guardian or other person having custody of the child to contribute a weekly, monthly or any other periodic sum as may be specified in the order or to make other necessary contributions as the court may consider proper in respect of his maintenance.

(2) A contribution order may be made against the parent or guardian or a person having custody of the child, who having been required to

attend before the child justice court, has failed to do so; but no such order shall be made without giving the person to make the contribution an opportunity to be heard.

(3) A contribution order shall remain in force as long as the relevant committal order is in force.

(4) Subject to subsections (4) and (5), no contribution shall be payable under a contribution order in respect of any period during which the person to be maintained is on conditional discharge or release or under the supervision of a probation officer.

(5) A contribution order may be varied, revoked or suspended by the court which made it but shall not be varied as to increase any contribution payable under the order without giving the person making the contribution an opportunity to be heard.

(6) If a person wilfully neglects to comply with a contribution order, the court which made the order may, for every breach of the order, by warrant, direct the amount due to be levied in accordance with the law for levying fines imposed by courts or may sentence the person to imprisonment for fourteen days for each month's contribution remaining unpaid.

Funds for public reformatory centres, public safety homes and public foster homes

178. Funds for public reformatory centres, public safety homes and public foster homes shall consist of—

(*a*) such funds as Parliament may appropriate;

(*b*) contributions ordered by the court under section 177; and

(*c*) any donations of funds, materials and other gifts from any person.

Duties and powers of a person to whom a child is committed

179.—(1) A person to whose care a child is committed under this Act shall, whilst the order is in force, have the like control over the child as if he were the parent of the child responsible for the maintenance of the child and the child shall continue to be in the care of such person notwithstanding any claim by the parent of the child or by any person unless the court orders otherwise.

(2) A person to whose care a child is committed under this Act shall report to the court—

(*a*) quarterly, on the condition, education and health of the child; and

(*b*) immediately, if the child dies or escapes from that person's control.

(3) Where a person fails to make a report under this section, the court may exercise any of its powers under section 146.

(4) A person to whose care a child is committed shall at all reasonable times allow a Social Welfare Officer to visit the place where the child is living and shall answer all reasonable enquiries which may be made by such Social Welfare Officer.

Duties arising from a probation order

180.—(1) Where a court has made a probation order under section 146 (1) (*f*) the parents or guardians of the child shall continue to be responsible for the care and maintenance of the child but shall allow the probation officer or other persons appointed for the purpose by the court (hereinafter referred to as the "supervisor") to have access at any time to the place where the child is living.

(2) The parents of the child shall give all such information relating to the condition, education and health of the child as the supervisor may require and shall, in the best interests of the child, consider any advice relating to the upkeep and education of the child which may be given by the supervisor.

(3) If at any time the supervisor reports to the court that the child in respect of whom the probation order has been made should be removed from the custody of the parents or guardian, the court shall consider such report as though there were proceedings pending under section 144 and may make any order in place of the probation order which it might have made under section 146.

General offences

181. Any person, not being a child, who—

(*a*) refuses to answer, to the best of his knowledge and belief, any question which he is legally bound to answer and which is asked of him by any officer appointed by or under this Act;

(*b*) willfully signs or delivers any false or incorrect notification, report or statement;

(*c*) refuses to allow an officer appointed or authorized under this Act such entry or access to any house, building, land, enclosure, vessel or other place as he is required by this Act to allow; or

(*d*) contravenes or fails to comply with any order, summons or warrant lawfully made or issued under this Act,

commits an offence and shall be liable to imprisonment for six months and to a fine of K50,000.

Mistake as to age

182.—(1) Subject to subsection (2), no action and no order made in the purported exercise of any power conferred by this Act shall be deemed illegal by reason only that it afterwards appears or is discovered that a mistake has been made regarding the age of a person.

(2) Where a mistake is made as to the age of a child, an order of the court made against the child on the basis of the mistake as to the age shall be invalid to the extent of the adverse effect as against the child, and the court which made the order or any other court of coordinate jurisdiction shall have power to make a declaration to that effect.

Extension of application of the Act

183. A court may, on application or on its own motion, extend the application of this Act to persons that are above sixteen years of age but below twenty-one years of age.

Regulations and rules

184. The Minister may, on the recommendation of the Board, make regulations for carrying this Act into effect.

Court rules

185. The Chief Justice may make rules regulating the procedure and practice in a child justice court.

Repeals and savings
Cap. 26:02
Cap. 26:03

186.—(1) Subject to subsection (2), the Affiliation Act and the Children and Young Persons Act are hereby repealed.

Cap. 26:02
Cap. 26:03

(2) Any subsidiary legislation and any order made under the Affiliation Act and the Children and Young Persons Act repealed by subsection (1) and in force immediately before the commencement of this Act—

(*a*) shall remain in force and effect, unless in conflict with this Act, shall be deemed to be subsidiary legislation or an order made under this Act; and

(*b*) may be replaced by subsidiary legislation or an order made under this Act.

PART X
Transitional Provisions

Transfer of children

187.—(1) The Minister shall, at the commencement of this Act, by writing under his hand direct—

(*a*) the transfer to a safety home in accordance with the provisions of this Act, any person in custody who is a child and is alleged to have committed an offence in respect of which proceedings have not been commenced;

(*b*) the transfer to a reformatory centre in accordance with the provisions of this Act, any person who is a child and is serving a custodial sentence;

(*c*) the transfer to a foster home or, where necessary, to a safety home in accordance with the provisions of this Act, any child who is in a reformatory centre for the purposes of care and protection.

Remittance of a list of children

188.—(1) A police officer in charge of a police station or a person in charge of a prison shall, at the commencement of this Act—

(*a*) remit to the Board a list of all persons in custody who are children within the meaning of this Act; and

(*b*) remit to the Board a list of all persons serving sentences in custody who were children at the time the offences were committed.

(2) A person in charge of a reformatory centre shall, at the commencement of this Act remit to the Board a list of children being kept at the centre for the purposes of care and protection.

Proceedings under the repealed Acts Cap. 26:03 Cap. 26:02

189.—(1) Where, at the commencement of this Act, proceedings have been commenced in respect of a person who is a child or a young person within the meaning of the Children and Young Persons Act and the Affiliation Act (now repealed) the proceedings and all related matters shall be dealt with as if they had been commenced under this Act and any court dealing with the matter shall continue as if it has jurisdiction under this Act.

SCHEDULES

FIRST SCHEDULE

s. 38

Prescribed Form of Account of a Child's Estate

I, ... of ..... do solemnly and sincerely declare that the estate of name of child/children ..... is as follows—

Description of property: .....
Income (monthly, quarterly, yearly): .....
Bank Details (account number, balance, etc.): .....

.....

AND I MAKE this solemn declaration, conscientiously believing the same to be true [and by virtue of the Oaths, Affirmations and Declarations Act].

Declared at ..... this ..... day of ....., 20.....

Before me

.....

[*Commissioner for Oaths*]

s. 52

SECOND SCHEDULE

FORM 1

FOSTER-CARE PLACEMENTS

Application to Foster a Child

Name of Applicant: .....

Married/Single: ..... Age: .....

Address: .....

.....

Telephone Number: .....

Number of Children: ..... Age: .....

Employment of Applicant: .....

Employment of Husband: .....

Employment of Wife: .....

Other Sources of Income (e.g. Farm): .....

Have you ever fostered a child/children before? (If so give particulars):

.....

.....

.....

Reasons for Foster: .....

Are you willing to undertake short-term fostering? .....

Names of Referees and their Addresses (one shall be your local or Village Chief): .....

1. .....

.....

.....

.....

2. .....

.....

.....

.....

Age Range: .....

Sex of child you wish to foster: .....

Applicant's Signature: .....

Date: .....

FOSTER-CARE PLACEMENTS s. 58

FORM 2

FORM OF UNDERTAKING

(*To be filled in Triplicate*)

I/We (names of foster parents): .....

Address of Foster Parents: .....

.....

Who received (name of child): .....

Into my/our home on (date): .....

From (name of District Social Welfare Office): .....

Undertake that—

1. I/we will care for (name of child): .....

   as though he/she were my/our own child.

2. I/we will bring him/her up in accordance with the .....
   .....

3. I/we will look after his/her health and allow him/her to be medically examined as required by the District Social Welfare Office.

4. I/we will allow an Officer of the District Social Welfare Office or representative of the Ministry to visit my/our home, and to see the child at any time.

5. I/we will inform the District Social Welfare Office immediately if the child is seriously ill, or is missing, or is involved in an accident, or is in any kind or trouble.

6. I/we will inform the district Social Welfare Office immediately if I/we plan to change residence and address.

7. I/we understand that an Officer of the District Social Welfare Office has the right to remove the child from my/or home in certain circumstances.

Signed: .....
(*Foster Father*)

Signed: .....
(*Foster Mother*)

CERTIFICATE

I. .....

(Title): .....

Certify that I have explained the foregoing undertaking in the ..... language to .... and ..... foster parent(s).

Signed: .....

(*District Social Welfare Officer*)

Date: .....

Signed: .....

(*Witness*)

Date: .....

.....

(Address of District Social Welfare Office)

……

(Address of Witness)

ss. 55 and 67

FOSTER-CARE PLACEMENTS

FORM 3

PROSPECTIVE FOSTER PARENT RECORD

Name of Prospective Foster Parent(s): .....

Date of Birth: .....

Age: .....

District of Origin: .....

Religion: .....

Occupation: .....

Marital Status of prospective Foster Parent(s): .....

Is the relationship monogamous or polygamous?: .....

Home Address—

T.A.: .....

Village: .....

District: .....

Details of other people living in the home:

Name	*Relationship to Prospective Foster Parent(s)*	*Age*	*School/Class Occupation*
.....	.....	.....	.....
.....	.....	.....	.....
.....	.....	.....	.....
.....	.....	.....	.....
.....	.....	.....	.....

Is there or has there been any serious illness/infection in the family? (If any, give details):

.....

.....

.....

.....

State the income and wealth of the prospective foster parents. Give details of business and land owned by the family/person.

Description of the home: .....

.....

Number of Rooms: ..... Type of Toilet: .....

Type of Water Supply: .....

Will the family/person need material support in order to start fostering? If the answer is "yes" state what will be needed:

.....

.....

.....

.....

.....

Why does this family/person wish to foster children?

.....

.....

.....

.....

.....

Do they understand the temporary nature of fostering? .....

Has the person/any member of the family had a serious conviction (if YES, give details and dates and state whether in your opinion it is of such seriousness as to prevent the family/person from taking on a foster placement?

.....

.....

.....

.....

Assessment of the suitability of that family/person to foster children.

.....

.....

.....

.....

Recommendation: .....

.....

.....

.....

What type of foster child would best benefit from this family/person? (baby, child, male, female, etc.)

Details of Foster Children already placed with foster parents:

Name of Foster	*Sex*	*Date of placement*	*Age at date of placement*	*Date of termination*	*Why terminated*
.....	.....	.....	.....	.....	.....
.....	.....	.....	.....	.....	.....
.....	.....	.....	.....	.....	.....
.....	.....	.....	.....	.....	.....

Details of parents and siblings of foster children if known:

Names of Foster Child	*Names of Parents*	*Name of brothers/ sisters of foster child*	*Sex*	*Age*	*Religion*	*Address*
.....	.....	.....	.....	.....	.....	.....
.....	.....	.....	.....	.....	.....	.....
.....	.....	.....	.....	.....	.....	.....
.....	.....	.....	.....	.....	.....	.....

Name of Supervising Officer: .....

Address: .....

.....

Signature: ..... Date: .....

FOSTER-CARE PLACEMENTS s. 67

FORM 4

FOSTER CHILD CASE RECORD

Name of child (surname first): .....

Date of Birth: ..... Age: .....

District of Origin: .....

Sex: ..... Religion: .....

Name of Foster Parents: .....

Foster Parent's Home Address:	Change of Address:
Village:	.....
T.A.:	.....
District:	.....

Natural Father's Name: ..... Alive/Dead/Unknown

Natural Mother's Name: ..... Alive/Dead/Unknown

Natural Father or Guardians Address	*Natural Mother or Guardians Address*
Village:	.....
T.A.:	.....
District:	.....

Details of Foster Child brothers, sisters and relatives:

Name	*Address*	*Alive/Dead*
.....	.....	.....
.....	.....	.....
.....	.....	.....
.....	.....	.....
.....	.....	.....

Where was the child living immediately prior to this foster placement? (Please give names and addresses of carers or institution):

.....

.....

.....

.....

CASE HISTORY OF THE CHILD AND HIS/HER FAMILY

.....

.....

.....

.....

.....

.....

.....

.....

State what efforts have been made to trace the parents or relatives and to return the child to his/her family:

.....

.....

.....

.....

Details of medical history including immunization:

.....

.....

.....

.....

Give details of education:

School: ..... class: .....

Name of supervising officer: .....

Address: .....

.....

Supervisor's Signature: ..... Date: .....

THIRD SCHEDULE

s. 88

Guiding Principles in Matters Concerning Children

Welfare principle

1. Whenever the state, a court, a local authority or any person determines any question with respect to—

(*a*) the upbringing of a child or;

(*b*) the administration of a child's property or the application of any income arising from it,

the welfare of the child shall be of the paramount consideration.

Time being of the essence

2. In all matters relating to a child, whether before a court of law or before any other person, regard shall be to the general principle that delay in determining the questions is likely to be prejudicial to the welfare of the child.

Criteria for decisions

3. In determining any question relating to circumstances set in paragraphs (*a*) and (*b*) of paragraph (1), the court or any other persons shall have regard to the best interest of the child, including in particular to—

(*a*) the ascertainable wishes and feelings of the child concerned considered in the light of his age and understanding;

(*b*) the physical, emotional and educational needs of the child;

(*c*) the likely effects of any changes in the child's circumstances;

(*d*) the age, sex and background of the child and any other circumstances relevant in the matter;

(*e*) any harm that the child has suffered or is at the risk of suffering;

(*f*) where relevant, the capacity of the parents, guardians or other people involved in the care of the child in meeting needs of the child.

Rights of the child

4. A child shall have the rights—

(*a*) to leisure which is not morally harmful and the right to participate in sports and positive cultural and artistic activities;

(*b*) to a just call on any social amenities or other resources available in any situation of armed conflict or natural or man-made disasters;

(*c*) to exercise, in addition to all rights states this Schedule and this Act, all the rights set out in the United Nations Convention on the Rights for the Child and the Organization of African Union Charter on the Rights and Welfare of the African Child with appropriate modifications to suit the circumstances in Malaŵi that are not specifically mentioned in this Act.

s. 112

FOURTH SCHEDULE

Children charged with the following offences shall not be considered for diversion:

OFFENCE

1. Rape
2. Attempted rape
3. Abduction
4. Defilement of a girl and attempted defilement
5. Defilement of an idiot or imbecile
6. Manslaughter
7. Murder
8. Attempted murder
9. Infanticide
10. Killing an unborn child
11. Disabling in order to commit a felony or misdemeanour
12. Stupefying by overpowering drug or thing with intent to commit a felony or misdemeanour
13. Robbery with violence
14. Attempted robbery with violence
15. House breaking and burglary
16. Arson
17. Offences against aircraft
18. Offences against motor vehicles, trains, etc.
19. Conspiracy to murder
20. Aiding suicide
21. Acts intended to cause grievous harm or prevent arrest
22. Preventing escape from a wreck
23. Maliciously administering poison with intent to harm
24. Intentionally endangering safety of persons travelling by railway
25. Accessory after the fact to murder.

FIFTH SCHEDULE

ss. 110, 113, 117 and 119

Diversion Options

CATEGORY A

Category A diversion options are—

(1) An oral or written apology to the victim or victims of the offence or to any other specified person or institution;

(2) A formal caution with or without conditions;

(3) Placement under a supervision and guidance order placing the child under the supervision and guidance of a mentor or peer role model for a period not exceeding three months in order to monitor and guide the child's behaviour;

(4) Placement under a reporting order requiring a child to report to a specified person at a time or at times specified in such order so as to enable such person to monitor the child's behaviour for a period not exceeding three months;

(5) The issue of compulsory school attendance order for a period not exceeding three months requiring the child to attend school everyday for a specified period of time, which attendance shall be monitored by a specified person;

(6) The issue of a family time order requiring the child to spend a number of hours with his family for a period not exceeding three months;

(7) The issue of a positive peer association order requiring a child to associate with persons who can contribute to the child's positive behaviour for a period not exceeding three months;

(8) The issue of a good behaviour order requiring a child to abide by an agreement made between the child and his family to comply with certain standards of behaviour;

(9) The issue of an order prohibiting the child from visiting, frequenting or appearing at a specified place;

(10) Referral to counselling or therapy for a period not exceeding three months;

(11) Compulsory attendance at a specified centre or place for a specified vocational or educational purpose for a period not exceeding five hours each week, for a maximum of three months;

(12) Symbolic restitution of an object owned, made or bought by a child to a specified person, persons, group or institution;

(13) Restitution of a specified object to a specified victim or victims of the alleged offence where the object concerned can be returned or restored; and

(14) Any order removing the child from undesirable environment for a specified period.

CATEGORY B

Category B diversion options are—

(1) Any of the options under Category A provided that where a maximum period has been imposed under paragraphs (3), (4), (5), (6), (7), (8), (9), and (10), the maximum period shall not exceed six months;

(2) Compulsory attendance at a specified centre or place for a specified vocational or educational purpose for a period not exceeding eight hours each week, for a maximum of six months;

(3) Performance without remuneration of some service for the benefit of the community under the supervision or control of an organization or institution, or a specified person or group identified by the probation officer for a maximum period of fifty hours, and to be completed within a maximum period of six months;

(4) Provision of some service or benefit to a specified victim or victims which the child or the family can afford;

(5) Payment of compensation to a maximum of K10,000 to a specified person, persons, group or institution where the child or his family is able to afford this;

(6) Where there is no identifiable person or persons to whom restitution or compensation could be made, provision of some service or benefit or payment of compensation to a community organization, charity or welfare organization;

(7) Referral to appear at a victim-offender mediation or other restorative justice involving family members at a specified place and time; and

(8) Any two of the options listed used in combination.

CATEGORY C

Category C diversion options are—

(1) Referral to a programme with a residential requirement, where the duration of the programme does not exceed six months, and no portion of the residence requirement exceeds a maximum of thirty-five nights during the operation of the programme;

(2) Performance without remuneration of some service for the benefit of the community under the supervision and control of an organization

or institution, or a specified person or group identified by the probation officer for a maximum period of two hundred and fifty hours, to be completed within a maximum period of twelve months;

(3) Where a child is and is not attending formal schooling, compulsory attendance at a specified centre or place for a specified vocational or educational purpose for a maximum period of not more than thirty-five hours per week, to be completed within a maximum period of six months;

(4) Referral to counselling or therapeutic intervention which shall be in conjunction with any of the options listed in this category.

SIXTH SCHEDULE

s. 141

Child offenders charged with the following offences shall be detained in accordance with section 141:

OFFENCE

1. Offences punishable by death
2. Attempting to murder
3. Attempting to murder by convict
4. Accessory after the fact to murder
5. Written threats to murder
6. Conspiracy to murder
7. Aiding suicide
8. Disabling in order to commit felony or misdemeanour
9. Stupefying in order to commit felony or misdemeanour
10. Acts intended to cause grievous harm or prevent arrest
11. Preventing escape from wreck
12. Intentionally endangering safety of persons travelling by railway
13. Attempting to injure by explosive substance
14. Maliciously administering poison with intent to harm
15. Infanticide
16. Manslaughter

s. 147

SEVENTH SCHEDULE

Reformatory Centre and Safety Home Orders

In the Child Justice Court sitting at: .....

Child Case Number: ..... (hereinafter called the child) who appears to the court to be a child having been born as far as can be ascertained, in or about the ..... day of ...., 20..... has this day *been found to be responsible for or having been charged with the following offences—

……

……

……

..... or *having been found to be in need of care, control and protection.

IS HEREBY ORDERED to be sent FORTHWITH (or on the ..... day of ....., 20.....) to a reformatory centre/safety home to be kept there until the child has been released on the recommendation of the Child Case Review Board or until the child has been discharged/released on bail/acquitted.

AND it is further ordered that the Police officers of the Republic or ..... shall be responsible for conveying the child to such reformatory centre/safety home as may be specified by the Child Case Review Board.

*AND it is further ordered that ..... residing at ..... being the parent or guardian or other person hitherto having custody of the child shall pay to .... the weekly (monthly) sum of K ..... until the child ceases to be subject to this order.

*AND it is further ordered that until the child is sent to the said reformatory centre/safety home in pursuance of this order he or she shall be kept in ..... or is committed to the custody of ....

Dated this ..... day of ....., 20....

Signed: .....

Magistrate/Chairman

*Delete if inappropriate

EIGHTH SCHEDULE

s. 159

Reformatory Centre and Safety Home (Management) Rules

1. These Rules may be cited as Reformatory Centre and Safety Home (Management) Rules. Citation

2. Reformatory centres and safety homes shall provide for the following minimum services and conditions— Minimum standards of safety homes

(*a*) education, recreation and health care;

(*b*) parent/child interaction centre;

(*c*) counselling services;

(*d*) proper hygiene and sanitation;

(*e*) adequate nutrition, proper clothing and bedding; and

(*f*) communication materials.

3. In addition to the services mentioned in rule 2, reformatory centres and safety homes may where circumstances do require, facilitate any other services by allowing service providers access to the centre or home or by allowing children to have access to the services. Other services

4. The officer-in-charge of a reformatory centre or a safety home shall keep a register in which details of each child shall be kept. Records

5. Details of the register shall be examined by the Board. Inspection of the Register by the Board

NATIONAL STATISTICS

CHAPTER 27:01

Containing Pages 1–13

CHAPTER 27:01

NATIONAL STATISTICS

ARRANGEMENT OF SECTIONS

SECTION

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FIRST SCHEDULE

SECOND SCHEDULE

CHAPTER 27:01

NATIONAL STATISTICS

6 of 2013 **An Act to make provision for the establishment of the National Statistical office and the National Statistical System; for the collection, compilation, analysis, abstraction, publication and dissemination of statistical information; and for matters connected therewith and incidental thereto**

[19th July, 2013]

PART I

Preliminary

Short title **1.** This Act may be cited as the National Statistics Act.

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

"authorized officer" means any person appointed as an authorized officer under section 9 and includes, a supervisor, enumerator, coder and data entry clerk;

"census" means a statistical operation in which all units of interest or the whole population are enumerated;

"Commissioner" means the public officer holding or acting in the office of Commissioner for Statistics appointed under section 4;

"National Statistical System" refers to public agencies responsible for producing, analysing, disseminating and using statistics, and encompasses the statistical outputs produced and the people involved, including both producers and users of statistics;

"official statistics" means any quantitative, qualitative, aggregate and representative information relating to any matter contemplated in the First Schedule and produced by the National Statistical Office, and includes any information produced by line government ministries, departments and public authorities, provided that such information shall become official statistics after the Commissioner shall have endorsed the information with a stamp of quality;

"respondent" means any person who supplies or is required to supply statistical information;

"return" means any book, document, form, card, tape, disc or storage media on which information required is entered or recorded or is required to be entered or recorded for statistical purposes under this Act;

"statistical sample survey" means a statistical operation in which only a selected part or sample and not all units of interest or the whole population are enumerated;

"statistics" means any quantity collected as a summary of data;

"survey" includes a survey of undertakings or persons whereby information is collected from all persons in a field of inquiry or from a sample thereof, wholly or primarily for statistical purposes;

"undertakings" means any undertaking by way of trade or business whether or not the trade or business is carried out for profit, and includes a ministry or Government department, statutory body, local government body, and any other organization or body of persons or any part thereof and includes a branch of undertakings.

PART II

Establishment and Functions of the National Statistical Office

Establishment of the National Statistical Office

3.—(1) There is hereby established the National Statistical Office which shall be a Government Department.

(2) The National Statistical Office shall be the central depository of all official statistics produced in Malaŵi.

Appointment of the Commissioner for Statistics

4.—(1) There shall be a Commissioner for Statistics who shall be appointed by the President.

(2) The Commissioner shall be responsible for the administration and control of the National Statistical Office.

Duties of the Commissioner for Statistics

5.—(1) It shall be the duty of the Commissioner to advise and report to the Minister generally on statistical matters, and, subject to any special or general directions of the Minister—

(*a*) to carry out any of the functions imposed on him under this Act;

(*b*) to advise the Minister on statistical policy matters, and where appropriate, to consult and liaise with other appropriate officers of Government ministries and departments;

(*c*) to advise Government ministries and departments on the conception of statistical projects initiated or carried out by such ministries and departments;

(*d*) to define, lay down and promote standard concepts, procedures, definitions and classification for use in official statistics;

(*e*) to collect, compile, analyze, abstract and publish or otherwise disseminate, statistical information relating to matters specified in the First Schedule;

First Schedule

(*f*) to organize a coordinated scheme of statistics relating to Malaŵi;

(*g*) to ensure the independence, accuracy, relevance, integrity, timeliness and professional standard of statistical information produced by the National Statistical Office;

(*h*) to ensure the security and confidentiality of information collected under this Act;

(*i*) to determine and exercise final responsibility for the discontinuance of statistical collection; and

(*j*) to determine the pricing policy of statistical products and services supplied by the National Statistical Office.

(2) The Commissioner shall cause the statistics collected under this Act to be compiled, tabulated and analyzed and, subject to this Act, may cause the statistics or abstracts thereof to be published and disseminated, with or without observations thereon, in such manner and by such medium as he may determine.

(3) The Commissioner shall have the sole responsibility of deciding the procedure and method to be employed in the provision of statistics and the extent, form and timing of publication and dissemination of any statistics produced or to be produced by the National Statistical Office.

(4) The Commissioner, as a coordinator of the National Statistical System, shall coordinate and monitor statistical activities in all Government ministries and departments, local authorities and statutory corporations in order to—

(*a*) ensure that approved statistical standards and procedures are applied;

(*b*) ensure that standard concepts, definitions and classifications are used to enhance harmonization and comparability of statistics; and

(*c*) minimize unnecessary overlapping and duplication in the collection and publication of statistical information.

(5) The Commissioner may collaborate with Government ministries and departments in the collection, compilation, analysis, publication and dissemination of statistical information, including statistics derived from the activities of any ministry or department.

(6) The Commissioner shall ensure that common definitions for statistical purposes are used in respect of all official statistics collected or published by any Government ministry or department.

(7) The Commissioner shall have the mandate to declare any statistics official if he is satisfied with their quality.

Employment of assistants

6. For purposes of carrying out his duties under this Act, the Commissioner may employ public officers or other persons to assist in carrying out the purposes and provisions of this Act, and may authorize such officers or persons, by writing under his hand or the hand of an officer of the National Statistical Office authorized by the Commissioner in that behalf, to perform such functions as may be required.

PART III

Establishment and Functions of the National Statistical System

Establishment of the National Statistical System

7.—(1) There is hereby established the National Statistical System.

(2) The National Statistical System shall comprise the following—

(*a*) producers of statistics, including the National Statistical Office as the coordinating agency of the System, Government ministries and departments and public agencies;

(*b*) data users, including key users such as policy and decision makers;

(*c*) data suppliers, including establishments and households; and

(*d*) research and training institutions, including universities and colleges.

Functions of the National Statistical System

8. The National Statistical System shall have the following functions—

(*a*) to raise public awareness about the importance and role of statistical information to society;

(*b*) to collect, process, analyze and disseminate quality statistical data and information in a coordinated and timely manner;

(*c*) to promote the use of best practices and international standards in statistical production, management and dissemination;

(*d*) to promote the use of statistical data and information, particularly for evidence-based policy design, monitoring and evaluation and decision making; and

(*e*) to build sustainable capacity for the production and use of statistical data and information in Malaŵi.

PART IV
Statistical Information and Powers of the National Statistical Office

Statistical surveys by public, private or foreign institutions

9.—(1) Any public, private or foreign institution wishing to conduct any statistical survey on a national scale shall first seek the approval of the Commissioner for the appropriateness of conducting such surveys and the methodology to be used.

(2) Where an institution has been granted the approval referred to in subsection (1), that institution shall, upon completion of the survey, provide the Commissioner with the datasets and copies of a report on the data collected.

Power to obtain particulars

10.—(1) The Commissioner may conduct a statistical inquiry or direct the conduct of a statistical inquiry relating to matters specified in the First Schedule, and may require such inquiry to be carried out using either census or sampling methods, or both.

(2) Where any statistical inquiry is being carried out in accordance with this Act, the Commissioner or any authorized officer may require any person to supply him with such particulars as may be prescribed, or

such of those particulars as the Commissioner may consider necessary or desirable in relation to that particular inquiry.

(3) A person, on being required to give information under subsection (2), shall, to the best of his knowledge, information and belief, complete forms, make returns, answer questions and give all necessary information, in the manner and within the time prescribed or as the Commissioner may direct.

(4) An authorized officer acting in accordance with this section may require any person to supply him with particulars either by—

(*a*) interviewing that person; or

(*b*) leaving at or posting to that person's last known address, a form containing a notice requiring the form to be completed and returned in the manner and within the time specified in the notice.

(5) Unless the contrary is proved, the sending of the form as provided for in subsection (4) shall be deemed to be sufficient request by the authorized officer to the person concerned, and delivery shall be deemed to have been made at the time of leaving the form at the person's last known address, or at the time of normal delivery of post at the address, as the case may be.

Compilation of list of respondents

11. For the purpose of compiling lists of respondents or respondents of a particular class, group or description, the Commissioner may, by notice published in the *Gazette*, or in a newspaper of wide circulation in Malaŵi, or in such other manner as might reasonably be expected to bring the notice to the attention of respondents' concerned, require the respondents to communicate with the Commissioner in a manner and within such time as may be specified in the notice.

Power of entry and inspection

12.—(1) The Commissioner or any authorized officer may, for any purpose connected with the collection of statistical information, enter and inspect any land, building or other premise, vehicle, vessel or aircraft, and may make such inquiries or observations as may be necessary for the collection of the information.

(2) The Commissioner or any authorized officer shall not enter and inspect the land, building or other premises, vehicle, vessel or aircraft without—

(*a*) a warrant issued in terms of subsection (3); or

(*b*) the consent of a person who is competent to consent to the entry and inspection.

(3) A warrant referred to in subsection (2) (*a*) may be issued in chambers by a magistrate court, only if the court is satisfied, on the basis of information made available to the court on oath or affirmation, that there are reasonable grounds for believing that entry on and inspection of the land, building or other premises, vehicle, vessel or aircraft concerned is reasonably necessary for the purpose contemplated in subsection (1).

(4) A warrant issued in terms of subsection (3) shall remain in force until—

(*a*) it is executed;

(*b*) it is cancelled by the court that issued it;

(*c*) the expiry of three months from the date it was issued; or

(*d*) the purpose for which the warrant was issued no longer exists,

whichever may occur first.

(5) An entry and inspection in terms of subsection (1) shall be carried out—

(*a*) at any reasonable time during the day unless the carrying out thereof by night is justifiable and necessary; and

(*b*) with strict regard to decency and order, including the protection of a person's right to dignity, freedom and privacy.

(6) The Commissioner or any authorized officer shall, immediately before carrying out an entry and inspection in terms of subsection (1)—

(*a*) identify himself to the owner or person in control of the land, building or other premises, vehicle, vessel or aircraft, if such person is present;

(*b*) if applicable, hand to that person a copy of the warrant or, if that person is not present, affix that warrant to a prominent place on the land, building or other premises, vehicle, vessel or aircraft; and

(*c*) supply that person with particulars regarding his authority to carry out the entry and inspection.

Disclosure of information and confidentiality

13.—(1) Subject to subsection (2), no return or other information collected by the National Statistical Office for the purpose of official or other statistics that relates to—

(*a*) a person;

(*b*) a household;

(*c*) a business; or

(*d*) any other organization,

may be disclosed to any person.

(2) The return or other information contemplated in subsection (1) may, subject to the directions of the Commissioner, be disclosed—

(*a*) to the Commissioner and officers concerned of the National Statistical Office who have taken the oath of secrecy referred to in section 17;

(*b*) to the person from whom the return or other information was collected;

(*c*) with the prior written consent of the person from whom the return or other information was collected, to his representative; or

(*d*) where the information is already available to the public from an organ of state, business or other organization concerned.

(3) Notwithstanding the provisions of any other law, no return or other information collected in terms of this Act shall be admissible as evidence in any legal proceedings, except for purposes of prosecution under this Act.

(4) Nothing in this section shall prevent or restrict the disclosure or publication of any report, abstract or document without the consent referred to in subsection (2) (*c*) where the particulars contained in the report, abstract or document render identification possible merely by reason of the fact that they relate to an undertaking or business which is the only undertaking or business within its particular sphere of activities, or one of two such undertakings or businesses:

Provided that in no case shall the particulars render possible identification of the costs of production of, or of capital employed in, or profits arising from the undertakings or businesses.

(5) Notwithstanding the provisions of subsection (2) (*c*), the Commissioner may release unit records, with identifiers removed, if he—

(*a*) is satisfied that the unit records so released will be used for research purposes only;

(*b*) is satisfied that the application and analysis is the result of the user's independent processing of the data;

(*c*) obtains from the recipient of the records a written undertaking that the records will not be released to any other person without the written consent of the Commissioner;

(*d*) obtains from the recipient a written undertaking to make available to the National Statistical Office a copy of the research findings; or

(*e*) is satisfied that the unit records cannot be identified as relating to any particular person or business enterprise.

Dissemination of statistical data

14. The Commissioner shall ensure that any statistical data collected, after appropriate processing and ascertaining its accuracy, and also after ensuring the confidentiality of any respondent who provided any statistical information, is released for general dissemination.

PART V

Miscellaneous Provisions

Relationship with other bodies

15.—(1) The National Statistical Office may, in the exercise of any other function under this Act, consult and coordinate with other bodies having duties related to, or having aims or objectives similar to those of the National Statistical Office.

(2) It shall be the duty of the bodies referred to in subsection (1) to cooperate with the National Statistical Office in the carrying out of its functions under this Act.

Offences and penalties

16.—(1) Any person employed in the performance of any function under this Act, who—

(*a*) by virtue of such employment or function becomes possessed of information which might influence or affect the market value of any share or other security, interest, product or article and who, before the information is made public, directly or indirectly uses it for personal gain;

(*b*) without lawful authority, publishes or communicates to any person other than in the ordinary course of his employment any information acquired by him in the course of the employment or function; or

(*c*) knowingly compiles or issues any false statistics or statistics information,

commits an offence and shall be liable to a fine of K500,000 and to imprisonment for two years.

(2) Any person who, being in possession of any information which to his knowledge has been disclosed in contravention of this Act, publishes or communicates such information to any other person, commits an offence and shall be liable to a fine of K500,000 and to imprisonment for two years.

(3) Any person who—

(*a*) hinders or obstructs an authorized officer in the lawful performance of any function under this Act;

(*b*) wilfully refuses or neglects—

(i) to complete and supply, within such time as may be specified for the purpose, the particulars required in any return, form or other document left with or sent to that person; or

(ii) to answer any question or inquiry put to or made of him under this Act; or

(*c*) knowingly or negligently makes in any return, form or other document completed by him under this Act or in any answer to any question or inquiry put to or made of him under this Act, any statement which is untrue in any material way,

commits an offence and shall be liable to a fine of K100,000 and to imprisonment for six months.

(4) Where a person has been convicted under subsection 3 (*b*) or (*c*) the court convicting that person may, in addition to any other penalty

imposed, order the person to—

(*a*) complete and supply such particulars as may be required;

(*b*) answer such question or inquiry; or

(*c*) correct such untrue statement, within such time as the court may specify.

(5) Any person who—

(*a*) falsely represents himself to be an authorized officer;

(*b*) not being an authorized officer, purports to perform the functions of an authorized officer under this Act; or

(*c*) fraudulently attempts to obtain information under this Act,

commits an offence and shall be liable to a fine of K500,000 and to imprisonment for two years.

Oath or Affirmation of Office and Secrecy

Second Schedule

17.—(1) Every person employed in the performance of any of the functions under this Act shall, before commencing such functions, take an Oath or Affirmation of Office and Secrecy, as the case may be, before a Commissioner for Oaths, as prescribed in the Second Schedule.

(2) In the case of a person employed under section 6, it shall be sufficient if the person makes, in any language approved by the Commissioner, and delivers or transmits to the Commissioner for Oaths, a written declaration in the same form substituting the words "do solemnly swear/affirm" with the word "declare".

Code of Practice for official statistics

18.—(1) In order to establish and maintain public confidence in all official statistics and analyses, the Commissioner shall issue a Code of Practice, as may be amended from time to time, that sets out professional standards and ethics to be followed by all agencies producing official statistics.

(2) The Code of Practice shall be published in the *Gazette*.

Special reports and investigations

First Schedule

19. The Commissioner may, at his discretion and at the request of any person and upon payment of such fee as the Commissioner may specify or as may be prescribed, supply to such person any special information or report concerning, or carry out for such person any special investigation into, any of the matters specified in the First Schedule.

Regulations

20.—(1) The Minister may make regulations for the better carrying out of this Act.

(2) Without derogating from the generality of subsection (1) the Minister may make regulations prescribing—

(*a*) the particulars to be furnished in relation to any matter in respect of which statistical information may be collected under this Act;

(*b*) the manner and form in which the times and places at which and the persons by whom such particulars and information shall be furnished; and

(*c*) penalties in respect of any contravention of this Act or regulations made thereunder.

Amendment of schedules

21. The Minister may, by Order published in the *Gazette*, amend the schedules.

Repeal and savings

22.—(1) The Statistics Act is hereby repealed.

(2) Any subsidiary legislation made under the Act repealed by subsection (1) in force immediately before the commencement of this Act—

(*a*) shall remain in force unless in conflict with this Act, and shall be deemed to be subsidiary legislation made under this Act; and

(*b*) may be replaced, repealed or amended by subsidiary legislation made under this Act.

FIRST SCHEDULE

ss. 5, 10 and 19

Matters concerning which statistical information may be collected, compiled, analyzed, abstracted and published shall include the following—

1. Population.
2. Vital occurrences and morbidity.
3. Immigration and emigration.
4. Housing.
5. Rents.
6. Real property.
7. Land tenure and the occupation and use of land.
8. Finance.
9. External finance and balance of payments.
10. Capital investment.
11. Savings.
12. Income, earnings, profits and interest.
13. Personal expenditure and consumption.
14. External trade.
15. Banking and insurance.
16. Wholesale and retail trade, including agents and brokers.
17. Manufacturing, building, construction and allied industries.
18. Mining and quarrying, including the prospecting of metallic, non-metallic, petroleum and natural gaseous products.

19. Agriculture, including animal husbandry, horticulture and allied industries.
20. Forestry and logging.
21. Hunting and fishing.
22. Stocks of manufactured and unmanufactured goods.
23. Wholesale and retail prices of commodities.
24. Storage and warehousing.
25. Employment and unemployment.
26. Salaries, wages, bonuses, fees, allowances and other payments and honoraria for services rendered.
27. Industrial disturbances and disputes.
28. Injuries, accidents and compensation.
29. Fuel and power.
30. Water undertakings and sanitary services.
31. Transport and communications.
32. Local government.
33. Community, business, recreation and personal services.
34. Handicrafts and rural industries.
35. Sweepstakes, lotteries, charitable and other public collections of money.
36. Education.
37. Health.
38. Environment.
39. Gender.
40. HIV/AIDS.
41. Transport.
42. Communication.
43. Information, Communication and Technology.

s. 17

SECOND SCHEDULE

Oath of Office and Secrecy

I, ..……... do solemnly swear that I shall faithfully and honestly fulfill my duties as …….....… in conformity with the requirements of the National Statistics Act and the regulations made there under, and that I shall not, without due authority, reveal any information acquired by virtue of my said duties, or, until such information is made public, directly or indirectly, use it for personal gain.

So help me God.

Made this ….....…..... day of ……..…. 20……..

Signature: …….....

Before me: …….....….....…..

Commissioner for Oaths

AFFIRMATION OF OFFICE AND SECRECY

I, …….....…..….....……. do affirm that I shall faithfully and honestly fulfill my duties as …… in conformity with the requirements of the National Statistics Act and the regulations made thereunder, and that I shall not, without due authority, reveal any information acquired by virtue of my said duties, or, until such information is made public, directly or indirectly, use it for personal gain.

Made this ….....…..... day of ……..…. 20……..

Signature: …….....

Before me: …….....…..

Commissioner for Oaths

NATIONAL ARCHIVES

CHAPTER 28:01

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CHAPTER 28:01

NATIONAL ARCHIVES

ARRANGEMENT OF SECTIONS

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CHAPTER 28:01
NATIONAL ARCHIVES

12 of 1975
20 of 1987
4 of 1989

An Act to provide for the classification, conservation, custody, control, acquisition and disposal of certain public, judicial, historical and general records; for the establishment of a collection of such records, to be known as the National Archives of Malaŵi, which shall be the official repository thereof; for the setting-up of the National Archives Advisory Council, with power to advise the Minister on certain stated matters of policy and administration; for the repeal of the National Archives Act of the Federation of Rhodesia and Nyasaland in its operation to Malaŵi; and for matters incidental to or connected with the foregoing

[14th November, 1975]

PART I
Preliminary

Short title

1. This Act may be cited as the National Archives Act.

Interpretation

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

"Council" means the National Archives Advisory Council established pursuant to section 8;

"document" includes any manuscript, newspaper, picture, painting, record, register, printed material, book, map, plan, drawing, photograph (positive or negative), photocopy, microfilm, cinematograph film, video tape, gramophone record or other transcription of language, picture or music, recorded by any means capable of reproduction;

"Government Archivist" means the person designated as such under section 5;

"historical records" means any documents (other than public or judicial records) which are declared to be of historical importance pursuant to section 9 (3);

"judicial records" means any documents constituting the official records of any proceedings before any court, commission, board of inquiry or other judicial or quasi-judicial body or person, which are in the custody of such court, or of any Ministry, Department or agency of Government, or of any person lawfully committed with such custody or which have been deposited in the National Archives as judicial records;

"National Archives" means a place where there is kept the official collection of public archives and public, judicial, historical and general records established pursuant to section 3;

"prescribed body" bears the meaning ascribed to that term by section 7 (1);

"public archives" means all such public and judicial records and all such historical records as are classified and conserved in the National Archives as public archives pursuant to sections 14 and 15, respectively;

"public records" means—

(*a*) any documents of the Government, or of any Ministry, Department or agency thereof (other than judicial records), which relate to the general or specific functions of the Government, or of the said Ministry, Department or agency, as the case may be, or to the performance of such functions, and which are in the custody of the said Ministry, Department or agency, or are on deposit in the National Archives as public records;

(*b*) any documents of any prescribed body, being public records pursuant to section 7 (2), which are in the custody of such prescribed body, or are on deposit in the National Archives as public records,

but does not include any such records as are classified and conserved in the National Archives as public archives pursuant to this Act;

"Seal" means the seal of the National Archives, as provided for in section 4 (1).

PART II

National Archives— Administration

Establishment of National Archives

3.—(1) There is hereby established, for the purposes of this Act, an official collection of public archives, and other public, judicial, historical and general records of, or relating to, Malaŵi; which collection shall be known as the National Archives of Malaŵi.

(2) All public archives and all such other public, judicial and historical records as are, at the date of commencement, deposited in the National Archives of Malaŵi established under section 4 of the National Archives Act of the former Federation of Rhodesia and Nyasaland, shall be transferred to and deposited in the National Archives established under this Act, and shall, upon such transfer, be classified and conserved in such National Archives under the classifications appropriate thereto under this Act.

4 of 1958 (F)

(3) The National Archives shall be kept in such place or places within Malaŵi, or elsewhere, as the Minister may, from time to time, designate in writing for such purpose. Notice of each such designation shall be published in the *Gazette*.

(4) The National Archives may, from time to time, in accordance with this Act, be extended by the inclusion therein of further public archives or further public, judicial, historical or general records or may be abridged by the removal therefrom, of any such archives or records.

Seal

4.—(1) There shall be an official seal of the National Archives which shall be an embossed seal of a design approved by the Minister.

(2) The Seal shall be kept in such custody as the Government Archivist with the approval of the Minister, directs, and shall be used solely for the certification or authentication of copies of, or copy extracts from, the National Archives.

(3) All courts, Judges and other persons acting judicially shall take judicial notice of the Seal of the National Archives affixed to any document, and shall presume that it was duly affixed.

(4) The Seal shall be authenticated by the signature of the Government Archivist, or of any officer of the National Archives duly authorized by the Government Archivist in that behalf.

Government Archivist
4 of 1989

5.—(1) There shall be a Government Archivist who shall be a public officer designated as such by the Minister.

(2) The Government Archivist shall be the controlling officer and custodian of the National Archives and shall be assisted by such other public officers as shall be necessary to carry out the provisions of this Act.

Powers and duties of the Government Archivist
4 of 1989

6. The Government Archivist shall, subject to this Act and to the general or special directions of the Minister—

(*a*) direct, manage and control the National Archives;

4 of 1989

(*b*) preserve, describe and arrange all public archives;

4 of 1989

(*c*) accept and store any public, judicial, historical or general records which are transferred to the National Archives;

(*d*) on behalf of the Government, acquire by purchase, gift, loan, bequest or otherwise from any person or body of persons, corporate or unincorporate, any document which in his opinion is, or is likely to be, of historical importance;

(*e*) cause any of the public archives to be repaired or bound or otherwise physically protected, if he deems such action necessary;

(*f*) cause, at the request of any Ministry, Government Department, Government agency or court, any public, judicial, or historical records in the custody of such Ministry, Department,

Government agency or court to be examined and, if necessary, advise such Ministry, Department, agency or court on appropriate measures to be taken for the proper care and conservation of such records;

(*g*) cause, at the request of any prescribed body, any public or historical records in the custody of such prescribed body to be examined, and, if necessary, to advise such prescribed body on appropriate measures to be taken for the proper care and conservation of such records;

(*h*) cause or permit to be reproduced from the National Archives, or published, such public archives, or public, judicial, historical or general records, or such extracts therefrom, as he may deem fit;

(*i*) cause to be compiled and published indices and guides to the National Archives;

(*j*) cause to be prepared and published brochures and other printed matter relating to the activities of, and the facilities provided by, the National Archives;

(*k*) determine the conditions under which members of the public may inspect public archives or use the facilities of the National Archives;

(*l*) make provision for the making and certifying of copies of, and of copy extracts from, public archives in the National Archives, whenever required to do so for the purposes of any pending judicial or quasi-judicial proceeding or for any other purpose approved by the Minister;

(*m*) lend, with the consent of the Minister, or of the owner thereof if the document is not owned by the Government, any document from the National Archives for display at any commemorative, trade, art, international or other exhibition or for any other special purpose approved by the Minister, subject to such conditions as the Minister or the owner, as the case may be, may impose with respect to such loan;

(*n*) perform such other functions as are necessary for the purpose of proper and effective direction, management and control of the National Archives. 4 of 1989

7.—(1) The Minister may, on the recommendation of the Council, from time to time, by Order published in the *Gazette*, declare any body corporate or any society, association or other body of persons to be a prescribed body for the purposes of this Act. Prescribed bodies

(2) The documents and records of any prescribed body shall be public records for the purposes of this Act:

Provided that the Minister may, in any Order made declaring a prescribed body pursuant to subsection (1), limit the operation and effect of this subsection to certain specified classes of documents or records of such prescribed body.

PART III

National Archives Advisory Council

Establishment of National Archives Advisory Council
4 of 1989

8.—(1) There is hereby established a body of persons to be called the National Archives Advisory Council which shall consist of the Government Archivist, *ex officio*, who shall be Secretary to the Council, and six ordinary members thereof appointed by the Minister, one of whom shall be designated as Chairman in the instrument of his appointment.

4 of 1989

(2) An ordinary member of the Council shall hold office for a period not exceeding two years, but shall be eligible for reappointment.

(3) The functions of the Council shall be to advise the Minister on all matters relating to the retention or destruction of public archives, or of public, judicial or historical records, the acquisition or transfer of any such records for deposit in the National Archives, or for their deposit therein as public archives, the right of access by members of the public to the National Archives and on such other matters relating to the National Archives, any public archives or any public, judicial or historical records as the Minister or the Government Archivist may refer to the Council.

(4) The Council shall meet at such times and places as the Chairman may determine, and shall be convened by the Chairman.

(5) In the absence of the Chairman from any meeting of the Council the members present, if constituting a quorum, shall elect one of their number to preside at that meeting.

4 of 1989

(6) Five members of the Council shall constitute a quorum.

(7) The Council shall determine its own procedure.

(8) At all meetings of the Council the person presiding shall have a deliberative vote, and, in the event of an equality of votes, shall also have a casting vote.

(9) Ordinary members of the Council shall not, by virtue only of their respective appointments to the Council, be deemed to be officers in the public service.

(10) No person shall be appointed to the Council who—

(*a*) is an undischarged bankrupt;

(*b*) has, within three years last past, for an offence against any written law, been sentenced to a term of imprisonment of six months or over, save as an alternative to, or in default of, the payment of a fine;

(*c*) has, within seven years last past, been convicted of an offence involving fraud or dishonesty.

(11) For the proper discharge of its functions, the Council may co-opt any person as a member of the Council and such member may take part in the deliberations of the meeting but shall not be entitled to vote. 4 of 1989

(12) A member of the Council other than a member *ex officio*, shall be paid out of the funds of the Government such honorarium and travelling expenses while engaged on the duties of the Council at such rates as the Minister may determine.

(13) The names of all members of the Council as first constituted, and every change in membership thereof, shall be published in the *Gazette*.

PART IV

Historical, Public And General Records

Historical records 4 of 1989

9.—(1) Any person who owns, or has exclusive custody of, any document which—

(*a*) is an account of, associated with or related to, any past event or transaction which, in some special way, affected or affects the economic, social or political life of Malaŵi; or

(*b*) is the act of, or relates to, any person involved in, or associated with, the happening of any such event or transaction as described in paragraph (*a*), or which elucidates some aspect of such person's private life or character relevant to his association with such event or transaction or, generally, with Malaŵi,

may submit such document to the Government Archivist for his scrutiny and classification.

(2) If the Government Archivist has reason to believe that any person in Malaŵi owns or has possession of any document such as is described in subsection (1), he may, by notice in writing, require such person to submit such document to him for his scrutiny and classification, at a time and place stated in such notice.

(3) Whenever the Government Archivist classifies any document submitted to him under subsection (1) or (2) as being of historical importance, he shall—

(*a*) notify, in writing, the person who submitted such document informing him of such classification thereof;

(*b*) affix or attach to such document, so as not to obscure, disfigure or deface the same, a certificate, in the prescribed form, under the Seal of the National Archives, stating that he has classified the said document as being of historical importance and that the same is an historical record;

(*c*) if necessary, cause copies of the said document to be made and retained in the National Archives, and shall return the said document, so certified in accordance with paragraph (*b*) to the person who submitted it:

Provided that the owner, or person having exclusive custody, of such document, upon receiving notice pursuant to paragraph (*a*) of the classification thereof as an historical record, may request the Government Archivist, in writing, to deposit the said document for safe keeping in the National Archives as an historical record. Whereupon, the Government Archivist shall deposit the same, as requested, and send, in the prescribed form, to the owner or person having the right to exclusive custody thereof, as the case may be, a notice of such deposit, together with an acknowledgment of such ownership, or of such right to exclusive custody, as the case may be.

Deposit of historical records and rights of owner thereof
4 of 1989

10.—(1) Notwithstanding the proviso to subsection (3) of section 9, any person who owns, and is in actual possession of, any document which is certified as an historical record may, at any time, deliver such document to the Government Archivist for deposit in the National Archives as an historical record, and the Government Archivist shall deposit the same accordingly and shall, in the forms prescribed, issue a receipt therefor together with acknowledgment of ownership thereof.

(2) Any historical record deposited in the National Archives pursuant to subsection (1) of this section or to the proviso to subsection (3) of section 9 may be withdrawn from the said National Archives by the current owner of such historical record upon his giving to the Government Archivist one month's notice in writing of his intention so to do and by returning to the Government Archivist the latest acknowledgment of ownership issued in respect of such historical record together with any certified copy of the said historical record in his possession.

(3) Ownership of any historical record may be transferred by delivery thereof with the intention of transferring such ownership:

Provided that a transfer of ownership of any historical record which is deposited in the National Archives pursuant to subsection (1) of this section or to the proviso to subsection (3) of section 9 may be effected, without the withdrawal of the said historical record from the National Archives for such purpose, by the delivery by the transferor to the transferee of a duly executed instrument of transfer, in the form prescribed, together with the acknowledgment of ownership issued to the transferor by the Government Archivist in respect thereof and any certified copy of such historical record which he may possess. The transferee shall, within one month of the date of the said instrument of transfer, deliver the same, together with the said acknowledgment of

ownership and certified copy of such historical record, if any, to the Government Archivist, who shall register such transferee as the current owner of such historical record, shall cancel the acknowledgment of ownership delivered by the transferee and issue an acknowledgment of the transferee's ownership of such historical record and deliver to the transferee such new acknowledgment of ownership and return to him the said certified copy, if any, of such historical record.

Selection and conservation of public records 4 of 1989

11.—(1) Subject to section 19 and to subsection (2) of this section, the Government Archivist and any officer of the National Archives duly authorized by him, hereinafter referred to as a "duly authorized officer", shall be entitled to examine any public records which are in the custody of any Ministry, Department or agency of the Government or any prescribed body, and to select therefrom those records which, in his opinion, ought to be deposited and conserved in the National Archives and direct their transfer accordingly.

(2) Nothing in this section or in section 6 shall be deemed to empower the Government Archivist or any authorized officer to inspect any public records that are classified as secret or confidential, except with the consent of the authority responsible for such classification.

(3) Subject to subsection (2), it shall be the duty of every person having custody of public records which have not been deposited in the National Archives—

(*a*) to afford the Government Archivist, or any duly authorized officer, appropriate facilities for examination of, and selection from, such public records pursuant to subsection (1);

(*b*) to provide, in accordance with any relevant regulations made under this Act and with any specific directions of the Government Archivist, for the assemblage and safe keeping, of such public records as are selected for deposit and conservation in the National Archives under subsection (1), pending their transfer to and deposit in the said National Archives.

(4) Subject to the approval of the Minister, the transfer of any such public records to the National Archives for deposit therein, may be withheld for the time being if, in the opinion of the person having custody thereof, the said records are required for administrative purposes, or ought to be retained for any other special reason, and appropriate measures are taken for the conservation and safe keeping of such records.

Destruction of public records 4 of 1989

12. If the Government Archivist is satisfied that any public records, selected for deposit in the National Archives under subsection (1) of section 11 but not yet deposited therein, are duplicated, or that there is some other cogent reason why such

records should not be conserved, he may, with the approval of the Minister and of such other Minister or person who appears to the Minister to be primarily concerned therewith, authorize the destruction of such public records, or, with such approval, their disposal in any other way.

General Records 4 of 1989

13.—(1) The Government Archivist may, on behalf of the Government acquire, by purchase, gift, bequest, loan or otherwise from any person for deposit in the National Archives any document (other than a public, judicial or historical record) which, in his opinion, is of general interest by reason of its content or of its associations with Malaŵi, and any such document so acquired shall be classified and deposited in the National Archives as a general record.

(2) Any person who is entitled to the immediate possession of any general record deposited on loan, in the National Archives may give notice in writing to the Government Archivist of his intention to withdraw the same from such Archives and may do so after the expiry of thirty days from the date of such notice.

(3) Subject to this section, the terms and conditions under which any document may be deposited on loan in the National Archives shall be determined by the Government Archivist.

PART V

Public Archives

Public and Judicial records declared public archives by Minister

14. The Minister may, on the advice of the Council, by Order declare—

(*a*) any public or judicial records of the Government of Malaŵi; or

(*b*) any public or judicial records of the former Government of the Federation of Rhodesia and Nyasaland, in the possession, or under the control, of the Government of Malaŵi; or

(*c*) any public or judicial records of the former Government of Nyasaland, in the possession, or under the control, of the Government of Malaŵi,

which have been deposited in the National Archives under this Act, to be records of rare public interest, and, as such, shall thereafter be, and be deemed to be, public archives, and shall be classified and conserved in the National Archives in the manner provided for the classification and conservation therein of the public archives.

Historical records declared public archives by Minister 4 of 1989

15.—(1) The Minister may, on the advice of the Council, by Order, declare any historical records, which have been deposited in the National Archives under this Act, to be records of rare public interest, and, as such, shall thereafter be, and be deemed to be, public archives, and shall be classified and conserved in the National Archives in the manner provided for the classification and conservation therein of the public archives.

(2) Whenever it is intended to make an Order under subsection (1) in respect of any historical record, which is the property of some person other than the Government or any local authority, the Minister shall instruct the Government Archivist to enter into negotiations with the owner of such historical record for the purchase of such record by the Government.

(3) If the owner of an historical record is unwilling to negotiate with the Government Archivist pursuant to subsection (2), or if, upon negotiation no price can be agreed upon between the Government and the said owner, the Minister may, by Order, compulsorily acquire the said historical record at a valuation to be determined by agreement between one valuer appointed by the Minister, one valuer appointed by the owner and one other valuer appointed by agreement between the two valuers directly appointed by the Minister and the owner:

Provided that if the owner fails or refuses to appoint a valuer within one month after the Minister has notified such owner of the name and address of the valuer appointed by the Minister, the Minister may appoint a second valuer, and such two valuers shall appoint a third valuer for the purposes of such valuation.

Publication or reproduction of public archives 4 of 1989

16.—(1) Public archives, other than judicial records, shall not be published or reproduced in any form by any person, unless, prior to such publication or reproduction, such person has obtained from the Government Archivist, in writing, permission so to publish or reproduce the same.

(2) Any person who contravenes the provisions of subsection (1) shall be guilty of an offence.

(3) Nothing in this section shall be construed as affecting or amending any law relating to copyright.

PART VI

Inspection, Copying and Removal of Records

Inspection and copying of National Archives 4 of 1989

17.—(1) Save with the written permission of the Government Archivist, and subject to subsection (3), and to any Regulations in that behalf prescribed under this Act, no person shall be entitled to inspect, copy, or copy extracts from any public, historical or general records in the National Archives.

(2) Subject to the provisions of subsections (1) and (3) the National Archives shall be open for inspection during such hours as may be fixed by the Government Archivist.

(3) Subject to section 19 where there are deposited in the National Archives any public, judicial, historical or general records containing information the disclosure of which is either prohibited, or limited to certain persons or purposes, by or under any written law or order or rule of court, no person, other than the Government Archivist and such officers of the National Archives,

as are duly authorized in that behalf under the said section 19, and such other persons as are otherwise thereunto lawfully authorized in that behalf, shall be permitted by the Government Archivist to inspect or copy, or copy extracts from, any such public, judicial, historical or general records:

Provided that the donor of any historical or general records shall be entitled to specify appropriate conditions for access to such records.

Restrictions on removal and export of National Archives or historical records
4 of 1990

18.—(1) Any person, not authorized to do so under any written law, who—

(*a*) removes any document, or part of any document, as the case may be, from the National Archives and takes the same outside the immediate custody and control of the Government Archivist; or

(*b*) knowingly receives any document, or part of any document, which has been removed from the National Archives in contravention of paragraph (*a*),

without prior written permission of the Government Archivist, under his hand, shall be guilty of an offence:

Provided that no person shall be convicted under paragraph (b) if he proves to the satisfaction of the court that he received such document or part of a document, as the case may be, with the intention, and for the sole purpose, of returning the same to the Government Archivist, without undue delay.

(2) Any person who exports from Malaŵi any document, or part of a document, removed from the National Archives save in accordance with a licence issued in that behalf by the Minister, shall be guilty of an offence.

(3) Any person who exports from Malaŵi any historical record, or any part thereof, save in accordance with a licence issued in that behalf by the Minister, shall be guilty of an offence.

(4) If the Government Archivist has reason to believe that any person intends to export from Malaŵi any document, or any part of any document, which in the opinion of the Government Archivist may be of historical importance, he may, by notice in the *Gazette*, prohibit the export of such document, or part of a document, as the case may be, as if such document were an historical record for the purposes of subsection (3).

(5) Any licence issued, or written permission granted, for the purposes of this section shall specify each document, or part of a document, as the case may be, to which it relates, and may contain such conditions as to the use, custody, conservation and return of such document, or part of a document, as the Minister or Government Archivist, as the case may be, deems fit to impose.

Government Archivist's right of access to documents restricted by Law, Order, etc.
4 of 1989

19.—(1) Where, by virtue of the provisions of any written law or in consequence of any order or rule of court, access to any document is restricted to certain named persons or classes of persons, such written law, or order or rule, as the case may be, shall, unless it therein expressly provides to the contrary, be construed as if the Government Archivist, or any officer of the National Archives duly authorized in writing in that behalf by the Government Archivist, acting in pursuance and for the purposes of this Act, were among the named persons or classes of persons to whom access to such document is so restricted under the provisions of such written law or in consequence of such order or rule of court, and the said Government Archivist or duly authorized officer, as the case may be, shall, in exercising such right of access to such document under this section, be subject to all relevant provisions of the said written law or terms of the said order or rule of court relating to non-disclosure of the contents of such document, as if he were one of the persons or one of the classes of persons named in the said written law or in the said order or rule of court as the case may be.

(2) Where any document, access to which is restricted in the manner described in subsection (1), is deposited in the National Archives among the public archives or public, judicial, historical or general records, the restrictions imposed by the relevant written law, or order or rule of court, as the case may be, shall apply thereto, and, notwithstanding any other provision of this Act, access to such document shall be limited to such persons, or classes or persons named in the said written law, order or rule of court and to the Government Archivist or officer duly authorized in accordance with subsection (1).

PART VII

Evidence

Authenticated copies
4 of 1990

20. Any copy of, or any copy extract from, any original document deposited in the National Archives, which purports to be duly certified under seal by the Government Archivist, or by any duly authorized officer of the National Archives, shall be admissible in evidence in any judicial or quasi-judicial proceedings as prima facie evidence of the contents of the said original document so copied, or of the contents of that part of the said original document so extracted.

PART VIII

Miscellaneous

Failure to comply with Notice to produce documents
4 of 1990

21.—(1) Any person who fails or refuses to comply with any Notice requiring him to produce or submit any document to the Government Archivist for the purposes of this Act shall be guilty of an offence.

(2) In any prosecution under this section the defendant shall be presumed to be, and to have been at all material times, in possession or control of such document unless the contrary is proved.

Failure to comply with conditions

22. Any person who fails or refuses to comply with any term or condition of any permission, authority or licence given under this Act shall be guilty of an offence.

Penalty

23. Any person who commits an offence under this Act shall be liable to a fine of K2,000 or to imprisonment for a term of five years, or to both such fine and such term of imprisonment.

Secrecy
4 of 1989

24.—(1) Any person having any official duty or being employed in the administration of this Act, who, in the course of such duty or employment, has access to any documents which are deposited in the National Archives and therein classified as secret or confidential, or to which access is restricted in the manner referred to in section 19, shall regard and deal with such documents and with any information contained therein as secret and confidential.

(2) Before any person may be assigned to any official duty or employment in the National Archives which shall entail access on the part of such person to any documents referred to in subsection (1) the Government Archivist shall require such person to execute, in writing, in the prescribed form, a solemn declaration of secrecy, pursuant to section 9 (1) of the Oaths, Affirmations and Declarations Act.

Cap. 4:07

Regulations
20 of 1987
4 of 1989

25. The Minister may, by notice published in the *Gazette*, make regulations for the better carrying out of this Act and, without prejudice to the generality of the foregoing, such regulations may make provision for—

(*a*) any forms to be used for the purpose of this Act;

(*b*) the form of any records to be maintained by the Government Archivist under this Act;

(*c*) fees to be charged for making and providing copies of, or of any part of, or of any extract from, any document in the National Archives;

(*d*) fees to be charged for certifying as a true copy any copy of, or of any part of, or of any extract from, any document in the National Archives;

20 of 1987

(*e*) fees to be charged for inspecting, or making use of, any document in the National Archives;

4 of 1989

(*f*) the setting of a suitable period of access to public archives;

(*g*) anything to be prescribed under this Act.

SUBSIDIARY LEGISLATION

G.N. 126/1987

NATIONAL ARCHIVES (FEES FOR USE OF DOCUMENTS) REGULATIONS

under s. 25

1. These Regulations may be cited as the National Archives (Fees for use of Documents) Regulations. Citation

2. The fees payable for obtaining a permit for the use of documents in the National Archives shall be in accordance with the fees specified in the Schedule— Fees

SCHEDULE

FEES r. 2

	K	t
(*a*) Foreign researchers—		
(i) for a permit for a period not exceeding 12 months . .	20	00
(ii) for renewal of the permit specified in paragraph (i) for a period not exceeding 12 months	10	00
(*b*) Local researchers, for a period not exceeding 12 months . .	2	00

MONUMENTS AND RELICS

CHAPTER 29:01

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CHAPTER 29:01

MONUMENTS AND RELICS

An Act to repeal the Monuments Act; to make provision for the conservation, preservation and study of cultural heritage including places of distinctive natural beauty and of sites, buildings and objects of archaeological, palaeontological, geological, anthropological, ethnological, historical, prehistorical and other interests; and to provide for the declaration of protected monuments and relics and acquisition thereof by the Government and the acquisition by the Government of rights and trusteeship over monuments and relics and for the preservation thereof by agreement with the owners; and to provide for the listing of monuments and the registration of monuments and relics; and to provide for the procedure to be followed in relation to the discovery, excavation, removal, sale, exportation and importation of monuments, relics and collections of cultural heritage; and to establish an advisory council to advise the Minister on matters aforesaid; and to provide for matters connected therewith or incidental thereto

16 of 1990
G.N. 41/1991

[14th March, 1991]

PART I

Preliminary

1. This Act may be cited as the Monuments and Relics Act. Short title

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

"Chief Antiquities Officer" means the person appointed as such pursuant to section 3 and includes any officer subordinate to him;

"collection", in relation to relics, means a permanent collection thereof;

"conservation" means measures taken to prevent destruction, deterioration or loss of cultural and natural heritage of Malaŵi;

"Council" means the Monuments and Relics Advisory Council established under section 5 (1);

"excavation" means the removal of any overburden deposit or the exposure of any buried or partially buried material in Malaŵi;

"listed monument" means a monument which is included in a list compiled under section 22 or 23;

"local authority" means the owner of a monument or relic, or an institution or organization, whether a company, or a district, municipal or city council, a church or other religious body or any other organization, whether corporate or unincorporate, which has a claim to ownership of a monument or relic;

"maintenance" includes the fencing, covering, repairing, restoring and cleansing of any monument or relic and the surroundings thereof, and the doing of any act which may be necessary for the purpose of maintaining a monument or relic or securing convenient access thereto;

"monument" means—

(*a*) any area of land which has distinctive scenery or which contains rare or distinctive vegetation;

(*b*) any structure, building, erection, ruin, stone, circle, monolith, altar, shrine, pillar, statue, memorial, fortification;

(*c*) any grave, tumulus, cairn, place of interment, pit dwelling, trench, excavation, working, rock, rock-shelter, midden, mound, cave, grotto, rock sculpture, rock painting and wall painting;

(*d*) inscription or any other site or article of a similar kind or associated therewith which is of archaeological, palaeontological, ethnological, prehistorical, historical, artistic or scientific value or interest;

(*e*) any remains of the matters and items referred to in paragraphs (*a*) to (*d*), including—

(i) the site on which any monument or group of monuments was discovered or exists; and

(ii) such portion of land adjoining such site as may be required for the maintenance of or otherwise for the conservation and preservation of such monument or group of monuments;

"preservation" means the taking of such actions, including salvage, as are designed to record and maintain the cultural and natural heritage of Malaŵi;

"protected monument" means a monument which is protected under section 11 and includes a group of monuments protected under that section and any single monument in such group;

"protected relic" means a relic which is protected under section 11 and includes a collection of relics protected under that section and any single relic in such collection;

"qualified person" means any person who has demonstrated competence to study archaeological sites or monuments, ethnology, social and physical anthropology and oral history;

"relic" means—

(*a*) any fossil of any kind;

(*b*) any artifact, implement, coin, document and manuscript;

(*c*) any chiefly, religious or war regalia;

(*d*) ornament or article (not being a monument),

which is of archaeological, palaeontological, geological, anthropological, ethnological, prehistorical, historical, artistic or scientific value or interest;

"rescue archaeology" means a systematic examination, including excavation, of any area of land, place, monument or relic threatened to become irretrievably destroyed by natural phenomena or action of man or animal, including development of such land, place, monument or relic, for purposes of assessing the cultural and natural significance of such action before it is taken;

"site museum" means a place that has been developed to exhibit material evidence of man and his environment for purposes of study, education and enjoyment;

"site record" means documented observations undertaken as an aspect of systematic examination or controlled recovery or discovery of prehistoric or historic places or objects, including locational records, photographs, notes, charts, drawings and descriptions of situations and materials;

"systematic examination" means the process by which the information content of prehistoric places or cultural material is realized for the purpose of conservation or preservation.

PART II

Administration

Chief Antiquities Officer and other staff

3. There shall be appointed in the public service an officer to be designated as the Chief Antiquities Officer and other officers subordinate to him who shall be responsible for the administration of this Act subject to any special or general directions of the Minister.

Duties of the Chief Antiquities Officer

4. The Chief Antiquities Officer shall, subject to this Act and to any special or general directions of the Minister—

(*a*) collect, conserve and preserve all monuments, relics and other objects entrusted to his care as the official custodian for the purpose of this Act;

(*b*) establish site museums where and when appropriate;

(*c*) liaise with institutions or persons concerned with conservation or preservation of monuments and relics, or with education and research;

(*d*) publish or cause to be published research results, guides to monuments and relics, and other matters relating to the activities of, and the facilities provided by, the Government for the purposes of this Act;

(*e*) take such steps as he may consider necessary for the erection, in suitable places, of tablets or statues relating to monuments or relics or giving information about historical events which have occurred at or near such monuments or relics;

(*f*) undertake archaeological, palaeontological, ethnological, oral history, historical and prehistoric research anywhere in Malaŵi; and

(*g*) purchase, lend or borrow cultural material for study or display in any institution, at any commemorative, trade, art, international or other exhibition or for any other purpose.

PART III
The Monuments and Relics Advisory Council

Establishment and composition of the Council

5.—(1) There is hereby established a body to be known as the Monuments and Relics Advisory Council.

(2) The Council shall consist of—

(*a*) the following ex *officio* members—

(i) the Secretary for Education and Culture or his representative;

(ii) the Secretary for Local Government or his representative;

(iii) the Chief Parks and Wildlife Officer or his representative;

(iv) the Chief Tourism Officer or his representative;

(v) the Chief Forestry Officer or his representative;

(vi) the Commissioner for Lands or his representative;

(vii) the Commissioner for Town and Country Planning or his representative;

(viii) the Controller of Customs and Excise or his representative;

(ix) the Government Archivist or his representative;

(x) the Chief Arts and Crafts Officer or his representative;

(xi) the Chief Curator of Museums of Malaŵi or his representative; and

(b) four other members appointed by the Minister.

(3) The Minister shall designate one of the members to be Chairman of the Council.

(4) A member of the Council appointed under subsection (2) (b) shall hold office for a period of two years unless his appointment be sooner terminated and shall be eligible for reappointment.

(5) The names of all members of the Council as first constituted and every change in the membership of the Council shall be published in the *Gazette*.

Secretary to the Council

6. The Chief Antiquities Officer shall act as secretary to the Council.

Functions of the Council

7. The functions of the Council shall be to advise the Minister in all matters affecting the collection, protection, conservation and preservation of monuments and relics.

Meetings of the Council

8.—(1) The Council shall meet not less than twice a year at such places as the chairman may determine.

(2) The Council shall further meet at any time at the request, in writing, of more than one-third of its members.

(3) The Council may at the discretion of the chairman invite any person or persons to attend any meeting of the Council and such person or persons may take part in the proceedings of that meeting but shall not be entitled to vote.

(4) In the absence of the chairman from any meeting of the Council the members present, if constituting a quorum, shall elect one of their number to preside at the meeting.

(5) Two-thirds of the members of the Council shall constitute a quorum.

(6) The Council shall determine its own procedure.

(7) At all meetings of the Council the chairman or other person presiding shall have a deliberative vote and, in the event of an equality of votes, shall have a casting vote.

(8) The chairman of the Council shall report to the Council at each meeting thereof the action taken in respect of any matter on which the Council has advised the Minister.

Members not deemed public officers

9. A member of the Council shall not, by virtue only of his membership to the Council, be deemed to be an officer in the public service.

Allowances

10. A member of the Council, who is not an officer in the public service, shall be paid an honorarium determined by the Minister and shall be paid his reasonable travelling expenses and subsistence allowance while engaged upon the business of the Council at the rate prescribed by the Minister.

PART IV

Declaration, Conservation and Preservation of Protected Monuments and Relics

Protected monuments and relics

11.—(1) Subject to subsection (2), the Minister may from time to time, on the recommendation of the Council, by notice in the *Gazette*, declare any monument or group of monuments or any relic or collection of relics to be a protected monument or a protected group of monuments or to be protected relic or protected collection of relics for the purpose of this Act.

(2) Before making a declaration under subsection (1), the Minister shall—

(*a*) cause to be published in the *Gazette* notice of his intention so to do and stating that representations in writing with respect to such proposal may be submitted to the Minister within one month of the publication of such notice, by any person who considers that he has interest in the monument, group of monuments, relics; and

(*b*) consider any representations with respect to such proposals which may have been received by him within the period specified in paragraph (a).

(3) The Minister may from time to time by notice in the *Gazette* cancel his intention to declare any monument, group of monuments, relic or collection of relics.

Acceptance of monuments and relics

12. The Minister may, on behalf of the Government, accept any monument or relic, or relics or any estate or interest therein, which the owner desires to give or has bequeathed to the Government.

Prohibition on alteration, etc.

13.—(1) No person shall without the prior written consent of the Minister—

(*a*) make any alteration to, or destroy or damage, any monument or relic or any part thereof; or

(*b*) carry out any cultivation or mining project or other work so as to cause, or likely to cause, damage or disturbance to any protected monument or protected relic.

(2) A person who contravenes subsection (1) shall be guilty of an offence.

Structures, buildings, erected in contravention of this Act

14. Any structure, building or other work erected, established, or planted in contravention of the provisions of this Act or of any regulations made under this Act shall, at the directions of the Minister, be demolished or otherwise determined removed at the expense of the offender and the cost of repairing any damage caused to any monument or relic shall be borne by the offender.

Agreements for conservation and preservation of monuments and relics

15.—(1) The Minister may enter into a written agreement with the owner of any monument or relic for the conservation and preservation of such monument or relic.

(2) An agreement under this section may provide for all or any of the following matters—

(*a*) the maintenance of such monument or relic;

(*b*) the custody of such monument or relic and the duties of any person who may be employed in connexion therewith;

(*c*) the restriction of the owner's right to develop, alter, use, destroy, remove or deface any such monument or relic or to build on or near the site of such monument or relic;

(*d*) the facilities for the access by the public or any part of the public to such monument or relic and for the access thereto for the purpose of inspection and maintenance thereof by persons deputed by the owner, the Chief Antiquities Officer or a local authority;

(*e*) the notice to be given to the Minister in case the land on which is situated such monument or relic is offered for sale by the owner and the right to be reserved to the Government to purchase within two years such land or any specified portion of such land at its market value;

(*f*) the payment of any expenses incurred by the owner or by the Government or by a local authority in connexion with the conservation and preservation of such monument or relic;

(*g*) the procedure relating to the settlement of any dispute arising out of the agreement;

(*h*) the removal, subject to the provisions of this Act, of such monument or relic to a place of safe custody; and

(*i*) any matter connected with the conservation or preservation of such monument or relic which is the subject of agreement between the owner and the Minister.

(3) The terms of an agreement under this section may be altered from time to time as agreed between the Minister and the owner of the monument or relic which is the subject of the agreement.

(4) The Minister or the owner of any monument or relic may terminate an agreement under this section by giving six months notice in writing to the other party of his intention to do so.

(5) An agreement under this section shall be binding on every person claiming to be the owner of any monument or relic to which it relates through or under a party by whom or on whose behalf the agreement was executed.

(6) Any rights acquired by the Minister in respect of expenses incurred in conserving or preserving any monument or relic under an agreement under this section shall not be affected by the termination of the agreement.

Owners who are under disability

16. If the owner of any monument or relic is unable, by reason of infancy or other disability, to act for himself, the person legally competent to act on his behalf may exercise the powers conferred upon such owner by section 15.

Enforcement of agreements

17.—(1) If the Minister apprehends that the owner or occupier of a protected or listed monument or a protected relic intends to act or to permit any other person to act in breach of any restriction imposed under an agreement made under section 15 the Minister may by directions in writing prohibit any such action.

(2) If an owner of any monument or relic or other person who is bound by an agreement under section 15 refuses to do any act which, in the opinion of the Minister, is necessary for such conservation, preservation or maintenance of a protected or listed monument or protected relic, or neglects to do any such act within such time as may be fixed by the Minister, or fails to comply with the requirements of an order made under subsection (1), the Minister may authorize any person to do such act and the attendant costs may be recovered from such owner or such other person.

Compulsory acquisition of monuments or relics

18.—(1) If the Minister apprehends that a monument or relic is in danger of being destroyed, injured or allowed to fall into disrepair or decay, or that a monument or relic is threatened by any proposed change of use or development of land, he may make a report in that behalf to the Minister responsible for land matters and it shall be lawful for that Minister to acquire the monument or relic under the provisions of the Land Act or the Land Acquisition Act as if the conservation or preservation of such monument or relic were a public purpose within the meaning of that Act.

Cap. 57:01
Cap. 58:04

(2) If the Minister apprehends that a monument or relic is in danger of being destroyed, damaged or allowed to fall into disrepair or decay, he may—

(*a*) where the owner can reasonably be ascertained, compulsorily purchase the monument or relic from the owner at such price as the Minister shall consider appropriate having regard to the state of preservation, conservation or maintenance of the monument or relic;

(*b*) where the owner cannot reasonably be ascertained, acquire the monument or relic,

and upon the purchase or acquisition the Government shall have good title to such monument or relic.

Limitation on powers of compulsory purchase or acquisition of monuments and relics

19. The powers of compulsory purchase or acquisition of monuments and relics pursuant to section 18 shall not be exercised—

(*a*) in respect of any monument or relic which is the subject of a subsisting agreement entered into under the provisions of section 15; and

(*b*) unless the owner of the monument or relic or other person competent to enter into an agreement under section 15 has failed, within such period as the Minister may fix in that behalf, to enter into an agreement under that section or has terminated or given notice of his intention to terminate such agreement.

Custody of monuments and relics

20. The Minister may remove or cause to be removed to a museum or place of safe custody any monument or relic acquired or purchased under section 18, which is not the subject of a subsisting agreement entered into under section 15.

Maintenance of monuments and relics

21.—(1) Every monument or relic in respect of which the Minister has acquired any of the rights mentioned in section 15, or which has been compulsorily purchased or acquired under

section 18, shall, unless the Minister otherwise decides, be maintained by the Minister who may delegate such responsibility to a local authority within whose area such monument or relic is situated:

Provided that where such monument or relic has been removed to a place of safe custody pursuant to section 20, the person in whose custody it is shall be responsible for its maintenance.

(2) Where the maintenance of a monument or relic is delegated under subsection (1) to a local authority, the local authority shall maintain that monument or relic under the supervision of the Chief Antiquities Officer.

PART V

Listing of Monuments of National or Local Importance

List of national monuments

22.—(1) The Minister shall compile a list of national monuments (other than those protected under section 11) of exceptional or special interest or of particular importance.

(2) In compiling a list under subsection (1), the Minister shall pay due regard to group value of monuments.

(3) The Minister shall serve notice on every owner or occupier of a listed monument to inform such occupier or owner that the monument is a listed monument.

List of monuments of local importance

23.—(1) A local authority may, and where so requested by the Minister, compile a list of monuments of local importance.

(2) Upon compiling a list of monuments of local importance, the local authority concerned shall submit the list to the Minister for approval and monuments on such list shall not be regarded as listed for the purposes of this Act, unless the list has been approved by the Minister.

Demolition, etc., of listed monuments

24.—(1) Any demolition, alteration or extension of a listed monument shall be undertaken only with the written consent of the Minister which may be granted subject to such conditions as the Minister may impose.

(2) In the case of demolition, the owner or occupier of the listed monument shall give two months notice in writing to the Minister of his intention and, upon receipt of such notice, the Minister may arrange for a record of the listed monument concerned to be made.

(3) Conditions attaching to a consent granted under subsection (1) may relate to—

(*a*) preservation of the features *in situ* or as salvage;

(*b*) making good any damage caused by the works;

(*c*) reconstruction of all or part of the monument including re-use of the original material;

(*d*) prohibition of demolition prior to the signing of a contract for the work of re-developing the site; and

(*e*) the period within which the works shall be commenced, which period shall, in no case, exceed three months from the date the consent was granted.

(4) In determining applications for demolishing, altering or extending a listed monument, the Minister shall have special regard to the desirability of preserving the monument or its setting or any special features it possesses.

(5) A person who contravenes subsection (1) or any condition of a consent granted under subsection (1) shall be guilty of an offence.

(6) It shall be a defence to an offence under subsection (5) if the person accused proves that the unauthorized works of demolition, alteration or extension were urgently required in the interest of health or safety and the Minister was notified as soon as was reasonably practicable.

PART VI

Ownership, Discovery, Collection, Excavation and Removal of Monuments and Relics

Ownership of monuments and relics

25.—(1) All monuments and relics, whether movable or immovable, lying on or beneath the surface of the ground or in a river, a lake or other waters are hereby declared to be the absolute property of the Government, except the following—

(*a*) privately-owned monuments whose owners establish title thereto;

(*b*) privately-owned monuments or relics which have been registered by the owners with the Minister; and

(*c*) monuments or relics which, in the opinion of the Minister expressed in writing, need not be registered but which have been shown to the Minister pursuant to subsection (2).

(2) An organization or an individual shall have the right to own monuments or relics and keep them in private collections provided that the monuments or relics have been shown to the Minister for registration of such items.

(3) Every person in possession of monuments or relics, whether or not registered, shall keep them safe and preserve them and shall refrain from modifying them in any way, and whenever such monuments or relics are, or are likely to be, lost or damaged, he shall immediately notify the Minister.

(4) A monument or relic imported into Malaŵi shall be part of the absolute property of the Government if it remains in Malaŵi for two or more years, unless it was declared on entry.

(5) The Minister may seize any privately-owned monument or relic which has not been registered with the Minister or shown to him for registration.

Transfer of ownership, etc., of protected monuments or relics

26.—(1) Whenever a person transfers the ownership, control or possession of any protected monument or protected relic, he shall—

(*a*) within fourteen days of the transfer, notify the Minister, in writing, the fact of the transfer; and

(*b*) inform the transferee that the monument or relic being transferred is a protected monument or protected relic.

(2) A protected monument or protected relic shall continue to enjoy the protection available under this Act irrespective of the person in possession or control of it.

(3) Ownership of any protected monument or protected relic belonging to the Government shall not be transferrable.

(4) A protected monument or protected relic belonging to a public body or public utility service may only be disposed of with the authorization of the Minister, and the ownership thereof may be transferred only to the Government, or to another public body or public utility service.

(5) Ownership of any land shall not, in itself, entitle the owner of the land to dispose of the monuments or relics on or under the surface of that land.

(6) In an action brought by the Government or by the original owner, which action may be brought at any time notwithstanding any provision to the contrary in any written law regarding limitation of actions, a court may, upon proof that the acquisition of a monument or relic by any person was effected in contravention of subsection (1), (2) or (3), declare such acquisition to be void and, upon such declaration, shall order that the monument or relic in question be restored to the Government or to its original owner:

Provided that where the person from whom the monument or relic in question was recovered was *bona fide* purchaser thereof the Minister shall pay to him the purchase money proven to the satisfaction of the Minister to have been paid by such person to the seller and the Minister shall be entitled to recover the amount from the seller.

Notification of discovery of monuments or relics

27.—(1) Any person who discovers a monument or relic, or is informed of such discovery, shall notify the Minister, in writing, within fourteen days following the discovery or the date he was informed of the discovery setting forth the fact of the discovery together with the circumstances of the discovery and such other details of such monument or relic as may be prescribed.

(2) The Minister may give to any person who has discovered a monument or relic, or has reported the discovery of a monument or relic, a cash reward of an amount which the Minister may, in his own discretion, consider to be appropriate in the circumstances.

Authorization for archaeological research

28.—(1) Archaeological excavations for monuments, relics or any other items of archaeological value may be undertaken only by—

(*a*) the Chief Antiquities Officer; and

(*b*) organizations or individuals holding a valid excavation permit issued by the Minister:

Provided that the Minister shall not issue an excavation permit to an organization or an individual, unless he is satisfied that the organization or the individual has the financial and scientific capability to undertake the excavation.

(2) A person, not being a person authorized in accordance with subsection (1), who excavates on any land, including his own, for monuments or relics or for any other item of archaeological value shall be guilty of an offence.

Rescue archaeology

29.—(1) A person in charge of any survey, excavation, exploration, construction or new development shall, at the earliest stages of planning for such activities, give notice to the Minister to enable, where necessary, rescue archaeology to be carried out in accordance with subsection (2).

(2) Rescue archaeology of a monument or relic under subsection (1) shall be carried out by the Chief Antiquities Officer or any qualified person with an excavation permit issued by the Minister, and the cost of such work shall, unless the Minister

otherwise directs, be borne by the person in charge of any survey, excavation, exploration, construction or other development.

Archaeological permits

30.—(1) An application for an excavation permit shall be made to the Minister through the Chief Antiquities Officer and shall specify—

(*a*) particulars of the applicant, including his qualifications and experience as an excavator or researcher and the scientific association, institute or organization to which he is attached;

(*b*) the boundaries of the area intended for excavation or research;

(*c*) a general programme of the work to be followed in the excavation or research; and

(*d*) the funding of the programme.

(2) The Chief Antiquities Officer shall examine the application and submit it, together with his recommendations, to the Minister who may—

(*a*) grant the application and issue the permit; or

(*b*) refuse the application.

(3) The Minister shall not be obliged to assign any reasons for his decision under subsection (2).

Obligations of the holder of an excavation permit

31. The holder of an excavation permit shall have the following responsibilities—

(*a*) to form a team of scientists to carry out the required research and provide the team with all the equipment needed to accomplish the works, and for the making of photographic records and for the handling of monuments and relics in accordance with recognized and acceptable methods and such a team may use the laboratories, workshops, equipment implements and other facilities of the Chief Antiquities Officer, subject to payment of an appropriate fee;

(*b*) to carry out the excavations each year during the validity period of the permit, unless the excavation is sooner completed;

(*c*) to send to the Minister, at intervals specified in the permit or otherwise in writing, a report on the excavations and their results together with full details of all monuments and relics discovered;

(*d*) to prepare maps, section plans and photographs of all discovered monuments and relics and such maps and plans shall be prepared to recognized scientific standards and shall contain detailed descriptions of the conditions of the objects at the time of their discovery;

(*e*) to refrain from demolishing or removing any part of the structures or buildings without the approval of the Minister which may be given only after the work referred to in paragraph (*d*) has been completed;

(*f*) to keep on the excavation site two numbered registers bearing the stamp of the Chief Antiquities Officer, one of which registers shall be used for recording progress in the work and shall be signed by the person directing the excavations at the end of each working day and the other shall be used for recording details of any monument and relic discovered;

(*g*) to take necessary measures for maintaining and protecting the excavations, monuments and relics against any damage, theft or loss resulting from natural phenomena or encroachment by any person or animal;

(*h*) to present to the Minister at the end of the excavation a complete set of maps, section plans, drawings and photographs required under paragraph (d) and a copy of each of the registers kept pursuant to paragraph (f);

(*i*) to reimburse the Government for the travel and accommodation expenses of any of its officials who may be assigned to the excavation team during the period of excavation;

(*j*) to submit, within six months of the end of each excavation, a general report setting out the most important findings of the investigation and drawn up in such a way that makes it suitable for publication in scientific and archaeological journals;

(*k*) to arrange, within two years of the excavation, or within such extended period not exceeding a further two years as the Minister may accept in writing, publication of a detailed scientific report giving precise information on their findings, the provenance and archaeological value of such findings and the results of the research, if such publication has not been done within such period the permit holder shall forfeit his publication to the Government;

(*l*) to provide the Minister with three copies of each of the works, publications or articles prepared by the holder of the permit on the excavations and their findings or part thereof;

(*m*) to pack any relics discovered and take them to such places as have been designated for the purpose by the Minister; and

(*n*) to restore and repair the excavation site and the most important findings that it contains in such a way as to indicate the stratigraphy of the site and the Government may contribute to the cost of restoring and repairing archaeological monuments and relics discovered at the site if justified by the archaeological value of such items and the resources of the excavation team which discovered them are insufficient to cover such costs.

Excavation permits not transferrable

32. An excavation permit shall not be transferrable without the consent of the Minister.

Government to refrain from certain acts of publication, etc.

33. The Minister shall—

(*a*) refrain from publishing the notes, maps and plans deposited by the holder of an excavation permit until after the expiry of the period specified in section 31 (*k*);

(*b*) refrain from permitting photographs to be taken of any discovered monument or relic for the purposes of publication before the holder of an excavation permit has exercised or forfeited his right of publication; but so, however, that the Chief Antiquities Officer may, in guides or information publications, make reference to, and insert photographs of, the items discovered.

Cancellation of excavation permit

34.—(1) The Minister may cancel an excavation permit if—

(*a*) the holder of the permit suspends excavation or is otherwise inactive without reasons accepted as valid by the Minister;

(*b*) the holder of the permit fails to comply with the requirements of this Act;

(*c*) the Minister considers it in the public interest so to do.

(2) Notwithstanding that a permit has been cancelled the Minister may require the permit holder to restore or repair the excavation site in accordance with section 31 (*n*) and a person who fails to comply with such requirement of the Minister shall be guilty of an offence.

(3) The cancellation of an excavation permit shall not preclude the grant of another excavation permit—

(*a*) to any other qualified person in respect of the same area or site;

(*b*) to the holder of the cancelled permit in respect of the same or any other area or site if he satisfies the Minister of his ability to comply with the requirements of this Act in that behalf.

35.—(1) The Minister may co-operate with foreign and local scientific institutions, archaeological missions or individual researchers in the conduct of any research. Research co-operation

(2) For the purpose of research co-operation under subsection (1), the Minister, on behalf of the Government, may enter into written agreements with such institutions, missions or individual researchers setting out the terms and conditions of such co-operation and such terms and conditions may relate to matters of a scientific, technical or financial nature.

PART VII

Dealing In Monuments and Relics

36.—(1) No person shall trade in any monument or relic whether or not such monument or relic is registered, unless he is a holder of a valid licence issued under this Act. No dealing in monuments and relics unless licensed

(2) A person who contravenes subsection (1) shall be guilty of an offence.

37.—(1) The Minister may, in accordance with regulations made under this Act, issue to any person a licence authorizing that person to trade in monuments or relics. Dealer's licence

(2) Every licence issued under subsection (1) shall be subject to such conditions as may be prescribed by regulations or specially endorsed on the licence and to the following general conditions that is to say that the licensee shall—

(*a*) keep official records provided for the purpose by the Minister in which he will record a detailed inventory of the monuments or relics constituting his stock and all his daily sale and purchase transactions;

(*b*) submit for inspection by the Chief Antiquities Officer and other persons duly authorized by the Minister every monument or relic in his possession, and extend to them all necessary assistance;

(*c*) if so requested by the Chief Antiquities Officer, provide him with a photograph of any monument or any relic in his possession, or permit him to photograph the monument or relic;

(*d*) submit to the Minister a monthly report showing all the monuments or relics he has bought or sold, and give details pertaining to the description of the monuments or relics in question and the identity of the respective seller or buyer;

(*e*) place at the entrance of his registered place of business a sign showing that he is licensed to deal in monuments or

relics, and post in a prominent place therein a notice, in both the English and Chichewa languages, to the effect that no monuments or relics may be exported without a licence issued under this Act.

(3) The Chief Antiquities Officer may at any reasonable time inspect the premises of a licensee and examine the records kept thereat and further may enter, for such inspection, the licensee's personal residence if, according to the licence granted to the dealer, his residence is to be used for storing or for dealing in monuments or relics.

Cancellation of licence

38.—(1) The Minister may cancel, or refuse to renew, a licence issued under this part if—

(*a*) he is satisfied that the licensee has not complied or is not capable of complying, with any condition of the licence;

(*b*) he considers it to be in the public interest so to do having regard to the nature of the monuments or relics which the licensee deals in.

(2) Where a licence has been cancelled or has not been renewed, the licensee shall be allowed to continue in business for such period not exceeding one year as the Minister shall direct in writing to enable him dispose of the stock.

(3) Any monument or relic remaining unsold after the period allowed under subsection (2) shall be treated as privately-owned monuments or relics of the licensee and be deemed to have been registered with the Minister for the purposes of section 25.

Prohibition of fraud in monuments and relics

39.—(1) No person shall without the written consent of the Minister—

(*a*) reproduce, retouch, rework or forge any monument or relic deriving its principal value from a monument or relic which is twenty-five or more years old, or any monument or relic which is less than twenty-five years but deemed by the Minister to be of national importance or interest;

(*b*) make any object, whether copied or not, or falsely label, describe, identify, or offer for sale or exchange any object, with the intention to represent the same to be an original and genuine monument or relic;

(*c*) offer for sale or exchange any object with the knowledge that it has previously been collected or excavated in contravention of this Act; and

(*d*) being a licensed dealer in monuments or relics, encourage any other person to excavate for monuments or relics without an excavation permit issued under this Act.

(2) A person who contravenes subsection (1) shall be guilty of an offence.

PART VIII

Exportation and Importation of Monuments and Relics

Export licence

40. No person shall export any monument or relic, whether or not such monument or relic is registered, unless he is a holder of a valid licence issued under this Part.

Applications for an export licence

41.—(1) A person who desires to export any monument or relic may apply, in writing or in such form as may be prescribed, to the Minister through the Chief Antiquities Officer.

(2) Subject to any regulations made under this Act, which may require further or other particulars to be furnished by an applicant, every application for a licence to export any monument or relic shall specify the following particulars—

(*a*) the name, occupation, address and nationality of the applicant;

(*b*) the port, station or border point from which the monument or relic will be exported;

(*c*) the name, address and other relevant particulars of the intended consignee;

(*d*) the method by which, and the place in Malaŵi from where, the monument or relic was obtained;

(*e*) in the case of a registered monument or relic particulars of its registration;

(*f*) in the case of an unregistered monument or relic particulars of the documentation evidencing that it was shown to the Minister for registration;

(*g*) description of the monument or relic with particulars as to quantity, type, dimension and estimated local price in Malaŵi.

(3) The applicant shall make available to the Chief Antiquities Officer for verification of the particulars stated in the application and for assessment of value, every monument or relic he intends to export.

(4) After examining an application received under this section and the monuments or relics intended for export, the Chief Antiquities Officer shall forward the application, together with his recommendation thereon, to the Minister who may, without being obliged to assign any reason—

(*a*) grant the application and issue the licence; or

(*b*) refuse to grant the application.

(5) An export licence issued under this Part shall be in such form and subject to such conditions as the Minister may prescribe.

Validity and duration of an export licence

42. An export licence issued under this Part may—

(*a*) authorize the licensee generally to export monuments or relics for such period as may be specified in the licence and which may be renewed from time to time; or

(*b*) be limited to a particular consignment or a number of consignments.

Export levy

43. The Minister may, by order published in the *Gazette*, impose a levy on exports of monuments or relics and the rate of such levy may relate to the estimated local or export value of the monuments or relics or to the quantity of the monuments or relics.

Value of monuments and relics for purpose of export levy

44. The value of monuments or relics for the purposes of an export levy under section 43 shall be the value declared by the exporter:

Provided that where the Chief Antiquities Officer considers, upon reasonable grounds, that the value declared by the exporter is markedly lower than the actual or potential value, he may make his own determination of the value and the export levy on those monuments or relics shall be computed on the basis of the value determined by the Chief Antiquities Officer.

Parking of monuments or relics for export

45. A person licensed to export monuments or relics shall pack the monuments or relics and seal the packages thereof in the presence of the Chief Antiquities Officer and shall affix on the sealed packages a manifest bearing the official stamp of the Chief Antiquities Officer and stating the number and date of issue of his export licence.

Seizure of monuments or relics exported without a licence

46. A customs officer or a police officer shall seize any monument or relic being exported in contravention of the provisions of this Part and shall send the items seized to the Chief Antiquities Officer indicating—

(*a*) the name and address of the exporter;

(*b*) the place where, and the date when, the items were seized.

Offence for illegal exports

47. A person who exports any monument or relic without a valid licence or otherwise in contravention of this Part shall be guilty of an offence.

48. Notwithstanding any other provision of this Act to the contrary, the Minister may grant permission for temporary exportation or importation of monuments or relics for purposes of study or official exhibition of such objects.

Temporary export and import permits

49. The Minister shall within the terms laid down in agreements, treaties and recommendations of international organizations, arrange to recover monuments or relics smuggled or otherwise taken out of Malaŵi and may assist in returning those brought into Malaŵi from other countries.

Recovery of smuggled monuments or relics

PART IX

General

50. Subject to the provisions of any regulations made under this Act, members of the public shall have a right of access to any monument or any relic which is kept in a place of safe custody under the provisions of section 20.

Right of access

51. The Minister may, where rights have been acquired by the Government in respect of any monument or relic under this Act relinquish the rights so acquired to the person who would for the time being be the owner of such monument or relic as if such rights had not been acquired.

Relinquishment of control over monuments and relics

52. The Minister may, by notice in the *Gazette*, declare that any protected or listed monument or a protected relic shall cease to be a protected or listed monument or protected relic.

Removal of protection

53. The Minister shall cause to be published in the *Gazette*—

Publication in the *Gazette*

(*a*) once every year, lists of monuments compiled under sections 22 and 23; and

(*b*) the declaration of any monument or relic as a protected monument or a protected relic.

54.—(1) There may be raised, from the public or private persons in or outside Malaŵi, for the conservation, preservation and protection of any monument or relic or for any other purposes of this Act, money and other assets by way of grants, bequests, gifts, and subscriptions or other donations.

Public donations

(2) Any money raised pursuant to subsection (1)—

(*a*) may be held on an account including an interest bearing account in a bank or other institution in or outside Malaŵi approved by the Minister; and

(*b*) shall not be appropriated for any of the purposes for which it was raised except upon the recommendation of the Council and with the approval of the Minister.

General offences

55.—(1) Save as is provided in this Act, any person who—

(*a*) without authority, knowingly alters, destroys, defaces, damages, demolishes, removes from the original site, reproduces a protected monument or protected relic or a listed monument whether in the possession of the Government or a private organization or an individual;

(*b*) possesses an unregistered monument or relic without having shown it to the Minister for registration;

(*c*) in any application to the Minister under this Act, makes any statement which he knows or ought reasonably to know to be false in any material respect,

shall be guilty of an offence.

General penalty

56. Any person guilty of an offence under this Act shall be liable to a fine of K10,000 and to imprisonment for three years.

No suit against public officers, etc.

57. No suit for compensation and no criminal proceedings shall lie against any public officer, local authority or officer of a local authority in respect of any act done or intended to be done, in good faith in the exercise of any power or performance of any duty conferred under the provisions of this Act.

Regulations

58. The Minister may make regulations for carrying this Act into effect and, without prejudice to the generality of the foregoing power, such regulations may, in particular, provide for—

(*a*) regulating the access of the public to any monument or relic and prescribing the fees, if any, which may be charged for such access;

(*b*) safeguarding monuments or relics from disfigurement alteration or destruction;

(*c*) regulating the excavation and exploration of monuments and relics and research in general;

(*d*) regulating trade, transfer, export, import, and temporary export and import of monuments or relics;

(*e*) establishment and running of site museums; and

(*f*) anything which is required to be prescribed under this Act.

PART X

Repeal and Savings

Repeal and savings

59.—(1) The Monuments Act is hereby repealed.

(2) Any subsidiary legislation made under the Act repealed

by subsection (1) in force immediately before the commencement of this Act—

(*a*) shall, unless in conflict with this Act continue in force and be deemed to be subsidiary legislation made under this Act; and

(*b*) may be replaced, amended or repealed by subsidiary legislation made under this Act.

(3) Any subsisting agreement or similar arrangement made pursuant to the provisions of the Act repealed by subsection (1) shall continue in force until terminated in accordance with the terms and conditions thereof.

WAR GRAVES

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CHAPTER 29:02

WAR GRAVES

ARRANGEMENT OF SECTIONS

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An Act to provide for the Control of War Graves 12 of 1967

[28TH JULY, 1967]

Short title

1. This Act may be cited as the War Graves Act.

Interpretation

2. In this Act—

"the Commission" means the Commonwealth War Graves Commission, a body corporate constituted by Royal Charter of the United Kingdom of the 21st May, 1917;

"war grave" means a grave which has been accepted by the Commission as a grave within the purposes of the said Charter and of a Supplemental Charter of the 8th June, 1964.

Power to vest control of war graves and cemeteries in Commission

3. The Minister may from time to time, by notice published in the *Gazette*, vest in the Commission—

(*a*) the control of all or any war graves in Malaŵi or in any area of Malaŵi, whether on public, private or customary land;

(*b*) the control of any piece of public or customary land containing war graves (in this Act referred to as a war grave cemetery); and

(*c*) the control of any piece of land for the erection by the Commission of a War Memorial elsewhere than in a war grave cemetery.

Powers of Commission

4. The Commission shall, subject to the general or special directions of the Minister, have all powers necessary or convenient for the fulfilment of their purposes and in particular for maintaining any war grave or war grave cemetery under their control in proper order and for maintaining and improving the appearance and amenities of the grave or cemetery. Such powers include the power to enclose the grave or cemetery and to erect and maintain thereon or therein gravestones, tablets, or monuments of any description.

Protection of private rights

5.—(1) Where a war grave is situated on private land, the Commission shall before entering thereon give at least twenty-four hours notice to the occupier, if any, and shall, as far as possible, consult his convenience, and shall compensate him for any actual damage caused to him by the exercise of their powers.

(2) In the event of dispute, the amount of such compensation shall be fixed by the Minister, whose decision shall be final.

(3) Nothing in this Act shall affect the right of the owner of any grave in a war grave cemetery, not being a war grave, to have access to and maintain such grave, or confer on the Commission any right to interfere with any such grave or gravestone tablet, or monument thereon.

Exclusive right of burial

6.—(1) The Commission shall have the exclusive right of burial in all war graves under their control.

(2) The Minister may confer on the Commission the exclusive right of burial in any vacant space in a war grave cemetery under their control.

(3) No person shall, except with the consent of the Commission, bury any body in any war grave or in any vacant space in any war grave cemetery in which the Commission have the exclusive right of burial.

Power to remove bodies from war graves

7. Where the Commission are satisfied that by reason of its situation or for any other reason a war grave cannot be properly maintained in its present position, they may, with the consent of the Minister and subject to such conditions as he may impose, remove the body from the war grave and re-inter it in any place approved by the Minister for the purpose:

Provided that the Commission shall, before removing a body, endeavour to obtain the consent of the widow, if any, of the deceased, or, if there is no widow, of one of his next-of-kin, and shall not remove the body if they are of opinion that the removal will be against the wishes of the widow, or, it there is no widow, of the next-of-kin.

8.—(1) No person shall wilfully destroy, injure, defile, disfigure or deface any building, wall, fence, gate, tree, plant, monument, tablet, inscription or gravestone belonging to or under the control of the Commission. Offences in relation to war graves

(2) No person shall without the consent of the Commission disturb the soil of any war grave under their control or without lawful title the soil of any war grave cemetery under their control.

(3) No person shall obstruct the Commission or any servant or agent of the Commission in the exercise of their powers or rights under this Act.

9. Any person who contravenes any of the provisions of this Act shall be liable to a fine of K200 and to imprisonment for six months. Penalty

SUBSIDIARY LEGISLATION

G.N. 130/1987

WAR GRAVES (CONTROL OF WAR GRAVES) NOTICE

under s. 3

Citation

1. This Notice may be cited as the War Graves (Control of War Graves) Notice.

Commission to control war graves (para. 2)

2. For the purposes of paragraph (*a*) of section 3 of the Act, the control of the war graves listed in the Schedule is hereby vested in the Commission.

SCHEDULE

1.—Mangochi Cemetery

Bingham, S/Serjeant T.
Bligh, vol. a.
Brown, Driver I.
Browning, Serjeant Herbert John
Bryne, S/Serjeant J.
Cawley, Driver H.
Clachan, Captain William James
Clack, Private Sidney Arthur
Cook, Serjeant R. A.
Cousins, Serjeant Alfred Henry Valentine
Crocker, Driver H. R.
Davidson, Driver J.
Donnelly, S. M. J.
Dutoit, Driver D.
Edwards, Serjeant B. C.
Fairbairn, Sapper F. S.
Ferreira, Driver S.
Fowler, Captain Alexander George
Garrard, Major P.
Habets, Father J.
Garbert, Serjeant W. J. A.
Huggan, Lieutenant Robert Elliot
Hughes, Serjeant W. J.
Hutchinson, Lieutenant Percy Lynn
Johnson, S/Serjeant F.
Jones, Private F.
Julius, Corporal J. R.
Kelly, Lieutenant Robert Houston
Lane, Driver A. E.
Leyshon, Captain T. St. L.
Lutz, Vol. J. F.
McCue, Driver W.
Maciver, Captain Kenneth Ogg Mackenzie
Mardon, Lieutenant A. W. L.
Meyer, Private Michael
Milne, Captain Arthur James
Minshall, Vol. J.
Myles, Captain John Adam Whitson Douglas
Mynhardt, Driver J. J.

PARISH, C. S. M. H.
PENSO, Signaller Francesco
RAMSAY, Serjeant A.
READ, T/Lieutenant S. T.
REID, Signaller James Reynard
SALVATOR, Sister
SCHEMELZER, Driver R.
SELL, C. S. M. Charles William
SMITH, Captain Valentine Herbert
THOMSON, Signaller John Alexander
TOFTS, Lieutenant Charles Frank
VALENTINE, Private J.
VILJOEN, Driver H.
VOLLENHOVEN, Corporal E.
WALLER, Driver B. H.
WARN, Lieutenant Archibald Herbert
WEBB, S/Serjeant L. M. M.
WHEATLEY, Serjeant Arthur William
WIGGALL, C.Q.M.S. Charles Herbert
WILLIAMS, Driver H.
WILSON, Mechanic J.

2.—ZOMBA CLASS 'A' PUBLIC CEMETERY

ADAMS, Driver W.
ANDREWS, C.Q.M.S. C.
ARMES, Serjeant Charles William Thomas
BACHELIN, Private Paul
BARNES, Driver A.
BARTHELS, Julius
BETTLE, Nursing Sister Hilda Maud
BOARDMAN, Private L.
BOTHA, Mechanic W. J. B.
CAMERON, Private K. J.
CLARKE, Serjeant B. E.
COLE, S.M. W. G.
COCKS, Serjeant Ronald
DOUGLAS, Captain Kenneth Mackenzie
ELLIOT, Mechanic R. J.
ELLIS, Driver P.
ERASMUS, Driver G.
FROST, Driver A. A.
GARNET, Driver A. A.
GERALD, Driver H.
GIRDLESTONE, Serjeant Colin Tibbs
GOLDBURG, S.M. S.
GRANT, Serjeant William Bland
GRIFFIN, Corporal R. A.
HALLETT, Serjeant T. H.
HEYNS, S/Serjeant P. H. Z.
HITCHCOCK, Serjeant C. J.
IRVINE, Private W.
JACOBS, Driver Gabriel G.
JOHNSON, Driver C. V.

KEHOE, Serjeant J.
LAVERTON, Rifleman J.
LAWSON, Private A.
LEHMAN, Driver E.
LESSING, Private Nicholas Stephanes
LOTHIAN, Serjeant J.
MCDONALD, Sapper J.
MAKIN, Mechanic A. D.
MALLOCH, Private P.
MANN, Lieutenant Horace
MOFFAT, Serjeant Tom Dickson
MURTON, Private Alfred Henry
MUSGRAVE, Serjeant Gerald Harry
NEILSON, Driver N.
OKEY, Sapper F. H.
PENNY, S/Serjeant J. A.
POTTEN, Corporal H. E.
PUGH, Captain E. R.
RADFORD, Lieutenant Charles Oates
RANIER, Mechanic J. H.
SHEED, Serjeant Charles Frederick
SHIRES, Driver R.
SPOUSE, S/Serjeant F. H.
STYLE, Driver H.
THATCHER, Mechanic J. H.
VICKERS, Driver D.
WILLIAMSON, Sapper J. T.
WINTER, Serjeant A. P. De L.
WRIGHT, Paymaster Francis Stanton Sillas

3.—BLANTYRE CHURCH OF CENTRAL AFRICA PRESBYTERIAN CEMETERY

BAMUSI Masapi, Private
BECK, S/Serjeant J. C.
BROPHY, Private N.
DONALDSON, Corporal W. W.
ENGELBRECHT, Private G. P.
EZAU, Private D.
FYNN, Driver B.
GARDNER, Serjeant David Mitchell
GIBSON, Driver J. A.
GLOVER, Rifleman George Martin
GOODREAU, Bglr. George H.
HUGHES, Private A.
JOHNSON, Private O. P.
KELLY, Private G. R.
KIRSTEN, Captain Andrew Peter
KLASS, Private J.
LIFRED Bechili, Private
MACKENZIE, Lieutenant Ian Russell, D.S.O.
MANDY, Rifleman C. J.
MEYER, Private Avie
MUDD, Serjeant A. T.
PARROTT, Private J.

PENNIKETT, Private J. A.
PROOK, Herman Gunter
RANDALL, Private John Edward
ROSS, Private H. M.
SCHNEIDER, Eric
SPARKS, C.S.M. A. M.
SPRINGFIELD, Private S.
UHLMANN, Mrs. Elizabeth Auguste
WILLIAMS, Private J.
WILLIAMS, Private Jacob

4.—LIMBE TOWNSHIP CEMETERY

COPLAND, Serjeant John Hay

5.—KARONGA WAR CEMETERY

ALEXANDER, Scout A. D. S.
ASCOT, Voltr. V. F. D.
CALDECOTT, Captain J. L.
CAMPBELL, Voltr. G.
CRUISE, Captain M. R.
CRUISE, Captain M. R.
DUMELOW, Voltr. L.
GARNETT, Lieutenant P. N.
HAIG, C.Q.M.S. E.
MANNING, Voltr. G. E.
MERRIMAN, Voltr. G.
MOORHEAD, Lieutenant Colonel G. O.
YORMAN, Clr. Serjeant
GRAVMANN, N.C.O.
HARNOSS, Voltr.
KLEIN, N.C.O.
MEYER, Voltr.
ROTH, N.C.O.
STEIN, N.C.O. M.

6.—ZOMBA K.A.R. CANTONMENT CEMETERY AND ZOMBA MEMORIAL

EX-SERVICEMEN'S MEMORIAL HOME

CHAPTER 29:03

Containing Pages 1–3

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CHAPTER 29:03

EX-SERVICEMENS MEMORIAL HOME

ARRANGEMENT OF SECTIONS

SECTION
1. Short title
2. Establishment of Home
3. Establishment of Board
4. Constitution and proceedings of Board
5. Funds and land vested in the Board
6. Powers and duties of the Board
7. Power to operate a banking account
8. Expenses
9. Accounts

An Act to establish a memorial home for distressed or disabled Malaŵi ex-servicemen and their families, to incorporate a board of Trustees for the purpose of managing, maintaining and controlling the home, and for matters incidental thereto 33 of 1971

[31st December, 1971]

1. This Act may be cited as the Ex-Servicemen's Memorial Home Act. Short title

2.—(1) There is hereby established a home to be called the Ex-Servicemen's Memorial Home (hereinafter referred to as for Home) for the purpose of providing a home and assistance the distressed or disabled Malaŵi ex-servicemen and their families. Establishment of Home

(2) The Board referred to in section 3 may, as and when it is considered necessary or desirable, and sufficient funds are available, establish other branches of the Home at suitable sites in Malaŵi, and for the purposes of this Act any reference to the Home shall be deemed to include reference to any branch or branches established under this subsection.

3.—(1) For the purpose of managing and controlling the Home there is hereby established a Board of Trustees (hereinafter referred to as the Board), which shall be a body corporate by the name of "the Trustees of the Ex-Servicemen's Memorial Home", with perpetual succession and a common seal, which shall in its corporate name be capable of suing and being sued, and subject to the provisions of this Act, of purchasing, or otherwise acquiring, holding, alienating or otherwise dealing in, property, whether movable or immovable, and of doing all such acts and things as bodies corporate may by law do or perform. Establishment of Board

(2) The seal of the Board shall be authenticated by the signature of the Chairman, or the person for the time being performing the

functions of Chairman, and one other member of the Board designated by the Board for such purpose, and any document purporting to be sealed with the said seal and so authenticated shall be admissible in evidence of the particulars stated in that document.

Constitution and proceedings of Board

4.—(1) The Board shall consist of the following members—

(*a*) the Chairman of the Commonwealth Ex-Services League of Malaŵi, who shall be Chairman of the Board;

(*b*) the Vice-Chairman of the Commonwealth Ex-Services League of Malaŵi, who shall be Vice-Chairman and shall in the absence or temporary incapacity of the Chairman perform the functions of Chairman of the Board;

(*c*) the Commander of the Malaŵi Army;

(*d*) the Accountant General;

(*e*) the Chairman of the Zomba Branch of the Commonwealth Ex-Services League of Malaŵi;

(*f*) a member nominated by the Central Council of the Commonwealth Ex-Services League of Malaŵi;

(*g*) the person for the time being appointed as secretary/treasurer of the Board.

(2) If the holder of any of the offices mentioned in subsection (1) is unwilling or unable to act, or if any such office is vacant or has been abolished, the Minister may appoint to the Board such person as he thinks fit. The Minister may at any time revoke any such appointment and shall revoke any such appointment whenever the contingency which led thereto has ceased to exist.

(3) Three members of the Board shall form a quorum.

(4) In the absence of the Chairman and Vice-Chairman from any meeting of the Board the members present may elect one of their number to perform the functions of Chairman at that meeting.

(5) The Accountant General may with the approval of the Central Council of the Commonwealth Ex-Services League of Malaŵi appoint a suitable person to be secretary/treasurer of the Board.

(6) The Board may regulate its proceedings in such manner as it thinks fit, but on any matter on which the votes of the Board are equally divided the Chairman or the person performing the functions of Chairman shall have a second or casting vote.

Funds and land vested in the Board

5.—(1) All moneys, whether represented by investments or cash, and all land and buildings which on the date of the passing of this Act were vested in the trustees appointed under the Malaŵi Ex-Servicemen's Memorial Home Act (repealed by this Act) are

hereby vested in the Board, and all moneys or property which may hereafter be given, bequeathed or received for the purposes of this Act shall be vested in the Board.

(2) Any moneys vested in the Board by virtue of the provisions of subsection (1) of this section and not immediately required for the exercise of any of the powers or the carrying out of any of the duties set out in section 6 of this Act shall be invested by the Board in any of the investments permitted by law for the investment of trust funds with power to vary any such investment for any other so authorized.

Powers and duties of the Board

6. The Board shall be responsible for the general management, maintenance and control of the Home, and for that purpose may—

(*a*) alter, demolish, adapt or add to any buildings forming part of the Home;

(*b*) erect such additional buildings as in its discretion it considers necessary for the purposes of the Home;

(*c*) furnish, equip and maintain such buildings so as to be fit for occupation;

(*d*) do all such acts and things incidental to or connected with such buildings (including laying out gardens and yards, drainage and sanitary works, and insuring against fire) as it may think necessary or desirable;

(*e*) enter into such contracts and employ such persons as may be necessary to do any of the things specified in paragraphs (*a*), (*b*), (*c*) and (d) of this section;

(*f*) provide for the inmates of the Home free food, fuel, lighting, clothing, bedding, medical attention and pocket money as it thinks fit;

(g) employ such staff on such terms and subject to such conditions as it thinks fit;

(*h*) subject to the provisions of this Act, do such other things as appear to it necessary or expedient in the interests of the Home.

Power to operate a banking account

7. The Board may open, maintain and operate in its name a banking account at such bank as it may think fit.

Expenses

8. All expenses incurred by the Board in carrying the purposes of this Act into effect shall be defrayed out of the moneys vested in the Board under this Act.

Accounts

9. The Board shall cause its accounts to be drawn up annually and submitted to the Auditor General as soon as practicable after the end of each financial year.

EDUCATION

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CHAPTER 30:01

EDUCATION

21 of 2013 **An Act to provide for the establishment, organization, governance, control, regulation and financing of schools and colleges; to provide for the establishment of the Teachers Council of Malaŵi; to provide for the establishment of the Malaŵi Institute of Education; and to provide for incidental matters thereto**

[6TH DECEMBER, 2013]

PART I

Preliminary

1. This Act may be cited as the Education Act. Short title

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

"Advisory Council" means a Council established under section 6;

"assisted college" means a college which is maintained in whole or in part by grants-in-aid;

"assisted school" means a school which is maintained in whole or in part by grants-in-aid;

"Board" means the Board of the Malaŵi Institute of Education;

"Board of Governors" means a Board of Governors established under section 25;

"college" means a teacher training college other than a university established under any written law or any other university recognized by the Minister;

"Council" means the Teachers' Council of Malaŵi established under section 57;

"Education Appeals Tribunal" means a tribunal established under section 42;

"Government college" means a college wholly maintained by the Ministry out of public funds;

"Government school" means a school wholly maintained by the Ministry out of public funds;

"Government Teaching Service Commission" has the meaning ascribed to it under the Government Teaching Service Commission Act; Cap. 30:08

"grant-in-aid" means a grant of money from public funds or the funds of any public authority or local government authority in aid of any school, college or education activity;

"Institute" means the Malaŵi Institute of Education established under section 82;

"local government authority" means a District Council, Town Council, Municipal Council or City Council;

"maintain", in relation to a school or college, means to pay the current outgoing expenses of the school in respect of staff salaries, wages, tuition and boarding costs, rent, repairs, electricity and water supply and similar expenses;

"manager", in relation to a school or college, means a person other than the head teacher or principal, who, on behalf of, or instead of, the proprietor, attends to the maintenance of a school or the employment and supervision of staff;

"parent", in relation to a student, includes a guardian, whether by customary law or otherwise, and every person who has the actual custody of the student;

"primary education" means atleast the first seven levels of formal education;

"primary school" means a school at which primary education is provided;

"proprietor", in relation to a school or college, means the person in whom is vested the ownership, custody or control of the place at which the school or college is carried on, and of the buildings, equipment and other things provided for the student attending the school or college and, where such ownership, custody or control is vested in more than one person, includes both or all of them, and any person registered as the person authorized to act as a manager on his or their behalf, but shall not include a landlord or other owner who has no right to immediate possession;

"Register of Schools and Colleges" means the register of schools and colleges established and maintained in accordance with section 34;

"school" means an institution at which a student receives regular secular instruction whether by personal tuition or by open and distance learning and any assembly of students for the purpose of receiving any such regular secular instruction, and any institution or place from which regular secular instruction emanates, or is imparted by means of open and distance learning, and includes any part of a school and any playing fields, recreational facilities, workshops, dormitories, kitchens, sick bays, hostels, laboratories staff quarters and ancillary buildings used in connection with a school, but does not include—

(*a*) any institution, assembly or place maintained or approved by a Ministry or Department other than the Ministry for the purpose of providing specialized instruction; or

(*b*) any institution, assembly or place in which the instruction is, in the opinion of the Minister, wholly or mainly of a religious character:

Provided that any class, division or section of any such last mentioned institution, assembly or place in which instruction is, in the opinion of the Minister, wholly or mainly devoted to secular subjects, shall be deemed to be a school;

"student" means a person of any age for whom education is provided or is required to be provided under this Act and any person enrolled on any register of enrollment of persons in attendance at a school or college maintained in a school or a college;

"teacher" means a person authorized or licensed to teach in accordance with this Act;

"university" means a university established under any written law, and any university recognized by the Minister by notice published in the *Gazette*.

Application

3. This Act shall not apply to—

(*a*) a university;

(*b*) any education institution which is established, administered, controlled, licensed or supervised under the provision of any other law;

(*c*) an institution established by a department of the Government other than the Ministry, except as may be prescribed by order in consultation with the Minister responsible for the portfolio subject under such department; and

(*d*) any other institution that provides education solely of a religious, social or recreational nature.

PART II

Promotion of Education

General duties and powers of the Minister

4.—(1) It shall be the duty of the Minister to—

(*a*) promote education for all people in Malaŵi; irrespective of race, ethnicity, gender, religion, disability or any other discriminatory characteristics;

(*b*) formulate policies, plan and manage information systems at national level;

(*c*) mobilize and allocate resources;

(*d*) design and develop the national curriculum;

(*e*) set and maintain national education standards;

(*f*) monitor, assess and evaluate the education system; and

(*g*) provide effective mechanisms for a transparent and accountable education system at all levels.

(2) In the exercise and performance of all the duties and powers conferred and imposed upon the Minister by this Act, the Minister shall have regard—

(*a*) to the general guiding principles of access, quality, relevance, efficiency, equality, equity, liberalization, partnership, decentralization, transparency and accountability; and

(*b*) in particular, to the general principle that, in so far as is compatible with the provision of efficient instruction and training and the avoidance of excessive public expenditure, students are to be educated in accordance with the wishes of their parents.

Goals of education in Malaŵi

5.—(1) The purpose of education in Malaŵi shall be to equip students with knowledge, skills and values to be self-reliant, and to contribute to national development.

(2) Without prejudice to the generality of subsection (1), the national goals of the education system in Malaŵi shall be to—

(*a*) promote national unity, patriotism and a spirit of leadership and loyalty to the nation;

(*b*) develop in the student, respect for the Constitution of Malaŵi and the principles of good governance;

(*c*) inculcate in the student, acceptable moral and ethical behaviour;

(*d*) develop in the student, an appreciation of one's culture and respect of other people's culture;

(*e*) develop in the student, an awareness of appropriate environmental resource utilization and management practices;

(*f*) develop in the student, an appreciation of the impact of rapid population growth on the environment and delivery of social services;

(*g*) impart vocational and entrepreneurship skills in the student in order to raise personal income and improve living standards;

(*h*) develop in the student respect of practical work in order to stimulate industrial development;

(*i*) promote equality of educational opportunity for all Malaŵians by identifying and removing barriers to achievement;

(*j*) develop in the student knowledge, understanding and skills needed by Malaŵians to compete successfully in the modern and ever-changing world;

(*k*) develop in the student a spirit of inquiry, independent thinking and problem solving; and

(*l*) promote innovation and development of appropriate technologies.

PART III

Advisory Council

Establishment and powers of the Advisory Council

6.—(1) There is hereby established an Advisory Council to advise the Minister on matters affecting education.

(2) The powers and functions of the Advisory Council shall be to—

(*a*) advise the Minister on educational matters upon the Advisory Council's own initiative or any question referred to the Advisory Council by the Minister;

(*b*) monitor and evaluate the implementation of educational policies;

(*c*) monitor the improvement and maintenance of quality in the education system;

(*d*) initiate review of overall effectiveness of particular aspects of the education system;

(*e*) foster public awareness and understanding of education policies;

(*f*) provide the Minister with professional information and advice for the development and execution of national policies of education; and

(*g*) exercise and perform such other powers and functions conferred or imposed upon it by or under this Act.

Composition of the Council and its procedure

7.—(1) The Advisory Council shall, subject to this section, consist of fifteen members who shall hold office for a period of three years and the members may be eligible for re-appointment at the expiry of that term for one more term.

(2) The Minister shall, for the purposes of appointing members of the Advisory Council, by notice in the *Gazette*, invite bodies or institutions with interest in education to nominate persons for appointment.

(3) The members of the Advisory Council shall be persons with sufficient interest or experience in the education sector or in some special aspect of the education sector.

(4) The Chairperson and Vice-Chairperson of the Advisory Council shall be elected from among the members at the first meeting of the Council.

(5) The Secretary of the Advisory Council shall be an official from the Ministry.

(6) The Advisory Council shall determine its own procedures.

Invited persons

8. The Advisory Council may invite any person or persons to attend any meeting of the Council or any of its committees and such person or persons may take part in the proceedings of that meeting but shall not be entitled to vote.

Reporting

9. The Chairperson of the Advisory Council shall report to the Council at each meeting the action taken by the Minister in any matter on which the Council has advised the Minister.

Orders to be published

10. The order appointing an Advisory Council, and every appointment, revocation of appointment, and resignation of a member of an Advisory Council, shall be published in the *Gazette*.

PART IV

Grants and Loans in Aid of Schools and Other Education Institution

Expenditure by Minister

11. The Minister may, from time to time, from public funds available for such purpose—

(*a*) establish, maintain or make grants or advances on loan in aid of schools or colleges and services related to education;

(*b*) maintain or make grants or advances on loan in aid of boarding accommodation, physical training and recreation at schools and colleges;

(*c*) maintain or make grants or advances on loan in aid of anybody or persons, institutions or organizations which promote the education of the people of Malaŵi or a substantial section thereof; and

Cap. 55:07

(*d*) subject to the Technical, Entrepreneurial and Vocational Education and Training Act or any other written law, make grants or advances on loan in aid of any person who provides technical instruction by way of an apprenticeship scheme or otherwise.

PART V

Primary Education

Provision of primary education

12.—(1) The provision of primary education shall be the responsibility of the local government authority for the area over which it exercises its jurisdiction.

(2) Notwithstanding subsection (1), a local government authority may enter into an agreement with another local government authority to administer and manage primary schools in the jurisdiction of the other local government authority.

Free and compulsory primary education

13. The provision of primary education in Government schools shall be free of tuition to all and compulsory for every child below eighteen years of age.

Appointment of education committees

14.—(1) Every local government authority shall appoint an education committee to which it shall refer all matters relating to the performance of its duties and exercise of its powers under this Act.

(2) Every local government authority shall appoint an officer to be secretary to the committee.

(3) A committee appointed under subsection (1) shall submit quarterly and specific reports to the local government authority.

(4) Every local government authority shall consider a report from its education committee before exercising any of its powers under this Act.

15. The duties of a local government authority shall be to— Duties of local government authorities

(*a*) implement the Government primary education policy in its area of jurisdiction;

(*b*) estimate the immediate and prospective needs of its area in respect of primary schools and primary education and the financial and other resources available for the establishment, maintenance, staffing and other requirements of such schools;

(*c*) prepare and submit to the Minister a plan (in this Act referred to as a "development plan") within such time and in such form as the Minister may direct, showing the action which the local government authority proposes should be taken for furthering primary education in its area and to prepare and submit to the Minister further development plans from time to time whenever required by the Minister, and to carry into effect development plans for its area published by the Minister;

(*d*) provide such funds as are available to it for the establishment and maintenance of primary schools, educational services related to primary education, physical training and recreation at primary schools and other expenses of primary education in its area in accordance with the primary education development plan for its area as the local education authority shall publish from time to time;

(*e*) exercise control, in accordance with this Act and any subsidiary legislation made under this Act, over primary schools in its area, to allocate funds provided for such schools and to control expenditure in accordance with estimates approved under any written law applicable to the authority and, in particular, to ensure that money provided by or through such local government authority for a particular purpose at any school is so used or is refunded;

(*f*) prepare and submit to the National Local Government Finance Committee established under the Local Government Act annual estimates of revenue and expenditure in respect of matters relating to primary education in its area in such form as the National Local Government Finance Committee may, by rule, prescribe; Cap. 22:01

(*g*) compile financial records and keep such financial books and other documents, and make such returns in respect of financial and other matters relating to primary education as the National Local Government Finance Committee, with the concurrence of the Minister responsible for Finance, may prescribe;

(*h*) comply with all policies adopted and guidelines issued by the Minister in accordance with powers conferred on him by this Act; and

(*i*) make recommendations to the Minister with respect to the ownership, management and registration of private primary schools.

Development plans

16.—(1) A development plan shall cover such period as a local government authority may in any case decide and may provide for all matters in respect of which the local government authority has duties and powers.

(2) In the preparation of its development plan, a local government authority shall consult the proprietors or persons representing the proprietors of all schools other than schools maintained by the local government authority which would, in the opinion of the local government authority, be affected by the execution of the plan and shall, after preparing the plan as soon as practicable furnish to the proprietors of every school such particulars relating to the plan as are sufficient to show the manner in which the school would be affected by the execution thereof.

(3) Where a development plan has been prepared under this section, a local government authority shall, if it is of the opinion that no particulars or insufficient particulars of the plan have been furnished to any person who, in its opinion, would be affected by the execution of the plan, give such directions as it considers expedient for securing that sufficient particulars are so furnished.

(4) A local government authority shall make available a copy of the development plan to the proprietor of every primary school in its area.

Powers of local government authorities

17. For the purposes of fulfilling its duties under this Act, every local government authority shall have power to—

(*a*) receive subvention or sums of money as Parliament shall appropriate for the purpose of primary education;

(*b*) seek and receive, with the approval of the Minister responsible for Finance, grants-in-aid from public or private funds;

(*c*) allocate funds for the establishment and maintenance of primary schools, educational services related to primary education, physical training and recreation at primary schools in its area;

(*d*) provide funds for scholarships and bursaries for maintenance and transport of pupils attending courses of instruction approved by the Minister within its area or outside;

(*e*) determine the siting and establishment of primary schools, through the education development plan or otherwise,

(*f*) require a proprietor of any primary school in its area to provide such information regarding the staff, students, classes and equipment of such school, the fees payable and received for tuition, boarding and otherwise, the funds available for maintenance and expansion of such schools and all such other information as it may require for the purpose of the preparation of development plans;

(*g*) allocate, in accordance with regulations made under this Act, funds provided by the Minister for primary schools in its area;

(*h*) maintain primary schools in its area, educational services related to primary education, physical training and recreation connected herewith;

(*i*) where it is justifiable, withhold any grant-in-aid to any assisted primary schools;

(*j*) inspect the buildings, furniture and equipment of and records, books and accounts kept at all primary schools in its area, report to the Minister the result of such inspections, and take steps to remedy any faults found; and

(*k*) attend to the performance of all its other duties under this Act or under any subsidiary legislation made under this Act.

Composition of education committee

18.—(1) Every education committee shall consist of such number of members as may be appointed by a local government authority from time to time.

(2) A chairperson of the committee shall be elected from among its members at the first meeting of the committee.

(3) A local government authority may, by simple majority resolution, remove from the membership of the committee, any member of the committee on reasonable grounds of which the member has had written notice of not less than twenty-one days.

(4) Vacancies in the committee may be filled from time to time by appointing members from the local government authority.

(5) An officer appointed as secretary of the committee shall attend all meetings of the committee but shall not be entitled to vote.

(6) An education committee may, where necessary co-opt any person to attend a meeting of the education committee but such a person shall not be entitled to vote.

Delegation of duties and powers of education committees

19.—(1) Every local government authority may delegate the performance of its duties under section 15 (*a*), (*b*), (*c*), (*e*) and (*g*), and the exercise of its powers under section 17 (*b*), (*d*), (*e*), (*f*), (*j*), and (*h*), to its education committee.

(2) The education committee of a local government authority shall prepare for the approval of the local government authority—

(*a*) draft annual estimates of revenue and expenditure in respect of matters relating to primary education in the area of the authority; and

(*b*) draft development plans.

Duties of secretary

20. A secretary of an education committee shall—

(*a*) undertake the preliminary preparation of the work of the committee, including the preparation of estimates, education development plans, reports and other documents;

(*b*) carry out school inspections on behalf of the committee;

(*c*) take such other executive action as a local government authority or the committee may lawfully direct;

(*d*) when required, assist and advise school management committees and proprietors of primary schools;

(*e*) interpret Government educational policy to the local government authority and the committee; and

(*f*) carry out any other functions which the local government authority may direct.

Establishment of school management committee

21.—(1) Each local government authority shall establish a school management committee in respect of a Government primary school or assisted primary school.

(2) In establishing the school management committee, the local government authority shall ensure that—

(*a*) the community served by the school is represented;

(*b*) where applicable, the proprietor who established the school is represented; and

(*c*) there is a representative of the local government authority.

(3) The local government authority may co-opt, on the committee persons who are not members of the committee but where a matter is to be decided through a vote, the co-opted persons shall not be entitled to vote.

Notice to be published

22. The Minister shall, by a notice published in the *Gazette*, provide for—

(*a*) the number of members of a school management committee;

(*b*) the membership representing the proprietor, a local government authority and the parents of students or the communities served by the school or group of schools;

(*c*) the tenure of office of the members and the method of ensuring continuity of membership of the committee;

(*d*) the revocation of the appointment of, the retirement and resignation of members of the committee and the appointment of new members and of temporary members in the case of absence or inability to act of any member;

(*e*) the co-option on the committee of persons who are not members; and

(*f*) such other matters as the Minister may prescribe in respect of the constitution, functions or procedure of the committee.

Functions of school management committee

23.—(1) Subject to this Act, the function of a school management committee shall be to assist in certain aspects of management and to advise a local government authority on any matter the committee deems appropriate.

(2) Without prejudice to the generality of subsection (1), the functions of the school management committee shall be to—

(*a*) observe the attendance and punctuality of teachers and students and advise the proprietor on the times at which the school session shall begin and end on any day;

(*b*) advise the proprietor on the appointment, supervision and dismissal of any non-teaching staff;

(*c*) advise the proprietor on the appointment, resignation or dismissal of any teacher from the school;

(*d*) satisfy itself as to the maintenance of the school fabric and the provision of school furniture and equipment to the standards approved by a competent authority;

(*e*) satisfy itself as to the implementation of reports by inspecting officers, where the reports relate to any matter mentioned in this subsection;

(*f*) advise the proprietor on the provision of religious instruction to an agreed syllabus, which in the case of schools established by a religious body, shall be in accordance with the tradition of the religious body;

(*g*) satisfy itself as to the proper payment of salaries to teachers;

(*h*) consider and advise the proprietor whether the conduct of the school is generally in accordance with the wishes of the parents; and

(*i*) advise the proprietor on the admission or refusal of students.

Obstruction of school management committee

24. If a local government authority is satisfied that a proprietor of an assisted school is obstructing the work of a school management committee, the local government authority may suspend payment of any money due to be paid from public funds to that school.

PART VI

Management of Secondary Schools and Colleges

Management of Government secondary schools and colleges

25.—(1) The management of Government secondary schools and Government colleges shall be under the control of the Minister.

(2) The Minister may, where he considers such action desirable for the improvement of education, by order published in the *Gazette*, establish a Board of Governors for any Government secondary school

or college or group of Government secondary schools or Government colleges.

(3) A Board of Governors established under subsection (2) shall have such powers and duties as are set out in the order by which it is established, and shall, subject to section 26, be composed of such persons as the Minister may determine.

Content of order establishing a Board of Governors

26.—(1) An order establishing a Board of Governors under section 25 shall provide for—

(*a*) the Board's exercise of the duty of management of a secondary school or a college or group of secondary schools or colleges specified in the order subject to such limitations or restrictions as may be so specified;

(*b*) the number of members of the Board;

(*c*) the representation on the Board of the Ministry, parents of students, the community or communities served by the secondary school or college or group of secondary schools or colleges and such bodies or organizations as, in the opinion of the Minister, are necessary to be represented on the Board;

(*d*) the method by which continuity of membership of the Board will be provided;

(*e*) the revocation of the appointment of, the retirement and resignation of members of the Board and the appointment of new members and of temporary members in case of absence or inability to act of any members thereof; and

(*f*) such other matters as the Minister may consider necessary in respect of the constitution, functions or procedure of the Board.

(2) A Board of Governors established under subsection (1) shall be a body corporate, if the order by which it is established so provides, by the name of the Board specified in such order, with perpetual succession and may sue and be sued in its name and shall have power to enter into contracts and to own land.

(3) With the consent of the Minister responsible for Finance, any such order or any subsequent order may vest in such body corporate any property used for the purposes of any school or college affected by the order.

(4) An order made under this section may be added to, varied, or revoked by the Minister at any time.

(5) Where any property is vested in a Board of Governors, the order vesting the property shall provide for the responsibilities, duties and powers of the Board in respect of the use of such property at times when it is not required to be used for purposes of education.

Responsibilities of proprietor of a secondary school or college

27.—(1) The responsibility for the management of a secondary school or college other than Government owned, shall rest on the proprietor.

(2) In cases where the proprietor of a secondary school or a college consists of more than one person, all such persons shall be jointly and severally responsible for the management of the secondary school or the college and each shall be responsible for the acts and omissions of the others relating to such management.

(3) The proprietor may, with the written consent of the Minister, and subject to the provisions of Part VII relating to registration, appoint a suitable and qualified person as manager to perform his duties during the temporary absence of the proprietor from Malaŵi or in other circumstances approved by the Minister.

(4) The appointment of a manager shall in no way relieve or excuse the proprietor from his responsibilities and liabilities under this Act.

(5) Any proprietor who would have been liable under this Act to any penalty for anything done or omitted to be done, if such a thing had been done or omitted to be done by him personally, shall be liable to the same penalty if such thing has been done or has been omitted to be done by his co-proprietor, manager, servant or agent.

Board of Governors of assisted secondary schools and colleges

28.—(1) Where, in the opinion of the Minister, it is desirable that a Board of Governors should be set up to manage an assisted secondary school or assisted college or a group of assisted secondary schools or assisted colleges, he shall consult the proprietor, of the secondary school or college or proprietors of the group of secondary schools or colleges, as the case may be, for that purpose.

(2) Where, in the opinion of the proprietor of any assisted secondary school or assisted college or group of assisted secondary schools or assisted colleges, it is desirable that a Board of Governors be set up to manage the secondary school or college or group of secondary schools or colleges, the proprietor or proprietors as the case may be, shall submit a proposal for that purpose to the Minister.

(3) The Minister may, by order published in the *Gazette*, establish a Board of Governors for a secondary school or college or group of secondary schools or colleges to which such proposals relate in accordance with any agreement which may be reached between him and the proprietor.

Contents of order, assisted secondary schools or colleges

29.—(1) An order establishing a Board of Governors under section 28 shall provide for—

(*a*) the name of the Board;

(*b*) the Board's exercise of the duty of management of the secondary school or college or group of secondary schools or colleges

specified in the order, subject to such limitations or restrictions as may be specified;

(*c*) the membership of the Board, including representation on the Board of the Ministry, the proprietor, parents of the students, or the community or communities served by the secondary school or college or group of secondary schools or colleges, and such bodies or organizations as may be agreed upon by the Minister and the proprietor all in such numbers and proportions as may be so agreed;

(*d*) the method by which the continuity of the membership of the Board may be provided;

(*e*) the revocation of the appointment of, the retirement and resignation of members of the Board and the appointment of new members thereof and of temporary members thereof in case of absence or inability to act of any members thereof;

(*f*) the respective responsibilities, duties and powers of the Board and of the persons, if any, in whom any land or other property is vested in trust for or for the benefit of any secondary school or college affected by the order and in respect of the use of the buildings and grounds of any such secondary school or college at times when they are not required to be used for purposes of education; and

(*g*) such other matters as the Minister may, in agreement with the proprietor, consider necessary in respect of the constitution, functions or procedure of the Board.

(2) A Board of Governors established under subsection (1) shall be a body corporate, if the order by which it is established so provides, by the name of the Board specified in the order, with perpetual succession and may sue and be sued in its name and shall have power to enter into contracts and to own land.

(3) An order under section 28 may vest all or any property of the proprietor in the Board of Governors or in the trustees of the secondary school or college, or group of secondary schools or colleges thereby affected.

(4) In any case in which property is or remains vested in the trustees of a secondary school or college or group of secondary schools or colleges, the order establishing a Board of Governors thereof may provide that the Board shall have the sole responsibility for management of the secondary school or college or group of secondary schools or colleges and in such case the trustees shall, notwithstanding any other provision of this Act, be under no liability as proprietors for any act or omission in relation to the management of the secondary school or college or group of secondary schools or colleges by the Board of Governors thereof, who shall be solely responsible for their own acts and omissions.

(5) An order made under section 28 may be varied or added to by the Minister at any time with the agreement of the proprietor or proprietors of the secondary school or college or group of secondary schools or colleges thereby affected:

Provided that if such proprietor or proprietors have died or ceased to exist, such variation or addition may be made without any such agreement.

Stamping and registration

30.—(1) An order made under section 25 or 28 by which any property is vested shall not be liable to stamp duty and any officer concerned with the registration of title, or documents relating to the title of the land affected by such order shall, at the request of the Minister, register the same or a copy thereof without payment of any fee:

Provided that the order or copy shall not be presented for registration except in accordance with the regulations and forms ordinarily governing registration in such registry.

PART VII

Establishment, Classification and Registration of Schools and Colleges

Establishment of Government schools and colleges

31.—(1) The Minister may, for the purpose of discharging his functions under this Act, establish and maintain such Government schools and Government colleges for the provision of education.

(2) The establishment of a Government school or a college other than a school providing primary education, may include the establishment or provision of hostels and other buildings for the boarding of students and housing of teachers, as the case may be.

Establishment of private schools or colleges

32.—(1) Subject to subsection (2), any person may establish and maintain a private school or college at his own cost and expense.

(2) No school or college other than a Government school or Government college shall be established except with the approval of the Minister.

Classification of schools or colleges

33. All schools and colleges shall be classified as follows—

(*a*) Government school or Government college;

(*b*) assisted school or assisted college; and

(*c*) private school or private college.

Registration of schools and colleges

34.—(1) The Minister shall cause to be established and maintained in the prescribed form, a Register of Schools and Colleges, in which shall be entered the particulars required or permitted under this Act or any subsidiary legislation made under this Act.

(2) For the purposes of such Register, a system of classification shall be adopted which distinguish schools offering primary education from other schools.

Duty of proprietor to conform to registered particulars

35.—(1) The education provided in any school or college shall be in accordance with the particulars, from time to time, registered in respect of such school.

(2) Any proprietor of a school or college, who refers to such school or college in any correspondence, advertisement or literature of any sort or description in such manner as to suggest that the school or the college is of a type or classification other than that in which it is, for the time being, registered under this Part, commits an offence.

(3) The proprietor of any school or college who does any act calculated to lead to the belief that the school or the college is registered while it is not registered under this Act commits an offence.

Procedure for establishing a school or college

36.—(1) Any person desirous of establishing a school or college shall first apply to the Minister for the registration thereof, in accordance with section 34 and any subsidiary legislation made under this Act.

(2) The Minister may, refuse any application for registration of a school or college if any of the conditions specified in subsection (3) or any other condition under this Act is not satisfied.

(3) The Minister shall register a school or college, if he is satisfied—

(*a*) that the school or college and any hostel premises or other facilities provided or to be provided at the school or college, are suitable and adequate in accordance with the prescribed minimum requirements applicable to a school or college;

(*b*) that the proprietor is—

(i) a resident of Malaŵi; and

(ii) a fit and proper person to be responsible for a school or college of the classification and type in respect of which the application is made; and

(*c*) with the undertaking of the proprietor that—

(i) adequate financial provision has been made or guaranteed for the maintenance of the school or college for a reasonable period;

(ii) the teaching staff to be employed at the school or college are sufficiently qualified for the purpose of efficient provision of quality education; and

(iii) the school or college shall not impose restrictions of whatever nature with respect to the admission of students, recruitment and appointment of staff.

(4) No person shall erect any building intended for use as a school or college before he first obtains an approval from the Minister or a local government authority, as the case may be.

(5) No person shall enroll any student in a school or college before he first registers the school of the college under this Act.

Application for registration of a school or college

37. A person who wishes to establish a school or college shall apply in writing to the Minister for the registration of a school or college in the prescribed manner and shall give particulars regarding—

(*a*) the classification of the school or the college sought to be established;

(*b*) the standards, forms and classes to be provided; and

(*c*) the name(s) and address of the proprietor or proprietors of the school or the college.

Variation of establishment

38.—(1) A proprietor of a school or college shall ensure that no variation in the establishment of the school or college takes place without the prior written approval of the Minister.

(2) In this Part, the expression "variation in the establishment of a school or college" includes—

(*a*) the provision of any nature, type or form of education different from the nature, type or form of education particulars of which have been registered in respect of such school or college in the Register of Schools and Colleges;

(*b*) the provision of any class, standard or form additional to those of which particulars have been entered in the Register of Schools and Colleges, whether or not such class, standard or form is in parallel to any registered class, standard or form in the school or college;

(*c*) the alteration of any qualification for admission to the school or college;

(*d*) the transfer of the school or the college to a new site; or

(*e*) any change in or transfer or proprietorship or ownership of the school or the college including the admission of a partner or new partner, death or retirement of any proprietor or partner and the appointment or change of any manager.

(3) An application for variation in the establishment of a school or college shall be made in the manner prescribed under this Act.

(4) The Minister may refuse any such application and shall give reasons for the refusal.

(5) Upon approval of a variation in the establishment of a school or college, the Minister shall issue a new certificate of registration in respect of the school or college.

Register of Schools and Colleges, publication and inspection thereof

39.—(1) the Minister shall establish and maintain in such form as he deems fit, a Register of Schools and Colleges.

(2) The Minister shall, at least once every year, cause to be published in the *Gazette* and at least in one local newspaper with wide circulation, the names of schools or colleges for the time being registered under this Part.

(3) The Register of Schools and Colleges shall be open for inspection at the offices of the Ministry by the general public at all reasonable times and the Ministry shall disseminate copies of the Register to all local government authorities for similar purposes.

De-registration of a school or college

40. Upon the cancellation of the registration of any school or college, the Minister shall cause notice of such cancellation to be published in the *Gazette* and at least in one local newspaper with wide circulation.

Complaints

41.—(1) If, after an inspection conducted at school or college under section 48 following a complaint lodged by any person regarding a school or college and the Minister is satisfied that the school or college is objectionable upon all or any of the grounds of complaint set out in subsection (3), the Minister shall by notice in writing inform the proprietor of the school or the college accordingly the measure necessary to remedy the matters complained of within such period, not being more than six months from the date of service of the notice.

(2) The notice shall also state whether the school or the college should be closed, where applicable, or payment of grants-in-aid be withheld or postponed if the measures necessary to remedy the complaint are not taken.

(3) The following may be grounds of complaint—

(*a*) that the school or the college is redundant having regard to the development plan for the area in which the school or college is situated;

(*b*) that the school or the college premises or any part thereof are unsuitable for a school or college;

(*c*) that the accommodation provided at the school or the college premises is inadequate or unsuitable having regard to the number, age and sex of the students attending the school or the college;

(*d*) that efficient and suitable instruction is not being provided at the school or the college having regard to the age and sex of the students attending the school or the college;

(*e*) that the proprietor of the school or the college or any teacher employed therein is not a fit and proper person to be the proprietor of a school or college or to be a teacher in any school or college, as the case may be;

(*f*) that the curriculum approved by the Minister is persistently and materially departed from at the school or the college;

(*g*) that there is no adequate supervision and control of staff; or

(*h*) that there has been an infringement of section 35 (1).

(4) If it is alleged by any notice of complaint served under this section that any person employed as a teacher at the school or college is not a fit and proper person to be a teacher in any school or college, that person shall be named in the notice and the particulars contained in the notice shall specify the grounds of the allegation, and a copy of the notice shall be served upon him.

(5) Every notice of complaint served on a proprietor under this section shall limit the time, not being less than thirty days after the service of the notice or copy, within which the complaint may be referred to the Education Appeals Tribunal appointed under section 42.

(6) Any proprietor upon whom a notice of complaint is served under this section may, within the time limited by the notice, refer the notice to the Education Appeals Tribunal in such manner as may be provided by rules made under this Act.

(7) Any teacher named in a notice of complaint may refer the complaint to the Government Teaching Service Commission in accordance with rules made under the Government Teaching Service Commission Act. Cap. 30:08

Education Appeals Tribunal

42.—(1) There is hereby established an Education Appeals Tribunal appointed by the Minister on recommendation from the Government Teaching Service Commission.

(2) Members of the Education Appeals Tribunal shall elect a chairperson and a vice-chairperson from among their number at the first meeting of the Education Appeals Tribunal.

(3) The Minister may make rules with respect to the hearing of complaints by the Education Appeals Tribunal and subject thereto the Education Appeals Tribunal shall have powers to determine its own procedure.

(4) The Minister may make such financial provision as he may think fit for—

(*a*) the appointment of a secretary and other staff, if any, for the Education Appeals Tribunal;

(*b*) the remuneration of members of the Education Appeals Tribunal and reimbursement of their expenses; and

(*c*) defraying of any reasonable expenses incurred by the Education Appeals Tribunal.

(5) Any sum payable under any provision made by the Minister under subsection (4) shall be paid out of money provided by Parliament.

Powers of the Education Appeals Tribunal

43. Where a notice of complaint under section 41 is referred to the Education Appeals Tribunal, the Tribunal shall, after affording all parties concerned an opportunity to be heard, and after considering such evidence as may be tendered by them or on their behalf, have power—

(*a*) to order that the complaint be dismissed;

(*b*) to order that the school or the college in respect of which the notice of complaint was served be closed;

(*c*) to order that the school or the college be closed unless the requirements of the notice, subject to such modifications, if any, as may be specified in the order are complied with to the satisfaction of the Minister before the expiration of such time as may be specified in the order; or

(*d*) if the complaint relates to a teacher, to direct that the consideration of the complaint so far as it relates to the school or college, be postponed until any reference by the teacher named in the complaint, to the Government Teaching Service Commission has been disposed of.

Power to close schools or colleges

44.—(1) The Minister may order any school or college to be closed in any case where he is satisfied that—

(*a*) a notice of complaint regarding the school or college, which has been duly served under section 41, has not been duly referred to the Education Appeals Tribunal and that the matters complained of have not been remedied within the time limited by the notice of complaint, or that the notice stated that a matter complained of was irremediable;

(*b*) the school or college is being conducted in a manner detrimental to the physical, mental or moral welfare of the students attending such school or college;

(*c*) any instruction at the school or college is being imparted to any student which is prejudicial to peace, good order or good government;

(*d*) any publication which is for the time being declared to be unsuitable for use in schools or colleges or any copy or extract thereof, has been used or referred to in, or in the course of, any instruction given in the school or college; or

(*e*) the school or the college is not registered under this Act:

Provided that the Minister shall not order the school or the college to be closed on the ground set out in section 41 (3) (*a*) if, in the notice of complaint, it was stated that in the Minister's opinion the appropriate action would be the withholding or postponement of payment of grant-in-aid, in such a case the Minister may withhold or postpone payment of any grant to the school or college.

(2) The Minister may order the re-opening of a school or college closed under this section where—

(*a*) a proprietor of the school or college complies with the notice of complaint; and

(*b*) the school or college has remained closed for a period of less than six months.

(3) The proprietor of any school or college ordered to be closed under this section may appeal against such order to the Education Appeals Tribunal in accordance with rules made under this Act.

Power to re-open school or college and payment of compensation

45.—(1) In any case where—

(*a*) a school or college has been ordered to be closed under section 43 or 44 and, if any appeal is permissible, the time for an appeal under section 44 has expired without any appeal having been made in accordance with section 44 (3); or

(*b*) a school or college has remained closed for a consecutive period of six months, and it appears to the Minister to be in the public interest that the school or college should be re-opened, the Minister may, by notice in writing, inform the proprietor of the school or the college of his intention to take possession of the school or college and thereafter the Minister may take possession thereof and make arrangements for the re-opening and management of the school or college as provided in section 46.

(2) A notice under subsection (1)—

(*a*) shall require the proprietor of the school or the college to hand over to a Ministry officer designated in such notice, the school or the college and all moveable and immovable property usually used, at the date of the order closing the school or the college, in connexion with the school or the college on a date specified in such notice being not less than one month from the date of service of the notice; or

(*b*) may offer a sum by way of compensation or may propose a means by which the amount of compensation may be settled and shall require the proprietor to make a claim for compensation within such time not being less than three months as is stated in the notice if he does not accept the Minister's offer or proposal.

(3) As soon as convenient after service of a notice under subsections (1) and (2) the Minister shall publish in the *Gazette* a declaration that the school or college is required for a public purpose.

(4) If, within the time stated in the notice under subsection (2), the proprietor does not accept the offer or proposal made in the notice—

(*a*) but does claim compensation, the payment of compensation shall be governed by subsections (5) to (12); and

(*b*) does not claim compensation, the amount, if any, offered by way of compensation in the notice shall be the amount payable by way of compensation and may be paid to such person and in such manner as is provided in the Lands Acquisition Act.

Cap. 58:04

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(5) Subject to the prior provisions of this section, the Lands Acquisition Act shall apply to the acquisition of the school or the college and payment of compensation in respect thereof with following variations—

(*a*) a notice and declaration under this section shall be deemed to be a notice and declaration under section 5 of the Lands Acquisition Act;

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(*b*) section 9 of the Lands Acquisition Act shall be subject to this section;

(*c*) compensation shall not be payable in respect of any property or part of any property to the extent that such property or part thereof was purchased or constructed out of public funds, in such cases subsection (8) shall apply.

(6) In any case where the property handed over to, or taken by the Minister under this Part consists of or includes moveable property used in connection with the school or the college, the compensation payable in respect of such moveable property shall be limited to the value of the moveable property that was not purchased out of public funds.

(7) Subject to subsection (6), compensation for moveable property shall be a sum equal to the price which the proprietor thereof could, immediately before the service of notice, under subsection (1), have reasonably been expected to obtain upon a sale of such moveable property on the basis of a willing seller and willing purchaser, regard being had to the condition of the property at the time when possession is obtained by the Minister.

(8) Where a dispute arises regarding the amount of compensation payable under subsection (6), such dispute may, if the court considers it convenient, be heard and determined at the same time as proceedings in relation to the acquisition of land forming part of the school or college.

(9) In any case where compensation is payable in respect of any property which was purchased or constructed partly out of funds provided by the proprietor and partly out of public funds the amount of compensation payable shall be a proportion of the value of the property equal to the proportion of the total cost provided by the proprietor.

(10) In all proceedings under this section, the onus of proving the total cost of the property and the amount contributed by the proprietor shall be on the person claiming compensation and the phrase "public funds" shall throughout this section be deemed to include the value of

any labour and materials voluntarily contributed by the people in the district in which the school or college is situated.

(11) Where any dispute arises regarding the persons entitled to compensation under this section, the fact that any person is registered as proprietor in the Register of Schools and Colleges shall not be conclusive evidence of title to the land.

(12) Where a dispute arises regarding ownership of any moveable property before compensation is paid, the dispute shall be decided by the court and the Minister may pay into court the sum awarded, as compensation and such payment into court shall be a complete discharge to the Minister from his obligations to pay compensation.

(13) Where no dispute regarding ownership of moveable property has arisen before the compensation agreed or awarded therefore has been paid to the person registered as proprietor in the Register of Schools and Colleges, the receipt by the registered proprietor shall be a complete discharge to the Minister from his obligations to pay compensation but shall not hinder any subsequent proceedings by any other person claiming to have a better right thereto against the person to whom such payment has been made.

Minister to handover possession to local government authority

46. Where the Minister takes over possession of a primary school under this Act, he shall, within a period of six months, handover the school to a local government authority of the area in which the school is situated.

Power to take possession

47.—(1) For the purpose of re-opening a school or college under section 45, the Minister may, if the school or the college or any part thereof is not handed over in accordance with the notice under that section—

(*a*) take possession of the school or the college and the site thereof including any land usually used for educational and recreational purposes in connexion with the school or the college before the school or the college was closed;

(*b*) take possession of any movable property which is then in the school or the college or was in the school or the college at the date of the order closing the school or the college, and was usually used in connection with the school or the college;

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(*c*) subject to the Waterworks Act, take water for the purpose of the school or the college from any source of supply whether natural or artificial;

(*d*) do, or authorize the doing, in relation to such school or college, anything which a person being the absolute owner thereof would be entitled to do by virtue of such ownership;

(*e*) make any arrangements, including the payment of managers or a managing body with such powers as he may think fit to vest in him or them, in relation to the management of the school or college;

(*f*) give such directions as appears to him to be necessary or expedient in respect of any of the foregoing matters and which he is authorized to give under this Act or any rules made under this Act; and

(*g*) request any person who was, at the date of the order closing the school or the college, using or in occupation or possession of such school or college, school or college site, land, movable property or source of water supply, to furnish in relation thereto such information as may be in his possession to such persons or authority as may be specified in the request.

(2) Any police officer may, on written request by the Minister for assistance, give assistance to the Minister in implementing this section and may for that purpose use such force as appears to him reasonably necessary.

(3) Where the Minister takes possession of any movable property under the powers conferred by subsection (1), he may use or deal with, or authorize the use of, or dealing with, the property in such manner as he thinks fit, and may hold or sell or otherwise dispose of such property as if the Government were the absolute owner thereof:

Provided that any such property which is proved to the satisfaction of the Minister to belong to any member of the former staff of the school or the college shall be returned to the owner if claimed within two months from the date when possession was taken.

(4) Where the source of any water supply or other utilities is the property of any statutory undertaker, water or other utilities shall not be taken from such source except with the consent of such statutory undertaker.

(5) Any person who—

(*a*) hinders or obstructs the Minister or any Ministry officer acting in the course of his duty, or any person exercising powers, or performing duties conferred or imposed, by or under this section; or

(*b*) fails to comply with any request made to him under subsection (1) (*g*),

commits an offence and shall, upon conviction, be liable to a fine of K100,000 and to imprisonment for two years.

Failure to close school or college

48. Any proprietor who fails to close, in accordance with this Act, a school or college ordered to be closed under section 43 or 45 commits an offence and shall, upon conviction, be liable to a fine of K1,000,000 and in default of payment to imprisonment for five

years, and to a further fine of K100,000 for each day on which the offence continues after conviction therefor and, of such further fine, or imprisonment for such period as is prescribed by the Penal Code. Cap. 7:01

Unsuitable publications

49.—(1) The Minister may by notice published in the *Gazette* declare any publications or periodical publication to be unsuitable for use in schools or in colleges, and such a declaration made in respect of a periodical publication shall include past and future issues thereof unless otherwise specified.

(2) For the purposes of this section, the expressions "publication" and "periodical publication" have the meanings assigned to them respectively by section 45 of the Penal Code, and such a declaration as aforesaid shall be deemed to extend to all copies and translations, in whatsoever language, of such publication or periodical publication. Cap. 7:01

PART VIII

Inspection of Schools and Colleges

Appointment of inspectors

50.—(1) There shall be appointed, by name or office, public officers each of whom shall perform the functions of an inspector of schools and colleges.

(2) Any person appointed under subsection (1) shall have relevant qualifications and not less than ten years experience in teaching, administration and management of an education institution.

Inspection of schools and colleges

51.—(1) The Minister shall cause any school or college to be inspected by an inspector for the purposes of ensuring that the school or college complies with this Act and of ascertaining whether that school or college is being properly and efficiently conducted.

(2) Every inspector shall make a report in respect of every school or college inspected with respect to such matters as the Minister may require him to report upon.

(3) An inspector shall make available a copy of the inspection report send to the Minister under this section to the school or college concerned, and in case of a primary school, to the local government authority responsible for the area in which the primary school is situated.

Functions of an inspector

52. An inspector shall—

(*a*) promote the highest standards of quality in the provision of education;

(*b*) keep the Minister informed of the state of the education service and ensure that the State is getting value for the money it spends on education;

(*c*) ensure compliance with the provisions of this Act;

(*d*) act as a facilitator and guide to teachers in the teaching and learning process;

(*e*) participate in the development and revision of the curriculum; and

(*f*) recommend to the Minister priorities for the continued training of teachers.

Powers of inspector

53.—(1) An inspector may—

(*a*) at all reasonable times, enter the premises of any school or college or any place in which it is reasonably suspected that a school or college is conducted;

(*b*) enter any premises upon which he has reason to suspect that an offence against this Act has been or is being committed;

(*c*) after entering the premises of any school or college, require any manager, principal or teacher to produce any book, document or other article or to furnish any information relating to the administration or management of or teaching or activities in the school or college;

(*d*) remove for further examination any book, document or other article which he has reason to suspect is evidence of the commission of an offence against this Act or of grounds for cancellation of the registration of the school or college or of any teacher in the school or college;

(*e*) make an entry in the school or college log book recording the date of inspection and such remarks as the inspector desires to make; and

(*f*) do such other things or acts as may be necessary for the furtherance of the purpose of inspection.

(2) Any person who, in any way, hinders or obstructs an inspector lawfully entering and making an inspection at any school or college under subsection (1) commits an offence and, upon conviction, shall be liable to a fine of K100,000 and to imprisonment for (12) twelve months.

General duties of proprietor

54.—(1) A proprietor of every school or college shall conduct the school or college in accordance with this Act and with any subsidiary legislation made under this Act and shall obey the lawful directions and requirements of the Minister given and made under the provisions of this Act.

(2) Without prejudice to the generality of subsection (1), the proprietor shall—

(*a*) keep a record in such form as may be prescribed, of teachers employed at the school or the college showing their qualifications;

(*b*) ensure that the school or college is properly conducted and follows a curriculum approved by the Minister;

(*c*) ensure that the head teacher keeps a register of enrollment of students and register of their daily attendance in such form as may be prescribed;

(*d*) furnish to the Minister and persons or bodies designated by him such statistical information and other returns as he or they may require;

(*e*) ensure that funds provided by Government or any local government authority for any purpose at the school or college are expended for the purpose specified or are refunded; and

(*f*) ensure that National Examinations are conducted in accordance with the Malaŵi National Examination Board Act or any other written law as may be applicable. Cap. 30:04

(3) The proprietor of every assisted school or assisted college shall ensure that the salaries and conditions of service of teachers employed by him are in accordance with any subsidiary legislation made by the Minister under this Act.

(4) The proprietor of any school or college who fails to comply with any of the requirements of this section commits an offence and shall, upon conviction, be liable to a fine of K300,000 and imprisonment for two years.

Conducting school or college without consent of Minister

55. Any person who, without the prior consent in writing of the Minister, owns or conducts a school or college or acts as manager for a school or a college commits an offence and shall be liable to a fine of K1,000,000 and to imprisonment for five years.

Refund of grant in certain cases

56.—(1) The proprietor of a school or a college shall be liable to refund the whole of any grant-in-aid made to the school or college if it is found that the grant made was greater in amount than it should have been owing to any misrepresentation or false return made by the proprietor.

(2) In the event of it being found that any grant-in-aid made was greater in amount than it should have been owing to a *bona fide* mistake on the part of the proprietor, the excess amount only shall be refunded and may, at the discretion of the Minister, be deducted from the grant next payable to such proprietor or manager.

(3) In any case where any grant-in-aid is made to a school or college for a specific purpose and that purpose is not carried out the grant shall be refunded.

PART IX

Establishment of the Teachers Council of Malaŵi and Registration of Teachers

Establishment of Council

57. There is hereby established the Teachers Council of Malaŵi, (hereinafter referred to as "the Council"), which shall be a body corporate having perpetual succession and common seal and shall, under that name, be capable of suing and being sued and of purchasing or otherwise acquiring, holding and alienating movable or immovable property and subject to the provisions of this Act, of performing all such acts as bodies corporate may by law perform.

Composition of the Council

58.—(1) The Council shall consist of—

(*a*) the following members appointed by the Minister—

(i) three persons having relevant knowledge, skill and experience in matters of education, in particular teacher training;

(ii) two representatives from religious umbrella bodies on matters of education;

(iii) a representative of private schools;

(iv) a representative of the Teachers Union of Malaŵi; and

(v) a Dean of a Faculty of Education of a university; and

(*b*) the following *ex officio* members—

(i) the Executive Director of the Malaŵi National Examination Board or his designated representative;

(ii) a representative of the caucus of local government authorities appointed by that caucus;

(iii) the Secretary for Education or his designated representative;

(iv) the Chairperson of the Government Teaching Service Commission or his designated representative; and

(v) the Director of Malaŵi Institute of Education or his designated representative.

(2) Members of the Council, other than *ex officio* members, shall serve on the Council for a period of three years, or until such earlier date as may, at the time of his appointment, be determined by the person or authority appointing him, and may be eligible for re-appointment for one more term.

(3) Members of the Council shall elect a Chairperson and Vice Chairperson from among their number at the first meeting of the Council.

(4) An *ex officio* member shall not be elected Chairperson or Vice-Chairperson of the Council.

Vacation of members from office

59.—(1) The office of a member of the Council, other than an *ex officio* member, shall become vacant—

(*a*) upon the expiry of the period of his appointment;

(*b*) upon his death;

(*c*) if he is adjudged bankrupt;

(*d*) if he is sentenced to imprisonment term without the option of a fine for an offence against any written law;

(*e*) if he fails to attend three consecutive meetings, of the Council, of which he has had notice;

(*f*) upon giving notice in writing of his resignation; and

(*g*) if he becomes, by reason of mental or physical infirmity, incapable of performing his duties as a member.

Meetings of the Council

60.—(1) The Council shall meet at such place, and at such time, as the Chairperson of the Council may determine and shall meet at least once in every four months.

(2) An ordinary meeting of the Council shall be convened by the Chairperson by notice in writing issued to the members fourteen days prior to the date of the meeting.

(3) The Chairperson may, at his discretion, and shall at the written request of six or more members and within seven days of such request cause an extraordinary meeting of the Council to be summoned at such place and time as he may appoint.

(4) The Chairperson or in his absence, the Vice-Chairperson, shall preside at meetings of the Council and the quorum at any meeting of the Council shall be one half of the members.

(5) In the absence of both the Chairperson and Vice-Chairperson, the members present and forming a quorum shall elect one of their number to preside over a meeting of the Council.

(6) Minutes of each meeting of the Council shall be kept by the Registrar.

(7) The decision of the Council at any meeting on any matter shall be that of the majority of the members present and voting, and at all meetings the person presiding shall have, in the event of an equality of votes, a casting vote in addition to his deliberative vote.

(8) The Council shall determine its own procedure for the conduct of its meetings, and the meetings of any committees it may establish.

Disclosure of interest

61. If a member acquires any pecuniary or other interest, direct or indirect, in any matter and is present at a meeting of the Council at which the matter is the subject of consideration by the Council, he shall

as soon as practicable after the commencement of the meeting disclose the fact to the Council, and shall not take part in the consideration or discussion of, or vote on any question with respect to the matter.

Functions of the Council

62. The Council shall be the sole registering authority of all persons required to be registered or licensed as teachers under this Act and shall have the following further functions—

(*a*) to establish and maintain, in such form as it thinks fit, a Register of Teachers and a Roll of Licensed Teachers;

(*b*) to take part in all matters affecting the education and training of teachers;

(*c*) to advise the Minister on any matter falling within the scope of this Act;

(*d*) to promote professional and ethical standards in the teaching profession; and

(*e*) to communicate to the Minister any information acquired by the Council relating to matters of education in general and teacher education in particular.

Powers of the Council

63. For the better performance of its functions, the Council shall, subject to the provisions of this Act, have power—

(*a*) to remove from or restore to the Register any name which has been recommended as such by the Government Teaching Service Commission or any employer;

(*b*) to acquire, hire or dispose of property, borrow money on security of assets of the Council, accept any donation or accept and administer any trust;

(*c*) to consider any matter affecting the teaching profession and make representations thereon to the Minister or take such action in connection therewith as the Council may consider necessary;

(*d*) upon application by any person, to recognize any qualification held by that person, whether such qualification has been obtained in Malaŵi or elsewhere, as being equal, either wholly or in part to any prescribed qualifications, whereupon such person shall, to the extent to which the qualifications have been so recognized, be deemed to hold such prescribed qualifications;

(*g*) to perform such other functions as may be prescribed or assigned to the Council by the Minister; and

(*h*) generally to do such things as the Council deems necessary or expedient to achieve the objects of this Act.

Committees

64.—(1) The Council may establish any number of committees to carry out any special or general functions determined by the Council and may delegate to any such committee, such of the functions of the Council as the Council may consider expedient.

(2) The chairperson of each committee shall be appointed by the Council from among the members of the Council.

(3) Any committee may co-opt as members of the committee, persons who are not members of the Council.

(4) The chairperson of a committee may, at any time and place, convene a meeting of his committee.

(5) The Council may, at any time, direct the chairperson of any committee to convene a meeting of such committee and such chairperson shall, as soon as practicable, comply with such direction.

(6) Every committee shall inform the Council of its activities and shall conduct its proceedings in such a manner as the Council may direct.

(7) Any member of a committee shall, in respect of expenses incurred by him in travelling or subsistence while discharging his duties as member of that committee, be paid out of the funds of the Council, such allowances as the Council may determine.

Appointment of Registrar and other staff

65.—(1) Subject to the provisions of this section, the Council—

(*a*) shall appoint a Registrar upon such terms and conditions approved by the Minister; and

(*b*) may appoint a Deputy Registrar and such other employees as it considers necessary or desirable in the discharge of its duties and upon such terms and conditions as it may determine.

(2) The Council may delegate to the Registrar the appointment of other employees of such grades as determined by the Council on such terms and conditions as the Council may consider appropriate and the Registrar shall, after he has employed any person, report the fact thereof to the Council at its next meeting.

(3) The Registrar shall be the secretary to the Council and to every committee established under section 64 and shall, on the instructions of the Chairperson of the Council or the chairperson of any committee, convene a meeting of the Council or committee, as the case may be.

(4) If the Registrar is absent or unable to carry out any of his functions under this Act, the Deputy Registrar or any other officer of the Council shall exercise, during the period the Registrar is so absent or unable to act, such functions of the Registrar as the Chairperson of the Council may designate.

Duties of the Registrar

66.—(1) The Registrar shall—

(*a*) keep a Register of Teachers and a Roll of Licensed Teachers;

(*b*) under the direction of the Council—

(i) enter in the Register of Teachers or the Roll of Licensed Teachers, particulars required under this Part of every person whom he registers or licenses as a teacher;

(ii) make in the Register of Teachers or the Roll of Licensed Teachers any necessary alterations on the name, address, qualification or other particulars of a registered or licensed person;

(*c*) erase from the Register of Teachers or Roll of Licensed Teachers the name of a registered or licensed person who—

(i) dies;

(ii) applies for removal of his name from the Register of Teachers or Roll of Licensed Teachers;

(iii) has been convicted of a criminal offence;

(iv) has been guilty of such misconduct that renders him unsuitable for employment as a teacher; and

(v) for a continuous period of five years, has not been engaged in teaching or in the administration of educational services.

(2) For the purposes of this section, "misconduct" shall include professional misconduct, conduct prejudicial to law and order and conduct prejudicial to the physical, mental or moral welfare of any student in any school or college.

(3) Where the Registrar erases or removes from the Register of Teachers or Roll of Licensed Teachers, the name of a person registered or licensed, he shall enter in the Register of Teachers or Roll of Licensed Teachers of the reasons therefor.

(4) The Registrar shall publish any names erased or removed from the Register or Roll of Licensed Teachers, as the case may be, in the *Gazette* and two widely circulated newspapers.

Qualifications and requirements for registration

67.—(1) Any person—

(*a*) who successfully completes a course of training as a teacher which is approved or recognized by the Minister and the Council;

(*b*) who satisfies the Council that he is of good character and has satisfactorily completed a probationary period of employment as a teacher approved by the Minister; and

(*c*) whose name has not at any time been removed from the Register, shall be entitled, on application made in that behalf to the Registrar, to be registered as a teacher, and shall be issued an authority to teach.

(2) An application for registration as a teacher shall be made in such form as the Minister may prescribe.

(3) Every registered teacher shall notify the Registrar of any change in his particulars as contained in the Register.

Licence to teach

68.—(1) The Council may issue a licence to any person to teach for such period as it thinks fit notwithstanding that such person has not completed a course of training as a teacher or has not attended such a course, and may, from time to time, review any such licence for a further period.

(2) The Registrar shall cause to be entered in the Roll of Licenced Teachers such particulars as the Council may by rules prescribe, of all persons to whom a licence to teach has been issued.

(3) The Council may make a licence issued under this section subject to such conditions, including that the person may teach only a particular subject or subjects or may teach only a particular class or classes in a school or college.

(4) The Council may, after affording the person an opportunity to be heard, withdraw the licence of any licensed teacher at any time, and may refuse to renew the licence of any licensed teacher.

(5) The Council shall from time to time cause to be published in the *Gazette* and in at least one local newspaper with wide circulation in the country, the names of persons to whom a licence to teach has been issued.

Teaching without licence or authority prohibited

69.—(1) No person shall teach in any school or college unless he holds a licence to teach or authority to teach issued by the Council.

(2) Any person who holds a licence to teach shall not teach otherwise than in accordance with the conditions stated on the licence.

(3) Any person who contravenes this section commits an offence and shall, on conviction, be liable to a fine of K300,000 and imprisonment for two years.

Appeals

70.—(1) Any person aggrieved by—

(*a*) the refusal of the Council to register or license him or any particulars which he wishes to be registered under this Act; or

(*b*) the removal from the Register of Teachers or the Roll of Licenced Teachers of his name or particulars which he considers he is entitled to under this Act to have been entered against his name in the Register of Teachers or the Roll of Licensed Teachers, may, after notice to the Council and within three months after the date on which notice is given to him by the Registrar of such refusal or removal, appeal to the Education Appeals Tribunal in such manner as may be prescribed.

(2) The Education Appeals Tribunal may—

(*a*) dismiss the appeal;

(*b*) if it is of the opinion that the Council has not acted in accordance with the provisions of this Act, make an order that the name of the appellant or particulars, as the case may be, be entered in the Register of Teachers or Roll of Licensed Teachers; or

(*c*) may refer the matter back to the Council for further consideration.

Offences relating to teaching and teachers

71. Any person who—

(*a*) not being the holder of an authority to teach or licence to teach issued under this Act, teaches or assists in teaching in any school or college;

(*b*) employs or engages as a teacher any person who is not the holder of an authority to teach or licence to teach issued under this Act;

(*c*) being a person licensed to teach under this Act, teaches or assists in teaching otherwise than in accordance with conditions stated on his licence; or

(*d*) employs or engages such person referred to in paragraph (*c*) above to teach or assist in teaching otherwise than in accordance with the conditions stated on his licence,

commits an offence and shall, upon conviction, be liable to a fine of K500,000 and to imprisonment for three years.

Evidence of entries in Registers of Teachers and of other records

72.—(1) Entries in the Register of Teachers or the Roll of Licensed Teachers and the contents of an authority or licence to teach may be proved by copies thereof or extracts therefrom upon which is endorsed a certificate, purporting to be signed by the Registrar, stating that the copy is a true copy.

(2) A certificate purporting to be signed by the Registrar stating that a person is or is not registered in the Register of Teachers or Roll of Licensed Teachers shall be *prima facie* evidence, in all legal proceedings, of the facts stated in such certificate.

(3) Every certificate purporting to be signed by the Registrar under this section shall be admissible as evidence, in all legal proceedings, without proof of the handwriting or official position of the person signing the certificate.

Funds of the Council

73.—(1) The funds of the Council shall consist of—

(*a*) such moneys as may be appropriated by Parliament for the purposes of the Council;

(*b*) registration and annual membership fees; and

(*c*) such other moneys and assets as may vest in or accrue to the Council, whether in the course of its functions or otherwise.

(2) The Council may accept moneys or other assets as may accrue to the Council by way of grants, subsidies, bequests, donations or gifts from any other person.

Accounts

74. The Council shall cause to be kept proper books of accounts and other records relating thereto in respect of its funds and shall in every respect comply with the provisions of the Public Audit Act, the Public Finance Management Act and the Public Procurement Act.

Cap. 37:01
Cap. 37:02
Cap. 37:03

Audits

75. The accounts of the Council shall be examined and audited annually by auditors appointed by the Council.

PART X

Curriculum and Instructions in Schools and Colleges

National curriculum for schools and colleges

76.—(1) The Minister shall promote the development of a national curriculum for schools and colleges that is comprehensive, balanced, flexible, integrated, diversified and relevant to the needs of the student and society.

(2) The national curriculum shall—

(*a*) prepare students for the world of work, social and political participation in the context of a rapidly changing and dynamic global economy and society;

(*b*) be student-centered and non-authoritarian, and encourage active participation of students in the learning process;

(*c*) stimulate critical and effective reasoning and develop problem solving and information processing skills;

(*d*) foster self-discipline;

(*e*) treat knowledge as provisional and contestable;

(*f*) promote moral and ethical behaviour;

(*g*) develop necessary understanding, values and skills for sustainable development;

(*h*) promote respect for human rights;

(*i*) promote unity in diversity through a flexible framework which allows for the accommodation of cultural differences and needs;

(*j*) take into account cross-cutting emerging and contemporary issues;

(*k*) promote entrepreneurial and technological values and skills; and

(*l*) prepare students for life long training.

(3) The national curriculum shall provide a general education based on positive values and attitudes, and academic and vocational skills.

(4) The areas of study across different learning contexts shall be as prescribed from time to time by the Minister.

(5) The design and development of the national curriculum, including the preparation of syllabuses, books and other learning materials shall be the responsibility of the Institute.

Teacher training curriculum

77.—(1) Any curriculum for teacher training shall take into account the national curriculum and shall be diversified to meet the needs of education for all.

(2) The areas of study and the structure of the teacher training curriculum shall be as prescribed by the Minister.

(3) The design and development of teacher training curriculum, including the preparation of syllabuses, trainers manuals and other instructional materials shall be undertaken by the Institute in accordance with the provisions of this Act.

Language of instruction

78.—(1) The medium of instruction in schools and colleges shall be English.

(2) Without prejudice to the generality of subsection (1), the Minister may, by notice published in the *Gazette* prescribe the language of instruction in schools.

Syllabus

79. The Minister shall exercise supervision and control over the instruction given in all schools or colleges to which this Act applies and may control the course of instruction in any school and colleges or category of schools by prescribing the syllabus which shall be followed in the school or college or category of schools or colleges.

Religious instruction

80.—(1) Religious instruction shall be given in every Government school or Government college and assisted schools or assisted colleges of any category but need not be included in a correspondence course.

(2) The syllabus for religious instruction in the case of Government schools or Government colleges shall be prescribed by the Minister and in the case of any other school or college shall be submitted by the proprietor for the information of the Minister.

(3) If a parent of any student in attendance at any Government school or Government college or assisted school or assisted college requests that he be wholly or partly excused from attendance at religious worship in the school or college or from attendance at both religious worship and religious instruction until the request is withdrawn, the student shall be excused from such attendance accordingly.

(4) A minister of religion shall have right of access at such reasonable times as may be agreed to any school or assisted college for the purpose of giving religious instruction to students whose parents have not made a request under subsection (3).

(5) Where a parent of a student attending a school or a college requires him to attend religious worship or religious instruction of a kind which is not provided in the school or the college, the proprietor of the school or the college shall make such arrangements as may be practicable for the student to receive religious instruction and attend religious worship of the kind desired by the parent.

(6) The Minister may, by order published in the *Gazette*, direct that this section shall not apply to any school or college or classification or type of schools or colleges or students of a particular religious persuasion in any school or college.

(7) No assisted school or assisted college shall be permitted to give religious instruction to or enforce divine worship on any student contrary to the wishes of a parent of the student.

(8) In the case of the proprietor of an assisted school or assisted college failing to provide religious instruction as required by this section or providing religious instructions contrary to this section, the Minister may withhold or postpone payment of grant-in-aid.

Textbooks and other instructional materials

81.—(1) The Institute shall be responsible for establishing and implementing a quality assurance process through the evaluation of textbooks, teachers guides, other instructional materials and, shall prescribe the criteria for the publication of textbooks, teacher guides and other instructional materials.

(2) All textbooks, teachers' guides and other instructional materials which meet the prescribed publishing criteria and are recommended for use in schools by the Institute, shall bear a symbol on their covers signifying that the textbooks or other instructional materials have been approved by the Ministry and the list of such books and other instructional materials shall be published in the *Gazette* and in at least one local newspaper with wide circulation in the country.

(3) The Institute shall make available the list of all textbooks and instructional materials approved for use in schools for public information, and shall distribute copies thereof to all users of such information.

(4) A person who is involved in the development of education materials shall not be involved in the evaluation process of the education materials.

(5) The Institute shall develop an enforceable code of conduct for publishers, authors, officials of the Ministry and the Institute that ensures that no conflict of interest situations or privileged relationships occur.

(6) Procedures for the evaluation of textbooks shall take into account the necessary lead time for research, trialling and consultation in order to achieve the highest level of quality.

(7) Selection of textbooks from the approved list shall occur, as far as possible, at institutional level.

(8) Government, local government authorities and proprietors, as the case may be, shall be responsible for the provision, in schools or colleges, of adequate instructional materials approved and selected in accordance with the provisions of this section.

PART XI

Establishment of the Malaŵi Institute of Education

Establishment of the Institute

82.—(1) There is hereby established a body to be known as the Malaŵi Institute of Education which shall—

(*a*) be a body corporate having perpetual succession, and common seal;

(*b*) be capable of suing and being sued in its corporate name;

(*c*) have power, subject to this Act, to do or perform all such other acts or things which a body corporate may lawfully do or perform.

(2) The Institute shall be governed by a Board which shall be responsible for the work and functions of the Institute, subject to such limitations or restrictions as are prescribed in this Act.

Composition of the Board

83.—(1) The Board shall consist of—

(*a*) the following members appointed by Minister—

(i) a Vice-Chancellor of a university, who shall be the Chairperson;

(ii) Dean of Faculty of Education of a university or college of higher learning;

(iii) two persons with expertise in the field of finance or any other appropriate field;

(iv) a representative of an organization of private schools;

(v) two representatives from religious organization; and

(*b*) the following *ex officio* members—

(i) the Secretary responsible for education or his designated representative;

(ii) the head of inspectorate and methods advisory in the Ministry responsible for education;

(iii) the Secretary to Treasury or his designated alternate;

(iv) a representative of the Ministry responsible for pre-service and in-service teacher education; and

(v) the Executive Director of the Malaŵi National Examination Board or his designated representative.

(2) The Members of the Board, other than the *ex officio* members, shall serve for a period of three years or until such earlier date as may,

at the time of his appointment, be determined by the person or authority appointing him, and may be eligible for re-appointment for one more term.

Duties of the Board

84.—(1) The responsibility of the Board shall be to—

(*a*) design, develop and evaluate the national curriculum for schools and colleges;

(*b*) evaluate textbook, teachers' guides and other instructional materials produced by publishers;

(*c*) review school and college curricula;

(*d*) establish and implement programmes for continuing professional development of teachers and other educational personnel;

(*e*) conduct education research;

(*f*) publish textbooks, teachers' guides and other instructional materials;

(*g*) disseminate relevant education information through the production and publication of journals and otherwise;

(*h*) train and assist in the training of teachers;

(*i*) provide training and professional services for teachers and offer advisory services to other sectors; and

(*j*) admit students and participants into courses offered by the Institute.

(2) For the purposes of this section, "students" include participants in programmes and seminars conducted by the Institute.

Powers of the Board

85.—(1) The Board shall have the power to do or perform any act or thing necessary for the purposes of discharging its responsibilities, subject to the provisions of this Act and of any other written law and to any written policy decisions taken by the Minister.

(2) Without prejudice to the generality of subsection (1), the Board shall have the following powers—

(*a*) to ensure that there is proper management and administration of the Institute;

(*b*) to approve the programmes of work of the Institute, including the organization of courses and the selection of students or participants;

(*c*) to approve and from time to time review the staff establishment of the Institute;

(*d*) to approve and employ all categories of staff required by the Institute;

(*e*) to consider the financial estimates required to carry out the work of the Institute and control expenditure of necessary recurrent and capital funds;

(*f*) to evaluate, from time to time, the work of the Institute;

(*g*) to co-opt additional members and establish whatever committees that may be needed;

(*h*) to appoint such Boards of Study and Boards of Examiners, as may be required for the effective conduct of Institute courses and examinations; and

(*i*) to award degrees, diploma's and certificates in the courses of study conducted by the Institute.

Vacation of office

86. A member of Board other than an *ex officio* member, shall cease to be a member if he—

(*a*) fails to attend three consecutive meetings of the Board without a valid excuse, of which he has had notice;

(*b*) adjudged bankrupt;

(*c*) dies;

(*d*) is sentenced for an offence against any written law, to a term of imprisonment without an option of a fine;

(*e*) becomes incapacitated by reason of physical or mental disability; or

(*f*) resigns by giving one month notice to the Chairperson of the Board.

Secretary of the Board

87. The Executive Director of the Institute shall, unless the Board otherwise directs, be the secretary of the Board.

Meetings of the Board

88.—(1) The Board shall meet in ordinary meetings at least three times a year.

(2) An ordinary meeting of the Board shall be convened by the Chairperson by notice in writing issued to the members fourteen days prior to the date of the meeting.

(3) The Chairperson may, at his discretion, and shall at the written request of six or more members and within seven days of such request cause an extraordinary meeting of the Board to be summoned at such place and time as he may appoint.

(4) Every notice given under subsection (3) shall include the agenda of the matters to be considered at the meeting.

Procedure at Board meetings

89.—(1) Subject to subsections (2) and (3), at any meeting of the Board—

(*a*) the quorum shall be formed by two-thirds (2/3) of the members thereof;

(*b*) only the members present may vote and each member shall have one vote;

(*c*) every matter shall be determined by a majority of the members present and voting, and in the event of an equality in the votes, the Chairperson, or any other member presiding, shall have a casting vote in addition to his deliberative vote; and

(*d*) the members present and forming the quorum may, if both the Chairperson and the Vice-Chairperson are absent or otherwise unable to act, elect one of their number to preside thereat.

(2) A member who is aware that he has a personal, proprietary, or pecuniary interest in a matter which is to be considered or is being considered by the Board, shall declare the interest to the Chairperson in writing, and shall not take part in the deliberations or to vote on the matter.

(3) A member who is unable to attend a meeting of the Board—

(*a*) may, with the written consent of the Chairperson, submit to the Board, in writing, his views on any matter to be considered by the Board; and

(*b*) shall not be entitled to vote on any matter which has been considered by the Board at that session.

Executive Director

90.—(1) There shall be an officer of the Institute who shall be designated as the Executive Director.

(2) The Executive Director shall be appointed by the Board from among persons who have experience in teaching, curriculum development and management of an educational institution.

(3) Except as is otherwise expressly provided by this Act, the Executive Director shall, subject to any general or special directions given by the Board, be the principal administrator in control of the internal organization and the day-to-day management of the Institute.

Deputy Executive Director

91.—(1) The Institute shall have a Deputy Executive Director who shall be appointed by the Board from among persons who have experience in teaching, curriculum development and management of an educational institution.

(2) The Deputy Executive Director shall be responsible to the Executive Director and shall assist the Executive Director in every respect to promote the proper management of the Institute.

Other staff

92. In addition to the Executive Director and Deputy Executive Director, the Board shall appoint such other staff as may be required to carry out the functions of the Institute.

Terms and conditions of service

93. The Executive Director, Deputy Executive Director and other staff appointed by the Board shall be subject to such terms and conditions of service as the Board shall, with the approval of the Minister, determine.

Proposals and reports to the Board

94.—(1) Except as is provided under subsection (2), any proposal or report by any person relating to the management or activities of the Institute shall be submitted in writing to the Board.

(2) Where a member of staff of the Institute wishes to submit any proposal or report to the Board under this section, he shall do so through the Executive Director.

Withdrawal and suspension of students or participants

95.—(1) The Board may withdraw from the Institute any student or course participant for any cause which it considers to be seriously adverse to the discipline or management of the Institute.

(2) The Executive Director may suspend from the Institute any student for any cause which he considers adequate to warrant either suspension, or withdrawal by the Board under subsection (1), and in such event he shall as soon as possible, report in writing the circumstances of the suspension to the Board for final decision.

Finance and Audit Committee

96.—(1) The Board shall establish a Finance and Audit Committee to which the Board may delegate any or all of its executive functions on financial matters, subject to the general policy, control and guidance of the Board.

(2) The Finance and Audit Committee shall make recommendations to the Board on the following matters—

(*a*) the investment and management of the Institute's money;

(*b*) the annual budget of the Institute;

(*c*) the control of expenditure authorized by the Board; and

(*d*) the preparation and presentation of the annual accounts of the Institute.

(3) The Board shall appoint, from among its members, a chairperson of the Finance and Audit Committee with experience in finance.

Control of finances

97. The Executive Director shall, on behalf of the Board, control the day-to-day expenditure of the Institute, and shall present an account of such expenditure to the Board three times a year or as often as the Board may direct.

Accounts

98. The Board shall furnish the Minister annually, or as often as the Minister may direct, accounts in respect of finances and property of the Institute, as well as an estimate of income and expenditure of the Institute for the following year, and in this regard, the Board shall comply with the relevant provisions of the Public Audit Act and the Public Finance Management Act.

Cap. 37:01
Cap. 37:02

Expenditure

99.—(1) The Board shall pay all expenses connected with the Institute, and shall retain in a current account with a registered bank such funds as are necessary for the day-to-day administration of the Institute.

(2) The annual expenditure of the Institute shall not exceed the amount approved by the Minister, and any virement between heads shall be at the direction of the Finance and Audit Committee of the Board.

Appeals for public subscription

100. The Board may, with the approval of the Minister, appeal to the public or any person or body for subscriptions and donations towards any project or purpose which it considers to be for the benefit of the Institute.

Borrowing and investments Cap. 37:01

101. Subject to the Public Audit Act, the Board may—

(*a*) with the prior approval of the Minister, borrow moneys for any stated purpose of the Institute and, in such event, shall ensure that proper provision is made for the repayment of such moneys and for the payment of any interest thereon or other charges in respect thereof; and

(*b*) invest, on such terms as may be approved by the Minister, such funds as are not immediately necessary for the day-to-day administration of the Institute.

Property of the Institute

102. The Board shall keep all property of the Institute in good state of repair, and may make such alterations to the grounds, buildings, fixtures, or fittings as it may consider to be for the benefit of the Institute.

PART XII

Students

Duty to obey school or college rules

103.—(1) Every student, on entry to any school or college of any category, shall undertake to obey all rules and orders given by the school or college and which conform with the directions of a local government authority or Minister, as the case may be.

(2) A Board of Governors of any school or college may direct any such school or college to cancel or vary any standing order or rule made by the school or college.

Medical examination

104. The Minister or a local government authority, as the case may be, may, after notification of parents, cause a medical examination to be carried out in respect of students at any school or college but such consent may be dispensed with if, in the opinion of the management of school or college, circumstances so require on account of emergency or other factors.

PART XIII

Fees

Minister may prescribe certain fees

105.—(1) The Minister may from time to time make regulations prescribing the fees which shall be charged in any Government school or college other than a government primary school.

(2) Such regulations may prescribe fees for—

(*a*) tuition and other charges in schools and colleges;

(*b*) the accommodation, including boarding of students at any school or college; or

(*c*) special courses of instruction provided for students.

(3) In any regulations made under this section, the Minister may—

(*a*) fix different rates of fees for different students, schools and colleges; or

(*b*) prescribe the circumstances in which fees may be refunded or remitted, whether in whole or in part; and

(*c*) prescribe the time or date when fees shall be payable in Government schools or Government colleges and the person to whom it shall be paid.

(4) The regulations made under this section may prescribe payment of fees to a proprietor of a school or college or to a body constituted or established under this Act or to a person delegated to receive fees on behalf of the proprietor or the body.

PART XIV

Miscellaneous Provision

Power of Minister to make regulations or rules

106.—(1) The Minister may make regulations or rules for the purposes of this Act in respect of any matter for which the power to make regulations or rules has not been specially conferred under any other Part of this Act.

(2) Without derogation from the generality of subsection (1), regulations or rules made under this section may provide for—

(*a*) anything which by this Act may be prescribed and generally for the effective administration of this Act;

(*b*) the conditions for payment of grants-in-aid and advances on loans;

(*c*) the requirements for school or college buildings, premises and equipment;

(*d*) the conditions for the grant and withdrawal of bursaries and scholarships;

(*e*) the establishment and control of the scales of salary to be paid to teachers in assisted schools or colleges and the other conditions of service of such teachers;

(*f*) the compulsory attendance of schools by students in any area and the manner in which compulsory attendance is to be ensured;

(*g*) the conditions for admission to any school or college and the conditions for expulsion or exclusion from Government schools and colleges and assisted schools and colleges;

(*h*) the manner in which the inspection or supervision of schools or colleges shall be carried out;

(*i*) safeguards for the health of students and staff in any school or college and the manner in which school or college medical inspection shall be carried out;

(*j*) the regulation of procedure in any Advisory Council, school management committee and Board of Governors appointed or established under this Act;

(*k*) the curriculum to be offered in any school or college and courses in such subjects and any syllabus to be followed in connexion therewith;

(*l*) where applicable, the manner in which records, statistics and accounts shall be kept and the returns or reports required by the Minister shall be made to the Ministry;

(*m*) the manner and form in which applications for the establishment and registration of schools or colleges shall be submitted and the information which shall be furnished in relation thereto and the manner and form in which such registration shall be effected;

(*n*) the manner in which schools or colleges shall be classified and the nomenclature thereof and of the classes or standards or forms into which schools may be divided;

(*o*) the conditions of the use of the buildings of Government schools or colleges out of school hours;

(*p*) the number and qualification of staff required in any school or college; and

(*q*) the procedure to be followed on any reference or appeal to the Education Appeals Tribunal to be made under this Act or on application by a teacher for his name to be restored to the Register of Teachers or Roll of Licensed Teachers and the fees to be paid in relation thereto.

Delegation

107. The Minister may delegate any person by name or the person for the time being holding any designated office to exercise, on his behalf, any power or perform, on his behalf, any duty which he is by this Act authorized to exercise or perform, subject to such

conditions, exceptions and qualifications as the Minister may specify, and thereupon, or from the date specified by the Minister, the person to whom the Minister has delegated shall have and may exercise such power and may perform such duty subject to any conditions, exceptions and qualifications as aforesaid:
Provided that nothing in this section shall empower the Minister to delegate to any person any power—

(*a*) to make regulations or rules;

(*b*) to make an order that any school or college be closed;

(*c*) to issue a notice of his intention to take possession of any school.

Defective appointment of member to be of no effect

108. No act or proceeding of any Board of Governors, school management committee or other body constituted or established under this Act shall be invalid on account of the appointment of any member having been defective.

General penalty for offences

109. Any person guilty of an offence against this Act for which no special penalty is provided by this Act shall be liable to a fine of K100,000 and to imprisonment for twelve months.

Service of notices and other documents

110. Any notice, request, demand or other document authorized or required by this Act to be given, sent or made to or served on any person may be given, sent, made or served by delivery thereof to that person or by sending a copy through the post in a cover addressed to him—

(*a*) in the case of a proprietor, at the address registered in the Register of Schools and Colleges as being his address;

(*b*) in the case of a teacher, at the address registered in the Register of Teachers or in the Roll of Licensed Teachers, as the case may be, as being his address; and

(*c*) in any other case, at his last known place of abode, and shall, if sent through the post, be deemed to have been received not later than twenty-one days after the day when posted.

Repeal and savings Cap. 30:01

111.—(1) The Education Act is hereby repealed.

(2) Any subsidiary legislation made under the Act repealed by subsection (1) and in force immediately before the coming into force of this Act—

(*a*) shall, so far as it is not inconsistent with the provisions of this Act, continue in force as if made under this Act; and

(*b*) may be amended, replaced, or revoked by subsidiary legislation made under this Act.

(3) All appointments, registrations made or given under the Act repealed under subsection (1) and subsisting at the time of the coming into force of this Act shall be deemed to have been made under this Act.

Transitional provisions

112. At the commencement of this Act—

(*a*) any person who is working as a teacher but is not registered or licensed as a teacher under the Act repealed by section 111, shall ensure that he registers or is licensed as a teacher within six months; and

(*b*) any proprietor of a private school or private college that is not registered under the Act repealed by section 111, shall ensure that the school or the college, as the case may be, is registered in accordance with the provisions of this Act within three months.

SUBSIDIARY LEGISLATION

EDUCATION (BOARD OF GOVERNORS OF PUBLIC SECONDARY SCHOOLS AND COLLEGES) ORDER

ARRANGEMENT OF PARAGRAPHS

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SCHEDULE

G.N. 39/2017

EDUCATION (BOARD OF GOVERNORS OF PUBLIC SECONDARY SCHOOLS AND COLLEGES) ORDER

under s. 25 (2)

PART I

PRELIMINARY

Citation

1. This Order may be cited as the Education (Board of Governors of Public Secondary Schools and Colleges) Order.

2. This Order shall apply to the public secondary schools and colleges listed in the Schedule.

Scope of application

PART II

Board of Governors

3.—(1) There is hereby established a Board of Governors for each of the secondary schools and colleges listed in the Schedule (hereinafter referred to as the "Board of Governors"), which shall have such powers and functions as specified in this Order.

Establishment of Boards of Governors for secondary schools and colleges

(2) A Board of Governors shall not—

(*a*) have perpetual succession;

(*b*) sue or be sued in its name; and

(*c*) have power to enter into contracts or own land.

4.—(1) A Board of Governors shall be composed of the following eleven members appointed by the Minister, subject to paragraph (2)—

Composition of the Board of Governors

(*a*) the Chairperson who shall be elected by the members at its first meeting convened by the Minister;

(*b*) five other persons with technical qualifications and experience in matters of education, finance and administration:

Provided that not less than two and not more four of the persons so appointed shall be of same sex;

(*c*) the following *ex officio* members—

(i) one parent representative identified by a committee of head teachers in a cluster;

(ii) one representative of the community identified by a committee of head teachers;

(iii) the District Education Manager or his representative, conversant with education matters;

(iv) the Chairperson of District Education Committee or his representative who shall be a member of the Education Committee; and

(v) the District Commissioner or his representative, conversant with education matters.

(2) A person shall only be eligible to be appointed as a member of a Board of Governors if he holds a minimum of a diploma in any field from a recognized or accredited education institution.

(3) Save for *ex officio* members, a person shall not serve as a member of a Board of Governors for more than two schools or colleges.

Co-opted members

5. A Board of Governors shall co-opt a member for the reasons of fulfilling a specific issue under consideration.

Tenure of office

6. A member of a Board of Governors, other than an ex official member, shall serve for a period of three years or until such earlier date as may, at the time of appointment, be determined by the Minister and may be eligible for reappointment for one more term.

Vacation office of a member

7. The office of a member of a Board of Governors, other than an *ex officio* member, shall become vacant—

(*a*) if he resigns upon giving a notice to the Chairperson of not less than twenty-one days;

(*b*) upon his death;

(*c*) if he has been absent from two consecutive meetings of the Board of Governors, of which he has had prior notice, without a reasonable cause; or

(*d*) if he is convicted of acts of misconduct.

Removal of a member at the instance of the Board

8. A Board of Governors may, through a simple majority resolution, recommend to the Minister the removal from membership of the Board any member based on reasonable grounds of which the member has written notice of at least twenty-one days.

Filling of vacancies

9. A vacancy on the membership of a Board of Governors shall be filled by the appointment of a new member by the Minister in accordance with paragraph 4.

Ordinary meetings of the Board

10.—(1) A Board of Governors shall hold its ordinary meeting at least once every year, at such places and times as the Chairperson may determine.

(2) The meeting referred to in subparagraph (1) shall be convened to—

(*a*) discuss matters pertaining to the management of the schools or colleges including approval of budget annual budget estimates;

(*b*) receive and approve progress reports; or

(*c*) review school or college performance against set improvement plans.

(3) The *quorum* for any meeting of a Board of Governors shall be two thirds of the members.

(4) A Board of Governors shall appoint a person to act as a secretary of the Board who shall attend all meetings of the Board but shall not be entitled to vote.

Powers of a Board of Governors

11.—(1) A Board of Governors shall have power to manage and govern a secondary school or college or group of secondary schools or colleges under its mandate.

(2) Notwithstanding the generality of subparagraph (1), a Board of Governors shall—

(*a*) receive subventions or sums of money as Parliament may appropriate for the purpose of secondary or college education;

(*b*) seek and receive, with the approval of the grants in-aid from public or private, funds for the school or college;

(*c*) allocate funds for the establishment and maintenance of secondary schools or colleges, education services related to secondary or college education, physical training and recreation at secondary schools and other expenses of secondary or college education in its area;

(*d*) approve the implementation of school or college plans;

(*e*) provide funds for scholarships and bursaries for maintenance and transport of students;

(*f*) have oversight on identification of bursary beneficiaries and disbursement of funds;

(*g*) determine the siting and establishment of secondary schools or colleges through the education development plan;

(*h*) require a head teacher or principal or proprietor of any secondary school or college in its area to provide such information regarding the staff, students, classes and equipment of such school or college, the fees payable and received for tuition, boarding, Textbook Revolving Fund, hall and property rentals, general purpose fund and development fund, the funds available for maintenance and expansion of such schools or colleges and all such other information as it may require for the purpose of the preparation of the development plans;

(*i*) allocate, in accordance with regulations made under the Act, funds provided by the Ministry responsible for education for secondary schools or colleges in its area;

(*j*) maintain secondary schools or colleges in its area, education services related to secondary education, physical training and recreation;

(*k*) where it is justifiable, withhold any grant in aid to any assisted secondary schools or colleges;

(*l*) inspect buildings, furniture and equipment and records, books and accounts kept at all secondary schools or colleges in its area, report to the Minister the result of such inspections, and take steps to remedy any faults found;

(*m*) ensure that all schools or colleges have appropriate buildings and infrastructure and teaching and learning materials and that they are in good state of repair and use;

(*n*) approve budgets for all school or college development plans, incomes and expenditures and ensure that all financial expenditure is properly accounted for;

(*o*) monitor the management of schools and colleges in the implementation of laws, policies and regulations in schools or colleges under its jurisdiction as issued from time to time by the Ministry responsible for education and other relevant legal bodies;

(*p*) receive and approve performance reports submitted by the head teachers and principals of their schools or colleges (learning performance, teacher and school or college performance);

(*q*) deal with teacher discipline matters and submit recommendations to appropriate commissions, bodies and the Ministry responsible for education;

(*r*) determine disciplinary action on students in schools or colleges other than dismissal from school or college;

(*s*) review and approve school or college rules and regulations under its jurisdiction;

(*t*) approve budgets, incomes and monitoring expenditure in schools or colleges; and

(*u*) monitor teaching and learning in the schools or colleges under their jurisdiction to ensure that they follow prescribed or approved curriculum, syllabuses, academic calendar and national education standards as prescribed under the Act.

(3) A Board of Governors may, subject to approval by the Minister, delegate the exercise of its powers as the Board may determine, to its head teachers and principals.

(4) A Board of Governors shall seek and conform to the policy directions provided by the Minister when exercising its powers under this Order.

(5) A Board of Governors shall conform to the laws, policies and regulations approved by Government when exercising its powers under this Order.

Duties and functions of a Board of Governors

12. A Board of Governors shall—

(*a*) implement the National Educational Policy;

(*b*) consider immediate and prospective needs of its school or college or group of schools or colleges and the financial and other resources required for the effective and efficient running of the schools or colleges;

(*c*) prepare and submit to a proprietor development plans within such time and in such form as proprietor may direct, showing costed action plans for furthering secondary or college education in the area and submit to the proprietor from time to time whenever required by the proprietor;

(*d*) provide such funds as are available to it for the establishment and maintenance of secondary schools or colleges, education services related to secondary or college education, physical training and recreation at secondary schools and other expenses of secondary or college education in its area in accordance with secondary or college development plan for its area as the Board shall publish from time to time;

(*e*) exercise control, in accordance with the Act and any subsidiary legislation made under the Act, over secondary schools or college in its area, to allocate funds provided for such schools or colleges and to control expenditure in accordance with estimates approved under any written law applicable to the Board, and in particular to ensure that money provided by or through such Board for particular purpose at any school so used or is refunded;

(*f*) prepare and submit to the proprietor annual estimates of revenue and expenditure in respect of matters relating to secondary or college education in its area in such a form as the proprietor may by rule prescribe;

(*g*) compile financial records and keep such financial books and other documents, and make such returns in respect of financial and other matters relating to secondary or college education as the proprietor may prescribe;

(*h*) comply with all policies adopted and guidelines issued by the proprietor in accordance with powers conferred on him by the Act; and

(*i*) make recommendations to the Minister with respect to the ownership, management and registration of private secondary schools and colleges.

Duties of head teachers for secondary schools and principals of colleges

13.—(1) A head teacher of a secondary or a principal of a college under a Board of Governors shall prepare for the approval of the Board—

(*a*) draft annual estimates of revenue and expenditure in respect of matters relating to the secondary school or college;

(*b*) draft development plans; or

(*c*) draft school or college improvement plans in relation to the approved curriculum and syllabus through teaching and learning activities and national education standards.

(2) A head teacher of a secondary or a principal of a college under a Board of Governors shall—

(*a*) undertake the preparation of the work of the Board and reports;

(*b*) implement actions as the Board may lawfully direct;

(*c*) interpret government education policy to the Board, school or college staff, students, parents and the community;

(*d*) collect revenue and carry out expenditures as approved by the Board, the Ministry responsible for education and in line with the government financial regulations; and

(*e*) prescribe school or college rules, regulations, rewards and sanctions.

Situation of a Board of Governors

14.—(1) A Board of Governors for a secondary school shall be situated at cluster level.

(2) Each cluster of schools shall have at least one school Board as the situation determines.

(3) Members of a Board of Governors for a secondary school shall come from within the cluster.

(4) A Board of Governors for a college shall be from the vicinity in which the college is situated.

SCHEDULE

GOVERNMENT SECONDARY SCHOOLS AND PRIMARY TEACHER TRAINING COLLEGES TO WHICH THIS ORDER APPLIES

DIVISION	SERIAL NO.	NAME OF SCHOOL
NATIONAL SECONDARY SCHOOL		
NORTHERN	1	Mzuzu Government Secondary School
CENTRAL WEST	2	Lilongwe Girls Secondary School
	3	Dedza Secondary School
SOUTH WEST	4	Blantyre Secondary School
DISTRICT BOARDING SCHOOLS		
NORTHERN	1	Bandawe Secondary School
	2	Chilumba Secondary School
	3	Chitipa Secondary School
	4	Euthini Secondary School
	5	Likoma Secondary School
	6	Mzimba Secondary School
	7	Rumphi Secondary School
	8	Wenya Secondary School
CENTRAL EAST	1	Chayamba Secondary School
	2	Chipoka Secondary School
	3	Dowa Secondary School
	4	Kasungu Secondary School
	5	Madisi Secondary School
	6	M'mbomba Secondary School
	7	Nkhotakota Secondary School
	8	Ntchisi Secondary School
	9	Salima Secondary School
CENTRAL WEST	1	Dzenza Secondary School
	2	Magawa Secondary School
	3	Mayani Secondary School
	4	Mchinji Secondary School
	5	Mitundu Secondary School
	6	Namitete Secondary School

DIVISION	SERIAL NO.	NAME OF SCHOOL
	7	Ntcheu Secondary School
	8	Umbwi Secondary School
SOUTH EAST	1	Balaka Secondary School
	2	Lisumbwi Secondary School
	3	Mangochi Secondary School
	4	Masongola Secondary School
	5	Mulunguzi Secondary School
SOUTH WEST	1	Chikhwawa Secondary School
	2	Ngabu Secondary School
	3	Mwanza Secondary School
	4	Bangula Secondary School
	5	Nsanje Secondary School
	6	Lunzu Secondary School
SHIRE HIGHLANDS	1	Chikhwaza Secondary School
	2	Chiradzulu Secondary School
	3	Gawani Secondary School
	4	Luchenza Secondary School
	5	Mulanje Secondary School
	6	Phalombe Secondary School
	7	Thyolo Secondary School
CITY DAY SECONDARY SCHOOLS		
NORTHERN	1	Katoto Secondary School
	2	Luwinga Secondary School
CENTRAL WEST	1	Bwaila Secondary School
	2	Chinsapo Secondary School
	3	Chipasula Secondary School
	4	Mkwichi Secondary School
SOUTH EAST	1	Likangala Day Secondary School
	2	Malindi Day Secondary School
SOUTH WEST	1	Bangwe Secondary School
	2	Ndirande Hill Secondary School
	3	Zingwangwa Secondary School
	4	Soche Hill Secondary School
	5	Chichiri Secondary School

DIVISION	SERIAL NO.	NAME OF SCHOOL
DISTRICT DAY SECONDARY SCHOOLS		
NORTHERN	1	Bolero Day Secondary School
	2	Maghemo Day Secondary School
	3	Mlare Day Secondary School
	4	Mzenga Day Secondary School
CENTRAL EAST	1	Bzyanzi Day Secondary School
	2	Lozi Day Secondary School
	3	Santhe Day Secondary School
	4	Kasakula Day Secondary School
	5	Walemera Day Secondary School
CENTRAL WEST	1	Dombole Day Secondary School
	2	Kang'oma Day Secondary School
	3	Linthipe Day Secondary School
	4	Madzanje Day Secondary School
	5	Mkanda Day Secondary School
	6	Mtakataka Day Secondary School
	7	Nachitheme Day Secondary School
	8	Nalikule Demonstration Day Secondary School
	9	Nsaru Day Secondary School
SOUTH EAST	1	Chimwalira Day Secondary School
	2	Chingale Day Secondary School
	3	Domasi Demonstration Day Secondary School
	4	Likangala Day Secondary School
	5	Liwonde Day Secondary School
	6	Majuni Day Secondary School
	7	Malindi Day Secondary School
	8	Malombe Day Secondary School
	9	Mbenjere Day Secondary School
	10	Mpiri Day Secondary School
	11	Puteya Day Secondary School
SOUTH WEST	1	Chapananga Day Secondary School
	2	Chiwale Day Secondary School

DIVISION	SERIAL NO.	NAME OF SCHOOL
	3	Dzumila Day Secondary School
	4	Namikasi Day Secondary School
	5	Njamba Day Secondary School
	6	Nyachilenda Day Secondary School
	7	Thawale Day Secondary School
SHIRE HIGHLANDS	1	Chambe Day Secondary School
	2	Malimba Day Secondary School
	3	Mapanga Day Secondary School
	4	Matapwata Day Secondary School
	5	Michesi Day Secondary School
	6	Mountain View Day Secondary School
	7	Nansomba Day Secondary School
	8	Nguludi Day Secondary School
	9	Thekerani Day Secondary School
COMMUNITY DAY SECONDARY SCHOOLS		
NORTHERN	1	Baula CDSS
	2	Bembe CDSS
	3	Bulala CDSS
	4	Bunga CDSS
	5	Bungano CDSS
	6	Bwengu CDSS
	7	Chaboli CDSS
	8	Champhira CDSS
	9	Chankhomi CDSS
	10	Chibandauka CDSS
	11	Chibavi CDSS
	12	Chifira CDSS
	13	Chigude CDSS
	14	Chihame CDSS
	15	Chikangawa CDSS
	16	Chikwawa CDSS
	17	Chikwina CDSS
	18	Chimbongondo CDSS
	19	Chindindindi CDSS

DIVISION	SERIAL NO.	NAME OF SCHOOL
	20	Chintheche CDSS
	21	Chinthekwe CDSS
	22	Chinunkha CDSS
	23	Chipyera CDSS
	24	Chirambo CDSS
	25	Chisala CDSS
	26	Chisangawe CDSS
	27	Chisansu CDSS
	28	Chisenga CDSS
	29	Chisu CDSS
	30	Chitheka CDSS
	31	Chitimba CDSS
	32	Chizumulu CDSS
	33	Choma CDSS
	34	Echilumbeni CDSS
	35	Edingeni CDSS
	36	Ehehleni CDSS
	37	Ekwendeni CDSS
	38	Elangeni CDSS
	39	Elunyeni CDSS
	40	Embangweni CDSS
	41	Emchakachakeni CDSS
	42	Emcisweni CDSS
	43	Emfeni CDSS
	44	Emthuzini CDSS
	45	Emvuyeni CDSS
	46	Endindeni CDSS
	47	Engucwini CDSS
	48	Enukweni CDSS
	49	Enyezini CDSS
	50	Eswazini CDSS
	51	Euthini CDSS
	52	Ezondweni CDSS
	53	Fulirwa CDSS

DIVISION	SERIAL NO.	NAME OF SCHOOL
	54	Hoho CDSS
	55	Iponga CDSS
	56	Jalawe CDSS
	57	Jenda CDSS
	58	Jombo CDSS
	59	Junju CDSS
	60	Kabuwa CDSS
	61	Kabwafu CDSS
	62	Kacheche CDSS
	63	Kafukule CDSS
	64	Kalenge CDSS
	65	Kalowa CDSS
	66	Kam'Banga CDSS
	67	Kameme CDSS
	68	Kamilaza CDSS
	69	Kamphenda CDSS
	70	Kanjuchi CDSS
	71	Kanyika CDSS
	72	Kapanda CDSS
	73	Kapando CDSS
	74	Kapirinkhonde CDSS
	75	Kaporo CDSS
	76	Karonga CDSS
	77	Kasoba CDSS
	78	Katowo CDSS
	79	Katunguwiri CDSS
	80	Kavuula CDSS
	81	Kavuzi CDSS
	82	Kawalazi CDSS
	83	Kayuni CDSS
	84	Kazomba CDSS
	85	Khondowe CDSS
	86	Khwawa CDSS
	87	Kwakupokela CDSS

DIVISION	SERIAL NO.	NAME OF SCHOOL
	88	Lisale CDSS
	89	Livingstonia CDSS
	90	Lufilya CDSS
	91	Lukalazi CDSS
	92	Lundu CDSS
	93	Lupaso CDSS
	94	Lupembe CDSS
	95	Lura CDSS
	96	Luviri CDSS
	97	Luvwere CDSS
	98	Luwazi CDSS
	99	Luwerezi CDSS
	100	Luwuchi CDSS
	101	Luzi CDSS
	102	Mabiri CDSS
	103	Madise CDSS
	104	Makhosikazi CDSS
	105	Malangazi CDSS
	106	Manyamula CDSS
	107	Masasa CDSS
	108	Mathandani CDSS
	109	Maula CDSS
	110	Mayibiyibi CDSS
	111	Mazozo CDSS
	112	Mbalachanda CDSS
	113	Mbawa CDSS
	114	Mchengautuba CDSS
	115	Meru CDSS
	116	Mharaunda CDSS
	117	Mhlafuta CDSS
	118	Mhuju CDSS
	119	Mibanga CDSS
	120	Misuku CDSS
	121	Mkombezi CDSS

DIVISION	SERIAL NO.	NAME OF SCHOOL
	122	Mlowe CDSS
	123	Mnjiri CDSS
	124	Moyale CDSS
	125	Mpamba CDSS
	126	Mpata CDSS
	127	Mpherembe CDSS
	128	Mphompha CDSS
	129	Mphongo CDSS
	130	Msongwe CDSS
	131	Mtangatanga CDSS
	132	Mtende CDSS
	133	Mtetete CDSS
	134	Mtuzuzu CDSS
	135	Mwazisi CDSS
	136	Mwenilondo CDSS
	137	Mzalangwe CDSS
	138	Mzambazi CDSS
	139	Mzoma CDSS
	140	Namatubi CDSS
	141	Ng'ombechinda CDSS
	142	Ng'onga CDSS
	143	Ngara CDSS
	144	Ngerenge CDSS
	145	Njerengwa CDSS
	146	Njewe CDSS
	147	Njuyu CDSS
	148	Nkhangwa CDSS
	149	Nkhomboli CDSS
	150	Nkhorongo CDSS
	151	Nkhumano CDSS
	152	Nthalire CDSS
	153	Nthumba CDSS
	154	Nthungwa CDSS
	155	Nyungwe CDSS

DIVISION	SERIAL NO.	NAME OF SCHOOL
	156	Old Salawe CDSS
	157	Phazi CDSS
	158	Phembe CDSS
	159	Pundu CDSS
	160	Rukuru CDSS
	161	Sanga CDSS
	162	Sazu CDSS
	163	Sokola CDSS
	164	St. Annes CDSS
	165	St. Augustine CDSS
	166	Therere CDSS
	167	Thimalala CDSS
	168	Thunduti CDSS
	169	Thunduwike CDSS
	170	Tilora CDSS
	171	Tukombo CDSS
	172	Unyolo CDSS
	173	Usisya CDSS
	174	Vongo CDSS
	175	Wililo CDSS
	176	Yamba CDSS
	177	Zolozolo CDSS
CENTRAL EAST	1	Benga CDSS
	2	Boma CDSS
	3	Chamakala CDSS
	4	Chamalire CDSS
	5	Chamama CDSS
	6	Chambala CDSS
	7	Chamkango CDSS
	8	Chamwavi CDSS
	9	Chankhanga CDSS
	10	Chankhungu CDSS
	11	Chathope CDSS
	12	Chibanzi CDSS

DIVISION	SERIAL NO.	NAME OF SCHOOL
	13	Chididi CDSS
	14	Chigodi CDSS
	15	Chilanga CDSS
	16	Chilinda CDSS
	17	Chilumba CDSS
	18	Chimbalu CDSS
	19	Chimbowe CDSS
	20	Chimkoka CDSS
	21	Chimwetsero CDSS
	22	Chinthembwe CDSS
	23	Chinziri CDSS
	24	Chipala CDSS
	25	Chipati CDSS
	26	Chiphaso CDSS
	27	Chitenje CDSS
	28	Chulu CDSS
	29	Dwambazi CDSS
	30	Dwasulu CDSS
	31	Dzaleka CDSS
	32	Dzoole CDSS
	33	Ergo CDSS
	34	Golong'ozi CDSS
	35	Gwangwa CDSS
	36	Kabwinja CDSS
	37	Kachokolo CDSS
	38	Kadifula CDSS
	39	Kafukule CDSS
	40	Kakhome CDSS
	41	Kakwale CDSS
	42	Kaluluma CDSS
	43	Kambulu CDSS
	44	Kamphenga CDSS
	45	Kanjaluni CDSS
	46	Kanjiwa CDSS

DIVISION	SERIAL NO.	NAME OF SCHOOL
	47	Kanyenda CDSS
	48	Kapelula CDSS
	49	Kaphirintiwa CDSS
	50	Kasamba CDSS
	51	Kasitu CDSS
	52	Kaungwe CDSS
	53	Kawangwi CDSS
	54	Kawiya CDSS
	55	Kayoyo CDSS
	56	Khola CDSS
	57	Lifidzi CDSS
	58	Linga CDSS
	59	Linyangwa CDSS
	60	Liwaladzi CDSS
	61	Lojwa CDSS
	62	Lungumadzi CDSS
	63	Madanjala CDSS
	64	Mafco CDSS
	65	Maganga CDSS
	66	Majiga CDSS
	67	Malepera CDSS
	68	Malomo CDSS
	69	Malowa CDSS
	70	Manyani CDSS
	71	Mankhaka CDSS
	72	Matenje CDSS
	73	Mathandani CDSS
	74	Mauni CDSS
	75	Mawiri CDSS
	76	Mbalame CDSS
	77	Mbilira CDSS
	78	Mbongozi CDSS
	79	Mdika CDSS
	80	Mikuyu CDSS

DIVISION	SERIAL NO.	NAME OF SCHOOL
	81	Milenje CDSS
	82	Mkaika CDSS
	83	Mkanakhoti CDSS
	84	Mkhota CDSS
	85	Mkwero CDSS
	86	Mndunje CDSS
	87	Mpando CDSS
	88	Mpherere CDSS
	89	Mphomwa CDSS
	90	Mpondagaga CDSS
	91	Mponela CDSS
	92	Msalura CDSS
	93	Msenjere CDSS
	94	Mtunthama CDSS
	95	Mvera Army CDSS
	96	Mvera CDSS
	97	Mwalawanyenje CDSS
	98	Mwansambo Sec School
	99	Nakaledza CDSS
	100	Nalunga CDSS
	101	Nathomba CDSS
	102	Natola CDSS
	103	Ngala CDSS
	104	Ngodzi CDSS
	105	Nkhunga CDSS
	106	Nthunduwala CDSS
	107	Nyangoza CDSS
	108	Nyenje CDSS
	109	Parachute CDSS
	110	Senga CDSS
	111	Simbi CDSS
	112	Simlemba CDSS
	113	Tchale CDSS
	114	Tchawale CDSS

DIVISION	SERIAL NO.	NAME OF SCHOOL
	115	Thavite CDSS
	116	Yambe CDSS
CENTRAL WEST	1	Bembeke CDSS
	2	Bilira CDSS
	3	Biwi CDSS
	4	Bua CDSS
	5	Chadabwa CDSS
	6	Chadza I CDSS
	7	Chadza II CDSS
	8	Chambidzi CDSS
	9	Champagnat CDSS
	10	Chankhandwe CDSS
	11	Chawa CDSS
	12	Chigodi CDSS
	13	Chigoneka CDSS
	14	Chikande CDSS
	15	Chikhutu CDSS
	16	Chilambula CDSS
	17	Chileka CDSS
	18	Chilinde CDSS
	19	Chilobwe CDSS
	20	Chimbidzi CDSS
	21	Chimphalika CDSS
	22	Chimteka CDSS
	23	Chimutu CDSS
	24	Chimwa CDSS
	25	Ching'ombe CDSS
	26	Chinkhuti CDSS
	27	Chisamba CDSS
	28	Chiseka CDSS
	29	Chitedze CDSS
	30	Chitowo CDSS
	31	Chitukula CDSS
	32	Chitundu CDSS

DIVISION	SERIAL NO.	NAME OF SCHOOL
	33	Chiunjiza CDSS
	34	Chiwamba CDSS
	35	Chiwambo CDSS
	36	Chiwe CDSS
	37	Chiwoko CDSS
	38	Chowo CDSS
	39	Dzenza CDSS
	40	Dzenza Mission CDSS
	41	Gandali CDSS
	42	Golomoti CDSS
	43	Gowa CDSS
	44	Gumba CDSS
	45	Jordan CDSS
	46	Kabekere CDSS
	47	Kabudula CDSS
	48	Kabuthu CDSS
	49	Kabwabwa CDSS
	50	Kabwazi CDSS
	51	Kabzala CDSS
	52	Kadzakalowa CDSS
	53	Kalaka CDSS
	54	Kaliyeka CDSS
	55	Kalonga CDSS
	56	Kalumbu CDSS
	57	Kamanzi CDSS
	58	Kampanje CDSS
	59	Kamphandira Ulongwe CDSS
	60	Kamuzu Barracks CDSS
	61	Kamuzu Palace CDSS
	62	Kamwanya CDSS
	63	Kamzimbi CDSS
	64	Kapalamula CDSS
	65	Kapiri CDSS
	66	Kapudzama CDSS

DIVISION	SERIAL NO.	NAME OF SCHOOL
	67	Kasiya CDSS
	68	Kasumbu CDSS
	69	Katewe CDSS
	70	Katsekaminga CDSS
	71	Katsekera CDSS
	72	Katsumwa CDSS
	73	Kaundama CDSS
	74	Kawale CDSS
	75	Khola CDSS
	76	Kholoni CDSS
	77	Kochilira CDSS
	78	Likudzi CDSS
	79	Livimbo CDSS
	80	Livulezi CDSS
	81	Lizulu CDSS
	82	Ludzi CDSS
	83	Magomero CDSS
	84	Magwero CDSS
	85	Makota CDSS
	86	Malembo CDSS
	87	Malikha CDSS
	88	Malingunde CDSS
	89	Malonda CDSS
	90	Manjawira CDSS
	91	Masasa CDSS
	92	Matapila CDSS
	93	Matundu CDSS
	94	Mbinzi CDSS
	95	Mcheuka CDSS
	96	Mchinji Mission CDSS
	97	Mchisu CDSS
	98	Mchitanjiru CDSS
	99	Mdzobwe CDSS
	100	Mikundi CDSS

DIVISION	SERIAL NO.	NAME OF SCHOOL
	101	Minga CDSS
	102	Ming'ongo CDSS
	103	Misale CDSS
	104	Mitundu CDSS
	105	Mkanda CDSS
	106	Mkomachi CDSS
	107	Mkomera CDSS
	108	Mlodza CDSS
	109	Mlomba CDSS
	110	Mngwangwa CDSS
	111	Mpalale CDSS
	112	Mpando CDSS
	113	Mphunzi CDSS
	114	Mpingu CDSS
	115	Mseche CDSS
	116	Mselera CDSS
	117	Mtakataka CDSS
	118	Mtemambalame CDSS
	119	Mtenthera CDSS
	120	Mvunguti CDSS
	121	Mwatibu CDSS
	122	Mwenyekondo CDSS
	123	Mzumanzi CDSS
	124	Nambuma CDSS
	125	Nanjati CDSS
	126	Ndaula CDSS
	127	Ngowe CDSS
	128	Njewa CDSS
	129	Njolomole CDSS
	130	Nkhoma CDSS
	131	Nsanjiko CDSS
	132	Nsipe CDSS
	133	Ntcheu CDSS
	134	Nthumbi CDSS

DIVISION	SERIAL NO.	NAME OF SCHOOL
	135	Nthumbo CDSS
	136	Ntonda CDSS
	137	Nzama CDSS
	138	Phirilanjuzi CDSS
	139	Sendwe CDSS
	140	Sharpevale CDSS
	141	Sopa CDSS
	142	St Martin CDSS
	143	Takondwa CDSS
	144	Tsabango CDSS
	145	Tsangano CDSS
	146	Tsokankanansi CDSS
	147	Waliranji CDSS
SOUTH EAST	1	Balamanja CDSS
	2	Cape Maclear CDSS
	3	Changali CDSS
	4	Chembera CDSS
	5	Chichiri CDSS
	6	Chikweo CDSS
	7	Chilimba CDSS
	8	Chilipa CDSS
	9	Chilunga CDSS
	10	Chimwala CDSS
	11	Chinkwezule CDSS
	12	Chiunda CDSS
	13	Chowe CDSS
	14	Cobbe Barracks CDSS
	15	Draper CDSS
	16	Dziwe CDSS
	17	Kankao CDSS
	18	Kapire CDSS
	19	Kasimu CDSS
	20	Kasonga CDSS
	21	Katamba CDSS

DIVISION	SERIAL NO.	NAME OF SCHOOL
	22	Katema CDSS
	23	Koche CDSS
	24	Likwenu CDSS
	25	Liwonde CDSS
	26	Lungwena CDSS
	27	Luntha CDSS
	28	Machinga CDSS
	29	Maera CDSS
	30	Magomero CDSS
	31	Makanjira CDSS
	32	Malundani CDSS
	33	Masanje CDSS
	34	Masuku CDSS
	35	Matandwe CDSS
	36	Mayaka CDSS
	37	Mbombwe CDSS
	38	Mdinde CDSS
	39	Mkumba CDSS
	40	Mlomba CDSS
	41	Mmanga CDSS
	42	Monkey Bay CDSS
	43	Mpilisi CDSS
	44	Mpiranjala CDSS
	45	Mpondasi CDSS
	46	Mtuwa CDSS
	47	Naisi CDSS
	48	Namadidi CDSS
	49	Namalomba CDSS
	50	Namandanje CDSS
	51	Namasika CDSS
	52	Naming'azi CDSS
	53	Namisonga CDSS
	54	Namitembo CDSS
	55	Nampeya CDSS

DIVISION	SERIAL NO.	NAME OF SCHOOL
	56	Namwera CDSS
	57	Nanjiri CDSS
	58	Nankhunda CDSS
	59	Nankhwali CDSS
	60	Nansenga CDSS
	61	Ngokwe CDSS
	62	Nkope CDSS
	63	Nsala CDSS
	64	Nsanama CDSS
	65	Nsondole CDSS
	66	Nswaswa CDSS
	67	Ntaja CDSS
	68	Ntonda CDSS
	69	Phalula CDSS
	70	Pirimiti CDSS
	71	Rivirivi CDSS
	72	Sadzi CDSS
	73	Sangadzi CDSS
	74	Songani CDSS
	75	St. Peters CDSS
	76	St. Anthony CDSS
	77	St. Benedict CDSS
	78	St. Bridget CDSS
	79	St. Charles Lwanga CDSS
	80	St. Joseph CDSS
	81	St. Louis Mont. CDSS
	82	St. Martins CDSS
	83	St. Marys CDSS
	84	St. Michaels CDSS
	85	St. Monica Girls CDSS
	86	St. Pauls CDSS
	87	Tanyamuka CDSS
	88	Thema CDSS
	89	Thumu CDSS

DIVISION	SERIAL NO.	NAME OF SCHOOL
	90	Toleza CDSS
	91	Tsekwere CDSS
	92	Ulongwe CDSS
	93	Ulumba CDSS
	94	Umodzi CDSS
	95	Utale CDSS
	96	Zomba Urban CDSS
SOUTH WEST	1	Bangwe CDSS
	2	Bwabwali CDSS
	3	Catholic Institute CDSS
	4	Chang'ambika CDSS
	5	Chekerere CDSS
	6	Chididi CDSS
	7	Chidoole CDSS
	8	Chifunda CDSS
	9	Chifunga CDSS
	10	Chigumukire CDSS
	11	Chigumula CDSS
	12	Chikonde CDSS
	13	Chikuli CDSS
	14	Chilaladzi CDSS
	15	Chilangoma CDSS
	16	Chimwankhunda CDSS
	17	Chinamvuu CDSS
	18	Chiraweni CDSS
	19	Chirimba CDSS
	20	Chivumbe CDSS
	21	Dziwe CDSS
	22	Fatima CDSS
	23	Futsa CDSS
	24	Joshua CDSS
	25	Kadabwako CDSS
	26	Kakoma CDSS

DIVISION	SERIAL NO.	NAME OF SCHOOL
	27	Kalambo CDSS
	28	Kambale CDSS
	29	Khombwe CDSS
	30	Ligowe CDSS
	31	Limbe CDSS
	32	Limphangwi CDSS
	33	Lirangwe CDSS
	34	Lisungwi CDSS
	35	Livunzu CDSS
	36	Lumbira CDSS
	37	Madziabango CDSS
	38	Magoti CDSS
	39	Makande CDSS
	40	Makhanga CDSS
	41	Maliya CDSS
	42	Manja CDSS
	43	Mapazi CDSS
	44	Masenjere CDSS
	45	Matindi CDSS
	46	Matope CDSS
	47	Mbiya CDSS
	48	Mdeka CDSS
	49	Mfera CDSS
	50	Milore CDSS
	51	Mitondo CDSS
	52	Mitsidi CDSS
	53	Mlomba CDSS
	54	Mpapa CDSS
	55	Mpatsa CDSS
	56	Mpemba CDSS
	57	Mphande CDSS
	58	Mpumbe CDSS
	59	Mthumba CDSS

DIVISION	SERIAL NO.	NAME OF SCHOOL
	60	Mtowe CDSS
	61	Mudi CDSS
	62	Mulunguzi CDSS
	63	Mzamba CDSS
	64	Naizi CDSS
	65	Namalimwe CDSS
	66	Namame CDSS
	67	Namiwawa CDSS
	68	Namwanje CDSS
	69	Nanjiriri CDSS
	70	Nankumba CDSS
	71	Nchalo CDSS
	72	Nchokera CDSS
	73	Ndirande CDSS
	74	Neno CDSS
	75	Ngongomwa CDSS
	76	Ngumbe CDSS
	77	Nkhande CDSS
	78	Nkhate CDSS
	79	Nkula CDSS
	80	Nkumaniza CDSS
	81	Nsenjere CDSS
	82	Ntenjera CDSS
	83	Nyamadzere CDSS
	84	Nyambadwe CDSS
	85	Phanda CDSS
	86	Phokera CDSS
	87	Phwadzi CDSS
	88	Tsongolo CDSS
	89	South Lunzu CDSS
	90	St. Kizito CDSS
	91	St. Michaels CDSS
	92	St. Pius CDSS
	93	Thambani CDSS

DIVISION	SERIAL NO.	NAME OF SCHOOL
SHIRE HIGHLANDS	1	Adolorata CDSS
	2	Bvumbwe CDSS
	3	Chigodi CDSS
	4	Chikhwaza Sec
	5	Chikolombe CDSS
	6	Chikonde CDSS
	7	Chinolampeni CDSS
	8	Chinyama CDSS
	9	Chiperere CDSS
	10	Chiradzulu CDSS
	11	Chiringa CDSS
	12	Chisitu CDSS
	13	Chisugulu CDSS
	14	Dzenje CDSS
	15	Dzumani CDSS
	16	Goliati CDSS
	17	Holy Family CDSS
	18	January CDSS
	19	Kabichi CDSS
	20	Kasupe CDSS
	21	Khongoloni CDSS
	22	Khwalala CDSS
	23	Likanani CDSS
	24	Lipho CDSS
	25	Litchenza CDSS
	26	Luchenza CDSS
	27	Makapwa CDSS
	28	Makuwa CDSS
	29	Malavi CDSS
	30	Mapesi CDSS
	31	Masalani CDSS
	32	Masambanjati CDSS
	33	Maveya CDSS
	34	Mendulo CDSS

DIVISION	SERIAL NO.	NAME OF SCHOOL
	35	Migowi CDSS
	36	Mikate CDSS
	37	Mikombe CDSS
	38	Milonde CDSS
	39	Milonga CDSS
	40	Misanjo CDSS
	41	Mpasa CDSS
	42	Mpenda CDSS
	43	Mpinji CDSS
	44	Muhasuwa CDSS
	45	Mulanje Boma CDSS
	46	Mulanje Mission CDSS
	47	Mulomba CDSS
	48	Muloza CDSS
	49	Nagwengwere CDSS
	50	Namadidi CDSS
	51	Namadzi CDSS
	52	Namaka CDSS
	53	Namalamba CDSS
	54	Namalowe CDSS
	55	Naming'omba CDSS
	56	Namipingo CDSS
	57	Namphungo CDSS
	58	Namulenga CDSS
	59	Nang'ombe CDSS
	60	Nankhundi CDSS
	61	Ngozi CDSS
	62	Njuli CDSS
	63	Nkhande CDSS
	64	Nkhulambe CDSS
	65	Nkhwangwa CDSS
	66	Nsoni CDSS
	67	Ntambanyama CDSS
	68	Nyodola CDSS

DIVISION	SERIAL NO.	NAME OF SCHOOL
	69	P.I.M CDSS
	70	Satemwa CDSS
	71	St. Anthony Henry CDSS
	72	St. Louis CDSS
	73	Thekerani CDSS
	74	Thuchila CDSS
	75	Thunga CDSS
	76	Vonken CDSS
PRIMARY TEACHER TRAINING COLLEGES		
	1	Karonga TTC
	2	Kasungu TTC
	3	Lilongwe TTC
	4	Machinga TTC
	5	Blantyre TTC
	6	Chiradzulu TTC
	7	Phalombe TTC

EDUCATION (MANAGEMENT COMMITTEES FOR GOVERNMENT PRIMARY SCHOOLS AND ASSISTED PRIMARY SCHOOLS) REGULATIONS

ARRANGEMENT OF REGULATIONS

REGULATION

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8. Conformance with laws and policies
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13. Frequency, agenda and minutes of meetings
14. Functions of the committee

G.N. 40/2017

EDUCATION (MANAGEMENT COMMITTEES FOR GOVERNMENT PRIMARY SCHOOLS AND ASSISTED PRIMARY SCHOOLS) REGULATIONS

under s. 22

PART I

PRELIMINARY

Citation

1. These Regulations may be cited as the Education (Management Committees for Government Primary Schools and Assisted Primary Schools) Regulations.

Interpretation

2. In these Regulations, unless the context otherwise requires—

"committee" means the management committee for—

(*a*) government primary schools; or

(*b*) assisted primary schools; and

"school" means a government primary school or assisted school to which these Regulations apply.

Application

3. These Regulations shall apply to management committees of Government primary schools and assisted primary schools that shall be established under Part V of the Act.

Committee to comply with these Regulations

4. A committee established under Part V of the Act for each Government primary school shall comply with these Regulations.

Powers of a committee

5.—(1) A committee shall have powers and duties as set out by the Minister or a local government authority.

(2) When exercising its powers, a committee shall seek and conform to the policy directions provided by the Minister or local government authority.

Manner of establishing a committee

6. A committee shall be established by name, without perpetual succession and may not be sued in its capacity and shall not have power to enter into contracts or own land.

Taking care of property and assets

7. In accordance with the relevant written laws, a committee shall take care of the property and assets bearing in mind that the responsibility lies with the Minister or a local government authority or in the case of assisted schools with the proprietor.

Conformance with laws and policies

8. A committee for primary Schools shall conform to the laws, policies and regulations approved by Government or a local government authority.

Composition of a committee

9.—(1) A committee shall consist of nine members who shall be appointed as follows—

(*a*) one member nominated by the proprietor of the school;

(*b*) one member who shall be the District Education Committee of the Local Education Authority of the area in which the school is situated;

(*c*) one member who shall be the District Education Officer or such person as that officer may nominate in his absence from any meeting;

(*d*) four members, each of whom shall be the parent of a pupil attending the school, elected at a meeting to be held in the first month

of each school year, at which all parents of pupils attending the school shall be entitled to attend and vote; and

(*e*) two members, who shall be co-opted by the committee from among persons residing in the area served by the school.

(2) Members eligible for nomination by the proprietor and those co-opted by the committee shall have a minimum educational qualification of Malawi School Certificate or its equivalent.

(3) Members of a committee for primary schools shall come from the vicinity in which the school is situated.

(4) A committee shall appoint annually from among their own number, a chairperson, a secretary and a treasurer:

Provided that the offices of secretary and treasurer may be combined if the committee so decides.

Tenure of office

10.—(1) A member of a committee nominated by the proprietor or the Local Education Committee shall hold office for a period of two years, subject to the right of the person or body by whom they were nominated to revoke the appointment at any time and appoint some other person.

(2) The four members, who are parents of pupils attending the school, shall hold office for one year.

(3) Co-opted members shall hold office for a period of two years.

(4) Any member, not being a co-opted member may, with the consent of the chairperson, nominate another person to represent him at a meeting which he is unable to attend.

Meetings of a committee

11.—(1) At any meeting of the committee the chairperson and four other members, of whom at least two shall be parents of pupils attending the school, shall form a quorum.

(2) The meetings of the committee shall be held in private:

Provided that, with the approval of the chairperson, other persons may be invited to attend a meeting of the committee for the purpose of advising the Committee on any subject on which the committee desires the advice of those persons.

Disqualified persons for membership

12.—(1) A head teacher or any member of the staff of the school shall not be a member of a committee.

(2) Notwithstanding subregulation (1), a head teacher of a school shall submit to the committee such matters relating to the conduct of the school as he may think fit or as the committee may desire and shall attend all meetings of the committee except when the committee otherwise determines.

Frequency, agenda and minutes of meetings

13.—(1) A committee shall, at least three times in each year, hold a meeting and at such other times as the chairperson may determine:

Provided that any three members of the committee may at any time request the chairperson in writing to convene a meeting, which shall take place within two weeks of the date of the request.

(2) The agenda for each meeting shall be sent out to the members at least seven days before the meeting is to take place.

(3) Any member who desires a matter to be placed on the agenda for a meeting shall submit that matter to the secretary at least two weeks before the date of the meeting.

(4) The secretary shall—

(*a*) keep proper minutes of the meetings of a committee in a bound notebook, and at each meeting the minutes of the previous meeting shall be read to the committee; and

(*b*) be responsible for the safe custody of the minute book but shall, at any reasonable time, permit any member of the committee to have access to such book for the purpose, if so desired, of making copies or extracts of any entries of the minutes.

Functions of the committee

14. A committee shall—

(*a*) assist the proprietor in the management of the school; and

(*b*) advise the Minister and the Local Education Authority on matters relating to management of the school.

UNIVERSITY OF MALAŴI

CHAPTER 30:02

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CHAPTER 30:02

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An Act to provide for the establishment of the University of Malaŵi and for the conduct and management thereof; for the establishment and incorporation of the Council of the University of Malaŵi as a body corporate and as the governing body of the University; for the establishment of a Senate thereof; for the repeal of the University of Malaŵi (Provisional Council) Act, and for matters incidental to and connected with the foregoing

25 of 1974
4 of 1981
7 of 1988
28 of 1994
12 of 1998
G.N. 55/1975
54/1976
11/1980
142/1981
92/1988
120/1988
65/1997

[24TH FEBRUARY, 1975]

PART I

PRELIMINARY

1. This Act may be cited as the University of Malaŵi Act. Short title

2. In this Act and in the Statutes, unless the context otherwise requires— Interpretation 4 of 1981 7 of 1988 12 of 1998

"Chairman" means the Chairman of the Council appointed pursuant to section 11;

"Chancellor" means the person who is for the time being the Chancellor of the University under section 13;

"College" means a College within the University established under section 20;

"Committee" includes subcommittee;

"Council" means the Council of the University established and incorporated by section 8;

"date of commencement" means the date upon which this Act comes into operation;

"Dean" means the Dean of a Faculty or School elected under the Statutes pursuant to section 23; 12 of 1998

"Deputy Dean" means the Deputy Dean of a Faculty elected under the Statutes pursuant to section 23;

12 of 1998 "Faculty" means a part or section of the academic administration of the University which offers courses leading to a degree;

"financial year" means the period commencing on the date of commencement and ending on the 31st August next following such date and thereafter means the period of twelve months ending on the 31st August, in each year;

12 of 1998 "Librarian" means the Librarian of the University appointed under section 16A;

"organization" means any company, association or body of persons, corporate or unincorporate wherever established or incorporated, but does not include any such association or body established or incorporated under this Act;

12 of 1998 "Principal" means the Principal of a College appointed pursuant to section 21 and includes a person who is for the time being performing the functions of a Principal;

"property of the University" means any property, real or personal, of every description vested in or held by the Council under any right of ownership or possession; and any property held by the Council in trust for the furtherance of any of the objects of the University;

12 of 1998 "Pro-Vice-Chancellor" means the Pro-Vice-Chancellor appointed under section 15;

"Registrar" means the Registrar of the University appointed pursuant to section 16;

"School" means a School within the University instituted under section 22;

"Senate" means the Senate of the University established under section 17;

"Senate Regulations" means Senate Regulations made under section 31;

"Statutes" means the Statutes set forth in the Schedule, as from time to time amended under section 30;

7 of 1988 "Students Loan Scheme" means the scheme established under the provisions of Part IIIA;

"University" means the University of Malaŵi established by section 3;

"Vice-Chairman" means the Vice-Chairman of the Council appointed pursuant to section 11 (8);

"Vice-Chancellor" means the Vice-Chancellor of the University appointed pursuant to section 15.

12 of 1998 "Vice-Principal" means the Vice-Principal of a college appointed under section 21.

PART II

Establishment of University

3. There is hereby established a university by the name and style of the University of Malaŵi.

Establishment of University of Malaŵi

4.—(1) The University shall consist of the following members—

Membership of the University 12 of 1998

(*a*) the Chancellor;

(*b*) the Vice-Chancellor;

(*c*) the Registrar;

(*d*) members of the Council;

(*e*) members of the Senate;

(*f*) all graduates of the University;

(*g*) all holders of Honorary Degrees from the University;

(*h*) all members of the administrative and academic staff of the University;

(*i*) all persons for the time being registered as students of the University;

(*j*) such other persons as the Council may by name or office declare to be members of the University.

(2) Any person who is a member of the University solely by virtue of being possessed of any qualification shall continue to be a member so long as he possesses such qualification.

(3) The Registrar shall keep and maintain a Register of Members of the University, which shall be available for scrutiny by the general public at all reasonable times.

5. The objects of the University shall be to advance knowledge and to promote wisdom and understanding by engaging in teaching and research and by making provision for the dissemination, promotion, and preservation of learning; by engaging in such university education and research as is responsive to the needs of Malaŵi and the whole world; and by offering, within the limits of its resources, to persons suitably qualified academically and who, in the opinion of the Council, are able and willing to benefit from the facilities offered by the University, an education of a high university standard.

Objects of the University 12 of 1998

6. The functions of the University shall be—

(*a*) to encourage the advancement and dissemination of learning and research;

(*b*) to engage in such university education and research as is responsive to the needs of Malaŵi and the whole world;

12 of 1998

(*c*) to provide facilities for higher education, for research and for the advancement of knowledge in such branches of learning and study and for such persons, whether members of

the University or not, as the Council may from time to time determine;

(*d*) subject to this Act and the Statutes, to award and confer Degrees and Diplomas, and other academic distinctions, including Honorary Degrees and distinctions.

Training for public officers, etc.
12 of 1998

7. The University may, as determined by the Council from time to time, provide specialist training in such subjects as may be deemed desirable for such purposes as the Council may determine.

PART III

The Council

Establishment and incorporation of the Council

8. There is hereby established the Council of the University of Malaŵi, which, under that name, shall be a body corporate with perpetual succession and a common seal and shall be capable by that name, of—

(*a*) suing and being sued in all courts;

(*b*) acquiring by purchase, gift, devise, bequest, operation of law, or otherwise, real or personal property wherever situate, or any right or interest therein, and holding the same in any capacity including that of trustee;

(*c*) granting, selling, mortgaging, hypothecating, alienating, assigning, leasing or letting real or personal property; and

(*d*) subject to this Act, doing and performing all such acts and things as a body corporate may by law do or perform or such as are incidental or appertain to a body corporate.

Common seal of the Council

9.—(1) The common seal of the Council shall be kept in such custody as the Council directs, and shall not be used except upon the order of the Council.

(2) All courts, judges, and other persons acting judicially shall take judicial notice of the common seal of the Council affixed to any document and shall presume that it was duly affixed.

(3) The common seal of the Council shall be authenticated by the signature of two members of the Council, or, alternatively, by the signatures of one such member of the Council and of the Registrar, or of some other person nominated in that behalf by the Council.

Functions and powers of the Council
12 of 1998

10.—(1) The Council shall be the governing body of the University and shall be responsible for the management and administration of the University and of its property and revenues, and, shall exercise general control and supervision over all the affairs of the University including its relations with the public, and, without prejudice to the generality of the foregoing, the functions and powers of the Council shall include the following powers and functions—

(*a*) to govern, maintain, administer, dispose of and, save as hereinafter provided, to invest all the property, money, assets, and rights of the University, to manage the business and all other affairs whatsoever of the University, and to enter into engagements and to accept obligations and liabilities without any restriction whatsoever, in the same manner in all respects as an individual may manage his own affairs:

Provided that, before determining any question relating to the matters aforesaid which affects the academic policy of the University, the Council shall refer such matters to the Senate if it has not previously been considered by the Senate, and shall take into consideration any recommendation or report thereon by the Senate;

(*b*) to demand and receive fees, subscriptions, deposits, fines and such other payments, and to effect payment of any money obligation;

(*c*) to take such steps as it thinks fit for the purpose of procuring and receiving contributions to the funds of the University to further the objects of the University, and, for this purpose, to raise money in such manner as it thinks fit;

(*d*) to borrow money on behalf of the University and for that purpose, if it thinks fit, to mortgage or charge all or any part of the real property of the University, unless the conditions of any will, deed or gift or other similar instrument are thereby contravened, and to give such other security, whether upon real or personal property or otherwise, as it thinks fit;

(*e*) to invest any moneys of the University, including any unapplied income, in such stocks, debentures, funds, shares, or other securities as the Council may from time to time determine, whether within Malaŵi or not, or in the purchase of real or personal property, with the like power of varying such investments from time to time by sale or re-investment or otherwise;

(*f*) to sell, buy, exchange, lease, rent, grant or take on lease or rent, real or personal property or portions thereof on behalf of the University, and to acquire any easement over any property held by other persons or to consent to any easement whether public or private over any property of the University;

(*g*) to undertake and execute any trust, the undertaking whereof may seem desirable to the Council for the attainment or fulfilment of any of the objects of the University, and to hold, invest, manage or distribute, in furtherance of and in accordance with any trust direction, discretion, obligation or permission, any property, or the income of any property, held by it as trustee subject to such trust;

(*h*) to enter into, vary, carry out or cancel contracts on behalf of the University, to compound or compromise any

action, suit or proceedings or any debt or claim, and to refer any matter to arbitration;

(*i*) for the aforesaid purposes, to appoint bankers, and any other officers or agents whom it may deem expedient to appoint, to determine any matters relating to the selection and period, terms and conditions of appointment of such persons, to determine and control all matters relating to the opening, use and closing of any such bank accounts as it thinks fit to have, and to cause proper books of account to be kept and audited for all sums of money received and expended by the University and for the assets and liabilities of the University so that the books give a true and fair view of the state of the University's affairs, and explain its transactions;

(*j*) after consultation with the Senate, to establish, institute or discontinue Colleges, Faculties, Schools or such other academic sections of the University, in accordance with this Act, and to assign each such Faculty, School or academic section to a specified College;

(*k*) after consultation with the Senate, to determine terms of service and general conditions relating to the employment of academic staff, and to establish, disestablish or otherwise make or discontinue financial provision for appointments to such posts;

(*l*) after consideration of any recommendation or report thereon from the Vice-Chancellor, to determine the terms of service and general conditions relating to the employment of administrative, clerical, technical and support staff, and to establish, disestablish, or otherwise make or discontinue financial provision for appointments to such posts;

(*m*) to determine the salary scales and general rates of payment for all categories of staff appointed by the University and for other persons commissioned to give services to the University, and to appoint and employ such persons, pay their salaries, wages or fees, and, subject to the provisions of Statute XVII, terminate their appointments;

(*n*) to make provision, so far as it thinks fit, for schemes of insurance, superannuation, pensions or retirement benefits for persons in the employment of the University and the wives, widows and dependents of such persons, to subscribe to benevolent and other such funds for the benefit of such persons, and to make such payments as it thinks fit to such persons;

(*o*) to take such steps as it thinks fit for furthering the objects and interests of the University by making provision for teaching and research, for the printing and publication of research and other works which may be issued by the University, and for the welfare of the staff and the students of the University; such steps to include the provision and maintenance of grounds, recreation facilities, buildings,

premises, furniture, equipment and other means required for carrying on the work of the University and maintaining its efficiency and well-being;

(*p*) to call for reports from the Vice-Chancellor or the Senate, and to review the work of the University in the light of such reports;

(*q*) to make provision for payments to external examiners and to such other persons to whom it thinks fit to make payments to further the objects of the University, and for scholarships, prizes, grants and such other payments to students of the University;

(*r*) after consideration of any recommendation or report thereon from the Senate, to determine fees to be charged to students;

(*s*) to determine to whom the award of Honorary Degrees of the University shall be made in accordance with the procedure prescribed therefor by the Statutes;

(*t*) to decide, after consultation with the Vice-Chancellor, whether or not any donation, gift, grant, devise, bequest or other bounty to the University should be accepted;

(*u*) to enter into agreements and other relationships with other institutions or bodies, whether academic or otherwise, for such purposes as the Council may determine, including the embodiment within the University of any other institution or body and the taking-over and assumption of the property, rights, privileges and liabilities of such other institution or body.

(*v*) to select persons for entry as students of the University on the recommendation of the Selection Committee established in accordance with the Statutes. 12 of 1998

(2) The Council shall consider any recommendation made by the Senate for the amendment or alteration of Statutes relating to the academic administration of the University and for taking any other action in respect of academic matters, and shall either accept, refer back or reject any such recommendation:

Provided that it may not be rejected unless the Senate has previously been informed of the Council's reasons for wishing to reject it and has been given an opportunity to comment thereon to the Council.

(3) The Council shall not discriminate against any person because of race, ethnic origin, political affiliation or opinion, religion, or sex whether in respect of— 12 of 1998

(*a*) the appointment of any person to the academic or other staff of the University; or

(*b*) the registration of any person as a student of the University; or

(*c*) the right of any person to hold any advantage or privilege of the University,

and the Council shall ensure that such discrimination shall not be practised in any instance by the Senate, any Statutory Committee, committee or officer of the University.

12 of 1998

(4) The Chairman shall keep the Chancellor fully informed on matters concerning the general conduct of the affairs of the University.

Composition of the Council
12 of 1998

11.—(1) The Council shall consist of the following members—

(*a*) the Chairman of the Council, appointed by the President;

(*b*) the Vice-Chancellor;

(*c*) the Principals of Colleges;

(*d*) the Secretary for Education, or his designate representative, *ex officio*;

(*e*) the Secretary to the Treasury, or his designate representative, *ex officio*;

(*f*) two members appointed by the Chancellor;

(*g*) four members appointed by the Senate from among its members;

(*h*) one member elected by the University of Malaŵi Alumni Association;

(*i*) one member appointed by the Council from a panel of three persons distinguished in university affairs in Malaŵi nominated by the Vice-Chancellor;

(*j*) one female member and one male member elected by the University of Malaŵi Students Union;

(*k*) such other members, not exceeding four, as the Council may co-opt, pursuant to subsections (3) and (4).

(2) Ex officio members of the Council shall remain members for so long as they hold the office, or the nomination, by virtue of which they have become members.

(3) Co-opted members of the Council shall be elected from a panel nominated jointly by the Chairman and the Vice-Chancellor. The panel so nominated shall consist of not less than eight persons engaged in the professions and in industrial, agricultural and commercial occupations in Malaŵi.

(4) Of the co-opted members elected, at least one shall be a woman and one a practising member of the teaching profession. No member of the full-time academic or administrative staffs of the University may be elected to the Council as a co-opted member.

12 of 1998

(5) Every member of the Council, except the Vice-Chancellor, the Principals and an *ex officio* member, shall hold office for two years from the date of appointment, and shall be eligible to be reappointed a member of the Council for further periods of two years.

(6) The Council shall appoint, from among the members appointed under paragraphs (*f*) and (*i*) of subsection (1), a member of Council to be Vice-Chairman thereof, who shall perform all the functions and duties of the Chairman in the event that the Chairman is unable to perform his functions and duties for any other reason. 12 of 1998

(7) The Registrar shall act as Secretary to the Council. 12 of 1998

(8) The Council shall appoint, from among the members appointed under paragraphs (e), (i), and (j) of subsection (1), a member of the Council to be Vice-Chairman thereof, who shall perform all of the functions and duties of the Chairman in the event that the Chairman is absent from Malaŵi, or, for the purposes of any meeting of the Council, in the event that the Chairman fails to attend such meeting.

(9) The Registrar shall act as Secretary to the Council.

Meetings and procedure of the Council

12.—(1) The Council shall meet at such times and places as may be necessary or expedient for the transaction of business, and such meetings shall be held at such times and places and on such dates as may be provided by the Statutes, or otherwise as the Council may determine:

Provided that the Chairman may at any time call a meeting of the Council and shall do so on the request in writing made to him in that behalf by any five members.

(2) One-third of the members of the Council shall constitute a quorum thereof.

(3) If the Chairman and Vice-Chairman are for any reason absent from any meeting of the Council, the members present may elect one of their number to preside at such meeting.

(4) Any matter for decision by the Council shall be determined by a majority vote of the members present and voting, and where there is an equality of votes the Chairman, or, in his absence, the Vice-Chairman or other member presiding, shall have a casting vote in addition to his deliberative vote.

(5) Subject to this Act and the Statutes, the Council may determine its own procedure.

PART IIIA

7 of 1988

Students Loan Scheme

Establishment of the Students Loan Scheme

12A.—(1) Where in exercise of its powers and functions under section 10, the Council requires students admitted to the University to pay fees, the Council may establish and operate a scheme to be known as the Students Loan Scheme which shall consist of funds out of which loans may be granted to students to enable them pay such fees.

(2) Every loan under the Students Loan Scheme shall be granted under an agreement in writing (hereinafter referred to as a ''loan agreement'') to be entered into between the Council and the student seeking the grant of the loan.

(3) Every loan agreement and the provisions, terms and conditions thereof shall be in the form prescribed by Statutes.

Enforceability of loan agreement

12B. A loan agreement under the Students Loan Scheme shall bind the student who is a party to it and shall be enforceable against him in accordance with its provisions, terms and conditions notwithstanding any written or other law whatsoever to the contrary respecting the capacity of a minor to enter into an agreement and to be bound thereby.

Powers of the Council respecting the Students Loan Scheme

12C.—(1) In administering the Students Loan Scheme, the Council shall have power, subject to the general or special directions of the Minister, to determine—

(*a*) the criteria in accordance with which a student may be considered eligible for a loan;

(*b*) the amount of loan repayment instalments and the interest chargeable thereon;

(*c*) the time when, and the period during which, a loan, including interest thereon, may be repaid;

(*d*) the manner in which the loan repayments may be made to the Council;

(*e*) all such other matters and questions as the Council may consider proper for the administration of the Students Loan Scheme.

(2) The Council may enter into an arrangement with any employer of a former student for the recovery of any outstanding indebtedness owed by that student to the Council under the Students Loan Scheme by which arrangement the employer may agree to deduct from the salary or other emoluments payable to the employee concerned the amounts of repayments instalments agreed under the loan agreement and to remit such amounts directly to the Council.

12 of 1998

(3) Where the Council enters into the arrangement referred to in subsection (2), the arrangement shall be deemed to be a term of the loan agreement and the former student shall be bound by it as if it had been a term of the loan agreement at the time it was entered into.

Administration of the Students Loan Scheme

12D.—(1) For the proper administration and management of the Students Loan Scheme, the Council may appoint a committee and assign to it such functions as the Council may consider appropriate; and without derogation from the generality of the foregoing, the functions of such committee may include—

(*a*) consideration of applications for loans by students;

(*b*) recommending to the Council the names of students who, in accordance with the eligibility criteria, may be granted loans and the amounts to be granted to such students;

(*c*) making recommendations to the Council on all aspects of the administration and operation of the Students Loan Scheme.

(2) The committee appointed under subsection (1) may consist of persons who are or are not members of the Council and shall include a representative of the Ministry of Education appointed from amongst serving senior officers in that Ministry.

Separate accounts and reports for the Students Loan Scheme

12E.—(1) The Council shall cause a separate set of proper books and records of account to be opened and maintained in respect of any money appropriated or otherwise received for the purposes of the Students Loan Scheme and shall furnish to the Minister, within six months after the end of each financial year, a report of the audited accounts of the funds of the Students Loan Scheme together with a general report on the administration thereof in respect of that year.

(2) The books of account relating to the Students Loan Scheme shall at all reasonable times during normal business hours be open to inspection by any officer in the public service duly authorized by the Minister in that behalf, any donor to the Students Loan Scheme and the auditors to the University.

Investment of funds for the purpose of the Students Loan Scheme

12F. The Council may invest, on interest bearing accounts with commercial banks or other financial institutions in Malaŵi or in such other securities available in Malaŵi as the Minister may generally or specially approve, such sums out of the funds appropriated or otherwise received for the purposes of the Students Loan Scheme as are not immediately required for such purposes.

PART IV

Officers of the University

Chancellor
28 of 1994

13.—(1) There shall be a Chancellor of the University who shall be the head of the University.

(2) The President shall be the Chancellor of the University.

Functions and duties of the Chancellor

14.—(1) The Chancellor, whenever present, shall preside at all ceremonial and other congregations of the University and shall, in the name of the University, confer all degrees, diplomas and certificates of the University.

12 of 1998

(2) The Vice-Chancellor shall keep the Chancellor and the Minister fully informed on matters concerning the general conduct of the affairs of the University and shall furnish the Chancellor and the Minister with such information as they may request on any particular matter relating to the affairs of the University.

(3) The Chancellor shall exercise such other functions and duties in relation to the University as are conferred upon him, from time to time, by the Statutes.

Vice-Chancellor

15.—(1) There shall be a Vice-Chancellor of the University, who shall be the principal academic and administrative officer of the University.

12 of 1998

(2) The Vice-Chancellor shall be appointed by the Council after considering recommendations in writing of the suitability of various candidates submitted to the Council by a committee of nine members appointed for that purpose and consisting of—

(*a*) the Chairman, who shall be chairman of such committee;

(*b*) three members of the Council, not being members of the Senate, appointed by the Council;

(*c*) five members of the Senate appointed by the Senate:

Provided that the appointment of the Vice-Chancellor shall be subject to the approval of the Chancellor.

12 of 1998

(3) The Vice-chancellor shall—

(*a*) hold office for a period of four years and on such terms and conditions as may, from time to time, be prescribed by or under this Act or the Statutes, and shall be eligible to be reappointed Vice-Chancellor for further periods of four years; and

(*b*) exercise such powers and functions, as may, from time to time, be prescribed by or under this Act or the Statutes.

12 of 1998

(4) There shall be a Pro-Vice-Chancellor of the University who shall assist the Vice-Chancellor in the performance of his functions.

12 of 1998

(5) The provisions of subsections (2) and (3) shall apply *mutatis mutandis* to the appointment and term of office of the Pro-Vice-Chancellor.

Registrar

16.—(1) There shall be a Registrar of the University appointed by the Council who shall be the chief administrative officer of the University under the Vice-Chancellor and shall exercise such powers and perform such duties in relation to the administration of the University as are assigned to him by this Act, by the Statutes and by the Council, or as are delegated to him by the Vice-Chancellor.

(2) The Registrar shall be under the immediate supervision and control of the Vice-Chancellor.

(3) The terms and conditions of employment of the Registrar shall be as determined, from time to time, by the Council.

University Librarian
12 of 1998

16A.—(1) There shall be a Librarian of the University appointed by the Council who shall be the principal officer in-charge

of the University Library and of the libraries of the Colleges and who shall exercise such powers and perform such duties as are assigned to him by or under this Act or the Statute, or by the Council or as delegated to him by the Vice-Chancellor.

(2) The Librarian shall be under the immediate supervision and control of the Vice-Chancellor.

(3) The terms and conditions of employment of the Librarian shall be determined, from time to time, by the Council.

PART V

The Senate

17.—(1) There is hereby established a Senate of the University which shall consist of the following members— Senate 4 of 1981

(*a*) the Vice-Chancellor, who shall be chairman;

(*b*) the Principals;

(*c*) the Deans;

(*d*) one member from each Faculty and School, elected, in accordance with the relevant Statutes, from and by the full-time academic staff holding posts allocated to the Faculty or School;

(*e*) other members representing each of the various Colleges, elected, in accordance with the relevant Statutes, from and by the full-time academic staff holding posts allocated to such College; the number of such representatives elected for each such College being as prescribed for such College by the relevant Statutes;

(*f*) such other members, not exceeding five, as may be co-opted, from time to time, by the Senate, for periods not exceeding twelve months and on such conditions as the Senate may determine. 12 of 1998

(*g*) one member elected by the University of Malaŵi Students' Union; 12 of 1998

(2) Every elected member of the Senate shall serve until the end of the second year following his election and shall be eligible for re-election.

(3) An elected member shall cease to be an elected member of the Senate and his membership thereof as such shall become vacant—

(*a*) upon his becoming a member of the Senate, *ex officio*;

(*b*) upon the post he holds on the academic staff being allocated to another College, Faculty or School, as the case may be;

(*c*) upon his resignation from the full-time academic staff or from membership of the Senate.

(4) The Registrar shall act as Secretary to the Senate.

Functions and powers of the Senate

18. The Senate shall perform such functions and exercise such powers as are prescribed by this Act or by the Statutes to be performed or exercised by the Senate.

Meetings of the Senate

19. The Senate shall be convened, from time to time, and meetings thereof shall be held, in accordance with the relevant provisions of the Statutes.

PART VI

Colleges, Faculties and Schools

Colleges

20.—(1) Subject to subsection (2), there shall be within the University such Colleges as the Council may, after consultation with the Senate and with the approval of the Minister, establish.

12 of 1998

(2) The Colleges within the University shall include the following—

(*a*) Bunda College of Agriculture;

(*b*) Chancellor College;

(*c*) The Polytechnic;

(*d*) Kamuzu College of Nursing; and

(*e*) College of Medicine.

(3) The Colleges shall be under the general administrative supervision of the Council and under the general academic supervision of the Senate.

Principals
12 of 1998

21.—(1) The Council shall, subject to the relevant provisions of the Statutes, appoint, on such terms and conditions as it deems fit, a Principal of each College from amongst suitably qualified persons recommended to the Council by a committee of five members of the Senate, three of whom shall come from the College to which the Principal shall be assigned.

(2) A Principal shall—

(*a*) hold office for a period of four years and shall be eligible to be reappointed Principal for further periods of four years; and

(*b*) perform the functions and duties prescribed by the Statutes.

(3) The Council shall, on the recommendation of the Principal of a College, appoint a Vice-Principal of the College on such terms and conditions as it deems fit.

(4) The Vice-Principal shall—

(*a*) hold office for a period of two years and shall be eligible to be reappointed Vice-Principal for further periods of two years; and

(*b*) assist the Principal in the performance of his functions and duties.

Faculties and Schools
4 of 1981

22.—(1) There shall be within the University such Faculties and Schools as the Council may, on the recommendation of the Senate, institute.

(2) The Council shall, on the recommendation of the Senate, assign each Faculty and School to a stated College and may, from time to time, as it deems it to be expedient, after consultation with the Senate, remove any Faculty or School from any College and reassign it to another or may discontinue any Faculty or School.

Deans
12 of 1998

23.—(1) There shall be a Dean of each Faculty and School, who shall be *ex officio* chairman of that Faculty or School and who shall, under the general direction and control of the Principal of the College to which that Faculty or School is assigned, perform such other functions and exercise such other duties as may, be prescribed by the Statutes.

(2) A Dean shall be elected, in accordance with the relevant Statutes, from and by the full-time academic staff holding posts assigned to the Faculty or School concerned, and he shall hold office from such date as the Senate shall determine until the end of the second year following that date, or until such earlier date as the Senate may in each case determine.

(3) A Dean may, by notice in writing given to the Senate, resign his post as Dean, but such resignation, unless expressly so stated, shall not entail his resignation from any other academic post he holds in the University.

(4) A Dean shall be eligible for re-election for further periods of office.

12 of 1998

(5) A Faculty may, by a resolution of at least two-thirds of all the members of the Faculty, remove from office the Dean of the Faculty.

12 of 1998

(6) There shall be a Deputy Dean who shall assist the Dean in the performance of his functions.

12 of 1998

(7) The provisions of subsections (2), (3) and (4) shall apply, *mutatis mutandis*, to the election and removal from office of the Deputy Dean.

Composition of Faculties and Schools

24.—(1) Each Faculty and School shall consist of—

(*a*) the Dean of that Faculty or School, who shall be chairman;

(*b*) the Vice-Chancellor;

(*c*) the Principal of the College to which that Faculty or School is assigned;

(*d*) all members of the full-time and part-time academic staff holding posts allocated to that Faculty or School; and

(*e*) such other members of the full-time or part-time staff of the University as may be co-opted by that Faculty or School as associate members for such period and on such terms as that Faculty or School may, in each case, determine.

(2) Associate members shall have the right to attend all meetings of the Faculty or School by which they have been coopted, and to take part in its deliberations, but shall have no right to vote thereon.

Departments
12 of 1998

24A.—(1) There shall be, within every Faculty, a Department to be headed by a Head of Department who shall be *ex officio* chairman of the Department.

(2) The Head of Department shall, in academic matters, be under the direction and control of the Dean of the Faculty to which the Department is assigned, and shall exercise powers and perform functions and duties as may, from time to time, be determined by the Senate.

(3) The Head of Department shall be elected—

(*a*) at a meeting of the Department convened and chaired by the Dean in accordance with the Statutes; and

(*b*) from the full-time academic staff holding posts assigned to the Department concerned, and shall hold office from such date as the Senate shall determine until the expiry of the second year following that date, or until such later date as the Senate may determine, in respect of each Head of Department, on a case by case basis.

(4) The Head of Department may, by notice in writing to the Principal of the College and submitted through the Dean, resign from his office, but such resignation shall not affect any other academic post which the Head of Department holds in the University.

(5) A Department may, by resolution of at least two-thirds of all the members of the Department, remove from office the Head of Department.

(6) The Head of Department shall be eligible for reelection to his post for such further term of office as the Senate may determine.

Composition
of
Department
12 of 1998

24B.—(1) Each Department shall consist of—

(*a*) the Head of Department;

(*b*) the Principal of the College to which the Department is assigned;

(*c*) the Dean of the Faculty to which the Department is assigned;

(*d*) all members of the full-time academic staff holding posts allocated to the Department; and

(*e*) such other members of the full-time or part-time staff of the University as may be co-opted by the Department for such period and on such terms as the Department may determine.

(2) A co-opted member of the Department shall have the right to attend all meetings of the Department and to take part in deliberations, but shall have no right to vote on any matter.

PART VII

Financial Provisions

Property of the University

25.—(1) The property of the University shall consist of—

(*a*) such sums as may, from time to time, be payable to the University from moneys appropriated therefore by Parliament;

(*b*) such sums of money or other property, real or personal, as may be acquired, purchased or received by, or transferred to, the University, whether by way of gift, devise, bequest, purchase or otherwise howsoever;

(*c*) such sums of money or other property, real or personal, as may accrue to the University in the exercise of its powers or the performance of its functions under this Act;

(*d*) such sums of money or other property, real or personal, as may accrue to, or be received by, the University by way of fees, grants, subsidies, contributions, donations, subscriptions, rents, interest or royalties from the Government or from any person;

(*e*) such sums of money or other property, real or personal, as may be donated to the University by any foreign Government international agency, or other body or person situate or resident outside Malaŵi.

(2) Where, under the terms of any written instrument, any right, title or interest in real or personal property is expressed to be disposed, granted or conveyed to the University, the said instrument shall, subject to law, have effect as a disposition, grant or conveyance of such property to the Council and shall vest such property in the Council to the extent of the right, title or interest therein expressed to be so disposed, granted or conveyed.

(3) The property of the University shall be payable to, vested in, held, managed and controlled by the Council, under this Act.

Compliance with the provisions of the Finance and Audit Act and audit of accounts Cap. 37:01

26.—(1) The Council shall at all times comply with the provisions of the Finance and Audit Act.

(2) The accounts of the University shall be audited at the end of each financial year by an auditor or auditors appointed by the Council, in accordance with Statute X.

(3) The Council shall pay, in respect of any audit held under this Part, such fees, costs and expenses as may be appropriate.

(4) The auditor may by writing under his hand require the production of all books, deeds, contracts, vouchers, receipts and other documents relating to the accounts or investments of the University which he may deem necessary for the purpose of the audit, and he may summon in writing all such persons, having knowledge of the affairs of the University, as he may think proper, to appear before him personally at the offices of the Council, at a time to be fixed in such summons, for examination in connexion with any documents or matters relating to the audit.

(5) Any person, who, without just cause, fails or refuses to produce any document the production of which has been duly required by the auditor, or who, having been duly required by the auditor, or who, having been so summoned—

(*a*) without just cause neglects or refuses to comply with the said requirement or summons; or

(*b*) having appeared before the auditor, without just cause refuses to be examined; or

(*c*) without just cause refuses to answer such questions pertaining to the audit as are put to him by the auditor,

shall be liable to a fine of K100 for every such refusal or neglect. In default of payment, such person shall be liable to imprisonment for three months:

Provided that any conviction under this section shall not operate or be taken to exempt the person convicted from the liability to do or perform the act, matter or thing required of him.

(6) After completion of the audit of the accounts of the University, the auditor shall report thereon in writing to the Council about the audit generally and on such specific matters in relation thereto as the Council may direct. The Council shall take the report under consideration within two months after the date of the receipt thereof.

Accounts 7 of 1988

27.—(1) All the moneys of the University shall be held in the name of the Council and shall be paid into one or another of the following accounts—

(*a*) the Endowment Fund;

(b) the special account;

(*c*) the capital account;

(*d*) the revenue account;

(*e*) the Students Loan Scheme account. 7 of 1988

(2) There shall be paid into the Endowment Fund all such moneys as are received by the Council and declared specifically to be payable into that Fund.

(3) The Council shall not, save with the prior approval of the Chancellor, expend any capital moneys of the Endowment Fund and shall pay into the revenue account all interest received from the investment of the moneys of the Endowment Fund. 12 of 1998

(4) There shall be paid into the special account all such moneys as are donated to and received by the Council for special purposes and which are not payable into the Endowment Fund or any other account.

(5) The capital moneys, and the interest therefrom, of the special account shall be used and applied for the special purposes for which such moneys were donated and in accordance with the conditions of such donation:

Provided that the Council shall not be obliged to accept a donation for a particular purpose unless it approves of the terms and conditions attaching to such donation.

(6) There shall be paid into the capital account all such moneys as are received by the Council for the purpose of capital expenditure for the construction and improvement of the University.

(7) The capital moneys, and the interest therefrom, of the capital account shall be used and applied by the Council on capital expenditure for the construction and improvement of the University.

(8) There shall be paid into the revenue account—

(i) the interest received from the investment of the moneys in the Endowment Fund;

(ii) all fees, charges, dues and other amounts payable by or in respect of students;

(iii) all revenue grants made by the Government of Malaŵi or by any other Government or by any person or organization to the Council for the purposes of the University;

(iv) all sums transferred under this Act from the Endowment Fund or any other account to the revenue account;

(v) all other sums received by the Council and not payable into the Endowment Fund or any other account.

(9) The moneys standing to the credit of the revenue account shall be used and applied by the Council for the management and working of the University in such manner and for such purposes as, in the opinion of the Council, are best suited to promote the interests of the University.

7 of 1988

(10) Subject to the provisions of Part IIIA, there shall be paid into the Students Loan Scheme account—

(*a*) such sums as may be appropriated by Parliament for the purposes of the Students Loan Scheme;

(*b*) interest accrued to any investment undertaken pursuant to section 12F;

(*c*) such sums as may be received, by way of donations, subscriptions, bequests, or gifts considered acceptable by the Council for the purposes of the Students Loan Scheme.

Borrowings

28. Subject to the provisions of this Act and of the Finance and Audit Act, the Council may borrow, either by way of overdraft from a banker or otherwise, such sums as it may from time to time require for the carrying out of its functions and powers.

PART VIII

Miscellaneous

The Statutes

29. Subject to this Act, the University shall be governed and administered in accordance with the provisions of the Statutes set forth in the Schedule.

Amendments to the Statutes

30.—(1) The Statutes may, pursuant to and in accordance with this section, be amended, from time to time, for the better carrying out of the purposes, and the more efficient administration, of this Act, and without prejudice to the generality of the foregoing, any such amendment may be made by way of alteration, addition, repeal or replacement, and may make provisions for—

(*a*) any matter which is required by this Act to be prescribed by the Statutes;

(*b*) the creation of permanent committees of the Council, or of the Senate, as the case may be, the membership of such committees, and the powers, functions or duties to be delegated thereto;

(*c*) the functions, duties and term of office of any officer of the University or member of the academic or administrative staff, to the extent that such functions or duties or term of office are not prescribed by this Act;

(*d*) the creation of new offices and posts within the University, the functions and duties attaching to such offices and posts, the duration thereof, and the manner of appointment thereto;

(*e*) such other matters, including matters of procedure and discipline, as may be deemed expedient or proper by the Council for regulation by Statute.

(2) The Council may by special resolution adopt any proposal to amend the Statutes.

(3) Upon the adoption by the Council of any proposal to amend the Statutes under subsection (2), the Vice-Chancellor shall, as soon as is practicable thereafter, submit to the Minister for his approval a certified copy of the proposal as adopted by the Council.

(4) If the Minister does not approve the proposal he shall notify the Council, in writing, of his non-approval.

(5) If the Minister approves the proposal, he may, by Order published in the *Gazette*, amend the Schedule in accordance with the terms of the said proposal.

(6) For the purposes of this section, the expression "special resolution" means a resolution—

(*a*) notice of which has been given to each member of the Council, not less than thirty days before the date of the meeting of the Council at which it is intended to be moved; and

(*b*) which is moved at a meeting of the Council with not less than one-half of the total membership of the Council being present at the time such resolution is moved and voted upon; and

(*c*) which is passed by a majority of not less than two-thirds of the members of the Council present at such meeting.

Senate Regulations 4 of 1981

31.—(1) Subject to this Act and to the Statutes and to the approval of the Council, the Senate may, by Senate Regulations made by notice published as provided in subsection (2), prescribe for the better carrying out of its functions and power under this Act and under the Statutes, and without prejudice to the generality of the foregoing, such Senate Regulations may make provision for—

(*a*) matters relating to teaching within the University, or to the teaching of any specified subject, periodic reports from professors and lecturers on the progress of students in any subjects, Faculty, School or College, and other like matters;

(*b*) schemes of study and research, and the conditions under which persons may be permitted to embark upon or to continue any such scheme;

(*c*) the terms and conditions under which students or other persons may use the library of the University, or any College library;

(*d*) the conduct and supervision of examinations;

(*e*) the award of Degrees, Diplomas or other academic honours and distinctions other than Honorary Degrees and distinctions;

(*f*) dealing with general academic disciplinary matters. 12 of 1998

(2) Any notice made pursuant to subsection (1) shall be published by the Registrar causing copies thereof to be posted for not less than seven days—

(*a*) in a prominent place outside his office, and also—

(*b*) on boards provided for such purpose in each of the Colleges and public halls of the University.

Service of process and other documents on the Council

32. Any writ or other process, notice, or document may be served upon the Council by serving the same upon the Registrar.

G.N. 11/1980 92/1988 120/1988 65/1997

s. 29

SCHEDULE

STATUTES OF THE UNIVERSITY

STATUTE

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STATUTE I

Interpretation

In these Statutes, unless the context otherwise requires—

G.N. 11/1980

"academic staff" means all persons for the time being holding appointments, whether full-time or part-time, under contract with the Council, as professors, readers, senior lecturers, lecturers, assistant lecturers, instructors or demonstrators of the University, or so holding any other post declared by the Senate by category or title to be an academic post;

"academic year" means such period not exceeding twelve consecutive months and "term" and "academic term" mean such part of an academic year, as the Senate may from time to time determine:

Provided that the Senate may, at any time, extend any academic year beyond the period of twelve months, and, in such event, such period so extended shall, for all purposes, constitute such academic year.

"administrative staff" means all persons for the time being holding appointments, whether full-time or part-time, under contract with the Council, in the administration of the affairs of the University;

"congregation" means such members of the University as are invited to and attend the award of degrees and other academic distinctions; G.N. 65/1997

"hall" means a residential or a non-residential hall;

"lecturer" includes an associate professor, a senior lecturer and an assistant lecturer; G.N. 65/1997

"Statutory Committees" means the Senate, the Faculties, the Schools, the Appointments Committee, and the Finance Committee; G.N. 142/1981

"student" means an undergraduate or graduate of the University, or other person, who is currently registered for a Degree or Diploma or Certificate of the University, or a person who is in a category of persons classified by the Council as students for any purpose.

STATUTE II

G.N. 65/1997

Congregations

1. The time, place and procedure of the congregations of whole University shall be determined by the Senate in consultation with the Chancellor. G.N. 65/1997

2. Degrees, Diplomas, Certificates and other academic distinctions shall be conferred in the presence of the Congregation.

3. The Chancellor, or in his absence, the Vice-Chancellor, or in the absence of both the Chancellor and Vice-Chancellor, the Pro-Vice-Chancellor, or in the absence of the Chancellor, Vice-Chancellor and Pro-Vice-Chancellor, a member of the Council appointed for the purpose by the Council, shall preside at congregations. G.N. 65/1997

4. At least one Congregation shall be held in each academic year.

STATUTE III

G.N. 11/1980
120/1988
54/1992
65/1997

Degrees and Other Academic Distinctions

1. The University may confer any of the following Degrees—

(1) Bachelor of Arts—B.A.

(2) Bachelor of Arts in Public Administration—B.A. (Pub. Admin.)

(3) Bachelor of Education—B.Ed.

(4) Bachelor of Laws—LL.B.
(5) Bachelor of Science in Agriculture—B.Sc. (Agric.)
(6) Bachelor of Science—B.Sc.
(7) Bachelor of Social Science—B.Soc.Sc.
G.N. 11/1980 (8) Bachelor of Commerce in Accountancy—B.Com. (Acc.)
(9) Bachelor of Commerce in Management—B.Com. (Mgt.)
(10) Bachelor of Science in Engineering—B.Sc. (Eng.)
(11) Bachelor of Arts with Honours—B.A. (Hons)
(12) Bachelor of Science with Honours—B.Sc. (Hons)
(13) Bachelor of Social Science with Honours—B.Soc.Sc. (Hons)
(14) Bachelor of Laws with Honours—LL.B. (Hons)
(15) Bachelor of Science in Agriculture with Honours—B.Sc. (Agric.) (Hons)
(16) Bachelor of Science in Engineering with Honours—B.Sc. (Eng.) (Hons)
G.N. 120/1988 (17) Bachelor of Commerce in Business Administration—B. Com. (Bus. Admin.)
(18) Master of Science in Agriculture—M.Sc. (Agric.)
(19) Master of Science in Applied Chemistry—M.Sc. (App. Chem.)
(20) Master of Arts—M.A.
(21) Master of Science—M.Sc.
(22) Master of Laws—LL.M.
(23) Doctor of Philosophy—Ph.D.
(24) Doctor of Letters—D.Litt.
(25) Doctor of Laws—LL.D.
(26) Doctor of Science—D.Sc.
G.N. 54/1992 (27) Bachelor of Accountancy—B.Acc.
(28) Bachelor of Business Administration—BBA.
(29) Bachelor of Arts in Theology—B.A. (Theology)
(30) Bachelor of Science in Nursing—B.Sc. (Nursing)
(31) Bachelor of Science in Civil Engineering—B.Sc. (Civil Eng.)
(32) Bachelor of Science in Electrical Engineering—B.Sc. (Elect. Eng.)
(33) Bachelor of Science in Mechanical Engineering—B.Sc. (Mech. Eng.)
(34) Master of Science in Animal Science—M.Sc. (Animal Sc.)
(35) Master of Science in Agricultural Economics—M.Sc. (Agric. Econs.)
(36) Master of Science in Agricultural Extension—M.Sc. (Agric. Ext.)
(37) Master of Science in Agronomy—M.Sc. (Agronomy)
(38) Master of Arts in Economics—M.A. (Econs.)
(39) Master of Arts in Sociology (Women in Development)—M.A. (Soc.)
G.N. 65/1997 (40) Bachelor of Education (Technical)—B.Ed. (Tech.)
G.N. 65/1997 (41) Bachelor of Medicine, Bachelor of Surgery—M.B.B.S.

(42) Bachelor of Science in Environmental Health—B.Sc. (Env. He.) G.N. 65/1997

(43) Bachelor of Science in Environmental Science and Technology—B.Sc. (Env. Sc. Tech.) G.N. 65/1997

(44) Master of Arts in Economics—M.A. (Econ.) G.N. 65/1997

(45) Master of Science in Agricultural Economics—M.Sc. (Agric. Econ.) G.N. 65/1997

(46) Master of Science in Agronomy—M.Sc. (Agron.) G.N. 65/1997

(47) Master of Science in Rural Development and Extension—M.Sc. (Rur. Dev. Ext.) G.N. 65/1997

2. The University may award any of the following Diplomas and Certificates—

(1) Diploma in Agriculture—Dip. Agric.

(2) Diploma in Business Studies—Dip. Bus. Studies

(3) Diploma in Education—Dip. Ed.

(4) Diploma in Engineering—Dip Eng.

(5) Diploma in Public Administration—Dip. Pub. Admin. G.N. 11/1980

(6) Diploma in Communication Studies—Dip. Comm.

(7) Diploma in Management Studies—Dip. Mgt.

(8) Diploma in Technical Teaching—Dip. Tech. Teaching

(9) Diploma in Public Health—Dip Pub. Health

(10) Diploma in Nursing—Dip. Nurs.

(11) Diploma in Management—Dip. Mgt. G.N. 120/1988

(12) Diploma in Technical Education—Dip. Tech. Ed.

(13) Diploma in Laboratory Technology—Dip. Lab. Tech.

(14) University Certificate in Education—U.C.E.

(15) University Certificate in Management (Nursing Administration)—U.C. Mgt. (Nurs. Admin.) G.N. 120/1988

(16) University Certificate in Midwifery—U.C. Mid.

(17) Diploma in Civil Engineering—Dip. Civil Eng. G.N. 54/1992

(18) Diploma in Electrical Engineering—Dip. Elect. Eng.

(19) Diploma in Mechanical Engineering—Dip. Mech. Eng.

(20) University Certificate in Accounting—U.C. Acc.

(21) University Certificate in Marketing—U.C. Marketing

(22) University Certificate in Computer Science—U.C. Comp. Sc.

(23) Diploma in Architectural Technology—(Dip. Arch. Tech.) G.N. 65/1997

(24) Diploma in Journalism—(Dip. Journ.) G.N. 65/1997

3. Subject to paragraph 6, the University may award such other academic distinctions of honour or merit as the Council may, from time to time, determine.

4. Degrees shall be conferred by the Chancellor, or in his absence by the Vice-Chancellor, or in the absence of both of them by the Acting Vice-Chancellor, at Congregations of the whole University:

Provided that where the Chancellor, Vice-Chancellor and Acting Vice-Chancellor are not available, the Council may appoint a member of the Council to confer the Degrees at any such Congregation.

5. No person shall be allowed to proceed to any Degree except an *aegrotat* Degree without examination or other adequate test, but Honorary Degrees may be conferred as the Chancellor thinks fit on the recommendation of the Council, as advised by the Honorary Degrees Committee.

6. No new Degree shall be established or other distinction of honour or merit adopted by the Council save on the recommendation, or with the approval of the Senate.

G.N. 65/1997

STATUTE IV

The Vice-Chancellor

G.N. 65/1997

1. The Vice-Chancellor shall be a member of every committee of the Council and Senate except the Appeals Committee and of every Statutory Committee but shall not be a member of the committee established under subsection (2) of section 15 of the Act.

G.N. 142/1981

2. The Vice-Chancellor shall have power to appoint a person to act as the Principal of a College, as the Dean of a Faculty or School, as the Head of a Department, as the Director of a Centre or Unit, as the Registrar, as the Finance Officer, or as the Librarian, during a temporary vacancy in such a post or the temporary absence from duty or inability of the holder of such a post. The person so appointed may exercise all or any of the powers, perform all or any of the duties, and have such of the privileges of the holder of the post to which he is appointed to act, as the Vice-Chancellor may determine.

G.N. 65/1997

3. The Vice-Chancellor—

(*a*) shall exercise general appellate disciplinary powers in nonacademic matters in respect of students; and

(*b*) may appoint standing or ad hoc committees to advise him on a course of action or to inquire into a matter, and report to him with recommendations as to possible courses of action.

G.N. 65/1997

STATUTE V

The Finance Officer

1. The Finance Officer shall be appointed by the Council.

2. The Finance Officer shall be the principal fiscal officer and treasurer of the University and shall be responsible to the Registrar for the keeping of all University accounts and such inventories as the Council may determine.

3. The Finance Officer shall exercise his powers and duties under the general or special direction of the Finance Committee.

4. The Finance Officer shall be entitled, at any time, to report directly to the Council on any matter involving the finances, revenue or expenditure or financial policy of the University, and shall be entitled to be heard by the Council on any such matter.

5. The Finance Officer shall extend to the auditor or auditors such co-operation as the auditor or auditors deem necessary for the auditing of the accounts and the preparation of any auditors' report.

6. The Finance Officer may, at any time, resign by written notice addressed to the Council.

7. The Council may appoint a Deputy Finance Officer, Senior Assistant Finance Officers and Assistant Finance Officers to assist the Finance Officer in the performance of his duties. G.N. 65/1997

STATUTE VI

G.N. 65/1997

The Principals of Colleges

1. The Principal of each College shall be responsible to the Vice-Chancellor for maintaining and promoting the efficiency and good order of the College of which he is Principal.

2. The Principal of each College shall, within such College, exercise such disciplinary control over the students as is, from time to time, assigned to him by these Statutes or by any regulations made thereunder, or determined from time to time by resolutions of the Council, or such as may be delegated to him from time to time by the Vice-Chancellor.

3. Subject to the Act and these Statutes, and the general or special directions of the Council, the Principal of each College shall be responsible to the said Council for the selection of persons to be registered as students engaging in schemes of study or research assigned to the College of which he is Principal.

4. The Principal of each College shall, within such College, exercise and discharge such other duties in connexion with student affairs as may be determined by the Council.

5. In the execution of his or her responsibilities and duties, every Principal shall, to such extent as he or she may deem necessary for the satisfactory running of the College, consult with the Deans of the Faculties and Schools and with Heads of Department and with other members of the academic staff assigned to the College of which he or she is Principal, and may appoint standing or ad hoc committees to advise him or her on any aspect of his or her responsibilities. G.N. 142/1981 65/1997

STATUTE VII

G.N. 65/1997

The Deans of the Faculties and Schools

1. The Dean of each Faculty or School shall be responsible to the Principal of the College to which the Faculty or School is assigned for the overall co-ordination of all matters relating to the academic welfare of the students within such Faculty or School. G.N. 142/1981 65/1997

2. The Dean of each Faculty or School shall discharge such duties in connexion with students' studies, attendance at lecturers, and other academic matters as may be determined by the Senate.

3. Subject to the Act, the Statutes and the general or special directions of the Council, the Dean shall be responsible to the Council for the selection of persons to be registered as students engaging in schemes of study or research assigned to the Faculty of which he is Dean. G.N. 65/1997

G.N. 65/1997

4. The Dean shall be responsible to the Principal for maintaining and promoting the academic efficiency of the Faculty of which he is Dean.

G.N. 65/1997

STATUTE VIII

The Registrar

1. The Registrar shall be the custodian of all of the records of the University.

2. The Registrar shall keep a register of all members of the University under their respective qualifications, as specified in section 4 (3) of the Act.

3. The Registrar shall exercise such powers and perform such duties as are assigned or delegated to him under section 16 (1).

G.N. 65/1997

4. The Council may appoint a Deputy Registrar, a Senior Assistant Registrar and Assistant Registrars to assist the Registrar in the performance of his duties.

5. In the absence of the Registrar through illness or otherwise the Senior Assistant Registrar shall be entitled to exercise all of the powers and perform all of the duties of the Registrar.

G.N. 65/1997

6. The Deputy Registrar, the Senior Assistant Registrars and Assistant Registrars shall perform such duties, including the duties of the College Registrar, as are assigned to them by the Registrar.

G.N. 65/1997

STATUTE VIIIA

Head Of Department

1. The Head of Department shall be responsible to the Dean of the Faculty to which the Department is assigned for the overall co-ordination of all academic matters of the Department, and to the Principal for all administrative matters of the Department.

2. The Head of Department shall discharge such other duties in connexion with lecturer time-tables, studies, attendance at lectures, examinations and such other matters in his Department as may be determined by the College.

G.N. 65/1997

STATUTE IX

The Librarian

1. The Librarian to the University shall be appointed by the Council.

2. The Librarian shall be the principal officer in charge of the University Library and of the libraries of the various Colleges.

3. The Librarian shall discharge such duties as may be determined from time to time by the Council.

G.N. 65/1997

4. In the exercise of his duties the Librarian shall be immediately responsible to the Vice-Chancellor, and shall perform such duties as are assigned or delegated to him under section 16A under the general supervision and control of the Vice-Chancellor.

5. The Librarian may delegate his authority in respect of any College Library to any Assistant Librarian, who shall be immediately responsible to the Librarian for the management and control of such College Library.

6. The provisions of paragraphs 4 to 6 of Statute VIII shall apply, *mutatis mutandis*, to the Librarian. G.N. 65/1997

STATUTE X

The Auditor

Subject to the Act—

(*a*) the auditor or auditors to the University shall be appointed by the Council from among persons or firms practising as public accountants in Malaŵi;

(*b*) the following persons shall be ineligible for appointment as auditor—

(i) any member of the Council or Senate or of any committee of the Council or Senate;

(ii) any business or professional partner of any member of the Council or Senate or of any member of any committee of the Council or Senate;

(iii) any firm of which any partner is a member of the Council or the Senate or of any committee of the Council or Senate;

(iv) any member of the staff of the University.

(*c*) no person or firm shall be appointed as auditor to the University if he, or any member of the firm of accountants of which he is a partner, or, in the case of a firm, if any member of the firm, is a member of the Council, the Senate, or of any committee of the said Council or Senate;

(*d*) auditors shall be appointed for one year, but shall be eligible for reappointment.

STATUTE XI G.N. 65/1997

Honorary and Emeritus Professors

1. Upon the recommendation of the Senate, the Council may appoint honorary professors and may confer the title of Emeritus Professor upon any professor who has retired from office.

2. An Honorary or Emeritus Professor shall not *ex officio* be a member of the Council, the Senate or of any Faculty or School but may, on invitation, attend the meetings of the Council, the Senate and of any Statutory Committee and take part in the deliberations of such meetings but shall not have the right to vote in such meetings. G.N. 142/1981 65/1997

STATUTE XII G.N. 142/1981

Procedure Generally

1. Save as provided in these Statutes, the Council, Senate, Faculties, Schools and any committees thereof shall determine and

make rules for the time, place and procedure of their respective meetings.

2. The minutes of all meetings of every committee held since the last preceding meeting of the parent body of such committee shall be laid on the table at each meeting of that body, whether it be the Council, the Senate or one of the Faculties or Schools.

3. The minutes of all meetings of the Faculties and Schools held since the last preceding meeting of the Senate shall be laid on the table at each meeting of the Senate.

4. The minutes of all meetings of the Senate shall be sent to the Council.

5. In the event of an equality of votes on any question, motion or resolution at a meeting of the Council, Senate, Faculties, Schools or of any committee, the chairman or person presiding at such meeting shall have a casting vote in addition to his deliberative vote.

G.N. 65/1997

STATUTE XIII

Finance Committee

1. There shall be appointed pursuant to paragraph 3 a Finance Committee which shall make recommendations to the Council upon the following matters, and to which the Council may delegate any or all of its executive functions with regard to such matters, subject to the general policy, control and guidance of the Council—

(*a*) the investment and management of the University's funds;

(*b*) the incurring of, or the authorization of persons or bodies in the University to incur, expenditure from University funds, including any income accruing to any section of, or body in, the University;

(*c*) the annual budget of the University;

(*d*) the control of expenditure from budgetary allocations by means of financial regulations and such other conditions;

(*e*) the preparation and presentation of the annual accounts of the University.

2. The Council shall appoint, from among those members of the Council nominated by the Chancellor, or by the University of Malaŵi ex-Students Association, or co-opted by the Council, a chairman of the Finance Committee who shall, subject to his remaining a member of the Council, hold office until the end of the third year following his appointment or until such earlier date as the Council may in his case determine, and who shall be eligible for reappointment.

G.N. 65/1997

3. The Finance Committee shall consist of the chairman of the Finance Committee, the Chairman of the Council, the Vice-Chancellor, or in the absence of the Vice-Chancellor, the Pro-Vice-Chancellor, Principals, two Senate representatives who are not Principals, the Secretary to the Treasury or his nominee, the Secretary for Education or his nominee, and one person appointed by the Council from among the four members of the Council nominated from and by the Senate. The Finance Committee shall have power to co-opt, with the consent of the Council, further persons to

membership thereof for such period and on such terms as it may in each case determine.

4. The member of the Finance Committee appointed by the Council from among the four members of the Council nominated from and by the Senate shall, subject to his remaining a member of the Council and of the Senate, serve until the end of the third year following his appointment or until such earlier date as the Council may in each case determine, and shall be eligible for reappointment.

STATUTE XIV

G.N. 142/1981 65/1997

Powers and Functions of the Senate

Subject to the Act and to any other powers or functions prescribed by these Statutes, the powers and functions of the Senate shall include the powers and functions—

(*a*) to determine the subjects to be pursued in each College, Faculty, School, Department or other such academic section of the University; to determine what schemes of study and research the University shall offer (whether leading to a qualification or not) and to assign each such scheme to one Faculty or School, and accordingly to allocate each post on the academic staff of the University to one College and, after consultation with the Principal of that College, to allocate each such post to one Faculty or School; and at any time to change such assignments of schemes and allocations of posts on the same terms;

(*b*) to keep under review the academic organization and development of the University with special reference to the effectiveness of the University's work in relation to the objects and functions of the University as set out in sections 5 and 6 of the Act;

(*c*) to make recommendations to the Council for the institution of new Colleges, Faculties, Schools or other such academic sections; for the establishment of additional posts on the academic staff, and for the provision of any other new academic development;

(*d*) to appoint consultative committees on subjects in which the University engages in teaching or research, consisting of members of the academic staff and persons outside the University with a special interest in and responsibility for the subject of concern to such consultative committee. Such committees shall seek and obtain from the Government and other bodies reports on their policy and needs in the various fields of research or employment involving the relevant subject, and shall also obtain reports from the Principals and Deans concerned, on the teaching or research being carried out in the subject in the University and on any proposed academic developments therein. Each such committee shall, with regard to the subject concerned, advise the Senate on the relevance of the curricula to the national need, on employment requirements, and on aspects thereof in which further teaching or research is required;

(*e*) subject to the powers of the Council, to determine matters concerning academic staff, including the subjects in which academic staff appointments are made, and the conditions under which academic staff carry out teaching or research in the University;

(*f*) to control all matters relating to content and methods of teaching, and to content and methods of assessment by examination or otherwise for the award of Degrees, Diplomas and other academic distinctions other than Honorary Degrees or distinctions;

G.N. 65/1997

(*fa*) on the recommendation of Colleges, to consider the performance of students in examinations and decide which of those students shall pass or be referred or repeat or not be re-registered;

(*g*) to appoint, with such duties and under such conditions as it may determine, external examiners and academic consultants for examinations for Degrees and Diplomas; to appoint internal examiners, and to terminate the appointment of any external or internal examiner:

(*h*) to call meetings of academic and administrative staff or groups of such staff, under such arrangements as it shall determine, in order to consider and report upon matters which it wishes to refer to such bodies;

(*i*) to review, amend, refer back or disallow any act of a College, Faculty, School or such other academic body in the University, and to give guidance and direction to any such body;

(*j*) with the approval of the Council, to determine what formalities and conditions shall attach to the conferment of Degrees, Diplomas and other academic distinctions, and to determine all matters relating to academic ceremonial, including academic dress;

(*k*) to determine dates of terms;

(*l*) to recommend to the Council the conferring of the title of Emeritus Professor, or Emeritus Registrar, honorary lecturer or professor, or such other academic title; and with the consent of the Council, recommend to the Appointments Committee appointments to personal chairs and to make recommendations as to the terms and conditions of such appointments;

(*m*) on what it deems to be good cause, to recommend to the Council the deprivation of persons of any Degrees, Diplomas or any other academic distinctions, or of any academic titles, conferred upon or awarded to them by the University;

(*n*) within available resources, to institute, control, regulate, award or discontinue, under terms and conditions determined by it (but subject to any conditions acceptable to it that may be made by donors), fellowships, studentships, scholarships, exhibitions, bursaries, prizes and other such awards to students for the encouragement of study and research;

(*o*) to determine general policy matters relating to library and laboratory facilities, teaching aids services, workshops and such other academic services which are in its view necessary to the furtherance of the academic objects of the University;

(*p*) to determine and control the terms and conditions under which any research or any other activity may be conducted or carried out in the University, or by members of the staff of the University, or under the sponsorship of or in collaboration with the University or with members of its staff;

(*q*) to determine the conditions under which, and the extent, if any, to which, periods and courses of study followed and

examinations passed at other institutions may be regarded as equivalent to periods and courses of study followed and examinations passed in the University;

(*r*) to enter into relations, subject to the powers of the Council, with other bodies, whether academic or otherwise, for the furtherance of the objects of the University, with special regard to the advancement of education or research in Malaŵi;

(*s*) subject to the Act and these Statutes, to take such steps as it thinks fit to give advice, guidance and directions regarding the constitution, functions and activities of any organization of members of the University eligible to receive and expend University funds;

(*t*) to discuss and express an opinion on any matter whatsoever relating to the University.

STATUTE XV

The Faculties and Schools

1. Subject to the Act and these Statutes, the functions of each Faculty or School shall, without prejudice to any other functions expressly prescribed therefor, include the following— G.N. 142/1981

(*a*) to consider and make recommendations to the Senate upon all matters relating to teaching and research in the subjects of the Faculty or School, including curricula and examinations;

(*b*) to consider and make recommendations to the Senate upon all matters relating to the progress of students following schemes of study or research assigned to the Faculty or School;

(*c*) to make recommendations to the Senate for the making of regulations for schemes of study or research;

(*d*) to make recommendations to the Senate, in a manner prescribed by the Senate, for the award of Degrees, Diplomas and other academic distinctions in the subjects of the Faculty or School;

(*e*) to submit proposals to the Senate, in a manner prescribed by the Senate, for academic developments;

(*f*) to put before the Senate any matter of concern to the Faculty or School upon which the Senate is empowered to act;

(*g*) to deal with and, if requested, report on any matters referred to it by the Senate.

2. Recommendations and proposals issuing from any Faculty or School to the Senate shall be presented to the Senate by the Principal of the College to which such Faculty or School is assigned, together with his comments and those of the relevant Dean thereon.

STATUTE XVI

G.N. 65/1997

Appointments Committee

1. There shall be an Appointments Committee consisting of—

(*a*) the Vice-Chancellor, as Chairman;

(*b*) two members of the Council appointed by the Council on such terms and conditions as the Council may determine;

(*c*) one member appointed from and by the Senate on such terms and conditions as the Council may determine;

G.N. 65/1997 (*d*) the principals of Colleges;

(*e*) not more than three persons co-opted by the Vice-Chancellor to membership of the Appointments Committee for each appointment to be made having regard to the subject of the appointment.

G.N. 65/1997 2. There shall be, in each College of the University, a Sub-Committee of the Appointments Committee to be known as the Appointments and Disciplinary Sub-Committee consisting of—

(*a*) the Principal, as Chairman;

(*b*) the College Registrar, who shall be the secretary of the Committee;

(*c*) the Dean; and

(*d*) one senior member of staff.

3. The Council may delegate to the Appointments Committee its powers of making appointments, other than that of making appointments to the posts of Principal, Registrar, Librarian, Finance Officer or Professor or other post at professorial level.

4. The Appointments Committee on behalf, and subject to the directions, if any, of the Council shall determine all matters relating to points of entry upon salary scales (subject to the powers of the Vice-Chancellor with regard to clerical, technical and support staff), incremental promotions within scales, promotions from one scale to another (other than promotions to posts of professorial level upon which the Appointments Committee shall make recommendations to the Council), renewal and extension of all contracts of appointment and the granting of allowances to staff.

G.N. 65/1997 5. The Appointments and Disciplinary Sub-Committee shall perform such functions as are assigned to it by the Appointments Committee.

G.N. 65/1997

STATUTE XVIA

Selection Committee

1. There shall be a Selection Committee consisting of—

(*a*) the Vice-Chancellor, or his representative who shall be the chairman of the Selection Committee;

(*b*) the Deans of Faculties or Schools;

(*c*) the Principals of Colleges, or their representatives; and

(*d*) the Registrar who shall be the secretary of the Selection Committee.

2. The Selection Committee shall make recommendations to the Council in respect of the entry of persons as students of the University.

STATUTE XVII

Procedure Relating to Contracts of Appointment

Subject to the Act and these Statutes, procedure relating to contracts of appointment, renewal of contracts and resignation,

retirement and dismissal of academic and administrative staff shall be determined by the Council, and such procedure shall incorporate the following conditions—

(*a*) that any member of the staff shall be at liberty to resign from his appointment and thereby to terminate his engagement with the University on giving in writing to the Registrar such notice as is stipulated in the terms of his appointment;

(*b*) that, save as may be provided otherwise by the Council in special cases, or as may, in such special cases relating to academic staff, be so provided by the Council on the recommendation of the Senate, a person appointed to the full-time staff of the University shall retire from his appointment, from any office he holds, and from membership of any Statutory Committee or any committee at such time as may be stipulated in the terms of his appointment;

(*c*) that the procedure for discontinuing the appointment of a member of the staff who would not, in the normal course of events, have had his appointment discontinued, shall be so framed that the member of the staff concerned shall have a right of appeal to the Council, whose decision thereon shall be final.

STATUTE XVIII

G.N. 142/1981 65/1997

Procedure of the Senate and Statutory Committees

1. Every Statutory Committee shall hold an ordinary meeting at least three times in each year at such date, time and place as shall be notified to the members at least one calendar month before the date of such meeting.

2. A special meeting of any Statutory Committee may be called by the Registrar for such date, at such time and place, and in such manner, as may be determined by its chairman but subject to the following—

(*a*) (i) in the case of the Finance Committee, at the discretion of the chairman of the Finance Committee after consultation with the Vice-Chancellor;

(ii) in the case of the Senate, at the discretion of the Vice-Chancellor; and

(iii) in the case of a Faculty or School, after consultation with the Principal of the College to which such Faculty or School is allocated; or

(*b*) on requisition in writing to the Registrar, stating the purpose of the meeting, by at least a third of the number of members of that Statutory Committee.

3. No matter shall be considered at a special meeting of a Statutory Committee other than that for which the meeting was called unless the Statutory Committee unanimously otherwise decides.

4. It shall be open to any member of a Statutory Committee to raise any matter he wishes for consideration at an ordinary meeting of such Statutory Committee, provided that, in the view of the chairman, the matter comes within the functions of such Statutory Committee and that the matter is brought to the attention of the chairman at least one week before the date of the ordinary meeting of the Statutory Committee at which the member wishes the matter to be raised.

5. The Registrar shall be responsible for sending to the members of a Statutory Committee and of the Council the agenda and documents (including minutes of proceedings of committees of such Statutory Committee held since the last meeting of the said Statutory Committee) for any ordinary meeting of the Statutory Committee, at least three days before the date of such meeting. Documents sent less than such number of days before the meeting, or tabled at the meeting, shall be considered only if the Statutory Committee by a majority of its members present agrees to do so.

G.N. 65/1997

6. Every Statutory Committee may appoint such committees thereof, including *ad hoc* committees, consisting of persons as it deems fit.

7. Every Statutory Committee may delegate any of its functions to such of its committees or to such member of the Council as it deems fit.

8. Every Statutory Committee shall review annually the work of any committee it has appointed, and if a committee is to be reappointed, shall, subject to these Statutes, review its terms of reference and membership.

9. The minutes of proceedings of all meetings of a committee of a Statutory Committee shall be put before the Statutory Committee which appointed it, and for this purpose the Faculties and Schools shall be regarded as committees of the Senate.

10. There shall be a quorum at any meeting of a Statutory Committee or committee thereof when one-third of the total number of members of such Statutory Committee, or committee thereof, as the case may be, is present. In the absence of a quorum no business other than the adjournment of the meeting shall be transacted.

11. In the absence of a person who is chairman or vice-chairman by appointment or *ex officio*, the members present at any Statutory Committee meeting or committee meeting, provided there is a quorum, shall elect from among those present a member to preside at that meeting who shall, during that meeting, or until the meeting is adjourned, exercise all the functions of the chairman.

12. The decisions of the chairman or other member presiding shall, on all procedural matters be final.

13. Pursuant to paragraph 9 of this Statute, the chairman of a committee shall present the minutes of any meetings of that committee to the Statutory Committee which has appointed it, provided that recommendations and proposals from Faculties and Schools to the Senate shall be presented by the Principal of the College to which that Faculty or School is assigned, or by the Dean if so requested by the Principal. In the absence of the chairman of the said committee or the Principal of the said College, as the case may be, any other member of the committee, or of the relevant Faculty or School, shall present such minutes to the said Statutory Committee.

14. Whether specifically empowered to do so or not, the chairman of any Statutory Committee or committee thereof shall have the power to take action on behalf of the Statutory Committee or committee, as the case may be, of which he is the chairman, provided he reports any

such action to the next meeting, and in his absence he may delegate such power to a person appointed as vice-chairman of the Statutory Committee or committee.

15. Decisions at meetings of any Statutory Committee or committee shall, except where otherwise provided, be taken by a consensus of agreement or, where, in the opinion of the chairman, a vote needs to be taken, shall be determined by a simple majority of the members present and voting on the matter. In the case of an equality of votes, the chairman shall have the power to exercise a casting vote in addition to his deliberative vote. Voting shall not be recorded in the minutes of proceedings.

16. The proceedings and decisions of any Statutory Committee or committee thereof shall not be invalidated by any vacancy in its number, nor by any defect in the election, appointment or qualification of any of the members whether present or absent, nor by any defect in the service of notices or documents, nor by any other administrative defect.

17. The chairman of any Statutory Committee or committee thereof shall have the power to invite any person to attend any meeting for the whole or part of the meeting, subject to the approval of his action by the said Statutory Committee or committee, as the case may be, at the beginning of the meeting. Persons invited to attend meetings shall participate in the proceedings only when invited to do so by the chairman and shall have no vote.

18. The chairman of, or the member presiding at, a meeting of any Statutory Committee or committee thereof shall have the power to adjourn such meeting and to determine the date, time, place and means of re-convening the meeting.

19. Members of Statutory Committees or committees thereof, other than *ex officio* members, may resign from membership at any time by writing addressed to the chairman of such Statutory Committee or committee thereof, as the case may be.

20. Except where the Act or Statutes provide otherwise, items of business of Statutory Committees or committees thereof may, at the discretion in each case of the chairman of the Statutory Committee, or committee thereof, as the case may be, be conducted by sending proposals to each member of the said Statutory Committee, or committee thereof, in writing in which case a decision shall be valid only if all members of the said Statutory Committee or committee thereof, having been given a reasonable time to reply, agree to the proposal sent to them.

21. Subject to its power to declare certain items or categories of business confidential, the minutes of all meetings of each Statutory Committee shall be available for consultation by members of the University by such means as the Statutory Committee may from time to time decide. All such minutes whether confidential or otherwise shall be available for consultation by any member of the Council.

22. Subject to these Statutes, Statutory Committees or committees thereof may make such further standing orders relating to their proceedings as they deem fit.

STATUTE XIX

Honorary Degrees

When and as often as the Council wishes to award Honorary Degrees pursuant to its powers under section 10 (*s*) the following procedure shall be followed—

(*a*) The Council shall appoint a Committee consisting of the Chairman of the Council as Chairman, the Vice-Chancellor, and four other members of the Council, two of whom shall be members of the Senate, to propose persons for the award of Honorary Degrees, which Committee shall be known as the Honorary Degrees Committee.

(*b*) The Honorary Degrees Committee shall invite the Chancellor, all members of the Council and the Senate, and the Registrar, to submit to the Vice-Chancellor in confidence proposals for the award of Honorary Degrees, and all such proposals shall be considered by the Committee. It shall be open to those so invited to seek suggestions from other members of the University.

(*c*) The Committee, having considered the proposals submitted to it, shall submit to the Council a list or those persons whom it recommends for the award of Honorary Degrees, listing the Honorary Degree it considers appropriate for award in each individual case.

(*d*) The Council shall consider the recommendations of the Committee and shall determine to whom of those persons recommended by the Committee such Honorary Degree shall be awarded, and the Degree to be so awarded in each individual case.

(*e*) No person shall be approached regarding his willingness to accept conferment of an Honorary Degree until the Council has approved all the names, and the approved names shall be published only when all the persons named in the list have signified their willingness to accept conferment to an Honorary Degree.

(*f*) The Honorary Degree conferred shall be that deemed appropriate by the Council.

(*g*) An Honorary Degree shall not be conferred in the absence of the person on whom such Degree is to be conferred.

(*h*) Serving members of Statutory Committees, members of staff and students of the University shall not be eligible for the award of Honorary Degrees.

G.N. 11/1980
142/1981
65/1997

STATUTE XX

Elections to Deanships and to the Senate

1. An election of a Dean and of elected members of the Senate, pursuant to section 23 and to paragraphs (d) and (e) of section 17 (1) of the Act, respectively, shall take place whenever there is a vacancy, provided that the whole process of the election is conducted during University term-time. All arrangements of such elections shall be the sole responsibility of the Registrar or his representative, who shall act as returning officer. The Registrar shall consult with the Vice-Chancellor and the Principal concerned, as often as he deems it

necessary, on the election programme and on other matters relating to the election procedure.

2. It shall be open to a College, Faculty or School as the case may be, if at least two-thirds of those entitled to vote in an election indicate their wish to do so, to carry out an election of elected members of the Senate at a meeting rather than by nomination and secret ballot.

3. The persons entitled to vote in an election of a Dean or of elected members of the Senate, and to be nominated and elected, shall be those persons whose names shall appear, as members of the full-time academic staff holding posts allocated to the College, Faculty or School concerned, in the master copy of the staff list kept in the Registrar's office.

4.—(1) No election shall be invalidated by reason only that the administrative procedure relating to such election was defective.

(2) Notwithstanding paragraph (1), the Registrar may, with the approval of the Vice-Chancellor and of the Principal, declare an election null and void on grounds of administrative or other defects.

5. If an elected member of the Senate is to be absent from the University for a period during which two or more ordinary meetings of the Senate will be held, the College, the Faculty or the School, as the case may be, may nominate a person to serve in his place during his said absence.

6. The number of members of the Senate elected under section 17 (1) (*e*) as representatives of the various Colleges, shall, in respect of each College be as hereinafter stated—

(*a*) Chancellor College, four members;
(*b*) The Polytechnic, three members;
(*c*) Bunda College of Agriculture, two members;
(*d*) Kamuzu College of Nursing, two members; G.N. 11/1980
(*e*) College of Medicine, two members. 65/1997

STATUTE XXI

Service of Notices and Documents

1. Any notice or document required, by or for the purposes of the Act or the Statutes, to be given or sent to a member of the University, or of the Council or of any Statutory or other committee may be given to him personally or may be sent to him by post, to his last postal address of which the Registrar has cognizance.

2. Where a notice or other document is sent by post, pursuant to paragraph 1, service thereof shall be deemed to have been properly effected by properly addressing and posting a letter containing the notice or other document, and shall be deemed to have been effected at the time at which the letter would be delivered in the ordinary course of post.

STATUTE XXII G.N. 92/1988

Students Loan Scheme

Pursuant to the provisions of Part IIIA of the Act, every loan agreement for the purposes of the Students Loan Scheme, and the

provisions, terms and conditions of such loan agreement, shall be in the form set out hereunder—

UNIVERSITY OF MALAŴI

LOAN AGREEMENT

STUDENTS LOAN SCHEME

(LOAN NUMBER .....)

AN AGREEMENT made and entered into
by and between

THE COUNCIL OF THE UNIVERSITY OF MALAŴI
(hereinafter referred to as the "Council")
and

.....
(hereinafter referred to as the "Student")

WHEREAS the Student wishes to pursue a course of studies with the University of Malaŵi at ..... (hereinafter referred to as the "Institution"), and for that purpose requires and seeks financial assistance to enable him/her to pay fees and like charges as demanded by the Council;

AND WHEREAS the Council is satisfied that the Student meets the eligibility criteria for the grant of financial assistance for such purposes;

Now, THEREFORE, the parties hereto agree as follows—

The Loan

1. The Council shall lend and advance to the Student on the terms and conditions in this Agreement provided the sum of Kwacha (K) (hereinafter referred to as the "Loan") for the 20...../20..... academic year (hereinafter referred to as the "academic year").

Payment of sums out of the Loan

2. The Council shall, in its absolute discretion, have the right to pay the Loan or any portion thereof direct to the Student or to the Institution or to such other establishment or person as the Council deems fit for the purpose for which the Loan has been advanced.

The Student's obligations

3. In consideration of the Loan granted by the Council, the Student shall—

(*a*) attend the Institution for the entire duration of the academic year for which the Loan has been granted;

(*b*) not during the academic year change his/her course of studies, without the consent of the Council;

(*c*) exercise due diligence in his/her course of studies throughout the entire duration of the academic year and exercise his/her best endeavours to pass in particular the final examination for the academic year;

(*d*) repay the Loan to the Council in the manner provided in clause 5.

4. The Council may cancel the Loan to the Student or any part thereof— Cancellation of the Loan or of any part thereof

(*a*) if unsatisfactory reports are made by the authority of the Institution concerning the Student's conduct or progress;

(*b*) if the Student fails to comply with the undertakings specified in paragraphs (*a*), (*b*) and (*c*) of clause 3;

(*c*) at the request of the Student;

(*d*) for any other reason which the Council in its absolute discretion considers good and sufficient; and there shall be no obligation on the part of the Council to disclose the reason for cancellation of the Loan under this paragraph.

5.—(1) The Student shall repay the amount of the Loan to the Council or any outstanding balance thereof together with interest thereon accrued in accordance with clause 6 of this Agreement in equal monthly instalments spread over a period of four years, the first instalment to be paid not later than the first day of any month occurring within six months after the Student has obtained his first employment or other gainful occupation and the remaining instalments to be paid by the first day of the month next following and of each succeeding month thereafter. Repayment of the Loan

(2) The Student or, on behalf of the Student, any person may at any time before or after maturity of the Loan repay the Loan, or any part thereof together with interest, if any, accrued thereon:

Provided that in the case of part repayment, the Council shall have the right to refuse to accept amounts repayments which in its opinion are insignificantly small and may in its absolute discretion prescribe in relation to this Agreement the minimum amount which the Council may accept as part repayment of the Loan.

6. Interest on the Loan shall accrue at the rate of ..... per cent (.....%) per annum reckoned from a date— Interest on Loan

(*a*) thirty days after the Student graduates from the Institution; or

(*b*) in the case of a Student who with the consent of the Council leaves the Institution before graduation to complete his studies in that course or in any other course at any other institution, thirty days after the Student graduates from that other institution;

(*c*) in the case of a Student who leaves the Institution before graduating for failure or other reasons, thirty days from the end of the academic year.

7. Where prior or subsequent to obtaining the Loan, the Student obtained or obtains a similar loan, then any outstanding amount of such other loan shall at its maturity from part of the Loan and, together with any accrued interest thereon shall, subject to any specific variations made in respect of such other loan, be repaid in accordance with this Agreement. Consolidation of loans

8. The Student hereby agrees to the Council entering into an arrangement with any current employer of the Student in the form set out in the Appendix hereto whereby the employer may agree to deduct from the salary or other emoluments payable to the Student the amounts of repayment instalments agreed under this Agreement and to remit such amounts directly to the Council. Arrangement with the Student's employer for repayment of the Loan

Acceleration of loan maturity

9. If—

(*a*) the Loan is cancelled by the Council as provided in clause 4; or

(*b*) the Student fails to pay any instalment mentioned in clause 5 on due date; or

(*c*) the Student resigns or is dismissed on grounds of misconduct or inefficiency from his/her employment within Malaŵi while the Loan or any part thereof is outstanding; or

(*d*) the Student through his/her own act or omission, renders himself/herself ineligible for employment within Malaŵi;

then, and in any such event, with effect from the date of such cancellation, default, failure, resignation, dismissal or ineligibility, as the case may be, the Loan or the outstanding balance thereof then due from the Student together with interest accrued thereon as in clause 5 provided, shall become immediately due and payable forthwith or at such other time or times as the Council may fix.

Council may defer repayment of the Loan

10. The Council may defer the repayment of any amount due from the Student in terms of the Agreement for such period or periods as the Council may deem necessary, but the granting of further time for repayment or of any other relief or indulgence by the Council shall not be construed as a waiver of its right to enforce the provisions of this Agreement.

Council not obliged to procure employment for the Student

11. Nothing contained in this Agreement shall be construed as imposing any liability on the Council to procure the employment of the Student within Malaŵi in any capacity whatsoever.

IN WITNESS WHEREOF this Agreement has been duly signed by and on behalf of the parties hereto on this ..... day of ..... 20.....

SIGNED, on behalf of the COUNCIL OF THE UNIVERSITY OF MALAŴI, by } .....

in the presence of—

1. .....

2. .....

SIGNED, by the STUDENT in the presence of—

1. .....

2. .....

APPENDIX

FORM OF AGREEMENT WITH EMPLOYERS OF STUDENTS

WHEREAS ....., a former student of the University of Malaŵi (hereinafter referred to as the "Student") has under the University Students Loan Scheme an outstanding indebtedness to the Council of K ..... together with accrued interest at the rate of ..... per cent (.....%) per annum;

AND WHEREAS under Loan Agreement No.(s) , , , , and, the Student agreed to repay the amount of such indebtedness by equal monthly instalments, the first to be paid not later than the first day of any month occurring within six months after the Student has obtained his first employment or other gainful occupation and the remaining instalments to be paid by the first day of the month next following and of each succeeding month;

AND WHEREAS the Student is now in the employment of, or in a gainful occupation as, ... (hereinafter referred to as the "Employer").

AND WHEREAS the Employer acknowledges the due contribution by the University towards the development, real or potential of manpower expertise and proficiency of the Student as an employee of the Employer:

Now, THEREFORE, the Council and the Employer agree as follows—

Monthly remittances by the Employer to the Council

1. The Employer shall make equal monthly deductions from the salary or other emoluments of the Student sufficient to cover the monthly instalments payable by the Student to the Council in respect of his outstanding indebtedness under the Students Loan Scheme and to remit the amounts so deducted directly to the Council by cheque made in favour of "The Students Loan Scheme Account", and further agrees to continue to make such deductions and such remittances for as long as the Student remains in the employment of the Employer and such indebtedness or any part thereof remains outstanding.

Employer to notify of termination of the Student's employment

2. In the event of termination of the Student's Employment with Employer, whether by way of dismissal, lay-off, resignation or otherwise, the Employer shall promptly notify the Council of the fact of such termination.

The Council to furnish statements to the Employer

3. (1) The Council shall maintain a proper statement of account in respect of the Student's indebtedness to the Council under the Students Loan Scheme and shall, once every six months, furnish the Employer with a copy of such statement.

(2) Upon full repayment of the Student's indebtedness to the Council, the Council shall record that fact and give written acknowledgement thereof to the Employer and to the Student with copies of a final statement of the Student's account.

Termination of this Agreement

4. This Agreement shall come to an end either—

(*a*) upon notification to the Council under clause 2 of this Agreement of the termination of the Student's employment with the Employer; or

(*b*) upon full repayment of the Student's indebtedness to the Council and acknowledgement thereof by the Council in accordance with clause 3 (2) of this Agreement.

IN WITNESS WHEREOF this Agreement has been duly signed by and on behalf of the parties hereto on this ..... day of ....., 20....., the date of its entry into force.

For the Council:	For the Employer:
Signature	Signature .....
Name	Name .....
Designation	Designation .....
Official stamp	Official stamp

MALAŴI BOOK SERVICE

CHAPTER 30:03

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CHAPTER 30:03

MALAŴI BOOK SERVICE

ARRANGEMENT OF SECTIONS

SECTION

1. Short title
2. Interpretation
3. Establishment of Malaŵi Book Service
4. Constitution of Board
5. Disqualification of members of the Board
6. Transfer of assets and liabilities of the African Book Centre to the Board
7. Functions of the Board
8. Officers and employees of the Malaŵi Book Service
9. Financial provisions
10. Financial policy
11. Advances by Government
12. Access to commercial credit facilities
13. Borrowing powers
14. Transfer of functions
15. Acquisition of land
16. General powers of the Minister
17. Accounts and reports
18. Legal proceedings
19. Indemnity for all acts done bona fide
20. Regulations

An Act to provide for the establishment of the Malaŵi Book Service and for the establishment of a Board of Management thereof and for matters connected therewith and incidental thereto

28 of 1983
3 of 1967
8 of 1980

[1st April, 1964]

Short title

1. This Act may be cited as the Malaŵi Book Service Act.

Interpretation

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

"African Book Centre" means the unincorporated body known as "The African Book Centre", established in 1949 as an agency of the Northern Rhodesia and Nyasaland Publications Bureau to distribute and sell the products of that Bureau;

"Board" means the Board of Management of the Malaŵi Book Service appointed under section 4 (2);

"educational supplies" means books, stationery, furniture, equipment, visual aid apparatus and educational aids of every kind habitually used or capable of being used in the course

of or for the purpose of providing or assisting in the provision of instruction in schools or other educational establishments;

"Malaŵi Book Service" means the Malaŵi Book Service established under section 3;

"member" includes the chairman of the Board.

Establishment of Malaŵi Book Service

3. There is hereby established the Malaŵi Book Service which shall be a body corporate by that name with perpetual succession and a common seal, with power to alter and change the same from time to time, and which shall be capable in law of suing and being sued, of purchasing, holding, letting and alienating land and of doing and performing such acts and things as bodies corporate may by law do and perform, subject to this Act.

Constitution of Board

4.—(1) The operation of the Malaŵi Book Service shall, subject to this Act, be controlled by a Board of Management.

(2) (*a*) The Board shall consist of the following members appointed at his discretion by the Minister—

(i) a chairman;

(ii) a vice-chairman;

(iii) not less than four or more than five other members as the Minister may determine.

8 of 1980

(*b*) Every member of the Board shall hold office for two years and subject thereto shall hold office in accordance with such terms and conditions as the Minister may at his discretion attach to his appointment.

(*c*) Any member of the Board may resign from the Board on giving notice thereof in writing to the Minister.

(*d*) Any member of the Board shall on the termination of his appointment be eligible for re-appointment.

(3) The chairman shall preside over meetings of the Board, but in his absence the vice-chairman shall act as chairman, and in the absence of both chairman and the vice-chairman from any meeting of the Board the members present shall elect one of their number to perform the functions of chairman.

(4) The Minister may appoint alternate members to act in case any member of the Board is unable to be present at any meeting of the Board through illness or for any other cause.

(5) The decisions of the Board shall be taken by a majority of the votes of the members present and voting:

Provided that—

(*a*) the chairman at any meeting shall have a casting as well as a deliberative vote;

(*b*) no member of the Board shall take part in the consideration or discussion of or vote upon any decision of the Board on any matter in which he has any pecuniary or other personal interest, direct or indirect.

(6) The validity of any proceedings of the Board shall not be affected by any vacancy among the members thereof, or by any defect in the appointment of any member thereof.

(7) The members of the Board may be paid such allowances or reimbursements as the Minister may from time to time authorize.

(8) The Board may from time to time, and subject to this Act, make standing orders for regulating—

(*a*) The mode and order of proceedings of the Board;

(*b*) the quorum necessary to constitute the meetings of the Board;

(*c*) the method of convening such meetings;

(*d*) the place of such meetings; and

(*e*) any other matters relating to the proper conduct of the business of the Board and its meetings.

Disqualification of members of the Board

5. No person shall be eligible for appointment as a member of the Board who—

(*a*) is an undischarged bankrupt; or

(*b*) is a person of unsound mind; or

(*c*) is serving a sentence of imprisonment; or

(*d*) has been convicted of an offence involving dishonesty.

Transfer of assets and liabilities of the African Book Centre to the Board

6.—(1) Such assets and liabilities of the African Book Centre as the Minister, after consultation with the Minister of Finance, shall decide shall be vested in the Board with effect from such date as the Minister may appoint.

(2) All mortgages, bonds, charges, agreements, contracts or other instruments, and all commercial arrangements subsisting immediately before the date of the coming into operation of this Act, shall be of as full force and effect against, or in favour of, as the case may be, the Malaŵi Book Service and enforceable as fully and effectually as if, instead of the African Book Centre, the Malaŵi Book Service had been therein named and had been a party thereto.

(3) Any legal proceedings or cause of action pending or subsisting immediately before the date of the coming into operation of this Act by or against the African Book Centre may be continued or enforced by or against the Malaŵi Book Service as it might have been by or against the African Book Centre if this Act had not been passed.

Functions of the Board

7. The functions and duties of the Board shall be—

(*a*) to serve, assist and promote the educational system and organization of Malaŵi by acting as central suppliers of educational supplies to schools and other educational establishments in Malaŵi;

(*b*) to provide, as wholesalers and distributors, educational supplies and, where necessary or desirable, to retail traders of educational supplies;

(*c*) to carry on the business both wholesale and retail of booksellers, stationers and dealers in educational supplies of all kinds;

(*d*) to carry on the business of publishers, and to undertake such other operations, directly or necessarily ancillary to those set out in the foregoing paragraphs, as the Minister may from time to time direct.

Officers and employees of the Malaŵi Book Service

8.—(1) The Board shall, with the prior approval of the Minister, appoint a general manager who shall be responsible to the Board for the day-to-day administration of the affairs of the Malaŵi Book Service and for its organization and efficient management for the due execution of its functions.

(2) The Board shall appoint a secretary to the Board.

(3) At the discretion of the chairman, the general manager and the secretary shall be entitled to attend all meetings of the Board. At any meeting of the Board the general manager shall be entitled to speak on the matters then under consideration by the Board, but neither the general manager nor the secretary shall be entitled to vote upon any matter under consideration by the Board.

(4) The Board shall have power to appoint such other staff as may from time to time be required for the due carrying out of the functions of the Malaŵi Book Service.

(5) The Board, with the prior approval in writing of the Minister, shall settle the remuneration, terms and conditions of service of its officers and employees. In settling the remuneration, terms and conditions of service of the general manager and other of its officers or employees, the Board shall have due regard to

the remuneration, terms and conditions of service of persons in positions of similar responsibility, or in like employment, in the public service.

(6) The Malaŵi Book Service, acting through the Board, may establish and maintain pensions, superannuation or other funds for the provision of benefits or allowances on death, resignation, retirement or discharge of its officers or employees. Subject to the prior approval in writing of the Minister, the Board may make rules for the payment of moneys out of the general revenue of the Board to such funds as aforesaid, and for the contribution of moneys to such funds by officers or employees. The Board may contract with insurance or other companies for the maintenance, guarantee or provision of benefits secured or intended to be secured by such funds:

Provided that any such contracts shall be subject to the prior approval in writing of the Minister after consultation and agreement with the Minister of Finance.

(7) The Board may accept and appoint on secondment, or by such other arrangements as may be deemed suitable, the services of officers in the public service to any appointment in the service of the Malaŵi Book Service including that of general manager or secretary:

Provided that the Board shall undertake to reimburse and indemnify the Government in respect of the costs and expenses of such officers in relation to their remuneration, superannuation, allowances or other benefits to which they may be entitled as officers in the public service.

Financial provisions

9. The annual revenue of the Malaŵi Book Service shall include—

(*a*) all income received from the sale of educational supplies or from such other commercial transactions as the Malaŵi Book Service may lawfully engage in;

(*b*) such grants, aids or advances as may be received from the Government or from private sources; and

(*c*) such income from the rents from real or leasehold property investments or other sources as may accrue to the Malaŵi Book Service.

Financial policy

10.—(1) The Malaŵi Book Service shall be a self-accounting body and shall so regulate and manage the conduct of its business that taking one year with another—

(*a*) its revenue is sufficient for meeting all expenditure properly chargeable to or against its revenue; and

(*b*) sufficient provision is made for depreciation of its assets.

(2) Save insofar as is required by subsection (1), the making of a profit in any year shall not be a primary object or consideration of the Malaŵi Book Service.

Advances by Government

11. It shall be lawful for the Malaŵi Book Service to obtain from time to time, with the prior consent in writing of the Minister of Finance, from the Government advances of money required for the proper carrying out of the functions and duties of the Malaŵi Book Service in accordance with this Act. Any moneys or advances and any interest accruing thereon shall be a liability of the Malaŵi Book Service and shall be, and for all purposes deemed to be, the first charge on all the property, real, chattel-real and personal, of the Malaŵi Book Service present or to come.

Access to commercial credit facilities

12. It shall be lawful for the Board to have access to and use such commercial credit facilities as will make financial subventions to the Malaŵi Book Service by the Government unnecessary, or which will substantially reduce the amount of such financial subventions. The use of such commercial credit facilities by the Malaŵi Book Service shall in every case be subject to the prior approval in writing of the Minister, after consultation and agreement with the Minister of Finance.

Borrowing powers

13.—(1) Subject to this section and to any law for the time being generally regulating the borrowing powers of statutory corporations, the Malaŵi Book Service may raise loans either by way of charge on its property and assets, by bank overdraft or by the use of other usual commercial credit facilities, for the purpose of meeting any of its obligations or discharging any of its functions. The power of the Board in this behalf shall be exercisable only with the prior approval in writing of the Minister, after consultation and agreement with the Minister of Finance.

(2) Where any such loan shall be received by means of the issue of stock, the provisions of any law for the time being in force relating to the issue of stock by statutory corporations, the provisions to be made for the payment of interest thereon and for the redemption of such stock at the time or times appointed for repayment, and the proceedings to be taken in case of default shall apply.

Transfer of functions

14. The Minister may by Rules make provision consequential on the assumption by the Malaŵi Book Service of its functions, under this Act for—

(*a*) the transfer to the Malaŵi Book Service of property of every kind, whether real, chattel-real or personal, invested in or, as the case may be, incurred by or in the name of the African Book Centre; and

(*b*) enabling any proceedings previously instituted by or against the African Book Centre to be carried on by or against the Malaŵi Book Service; and

(*c*) any other matters necessary, incidental or conducive to the performance of the foregoing matters.

Acquisition of land Cap. 58:04

15. The Lands Acquisition Act shall apply to the Malaŵi Book Service as if it were a company within the meaning of that Act.

General powers of the Minister

16. Subject to this Act, the Malaŵi Book Service in the performance of its functions and in the exercise of any power conferred upon it by this Act, shall be subject to the general or specific directions of the Minister.

Account and reports

17.—(1) The Board shall—

(*a*) keep proper accounts;

(*b*) keep proper records relating to the accounts and to the proceedings of the Board;

(*c*) prepare for inspection each financial year a statement of accounts in such form as the Minister may direct.

(2) The accounts of the Malaŵi Book Service shall be audited annually by auditors to be appointed annually by the Board.

(3) In every year, within three months after the end of the financial year, the Board shall—

(*a*) prepare a general report of its proceedings during the financial year; and

(*b*) transmit to the Minister that report together with a certified copy of the audited accounts of the Malaŵi Book Service and the Minister shall lay on the table of the National Assembly copies of that report and a certified copy of the audited accounts.

Legal proceedings

18. In any legal proceedings brought by or against it the Malaŵi Book Service shall appear by and act through any legal practitioner qualified to practise law in Malaŵi.

Indemnity for all acts done bona *fide*

19.—(1) No act or thing done by any member of the Board or by any officer or employee of the Board, or other person acting under the direction of the Board, shall, if the act or thing was done *bona fide* for the purpose of carrying this Act into effect, subject him personally to any liability, action, claim or demand whatsoever.

(2) All expenses incurred by any such member, officer or person as is mentioned in subsection (1) for the purpose of carrying this Act into effect, shall be paid out of moneys provided by Parliament.

(3) Nothing in this section shall be construed to exempt any member of the Board or any officer or employee of the Board from liability to be surcharged with the amount of any payment which may be disallowed by the audit or in the accounts of the Malaŵi Book Service, and which that particular officer or employee authorized or joined in authorizing.

Regulations

20. The Minister may make such Regulations as he may deem expedient to give force or effect to this Act or for its better administration.

MALAŴI NATIONAL EXAMINATIONS BOARD

CHAPTER 30:04

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MALAŴI NATIONAL EXAMINATIONS BOARD

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12 of 1969
30 of 1969
12 of 1976
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9 of 1986
9 of 1987
30 of 1994
10 of 2004

[1ST AUGUST, 1969]

PART I

Preliminary

Short title
9 of 1987

1. This Act may be cited as the Malaŵi National Examinations Board Act.

Interpretation
9 of 1987

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

"Board" means the Malaŵi National Examinations Board established under section 3 (1);

"Centre" means the Regional Testing Resource and Training Centre, an international organization established by agreement dated the 26th day of June, 1969, made between the respective Governments of Malaŵi, Swaziland, Lesotho, Botswana and the United States Agency for International Development, having its principal office in Malaŵi and now in the course of dissolution;

"Chairman" means the Chairman of the Board as provided under section 5;

"committee" means a committee of the Board appointed under section 8;

"financial year" means such year or other period as the Minister may, from time to time, by notice published in the *Gazette*, determine to be the financial year of the Board.

PART II

Establishment of Malaŵi National Examinations Board

Establishment of Board
12 of 1976
9 of 1987

3.—(1) There is hereby established a Board, to be known as the Malaŵi National Examinations Board which shall be governed and administered in accordance with the provisions of this Act.

(2) The Board shall be a body corporate with perpetual succession and a common seal, with power to acquire, hold, charge and dispose of property, movable and immovable, to borrow money and to do or perform all such things and acts for the purpose of carrying out its functions as a body corporate may lawfully do.

(3) The Board may sue and be sued in its corporate name and may for all purposes be described by such name.

Execution of documents, etc.

4. All documents, other than those required by law to be under seal, made by, and all decisions of, the Board may be signified under the hand of the Chairman or any member or officer of the Board authorized in that behalf by the Chairman.

PART III

Constitution of Board and Procedure

Constitution of Board
12 of 1976
8 of 1980
9 of 1987

5.—(1) The Board shall consist of—

(*a*) The Vice-Chancellor of the University of Malaŵi, who shall be Chairman;

(*b*) four members nominated by the Senate of the University of Malaŵi, appointed by the Minister;

(*c*) four members appointed by the Minister in his discretion;

(*d*) four members, representing post primary institutions, other than those institutions mentioned in this section, providing full time recognized courses, to be recommended at a meeting of all members appointed under paragraphs (*a*), (*b*) and (*c*), appointed by the Minister;

(*e*) the Secretary for Education and Culture or his representative;

(*f*) one member representing the Malaŵi Institute of Education, appointed by the Minister;

(*g*) four members representing primary schools, appointed by the Minister from amongst headmasters of primary schools;

(*h*) four members representing secondary schools, appointed by the Minister from amongst headmasters of secondary schools;

(*i*) two members representing primary school teacher training colleges, appointed by the Minister from amongst principals of those colleges;

(*j*) one member representing the Christian Council, appointed by the Minister;

(*k*) one member representing the Special Education, appointed by the Minister;

(*l*) one member representing the Catholic Secretariat, appointed by the Minister;

(*m*) one or more members representing and recommended by external examining bodies, appointed by the Minister; and

(*n*) two members actively engaged in commercial pursuits in Malaŵi, appointed by the Minister from amongst persons so engaged.

(2) The members of the Board shall elect one of their number to be Vice-Chairman who shall, in the absence or temporary incapacity of the Chairman, act as Chairman.

(3) The members of the Board, other than the Chairman, shall hold office for two years.

(4) Any member of the Board shall be eligible for re-appointment for any number of terms of office.

(5) Any person who is absent for more that three successive meetings of the Board without permission from the Chairman, or who, in the opinion of the Chairman is for any cause incapacitated so as to be unable to take a proper part in the affairs of the Board, may have his membership of the Board terminated by the President.

(6) Any appointed member may, by notice under his hand addressed to the Chairman, resign from his membership of the Board.

(7) Where any member of the Board ceases to be a member before the normal expiration of his term of office, the authority which appointed him may appoint another person in his stead to hold office until such first-named person's term of office would have expired had he not ceased to be a member as aforesaid.

(8) The Board may in its discretion invite any person to attend a meeting of the Board, and such person may, with the consent of the Chairman, speak but shall have no power to vote at that meeting.

Executive Secretary
12 of 1976
9 of 1986

6. There shall be an Executive Secretary of the Board who shall be appointed by the Board on such terms and conditions as it thinks fit.

Procedure of Board
9 of 1987

7.—(1) The Board shall meet not less than once in every year.

(2) Ten members of the Board shall be a quorum.

(3)—(*a*) All questions at a meeting of the Board shall be determined by a majority of the votes of the members present.

(*b*) The Chairman shall have, in the case of equality of votes, a casting vote in addition to a deliberative vote.

(4) The Chairman may, and upon application in writing with reasons specified by three members shall, convene a special meeting of the Board at any time.

(5)—(*a*) The Board shall cause minutes of all proceedings of meetings of the Board, and of all meetings of committees appointed under section 8 (1), to be entered in books kept for that purpose.

(*b*) Any such minutes, if purporting to be approved by and signed by the Chairman of the next succeeding meeting of the Board or committee, as the case may be, shall be evidence of such proceedings and until the contrary is proved the meeting to which the minutes relate shall be deemed to have been duly held and convened and all proceedings thereat to have been duly transacted and all appointments of members and members of committees shall be deemed to be valid.

(6) Subject to the foregoing the Board may regulate its own procedure and may make administrative rules generally for the government, control, administration and management of the Board and committees and for the conduct of its business,

including, without limiting the generality of the foregoing, rules prescribing—

(*a*) the terms and conditions of service, pension and retirement benefits and the like, of staff, other than temporary staff;

(*b*) measures for the discipline of staff; and

(*c*) the financial procedure of the Board.

Committees

8.—(1) The Board may by resolution appoint such committees as it may think fit.

(2) The Board shall determine the powers, duties and procedure of all committees appointed by it under the Act and the terms of office of persons appointed to such committees and may delegate to them any of the functions of the Board other than those required by this Act to be exercised by resolution of the Board.

(3) The Board may, in appointing any committee under this section, appoint any person thereto notwithstanding that he is not a member of the Board.

PART IV

Functions and Powers of the Board

Functions and powers of the Board
12 of 1976
9 of 1987

9.—(1) The functions and powers of the Board shall be—

(*a*) to conduct such academic, technical and other examinations at the conclusion of any approved course in Malaŵi as it may consider desirable in the public interest;

(*b*) to award certificates or diplomas to successful candidates in such examinations;

(*c*) to invite any body or bodies outside Malaŵi to conduct examinations jointly with the Board and to award certificates or diplomas to successful candidates in such examinations;

(*d*) to advise any body or bodies so invited under paragraph (*c*) upon the adaptation of examinations necessary for the requirements of Malaŵi and to assist any such body or bodies to conduct such examinations;

(*e*) to recommend to the Minister syllabuses for use in secondary schools;

(*f*) to process and analyse examination results statistically; 12 of 1976

(*g*) to provide computer or statistical services when required;

(*h*) to engage in test development, related research and validity studies;

(*i*) to devise, develop and implement systems of test enabling or facilitating the proper selection of pupils for secondary education and students for any university, school

or other educational institution approved by the Minister, at any such university, school or institution or to devise, develop, implement or facilitate any course of instruction or training approved by the Minister;

(*j*) to advise the Government, the Minister and any university, school or other educational institution approved by the Minister on the development and use of such systems of test as are referred to in paragraph (i); and

(*k*) to advise the Public Service Commission and, at the discretion of the Board, any employer, on tests designed to demonstrate the suitability of any employee, or prospective employee, for employment, either generally or in any particular position, capacity or class of employment.

(2) For the furtherance of its functions and powers the Board may with the approval of the Minister make regulations—

(*a*) regulating the conduct of examinations and tests for all purposes incidental thereto; and

(*b*) prescribing examination and test fees and other charges payable to the Board.

(3) For the furtherance of its functions and powers the Board may, with the approval of the Minister, organize training courses for, or arrange for the training of, examiners, markers, supervisors, invigilators, testing, research and computer personnel to ensure the proper management of examinations and tests conducted by the Board.

(4) The Board shall have the further powers set out in the Schedule.

(5) The Minister may, at any time, by notice published in the Gazette, alter or amend the Schedule.

PART V

Financial Provisions

Finance

10.—(1) The funds of the Board shall comprise—

(*a*) such moneys as may be granted from time to time by the Government;

(*b*) such donations, grants, bequests and loans as may from time to time be accepted by the Board;

(*c*) such fees or other charges as may be paid to the Board by candidates for examinations and test users; and

(*d*) such other moneys as the Board may from time to time lawfully obtain or receive.

(2) The funds of the Board shall be applied to the purposes for which the Board is established under this Act.

(3) The funds of the Board shall be paid into a bank and the banking account or accounts shall be operated in such manner as the Board may determine.

Investment

11.—(1) The Board may, with the approval of the Minister, and subject to such conditions as he may impose, invest such part of its funds as are not for the time being required for the purposes of its business.

(2) The powers of the Minister under this section shall be exercised with the concurrence of the Minister for the time being responsible for finance and shall extend to the amount which may be invested, the nature of the investment and the terms and conditions thereof, and the Minister's approval may be either general or limited to a particular investment.

Borrowings
12 of 1976

12. Subject to section 31 of the Finance and Audit Act, the Board may borrow moneys by way of bank overdraft, the issue of securities, or in any other manner whatsoever.

Accounts and audit
12 of 1976

13. The Board shall keep proper accounts and other records in relation thereto and shall prepare in respect of each financial year of the Board a statement of accounts in a form approved by the Minister.

(2) Subject to any direction made by the Minister for the time being responsible for finance under section 45 of the Finance and Audit Act, the accounts of the Board shall be audited by auditors approved annually by the Minister.

Cap. 37:01

(3) As soon as the accounts of the Board for any financial year have been audited, the Board shall cause to be sent to the Minister a copy of the statement of accounts prepared in respect of that year together with a copy of any report made by the auditors on the statement or on the accounts.

(4) The Minister shall, within a period of six months after the end of the financial year to which the accounts relate, lay a copy of every such statement and report before the National Assembly.

PART VI
Offences and Penalties

Offences and penalties
30 of 1994
10 of 2004

14.—(1) For purposes of this section—

"candidate" means candidate for National Examinations;

"National Examinations" has the meaning ascribed thereto in the Education Act.

Cap. 30:01

(2) A person who—

(*a*) gains access to National Examinations materials without authority;

(*b*) reveals, orally or in writing, the contents of National Examinations material; or

(*c*) willfully or maliciously damages National Examinations materials,

shall be guilty of an offence and liable to a fine of K300,000 and imprisonment for ten years.

(3) Any person who, being charged with the responsibility for the safekeeping, delivery, distribution, printing or otherwise processing of National Examinations materials—

(*a*) fails to exercise due care and attention in relation to the security of National Examinations materials; or

(*b*) fails to take reasonable steps for the security of National Examinations materials,

shall be guilty of an offence and liable to a fine of K300,000 and imprisonment for ten years.

(4) Any candidate who—

(*a*) enters, or attempts to enter an examination room where National Examinations are being conducted with any reference materials, or any other unauthorized equipment or instrument; or

(*b*) possesses or uses, in an examination room where National Examinations are being conducted, any reference material, or any other unauthorized equipment or instrument,

shall be guilty of an offence and liable to a fine of K50,000 and imprisonment for two years.

(5) Any candidate who, during National Examinations—

(*a*) copies from, or discusses with, another candidate or any other person, any answer to any question in the examination;

(*b*) having been permitted to go outside the examination room to relieve himself or herself, consults with any person, or refers to any reference material, in relation to the examination,

shall be guilty of an offence and liable to a fine of K50,000 and imprisonment for two years.

(6) Any person who intimidates, harasses, assaults or otherwise obstructs a supervisor, an invigilator, a security officer or any other person authorized to conduct or administer National Examinations or lawfully involved in conducting or administering National Examinations, shall be guilty of an offence and liable to a fine of K300,000 and imprisonment for ten years.

(7) Any person who—

(*a*) being involved in the enrolment and registration process of candidates for National Examinations; or

(*b*) being authorized to conduct or administer National Examinations,

fails to comply with, or contravenes, any regulations in relation to the conduct of National Examinations, shall be guilty of an offence and liable to a fine of K300,000 and imprisonment for ten years.

(8) Any person who contravenes any regulation made under this Act shall be guilty of an offence, and where no specific penalty is provided for, shall be liable to a fine of K50,000 and imprisonment for two years.

SCHEDULE

12 of 1976

Powers of the Board

(section 9)

1. To appoint and employ, with the approval of the Minister, such professional, technical and administrative officers, clerks and other servants as it may deem requisite.
2. To pay any person in its employ such salary, wages or other remuneration as it may deem fit, and to grant him such leave as it may deem fit.
3. To provide for persons in its employ or their dependants, by means of insurance with an insurance company or a pension or provident fund or in any other manner whatsoever, pecuniary benefits upon retirement, death or termination of service or in the event of any sickness or injury.
4. To purchase, take on lease or in exchange or otherwise acquire dwelling-houses for persons in its employ.
5. To purchase land and construct thereon dwelling-houses for persons in its employ.
6. To sell or lease dwelling-houses and land for residential purposes to persons in its employ.
7. Wherever it considers it necessary or expedient, for the performance of any of its powers or functions, to purchase, take on lease or in exchange, hire, or otherwise acquire any real or personal property, or any right of possession, occupancy or user in or over any such property.
8. To construct, maintain, alter and improve any buildings, works machinery and plant wherever it deems it necessary or expedient to do so for the performance of any of its powers or functions.

9. To work or otherwise beneficially use, to exchange, let, sell or mortgage any property, acquired or constructed under paragraphs 4, 5, 6, 7 or 8.
10. To enter into agreements to facilitate the voluntary transfer of professional, technical or other staff between itself and any other employer.
11. To dispose of by way of sale, gift or such other means as the Board may deem fit any used or perishable stores not required for the purposes of the Board.
12. For the better performance of its functions, to cooperate with Government departments, local authorities, universities, technical colleges, schools, Chambers of Commerce and such other associations, organizations or persons as to it may appear necessary or desirable.
13. To make rules prescribing measures for the discipline of staff.
14. To do all things incidental or conducive to the performance of its powers or functions under this Act.

SUBSIDIARY LEGISLATION

MALAŴI NATIONAL EXAMINATIONS BOARD (FINANCIAL YEAR COMMENCEMENT) NOTICE

9 of 1987
G.N. 271/1969

under s. 2

The Minister has determined to be the financial year of the Board in respect of the financial year commencing on the 1st day of January, 1969, the fifteen-month period so commencing and ending on the 31st day of March, 1970, and that thereafter the financial year of the Board shall be the twelve-month period commencing on the 1st day of April in each year.

MALAŴI NATIONAL EXAMINATIONS BOARD (CONDUCT OF EXAMINATIONS) REGULATIONS

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MALAŴI NATIONAL EXAMINATIONS BOARD (CONDUCT OF EXAMINATIONS) REGULATIONS

G.N. 13/2008

under s. 9 (2)

PART I
PRELIMINARY

Citation

1. These Regulations may be cited as the Malaŵi National Examinations Board (Conduct of Examinations) Regulations.

Interpretation

2. In these Regulations, unless the context otherwise requires—

"Board" means the Malaŵi National Examinations Board;

"candidate" means a candidate for National Examinations;

"Cluster Centre" means a school, a hall, a room, a warehouse or any other place designated by the Board, where candidates from two or more schools write National Examinations together;

"critic" means a person who reviews examination questions;

"Distribution Centre" means a Distribution Centre for National Examination papers and materials;

"enrollment" means enrollment for National Examinations at an Examination Administration Centre;

"Examination Administration Centre" means a Cluster Centre or a Lone Centre or an Examination Centre where minor subjects and practical subjects are written;

"Examination Centre" means an educational institution approved by the Board to enrol candidates for national examinations;

"external candidate" means a candidate in National Examinations who is not an internal candidate;

"feeder school" means an Examination Centre that uses one particular Cluster Examination Centre;

"internal candidate" means a candidate in National Examinations who is a student of a feeder school;

"Lone Examination Centre" means a school, a hall, a room, a church, a mosque, a warehouse or any other place designated as an Examination Administration Centre by the Board, where candidates from only one school write National Examinations;

"moderator" means a person who reviews an examination paper holistically;

"National Examinations" has the meaning ascribed thereto in section 57 of the Education Act;

Cap. 30:01

"setter" means a person who composes examination questions;

"supervisor" means the supervisor of an Examination Administration Centre.

Application

3.—(1) These Regulations shall apply to candidates and all officials involved in the development, administration and marking scripts of National Examinations.

(2) Without derogation from the generality of subregulation (1), these Regulations shall apply to, and bind, the following officials—

(*a*) supervisors;

(*b*) invigilators;

(*c*) security officers;

(*d*) administrators of a Distribution Centre;

(*e*) staff of the Board;

(*f*) members of committees of the Board including any task force appointed by the Board;

(*g*) candidates;

(*h*) head-teachers and teachers of feeder schools;

(*i*) proprietors of schools;

(*j*) setters;

(*k*) critics;

(*l*) moderators;

(*m*) coordinators, chief or senior examiners and administrators at a Marking Centre; and

(*n*) members of the general public.

Part II
Designation of Examination Administration Centres

Designation of Examination Administration Centres

4.—(1) The Board shall determine and designate Examination Administration Centres every year for purposes of National Examinations.

(2) The whole list of the Examination Administration Centres shall be conspicuously displayed at the Board's Offices and, at each District Commissioner's office:

Provided that the list of the Examination Administration Centres displayed at each District Commissioner's office shall be the list of the Examination Administration Centres for that particular District only.

(3) Every Examination Administration Centre shall—

(*a*) if it is a Cluster Examination Centre, have at least twenty candidates for National Examinations; and

(*b*) if it is a Lone Examination Centre, have at least ten candidates for National Examinations.

(4) The Board may, with the approval of the Minister, revoke the designation of an Examination Administration Centre if there has been non-compliance with these Regulations at that Centre:

Provided that before the revocation, the Board shall give the persons responsible for that Examination Administration Centre an opportunity to be heard.

Physical condition of Examination Administr-ation Centre

5. Every Examination Administration Centre shall be a permanent building constructed with sound and durable materials.

Furniture at Examination Administr-ation Centre

6.—(1) Each Examination Administration Centre shall have enough desks and chairs for all the registered candidates.

(2) The desks for candidates at each Examination Administration Centre shall be arranged in such a manner that the distance between the candidates is 1.4 metres apart.

(3) Only one candidate shall sit at one desk.

(4) No candidate shall write examinations while seated on the floor.

(5) District Education Managers may, in consultation with the Board, make special arrangements with respect to candidates with disabilities.

Distance between Cluster Examination Centres

7. Cluster Examination Centres shall, where possible, be located within a distance of not more than five kilometres of each other; and where this is not possible, Cluster Examination Centres shall be located within a walkable distance from all the feeder schools surrounding it.

Notification, inspection and certification of Examination Administr-ation Centres

8. Each District Education Manager shall, not later than four months before the date of National Examinations, notify the Board of all Centres to be used as Examination Administration Centres in the district in any particular year and every such notification shall be accompanied by a written statement signed by

the District Education Manager and a police officer of the rank of Inspector or above, confirming that they have visited the proposed Examination Administration Centre and certify that the Centre fulfils the requirements for an Examination Administration Centre under these Regulations.

Part III
Examinations Administration Personnel and the Conduct of Examinations

Personnel involved in administration of National Examinations

9.—(1) All Personnel involved in the Administration of National Examinations at an Examination Administration Centre shall be persons of high integrity, diligent, mature and possess a good professional track record.

(2) Every Examination Administration Centre shall have a supervisor and an invigilator to oversee the administration of examinations.

(3) A selection committee chaired by the District Education Manager of the district shall appoint supervisors and invigilators at an Examination Administration Centre.

(4) The selection committee for the appointment of supervisors and invigilators for Primary School Leaving Certificate Examination shall consist of—

(*a*) the District Education Manager;

(*b*) the Coordinating Primary Education Advisor;

(*c*) not more than three religious representatives, appointed by the District Education Manager, in consultation with religious leaders in the district;

(*d*) two Chief Primary School Teachers appointed by the District Education Manager;

(*e*) one representative of the Teachers Union of Malaŵi, appointed by the District Education Manager in consultation with the Teachers Union of Malaŵi; and

(*f*) one representative of the Private Schools Association of Malaŵi, appointed by the District Education Manager, in consultation with the Private Schools Association of Malaŵi.

(5) The selection committee for the appointment of supervisors and invigilators for Junior Certificate of Education Examination and Malaŵi School Certificate of Education Examination shall consist of—

(*a*) the District Education Manager;

(*b*) the Coordinating Primary Education Advisor;

(*c*) two religious representatives, appointed by the District Education Manager, in consultation with religious leaders in the District;

(*d*) two senior head-teachers of Secondary Schools, appointed by the District Education Manager;

(*e*) one representative of the Teachers' Union of Malaŵi, appointed by the District Education Manager, in consultation with the Teachers Union of Malaŵi; and

(*f*) one representative of the Private Schools Association of Malaŵi appointed by the District Education Manager, in consultation with the Private Schools Association of Malaŵi.

(6) Every appointment of a supervisor and invigilator by a selection committee shall be subject to approval by the Board.

Additional personnel at Examination Administration Centres

10. Each Examination Administration Centre shall have the following additional personnel—

(*a*) security officers from the Malaŵi Police Service, who shall be present at the Examination Administration Centre one day before and throughout the National Examinations period;

(*b*) feeder school head-teachers or their designated representatives, who shall be present at Cluster Examination Centres at least one day before the commencement of the National Examinations.

Qualifications of supervisors for Cluster Examination Centres

11.—(1) Supervisors for Primary School Leaving Certificate of Education Examination for a particular Cluster Examination Centre shall come from outside the zone of feeder schools, and shall be appointed from amongst—

(*a*) grade T2 teachers with not less than five years experience;

(*b*) college tutors;

(*c*) head-teachers of secondary schools;

(*d*) secondary school teachers;

(*e*) senior head-teachers of primary schools;

(*f*) retired senior head-teachers of primary schools; and

(*g*) chief primary school teachers.

(2) Supervisors for Junior Certificate of Education Examination and Malaŵi School Certificate of Education Examination shall come from outside the feeder schools, and shall be appointed from amongst—

(*a*) head-teachers of secondary schools;

(*b*) heads of department in secondary schools;

(*c*) secondary school teachers, other than head-teachers of secondary schools and heads of department in secondary schools, with the same qualification as head-teachers of secondary schools or heads of department in secondary schools and have at least three years teaching experience; and

(*d*) tutors from teacher training colleges and technical colleges:

Provided that no person holding a Bachelor's degree with less than three years teaching experience or a Diploma with less than five years teaching experience shall be eligible for appointment as a Cluster Examination Centre Supervisor for Junior Certificate of Education and Malaŵi School Certificate of Education Examinations.

Qualifications for invigilators for Cluster Examination Centres

12.—(1) Invigilators for Primary School Leaving Certificate Examination at Cluster Examination Centres shall come from outside the zone of feeder schools for that particular Examination Centre, and shall be T2 or T3 teachers selected from amongst—

(*a*) senior primary school teachers;

(*b*) college tutors; and

(*c*) head-teachers of primary schools:

Provided that where the invigilators are T2 teachers, they shall have not less than three years teaching experience at that level and where the invigilators are T3 teachers, they shall have not less than five years teaching experience at that level.

(2) Invigilators for Junior Certificate of Education Examination and Malaŵi School Certificate of Education Examination at Cluster Examination Centres shall come from outside feeder schools for that Examination Administration Centre, and shall be—

(*a*) secondary school teachers holding a Bachelor's Degree with not less than three years teaching experience;

(*b*) diploma holders with not less than five years teaching experience; or

(*c*) T2 teachers teaching in secondary schools with not less than ten years teaching experience at that level.

Qualifications and appointment of supervisors and invigilators for Lone Examination Centres

13.—(1) All supervisors and invigilators for Lone Examination Centres shall be appointed in a manner similar to that used for appointing supervisors and invigilators for Cluster Examination Centres, and shall have the same qualifications as those required for supervisors and invigilators for Cluster Examination Centres.

(2) Supervisors and invigilators for Lone Examination Centres shall not come from the school that is or uses that Examination Centre.

Number of invigilators at Examination Administration Centre

14.—(1) Where the National Examinations are being taken in a hall, there shall be one invigilator for every one hundred candidates or less.

(2) Where the National examinations are being taken in a classroom, each classroom shall be filled to capacity with candidates seated 1.4 metres apart, and there shall be one invigilator per classroom.

(3) Candidates with disabilities, particularly visually impaired candidates, candidates with hearing problems and candidates with learning difficulties, shall have their own invigilators and separate examination classrooms.

Number of security officers at Examination Administration Centre

15.—(1) There shall be one security officer at every Examination Administration Centre.

(2) Every security officer shall carry a valid identification card.

(3) Where, in the opinion of the District Education Manager, the safety of National Examination papers cannot be guaranteed, there shall be one security officer to take care of the examination papers and another security officer to oversee the examination writing process.

Payment of examination fees

16. There shall be payable to the Board, for the applicable Examination, the examination fees set out in the first Schedule hereto.

Storage of National Examination papers

17.—(1) All National Examination papers shall be delivered and kept securely at a Distribution Centre designated by District Education Managers prior to delivery to Examination Administration Centres.

(2) Whilst at the Examination Administration Centre, National Examination papers and answer sheets shall be kept in a lockable metal cabinet or a safe with a double locking system, and one set of keys shall be kept by the supervisor and the other one by the security officer.

(3) Where the cabinet or safe for the storage of examination papers has one lock only, the main door to the room in which the cabinet is located shall have a double locking system, and keys to the locking system shall be kept by the supervisor and those for the cabinet by the security officer.

Registration of candidates

18.—(1) Subject to subregulation (10), every candidate intending to sit for National Examinations shall enrol at his or her current school but so however that where the school is not a designated Examination Centre, the head-teacher of the school shall request the District Education Manager to specify an Examination Centre closest to that school at which candidates may enrol.

(2) Every candidate intending to sit for Junior Certificate of Education Examination and Malaŵi School Certificate of Education Examination shall, where applicable, specify the subjects which he or she intends to sit for during the examination, but so however that every internal candidate shall specify at least six subjects, including English language.

(3) Every completed enrollment form shall be forwarded to the Board.

(4) Upon receipt of the enrollment form pursuant to subregulation (3), the Board shall—

(*a*) register the candidate;

(*b*) assign the candidate an examination number; and

(*c*) register the subjects which the candidates will sit for during National Examinations.

(5) No enrollment and registration of a candidate for National Examinations shall be done direct with the Board, except and exclusively through a designated Examination Centre and on prescribed and authentic nominal rolls.

(6) No person, other than the Board, shall assign, whether in print or handwritten, an examination number to a candidate.

(7) Every enrollment and registration of a candidate for National Examinations shall be processed within such period or periods as the Board may specify, and no candidate may be enrolled or registered, as the case may be, after the expiry period or periods specified by the Board.

(8) No candidate shall be permitted to transfer from one Examination Centre to another after the expiry of the enrollment and registration period.

(9) No candidate shall be permitted to change the subjects that he or she intends to sit for in National Examinations after the expiry of the enrollment and registration period:

Provided that in exceptional and justifiable cases a candidate may change the subjects that he or she intends to sit for in National Examinations after the expiry of the enrollment and registration period and the change shall only be accepted by the Board—

(*a*) if the application is submitted to the Board on the completed prescribed enrollment form duly signed by the head teacher of the school and further if the enrollment form bears the official stamp of the school; and

(*b*) upon the payment of a prescribed fee.

(10) An external candidate shall enroll at an approved Examination Centre.

(11) All MSCE, JCE and external PLSCE candidates shall wear authentic ID Cards issued by the Board, while sitting for the National Examinations.

(12) Save as provided in subregulation (10), the provisions of this regulation with respect to enrollment and registration of candidates for National Examinations shall apply *mutatis mutandis* to external candidates.

(13) No person shall—

(*a*) enroll or facilitate the enrollment of any candidate for National Examinations at an Examination Centre—

(i) otherwise than in accordance with this regulation; or

(ii) if that Examination Centre does not have the capacity to accommodate the candidate;

(*b*) enroll or facilitate the enrollment of any external candidate as an internal candidate.

Verification of examination registers

19.—(1) After the expiry of the enrollment and registration period, the Board shall forward to each Examination Centre a draft examination register for verification of—

(*a*) the enrolled names of candidates;

(*b*) the examination numbers of the candidates; and

(*c*) the subject entries of candidates.

(2) After the verification of the information on the draft examination register, each candidate shall sign the register against his or her name; and the head-teacher of the school shall countersign each page of the draft examination register, and shall affix the official stamp of the school or the seal of the school, as the case may be, on each page of the draft examination register.

Identification of candidates prior to examination

20.—(1) Every head-teacher of a feeder school shall, a day before the commencement of National Examinations period, submit to the supervisor the attendance register used at the school in respect of candidates at that school.

(2) All internal candidates of feeder schools or Lone Examination Centres shall be identified before the commencement of any examination period.

(3) To facilitate the identification process of internal candidates of feeder schools or Lone Examination Centres, the head-teachers of the feeder schools or of the schools using the Lone Examination Centre shall, a day before the commencement of the National Examinations, present all the candidates in person to the supervisor.

(4) The head-teachers of the feeder schools shall be required to produce to the supervisors the school attendance registers, payment schedules and enrollment forms together with the examination attendance register to assist the supervisor in the identification process.

(5) Supervisors shall ensure that they have positively verified the identity of all external candidates a day before the commencement of the National Examinations; and where an external candidate is not known at the Examination Administration Centre where he or she shall write the National Examinations, he or she may bring another responsible person in society to identify him or her to the supervisor.

Duties and conduct of the supervisor

21.—(1) The supervisor shall be overall in charge at an Examination Administration Centre.

(2) Without derogation from the generality of subregulation (1), the duties of the supervisor shall be—

(*a*) to prepare the Examination Administration Centre to the standard stipulated in these Regulations, and to ensure that all supporting personnel, equipment and security are in place;

(*b*) to brief the invigilator and the security officer on, and to supervise the invigilator and security officer in, their respective roles in the proper conduct of the examinations;

(*c*) in the company of a security officer, to collect examination papers from the Distribution Centre on a daily basis for writing of National Examinations at the Examination Administration Centre;

(*d*) to ensure that all candidates are identified, either as students of feeder schools or external candidates before the commencement of the National Examinations;

(*e*) to ensure that all candidates are thoroughly searched before they enter the examination room;

(*f*) to ensure that candidates visibly wear ID cards and keep them visible until the end of each examination paper;

(*g*) to open the "A" envelope and to assist the invigilator in distributing question papers and collecting answer sheets and thereafter to witness the sealing of the return envelopes;

(*h*) where any envelope has been tampered with, to ensure that the invigilator does not conduct the examination, and to report the matter to the District Education Manager or Police and to the Board without delay, and where appropriate, by telephone;

(*i*) to ensure that the invigilator is given the examination attendance register and that the invigilator marks the register while the examination is in progress;

(*j*) to ensure that no cheating takes place at the Examination Administration Centre;

(*k*) to report to the Board any irregularities committed by any invigilator, any security officer or any other person;

(*l*) to attend to all eventualities such as hardship cases, illness and disruption that may occur at the Examination Administration Centre, and to submit a written report of the same at the end of the examination;

(*m*) to ensure that all examination papers are accounted for on a daily basis;

(*n*) to ensure that attendance registers are enclosed in "B" or "C" envelope (return envelope) at the end of each examination paper;

(*o*) in the company of a security officer, to deliver all written examination scripts and other documents to the Distribution Centre at the end of the final examinations paper of the day;

(*p*) to ensure that extra question papers for each feeder school remain the property of that feeder school; and

(*q*) to ensure that all documents used during the administration of the National Examinations are returned to the Board, duly completed;

(3) Supervisors shall always be punctual in arriving at the Examination Centre during the conduct of National Examinations.

(4) Supervisors shall ensure that no candidate brings any unauthorized reference materials into the examination room.

Duties and conduct of invigilators

22.—(1) Invigilators shall report to the supervisors.

(2) The main duties and conduct of an invigilator shall be—

(*a*) in liaison with the supervisor, to prepare the Examination Administration Centre to the standards stipulated in these Regulations, and to check that all equipment, personnel and security are as required for the proper conduct of National Examinations at the Centre;

(*b*) to always be punctual at the Examination Administration Centre during the conduct of National Examinations;

(*c*) to help the supervisor search the candidates thoroughly;

(*d*) to ensure that all examinations papers for National Examinations are available and to witness the opening of the "A" envelope;

(*e*) to remain in the examination room throughout the duration of the examination and to be alert in order to maintain order and curb malpractices throughout the duration of the examination;

(*f*) to complete the examinations attendance registers as each examination paper is being written, and to check that all candidates have written their correct examination numbers on the scripts;

(*g*) to ensure that there is no cheating at the Examination Administration Centre during the conduct of the National Examinations;

(*h*) to report to the Board, through the supervisor all cases of hardship, anomalies or irregularities, and where anomalies or irregularities are committed by the supervisor, to report such anomalies or irregularities directly to the Board;

(*i*) to see to it that no question paper goes out of the examination room before the end of each examination;

(*j*) to ensure that all scripts bear the correct candidate examination numbers, and to account for all examination scripts;

(*k*) to check the seating plan, endorse absentees and eventually to enclose the seating plan together with examination scripts in the "B" and "C" envelopes (the return envelope);

(*l*) to complete the details on the "B" and "C" envelopes (the return envelope);

(*m*) to complete and enclose the Script Declaration Form in the "B" and "C" envelopes (the return envelope);

(*n*) to record any examination malpractice on the prescribed form, or where no prescribed form is available, on a sheet of paper, and to ensure that the form or sheet of paper as the case may be, is duly signed by all relevant parties;

(*o*) where the "A" envelope has been tampered with, not to conduct the examination, but to report the matter to the supervisor, District Education Manager or Police and to the Board without delay, and where appropriate, by telephone; and

(*p*) to ensure that all extra examination question papers remain in the envelop on the supervisor's table during the course of examination.

Joint duties of supervisors and invigilators

23.—(1) For effective invigilation of examinations, the supervisors and invigilators shall—

(*a*) check and note the number of envelopes per paper which the Examination Administration Centre received against the delivery sheet from the Board so that they are given all the envelopes for each paper;

(*b*) have adequate information about National Examinations to enable them to make proper arrangements for the examinations, most especially information relating to—

(i) timetables;

(ii) nominal rolls;

(iii) examination attendance registers;

(iv) confidential instructions, where applicable;

(v) corrigenda, if any;

(vi) confidential timetable, where applicable;

(vii) syllabus; and

(viii) regulations relating to the conduct of examinations;

(*c*) make necessary arrangements in advance of the National Examinations, namely, allocate adequate rooms, desks, stationery and other materials and also ensure that security personnel are available;

(*d*) collect all written scripts at the end of an examination paper and to seal the envelopes properly in the presence of candidates;

(*e*) ensure that only candidates who registered for particular subjects are allowed to sit for the examinations of that subject;

(*f*) have each candidate sign against his or her name on the examination attendance register while the examination is in progress to confirm his or her presence during each of the examination papers indicated by the invigilator;

(*g*) ensure that during examinations each candidate behaves according to the rules and regulations set by the Board; and

(*h*) gather all necessary evidence on any malpractice any candidate is involved in during examinations viz-a-viz getting medical reports on issues of drug and alcohol intake.

(2) A day before the start of writing examinations, the supervisor and the invigilator shall—

(*a*) ensure that a special room has been set aside for examination purposes;

(*b*) make a seating plan for major and minor examination subjects for every examination paper;

(*c*) ensure that there are enough desks to seat candidates 1.4 metres apart;

(*d*) read out regulation 29 to the candidates;

(*e*) read out to the candidates the declaration with respect to the attendance of examinations, and explain to the candidates its implication; and

(*f*) invite each candidate to write his or her name and append his or her signature against the same on the examination attendance declaration form to certify that they have understood and will adhere to the examination regulations.

(3) Before the students enter the examination room, the supervisor and invigilator shall ensure that—

(*a*) there are no candidates in the examination room, and that there is no literature in lockers in the examination room;

(*b*) there are no unauthorized persons within a radius of thirty metres outside the examination room;

(*c*) each additional examination room has a full-time invigilator allocated before the examinations start;

(*d*) there are no text books, notebooks or any papers in the desks, on the floor or on the walls in the examination room or dangerous weapons in the examination room;

(*e*) the examination room is well lighted and ventilated;

(*f*) there is a clock placed in a conspicuous position in the examination room;

(*g*) the correct examination envelopes are collected from the supervisor's office, and are checked for tampering and for subject, paper number, quantities, dates and time;

(*h*)the examination envelopes are sealed and intact; and

(*i*) all necessary documents, namely, examination attendance registers, seating plans, stationery and the like, have been collected together with all the examination envelopes from the supervisor's office.

(4) Before the writing of National Examinations starts, the supervisor and invigilator shall—

(*a*) call up candidates for searching and identification thirty minutes before starting time;

(*b*) identify Primary School Leaving Certificate Examination internal candidates to ensure that they belong to a particular feeder school or Lone Examination Centre;

(*c*) identify Primary School Leaving Certificate Examination external candidates at the entrance door from their authentic ID cards and send away external candidates who cannot be identified;

(*d*) identify Junior Certificate Examination and Malaŵi School Certificate Examination candidates by their ID cards issued by the Board;

(*e*) advise candidates to leave all books and other belongings one hundred metres away from the examination room;

(*f*) physically check that the candidates do not carry any unauthorized notes or books into the examination room;

(*g*) physically check that candidates are not wearing coats, jerseys, jackets, high boots, *zitenje* and more than one shirt, blouse, skirt, dress or one pair of trousers;

(*h*) seat candidates according to the seating plan and at a distance of not less than 1.4 metres apart and ensure that all the candidates are seated fifteen minutes before examination time;

(*i*) distribute stationery;

(*j*) advise candidates to write their examination numbers on the answer book and check if the numbers are correct;

(*k*) show the right examination question paper envelopes to candidates as evidence that the envelopes have not been tampered with;

(*l*) call one candidate to sign on the right envelope as a witness that the envelopes are still sealed;

(*m*) open the right envelopes, physically count the papers and then distribute the examination question papers to the candidates;

(*n*) inform the candidates that any candidate who is wholly or partly responsible for any misconduct, cheating or disruption during the examination shall be liable to be disqualified and in addition, shall be liable to prosecution for a criminal offence;

(*o*) ensure that each candidate has an examination question paper;

(*p*) where applicable, give candidates a five minute chance to practise shading computer OMR forms on the sample section;

(*q*) advise candidates to check that the examination question paper has all pages;

(*r*) announce the starting time, and except for practical examinations which can be done in sessions provided the specific time is observed for each session, the starting time for examinations shall not be altered without the approval of the Board; and

(*s*) tell candidates to start writing the examinations.

(5) While candidates are writing the examinations, the invigilator shall—

(*a*) be in the examination room from the beginning to the end;

(*b*) walk around the examination room, observing the candidates;

(*c*) stop any communication between the candidates;

(*d*) not allow any candidate to leave the examination room before the end of the examination unless authorized by the supervisor or the invigilator;

(*e*) check the candidate's scripts to ensure that they have written their correct examination numbers;

(*f*) confiscate any unauthorized notes, books, or items that any candidate is found with in the examination room and if confiscated ensure that such notes, books or items are—

(i) labelled with the candidate's examination number; and

(ii) signed by the candidate, the supervisor, invigilator and security officer:

Provided that the Invigilator shall attach to the candidate's script a brief report on the matter to the Board;

(*g*) not give extra time to late candidates;

(*h*) not allow any teacher or any person outside the examination room to communicate with any candidate while examinations are in progress;

(*i*) record the examination number of any candidate who reports hardship;

(*j*) submit a written report with an authentic medical report, where applicable provided by any candidate who falls ill, gets hurt or faints;

(*k*) complete the examination attendance register and the seating plan for the paper;

(*l*) indicate absentees on the seating plan and the "B" envelope (or the return envelope);

(*m*) report any emergency to the supervisor;

(*n*) announce time periodically, for instance, every thirty minutes;

(*o*) ensure that the Board's officials produce valid official identification cards before they are allowed into the examination room;

(*p*) ensure that no candidate goes out of the examination room during the last ten minutes of the examination; and

(*q*) ensure that any official who comes for spot checking is closely monitored and he or she briefs the supervisor on the findings before leaving the Centre.

(6) Five minutes before the end of the examination, the security officer shall return to the examination room to witness the sealing of "B" and "C" envelopes (the return envelopes).

(7) Five minutes before the end of the examination, the invigilator shall warn the candidates that there are only five minutes to go.

(8) When the time is up, the invigilator shall tell the candidates to stop writing and when he or she makes this announcement the invigilator shall—

(*a*) ask all candidates to stand up;

(*b*) collect scripts and other documents while the candidates are standing, and ensure that the scripts have been arranged in numerical order according to feeder schools;

(*c*) check the examination numbers on the scripts to ensure that every script has the number;

(*d*) ensure that computer OMR cards are not folded as they are put in the "C" envelope;

(*e*) seal scripts in separate "B" envelopes (the return envelopes) according to feeder schools in the presence of candidates, the supervisor and the security officer;

(*f*) seal in the same envelope scripts for both internal and external candidates for each feeder school;

(*g*) enclose in the "B" envelope (the return envelope) the Seating Plan, Script Declaration Form, the "A" envelope and the attendance register;

(*h*) surrender all sealed examination envelopes, registers and unused stationery to the supervisor;

(*i*) ensure that all scripts and OMR cards are accounted for;

(*j*) dismiss the candidates; and

(*k*) report to the supervisor, and the Board any anomaly or irregularity which may have occurred during the writing of a particular paper.

Duties of head-teachers of feeder schools

24.—(1) The head-teachers of feeder schools shall be responsible for—

(*a*) the enrollment and registration process of their internal and external candidates, including the verification of examination attendance registers, nominal rolls;

(*b*) identifying their candidates to the supervisor;

(*c*) providing any extra furniture that may be required at the Examination Administration Centre; and

(*d*) the delivery of examinations attendance registers, payment schedules, enrollment forms and class attendance registers to the supervisor; and

(*e*) ensuring that each candidate signs the attendance declaration form.

(2) The head-teacher shall read the rules applicable to the candidates before they sit for National Examinations.

(3) The head-teachers of feeder schools shall not, during National Examinations, be present at the Examinations Centre used by their feeder schools.

Duties of a security officer at Examination Administr-ation Centre

25.—(1) The security officer at an Examination Administration Centre shall be answerable to the supervisor, and his or her main duties shall be—

(*a*) to ensure that they collect the correct envelopes from the Distribution Centre for the day's examinations;

(*b*) to accompany the supervisor to the Examination Administration Centre after collecting examination papers from the Distribution Centre;

(*c*) to assist invigilators in searching candidates for the possible importation of unauthorized reference and other prohibited materials into the examination room;

(*d*) to monitor the administration of examinations at the Examination Centre for adherence to standing regulations and guidelines;

(*e*) to maintain a visible presence at the Examination Administration Centre by spending most of his time patrolling the Examination Centre, including going into the examination room when there is need to do so but not to interact with or disturb the candidates;

(*f*) to stop or prevent acts of cheating by candidates and report any such case to the invigilator and supervisor for appropriate action;

(*g*) to stop or prevent acts of cheating by the invigilators, teachers and any other persons and report any identified or suspected cases to the Board and the police for appropriate action;

(*h*) to escort candidates wishing to go to the toilets during the examination process;

(*i*) to check the number of question papers remaining on the supervisor's table each time he or she enters the examination room;

(*j*) to ensure that no examination question paper goes out of the examination room before the end of the examination time;

(*k*) to complete security remarks forms regarding the security of examinations and scripts at the Distribution Centre; and

(*l*) to escort the supervisor to deliver written scripts to the Distribution Centre at the end of each day.

Duties of a security officer at Distribution Centres

26. The security officer stationed at a Distribution Centre shall be answerable to the administrator of the Distribution Centre and his or her main duties shall be—

(*a*) to liaise with the Distribution Centre administrator and the Board in order to ensure the security of examination papers and written scripts during the duration of the examinations and until all the scripts delivered at the Distribution Centre by the supervisor have been forwarded to the Board;

(*b*) to check that envelopes containing examinations and related materials are not tampered with during delivery;

(*c*) to periodically check the security of the strong room at the Distribution Centre;

(*d*) to ensure that entry to the strong room at the Distribution Centre is at all times restricted to staff at the Distribution Centre;

(*e*) to monitor the transactions between staff of the Distribution Centre and the Examination Administration Centre;

(*f*) to report to the Board or police station any malpractices by staff at the Distribution Centre;

(*g*) to intervene and stop any observed acts by staff at the Distribution Centre which are likely to compromise the security of the examination papers and written scripts; and

(*h*) to ensure that scripts are received at the Distribution Centre soon after the last examination paper of the day.

Duties of the administrator of the Distribution Centre

27. The administrator of the Distribution Centre shall—

(*a*) ensure that the Distribution Centre is set up and ready to operate, and that all required resources are in place and that the personnel is well informed of their roles;

(*b*) liaise with the police to ensure that all security arrangements for the Distribution Centre are in place and. where possible, shall retain the keys to the strong room at the Distribution Centre;

(*c*) receive National Examination papers from the Board and complete appropriate documents certifying the correctness, safety and security of the examinations papers;

(*d*) sort out National Examination papers for the next day's examinations;

(*e*) issue National Examination papers to Supervisors in the presence of security officers;

(*f*) receive written scripts from Examination Administration Centres;

(*g*) on a daily basis, maintain all records of examination issuing transactions and return of scripts from Examination Centres;

(*h*) attend to National Examinations queries from Examination Administration Centres;

(*i*) ensure that all documents used in the administration of National Examinations have been enclosed in examination envelopes and are sent back to the Board at the end of the examination;

(*j*) report to the Board any anomalies noted in the National Examinations papers or scripts envelopes; and

(*k*) issue confidential instructions for practical examinations to head-teachers of schools on specified dates.

Supervisors, etc., not to be corrupt

28.—(1) Supervisors, invigilators and security officers shall be accommodated in neutral houses not owned or occupied by officials of the feeder schools or Examination Administration Centres.

(2) Supervisors, invigilators and security officers shall not demand or receive anything of monetary or non-monetary value or any form of entertainment that would influence their actions and decisions in the administration of National Examinations.

(3) No supervisor, invigilator or security officer shall answer examination questions or unlawfully posses examination answers at any time when National Examinations are being conducted.

(4) Any supervisor, invigilator or security officer alleged to have been involved in any malpractice during the conduct of any National Examination shall complete his or her section on form No. EMF 001 contained in the Part A in the Second Schedule hereto.

(5) Any supervisor, invigilator or security officer who fails to comply with these Regulations or breaches any duty imposed by these Regulations shall not be allowed to conduct any future National Examinations, and shall be reported to Police, the Anti Corruption Bureau or the Ministry of Education for further action.

Rules applicable to candidates

29.—(1) The following rules shall apply to all candidates.

(2) All candidates shall, before entering the examination room—

(*a*) visibly wear their ID cards and keep them visible until the end of each examination paper; and

(*b*) submit to thorough search, and any candidate found in possession of, or with reference materials in the examination room shall be liable to be disqualified for the entire examination and to prosecution.

(3) Any candidate who colludes with another, or shares ideas or uses mirrors to reflect responses to another, to cheat or share ideas during National Examinations shall be liable to be disqualified for the entire examination and to prosecution.

(4) Every candidate shall be seated in the examination room fifteen minutes before the examination starting time.

(5) Where a candidate is permitted to enter the examination room after the examination starting time, no extra time shall be allowed.

(6) No candidate will be permitted into the examination room after the examination has been in progress for thirty minutes or more.

(7) No candidate shall be allowed to bring into the examination room such things as notes, textbooks, cell phones, mirrors, cardboards, folders, files, crib garments or any material which is likely to be used for cheating, and any such items found in possession of any candidate shall be confiscated, and the candidate liable to be disqualified for the entire examination, and to prosecution.

(8) No candidate shall bring any reference materials within one hundred metres of the examination room.

(9) Every candidate shall make sure that the examination envelope marked "A" is opened and that the one marked "B" is sealed in their presence.

(10) A candidate may be allowed to go to the toilet and shall be escorted by a security officer, and any time lost in the process shall not be compensated.

(11) Any candidate who harasses a supervisor, an invigilator or any authorized official at the Examination Administration Centre, or who disrupts examinations in any way shall be liable to be disqualified for the entire examination, and shall be liable to prosecution.

(12) Any candidate who is unlawfully assisted in any way during an examination shall be disqualified for the entire examination, and shall be liable to prosecution.

(13) All internal candidates shall be identified by the head-teacher of their school.

(14) All external candidates shall be identified by the authentic ID cards issued by the Board and the external candidates who do not have the required ID cards shall not be admitted into an examination room.

(15) Any candidate who has been caught in any Examination malpractice shall complete his or her section on the form No. EMF 002, contained in Part B in the Second Schedule hereto.

(16) Any candidate found copying or exchanging scripts or peeping from another candidate's script during the examination shall be disqualified for the entire examination, and shall be liable to prosecution.

(17) Any candidate who submits two scripts of an examination paper shall be disqualified for the entire examination.

(18) Any candidate who hires another person to write examinations on his or her behalf shall be disqualified for the entire examination and shall be liable to prosecution while the hired person commits an offence and shall be liable to prosecution.

(19) No candidate shall write the examination while under the influence of alcohol or narcotic drugs.

(20) Any candidate who, in the course of or at the end of National Examinations—

(*a*) threatens, harasses or intimidates any member of staff, any candidate or any student at an Examination Administration Centre; or

(*b*) willfully destroys, damages, or vandalizes any property at an Examination Administration Centre, shall be disqualified in the entire examination and, in addition, shall be liable to prosecution.

(21) Any candidate who has enrolled as an external candidate and writes any National Examination as an internal candidate shall be liable to be disqualified in the entire examination.

Examination rooms out of bounds for outsiders

30. No person, other than a candidate or a person administering National Examinations shall be found within thirty metres of an Examination Administration Centre when National Examinations are in progress.

Teachers sitting examination as candidates

31. No serving school teacher shall register to write examinations at the school where he or she teaches or at an Examination Administration Centre that is used by candidates belonging to a feeder school where he or she teaches.

Delivery of examination papers. stationery, etc

32. The District Education Manager shall act in liaison with the Primary Education Advisor in organizing the mode of delivery of examination papers from the Distribution Centre to the Examination Administration Centre and the return of examination scripts from the Examination Administration Centre to the Distribution Centre.

Spot-checks by the Board

33.—(1) The Board may, through members of its committees, carry out spot-checks on the progress and conduct of National Examinations at any Examination Administration Centre.

(2) Every person who is authorized to carry out a spot-check of an Examination Administration Centre pursuant to subregulation (1)—

(*a*) shall carry a valid MANEB identity card;

(*b*) may go into the examination room at the Centre, and shall report any malpractice to the relevant authorities; and

(*c*) may spot check a Centre as many times as possible.

(3) Without derogating from the generality of subregulation (1), every person who is authorized to spot-check an Examination Centre may—

(*a*) check the seating plan and other relevant documents;

(*b*) check impersonation by comparing the ID cards with the candidates' faces;

(*c*) stop impersonators from continuing to write the National Examinations;

(*d*) report impersonation cases to police;

(*e*) check spare examination question papers so that they are not abused;

(*f*) check unauthorized reference material smuggled into the examination room;

(*g*) interrupt the examinations for not more than fifteen minutes where there is rampant cheating, and any lost time shall be added to the scheduled time for the examination;

(*h*) check envelopes of examinations that have not been written; and

(*i*) in case of rampant cheating, recommend the replacement of the supervisor, invigilator and security officer.

(4) The person who carries out the spot-checking shall submit a written report of the same to the Board as soon as possible.

(5) Every Examination Administration Centre shall be open to spot-checking, and every person in charge of an Examination Administration Centre shall allow spot-checkers free access to the Centre.

Briefing on conduct of examinations

34.—(1) Prior to the commencement of National Examinations—

(*a*) all officers involved in conducting the examinations shall be properly briefed by, or on behalf of the Board; and

(*b*) security officers shall also be briefed, but separately.

(2) Any person who has not been briefed shall not participate in the conduct of National Examinations.

Seating plan arrangements

35.—(1) Candidates at a Cluster Centre shall be seated in alternate columns in either halls or classrooms so that candidates from the same school are not seated close to each other.

(2) Candidates shall be identified by a colour code marked at the corner of candidates' scripts, and the scripts shall be enclosed in a separate "B" envelope according to the feeder school.

Part IV
Duties and Conduct of Personnel During Marking Examination Scripts at Marking Centres

Appointment of personnel for Marking Centres

36.—(1) All Personnel involved in the marking of National Examination scripts and the administration thereof, at a Marking Centre shall be persons of high integrity, diligent, mature and possess a good professional track record.

(2) Every Marking Centre shall have a coordinator and an administrator to oversee the conduct and administration of marking examination scripts.

(3) MANEB shall appoint coordinators, administrators and examiners to participate in the administration and marking of National Examinations at Marking Centres.

Duties of a coordinator at a Marking Centre

37. The coordinator shall be answerable to the Director of Examinations and his or her main duties shall be to—

(*a*) supervise MANEB staff, security officers, examiners and any other member of staff at the Marking Centre;

(*b*) look into the discipline and welfare of examiners and staff at the marking centre;

(*c*) ensure that envelopes are extracted for pre-marking;

(*d*) ensure that scripts are extracted for pre-marking;

(*e*) check that all envelopes from all centres have been received and entered in the master card;

(*f*) ensure that chief and senior examiners pre-mark before standardization and that all envelopes used for the same are accounted for;

(*g*) ensure that a thorough standardization is done by chiefs, seniors and other examiners;

(*h*) ensure that no examiner takes part in marking before participating in standardization;

(*i*) ensure that marking rooms are set for the marking exercise;

(*j*) check daily progress of the marking exercise and report to management accordingly and periodically;

(*k*) ensure timely completion of the marking exercise;

(*l*) maintain a record of attendance for all the examiners starting from standardization to the end of the marking session;

(*m*) ensure the availability of working documents and stationery such as pens of all colours for chief or senior examiners, punching machines, staplers and others;

(*n*) refer all policy issues to management;

(*o*) ensure that only those invited to mark and have participated in standardization are the ones doing the exercise;

(*p*) ensure safe keeping of mark sheets;

(*q*) ensure that all claim forms such as those for transport and subsistence, and marking fees are processed accurately and on time;

(*r*) ensure that no chief examiner leaves the Marking Centre before he or she has accounted for all scripts of all centres and that the coordinator has verified that the marking has indeed been thoroughly completed;

(*s*) ensure that a chief examiner's report has been written and submitted before the chief examiner leaves the Marking Centre;

(*t*) ensure that no unauthorized persons visit marking rooms;

(*u*) ensure that mark sheets for all centres have been received and thoroughly checked before submitting to Computer Services Department (CSD);

(*v*) brief examiners on how marking exercises will be carried out such as code of conduct and upholding of professionalism in marking;

(*w*) supervise quality control of mark sheets;

(*x*) timely report to management all erratic or indisciplined examiners; and

(*y*) ensure that all documents such as attendance registers and candidates declaration forms are accounted for.

Duties of chief or senior examiners at a Marking Centre

38. The chief or senior examiner shall be answerable to the coordinator and his or her duties shall include to—

(*a*) pre-mark samples of scripts before standardization;

(*b*) conduct thorough standardization meetings;

(*c*) ensure that no examiner who has not participated in standardization takes part in the marking of scripts;

(*d*) supervise examiners;

(*e*) check quality of marking by sampling at least fifteen per cent of the examiner's work;

(*f*) issue scripts to examiners for actual marking;

(*g*) recommend the withdrawal of persistent erratic examiners;

(*h*) look into the discipline and welfare of examiners under his or her charge;

(*i*) attend to queries from examiners, checkers and MANEB staff on the work of candidates;

(*j*) enforce discipline in the marking room;

(*k*) ensure that marking is done only in the designated marking room;

(*l*) ensure that no audio gadgets are brought into the marking room;

(*m*) ensure that marking starts and ends at the stipulated time;

(*n*) account for all scripts and mark sheets;

(*o*) keep a record of scripts allocation to examiners;

(*p*) supervise checkers;

(*q*) verify marking claims;

(*r*) appraise examiners;

(*s*) compile chief examiner's reports;

(*t*) report from time to time on the progress of work to the coordinator; and

(*z*) submit proposed cut off points for awards to coordinators.

Duties of a security officer at a Marking Centre

39. The security officer shall be answerable to the coordinator and his or her duties shall be to—

(*a*) ensure safety of scripts in the marking and strong rooms;

(*b*) ensure safety of examiners, MANEB staff and property at the Marking Centre;

(*c*) ensure that peace prevails at the Marking Centre;

(*d*) ensure that no unauthorized people, including visitors are allowed at the Marking Centre;

(*e*) ensure that all suspected cheating cases have been received and forwarded to the Board;

(*f*) ensure that he or she witnesses the receipt or issuing of goods, such as food stuff and stationery by the stores officer;

(*g*) prevent abuse of Board's property including food stuffs;

(*h*) ensure that he or she keeps and accounts for all candidates' declaration forms;

(*i*) ensure that no unauthorized person gains access to scripts and mark sheets; and

(*j*) ensure that there is orderliness and discipline at all times.

Duties of an administrator at a Marking Centre

40. The administrator shall be answerable to the coordinator and his or her duties shall be to—

(*a*) look into the general welfare of examiners such as attending to sickness, and other special services such as diet, first aid, etc.;

(*b*) issue such utilities as toiletries and mosquito killers to examiners and other staff;

(*c*) ensure cleanliness of the hostels and marking rooms;

(*d*) ensure that every examiner and MANEB staff are properly accommodated;

(*e*) ensure that all transport subsistence claims are processed and delivered in time to the Board for payment;

(*f*) ensure that meals are well prepared and served in time; and

(*g*) ensure that all administrative issues are taken care of and reported to the coordinator on time.

Rules applicable to examiners

41. All examiners at a Marking Centre shall be answerable to the chief examiner and coordinator and shall be subject to the following rules—

(*a*) no examiner shall mark before participating in standardization exercise;

(*b*) every examiner shall mark candidate scripts in consistency with the agreed marking scheme;

(*c*) every examiner shall ensure that he or she is punctual during the entire period of marking;

(*d*) every examiner shall report any suspected cases of cheating, fraud and examination malpractices;

(*e*) every examiner shall ensure that all reports or documents of cheating and hardship cases from examination centres are duly reported;

(*f*) every examiner shall enter all raw scores on the mark sheet including those of Braille;

(*g*) every examiner shall not mark while under the influence of alcohol or intoxicating liquor;

(*h*) every examiner shall ensure that marking is done only in the designated marking rooms;

(*i*) every examiner shall not alter raw scores on the mark sheet;

(*j*) every examiner shall not be allowed to take scripts outside the marking room without authority;

(*k*) every examiner shall ensure that all scripts allocated to him or her have been marked before entering marks on a mark sheet; and

(*l*) no inter-party discussion of examinations is allowed during marking or marking breaks.

Communication with the media, etc., by officials at a Marking Centre

42. No unauthorized official or any other person shall—

(*a*) communicate with the media on anything concerning exams;

(*b*) reveal raw scores to any person; or

(*c*) gain access to examinations scripts and mark sheets.

Part V
Miscellaneous Provisions

Offences and disciplinary action

43.—(1) Any person who contravenes these Regulations commits an offence and shall, in addition to the penalties prescribed under the Act, be liable to disciplinary action.

(2) Any person involved in the administration or conduct of National Examinations who contravenes these Regulations shall never be allowed again to administer or conduct National Examinations.

Revocation of G.N. 32/2003 13/2004 11/2005

44. The Malaŵi National Examinations Board (Conduct of National Examinations) Regulations, 2003, the Malaŵi National Examinations Board (Conduct of National Examinations) (Amendment) Regulations, 2004 and the Malaŵi National Examinations Board (Conduct of National Examinations) (Amendment) Regulations, 2005 are hereby revoked.

FIRST SCHEDULE
Examination Fees

reg. 16

Malaŵi School Certificate of Education Examinations — Internal Candidates

	K	t
Fees, per subject	98	00
Entry fees, per candidate	154	00
Administration fees, per candidate	84	00
Examination Centre fees, per candidate	84	00

Malaŵi School Certificate of Education Examinations — External Candidates

Fees, per subject	98	00
Entry fees, per candidate	154	00
Administration fees, per candidate	84	00
Examination Centre fees, per candidate	84	00
Form fees, per candidate	84	00

Junior Certificate of Education Examinations — Internal Candidates

Fees, per subject	49	00
Entry fees, per candidate	84	00
Administration fees, per candidate	84	00
Examination Centre fees, per candidate	84	00

Junior Certificate of Education Examinations — External Candidates

	K	t
Fees, per subject	49	00
Entry fees, per candidate	84	00
Administration fees, per candidate	84	00
Examination Centre fees, per candidate	84	00
Form fees, per candidate	84	00

SECOND SCHEDULE

PART A

Form No. EMF. 001 reg. 28 (4)

THE MALAŴI NATIONAL EXAMINATIONS BOARD

EXAMINATION MALPRACTICE FORM FOR A CANDIDATE

Date: .....

Centre Name: .....

Centre No.: .....

Subject Name: .....

Paper Name: ..... Paper No.:.....

I, ... whose examination number is ..... has been found .... during the 20..... PSLCE/JCE/MSCE ..... examination paper.

I fully understand and acknowledge that what I have done is a gross breach of Malaŵi National Examinations Board's (Conduct of Examinations) Regulations of proper conduct of National Examinations.

I know that I shall be disqualified in the entire examination and liable to prosecution.

Name: ..... Signature: ..... Date: .....
CANDIDATE

Name: ..... Signature: ..... Date: .....
INVIGILATOR

Name: ..... Signature: ..... Date: .....
SUPERVISOR

Name: ..... Signature: ..... Date: .....
POLICE OFFICER

Name: ..... Signature: ..... Date: .....
MANEB OFFICIAL

Time: ..... Caught by: ..... Phone No: .....

Arrested by: ..... Phone No: .....

Evidence kept by: ..... Phone No: .....

Report to be addressed to: The Executive Director
MANEB, PO Box 191, Zomba.

PART B

Form No. EMF. 002 reg. 29 (15)

THE MALAŴI NATIONAL EXAMINATIONS BOARD

EXAMINATION MALPRACTICE FORM FOR SUPERVISORS/ INVIGILATORS/ POLICE OFFICERS

Date: .....

Centre Name: .....

Centre No.: .....

Subject Name: .....

Paper Name: ..... Paper No.:.....

I, ... Supervisor/Invigilator/Police Officer of Centre No.: ..... has be found .....
.....
during the 20..... PSLCE/JCE/MSCE .....
..... examination paper.

I fully understand and acknowledge that what I have done is a gross breach of Malaŵi National Examinations Board's (Conduct of Examinations) Regulations of proper conduct of National Examinations.

I know that I am liable to prosecution.

Name: ..... Signature: ..... Date: .....
CANDIDATE

Name: ..... Signature: ..... Date: .....
INVIGILATOR

Name: ..... Signature: ..... Date: .....
SUPERVISOR

Name: ..... Signature: ..... Date: .....
POLICE OFFICER

Name: ..... Signature: ..... Date: .....
MANEB OFFICIAL

Time: ..... Caught by: ..... Phone No: .....

Arrested by: ..... Phone No: .....

Evidence kept by: ..... Phone No: .....

Report to be addressed to: The Executive Director
MANEB, PO Box 191, Zomba.

MALAŴI NATIONAL COUNCIL OF SPORTS

CHAPTER 30:05

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CHAPTER 30:05

MALAŴI NATIONAL COUNCIL OF SPORTS

ARRANGEMENT OF SECTIONS

PART I

Preliminary

SECTION
1. Short title
2. Interpretation

PART II

Establishment of the Malaŵi National Council of Sports, its Functions and Powers, Funds and Accounts, etc.

3. Establishment of the Malaŵi National Council of Sports
4. Composition of the Council
5. Tenure of Office of members of the Council
6. Appointment of temporary Chairman or members
7. The Council may co-opt persons to attend meetings
8. Members' allowances, etc.
9. Meetings of the Council
10. Non-liability of members
11. Pecuniary interest of members
12. Functions of the Council
13. Powers of the Council
14. Committees of the Council
15. Funds of the Council
16. Investment of moneys by the Council
17. Compliance with the provisions of the Finance and Audit Act
18. Books, accounts and auditing

PART III

Registration of National Sports Associations, etc.

19. Registration of National Sports Associations
20. Striking off Register
21. Penalties

PART IV

Transitional Provisions, Regulation-Making Power, etc.

22. Regulation-Making powers
Schedule

CHAPTER 30:05

MALAŴI NATIONAL COUNCIL OF SPORTS

10 of 1974
8 of 1980
16 of 1983

An Act to provide for the establishment of a body corporate to be known as the Malaŵi National Council of Sports; to provide for the functions and powers of such body; to provide for the registration of national sports associations; and for matters incidental to, or connected with, the foregoing

[1st June, 1974]

PART I

Preliminary

Short title

1. This Act may be cited as the Malaŵi National Council of Sports Act.

Interpretation

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

"Chairman" means the Chairman of the Council appointed and designated pursuant to section 4;

"Council" means the Malaŵi National Council of Sports established by section 3;

"financial year" means the period commencing on the date of the commencement of this Act and ending on the 31st of March next following such date and thereafter means the period of twelve months ending on the 31st of March in each year;

"Former Council" means the Council known as the Advisory Council for Sports functioning in Malaŵi immediately before the coming into operation of this Act;

"member" means any member of the Council appointed pursuant to section 4;

"national sports association" means any group or body of persons, corporate or unincorporate, formed or operating in Malaŵi and having as one of its objects the promotion on a national basis of any sport whether amateur or professional;

"Register" means the Register of National Sports Associations provided for in section 19; and "register" and "registered" bear corresponding meanings;

"registered association" means a national sports association for the time being registered in the Register pursuant to section 19;

"Secretary" means such officer in the public service as the Minister shall designate as Secretary to the Council;

"sport" means any sport, game or pastime designated by the Minister, by notice published in the *Gazette*, to be a sport for the purpose of this Act.

PART II

Establishment of the Malaŵi National Council of Sports, its Functions and Powers, Funds and Accounts, etc.

Establishment of the Malaŵi National Council of Sports

3. There is hereby established a body corporate to be known as the Malaŵi National Council of Sports, which shall be a body corporate by that name with perpetual succession and a common seal (with power to alter and change such seal from time to time) and which shall be capable in law of suing and being sued, and, subject to this Act, of acquiring, holding, letting and otherwise disposing of land, and doing and performing such acts and things as bodies corporate may by law do and perform.

Composition of the Council

4.—(1) The Council shall consist of not less than eight and not more than ten members, who shall be appointed by the Minister by notice published in the *Gazette*.

(2) The Minister shall designate one member as Chairman of the Council and another member as Deputy Chairman thereof.

(3) Members of the Council shall not, by virtue only of their appointments to the Council, be deemed to be officers in the public service.

(4) No person shall be appointed to the Council who—

(*a*) is an undischarged bankrupt;

(*b*) has, within three years last past, for an offence against any written law, been sentenced to a term of imprisonment of not less than six months, save as an alternative to, or in default of, the payment of a fine;

(*c*) has, within seven years last past, been convicted of an offence involving fraud or dishonesty.

(5) The names of all members of the Council as first constituted and every change in membership thereof shall be published in the *Gazette*.

Tenure of office of members of the Council 8 of 1980

5.—(1) Members of the Council shall, subject to the provisions of this section, hold office for two years from the date of their respective appointments.

(2) All members shall hold office subject to the pleasure of the Minister.

(3) Subject to subsection (4) the office of a member shall be vacated—

(*a*) upon his death;

(*b*) upon the expiry of one month's notice in writing of his intention to resign his said office given by him to the Minister;

(*c*) upon the receipt by him from the Minister of notice of termination of his appointment to the Council;

(*d*) upon his being adjudicated bankrupt;

(*e*) if, by reason of physical or mental illness, he is incapacitated from performing his duties and functions as a member of the Council;

(*f*) if, for an offence against any written law, he is sentenced to a term of imprisonment of not less than six months, save as an alternative to, or in default of, the payment of a fine;

(*g*) if he is convicted of an offence involving fraud or dishonesty;

(*h*) if he has been absent from three consecutive meetings of the Council without the permission of the Council or the Minister.

(4) If any vacancy occurs by reason of death, resignation, or otherwise, in the office of any member, such vacancy shall be filled in the manner provided by subsection (1) of section 4, and the person appointed to fill such vacancy shall hold office for so long as the person in whose place he is appointed would have held such office should such vacancy not have occurred.

Appointment of temporary members

6. If at any time any member, other than the Chairman, is unable, owing to his absence from Malaŵi or to illness or to any other cause, temporarily to perform his duties or discharge his functions in the manner prescribed by this Act, the Minister may appoint a temporary member to perform the duties or discharge the functions of such member for the period during which the member is so disabled.

The Council may co-opt persons to attend meetings

7.—(1) The Council may, with the consent of the Minister, co-opt any one or more persons to attend any particular meeting or series of meetings of the Council for the purpose of assisting or advising the Council in respect of any particular matter under consideration by the Council.

(2) Any person co-opted pursuant to subsection (1) may take part in the deliberations of the Council at any meeting he so attends but shall have no voting powers.

Members' allowances, etc.
16 of 1983

8. A member of the Council, shall be paid such remuneration and allowances, if any, as the Minister may in his case fix.

Meetings of the Council

9.—(1) The Council may meet at such places and times as the Chairman may determine or as he may be directed by the Minister and such meetings shall be convened by notice to the members given by the Chairman.

(2) In the absence of the Chairman from any meeting of the Council, the Deputy Chairman shall preside at that meeting, and in the absence of both the Chairman and the Deputy Chairman, the members of the Council present shall elect one of their number to preside thereat, and the Deputy Chairman, or other member so presiding, shall have all of the powers and perform all of the duties and functions of the Chairman for that meeting.

(3) Save where otherwise provided by this Act, the Council shall conduct its proceedings in such manner as may be directed by the Minister or in the absence of any such direction, in such manner as the Council deems fit.

(4) Minutes of each meeting shall be kept by the Secretary and shall be confirmed by the succeeding meeting and thereat signed by the Chairman, or, in his absence, by the other member presiding, as the case may be.

(5) Subject to the provisions of this Act, six members shall form a quorum of the Council.

(6) A decision of the Council shall be by resolution of the majority of members present and voting thereon at the meeting in question and at all meetings of the Council the Chairman or the person presiding, as the case may be, shall, in the event of an equality of votes, have a casting vote in addition to his deliberative vote as a member of the Council.

(7) All orders and directions of the Council shall be made and given under the hand of the Chairman or the Secretary.

Non-liability of members

10. No member shall be personally liable for any act or default of his or of the Council done in good faith in the exercise, or the purported exercise, of any power or function of the Council.

Pecuniary interest of members

11.—(1) If a member of the Council or his spouse or any company of which he or she is a director or major shareholder or any partner of such member or his spouse has or acquires any pecuniary interest, direct or indirect, in any matter in which his private interests conflict with his duties as a member and which is the subject of consideration by the Council, he shall, as soon as he becomes aware of such interest in such matter, disclose the facts relating thereto to the Council and to the Minister.

(2) A member referred to in subsection (1) shall not take part in the consideration of, or vote on, any question before the Council which relates to the matter referred to in that subsection.

(3) For the purposes of this section, the term ''major shareholder'' means any person who, at the relevant time, in his own right or by right of any other person, has the power to exercise or control not less than ten *per centum* of the voting rights in the relevant company, whether by reason of share holdings, debenture holdings or proxy or otherwise.

Functions of the Council

12.—(1) The functions of the Council shall be—

(*a*) to develop, promote, encourage and control all forms of sport in Malaŵi on a national basis;

(*b*) to facilitate and encourage co-operation among the various national sports associations and other sports organizations in Malaŵi;

(*c*) to assist, whenever possible, sports associations and national, regional, district and local authorities in promoting the development of sport and physical recreation in Malaŵi;

(*d*) to organize in consultation with national sports associations, national, international and other sports competitions and festivals with particular emphasis on the exchange of experience, and the fostering of friendly relations with other nations;

(*e*) to promote throughout Malaŵi the highest standards of sportsmanship and discipline in all sportsmen;

(*f*) to organize and promote scholarships for the training of coaches, organizers, and officials and to foster the promotion of training and coaching schemes and courses;

(*g*) to advise the Government and any authority, either specifically or generally, on matters relating to sport and physical recreation.

(2) In carrying out the functions conferred upon it by this Act, the Council shall at all times do so in accordance with the directions, whether general or special, of the Minister.

Powers of the Council

13.—(1) Subject to the directions of the Minister, whether general or special, the Council shall have the power to do all such things as are incidental or conducive to the carrying out of its functions under this Act or any of them.

(2) The Council shall in addition to the powers conferred by, or implied in, this Act have the powers set out in the Schedule.

(3) The Minister may at any time, by notice published in the *Gazette*, alter, amend or add to the Schedule.

Committees of the Council

14.—(1) The Council may establish committees to assist it in carrying out its functions and in its discretion appoint any person as a member of such committee whether or not he is a member of the Council.

(2) The Council may in its discretion assign any of its functions or powers to a committee established in accordance with subsection (1) but shall not be divested of any power or function which it may have assigned to a committee and may amend or withdraw any decision of any such committee.

(3) The Council may, out of its funds, pay to any member of any committee established under this section who is not a public officer such remuneration and allowances as the Minister may determine.

Funds of the Council

15.—(1) The funds of the Council shall consist of—

(*a*) such sums as may be payable to the Council from moneys appropriated by Parliament for the purpose;

(*b*) such moneys or assets as may accrue to, or vest in, the Council whether in the course of the exercise of its functions or powers or otherwise;

(*c*) such moneys or other assets as may accrue to, or vest in, the Council by way of grants, subsidies, bequests, donations, gifts, subscriptions, rents, interest or from any other source;

(*d*) such sums as are derived from the sale of any property, real or personal, by, or on behalf of, the Council;

(*e*) revenue obtained by virtue of the provisions of subsection (2);

(*f*) any moneys received as a result of the exercise by the Council of the powers conferred upon it by section 16.

(2) Subject to the provisions of this Act, the Council may, in respect of any service rendered by it under this Act, charge fees or make such other financial arrangements as it may deem fit.

(3) With the approval of the Minister, the Council may establish such reserve funds as it may deem necessary or expedient and put therein such amounts as the Minister may approve.

Investment of moneys by the Council

16.—(1) The Council may, subject to the special or general directions of the Minister, invest all or any portion of its moneys—

(*a*) in the purchase of Treasury Bills or any other security issued by the Government of Malaŵi;

(*b*) on deposit in any bank or building society licensed or registered under any law for the time being in force in Malaŵi;

(*c*) in any other form or manner approved by the Minister and the Minister of Finance.

(2) The Council may vary or realize any of its investments with the approval of the Minister.

(3) The Council shall utilize its funds for defraying expenses in connexion with the carrying out of its functions.

(4) Subject to the directions of the Minister, whether special or general, all moneys, when received by the Council, shall be paid into a bank licensed or registered under the law for the time being in force in Malaŵi and shall be credited to such of the Councils' accounts as may be appropriate.

Compliance with the provisions of the Finance and Audit Act Cap. 37:01

17. The Council shall at all times comply with the provisions of the Finance and Audit Act.

Books, accounts and auditing

18.—(1) The Council shall cause to be kept proper books of account and other books in relation thereto.

(2) The accounts of the Council shall be audited at the end of each of the Council's financial years by an auditor appointed by the Council and approved by the Minister.

(3) The Council shall pay in respect of any audit held under this Part such fees, costs and expenses as may be appropriate.

(4) With the prior consent of the Minister, the auditor may by writing under his hand require the production of all books, deeds, contracts, vouchers, receipts and other documents relating to the accounts or investments of the Council which he may deem necessary for the purpose of the audit. He may summon in writing all such persons having knowledge of the affairs of the Council as he may think proper to appear before him personally at the offices of the Council at a time to be fixed in such summons for examination in connexion with any documents or matter relating to the audit.

(5) Any person who, without just cause, fails or refuses to produce any document the production of which has been duly required by the auditor, or who, having been so summoned—

(*a*) without just cause neglects or refuses to comply with the summons; or

(*b*) having appeared before the auditor, without just cause refuses to be examined; or

(*c*) without just cause refuses to answer such questions pertaining to the audit as are put to him,

shall be liable to a fine of 100 Kwacha for every such refusal or neglect incurred. In default of payment, such person shall be liable to imprisonment for three months:

Provided that any conviction under this section shall not operate or be taken to exempt the person convicted from the liability to do or perform the act, matter or thing required of him.

(6) After completion of the audit of the accounts of the Council, the auditor shall report thereon in writing to the Council about the audit generally and on such specific matters in relation thereto as the Minister may direct. The Council shall take the report into consideration within two months after the date of the receipt thereof, and thereupon a copy of such report, together with the Council's comments thereon, shall be sent by the Council to the Minister.

PART III

Registration of National Sports Associations, etc.

Registration of national sports associations

19.—(1) A Register of National Sports Associations in such form, if any, as may be prescribed shall be kept and maintained by the Council.

(2) Every national sports association shall, within three months of the date of the commencement of this Act or within 30 days of its coming into existence, whichever date shall be the later, apply to the Council in the prescribed manner for registration in the Register as a registered association under this Act.

(3) Every national sports association applying for registration pursuant to subsection (2) shall in its application—

(*a*) set forth the name and address of the association and the names, designations, and addresses of its officers and the members of its executive committee or other body in control of its affairs;

(*b*) state the name and the address in Malaŵi of a person authorized to accept service of any proceedings, notices, or other things on its behalf;

(*c*) submit together with the application a copy of the memorandum and articles, constitution or rules of the association, as the case may be.

(4) As soon as is practicable after receiving an application pursuant to subsection (2), the Council shall consider the same and, having satisfied itself as to—

(*a*) the suitability of the memorandum and articles, constitution or rules of the association;

(*b*) the good faith of its officers and members; and

(*c*) the fact that the association complies in all respects with the criteria prescribed for registration,

the Council may direct the Secretary to cause the national sports association in question to be registered in the Register.

(5) Where any amendment is made to the memorandum, articles, constitution or rules of a registered association, or any alteration occurs in any of the matters or things in respect whereof particulars are required to be given under subsection (3), such association shall forthwith give particulars in writing of such amendments or alteration, as the case may be, to the Council.

(6) Every registered association shall, not later than the last day of June in each year, submit to the Council a report of the operations of the association during the period of twelve months ending on the 31st of March in such year together with a balance sheet and income and expenditure account giving true and complete particulars of the financial position of the association as at such last-mentioned date and of its financial transactions during the twelve-month period preceding such date respectively. The balance sheet submitted under this section shall be duly certified as true and complete by the auditors of the association appointed following election at its annual general meeting.

Striking off register

20.—(1) If any registered association, in the opinion of the Minister—

(*a*) has failed to comply with any of the provisions of subsection (5) or (6) of section 19;

(*b*) has ceased to operate in Malaŵi as a national sports association or to comply with any of the criteria prescribed in relation to its registration;

(*c*) should in the public interest cease to be registered,

the Minister may call upon such association to show to him cause why the association should not be struck off the Register.

(2) If cause why such association should not be struck off the Register is not shown to the satisfaction of the Minister within a reasonable time, the Minister may direct the Secretary to strike the association off the Register from such date as the Minister may specify and the Secretary shall strike it off accordingly.

(3) Any decision of the Minister under this section shall be final and shall not be subject to appeal to, or question by, any court of law, and the Minister shall not be required to assign any reason for any such decision.

Penalties

21. If, at any time after the commencement of this Act, a national sports association, not being a registered association under this Act, operates in Malaŵi as a national sports association, every person concerned in the management of the said national sports association shall be guilty of an offence and liable to a fine of 200 Kwacha and to imprisonment for three months:

Provided that nothing in this section shall apply to any person concerned in the management of a national sports association if application to register such association has been made in full compliance with section 19 and the result of such application has not been notified by the Secretary to the person stated under section 19 to be the person authorized to accept service on behalf of the association.

PART IV

Transitional Provisions, Regulation-Making Powers, etc.

Regulation-making powers

22. The Minister may make regulations for the better carrying out of this Act, and, without prejudice to the generality of the foregoing, such regulations may provide for—

(*a*) forms to be used for the Register and for any application or notices under this Act;

(*b*) the criteria to be satisfied by a national sports association before it may be registered;

(*c*) the forms of certificates of registration;

(*d*) the fees for any application to the Council;

(*e*) any matter to be or which may be prescribed.

SCHEDULE

POWERS OF THE COUNCIL

(Section 13)

Subject to the directions of the Minister, whether special or general, the Council shall have the following powers—

(*a*) to award, in consultation with the Olympic and Commonwealth Games Association of Malaŵi and other national sports associations, national colours, ties, medals, diplomas, trophies and other awards for the encouragement and promotion of sport and physical recreation in Malaŵi;

(*b*) to approve international and national sports competitions and festivals organized by registered and other associations.

SUBSIDIARY LEGISLATION

G.N. 96/1974

MALAŴI NATIONAL COUNCIL OF SPORTS (REGISTRATION OF NATIONAL SPORTS ASSOCIATIONS) REGULATIONS

under s. 22

Citation

1. These Regulations may be cited as the Malaŵi National Council of Sports (Registration of National Sports Associations) Regulations.

Application for registration of national sports association

2.—(1) Every application for registration of any national sports association pursuant to section 19 (2) of the Act, shall be made to the Council and shall be in Form 'A' in the First Schedule hereto.

(2) There shall be submitted together with every application under sub-regulation (1) the appropriate fee prescribed therefor in the Second Schedule.

Certificate of registration

3. Upon registration of any national sports association the Council shall issue to such national sports association a certificate in Form 'B' in the First Schedule hereto.

Notification of change in particulars of national sports association

4. Whenever any change in any of the particulars contained in any application made under regulation 3 of these Regulations or in the memorandum and articles constitution or rules of the Association occurs, notice of such change shall within 30 days after such change has been effected be communicated by the appropriate national sports association to the Council who shall cause the Register or its records, or both, as the case may be, to be amended accordingly.

Notice of dissolution of association

5.—(1) Any national sports association registered under these Regulations which is dissolved shall notify the Council of such dissolution.

(2) Such notice of dissolution shall be in Form 'C' in the First Schedule hereto.

Inspection of documents

6.—(1) All documents required to be submitted under the Act and under these Regulations for the purpose of registration of any such document at the office of any national sports association shall be retained by the Council and shall be public documents.

(2) Any member of the public may, on payment of the appropriate fee prescribed therefor in the second Schedule, inspect any such document at the office of the Council during normal working hours or may obtain a copy thereof from the Council, certified by the Secretary as being—true copy of the said document.

Fees

7. All fees payable under these Regulations shall be paid to the Council.

FORM "A"

FIRST SCHEDULE

MALAŴI NATIONAL COUNCIL OF SPORTS ACT

(CAP. 30:05)

To: THE MALAŴI NATIONAL COUNCIL OF SPORTS

APPLICATION FOR REGISTRATION OF A NATIONAL SPORTS ASSOCIATION

The ....., being a national sports association, hereby applies for registration under the Malaŵi National Council of Sports Act, and submit the following particulars—

1. Name of the association .....
2. Postal Address .....
3. Class of Sport promoted .....
4. Names of current office bearers and their designations .....
   .....
   .....
   .....
5. Tenure of office of office bearers .....
6. Names of organizations and clubs affiliated to the Association
   .....
   .....
   .....
7. Present working capital of the association .....
8. Association's bank .....
9. Name and address of person authorized to accept service of proceedings etc., on behalf of the association .....
   .....
   .....
10. Date association (established incorporated (delete where not applicable) in Malaŵi) .....
11. One copy of the (Memorandum and Articles of Association Constitution Rules (delete where not applicable) of the association, is submitted herewith).

Dated this ..... day of ....., 197.....

.....
Chairman

.....
Secretary

.....
Treasurer

FORM "B"

MALAŴI NATIONAL COUNCIL OF SPORTS ACT
(CAP. 30:05)
CERTIFICATE OF REGISTRATION

THIS IS TO CERTIFY THAT ..... is registered in the Register of Malaŵi National Sports Association as a national sports association, pursuant to section 19 of the Malaŵi National Council of Sports Act.

Dated this ..... day of ....., 197.....

.....
Secretary
Malaŵi National Council of Sports

Registered No. .....

FORM "C"

MALAŴI NATIONAL COUNCIL OF SPORTS ACT
(CAP. 30:05)
NOTICE OF REGISTRATION

To: THE MALAŴI NATIONAL COUNCIL OF SPORTS

Whereas the ..... (name of Association) registered in the Register of the Malaŵi National Council of Sports pursuant to section 19 of the Malaŵi National Council of Sports Act under Number ..... in the said Register has ceased to exist as a National Sports Association.

Now we, the undersigned hereby give notice on behalf of .... (name of National Sports Association) that the aforesaid Association ceased to exist as such as from the ..... day of ....., 197..... save for the purpose of winding up its business.

Dated this ..... day of ....., 197.....
Signed by 3 office bearers

.....
Chairman
.....
Secretary
.....
Treasurer

SECOND SCHEDULE

FEES

	K t
(1) Application for registration	5 00
(2) Inspection of documents	0 50

COUNCIL FOR NATIONAL HERBARIUM AND BOTANIC GARDENS OF MALAŴI

CHAPTER 30:06

Containing Pages 1–10

L.R.O. 1/1990

CHAPTER 30:06

COUNCIL FOR NATIONAL HERBARIUM AND BOTANIC GARDENS OF MALAŴI

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CHAPTER 30:06

COUNCIL FOR NATIONAL HERBARIUM AND BOTANIC GARDENS OF MALAŴI

An Act to provide for the development and management of herbarium and botanic matter as national heritage of Malaŵi and to establish the Council for National Herbarium and Botanic Gardens of Malaŵi and further to provide for matters connected therewith or incidental thereto

[1st December, 1987]

PART I

Preliminary

Short title

1. This Act may be cited as the Council for National Herbarium and Botanic Gardens of Malaŵi Act.

Interpretation

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

"botanic gardens" means a botanic garden referred to in section 5 (1) (*b*);

"Council" means the Council for National Herbarium and Botanic Gardens of Malaŵi established under section 3 (1);

"financial year" means the financial year of the Council being the period specified in section 12;

"herbarium" means a herbarium established under section 5 (1) (*a*);

"object" includes a plant, living or dead.

PART II

The Council for National Herbarium and Botanic Gardens of Malaŵi

Establishment of the Council

3.—(1) There is hereby established a body to be known as the Council for National Herbarium and Botanic Gardens of Malaŵi which shall—

(*a*) be a body corporate with perpetual succession;

(*b*) have a common seal;

(*c*) be capable of—

(i) acquiring, holding and disposing of real and personal property;

(ii) suing and being sued in its corporate name; and

(iii) doing or performing all such acts and things as a body corporate may by law do or perform.

Schedule

(2) The provisions of the Schedule shall have effect with respect to the Council.

Schedule

(3) The Minister may, by Order published in the *Gazette*, amend the Schedule.

Composition of the Council

4.—(1) The Council shall consist of—

(*a*) one member appointed by the Minister and designated by him as Chairman of the Council;

(*b*) one member appointed by the Minister and designated by him as Vice-Chairman of the Council;

(*c*) three members representing the University of Malaŵi, other than the Vice-Chancellor thereof, appointed by the Minister;

(*d*) one member representing the Research Council of Malaŵi, appointed by the Minister from the officials or members of that Council;

(*e*) one member representing the National Fauna Preservation Society of Malaŵi, appointed by the Minister;

(*f*) one member representing the Museums of Malaŵi, appointed by the Minister from the officials or the Trustees of the Museums of Malaŵi;

(*g*) the following ex officio members—

(i) the Secretary for Forestry and Natural Resources or his representative;

(ii) the Secretary for Agriculture or his representative;

(iii) the Secretary for Local Government or his representative;

(iv) the Secretary for Education and Culture or his representative; and

(v) the Vice-Chancellor of the University of Malaŵi, unless he is appointed either under paragraph (a) or (b).

(2) A member of the Council shall not, by virtue only of his appointment to the Council, be deemed to be an officer in the public service.

(3) The names of all members of the Council as first appointed and every change in membership thereof shall be published in the *Gazette*.

(4) No person shall be appointed to the Council who—

(*a*) is an undischarged bankrupt;

(*b*) has, during the preceding three years, been sentenced for an offence against any written law to a term of imprisonment, otherwise than as an alternative to, or in default of, the payment of a fine.

PART III

Functions and Powers of the Council

General functions of the Council

5.—(1) Subject to the provisions of this Act and to any other written law, the functions of the Council shall be to—

(*a*) establish a herbarium at a suitable place which shall be a centre for the assemblage, growth, curation and classification of plants in Malaŵi;

(*b*) develop the existing botanic garden in the Municipality of Zomba and establish other botanic gardens at such other suitable place or places in Malaŵi as the Council may see fit;

(*c*) carry out investigation and research into the science of plants and related subjects, and disseminate the results of the investigation and research;

(*d*) provide advice, instruction and education in relation to those aspects of the sciences of plants with which the Council is for the time being in fact concerned;

(*e*) care for the Council's collection of plants, preserved plant material, other objects relating to plants, books and records;

(*f*) keep the collections as national reference collections, ensure that such collections are available to interested persons for the purposes of study and add to, or adapt, such collections according to scientific needs and as the resources of the Council may allow;

(*g*) afford members of the public opportunity to enter a herbarium or any land occupied or managed by the Council, for the purposes of gaining knowledge and enjoyment from the Council's collection.

(2) For the purpose of discharging its functions, the Council may, subject to the provisions of this Act—

(*a*) acquire by purchase, exchange or lease any land or building for the purpose of a herdarium or botanic garden and sell, exchange or lease land or buildings vested in, or held by, the Council which is not required for those purposes;

(*b*) erect, repair, alter, or demolish, or cause to be erected, repaired, altered or demolished, such buildings and other structures as the Council may deem necessary or expedient in the exercise of its powers or in the performance of its functions;

(*c*) with the approval of the Minister, solicit, accept and receive subscriptions, donations, devises, gifts and bequests of real or personal property, howsoever made to the Council for the purposes of a herbarium or a botanic garden;

(*d*) require and obtain payment for any advice, instruction, education or other service provided by the Council or for any goods supplied by the Council or for entry upon any land or building occupied or managed by the Council;

(*e*) apply any moneys of the Council for the purchase of any object which, in the opinion of the Council, it is desirable to acquire for a herbarium or botanic garden or in furthering the interests and increasing the utility of a herbarium or botanic garden or for any other purpose in the exercise of the Council's powers or in the performance of its functions;

(*f*) exchange with or sell to any person or institution any object;

(*g*) affiliate with any institution, whether within or outside Malaŵi, of a generally similar character;

(*h*) enter into contracts and other agreements;

(*i*) do such other things as it thinks necessary or expedient—

(i) for preserving and increasing the utility of the Council's collections;

(ii) for ensuring the due administration of anything vested in or acquired by the Council and any land or building occupied or managed by the Council under, or by virtue of, this Act; and

(iii) otherwise for the purposes of the Council's functions.

(3) The Council may, with the approval of the Minister and by Order published in the *Gazette*, prescribe—

(*a*) the hours during which members of the public may enter any land or building occupied or managed by the Council; and

(*b*) the fees charged for such entry.

Powers of the Council

6.—(1) The Council may, with the approval of the Minister and subject to any conditions he may impose, form or take part in forming one or more bodies corporate which or each of which has as its main objective or objectives one or more of the following—

(*a*) the production and publication of books, films or other informative material relating to the science of plants or related subjects or to the Council and its functions;

(*b*) the production of souvenirs relating to plants or to the activities of the Council;

(*c*) the sale of materials referred to in paragraphs (a) and (b);

(*d*) the provision of catering, car parking or other services or facilities for the public at any land or building occupied or managed by the Council.

(2) The Council may hold interests in such body, exercise rights conferred by the holding of interests in it, and provide financial or other assistance to or in respect of such body.

PART IV

Vesting Provisions

Initial vesting in the Council

7.—(1) Where any object belonged to, or was otherwise vested in the Government or in the University of Malaŵi immediately before the commencement of this Act, and the object—

(a) then formed part of a collection of plants, preserved plant material, other objects relating to plants, or books or records of the institution known as the National Herbarium of Malaŵi; or

(*b*) was then in use in respect of the collections or solely for the purposes of the administration of the National Herbarium of Malaŵi,

such object shall, upon the commencement of this Act, vest instead in the Council.

(2) In the case of an object referred to in subsection (1) (a), it shall be immaterial that, immediately before the commencement of this Act, it was situated elsewhere than at premises managed for the purposes of the National Herbarium of Malaŵi.

(3) Upon the commencement of this Act, any right, power, duty or liability or obligation which immediately before then was exercisable by or against the Government, or the University of Malaŵi in relation to the National Herbarium of Malaŵi shall instead become exercisable by or against the Council and may be enforced by or against the Council in like manner as it would have been enforced by or against the Government or the University of Malaŵi:

Provided that nothing in this subsection shall preclude the Government or the University of Malaŵi from divesting the Council of any liability or obligation hitherto vested in the Government or the University of Malaŵi.

Acquisition and disposal of objects

8.—(1) The Council may acquire (whether by purchase, exchange, gift or otherwise) any object which in its opinion it is desirable to add to the collections of the Council.

(2) The Council may not dispose of an object the property in which is vested in the Council and which is comprised in the Council's collection unless—

(*a*) the disposal is by way of sale, exchange or gift of an object which is a duplicate of another object the property in which is so vested and which is so comprised; or

(*b*) the disposal is by way of sale, exchange or gift of an object which in the Council's opinion is unsuitable for retention in its collections and can be disposed of without detriment to the interests of scientific research or studies in Malaŵi; or

(*c*) the disposal (by whatever means, including destruction) is of an object which the Council is satisfied has become useless for the purposes of the Council's collections by reason of damage, physical deterioration, or infestation by destructive organisms.

(3) An object may be disposed of as mentioned in subsection (2) (*c*) notwithstanding a trust or condition, express or implied, prohibiting or restricting the disposal of the object.

Lending and borrowing of objects

9.—(1) Subject to subsection (3), the Council may lend any object the property in which is vested in the Council and which is comprised in the collections of the Council.

(2) The provisions of subsection (1) shall apply, whether or not such lending is for purposes of public exhibition, and whether or not under the terms of the lending the object is to remain in Malaŵi or to be taken out of Malaŵi.

(3) In deciding whether or not to lend an object, and in determining the time for which and conditions subject to which an object is to be lent, the Council shall—

(*a*) give special consideration to a request for the lending of an object for public exhibition; and

(*b*) have regard to the interests of scientific research and study in Malaŵi, the suitability of the prospective borrower, the purpose of the lending, the physical condition and degree of rarity of the object, and any risks to which it is likely to be exposed.

(4) The Council may borrow objects from other organizations within or outside Malaŵi for the purpose of exhibiting them or of scientific research or study.

PART V

Financial Provisions

Funds of the Council

10.—(1) The funds of the Council shall consist of—

(*a*) such sums as may be payable to the Council from moneys appropriated by Parliament for the purpose;

(*b*) such moneys or assets as may accrue to, or vest in, the Council whether in the course of the exercise of its functions or powers, or otherwise;

(*c*) such moneys or other assets as may accrue to, or vest in, the Council by way of grants, subsidies, bequests, donations, gifts, subscriptions, rents, interest or royalties, from the Government or any other person;

(*d*) such sums as are derived from the sale of any property, real or personal, by, or on behalf of, the Council;

(*e*) such sums as are received by the Council by way of voluntary contributions;

(*f*) such moneys or other assets as may be donated to the Council by any foreign government, international agency or other foreign institution or body;

(*g*) such moneys as the Council may raise under section 11;

(*h*) such other moneys as the Council may lawfully acquire in the exercise of its functions or powers under this Act.

Borrowing powers Cap. 37:01

11. Subject to the Finance and Audit Act, the Council may raise moneys by way of loans or bank overdrafts.

Annual budget

12.—(1) The Council shall draw up, in respect of each financial year, an annual budget showing the estimated expenditure on capital and revenue account, respectively, and shall submit the budget for the approval of the Minister.

(2) The financial year of the Council shall be a period of twelve months ending on 31st March each year:

Provided that the first financial year of the Council may be a period shorter or longer than twelve months, but not exceeding twenty-four months ending on the 31st March of such year as the Minister may, by general notice published in the *Gazette*, specify.

Books of accounts, audit and reports

13.—(1) The Council shall cause to be kept proper books of accounts and other books in relation thereto.

(2) The accounts of the Council shall be audited annually by professional auditors appointed by the Council with the approval of the Minister. The expenses of the audit and incidental thereto shall be paid from the funds of the Council.

(3) The Council shall, as soon as is practicable, but not later than six months after the end of each financial year, submit to the Minister an annual report upon its work and operations.

(4) Such report shall include a balance sheet, an income and expenditure account and the annual report of the auditors, and shall be laid by the Minister before the National Assembly pursuant to the Finance and Audit Act.

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PART VI

Miscellaneous

Regulations

14. The Minister may, by notice published in the *Gazette*, make regulations for the better carrying into effect of this Act.

SCHEDULE

Section 3 (3) and 4 Staff of the Council

1.— (1) There shall be a manager (by whatever title designated) of the Council who shall be appointed by the Council with the approval of the Minister.

(2) The manager shall be the chief executive officer of the Council and shall be responsible to the Council for the general exercise of the functions of the Council.

(3) The Council may appoint such other professional, technical and administrative officers, clerks and other servants as it may deem requisite.

(4) The Council shall pay to a person in its employ such remuneration and allowances as it may, with the approval of the Minister, determine.

(5) An employee of the Council shall be appointed on such other terms and conditions as the Council may, with the approval of the Minister, determine.

(6) The Council may enter into agreements to facilitate the voluntary transfer of employees between itself and any other employer.

Meeting of the Council

2.—(1) The Council shall meet at least three times a year at such places and times as the Chairman may determine or as may be directed by the Minister.

(2) The Chairman shall convene meetings of the Council by giving the members at least seven days' written notice but, where the urgency of the matter to be discussed so requires, the Chairman shall convene a meeting without giving such notice.

(3) The Chairman shall preside at meetings of the Council or, in his absence, the Vice-Chairman, who, for the purposes of that meeting, shall exercise all the powers and perform all the duties of the Chairman.

(4) In the absence of both the Chairman and the Vice-Chairman the members present at a meeting shall elect from amongst themselves one member who, for the purposes of that meeting, shall exercise all the powers and perform all the duties of the Chairman.

(5) At every meeting of the Council the quorum shall be formed by more than one-third of the members.

(6) The Council shall have power to regulate its own procedures.

(7) Decisions of the Council shall be made by a majority of the members present at a meeting of the Council. At all such meetings the person presiding shall have a deliberative vote and, in the event of an equality of votes, shall also have a casting vote.

(8) The Council may, in the exercise of its powers and functions, appoint or dissolve any committee.

(9) The Council may, with the approval of the Minister, co-opt one or more persons to attend any particular meeting or series of meetings of the Council or committee for the purpose of assisting or advising the Council or committee, as the case may be, in respect of any matter under consideration by the Council or committee.

(10) A person co-opted pursuant to subparagraph (9)—

(*a*) may take part in the deliberations of the Council or committee, as the case may be, at any meeting he attends, but shall not be entitled to vote; and

(*b*) shall not, by virtue of such co-option, be deemed to be a member of the Council.

(11) The validity of any proceedings of the Council shall not be affected by any vacancy among the members or by any defect in the appointment of any member.

(12) The manager of the Council shall be the secretary to the Council at its meetings and shall keep minutes of each meeting and, with the approval of the Chairman, shall prepare the agenda of each meeting. The minutes shall be confirmed at the succeeding meeting by the Chairman, or, in his absence, by the Vice-Chairman, or, in his absence, by the member for the time being acting as Chairman.

Allowances

3. A member of the Council or of a committee, not being an officer in the public service, may be paid such allowances as the Minister may from time to time determine.

Tenure of office

4.—(1) A member of the Council, other than an ex officio member, shall, subject to this paragraph, hold office for two years from the date of his appointment.

(2) An *ex officio* member of the Council shall hold office as such so long as he holds the office by virtue of which he is a member of the Council.

(3) Upon the expiry of the period for which a member of the Council who is not a member ex officio is appointed, he shall continue to hold office until his successor has been appointed, but in no case shall such further period exceed three months.

(4) A retiring appointed member shall be eligible for reappointment if not disqualified under section 4 (6).

(5) Where the office of a member of the Council is vacated, the Minister may appoint any person, qualified for appointment in accordance with the provisions under which the former member was appointed, to fill the vacancy until the expiry of the remaining period.

(6) A member, other than an *ex officio* member, shall vacate his office—

(*a*) if the Minister so directs;

(*b*) upon the expiry of two years from the date of his appointment;

(*c*) upon his death;

(*d*) if he is adjudged bankrupt;

(*e*) if he is sentenced for an offence against any written law to a term of imprisonment of, or exceeding, six months, otherwise than as an alternative to, or in default of, the payment of fine;

(*f*) upon the expiry of one month's notice in writing of his intention to resign his said office given by him to the Minister;

(*g*) if the Minister is satisfied upon medical evidence that by reason of mental or physical informity he has become incapable of performing his duties as a member of the Council.

MALAŴI INSTITUTE OF MANAGEMENT

CHAPTER 30:07

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MALAŴI INSTITUTE OF MANAGEMENT

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SCHEDULE

CHAPTER 30:07

MALAŴI INSTITUTE OF MANAGEMENT

An Act to provide for the establishment of the Malaŵi Institute of Management; its incorporation and to provide for matters incidenta thereto or connected therewith 7 of 1989

[26TH APRIL, 1989]

PART I

Preliminary

Short title

1. This Act may be cited as the Malaŵi Institute of Management Act.

Interpretation

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

"Board" means the Board of Governors for the Institute established under section 5;

"Chairman" means the Chairman of the Board appointed and designated as such under section 6 (1) (*a*);

"Institute" means the Malaŵi Institute of Management established under section 3;

"Principal" means an officer of the Institute appointed and designated as such under section 11;

"participant" means a person enrolled on a training programme conducted by the institute;

"statutory body" means a local authority, a cooperative society and any body of persons, corporate or unincorporate, established by or under any written law or declared as such under any written law.

PART II

The Malaŵi Institute of Management

Establishment of the Institute

3. There is hereby established an institute to be known as the Malaŵi Institute of Management which shall be a body corporate, by that name, having perpetual succession and a common seal and shall, by that name, be capable of suing and being sued and of purchasing or otherwise acquiring, holding and alienating moveable or immoveable property and, subject to the provisions of this Act, of doing or performing all such acts or things as bodies corporate may by law do or perform.

Objects of the Institute

4. The objects of the Institute shall be—

(*a*) to provide training programmes and seminars and workshops aimed at upgrading and improving managerial skills of managers in the public service, statutory bodies and the private sector; and

(*b*) to provide management consultancy services to the Government, statutory bodies and the private sector.

PART III

Board of Governors for the Institute

Establishment of Board of Governors

5.—(1) There is hereby established a body to be known as the Board of Governors for the Institute.

(2) The operations of the Institute shall be governed by the Board which, subject to any special or general directions of the Minister, may exercise all powers and functions otherwise vested in the Board by this Act.

Composition of the Board

6.—(1) Subject to subsection (3), the Board shall consist of—

(*a*) a public officer of the rank of Principal Secretary, not being a public officer serving by virtue of paragraph (*b*), (*c*) (*d*) or (*e*) appointed by the Minister and whom the Minister shall designate as Chairman of the Board;

(*b*) the Secretary for Personnel Management and Training who shall be the Vice-Chairman;

(*c*) the Secretary to the Treasury;

(*d*) the Secretary for Education and Culture;

(*e*) the Secretary for Economic Planning and Development;

(*f*) the Head of the Department of Management of the University of Malaŵi; and

(*g*) one member who shall be appointed by the Minister from amongst chief executives of statutory bodies.

(2) No member of the Board shall attend to the business of his office by representation except with the consent of the Chairman, but otherwise he may request that his apologies be registered.

(3) The Minister may appoint to the Board for a period not exceeding two years such number of persons, not exceeding three in number as he considers suitably qualified to assist the Board in its work and deliberations, and such persons shall not have the right to vote at any meeting of the Board.

Co-opted persons

7. The Board may in its discretion at any time and for any length of time invite any person, and the Minister may in like manner nominate any officer in the public service, to attend any meeting of the Board and take part in the deliberations of the Board, but such person or officer shall not be entitled to vote at that meeting.

Meetings of the Board

8.—(1) Subject to the provisions of this Act, the Board shall hold ordinary meetings for the dispatch of business at least four times in each year.

(2) An extraordinary meeting of the Board—

(*a*) may be convened by the Chairman at any time;

(*b*) shall be convened by the Chairman within twenty-one days of the receipt by him of a request in writing signed by not less than three members of the Board and specifying the purpose for which the meeting is to be convened.

(3) At any meeting of the Board—

(*a*) the Chairman or, in his absence the Vice-Chairman, shall preside;

(*b*) in the absence of both the Chairman and the Vice-Chairman, the members present and forming the quorum shall elect one of their number to preside; and

(*c*) the quorum shall be formed by any four voting members.

(4) At any meeting the decision of the Board on any matter shall be that of the majority of the members present and voting at that meeting, and in the event of an equality of votes, the Chairman or the person presiding shall have a casting vote in addition to his deliberative vote.

Powers and functions of the Board

9.—(1) Subject to the provisions of section 5 (2), the Board shall have the power—

(*a*) to determine policy respecting the implementation of the objects of the Institute;

(*b*) with the approval of the Minister—

(i) to appoint such categories of staff and upon such terms and conditions of service as the Board may determine;

(ii) to exercise disciplinary control over the staff appointed under paragraph (i) and over the participants;

(*c*) subject to this Act, to determine its own procedure;

(*d*) to regulate the admission of participants to the Institute;

(*e*) to determine the range, duration and content of the courses conducted at the Institute and shall do so in consultation with the Government Ministries, departments, statutory bodies and private sector organizations from time to time directly concerned with courses conducted at the Institute; and

(*f*) with the approval of the Minister, to determine whether the academic awards for courses conducted at the Institute should be at the level of certificate, diploma or otherwise and to make appropriate awards to successful participants.

(2) In addition to the powers specified in subsection (1), the Board shall have the following further powers and functions—

(*a*) to establish committees to assist it in the performance of its functions and may, subject to the approval of the Minister, appoint any person as a member of any such committee whether or not such person is a member of the Board and—

(i) may in its discretion assign any of its powers or functions to any such committee but the Board shall not be divested of any power or function which it may have so assigned to any such committee and may approve, vary or revoke any decision of any such committee;

(ii) may, out of the funds of the Institute, pay to any member of any such committee who is not an officer in the public service such remuneration and allowances as the Board may, with the approval of the Minister, determine;

(*b*) to determine fees to be paid to the Institute for the attendance of courses at the Institute by participants;

(*c*) to require the Principal or any officer of the Institute to make reports to the Board respecting financial and other circumstances of the Institute and to direct any action to be take by the Principal or any officer of the Institute; and

(*d*) to do or perform any thing or act specified in the Schedule.

Non-liability of members of the Board and staff of the Institute

10. No member of the Board or staff of the Institute shall be personally liable for any act or default of his, or of the Board, done in good faith in the exercise or purported exercise, of the functions of the Board.

PART IV

Management of the Institute

Appointment of the Principal and other staff of the Institute

11.—(1) Subject to section 9 (1) (*b*) (*i*), the Board shall appoint an officer of the Institute who shall be designated as the Principal upon terms and conditions approved by the Minister.

(2) The Principal shall be appointed from amongst persons who have had experience and shown capacity in matters relating to the activities and administration of management, educational, training or similar institutions.

(3) Except as otherwise expressly provided under this Act, the Principal shall, subject to any special or general directions of the Board—

(*a*) be the chief executive officer of the Institute and as such he shall be responsible to the Board for the internal organization and management of the Institute;

(*b*) be responsible for the supervision of the other staff of the Institute including the maintenance of discipline among the staff and participants of the Institute;

(*c*) after consultation with the Chairman, appoint temporary employees at such daily rates of pay, not below the minimum rates otherwise prescribed by written law, as he may consider appropriate and shall, after he has appointed any such employees report the fact thereof to the Board at its next meeting;

(*d*) be the secretary to the Board and any committee which the Board may establish pursuant to section 9 (2) (a) and shall, on the instructions of the Chairman or the chairman of any such committee, as the case may be, convene any meeting thereof, and in carrying out his duties under this paragraph, the Principal—

(i) may attend all meetings of the Board and those of any committee; and

(ii) may attend any of the meetings referred to in subparagraph (i) together with such other officers of the Institute as the Principal may determine; and

(*e*) do or perform any thing or act as the Board may from time to time require him to do.

(4) The Board may appoint a Deputy Principal if it considers it desirable for the discharge of the purposes of the Institute and the appointment shall be upon such terms and conditions as the Board may, subject to the approval of the Minister, determine.

(5) If the Principal is absent or otherwise unable to carry out any of his functions under this Act, the Deputy Principal shall exercise the functions of the Principal during the period that the Principal is so absent or unable to act.

PART V

Financial Provisions

Funds, accounts and audit

12.—(1) The funds of the Institute shall consist of—

(*a*) such sums as may be appropriated by Parliament for the purposes of the Institute;

(*b*) all fees payable under this Act;

(*c*) such other moneys and assets as may vest in or accrue to the Institute, whether in the course of its functions or otherwise.

(2) The Board shall—

(*a*) keep proper accounts and other records relating thereto in respect of the funds of the Institute and shall in every respect comply with the provisions of the Finance and Audit Act; and

Cap. 37:01

(*b*) furnish to the Minister annually, or as often as the Minister may direct, accounts in respect of finances and property of the Institute, including an estimate of income and expenditure of the Institute for the following year.

(3) The accounts of the Institute shall be examined and audited annually by auditors appointed by the Institute and approved by the Minister.

Remuneration and expenses of members of the Board

13. Members of the Board may be paid from the funds of the Institute such allowances as the Minister may determine and in determining the allowances the Minister may make provision for the reimbursement of any expenses incurred by a member of the Board.

Bank account

14. The Board may hold on a current or other account with a registered bank funds of the Institute and for such purposes as the Minister may approve.

PART VI

Miscellaneous

Property of the Institute

15.—(1) All property of the Institute, real or personal, which before the date of the commencement of this Act was vested in the Government shall, unless the Government otherwise agrees with the Institute, remain vested in the Government.

(2) The Board shall keep all property of the Institute in good repair and may, with the prior written consent of the Government, make such alterations to the grounds, buildings, fixtures or fittings of the Institute as it may consider to be for the benefit of the Institute.

(3) The Board may, in consultation with the Minister, regulate the use of the buildings or grounds of the Institute at times when they are not required to be used for purposes of education or training.

Transitional vesting provisions

16.—(1) All assets, liabilities, rights and obligations in, or appertaining to, the operations of the Institute within Malaŵi which immediately before the commencement of this Act were vested in, owing to or incurred by the Government or any person on behalf of, or as trustee for, the Institute are hereby vested in, transferred to and assigned to the Institute subject to any trusts under which such assets, liabilities, rights or obligations were held or incurred.

(2) All bonds, charges, agreements, contracts, instruments and working arrangements creating or giving rise to liabilities, rights or obligations in, or appertaining to, the operations of the Institute within Malaŵi which immediately before the date of the commencement of this Act were subsisting in favour of or against any person on behalf of, or as trustee for, the Institute shall on that date, subject to any trusts under which such assets, liabilities, rights or obligations were so subsisting, become enforceable in favour of or against the Institute as if, instead of the Government or such person, the Institute had been named therein or had been party thereto.

(3) All proceedings, judgments or causes in action which were pending or existing immediately before the commencement of this Act—

(*a*) relating to or connected with any asset,liability, right or obligation referred to in subsection (1), or

(*b*) arising out of any bond, charge, agreement, instrument or working arrangement referred to in subsection (2),

may be continued or enforced by or against the Institute as they might have been continued or enforced by or against the Government or any person on behalf of the Institute or as trustee for the Institute had this Act not come into operation.

(4) Where the transfer of any property transferred to or vested in the Institute under subsection (1) is required by any written law to be registered, the Institute shall, within one year, or within such shorter period as is prescribed by the written law, from the date of commencement of this Act, apply to the appropriate registering authority for the registration of the transfer and thereupon the registering authority shall, at no cost to the Institute or any person by way of registering fees, stamp or other duties—

(*a*) make such entries in the appropriate register as shall give effect to the transfer;

(*b*) where appropriate, issue to the Institute a certificate of title or other statutory evidence of ownership of the property or make such amendments to the appropriate register as may be necessary; and

(*c*) make any necessary endorsements on such deeds or other documents as may be presented to such registering authority relating to the title, right or obligation concerned.

(5) The foregoing provisions of this section shall not apply to any property referred to in subsection (1) of section 15.

Non-disclosure of information

17. A person who discloses to any other person any information respecting the administration of the Institute which he has obtained as—

(*a*) a member of the Board;

(*b*) a member of any committee of the Board;

(*c*) a Principal of the Institute;

(*d*) a member of staff of the Institute,

and except if such disclosure is made to the Minister, the Board, any committee of the Board, or court of law or in the discharge of that person's duties under this Act, shall be guilty of an offence and shall be liable to a fine of K200 and to imprisonment for a term not exceeding three months.

Regulations

18. The Minister may make regulations for carrying out or giving effect to the provisions of this Act.

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SCHEDULE

Powers and Functions of the Board

The powers and functions of the Board shall include the power—

(*a*) subject to the directions of Minister, to make provision for the salaries, wages and other conditions of service of the Principal and other staff or employees of the Institute;

(*b*) to make advances to employees of the Institute for the purchase of motor vehicles, or other vehicles by such employees, on terms and conditions as to use of such vehicles and as to repayment of such advances as the Minister may, from time to time, require;

(*c*) to provide for persons in its employ or their dependants by means of insurance with an insurance company or a pension or provident fund or in any other manner whatsoever, pecuniary benefits upon retirement, death or termination of service or in the event of any sickness or injury;

(*d*) to purchase, take on lease or in exchange or otherwise acquire dwelling houses for persons in its employ;

(*e*) to purchase land and construct thereon dwelling houses for persons in its employ;

(*f*) to sell or lease dwelling houses and land for residential purposes to persons in its employ;

(*g*) subject to the Finance and Audit Act, to raise moneys by way of loans or bank overdraft;

(*h*) to manage, insure, purchase, take on lease or in exchange, or otherwise acquire any moveable or immoveable property, and any rights or privileges in or over any such property, which it considers necessary for the purpose of performing its functions;

(*i*) to construct, maintain, alter and improve any buildings, works machinery and plant necessary or expedient for the purpose of performing its functions;

(*j*) to work or otherwise beneficially use, or to exchange, let, sell or mortgage any property rights or privileges acquired or constructed under paragraph (*d*), (*e*), (*h*) or (*i*);

(*k*) to invest and deal with any of its moneys not immediately required in such securities and in such manner as it may think fit and to vary or realize such investments;

(*l*) to invite or receive donations from any person towards its expenses and to award bursaries and to make grants towards research or to any other such projects as it deems conducive to the promotion of the objects of the Institute;

(*m*) to enter into agreements to facilitate the voluntary transfer of professional, technical or other staff between itself and any other employer;

(*n*) for the better performance of its functions, to co-operate with Ministries, Government Departments, universities, statutory bodies and private sector organizations or any organizations or persons as may desire to avail themselves of its facilities inside and outside Malaŵi; and

(*o*) to do all things incidental or conducive to the performance of its functions under this Act.

GOVERNMENT TEACHING SERVICE COMMISSION

CHAPTER 30:08

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CHAPTER 30:08

GOVERNMENT TEACHING SERVICE COMMISSION

ARRANGEMENT OF SECTIONS

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An act to provide for the establishment, functions and powers of the Government Teaching Service Commission, to regulate the appointment and terms and conditions of persons employed in the Government Teaching Service, and to make provision for matters connected therewith or incidental thereto 12 of 1996 G.N. 47/1997

[1ST JUNE, 1997]

PART I

PRELIMINARY

1. This Act may be cited as the Government Teaching Service Commission Act. Short title

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

"Commission" means the Government Teaching Service Commission established under section 3;

"Government Teaching Service" means that body of teachers who, as such are public officers;

"Minister" means the Minister responsible for education;

"Public Appointments Committee" means the Public Appointments Committee established under section 56 (7) of the Constitution;

"Service" means the Government Teaching Service;

PART II

Establishment of the Government Teaching Service Commission

Establishment and composition of the Government Teaching Service Commission

3. There is hereby established a Commission to be known as the Government Teaching Service Commission (in this Act otherwise referred to as the "Commission") which shall have the powers and functions conferred upon by this Act, and which shall consist of a Chairperson, a Deputy Chairperson and not less than six nor more than ten other members.

Appointment of members of the Commission

4.—(1) Members of the Commission shall be appointed by the President and the appointment shall be confirmed by the Public Appointments Committee.

(2) A person shall not be qualified for appointment as a member of the Commission if that person—

(*a*) is a President, a Vice President, a Minister or Deputy Minister, a Member of Parliament or an officer in the Service;

(*b*) is an undischarged bankrupt;

(*c*) has, within the three years immediately preceding, been convicted of any offence by a court and sentenced therefor to a term of imprisonment of six months or more without the option of a fine;

(*d*) has, within the seven years immediately preceding been convicted of an offence involving fraud or dishonesty.

Tenure of office of members of the Commission

5.—(1) Subject to subsections (3), (4) and (5), every member of the Commission shall hold office as such member for such period not exceeding three years from the date of his or her appointment, as may be specified in the instrument of appointment.

(2) Any retiring member of the Commission, other than a member who is disqualified under section 4 (2), shall be eligible for re-appointment.

(3) Upon the expiry of the period for which a member is appointed he or she shall continue to hold office until his or her

successor is appointed, but in no case shall such further period exceed three months.

(4) The office of a member of the Commission shall be vacated—

(*a*) upon his or her death;

(*b*) if, save through illness, he or she is absent from three consecutive meetings of the Commission without the permission of the Commission or the Minister;

(*c*) upon the expiry of one month's notice in writing of his or her intention to resign given by him or her to the Minister;

(*d*) if he becomes physically or mentally unfit, and the Minister and the Commission are of the opinion that, by reason of such unfitness, he or she is no longer capable of performing his or her duties as a member of the Commission:

Provided that, in the case of the Chairperson, this paragraph shall not apply if, upon the submission of the opinion of the Commission and the Minister to the President by the Minister, the President does not approve of its application; and

(*e*) if he or she becomes disqualified from membership of the Commission under section 4 (2).

(5) A member of the Commission may be removed from office by the President at any time, subject to the Public Appointments Committee being satisfied that the member is no longer competent to discharge his or her duties.

(6) A member of the Commission who is removed from office under this section may appeal to the High Court against the decision to remove him or her from office.

Remuneration and allowances of members of the Commission

6. The Chairperson and other members of the Commission shall receive such remuneration and allowances as may, from time to time, be determined by the Minister.

PART III

Powers and Functions of the Commission

Powers and functions of the Commission Cap. 1:03

7.—(1) Subject to the Public Service Act, the Commission shall—

(*a*) have power to appoint persons to hold or act in offices in the Service, including power to promote persons to, and to remove persons from, office;

(*b*) exercise disciplinary control over persons holding or acting in any office in the Service.

Delegation

8.—(1) The Commission may, subject to the general or special directions of the Minister, delegate its powers under this Act by

directions in writing to any member of the Commission or any public servant or public body.

(2) Where any person or body exercises powers under this section on behalf of the Commission in accordance with subsection (1), the Commission shall—

(*a*) require that person or body to furnish reports in such manner or form as may be specified in the directions by which the Commission delegated powers;

(*b*) hear complaints or appeals from persons with sufficient interest relating to the exercise of powers under this section, and the Commission may—

(i) quash the decision of a person or body exercising such powers;

(ii) exercise such disciplinary powers relating to such persons or body, subject to the conditions laid down by an Act of Parliament;

(iii) revoke directions delegating powers to any person or body:

Provided that nothing in this subsection shall prejudice the right of any person who is the subject of a decision made by or on behalf of the Commission to appeal to the High Court, or the right of any person with sufficient interest in such a decision to petition the High Court for judicial review or otherwise of that decision.

PART IV

Miscellaneous

Application of Cap. 1:03

9. Save as otherwise provided in this Act, the provisions of the Public Service Act, shall apply to the Service, and the Commission shall, in the exercise of its powers and the performance of its functions be bound and guided by the provisions of that Act.

Regulations

10.—(1) The Minister may make regulations for the administration, regulation and disciplinary control of the Service and for matters incidental thereto.

(2) Without restriction on the generality of subsection (1), any such regulations may make provision for—

(*a*) the terms and conditions of service of members of the Service;

(*b*) the performance of the function of any appropriate authority and the forms and procedures to be followed by such authority in the exercise of its functions or by a person to whom such functions have been lawfully delegated.

savings

11. Any regulations or other subsidiary legislation applicable with respect to the terms and conditions of service of members of the Service immediately before the commencement of this Act and which are or is capable of being made under section 10—

(*a*) shall continue in force and be deemed to be regulations or other subsidiary legislation made under this Act; and

(*b*) may be amended or replaced by regulations or other subsidiary legislation made under this Act.

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PART I

PRELIMINARY

Citation and application

1.—(1) These Regulations may be cited as the Government Teaching Service Commission Regulations.

(2) These Regulations shall not apply to any matter in relation to which it is provided in the Constitution or in any other law that some person or body other than the Commission has authority.

Interpretation

2.—(1) In these Regulations, unless the context otherwise requires—

"abscond" means to be absent from duty without leave or just reason for a period exceeding 48 hours;

"appointment" means the conferment of an officer of emolument in the Government Teaching Service and shall include an appointment on promotion;

"Chairperson" means the Chairperson of the Commission or in his or her absence the Deputy Chairperson;

"Commission" means the Government Teaching Service Commission;

"Contract Officer" means an officer employed for a predetermined period of time under a written contract signed by or with the authority of the Secretary for the Department of Human Resource Management and Development and containing terms and conditions of employment individual to such an officer, but does not include a permanent officer or employee;

"equivalent grade" means a grade to which a minimum salary attached is at the least equal to the minimum salary attached to the grade with which it is compared;

"Estimates" means the current estimates on Revenue Account and the current estimate on Development Account and the current Establishment Warrants;

"grade" means one of the grades of office prescribed in these Regulations;

"Member" includes the Chairperson or Deputy Chairperson and any other member of the Commission;

"misconduct" includes any act or omission which constitutes misconduct in accordance with these Regulations;

"officer" means a teacher employed in the Service;

"permanent officer" means an officer employed on the basis that on confirmation of his or her appointment the duration of his or her employment is permanent—

(*a*) until he or she reaches the age for retirement under these Regulations; or

(*b*) until his or her employment is terminated in accordance with these Regulations, but does not include a contract officer;

"posting" means the assignment by the Responsible Officer of an officer to a different duty station within the Service;

"probationary period" means the period before an officer is confirmed in his or her post;

"probationer" means an officer serving on probation;

"promotion" means the conferment upon an officer of a public office to which is attached a higher salary or salary scale segment than that attached to the office to which he or she was last substantively appointed;

"Responsible Officer" means the Principal Secretary responsible for Education;

"School" has the meaning assigned thereto in the Education Act; Cap. 30:01

"Secretary" in relation to these Regulations, means the Secretary to the Commission;

"seniority" means the relative seniority of an officer determined in accordance with regulation 16;

"Service post" means a pensionable or permanent post in the Service;

"stoppage" in relation to an increment has the meaning assigned thereto in the Malaŵi Public Service Regulations;

"teacher" means a person authorized or licensed to teach in accordance with the Education Act; Cap. 30:01

"temporary employee" means an officer employed on terms and conditions set out in Book Two of the Malaŵi Public Service Regulations;

"terminal benefit" means a benefit, allowance or privilege conferred on an officer by the Government on the termination of his or her service or employment;

"trainee" means a person serving in a training post;

"training post" means a post to which an untrained person is appointed;

"transfer" means the conferment upon an officer of a different public office under conditions which do not constitute a promotion or posting;

"vacancy" means a vacancy in a post for which full (as opposed to token) financial provisions is made in the Estimates;

"withhold" in relation to an increment, has the meaning assigned thereto in the Malaŵi Public Service Regulations.

(2) Reference in these Regulations to officers in the public service shall, unless the context otherwise requires, be construed in the same manner as such references would be construed in the Constitution.

PART II

Procedure

Secretary and staff

3. The Commission shall appoint a secretary to the Commission and such other staff as it may from time to time consider necessary.

Presiding at meetings

4. The Chairperson shall preside at meetings of the Commission, but in his or her absence the Deputy Chairperson shall act as Chairperson, and in the absence of both the Chairperson and the Deputy Chairperson, the members present and forming a quorum shall elect one of their number to preside at the meeting.

Records of meetings

5. A record shall be kept by the Secretary of the members present and of the business transacted at every meeting of the Commission.

Decision by circulation of papers

6. Decisions may be made by the Chairperson without a meeting by the circulation of the expression of the Commissioner's views in writing:

Provided that if there is any disagreement as to the decision to be made, or if any member expresses a desire for the decision to be deferred, the matter shall be considered at a meeting of the Commission.

Dissent

7. A member shall be entitled to dissent from a decision of the Commission and to have his or her dissent and his or her reasons therefor set out in the records of the Commission.

Quorum for meetings and majority decisions

8.—(1) When the Commission consists of not more than eight (8) members the quorum for a meeting shall be four (4) members. When the Commission consists of more than eight (8) members the quorum for a meeting shall be five (5) members.

(2) A decision of the Commission shall require the concurrence of a majority of all the members.

Communications to the Commission and members

9.—(1) All communications intended for the Commission shall be addressed to the Secretary. The Secretary shall place such communications before the Commission.

(2) No officer shall make any communication orally or in writing relating to his or her position in the Service to an individual member, except in the course of a disciplinary enquiry before the Commission.

Right of a Responsible Officer to be heard

10. The Responsible Officer who has made a recommendation to the Commission shall have the right, if he or she requests in writing, to attend the Commission personally or by representative and then be heard in connexion with such recommendation.

Irregular representation

11. In carrying out its functions the Commission shall not take into account any representation made to it otherwise than in accordance with these Regulations.

Oaths to be taken by staff

12.—(1) The Secretary and such other members of staff and where appropriate, members of Interview Boards as the Chairperson or in his or her absence the Deputy Chairperson, may require to do so, shall on appointment take an oath in the form set out in the Schedule to these Regulations:

Provided that any such person who has no religious belief or for whom the taking of an oath is contrary to his or her belief may make and subscribe a solemn affirmation in the form set out in the Schedule to these Regulations.

(2) An oath or affirmation under this regulation may be administered by the Chairperson or, in his or her absence, the Deputy Chairperson.

PART III—PRINCIPLES TO BE OBSERVED BY THE COMMISSION

Matters to be considered regarding appointments and promotions

13.—(1) In exercising its powers in connexion with the appointment and promotion of officers, the Commission shall have regard to the maintenance of the high standard of efficiency necessary to the Government Teaching Service promotions and subject thereto shall—

(*a*) where, in the opinion of the Commission, an officer is qualified and suitable to fill a vacancy, give preference to that officer over any person not in the Government Teaching Service;

(*b*) where more than one officer may be suitable to fill a vacancy, take into account seniority, qualifications, experience and merit and, other things being equal, give preference to a permanent officer over a contract officer.

(2) The qualifications for a post shall be such as have been determined by Government but shall not be designed or be so restrictive in their effect as to favour a particular candidate for appointment, or to interfere with the due performance by the Commission of the functions vested in it by the Act.

Examinations and Training Courses

14. Where a vacancy is to be filled—

(*a*) according to the results of examinations or interviews which are conducted by or supervised by the Commission; or

(*b*) on the successful completion of a course of study or training by a person who has been selected for such study or training with the intention that, when trained he or she shall be appointed or promoted within the Service,

the Commission may make such arrangements as it considers appropriate.

Matters to be considered regarding transfers

15. In exercising its powers in connexion with the transfer of officers the Commission will have regard to the interest of the sector concerned with the officer proposed to be transferred, as well as the interests of the service generally.

Seniority

16.—(1) Except as may be otherwise provided by the Commission, the relative seniority of officers within the Government Teaching Service or sectors shall be determined as follows—

(*a*) as between officers of the same grade, seniority shall be determined by reference to the dates on which they respectively entered the grade;

(*b*) as between officers of different grades with the same salary scale segment or same fixed salary, seniority shall be determined by reference to the date on which they respectively entered the grade;

(*c*) where under the provisions of paragraph (*a*) or (*b*), two or more officers would have equal seniority, their seniority relative to each other shall be determined by reference to their seniority on the date by which their seniority is calculated under paragraph (*a*) or (*b*):

Provided that on that date such officers had equal seniority (by reason of first appointment) their seniority in relation to each other shall be determined by their respective ages;

(*d*) as between officers in different grades on different salary scale segments, their seniority relative to each other shall be determined by reference to the maximum point on the salary scale segment, a fixed salary being regarded for this purpose as a salary scale segment with a maximum point equivalent to that fixed salary.

(2) When assessing the seniority of a permanent officer, service by himself or herself or any other officer in a non-permanent capacity shall be taken into account only in so far as during such service the officer or other person was fully qualified to serve on permanent terms in the post which he or she so occupied.

Advertisements

17.—(*a*) The Commission shall advertise vacant posts after it is advised of such vacancies by the Responsible Officer.

(*b*) The Commission shall advertise in electronic and/or print media with copies to the Responsible Officer to ensure prompt and wide distribution so that all eligible candidates in the Service have equal access and opportunity of applying.

Interviews

18. Interviews, written and/or oral shall be conducted to select the most suitable candidate for the post out of the eligible candidates.

Consultation, selection boards and examinations

19. The Commission may, in order to assist it in its functions relating to the appointment and promotion of officers—

(*a*) appoint a selection or interview board consisting partly or wholly of persons who are not members and determine the form of the report in which such a board is to tender its advice to the Commission;

(*b*) make arrangements for tests or examinations to be undertaken by candidates;

(*c*) consult with any person; and

(*d*) interview any applicant.

Perfomance Appraisal Report

20. Every Controlling Officer shall forward to the Commission, through the Responsible Officer a Performance Appraisal report annually during the month of January in the form set out in the appropriate form, regarding the performance of every teacher serving under him or her.

PART IV

Duties of Responsible Officer in Relation to Vacancies and Probationary Appointments

Duty to report vacancies

21.—(1) When a vacancy occurs or it is known that a vacancy will occur, the Responsible Officer, unless authority to fill the vacancy has been delegated to him or her by the Commission shall report the vacancy to the Secretary and shall make a recommendation whether the vacancy should be filled by promotion, by transfer, by other appointment or by acting appointment or, give reasons why the vacancy should remain unfilled.

(2) Such report shall be on Form GTSR 2 in the Second Schedule and shall contain the information therein specified.

(3) If the Responsible Officer recommends that a vacancy should be filled by the appointment or promotion of an officer serving in the sector in which the vacancy occurs or will occur, he or she shall, when reporting the vacancy to the Secretary, forward a list of all the officers in that sector eligible for consideration who are senior to the recommended officer together with their records of service and that of the recommended officer, and shall give his or her reasons for recommending their supersession.

(4) If the Responsible Officer does not recommend that such vacancy should be filled by the appointment or promotion of an officer serving in the sector in which the vacancy has occurred or will occur he or she shall when reporting the vacancy—

(*a*) report to the Secretary the names of the officers then serving in the grade from which the promotion could be made if there were a suitable officer available and shall state the reasons why he or she does not consider that the officers named are suitable for promotion to fill the vacancy; and

(*b*) forward to the Secretary a draft advertisement setting out the details, including duties of the vacant office, and the qualifications which must be held by the applicants for the office.

Applications by officers and others

22.—(1) An officer who wishes to apply to fill a vacancy advertised by the Commission shall submit his or her application on form GTSR 3 through his or her Responsible Officer. The Responsible Officer shall forward the application to the Secretary with such comments as he or she may consider suitable.

(2) Non-Serving officers shall be required to forward their application straight to the Commission.

Appointments

23.—(1) When the Commission has selected a person for first appointment as a permanent officer his or her appointment shall be conditional upon a satisfactory medical report and the production of any evidence of his or her qualifications which the Commission has allowed to be deferred. Such apppointments shall be on probation in accordance with these Regulations.

(2) The Secretary to the Commission shall issue minutes of the Commission carrying an appropriate numbering which he or she shall in turn send to the Responsible Officer. The Responsible Officer shall also complete an appropriate form which he or she shall send to the Commission.

(3) Where the appointment is to be made on contract terms, particulars of the person selected shall be notified to the Secretary for Human Resource Management and Development by the Responsible Officer.

(4) A first appointment may be made on temporary terms where the Commission considers it appropriate to do so.

Delayed documentary evidence

24. Where an applicant for a post claims to have qualifications for that post which claim would normally be capable of proof of documentary evidence and the applicant satisfies the Commission that there is good reason for delay in production of such evidence, the candidate shall be deemed to have been qualified for the post.

Appointment on probation

25. (1) An Officer, other than a contract officer, will on first appointment be engaged on probation.

(2) The period of probation shall, subjets to the other provisions of these Regulations, be two years.

(3) In case of delay in seeking, or reaching a decision by the Commission regarding confirmation, the probationary period shall be deemed extended until a decision is reached.

Duties of Responsible Officer in relation to probationers

26.—(1) A Responsible Officer shall arrange for the performance of every probationer for whom he or she is responsible to be regularly supervised during his probationary period.

(2) A Responsible Officer shall give his or her probationers such assistance as may be possible in correcting any faults, and should also consider whether the probationer should be posted or transferred, or placed under increased supervision in the performance of his or her duties; unsatisfactory probationer's progress shall be brought to his or her attention by his or her Responsible Officer on an appropriate Form so that he or she may have reasonable time within which to correct his or her shortcomings.

(3) Where the Responsible Officer is of the opinion that a probationer has not, within the time allowed, corrected the shortcomings of which were brought to his or her attention under subregulation (2) and is also of the opinion that the probationary appointment should be terminated before the expiration of the probationary period, he or she shall notify the probationer and make a report and recommendation to the Commission in accordance with subregulation (5) and thereupon if the Commission considers that there is doubt whether a probationer is a suitable person for retention in the service, the Commission may direct that the appointment of the probationer be terminated on giving the probationer thirty days' notice.

(4) Not later than three months before the expiration of the probationary period, the Responsible Officer of every probationer shall report and make his or her recommendation to the Commission in an appropriate form and in accordance with these Regulations.

(5) If at any time it is intended by the Responsible Officer to submit an adverse report and recommendation to the Commission in respect of a probationer, the Responsible Officer shall notify the probationer of that intention in an appropriate form and allow him or her reasonable time within which to submit representations. On receipt of such representations, or the expiration of the period so fixed the Responsible Officer shall forward to the Commission—

(*a*) his or her recommendation in an appropriate form;

(*b*) a copy of any warning served on the probationer under subregulation (1) and any representations of the probationer at that time;

(*c*) a copy of the notice under this subregulation;

(*d*) the representation, if any, of the probationer; and

(*e*) his or her own comments on such representations.

(5) Nothing in this regulation shall be construed in such a way as to prevent disciplinary proceedings being taken against a probationer for misconduct.

Conclusion and extension of probationary any period

27.—(1) Where an officer holds a probationary appointment, three months before the expiration of such a probationary appointment, the Responsible Officer shall consider where—

(*a*) such an officer, on expiration of such a period, be confirmed in a pensionable post; or

(*b*) the probationery period be extended; or

(*c*) the probationery appointment be terminated.

(2) An extension of probationary period shall not be for less than three nor more than twenty-four months.

(3) The probationary period shall not be extended unless the Commission is satisfied that the probationer is likely, within the extended period—

(*a*) to overcome the defects which the Commission considers that he or she has; and

(*b*) to attain any required qualifications for confirmation.

(4) The Secretary shall inform the Responsible Officer of the decision of the Commission under subregulation (1).

Medical examination

28.—(1) The medical examination of a person appointed to a post as permanent officer shall be arranged by the Responsible Officer, and the report of such examination shall be made to the Responsible Officer on a prescribed form.

(2) If the report is considered by the Responsible Officer to throw serious doubt upon the suitability of the person examined to be employed by Government on permanent basis the Responsible Officer may notify the person that the conditions of his or her appointment have not been fulfilled and, shall report to the Commission that fact and the consequent vacancy and shall attach to the report a copy of the medical report.

(3) In case a vacancy shall arise as a result of the failure of a newly appointed officer to satisfy the Responsible Officer of his or her medical fitness, the Commission may, without further advertisement, appoint to the vacancy, any of the other applicants for the post who applied at the same time as the person considered medically unfit.

Acting appointments and supersession

29.—(1) Where the Responsible Officer recommends that an officer should be appointed in an acting appointment, he or she shall recommend to the Commission accordingly.

(2) Where a recommendation involves the supersession of any senior officer in the Service, reasons for the supersession of such an officer will be forwarded with the recommendations.

(3) In considering the recommendations of acting appointments, the Commission shall apply the standards prescribed in these Regulations, except that consideration may be subject to the exigencies of the Service.

(4) Where the acting appointment is proposed to be made to a post which has functions which by law may be performed only by an officer appointed to hold or act in such a post and it is necessary in the public interest that an acting appointment be made before the matter can be referred to the Commission, the Responsible Officer may issue a letter of appointment appointing an officer to act in the post for a period not exceeding 48 hours, and if on receipt of the Responsible Officer's report and recommendation the Commission decides to appoint the officer so appointed by the Responsible Officer the appointment of the Commission may be dated with effect from the date of the letter of appointment so issued by the Responsible Officer.

(5) The Secretary shall inform the Responsible Officer of the decision of the Commission.

Training grades

30.—(1) If at any time during the training period the Responsible Officer of a trainee considers that the competency and efficiency of a trainee are not in all respect satisfactory, he or she shall warn the trainee in writing in an appropriate form of the shortcomings of which complaint is made and allow him or her reasonable time within which to correct the shortcomings.

(2) Where the Responsible Officer is of the opinion that a trainee has not, within the time allowed corrected the shortcomings, of which he or she has been warned under subregulation (1) and is also of the opinion that the trainee appointment should be terminated before the expiration of the training period, he or she shall notify the trainee and make a report and recommendation to the

Commission in accordance with subregulation (3) and thereupon if the Commission considers that there is doubt whether a trainee is a suitable person for retention in the service, the Commission may direct that the trainee's training appointment be terminated.

(3) On receipt of a report and a recommendation under subregulation (2), the Commission shall decide whether—

(*a*) the trainee appointment be terminated;

(*b*) if the training appointment was on first appointment as a probationer, the probationary training appointment should be terminated but without prejudice to the trainee seeking any other appointment in the Service; and

(*c*) the trainee should be promoted to a substantive grade and, if any increments have previously been withheld, whether they should be restored in whole or in part.

Compulsory retirements

31. An officer may be required to retire from the Government Teaching Service—

(*a*) on medical grounds as provided in regulation 32;

(*b*) if the post which he or she holds is abolished as provided in regulation 33; or

(*c*) where the Commission on the application of the Secretary to the President and Cabinet is satisfied that it is in the public interest that he or she be required to retire, as provided in this regulation.

Medical grounds

32.—(1) Where the Responsible Officer is of the opinion that an officer is incapable by reason of infirmity of mind or body of discharging his or her duties and that such infirmity is likely to be permanent, the Responsible Officer shall require the ailing officer to submit himself or herself for medical examination by a medical board convened by the Secretary for Health.

(2) The report of the medical board shall be furnished to the Secretary for Health who shall forward it to the Responsible Officer with his or her recommendation whether the ailing officer should be required to retire from the service, and if the recommendation is that the ailing officer be required to retire, the Responsible Officer, before forwarding such recommendation to the Commission, shall notify the ailing officer by filling an appropriate form of his or her intention to forward the report and recommendation to the Commission and fix a reasonable time within which the ailing officer may make representations.

(3) On receipt of such representations or the expiration of the period so fixed, the Responsible Officer shall forward to the Secretary a full statement of his or her reasons for recommending that the ailing officer should be required to retire and shall attach thereto the report of the medical board, the recommendation of the Secretary for Health and the representation of the officer.

(4) The Commission after considering the report may—

(*a*) direct that he or she be required to retire from the service; and

(*b*) direct that disciplinary proceedings be taken against the ailing officer.

(5) On receipt of the report of the medical board under subregulation (4), the Commission shall direct whether or not the ailing officer be subjected to any penalty or required to retire from the Service.

Abolition of office

33. Where a post in the Government Teaching Service is abolished and it appears to the Responsible Officer that no other post in the Service is vacant, to which the holder of the abolished post can properly be appointed, the Responsible Officer shall notify the officer in an appropriate form of his or her intentions and shall fix a reasonable period of time within which representations may be made to him or her.

PART V

Discipline

Penalties

34.—(1) The Commission may inflict one or more of the following penalties upon any officer as a result of proceedings under the provision of this Part—

(*a*) dismissal;

(*b*) termination of the contract of a contract officer in accordance with terms of his or her contract;

(*c*) reduction in grade;

(*d*) reduction in salary;

(*e*) stoppage of increment;

(*f*) withholding of increment;

(*g*) severe reprimand; and

(*h*) compulsory retirement under regulation 31.

(2) Nothing in these regulations shall restrict the authority of the Secretary to the Treasury or a Responsible Officer—

(*a*) to stop the pay of an officer who has been absent from duty without leave or reasonable cause an amount which bears the same proportion to his or her annual salary as such period bears to one year; and

(*b*) to order the recovery of the cost or part of the cost of any loss of money or for damage to any property of the Government caused as a result of negligence or default.

Interdiction and suspension

35.—(1) Where an order is made interdicting an officer from service of the powers and functions of his or her office (herein referred to as an order of interdiction) that officer shall cease to exercise any of such powers and functions, shall not leave the Republic of Malaŵi without written permission of the Responsible Officer, and shall be entitled to receive—

(*a*) where misappropriation of public funds is suspected, no salary;

(*b*) where it is suspected that the officer obtained his or her appointment by means of false representation, no salary; and

(*c*) in any other cases half salary, if the Commission so directs, no salary or such fraction of the officer's salary as it may specify,

during that period until the Commission has reached a decision on the charges of misconduct, or the order of interdiction is cancelled.

(2) Where an order is made suspending an officer from the exercise of the powers and functions of his or her office that officer shall cease to exercise the powers and functions and shall be entitled to receive no salary during the period of suspension until the Commission cancels the order.

(3) An order of interdiction may be made by a Responsible Officer in the circumstances specified in this part.

Where a Responsible Officer is satisfied that the public interest no longer requires that an order of interdiction should remain in force he or she may cancel the order and shall forthwith report such cancellation to the Commission, whereupon the salary which has been withheld shall be restored in full unless the Commission, on the application of the Responsible Officer for directions, otherwise directs:

Provided that where the order of interdiction is made as a result of allegations of theft or misappropriation of public funds or negligence resulting in the conviction of the officer against whom such an order was made, the Responsible Officer shall, if he or she considers that the public interest no longer requires that the order remain in force, so recommend to the Commission which may direct that the order be cancelled or that it remain in force pending the institution of such disciplinary charges as may be instituted under this Part.

(4) Where disciplinary proceedings do not result into dismissal of the officer against whom an order of interdiction was made the salary withheld under subregulation (1) shall be restored to the officer in whole unless the Commission otherwise directs, and the Commission may direct partial or no restoration of salary.

(5) An order of suspension may be made against an officer whenever an officer has been convicted of a criminal offence and such order may take effect as at the date of conviction; but so however that nothing in this subregulation shall be construed so as to limit the operation of subregulation (3).

(6) The Commission may at any time cancel an order of interdiction and make such order, if any, regarding restoration of salary in part as it deems proper, and if no order for restoration is made the officer shall not be entitled to any restoration of salary.

Duty to investigate information regarding misconduct

36.—(1) Where any information comes to a Controlling Officer suggesting that any officer for whom he or she has responsibility may have been guilty of misconduct he or she shall report such information to the Responsible Officer.

(2) Where information reaches a Responsible Officer suggesting that an officer for whom he or she is responsible may have been guilty of misconduct he or she shall forthwith institute a preliminary investigation into the matter, and shall conduct all subsequent operations under this Part expeditiously.

Action to be taken after preliminary investigations

37.—(1) Where in the opinion of the Responsible Officer such preliminary investigation does not disclose any misconduct that would warrant the exercise of its disciplinary control by the Commission, the Responsible Officer shall issue a reprimand or warning or take no further action.

(2) A copy of any such reprimand or warning and an answer, if any, of the officer shall be placed on that officer's personal file, and a copy thereof shall be sent to the Commission.

(3) Where, at any time after the preliminary investigation, the Responsible Officer is satisfied that public interest requires that an officer for whom he or she is responsible should cease to exercise powers and functions of his or her office, he or she shall make an order of interdiction against the officer, and shall report to the Commission.

(4) If the preliminary investigation indicates that a criminal offence of a nature likely to warrant criminal proceedings may have been committed, the Responsible Officer shall report to the Police.

(5) If no question of criminal proceedings arise under subregulation (4), or if the Police advises that criminal proceedings should not be taken, but the Responsible Officer considers that there may be grounds on which the Commission might exercise its disciplinary control, he or she shall submit to the Solicitor General for advice, draft disciplinary charges in respect of the alleged misconduct:

Provided that where the preliminary investigation discloses that an officer had absconded, the Responsible Officer shall forthwith stop payment of his or her salary and report the facts to the Commission in an appropriate form.

Criminal Proceedings

38.—(1) Where an officer has been convicted on a criminal charge of an act or omission which constitutes a misconduct, the Responsible Officer shall furnish a report to the Commission together with a certified copy of the judgment in the criminal proceedings, and, if available, a copy of the record of such proceedings together with his or her recommendation whether the officer should be dismissed or some other disciplinary penalty be inflicted.

(2) The report of the Responsible Officer shall be made on the expiration of the time for appeal against conviction or, if there is an appeal, when the appeal has been determined.

(3) If the criminal proceedings in respect of an officer interdicted on half salary or any fraction of his or her salary in accordance with these Regulations have resulted in a sentence of imprisonment the convicted officer shall receive no salary after the date of conviction until the Commission has decided what disciplinary penalty is to be inflicted.

Proceedings after acquital on criminal charges

39.—(1) An officer acquitted of a criminal charge in any court shall not be dismissed or otherwise punished on any charge upon which he or she has been acquitted, but nothing in this regulation shall prevent his or her being dismissed or otherwise penalized on any other charges arising out of his or her conduct in the matter, provided that they do not raise substantially the same issues that on which he or she has been acquitted:

Provided further that where conduct in respect of which an officer interdicted results in criminal charges being brought against him or her, and he or she is acquitted of the charges, the Responsible Officer shall report that acquittal to the Commission and shall not cancel the order of interdiction unless and until directed to do so by the Commission.

(2) Such other charges shall be referred by the Responsible Officer to the Solicitor General and may be proceeded with under the provisions of regulation 40.

Notice of intention to institute disciplinary proceedings

40.—(1) Where the Solicitor General has advised that disciplinary charges be made against an officer, notice of intention to refer such charges to the Commission shall be served on such officer in an appropriate form, and a reasonable period of time shall be fixed in such notice within which the officer may answer charges in writing.

(2) On receipt of the answer or the expiration of the period so fixed the Responsible Officer shall, unless he or she considers that the answer of the officer is a sufficient answer to the charges, forward the charges and the answer, if any, to the Commission with such comments and recommendations as he or she may consider appropriate.

Absconding officers

41.—(1) Where a report is received by the Commission from the Responsible Officer that an officer has absconded it may, after such further investigations, if any, as it considers desirable, dismiss the absconding officer.

(2) Where an officer who has been dismissed under the provision of subregulation (1) who considers that he or she should be reinstated in the Service he or she may apply in writing to the Responsible Officer for reinstatement to the post from which he or she was dismissed, who shall forward it with his or her comments and recommendation to the Commission and the Commission may after such inquiry into the reasons for absence as it considers desirable reinstate him or her in the service post with such penalty, if any, as it considers just, or may refuse the application.

Action by Commission on receipt of report

42.—(1) On receipt of a report under the provision of regulation 38 or 39 the Commission shall decide whether any further investigation is necessary:

(2) If the Commission is of the opinion that no further investigation is necessary, it may forthwith determine the penalty, if any, which should be inflicted on the officer.

(3) If the Commission is of the opinion that further investigation is necessary, it shall direct a disciplinary inquiry, and may amend or add the charges.

Disciplinary inquiries

43.—(1) A disciplinary inquiry shall be held before the Commission or before a Teachers' Board of Appeal, appointed by the Commission:

Provided that if the Commission considers that the charges, if proved, would not warrant the infliction of a punishment exceeding the stoppage of increment, but that some further inquiry is desirable, it may direct a further inquiry and report to be made by a single officer, who shall not be the Responsible Officer.

(2) A Committee of enquiry shall consist of not less than three members one of whom shall have legal qualifications, and the other shall be of a grade not less than that of the accused officer and shall not include the Responsible Officer or any officer serving in the same department as the accused officer.

Procedure of Teachers Board of Appeal

44.—(1) The Board of Appeal shall give notice to the accused officer and the Responsible Officer in an appropriate form fixing a date not less than seven days from the date of the service of the notice, on which it will investigate the charges against the accused officer:

Provided that if the Commission has directed any amendment of or addition to the charges against the officer a copy of the varied charges shall be served on the accused officer and the Responsible Officer with notice.

(2) The Committee of inquiry shall make a thorough investigation without regard to legal forms and solemnities and shall direct itself by the best evidence which it can procure or which is laid before it whether the evidence is such as the law would require or admit in other cases or not.

(3) The Responsible Officer or an Officer deputed by him or her shall call and examine such evidence and produce such documentary evidence as he or she considers necessary to substantiate the charges and the accused officer, if present or dully represented, shall be given an opportunity to cross-examine such witnesses and to produce such oral or written evidence as he or she desires:

Provided that—

(*a*) no documentary evidence shall be used against an accused officer unless not less than 48 hours before it is so used, a copy thereof has been furnished to him or her and has been given opportunity to inspect it;

(*b*) the committee of inquiry may refuse to admit any evidence that is not relevant to the charges under consideration; and

(*c*) if the officer deputed by the Responsible Officer is legally qualified the accused officer may be represented by another officer or a legal practitioner.

(4) if, during the course of the inquiry, grounds for the framing of additional charges are disclosed, the committee shall so inform the Responsible Officer who shall follow the same procedures as was adopted in framing the original charges.

(5) The committee, having enquired into the matter, shall forward to the Commission its report thereon in a form approved by the Commission together with the record of the charges framed, the evidence given, the defence and other proceedings relevant to the enquiry. The report of the committee shall include—

(*a*) a statement whether in the committee's opinion the accused officer has or has not committed the offence or offences charged and a brief statement of the reasons for their opinion;

(*b*) details of any matter which in the committee's opinion aggravate or alleviate the gravity of the case; and

(*c*) a summary and such comments as will indicate clearly the opinion of the committee on the matter under inquiry.

(6) The committee shall not make any recommendation regarding the form of punishment.

Proceedings before Commission

45.—(1) If the Commission itself conducts the inquiry the procedure prescribed in regulation 44 shall be followed up to the end of taking evidence, whereafter the Commission shall, if it considers the accused officer guilty of any of the charges, determine what penalty, if any, shall be inflicted on the officer.

(2) If the inquiry has been held before the committee of inquiry or an individual officer the Commission shall consider the report of the committee or officer and shall either refer the matter back for further investigation or another report to determine the penalties, if any, to be inflicted on the accused officer.

Inquiry by individual officer

46. A disciplinary inquiry by an individual officer under the provision of regulation 44 shall be so conducted as to allow the accused officer an opportunity of making his or her defence.

Incompetency and inefficiency

47.—(1) Where a Responsible Officer considers that the salary increment of an officer for whom he or she is responsible should be withheld or stopped on any of the grounds set out in these Regulations he or she shall—

(*a*) serve upon the officer a notice in an appropriate form of his or her intention to recommend such withholding or stoppage and shall fix a reasonable time within which the officer may make representations to him or her.

(*b*) on receipt of such representations or the expiration of such a period of time so fixed the Responsible Officer may report to the Commission the grounds on which he or she considers that the officer's increment should be withheld or stopped and shall make his or her recommendation to the Commission accordingly, and shall attach to his or her report and recommendation a copy of the notice to an officer containing grounds for withholding or stoppage of salary increment and representations, if any, of the officer.

(2) Where a Responsible Officer considers that an officer has become incompetent to perform his or her duties or that he or she performs his or her duties inefficiently, he or she may either institute disciplinary proceedings after serving a warning under these Regulations or may recommend to the Secretary to the President and Cabinet that the officer be required to retire from the service.

(3) A recommendation for compulsory retirement may be made to the Commission by the Secretary to the President and Cabinet on the grounds that—

(*a*) the officer has admitted his or her incompetency or inefficiency;

(*b*) the officer claims that the cause thereof is beyond his or her control; and

(*c*) the correctness of such claim is accepted.

(4) A recommendation to the Commission for termination of service of an officer under this regulation shall be made in an appropriate form stating the particulars of incompetency or inefficiency charged and admitted and shall contain a statement of the grounds on which it is considered that the incompetency or inefficiency is beyond the officer's control and whether in the opinion of the Secretary to the President and Cabinet the officer would be competent to undertake work in any lower grade if he or she elected to accept reduction to such a grade.

(5) Where, as a result of disciplinary proceedings or a recommendation under subregulation (3), the Commission is satisfied that an officer is incompetent to discharge the duties of his or her office efficiently but such incompetence is not due to matters within his or her control, it may instead of directing his or her dismissal or

reduction in grade, direct that he or she be required to retire from the service in accordance with these Regulations recommending that full or reduced terminal benefits be granted:

Provided that no reduction of terminal benefits greater than that recommended by the Commission shall be made without reference back to the Commission.

(6) Nothing in this regulation shall be construed so as to limit the power of the Commission to direct the termination of the contract of a contract officer.

(7) An officer required to retire with full terminal benefits may with the consent of the Minister and of the Commission, elect to accept reduction of grade with terminal benefits adjusted as provided in these Regulations.

PART VI

General

Service of documents

48. Where under the provision of these regulations—

(*a*) it is necessary either—

(i) to serve any notice, charge or document upon an officer; or

(ii) to communicate any information to an officer; and

(*b*) by reason of such officer having absented himself or herself from duty or having been interdicted or suspended it is not possible to effect such service upon or communicate such information to such officer personally,

it shall be sufficient if such notice, charge or other document, or a letter containing such information, is sent by registered post in a cover addressed to such officer at his or her last known address.

Attendance of officers and production of documents

49.—(1) An officer who is required to do so in writing by the Commission shall attend before the Commission at the time and place specified in the request and shall be with him or her such public papers in his or her custody or control as he or she may be requested to bring and shall place such papers before the Commission and give such information to the Commission as it requires.

(2) An officer who submits any matter for the consideration of the Commission shall ensure that all papers relevant to the matter are provided to the Commission with his or her recommendation.

Right of appeal

50.—(1) Where an officer has been dismissed from his or her office following the directive of the Commission, he or she shall have a right of appeal to the President:

Provided that no such appeal shall be permitted from any officer who has been dismissed—

(*a*) following conviction for an offence involving dishonesty; or

(*b*) where it has been established that a post in the Service has been obtained by means of a false representation:

Provided further that no such appeal will be entertained unless the appeal is made within 14 days from the date on which the notification by the Commission of such dismissal is communicated to the officer.

(2) An appeal shall be addressed to the Responsible Officer who shall forward it to the Secretary to the President and Cabinet for submission to the President, together with such comments as the Responsible Officer may wish to make.

Cases not otherwise provided for

51. The procedure in cases not provided for in these Regulations shall be as the Commission may determine on reference being made to it.

SCHEDULE

Oath of Secretary, Other Staff of Commission or Member of a Committee of Inquiry

I, ... being called upon to exercise the functions of Secretary to (a member of the staff of) the Commission (Member of a committee of inquiry) *, do swear that I will not, directly or indirectly, reveal to any unauthorized person or otherwise than in the course of duty the contents or any part of the contents of any documents, communication or information whatsoever which may come to my knowledge in the course of my duties as such.

SO HELP ME GOD

Sworn before me this ..... day of ....., 20.....

.....
Chairman of the Commission

*Delete whatever is inapplicable

SOLEMN AFFIRMATION

I, ..., being called upon to exercise the functions of Secretary to (a member of the staff of) the Commission (member of a committee of inquiry) *, do solemnly, sincerely and truly declare and affirm that I will not, directly or indirectly, reveal to any unauthorized person or otherwise than in the course of duty the contents or any part of the contents of any documents, communication or information whatsoever which may come to my knowledge in the course of my duties as such.

Declared before me this ..... day of ....., 20.....

.....
Chairman of the Commission

*Delete whatever is inapplicable

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GOVERNMENT TEACHING SERVICE REGULATIONS

PART I

PRELIMINARY

Citation

1. These Regulations may be cited as the Malaŵi Government Teaching Service Regulations.

Interpretation

2. In these Regulations, unless the context otherwise requires—

"acceleration" means awarding one or more increments to an officer's salary upon completion of a relevant course or upon display of exceptional abilities;

"appointment" means conferment of an office of emolument in the Service and shall include an appointment on promotion;

"citizen" means a citizen of the Republic of Malaŵi;

"Commission" means the Malaŵi Government Teaching Service Commission established under section 3 of the Act;

"contract employee" means an officer employed for a predetermined period of time under a written contract as may be deemed appropriate by Government from time to time and shall contain terms and conditions of employment applicable to such officer, but does not include a permanent employee;

"Controlling Officer" means an officer to whom responsibility is delegated by a Responsible Officer under these Regulations;

"employer" means the Ministry of Education on behalf of the Government;

"expatriate employee" means any person appointed on terms and conditions set out in Part IV;

"grade" means any one of the grades of offices prescribed in the Government Teaching Service Commission Regulations;

"Government" means the person having general executive authority in the Republic of Malaŵi in accordance with the Constitution;

"employee" means a serving teacher or lecturer or an officer who has been deployed in the Service up to the Salary Scale I (P5);

"misconduct" includes any act or omission contravening these Regulations;

"officer" means any person trained as a teacher and working in the Service;

"permanent employee" means an employee employed on the basis that on confirmation of his or her appointment the duration of his or her employment is—

(*a*) until he or she reaches the mandatory retiring age under Government Teaching Service Commission Regulations; and

(*b*) his or her employment is terminated, but does not include a contract officer or employee;

"posting" means the assignment of an employee by the Responsible Officer to a different post of the same grade—

(*a*) within the same department; or

(*b*) within the Ministry of Education.

"probationary period" means the period before an officer is confirmed in his or her service post for a period not less than two years to a permanent post;

"promotion" means the appointment of an employee to a higher service post;

"re-appointment" means an appointment made for the second or subsequent times after a break in the service;

"Register of Teachers" means the register maintained pursuant to section 52 of the Education Act;

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"relevant parties" means all stake-holders in teachers' welfare;

"remuneration" means the payment of salary to a member for the services rendered;

"Responsible Officer" means the Secretary for Education;

"school" has the meaning assigned thereto in the Education Act;

"secondment" means the attachment of an employee to any other public or private institution or post for a specified or unspecified period as may be approved by the Government;

"Secretary" in relation to these regulations, means Secretary for the Government Teaching Service Commission;

"service post" means a pensionable or permanent post in the Service;

"Teacher" has the meaning assigned thereto in the Education Act;

"temporary employee" means an officer employed on terms and conditions set out in Part III of these Regulations;

"terminal benefits" means a benefit, allowance or privilege conferred on an employee by Government on the termination of his or her service;

"trainee teacher" means an employee serving in any training grade as prescribed by the Service from time to time;

"vacancy" means a vacant post for which full financial provisions were made in the estimates;

PART II

Conditions of Service for Permanent and Pensionable Employees

Division 1—Establishment

Establishment

3. The establishment shall be in accordance with the human resource requirements of the Service and as approved by Treasury.

The establishment shall be budgeted for annually.

No appointment shall be made to any post that has not been included in the annual budget.

Division 2—Recruitment and Appointment

Recruitment

4. Where a vacancy occurs or it is known that a vacancy will occur in any post within the Service, the Responsible Officer shall report the fact to the Commission in accordance with the Government Teaching Service Commission Regulations.

Vacancies

5. The Responsible Officer shall inform the Commission of the existence of vacant posts in the Service.

Advertisements

6. The Commission shall advertise in electronic and/or print media with copies to the Responsible Officer to ensure prompt and wide distribution so that all eligible candidates in the Service have equal access and opportunity of applying.

Letters of application

7. Applicants shall submit applications in writing. Serving employees who apply for a vacancy advertised by the Commission shall submit the application by filling appropriate forms which they shall forward to the Commission through the Controlling Officers.

Interviews

8. Interviews, written and/or oral, shall be conducted to select the most suitable candicate for the post.

Appointments on probation

9.—(1) All employees on first appointment shall be subject to a probationary period of two years.

(2) Three months before the expiration of such a probationary appointment, the Responsible Officer shall consider—

(*a*) whether such an officer, on expiration of such a period, be confirmed in a pensionable post; or

(*b*) whether the appointment be terminated.

Registration of teachers and authority to teach

10.—(1) The Minister shall cause to be established and maintained, in such form and authority as he or she may think fit, a Register of Teachers and a Roll of Licensed Teachers.

(2) The Minister shall appoint an officer to be Registrar of Teachers, who shall have control of the Register of Teachers and the Roll of Licensed Teachers.

(3) Every teacher whose name is on the Register of Teachers shall be issued with an authority to teach.

(4) The Registrar of Teachers shall, from time to time, publish in the *Gazette* the names of persons to whom an authority to teach has been issued.

Confirmation in appointment

11. An Officer shall be confirmed in appointment when—

(*a*) he or she is competent in his or her substantive post with favourable inspection and/or annual confidential reports;

(*b*) he or she is of mature character and confident so that his or her advice is acceptable to others;

(*c*) he or she is of sober habits and loyal to authority;

(*d*) he or she is a good organizer.

Intention to recommend extension of probation period

12. Where, after consideration of the matters referred to in regulation 11, the Responsible Officer is of the opinion that the work or conduct of an officer in a probationary appointment has not been, in all respects, satisfactory, he or she shall so inform the officer in writing and indicate whether he or she intends to recommend to the Responsible Officer—

(*a*) to extend the officer's probationary period; or

(*b*) that the officer's appointment be terminated.

Gazette notification

13.—(1) The Responsible Officer shall cause to be published in the *Gazette*, as soon as possible, notification of the following events in respect of employees—

(*a*) appointment;

(*b*) confirmations in appointments;

(*c*) acting appointments;

(*d*) promotions;

(*e*) transfers;

(*f*) secondments;

(*g*) assumptions and relinquishments of duties whenever a posting takes place to or from a post for which publication is required by statute or to give essential public information;

(*h*) termination of probationary appointments;

(*i*) reversions to substantive grade from a training grade;

(*j*) retirements;

(*k*) resignations;

(*l*) dismissals; and

(*m*) deaths.

(2) Such notification shall contain the following information as may be appropriate—

(*a*) employee's full name;

(*b*) event specified in regulation 13 (1) which has occurred;

(*c*) title and grade of the employee's post;

(*d*) effective date of event; and

(*e*) reference to the minute or letter from the Commission authorizing the event.

Division 3—Advancement

Promotion

14. Opportunities for promotion shall be accorded to all members on merit and depending on the availability of vacant posts.

Upgrading a post

15.—(1) Where a particular post is upgraded, the incumbent shall be substantively promoted to the upgraded post.

(2) Upon the attainment of a higher educational qualification that would warrant placement into a grade higher than that substantively held before the attainment of the higher qualification.

Acting appointments

16.—(1) From time to time an employee may be required to act in a post that is temporarily vacant or where the incumbent is away for more than thirty calendar days provided that the post is one to which are assigned specific duties and responsibilities of a higher grade than those of the employee's substantive post.

(2) When a member is appointed to a higher post in an acting capacity, he or she shall receive an acting allowance amounting to the difference between his or her present basic salary and minimum basic salary of the grade in which he or she is acting.

(3) No one employee shall act in more than one appointment at any one time.

(4) The acting appointment shall not itself create a vacancy for the purpose of a further acting appointment.

(5) All acting appointments shall be approved by the Commission and they shall be from the grade C in the Service.

Division 4—Remuneration

Grades

17. Each post within the Service shall be placed in a grade with other posts of a level of responsibility.

Salary scale

18. Each grade shall have a salary scale with a number of notches in between minimum and maximum points which does not overlap with salary scales of other grades.

Starting salary

19. An employee shall normally start on a minimum salary scale for his or her grade in some cases where a member has higher qualifications or more experience than the minimum required for the post, he or she may be appointed at a salary above the minimum.

Minimum qualifications and entry point

20.—(1) The first appointment of an employee for a service post shall be at a grade appropriate to his or her qualifications as prescribed below—

1. *Primary School and College*

Grade	*Qualifications*
A.	Junior Certificate of Education and successful completion of a professional course or a Higher National Diploma without Malaŵi School Certificate of Education.

B. On promotion from A or with a High National Diploma with Malaŵi School Certificate of Education.

C. On promotion from B.

D. On promotion from C.

2. *Secondary School and College*

Grade	*Qualifications*
E1	Diploma or its equivalent
E2	Basic Degree without Certificate in Education.
E3	Bachelor of Education (B.Ed.) or Basic Degree and Certificate in Education.

(2) The entry point of an employee on first appointment shall be at a grade in the salary scale as prescribed by Government from time to time.

Incremental progression

21. Increments are not an entitlement but in normal circumstances employees may progress in their salary scales by annual increments of one notch provided their performances have been satisfactory throughout the year.

Increments

22. For purposes of determining the date on which an emlpoyee of the Service becomes eligible for an increment in the salary scale on which he or she is appointed—

(*a*) an emlpoyee shall earn an increment on his or her salary after serving in a service post for a minimum of one year;

(*b*) the incremental date and/or any subsequent increments of a member promoted to a service post shall be the first of July of each year;

(*c*) an employee shall have a right to an increment, unless an increment is withheld or stopped in accordance with these Regulations; the employer shall grant increments annually up to a maximum of the scale on which the employee is appointed, unless such increments are withheld due to adverse reports;

(*d*) except where the Commission directs to the contrary, the salary increment of an employee shall be retarded by the period of any leave without pay granted to such a member;

(*e*) in the event of there being a dispute as to the appropriate incremental date of an employee of the Service, in respect of re-appointments, retirements, re-categorization or otherwise, the decision of the Commission shall be final;

(*f*) any re-assessment of salaries made with the consent of the Government shall not affect an employee's incremental date;

(*g*) where an increment is stopped by the Commission for any other reason it may consider appropriate, the employee shall not receive any increment during the year in which it is stopped; and

(*h*) no increment shall be granted before the due date.

Award of incremetal credits

23. Nothing in these Regulations shall be construed as prohibiting the Responsible Officer from awarding an extra increment or increments to an employee who has obtained higher relevant academic qualifications from a recognized institution or past relevant experience. The basic salary and salary scales shall be in accordance with recommendations to be made by any salary review commission within the Service from time to time.

Maximum salary

24. An employee who has reached the maximum point in the salary scale for his or her grade shall receive no further increment in salary until he or she is promoted to a higher grade.

Annual salary review

25. The Responsible Officer, in consultation with the relevant parties, shall ensure that every effort shall be made to ensure that the annual review of salaries is made in accordance with prevailing economic conditions.

Payment of slaries

26. An employee's salary shall be paid in arrears save that where an employee is proceeding on leave, he or she may, at his or her discretion, be advanced his or her salary provided that his or her leave commences before the end of that month.

Division 5—Place and Hours of Work

Place of work

27. Every employee shall be required to work anywhere in Malaŵi on the instruction of the Responsible Officer which shall take into account operational requirements.

Duties

28.—(1) The main duties and responsibilities of each employee shall be those set out in the job description. The Responsible Officer or controlling officers may require an employee to carry out any other duties in addition to those set out in his or her job description provided that the duties are consistent with the objectives of the Service.

(2) Remuneration of all employees of the Service shall be based on the assumption that all their time is at the disposal of the Government.

Hours of work

29. The Government shall lay down a minimum number of working hours from time to time as it deems necessary, but so however that the foregoing shall not exempt the members from being called upon to put in hours in excess of the normal hours in time of need.

Division 6—Annual Holiday and Leave

Annual holiday entitlement

30.—(1) Annual holiday is intended to entitle employees to have some rest from their working environment.

(2) An annual holiday is a privilege and not a right.

(3) Subject to the exigencies of service, the Responsible Officer shall grant leave to employees as follows—

(*a*) F to I—30 working days;

(*b*) all other members—24 working days.

Annual Leave

31.—(1) The holiday year shall be for a period of twelve months and shall coincide with the financial year.

(2) Annual leave for those in teaching positions shall be taken during any school holiday except in extenuating circumstances.

(3) Sundays, Saturdays and public holidays shall not count against any holiday under this Part.

(4) No travelling time shall be granted in addition to any annual holiday set forth in this Part.

Leave roster

32.—(1) Leave roster shall be prepared at the beginning of each year and each member shall be required to state when he or she proposes to take his or her leave.

(2) When a public holiday occurs during the period of leave, a further one day shall be added to the appropriate leave.

Accumulation of leave days

33.—(1) An annual holiday may not be accumulated into the next holiday year without the approval of the Responsible Officer on the recommendation of the Controlling Officer.

(2) The only exception is where an employee planned to take leave but was not permitted to do so or was recalled from leave to resume duties.

Commutation of leave days

34.—(1) Subject to the availability of funds, employees may opt to commute the accumulated leave days for cash or take them on retirement.

(2) Commutation of leave shall be recommended as a last resort where it has been demonstrated that it was impractical for an employee to proceed on leave in accordance with the leave roster.

(3) For purposes of commutation of leave for cash it shall be mandatory for each member to take at least seven days leave.

Leave grants

35.—(1) The leave grant shall be payable to members only once in each holiday year and to qualify for it an employee must take at least seven consecutive working days.

(2) Applications for leave grants shall be made not less than ten days before the date an employee proceeds on leave.

(3) No travel warrants shall be provided in lieu of leave grant.

(4) If the day on which salaries are paid falls within a period of leave, an employee may request the payment of salary due on that day to be made before he or she proceeds on leave.

Types of leave

36. There shall be four other types of leave.

Study leave

37.—(1) Where it is considered to be in the interests of the Service that an employee should be nominated to attend a full time course of study or training, other than an "in service" course, the employee shall be granted study leave for this purpose.

(2) An employee shall be paid a salary and allowances in accordance with the provisions of the Government's regulations determining the salary and allowances to be paid to public officers who are nominated for study courses.

Leave without pay

38. Notwithstanding the provisions of these Regulations, the Responsible Officer may after considering the nature of the issue, grant an employee such leave without pay as the Responsible Officer may see fit.

Sick leave

39.—(1) A permanent and pensionable employee of the Service shall be eligible for sick leave up to a maximum of one hundred and eighty consecutive days with full pay and one hundred and eighty days on half pay.

(2) Notwithstanding subregulation (1), no sick leave shall be granted where the sickness is attributed to the officer's indiscretion or negligence.

(3) Where any period of sickness exceeds the period laid down in subregulation (1), any further leave shall be regarded as unpaid leave, and consideration may be given to the termination of the employee's appointment on medical grounds.

Maternity leave

40. Any female employee of the Service will be granted paid maternity leave of ninty consecutive days, every three years and which shall not be carried forward and shall be exclusive of her annual leave for the calendar year which the maternity leave is taken.

Division 7—Allowances

Transport allowance

41. Where no transport is available and an employee is required to undertake a journey on official business, he or she may be authorized by the Controlling Officer on behalf of the Responsible Officer to use his or her own private car, motorcycle or bicycle and shall be paid an allowance at rates approved by Government from time to time.

Consolidated kilometreage allowance

42.—(1) Where an employee is required and transport authorized to use his or her own transport on a regular basis for official duties, the Responsible Officer may authorize payment of a monthly consolidated allowance based on the estimated monthly kilometreage.

(2) Under no circumstances should consolidated kilometreage allowance be paid for the period an employee's car, motorcycle or bicycle was unserviceable or the member was absent from his or her normal place of work for any reason.

(3) Travel to and from an employee's residence to his or her normal place of work does not qualify for any kilometreage allowance.

Subsistence allowance

43. Any employee who is required and authorized by the Responsible Officer or Controlling Officer to travel away from his or her normal place of work overnight shall be paid subsistence allowance at the rate Government may consider appropriate from time to time.

Responsibility allowance

44. A responsibility allowance shall be paid to an employee who is appointed to a post to which a responsibility allowance is attached.

Occasional meal allowance

45. Where an employee is required and authorized to be away from his or her normal place of work for five hours or more but not spending a night, he or she may claim occasional meal allowance at the rate as laid out by Government from time to time.

Acting allowance

46.—(1) Notwithstanding anything to the contrary contained in these Regulations, no employee shall be entitled as of right to claim an acting allowance.

(2) Where, with the confirmation of the Commission, an employee is appointed under regulation (16) to act in any post which is—

(*a*) not an acting post;

(*b*) higher than or in a grade higher than the post to which he or she is substantively appointed,

and the appointment is dully notified in terms of that regulation he or she may, with the approval of the Responsible Officer, be paid an acting allowance during the period of the acting appointment:

Provided that it has not been necessary to appoint another employee to perform the duties of the post in which he or she is acting, an employee who is drawing an acting allowance may continue to draw it for the whole period an employee occupies the post in question and is resident in Malaŵi, including authorized periods of absence on holiday, duty or course, etc.

(3) Where a Responsible Officer approves the payment of an acting allowance under this Part, the allowance shall be the difference between the minimum salary in the segment of post in which he or she is acting and the employee's salary.

(4) An acting allowance shall be non-pensionable but otherwise reckonable for all benefits and charges which are tied to salary such as subsistence allowance, rent and tax.

Warm clothing allowance

47.—(1) An allowance for the purchase of warm clothing may be made by the Responsible Officer to an employee who is required to proceed abroad on duty or training to a cold country.

(2) For the purposes of this regulation, a cold country shall be one which lies wholly or principally outside the latitudes of 30 degrees north and 30 degrees south of the equator.

(3) The rate of the allowance shall be laid down by Government as it considers necessary from time to time:

Provided that no such allowance shall be paid unless a period of not less than three months shall elapse while the employee is still abroad.

(4) The allowance shall not be paid to employees who are covered by Part III and IV of these Regulations.

Government examination allowance

48.—(1) An employee who, with the prior approval of the Responsible Officer, attends an approved Government examination, shall be eligible for payment of the following appropriate allowances—

(*a*) kilometreage allowance;

(*b*) transport allowance; and

(*c*) subsistence allowance:

Provided that such an employee shall not be eligible for such allowance in respect of any such attendance by him or her for the purpose of re-taking such examination.

(2) In this regulation, the expression "an approved Government examination" means a Government examination approved by the Secretary for Human Resource Management and Development for the purpose of this regulation.

Professional allowance

49.—(1) Any member registered in the Register of Teachers shall be paid a professional allowance as laid down by the Government from time to time.

(2) An allowance payable under this section shall be paid as long as an employee is still teaching formally in a class situation and shall include periods of annual leave and public holidays.

Housing allowance

50. All employees not housed by the Responsible Officer shall be entitled to a housing allowance at the rate approved by Government from time to time.

Division 8—Advances

Advances

51.—(1) Advances are loans that may be granted to an employee by the Controlling Officer with the approval of the Responsible Officer depending on the amount of the loan and the need for the loan.

(2) The advance may carry an interest fixed by the Government from time to time except for the education advance.

(3) Repayment of the advance shall be by deductions from an employee's salary.

Condition of advance

52. In order to qualify for a loan or an advance, a member must—

(*a*) demonstrate his or her ability to repay the loan;

(*b*) not have any other outstanding loan in whole or in part except that the request for the second loan is of an emergency nature.

Interest payable

53. The interest charged on loans shall be at the rate in force at the time of advance. As this changes from time to time, an employee should consult the Department of Human Resource Management and Development to obtain current rates.

Types of advances

54. There shall be five types of advances.

Education advance

55.—(1). The Controlling Officer may approve an Education Advance to an employee who wishes to take a course of study in Malaŵi or outside. An education advance may be granted for the purpose of meeting the costs of—

(*a*) tuition;

(*b*) text books; and

(*c*) examination fees.

(2) The maximum amount that can be borrowed shall be equivalent to twelve months' salary or the exact cost of the course.

(3) The advance shall be repaid within forty-eight months by equal monthly installments with no interest.

(4) If an employee is successful in the examination at the conclusion of his or her study, the advance shall be converted into a grant provided the course or training is relevant to his or her service.

(5) The education advance shall not be given to employees who have served for less than six months.

(6) No education advance may be granted unless the institution offering the course has been approved by Government and the course itself is approved by the Minister of Education.

Emergency advance

56.—(1) An emergency advance may be granted to members where an unfortunate occurrence has resulted in serious financial hardships to the applicant.

(2) The amount of the emergency advance may not exceed three months' basic salary and the repayment period shall be a maximum of eighteen months for the maximum amount. Interest rate shall be the one laid down by the Government from time to time.

Bicycle advance

57.—(1) A member may be granted a bicycle advance under the following conditions—

(*a*) where an employee has completed six months' continuous service; and

(*b*) where the bicycle will be used by an employee in carrying out his or her official duties.

(2) Only one bicycle advance shall be granted in any four-year period.

(3) A bicycle advance shall be paid directly to the seller and shall be equivalent to the cost of the bicycle.

(4) A bicycle advance shall be repayable in forty-eight monthly installments and the interest shall be at the rate in force at the time of the advance.

Motor vehicle/ cycle advance

58.—(1) The application for a motor vehicle or motorcycle advance may be approved by the Controlling Officer on the condition that—

(*a*) The maximum amount of the advance to be borrowed is twenty-four months' salary to be paid in seventy-eight months and is limited to one advance for every six years;

(*b*) The motor vehicle or motorcycle purchased out of an advance may not be taken out of Malaŵi or sold without the permission of the Secretary to the Treasury if the advance has not been fully paid.

General purpose advance

59.—(1) A general purpose advance may be granted by the Controlling Officer with the approval of the Responsible Officer to purchase household furniture or domestic appliances.

(2) The maximum amount of a general purpose advance shall be an amount equivalent to eighteen months' salary, and the general purpose advance shall be repayable in seventy-two months.

(3) In order to qualify for this advance a member must—

(*a*) be confirmed in appointment;

(*b*) prove that his or her net salary at the time of application is 50 per cent over his or her gross salary per month.

Application procedure

60.—(1) An application for all advances procedure shall be made on relevant forms in triplicate to the applicant's Responsible Officer.

(2) If the Responsible Officer considers that the application is a proper one but that an advance on exceptional terms is necessary, he or she may refer the application to the Secretary to the Treasury.

Agreement

61. If an advance is authorized, the employee concerned shall be required to sign in triplicate an Agreement on the relevant forms.

Sale of item purchase on loans

62.—(1) Where an employee wishes to sell a motor vehicle or motorcycle or bicycle before a loan is fully repaid, he or she shall obtain permission from the Responsible Officer:

Provided the proceeds of the sale have to be paid to recover the loan.

(2) Any excess remaining after liquidating the loan shall be paid to the employee.

Division 9—Housing

Housing

63.—(1) The Government may provide housing where possible.

(2) The provision of housing to employees shall be determined by the needs of the service and controlled by heads of institutions and the Responsible Officer.

Housing responsibility

64. Where the Responsible Officer is unable to provide a suitable house, all employees are responsible for either renting a house on their own behalf or buying a house in accordance with the Government Home Ownership Scheme.

Home ownership scheme

65. An employee who wishes to purchase a house may take advantage of the Government Home Ownership Scheme or any other existing scheme as approved by the Government.

Fringe benefits

66.—(1) The Government may pay fringe benefits in whole or in part to appropriate grades of staff.

(2) Where it shall be deemed fit for an employee to be provided with a telephone in his or her residence and subject to the approval of the Responsible Officer, the Government shall reimburse the employee the cost of installation, rental and business calls made.

Quarters

67. Where a house is provided the officer shall pay the rent prescribed by the Government and it shall be lawful for the Responsible Officer to deduct the rent from the salary of the officer.

Furnished quarters

68. Employees occupying furnished quarters shall pay the corresponding rent as prescribed by the Government from time to time.

Sharing of quarters

69.—(1) Where employees share the same quarters, each shall pay an equal proportion of the appropriate rent payable.

(2) In the case where both the husband and wife are employees, the quarters shall be allocated to one of them who shall pay the full rent due while the other employee shall be entitled to the prescribed housing allowance.

(3) Notwithstanding the provision of this regulation, no rent shall be charged where employees are occupying tents and dormitories and sub-standard houses.

Letting of quarters

70. Under no circumstances shall an employee let or sub-let a quarter or any part of such a quarter allocated to him or her by his or her Controlling Officer.

Division 10—Safety and Security

Safety

71. The Responsible Officer has an obligation to provide safe working conditions for employees; equally, employees have an obligation to avoid any act which may endanger themselves or any other person.

Security

72. Every employee has a duty to protect his or her property, colleagues and the Government from loss, theft or damage; and any loss, damage or theft by suspicious circumstances or neglect of security regulations shall be reported immediately to a person in authority.

Workers compensation Cap. 55:03

73.—(1) The provisions of the Workers Compensation Act apply to all employees of the Service.

(2) Injuries incurred on duty shall be restricted to injuries sustained while an employee is executing his or her official duties.

(3) Any sick leave taken as a result of an injury sustained on duty is not recorded as sick leave on an employee's record of service card, nor shall it count towards the sick leave entitlement of an employee in accordance with these regulations.

Protective clothing

74. Where an employee's duties require him or her to work in hazardous or dirty conditions, the Controlling Officer shall provide protective clothing and/or footwear on the scale of items and replacement frequency laid by the Government, from time to time, and approved by the Responsible Officer.

Ownership of clothing

75. All items supplied to employees remain the property of the Government and shall be kept in good condition by the employee and may be returned on demand.

Loss or damage to property

76.—(1) When protective clothing, uniforms or other items provided become damaged or lost in the course of the member's duty, it shall be replaced free of charge after suitable enquiry.

(2) When such clothing or items are lost or damaged due to the negligence of the member, they shall be replaced at a cost deductible from member's salary.

Division 11—Misconduct and Discipline

Acts of misconduct

77. A teacher shall be guilty of misconduct who—

(*a*) conducts himself or herself so as impair the efficiency of the school or college;

(*b*) absents himself or herself from duty without just cause;

(*c*) refuses or neglects to carry out professional duties and lawful instructions as prescribed in these Regulations;

(*d*) uses his or her position as an employee to further the ends of any political party or organization;

(*e*) displays insubordination by word or conduct;

(*f*) continues to be incompetent or inefficient after the expiration of the period fixed in a warning given to him or her by the Controlling Officer unless such incompetence or inefficiency is due to causes beyond his or her control;

(*g*) fails to comply with any of the Regulations, Financial Orders or Stores Regulations as amended from time to time or commits a breach of any contract or agreement entered into under the Government Teaching Service Commission Act or the Constitution;

(*h*) is under the influence of intoxicating liquor or habit forming drugs during the normal hours of attendance or during such other hours as he or she may be required to be on duty;

(*i*) habitually takes intoxicating liquor or habit forming drugs;

(*j*) is, under any statute, adjudged or otherwise declared bankrupt or insolvent or has a writ of civil imprisonment or any other like order issued against him or her, unless he or she can show that his or her financial difficulties have been caused by circumstances beyond his or her control;

(*k*) suffers pecuniary embarrassment likely to interfere with the efficient performance of his or her duties;

(*l*) except in the discharge of his or her duties or with the consent of the Minister and in accordance with such directions, if any, as the Minister may from time to time give him or her, discloses or reveals either directly or indirectly the contents of any documents, communication or information whatsoever acquired in the course of such duties;

(*m*) uses for personal gain information acquired through his or her employment in the Service, notwithstanding that he or she does not disclose such information;

(*n*) conducts himself or herself on any occasion in disgraceful, improper or unbecoming manner, or while on duty, is grossly discourteous to any person;

(*o*) makes use of public monies or any property of the Government for private purposes;

(*p*) fails to take reasonable care of any Government property in his or her custody or on charge to him or her or take such steps as are within his or her power to ensure that reasonable care is taken of any such property;

(*q*) without the consent in writing of the Responsible Officer, he or she cedes the whole or part of the salary, allowance or any other remuneration payable to him or her;

(*r*) engages in an occupation or undertaking or performs any act which might in any way conflict with the interests of the Government or be inconsistent with his or her duties;

(*s*) acquires or holds a direct or indirect pecuniary interest in a contract relating to matters falling within the function of the Department in which he or she is serving; or

(*t*) knowingly acquires or holds a direct or indirect pecuniary interest in a firm or company applying or negotiating for a contract with the Government relating to matters falling within the Service;

(*u*) owns any right in immovable property, or has a direct or indirect pecuniary interest in a firm or company, which results in his or her private interests coming into real or apparent conflict with his or her official duties;

(*v*) does or causes or permits to be done, or connives in any act which is prejudicial to the administration, discipline or efficiency of the Service or any part of it;

(*w*) commits any of the following offences and is convicted thereof by a court of law—

(i) extortion, bribery, corruption;

(ii) theft, theft by false pretences, receiving stolen property knowing it to have been stolen;

(iii) fraud, forgery, altering a forged instrument knowing it to have been forged; or

(iv) attempts, incites or conspires to commit an offence under this subsection.

(x) attempts to secure intervention from political sources in relation to his or her position or conditions of employment in the Service:

Provided that nothing in this regulation shall be construed as precluding an officer from endeavouring to obtain redress of any grievance through a member of the National Assembly.

(*y*) except with the consent of the Minister and except in accordance with such directions, if any, as may, from time to time, be given to him or her by the Minister—

(i) does not place the whole of his or her time during the normal hours of attendance at the disposal of the Government;

(ii) performs or engages himself or herself in performing work outside the Service for remuneration;

(iii) acts as reporter, correspondent or editor of a newspaper or takes any part, directly or indirectly, in the management thereof;

(iv) otherwise than in the discharge of his or her official duties speaks in public, broadcasts, writes letters to the press, grants interviews, publishes books or articles, circulates leaflets or otherwise publishes anything on matters which are concerned with the Service; or

(v) accepts valuable presents, other than the ordinary gifts from personal friends, from persons with whom he or she comes or is likely to come into contact in the discharge of his or her duties;

(vi) takes part in or assists any activity subversive to the Government;

(vii) engages in any activity, political or otherwise which interferes with the due performance of his or her duties as a member;

(viii) makes to the Government any false claim;

(ix) has wilfully supplied to the Commission or to any officer or other person acting on behalf of the Government incorrect or misleading information in connexion with his or her appointment to the Service; and

(x) behaves immorally with any pupil or student of any educational institution in the country.

Division 12—Termination of Employment

Termination of appointment

78.—(1) The appointment of an employee in a service post shall not be terminated by his or her employer otherwise than by dismissal except—

(*a*) with the consent of the Responsible Officer and on the employer giving the permanent employee not less than three months' salary in lieu of notice; and

(*b*) on the employee's compulsory retirement.

Dismissal

79. No employee of the Service shall be dismissed from a service post by his or her employer except where, as a consequence of disciplinary action being taken against him or her under these Regulations, he or she is directed by the Commission to be so dismissed.

Abolition of office

80. Abolition of office shall occur when an established post is deleted from the establishment due to re-organization of the Service.

Death of employee

81. The Responsible Officer may grant at his or her discretion appropriate benefits either wholly or partly to the beneficiaries of any eligible employee who dies while in the Service.

Burials arrangements

82.—(1) The Responsible Officer shall provide a suitable coffin and reasonable transport to convey the employee's body to the place of burial.

(2) On the death of the employee's spouse or dependant children living with him or her at his or her residence, the Responsible Officer shall provide reasonable transport to convey the body to its place of burial.

Retirement

83.—(1) An employee may retire on attaining the retirement age of fifty-five years or on having done twenty years of service.

(2) Where a member wishes to retire before the age of fifty-five years and has done less than twenty years of service he or she may do so with the approval of the Responsible Officer.

Retirement on health grounds

84.—(1) If at any time during an employee's service, he or she is certified by a medical board to be permanently unfit or incapable of continuing in the Service due to ill health, the Commission may require him or her to retire on health grounds.

(2) He or she shall then receive the appropriate period of notice in accordance with the provision of these Regulations.

Recovery of debt

85. The Responsible Officer shall recover the amount of any debt owed by an employee to the Government on the termination of his or her employment for whatsoever reason.

Transport on termination

86.—(1) The Responsible Officer shall provide reasonable transport on termination of employment of a member to his or her home or place of residence except on resignation.

(2) On termination of employment a member may be allowed to stay in a house leased by the Government for a period of one month.

Terminal benefits

87.—(1) Terminal benefits are entitlement paid to an employee or his or her estate upon termination of employment.

(2) The benefits shall be paid in accordance with Government regulations.

Gratuity

88.—(1) Employees who are not eligible for pension shall receive a gratuity, where they retire or leave the service for any other reason according to these Regulations.

(2) The gratuity shall be paid in accordance with Government regulations on gratuity.

PART III

Conditions of Service for Temporary Employees

Division 1—Establishment

Establishment

89.—(1) The establishment shall be in accordance with the human resource requirements of the Service on recommendations of the Responsible Officer.

(2) The establishment shall be budgeted for annually.

(3) No appointment shall be made to any post that has not been included in the annual budget.

Division 2—Recruitment and Appointment

Recruitment

90. All appointments of temporary teachers under this Part shall be made in accordance with the Government Teaching Service Commission Regulations; and appointments shall be made subject to the production by the candidate of acceptable documentary evidence that he or she possesses all the qualifications necessary for the appointment and subject to his or her being passed as medically fit for his or her post by a Government Medical Officer or medical practitioner authorized by the Government on its behalf.

Advertisement

91. The Commission shall advertise in electronic and/or print media with copies to the Responsible Officer to ensure prompt and wide distribution so that all eligible candidates have equal access and opportunity of applying.

Letters of application

92. Applicants shall submit applications in writing.

Interviews

93. Interviews, written and/or oral shall be conducted to select the most suitable candidates for the post out of the eligible candidates.

Appointments

94.—(1) Successful candidates shall be issued with letters of temporary appointment.

(2) The successful candidates shall accept the offer of appointment by signing the letters of temporary appointment and returning them to the Responsible Officer.

Division 3—Advancement

Advancement

95. A temporary employee shall qualify for a permanent service post upon successful completion of a training course, and thereafter he or she shall be eligible to a progression in the service post as in Part II.

Division 4—Remuneration

Renumeration

96. Persons employed on temporary terms and conditions under this Part shall be appointed to a grade or salary scale segment and a starting salary which otherwise will be appropriate to the appointment of an employee under Part II of these Regulations.

Minimum salary and entry qualifications

97.—(1) The first appointment of an employee of the Service to a temporary post shall be at a grade appropriate to his or her entry qualifications as prescribed below.

A. Primary School Teacher

Grade	*Qualifications*
A	Malaŵi School Certificate of Education.

(2) The entry qualifications of an employee on first appointment shall be at a grade, in the salary scale as prescribed by Government from time to time.

Incremental progression

98. Increments are not an entitlement but in normal circumstances employees may progress in their salary by annual increments of one step provided their performances have been satisfactory throughout the year.

Increments

99.—(1) For purposes of determining the date on which an employee of the service becomes eligible for an increment in the salary scale on which he or she is appointed.

(2) An employee shall earn an increment in his or her salary after serving in a training post for a minimum of one year.

(3) The incremental date and any subsequent increments of a member shall be the first of July of each year.

(4) An employee shall have a right to an increment, unless an increment is withheld or stopped in accordance with these Regulations; and the employer shall grant increments annually up to a maximum of the scale on which the member is appointed, unless such increments are withheld due to adverse reports.

(5) Any re-assessment of salaries made with the consent of the Commission shall not affect the employee's incremental date.

(6) Where an increment is stopped by the Commission for any other reason it may consider appropriate, the employee shall not receive any increment during the year in which it is stopped.

(7) No increment shall be granted before the due date.

(8) Notwithstanding the foregoing paragraphs, soon after the publication of these Regulations, serving employees shall retain their immediate incremental dates, provided that no employee shall be eligible for the next increment before the completion of twelve months from the date he or she was granted such an increment.

Payment of salaries

100. An employee's salary shall be paid in arrears.

Division 5—Place and hours of work

Place of work

101.—(1) As far as possible, temporary employees shall be required to report to their respective Controlling Officers.

(2) Upon successful completion of a training course employees shall be required to work anywhere in Malaŵi at the request of the Responsible Officer who shall take into account operational requirements.

Duties

102.—(1) The main duties and responsibilities of each employee shall be those set out in the job descriptions.

(2) The Secretary for Education or Controlling Officers may require an employee to carry any duties in addition to those set out in his or her job description provided that the duties are consistent with the objectives of the Service.

Hours of work

103.—(1) Remuneration of all employees shall be based on the assumption that all their time is at the disposal of the Government.

(2) The Minister shall lay down a minimum number of working hours as he or she deems necessary, from time to time; but so however that the foregoing shall not exempt the members from being called upon to put in hours in excess of the normal without compensation in time of need.

(3) Individual employees may be required to work different hours or in shifts to suit the needs of the Service.

Division 6—Leave

104. There shall be three main types of leave. Types of leave

105.—(1) Annual leave is intended to allow employees to have some rest from their working environment. Annual leave

(2) Subject to the exigencies of service, the Responsible Officer may grant twenty-four working days leave to all temporary employees.

106.—(1) A temporary employee of the Service shall be eligible for sick leave up to a maximum of forty-five consecutive days with full pay, and forty-five days on half pay. Sick leave

(2) Where the sickness persists beyond the duration of the paid sick leave the employee will be withdrawn from appointment.

107. Any female employee of the Service will be granted paid maternity leave of ninty consecutive days, in every three years and which shall not be carried forward and shall be exclusive of her annual leave for the calendar year in which the maternity leave is taken. Martenity leave

Division 7—Housing

108.—(1) The Government may provide housing where possible. Housing

(2) The provision of housing to employees shall be determined by the needs of the Service and controlled by heads of institutions and the Responsible Officer.

109. All employees not housed shall receive housing allowance at the rate approved by the Government from time to time. Housing allowance

110.—(1) Where a quarter is provided for by the employer, the officer shall pay the rent prescribed by the Government and it shall be lawful for the employer to deduct the rent from the salary of the officer. Quarters

(2) Every employee of the Service shall be eligible to suitable housing according to his or her grade, and it is the responsibility of the employer either to provide housing or assist the employee to acquire suitable accommodation, or pay housing allowance as the Government may prescribe from time to time.

111.—(1) Where employees share the same quarters, each shall pay an equal proportion of the appropriate rent payable. Sharing of quarters

(2) In the case where both the husband and wife are employees, the quarters shall be allocated to one of them who shall pay the full rent due while the other employee shall be entitled to the prescribed housing allowance.

(3) Notwithstanding the provision of this regulation, no rent shall be charged where members are occupying tents and dormitories.

Letting of quartets

112. Under no circumstances whatsoever shall an employee let or sublet a quarter allocated to him or her by his or her employer or any part of such a quarter.

Division 8—Safety and Security

Safety

113. The Responsible Officer shall have an obligation to provide safe working conditions for employees; and equally, employees shall have an obligation to avoid any act which may endanger themselves or any other person.

Security

114. Every employee shall have a duty to protect his or her property, colleagues and the Government from loss, theft or damage; and any loss, damage or theft in suspicious circumstances or neglect of security regulations should be reported immediately to a person in authority.

Workers' Compesation

115. (1) The provisions of the Workers' Compensation Act shall apply to all employees of the Service.

(2) Injuries on duty shall be restricted to injuries sustained while a member is executing his or her official duties.

(3) Any sick leave taken as a result of an injury on duty shall not be recorded as sick leave on an employee's record of service card, nor shall it count towards the sick leave entitlement of a member in accordance with these Regulations.

Division 9—Misconduct and Discipline

Acts of misconduct

116. The provisions of Division II of Part II of these Regulations shall apply with equal force and effect to all temporary employees as if they were permanent employees.

Division 10—Termination of Service

Termination of appointment

117. The appointment of an employee in a training post shall not be terminated by his or her employer otherwise than by dismissal except—

(*a*) with the consent of the Commission and on the employer giving the employee not less than one month's salary in lieu of notice; and

(*b*) notwithstanding the above, an employee shall have the right to appeal to the High Court if he or she is not satisfied with the decision of the Commission.

Dismissal

118. No employee shall be dismissed from a service post by his or her employer except where, as a consequence of disciplinary action being taken against him or her under these Regulations, he or she is directed by the Commission to be so dismissed.

Abolition of office

119. Abolition of office shall occur when an established post is deleted from the establishment due to re-organization of the Service.

Death of employee

120. The Responsible Officer may grant at his or her discretion appropriate benefits either wholly or partly to the beneficiaries of any eligible employee who dies while in service.

Burial arrangment

121.—(1) The Responsible Officer shall provide a suitable coffin and reasonable transport to convey the employee's body to the place of burial.

(2) On the death of the employee's spouse or dependant child living with him or her at his or her residence the Responsible Officer may provide reasonable transport to convey the body to its place of burial.

Termination of service on health grounds

122.—(1) If at any time during an employee's service he or she is certified by a medical practitioner to be permanently unift or incapable of continuing in the Service due to ill health, the Commission may require him or her to have his or her services terminated.

(2) He or she shall then receive one month salary.

Recovery of debt

123. The Responsible Officer shall recover the amount of any debt owed by an employee to the Government on the termination of his or her employment for whatsoever reason.

Transport on termination

124.—(1) The Responsible Officer shall provide reasonable transport on termination of employment of an employee to his or her home or place of residence except on resignation.

(2) On termination of employment an employee may be allowed to stay in a house leased by the Government on the discretion of the Responsible Officer for a period to be determined by the Responsible Officer.

Terminal benefit

125.—(1) Terminal benefits are entitlement paid to an employee or his or her estate upon termination of employment.

(2) The benefits shall be paid in accordance with Government Regulations.

Gratuity

126.—(1) Employees who are not eligible for pension shall receive a gratuity when they retire or leave the Service for any other reason after working for at least five years.

(2) The gratuity shall be paid in accordance with Government Regulations on gratuity.

Division 11—Medical Aid Scheme

Medical aid scheme

127.—(1) The Minister shall cause to be established and maintained in such form as he or she deems fit, a medical aid scheme.

(2) All employees shall benefit from the scheme in accordance with Government Regulations.

PART IV

CONDITIONS FOR EXPATRIATE AND CONTRACT EMPLOYEES

Division 1—Application

Application

128.—(1) The provisions of this Part shall apply to employees who are not citizens of Malaŵi, and who are employed on contract terms in accordance with the Act.

(2) The provisions of this Part shall not apply to public officers, volunteers or technical assistance employees.

Division 2—Conditions of Service

Condition

129. The conditions of service governing the engagement of expatriate and contract employees shall be laid down by the Government from time to time.

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12 of 1997
G.N. 48/1997

An Act to provide for the establishment of the Mzuzu University and for the conduct and management thereof; for the establishment and incorporation of the Council of the Mzuzu University as a body corporate and as the governing body of the University; for the establishment of a Senate thereof; and for matters incidental to and connected with the foregoing

[1st July, 1997]

PART I

PRELIMINARY

Citation

1. This Act may be cited as the Mzuzu University Act.

Interpretation

2. In this Act and in the Statutes, unless the context otherwise requires—

"Centre" means a Centre within the University instituted under section 25;

"Chairman" means the Chairman of the Council appointed pursuant to section 11;

"Chancellor" means the person who is the Chancellor of the University under section 14;

"Committee" includes sub-Committee;

"Council" means the Council of the University established and incorporated by section 8;

"Dean" means the Dean of a Faculty elected by a Faculty pursuant to section 26;

"Director of Investments" means the Director of Investments appointed pursuant to section 19;

"Director of Research" means the Director of Research appointed pursuant to section 20;

"Faculty" means a Faculty within the University instituted under section 25;

"financial year" means the period commencing on the date of commencement and ending on the 31st December, next following such date and thereafter the period of twelve months ending on the 31st December, in each year;

"Institute" means an Institute within the University created under section 25;

"Librarian" means the Librarian appointed pursuant to section 18;

"Minister" means the Minister responsible for University education;

"organization" means any company, association or body of persons, corporate or unincorporate wherever established or incorporated, but does not include any such association or body established or incorporated under this Act;

"President" means the President of the Republic of Malaŵi;

"property of the University" means any property, real or personal, of every description vested in or held by the Council under any right of ownership or possession; and any property held by the Council in trust for the furtherance of any of the objects of the University;

"Registrar" means the Registrar of the University appointed pursuant to section 17;

"Senate" means the Senate of the University established under section 21;

"Senate Regulations" means Senate Regulations made under section 36;

"Statutes" means the Statutes made under section 35;

"University" means the Mzuzu University established under section 3;

"Vice-Chancellor" means the Vice-Chancellor of the University appointed pursuant to section 16.

PART II

Establishment of the University

Establishment of the Mzuzu University

3. There is hereby established a university by the name and style of the Mzuzu University.

Membership of the University

4.—(1) The University shall consist of the following members—

(*a*) the Chancellor;

(*b*) the Vice-Chancellor;

(*c*) the Deputy Vice-Chancellor;

(*d*) the Registrar;

(*e*) the Librarian;

(*f*) the Director of Investments;

(*g*) the Director of Research;

(*h*) members of the Council;

(*i*) members of the Senate;

(*j*) all graduates of the University;

(*k*) all holders of Honorary Degrees from the University;

(*l*) all Deans of Faculties of the University;

(*m*) all Directors of Centres and Institutes;

(*n*) all professors, lecturers and assistant lecturers of the University;

(*o*) all other members of the academic, administrative, and research staff of the University;

(*p*) all persons for the time being registered as students of the University;

(*q*) such other persons as the Council may by name or office declare to be members of the University.

(2) Any person who is a member of the University solely by virtue of being possessed of any qualification shall continue to be a member so long as he possesses such qualification.

(3) The Registrar shall keep and maintain a Register of Members of the University, which shall be available for scrutiny by the general public at all reasonable times.

Objects of the University

5. The objects of the University shall be to advance knowledge and to promote wisdom and understanding by engaging in teaching, research, and training by making provision for the

dissemination, promotion, and preservation of learning; by engaging in such university education, research, and training as is responsive to the needs of Malaŵi, Africa and the whole world; by offering an education of a high university standard; and by providing complementary services to meet the technological, social and economic needs of individuals and communities in Malaŵi.

Functions of the University

6. The functions of the University shall be—

(*a*) to encourage the advancement and dissemination of learning and research;

(*b*) to engage in such university education, research, and training as is responsive to the needs of Malaŵi, Africa and the whole world;

(*c*) to provide facilities for higher education, for research, for training, and for the advancement of knowledge in such branches of learning and study and for such persons, whether members of the University or not, as the Council may from time to time determine;

(*d*) subject to this Act and the Statutes, to award and confer Degrees and Diplomas, and other academic distinctions, including Honorary Degrees and distinctions.

Specialist training

7. The University may, as determined by the Council from time to time, provide specialist training in such subjects as may be deemed desirable.

PART III

The Council

Establishment and incorporation of the Council

8. There is hereby established the Council of the University, which, under that name, shall be a body corporate with perpetual succession and a common seal and shall be capable by that name, of—

(*a*) suing and being sued in all courts;

(*b*) acquiring by purchase, gift, devise, bequest, operation of law, or otherwise, real or personal property wherever situate, or any right or interest therein, and holding the same in any capacity including that of trustee;

(*c*) granting, selling, mortgaging, hypothecating, alienating, assigning, leasing or letting real or personal property; and

(*d*) subject to this Act, doing and performing all such acts and things as a body corporate may by law do or perform or such as are incidental or appertain to a body corporate.

Common Seal of the Council

9.—(1) The common seal of the Council shall be kept in such custody as the Council directs, and shall not be used except upon the order of the Council.

(2) All courts, judges, and other persons acting judicially shall take judicial notice of the common seal of the Council affixed to any document and shall presume that it was duly affixed.

(3) The common seal of the Council shall be authenticated by the signature of two members of the Council, or, alternatively, by the signatures of one such members of the Council and of the Registrar, or of some other person nominated in that behalf by the Council.

Functions and powers of the Council

10.—(1) The Council shall be the governing body of the University and shall be responsible for the management and administration of the University and of its property and revenues, and, shall exercise general control and supervision over all the affairs of the University including its relations with the public, and, without prejudice to the generality of the foregoing, the functions, and powers of the Council shall include the following—

(*a*) to govern, maintain, administer, dispose of and, save as hereinafter provided, to invest all the property, money, assets, and rights of the University, to manage the business and all other affairs whatsoever of the University, and to enter into engagements and to accept obligations and liabilities without any restriction whatsoever, in the same manner in all respects as an individual may manage his own affairs:

Provided that, before determining any question relating to the matters aforesaid which affects the academic policy of the University, the Council shall refer such matters to the Senate if it has not previously been considered by the Senate, and shall take into consideration any recommendation or report thereon by the Senate;

(*b*) to determine, demand and receive fees, subscriptions, deposits, fines and such other payments, and to effect payment of any money obligation;

(*c*) to take such steps as it thinks fit for the purpose of procuring and receiving contributions to the funds of the University to further the objects of the University, and, for this purpose, to raise money in such manner as it thinks fit;

(*d*) to borrow money on behalf of the University and for that purpose, if it thinks fit, to mortgage or charge all or any part of the real property of the University, unless the conditions of any will, deed or gift or other similar instrument are thereby contravened, and to give such other security, whether upon real or personal property or otherwise, as it thinks fit;

(*e*) to invest any moneys of the University, including any unapplied income, in such stocks, debentures, funds, shares, or other securities as the Council may from time to time determine, whether within Malaŵi or not, or in the purchase of real or personal property, with the like power of varying

such investments from time to time by sale or re-investment or otherwise;

(*f*) to sell, buy, exchange, lease, rent, grant or take on lease or rent, real or personal property or portions thereof on behalf of the University, and to acquire any easement over any property held by other persons or to consent to any easement whether public or private over any property of the University;

(*g*) to undertake and execute any trust the undertaking whereof may seem desirable to the Council for the attainment or fulfilment of any of the objects of the University, and to hold, invest, manage or distribute, in furtherance of and in accordance with any such trust direction, discretion, obligation or permission, any property, or the income of any property, held by it as trustee subject to such trust;

(*h*) to enter into, vary, carry out or cancel contracts on behalf of the University, to compound or compromise any action, suit or proceedings or any debt or claim, and to refer any matter to arbitration;

(*i*) to operate bank accounts, and to cause proper books of account to be kept and audited for all sums of money received and expended by the University and for the assets and liabilities of the University so that the books give a true and fair view of the state of the University's affairs, and explain its transactions;

(*j*) after consultation with the Senate, to establish, institute or discontinue Faculties, Centres, Institutes or such other academic sections of the University, in accordance with this Act;

(*k*) after consultation with the Senate, to determine terms of service and general conditions relating to the employment of academic staff, and to establish, disestablish or otherwise make or discontinue financial provision for appointments to such posts;

(*l*) after consideration of any recommendation or report thereon from the Vice-Chancellor, to determine the terms of service and general conditions, relating to the employment of administrative, clerical, technical and support staff, and to establish, disestablish, or otherwise make or discontinue financial provision for appointments to such posts;

(*m*) to determine the salary scales and general rates of payment for all categories of staff appointed by the University and for other persons commissioned to give services to the University, and to appoint and employ such persons, pay their salaries, wages or fees, and subject to the provisions of the Statutes terminate their appointments;

(*n*) to make provisions, so far as it thinks fit, for schemes of insurance, superannuation, pensions or retirement benefits for

persons in the employment of the University and the spouses and dependents of such persons, to subscribe to benevolent and other such funds for the benefit of such persons, and to make such payments as it thinks fit to such persons;

(*o*) to take such steps as it thinks fit for furthering the objects and interests of the University by making provision for teaching and research, for the printing and publication of research and other works which may be issued by the University, and for the welfare of the staff and the students of the University;

(*p*) to call for reports from the Vice-Chancellor or the Senate, and to review the work of the University in the light of such reports;

(*q*) to make provision for payments to external examiners and to such other persons to whom it thinks fit to make payments to further the objects of the University, and for scholarships, prizes, grants and such other payments to students of the University;

(*r*) after consideration of any recommendation or report thereon from the Senate, to determine fees to be charged to students;

(*s*) to determine to whom the award of Honorary Degrees of the University shall be made in accordance with the procedure prescribed therefore by the Statutes;

(*t*) to decide, after consultation with the Vice-Chancellor, whether or not any donation, gift, grant, devise, bequest or other bounty to the University should be accepted;

(*u*) to enter into agreements and other relationships with other institutions or bodies, whether academic or otherwise, for such purposes as the Council may determine, including the embodiment within the University of any other institution or body and the taking-over and assumption of the property, rights, privileges and liabilities of such other institution or body.

(2) The Council shall consider any recommendation made by the Senate for the amendment or alteration of Statutes relating to the academic administration of the University and for taking any other action in respect of academic matters, and shall either accept, refer back or reject any such recommendation:

Provided that it may not be rejected unless the Senate has previously been informed of the Council's reasons for wishing to reject it and has been given an opportunity to comment thereon to the Council.

Composition of the Council

11.—(1) The Council shall consist of the following members—

(*a*) the Chairman of the Council, appointed by the Chancellor;

(*b*) the Vice-Chancellor or the Deputy Vice-Chancellor;

(c) the Chairman of the Board of Trustees of the Mzuzu University Trust, *ex officio*;

(*d*) the Secretary for Education or his nominee, *ex officio*;

(*e*) the Secretary to the Treasury or his nominee, *ex officio*;

(*f*) three members elected by the Senate from among its members;

(*g*) one member elected by the Mzuzu University Alumni;

(*h*) one member appointed by the Council from a panel of three persons distinguished in university affairs in Malaŵi;

(*i*) two registered students of the University elected by the student body;

(*j*) one member elected by the University of Malaŵi Senate from amongst their number.

(2) *Ex officio* members of the Council shall remain members for so long as they hold the office, or the nomination, by virtue of which they have become members.

(3) The Vice-Chancellor and the Deputy Vice-Chancellor shall serve as members of the Council for so long as they retain the offices of Vice-Chancellor and Deputy Vice-Chancellor.

(4) Every other member of the Council shall serve until the end of the third year following his appointment, or until such earlier date as may, at the time of his appointment or election, be determined by the person or authority appointing or electing him, and shall be eligible for reappointment or re-election.

(5) The Vice Chairman shall be appointed by the Council from amongst its members and shall preside over the meetings of the Council in the absence of the Chairman.

(6)—(i) A vacancy on the Council shall arise on—

(*a*) the expiry of the term of office of a member;

(*b*) the resignation of a member after one month's written notice to the Chairman;

(*c*) the death of a member;

(*d*) a member leaving the country for more than three years;

(*e*) a member failing to attend three consecutive meetings of the Council, of which he has had notice, without valid excuse or reason;

(*f*) a member becoming mentally or physically unfit, and the Council is of the opinion that he is no longer, by reason of such unfitness, capable of performing his duties as a member of the Council;

(*g*) a member being declared bankrupt.

(ii) A vacancy due to any one of the above shall be filled within one month of the occurrence of such vacancy.

(7) The Registrar shall act as Secretary to the Council.

(8) The Chancellor may, in consultation with the Minister, dissolve the Council.

(9) The Chairman shall keep the Chancellor and the Minister fully informed on matters concerning the general policy of the University.

Meetings and procedure of the Council

12.—(1) The Council shall meet at such times and places as may be necessary or expedient for the transaction of business, and such meetings shall be held at such times and places and on such dates as may be provided by the Statutes, or otherwise as the Council may determine:

Provided that the Chairman may at any time call a meeting of the Council and shall do so on the request in writing made to him in that behalf by any five members.

(2) A simple majority of the members of the Council shall constitute a quorum thereof.

(3) If the Chairman and Vice-Chairman are for any reason absent from any meeting of the Council, the members present may elect one of their number to preside at such meeting.

(4) Any matter for decision by the Council shall be determined by a majority vote of the members present and voting, and where there is an equality of votes the Chairman, or, in his absence, the Vice-Chairman or other member presiding, shall have a casting vote in addition to his deliberative vote.

(5) Subject to this Act and the Statutes, the Council may determine its own procedure.

PART IV

Mzuzu University Trust

Mzuzu University Trust Cap. 5:03

13. The Mzuzu University Trust established under the Trust Deed and incorporated under the Trustees Incorporation Act prior to the coming into force of this Act shall be deemed to have been executed by the Council under section 10 (1) (*g*) of this Act.

PART V

Officers of the University

Chancellor

14.—(1) There shall be a Chancellor of the University who shall be the head of the University.

(2) The President shall, unless he declines the appointment, be the Chancellor of the University.

(3) Where the President declines the appointment under subsection (1), the Chancellor shall be appointed by the Council in consultation with the Minister.

(4) The Office of Chancellor shall be vacated by him—

(*a*) upon the submission of his resignation therefrom, in writing, to the Council;

(*b*) if he becomes mentally or physically incapable of performing his duties as Chancellor.

(*c*) if he is declared bankrupt;

(*d*) if he is absent from Malaŵi for a continuous period of six months or more, without the permission of the President or the Council;

(*e*) if, for any offence against any written law, he is sentenced to a term of imprisonment of, or exceeding, six months, otherwise than as an alternative to, or in default of, the payment of a fine.

Functions and duties of the Chancellor

15.—(1) The Chancellor, whenever present, shall preside at all ceremonial and other congregations of the University and shall, in the name of the University, confer all degrees, diplomas and certificates of the University.

(2) The Chairman and the Vice-Chancellor shall keep the Chancellor and the Minister fully informed on matters concerning the general conduct of the affairs of the University and shall furnish the Chancellor and the Minister with such information as they may request on any particular matter relating to the affairs of the University.

(3) The Chancellor shall exercise such other functions and duties in relation to the University as are conferred upon him, from time to time, by the Statutes.

Vice-Chancellor

16.—(1) There shall be a Vice-Chancellor of the University, who shall be the principal academic and administrative officer of the University.

(2) The Vice-Chancellor shall be appointed by the Council after considering recommendations in writing on the suitability of various candidates submitted to the Council by a committee of nine members appointed for that purpose and consisting of—

(*a*) the Chairman, who shall be chairman of such committee;

(*b*) three members of the Council, not being members of the Senate, appointed by the Council; and

(*c*) five members of the Senate appointed by the Senate:

Provided that the appointment of the Vice-Chancellor shall be subject to the approval of the Chancellor.

(3) The Vice-Chancellor shall hold office for a period of four years on such terms and conditions, and shall exercise such powers and functions, as may, from time to time, be prescribed by or under this Act and the Statutes.

(4) There shall be a Deputy Vice-Chancellor who shall assist the Vice-Chancellor in the performance of his functions.

(5) The provisions of subsections (2) and (3) of this section shall apply, *mutatis mutandis*, to the appointment and term of office of the Deputy Vice-Chancellor.

Registrar

17.—(1) There shall be a Registrar of the University appointed by the Council who shall be the chief administrative officer of the University under the Vice-Chancellor and shall exercise such powers and perform such duties in relation to the administration of the University as are assigned to him by this Act, by the Statutes and by the Council, or as are delegated to him by the Vice-Chancellor.

(2) The Registrar shall be under the immediate supervision and control of the Vice-Chancellor.

(3) The terms and conditions of employment of the Registrar shall, subject to this Act and the Statutes, be as determined, from time to time, by the Council.

Librarian

18.—(1) There shall be a Librarian of the University appointed by the Council who shall be the principal officer in charge of the University Library.

(2) The Librarian shall be under the immediate supervision and control of the Vice-Chancellor.

(3) The terms and conditions of the Librarian shall, subject to the provisions of this Act and the Statutes, be as determined, from time to time, by the Council.

Director of Investments

19.—(1) There shall be a Director of Investments appointed by the Council who shall be the principal officer in charge of investments of the University and shall exercise such powers and perform such duties in relation to the investments of the University as are assigned to him by this Act, by the Statutes and by the Council, or as are delegated to him by the Vice-Chancellor.

(2) The Director of Investments shall be under the immediate supervision and control of the Vice-Chancellor.

(3) The terms and conditions of employment of the Director of Investments shall, subject to the provisions of this Act and the Statutes, be as determined, from time to time, by the Council.

Director of Research

20.—(1) There shall be a Director of Research appointed by the Council who shall be the principal officer in charge of research in the University and shall exercise such powers and perform such duties in relation to research as are assigned to him by this Act, by the Statutes and by the Council, or as are delegated to him by the Vice-Chancellor.

(2) The Director of Research shall be under the immediate supervision and control of the Vice-Chancellor.

(3) The terms and conditions of employment of the Director of Research shall, subject to the provisions of this Act and the Statutes, be as determined, from time to time, by the Council.

PART VI

The Senate

The Senate

21.—(1) There is hereby established a Senate of the University which shall consist of the following members—

(*a*) the Vice-Chancellor, who shall be chairman;

(*b*) the Deputy Vice-Chancellor;

(*c*) the Deans of the Faculties of the University;

(*d*) all Directors of Centres and Institutes of the University;

(*e*) one member from each Faculty, elected in accordance with the relevant Statutes, from and by the full-time academic staff holding posts allocated to the Faculty or School;

(*f*) the Librarian;

(*g*) such other members, not exceeding five, as may be co-opted, from time to time, by the Senate for periods not exceeding two years and on such conditions as the Senate may determine.

(2) Every elected member of the Senate shall serve until the end of the second year following his election and shall be eligible for re-election.

(3) An elected member shall cease to be an elected member of the Senate and his membership thereof as such shall become vacant—

(*a*) upon his becoming a member of the Senate, ex officio;

(*b*) upon the post he holds on the academic staff being allocated to another Faculty or School, as the case may be;

(*c*) upon the resignation from the full-time academic staff or from membership of the Senate.

(4) The Registrar shall act as Secretary to the Senate.

Invited persons

22.—(1) The Senate may invite any person to attend any particular meeting or series of meetings of the Senate for the purpose of assisting or advising the Senate in respect of any matter under consideration by the Senate.

(2) Any person invited pursuant to subsection (1) shall take part in the deliberations of the Senate at any meeting he attends but shall not be entitled to vote.

Functions and powers of the Senate

23. The Senate shall perform such functions and exercise such powers as are prescribed by this Act or by the Statutes to be performed or exercised by the Senate and, without prejudice to the generality of the foregoing, such functions and powers of the Senate shall include the following—

(*a*) to make recommendations to the Council on matters affecting the academic policy of the University;

(*b*) to review the work of the University and report thereon to the Council;

(*c*) to make recommendations to the Council on fees to be charged to students of the University.

Meetings of the Senate

24. The Senate shall be convened, from time to time, and meetings thereof shall be held, in accordance with the relevant provisions of the Statutes.

PART VII

Faculties, Centres and Institutes

Faculties, Centres and Institutes

25.—(1) There shall be within the University such Faculties, Centres and Institutes as the Council may, on the recommendation of the Senate, establish.

(2) The Faculty, Centre or Institute of the University may, where appropriate, deal directly with the University on academic matters.

Deans

26.—(1) There shall be a Dean of each Faculty who shall be *ex officio* chairman of that Faculty and who shall, under the general direction and control of the Vice-Chancellor, perform such other functions and exercise such other duties as may, from time to time, be determined by the Senate and prescribed by Statutes.

(2) A Dean shall be elected by members of his Faculty in accordance with the relevant Statutes, and he shall hold office for three years or until such earlier date as the Faculty may in each case determine.

(3) A Dean may, by notice in writing given to the Council, resign his post as Dean, but such resignation, unless expressly so stated, shall not entail his resignation from any other academic post he holds in the University.

(4) A Dean shall be eligible for reappointment for one further term of office.

(5) There shall be a Deputy Dean who shall assist the Dean in the performance of his functions.

(6) The provisions of subsections (2), (3) and (4) of this section shall apply, *mutatis mutandis*, to the Deputy Dean.

Directors

27.—(1) There shall be a Director of each Centre or Institute who shall be the principal officer of that Centre or Institute and shall be under the general direction and control of the Board of such Centre or Institute, and shall perform such other functions and exercise such other duties as may, from time to time, be determined by the Senate and prescribed by Statutes.

(2) A Director shall be appointed by the Council and he shall hold office for such period as the Council may determine.

(3) A Director may, by notice in writing given to the Council, resign his post as Director, but such resignation, unless expressly so stated, shall not entail his resignation from any other post he holds in the University.

(4) A Director shall be eligible for reappointment for further periods of office.

(5) There shall be a Deputy Director who shall assist the Director in the performance of his functions.

(6) The provisions of subsections (2), (3) and (4) of this section shall apply, *mutatis mutandis*, to the Deputy Director.

Composition of Faculties

28.—(1) Each Faculty shall consist of—

(*a*) the Dean of that Faculty who shall be the chairman;

(*b*) all members of the full-time and part-time academic staff holding posts allocated to that Faculty; and

(*c*) such other members of the full-time or part-time staff of the University as may be co-opted by that Faculty as associate members for such period and on such terms as that Faculty may, in each case, determine.

(2) Associate members shall have the right to attend all meetings of the Faculty by which they have been co-opted, and to take part in its deliberations, but shall have no right to vote thereon.

Composition of Centres and Institutes

29. Each Centre and Institute shall consist of such members as the Senate, with the approval of the Council, may prescribe by Statute.

Faculty Committee

30.—(1) There shall be a Faculty Committee for each Faculty of the University.

(2) Each Faculty Committee shall consist of—

(*a*) the Dean of the Faculty, who shall be chairman;

(*b*) the Heads of Departments in the Faculty;

(*c*) two students in the Faculty elected by the students taking courses in the Faculty;

(*d*) two members from industries and professions related to the courses offered in the Faculty;

(*e*) two co-opted members from any other Faculty of the University.

(3) The Faculty Committee shall be responsible for the planning, management and review of the programs and activities of the Faculty including relations with the University, the community, the industry and the general public.

PART VIII

Financial Provisions

Property of the University

31.—(1) The property of the University shall consist of—

(*a*) such sums as may, from time to time, be payable to the University from moneys appropriated therefor by Parliament;

(*b*) such sums of money or other property, real or personal as may be acquired, purchased or received by, or transferred to the University, whether by way of gift, devise, bequest, purchase or otherwise howsoever;

(*c*) such sums of money or other property, real or personal, as may accrue to the University in the exercise of its powers or the performance of its functions under this Act;

(*d*) such sums of money or other property, real or personal, as may accrue to, or be received by, the University by way of fees, grants, subsidies, contributions, donations, subscriptions, rents, interest or royalties from the Government or from any person;

(*e*) such sums of money or other property, real or personal, as may be donated to the University by any foreign Government, international agency, or other body or person situate or resident outside Malaŵi;

(*f*) such sums of money as may accrue to the University from the Trust.

(2) Where, under the terms of any written instrument, any right, title or interest in real or personal property is expressed to be disposed, granted or conveyed to the University, the said instrument shall, subject to law, have effect as a disposition, grant or conveyance of such property to the Council and shall vest such property in the Council to the extent of the right, title or interest therein expressed to be so disposed, granted or conveyed.

(3) The property of the University shall be payable to, vested in, held, managed and controlled by the Council, under this Act.

Compliance with the Finance and Audit Act

32.—(1) The Council shall at all times comply with the provisions of the Finance and Audit Act.

(2) The accounts of the University shall be audited at the end of each financial year by an auditor or auditors appointed by the Council, in accordance with Statute X.

(3) The Council shall pay, in respect of any audit held under this Part, such fees, costs and expenses as may be appropriate.

(4) The auditor may by writing under his hand require the production of all books, deeds, contracts, vouchers, receipts and other documents relating to the accounts or investments of the University which he may deem necessary for the purpose of the audit, and he may summon in writing all such persons having knowledge of the affairs of the University, as he may think proper, to appear before him personally at the offices of the Council, at a time to be fixed in such summons, for examination in connexion with any documents or matters relating to the audit.

(5) Any person, who without just cause, fails or refuses to produce any document the production of which has been duly required by the auditor, or who having been so summoned—

(*a*) without just cause neglects or refuses to comply with the said requirement or summons; or

(*b*) having appeared before the auditor, without just cause refuses to be examined; or

(*c*) without just cause refuses to answer such questions pertaining to the audit as are put to him by the auditor, shall be guilty of an offence and upon conviction be liable to a fine of K5,000 for every such refusal or neglect. In default of payment of the fine, such person shall be liable to imprisonment for six months:

Provided that any conviction under this section shall not operate or be taken to exempt the person convicted from the liability to do or perform the act, matter or thing required of him.

(6) After completion of the audit of the accounts of the University, the auditor shall report thereon in writing to the Council about the audit generally and on such specific matters in relation thereto as the Council may direct. The Council shall consider the report within two months after the date of the receipt thereof.

Accounts

33.—(1) All the moneys of the University shall be held in the name of the Council and shall be paid into one or another of the following accounts—

(*a*) the Endowment Fund;

(*b*) the special account;

(*c*) the capital account;

(*d*) the revenue account;

(*e*) the Mzuzu University Fund accounts;

(*f*) such other account as the Council may establish in respect of any trust the Council may establish in exercise of its powers under this Act.

(2) There shall be paid into the Endowment Fund all such moneys as are received by the Council and declared specifically to be payable into that Fund.

(3) The Council shall not, save with the prior approval of the Chancellor, expend any capital moneys of the Endowment Fund and shall pay into the revenue account all interest received from the investment of the moneys of the Endowment Fund.

(4) There shall be paid into the special account all such moneys as are donated to and received by the Council for special purposes and which are not payable into the Endowment Fund or any other account.

(5) The capital moneys, and the interest therefrom, of the special account shall be used and applied for the special purposes for which such moneys were donated and in accordance with the conditions of such donation:

Provided that the Council shall not be obliged to accept a donation for a particular purpose unless it approves of the terms and conditions attaching to such donation.

(6) There shall be paid into the capital account all such moneys as are received by the Council for the purpose of capital expenditure for the construction and improvement of the University.

(7) The capital moneys, and the interest therefrom, of the capital account shall be used and applied by the Council on capital expenditure for the construction and improvement of the University.

(8) There shall be paid into the revenue account—

(i) the interest received from the investment of the moneys in the Endowment Fund;

(ii) all fees, charges, dues and other amounts payable by or in respect of students;

(iii) all revenue and grants made by the Government of Malaŵi or by any other Government or by any person or organization or the Trust to the Council for the purposes of the University;

(iv) all sums transferred under this Act from the Endowment Fund or any other account to the revenue account;

(v) all other sums received by the Council and not payable into the Endowment Fund or any other account.

(9) The moneys standing to the credit of the revenue account shall be used and applied by the Council for the management and working of the University in such manner and for such purposes as, in the opinion of the Council, are best suited to promote the interests of the University.

Borrowings

34. Subject to the provisions of this Act and of the Finance and Audit Act, the Council may borrow, either by way of overdraft from a banker or otherwise, such sums as it may from time to time require for the carrying out of its functions and powers.

PART IX

Miscellaneous

The Statutes

35. Subject to this Act, the University shall be governed and administered in accordance with the provisions of the Statutes made by the Minister with the advice of the Council.

Amendments to the statutes

36.—(1) The Statutes may, pursuant to and in accordance with this section be amended, from time to time, for the better carrying out of the purposes, and the more efficient administration, of this Act, and without prejudice to the generality of the foregoing, any such amendment may be made by way of alteration, addition, repeal or replacement, and may make provisions for—

(*a*) any matter which is required by this Act to be prescribed by the Statutes;

(*b*) the creation of permanent committees of the Council, or of the Senate, as the case may be, the membership of such committees, and the powers, functions or duties to be delegated thereto;

(*c*) the functions, duties and term of office of any officer of the University or member of the academic or administrative staff, to the extent that such functions or duties or term of office are not prescribed by this Act;

(*d*) the creation of new offices and posts within the University, the functions and duties attaching to such offices and posts the duration thereof, and the manner of appointment thereto;

(*e*) such other matters, including matters of procedure and discipline, as may be deemed expedient or proper by the Minister for regulation by Statute.

(2) The Council may by special resolution adopt any proposal to amend the Statutes.

(3) Upon the adoption by the Council of any proposal to amend the Statutes under subsection (2), the Vice-Chancellor shall, as soon as is practicable thereafter, submit to the Minister for his approval a certified copy of the proposal as adopted by the Council.

(4) If the Minister does not approve the proposal he shall notify the Council, in writing, giving reasons for his nonapproval.

(5) If the Minister approves the proposal, he may, by order published in the *Gazette*, amend the Statutes in accordance with the terms of the said proposal.

(6) For the purpose of this section the expression "special resolution" means a resolution—

(*a*) notice of which has been given to each member of the Council, not less than thirty days before the date of the meeting of the Council at which it is intended to be moved;

(*b*) which is moved at a meeting of the Council with not less than one-half of the total membership of the Council being present at the time such resolution is moved and voted upon; and

(*c*) which is passed by a majority of not less than two-thirds of the members of the Council present at such meeting.

Senate Regulations

37.—(1) Subject to this Act and to the Statutes and to the approval of the Council, the Senate may, by Senate Regulations made by notice published as provided in subsection (2), prescribe for the better carrying out of its functions and powers under this Act and under the Statutes, and without prejudice to the generality of the foregoing, such Senate Regulations may make provision for—

(*a*) matters relating to teaching within the University, or to the teaching of any specified subject, periodic reports from professors and lecturers on the progress of students in any subjects, Faculty and other like matters;

(*b*) schemes of study and research, and conditions under which persons may be permitted to embark upon or to continue any such scheme;

(*c*) the terms and conditions under which students or other persons may use the library of the University;

(*d*) the conduct and supervision of examinations;

(*e*) the award of Degrees, Diplomas or other academic honours and distinctions other than Honorary Degrees and distinctions;

(*f*) dealing with general academic disciplinary matters;

(*g*) matters relating to the activities and progress of Centres and Institutes.

(2) Any notice made pursuant to subsection (1) shall be published by the Registrar causing copies thereof to be posted for not less than seven days—

(*a*) in a prominent place outside his office; and

(*b*) on boards provided for such purpose in each of the public halls of the University.

Service of process and other documents on the Council

38. Any writ or other process, notice, or document may be served upon Council by serving the same on the Registrar.

SUBSIDIARY LEGISLATION

MZUZU UNIVERSITY STATUTES

G.N. 9/1999

under s. 35

Citation

1. These Statutes may be cited as the Mzuzu University Statutes.

Governing and Administering the University

2.—(1) The Mzuzu University shall be governed and administered in accordance with these Statutes.

(2) Nothing in these Statutes shall be interpreted in such a manner as to conflict with the provisions of the Act.

STATUTE I

Interpretation

In these Statutes, unless the context otherwise requires—

"academic staff" means all persons for the time being holding appointments, whether full-time or part-time, under contract with the Council as professors, associate professors, senior lecturers, lecturers, assistant lecturers, instructors or demonstrators of the University, including those whose conditions of service contain the obligation to undertake research and the senior professional staff of the library, or any other post declared by the Senate by category or title to be an academic post;

"academic year" means such period not exceeding twelve consecutive months; and

"semester" and "academic semester" shall mean such part of an academic year, as the Senate may, from time to time, determine:

Provided that the Senate may, at any time, extend any academic year beyond the period of twelve months, and, in such event, such period so extended shall, for all purposes, constitute such academic year.

"administrative staff" means all persons for the time being holding appointments, whether full-time or part-time, under contract with the Council, in the administration of the affairs of the University;

"hall" means a residential or a non-residential hall;

"lecturer" includes an assistant lecturer;

"Statutory Committees" means the Senate, the Executive Committee of the Senate, the Faculties, the Centres, the Institutes, the Appointments Committee and the Finance Committee;

"student" means an undergraduate or a graduate of the University, or any other person, who is currently registered full-time, part-time or in-service for a Degree, Diploma or Certificate of University, or a person who is in a category of persons classified by the Council as students for any purpose.

STATUTE II

Congregations

1. With the approval of Council, the time, place and procedure of the Congregations of the whole University shall be determined by the authority of the Senate.

2. Degrees, Diplomas, certificates and other academic distinctions shall be conferred in the presence of the Congregation.

3. The Chancellor, or, in his absence, the Vice-Chancellor or, in the absence of both, the Deputy Vice-Chancellor, or in the absence of the Chancellor, Vice-Chancellor and Deputy Vice-Chancellor, a member of the Council appointed for the purpose by the Council, shall preside at all Congregations.

4. At least one Congregation shall be held in each academic year.

STATUTE III

Degrees and Other Academic Distinctions

1. The titles and abbreviations of first degrees are given below and may be conferred at ordinary or honours level. Honours Degrees shall be classified as First Class, Second Class (Upper Division) Second Class (Lower Division) and Third Class. Those candidates who are deemed by the Senate to obtain a Degree but not at honours level shall be conferred a Degree at ordinary level. The University may award any of the following Degrees—

(*a*) Bachelor of Arts—B.A.

(*b*) Bachelor of Arts in Public Administration—B.A. (Pub. Admin.)

(*c*) Bachelor of Education—B.Ed.

(*d*) Bachelor of Arts (Education)—B.A. (Ed.)

(*e*) Bachelor of Science (Education)—B.Sc. (Ed.)

(*f*) Bachelor of Laws—LL.B.

(*g*) Bachelor of Science in Agriculture—B.Sc. (Agric.)

(*h*) Bachelor of Science in Fisheries—B.Sc. (Fisheries)

(*i*) Bachelor of Science in Forestry—B.Sc. (Forestry)

(*j*) Bachelor of Science in Mining Engineering—B.Sc. (Min. Eng.)

(*k*) Bachelor of Science—B.Sc.

(*l*) Bachelor of Social Science—B.Soc.Sc.

(*m*) Bachelor of Commerce in Accountancy—B.Com. (Acc.)

(*n*) Bachelor of Business Administration—B.B.A.

(*o*) Bachelor of Science in Engineering—B.Sc. (Eng.)

(*p*) Bachelor of Veterinary Medicine—B.V.M.

(*q*) Bachelor of Science—Health Science Education—B.Sc. (Health Sc. Ed.)

(*r*) Master of Arts—M.A.

(*s*) Master of Education—M.Ed.
(*t*) Master of Science—M.Sc.
(*u*) Master of Laws—LL.M.
(*v*) Master of Business Administration—M.B.A.
(*w*) Master of Public Administration—M.P.A.
(*x*) Doctor of Philosophy—Ph.D.
(*y*) Doctor of Education—D.Ed.
(*z*) Doctor of Letters—D.Litt.
(*aa*) Doctor of Laws—LL.D.
(*bb*) Doctor of Science—D.Sc.

Any postgraduate Degree described in Statute III may be awarded *honoris causa*.

2. The University may award any of the following Diplomas and Certificates—

(*a*) Diploma in Agriculture—Dip. Agric.
(*b*) Diploma in Business Studies—Dip. Bus. Studies.
(*c*) Diploma in Education—Dip. Ed.
(*d*) Diploma in Engineering—Dip. Eng.
(*e*) Diploma in Fisheries—Dip. Fish.
(*f*) Diploma in Forestry—Dip. For.
(*g*) Diploma in Public Administration—Dip. Pub. Admin.
(*h*) Diploma in Communication Studies—Dip. Comm.
(*i*) Diploma in Management Studies—Dip. Mgt.
(*j*) Diploma in Mining Engineering—Dip. Min. Eng.
(*k*) Diploma in Technical Teaching—Dip. Tech. Teaching
(*l*) Diploma in Public Health—Dip. Pub. Health
(*m*) Postgraduate Diploma in Education—P.G. Dip.Ed.
(*n*) University Certificate in Education—U.C.E.

3. Subject to paragraph 6, the University may award such other academic honours as the Council may determine.

4. Degrees, Diplomas and Certificates shall be conferred by the Chancellor or, in his absence, by the Vice-Chancellor or, in the absence of both of them, by the Deputy Vice-Chancellor at Congregations of the Whole University:

Provided that where the Chancellor, Vice-Chancellor and Deputy Vice-Chancellor are not available, the Council may appoint a member of the Council to confer the Degrees, Diplomas and Certificates at any such Congregation.

5. No person shall be allowed to proceed to any Degree except an aegrotat Degree without examination or other adequate test, but Honorary Degrees may be conferred by the University on the approval of the Council, as advised by the Honorary Degrees Committee.

6. No new Degree shall be established or other distinction of honour or merit adopted by the Council save on the recommendation, or with the approval, of the Senate.

STATUTE IV

The Vice-Chancellor

1. The Vice-Chancellor is the Chief Executive of the University. He shall be a member of every committee of the Council and Senate and of every Statutory Committee but shall not be a member of the committee established under subsection (2) of section 16 of the Act.

2. The Vice-Chancellor shall have power to appoint a person to act as the Director of Studies, Director of Research, Dean of a Faculty, the Head of a Department, a Director of a Centre or Institute, the Registrar, the Finance Officer, or the Librarian, during a temporary vacancy in such a post or the temporary absence from duty or inability of the holder of such a post. The person so appointed may exercise all or any of the powers, perform all or any of the duties, and have such of the privileges of the holder of the post to which he is appointed to act, as the Vice-Chancellor may determine.

3. The Vice-Chancellor shall within six months after the end of each academic year, report to the Council upon the activities of the University and shall submit that report through the Senate, who may comment on but shall not have the power to alter its contents or to delay the Vice-Chancellor's report. He shall also report on any matter which may be referred to him by the Council or the Senate.

4.—(*a*) The Vice-Chancellor shall be responsible to the Council for maintaining and promoting the reputation, efficiency and good order of the University including the discipline of the students, and shall have all such powers as are necessary or expedient for him to perform these duties.

(*b*) subject to such regulations as the Council may approve, the Vice-Chancellor may, in the performance of his duties—

(i) prohibit the admission as a student or any person to the University;

(ii) prohibit, for such period as he may specify, any student from attending classes or a particular class;

(iii) prohibit any student from entering or remaining on such part or parts of the University precinct as he shall specify;

(iv) dismiss or suspend, for such period as he shall specify, any student or group of students.

(*c*) the Vice-Chancellor may appoint a disciplinary committee, with membership as he deems appropriate, to assist him in the performance of his duties under this Statute.

(*d*) the provisions of this Statute shall not be construed to restrict or limit the general powers, functions or duties, or any of them, of the Vice-Chancellor conferred in any other Statute.

5. The Vice-Chancellor may delegate any of his powers, duties or functions as he may deem fit and prescribe conditions governing the exercise of any delegated powers, duty or function:

Provided that, in the absence of express provision made by him a power delegated shall not include a power of sub-delegation.

STATUTE V

The Deputy Vice-Chancellor

1. The Deputy Vice-Chancellor shall be a member of every committee of the Council and Senate and of every Statutory Committee but shall not be a member of the committee established under subsection (2) of section 16 of the Act.

2. In the absence of the Vice-Chancellor through illness or otherwise the Deputy Vice-Chancellor shall be entitled to exercise all of the powers and perform all of the duties of the Vice-Chancellor.

STATUTE VI

The Registrar

1.—(*a*) The Registrar shall be responsible to the Vice-Chancellor for—

(i) the co-ordination and control of the administrative functioning of the University and all its subsidiaries other than in respect of financial matters;

(ii) all administrative functions in relation to admissions to the University;

(iii) the scheduling and security of examinations and the issuing of results and official transcripts;

(iv) the preparation of teaching timetables in co-operation with Faculties and Director of Studies;

(v) all administrative work in relation to appointments, renewals of contracts, confirmation of appointments, promotions and terminations.

(*b*) the Registrar shall act as Secretary to the Council, Senate and Executive Committee of Senate and shall arrange for the servicing of other Statutory Committees.

2. The Registrar shall keep a register of all members of the University, as specified in section 4 (3) of the Act, including a record of their respective qualifications.

3. In the absence of the Registrar through illness or otherwise his deputy shall be entitled to exercise all of the powers and perform all of the duties of the Registrar.

STATUTE VII

The Deans Of Faculties

1. The Dean of each Faculty shall be responsible to the Vice-Chancellor for maintaining and promoting the efficiency and good order of the Faculty of which he is Dean.

2. The Dean of each Faculty shall, within such Faculty, exercise such disciplinary control over the students as is, from time to time, assigned to him by these Statutes or by any regulations made

hereunder, or determined from time to time by resolutions of the Senate, or such as may be delegated to him from time to time by the Vice-Chancellor.

3. Subject to the Act and these Statutes, and the general or special directions of the Council, the Dean of each Faculty shall—

(*a*) be responsible to the Senate for the selection of persons to be registered as students engaging in schemes of study or research assigned to the Faculty of which he is Dean; and

(*b*) within such Faculty, exercise and discharge such other duties in connexion with student affairs as may be determined by the Senate.

4. In the execution of his responsibilities and duties, every Dean shall, to such extent as he may deem necessary for the satisfactory running of the Faculty, consult with the Deans of the various Faculties and with other members of the academic staff assigned to the Faculty of which he is Dean.

STATUTE VIII

The Directors of Centres and Institutes

1. The Director of each Centre or Institute shall be responsible to the Vice-Chancellor for maintaining and promoting the efficiency and good order of the Centre or Institute of which he is Director.

2. The Director of each Centre or Institute shall, within such Centre or Institute, exercise such disciplinary control over the students as is, from time to time, assigned to him by these Statutes or by any regulations made hereunder, or determined from time to time by resolutions of the Council, or such as may be delegated to him from time to time by the Vice-Chancellor.

3. Subject to the Act and these Statutes, and the general or special directions of the Council, the Director of each Centre or Institute shall be responsible to the Senate for—

(*a*) the selection of persons to be registered as students engaging in schemes of study or research assigned to the Centre or Institute of which he is Director;

(*b*) within such Centre or Institute, exercise and discharge such other duties in connexion with student affairs as may be determined by the Senate.

4. In the execution of his responsibilities and duties, every Director shall, to such extent as he may deem necessary for the satisfactory running of the Centre or Institute, consult with the Director of the various Centres or Institutes and with other members of staff assigned to the Centre or Institute of which he is Director.

STATUTE IX

THE FINANCE OFFICER

1. The Finance Officer shall be appointed by the Council.

2.—(*a*) The Finance Officer shall be responsible to the Vice-Chancellor for—

(i) developing and directing the financial administration of the University;

(ii) the preparation of financial statements, financial statistical reports and special studies.

(iii) the oversight of University properties, movable and immovable;

(iv) the preparation and control of the capital and recurrent budgets;

(v) the administration of funds and insurance;

(vi) the preparation and payment of salaries, other emoluments and taxes; and

(vii) the supervision of maintenance and domestic services;

(*b*) the Finance Officer shall perform such other duties as may be assigned to him by the Vice-Chancellor or the Council.

3. In exceptional circumstances, the Finance Officer shall be entitled to report directly to the Council on any matter involving the finances of the University.

4. The Finance Officer shall extend to the auditor or auditors such co-operation as the auditor or auditors deem necessary for the auditing of the accounts and the preparation of any auditors' report.

STATUTE X

The Librarian

1. The Librarian to the University shall be appointed by the Council.

2. The Librarian shall be the principal officer in charge of the University Library.

3. The Librarian shall discharge such duties as may be determined from time to time by the Council.

4. In the exercise of his duties the Librarian shall be immediately responsible to the Vice-Chancellor and shall perform such duties under the general supervision and control of the Vice-Chancellor.

5. The Librarian may delegate his authority in respect of any Faculty Library to any Assistant Librarian who shall be immediately responsible to the Librarian for the management and control of such Faculty Library.

STATUTE XI

The Director of Investments

1. The Director of Investments shall be appointed by the Council.

2. The Director of Investments shall be the principal officer in charge of investments of the University.

3. The Director of Investments shall discharge such duties as may be determined from time to time by the Council.

4. In the exercise of his or her duties the Director of Investments shall be immediately responsible to the Vice-Chancellor and shall perform such duties under the general supervision and control of the Vice-Chancellor.

5. The Director of Investments shall work in close liaison with the Board of Trustees.

STATUTE XII

The Director Of Research

1. The Director of Research shall be appointed by the Council.

2. The Director of Research shall be the principal officer in charge of research in the University.

3. Subject to the Act and these Statutes and the general or special directions of the Council, the Director of Research shall discharge such duties as may be determined, from time to time, by the Senate.

4. In the exercise of his or her duties, the Director of Research shall be responsible to the Vice-Chancellor and shall perform such duties under the general supervision and control of the Vice-Chancellor.

STATUTE XIII

The Director of Studies

1. The Director of Studies shall be appointed by the Council.

2. In the exercise of his or her duties the Director of Studies shall be responsible to the Vice-Chancellor and shall perform such duties under the general supervision and control of the Vice-Chancellor.

3. Subject to the Act, these Statutes and the general or special directions of the Council, the Director of Studies shall discharge such duties as may be determined, from time to time, by the Senate. The Director of Studies shall have particular responsibility to the Senate for the creation and co-ordination of academic initiatives and maximizing the efficient use of teaching staff across the Faculties and the Centre for Continuing Education.

4. The Director of Studies shall advise the Senate on possible initiatives involving the people of Malaŵi and the donor community.

STATUTE XIV

The Auditor

Subject to the Act—

(*a*) the auditor or auditors to the University shall be appointed by the Council from among persons or firms practising as public accountants in Malaŵi;

(*b*) the following persons shall be ineligible for appointment as auditor—

(i) any member of the Council or the Senate or of any committee of the Council or the Senate;

(ii) any business or professional partner of any member of the Council or the Senate or of any member of any committee of the Council or the Senate;

(iii) any firm of which any partner is a member of the Council or the Senate or of any committee of the Council or the Senate;

(iv) any member of the staff of the University;

(*c*) no person or firm shall be appointed as auditor to the University if he, or any member of the firm of accountants of which he is a partner, or, in the case of a firm, if any member of the firm, is a member of the Council, the Senate or of any committee of the Council or the Senate;

(*d*) auditors shall be appointed for one year, but shall be eligible for reappointment.

STATUTE XV

Honorary, Visiting and Emeritus Professors

1. Upon the recommendation of the Senate, the Council may appoint honorary and visiting professors and may confer the title of Emeritus Professor upon any professor who has retired from office.

2. An honorary, visiting or Emeritus Professor shall not be a member *ex officio* of the Council, the Senate or of any Faculty.

STATUTE XVI

Procedure Generally

1. Save as is provided in these Statutes, the Council, the Senate, the Executive Committee of the Senate, Faculties and any committees thereof shall determine and make rules for the time, place and procedure of their respective meetings.

2. The minutes of all meetings of every committee held since the last preceding meeting of the parent body of such committee shall be laid on the table at each meeting of that body, whether it be the Council, the Senate, the Executive Committee of the Senate or one of the Faculties.

3. The minutes of all meetings of the Faculties held since the last preceding meeting of the senate shall be laid on the table at each meeting of the Senate.

4. The minutes of all meetings of the Senate shall be sent to the Council.

5. In the event of an equality of votes on any question, motion or resolution at a meeting of the Council, the Senate, the Faculties or

of any committee, the chairman or person presiding at such meeting shall have a casting vote in addition to his or her deliberative vote.

6. The Council, the Senate, the Faculties and any committee thereof shall have power to co-opt further persons to membership thereof for such period and on such terms as they may in each case determine.

STATUTE XVII

Finance Committee

1. There shall be appointed pursuant to paragraph 3 a Finance Committee which shall make recommendations to the Council upon the following matters, and to which the Council may delegate any or all of its executive functions with regard to such matters, subject to the general policy, control and guidance of the Council—

(*a*) the investment and management of the University's funds;

(*b*) the incurring of, or the authorization of persons or bodies in the University to incur expenditure from University funds, including any income accruing to any section of, or body in, the University;

(*c*) the annual budget of the University;

(*d*) the control of expenditure from budgetary allocations by means of financial regulations and such other conditions;

(*e*) the preparation and presentation of the annual accounts of the University.

2. The Council shall appoint, from among those members of the Council appointed by the Chancellor, or by the Mzuzu University Alumni, or under section 11 (1) (*h*) of the Act, a chairperson of the Finance Committee who shall, subject to his remaining a member of the Council, hold office until the end of the third year following his appointment or until such earlier date as the Council may in his case determine, and who shall be eligible for reappointment.

3. The Finance Committee shall consist of the chairman of the Finance Committee, the Chairman of the Council, the Vice-Chancellor, the Secretary to the Treasury or his nominee, the Secretary for Education or his nominee, the person appointed under section 11 (1) of the Act and one member from the Senate. The Finance Officer shall be the Secretary of the Committee. The Finance Committee shall have power to co-opt, with the consent of the Council, further persons to membership thereof for such period and on such terms as it may in each case determine.

4. The member of the Finance Committee appointed under section 11 (*i*) (*j*) of the Act shall, subject to his or her remaining a member of the Council and of the Senate; serve until the end of the third year following his or her appointment or until such earlier date as the Council may, in each case, determine and shall be eligible for reappointment.

STATUTE XVIII

Powers and Functions of the Senate

1. Subject to the Act and to any other powers and functions prescribed by these Statutes, the powers and functions of the Senate shall include the following—

(*a*) to confirm or otherwise the subjects recommended by Faculties, Departments or other such academic sections of the University; to confirm what schemes of study and research the University shall offer, whether leading to a qualification or not, and to assign each such scheme to a Faculty and accordingly to allocate each post on the academic staff of the University to a Faculty and, after consultation with the Dean of that Faculty to allocate each such post to a Faculty; and at any time to change such assignments of schemes and allocations of posts on the same terms;

(*b*) to keep under review the academic organization and development of the University with special reference to the effectiveness of the University's work in relation to the objects and functions of the University as set out in sections 5 and 6 of the Act;

(*c*) to make recommendations to the Council for the institution of new Faculties, Centres or Institutes or other such academic sections; for the establishment of additional posts on the academic staff, and for the provision of any other new academic development;

(*d*) to appoint consultative committees on subjects in which the University engages in teaching or research, consisting of members of the academic staff and persons outside the University with a special interest in and responsibility for the subject of concern to such consultative committee. Such committees shall seek and obtain from the Government and other bodies reports on their policy and needs in the various fields of research or employment involving the relevant subject, and shall also obtain reports from the Deans concerned, on the teaching or research being carried out in the subject in the University and on any proposed academic developments therein. Each such committee shall, with regard to the subject concerned, advise the Senate on the relevance of the curricula to the national need, on employment requirements, and on aspects thereof in which further teaching or research is required;

(*e*) subject to the powers of the Council, to determine matters concerning academic staff, including the subjects in which academic staff appointments are made, and the conditions under which academic staff carry out teaching or research in the University;

(*f*) to control all matters relating to content and methods of teaching, and to content and methods of assessment by examination or otherwise for the award of Degrees, Diplomas and other academic distinctions other than Honorary Degrees of distinctions;

(*g*) to appoint, with such duties and under such conditions as it may determine, external examiners and academic consultants for examinations for Degrees and Diplomas; to appoint internal examiners, to terminate the appointment of any external or internal examiner; and to recommend to the Council the fee payable to examiners;

(*h*) to call meetings of academic and administrative staff or groups of such staff, under such arrangements as it shall determine, in order to consider and report upon matters which it wishes to refer to such bodies;

(*i*) to review, amend, refer back or, subject to legal implications, disallow any actions of a Faculty, a Centre or an Institute or such other academic body in the University, and to give guidance and direction to any such body;

(*j*) with the approval of the Council, to determine what formalities and conditions shall attach to the conferment of Degrees, Diplomas and other academic distinctions, and to determine all matters relating to academic ceremonies, including academic dress;

(*k*) to determine dates of the Academic Calendar;

(*l*) to recommend to the Council the conferring of the title of Emeritus Professor, Visiting Professor, Honorary Professor or Lecturer or such other academic titles, including personal chairs;

(*m*) on what it deems to be good cause, to recommend to the Council the deprivation of persons of any Degrees, Diplomas or any other academic distinctions, or of any academic titles, conferred upon or awarded to them by the University;

(*n*) within available resources, to institute, control, regulate, award or discontinue, under terms and conditions determined by it, but subject to any conditions acceptable that may be made by donors, fellowships, studentships, scholarships, exhibitions, bursaries, prizes and other such awards to students for the encouragement of study and research;

(*o*) to determine general policy matters relating to library and laboratory facilities, teaching aids services, workshops and such other academic services which are in its view necessary to the furtherance of the academic objectives of the University;

(*p*) to determine and control the terms and conditions under which research or any other activity may be conducted or carried out in the University, or by members of the staff of the University, or under the sponsorship of or in collaboration with the University or with members of its staff;

(*q*) to determine the conditions under which, and the extent, if any, to which, periods and courses of study followed and examinations passed at other institutions may be regarded as equivalent to periods and courses of study followed and examinations passed in the University;

(*r*) to enter into relations, subject to the powers of the Council, with other bodies, whether academic or otherwise, for the furtherance of the objects of the University, with special regard to the advancement of education or research in Malaŵi;

(*s*) subject to the Act and these Statutes, to take such steps to give advice and guidance regarding the constitution, functions and activities of any organization of members of the University eligible to receive and expend University funds;

(*t*) subject to the provisions of the Act and these Statutes, to discuss and express an opinion on any academic or research matter relating to the University programmes;

(*u*) in consultation with the Finance Officer, cause to be prepared estimates of expenditure required to carry out academic and research work of the University and to submit them to the Council for approval through the Finance Committee;

2. The Vice-Chancellor shall be the Chairperson of the Senate and in his absence, the Deputy Vice-Chancellor shall act as the Chairperson.

STATUTE XIX

Executive Committee of Senate

1. The Executive Committee of the Senate shall consist of the following members—

(i) the Vice-Chancellor;

(ii) the Deputy Vice-Chancellor;

(iii) the Deans of Faculties;

(iv) the Director of Studies;

(v) the Director of the Centre for Continuing Education;

(vi) the Director of Research;

(vii) the Librarian; and

(viii) two members of the Senate, elected by the Senate.

2. The Committee may arrange the time and place of its meetings and may make rules and regulations for governing its proceedings:

Provided that the Vice-Chancellor may summon meetings wherever the Vice-Chancellor may deem it necessary to do so.

3. The quorum at meetings of the Executive Committee of the Senate shall be four members.

4. The Vice-Chancellor shall be the Chairman and in his absence the Deputy Vice-Chancellor shall be the Chairman.

5. The Registrar shall be the Secretary of the Executive Committee of the Senate or, in his absence, his nominee.

6. The Executive Committee of the Senate may act on behalf of the Senate on urgent matters between meetings of the Senate.

7. The Executive Committee of the Senate may act on the call of the Vice-Chancellor as an advisory body to the Vice-Chancellor.

STATUTE XX

The Faculties

1. Subject to the Act and these Statutes, the functions of each Faculty shall, without prejudice to any other functions expressly prescribed therefore, include the following—

(*a*) to consider and make recommendations to the Senate upon all matters relating to teaching and research in the subjects of the Faculty including curricula and examinations;

(*b*) to consider and make recommendations to the Senate upon all matters relating to the progress of students following schemes of study or research assigned to the Faculty;

(*c*) to make recommendations to the Senate for the making of regulations for schemes of study or research;

(*d*) to make recommendations to the Senate, in a manner prescribed by the Senate, for the award of Degrees, Diplomas and other academic distinctions in the subjects of the Faculty;

(*e*) to submit proposals to the Senate, in a manner prescribed by the Senate, for academic developments;

(*f*) to put before the Senate any matter of concern to the Faculty upon which Senate is empowered to act;

(*g*) to deal with and, if requested, report on any matters referred to it by the Senate.

2. Recommendations and proposals issuing from any Faculty to the Senate shall be presented to the Senate by the Dean of the Faculty to which such Faculty is assigned, together with his comments.

STATUTE XXI

Departmental Board

1. For every Department there shall be a Departmental Board which consists of—

(*a*) the Vice-Chancellor;

(*b*) the Deputy Vice-Chancellor;

(*c*) the Director of Studies;

(*d*) the Director of Research;

(*e*) the Dean of the Faculty;

(*f*) the Head of the Department who shall be Chairman of the Departmental Board;

(*g*) all full-time members of the academic staff of the Department; and

(*h*) not more than two students elected annually by the students of the Department from among themselves, whose membership shall cease when they cease to be registered students of the University.

2. Staff Development Fellows and part-time members of the academic staff may attend the meeting of the Departmental Board at the discretion of the Head of Department but shall have no vote.

3. A Departmental Board may co-opt the tutors of the Faculty of which the Department forms a part and representatives of Departments with related interests.

4. The members of a Departmental Board referred to in paragraph (*h*) shall vacate their seats at the end of each academic year.

5. The quorum for a Departmental Board meeting shall be one-half of the membership thereof, excluding the Vice-Chancellor, the Deputy Vice-Chancellor, the Director of Studies, the Director of Research and the Dean of the Faculty.

6. The functions of a Departmental Board shall be—

(*a*) to make recommendations for courses in the Department;

(*b*) to consider the general organization of courses of study and research within the Department and make recommendations to the Faculty Board;

(*c*) in consultation with the Dean of the Faculty and the Registrar, to make arrangements for the examination of each course in the Department;

(*d*) to recommend candidates for appointment to posts within the Department;

(*e*) to consider, from time to time, the progress and conduct of the students of the Department and make regular reports to the Faculty Boards;

7. All new initiatives submitted to the Faculty Board shall be costed.

8. The head of a Department shall convene at least two meetings of the Departmental Board in each Semester.

9. Subject to the Statutes, every Departmental Board shall regulate its own procedure.

STATUTE XXII

Heads of Departments

1. The Head of Department shall be appointed by the Vice-Chancellor after consultations with the Dean of the Faculty concerned, who shall make his or her recommendation after consulting the full-time members of the academic staff of the Department.

2. Subject to these Statutes, the Head of a Department shall hold his or her appointment as such for not longer than two years, and shall be eligible for reappointment. The period of tenure as Head of Department shall not exceed 6 years.

3. The Head of each Department shall be responsible to the Dean, in the first instance, for the satisfactory performance of the Department within the Faculty.

4. The Head of a Department shall be responsible for—

(*a*) the co-ordination of the courses and programmes offered within the Department and, in consultation with the Dean and other Deans in the University, their co-ordination with the programmes of other Departments of the University;

(*b*) the development, in co-operation with members of the Department, of proposals for the extension, revision and improvement of the courses and programmes offered by the Department;

(*c*) the promotion of research within the Department;

(*d*) the implementations, in co-operation with the Dean and members of the Department, of academic policy as approved by the Senate and the Council;

(*e*) the preparation of the Departmental budget, in response to the needs of the Department, taking into account the policies and resources of the University;

(*f*) the quality and performance of the academic staff and others required in the Department and for making recommendations for the recruitment of new staff in consultation with the Dean of the Faculty;

(*g*) advising the Dean and any relevant Committee on matters relating to academic personnel such as appointments, renewals of contracts, confirmation of appointments and salary adjustments after satisfying himself or herself that he or she is fully aware of the views of the Department;

(*h*) the welfare and progress of students whose major field of study lies within the Department and, in co-operation with the Registrar, the handling of such students' academic problems and the referral of their non-academic problems to the relevant authority;

(*i*) advising the Dean on any matters relating to the students, staff and programmes of the Department and ensuring that the Dean is fully informed of the opinion of members of the Department on the matter concerned, including any minority views not supported by the Department as a whole.

STATUTE XXIII

Academic and Senior Administrative Staff Appointments and Promotions Committee

1. There shall be an Academic and Senior Administrative Staff Appoinments and Promotions Committee of the Council (in this Statute referred to as the "Committee") which shall consist of—

(*a*) the Chairman of the Council;

(*b*) the Vice-Chancellor;

(*c*) the Deputy Vice-Chancellor;

(*d*) the Director of Studies;

(*e*) the Deans of the Faculties;

(*f*) the Director of Research;

(*g*) the Head of Department under consideration, but only when the business of that Department is being considered;

(*h*) one person appointed by the Council from among those of its members who are not members of the academic staff of the University;

(*i*) one member of staff of a cognate Department, if applicable, appointed by the Vice-Chancellor;

(*j*) at the discretion of the Vice-Chancellor, not more than one additional member with special competence from within or outside the University;

(*k*) the Registrar or his or her nominee who shall serve the Committee.

3. A quorum at a meeting of the Committee shall be five members thereof.

4. Subject to any directions which may be given by the Council, the Committee shall regulate its own procedure.

5. Subject to the Act and these Statutes and such directions as may be given by the Council, every appointment to the academic or senior administrative staff of the University and every promotion of a member of the academic or senior administrative staff of the University shall be made by the Committee, except that every appointment to a Personal Chair shall be approved by the Council.

6. Where a member of the Committee constituted under this Statute is himself or herself a candidate for appointment or promotion under consideration by the Committee, he or she shall take no part in the consideration or discussion of, nor vote on any question relating to, that appointment or promotion.

7. Notwithstanding the other provisions of this Statute, where the Vice-Chancellor is satisfied that exceptional circumstances so require, he or she may, after appropriate consultation, appoint a visiting member of the academic or other staff of the University in a full-time contract or part-time contract.

8. A visiting member of the academic or other staff appointed under this Statute shall hold his appointment for such period, not being more than two years, as the Vice-Chancellor shall determine.

9. The Vice-Chancellor shall inform the Committee of every appointment made under paragraph 7.

10. The Vice-Chancellor may refer decisions of the Committee in respect of the University staff appointments or promotions to the Council and defer their implementation until the Council has taken a decision on them.

11. For purposes of this Statute, the offices of the Registrar, the Finance Officer, the Librarian, any Institutes and any other group of staff which the Council shall specify, shall be regarded as Departments and the term Head of Department shall be correspondingly interpreted.

STATUTE XXIV

Non-Academic Staff Appointments and Promotions Committee

1. There shall be a Non-Academic Staff Appointments and Promotions Committee of the Council (in this Statute referred to as the "Committee") which shall consist of—

(*a*) the Vice-Chancellor, who shall be the Chairperson of the Committee or his nominee;

(*b*) the Deputy Vice-Chancellor;

(*c*) a person appointed by the Council from among those of its members who are not members of the academic staff of the University;

(*d*) two members appointed by the Senate;

(*e*) the Head of Department within which the appointment or promotion is to be made;

(*f*) one member of staff of a cognate Department, if applicable, appointed by the Vice-Chancellor;

(*g*) at the discretion of the Vice-Chancellor, not more than one additional member with special competence from within or outside the University;

(*h*) the Registrar or his nominee who shall serve the Committee.

2. Subject to any direction which may be given by the Council, the Committee shall regulate its own procedure.

3. For the purposes of this Statute, the offices of the Registrar, the Finance Officer, the Librarian and any Institute and any other group of staff which the Council shall specify, shall be regarded as Departments and the term Head of Department shall be correspondingly interpreted.

4. The Committee, on behalf and subject to directives, if any, of the Vice-Chancellor shall determine all matters relating to points of entry upon salary scales.

5. At a meeting of the Committee the quorum shall be any four members of the Committee

STATUTE XXV

Procedure Relating to Contracts of Appointment

Subject to the Act and these Statutes, the procedure relating to contracts of appointment, renewal of contracts and resignation, retirement and dismissal of academic and administrative staff shall be determined by the Council, and such procedure shall incorporate the following conditions—

(*a*) that any member of the staff shall be at liberty to resign from his or her appointment and thereby to terminate his or her engagement with the University on giving in writing to the Registrar such notice as is stipulated in the terms of his appointment;

(*b*) that, save as may be provided otherwise by the Council in special cases, or as may, in such special cases relating to academic staff, be so provided by the Council on the recommendation of the Senate, a person appointed to the full-time staff of the University shall retire from his or her appointment, from any office he or she holds, and from membership of any Statutory Committee or any committee at such time as may be stipulated in the terms of his or her appointment;

(*c*) that the procedure for discontinuing the appointment of a member of the staff who would not, in the normal course of events, have had his or her appointment discontinued, shall be so framed that the member of the staff concerned shall have a right of appeal to the Council.

STATUTE XXVI

Procedure of Statutory Committees

1. Every Statutory Committee shall hold an ordinary meeting at least three times in each year at such date, time and place as shall be notified to the members at least two weeks before the date of such meeting.

2. A special meeting of any Statutory Committee may be called by the Vice-Chancellor, at such time and place, and in such manner, as may be determined in consultation, but subject to the following—

(*a*) (i) in the case of the Finance Committee, at the discretion of the Chairperson of the Finance Committee;

(ii) in the case of a Faculty, after consultation with the Dean of the Faculty to which such Faculty is allocated; or

(*b*) on request in writing to the Chairperson, stating the purpose of the meeting, by at least a third of the number of members of that Statutory Committee.

3. No matter shall be considered at a special meeting of a Statutory Committee other than that for which the meeting was called unless the Statutory Committee unanimously otherwise decides.

4. It shall be open to any member of a Statutory Committee to raise any matter he or she wishes for consideration at an ordinary meeting of such Statutory Committee, provided that, in the view of the Chairperson, the matter comes within the functions of such Statutory Committee and that the matter is brought to the attention of the Chairperson at least one week before the date of the ordinary meeting of the Statutory Committee at which the member wishes the matter to be raised.

5. The Secretary of the meeting shall be responsible for sending the agenda and documents to the members of a Statutory Committee and of the Council. The agenda and documents shall be sent to members at least three days before the date of such meeting. Documents sent less than such number of days before the meeting, or tabled at the meeting, shall be considered only if the Statutory Committee by a majority of its members present agrees to do so.

6. A Statutory Committee may appoint such sub-committees or Task Forces thereof, consisting wholly or partly of its members, as it deems fit.

7. A Statutory Committee may delegate any of its functions to such of its sub-committees or Task Forces as it deems fit.

8. Every Statutory Committee shall review periodically the work of any sub-committee or Task Force it has appointed, and if a committee is to be reappointed, shall, subject to these Statutes, review its terms of reference and membership.

9. The minutes of proceedings of all meetings of a sub-committee or Task Force of a Statutory Committee shall be put before the Statutory Committee which appointed it, and for this purpose the Faculties shall be regarded as committees of the Senate.

10. Subject to the provisions of the Act and these Statutes, there shall be a quorum at any meeting of a Statutory Committee or sub-committee or Task Force when one-third of the membership is present. In the event of one-third of total number of the Statutory Committee being less than four, then the minimum shall be four members for a quorum. In the absence of a quorum no business other than the adjournment of the meeting shall be transacted.

11. In the absence of a person who is chairman or vice-chairman by appointment or *ex officio*, the members present at any Statutory Committee, sub-committee meeting or Task Force meeting provided there is a quorum, shall elect from among those present a member to preside at that meeting who shall, during that meeting, or until the meeting is adjourned, exercise all the functions of the chairperson.

12. The decisions of the Chairperson or other member presiding shall, on all procedural matters, be final.

13. Pursuant to paragraph 9 of this Statute, the chairperson of a committee shall present the minutes of any meetings of that committee to the Statutory Committee which has appointed it, provided that recommendations and proposals from Faculties to the Senate shall be presented by the Dean of the Faculty to which that Faculty is assigned. In the absence of the chairperson of the said committee or the Dean of the said Faculty as the case may be, any other member of the committee, or of the relevant Faculty shall present such minutes to the said Statutory Committee.

14. Whether specifically empowered to do so or not, the chairperson of any Statutory Committee, sub-committee or Task Force thereof shall have the power to take action on behalf of the Statutory Committee or sub-committee or Task Force, as the case may be, of which he or she is the Chairperson, provided he or she reports any such action to the next meeting, and in his or her absence he or she may delegate such power to a person appointed as Vice-Chairperson of the Statutory Committee, sub-committee or Task Force.

15. Decisions at meetings of any Statutory Committee, subcommittee or Task Force shall, except where otherwise provided, be taken by a consensus of agreement or, where, in the opinion of the chairperson, a vote needs to be taken, shall be determined by a simple majority of the members present and voting on the matter. In the case of an equality of votes, the chairperson shall have the power to exercise a casting vote in addition to his or her deliberate vote. Voting shall not be recorded in the minutes of the proceedings.

16. The proceedings and decisions of any Statutory Committee, sub-committee or Task Force thereof shall not be invalidated by any vacancy in its number, nor by any defect in the election, appointment or qualification of any of the members whether present or absent, nor by any defect in the service of notices or documents, nor by any other administrative defect.

17. The Chairperson of any Statutory Committee, sub-committee or Task Force thereof shall have the power to invite any person to attend any meeting for the whole or part of the meeting, subject to the approval of his or her action by the said Statutory Committee, sub-committee or Task Force as the case may be, at the beginning of the meeting. Persons invited to attend meetings shall participate in the proceedings only when invited to do so by the Chairperson and shall have no vote.

18. The Chairperson of, or the member presiding at, a meeting of any Statutory Committee, sub-committee or Task Force thereof shall

have the power to adjourn such meeting and to determine the date, time, place and means of re-convening the meeting.

19. Members of Statutory Committees, sub-committees or Task Force thereof, other than members ex officio may resign from membership at any time by writing addressed to the Chairperson of such Statutory Committee, sub-committee or Task Force thereof, as the case may be.

20. Except where the Act or these Statutes provide otherwise, items of business of Statutory Committees, sub-committees or a Task Force thereof may, at the discretion in each case of the chairperson of the Statutory Committee, sub-committee or Task Force thereof, as the case may be, be conducted by sending proposals to each member of the said Statutory Committee, sub-committee or Task Force thereof, in writing, in which case a decision shall be valid only if all members of the said Statutory Committee, sub-committee, or Task Force thereof, having been given a reasonable time to reply, agree to the proposal sent to them.

21. Subject to its power to declare certain items or categories of business confidential, the minutes of all meetings of each Statutory Committees shall be available for consultation by members of the University by such means as the Statutory Committee may from time to time decide. All such minutes whether confidential or otherwise shall be available for consultation by any member of the Council.

22. Subject to these Statutes, Statutory Committees, sub-committees or Task Forces thereof may make such further standing orders relating to their proceedings as they may deem fit.

STATUTES XXVII

Honorary Degrees

When and as often as the Council wishes to award Honorary Degrees pursuant to its powers under section 10 (s) of the Act, the following procedure shall be followed—

(*a*) the Council shall appoint a Committee consisting of the Chairperson of the Council as Chairperson, the Vice-Chancellor and four other members of the Council, two of whom shall be members of the Senate, to propose persons for the award of Honorary Degrees, which Committee shall be known as the Honorary Degrees Committee;

(*b*) the Honorary Degrees Committee shall invite the Chancellor, all members of the Council and the Senate, and the Registrar, to submit to the Vice-Chancellor in confidence proposals for the award of Honorary Degrees, and all such proposals shall be considered by the Committee. It shall be open to those so invited to seek suggestions from other members of the University;

(c) the Honorary Degrees Committee, having considered the proposals submitted to it, shall submit to the Council a list of those persons who it recommends for the award of Honorary Degrees, listing the Honorary Degree it considers appropriate for award in each individual case;

(*d*) the Council shall consider the recommendations of the Honorary Degrees Committee and shall determine to whom of those persons recommended by the Committee such Honorary Degrees shall be awarded, and the Degree to be so awarded in each individual case;

(*e*) no person shall be approached regarding his willingness to accept conferment of an Honorary Degree until the Council has approved all the names, and the approved names shall be published only when all the persons named in the list have signified there willingness to accept conferment of an Honorary Degree;

(*f*) the Honorary Degree conferred shall be that deemed appropriate by the Council;

(*g*) an Honorary Degree shall not be conferred in the absence of the person on whom such Degree is to be conferred; and

(*h*) serving members of Statutory Committees, members of staff and students of the University shall not be eligible for the award of Honorary Degree.

STATUTE XXVIII

Elections to Deanships and to the Senate

1. An election of a Dean and of elected members of the Senate, pursuant to sections 21 (e) and 26 of the Act, respectively, shall take place whenever there is a vacancy, provided that the whole process of the election is conducted during University term-time. All arrangements of such elections shall be the sole responsibility of the Registrar or his representative, who shall act as returning officer.

2. It shall be open to a Faculty if at least two-thirds of those entitled to vote in an election indicate their wish to do so, to carry out an election of elected members of the Senate at a meeting rather than by nomination and secret ballot.

3. The persons entitled to vote in an election of a Dean or of elected members of the Senate, and to be nominated and elected, shall be those persons whose names shall appear, as members of the full-time academic staff holding posts allocated to the Faculty concerned, in the master copy of the staff list kept in the Registrar's office.

4.—(1) No election shall be invalidated by reason only that the administrative procedure relating to such election was defective.

(2) Notwithstanding paragraph (1), the Registrar may, with the approval of the Vice-Chancellor, declare an election null and void on grounds of administrative or other defects.

5. If an elected member of the Senate is to be absent from the University for a period during which two or more ordinary meetings of the Senate will be held, the Faculty, or as the case may be, may nominate a person to serve in his or her place during his or her said absence.

STATUTE XXIX

Service of Notices and Documents

1. Any notice or document required, by or for the purposes of the Act or these Statutes, to be given or sent to a member of the University, or of the Council or of any Statutory or other committee may be given to him or her personally or may be sent to him or her by post, to the last postal address of which the Registrar has cognizance.

2. Where a notice or other document is sent by post, pursuant to paragraph 1, service thereof shall be deemed to have been properly effected by properly addressing and posting a letter containing the notice or other document, and shall be deemed to have been effected at the time at which the letter would be delivered in the ordinary course of post.

STATUTE XXX

Affiliated Institutions

1. The Council may, on the recommendation of the Senate, approve the affiliation with the University of any other institution of teaching or research situated within or outside Malaŵi and may designate it an affiliated institution of the University.

2. In respect of any affiliated institution the Senate may, with a mutual agreement—

(*a*) advise on and assist in the preparation of programmes of instruction;

(*b*) validate programmes of instruction, examinations and the granting of certificates and other awards of the affiliated institutions.

STATUTE XXXI

Students' Representative Council

1. The affairs of the students of the University shall be governed by a Students' Representative Council.

2. The Constitution of the Students' Representative Council shall be subject to the approval of the Council.

3. The functions of the Students' Representative Council shall be—

(*a*) to represent the students in relations with the authorities of the University and other relevant bodies;

(*b*) to develop the cultural, social, recreational and athletic life of the students; and

(*c*) to foster the corporate spirit of the students.

4. Subject to the observance by them of the Act, the Statutes and of regulations prescribed under the Statutes, the students shall enjoy all the privileges and facilities available to them in the University.

STATUTE XXXII

Amendments to Statutes

The Council shall not make, amend or revoke any Statute which, in the opinion of the Council, affects academic and research matters without first consulting the Senate and considering any representations the Senate may make upon such making, amendment or revocation as the case may be.

SCIENCE AND TECHNOLOGY

CHAPTER 30:10

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CHAPTER 30:10

SCIENCE AND TECHNOLOGY

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An Act to provide for the advancement of science and technology; to establish the National Commission for Science and Technology and to provide for matters connected therewith and incidental thereto

16 of 2003
G.N. 1/2009

[14TH NOVEMBER, 2008]

PART I
PRELIMINARY PROVISIONS

Short title

1. This Act may be cited as the Science and Technology Act.

Interpretation

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

"appeals committee" means an appeals committee appointed under section 44;

"Awards Committee" means the Scientific Awards Committee established under section 34;

"Chairman" means Chairman of the Commission;

"Commission" means the National Commission for Science and Technology established under section 5;

"committee" means a committee of the Commission established under section 11 and includes the Scientific Awards Committee;

"Fund" means the Science and Technology Fund established under section 24;

"member" means a member of the Commission;

"organism" means any biological entity, whether microscopic or not, capable of replication;

"Vice-Chairman" means the person elected as the Vice-Chairman of the Commission under section 6 (3).

Part II

Advancement of Science and Technology in Malaŵi

Policy and Statement to rank paramount

3. Every public officer and any authority in Malaŵi exercising or performing powers, duties or functions in connexion with or concerning the commitment of the Government in advancing science and technology in Malaŵi as declared in the National Science and Technology Policy (in this Act otherwise referred to as the "Policy") and in the Statement of National Priorities in Science and Technology (in this Act otherwise referred to as the "Statement") shall, in the exercise of his powers or the performance of his duties or functions, consider and treat the Policy and the Statement as ranking paramount in the business of the Government and shall further consider it to be his paramount duty to act with all due diligence and dispatch in taking such action as is required or necessary to give effect to the Policy and Statement.

Publication and revision of the Policy and the Statement

4.—(1) The Policy and the Statement shall be published respectively by the Minister and the Commission for general distribution and, in the case of the Statement, copies of its publication shall be made freely available and without charge in and outside Malaŵi to bodies connected with science and technology.

(2) Following any change in the Policy or the Statement, or following any legislative or statutory action or other action having similar effect taken by the Government in pursuance or implementation of the Policy or the Statement, the Minister shall publish in the *Gazette* the changes.

Part III

Establishment of the National Commission for Science and Technology

Establishment of the National Commission for Science and Technology

5. There is hereby established a commission to be known as the National Commission for Science and Technology (in this Act otherwise referred to as the "Commission").

Composition of the Commission

6.—(1) The Commission shall consist of—

(*a*) the Chairman who shall be appointed by the Minister;

(*b*) nine persons, who shall be appointed by the Minister, at least—

(i) six of whom shall be appointed from the industry, academic, research and development institutions;

(ii) one of whom shall be appointed from the civil society; and

(iii) one of whom shall be a gender expert; and

(*c*) the following *ex officio* members—

(i) the Secretary for Agriculture and Irrigation or his representative;

(ii) the Secretary for Education, Science and Technology or his representative;

(iii) the Secretary for Health and Population or his representative;

(iv) the Secretary for Natural Resources and Environmental Affairs or his representative; and

(v) the Secretary for the National Economic Council or his representative.

(2)—(1) A representative of an *ex officio* member referred to in subsection (1) shall be designated by, or on behalf of, the *ex officio* member by a notice in writing to the Commission to attend the meetings of the Commission, and upon such designation such representative shall not attend to the business of the Commission by representation.

(3) The Vice-Chairman shall be elected by the Commission from among its members:

Provided that no member appointed under paragraph (*c*) of subsection (1) shall be elected as Vice-Chairman.

(4) The names of all members as first constituted and every change of membership shall be published in the *Gazette*.

(5) The persons to be appointed under subsection (1) (*b*) shall be chosen for their ability and experience in scientific disciplines, technology-related activities or their professional qualifications or their suitability otherwise for appointment.

(6) A member shall not be in the employ of the Commission nor serve on a full time basis.

(7) The Director General shall be the secretary of the Commission.

Tenure of office and vacancies

7.—(1) A member, other than an ex officio member, shall hold office for a period of three years and shall be eligible for re-appointment for another three year term but the office of that member shall become vacant—

(*a*) if he resigns by giving one month notice in writing to the Commission;

(*b*) upon his death;

(*c*) if he is absent without valid excuse from three consecutive meetings of the Commission of which he has had notice;

(*d*) if he becomes an undischarged bankrupt;

(*e*) if he becomes of unsound mind; and

(*f*) if he participates, directly or indirectly, in an activity which is in contravention of this Act.

(2) On vacation of office by a member, the vacancy shall be filled by a person appointed in accordance with the relevant provisions of section 6 (1) (*b*) under which the former member was appointed:

Provided that if the remaining period is less than six months, the Minister may decide not to have the vacancy filled until the expiry of the period.

Allowances and expenses of members

8.—(1) Members or members of a committee of the Commission shall be paid such an allowance as the Minister shall determine.

(2) The Commission may make provision for reimbursement of any reasonable expense incurred by a member or a member of a committee of the Commission in connexion with the business of the Commission or the committee.

Policy directions

9. The Commission may, where necessary, seek the general directions of the Minister on the manner in which it is to carry out its duties under this Act.

Proceedings of the Commission

10.—(1) Subject to the other provisions of this Act, the Commission may regulate its own procedure.

(2) The Commission shall meet for the transaction of business at least once every three months at such places and at such times as the Chairman may determine.

(3) An extraordinary meeting of the Commission may be called by the Chairman upon written notice of not less than seven days received from any member and shall be called if at least four members so request in writing:

Provided that if the urgency of any particular matter does not permit the giving of such notice, an extraordinary meeting may be called upon giving a shorter notice.

(4) Half of the members shall form the quorum of any meeting of the Commission.

(5) There shall preside at any meeting of the Commission—

(*a*) the Chairman;

(*b*) in the absence of the Chairman, the Vice-Chairman: and

(*c*) in the absence of the Chairman and the Vice-Chairman, such member as the members present and forming a quorum

may elect from among their number for the purpose of the meeting.

(6) The decision of the Commission on any matter before any meeting shall be that of the majority of the members present and voting at the meeting and, in the event of an equality of votes, the person presiding shall have a casting vote.

(7) No member shall attend to the business of his office by representation and where a member is unable to attend any meeting of the Commission, he may request that his apologies for failure to attend be recorded.

Committees of the Commission

11.—(1) In addition to the Awards Committee, the Commission may, for the purpose of performing its functions under this Act, establish other committees and delegate to any such committee such of its functions as it considers necessary.

(2) The Commission may appoint as members of a committee established under subsection (1) persons who are or are not members of the Commission and such persons shall hold office for such period as the Commission may determine.

(3) Subject to any specific or general directions of the Commission, a committee may regulate its own procedure.

Minutes of meetings

12. The Commission shall cause minutes to be kept of the proceedings of every meeting of the Commission and of every meeting of a committee of the Commission.

Disclosure of interest by members

13.—(1) if any member is present at a meeting of the Commission or of any committee at which any matter which is the subject of consideration is a matter in which that person or his immediate family member or his professional or business partner is directly or indirectly interested in a private or professional capacity, he shall, as soon as is practicable after the commencement of the meeting, disclose such interest and, unless the Commission or the committee otherwise directs, that person shall not take part in any consideration or discussion of, or vote on, any question touching on such matter.

(2) A disclosure of interest shall be recorded in the minutes of the meeting at which it is made.

Protection of members

14. No action, suit or other proceedings shall be brought or instituted personally against any member or a member of a committee in respect of any act done in good faith in the course of carrying out the provisions of this Act.

Invited persons

15.—(1) The Commission may in its discretion at any time and for any period invite any person, and the Minister may in like

manner nominate an officer in the public service, to attend any meeting of the Commission or of any of its committees and take part in the deliberations of the meeting, but such person or officer shall not be entitled to vote at the meeting.

(2) Section 14 shall apply, *mutatis mutandis*, to a person or an officer attending a meeting of the Commission or committee pursuant to subsection (1).

Oath of secrecy

16. Every—

(*a*) member;

(*b*) member of a committee;

(*c*) employee of the Commission; or

(*d*) consultant in the service of the Commission,

shall, upon assumption of his office, take such oath of secrecy as may be approved by the Commission or as may otherwise be prescribed under this Act.

Prohibition of disclosure of information by unauthorized persons

17.—(1) No person shall, without the consent in writing given by or on behalf of the Commission, publish or disclose to any person, otherwise than in the course of his duties, contents of any document, communication or information which relates to, and which has come to his knowledge in the course of, duties under this Act.

(2) Any person who contravenes subsection (1) shall be guilty of an offence and liable to a fine of K100,000 and to imprisonment for three years.

Part IV
Functions and Powers of the Commission

Functions of the Commission

18.—(1) The functions of the Commission shall be to advise the Government and other stakeholders on all science and technology matters in order to achieve a science and technology-led development.

(2) Without prejudice to the generality of subsection (1), the Commission shall—

(*a*) create science and technology awareness at the political and other levels of society and thereby obtain their commitment towards the value of science and technology as integral parts of national development strategies;

(*b*) establish mechanisms to solicit support from the executive and legislative branches of Government, policy-makers and the private sector in order to promote the formulation and revision of policies, strategies, laws and regulations for science and

technology and the monitoring of the implementation of science and technology development activities;

(*c*) source funding from within and outside Malaŵi to finance the national research and development effort and allocate the funds to research institutions based on set priorities;

(*d*) chart out national direction and establish national priorities in science and technology development in relation to socio-economic development needs;

(*e*) appraise, review, monitor and evaluate priority research and development programmes, plans and projects of research and development institutions and undertake independently or in collaboration with any appropriate person, body or institution surveys and research investigations considered necessary;

(*f*) promote and advocate for the development of science and technology human resources by building capacity in science and technology education and training programmes and providing assistance in the development of appropriate science and technology curricula of the various levels of the education systems;

(*g*) create a conducive working environment for science and technology personnel in order to retain them and attract those outside Malaŵi to return through, *inter alia*, providing appropriate science and technology infrastructures and facilities;

(*h*) encourage the use of local expertise in science and technology matters through use of a set of professional standards, ethics and guidelines and support professional science and technology associations;

(*i*) encourage the establishment and promote the coordination of research institutions that undertake research and development activities which promote national socio-economic development and other specialized research and development activities in a manner that enhances co-orporation and collaboration among national and international science and technology personnel and institutions;

(*j*) organize national science and technology fairs and open-days so as to promote national science and technology awareness and culture, documentation, consolidation and dissemination of relevant science and technology information and generally promote the role of information technology;

(*k*) promote the transfer of technology through conventional methods including information exchange and training, purchase and licence agreements and joint venture agreements with foreign partners in which research and development is given

prominent consideration and, in support of this, establish and maintain national capacity for negotiating, monitoring and regulating technology for negotiating, monitoring and regulating technology transfer agreements;

(*l*) promote and encourage the patenting and commercialization of research results to farmers, industrialists and entrepreneurs as end-users in a manner that enhances economic diversification, competitiveness and employment generation;

(*m*) promote sustainable socio-economic development through the general and application of environmental friendly technologies so as to protect and conserve natural resources;

(*n*) develop and synthesize science and technology indicators covering such aspects as research and development statistics, bibliometrics, technology balance of payments statistics, patent data, human resources and innovation data using internationally accepted procedures and standards;

(*o*) conduct an inquiry into any matter being investigated by the Commission;

(*p*) sponsor such national and international scientific conferences as it may consider appropriate;

(*q*) promote and maintain cooperation in science and technology with similar bodies in other countries and with international bodies connected with science and technology;

(*r*) prepare, every two years, a state of Science and Technology Report for presentation to the National Assembly; and

(*s*) perform any other function or activity related to science and technology.

Powers of the Commission

19. Subject to the directions of the Minister, whether general or special, the Commission shall have the power to do all such things as are incidental or conducive to the carrying out of its functions under this Act.

Part V
The Secretariat of the Commission

Secretariat of the Commission

20. The Secretariat of the Commission shall consist of the Director General and such other suitably qualified officers as may be required for the proper administration of this Act.

Director General of the Commission

21.—(1) The Minister, on the recommendation of the Commission, shall appoint, on such terms and conditions as he may determine, a Director General of the Commission who shall be the

chief executive of the Commission, and shall in addition perform such duties as the Commission shall assign to his office and ensure the effective administration and implementation of this Act.

(2) The Director General shall be appointed from within or without the civil service.

(3) Without derogation from the generality of the responsibilities and duties of the Director General conferred under subsection (1), the Director General shall be responsible for the day to day administration of the Commission.

(4) The Director General, or such other officer of the Commission as the Director General may designate, shall attend meetings of the Commission and of any committee of the Commission and may address such meetings, but shall not vote on any matter:

Provided that the person presiding at any meeting may, for good cause, require the Director General or such other officer to withdraw from such meeting.

(5) Section 13 shall apply, *mutatis mutandis*, to the Director General and such other officer referred to in this section.

Disclosure of interest by employees, etc.

22.—(1) An employee of the Commission or a consultant to the Commission who, or whose immediate family member is directly or indirectly interested in a private or professional or official capacity in any matter being considered by the Commission, shall disclose such interest.

(2) A disclosure of interest made under this section shall be made to the Director General who shall take such decision as he considers appropriate in each case and submit a report to the Commission.

Functions of the Secretariat of the Commission

23.—(1) The Secretariat of the Commission shall be responsible for implementing the programmes of the Commission.

(2) Without prejudice to the generality of subsection (1), the Secretariat of the Commission shall—

(*a*) provide technical and administrative backup services to the meetings and other functions of the Commission;

(*b*) prepare and present to the Commission science and technology programmes for approval;

(*c*) manage and coordinate science and technology funds in accordance with general and specific directions of the Commission;

(*d*) maintain liaison with national and international agencies that provide financial and technical support for the implementation of the science and technology policy;

(*e*) coordinate all science and technology related issues in the country;

(*f*) prepare annual progress reports for consideration by the Commission; and

(*g*) perform such other functions as may be assigned to it by the Commission.

Part VI
Science and Technology Fund

Establishment of the Fund

24.—(1) There is hereby established a fund to be known as the Science and Technology Fund (in this Act otherwise referred to as the "Fund").

(2) The Fund shall consist of—

(*a*) such sums as shall be appropriated by Parliament for the purposes of the Fund;

(*b*) the levy imposed under section 32;

(*c*) advances made to the Fund under section 26;

(*d*) such sums or other assets as may be received for the purposes of the Fund by way of voluntary contributions or donations; and

(*e*) such sums as are paid as a result of services provided by the Commission.

The fund to vest in the Minister Cap. 37:01

25. The Fund shall be vested in the Minister and, subject to this Act, and the Finance and Audit Act, shall be administered in accordance with his directions.

Advances to the Fund

26. If in any financial year the income of the Fund together with any surplus income brought forward from a previous year is insufficient to meet the actual or estimated liabilities of the Fund, the Minister responsible for finance may make advances to the Fund in order to meet the deficiency or any part thereof and such advances shall be made on such terms and conditions, whether as to repayment or otherwise, as the Minister responsible for finance may determine.

Objects of the Fund

27. The objects of which the Fund is established shall be the advancement of science and technology in Malaŵi.

Application of the Fund

28. Without derogation from the generality of section 27, the Fund may be applied for the purposes of—

(*a*) financing, by way of loans or grants, any research or study carried on, by or for the benefit of persons or organizations

engaged in research in matters relating to the development of science and technology;

(*b*) financing, by way of loans or grants, the training of citizens of Malaŵi for the benefit of organizations engaged in research in the development of science and technology;

(*c*) making awards to any person qualified for the grant to him of an award under this Act;

(*d*) providing support for scientific research and technology development and the application of the results in compliance with the national priorities determined by the Government upon advice by the Commission;

(*e*) commissioning the carrying out of a project by any person for any specific research which is of special importance to the nation;

(*f*) meeting any expenses arising from the establishment and maintenance of the Fund; and

(*g*) any purpose which the Minister considers to be in the interest of the objects of the Fund.

Books and other records of accounts, audit and reports of the Fund

Cap. 37:01

29.—(1) The Minister shall cause to be kept proper books and other records of account in respect of receipts and expenditure of the Fund.

(2) The accounts of the Fund shall be audited by the Auditor General, who shall have all the powers conferred upon him by the Finance and Audit Act.

(3) The Minister shall cause to be prepared, as soon as practicable, but not later than six months after the end of the financial year, an annual report on all the financial transactions of the Fund.

(4) The report under subsection (3) shall include a balance sheet, an income and expenditure account and the annual report of the Auditor General and shall be laid by the Minister before the National Assembly.

Holdings of the Fund

30.—(1) All sums received for the purposes of the Fund shall be paid into a bank account and no amount shall be withdrawn therefrom except by means of cheques signed by such persons as are authorized in that behalf by the Minister.

(2) Any part of the Fund not immediately required for the purposes of the Fund may, on the recommendation of the Commission, be invested in such manner as the Minister may determine, after consulting with the Minister responsible for finance.

Financial year

31. The financial year of the Fund shall be the period of twelve months ending on 30th June in each year or on such other date as the Minister may specify by order published in the *Gazette*:

Provided that the financial year of the Fund may be a period shorter or longer than twelve months as the Minister shall determine, but in any case not longer than eighteen months.

Levy

32. The Commission may, from time to time, by order published in the *Gazette*, impose a levy.

Part VII
Granting of Awards

Institutions of Awards

33. The Commission shall, from time to time, institute awards for the purpose of promoting innovations in science and technology.

Awards Committee

34.—(1) There is hereby established a Scientific and Awards Committee (in the Act otherwise referred to as the "Awards Committee") which shall consist of—

(*a*) a Chairman, who shall be appointed by the Minister from among the members of the Commission;

(*b*) the Director General who shall also be the Secretary of the Awards Committee; and

(*c*) six other members who shall be appointed by the Minister on the recommendation of the Commission.

(2) In appointing persons to the Awards Committee, the Minister shall give consideration to persons who have knowledge and experience of the application of science and technology.

(3) A member of the Awards Committee shall, unless he sooner ceases to be a member, hold office for a period of three years from the date of his appointment, and shall be eligible for re-appointment.

(4) The Awards Committee may co-opt any person whose knowledge and experience in the application of science and technology may be of assistance to it in considering any application or proposal for the conferment of an award under this Act.

(5) The Awards Committee shall consider all applications or proposals for the conferment of awards under this Act and make appropriate recommendations to the Board regarding the grant of an application or proposal.

(6) In deciding whether or not any application or proposal for the conferment of an award under this Act may be granted, the

Awards Committee shall consider the importance of the invention or discovery in its application to the search for the solution of various social and economic problems obtaining in Malaŵi.

Malaŵi Award for Science and Technological Achievement

35.—(1) There is hereby instituted an award to be known as Malaŵi Award for Science and Technological Achievement.

(2) The Malaŵi Award for Science and Technological Achievement may be conferred upon any person who within Malaŵi makes an invention or discovery which, in the opinion of the Awards Committee, is likely to promote and accelerate the social and economic progress of Malaŵi.

Part VIII
Licences and Permits

Licensing authority

36. The Commission shall be the licensing authority responsible for the granting, renewal, variation, suspension and revocation of licences under this Act.

Biotechnology consent

37. Subject to the provisions of this Act, no person shall engage in any matter related to biotechnology without prior consent of the Commission.

Classes of licences

38. The Commission may by order published in the *Gazette* prescribe activities, relating to science and technology, which shall not be carried out except under the authority of a licence issued by the Commission.

Exemptions

39. The provisions of section 38 shall not apply in such circumstances as may be specified by the Minister in a notice published in the *Gazette*.

Application for a licence

40.—(1) Any application for a licence under this Act shall be made to the Commission in the prescribed form.

(2) Any application referred to in subsection (1) shall contain a description of activities or products to which the licence will relate.

Issues of licences

41.—(1) If the Commission is satisfied that the applicant is a fit and proper person to engage in activities required to be done under a licence, the Commission may issue to the applicant the licence appropriate to such activity subject to such general or special conditions as the Commission may consider appropriate to impose.

(2) A licence issued under subsection (1) shall be in such form, and shall be for such duration, as may be prescribed.

(3) Where the Commission considers that the applicant is not a fit and proper person to whom a licence should be issued, it shall refuse to issue a licence.

Suspension and revocation of a licence

42.—(1) Subject to this Part, the Commission may—

(*a*) suspend a licence for such period as it may determine;

(*b*) revoke a licence; or

(*c*) vary the provisions of a licence.

(2) The suspension or revocation of a licence under this section may be limited to organisms or products thereof of one or more descriptions, or to any particular premises or to a particular part of any premises.

Variation of a licence

43. Subject to section 40 the Commission may, on the application of the holder of a licence under this Act, vary the provisions of the licence, in accordance with any proposal contained in the application, if the Commission is satisfied that the variation will not adversely affect the safety, quality or efficacy of activities in respect of which the licence was granted.

Part IX
Appeals

Appeals

44.—(1) Any person who is aggrieved by—

(*a*) any refusal, suspension, revocation or variation of a licence, permit or certificate issued under this Act; or

(*b*) any decision directly applicable to him taken by the Commission or any person exercising powers under this Act,

may, within thirty days, appeal in writing to the Minister who shall appoint an appeals committee for the purpose of hearing the appeal in question.

Appeals committee

45.—(1) An appeals committee shall consist of five persons who, in the opinion of the Minister, have expert knowledge and who are otherwise suitable to determine the issues raised in the appeal.

(2) The Minister shall designate one of the members of the appeals committee as chairperson of the committee.

(3) A member of the appeals committee shall excuse himself as a member of the appeals committee if he has any direct or indirect interest in the subject matter of the appeal or if for any reason there is likely to be conflict of interest as a result of his participation in the proceedings of the committee.

(4) There shall be paid to members of an appeals committee such remuneration or allowances as the Minister may determine.

Powers of appeals committee

46.—(1) An appeals committee shall have, in relation to the hearing of any appeal, the power to—

(*a*) confirm, set aside, vary, alter, reverse or amend the decision which is the subject of the appeal;

(*b*) refer the relevant matter back to the Director General for the reconsideration by the Commission;

(*c*) order persons to attend and give evidence or to produce or give discovery and inspection of documents in like manner as in proceedings in the High Court:

Provided that the appeals committee may in its absolute discretion admit evidence which would not be admissible in a court of law and may use evidence contained in any official record and may call evidence on its own motion;

(*d*) award costs of any proceedings before it and to direct that such costs shall be taxed upon such scale and in such manner as may be prescribed;

(*e*) make such order as it may deem fit; and

(*f*) do all things which it is required or empowered to do by or under this Act.

(2) The decision of the appeals committee on any appeal shall be—

(*a*) made in writing;

(*b*) sent to all the parties to the appeal and, where he was not a party, to the Minister; and

(*c*) made available for public inspection,

within thirty days thereof, apply to the High Court for judicial review of the decision of the appeals committee.

Part X
Miscellaneous Provisions

Secrecy to be observed

47.—(1) A member or a member of a committee and every person employed under this Act shall not disclose to any person, except in the performance of his duties under this Act or when required to do so by any written law, any information which he may have acquired in the course of his duties in relation to the financial or business affairs of any person, undertaking or business.

(2) Any person who contravenes subsection (1) shall be guilty of an offence and liable to a fine of K1,000,000 or to an amount equivalent to the financial gain generated by the offence, if such amount be greater and imprisonment for five years.

Offences

48. Any person who—

(*a*) contravenes or fails to comply with any provision of this Act or any regulations made hereunder, or any directive or order lawfully given, or any requirement lawfully imposed under this Act or any regulations made hereunder;

(*b*) omits or refuses—

(i) to furnish any information when required by the Commission to do so; or

(ii) to produce any document when required to do so by a notice sent by the Commissioner; or

(*c*) knowingly furnishes any false information to the Commission,

shall be guilty of an offence.

Penalty for offences

49. A person guilty of an offence under this Act for which no specific penalty is provided shall be liable to a fine of K100,000 or to an amount equivalent to the financial gain generated by the offence, if such amount be greater, and to imprisonment for three years.

Regulations

50.—(1) The Minister may, on the advice of the Commission, make regulations for the better carrying into effect the purposes of this Act.

(2) Without prejudice to the generality of subsection (1), the regulations may provide for—

(*a*) anything required to be prescribed under, or for the purposes of, this Act;

(*b*) any forms required for the purposes of this Act;

(*c*) fees payable in respect of any service provided by the Commission;

(*d*) the furnishing of reports to the Minister on science, technology, research and development; and

(*e*) the form of awards and certificates to be awarded by the Commission.

Cap. 1:01

(3) Any regulation made under this Act may, notwithstanding the provisions of section 21 (*e*) of the General Interpretation Act, prescribe a fine of up to K20,000 and imprisonment for up to one year for an offence committed against any provision of such regulation.

LILONGWE UNIVERSITY OF AGRICULTURE AND NATURAL RESOURCES

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CHAPTER 30:11

LILONGWE UNIVERSITY OF AGRICULTURE AND NATURAL RESOURCES

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22 of 2011
2 of 2016
G.N. 3/2012

An Act to make provision for the establishment of the Lilongwe University of Agriculture and Natural Resources; for the conduct and management of the University; and for matters incidental to and connected therewith

[6TH FEBRUARY, 2012]

PART I
PRELIMINARY

Short title

1. This Act may be cited as the Lilongwe University of Agriculture and Natural Resources Act.

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

"Academic Department" means an Academic Department within the University under a Faculty constituted under section 27;

"Academic staff" means all persons for the time being holding appointments, whether on full time or part time basis, under contract with the Council, as professors, associate professors, senior lecturers, lecturers, assistant lecturers, adjunct staff, instructors or demonstrators of the University, including those whose conditions of service contain the obligation to undertake research and the senior professional staff of the library, or any other post declared by the Senate by category or title to be an academic post;

"Administrative staff" means all persons for the time being holding appointments, whether on full time or part time basis, under contract with the Council, in the administration of the affairs of the University;

"Chairperson" means the Chairperson of the Council appointed pursuant to section 8;

"Chancellor" means the Chancellor of the University;

"Clerical, Technical and Support Staff (CTS)" means all persons for the time being holding appointments whether on full time or part time basis under Contract with the University Management in the execution of assigned duties;

"College, Centre, School or Institute" means a College Centre, School or Institute respectively within the University, established under section 23;

"Committee" includes a sub-committee;

"Council" means the Council of the University established under section 7;

"Dean" means the Dean of a Faculty or School and includes any other Dean that the Council may decide to appoint under the Statutes pursuant to section 24 and shall exercise Executive powers;

"Deputy Vice-Chancellors" means the Deputy Vice-Chancellors for Academic and Planning, Research and Development and Administration and Finance Affairs appointed pursuant to section 15;

"Director of Finance" means the Director of Finance and appointed pursuant to section 17;

"Faculty" means a Faculty within the University established under section 23;

"Financial year" means the period commencing on the date of commencement of this Act and ending on the 30th of June next following the commencement date and thereafter the period of twelve months ending on 30th June, in each year;

"Head of Department" means the Head of Department appointed pursuant to section 26;

"Librarian" means the Librarian of the University appointed pursuant to section 18;

"Organization" means any company, association or body of persons, corporate or unincorporated, but does not include any association or body established or incorporated under this Act;

"property of the University" means any property, intellectual, real or personal, of every description, vested in or held by the Council under any right of ownership or possession and any property held by the Council in trust for the furtherance of any of the objects of the University;

"Registrar" means Registrar of the University appointed pursuant to section 16;

"Senate" means the Senate of the University established under section 19;

"Senate Regulations" means Senate Regulations made pursuant to section 37;

"Statutes" mean the Statutes made pursuant to section 35;

"University" means the Lilongwe University of Agriculture and Natural Resources established under section 3; and

"Vice-Chancellor" means the Vice-Chancellor of the University appointed pursuant to section 14.

PART II
Establishment of the University

Establishment of the Lilongwe University of Agriculture and Natural Resources

3.—(1) There is hereby established a university to be known as the Lilongwe University of Agriculture and Natural Resources.

(2) The University shall comprise the institutions specified in the Schedule, and such other institutions as the Council may establish pursuant to Part VI.

Membership of the University

4.—(1) The University shall consist of the following members—

(*a*) the Chancellor;

(*b*) the Vice-Chancellor;

(*c*) Deputy Vice-Chancellors;

(*d*) the Registrar;

(*e*) the Director of Finance;

(*f*) the Librarian;

(*g*) members of the Council;

(*h*) members of the Senate;

(*i*) all graduates of the University;

(*j*) all holders of Honorary Degrees from the University;

(*k*) all Deans of Faculty of the University;

(*l*) all Heads of Departments;

(*m*) all Directors of Centres, Schools, Colleges and Institutes;

(*n*) all other members of the academic, non-academic and administrative staff of the University;

(*o*) all persons for the time being registered as students of the University; and

(*p*) such other persons as the Council may by name or office declare to be members of the University.

(2) Any person who is a member of the University solely by virtue of holding any qualification from the University shall continue to be a member so long as he holds that qualification.

(3) The University Registrar shall keep and maintain a Register of members of the University, which shall be available for scrutiny by the general public at all reasonable times.

Aims and objectives of the University

5. The aims and objectives of the University include—

(*a*) to provide quality education and training in agricultural and natural resources sciences, engineering and irrigation technologies, agro-processing, entrepreneurship, trade, climate change adaptation, sustainable utilization of natural resources and environmental preservation for socio-economic development;

(*b*) to encourage the advancement, dissemination and commercialization of research;

(*c*) to promote industrial growth through research and dissemination of knowledge and skills;

(*d*) to establish and support science and technology innovation centres of excellence for industrial production and manufacturing of value added agricultural and natural resource products;

(*e*) to develop partnerships with relevant industries for the generation, transfer, adoption and application of technologies;

(*f*) develop into an institution of excellence in teaching, learning, training, Information, Communication Technology (ICT), e-learning and research in science, technology and biotechnology;

(*g*) to promote practical university education, research and training so as to respond to the needs of Malaŵi, Africa and the World;

(*h*) to demonstrate and promote entrepreneurship among its students;

(*i*) to provide specialist training in such subjects as may be found desirable by the University Council and the nation; and

(*j*) to provide opportunities and facilities for accessing information in support of the programmes of the University.

Powers of the University

6. Subject to this Act and the Statutes, the University shall award and confer Degrees, Diplomas, Certificates and other academic distinctions, including Honorary Degrees and distinctions.

PART III
The Council

Establishment and incorporation of the Council

7. There is hereby established the Council of the University, which shall be a body corporate with perpetual succession and a common seal and shall be capable under that name, of—

(*a*) suing and being sued;

(*b*) acquiring by purchase, gift, devise, bequest, operation of law, or otherwise, real or personal property wherever situated, or any right or interest therein, and holding the same in any capacity including that of a trustee:

(*c*) granting, selling, mortgaging, hypothecating, alienating, assigning, leasing or letting real or personal property; and

(*d*) subject to this Act, doing and performing all acts and things as a body corporate may by law do and perform.

Composition of the Council

8.—(1) The Council shall consist of—

(*a*) the Chairperson of the Council, who shall be appointed by the President;

(*b*) the Vice-Chancellor;

(*c*) Deputy Vice-Chancellors;

(*d*) four independent members appointed by the Chancellor, two of which shall be women;

(*e*) two members of the Senate appointed from its membership;

(*f*) the following *ex officio* members—

(i) the Principal Secretary responsible for education, science and technology, or his nominee;

(ii) the Principal Secretary responsible for agriculture and food security, or his nominee;

(iii) the Principal Secretary responsible for natural resources, or his nominee;

(*g*) one female member and one male member elected by the Lilongwe University of Agriculture and Natural Resources Students Union; and

(*h*) such other persons, not exceeding two, as the Council may co-opt from time to time, provided that the persons shall not be serving members of the University.

(2) The *ex officio* members of the Council shall remain members for as long as they hold the offices, or the nominations, by virtue of which they became members.

(3) The Vice-Chancellor and the Deputy Vice-Chancellors shall serve as members of the Council as long as they hold their respective offices.

(4) A member of the Council shall serve for a term of three years from his appointment and shall be eligible for re-appointment for one further period of three years.

(5) The Council shall appoint from amongst their number, other than *ex officio* members, the Vice-Chairperson who shall perform all the functions and duties of the Chairperson in the event that the Chairperson is unable to perform any other duties;

(6) The Registrar shall act as Secretary to the Council;

(7) The Chancellor may, on the recommendation of the Minister, dissolve the Council.

Functions and powers of the Council

9.—(1) The Council shall be the governing body of the University and shall be responsible for the management and administration of the University, its property and revenues, and shall exercise general control and supervision over all the affairs of the University including its relations with the public.

(2) Without prejudice to the generality of subsection (1), the functions and powers of the Council shall include—

(*a*) to govern, maintain, administer, dispose of and, save as hereinafter provided, to invest all the property, money, assets, and rights of the University;

(*b*) to manage the business and all other affairs of the University, and to enter into engagements and to accept obligations and liabilities without any restriction whatsoever;

(*c*) before determining any question relating to the matters contained in paragraphs (*a*) and (*b*) which affects the academic policy of the University, the Council shall refer the matter to the Senate if it has not previously been considered by the Senate, and shall take into consideration any recommendation or report thereon by the Senate, and may accept or reject any Senate recommendation;

(*d*) to determine, demand and receive fees, subscriptions, deposits, fines and other payments, and to effect payment of any monetary obligations;

(*e*) to take such steps as it determines fit for the purpose of procuring and receiving contributions to the funds of the University to further the objectives of the University, and, for this purpose, to raise money in a manner as it determines fit;

(*f*) to borrow money on behalf of the University and for that purpose, if it considers appropriate, to mortgage or charge all or any part of the real property of the University, unless the conditions of any will, deed or gift or other similar instrument are contravened, and to give such other security, whether upon real or personal property or otherwise, as it finds fit;

(*g*) to invest any moneys of the University, including any unapplied income, in stocks, debentures, funds, shares, or other securities as the Council may, from time to time, determine, whether within or outside Malaŵi, or in the purchase of real or personal property, with the like power of varying such investments from time to time by sale or re-investment or otherwise;

(*h*) to sell, buy, exchange, lease, rent, grant or take on lease or rent, real or personal property or portions thereof on behalf of the University, and to acquire any easement over any property held by other persons or to consent to any easement whether public or private over any property of the University;

(*i*) to undertake and execute any trust the undertaking whereof the Council may find desirable for the attainment or fulfillment of any of the objects of the University;

(*j*) to hold, invest, manage or distribute, in furtherance of and in accordance with any trust direction, discretion, obligation or permission, any property or income, held by it as trustee subject to the trust;

(*k*) to enter into, vary, carry out or cancel contracts on behalf of the University;

(*l*) to compound or compromise any action, suit or proceedings or any debt or claim, and to refer any matter to arbitration;

(*m*) to operate bank accounts, and to cause proper books of accounts to be kept and audited for all sums of money received and expended by the University and for the assets and liabilities of the University so that the books give a true and fair view of the state of the affairs of the University, and explain its transactions;

(*n*) after consultation with the Senate, to establish, Institutes and Colleges or discontinue Faculties, Centres, Institutes, Colleges or such other academic departments or sections of the University, in accordance with this Act or the Statutes;

(*o*) after consultation with the Senate, to determine terms of service and general conditions relating to the employment of academic staff, and to establish, disestablish or otherwise make or discontinue financial provisions for appointments to such posts;

(*p*) after consideration of any recommendation or report thereon from the Vice-Chancellor, to determine the terms of service and general conditions relating to the employment of academic, research, administrative, clerical, technical and support staff, and to establish, disestablish, or otherwise make or discontinue financial provisions for appointments to the posts;

(*q*) to determine the salary scales and general rates of payment for all categories of staff appointed by the University and for other persons commissioned to give services to the University, and to appoint and employ staff, pay their salaries, wages or fees, and, subject to the provisions of the Statutes, terminate their appointments;

(*r*) to make provisions, as it may find fit, for schemes of insurance, superannuation, pensions or retirement benefits for employees of the University and their spouses and dependents of the employees, to subscribe to benevolent and other funds for the benefit of its employees, and to make such payments as it thinks fit to the employees;

(*s*) to take steps as it determines appropriate for furthering the objects and interests of the University by making provision for teaching and research, printing and publication of research and other works which may be issued by the University, and for the welfare of the staff and the students of the University;

(*t*) to call for reports from the Vice-Chancellor or the Senate, and to review the work of the University in the light of the reports;

(*u*) to make provision for payments to external examiners and to other persons to whom it finds fit to make payments to further the objects of the University, and for scholarships, prizes, grants and other payments to students of the University;

(*v*) after consideration of any recommendation or report from the Vice-Chancellor and Senate, to determine fees to be charged to students;

(*w*) to determine to whom the award of Honorary Degrees of the University shall be made in accordance with the procedure prescribed therefor by the Statutes;

(*x*) to decide, after consultation with the Vice-Chancellor, whether or not any donation, gift, grant, devise, bequest or other bounty to the University should be accepted;

(*y*) to enter into agreements and other relationships with institutions or bodies, whether academic or otherwise, for such purposes as the Council may determine, including the embodiment within the University of any other institution or body and the taking-over and assumption of the property, rights, privileges and liabilities of such other institution or body;

(*z*) to select persons for entry as students of the University on the recommendation of a selection Committee established by the Statutes; and

(*aa*) to establish such sub-committees as it may determine necessary.

(3) The Council shall consider any recommendation made by the Senate for the amendment or alteration of Statutes relating to the academic administration of the University and for taking any other action in respect of academic matters, and shall either accept, refer back or reject any such recommendation.

(4) The Council shall exercise fairness and where necessary employ affirmative action in order to ensure that nobody is discriminated against for reasons of race, ethnic origin, political affiliation or opinion, religion, sex, or Human Immune Deficiency Virus or Acquired Immunity Deficiency Syndrome status, gender, physical disability or other status in respect of—

(*a*) the appointment of any person to the academic or other categories of staff of the University; or

(*b*) the registration of any person as a student of the University; or

(*c*) the right of any person to hold any advantage or privilege of the University.

(5) The Council shall ensure that the fairness it exercises shall also be practiced by the Senate, any statutory Committee, or officer of the University.

(6) The Chairperson shall keep the Chancellor and the Minister informed on matters concerning the general policy and conduct of the University.

Vacancies on the Council

10.—(1) A vacancy on the Council shall arise—

(*a*) on the expiry of the term of office of a member;

(*b*) on the resignation of a member after one month's written notice to the Chairperson;

(*c*) on the death of a member;

(*d*) upon a member leaving the country for more than one year;

(*e*) upon a member failing to attend three consecutive meetings of the Council, of which he has had notice, without valid excuse or reason;

(*f*) upon a member becoming mentally or physically unfit, where upon the Council is of the opinion that he is no longer, by reason of the unfitness, capable of performing his duties as a member of the Council;

(*g*) a member being declared bankrupt; or

(*h*) upon the conviction of a member for an offence under any written law and being sentenced to a term of imprisonment otherwise than as an alternative to, or in default of, the payment of a fine.

(2) A vacancy due to any one of the reasons in subsection (1) shall be filled within three months of the occurrence of the vacancy.

Meetings and procedures of the Council

11.—(1) The Council shall meet at such times and places as may be necessary or expedient for the transaction of business, and the meetings shall be held at such times and places and on such dates as may be provided by the Statutes, or otherwise as the Council may determine.

(2) The Chairperson may at any time call for a meeting of the Council and shall do so on the request in writing made to him in that behalf by any four members.

(3) Two thirds of the members of the Council shall constitute a *quorum* thereof.

(4) If the Chairperson and Vice-Chairperson are for any reason absent from any meeting of the Council, the members present may elect one of their members to preside at the meeting provided they form a *quorum*.

(5) Any matter for decision by the Council shall be determined by a majority vote of members present and voting, and where there is an

equality of votes the Chairperson, or in his absence, the Vice-Chairperson or other member presiding, shall have a casting vote in addition to his deliberative vote.

(6) Subject to this Act and Statutes, the Council may determine its own procedure.

Common Seal of the Council

12.—(1) The common seal of the Council shall be kept in such custody as the Council directs, and shall not be used except upon the order of the Council.

(2) All courts, judges, and other persons acting in judicial capacity shall take judicial notice of the common seal of the Council affixed to any document and shall presume that it was duly affixed.

(3) The common seal of the Council shall be authenticated by the signature of two members of the Council, or, alternatively, by the signatures of one member of the Council and of the Vice-Chancellor or Deputy Vice-Chancellor or Registrar, or of some other person nominated in that behalf by the Council.

PART IV

Officers of the University

Chancellor

13.—(1) There shall be a Chancellor of the University who shall be the head of the University.

(2) The President shall be the Chancellor of the University.

(3) The Chancellor shall, whenever present, preside at all ceremonial and other congregations of the University and shall, in the name of the University, confer all degrees, diplomas and certificates of the University.

(4) The Chancellor shall exercise other functions and duties in relation to the University as are conferred upon him, from time to time, by the Statutes.

(5) The Chairperson and the Vice-Chancellor shall keep the Chancellor and the Minister fully informed on matters concerning the general conduct of the affairs of the University and shall furnish the Chancellor and the Minister with information as they may request on any particular matter relating to the affairs of the University.

Vice-Chancellor

14.—(1) There shall be a Vice-Chancellor of the University, who shall be the principal academic and administrative manager of the University.

(2) The Vice-Chancellor shall be appointed by the Council after considering recommendations in writing on the suitability of various

candidates submitted to the Council by a committee of seven members appointed for that purpose and consisting of—

(*a*) the Chairperson of Council, who shall be chairperson of the committee;

(*b*) three members of the Council, not being members of the Senate, appointed by the Council; and

(*c*) three members of the Senate appointed by the Senate.

(3) The appointment of the Vice-Chancellor be subject to the approval of the Chancellor.

(4) The Vice-Chancellor shall hold office for a period of four years on such terms and conditions as may, from time to time, be prescribed by this Act and the Statutes.

(5) The Vice-Chancellor shall be eligible for re-appointment for further terms of office.

(6) The Vice-Chancellor shall—

(*a*) be responsible for the overall management of the University, including the development and implementation of strategic plans, policies, teaching and research programmes, and budgets; and

(*b*) have such powers and perform such functions as may from time to time, be prescribed by this Act and the Statutes.

Deputy Vice-Chancellors

15.—(1) There shall be Deputy Vice-Chancellors who shall assist the Vice-Chancellor in the performance of his functions.

(2) The Deputy Vice-Chancellors shall have such functions and powers as are assigned to those offices by this Act, the Statutes, the Council, or as delegated by the Vice-Chancellor from time to time.

(3) The provisions of section 14 (2) and (3) shall apply, *mutatis mutandis*, to the appointment and term of office of the Deputy Vice-Chancellors.

Registrar

16.—(1) There shall be a Registrar of the University appointed by the Council, who shall be the chief administration officer of the University.

(2) The Registrar shall exercise such powers and perform such duties in relation to the administration of the University as are assigned to him by this Act, the Statutes, the Council, or as are delegated to him by a Deputy Vice-Chancellor.

(3) The Registrar shall be under the immediate supervision and control of the Deputy Vice-Chancellors.

(4) The terms and conditions of employment of the Registrar shall, subject to this Act and the Statutes, be as determined, from time to time, by the Council.

Director of Finance

17.—(1) There shall be a Director of Finance for the University appointed by the Council, who shall be in charge of the finances and the investments of the University.

(2) The Director of Finance shall exercise such powers and perform such duties as are assigned to him under this Act, the Statutes, by the Council or as delegated to him by the Deputy Vice-Chancellors.

(3) The Director of Finance shall be under the immediate supervision and control of the Deputy Vice-Chancellors.

(4) The terms and conditions of employment of the Director of Finance shall, subject to this Act and the Statutes, be as determined, from time to time, by the Council.

Librarian

18.—(1) There shall be a Librarian of the University appointed by the Council, who shall be the officer in-charge of the University Library, and information and communications technology.

(2) The Librarian shall exercise such powers and perform such duties as are assigned to him by this Act, the Statutes, the Council, or as delegated to him by the Deputy Vice-Chancellors.

(3) The Librarian shall be under the immediate supervision and control of the Deputy Vice-Chancellors.

(4) The terms and conditions of the Librarian shall, subject to the provisions of this Act and the Statutes, be as determined, from time to time, by the Council.

PART V
The Senate

The Senate

19.—(1) There is hereby established a Senate of the University which shall consist of the following members—

(*a*) the Vice-Chancellor, who shall be the chairperson;

(*b*) the Deputy Vice-Chancellors;

(*c*) Principals of Colleges, *ex officio*;

(*d*) the Deans of Faculty;

(*e*) the Librarian;

(*f*) the Directors of Centres, Schools, and Institutes of the University as prescribed by the Statutes;

(*g*) one member from each Faculty, elected in accordance with the relevant Statutes, from and by the full time academic staff holding posts allocated to the Faculty;

(*h*) such other members, not exceeding three, as may be co-opted, from time to time, by the Senate on such conditions as the Senate may determine.

(2) Every elected member of the Senate shall hold office for a term of three years and shall be eligible for re-election.

(3) An elected member shall cease to be an elected member of the Senate and his membership thereof shall become vacant—

(*a*) upon his becoming an *ex officio* member of the Senate;

(*b*) upon the post he holds on the academic staff being allocated to another Faculty; or

(*c*) upon his resignation from the full-time academic staff or from membership of the Senate.

(4) The Registrar shall act as Secretary to the Senate.

Functions and powers of the Senate

20. The Senate shall perform such functions and exercise such powers as prescribed by this Act or by the Statutes and without prejudice to the generality of the foregoing, such functions and powers of the Senate shall include the following—

(*a*) to make recommendations to the Council on matters affecting the academic programmes and policy of the University;

(*b*) to review the work of the University and report thereon to the Council; and

(*c*) to make recommendations to the Council on fees to be charged to students of the University.

Meetings of the Senate

21. The Senate shall be convened in accordance with the provisions of the Statutes.

Invited persons

22.—(1) The Senate may invite any person to attend any particular meeting or series of meetings of the Senate for the purpose of assisting or advising the Senate in respect of any matter under consideration by the Senate.

(2) Any person invited pursuant to subsection (1) shall take part in the deliberations of the Senate at the meeting which he attends but shall not be entitled to vote.

PART VI

Faculties, Centres, Schools, Colleges and Institutes

Faculties, Centres, Schools, Colleges and Institutes

23.—(1) There shall be within the University such Faculties, Centres, Schools, Colleges and Institutes as the Council may, on the recommendation of the Senate, and with the approval of the Minister, establish.

(2) A Faculty, Centre, School, College or Institute of the University may, where appropriate, deal directly with the University Senate on academic and research matters.

Deans

24.—(1) There shall be a Dean of each Faculty who shall be Chairperson of that Faculty and who shall, under the general direction of the Deputy Vice-Chancellors, perform other functions and exercise other duties as may, from time to time, be determined by the Senate and prescribed by Statutes.

(2) A Dean shall be appointed by the Council in accordance with the relevant Statutes, and he shall hold office for a term of three years.

(3) A Dean may, by notice in writing given to the Council, resign his post as Dean, but the resignation, unless expressly so stated, shall not entail his resignation from any other academic post which he holds in the University.

(4) A Dean shall be eligible for re-appointment for a further term of office.

(5) There shall be a Deputy Dean who shall assist the Dean in the performance of his functions.

(6) The provisions of subsections (2), (3) and (4) of this section shall apply, *mutatis mutandis*, to the office of the Deputy Dean.

Head of Department

25.—(1) There shall be a Head of Department of each Department who shall be Chairperson of that Department and who shall, under the general direction of the Dean of Faculty, perform other functions and exercise other duties as may, from time to time, be determined by the Senate and prescribed by Statutes.

(2) A Head of Department shall be appointed by the Council in accordance with the relevant Statutes, and he shall hold office for a term of three years.

(3) A Head of Department may, by notice in writing given to the Council, resign his post as Head of Department, but the resignation, unless expressly so stated, shall not entail his resignation from any other academic post which he holds in the University.

(4) A Head of Department shall be eligible for re-appointment for a further term of office.

Directors

26.—(1) There shall be a Director of each Centre, School, College or Institute who shall be the principal officer of that College, School, Centre or Institute and shall be under the general direction and control of the Board of such College, School, Centre or Institute, and shall perform other functions and exercise other duties as may, from time to time, be determined by the Senate and prescribed by the Statutes.

(2) A Director shall be appointed by the Council and shall hold office for a term of three years.

(3) A Director may, by notice in writing given to the Council, resign his post as Director, but such resignation, unless expressly so stated, shall not entail his resignation from any other post he holds in the University.

(4) A Director shall be eligible for re-appointment for a further term of office.

(5) There shall be a Deputy Director of each Center, School, College or Institute who shall assist the Director in the performance of his functions.

(6) The provisions of subsections (2), (3) and (4) shall apply, *mutatis mutandis*, to the office of the Deputy Director.

Composition of Faculties and Departments

27.—(1) Each Faculty shall consist of—

(*a*) the Dean of that Faculty who shall be the chairperson;

(*b*) all members of the full-time and part-time academic staff holding posts allocated to that Faculty; and

(*c*) such other members of the full-time or part-time staff of the University as may be co-opted by that Faculty as associate members for such period and on such terms as that Faculty may, in each case, determine.

(2) Each Department shall consist of—

(*a*) the Head of Department of that Department who shall be the chairperson;

(*b*) all members of the full-time and part-time academic staff holding posts allocated to that Department; and

(*c*) such other members of the full-time or part-time staff of the University as may be co-opted by that Department as associate members for a specified period.

Faculty Board

28.—(1) There shall be a Faculty Board for each Faculty of the University.

(2) Each Faculty Board shall consist of—

(*a*) the Dean of the Faculty, who shall be the chairperson;

(*b*) the Vice-Chancellor;

(*c*) the Registrar;

(*d*) the Heads of Department in the Faculty;

(*e*) the academic staff members in the Faculty;

(*f*) the Librarian;

(*g*) two students, one female and one male, in the Faculty elected by the students taking courses in the Faculty; and

(*h*) two members from relevant industries and professions related to the courses offered in the Faculty.

(3) The Faculty Board shall be responsible for the planning, management and review of the programmes and activities of the Faculty including relations with the University, the community, the industry and the general public.

(4) The Faculty Board may, from time to time, establish Advisory Committees to assist the Board in the development of relevant programmes.

Composition of Centres, Schools, Colleges and Institutes

29. Each Centre, School, College and Institute shall consist of such members as the Senate, with the approval of the Council, may prescribe.

PART VII
Financial Provisions

Funds and property of the University

30.—(1) The funds and property of the University shall consist of—

(*a*) such sums as may, from time to time, be payable to the University from moneys appropriated thereof by Parliament;

(*b*) such sums of money or other property, real or personal as may be acquired, purchased or received by, or transferred to, the University, whether by way of gift, devise bequest, purchase or otherwise;

(*c*) such sums of money or other property, real or personal, as may accrue to the University in the exercise of its powers or the performance of its functions under this Act;

(*d*) such sums of money or other property, real or personal, that may accrue to, or be received by, the University by way of fees, grants, subsidies, contributions, donations, subscriptions, rents, interest or royalties from the Government or from any person;

(*e*) such sums of money or other property, real or personal, as may be donated to the University by any foreign Government, international agency or other body or person situate or resident outside Malaŵi; and

(*f*) such sums of money as may accrue to the University from any trust established by the University.

(2) Where, under the terms of any written instrument, any right, title or interest in real or personal property is expressed to be disposed, granted or conveyed to the University, the said instrument shall, subject to law, have effect as a disposition, grant or conveyance of such property to the Council and shall vest such property in the Council to the extent of the right, title or interest therein expressed to be so disposed, granted or conveyed.

(3) The property of the University shall be payable to, vested in, held, managed and controlled by the Council.

Compliance with the provisions of the Public Finance Management Act Cap. 37:02

31. The Council shall at all times comply with the provisions of the Public Finance Management Act.

Audit of Accounts

32.—(1) The accounts of the University shall be audited at the end of each financial year by an auditor or auditors appointed by the Council in accordance with the Statutes.

(2) The Council shall pay, in respect of any audit held under this Part, such fees, costs and expenses as may be appropriate.

(3) The auditor may, by writing under his hand, require the production of all books, deeds, contracts, vouchers, receipts and other documents relating to the accounts or investments of the University which he may consider necessary for the purpose of the audit, and he may summon in writing all persons having knowledge of the affairs of the University, as he may find appropriate, to appear before him personally at the offices of the Council, at a time to be fixed in the summons, for examination in connexion with any documents or matters relating to the audit.

(4) Any person—

(*a*) who without just cause, fails or refuses to produce any document, the production of which has been duly required by the auditor; or

(*b*) who having been summoned for examination in connexion with any documents relating to an audit—

(i) without just cause neglects or refuses to comply with the summons;

(ii) having appeared before the auditor, without just cause refuses to be examined; or

(iii) without just cause refuses to answer questions pertaining to the audit as are put to him by the auditor,

commits an offence and shall, upon conviction, be liable to a fine of K50,000 for every refusal or neglect and in default of payment of the fine, such person shall be liable to imprisonment for six months:

Provided that any conviction under this section shall not operate or be taken to exempt the person convicted from the liability to do or perform the act, matter or thing required of him.

(5) On completion of the audit of the accounts of the University, the auditor shall report thereon in writing to the Council about the audit generally and on such specific matters in relation thereto as the Council may direct.

(6) The Council shall consider the report of the auditor within three months after the date of the receipt thereof.

Accounts and funds

33.—(1) All the moneys of the University shall be held in the name of the Council and shall be paid into one or another of the following accounts—

(*a*) the Development Endowment Fund;

(*b*) the special account;

(*e*) the capital account;

(*d*) the revenue account; or

(*e*) such other account as the Council may establish in respect of any trust the Council may establish in exercise of its powers under this Act.

(2) There shall be paid into the Development Endowment Fund all moneys that are received by the Council and declared specifically to be payable into the Fund.

(3) The Council shall pay into the revenue account all interest received from the investment of the moneys of the Development Endowment Fund.

(4) There shall be paid into the special account all moneys that are donated to and received by the Council for special purposes and which are not payable into the Development Endowment Fund or any other account.

(5) The capital moneys, and the interest therefrom, of the special account shall be used and applied for the special purposes for which the moneys were donated and in accordance with the conditions of the donation:

Provided that the Council shall not be obliged to accept a donation for a particular purpose unless it approves of the terms and conditions attached to the donation.

(6) There shall be paid into the capital account all the moneys that are received by the Council for the purpose of capital expenditure for the construction and improvement of the University.

(7) The capital moneys and the interest therefrom, shall be used and applied by the Council on capital expenditure for the construction of infrastructure and improvement of the University.

(8) There shall be paid into the revenue account—

(*a*) the interest received from the investment of the moneys in the Development Endowment Fund;

(*b*) all fees, charges, dues and other amounts payable by, or in respect of students;

(*c*) all revenue and grants made by the Government of Malaŵi or by any other Government, any person, organization or any trust of the University, to the Council for the use by the University;

(*d*) all sums transferred under this Act from the Development Endowment Fund or any other account to the revenue account; and

(*e*) all other sums received by the Council and not payable into the Development Endowment Fund or any other account.

(9) The moneys standing to the credit of the revenue account shall be used and applied by the Council for the management and working of the University in such manner and for such purposes as, in opinion of the Council, are best suited to promote the interests of the University.

Borrowings Cap. 37:02

34. Subject to the provisions of this Act and of the Public Finance Management Act, the Council may borrow, either by way of overdraft from a bank or otherwise, such sums as it may, from time to time, require for the carrying out of its functions and powers.

PART VIII

Miscellaneous

The Statutes

35.—(1) Subject to this Act, the University shall be governed and administered in accordance with the provisions of Statutes made by the Minister with the advice of the Council.

(2) The Statutes shall make provision for the better carrying out of the purposes, and more efficient administration of the University and of this Act.

(3) Without prejudice to the generality of the foregoing, the Statutes may make provision for—

(*a*) any matter which is required by this Act to be prescribed by the Statutes;

(*b*) the creation of permanent committees of the Council, or of the Senate, as the case may be, the membership of such committees, and the powers, functions or duties to be delegated thereto;

(*c*) the functions, duties and terms of office of any officer of the University or member of the academic or administrative staff to the extent that such functions or duties or terms of office are not prescribed by this Act;

(*d*) the creation of new offices and posts within the University, the functions and duties attaching to the offices and posts, the duration thereof, and the manner of appointment thereto; and

(*e*) such other matters, including matters of procedure and discipline, as may be found to be expedient or proper by the Minister for regulation by Statute.

(4) The Council, may by special resolution, adopt the Statutes.

(5) Upon the adoption of the Statutes by the Council under subsection (4), the Vice-Chancellor shall, as soon as it is practicable thereafter, submit to the Minister for his approval, a certified copy of the proposal as adopted by the Council.

(6) If the Minister does not approve the proposal, he shall notify the Council, in writing, giving reasons for his non-approval.

(7) If the Minister approves the proposal, he may, by order published in the *Gazette*, make the Statutes in accordance with the terms of the proposal.

(8) For the purpose of this section, the expression "special resolution" means a resolution—

(*a*) notice of which has been given to each member of the Council, not less than thirty days before the date of the meeting of the Council at which it is intended to be moved; and

(*b*) which is moved at a meeting of the Council with not less than one-half of the total membership of the Council being present at the time such resolution is moved and voted upon; and

(*c*) which is passed by a majority of not less than two-thirds of the members of the Council present at the meeting.

Amendment of the Statutes

36.—(1) The Statutes may be amended from time to time in accordance with this section.

(2) The provisions of section 35 (4), (5), (6), (7), and (8) shall apply *mutatis mutandis,* to amendments to the Statutes.

Senate Regulations

37.—(1) Subject to this Act and to the Statutes, and to the approval of the Council, the Senate may, for the better carrying out of its functions and powers under this Act and under the Statutes, make Senate Regulations by notice published as provided in subsection (3).

(2) Without prejudice to the generality of the foregoing, Senate Regulations may make provision for—

(*a*) matters relating to teaching within the University, or to the teaching of any specified subject, periodic reports from professors and lecturers on the progress of students in any subjects, Faculty and other like matters;

(*b*) schemes of study and research, and conditions under which persons may be permitted to embark upon or to continue any such scheme;

(*c*) a research grant system to support academic individual and joint research undertakings;

(*d*) the award of Degrees, Diplomas or other academic honours and distinctions other than Honorary Degrees or distinctions;

(*e*) the conduct and supervision of examinations;

(*f*) the engagement and payment of external examiners;

(*g*) dealing with general academic disciplinary matters;

(*h*) dealing with research and development linkages with the industry and other institutions; and

(*i*) matters relating to the activities and progress of Centres and Institutes.

(3) Any notice made pursuant to subsection (1) shall be published by the Director of Administration by causing copies thereof to be posted for not less than seven days—

(*a*) in a prominent place outside his office; and

(*b*) on boards provided for such purpose in each of the public halls of the University.

Service of process and other documents on the Council

38. Any writ or other process, notice, or document may be served upon the Council by serving the same on the Registrar.

PART IX
Transitional Provisions

Saving of existing programmes, students' powers and rights

39.—(1) Programmes and courses existing or subsisting at the commencement of this Act with respect to students registered at the institutions specified in the Schedule (hereinafter referred to as the "institutions"), shall continue on the terms and conditions subsisting before the commencement of this Act.

(2) Any act done, or degree, diploma and other academic distinction conferred, and any power exercised or right acquired under the University of Malaŵi Act repealed by the University of Malaŵi (Amendment) Act, shall not be invalid by virtue only of that repeal.

Cap. 30:02

13 of 2011

Transfer of assets and liabilities

40.—(1) Property, assets, funds, liabilities, obligations, agreements and arrangements existing at the commencement of this Act and vested in, acquired, incurred or entered into by or on behalf of the institutions shall, on commencement of this Act, be deemed to have vested in, or to have been acquired, incurred or entered into by, or on behalf of, the University, and shall become enforceable by, or against, the University, to the same extent as they were enforceable by or against the institutions.

(2) Where the transfer of any property transferred to or vested in the institutions under subsection (1) is required by any written law to be registered, the University shall, within one year from the commencement of this Act, or within such other period as the written law may prescribe, apply to the appropriate registering authority for the registration of the transfer and thereupon the registering authority shall, at no cost to the University or any person by way of registration fees, stamp or other duties—

(*a*) make such entries in the appropriate register as shall give effect to the transfer;

(*b*) where appropriate, issue to the University a certificate of title or other statutory evidence or ownership of the property or make such amendments on such certificates or in the appropriate register as may be necessary; and

(*c*) make any necessary endorsement on such deeds or other documents as may be presented on such registering authority relating to the title, right or obligation concerned.

Transfer of employees

41.—(1) All appointments of members, directors and staff of the institutions made prior to the commencement of this Act and subsisting at that date shall be deemed to have been made in accordance with this Act.

(2) Any person who, immediately prior to the commencement of this Act is employed by any of the institutions, shall, until otherwise determined by the Council, be deemed to have been transferred to the employment of the University on the same terms and conditions of service and, for the purpose of determining his rights thereunder, his service shall be regarded as continuous from the date he was appointed by the relevant institution.

SCHEDULE

s. 3

Institutions of the Lilongwe University of Agriculture and Natural Resources

2 of 2016

1. Bunda College of Agriculture
2. Natural Resources College

3.–4. [*Deleted by Act No.* 2 *of* 2016.]

NATIONAL COUNCIL FOR HIGHER EDUCATION

CHAPTER 30:12

Containing Pages 1–21

CHAPTER 30:12

NATIONAL COUNCIL FOR HIGHER EDUCATION

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15 of 2011
G.N. 23/2012

An Act to regulate higher education; to provide for the establishment, functions and powers of the National Council for Higher Education; and to provide for matters incidental thereto

[23RD APRIL, 2012]

PART I

PRELIMINARY

Short title

1. This Act may be cited as the National Council for Higher Education Act.

Interpretation

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

"academic cycle" means a period within which to complete a programme of study;

"accreditation" means the process of recognizing higher education institution's programmes in accordance with section 27;

"accreditation certificate" means a certificate issued under section 27;

"Chairperson" means the Chairperson of the Council and includes any person acting in that capacity;

"Charter" means a document granted by the Minister under section 20 describing the basis for establishment and legitimizing the existence of a private higher education institution;

"Chief Executive Officer" means the Chief Executive Officer of the Council appointed pursuant to section 17;

"Council" means the National Council for Higher Education established under section 3;

"foreign higher education institution" means a higher education institution registered outside Malaŵi;

"higher education" means all learning programmers leading to qualifications registered under the National Qualifications Framework but may not include vocational training by a vocational training centre under the Technical, Entrepreneurial and Vocational Education Act; Cap. 55:06

"higher education institution" means any institution that provides higher education and which is—

(*a*) established as a public higher education institution;

(*b*) registered as a private higher education institution under this Act; or

(*c*) an affiliate of a higher education institution;

"institutional quality assurance standards" means the standards referred to in section 27;

"member" means a member of the Council appointed as such under section 4;

"National Qualifications Framework" means a structured description which classifies and registers qualifications according to a set of national standards for levels of learning, obtained at different levels compatible with regional and international structures and standards;

"private higher education institution" means any institution registered or conditionally registered as a private higher education institution in terms of Part V;

"provisional registration certificate" means a certificate issued pursuant to section 20;

"public higher education institution" means any institution that provides higher education and which is established by the Government or under any law and is wholly or partially funded by the Government; and

"register" means a register kept and maintained in terms of section 20.

PART II

The National Council for Higher Education

Establishment of the Council

3. There is hereby established a body to be known as the National Council for Higher Education (in this Act otherwise referred to as the "Council") which shall be—

(*a*) a body corporate with perpetual succession and a common seal;

(*b*) capable of suing and being sued in its corporate name;

(*c*) capable of holding, purchasing or otherwise acquiring and disposing of any property, movable or immovable, for the purposes, or in the course, of carrying out its functions; and

(*d*) capable of doing and performing all such acts and things as bodies corporate may, by law, do and perform.

Composition of the Council

4.—(1) The Council shall consist of—

(*a*) six persons appointed by the Minister on account of high professional standing, special knowledge, skills and expertise in matters of higher education:

Provided that such persons shall not be employees in the public service and two of whom shall be persons from the business community;

(*b*) the following *ex officio* members—

(i) the Secretary for Education or his designated representative;

(ii) the Secretary to the Treasury or his designated representative;

(iii) the Comptroller of Statutory Corporations or his designated representative;

(iv) the Secretary for Human Resource Management and Development or his designated representative;

(v) two Vice-Chancellors to represent public universities; and

(vi) one Vice-Chancellor to represent private universities.

(2) An *ex officio* member of the Council or any person employed in the public service shall not be eligible to be elected Chairperson of the Council but shall have a right to vote on any matter at a meeting of the Council.

(3) Members of the Council shall not, by virtue of their appointment to the Council, be deemed to be officers in the public service.

(4) The Minister shall publish in the *Gazette* names of all members of the Council as first constituted, and every change in the membership of the Council.

Tenure of office

5.—(1) A member of the Council, other than an *ex officio* member, shall hold office for a period of three years from the date of appointment and shall be eligible for re-appointment at the expiry of that period:

Provided that non-*ex officio* members shall not be appointed for more than two consecutive terms of office.

(2) On the expiry of the period for which an appointed member of the Council has been appointed, he shall continue to hold office until he has been re-appointed or a successor has been appointed:

Provided that a member shall not continue to hold office in terms of this subsection for more than six months.

(3) When making any appointment after the expiry of the three years, the Minister shall have regard to the need to maintain a reasonable degree of continuity on the membership of the Council, so that at least half of the appointed members shall be re-appointed for the next term of office.

Vacation of office of members

6.—(1) The office of a member, other than an *ex officio* Member, shall become vacant—

(*a*) upon his death;

(*b*) if he has been absent from three consecutive meetings of the Council, of which he has had notice, without a reasonable cause;

(*c*) if he has been convicted of an offence without the option of a fine and sentenced to imprisonment for a period exceeding six months;

(*d*) if he becomes mentally or physically incapable of efficiently performing his duties as a member of the Council; and

(*e*) if he is adjudged bankrupt.

(2) A member may at any time resign his office by giving one month written notice to the Minister.

Filling of vacancies on the Council

7.—(1) A vacancy on the membership of the Council shall be filled by the appointment of a new member in accordance with the relevant provisions of section 4 under which the former member was appointed.

(2) A person appointed to fill the vacancy shall serve for the remainder of the term of office but no person shall be so appointed where the remainder of the term of office is a period of less than six months.

Co-opted persons

8. The Council may, at any time and for any period, invite any person and the Minister may, in like manner nominate any officer in the public service, to attend any meeting of the Council and take part in the deliberations of the Council, but such person or officer shall not be entitled to vote at any meeting.

Chairperson and Vice-Chairperson

9.—(1) There shall be a Chairperson of the Council appointed by the Minister.

(2) There shall be a Vice-Chairperson of the Council who shall be elected by the Council from among the appointed members at the first meeting of the Council.

(3) The Chairperson and Vice-Chairperson shall hold office as such until the expiry of their term of office as members of the Council.

Remuneration

10. A member of the Council shall be paid such honorarium for membership and such allowances as the Council shall reasonably determine, subject to approval by the Minister.

Disclosure of interest

11. If a member of the Council acquires any pecuniary interest, directly or indirectly, in any matter and is present at a meeting of the Council at which that matter is the subject of consideration by the Council, he shall, as soon as practicable, after the commencement of the meeting, disclose the fact to the Council, and shall not take part in the consideration or discussion of, or vote on any question with respect to the determination of the matter.

Meetings of the Council

12.—(1) Subject to subsection (2), the Council shall hold ordinary meetings for the dispatch of business at least four times a year.

(2) An extraordinary meeting of the Council—

(*a*) may be convened by the Chairperson at any time;

(*b*) shall be convened by the Chairperson within seven days of receipt by him of a request in writing signed by not less than two members of the Council and specifying the purpose for which the meeting is to be convened.

(3) At any meeting of the Council—

(*a*) the Chairperson shall preside or in his absence, the Vice-Chairperson shall preside;

(*b*) in the absence of both the Chairperson and the Vice-Chairperson, the members present and forming a quorum shall elect one of them to preside; and

(*c*) the quorum shall be formed by one-half ($^1/_2$) of the members.

(4) An *ex officio* member of the Council shall attend any meeting of the Council in person or designate another person in writing.

(5) At any meeting of the Council, a decision on any matter shall be that of the majority of the members present and voting at that meeting, and in the event of an equality of votes, the Chairperson or the person presiding shall have a casting vote in addition to his deliberative vote.

(6) The Council shall have powers to regulate its own procedure.

(7) The Council shall cause minutes of every meeting of the Council or Committee to be kept.

Committees of the Council

13.—(1) The Council may, for the purpose of performing its functions under this Act, establish such committees and delegate to any such committee such functions of the Council as the Council may consider expedient.

(2) Subject to subsection (1), the Council shall appoint the following committees—

(*a*) the Higher Education Quality Assurance and Accreditation Committee; and

(*b*) the Higher Education Finance Committee.

(3) The chairperson of each committee shall be appointed by the Council from amongst the members of the Council:

Provided that the chairperson of the Higher Education Quality Assurance and Accreditation Committee shall be a Vice-Chancellor or former Vice-Chancellor.

(4) Each committee may invite any person, not being a member of the Council, to attend a meeting of the committee and take part in the deliberations of the meeting but such person shall not be entitled to vote.

(5) The chairperson of a committee may, at any time and place, convene a meeting of the committee of which he is chairperson.

(6) The Chairperson may, at any time, direct the chairperson of any committee to convene a meeting of such committee and such chairperson shall, as soon as practicable, comply with the direction.

(7) At all meetings of a committee, the quorum shall be formed by a majority of the members.

(8) At all meetings of a committee, each member present shall have one vote on a question before the committee and, in the event of an equality of votes, the chairperson of the committee shall have, in addition to a deliberative vote, a casting vote.

(9) Every committee shall have power to regulate its own procedure.

(10) Every committee shall keep minutes of its meetings, inform the Council of its activities and conduct its proceedings in such a manner as the Council may direct.

(11) The Higher Education Quality Assurance and Accreditation Committee shall—

(*a*) promote institutional quality assurance standards in higher education;

(*b*) audit the institutional quality assurance systems in higher education;

(*c*) develop and implement an accreditation and evaluation framework for learning programmes offered by higher education institutions;

(*d*) recommend to the Council the accreditation of higher education institutions and their programmes;

(*e*) recommend to the Council on the overall structure in terms of capacity, number of institutions, enrolments in higher education institutions and other areas that the Committee considers important;

(*f*) recommend to the Council on the capacity of individual higher education institutions and other areas that are considered important;

(*g*) recommend to the Council on optimal enrolments in individual higher education institutions, their programmes and classes;

(*h*) recommend to the Council varied levels of intellectual and conceptual knowledge, skills and attitudes needed to meet the requirements of a developing country;

(*i*) recommend to the Council on the development of professionals in different disciplines through different kinds of education; and

(*j*) recommend to the Council on matters of equity and access to higher education.

(12) The Higher Education Finance Committee shall make recommendations to the Council on the following matters—

(*a*) relevant information to advise the Minister on all aspects of funding and financing in public higher education institutions;

(*b*) relevant information on policies, principles, formulae and criteria governing the allocation of public funds to public higher education institutions and to review periodically, such policies, principles, formulae and criteria;

(*c*) the basis for the Council to advise the Minister on funding for the development of physical infrastructure in public higher education institutions;

(*d*) the investment and management of funds of the Council;

(*e*) the incurring of, or the authorization of persons or bodies in the Council to incur expenditure from funds of the Council, including any income accruing to any section of, or body in the Council;

(*f*) the annual budget of the Council;

(*g*) examination of—

(i) the control of expenditure from budgetary allocations by means of financial regulations and such other conditions;

(ii) the preparation and presentation of annual accounts of the Council; and

(*h*) any other financial function as assigned by the Council from time to time.

(13) The Council may delegate any or all of its executive functions with regard to the matters specified in subsection (12), subject to the general policy, control and guidance of the Council.

Non-liability of members of the Council or of committees

14. No member of the Council or of any committee of the Council shall be liable for any act or default of his or of the Council, done in the exercise in good faith of the functions or powers of the Council.

PART III

Functions and Powers of the Council

Functions of the Council

15. The functions of the Council shall be—

(*a*) to promote and coordinate education provided by higher education institutions;

(*b*) to register and de-register higher education institutions;

(*c*) to determine a framework for funding public higher education institutions;

(*d*) to harmonize selection of students to all public universities;

(*e*) to regulate, determine and maintain standards of teaching, examinations, academic qualifications, academic facilities;

(*f*) to develop a national qualifications framework which is compatible with regional and international standards;

(*g*) to determine minimum criteria and procedures for registration and de-registration of higher education institutions;

(*h*) to accredit both public and private higher education institutions;

(*i*) to design and recommend an institutional quality assurance system for higher education;

(*j*) to recommend to the Minister institutional quality assurance standards for the establishment, standardization and accreditation of higher education institutions including standards of—

(i) teaching and learning;

(ii) infrastructure, physical plant and equipment;

(iii) the development of curricula;

(iv) libraries and learning resource centres;

(v) safety of teaching and learning facilities; and

(vi) student-transfer between programmes and higher education institutions.

(*k*) to provide guidance for terms and conditions for awarding grants and scholarships to students of public higher education institutions;

(*l*) to ensure that higher education institutions have high calibre members of staff by—

(i) prescribing standards and maintaining minimum requirements for engagement of members of staff to all levels of higher education institutions;

(ii) advising on conditions of employment;

(iii) overseeing continuous professional development for members of staff of higher education institutions; and

(iv) from time to time, prescribing, maintaining and reviewing a code of professional ethics for members of staff in higher education institutions;

(*m*) to assess, evaluate and recognize qualifications attained at a foreign higher education institution;

(*n*) to represent interests of the Malaŵian higher education regionally and internationally;

(*o*) to monitor the implementation of international agreements concerning higher education;

(*p*) to promote international cooperation and facilitate exchanges in higher education; and

(*q*) to advise the Minister on all matters of higher education.

Powers of the Council

16. For the better performance of its functions, the Council shall, subject to the provisions of this Act, have the power—

(*a*) to employ professional, technical and administrative personnel as it may consider necessary and lay down conditions of service of such employees;

(*b*) to enter into any contract or agreement;

(*c*) to purchase, take on lease or in exchange, hire or otherwise acquire any real or personal property, which it considers necessary in the furtherance of its functions;

(*d*) to manage, insure, let, sell, alienate, mortgage or otherwise deal with any property of the Council as it may consider necessary or expedient;

(*e*) to sponsor, support or organize conferences, seminars, workshops and symposia on various aspects of higher education;

(*f*) to determine the protection, standardization, homogeneity, equivalence and recognition of qualifications;

(*g*) to share with higher education institutions best practices in improving and promoting higher education;

(*h*) to require every higher education institution to provide the Council with such information as the Council may consider necessary for the performance of its functions;

(*i*) to invest or deal with any of the moneys not immediately required in securities or in a manner as it may think fit and to vary or realize such investments;

(*j*) to receive donations or gifts of money or other property from any person or body of persons for the furtherance of its objects;

(*k*) to publish, from time to time information on higher education as it considers necessary or expedient for the promotion of its functions; and

(*l*) to do all acts, matters and things as it considers necessary for the fulfillment of the functions of the Council.

PART IV

Management of the Council

Appointment of Chief Executive Officer and other members of staff

17.—(1) Subject to the provisions of this section, the Council—

(*a*) shall appoint a person to be designated as the Chief Executive Officer upon such terms and conditions as the Council shall determine;

(*b*) shall appoint Deputy Chief Executive officers; and

(*c*) may appoint such other employees as it considers necessary or desirable in the discharge of its duties and upon such terms and conditions as it may determine.

(2) The office of the Chief Executive Officer shall be held by a person who—

(*a*) is a distinguished academician and administrator in higher education; and

(*b*) has such other qualifications and experience as the Council may determine.

(3) The Chief Executive Officer shall be the secretary to the Council and all committees and shall, on instructions of the Chairperson, convene meetings of the Council or committees.

Duties of the Chief Executive Officer

18. Subject to the general or special directions of the Council, the Chief Executive Officer shall be responsible for the day to day management of the Council and administrative control of other members of staff of the Council and, in that regard shall be answerable and accountable to the Council.

PART V

Registration of Private Higher Education Institutions

Registration of private higher education institutions

19.—(1) No person other than a public higher education institution or organ of state shall provide higher education unless that person is registered or provisionally registered as a private higher education institution in terms of this Act.

(2) An application for registration of a private higher education institution shall be made to the Council by submitting to Chief Executive Officer in the prescribed form and be accompanied by the prescribed fee and such other further information and documentation in support of the application as the Council may request.

(3) The Council shall evaluate and verify the suitability of an application in terms of the minimum standards for higher education set by the Council.

Provisional and final registration of private higher education institutions

20.—(1) The Council shall register an institution as a private higher education institution if the Council is satisfied—

(*a*) that the institution is a body corporate;

(*b*) that the institution or the facilities to be provided by that institution are suitable and meet the minimum standards for higher education set by the Council;

(*c*) that the institution is financially capable of satisfying its obligations to prospective students;

(*d*) that the teaching staff to be employed by the institution is sufficiently qualified;

(*e*) that the higher education to be provided by the institution is of a quality that it will enable the institution to provide a standard of education no less than the minimum standard set by the Council;

(*f*) that the institution shall ensure that no person is discriminated against on account of race, ethnic origin, political affiliation or opinion, religion, sex, or Human Immune Deficiency Virus or

Acquired Immune Deficiency Syndrome status, gender, physical disability or other status in respect of—

(i) the admission of students;

(ii) the recruitment of staff; and

(*g*) that the establishment of a higher education institution is in the interest of higher education in Malaŵi.

(2) The Council shall issue a provisional registration certificate to the applicant until such a time as it is finally registered in terms of subsection (8).

(3) A provisional registration certificate will authorize a private higher education institution to—

(*a*) set up a governing body for the proposed institution;

(*b*) commence or continue to develop physical facilities and mobilize financial and human resources;

(*c*) commence or continue to assemble academic resources; and

(*d*) publicise the programmes of instruction expected to be offered at the institution.

(4) Students shall not be admitted while a higher education institution holds a provisional certificate.

(5) A provisional registration may be subject to any reasonable conditions as the Council may determine.

(6) A provisional registration certificate shall be valid for one year cycle from the date it is issued or as the Council may determine.

(7) Before the expiry of a provisional registration certificate, a private higher education institution shall apply to the Council for final registration by submitting to the Chief Executive Officer the application in the prescribed form accompanied by the prescribed fee and any documentation as may be requested.

(8) If the Council, after considering the application and upon carrying out an inspection of the institution, is satisfied that the provisionally registered institution has fulfilled the terms and conditions under the provisional certificate, it shall make recommendations to the Minister for approval of final registration and further that a Charter be granted to the institution concerned.

(9) If, after receiving the recommendations, the Minister considers that the establishment of the institution will further the development of higher education in Malaŵi, he may approve the final registration and grant the institution a Charter, and thereafter, he shall publish a notice in the *Gazette*, the terms of the registration and the Charter.

(10) The higher education institution concerned shall, on registration under this Act, be subject to and regulated by its Charter.

(11) The Council shall keep and maintain a register of all private higher education institutions which shall be available for inspection by members of the public during normal working hours upon payment of a prescribed fee.

Contents of Charter of private higher education institutions

21.—Every Charter of a private higher education institution shall contain the following—

(*a*) the type and name of the institution;

(*b*) the objects and functions of the institution;

(*c*) membership and governance of the institution;

(*d*) the administration of the institution;

(*e*) the finances and business plan of the institution;

(*f*) the general academic regulation of the institution;

(*g*) the appointment, removal and conditions of service of members of the teaching staff;

(*h*) the admission rights and discipline of students;

(*i*) the establishment of faculties, departments, schools, institutes and centres;

(*j*) the making of rules for the regulation of the institution; and

(*k*) any other matter which is considered by the Council to be necessary or desirable for the proper functioning of the institution.

Application for amendment of the Charter

22.—(1) A private higher education institution may, at any time, apply to the Council, in the prescribed form, for approval of an amendment to the Charter.

(2) An application in terms of subsection (1) shall be accompanied by—

(*a*) a draft of the proposed amendment;

(*b*) such information as the Council may request; and

(*c*) a prescribed fee.

(3) The Council shall consider every application and after conducting such inquiry and carrying out an investigation into the matter, it shall submit the application together with its advice on the matter to the Minister.

(4) If, after receiving an application for the amendment of the Charter, the Minister is satisfied that the amendment—

(*a*) will enable a higher education institution to carry out its functions more effectively; or

(*b*) will be in the interest of the development of higher education in Malaŵi, may, by proclamation in a statutory instrument, amend the Charter.

Revocation of a Charter

23.—(1) If, at any time, the Council is satisfied that a private higher education institution—

(*a*) has failed to carry out its objects; or

(*b*) has breached its Charter in any material respect; or

(*c*) is not carrying out its functions properly; and

(*d*) that it is in the interest of higher education in Malaŵi generally for the Charter of a higher education institution concerned to be revoked, the Council may advise the Minister that the Charter be revoked:

Provided that—

(*a*) before submitting its advice to the Minister, the Council shall afford the governing body of the higher education institution concerned an opportunity to make representation on the matter and the Council shall forward any such representations made by the governing body to the Minister together with its advice; and

(*b*) before submitting such advice, representation and recommendations to the Minister, the Council may conduct an inquiry or carry out further investigations into the matter.

(2) If, after receiving a recommendation for revocation of a Charter, the Minister is satisfied that it is in the interest of higher education in Malaŵi generally, for the Charter to be revoked, the Minister may, by Order published in the *Gazette*, revoke the Charter with effect from such date as he may specify in the Order.

(3) With effect from the date specified in the proclamation in terms of subsection (2), the institution shall be de-registered and shall cease to exist:

Provided that the revocation of the Charter shall not affect the validity of any certificate, diploma, degrees or other academic qualifications conferred or awarded by the higher education institution concerned prior to that date.

PART VI

Public Higher Education Institutions

Establishment of higher education institutions

24. The Council may advise the Minister either on his request or

its own initiative, on the establishment of a public higher education institution.

Declaration of a public higher education institution Cap. 30:01

25. The Minister may, with the advice of the Council and by notice in the *Gazette*, declare as a public higher education institution any—

(*a*) public education institution operating under the Education Act; or

(*b*) statutory body, offering degrees.

Closure, merger and splitting of public higher education institutions

26.—(1) If, at any time, the Council is satisfied that a public higher education institution has failed to discharge its functions in terms of the enactment under which it was established, and that it is in the interest of higher education in Malaŵi for the institution concerned to be merged with other institutions or be closed, the Council may recommend to the Minister any one or more of the following—

(*a*) a merger of a public higher education institution with any other higher education institution;

(*b*) closure of a public higher education institution; or

(*c*) a repeal of the enactment under which the public higher education institution was established:

Provided that, before submitting its advice to the Minister, the Council shall afford the governing body of the higher education institution concerned an opportunity to make representations on the matter.

(2) The Council shall submit to the Minister any representations it receives together with its recommendations:

Provided that, before submitting any such recommendations and representations to the Minister, the Council may conduct such further inquiry or carry out an investigation on the matter as it finds necessary.

(3) If the Minister is satisfied that it is in the interest of higher education in Malaŵi generally for a higher education institution to be merged or closed, the Minister may signify in writing his approval of the merger or closure of the higher education institution specifying the date from which a higher education institution shall merge or cease to operate:

Provided that the merger or closure of the higher education institution shall not affect the validity of any certificate, diplomas degrees or other academic qualifications conferred or awarded by the higher education institution prior to that date.

(4) If, any time the Council is satisfied that a public higher education institution will efficiently and effectively discharge its functions in

terms of the enactment under which it was established, and that it is in the interest of higher education in Malaŵi generally for the institution concerned to be split, the Council may recommend to the Minister any one or more of the following—

(*a*) the institution concerned be split into units which will make separate higher education institutions; and

(*b*) the repeal of the enactment under which the higher education institution was established:

Provided that, before making a recommendation to the Minister, the Council shall afford the governing body of the higher education institution concerned an opportunity to make representations on the matter.

(5) The Council shall submit to the Minister any recommendations and representations received on the matter from the governing body of the higher education institution concerned:

Provided that, before submitting any such recommendations or representation to the Minister, the Council shall conduct any further inquiry or carry out further investigations on the matter as it considers necessary.

(6) If the Minister is satisfied that it is in the interest of higher education in Malaŵi, generally, for the public higher education institution to be divided, the Minister may signify in writing his approval for the division:

Provided that, the division of the public higher education institution concerned shall not affect the validity of any certificates, diplomas, degrees or other academic qualifications conferred or awarded by the higher education institution concerned prior to that date.

PART VII

Standards and Accreditation

Institutional quality assurance standards and evaluation of higher education institutions

27.—(1) The Minister may, on the recommendation of the Council, prescribe the institutional quality assurance standards to govern the performance, operations and general conduct of higher education institutions.

(2) The Council shall evaluate the performance of higher education institutions every academic cycle for purposes of accreditation.

(3) After the evaluation, the Council may issue an accreditation certificate.

(4) The Council shall publish the results of the accreditation process in the *Gazette* or any other media.

(5) Where the Council has refused to grant an accreditation certificate, it shall indicate in writing the specific steps to be taken by higher education institution concerned towards the attainment of the standards referred to in subsection (1).

Basis of accreditation

28.—(1) A higher education institution shall be issued with a certificate of accreditation if it demonstrates the achievement of acceptable standards in terms of—

(*a*) physical, human, financial, teaching and learning resources;

(*b*) management and operational procedures; and

(*c*) an acceptable standard of academic life focusing on teaching, research, community service and expert service.

(2) For each programme, the accreditation process may take into account—

(*a*) the academic qualifications of all members of staff employed by a higher education institution during the period of assessment including those expected to be employed by the higher education institution;

(*b*) the total number of students enrolled in each programme of instruction offered at a higher education institution and the standards attained by those that have graduated during the period of assessment;

(*c*) information and communication technology infrastructure and the provision for training;

(*d*) the size and quality of the library and other teaching and learning resources;

(*e*) the financial resources available for the exclusive use by a higher education institution, certified by its auditors;

(*f*) the physical facilities including land made available for the exclusive use by a higher education institution;

(*g*) student-staff ratio of a higher education institution; and

(*h*) the currency, relevance and frequency of review of the curriculum for each programme for comparability nationally and internationally.

Effect of accreditation

29. The qualifications awarded in respect of programmes of instruction by an accredited higher education institution shall be recognized as comparable and of equivalent merit to similar qualifications awarded

in respect of programmes offered by other accredited higher education institutions in Malaŵi and internationally.

Annual reports by higher education institutions

30.—(1) Every higher education institution shall prepare and submit to the Council—

(*a*) an annual report of its activities within six months after the end of each academic year in accordance with the format prescribed by the Council; and

(*b*) a detailed annual assessment report including achievements, as the Council may determine, of the steps it has taken towards the achievement of the aims and objectives for which that higher education institution was established.

(2) The Council shall analyse all the reports submitted pursuant to subsection (1) and may make such comments or give such advice thereon for action by a higher education institution concerned.

(3) If a higher education institution has failed to submit its report within the stipulated period, the Council may serve on the higher education institution an order—

(*a*) requiring the higher education institution to submit its report; and

(*b*) stipulating the period within which the report should be submitted.

(4) The notice of the order shall be published by the Council in such manner as it considers appropriate to draw the attention of persons affected or likely to be affected by such order.

(6) An order served in terms of subsection (3) may specify a penalty for each day that a higher education institution is in default.

(7) The Council may institute civil proceedings for specific performance or the recovery of any penalty imposed in terms of subsection (4).

PART VIII

Financial Provisions

Funds, accounts and audit

31.—(1) The funds of the Council shall consist of—

(*a*) such sums as may be appropriated by Parliament for the purpose of the Council;

(*b*) any fees payable under this Act;

(*c*) such other moneys and assets as may vested in or accrue to the Council in the course of its functions;

(*d*) any civil penalties collected under this Act;

(*e*) such moneys or other assets as may accrue to or vest in, the Council by way of grants, bequests, donation or gifts from any other person; and

(*f*) other lawful sources of funding.

(2) The Council shall keep proper accounts and other records relating thereto and shall, at all times, comply with the provisions of the Public Audit Act, the Public Finance Management Act and the Public Procurement Act.

Cap. 37:01
Cap. 37:02
Cap. 37:03

(3) The accounts of the Council shall be examined and audited annually by auditors appointed by the Council and approved by the Minister.

Investment of surplus sums of money

32. The Council may invest any sums of money which are not immediately required for its objectives in such manner as the Council may consider fit.

Financial year of the Council

33. The financial year of the Council shall be the period commencing on the date of commencement of this Act and ending on 30th June of the following year and thereafter, it shall be a period of twelve months ending on 30th June every year.

PART IX
Miscellaneous Provisions

Offences

34.—(1) Any person who, without the authority of the Council—

(*a*) offers or pretends to offer any higher education programme or part thereof;

(*b*) purports to confer a qualification granted by a higher education institution, or in collaboration with a higher education institution; or

(*c*) purports to perform an act on behalf of a higher education institution,

commits an offence and on conviction, shall be liable to a fine of K2,000,000 and to imprisonment for fourteen years.

(2) Any person who contravenes section 19 commits an offence and on conviction, shall be liable—

(*a*) in case of an individual, to a fine of K2,000,000 and imprisonment for fourteen years; and

(*b*) in case of a body corporate, an organization or an association, to a fine of K10,000,000.

Regulations

35.—(1) The Minister, in consultation with the Council, may make regulations for the better carrying into effect the provisions of this Act.

(2) Without prejudice to the generality of subsection (1), the regulations may provide for—

(*a*) anything required to be prescribed under, or for the purposes of, this Act;

(*b*) fees payable in respect of any service provided by the Council;

(*c*) any forms required for the purposes of this Act;

(*d*) the manner in which an inquiry may be conducted on a higher education institution;

(*e*) minimum standards of instruction for the grant of any qualification;

(*f*) registration of higher education institution and maintenance of the register;

(*g*) accreditation of programmes in a higher education institution; and

(*h*) conditions governing use and protection of qualifications for higher education.

Transitional provisions

36.—(1) Any public or private higher education institution in existence at the commencement of this Act shall be deemed to be duly registered with the Council.

(2) A higher education institution shall be deemed to be in existence if it—

(*a*) has been established by an Act of Parliament;

(*b*) holds a Charter granted by the Minister; or

(*c*) is otherwise registered with the Ministry responsible for higher education.

(3) All higher education institutions deemed to be registered with the Council at the commencement of this Act, shall, not later than six months apply to the Council for accreditation.

MALAŴI UNIVERSITY OF SCIENCE AND TECHNOLOGY

CHAPTER 30:13

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MALAŴI UNIVERSITY OF SCIENCE AND TECHNOLOGY

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CHAPTER 30:13
MALAŴI UNIVERSITY OF SCIENCE AND TECHNOLOGY

31 of 2012
G.N. 9/2013

An Act to make provision for the establishment of the Malaŵi University of Science and Technology; for the conduct and management of the University; and for matters incidental to and connected therewith

[1st May, 2013]

PART I
PRELIMINARY

Short title

1. This Act may be cited as the Malaŵi University of Science and Technology Act.

Interpretation

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

"academic staff" means all persons for the time being holding appointments, whether on full time, part time or adjunct, under contract with the Council, as professors, associate professors, senior lecturers, lecturers, assistant lecturers, staff associates, instructors or demonstrators of the University, including those whose conditions of service contain the obligation to undertake research, and the senior professional staff of the library, or any other post declared by the Senate by category or title to be an academic post;

"Administrative staff" means all persons for the time being holding appointments, whether on full time or part time basis, under contract with the Council, in the administration of the affairs of the University;

"Centre" means a Centre within the University established under section 23;

"Chairperson" means the Chairperson of the Council appointed pursuant to section 8;

"Chancellor" means the Chancellor of the University appointed pursuant to section 13;

"College, School, Faculty or Division" means a College, School, Faculty or Division respectively within the University, established under section 23;

"Committee" includes a sub-committee;

"Council" means the Council of the University established under section 7;

"Dean" means the Executive Dean of a Faculty, Dean of students, or of postgraduate studies appointed pursuant to section 25;

"Deputy Vice-Chancellor" means the Deputy Vice-Chancellor appointed pursuant to section 15;

"Director of Finance" means the Director of Finance appointed pursuant to section 17;

"Financial year" means the period commencing on the date of commencement of this Act and ending on the 30th of June next following the commencement date and thereafter the period of twelve months ending on 30th June, in each year;

"Institute" means an Institute within the University established under section 23;

"Librarian" means the Librarian of the University appointed pursuant to section 18;

"Organization" means any company, association or body of persons, corporate or unincorporated, but does not include any association or body established or incorporated under this Act;

"property of the University" means any property, intellectual, real or personal, of every description, vested in or held by the Council under any right of ownership or possession; and any property held by the Council in trust for the furtherance of any of the objects of the University;

"Registrar" means the Registrar of the University appointed pursuant to section 16;

"Senate" means the Senate of the University established under section 19;

"Senate Regulations" means Senate Regulations made pursuant to section 37;

"Statutes" mean the Statutes made pursuant to section 35;

"University" means the Malaŵi University of Science and Technology established under section 3;

"Vice-Chancellor" means the Vice-Chancellor of the University appointed pursuant to section 14.

PART II
Establishment of the University

Establishment of the Malaŵi University of Science and Technology

3. There is hereby established a University to be known as the Malaŵi University of Science and Technology.

Membership of the University

4.—(1) The University shall consist of the following members—

(*a*) the Chancellor;

(*b*) the Vice-Chancellor;

(*c*) Deputy Vice-Chancellors;

(*d*) the Registrar;

(*e*) the Director of Finance;

(*f*) the Librarian;

(*g*) members of the Council;

(*h*) members of the Senate;

(*i*) all graduates of the University;

(*j*) all holders of Honorary Degrees from the University;

(*k*) all Deans of Faculty of the University;

(*l*) all Directors of the Centre and the Institute;

(*m*) all other members of the academic, non-academic and administrative staff of the University;

(*n*) all persons for the time being registered as students of the University; and

(*o*) such other persons as the Council may by name or office declare to be members of the University.

(2) Any person who is a member of the University solely by virtue of possessing any qualification from the University shall continue to be a member so long as he possesses that qualification.

(3) The Registrar shall keep and maintain a register of members of the University, which shall be available for scrutiny by the general public at all reasonable times.

Aims and objectives of the University

5. The aims and objectives of the University include—

(*a*) to provide quality holistic education in fisheries science, ecosystem management, recreation and tourism, water transport and green belt initiatives;

(*b*) to encourage the advancement of knowledge, dissemination and commercialization of research products;

(*c*) to promote industrial growth through research and dissemination of knowledge;

(*d*) to establish and support marine and fisheries innovation centres of excellence for industrial production and growth;

(*e*) to develop partnerships with industry for the generation, transfer, adoption and application of technologies;

(*f*) to develop into an institution of excellence in teaching, learning, training, research, consultancy and dissemination of knowledge in fisheries science, ecosystem management, recreation and tourism, water transport and green belt initiatives;

(*g*) to encourage such university education, research and training so as to respond to the needs of Malaŵi, Africa and the whole world;

(*h*) to promote entrepreneurship among its students; and

(*i*) to provide specialist training in such subjects as may be deemed desirable for such purposes by the Council.

Powers of the University

6. Subject to this Act and the Statutes, the University shall award and confer Degrees, Diplomas, Certificates and other academic distinctions, including Honorary Degrees and distinctions.

PART III
THE COUNCIL

Establishment of the Council

7. There is hereby established the Council of the University, which shall be a body corporate with perpetual succession and a common seal and shall be capable under that name, of—

(*a*) suing and being sued;

(*b*) acquiring by purchase, gift, devise, bequest, operation of law, or otherwise, real or personal property wherever situated, or any right or interest therein, and holding the same in any capacity including that of trustee;

(*c*) granting, selling, mortgaging, hypothecating, alienating, assigning, leasing or letting real or personal property; and

(*d*) subject to this Act, doing and performing all such acts and things as a body corporate may by law do and perform, or such as are incidental or appertain to a body corporate.

Composition of the Council

8.—(1) The Council shall consist of—

(*a*) the Chairperson, who shall be appointed by the President;

(*b*) the Vice-Chancellor;

(*c*) Deputy Vice-Chancellors;

(*d*) four independent members from the private sector appointed by the Chancellor, two of whom shall be women;

(*e*) a member of the Senate appointed from its membership;

(*f*) one female member and one male member elected by the Malaŵi University of Science and Technology Students Union; and

(*g*) the following *ex officio* members—

(i) the Secretary for Education, Science and Technology, or his nominee;

(ii) the Chief Executive Officer of the National Council for Higher Education, or his nominee;

(iii) the Secretary for Transport, or his nominee; and

(iv) the Secretary to the Treasury, or his nominee.

(2) The *ex officio* members of the Council shall remain members for as long as they hold the offices, or the nominations, by virtue of which they became members.

(3) The Vice-Chancellor and the Deputy Vice-Chancellors shall serve as members of the Council as long as they hold their respective offices.

(4) Every other member of the Council shall serve for a term of three years from the time of his appointment and shall be eligible for re-appointment for one further period of three years.

(5) Members of the Council shall appoint from amongst their number, other than *ex officio* members, the Vice-Chairperson, who shall perform all the functions and duties of the Chairperson in the event that the Chairperson is unable to perform his duties for any other reason.

(6) The Registrar shall act as Secretary to the Council.

(7) The Chancellor shall have powers to dissolve the Council.

Functions and powers of the Council

9.—(1) The Council shall be the governing body of the University and shall be responsible for the management and administration of the University, its property and revenues, and shall exercise general control and supervision over all the affairs of the University.

(2) Without prejudice to the generality of subsection (1), the functions and powers of the Council shall include—

(*a*) to govern, maintain, administer, dispose of and, save as hereinafter provided, to invest all the property, money, assets, and rights of the University;

(*b*) to manage the business and all other affairs of the University, and to enter into engagements and to accept obligations and liabilities without any restriction whatsoever:

Provided that, before determining any question relating to the matters contained in paragraphs (*a*) and (*b*) which affects the academic policy of the University, the Council shall refer the matter to the Senate if it has not previously been considered by the Senate, and shall take into consideration any recommendation or report thereon by the Senate;

(*c*) to determine, demand and receive fees, subscriptions, deposits, fines and other payments, and to effect payment of any monetary obligations;

(*d*) to take such steps as it determines fit for the purpose of procuring and receiving contributions to the funds of the University to further the objects of the University, and, for this purpose, to raise money in such a manner as it determines fit;

(*e*) to borrow money on behalf of the University and for that purpose, if it considers appropriate, to mortgage or charge all or any part of the real property of the University, unless the conditions

of any will, deed or gift or other similar instrument are thereby contravened, and to give such other security, whether upon real or personal property or otherwise, as it considers fit;

(*f*) to invest any moneys of the University, including any unapplied income, in such stocks, debentures, funds, shares, or other securities as the Council may, from time to time, determine, whether within or outside Malaŵi, or in the purchase of real or personal property, with the like power of varying such investments from time to time by sale or re-investment or otherwise;

(*g*) to sell, buy, exchange, lease, rent, grant or take on lease or rent, real or personal property or portions thereof on behalf of the University, and to acquire any easement over any property held by other persons or to consent to any easement whether public or private over any property of the University;

(*h*) to undertake and execute any trust, the undertaking whereof the Council may find desirable for the attainment or fulfillment of any of the objects of the University;

(*i*) to hold, invest, manage or distribute, in furtherance of and in accordance with any trust direction, discretion, obligation or permission, any property income, held by it as trustee, subject to such trust;

(*j*) to enter into, vary, carry out or cancel contracts on behalf of the University;

(*k*) to compound or compromise any action, suit or proceedings, or any debt or claim, and to refer any matter to arbitration;

(*l*) to operate bank accounts, and to cause proper books of accounts to be kept and audited for all sums of money received and expended by the University and for the assets and liabilities of the University so that the books give a true and fair view of the state of the affairs of the University, and explain its transactions;

(*m*) after consultation with the Senate, to establish, institute or discontinue Faculties, Centres, Institutes or such other academic departments or sections of the University, in accordance with this Act or the Statutes;

(*n*) after consultation with the Senate, to determine terms of service and general conditions relating to the employment of academic staff, and to establish, disestablish or otherwise make or discontinue financial provisions for appointments to such posts;

(*o*) after consideration of any recommendation or report thereon from the Vice-Chancellor, to determine the terms of service and general conditions relating to the employment of administrative, clerical, technical and support staff, and to establish, disestablish, or otherwise make or discontinue financial provisions for appointments to such posts;

(*p*) to determine the salary scales and general rates of payment for all categories of staff appointed by the University and for other persons commissioned to give services to the University, and to appoint and employ such persons, pay their salaries, wages or fees, and, subject to the provisions of the Statutes, terminate their appointments;

(*q*) to make provisions, as it may find fit, for schemes of insurance, superannuation, pensions or retirement benefits for employees of the University, their spouses and dependents, to subscribe to benevolent and such other funds for the benefit of the employees, and to make such payments to the employees as it thinks fit;

(*r*) to take such steps as it determines appropriate for furthering the objects and interests of the University by making provision for teaching and research, printing and publication of research and other works which may be issued by the University, and for the welfare of the staff and students of the University;

(*s*) to call for reports from the Vice-Chancellor or the Senate, and to review the work of the University in the light of the reports;

(*t*) to make provision for payments to external examiners and other persons to whom it finds fit to make payments to further the objects of the University, and for scholarships, prizes, grants and other payments to students of the University;

(*u*) after consideration of any recommendation or report from the Vice-Chancellor and Senate, to determine fees to be charged to students;

(*v*) to determine to whom the award of Honorary Degrees of the University shall be made in accordance with the procedure prescribed therefor by the Statutes;

(*w*) to decide, after consultation with the Vice-Chancellor, whether or not any donation, gift, grant, devise, bequest or other bounty to the University should be accepted;

(*x*) to enter into agreements and other relationships with institutions or bodies, whether academic or otherwise, for such purposes as the Council may determine, including the embodiment within the University of any other institution or body and the taking-over and assumption of the property, rights, privileges and liabilities of such other institution or body;

(*y*) to select persons for entry as students of the University on the recommendation of a selection committee established by the Statutes; and

(*z*) to establish such sub-committees as it may deem necessary.

(3) The Council shall consider any recommendation made by the Senate for the amendment or alteration of Statutes relating to the academic administration of the University and for taking any other action in respect of academic matters, and shall either accept, refer back or reject any such recommendation.

(4) The Council shall exercise fairness and where necessary employ affirmative action in order to ensure that nobody is discriminated against on the basis of race, ethnic origin, political affiliation or opinion, religion, sex, gender, physical disability, HIV and AIDS status, or other status, in respect of—

(*a*) the appointment of any person to the academic or other categories of staff of the University;

(*b*) the registration of any person as a student of the University; or

(*c*) the right of any person to hold any advantage or privilege of the University.

(5) The Council shall ensure that the fairness it exercises shall also be practiced by the Senate, any statutory committee, or officer of the University.

(6) The Chairperson shall keep the Chancellor informed on matters concerning the general policy and conduct of the University.

Vacancies on the Council

10.—(1) A vacancy on the Council shall arise—

(*a*) on the expiry of the term of office of a member;

(*b*) on the resignation of a member after one month's written notice to the Chairperson;

(*c*) on the death of a member;

(*d*) upon a member leaving the country for more than one year;

(*e*) upon a member failing to attend three consecutive meetings of the Council, of which he has had notice, without valid excuse or reason;

(*f*) upon a member becoming mentally or physically unfit, where upon the Council is of the opinion that he is no longer, by reason of the unfitness, capable of performing his duties as a member of the Council;

(*g*) upon a member being declared bankrupt; or

(*h*) upon the conviction of a member for an offence under any written law and being sentenced to a term of imprisonment otherwise than as an alternative to, or in default of, the payment of a fine.

(2) A vacancy on the membership of the Council shall be filled within three months of the occurrence of the vacancy, by the appointment of a new member in accordance with the relevant provisions of section 8 under which the former member was appointed.

Meetings and procedures of the Council

11.—(1) The Council shall meet at such times and places as may be necessary or expedient for the transaction of business, and the meetings shall be held at such times and places and on such dates as may be provided by the Statutes, or otherwise as the Council may determine.

(2) The Chairperson may at any time call for a meeting of the Council and shall do so on the request in writing made to him in that behalf by any four members.

(3) Two thirds of the members of the Council shall constitute a *quorum* thereof.

(4) If the Chairperson and Vice Chairperson are for any reason absent from any meeting of the Council, the members present may elect one of their numbers to preside at the meeting provided they form a *quorum*.

(5) Any matter for decision by the Council shall be determined by a majority vote of members present and voting, and where there is an equality of votes the Chairperson, or in his absence, the Vice Chairperson or other member presiding, shall have a casting vote in addition to his deliberative vote.

(6) Subject to this Act and Statutes, the Council may determine its own procedure.

Common Seal of the Council

12.—(1) The common seal of the Council shall be kept in such custody as the Council directs, and shall not be used except upon the order of the Council.

(2) All courts, judges, and other persons acting in a judicial capacity shall take judicial notice of the common seal of the Council affixed to any document and shall presume that it was duly affixed.

(3) The common seal of the Council shall be authenticated by the signatures of two members of the Council, or, alternatively, by the signatures of one such member of the Council and of the Registrar, or of some other person nominated in that behalf by the Council.

PART IV
Officers of the University

Chancellor

13.—(1) There shall be a Chancellor of the University who shall be the head of the University.

(2) The President shall, unless he declines the appointment, be the Chancellor of the University.

(3) Where the President declines the appointment under subsection (1), the Chancellor shall be appointed by the Council in consultation with the Minister.

(4) The Chairperson and the Vice-Chancellor shall keep the Chancellor fully informed on matters concerning the general conduct of the affairs of the University and shall furnish the Chancellor with such information as he may request on any particular matter relating to the affairs of the University.

(5) The Office of a Chancellor shall become vacant—

(*a*) upon his death;

(*b*) upon submission of his resignation, in writing, to the Council;

(*c*) if he becomes mentally or physically incapable of performing his duties as Chancellor; or

(*d*) if he is declared bankrupt.

Vice-Chancellor

14.—(1) There shall be a Vice-Chancellor of the University, who shall be the principal academic and administrative officer of the University.

(2) The Vice-Chancellor shall be appointed by the Council after considering recommendations in writing on the suitability of various candidates submitted to the Council by a committee of seven members appointed for that purpose and consisting of—

(*a*) the Chairperson, who shall be Chairperson of the committee;

(*b*) three members of the Council, not being members of the Senate, appointed by the Council; and

(*c*) three members of the Senate appointed by the Senate.

(3) The appointment of the Vice-Chancellor shall be subject to the approval of the Chancellor.

(4) The Vice-Chancellor shall hold office for a period of five years, on such terms and conditions as may, from time to time, be prescribed by this Act and the Statutes.

(5) The Vice-Chancellor shall be eligible for re-appointment for one further term of office.

(6) The Vice-Chancellor shall—

(*a*) be responsible for the overall management of the University, including the development and implementation of strategic plans, policies, teaching and research programmes, and budgets;

(*b*) ensure that there is student representation on committees dealing with matters related to students; and

(*c*) have such powers and perform such functions as may from time to time, be prescribed by this Act and the Statutes.

Deputy Vice-Chancellors

15.—(1) There shall be Deputy Vice-Chancellors who shall assist the Vice-Chancellor in the performance of his functions.

(2) The Deputy Vice-Chancellors shall have such functions and powers as are assigned to those offices by this Act, the Statutes, the Council, or as delegated by the Vice-Chancellor from time to time.

(3) The provisions of section 14 (2), (3) and (4) shall apply, *mutatis mutandis*, to the appointment and term of office of the Deputy Vice-Chancellors.

Registrar

16.—(1) There shall be a Registrar of the University appointed by the Council, who shall be the head of administration of the University.

(2) The Registrar shall exercise such powers and perform such duties in relation to the administration of the University as are assigned to him by this Act, the Statutes, the Council, or as are delegated to him by the Deputy Vice-Chancellor responsible for Administration and Finance.

(3) The Registrar shall be under the immediate supervision and control of the Deputy Vice-Chancellor responsible for Administration and Finance.

(4) The terms and conditions of employment of the Registrar shall, subject to this Act and the Statutes, be determined, from time to time, by the Council.

Director of Finance

17.—(1) There shall be a Director of Finance for the University appointed by the Council, who shall be in charge of the finances and the investments of the University.

(2) The Director of Finance shall exercise such powers and perform such duties as are assigned to him by this Act, the Statutes, the Council or as delegated to him by the Deputy Vice-Chancellor responsible for Administration and Finance.

(3) The Director of Finance shall be under the immediate supervision and control of the Deputy Vice-Chancellor responsible for Administration and Finance.

(4) The terms and conditions of employment of the Director of Finance shall, subject to this Act and the Statutes, be determined, from time to time, by the Council.

Librarian

18.—(1) There shall be a Librarian of the University appointed by the Council, who shall be the officer in-charge of the University Library, and information and communications technology.

(2) The Librarian shall exercise such powers and perform such duties as are assigned to him by this Act, the Statutes, the Council, or as delegated to him by the Vice-Chancellor.

(3) The Librarian shall be under the immediate supervision and control of the Deputy Vice-Chancellor responsible for Academic matters.

(4) The terms and conditions of employment of the Librarian shall, subject to this Act and the Statutes, be determined, from time to time, by the Council.

PART V
The Senate

The Senate

19.—(1) There is hereby established a Senate of the University which shall consist of the following members—

(*a*) the Vice-Chancellor, who shall be chairperson;

(*b*) Deputy Vice-Chancellors;

(*c*) Deans of Faculty, Students and Postgraduate Studies;

(*d*) Heads of Colleges, Schools, Divisions and Institutes of the University as prescribed by the Statutes;

(*e*) one member from each Faculty, elected in accordance with the relevant Statutes, from and by the full time academic staff holding posts allocated to the Faculty;

(*f*) one female member and one male member elected by the Malaŵi University of Science and Technology Students Union;

(*g*) the Librarian; and

(*h*) such other members, not exceeding five, two of whom shall be full Professors, as may be co-opted, from time to time, by the Senate for periods not exceeding two years and on such conditions as the Senate may determine.

(2) Every elected member of the Senate shall hold office for a term of two years and shall be eligible for re-election for one further term.

(3) An elected member shall cease to be an elected member of the Senate and his membership thereof shall become vacant—

(*a*) if he becomes an *ex officio* member of the Senate;

(*b*) if the post he holds on the academic staff is allocated to another Faculty; or

(*c*) upon his resignation from the full-time academic staff or from membership of the Senate.

(4) The Registrar shall act as Secretary to the Senate.

Functions and powers of the Senate

20. The Senate shall perform such functions and exercise such powers as prescribed by this Act or the Statutes and, without prejudice to the generality of the foregoing, such functions and powers shall include—

(*a*) to make recommendations to the Council on matters affecting the academic policy of the University;

(*b*) to review the academic work of the University and report thereon to the Council;

(*c*) to make recommendations to the Council on admissions of students into the University; and

(*d*) to make recommendations to the Council on academic programmes of the University.

Meetings of the Senate

21. The Senate shall be convened in accordance with the relevant provisions of the Statutes.

Invited persons

22.—(1) The Senate may invite any person to attend any particular meeting or series of meetings of the Senate for the purpose of assisting or advising the Senate in respect of any matter under consideration by the Senate.

(2) Any person invited pursuant to subsection (1) shall take part in the deliberations of the Senate at the meeting which he attends but shall not be entitled to vote.

PART VI
Colleges, Schools, Faculties, Divisions, Centres and Institutes

Colleges, Schools, Faculties, Divisions, Centres and Institutes

23.—(1) There shall be within the University such Colleges, Schools, Faculties, Divisions, Centres and Institutes as the Council may, on the recommendation of the Senate, establish.

(2) A College, School, Faculty, Division, Centre or Institute of the University may, where appropriate, deal directly with the University Senate on academic matters.

Directors

24.—(1) There shall be a Director of each School, College, Centre or Institute who shall—

(*a*) be the principal officer of that School, College, Centre or Institute;

(*b*) be under the general direction and control of the Board of such School, College, Centre or Institute; and

(*c*) perform such other functions and exercise such other duties as may, from time to time, be determined by the Senate and prescribed by the Statutes.

(2) A Director shall—

(*a*) be appointed by the Council;

(*b*) hold office for a term of three years; and

(*c*) be eligible for re-appointment for one further term.

(3) A Director may, by notice in writing to the Council, resign his post as Director, but the resignation shall not, unless expressly so stated, entail his resignation from any other academic post which he holds in the University.

(4) There shall be a Deputy Director of each School, College, Centre or Institute who shall assist the Director in the performance of his functions.

(5) The provisions of subsections (2) and (3) shall apply, *mutatis mutandis*, to the office of the Deputy Director.

Dean

25.—(1) There shall be an Executive Dean of each Faculty who shall be the Chairperson of that Faculty and shall, under the general direction and control of the Deputy Vice-Chancellor, perform such other functions and exercise such other duties as may, from time to time, be determined by the Senate and prescribed by Statutes.

(2) A Dean shall—

(*a*) be elected by faculty members of staff in accordance with the relevant Statutes;

(*b*) hold office for a term of two years; and

(*c*) be eligible for re-appointment for one further term.

(3) A Dean may, by giving a three months' written notice to the Council, resign his post as Dean, but the resignation shall not, unless expressly so stated, entail his resignation from any other academic post which he holds in the University.

(4) There shall be a Deputy Dean who shall assist the Dean in the performance of his functions.

(5) The provisions of subsections (2) and (3) shall apply, *mutatis mutandis*, to the office of the Deputy Dean.

Head of Department

26.—(1) There shall be a Head of Department of each Department who shall be the Chairperson of that Department and shall, under the general direction of the Dean of Faculty, perform such other functions and exercise such other duties as may, from time to time, be determined by the Senate and prescribed by Statutes.

(2) A Head of Department shall—

(*a*) be elected by departmental members of staff in accordance with the relevant Statutes;

(*b*) hold office for a term of two years; and

(*c*) be eligible for re-appointment for one further term.

(3) A Head of Department may, by giving a one month written notice to the Executive Dean, resign his post as Head of Department, but the resignation shall not, unless expressly so stated, entail his resignation from any other academic post which he holds in the University.

Composition of Faculties and Departments

27.—(1) Each Faculty shall consist of—

(*a*) the Dean of that Faculty who shall be the Chairperson;

(*b*) all members of the full-time and part-time academic staff holding posts allocated to that Faculty; and

(*c*) such other members of the full-time or part-time staff of the University as may be co-opted by that Faculty as associate members for such period and on such terms as that Faculty may, in each case, determine.

(2) Associate members shall have the right to attend any meeting of the Faculty by which they have been co-opted and take part in its deliberations, but shall have no right to vote at that meeting.

(3) Each Department shall consist of—

(*a*) the Head of Department of that Department who shall be the Chairperson;

(*b*) all members of the full-time and part-time academic staff holding posts allocated to that Department; and

(*c*) such other members of the full-time or part-time staff of the University as may be co-opted by that Department as associate members for a specified period.

Faculty Board

28.—(1) There shall be a Faculty Board for each Faculty of the University.

(2) Each Faculty Board shall consist of—

(*a*) the Dean of the Faculty, who shall be the Chairperson;

(*b*) the Heads of Department in the Faculty;

(*c*) two students in the Faculty elected by the students taking courses in the Faculty;

(*d*) two members from the relevant industries and professions related to the courses offered in the Faculty; and

(*e*) two co-opted members from any other Faculty of the University.

(3) The Faculty Board shall be responsible for the planning, management and review of the programs and activities of the Faculty, including relations with the University, the community, the industry and the general public.

(4) The Faculty Board may, from time to time, establish Industry Advisory Committees to assist the Board in the development of relevant programmes.

Composition of Centres and Institutes

29. Each Centre and Institute shall consist of such members as the Senate may, with the approval of the Council, prescribe by Statute.

PART VII
Financial Provisions

Funds and property of the University

30.—(1) The funds and property of the University shall consist of—

(*a*) such sums as may, from time to time, be payable to the University from moneys appropriated thereof by Parliament;

(*b*) such sums of money or other property, real or personal, as may be acquired, purchased or received by, or transferred to, the University, whether by way of gift, devise, bequest, purchase or otherwise;

(*c*) such sums of money or other property, real or personal, as may accrue to the University in the exercise of its powers or the performance of its functions under this Act;

(*d*) such sums of money or other property, real or personal, as may accrue to, or received by, the University, by way of fees, grants, subsidies, contributions, donations, subscriptions, rents, interest or royalties from the Government or any person;

(*e*) such sums of money or other property, real or personal, as may be donated to the University by any foreign Government, international agency or other body or person situate or resident outside Malaŵi; and

(*f*) such sums of money as may accrue to the University from any trust established by the University.

(2) Where, under the terms of any written instrument, any right, title or interest in real or personal property is expressed to be disposed, granted or conveyed to the University, the said instrument shall, subject to law, have effect as a disposition, grant or conveyance of such property to the Council and shall vest such property in the Council to the extent of the right, title or interest therein expressed to be so disposed, granted or conveyed.

(3) The property of the University shall be payable to, vested in, held, managed and controlled by the Council.

Compliance with Acts Cap. 37:02 Cap. 37:01 Cap. 37:03

31. The Council shall at all times comply with the provisions of the Public Finance Management Act, Public Audit Act, Public Procurement Act and any other applicable laws.

Audit of Accounts

32.—(1) The accounts of the University shall be audited at the end of each financial year by an auditor or auditors appointed by the Council in accordance with the Statutes.

(2) The Council shall pay, in respect of any audit held under this Part, such fees, costs and expenses as may be appropriate.

(3) The auditor may, by writing under his hand, require the production of all books, deeds, contracts, vouchers, receipts and other documents relating to the accounts or investments of the University which he may consider necessary for the purpose of the audit, and he may summon in writing all persons having knowledge of the affairs of the University, as he may find appropriate, to appear before him personally at the offices of the Council, at a time to be fixed in the summons, for examination in connection with any documents or matters relating to the audit.

(4) Any person who—

(*a*) without just cause, fails or refuses to produce any document, the production of which has been duly required by the auditor; or

(*b*) having been summoned for examination in connection with any documents relating to an audit—

(i) without just cause, neglects or refuses to comply with the said requirement or summons;

(ii) without just cause, refuses to be examined having appeared before the auditor; or

(iii) without just cause, refuses to answer questions pertaining to the audit as are put to him by the auditor,

commits an offence and shall, upon conviction, be liable to a fine of K50,000 for every such refusal or neglect, and in default of payment of

the fine, such person shall be liable to a term of imprisonment for six months:

Provided that any conviction under this section shall not operate or be taken to exempt the person convicted from the liability to do or perform the act, matter or thing required of him.

(5) On completion of the audit of the accounts of the University, the auditor shall report thereon in writing to the Council about the audit generally and on such specific matters in relation thereto as the Council may direct.

(6) The Council shall consider the report of the auditor within three months after the date of the receipt thereof.

Accounts and funds

33.—(1) All the moneys of the University shall be held in the name of the Council and shall be paid into one of the following accounts—

(*a*) the Development Endowment Fund;

(*b*) the special account;

(*c*) the capital account;

(*d*) the revenue account; or

(*e*) such other account as the Council may establish in respect of any trust the Council may establish in the exercise of its powers under this Act.

(2) There shall be paid into the Development Endowment Fund all moneys that are received by the Council and declared specifically to be payable into the Fund.

(3) The Council shall pay into the revenue account all interest received from the investment of the moneys of the Development Endowment Fund.

(4) There shall be paid into the special account all moneys that are donated to and received by the Council for special purposes and which are not payable into the Development Endowment Fund or any other account.

(5) The capital moneys, and the interest therefrom, of the special account, shall be used and applied for the special purposes for which the moneys were donated and in accordance with the conditions of the donation:

Provided that the Council shall not be obliged to accept a donation for a particular purpose unless it approves of the terms and conditions attaching to the donation.

(6) There shall be paid into the capital account all the moneys that are received by the Council for the purpose of capital expenditure for the construction and improvement of the University.

(7) The capital moneys, and the interest therefrom, of the capital Account, shall be used and applied by the Council on capital expenditure for the construction and improvement of the University.

(8) There shall be paid into the revenue account—

(*a*) the interest received from the investment of the moneys in the Development Endowment Fund;

(*b*) all fees, charges, dues and other amounts payable by, or in respect of students;

(*c*) all revenue and grants made by the Government of Malaŵi or any other Government, or any person, organization or trust of the University, to the Council for use by the University;

(*d*) all sums transferred under this Act from Development Endowment Fund or any other account to the revenue account; and

(*e*) all other sums received by the Council and not payable into the Development Endowment Fund or any other account.

(9) The moneys standing to the credit of the revenue account shall be used and applied by the Council for the management and working of the University in such manner and for such purposes as, in the opinion of the Council, are best suited to promote the interests of the University.

Borrowings Cap 37:02

34. Subject to the provisions of this Act and of the Public Finance Management Act, the Council may borrow, either by way of overdraft from a bank or otherwise, such sums as it may, from time to time, require for the carrying out of its functions and powers.

PART VIII
Miscellaneous Provisions

The Statutes

35.—(1) Subject to this Act, the University shall be governed and administered in accordance with the provisions of Statutes made by the Minister with the advice of the Council.

(2) The Statutes shall make provision for the better carrying out of the purposes, and the efficient administration of the University and of this Act.

(3) Without prejudice to the generality of the foregoing, the Statutes may make provision for—

(*a*) any matter which is required by this Act to be prescribed by the Statutes;

(*b*) the creation of permanent committees of the Council, or of the Senate, as the case may be, the membership of such committees, and the powers, functions or duties to be delegated thereto;

(*c*) the functions, duties and terms of office of any officer of the University or member of the academic or administrative staff, to the extent that such functions or duties or terms of office are not prescribed by this Act;

(*d*) the creation of new offices and posts within the University, the functions and duties attaching to such offices and posts, the duration thereof, and the manner of appointment thereto; and

(*e*) such other matters, including matters of procedure and discipline, as may be found to be expedient or proper by the Minister for regulation by Statute.

(4) The Council may, by special resolution, adopt the Statutes.

(5) Upon the adoption of the Statutes by the Council under subsection (4), the Vice-Chancellor shall, as soon as it is practicable thereafter, submit to the Minister for his approval, a certified copy of the proposal as adopted by the Council.

(6) If the Minister does not approve the proposal, he shall notify the Council, in writing, giving reasons for his non-approval.

(7) If the Minister approves the proposal, he may, by order published in the *Gazette*, make the Statutes in accordance with the terms of the proposal.

(8) For the purpose of this section, the expression "special resolution" means a resolution—

(*a*) notice of which has been given to each member of the Council, not less than thirty days before the date of the meeting of the Council at which it is intended to be moved;

(*b*) which is moved at a meeting of the Council with not less than one-half of the total membership of the Council being present at the time such resolution is moved and voted upon; and

(*c*) which is passed by a majority of not less than two-thirds of the members of the Council present at the meeting.

Amendments to the Statutes

36.—(1) The Statutes may be amended from time to time in accordance with this section.

(2) The provisions of section 35 (4), (5), (6), (7) and (8) shall apply, *mutatis mutandis*, to amendments to the Statutes.

Senate Regulations

37.—(1) Subject to this Act and the Statutes, and to the approval of the Council, the Senate may, for the better carrying out of its functions and powers under this Act and under the Statutes, make Senate Regulations by notice published as provided in subsection (3).

(2) Without prejudice to the generality of the foregoing, Senate Regulations may make provision for—

(*a*) matters relating to teaching within the University, or to the teaching of any specified subject, periodic reports from professors and lecturers on the progress of students in any subjects, Faculty and other like matters;

(*b*) schemes of study and research, and conditions under which persons may be permitted to embark upon or to continue any such scheme;

(*c*) a research grant system to support academic individual and joint research undertakings;

(*d*) the award of Degrees, Diplomas or other academic honours and distinctions other than Honorary Degrees or distinctions;

(*e*) the conduct and supervision of examinations;

(*f*) the engagement and payment of external examiners;

(*g*) dealing with general academic disciplinary matters;

(*h*) dealing with research and development linkages with the industry and other institutions; and

(*i*) matters relating to the activities and progress of Centres and Institutes.

(3) Any notice made pursuant to subsection (1) shall be published by the Registrar by causing copies thereof to be posted for not less than seven days—

(*a*) in a prominent place outside his office; and

(*b*) on boards provided for such purpose in each of the public halls of the University.

Service of process and other documents on the Council

38. Any writ or other process, notice, or document may be served upon the Council by serving the same on the Registrar.

Transfer of assets, liabilities, etc.

39.—(1) Property, assets, funds, liabilities, obligations, agreements and other arrangements existing at the commencement of this Act and vested in, acquired, incurred or entered into by or on behalf of the Malaŵi Industrial Research and Technology Development Centre shall, on the commencement of this Act, be deemed to have vested in or to have been

acquired, incurred or entered into by or on behalf of the University and shall become enforceable by or against the University to the same extent as they were enforceable by or against the Malaŵi Industrial Research and Technology Development Centre.

(2) Where the transfer of any property transferred to or vested in the University under subsection (1) is required by any written laws to be registered, the University shall, within one year from the commencement of this Act or within such other period as the written law may prescribe, apply to the appropriate registering authority for the registration of the transfer and thereupon the registering authority shall, at no cost to the University or any person by way or registration fees, stamp or other duties—

(*a*) make such entries in the appropriate register as shall give effect to the transfer;

(*b*) where appropriate, issue to the University a certificate of title or other statutory evidence of ownership of the property or make such amendments on such certificates or in the appropriate register as may be necessary; and

(*c*) make any necessary endorsement on such deeds or other documents as may be presented on such registering authority relating to the title, right or obligation concerned.

Transfer of employees

40.—(1) All appointments of members of the Malaŵi Industrial Research and Technology Development Centre made prior to the commencement of this Act and subsisting at that date shall, unless otherwise provided under any written law, be deemed to have been made in accordance with this Act.

(2) Any person who, immediately prior to the commencement of this Act is employed by the Malaŵi Industrial Research and Technology Development Centre, shall, unless otherwise provided under any written law, be deemed to have been transferred to the employment of the University on the same terms and conditions of service and, for the purpose of determining his rights thereunder, his service shall be regarded as continuous from the time he was appointed by the Malaŵi Industrial Research and Technology Development Centre.

HIGHER EDUCATION STUDENTS' LOANS AND GRANTS

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CHAPTER 30:14

HIGHER EDUCATION STUDENTS' LOANS AND GRANTS

2 of 2015
G.N. 11/2015

An Act to make provision for the establishment of the Higher Education Students' Loans and Grants Board; for the establishment of the Higher Education Students' Loans and Grants Fund; for the procedure and criteria for granting student loans and student grants; and for matters incidental thereto and connected therewith

[1st June, 2015]

PART I

Preliminary

1. This Act may be cited as the Higher Education Students' Loans and Grants Act. Short title

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

"accredited institution" means an institution of higher education in Malaŵi which is accredited under the National Council for Higher Education Act; Cap. 30:12

"Board" means the Higher Education Students' Loans and Grants Board established under section 3;

"Chairperson" means the Chairperson of the Board appointed pursuant to section 5, and includes any person acting in that capacity;

"committee" means a committee of the Board;

"eligible student" means a student who is eligible to receive a student loan or a student grant under this Act;

"employer" means an employer of a loan beneficiary and includes the Government;

"Executive Director" means the Executive Director of the Board appointed under section 15;

"Fund" means the Higher Education Students' Loans and Grants Fund established under section 20;

"grant beneficiary" means a student who has received a student grant under this Act;

"higher education" means the education provided at the level of Degree or Advanced Diploma;

"loan beneficiary" means a student who has been granted a student loan under this Act;

"member" means a member of the Board or of a committee of the Board and includes a member's designated representative;

"student" means any person admitted to an accredited institution;

"student grant" means money awarded to a student by Government to enable the student to meet all or any of the students' cost of higher education with no requirement for the student to repay the money to Government; and

"student loan" means money awarded to a student by Government to enable the student to meet all or any of the students' costs of higher education and which the student will be required to pay back to Government.

PART II

Establishment of Higher Education Students' Loan and Grants Board

Establishment of the Board

3. There is hereby established a Board to be known as the Higher Education Students' Loans and Grants Board (in this Act hereinafter referred to as the "Board") which shall—

(*a*) be a body corporate with perpetual succession and a common seal; and

(*b*) be capable of doing all such other things or acts which may lawfully be done or performed by a body corporate.

Functions and powers of the Board

4. The functions and powers of the Board shall be to—

(*a*) control and manage the Fund;

(*b*) receive and consider applications for student loans and student grants from students;

(*c*) determine the maximum number of eligible students to be granted student loans and student grants in any one particular year;

(*d*) administer and supervise the process of payment of student loans and student grants, and repayment of student loans;

(*e*) keep a register and other records of loan beneficiaries and grant beneficiaries;

(*f*) advise the Minister on matters of policy and law concerning the grant of student loans and student grants, and recovery of such student loans;

(*g*) establish operational links between the Board and accredited higher education institutions for facilitating a smooth, efficient and effective administration of student loans and student grants;

(*h*) establish operational links with employers of loan beneficiaries for the purpose of facilitating the recovery of student loans;

(*i*) establish and maintain links with other persons, bodies or organizations within or outside Malaŵi, as the Board may consider appropriate, for the furtherance of the purposes for which the Board is established;

(*j*) conduct research and maintain a databank on other local and external scholarships, sponsorships and awards that may be accessed by students;

(*k*) notwithstanding the Limitation Act, with the assistance of the students' respective employers or otherwise in accordance with the provisions of this Act, recover outstanding loans that were granted to students under students' loan schemes which were introduced in the 1985/1986 until the commencement of this Act; Cap. 6:02

(*l*) approve staff establishment and development plans;

(*m*) consider and approve the annual estimates of the Fund submitted by the Executive Director;

(*n*) monitor and review financial statements and authorize expenditure;

(*o*) appoint independent auditors for the Board;

(*p*) appoint committees of the Board;

(*q*) appoint employees of the Board and determine their terms and conditions of service;

(*r*) formulate and implement financial policies of the Board;

(*s*) with the approval of the Minister and subject to the Public Finance Management Act, borrow money for the furtherance of the objectives of the Act; Cap. 37:02

(*t*) receive gifts, donations or grants from any person, organization or body within or outside Malaŵi, for the furtherance of the objectives of this Act;

(*u*) demand and receive fees for services rendered to other institutions by officers and other employees of the Board;

(*v*) ensure the overall efficient and effective implementation of the provisions of this Act; and

(*w*) do such acts or things provided for in this Act or any other written law which may, in the opinion of the Board, be necessary for the proper exercise of the functions of the Board.

Composition of the Board

5.—(1) The Board shall consist of—

(*a*) the following members appointed by the President and confirmed by the Public Appointment Committee—

(i) the Chairperson; and

(ii) six other persons with technical qualifications and experience in matters of higher education, finance, law, banking or commerce, at least three of which shall be women; and

(*b*) the following *ex officio* members—

(i) the Secretary responsible for education, or his designated representative;

(ii) the Secretary to the Treasury, or his designated representative;

(iii) the Secretary responsible for human resource management and development, or his designated representative; and

(iv) the Secretary responsible for gender or his designated representative.

(2) A person appointed as a member under subsection (1) (*a*), shall have technical qualifications or experience in matters of higher education, finance, law, banking or commerce.

(3) A person appointed as a member under subsection (1) (*a*) shall not, by virtue of his appointment, be deemed to be an employee in the Public Service.

(4) The Minister shall publish in the *Gazette* names of all members of the Board, as first constituted, and every change in the membership of the Board.

(5) A person shall not be qualified to be appointed a member under subsection (1) (*a*) if that person—

(*a*) holds a political office;

(*b*) is an employee in the Public Service;

(*c*) has been declared bankrupt by a court of law; or

(*d*) has, in the preceding seven years, been convicted of an offence and sentenced to a term of imprisonment without an option of a fine.

(6) The Members of the Board shall, at the first meeting of the Board, appoint one of their number to be the Vice-Chairperson of the Board.

(7) An *ex officio* member shall not be eligible to be appointed Chairperson or Vice-Chairperson.

Tenure of office and vacancies

6.—(1) A member, other than an *ex officio* member, shall hold office for a term of three years, and may be eligible for re-appointment for one more term.

(2) When making an appointment after the expiry of a term of office of a member, the President shall have regard to the need to maintain a reasonable degree of continuity in the membership of the Board so that at least one third of the appointed members shall be re-appointed for the next term of office.

(3) A vacancy in the office of a member other than an *ex officio* member, shall occur if the member—

(*a*) dies;

(*b*) becomes disqualified under section 5 (5);

(*c*) fails, without the permission of the Chairperson to attend three consecutive meetings of the Board of which he has had notice;

(*d*) becomes incapacitated by reason of physical or mental disability;

(*e*) resigns in accordance with subsection (4); or

(*f*) is removed by the President in accordance with subsection (5).

(4) A member other than an *ex officio* member, may at any time, resign from his office by giving one month written notice to the Chairperson, who shall forward the notice of resignation to the President.

(5) The President may remove an appointed member on any of the following grounds—

(*a*) if the member engages in conduct that brings the Board into disrepute;

(*b*) incompetence in the execution of his duties as a member; or

(*c*) if the member becomes disqualified under section 5 (5).

(6) Except for an *ex officio* member, a vacancy in the membership of the Board shall be filled by the appointment of a new member by the President.

(7) A person appointed to fill a vacancy shall serve for the remainder of the term of office of his predecessor, but a person shall

not be appointed to fill a vacancy if the remainder of the term of office of the predecessor is less than six months.

Committees of the Board

7.—(1) The Board shall appoint the following committees—

(*a*) Loans and Grants Disbursement Committee;

(*b*) Finance and Administration Committee;

(*c*) Loans Recovery Committee; and

(*d*) any other committee that the Board may deem necessary.

(2) The Board shall appoint a Chairperson and Vice-Chairperson for each committee from amongst the members of the Board.

Meetings of the Board

8.—(1) The Board shall meet at least once every three months, at such times and places and on such dates, as the Chairperson may determine, for the transaction of business.

(2) The Chairperson shall convene ordinary meetings of the Board by giving not less than fourteen days written notice to the members.

(3) The Chairperson, or in his absence, the Vice-Chairperson, may, where necessary, call for an extraordinary meeting of the Board, at such place and time as he may appoint:

Provided that the Chairperson or the Vice-Chairperson shall call for an extraordinary meeting upon the written request of more than four members and within seven days of the request being made.

(4) The *quorum* at any meeting of the Board shall be six members.

(5) The Chairperson, or in his absence, the Vice-Chairperson, shall preside at any meeting of the Board.

(6) In the absence of both the Chairperson and the Vice-Chairperson, members present and forming a *quorum* shall elect one of the appointed members to preside over a meeting.

(7) The decision of the Board on any matter, at any meeting, shall be that of the majority of the members present and voting at the meeting and, in the event of an equality of votes, the person presiding shall have a casting vote in addition to his deliberative vote.

(8) The Board shall keep minutes of any of its meetings.

(9) An appointed member shall attend meetings of the Board in person.

(10) The provisions of this Act relating to the meetings of the Board shall apply *mutatis mutandis* to meetings of a committee of the Board.

(11) The Board shall determine its own procedure for the conduct of its meetings, and the meetings of any of its committees.

Invited persons

9. The Board may, at any time and for any period of time, invite any person to attend any meeting of the Board or of its committees and take part in the deliberations of the Board or the committee, or to make a presentation before the Board or committee, but such person shall not be entitled to vote at that meeting.

Disclosure of interest

10.—(1) If any member is present at a meeting of the Board or of any committee of the Board at which any matter which is the subject of consideration is a matter in which that member or his immediate family member or his professional or business partner, is directly or indirectly interested, he shall, as soon as practicable after the commencement of the meeting, disclose such interest and, unless the Board or the committee otherwise directs, that member shall not take part in any consideration or discussion of, or vote on, any question relating to the matter.

(2) A disclosure of interest by a member shall be recorded in the minutes of the meeting at which it is made.

(3) A member who fails to comply with this section commits an offence and shall, on conviction, be liable to a fine of K1,000,000 and imprisonment for six months.

Non-liability of members

11.—(1) A member shall not be held personally liable for any act or omission done in good faith in the exercise of the functions or powers of the Board.

(2) Where, in any proceedings, a question arises as to whether an act or omission was done in good faith, the burden of proving that the act or the omission was done in good faith shall lie with the person alleging that the act or the omission was done in good faith.

Allowances and expenses of members

12.—(1) A member shall be paid such allowances as the Board may determine, subject to approval by the Minister.

(2) The Board may make provision for the reimbursement of any reasonable expenses incurred by a member in connexion with his duties as a member.

Reporting and policy direction

13. The Board shall submit an annual report to the Minister and shall keep the Minister fully informed on matters concerning the general conduct of the affairs of the Board.

Delegation of powers by the Board

14.—(1) The Board may, subject to subsection (4) and subject to such terms, conditions and restrictions as it may specify, delegate to any committee or to any employee of the Board some of its functions, powers or duties as conferred on the Board under this Act.

(2) A delegation made under subsection (1), may be made to the holder of an office of the Board specifying the office but without naming the holder, and in every case, where a delegation is so made, every successive holder of the office in question and every person who occupies or performs the duties of that office, may, without any further authority, perform or exercise the delegated function, power or duty in accordance with the delegation made by the Board.

(3) The delegation made under this section shall not prevent the Board from performing or exercising the delegated function, power or duty.

(4) The Board shall not delegate the power to approve the annual estimates of the Fund or its supplementary estimates, annual balance sheet or any statement of accounts.

PART III

Management of the Board

Executive Director and Deputy Executive Director of the Board

15.—(1) There shall be an Executive Director of the Board who shall be appointed by the Board on such terms and conditions as the Board shall determine.

(2) The office of the Executive Director shall be a public office.

(3) The office of the Executive Director shall be held by a person with such qualifications and experience as the Board may determine.

(4) The Executive Director shall hold office for a period of five years and may be eligible for re-appointment for one more term.

(5) The Executive Director may, at any time resign his office by giving a three months written notice to the Chairperson.

(6) The Board shall appoint a Deputy Executive Director on such terms and conditions as the Board may determine.

(7) The Deputy Executive Director shall perform such functions and duties as may be assigned to him by the Executive Director from time to time.

(8) The office of the Deputy Executive Director shall be a public office and be held by a person with such qualifications and experience as the Board may determine.

(9) The Deputy Executive Director may—

(*a*) subject to section 16, hold office for a period of five years and be eligible for appointment for another term; and

(*b*) qualify for appointment as Executive Director.

Termination of service of the Executive Director or Deputy Executive Director

16. The Board may terminate the appointment of the Executive Director or the Deputy Executive Director on any of the following grounds—

(*a*) conduct that brings the office of the Executive Director or the Deputy Executive Director into disrepute;

(*b*) failure or inability to perform the duties of his office arising from infirmity of body or mind;

(*c*) incompetence in the execution of the duties of the office of the Executive Director or Deputy Executive Director;

(*d*) if the Executive Director or Deputy Executive Director is adjudged bankrupt; or

(*e*) if the Executive Director or the Deputy Executive Director has been convicted of an offence involving moral turpitude or dishonesty.

Duties of the Executive Director

17.—(1) The Executive Director shall be responsible for the day to day management of the Board and the administrative control of other employees of the Board, and perform such other duties as the Board may direct.

(2) The Executive Director shall be the Secretary to the Board.

Appointment of other employees of the Board

18. Subject to the provisions of this Act, the Board may appoint directors and such other employees of the Board as it considers necessary or desirable for the proper and efficient conduct of its business and activities, and, on such terms and conditions as the Board may determine.

Disciplinary authority

19.—(1) The Board shall be the disciplinary authority in relation to employment matters of the Executive Director and other directors.

(2) The Executive Director shall be the disciplinary authority, and the Board shall be the appellate authority in relation to employment matters of other employees of the Board.

PART IV

Establishment of the Higher Education Students' Loans and Grants Fund

Establishment of the Fund

20.—(1) There is hereby established a Higher Education Students' Loans and Grants Fund (hereinafter referred to as the "Fund") which shall be managed and administered by the Board.

(2) The purpose of the Fund shall be to provide student loans and award student grants to eligible students for the purpose of

pursuing academic programmes in accredited higher education at any accredited institution.

Revenue and expenditure of the Fund

21.—(1) There shall be credited to the Fund—

(*a*) such sums of money as may be appropriated by Parliament for that purpose;

(*b*) sums of money which represent the repayment of the capital and interest of any student loan or any other loan made by the Government prior to the commencement of this Act;

(*c*) income from any investment made by the Board;

(*d*) sums of money borrowed by the Board; and

(*e*) gifts, donations and grants made to the Fund.

(2) There shall be paid out of the Fund, such sums of money as may be approved by the Board, for the purpose of paying for expenses incurred in connexion with the administration of the Fund.

Annual Estimates of the Fund

22.—(1) The Executive Director shall, at least three months before the commencement of each financial year, prepare or cause to be prepared, for the approval of the Board, annual estimates of revenue and expenditure of the Fund for the following financial year.

(2) The Board shall, before the commencement of each financial year, consider and approve, subject to any amendments as it may consider appropriate, the annual estimates of the Fund.

(3) The annual estimates of the Fund shall contain provision for all the estimated expenditure of the following financial year and in particular, the annual estimates shall contain information relating to the following—

(*a*) the disbursement of student loans and student grants to loan beneficiaries and grant beneficiaries; and

(*b*) the payment of costs of materials, equipment and other charges in respect of services, and, if applicable, training and consultancy.

(4) No expenditure of the Fund shall be incurred except in accordance with the provisions of the annual estimates or in accordance with the provisions of any supplementary estimates approved by the Board.

(5) A copy of the annual estimates of the Fund and the supplementary estimates, if any, shall, immediately upon being approved by the Board, be submitted to the Minister.

Accounts and audit of the Fund

23.—(1) The Board shall cause to be kept proper books of accounts for the Fund and shall, not later than six months after the end of each financial year, cause to be prepared—

(*a*) a statement of income and expenditure during such financial year; and

(*b*) such other statements as may be required.

(2) The Board shall submit the accounts of the Fund for auditing by auditors that the Board may appoint.

(3) The Board shall submit to the Minister copies of the statements referred to in subsection (1), a copy of the auditor's report and a copy of a report on the activities of the Board during that financial year.

PART V

Granting of Students Loans, Students Grants, Eligibility and Obligation

Eligibility for student loans or student grants

24. A student shall be eligible for a student loan or student grant under this Act if the student—

(*a*) is a Malaŵian and has been admitted to pursue, or is pursuing, an accredited higher education programme at an accredited institution; and

(*b*) has no financial assistance from any other source to cover the item or items of cost for which the application is made.

Provision of student loans or student grants

25.—(1) Subject to the provisions of this Act, the Board may provide a student loan or a student grant to any eligible student who is in need of, and has applied for, such student loan or student grant to enable the student meet all or any of the student's costs of higher education.

(2) Applications for student loans or student grants shall be made by eligible students and submitted to the Board in the prescribed form.

(3) The application shall, among other things, include the following information—

(*a*) name of the student;

(*b*) name, address and financial details of the student's parents or guardians; and

(*c*) reasons for the application.

(4) A student may be awarded a student grant either based on his exceptional academic performance or the importance of the

programme of study he has been admitted to, as may be determined by Government from time to time.

(5) The Board shall issue an identification personal account number to every student who has been granted a student' loan or student grant.

Conditions for providing student loans or student grants

26.—(1) The Board shall have the right to accept or reject an application for a student loan or a student grant.

(2) Where an application for a student loan or student grant is accepted, the Board shall determine conditions for such loan or grant and, in the case of a student loan, shall require repayment in installments at such times, and within such period, as the Board may deem fit.

(3) Where an application for a student loan or student grant is not accepted, the Board shall give reasons in writing for such decision.

(4) The Board may, on request by a loan beneficiary or a grant beneficiary, vary—

(*a*) the condition upon which the student loan or the student grant was given; or

(*b*) the terms of the repayment in respect of the student' loan.

(5) In providing a loan to any student, the Board shall require a guarantor to guarantee any loan granted to a student, in case of any default by the student in the repayment of the loan, any guarantor who has guaranteed any such loan shall be automatically and fully liable to pay the Board all or any outstanding loan together with interest accrued thereon owed to the Board by the student as shall be notified to the guarantor by the Board.

Liabilities and obligations of a loan beneficiary

27.—(1) It shall be the duty of every loan beneficiary under this Act to repay his debt to the Government through the Board.

(2) A loan beneficiary shall, within two years upon successful or unsuccessful completion of the course for which the loan was granted, or upon earlier termination of such course for any reason or cause whatsoever, start the repayment of his student loan to the Board.

(3) A loan beneficiary shall be liable to repay to the Board the total sum of money loaned—

(*a*) calculated on the basis of the formula as prescribed on the application forms issued to him by the Board; or

(*b*) as may have been established by the Board as having been the sum of money personally received by the loan beneficiary or received through his bank account.

(4) A loan beneficiary who pursues his higher education course at an accredited institution outside Malaŵi, shall, upon his admission to the accredited institution, enter into an arrangement with the Board on the mode of repayment of the student loan.

(5) A loan beneficiary who is employed, whether the employment is on contract or permanent terms, shall—

(*a*) make arrangements with his employer for monthly deductions from his salary, of such amount, and within such a period as the Board may determine for remittance to the Board as repayment of a student loan taken;

(*b*) ensure that payment of the monthly deductions by the employer are remitted to the Board from the date such remittance is due and that all relevant documents bear the correct name of the loan beneficiary and his student loan number;

(*c*) inform the Board in writing of—

(i) the name, address and telephone numbers of his employer and of any subsequent employer or employers and the arrangements made with the employer in accordance with the provisions of subsection (4) (*a*) and subsection (4) (*b*); and

(ii) his address and any subsequent change of address until settlement or payment of the final installment of the loan, including interest, if any; and

(*d*) comply with any relevant regulations made under this Act.

(6) A loan beneficiary who is self-employed in any trade, occupation or profession shall, within two years of engaging in such self-employment—

(*a*) make monthly remittances to the Board of such amounts of money as the Board may determine;

(*b*) ensure that the remittance of such monthly amounts is made to the Board and that all relevant documents bear the correct name and address of the loan beneficiary and his student loan number;

(*c*) inform the Board of his current postal, physical, occupational and residential addresses and telephone numbers, if any, and any subsequent changes thereof; and

(*d*) comply with any relevant regulations made under this Act.

(7) Subsection (5) shall apply, *mutatis mutandis*, to any loan beneficiary who is in the employment of a foreign government, an international organization, a foreign company, a foreign agency, a foreign association or any foreign institution or entity.

(8) For purposes of subsection (6), the term—

(*a*) "foreign government" includes an embassy, high commission, or resident representative of a foreign government;

(*b*) "international organization" includes organizations within the United Nations Organization; and

(*c*) "foreign company", "foreign agency", "foreign association" or "foreign institution or entity" means any company, agency, association, institution or entity that is not incorporated or registered as such in Malaŵi.

Failure to repay a student loan

28. A loan beneficiary who, without good cause, fails to repay his student loan, shall be liable to civil proceedings.

Responsibilities of an employer

29. It shall be the duty of an employer of any loan beneficiary to—

(*a*) demand every employee to declare whether they have a student loan;

(*b*) notify the Board within thirty days of the employment of a loan beneficiary;

(*c*) ensure that the employee arranges with the employer for the monthly deduction and remittance of repayment installments to the Board in accordance with this Act;

(*d*) ensure that monthly deductions are made from the salary of a loan beneficiary and remitted to the Board in accordance with the provisions of this Act; and

(*e*) when so required by the Board, inform the Board, in writing, of the position, rank, or salary and changes if any, of an employee who is a loan beneficiary.

(2) An employer shall pay, in the prescribed manner, every deduction made from a loan beneficiary's salary to the Board within fifteen days, after the end of each month.

Penalty for failure to notify the Board and for delayed remittance

30.—(1) An employer who fails, without reasonable cause, to notify the Board that he has in his employment, a loan beneficiary after being made aware of such a fact, within the period specified under section 29, commits an offence and shall, on conviction, be liable to a fine of K1,000,000.

(2) An employer who fails to deduct, or after having deducted a loan repayment from a loan beneficiary, fails to pay such deduction to the Board within the period specified under section 29, shall be liable to pay a sum equal to ten percent of the total amount of the monthly repayment for each month or part of the month that the repayment remains unpaid.

Obligations of a guarantor

31.—(1) A person who acts as a guarantor of a loan beneficiary shall, if requested to do so by the Board—

(*a*) inform the Board of the address and occupation of the loan beneficiary and the name, postal and physical address of the employer of the loan beneficiary;

(*b*) ensure that payments in respect of the loan for which the loan beneficiary is liable to repay are duly made in accordance with this Act; and

(*c*) give any relevant information and give or do, any other thing required to be given or done by the loan beneficiary under this Act.

(2) A person who fails to comply with subsection (1), commits an offence and shall, on conviction, be liable to a fine of K1,000,000 and imprisonment for six months.

Waiver or deferment of student loan repayment

32.—(1) The Board may waive or defer a student loan repayment if—

(*a*) the loan beneficiary is dead; or

(*b*) the cost to be incurred in the recovery of the loan is more than the amount of the loan to be recovered.

(2) The Board may, on conditions determined by the Board, defer a student loan repayment if—

(*a*) the loan beneficiary is experiencing exceptional financial hardship; or

(*b*) any other ground that the Board may determine.

(3) The Minister may, by notice published in the *Gazette*, exempt any class of persons from all or any of the provisions of this Act, where in his opinion, it is in the public interest to do so.

PART VI

Financial Provisions

Annual estimates

33.—(1) The Board shall at least three months before the commencement of each financial year submit to the Minister an

estimate of its income and expenditure for the following financial year.

(2) The annual estimates shall make provision for all the estimates of expenditure of the Board for the financial year and shall provide for—

(*a*) the cost of administration of the Board including payment of salaries, allowances, travel and other charges payable to employees of the Board;

(*b*) the payment of allowances, fees and expenses in respect of members of the Board;

(*c*) the improvement or maintenance of any building or other immovable properties of the Board;

(*d*) the maintenance and replacement of furniture and equipment of the Board; and

(*e*) the creation of such reserve fund to meet future contingent liabilities as the Board may think fit.

Accounts and Audit

34.—(1) The Board shall, not later than three months after the end of each financial year, cause to be prepared—

(*a*) a statement of the assets and liabilities of the Board on the last day of that financial year;

(*b*) a statement on financial activities, income and expenditure during the financial year; and

(*c*) such other statements of accounts as may be necessary to fully disclose the undertaking, liabilities and discharge of the functions of the Board.

(2) The Board shall submit the accounts of the Board for auditing by auditors that the Board may appoint.

(3) The Board shall submit to the Minister copies of the statements referred to subsection (1), a copy of the auditor's report and a copy on the activities of the Board during that financial year.

PART VII

Miscellaneous Provisions

Laying of reports before the National Assembly

35. The Minister shall lay before the National Assembly, as soon as may be practicable, and in any case not later than six months after the end of each financial year, the following—

(*a*) a copy of the statement of income and expenditure of the Fund;

(*b*) a copy of the auditor's report of the Fund; and

(*c*) a copy of the Board's annual report.

Oath of Secrecy

36. A member and any employee of the Board or a person invited under section 9, shall, upon assuming office or, in the case of a person invited under section 9, before attending any meeting, take an oath of secrecy in the form set out in the Schedule.

Schedule

Confidentiality

37.—(1) A person shall not directly or indirectly reveal any matter related to the Board to any person, without the authority of the Board, or without the authority of a person authorized by the Board to give such authority.

(2) A person who fails to comply with subsection (1), commits an offence and shall, on conviction, be liable to a fine of K1,000,000 and imprisonment for six months.

Regulations

38.—(1) The Minister may, on recommendation of the Board, make regulations for the better carrying into effect of this Act.

(2) Without prejudice to the generality of subsection (1), the regulations may—

(*a*) prescribe the conditions and terms on which any specified services or categories of services within the scope of the powers, functions and duties of the Board, shall be provided to applicants of student loans, to loan beneficiaries, grant beneficiaries and other relevant persons;

(*b*) prescribe, where applicable, fees, rates and other charges for or in connexion with the provision by the Board of any facilities or services;

(*c*) prescribe various procedural matters and forms to be used under this Act;

(*d*) provide for the proper management, control and administration of the Board;

(*e*) prescribe procedures for recovery of student loans;

(*g*) prescribe anything which may be required to be prescribed under this Act; and

(*h*) provide for any matter which, in the opinion of the Board, is necessary for the efficient performance of the functions of the Board.

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SCHEDULE

OATH OF SECRECY

I, ... being a member/having been employed in the service, of the Board, do hereby swear/affirm that I will freely and without fear or favor, affection or ill will, discharge the functions of a member/an employee, of the Board, and that I will not directly or indirectly reveal any matters related to such functions to any unauthorized person or otherwise than in the course of my duty.

SWORN/DECLARED at .....
this ..... day of ..... 20...

BEFORE ME:

.....
COMMISSIONER FOR OATHS

MALAŴI INSTITUTE OF PROCUREMENT AND SUPPLY

CHAPTER 30:15

Containing Pages 1–17

CHAPTER 30:15

MALAŴI INSTITUTE OF PROCUREMENT AND SUPPLY

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CHAPTER 30:15

MALAŴI INSTITUTE OF PROCUREMENT AND SUPPLY

An Act to provide for the establishment of the Malaŵi Institute of Procurement and Supply; the registration of procurement and supply chain management professionals; the regulation of the procurement and supply chain management profession; and to provide for matters connected therewith and incidental thereto

3 of 2016
G.N. 9/2016

[1st June, 2016]

PART I

Preliminary

1. This Act may be cited as the Malaŵi Institute of Procurement and Supply Act.

Short title

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

Interpretation

"affiliate member" means a member of the Institute registered pursuant to section 16;

"Appeals Board" means the Appeals Board established under section 26;

"Board" means the Board of Directors appointed pursuant to section 5;

"corporate member" means a member of the Institute registered pursuant to section 19;

"Disciplinary Committee" means the Disciplinary Committee constituted under section 27;

"Education and Qualifications Committee" means the Education and Qualifications Committee constituted under section 32;

"full member" means a member of the Institute registered pursuant to section 15;

"honorary member" means a member of the Institute registered pursuant to section 18;

"Institute" means the Malaŵi Institute of Procurement and Supply established under section 3;

"Professional Practice Committee" means the Professional Practice Committee established under section 34;

"procurement and supply management professional" means any person who has undergone special and formal training in procurement and supply management and other related professional courses in procurement and supply management and has attained formal qualification from such training; and

"student member" means a member of the Institute registered pursuant to section 17.

PART II

The Malaŵi Institute of Procurement and Supply

Establishment of the Malaŵi Institute of Procurement and Supply

3.—(1) There is hereby established a body to be known as the Malaŵi Institute of Procurement and Supply.

(2) The Institute shall be a body corporate which shall—

(*a*) have perpetual succession and a common seal;

(*b*) be capable of suing and being sued in its corporate name;

(*c*) be capable of acquiring and disposing of any moveable or immovable property; and

(*d*) perform such acts as a body corporate may, by law perform.

(3) The Institute shall be autonomous and independent of the direction of any person and have power to perform such functions and exercise such powers as conferred by this Act.

Functions of the Institute

4. The Institute shall—

(*a*) register procurement and supply chain management professionals, pursuant to this Act;

(*b*) establish educational standards and qualifications for the procurement and supply chain management profession in Malaŵi;

(*c*) set the professional standards of procurement and supply chain management professionals in collaboration with educational institutions, professional institutions, government departments, commercial institutions and similar international institutions in the practice of procurement and supply chain management;

(*d*) promote, uphold and improve training and professional standards of procurement and supply chain management professionals;

(*e*) develop ethical standards in the procurement and supply chain management profession in Malaŵi and ensure that reputable and high standards of behaviour are maintained in the profession;

(*f*) exercise disciplinary control over the procurement and supply chain management profession in Malaŵi;

(*g*) set and conduct professional examinations leading to the award of certificates and other awards in procurement and supply chain management;

(*h*) conduct research related to procurement and supply chain management professional;

(*i*) preserve professional independence of its members;

(*j*) promote and protect the welfare of its members both in Malaŵi and abroad;

(*k*) arrange conferences, seminars and meetings for discussion of procurement and supply chain management or related matters;

(*l*) publish literature in procurement and supply chain management and encourage members to conduct research and make publications in the procurement and supply chain management profession;

(*m*) organize post qualification training for its members; and

(*n*) do all such acts as are necessary for the better carrying out of the functions of the Institute specified under this Act.

Board of Directors

5. There shall be a Board of Directors of the Institute which shall be responsible for the administration and general management of the Institute and in so doing, shall—

(*a*) be responsible for registration of procurement and supply chain management professionals;

(*b*) establish committees to carry out any special or general functions, as determined by the Board from time to time;

(*c*) appoint, suspend or remove members of any committee for non-performance of duties and gross misconduct;

(*d*) appoint the Chief Executive Officer of the Institute; and

(*e*) carry out such other functions as it determines necessary for the proper running of the Institute.

Composition of the Board

6.—(1) The Board shall consist of—

(*a*) the following seven members nominated at an Annual General Meeting of the members of the Institute from the membership of the Institute and, appointed by the Minister—

(i) two representatives from the public sector;

(ii) two representatives from the private sector; and

(iii) three other members from the general membership of the Institute; and

(*b*) the Director of Public Procurement or his duly appointed representative, *ex officio*.

(2) The Board shall elect a Chairperson from the seven appointed members under subsection (1) (*a*), at the first meeting of the Board.

(3) The Chairperson shall preside over meetings of the Board and, in the event that the Chairperson is absent during a meeting, members of the Board shall elect one of their number to exercise the powers and perform the duties of the Chairperson.

(4) The members of the Board, other than the *ex officio* member, shall be persons who—

(*a*) are full and paid up members of the Institute and are resident in Malaŵi;

(*b*) possess relevant qualifications, expertize and experience in procurement and supply management; and

(*c*) have made a significant contribution to the promotion of the procurement and supply chain management profession in Malaŵi.

Disqualification of members of the Board

7. Any person who—

(*a*) is an undischarged bankrupt;

(*b*) has been convicted of an offence involving fraud or dishonesty;

(*c*) has been adjudged to be of unsound mind; or

(*d*) is a member of Parliament, Minister or Deputy Minister; shall be disqualified from being elected to, or from continuing to hold office, as a member of the Board.

Tenure of office of members of the Board

8.—(1) A member of the Board, other than an *ex officio* member—

(*a*) shall hold office for a period of three years from the date of appointment; and

(*b*) shall be eligible for re-election for a further term:

Provided that two members of the Board are retained at the expiry of each Board term.

(2) A member of the Board, other than an *ex officio* member, may resign by giving thirty days written notification to the Chairperson of the Board.

(3) Upon the expiry of the period for which a member is appointed, that member shall continue to hold office until his successor has been appointed, but in no case shall such further period exceed three months.

(4) A vacancy in the Board shall be filled by a person appointed in accordance with section 6:

Provided that, if the remaining period is less than six months, the Board may decide not to have the vacancy filled until the expiry of the period.

Allowances of the Board of Directors

9. Members of the Board shall be paid out of the funds of the Institute, such allowances as may be approved by members of the Institute, at an Annual General Meeting.

Meetings of the Board

10.—(1) The Board shall meet once every three months at such places and times as the Chairperson may determine.

(2) An extraordinary meeting of the Board—

(*a*) may be convened by the Chairperson at any time; or

(*b*) shall be convened by the Chairperson within seven days of the receipt by him of a request in writing signed by not less than three members of the Board specifying the purpose for which the meeting should be convened.

(3) The *quorum* at a meeting shall be five members of the Board.

(4) The Board shall regulate its own procedure and that of its committees.

Chief Executive Officer

11.—(1) There shall be a Chief Executive Officer who shall be appointed by the Board on a performance based contract for a period of three years which may be renewed once and on such other terms and conditions as the Board shall determine.

(2) The Chief Executive Officer shall be responsible to the Board for the administration and management of its affairs, and shall be in charge of all administrative, executive and other matters of the

Institute, and in all such matters, shall, at all times, be subject to the direction of the Board.

Other employees of the Institute

12. The Chief Executive Officer shall, with prior approval of the Board, appoint such other officers of the Institute as may from time to time be required for the carrying out of the functions of the Institute, on such terms and conditions as the Board may determine.

PART III

Registration of Members

Registration

13. A person shall not engage in the practice of procurement and supply chain management in Malaŵi or hold out as being entitled to do so, unless that person is a registered member under this Act:

Provided that student members shall not practice as procurement and supply chain management professionals.

Application for registration

14.—(1) A person may apply for membership to the Institute in the prescribed form, upon payment of a fee as determined by the Board from time to time, and shall state the class of membership to which the application relates.

(2) A person applying for membership shall, in addition to evidence of qualification, satisfy the Board that—

(*a*) he is of good character; and

(*b*) he has not been convicted by any court, of an offence involving fraud or dishonesty or such other offence as, in the opinion of the Board, would render the applicant unfit to be a member of the Institute.

(3) Where the Board is satisfied that an applicant holds relevant qualifications or experience, it shall issue that applicant with an appropriate registration certificate depending on the category of membership for which the applicant qualifies for.

Registration of full members

15. The Board may register an applicant as a full member if the applicant holds the qualifications and experience prescribed by the Board.

Registration of affiliate members

16. The Board may register an applicant as an affiliate member if the applicant is not eligible to be registered as a full member:

Provided that the applicant holds qualifications and experience prescribed by the Board.

Registration of student members

17. The Board may, on application, register students who are undergoing training for a qualification required for registration as a full or affiliate member on such terms and conditions prescribed by the Board relating to the practice of procurement and supply chain management.

Honorary members

18. The Board may confer honorary membership to any person who has made outstanding contribution to the procurement and supply management profession in Malaŵi, but such members shall not be eligible to vote or be voted for at any election of the Institute.

Corporate members

19. The Board may, on application, register any organization affiliated to the Institute, as a corporate member.

Foreign procurement and supply management professionals

20. The Board may, on application, register a foreign procurement and supply management professional if the applicant holds the qualification and experience prescribed by the Board.

Registers

21.—(1) The Chief Executive Officer shall, on behalf of the Board, keep and maintain—

(*a*) a register of full members;

(*b*) a register of affiliate members;

(*c*) a register of corporate members;

(*d*) a register of student members;

(*e*) a register of honorary members; and

(*f*) a register of foreign members.

(2) There shall be entered into a register, in relation to a registered member, the address, qualification and experience, date of first registration and other particulars that the Chief Executive Officer may determine as appropriate.

(3) The Chief Executive Officer may make necessary alterations or corrections in any Register in relation to an entry made therein.

Publication of list of members

22. The Board shall cause to be published annually in the *Gazette*, and in other media of general nationwide circulation, as agreed by the Board, a list of the names, addresses and qualifications of registered procurement and supply management members, by 30th April of each year.

Subscription fees

23.—(1) The members of the Institute shall, by 31st March each year, pay subscription fees, as may be prescribed by the Board.

(2) Honorary members shall not be required to pay any subscription fees.

Disqualification from membership

24. A person shall not qualify to be registered as a member if that person—

(*a*) is below the age of eighteen;

(*b*) does not hold the prescribed qualifications for membership;

(*c*) has been convicted of an offence involving dishonesty or fraud;

(*d*) is an undischarged bankrupt; or

(*e*) has been adjudged or declared to be of unsound mind.

Cessation of membership

25. Any member of the Institute, other than an honorary member, who ceases to qualify for membership, shall automatically cease to be a member of the Institute.

Appeals Board

26. (1) There shall be established an Appeals Board, which shall hear appeals by any person aggrieved by a decision of the Board in relation to registration.

(2) The Appeals Board shall consist of—

(*a*) a lawyer nominated by the Malaŵi Law Society; and

(*b*) four full members of the Institute who shall be representatives from the works and service sectors.

(3) The Appeals Board shall elect a chairperson and vice-chairperson from amongst their number.

(4) The chairperson or, in his absence, the vice-chairperson and two other members shall constitute a *quorum* at any meeting of the Appeals Board.

(5) The Appeals Board shall regulate its own procedure:

Provided that the procedures shall be in accordance with principles of natural justice.

(6) The Appeals Board shall give a direction as it determines appropriate, in a matter brought before it on appeal.

(7) Any person aggrieved by a decision of the Appeals Board may apply to the High Court for a review of the decision.

PART IV

Disciplinary Provisions

Disciplinary Committee

27.—(1) There shall be established a Disciplinary Committee of the Board which shall consist of—

(*a*) a chairperson who shall be appointed by the Chairperson of the Board from among members of the Board;

(*b*) a lawyer nominated by the Malaŵi Law Society; and

(*c*) three other members nominated by the members of the Institute from amongst the full and paid up members of the Institute.

(2) At any meeting of the Disciplinary Committee, three members including the member from the Malaŵi Law Society, shall form a *quorum*.

(3) The Disciplinary Committee shall regulate its own procedures.

Powers of inquiry of the Disciplinary Committee

28. The Disciplinary Committee shall have power to inquire into the conduct of any member of the Institute in accordance with the provisions of this Part.

(2) For the purpose of any inquiry under subsection (1), the Disciplinary Committee shall have all powers of Commissioners under sections 9 and 10 of the Commissions of Inquiry Act and sections 11, 12, and 13 of that Act shall apply to proceedings before the Disciplinary Committee as though it were a commission appointed under that Act.

Cap. 18:01

Application of rules of natural justice

29. The Disciplinary Committee shall, before taking any disciplinary action, observe the rules of natural justice and accord a member who is a subject of a disciplinary action, a right to be heard.

Proceedings of the Disciplinary Committee

30.—(1) The chairperson shall preside at meetings of the Disciplinary Committee or in the absence of the chairperson, such member as the members present at the meeting, may elect one of their number as chairperson, for the purpose of that meeting.

(2) A party to proceedings before the Disciplinary Committee may be represented by a legal practitioner or by any person authorized by that party.

(3) A party to the proceedings may cross-examine a person giving evidence before the Disciplinary Committee.

(4) The Disciplinary Committee may proceed to hear a matter in the absence of a concerned party, where the party fails to appear after being given due notice of proceedings before the Disciplinary Committee, without reasonable justification.

Report of proceedings

31.—(1) The Disciplinary Committee shall, within fourteen days of the close of an inquiry, produce a report which shall be submitted to the Board together with documents produced at the inquiry.

(2) The report of the Disciplinary Committee shall contain recommendations for the Board.

(3) The Board shall consider the report and make a decision thereon within fourteen days of its receipt.

(4) Where a member has committed a misconduct, the Board may impose the following penalties—

(*a*) a reprimand;

(*b*) suspension of the member from the Institute for a maximum period of one year; or

(*c*) cancellation of registration:

Provided that the member may be allowed to re-register as a member after seven years elapse from the date of cancellation of registration.

(5) The Board shall communicate the decision made pursuant to subsection (4), to the member concerned within ten working days from the date the decision is made.

(6) Any member of the Institute whose registration has been suspended or cancelled, pursuant to this Part, may apply to the High Court for a review of the decision of the Board.

PART V

Committees of the Board

Education and Qualifications Committee

32.—(1) There shall be established an Education and Qualifications Committee which shall consist of—

(*a*) one member of the Board appointed and designated by the Board as chairperson of the Committee;

(*b*) two persons appointed by the Board who may or may not be members of the Institute;

(*c*) a representative of the Malaŵi National Examinations Board; and

(*d*) a representative of the Ministry of Education, *ex officio*.

(2) At a meeting of the Education and Qualifications Committee, any three members shall constitute a *quorum*.

(3) The chairperson shall preside over meetings of the Committee and, in the event that the chairperson is absent during a meeting, members of the Committee shall elect one of their number to exercise the powers and perform the functions of the chairperson.

Functions of the Education and Qualifications Committee

33. Subject to the general directions of the Board, the Education and Qualifications Committee shall—

(*a*) advise the Board on all matters relating to the education and training requirements of procurement and supply chain management professionals in Malaŵi;

(*b*) satisfy itself and the Board that the curricula and conditions in every learning institution in Malaŵi in the procurement and supply chain management profession ensures that graduates will have sufficient knowledge, skills and ethical standards for the practice of the profession; and

(*c*) carry out such other functions as are necessary for the improvement of education and training of procurement and supply chain management professionals.

Professional Practice Committee

34.—(1) There shall be established a Professional Practice Committee which shall consist of—

(*a*) one member of the Board appointed and designated by the Board as chairperson of the Committee; and

(*b*) four other persons appointed by the Board at least two of which, shall be members of the Institute.

(2) At a meeting of the Professional Practice Committee, any three members shall constitute a *quorum*.

(3) The chairperson shall preside at meetings of the Committee and, in the event that the chairperson is absent during a meeting, members of the Committee shall elect one of their number to exercise the powers and perform the functions of the chairperson.

Functions of the Professional Practice Committee

35. Subject to the general directions of the Board, the Professional Practice Committee shall—

(*a*) advise the Board on all matters relating to the practice of the procurement and supply chain management profession in Malaŵi;

(*b*) develop ethical and practice standards for the procurement and supply chain management profession;

(*c*) enforce ethical and practice standards in the procurement and supply chain management profession; and

(*d*) carry out such other functions as may be assigned by the Board from time to time.

PART VI

Financial Provisions

Funds of the Institute

36. The funds of the Institute shall consist of—

(*a*) such sums as may be payable to the Institute from moneys appropriated by Parliament for the purpose;

(*b*) sums of money as may be paid to the Institute by way of fees by the members of the Institute in accordance with this Act;

(*c*) sums of money as may be payed to the institute by way of grant or donation; and

(*d*) other moneys as may accrue to the Institute in the exercise of its functions.

Investment power

37. All moneys of the Institute not immediately required for any payment to be made by the Institute, may be invested by the Board in a manner as the Board may, from time to time, determine appropriate.

Compliance with Caps. 37:01, 37:02 and 37:03
Cap. 37:01
Cap. 37:02
Cap. 37:03

38. The Institute shall, in its financial transactions, comply with the provisions of the Public Audit Act, Public Finance Management Act and the Public Procurement Act.

Borrowing powers

39. The Institute may borrow such moneys as it may require for the performance of its functions under this Act by way of loan or overdraft from any financial institution with the prior approval of the Board.

Accounts and audit

40.—(1) The Institute shall keep proper books of accounts and other records relating to its accounts and shall prepare, in respect of each financial year, a statement of accounts and balance sheet showing, in all necessary detail, the income and expenditure, assets and liabilities of the Institute.

(2) The accounts of the Institute shall be audited annually by an independent auditor appointed by the Board and confirmed at an Annual General Meeting.

Annual report

41.—(1) As soon as practicable, but not later than six months after the expiry of each financial year, the Institute shall prepare a report concerning its activities during that financial year.

(2) The report referred to in subsection (1) shall be in the prescribed form and contain information required by the Board.

(3) There shall be appended to the report—

(*a*) an audited balance sheet;

(*b*) an audited statement of income and expenditure; and

(*c*) other information as the Board may consider appropriate.

(4) The report shall be laid before the members at an Annual General Meeting.

Financial year

42. The financial year of the Institute shall be twelve months ending on 31 December each year or on such other date as the Minister may specify by order published in the *Gazette*:

Provided that the financial year of the Institute may be such shorter or longer periods than twelve months as the Minister shall determine but being not less than six months nor more than eighteen months.

PART VII

Meetings of the Institute

Meetings

43.—(1) The members of the Institute shall hold an Annual General Meeting once every year at such time, and place, as the Board may determine.

(2) Members of the Institute, shall, every two years at an Annual General Meeting, elect a President and such other officers and constitute such committees from its membership, as the Institute determines as necessary.

(3) An extra ordinary meeting of the Institute—

(*a*) may be convened by the President at any time; or

(*b*) shall be convened by the President within seven days of the receipt by him of a request in writing signed by not less than five per cent of the members of the Institute specifying the purpose for which the meeting should be convened.

Quorum

44. One quarter of the total of full and paid up members of the Institute shall constitute a *quorum* at a meeting of the Institute.

Procedures at meetings

45. The Board may prescribe procedures to be followed at meetings under this Part.

PART VIII

Misconduct and Offences

Misconduct relating to practice

46.—(1) Any person registered under this Act who contravenes the following, commits a misconduct—

(*a*) duty not to commit or abet corruption;

(*b*) duty to avoid conflict of interest when acting in official capacity;

(*c*) duty to act fairly;

(*d*) confidentiality and appropriate use of information; or

(*e*) duty to follow the principle of non-discrimination.

(2) A person who commits or is alleged to have committed misconduct shall be subject to disciplinary action in accordance with Part IV of this Act.

Offences and penalties

47.—(1) Any person who—

(*a*) furnishes the Institute with false information;

(*b*) makes or causes to be made, an unauthorized entry, alteration or erasure in the register; or

(*c*) procures the registration of any person by means of fraud, misrepresentation, or concealment of a material fact,

commits an offence and on conviction, shall be liable to pay a fine of K2,000,000 and to imprisonment for five years.

(2) Any person who is not registered under this Act, and who, in Malaŵi—

(*a*) engages or purports to engage in the practice of procurement and supply chain management;

(*b*) holds himself out as being entitled to engage in the practice of procurement and supply chain management; or

(*c*) does or performs, or purports to do or perform, any act or thing which, under this Act, may be done or performed exclusively by a person registered under this Act,

commits an offence and on conviction, shall be liable to a fine of K500,000 and to imprisonment for two years.

PART IX

Miscellaneous Provisions

Transitional arrangements

48.—(1) Any person who, immediately before the commencement of this Act, was a member of the former Institute, shall continue to

be a member of the Institute as if that person was registered under this Act.

(2) All acts done by the Council of the former Institute before the commencement of this Act, shall be deemed to have been done by the Board.

(3) All property, assets, rights and liabilities of the former Institute shall vest or subsist against the Institute.

(4) Any proceedings or cause of action instituted by or pending against the former Institute shall continue as if instituted by or against the Institute under this Act.

(5) The employees of the former Institute shall continue to be employees of the Institute established by this Act, on the prevailing terms and conditions until the Board determines otherwise.

(6) For the purpose of this section, "former Institute" means the Malaŵi Institute of Procurement and Supply, a company limited by guarantee incorporated by the Registrar of Companies on 20th November, 2008.

Rules

49.—(1) The Board may, on approval by the Minister, make rules for the better carrying out of the provisions of this Act.

(2) Notwithstanding the generality of subsection (1), the Board may prescribe—

(*a*) qualifications and experience of categories of members;

(*b*) registration forms;

(*c*) qualifications and experience for members of the Institute; and

(*d*) the amount of annual subscription fees.

Regulations

50.—(1) The Minister may make Regulations for the better carrying out of this Act.

Cap. 1:01

(2) Notwithstanding section 21 (*e*) of the General Interpretation Act, regulations made under this Act may prescribe penalties not exceeding K2,000,000 and a term of imprisonment of not more than five years.

LAWS OF MALAŴI

VOL V

L.R.O. 1/2018

NATIONAL LIBRARY SERVICE

CHAPTER 31:01

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CHAPTER 31:01

NATIONAL LIBRARY SERVICE

ARRANGEMENT OF SECTIONS

SECTION

1. Short title
2. Interpretation
3. Establishment of Board
4. Functions of Board
5. Report by Board
6. Appointment of Executive Secretary and other staff
7. Funds of Board
8. Investment
9. Accounts and audit
10. Execution of documents
11. Regulations

Schedule

An Act to provide for the control and regulation of the National Library Service, to establish the National Library Service Board and to provide for matters incidental thereto and connected therewith 31 of 1967 30 of 1969 9 of 1986 G.N. 15/1979

[23RD FEBRUARY, 1968]

1. This Act may be cited as the National Library Service Act. Short title

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

"Board" means the National Library Service Board established by section 3;

"Executive Secretary" means the Executive Secretary of the National Library Service appointed under section 6; 9 of 1986

"financial year" means such year or other period as the Minister may from time to time, by notice published in the *Gazette*, determine to be the financial year of the Board. 30 of 1969

3.—(1) There is hereby established a Board, which shall— Establishment of Board

(*a*) be a body corporate by the name of the National Library Service Board, with perpetual succession and a common seal;

(*b*) in its corporate name be capable of suing and being sued; and

(*c*) be capable of holding, purchasing and otherwise acquiring, and disposing of any property, moveable or immoveable, for the purposes of, or in the course of, the carrying out of its functions.

(2) The Schedule shall have effect as to the constitution and proceedings of, and otherwise in relation to, the Board.

(3) The Minister may, on the advice of the Board, by Order amend the Schedule.

Functions of Board

4.—(1) The functions of the Board shall be to promote, establish, equip, manage, maintain and develop libraries in Malaŵi.

(2) The Board shall have power for the purpose of carrying out its functions to do all such acts as appear to it to be necessary, desirable, advantageous or convenient for or in connexion with the carrying out of its functions or to be incidental or conducive to their proper discharge, and may carry on any activities in that behalf either alone or in association with any other person or body (including the Government or a local authority).

(3) For the avoidance of doubt it is hereby declared that the powers of the Board referred to in subsection (2) relate only to its capacity as a body corporate and nothing in that subsection shall authorize the disregard by the Board of any written law.

Report by Board

5. The Board shall, within six months after the end of each financial year, make a full report to the Minister on the conduct of its business during that year, and the Minister shall lay a copy thereof before the National Assembly.

Appointment of Executive Secretary and other staff
9 of 1986

6.—(1) Subject to subsection (2), the Board may appoint an Executive Secretary of the National Library Service who shall be the chief executive officer of the Board and who shall be entitled to be present and to speak, but not to vote, at meetings of the Board.

(2) The appointment of the Executive Secretary and his terms and conditions of service shall be subject to the approval of the Minister.

(3) The Board may from time to time appoint, on such terms and conditions as it thinks fit, such officers, clerks and servants as it considers necessary for carrying out its functions under this Act.

(4) The Board may appoint from among its members a working committee, of such composition and with such powers as the Board may determine, for the purpose of assisting or advising the Executive Secretary in his day to day administration of the National Library Service.

7. The funds and resources of the Board shall consist of— Funds of the Board

(*a*) such sums as may be provided by Parliament for the purposes of this Act;

(*b*) any sums or property which may in any manner become payable to or vested in the Board in respect of any matter incidental to the carrying out of its functions;

(*c*) any sums or property which may be donated to the Board:

Provided that the Board shall not be obliged to accept a donation for a particular purpose unless it approves of the terms and conditions attached to such donation.

8.—(1) The Board may, with the approval of the Minister and subject to such conditions as he may impose, invest such part of its funds as are not for the time being required for the purposes of its business. Investment

(2) The powers of the Minister under this section shall be exercised with the concurrence of the Minister for the time being responsible for Finance and shall extend to the amount which may be invested, the nature of the investment and the terms and conditions thereof, and the Minister's approval may be either general or limited to a particular investment.

9.—(1) The Board shall keep proper accounts and other records in relation thereto and shall prepare in respect of each financial year of the Board a statement of accounts in a form approved by the Minister, being a form which conforms with the best commercial standards. Accounts and audit

(2) Subject to any direction made by the Minister for the time being responsible for Finance under section 45 of the Finance and Audit Act the accounts of the Board shall be audited by auditors appointed annually by the Minister. Cap. 37:01

(3) As soon as the accounts of the Board for a financial year have been audited, the Board shall cause to be sent to the Minister a copy of the statement of accounts prepared in respect of that year together with a copy of any report made by the auditors on the statement or on the accounts.

(4) The Minister shall, within a period of six months (or such longer period as the National Assembly may, by resolution, appoint) after the end of the financial year to which the accounts relate, lay a copy of every such statement and report before the National Assembly.

10.—(1) All deeds, instruments, contracts and other documents shall be deemed to be duly executed by or on behalf of the Board— Execution of documents

(*a*) if sealed with the common seal of the Board and signed by two members thereof; or

9 of 1986

(*b*) if executed in that behalf by one member of the Board appointed by the Board for that purpose and by the Executive Secretary or any member of the staff of the Board acting in that office.

(2) A deed, instrument, contract or other document executed in accordance with subsection (1) shall, subject to any exception that may be taken thereto on any ground other than that of the competence of the party executing the same on behalf of the Board, be effectual in law to bind the Board and its successors thereto and may be varied or discharged in like manner as that in which it was executed.

Regulations

11. The Minister, acting on the advice of the Board, may make regulations—

(*a*) for the better management and control of any library managed by the Board;

(*b*) for protecting any such library, and fittings, furniture and contents thereof, from damage;

(*c*) requiring the giving of a guarantee or security by any person using any such library;

(*d*) prescribing any fees and penalties to be paid by any person borrowing books from any such library; and

(*e*) generally for the better carrying out of the purposes of this Act.

s. 3 (2)
G.N. 15/1979

SCHEDULE

Constitution and Proceedings of the Board

Constitution

1.—(1) The Board shall consist of the following members appointed by the Minister—

(*a*) a Chairman;

(*b*) a representative of the Ministry for the time being responsible for Education;

(*c*) a representative of the Ministry for the time being responsible for Local Government;

(*d*) a representative of the Ministry for the time being responsible for Development and Planning;

(*e*) a representative of the Lilongwe City Council;

(*f*) a representative of the Mzuzu City Council;

(*g*) a representative of the Blantyre City Council;

(*h*) a representative of the University of Malaŵi;

(*i*) a representative of the British Council;

(*j*) a representative of the Department of Information;

(*k*) a representative of each of the three Regions;

(*l*) a representative of the Education Secretary General, Catholic Schools;

(*m*) a representative of the Education Secretary General, Christian Council.

(2) A member of the Board shall, subject to the power of the Minister at his discretion sooner to terminate his appointment, or unless he otherwise ceases to be a member, hold office for such period as the Minister may specify in his appointment or, if no such period is specified, for a period of three years from the date of his appointment, and shall be eligible for re-appointment.

(3) Any member of the Board may at any time resign by giving notice in writing to the Minister, and from the date specified in the notice he shall cease to be a member of the Board.

(4) If any member of the Board is, without the permission of the Board, absent from more than four consecutive meetings of the Board or, without such permission, is absent from Malaŵi for a period exceeding one year he shall cease to be a member of the Board.

Casual vacancies

2. Where any member of the Board ceases to be a member before the normal expiration of his term of office, the Minister, after consulting the Board, may appoint another person in his stead to hold office until such first-named person's term of office would have expired had he not ceased to be a member as aforesaid.

Quorum and procedure

3.—(1) The Board shall meet at such times as may be necessary or expedient for the transaction of business.

(2) At any meeting of the Board seven members thereof shall constitute a quorum.

(3) The Board may elect any member thereof to be Vice-Chairman of the Board.

(4) At any meeting of the Board the Chairman shall preside or, in the absence of the Chairman, if a Vice-Chairman has been elected the Vice-Chairman shall preside or, if no Vice-Chairman has been elected or if the Vice-Chairman is also absent, the members present at the meeting shall elect one of their number to be Chairman for that meeting.

(5) In the event of an equality of votes, the Chairman of the meeting shall have a casting vote in addition to his deliberative vote.

(6) Minutes in proper form of each meeting of the Board shall be kept and shall be confirmed by the Board at the next meeting and signed by the Chairman of that meeting.

(7) Subject to this paragraph and to any directions given by the Minister, the Board may regulate its own procedure.

(8) The Board may in its discretion invite any person to attend a meeting of the Board, and such person may, with the consent of the Chairman of the meeting, speak but shall have no power to vote at that meeting.

Vacancies, etc., not to invalidate proceedings

4. Subject to the provisions of paragraph 3 relating to a quorum, the Board may act notwithstanding any vacancy in the membership thereof and no act or proceeding of the Board shall be invalid by

reason only of some defect in the appointment of a person who purports to be a member thereof.

Remuneration and expenses

5. The members of the Board shall be paid out of the funds thereof such expenses as the Minister may from time to time determine.

Notice **[Subsidiary]**

SUBSIDIARY LEGISLATION

G.N. 272/1969

NOTICE

under s. 2

The Minister has determined to be the financial year of the Board in respect of the financial year commencing on the 1st day of January, 1969, the fifteen month period so commencing and ending on the 31st day of March, 1970, and that thereafter the financial year of the Board shall be the twelve month period commencing on the 1st day of April in each year.

BOY SCOUTS AND GIRL GUIDES

CHAPTER 31:02

Containing Pages 1–2

L.R.O. 1/1968

CHAPTER 31:02

BOY SCOUTS AND GIRL GUIDES

ARRANGEMENT OF SECTIONS

SECTION

1. Short title
2. Interpretation
3. Restriction on use of uniform, etc., of the Boy Scouts Association
4. Restriction on sale of badges, etc., of Association
5. Boy Scout not to pass himself off as police officer, etc.
6. No person falsely to claim connexion with Boy Scouts Association
7. Penalties
8. Application of Act to Girl Guides Association

An Act to further and protect the Activities and Interests of the Boy Scouts Association and the Girl Guides Association in Malaŵi 44 of 1946

[28TH DECEMBER, 1946]

1. This Act may be cited as the Boy Scouts and Girl Guides Act. Short title

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

"the Association" means the Boy Scouts Association incorporated in England under the Royal Charter granted on the 4th January, 1912;

"boy scout" means a boy scout recognized as such under the constitution, by-laws, or rules of the Association, and includes also all officers of the Association;

"Commissioner" means the person holding or acting in the office of Chief Commissioner of Boy Scouts for Malaŵi.

3. It shall not be lawful for any person, not being under the by-laws or rules of the Association duly authorized and entitled so to do, publicly to wear, carry, or bear any uniform, badge, token, or emblem which under the said by-laws or rules are specifically adopted for use under the authority of the Association or which could reasonably be held to be an imitation of the same in such style or manner as to convey an impression that such person is under the said by-laws or rules entitled so to wear, carry, or bear such uniform, badge, token or emblem. Restriction on use of uniform, etc., of the Boy Scouts Association

Restriction on sale of badges, etc., of Association

4. No person shall sell or offer for sale any article bearing a badge, token, or emblem specifically adopted for use under the authority of the Association, or which could reasonably be held to be an imitation of the same, unless he shall have first submitted such article to the inspection of the Commissioner and shall have obtained authority from him in writing so to do.

Boy scout not to pass himself off as police officer, etc.

5.—(1) It shall not be lawful for any boy scout not being otherwise thereunto lawfully entitled and authorized, to pretend to be, or to pass himself off as, or to arrogate to himself the authority, position, or powers of, or to claim to be or to act as—

(*a*) a member of police or armed force; or

(*b*) an officer exercising police functions in the service of any Chief; or

(*c*) an agent or officer of the Government or of any Chief or tribunal.

(2) No boy scout shall seek or attempt by virtue of his wearing any uniform, badge, token, or emblem of the Association, or uniform, badge, token, or emblem purporting or appearing to be such, to enforce or exercise authority otherwise than in accordance with and as authorized by the by-laws or rules of the Association.

No person falsely to claim connexion with Boy Scouts Association

6. It shall not be lawful for any person to form, organize, or work in connexion with, or to be concerned in forming, organizing, or in work in connexion with any corps or body which without due authority granted under the Royal Charter of the Association claim or purport to be boy scouts or otherwise to be connected with the Association, or which hold themselves out as, or pass themselves off as, boy scouts, or as otherwise connected with the Association.

Penalties

7. Any person wilfully contravening any of the provisions of this Act shall be liable to a fine of £10 and to imprisonment for one month, and it shall be lawful for the court to order the forfeiture of any such uniform, badge, token or emblem, as mentioned in sections 3 and 4, in respect of which an offence has been committed and a conviction recorded.

Application of Act to Girl Guides Association

8. This Act shall apply, *mutatis mutandis*, to the Girl Guides Association incorporated in England under Royal Charter.

NATIONAL YOUTH COUNCIL OF MALAŴI

CHAPTER 31:04

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NATIONAL YOUTH COUNCIL OF MALAŴI

ARRANGEMENT OF SECTIONS

SECTION

PART I

PRELIMINARY

1. Short title
2. Interpretation

PART II

THE NATIONAL YOUTH COUNCIL OF MALAŴI

3. Establishment of the Council
4. Composition of the Council
5. Vacation of office of members
6. Filling of vacancies on the Council
7. Co-opted persons
8. Chairman and Vice-Chairman
9. Remuneration of members of the Council
10. Meetings of the Council
11. Non-liability of members of the Council or of committees

PART III

FUNCTIONS AND POWERS OF THE COUNCIL

12. Functions of the Council
13. Powers of the Council
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15. Disclosure of interest

PART IV

MANAGEMENT OF THE COUNCIL

16. Appointment of an Executive Secretary

PART V

FINANCIAL PROVISIONS

17. Funds, accounts and audit
18. Remuneration and expenses of members of the Council
19. Investment of surplus sums
20. Borrowing powers
21. Financial year of the Council

PART VI

REGISTRATION OF YOUTH ORGANIZATIONS

22. Registrar of youth organizations
23. Application for registration
24. Ground for refusing to register a youth organization

SECTION

25. Cancellation of registration
26. Notification of grounds
27. Appeal to the Minister

PART VII
GENERAL ASSEMBLY

28. General Assembly
29. Extraordinary General Assembly

PART VIII
MISCELLANEOUS PROVISIONS

30. Independence of youth organizations
31. Appeals to the Minister
32. Dissolution of youth organization
33. Regulations

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22 of 1996
G.N. 2/1997

An Act to make provision for the promotion, co-ordination and implementation of youth development programmes in Malaŵi; the establishment of a National Youth Council of Malaŵi; and further to provide for matters incidental thereto or connected therewith

[19TH JANUARY, 1997]

PART I

PRELIMINARY

Short title

1. This Act may be cited as the National Youth Council of Malaŵi Act.

Interpretation

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

"Chairman" means the person appointed as Chairman of the Council under section 8;

"Council" means the National Youth Council of Malaŵi established under section 3;

"Member" means a member of the Council;

"Executive Secretary" means the person appointed Executive Secretary of the Council under section 16.

PART II

THE NATIONAL YOUTH COUNCIL OF MALAŴI

Establishment of the Council

3. There is hereby established a body to be known as the National Youth Council of Malaŵi (in this Act otherwise referred to as the "Council") which shall be—

(*a*) a body corporate with perpetual succession and a common seal;

(*b*) in its corporate name, capable of suing and of being sued;

(*c*) capable of holding, purchasing and otherwise acquiring and disposing of any property, movable or immovable, for the purposes, or in the course, of carrying out its functions; and

(*d*) capable of doing and performing all such acts and things as bodies corporate may by law do and perform.

Composition of the Council

4.—(1) The Council shall consist of—

(*a*) the following members appointed by the Minister—

(i) seven persons representing registered youth organizations in Malaŵi

(ii) a representative of the Episcopal Conference of Malaŵi;

(iii) a representative of the Christian Council of Malaŵi;

(iv) a representative of the Muslim Association of Malaŵi;

(v) a representative of Women's Organizations; and

(vi) three Councillors.

(b) the following *ex officio* members—

(i) the Secretary for Education or his representative;

(ii) the Secretary for Youth, Sports and Culture or his representative;

(iii) the Secretary for Health or his representative;

(iv) the Secretary for Women and Children Affairs and Community Development and Social Welfare or his representative;

(v) the Secretary for Labour and Manpower Development or his representative;

(vi) the Secretary for Local Government and Rural Development or his representative;

(vii) the Secretary for Justice or his representative; and

(viii) the Secretary for Home Affairs or his representative.

(2) A representative of an *ex officio* member referred to in subsection (1) (*b*) shall be designated by, or on behalf of, the *ex officio* by a notice in writing to the Council to attend the meetings of the Council, and upon such designation such representative shall not attend to the business of the Council by representation.

(3) A member of the Council appointed under subsection (1) (*a*) shall hold office for a period of two years unless his appointment is terminated sooner than the expiry of that period and shall be eligible for re-appointment.

(4) A member of the Council appointed under subsection (1) (*a*) may resign his office upon giving one month's written notice to the Minister.

(5) The names of all members of the Council as first constituted and every change in the membership of the Council shall be published in the *Gazette*.

Vacation of office of members

5. The office of a member, other than an *ex officio* member, shall become vacant—

(*a*) upon his death;

(*b*) if he has been absent from three consecutive meetings of the Council, of which he has had notice, without the permission of the Chairman;

(*c*) if he has been convicted of an offence without the option of a fine and sentenced to imprisonment for a period exceeding six months;

(*d*) if in the opinion of the Minister he becomes mentally or physically incapable of efficiently performing his duties as a member of the Council; and

(*e*) if the Minister, upon the recommendation of the Council, so directs.

Filling of vacancies on the Council

6.—(1) On vacation of office by a member of the Council, the vacancy shall be filled by a person appointed in accordance with the relevant provisions of section 4 (1) (*a*) under which the former member was appointed:

Provided that if the remaining period is less than six months the Minister may decide not to have the vacancy filled until the expiry of the period.

(2) If any member of the Council is granted leave of absence by the Council, the Council may, if it sees fit co-opt a person who belongs to the same organization as the member who has been granted leave to fill the vacancy during the absence of that member.

Co-opted persons

7. The Council may in its discretion at any time and for any period invite any person, and the Minister may in like manner nominate any officer in the public service, to attend any meeting of the Council and take part in the deliberations of the Council, but such person or officer shall not be entitled to vote at that meeting.

Chairman and Vice-Chairman

8.—(1) The Minister shall, appoint a Chairman of the Council from amongst members appointed under section 4 (1) (*a*).

(2) Subject to subsection (3), the Chairman shall hold office for the duration of his membership on the Council.

(3) The office of the Chairman shall become vacant—

(*a*) if the holder resigns his office by notice to the Minister;

(*b*) if the holder of the office ceases to be a member of the Council;

(*c*) if the Minister, upon the recommendation of the Council, so directs.

(4) The Minister shall appoint a Vice-Chairman from amongst members of the Council who shall, subject to subsection (5), hold office for the duration of his membership on the Council.

(5) The office of the Vice-Chairman shall become vacant—

(*a*) if the holder resigns his office by notice in writing to the Council;

(*b*) if the holder of the office ceases to be a member of the Council;

(*c*) if the Minister, upon the recommendation of the Council, so directs.

(6) Whenever the Chairman is absent or is for any cause unable to discharge the functions of his office, the ViceChairman shall discharge the functions of the Chairman.

Remuneration of members of the Council

9. A member of the Council other than an *ex officio* member, shall be paid out of the funds of the Council, such remuneration and allowances, if any, as the Minister may determine.

Meetings of the Council

10.—(1) Subject to subsection (2), the Council shall hold ordinary meetings for the dispatch of business at least twice a year.

(2) An extraordinary meeting of the Council—

(*a*) may be convened by the Chairman at any time;

(*b*) shall be convened by the Chairman within twenty-one days of receipt by him of a request in writing signed by not less than five members of the Council and specifying the purpose for which the meeting is to be convened.

(3) At any meeting of the Council—

(*a*) the Chairman or, in his absence, the Vice-Chairman, shall preside;

(*b*) in absence of both the Chairman and Vice-Chairman, the members present and forming a quorum shall elect one of them to preside;

(*c*) the quorum shall be formed by eight members.

(4) An *ex officio* member of the Council shall attend any meeting of the Council in person.

(5) At any meeting of the Council a decision on any matter shall be that of the majority of the members present and voting at that meeting, and in the event of an equality of votes, the Chairman, Vice-Chairman or the person presiding shall have a casting vote in addition to his deliberative vote.

(6) The Council shall have power to regulate its own procedure.

(7) The Council shall cause minutes of every meeting of the Council or Committee to be kept.

Non-liability of members of the Council or of committees

11. No member of the Council or of any committee of the Council shall be liable for any act or default of his or of the Council, done in the exercise in good faith of the functions or powers of the Council.

PART III

Functions and Powers of the Council

Functions of the Council

12. The functions of the Council shall be—

(*a*) to develop, promote, encourage and control all forms of youth activities in Malaŵi on a national basis;

(*b*) to facilitate and encourage co-operation among registered youth organizations in Malaŵi;

(*c*) to initiate operation and management of non-profit making or profit making projects in support of youth development;

(*d*) to organize and promote scholarships for youth workers, members of youth organizations and officials;

(*e*) to foster the promotion of training courses;

(*f*) to register youth organizations;

(*g*) to advise Government and any authority either specifically or generally, on matters relating to sport and physical recreation; and

(*h*) to develop and institute guidelines for co-operation, for the purposes of this Act, between the Government and other organizations and agencies operating in Malaŵi.

Powers of the Council

13. For the better performance of its functions, the Council shall, subject to the provisions of this Act, have power—

(*a*) to employ professional, technical and administrative personnel as it may deem requisite and lay down conditions of service for such employees;

(*b*) to pay any person in its employ such salary, wages or other remuneration as it may deem fit, and to grant him such leave as it may deem fit;

(*c*) to enter into any contract or agreement;

(*d*) to purchase, take on lease or in exchange, hire or otherwise acquire any real or personal property, which it considers necessary in the furtherance of its objects;

Cap. 37:01

(*e*) subject to the Finance and Audit Act, to raise moneys by way of loans or overdrafts;

(*f*) to invest or deal with any of the moneys not immediately required in such securities and in such manner as it may think fit and to vary or realize such investments;

(*g*) to manage, insure, let, sell, alienate, mortgage or otherwise deal with any property of the Council as it may deem necessary or expedient;

(*h*) to receive donations or gifts of money or other property from any person or body of persons for the furtherance of its objects;

(*i*) to receive such donations or gifts beneficially or as trustee of any trust established for the furtherance of such objects;

(*j*) to publish, from time to time, such professional or other information as it deems necessary or expedient for the promotion of the objects of the Council; and

(*k*) to do all such acts, matters and things as it deems necessary for fulfilling the functions of the Council.

Committees of the Council

14.—(1) The Council may, for the purpose of performing its functions under this Act, establish committees and delegate to any such committee such of the functions of the Council as the Council may consider expedient.

(2) The Chairman shall, by reason of his office, be a member of every committee established under subsection (1).

(3) The Chairman of each committee shall be appointed by the Council from amongst the members of the Council.

(4) Each committee may in its discretion invite any person, not being a member of the Council, to attend a meeting of the Committee and take part in the deliberations of the meeting but such person shall not be entitled to vote.

(5) The chairman of a committee may, at any time and place, convene a meeting of the committee of which he is chairman.

(6) The Chairman may, at any time, direct the chairman of any committee to convene a meeting of such committee and such chairman shall, as soon as is practicable, comply with such direction.

(7) At all meetings of a committee the quorum shall be formed by a majority of members.

(8) At all meetings of a committee each member present shall have one vote on a question before the committee and, in the event of an equality of votes, the chairman shall have, in addition to a deliberative vote, a casting vote.

(9) Every committee shall have the power to regulate its own procedure.

(10) Every committee shall keep minutes of its meetings and shall inform the Council of its activities and shall conduct its proceedings in such manner as the Council may direct.

(11) A member of a committee who is not an officer in the public service shall, in respect of expenses incurred by him in travelling and subsistence while discharging his duties as member of that committee, be paid out of the funds of the Council such allowances as the Council may, with the approval of the Minister, determine.

Disclosure of interest

15. If a member of the Council has an interest, direct or indirect, in any matter before the Council and is present at a meeting of the Council at which the matter is under consideration, he shall as soon as practicable, disclose the fact and shall not take part in the consideration or discussion of or vote on any question with respect to the determination of the matter.

PART IV

Management of the Council

Appointment of an Executive Secretary

16.—(1) Subject to the provisions of this section, the Council—

(*a*) shall appoint a person to be designated as the Executive Secretary of the Council upon such terms and conditions as the Council shall determine with the approval of the Minister;

(*b*) may appoint such other employees as it considers necessary or desirable in the discharge of its duties and upon such terms and conditions as it may determine.

(2) The Executive Secretary, after consultation with the Chairman, may appoint temporary employees at such daily rates of pay, not below the minimum rates otherwise prescribed by law, as he may consider appropriate and shall, after he has appointed any such employee, report the fact thereof to the Council at its next meeting.

(3) The Executive Secretary shall be the secretary to the Council and shall, on the instructions of the Chairman, convene meetings of the Council.

(4) An officer of the Council duly appointed Executive Secretary shall be secretary to a committee of the Council and shall, on the instructions of the Chairman of the committee, convene meetings of the committee.

PART V

Financial Provisions

Funds, accounts and audit

17.—(1) The funds of the Council shall consist of—

(*a*) such sums as may be appropriated by Parliament for the purpose of the Council;

(*b*) any fees payable under this Act;

(*c*) such other moneys and assets as may vest in or accrue to the Council in the course of its functions;

(*d*) such moneys or other assets as may accrue to or vest in, the Council by way of grants, subsidies, bequests, donations, gifts, subscriptions, rents, interest or royalties from any other persons.

(2) The Council shall keep proper accounts and other records relating thereto in respect of its funds and shall in every aspect comply with the provision of the Finance and Audit Act. Cap. 37:01

(3) The accounts of the Council shall be examined and audited annually by auditors appointed by the Council in the General Assembly and approved by the Minister.

Remuneration and expenses of members of the Council

18. A member of the Council or of a committee shall be paid from the funds of the Council such allowances as the Minister may prescribe and in prescribing the allowances, the Minister may make provision for the reimbursement of any reasonable expenses incurred by a member of the Council or of a committee in connexion with the business of the Council or the committee.

Investment of surplus sums

19. The Council may invest any sums which are not immediately required for its objectives in such manner as the Minister may approve.

Borrowing powers Cap. 37:01

20. Subject to the provisions of section 32 (1) of the Finance and Audit Act, the Council may, with the approval of the Minister, borrow either temporarily, by way of overdraft or otherwise, such sums as it may require, for meeting its obligations or discharging its functions under this Act.

Financial year of the Council

21. The financial year of the Council shall be the period commencing on the date of commencement of this Act and ending on the following 31st March and thereafter it shall be a period of twelve months ending on 31st March every year.

PART VI

Registration of Youth Organizations

Register of youth organizations

22.—(1) The Executive Secretary shall keep and maintain in the prescribed form a register wherein shall be registered every youth organization in Malaŵi.

(2) No youth organization shall operate in Malaŵi unless it is registered under this Act.

Application for registration

23.—(1) An application for registration of a youth organization shall be submitted to the Executive Secretary in such form as may be prescribed.

(2) Every application for registration of a youth organization shall be accompanied by—

(*a*) a registration fee to be prescribed by the Minister;

(*b*) a copy of the constitution of the youth organization and, unless the constitution itself contains such particulars, a memorandum containing the following particulars—

(i) the objectives and functions of the youth organization;

(ii) the name and addresses of the office bearers of the youth organization; and

(iii) the place of operation.

(3) On receipt of an application under subsection (1), the Executive Secretary may carry out such investigation or require such further information to be submitted to him as he considers necessary.

(4) Upon registration, a youth organization shall be issued with a certificate of registration.

Grounds for refusing to register a youth organization

24. The Executive Secretary shall refuse to register an organization as a youth organization if he is satisfied that—

(*a*) the name under which the organization wishes to be registered is identical or similar to the name of an existing youth organization;

(*b*) the youth organization does not exist; and

(*c*) the youth organization does not have the same objectives as those contained in the National Youth Policy Document.

Cancellation of registration

25. The Executive Secretary may at any time cancel the registration of any youth organization if he is satisfied that—

(*a*) the constitution of such youth organization is in any respect repugnant to or inconsistent with the provisions of any law for the time being in force in Malaŵi;

(*b*) the organization has ceased to exist in Malaŵi as a youth organization; or

(*c*) the organization has changed its name and the new name it has adopted—

(i) is identical with that of any other existing youth organization;

(ii) so nearly resembles the name of another youth organization and that it is likely to deceive the public or the members of either youth organization; or

(iii) is repugnant to or inconsistent with the provisions of any law in force in Malaŵi.

Notification of grounds

26. Where an application for registration as a youth organization is refused or the registration of a youth organization is cancelled, the Executive Secretary shall make and

furnish to the youth organization concerned a notice giving therein the reasons for such refusal or cancellation, as the case may be.

Appeal to the Minister

27.—(1) An appeal against a decision to cancel or to refuse the registration of a youth organization may be made to the Minister within thirty days of the receipt of the notice.

(2) Where any appeal is made under subsection (1), the Minister may, to enable him determine the appeal, give such directions to the Executive Secretary as he may consider necessary.

(3) After hearing an appeal made under subsection (1), the Minister may confirm, set aside or vary the decision of the Council.

(4) Any person aggrieved with the decision of the Minister may apply to the High Court for a review of such decision.

PART VII

General Assembly

General Assembly

28.—(1) There shall be a General Assembly of the Council which shall be attended by the following—

(*a*) all members of the Council;

(*b*) the Chairman, Secretary and Treasurer of each registered youth organization;

(*c*) three members from the youth wing of each registered political party;

(*d*) representatives of youth wings of religious organizations; and

(*e*) the Chief Youth Officer.

(2) The General Assembly of the Council shall be held once in every year to transact the following business—

(*a*) to receive and to adopt a statement of the Council accounts to the end of the preceding year;

(*b*) to appoint an auditor or auditors;

(*c*) to deal with any special matter which the Council desires to bring before it and any other matter or suggestion which the general membership may bring before it:

Provided that no such suggestions shall be considered by the General Assembly unless two weeks prior notice in writing is served on the members before the meeting is held.

(3) A notice convening the General Assembly shall be sent to members not less than fourteen days before the date of the meeting and the notice shall be accompanied with the agenda for the meeting.

(4) At the General Assembly the quorum shall be formed by fifty per cent of the membership.

(5) At the General Assembly voting shall be by show of hands and in the event of equality of votes the Chairman or other person presiding shall have a casting vote as well as a deliberative vote.

Extraordinary General Assembly

29.—(1) An Extraordinary General Assembly may be convened at any time by the Council and shall be convened within twenty-one days from the receipt of a requisition in writing signed by not less than one fifth of the members specifying objects of the meeting for any of the following purposes—

(*a*) to deal with matters which the Council deems fit to place before the meeting;

(*b*) to receive a report on the activities of the Council;

(*c*) to deal with any special matters which the members requesting for the meeting may desire to place before the Council.

(2) A notice convening the Extraordinary General Assembly shall be sent to members not less than fourteen days before the date of the meeting and the notice shall be accompanied with the agenda for the meeting.

(3) At an Extraordinary General Assembly the quorum shall be formed by fifty per cent of the membership.

(4) At the Extraordinary General Assembly voting shall be by show of hands and in the event of equality of votes the Chairman or other person presiding shall have a casting vote as well as a deliberative vote.

PART VIII

Miscellaneous Provisions

Independence of youth organizations

30. Save as otherwise provided in this Act, the Council shall not interfere with the day-to-day administration or internal affairs of a youth organization or of any branch of such organization.

Appeals to the Minister

31.—(1) Any youth organization, branch of such organization or any person aggrieved by a decision of the Council, may, not later than thirty days from the receipt of such decision, appeal to the Minister.

(2) Any youth organization, branch of a youth organization or person aggrieved by the decision of the Minister may apply to the High Court for a review of such decision.

Dissolution of youth organization

32. Subject to the constitution of a youth organization, where a youth organization is dissolved, the assets and liabilities of such organization shall be disposed of in accordance with directions given by the Minister:

Provided that the assets, if any, left over, after meeting all the liabilities of such organization shall not be utilized for any purpose other than for the purpose of other youth organizations as the Council may direct.

Regulations

33. The Minister may make regulations for the better carrying into effect of the provisions of this Act, and, in particular and without prejudice to the generality of the foregoing power, such regulations may provide for—

(*a*) the fees, allowances or remuneration to be paid under this Act;

(*b*) the books, registers and other records to be kept by a youth organization and for the inspection thereof;

(*c*) the forms to be used for the purposes of this Act;

(*d*) the process to be followed in—

(i) registering youth organizations; and

(ii) cancelling youth organizations from the register.

BUILDING SOCIETIES

CHAPTER 32:01

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BUILDING SOCIETIES

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An Act to amend and consolidate the law relating to building societies and to amend the law relating to the investment of trust moneys by trustees and for matters incidental thereto and connected therewith

[1st February, 1964]

PART I

Preliminary

Short title

1. This Act may be cited as the Building Societies Act.

Interpretation
33 of 1952

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

"additional advance" means a sum of money lent by a society under section 30 (3) (*b*);

"advance" means a sum of money lent by a society under section 30 (3) (*a*);

"approved investment" means an investment by a society, other than an investment in another society, being an investment for the time being authorized by law in Malaŵi for investment of trust moneys;

"Board of directors", in relation to a society, means the managing body thereof by whatever name called;

"building society" means a society formed for the purpose of raising a stock or fund from which to make advances upon security by way of mortgage of lands or buildings and which is registered in accordance with section 8;

"deposit" means an amount accepted as an investment by a society either as a fixed deposit, an investment deposit or a savings deposit;

"depositor" means a person who is entered in the books of a society as the owner of, or person beneficially entitled to, a fixed deposit, an investment deposit or a savings deposit;

33 of 1952

"existing society" means any society, association, partnership or company, whether incorporated or registered in or outside Malaŵi, which was registered under section 5 of the Building Societies Ordinance, 1952 (now repealed) immediately before the date of the coming into operation of this Act;

"fixed deposit" means a deposit for a stated period which is not less than six months;

"general reserve fund" means any reserve fund established by a society out of profits and not set aside for any specific purpose;

"investment deposit" means an amount accepted as an investment by a society and which is repayable after a period of notice;

"land" includes buildings, whether the same were erected before, or are erected during, the period for which any mortgage on such land in favour of a society subsists;

"loan" means an amount borrowed by a society under section 42;

"member", in relation to a society, means a person who holds permanent shares therein which participate in the profits thereof whether or not such shares are held by the society as security for an advance;

"mortgage commitment" means the amount of money authorized by a board of directors to be advanced on the security of mortgages, which moneys have not been taken up by the persons to whom the advances have been approved;

"officer", in relation to a society, means any director, manager, secretary, clerk, agent or other employee of the society but does not include an auditor of the society;

"permanent share" means a fully paid up share of which the owner shall not be entitled at any time to demand redemption, except on dissolution of the society, but which may be transferred to another person or member, provided that the number of members is not thereby reduced below four;

"permanent-share capital" means the total nominal value of permanent shares issued by a society;

"person" includes the Government;

"reducible advance" means an advance made by a society on terms and conditions which provide for the reduction of the capital amount advanced by periodical payments;

"Registrar" means the Registrar of Building Societies appointed under section 5;

"savings deposit" means a deposit other than a fixed deposit or an investment deposit;

"secretary", in relation to a society, includes any executive officer of the society acting in the capacity of secretary;

"society" means a building society;

"terminating society" means an association which by its rules, is bound to terminate on the expiry of a fixed period or upon the occurrence of an event specified, or the rules of which provide for the organization of its members in sections, for

the separate administration of the affairs of each section or the joint administration of the affairs of all sections and for the termination of each section upon expiry of a fixed period or upon the occurrence of an event specified in the rules;

"shareholder" means the owner of a permanent share.

Application

3.—(1) This Act shall apply to every society.

(2) No person shall use the name or style of "building society" unless such person is a society registered under section 8.

(3) Every person who contravenes subsection (2) shall be liable to a fine of £500 and £50 for each day for which such contravention continues.

Prohibition of terminating societies

4.—(1) No terminating society shall carry on business in Malaŵi.

(2) Any society which contravenes subsection (1) shall be liable to a fine of £500, and £50 for each day for which such contravention continues.

Appointment of Registrar

5. The Minister shall appoint a public officer to be Registrar of Building Societies to perform the duties and exercise the powers imposed and conferred upon the Registrar by this Act.

Indemnity of the Registrar and other persons

6. The Registrar shall not, nor shall any person acting under the authority of the Registrar, be personally liable for or in respect of any act or matter done in good faith in the exercise of the powers conferred by this Act.

PART II

Formation and Registration

Prohibition of unregistered society

7.—(1) No person shall carry on business in Malaŵi as a society unless it is registered under this Act:

Provided that an existing society may carry on business in Malaŵi for a period of three months from the date of the coming into operation of this Act notwithstanding that it is not registered under this Act.

(2) An existing society shall not, after the date of coming into operation of the Act, pay or repay, or agree to pay or repay, outside Malaŵi any sums of money received by it in Malaŵi, whether such sums were received before or after such date.

(3) Any person who contravenes subsections (1) and (2) shall be liable to a fine of £500, and £50 for each day for which such contravention continues.

Formation of societies

8.—(1) Any four or more persons who agree jointly to subscribe to permanent shares of the society to an amount of not less than £20,000 may form a society by subscribing their names and addresses to rules agreed by them for the government of such society and by obtaining registration under this Act.

(2) Subject to this section, persons intending to form a society shall apply to the Registrar for registration in the prescribed form, accompanied by two copies of such rules.

(3) Every application for registration under subsection (2) shall be accompanied by such registration fee as may be prescribed.

(4) If the Registrar is satisfied that the application and such rules are in compliance with this Act, he shall enter the prescribed particulars relating thereto in the register:

Provided that the Minister may, if he is satisfied that it is in the public interest so to do—

(*a*) by order published in the *Gazette* suspend the registration of new societies either indefinitely or for a stated period and during such period the Registrar shall not register any new society;

(*b*) in any particular case direct the Registrar that registration of a proposed society shall be refused.

(5) The Registrar shall issue a certificate of registration in the prescribed form to every society under this section.

Certificates, etc., to be evidence

9.—(1) A certificate of registration of a society issued by the Registrar shall, upon its mere production, be conclusive evidence, unless the contrary be proved, that all the requirements of this Act in respect of registration and of matters precedent and incidental thereto have been complied with and that the society is duly registered.

(2) Any other document relating to a building society and purporting to be signed by the Registrar shall, in the absence of any evidence to the contrary, be admissible as evidence in any court without proof of the signature.

Maintenance of register

10. The Registrar shall keep and maintain a register of societies in which he shall record, in respect of all societies registered under section 8, the following particulars, that is to say—

(*a*) the name of the society;

(*b*) the situation and postal address of the head office in Malaŵi of the society;

(*c*) the permanent-share capital of the society;

(*d*) the names and addresses of members and their holdings of permanent shares;

(*e*) such other information as may be prescribed.

Effect of registration

11. From the date of registration of a society under this Act, such society shall be a body corporate by its registered name with perpetual succession and, subject to this Act, shall be capable of doing all such acts as a body corporate may by law perform.

Names of societies

12.—(1) No society shall be registered by a name which is identical with that of any other society previously registered, or by a name which so nearly resembles the same as to be likely to deceive, unless such other society is in course of being dissolved and consents to such registration.

(2) The name of every society shall end with the words "Building Society".

(3) A society shall not use any name or title other than its registered name.

(4) The Registrar may, with the approval of the Minister, refuse to register a society by a name which in his opinion is likely to deceive or to cause offence to any person or class of persons.

Registration of existing societies

13. Every existing society shall, if it intends to carry on business after the expiration of a period of three months from the date of coming into operation of this Act, within that period apply to the Registrar for registration in like manner as a society making application under section 8.

Application by Registrar for winding up

14. Where the Registrar has reasonable grounds for believing—

(*a*) that a certificate of registration has been obtained for a society by fraud or granted by mistake;

(*b*) that a society exists for an illegal purpose;

(*c*) that a society has wilfully and after notice from the Registrar contravened any of the provisions of this Act;

(*d*) that a society has ceased to conduct business as a building society; or

(*e*) that a society has commenced operations as a building society outside Malaŵi,

he may, with the approval of the Minister, and in accordance with rules made by the Chief Justice, apply to the High Court for an order for the dissolution of the society.

Contents of rules of societies

15. The rules of every society shall set forth—

(*a*) the name of the society and the location and postal address of the head office of the society;

(*b*) the objects of the society;

(*c*) the manner in which a person may become a member, and may cease to be a member, of the society;

(*d*) the manner in which permanent shares may be issued or transferred;

(*e*) the manner in which the funds of the society are to be raised, the purposes to which they are to be applied and the manner in which surplus funds are to be invested;

(*f*) the terms upon which the society will accept and repay deposits;

(*g*) the manner in which and the conditions upon which advances upon the security of a mortgage or otherwise are to be made and repaid, and the conditions upon which a borrower can redeem the amount due from him before the expiration of the period for which the advance was made;

(*h*) the manner in which profits or losses are to be ascertained and dealt with or provided for;

(*i*) the borrowing powers of the society within this Act;

(*j*) the limits, if any, on the amount of deposits which may be held or made by any one person;

(*k*) the manner of altering the rules of the society;

(*l*) the manner of appointing, remunerating and removing the directors, their qualifications, powers and duties, and the manner of appointing, remunerating and removing auditors and officers of the society;

(*m*) the manner of calling meetings of the members, the quorum for such meetings and the right to attend and the manner of voting thereat;

(*n*) the provision for an annual or more frequent audit of the accounts and the inspection by the auditors of the mortgages and other securities held by the society;

(*o*) the manner of settling disputes between the society and any persons;

(*p*) the device, custody and use of the common seal of the society;

(*q*) provision for the custody of mortgages, and other securities held by the society;

(*r*) the charges, fees, fines and forfeitures which may be demanded from or imposed on depositors with and borrowers from the society;

(*s*) the manner in which the society may be dissolved;

(*t*) such other matters as may be prescribed.

Rules to be open

16. Every society shall make a copy of its rules available for inspection by such persons as have dealings with the society during the normal business hours of the society.

Common seal

17. Every society shall have a common seal which shall bear the registered name of the society.

PART III

Management of Societies

Directors

18.—(1) Every society shall have a board of directors consisting of three or more persons.

(2) The remuneration payable to the directors in any financial year shall not exceed in total 10 per centum of the permanent share capital of the society, or one half of one per centum of the mortgage assets at the end of the previous financial year, whichever is the less:

Provided that the remuneration payable to each director shall not be reduced below £300 per annum by the operation of this provision.

(3) The duties of every director of a society shall include the duty of satisfying himself that the arrangements made for valuing the adequacy of any security to be taken in respect of any advance to be made by the society are such as may be reasonably expected to ensure that the adequacy of any security to be so taken will be valued by a competent and prudent person experienced in the matters relevant to the determination of the value of that security.

Election of directors

19.—(1) The directors shall be elected by the members for a period not exceeding three years, and shall be eligible for re-election.

(2) Whenever a casual vacancy occurs, a person may be appointed by the remaining directors to fill the vacancy until the next annual general meeting.

(3) Vacancies in the board of directors shall be filled at the annual general meeting by election by a majority of the members.

(4) No person shall become a director until after he has given his consent in writing to his being elected or appointed as such.

Validity of acts of directors

20. The acts of a director shall be valid notwithstanding any defect that may afterwards be discovered in his election or appointment or qualification, but shall not be valid after the date of the discovery of such defect.

Disqualification for appointment as director

21. The following persons shall be disqualified from being appointed a director of a society—

(*a*) a person who is not a member of the society;

(*b*) a member who holds permanent shares in the society to a value of less than £500;

(*c*) a body corporate;

(*d*) a minor or any other person under legal disability;

(*e*) any person who at any time has been adjudged bankrupt by a competent court, whether in Malaŵi or elsewhere, or who, whether in Malaŵi or elsewhere, has made an arrangement or composition with his creditors;

(*f*) any person who has at any time been convicted (whether in Malaŵi or elsewhere) of theft, any offence involving an element of fraud, forgery, uttering a forged document, or perjury or any similar offence, by whatever name called, and has been sentenced therefor to serve a term of imprisonment without the option of a fine, or to a fine exceeding £50;

(*g*) any person removed by a competent court, whether in Malaŵi or elsewhere, from an office of trust on account of misconduct.

Duty of director to disclose interest

22.—(1) Any director of a society who has any direct or indirect pecuniary interest in any contract which the society proposes to enter into, or in the granting of an advance shall declare the nature and extent of such interest at any meeting of the Board of Directors of the society at which the proposed contract or the granting of such advance or the valuation of property offered as security for such advance is considered, and shall not vote on any such matter in which he has such interest.

(2) Any person who contravenes any of the provisions of this section shall be liable to a fine of £500.

Auditors

23. Every society shall have one or more auditors, who shall be a person or persons approved for that purpose by the Registrar.

Disqualifications for appointment as auditor

24.—(1) The following persons shall be disqualified from being appointed an auditor of a society—

(*a*) an officer or servant of the society;

(*b*) a person who is a partner of an officer or servant of the society;

(*c*) a person who is an employer or an employee of an officer or servant of the society;

(*d*) a body corporate.

(2) Any person who acts as auditor of a society when disqualified as aforesaid shall be liable to a fine of £100 and to imprisonment for six months.

Officers, etc., not to accept gifts

25.—(1) No director, secretary or other officer of a society, nor any surveyor or valuer or legal practitioner retained by it, shall, in addition to the remuneration prescribed or authorized by the rules of the society, receive from any other person any gift, bonus, commission or benefit for or in connexion with any transaction whatsoever relating to the business of the society.

(2) Any person who pays or accepts any such gift, bonus, commission or benefit shall be liable to imprisonment for two years, and the person accepting any such gift, bonus, commission or benefit shall, if ordered so to do by the court by whom he is convicted, pay over to the society the amount or value of such gift, bonus, commission or benefit, and in default of so doing shall be guilty of a further offence and shall be liable to imprisonment for a further six months.

(3) This section shall not apply to the payment of a bonus gratuity or other award in appreciation of long, good or special services rendered to the society where such payment is authorized by the rules of the society.

Restriction of payment of commissions

26.—(1) It shall not be lawful—

(*a*) for any person to receive or to agree to receive any commission or gift from a building society or from any officer, servant or agent of a building society, in consideration of the introduction of mortgage business to the society or in consideration of a promise to introduce such business to the society; or

(*b*) for a building society, or any officer, servant or agent of a building society, to offer to give or agree to give any commission or gift to any person for any such consideration as is mentioned in paragraph (*a*).

(2) Any person who contravenes this section shall be liable to a fine of £500 and to imprisonment for twelve months.

Provisions excluding liability of officers forbidden

27. Any provision, whether contained in the rules of a building society or in any contract with a building society, for exempting any director, manager or officer of a building society, or any person (whether an officer of the society or not) employed by the society as an auditor, from, or indemnifying him against, any liability which by virtue of any rule of law would otherwise attach to him in respect of any negligence, default, breach of duty or breach of trust of which he may be guilty in relation to the society, shall be void.

PART IV

Powers of Societies

Power to borrow
39 of 1981
30 of 1991

28.— (1) Subject to this Act, and without prejudice to any other powers of the society, a society may accept deposits to be applied to the purposes of the society.

(2) A society may allow any person to—

(*a*) maintain a credit balance in his savings deposit account not exceeding Kl,000,000;

(*b*) hold investment deposits to a value not exceeding K2,000,000; and

(*c*) hold fixed deposits to a value not exceeding K3,000,000:

Provided that the Registrar may, subject to such conditions as he may determine, consent in writing to a society allowing a person to maintain a credit balance in his savings deposit and to hold investment deposits and fixed deposits in excess of the amounts set forth in this subsection.

(3) Notwithstanding subsection (2) a society may accept deposits from a trustee for different trusts which exceed in the aggregate the limits specified in that section if the amount deposited in respect of each individual trust does not exceed such limits.

(4) The Minister may, if he considers it in the public interest so to do, by notice published in the *Gazette*, prohibit a society from accepting any or any further deposits.

(5) If a society contravenes this section or section 42, the society and every director, secretary or other officer of the society who is a party to the contravention shall be liable to a fine of K200.

(6) If any society receives deposits in excess of the limits prescribed by this section or borrows money by way of loan contrary to section 42 every director of the society shall, if the

society is unable to meet its obligations, be personally liable for the amount so received in excess or contrary to section 42, as the case may be.

Restriction on acquiring land, etc.

29. No society shall, without the consent in writing of the Registrar, acquire or retain land or erect buildings for the administration of the society's affairs or for the housing of its employees to a value exceeding, at the time that the acquisition is made or the buildings are erected, an amount equal to 20 per centum of its permanent-share capital together with the amount standing to the credit of a reserve fund appropriated out of profits for that purpose, or three per centum of the society's total assets, whichever is the less.

Power to make advances
9 of 1985

30.—(1) A society may, subject to this section and section 34, make advances or special advances out of its funds upon the security of lands or buildings:

Provided that no society shall advance money on the security of any lands or buildings which are subject to a prior mortgage, unless the society making the advance is the mortgagee under such prior mortgage.

9 of 1985

(2) If any advance is made in contravention of subsection (1), the directors of the society who authorized the advance shall be jointly and severally liable for any loss on the advance occasioned to the society.

(3)—*(a)* Subject to paragraph *(b)* no society shall, on the security of a mortgage, make an advance in excess of such amount as may from time to time be determined by the Minister or 75 per centum of the value of the lands or buildings mortgaged as determined at the time of making the advance, whichever is the less:

Provided that where a society exercises its right of foreclosure, or exercises its power of sale, in respect of lands or buildings mortgaged to it such society may make a reducible advance, secured by a further mortgage, to the purchaser of such lands or buildings in an amount not exceeding the amount owing to the society at the date of such foreclosure or sale, as the case may be, or the amount determined by the Minister or 75 per centum of the value of the lands or buildings mortgaged by such further mortgage, whichever is the greater.

9 of 1985

39 of 1968

(*b*) A society may, in conjunction with an advance made on the security of lands or buildings, make an additional advance—

(i) against additional security as specified in the Schedule, in an amount not exceeding the value of the additional security, or 15 per centum of the value of the lands or buildings mortgaged, whichever is the less; or

(ii) against a guarantee given by the Minister for and in the name of the Government in respect of the additional advance, in an amount not exceeding 20 per centum of the value of the lands or buildings mortgaged.

(4) Where a charge upon a policy of life assurance is taken as additional security for an advance, the value of the policy shall be assessed at an amount not exceeding the surrender value thereof at the time when the advance is made.

(5) A society may, in accordance with any general or special directions of the Minister, lend money— 9 of 1985

(*a*) to members and depositors on the security of their deposits; and

(*b*) to members on the security of their shares.

Special advance

31.—(1) A special advance is an advance made by a society on the security of lands or buildings being an advance of one of the following descriptions, that is to say:

(*a*) an advance of any amount to a body corporate;

G.N. 134/1968 121/1981 44/1992

(*b*) an advance of a sum exceeding K150,000, or such other sum as may be prescribed by the Minister, to a person other than a body corporate;

(*c*) an advance of any amount to a person other than a body corporate being a person who after the advance is made to him is indebted to the society in an amount exceeding K150,000, or such other sum as may be prescribed by the Minister.

G.N. 121/1981 44/1992

(2) An advance made jointly to two or more persons shall be deemed to be a special advance if an advance of the same amount under like conditions to any one of those persons would be a special advance.

Advances to be reducible advances

32.—(1) No society shall make any advance other than a reducible advance.

(2) The terms of a reducible advance shall provide for the annual reduction of the capital amount outstanding and for the repayment of the total capital amount within a period of not more than 30 years. If any portion of the capital amount advanced has been repaid to the society and the society has readvanced an amount equal to the portion so repaid to the person who repaid it, the capital amount of the original advance still outstanding and the amount so readvanced shall be repaid within a period of not more than 30 years calculated from the date of the original advance.

Society may make further advances for certain purposes

33. Notwithstanding section 30, a society may for the purpose of protecting lands and buildings mortgaged to it or for the purpose of maintaining the security held by it for the repayment of an advance, make further advances in respect of—

(*a*) premiums on insurance policies designed to provide further security for the repayment of an advance;

(*b*) rates, taxes and other charges on the property;

(*c*) the maintenance and repair of the property,

and such further advances shall be a charge on the property and shall form part of the moneys secured by the mortgage.

Limitation on making advances
25 of 1968
9 of 1985

34.—(1) No advance or special advance shall be authorized by the Board of Directors of a society unless, at the close of business on the business day immediately preceding the day on which such advance or special advance is considered by the Board for authorization, the society held securities equivalent to the aggregate value of 15 per centum of the liability of the society in respect of deposits and 50 per centum of the society's mortgage commitments:

Provided that the liability of the society calculated for the purpose of this subsection shall be reduced by the amount owing on the loans, together with interest accrued thereon, made by the society under section 30 (5).

(2) For the purpose of subsection (1) ''securities'' mean—

(*a*) cash;

(*b*) deposits in any commercial bank registered in Malaŵi;

(*c*) Malaŵi Government Treasury Bills;

(*d*) any trustee securities issued by the Government of Malaŵi or any securities for which the Government of Malaŵi is responsible, due for payment or maturing within the next ensuing five years; and

(*e*) any other trustee securities which have been approved for the purpose by the Minister,

and the value of such securities shall be the cost thereof to the society or the market value thereof, whichever is the lower, and for the purpose of determining the aggregate value of such securities there shall be deducted from the aggregate thereof the amount of any loan owing by the society.

(3) No society may make a special advance during the 12 months subsequent to the society's registration under this Act.

(4) No society may make special advances during its second or subsequent financial year if the total value of special advances at the end of the preceding financial year exceeded 25 per centum of the mortgage assets of the society.

(5) No society may make special advances during a financial year to an amount exceeding 5 per centum of the total amount of all advances made during that financial year if the total value of special advances at the end of the preceding financial year exceeded 10 per centum of the mortgage assets of the society.

(6) No society may make special advances during a financial year to an amount exceeding 10 per centum of the total amount of all advances made during that financial year.

(7) A society which accepts a transfer of engagements from an existing society under section 74 may do so notwithstanding that the total of special advances included in those engagements exceeds 25 per centum of the total advances taken over but the society shall not then make any special advances until the total

special advances of the society falls below 25 per centum of the society's total advances.

(8) A society may make an advance or a special advance notwithstanding this section if it is authorized so to do in writing by the Registrar.

Special advances on default of debtor

35.—(1) Where a special advance has been made on the security of lands or buildings mortgaged to a society and the society exercises its right of foreclosure in respect of such lands or buildings or where such lands or buildings have been sold in execution or upon insolvency or under the authority of the debtor granted subsequent to his default on the mortgage, the society may make a special advance to a purchaser, notwithstanding section 34 if the permission of the Registrar is first obtained in writing.

(2) The Registrar may, in his discretion, authorize in writing any special advance permitted by him under subsection (1) to be left out of account when determining the limits provided in section 34 (3), (4), (5) and (6).

Valuation of property for purposes of advance

36.—(1) No society shall make any advance or special advance unless it is based upon a valuation made by a person (hereinafter called a valuer) appointed by the society for the purpose of making such a valuation.

(2) Every valuer shall make a personal inspection of the lands or buildings offered as security for an advance and in the case of an uncompleted building, shall also examine the building plans and specifications.

(3) Every valuer shall record his valuation and the date of his inspection on the prescribed form and shall sign such form.

(4) If an advance is authorized on the security of a building to be completed and such advance is to be paid by instalments to be paid during the period of construction of such building the valuer shall make a personal inspection of such building prior to the payment of each instalment, and the amount of such instalment shall be based on his valuation at such inspection.

Valuer must have no pecuniary interest in advance

37.—(1) No society shall appoint as a valuer, under section 36 (1), any person who has any direct or indirect pecuniary interest, other than the payment of fees for professional services, in the granting of an advance.

(2) No person shall make any valuation for the purposes of section 36 (1) if he has any direct or indirect pecuniary interest, other than the receipt of fees for professional services, in the granting of an advance.

(3) Any society which, or person who, contravenes this section shall be liable to a fine of £500.

Minister may guarantee repayment of advances 39 of 1968

38. The Minister may, for and in the name of the Government, on such terms and conditions as he may determine, guarantee the repayment of advances made by a society on the security of lands or buildings.

Limit of amount of advance when Minister has guaranteed repayment 39 of 1968

39. The total amount of any advance and of any additional advance of which the Minister has guaranteed repayment under section 30 (3) *(b)* (ii) shall not exceed in any individual case 95 per centum of the value of the property mortgaged as determined at the time of making the advance.

Notice to be given where security is taken from a third party

40. Where a society makes an advance, an additional advance or a special advance for the purpose of its being used in defraying the purchase price of land or buildings and takes any security for the advance from another person, then, before any contract requiring the borrower to repay the advance is entered into, the society shall give to the borrower and to that other person a notice in writing in the prescribed form.

Power to invest

41.—(1) A society may, from time to time and subject to its rules, invest its funds in approved investments.

(2) No society shall invest any part of its funds in any investment other than an approved investment.

(3) Notwithstanding subsection (2) a society may keep money on current account and deposit account at one or more commercial banks or with the Post Office Savings Bank.

(4) Notwithstanding subsection (1) the Minister may by order published in the *Gazette* prohibit the investment of funds by a society in any security or securities which would, but for the Order, be an approved investment:

Provided that a society which, at the time such Order comes into operation, has funds invested in a security which by virtue of such Order is not an approved investment may, with the written approval of the Registrar, retain such investment, and the Registrar shall give his approval to such retention for so long as he is satisfied that the realization of the investment would be detrimental to the interest of the society.

Restrictions on borrowing

42.—(1) Subject to section 28, a society may only obtain money by way of a loan on terms and conditions approved in writing by the Registrar with the prior consent of the Minister and may, if authorized in writing to do so by the Registrar with

the prior consent of the Minister, borrow such money on the security of all or any of its assets.

(2) In this section the word "loan" includes an overdraft with a bank.

General reserve fund

43.—(1) Every society may establish a fund to be known as the general reserve fund, appropriations to which fund shall only be made out of the realized profits of the society.

(2) No dividend, bonus or donation shall be paid out of the general reserve fund.

(3) Moneys standing to the credit of the general reserve fund shall be invested in approved investments or in advances on the security of lands or buildings.

(4) A society may charge against the general reserve fund any net loss remaining to the society in any year after applying to such loss any undistributed profits brought forward from previous years.

Restriction on payment of dividends

44.—(1) Notwithstanding anything to the contrary contained in its rules, no society shall pay any dividend or interest on any of its permanent shares otherwise than out of profits earned by the society during the current financial year, and undistributed profits.

9 of 1998

(2) Notwithstanding anything to the contrary contained in its rules, no society shall pay any dividend, interest or bonus on any of its permanent shares in excess of 65 per centum of profits after tax per annum.

PART V

Meetings and Periodical Returns

Annual general meeting

45. Every society shall within five months of the end of each financial year hold a general meeting as its annual general meeting in addition to other meetings in that year and shall specify the meeting as such in the notices calling it.

Other meetings

46. The board of directors of a society shall call such other general meetings as may be required by the rules of the society or as they may consider desirable, and shall, notwithstanding anything contained in the rules of the society, call a general meeting on the application of not less than one-half of the total number of members.

Annual account and statement

47.—(1) *(a)* Every society shall, as soon as is practicable and not more than four months after the expiration of each financial year, cause to be prepared an account of all the income and expenditure of the society during such financial year and a general statement of its funds and effects, liabilities and assets as at the end of the financial year.

(*b*) Every such account and statement shall be signed by the auditors of the society and shall be countersigned by at least two directors thereof.

(2) Every such account and statement shall be in such form and shall contain such particulars as may be prescribed, and, without prejudice to the generality of the foregoing, shall show—

(*a*) the amounts due to depositors;

(*b*) the balance due or outstanding on the security of mortgages (not including prospective interest); and

(*c*) the amount invested by the society in other securities, showing separately investments in and investments outside Malaŵi.

(3) Every auditor in signing such annual account or statement shall either certify that it is correct, duly vouched and in accordance with law or specially report to the society in what respect he finds it incorrect, unvouched or not in accordance with law, and shall also certify that he has at that audit actually inspected the securities belonging to the society, and shall state the number of properties with respect to which evidence of title has been produced to and actually inspected by him.

(4) A copy of such account and statement shall be sent to every member of the society together with the notice convening the annual general meeting at which they are to be presented and copies thereof shall also be available at the offices of the society not less than 14 days before such annual general meeting.

(5) A copy of every such annual account and statement, certified in such manner as may be prescribed, shall be sent to the Registrar within 14 days after the annual general meeting at which it was presented or within five months after the expiration of the financial year to which it relates, whichever period expires first.

(6) If any society fails to comply with this section, the society and every director, secretary or other officer of the society shall be liable to a fine of £250.

Returns of sales and transfers

48. Every society shall, in respect of each financial year, cause to be prepared and sent to the Registrar at the same time as its annual account and statement is sent a return in such form as may be prescribed with respect to—

(*a*) every property which has, during the period to which the return relates, been sold by the society in the exercise of its powers as mortgagee thereof;

(*b*) every mortgage which, during the said period, has been transferred by the society.

PART VI

Miscellaneous Provisions

Books and records to be kept by societies

49.—(1) Every society shall keep the following books, that is to say—

(*a*) a minute book recording all proceedings of general meetings;

(*b*) a minute book recording all proceedings of the board of directors;

(*c*) a register of directors, showing the full names of every director, his postal and residential address, the date of his appointment and the date of his ceasing to hold office as such director; and

(*d*) such books of account as may be necessary to show the receipts and expenditure of the society, the amounts due to depositors, the balance due or outstanding on the security of mortgages and the amount invested by the society.

(2) Every society shall cause to be kept records showing with respect to every advance made by the society on the security of any lands or buildings—

(*a*) the amount at which the lands or buildings were valued and the name of the person by whom the assessment was made; and

(*b*) particulars of any additional security taken by the society, including the amount at which it was valued and the name of the person by whom the valuation was made.

(3) Every society registered under section 8 shall keep all registers, minute books, books of account and other records, which it is required by this Act to keep, in English.

(4) If any building society fails to comply with this section, the society and every director, secretary or other officer of the society shall be liable to a fine of £500.

Rules to be binding on members and others

50. The rules of a society registered under section 8 shall be binding on the members and officers of the society, its shareholders and depositors and all persons to whom the society has made advances under the rules, all of whom shall be deemed to have full notice thereof.

Duty to supply copy of rules

51. Every society shall supply to any person requiring the same a complete printed copy of its rules, with a copy of the certificate of registration appended thereto, and shall be entitled

to charge for the same a sum not exceeding such amount as the Minister may prescribe.

Evidence of rules

52. A copy of the rules of a building society, certified by the secretary or other officer of the society to be a true copy of its registered rules, shall, in the absence of evidence to the contrary, be *prima facie* evidence of such rules.

Persons under 21

53.—(1) Any person who is under the age of 21 years may become a member, shareholder or depositor of or in any society if its rules do not prohibit such admission.

(2) A member, shareholder or depositor of or in a society while under the age of 21 years may, subject to its rules—

(*a*) give all necessary acquittances;

(*b*) in the case of a member, consent to the dissolution of the society; and

(*c*) by his guardian *ad litem*, present a petition for the dissolution of the society,

but may not—

(i) vote at any meeting of the society; or

(ii) execute a mortgage to secure advances made to him by the society.

Deposits may be made jointly

54. Two or more persons may jointly make a deposit or deposits in a building society.

Prohibition of balloting

55. No society shall cause or permit applicants for advances to ballot for precedence or in any way make the granting of an advance depend on any chance or lot.

Implied warranty

56. Where a society makes an advance for the purpose of its being used in defraying the purchase price of lands or buildings, the society shall be deemed to warrant to the borrower that the purchase price is reasonable unless, before any contract requiring the borrower to repay the advance is entered into, the society gives to the borrower a notice in writing in such form as may be prescribed stating that the making of the advance implies no such warranty.

Exercise of power of sale

57.—(1) If a society acquires by foreclosure or surrender any lands or buildings mortgaged to it, such lands or buildings shall be sold and converted into money within two years of the date of such foreclosure or surrender, or such longer period as the Registrar may from time to time, in any particular case, authorize in writing.

(2) A society exercising its power of sale of any land mortgaged to it shall take reasonable care to ensure that in the exercise of such power the price at which the land is sold is the best price which can reasonably be obtained; and any agreement if and so far as it relieves or may have the effect of relieving a society from the obligations imposed by this section shall be of no effect.

(3) Where a society has exercised its powers of sale of any lands or buildings mortgaged to it, it shall, within 28 days from the completion of the sale, send by registered post to the person who immediately before the sale was the owner of the land at his last known address a notice containing such particulars relating to the sale as may be prescribed.

(4) Nothing in subsection (3) shall affect the operation of any rule or law relating to the duty of a mortgagee to account to a mortgagor.

(5) If a society contravenes subsection (3) the society and every director, secretary or other officer of the society, who is a party to such contravention, shall be liable to a fine of £500.

Lost or destroyed permanent share certificate, etc.

58.—(1) If any permanent share certificate, savings deposits pass-book, investment book, fixed deposit receipt or any statement or other form of receipt, issued by a society is lost or destroyed, the society, upon such evidence, and subject to such terms and conditions as the directors think fit, and after the loss or destruction thereof has been duly advertised once in the *Gazette* and once in a newspaper circulating in the town or District in which the shareholder or depositor, as the case may be, resides, may issue a certified copy of such certificate, pass-book, book, receipt or statement:

Provided that the directors may in their discretion authorize the issue of such a certified copy without requiring the loss or destruction to be advertised.

(2) Such certified copy shall thereafter for all purposes take the place of the certificate, pass-book, book, receipt or statement so lost or destroyed and be the sole evidence thereof.

Inspection of documents by public

59. On payment of the prescribed fees, any person may inspect at the office of the Registrar the documents relating to any society and required to be lodged with the Registrar in terms of this Act or obtain from the Registrar a copy or extract of any such document or part of any such document kept by the Registrar.

Exemptions from stamp duty

60. Notwithstanding any other law for the time being in force, no stamp duty or stamp duties whatsoever shall be payable in respect of the following documents or payments—

(*a*) a society's fixed deposit receipts;

(*b*) repayments of an advance made by a society on the security of a mortgage;

(*c*) deposits for credit of a savings deposit account held with a society;

(*d*) paid-up permanent share certificates issued by a society;

(*e*) a receipt given to a society on the repayment by the society of any deposit;

(*f*) deposits for credit of an investment deposit account held with a society.

Financial year of society

61. The financial year of every society shall end on the 31st day of January in each year.

Conditions relating to deposits and permanent shares

62.—(1) No society shall—

(*a*) issue any form of application to make a deposit unless such form of application is accompanied by a notice printed in English and in the vernacular language in use in the area in which the form of application is issued, stating the types of deposits accepted by the society, the conditions of repayment thereof, and the preferential and other special rights attaching thereto;

(*b*) accept any person as a member unless he has signed a form of application for permanent shares in the society;

(*c*) accept any investment deposit repayable after a period of notice of less than two months;

(*d*) issue any permanent share unless it is paid for in full when the application for such share is accepted;

(*e*) issue any permanent share at a value other than its nominal or face value.

39 of 1968

(2) Notwithstanding the provisions of subsection (1), but subject to the provisions of sections 44 and 63, a society may capitalize its reserves by the issue of bonus permanent shares to the current holders of permanent shares.

Conditions relating to the issue and transfer of permanent shares

63.—(1) No society shall issue permanent shares in addition to the permanent shares for which members have subscribed in accordance with section 8 or section 13 unless the Registrar has given his consent in writing to the issue of such additional permanent shares.

(2) No society shall transfer permanent shares to a person or member unless the Registrar has given his consent in writing to the transfer.

(3) An application by a society to the Registrar for his consent to the issue or transfer of permanent shares must be signed by all existing holders of permanent shares.

(4) The Minister may, if he considers it in the public interest so to do, direct the Registrar to withhold his consent to the issue or transfer of the permanent shares of any society.

Conditions relating to savings deposits

64. Every savings deposit account in a society shall be subject to the condition that no depositor in such a deposit account may withdraw more than K100 in any one day from the account on giving less than one month's notice.

Waiver of condition or limitation 51 of 1971

64A. The requirement of notice for the repayment of any sum on investment deposit as provided by section 62 (1) (c), and the condition limiting withdrawals from any savings deposit account to not more than K100 in any one day as provided by section 64, may be waived by any building society in any particular case where it is satisfied that it is necessary so to do in order to relieve personal hardship or for any other humanitarian purpose.

Repayment of deposits at maturity

65. Deposits in a society accepted on terms specifying maturity on a fixed date shall be repaid to the depositor on that date, unless the society has obtained such depositor's consent to convert the maturing deposits into new deposits accepted by the society under its current terms at the date of maturity.

Misleading advertisements

66.—(1) No society shall publish or cause to be published any advertisement which is likely to mislead the public in any way as to the affairs of the society, including its assets and financial position.

(2) The Registrar shall by notice in writing draw the attention of any society to the terms of any advertisement published by it which in his opinion is an advertisement likely to mislead the public within the meaning of subsection (1).

(3) A society which receives a notice under subsection (2) shall forthwith discontinue publication of the advertisement to which the notice refers or cause it to be discontinued, as the circumstances may require:

Provided that the society may within a period of 14 days, calculated from the date on which the notice is received, make representations in the matter to the Minister, and the Minister may direct that the prohibition against further publication of the advertisement be removed.

(4) No society or agent of a society shall publish or cause to be published any advertisement or issue or cause to be issued any prospectus or circular in connexion with the affairs of such society, unless the name of such society is clearly stated in such advertisement, prospectus or circular.

(5) Any person, other than a society or an agent of a society, who publishes any advertisement or issues any prospectus or circular inviting members of the public to invest funds shall, if such advertisement, prospectus or circular states or suggests in

any manner whatsoever that such person is carrying on business as a building society on such person's own behalf or in association with a building society, be liable to a fine of K2,000 and to imprisonment for two years.

(6) Any society which publishes or causes to be published such an advertisement as is mentioned in subsection (1) shall be liable to a fine of K2,000 and any society which fails to comply with a notice issued under subsection (2) in the manner provided in subsection (3) shall be guilty of a further offence and shall be liable to a like penalty.

PART VII

Change of Name, Address, Officers and Constitution

Change of name

67.—(1) A society may, by resolution of all its members, change its name.

(2) A society which changes its name in accordance with subsection (1) shall, within 14 days from the date of the meeting at which the resolution was passed, send to the Registrar a copy of the resolution certified in such manner as may be prescribed.

(3) Subject to section 12 the Registrar shall register the change of name and forward to the society a new certificate of registration, and such change of name shall have effect from the date of issue of such new certificate.

(4) Upon receipt of the new certificate of registration mentioned in subsection (3) the society shall within 14 days of the date of such receipt publish in the *Gazette* and in one newspaper circulating in Malaŵi a notice specifying both its former name and its new name together with the date on which such change of name was registered.

(5) A change of name by a society in accordance with this section shall not affect any right or obligation of the society or any member thereof, or other person concerned, or render defective any legal proceedings by or against the society, and any legal proceedings that may have been continued or commenced against it by its former name may be continued against it by its new name.

Change of address

68. Every society which changes the situation of its registered office or its postal address shall, within 14 days after such change, send to the Registrar notice thereof in the prescribed form, and the Registrar shall register such change.

Change of directors

69. Whenever any person is appointed a director of a society or ceases for any reason to be a director of a society the society shall within 14 days after such happening send to the Registrar notice thereof in the prescribed form.

Alteration of rules

70.—(1) A society may, by resolution, alter its rules:

Provided that no such resolution shall have effect until approved under subsection (3).

(2) Where a society has altered its rules, it shall, within 14 days from the date of the meeting at which the resolution was

adopted, apply to the Registrar for his approval of such alteration and sent to him two copies of the resolution, certified in such manner as may be prescribed.

(3) If the Registrar is satisfied that the alteration is in conformity with this Act, he shall approve it and return to the society one copy of the resolution endorsed with his approval.

Penalties

71. If any society fails to comply with section 67 (2), section 68, section 69 or section 70 (2), the society and every director, secretary and other officer of the society shall be liable to a fine of £250.

PART VIII

Amalgamation of Societies and Transfer of Engagements

Amalgamation of building societies

72.—(1) Two or more societies may, with the prior approval of the Minister, unite and become one society, with or without any dissolution or division of the funds of such societies, or either of them, upon such terms as are agreed by resolution of all the members of each of such societies.

(2) Notice of any such union shall be sent to the Registrar in the prescribed form.

(3) Upon completion of the union under this section, the societies so united shall be deemed to be dissolved and their registrations cancelled, and the Registrar shall thereupon register the new society under section 8.

Transfer of engagements

73.—(1) A society may, with the prior approval of the Minister, by a resolution of all its members, transfer all or part of its engagements to any other society which may undertake to fulfil those engagements, and a society may undertake to fulfil the engagements of any other society by resolution of all its members.

(2) Notice of any such transfer shall be sent to the Registrar by the transferee society in the prescribed form and shall be registered by the Registrar.

Transfer of engagements by an existing society

74.—(1) An existing society may, with the approval of the Minister, by resolution of its board of directors transfer with or without a balancing consideration all or any of its engagements in Malaŵi to any other society registered under this Act which may undertake to fulfil the transferred engagements and the society registered under this Act may, with the approval of the Minister, by resolution of all its members, undertake to fulfil the engagements in Malaŵi of such transferor society.

(2) Notice of any such transfer shall be sent to the Registrar by the transferee society in the prescribed form and shall be registered by the Registrar.

(3) The transfer of engagements from an existing society may be accepted by a society registered under this Act notwithstanding that the terms and conditions applicable to the shares and deposits of the existing society do not comply with this Act. The terms of withdrawal formerly applied by the transferor society shall continue to apply to those shares and deposits for a period of six months from the date of transfer of engagements.

Registration of transfers etc., to operate as conveyance

75. Upon the registration by the Registrar, under section 8, of a new society formed under section 72 and upon the registration of a transfer of all or part of the engagements of a society or of an existing society under section 73 or 74, there shall, notwithstanding any other Act or law, vest without further or other assurance—

(*a*) in the case of a new society in such new society all the funds, liabilities, assets and property vested or held in the name of each of the societies dissolved under section 72;

(*b*) in the case of a transfer of engagements in the transferee society so much of the funds, liabilities, assets and property vested or held in the name of the transferor society, as the case may be, as is comprised in such transfer of engagements.

Registration of certificates under Deeds Registration Act Cap. 58:02

76. A certificate of registration of a new society, formed under section 72, and a certificate of registration of a transfer of all or part of the engagements of a society or an existing society under section 73 or 74, shall, for the purposes of the Deeds Registration Act, be an effective conveyance and assignment of each and every document registered under that Act by each of the societies dissolved or by a society, or an existing society, transferring its engagements, as the case may be, and a copy of such certificate, duly certified by the Registrar, shall be registered under that Act as if it complied with all the provisions thereof, and no fee shall be payable under that Act in respect of the registration of such a copy.

Exemption from stamp duty, etc.

77. Notwithstanding any other Act or law, no instrument or document which is required or authorized to be given, issued, signed, made or produced under section 72, 73, 74 or 76 shall be subject or liable to be charged with any stamp duty or stamp duties whatsoever.

Creditors not prejudiced

78. No union of building societies and no transfer of engagements from one society or from an existing society to another society shall affect the rights of any creditor of either or any of the societies concerned.

PART IX

Determination of Disputes

Determination of disputes

79.—(1) Where the rules of a society direct that any dispute shall be referred to arbitration by an arbitrator or arbitrators, an arbitrator or arbitrators shall be nominated in the manner provided by those rules.

(2) For the purpose of the determination of any dispute there may be either a single arbitrator or an uneven number of arbitrators.

(3) In the case of the death or refusal or neglect of any arbitrator to act, an arbitrator shall be nominated in the manner provided by the rules of the society to act in the place of the arbitrator dying or refusing or neglecting to act.

(4) The names of every arbitrator nominated in the manner provided by the rules of the society shall be entered in the minute book of the society.

(5) Any award made by an arbitrator or by a majority of the arbitrators shall determine the dispute.

(6) Where the parties to any dispute arising in a society agree to refer the dispute to the Registrar, or where the rules of the society so provide, the Registrar may act as an arbitrator.

(7) The arbitrator or arbitrators shall, at the request of any party to the arbitration or any person claiming under him, and upon payment of the costs and charges of filing the award, cause the award, or a signed copy of it, to be filed in the High Court; and notice of the filing shall be given to the parties by the arbitrator or arbitrators.

(8) An award in an arbitration under this section, on being filed in the High Court in accordance with subsection (7), shall be enforceable as if it were a decree of the Court.

Determination of disputes by the High Court

80. The High Court may hear and determine any dispute—

(*a*) if it appears to the Court upon the petition of any person concerned that application has been made by either party to the dispute to the other party for the purpose of having the dispute settled by arbitration under the rules of the society and that such application has not within 40 days been complied with or that the arbitrator or arbitrators have refused or, for a period of 21 days, have neglected to make any award; or

(*b*) where the rules of the society do not make provision for the referring of disputes to arbitration or direct that any dispute shall be referred to the High Court.

Determination of disputes by arbitrators to be final

81. Every determination by an arbitrator or arbitrators under this Act of a dispute shall be binding and conclusive on all parties and shall be final to all intents and purposes and shall not be subject to appeal and shall not be removed or removable into any court or restrained or restrainable by the injunction of any court:

Provided that the arbitrator or arbitrators may, at the request of either party, state a case for the opinion of the High Court on any question of law (but shall not be compelled to do so), and shall have power to grant to either party in the dispute such discovery as to documents and otherwise as might be granted by the High Court, such discovery to be made on behalf of the society as the arbitrator or arbitrators may determine.

PART X

Powers of the Registrar

Power to require production of books, etc.

82.—(1) The Registrar may at any time, by notice in writing served on a society or on an existing society or on any person who is or has been an officer of such a society, require the society or person to produce to the Registrar such books, accounts, deeds and other documents relating to the business of the society and to furnish to him such other information relating to that business as he considers necessary for the exercise of the powers conferred upon him by this Act and any such notice may contain a requirement that any information to be furnished in accordance with the notice shall be verified by a statutory declaration.

(2) If any society or other person fails to comply with the requirements of a notice under this section, the society and every director, secretary or other officer of the society or such other person, as the case may be, shall be liable to a fine of £250.

Inspection

83.—(1) The Registrar may, on his own motion or, if he thinks fit, upon application by any member, shareholder, depositor or creditor of any society, appoint an inspector to examine into and report on the affairs of the society.

(2) The Registrar may require any person making application under subsection (1) to give security for the costs of the proposed inspection.

(3) All expenses of or incidental to any such inspection shall be defrayed by the society or by the members, shareholders, depositors, creditors making application under subsection (1) or by former members or officers of the society in such proportions as the Registrar may direct.

(4) An inspector appointed under subsection (1) may require the production of all or any of the books, accounts, securities and documents of the society and take extracts therefrom at all

reasonable hours at the head office of the society or at any place where the books are kept, and may examine on oath its officers, members, agents and servants in relation to its business, and may administer an oath accordingly.

(5) The Registrar shall communicate the results of any such inspection to the Minister, to the society and to any person making application under subsection (1).

(6) Any person who in any examination into the affairs of a society under this section having been duly sworn under subsection (4) knowingly gives false testimony touching any matter which is material to such examination shall be guilty of an offence.

Power of Registrar to call a meeting

84.—(1) The Registrar may, with the consent of the Minister, call a meeting of a society, and may, on his own motion, exercise this power in the following circumstances—

(*a*) where a society has failed to make any return required by this Act;

(*b*) where a society has, after notice in writing served upon it in that behalf, failed to correct or complete any such return;

(*c*) where evidence is furnished by statutory declaration of facts which in the opinion of the Registrar call for investigation.

(2) The Registrar may direct at what time and place a meeting under this section is to be held, and what matters are to be discussed and determined at the meeting, and the meeting shall have all the powers of a meeting called according to the rules of the society, and shall in all cases have power to appoint its own chairman, any rule to the contrary notwithstanding; and no provision in the rules of the society for a quorum shall apply to such a meeting.

PART XI

Dissolution

Dissolution

85.—(1) A society or an existing society may be dissolved—

(*a*) with the prior approval of the Minister and with the consent of all its members, testified by their signature to an instrument of dissolution; or

(*b*) voluntarily under the supervision of the High Court; or

(*c*) by the High Court.

(2) Notice of the commencement and completion of any dissolution shall be sent to the Registrar and registered by him.

Instruments of dissolution

86.—(1) Every instrument of dissolution of a society shall set forth—

(*a*) the liabilities and assets of the society in detail;

(*b*) the number of members and the amount standing to their credit in the books of the society;

(*c*) the claims of shareholders, depositors and other creditors and the provision to be made for their payment;

(*d*) the intended appropriation or division of the funds and property of the society; and

(*e*) the names of one or more persons to be appointed trustee for the purpose of the dissolution, and their remuneration.

(2) The provisions of an instrument of dissolution may be varied with the like consent, testified in the same manner, as is required for an instrument of dissolution.

(3) Every instrument of dissolution, and every instrument varying the provisions of an instrument of dissolution, shall be made and signed in duplicate by the trustee and sent to the Registrar within 14 days of signature, whereupon the Registrar shall register one copy of the instrument and return the other to the society endorsed by the Registrar.

(4) An instrument of dissolution, and any instrument varying the provisions of an instrument of dissolution, shall, when registered, be binding upon all members of the society.

Dissolution by the High Court

87.—(1) The High Court may, on the petition of—

(*a*) the Registrar with the prior approval of the Minister;

(*b*) any member authorized to present the same on behalf of the society by all members present at a meeting of the society specially called for the purpose; or

(*c*) any judgment creditor for not less than £50, but not otherwise, order that a society be dissolved either voluntarily under the supervision of the Court or by the Court.

(2) The law for the time being in force in regard to the winding up of a company shall *mutatis mutandis* apply to the dissolution of a society, subject to such adaptations or modifications as may be prescribed.

Powers of liquidators and trustees

88. When a society is being dissolved in accordance with section 85 (1), this Act shall continue to apply as if the liquidators or other persons conducting the dissolution of the society, or the trustees appointed under the instrument of dissolution, were the board of directors of the society.

Liability of members and others on dissolution

89.—(1) When a society is being dissolved, the liability of any member of such society in respect of any permanent share upon which no advance has been made shall be limited to the amount actually paid and in respect of any permanent share upon which an advance has been made shall be limited to the amount payable thereon under any mortgage or other security or under the rules of the society.

(2) When a society is being dissolved, a borrower to whom an advance has been made under any mortgage or other security or under the rules of the society shall not be liable to pay the amount payable under the mortgage or other security, or under the rules, except at the time or times and subject to the conditions therein expressed.

Account and balance sheet on dissolution

90. If a society is dissolved in accordance with section 85 (1), the liquidators, trustees and other persons having the conduct of the dissolution shall, within 28 days from the end of each six month period subsequent to the commencement of the dissolution and finally within 28 days from the termination of the dissolution, send to the Registrar an account and balance sheet, signed and certified by them as correct and showing the assets and liabilities of the society and the way in which those assets and liabilities have been applied and discharged since the commencement of the dissolution.

Dissolution by order of Registrar

91.—(1) On the application in writing by 50 or more shareholders or depositors of any society, setting forth that the society is unable to meet the claims of its depositors, and that it would be for their benefit that it should be dissolved, and requesting an investigation into the affairs of the society with a view to the dissolution thereof, the Registrar may investigate the affairs of the society, but shall before doing so give not less than two months' previous notice in writing to the society at its head office.

(2) If on such investigation it appears that the society is unable to meet the claims of its depositors, and that it would be for their benefit that it should be dissolved, the Registrar may, with the approval of the Minister, order that the society be dissolved, and shall direct in what manner the society is to be dissolved:

Provided that the Registrar may suspend his order for such period as he may deem necessary to enable the society to make such alterations of its rules as will, in his opinion, prevent the necessity of the order being made.

PART XII

Offences

Withholding or misapplying property of a society an offence

92.—(1) If any person by false representation or imposition obtains possession of any moneys, securities, books, papers or other effects of a society, or having the same in his possession withholds or misapplies the same or wilfully applies any part thereof to purposes other than those expressed or directed in the rules of the society and authorized by this Act, he shall be liable to a fine of £1,000 and to imprisonment for two years, and to be ordered to deliver up to the society all such moneys, securities, books, papers or other effects and to repay the amount of money applied improperly, and in default of such delivery of effects or repayment of such amount of money shall be liable to a fine of £250 and to imprisonment for six months.

(2) Proceedings under subsection (1) may be taken at the instance of—

(*a*) the society; or

(*b*) any person authorized by the society or by the board of directors or by the Registrar; or

(*c*) the Registrar.

False statements

93. Any person who makes any false statement or orders or allows any false statement to be made in any document which is required by this Act to be sent to the Registrar, or which such person expects will be published, knowing such statement to be false, or who by addition, alteration, erasure or omission falsifies any such document, knowing that the addition, alteration, erasure or omission will cause a falsification of the document, shall be liable to imprisonment for six months.

General penalty

94.—(1) If any society neglects or refuses—

(*a*) to give any notice, send any return or document or do or allow to be done anything which the society is by this Act required to give, send, do or allow to be done; or

(*b*) to do any act or furnish any information required for the purposes of this Act by the Registrar or by an inspector,

the society, and every officer thereof bound by the rules of the society to fulfil the duty whereof a breach has been so committed, and, if there is no such officer, then every director, unless it appears that he was ignorant of or attempted to prevent the breach, shall be guilty of an offence and, unless a special penalty is provided by this Act, liable to a fine of £100.

(2) This section and sections 3, 7, 25 (2), 26 (2), 66 (5) and (6), 92 (1) and 93 shall be in addition to and not in derogation of Chapters XXVI, XXVII, XXXI, XXXIII, XXXV and XXXVI of the Penal Code. Cap. 7:01

PART XIII

General

95. The Chief Justice may make rules of court for regulating proceedings before the High Court, and applications and appeals thereto, under this Act, and for the fees to be paid in respect thereof. Rules of court

96. The Minister may make regulations prescribing anything required to be prescribed under this Act, and, for the better carrying into effect of this Act, and without prejudice to the generality of the foregoing, such regulations may provide for the procedure in the office of the Registrar, the hours in which that office is to be open for business the forms to be used and the fees to be paid in respect of any matter which is required or permitted to be done under this Act. Regulations

97.—(1) No advance made by the society shall be invalidated by reason only of the fact that the society or any officer of the society has, in connexion with such advance or loan, contravened or failed to comply with any provision of this Act. Non-compliance not to invalidate advance

(2) Every director of a society who makes or authorizes the making of any advance or payment on behalf of the society which authorization contravenes or fails to comply with this Act shall be personally liable to make good to the society any loss occasioned to the society by reason of the making of such an advance or payment.

(3) Every officer of a society who makes any advance or payment on behalf of the society without the authorization of the board of directors shall be personally liable to the society for any loss occasioned to the society by reason of the making of such advance or payment.

98. Notwithstanding any other Act or law, a trustee may invest any trust funds in his hands, whether at the time in a state of investment or not, in fixed deposits in a society designated for that purpose by the Minister by notice published in the *Gazette*, but the Minister shall not designate a society for that purpose until he has guaranteed the liquidity of the society in accordance with section 99. Investments in societies to be trustee securities G.N. 84/1964(N)

Minister may guarantee liquidity of a society

99. Where the Minister considers it in the public interest so to do, he may, on behalf of the Government, guarantee the liquidity of a society in which the Government is the owner of permanent shares.

Power of Minister to permit act by less than all members

100. Where any act or thing is required or authorized to be done under this Act by all the members of a society, the Minister may, where he considers it in the public interest so to do, permit any such act or thing to be done by a lesser number of members.

Delegation of certain of the Minister's powers and duties to the Reserve Bank 22 of 1989

101.—(1) The Minister may, by Order published in the *Gazette*, delegate to the Reserve Bank of Malaŵi such of the powers and duties conferred under this Act as relate to the conduct of banking business by a society, including powers and duties relating to the registration of societies.

Act No. 19 of 1989

(2) In this section "banking business" has the meaning ascribed thereto in the Banking Act.

39 of 1968

SCHEDULE

Classes of additional security which may be taken into account in determining the amount of an additional advance under section 30 (3) (*b*) (i)

1. A charge upon a policy of life assurance.

2. A charge upon any stocks, shares or securities for the time being authorized by law in Malaŵi for the investment of trust moneys.

3. A guarantee given by an insurance company or any other person approved by the Minister.

4. A guarantee accepted by the society with the written consent of the borrower and supported by a charge upon stocks, shares or securities for the time being authorized by law in Malaŵi for the investment of trust moneys.

SUBSIDIARY LEGISLATION

APPOINTMENT OF REGISTRAR

G.N. 111/1965

under s. 5

The Minister has appointed the Secretary to the Treasury to be Registrar of Building Societies.

BUILDING SOCIETIES REGULATIONS

G.N. 49/1964(N) 1/1969

under s. 96

1. These Regulations may be cited as the Building Societies Regulations.

Citation

2. Every application for the registration of a society under section 8 or section 13 of the Act shall be made in Form B.S.1 in the First Schedule.

Application for registration

3. Upon the registration of a society, the Registrar shall issue a certificate of registration in Form B.S.2 in the First Schedule.

Registration certificate

4. Every application under section 23 of the Act for the approval of a person as an auditor of a society shall be in Form B.S.3 in the First Schedule.

Application for approval of auditor

5. Every application under section 28 of the Act for the consent of the Registrar to any one person holding deposits in excess of the limits prescribed by that section shall be in Form B.S.4 in the First Schedule.

Application to exceed investor's limits G.N. 1/1969

6. Every application under section 29 of the Act for the consent of the Registrar to a society holding land or buildings in excess of the limits prescribed by that section shall be in Form B.S.5 in the First Schedule.

Application to acquire additional land or buildings

7. Every application under section 34 or 35 (1) of the Act for the authority of the Registrar to make an advance or special advance in excess of the limits prescribed by those sections shall be in Form B.S.6 in the First Schedule.

Application for authority to make certain advances

8. Every application under section 35 (2) of the Act for the permission of the Registrar to leave a special advance out of account in accordance with that section shall be in Form B.S.7 in the First Schedule.

Application to leave certain special advances out of account

Notice to borrower and third party

9. Every notice to a borrower and to another person providing additional security which is required under section 40 of the Act shall be in Form B.S.8 in the First Schedule.

Application to retain unauthorized investments

10. Every application under section 41 of the Act for the authority of the Registrar to retain unauthorized investments shall be in Form B.S.9 in the First Schedule.

Application to borrow on loan

11. Every application under section 42 of the Act to enable a society to borrow by way of a loan shall be in Form B.S.10 in the First Schedule.

Statement and accounts

12. Every account and statement of a society prepared in accordance with section 47 of the Act shall relate to and concern all the business of that society and shall be in the form and shall contain the particulars set out in Form B.S.11 in the First Schedule.

Return of sales and transfers

13. Every return of sales and transfers prepared in accordance with section 48 of the Act shall be in Form B.S.12 in the First Schedule.

Notice as to warranty

14. Every notice given to a prospective borrower in accordance with section 56 of the Act shall be in Form B.S.13 in the First Schedule.

Notice on sale of property

15. Every notice sent to a member in accordance with section 57 of the Act shall be in Form B.S.14 in the First Schedule and shall state—

(*a*) the particulars of the land sold;

(*b*) the amount of money realized by such sale;

(*c*) the expenses and costs incidental to the sale;

(*d*) the name of the purchaser of the land.

Change of name

16.—(1) Every notification to the Registrar under section 67 of the Act shall be in Form B.S.15 in the First Schedule and shall have attached thereto a copy of the resolution to which such notification relates certified by at least four members of the society.

(2) Upon the registration by the Registrar of a change in the name of a society, the Registrar shall issue a new certificate of registration in Form B.S.16 in the First Schedule.

Change of address

17. Every notification to the Registrar under section 68 of the Act shall be in Form B.S.17 in the First Schedule.

Appointment, etc., of directors

18. Every notification to the Registrar under section 69 of the Act shall be in Form B.S.18 in the First Schedule.

Alteration of rules

19. Every application under section 70 of the Act for the approval of the Registrar of an alteration in the rules of a society shall be in Form B.S.19 in the First Schedule.

Notice of union

20. Every notice of union under section 72 of the Act shall be in Form B.S.20 in the First Schedule.

Notice of transfer of engagements

21.—(1) Every notice of transfer under section 73 of the Act shall be in Form B.S.21 in the First Schedule.

(2) Every notice of transfer under section 74 of the Act shall be in Form B.S.22 in the First Schedule.

Form of documents

22.—(1) All applications, notices, returns and other documents required to be sent to the Registrar shall be clearly and legibly printed or typewritten in the English language on paper of durable quality.

(2) The forms prescribed in the First Schedule shall be used in all matters for which they are prescribed, being adapted with such alterations or additions as may be necessary and as the Registrar may, in his discretion, permit.

(3) Where any document is sent to the Registrar or tendered for registration which, in the opinion of the Registrar, substantially complies with the Act and these Regulations, the Registrar may accept and, where requisite, register the same:

Provided that nothing in this paragraph shall prevent the Registrar from refusing to accept or register any document not in the prescribed form, or in the prescribed form but unnecessarily long or containing unnecessary or irrelevant matter.

Registrar's authentication of documents

23. Every document bearing the signature and, where usual, the seal or other device of the Registrar shall be deemed, until the contrary is shown, to be duly authenticated for the purposes of the Act or these Regulations.

Record of names, etc., of directors

24. The Registrar shall record, in addition to the particulars prescribed by section 10 of the Act, the name and address of every director of every society and his holding of permanent shares in the society in the register required to be kept and maintained under that section.

Fees

25. There shall be payable in the manner and for the several matters set out in the first column of the Second Schedule the appropriate fees as set out in the second column of the said Schedule.

FIRST SCHEDULE

FORM B.S.1

BUILDING SOCIETIES ACT

APPLICATION FOR REGISTRATION OF A BUILDING SOCIETY

We the undersigned having agreed jointly to subscribe to the permanent shares of a building society to be known as the ..... Building Society and having subscribed our names and addresses to rules agreed by us for the government of the said society hereby apply for registration of the said ..... Building Society by that name under the provisions of the Building Societies Act.

Names, addresses and signatures of permanent shareholders and amount of permanent shares held.

Name of shareholder	Address of shareholder	Amount of permanent shares held	Signature of share-holder
(1)			
(2)			
(3)			
(4)			
(5)			
(6)			
(7)			
(8)			
(9)			
		TOTAL	... £ .....

This application is accompanied by—

(1) Two printed /typed* copies of the rules of the society.

(2) £ in payment of the registration fee.

*Delete as applicable.

FORM B.S.2

BUILDING SOCIETIES ACT

CERTIFICATE OF REGISTRATION

I hereby certify that ..... Building Society has this day been registered under the Building Societies Act.

Dated this ..... day of ..... 19 .....

Registrar of Building Societies

FORM B.S.3

(To be submitted in duplicate)

BUILDING SOCIETIES ACT

TO: THE REGISTRAR OF BUILDING SOCIETIES,
ZOMBA

APPROVAL OF AUDITOR

In accordance with section 23 of the Building Societies Act, I hereby apply on behalf of the ..... Building Society for your approval to the appointment of Mr. ..... as auditor of the society. His qualifications are ..... and his business address is .....

Date .....

..... (*Signature of director*)

..... (*Name of society*)

ENDORSEMENT

(for official use only)

The appointment of the above named person as auditor is hereby approved.

Dated this ..... day of ..... 19 .....

Registrar of Building Societies

FORM B.S.4

(To be submitted in duplicate)

BUILDING SOCIETIES ACT

TO: THE REGISTRAR OF BUILDING SOCIETIES,
ZOMBA

APPROVAL OF EXCESS HOLDING OF DEPOSITS

In accordance with section 28 of the Building Societies Act, I hereby apply for your consent to the acceptance of £..... as an additional holding of fixed deposits/investment deposits/savings deposits from ....., whose existing holdings are—

fixed deposits	£.....	repayable .....
investment deposits	£.....	
savings deposits	£.....	
Total	£	

I confirm that the proposed additional holding is not in excess of the amount permitted by the rules of the society, and that acceptance of the offer was approved by a resolution of the board at a meeting on ..... on condition that the terms of repayment are to be ....

Date .....

..... (*Signature of director*)

..... (*Name of society*)

ENDORSEMENT

(for official use only)

I consent to the acceptance of the additional holding from the above named person *on the conditions approved by the Board/subject to compliance with the following conditions ....

Dated this ..... day of ..... 19 .....

*Delete as applicable

Registrar of Building Societies

FORM B.S.5

(To be submitted in duplicate)

BUILDING SOCIETIES ACT

TO: THE REGISTRAR OF BUILDING SOCIETIES,
ZOMBA

APPROVAL OF ACQUISITION OF ADDITIONAL LAND, ETC.

In accordance with section 29 of the Building Societies Act, I hereby apply for your consent to acquire or retain land or erect buildings for the following purpose .....

The property is .....

The total cost to the society will not exceed £ ..... and the purchase was approved by a resolution of the board at a meeting held on .....

I hereby declare that the book value of land or buildings previously acquired by the society is £ ....., that the permanent-share capital of the society is £ ....., that the balance of the reserve fund available for this purpose now stands at £ ..... in the society's books, and that the society's total assets are valued at £ ..... in the society's books.

Date .....

..... (*Signature of director*)

..... (*Name of society*)

ENDORSEMENT

(for official use only)

I consent to the acquisition of the above property provided that the total cost to the society does not exceed the price stated.

Dated this ..... day of ..... 19 .....

Registrar of Building Societies

FORM B.S.6

(To be submitted in duplicate)

BUILDING SOCIETIES ACT

TO: THE REGISTRAR OF BUILDING SOCIETIES,
ZOMBA

APPLICATION FOR REGISTRAR'S AUTHORITY TO AN ADVANCE

In accordance with section *34/35 (1) of the Building Societies Act, I hereby apply for authority to approve * an advance/a special advance of £ ..... to ..... on the security of property situate at ..... in accordance with a resolution of the Board passed at a meeting held on .....

I hereby declare that—

(1) the property has been valued at £ .....

(2) the liability of the society in respect of fixed-period shares, shares and deposits at the close of business on ..... 19 ..... was £ .....

(3) the society's mortgage commitments on ..... 19 were £ .....

(4) the value of the society's securities on ..... 19 ..... was £ .....

(5) the total value of special advances at the end of the preceding financial year was £ .....

(6) the total value of special advances authorized by the Registrar to be left out of account is £ .....

(7) the total value of special advances included in a transfer of engagements from an existing society during the current financial year was £ .....

and I recommend approval be given for the following reasons .....
.....
.....

Date .....

..... (*Signature of director*)
..... (*Name of society*)

ENDORSEMENT

(for official use only)

I hereby authorize the making of the *advance/special advance to which this application refers.

Dated this ..... day of ..... 19 .....

Registrar of Building Societies

*Delete as applicable

FORM B.S.7

(To be submitted in duplicate)

BUILDING SOCIETIES ACT

TO: THE REGISTRAR OF BUILDING SOCIETIES,
ZOMBA

APPLICATION TO LEAVE A SPECIAL ADVANCE OUT OF ACCOUNT

In accordance with section 35 (2) of the Building Societies Act, I hereby apply for permission to leave the reducing balance of a special advance of £ ..... out of account when determining the limits provided in section 34 (3), (4), (5) and (6). This special advance was made on the security of the property .....
.....
which had been acquired by the society through ....., and for which your authority was given on ..... 19 .....
I recommend that permission should be given for the following reasons .....
.....

Date .....

..... (*Signature of director*)

..... (*Name of society*)

ENDORSEMENT

(for official use only)

I hereby permit the society to leave the reducing balance of this special advance out of account when determining the limits provided in section 34 (3), (4), (5) and (6) of the Building Societies Act.

Dated this ..... day of ..... 19 .....

Registrar of Building Societies

FORM B.S.8

BUILDING SOCIETIES ACT

NOTICE OF INTENTION TO TAKE SECURITY FROM THIRD PARTY

(Section 40 of the Building Societies Act)

To	And to
.....	.....
.....	.....
(Name and address of prospective borrower)	*(Name and address of third party providing the security)*

With reference to the application of ..... for an advance upon mortgage from the ..... Building Society to assist in the purchase of .....

(Description, particulars and address of property)

.....

.....

the maximum amount which the society may advance upon the security of the property if no other security were taken by the society is £.....

In view of the provisions of additional security, the society is prepared to consider making an additional advance of £ ..... upon such property, the additional security being—

(Type) .....

(Value) .....

(Provided by) .....

Dated this ..... day of ..... 19 .....

.....

(Signature of officer of the building society)

FORM B.S.9

(To be submitted in duplicate)

BUILDING SOCIETIES ACT

TO: THE REGISTRAR OF BUILDING SOCIETIES,
ZOMBA

APPLICATION TO RETAIN UNAUTHORIZED INVESTMENTS

In accordance with section 41 of the Building Societies Act, I hereby apply for your approval to the retention by this Society of the following investments—

.....

.....

The book value of these investments is £ ..... and I hereby declare that the investments were approved investments at the time of their purchase by the society. They ceased to be approved investments on ..... 19 .... by virtue of the order published in the *Gazette* on the ..... day of ..... 19 .... as Government Notice No ..... and I recommend approval be given for the following reasons—

.....

.....

Date .....

..... (*Signature of director*)

..... (*Name of society*)

ENDORSEMENT

(for official use only)

I hereby authorize retention by the society of the investments listed above.

Dated this ..... day of ..... 19 .....

Registrar of Building Societies

FORM B.S.10

(To be submitted in duplicate)

BUILDING SOCIETIES ACT

TO: THE REGISTRAR OF BUILDING SOCIETIES,
ZOMBA

APPLICATION FOR AUTHORITY TO BORROW

In accordance with section 42 of the Building Societies Act, I hereby apply for authority to enable this society to borrow by way of a loan an amount not exceeding K ..... from ..... on the following terms and conditions—

.....

This amount is within the borrowing powers laid down in the rules of the society and the borrowing of it was approved by a resolution of the Board at a meeting held on .....19 ..... The loan is required for .....
.....

Date .....

..... (*Signature of director*)

..... (*Name of society*)

ENDORSEMENT

(for official use only)

I hereby authorize, with the prior consent of the Minister, the ..... Building Society to borrow an amount not exceeding K..... on the terms and conditions stated above.

Dated this ..... day of ..... 19 .....

Registrar of Building Societies

FORM B.S. 11

G.N. 1/1991
114/1991

BUILDING SOCIETIES ACT

ANNUAL STATEMENT AND ACCOUNT

For the twelve month period ending 31st January, 19 .....

Name of Society .....

Registered Office .....

Postal Address .....

Names and addresses of the members and their holdings of permanent shares:

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

Names and addresses of the directors and their holdings of permanent shares:

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

THE ..... SOCIETY

BALANCE SHEET

31st January, 19 .....

	Notes	19	19 .....
		K	K
FUNDS EMPLOYED			
Share Capital			
Reserves			
TOTAL SHAREHOLDERS' EQUITY			
DEPOSITS			
Fixed			
Tax-Free			
Investment			
Savings			
TOTAL DEPOSITS			
LONG-TERM LIABILITIES			
Loans			
CURRENT LIABILITIES			
Creditors			
Dividends			
TOTAL CURRENT LIABILITIES			
TOTAL FUNDS EMPLOYED			
EMPLOYMENT OF FUNDS			
ADVANCES			
Secured by mortgages			
Secured by pledge of deposits			
TOTAL ADVANCES			
INVESTMENTS			
INVESTMENT PROPERTIES			
FIXED ASSETS			
CURRENT ASSETS			
Stock of consumables			
Other debtors and prepaid expenses			
Funds at call and on deposit			
Bank balances and cash			
TOTAL CURRENT ASSETS			
TOTAL EMPLOYMENT OF FUNDS			

.....
..... } DIRECTORS

THE ..... SOCIETY

INCOME STATEMENT
For the year ended 31st January, 19 .....

	Notes	19 ..... K	19 ..... K
INCOME			
INTEREST RECEIVED:			
Mortgage Advances			
Short-term Loans			
TOTAL INCOME FROM LENDING			
INVESTMENT INCOME			
Rent Receivable			
Fines levied and mortgages in arrears			
Other income			
TOTAL INCOME			
EXPENDITURE			
Operating Costs			
Interest Payable			
TOTAL EXPENDITURE			
OPERATING SURPLUS/(DEFICIT) for the year			
DIVIDENDS			
NET SURPLUS/(DEFICIT) for the year			
RETAINED EARNINGS at beginning of the year			
TRANSFERS TO RESERVES			
RETAINED EARNINGS at the end of the year			

THE ..... SOCIETY

STATEMENT OF SOURCE AND APPLICATION OF FUNDS
For the year ended 31st January, 19 .....

	19 ..... K	19 ..... K
SOURCE OF FUNDS		
Net surplus/(Deficit) for the year		
Adjustment for items not involving the movement of funds:		
Depreciation		
(Profit)/Loss on sale of fixed assets		
TOTAL FUNDS GENERATED FROM OPERATIONS		
Net movement in deposits:		
Fixed deposits		
Tax free deposits		
Investment deposits		
Savings deposits		
Movement in Loan		
Proceeds from disposal of fixed assets		
TOTAL SOURCE OF FUNDS		

APPLICATION OF FUNDS
Movement in investment deposits
Movement in investments
Movement in mortgage advances
Movement in short-term loans
Purchase of fixed assets
Dividends paid

TOTAL APPLICATION OF FUNDS

INCREASE/(DECREASE) IN THE NET WORKING CAPITAL
MOVEMENT IN NET WORKING CAPITAL analysed as:
Stock
Other debtors and prepaid expenses
Loans
Unrealized profit accrued on investments
Creditors

MOVEMENT IN LIQUID FUNDS:
Funds at call and on deposit
Bank balances and cash

INCREASE/(DECREASE) IN THE NET WORKING CAPITAL

THE ..... SOCIETY
Notes to the accounts

The notes to the accounts shall include details of—

1. Principal accounting policies.
2. Permanent share capital:
   Number and nominal value of issued and fully paid shares.
   Number of shares and nominal value of authorized share capital.
3. Loans, showing repayment terms, security and interest rates.
4. Reserves, showing movement thereof and distinguishing capital from revenue reserves.
5. Deposits, showing the range of repayment dates for fixed deposits and the terms of repayment for other deposits.
6. Investments, giving description and cost of each investment and the total market value of all investments held.
7. Movement in investment properties and fixed assets.
8. Movement in mortgage advances, in number and values, distinguishing ordinary from special advances.
9. Interest payable on deposits.
10. Operating costs, with auditors fees, directors fees and depreciation shown separately.
11. Investment income.

REPORT OF THE AUDITORS

We have examined the books, accounts and vouchers of the Society and have obtained all the information and explanation that we have considered necessary for the purpose of our audit. During the course of our audit we physically verified the existence of mortgage deeds

in respect of ..... of the properties in mortgage to the Society and other securities belonging to the Society.

In our opinion, the foregoing Annual Statement and Account, set out on pages 1 to ....., which is in agreement with the books of account, gives a true and fair view of the state of the Society's affairs at 31st January, 19 ..... and its results for the year then ended, in compliance with the Building Societies Act (Cap. 32:01).

Date .....

.....

Signature of Auditor

Address .....

.....

.....

.....

FORM B.S.12

BUILDING SOCIETIES ACT

RETURN OF SALES OF PROPERTIES AND TRANSFERS OF MORTGAGES

For the twelve month period ending 31st January, 19 .....

Name of Society .....

PART I — PROPERTIES SOLD

Roll number	If lease-hold or right of occupancy state term at date of advance	Valuation of property for purpose of advance	Date of advance	Amount of advance	Date of completion of sale	Debt at date of completion of sale	Whether sale was by private treaty or by public auction	Sale price	Amount otherwise recovered	Source of recovery	Name and address of purchaser	Observa-tions
1	2	3	4	5	6	7	8	9	10	11	12	13
	Years	£		£		£		£	£			

PART II — MORTGAGES TRANSFERRED

Roll number	If lease-hold or right of occupancy state term at date of advance	Valuation of property for purpose of advance	Date of advance	Amount of advance	Date of transfer	Debt at date of transfer	Consideration for transfer	Name and address of transfer	Observations
1	2	3	4	5	6	7	8	9	10
	Years	£		£		£			

Dated this ..... day of ..... 19 .....

Signature of director .....

FORM B.S.13

BUILDING SOCIETIES ACT

NOTICE AS TO ABSENCE OF WARRANTY

To

.....

.....

(*Name and address of prospective borrower*)

NOTICE is hereby given that, in the event of the ..... Building Society making an advance to assist you in the purchase of .....

(*Description and address of property*)

.....

the making of the advance will not imply any warranty by the society that the purchase price of the property is reasonable.

Dated this ..... day of ..... 19 .....

.....

(Signature of officer of the building society)

ACKNOWLEDGMENT

I hereby acknowledge receipt of this notice.

Dated this ..... day of ..... 19 .....

.....

(Signature of borrower)

(The borrower's acknowledgment of receipt is to be endorsed on the duplicate hereof and returned to the society.)

FORM B.S.14

BUILDING SOCIETIES ACT

NOTICE TO MORTGAGOR OF SALE OF PROPERTY

To

.....

.....

NOTICE is hereby given that in exercise of the power of sale by virtue of a mortgage dated the ..... day of ..... 19 .... the ..... Building Society on the ..... day of ..... 19 ...., agreed to sell the property described in the Schedule hereto to ..... for the sum of ..... and that the said sale was completed on the ..... day of ..... 19 .... and the said sum of .....

was paid to the society. The expenses and costs incidental to the sale are .....

Dated this ..... day of ..... 19 .....

.....
(Signature of officer of the building society)

SCHEDULE OF PROPERTY

.....
.....
.....
.....
.....
.....

FORM B.S.15

BUILDING SOCIETIES ACT

TO: THE REGISTRAR OF BUILDING SOCIETIES,
ZOMBA

CHANGE OF NAME

We enclose a copy of a resolution passed at a meeting of the members of the ..... Building Society held on ..... 19 .... at which the members declared that the name of the society is thereby changed to the ..... Building Society. We declare that the resolution was approved by all the members of the society.

Date .....

..... (*Signature of director*)

..... (*Name of society*)

FORM B.S.16

BUILDING SOCIETIES ACT

CERTIFICATE OF REGISTRATION OF CHANGE OF NAME

I HEREBY CERTIFY that the resolution of the members dated ..... has been registered in accordance with section 67 of the Building Societies Act, and that the society formerly known as ..... Building Society has now changed its name to .... Building Society.

Dated this ..... day of ..... 19 .....

Registrar of Building Societies

FORM B.S.17

(To be submitted in duplicate)

BUILDING SOCIETIES ACT

TO: THE REGISTRAR OF BUILDING SOCIETIES,
ZOMBA

NOTICE OF CHANGE OF OFFICE OR ADDRESS

NOTICE is hereby given that the situation of the registered office and postal address of the building society known as the ..... Building Society was on the ..... day of ..... 19 ..... changed from ..... to .....

Dated this ..... day of ..... 19 .....

.....
(*Signature of director*)

ENDORSEMENT

(for official use only)

The above-mentioned change of office or address has been noted in the Register of Building Societies.

Dated this ..... day of ..... 19 .....

Registrar of Building Societies

FORM B.S.18

(To be submitted in duplicate)

BUILDING SOCIETIES ACT

TO: THE REGISTRAR OF BUILDING SOCIETIES,
ZOMBA

NOTICE OF CHANGE OF DIRECTORS

..... Building Society
(*Name of society*)

1. The following persons have ceased to be directors

Full name	Postal and residential addresses	Date of vacating office
.....	.....	.....
.....	.....	.....
.....	.....	.....

2. The following persons have been appointed as directors

Full name	Postal and residential addresses	Date of appointment
.....	.....	.....
.....	.....	.....
.....	.....	.....

3. The following persons are the present directors

Full name	Postal and residential addresses	Date of appointment
.....	.....	.....
.....	.....	.....
.....	.....	.....

Dated this ..... day of ..... 19 .....

.....
(*Signature of director*)

ENDORSEMENT

(for official use only)

The above-mentioned cessations and appointments have this day been noted in the Register of Building Societies.

Dated this ..... day of ..... 19 .....

Registrar of Building Societies

FORM B.S.19

(To be submitted in duplicate)

BUILDING SOCIETIES ACT

TO: THE REGISTRAR OF BUILDING SOCIETIES,
ZOMBA

APPLICATION TO ALTER RULES

We enclose two copies of a resolution passed at a meeting of .... Building Society on ..... 19 .... at which it was agreed that the rules of the society should be altered in accordance with the resolution. I hereby declare that the meeting was properly constituted and that the resolution was passed by the required majority as stated in the existing rules. I therefore request your approval of the proposed alteration.

Date .....

..... (*Signature of director*)

..... (*Name of society*)

ENDORSEMENT

(for official use only)

CERTIFICATE OF APPROVAL OF AMENDMENT OF RULES

I HEREBY CERTIFY that the resolution dated the ..... day of ..... and endorsed by me on a copy thereof by which the ..... Building Society amended its rules, has been this day approved by me.

Dated this ..... day of ..... 19 .....

Registrar of Building Societies

FORM B.S.20

(To be submitted in quadruplicate)

BUILDING SOCIETIES ACT

TO: THE REGISTRAR OF BUILDING SOCIETIES,
ZOMBA

NOTICE OF UNION

NOTICE is hereby given that at a general meeting of the members of the ..... Building Society convened for the purpose and held pursuant to the Building Societies Act on the ..... day of ..... 19 ...., a resolution was passed by all the members of the Society that the said society should unite with the ..... Building Society in accordance with the instrument of union containing the whole of the terms and conditions of the said union, a copy of which, signed by a director of each society, is annexed to this notice:

AND at a general meeting of the said ..... Building Society convened for the purpose and held pursuant to the Building Societies Act on the ..... day of ..... 19 .... a resolution was passed by all members of the society that that society should unite with the said ..... Building Society in accordance with the terms of the said instrument of union:

AND it is intended that the united society shall be called .... Building Society.

AND the approval of the Minister was given to this union by his letter ..... dated .....19 ...

Dated this ..... day of ..... 19 .....

(*Seal of each building society*)

THE permanent-share capital of the first-named society is £..... and of the second-named society is £ ..... and the consent in writing of the holders of such permanent shares is testified by their signatures hereunder.

Signatures of permanent share holders of the ..... Building Society:—

Name	*Amount of permanent shares*	*Signature*
.....	.....	.....
.....	.....	.....
.....	.....	.....

Signatures of permanent share holders of the ..... Building Society:—

Name	*Amount of permanent shares*	*Signature*
.....	.....	.....
.....	.....	.....
.....	.....	.....

ENDORSEMENT

(for official use only)

I certify that I have registered this notice of union and that a certificate of registration of the new society has been issued.

Dated this ..... day of ..... 19 .....

Registrar of Building Societies

FORM B.S.21

(To be submitted in duplicate)

BUILDING SOCIETIES ACT

TO: THE REGISTRAR OF BUILDING SOCIETIES,
ZOMBA

NOTICE OF TRANSFER OF ENGAGEMENTS

NOTICE is hereby given that at a meeting of the ..... Building Society convened for the purpose and held pursuant to the Building Societies Act on the ..... day of ..... 19 ...., a resolution was passed by all the members of the society that the said society should transfer its engagements to the ..... Building Society in accordance with the instrument of transfer containing the whole of the terms and conditions of the said transfer, a copy of which, signed by a director of each society, is annexed to this notice:

AND at a meeting of the said ..... Building Society convened for the purpose and held pursuant to the Building Societies Act on the ..... day of ..... 19 ...., a resolution was passed by all the members of that society that that society should undertake to fulfil the engagements of the said ..... Building Society in accordance with the terms of the said instrument of transfer:

AND the approval of the Minister was given to this transfer by his letter ..... dated ..... 19 ....

Dated this ..... dated ..... 19 ....

(*Seal of each building society*)

THE permanent-share capital of the first-named society is £..... and the consent in writing of all the members is testified by their signatures hereunder.

Signatures of permanent share holders of the ..... Building Society:—

Name	*Amount of permanent shares*	*Signature*
.....	.....	.....
.....	.....	.....
.....	.....	.....

ENDORSEMENT

(for official use only)

CERTIFICATE OF REGISTRATION OF TRANSFER

I certify that I have this day registered this notice of transfer of engagements.

Date ..... 19 .....

Registrar of Building Societies

FORM B.S.22

(To be submitted in quadruplicate)

BUILDING SOCIETIES ACT

TO: THE REGISTRAR OF BUILDING SOCIETIES,
ZOMBA

NOTICE OF TRANSFER OF ENGAGEMENTS BY AN EXISTING SOCIETY

Notice is hereby given that a meeting of the Board of Directors of the ..... Building Society held at ..... on ..... 19 .... resolved that the said society should transfer its engagements in Malaŵi to the .... Building Society in accordance with the instrument of transfer containing the whole of the terms and the conditions of the said transfer. A copy of the resolution and of the instrument of transfer, signed by the chairman of the Board of Directors, is annexed to this notice:

And at a meeting of the said ..... Building Society convened for the purpose and held on .....19 .... a resolution was passed by all the members of that society that that society should undertake to fulfil the engagements of the said ..... Building Society in accordance with the terms of the said instrument of transfer:

And the approval of the Minister was given to this transfer by his letter ..... dated .....

Dated this ..... day of .....19 ....

(*Seal of transferee society*)

ENDORSEMENT

(for official use only)

CERTIFICATE OF REGISTRATION OF TRANSFER

certificate of registration of the new society has been issued.

engagements.

Dated ..... 19 .....

Registrar of Building Societies

SECOND SCHEDULE

BUILDING SOCIETIES ACT

FEES

Subject matter and manner fee payable	£	s.	d.
1. For the registration of a society; payable on application therefor	50	0	0
2. On application to the Minister for his approval to a union or to a transfer of engagements; payable on application therefor	25	0	0
3. On application for the approval of the appointment of an accountant, actuary or inspector under section 83 or section 91 of the Act payable on application therefor	25	0	0
4. On application for the Registrar to order the dissolution of a society; payable on application therefor	25	0	0
5. On application to refer dispute to the Registrar under section 79—			
(*a*) payable on application therefor	10	0	0
(*b*) payable thereafter such fee, not exceeding £100, as the Registrar may consider proper having regard to the complexity of the dispute, the time involved, and the expenses incurred.			
6. On application to the Registrar for any authority or approval under any section of the Act, not otherwise provided for in this Schedule; payable on application therefor	2	0	0

	K	t
7. For the filing of an annual statement and account, together with the return of sales and transfers; payable on the filing thereof	10	00
8. For the filing of a notice of change of name, change of office or address, or change of directors; payable on the filing thereof	2	00
9. For filing a notice of the commencement or completion or termination of dissolution; payable on the filing thereof	10	00
10. For the filing or registration of any document not specified in this Schedule payable on the filing or registration thereof	2	00
11. For a copy or extract of any document in the custody of the Registrar payable per folio of one hundred words		75
12. For the inspection of documents in the custody of the Registrar; payable on inspection	1	00

DESIGNATION OF BUILDING SOCIETY FOR THE PURPOSE OF THE INVESTIMENT OF TRUST FUNDS

G.N. 88/1964(N)

under s. 98

The Minister, having guaranteed the liquidity of The New Building Society, has designated that society for the purpose of the investment of trust funds in terms of section 98 of the Act.

MALAŴI HOUSING CORPORATION

CHAPTER 32:02

Current Pages

PAGE					L.R.O.
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7	. .	. .	. .	. .	1/1973

CHAPTER 32:02

MALAŴI HOUSING CORPORATION

ARRANGEMENT OF SECTIONS

SECTION

1. Short title
2. Interpretation
3. Establishment of the Corporation and powers and functions thereof
4. Status of the Corporation
5. Constitution of the Corporation
6. Disqualification of members of the Corporation
7. Financial policy of the Corporation
8. Loans by the Corporation
9. Repayment of, and interest on, advances
10. Borrowing powers
11. Consequential provisions on transfer of functions
12. Acquisition of customary land
13. Employees of the Corporation
14. Power of Minister to give directions
15. Accounts, audit and reports
16. By-laws

An Act to provide for the establishment of a Malaŵi Housing Corporation and for purposes connected therewith

[1st January, 1964]*

21 of 1963
20 of 1966
16 of 1970
21 of 1970
5 of 1971
24 of 1972
8 of 1980
26 of 1988
27 of 2016
6 of 2017
G.N.
16/1964(M)
137/1966
65/2017

Short title

1. This Act may be cited as the Malaŵi Housing Corporation Act.

Interpretation

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

"Corporation" means the Malaŵi Housing Corporation established under section 3; and

"member" includes the Chairman of the Corporation.

Establishment of the Corporation and powers and functions thereof
26 of 1988
27 of 2016

3.—(1) There is hereby established in accordance with this Act, a body to be called the Malaŵi Housing Corporation.

(2) The Corporation shall have power—

(*a*) to undertake the management of houses, classes of houses and housing estates as the Minister may entrust to the Corporation, and the

*Section 3 (2) (*d*) of this Act came into force on the 1st February, 1965 (G.N. 36/1965).

Corporation shall be at liberty to charge a fee for management of the houses, classes of houses or housing estates where the Corporation has not been given their beneficial ownership;

(*b*) to develop, build, manage, control or sell houses, housing estates or buildings at the request of any person, at a fee or in partnership with a person;

(*c*) to enter into agreements with contractors or agents or any person or organization whether public or private for the construction, development, maintenance, management, supervision or sale of houses, housing estate, buildings or any landed property;

(*d*) to build or to permit or assist in the building of commercial buildings or any type of building or to purchase commercial landed property, on any land owned, leased or controlled by the Corporation;

(*e*) to acquire and dispose of interests in movable property;

(*f*) to purchase, hold, manage, lease or otherwise dispose of any interests in, or attaching to land:

Provided that a lease to the Corporation under section 12 of the Land Act shall not be disposed of by assignment;

Cap. 57:01

(*g*) with the approval of the Minister, and subject to the provisions of the Public Finance Management Act, to borrow such sums of money as may be required for the purpose of discharging its functions by way of—

Cap. 37:02

(i) loan;

(ii) issue of stocks or bonds;

(iii) mortgage;

(iv) bank draft; or

(v) any other source approved by the Minister and the Minister responsible for Finance; and

(*h*) to do all such things as are necessary, incidental or conducive to the performance of the foregoing powers.

(3) Subject to the provisions of this Act, the Corporation shall have the function of continuously providing housing accommodation and reviewing housing needs of the people of Malaŵi, and shall—

(*a*) undertake the development and construction of houses and housing estates;

(*b*) carry out surveys of housing requirements for Malaŵians, at a fee;

(*c*) undertake, support and encourage research, either by itself or in conjunction with a local authority or any person, into all housing aspects, including suitability, adaptability, and methods of building and development with particular reference to the construction of houses, and all matters connected therewith, at a fee;

(*d*) undertake and encourage the collation and dissemination of scientific, economic, social and other data concerning housing and other connected matters at a fee;

(*e*) advise and assist any local authority or person in the preparation of proposals and programmes for the construction of houses and to assist in carrying out of such proposals and programmes at a fee; and

(*f*) provide town planning, consultancy and other services in relation to housing programmes at a fee.

Status of the Corporation

4. The Corporation shall be a body corporate with perpetual succession and a common seal, and may in its corporate name sue and be sued.

Constitution of the Corporation 16 of 1970

5.—(1) The Corporation shall consist of a Chairman, a Deputy Chairman, and four other members all of whom shall be appointed by the Minister. The Deputy Chairman shall preside at the meetings of the Corporation in the absence or inability to act of the Chairman. The Chairman, or, in his absence or inability to act, the Deputy Chairman, and any three other members shall form a quorum.

8 of 1980

(2) Subject to this section, each member of the Corporation shall hold office for two years:

Provided that—

(*a*) any person so appointed shall, on ceasing to be a member, be eligible for reappointment; or

(*b*) any person so appointed may at any time by notice in writing to the Minister resign his office.

(3) Decisions of the Corporation shall be taken by a majority of votes of members present and voting:

Provided that—

(*a*) the person lawfully acting as Chairman at any meeting of the Corporation shall have a casting as well as an original vote;

(*b*) no member of the Corporation shall take part in the consideration or discussion of or vote on any decision of the Corporation in respect of any matter in which he has any pecuniary interest, direct or indirect.

(4) The validity of any proceedings of the Corporation shall not be affected by any vacancy amongst the members thereof, or by any defect in the appointment of a member thereof.

(5) The members of the Corporation shall not be paid any remuneration except such allowances as may be prescribed by any by-laws made under section 16.

(6) The Corporation may, subject to this Act, make Standing Orders providing for the proper conduct of the business and of the meetings of the Corporation.

(7) The Minister shall have power at any time to terminate the appointment of any member of the Corporation.

Disqualification of members of the Corporation

6. No person shall be eligible for appointment as a member of the Corporation who—

(*a*) is an undischarged bankrupt having been adjudged or otherwise declared bankrupt under any law in force in the Commonwealth;

(*b*) is of unsound mind;

(*c*) is serving a sentence of imprisonment;

(*d*) has been convicted of any offence involving dishonesty and been sentenced to imprisonment (by whatever name called) therefor in any part of the Commonwealth and has not received a free pardon; or

(*e*) being a person possessed of professional qualifications, is disqualified (otherwise than at his own request) in any part of the Commonwealth from practising his profession by the order of any competent authority made in respect of him personally.

Financial policy of the Corporation 27 of 2016

7. The Corporation shall be self-accounting and shall so manage its business to ensure that it is a going concern and that—

(*a*) its revenue is sufficient to meet all expenditure properly chargeable to revenue and to finance ongoing and future projects;

(*b*) sufficient provision is made for depreciation of assets; and

(*c*) it makes profits to finance more housing projects and ensure its expansion for the benefit of many Malaŵians.

Loans by the Corporation 27 of 2016

8.—(1) The Corporation may obtain loans for the proper carrying out of the provisions of this Act and such loans so obtained, and the interest thereon, if any, shall constitute a liability of the Corporation and shall be charged in the property and annual revenues of the Corporation, present and future, subject to the provisions of any existing agreement or other arrangement existing at the commencement of this Act.

Cap. 37:02

(2) The Government may, subject to the provisions of the Public Finance Management Act, guarantee loans which the Corporation has taken or plans to take.

Repayment of, and interest on, advances

9.—(1) The Corporation shall make to the Government, at such times and in such manner as the Minister may direct, payments of such amounts as he may so direct in or towards repayment of advances made to the Corporation under section 8 and payment of interest on what is outstanding for the time being in respect of such advances at such rate as he may so direct, and different rates may be directed as respects different advances and as respects interest for different periods.

(2) The Minister shall lay before the National Assembly a statement of any payment due from the Corporation under this section which is not duly paid.

10.—(1) Subject to this section, and any law generally regulating the borrowing powers of the Government and statutory corporations constituted under any law of Malaŵi, the Corporation may raise loans whether by bank overdraft or otherwise for meeting any of its obligations or discharging any of its functions.

Borrowing powers

(2) The power of the Corporation to raise loans shall be exercisable only with the approval of the Minister.

(3) Where any such loan shall be raised by means of stock, the provisions of any borrowing powers Act that may be applicable and in force in Malaŵi with regard to the issuing of stock, the provisions to be made for the payment of interest thereon, and for the redemption thereof at the time or times fixed for repayment, and the proceedings to be taken in case of default, shall apply.

11. The Minister may by Regulation make provision consequential on the assumption by the Corporation of any functions under this Act for—

Consequential provisions on transfer of functions

(*a*) the transfer to the Corporation of property and liabilities held or incurred for the purposes of the said functions;

(*b*) enabling any proceedings pending with respect to any such functions, property or liabilities to be carried on by or against the Corporation;

(*c*) for continuing in force anything done by the Minister in relation to such functions; or

(*d*) such other matters supplementary to the foregoing as appear to the Minister necessary or expedient.

12. If the Corporation requires any customary land for the purposes of carrying into effect any of the provisions of this Act, it may apply for a grant, lease or other disposition in accordance with the Customary Land Act.

Acquisition of customary land
21 of 1970
6 of 2017
Act 19 of 2016

13.—(1) For the purposes of carrying out its functions under this Act, the Corporation may, subject in each case to the directions of the Minister, appoint a Chief Executive Officer and such other officers or servants as the Minister considers necessary.

Employees of the Corporation
5 of 1971
24 of 1972
27 of 2016

(2) The Chief Executive Officer and all other officers and servants employed for the purpose of the discharge of the functions of the Corporation shall be employees of the Corporation and the employment of all such employees, in respect of remuneration and conditions of service, shall be in accordance with regulations made by the Minister and not otherwise.

27 of 2016

(3) The Corporation may employ any public officer on such terms and conditions as may be approved by the Minister responsible for the Ministry in which such officer is serving.

(4) The Corporation may, in its absolute discretion, advance money, by way of repayable loan, to any employee thereof for the purchase, or acquisition, by such employee, of a motor car, bicycle, or other like vehicle, for the private use of such employee.

(5) Any advance made pursuant to subsection (4) shall be in accordance with and subject to such general terms and conditions as the Minister may approve and, in particular, subject to any such approved terms and conditions as to the repayment of such advance, or the possession or use of such vehicle by such employee.

Power of Minister to give directions

14. In exercise of any function conferred upon the Corporation by any of the provisions of this Act the Corporation shall be subject at all times to the general or special directions of the Minister.

Accounts, audit and reports

15.—(1) The Corporation shall—

(*a*) keep proper accounts;

(*b*) keep proper records relating to the accounts; and

(*c*) prepare, in respect of each financial year, a statement of accounts in a form prescribed by the Minister.

(2) The accounts of the Corporation shall be audited annually by auditors appointed by the Corporation with the approval of the Minister.

(3) Within three months after the end of the financial year, the Corporation shall—

(*a*) prepare a general report of its proceedings during the financial year; and

(*b*) transmit to the Minister—

(i) that report, together with

(ii) a certified copy of the audited accounts of the Corporation,

and the Minister shall lay on the table of the National Assembly copies of that report and a certified copy.

By-laws

16. The Corporation may, subject to the prior approval of the Minister, make by-laws regulating any of the following matters—

(*a*) the procedure governing the allocation of the Corporation's houses to applicants and the assessment of rents to be paid;

(*b*) the rates of interest, charges and conditions to be contained in agreements made by the Corporation in respect of premises sold upon deferred terms of payment;

(*c*) the rates of interest, charges and conditions attaching to loans to persons for the construction of dwelling houses; or

(*d*) the allowances to be paid to members of the Corporation.

SUBSIDIARY LEGISLATION

MALAŴI HOUSING CORPORATION (LOANS FOR INSTALLATION FOR PRIVATE WATER SUPPLIES) BY-LAWS

G.N. 69/1965

under ss. 3 (2) (*g*) *and* (*h*) *and* 16 (*c*)

Citation

1. These By-laws may be cited as the Malaŵi Housing Corporation (Loans for Installation of Private Water Supplies) By-laws.

Interpretation

2. In these By-laws "plot holder" means any person occupying a plot in a housing area or estate administered by the Malaŵi Housing Corporation.

Loan for Installation

3. The Corporation may grant a loan to a plot holder covering, in whole or in part, the cost of installing an individual water supply to his plot:

Provided that—

(*a*) the plot holder pays to the Corporation a sum of not less than K10 towards the cost of installing the water supply;

(*b*) the amount of the loan does not exceed K 30;

(*c*) the plot holder pays interest on the loan at such rate as may be prescribed by the Corporation with the prior approval of the Minister;

(*d*) the loan is repaid over a period not exceeding five years.

Discontinuance of Water Supply

4. The Corporation may disconnect, or may instruct the Water Board for the area concerned to disconnect, an individual water supply in the event of failure on the part of the plot holder to pay either—

(*a*) any instalment of the loan repayment and interest when it becomes due; or

(*b*) the charge for water consumed.

The supply may be reconnected on payment by the plot holder of all charges outstanding, together with such reconnexion fee as the Corporation or the Water Board, as the case may be, may prescribe.

Application for a Loan

5. An application for a loan shall be made in such form or in such manner as the Corporation may prescribe.

AFRICANS ON PRIVATE ESTATES

CHAPTER 33:01

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CHAPTER 33:01

AFRICANS ON PRIVATE ESTATES

ARRANGEMENT OF SECTIONS

SECTION

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25. Special agreement
26. Minister may make schemes
27. Effect of Act
28. Penalty
29. Regulations and rules

An Act to regulate the conditions on which Africans may reside on Private Estates, the Orderly Development of Agricultural Land and Matters connected therewith

[17TH AUGUST, 1962]

12 of 1962
26 of 1971
26 of 1988
G.N. 43/1963
1/1965
137/1966
166/1967

Short title

1. This Act may be cited as the Africans on Private Estates Act.

Application of the Act

2.—(1) This Act shall apply to such part or parts of Malaŵi as the Minister may, by notice published in the *Gazette*, direct.

(2) This Act shall not apply to any African who is in occupation of land on an estate by virtue of a valid lease or tenancy agreement for a period of not less than two years.

(3) The Minister may by notice published in the *Gazette* suspend or rescind the application of this Act to any part or parts of Malaŵi to which it has been applied.

Interpretation

3. In this Act, unless the context otherwise requires—

"African" means any person who is a member of an African community indigenous to Malaŵi, Tanzania, Zambia or Mozambique;

"economic crops" means such crops as are grown for sale and not for the consumption of the grower or his family;

"estate" means an undivided area of land, the legal right to occupy which is vested in some person other than the Government;

"exempted African" in relation to an estate means any African employee serving the owner of such estate otherwise than under this Act and living in a dwelling constructed at the expense of the owner and, during the registration period referred to in section 5, includes an African residing on an estate in pursuance of a contract which was a special agreement under the Africans on Private Estates Ordinance, 1952 (now repealed);

8 of 1952

"operative date" means the date upon which this Act comes into operation in relation to any estate by reason of its application to such estate under section 2 (1);

"owner" means any person, other than the Government, having a legal right, otherwise than under this Act, to occupy the estate in respect of which such term is used;

"resident African" means any African who is entitled to be registered as such under this Act;

"Tribunal" means the Africans on Private Estates Tribunal established under section 18;

"special agreement" means a written agreement made in accordance with section 25;

"unmarried woman" means a woman who has not married and includes—

(*a*) a widow who has not remarried;

(*b*) a divorced woman who has not remarried;

(*c*) a woman whose husband has been absent from Malaŵi for a continuous period of two years or upwards and is still absent;

(*d*) a woman the whereabouts of whose husband have been unknown for a continuous period of two years or upwards and whose whereabouts are still unknown.

Registers to be kept

4.—(1) Every owner shall register all resident Africans on his estate in a register which shall be in such form and contain such particulars as the Minister may prescribe.

(2) Every resident African registered under subsection (1) shall be supplied by the owner with a document in the form prescribed by the Minister certifying his registration.

(3) Every owner shall keep a separate register, which shall be in such form and contain such particulars as the Minister may prescribe, of all Africans who enter his estate under a special agreement.

(4) Every owner who contravenes this section shall be guilty of an offence.

Who may apply for registration

5.—(1) Every male African over the apparent age of 18 years and every unmarried African woman over the apparent age of 18 years who, on the operative date, was resident on an estate, shall be entitled, on application to the owner of the estate, to be registered as a resident African. Every application for registration shall, subject as hereinafter provided, be made within the period (hereinafter referred to as the registration period) of six months after the operative date:

Provided that—

(*a*) an exempted African shall not be entitled to apply for registration;

(*b*) an African, who was party to an agreement, in force on the operative date, for which approval was applied under section 25 but which was not approved before the expiration of the registration period, may apply, within one month after such expiration, for registration as a resident African.

(2) No African shall be deemed to be resident on any estate for the purposes of subsection (1) unless he was, on the operative date, residing in a dwelling on the estate constructed by him while he was not employed by the owner, or was residing on the estate with the knowledge of the owner.

(3) Any African who satisfies the Tribunal that he has resided on an estate continuously since the 1st day of January, 1962, shall be deemed to have been residing on that estate with the knowledge of the owner on the operative date.

(4) Any person applying for registration shall supply full particulars of the members of his family residing with him on the estate, including wives, children and any other dependants and the approximate ages of such children and dependants and of the dwellings and other buildings occupied or used by him.

Newcomers and trespassers

6.—(1) Any owner who consents to any African, other than an exempted African, residing, after the expiration of the registration period, on his estate, for the purpose of growing any economic crop for sale to, or performing any agricultural work for, that owner shall be guilty of an offence, unless such African is a person in respect of whom particulars have been registered under this Act, or in respect of whom application for registration or for approval of a special agreement is pending.

(2) After the operative date, any African who resides on or cultivates any estate or part thereof or exercises any rights conferred by section 10 (2) on resident Africans over or in relation to any estate shall be a trespasser, and guilty of an offence, unless he is a person of whom particulars have been registered under this Act or in respect of whom application for registration or for approval of a special agreement is pending.

Applications to Tribunal

7.—(1) Any African who has applied unsuccessfully to an owner for registration may, within one month after refusal of registration, apply to the Tribunal for an order that the owner grant his application.

(2) An application for registration shall, for the purposes of section 6, be deemed to be pending from the time when it is made until it is granted or refused by the owner and, if refused, until the time for application to the Tribunal under subsection (1) has expired and, if application is so made to the Tribunal, until the Tribunal has given its decision on such application.

Additions to register

8. Any African who, after the operative date, comes to reside on an estate, in pursuance of a valid marriage to an unmarried woman who is registered as a resident African, shall apply to the owner for and shall be entitled to registration as a resident African. No other person shall be entitled to registration as a resident African after the expiration of the registration period except in pursuance of an order of the Tribunal, or in accordance with proviso (*b*) to section 5 (1). A child, or other dependant brought up as a child, of a registered resident African may on attaining the age of 18 years apply to the owner for the occupation of land on the estate under a special agreement and such application shall be granted.

Right of Minister to enter and obtain information

9.—(1) The Minister or any other person duly authorized by him in that behalf shall have the right to enter upon any estate at all reasonable times for the purpose of inspecting the registers and enforcing this Act, and investigating the conditions of Africans residing or working on the estate.

(2) The owner of every estate shall furnish, on demand, to the Minister or any person duly authorized by him, full information regarding entries in the registers maintained by him and regarding matters which are required to be entered in such registers.

(3) Any owner who fails to comply with the requirements of this section shall be guilty of an offence.

Allocation of land

10.—(1) Every registered resident African shall be entitled to the continuous use, on the estate in respect of which he is registered, of a suitable site for a dwelling and reasonable outbuildings for himself and each registered wife and, if practicable, of an area of land for cultivation adequate for growing the usual food crops for the sustenance of himself and those of his wives and dependants whose particulars have been registered, and at a reasonable distance from his dwelling.

(2) Every registered resident African and every member of his family or other dependant of whom particulars have been registered shall be entitled to cut or remove grass, firewood (if available) and other materials necessary for his domestic purposes (including the erection and maintenance of buildings) from land allocated to him for cultivation and from any part of the estate which has not been set aside by the owner for the protection of streams and water supplies or for the protection of land from soil erosion, and which has not been cultivated, re-afforested or set aside for controlled cutting under a silvicultural management scheme.

(3) The operation of this section shall be subject to any other written law for the time being in force in Malaŵi.

Liability to pay rent

11.—(1) Subject to subsections (2), (3) and (4), every registered resident African shall be liable to pay to the owner of the estate, in respect of which he is registered, a rent of £1 per annum in respect of each dwelling occupied by him on the estate. For the purposes of this section a dwelling shall be deemed to include a group of buildings occupied by a wife.

(2) The following persons shall be exempt from the payment of rent under the provisions of subsection (1)—

(*a*) an unmarried woman;

(*b*) a married woman whose husband is registered as a resident African in respect of the same estate;

C.41:01

(*c*) a person exempt from payment of tax by virtue of the Taxation Act;

15 of 1928

(*d*) a person who on the 30th day of June, 1942, was a resident native on the estate under the Natives on Private Estates Ordinance, 1928 (now repealed) or is a descendant according to customary law, of such a person;

(*e*) a resident African who, in the opinion of the Tribunal, is without the means to pay rent and is unable to acquire the means due to sickness, age, infirmity or preoccupation with the care of infant children.

(3) A male resident African who has two wives who live in separate dwellings on the same estate shall be liable to pay rent in respect only of one dwelling:

Provided that—

(*a*) any male resident African who has more than two but not more than three wives who live in separate dwellings on the same estate shall be liable to pay rent in respect of the third dwelling at the rate of six shillings and eightpence per annum;

(*b*) a resident African who has more than three wives living in separate dwellings on the same estate shall be liable to pay additional rent in respect of each dwelling after the first two at the rate of ten shillings per annum.

(4) Every male resident African, who has wives living on separate estates belonging to different owners, shall be liable to pay rent in respect of the dwellings on each separate estate in accordance with subsections (1), (2) and (3).

When rent is due and recoverable

12. Rent shall be due in advance on the 1st day of January in each year and shall become recoverable from the 1st day of July next after it becomes due:

Provided that no rent shall be payable in respect of the period from the 1st day of July until the 31st day of December, 1962.

Receipts for rent paid or certificates

13.—(1) Every owner who receives rent from a resident African shall give to such resident African a written receipt therefor specifying the period in respect of which rent was received.

(2) Every owner for whom any resident African has worked for wages in accordance with this Act shall give to such resident African a certificate specifying the period of work and stating the amount deducted from his wages in respect of rent payable under this Act.

Resident Africans may work for wages

14.—(1) Notwithstanding anything hereinbefore contained, a resident African may elect to work for wages for the owner of the estate upon which he resides.

(2) Every resident African who is liable to pay rent under this Act shall before the 30th day of September in each year inform the owner of the estate whether he desires to pay his rent or whether he desires to offer to work for such owner for any and, if so, what period during the next year.

(3) Where such resident African has elected to offer to work for wages for the owner of the estate, the owner shall offer such resident African suitable work on the estate within a reasonable distance from his dwelling for a period sufficient to enable such resident African to pay his rent in accordance with section 15, or such lesser period as the resident African may elect, or shall provide such resident African with such reasonable facilities for growing economic crops in accordance with section 16 as may be expected to produce sufficient cash return to pay the rent.

(4) Where a resident African has elected to work for wages for the owner of the estate upon which he resides, he shall not be liable to pay the rent if the owner has failed or is unwilling to offer such resident African suitable work within a reasonable distance of his dwelling during the months in which he has elected to work or to provide facilities for growing economic crops.

(5) Every resident African who works for the owner of the estate in accordance with this Act shall be entitled to be paid wages at not less than the rate prescribed by any law for the time being in force in Malaŵi regulating the payment of wages.

Owner to deduct rent from wages

15.—(1) There shall be deducted from the wages payable to any resident African who works for the owner of the estate on which he resides an amount in respect of rent payable under this Act not exceeding one-third of such wages in any month; but a resident African may pay rent from his wages to an extent greater than one-third thereof if he so desires.

(2) Save in accordance with section 25 (2), it shall be unlawful for the owner of an estate to demand work or exact services from any resident African on any estate.

(3) Every owner who contravenes this section shall be guilty of an offence.

Economic crops

16.—(1) No resident African shall grow economic crops on the estate on which he resides without the written consent of the owner and the approval of the Minister or other person approved by him in that behalf.

(2) Where the owner has consented and given reasonable faci-

lities to a resident African, who is liable to pay rent under this Act, to grow economic crops for the purchase of the owner of the estate, the owner of the estate shall be entitled to deduct from the purchase price an amount equal to the rent payable to the owner of the estate under this Act.

(3) The conditions upon which resident Africans may grow economic crops on any estate shall be subject on each estate to the approval of the Minister or other person authorized by him in that behalf.

(4) The Minister may make regulations under this section prescribing the conditions on which economic crops may be grown on any estate by resident Africans.

(5) The Minister or any other person authorized by him in that behalf shall be entitled to enter upon any estate where resident Africans are permitted to grow economic crops, for the purpose of inquiring into the conditions under which such economic crops are grown, and he may appoint a public officer to supervise the grading or purchase of such crops. Any expense of such supervision shall be borne by the owner:

Provided that notwithstanding that this Act has not been applied to any estate or part of Malaŵi the Minister may by notice published in the *Gazette* apply to any such estate or part of Malaŵi this subsection so modified as though the subsection applied to crops grown on any estate by any African and, if this subsection is so applied, section 28 (6) and (7) shall also apply, and the owner shall not refuse to purchase, at a fair price, any crop so grown and remaining for sale after this subsection has been so applied.

(6) Where there is a dispute between resident Africans and any owner of the estate as to any conditions in respect to the growing of economic crops, marketing, price or grading or any other matter, the Minister may himself inquire into the dispute or refer it to the Tribunal. The Tribunal shall report the result of such inquiry to the Minister who shall have power to make such order as he deems fit.

(7) Any person who wilfully ignores or neglects or disobeys the order of the Minister made under subsection (6) shall be guilty of an offence.

Disputes between resident Africans and owners

17. If any other dispute shall arise as to the liability or rights of resident Africans or liability and rights of the owners of any estate under this Act, such dispute shall be referred to the Tribunal for its determination.

Establishment of the Tribunal

18.—(1) There shall be established by the Minister a Tribunal, to be known as the Africans on Private Estates Tribunal, whose function it shall be—

(*a*) to determine any matter which, under this Act is to be, or may be, determined by such Tribunal;

(*b*) to determine any other matter or dispute which under this Act the Minister may refer to such Tribunal;

(*c*) to determine whether it is practicable for a special agreement to be given to the child or other dependant of a registered resident African under section 8;

(*d*) to make and enforce orders for ejectment and any other orders in accordance with this Act;

(*e*) subject to the approval of the Minister, to employ and remunerate suitable officers to enforce the orders of the Tribunal.

(2) The Tribunal shall consist of a Chairman and four other members to be appointed by the Minister.

The Minister shall appoint a public officer to be the secretary of the Tribunal, who shall be entitled to speak at the meetings of the Tribunal, but not to vote thereat.

(3) The Tribunal may, with the approval of the Minister, make rules governing the manner of making applications, the conduct of its own proceedings, the convention of its meetings, the quorum thereof and the allowances payable to its members:

Provided that rules governing the allowances payable to its members shall require approval by the Minister.

(4) The Chairman shall preside at all meetings of the Tribunal unless incapacitated by sickness or absent from some other cause, and in the event of the absence of the Chairman from any meeting, the members present shall choose one of their number to act as Chairman at the meeting.

(5) Before any determination of the Tribunal is made, opportunity shall be given to every person having an interest therein, or his representative, to be heard.

(6) Except where under this Act it is otherwise provided, any person aggrieved by a decision or determination of the Tribunal, and having an interest therein, may, within forty-five days of notification of such a decision or determination, appeal to the Minister who may refer such appeal to an Appeal Advisory Board.

(7) The Appeal Advisory Board shall consist of such members as may from time to time be appointed by the Minister and shall advise the Minister in respect of any appeal referred to it. The Minister, whose decision in any appeal shall be final, shall not be bound by any advice given to him by the Appeal Advisory Board.

(8) The appointment of any member to the Tribunal may be revoked by the Minister.

Resident Africans not to quit estate except on lawful order

19.—(1) Subject to this Act, no resident African shall be required to quit the estate on which he resides except in accordance with the order of the Tribunal lawfully made under this Act.

(2) No order of the Tribunal requiring any resident African to quit the estate on which he resides shall have any effect unless and until it has been approved by the Minister.

Order to quit

20.—(1) Any owner may apply to the Tribunal for an order requiring a resident African, or any African, to quit the estate on which he resides on the ground—

(*a*) that the owner has not received the rent for one year since it became due and that the resident African has not offered to work for him for wages during the same period, or, having offered to work, has failed to do so;

(*b*) that the resident African has been convicted or guilty of an offence of such gravity as to render him undesirable as a resident African;

(*c*) that the African is a trespasser;

(*d*) that the African is a member of the family or other dependant of a registered resident African, who has attained the age of 18 years and who has been offered land for occupation on the terms of an agreement in a form approved by the Minister, but has been unwilling to enter into such an agreement, or who, having entered into such an agreement, has not acted in accordance therewith.

(2) Any owner may apply to the Tribunal for a declaration that any resident African is liable to pay rent or to do anything which, under this Act, he is liable to do.

(3) Any resident African may apply to the Tribunal for—

(*a*) an order that the owner of an estate shall register him as a resident African, or to restrain the owner of the estate on which he resides or works from in any way interfering with his rights under this Act;

(*b*) a declaration that he is not liable to pay rent under this Act, or that he is entitled to any other right thereunder;

(*c*) a declaration regarding the amount and situation of land which he is entitled to use under this Act.

Power to make orders

21.—(1) The Tribunal may, at its discretion, grant or refuse any application made under this Act, and may make such order as it thinks fit, including the award of compensation to either party.

(2) In making such order the Tribunal shall have regard to all the circumstances of the case in so far as they may be relevant to the issue.

(3) Every order of the Tribunal requiring any resident African to quit the estate on which he resides shall specify—

(*a*) the date on or before which the resident African is required to quit the estate;

(*b*) the amount of compensation which shall be paid by the owner of the estate to the resident African in respect of crops, buildings and other improvements and for disturbance;

(*c*) whether the owner of the estate shall be responsible for the cost of transportation of the resident African to the new place selected for the resident African by the Minister,

and when the cost of transportation can be ascertained the Tribunal may fix the amount of such cost.

(4) Where the Tribunal has ordered a resident African to quit the estate on which he resides and has ordered that compensation shall be paid, such resident African need not quit the estate until the amount of compensation which the Tribunal has ordered to be paid to him has been paid in full.

Compensation for disturbance

22.—(1) Every resident African who has been ordered by the Tribunal to quit the estate on which he resides shall be entitled to compensation for disturbance.

(2) Compensation for disturbance shall be assessed by the Tribunal and shall be of such amount as the Tribunal considers just and reasonable. The Minister may in his discretion reduce or increase the amount of compensation assessed by the Tribunal.

(3) In cases where there is disagreement between members of the Tribunal as to the amount payable as compensation, the matter shall be referred to the Minister who may appoint an independent valuer to arrive at an independent assessment, or may himself assess the compensation. The amount assessed by an independent valuer shall be deemed to be an assessment by the Tribunal approved by the Minister.

Offence to disobey order

23. Any person who wilfully ignores or neglects or disobeys an order of the Tribunal made in accordance with this Act shall be guilty of an offence.

Resettlement of evicted resident Africans

24. Where a resident African has, under this Act, been ordered to quit the estate on which he resides, the Government shall afford such resident African such assistance as may be necessary to enable him to obtain a suitable site for his dwelling and cultivable land on customary land or public land.

Special agreement 8 of 1952

25.—(1) Any owner may enter into a written special agreement with any African whereby such African, together with his wife or wives (or her husband) and family, is entitled to reside on the estate of such owner.

(2) Such written agreement may provide that an African who enters into such agreement shall be required to work for the owner of the estate for such period during the year as may be agreed upon:

Provided that—

(*a*) no such special agreement made after the operative date shall be valid unless it has been approved in writing by the Minister with whom a written copy thereof shall be filed;

8 of 1952

(*b*) any agreement which was a special agreement for the purposes of the Africans on Private Estates Ordinance, 1952 (now repealed), and which was in force on the operative date, shall cease to have any effect at the expiry of six months thereafter, unless it has been approved by the Minister in writing as a special agreement and a copy thereof filed with him;

(*c*) no agreement shall be approved by the Minister as a special agreement unless he is satisfied that it provides for adequate security of tenure, adequately controls the types of crops which may be grown and is fair and equitable in all the circumstances;

(*d*) if any agreement ceases to have effect by reason of proviso (*b*), the African who was a party to the agreement may apply for registration as a resident African under section 5.

(3) Reference to every special agreement approved under this section shall be made in a register kept in accordance with section 4, and copy thereof shall be supplied by the owner to the African with whom it is made.

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(4) Notwithstanding section 6 of the Deeds Registration Act, no special agreement shall be subject to compulsory registration in the Deeds Registry Office.

(5) Every special agreement shall be free of stamp duty.

Minister may make schemes 26 of 1988

26.—(1) Subject to subsection (4) the Minister may, after consultation with the owner, prescribe a scheme for the orderly development of any estate which comprises undeveloped land or land occupied by resident Africans.

(2) Such scheme shall as the Minister may see fit, be prepared by or with the assistance of the Commissioner for Town and Country Planning and may provide for—

(*a*) the setting aside of a defined area of the estate for occupation by Africans pursuant to special agreements and may limit the number of families who may so occupy such area;

(*b*) the delimitation of areas on the estate which may be occupied or used by resident Africans;

(*c*) the removal of resident Africans from land occupied by them to another part of the estate or to public land, to facilitate an approved scheme of development, and the payment of the cost of such removal and compensation;

(*d*) penalties for infringements of the scheme.

(3) Any owner whose estate is affected by a scheme prescribed or proposed to be prescribed under subsection (1) may by notice in writing inform the Minister that he desires any land so affected to be acquired by Government.

(4) In any case in which the owner has expressed a desire under subsection (3)—

(*a*) the land specified in the notice of such desire shall be deemed to be required for a public purpose;

(*b*) the Minister may cause steps to be taken for the acquisition of such land; 26 of 1971

(*c*) the scheme shall not take effect until the land has been so acquired.

Effect of Act

27. This Act shall have effect notwithstanding any condition to the contrary, express or implied, in any past grant or lease of public land.

Penalty

28. Any person who is guilty of an offence under this Act shall be liable to a fine of K200 and to imprisonment for six months.

Regulations and rules

29. The Minister may make regulations—

(*a*) prescribing any thing which by this Act may be or is to be prescribed by him;

(*b*) providing for the appointment of officers or other persons with power to enter upon any estates for the purpose of enforcing this Act and for investigating the condition of Africans residing or working thereon;

(*c*) generally for the purpose of carrying this Act into effect.

SUBSIDIARY LEGISLATION

APPLICATION OF ACT

under s. 2

APPLICATION TO SOUTHERN REGION

G.N. 127/1962 268/1970

The Minister has directed that the Africans on Private Estates Act shall apply to the whole of the Southern Region with the exception of the estates set forth in the Schedule.

SCHEDULE

District	*Name of Estate*	*Owner*	*Acreage*
Blantyre	Limbe/Bangwe	British Central Africa Company Ltd.	1382
	Michiru	Blantyre and East Africa Ltd. and other owners of Subdivisions deriving title from Blantyre and East Africa Ltd.	1554
	Ngumbe	British Central Africa Company Ltd.	638
	Ngumbe	do	1485
Chiradzulu	Chikowa	do	1772
	Matambo	Colonel W. D. Lewis	716.4785
	Sakata Hill	British Central Africa Company Ltd.	512
Thyolo	Chaoni	British Central Africa Company Ltd.	437
	Chisunga	do	3892
	Chiwale	A. M. **Henderson** and Sons	945
	Gotha Tea Estate	Gotha Tea Estates Company Ltd.	1465
	Kamponji	L. J. Rumsey	965
	Kumadzi	Alex. Lawrie & Co. Ltd.	1344.10
	Kwenengwe	British Central Africa Company Ltd.	1295
	Lujenda	Lujenda Estates Limited	1372.67
	Mafisi	Naming'omba Tea Estates Limited	1803
	Makandi/Sanjika	British Central Africa Company Ltd.	8250
	Makwasa Group	Thyolo Highlands Tea Estates Ltd.	6571.259
	Mandimwi	Naming'omba Tea Estates Limited	1994
	Mikolongwe	British Central Africa Company Ltd.	1751
	Mindali	do	2214
	Mindimwe	Naming'omba Tea Estates Limited	1351
	Mwiwala	British Central Africa Company Ltd.	395.087
	Mirango	Lujenda Estates Limited	1350.9
	Mpeni	British Central Africa Company Ltd.	2908
	Mpezo	do	1510
	Msituiwire, Chimvuu/ Namikuyu	do	1570
	Nakhurumbo	Gotha Tea Estates Limited	1081
	Namabinzi	Naming'omba Tea Estates Limited	893
	Namadzi	A. M. Henderson and Sons	971

District	*Name of Estate*	*Owner*	*Acreage*
Thyolo —*continued*	Naming'omba	Naming'omba Tea Estates Limited	2089
	Namisinje	British Central Africa Company Ltd.	705
	Nansadi	do	813
	Napiyo	do	1155
	Nasonia	Nasonia Tea Company Ltd.	1480
	Nchefu	Miss H. Glover	591.61
	Nchiwi	Lujenda Estates Limited	16.17
	Ndata	British Central Africa Company Ltd.	2226
	Nkami	do	600
	Nkami (B)	do	957
	Ntimabe	do	869
	Ntuwanjati	E. P. Roe	1000
	Tunga	British Central Africa Company Ltd.	1341
	Uplands	do	4208
	Namireme	Thyolo Highlands Tea Estates Ltd.	340.957

APPLICATION TO CENTRAL AND NORTHERN REGIONS

G.N. 128/1962

under s. 2

The Minister has directed that the Africans on Private Estates Act shall apply in the Central and Northern Regions to the estates set forth in the Schedule with effect from the 1st day of September, 1962.

SCHEDULE

CENTRAL REGION

District	*Estate*	*Owner*
Dedza	Sekwere	M. W. Bartlett
	Linthipe	M. De Vito
	Tete	Ibrahim Hassam
	Mdinde	J. N. S. Chaudhri
	Mpata Milonde	J. N. S. Chaudhri
	Mphati	Trustees of Osman Adam
	Golomoti	G. H. Charlton
	Golomoti	African Export Corporation Limited
	Orpington	Dharap Brothers
Dowa	Mpali	Mbabzi Estates Limited
	Kasangadzi	Mbabzi Estates Limited
	Monjesi	Mbabzi Estates Limited
	Chikambe	Mbabzi Estates Limited
	Nakandwa	Mbabzi Estates Limited
	Chikwawa	Mrs. G. M. Wallace
	Chikwawa Extension	Mrs. G. M. Wallace
	Kantunda	I. Conforzi (Tea and Tobacco) Limited
	Chikwawa	I. Conforzi (Tea and Tobacco) Limited
	Kasache	D. W. K. MacPherson Limited

District	*Estate*	*Owner*
Mchinji	Likasi	British Central Africa Company Ltd.
	Lisoka	Mrs. G. M. Wallace
	Mperere	I. Conforzi (Tea and Tobacco) Limited
	Konongo	D. W. K. MacPherson Limited
	Agra	D. W. K. MacPherson Limited
	Namitete Extension	Mrs. M. Dickinson
	Kawere/Kalulu	Mrs. M. Dickinson
Kasungu	Chasenga	Mbabzi Estates Limited
	Nkandaula	Mbabzi Estates Limited
	Katondo	Mbabzi Estates Limited
Lilongwe	Chanumba	R. W. J. Wallace Limited
	Kalata	R. G. Calvert
	Mudi	Mbabzi Estates Limited
	Mbabzi	Mbabzi Estates Limited
	Chipala	Mbabzi Estates Limited
	Bua	Mbabzi Estates Limited
	Namitete	Mbabzi Estates Limited
	Kasu	Mrs. G. M. Wallace
	Msangwa	Mrs. G. M. Wallace
	Lingadzi	Mrs. G. M. Wallace
	Namitete	Mrs. G. M. Wallace
	Daning'a	Mrs. G. M. Wallace
	Nsunga	I. Conforzi (Tea and Tobacco) Limited
	Nsungwa	I. Conforzi (Tea and Tobacco) Limited
	Likuni	I. Conforzi (Tea and Tobacco) Limited
	Lisungwe	I. Conforzi (Tea and Tobacco) Limited
	Cirikande	I. Conforzi (Tea and Tobacco) Limited
	Ncheza	I. Conforzi (Tea and Tobacco) Limited
	Kakuyu	R. P. Warren
	Kapanula	R. P. Warren
	Malowa	R. P. Warren
	Kachawa	T. W. Bradshaw
	Likuni	T. W. Bradshaw
	Namitete	Mrs. M. Dickinson
	Kaphiri	Mrs. M. Dickinson
	Mitundu	R. McFadyen
	Nanjai Dambo	R. McFadyen
	Mkhana	D. Mackenzie
	Mgwerisi	D. Mackenzie
	Zanzi	F. Comminetti
	Masula	F. Comminetti
	Lingadzi	Mrs. Sirjeet Kour
	Namitete	Namitete Estates Limited
Ncheu	Balaka	S. H. Osman
	Mitongwe	A. C. Dent
	Balaka	H. O. Hussein
	Bilila	H. Osman and Sons
	Dzunje	Mrs. M. Nussbaum
	Rivi Rivi	I. Conforzi (Tea and Tobacco) Limited
	NORTHERN REGION	
Karonga	Nyungwe	D. Maxwell
	Nyungwe	T. Maxwell

THE AFRICANS ON PRIVATE ESTATES (FORMS) RULES

G.N. 129/1962

under s. 29(2)

Citation

1. These Rules may be cited as the Africans on Private Estates (Forms) Rules.

Register of resident Africans

2. The register of resident Africans referred to in section 4 (1) of the Act shall be in the form set forth in Form I in the Schedule and shall contain the particulars specified therein.

Certificate of registration

3. The document certifying registration referred to in section 4 (2) of the Act shall be in the form set forth in Form II in the Schedule.

Register of Africans under special agreements

4. The register of Africans entering an estate under special agreements referred to in section 4 (3) of the Act shall be in the form set forth in Form III in the Schedule and shall contain the particulars specified therein.

SCHEDULE

FORM I

THE AFRICANS ON PRIVATE ESTATES ACT

(Section 4(1))

REGISTER OF RESIDENT AFRICANS

I *Register Number*	II *Date of Regis-tration*	III *Name in Full*	IV *Tax Census Number*	V *Name or description of locality where resident on Estate*	VI *Average allocated*	VII *Whether or not exempted from paying rent*	VIII *Name and full details of wife or wives (including residence)*	IX *Details of children (number, sex and ages)*

In the event of additions being made to the register in terms of section 8 (in pursuance of a valid marriage, etc.) it is only necessary to enter columns I to IV and to enter the register number in column V of the resident African with whom marriage has been joined.

FORM II

THE AFRICANS ON PRIVATE ESTATES ACT
(SECTION 4 (1))

CERTIFICATE OF REGISTRATION AS A RESIDENT AFRICAN

This is to certify that the undermentioned person has been registered as a resident African with effect from ..... on ..... Estate in ..... District in accordance with section 4 (1) of the Africans on Private Estates Act.

Name .....

Estate Register No. .....

FORM III

THE AFRICANS ON PRIVATE ESTATES ACT
(SECTION 4 (3))

REGISTER FOR AFRICANS ON SPECIAL AGREEMENTS

Agreement No.	*Date of Agreement*	*Name of Tenant in full*	*Tax Census No. (if any)*	*Home Address of Tenant*	*Whether agreement approved by Minister and Ministry Reference*

AFRICANS ON PRIVATE ESTATES TRIBUNAL RULES

G.N. 1/1963

under s. 18

Citation

1. These Rules shall be known as the Africans on Private Estates Tribunal Rules.

Interpretation

2. In these Rules, unless the context otherwise requires, "Chairman" means the Chairman of the Tribunal; "member" means a member of the Tribunal; "Secretary" means the Secretary to the Tribunal.

Persons who may apply to Tribunal

3. Application to the Tribunal shall be made only by a person aggrieved by an act, omission or determination of any other person under the Act. For the purposes of this rule, "person" includes the Government.

Method of application

4. All applications shall be made to the Secretary. There is no set form for an application, but all applications must be written and either signed or thumb-printed. An application should state the names and addresses of all persons involved in the matter and shall briefly state the matter in dispute.

Secretary to notify person complained against

5.—(1) When the Secretary has received an application, he shall notify the person complained against of the substance of the complaint and invite a written reply.

(2) Where an application is filed against a person or persons unknown, the Secretary may seek assistance from responsible sources to determine the names and addresses of such person or persons.

Secretary to establish agreed facts

6. The Secretary shall attempt to establish as many facts as possible as agreed facts before the Tribunal acts on any matter.

Convention of Tribunal

7.—(1) The Chairman, or in his absence or illness, any member designated by him, may convene the Tribunal.

(2) No meeting of the Tribunal may be convened on less than seven days' written notice.

Quorum and voting

8.—(1) Three members of the Tribunal shall constitute a quorum. A majority of a quorum shall be competent to conduct the business of the Tribunal.

(2) The Chairman, or the member elected to act as Chairman, shall have both an original and a casting vote.

(3) No member of the Tribunal shall be qualified to participate or vote in any matter in which he has a direct financial interest.

Chairman

9. The Chairman shall preside at all meetings of the Tribunal unless incapacitated by sickness or absent from some other cause. When the Chairman is absent from any meeting, the members present shall choose one of their number to act as Chairman for that meeting.

Questions of competence

10. The Secretary may offer advice to the Tribunal in any matter where the question of the Tribunal's competence to hear that matter is in doubt. The Tribunal shall decide the question of competence before dealing with the substance of the dispute.

General procedure

11.—(1) As presiding officer of the Tribunal, the Chairman shall have general powers to supervise the hearing of any matter before the Tribunal. This includes regulating the manner in which persons giving information to the Tribunal may be questioned.

(2) The Tribunal shall not be bound by technical rules of evidence.

(3) Every person having an interest in any matter before the Tribunal shall have the opportunity to be heard, either in person or by a representative.

(4) The Chairman may invite any person who, in the Chairman's opinion, may be able to assist the Tribunal in its deliberations, either to appear in person or to submit a written statement to the Tribunal.

Prompt despatch of business

12.—(1) The Tribunal shall promptly consider any matter brought before it.

(2) Where a person has been invited to comment on or reply to a matter before the Tribunal, and such person fails to do so within a reasonable time, the Tribunal may consider the matter, notwithstanding the absence of the invited information.

Determination of Tribunal

13.—(1) The Tribunal may withdraw to consider its determination.

(2) A summary of the determination of the Tribunal shall be signed by the Chairman and any written dissent by a member shall be signed by him. Copies shall be made available to the parties to the dispute by the Secretary.

Allowances and honoraria

14. The subsistence and travelling allowances paid to members shall be at the rates laid down from time to time by the Government for payment to non-official members of committees, boards and similar bodies. An honorarium at the rate of £100 per annum shall be paid to the Chairman and each member of the Tribunal. The honorarium will be payable in quarterly instalments calculated from the date of appointment to the Tribunal in respect of each completed month's service on the Tribunal.

HANDICAPPED PERSONS

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CHAPTER 33:02

HANDICAPPED PERSONS

ARRANGEMENT OF SECTIONS

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Preliminary

SECTION

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2. Interpretation

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6. Tenure of office of members
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PART III

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19. Registration of the handicapped
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24. Restrictions on seeking subscriptions, contributions or collections
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CHAPTER 33:02

HANDICAPPED PERSONS

48 of 1971
9 of 1986

An Act to make provision for the improvement of the care, assistance and education of handicapped persons in Malaŵi; to establish a Council for the handicapped; to provide for the voluntary registration of handicapped persons; to provide for the registration, direction, control and regulation of associations whose objects include the welfare of the handicapped; and further to provide for matters incidental thereto and connected therewith

[1st October, 1972]

PART I

Preliminary

Short title

1. This Act may be cited as the Handicapped Persons Act.

Interpretation

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

"association" has the meaning assigned to it by section 20;

"authorized officer" means a medical practitioner and any other person authorized by the Minister for the purposes of this Act;

"Chairman" means the Chairman of the Council appointed and designated pursuant to section 4;

"Council" means the Malaŵi Council for the Handicapped established by section 3;

"the handicapped" means those persons who, by reason of any defect or impairment of the mind, senses or body, congenital or acquired, are unable to take part in normal education, occupation and recreation, or who, by reason of any such defect or impairment, require special assistance or training to enable them to take part in normal education, occupation or recreation, and

"handicap" shall be construed accordingly;

"institution" means any land, buildings or other premises in which an association carries on work for the promotion of the welfare of the handicapped, and includes premises where the handicapped live and are cared for by any such association;

"Minister" means the Minister for the time being responsible for the administration of this Act;

"Vice-Chairman" means the Vice-Chairman of the Council elected pursuant to section 4.

PART II

Administration

Establishment of Council

3. There is hereby established a Council to be known as the Malaŵi Council for the Handicapped (hereinafter referred to as

"the Council") which shall be a body corporate by that name with perpetual succession and common seal and shall be capable of suing and being sued, of acquiring, holding, letting and otherwise disposing of land and, subject to the provisions of this Act, of performing all such acts and things as a body corporate may by law perform.

Composition of the Council
9 of 1986

4.—(1) The Minister shall, by notice in the *Gazette*, appoint the members of the Council.

(2) The Council shall consist of—

(*a*) one member designated by the Minister as Chairman;

(*b*) two independent members who shall be persons with wide and specialized knowledge in the field of the handicapped;

(*c*) five other members.

(3) The Minister may appoint to the Council such additional members, not exceeding two, as he deems essential to the Council in the exercise of its functions and powers.

(4) The Council shall, at its first meeting, elect one of its members to be Vice-Chairman of the Council for the period ensuing from the date of that meeting to the date of its first annual general meeting, and shall, at its first annual general meeting, and at each and every annual general meeting held thereafter, elect one of its members to be Vice-Chairman of the Council for the ensuing year.

Secretary/
Registrar and
officers

5.—(1) There shall be a Secretary to the Council who shall be appointed by the Minister, and who shall be the Registrar for all of the purposes of this Act.

(2) The Minister may appoint such other officers of the Council as he may deem necessary for the proper administration of the affairs of the Council.

(3) The Minister shall determine the terms and conditions of appointment of the Secretary and other officers appointed pursuant to subsections (1) and (2).

(4) The Secretary shall be the chief executive officer of the Council and shall work under the direction of, and be responsible to, the Council for the performance of any duties assigned to him by this Act or delegated to him by the Council, as the case may be.

(5) The Secretary may delegate or assign any administrative or other duties to any officer appointed pursuant to subsection (2) and each officer so appointed shall be responsible to the Secretary for the performance of any such duties lawfully delegated or assigned to him.

(6) The Secretary and every officer appointed pursuant to this section shall be paid such salaries and emoluments as shall be

fixed by the Minister in the terms of their respective appointments, and such salaries and emoluments shall be paid to them out of the funds of the Council.

(7) Notwithstanding the foregoing provisions of this section, the Minister may designate an officer in the public service to be the Secretary to the Council, or may designate officers in the public service to be officers of the Council, and in any such event the provisions of subsection (6) shall not apply in respect of such Secretary or officers so designated by the Minister.

Tenure of office of members

6.—(1) Members of the Council shall, subject to the provisions of this section, hold office for such period, being not more than three years, as may be specified in their respective appointments.

(2) A retiring member shall be eligible for re-appointment.

(3) On the expiry of the period for which a member is appointed he shall continue to hold office until his successor has been appointed, but in no case shall such further period exceed three months.

(4) The office of a member shall be vacated—

(*a*) upon his death;

(*b*) if he is absent from three consecutive meetings of the Council without the permission of the Council;

(*c*) upon the expiry of one month's notice in writing of his intention to resign his said office given by him to the Minister;

(*d*) upon the expiry of one month's notice in writing terminating his appointment to such office given to him by the Minister;

(*e*) if he becomes physically or mentally incapable of performing his duties as a member of the Council.

Remuneration of members of the Council

7. Any member of the Council who is not an officer in the public service shall be paid, out of the funds of the Council, such remuneration and allowances, if any, as the Minister may in his case fix.

Proceedings of the Council

8.—(1) The Council shall meet at such places and times as the Chairman may determine or as he may be directed by the Minister and such meetings shall be convened by notice to the members given by the Chairman.

(2) At any meeting of the Council more than half the number of members of the Council shall constitute a quorum and all acts, matters or things authorized or required to be done by the Council shall be decided by resolution by majority vote of the members present at any such meeting.

(3) At all meetings of the Council, the Chairman or in his absence the Vice-Chairman or, in the absence of both, such member as the members present shall elect, shall preside.

(4) The person presiding at any meeting of the Council shall have a deliberative vote and, in the event of an equality of votes, shall also have a casting vote.

(5) Subject to the provisions of subsection (2), no act, decision or proceedings of the Council shall be questioned on account of any vacancy in the membership thereof, or on account of the appointment of any member of the Council being defective.

(6) The Council may from time to time make rules for the transaction of the business of the Council or of any Committee of the Council.

(7) The Council may appoint committees for any purposes that it may deem expedient and may, with the prior consent of the Minister, co-opt any person to be a member of any committee so appointed. The Chairman of the Council shall, by virtue of his office, be a member of every committee so appointed.

(8) Subject to the provisions of this Act, the Council may regulate its own procedure.

(9) The Council shall hold in each year an annual general meeting within three months of the first day of the financial year of the Government .

(10) The Council shall cause minutes of every Council meeting to be kept.

Non-liability of members of Council

9. No member of the Council, or of any committee of the Council, shall be liable for any act or default of his, or of the Council, done in the exercise in good faith of the functions or powers of the Council.

Functions of the Council

10. The Council shall act as an agent of the Government and, in promoting the welfare of the handicapped, its functions shall be—

(*a*) to advise the Minister in regard to all matters affecting the welfare, education, training and employment of the handicapped and in regard to all matters relating to the prevention of any type of handicap;

(*b*) to promote public interest in the welfare and care of the handicapped;

(*c*) to administer vocational and special training centres for the handicapped;

(*d*) to administer rehabilitation services for the handicapped and to administer services for the care and welfare of handicapped persons;

(*e*) to raise and receive funds and donations which it may apply for the welfare of the handicapped.

Powers of the Council

11. The Council shall have power—

(*a*) to acquire by purchase, gift or otherwise any property, real or personal, and any rights or interest therein or thereover;

(*b*) to enter into any contract or agreement;

(*c*) to employ upon such terms and conditions as may be determined by the Council such managers, agents and servants as the Council may deem necessary, to fix their remuneration, and to arrange for pension schemes, gratuities and retiring allowances and any contributions therefor;

(*d*) to augment the earnings of persons registered pursuant to section 19, or of any person engaged in promoting the welfare, education, training or employment of the handicapped;

(*e*) to raise and receive funds and donations to be applied for the welfare of the handicapped;

(*f*) to borrow and raise moneys;

(*g*) to invest any moneys not immediately required in any investment for the time being authorized by law for the investment of trust moneys, and to vary such investments;

(*h*) to assist by grants-in-aid or loans in the establishment, maintenance or running of any association or institution which will be of direct benefit to the handicapped;

(*i*) to do all such acts, matters and things as may be necessary for fulfilling the objects of the Council.

Authentication of the Common seal

12. The common seal of the Council shall be authenticated by the signature of the Chairman or of some other member of the Council authorized by the Chairman, in writing, in that behalf and such seal shall be officially and judicially noticed.

Annual report

13.—(1) The Council shall, as soon as practicable and in any case not later than six months after the termination of the financial year, submit to the Minister an annual report of its work and operations during the year.

(2) The annual report shall include a balance sheet and a complete statement of income and expenditure duly audited, and the report of the auditors and such other information as the Minister may require.

Exemption from taxes

14. The Council shall be exempt from any tax on income, profits or capital gains.

Funds of the Council

15. The funds of the Council shall consist of—

(*a*) such sums as may be payable to the Council from moneys appropriated by Parliament;

(*b*) such moneys as may be given to the Council by way of donation, contribution, collection or gift; and

(*c*) such other moneys or assets as may vest in or accrue to the Council whether in the course of its work or operations or otherwise.

Accounts

16. The Council shall keep or cause to be kept a full and correct account of all moneys and assets vested, received or otherwise obtained and all moneys expended and assets sold or otherwise disposed of by the Council.

Appointment of auditors and audit of Council's accounts

17.—(1) The Council shall with the approval of the Minister, at its first meeting, appoint one or more persons who publicly carry on the profession of accountants as its auditors to examine and report to the Council and to the Minister on the Council's accounts not less than once in each financial year.

(2) In addition to the report referred to in subsection (1), the Minister may, at any time, require the Council to obtain from its auditors such other reports, statements or explanations in connexion with the work, operations, undertakings and property of the Council as the Minister may consider expedient.

(3) The Council shall produce to the auditors all its books and accounts with all vouchers in support thereof and all books, papers and writings in its possession or control relating thereto.

(4) The auditors shall be entitled at all reasonable times to require from all members, the Secretary and officers and all other persons in the employ of the Council such information and explanations as may be necessary for the performance of their duties as auditors.

(5) The expenses of and incidental to any audit shall be borne and paid by the Council.

Duties of auditors

18. It shall be the duty of the auditors of the Council, in addition to the ordinary duties of auditors, to certify not less than once in each financial year whether or not—

(*a*) they have received from the Council all the information and explanations which they considered necessary for the performance of their duties as auditors;

(*b*) the accounts of the Council have been properly kept; and

(*c*) the accounts of the Council present a true and fair view of the financial position of the Council according to the information and explanations given and the books and records produced to them.

PART III

Registration

Registration of the handicapped

19.—(1) A register of the handicapped in the form prescribed, hereinafter referred to as "the register", shall be maintained by the Council.

(2) Any person wishing to be registered as handicapped shall make or cause to be made on his behalf an application in the prescribed form to the Council.

(3) On receipt of an application under the provisions of subsection (2) the Council shall cause the person by whom or on whose behalf the application is made to be examined by an authorized officer.

(4) Where an authorized officer has examined any person under the provisions of subsection (3), he shall forward a certificate in the prescribed form to the Council stating whether he is satisfied that the person examined by him is a handicapped person.

(5) Where an authorized officer certifies that he is satisfied that a person examined by him under this section is a handicapped person, the Council shall, on receipt of such certificate, direct the Registrar to cause the name of that person to be entered in the register and to issue a certificate of registration, in the prescribed form, to the person so registered.

(6) Where any person, who is registered pursuant to this section, is subsequently examined by a medical practitioner and such medical practitioner certifies in the prescribed form that the said person is no longer a handicapped person, the Council shall, on receipt of such certificate, cause the Registrar to strike the name of the said person off the register.

Registration of associations

20.—(1) A Register of Associations in the form prescribed (hereinafter referred to as "the register") shall be kept and maintained by the Council.

(2) Every group or body of persons, corporate of unincorporate, other than any body corporate established by any Act of Parliament expressly enacted for that purpose, formed or operating within Malaŵi and having as one of its objects the promotion of the welfare of the handicapped (in this Act referred to as an "association") shall apply to the Council in the manner prescribed, for registration as a registered association under this Act.

(3) Every association applying for registration pursuant to subsection (2) shall, in its application—

(*a*) set forth the name and address of the association and the names, designations and addresses of its officers and the members of its executive committee or other body in control of its affairs; and

(*b*) submit together with its application a copy of the memorandum and articles, constitution or rules, as the case may be, of the association.

(4) As soon as is practicable after receiving an application pursuant to subsection (2), the Council shall consider the same

and, having satisfied itself as to the suitability of the memorandum and articles, constitution or rules of the association and the good faith of its officers and members, the Council may direct the Registrar to cause such association to be registered in the register.

(5) Where any amendment is made to the memorandum and articles, constitution or rules of an association registered pursuant to this section, the association shall forthwith give particulars thereof in writing to the Council.

(6) An association registered pursuant to this section shall, not later than the last day of April in each year, submit to the Council a report of the operations of the association together with a balance sheet duly certified by auditors elected at the annual general meeting of the association.

Power to impose conditions

21.—(1) The Council may before registration of an association or at any time thereafter impose conditions—

(*a*) limiting the number of the handicapped in any age group who may be maintained at any one time in any institution operated or managed by the said association;

(*b*) for ensuring that any such institution shall be adequately staffed both as regards the qualifications and experience of the persons employed therein or taking part in the conduct thereof;

(*c*) for ensuring that any such institution shall be adequately equipped and maintained;

(*d*) providing for the keeping by any association of records of the handicapped admitted into and maintained in any such institution;

(*e*) generally for securing the wellbeing of the handicapped persons admitted into any such institution.

(2) Any association upon which conditions are imposed by the Council pursuant to subsection (1) shall be notified by the Council in writing of the terms of such conditions.

(3) Any conditions imposed by the Council under the provisions of this section may, at any time, be varied or revoked by the Council and the Council shall, in writing, notify the association concerned of such variation or revocation.

(4) Any association aggrieved by any condition imposed, or by any variation of any such condition made, by the Council under this section may, within thirty days after being notified of such imposition or variation, appeal to the Minister, who may dismiss the appeal, or revoke the condition imposed or variation made, or vary such condition or variation and, in this regard, may exercise generally all or any of the powers of the Council under subsection (1).

(5) The decision of the Minister on any appeal pursuant to subsection (4) shall be final and shall not be subject to appeal to or question in any court of law, and the Minister shall not be required to assign any reason for any such decision.

Inspection of institutions

22.—(1) Any public officer authorized by the Minister may, at all reasonable times, enter any institution and may inspect the same, and the facilities provided therein for the handicapped, the arrangements for their welfare, education, training, rehabilitation, health and employment and any records kept pursuant to this Act.

(2) Any person who hinders or obstructs any such authorized public officer in the exercise of any of the powers conferred by subsection (1) shall be guilty of an offence and shall be liable to a fine of one hundred Kwacha.

Penalties for failing to register

23. If at any time after three months after the commencement of this Act—

(*a*) any handicapped person is admitted to, or found in any institution operated by an association which is not registered under section 20; or

(*b*) any condition lawfully imposed in relation to an association under section 21 is contravened or not complied with,

every person concerned in the management of the said association and any person in control or in charge of the said institution shall be guilty of an offence, and shall be liable, in the case of a first offence, to a fine of two hundred Kwacha, and in the case of a second or subsequent offence, to a fine of four hundred Kwacha and to imprisonment for six months.

PART IV

Miscellaneous

Restrictions on seeking subscriptions, contributions or collections

24.—(1) Save with the written permission of the Council, but without prejudice to any other law, no person shall—

(*a*) publish appeals to the general public for subscriptions, contributions, donations or other forms of gifts for the welfare of the handicapped; or

(*b*) organize, hold, assist or be concerned in any collection of money, or in any attempt to collect any money, from house to house, in any street, by sale of goods or otherwise, for the welfare, education, training, rehabilitation or health of the handicapped.

(2) Any person who contravenes subsection (1) shall be liable to a fine of one hundred Kwacha and to imprisonment for six months and the court before which the person is convicted of an offence under this section may order that the money, goods or other things collected or received by him by way of a subscription,

donation, contribution or gift, shall be forfeited and paid or given to the Council:

Provided that it shall be a sufficient defence if the person charged with an offence under this section proves that he was acting for and on behalf of an association registered under section 20.

Minister may make regulations

25. The Minister may make regulations for the better administration and efficient working of this Act and, without prejudice to the generality of the foregoing, such regulations may make provision for—

(*a*) the form of records to be kept under this Act;

(*b*) the criteria to be applied when examining any person who has applied to be registered under section 19;

(*c*) anything to be prescribed under this Act.

KAMUZU NATIONAL FOUNDATION TRUST

CHAPTER 33:03

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CHAPTER 33:03

KAMUZU NATIONAL FOUNDATION TRUST

ARRANGEMENT OF SECTIONS

SECTION

1. Short title
2. Interpretation
3. Establishment and property of Trust
4. Trustees of the Trust
5. The Trustees: appointment, tenure and meetings

5A. Secretary

6. Objects of the Trust
7. Powers of the Trustees
8. Trustees' power to use Trust income
9. Trustees' power to use Trust capital
10. Exemptions from taxation

An Act to provide for the establishment of a fund entitled the Kamuzu National Foundation Trust; to provide for the appointment of Trustees thereof and for the vesting of the property constituting such fund in such Trustees; to provide for the incorporation of such Trustees as a body corporate under the name, the Trustees of the Kamuzu National Foundation Trust; to provide for the terms and conditions of the trusts under which such fund shall be held and administered by such Trustees; and further to provide for matters incidental to or connected with the forgoing

49 of 1971
9 of 1986

[31st December, 1971]

Short title

1. This Act may be cited as the Kamuzu National Foundation Trust Act.

Interpretation

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

"alternate Trustee" means an alternate Trustee appointed in accordance with section 5 (2);

"objects" means the objects of the Trust declared by section 6;

"Trust" means the fund known as the Kamuzu National Foundation Trust established by section 3;

"Trust capital" means such moneys as are transferred to and vested in the Trustees for the purposes of the Trust by virtue of section 11, together with all moneys or other property, real or personal, received by the Trustees in their capacity as such, whether by gift, devise or bequest, or purchased or otherwise acquired by, or vested in, the Trustees for the benefit of the Trust, other than Trust income not accumulated;

"Trust income" means any interest, rents, dividends or other annual or periodic earnings from the investment or use of the Trust capital;

"Trustee" means a Trustee appointed in accordance with section 5 (1);

"the Trustees" means the Trustees of the Kamuzu National Foundation Trust constituted and incorporated pursuant to section 4.

Establishment and property of Trust

3.—(1) There is hereby established a fund to be known as the Kamuzu National Foundation Trust (hereinafter referred to as the "Trust") which shall vest in, be held and administered by Trustees pursuant to this Act upon and subject to the trusts and for the advancement and furtherance of the objects in this Act hereinafter declared.

(2) The property of the Trust shall consist of—

(*a*) such sums of money as may be paid to the Trustees for the benefit of the Trust from moneys appropriated therefor by Parliament;

(*b*) such sums of money or other property, real or personal, as may be purchased, acquired or received by, or transferred to, or vested in the Trustees, in their capacity as such, whether by way of gift, devise, bequest, purchase or otherwise howsoever;

(*c*) such sums of money or other property, real or personal as may accrue to the Trustees in the exercise of their powers under this Act;

(*d*) such sums of money or other property, real or personal, as may be transferred to the Trustees for the benefit of the Trust by or under this or any other written law.

Trustees of the Trust

4. There is hereby constituted the Trustees of the Kamuzu National Foundation Trust, which shall by that name be a body corporate with perpetual succession and a common seal capable of suing and being sued and, subject to the provisions of this Act, of doing such acts and performing such deeds as a body corporate may lawfully do or perform.

The Trustees

5.—(1) The Trustees of the Kamuzu National Foundation Trust shall be appointed by the President and shall consist of—

(*a*) one person to represent the Malaŵi Army;

(*b*) one person to represent the Malaŵi Police;

(*c*) one person to represent the Malaŵi Congress Party;

(*d*) one person to represent commercial and industrial interests in Malaŵi;

(*e*) one person to represent banking institutions in Malaŵi, one of whom shall be designated by the President as Chairman of the said Trustees and another of whom shall be so designated as the Vice-Chairman thereof. In the absence or incapacity of the Chairman the Vice-Chairman shall act in his stead.

(2) The President shall, upon the appointment of a Trustee pursuant to subsection (1), appoint from the same category an alternate Trustee.

(3) An alternate Trustee appointed pursuant to subsection (2)—

(i) shall act as a Trustee only when the Trustee to whom he is alternate is unable to exercise his functions as Trustee by reason of illness, absence from Malaŵi or other grave cause;

(ii) when acting as a Trustee shall have all the powers and be subject to all the duties of a Trustee.

(4) Alternate Trustees may, when not acting under the provisions of subsection (3), attend meetings of the Trustees as observers only, but shall have no voice in the proceedings of, and no voting powers at, any such meeting.

(5) No person shall be appointed a Trustee or alternate Trustee who—

(*a*) is an undischarged bankrupt;

(*b*) has, within three years last past, for an offence under any written law, been sentenced to a term of imprisonment of not less than six months save as an alternative to, or in default of, the payment of a fine;

(*c*) has, within seven years last past, been convicted of an offence involving fraud or dishonesty.

(6) The office of Trustee or of alternate Trustee shall be vacated—

(*a*) upon his death;

(*b*) upon his ceasing to reside in Malaŵi;

(*c*) upon the happening of any event which would render him ineligible for appointment as provided by subsection (5);

(*d*) upon his resignation as Trustee or alternate Trustee;

(*e*) upon his removal by the President.

(7) When the office of Trustee or of alternate Trustee is vacated pursuant to subsection (6), the President shall appoint a new Trustee, or alternate Trustee, as the case may be, from the category from which the said former Trustee or alternate Trustee was originally appointed.

(8) Trustees or alternate Trustees shall not be entitled to any remuneration for their services as Trustees or as alternate Trustees.

(9) Meetings of the Trustees shall be held once every four months at such places and times as the Chairman may determine and shall be convened by notice in writing given by the Chairman, and shall be presided over by him. 9 of 1986

(10) A quorum of the Trustees shall consist of the Chairman and two other trustees, or, in the absence of the Chairman, the Vice-Chairman and two other Trustees.

(11) At every meeting of the Trustees the person presiding shall have a deliberative vote and, in the event of an equality of votes, shall also have a casting vote.

(12) If any Trustee or his spouse, or any company of which he or she is a director or major shareholder, or any partner of such Trustee or his spouse, has or acquires any pecuniary interest, direct or indirect, in any matter in which his private interests conflict with his duties as a Trustee and which is the subject of consideration by the Trustees, or if he or his spouse is related by consanguinity or affinity with any person whose application for assistance is being considered by the Trustees, he shall, as soon as he becomes aware of such interest in such matter, or of such relationship to such person, disclose the facts relating thereto to the Chairman and the President, and shall not, save with the written approval of the President, take part in the consideration of, or vote on, any question before the Trustees, which relates to such matter or person:

For the purposes of this subsection the expression "major shareholder" means any person who, at the relevant time, in his own right, or in the right of any other person, has the power to exercise or control not less than ten *per centum* of the voting rights in the relevant company, whether by reason of share holdings, debenture holdings, proxy or otherwise.

Secretary
9 of 1986

5A. The President shall appoint a person to be a Secretary to the Trust.

Objects of the Trust

6. The objects of the Trust shall be—

(*a*) the grant of financial, medical, educational and other aid, assistance and relief to disabled, needy or incapacitated members, of all ranks, of the Malaŵi Army or of the Malaŵi Police or to the wives, widows or dependants of such persons;

(*b*) the grant of financial, medical, educational and other aid, assistance and relief to disabled citizens of Malaŵi generally;

(*c*) the grant of financial, medical or other aid or assistance to such educational or charitable purposes as the President may, from time to time, direct.

Powers of the Trustees

7. The Trustees shall have power to hold the Trust upon and subject to the trusts by this Act declared, and shall have power to enter into any transaction or to do any act, which in their opinion will tend to the advancement of the objects of the Trust as declared by section 6, or which is incidental or contributory thereto, and, without prejudice to the generality of the foregoing, shall have power to—

(*a*) receive upon trust any gift of any property, real or personal, whether generally or subject to any special trust for the advancement of any specific object within the objects declared by section 6;

(*b*) receive upon trust from any executor or administrator with the will annexed any devise or bequest, whether generally or subject to any special trust for the advancement of any specific object within the objects declared by section 6;

(*c*) receive, purchase, take on lease or otherwise acquire real or personal property whether generally or subject to any special trust for the advancement of any specific object within any of the objects declared by section 6;

(*d*) solicit, from any source whether within or outside Malaŵi, contributions, whether of money or other property, real or personal, to the Trust;

(*e*) borrow or otherwise raise money;

(*f*) invest any moneys of the Trust which are not immediately required for its objects, and in this regard the Trustees shall have power to make such wider range investments as fall within Part II of the Schedule to the Trustee Act: Cap. 5:02

(*g*) construct, maintain or alter any buildings, drainage or other works;

(*h*) manufacture, buy, sell, supply, distribute and deal in goods of any kind;

(*i*) subject to the approval of the President, employ administrative or executive staff and other servants or agents for the management and administration of the affairs of the Trust and to make provision for the salaries, wages, commissions and other conditions of service of such persons including pensions, gratuities and other superannuation benefits;

(*j*) establish or maintain or assist in establishing or maintaining or give financial or other support to any institution, society or association whose objects are similar to the objects declared by section 6 or any of them;

(*k*) provide scholarships, bursaries, or other financial aid for the advancement of any of the objects declared by section 6.

Trustees' power to use Trust income

8.—(1) In administering the Trust, the Trustees shall apply so much of the Trust income as they deem necessary for the furtherance of the objects of the Trust declared by section 6.

(2) Subject to the provisions of section 9, in the event of there being any surplus Trust income at the end of any financial year, the Trustees may, in their absolute discretion, allow such surplus to be carried over, as Trust income, to the succeeding financial year or may transfer the same to Trust capital.

(3) Save as provided by section 9, the Trustees shall not reduce the Trust capital.

Trustees' power to use Trust capital

9. The Trustees, in their absolute discretion, shall have power to make, for the furtherance of any of the objects declared by section 6, advancement from the Trust capital:

Provided that, at no time, shall any such advancement be made which would reduce such Trust capital below the value of one hundred thousand Kwacha (K 100,000):

And further provided that if upon any revaluation of the Trust capital at the end of any financial year the said capital is shown to be reduced below the value of one hundred thousand Kwacha (K100,000) the Trustees shall thereafter accumulate not less than one half of the Trust income during the course of the next succeeding financial years and shall apply such accumulation towards the said Trust capital until such time as the said Trust capital has, on further revaluation, been shown to have reached the value of one hundred thousand Kwacha (K100,000).

Exemptions from taxation

10.—(1) Any written law to the contrary notwithstanding—

(*a*) no duty imposed under any written law for the time being in force relating to customs or excise shall be levied, charged, collected or paid in respect of any goods imported into, or manufactured or produced within, Malaŵi by or on behalf of the Trustees;

(*b*) the income of the Trust from whatever source shall be exempt from any tax payable under any written law for the time being in force relating to taxes on income or profits.

(2) Where any testator devises or bequeaths any property, rea or personal, for the Trust, generally, or subject to any special trust for the advancement of any of the objects declared by section 6 the value of the property so devised or bequeathed shall be deducted in determining the principal value of the property of such testator for the purposes of estate duty in accordance with the Estate Duty Act as if such devise or bequest were a debt allowable under section 12 of the said Act, and the said devise or bequest shall be payable into the said Trust free of any estate duty under the said Act.

Cap. 43:02

NATIONAL FAMILY WELFARE COUNCIL OF MALAŴI

CHAPTER 33:04

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CHAPTER 33:04

NATIONAL FAMILY WELFARE COUNCIL OF MALAŴI

ARRANGEMENT OF SECTIONS

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CHAPTER 33:04

NATIONAL FAMILY WELFARE COUNCIL OF MALAŴI

20 of 1990
G.N. 126/1990

An Act to make provision for the co-ordination, promotion, fostering and implementation of family welfare programmes in Malaŵi; the establishment of a National Family Welfare Council of Malaŵi; and further to provide for matters incidental thereto or connected therewith

[4th January, 1991]

PART I

Preliminary

Short title

1. This Act may be cited as the National Family Welfare Council of Malaŵi Act.

Interpretation

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

"Chairman" means the person designated as Chairman of the Council under section 8;

"Council" means the National Family Welfare Council of Malaŵi established under section 3;

"Family Welfare" means the well-being of all persons in Malaŵi in all aspects of their cultural, social, economic and other forms of human development, reproduction, growth, population and other human development related matters.

PART II

The National Family Welfare Council of Malaŵi

Establishment of the Council

3. There is hereby established a body to be known as the National Family Welfare Council of Malaŵi which shall be—

(*a*) a body corporate with perpetual succession and a common seal;

(*b*) in its corporate name, capable of suing and being sued;

(*c*) capable of holding, purchasing and otherwise acquiring and disposing of any property, moveable or immoveable, for the purposes, or in the course, of carrying out its functions; and

(*d*) capable of doing and performing all such acts and things as bodies corporate may by law do and perform.

Composition of the Council

4.—(1) The Council shall consist of—

(*a*) The following members appointed by the Minister—

(i) three persons representing religious organizations in Malalŵi;

(ii) a representative of the Private Hospital Association of Malaŵi;

(iii) a representative of the Council for Social Welfare;

(iv) a representative of the Malaŵi Broadcasting Corporation;

(v) a representative of the Chitukuko Cha Amayi m'Malaŵi;

(vi) not less than three and not more than five other members representing the non-governmental sector;

(*b*) the following *ex-officio* members—

(i) the Secretary for Health or his representative;

(ii) the Secretary for Community Services or his representative;

(iii) the Secretary for Education and Culture or his representative;

(iv) the Secretary to the Treasury or his representative;

(v) the Secretary for Media Services and Public Affairs or his representative; and

(vi) the Secretary for Economic Planning and Development or his representative.

(2) A representative of an *ex-officio* member referred to in subsection (1) (b) shall be designated by, or on behalf of, the *ex-officio* by a notice in writing to the Council to attend the meetings thereof, and upon such designation such representative shall not attend to the business of the Council by representation.

(3) A member of the Council appointed under subsection (1) (a), shall hold office for a period of two years unless his appointment is terminated sooner than the expiry of that period and shall be eligible for re-appointment.

(4) The names of all members of the Council as first constituted and every change in the membership of the Council shall be published in the *Gazette*.

Vacation of office of members

5. The office of a member, other than *an ex-officio* member, shall become vacant—

(*a*) upon his death;

(*b*) if he has been absent from three consecutive meetings of the Council, of which he has had notice, without the permission of the Chairman;

(*c*) if he has been convicted of an offence without the option of a fine and sentenced to imprisonment for a period exceeding six months;

(*d*) if in the opinion of the Minister he becomes mentally or physically incapable of efficiently performing his duties as a member of the Council; and

(*e*) if the Minister so directs.

Filling of vacancies on the Council

6.—(1) On vacation of office by a member of the Council, the vacancy shall be filled by a person appointed in accordance with the relevant provisions of section 4 (1) (*a*) under which the former member was appointed:

Provided that if the remaining period is less than six months, the Minister may decide not to have the vacancy filled until the expiry of the period.

(2) If any member of the Council is granted leave of absence by the Council, the Council may, if it sees fit, co-opt a person who belongs to the same organization as the member who has been granted leave to fill the vacancy during the absence of that member.

Co-opted persons

7. The Council may in its discretion at any time and for any period invite any person, and the Minister may in like manner nominate any officer in the public service, to attend any meeting of the Council and take part in the deliberations of the Council, but such person or officer shall not be entitled to vote at that meeting.

Chairman and Vice-Chairman

8.—(1) The Minister shall, by writing under his hand, designate one member of the Council to be the Chairman thereof and the person so designated shall, subject to subjection (2), hold office for the duration of his membership on the Council.

(2) The office of the Chairman shall become vacant—

(*a*) if the holder resigns his office by notice to the Minister;

(*b*) if the holder of the office ceases to be a member of the Council;

(*c*) if the Minister so directs.

(3) The Council shall elect a Vice-Chairman from amongst its members who shall subject to subsection (4), hold office for the duration of his membership on the Council.

(4) The office of the Vice-Chairman shall become vacant—

(*a*) if the holder resigns his office by notice in writing to the Council;

(*b*) if the holder of the office ceases to be a member of the Council; and

(*c*) if the Council so directs.

(5) Whenever the Chairman is absent or is for any cause unable to discharge the functions of his office, the Vice-Chairman shall discharge the functions of the Chairman.

Remuneration of members of the Council

9. A member of the Council other than an *ex-officio* member, shall be paid out of the funds of the Council, such remuneration and allowances, if any, as the Minister may determine.

Meetings of the Council

10.—(1) Subject to subsection (2), the Council shall hold ordinary meetings for the dispatch of business at least four times a year.

(2) An extraordinary meeting of the Council—

(*a*) may be convened by the Chairman at any time; and

(b) shall be convened by the Chairman within twenty-one days of receipt by him of a request in writing signed by not less than five members of the Council and specifying the purpose for which the meeting is to be convened.

(3) At any meeting of the Council—

(*a*) the Chairman or, in his absence, the Vice-Chairman, shall preside;

(*b*) in absence of both the Chairman and Vice-Chairman, the members present and forming a quorum shall elect one of them to preside; and

(*c*) the quorum shall be formed by a majority of members.

(4) An *ex-officio* member of the Council shall attend any meeting of the Council in person.

(5) At any meeting of the Council a decision on any matter shall be that of the majority of the members present and voting at that meeting, and in the event of an equality of votes, the Chairman, Vice-Chairman or the person presiding shall have a casting vote in addition to his deliberative vote.

(6) The Council shall have power to regulate its own procedure.

(7) The Council shall cause minutes of every meeting of the Council or Committee to be kept.

Non-liability of members of the Council or of committees

11. No member of the Council or of any committee of the Council shall be liable for any act or default of his, or of the Council, done in the exercise in good faith of the functions or powers of the Council.

PART III

Functions and Powers of the Council

Functions of the Council

12. The Council shall be responsible for co-ordinating, promoting, fostering and implementing family welfare programmes in Malaŵi, and without prejudice to the generality of the foregoing the functions of the Council shall be—

(*a*) to develop family welfare services where they are nonexistent and strengthen such services where they are inadequate;

(*b*) to promote standardization of family welfare services;

(*c*) to promote and encourage the piloting of alternative family welfare service delivery methods;

(*d*) to develop and maintain an effective management information system aimed at achieving optimum family welfare services and further to promote effective dissemination and use of such information;

(*e*) to advise the Government on policies relating to family welfare and implement such policies either directly or through other organizations and agencies;

(*f*) to promote an acceptable image of family welfare activities in Malaŵi;

(*g*) to promote optimum standards of contraceptive care in Malaŵi by ensuring adequate and appropriate supply and wide distribution of a variety of methods of contraceptives;

(*h*) to promote motivation of persons of child bearing age as a key factor in fostering the acceptability and sustenance of usage of contraceptives; and

(*i*) to develop and institute guidelines for co-operation, for the purposes of this Act, between the Government and other orgnizations and agencies operating in Malaŵi.

Powers of the Council

13. For the better performance of its functions, the Council shall, subject to the provisions of this Act, have power—

(*a*) to employ technical and administrative personnel;

(*b*) to acquire by purchase, gift or otherwise any property, moveable or immoveable, and any rights or interest therein or thereover;

(*c*) to enter into any contract or agreement;

(*d*) with the approval of the Minister, to raise and receive funds and donations to be applied for the family welfare activities;

(*e*) subject to the Finance and Audit Act, to raise moneys by way of loans or overdrafts;

(*f*) to invest any moneys not immediately required in any investment approved by the Minister or for the time being authorized by law;

(*g*) to co-operate with the Government and other organizations and agencies in research activities;

(*h*) to publish any technical or other information as it deems necessary or expedient for the promotion of family welfare; and

(*i*) to do all such acts, matters and things as may be necessary for fulfilling the functions of the Council.

Committees of the Council

14.—(1) In addition to the Policies, Programmes and Procedures Committee, Quality Control Committee and Education Committee and save as otherwise provided in relation to those committees, the Council may establish any number of other committees to carry out any special or general functions determined by the Council and may delegate to any such committee such of the functions of the Council as the Council may consider expedient.

(2) The Chairman shall, by reason of his office, be a member of every committee established under subsection (1).

(3) The Chairman of each committee shall be appointed by the Council from amongst the members of the Council.

(4) Each committee may in its discretion invite any person, not being a member of the Council, to attend a meeting of the committee and take part in the deliberations of the meeting but such person shall not be entitled to vote.

(5) The Chairman of a committee may, at any time and place, convene a meeting of the committee of which he is chairman.

(6) The Chairman may, at any time, direct the chairman of any committee to convene a meeting of such committee and such chairman shall, as soon as is practicable, comply with such direction.

(7) At all meetings of a committee the quorum shall be formed by a majority of members.

(8) At all meetings of a committee each member present shall have one vote on a question before the committee and, in the event of an equility of votes, the chairman shall have, in addition to a deliberative vote, a casting vote.

(9) Every committee shall have the power to regulate its own procedure.

(10) Every committee shall keep minutes of its meetings and shall inform the Council of its activities and shall conduct its proceedings in such manner as the Council may direct.

(11) A member of a committee who is not an officer in the public service shall, in respect of expenses incurred by him in travelling and subsistence while discharging his duties as member of that committee, be paid out of the funds of the Council such allowances as the Council may, with the approval of the Minister, determine.

PART IV

Management of the Council

Appointment of an Executive Secretary and other staff

15.—(1) Subject to the provisions of this section, the Council—

(*a*) shall appoint a person to be designated as the Executive Secretary of the Council upon such terms and conditions as the Council shall determine with the approval of the Minister;

(*b*) may appoint such other employees as it considers necessary or desirable in the discharge of its duties and upon such terms and conditions as it may determine.

(2) The Executive Secretary, after consultation with the Chairman, may appoint temporary employees at such daily rates of pay, not below the minimum rates otherwise prescribed by law, as he may consider appropriate and shall, after he has appointed any such employee, report the fact thereof to the Council at its next meeting.

(3) The Executive Secretary shall be the secretary to the Council and shall, on the instructions of the Chairman, convene meetings of the Council.

(4) An officer of the Council duly appointed by the Executive Secretary shall be secretary to a committee of the Council and shall, on the instructions of the chairman of the committee, convene meetings of the committee.

PART V

Financial Provisions

Funds, accounts and audit

16.—(1) The funds of the Council shall consist of—

(*a*) such sums as may be appropriated by Parliament for the purposes of the Council; and

(*b*) such moneys as may be given to the Council by way of donation, contribution, collection or gift approved by the Minister.

(2) The Council shall keep proper accounts and other records relating thereto in respect of its funds and shall in every respect comply with the provisions of the Finance and Audit Act. Cap. 37:01

(3) The accounts of the Council shall be examined and audited annually by auditors appointed by the Council and approved by the Minister.

(4) The expenses of and incidental to any audit shall be borne and paid by the Council.

PART VI

Committees of the Council

Policies, Programmes and Procedures Committee

17.—(1) There shall be a Policies, Programmes and Procedures Committee which shall consist of—

(*a*) one member of the Council appointed and designated by the Council as chairman of that committee;

(*b*) every officer who is the head of a department of the Council;

(*c*) the financial officer of the Council, if one be appointed; and

(*d*) four other persons conversant with personnel and administration matters appointed by the Council and who may or may not be members of staff of the Council.

(2) Subject to the general directions of the Council, the functions of the Policies, Programmes and Procedures Committee shall be—

(*a*) to review and formulate policies, programmes and procedures of the Council for approval by the Council;

(*b*) to implement or supervise the implementation of the policies and programmes of the Council; and

(*c*) to produce periodic reports on the programmes and activities of the Council.

Quality Control Committee

18.—(1) There shall be a Quality Control Committee which shall consist of—

(*a*) one member of the Council appointed and designated by the Council as chairman of that committee;

(*b*) every officer who is the head of a department of the Council;

(*c*) an obstetrician and gynaecologist practising at a Government hospital, appointed by the Council;

(*d*) one person experienced in providing health education, appointed by the Council;

(*e*) two persons appointed by the Council from amongst persons suitably qualified to assist the committee in its work; and

(*f*) a representative of the Malaŵi Bureau of Standards.

(2) Subject to the general directions of the Council and in collaboration with other departments of the Council, the functions of the Quality Control Committee shall be—

(*a*) to monitor and supervise all contraceptive care services relating to family welfare;

(*b*) to set up standards for supervisory activity and to receive and review reports in respect thereof;

(*c*) to develop and disseminate information on the quality of methods of contraceptive care; and

(*d*) to review and approve standards for clinic procedures aimed at ensuring proper client flow, availability of reference materials to service providers and proper direction of other matters.

Education Committee

19.—(1) There shall be an Education Committee which shall consist of—

(*a*) one member of the Council appointed and designated by the Council as the chairman of that committee;

(*b*) every officer who is the head of a department of the Council;

(*c*) one person representing the Ministry of Education and Culture;

(*d*) one person representing the Ministry of Health;

(*e*) one person representing the Ministry of Community Services;

(*f*) one person representing the Medical Council of Malaŵi;

(*g*) one person representing the Nurses and Midwives Council of Malaŵi; and

(*h*) one person representing non-governmental organizations in Malaŵi

(2) Subject to the general directions of the Council, the functions of the Education Committee shall be—

(*a*) to make or review proposals for approval by the Council for family welfare training curricula;

(*b*) to review materials of the Council relating to information, education and communication systems and to ensure

that such materials are properly distributed for the purposes of the programmes of the Council;

(*c*) to ensure liaison with the Government and other organizations involved in the programmes of the Council; and

(*d*) to standardize family welfare education materials and programmes.

PART VII

Miscellaneous Provisions

Regulations

20. The Minister may, with the advice of the Council, make regulations for carrying out or giving effect to the provisions of this Act.

DISASTER PREPAREDNESS AND RELIEF

CHAPTER 33:05

Containing Pages 1–21

L.R.O. 1/2003

CHAPTER 33:05

DISASTER PREPAREDNESS AND RELIEF

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An Act to make provision for the co-ordination and implementation of measures to alleviate effects to disasters, the establishment of the office of Commissioner for Disaster Preparedness and Relief, the establishment of a National Disaster Preparedness and Relief Committee of Malaŵi, and for matters incidental thereto or connected therewith

27 of 1991
G.N. 48/1992

[16TH MARCH, 1992]

PART I

PRELIMINARY

Short title

1. This Act may be cited as the Disaster Preparedness and Relief Act.

Interpretation

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

"area civil protection officer" means an area civil protection officer referred to in section 23;

"civil protection" means any service provided or measure taken for the purpose of preparing for, guarding against or dealing with any actual or potential disaster;

"civil protection area" means a civil protection area established pursuant to section 22;

"civil protection region" means a civil protection region established pursuant to section 18;

"Committee" means the National Disaster Preparedness and Relief Committee of Malaŵi established by section 5;

"Commissioner" means the Commissioner for Disaster Preparedness and Relief appointed under section 3;

"disaster" means an occurrence (whether natural, accidental or otherwise) on a large scale which has caused or is causing or is threatening to cause—

(*a*) death or destruction of persons, animals or plants;

(*b*) disruption, pollution or scarcity of essential supplies;

(*c*) disruption of essential services;

(*d*) influx of refugees into or out of Malaŵi;

(*e*) plague or epidemic of disease that threatens the life or well-being of the community,

and includes the likelihood of such occurrence;

"Fund" means the National Disaster Preparedness and Relief Fund established under section 34;

"planning sub-committee" means a planning sub-committee appointed under section 16;

"state of disaster" means a state of disaster declared under section 32;

"volunteer" means a person who has applied to be a volunteer and whose name is entered in a register of volunteers established under section 26.

PART II

Commissioner For Disaster Preparedness And Relief

Establishment of the office of the Commissioner

3.—(1) There shall be a Commissioner for Disaster Preparedness and Relief (in this Act referred to as the "Commissioner") whose office shall be a public office.

(2) In addition to the Commissioner there shall be appointed in the public service such officers subordinate to the Commissioner as are necessary for the proper performance of the functions of the Commissioner.

Functions of the Commissioner

4. Subject to this Act, the Commissioner shall have the following functions—

(*a*) directing the establishment of civil protection organizations and civil protection areas;

(*b*) controlling and directing personnel, materials and services for the purposes of this Act;

(*c*) directing and assisting regional civil protection officers and area civil protection officers in the performance of their duties under this Act;

(*d*) co-ordinating the training of personnel for civil protection purposes;

(*e*) generally co-ordinating the planning and execution of civil protection;

(*f*) promoting research in matters relating to civil protection and disseminating information on matters of civil protection and on activities in civil protection regions and civil protection area;

(*g*) advising the Minister on all matters relating to civil protection; and

(*h*) performing any other functions relating to civil protection that may be assigned to him by the Committee or by the Minister under this Act.

PART III

National Disaster Preparedness and Relief Committee of Malaŵi

Establishment of the Committee

5. There is hereby established a body to be known as the National Disaster Preparedness and Relief Committee of Malaŵi (in this Act referred to as the "Committee").

Composition of the Committee

6.—(1) The Committee shall consist of—

(*a*) the following *ex-officio* members—

(i) the Secretary to the President and Cabinet, or his representative;

(ii) the Secretary for Health, or his representative;

(iii) the Secretary for Community Services, or his representative;

(iv) the Secretary for Local Government, or his representative;

(v) the Secretary to the Treasury, or his representative;

(vi) the Secretary for Economic Planning and Development, or his representative;

(vii) the Secretary for Works, or his representative;

(viii) the Secretary for Agriculture, or his representative;

(ix) the Secretary for Forestry and Natural Resources, or his representative;

(x) the Secretary for Transport and Communications, or his representative;

(xi) the Inspector General of Police, or his representative;

(xii) the Army Commander, or his representative;

(xiii) the Secretary for Youth and Culture or his representative;

(*b*) not less than three and not more than five other members representing the non-governmental sector appointed by the Minister.

(2) A representative of an *ex-officio* member referred to in subsection (1) (a) shall be designated by, or on behalf of, the *ex-officio* member by notice in writing to the Committee to attend the meetings thereof, and upon such designation such representive shall not himself attend to the business of the Committee by representation.

(3) A member of the Committee appointed under subsection (1) (*b*) shall hold office for a period of two years, unless his appointment is terminated sooner than the expiry of that period and shall be eligible for re-appointment.

(4) The names of all members of the Committee as first constituted and every change in the membership of the Committee shall be published in the *Gazette*.

Vacation of office by members of the Committee

7. The office of a member, other than an *ex-officio* member, shall become vacant—

(*a*) upon his death;

(*b*) if he has been absent from three consecutive meetings of the Committee of which he has had notice, without the permission of the Chairman;

(*c*) if he has been convicted of an offence without the option of a fine and sentenced to imprisonment for a period exceeding six months;

(*d*) if, in the opinion of the Minister, he becomes mentally or physically incapable of performing his duties as a member of the Committee; and

(*e*) if the Minister so directs.

Filling of vacancies on the Committee

8.—(1) On vacation of office by a member of the Committee, other than an *ex-officio* member, the vacancy shall be filled by a person appointed in accordance with the relevant provisions of section 6 (1) (*b*) under which the former member was appointed:

Provided that if the remaining period is less than six months, the Minister may decide not to have the vacancy filled until the expiry of the period.

(2) If any member of the Committee is granted leave of absence by the Committee, the Committee may, if it sees fit, co-opt a person who belongs to the same organization as the member who has been granted leave to fill the vacancy during the absence of that member.

Co-opted persons

9. The Committee may, in its discretion, at any time and for any period, invite any person, and the Minister may in like manner nominate any officer in the public service, to attend any meeting of the Committee and take part in the deliberations of the Committee, but such person or officer shall not be entitled to vote at that meeting.

Chairman and Vice-chairman of the Committee

10.—(1) The Minister shall, by writing under his hand, designate one member of the Committee to be the Chairman thereof and the person so designated shall, subject to subsection (2), hold office for the duration of his membership on the Committee.

(2) The office of the Chairman shall become vacant—

(*a*) if the holder resigns his office by notice to the Minister;

(*b*) if the holder of the office ceases to be a member of the Committee; and

(*c*) if the Minister so directs.

(3) The Committee shall elect a Vice-Chairman from amongst its members who shall, subject to subsection (4), hold office for the duration of his membership on the Committee.

(4) The office of the Vice-Chairman shall become vacant—

(*a*) if the holder resigns his office by notice in writing to the Committee;

(*b*) if the holder of the office ceases to be a member of the Committee; and

(*c*) if the Committee or the Minister so directs.

(5) Whenever the Chairman is absent or is for any cause unable to discharge the functions of his office, the Vice-Chairman shall discharge the functions of the Chairman.

Allowances of members of the Committee

11. A member of the Committee other than an *ex-officio* member, shall be paid out of the funds of the Fund such allowances as the Minister may determine.

Meetings and procedure of the Committee

12.—(1) Subject to subsection (2), the Committee shall hold ordinary meetings for the dispatch of business at least four times a year.

(2) An extraordinary meeting of the Committee—

(*a*) may be convened by the Chairman at any time;

(*b*) shall be convened by the Chairman within twenty-one days of receipt by him of a request in writing signed by not less than five members of the Committee and specifying the purpose for which the meeting is to be convened.

(3) At any meeting of the Committee—

(*a*) the Chairman or, in his absence, the Vice-Chairman, shall preside;

(*b*) in absence of both the Chairman and Vice-Chairman, the members present and forming a quorum shall elect one of their member to preside;

(*c*) the quorum shall be formed by a majority of members;

(*d*) the decision on any matter shall be that of the majority of the members present and voting at that meeting, and in the event of an equality of votes, the Chairman, Vice-Chairman or the person presiding shall have a casting vote in addition to this deliberative vote.

(4) The Committee shall have power to regulate its own procedure.

(5) The Committee shall cause minutes of every meeting of the Committee to be kept.

Functions of the Committee

13. The Committee shall be responsible for co-ordinating the implementation of measures to alleviate disasters in Malaŵi, and without prejudice to the generality of the foregoing the functions of the Committee shall include—

(*a*) the planning and implementation of the measures for the establishment, maintenance and effective operation of civil protection;

(*b*) reviewing, from time to time, the measures referred to in paragraph (*a*);

(*c*) considering plans prepared by planning sub-committees pursuant to section 17.

Sub-committees of the committee

14.—(1) In addition to the planning sub-committees, and save as otherwise provided in relation to those sub-committees, the Committee may establish any number of other sub-committees to carry out any special or general functions determined by the Committee and may delegate to any sub-committee such of the functions of the Committee as the Committee may deem expedient:

Provided that—

(i) the vesting or imposition of any functions in a sub-committee shall not divest the committee of such functions; and

(ii) the Committee may vary or revoke any decision of any such sub-committee in exercise of its functions.

(2) The Chairman shall, by reason of this office, be a member of every sub-committee established under subsection (1).

(3) The Chairman of each sub-committee shall be appointed by the Committee from amongst the members of the Committee.

(4) If at a meeting of a sub-committee the Chairman is absent, the members present may elect one of their number to be chairman.

(5) Every sub-committee may, in its discretion, invite any person to attend a meeting of the sub-committee and take part in the deliberations of the meeting but such person shall not be entitled to vote.

(6) The Chairman of a sub-committee may, at any time and place, convene a meeting of the sub-committee of which he is chairman.

(7) The Chairman may, at any time, direct the chairman of any sub-committee to convene a meeting of such sub-committee and such chairman shall, as soon as is practicable, comply with such direction.

(8) At all meetings of a sub-committee the quorum shall be formed by a majority of members.

(9) At all meetings of a sub-committee each member present shall have one vote on a question before the sub-committee and, in the event of an equality of votes, the chairman shall have a casting vote in addition to his deliberative vote.

(10) Every sub-committee shall have the power to regulate its own procedure.

(11) Every sub-committee shall keep minutes of its meetings and shall inform the committee of its activities.

(12) A member of a sub-committee who is not an officer in the public service shall, in respect of expenses incurred by him in travelling and subsistence while discharging his duties as member of that sub-committee be paid out of the funds of the Fund such allowances as the Committee may, with the approval of the Minister, determine.

Non-liability of members of the Committee or of sub-committees

15. No member of the Committee or of any sub-committee of the Committee shall be liable for any act or default of his, or of the Committee, done in the exercise in good faith of the functions or powers of the Committee.

PART IV

Planning Sub-Committees and Civil Protection Plans

Planning sub-committees

16.—(1) The Committee may, from time to time, appoint such planning sub-committees as it considers necessary for the purpose of preparing plans in respect of any aspect of civil protection in any civil protection region or in any civil protection area.

(2) A planning sub-committee shall consist of persons from the public service, local authorities, statutory bodies and such non-governmental organizations as the Committee, after consultation with the Minister, considers have a general responsibility for carrying out functions associated with or related to civil protection or which have resources and services for carrying out civil protection measures.

(3) The Committee shall designate one of the members of a planning sub-committee as chairman.

(4) A planning sub-committee shall hold its first meeting on such date and at such place as the Committee may fix and thereafter the planning sub-committee shall meet for the dispatch of business and adjourn, close and otherwise regulate its meeting and procedures as it considers appropriate.

Civil protection plans

17.—(1) A planning sub-committee shall prepare a civil protection plan for the civil protection region or civil protection area for which it was appointed, in which the planning sub-committee shall specify its proposals of the civil protection measures to be undertaken and the functions to be exercised by government departments, local authorities, statutory bodies and non-governmental organizations in contemplation of, or in the event of, a disaster.

(2) The chairman of a planning sub-committee shall submit every plan prepared pursuant to subsection (1) to the Chairman who shall submit it for consideration by the Committee.

(3) If the committee adopts a plan submitted to it under subsection (2), the Chairman shall submit the plan to the Minister for his approval.

(4) Where the Committee does not adopt a plan submitted to it under subsection (2), the Chairman shall return the plan, together with directions, if any, given thereon by the Committee, to the appropriate planning sub-committee for a review of the plan or for a new plan to be prepared and the planning sub-committee shall endeavour to comply with such directions.

(5) Where a plan has been approved by the Minister, every public officer and every local authority, statutory body or non-governmental organization which is required under the plan to undertake civil protection measures, shall take necessary steps to undertake and effect those measures.

PART V

Regional Organization of Civil Protection

Civil protection plans

18.—(1) The Minister may, subject to subsection (2), by order published in the *Gazette* and on the advice of the Commissioner, establish civil protection regions or declare an area to be a civil protection region for the purposes of this Act with such boundaries and names as he thinks fit and may in like manner vary or revoke the establishment or declaration of any such region.

(2) In establishing or declaring any civil protection region the Minister shall pay due regard to—

(*a*) the boundaries of local authorities within the proposed region; and

(*b*) the boundaries of regions and districts as established by the Regional and District Boundaries and Place Names Act, Cap. 18:04

and shall ensure that, wherever practicable, no local authority, district or region is included in two or more civil protection regions.

Regional civil protection officers and their assistants

19.—(1) For the carrying out of the purposes of this Act, there shall be appointed in the public service a regional civil protection officer for each civil protection region and such other officers assistant to him as may be necessary.

(2) In performing their duties under this Act, regional civil protection officers and their assistants shall be subordinate to the Commissioner.

Functions of regional civil protection officers

20.—(1) Subject to this Act, a regional civil protection officer shall, within the civil protection region for which he has been appointed, be responsible for—

(*a*) co-ordinating the planning of civil protection measures;

(*b*) co-ordinating the training of personnel for civil protection purposes;

(*c*) directing and assisting area civil protection officers in the execution of their duties; and

(*d*) preparing reports on civil protection activities in his civil protection region regularly and whenever he is required to do so by the Commissioner or the Committee.

(2) Subject to any instructions given to him by the regional civil officer for his region, an assistant to the regional civil protection officer may exercise all the powers conferred, and shall perform all the duties imposed, upon a regional civil protection officer under this Act.

Appointment of committees and delegation of powers by regional civil protection officers

21.—(1) A regional civil protection officer may, and if so directed by the Commissioner shall, appoint one or more committees to advise and assist him in the performance of his functions under this Act.

(2) A regional civil protection officer may with the consent of the Commissioner, and if so directed by the Commissioner shall, delegate all or any of his powers to any committee appointed by him under subsection (1) or to any other person.

(3) Delegation of any power by a regional civil protection officer under subsection (2) shall not divest him of that power, and he may at any time vary or revoke any decision of any committee or person in the exercise of that power:

Provided that where the regional civil protection officer has been directed by the Commissioner to delegate any power to a committee or person, he shall not vary or revoke a decision of any such committee or person except with the consent of the Commissioner but may express such views thereon as he considers appropriate.

(4) Where there has been delegation of powers to a committee or to any person under subsection (2), the regional civil protection officer shall, in writing, notify the committee or the person of the delegation and shall, in the notification, specify the terms of the delegation.

PART VI

Area Organization of Civil Protection

Civil protection areas

22.—(1) The Minister may, subject to subsection (2), by order published in the *Gazette*, and on the advice of the Commissioner, establish civil protection areas in civil protection regions or declare any area to be a civil protection area for the purposes of this Act with such names as he thinks fit and may in like manner vary or revoke the establishment or declaration of any such area.

(2) In declaring any civil protection area the Minister shall pay due regard to—

(*a*) the boundaries of local authorities within the proposed area; and

(*b*) the boundaries of districts established under the Regional and Districts Boundaries and Place Names Act, Cap. 18:04

and shall ensure that, wherever practicable, no local authority or district is included in two or more civil protection areas.

Area civil protection officers and their assistants

23.—(1) For the carrying out of the purposes of this Act, there shall be appointed in the public service an area civil protection officer for each civil protection area and such other officers assistant to him as may be necessary.

(2) In performing their duties under the Act area civil protection officers and their assistants shall be subordinate to their respective regional civil protection officer and to the Commissioner.

Functions of area civil protection officers

24.—(1) Subject to this Act, an area civil protection officer shall, within the civil protection area for which he has been appointed, be responsible for—

(*a*) the establishment, maintenance and command of civil protection organizations;

(*b*) the provision, operation and co-ordination of all civil protection services and activities;

(*c*) giving such orders and taking such measures, during a state of disaster, as in his opinion are reasonably necessary in order to deal with such state of disaster;

(*d*) co-ordinating the use of materials and services made available by government departments, local authorities, statutory bodies and other non-governmental organizations during a state of disaster; and

(*e*) the preparation of reports on civil protection generally in his civil protection area whenever he is required to do so by the regional civil protection officer or by the Commissioner or the Committee.

(2) In the exercise of his functions, an area civil protection officer may—

(*a*) enter into arrangements, other than financial arrangements, with any person whereby that person makes available or undertakes to make available his services or those of his staff, whether individually or in units under the control of that person, for the purpose of carrying out such civil protection measures and activities as may be agreed upon;

(*b*) cause personnel to be trained for civil protection purposes within the civil protection area under his jurisdiction;

(*c*) disseminate information and advice on matters relating to civil protection to local authorities or to the public generally.

(3) Whenever it is possible to do so, an area civil protection officer shall exercise his powers under this Act after consultation and in co-operation with the District Commissioner and the commanding officers of the Malaŵi Police Service and the Malaŵi Defence Force within his civil protection area.

(4) Subject to any instructions given to him by the area civil protection officer for his area, an assistant to the area civil protection officer may exercise all the powers conferred, and shall perform all the duties imposed, upon an area civil protection officer under this Act.

Appointment of committees and delegation of powers by area civil protection officers

25.—(1) An area civil protection officer may, and if so directed by the Commissioner shall, appoint one or more committees to advise and assist him in the performance of his functions under this Act.

(2) An area civil protection officer may, with the consent of the Commissioner, and if so directed by the Commissioner shall, delegate all or any of his powers to any committee appointed by him under subsection (1) or to any other person.

(3) Delegation of any power by an area civil protection officer under subsection (2) shall not divest him of that power, and he may at any time vary or revoke a decision of any committee or any person in the exercise of that power:

Provided that where the area civil protection officer has been directed by the Commissioner to delegate any power to a committee or person he shall not vary or revoke the decision of any such committee or person except with the consent of the Commissioner but may express such views thereon as he considers appropriate.

(4) Where there has been delegation of powers to a committee or to any person under subsection (2), the area civil protection officer shall, in writing, notify the committee of the delegation and shall, in the notification, specify the terms of the delegation.

PART VII

Volunteers

Volunteers

26.—(1) Any person may, by applying to the area civil protection officer for the civil protection area concerned, volunteer—

(*a*) to serve in a civil protection organization for the civil protection area; or

(*b*) to provide or assist in the provision of any civil protection service within the civil protection area; or

(*c*) to perform, within the civil protection area, any function connected with civil protection,

and the area civil protection officer shall enter the name of such person in the register kept pursuant to subsection (4).

(2) A volunteer may resign as a volunteer upon giving fourteen days' notice in writing to the area civil protection officer for the civil protection area concerned who shall, upon the expiry of that period, remove the volunteer"s name from the register.

(3) A volunteer shall comply with every reasonable instruction given to him by the area civil protection officer for the civil protection area concerned or by any person authorized to give such instruction by the area civil protection officer.

(4) Every area civil protection officer shall maintain a register of all volunteers in the civil protection area within which he may exercise his powers.

Reimbursement and indemnification of persons employed in civil protection

27. Every volunteer and any other person employed in a civil protection organization established and maintained under this Act shall be reimbursed and indemnified from the proceeds of the Fund to such extent and in such manner as may be prescribed for any reasonable expense or liability incurred by such volunteer or other person as a result of—

(*a*) carrying out any order or performing any civil protection service under this Act; or

(*b*) making available, for purposes of civil protection, any land or other property.

Disability benefits

28.—(1) Any written law relating to the payment of compensation on death of, or injury to, an officer in the public service shall, *mutatis mutandis*, apply in relation to a volunteer or other person performing any duty under this Act as though he were an officer in the public service; and for the purpose of this section every such volunteer shall be ranked at a grade of Technical Officer (T.O.) and be assigned the highest salary point of that grade.

(2) Any compensation payable under subsection (1) shall be paid out of the Consolidated Fund without further appropriation than this Act.

PART VIII

General Powers of Civil Protection Officers

Interpretation

29. In this Part—

"civil protection officer" includes a regional civil protection officer, an officer assistant to a regional civil protection officer, an area civil protection officer and an officer assistant to an area civil protection officer.

Orders by civil protection officers

30.—(1) Subject to this Act, a civil protection officer may, by order in writing, direct any person—

(*a*) to supply him with information relating to the existence and availability of any service, facility or thing whatsoever which may be used for or in connexion with civil protection and which is under the control or in the possession of such person;

(*b*) to maintain such specified stocks of fuel, food, water, medical supplies, for use during a state of disaster as he may reasonably be expected to maintain; and

(*c*) while a declaration of a state of disaster under this Act is in force, to perform any work or render any service which, as a result of the disaster, is reasonably necessary for the purpose of dealing with the situation.

(2) Every civil protection officer and every person employed in a civil protection capacity shall keep secret and aid in keeping secret any information supplied in compliance with an order given under paragraph (*a*) of subsection (1).

(3) Any person aggrieved by an order given under paragraph (*a*), (*b*) or (*c*) of subsection (1) may appeal in writing against the order to the Minister.

(4) In any appeal under subsection (3), the Minister, after inviting the civil protection officer concerned to submit written representations in the matter and considering any representations so submitted, may confirm. vary or set aside the order appealed against or give such other directions in the matter as he thinks appropriate.

Powers of civil protection officers to requisition land and property

31.—(1) Subject to subsection (2), a civil protection officer may, while a declaration of a state of disaster under this Act is in force, take possession or control of any land or other property whatsoever for the purpose of dealing with the situation that has arisen.

(2) As soon as possible after taking possession or control of any land or property under subsection (1), a civil protection officer shall cause written notice of such taking to be served on any person owning or possessing such land or property:

Provided that, if it is expedient to do so, the civil protection officer shall cause such notice to be served before taking possession or control of the land or property concerned.

(3) Any person from whom possession or control of any land or property has been or is about to be taken in accordance with this section may, if he objects to such taking, notify in writing the civil

protection officer concerned accordingly, and upon such notification the civil protection officer, if he does not accept the objection, shall instruct the Attorney General to apply to the High Court for a determination of his right to exercise his powers under this Act to take possession or control of the land or property in question, and such application shall be made within thirty days after the written notification by the person objecting.

(4) On an application under subsection (3), the High Court shall, unless it is satisfied that the exercise of the power by the civil protection officer concerned was reasonably justified in the circumstances of the situation arising or existing as a result of the disaster concerned or giving rise to the declaration of the state of disaster for the purpose of dealing with that situation, order the civil protection officer to return any land or property which he has taken into his possession or control or to cancel his notice of intention to take possession or control thereof, as the case may be.

(5) When the continued possession or control by a civil protection officer of any land or property taken under this section is no longer required or is no longer reasonably justified for the purpose of this Act, that land or property shall, wherever possible, be promptly returned to the person entitled to its possession or control and as far as possible in the condition in which it was at the time of such, taking of possession or control.

(6) Adequate compensation shall be paid promptly out of the Fund for—

(*a*) the taking of possession or control of any land or property under this section;

(*b*) where appropriate, any failure to return any land or property in accordance with subsection (4) or (5); and

(*c*) any damage to any land or property taken under this section.

(7) The owner or any other person entitled to the return of any land or property under subsection (5) or entitled to compensation under subsection (6) may apply to the High Court for the return of the land or property or for the determination of his right thereto or the amount of compensation, as the case may be, and the High Court shall make such order in respect thereof as it thinks fit.

(8) Part II of the Lands Acquisition Act shall, *mutatis mutandis*, apply in respect of a claim for compensation for land taken under this section. Cap. 58:04

(9) No land or other property owned or possessed by the Government shall be taken under this section without the consent of the Minister responsible for the land.

PART IX

Declaration of a State of Disaster

Declaration of a state of Disaster

32.—(1) If at any time it appears to the President that any disaster is of such a nature and extent that extraordinary measures are necessary to assist and protect the persons affected or likely to be affected by the disaster in any area within Malaŵi or that circumstances are likely to arise making such measures necessary, the President may, in such manner as he considers fit, declare that, with effect from a date specified by him in the declaration, a state of disaster exists within an area defined by him in the declaration:

Provided that where such declaration has been made in any manner other than by notice in the *Gazette*, the President shall, as soon as possible after making it, cause it to be published in the *Gazette*.

(2) The declaration of a state of disaster under subsection (1) shall remain in force for a period of three months from the date specified in the declaration as the commencement date of the state of disaster, unless the President by notice in the *Gazette*, withdraws such declaration before the expiry of such period:

Provided that the President may, from time to time, extend or further extend such period by not more than another three months and shall do so by notice in the *Gazette*, published before the expiry of such period or any such extension thereof.

Communication to the National Assembly

33. Where a state of disaster has been declared under section 32 the Minister shall communicate such declaration to the National Assembly during the meeting next occurring after the declaration.

PART X

National Disaster Preparedness and Relief Fund

Establishment of the Fund

34.—(1) There is hereby established a fund to be known as the National Disaster Preparedness and Relief Fund (in this Act referred to as the "Fund").

(2) The Fund shall consist of—

(*a*) such sums as shall be appropriated by Parliament for the purposes of the Fund;

(*b*) advances made to the Fund under section 36;

(*c*) such sums as may be received for the purposes of the Fund by way of voluntary contributions; and

(*d*) such sums or other assets as may be donated for the purposes of the Fund by any foreign government, international agency or foreign institution or body.

35. The Fund shall be vested in the Minister and, subject to this Act, shall be administered in accordance with his directions.

The Fund to vest in the Minister

36. If in any financial year the income of the Fund, together with any surplus income brought forward from a previous year, is insufficient to meet the actual or estimated liabilities of the Fund, the Minister responsible for finance may make advances to the Fund out of moneys appropriated for that purpose by Parliament in order to meet the deficiency or any part thereof and such advances shall be made on such terms and conditions, whether as to repayment or otherwise, as the Minister responsible for finance may determine.

Advances to the Fund

37. The objects for which the Fund is established shall be the development, promotion, management and administration of civil protection.

Objects of the Fund

38. Without derogation from the generality of section 37, the Fund may be applied to—

Application of the Fund

(*a*) research and training which is calculated to promote civil protection;

(*b*) the acquisition of land, equipment, materials and other assets and the construction of buildings in order to promote the objects of the Fund;

(*c*) the cost of any scheme which the Minister considers to be in the interest of civil protection;

(*d*) meeting any expenses arising from the establishment and maintenance of the Fund; and

(*e*) any purpose which the Minister considers to be in the interest of the objects of the Fund.

39.—(1) The Minister shall cause to be kept proper books and other records of account in respect of receipts and expenditures of the Fund.

Books and other records of account, audit and reports of the Fund
Cap. 37:01

(2) The accounts of the Fund shall be audited by the Auditor General, who shall have all the powers conferred upon him by Part VI of the Finance and Audit Act.

(3) The Minister shall cause to be prepared, as soon as practicable, but not later than six months after the end of the financial year, an annual report on all the financial transactions of the Fund.

(4) The report under subsection (3) shall include a balance sheet, an income and expenditure account and the annual report of the Auditor General and shall be laid by the Minister before the National Assembly.

Holdings of the Fund

40.—(1) All sums received for the purposes of the Fund shall be paid into a banking account and no amount shall be withdrawn therefrom except by means of cheques signed by such persons as are authorized in that behalf by the Minister.

(2) Any part of the Fund not immediately required for the purposes of the Fund may be invested in such manner as the Minister, after consulting with the Minister responsible for finance, may determine.

Financial year

41. The financial year of the Fund shall be the period of twelve months ending on the 31st March in each year:

Provided that first financial year of the Fund may be a period shorter or longer than twelve months as the Minister shall determine, but in any case not longer than eighteen months.

PART XI

Emergency Powers of the Minister

Minister may take over certain powers and duties during disaster

42.—(1) Where a state of disaster has, under this Act, been declared to exist in any area and the Minister considers that the civil protection organization in that area is unable to provide adequate civil protection to meet the disaster, the Minister, on the advice of the Committee, may—

(*a*) by notice published in such manner as he thinks fit—

(i) take over, to such extent and for such purposes as he may specify in the notice, any power or duty conferred or imposed by or under this Act upon the area civil protection officer for the civil protection area concerned;

(ii) confer or impose upon any person or authority any power or duty conferred or imposed upon an area civil protection officer or other person by or under this Act:

Provided that if such notice has been made in any manner other than by publication in the *Gazette*, the Minister shall, as soon as possible after making the notice, cause it to be published in the *Gazette*;

(*b*) direct any person employed in the public service to render such assistance as the Minister may direct to any area civil protection officer or other person upon whom a power or duty is conferred by or under this Act.

(2) Where the Minister has, by notice under subsection (1)—

(*a*) taken over any powers or duties; or

(*b*) conferred or imposed powers or duties on any person or authority,

any reference in this Act to the exercise of such powers or the performance of such duties by any person or authority shall be

construed as reference to the exercise of the powers or the performance of the duties by the Minister or the person or authority upon whom he has conferred or imposed such powers or duties.

Burial, etc., during disasters

43. Where the Minister is satisfied that persons have died as a result of any disaster, he may, after consulting with the Minister responsible for health, if he considers that it is necessary or expedient to do so, give directions and make such arrangements as he considers appropriate in respect of—

(*a*) the removal, safe custody, examination, burial or cremation of the remains of the persons concerned;

(*b*) the issue of certificates in respect of the deaths or causes of death of the persons concerned;

(*c*) any other related matters,

and any such directions or arrangements shall have effect notwithstanding any written law to the contrary.

PART XII

Miscellaneous

Secretariat

44. The Commissioner, every regional civil protection officer and every area civil protection officer shall act as secretary to the Committee and any committee appointed under Part V and any committee appointed under Part VI, respectively.

Commissioner, etc., to deliberate at meeting of the Committee, etc.

45. The Commissioner and such other officers as he may designate shall be entitled to attend meetings of the Committee and to take part in the deliberations thereof but shall not be entitled to vote, and regional or area civil protection officers shall similarly be entitled to attend meetings of their respective committees.

Offences

46. Any person, who without lawful excuse, fails to comply with an order, direction or instruction given under this Act shall be guilty of an offence and liable to a fine of K5,000 or to imprisonment for three years.

Regulations

47. The Minister may make regulations providing for all matters which, in his opinion, are necessary or expedient for giving effect to this Act.

Transitional

48. If at the commencement of this Act there are—

(*a*) any sums held in an account or a special fund of the Government; or

(*b*) any materials at the disposal of the Government,

for the purpose of managing any existing disaster, such sums or materials shall forthwith transfer to the Fund and shall be applied in accordance with this Act as if the disaster had been declared under this Act.

DISABILITY ACT

CHAPTER 33:06

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CHAPTER 33:06

DISABILITY

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CHAPTER 33:06

DISABILITY

8 of 2012
G.N. 55/2013

An Act to make provision for the equalization of opportunities for persons with disabilities through the promotion and protection of their rights; to provide for the establishment of a Disability Trust Fund; and to provide for matters connected with or incidental to the foregoing

[1st August, 2013]

PART I
PRELIMINARY

Short title

1. This Act may be cited as the Disability Act.

Interpretation

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

"accessibility" understood as universal design, means the design of products, programmes, the environment and services to be used by all persons to the greatest extent possible, without the need for adaptation and specialized design;

"assistive devices" means appropriate aids, appliances, technologies or other support systems that facilitate the better functioning of persons with disabilities;

"disability" means a long-term physical, mental, intellectual or sensory impairment, which, in interaction with various barriers, may hinder the full and effective participation in society of a person on equal basis with other persons;

"disability mainstreaming" means a strategy for making the needs, concerns and experiences of persons with disabilities an integral dimension of the design, implementation, monitoring, and evaluation of policies and programmes in the political, economic and societal spheres to ensure that persons with disabilities benefit equally;

"Disability Trust Fund" means a fund to be established by the Minister pursuant to section 28;

"discrimination" means a distinction, exclusion or restriction on the basis of disability, which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, of any human rights or fundamental freedoms, in the political, economic, social, cultural, civil or other field;

"equalization of opportunities" means a process through which the various systems of society and the environment, including services, activities, information and documentation, are made available and accessible to persons with disabilities;

"impairment" means any loss or limitation of psychological, physiological or anatomical structure or function;

"inclusive education" means a process of addressing and responding to the diversity of needs of all learners through increasing participation in learning, cultures and communities and reducing exclusion from and within education;

"institution" means any building or other premises in which an organization carries on work for the empowerment of persons with disabilities, and includes premises where persons with disabilities live and are supported by such organization;

"National Advisory and Coordinating Committee on Disability Issues (NACCODI)" means a Committee to be established by the Minister pursuant to section 5 (2);

"reasonable accommodation" means necessary and appropriate modifications and adjustments that ensure that persons with disabilities enjoy or exercise all human rights and fundamental freedoms on equal basis with other persons, without imposing disproportionate or undue burden on the other persons; and

"rehabilitation" means a goal-oriented process aimed at enabling a person with a disability to reach an optimum mental, physical or social functional level, by providing such person with tools to improve his life.

PART II

Adoption of Policies and Legislation

Adoption of policies and legislation on equalization of opportunities

3.—(1) The Government shall adopt policies and legislation on equalization of opportunities for persons with disabilities in order to—

(*a*) promote and protect the rights of persons with disabilities; and

(*b*) fully include them in all aspects of life, to enhance their dignity and well-being.

(2) The Government shall—

(*a*) recognize the role of the private sector and civil society organizations in promoting and protecting the rights of persons with disabilities; and

(*b*) encourage partnerships in programmes that address the needs and concerns of persons with disabilities by advocating removal of social, cultural, economic, environmental and attitudinal barriers and facilitating the inclusion of persons with disabilities.

PART III

Administration

Responsibilities of the Minister

4. The Minister shall be responsible for the proper administration of this Act, including—

(*a*) coordinating policy formulation and review;

(*b*) implementing, monitoring and evaluating programmes;

(*c*) promoting disability mainstreaming in all sectors;

(*d*) mobilizing resources, both from within and outside Malaŵi, for policy development and implementation; and

(*e*) strengthening the capacity of persons with disabilities as well as organizations of and organizations for persons with disabilities, in order to enhance advocacy and facilitate the effective and efficient implementation of policies, programmes and services.

Powers of the Minister

5.—(1) The Minister shall have powers to establish institutions and committees for purposes of the proper and effective administration of this Act.

(2) Notwithstanding the generality of subsection (1), the Minister shall establish a National Advisory and Coordinating Committee on disability issues which shall—

(*a*) provide a forum for all key stakeholders on disability issues to receive, discuss and review reports from Government ministries and departments and other relevant stakeholders on disability mainstreaming;

(*b*) make recommendations to Government on best practices regarding the formulation of policies, legislation and programmes, with respect to disability; and

(*c*) oversee the implementation, monitoring and evaluation of disability-related programmes.

PART IV
Rights of Persons with Disabilities

Health care services

6.—(1) The Government shall provide appropriate health care services to persons with disabilities, including prevention, early identification, intervention and other services designed to minimize and prevent the occurrence of more disabilities.

(2) The Government shall—

(*a*) undertake or initiate surveys, investigations and research concerning the cause and occurrence of disabilities;

(*b*) through the media, create awareness on the occurrence of disabilities and their preventive measures;

(*c*) provide persons with disabilities the same range, quality and standard of free or affordable health care services as provided to other persons, including sexual and reproductive health services and population based public health programmes;

(*d*) formulate and implement a programme to enable persons with disabilities have access to free medical rehabilitation services in Government hospitals and, where there is need for a referral to a private hospital, put mechanisms in place for the persons with disabilities to access the rehabilitation services;

(*e*) provide medical personnel specialising in the treatment and rehabilitation of persons with disabilities, to district hospitals and health centres; and

(*f*) develop national guidelines, minimum norms and standards for the provision of assistive devices and personal assistants to persons with disabilities.

Prohibition of discrimination in health care and rehabilitation services

7.—(1) No person shall be denied access to health care and rehabilitation services in any health establishment or be required to pay a higher fee for such services, on the basis of disability.

(2) A person who contravenes subsection (1) commits an offence and is liable to—

(*a*) in the case of a natural person, a fine of K200,000 and imprisonment for two years; or

(*b*) in the case of a body corporate, a fine of K1,000,000.

Accessibility

8. The Government shall take appropriate measures to ensure that persons with disabilities have access to the physical environment, transportation, information and communications, including information and communication technologies and systems, and other facilities and services available or provided to the public by—

(*a*) developing, promulgating and monitoring the implementation of universal standards and guidelines for the accessibility of all facilities and services available or provided to the public;

(*b*) ensuring that private entities that offer facilities and services which are available or provided to the public, take into account all aspects of accessibility for persons with disabilities;

(*c*) raising awareness and providing appropriate training on accessibility issues facing persons with disabilities;

(*d*) ensuring the attainment of a barrier free environment that enables persons with disabilities to have access to public and private buildings and establishments and such other places in line with universal designs;

(*e*) certifying architectural drawings for public and institutional buildings to comply with the standards of universal designs; and

(*f*) developing a Malaŵi sign language as a national language for persons with hearing impairments and recognizing it as an official language.

Prohibition of discrimination in accessing premises and the provision of services or amenities

9.—(1) No person shall be denied access or admission to any premises or the provision of any service or amenity, on the basis of disability.

(2) A person who contravenes subsection (1) commits an offence and is liable to—

(*a*) in the case of a natural person, a fine of K100,000 and imprisonment for twelve months; or

(*b*) in the case of a body corporate, a fine of K1,000,000.

(3) Notwithstanding the provisions of subsection (2), a court may, in addition to any penalty imposed under the subsection, order the person or body corporate, to undertake reasonable accommodation to facilitate access for persons with disabilities to the premises or the provision of the service or amenity.

Education and training

10. The Government shall recognize the rights of persons with disabilities to education on the basis of equal opportunity, and ensure an inclusive education system and lifelong learning by—

(*a*) ensuring that persons with disabilities are not excluded from the general education system at all levels and have access to quality primary education;

(*b*) taking into consideration the special requirements of persons with disabilities in the formulation of educational policies and programmes, including the provision of assistive devices, teaching aids and learning support assistants; and

(*c*) providing financial assistance to the less privileged and deserving students with disabilities who are pursuing secondary or tertiary education in public institutions, in the form of scholarship grants, student loan programmes, subsidies, and other incentives and ensure that a minimum of ten per cent of the allocation for students' financial assistance programmes as created by the local government is set aside for the students with disabilities.

Prohibition of discrimination in education or training institutions

11.—(1) No education or training institution shall—

(*a*) deny any person admission into or expel the person from the institution;

(*b*) discipline, segregate or deny the person participation in any event or activity; or

(*c*) deny any benefits or services to the person,

on the basis of disability.

(2) A person who contravenes subsection (1) commits an offence and is liable to—

(*a*) in the case of a natural person, a fine of K100,000 and imprisonment for twelve months; or

(*b*) in the case of a body corporate, a fine of K1,000,000.

Work and employment

12.—(1) The Government shall recognize the rights of persons with disabilities to work and employment, which rights shall include—

(*a*) the right to gain a living through work that is freely chosen or accepted in a labour market; and

(*b*) a working environment that is open, inclusive and accessible to persons with disabilities.

(3) The Government shall safeguard and promote the realization of the right to work and employment by—

(*a*) prohibiting discrimination on the basis of disability, with regard to all matters concerning all forms of employment, including—

(i) conditions of recruitment;

(ii) hiring and restructuring of employment;

(iii) continuation of employment;

(iv) career advancement; and

(v) safe and healthy working conditions;

(*b*) providing persons with disabilities access to just and favourable conditions of work, including—

(i) equal opportunities and equal remuneration for work of equal value;

(ii) safe and healthy working conditions;

(iii) protection from harassment; and

(iv) redress of grievances;

(*c*) providing persons with disabilities effective access to general, technical and vocational guidance programmes, placement services and vocational and continuing training;

(*d*) providing persons with disabilities employment opportunities and career advancement in the labour market, as well as assistance in finding, obtaining, maintaining and retaining employment;

(*e*) creating a conducive environment for persons with disabilities for self-employment, entrepreneurship, and the development of cooperatives; and

(*f*) promoting the employment of qualified persons with disabilities in the public and private sector, through appropriate policies and measures, which shall include affirmative action programmes and incentives.

Prohibition of discrimination in work and employment

13.—(1) No person shall be discriminated against on the basis of disability with regard to all matters concerning all forms of employment, including—

(*a*) conditions of recruitment;

(*b*) hiring and restructuring of employment;

(*c*) continuation of employment;

(*d*) career advancement; and

(*e*) safe and healthy working conditions.

(2) A person who contravenes subsection (1) commits an offence and is liable to—

(*a*) in the case of a natural person, a fine of K100,000 and imprisonment for twelve months; or

(*b*) in the case of a body corporate, a fine of K1,000,000.

Social protection

14.—(1) The Government shall—

(*a*) recognize the right of persons with disabilities to adequate standards of living, for themselves and their families, including—

(i) access to adequate food, clothing and housing; and

(ii) the continuous improvement of living conditions; and

(*b*) take appropriate steps to safeguard and promote the realization of this right without discrimination on the basis of disability.

(2) The Government shall—

(*a*) ensure equal access by persons with disabilities to appropriate and affordable social services;

(*b*) ensure access by persons with disabilities to social support programmes; and

(*c*) develop national guidelines to enable persons with disabilities that are receiving social benefits to move into self or open labour market employment.

Prohibition of discrimination in social services

15.—(1) No person shall be discriminated against on the basis of disability with regard to all matters concerning social support, including access to appropriate and affordable social services.

(2) A person who contravenes subsection (1) commits an offence and is liable to—

(*a*) in the case of a natural person, a fine of K100,000 and imprisonment for twelve months; or

(*b*) in the case of a body corporate, a fine of K1,000,000.

Right of association and representation

16. Every person with a disability shall have the right to—

(*a*) form and join any group or association of his choice; and

(*b*) be represented at any level in such group or association.

Participation in political and public life

17. The Government shall, through deliberate policies and measures, guarantee participation in political and public life by persons with disabilities, by—

(*a*) creating a conducive environment for persons with disabilities to effectively and fully exercise their political rights, directly or through their freely chosen representatives, by—

(i) ensuring that voting procedures, facilities and materials are appropriate, accessible and easy to understand and use;

(ii) protecting their right to freely vote by secret ballot in elections and public referendum;

(iii) ensuring that they stand for elections, effectively hold office and perform all public functions at all levels of government; and

(iv) guaranteeing the free expression of their will as voters and, where necessary and at their request, allowing a person of their own choice to assist them in voting;

(*b*) creating an environment and encouraging persons with disabilities to participate fully in the conduct of public affairs, by—

(i) having membership in non-governmental organizations, Boards of Statutory Corporations, diplomatic missions and other institutions concerned with the political and public life of the people of Malaŵi, and participation in the activities and administration of political parties; and

(ii) forming and joining organizations of persons with disabilities to represent them at local, regional and international levels; and

(*c*) providing opportunities to persons with disabilities to participate in the planning, organization, management, monitoring and evaluation of all development programmes and projects at the community and national levels.

Prohibition of discrimination in political and public life

18.—(1) No person shall be denied or prevented from participating in political and public life on the basis of disability.

(2) A person who contravenes subsection (1) commits an offence and is liable to—

(*a*) in the case of a natural person, a fine of K100,000 and imprisonment for twelve months; or

(*b*) in the case of a body corporate, a fine of K1,000,000.

Cultural and sporting activities, and recreational services

19.—(1) The Government shall—

(*a*) recognize the rights of persons with disabilities to take part in cultural and sporting activities, and access recreational services; and

(*b*) take appropriate measures to ensure that persons with disabilities have access to—

(i) cultural materials available in television programmes, films, theatre and other cultural activities, in accessible formats;

(ii) places of cultural performances or services, such as theatres, museums, cinemas, libraries and tourism services, and, as far as possible, to monuments and sites of national and cultural importance; and

(iii) specific development programmes for sports, both in and out of school.

Prohibition of discrimination in cultural and sporting activities, and recreational services

20.—(1) No person shall be denied participation in cultural or sporting activities or access to recreational services, on the basis of disability.

(2) A person who contravenes subsection (1) commits an offence and is liable to—

(*a*) in the case of a natural person, a fine of K100,000 and imprisonment for twelve months; or

(*b*) in the case of a body corporate, a fine of K1,000,000.

Housing

21. The Government shall, in its National Housing Programmes, take into account the needs of persons with disabilities by—

(*a*) providing the persons with disabilities with equal access to secure land tenure, housing, financing, and property rights;

(*b*) facilitating access to housing by the persons with disabilities, through elimination of prejudice and discrimination in housing transactions and in the provision of services under any government schemes; and

(*c*) ensuring disability friendly institutional housing.

Prohibition of discrimination in housing

22.—(1) No person shall be denied access to land tenure, housing and property rights on the basis of disability.

(2) A person who contravenes subsection (1) commits an offence and is liable to—

(*a*) in the case of a natural person, a fine of K100,000 and imprisonment for twelve months; or

(*b*) in the case of a body corporate, a fine of K1,000,000.

Economic empowerment

23. The Government shall recognize the importance of empowering persons with disabilities economically, without any form of discrimination, and shall ensure that the persons with disabilities are able to access loans and credit facilities for purposes of carrying out income generating activities.

Prohibition of disempowerment

24.—(1) No person or institution shall—

(*a*) deny any person admission into or expel the person from any institution; or

(*b*) segregate or deny any benefits or services to the person, on the basis of disability.

(2) A person who, or an institution that, contravenes subsection (1) commits an offence and is liable to—

(*a*) in the case of a natural person, a fine of K100,000 and imprisonment for twelve months; or

(*b*) in the case of a body corporate, a fine of K1,000,000.

Right to information and communication technologies

25. A person with disability shall have the right to access information and communication technologies at an affordable cost.

Research and information and communication technologies

26.—(1) The Government shall recognize the importance of research and the role that information and communication technologies play in improving the quality of life of persons with disabilities.

(2) The Government shall—

(*a*) facilitate the development of national guidelines based on universal standards to ensure inclusive research on social, economic and participation issues affecting persons with disabilities and their families;

(*b*) promote regular and appropriate data collection on the living conditions of persons with disabilities in order to determine the amount of resources required to deal with those conditions;

(*c*) ensure integration of disability-focused and general research, through establishment of relevant fora for stakeholders to exchange information related to disability and research;

(*d*) network with local, regional and international research institutions, and promote development of appropriate rehabilitation technology; and

(*e*) promote the design, development, production and distribution of accessible information and communications technologies and systems, and ensure that the same are available to persons with disabilities at an affordable cost.

Prohibition of participation in research without consent

27.—(1) No person with disability shall be forced to participate in any research without his consent.

(2) A person who contravenes subsection (1) commits an offence and is liable to—

(*a*) in the case of a natural person, a fine of K500,000 and imprisonment for five years; or

(*b*) in the case of a body corporate, a fine of K1,000,000.

PART V
Disability Trust Fund

Disability Trust Fund

28. The Minister shall establish a trust fund to be known as the Disability Trust Fund which shall consist of such monies as may be given to the Fund by way of donations, contributions or grants.

Purpose of the Fund

29. The purpose of the Disability Trust Fund shall be to support the implementation of disability programmes and services.

PART VI
Miscellaneous Provisions

Investigations by the Minister

30. The Minister shall investigate any violation of this Act, and shall periodically review compliance with this Act by all the relevant authorities or institutions.

Civil remedies

31.—(1) Where a person with a disability has reason to believe that any person or institution has violated any provision in Part III of this Act, the aggrieved person may commence legal action against that person or institution in any competent court of law.

(2) In seeking a remedy for violation of any provision in Part III of this Act, the court may award the aggrieved person any of the following remedies—

(*a*) equitable relief that the court may consider appropriate in accordance with the gravity of the violation;

(*b*) the provision of auxiliary aid or services; or

(*c*) any other relief that the court may consider appropriate, including monetary damages to the aggrieved person.

Administrative penalties

32.—(1) If the Minister is satisfied on reasonable grounds that a person or an institution has contravened this Act or any regulations made under it, he may impose administrative penalties on such person or institution by—

(*a*) giving the person or institution a written warning; or

(*b*) directing the person or institution to do a specified act, or refrain from doing a specified act, in order to—

(i) remedy the effects of the contravention;

(ii) compensate the person who has suffered loss because of the contravention; or

(iii) ensure that the person or institution does not commit further contraventions.

(2) The direction referred to in subsection (1) (*b*) may require the establishment of compliance programmes, corrective advertising, or, in the case of a direction to an institution, changes in the management of the institution.

(3) A person on whom an administrative penalty has been imposed and who fails or refuses to comply with the penalty, commits an offence and is liable to—

(*a*) in the case of a natural person, a fine of K100,000 and imprisonment for twelve months; or

(*b*) in the case of a body corporate, a fine of K1,000,000.

(4) Where the administrative penalty imposed under subsection (1) is a monetary penalty and the person on whom the penalty has been imposed does not pay the penalty for a period of more than thirty days from the date the penalty was imposed, the penalty shall be recoverable as a civil debt.

Regulations

33.—(1) The Minister may make regulations for the better carrying out or giving effect to the provisions of this Act.

(2) Without prejudice to the generality of subsection (1), such regulations may prescribe any matter which under this Act is required or permitted to be prescribed.

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43 of 1971
3 of 1975
21 of 1992
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22/1963
224/1963
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166/1967

An Act to amend and consolidate the law regarding the preservation of public health

[29th July, 1948]

Short title

1. This Act may be cited as the Public Health Act.

Application of Act

2. This Act, or specified provisions thereof only, shall apply to such part or parts of Malaŵi as the Minister may direct by notice published in the *Gazette*.

Power to vary application

3. The Minister may by notice published in the *Gazette* suspend or rescind the application of this Act, or of specified provisions thereof, to any part or parts of Malaŵi to which it, or such specified provision, has or have been applied.

PART I

Interpretation of Terms

Interpretation

4. In this Act and in any Rules made under this Act, unless the context otherwise requires, the following terms have the following meanings—

"adult" means a person who is over or appears to be over eighteen years of age;

21 of 1992 "assisted hospital" means a hospital or any other health facility which is maintained in whole or in part by grants-in-aid;

21 of 1992 "Board or Board of Governors" means a Board of Governors established under Part IIA;

"building" includes any structure whatsoever whether permanent or temporary for whatsoever purpose used;

"burial" means burial in earth, interment or any other form of sepulture, or the cremation or any other mode of disposal of a dead body, and "buried" has a corresponding meaning;

"carrier of a disease" means one in whose body the infection of a disease is still present and liable to be transmitted to another person, although the carrier is not himself suffering from the disease in an active form;

"child" means a person who is under or appears to be under eighteen years of age;

"dairy" includes any farm-house, cow shed, milk-stall, milk-shop or other place from which milk is supplied or in which milk is kept or used for purposes of sale or is manufactured into butter, ghee, cheese, dried milk or condensed milk for sale;

"dairyman" includes any cow-keeper, purveyor of milk, or occupier of a dairy, and in cases where a dairy is owned by a corporation or company, the secretary or other person actually managing such dairy;

"district" means in relation to a local authority, the area which is under the jurisdiction of that local authority;

"drain" means any drain together with its appurtenances used for the drainage of one building only, or of premises within the same curtilage and made merely for the purpose of communicating therefrom with a cesspool or other like receptacle for drainage, or with a sewer into which drainage of two or more buildings or premises occupied by different persons is conveyed, and includes any pipe or channel whether opened or closed, used or intended to be used for the drainage of land;

"dwelling" means any house, room, shed, hut, cave, tent, vehicle, vessel or boat or any other structure or place whatsoever, any portion whereof is used by any human being for sleeping or in which any human being dwells;

"to erect" in reference to a dwelling or room includes "to alter", "add to" or "convert into" and "erected" has a corresponding meaning;

"factory" means any premises wherein, or within the close or curtilage or precincts of which, steam, water, or other power whether mechanical or manual is used in aid of the manufacturing process there carried on;

"food" means any article used for food or drink other than drugs or water, but includes ice, and any article which ordinarily enters into or is used in the composition or preparation of human food, and includes flavouring matters and condiments, and "foodstuffs" has a corresponding meaning;

"guardian" means any person having by reason of the death, illness, absence or incapacity of a parent or any other cause, the custody of a child;

"health officer" means a medical officer of health and a health inspector;

"health inspector" means a health inspector of the Ministry of Health or one employed by a local authority;

"infected" means suffering from, or in the incubation stage of, or contaminated with the infection of, any infectious disease;

"infectious disease" means any disease which can be communicated directly or indirectly by any person suffering therefrom to any other person;

"isolation" means the segregation and the separation from, and interdiction of communication with others, of persons who are or are suspected of being infected, and "isolated" has a corresponding meaning;

"keeper of a lodging-house" means any person keeping a hotel or lodging-house;

"land" includes any right over or in respect of land or any interest therein;

"latrine" includes privy, urinal, earth-closet and water-closet;

"lodging-house" means a building or part of a house including the veranda thereof, if any, which is let or sublet in lodgings or otherwise, either by storeys, by flats, by rooms, or by portions of rooms;

"medical observation" means the isolation of persons in a suitable place;

"medical officer" means any registered or licensed medical practitioner in the employment of the Government and includes any person authorized by the Secretary for Health to act as a medical officer;

"medical officer of health" means the Secretary for Health or any medical officer appointed by the Secretary for Health to act as such in any area;

"medical practitioner" means a person who is registered or licensed as such under any law in force in Malaŵi governing the registration of medical practitioners;

"medical surveillance" means the keeping of a person under medical supervision. Persons under such surveillance may be required by the medical officer of health or any officer duly authorized by the Secretary for Health to remain within a specified area or to attend for medical examination at specified places and times;

"occupier" shall include any person in actual occupation of land or premises without regard to the title under which he occupies and, in case of premises subdivided and let to lodgers or various tenants, the person receiving rent payable by the lodgers or tenants whether on his own account or as

an agent for any person entitled thereto or interested therein;

"offensive trade" includes the trade of blood-boiler, bone-boiler, fell-monger, soap-boiler, tallow-melter, tripe-boiler, tanner, preparer or storer of hides, manure manufacturer, and any other noxious or offensive trade, business or manufacture declared by the Minister by notice published in the *Gazette* to be a noxious or offensive trade;

"owner" shall, as regards immovable property, include any person, other than the Government, receiving the rent or profits of any land or premises from any tenant or occupier thereof, or who would receive such rent or profits if such land or premises were let whether on his own account or as agent for any person other than the Government entitled thereto or interested therein. The term includes any lessee or licensee from the Government and any superintendent, overseer, or manager, of such lessee or licensee residing on the lands or premises;

"parent" means and includes the father and mother of a child whether legitimate or not;

"premises" includes any building or tent together with the land on which it is situated and the adjoining land used in connexion therewith, and includes any vehicle, conveyance or vessel;

"proprietor" in relation to an assisted hospital, includes a former proprietor; 21 of 1992

"public building" means a building used or constructed or adapted to be used either ordinarily or occasionally as a place of public worship or as a hospital, college, school, theatre, public hall, or as a public place of assembly or entertainment for persons admitted by ticket or otherwise, or used or adapted to be used for any other public purpose;

"public vehicle" means any vehicle which plies or stands for hire, or is from time to time let out for hire or is intended to be let out for hire and includes any railway coach or aircraft or vessel;

"slaughter-house" means any premises set apart for the purpose of a slaughter-house by a local authority;

"stock" means and includes all domesticated animals of which the flesh or milk is used for human consumption;

"street" means any highway, road or sanitary lane, and includes any bridge, footway, square, court, alley or passage whether a thoroughfare or a part of one or not;

"trade premises" means any premises (other than a factory) used or intended to be used for carrying on any trade or business;

"vehicle" means every means of conveyance or of transit or parts thereof manufactured for use or capable of being used on land, water or in the air and in whatever way driven or propelled or carried;

"veranda" includes any stage, platform or portico projecting from the external wall of any building;

"veterinary officer" means the Director of Veterinary Services or any veterinary officer in the employment of the Government or any member of the Government veterinary staff appointed by the Director of Veterinary Services to act as such in any area;

"workshop" means any building or part of a building or any premises in which manual labour is exercised for the purposes of trade.

PART II

Administration

Power to direct inquiries

5. The Minister may cause to be made such inquiries as he may see fit in relation to any matters concerning the public health in any place.

Power of persons directed to make inquiries

6. When the Minister directs any inquiry to be made, the person directed to make such inquiry shall have free access to all books, plans, maps; documents, and other things relevant to the inquiry, and shall have in relation to witnesses and their examination and the production of documents similar powers to those conferred upon Commissioners by the Commissions of Inquiry Act, and may enter and inspect any building, premises, or place, the entry or inspection whereof appears to him requisite for the purpose of such inquiry.

General duties of local authorities

7. It shall be the duty of every local authority to take all lawfull, necessary and under its special circumstances reasonable and practicable measures for preventing the occurrence or dealing with any outbreak or prevalence of any infectious, communicable or preventable disease, to safeguard and promote the public health, and to exercise the powers and perform the duties in respect of the public health conferred or imposed on it by this Act or by any other law.

Proceedings on complaint against local authorities

8. Whenever any complaint is made that the public health in any locality is endangered by the failure or refusal on the part of the local authority to exercise the powers or perform the duties devolving upon it under this Act, the Minister, if satisfied after due inquiry that the local authority is guilty of default, may make an order directing the local authority to perform its duty in the matter of such complaint and prescribing a time for such performance. If such order is not obeyed within the time prescribed the Minister may appoint some person to carry out

such order, and the cost of carrying out the order may be recovered as a debt due to the Government from the local authority.

Powers of person appointed under preceding

9. Any person appointed under the last preceding section to perform the duty of a defaulting local authority shall, in the perfomance and for the purpose of such duty, have all the powers of such local authority other than the powers of levying rates vested in any local authority pursuant to the provision of any Act in that behalf, and the Minister may from time to time by order change any person so appointed.

This Act in relation to other Acts

10. Save as is specially provided in this Act, this Act shall be deemed to be in addition to and not in substitution for any provisions of any other Act which are not in conflict or inconsistent with this Act.

PART IIA

Management of Assisted Hospitals

Board of Governors of assisted hospitals 21 of 1992

10A.—(1) Where, in the opinion of the Minister, it is desirable that a Board of Governors should be set up to manage an assisted hospital or a group of assisted hospitals, he shall cause proposals for that purpose to be placed before the proprietor of that hospital or group of hopitals.

(2) Where, in the opinion of the proprietor of any assisted hospital or group of assisted hospitals, it is desirable that a Board of Governors be set up to manage the hospital or group of hospitals, the proprietor shall submit proposals for that purpose to the Minister.

(3) The Minister may, by order published in the *Gazette* establish a Board of Governors for the hospital or group of hospitals to which such proposals relate in accordance with any agreement which may be reached between him and the propietor.

Contents of order 21 of 1992

10B.—(1) An order establishing a Board of Governors under section 10A shall provide for—

(*a*) the name of the Board;

(*b*) the exercise by the Board of the duty of management of the assisted hospital or group of hospitals specified in the order, subject to such limitations or restrictions as may be specified;

(*c*) the membership of the Board, including representation on the Board of the Ministry, the proprietor, the community or communities served by the hospital or group of hospitals and such bodies or organizations as may be agreed upon by the Minister and the proprietor, all in such numbers and proportions as may be so agreed;

(*d*) the method by which the continuity of the membership of the Board may be provided;

(*e*) the revocation of the appointment of, the retirement and resignation of, members of the Board and the appointment of new members thereof and of temporary members thereof in case of absence or inability to act of any members thereof;

(*f*) the respective responsibilities, duties and powers of the Board and of the other persons (if any) in whom any land or other property is vested in trust for or for the benefit of any hospital affected by the order and in respect of the use of the buildings and grounds of any such hospital at times when they are not required to be used for purposes of health services;

(*g*) such other matters as the Minister may, in agreement with the proprietor, consider necessary in respect of the constitution, functions or procedure of the Board.

(2) A Board of Governors established under subsection (1) shall be a body corporated by the name of the Board, unless the order by which it is established otherwise provides. Such body corporate shall have perpetual succession and may sue and be sued by its name and shall have power to make contracts and to own land.

(3) All or any property of the proprietor may be vested by an order made under section 10A in the Board of Governors thereby established or in trustees for the assisted hospital or group of assisted hospitals thereby affected.

(4) In any case in which property is or remains vested in trustees for an assisted hospital or group of assisted hospitals, the order establishing a Board of Governors thereof may provide that the Board shall have sole responsibility for management of the assisted hospital or group of assisted hospitals and in such case the trustees shall, notwithstanding any other provision of this Act or of any other written law, be under no liability as proprietors for any act or omission in relation to the management of the assisted hospital or group of assisted hospitals by the Board of Governors thereof, who shall be solely responsible for their own acts and omissions.

(5) An order made under section 10A may be amended by the Minister at any time with the agreement of the proprietor of the assisted hospital or group of assisted hospitals thereby affected:

Provided that if such proprietor has died or ceased to exist, such amendment may be made without any such agreement.

PART III

Notification of Infectious Diseases

Notifiable diseases

11. The provisions of this Act, unless otherwise expressed, shall, so far as they concern notifiable infectious diseases, apply to anthrax; blackwater fever; cerebro-spinal meningitis or cerebro-spinal fever; cholera; diphtheria or membranous croup;

dysentery (bacillary); encephalitis lethargica; enteric or typhoid fever (including paratyphoid); erysipelas; hydrophobia or human rabies; influenza; measles; plague; acute primary pneumonia; acute anterior poliomyelitis; acute polioencephalitis; puerperal fever (including septicaemia, pyaemia, ceptic pelvic cellulitis or other serious septic condition occurring during the puerperal state); relapsing fever; scarlet fever or scarlatina; sleeping sickness or human trypanosomiasis; smallpox or any disease resembling smallpox; all forms of tuberculosis which are clinically recognizable apart from reaction to the tuberculin test; typhus fever; whooping-cough and yellow fever.

Declaration of notifiable diseases by Minister

12. The Minister may by notice published in the *Gazette*—

(*a*) declare that any infectious disease other than those specified in section 11 shall be a notifiable disease under this Act;

(*b*) declare that only such provisions of this Act as are mentioned in such notice shall apply to any such notifiable disease;

(*c*) restrict the provisions of this Act, as regards the notification of any disease, to the district of any local authority or to any area defined.

Notification of infectious diseases

13.—(1) Where an inmate of any dwelling in Malaŵi is suffering from any notifiable infectious disease, unless such dwelling is a hospital in which persons suffering from any notifiable infectious diseases are received, the following provisions shall have effect—

(*a*) the head of the family to which such inmate (in this Act referred to as "the patient") belongs and in his default the nearest relatives of the patient present in the building or in their default the person in charge of or in attendance on the patient, and in default of any such person the occupier of the dwelling shall, as soon as he becomes aware that the patient is suffering from any notifiable infectious disease to which this Act applies, send notice thereof to the nearest medical officer of health;

(*b*) whenever any child attending any school, orphanage or like institution, or any person residing in any hotel, boardinghouse or other like institution, shall be known to be suffering from any infectious disease (whether such infectious disease is specified in this Act or not) the manager, principal or person in charge of such school, orphanage or other like institution, or the manager or proprietor or person in charge of such hotel, boarding-house or other like institution shall forthwith send notice thereof to the nearest medical officer of health and shall furnish to him on his request a list of scholars or residents thereat, together with their addresses;

(*c*) every medical practitioner attending on or called in to visit a patient shall forthwith on becoming aware that the patient is suffering from any notifiable infectious disease to which this Act applies, send to the nearest medical officer of health a certificate stating the name of the patient, the situation of the building and the notifiable infectious disease from which, in the opinion of such medical practitioner, the patient is suffering;

(*d*) in any case in which a medical practitioner has been called in, the obligation to notify an infectious disease shall rest on such medical practitioner only;

(*e*) every medical practitioner who becomes aware, by postmortem examination or otnerwise that any, person has died of a notifiable infectious disease shall immediately furnisn a written certificate thereof to the nearest medical officer of health and shall also inform the head of the household or the occupier of the premises or any person who has been in

attendance on such diseased person of the infectious nature of the disease and the precautions to be taken to prevent its conveyance to others.

(2) Every person required by this section to give a notice or certificate who fails to give the same shall be liable to a fine of £5:

Provided that if a person is not required to give notice in the first instance, but only in default of some other person, he shall not be liable to any fine if he satisfies the court that he had reasonable cause to suppose that the notice had been duly given.

Regulations for the notification of infectious diseases

14. The Minister may, in respect of the notification of infectious disease, make Regulations as to—

(*a*) the duties of owners or occupiers of land, the owners or managers of mines, employers of labour and all Chiefs or Headmen or others in regard to reporting the occurrence of any infectious disease;

(*b*) the duties of the person in charge of any school, orphanage or similar institution in regard to the reporting of such diseases or any other communicable disease specified in the Regulations to the local authority;

(*c*) the circumstances in which notification of particular infectious diseases shall not be required;

(*d*) the duties of the local authority in respect to the keeping of registers and records of such notifications;

(*e*) the duties of registrars of death in respect of furnishing the local authority with notification of returns of deaths notified with such registrars;

(*f*) the forms to be used and the particulars to be furnished by medical practitioners when making such notifications to the local authority;

(*g*) the forms to be used and the particulars to be furnished by the local authorities when transmitting returns and reports to the Secretary for Health,

and generally for better carrying out the provisions and attaining the objects and purposes of this Part. Any person who contravenes or fails to comply with any such Regulation shall be guilty of an offence.

Fees for certificates

15. The local authority shall pay to every medical practitioner, other than a Government medical officer, for each certificate duly sent by him in accordance with this Act a fee of five shillings.

PART IV

Prevention and Suppression of Infectious Diseases

Powers of medical officer of health to inspect premises and persons

16. A medical officer of health may at any time enter and inspect any premises in which he has reason to believe that any person suffering or who has recently suffered from any infectious disease is or has recently been present, or any inmate of which has recently been exposed to the infection of any infectious disease, and may medically examine any person in such premises for the purpose of ascertaining whether such person is suffering or has recently suffered from or is a carrier of any such disease and may cause a post-mortem examination to be made on any corpse for the purpose of ascertaining if the cause of death has been any infectious disease.

Cleansing and disinfection of premises and articles therein

17.—(1) If a local authority is satisfied upon a certificate of a medical officer of health or a health inspector that the cleansing and disinfection of any premises, and the disinfection and destruction of any articles therein likely to retain infection, would tend to prevent the spread of any infectious disease, the authority shall give notice to the occupier of the premises that it will at his cost cleanse and disinfect the premises and disinfect or, as the case may require, destroy any such articles therein.

(2) The authority may, twelve hours after the delivery of such notice, or at any time with the consent of the occupier, cause the premises to be cleansed and disinfected and the articles to be disinfected or destroyed, as the case may require, and may, if it thinks fit, recover from him the expenses reasonably incurred by it in so doing.

(3) Where a local authority has under this section disinfected any premises or article, or destroyed any articles, it may if it thinks fit, pay compensation to any person who has suffered damage by its action.

(4) For the purpose of this section, the owner of unoccupied premises shall be deemed to be in occupation thereof.

No compensation for deprivation during disinfection

18. Compensation shall not be payable in respect of the deprivation of the occupation or use of any building or part thereof or of the use of any article occasioned by disinfection, if no undue delay has occurred.

Provision of means of disinfection

19. Any local authority may provide a proper place, with all necessary apparatus and attendance, for the disinfection of bedding, clothing or other articles which have become infected, and may cause any articles brought for disinfection to be dealt with free of charge.

Provision of conveyance for infected persons

20. Any local authority may provide and maintain a conveyance or conveyances for the carriage of persons suffering from any infectious disease and may pay the expenses of carriage therein of any person so suffering to a hospital or other place of detention.

Provision for removal to hospital of persons suffering from infectious diseases where serious risk

21. Where the local authority is satisfied on a certificate of the medical officer of health that a person is suffering from an infectious disease and—

(*a*) that his circumstances are such that proper precautions to prevent the spread of infection cannot be taken, or that such precautions are not being taken; and

(*b*) that serious risk of infection is thereby caused to other persons; and

(*c*) that accommodation for him is available in a suitable hospital or institution,

the local authority may order him to be removed thereto and maintained at the cost of the authority, and to be there detained until such medical officer of health is satisfied that he is free from infection or can be discharged without danger to the public health.

Penalty on exposure of persons and articles liable to convey infectious disease

22. Any person who—

(*a*) while suffering from any infectious disease wilfully exposes himself without proper precautions against spreading the said disease in any street, public place, shop, inn or public conveyance, or enters any public vehicle without previously notifying the owner, conductor or driver thereof that he is so suffering; or

(*b*) being in charge of a person so suffering exposes such sufferer; or

(*c*) gives, lends, sells, transmits or exposes, without previous disinfection, any clothing, bedding or rags which he knows to have been exposed to infection from any such disease, or any other article which he knows to have been so exposed,

shall be liable to a fine of £15 and to imprisonment for three months; and a person who, while suffering from any such disease, enters any public vehicle without previously notifying to the owner or driver that he is so suffering, shall in addition be ordered by the court to pay such owner or driver the amount of any loss and expenses he or they may incur in carrying into effect the provisions of this Act with respect to disinfection of the vehicle:

Provided that no proceedings under this section shall be taken against persons transmitting with proper precautions any

bedding, clothing, rags or other things for the purpose of having the same disinfected.

Penalty on failing to provide for disinfection of vehicle

23. Every owner or driver of a vehicle shall immediately notify a medical officer of health, and provide for the disinfection of such vehicle to the satisfaction of such medical officer of health, after it has to his knowledge conveyed any person suffering from an infectious disease, and if he fails to do so he shall be liable to a fine of £20; but no such driver or owner shall be required to convey any person so suffering until he has been paid a sum sufficient to cover any loss or expenses incurred by him in carrying this section into effect.

Penalty for letting infected house

24. Any person who knowingly lets for hire any dwelling or premises or part thereof in which, within the previous six weeks, any person has been suffering from an infectious disease without having the same, and all articles therein liable to retain infection, efficiently disinfected to the satisfaction of the medical officer of health as testified by a certificate signed by him shall be liable to a fine of £50.

This section shall apply to any owner or keeper of a lodging-house.

Duty of person letting house lately infected to give true information

25. Any person letting for hire or showing for the purpose of letting for hire any building or part thereof who on being questioned by any person negotiating for the hire of such building or part as to the fact of there being or within six weeks previously having been therein any person suffering from any infectious disease knowingly makes a false answer to such question shall be liable to a fine of £50.

Notification of deaths and removal of bodies of persons dying of infectious disease

26.—(1) In every case of death from an infectious disease it shall be the duty of the occupier of the building in which the death has occurred immediately to notify the local authority of the death and on receipt of such notification the local authority shall at once transmit the information received to the nearest medical officer of health and make the best arrangements practicable pending the removal of the body and the carrying out of thorough disinfection for preventing the spread of such disease.

(2) It shall be an offence against this Act for the occupier of any premises to keep any dead body in any room in which food is kept or prepared or eaten, or to keep any dead body for more than twenty-four hours in any room in which any person lives, sleeps or works or to keep the body of any person who is known to have died of an infectious disease in any place other than a mortuary or other place set apart for the keeping of dead bodies, without first obtaining the sanction of the local authority or a medical officer of health.

(3) Where any person dies of an infectious disease it shall be an offence against this Act to remove the body except to a mortuary or for the purpose of immediate burial; and it shall be the duty of any person who removes the body to take it direct to the mortuary or to the place of interment for burial.

(4) Nothing in this section shall be deemed to prevent the removal by due authority of any dead body from a hospital to a mortuary.

Removal and burial of bodies of persons who have died of an infectious disease

27. A medical officer of health, a health officer, a health inspector, a local authority or any administrative or police officer on a certificate from a medical practitioner that a person has died from an infectious disease, is empowered to direct that the dead body of a person who has so died be removed to a mortuary or other suitable place whenever such body—

(*a*) is retained in contravention of the preceding section in a room in which any person lives, sleeps, or works, or in which food is kept or prepared or eaten; or

(*b*) is retained in any premises in circumstances which, in the opinion of a medical officer of health, are likely to cause nuisance or endanger health.

Any person who obstructs the execution of any order or direction given under this section shall be guilty of an offence.

Local authority to remove and bury unclaimed bodies

28. A local authority shall be responsible for the removal and burial of bodies of destitute persons and of unclaimed bodies within its own district.

Rules

29. The Minister may make Rules applicable to all infectious diseases or only to such infectious diseases as may be specified therein, regarding the following matters—

(*a*) the closing of any school or any place of public entertainment, where deemed necessary for the purpose of preventing the spread of any infectious disease, and the regulation and restriction of school attendance;

(*b*) the duties of parents or guardians of school children who are suffering or have recently suffered from or been exposed to the infection of any infectious disease, and the duties of persons in charge of schools in respect of such children;

(*c*) the establishment, maintenance, management, and inspection of isolation hospitals, convalescent homes or other institutions for the accommodation or treatment of persons suffering from or who have recently suffered from any infec-

tious disease, the removal of persons to such institutions and their discharge therefrom and the classification and control of the patients and staff of such institutions;

(*d*) the imposition and enforcement of quarantine or of medical observation or surveillance in respect of persons suffering or suspected to be suffering from an infectious disease who are not removed to a hospital or place of isolation, the premises in which such persons are accommodated, those in charge of or in attendance on such persons, and other persons living in or visting such premises or who may otherwise have been exposed to the infection of any such disease;

(*e*) the duties in respect of the prevention of infectious diseases therefrom, of owners of land on which other persons reside and of employers of labour and of Chiefs or headmen and others;

(*f*) the measures to be taken for the prevention of the spread of any infectious disease requiring to be dealt with in a special manner;

(*g*) the conveyance by rail or otherwise of persons suffering from, or bodies of persons who have died of, an infectious disease;

(*h*) the prevention of the spread from any animal or the carcass or product of any animal to man, of rabies, glanders, anthrax, plague, tuberculosis, trichinosis or any other disease communicable by any animal, or the carcass or product of any animal, to man;

(*i*) the prevention of the spread of disease by flies or other insects and the destruction and the removal of or the abatement of conditions permitting or favouring the prevalence or multiplication of such insects;

(*j*) the destruction of rodents and other vermin and the removal or abatement of conditions permitting or favouring the harbourage or multiplication thereof;

(*k*) the prevention of the spread of ancylostomiasis, schistosomiasis or other disease in man caused by an animal or vegetable parasite;

(*l*) the prevention of the spread of any infectious disease by the carrying on of any business, trade or occupation;

(*m*) the prevention of the spread of any infectious disease by carriers, and the keeping under medical surveillance and the restriction of the movements of such carriers;

(*n*) the prohibition of spitting in public places or in public vehicles, except into receptacles provided for the purpose;

(o) the regulation and restriction of any trade or occupation entailing special danger to the health of those engaged therein, whether from infectious disease or otherwise, and the institution of measures for preventing or limiting such danger;

(*p*) the establishment, maintenance and management of cleansing stations and the cleansing of dirty or verminous persons, the disinfection or fumigation of buildings, clothing or other articles which have been exposed to or are believed to be contaminated with the infection of any infectious disease, or which are dirty or verminous, and the prohibition of the carrying out of any fumigation which involves the use of poisonous gas except under licence;

(*q*) the disposal of any refuse, waste matters or other matter or thing which has been contaminated with or exposed to the infection of any infectious disease;

(*r*) the giving compulsorily of any information or the production compulsorily of any documentary or other evidence required for the purpose of tracing the source or preventing the spread of any infectious disease, and generally for better carrying out the provisions and attaining the objects and purposes of this Part.

PART V

Special Provisions Regarding Certain Formidable Epidemic or Endemic Diseases

Formidable epidemic or endemic diseases

30. This Part shall apply to smallpox, plague, cholera, yellow fever, cerebro-spinal meningitis, typhus, sleeping sickness or human trypanosomiasis and any other disease which the Minister may by notice declare to be a formidable epidemic or endemic disease for the purpose of this Part.

Power to make Rules for prevention of disease

31. Whenever any part of Malaŵi appears to be threatened by any disease described in the last preceding section, the Minister may declare such part an infected area and may make Rules for all or any of the following purposes, namely—

(*a*) for the speedy interment of the dead;

(*b*) for house to house visitation;

(*c*) for the provision of medical aid and accommodation, for the promotion of cleansing, ventilation and disinfection and for guarding against the spread of disease;

(*d*) for preventing any person from entering or leaving any infected area without undergoing all or any of the following—

medical examination, disinfection, inoculation, vaccination or passing a specified period in an observation camp or station;

(*e*) for the formation and regulation of hospitals and observation camps or stations, and for the placing therein and reception of persons who are suffering from or have been in contact with persons suffering from infectious disease;

(*f*) for the destruction or disinfection of buildings, furniture, goods or other articles, which have been used by persons suffering from infectious disease, or which are likely to spread the infection;

(*g*) for the removal of persons who are suffering from an infectious disease and persons who have been in contact with such persons;

(*h*) for the removal of corpses;

(*i*) for the destruction of rats, the means and precautions to be taken on shore or on board vessels for preventing them passing between vessels and from vessels to the shore or from the shore to vessels and the better prevention of the danger of spreading infection by rats;

(*j*) for the destruction of mosquitoes, the means and precautions to be taken in respect of aircraft arriving at or departing from Malaŵi and for preventing mosquitoes from passing from aircraft to land or from land to aircraft, and the better prevention of the danger of spreading infection by mosquitoes;

(*k*) for the removal and disinfection of articles which have been exposed to infection;

(*l*) for prohibiting any person from living in any building or using any building for any purpose whatsoever if in the opinion of a medical officer of health any such use is liable to cause the spread of any infectious disease; any Rules made under this section may give a medical officer of health power to prescribe the conditions on which such a building may be used;

(*m*) for the compulsory medical examination of persons suffering or suspected to be suffering from infectious disease;

(*n*) for the registration of residents in an infected area;

(*o*) for the registration of vehicles in an infected area;

(*p*) for the compulsory confiscation and disposal of canoes and fishing gear used by any person in breach of any rule relating to the disease known as sleeping sickness;

(*q*) for the control of wood cutting in an infected area;

(*r*) for the restriction of residence in, immigration to or emigration from, an infected area;

(*s*) for the control of fishing and hunting in an infected area;

(*t*) for any other purpose whether of the same kind or nature as the foregoing or not having for its object the prevention, control or suppression of infectious disease,

and may by order declare all or any of the Rules so made to be in force within the whole or any part or parts of the infected area.

Local authority to see to the execution of Rules

32. The local authority of any area within which or part of which Rules made under this Part are declared to be in force, shall do and provide all such acts, matters and things as may be necessary for mitigating any such disease, or aiding in the execution of such Rules, or for executing the same, as the case may require. A local authority may from time to time direct any prosecution or legal proceedings for or in respect of the wilful violation or neglect of any such Rules.

Power of local authority or medical officer of health to enforce Rules

33. Any local authority or medical officer of health or any person duly authorized by any local authority or medical officer of health shall have power of entry on any premises or vehicle, for the purpose of executing or superintending the execution of any Rules so made by the Minister as aforesaid.

Notification of sickness or mortality in animals suspected of plague

34.—(1) Any person who becomes aware of any unusual sickness or mortality among rats, mice, cats, dogs or other animals susceptible to plague or other formidable epidemic diseases not due to poison or other obvious cause, shall immediately report the fact to a medical officer of health, where practicable, and where impracticable, to a local authority.

(2) Any such person who fails so to report shall be guilty of an offence.

Local authorities to report notification of formidable epidemic disease by telegraph

35. Every local authority shall immediately report to the Secretary for Health or the nearest medical officer of health by telegraph, or other expeditious means, particulars of every notification received by such authority of a case or suspected case of any formidable epidemic or endemic disease, or of any unusual sickness or mortality in animals made under the last preceding section.

Secretary for Health may requisition buildings

36.—(1) Where there exists or is threatened an outbreak of any disease to which this Part applies it shall be lawful for the Secretary for Health to require any person owning or having charge of any land or any premises, or any person owning or

having charge of tents, transport, bedding, hospital equipment, drugs, food or other appliances, materials or articles urgently required in connexion with the outbreak, to hand over the use of any such land or premises or to supply or make available any such article, subject to the payment of a reasonable amount as hire or purchase price.

(2) Any person who, without reasonable cause, fails or refuses to comply with any such requirement, shall be guilty of an offence.

Penalties for offences against this Part

37. Any person guilty of an offence against this Part shall be liable to a fine of £100 and to imprisonment for twelve months.

PART VI

Prevention of Introduction of Infectious Diseases

Power to enforce precautions at borders of Malaŵi

38.—(1) For the purpose of preventing the introduction of infectious disease into Malaŵi the Minister may by order—

(*a*) regulate, restrict or prohibit the entry into Malaŵi or any part thereof of any person or of persons of any specified class or description or from any specified country, locality or area;

(*b*) regulate, restrict or prohibit the introduction into Malaŵi or any specified part thereof of any animal, article or thing;

(*c*) impose requirements or conditions as regards the medical examination, detention, quarantine, disinfection, vaccination, isolation or medical surveillance or otherwise of persons entering, or the examination, detention, or disinfection or otherwise of such persons as aforesaid or of articles and things introduced into Malaŵi or any part thereof.

(2) Any person who contravenes or fails to comply with any such order shall be liable to a fine of £50 and to imprisonment for six months.

Removal of infected persons from railway trains

39.—(1) Where any person arriving in Malaŵi by railway train or other vehicle is found to be suffering from any infectious disease, and in the opinion of a medical officer of health cannot be accommodated or cannot be nursed or treated so as to guard against the spread of the disease or to promote recovery, the medical officer of health may order the removal of such person to a hospital or place of isolation for such period as may be necessary in the interests of the patient or to prevent the spread of infection.

(2) All expenses necessarily incurred in dealing with a patient under this section shall be a charge against the said patient and

may be recovered from him as a debt due to the Government. In the case of a person unable to pay any or all of such expenses necessarily incurred on his behalf, such expenditure or balance thereof shall be a charge on the Consolidated Fund.

Isolation or surveillance of persons exposed to infection

40.—(1) Where any person arriving by railway train or other vehicle within Malaŵi is believed to have been recently exposed to the infection, or to be in the incubation stage of, any notifiable disease, a medical officer of health may require such person to be removed to some hospital or place of isolation until considered free from infection, or alternatively may allow such person to proceed to his place of destination and there report himself to the local authority for medical surveillance by such local authority until considered free from infection.

(2) The medical officer of health shall in each instance notify the local authority of the district of such person's destination, of the fact that such person is believed to have been recently exposed to infection and has been allowed to proceed to his destination.

Powers of medical officers of health to inspect railway trains and medically examine passengers

41.—(1) Any medical officer of health may at any time board any railway train or other vehicle arriving within Malaŵi, and may inspect any portion thereof or anything therein, and may medically examine any person travelling by such train or vehicle and require any such person to answer any question for the purpose of ascertaining if such person is infected by or has recently been exposed to the infection of any notifiable infectious disease.

(2) Any person who refuses to allow any such officer to board any railway train or other vehicle or to make any inspection or medical examination as aforesaid or otherwise obstructs or hinders any such officer in the execution of his duty, or who fails or refuses to give any information which he may lawfully be required to give, or who gives false or misleading information to any such officer, knowing it to be false or misleading, shall be guilty of an offence.

PART VII

Smallpox

Definition of "protected person" "public vaccinator" "unprotected person" and "vaccination" in this Part

42. For the purposes of this Part—

"protected person" means a person or child who is protected;

"public vaccinator" means a public vaccinator appointed by the Secretary for Health and any person appointed by the Secretary for Health to assist or act for a public vaccinator and includes any registered or licensed medical practitioner;

"unprotected person" includes a child and means a person who has not been protected from smallpox either by having had

the disease, or by having been successfully vaccinated not less than fourteen days nor more than three years previously; and

"vaccination" means the introduction into the skin of smallpox vaccine virus contained in a pure and tested vaccine lymph.

Vaccination of children

43. The parent or guardian of every child born in Malaŵi shall, after six months and within twelve months from birth, unless such child is unfit or has suffered from smallpox, cause such child to be successfully vaccinated by a public vaccinator.

Vaccination of persons in declared areas or entering Malaŵi

44.—(1) The Minister may by notice published in the *Gazette* declare any area to be a compulsory vaccination area and shall in such notice specify a period within which the vaccination of all unprotected persons dwelling in such area shall take place.

(2) Every unprotected adult and the parent or guardian of every unprotected child in any area declared to be a compulsory vaccination area shall cause himself and such child to be vaccinated within the period specified.

(3) Every unprotected adult and the parent or guardian of every unprotected child entering Malaŵi shall cause himself and such child to be vaccinated within one month:

Provided that—

(*a*) this section shall not require the vaccination of any adult or child who, in the opinion of a public vaccinator, is not in a fit state to be vaccinated;

(*b*) this section shall not apply to any person who can prove that reasonable facilities for vaccination were not available.

If adult or child unfit for vaccination certificate to be given

45. If any public vaccinator shall be of opinion that any adult or child is not in a fit state to be vaccinated, he shall give to the adult or to the parent or guardian of the child a certificate under his hand that the adult or child is then in a state unfit for vaccination.

The said certificate shall remain in force for six months only but shall be renewable for successive periods of six months until the public vaccinator shall deem the adult or child to be fit for vaccination, when the adult or child shall with all reasonable despatch be vaccinated.

Certificates to be given for successful vaccination

46. Every public vaccinator who shall have performed the operation of vaccination upon any adult or child, and shall have ascertained that the same has been successful shall deliver to such adult or the parent or guardian of such child a certificate certifying that the said adult or child has been successfully vaccinated.

47. No fee or remuneration shall be charged to the person vaccinated by any public vaccinator for any certificate granted under this Act, nor for any vaccination done by him in pursuance of this Act.

No fee to be charged for a certificate or for vaccination by public vaccinator

48. Every superintendent or person in charge of a leprosy settlement, mental hospital, chronic sick hospital, gaol, prison, reformatory, or other similar institution, shall where practicable, cause to be vaccinated within fourteen days following his admission to such institution every inmate thereof who, being in a fit state of health to undergo vaccination, fails to prove satisfactorily that he has been successfully vaccinated within the three years immediately preceding; if such person is at the time unfit to undergo vaccination, he shall be vaccinated as soon as he is so fit.

Vaccination of inmates of institutions

49.—(1) Subject to section 45, no child shall be admitted to or attend any school until there has been produced to the school manager or other person in charge thereof a certificate or other satisfactory evidence that the child is a protected person and any school manager or other person who admits or permits such child to be admitted shall be guilty of an offence.

School attendance

(2) For the purpose of ascertaining whether subsection (1) is being observed, every public vaccinator shall, whenever instructed by the Secretary for Health, visit any school and make therein such inspection of the children attending thereat as will enable him to furnish such particulars as the Secretary for Health may require as to the children who are unprotected.

50. Any person who inoculates himself or any other person against smallpox with material taken from a person suffering from smallpox or from a vaccine vesicle on another person shall be guilty of an offence.

Supply of vaccine lymph and inoculation from arm to arm, etc., forbidden

51.—(1) The Minister may, at any time when he considers it necessary as a result of an outbreak, or to prevent the outbreak of smallpox in any area, direct that all persons or any class of persons within Malaŵi, or within any place, area, municipality, town, village or community therein, or all persons entering Malaŵi shall, unless they can give satisfactory evidence that they have, within such period as the Minister may specify, already been vaccinated, be vaccinated forthwith.

Power to order vaccination of all persons at any time

(2) Where the Minister has issued directions under subsection (1) the local authority having jurisdiction in any place, area, municipality, town or village or in respect of any community

specified in such directions shall require all persons therein to attend, or all parents or guardians of children to cause such children to attend at centres or vaccination posts according to instructions issued there to undergo inspection by a public vaccinator and if found to be unprotected, and subject to section 45, to undergo vaccination. Such instructions may be issued by notice in the press, or by notices posted in public places, or otherwise as may be deemed sufficient by the local authority. Any person, parent or guardian failing to comply with such instructions shall be guilty of an offence.

(3) The Minister may make rules for the purpose of regulating or enforcing vaccination under this section and such rules may confer powers on public vaccinators in respect of persons passing vaccination centres or posts, who require vaccination.

Power to make Rules

52. The Minister may make Rules—

(*a*) prescribing forms of certificates, notices, returns and books of record to be used in connexion with public vaccination, and defining the information to be furnished therein, and requiring the furnishing and prescribing the manner of use thereof by registrars of deaths, public vaccinators, local authorities, medical practitioners, parents or guardians of children, persons in charge of schools, employers of labour and others;

(*b*) conferring powers and imposing duties, in connexion with the carrying out of enforcement of vaccination, on magistrates, administrative officers, members of the police force, or other Government officers, local authorities, persons in charge of schools, employers of labour, Chiefs and village headmen and others;

(*c*) prescribing and defining the duties in connexion with vaccination of public vaccinators;

(*d*) prescribing the manner in which vaccination shall be performed and the precautions to be observed by those performing it and by the persons or the parents or the guardians of children vaccinated;

(*e*) providing for the vaccination of persons and assigning where deemed desirable the responsibility for the carrying out of such vaccination to local authorities or employers of labour; and

(*f*) generally for the better carrying out of this Part and attaining the objects and purposes thereof.

PART VIII

Venereal Diseases

Venereal diseases

53. The provisions of this Act, unless otherwise expressed, in so far as they concern venereal diseases, shall be deemed to apply to primary or secondary syphilis, acute and chronic gonorrhoea, gonorrhoeal ophthalmia, soft chancre, lymphogranuloma inguinale, ulcerating granuloma and any other disease that may be declared by the Minister by notice published in the *Gazette* to be a venereal disease.

Employment of infected persons

54.—(1) Any person who, while suffering from any venereal disease in a communicable form, accepts or continues in employment either as an employee or on his own account in or about any factory, shop, hotel, restaurant, dwelling-house, or any place in any capacity entailing the care of children or the handling of food intended for consumption or of food utensils for use by any other person shall be guilty of an offence, unless he proves that he did not know or suspect, and had no reasonable means of knowing or suspecting, that he was so suffering.

(2) Every person shall be guilty of an offence who employs or continues to employ any person suffering from any venereal disease in a communicable form, if by reason of such employment such person is required or is permitted to have the care of children or to handle any food intended for consumption or food or household utensils, unless the employer proves that he did not know or suspect, and had no reasonable means of knowing or suspecting that the person so employed by him was suffering from such disease.

(3) If an employee who is employed in any manner set out in the preceding subsections is shown by a certificate signed by a registered or licensed medical practitioner to be suffering from a venereal disease, or if any employer has reasonable cause to suspect that such employee is suffering from a venereal disease and the said employee refuses to submit himself to medical examination, it shall be lawful for the employer summarily to dismiss the employee with payment of wages up to the date of dismissal.

Publication of advertisements of cures

55.—(1) No person shall publish, exhibit or circulate any advertisement or statement intended to promote the sale of any medicine, appliance or article for the alleviation or cure of any venereal disease or disease affecting the generative organs or functions, or of sexual impotence or of any complaint or infirmity arising from or relating to sexual intercourse.

(2) No person shall hold out or recommend to the public by any notice or advertisement, or by any written or printed papers

or handbills, or any label or words written or printed, affixed to or delivered with, any packet, box, bottle, phial or other enclosure containing the same, any pills, capsules, powders, lozenges, tinctures, potions, cordials, electuaries, plasters, unguents, salves, ointments, drops, lotions, oil, spirits, medicated herbs and waters or chemical and official preparations whatsoever, to be used or applied externally or internally as medicines or medicaments for the prevention, cure, or relief of any venereal disease or disease affecting the generative organs or functions, or sexual impotence, or of any complaint or infirmity arising from or relating to sexual intercourse.

(3) This section shall not apply to publications by or under the authority of the Secretary for Health, or by any local authority, public hospital, or other public body in the discharge of its lawful duties or by any society or person acting with the authority of the Government first obtained, or to any books, documents or papers published in good faith for the advancement of medical science.

Prevention of the treatment of venereal disease otherwise than by registered or licensed persons

56. No person, unless he is a registered or licensed medical practitioner, or a State registered nurse, or other person certified by the Secretary for Health to be competent to diagnose and treat venereal disease, shall for reward treat any person for venereal disease or suspected venereal disease or prescribe any remedy therefor, or give any advice in connexion with the treatment thereof, whether the advice is given to the person to be treated or to any other person.

Conveyance of infection an offence

57. No person shall wilfully or by culpable negligence infect any other person with venereal disease or do or permit or suffer any act likely to lead to the infection of any other person with such disease.

Offences and penalties

58.—(1) Any person who contravenes or fails to comply with any of the provisions of this Part shall be liable to a fine of £150 and to imprisonment for two years.

(2) When a person is convicted of an offence against this Part, the court may order any advertisement or written matter specified in section 55, or drugs, poisons, medicines, needles, syringes or surgical, medical or diagnostic instruments or appliances, published or used by, belonging to, or in the possession of the person convicted, to be forfeited, and to be destroyed or otherwise disposed of.

PART IX

Sanitation and Housing

Nuisances prohibited

59. No person shall cause a nuisance, or shall suffer to exist on any land or premises owned or occupied by him or of which he is

in charge, any nuisance or other condition liable to be injurious or dangerous to health.

Duties of local authorities to maintain cleanliness and prevent nuisances

60. It shall be the duty of every local authority to take all lawful, necessary and reasonably practicable measures for maintaining its area at all times in clean and sanitary condition, and for preventing the occurrence therein of, or for remedying or causing to be remedied, any nuisance or condition liable to be injurious or dangerous to health and to take proceedings at law against any person causing or responsible for the continuance of any such nuisance or condition.

Duty of local authorities to prevent or remedy danger to health arising from unsuitable dwellings

61. It shall be the duty of every local authority to take all lawful, necessary and reasonably practicable measures for preventing or causing to be prevented or remedied all conditions liable to be injurious or dangerous to health arising from the erection or occupation of unhealthy dwellings or premises, or the erection of dwellings or premises on unhealthy sites or on sites of insufficient extent, or from overcrowding, or from the construction, condition or manner of use of any factory or trade premises, and to take proceedings under the law or rules in force in its area against any person causing or responsible for the continuance of any such conditions:

Provided that no action shall be taken by any local authority in pursuance of this Part in respect of any factory if such action is calculated to interfere with the construction of any building or with the condition or manner of use of any machinery without the consent of the Chief Inspector of Factories.

What constitutes a nuisance

62. The following shall be deemed to be nuisances liable to be dealt with in the manner provided in this Part—

(1) any vehicle in such a state or condition as to be injurious or dangerous to health;

(2) any dwelling or premises or part thereof which is or are of such construction or in such state or so situated or so dirty or so verminous or so damp as to be likely to be injurious or dangerous to health or which is or are liable to favour the spread of any infectious disease;

(3) any street, road or any part thereof, stream, pool, ditch, gutter, watercourse, sink, water tank, cistern, latrine, cesspool, soak-away pit, septic tank, cesspit, soil-pipe, waste-pipe, drain, sewer, garbage receptacle, dust bin, dung pit, refuse pit, slop tank or manure heap so foul or in such a state or so situated or constructed as to be offensive or to be likely to be injurious or dangerous to health;

(4) any well or other source of water supply or any cistern or other receptacle for water, whether public or private, the

water from which is used or is likely to be used by human beings for drinking or domestic purposes or in connexion with any dairy, or in connexion with the manufacture or preparation of any article of food intended for human consumption, which is in a condition liable to render any such water injurious or dangerous to health;

(5) any noxious matter, or waste water, flowing or discharged from any premises, wherever situated, into any public street, or into the gutter or side channel of any street, or into any gully, swamp, or watercourse or irrigation channel not approved for the reception of such discharge;

(6) any collection of water, sewage, rubbish, refuse, ordure, or other fluid or solid substances which are offensive or which are dangerous or injurious to health or which permit or facilitate the breeding or multiplication of animal or vegetable parasites of men or domestic animals, or of insects or of other agents which are known to carry such parasites or which may otherwise cause or facilitate the infection of men or domestic animals by such parasites;

(7) any collection of water found to contain any of the immature stages of the mosquito;

(8) any cesspit, latrine, urinal, dung pit, or refuse pit found to contain any of the immature stages of the mosquito;

(9) any stable, cow shed or other building or premises used for keeping of animals or birds which is so constructed, situated, used or kept as to be offensive or which is injurious or dangerous to health;

(10) any animal or bird so kept as to be offensive or injurious to health;

(11) any accumulation of stones, timber, or other material of any nature whatever if such is likely, in the opinion of a medical officer of health, to harbour rats and other vermin, and any premises in such a state or condition and any building so constructed as to be likely to harbour rats;

(12) any dwelling or premises so overcrowded as to be injurious or dangerous to the health of the inmates, or dilapidated or defective in lighting or ventilation, or not provided with or so situated that such dwelling or premises cannot be provided with sanitary accommodation to the satisfaction of a medical officer of health;

(13) any public or other building which is so situated, constructed, used or kept as to be unsafe or injurious or dangerous to health;

(14) any occupied dwelling for which a proper, sufficient and wholesome water supply is not available within a reasonable distance;

(15) any factory or trade premises not kept in a cleanly state and free from offensive smell arising from any drain or latrine, or not ventilated so as to destroy or render harmless and inoffensive as far as practicable any gases, vapours, dust or other impurities generated, or so overcrowded or so badly lighted or ventilated as to be injurious or dangerous to the health of those employed therein;

(16) any factory or trade premises causing or giving rise to smells or effluvia which are injurious or dangerous to health;

(17) any area of land kept or permitted to remain in such a state as to be offensive, or liable to cause any infectious, communicable or preventable disease or injury or danger to health;

(18) any machinery sending forth smoke in such quantity or in such manner as to be offensive or injurious or dangerous to health;

(19) any cemetery, burial place, crematorium or other place of sepulture so situated or so crowded or otherwise so conducted as to be offensive or injurious or dangerous to health;

(20) any gutter, drain, shoot, stack pipe, down spout, water tank or cistern which by reason of its insufficiency or its defective condition shall cause damp in any dwelling;

(21) any deposit of material in or on any building or lane which shall cause damp in any building so as to be dangerous or injurious to health;

(22) any dwelling, public building, trade premises, workshop or factory not provided with sufficient and sanitary latrines;

(23) any act, omission, or thing which is or may be offensive, dangerous to life or injurious to health.

Author of nuisance

63. The author of a nuisance means the person by whose act, default or sufferance the nuisance is caused, exists or is continued, whether he be the owner or occupier or both owner and occupier or any other person.

Notice to abate nuisance

64. A local authority or a medical officer of health, if satisfied of the existence of a nuisance, may serve a notice on the author of the nuisance, or, if he cannot be found, then on the occupier or owner of the dwelling or premises on which the nuisance arises or continues, requiring him to abate it within the time specified in the notice, and if the local authority or medical officer of health thinks it desirable (but not otherwise) any work to be executed to abate or prevent a recurrence of the said nuisance may be also specified in the notice:

Provided that—

(*a*) where the nuisance arises from any want or defect of a structural character, or where the dwelling or premises are unoccupied, the notice shall be served on the owner;

(*b*) where the author of the nuisance cannot be found or it is clear that the nuisance does not arise or continue by the act or default or sufferance of the occupier or owner of the dwelling or premises, the local authority shall abate the nuisance and may do what is necessary to prevent the recurrence thereof.

Procedure in case owner fails to comply with notice

65.—(1) If the person on whom a notice to abate a nuisance has been served as aforesaid fails to comply with any of the requirements thereof within the time specified, or if the nuisance although abated since the service of the notice is, in the opinion of the local authority, likely to recur on the same premises, the local authority may cause a complaint relating to such nuisance to be made before a Resident Magistrate's court or a subordinate court of the first or second grade and such court may thereupon issue a summons requiring the person on whom the notice was served to appear before it.

(2) If the court is satisfied that the alleged nuisance exists, or that although abated it is likely to recur on the same premises the court shall make an order on the author thereof, or the occupier or owner of the dwelling or premises, as the case may be, requiring him to comply with all or any of the requirements of the notice or otherwise to abate the nuisance within a time specified in the order and to do any works necessary for that purpose; or an order prohibiting the recurrence of the nuisance and directing the execution of any works necessary to prevent the recurrence, or an order both requiring abatement and prohibiting the recurrence of the nuisance.

(3) The court may by such order impose a fine of £20 on the person on whom the order is made and may also give directions as to the payment of all costs incurred up to the time of the hearing or making of the order for the abatement of the nuisance.

(4) Before making any order, the court may, if it thinks fit, adjourn the hearing or further hearing of the summons until an inspection, investigation or analysis in respect of the nuisance alleged has been made by some competent person.

(5) Where the nuisance proved to exist is such as to render a dwelling unfit, in the judgment of the court, for human habitation, the court may issue a closing order prohibiting the use thereof as a dwelling until in its judgment the dwelling is fit for that purpose; and may further order that no rent shall be due or payable by or on behalf of the occupier of that dwelling in respect of the period in which the closing order exists; and on the

court being satisfied that such dwelling has again been rendered fit for use as a dwelling the court may terminate the closing order and by a further order declare the dwelling habitable, and from the date thereof such dwelling may be let or inhabited.

Notwithstanding any such last-mentioned order, further proceedings may be taken in accordance with this section in respect of the same dwelling in the event of any nuisance occurring or of the dwelling being again found to be unfit for human habitation.

Penalties in relation to nuisance

66.—(1) Any person who fails to obey an order by a court to comply with the requirements of a local authority or medical officer of health or otherwise to abate the nuisance, shall, unless he satisfies the court that he has used all diligence to carry out such order, be liable to a fine of £5 for every day during which the default continues; any person wilfully acting in contravention of a closing order issued under the last preceding section shall be liable to a fine of £5 for every day during which the contravention continues.

(2) The local authority may in such a case enter the premises to which any such order relates and abate the nuisance or do whatever may be necessary in the execution of such order and recover in a Resident Magistrate's court or a subordinate court of the first or second grade the expenses incurred from the person on whom the order is made.

Court may order local authority to execute works in certain cases

67. Whenever it appears to the satisfaction of the court that the person by whose act or default the nuisance arises, or that the owner or occupier of the premises is not known or cannot be found, the court may at once order the local authority to execute the works thereby directed and the cost of executing the same shall be a charge on the property on which the said nuisance exists.

Provision in case of two orders for overcrowding relating to same premises

68. Where the court has twice within a period of three months issued an order as specified in section 65 (2) relating to overcrowding of the same premises or part of the same premises the court may, on the application of a local authority, order such premises to be closed for such period as the court may deem necessary.

Power of sale

69. Any matter or thing removed by a local authority in abating any nuisance under this Part may be sold by public auction, and the money arising from the sale may be retained by the local authority, and applied in payment of the expenses incurred by them in reference to such nuisance, and the surplus (if any) shall be paid, on demand, to the owner of such matter or thing if he shall establish his claim thereto within two years from the date of such sale, failing which such surplus shall be paid into the Consolidated Fund.

Persons jointly responsible for nuisances may be proceeded against

70.—(1) Where any nuisance liable to be dealt with in the manner provided in this Part appears to be wholly or partly caused by the acts or defaults of two or more persons, a local authority may institute proceedings against any one of such person or may include all or any two or more of them in one proceeding, and any one or more of such persons may be ordered to abate the nuisance, so far as it appears to be caused by his or their acts or defaults or may be prohibited from continuing any acts or defaults which contribute to the nuisance, or may be fined or otherwise dealt with notwithstanding that the acts or default of any one of such persons would not separately have caused a nuisance, and the costs may be distributed as may appear to the court fair and reasonable.

(2) Proceedings under the preceding subsection against several persons included in one complaint shall not abate by reason of the death of any of the persons so included, but all such proceedings may be carried on as if such deceased person had not been originally so included.

(3) Where some only of the persons by whose act or default any nuisance has been caused or partly caused have been proceeded against under this Part, they shall, without prejudice to any other remedy, be entitled to recover from any other persons who were not so proceeded against and by whose act or default the said nuisance was caused or partly caused a proportionate part of the costs of and incidental to such proceedings and abating such nuisance, and of any fine and costs ordered to be paid in such proceedings.

Demolition of unfit buildings 34 of 1969

71.—(1) Where in the opinion of the Minister a nuisance exists with respect to premises which in his opinion are so dilapidated or so defectively constructed or so situated that repairs to or alterations of such premises are not likely to remove the nuisance the Minister may issue a demolition order ordering the owner of the premises to commence to demolish them on or before a specified day, being at least one month from the date of issuing the order, and to complete the demolition and to remove the materials which comprised the premises from the site before another specified day:

Provided that at least one month before issuing such a demolition order notice of the intention to issue such an order shall be served on the owner of the premises who may make representations in respect thereof to the Minister. The Minister shall consider any representations so made before issuing a demolition order under this section.

(2) The Minister shall give notice to the occupier of the premises in respect of which a demolition order has been issued requiring him to vacate the premises within a time to be specified in such

notice, and if any person fails to comply with the notice or enters the premises, without lawful excuse, after the date specified in the notice, he shall be guilty of an offence.

(3) If any person fails to comply with an order for demolition issued under this section he shall be guilty of an offence and be liable to pay the daily fine provided in section 66 (1), and the Minister may cause the premises to be demolished and may recover from the owner the expenses incurred in doing so after deducting the net proceeds of the sale of the materials which the Minister may sell by auction.

(4) No compensation shall be paid to the owner or occupier of any premises in respect of the demolition thereof as aforesaid.

(5) For the purposes of this section the Minister means the Minister for the time being responsible for land.

Prohibitions in respect of back-to-back dwellings and rooms without through ventilation

72.—(1) The Minister may, by notice published in the *Gazette*, prohibit within any area defined in such notice—

(*a*) the erection of any premises intended to be used as a dwelling constructed on the back-to-back system; or

(*b*) the erection of any room intended to be used as a sleeping or living or work room which is not provided with an external window or windows having a total area not less than one-tenth of the floor area, at least half of such window or windows being capable of being opened:

Provided that—

(i) any such room which is without a fireplace and flue shall in addition be provided with a fresh air inlet having an unobstructed sectional area of at least thirty square inches;

(ii) such windows or inlets shall be so placed as to secure through or cross ventilation; or

(*c*) the erection of any premises intended to be used as a dwelling on made ground containing street sweepings, refuse, rubbish or other matter liable to decomposition unless the approval of the local authority has been obtained and such measures for safeguarding health have been taken as such local authority may require.

(2) Any person who contravenes any provision of this section shall be liable to a fine of £50 and to a further fine of £2 for every day during which such contravention continues after the date fixed in any written notice in respect thereof from the local authority.

Cost of execution of provisions relating to nuisances

73.—(1) All reasonable costs and expenses incurred in serving a notice, making a complaint or obtaining a nuisance order, or in carrying the order into effect, shall be deemed to be money paid for the use and at the request of the person on whom the order is made; or, if no order is made but the nuisance is proved to have existed when the notice was served or the complaint made, then of the author of the nuisance.

(2) Such costs and expenses incurred in relation to any such nuisance may be recovered as a civil debt, and the court shall have power to divide such costs and expenses between the authors as to it may seem just.

(3) Where, in accordance with this Act, a local authority has itself abated a nuisance, or done what is necessary to prevent a recurrence thereof, if no owner or occupier of the premises can be found, or appears or pays the expenses thereby incurred within six months after the completion of the abatement of such nuisance, the court may order the premises upon which the work shall have been done, or any part thereof, or any movable property found thereon, to be sold by public auction, and the amount realized by such sale shall be applied in defraying such costs and expenses, and the balance (if any) paid over to the owner or occupier if he shall establish his claim thereto within two years after the date of such sale failing which such balance shall be paid into the Consolidated Fund.

Examination of premises

74. A local authority or a health officer may, at all reasonable times, enter any premises for the purpose of ascertaining the existence of any nuisance therein; and the local authority may, if necessary, open up the ground of such premises and cause the drains to be tested, or such other work to be done as may be necessary for the effectual examination of the said premises:

Provided that if no nuisance is found to exist the local authority shall restore the premises at their own expense.

Power to make Rules

75. The Minister may make Rules, and may confer powers and impose duties in connexion with the carrying out and enforcement thereof on local authorities, owners and others as to—

(*a*) the inspection of land, dwellings, buildings, factories and trade premises, and for securing the keeping of the same clean and free from nuisance and so as not to endanger the health of the inmates or the public health;

(*b*) the construction of buildings, the provision of proper lighting and ventilation, and the prevention of overcrowding;

(*c*) the periodical cleansing and white-washing or other treatment of premises and the cleansing of land attached thereto and the removal of rubbish or refuse therefrom;

(*d*) the drainage of land, streets or premises, the disposal of offensive liquids and the removal and disposal of rubbish, refuse, manure and waste matters;

(*e*) the standard or standards of purity of any liquid which, after treatment in any purification works, may be discharged therefrom as effluent;

(*f*) the keeping of animals or birds and the construction, cleanliness and drainage of places where animals or birds are kept;

(*g*) the establishment and carrying on of offensive trades, factories or trade premises which are liable to cause offensive smells or effluvia, or to discharge liquid or other material liable to cause such smells or effluvia, or to pollute streams, or are otherwise liable to be a nuisance or injurious or dangerous to health, and for prohibiting the establishment or carrying on of such factories or trade premises in unsuitable localities or so as to be a nuisance or injurious or dangerous to health;

(*h*) the subdivision and general lay-out of land intended to be used as building sites, the level, construction, number, direction, and the width of streets and thoroughfares, the limitation of the number of dwellings or other buildings to be erected on such land, the proportion of any building site which may be built upon and the establishment of zones within which different limitations shall apply and zones within which may be prohibited the establishment or conduct of occupations or trades likely to cause nuisance or annoyance to persons residing in the neighbourhood;

(*i*) the inspection of the district of any local authority by that local authority with a view to ascertain whether the lands and buildings thereon are in a state to be injurious or dangerous to health and the preparation, keeping, and publication of such records as may be required;

(*j*) the control of houses let in lodgings, the fixing of the maximum number of lodgers, the minimum floor space allotted to each lodger, the adequate ventilation and lighting and periodical cleansing and lime washing at stated intervals of the premises, the provision of adequate sanitary appliances and other requirements having for their object the protection of the health of the lodgers or surrounding inhabitants;

(*k*) the sanitary control of markets and market buildings.

Rules as to buildings

76.—(1) The power under section 75 to make Rules relating to the construction of buildings shall include the power to regulate all or any of the following matters—

(*a*) as regards building—

(i) the materials to be used in the construction of buildings;

(ii) the space about buildings and the dimensions of rooms intended for human habitation;

(iii) the height of buildings; the height of chimneys, not being separate buildings, above the roof of the building of which they form part;

(*b*) as regards works and fittings—

(i) sanitary conveniences in connexion with buildings, the drainage of buildings, including the means for conveying soil, waste, storm and subsoil water from buildings and their curtilages and cesspools and other means for the reception or disposal of foul matter in connexion with buildings;

(ii) refuse pits in connexion with buildings;

(iii) wells, tanks and cisterns for the supply of water for human consumption in connexion with buildings;

(iv) stoves and other fittings in buildings (not being electric stoves or fittings), in so far as rules with respect to such matters are required for the purpose of health and the prevention of fire;

(v) private and public sewers and communications between drains and sewers and between sewers.

(2) Any Rules to which this section relates may include provisions as to—

(*a*) the giving of notices and the deposit of plans, sections, specifications and written particulars;

(*b*) the inspection of work, the protection and testing of drains and private sewers, and the taking by the local authority of samples of materials to be used in the construction of buildings, or in the execution of other works;

(*c*) the protection of public sewers; and

(*d*) the examination and licensing of plumbers and drain layers.

Power to require removal or alteration of work not in conformity with Rules

77.—(1) If any work to which any Rules referred to in section 76 are applicable contravenes any of those Rules, the local authority, without prejudice to its right to take proceedings for a fine in respect of the contravention, may by notice require the owner either to pull down or remove the work or, if he so elects, to effect such alterations therein as may be necessary to make it comply with the Rules.

(2) If a person to whom a notice has been given under the foregoing provisions of this section fails to comply with the

notice before the expiration of twenty-eight days, or such longer period as the authority may allow, the authority may pull down or remove the work in question, or effect such alterations therein as it deems necessary, and may recover from him the expenses reasonably incurred by it in so doing.

(3) No such notice as is mentioned in subsection (1) shall be given after the expiration of twelve months from the date of the completion of the work in question, and, in any case where plans were deposited, it shall not be open to the authority to give such a notice on the ground that the work contravenes any building rule, if either the plans were passed by the authority, or notice of their rejection was not given within the prescribed period from the deposit thereof, and if the work has been executed in accordance with the plans and of any requirement made by the authority as a condition of passing the plans.

PART X

Conservancy, Sewerage and Drainage

Interpretation of Part X

78.—(1) In this Part unless the context otherwise requires the following terms shall have the following meanings—

"cesspool" means a tank or receptacle for the reception of sewage and foul matter for which no automatic outlet is provided;

"earth-closet" means a closet for the reception of faecal matter into a movable receptacle in which it is deodorized by the use of earth, ashes, chemicals or by some other method;

"lateral drain" means that portion of a system of drains or private sewers, which—

(*a*) in the case of a sewer for soil and waste water, lies between the intercepting chamber and the public sewer (including the intercepting trap and sewer connexion); or

(*b*) in the case of a sewer for storm water, lies between the last inspection chamber and the public sewer, or, if there be no inspection chamber, between the curtilage of the premises and the public sewer;

"prejudicial to health" means injurious or likely to cause injury to health;

"private sewer" means a sewer which is not a public sewer;

"privy" means a closet for the reception of faecal matter into a non-movable receptacle and includes a pit latrine or a bored-hole latrine;

"public sewer" means any sewer vested in or constructed by or on behalf of or under the control of a local authority;

"septic tank" means a tank or receptacle for the reception of sewage or foul matter for the effluent from which an automatic outlet is provided;

"sewer" does not include a drain as defined in section 3 but, save as aforesaid, includes all sewers and drains used for the drainage of buildings and yards appurtenant to buildings and their curtilages;

"soil water" means any discharge from water-closets or urinals and all water containing excremental liquid or substance;

"storm water" includes surface or rain water;

"waste water" means liquid waste of a non-excremental nature but does not include storm water;

"water-closet" means latrine accommodation used, adapted or intended to be used in connexion with a water carriage system and comprising provision for the flushing of the receptacle by means of water;

"workplace" does not include a factory or workshop but save as aforesaid includes any place in which persons are employed otherwise than in domestic service.

(2) Any reference in this Part to a drain or sewer shall be construed as including a reference to any manholes, ventilating shafts, pumps or other accessories belonging to that drain or sewer.

(3) For the purpose of this Part, a building or proposed building shall not be deemed to have a public sewer available unless—

(*a*) there is or there is in course of construction within one hundred feet of the curtilages of the building or proposed building, and at a level which makes it reasonably practicable to construct a drain to communicate therewith, a public sewer or other sewer which the owner of the building or proposed building is, or will be, entitled to use; and

(*b*) the intervening land is land through which he is entitled to construct a drain, and shall not be deemed to have a sufficient water supply available unless it has a sufficient supply of water laid on or unless such a supply can be laid on to it from a point within one hundred feet of the curtilage of the building or proposed building, and the intervening land is land through which the owner of the building or proposed building is, or will be, entitled to lay a communication pipe:

Provided that, for the purposes of this definition, the limit of one hundred feet shall not apply, if the local authority undertakes to bear so much of the expenses reasonably incurred in constructing a drain to communicate with a public sewer or, as the case may be, in laying a pipe for the purpose of obtaining a

supply of water, as may be attributable to the fact that the distance of the public sewer, or of the point from which a supply of water can be laid on, exceeds one hundred feet as aforesaid.

Public Sewers

Provision of public sewers and sewerage disposal work

79.—(1) A local authority may within its district and also, subject to the prior approval of the Minister without its district—

(*a*) construct and maintain a public sewer—

(i) in, under or over any street, or under any cellar or vault below any street; and

(ii) in, or over any land not forming part of a street, after giving reasonable notice to every owner and occupier of that land;

(*b*) construct sewage disposal works on any customary land or public land or land acquired, or lawfully appropriated for the purpose.

(2) In the exercise of its powers under subsection 1 (*a*) (ii), the local authority shall not be liable to pay any compensation to an owner or occupier of any private lands but shall make good, or, at its option, shall pay for any damage done or occasioned by reason of the exercise of the said powers.

Duty of local authority to keep map showing public sewers

80.—(1) Every local authority shall keep deposited at its offices, for inspection by any person at all reasonable hours, free of charge, a map showing and distinguishing all public sewers existing or in course of construction within its district or under its control.

(2) Where some of the public sewers are reserved for soil and waste water only or for storm water only, the map referred to in this section shall show also the purposes which each sewer is intended to serve.

Power of local authority to alter or close public sewers

81. A local authority may alter the size or course of any public sewer vested in it, or may discontinue and prohibit the use of any such public sewer, either entirely, or for the purpose of soil and waste water drainage, or for the purpose of storm water drainage, but, before any person who is lawfully using the public sewer for any purpose is deprived by the authority of the use of the sewer for that purpose, the authority shall provide a public sewer equally effective for his use for that purpose and shall at its expense make his drains or sewers to communicate with the sewer so provided.

Certain matters not to be passed into sewers or drains

82.—(1) No person shall throw, empty or turn, or suffer or permit to be thrown or emptied or to pass, into any public sewer, or into any drain or private sewer communicating with a public sewer—

(*a*) any matter likely to injure the sewer or drain, or to interfere with the free flow of its contents, or to affect prejudicially the treatment and disposal of its contents; or

(*b*) any chemical refuse or waste steam, or any liquid of a temperature higher than one hundred and ten degrees Fahrenheit, being refuse or steam, which, or a liquid which when so heated, is, either alone or in combination with the contents of the sewer or drain, dangerous or the cause of a nuisance, or prejudicial to health; or

(*c*) any petroleum spirit, or carbide of calcium.

(2) A person who contravenes any of the provisions of this section shall be liable to a fine of £10 and to a further fine of £5 for each day on which the offence continues after conviction therefor.

Right to Connect with Public Sewers

Right of owners and occupiers within district of local authority to drain into public sewers

83. Subject to this section and section 86, the owner or occupier of any premises, or the owner of any private sewer, within the district of a local authority shall be entitled to have his drains or private sewer made to communicate with any available public sewer of that authority, and thereby to discharge soil and waste water and storm water from those premises or that private sewer:

Provided that nothing in this section shall entitle any person—

(*a*) to discharge directly or indirectly into any public sewer—

(i) any liquid from a manufacturing process or any liquid from a factory, other than domestic sewage or storm water except by agreement with the local authority;

(ii) any liquid or other matter the discharge of which into public sewers is prohibited under this Act or any other law; or

(*b*) where separate public sewers are provided for soil and waste water and for storm water, to discharge directly or indirectly—

(i) soil or waste water into a sewer provided for storm water; or

(ii) except with the approval of the authority, storm water into a sewer provided for soil and waste water; or

(*c*) to have his drains or private sewer made to communicate directly with a storm water overflow; or

(*d*) to have his drains or private sewer made to communicate with a public sewer provided for soil and waste water unless

and until he satisfies the authority that the premises to be drained have a sufficient water supply available; or

(*e*) to have his drains or private sewer made to communicate with any public sewer if such sewer is situated in excess of one hundred feet of the curtilage of the premises.

Use of public sewers by owners and occupiers without the district of local authority

84. Subject as hereinafter provided, the owner or occupier of any premises and the owner of any private sewer without the district of a local authority shall have the like rights with respect to drainage into the available public sewers of the authority as he would have had under section 82 if his premises or private sewer were situate within its district and that section shall apply accordingly:

Provided that, without prejudice to the prohibition contained in section 83 against the discharge of certain liquids or other matters into public sewers or into some public sewers or the right of a local authority under section 86 to refuse to permit a communication to be made on any of the grounds set out in subsection (1) of that section and to require the drain or private sewer to be laid open for inspection, the authority may, in the case of a drain or private sewer from premises outside its district, refuse to permit a communication to be made except upon such reasonable terms and conditions as may be prescribed or as the Minister may approve. Such terms and conditions may include—

(*a*) compliance with any reasonable requirements of the authority that the premises to be drained shall be sanitary or in a proper state of repair;and

(*b*) such reasonable payment or periodical payment as subject to any special or general directions of the Minister, the authority may see fit to impose.

Sewer connexions in streets and through private land

85. For the purpose of making or maintaining a communication with a public sewer it shall be lawful for a local authority to construct or repair a lateral drain or, with the prior consent of the local authority and in such manner as it may approve, for the owner of any building to construct or repair a drain or private sewer, as the case may be, in, on or over any land, but where such land does not form part of a street, such authority or owner shall give to every owner or occupier of such land reasonable notice and shall be liable to make good or, at the option of the authority or the owner undertaking the works, to pay for any damage done or occasioned by reason of the exercise of the said power:

Provided that the works intended to be carried out in exercise of the powers herein conferred shall not interfere unduly with the amenities or future development of the land or any adjacent land and, in case of dispute, a person aggrieved may appeal in the manner set out in section 132 (*e*) and (*f*).

Procedure in regard to making communication with public sewers

86.—(1) A person who wishes or who is required to have his drains or private sewers made to communicate with a public sewer shall give to the local authority notice of his proposals in writing in such manner as may be prescribed and at any time within twenty-one days of the receipt thereof the authority may by notice to him refuse to make the communication if it appears to the authority that the mode of construction of the drain or private sewer is not in conformity with the rules in force governing the same or that the condition of the drain or private sewer or the matter carried or to be carried thereby is such that the making of the communication would be prejudicial to the sewerage system of the authority and for the purpose of examining the mode of construction and condition of the drain or private sewer the authority may, if necessary, require it to be laid open for inspection.

(2) If no such notice as aforesaid is served on such person, the authority shall, with all reasonable despatch, cause the communication to be made by means of a lateral drain to the public sewer in such manner as may be prescribed or as the authority may decide, but it shall not be obligatory on the authority to make the communication until the estimated cost of the work has been paid to it or security for payment has been given to its satisfaction.

(3) If any payment so made to the authority exceeds the expenses reasonably incurred by it in the execution of the work, the excess shall be repaid by it and, if and so far as those expenses are not covered by the payment made to it, the authority may recover the expenses, or the balance thereof, from the person for whom the work was done.

(4) For the purposes of this section, the making of the communication between a drain or private sewer and a public sewer includes all such work as involves the breaking open of a street and the taking of any steps which the authority may consider necessary for repairing, relaying or safeguarding any pipes, drains, lines or any other works which may be or are liable to be disturbed or damaged by or in the course of making such communication.

(5) Any lateral drain so constructed shall vest in the local authority (but shall not thereby become a public sewer) and the maintenance, repair and renewal of the same from time to time shall be carried out by the authority at the expense of the owner of the premises served by such drain.

(6) Any person (other than a person lawfully acting on behalf of a local authority) who causes a drain or sewer to communicate with a public sewer and any person who fails to comply with or acts in contravention of any of the provisions of this section, shall be liable to a fine of £20, and, whether proceedings have or have

not been taken in respect of that offence, the local authority may close any communication made in contravention of any of such provisions, and recover from the offender any expenses reasonably incurred by it in so doing.

Drainage and Latrines or New Buildings

New buildings to be provided with any necessary drains, etc.

87.—(1) Where plans of a building or of an extension of a building are, in accordance with any building rules, deposited with a local authority, the authority shall reject the plans unless either the plans show that satisfactory provision will be made for the drainage of the building or of the extension, as the case may be, or the authority is satisfied that in the case of the particular building or extension it may properly dispense with any provision for drainage.

In this section the expression "drainage" includes the conveyance, by means of a drain, of soil and waste water and the conveyance of storm water and subsoil water from the building and its curtilage.

(2) A proposed drain shall not be deemed to be a satisfactory drain for the purposes of this section unless it is proposed to be made, as the authority may require, to connect with an available public sewer, or, if there be no such sewer, to discharge into a cesspool, septic tank or other place which the local authority may approve.

Latrine accommodation to be provided for new buildings

88. Where plans of a building or of an extension of a building are, in accordance with any building rules, deposited with a local authority, the authority shall reject the plans unless either the plans and the prescribed particulars deposited therewith show that the prescribed or sufficient and satisfactory latrine accommodation will be provided, or the authority is satisfied that in the case of a particular building or extension it may properly dispense with the provision of latrine accommodation:

Provided that—

(*a*) unless a sufficient water supply and public sewer are available, the authority shall not reject the plans on the ground only that the proposed accommodation consists of or includes an earth-closet or earth-closets or a privy or privies of a type approved by the authority; and

(*b*) if the plans and the deposited particulars show that the proposed building or extension is likely to be used as a factory, workshop, workplace, club, place of entertainment or other place in which persons of both sexes will be employed, or will be in attendance, the authority shall reject the plans, unless either the authority is satisfied that sufficient and satisfactory separate latrine accommodation for persons of each sex will be

provided, or that in the circumstances of the particular case it may properly dispense with the provision of such separate accommodation.

Drainage and Latrines of Existing Buildings

Provisions as to drainage, etc., of existing buildings

89.—(1) If it appears to a local authority that in the case of any building—

(*a*) satisfactory provision has not been, and ought to be, made for drainage; or

(*b*) any cesspool, septic tank, private sewer, drain, soil-pipe, rain-water-pipe, spout, sink or other necessary appliance provided for the building is defective or insufficient; or

(*c*) any cesspool, septic tank or other such work or appliance as aforesaid provided for the building is in such a condition as to be prejudicial to health or a nuisance; or

(*d*) any cesspool, septic tank, private sewer or drain formerly used for the drainage of the building, but no longer used therefor, is prejudicial to health or a nuisance,

it shall by notice require the owner of the building to make satisfactory provision for the drainage of the building, or, as the case may be, require either the owner or the occupier of the building to do such work as may be necessary for renewing, repairing, or cleansing the existing cesspool, septic tank, sewer, drain pipe, spout, sink or other appliances, or for filling up, removing or otherwise rendering innocuous the disused cesspool, septic tank, sewer or drain.

(2) Except in cases where the local authority is satisfied that in the case of any particular building it may properly dispense with any provision for drainage, for the purposes of subsection (1), "satisfactory provision for drainage" means that the drainage system and appliances of the building comply with the rules for the time being in force relating to the same and that the drainage systems of the premises connect with available public sewers, or, if there be no such sewers, discharge into cesspools or other places which the authority may approve.

Replacement of earth-closets, etc., by water-closets

90. If any existing building in the district of a local authority has a sufficient water supply and a public sewer is available, the authority may, subject to section 78 (3), by notice to the owner of the building require that any latrines, other than water-closets, provided for, or in connexion with, the building shall be replaced by water-closets and that the owner shall make an application within a specified time to have his drain made to communicate with a public sewer under section 86, notwithstanding that the latrines are not insufficient in number and are not prejudicial to health or a nuisance.

Building or land having insufficient latrines or latrines so defective as to require reconstruction 30 of 1969

91. If it appears to a local authority, having due regard to the purposes for which any building or land is used, that—

(*a*) such building or land is without sufficient latrine accommodation; or

(*b*) latrines provided for or in connexion with such building or land are in such a state as to be prejudicial to health or a nuisance and cannot without reconstruction be put into a satisfactory condition,

the authority shall, by notice to the owner of the building or land, require him to provide the building or land with such latrines or additional latrines, or such substituted latrines, as the authority may approve and may consider necessary:

Provided that, unless a sufficient water supply and public sewer are available, the authority shall not require the provision of a water-closet except in substitution for an existing water-closet.

Buildings having defective latrines capable of repair

92.—(1) If it appears to a local authority that any latrines provided for or in connexion with a building are in such a state as to be prejudicial to health or a nuisance, but that they can without reconstruction be put into a satisfactory condition, the authority shall by notice require the owner or the occupier of the building to execute such works, or to take such steps by cleansing the latrines or otherwise, as may be necessary for that purpose.

(2) In so far as such a notice requires a person to take any steps other than the execution of works, he shall, if he fails to comply with the notice, be liable to a fine of £5 and to a further fine of £2 for each day on which the offence continues after conviction therefor:

Provided that in any proceedings under this subsection it shall be open to the defendant to question the reasonableness of the authority's requirements, or of its decision to address the notice to him and not to the occupier or, as the case may be, the owner of the building.

Drainage of Buildings in Combination

Drainage of buildings in combination

93.—(1) Where a local authority might under this Part require each of two or more buildings to be drained separately into an existing public sewer, but it appears to the authority that those buildings may be drained more economically or advantageously in combination, the authority may, when the drains of the buildings are first laid, require that the buildings be drained in combination into the existing public sewer by means of a private sewer to be constructed either by the owners of the buildings in such manner as the authority may direct, or, if the authority so elects, by the authority on behalf of the owners:

Provided that an authority shall not, except by agreement with the owners concerned, exercise the powers conferred by this subsection in respect of any building for the drainage of which plans have been previously passed by it.

(2) An authority who makes such a requirement as aforesaid shall fix the proportions in which the expenses of constructing, and of maintaining and repairing, the private sewer are to be borne by the owners concerned, or, in a case in which the distance of the existing public sewer from the curtilage of any of the buildings in question is or exceeds one hundred feet, the proportions in which those expenses are to be borne by the owners concerned and the local authority, and shall forthwith give notice of the decision to each owner affected.

(3) An owner aggrieved by a decision of an authority may appeal to the High Court in such manner as may be prescribed by Rules made by the High Court. Subject to any such appeal, any expenses reasonably incurred in constructing, or in maintaining or repairing, the private sewer shall be borne in the proportions so fixed, and those expenses, or, as the case may be, contributions thereto, may be recovered accordingly by the person, whether the authority or owners, by whom they were incurred in the first instance.

(4) A sewer constructed by a local authority under this section shall not be deemed to be a public sewer by reason of the fact that the expenses of its construction are in the first instance defrayed by the authority, or by reason of the fact that some part of those expenses is borne by it.

Payment of advances for defraying drainage expenses

94.—(1) In any case where it shall appear to a local authority that the owner or occupier of any premises is unable to make a present payment of the amount of the expenses necessary to be incurred for the drainage and sewerage of such premises and the communication thereof with an available public sewer, the local authority may, subject to any general or special directions of the Minister in that behalf, make an agreement in the prescribed form with such owner or occupier for the advance of a sum of money for such necessary expenses at such interest as may be prescribed and for its repayment in such and so many instalments as the authority may determine.

(2) Any sum of money so advanced shall be a charge on the premises and all estates and interests therein in respect of which the advance is made and section 135 shall apply, mutatis mutandis, as if the sum advanced were expenses incurred by a local authority under this Act.

Rules

95. The Minister may make Rules for the purpose of prescribing any matters required to be prescribed including the

method of construction of any cesspool, earth-closet, privy, septic tank or sewer, or any other structure mentioned in this Part, and generally for carrying out the purposes of this Part.

PART XI

The Prevention and Destruction of Mosquitoes

Breeding places of mosquitoes to be nuisances

96. For the purpose of this Act—

(*a*) any collection of water, sewage, rubbish, refuse, ordure, or other fluid or solid substance, which permits or facilitates the breeding or multiplication of animal or vegetable parasites of human beings or domestic animals, or of insects or of other agents which are known to carry such parasites or which may otherwise cause or facilitate the infection of human beings or domestic animals by such parasites;

(*b*) any collection of water in any well, pool, gutter, channel, depression, excavation, barrel, tub, bucket, or any other article, found to contain any of the immature stages of the mosquito;

(*c*) any cesspool, latrine, urinal, dung pit or refuse pit found to contain any of the immature stages of the mosquito,

shall be nuisances liable to be dealt with in the manner hereinbefore provided for the treatment of nuisances.

Yards to be kept free from bottles whole or broken, etc.

97. The occupier or owner of any premises shall keep such premises free from all bottles, whole or broken, whether fixed on walls or not, tins, boxes, calabashes, earthenware vessels, shells, or any other articles, and trees, standing or fallen, and tree stumps, in such a state or position as to be likely to retain water. Any occupier or owner of any premises failing to comply with this section shall be guilty of an offence and liable to a fine of £5.

Clearance of bush or long grass

98. No person shall permit any premises or lands owned or occupied by him or over which he has control to become so overgrown with bush or long grass as, in the opinion of a medical officer of health, to be likely to harbour mosquitoes.

Wells, etc., to be covered

99. It shall not be lawful for any person to keep, or for the occupier or owner of any premises to allow to be kept thereon, any collection of water in any well, barrel, tub, bucket, tank or other vessel intended for the storage of water, unless such well, barrel, tub, bucket, tank or other vessel is fitted with a sufficient cover, the said cover to be kept in good repair and properly protected or screened to the satisfaction of a medical officer of health so as to prevent the ingress of mosquitoes into the same. Any person offending against this section shall be liable to a fine

of £5, and, after notice received from a local authority or a medical officer of health, to a further fine of £1 for each day during which he shall make default in complying with such notice:

Provided that this section shall not apply to the keeping of water in a swimming pool the use of which has been authorized in writing by a local authority or medical officer of health.

Cesspits to be screened or protected

100. The occupier or owner of any premises upon or attached to which is any cesspool or septic tank shall cause such cesspool to be properly protected or screened to the satisfaction of a medical officer of health so as to prevent the ingress of mosquitoes. Any persons offending against this section shall be guilty of an offence and liable to a fine of £5, and to a further fine of £1 for each day during which he shall continue to make default after notice received from the local authority to comply with this section.

Larvae, etc., may be destroyed

101.—(1) Where any of the immature stages of the mosquito are found on any premises it shall be lawful for the local authority or a health officer to take immediate steps to destroy any such immature stages of the mosquito.

(2) It shall be lawful for the local authority or a health officer to take such action as is necessary to render any pools or collections of water unfit to become breeding places for mosquitoes.

Mere presence of mosquito larvae an offence

102. Notwithstanding any provision of this Act, the occupier or owner of any house or premises or the owner or person having the charge of any vessel, timber, cask, or other articles in or about which there is any collection of water found by a health officer, or any person authorized by him, to contain any of the immature stages of the mosquito, shall be liable in respect of each and every such collection of water to a fine of £5.

PART XII

Protection of Foodstuffs

Construction and regulation of buildings used for the storage of foodstuffs

103.—(1) All warehouses or buildings of whatever nature in regular use for the storage of foodstuffs for trade purposes shall be constructed of such materials and in such manner as shall render such warehouses or buildings rat-proof.

(2) Where any warehouse or building intended for the storage of foodstuffs as aforesaid has fallen into a state of disrepair, or does not afford sufficient protection against rat invasion on account of its design or construction or by reason of the materials used being defective, a local authority may by written notice require the owner to effect such repairs and alterations as the

notice shall prescribe within a time to be specified in the said notice, and if such requirement is not complied with the local authority may enter upon the premises and effect such repairs and alterations, and may recover all costs and expenses incurred from the owner.

(3) Where in the opinion of a medical officer of health any such foodstuffs within a warehouse or building are insufficiently protected against rats, vermin or pollution the owner thereof shall observe all written instructions and directions of the medical officer of health within a time to be specified in the notice for the better protection of the same, and any owner failing so to do shall be guilty of an offence:

Provided that in the case of any prosecution under this section the court may in its discretion acquit the accused if it is satisfied that all reasonable steps have been taken to exclude rats having regard to all the circumstances of the case.

No person to reside or sleep in any room in which foodstuffs are stored, etc.

104.—(1) No person shall reside or sleep in any kitchen or room in which foodstuffs for sale are prepared or stored for sale.

(2) If it appears to a medical officer of health that any kitchen or room is being used contrary to this section, or that any part of the premises adjoining the room in which foodstuffs are stored or exposed for sale is being used as a sleeping apartment under such circumstances that the foodstuffs are likely to be contaminated or made unwholesome, he may serve upon the offender or upon the owner of the house or upon both a notice calling for such measures to be taken as shall prevent the improper use of such kitchen and premises within a time to be specified in the notice, and if such notice be not complied with the party upon whom it was served shall be guilty of an offence.

PART XIII

Water and Food Supplies

Duty of local authorities as to polluted water supplies

105. It shall be the duty of every local authority to take all lawful, necessary and reasonably practicable measures—

(*a*) for preventing any pollution dangerous to health of any supply of water which the public within its district has a right to use and does use for drinking or domestic purposes (whether such supply is derived from sources within or beyond its district); and

(*b*) for purifying any such supply which has become so polluted,

and to take measures (including if necessary, proceedings at law) against any person so polluting any such supply or polluting any stream so as to be a nuisance or danger to health.

Sale of unwholesome food prohibited

106.—(1) No person shall sell or expose for sale or bring into Malaŵi or into any market or have in his possession without reasonable excuse any food for man in a tainted, adulterated, diseased or unwholesome state, or which is unfit for use, or any food for any animal which is in an unwholesome state or unfit for its use and any medical officer of health, veterinary officer, health inspector, or any administrative officer or police officer of or above the rank of a sub-inspector may seize any such food, and any magistrate, on the recommendation of a health officer or veterinary officer, may order it to be destroyed, or to be so disposed of as to prevent it from being used as food for man or animal as the case may be.

(2) No person shall collect, prepare, manufacture, keep, transmit or expose for sale any foodstuffs without taking adequate measures to guard against or prevent any infection or contamination thereof.

Seizure of unwholesome food

107. Any health officer or local authority or person duly authorized by such in writing, may, at any time between the hours of 6 a.m. and 6 p.m. enter any shop or premises used for the sale or preparation for sale, or for the storage of food, to inspect and examine any food found therein which he shall have reason to believe is intended to be used as food for man, and should such food appear to such officer or authority to be unfit for such use, he may seize the same, and any magistrate may order it to be disposed of as in the last foregoing section. The onus of proving that such food was not intended to be used as food for man shall be upon the person charged.

Penalty

108. Any person in whose possession there shall be found any food liable to seizure under sections 106 and 107 shall be liable to a fine of K200 and to imprisonment for six months.

Rules
43 of 1971
3 of 1975

109.— (1) The Minister may make Rules regarding all or any of the following matters—

(*a*) the inspection of dairy stock and of animals intended for human consumption, and of dairies, stock-sheds or yards, milk vessels and slaughterhouses, and of factories, stores, shops and any other places where any article of food is manufactured or prepared or kept;

(*b*) the taking and examination of samples of milk, dairy produce, meat or other articles of food and the removal or detention, pending examination or inquiry, of animals or articles which are suspected of being diseased or unsound or unwholesome or unfit for human consumption, and the seizure and destruction, or treatment or disposal so as not to endanger health, of any such article which is found to be unwholesome

or unsound or diseased or infected or contaminated, and of diseased animals sold or intended or offered or exposed for sale for human consumption;

(*c*) the veterinary inspection of dairy stock, the sampling and bacteriological examination of milk and dairy produce and the prevention of the sale, or the keeping, transmission, or exposure for sale of milk from a diseased or infected animal;

(*d*) the duties of dairymen in connexion with the occurrence of infectious disease amongst persons residing or employed in or about their premises and the furnishing by them of the names and addresses of their customers, and in connexion with reporting the occurrence, in animals on the premises or any dairy cattle, of diseases which are communicable to man and of any disease of the udder;

(*e*) the inspection and examination of, and the regulation, inspection and supervision of the manufacture, preparation, storage, keeping and transmission of any article of food intended for sale or for export from Malaŵi and the prohibition of the manufacture, preparation, storage, keeping, transmission, sale or export from Malaŵi of any such article which is, or contains, an ingredient which is diseased or unsound or unfit for human consumption, or which has been exposed to any infection or contamination;

(*f*) the prohibition of the importation into Malaŵi of any article of food which is not clean, wholesome, sound and free from any disease, infection or contamination, and the seizure and disposal by destruction or otherwise of any such article so imported;

(*g*) the preparation, manufacture, or importation and the storage and sale of or trade in articles of food which are packed in air-tight receptacles or are otherwise preserved, and the marking of any such article or receptacle with the date of manufacture or preparation, or with other information;

(*h*) the prohibition of the importation, sale, possession or use of vessels which are intended to contain milk or any liquid or semi-solid article of food and which are rusty or defectively soldered or are made of material containing in any part likely to come in contact with the contents, lead or other poisonous or injurious substance in such proportion as to be likely to

cause injury or danger to health, and fixing the maximum proportions of such substances which may be used in such vessels;

(*i*) the licensing, regulation and inspection of hotels, restaurants, cafes, and eating-houses;

(*j*) the licensing, regulation and inspection of the preparation and sale of foods by hawkers;

(*k*) the licensing, regulation and inspection of aerated water factories and ice manufacture;

(*l*) the licensing, regulation and inspection of the premises of fishmongers

(*m*) the licensing, regulation and inspection of the premises of butchers and retailers of meat;

(*n*) the licensing, regulation and inspection of bakehouses and bakeries;

(*o*) the fixing of fees and the prescribing of forms in regard to any matters prescribed.

(2) Before making Rules relating to dairies, dairy stock, dairymen, milk and milk products, the Minister shall act on the advice of the Minister responsible for agriculture and natural resources.

Fixing of standards for foodstuffs or other articles

110.—(1) The Minister may specify by order standards of quality, composition and condition, and minimum standards, in respect of any foodstuffs, goods or other articles.

(2) Any person who imports, manufactures, sells or barters any foodstuffs, goods or other articles which do not comply with any standard specified in respect thereof by an order made under subsection (1) shall be guilty of an offence.

Medical officer of health's powers to make orders for protection of public health

111. A medical officer of health, if he reasonably considers such action necessary for the protection of the public health, may—

(*a*) prohibit the employment by any dairyman or other person in connexion with the collection, preparation, storage, distribution or sale of milk or dairy produce or any article of food of any person who has been proved to be a carrier of the infection of typhoid or enteric fever or other infectious disease, while so infected;

(*b*) make orders requiring the closing of any stock-shed or yard or dairy, or the exclusion from any stock-shed or dairy premises of any animal the milk from which is believed to have conveyed or to be liable to convey any infectious disease.

Power to make orders

112. The Minister, may make orders—

(*a*) prohibiting the sale or exposure for sale of milk by any dairyman who has been three times convicted of offences under this Part or any Rules made thereunder;

(*b*) requiring the medical examination of any persons in any premises in which any milk or dairy produce or other article of food intended for sale is collected, kept, sold or exposed for sale, or of any person who is or has been engaged in the collection, preparation, keeping, conveyance or distribution of any such milk or produce or article.

PART XIV

CEMETERIES

Cemeteries and crematoria to be appointed

113.—(1) It shall be lawful for the Minister to select and appoint and to notify in the *Gazette* sufficient and proper places to be the sites of, and to be used as, cemeteries or crematoria for townships and rural areas; and it shall be obligatory where such cemeteries or crematoria exist to bury or cremate the dead in such cemeteries or crematoria in conformity with the provisions of Rules made by the local authority concerned. Any person who shall be guilty of a breach of any such Rule shall be liable to a fine of £75.

(2) No person shall export any corpse from Malaŵi, or cremate any corpse within Malaŵi, without, in the case of export, the written permission of the Minister, or, in the case of cremation, of a medical officer first had and obtained.

List of authorized cemeteries

114. All cemeteries now being used as such and such other cemeteries as may be authorized by the Minister, notice whereof shall be published in the *Gazette*, shall be deemed authorized cemeteries.

Permit to exhume

115.—(1) Subject to this Act it shall not be lawful to exhume any body or the remains of any body which may have been interred in any authorized cemetery or in any other cemetery, burial ground or other place without a permit.

(2) (*a*) Such permit shall be granted only to the legal personal representative or next of kin of the person buried, or to his or their duly authorized agent.

(*b*) Such permit may be granted by the Minister in respect of any body or the remains of any body interred in any cemetery or burial ground or any other place.

(3) The Minister may prescribe such precautions as he may deem fit as the condition of the grant of such permit, and any person who shall exhume any body or the remains of any body contrary to this Act, or who shall neglect to observe the precautions prescribed as the condition of any such permit, shall be liable to a fine of £150:

Provided always that nothing herein contained shall be deemed to affect the right of a coroner to order the exhumation of a body or the remains of any body for the purpose of holding an inquiry into the cause of death of any person.

Exhumation needed for execution of public works

116.—(1) It shall be lawful for the Minister whenever he shall deem it expedient for the execution of any public work or any public purpose, to order removal of any body or the remains of any body from any grave whether in an authorized cemetery or elsewhere, and by order under his hand to direct such removal to be made in such manner as he shall think fit.

(2) No such order shall be made in respect of any grave situated in an authorized cemetery until six months' notice of the intention to make it shall have been given by notification in the *Gazette*. Copies of such notice shall be posted at or near the grave, and copies shall be sent by post in a registered letter to the legal personal representative or next of kin of the person buried, if his or their address can be ascertained. Such copies shall be accompanied by a translation in the language of the race to which such personal representative or next of kin belongs.

(3) When an order is made directing a removal from any grave aforesaid elsewhere than in an authorized cemetery, due notice of such order shall, so far as it is possible to do so, be given to the legal personal representative or next of kin of the person buried before the work of removal is undertaken and to the local authority of the area in which the grave is situated.

(4) The Minister shall cause proper and fitting arrangements to be made for the re-interment of any body or remains of any body removed under this section, and for the removal and re-erection of any monument, all charges in connexion therewith being defrayed out of the public revenue.

Record of permit for exhumation

117. There shall be kept at the office of the Registrar General of Births, Deaths and Marriages, a record of every permit granted and of every order made under the last two sections

other than an order made by a magistrate. Such record shall contain particulars, so far as the same can be ascertained, of the race, nationality, name, sex and age of the persons buried, date of burial and of the place of original burial and re-burial or removal. Such record shall be open during office hours to inspection by any person.

Closing of cemeteries by Minister

118. It shall be lawful for the Minister to notify in the *Gazette* that any authorized crematorium or cemetery shall, from a time in such notification to be specified, be closed, and the same shall be closed accordingly and whoever, after the said specified time, shall burn or bury any body or the remains of any body in the said crematorium or cemetery shall be liable to a fine of £75.

Cremations in places where no crematorium provided

119. In places where no crematorium is provided, it shall be permissible for cremations to be carried out at such places and under such conditions as are laid down by the local authority with the concurrence of the medical officer of health.

PART XV

General

Basements not to be occupied without permission

120. It shall not be lawful without the written permission of the local authority on the advice of the medical officer of health to live in, occupy or use or to let or sublet, or to suffer or permit to be used any basement for habitation, nor to use such basement as a shop, office, workshop, or factory or for the preparation or storage of food, and no basement shall be used unless it is well lit and ventilated and is free from damp and is rendered ratproof to the satisfaction of a medical officer of health.

Lodging-houses

121. The Minister may make Regulations for the conduct and inspection of lodging-houses and no person shall open or keep open a lodging-house unless the house is registered and the keeper thereof is licensed by the local authority.

Nursing homes

122.—(1) No person shall open or keep open a nursing home, maternity home, mental home, convalescent home, private hospital, infirmary or any institution where invalids, mental patients or convalescents are treated or received upon payment of fees or charges unless the premises thereof are approved by the Secretary for Health and a permit has been obtained from him. Permits granted shall be in accordance with any conditions laid down by the Secretary for Health and shall be liable to cancellation by him on violation or non-fulfilment of any of the conditions laid down.

(2) The Secretary for Health may authorize a medical practitioner on his behalf to visit any such premises as in this

section mentioned and to report to the Secretary for Health upon any matter or thing connected with the premises or the use thereof.

(3) Any person who knowingly obstructs an authorized medical practitioner in any such inspection as is authorized by the Secretary for Health shall be guilty of an offence.

Maternity and child welfare

123. The Minister may make Rules for the proper control and administration of clinics or institutions open or kept open by any person for the welfare and care of children or the care of expectant or nursing mothers.

Regulation of public washermen

124. Any local authority may by public notice prohibit the washing of clothes by washermen in the exercise of their calling except at public wash-houses or at such other places as may be appointed for the purpose.

Control of irrigated land

125.—(1) Where it is shown to the satisfaction of the Minister, that the growing of any crop or the irrigation of any land in any area is unhealthy or insanitary, the Minister may, by notice published in the *Gazette*, prohibit the growing of any crop or the irrigation of any land within such area, and may cause any permit or authorization issued for the diversion, abstraction or use of water for such purpose to be cancelled upon such terms as may appear to him equitable.

(2) The Minister may make Rules for ensuring that the health of the inhabitants of a district may be safeguarded in respect of—

(*a*) the prevention of pools of standing water;

(*b*) the drainage and control of such pools when they exist;

(*c*) the inspection, repair and cleansing of open channels, canals and drains.

Supervision of importation or manufacture of vaccines, etc.

126.—(1) The Minister may provide for the inspection, sampling and examination, by officers of the Ministry of Health, of vaccines, vaccine lymphs, sera, and similar substances imported into or manufactured in Malaŵi and intended to be used for the prevention or treatment of human diseases, and may prohibit the importation, manufacture, or use of any such substance which is considered to be unsafe or to be liable to be harmful or deleterious.

(2) The Minister may make such Rules as he may consider necessary for properly carrying out this section.

PART XVI

Miscellaneous Provisions

Authentication of notices, etc.

127.—(1) Any notice, order, consent, demand, complaint or other document which is required or authorized by or under this Act may be signed or authenticated in the case of a local authority by—

(*a*) the secretary or executive officer;

(*b*) the surveyor, engineer, health officer or financial officer of or acting on behalf of the authority as respects documents relating to matters within their respective provinces;

(*c*) any other officer authorized by the authority in writing to sign documents of the particular kind or the particular document as the case may be.

(2) The Minister may by Rule prescribe the form of any notices, orders, consents, demands or other documents to be used for any of the purposes of this Act and if forms are so prescribed those forms or forms to a like effect may be used in all cases to which those forms are applicable.

Service of notices, etc.

128. Any notice, court summons, order or other document required or authorized to be served or issued under this Act may be served by delivering the same at the residence of the person to whom it is addressed, or, where it is addressed to the owner or occupier of premises, by delivering the same, or a true copy thereof, to some person on the premises, or, if there is no person on the premises who can be served, by fixing the same on some conspicuous part of the premises; it may also be served by post in a registered letter, and if so served shall *prima facie* be deemed to have been served at the time when the letter containing the same would be delivered in the ordinary course of post, and in proving such service it shall be sufficient to prove that the notice, court summons, order or other document was properly addressed and put in the post.

Powers and duties of the officers of the Ministry of Health

129. Any duties imposed or powers conferred by this Act on medical officers of health or health officers may be carried out or exercised by the Secretary for Health or any person designated by him for that purpose.

Defect in form not to invalidate notices, etc.

130. No defect in the form of any notice or order made under this Act shall invalidate or render unlawful the administrative action taken or be a ground for exception to any legal proceedings which may be taken in the matter to which such notice or order relates, provided the requirements thereof are substantially and intelligibly set forth.

Powers of entry and inspection of premises and penalties for obstruction

131.—(1) Any health inspector, medical officer of health, administrative officer, or police officer of the rank of subinspector or above, or any person generally or specially authorized in writing by the Secretary for Health, may, at any reasonable hour for the proper performance of the duty, enter any land or premises to make any inspection or to perform any work or to do anything which is required or authorized by this Act, if such inspection, work or thing is necessary for or incidental to the performance of his duties or the exercise of his powers.

(2) Any person who fails to give or refuses access to any officer, inspector, or person mentioned in or authorized under subsection (1), if he requests entrance on any land or premises; or obstructs or hinders him in the execution of his duties under this Act; or who fails or refuses to give information that he may lawfully be required to give to such officer, inspector or person; or who gives to such officer, inspector or person false or misleading information knowing it to be false or misleading; or who prevents the owner or any of his servants or workmen from entering any land or dwelling or premises for the purpose of complying with any requirement under this Act, shall be guilty of an offence.

Provisions as to appeals against and the enforcement of notices requiring execution of works

132. The following provisions of this section shall, subject to any express modifications specified in the section under which the notice is given, apply with respect to appeals against, and the enforcement of, notices requiring the execution of works under this Act—

(*a*) Any such notice shall indicate the nature of the works to be executed, and state the time within which they are to be executed.

(*b*) Any person served with such a notice as aforesaid may appeal in the manner hereinafter provided on any of the following grounds which are appropriate in the circumstances of the particular case—

(i) that the notice or requirement is not justified by the terms of the law under which it purports to have been given or made;

(ii) that there has been some defect or error in, or in connexion with, the notice;

(iii) that the works required by the notice to be executed are unreasonable in character or extent;

(iv) that the time within which the works are to be executed is not reasonably sufficient for the purpose;

(v) that the notice might lawfully have been served on the occupier of the premises in question instead of on the owner, or on the owner instead of on the occupier, and that it would have been equitable for it to have been so served.

(*c*) If and in so far as an appeal under this section is based on the ground of some informality, defect or error in or in connexion with the notice, the appeal shall be dismissed, if it is shown that the informality, defect or error was not a material one.

(*d*) Where the grounds upon which an appeal under this section is brought include a ground specified in paragraph (*b*) (v), the appellant shall serve a copy of his notice of appeal on each other person referred to, and in the case of any appeal under this section may serve a copy of his notice of appeal on any other person having an estate or interest in the premises in question, and on the hearing of the appeal an order may be made with respect to the person by whom any work is to be executed or as to the proportions in which any expenses which may become recoverable by the authority are to be borne by the appellant and such other person.

In the exercise of the powers conferred by this subsection, regard shall be had as between an owner and an occupier, to the terms and conditions, whether contractual or statutory, of the tenancy and to the nature of the works required.

(*e*) Subject to this Act, any appeal in pursuance of this section shall be preferred, in the case of notices requiring the execution of works issued by a local authority, to the court of a magistrate of the first or second class exercising jurisdiction in the place where the premises are situated in pursuance of any Rules made in that behalf by the High Court.

(*f*) The time within which any such appeal may be brought shall be two months from the date on which notice requiring the works was served upon the person desiring to appeal.

Execution of works

133.—(1) Subject to a right of appeal, if the person required by the notice to execute works fails to execute the works indicated within the time thereby limited, the local authority may itself execute the works and recover from that person the expenses reasonably incurred by it in so doing and, without prejudice to its right to exercise that power, he shall be liable to a fine of £5, and to a further fine of £2 for each day on which the default continues after conviction therefor.

(2) In proceedings by a local authority against the person served with the notice for the recovery of any expenses which the authority is entitled to recover from him, it shall not be open to him to raise any question which he could have raised on an appeal against such notice.

Certain expenses recoverable from owners to be a charge on the premises; power to accept payment by instalments

134.—(1) Where a local authority has incurred expenses for the repayment of which the owner of the premises in respect of which the expenses were incurred is liable under this Act, or by agreement with the authority, those expenses, together with interest from the date of service of a demand for the expenses, may be recovered by the authority from the person who is the owner of the premises at the date when the works are completed, or, if he has ceased to be the owner of the premises, before the date when a demand for the expenses is served, either from him or from the person who is the owner at the date when the demand is served, and, as from the date of the completion of the works, the expenses and interest accrued due thereon shall, until recovered, be a charge on the premises and on all estates and interests therein. The charge hereby created shall be deemed to extend to any expenses lawfully paid to the Deeds Registrar in connexion with the registration or withdrawal of the charge in pursuance of the other provisions of this section.

(2) The charge created by subsection (1) shall be in favour of the local authority as the case may be if such authority is a body corporate entitled to hold land and in all other cases the charge shall be in favour of the Minister and the local authority or the Minister shall have all powers and remedies conferred on mortgagees by the Deeds Registration Act and any other law for the time being in force.

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(3) The local authority shall, prior to the commencement of any work the cost of which will constitute a charge on the land on or in respect of which the same is done, serve on the Deeds Registrar a notice stating that such work is about to be commenced and specifying the property that will be the subject of such charge and thereupon the Registrar shall enter such notice in the appropriate Volume and Folio of the Register Book (hereinafter referred to as "the Register").

(4) On the completion of such work the said local authority shall serve on the Deeds Registrar a further notice specifying the amount in respect of which such land by virtue of subsection (1) stands charged and thereupon the Deeds Registrar shall protect the interest of the said local authority or of the Minister, as the case may be, on the Register in such manner as shall appear to him appropriate.

(5) A notice or entry on the Register pursuant to subsection (3) or (4) shall be deemed to constitute actual notice to all persons that a charge against the land comprised in the Volume and Folio of the Register in which such notice or entry appears is pending or existent but such charge shall be void as against a bona fide purchaser for money or moneys worth of a legal estate in such land unless the notice referred to in subsection (3) has been served on the Deeds Registrar before the date of lodgment

with him of the instrument of transfer executed in pursuance of such purchase.

(6) In making any entry on the Register pursuant to subsection (4) the Deeds Registrar shall accept as conclusive the statement in writing relating to such charge of any duly constituted officer of any such local authority.

(7) Any person having any registered estate in land in respect of which any such notice or entry appears on the register or any interest protected by the entry of a *caveat* may summon such local authority, or the Attorney General on behalf of the Minister as the case may be, to appear before the High Court and show cause why such notice or entry should not be removed from the Register and such Court may make such order in the premises either *ex parte* or otherwise and as to costs as to it seems fit.

(8) A local authority may, subject to the approval of the Minister of Finance, or some other officer whom the Minister may charge with such duty, agree that any expenses recoverable by the authority under this section shall be payable with interest by instalments within such period as it thinks fit, until the whole amount is paid. Any such instalments and interest, or any part thereof, may be recovered from the owner or occupier for the time being of the premises in respect of which the expenses were incurred, and, if recovered from the occupier, may be deducted by him from the rent of the premises:

Provided that an occupier shall not be required to pay at any time any sum in excess of the amount which was due from him on account of rent, or has become due from him on account of rent since the date on which he received a demand from the authority together with a notice requiring him not to pay rent to his landlord without deducting the sum so demanded.

(9) The rate of interest chargeable under subsection (1) or subsection (8) shall be such rate as the Minister may determine.

(10) Every local authority shall keep at its offices a register of all expenses incurred and advances made under this section, and shall show in such register the total amounts thereof, the instalments in which the same are payable, the land or premises in respect of which the same have been incurred or made, and the balances for the time being outstanding; and shall keep such register open at all reasonable times to the inspection of any person, free of charge. Such register and any extract therefrom, certified by any other person authorized by the local authority in that behalf, shall, in any proceedings for the recovery of such expenses, advances or interest thereon or any instalments thereof, be *prima facie* evidence of the matters contained therein.

Power to make a charge in respect of establishment expenses

135. Where under this Act a local authority is empowered to execute works and to recover from any person the expenses incurred by it in so doing, it may include in, and recover as part of, the expenses an additional sum to cover customs duties and other charges and departmental expenses on such scale or in such manner as may be prescribed or as the Minister may direct.

Recovery of expenses, etc.

136.—(1) Any sum which a local authority is entitled to recover under this Act and with respect to the recovery of which no other provision is made, may be recovered as a simple contract debt in any court of competent jurisdiction.

(2) The time within which summary proceedings may be taken for the recovery of any such sums shall, except where otherwise expressly provided, be reckoned from the date of the service of a demand therefor.

Protection of local authorities and their officers from personal liability

137. No matter or thing done and no contract entered into by any local authority, and no matter or thing done by any member of any such authority or by any officer of or acting on behalf of such authority or other person whomsoever acting under the direction of such authority, shall, if the matter or thing were done or the contract entered into *bona fide* for the purpose of executing this Act, subject any member, officer or person as aforesaid personally, to any action, liability, claim or demand whatsoever.

Penalties where not expressly provided

138. Any person guilty of an offence against or contravention of, or default in complying with, any provision of this Act or any Rules made hereunder, shall, if no penalty is expressly provided for such offence, contravention or default, be liable to a fine of £100, and if the offence, contravention or default is of a continuing nature, to a further fine of £5 for each day during which he shall make default.

Liability of secretary or manager of company

139. Where a contravention of any of the provisions of this Act or any Rule made hereunder is committed by any company or corporation, the secretary or manager thereof may be summoned and may be held liable for such contravention and the consequences thereof.

Proceedings against several persons

140. Where proceedings under this Act are competent against several persons in respect of the joint act or default of such persons, it shall be sufficient to proceed against on or more of them without proceeding against the others.

Prosecution

141.—(1) A local authority may, by any of its officers or by any person generally or specially authorized in writing by such local authority, prosecute for any contravention of, offence against, or default in complying with, any provision of this Act

or any Rule made or deemed to be made hereunder, if the contravention, offence, or default is alleged to have been committed within or affects its district.

(2) Where an officer or person authorized by a local authority has under subsection (1) prosecuted any person for any contravention of, offence against or default in complying with any provision of this Act, or any Rule made or deemed to be made hereunder and the accused has been convicted of a contravention, offence or default, all fines and penalties imposed may be recovered by such officer or person authorized by a local authority as a civil judgment debt.

Power of local authority outside its district

142. Nothing in any law specially governing any local authority shall be construed as preventing such local authority from exercising any power or performing any duty under this Act by reason only that in exercising such power or performing such duty it must do some act or thing or incur expenditure outside its district.

Power to make Rules for purposes of this Act

143.—(1) The Minister may make Rules for any purpose having as its object the preservation of health or prevention of disease, and generally for the carrying out of the purposes of this Act.

(2) Without prejudice to the generality of the foregoing power, the Minister may make rules regarding the following matters—

(*a*) the licensing, regulation and inspection of the premises of hairdressers;

(*b*) the licensing, regulation and inspection of laundries and wash-houses;

(*c*) the regulation, inspection and control of cemeteries and crematoria;

(*d*) the disposal and burial of corpses;

(*e*) the fixing of fees and the prescribing of forms in regard to any matters prescribed.

Saving 5 of 1932

144. All Rules, orders, proclamations, notices and appointments made under the Public Health Ordinance, 1932 (now repealed) shall, in so far as they are not inconsistent with this Act, be deemed to have been made hereunder, and shall continue in force until replaced by Rules, orders, proclamations, notices and appointments made under this Act.

SUBSIDIARY LEGISLATION

G.N.
144/1948
230/1949
127/1950
211/1950
178/1952
268/1970
88/1971

APPLICATION OF ACT NOTICES

under s. 2

It has been directed that the provisions of the Act specified in the first column of the Schedule hereto shall apply in whole or in part to Malaŵi as specified in the second column of the said Schedule—

SCHEDULE

Provisions of the Act		*Malaŵi, or part thereof*
The whole, except section 120 ..		Those areas which are within a radius of two miles from the Monkey Bay Hotel, in the Mangochi District
PART I	.. ..	The whole of Malaŵi
PART II	.. ..	The whole of Malaŵi
PART III	.. ..	The whole of Malaŵi
PART IV	.. ..	The whole of Malaŵi
PART V	.. ..	The whole of Malaŵi
PART VI	.. ..	The whole of Malaŵi
PART VII	.. ..	The whole of Malaŵi
PART VIII	.. ..	The whole of Malaŵi
PART IX—	Sections 59–61 inclusive; 62 subsections (1)–(4) inclusive, (9), (10), (13), (15), (17), (19), and (23); 63–70 inclusive; and 72–77 inclusive	The whole of Malaŵi
	Section 62 subsections (5)–(8) inclusive, (11), (12), (14), (16), (18), (20), (21), and (22); and 71	All Municipalities, Townships and the settled areas of Chinteche, Mzimba, Nkhotakota, Kasungu, Ncheu, Chiradzulu, Mulanje, Luchenza, Chikwawa
PART X—	Sections 79–94 inclusive	Those areas which are within a radius of four miles from the
PART XI—	Sections 96–100 inclusive and 102	District Commissioner's office at Zomba in the Zomba District
PART XV—	Sections 120, 121, 124 and 125	The settled areas of the Thyolo District
PART X—	Sections 78 and 95 ..	The whole of Malaŵi
PART XI—	Sections 96–100 inclusive and 102	Those areas which are within a radius of one mile from the Cape Maclear Hotel in the Mangochi District
	Section 101	The whole of Malaŵi

PART XII	The whole of Malaŵi
PART XIII	The whole of Malaŵi
PART XIV	The whole of Malaŵi
PART XV— Sections 122,123 and 126	The whole of Malaŵi
PART XVI	The whole of Malaŵi

PUBLIC HEALTH (INFECTED AREAS) (HUMAN TRYPANOSOMIASIS) RULES

G.N. 196/1952 197/1954(F) 224/1963

under s. 31

1. These Rules may be cited as the Public Health (Infected Areas) (Human Trypanosomiasis) Rules. Citation

2. In these Rules, the expression "infected area" means any part of Malaŵi which has been declared by the Minister to be an infected area by reason of the disease of human trypanosomiasis under section 31 of the Act. Interpretation

3. The Secretary for Health, a medical officer, and any person authorized in writing by the Secretary for Health or a medical officer, may— Powers of officials

(*a*) require any person residing in an infected area who is suffering or suspected to be suffering from human trypanosomiasis to submit to medical examination;

(*b*) require any person who enters or leaves an infected area to submit to medical examination;

(*c*) cause any person found to be suffering from human trypanosomiasis or who has been in contact with any person suffering from human trypanosomiasis to be removed to a hospital or to any other place designated by the Secretary for Health for the reception of such persons;

(*d*) require any person found to be suffering from human trypanosomiasis to undergo medical treatment for that disease for such period of time and at such place as a medical officer may direct;

(*e*) provide any medical aids which may be required for the treatment of persons suffering from human trypanosomiasis, including the provision of emergency hospitals, camps and stations;

(*f*) require all persons resident in an infected area or in any part thereof to attend at such place as may be specified by the Secretary for Health for registration;

(*g*) require the owner of any vehicle normally kept in an infected area to register such vehicle at such place and in such manner as may be specified by the Secretary for Health;

(*h*) restrict the movement of vehicles or animals within an infected area;

(*i*) specify the areas in which wood may not be cut in an infected area;

(*j*) prohibit or control the entry of persons into an infected area who are not normally resident therein;

(*k*) prohibit or control any hunting within an infected area;

(*l*) require vehicles and persons to stop at any place indicated for the purpose and to submit to disinsectization to prevent the spread of tsetse flies.

Entrance into places within infected area

4. The Secretary for Health, a medical officer and any person authorized in writing by the Secretary for Health or a medical officer, may at all times enter into any building or place within an infected area for any purpose connected with the performance of any power conferred by rule 3.

Offences

5. Any person who—

(*a*) obstructs the Secretary for Health, a medical officer, or a person duly authorized by the Secretary for Health or a medical officer under these Rules, in the exercise of any power conferred by these Rules; or

(*b*) fails, neglects or refuses to comply with any requirement made under these Rules; or

(*c*) does any act or thing which under these Rules is forbidden to be done,

shall be liable to a fine of £25.

G.N. 196/1952 197/1952

APPLICATION OF RULES

under s.31

It has been ordered in terms of section 31 of the Act that the Public Health (Infected Area) (Human Trypanosomiasis) Rules shall apply to the whole of the area declared to be an infected area by Government Notice 195 /1952 (below).

DECLARATION OF INFECTED AREA

G.N. 195/1952

under s. 31

Whereas it appears that the area of Chief Chapananga, the boundaries of which area are described in the Schedule hereto, is a part of Malaŵi which is threatened by human trypanosomiasis, such area has been declared to be an infected area.

SCHEDULE

Commencing at beacon No. 39 on the Malaŵi-Mozambique Border, by the Chikwawa District northern boundary in an easterly direction to a point on the summit of Kapirimbewe Hill; thence by a straight line in a southerly direction to the source of Mtumba Stream; thence by the Mtumba Stream downstream to the point where it is crossed by the Blantyre-Tete telegraph line; thence by a straight line in a south-westerly direction to a point on the Mwanza River half a mile west of Mwazaonga Village; thence by the Mwanza River downstream to a point one mile west of the south-western corner of the Kasindula Estate of the Central Africa Company, Limited (Deed No. 12496); thence by a straight line in a southwesterly direction to the confluence of the Nkombezi-wa-Fodia and Makanga Rivers; thence by the Makanga River upstream to its source; thence by a straight line due west to the Malaŵi-Mozambique Border; thence by the Malaŵi-Mozambique Border in a general north-westerly direction to the point of commencement.

YELLOW FEVER (PREVENTION OF INTRODUCTION) ORDER

G.N. 182/1951 224/1963

under s.38

1. This Order may be cited as the Yellow Fever (Prevention of Introduction) Order. Citation

2. For the purposes of this Order— Interpretation

(*a*) "sanitary authority" means the Secretary for Health or any person authorized by him to perform the duties of sanitary authority;

(*b*) an aircraft shall be deemed to have been in contact with another aircraft if, prior to its arrival at any place in Malaŵi, it has been on an aerodrome while such other aircraft was on that aerodrome;

(*c*) "sanitary aerodrome" means an aerodrome which has been declared as such by notice in the *Gazette*;

(*d*) "authorized aerodrome" means any one of the aerodromes mentioned in the First Schedule;

(*e*) "scheduled place" means any country or part of a country within an endemic zone as delineated in the Second Schedule;

(*f*) "valid inoculation certificate" means a certificate in the form prescribed in the International Sanitary Regulations, 1965, which certifies—

(i) that the certificate is valid only if the vaccine used has been approved by the World Health Organization and if the vaccinating centre has been designated by the health administration for the territory in which that centre is situated;

(ii) that the validity of the certificate shall extend for a period of 10 years beginning 10 days after the date of vaccination or in the event of a revaccination, within such period of 10 years from the date of that revaccination.

Application

3. This Order shall apply to every aircraft, vessel, road or railway vehicle, and to the passengers and crew thereof arriving at any place in Malaŵi from any scheduled place.

Aircraft

4.—(1) Every aircraft to which this Order applies shall make its first landing in Malaŵi at a sanitary or authorized aerodrome and together with the crew and passengers may be subject to inspection by the sanitary authority.

(2) No member of the crew and no passenger of any such aircraft shall have access to the public or leave the aerodrome until authorized by the sanitary authority.

(3) No person shall be deemed to have contravened or failed to comply with this part of this Order if the pilot or person in charge of the aircraft proves that accident, stress of weather or other unavoidable circumstances prevented him from making his first landing at a sanitary or authorized aerodrome provided that—

(*a*) the pilot or person in charge of any aircraft making its first landing at a place other than a sanitary or authorized aerodrome forthwith reports the facts of the situation by the most expeditious means to the nearest district officer or Medical Officer of the Ministry of Health or police officer; and

(*b*) the pilot or person in charge of such aircraft if so ordered by a district officer or Medical Officer of the Ministry of Health or police officer shall proceed with such aircraft to a sanitary or authorized aerodrome as soon as possible; and

(*c*) the crew and passengers of such aircraft comply with the instructions of a district officer or Medical Officer of the Ministry of Health or police officer.

Pilot's duties

5. The pilot or person in charge of every aircraft to which this Order applies shall, at the request of the sanitary authority—

(*a*) give the names and addresses at destination of all persons carried;

(*b*) state the place where and the date on which each person was taken on board;

(*c*) state whether the aircraft has, within the six days preceding arrival at any place in Malaŵi, been on the ground in any scheduled place;

(*d*) produce his journey logbook for inspection; and

(*e*) furnish any other information of a public health nature in his possession regarding persons, animals, articles or things on board.

Furnishing of information

6. Every person to whom this Order applies shall, at the request of the sanitary authority, furnish any information of a public health nature concerning himself that may be required by such authority.

Inspection of vehicle and medical examination

7. The sanitary authority may—

(*a*) inspect any aircraft and any road or railway vehicle and any vessel to which this Order applies and the cargo thereof to ascertain whether they contain mosquitoes, and may subject the aircraft or road or railway vehicle or vessel to disinsectization; and

(*b*) conduct or cause to be conducted a medical examination of the passengers and crew of such aircraft or road or railway vehicle or vessel to ascertain whether they are free from symptoms of yellow fever.

Examination and detention

8. Every person to whom this Order applies shall, if so required by the sanitary authority, submit himself to medical examination and shall be dealt with by the sanitary authority as follows—

(*a*) if such person is not in possession of a valid inoculation certificate he may be detained and subjected to observation in a place and under conditions approved by the sanitary authority for a period not exceeding six days reckoned from the date of leaving any scheduled place;

(*b*) if such person is in possession of a valid inoculation

certificate he shall be allowed to proceed without being subjected to observation.

Inoculation

9. When in his opinion such action is necessary for the protection against yellow fever of Malaŵi or of any part thereof, the Secretary for Health may order any person or group of persons in Malaŵi to be inoculated against yellow fever.

para. 2 (*d*)

FIRST SCHEDULE

Authorized Aerodromes

Blantyre Airport (Chileka)	Lilongwe	Mzimba
Zomba	Karonga	Mangochi

and such other aerodromes as may from time to time be notified in the *Gazette*.

para. 2 (*e*)

SECOND SCHEDULE

ENDEMIC ZONE

The delineation is as follows:

From the mouth of the River Senegal along that river eastwards to the 15° North parallel of latitude; thence eastwards along that parallel to the western border of the Sudan; thence southwards along that border to the 12° North parallel; thence eastwards along that parallel to the eastern border of the Sudan; thence northwards along that border to the Red Sea coast; thence southwards along the eastern coast of Africa to the northern boundary of the French Territory of the Afars and the Issas; thence along that boundary successively westwards, southwards and eastwards to the southern boundary of Somalia (Northern Region) and along that boundary eastwards and northwards to the eastern coast of Africa and thence along this coast to the southern boundary of Tanzania (Tanganyika); thence westwards along that boundary to its junction with the eastern boundary of the Congo (Democratic Republic); thence westwards and southwards along the boundary of the Congo (Democratic Republic) to the 10° South parallel of latitude; thence westwards along that parallel to the eastern border of Angola; thence southwards along that border and then along the eastern boundary of Balovale District ** and Barotse Province ** (Zambia) to the northern border of South-West Africa; thence westwards along that border to the west coast of Africa; thence northwards along the west coast of Africa to the mouth of the River Senegal, including the islands of the Gulf of Guinea. Excluded from the endemic zone are: the French Territory of the Afars and the Issas and the Northern Region of Somalia; Assab, Massawa, an area of 10 kilometers in

radius from the centre of Asmara and an area of 20 kilometres in radius from the centre of Addis Ababa (Ethiopia); Kisumu airport, Nairobi airport, Mombasa port and Mombasa airport (Kenya). The continued exclusion of these areas is, however, contingent on their maintenance of an Aedes aegypti index not exceeding 1 per cent. * in Assab and Massawa, in and around Asmara, in Jibuti, Berbera and Hargeisa, in the airports of Kisumu and Nairobi and in the port and airport of Mombasa, as reported quarterly to the World Health Organization.

*Should, at any time, the index exceed 1 per centum in any of the localities excluded from the endemic zone, information to that effect must immediately be notified to the World Health Organization.

**According to the previous delineations of this district and province.

PREVENTION OF THE INTRODUCTION OF SMALLPOX PROCLAMATIONS

deemed to be made under s. 38

[*made under Part VI of the Public Health Ordinance*, 1932, *No*. 5 *of* 1932 (*now repealed*)]

The following requirements and conditions have been proclaimed and declared for the purpose of preventing the introduction of smallpox into Malaŵi:

1. With respect to Southern Rhodesia and South Africa— G.N. 50/1944 199/1954 (F)

(*a*) All persons arriving by train at Nsanje from Southern Rhodesia or the Republic of South Africa and intending to enter Malaŵi may be required by the sanitary authority to be medically examined. Any such person so required shall submit himself to medical examination.

(*b*) Any such person who on medical examination shows no evidence of previous successful vaccination may be required to be vaccinated and shall, if so required, submit himself to vaccination.

(*c*) For the purpose of this notice "sanitary authority" means the Secretary for Health or any person authorized by him to perform the duties of sanitary authority.

2. With respect to Tanzania and Zambia— G.N. 90/1944 200/1954 (F)

(*a*) All persons coming from Tanzania or Zambia and intending to enter the Karonga or Mzimba District of

Malaŵi may be required by the sanitary authority to be medically examined. Any such person so required shall submit himself to medical examination.

(*b*) Any such person who on medical examination shows no evidence of previous successful vaccination may be required to be vaccinated and shall, if so required, submit himself to vaccination.

(*c*) For the purpose of this notice "sanitary authority" means the Secretary for Health or any person authorized by him to perform the duties of sanitary authority.

G.N. 93/1938
25/1939
224/1963
88/1971

PUBLIC HEALTH (VACCINATION POSTS) RULES

deemed to be made under s. 51

[*made under s*. *54 of the Public Health Ordinance*, 1932, *No*. 5 *of* 1932 (*now repealed*)]

Citation

1. These Rules may be cited as the Public Health (Vaccination Posts) Rules.

Vaccination posts

2. The posts set out in the Schedule hereto shall be vaccination posts for the purposes of these Rules.

Examination and vaccination

3. Any person passing a vaccination post may be required by the vaccinator in charge of such post to submit himself for examination and if such person, in the opinion of the vaccinator, requires vaccination, he may then and there be vaccinated.

Offences

4. Any person who, when called upon by the vaccinator to submit himself for such examination or vaccination refuses to do so, or obstructs the vaccinator in his duties of examination and vaccination, shall be guilty of an offence against these Rules.

Penalty

5. Any person who is convicted of an offence against these Rules may be sentenced to a fine of K10.00 and to imprisonment for three months.

SCHEDULE

Vaccination post	*District*
Muloza	Mulanje
Mariyela	Mulanje
Phalombe	Mulanje
Ifumba	Karonga
Kaporo	Karonga

PUBLIC HEALTH (MINIMUM BUILDING STANDARDS FOR TRADITIONAL HOUSING AREAS) RULES

G.N. 10/1960
21/1960
48/1963
224/1963
89/1971

under s.75

Citation and application

1. These Rules may be cited as the Public Health (Minimum Building Standards for Traditional Housing Areas) Rules, and shall apply to such areas (hereinafter referred to as Traditional Housing Areas) as the Minister may, by Order published in the *Gazette*, declare. *

Interpretation

2. In these Rules, unless the context otherwise requires—

"building line" means a line drawn across a plot so that no building or structure, except a boundary wall or fence of approved design enclosing the plot, may be erected within the area contained between the line and the plot frontage;

"controlling authority" means, in relation to a Traditional Housing Area, the local authority, corporation, or other body or person authorized by the Minister to administer such Area; G.N. 89/1971

"dwelling house" means a building used exclusively or partly for the purpose of human habitation; and

"plot" means any piece or parcel of land whether demarcated by survey or not.

Application of Rules in Planning Areas Cap. 23:01

3. When any area, to which these Rules shall be applied, is included in a planning area declared under the Town and Country Planning Act, these Rules shall not apply where the dwelling house to be erected on a plot is intended to be of permanent construction or is to be constructed of permanent building materials; but the relevant provisions of such Act shall apply thereto.

Building line

4. No building shall be sited on a plot otherwise than in accordance with any building line approved by the controlling authority.

Size of plots 89/1971

5. No plot shall be less than 4,000 square feet and the maximum area of any plot which may be built on shall be one third of the total area.

Side boundaries

6. No building shall be erected within 10 feet of any side boundary of the plot on which it stands:

Provided that a latrine may be sited up to the line of the back boundary of the plot.

Latrines

7. Every latrine shall be sited in accordance with the directions of the controlling authority.

*The Orders are not being published here as this rule is about to be so amended that the Orders will cease to have effect. These Orders are as follows: G.N. 10/1960, G.N. 120/1960, G.N. 187/1961 G.N. 117/1962, G.N. 19/1963 and G.N. 146/1963.

Minimum area specifications

8.—(1) Every dwelling house shall have a minimum floor area of 40 square feet for each person to be accommodated therein.

(2) No round house or rondavel shall have an internal diameter less than 12 feet.

(3) Rectangular houses shall not be smaller than 180 square feet total floor area, and no single wall shall be less than 10 feet in length. Each occupant of a house shall have at least 40 square feet of floor area in rooms used for sleeping purposes.

(4) When thatch is the roof material the height from the floor to the top of the wall shall be not less than six feet, and when the roof is of iron or aluminium the minimum height of wall shall be not less than eight feet.

(5) Where the window space which opens does not equal or exceed one twentieth of the floor area, an air space four inches in height shall be provided between all the walls and the roof.

Specifications for latrines

9.—(1) Every dwelling house shall be provided with a latrine, the doorway of which shall be suitably screened from view.

(2) A pit latrine shall be at least 15 feet in depth from ground level to the bottom of the pit and shall be provided with a roof, the height of which shall be at least six feet from the floor to the underside of the roof or ceiling:

Provided that when the surface of the water table is less than 15 feet below ground level a depth of 10 feet from ground level to the bottom of the pit shall be permitted.

(3) A pit latrine shall be provided with a concrete stance and with a fly-proof cover.

External doors

10. Every dwelling house shall be provided with an external door or doors to the satisfaction of the controlling authority.

Drainage

11. Storm water drainage shall be provided and the filling of holes and clearing of the site shall be completed by the house owner to the satisfaction of the controlling authority on or before the date of completion of the building.

Kitchen

12. Each dwelling house shall be provided with a kitchen of not less than 24 square feet floor area and with adequate ventilation to the satisfaction of the controlling authority.

Foundations

13. Foundations shall be adequate to support the load transmitted to them and shall be constructed in such a manner as the controlling authority may approve. Every foundation shall be laid on ground of such compressive strength as will carry the total loads imposed.

Walls 89/1971

14. Walls shall be constructed of materials approved by the controlling authority. They shall have a smooth internal finish and external protection in accordance with best local customs except where the controlling authority may require any other form of finish.

Floors

15. Every floor shall have a smooth finish and shall be at least four inches above the surrounding ground level. A floor may be constructed of well compacted earth or of such materials as will provide a smooth hygienic finish.

Roofs

16. Every roof shall be of thatch or of asbestos, tiles, corrugated iron or aluminium or of such other material as may be approved by the local authority.

Screens

17. Screening of bathrooms and latrines may be in reed fencing or other material approved by controlling authority.

Notice to be given

18. Every person proposing to erect any dwelling house to which these Rules apply shall give notice to the controlling authority, or to any representative thereof appointed under rule 22, of his intention to build and shall supply such particulars of the proposed building and materials as the controlling authority or such representative shall require. No person shall commence any building operations until the written authority of the controlling authority or any such representative has been obtained.

Restriction on right to occupy

19. No person shall occupy or permit the occupation of any dwelling house to which these Rules apply until he has obtained from the controlling authority a permit in writing authorizing occupation of such premises, which permit shall not be issued unless the controlling authority is satisfied that the construction of the dwelling house is to a standard not lower than is required by these Rules.

Restriction of numbers

20. Where rooms are used for the housing of employees without their families, no more than eight persons shall be permitted to sleep in any one room without the permission in writing of the controlling authority.

Entry and inspection

21.—(1) Any person authorized by a controlling authority may with or without workmen or others at all reasonable times enter upon the site of any building for the purpose of the inspection of such building whether under construction or already constructed, or for the purpose of securing compliance with any of these Rules.

(2) Every person shall comply forthwith with any written notice given by a controlling authority, or by any representative thereof appointed under rule 22 requiring any such person to carry out any works, repairs or operations, or to do or to refrain from doing anything for the purpose of securing compliance with any of these Rules.

Controlling authority representative

22. A controlling authority may, and shall when so directed by the Minister, appoint a person or persons approved by the Minister to act as its representative for the purposes of these Rules, and any act, matter or thing done by any such representative on behalf of the controlling authority shall be deemed to have been done by such controlling authority.

Penalties

23. Any person who contravenes any of the provisions of these Rules shall be guilty of an offence and shall be liable to the penalties prescribed in section 138 of the Act.

G.N. 90/1971 253/1971 263/1971

APPLICATION OF PUBLIC HEALTH (MINIMUM BUILDING STANDARDS FOR TRADITIONAL HOUSING AREAS) RULES

under rule 1

It has been ordered under rule 1 of the Public Health (Minimum Building Standards for Traditional Housing Areas) Rules that such Rules shall apply to the following areas—

(*a*) ALL THAT piece or parcel of land situate at Bangwe in the Blantyre District (City of Blantyre) known as the Bangwe Traditional Housing Area and consisting of the area surveyed as plots BL/46, BL/57 and BL/378 which are shown upon Surveys Department Plans numbered SD4435 and SD4672 and upon Surveys Department Deed Plans numbered DP174/66, DP/175/66 and DP/73/70.

(*b*) ALL THAT piece of land commencing at a point on the Liwonde-Balaka road some two miles from the west bank of the Shire River, thence in a straight line in a northerly direction for 500 feet; thence by a line parallel to the main Liwonde-Balaka road in a south-easterly direction for approximately 4,000 feet to where it meets a small unnamed stream; thence by the said unnamed stream downstream in an easterly direction to its confluence with the Shire River; thence by the west bank of the Shire River in a northerly direction for approximately two miles

to a point opposite its confluence with the Likwenu Stream; thence across the Shire River and by the Likwenu Stream upstream for approximately three miles to where it meets the Liwonde-Nacala railway; thence by the Liwonde-Nacala railway in a westerly direction for approximately 3,000 feet; thence in a straight line in a south-westerly direction for approximately 11,700 feet to the most southerly corner of the old Liwonde Estate shown on Surveys Department Plan No. SD/356; thence by the southern boundary of the said estate in a westerly direction to the Shire River; thence across the Shire River and by its west bank in a northerly direction for approximately 2,000 feet to its confluence with an unnamed stream; thence by the said unnamed stream upstream for approximately 4,000 feet; thence by a straight line in a north-easterly direction for approximately 8,000 feet to a point 500 feet from the centre of the main Liwonde-Balaka road on its south side; thence by a line parallel to the main Liwonde-Balaka road in a north-westerly direction for approximately 6,400 feet; thence by a straight line in a northerly direction for 500 feet to the point of commencement.

(*c*) ALL THAT piece or parcel of land situate at South Lunzu in the Blantyre District known as the South Lunzu Traditional Housing Area and consisting of the area surveyed as Lunzu South-Ntawira Block, Lot 1 Ntawira Estate, Lot 2 Ntawira Estate, Lot 3 Ntawira Estate, Lot 4 Ntawira Estate, Remainder of Ntawira Estate, and Sandford Estate which are shown upon Survey Departments Plans numbered SD/1956 and SD/5124.

PUBLIC HEALTH (CONDENSED MILK) RULES

G.N. 47/1940 201/1954(F) 224/1963 166/1967

*deemed to be made under s.*109

[*made under s. 74 of the Public Health Ordinance*, 1932, *No.* 5 *of* 1932 (*now repealed*)]

Citation

1. These Rules may be cited as the Public Health (Condensed Milk) Rules.

Interpretation

2. In these Rules unless the context otherwise requires—

"condensed milk" means milk, or skimmed milk which has been concentrated by the removal of part of its water, with or without the addition of sugar, and includes the article commonly known as "evaporated milk" but does not include the article commonly known as "dried milk" or "milk powder";

"skimmed milk" includes separated or machine skimmed milk;

"net weight" means the weight of the contents exclusive of the tin or other receptacle;

"owner" in respect of goods includes any person being, or holding himself out to be, the owner, importer, exporter, consignee, agent or person in possession of or beneficially interested in, or having any control of, or power of disposition over, the goods;

"percentage" means percentage calculated by weight.

Conditions on disposal of condensed milk

3. No person shall sell or expose for sale or deposit in any place for the purpose of sale, or despatch or deliver to any purchaser, broker or agent any condensed milk intended for human consumption unless the condensed milk—

(*a*) is contained in a tin or other receptacle which is labelled in the manner prescribed in and complies with all the conditions laid down in the First Schedule; and

(*b*) contains not less than the appropriate percentage of fat and milk solids as specied in the Second Schedule:

Provided that—

(i) this rule shall not apply in any case where the condensed milk is contained in a tin or other receptacle whose net weight exceeds fifteen pounds;

(ii) in any refreshment room, restaurant room or other place in which food or drink is sold for consumption on the premises, the receptacle containing condensed milk so sold shall not be required to be labelled in the manner prescribed by these Rules;

(iii) this rule shall not apply in any case where condensed milk is imported for re-exportation and remains under control of public officers responsible for Customs and Excise until exported from Malaŵi to any other place.

Analysis of sample

4. Any medical officer, health inspector, police officer of the rank of sub-inspector or above or any other person authorized by the medical officer or by a local authority in writing may procure any sample of condensed milk, and, where an analysis is required for the purpose of these Rules, shall submit the sample to the officer for the time being exercising the duties of Pathologist of the Ministry of Health and shall forthwith notify to the seller or his agent selling the condensed milk his intention of having the same analysed by the Pathologist of the Ministry of Health.

Taking of samples

5. Any medical officer, health inspector or police officer of the rank of sub-inspector or above and any other person authorized by the medical officer or by a local authority in writing may when exercising the powers of entry on to land or into premises conferred by section 131 of the Act, take samples of any article used or capable of being used in the preparation of condensed milk and of any labels designed to be used for affixing to tins or other receptacles of condensed milk.

Importation

6. No person shall import into Malaŵi condensed milk intended for sale for human consumption unless the same contains not less than the appropriate percentages of milk fat and milk

solids as specified in the Second Schedule and is contained in a tin or other receptacle labelled in the manner prescribed in the First Schedule:

Provided that this rule shall not apply in any case—

(*a*) where the condensed milk is contained in a tin or other receptacle whose net weight exceeds fifteen pounds;

(*b*) where the condensed milk is imported for re-exportation and remains under control of the public officers responsible for Customs and Excise until exported from Malaŵi to any other place.

Samples of imported milk

7. A public officer responsible for Customs and Excise may take such samples of consignments of imported condensed milk as may be necessary for the purpose of analysis by the Pathologist of the Ministry of Health.

Offences

8. Any person who is guilty of an offence against, or who acts in contravention of, or who fails to comply with, any of these Rules shall be liable to a penalty of £25 and, in the case of a continuing offence, to a further penalty of £3 for every day during which the offence continues.

Limit on application

9. These Rules shall not apply to supplies of condensed milk which are in Malaŵi at the time of the coming into operation of these Rules until a period of six months from the date of such coming into operation has elapsed.

rr. 3 (*a*) and 6

FIRST SCHEDULE

REGULATIONS WITH RESPECT TO THE LABELLING OF CONDENSED MILK

1. Every tin or other receptacle containing condensed milk shall bear a label upon which is printed such one of the following declarations as may be applicable—

(I) In the case of full cream milk (unsweetened):

CONDENSED FULL CREAM MILK (UNSWEETENED) This tin contains the equivalent of (a) Pints of milk.

(II) In the case of full cream milk (sweetened):

CONDENSED FULL CREAM MILK (SWEETENED) This tin contains the equivalent of (a) Pints of milk, with sugar added.

(III) In the case of skimmed milk (unsweetened):

CONDENSED SKIMMED MILK (UNSWEETENED)
UNSUITABLE AS A SOLE FOOD FOR BABIES (Vernacular translation)
This tin contains the equivalent of (a) Pints of skimmed milk.

(IV) In the case of skimmed milk (sweetened):

CONDENSED SKIMMED MILK (SWEETENED)
UNSUITABLE AS A SOLE FOOD FOR BABIES (Vernacular translation)
This tin contains the equivalent of (a) Pints of skimmed milk , with sugar added

2. The declaration shall in each case be completed by inserting at (a) the appropriate number in words and figures, e.g. "one and a half ($1\frac{1}{2}$)," any fraction being expressed as eighths, quarters or half. For the purposes of these Rules "milk" means milk which contains not less than 12.4 per centum of milk solids (including not less than 3.6 per centum of milk fat) and "skimmed milk" means milk which contains not less than 9 per centum of milk solids other than milk fats.

3.—(*a*) in the case of full cream condensed milk the prescribed declaration shall be printed in dark block type upon a light coloured ground.

(*b*) In the case of condensed skimmed milk the prescribed declaration shall be printed in white block type upon a black ground.

(*c*) There shall be a surrounding line enclosing the declaration and in the cases in which the words ''unsuitable as a sole food for babies'' and the vernacular translation are required to be used there shall be another such line enclosing these words.

(*d*) The distance between any part of the words ''unsuitable as a sole food for babies'' and the vernacular translation and the surrounding line enclosing these words shall not be less than one-sixteenth of an inch.

(*e*) No matter other than that hereinbefore prescribed shall be printed within either surrounding line.

(*f*) The type used for the declaration shall not in any part be less than one-eighth of an inch in height (or if the net weight of the contents of the tin or other receptacle does not exceed twelve ounces, one-sixteenth of an inch in height) and the type used for the words ''unsuitable as a sole food for babies'' and the vernacular translation shall not be less than three-sixteenths of an inch in height (or if the net contents do not exceed two and three-quarter ounces, one-eighth of an inch in height.)

(*g*) In cases in which the words ''unsuitable as a sole food for babies'' and the vernacular translation are required to be used the entire panel in which the prescribed declaration is enclosed shall present an all-black background with the declaration in white block type and the surrounding lines in white; no colour nor shading medium shall appear on the panel and no decorative border round the panel of any kind or description shall be allowed.

4. The label shall in addition bear the name and address of the manufacturer of the condensed milk or of the dealer, merchant or importer in the territory for whom it is manufactured.

5. The label shall be securely affixed to the tin or other receptacle so as to be clearly visible. If there is attached to the tin or other receptacle a label bearing the name, trademark or design representing the brand of the condensed milk, the prescribed declaration shall be printed as part of such label.

6. The label shall in addition bear the net weight of the contents of the tin or other receptacle. The type to be used shall not in any part be less than one-eighth of an inch in height:

Provided that when the net weight of the contents of the tin or other receptacle does not exceed twelve ounces, the type shall be not less than one-sixteenth of an inch in height.

7. Wherever the word ''milk'' appears on the label of a tin or other receptacle of condensed skimmed milk as the description or part of the description of the contents, it shall be immediately preceded or followed by the word ''skimmed."

8. There shall not be placed on any tin or other receptacle containing condensed milk—

(*a*) any comment on, explanation of, or reference to either the statement of equivalence contained in the prescribed declaration or the words ''skimmed'' or ''unsuitable as a sole food for babies'' and the vernacular translation; or

(*b*) any instruction as to dilution, unless either—

(i) the fluid produced in accordance with such instructions would contain not less milk fat and not less milk solids than milk or skimmed milk as defined in paragraph 2 of this Schedule as the case may require; or

(ii) such instructions clearly specify that the fluid produced is not of equivalent composition to milk or skimmed milk as the case may be.

9. Where a tin or other receptacle containing condensed skimmed milk is required under these Rules to be labelled, no person shall expose or offer for sale or sell such a tin or receptacle in a paper or other wrapper unless such wrapper has printed on the outside thereof the words ''unsuitable as a sole food for babies'' and (here insert vernacular translation), such words being contained within a surrounding line. The type used for the words shall not be less than three-sixteenths of an inch in height (or if the net contents do not exceed two and three-quarter ounces, one-eighth of an inch in height) and the printing and colouring shall otherwise conform with the Rules prescribed for the printing and colouring of the same matter on the label affixed to the tin or other receptacle.

SECOND SCHEDULE

rr. 3 (*b*) and 6

All condensed milk shall contain not less than the appropriate percentages of milk fat and milk solids as specified in the following table.

Description of Milk	Percentage of milk fat	Percentage of all milk solids including fat
1. Full cream, unsweetened	9	31
2. Full cream, sweetened	9	31
3. Skimmed, unsweetened	—	20
4. Skimmed, sweetened	—	26

G.N. 43/1946

PUBLIC HEALTH (CONSTRUCTION OF TRADING STORES) RULES

deemed to be made under s. 109

[*made under s*. *74 of the Public Health Ordinance*, 1932, *No*. 5 *of* 1932 (*now repealed*)]

Citation and application

1. These Rules may be cited as the Public Health (Construction of Trading Stores) Rules, and shall apply to all areas other than Municipalities and Townships.

Interpretation

2. In these Rules—

"store" means any building used wholly or in part as a trading store or for the storage of foodstuffs in connexion therewith;

"plot" means a piece of land on which one of the buildings is a store.

Size of plot

3. No store shall be erected on a plot which is less than $\frac{1}{4}$ of an acre in area without the permission of the local authority.

Building permit

4. No person shall erect any building on a trading plot until he has obtained from the local authority a building permit.

Form of application for a building permit

5. Every application for a building permit shall be accompanied by a plan of the building which it is proposed to erect together with a specification giving the following particulars—

(*a*) depth of foundations and width of footings;

(*b*) thickness of walls;

(*c*) materials to be used in the construction of walls and roofs;

(*d*) provision made for natural lighting, ventilation and drainage of storm water;

(*e*) provision made for an ant-proof course;

(*f*) the general layout of the building and other buildings (if any) on the plot.

Walls and foundations

6.—(1) The walls of a store shall be of such width as will satisfy the local authority, but if built of brickwork an external wall shall in no case be less than 14 inches thick or an internal or party wall be less than 9 inches thick.

(2) No foundation shall be less than the following dimensions—

	Width	*Depth*
(*a*) in the case of a 9 inch wall	1′ 2″	1′ 6″
(*b*) in the case of a 14 inch wall	2′ 0″	2′ 0″

(3) The above dimensions shall apply in the case of single storey stores; in the case of stores comprising more than one storey the dimensions shall be such as will satisfy the local authority.

Construction of walls

7. The walls of a store shall be made of burned brick, stone, or other hard and incombustible material, and shall be maintained properly plastered or otherwise free from cracks or crevices.

Height of walls

8. Every room in a store which is used for the purpose of trading or storing foodstuffs shall over its entire area, be of a mean average height of at least 9 feet from the floor to the underside of the ceiling or roof, and no part thereof (other than a part not exceeding in all 15 per centum of the whole in extent) shall be less than 7 feet 6 inches in height from the floors to the underside of the ceiling or roof.

Floors

9. Floors may be of concrete or cement plaster laid on brick or stone. If cement plaster is used it shall not be less than $\frac{3}{4}$ inch thick, nor of a weaker mixture than four parts clean sand to one part cement.

Ant-proof course

10. Every store shall be provided with an effective ant-proof course to the satisfaction of the local authority. The ant-proof course shall be laid at least 12 inches above ground level.

Roofing

11. The roofing of every store shall be of corrugated iron, tiles, slate or other material approved by the local authority. Thatch shall not be used except as a covering for corrugated iron. If the roof is of corrugated iron a sun-proof cover shall be provided either above or below the corrugated iron.

Size of room used for trading

12. No room in a store used for the purposes of trading shall be of less than 18 feet by 12 feet in area, except with the consent of the local authority.

Windows

13. The window area in any room in a store shall be at least 10 per centum of the floor.

Ventilation

14. In every room in a store in which no fireplace is installed there shall be provided an opening for permanent ventilation, the area of which shall not be less than 1 per centum of the floor space with a minimum of 1 square foot.

Ratproofing

15. Any room in a store which is used wholly or in part for the storage of foodstuffs intended for sale to the public shall be effectively ratproofed.

Storm water

16. Provision shall be made for the disposal of storm water and sullage so that no nuisance shall arise.

Dwelling-house

17. No dwelling-house on a plot shall form part of the same building as a store unless such building consists of two storeys or more.

Living quarters

18. No part of a store which is used for the purpose of trading or for the storage of goods shall be used as a living room.

Whitewashing

19. To ensure cleanliness, the interior walls of every room in a store which is used for the purpose of trading shall be whitewashed at least once in every quarter.

Area of plot which may be built on

20. Not more than 50 per centum of the area of a plot may be built on:

Provided that where one of the buildings is of or exceeds two storeys, the local authority may permit up to 60 per centum of the area to be built on.

Space between walls and boundary of plot

21. A clear space at least 5 feet wide shall be left between the boundary of a plot and the walls of every building thereon.

Buildings constructed of grass, etc.

22. No building constructed wholly or in part of grass, reeds or similar material shall be erected on a plot.

Alteration or reconstruction of buildings

23. No reconstruction or alteration of or addition to any building on a plot shall be made without the consent in writing of the local authority who shall, so far as is possible in the circumstances of each case, apply these Rules to such building.

Latrines

24. Adequate latrine accommodation shall be provided for all persons who live or are employed in any building on a plot.

Position of pit latrines

25.—(1) No pit latrine shall be sited on any plot unless it is at least 20 feet from the nearest kitchen or inhabited building and at least 5 feet from the boundary of the plot.

(2) No pit latrine shall be sited within 100 feet of any well, spring, stream or other source of natural water supply.

Depth of pit latrines

26. No pit latrine shall be brought into use until it has been excavated to a minimum depth of 15 feet and no latrine shall be

maintained in use on a plot after the level of the contents has risen to 3 feet from ground level.

Construction of pit latrine

27. The platform of a pit latrine shall be constructed of impervious materials and the aperture to the pit shall be provided with a properly fitting cover. The walls of the superstructure shall be of not less than 6 feet to the wall plate and the buildings shall be provided with adequate permanent ventilation.

Earth-closets

28. In the case of earth-closets—

(*a*) the door through which the receptacle for excreta is removed shall be of iron;

(*b*) the receptacle shall be water-tight and of non-absorbent material;

(*c*) a suitable container for dry earth shall be provided;

(*d*) the floor shall be of impervious material.

Servants' quarters

29. Where quarters are provided on a plot for staff or servants employed thereon, no room therein shall have an area of less than 120 square feet. The mean height of the walls shall not be less than 7 feet 6 inches. In respect of lighting, ventilation and materials used in construction such quarters shall conform with the provisions of these Rules relating to the construction of stores.

When servants' quarters must be provided

30. All staff and servants employed on a plot shall be provided with suitable quarters unless it is established to the satisfaction of the local authority that they have homes in the neighbourhood of their place of employment to which they are in the practice of returning at night.

Servants' Kitchens

31. Where staff or servants are accommodated in quarters on a plot they shall also be provided with adequate kitchen accommodation.

Temporary trading stores

32. Notwithstanding anything contained in these Rules it shall be lawful for the local authority to grant to any person permission to erect and use a trading store constructed of temporary materials outside an established trading centre, on such conditions as to location and otherwise as the local authority may in writing specify:

Provided that no trading store erected under this rule shall be used for a period in excess of four years from the date of erection.

AUTHORIZATION OF CEMETERIES

under ss. 113 *and* 114

G.N. 206 / 1951

Blantyre Cemeteries

The following cemeteries have been authorized under section 114 of the Act for the City of Blantyre—

(*a*) the European Cemetery, Church of Central Africa Presbyterian;

(*b*) the African Cemetery, Church of Central Africa Presbyterian;

(*c*) the Catholic Cemetery, Montfort Marist Mission;

(*d*) the Moslem Cemetery, Napere;

(*e*) the European Public Cemetery.

G.N. 207 / 1951

European Public Cemetery, Blantyre

The place described in the Schedule hereto has been selected and appointed, under section 113 of the Act, to be the site of a cemetery to be known as the European Public Cemetery, Blantyre, and shall be deemed an authorized cemetery under section 114 of the Act

SCHEDULE

Description of the Boundaries of the European Public Cemetery, Blantyre

All that piece of land containing an area of $2\frac{1}{2}$ acres approximately the boundaries whereof are as follows:

Commencing at a beacon situate $17\frac{1}{2}$ feet from the north-western boundary of the existing European Cemetery of the Church of Central Africa Presbyterian in Blantyre as measured at right angles thereto the boundary runs by a straight line in a south-westerly direction for a distance of $325\frac{1}{2}$ feet parallel to and $17\frac{1}{2}$; feet distant from the said north-western boundary of the said cemetery to a beacon demarcating the southern corner of the said piece of land; thence by a straight line at right angles and in a north-westerly direction for a distance of 400 feet; thence by a straight line in an easterly direction for a distance of 350 feet; thence by a straight line in a south-easterly direction for a distance of 270 feet to the beacon being the point of commencement.

African Public Cemetery, Blantyre

G.N. 93/1953
262/1971

The place described in the Schedule was selected and appointed, under section 113 of the Act, to be the site of a cemetery to be known as the African Public Cemetery, Blantyre, and deemed to be an authorized cemetery under section 114 of the Act. The same was, however, closed under section 118 of the Act with effect from the 1st of December, 1971 (see G.N. 282/1971).

SCHEDULE

Description of the Boundaries of the African Public Cemetery, Blantyre

All that piece or parcel of land containing an area of 3.960 acres or thereabouts situate in the Nyambadwe Ward area of the City of Blantyre, the boundaries whereof as demarcated by Survey beacons are more particularly described and delineated on Survey Department Deed Plan No. 86/71.

European Public Cemetery, Limbe

G.N. 174/1956

The place described in the Schedule has been selected and appointed, under section 113 of the Act, to be the site of a cemetery to be known as the European Public Cemetery, Limbe, and shall be deemed an authorized cemetery under section 114 of the Act.

SCHEDULE

All that plot of land comprising three acres or thereabouts near Limbe having a frontage of 400 feet on the Thyolo Road and a depth of 326.70 feet measured from the frontage line which is 25 feet from the centre of the road; the south-eastern beacon of the plot is distant 52 feet to the south from a culvert which passes under the road at one mile and thirteen chains approximately from Limbe, all as delineated on the plan annexed to an Indenture made the 10th day of January, 1928, between The Imperial Tobacco Company (of Great Britain and Ireland) Limited of the one part and The Limbe Town Council of the other part; which block of land forms part of a larger block of land vested in the Company in virtue of an Indenture dated the 10th day of February, 1913 and made between Grace Bisset Lindsay formerly of Limbe of the one part and the Company of the other part (Registered No. 2415).

G.N. 118/1952

European Public Cemetery, Lilongwe

The place described in the Schedule has been selected and appointed, under section 113 of the Act, to be the site of a cemetery to be known as the European Public Cemetery, Lilongwe, and shall be deemed an authorized cemetery under section 114 of the Act.

SCHEDULE

Description of The Boundaries of The European Public Cemetery, Lilongwe

All that piece of land containing an area of 2.25 acres known as Plots Nos. 8A and 8B situate in the European Residential Area of the Lilongwe Township the boundaries whereof are as follows:

Commencing at a beacon which is also the north corner beacon of Plot No. 8 the boundary runs on a bearing of 46° 00' 00'' for a distance of 389.6 feet to a beacon demarcating the northern corner of the said piece or parcel of land; thence on a bearing of 134° 24' 50'' for a distance of 239.5 feet to a beacon demarcating the eastern corner of the said piece or parcel of land; thence on a bearing of 223° 42' 50'' for a distance of 403.1 feet to a beacon demarcating the southern corner of the said piece or parcel of land; thence on a bearing of 136° 30' 00'' for a distance of 239 feet to the said beacon demarcating the western corner of the said piece or parcel of land being the point of commencement.

G.N. 195 / 1953

Mahomedan Cemetery, Zomba

The place described in the Schedule has been selected and appointed, under section 113 of the Act, to be the site of a cemetery to be known as the Mahomedan Cemetery, Zomba, and shall be deemed an authorized cemetery under section 114 of the Act.

SCHEDULE

Description of the Boundaries of the Mahomedan Cemetery, Zomba

All that piece or parcel of land containing an area of 1.69 acres the boundaries whereof are as follows:

Commencing at a beacon being the most southerly corner beacon of the parcel of land known as Plot No. 33 in Zomba Township and distant 25 feet from the north-eastern edge of the road leading from the Blantyre-Zomba main road to the Abattoir and distant 104.3 feet on a bearing of 147° 30' from the centre line of the said main road the boundary runs on a bearing of 147° 30' for a distance of 231.9 feet to a beacon demarcating the most southerly corner of the said cemetery which said beacon is distant 58.6 feet on a bearing of 272° 10' from the north-eastern corner beacon of the plot occupied by The Bata Shoe Company Limited; thence on a bearing of 59° 17' for a distance of 306.2 feet to a beacon demarcating the most easterly corner of the said cemetery; thence on a bearing of 334° 50' for a distance of 231.6 feet to a beacon demarcating the most northerly corner of the said cemetery; thence on a bearing of 239° 31' for a distance of 332.5 feet to the beacon demarcating the most westerly corner of the said cemetery being the point of commencement.

The Church of Saint Paul, Blantyre (Bishop Mackenzie) Cemetery

G.N. 147 / 1961

The Church of Saint Paul, Blantyre, within the boundary of Plot No. 324 has been selected and appointed, under section 113 of the Act, to be used as a cemetery for the purpose of re-interring the remains of Bishop F. Charles Mackenzie and the said church shall be deemed to be authorized, under section 114 of the Act, for such purpose only.

Chitawila Public Cemetery, Blantyre

G.N. 99 / 1969

The place described in the Schedule hereto has been selected and appointed, under sections 113 and 114 of the Act, to be the site of a cemetery to be known as the Chitawila Public Cemetery, Blantyre, and shall be deemed an authorized cemetery under section 114 of the Act.

SCHEDULE

ALL the piece or parcel of land containing an area of 3.21 (three decimal point two one) acres or thereabouts situate in the Naperi Ward of the Soche Area of the City of Blantyre the boundaries whereof as demarcated by survey beacons are more particularly described and delineated on Survey Department Deed Plan No. 64/62.

G.N. 121/1973

BANGWE PUBLIC CEMETERY

The place described in the Schedule has been selected and appointed, under section 113 of the Act, to be the site of a cemetery to be known as the Bangwe Public Cemetery and shall be deemed an authorized cemetery under section 114 of the Act.

SCHEDULE

FIRST ALL THAT piece or parcel of land containing an area of one decimal point two two nought (1.220) acres or thereabouts situate at Blantyre the boundaries whereof are more particularly described and delineated on Survey Department Deed Plan No. 293/72 and are thereon edged with red colour.

SECONDLY ALL THAT piece or parcel of land containing an area of two decimal point seven nought two (2.702) acres or thereabouts situate at Blantyre the boundaries whereof are more particularly described and delineated on Survey Department Deed Plan No. 406/71 and are thereon edged with red colour.

G.N. 141/1975

AREA 30 PUBLIC CEMETERY, CITY OF LILONGWE

The place described in the Schedule has been selected and appointed, under section 113 of the Act, to be the site of a cemetery to be known as the Area 30 Public Cemetery, City of Lilongwe and shall be deemed an authorized cemetery under section 114 of the Act.

SCHEDULE

ALL THAT piece of land known as Plot No. 1 containing an area of 17.940 hectares or thereabouts, situate in Area 30 of the City of Lilongwe, the boundaries whereof as demarcated by Survey beacons are more particularly described and delineated on Survey Department Deed Plan No. 328/1974.

G.N. 40/1977

POOR CLARES PRIVATE CEMETERY, LILONGWE

The place described in the Schedule has been selected and appointed under section 113 of the Act, to be the site of a cemetery to be known as the Poor Clares Private Cemetery, Lilongwe and shall be deemed an authorized cemetery under section 114 of the Act.

SCHEDULE

POOR CLARES PRIVATE CEMETERY, LILONGWE

ALL THAT piece of land containing an area of 2,280 sq. feet or thereabouts within plot No. 4001, situated in area 7 of the City of Lilongwe, the boundaries whereof as demarcated by Survey beacons are more particularly described and delineated on Deed No. 26657/1961.

SAINT MARY'S CEMETERY, ZOMBA

G.N. 137/1977

The place described in the Schedule has been selected and appointed under section 113 of the Act, to be the site of a cemetery to be known as the Saint Mary's Cemetery, Zomba and shall be deemed an authorized cemetery under section 114 of the Act.

SCHEDULE

SAINT MARY'S CEMETERY, ZOMBA

ALL THAT piece of land containing an area of six decimal point one seven nine (6.179) hectares or thereabouts situate at and known as Plot No. 360, Zomba Township in the Zomba District, the boundaries whereof as demarcated by survey beacons are more particularly described and delineated on Survey Department Deed Plan No. 31/75 for a public cemetery.

QUEEN ELIZABETH CENTRAL HOSPITAL ADVISORY COMMITTEE RULES

G.N. 11/1966 110/1967 64/1972

under s. 143

Citation

1. These Rules may be cited as the Queen Elizabeth Central Hospital Advisory Committee Rules.

Interpretation

2. In these Rules, unless inconsistent with the context—

"Central Hospital" means the Queen Elizabeth Central Hospital;

"the Advisory Committee" and "Committee" mean the Central Hospital Advisory Committee;

"Senior Medical Superintendent" means the Senior Medical Superintendent for the time being in charge of the Central Hospital.

ESTABLISHMENT AND MEMBERSHIP OF ADVISORY COMMITTEE

Establishment

3. The Minister hereby establishes an Advisory Committee for the Queen Elizabeth Central Hospital.

Membership

4.—(1) The Committee shall consist of 9 members who shall be appointed as follows—

5 members who shall be appointed by the Minister;

2 members who shall be appointed by the City Council;

1 member who shall be appointed by the Malaŵi Medical Association;

1 member who shall represent the Social Welfare Department of the Ministry of Community Development and Social Welfare, appointed by the Minister of Community Development and Social Welfare after consultation with the Minister of Health.

(2) Where any of the above bodies shall fail to appoint its member or members within 30 days from the date on which it was requested to do so, the Minister may proceed to make the appointment, without any such nomination, of any person he deems suitable.

Term of office

5.—(1) A member of the Advisory Committee shall hold office for two years only, provided that, at the end of the first year of the existence of the Advisory Committee, one half of its members, as determined by lot, shall retire and be replaced in the manner described in rule 4.

(2) Any retiring member may be re-appointed with the approval of the Minister.

Resignation, termination and replacement of officers

6.—(1) If any member of the Advisory Committee fails to attend two consecutive meetings without leave of absence (which may be granted by the Committee for up to seven months) the Minister may cancel the appointment of that member.

(2) Any member of the Advisory Committee may at any time tender his resignation to the Minister.

(3) Where an appointment is cancelled, or a resignation accepted by the Minister in accordance with subrules (1) and (2), the Minister may either permit the replacement of the Member concerned in accordance with rule 4 (1), or proceed to nominate a replacement in accordance with rule 4 (2), as he deems appropriate, for the remainder of the unexpired term of office.

PROCEDURE FOR MEETINGS OF THE ADVISORY COMMITTEE

Time of meetings

7. The first meeting of the Advisory Committee shall be held not later than one month from the appointment of its members; thereafter it shall meet not less than once in every two months.

Quorum

8. The quorum necessary for the transaction of business at any meeting will be four Members.

Election of Chairman and Vice-Chairman

9. At its first meeting in any year, the Advisory Committee shall elect a Chairman and Vice-Chairman from amongst its members. In the absence of either, the remaining members shall appoint one of their number to preside.

Special meetings

10. The Chairman, or any three members of the Advisory Committee or the Senior Medical Superintendent may call a special meeting at any time, at which business will be confined to the item or items on account of which the meeting has been convened.

Appointment and duties of Secretary

11. The Minister shall appoint a Secretary to the Advisory Committee from Central Hospital administrative staff. The appointed Secretary shall keep a record of the attendance of members and of the Minutes of each meeting and shall transmit a copy of this record to the Senior Medical Superintendent and to the Minister of Health as soon as possible after each meeting.

Persons to participate in meetings

12. The Senior Medical Superintendent or an officer appointed by him in writing shall have the right to be present at each Meeting and shall be entitled to speak but not to vote. The Advisory Committee, with the approval of the Senior Medical Superintendent, shall have the right to call any member of the Hospital Staff to its meetings to assist the Committee in matters of which he has specialized knowledge.

Standing Orders

13. The Advisory Committee shall consider and approve within six months of its appointment, Standing Orders for the further regulation of its meetings.

DUTIES OF THE ADVISORY COMMITTEE

Complaints

14. It shall be the duty of the Advisory Committee:—

(*a*) to receive and enquire into complaints of patients or of their relatives or friends as to nursing, diet or treatment of patients and into allegations of misconduct or negligence on the part of the nursing staff;

(*b*) to make such recommendations as it deems advisable to the Senior Medical Superintendent on the provision and disposition of nursing and serving staff.

Investigation of complaints

15. Every complaint or representation in writing by the complainant or his representative shall be laid before the Advisory Committee and, after investigation, the Committee shall forward to the Senior Medical Superintendent an account of the complaint or representation together with the Committee's findings relating to it. The Senior Medical Superintendent shall inform the Committee as soon as possible of its own conclusions on the complaint or representation and of any action taken by him in regard to it.

Visiting Committee

16. The Advisory Committee may appoint at least two of its members to form a Visiting Committee to the Central Hospital. This Visiting Committee may enter the Central Hospital premises daily between the hours of 10.30 a.m. and 4 p.m. by arrangement with the Senior Medical Superintendent for the purpose of inspecting the conditions under which the Hospital is managed and in order to ascertain whether complaints made by or on behalf of patients are Justified.

Recommendations on diet and equipment

17. The Advisory Committee shall recommend to the Senior Medical Superintendent such alterations or additions to the scale of diets and the provision of domestic equipment as it may deem necessary.

Expenditures

18. No expenditure shall be incurred, nor any action taken which may involve expenditure, without the approval of the Minister.

Benefits

19. The Advisory Committee shall inform the Minister of any benefit donated, bequeathed, offered or promised to the Committee for the use of the Central Hospital. Such benefits can only be accepted by the Advisory Committee with the approval of the Minister and must be employed in a manner agreed by him.

Influence or interference

20. The Advisory Committee shall in no way attempt to influence or to interfere with the medical treatment of patients nor shall it concern itself with the appointment, promotion, transfer or dismissal of hospital staff.

Control by Senior Medical Superintendent

21. Nothing in these Rules relating to the duties of the Advisory Committee shall restrict the right of the Senior Medical Superintendent to exercise such control as is normally permitted him over persons enjoying the privilege of access to the Central Hospital as either visitors or patients.

GENERAL

22. The Senior Medical Superintendent shall submit to the Advisory Committee the sketch-plans which he has received from the Secretary for Health of any proposed new hospital building or of any proposed extensions or alterations to existing hospital buildings before the final plans are prepared. Submission of sketch-plans

23. The Advisory Committee shall return the plans to the Senior Medical Superintendent as soon as possible with such comments or recommendations as it may wish to make. The Senior Medical Superintendent will thereafter keep the Committee informed of any action taken either in accordance with or contrary to the Committee's wishes. Return of plans by Advisory Committee

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ZOMBA GENERAL HOSPITAL ADVISORY COMMITTEE RULES

G.N. 240/1967

under s. 143

PART I—PRELIMINARY

1. These Rules may be cited as the Zomba General Hospital Advisory Committee Rules. Citation

2. In these Rules, unless the context otherwise requires— Interpretation

"Committee" means the Advisory Committee for the Zomba General Hospital established under these Rules;

"Hospital" means the Zomba General Hospital;

"Medical Superintendent" means the Medical Superintendent for the time being in charge of the Hospital;

"member" means member of the Committee.

PART II—ESTABLISHMENT OF ADVISORY COMMITTEE

3. The Minister hereby establishes an Advisory Committee for the Zomba General Hospital. Establishment of Committee

4.—(1) The Committee shall consist of six members who shall be appointed as follows— Appointment of members

three members shall be appointed by the Minister;

two members shall be appointed by the Town Council of Zomba;

one member shall be appointed by the Malaŵi Medical Association.

(2) Where either the Zomba Town Council or the Malaŵi Medical Association shall fail to appoint its member or members within 30 days from the date on which it is requested by the Minister to do so, the Minister may proceed to make the appointment, without any such nomination, of any person he deems suitable.

Tenure of office

5.—(1) A member shall hold office for two years only, provided that, at the end of the first year of the existence of the Committee one half of its members, as determined by lot, shall retire and be replaced in the manner described in rule 4.

(2) Any retiring member may be re-appointed with the approval of the Minister.

Termination of appointment and resignation

6.—(1) If any member fails to attend two consecutive meetings without leave of absence (which may be granted by the Committee for up to seven months) the Minister may terminate the appointment of that member.

(2) Any member may at any time tender his resignation to the Minister.

(3) Where an appointment is terminated, or a resignation tendered to the Minister in accordance with subrules (1) and (2), the Minister may either permit the replacement of the member concerned in accordance with rule 4 (1) or proceed to nominate a replacement in accordance with rule 4 (2), as he deems appropriate, for the remainder of the unexpired term of office.

Part III—Procedure of the Advisory Committee

Times of meetings

7. The first meeting of the Committee shall be held not later than one month from the first appointment of its members; thereafter it shall meet not less than once in every two months.

Quorum

8. The quorum necessary for the transaction of business of the Committee at any meeting will be four members.

Election of Chairman and Vice-Chairman

9. At its first meeting in any year, the Committee shall elect a Chairman and a Vice-Chairman from amongst its members. In the absence of both, the remaining members shall appoint one of their number to preside.

Special meetings

10. The Chairman or any three members of the Committee or the Medical Superintendent may call a special meeting at any time, at which business will be confined to the item or items on account of which the meeting has been called.

Appointment and duties of secretary

11. The Minister shall appoint a secretary to the Committee from General Hospital Administrative staff. The appointed secretary shall keep a record of the attendance of members and of the minutes of each meeting and shall transmit a copy of this record to the Medical Superintendent and to the Minister as soon as possible after each meeting.

Attendance of Medical Superintendent and Hospital staff at meetings

12. The Medical Superintendent or an officer appointed by him in writing shall have the right to be present at each meeting and shall be entitled to speak but not to vote. The Committee, with the approval of the Medical Superintendent, shall have the right to call any member of the Hospital staff to its meetings to assist the Committee in matters of which he has specialized knowledge.

Standing Orders for meetings

13. The Committee shall consider and approve within six months of its appointment, Standing Orders for the further regulation of its meetings.

Part IV—Duties of the Advisory Committee

Investigation of complaints and recommendations

14. It shall be the duty of the Committee—

(*a*) to receive and enquire into complaints of patients or of their relatives or friends as to nursing, diet or treatment of patients and into allegations of misconduct or negligence on the part of the nursing staff;

(*b*) to make such recommendations as it deems advisable to the Medical Superintendent on the provision and disposition of nursing and serving staff.

Procedure relating to complaints and representations

15. Every complaint or representation by any person or persons shall be laid before the Committee in writing and, after investigation, the Committee shall forward to the Medical Superintendent an account of the complaint or representation together with the Committee's findings relating to it. The Medical Superintendent shall inform the Committee as soon as possible of his own conclusions on the complaint or representation and of any action taken by him in regard to it.

Visiting Committee

16. The Committee may appoint at least two of its members to form a Visiting Committee to visit the Hospital premises daily between the hours of 10.30 a.m. and 4 p.m. by arrangement with the Medical Superintendent for the purpose of inspecting the conditions under which the Hospital is managed and in order to ascertain whether complaints made by or on behalf of patients are justified.

Recommending alterations to diets etc.

17. The Committee shall recommend to the Medical Superintendent such alterations or additions to the scale of diets and provision of domestic equipment as it may deem necessary.

Approval for expenditure

18. No expenditure shall be incurred, or any action taken which may involve expenditure, without the approval of the Minister.

Benefits to be approved by Minister

19. The Committee shall inform the Minister of any benefit donated, bequeathed, offered or promised to the Committee for the use of the Hospital. Such benefits can only be accepted by the Committee with the approval of the Minister and must be employed in a manner agreed by him.

No interference with treatment or staff

20. The Committee shall in no way attempt to influence or to interfere with the medical treatment of patients nor shall it concern itself with the appointment, promotion, transfer or dismissal of the staff of the Hospital.

Control by Medical Superintendent

21. Nothing in these Rules relating to the duties of the Committee shall restrict the right of the Medical Superintendent to exercise such control as is normally permitted over persons enjoying the privilege of access to the General Hospital as either visitors or patients.

Part V—General

Duty of Medical Superintendent to submit sketch-plans

22. The Medical Superintendent shall submit to the Committee the sketch-plans which he has received from the Permanent Secretary for the Ministry of Health of any proposed new buildings or of any proposed extensions or alterations to existing buildings of the Hospital before the final plans are prepared.

Comments on sketch-plans by the Committee

23. The Committee shall return the sketch-plans to the Medical Superintendent as soon as possible with such comments or recommendations as it may wish to make. The Medical Superintendent will thereafter keep the Committee informed of any action taken either in accordance with or contrary to the Committee's wishes.

DOWA DISTRICT HOSPITAL ADVISORY COMMITTEE RULES

G.N. 122/1974

under s. 143

PART I

Preliminary

1. These Rules may be cited as the Public Health (Dowa District Hospital Advisory Committee) Rules. Citation

2. In these Rules, unless the context otherwise requires— Interpretation

"Committee" means the Advisory Committee for the Dowa District Hospital established under rule 3;

"Hospital" means the Dowa District Hospital;

"Medical Officer" means the Medical Officer for the time being in charge of the Hospital;

"member" means member of the Committee.

PART II

Establishment of Advisory Committee

3. The Minister hereby establishes an Advisory Committee for the Dowa District Hospital (hereinafter referred to as the "Committee"). Establishment of Advisory Committee

4.—(1) The Committee shall consist of six members who shall be appointed as follows— Appointment of members

three members shall be appointed by the Minister;

two members shall be appointed by the Dowa District Council;

one member shall be appointed by the Malaŵi Medical Association.

(2) Where either the Dowa District Council or the Malaŵi Medical Association shall fail to appoint its member or members within 30 days from the date on which it is requested by the Minister to do so, the Minister may proceed to make the appointment of any person he deems suitable.

5.—(1) A member shall hold office for two years only, provided that, at the end of the first year of the existence of the Committee, one half of its members, as determined by lot, shall retire and be replaced in the manner described in rule 4 above. Tenure of office

(2) Any retiring member may be re-appointed with the approval of the Minister.

6.—(1) If any member fails to attend two consecutive meetings without leave of absence (which may be granted by the Committee for up to seven months) the Minister may terminate the appointment of that member. Termination of appointment and resignation

(2) Any member may at any time tender his resignation to the Minister.

(3) Where an appointment is terminated, or a resignation tendered to the Minister in accordance with the provisions of paragraphs (1) and (2) of this rule, the Minister may either permit the replacement of the member concerned in accordance with rule 4 (1), or proceed to nominate a replacement in accordance with rule 4 (2), as he deems appropriate, for the remainder of the unexpired term of office.

PART III

Procedure of the Committee

Times of meetings

7. The first meeting of the Committee shall be held not later than one month from the first appointment of its members; thereafter it shall meet not less than once in every two months.

Quorum

8. The quorum necessary for the transaction of business of the Committee at any meeting will be four members.

Election of Chairman and Vice-Chairman

9. At its first meeting in any year, the Committee shall elect a Chairman and a Vice-Chairman from amongst its members. In the absence of either, the remaining members shall appoint one of their number to preside.

Special meetings

10. The Chairman or any three members of the Committee or the Medical Officer may call a special meeting at any time, at which business will be confined to the item or items on account of which the meeting has been called.

Appointment and duties of secretary

11. The Minister shall appoint a secretary to the Committee from District Hospital Administrative staff. The appointed secretary shall keep a record of the attendance of members and of the minutes of each meeting and shall transmit a copy of this record to the Medical Officer and to the Minister as soon as possible after each meeting.

Attendance of Medical Officer and Hospital staff at meetings

12. The Medical Officer or an officer appointed by him in writing shall have the right to be present at each meeting and shall be entitled to speak but not to vote. The Committee, with the approval of the Medical Officer, shall have the right to call any member of the Hospital staff to its meetings to assist the Committee in matters of which he has specialized knowledge.

Standing Orders for meetings

13. The Committee shall consider and approve within six months of its appointment, Standing Orders for the further regulation of its meetings.

PART IV

Duties of the Advisory Committee

Investigation of complaints and recommendations

14. It shall be the duty of the Committee—

(i) to receive and enquire into complaints of patients or of their relatives or friends as to nursing, diet or treatment of patients and into allegations of misconduct or negligence on the part of the hospital staff;

(ii) to make such recommendations as it deems advisable to the Medical Officer on the provision and disposition of nursing and serving staff.

Procedure relating to complaints and representations

15. Every complaint or representation by any person or persons shall be laid before the Committee in writing and, after investigation, the Committee shall forward to the Medical Officer an account of the complaint or representation together with the Committee's findings relating to it. The Medical Officer shall inform the Committee as soon as possible of his own conclusions on the complaint or representation and of any action taken by him in regard to it.

Visiting Committee

16. The Committee may appoint at least two of its members to form a Visiting Committee to visit the Hospital premises, by arrangement with the Medical Officer, for the purpose of inspecting the conditions under which the Hospital is managed and in order to ascertain whether complaints made by or on behalf of patients are justified.

Recommending alterations to diets, etc.

17. The Committee shall recommend to the Medical Officer such alterations or additions to the scale of diets and provision of domestic equipment as it may deem necessary.

Approval for expenditure

18. No expenditure shall be incurred, or any action taken which may involve expenditure, without the approval of the Minister.

Benefits to be approved by Minister

19. The Committee shall inform the Minister of any benefit donated, bequeathed, offered or promised to the Committee for the use of the Hospital. No such benefit shall be accepted by the Committee save with the prior approval of the Minister. Any benefit received by the Committee in accordance with this regulation shall be applied by it as directed or agreed by the Minister.

No interference with treatment or staff

20. The Committee shall in no way attempt to influence or interfere with the medical treatment of patients nor shall it concern itself with the appointment, promotion, transfer or dismissal of the staff of the Hospital.

Control by Medical Officer

21. Nothing in these Rules relating to the duties of the Committee shall restrict the right of the Medical Officer to exercise such control as is normally permitted over persons enjoying the privilege of access to the District Hospital as either visitors or patients.

PART V

General

Duty of Medical Officer to submit sketch plans

22. Whenever the Medical Officer receives from the Secretary for Health, any sketch plans of any proposed new building or of any proposed extensions to or alterations of existing buildings, he shall, before the final plans are prepared, submit the said sketch plans to the Committee for its comments and recommendations thereon.

Comments on sketch plans by the Committee

23. The Committee shall return the said sketch plans to the Medical Officer as soon as is practicable, with such comments or recommendations thereon as it may wish to make. Thereafter the Medical Officer will keep the Committee informed on any action taken in respect of such plans, whether in accordance or otherwise with the Committee's comments or recommendations.

KASUNGU DISTRICT HOSPITAL ADVISORY COMMITTEE RULES

G.N. 103/1973

under s. 143

PART I

Preliminary

Citation

1 These Rules may be cited as the Kasungu District Hospital Advisory Committee Rules.

Interpretation

2. In these Rules, unless the context otherwise requires—

"Committee" means the Advisory Committee for the Kasungu District Hospital established under rule 3;

"Hospital" means the Kasungu District Hospital;

"Medical Officer" means the Medical Officer for the time being in charge of the Hospital;

"Member" means member of the Committee.

PART II

Establishment and Membership of Advisory Committee

Establishment of Advisory Committee

3 The Minister hereby establishes an Advisory Committee for the Kasungu District Hospital (hereinafter referred to as the Committee).

Appointment of members

4.—(1) The Committee shall consist of six members who shall be appointed as follows—Four members shall be appointed by the Minister; and two members shall be appointed by the Kasungu District Council.

(2) Where the Kasungu District Council shall fail to appoint its member or members within 30 days from the date on which it is requested by the Minister to do so, the Minister may proceed to make the appointment of any person he deems suitable.

Tenure of office

5.—(1) A member shall hold office for two years only, provided that, at the end of the first year of the existence of the Committee, one half of its members, as determined by lot, shall retire and be replaced in the manner described in rule 4 above.

(2) Any retiring member may be re-appointed with the approval of the Minister.

Termination of appointment and resignation

6.—(1) If any member fails to attend two consecutive meetings without leave of absence (which may be granted by the Committee for up to seven months) the Minister may terminate the appointment of that member.

(2) Any member may, at any time, tender his resignation to the Minister.

(3) Where an appointment is terminated, or a resignation tendered to the Minister in accordance with the provisions of paragraphs (1) and (2) of this rule, the Minister may either permit replacement of the member concerned in accordance with rule 4 (1), or proceed to nominate a replacement in accordance with rule 4 (2), as he deems appropriate, for the remainder of the unexpired term of office.

PART III

Procedure of the Committee

Times of meetings

7 The first meeting of the Committee shall be held not later than one month from the first appointment of its members; thereafter it shall meet not less than once in every two months.

Quorum

8. The quorum necessary for the transaction of business of the Committee at any meeting will be four members.

Election of Chairman and Vice-Chairman

9. At its first meeting in any year, the Committee shall elect a Chairman and a Vice-Chairman from amongst its members. In the absence of either, the remaining members shall appoint one of their number to preside.

Special meetings

10. The Chairman or any three members of the Committee or the Medical Officer may call a special meeting at any time, at which business will be confined to the item or items on account of which the meeting has been called.

Appointment and duties of secretary

11. The Minister shall appoint a secretary to the Committee from District Hospital Administrative staff. The appointed secretary shall keep a record of the attendance of members and of the minutes of each meeting and shall transmit a copy of this record to the Medical Officer and to the Minister as soon as possible after each meeting.

Attendance of Medical Officer and Hospital staff at meetings

12. The Medical Officer or an officer appointed by him in writing shall have the right to be present at each meeting and shall be entitled to speak but not to vote. The Committee, with the approval of the Medical Officer, shall have the right to call any member of the Hospital staff to its meetings to assist the Committee in matters of which he has specialized knowledge.

Standing Orders for meetings

13. The Committee shall consider and approve within six months of its appointment, Standing Orders for the further regulation of its meetings.

PART IV

Duties of the Advisory Committee

Investigation of complaints and recommendations

14. It shall be the duty of the Committee—

(i) to receive and enquire into complaints of patients or of their relatives or friends as to nursing, diet or treatment of patients and into allegations of misconduct or negligence on the part of the nursing staff.

(ii) to make such recommendations as it deems advisable to the Medical Officer on the provision and disposition of nursing and serving staff.

Procedure relating to complaints and representations

15. Every complaint or representation by any person or persons shall be laid before the Committee in writing and, after investigation, the Committee shall forward to the Medical Officer an account of the complaint or representation together with the Committee's findings relating to it. The Medical officer shall inform the Committee as soon as possible of his own conclusions on the complaint or representation and of any action taken by him in regard to it.

Visiting Committee

16. The Committee may appoint at least two of its members to form a Visiting Committee to visit the Hospital premises daily between the hours 10.30 a.m. and 4 p.m. by arrangement with the Medical Officer for the purpose of inspecting the conditions under which the Hospital is managed and in order to ascertain whether complaints made by or on behalf of patients are justified.

Recommending alterations to diets, etc.

17. The Committee shall recommend to the Medical Officer such alterations or additions to the scale of diets and provision of domestic equipment as it may deem necessary.

Approval for expenditure

18. No expenditure shall be incurred, or any action taken which may involve expenditure, without the approval of the Minister.

Benefits to be approved by Minister

19. The Committee shall inform the Minister of any benefit donated, bequeathed, offered or promised to the Committee for the use of the Hospital. Such benefits can only be accepted by the Committee with the approval of the Minister and must be employed in a manner agreed by him.

No interference with treatment or staff

20. The Committee shall in no way attempt to influence or to interfere with the medical treatment of patients nor shall it concern itself with the appointment, promotion, transfer or dismissal of the staff of the Hospital.

Control by Medical Officer

21. Nothing in these Rules relating to the duties of the Committee shall restrict the right of the Medical Officer to exercise such control as is normally permitted over persons enjoying the privilege of access to the Hospital as either visitors or patients.

PART V

GENERAL

Duty of Medical Officer to submit sketch plans

22. The Medical Officer shall submit to the Committee the sketch plans which he has received from the Permanent Secretary for the Ministry of Health of any proposed new building or of any proposed extensions or alterations to existing buildings of the Hospital before the final plans are prepared.

Comments on sketch plans by the Committee

23. The Committee shall return the plans to the Medical Officer as soon as possible with such comments or recommendations as it may wish to make. The Medical Officer will thereafter keep the Committee informed of any action taken either in accordance with or contrary to the Committee's wishes.

G.N. 111/1973

LILONGWE GENERAL HOSPITAL ADVISORY COMMITTEE RULES

under s. 143

PART I

PRELIMINARY

Citation

1. These Rules may be cited as the Lilongwe General Hospital Advisory Committee Rules.

Interpretation

2. In these Rules, unless the context otherwise requires—

"Committee" means the Advisory Committee for the Lilongwe General Hospital established under rule 3;

"Hospital" means the Lilongwe General Hospital;

"Medical Superintendent" means the Medical Superintendent for the time being in charge of the Hospital;

"member" means member of the Committee.

PART II

ESTABLISHMENT OF ADVISORY COMMITTEE

Establishment of Advisory Committee

3. The Minister hereby establishes an Advisory Committee for the Lilongwe General Hospital (hereinafter referred to as the Committee).

Appointment of members

4.—(1) The Committee shall consist of six members who shall be appointed as follows—

three members shall be appointed by the Minister;

two members shall be appointed by the Lilongwe Municipal Council;

one member shall be appointed by the Malaŵi Medical Association.

(2) Where either the Lilongwe Municipal Council or the Malaŵi Medical Association shall fail to appoint its member or members within 30 days from the date on which it is requested by the Minister to do so, the Minister may proceed to make the appointment of any person he deems suitable.

Tenure of office

5.—(1) A member shall hold office for two years only, provided that, at the end of the first year of the existence of the Committee, one half of its members, as determined by lot, shall retire and be replaced in the manner described in rule 4 above.

(2) Any retiring member may be re-appointed with the approval of the Minister.

Termination of appointment and resignation

6.—(1) If any member fails to attend two consecutive meetings without leave of absence (which may be granted by the Committee for up to seven months) the Minister may terminate the appointment of that member.

(2) Any member may at any time tender his resignation to the Minister.

(3) Where an appointment is terminated, or a resignation tendered to the Minister in accordance with the provisions of paragraphs (1) and (2) of this rule, the Minister may either permit the replacement of the member concerned in accordance with rule 4 (1), or proceed to nominate a replacement in accordance with rule 4 (2), as he deems appropriate, for the remainder of the unexpired term of office.

PART III

Procedure of the Committee

Times of meetings

7. The first meeting of the Committee shall be held not later than one month from the first appointment of its members; thereafter it shall meet not less than once in every two months.

Quorum

8. The quorum necessary for the transaction of business of the Committee at any meeting will be four members.

Election of Chairman and Vice-Chairman

9. At its first meeting in any year, the Committee shall elect a Chairman and a Vice-Chairman from amongst its members. In the absence of either, the remaining members shall appoint one of their number to preside.

Special meetings

10. The Chairman or any three members of the Committee or the Medical Superintendent may call a special meeting at any time, at which business will be confined to the item or items on account of which the meeting has been called.

Appointment and duties of secretary

11. The Minister shall appoint a secretary to the Committee from General Hospital Administrative staff. The appointed secretary shall keep a record of the attendance of members and of the minutes of each meeting and shall transmit a copy of this record to the Medical Superintendent and to the Minister as soon as possible after each meeting.

Attendance of Medical Superintendent and Hospital staff at meetings

12. The Medical Superintendent or an officer appointed by him in writing shall have the right to be present at each meeting and shall be entitled to speak but not to vote. The Committee, with the approval of the Medical Superintendent, shall have the right to call any member of the Hospital staff to its meetings to assist the Committee in matters of which he has specialized knowledge.

Standing Orders for meetings

13. The Committee shall consider and approve within six months of its appointment, Standing Orders for the further regulation of its meetings.

PART IV

Duties of the Advisory Committee

Investigation of complaints and recommendations

14. It shall be the duty of the Committee—

(i) to receive and enquire into complaints of patients or of their relatives or friends as to nursing, diet or treatment of patients and into allegations of misconduct or negligence on the part of the nursing staff;

(ii) to make such recommendations as it deems advisable to the Medical Superintendent on the provision and disposition of nursing and serving staff.

Procedure relating to complaints and representations

15. Every complaint or representation by any person or persons shall be laid before the Committee in writing and, after investigation, the Committee shall forward to the Medical Superintendent an account of the complaint or representation together with the Committee's findings relating to it. The Medical Superintendent shall inform the Committee as soon as possible of his own conclusions on the complaint or representation and of any action taken by him in regard to it.

Visiting Committee

16. The Committee may appoint at least two of its members to form a Visiting Committee to visit the Hospital premises daily between the hours 10.30 a.m. and 4 p.m. by arrangement with the Medical Superintendent for the purpose of inspecting the conditions under which the Hospital is managed and in order to ascertain whether complaints made by or on behalf of patients are justified.

17. The Committee shall recommend to the Medical Superintendent such alterations or additions to the scale of diets and provision of domestic equipment as it may deem necessary. Recommending alterations to diets, etc.

18. No expenditure shall be incurred, or any action taken which may involve expenditure, without the approval of the Minister. Approval for expenditure

19. The Committee shall inform the Minister of any benefit donated, bequeathed, offered or promised to the Committee for the use of the Hospital. Such benefits can only be accepted by the Committee with the approval of the Minister and must be employed in a manner agreed by him. Benefits to be approved by Minister

20. The Committee shall in no way attempt to influence or to interfere with the medical treatment of patients nor shall it concern itself with the appointment, promotion, transfer or dismissal of the staff or the Hospital. No interference with treatment or staff

21. Nothing in these Rules relating to the duties of the Committee shall restrict the right of the Medical Superintendent to exercise such control as is normally permitted over persons enjoying the privilege of access to the General Hospital as either visitors or patients. Control by Medical Superintendent

PART V

General

22. The Medical Superintendent shall submit to the Committee the sketch plans which he has received from the Permanent Secretary for the Ministry of Health of any proposed new building or of any proposed extensions or alterations to existing buildings of the Hospital before the final plans are prepared. Duty of Medical Superintendent to submit sketch plans

23. The Committee shall return the plans to the Medical Superintendent as soon as possible with such comments or recommendations as it may wish to make. The Medical Superintendent will thereafter keep the Committee informed of any action taken either in accordance with or contrary to the Committee's wishes. Comments on sketch plans by the Committee

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RUMPHI DISTRICT HOSPITAL ADVISORY COMMITTEE RULES

G.N. 104/1973

under s. 143

PART I

Preliminary

1. These Rules may be cited as the Public Health Rumphi District Hospital Advisory Committee Rules. Citation

Interpretation

2. In these Rules, unless the context otherwise requires—

"Committee" means the Advisory Committee for the Rumphi District Hospital established under rule 3;

"Hospital" means the Rumphi District Hospital;

"Medical Officer" means the Medical Officer for the time being in charge of the Hospital;

"Member" means member of the Committee.

PART II

Establishment and Membership of Advisory Committee

Establishment of Advisory Committee

3. The Minister hereby establishes an Advisory Committee for the Rumphi District Hospital (hereinafter referred to as the Committee).

Appointment of members

4.—(1) The Committee shall consist of six members who shall be appointed as follows—

Four members shall be appointed by the Minister; and two members shall be appointed by the Rumphi District Council.

(2) Where the Rumphi District Council shall fail to appoint its member or members within 30 days from the date on which it is requested by the Minister to do so, the Minister may proceed to make the appointment of any person he deems suitable.

Tenure of office

5.—(1) A member shall hold office for two years only, provided that, at the end of the first year of the existence of the Committee, one half of its members, as determined by lot, shall retire and be replaced in the manner described in rule 4 above.

(2) Any retiring member may be re-appointed with the approval of the Minister.

Termination of appointment and resignation

6.—(1) If any member fails to attend two consecutive meetings without leave of absence (which may be granted by the Committee for up to seven months) the Minister may terminate the appointment of that member.

(2) Any member may at any time tender his resignation to the Minister.

(3) Where an appointment is terminated, or a resignation tendered to the Minister in accordance with the provisions of paragraphs (1) and (2) of this rule, the Minister may either permit the replacement of the member concerned in accordance with rule

4 (1), or proceed to nominate a replacement in accordance with rule 4 (2), as he deems appropriate, for the remainder of the unexpired term of office.

PART III

Procedure of the Committee

Times of meetings

7. The first meeting of the Committee shall be held not later than one month from the first appointment of its members; thereafter it shall meet not less than once in every two months.

Quorum

8. The quorum necessary for the transaction of business of the Committee at any meeting will be four members.

Election of Chairman and Vice-Chairman

9. At its first meeting in any year, the Committee shall elect a Chairman and a Vice-Chairman from amongst its members. In the absence of either, the remaining members shall appoint one of their number to preside.

Special meetings

10. The Chairman or any three members of the Committee or the Medical Officer may call a special meeting at any time, at which business will be confined to the item or items on account of which the meeting has been called.

Appointment and duties of secretary

11. The Minister shall appoint a secretary to the Committee from District Hospital Administrative staff. The appointed secretary shall keep a record of the attendance of members and of the minutes of each meeting and shall transmit a copy of this record to the Medical Officer and to the Minister as soon as possible after each meeting.

Attendance of Medical Officer and Hospital staff at meetings

12. The Medical Officer or an officer appointed by him in writing shall have the right to be present at each meeting and shall be entitled to speak but not to vote. The Committee, with the approval of the Medical Officer, shall have the right to call any member of the Hospital staff to its meetings to assist the Committee in matters of which he has specialized knowledge.

Standing Orders for meetings

13. The Committee shall consider and approve within six months of its appointment, Standing Orders for the further regulation of its meetings.

PART IV

Duties of the Advisory Committee

Investigation of complaints and recommendations

14. It shall be the duty of the Committee—

(i) to receive and enquire into complaints of patients or of their relatives or friends as to nursing, diet or treatment of patients and into allegations of misconduct or negligence on the part of the nursing staff.

(ii) to make such recommendations as it deems advisable to the Medical Officer on the provision and disposition of nursing and serving staff.

Procedure relating to complaints and representations

15. Every complaint or representation by any person or persons shall be laid before the Committee in writing and, after investigation, the Committee shall forward to the Medical Officer an account of the complaint or representation together with the Committee's findings relating to it. The Medical Officer shall inform the Committee as soon as possible of his own conclusions on the complaint or representation and of any action taken by him in regard to it.

Visiting Committee

16. The Committee may appoint at least two of its members to form a Visiting Committee to visit the Hospital premises daily between the hours 10.30 a.m. and 4 p.m. by arrangement with the Medical Officer for the purpose of inspecting the conditions under which the Hospital is managed and in order to ascertain whether complaints made by or on behalf of patients are justified.

Recommending alterations to diets, etc.

17. The Committee shall recommend to the Medical Officer such alterations or additions to the scale of diets and provision of domestic equipment as it may deem necessary.

Approval for expenditure

18. No expenditure shall be incurred, or any action taken which may involve expenditure, without the approval of the Minister.

Benefits to be approved by Minister

19. The Committee shall inform the Minister of any benefit donated, bequeathed, offered or promised to the Committee for the use of the Hospital. Such benefits can only be accepted by the Committee with the approval of the Minister and must be employed in a manner agreed by him.

No interference with treatment or staff

20. The Committee shall in no way attempt to influence or to interfere with the medical treatment of patients nor shall it concern itself with the appointment, promotion, transfer or dismissal of the staff of the Hospital.

Control by Medical Officer

21. Nothing in these Rules relating to the duties of the Committee shall restrict the right of the Medical Officer to exercise such control as is normally permitted over persons enjoying the privilege of access to the Hospital as either visitors or patients.

PART V

GENERAL

22. The Medical Officer shall submit to the Committee the sketch plans which he has received from the Permanent Secretary for the Ministry of Health of any proposed new building or of any proposed extensions or alterations to existing buildings of the Hospital before the final plans are prepared. Duty of Medical Officer to submit sketch plans

23. The Committee shall return the plans to the Medical Officer as soon as possible with such comments or recommendations as it may wish to make. The Medical Officer will thereafter keep the Committee informed of any action taken either in accordance with or contrary to the Committee's wishes. Comments on sketch plans by the Committee

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SALIMA DISTRICT HOSPITAL ADVISORY COMMITTEE RULES

G.N. 106/1975

under s. 143

PART I

PRELIMINARY

1. These Rules may be cited as the Public Health (Salima District Hospital Advisory Committee) Rules. Citation

2. In these Rules, unless the context otherwise requires— Interpretation

"Committee" means the Advisory Committee for the Salima District Hospital established under Rule 3;

"Hospital" means the Salima District Hospital;

"Medical Officer" means the Medical Officer for the time being in charge of the Hospital;

"member" means member of the Committee.

PART II

ESTABLISHMENT OF ADVISORY COMMITTEE

3. The Minister hereby establishes an Advisory Committee for the Salima District Hospital (hereinafter referred to as the "Committee"). Establishment of Advisory Committee

4.—(1) The Committee shall consist of six members who shall be appointed as follows— Appointment of members

(*a*) Three members shall be appointed by the Minister;

(*b*) Two members shall be appointed by the Salima District Council;

(*c*) One member shall be appointed by the Malaŵi Medical Association.

(2) Where the Salima District Council or the Malaŵi Medical Association, respectively fail to exercise its power of appointment in respect of any member pursuant to subrule (1) within 30 days from the date on which it is requested by the Minister to do so, the Minister may exercise such power of appointment and in so doing may appoint as such member any person whom he deems suitable.

Tenure of Office

5.—(1) A member shall hold office for two years, provided that, at the end of the first year of the existence of the Committee, one half of its members, as determined by lot, shall retire and be replaced in the manner described in rule 4 above.

(2) Any retiring member may be re-appointed with the approval of the Minister.

Termination of appointment and resignation

6.—(1) If any member fails to attend two consecutive meetings without leave of absence (which may be granted by the Committee for up to seven months) the Minister may terminate the appointment of that member.

(2) Any member may at any time tender his resignation to the Minister.

(3) Where any member who was appointed pursuant to paragraph (*b*) or (*c*) of rule 4 (1) resigns or his membership is terminated under these rules the Minister may either direct the relevant appointing authority under rule 4 (1) (*b*) or 4 (1) (*c*), as the case may be, to proceed to appoint a new member in the place and stead of the said member who has resigned or whose membership has been terminated, or he may, without giving any such direction, as aforesaid, himself appoint such new member. Any member appointed under this paragraph shall hold office during the unexpired residue of the term of the member he has replaced.

PART III

Procedure of the Committee

Time of meetings

7. The first meeting of the Committee shall be held not later than one month from the first appointment of its members; thereafter it shall meet not less than once in every two months.

Quorum

8. The quorum necessary for the transaction of business of the Committee at any meeting will be four members.

Election of Chairman and Vice-Chairman

9. At its first meeting in any year, the Committee shall elect a Chairman and Vice-Chairman from amongst its members. In the absence of either, the remaining members shall appoint one of their members to preside.

Special meetings

10. The Chairman or any three members of the Committee or the Medical Officer may call a special meeting at any time, at which business will be confined to the item or items on account of which the meeting has been called.

Appointment and duties of secretary

11. The Minister shall appoint a secretary to the Committee from District Hospital Administrative staff. The secretary shall keep a record of the attendance of members and of the minutes of each meeting and transmit a copy of this record to the Medical Officer and to the Minister as soon as possible after each meeting.

Attendance of Medical Officer and Hospital staff at meeting

12. The Medical Officer or an officer appointed by him in writing shall have the right to be present at each meeting and shall be entitled to speak but not to vote. The Committee, with the approval of the Medical Officer, shall have the right to call any member of the Hospital staff to its meetings to assist the Committee in matters of which he has specialized knowledge.

Standing Orders for meetings

13. The Committee shall consider and approve within six months of its appointment, Standing Orders for the further regulation of its meetings.

PART IV

Duties of the Advisory Committee

Investigation of complaints and recommendations

14. It shall be the duty of the Committee—

(i) to receive and enquire into complaints of patients or of their relatives or friends as to nursing, diet or treatment of patients and into allegations of misconduct or negligence on the part of the hospital staff;

(ii) to make such recommendations as it deems advisable to the Medical Officer on the provision and disposition of nursing and serving staff.

Procedure relating to complaints and representations

15. Every complaint or representation by any person or persons shall be laid before the Committee in writing and, after investigation, the Committee shall forward to the Medical Officer an account of the complaints or representation together with the Committee's findings relating to it. The Medical Officer shall inform the Committee as soon as possible of his own conclusions on the complaint or representation and of any action taken by him in regard to it.

Visiting Committee

16. The Committee may appoint at least two of its members to form a Visiting Committee to visit the Hospital premises by arrangement with the Medical Officer for the purpose of inspecting the conditions under which the Hospital is managed and in order to ascertain whether complaints made by or on behalf of patients are justified.

Recommending alterations to diets, etc.

17. The Committee shall recommend to the Medical Officer such alteration or addition to the scale of diets and provision of domestic equipment as it may deem necessary.

Approval for expenditure

18. No expenditure shall be incurred, or any action taken which may involve expenditure without the approval of the Minister.

Benefits to be approved by Minister

19. The Committee shall inform the Minister of any benefit donated, bequeathed, offered or promised to the Committee for the use of the Hospital. Such benefits can only be accepted by the Committee with the approval of the Minister and must be employed in a manner agreed by him.

No interference with treatment or staff

20. The Committee shall in no way attempt to influence or interfere with the medical treatment of patients nor shall it concern itself with the appointment, promotion, transfer or dismissal of staff of the Hospital.

Control by Medical Officer

21. Nothing in these rules relating to the duties of the Committee shall restrict the right of the Medical Officer to exercise such control as is normally permitted over persons enjoying the privilege of access to the District Hospital as either visitors or patients.

PART V

General

Duty of Medical Officer to submit sketch

22. The Medical Officer shall submit to the Committee the sketch plans which he has received from the Permanent Secretary for the Ministry of any proposed new building or of any proposed extensions or alterations to existing buildings of the hospital before the final plans are prepared.

Comments on sketch plans by the Committee

23. The Committee shall return the plans to the Medical Officer as soon as possible with such comments or recommendations as it may wish to make. The Medical Officer will thereafter keep the Committee informed of any action taken either in accordance with or contrary to the Committee's wishes.

CHITIPA DISTRICT HOSPITAL ADVISORY COMMITTEE RULES

G.N. 13/1980

under s. 143

Part I

Preliminary

1. These Rules may be cited as the Public Health (Chitipa District Hospital Advisory Committee) Rules. Citation

2. In these Rules, unless the context otherwise requires— Interpretation

"Committee" means the Advisory Committee for the Chitipa District Hospital established under rule 3;

"Hospital" means the Chitipa District Hospital;

"Medical Officer" means the Medical Officer for the time being in charge of the Hospital;

"Member" means member of the Committee.

Part II

Establishment and Membership of the Advisory Committee

3. The Minister hereby establishes an Advisory Committee for the Chitipa District Hospital (hereinafter referred to as the Committee). Establishment of Advisory Committee

4.—(1) The Committee shall consist of six members of whom four shall be appointed by the Minister and two shall be appointed by the Chitipa District Council. Appointment of members

(2) If the Chitipa District Council shall have failed to appoint any or either such member within thirty days from the date on which it was requested by the Minister to do so, the Minister may appoint any person he deems suitable as such member.

5.—(1) At the end of the first year of the existence of the Committee, one half of its members, as determined by lot, shall retire and be replaced in the manner described in rule 4. Tenure of office

(2) Subject to subrule (1), a member shall hold office for two years.

(3) Any retiring member may be reappointed with the approval of the Minister.

6.—(1) If any member fails to attend two consecutive meetings without leave of absence (which at any time may be granted by the Committee for any period of not more than seven months) the Minister may terminate the appointment of that member. Termination of appointment and resignation

(2) Any member may at any time tender his resignation to the Minister.

(3) Where an appointment is terminated, or a resignation is tendered to the Minister, in accordance with the provisions of this rule, the Minister may either permit the replacement of the member concerned in accordance with rule 4 (1), or proceed to nominate a replacement in accordance with rule 4 (2), as he deems appropriate, for the remainder of the unexpired term of office.

Part III

Procedure of the Advisory Committee

Time of meetings

7. The first meeting of the Committee shall be held before the expiry of one month after the date of the first appointment of its members; thereafter it shall meet not less than once in every two months.

Quorum

8. The quorum necessary for the transaction of the business of the Committee at any meeting is four members.

Election of Chairman and Vice-Chairman

9.—(1) At its first meeting in any year, the Committee shall elect a Chairman and a Vice-Chairman from amongst its members.

(2) The Chairman or, in his absence, the Vice-Chairman shall preside at meetings of the Committee; in the absence of both the Chairman and the Vice-Chairman at any meeting, the members of the Committee present may appoint any one of their number to preside thereat.

Special meetings

10. The Chairman or any three members of the Committee or the Medical Officer may call a special meeting of the Committee at any time, at which business shall be confined to the purpose for which the meeting has been called.

Appointment and duties of Secretary

11. The Minister shall appoint a Secretary to the Committee from the Hospital Administrative staff. The Secretary shall keep a record of the attendance of members and of the minutes of each meeting and shall transmit a copy of such record to the Medical Officer and to the Minister as soon as practicable after each meeting.

Attendance of Medical Officer and Hospital staff at meetings

12. The Medical Officer or an officer appointed by him in writing shall be entitled to be present at each meeting and to speak but not to vote. The Committee, with the approval of the Medical Officer, may summon any member of the Hospital staff to its meetings to assist the Committee in matters of which such member of staff has specialized knowledge.

Standing Orders or meetings

13. The Committee shall, within six months of its appointment, consider and approve Standing Orders for the regulation of its meetings in any manner not inconsistent with the provisions of these Rules.

PART IV

Duties of the Advisory Committee

Investigation of complaints and recommendations

14. It shall be the duty of the Committee—

(*a*) to receive and enquire into any complaints made by patients or by the relatives or friends of patients as to the nursing, diet or treatment administered to patients at the hospital, and into any allegations of misconduct or negligence on the part of the nursing staff;

(*b*) to make such recommendations to the Medical Officer as it deems advisable with respect to the provision and disposition of nursing and serving staff.

Procedure relating to complaints and representations

15. Every such complaint or allegation shall be laid before the Committee in writing and, after due enquiry, the Committee shall forward to the Medical Officer a report thereon which shall contain the Committee's findings in relation thereto. The Medical Officer shall inform the Committee as soon as possible thereafter of his own conclusions with regard to such complaint or allegation and of any consequent action taken by him.

Visiting Committee

16. The Committee may appoint at least two of its members to form a Visiting Committee whose duty it shall be to visit the hospital premises daily between the hours 10:30 a.m. and 4.00 p.m. by arrangement with the Medical Officer for the purpose of inspecting the conditions under which the hospital is being managed and ascertaining whether any such complaints or allegations appear to be justified.

Recommending alteration to diets, etc.

17. The Committee may recommend to the Medical Officer any alterations or additions to the scale of diets or to the domestic equipment of the hospital as it thinks necessary.

Approval for expenditure

18. No expenditure shall be incurred by the Committee, nor any action taken by the Committee which may involve expenditure, without the approval of the Minister.

Donations and bequests first to be approved by Minister, etc.

19. The Committee shall notify the Minister of any donation or bequest that may have been offered or promised to the Committee for the use of the hospital. No such donation or bequest shall be accepted by the Committee unless the approval of the Minister has first been obtained, and every such donation and bequest shall be devoted only to such purpose for the benefit of the hospital as he shall direct.

No interference with treatment of staff

20. The Committee shall not, in any way, whether directly or indirectly, influence or interfere with the medical treatment of patients nor attempt to do so, nor concern itself with the appointment, promotion, transfer or dismissal of the staff of the hospital.

PART V

GENERAL

Control by Medical Officer

21. Nothing in these Rules relating to the duties of the Committee shall restrict the right of the Medical Officer to exercise such control as is customary over visitors to the hospital and patients therein.

Duty of Medical Officer to submit sketch plans

22. The Medical Officer shall submit to the Committee any sketch plans, received by him from the Secretary for Health, of any proposed new building or of any proposed extensions or alterations to existing buildings, of the hospital, before final plans are prepared.

Comments on sketch plans by the Committee

23. The Committee shall consider and return such sketch plans to the Medical Officer as soon as possible with such comments or recommendations thereon as it may wish to make. The Medical Officer shall thereafter keep the Committee informed of any consequent action taken whether or not such action is at variance with any such comment or recommendation.

G.N. 90/1993
38/1997
15/1998

PUBLIC HEALTH (GOVERNMENT HOSPITALS) (FEES) RULES

under s. 143

Citation

1. These Rules may be cited as the Public Health (Government Hospitals) (Fees) Rules.

Fees

2.—(1) Subject to sub-rule (2), the fees prescribed in the Schedule shall be payable in respect of the matters specified therein in relation to such fees.

(2) Where a patient is a member of a medical insurance scheme, the fees payable in respect of matters specified in the Schedule shall be in accordance with the fees prescribed in the Schedule, or the fees schedule of the medical insurance scheme, whichever is the higher.

r. 2

SCHEDULE

G.N. 38/1997
15/1998

FEES PAYABLE BY PRIVATE PATIENTS AT GOVERNMENT HOSPITALS

Matter	*Fees payable* K t
1. OUT-PATIENTS, per attendance—	
(*a*) Specialists:	
(i) for first attendance	60 00

Matter	*Fees payable* K	t
(ii) for subsequent attendance for the same episode of illness, or acute exacerbation of chronic illness	30	00
(*b*) General practitioners—		
(i) for first attendance	40	00
(ii) for subsequent attendance for the same episode of illness, or acute exacerbation of chronic illness	20	00
2. IN-PATIENTS—		
(*a*) Central and General Hospitals—		
(i) single self-contained room, per day	300	00
(ii) shared room, per day	150	00
(iii) deposit payable on admission	600	00
(iv) ICU bed.	400	00
(*b*) District Hospitals, per day	75	00
(*c*) Doctor's visits on request, per visit—		
(i) specialists	100	00
(ii) general practitioners	50	00
3. SURGERY INCLUDING OBSTETRICS, GYNAECOLOGY, OPHTHALMOLOGY AND DENTISTRY—		
(*a*) major operation	1,500	00
(*b*) minor operation with general anesthesia	650	00
(*c*) minor operation without general anaesthesia	300	00
4. MATERNITY SERVICES—		
(*a*) Antenatal and postnatal out-patient care, for the entire period	200	00
(*b*) Delivery:		
(i) normal delivery		
by midwife	300	00
by general practitioner	400	00
by obstetrician/gynaecologist	750	00
(ii) caesarean section	750	00
5. DIAGNOSTIC PROCEDURES—		
(*a*) Lumber puncture	50	00
(*b*) Paracentesis:		
(i) chest with drain	100	00
(ii) chest without drain	50	00
(iii) pericardium with drain	100	00
(iv) pericardium without drain	60	00
(v) abdomen	50	00
(vi) aspiration of joint	50	00
(*c*) Electrocardiogram	250	00
(*d*) Liver biopsy	75	00

Matter	*Fees payable* K	t
(*e*) Sigmoidoscopy, with general anaesthesia	200	00
(*f*) Sigmoidoscopy, without general anaesthesia	60	00
(*g*) Gastroscopy	200	00
(*h*) Colonoscopy	260	00
(*i*) Bronchoscopy	200	00
(*j*) Complete abdominal ultrasound scan	300	00
(*k*) Obstetrical and gynaecological scan	100	00
(*l*) Fine needle aspiration	60	00

Out-Patient Department II (Opd II)

6. Laboratory Tests—

(a) Parasitology:		
(i) stool (microscopy)	20	00
(ii) urine (microscopy)	20	00
(iii) urine (sugar)	20	00
(iv) urine and stool (full report)	50	00
(v) urine bile	30	00
(vi) malaria parasites smear	30	00
(vii) stool occult blood	55	00
(*b*) Serology:		
(i) VDRL	60	00
(ii) widal	60	00
(iii) weil felix	60	00
(iv) brucellosis	20	00
(v) HIV ordered by doctor	free	
(vi) HIV (ELISA) test on request by individual	85	00
(vii) HIV on request by insurance company	450	00
(viii) HIV (western blot) test	450	00
(ix) hepatitis B surface antigen	147	00
(x) slide test	40	00
(xi) antistreptolysin (ASO) titre	100	00
(xii) rheumatoid factor	100	00
(*c*) Bacteriology:		
(i) culture only	50	00
(ii) culture and sensitivy	100	00
(iii) AAFB (x3)	100	00
(iv) cerebrospinal fluid:		
gram stain	30	00
cell count	30	00
sugar	30	00
protein	30	00
wet preparation	30	00

Matter	*Fees payable* K	t
(*d*) Haematology:		
(i) haemoglobin	25	00
(ii) WBC	25	00
(iii) ESR	110	00
(iv) full blood count	65	00
(v) full blood count and differencial	95	00
(vi) LE cells	85	00
(e) Electrophoresis:		
(i) haemoglobin	65	00
(ii) serum	65	00
(iii) urine	65	00
(iv) cerebrospinal fluid	65	00
(v) prothrombin time	100	00
(vi) clotting time	20	00
(vii) bone marrow examination	100	00
(viii) bone marrow aspiration and examination by pathologist	150	00
(ix) fibrinogen	170	00
(x) coombs test, direct and indirect	50	00
(xi) grouping and cross matching	65	00
(xii) grouping alone	25	00
(xiii) cross matching	60	00
(*f*) Biochemistry:		
(i) blood glucose	40	00
(ii) serum protein	40	00
(iii) 1electrolytes (sodium, potassium, calcium chloride, bicarbonate and lithum), per electrolyte	100	00
(iv) acid phosphate	70	00
(v) alkaline phosphate	40	00
(vi) amylase	45	00
(vii) cholesterol	40	00
(viii) creatine phosphokinase (CPK).	130	00
(ix) creatinine	40	00
(x) urea	20	00
(xi) uric acid	40	00
(xii) glucose-6-phosphate dehydroganae (G6PD)	80	00
(*g*) Liver function tests:		
(i) complete	200	00
(ii) total protein	40	00
(iii) SGOT	40	00
(iv) SGPT	55	00

Matter	*Fees payable* K t
(v) A/G ratio	55 00
(vi) albumium	55 00
(vii) bilirubin	50 00
(*h*) Pregnancy tests:	
(i) qualitative	50 00
(ii) quantitative	75 00
(*i*) Histology and cytology:	
(i) histology	65 00
(ii) extra fee for special stains	25 00
(iii) cytology by technician	40 00
(iv) cytology by pathologist	50 00
(v) semen analysis	50 00
(vi) buccal smear	65 00
(vii) barr bodies	50 00
7. X-Rays—	
(*a*) upper or lower limbs, per limb	45 00
(*b*) skull, plain	55 00
(*c*) skull with contrast media	180 00
(*d*) chest	60 00
(*e*) angiogram	160 00
(*f*) intravenous urogram	160 00
(*g*) salpingogram	100 00
(*h*) barium meal	170 00
(*i*) barium enema	170 00
(*j*) barium shallow	140 00
(*k*) abdomen, plain film	45 00
(*l*) whole gastrointenstinal tract contrast media	200 00
(*m*) pelvis	60 00
(*n*) vertebral column:	
(i) per section	60 00
(ii) whole spine	95 00

Out-Patient Department 1 (OPD 1)

8. Dental Procedures other than major and minor operations made in paragraph 3 above—	
(*a*) Diagnosis—	
(i) clinical examination, advice, charting (including monitoring of periodontal status and report), per course of treatment	60 00
(ii) full case assessment treatment planning by dentist	100 00
(iii) for oral and maxillofacial assessment by dental specialist	150 00

Matter	*Fees payable* K t
(iv) for orthodontic assessment by dentist	100 00
(v) for orthodontic assessment by dental specialist	150 00
(vi) radiographic examination and report:	
(A) small films under 16 cm^2	40 00
(B) medium film between 16 cm^2 and 50 cm^2	70 00
(C) large film over 50 cm^2 except panoral and lateral skull	150 00
(D) panoral film	200 00
(E) lateral head plate	300 00
(F) cephalometric analysis	400 00
(vi) study models:	
(A) per set	200 00
(B) per duplicate set	150 00
(C) per single cast	100 00
(vii) colour photographs:	
(A) per film	30 00
(B) per additional film	15 00
(viii) biopsy:	
(A) excisional	300 00
(B) incisional	250 00
(*b*) Preventive care—	
(i) intensive instruction in the prevention of dental disease including advice on diet and on oral hygiene techniques	50 00
(ii) application of fissure sealants as a primary preventive measure to pits and fissure per tooth	50 00
(iii) application of flourides, per tooth	60 00
(*c*) Periodontal treatment—	
(i) simple scaling and polishing including oral hygiene instruction	50 00
(ii) treatment of periodontal disease requiring more than 1 visit including oral hygiene instruction, scaling, polishing and marginal correction of fillings	150 00
(iii) non-surgical treatment of chronic periodontal diseases requiring a minimum of three visits treatment to include root-planning, deep scaling and where required marginal correction of restorations, syringing of periodontal pockets, subgingival curettage and/or gingival packing of affected teeth	300 00
(*d*) Conservation treatment—	
(i) amalgam fillings:	
(A) one surface	50 00
(B) two surfaces	80 00

Matter	*Fees payable* K t
(C) three or more surfaces	100 00
(ii) composite fillings:	
(A) one surface	250 00
(B) two surfaces	400 00
(C) three or more surfaces	500 00
(D) additional fee for light cure	50 00
(iii) glass lonomer, solicate or solico phosphate filling, per tooth	100 00
(iv) glass lonomer/composite sandwitch filling, per tooth	200 00
(v) pin or screw retention of above treatment, per pin or screw	50 00
(*e*) Endodontic treatment—	
(i) root canal treatment with radioopaque fillingmaterial:	
(A) per incisor or canine tooth	190 00
(B) per upper premolar tooth	250 00
(C) per lower premolar tooth	200 00
(D) per molar tooth	350 00
(E) each additional canal	62 00
(ii) vital pulpolomy and dressing	150 00
(iii) apicetomy of permanent teeth—	
(A) per incisor or canine tooth	250 00
(B) per premolar tooth	350 00
(C) per buceal tooth of upper mollar, per tooth	400 00
(*f*) Porcelain veneers facing or refacing of a permanent anterior tooth to the first premolar and including acid etch retention, per tooth	600 00
(*g*) In lays and crowns—	
(i) in alloys containing 60 per cent or fine gold:	
(A) surface cavity inlay	400 00
(B) two surface cavity inlay	500 00
(C) three or more surfaces cavity inlay	600 00
(ii) cast three-quarter crown	800 00
(iii) cast full crown	700 00
(iv) in other alloys:	
(A) full crown cast in precious metal alloy	800 00
(B) full crown in non-precious mental alloy	500 00
(v) porcelain jacket crown	800 00
(vi) bonded crowns:	
(A) full crown cast in alloy of fine gold or previous metal with thermally bonded porcelain	1,500 00
(B) full crown cast in non-precious metal alloy with thermally bonded porcelain	1,200 00

Matter	*Fees payable* K t
(C) porcelain jacket crown bonded to wrought platinum coping	1,000 00
(D) jacket crown in synthetic resin	300 00
(E) core and post both cast in previous metal alloy	500 00
(F) core and post prefabricated in non-precious metal alloy	200 00
(G) pin or screw retention for a core fabricated in mouth	100 00
(H) provision of a facing with ailicate, silicatephosphate glass ionomer, synthetic resin or composite resin	70 00
(I) temporary crown provided prior to preparation of a permanent crown as an immediately necessary palliative	100 00
(J) removal of a post fractured at or below a root face necessitating the modification of the existing canal form	100 00
(K) crown or inlay repair	70 00
(L) refixing or recementing on inlay or crown	70 00
(M) laboratory fees	500 00
(*h*) Provision of bridges—	
(i) per pontic:	
(A) acidetch retained bridge	800 00
(B) cast in alloy containing 60 per cent or more fine gold	1,500 00
(C) other precious metal	1,200 00
(D) non-precious metal	1,100 00
(E) porcelain	1,000 00
(F) bonded porcelain	1,200 00
(G) porcelain bonded to an alloy	1,500 00
(ii) retainers for other than acidetch retained bridges:	
(A) cast in alloy containing 60 per cent or more fine gold	1,300 00
(B) in other alloys	1,500 00
(C) porcelain full crown, per retainer	1,650 00
(D) full bonded crown cast in an alloy of fine gold or precious metal thermally bonded porcelain	2,500 00
(iii) additional items on retainers, per abutment tooth:	
(A) core and post both cast in precious metal	.500 00
(B) core and post both cast in non-precious metal	.250 00
(C) pin or screw retension for a core fabricated in mouth	100 00
(iv) temporary bridge (maryland)	200 00
(v) recementing or refixing bridge	200 00
(vi) laboratory fees	500 00

Matter	*Fees payable* K t
(*i*) Provision of dentures—	
(i) preprosthetic treatment including synthetic resin addition to occlusal surface of existing dentures to restore vertical dimensions tissue conditioning with auto-polymerising tissue conditioner	200 00
(ii) provision of denture in synthetic resin including all necessary backing and tagging:	
(A) full upper and full lower dentures	2,000 00
(B) full upper or full lower only	1,000 00
(C) partial dentures bearing up to three teeth . .	800 00
(D) partial dentures bearing four to eight teeth . .	1,100 00
(E) partial denture bearing more than eight teeth . .	1,500 00
(iii) additional fee for stainless steel lingual bar or palatal bar, per unit	300 00
(iv) provision of metal based dentures which may not be provided until such period after extraction (normally not less than three months) as the dentist thinks fit:	
(A) full upper or full lower denture in chrome combalt or stainless steel, per denture . .	3,500 00
(B) plate design partial denture bearing up to three teeth	3,600 00
(C) plate design partial denture bearing between four to eight teeth	3,700 00
(D) plate design partial denture bearing more than eight teeth	3,800 00
(v) skeleton design partial denture with single connexion bearing:	
(A) up to three teeth	3,700 00
(B) four to eight teeth	3,800 00
(C) more than eight teeth	3,900 00
(vii) additional fee for provision of soft liners	500 00
(viii) additional fee for use of laboratory constructed special trays for taking impressions	200 00
(ix) impression fees	50 00
(x) denture repair	50 00
(xi) replacement of one tooth	65 00
(xii) relining or renewal of soft-liner	500 00
(xiii) rebasing	600 00
(xiv) addition of a clasp (stainless steel)	170 00
(xv) addition of a tooth	210 00
(*j*) Obturators, splints and other non-orthodontic applications—	

Matter	*Fees payable* K t
(i) obturators	500 00
(ii) repair to obturators	100 00
(iii) provision of emergency splinting for luxated or mobile teeth	150 00
(iv) provision of acid etch retained composite splint	200 00
(v) provision of laboratory fabricated heat cured acrylic splint designed to be retained normally for more than six weeks	300 00
(vi) provision of heat cured acrylic acclusal appliance for diagnostic and herapentic purpose	400 00
(vii) laboratory fees	500 00
(*k*) Orthodontic treatment—	
(i) intra oral appliances:	
(A) removable spring type appliance	1,000 00
(B) removable appliance with screws	1,500 00
(C) retainer	500 00
(D) simple fixed appliance	1,500 00
(E) fixed multiband or multibracket appliance	2,000 00
(F) functional appliance	1,300 00
(G) bite plane appliance	600 00
(H) additional fee for extra oral traction or anchorage reinforcement	350 00
(ii) repairs to orthodontic appliances:	
(A) repairing cracks or fracture in the acrylic of a removable appliance	150 00
(B) refixing a metal component or providing and fixing a replacement metal component on a removable appliance	200 00
(C) repairing a functional appliance	250 00
(D) repairing a fixed appliance involving replacing two or more blanketsm, band arcluwires or auxilliaries	350 00
(iii) replacement of appliances lost or damaged beyond repair:	
(A) space maintainer or retention appliance	190 00
(B) removable spring or screw type appliance	190 00
(C) simple fixed type appliance	700 00
(D) fixed multiband or multibracket appliance	1,000 00
(*l*) Exodontics—	
(i) simple extraction, per tooth	50 00
(ii) surgical extraction	190 00
(iii) removal of buried roots, per quadrant	300 00
(iv) removal of unerupted or impacted tooth	400 00

Matter	*Fees payable* K t
(v) clearance at least five teeth removal per jaw	500 00
(vi) local treatment of post extraction	20 00
(vii) haemorrhage	20 00
(viii) treatment of septic socket	20 00
(*m*) Oral infection treatment—	
(i) intra oral incision and drainage of pyogenic abscess	500 00
(ii) sequestrectomy-intra oral	400 00
(*n*) Para-orthodontic surgical procedure—	
(i) surgical exposure of unrupted tooth	00 00
(ii) surgical re-implantation of tooth plus	500 00
(iii) laboratory fees and splinting	500 00
(iv) surgical transplantation plus laboratory fees and splinting	900 00
(*o*) Threatre charges—	
(i) dental theatre fees—first fifteen minutes, each . .	200 00
(ii) fifteen minutes thereafter or part thereof (Actual theatre time must be shown on chart form)	50 00
(*p*) Periodontal treatment (by dental therapist), simple scaling and polishing	25 00
(*q*) Conservation treatment (by dental therapist)—	
(i) one surface filling	25 00
(ii) two surfaces filling	40 00
(iii) three surfaces filling	50 00
(*r*) Prothesis, obturators and other appliances (by dental technologist)—	
(i) dentures, these are limited to removable acrylic dentures as follows:	
(A) partial denture, up to four teeth	200 00
(B) fees, per additional tooth	20 00
(C) full denture, upper or lower only	350 00
(D) full denture, upper and lower	700 00
(E) denture repair	50 00
(ii) orthodontics:	
(A) removable appliance	260 00
(B) removable appliance with screws	310 00
(C) retainer	190 00
(iii) laboratory fees	300 00
(iv) impression fees	30 00
9. Physiotherapy for both in-patients and out-patients per session—	
(a) one mode therapy:	
(i) for first attendance	45 00

Matter	*Fees Payable* K t
(ii) for subsequent attendance for same episode of illness or acute exacerbation of chronic illness . .	25 00
(*b*) combination therapy:	
(i) for first attendance	60 00
(ii) for subsequent attendance for the same episode of illness or acute exacerbation of chronic illness . .	40 00
10. Miscellaneous Charges—	
(*a*) death report	100 00
(b) full examination for insurance purpose (all hospitals) . .	450 00
(*c*) medical report to insurance companies and private sectors (all hospitals)	350 00
(*d*) Ambulance hire charge per km	8 00
(*e*) embalming:	
(i) for local	400 00
(ii) for international	1,000 00
(f) Postmortem	1,000 00
(*g*) washing of body	30 00
(h) vaccination for travelling	30 00
11. Out-patient Department II	
(*a*) Diagnosis	free
(*b*) Preventive care	free
(*c*) Exodontics	free
(*d*) Obstructors and splints	free
(*e*) Children five years old and below	free

PUBLIC HEALTH (MARKETING OF INFANT AND YOUNG CHILD FOODS) RULES

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PUBLIC HEALTH (MARKETING OF INFANT AND YOUNG CHILD FOODS) RULES

G.N. 8/2004

under s. 143

PART I
PRELIMINARY

Citation

1. These Rules may be cited as the Public Health (Marketing of Infant and Young Child Foods) Rules.

Application

2. The Rules shall be applicable in the whole country and shall affect all breast-milk substitutes and other designated products whether locally made or imported and the practices related thereto, including their quality, availability and information concerning their use.

Interpretation

3. In these Rules, unless the context otherwise requires—

"advertising" means to make any representation for the purpose of promoting directly or indirectly sell of a designated product and includes every form of advertising or information dissemination by—

(*a*) written publications, television, radio, film, video or telephone;

(*b*) display of signs, billboards, notices or goods;

(*c*) exhibition of pictures or models;

(*d*) e-mail and internet; or

(*e*) any other means;

"Advisory Committee" means a Committee set up under rule 7;

"complimentary food" means any food suitable or presented as suitable addition to breast-milk, infant formula or follow-up formula;

"container" means any form of packaging of product for sale as a retail unit, including wrappers;

"designated product" includes—

(*a*) infant formula including special formulas for premature babies and those with metabolic diseases;

(*b*) any other food or milk marketed or otherwise presented as suitable for feeding infants for the first six months of life;

(*c*) feeding bottles, teats, pacifiers, cups with spouts and similar receptacles; and

(*d*) such other products as the Minister may, from time to time, declare to be designated products for purposes of these Rules by notice in the *Gazette*;

"distributor" means a person engaged in the business, whether wholesale or retail, of marketing any designated product and includes any person engaged in the business of providing information, or public relations services in relation to any designated product;

"follow-up formula" means an animal or vegetable-based milk product intended for infants and young children older than six months and industrially formulated in accordance with Malaŵi standards or in the absence of such standards, in accordance with standards elaborated by the Codex Alimentarius Commission;

"health care facility" means a public or private institution, non-governmental organization or private practitioner engaged directly or indirectly in the provision of health care or in health care education, day-care centres, nurseries or other infant-care facilities;

"health professional" includes a medical practitioner, nurse, clinical officer, midwife, dietician, nutritionist and environmental health officer;

"health worker" includes a person working, or in training to work in a health care facility, whether professional or non-professional including voluntary unpaid workers;

"infant" means a child from birth up to the age of twelve months;

"infant formula" includes an animal or vegetable-based milk product; industrially formulated in accordance with Malaŵi standards, or in the absence of such standards, in accordance with standards elaborated by the Codex Alimentarius Commission, to satisfy some or all of the nutritional requirements of infants up to the age of six months;

"Inspector" means a person appointed as an inspector under rule 15;

"label" includes a tag, mark, pictorial or other descriptive matter, written, printed, stenciled, marked, attached or otherwise appearing on or displayed near a container of a designated product;

"manufacturer" means a person engaged in the business of producing a designated product whether directly, or through an agent, controlled by or under an agreement;

"marketing" means any method of introducing or selling a designated product, including promotion, distribution, advertising, distribution of samples, public relations and information services;

"pacifier" means an artificial teat for babies to suck, also referred to as a "dummy";

"sample" means a single or small quantity of a designated product provided without cost;

"young child" means a person from the age of twelve months up to the age of three years.

Objective

4. These Rules intend to ensure safe and adequate nutrition for infants and young children by—

(*a*) promoting, protecting and supporting exclusive breast-feeding for six months and breast-feeding with adequate complementation with locally available foods up to about two years or beyond; and

(*b*) regulating the marketing of designated products.

PART II
ADMINISTRATION

Implementation

5.—(1) The Minister shall be responsible for the implementation of these Rules.

(2) The Minister shall, when necessary, call upon other ministries to ensure the proper implementation of these Rules.

Powers and functions of the Minister

6. For the purpose of implementing these Rules, the Minister shall have the following powers and functions—

(*a*) to call for consultations with Government agencies and other interested parties to ensure implementation and strict compliance with the provisions of these Rules;

(*b*) to ensure the enforcement of these Rules; and

(*c*) to exercise such other powers and functions as may be necessary for or incidental to the attainment of the purposes and objectives of these Rules.

Advisory Committee

7.—(1) There shall be an Advisory Committee which shall be responsible for the promotion, protection and support of breast-feeding.

(2) The Advisory Committee shall consist of the following members—

(*a*) the Minister of Health or his representative who shall be the *ex officio* chairman;

(*b*) two representatives from the Ministry of Health and Population responsible for nutrition, food and hygiene;

(*c*) two persons representing non-governmental organizations in the field of child welfare and development, infant nutrition or consumer protection;

(*d*) a representative from Malaŵi Bureau of Standards;

(*e*) the Secretary for Commerce and Industry or his designated representative;

(*f*) the Secretary for Ministry of Justice or his designated representative; and

(*g*) the Secretary for Gender and Community Services or his designated representative.

(3) No person shall be appointed a member of the Advisory Committee who has any direct or indirect financial interest in any designated product.

(4) The Minister shall appoint the members of the Advisory Committee within thirty days after these Rules come into force.

(5) The members of the Advisory Committee other than the *ex officio* members, shall hold office for a term of three years and shall be eligible for re-appointment for one more term.

Vacation of member

8.—(1) The office of a member of the Advisory Committee, other than an *ex officio* member shall be vacated—

(*a*) upon the expiry of the period of his appointment;

(*b*) upon his death;

(*c*) upon notice in writing to the Minister of his intention to resign his office;

(*d*) if a member acquires direct or indirect financial interest in any designated product; or

(*e*) if he is absent, without valid reasons, from three consecutive meetings of the Advisory Committee of which he has had notice.

(2) A vacancy shall be filled in the same manner as the original appointment for the remaining unexpired term.

Invited persons

9. The Advisory Committee may invite any person to attend any deliberations of the Committee but such person shall not be entitled to vote on any matter at any meeting of the Advisory Committee.

Sub-committees of the Advisory Committee

10. The Advisory Committee may establish sub-committees to carry out any special or general functions determined by the Advisory Committee.

Administr-ation of the Advisory Committee

11.—(1) The Minister shall appoint, within his Ministry, a secretary to the Advisory Committee and such other officers as he deems necessary for the purposes of the implementation of these Rules.

(2) The Secretary shall—

(*a*) convene meetings of the Advisory Committee at the direction of the Chairman;

(*b*) maintain minutes of the meetings; and

(*c*) perform such other duties as may be directed by the Advisory Committee.

Meetings of the Advisory Committee

12.—(1) The Advisory Committee shall meet as often as it deems necessary, but not less than twice a year at such time and place as the Secretary shall indicate.

(2) Five members of the Advisory Committee shall constitute a quorum for a meeting.

(3) At any meeting the decision for the Advisory Committee on any matter shall be that of the majority of the members present and voting at that meeting and in the event of an equality of votes, the Chairman or the person presiding shall have a casting vote in addition to his deliberate vote.

(4) The Advisory Committee may make such other administrative rules as may be required for its proper functioning.

(5) An extraordinary meeting of the Advisory Committee—

(*a*) may be convened by the Chairman at any time; and

(*b*) shall be convened by the Chairman within seven days after receipt by him of a request in writing signed by not less than three members of the Advisory Committee and specifying the purpose for which the meeting is to be convened.

Powers and functions of the Advisory Committee

13. The Advisory Committee shall have the following powers and functions—

(*a*) to review reports of violation or other matters concerning these Rules;

(*b*) to issue instructions to inspectors on what actions to be taken, or take such other actions, as the case may be, against any person found violating the provisions of these Rules;

(*c*) to examine and approve materials submitted in accordance with rule 21 (4) and recommend appropriate actions to be taken in the case of a violation of Part V; and

(*d*) such other powers and functions, as are conferred on it by the provisions of these Rules.

PART III
Registration and inspection

Registration of designated products

14.—(1) (*a*) Every manufacturer, importer, wholesaler or retailer of designated products shall apply annually to the Ministry for registration as a manufacturer, importer, wholesaler or retailer of designated products; and

(*b*) the application for registration shall be accompanied by non-refundable registration fees specified in the Schedule hereto.

(2) The Minister shall, by notice in the *Gazette*, specify the date prohibiting the importation, manufacturing or sale of any designated product that is not registered.

(3) A person applying for registration as a manufacturer, importer, wholesaler or retailer of a designated product shall

furnish such information and samples as specified in the registration form.

(4) Once the registration has been approved, a Certificate of Registration shall be issued by the Ministry.

(5) No Certificate of Registration shall be granted unless the designated product is—

(*a*) in accordance with the Malaŵi Standards, or in the absence of such standards, in accordance with standards elaborated by the Codex Alimentarius Commission; and

(*b*) every label of designated product is in accordance with the requirements of Part VI of these Rules.

Inspectors

15. The Minister shall appoint such persons as he sees fit, who have the prescribed qualifications, to be inspectors for the purposes of these Rules within such limits as may be assigned to them respectively:

Provided that no person who has any direct or indirect financial interest in any designated product shall not be appointed as an inspector.

Powers of Inspectors

16. An Inspector may—

(*a*) inspect any premises where any designated product is imported, manufactured, sold, stocked, exhibited for sale, advertised or otherwise promoted;

(*b*) inspect all relevant records and documents related to designated products; and

(*c*) exercise such other relevant powers.

Procedure for inspection

17.—(1) Inspectors shall inspect, as regularly as possible but in any case not less than four times a year, the premises which are used as a factory, warehouse, distribution or selling point of any breast-milk substitute or other designated product.

(2) After each inspection, the Inspector shall submit a report including any kind of violation of these Rules and recommendations to the Minister and seek instructions as to the action to be taken in respect of such violation.

PART IV
Prohibitions

Sale, etc., of designated product

18. No person shall distribute for sale, sell, stock or exhibit for sale any designated product that—

(*a*) is not in compliance with these Rules;

(*b*) has reached its expiration date; or

(*c*) is not in its original container.

Promotion prohibited

19.—(1) No manufacturer or distributor shall promote any designated product.

(2) Prohibited promotional practices include—

(*a*) advertising;

(*b*) sales devices including but not limited to rebates, special sales, discount coupons, prizes and gifts;

(*c*) the giving of one or more samples of a designated product to any person;

(*d*) distribution of any information or educational material regarding infant or young child feeding, except in accordance with these Rules; and

(*e*) direct or indirect contact between marketing personnel and members of the public in furtherance of or for the purposes of their business.

(3) For the purposes of this rule, "promote" means to employ any method of directly or indirectly encouraging a person to purchase or use a designated product.

Prohibition of donations, gifts, etc.

20.—(1) (*a*) No manufacturer or distributor shall donate or sell at lower than eighty per cent of retail price any quantity of a designated product to a health care facility:

Provided that such donations or low-price sales may be offered to orphanages or institutions devoted exclusively to caring for abandoned children; and

(*b*) when such donations or low-priced sales are made, they shall be in a quantity sufficient to feed the infants concerned for a period of at least six months.

(2) No manufacturer or distributor shall donate to or distribute within a health care facility materials, other than those specified in subrule (1) of this rule.

(3) (*a*) No manufacturer or distributor of any designated product shall offer any gifts to a health worker, including but not limited to pens, calendars, posters note pads, growth charts or toys;

(*b*) a manufacturer or distributor of any designated product may make contribution to a health worker for the purpose of funding the health worker's attendance at meetings, seminars,

conferences, continuing education courses, or giving fellowships, study grants or for similar purposes:

Provided that the manufacturer or distributor informs the Advisory Committee and the institution to which the health worker is affiliated of the contribution; and

(*c*) manufacturers or distributors shall not make direct contributions to individual health workers for such purposes.

(4) (*a*) No manufacturer or distributor shall fund research by a health worker, including clinical research on a designated product, unless such research conforms to a protocol that has been approved by the Advisory Committee;

(*b*) the disclosure should include the source of funding and the name of the recipient of the research grant; and

(*c*) any publication resulting from such research must include a statement disclosing the source of funding.

(5) No manufacturer or distributor shall provide payments to any personnel employed within a health care facility.

PART V
Information and Education

Information and education about infant-feeding

21.—(1) Information or educational materials, whether written, audio or visual, on the topic of infant and young child feeding shall—

(*a*) clearly and conspicuously explain each of the following points—

(i) the importance, benefits and superiority of breast-feeding;

(ii) how to prepare for and maintain breast-feeding including maternal nutrition;

(iii) how and why early introduction of complementary foods interferes with breast-feeding;

(iv) how and why bottle-feeding interferes with breast-feeding;

(v) why it is difficult to return to breast-feeding after a period of bottle-feeding even if limited to a few feeds; and

(vi) the adverse effects of the use of pacifiers on breast-feeding;

(*b*) contain only factual and current information and shall not use any pictures or text that discourage breast-feeding;

(*c*) be written in English and Chichewa; and

(*d*) not make reference to the brand name of any designated product nor contain the name or logo of any manufacturer or distributor of the designated product, except by way of designating a copyright:

Provided that this paragraph shall not be applicable to information about designated products intended for health professionals.

(2) If the material referred to in subrule (1) includes the topic of feeding infants with infant formula or any other food or drink by feeding bottle, it must also include the following points—

(*a*) instructions for the proper preparation and use of the product including cleaning and sterilization of feeding utensils;

(*b*) the approximate financial cost of feeding an infant with the product for a period of six months;

(*c*) the health hazards of bottle-feeding;

(*d*) the health hazards of improper preparation of the product; and

(*e*) how to feed infants with a cup.

(3) If the material referred to in subrule (1) includes the topic of feeding infants with complementary foods it must also explain the following points—

(*a*) the health hazards of introducing complementary foods before six months or late; and

(*b*) that complementary foods can easily be prepared at home using local ingredients.

(4) Any person who produces or distributes any material referred to in this Part shall submit copies to the Advisory Committee.

PART VI
Labels on Designated Products

Labels of designated products

22. The label of every designated product shall—

(*a*) not contain any text that may tend to discourage breast-feeding;

(*b*) contain the following notice, on the front, in bold and conspicuous characters, not less than 50 per cent the size of the largest words on the label and not more than 2 mm in height: "BREAST-MILK IS THE BEST FOOD FOR YOUR BABY";

(*c*) contain instructions for appropriate preparation in words and in easily understood graphics;

(*d*) indicate the age for which the product is recommended;

(*e*) explain clearly the health hazards of introducing the product prior to the recommended age;

(*f*) be written in Chichewa and English;

(*g*) indicate the ingredients, specifying the origin of any milk product, the composition and analysis of the product, the required storage conditions, the batch number, the date of manufacture and date before which the product is to be consumed, taking into account climatic and storage conditions;

(*h*) contain the name and address of the manufacturer and the distributor; and

(*i*) be in distinct characters and contrasting colour to the back ground.

(2) The label of every container of infant formula, in addition to the requirements specified in subrule (1) of this rule shall—

(*a*) not use the terms "humanized" or such similar terms nor contain any comparison with breast-milk;

(*b*) contain the following notice in bold characters no less than 1.5 mm in height:

"FOLLOW THE PREPARATION INSTRUCTIONS CAREFULLY OR YOUR BABY MAY BECOME ILL OR MALNOURISHED";

(*c*) not show any photographs of an infant or child, drawings or other graphics representation other than for illustrating method of preparation and, in no case, shall depict a feeding bottle; and

(*d*) in the case of infant formula, indicate the number of containers required to feed the infant during the first six months of life.

(3) The label of every container of the following products in powder or liquid form shall contain the following notices in characters no less than 2 mm in height—

(*a*) skimmed or condensed milk:

"THIS PRODUCT SHOULD NOT BE USED TO FEED AN INFANT OR A YOUNG CHILD";

(*b*) standardized milk:

"THIS PRODUCT SHOULD NOT BE USED AS THE SOLE SOURCE OF NUTRITION FOR AN INFANT OR ANY YOUNG CHILD"

(*c*) whole cow's milk:

"THIS PRODUCT SHOULD NOT BE USED AS THE SOLE SOURCE OF NUTRITION FOR AN INFANT OR A YOUNG CHILD, UNLESS ADVISED BY A MEDICAL PRACTITIONER OR A NUTRITIONIST".

(4) The label of containers of every bottle and teat shall, in addition to the requirements specified in subrule (1) in paragraphs (*a*), (*d*), (*e*), (*f*), (*h*) and (*i*) of this rule contain—

(*a*) "YOUR BABY MAY BECOME ILL BY USING A FEEDING BOTTLE, FEEDING WITH A CUP IS MUCH SAFER, FOLLOW THE PREPARATION INSTRUCTIONS CAREFULLY"; and

(*b*) instructions for proper cleaning and sterilization in words and in easily understood graphics.

(5) The label of every pacifier shall contain the following notice in characters no less than 2 mm in height—

"WARNING: USE OF A PACIFIER CAN INTERFERE WITH BREAST-FEEDING".

PART VII
Health Workers

Promotion of breast-feeding

23.—(1) Heads of health facilities, national and local health authorities shall take measures—

(*a*) to promote, protect and support breast-feeding;

(*b*) to promote these Rules; and

(*c*) to give information and advice to health workers regarding their responsibilities and particularly ensure that health workers are familiar with all of the information specified in Part V.

(2) Health workers shall promote, protect and support breast-feeding and know the provisions of these Rules, particularly the information specified in Part V.

(3) Health workers shall work to eliminate practices that directly or indirectly retard the initiation and continuation of breast-feeding, such as prelacteal feeds.

Prohibitions

24. Health workers shall not—

(*a*) accept any gift or benefit, financial or otherwise of whatever value from a manufacturer or distributor;

(*b*) accept nor give samples of designated products from or to any person, except in accordance with the provision of these Rules; and

(*c*) promote, in any way, any designated product.

Written report

25. A health worker shall submit a written report to the head of a health facility, regarding any offer they receive of a sample or gift or other benefit from a manufacturer or distributor or any contravention of the provisions of these Rules and the head of the facility shall in turn report the matter to the Advisory Committee.

PART VIII
Penalties, Procedures

Penalties

26.—(1) Any person who contravenes the provisions of these Rules commits an offence and shall, upon conviction, be liable to a fine of K2,000 and to imprisonment for six months.

(2) Any person convicted of an offence under subrule (1) and who is again convicted of an offence under that subrule shall be liable to a fine of not less than K2,000 and to imprisonment for six months.

Suspension or cancellation of Certificate of Registration

27.—(1) The Minister shall have the power to make cease and desist orders upon receiving a report from an Inspector or the Advisory Committee of a violation of the provisions of these Rules.

(2) Where a person contravenes any of the provisions of these Rules the Minister may, upon written recommendation of the Advisory Committee and after giving the person an opportunity to be heard, suspend or cancel any Certificate of Registration issued to that person pursuant to these Rules.

Appeal

28. Any person aggrieved by the decision of the Minister may apply to the High Court for judicial review within thirty-five days after the decision is made.

Strict liability for officers directors, etc.

29. Where the person, guilty of an offence under these Rules is a corporation, company, partnership, firm, etc., or other association, every director, officer, partner and employee of the corporation, company, partnership, firm or other association, shall also be liable for that offence unless he proves that the offence was committed without his knowledge or consent.

Institution of prosecution

30. The Minister may refer, a matter to the Director of Public Prosecutions for prosecution where the contravention of these Rules constitutes a criminal offence.

Public enforcement

31.—(1) Any person has the right to lodge a formal complaint to the Advisory Committee which may recommend that proceedings be instituted against any person relating to a violation of any provision that constitutes an offence under these Rules.

(2) Any person has the right to commence an action for damages in a court of law against any manufacturer or distributor or other person for any harm suffered as a result of violation of any provision that constitutes an offence under these Rules.

SCHEDULE

REGISTRATION FEES

Category	*Amount to be paid annually* K t
Manufacturers, importers or wholesalers	5,000 00
Retailers	1,000 00

MENTAL TREATMENT

CHAPTER 34:02

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CHAPTER 34:02

MENTAL TREATMENT

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CHAPTER 34:02

MENTAL TREATMENT

14 of 1948
41 of 1953
30 of 1969
G.N.
186/1954(F)
101/1956(F)
224/1963
219/1964(N)
166/1967

An Act to make provision for the care of persons who are suffering from mental disorder or mental defect, for the custody of their persons and the management of their estates, and for the management and control of mental hospitals in Malaŵi

[29TH JULY, 1948]

Short title

1. This Act may be cited as the Mental Treatment Act.

Interpretation

2. In this Act unless the context otherwise requires—

"approved institution" means an institution declared by the Minister to be an approved institution under section 29;

"Court" means the High Court;

"magistrate" means a Resident Magistrate or a magistrate of the first or second grade;

"manager" means any person appointed under section 33;

"medical practitioner" means any medical practitioner who is registered or licensed as such under any law in force in Malaŵi governing the registration of medical practitioners;

"mental hospital" means any hospital or other place which has been authorized, or may hereafter be authorized by the Minister as a place for the reception, detention and treatment of two or more persons who are suffering from mental disorder or mental defect;

"person in charge" means any person appointed or approved by the Minister to be in charge of a mental hospital;

"person of unsound mind" means any person who has been so found under Part V or Part VII;

"reception order" means an order made under Part V or Part VII;

"visiting committee" means a committee of visitors to a mental hospital appointed under section 4.

PART I
Reception of Persons in a Mental Hospital

3. Subject to the provisions of the Criminal Procedure and Evidence Code relating to persons found unfit to plead or not guilty by reason of insanity, no person shall be received, or detained for treatment in a mental hospital except under and in accordance with this Act.

Reception into a mental hospital
Cap. 8:01
30 of 1969

PART II
Visiting Committee

4. The Minister shall appoint for every mental hospital a visiting committee which shall consist of not less than two male visitors and one female visitor, one of whom at least shall be a medical practitioner.

Appointment of visiting committees

5.—(1) Two or more of the visitors, one of whom shall be a medical practitioner, shall, once at least in every month, inspect every part of the mental hospital of which they are visitors, and see and examine, as far as circumstances will permit, every patient therein, and the authority for the admission of every patient admitted since the last visitation of the visitors, and shall record in a minute book to be kept for that purpose any resolutions or remarks which they may deem proper to make in regard to the management and condition of the mental hospital and the patients therein.

Duty of visitors

(2) Any of the members of the visiting committee shall be at liberty to call at and inspect the mental hospital or any portion of it, at any hour of the day or night they or any of them shall deem proper, and shall see and examine any patient, if they shall think fit.

(3) A copy of all entries made in the minute book shall be made and forwarded monthly to the Minister.

PART III
Voluntary Patients

6.—(1) Any person who has attained the age of sixteen years or more who is desirous of voluntarily submitting himself to treatment for mental disorder or mental defect and who makes a written application in the form prescribed for the purpose, accompanied by a medical recommendation, to the person in charge may, without a reception order, be received as a voluntary patient into a mental hospital.

Power to receive voluntary patients

(2) Any person under the age of sixteen years whose parent or guardian is desirous of submitting him to treatment for mental disorder or mental defect may, if the parent or guardian makes

to the person in charge of a mental hospital an application in the form prescribed for the purpose, accompanied by a medical recommendation, be received as a voluntary patient under this section, but such a person shall not be so received on his own application.

(3) The medical recommendation referred to in the preceding subsections shall—

(*a*) be signed by a medical practitioner, who shall be either the usual medical attendant of the patient to whom the application relates, or a medical practitioner who has been approved for the purpose of making such a recommendation by the Minister; and

(*b*) state the qualifications of the medical practitioner, the date or dates on which he examined the said patient and that the said patient is likely to be benefited by being received as a voluntary patient for treatment under this section.

(4) A medical recommendation shall cease to have effect for the purposes of this section upon the expiration of fourteen days from the last date on which the patient to whom the recommendation relates was examined by the medical practitioner for the purpose of making the recommendation.

(5) Any person received as a voluntary patient under this section may leave the mental hospital upon giving to the person in charge seventy-two hours' notice in writing of his intention to do so, or, if he is a person under the age of sixteen, upon such notice being given by his parent or guardian.

(6) For the purposes of this Part, the expression ‘‘guardian’’ in relation to a person under the age of sixteen includes any person having the charge of the person under sixteen.

Notification of reception or death or departure of voluntary patient to visiting committee

7. Where a person is received into a mental hospital as a voluntary patient under section 6, or where a person so received dies in or departs from a mental hospital, information of his reception, death, or departure shall be given by the person in charge to the visiting committee at their next meeting.

Voluntary patient not to be detained for more than forty days

8.—(1) If any person received into a mental hospital as a voluntary patient under section 6 becomes at any time incapable of expressing himself as willing or unwilling to continue to receive treatment, he shall not be retained as a voluntary patient for a longer period than forty days thereafter, and shall be discharged on or before the expiration of that period, unless, in the meantime, he has again become capable of so expressing himself, or an application has been made under section 9 or a reception order has been made under Part V or Part VII.

(2) If a patient who is under the age of sixteen and who has been received as aforesaid ceases to have any parent or guardian, or if his parents or guardians are incapable of performing, or refuse or persistently neglect, to perform their duty as such, the person in charge shall inform the visiting committee at its next meeting of the circumstances of the case and the condition of the voluntary patient, and the visiting committee shall forthwith consider the report and give such directions for the retention or discharge of such patient as they may think fit.

PART IV

Temporary Treatment Without Reception Order

Provision for temporary treatment without certificate of certain persons

9.—(1) Subject to this section, a person who is suffering from mental disorder or mental defect and is likely to benefit by temporary treatment in a mental hospital but is for the time being incapable of expressing himself as willing or unwilling to receive such treatment may, on a written application duly made in accordance with this section but without a reception order, be received into a mental hospital as a temporary patient for the purpose of treatment.

(2) An application under this section shall be made in the form prescribed, to the person in charge of the mental hospital and shall, if possible, be made by the husband or wife, or by a relative of the person to whom it relates; and, if the application is not so made, it shall contain a statement of the reason why it is not so made, of the connexion of the applicant with the person to whom it relates and of the circumstances in which he makes the application.

(3) The application shall be accompanied by a recommendation in the form prescribed signed by a medical practitioner who shall be either the usual medical attendant of the person to whom the application relates, or a medical practitioner who has been approved by the Minister for the purpose of making such a recommendation.

(4) The medical practitioner by whom a recommendation under this section is to be made shall, before signing the recommendation, examine the person to whom the recommendation relates and shall specify in the recommendation the date or dates on which he so examined the said person and the grounds on which he bases his recommendation.

(5) A recommendation shall cease to have effect on the expiration of fourteen days from the last date on which the person to whom the recommendation relates was examined by the medical practitioner.

(6) A person received as a temporary patient into a mental hospital may be detained therein for a period not exceeding twelve months but shall not be detained as such for any longer period.

(7) If a person who has been received as a temporary patient becomes capable of expressing himself as willing or unwilling to continue to receive treatment, he shall not be detained for more than forty days thereafter unless, in the meantime, he has again become incapable of so expressing himself, or an application has been duly made by him under section 6, or a reception order has been made under Part V or Part VII.

(8) Where a person has been received into a mental hospital as a temporary patient under subsection (7), or if a patient so received dies in or departs from the mental hospital, information of the reception, death, or departure shall be given by the person in charge to the visiting committee at their next meeting.

Minister's powers of discharge

10. When any person has been received into a mental hospital under Part III or this Part the Minister may at any time order that any such person shall be discharged, or otherwise dealt with under this Act.

PART V

Reception Orders

Application for reception order

11.—(1) An application for a reception order shall be made by petition accompanied by a statement of particulars to the magistrate within the local limits of whose jurisdiction the person alleged to be of unsound mind ordinarily resides, shall be in the form prescribed and shall be supported by a certificate from a medical practitioner.

(2) If the medical certificate is signed by any relative, partner or assistant of the person alleged to be of unsound mind or of the petitioner, the petition shall state the fact, and, where the person signing is a relative the exact manner in which he is related to the person of unsound mind or the petitioner.

(3) The petition shall also state whether any previous application has been presented for a judicial inquiry into the mental capacity of the person alleged to be of unsound mind in any court; and if such application has been made, a certified copy of the order made thereon shall be attached to the petition.

Application by whom to be presented

12.—(1) The petition shall be presented, if possible, by—

(*a*) the husband or wife of the person alleged to be of unsound mind; or

(*b*) if there is no such husband or wife, or such husband or wife is absent or incapacitated, or neglects or is unwilling to act, by any other relative of his.

(2) If the petition is not so presented, it shall contain a statement of the reasons why it is not so presented, and of the connexion of the petitioner with the person alleged to be of unsound mind, and the circumstances under which he presents the petition.

(3) No person shall present a petition unless he has attained the age of majority and has, within fourteen days before the presentation of the petition, personally seen the person alleged to be of unsound mind.

(4) The petition shall be signed and verified by the petitioner, and the statement of prescribed particulars by the person making such statement.

Procedure upon petition for reception order

13.—(1) Upon the presentation of the petition the magistrate shall consider the allegations in the petition and the evidence of unsound mind appearing from the medical certificate.

(2) If he considers that there are grounds for proceeding further, he shall personally examine the person alleged to be of unsound mind unless, for reasons to be recorded in writing, he thinks it unnecessary or inexpedient so to do.

(3) If he is satisfied that the person is of unsound mind and that a reception order may properly be made forthwith, he may adjudge him to be of unsound mind and may make a reception order in the form prescribed for the admission of such person into a mental hospital accordingly.

(4) If he is not so satisfied, he shall fix a date (notice whereof shall be given to the petitioner and to any other person to whom in the opinion of the magistrate notice should be given) for the consideration of the petition, and he may make such further or other inquiries of or concerning the person alleged to be of unsound mind as he may think fit.

Detention of person alleged to be of unsound mind pending inquiry

14. Upon the presentation of the petition, the magistrate may make such orders as he may think fit for the suitable custody of the person alleged to be of unsound mind pending the conclusion of the inquiry.

Consideration of petition

15. The petition shall be considered in private in the presence of the petitioner, the person alleged to be of unsound mind (unless the magistrate in his discretion otherwise directs), any person appointed by the person alleged to be of unsound mind to represent him and such other persons as the magistrate may think fit.

Order

16.—(1) At the time appointed for the consideration of the petition, the magistrate may either adjudge the person to be of unsound mind and make a reception order in the form prescribed for the admission of such person into a mental hospital, or may dismiss the petition, or may adjourn the same for further evidence or inquiry, and may make such order as to the payment of the costs of the inquiry by the person upon whose application it was made, or out of the estate of the person alleged to be of unsound mind if found to be of unsound mind, or otherwise as he may think fit.

(2) If the petition is dismissed, the magistrate shall record in writing his reasons for dismissing the same, and shall deliver or cause to be delivered to the petitioner a copy of such order.

Powers and duties of police in respect of wandering or dangerous persons of unsound mind and such persons cruelly treated or not under proper care and control

17.—(1) Every officer in charge of a police station, administrative officer or Chief may take into his safe-keeping any person whom he has reason to believe to be suffering from mental disorder or mental defect and who is found, within the limits of his jurisdiction, wandering at large and shall take into safekeeping any person within the limits of his jurisdiction whom he has reason to believe to be dangerous to himself or to others, or who acts in a manner offensive to public decency so as to be a public nuisance, by reason of such mental disorder or mental defect. Any person so taken into safe-keeping shall be taken forthwith before the nearest magistrate.

(2) Every officer in charge of a police station, administrative officer or Chief who has reason to believe that any person within the limits of his jurisdiction is suffering from mental disorder or mental defect and is not under care and control, or is being cruelly treated or neglected by any relative or other person having the charge of him, shall immediately report the fact to the nearest magistrate who may order such person to be brought before him.

Duty of custodian of person of unsound mind

18. Where any person, having the care and control of a person apparently of unsound mind, is, for any reason, no longer able properly to control such person or to prevent such person from doing injury to himself or others or from acting in a manner offensive to public decency so as to be a public nuisance, it shall be the duty of such first-mentioned person to make due application to a magistrate under section 11 or to report the circumstances of the case to a police officer or an administrative officer or to a Chief in order that proceedings under this Act may be taken in regard to such person.

Power of magistrate

19. Where a magistrate is satisfied by information on oath or affirmation that any person suspected of being of unsound mind is at large or is dangerous to himself or others or is acting in a

manner offensive to public decency so as to be a public nuisance or is not under proper care and control or is cruelly treated or neglected by any relative or other person having the care or charge of him, such magistrate may, by order under his hand, require a person specified in such order to bring before him the person suspected of being of unsound mind.

Reception order in case of wandering and dangerous persons

20. Where any person is brought before a magistrate under section 17 or section 19, the magistrate shall examine such person, and if he thinks that there are grounds for proceeding further, shall cause the person concerned to be examined by a medical practitioner and may make such other inquiries as he may think fit; and, if the magistrate is satisfied by examination and inquiries and by a medical certificate issued under section 22, that such person is a person of unsound mind and a proper person to be placed under care and treatment, he may adjudge such person to be of unsound mind or may make a reception order in the form prescribed for the admission of such person into a mental hospital:

Provided that, instead of making a reception order, the magistrate may, if he thinks fit, make such person over to the care of any relative or friend upon such relative or friend entering into a bond, with or without sureties, for such sum of money as the magistrate may think fit, that such person shall be properly taken care of and prevented from doing injury to himself or others or from becoming a public nuisance.

Detention of person alleged to be of unsound mind pending report by medical practitioner

21. Where any person is brought before a magistrate under section 17 or section 19, the magistrate may, by order in writing, authorize the detention of such person in a mental hospital, or in any place which the magistrate deems suitable for the purpose, for such time not exceeding thirty days as may, in his opinion, be necessary to enable a medical practitioner to determine whether or not such person is a person in respect of whom a medical certificate of unsound mind may properly be given:

Provided that no person shall be detained in any police station or prison if any other suitable accommodation is available.

Issue of medical certificates

22.—(1) Every medical certificate given under this Part shall be signed by a medical practitioner and shall be in the form prescribed.

(2) Every such medical certificate shall state the facts upon which it is founded, distinguishing facts observed by the medical practitioner giving such certificate from the facts communicated to him by others, and no reception order shall be made upon a certificate founded only upon facts communicated by others.

(3) Every medical certificate purporting to be given under, and in accordance with, this Part shall, for the purpose of this Act, be

received in evidence without further proof and be *prima facie* evidence of the facts and the opinion therein appearing.

Detention of person alleged to be of unsound mind pending removal to mental hospital

23. When any reception order has been made under this Part, the magistrate may, for reasons to be recorded in writing, direct that the person, pending his removal to a mental hospital, be detained in suitable custody in such place and for such time as the magistrate may think fit:

Provided that no person shall be detained in any police station or prison if any other suitable accommodation is available.

Power to summon custodian of person suffering from mental disorder

24.—(1) In any case arising under section 17 (2) the magistrate may summon before him any person who has, or ought to have, the charge of the person who is suffering from mental disorder or mental defect; and if such person is legally bound to maintain the person who is so suffering from mental disorder or mental defect, the magistrate may make an order requiring such other person to cause the person who is suffering from mental disorder or mental defect to be properly cared for and treated.

(2) If such person fails to comply with such order, he shall be guilty of an offence against this Act.

Time and manner of medical examination of person

25. A reception order shall not be made unless it appears from the medical certificate upon which such order is to be founded that the medical practitioner who signed the certificate personally examined the person to whom the certificate relates not more than seven clear days before the date of the order.

Authority for reception

26.—(1) A reception order, accompanied by a copy of the medical certificate upon which it is founded, shall be sufficient authority for any person authorized in the order to take the person of unsound mind and convey him to a mental hospital or to any other place of custody which is mentioned in the order, and for the person of unsound mind to be received and detained therein. Any such order may be acted upon without further evidence of the signature or of the jurisdiction of the person making the order.

(2) The reception order and copy of the medical certificate shall accompany the person of unsound mind to whatever mental hospital or other place of safe-keeping he may be sent, and no person shall be received into any mental hospital or other place of safe-keeping under a reception order unless so accompanied.

(3) No person shall be received into a mental hospital under a reception order which accompanies him if such reception order is dated more than forty days before the date upon which such person arrives at the mental hospital.

Power to order detention outside jurisdiction

27. A magistrate may make a reception order for the detention, care and treatment of a person, adjudged to be of unsound mind, in a mental hospital which is situated in a place outside the ordinary limits of such magistrate's jurisdiction and a reception order shall authorize the detention, care and treatment of the patient at such mental hospital within Malaŵi at which it appears to the magistrate that sufficient accommodation is available, and where suitable treatment can be given, having regard to the circumstances of the particular case.

PART VI

Discharge of Patients from, and Transfers to, Mental Hospitals

Order of discharge from mental hospital

28. The Minister or any three of the visitors of any mental hospital, of whom one at least shall be a medical practitioner, may, by order in writing, direct the discharge of any person detained in such mental hospital and such person shall thereupon be discharged:

Provided that no order shall be made under this section in the case of a patient detained under the Criminal Procedure and Evidence Code. Cap. 8:01

Order of discharge to an approved institution

29.—(1) Whenever it appears to the Minister that any person detained in a mental hospital under this Act is, by reason of his mental and physical condition and conduct, fit to be discharged conditionally into the care of an approved institution, the Minister may, with the consent of the person in charge of such approved institution, and with the approval of any three of the visitors of the mental hospital concerned, of whom one at least shall be a medical practitioner, order that such person be discharged into the care of such person in charge upon such terms and conditions as the Minister may in his discretion direct.

(2) Where any person discharged into the care of a person in charge of an approved institution under subsection (1), leaves such approved institution in breach of any term or condition made by the Minister, a police officer may apprehend such

person without an order from a magistrate and without a warrant and may take such person before a magistrate.

(3) Where any such person is brought before a magistrate because he has left an approved institution in breach of any such term or condition, the magistrate may, after consulting the Minister or some person on his behalf, direct that such person be returned in custody either to such approved institution or to a mental hospital and may make such other order as he may think fit.

(4) The Minister may by notice published in the *Gazette* declare any institution to be an approved institution for the purposes of this section.

Appointment and report of medical inspector

30. The Minister may appoint a medical inspector to visit any approved institution and to report upon the condition of any person who has been discharged into the care of the person in charge of such institution under section 29. Upon receiving the report of any such inspector, the Minister may, should he think fit—

(*a*) direct the discharge of any such person; or

(*b*) direct the return of such person to a mental hospital there to be detained as if he had not been conditionally discharged; or

(*c*) vary the terms and conditions under which such person has been conditionally discharged.

Order of discharge and undertaking of relative for due care of the person of unsound mind

31. Where any relative or friend of a person detained in any mental hospital under a reception order made under this Act desires that such person shall be delivered over to his care and custody, he may for that purpose make an application to the person in charge, and, if the Minister or any three of the visitors, of whom one at least shall be a medical practitioner, consider that such application should be granted, he or they may order that the person be discharged into the care of such relative or friend upon such terms and conditions, as to entering into a bond or otherwise, as the Minister or such visitors may in his or their discretion direct.

Transfer of patients

32. Any person detained in a mental hospital under this Act may be transferred by order of the Minister from one mental hospital to another. When a person is transferred under this section the person responsible for conveying him shall produce to the person in charge of the mental hospital to which transfer is made a certified copy of the order of the Minister.

PART VII

Judicial Power Over Persons and Estates of Persons of Unsound Mind or in a Mental Hospital

Safe-keeping and management of estates of persons in mental hospitals

33.—(1) The Court may make orders—

(*a*) for the safe-keeping of any person found by inquiry by the Court to be of unsound mind, and for this purpose and without prejudice to any inherent powers of the Court, may exercise all or any of the powers conferred upon a magistrate by Part V;

(*b*) for the management of the estate of any such person; and

(*c*) for the guardianship of his person by any near relative or by any other suitable person;

and may also make orders under paragraphs (*b*) and (*c*) in the case of any person in respect of whom a reception order has been made under Part V or in respect of any person who is undergoing treatment in a mental hospital.

(2) Where there is no near relative or other suitable person, the Administrator General of Malaŵi may be appointed manager of the estate and guardian of any such person.

(3) Where upon inquiry it is specially found that the person to whom the inquiry relates is of unsound mind so as to be incapable of managing his affairs, but that he is capable of managing himself and is not dangerous to himself or to others or likely to act in a manner offensive to public decency so as to be a public nuisance, the Court may make such orders as it thinks fit for the management of the estate of such person including proper provision for the maintenance of him, and of such members of his family as are dependent upon him for maintenance, but it shall not be necessary to make any order as to the custody of the person of unsound mind.

Power of manager in respect of estate

34.—(1) Where a manager of the estate of a person is appointed under this Part, the Court may direct by the order of appointment, or by any subsequent order, that such manager shall have such general or special powers for the management of the estate as to the Court may seem necessary and proper, reference being had to the nature of the property, whether movable or immovable, of which the estate may consist:

Provided that no manager so appointed shall without the special permission of the Court—

(*a*) mortgage, charge or transfer by sale, gift, surrender, exchange or otherwise, any immovable property of which the estate may consist;

(*b*) lease any such property for a term exceeding five years; or

(*c*) invest any funds in any securities the interest on which is for the time being guaranteed by the Parliament of the United Kingdom or by the Government, or in any public debentures issued under the authority of and guaranteed by any Act.

(2) If the person appointed to be manager of the estate, or the person appointed to be guardian of a person under this Part, is unwilling to discharge the trust gratuitously, the Court may fix such allowance or allowances to be paid out of the estate of the person in respect of whom the manager or guardian has been appointed as, in the circumstances of the case, the Court may think fit.

Power to make order concerning any matter connected with the person

35. The Court may, upon application made to it by petition concerning any matter whatsoever connected with a person of unsound mind or a person undergoing treatment in a mental hospital or with his estate, make such order, subject to this Part, respecting the application as in the circumstances of the case the Court may think fit.

Power to apply property for maintenance of person of unsound mind without appointing manager in certain cases

36.—(1) If it appears to the Court that, having regard to the situation and condition of life of a person of unsound mind or who is suffering from mental disorder or mental defect and of his family and the other circumstances of the case, it is expedient that his property should be made available for his or their maintenance in a direct and inexpensive manner it may, instead of appointing a manager or notwithstanding such appointment, order that the property if money, or if any other description the produce thereof, when realized, be paid to such person as the Court may think fit, to be applied for the purpose aforesaid.

(2) If it appears to the Court that the unsoundness of mind, or the mental disorder or mental defect is in its nature temporary, and that it is expedient to make temporary provision for his maintenance or for the maintenance of such members of his family as are dependent on him for their maintenance the Court may in like manner as under subsection (1) direct his property or a sufficient part of it to be applied for the purpose aforesaid.

(3) The receipt of the person so appointed shall be a valid discharge to any person who pays any money or delivers any property of the person of unsound mind or of the person suffering from mental disorder or mental defect to the person so appointed.

Powers of Court in regard to property of person where no manager is appointed

37. In cases where no manager is appointed the Court may if it appears to be just or for the benefit of the person of unsound mind or of the person suffering from mental disorder or mental defect, order that any property, whether movable or immovable, of such person and whether in possession, reversion, remainder, or contingency, be sold, charged, mortgaged, dealt with or otherwise disposed of as may seem most expedient for the purpose of raising or securing or repaying with or without interest money to be applied, or which has been applied to all or any of the following purposes—

(*a*) the payment of the debts or engagements of such person;

(*b*) the discharge of any incumbrance on his property;

(*c*) the payment of any debt or expenditure incurred for the maintenance of such person or otherwise for his benefit;

(*d*) the payment of or provision for the expenses of his future maintenance and the maintenance of such members of his family as are dependent upon him for maintenance, including the expenses of his removal from Malaŵi if he shall be so removed, and all expenses incidental thereto;

(*e*) the payment of the costs of any inquiry under this Act and of any costs incurred by order or under the authority of the Court.

Power to order transfer of property of person of unsound mind residing out of Malaŵi

38. Where any movable or immovable property is standing in the name of or vested in, any person residing out of Malaŵi, the Court, upon being satisfied that such person has been declared to be of unsound mind, and that a manager has been appointed for his estate according to the law of the place where he is residing, may order some fit person to pay, deliver or transfer the property, or any part thereof, to the name of the person so appointed, as the Court may think fit.

Execution of conveyances and powers by manager under order of Court

39. The manager, or such other person as the Court may appoint for the purpose, shall, in the name and on behalf of the person of unsound mind or of the person suffering from mental disorder or mental defect, execute all such conveyances and instruments of transfer relative to any sale, mortgage or other disposition of such person's estate as the Court may order, and any conveyance or other instrument executed by the manager, or any other person appointed by the Court as aforesaid, with the sanction of the Court shall be as valid and effectual in all respects as if it had been executed by the person of unsound mind while he was of sound mind or, in the case of a person suffering from mental disorder or mental defect, before he was so suffering.

Carrying on business of person of unsound mind

40.—(1) Where a person of unsound mind has been engaged in business, the Court may, if it appears to be for the benefit of the person of unsound mind, order the manager to continue such business for such period and on such conditions as the Court may direct.

(2) The manager continuing a business under an order made by virtue of this section shall not be personally liable in respect of any debt or other contractual obligation incurred by him in the proper conduct of the business.

Managers to furnish inventory and annual accounts

41.—(1) Every person appointed by the Court to be manager of the estate of a person under this Part shall, within six months after the date of his appointment, deliver to the Court an inventory of the property belonging to the person of whose estate he has been appointed manager and of all such sums of money, goods and effects as he shall receive on account of the estate together with a statement of all debts due by or to the same, and every such manager shall furnish to the Court annually, within three months of the close of the year, an account of the property in his charge, showing the sums received and disbursed on account of the estate and the balance remaining on his hands.

(2) Where any relative of the person of unsound mind or of the person suffering from mental disorder or mental defect, or any public officer, by petition to the Court, impugns the accuracy of the said inventory and statement, or of any annual account, the Court may summon the manager, and inquire summarily into the matter and make such order thereon as it thinks proper, or the Court, at its discretion, may refer any such petition to any Resident Magistrate or magistrate of the first or second grade having jurisdiction in the place wherein the property belonging to the person concerned is situate.

Removal of managers and guardians

(3) The Court may, for any cause which seems to it sufficient, remove any manager appointed by it under this Part, and may appoint any other fit person in his place, and may compel the person so removed to make over the property in his hands to his successor, and to account to such successor for all money received or disbursed by him.

(4) The Court may also for any sufficient cause, remove any guardian of a person so appointed by it, and may appoint any other fit person in his place.

Termination of appointment of manager

42.—(1) On the termination of the appointment of any manager for any reason whatsoever, such manager shall deliver his accounts of the property in his hands to the Court who made his appointment.

(2) It shall be the duty of the Registrar of the Court to pass and approve of all such accounts.

(3) Any manager who neglects or refuses to deliver his accounts or any property in his hands within the time fixed by the Court shall be guilty of an offence against the Act.

Proceedings to cease or to be set aside if Court finds that the unsoundness of mind has ceased

43.—(1) Where any person has been found under this Act to be of unsound mind, and it is subsequently shown to the Court that there is reason to believe that such unsoundness of mind has ceased, the Court may make an order for the purpose of inquiring as to whether or not such person is still of unsound mind and incapable of managing himself or his affairs.

The inquiry shall, as far as may be, be conducted in the manner prescribed in this Act for any inquiry into the unsoundness of mind of a person alleged to be of unsound mind.

(2) Where it is found that the unsoundness of mind has ceased, or where the Court is satisfied, in the case of any person who is suffering from mental disorder or mental defect, that it is no longer necessary for his estate to be managed, the Court shall order all proceedings under this Part to cease, or to be set aside, on such terms and conditions as to the passing of accounts or otherwise as to the Court may seem fit.

Examination of females

44. Women, alleged to be of unsound mind, who, according to the customs and manners of their community ought not to be compelled to appear in public, shall be exempt from personal appearance in Court under this Act, but may be examined by such persons and in such manner as the Court may direct.

Court procedure

45. Wherever possible the Court or a magistrate when hearing applications under this Act where a person alleged to be of unsound mind is before the Court or magistrate, as the case may be, shall sit in *camera*.

PART VIII

Special Provisions Relating to Maintenance

Application of property in the possession of a person of unsound mind found wandering

46. Any money in the possession of a person of unsound mind found wandering at large may be applied by the magistrate towards the payment of the cost of maintenance of such person or of any other expenses incurred on his behalf, and any movable property found on the person of unsound mind may be sold by the magistrate, and the proceeds thereof similarly applied.

Application to civil court for order for the payment of cost of maintenance out of the estate of the person of unsound mind

47.—(1) If a person detained in a mental hospital under a reception order made under this Act has an estate available for his maintenance, or if any person legally bound to maintain such person has the means to maintain him, the Court which, or the magistrate who, made the reception order may, after summary inquiry, make an order against such estate or such person, as the case may be, for payment of the costs of maintenance of such person so detained together with the costs of the inquiry.

(2) If a person received in a mental hospital under Part III or Part IV has an estate available for his maintenance, or if any person legally bound to maintain such patient has the means to maintain him, a magistrate may, on application by the Minister or by any person authorized by him in that behalf, after summary inquiry make an order for the payment of the costs of maintenance of such person together with the costs of the inquiry.

(3) Such orders shall be enforced in the same manner, and shall be of the same force and effect and subject to the same appeal as a judgment given by the said court in a suit in respect of the property or person therein mentioned.

Certain maintenance costs to be met from public funds

48. If and so far as the costs, or any portion thereof, of the maintenance of a person detained in a mental hospital under a reception order made under this Act are not provided for by an order under this Act, such costs, or portion thereof, shall be paid out of moneys provided by Parliament.

Saving of liability of relatives to maintain person of unsound mind

49. The liability of any relative or person to maintain any person who is suffering from mental disorder or mental defect shall not be taken away or affected by any provision contained in this Act.

Pension of person of unsound mind payable by Government

50. When any sum is payable in respect of salary, pension, gratuity or other similar allowance to any person by the Government and the Secretary for Health certifies that the person to whom the sum is payable is in a mental hospital and no proceedings for the appointing of a manager of his estate have been instituted under Part VII, the Government officer under whose authority such sum would be payable if the payee were not in a mental hospital may pay so much of the said sum as he thinks fit to the person having charge of such person, and may pay the surplus, if any, or such part thereof as he thinks fit for the maintenance of such members of the family of such person as are dependent upon him for maintenance.

PART IX

General

51. The person in charge of any mental hospital shall give immediate notice of the death of any patient therein, to the coroner having judisdiction in the District in which the mental hospital is situated, and thereupon the coroner shall hold an inquest upon the body of such patient in the manner provided by the Inquests Act.

Inquests on patients

Cap. 4:02

52. The person in charge of any approved institution shall report, as soon as may be, the death of any person discharged into his care, under section 29, to the Secretary for Health and shall also report to the Secretary for Health the breach by any such person of any of the terms and conditions made by the Secretary for Health relating to his discharge.

Death of person discharged to approved institution or breach of a condition by such person to be reported

53.—(1) The person in charge of a mental hospital and every person having charge of any patient therein shall forward all letters written by any patient therein and addressed to the visiting committee, or to any member of the visiting committee, of the mental hospital in which any patient writing such letters may be:

Letters of patients

Provided that not more than one such letter a month be sent.

(2) Letters addressed by such patients to addressees other than those mentioned in subsection (1) shall be forwarded on, as the person in charge of the mental hospital may in his discretion decide.

(3) Every person in charge of a mental hospital and every person having charge of a single patient therein shall however be entitled to examine and, at his discretion, retain any letters addressed to persons other than the visiting committee.

54. Notwithstanding anything in this Act contained, the person in charge of a mental hospital may lawfullly refuse to receive any person into such hospital on the ground that there is not sufficient accommodation available therein.

Power to refuse accommodation at mental hospital

55.—(1) A person who does any act in pursuance or in intended pursuance of any of the provisions of this Act shall not be under any civil or criminal liability in respect thereof, whether on the ground of want of jurisdiction or of mistake of law or of fact or on any other ground, if he has acted in good faith and with reasonable care.

No liability in respect of act done in good faith in pursuance of this Act

(2) In any proceedings taken against any such person for any such act the burden of proving that he acted without good faith or without reasonable care shall lie upon the plaintiff or the prosecutor.

(3) Any proceedings taken against any such person for any such act may, upon application to the court in which they are taken, be stayed if the court is satisfied that there is no reasonable ground for alleging want of good faith or reasonable care, or that the proceedings are frivolous or vexatious.

(4) No such proceedings shall be commenced after the expiry of six months from the act complained of, or, in the case of a continuance of injury or damage, after the expiry of six months from the cessation thereof:

Provided that, in estimating the said period of six months so limited for the commencement of proceedings, no account shall be taken of any time or times during which the person alleged to be injured was under detention, lawfully or unlawfully, as a person of unsound mind or as a person suffering from mental disorder or mental defect, or was ignorant of the facts which constitute the cause of action.

(5) Nothing in this section shall be construed as depriving any person of any defence which he would have independently of this section.

Who may not give certificates

56. No medical recommendation for admission to a mental hospital and no medical certificate for the purpose of Part V or Part VII shall be signed by any person in charge of, or by any person employed at the mental hospital where the patient is received, unless the person in respect of whom the recommendation or certificate is sought is at the time an inmate of the said mental hospital, or by any person owning a financial interest in the mental hospital.

Amendment of order or certification

57. If, after the reception of any person into any mental hospital, it appears to the person in charge that the order under which he was received or the medical certificate upon which such order was founded or the medical recommendation upon which he was admitted is or are defective or incorrect, the order, certificate or recommendation, as the case may be, may, at any time within forty days after such reception, be amended by the person or persons signing the same, failing which the person in respect of whom the order, certificate or recommendation was made shall be discharged from the mental hospital.

Person received into mental hospital to be detained until discharged

58. Every person received into a mental hospital under this Act shall be detained therein until he leaves, is removed, or discharged, in accordance with this Act; and if any person detained in a mental hospital under a reception order made under this Act escapes therefrom he may be retaken by any police officer, or by any person employed in such mental hospital or by any other person authorized in that behalf by the person in charge of any such mental hospital, and conveyed to and again received into such mental hospital.

PART X

Offences

59. Any person who, not being a medical practitioner, knowingly and wilfully signs a medical certificate prescribed under this Act shall be guilty of an offence against this Act.

Persons other than medical practitioner signing certificate

60. Any medical practitioner who knowingly or wilfully or recklessly in any certificate prescribed under this Act certifies anything untrue shall be guilty of an offence against this Act.

False certificates

61. Any person who wilfully assists the escape of any person of unsound mind being conveyed to, or from or while under care and treatment in a mental hospital, or who hides any person of unsound mind who has escaped from a mental hospital shall be guilty of an offence against the Act.

Escape of person of unsound mind

62. Any person in charge, or any servant, of a mental hospital who through wilful neglect or connivance permits any patient in the mental hospital to quit such hospital other than in accordance with this Act, or of any other law for the time being in force, shall be guilty of an offence against this Act.

Permitting patient to quit mental hospital unlawfully

63. Any person in charge of, or employed at, a mental hospital who strikes, ill-treats, abuses or wilfully neglects any patient in such mental hospital shall be guilty of an offence against this Act.

Ill-treatment of persons in mental hospital

64. Any person, who, without the consent of the person in charge of a mental hospital, gives, sells or barters any article or commodity of any kind to any patient in a mental hospital, whether inside or outside the grounds of the mental hospital, shall be guilty of an offence against this Act.

Dealings with patients

65. Any person who when publishing in any newspaper any matter referring to any proceedings under this Act mentions by name any of the parties thereto shall be guilty of an offence against this Act.

Prohibition on publishing names of parties

66. Any person who is guilty of an offence against this Act or who contravenes or fails to comply with any of the provisions of this Act, or of any Rules made thereunder, shall, where no other penalty is expressly prescribed, be liable to a penalty of £50 and to imprisonment for six months.

General penalty

PART XI

Rule Making Powers

Rules

67. The Minister may make Rules—

(*a*) prescribing the forms to be used under this Act;

(*b*) fixing the fees to be charged thereunder or under such Rules;

(*c*) for the appointment of the staff of mental hospitals, and for the terms of service, discipline and control of such staff;

(*d*) generally for regulating the administration, control and management of mental hospitals and any other matter to which this Act relates.

PART XII

Saving

Saving
17 of 1928
18 of 1928

68. All Rules, orders, proclamations, notices, appointments and undertakings made or given under the Lunacy Ordinance, 1928 (now repealed) or the Asylums Ordinance, 1928 (now repealed) shall have the same force and effect as if they had been made or given under this Act and by or to the authority empowered thereby in such behalf until replaced by Rules, orders, proclamations, notices, appointments and undertakings made or given under this Act.

SUBSIDIARY LEGISLATION

(Subsidiary legislation made under the Asylums Ordinance, 1928 (18 *of* 1928) *and still in force by virtue of section 68 of the Mental Treatment Act is omitted as it is shortly to be replaced)*

MENTAL TREATMENT (PRESCRIBED FORMS) RULES

G.N. 61/1949
224/1963

under s. 67

Citation

1. These Rules may be cited as the Mental Treatment (Prescribed Forms) Rules.

Forms

2. The Forms to be used for the purposes of the Act shall be the Forms prescribed in the Schedule hereto.

SCHEDULE

r. 2

FORM NO. 1

THE MENTAL TREATMENT ACT

(Cap. 34:02)

APPLICATION FOR RECEPTION ORDER

(under section 11 of the Act)

In the ..... Subordinate Court of .....
The petition of .....
of .....

1. I hereby make application for the reception into a Mental Hospital of .....
..... of .....
..... as a person of unsound mind.

2. I am over 21 years of age and I have personally seen the said .....
within fourteen days immediately prior to the date hereof.

3. (*a*) I am the husband/wife of the said .....

or

(*b*) I am related to the said .....
in the following manner .....

.....

and

the said ..... is unmarried

or

the husband/wife of the said ..... is absent, incapacitated, has neglected, is unwilling to present a petition

or

(*c*) I am not related to the said .....

I am connected with the said ..... in the following manner:

The reasons why this petition is not presented by a relative of the said ..... are as follows—
.....

4. I submit herewith a medical certificate signed by .... who is/is not a relative, partner, or assistant of the said ..... or of the petitioner.

The said ..... is related to ..... the said ..... or to the petitioner in the following manner:

5. No previous application has been presented in any Court for a judicial inquiry into the mental capacity of the said .... or

A previous application was presented on the ..... day of ..... 19 ..... in the ..... Court ..... for a judicial inquiry into the mental capacity of the said .....
A certified copy of the order made thereon is attached hereto.

The Petitioner therefore prays that the Court will be pleased to make a reception order as prayed.

I certify that the above statements are true.

Dated .....

Signature .....
Petitioner

STATEMENT OF PARTICULARS

(*If any of the particulars in this statement are not known, the fact to be so stated*.)

The following is a statement of particulars relating to the said person:

Name of patient at length .....

Sex and age .....

Married, single or widowed .....

Occupation .....

Tribe and religious belief, as far as known .....

Residence .....

Names of relatives .....

When first showed signs of unsoundness of mind .....

Age (if known) on first attack .....

Whether previously under care and treatment .....

Supposed cause .....

Whether the patient is subject to epilepsy .....

Whether suicidal .....

Whether he is known to be suffering from phthisis or any form of tubercular disease .....

Whether dangerous to others, and in what way .....

Whether he is capable of looking after himself .....

With whom he has been living .....

Whether the patient is addicted to the use of any drug or intoxicant

.....

Whether any near relative (stating the relationship) has been afflicted with insanity .....

I certify that the above statements are true.

Date ....

Signature of person making the Statement

Form No. 2

THE MENTAL TREATMENT ACT

(Cap. 34:02)

MEDICAL CERTIFICATE

(under section 22 of the Act)

In the matter of .....

In the District of .....

I, ... do hereby certify as follows—

1. On the ..... day of .....19 ...,

at ..... in the District of .....

I personally examined the said .....

and I am of opinion that the said .....
is of unsound mind and a proper person to be taken charge of and detained under care.

2. I formed this conclusion on the following grounds—

(*a*) Facts indicating insanity observed by myself:—

(*Here state observations*)

(*b*) Other facts, if any, indicating insanity communicated to me by others.

(*Here state information and from whom*)—

Here state whether the person giving the certificate is a registered or a licensed medical practitioner.

Signed ..... *Qualifications* .....

FORM NO. 3

THE MENTAL TREATMENT ACT

(Cap. 34:02)

RECEPTION ORDER

(under section 16 of the Act)

In the ..... Subordinate Court

of .....

Whereas .....
has been brought before this Court (on the petition of .....
.....) under section .....
of this Act.

And whereas ..... *

has examined the said .....
and furnished me with a certificate as to mental state.

* State whether a registered or a licensed medical practitioner.

Now I, ... Magistrate of
the ..... Class Subordinate Court at
..... having considered the certificate
and being satisfied after due inquiry that the said .....
..... is of unsound mind and is a proper person to be taken charge
of and detained under care, hereby direct you to receive the said

.....

..... into your mental hospital.

Dated the ..... day of ..... 19 .....

.....
Magistrate

To the person in charge of
the Mental Hospital at .....

FORM NO. 4

BOND ON THE MAKING OVER OF A PERSON OF UNSOUND MIND TO THE CARE OF RELATIVE OR FRIEND

(section 20)

THE MENTAL TREATMENT ACT

WHEREAS ..... has been brought before the Magistrate of the ..... Subordinate Court at ..... and has been found of unsound mind:

Now, I ....., do hereby bind myself that on the said ..... being made over to my care, I will have the said .... properly taken care of and prevented from doing injury to himself or to others; and in case of my making default therein, I hereby bind myself to forfeit to the Minister the sum of ..... pounds.

Dated this ..... day of ..... 19 .....

(*Signed*).....

(*Where a bond with sureties is to be executed, add*)—

We do hereby declare ourselves sureties for the above-named

..... that he will, on the aforesaid ..... being made over to his care have the said .... properly taken care of and prevented from doing injury to himself or to others; and in case of the said ..... making default therein, we bind ourselves, jointly and severally, to forfeit to the Minister the sum of ..... pounds.

Dated this ..... day of ..... 19 .....

(*Signatures*) .....

.....

.....

FORM NO. 5

BOND ON THE DISCHARGE OF A PERSON OF UNSOUND MIND FROM A MENTAL HOSPITAL INTO THE CARE OF RELATIVE

(section 31)

THE MENTAL TREATMENT ACT

WHEREAS .....

of ..... is now detained in the Mental Hospital at ....., under a reception order made by the Magistrate of the ..... Subordinate Court at ..... under the Mental Treatment Act; and whereas I, ... have applied that the said ..... may be delivered to my care and custody:

I hereby bind myself that on the said ..... being made over to my care and custody, I will have him properly taken care of and prevented from doing injury to himself or to others; and in case of my making default therein, I hereby bind myself to forfeit to the Minister the sum of ..... pounds.

Dated this ..... day of ..... 19 .....

(*Signed*).....

(*Where a bond with sureties is to be executed, add*)—

We do hereby declare ourselves sureties for the above-named ..... that he will, on the aforesaid ..... being delivered to his care and custody, have the said ..... properly taken care of and prevented from doing injury to himself or to others; and in case of the said ..... making default therein, we bind ourselves, jointly and severally, to forfeit to the Minister the sum of ..... pounds.

Dated this ..... day of ..... 19 .....

(*Signatures*) .....

.....

.....

ANATOMY

CHAPTER 34:03

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CHAPTER 34:03

ANATOMY

ARRANGEMENT OF SECTIONS

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CHAPTER 34:03

ANATOMY

34 of 1990
G.N. 39/1991

An Act to make provision for the donation, examination and use of bodies, or parts of bodies, of deceased persons for educational, scientific, research, therapeutic or diagnostic purposes; to re-enact the law dealing with human tissue and to provide for matters incidental thereto or connected therewith

[1st April, 1991]

PART I

Preliminary

Short title

1. This Act may be cited as the Anatomy Act.

Interpretation

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

"approved school of anatomy" means any school, college, hospital or other institution authorized under this Act to receive, acquire, preserve, issue or use the bodies of deceased persons for educational, scientific, therapeutic or diagnostic purposes;

"body" means the human body;

Cap. 36:01

"dentist" means a person registered as such under the Medical Practitioners and Dentists Act;

"examine anatomically" includes dissection of a body;

Cap. 36:01

"medical practitioner" means a person registered as such under the Medical Practitioners and Dentists Act;

"scientific purposes" means—

(*a*) any medical or dental education or research; or

(*b*) the advancement of medical or dental science;

"therapeutic purposes", in relation to the use of tissue removed from the body of a person, means therapy of, including use in, the body of any other living person;

"tissue" means any human tissue including any human flesh, organ, bone, body fluid or derivative of any human tissue.

PART II

Authority for Anatomical Examination of the Body of a Deceased Person

Authority for anatomical examination of the body of a deceased person

3.—(1) If any person, either in writing signed by him at any time or orally in the presence of two or more witnesses during the illness from which he died—

(*a*) has directed or expressed the wish that his body after his death be examined anatomically; or

(*b*) has nominated any person to examine his body anatomically after his death,

the person lawfully in possession of that person's body after his death shall, if such direction, wish or nomination is made known to him before he has disposed of the body, in writing authorize that the body be examined anatomically or, in the case of nomination, shall in writing authorize the person nominated to examine the body anatomically, in either case, in an approved school of anatomy, unless the person lawfully in possession of the body has reason to believe that the direction or nomination was withdrawn by the deceased, or that the surviving spouse or a close relative of the deceased person objects to the body being examined anatomically.

(2) No authority shall be given under subsection (1) in respect of a body of a deceased person by a person lawfully in possession of the body for the purpose only of its cremation or interment.

Inquests, postmortems, etc.

4. Where a person has reason to believe that, in accordance with any written law—

(*a*) an inquest may be required to be held on a body of a deceased person; or

(*b*) a postmortem may be required to be carried out on a body of a deceased person; or

(*c*) a body of a deceased person or any part of the body may be required to be dealt with or disposed of in any other manner prescribed by or under such written law or any other written law,

he shall not give authority under section 3 in respect of that body or part thereof or act on such authority given by any other person.

Persons who may give authority in respect of bodies lying in hospitals, etc.

5. Where the body of a deceased person which is to be examined anatomically lies in a hospital, nursing home, prison or other institution, authority required to be given under section 3 may be given by the person having the control and management of that institution or by a person duly authorized to act on behalf of such person or by a medical practitioner serving at, or visiting, the institution.

Examination of bodies to be under supervision of a medical practitioner or a dentist

6.—(1) No examination of the body of a deceased person or any part thereof required to be conducted in accordance with authority given under this Act, shall be carried out otherwise than by or in accordance with the instructions of, and under supervision by, a medical practitioner or dentist who shall first have satisfied himself by his own personal examination of the body that life is extinct.

(2) No removal of a part of the body of a deceased person in accordance with authority given under this Act shall be effected except by a medical practitioner or a dentist who shall first have satisfied himself by his own personal examination of the body that life is extinct.

Conditions to be complied with before a body is examined

7.—(1) The body of a deceased person shall not be examined anatomically or removed for anatomical examination from the place where the person died unless—

(*a*) written notice of the intended anatomical examination has been given to the person who is in lawful possession of the body; and

(*b*) the person to examine the body or any part thereof or the person to remove the body for anatomical examination, has first obtained a death certificate in accordance with subsection (2); and

(*c*) the person removing the body or any part thereof has first placed it in a decent coffin or in a manner acceptable under the culture or religion of the deceased person.

(2) The death certificate required for the purpose of subsection (1) (*b*) shall—

(*a*) state the cause of the death;

(*b*) be signed by the medical practitioner who was present at the death of the deceased or attended the deceased person during his last illness, not being the person referred to in subsection (1) (*b*); or

(*c*) where there is no such medical practitioner as is referred to in paragraph (*b*) be signed by a medical practitioner called in soon after the death of the deceased to view the body who

shall state in the certificate the manner or cause of death according to the best of his knowledge and belief.

(3) Where the death certificate is obtained by the person who removes the body for anatomical examination, such person, on delivering the body for anatomical examination, shall deliver a copy of the certificate to the person who receives the body.

Disposal of body anatomically examined and notice thereof

8.—(1) Any person who receives the body of a deceased person for anatomical examination shall, except as provided in subsection (3), make provision for such body, after having been examined anatomically, to be decently cremated or decently interred in consecrated ground or in some public burial ground devoted to persons of the deceased person's culture or religion, or in any other manner provided by law.

(2) After a body has been cremated or interred in accordance with subsection (1), the person who received the body for anatomical examination shall as soon as possible give written notice of such cremation or interment to the person who was in lawful possession of the body.

(3) Where a body which is examined anatomically is the body of a person who has been executed pursuant to death warrant, the person to whom the warrant was directed shall make provision for the body, after having been examined anatomically, to be disposed of in accordance with the directions contained in the warrant.

(4) A person who contravenes this section shall be guilty of an offence and liable to a fine of five hundred Kwacha and to imprisonment for a period of one year.

Illegal taking or removing of parts of a deceased person

9.—(1) Where authority under this Act has been given for the body of a deceased person to be anatomically examined, no person shall—

(*a*) take or remove from that body any part thereof before the body is received into an approved school of anatomy;

(*b*) take or remove from an approved school of anatomy any part of the body except for cremation or burial or for educational, scientific, research, therapeutic or diagnostic purposes permissible under this Act;

(*c*) receive any part of the body taken or removed in contravention of paragraph (*a*) or (*b*).

(2) A person who contravenes subsection (1) shall be guilty of an offence and liable to a fine of two thousand Kwacha and to imprisonment for a period of one year.

Postmortem examination of a body

10. Any medical practitioner may, with the prior approval of a close relative of the deceased person or, in case where a close relative is not known, the police officer in charge of a police station, carry out a postmortem examination on the body of a deceased person before its burial or examination in order to establish the cause of death.

Removal of tissue from bodies of living persons

11. Any medical practitioner or any other authorized person may remove tissue from the body of a living person for educational, scientific, research, therapeutic or diagnostic purposes with the consent of—

(*a*) that person or his spouse or close relative;

(*b*) in the case of a minor or a mentally handicapped person, with the consent of a parent, guardian or close relative:

Provided that, in either case, the close relative is not himself a minor or a mentally handicapped person.

PART III

Conduct of Anatomical Examinations and Approved Schools of Anatomy

Conduct of anatomical examination of bodies

12.—(1) No anatomical examination in an approved school of anatomy shall be conducted, except by—

(*a*) a medical practitioner or dentist;

(*b*) a professor, lecturer or teacher of anatomy;

(*c*) a person registered as a student of any approved school of anatomy; or

(*d*) a person who practises a profession or calling allied to medicine and whose work is concerned closely with the prevention or treatment of physical or mental ailment in human beings:

Provided that in the case of a person referred to in paragraphs (*c*) and (*d*) he shall at all times act under the supervision of a person specified in paragraph (*a*) or (*b*).

(2) Authority given under this section shall, subject to this Act, entitle the person to whom it is given to conduct anatomical examination in an approved school of anatomy and to receive for the purpose of such examination, the body of a deceased person.

(3) A person who—

(*a*) not being qualified under this section to do so, examines anatomically or receives for the purpose of anatomical examination any body of a deceased person;

(*b*) whether or not qualified under this section, examines anatomically the body of a deceased person at a place other than an approved school of anatomy; or

(*c*) practises anatomy in contravention, or not in accordance with the requirements, of this Act,

shall be guilty of an offence and liable to a fine of three thousand Kwacha and to imprisonment for a period of two years.

Designation of schools of anatomy

13.—(1) The Minister may, by order published in the *Gazette*, designate any school, college, hospital or any other similar institution to be an approved school of anatomy and may in such order prescribe any conditions or requirements to be fulfilled by an institution so designated.

(2) A person—

(*a*) in charge of any premises which are not an approved school of anatomy, who permits anatomy to be practised at such premises; or

(*b*) in charge of an approved school of anatomy who permits anatomy to be practised at such premises by any person not authorized in accordance with this Act to practise anatomy,

shall be guilty of an offence and liable to a fine of five thousand Kwacha and to imprisonment for a period of three years.

PART IV

Miscellaneous Provisions

Acquisition, preservation, receiving, use, etc., by authorized institutions

14.—(1) The Minister may, by order published in the *Gazette*, authorize institutions specified in the order to receive, acquire, preserve, use or issue any tissue which has been lawfully removed from the body of a deceased person or a living person.

(2) An institution authorized under subsection (1) may at any time issue any tissue in its possession to an approved school of anatomy, a medical practitioner, a dentist or any person authorized under this Act for any educational, scientific, research, therapeutic or diagnostic purposes.

Control over the body or tissue

15. A person to whom the body of a deceased person or tissue is donated or who acquires any body or tissue under this Act shall, upon delivery of the body or tissue to him, be vested, subject to this Act, with the exclusive control over the body or tissue.

Prohibition of sale of body or tissue

16. A person who—

(*a*) sells or buys the body of a deceased person or a tissue removed from the body of a deceased or living person; or

(*b*) for gain or profit, supplies to any person for educational, scientific, research, therapeutic or diagnostic purposes, or any other purpose whatsoever, tissue removed from the body of a deceased or living person,

shall be guilty of an offence and liable to a fine of fifteen thousand Kwacha and to imprisonment for a period of ten years.

Prohibition of publication of identity of donor or recipient of a body or tissue

17.—(1) Subject to subsection (2), no person shall publish to any other person any fact whereby the identity of—

(*a*) the deceased person; or

(*b*) the donor of the body of a deceased person; or

(*c*) the donor of the tissue removed from the body of a deceased or living person; or

(*d*) the recipient of any tissue removed from the body of a deceased person or the body of a living person,

unless such donor, living person, recipient or, prior to his death, the deceased consented in writing to such publication:

Provided that where the recipient dies without giving consent or the deceased did not give consent but such recipient or deceased did not indicate that he would not be prepared to give consent, consent may be given in writing signed by a close relative who is himself not a minor or a mentally handicapped person.

(2) This section shall not apply in respect of any communication reasonably necessary in connexion with the removal, storage or use of the tissue or body.

Offences and penalties

18.—(1) A person who—

(*a*) removes any tissue from the body of a deceased person or the body of a living person otherwise than in accordance with this Act or any other written law or, in pursuance of a profession or calling he lawfully practises; or

(*b*) conducts a postmortem on the body of a deceased person otherwise than in accordance with this Act or any other written law; or

(*c*) not being the person empowered to do so under this Act, purports to give authority for the body of a deceased person or for any tissue to be examined anatomically;

(*d*) being lawfully in possession of the body of a deceased person or of any tissue, delivers up such possession to another person knowing or having reason to believe that the body or tissue will be examined anatomically otherwise than in accordance with this Act; and

(*e*) receives for anatomical examination or examines anatomically, the body of a deceased person or any tissue in respect of which authority under this Act has not been given,

shall be guilty of an offence and liable to a fine of five thousand Kwacha and to imprisonment for a period of three years.

Documentation

19.—(1) A person who sends to another person the body of a deceased person for anatomical examination under this Act shall, along with the body, send to such other person a copy of the death certificate referred to in section 7.

(2) A person who receives the body of a deceased person for anatomical examination under this Act shall enter or cause to be entered, in a book to be kept by him for that purpose, the following particulars—

(*a*) the day and hour he has received the body;

(*b*) the name and address of the person who delivered the body;

(*c*) the date and place of death;

(*d*) sex, name, age and last place of abode of the deceased person,

and shall send to the sender of the body a return showing all those particulars and shall forward a copy of the return to the Minister.

(3) Any person who contravenes this section shall be guilty of an offence and liable to a fine of five hundred Kwacha and to imprisonment for a period of one year.

Inspection

20.—(1) A person authorized by the Minister in writing to do so, or any police officer of or above the rank of sub-inspector may—

(*a*) upon production of his proper identity, enter and inspect at any reasonable time any approved school of anatomy and inspect any body of a deceased person which has been received for anatomical examination and inspect any book which is required to be kept under section 19 (2);

(*b*) require any person who authorized the body of a deceased person to be examined anatomically or any person who received such body for the purpose of examining it anatomically, to give such information and produce any relevant documents as he may reasonably require for the purpose of ascertaining that the provisions of this Act are complied with.

(2) A person who resists, hinders or obstructs any person acting in pursuance of subsection (1) or who wilfully withholds

any information or gives any information which he knows or has reason to believe that it is false or misleading, shall be guilty of an offence and liable to a fine of two thousand Kwacha and to imprisonment for a period of one year.

Dispatch of bodies or tissue between Malaŵi and other countries

21.—(1) Where the Minister is satisfied that arrangements of a reciprocal nature or effect have been or are to be made by the competent authority in a foreign country, he may make arrangements with that authority—

(*a*) for the dispatch from Malaŵi to that country of a body of a deceased person or any tissue for anatomical examination in a school of anatomy established under the laws of that country; or

(*b*) for the receipt in Malaŵi of the body of a deceased person or tissue dispatched from that country for anatomical examination in an approved school of anatomy in Malaŵi.

(2) Any arrangement made under subsection (1) shall include a requirement that—

(*a*) the person in charge of the school of anatomy where the body of a deceased person or tissue dispatched from Malaŵi be examined anatomically shall make provision that the body, after having been anatomically examined, be decently cremated or decently interred in consecrated ground or in some public burial ground in use for persons of the deceased person's culture or religion; and

(*b*) a written confirmation of the cremation or interment of the body or disposal of tissue shall be transmitted to the Minister soon after the body has been cremated or after the tissue has been disposed of.

(3) Any person in lawful possession of the body of a deceased person may in writing authorize any other person to receive the body for the purpose of—

(*a*) dispatching it to a foreign country; or

(*b*) conveying it to an approved school of anatomy, pursuant to arrangements made under this section:

Provided that no body of a deceased person shall be dispatched or conveyed by the person so authorized, unless it is accompanied with a death certificate given under section 7 or under any relevant written law of the foreign country concerned.

22.—(1) No person shall dispatch to a person outside Malaŵi for histo-pathological examination any tissue removed from a person in Malaŵi except under the authority of a pathologist or of any person duly designated by a pathologist to act, in that respect, on his behalf. Prohibition against unauthorized exportation of tissue

(2) A person who contravenes subsection (1) shall be guilty of an offence and liable to a fine of five thousand Kwacha and to imprisonment for a period of three years.

23. The Minister may make regulations generally for the better carrying out of the provisions and purposes of this Act, and without prejudice to the generality of the foregoing, such regulations may make provision for— Regulations

(*a*) the conduct, equipment, inspection and control of approved schools of anatomy;

(*b*) prescribing the form of application, authority, certificate and return to be used under this Act;

(*c*) prescribing the fees to be paid under this Act;

(*d*) relating to the receipt, preservation, use, possession, issue or disposal of any tissue removed from the body of a deceased person or a living person under this Act;

(*e*) prescribing the requirements with which an authorized institution shall comply; and

(*f*) any other matters required to be prescribed under this Act.

24. The Human Tissue Act is hereby repealed. Repeal of Cap. 34:03

PHARMACY, MEDICINES AND POISONS

CHAPTER 35:01

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CHAPTER 35:01

PHARMACY, MEDICINES AND POISONS

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15 of 1988
30 of 1991
19 of 1995
21 of 1996
G.N. 9/1991

[15TH JANUARY, 1991]

Short title

1. This Act may be cited as the Pharmacy, Medicines and Poisons Act.

PART I

PRELIMINARY

Interpretation

2.—(1) In this Act, unless the context otherwise requires—

"administer" means administer to a human being or an animal, whether orally, by injection or by introduction into the body in any other way, or by external application, whether by direct contact with the body or not; and any reference in this Act to administering a substance or article is a reference to administering it either in its existing state or after it has been dissolved or dispensed in, or diluted or mixed with, some other substance used as a vehicle for such administration;

"animal test certificate" has the meaning assigned to it by section 43 (*c*) (ii);

"assemble", in relation to a medicinal product, means—

(*a*) enclosing the product, with or without other medicinal products of the same description, in a container which is labelled before the product is sold or supplied; or

(*b*) where the product, with or without other medicinal products of the same description, is already enclosed in the container in which it is to be sold or supplied, labelling the container before the product is sold or supplied in it; and

"assembly" has a corresponding meaning;

"authorized seller of poisons" is a person, other than a person lawfully conducting a retail pharmacy business, who may sell Part II poisons pursuant to section 55 (2) (*b*);

"Board" means the Pharmarcy, Medicines and Poisons Board established by section 3;

"business" includes a professional practice and any activity carried on by a person or a body of persons, whether corporate or unincorporate;

"clinical officer" means a person dully registered as such under the Medical Practitioners and Dentists Act; Cap. 36:01

"clinical trial" and "clinical trial certificate" have the meaning assigned to them by section 42;

"composition", in relation to a medicinal product, means the ingredients of which it consists and the proportions, and the degree of strength, quality and purity, in which those ingredients are contained in it;

"container" in relation to a medicinal product, means a bottle, jar, box, packet or other receptacle which contains or is to contain it, not being a capsule, cachet or other article in which the product is or is to be administered, and, where any such receptacle is or is to be contained in another such receptacle, includes the former but does not include the latter receptacle;

"dentist" or "dental assistant" means a person registered as such under the Medical Practitioners and Dentists Act; Cap. 36:01

"despensing" means selling or supplying a medical product;

"dispensing licence" has the meaning assigned to it in section 35 (4);

"hospital" includes a clinic, dispensary or similar institution;

"ingredients" in relation to the manufacture or preparation of a substance, includes anything which is the sole active ingredient of that substance as manufactured or prepared;

"inspector" means a person appointed under section 59;

"labelling", in relation to a container or package or medicinal products, means affixing to or otherwise displaying on the container or package a notice describing or otherwise relating to the contents thereof, and "label" has a corresponding meaning;

"leaflet" includes any written information;

"licensing authority" means the authority upon which responsibility for licensing has been conferred by section 34;

"manufacture", in relation to a medicinal product, includes any process carried out in the course of making the medicinal product but does not include dissolving or dispensing the

medicinal product in, or diluting or mixing it with, some other substance used as a vehicle for the purpose of administering it or the incorporation of the product in any animal feed;

"manufacturer's licence" has the meaning assigned to it in section 35(2);

"medical practitioner" or "medical assistant" means a person registered as such under the Medical Practitioners and Dentists Act; Cap. 36:01

"medicinal product" means any substance or article which is manufactured, sold, supplied, imported or exported for use wholly or mainly in either or both of the following ways—

(*a*) use by being administered to a human being or an animal for a medicinal purpose;

(*b*) use as an ingredient in the preparation of a substance or article which is to be administered to a human being or an animal for a medicinal purpose,

but it shall not include an instrument, apparatus or appliance;

"medicinal purpose" means any one or more of the following purposes—

(*a*) treating or preventing diseases;

(*b*) diagnosing disease or ascertaining the existence, degree or extent of a physiological conditions;

(*c*) contraception;

(*d*) inducing anaesthesia;

(*e*) otherwise preventing or interfering with the normal operation of a physiological function whether permanently or temporarily and whether by way of terminating, reducing or postponing, or increasing or accelerating, the operation of that function or in any other way;

"nurse" or "midwife" means a nurse or midwife registered in any category of nurses or midwives under the Nurses and Midwives Act: Cap. 36:02

"package", in relation to any medicinal products, means any box, packet or other article in which one or more containers of the medicinal products are or are to be enclosed, and where any such box, packet or other article is or is to be enclosed in one or more other boxes, packets or articles in question, the collective number thereof;

"pharmacist" means a person registered as such under Part III;

"pharmacy technologist" means a person registered as such under Part III;

"pharmacy assistant" means a person registered as such under Part III;

"poison" means a substance specified in the Poisons List prescribed under section 55 (1);

"product licence" has the meaning assigned to it in section 35 (1);

"Registrar" means the Registrar of the Board appointed under section 13 and includes any person duly acting as, or on behalf of, the Registrar;

"retail pharmacy business" means a business which consists of or includes the retail sale of medicinal products but does not include a professional practice carried on by a pharmacist;

"substance" means any natural or artificial substance, whether in solid or liquid form or in the form of a gas or vapour;

"treatment" in relation to disease, includes anything done or provided for alleviating the effects of the disease, whether it is done or provided by way of cure or not;

Cap. 53:04

"veterinary surgeon" means a person registered as such under the Veterinary Surgeons Act;

"wholesale dealer's licence" has the meaning assigned to it in section 35 (3);

(2) In this Act, any reference to a sale of medicinal products or poisons by way of wholesale dealing is a reference to the sale of medicinal products or poisons to a person who buys medicinal products or poisons for the purpose of—

(i) selling or supplying medicinal products or poisons; or

(ii) administering or causing to be administered any medicinal products or poisons to a human being or an animal,

in the course of business carried on by that person but it shall not include any such sale by the manufacturer of medicinal products or poisons.

(3) In this Act, any reference to a retail sale of medicinal products or poisons is a reference to the sale of medicinal products or poisons to a person who buys medicinal products or poisons otherwise than for a purpose specified in subsection (2).

PART II

Administration

Establishment of a pharmacy, medicines and poisons Board 30 of 1991

3. There is hereby established a board to be known as the Pharmacy, Medicines and Poisons Board (in this Act referred to as the "Board") which shall be a body corporate having perpetual succession and a common seal and shall under that name, be capable of suing and being sued and of purchasing or otherwise acquiring, holding and alienating moveable or immoveable property and, subject to the provisions of this Act, of doing or

performing all such acts and things as bodies corporate may by law perform.

Composition of the Board

4.—(1) Subject to subsection (3), the Board shall consist of the following eight members appointed by the Minister each of whom shall, except in case of an *ex officio* member, be a citizen of Malaŵi—

(*a*) the Chief of Health Services, who shall be a member *ex officio* whether or not he is a citizen of Malaŵi;

(*b*) the Chief Pharmacist, who shall be a member *ex officio* whether or not he is a citizen of Malaŵi;

(*c*) three members, representing pharmacists;

(*d*) one member, representing medical practitioners;

(*e*) one member, representing veterinary surgeons; and

(*f*) one member, representing nurses and midwives.

(2) A member of the Board, not being a member *ex officio*, shall hold office for three years.

(3) The Minister may appoint to the Board, for a period not exceeding three years, such other persons not exceeding three in number, as he considers suitably qualified to assist the Board in its work and deliberations and such persons shall not have the right to vote at any meeting of the Board.

(4) Upon the appointment to the Board of any member, the Minister shall cause notice of such appointment to be published in the *Gazette* and shall in such notice specify the current membership of the Board resulting upon such appointment.

(5) Members of the Board shall not, by virtue only of their appointment to the Board, be deemed to be officers of the public service.

Vacation, etc., of members from office

5.—(1) The Minister may require a member of the Board to vacate his office if the Minister is satisfied that the member—

(*a*) has become insolvent or has assigned his estate for the benefit of, or made a composition or other arrangement with, his creditors; or

(*b*) has been absent from three consecutive meetings of the Board, of which he has had notice, without the leave of the Chairman of the Board; or

(*c*) has been disqualified under this Act from carrying on his profession or calling; or

(*d*) has been convicted of an offence under this Act or the Act repealed by this Act or any law relating to drugs; or

(*e*) has been convicted—

(i) within Malaŵi of a criminal offence; or

(ii) outside Malaŵi of an offence by whatever name called which, if committed within Malaŵi, would have been a criminal offence,and sentenced to imprisonment for a term of six months or more without the option of a fine, whether or not such sentence has been suspended, and has not received a free pardon; or

(*f*) is mentally or physically incapable of efficiently performing his duties as a member of the Board.

(2) The Minister may suspend from office a member of the Board against whom—

(*a*) criminal proceedings have been instituted for an offence in respect of which a sentence of imprisonment for a term of six months or more without the option of a fine may be imposed; or

(*b*) the Board has instituted an inquiry into his professional conduct or considers the removal of his name from the register under section 24 (1);

and while that member is so suspended he shall not carry out any duties as a member.

(3) A member of the Board may resign his office by notice in writing to the Minister and if the Minister accepts such resignation.

Filling of vacancies on the Board

6.—(1) On vacation of office by a member of the Board, the vacancy shall be filled by a person appointed in accordance with section 4 (1) under which the former member was appointed:

Provided that if the remaining period is less than six months the Minister may decide not to have the vacancy filled until the expiry of the period.

(2) If any member of the Board is granted leave of absence by the Board, the Board may, if it sees fit, co-opt a person who belongs to the same profession or calling as the member who has been granted leave to fill the vacancy during the absence of the member.

Co-opted persons

7. The Board may in its discretion at any time and for any length of period invite any person, and the Minister may in like manner nominate any officer in the public service, to attend any meeting of the Board and take part in the deliberations of the Board, but such person or officer shall not be entitled to vote at that meeting.

Chairman and Vice-Chairman

8.—(1) The Minister shall, by writing under his hand, designate one member of the Board who is a pharmacist to be the Chairman thereof.

(2) The Board shall elect a Vice-Chairman from amongst its members who are pharmacists. The Vice-Chairman shall, subject to subsection (3), hold office for the duration of his membership on the Board.

(3) The office of the Vice-Chairman shall become vacant—

(*a*) if the holder resigns his office by notice in writing to the Board; or

(*b*) if the holder of the office ceases to be a member of the Board; or

(*c*) if the Board so determines.

(4) Whenever the Chairman is absent or is for any reason unable to discharge the functions of his office, the Vice-Chairman shall discharge the functions of the Chairman.

Meetings of the Board

9.—(1) Subject to this Act, the Board shall hold ordinary meetings for the dispatch of business at least four times in each year.

(2) An extraordinary meeting of the Board—

(*a*) may be convened by the Chairman at anytime;

(*b*) shall be convened by the Chairman within twenty-one days of the receipt by him of a request in writing signed by not less than any three members of the Board and specifying the purpose for which the meeting is to be convened.

(3) At any meeting of the Board—

(*a*) the Chairman or, in his absence the Vice-Chairman, shall preside;

(*b*) in the absence of both the Chairman and the Vice-Chairman the members present and forming the quorum shall elect one of their number to preside; and

(*c*) the quorum shall be formed by any five members.

(4) At any meeting the decision of the Board on any matter shall be that of the majority of the members present and voting at that meeting, and in the event of an equality of votes, the Chairman or the person presiding shall have a casting vote in addition to his deliberative vote.

(5) Subject to this Act, the Board may make standing orders for the regulation of its proceedings and business and may vary, suspend or revoke any such standing orders.

Functions of the Board

10. The Board shall be the sole registering authority of all persons required to be registered under this Act and shall have the following further functions—

(*a*) to assist in the promotion and improvement of the health of the population of Malaŵi;

(*b*) to exercise discipline and control over the professional conduct of all persons registered under this Act and practising in Malaŵi;

(*c*) to control and exercise authority affecting the training of persons in the profession of pharmacy;

(*d*) to promote liaison in the field of training in the profession of pharmacy both within Malaŵi and elsewhere and to promote the standards of such training in Malaŵi;

(*e*) to advise the Minister on any matter falling within the scope of this Act.

Powers of the Board
30 of 1991

11. For the better performance of its functions, the Board shall, subject to this Act, have power—

(*a*) to remove any name from any register or, subject to such conditions as the Board may impose, restore it thereto;

(*b*) to approve of institutions in Malaŵi and of the curriculum for the training of pharmacists, pharmacy technologists and pharmacy assistants;

(*c*) to acquire, hire or dispose of property, and borrow money on the security of the assets of the Board and accept and administer any trust or donation;

(*d*) to consider any matter affecting the profession of pharmacy and make representations thereon to the Minister or take such action in connexion therewith as the Board considers necessary;

(*e*) to keep and maintain separate registers in the prescribed form—

(i) of all pharmacists registered under this Act;

(ii) of all pharmacy technologists registered under this Act;

(iii) of all pharmacy assistants registered under this Act;

(iv) of all pharmacy premises registered under this Act;

(*f*) to advise the licensing authority on matters relating to medicinal products and poisons;

(*g*) upon application by any person, to recognize any qualifications held by that person (whether such qualifications have been obtained in Malaŵi or elsewhere) as being equal, either wholly or in part, to any prescribed qualifications, whereupon such person shall, to the extent to which the qualifications have been so recognized, be deemed to hold such prescribed qualifications;

(*h*) to perform such other functions as may be assigned to the Board by the Minister; and

(i) generally, to do and perform all such acts or things as the Board deems necessary or expedient to achieve the objects of this Act.

Committees of the Board

12.—(1) In addition to the Pharmacy Committee, Medicines Committee and Poisons Committee and save as otherwise provided in relation to those three committees, the Board may establish any number of other committees to carry out any special or general functions determined by the Board and may delegate to any such committee such of the functions of the Board as the Board may consider expedient.

(2) The Chairman of the Board shall by reason of his office be a member of every committee established under subsection (1).

(3) The chairman of each committee shall be appointed by the Board from amongst the members of the Board.

(4) Each committee may co-opt as members of such committee persons who are not members of the Board and any of such members so co-opted may or may not be officers in the public service.

(5) The chairman of a committee may, at any time and place, convene a meeting of the committee of which he is chairman.

(6) The Board may, at any time, direct the chairman of any committee to convene a meeting of such committee and such chairman shall, as soon as is practicable, comply with such direction.

(7) Every committee shall keep minutes of its meetings and shall inform the Board of its activities and shall conduct its proceedings in such manner as the Board may direct.

(8) A member of a committee who is not an officer in the public service shall, in respect of expenses incurred by him in travelling and subsistence while discharging his duties as member of that committee, be paid out of the funds of the Board, such allowances as the Board may determine.

Appointment of Registrar and other staff

13.—(1) Subject to this section, the Board—

(*a*) shall appoint a Registrar upon terms and conditions approved by the Minister; and

(*b*) may appoint assistant registrars and such other employees as it considers necessary or desirable in the discharge of its duties and upon such terms and conditions as it may determine.

(2) The Registrar, after consultation with the Chairman of the Board, may appoint temporary employees at such daily rates of pay, not below the minimum rates otherwise prescribed by law, as he may consider appropriate and shall, after he has appointed any such employee, report the fact thereof to the Board at its next meeting.

(3) The Registrar shall be the secretary to the Board and to every committee thereof.

(4) If the Registrar is absent or unable to carry out any of his functions under this Act or any other enactment, an assistant registrar or any officer of the Board shall exercise, during the period that the Registrar is so absent or unable to act, such of the functions of the Registrar as the Chairman of the Board may designate.

(5) Subject to any general or special directions of the Board, the Registrar shall be the chief executive officer of the Board and as such he shall be responsible to the Board for the administration and management of its affairs, including the supervision of other staff of the Board.

Funds, accounts and audit

14.—(1) The funds of the Board shall consist of—

(*a*) such sums as may be appropriated by Parliament for the purposes of the Board;

(*b*) all fees payable under this Act;

(*c*) such other moneys and assets as may vest in or accrue to the Board, whether in the course of its functions or otherwise;

(*d*) the levy imposed under section 15.

(2) The Board shall keep proper accounts and other records relating thereto in respect of its funds and shall in every respect comply with the provisions of the Finance and Audit Act.

Cap. 37:01

(3) The accounts of the Board shall be examined and audited annually by auditors appointed by the Board and approved by the Minister.

Levy

15. The Minister may from time to time, by order published in the *Gazette*, impose a levy on gross or net income accruing to any person or class of persons registered under this Act and such levy shall be appropriated for the general operations of the Board or for such operations of the Board as the Minister may specify in the order.

Remuneration and expenses of members of the Board

16. Members of the Board shall be paid from the funds of the Board such allowances as the Minister may determine and in determining the allowance the Minister may make provision for the reimbursement of any reasonable expenses incurred by a member of the Board or of a committee in connexion with the business of the Board or the committee.

PART III

Pharmacy

No person to carry on pharmacy business unless registered

17.—(1) Except as is provided by this Act, no person other than a person registered as a pharmacist under this part shall—

(*a*) conduct a retail pharmacy business;

(*b*) in the course of any trade or business prepare, mix, compound or dispense any medicinal product or poison except under the supervision of a registered pharmacist; and

(*c*) assume, take, exhibit or, in any way make use of, any title, emblem, description or addition reasonably calculated to suggest that he is registered as a pharmacist.

(2) For the purpose of paragraph (*c*) of subsection (1), the use of the word "pharmacist" or "chemist" or "druggist" or any similar word or combination of words shall be deemed to suggest that the owner of the business or the person having control of the business on those premises is, or purports to be, a registered pharmacist.

Persons registered under the repealed Act

18.—(1) Every person who, immediately before the commencement of this Act, was registered in the register of pharmacists under the Act repealed by this Act and is resident in Malaŵi, shall be deemed to have been registered under this Act in that register.

(2) Every person deemed by subsection (1) to be registered under this Act shall submit to the Registrar particulars of his registration in such form as may be prescribed and, subject to payment of the prescribed fee, shall be entitled to be issued with a certificate of registration under this Act.

Residence of registered persons

19.—(1) Subject to subsection (2), an applicant for registration as a pharmacist, pharmacy technologist or pharmacy assistant shall not be registered unless at the time of his application—

(*a*) he resides in Malaŵi; or

(*b*) he intends, if he is registered, to take up residence in Malaŵi within six months of the date of his registration.

(2) Any person who resides in and is lawfully practising his profession or calling in such country as the Board may from time to time specify for the purposes of this subsection by notice in the *Gazette*, may be registered if, but for residing outside Malaŵi, he is otherwise qualified for registration.

Persons eligible to be registered as pharmacists, pharmacy technologists or pharmacy assistants

20.—(1) Subject to this section, a person shall be eligible for registration under this Act as a pharmacist or pharmacy technologist or pharmacy assistant if he is a holder of a degree, diploma, certificate or other qualification which is recognized by the Board as making him eligible for registration and he satisfies the Board that he—

(*a*) has acquired sufficient knowledge of science and pharmacy;

(*b*) has an adequate knowledge of the English language; and

(*c*) is, in all respects as to character and otherwise, a fit and proper person to be registered.

(2) No qualification from an examination authority outside Malaŵi shall be recognized or accepted under subsection (1) as a qualification for registration of the holder, unless the qualification entitles the holder to registration in the country, state or territory in which the examination authority has jurisdiction.

(3) In any case where the Board does not recognize a degree, diploma, certificate or other qualification, relating to the profession of pharmacy held by any person, as making him eligible for registration, the Board may take steps to assess his suitability for registration and for the purpose of so doing may require him to attend an interview or to undergo any oral or written examination.

(4) The Board may, where it considers it expedient so to do, delegate the assessment of suitability for registration under subsection (3) to a committee of the Board which shall, after making such assessment, make such recommendations to the Board as it considers appropriate.

Procedure for registration

21.—(1) A person desiring to be registered under this Act may make his application, in the prescribed form, to the Board and shall submit with his application—

(*a*) the prescribed fee; and

(*b*) a certificate of any qualification on which he relies for registration or a certified photocopy thereof:

Provided that a certificate showing his registration in the country, state or territory in which he qualified is submitted and that such a certificate contains details of the qualifications on which registration was based; and

(*c*) if other practical experience or training is required in the country, state or territory in which he qualified before registration in that country, state or territory—

(i) evidence that such experience has been acquired or that such training has been obtained; and

(ii) the certificate of registration in that country, state or territory or a certified copy thereof;

(*d*) save in case of a person referred to in section 19 (2), evidence that he resides or intends, if he is registered, to reside in Malaŵi.

(2) The Board may require any statement in connexion with an application under subsection (1) to be supported by a solemn or statutory declaration.

(3) If the Board is satisfied that the qualification and the particulars or documents submitted under subsection (1) are in accordance with the requirements of this Act, the Board shall, upon payment by the applicant of the prescribed fee, register the applicant in the appropriate register.

Certificate of registration
30 of 1991

22. Upon registration by the Board of the applicant in—

(*a*) the register of pharmacists;

(*b*) the register of pharmacy technologists;

(*c*) the register of pharmacy assistants.

the Board shall issue an appropriate certificate of registration in the prescribed form.

Application for retention of name on register
30 of 1991

23.—(1) Every registered pharmacist, registered pharmacy technologist and registered pharmacy assistant shall, before the 31st January in each year, make application to the Board for the retention of his name on the appropriate register.

(2) An application made under subsection (1) shall be accompanied with the prescribed fee.

(3) The Board may, by its resolution, strike off from the appropriate register the name and other particulars of any registered pharmacist, registered pharmacy technologist or registered pharmacy assistant who does not make application to the Board for the retention of his name on the appropriate register as required by subsection (1).

Removal of name of registered pharmacist, etc., from the register
30 of 1991

24.—(1) Subject to paragraph (3), the Board may remove from the appropriate register the name of a pharmacist or a pharmacy technologist or a pharmacy assistant who—

(*a*) is convicted of an offence against this Act or any other written law which in the opinion of the Board renders him unfit to be on the appropriate register; or

(*b*) is judged by the Board after due inquiry, at which such person shall have an opportunity of being heard—

(i) to have been guilty of improper or disgraceful conduct or conduct which, when due regard is had to his profession or calling, is improper or disgraceful; or

(ii) to be grossly incompetent or to have performed any act pertaining to his profession or calling in a grossly incompetent manner; or

(*c*) is dead.

(2) Every pharmacist, pharmacy technologist or pharmacy assistant whose name is removed from the register under this section shall surrender the certificate of registration to the Registrar for cancellation.

(3) The Board may, instead of removing the name of a person registered under this Act from an appropriate register, reprimand such person or suspend his registration subject to such conditions as the Board may consider necessary to impose.

Notification of registration and of removal from register

25. The Board shall, from time to time and not less frequently than once every year, cause to be published in the *Gazette* a notification of all registrations effected under this Act and of all removals from any register.

Appeals against refusal to register or against removal from register

26.—(1) A person aggrieved by—

(*a*) the refusal of the Board to enter his name in an appropriate register; or

(*b*) the removal by the Board of his name from an appropriate register,

may after giving written notice to the Board and within three months after the date on which notice is given to him by the Board of the fact of refusal or removal, as the case may be, appeal to the High Court in such manner as may be prescribed or as may be considered appropriate by the High Court.

(2) On an appeal under subsection (1) the High Court may—

(*a*) dismiss the appeal; or

(*b*) if it is of the opinion that the Board has not acted in accordance with the Act, make an order that the name of the appellant be entered or retained in the appropriate register; or

(*c*) refer the matter back to the Board for further consideration, and may make such other order as to costs of the appeal or otherwise as it may deem just:

Provided that the High Court shall not set aside any finding or penalty imposed by the Board by reason only of an informality or irregularity in the proceedings of the Board, or where the matter was referred to the Pharmacy Committee, the proceedings of that committee which did not embarrass or prejudice the appellant in answering the charge or in the conduct of his defence.

Display of certificate of registration on premises where pharmacy business is carried on

27. No person shall carry on a retail pharmacy business unless the name and certificate of registration of the person having control of the premises in which such business is carried on are conspicuously exhibited therein.

Registration of premises where pharmacy business is to be carried on 30 of 1991

28.—(1) A person carrying on manufacturing pharmacy business, a wholesale pharmacy business or a retail pharmacy business in accordance with this Act shall cause each set of premises where such business is being carried on to be registered.

(2) An application for registration of premises under this section shall be made to the Board in the prescribed form and such application shall be accompanied with the prescribed fee.

(3) The registration of any premises under this section shall become void upon the expiry of thirty days from the date of any change in the ownership of the business carried on therein.

(4) The Board may, for good cause to be stated in writing, refuse to register or in like manner remove from the register any premises which in its opinion are or have become unsuitable for the purpose of carrying on manufacturing pharmacy business, a wholesale pharmacy business or a retail pharmacy business.

Company may carry on a retail pharmacy business upon certain conditions

29.—(1) Notwithstanding anything contained in the foregoing provisions of this Act, a company may carry on a retail pharmacy business if—

(*a*) it is registered by the Board under this Act;

(*b*) it is shown to the satisfaction of the Board that the business is under the personal management and control of a registered pharmacist;

(*c*) a copy of the certificate of incorporation of the company is lodged with the Board; and

(*d*) the other provisions of this Act are complied with.

(2) A company carrying on a retail pharmacy business in accordance with this section shall be an authorized seller of poisons within the meaning of this Act and may use the description of chemist and druggist, or of dispensing chemists or dispensing druggist and may use the description "pharmacy" in connexion with the registered premises.

(3) Any act which if done by an individual would be an offence against this Act shall, if done by a company, be an offence committed by every director, secretary and manager thereof unless he proves that the act or omission constituting the offence took place without his knowledge or consent.

Representatives of deceased or insolvent pharmacists

30. Notwithstanding anything contained in the foregoing provisions of this Part—

(*a*) if a pharmacist dies, or becomes of unsound mind or is adjudged bankrupt or enters into an arrangement with his creditors, his representative may, with the permission of the Board and subject to such directions and conditions as the Board may in its discretion deem fit to impose, carry on the business, and it shall be necessary for such representative to be registered in relation to the premises where such business is carried on, and such business shall be continued only under the personal management and control of a pharmacist and for such period not exceeding five years as the Board may decide;

(*b*) the representative of a pharmacist carrying on a business in accordance with paragraph (*a*) shall be the authorized seller of poisons within the meaning of this Act and it shall be lawful for him to use any title, emblem or description which might have been lawfully used by the pharmacist whose representative he is.

Exemptions from this Part

31.—(1) This Part shall not apply to medicinal products supplied by—

(*a*) a medical practitioner or dentist in the ordinary course of his practice;

(*b*) a veterinary surgeon in the ordinary course of his practice;

(*c*) any hospital which the Minister may, by order published in the *Gazette*, exempt;

(*d*) any sale of poisons in Part II of the Poisons List by an authorized seller of poisons pursuant to section 55 (2) (*b*); and

(*e*) any transaction mentioned in section 35 (2) and (3).

Pharmacy Committee 19 of 1995

32.—(1) There shall be a Pharmacy Committee (in this section referred to as the "Committee") of the Board which shall consist of a chairman and not less than two and not more than four other persons, at least two of whom shall be pharmacists, specially appointed by the Chairman of the Board for any particular business or function of the Committee.

(2) The Committee shall perform such functions and exercise such powers as the Board may from time to time assign to the Committee.

21 of 1996

(3) Without prejudice to the generality of subsection (2) the Committee shall, where it is assigned by the Board so to do, deal with all matters relating to—

(*a*) the registration and discipline of pharmacists, pharmacy technologists or pharmacy assistants;

(*b*) regulate the training of pharmacists, pharmacy technologists and pharmacy assistants; and

(*c*) the control and regulation of any pharmacy business.

(4) In any disciplinary inquiry before the Committee, the Board may request the Attorney General to nominate a legally qualified person serving in the public service to assist the Committee in the proceedings of the inquiry.

(5) At any meeting of the Committee the Chairman and two other members shall form a quorum.

(6) For the purposes of any disciplinary inquiry before the Committee, the Chairman of the Board may appoint to the Committee, in addition to the members by virtue of subsection (1), any other person he considers reasonably qualified to assist the Committee in the conduct of the inquiry.

(7) All facts, matters or things authorized or required to be done by the Committee shall be decided by a majority vote at a meeting of the Committee at which a quorum is present.

(8) At all meetings of the Committee each member present being a member by virtue of subsection (1), shall have one vote on a question before the Committee and, in the event of an equality of votes, the Chairman shall have, in addition to a deliberative vote, a casting vote.

(9) The Committee shall have power to regulate its own procedure.

Pharmacy Committee to be the disciplinary committee of the Board
30 of 1991
21 of 1996

33.—(1) Subject to subsection (2), the Pharmacy Committee shall perform the functions of a disciplinary committee of the Board and for that purpose it shall have power to inquire into any matter or question referred to it by the Board pursuant to sections 24 (1) and 32 (3) (a) alleging that a pharmacist, pharmacy technologist or pharmacy assistant—

(*a*) has been guilty of an offence which in the view of the Board renders him unfit to be on the appropriate register; or

(*b*) has been guilty of improper or disgraceful conduct or conduct which, when due regard is had to his profession or calling, is improper or disgraceful; or

(*c*) is grossly incompetent or has performed any act pertaining to his profession or calling in a grossly incompetent manner.

(2) Before exercising its function under subsection (1), the Pharmacy Committee shall—

(*a*) cause to be served upon a registered pharmacist or registered pharmacy technologist or registered pharmacy assistant a notice setting out the allegations against him; and

(*b*) afford him a reasonable opportunity of being heard either by himself or, if he so wishes, by a legal representative.

(3) For purposes of any inquiry, the Pharmacy Committee may take evidence and may—

(*a*) under the hand of the chairman or the Registrar summon witnesses and require the production of any book, record, document or thing;

(*b*) administer oath or affirmation to any person; and

(*c*) examine any book, record, document or thing which a witness has been required to produce.

(4) A summons for attendance before the Pharmacy Committee or for the production to it of any book, record, document or thing shall be—

(*a*) in the form prescribed; and

(*b*) signed by the Chairman of the Board or Registrar.

(5) Any person who has been summoned under subsection (4) and who— 21 of 1996

(*a*) refuses or fails without sufficient cause to attend and give evidence relevant to the inquiry at the time and place specified in the summons; or

(*b*) refuses to be sworn or to affirm; or

(*c*) refuses or fails without sufficient cause to produce any book, record, document or thing which he has been required by that summons to produce; or

(*d*) attends as a witness before the Pharmacy Committee and refuses to answer or to answer fully and satisfactorily to

the best of his knowledge and belief any question properly put to him; or

(*e*) gives false evidence on oath at an inquiry before the Pharmacy Committee knowing such evidence to be false or not believing it to be true,

shall be guilty of an offence and liable to a fine of K5,000 and to imprisonment for six months.

(6) The Pharmacy Committee shall, as soon as practicable after the close of the inquiry, consider the evidence adduced and the representations made thereat, and shall, without undue delay complete and deliver to the Board its report thereon together with such documents as were produced and are relevant to the matters inquired into, and shall make its recommendations as to whether the allegation should be dismissed, or the pharmacist, or pharmacy technologist, or pharmacy assistant, as the case may be, should be reprimanded, or his registration should be suspended or cancelled.

PART IV

Medicinal Products

Licensing authority 19 of 1995

34. The Board shall be the licensing authority responsible for the granting, renewal, variation, suspension and revocation of licences and certificates under this Part.

Classes of licences 21 of 1996

35.—(1) Subject to the provisions of this Act and except in accordance with a licence granted under this section (hereinafter referred to as a "product licence"), no person shall, in the course of a business carried on by him—

(*a*) sell, supply, export or import any medicinal product;

(*b*) procure for sale, supply or exportation of any medicinal product; and

(*c*) procure the manufacture or assembly or for the manufacture or assembly of any medicinal product for sale, supply or export.

(2) No person shall, in the course of any business carried on by him, manufacture or assemble any medicinal product except in accordance with a licence granted for that purpose (hereinafter referred to as a "manufacturer's licence").

(3) No person shall, in the course of any business carried on by him, sell, supply any medicinal product by way of wholesale dealing except in accordance with a licence granted for that purpose (hereinafter referred to as a "wholesale dealer's licence").

(4) No person other than a person lawfully carrying on a retail pharmacy business shall sell or supply any medicinal product by way of dispensing except in accordance with a

licence granted for that purpose (hereinafter referred to as a "dispensing licence").

(5) Any person who contravenes subsection (1) shall be guilty of an offence and shall be liable to a fine of not less than ten thousand Kwacha and not exceeding one hundred thousand Kwacha. 21 of 1996

(6) Any person who contravenes subsection (2) shall be guilty of an offence and shall be liable to a fine of not less than twenty thousand Kwacha and not exceeding two hundred thousand Kwacha, and to imprisonment for five years. 21 of 1996

(7) Any person who contravenes subsection (3) shall be guilty of an offence and shall be liable to a fine of not less than fifty thousand Kwacha and not exceeding five hundred thousand Kwacha, and to imprisonment for ten years. 21 of 1996

(8) Any person who contravenes subsection (4) shall be guilty of an offence and shall be liable to a fine of not less than ten thousand Kwacha and not exceeding one hundred thousand Kwacha. 21 of 1996

36. The provisions of section 35 shall not apply to— Exemptions

(*a*) anything done by a medical practitioner or dentist which—

(i) relates to a medicinal product specially prepared, or specially imported by him or to his order, for administration, sale or supply to his particular patient; or

(ii) relates to a medicinal product specially prepared by a medical practitioner or dentist at the request of another medical practitioner or dentist for administration, sale, or supply to a particular patient of that other medical practitioner or dentist; or

(*b*) anything done by a veterinary surgeon which—

(i) relates to a medicinal product specially prepared for administration, sale, or supply for a particular animal or herd which is under his care; or

(ii) relates to a medicinal product specially prepared by a veterinary surgeon at the request of another verteinary surgeon for administration, sale or supply to a particular animal or herd which is under the care of that other veterinary surgeon;

(*c*) anything which is done in a registered pharmacy or a hospital and is there done by or under the supervision of a pharmacist and consists of preparing, dispensing, assembling or procuring a medicinal product in accordance with a prescription given by a medical practitioner or dentist;

(*d*) anything which is done in a registered pharmacy by or under the supervision of a pharmacist and consists of—

(i) preparing or dispensing a medicinal product for administration to a person where the pharmacist is requested by or on behalf of that person to do so in accordance with the pharmacist's own judgment as to the treatment required, and that person is present in the pharmacy at the time of the request in pursuance of which that product is prepared or dispensed; or

(ii) preparing a stock of medicinal products with a view to dispensing them as mentioned in paragraph (*c*) or in paragraph (*d*) (i); or

(*e*) anything which is done in a hospital by or under the supervision of a pharmacist and consists of preparing a stock of medicinal products with a view to dispensing them as mentioned in paragraph (*c*); or

(*f*) the assembly of any medicinal products by a person in the course of that person's profession as a nurse or midwife; or

(*g*) the importation of a medicinal product by any person for administration to himself or to any persons who are members of his household, or the importation of a medicinal product where it is specially imported by or to the order of a medical practitioner or dentist for administration to his patient provided that in either case the quantity so imported shall be no greater than is reasonably necessary for that purpose and is not of commercial value; or

(*h*) the importation of a medicinal product in such circumstances as may be specified by the Minister in the notice published in the *Gazette*.

Application for licences

37.—(1) Any application for a licence under this Part shall be made to the licensing authority in the prescribed form.

(2) Any application referred to in subsection (1) shall contain a description of medicinal products to which the licence will relate.

Matters to be considered before issuing a licence

38. Where an application is made for a licence under this Part, the licensing authority shall, before issuing the licence to which the application relates, consider the following—

(*a*) in the case of an application for a product licence—

(i) the safety of medicinal products of each description to which the application relates;

(ii) the efficacy of medicinal products of each such description for the purposes for which the medicinal products are proposed to be administered; and

(iii) the quality of medicinal products of each such description, according to the specification and the method or proposed method of manufacture of the medicinal products, and the provisions proposed for securing that the

medicinal products when sold or supplied will be of that quality;

(*b*) in the case of an application for a manufacturer's licence—

(i) the operations proposed to be carried out pursuant to the licence;

(ii) the premises in which those operations are to be carried out;

(iii) the equipment which is or will be available on those premises for carrying out those operations;

(iv) the qualifications of the person under whose supervision those operations will be carried out; and

(v) the arrangements made or to be made for securing the safekeeping of, and the maintenance of adequate records in respect of, medicinal products manufactured or assembled in pursuance of the licence;

(*c*) in the case of an application for a wholesale dealer's licence—

(i) the premises on which medicinal products of the description to which the application relates will be stored;

(ii) the equipment which is or will be available for storing medicinal products on those premises;

(iii) the equipment and facilities which are or will be available for distributing medicinal products from those premises;

(iv) the qualifications of the persons under whose supervision those operations will be carried out; and

(v) the arrangements made or to be made for securing the safekeeping of, and the maintenance of adequate records in respect of, medicinal products stored on or distributed from those premises.

Issue of licences

39. (1) If the licensing authority is satisfied that the applicant is a fit and proper person to carry on any business set out in section 35, he may issue to the applicant the licence appropriate to such business subject to such general or special conditions as the licensing authority may consider appropriate to impose.

(2) A licence issued under subsection (1) shall be in the form, and shall be for such duration, as may be prescribed.

(3) Where the licensing authority, after consultation with the Board, considers that the applicant is not a fit and proper person to whom a licence should be issued for the carrying on of any business specified in section 35, he shall refuse to issue a licence and such refusal shall not be subject to appeal to, or question in or by, any court, and the licensing authority shall not be required to assign any reasons therefor.

Suspension and revocation of a licence

40.—(1) Subject to this Part, the licensing authority may suspend a licence for such period as he may determine, or may revoke, or vary the provisions of such licence.

(2) The suspension or revocation of a licence under this section may be limited to medicinal products of one or more descriptions, or to any particular premises or to a particular part of any premises.

Variation of a licence

41. Subject to section 37, the licensing authority may, on the application of the holder of a licence under this Part, vary the provisions of the licence in accordance with any proposals contained in the application, if the licensing authority is satisfied that the variation will not adversely affect the safety, quality or efficacy of medicinal products.

Clinical trial

42.—(1) In this Part "clinical trail" means an investigation or series of investigations consisting of the administration of one or more medicinal products of a particular description by, or under the direction of, a medical practitioner or dentist to his patient where there is evidence that medicinal products of that description

have effects which may be beneficial to the patient in question and the administration of the medicinal product is for the purpose of ascertaining to what extent the product has any other effects whether beneficial or harmful.

(2) Subject to the provisions of this Part, no person shall, in the course of a business carried on by him—

(*a*) sell or supply any medicinal product for the purpose of a clinical trial; and

(*b*) procure the sale or supply of any medicinal product for the purpose of a clinical trial; or

(*c*) procure the manufacture or assembly or for the manufacture or assembly of any medicinal product for sale or supply for the purpose of a clinical trial,

unless the following conditions are fulfilled by that person—

(*aa*) that he is the holder of a product licence which authorizes the clinical trial in question, or he does it to the order of the holder of such a licence, and, in either case, he does it in accordance with that licence; and

(*bb*) that a certificate for the purpose of this section (in this Act referred to as a "clinical trial certificate") has been issued to him certifying that, subject to the provisions of the certificate, the licensing authority has authorized the clinical trial in question and that a certificate is for the time being in force and the trial is to be carried out in accordance with that certificate.

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

(*a*) anything which is done in a registered pharmacy or a hospital by or under the supervision of a pharmacist in accordance with a prescription given by a medical practitioner or dentist; or

(*b*) anything done by or under the supervision of a pharmacist which consists of procuring the preparation or dispensing of a medicinal product in accordance with a prescription given by a medical practitioner or dentist.

(4) Any person who contravenes the provisions of this section shall be guilty of an offence.

Animal test

43.—(1) Subject to this Part, no person shall, in the course of a business carried on by him—

(*a*) sell or supply any medicinal product for the purposes of a medicinal test on animals; or

(*b*) procure the sale or supply of any medicinal product for the purposes of medicinal test on animals; or

(*c*) procure the manufacture or assembly or for the manufacture or assembly of any medicinal product for sale or supply for the purposes of medicinal test on animals,

unless the following conditions are fulfilled by that person—

(i) that he is the holder of a product licence which authorizes the test in question, or he does it to the order of the holder of such a licence, and, in either case, he does it in accordance with that licence;

(ii) that a certificate for the purpose of this section (in this Act referred to as an "animal test certificate") has been issued to him certifying that, subject to the provisions of the certificate, the licensing authority has authorized the test in question and that a certificate is for the time being in force and the test is to be carried out in accordance with that certificate.

(2) Any person who contravenes the provisions of this section shall be guilty of an offence.

Clinical trial and animal test certificates

44. (1) Subject to the provisions of this section, every clinical trail certificate or animal test certificate, unless previously renewed or revoked, shall expire at the end of the period of one year from the date on which it was issued or from the date specified in the certificate as issued or renewed.

(2) Any certificate, if it has not been revoked, may, on the application of the holder of the certificate be renewed by the licensing authority for a further period of one year from the date on which it would otherwise expire.

(3) The licensing authority may suspend, for such period as he may determine, a clinical trail certificate or animal test certificate, or he may revoke or vary the provisions of, any such certificate.

PART V

Provisions Relating to Dealings in Medicinal Products

Restrictions on sale of medicinal products

45.—(1) Subject to any exemption conferred by or under this Part, no person shall sell by retail, offer or expose for sale by retail or supply any medicinal product on a pharmacy list unless—

(*a*) the person is lawfully conducting a retail pharmacy business; or

(*b*) the product is sold or supplied on premises which are a registered pharmacy; or

(*c*) the person is a pharmacist, or, if the transaction is carried out on his behalf by another person, then that other person is, or acts under the supervision of a pharmacist; or

(*d*) the product has been made up for sale in a container or package elsewhere than at the place at which it is sold or supplied and the container has not been opened since the product was made up for sale in it.

(2) No person shall sell or supply any medicinal product unless such sale or supply is made from premises capable of being closed so as to exclude the public.

(3) Any person who contravenes the provisions of this section shall be guilty of an offence.

Circumstances in which restrictions on sale of medicinal product may not apply

46.—(1) The restrictions imposed by section 45 shall not apply to—

(*a*) the sale or supply of a medicinal product—

(i) by a medical practitioner or dentist who holds a dispensing licence; or

(ii) in the course of the business of a hospital where the product is sold or offered for sale or supplied for the purpose of being administered, whether in the hospital or elsewhere, in accordance with the directions of a medical practitioner or dentist;

(*b*) the sale or supply of a medicinal product of a description or class specified by Order made by the Minister and published in the *Gazette* where such medicinal product is sold or supplied—

(i) by a nurse in the course of her professional practice; or

(ii) by a midwife in the course of her professional practice; or

(iii) by a clinical officer in the course of his professional practice and where he holds a dispensing licence; or

(iv) by a medical assistant or dental assistant in the course of his professional practice and where he holds a dispensing licence; or

(v) a veterinary surgeon who holds a dispensing licence.

Sale and administration of medicinal product to be subject to prescription by appropriate practitioner

47.—(1) Subject to the provisions of this section, no person shall sell by retail, or supply in circumstances corresponding to retail sale or administer, other than to himself, a medicinal product of a description or a class specified by Order made by the Minister and published in the *Gazette* except in accordance with a prescription given by an appropriate practitioner.

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

(*a*) the sale or supply or administration of a medicinal product to a patient is by a medical practitioner or dentist who holds a dispensing licence; or

(*b*) the sale or supply of a medicinal product is for administration to an animal or herd by a veterinary surgeon who holds a dispensing licence.

(3) In this Part "appropriate practitioner" means a medical practitioner, dentist, veterinary surgeon and any person as the Minister may specify in the Order made under subsection (1).

(4) Any person who contravenes the provisions of this section shall be guilty of an offence.

Restrictions on wholesale dealings

48. The Minister may by Order published in the *Gazette* provide for restrictions on the sale or supply of medicinal products by way of wholesale dealing.

Prohibition of adding to or abstraction of any substance from medicinal products 30 of 1991

49.—(1) No person shall—

(*a*) add any substance to, or abstract any substance from, a medicinal product so as to affect adversely the composition of the product with intention of selling the product in that changed state; or

(*b*) sell or supply, or offer or expose for sale or supply, or have in his possession for the purpose of sale or supply, any medicinal product whose composition has been adversely affected by the addition thereto or abstraction therefrom of any substance; or

(*c*) sell or supply any medicinal product which is not of the nature or quality demanded by the purchaser.

(2) Subsection 1 (*c*) shall not be taken to have been contravened by reason only that a medicinal product contains some extraneous matter if it is proved that the presence of that matter was an inevitable consequence of the process of manufacture of the product.

(3) Where a medicinal product is sold or supplied pursuant to a prescription given by an appropriate practitioner, subsections (1) and (2) shall have effect as if—

(*a*) any reference to the "purchaser" included a reference to the person for whom the medicinal product was prescribed by an appropriate practitioner; and

(*b*) for the words "demanded by the purchaser" there were substituted the words "specified in the prescription".

(4) Any person who contravenes the provision of this section and regulations made under section 66 shall be guilty of an offence.

PART VI

Containers, Package, and Identification of Medicinal Products

Medicinal product to be in labelled containers or packages

50.—(1) No person shall, in the course of a business carried on by him, sell or supply or have in his possession for the purpose of selling or supplying any medicinal product in a container or package which is not labelled in accordance with regulations made under section 66.

(2) Without prejudice to subsection (1), no person shall, in the course of a business carried on by him, sell or supply, a medicinal product of any description in a container or package which is labelled or marked in such a way that the container or package—

(*a*) falsely describes the product; or

(*b*) is likely to be misleading as to the nature, efficacy or quality of the product or as to the uses or effects of medicinal products of that description.

(3) Any person who contravenes this section shall be guilty of an offence.

Leaflets

51.—(1) No person shall, in the course of a business carried on by him, supply or have in his possession for the purpose of supplying together with medicinal products, a leaflet relating to such medicinal products which does not comply with regulations made under section 66.

(2) Without prejudice to subsection (1), no person shall, in the course of a business carried on by him, supply together with a medicinal product or have in his possession for the purpose of so supplying a leaflet which—

(*a*) falsely describes a medicinal product to which it relates; or

(*b*) is likely to be misleading as to the nature, efficacy or quality of such medicinal product.

(3) Any person who contravenes this section shall be guilty of an offence.

PART VII

Promotion of Sales of Medicinal Products

Regulations for advertising of medicinal products

52. The Minister may make regulations which may prohibit any issue of advertisements—

(*a*) relating to medicinal products of a description or a class specified in the regulations;

(*b*) likely to lead to the use of any medicinal product, or any other substance or article, for the purpose of treating or preventing a disease so specified or of ascertaining the existence, degree or extent of a physiological condition so specified or of permanently or temporarily preventing or otherwise interfering with the normal operation of a physiological function so specified or for the purpose of artificially inducing a condition of body or mind so specified;

(*c*) likely to lead to the use of medicinal products of a particular description or class specified in the regulations or the use of any other substance or article of a description or class so specified for any such purpose as is mentioned in paragraph (*b*); and

(*d*) relating to medicinal products and containing a word or phrase specified in the regulations, as being a word or phrase which, in the opinion of the Minister, is likely to mislead the public as to the nature or effects of the products or as to any

condition of body or mind in connexion with which the medicinal product might be used.

Meaning of advertisement

53.—(1) In this Part "advertisement" includes every form of advertising, whether in a publication, or by the display of any notice or by means of any catalogue, price list, letter, whether circular or addressed to a particular person, or by the exhibition of a photograph or a cinematograph film, or by way of sound recording, sound broadcasting or television.

(2) Notwithstanding anything contained in subsection (1), "advertisement" does not include spoken words except—

(*a*) words forming part of a sound recording or embodied in a sound-track associated with a cinematograph film;

(*b*) words broadcast by way of sound broadcasting or television or transmitted to subscribers to a diffusion service; and

(*c*) anything spoken in public.

(3) Save as regulations made under section 52 may otherwise provide, for the purposes of this Part, the following shall not constitute an advertisement—

(*a*) the sale or supply, or offer or exposure for sale or supply, of a medicinal product in a labelled container or package; and

(*b*) the supply, together with a medicinal product, of a leaflet relating solely to the use of the medicinal products supplied.

Medicines Committee 19 of 1995

54.—(1) There shall be a Medicines Committee of the Board (in this section referred to as the "Committee") which shall consist of a chairman and not less than two and not more than four other persons appointed by the Board.

(2) The Committee shall perform such functions and exercise such powers as the Board may from time to time assign to the Committee.

(3) Without prejudice to the generality of subsection (2), the Committee shall—

(*a*) advise the Board on all matters covered in Parts IV to VII; and

(*b*) advise the Board on the safety, quality or efficacy of medicinal products.

(4) Section 12 shall apply to the Committee to the extent possible.

PART VIII

Poisons

Preparation of poisons list

55.—(1) The Minister shall, after consultation with the Board, prescribe a list of non-medicinal poisons (hereinafter referred to as the "Poisons List").

(2) The Poisons List shall be divided into two parts, as follows—

(*a*) Part I shall consist of those substances which, subject to the provisions of this Act, are prohibited from being sold except by a person who is lawfully conducting a retail pharmacy business; and

(*b*) Part II shall consist of those substances which, subject to the provisions of this Act, are prohibited from being sold except by a person who is an authorized seller of Part II poisons.

Prohibition of, and conditions with respect to, sale of poisons

56.—(1) Subject to the provisions of this Act, no person shall—

(*a*) sell or supply any poison which is a substance included in Part I of the Poisons List, unless—

(i) he is a person lawfully conducting a retail pharmacy business;

(ii) the sale or supply is effected on premises which are a registered pharmacy; and

(iii) the sale or supply is effected by, or under the supervision of, a pharmacist;

(*b*) sell or supply any poison which is a substance included in Part II of the Poisons List, unless—

(i) he is a person lawfully conducting a retail pharmacy business and the sale or supply is effected on premises which are a registered pharmacy; or

(ii) he is a person who is an authorized seller of Part II poisons;

(*c*) sell or supply any poison, whether it is a substance included in Part I or in Part II of the Poisons List, unless the container of the poison is labelled in the prescribed manner—

(i) with the name of the poisons;

(ii) in the case of a preparation which contains a poison as one of its ingredients, with the prescribed particulars as to the proportion which the poison contained in the preparation bears to the total ingredients;

(iii) with the word "poison" or other prescribed indication of the character of the article; and

(iv) with the name of the seller of the poison and the address of the premises on which it is sold.

(2) Subject to the provisions of this Act—

(*a*) no person shall sell or supply any poison which is a substance included in Part I of the Poisons List to any person unless that person is either—

(i) certified in writing in the prescribed manner by a person authorized in that behalf by the Minister; or

(ii) known by the seller or by a pharmacist in the employment of the seller at the premises where the sale is effected to be a person to whom the poison may properly be sold;

(*b*) the seller of any poison shall not deliver it until—

(i) he has made or caused to be made an entry in a book to be kept for that purpose stating the date of the sale, the name and address of the purchaser and of the person by whom the certificate required under paragraph (a) was given, the name and quantity of the article sold, and the purposes for which it is stated by the purchaser to be required; and

(ii) the purchaser has signed for the entry.

(3) Subject to the provisions of this Act, a poison shall not be exposed for sale in, or be offered for sale by means of, an automatic machine.

(4) Any person who contravenes this section shall be guilty of an offence.

Poisons Committee

57.—(1) There shall be a Poisons Committee of the Board (in this section referred to as the "Committee") which shall consist of a chairman and not less than two and not more than four other persons appointed by the Board.

(2) The Committee shall perform such functions and exercise such powers as the Board may from time to time assign to the Committee.

(3) Without prejudice to the generality of subsection (2), the Committee shall, where it is assigned by the Board so to do—

(*a*) advise the Board on all matters covered under this Part; and

(*b*) assist the Board in the preparation of the Poisons List.

(4) Section 12 shall apply to the Committee to the extent possible.

PART IX

Provisions for Non-Medicinal Products

Provisions relating to substances which are not medicinal products

58.—(1) The Minister may by regulations specify any descriptions or classes of articles or substances which—

(*a*) are manufactured, sold, supplied, imported or exported in a manner similar to medicinal products; or

(*b*) are used as ingredients in the manufacture of a medicinal product; or

(*c*) if used without proper safeguards, are likely to be a risk to public health or to be dangerous or injurious to animals, and he may provide that, subject to such exceptions

and modifications as may be specified, the provisions of this Act including those relating to offences and penalties shall have effect to such descriptions or classes of articles or substances as those provisions apply to medicinal products.

PART X

Inspection

Inspectors
21 of 1996

59.—(1) The Board shall, for the purposes of enforcing the provisions of this Act, appoint such number of inspectors as it considers appropriate and shall issue to them, in writing or in such form as may be prescribed, certificates of authority to act as such inspectors.

21 of 1996

(2) A person shall not be qualified for appointment as an inspector unless he is a pharmacist or pharmacy technologist.

21 of 1996

(3) A person appointed by the Board as an inspector under this section shall hold office subject to such conditions as the Board may determine, and the Board shall, in the case of an inspector who is a pharmacy technologist, determine the premises which may be inspected by such inspector.

Entry into premises
21 of 1996

60.—(1) Subject to the provisions of this section and section 59 (3), an inspector may, at any reasonable time and on production of his certificate of authority, enter any premises—

(*a*) for the purpose of ascertaining whether there is or has been, on or in connexion with those premises, any contravention of this Act; and

(*b*) generally for the purposes of discharging his functions under this Act.

(2) An inspector may, at any reasonable time and on production of his certificate of authority—

(*a*) enter any ship, aircraft or any vehicle for the purpose of ascertaining whether there is in the ship, aircraft or vehicle any substance or article imported in contravention of this Act; or

(*b*) enter any ship, aircraft or any vehicle for any purpose for which the inspector is authorized to enter any premises under subsection (1).

Mode of inspection

61.—(1) For the purpose of ascertaining whether there is or has been a contravention of this Act an inspector may inspect—

(*a*) any substance or article appearing to him to be a medicinal product or a poison;

(*b*) any article appearing to him to be a container or package used or intended to be used to contain any medicinal product or poison or to be a label or leaflet used or intended to be used in connexion with a medicinal product or poison; or

(*c*) any plant or equipment appearing to him to be used or intended to be used in connexion with the manufacture or assembly of medicinal products or poisons and the means employed, at any stage of the processes of manufacture or assembly, for testing the materials after they have been subjected to those processes.

(2) Where an inspector requires a sample of any substance or article appearing to him to be—

(*a*) a medicinal product or poison sold or supplied or intended to be sold or supplied; or

(*b*) a substance or article used or intended to be used as an ingredient in the manufacture of a medicinal product or poison,

he shall, if he does not obtain the sample by purchase, obtain the sample of that substance or article from the person by whom the medicinal product or poison is sold and supplied or intended to be sold, supplied or manufactured.

(3) For the purposes of this section, an inspector may—

(*a*) require any person carrying on a business which consists of, or includes, the manufacture, assembly, sale or supply of medicinal products or poisons, and any person employed in connexion with such a business, to produce any books or documents relating to the business which are in his possession or under his control; and

(*b*) take copies of, or of any entry in, any book or document produced in pursuance of paragraph (*a*).

(4) An inspector may seize and detain any substance or article which he has reasonable cause to believe to be a substance or article in relation to which, or by means of which, an offence under this Act is being or has been committed, and any document which he has reasonable cause to believe to be a document which may be required as evidence in proceeding under this Act.

(5) In exercising the powers under this section, an inspector may, in order to secure that the provisions of this Act are observed, require any person who owns the substance or article or has authority over the substance or article which is contained in a container or package or a vending machine, to break open any container or package or open any vending machine or to permit the inspector do so.

(6) Where an inspector seizes any substance or article, including any document pursuant to subsection (4), he shall inform of that fact the person from whom it is seized and, in the case of anything seized from a vending machine, the person whose name and address are stated on the machine as being those of the owner of the machine or, if no name and address are

so stated, the occupier of the premises on which the machine stands or to which it is affixed.

(7) An inspector entering any premises, ship, aircraft or vehicle, pursuant to section 60 may take with him such other persons and such equipment as may appear to him to be necessary, and on leaving any such premises, ship, aircraft or vehicle, he shall, if the premises are unoccupied or the occupier, or in the case of a ship, aircraft, vehicle, the master, commander or other person in charge of it is temporarily absent, leave it as effectively secured against trespass as he found it.

(8) Any person who—

(*a*) wilfully obstructs an inspector in the discharge of his duties; or

(*b*) wilfully fails to comply with any requirement properly made to him by an inspector; or

(*c*) without reasonable cause fails to give to the inspector any assistance or information which the inspector may reasonably require of him for the purpose of the performance of his duties under this Act,

shall be guilty of an offence.

(9) If any person, in giving any such information as is mentioned in subsection (8) (*c*), makes any statement which he knows to be false or which he does not believe to be true, he shall be guilty of an offence.

(10) Nothing in this section shall be construed as requiring a person to answer any question or give any information if to do so might incriminate that person or, where that person is married, the husband or wife of that person.

Closure of premises and seizure of equipment, etc.
21 of 1996

61A.—(1) Where the Board believes, on reasonable grounds, that this Act or any regulations made thereunder have been contravened, the Board may, subject to subsection (2), order—

(*a*) the closure of any premises; and

(*b*) the seizure of any equipment, instrument or any other thing,

by means of, or in relation to which, the Board reasonably believes the contravention was committed.

(2) The closure of any premises shall cease, and any equipment or any other thing seized shall not be detained, after the provisions of this Act or any regulations made thereunder have, in the opinion of the Board, been complied with, unless before that time disciplinary or court proceedings, as the case may be, have been instituted in respect of the contravention, in which event the premises shall remain closed and the equipment,

instrument or other thing may be detained until the proceedings are finally concluded.

(3) Where a person has been found guilty of an offence or disciplinary misconduct under this Act or any regulations made thereunder, any equipment, instrument or other thing by means of or in relation to which the offence or misconduct was committed may, in addition to any other penalty imposed by the court or the Board, be forfeited to such person, and may be disposed of in such manner and at such time and place, as the court or the Board, as the case may be, may direct; but no equipment, instrument or other thing shall be disposed of pending an appeal against the decision of the court or the Board or before the time within which the appeal may be taken has expired.

Non-disclosure of information

62.—(1) If any person discloses to any other person—

(*a*) any information with respect to any manufacturing process or trade secret obtained by him in premises which he has entered pursuant to this Act;

(*b*) any information obtained by or furnished to him pursuant to this Act,

he shall, unless the disclosure was made in the performance of his duty and to an authorized person therefor, be guilty of an offence and shall be liable to a fine not exceeding K200 and to imprisonment for a term not exceeding three months.

Inspectors not to be personally liable for acts done by them under the Act

63. An inspector shall not be personally liable in respect of any act done by him in the course of his employment and in the execution or purported execution of any duty under this Act.

Offences by a corporate body

64. Where under this Act, an offence committed by a body corporate is proved to have been committed with the consent and connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or any person who was supposed to act in any capacity, such officer and the body corporate shall severally and jointly be guilty of an offence.

Penalty
21 of 1996

65.—(1) Any person who is guilty of an offence under this Act for which a specific penalty has not been provided shall be liable to a fine not exceeding K50,000 and to imprisonment for a term not exceeding five years.

(2) Upon conviction of any person for an offence under this Act, the court may, in addition to any other penalty imposed, declare any substance or article seized and detained by an inspector and found to have been used in, or in connexion with, the commission of that offence to be forfeited, and may order it to be destroyed, without compensation.

PART XI

Regulations and Savings

Regulations

66. The Minister may, with the advice of the Board, make regulations for carrying out or giving effect to the provisions of this Act and, without prejudice to the generality of the foregoing, such regulations may—

(*a*) specify descriptions or classes of medicinal products or poisons or of any articles or substances required to be specified under this Act;

(*b*) control, regulate or prohibit the sale or supply, export or the importation, of medicinal products or poisons or any articles or substances of any specified description or class;

(*c*) provide for the manner in which containers and packages or medicinal products or poisons may be labelled;

(*d*) provide for the manner in which leaflets relating to the advertisement of medicinal products or poisons may be made;

(*e*) prescribe such requirements as may be necessary with respect to—

(i) the manner in which, or persons under whose supervision, medicinal products or poisons may be prepared or may be dispensed;

(ii) the amount of space to be provided in any premises for persons preparing or dispensing medicinal products, the separation of any such space from the remainder of the premises, and the facilities to be provided in any premises for such persons;

(iii) the accommodation to be provided in any premises for the sale or supply of medicinal products or poisons;

(iv) the accommodation to be provided in any premises for members of the public to whom medicinal products or poisons are sold or supplied or for whom medicinal products or poisons are being prepared or assembled;

(v) the amount of space to be provided in any premises for members of the public and storage of medicinal products or poisons;

(vi) the safekeeping of medicinal products or poisons;

(vii) the disposal of medicinal products or poisons which have become unusable or otherwise unwanted;

(viii) precautions to be observed before medicinal products or poisons are sold or supplied;

(ix) the keeping of records relating to the sale or supply of medicinal products or poisons;

(x) the supply of medicinal products or poisons distributed as samples;

(xi) sanitation, cleanliness, temperature, humidity or other factors relating to the construction, location and use of automatic machines for the sale of medicinal products;

(*f*) prescribe forms of any register required to be kept by the Board under this Act;

(*g*) prescribe forms of any applications, notices, licences, certificates and any other documents required to be prescribed under this Act;

(*h*) prescribe forms of any book or record to be kept for the purposes of this Act;

(*i*) prescribe the fees payable upon registration or renewal of registration and upon application for a licence or certificate or renewal of licence or certificate; and

(*j*) prescribe anything to be prescribed under this Act.

Repeal and savings Cap. 35:01

67.—(1) The Pharmacy and Poisons Act is hereby repealed.

(2) Any subsidiary legislation made under the Pharmacy and Poisons Act in force immediately before the commencement of this Act

(*a*) shall remain in force unless in conflict with this Act and be deemed to be a subsidiary legislation made under this Act; and

(*b*) may be replaced, amended or repealed by subsidiary legislation made under this Act.

SUBSIDIARY LEGISLATION

G.N. 65/1991
14/1995
82/1995
7/1997
87/1998
49/2000
23/2014

PHARMACY, MEDICINES AND POISONS (FEES AND FORMS) REGULATIONS

under s. 66

Citation

1. These Regulations may be cited as the Pharmacy, Medicines and Poisons (Fees and Forms) Regulations.

Fees

2. The Fees specified in the First Schedule shall be payable in respect of the matters correspondingly specified herein.

Forms

3. The forms set out in the Second Schedule shall be used for the purposes of the Act, and such particulars as are contained in these forms and not particularly prescribed by the Act are hereby prescribed as particulars required under the Act.

G.N. 14/1995
82/1995
87/1998
49/2000
23/2014

FIRST SCHEDULE

Composition of the Board

FEES

reg. 2

Item	*Matter*	*Fees* K	*t*
1.	Registration fees: On application for registration including issue of certificate—		
	(*a*) as pharmacist—		
	(i) for a Malaŵian	25,000	00
	(ii) for a newly qualified Malaŵian including internship	25,000	00
	(iii) for a non-Malaŵian	US$750	00
	(*b*) as a pharmacy technologist—		
	(i) for a Malaŵian	12,000	00
	(ii) for a newly qualified Malaŵian . .	12,000	00
	(iii) for a non-Malaŵian	US$500	00
	(*c*) as pharmacy assistant—		
	(i) for a Malaŵian	10,000	00
	(ii) for a newly qualified Malaŵian including internship	10,000	00
	(iii) for a non-Malaŵian	US$300	00

Item	*Matter*	*Fees* K	t
(*d*)	registration of premises where a retail pharmacy business is to be carried on—		
	(i) in urban areas	150,000	00
	(ii) in rural areas	120,000	00
(*e*)	registration of premises where a wholesale pharmacy business is to be carried out—		
	(i) in urban areas	350,000	00
	(ii) in rural areas	200,000	00
(*f*)	inspection plus registration of premises—		
	(i) for manufacturing of external or oral liquid preparation	250,000	00
	(ii) for manufacturing of external preparations and oral liquid preparations . .	350,000	00
	(iii) for manufacture of sterile preparations and other types of dosage forms . .	500,000	00
	(iv) for primary packaging only . .	150,000	00
	(v) for secondary packaging only . .	100,000	00
	(vi) re-inspection fee of manufacturing premises if previously rejected	US$120	00
	(vii) re-inspection fee of all other premises if previously rejected	US$100	00
(*g*)	registration of premises where a medicine store business is to be carried on—		
	(i) in urban areas	55,000	00
	(ii) in municipal areas	45,000	00
	(iii) in rural areas	35,000	00
(*h*)	dispensing premises application for dispensing licence by—		
	(i) a private clinic or hospital in urban or municipal areas with admission facilities	100,000	00
	(ii) a private clinic or hospital in urban or municipal areas without admission facilities	50,000	00
	(iii) a private clinic or hospital in rural areas with admission facilities	50,000	00
	(iv) a private clinic or hospital in rural areas without admission facilities	30,000	00

Item	*Matter*	*Fees* K	*t*
	(*i*) registration of pharmacy or dispensing premises of public health facilities—		
	(i) fees would vary from time to time		
	(ii) public teaching facilities with dispensing premises	Exempted	
2.	Retention fees—		
	(*a*) on application for retention of name on the register of—		
	(i) Malaŵian pharmacist	15,000	00
	(ii) Non-Malaŵian pharmacist . .	US$400	00
	(iii) Malaŵian pharmacy technologist . .	7,500	00
	(iv) Non-Malaŵian pharmacy technologist	US$200	00
	(v) Pharmacy assistant	5,000	00
	(vi) Non-Malaŵian pharmacy assistant	US$100	00
	(*b*) a retail pharmacy business—		
	(i) urban	100,000	00
	(ii) rural	80,000	00
	(*c*) a wholesale dealer's licence—		
	(i) urban	200,000	00
	(ii) rural	150,000	00
	(*d*) a medicine store business—		
	(i) urban	40,000	00
	(ii) rural	20,000	00
	(iii) municipal	30,000	00
	(*e*) a manufacturer's licence—		
	(i) for manufacturing of external or oral liquid preparations	50,000	00
	(ii) for manufacturing of external preparations and oral liquid preparations . .	200,000	00
	(iii) for manufacturing of sterile preparations and other types of dosage forms . .	250,000	00
	(iv) for primary packaging only . .	110,000	00
	(v) for secondary packaging only . .	75,000	00

Item	*Matter*	*Fees* K t
	(*f*) retention of dispensing licence by—	
	(i) a private clinic or hospital in urban or municipal areas with admission facilities	75,000 00
	(ii) a private clinic or hospital in urban or municipal areas without admission facilities	35,000 00
	(iii) a private clinic or hospital in rural areas with admission facilities	30,000 00
	(iv) a private clinic or hospital in rural areas without admission facilities . .	25,000 00
	(*g*) retention of pharmacy or dispensing premises of public health facilities—	
	(i) fees would vary from time to time;	
	(ii) public teaching facilities with dispensing premises	Exempted
3.	Upon analysis of a sample by the quality control laboratory i.e. testing—	
	(*a*) routine drug analysis of one batch in the Pharmacy, Medicines and Poisons Board laboratory	US$300 00
	(*b*) male Latex Condoms per batch	US$ 50 00
	(*c*) Long Lasting Insecticide Treated Nets (LLINs), per batch of size up to 30,000 nets and every 30,000 nets	US$ 200 00
	(*d*) samples analyzed at laboratories outside Pharmacy, Medicines and Poisons Board . .	Cost and 10% service charge
	(*e*) re-analysis of a sample at owner's or importer's request	US$ 800 00
	(*f*) detailed Certificate of Analysis at the request of the owner or importer	US$ 350 00
	(*g*) analysis for gloves	US$ 150 00
	(*h*) analysis for more than three batches (charge per batch)	US$ 50 00
	(*i*) import or export analysis of medicine (based on invoice total value)	0.3%

Note: The fees for analysis of samples from non-commercial institutions such as Police and Central Medical Stores will be negotiated as per the nature of sample.

Item	*Matter*	*Fees* K t
4.	Upon assessment and issuance of permit for importation, exportation and waivers on importation—	
(*a*)	annual import or export permit	300,000 00
(*b*)	import or export permit (per consignment)(based on invoice total value)	1.5%
(*c*)	verification fees for commercial consignments and donations to commercial organizations (based on invoice total value)	1.0%
(*d*)	importation of unregistered medicines from authorized and approved sources (based on invoice total value)	5.0%
(*e*)	verification fees for donations to non-profit making charitable Non Governmental Organizations . .	10,000 00
(*f*)	verification fee for donations to government and consignments for disasters, outbreaks, vaccines, and raw materials. . . .	Exempted
(*g*)	penalty fee for a consignment of medicine(s) imported without prior authorization by Pharmacy, Medicines and Poisons Board or which arrives at the port of entry before the product is registered or amendments are applied for and approved	US$1,000 00

5. Upon inspection of foreign manufacturing sites to assess current Good Manufacturing Practices (cGMP)—

	Capacity of site for inspection and location	*Within SADC or COMESA*	*Within the rest of Africa*	*Outside Africa (Asia/ Europe/ America/ New Zealand/ Australia)*
(*a*)	on site good manufacturing practice inspection with all processes at one site for 5 product lines	US$3,000 00	US$4,000 00	US$5,000
(*b*)	any additional production line	—	—	US$1,000 00

Item	*Matter*			*Fees* K t
	(*c*) For products moving through several sites, in additional to the main site in the same country			
	(i) Warehousing of raw materials up to fined bulk product	US$1,000 00	US$1,500 00	US$2,000 00
	(ii) Final packaging, quality control and final release	US$1,000 00	US$1,500 00	US$2,000 00
	(iii) Quality control and final release	US$500 00	US$750 00	US$1,000 00
6.	Product registration: application plus registration for licence—			
	(*a*) for human or veterinary medicinal product—			
	(i) product licence for products manufactured within Malaŵi			150,000 00
	(ii) product licence for products manufactured outside Malaŵi			US$1,000 00
	(*b*) for imported—			
	(i) human nutritional or veterinary supplement			US$ 500 00
	(ii) but locally packaged (applies to all product categories)			US$ 300 00
	(*c*) for traditional including herbal medicinal product—			
	(i) where the product is manufactured in Malaŵi			50,000 00
	(ii) where the product is manufactured outside Malaŵi			US$ 500 00
7.	Annual retention or renewal of product licence—			
	(*a*) for human or veterinary medicinal product—			
	(i) product licence for products manufactured within Malaŵi			75,000 00

Item	*Matter*	*Fees* K t
	(ii) product licence for products manufactured outside Malaŵi	US$ 500 00
	(*b*) for imported—	
	(i) human nutritional or veterinary supplement	US$ 200 00
	(ii) but locally packaged (applies to all product categories)	US$150 00
	(*c*) for traditional including herbal medicinal product—	
	(i) where the product is manufactured in Malaŵi	30,000 00
	(ii) where the product is manufactured outside Malaŵi	US$ 300 00
Note: Products not retained for one year without submission of withdrawal notice, will attract payment of the retention fees in arrears first, before re-instatement on the Register.		
8.	Upon application, registration, amendment and field trial authorization of a clinical trial—	
	(*a*) application, review and registration, regardless of phase	US$4,000 00
	(*b*) annual renewal, regardless of phase . .	US$1,500 00
	(*c*) amendments to clinical trial application . .	US$ 200 00
	(*d*) field trial (veterinary) for all phases . .	US$1,000 00
9.	Upon vetting medicine promotion materials—	
	(*a*) screening of promotional materials per language—	
	(i) written materials	25,000 00
	(ii) audio, video and written Scripts . .	50,000 00
	(iii) posters or bill boards on any medium including internet	50,000 00
	(iv) posters on vehicles	20,000 00
	(v) T-shirt	10,000 00
	(vi) other materials such as caps, wall clocks, watches, umbrellas or bags	10,000 00
	(*b*) organizing a launch or a symposium . .	50,000 00
	(*c*) participating in exhibitions	25,000 00

Item	*Matter*	*Fees* K t
	(*d*) miscellaneous—	
	(i) roadside shows	75,000 00
	(ii) sponsorship of functions	75,000 00
10.	Upon application, assessment and approval of amendments—	
	(*a*) amendment of human or veterinary product licence particulars—	
	(i) major amendment such as indication, formulation, strength, manufacturing site or manufacturer	US$ 300 00
	(ii) minor amendment such as flavour, colour or artwork	US$ 100 00
	(iii) notification such as change of pack size	US$ 50 00
	(*b*) amendment of food supplements (foreign)—	
	(i) major amendment such as indication, formulation, strength, manufacturing site or manufacturer	US$ 150 00
	(ii) minor amendment such as flavour, colour or artwork	US$ 75 00
	(iii) notification such as change of pack size	US$ 40 00
	(*c*) amendment of herbals (foreign)—	
	(i) major amendment such as indication, formulation, strength, manufacturing site or manufacturer	US$ 150 00
	(ii) minor amendment such as flavour, colour or artwork	US$ 75 00
	(iii) notification such as change of pack size	US$ 40 00
	(*d*) amendment of locally manufactured products—	
	(i) major amendment such as indication, formulation, strength, manufacturing site or manufacturer	40,000 00
	(ii) minor amendment such as flavour, colour or artwork	20,000 00
	(iii) notification such as change of pack size	10,000 00

Item	*Matter*	*Fees* K	*t*
	(*e*) amendment of manufacturing licence—		
	(i) with site inspection (for manufacturer)	80,000	00
	(ii) with site inspection (for packaging activities)	50,000	00
	(iii) without inspection	30,000	00
11.	Fees for Pharmacy, Medicines and Poisons Board publications—		
	(*a*) Set of Statutes and Statutory Instruments. .	25,000	00
	(*b*) Dangerous Drugs Act Register	5,000	00
	(*c*) List of licensed drug outlets, wholesalers or manufacturers	25,000	00
	(*d*) Good Manufacturing Practice Audit Checklist or set of Pharmacy, Medicines and Poisons Board guidelines	15,000	00
	(*e*) Drug register (Human)	15,000	00
	(*f*) Drug register (Veterinary)	15,000	00

SECOND SCHEDULE FORM NO. 1

FORMS

PHARMACY, MEDICINES AND POISONS ACT

(CAP. 35:01)

PHARMACY, MEDICINES AND POISONS (FEES AND FORMS) REGULATIONS

APPLICATION FOR REGISTRATION AS A PHARMACIST, PHARMACY TECHNOLOGIST OR PHARMACY ASSISTANT*

(*section* 21 (1))

To: The Registrar
Pharmacy, Medicines and Poisons Board
P.O. Box 30377
Lilongwe 3

**Delete whatever is not applicable*

1. Name and address of applicant (in block letters)
   Surname.....
   First Names .....
   Address.....
   Telephone Number .....
   Telephone Number .....
2. Date of birth .....
3. Sex (male/female) .....
4. Nationality .....
5. Application for registration in the register of .....

6. Academic qualifications (certificates, diplomas, degrees) and institutions attended (school, university, college)—

Qualification	*Year*	*Institution and Country*
.....	.....	.....
.....	.....	.....
.....	.....	.....
.....	.....	.....
.....	.....	.....

7. Professional qualifications (with dates and institutions attended)—

Qualification	*Year*	*Institution/Body*
.....	.....	.....
.....	.....	.....
.....	.....	.....
.....	.....	.....

8. Present employer and address:

.....

.....

9. I, the above-mentioned applicant, hereby apply for registration on the aforementioned register and submit herewith—

*(*a*) the prescribed application fee of K.....

*(*b*) the prescribed registration fee of K....., and

*(*c*) the following documents in support of my application: .....

10. Declaration—

I, the above-mentioned applicant, hereby solemnly and sincerely declare that the information I have given above is true in every respect to the best of my knowledge and belief and that I have read the Act and the Regulations made under the Act and understand that, if registered, I shall be bound thereby and by any amendments thereto, for as long as my name shall remain on the aforementioned register.

Declared at ..... by .....

Signature of Applicant

before me ..... at .....
on this ..... day of ....., 19 .....

.....
Commissioner of Oaths

11. For Office Use Only—

(*a*) Date of approval of application .....
(*b*) Registration No. ..... Certificate No. .....
(*c*) Receipt Nos. of application and registration fees
(*d*) Remarks .....
.....
.....

Date ..... Signature .....

Registrar
Pharmacy, Medicines and Poisons Board

[*NOTE: 1. Fee must be payable only by cheque or postal order made in favour of the Pharmacy, Medicines and Poisons Board.

2. Application fee is not refundable, but registration fee shall be refunded where application for registration has not been accepted.]

FORM NO. 2

PHARMACY, MEDICINES AND POISONS ACT

(CAP. 35:01)

PHARMACY, MEDICINES AND POISONS (FEES AND FORMS) REGULATIONS

REGISTER OF PHARMACIST, PHARMACY TECHNOLOGIST OR PHARMACY ASSISTANT*

(*Sections* 21 (3) *and* 66 (*f*))

Name of Registered person	*Date of Registration*	*Registration Number*	*Expiry Date*	*Address*	*Nationality*	*Date of Birth*	Qualifications		*University, College, School or other institution*	*Date of cancellation of registration, if any*	*Remarks, if any*
							Upon registration	*Subsequent to registration*			

(* *Delete whatever is not applicable*)

FORM NO. 3

PHARMACY, MEDICINES AND POISONS ACT

(CAP. 35:01)

PHARMACY, MEDICINES AND POISONS (FEES AND FORMS) REGULATIONS

CERTIFICATE OF REGISTRATION OF A PHARMACIST, PHARMACY TECHNOLOGIST OR PHARMACY ASSISTANT*

(*Section* 22)

Registration No ..... Certificate No. .....
This is to certify that .....
is this ..... day of ....., 19 .....
registered on the register of .....
kept and maintained by the Pharmacy, Medicines and Poisons Board in accordance with the provisions of the Pharmacy, Medicines and Poisons Act, 1988, and the Regulations made thereunder.

Valid until ....., 19 .....
Dated .....

....
Registrar *Chairman*

Common Seal of the Board

(**Delete whatever is not applicable*)

FORM NO. 4

PHARMACY, MEDICINES AND POISONS ACT

(CAP. 35:01)

PHARMACY, MEDICINES AND POISONS (FEES AND FORMS) REGULATIONS

APPLICATION FOR RETENTION OF NAME OF REGISTERED PHARMACIST, REGISTERED PHARMACY TECHNOLOGIST, OR REGISTERED PHARMACY ASSISTANT* ON APPROPRIATE REGISTER

(*Sections* 23 (1) *and* 66 (*g*))

To: The Registrar
Pharmacy, Medicines and Poisons Board
P.O. Box 30377
Lilongwe 3

(**Delete whatever is not applicable*)

1. Surname .....
2. First names .....
3. Address .....
4. Date of Birth .....
5. Sex (male/female) .....
6. Nationality .....
7. Registration No. ..... dated ....., 19 .....
8. Certificate No. ..... dated ....., 19 .....
9. Application for retention of name on the .....
   in respect of .....
   .....

(*name of registered Pharmacist, registered Pharmacy Technologist or registered Pharmacy Assistant*)

10. I, the above-mentioned applicant, hereby apply for retention of my name on the aforementioned register and submit therefor—
    *(*a*) application fee of K ..... and
    *(*b*) retention fee of K.....

    Dated this ..... day of ....., 19 .....

    .....
    Signature of Applicant

11. For Office Use Only—
    (*a*) Date of approval of application .....
    (*b*) Registration No. ..... Certificate No. .....
    (*c*) Receipt Numbers of application and retention fees .....
    (*d*) Remarks .....

    Date ....

Registrar
Pharmacy, Medicines and Poisons Board

[*Note: 1. Fees must be payable only by cheque or postal order made in favour of the Pharmacy, Medicines and Poisons Board.

2. Application fee is not refundable, but retention fee shall be refundable where application for retention has not been accepted].

Form No. 5

PHARMACY, MEDICINES AND POISONS ACT
(Cap. 35.01)

PHARMACY, MEDICINES AND POISONS (FEES AND FORMS) REGULATIONS

Application for Registration of Premises Where a Retail Pharmacy Business is to be Carried on
(*Section 28*)

To: The Registrar
Pharmacy, Medicines and Poisons Board
P.O. Box 30377
Lilongwe 3

1. Name of applicant .....

2. Address .....

3. Location of premises on which a retail pharmacy business it to be carried (Town, Street, Plot No.)
.....
.....
.....

4. Where the applicant is a company—

   (*a*) state registration number of company under the Act .....

   (*b*) state name and Certificate No. of registered pharmacist under whose personal management and control the affairs of the company would be subject to .....
   .....

   (*c*) attach a copy of the certificate of incorporation of the company
   .....
   .....

5. Name and number of certificate of registration of a registered pharmacist having control of the premises referred to in paragraph 3 .....
.....

6. I, the above-mentioned applicant, submit herewith application fee of K ..... and registration fee of K .....

   Date ....
   Signature of Applicant

[*NOTE 1. Fees must be payable only by cheque or postal order made in favour of the Pharmacy, Medicines and Poisons Board.

2. Application fee is not refundable whereas registration fee is refundable where the application is not accepted]

7. FOR OFFICE USE ONLY—

   (*a*) Date of inspection of premises .....
   (*b*) Remarks .....
   (*c*) Date of approval of application .....
   (*d*) Registration No. .....
   (*e*) Receipt Nos. of application and registration fees .....

   Date ..... Signature .....
   Registrar
   Pharmacy, Medicines and Poisons Board

FORM NO. 6

PHARMACY, MEDICINES AND POISONS ACT

(CAP. 35:01)

PHARMACY, MEDICINES AND POISONS (FEES AND FORMS) REGULATIONS

CERTIFICATE OF REGISTRATION OF PREMISES WHERE A RETAIL PHARMACY BUSINESS IS TO BE CARRIED ON

(*Sections* 28 *and* 66)

REGISTRATION NO. ..... CERTIFICATE NO. .....

THIS IS TO CERTIFY that the Premises situated at .....
.....
(*state location of premises, namely town, street and plot No.*)

where ..... is authorized to carry out a .....
(*Name of business owner*)

retail pharmacy business are this ..... day of ....., 19 ..... registered on the register of premises where retail pharmacy business is to be carried on, kept and maintained by the Pharmacy, Medicines and Poisons Board in accordance with the provisions of the Pharmacy, Medicines and Poisons Act and the Regulations made thereunder.

Date .....

....
Registrar *Chairman*

Common Seal of the Board

FORM NO. 7

PHARMACY, MEDICINES AND POISONS ACT

(CAP. 35:01)

PHARMACY, MEDICINES AND POISONS (FEES AND FORMS) REGULATIONS

REGISTER OF PREMISES WHERE A RETAIL PHARMACY BUSINESS IS TO BE CARRIED ON

(*Sections* 28 *and* 66 (*f*))

Location of Registered Premises			*Date of Registration*	*Registration*	*Name, Registration and Certificate No. of Registered Pharmacist in Control of Business*	*Remarks, if any*
Town	*Street*	*Plot No.*				

FORM NO. 8

PHARMACY, MEDICINES AND POISONS ACT

(CAP. 35:01)

PHARMACY, MEDICINES AND POISONS (FEES AND FORMS) REGULATIONS

APPLICATION FOR A PRODUCT LICENCE

(*Sections* 35 (1) *and* 37 (1))

To: The Secretary for Health
Ministry of Health
P.O. Box 30377
Lilongwe 3 Malaŵi

NOTES—1. Application for a product licence in respect of established medicinal products may be exempted from submission of information normally required for certain parts of the application at the discretion of the licensing authority. Exemption claims may be submitted along with the application with reasons for the request. Application for a product licence in respect of new medicinal products, however, will normally have to comply in full with the requirements of all relevant parts of the application form.

2. Before completing each part of the form, please read any notes on the application form.

3. Samples and printed matter should be sent by post or other means, postage prepaid by the applicant.

4.—(*a*) Written evidence of application fee of K ..... and product licence fee of K ..... as having been paid to the Board should be submitted together with this application, to the Secretary for Health. The application fee and product licence fee shall be paid to the Board in the form of postal order or cheque.

(*b*) The application fee shall not be refundable whereas the product licence fee shall be refundable where the applicant is not accepted.

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PART 1

1.1 Particulars of Applicant (2)
Name .....
Business address .....
Postal address .....
Telephone number .....
Telex number .....
Telefax number .....

1.2 Description of medicinal product to which the product licence relates .....
Approved name (3) .....
Proprietary name (4) .....
Dosage form and presentation (5) .....
Pharmacological classification (6) .....
Country of origin (7) .....
Principal's name and address .....
.....
.....
Manufacturer's name and address .....
.....
.....
.....
The medicinal product * has/has not been available in Malaŵi/ before .....
....., 19 .....
(**delete as appropriate*)

I, the undersigned, hereby solemnly and sincerely declare that the information I have given above is true in every respect to the best of my knowledge and belief and that I have read the Act and any Regulations or Rules made under the Act and understand that, if issued with the product licence, I shall be bound thereby for so long the product licence is valid.

.....
Signature of Applicant

Declared at ..... by .....
(*State name of applicant*)

before me ..... this ..... day of ....., 19 .....
Signature .....
(*Commissioner of Oaths*)

PART 1—NOTES

(1) For office use only.

(2) Application for product licence shall be made—

(*a*) in case of an individual, by a registered pharmacist who is himself the applicant;

(*b*) in case of a company, by a registered pharmacist under whose personal management and control the business of the company is carried on.

(3) (*a*) This shall be the international non-proprietary name or approved genetic name in the country of origin.

(*b*) If an approved name has not yet been allocated to the medicinal product by an appropriate international or national body, the name which has been or will be submitted for approval shall be stated here.

(4) This is the trade name which is unique to the particular medicinal product and by which it is generally identified for commercial purposes.

(5) (*a*) The dosage form namely, capsule, eye-drops, injection vial, ointment, solution, suppository, tablet and the presentation, including a brief description of the physical characteristics of the medicinal product and the strength of its active ingredient(s) shall be stated here.

Examples:

(i) dispersible greenish-yellow round scored tablets containing .....

(ii) injection, powder for reconstitution as a solution/suspension, 2 g vial

(iii) suspension (= mixture), granules for reconstitution with water for preparations, 100 ml bottle. When reconstituted contains ..... /5m

(*b*) Each different dosage form or presentation of a medicinal product will be construed as requiring a separate product licence.

However applications for product licence in respect of medicinal products which vary only in strength may be made on the same form.

(6) The pharmacological classfication or therapeutic group into which the medicinal product falls should be stated.

Examples— stimulant lexative
non-steroidal anti-inflammatory
anti-epileptic
topical antifungal
anti-tuberculosis drug, etc.

(7) This is the country of original development of the medicinal product.

PART 2: PHARMACEUTICAL DATA (FORMULATION)

Name of applicant:

Name of medicinal product— (*a*) Approved:
(*b*) Proprietary:

Dosage Form:

Listed below are details of the active and inactive ingredients contained in the medicinal product.

Approved name (1)	*Chemical name (2)*	*Quantity (3)*	*Active or inactive (4)*	*Reasons for inclusion if inactive*

PART 2—NOTES

(1) This will be the international non-proprietary name or a national generic name. If no such approved name exists, the name which has been submitted for approval should be stated.

(2) This shall, wherever possible, be given in terms of the published list of an appropriate international body. If none exists, the chemical nature of the ingredient should be described.

(3) This should be stated in terms of a dosage unit or, where none exists, in terms of a suitable unit of mass or volume of the medicinal product.

(4) Inactive ingredients include all ingredients other than the active ingredient(s), including pharmaceutical additives, necessary for formulation purposes.

PART 3: CHEMICAL DATA (ACTIVE AND INACTIVE INGREDIENTS)

Name of Applicant:
Name of Medicinal product— (*a*) Approved:
(*b*) Proprietary:

Dosage Form:

3.1 Chemical details of the active and inactive ingredients are as follows:

Approved name	*Chemical name and structural formula*	*Specifications (1)*	*Physical Characteristics (2)*

3.2 Outline synthesis procedures for each active ingredient with side-product limits is as follows:

Active ingredient	*Outline synthesis*	*Side-product limits*

PART 3—NOTES

(1) Where applicable, reference to internationally recognized publications e.g. BP, BPC, Eur.P, IP, USP, etc., will be acceptable.

(2) These should include where relevant—
(*a*) Melting point
(*b*) Boiling point
(*c*) Optical rotation
(*d*) Water solubility (according to BP terminology)
(*e*) Crystal form
(*f*) Particle size
together with any other physical properties which characterize the ingredient.

PART 4: MANUFACTURING DATA

Name of Applicant:
Name of Medicinal product—(*a*) Approved:
(*b*) Proprietary:

Dosage Form:

4.1 Summary of Manufacturing Procedure (1)–(3).

4.2 Analytical, microbiological or other in-process control procedures (2).

PART 4—NOTES

(1) This should cover the various stages of manufacturing and packaging and should include types of equipment and process durations.

(2) The frequency with which and sequence in which in-process controls are carried out should also be indicated here.

(3) The name and address of each pharmaceutical manufacturing facility which carries out any of the above procedures should be indicated, together with particulars of the procedures.

PART 5: RAW MATERIALS DATA

Name of Applicant:
Name of Medicinal product—(*a*) Approved:
(*b*) Proprietary:

Dosage Form:

5.1—Specifications

Summarized below are the specifications of all active and inactive raw materials used in the manufacturing process of the medicinal product. The names of the tests, limits and criteria of acceptance of each parameter in the specifications are given (1)–(4).

PART 5.1—NOTES

(1) Where the stated specification tests correspond to a recognized pharmacopoeia, this should be stated.
(2) Specifications should be as in the latest editions of such pharmacopoeia and any departure from these should be fully substantiated.
(3) Approved or chemical names only should be used.
(4) Those raw materials not present in the final product should be indicated.

5.2—Control Procedures

Following is a description of the analytical and other control procedures performed on each of the raw materials, in order to confirm the specifications stated in Part 5.1 (1)–(3). This should include microbiological procedures where applicable.

PART 5.2—NOTES

(1) Reference only to standard texts will not be sufficient and full details should therefore be given.
(2) Release criteria should be stated for each raw material.
(3) The name of the laboratory carrying out each control procedure should be given.

PART 6: FINAL PRODUCT DATA

Name of Applicant:
Name of Medicinal Product—(*a*) Approved:
(*b*) Proprietary:

Dosage Form:

6.1 Specifications

Summarized below are the specifications of the final product in terms of the name of the specification and the limits and criteria of acceptance of the physical, chemical and microbiological parameters where applicable.

PART 6.1—NOTES

(1) Analytical procedures should not be given here but in the next section, part 6.2.

(2) Control Procedures

Following is a description of analytical and other control procedures performed on the final product in order to confirm the specifications stated in Part 6.1. This should include microbiological procedures where relevant (1)–(4).

PART 6.2—NOTES

(1) Reference only to standard texts will not be sufficient and full details should therefore be given.

(2) Where an analytical procedure has been fully described in another part of the application reference to the relevant page may be made.

(3) Lot release requirements for the final product should be stated.

(4) The name of the laboratory carrying out each control procedure should be given.

6.3 Product Information (1)

(*a*) Name of medicinal product (2) and dosage form
(*b*) Content of active ingredient(s) (3)
(*c*) Summary of pharmacological effects
(*d*) Indications (4)
(*e*) Contra-indications
(*f*) Dose information (5)
(*g*) Cautions (6)
(*h*) Side-effects (7)
(*i*) Interactions and incompatibilities with other medicinal products and other substances (8)
(*j*) Treatment of overdosage (9)
(*k*) Presentation and pack size(s) of the medicinal product (10)
(*l*) Other dosage forms of the same medicinal product available (11)
(*m*) Storage requirements of the medicinal product (11)
(*n*) Scheduling status (12)
(*o*) Proposed retail price per unit pack.

PART 6.3—NOTES

(1) All the information given here (with the exeption of (1)), should appear on the data sheet package insert together with other details as specified in Part 9.

(2) The international non-proprietary name or nationality approved generic name should be given together with the proprietary name, where this exists.

(3) This should be expressed as the amount per unit dose or per suitable unit mass or volume. The name and quantity of any added preservative should be given. Inactive ingredients may be specified as "excipients" except where they have special significance, e.g. sugar in preparations likely to be used by diabetics.

(4) These will be the indications for which a product licence is being sought.

(5) (*a*) Dose information should be given in the form of average doses or dose ranges and normal, maximum single and total daily doses for adults, children and infants.

(*b*) This should be accompanied by information on routes of administration, dose frequencies and normal duration of treatment with the medicinal product. Where relevant, the above information should be given for each therapeutic indication of the medicinal product.

(*c*) Doses for children and infants should be expressed as mg/kg, mg/m^2 or for specified age ranges.

(6) Cautions should include—

(*a*) Specific information on conditions or patients where the medicinal product should be used with particular care, e.g. in

pregnancy, in renal or hepatic impairment, in elderly or young patients, during lactation, etc.

(*b*) Other specific warnings on use of the medicine, i.e. if liable to cause drug dependence, the statement "may be habit forming"; if a prescription only medicinal product, the statement "consult your physician before use of this medicine" or similar warnings.

(*c*) Warnings of potential drug interactions and incompatibilities (to be detailed in section (i)).

(7) *(a)* Details of all major and minor side-effects should be given together with an indication of the likely frequency of occurrence, e.g. common, occasional, rarely with all patients, etc.

(*b*) Also whether such side-effects are related to high or low doses and short or prolonged courses of treatment with the medicine should be stated, together with information on the reversibility or otherwise of the side-effect(s).

(8) All potential interactions and incompatibilities with other medicinal products should be given together with any involving alcohol, tobacco, foodstuffs, etc., where relevant.

(9) Information on both general measures for treatment of overdose and use of specific antidotes should be given where available.

(10) Presentation should be described in terms of the macroscopic characteristics of the product together with details of any distinguishing features, e.g. colour, flavour, scoring, distinguishing marks, etc.

(11) Refers to other products made by the company manufacturing the medicinal products for which application for registration is being submitted.

(12) i.e. CD =controlled drug
POM=prescription medicinal product
OMP=other medicinal product
GSL =general sales list medicinal product, etc.

Part 7: Container and Packaging Data

Name of Applicant:

Name of Medicinal product—(*a*) Approved:
(*b*) Proprietary:

Dosage Form:

7.1 Primary Container

7.1.1 Specifications

The following are the detailed specifications of the type, nature, size and grade of the primary container, i.e. that which is in direct contact with the medicinal product. Details of the type and method of closure together with those of any internal wadding or packing materials should also be stated. (1)

Part 7.1.1—Notes

(*a*) The physical characteristics of the material(s) of construction of the container and closure should be given.

(*b*) In the case of plastics, names and percentages of any supplementary substances should be indicated.

(*c*) With metals, information on any interior lacquer coating substance should be given.

(*d*) For all materials, possible interactions with the medicinal product should be described.

(*e*) Where specifications for a container material do not exist, this should be stated.

7.1.2 Control Procedures

Following are the analytical and any other control procedures carried out on the primary container by or on behalf of the applicant, in order to confirm the requirements of the specification detailed in Part 7.1.1.

PART 7.1.2—NOTES

(1) Reference only to standard reference texts will not be sufficient and full details should therefore be provided.

(2) The laboratories in which the control procedures are carried out should be stated, and where a laboratory other than that of the applicant or manufacturer is used, the applicant should confirm that the relevant tests are being carried out.

(3) Release criteria for the primary container and the closure should be stated.

7.2 External Packaging(s)

A brief description of any outer packaging(s) together with specifications, where relevant, is given below.

PART 8: STABILITY DATA (1) (6)

Name of Applicant:

Name of Medicinal product—(*a*) Approved:

(*b*) Proprietary:

Dosage Form:

8.1 Following is a description of active ingredient(s) characteristics regarding—

(*a*) normal degradation patterns (where known) resulting from hydrolysis, photolysis, oxidation and other processes: .....
.....
.....

(*b*) identity of known degradation products: .....
.....
.....; and

(*c*) storage conditions currently used to maintain the quality of each .....
.....
.....

8.2 Following is a description of analytical procedures used to determine the stability of the medicinal product as packaged with the reasons for assuming that these methods can indicate stability. (2) (3)...

.....

.....

8.3 Following are tabulated experimental results of the above stability tests carried out on the final product, together with the interpretation of the results and an explanation of the basis on which the shelf-life is deduced. (4) .....

.....

.....

8.4 The shelf-life claimed for the final packaged product under specified storage conditions is as follows .....

.....

.....

.....

8.5 The methods employed and results obtained for determination of the presence of degradation products after a period of storage under specified conditions are as follows .....

.....

.....

.....

.....

8.6 Physical characteristics of the final product during storage under specified normal conditions and evidence indicating deterioration are as follows .....

.....

.....

8.7 Following is a programme of stability testing which is used to monitor and confirm the deduced shelf-life. (5) .....

.....

.....

.....

PART 8—NOTES

(1) (*a*) No application for a product licence in respect of any medicinal product shall be submitted without inclusion of stability data indicating a shelf-life of twenty-four months for the final packaged medicinal product.

(*b*) This requirement will not apply to medicinal products with inherently unstable ingredients.

(2) As temperatures up to 40 degrees centigrade may be reached during storage in Malaŵi, testing should simulate these condition.

(3) Stability tests should include monitoring of the continued preserving ability of any antimicrobial preservative in the product.

(4) Tabulated results of stability tests should include—

(*a*) stability results obtained in respect of all specification tests listed in Part 6.2.;

(*b*) full details of environmental conditions e.g. temperature, humidity, light, duration of storage, used in shelf-life studies.

(*c*) batch numbers and dates of manufacture of the samples' examined; and

(*d*) confirmation that the packaging used is the same as described in Part 7.1.

(5) The programme shall include details of frequency of testing, proposed environmental conditions, acceptance criteria and parameters to be tested.

(6) (*a*) Informing on the batch number code must be given to the licensing authority so that it will be possible to judge the age of the product.

(*b*) Alternatively the date of manufacture should be declared on the label of the primary container and on any other packaging.

PART 9: LABELLING AND PACKAGE INSERT DATA

Name of Applicant:

Name of Medicinal product—(*a*) Approved:

(*b*) Proprietary:

Dosage Form:

9.1 Package Insert

The following information shall appear on the package insert/data sheet of the product, six specimens of which should be submitted—

(*a*) scheduling status;

(*b*) generic name;

(*c*) proprietary name;

(*d*) dosage form;

(*e*) composition;

(*f*) pharmacological/therapeutic classification;

(*g*) summary of pharmacological action;

(*h*) indications;

(*i*) contra-indications;

(*j*) dosages and directions for use;

(*k*) side-effects;

(*l*) interactions and incompatibilities;

(*m*) symptoms and treatment of overdose;
(*n*) cautions/warnings;
(*o*) storage instructions;
(*p*) presentation/identification;
(*q*) name and address of manufacturer;
(*r*) product licence number and date of issue; and
(*s*) date of publication.

PART 9.1—NOTES

As for Part 6.1 where applicable

9.2 Product label.

The following information should be included on the label of the primary container which is in direct contact with the medicine, six specimens of which should be submitted—

(*a*) scheduling status;
(*b*) generic and proprietary names;
(*c*) dosage form;
(*d*) composition;
(*e*) doses and routes of administration/directions for use;
(*f*) any necessary warnings e.g. "keep away from children" "read package insert carefully before use";
(*g*) date of manufacture;
(*h*) batch number;
(*i*) date of expiry; and
(*j*) name and address of manufacturer.

PART 9.2—NOTES

As for Part 6.3 where applicable

9.3 Outer Package Label

The following information should be included on the label of any outer package of the product, six specimens of which should be submitted—

(*a*) scheduling status;
(*b*) generic and proprietary names;
(*c*) dosage form;
(*d*) composition;
(*e*) doses and routes of administration/directions for use;
(*f*) any necessary warnings;
(*g*) manufacturing date;
(*h*) batch number;
(*i*) expiry date;
(*j*) date and number of product licence;
(*k*) for introductory samples, the statement "SAMPLE";
(*l*) name and address of manufacturer; and
(*m*) indications (in the case of over-the-counter products).

PART 9.3—NOTES

As for Part 6.3 where applicable

PART 10: FOREIGN REGISTRATION DATA

Name of Applicant:
Name of Medicinal product—(*a*) Approved:
(*b*) Proprietary:

Dosage Form:

10.1 Product licence/registration number in country of origin (1).

10.2 Summary of other countries of registration with product licence/registration numbers, name and presentation of the medicinal product and prescription status (2) in these countries. (Copies of the registration certificates and product licences should be submitted.)

Country	*Licence/ Registration*	*Name of Medicinal Product*	*Presentation*	*Prescription*

10.3—Countries in which registration of the medicinal product has not been accepted with reasons for non-acceptance are as follows—

PART 10—NOTES

(1) If registration has not been authorized details as to progress made with the registration application should be given.

(2) i.e. PO (prescription only), P (pharmacy only), GSL (general sales list), CD (controlled drug) or other as specified.

PART 11: DISTRIBUTION AND PROMOTION DATA

Name of Applicant:

Name of Medicinal product—(*a*) Approved:
(*b*) Proprietary:

Dosage Form:

11.1 How it is proposed to distribute the medicinal product (1)

(*a*) under controlled drug (narcotics) regulations	
(*b*) on prescription only	
(*c*) recorded purchase through pharmacies only	
(*d*) on sale through pharmacies only	

(*e*) for general sale	
(*f*) for veterinary use only	
11.2 How will the medicinal product be advertised/ promoted ? (1)	
(*a*) to the medical/pharmacy professions only	
(*b*) to the general public by point-of-sale displays in pharmacies	
(*c*) to the general public	

PART 11—NOTES

(1) Please tick the appropriate boxes

PART 12: PHARMACEUTICAL AND BIOLOGICAL AVAILABILITY DATA

Name of Applicant:

Name of Medicinal product—(*a*) Approved:

(*b*) Proprietary:

Dosage Form:

Following are experimental details and results of tests performed on the medicinal product to confirm its pharmaceutical and biological availability (bioavailability).

12.1 Pharmaceutical Availability (1)

12.2 Biological Availability (2)

PART 12—NOTES

(1) These are IN VITRO tests (commonly dissolution rate studies) designed to illustrate the rate of release of active ingredient(s) from the dosage form.

(2) These are IN VIVO tests designed to show the characteristics of release of the active ingredient(s) from the dosage form into body fluid (usually blood plasma).

(3) Confirmation must be given that such tests were carried out on the medicine formulation for which registration is being sought. If the product formulation with which clinical trials were conducted is not identical to that of this application, any differences must be clearly indicated.

(4) The applicant should state whether any correlation exists between the in vitro and in vivo data obtained using the methods described above.

(5) Full details of any standard reference substances used in the tests should be given, e.g. supplier, composition, batch number.

PART 13: TOXICOLOGICAL DATA

Name of Applicant:
Name of Medicinal product—(*a*) Approved:
(*b*) Proprietary:

Dosage Form:

Following are details of methods used in, results obtained and conclusion drawn from tests performed on the medicinal product to demonstrate all aspects of its toxicity and to prove the safety of its use. These should include (1–6) (11)—

13.1 Pre-clinical studies with special reference to—

(*a*) single dose studies to investigate acute toxicity and determine the average lethal dose (7).

(*b*) multiple dose studies to investigate sub-acute and chronic toxicity (8);

(*c*) teratogenicity studies and other reproduction studies (9);

(*d*) mutagenicity studies (10);

(*e*) carcinogenicity studies (10); and

(*f*) other studies to substantiate the safety of the medicinal product, including studies investigating drug-dependence potential and histo-pathological investigations.

PART 13.1—NOTES

(1) Where well known active ingredients are concerned, the licensing authority may grant exemption from the submission of some of the above information.

(2) The route of administration used in the tests should generally be the same as that intended for clinical use.

(3) Control groups should always be included in the tests. These controls would usually be given a place but otherwise treated and observed like the test groups.

(4) Data provided should be concise, relevant and provide adequate proof that the requirements of this part have been met.

(5) The following information must be supplied—

(*a*) animal strain;

(*b*) method of administration and dosage;

(*c*) solvents or suspending agents used;

(*d*) numbers, sexes, ages and weights of animals used; and

(*e*) numbers and composition of control groups.

(6) Results of investigations and observations carried out should be reported both individually for each animal and collectively for each group. The arithmetic means for each test and control group should be specified.

(7)—(*a*) Data on acute toxicity, stated as LD50 with cofidence limits and preferably LD95 also, should be expressed as units of weight or volume per kg of body weight.

(*b*) This data should generally be available for at least two animal species and in respect of different adimistration methods.

(*c*) Observation periods and survival times of the animals tested should be stated.

(*d*) Data on acute toxicity in newborn animals should be provided for medicines to be used in the prenatal period.

(8) Reference here is to toxicity following different forms of repeated administration of the medicine. Such tests should be conducted with at least two animal species, one of which should normally be a non-rodent.

(9) These should include—

(*a*) embryotoxicity (death of foetus or reduced foetal weight);

(*b*) peri- and post-natal actions (effects arising just prior to, during and after parturition; and

(*c*) fertility studies.

(10) These tests are generally required if any ingredient of the medicine or metabolite are allied to known carcinogenic and/or mutagenic substances, and also in general if the medicine is intended to be used over prolonged periods.

(11) Where certain tests have not been performed, the reasons for this should be stated which the medicinal product is intended to be used and with regard to the dosage and method of administration of the medicinal product—

.....
.....
.....
.....
.....

14.2 Clinical studies, with special reference to comparative or controlled clinical tests, double blind tests, etc.—

.....
.....
.....

PART 14.2—NOTES

(1) Proof of all information relating to efficacy as contained in the package insert should be substantiated here.

(2) By whom, when and where the studies were carried out should be stated.

PART 15: PHARMACOLOGICAL DATA

Name of Applicant:

Name of Medicinal product—(*a*) Approved:
(*b*) Proprietary:

Dosage Form:

The pharmacological properties of the medicinal product are summarized below in terms of its pharmacodynamic and pharmacokinetic characteristics.

15.1 Pharmacodynamic data (1).

15.1.1 Pre-clinical data on primary pharmacodynamic effects:

A summary of studies in animals of the pharmacological effects forming the basis for therapeutic use of the medicinal product, with particular reference to quantitative aspects is given below—

.....

.....

15.1.2 Pre-clinical data on other pharmacodynamic effects:

(*a*) Studies of other pharmacological effects of the medicinal product in animals, which though not relevant to its therapeutic use are relevant to assessment of its clinical use and risks, are summarized below—

.....

.....

(*b*) Interactions of the medicinal product with other compounds where relevant to the proposed therapeutic use should be indicated.

15.1.3 Clinical data on primary pharmacological effects (2):

A summary of studies in humans of the pharmacological effects forming the basis for the therapeutic use of the medicinal product, with particular reference to quantitative aspects is given below—

.....

.....

15.1.4 Clinical data on other pharmacodynamic effects (3):

(*a*) Studies of such effects in humans, which though not relevant to the therapeutic use of the medicine are relevant to assessment of its clinical use and risks, are summarized below—

.....

.....

(*b*) Any interactions of the medicinal product with other compounds where relevant to its proposed therapeutic use should also be stated.

PART 15.1—NOTES

(1) In the case of new drugs which are similar to others in the same pharmacological category, clinical trials should if possible be planned so that comparison with an established drug in the category can be made.

(2) Dose-response curves and dose duration should be given.

(3) Any effect of the medicinal products on the CNS, including respiratory system, cardiovascular system, blood, hepatic and renal function, details of development of tolerance to the medicinal products should be described, in relation to doses intended for clinical use.

15.2 Pre-clinical Pharmacokinetic Data (1).

The pattern and time course of absorption (2), distribution (3), biotransformation (4) and elimination (5) of active constituents of the medicinal product and important metabolites, in at least one animal species are described below:

.....

.....

.....

15.2.1 Clinical Pharmacokinetic Data.

As in 15.2 above but in human volunteers

PART 15.2—NOTES

(1) To facilitate assessment of information obtained in these investigations, certain relevant chemical and physical chars of the active ingredients should be stated in this part including pka values, partition coefficients at various pHs.

(2)—(*a*) Absorption should be documented preferably on a quantitative basis and with the intended route of administration, Particulars should be given for those concentrations in the blood, plasma or serum at which pharmacological and toxicological effects are obtained.

(*b*) Any physico-chemical properties influencing absorption should be stated.

(3)—(*a*) Primary distribution should be outlined by specifying concentrations in the various tissues. It is important to indicate individual organs having particulary high concentrations of the drug(s) or metabolites or risks of retention of these. Protein binding characteristics should be detailed.

(*b*) Penetration characteristics of the drug across the blood-brain and placental barriers should be described, preferably quantitatively.

(*c*) It should also be established whether the drug(s) is secreted in breast milk and what concentrations may be reached.

(*d*) Any physico-chemical properties affecting distribution should be stated.

(4) Studies of metabolism of the drug(s) in several species of animal and in humans should be described together with investigation into biologically active metabolites and including at test for chemical toxicity.

(5) The main routes of excretion of the drug(s) and its main metabolites should be stated. Data on the rate of elimination (half-life) from the blood, plasma or serum, should be stated including if possible the most important factors affecting elimination rate, including biotransformation, renal excretion and urinary pH.

15.3 Adverse Reaction Data (1).

Incidence and nature of adverse reactions to the medicine in therapeutic doses, together with descriptions of individual cases with particularly toxic or hypersensitivity reactions are stated below—

15.4 Overdosage

Toxic effects of overdosage with recommended treatment of such intoxication are detailed below—

.....
.....
.....
.....
.....

PART 15.3—NOTES

(1) If available, information regarding the origin and biochemical mechanisms of adverse effects should be given, together with advice on how the effects may be minimized.

(2) All indications of development of tolerance, dependence or habitation to the medicinal product should be stated, including the appearance of withdrawal symptoms.

15.5 Interaction Data

All interactions with other drugs and in particular those likely to be used concurrently should be stated together with the likely effects of such an interaction.

15.5.1 Animal Studies

Interaction data observed in animal studies is summarized below (with references). Mechanisms of interaction aetiology should be explained.

15.5.2 Clinical Investigations

Interactions of the medicinal product observed in humans with other drugs, foods or other agents including alcohol, tobacco, together with a description of the effects of such interactions, are as follows (with references): .....
.....
.....
.....

15.6 (*c*) Biological Assay Data

Details of assay methods for the drug within body fluids including blood, urine, saliva are as indicated below. Experimental details of tests performed and results obtained to establish correlation between physiological levels of the drug and pharmacological action are as indicated.

PART 16: VETERINARY MEDICINE CLINICAL STUDIES DATA

Name of Applicant:

Name of Medicinal product—(*a*) Approved:
(*b*) Proprietary:

Dosage Form:

16.1 Toxicological Data

Tests performed on different animal species regarding safety of the medicinal product are as follows—

16.1.1 Acute Toxicity

Studies are described below and the maximum tolerated doses and minimum lethal doses indicated: .....

Clinical tests performed regarding the efficacy of the .....
.....
.....
.....

16.1.2 Chronic Toxicity

Field use studies involving sufficiently large groups of animals of both sexes and different ages are described below and results and conclusions are summarized: .....
.....
.....
.....

PART 16.1—NOTES

(1) All supporting data should be concise, relevant and sufficient to provide proof that the requirements of this part have been fulfilled.

(2) Proof of all information relating to toxicity and efficacy as contained in the package insert should be provided.

(3) For each species, the doses administered, route of administration used and side-effects observed, clinical tests performed regarding the efficacy of the medicinal products are described below and the results and conclusions of these are summarized: .....
.....
.....
.....

PART 16.2—NOTES

(1) By whom, when and where the tests were conducted should be stated.

(2) Special reference should be made to comparative and controlled clinical trials.

16.3 Pharmacological Data

(*a*) Tests performed to establish correlation between physiological levels of the medicinal products and claimed pharmacological action are as described below:
.....
.....
.....

(*b*) Experimental details and results are specified and conclusions summarized:
.....
.....
.....

16.4 Data on Residues

(*a*) Tests conducted to determine the presence of residues of active ingredients of the medicinal product of their metabolities in the eggs, milk and tissues of food animals are described below: .....
.....
.....
.....

(*b*) Experimental details and results are specified and conclusions summarized (1) .....
.....
.....

PART 16.4—NOTES

(1) The recommended withdrawal period for the medicinal product should be stated.

PART 17: ADDITIONAL DOCUMENT REQUIREMENTS

Name of applicant:

Name of Medicinal product—(*a*) Approved:

(*b*) Proprietary:

Dosage Form:

Listed below are the additional documents required to be submitted along with the application for product licence. Numbers of copies are indicated and reference is made to the relevant part of the application form where applicable—

(1) medical literature references regarding therapeutic use of the medicinal product, published within the last 10 years—one copy of each;

(2) package insert (Part 9.1)—6 copies;

(3) product label (Part 2)—6 copies;

(4) outer package label (Part 9.3)—6 copies;

(5) all proposed advertising and promotional meterials (Part 11)—6 copies of each;

(6) product information summary (Part 6.3)—6 copies;

(7) product formula (Part 2)—6 copies;

(8) all manufacturing records and batch data relating to a particular batch, preferably that of the sample submitted, including—

(*a*) raw material analytical reports;

(*b*) manufacturing and packaging master sheets;

(*c*) in process control records;

(*d*) final product analytical reports;

(*e*) authorization for release;

(*f*) any other appropriate records, one copy of each;

(9) five sealed samples of the smallest commercial pack, to enable analytical tests to be performed.

FORM NO. 8A

PHARMACY, MEDICINES AND POISONS ACT

(CAP. 35:01)

PHARMACY, MEDICINES AND POISONS (FEES AND FORMS) REGULATIONS

APPLICATION FOR A PRODUCT LICENCE (SUMMARY SHEET)

(*sections* 35 (1) *and* 37 (1))

A. Product Identification

1. PMPB Ref. No. (*for office use only*)	2. Proprietary name	3. Non-proprietary name (INN)
4. Dosage form	5. Strength	6. Route of administration
7. Suggested Price US		

B. Applicant details

1. Name of Applicant			
2. Address of Applicant		3. City/town	4. Country
5. Tel. No.	6. Fax. No.	7. Telex	8. E-mail address

C. Manufacturer details

1. Name of manufacturer		2. Address	
3. City/town	4. Country	9. Manufacturing licence No.	10. Licence date
5. Tel. No.	6. Fax No.	11. Name and address of licensing authority	
7. Telex	8. E-mail address	12. Date of last GMP inspection	

D. Product details	
1. Therapeutic category	2. Main indication(s)
3. Dosage details and method of use	4. Stability data (on first 3 batches)
5. Shelf-life	6. Storage conditions

7. Complete quantitative formula (per dose form)

(*a*) Substance	(*b*) Function	(*c*) Amount	(*d*) QC specifications
(i)			
(ii)			
(iii)			
(iv)			
(v)			
(vi)			
(vii)			
(viii)			
		8. Total weight or volume of dose form	

E. Active ingredient details

9. Active ingredients

(*a*) Active ingredient	(*b*) Source	(*c*) Standard e.g. USP, BP	(*d*) In-process controls (Optional)
(i)			
(ii)			
(iii)			
(iv)			

F. Manufacturing and Quality Control Information

10. (*a*) Method of manufacture of dosage form

10 (*b*) In process control measures

11. QC specifications of the final product

12. Validated analytical method for final product

13. Batch No.	14. Date of manufacture	15. Expiry date	16. Results of batch testing

(*attach additional information if necessary*)

G. Equivalence data (Optional)

Comparative bioavailability, pharmacodynamic or clinical studies and comparative *in vitro* dissolution tests

H. Container information

(*a*) Size (number of dose units)	(*b*) Description of container and closure
(i)	
(ii)	
(iii)	

I. Distribution and Promotion Information

1. What is the intended scheduling status of the product? (tick appropriate box)

(*a*) CD Controlled	(*b*) POM Prescription only medicine	(*c*) PIM Pharmacist initiated medicine	(*d*) I' Pharmacy only medicine	(*e*) GSL General sales list medicine	(*f*) Veterinary use only

2. How is it proposed to promote the medicinal product? (tick appropriate box)

(*a*) to the medical and pharmacy professions only ☐

(*b*) to the general public b point-of-sale displays in pharmacies ☐

(*c*) to the general public ☐

(*d*) other (please specify) ☐

J. Current Regulatory Status of Product (Please attach relevant documents)

(*a*) Country	(*b*) Product Licence No.	(*c*) Date of First Registration
(i) Country of manufacture		
(ii)		
(iii)		
(iv)		
(v)		

K. Date and Signature

(*a*) Date of application	(*b*) Signature of registered pharmacist (*c*) Applicant official seal

L. Registration Information (for office use only)

(*a*) Application Fee	(*b*) App. Fee No.	(*c*) Registration Fee	(*d*) Reg. Fee Receipt No.
(*e*) Reg. Date	(*f*) Reg. expiry date	(*g*) Registration No.	
(*h*) Full name and signature			

Registrar
Pharmacy, Medicines and Poisons Board

FORM NO. 9

PHARMACY, MEDICINES AND POISONS ACT G.N. 7/1997

(CAP. 35:01)

PHARMACY, MEDICINES AND POISONS (FEES AND FORMS) REGULATIONS

PRODUCT LICENCE

(*section* 39)

Product Licence No. ..... issued at ..... under section 39 of the Pharmacy, Medicines and Poisons Act to .....

(*name of person or firm to whom licence is issued*)

of .....

(*state city, street, plot number and postal address*)

who is hereby licensed to engage in any or all of the business activities outlined under section 35 (1) of, and subject to, the Act in regard to the following medicinal product(s) in accordance with the special conditions specified hereunder—

(*a*) Medicinal product identity—
- (i) name .....
- (ii) generic form .....
- (iii) dosage form .....
- (iv) strength .....
- (v) manufacturing .....
- (vi) manufacturing country .....

(*b*) Year and therapeutic category of the medicinal product

(*c*) Scheduling status

(*d*) Declaration of content—
- (i) active ingredient .....
- (ii) content per unit dose .....

(*e*) Package—
- (i) type of package .....
- (ii) size of package .....
- (iii) initial retail price per package .....

Further conditions of this Product Licence are—

Valid until ....., 20 .....

Date .....

(Official Stamp)

....

Registrar *Chairman*

FORM NO. 10

PHARMACY, MEDICINES AND POISONS ACT

(CAP. 35:01)

PHARMACY, MEDICINES AND POISONS (FEES AND FORMS) REGULATIONS

REGISTER OF PRODUCT LICENCES

(*section* 66)

Product licence		*Description of Medical Products to which licence relates*	*Name and address of licence holder*
No.	*Date issued*		

FORM NO. 11

PHARMACY, MEDICINES AND POISONS ACT
(CAP. 35:01)
PHARMACY, MEDICINES AND POISONS (FEES AND FORMS) REGULATIONS

APPLICATION FOR A MANUFACTURER'S LICENCE
(*sections* 35 (2) *and* 37 (1))

To: The Secretary for Health
P.O. Box 30377
Lilongwe 3
Malaŵi

1. Name of applicant .....
2. Address .....
.....
.....
3. List of products to be manufactured (name, form, dosage and strength) (submit formula for each product): .....
.....
.....
4. Location of business premises: .....
.....
(state city, street and plot number)
5. Manufacturing equipment to be used—

Name /type	*Capacity*
.....	.....
.....	.....
.....	.....

6. Name and registration number of supervising pharmacist:
.....
.....

7. Qualifications and experience of supervising pharmacist:
.....
.....

8. Other key officers:

	Name	*Qualification*	*Experience*
Production Officer(s)	.....	.....	.....
Quality Control Officer(s)	.....	.....	.....
Maintenance Officer(s)	.....	.....	.....

9. Arrangements made or to be made for securing safekeeping of, and the maintenance of adequate records in respect of medicinal products stored on or distributed from premises specified under paragraph 4 .....
.....
.....

10. Brief description of manufacturing process (may be attached separately) .....
.....
.....
.....
11. Proposed source(s) of raw materials.
12. I submit herewith written evidence that application fee of K ..... and manufacturer's fee of K ..... have been paid to the Board.

Date ....

Signature of Applicant

13. FOR OFFICE USE ONLY
    (*a*) Date of inspection .....
    (*b*) Date of approval .....
    (*c*) Licence No. .....
    (*d*) Receipt No. of application fees .....
    (*e*) Remarks .....

    Date ....

Registrar
Pharmacy, Medicines and Poisons Board

[NOTE: 1. Fees shall be payable to the Board in the form of postal order or cheque.
2. Application fee shall not be refundable whereas manufacturer's licence fee shall be refundable where the application is not accepted.]

FORM NO. 12

G.N. 7/1997

PHARMACY, MEDICINES AND POISONS ACT

(CAP. 35:01)

PHARMACY, MEDICINES AND POISONS (FEES AND FORMS) REGULATIONS

MANUFACTURER'S LICENCE

(*section* 39)

Manufacturer's Licence No. ..... issued at ..... under section 39 of Pharmacy, Medicines and Poisons Act to .....
.....

(*name of person or firm to whom licence is issued*)

of .....

(*state city, street, plot number and postal address*)

who is hereby licensed to manufacture, subject to the Pharmacy, Medicines and Poisons Act and to the special conditions set out hereunder, the following medicinal products—

Special conditions of this Licence are—
.....
.....

Valid until ....., 20 .....
Date .....
(Official Stamp)

....
Registrar *Chairman*

FORM NO. 13

PHARMACY, MEDICINES AND POISONS ACT

(CAP. 35:01)

PHARMACY, MEDICINES AND POISONS (FEES AND FORMS) REGULATIONS

APPLICATION FOR A WHOLESALE DEALER'S LICENCE

(*sections* 35 (3) *and* 37 (1))

To: The Secretary for Health
P.O. Box 30377
Lilongwe 3
Malaŵi

1. Name of applicant: .....
2. Postal address: .....
3. Residential address: .....
(*state city, street, plot number*)
4. Medicinal products to which this application relates: .....
.....
.....
5. Location of premises on which medicinal products specified under paragraph 4 will be stored: .....
.....
.....
(*state city, street, plot number*)
6. Specify equipment which is or will be available for storing the medicinal products at the premises referred to under paragraph 5:
.....
.....
7. Specify equipment and facilities which are or will be available for distributing the medicinal products from the premises referred to under paragraph 5: .....
.....
.....
8. Specify qualifications including the registration number of the pharmacist under whose supervision the wholesale dealer's business will be carried out: .....
.....
9. Specify the arrangements made or to be made for securing the safekeeping of and the maintenance of adequate records of the medicinal products stored on or distributed from the premises referred tounder paragraph 5: .....
.....
.....

10. I submit herewith written evidence that application fee of K ..... and wholesale dealer's licence fee of K ..... have been paid to the Board.

Date ....

Signature of Applicant

FOR OFFICE USE ONLY

(*a*) Date of inspection .....

(*b*) Remarks .....

(*c*) (i) Application fees K ..... Receipt No. .....

(ii) Licence fees K ..... Receipt No. .....

(*d*) Date of approval ..... Licence No. .....

Date ....

Secretary for Health

[NOTE: 1. Fees shall be payable to the Board in the form of postal order or cheque.

2. Application fee shall not be refundable, whereas registration fee shall be refundable where application for licence has not been accepted.]

FORM NO. 14

G.N. 7/1997

PHARMACY, MEDICINES AND POISONS ACT

(CAP. 35:01)

PHARMACY, MEDICINES AND POISONS (FEES AND FORMS) REGULATIONS

WHOLESALE DEALER'S LICENCE

(*section* 39)

Wholesale Dealer's Licence No. ..... issued at ..... under section 39 of the Pharmacy, Medicines and Poisons Act to .....

(*name of person or firm to whom the licence is issued*)

of .....

(*state city, street, plot number and postal address*)

who is hereby licensed to carry on business as a wholesaler of medicinal products, subject to the Pharmacy, Medicines and Poisons Act and to the special conditions set out hereunder.

Special Conditions of this Licence are—

.....

.....

Valid until ....., 20 .....

Date .....

(Official Stamp)

....

Registrar *Chairman*

FORM NO. 15

PHARMACY, MEDICINES AND POISONS ACT G.N. 7/1997

(CAP. 35:01)

PHARMACY, MEDICINES AND POISONS (FEES AND FORMS) REGULATIONS

DISPENSING LICENCE

(*section* 39)

Dispensing Licence No ..... issued at ..... under section 39 of the Pharmacy, Medicines and Poisons Act to .....

(*name of person or firm to whom licence is issued*)

of .....

(*state city, street, plot number and postal address*)

who is hereby licensed to dispense medicinal products, subject to the Pharmacy, Medicines and Poisons Act, and to the special conditions set out hereunder.

Special conditions of this licence are—

.....

.....

Valid until ....., 20 .....

Date .....

(Official Stamp)

....

Registrar *Chairman*

FORM NO. 16

PHARMACY, MEDICINES AND POISONS ACT

(CAP. 35:01)

PHARMACY, MEDICINES AND POISONS (FEES AND FORMS) REGULATIONS

APPLICATION FOR A DISPENSING LICENCE

(*sections* 35 (4) *and* 37 (1))

To: The Secretary for Health
P.O. Box 30377
Lilongwe 3
Malaŵi

1. Name of Applicant: .....
2. Address: .....
3. Location of business premises: .....
   .....
   (*state city, street, and plot number*)
4. Name and registration number of supervising Pharmacist .....
   .....
   .....

.....

5. Qualifications and experience of supervising pharmacist .....
.....

6. Medicinal products to which this application relates .....
.....
.....

7. I submit herewith written evidence that application fee of K ..... and dispensing licence fee of K ..... have been paid to the Board.

Date ....

Signature of applicant

8. FOR OFFICE USE ONLY—
   (*a*) Date of inspection .....
   (*b*) Remarks .....
   (*c*) Receipt of application fees .....
   (*d*) Date of approval .....
   (*e*) Licence No. .....

Date ....

Secretary for Health

[NOTE: 1. Fees shall be payable to the Board in the form of postal order or cheque.

2. Application fee shall not be refundable whereas dispensing licence fees shall be refundable where the application is not accepted.]

FORM NO. 17

G.N. 87/1998

PHARMACY, MEDICINES AND POISONS ACT

(CAP. 35:01)

PHARMACY, MEDICINES AND POISONS (FEES AND FORMS) REGULATIONS

MEDICINES INSPECTORATE

C.G.M.P. Inspection Report

(*section* 60)

MANUFACTURING

1. Name of Manufacturer: ..... Date: .....
   Owner: ..... Individual/Partnership/Company
   Address: .....
   Tel. No. ..... Fax No. .....
   Name of Production Pharmacist/Manager .....
   Registration Number .....

	Complies	*Default*	*Not Applicable*
2. PREMISES:			
2.1 Constructed and maintained to protect against weather, ground seepage, pests, vermins, etc.			
2.2 Sited to avoid external contamination			
2.3 Surrounding environment pleasant			
2.4 Good state of repair of walls, floors and ceiling (no cracks, etc.)			
2.5 Premises clean and tidy			
2.6 Walls and floor cleanable			
3. SERVICES PROVIDED:			
3.1 Adequate lighting			
3.2 Temperature controller/Air conditioner			
3.3 Acceptable ventilation and humidity			
3.4 Filtered air in sterile suites			
3.5 Water supply (hot and cold)			
3.6 Distilled water supply			
3.7 Disposal of waste, receptacles provided			
4. SECURITY:			
4.1 Restricted entry into drug production and storage areas to authorized personnel only			
4.2 Burglar bars provided			
4.3 Adequate locking system			
4.4 Security watchmen deployed			
4.5 Burglar alarm installed			
5. SAFETY:			
5.1 Fire fighting equipment, e.g. hose pipes, fire extinguishers			

	Complies	*Default*	*Not Applicable*
5.2 Fire exits clearly marked			
5.3 Fire alarm/smoke detectors			
6. LAYOUT OF WAREHOUSE:			
Adequate space to allow logical flow of materials and activities and to allow easy communication and supervision of operations in each of the following sections—			
6.1 Receipts and quarantine section (raw materials store)			
6.2 Weighing section (raw materials)			
6.3 Production suites			
6.4 In houses QC laboratory			
6.5 Packing and labelling sections			
6.6 Quarantine areas (finished products)			
6.7 Rejected products area			
6.8 Warehouse for finished products			
6.9 Dispatch section (finished products)			
6.10 Recalled products area			
6.11 Retained samples area			
6.12 Materials and finished products stored to minimize mix-up errors or cross contamination			
6.13 All storage areas clearly labelled			
6.14 Animal houses completely separated from production areas			
6.15 Changing or cloakrooms suitably located and separated from production areas			

	Complies	*Default*	*Not Applicable*
6.16 Toilet facilities adequate and provided with running water, hand wash basin and other facilities			
6.17 Toilets not opening directly to manufacturing areas			
6.18 Air lock system on entering into the main production areas			
6.19 Microbiological contamination monitoring and validation			
7. EQUIPMENT:			
7.1 General layout of equipment including segregation and spacing			
7.2 State of repair and functioning of each equipment			
7.3 Maintenance schedule and/ or service contracts			
7.4 Written SOPs and other operating instructions available			
7.5 Calibration methods and validation SOPs available			
7.6 Cleaning SOPs to avoid cross contamination and their validation			
7.7 Suitability of equipment in relation to the production activities			
8. HUMAN RESOURCES:			
8.1 Production Manager: a fulltime supervisor of production activities who is a registered pharmacist			
8.2 Name and registration number given			
8.3 Relevant experience related to manufacturing noted and satisfactory			
8.4 Other supporting staff in production suitably qualified			

	Complies	*Default*	*Not Applicable*
(1)			
(2)			
(3)			
(4)			
(5)			
8.5 Written job descriptions and areas of responsibilities for all support staff available and well defined			
8.6 Formal preliminary and continuous educational program given to staff			
8.7 Quality assurance manager available			
8.8 QA manager separate from production manager			
8.9 Relevant qualifications and experience noted and satisfactory			
8.10 Other supporting staff in QC suitably trained			
(1)			
(2)			
(3)			
(4)			
8.11 Written job descriptions and areas of responsibility available and well defined for all QC support staff			
8.12 Personal Hygiene:			
8.12.1 Instructions to personnel on hygiene			
8.12.2 Adequate facilities for washing			
8.12.3 Adequate toilet facilities			
8.12.4 Adequate changing room			
8.13 Health:			
8.13.1 Pre-employment medical check-up policy in place			

	Complies	*Default*	*Not Applicable*
8.13.2 Periodic medical check-up during employment and records kept			
8.13.3 Provision of protective clothing, headgear, marks boots, gloves, ear plugs, etc.			
9. DOCUMENTATION:			
Are documents available in the following areas and are they adequate?			
9.1 Starting materials testing and specifications			
9.2 Packaging materials testing and specifications			
9.3 Intermediate and bulk material specifications			
9.4 Finished products specifications			
9.5 Sampling and approved documentation			
9.6 Master formula and production methods			
9.7 Inventory records for starting materials			
9.8 Inventory records for packing materials including printed labels			
9.9 Production: Yield reconciliation			
9.10 Batch manufacturing records			
9.11 Intermediate and bulk release records			
9.12 Complaints, recalls and returned goods records and SOPs			
9.13 Documented analytical methods for raw materials			
9.14 Documented analytical methods for finished products			

	Complies	*Default*	*Not Applicable*
9.15 Product stability data and its conformity to labelling and packing instructions of final product			
10. MANUFACTURING PROCESS			
10.1 Compliance with written specifications for raw materials including the following main areas—			
10.1.1 Physical description of material			
10.1.2 Safety precautions on handling			
10.1.3 Approved supplier(s) of material			
10.1.4 Storage conditions of material			
10.1.5 Details of tests for identity, limits of purity, physical and chemical properties and microbiological standards (where applicable)			
10.1.6 Method of assay of material			
10.1.7 Re-examination and retesting program			
10.2 Weighing and measuring records for all raw materials for the production process			
10.3 Labelling and batch numbering			
10.4 Batch manufacturing methods specify the following—			
10.4.1 Specific equipment used and the cleaning, assembly, calibration, sterilization, etc.			
10.4.2 Detailed stepwise processing instructions including the following—			

	Complies	*Default*	*Not Applicable*
10.4.2.1 Sequence of adding materials			
10.4.2.2 Mixing and other processing times			
10.4.2.3 Working temperature			
10.4.2.4 Authorization and checking on each process			
10.4.2.5 Format for presentation of data acceptable			
11. IN-PROCESS ACTIVITY AND PACKING			
11.1 Facilities and personnel for in-process activities adequate			
11.2 Sampling testing, recording and checking processes adequate			
11.3 Contamination and product mix-up minimized			
11.4 Storage and security of labels and their release procedure adequate			
11.5 Reconciliation of yields done			
11.6 Quarantine and release procedures for finished products in place			
11.7 Storage facility and conditions of storage for finished products acceptable			
11.8 Tests for quality of finished product including assay methods			
11.9 Stability evaluation (records for accelerated stability tests and tests on samples at room temp).			
12. QUALITY CONTROL			
12.1 Laboratory premises: cleanliness and layout acceptable			

	Complies	*Default*	*Not Applicable*
12.2 Ventilation adequate			
12.3 Temperature and humidity controlled			
12.4 Equipment adequate for the product list			
12.5 Equipment in good working order			
12.6 Maintenance, calibration and standardization program for equipment available			
12.7 Sampling and handling of samples acceptable			
12.8 Written specifications and methods of analysis available			
12.9 Validation of methods of analysis done			
12.10 Retention and storage of test samples adequate			
12.11 Written reports and raw data presentations acceptable			
13. SELF AUDIT			
13.1 All items on product list are registered			
13.2 Final product specifications and monographs available			
13.3 Written, authorized and checked SOPs for all processes and procedures in manufacture, in processes control and quality control available			
13.4 Continued R&D to improve available formulations			
14. REFERENCE BOOKS AND OTHER PUBLICATIONS			
14.1 Current Edition Martindale			

	Complies	*Default*	*Not Applicable*
14.2 Current GMP manuals (e.g. British, American or other)			
14.3 United States pharmacopoeia			
14.4 British Pharmacopoeia			
14.5 BPC			
14.6 Remington Pharmaceutical Sciences			
14.7 Pharmacy, Medicines and Poisons Regulations			
14.8 Others			

INSPECTION REPORT: COMMENTS AND RECOMMENDATION

(*attach additional sheet if necessary*)

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Inspector's Name	*Number*	*Signature*	*Date*

FORM NO. 18

G.N. 87/1998

PHARMACY, MEDICINES AND POISONS ACT

(CAP. 35:01)

PHARMACY, MEDICINES AND POISONS (FEES AND FORMS) REGULATIONS

MEDICINES INSPECTORATE

Wholesale inspection Report
(*section* 60)

WHOLESALE

1. Name of Wholesale: ..... Date: .....
   Owner: ..... Individual/Partnership/Company
   Address: .....
   Tel. No ..... Fax No .....
   Name of Pharmacist/Manager: .....
   Registration Number: .....

	Complies	*Default*	*Not Applicable*
2. PREMISES:			
2.1 Constructed and maintained to protect against weather, ground seepage, pests, vermins, etc.			
2.2 Sited to avoid external contamination			
2.3 Surrounding environment pleasant			
2.4 Good state of repair of walls, floors and ceiling			
2.5 Premises clean and tidy, walls and floor cleanable			
3. SERVICE PROVIDED:			
3.1 Adequate lighting			
3.2 Temperature controlled			
3.3 Acceptable ventilation and humidity			
3.4 Water supply (hot and cold)			
3.5 Disposal of waste; receptacles provided			
4. SECURITY:			
4.1 Restricted entry into drug storage areas to authorized personnel only			
4.2 Burglar bars provided			
4.3 Adequate locking systems			
4.4 Security watchmen deployed			
4.5 Burglar alarm installed			
5. SAFETY:			
5.1 Fire fighting equipment, e.g. hose pipes, fire extinguishers			
5.2 Fire alarm/smoke detector			
6. LAYOUT OF WAREHOUSE:			
6.1 Adequate space to allow logical flow of goods in receipt, dispatch and storage sections			

	Complies	*Default*	*Not Applicable*
6.2 Space adequate enough to allow easy communication and supervision of various operations			
6.3 Warehouse layout and shelving orderly to eliminate mix-up errors or cross contamination during handling			
6.4 Quarantine area for inspection of incoming goods provided			
6.5 Segregated storage for rejected goods			
6.6. Segregated areas for product recalls			
6.7 Segregated area for expired medicines			
6.8 Pharmacist's office, tea/ rest room for other staff available			
6.9 Properly located toilet facilities with running water, hand wash basin and other facilities available			
7. FACILITIES/EQUIPMENT:			
7.1 Adequate shelving, racks and pallets			
7.2 Refrigerator with freezer in good working order with temperature monitoring device			
7.3 Goods assembly benches and trolleys			
7.4 Cartons, seal tapes, etc.			
8. HUMAN RESOURCES:			
8.1 Full-time supervision by a registered pharmacist			
8.2 Name and registration number given			
8.3 Relevant experience noted and satisfactory			
8.4 Other adequately trained support staff			

	Complies	*Default*	*Not Applicable*
(1)			
(2)			
(3)			
(4)			
9. RECORDS:			
9.1 Records for receipt of goods, delivery notes and invoices available on file			
9.2 Purchase orders (for stock) and other supplies logistics activities authorized signed/countersigned by pharmacist			
9.3 Expiry dates indicated on inventory records			
9.4 Batch numbers recorded on inventory records			
9.5 All sources of received goods identified and indicated on inventory records			
9.6 Sales records: Details of clinics, hospitals and individuals supplied indicated on inventory records			
9.7 Are the clients supplied bona fide registered persons? And is this requirement adequately verifiable?			
9.8 Quantities sold tally with requisitions and sales invoices.			
10. OTHER REQUIREMENTS:			
10.1 No unregistered medicines sold in the premises (contrary to PMPB Act)			
10.2 All medicines comply with labelling and other presentation requirements			
10.3 No secondary production activities such as repacking and re-labelling take place			

	Complies	*Default*	*Not Applicable*
10.4 Dispatch records and delivery notes (to be) countersigned by pharmacist			
10.5 Records for stock balances available for each item			
10.6 Stock verification done on regular basis and shown on records			
10.7 Records able to trace specific batches delivered for product recall purposes			
10.8 Orders (requisitions) for supply from wholesale verified and countersigned by known (authorized) persons			
11. CONTROLLED DRUGS: (CD Schedule):			
11.1 Transaction records kept in accordance with the provision of Dangerous Drugs Act			
11.2 Storage in accordance with the Dangerous Drugs Act			
11.3 Supplies sold to authorized clinics or individuals (verified)			
11.4 Other controlled medicines stored securely under lock and key			
12. REFERENCE BOOKS:			
12.1 Current Edition martindale			
12.2 United States pharmacopoeia			
12.3 British Pharmacopoeia			
12.4 Pharmacy, Medicines and Poisons Board Act and Regulations			
12.5 PMPB Schedules of Registered Medicine (POM, PIM, P, GSL)			

COMMENTS AND RECOMMENDATIONS
(*attach additional sheet if necessary*)

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Inspector's Name	*Number*	*Signature*	*Date*

FORM NO. 19

PHARMACY, MEDICINES AND POISONS ACT G.N. 87/1998

(CAP. 35:01)

PHARMACY, MEDICINES AND POISONS (FEES AND FORMS) REGULATIONS

MEDICINES INSPECTORATE

Dispensing Practitioner Inspection Report (*Clinic, Surgery or Private Hospital*)

(*section* 60)

1. PREMISES OWNED BY:. .....
   Individual/Partnership/Company
   Address: .....

Tel. No .....
Available practitioner in-charge: .....
.....
.....
Other dispensing staff members (nurses, pharmacy assistants, etc.)
Practitioner's registration certificate displayed . . . . YES/No.
Dispensing licence displayed . . . . . YES/No.
Distance from nearest Pharmacy ..... Km

	Complies	*Default*	*Not Applicable*
2. DISPENSARY LAYOUT			
2.1 Constructed and maintained to protect against weather, ground seepage, pests, vermins, etc.			
2.2 Sited to avoid contamination			
2.3 Separate from Clinical Area (room)			
2.4 Good state of repair of walls, floors and ceiling			
2.5 Adequate ventilation			
2.6 Lighting satisfactory			
2.7 Security satisfactory			
2.8 Wash-hand basin with cold and hot water			
2.9 Toilet facilities satisfactory			
2.10 Adequate seat for waiting area for patients			
3. STOREROOM:			
3.1 Adequate lighting			
3.2 Temperature controlled			
3.3 Acceptable ventilation and humidity			
3.4 Disposal of waste; receptacles provided			
3.5 Orderly arrangement of medicines; external and internal medicines separated			
3.6 Medicines protected from direct sunlight			

	Complies	*Default*	*Not Applicable*
3.7 Medicines protected from heat			
3.8 Medicines protected from moisture			
3.9 Medicines out of reach of patients			
4. SECURITY AND SAFETY:			
4.1 Restricted entry into storeroom to authorized staff only			
4.2 Adequate locking systems			
4.3 Security watchmen deployed			
4.4 Burglar alarm installed			
4.5 Fire fighting equipment, e.g. hose pipes, fire extinguishers			
5. DISPENSING PROCEDURES:			
5.1 Dispensed product label to comply with the following:			
5.1.1 Name and strength of the medicine			
5.1.2 Directions for use of medicine			
5.1.3 Name of patient on label			
5.1.4 Quantity dispensed indicated			
5.1.5 Label legible			
5.1.6 Name and address of surgery			
5.1.7 Date of dispensing			
6. EQUIPMENT:			
6.1 Measuring cylinders for dispensing reconstituted powders			
6.2 Refrigerator in good working condition			
6.3 Medicines counting tray			
6.4 Washable formica dispensing bench			

	Complies	*Default*	*Not Applicable*
6.5 Dispensing packs/ containers/ glass bottles/ vials, etc.			
6.6 Adequate shelves, fans, air conditioner			
7. HUMAN RESOURCES.			
7.1 Full-time supervisor who is a registered health professional in the medical, nursing or pharmacy field			
7.2 Name and registration number given			
7.3 Relevant experience noted and satisfactory			
8. RECORDS:			
8.1 Receipt of goods delivery notes and invoices available			
8.2 All sources of received goods indicated on inventory records			
8.3 All documents, e.g. invoices, delivery notes for all receipts carefully filed			
8.4 No unregistered medicines sold in the premises contrary to PMPB Act unless exempted			
8.5 Records for stock movement and balances available for each item			
8.6 Stock verification done on regular basis and shown on records			
8.7 Expired medicines not on shelf and disposed off according to procedure			
8.8 Transaction records for narcotics maintained satisfactorily and according to the provisions of the Controlled Substances Act (DDA)			

	Complies	*Default*	*Not Applicable*
8.9 Storage of narcotics in accordance with the Controlled Substances Act (DDA)			
8.10 Other controlled medicines stored securely under lock and key			
8.11 Records for ALL dispensed medicines available; computer, patient cards, etc.			
9. REFERENCE BOOKS:			
9.1 Current Edition Martindale			
9.2 Pharmacy, Medicines and Poisons Board Act and Regulations			
9.3 PMPB Schedules of Registered Medicines (POM, PIM, P, GSL)			
9.4 Malaŵi National Formulary			
9.5 Malaŵi Standard Treatment Guidelines			

COMMENTS AND RECOMMENDATIONS

(*attach additional sheet if necessary*)

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Inspector's Name	*Number*	*Signature*	*Date*

FORM NO. 20

G.N. 87/1998

PHARMACY, MEDICINES AND POISONS ACT

(CAP. 35:01)

PHARMACY, MEDICINES AND POISONS (FEES AND FORMS) REGULATIONS

MEDICINES INSPECTORATE

Medicine Store Inspection Report

(*section* 60)

1. MEDICINE STORE
   Name of Medicine Store: ..... Date: .....
   Owner: ..... Individual/Partnership/Company
   Address: .....
   Tel. No ..... Fax No .....

	Complies	*Default*	*Not Applicable*
2. PREMISES:			
2.1 Constructed and maintained to protect against weather, ground seepage, pests, vermins, etc.			
2.2 Sited to avoid external contamination			
2.3 Surrounding environment pleasant			
2.4 Good state of repair of walls, floors and ceiling			
2.5 Premises clean and tidy, walls and floor cleanable			
3. SERVICES PROVIDED:			
3.1 Adequate lighting			
3.2 Temperature controlled			
3.3 Acceptable ventilation and humidity			
3.4 Water supply			
3.5 Disposal of waste; receptacles provided			
4. SECURITY AND SAFETY:			
4.1 Adequate locking systems			

	Complies	*Default*	*Not Applicable*
4.2 Security watchmen deployed			
4.3 Burglar bars/alarm installed			
4.4 Fire fighting equipment available			
5. LAYOUT OF DRUG STORE:			
5.1 Space adequate to allow easy communication and supervision of operations			
5.2 Medicines stored to minimize errors or contamination during sale			
5.3 Quarantine area for inspection of incoming goods available			
5.4 Properly located toilet facilities with water, hand wash basin and other facilities available			
6. EQUIPMENT:			
6.1 Adequate shelving, racks and pallets			
6.2 Refrigerator, if needed, in good working order			
7. HUMAN RESOURCES:			
7.1 Full-time supervision by a registered health professional approved by the Pharmacy Board			
7.2 Name and registration number of supervisor given			
7.3 Relevant experience noted and satisfactory			
7.4 Other support staff			
(1)			
(2)			
(3)			
8. RECORDS:			
8.1 Receipt of documentation such as goods delivery notes and invoices available			

	Complies	*Default*	*Not Applicable*
8.2 All sources of received goods identified and indicated on inventory records			
8.3 All documents, e.g. invoices, delivery notes for all receipts carefully filed			
8.4 No unregistered medicines sold in the premises contrary to PMPB Act			
8.5 Only P and GSL medicines found on premises			
8.6 No secondary production activities such as re-packing and re-labelling or dispensing taking place			
8.7 Expired medicines not on shelves and disposed off according to procedure			
9. REFERENCE BOOKS:			
9.1 Pharmacy, Medicines and Poisons Board Act and Regulations			
9.2 PMPB Schedules of Registered Medicines (POM, PIM, P, GSL)			
9.3 Malaŵi National Formulary			
9.4 Guidelines Malaŵi Standard Treatment			

COMMENTS AND RECOMMENDATIONS

(*attach additional sheet if necessary*)

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Inspector's Name	*Number*	*Signature*	*Date*

FORM NO. 21

PHARMACY, MEDICINES AND POISONS ACT G.N. 87/1998

(CAP. 35:01)

PHARMACY, MEDICINES AND POISONS (FEES AND FORMS) REGULATIONS

MEDICINES INSPECTORATE

Retail Pharmacy Inspection Report

(*section* 60)

RETAIL PHARMACY

1. Name of Owner: ..... Date: .....
   Owner: ..... Individual/Partnership/Company
   Address: .....
   Tel. No. ..... Fax No. ..... Name of Pharmacist/Manager
   ..... Registration Number: .....

	Complies	*Default*	*Not applicable*
2. PREMISES:			
2.1 Constructed and maintained to protect against weather, ground seepage, pests, vermins, etc.			
2.2 Sited to avoid external contamination			
2.3 Surrounding environment pleasant			
2.4 Good state of repair of walls, floors and ceiling			
2.5 Premises clean and tidy, walls, floors and shelves cleanable			
3. SERVICES PROVIDED:			
3.1 Adequate lighting			
3.2 Temperature controlled			
3.3 Acceptable ventilation and humidity			
3.4 Water supply (hot and cold)			
3.5 Disposal of waste, receptacles provided			
4. SECURITY:			
4.1 Restricted entry into drug storage areas to authorized personnel only			
4.2 Burglar bars provided			
4.3 Adequate locking systems			
4.4 Security watchmen deployed			
4.5 Burglar alarm installed			
5. SAFETY:			
5.1 Fire fighting equipment, e.g. hose pipes, fire extinguishers			
5.2 Fire alarm/smoke detector			

	Complies	*Default*	*Not applicable*
6. LAYOUT OF WAREHOUSE:			
6.1 Suitable lockable room allocated for dispensing POM preparations out of reach of clients. Dispensing counter provided marked "Prescriptions" for serving clients, elevated in relation to the rest of the pharmacy front shop			
6.2 Dispensing counter clean and tidy with white smooth finish preferably formica			
6.3 Space (shelving) allocated for PIM preparations behind the dispensing counter with no public access			
6.4 Small room allocated for private consultations with patients next to the dispensary			
6.5 Space for the front shop for P and GSL medicines and other merchandise			
6.6 Medicines stored in all sections in an orderly manner to minimize mix-up errors or contamination during handling			
6.7 Quarantine area for inspection of incoming goods provided			
6.8 Segregated storage for rejected goods			
6.9 Segregated areas for product recalls			
6.10 Segregated area for expired medicines			
6.11 Pharmacist's office, tea/ rest room for other staff available			
6.12 Properly located toilet facilities with running water, hand wash basin and other facilities available			

	Complies	*Default*	*Not applicable*
7. FACILITIES/EQUIPMENT:			
7.1 Adequate shelving, racks white smooth finish or formica in all sections			
7.2 Refrigerator with freezer in good working order with temperature monitoring device			
7.3 Dispensing counter (see 5.2)			
7.4 Measuring cylinders for up to 200 ml volume			
7.5 Balance in metric system			
7.6 Dispensing counting trays			
7.7 Fixed double lockable cupboard for Narcotics			
7.8 Other controlled substances such as psychotropics under lock and key			
8. HUMAN RESOURCES:			
8.1 Full-time supervision by a registered pharmacist			
8.2 Name and registration number given			
8.3 Relevant experience noted and satisfactory			
8.4 Other adequately trained support staff			
(1)			
(2)			
(3)			
(4)			
9. RECORDS:			
9.1 Records for receipt of goods such as delivery notes and invoices available on file			
9.2 Purchase orders (for stock) and other supplies logistics activities authorized, signed/ countersigned by pharmacist			

	Complies	*Default*	*Not applicable*
9.3 All sources of received medicines identified and recorded on inventory records			
9.4 Dispensing records:			
9.4.1 Patient profile cards			
9.4.2 Dispensed prescriptions filing system in place			
9.4.3 Labelling of dispensed prescriptions according to guidelines			
9.4.4 Patient counselling according to guidelines			
10. OTHER REQUIREMENTS:			
10.1 No unregistered medicines handled in the premises			
10.2 No expired medicines in the premises. Expired medicines disposed off according to procedure			
10.3 Stock verification done on regular basis and shown on records			
11. CONTROLLED DRUGS: (CD Schedule)			
11.1 Transaction records kept in accordance with the provision of Dangerous Drugs Act			
11.2 Storage in accordance with the Dangerous Drugs Act (see 6.7)			
11.3 Supplies sold to authorized clinics or individuals (verifiable)			
11.4 Other controlled medicines such as psychotropics stored securely under lock and key and sold to bona fide individuals			
12. REFERENCE BOOKS:			
12.1 Current Edition Martindale			
12.2 United States Pharmacopoeia			

	Complies	*Default*	*Not applicable*
12.3 British Pharmacopoeia			
12.4 Pharmacy, Medicines and Poisons Regulations			
12.5 PMPB Schedules of Registered Medicines (POM, PIM, P, GSL)			

COMMENTS AND RECOMMENDATIONS
(*attach additional sheet if necessary*)

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Inspector's Name	*Number*	*Signature*	*Date*

PHARMACY, MEDICINES AND POISONS REGULATIONS

ARRANGEMENT OF REGULATIONS

REGULATION

PART I

PRELIMINARY

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2. Interpretation

PART II

FORMS

3. Particulars, etc., on forms
4. Illegible or incomplete forms

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6. Dispensing licences
7. Duration of licences
8. Display of licences
9. Production and return of licences
10. Application for renewal of licences

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CLASSIFICATION, REGISTRATION AND RETENTION OF REGISTRATION OF MEDICINAL PRODUCTS

11. Categories for registration
12. Application for registration and retention of registration of medicinal products
13. Labelling and marking of medicinal products
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REGULATION

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26. Return of medicinal products three months before expiry
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32. Records of prescription
33. Preservation of records of prescription
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36. Supply of prescription only medicines
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Division 2—Pharmacist Initiated Medicines (*PIM*) *and Pharmacy Medicines* (*P*)

39. Supply of pharmacist initiated medicines and pharmacy medicines

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SPECIAL PROVISIONS FOR INSTITUTIONS

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MISCELLANEOUS PROVISIONS

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48. Report of loss or theft of medicinal products
49. Disposal of existing stocks of prohibited medicinal products

REGULATION

50. Availability of Act and regulations
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Tenth Schedule

PHARMACY, MEDICINES AND POISONS REGULATIONS

G.N. 88/1998

under s. 66

PART I

Preliminary

1. These Regulations may be cited as the Pharmacy, Medicines and Poisons Regulations. Citation

2. In these Regulations, unless the context otherwise requires— Interpretation

"batch number" means the number or other cipher allocated to medicinal product by a manufacturer, by which the origin of raw materials and the complete process of manufacture of the medicinal product can be determined;

"business address" in relation to a business, means the full address of the premises where that business is carried on or any abbreviated address approved by the Board;

"country of origin" in relation to a medicinal product, means the country where the manufacture of that medicinal product was undertaken;

"dangerous drug" or "Controlled Drugs" or "(CD)" means a drug—

(*a*) controlled in terms of the Dangerous Drugs Act;

(*b*) listed in the Tenth Schedule; or

(*c*) registered as such by the Board;

"expiry date", in relation to any batch of a medicinal product, means the date on which the shelf-life of such medicinal product will expire;

"general sales list medicine" or "GSL" means a medicinal product to which *Division* 3 of Part VI applies or a medicinal product registered as such by the Board;

"logo" means the mark, device, design, letter, word, name or numeral or any combination thereof which is used in, or proposed to be used, in relation to, any medicinal product for the purpose of indicating a connexion with the principal manufacturer of the medicinal product and the medicinal product itself;

"institution" means a hospital, dispensary, clinic, nursing home or other institution at which human ailments are treated;

"label", in relation to a package of a medicinal product, means any written, pictorial or other matter marked on or affixed to the package;

"package insert" means a pamphlet on which is printed the particulars prescribed in regulation 15;

Cap. 49:02

"patent" means a patent registered in terms of the Patents Act and which is of full force and effect;

"pharmacist initiated medicine" or "PIM" means a medicinal product listed in the Sixth Schedule or registered as such by the Board;

"pharmacy medicine" or "(P)" means a medicinal product listed in the Seventh Schedule or registered as such by the Board;

"prescriber" means a medical practitioner, a dentist, or a veterinary surgeon or any other person who is lawfully authorized to prescribe any medicinal product;

"prescription" means an order, in writing or orally by a prescriber for the supply of a medicinal product or combination of medicinal products, for the treatment of a person or animal specified therein;

"prescription only medicines" or "POM" means a medicinal product listed in the Fifth Schedule, or registered as such by the Board;

"shelf-life", in relation to any batch or a medicinal product, means the period up to which a medicinal product in that batch will retain the potency and properties stated on the label as fixed by the manufacturer.

PART II

Forms

Particulars, etc., on forms

3.—(1) Every person who is required to make an application under the Act shall complete the prescribed form and pay the

prescribed fees, and shall furnish to the Registrar with such further information or particulars as may be prescribed.

(2) All forms shall be completed in English.

Illegible or incomplete forms

4. The Registrar may reject any form if any part of the form is illegible or not properly completed.

PART III

Licensing of Premises and Persons

Minimum requirements for premises, etc.

5. Any person who applies for registration under the Act shall ensure that the premises comply with—

(*a*) in the case of manufacturing pharmacy business, the minimum requirements set out in Part I of the First Schedule;

(*b*) in the case of wholesale pharmacy business, the minimum requirements set out in Part II of the First Schedule;

(*c*) in the case of retail pharmacy business, the minimum requirements set out in Part III of the First Schedule;

(*d*) in the case of an institution, the minimum requirements set out in Part III of the First Schedule;

(*e*) in the case of a registered dispensing practitioner, the minimum requirements set out in Part IV of the First Schedule; and

(*f*) in the case of a medicine store, the minimum requirements set out in Part V of the First Schedule.

Dispensing licences

`**6.** An application for a dispensing licence to dispense medicinal products from any premises in accordance with section 35 (4) of the Act shall not be granted where such premises are situated within five kilometres of a pharmacy:

Provided that the Board may waive this requirement where the Board considers it in the public interest so to do.

Duration of licences

7. Every licence which is issued in respect of premises or to any person pursuant to the Act shall be valid for a period of one year from the date of issue, and may be renewed annually thereafter.

Display of licences

8.—(1) Subject to subregulation (2), every licensee shall ensure that his licence is prominently displayed at all times upon the licensed premises to which it relates.

(2) Subregulation (1) shall not apply in respect of any period during which the licence is necessarily removed from the licensed premises for the purposes of doing anything in terms of the Act or for any other lawful purpose the proof thereof, in any proceedings against any person for contravention of subsection (1), shall lie upon that person.

Production and return of licences

9.—(1) Whenever the Board—

(*a*) cancels any licence;

(*b*) varies or amends the conditions of any licence; or

(*c*) imposes any new condition in respect of or on the renewal of any licence,

the Registrar shall request the holder of the licence to produce such licence within such period as the Registrar may specify, and the holder thereof shall produce such licence within the specified period.

(2) Any person who fails to comply with a request made in accordance with subregulation (1) shall be guilty of an offence.

(3) Whenever the Board varies, amends or imposes any new condition in respect of a licence, the Board shall return such licence duly endorsed to the holder thereof within a reasonable time.

Application for renewal of licences

10.—(1) Every application for the renewal of a licence shall be—

(*a*) in the prescribed form;

(*b*) lodged with the Registrar at least two months before the expiry of the licence; and

(*c*) accompanied by the appropriate fee in respect of the licence.

(2) If an application for the renewal of a licence is lodged with the Registrar after the time limit as specified in subregulation (1) there shall be paid in addition to the renewal fee an appropriate penalty fee in respect of the licence as determined by the Board.

PART IV

Classification, Registration and Retention of Registration of Medicinal Products

Categories for registration

11. For the purpose of registration, the Board shall divide medicinal products into the categories specified in the Second Schedule.

Application for registration and retention of registration of medicinal products

12.—(1) An application for the registration of a medicinal product may be made by—

(*a*) the person who owns the medicinal product; or

(*b*) any other person registered by the Board.

(2) Every application for the registration of a medicinal product shall be submitted to the Registrar in the prescribed form and shall be accompanied by—

(*a*) a sample of the medicinal product in the smallest of each of the package forms available for distribution to the public, including the identification marks on such product

where appropriate, or if the package forms are not yet available, a sample in a package in which the applicant intends to make the medicinal product available for distribution to the public;

(*b*) detailed information of all advertising material and package inserts which the applicant intends to use;

(*c*) such samples of the medicinal product or the raw materials thereof as the Board may request for analysis;

(*d*) a copy of any literature in support of the application:

Provided that the Board may require additional copies of such literature;

(*e*) twenty additional package inserts and twenty labels or copies of the package;

(*f*) at least three copies of all records and batch data relating to a particular batch, which shall include raw material analytical reports, master sheets relating to manufacture and packaging in process control records, final product analytical records and authorized for release, and any other relevant records; and

(*g*) the prescribed fee, together with such additional fees as the Board may require for the purpose of analysing the medicinal product.

(3) Every applicant shall, without delay, inform the Board either before or after the registration of a medicinal product—

(*a*) of any alteration of the information or particulars furnished by him in applying for registration in terms of subsection (2); and

(*b*) whether the medicinal product is to be imported as a finished product into, or relabelled or repackaged or dealt with in any other manner, in Malaŵi.

(4) For the purposes of paragraph (*b*) of subsection (3), "finished product", in relation to a medicinal product, means a medicinal product which is wholly manufactured outside Malaŵi and is imported into Malaŵi ready for sale without having to be relabelled or repackaged.

(5) An application for the retention of the registration of a registered medicinal product shall be submitted to the Registrar, in prescribed form at least two months before the expiry of the licence and shall be accompanied by the prescribed fee.

Labelling and marking of medicinal products

13.—(1) Subject to regulation 29, every medicinal product shall, unless otherwise directed by the Board, bear or incorporate a label on the package in which the medicinal product is sold, on which is printed in clear and indelible letters in the English language and any other language as may be directed or approved by the Board the following particulars which relate to that medicinal product—

(*a*) the name and address of the person who owns the medicinal product;

(*b*) the name and address of the manufacturer;

(*c*) the approved name of the medicinal product and the proprietary name or trade mark, if any, of the medicinal product;

(*d*) the logo, if any, of the person who owns the medicinal product or manufacturer of the medicinal product;

(*e*) the name and percentage of any bacteriostatic or bactericidal agent which is added to the medicinal product as a preservative;

(*f*) the date of manufacture and the expiry date of the medicinal product;

(*g*) the batch number of the medicinal product;

(*h*) the quantity of the medicinal product, in the package;

(*i*) the strength of the medicinal product;

(*j*) the required storage conditions or other necessary precautions for the preservation of the medicinal product;

(*k*) the category of distribution of the medicinal product which may be represented by words or symbols as set out in the Third Schedule;

(*l*) the dosage of the medicinal product and the directions for use;

(*m*) any warning notices which shall be in a colour or print other than the colour or print of the particulars referred to in subparagraphs (*a*) to (*l*); and

(*n*) any other particulars as may be directed by the Board:

Provided that in the case of a small package containing a medicinal product, it shall be adequate to record the information required by paragraphs (*c*), (*f*), (*g*), (*h*), and on the outer label.

(2) Every medicinal product shall where possible be marked with the logo of the owner of the medicinal product or manufacturer of the medicinal product, as the case may be, and such other distinguishing mark for the purpose of identifying such medicinal product.

Package inserts

14. Every package of a medicinal product shall, unless otherwise directed by the Board, contain a package insert on which is printed in clear and indelible letters in the English language and any other language as may be directed or approved by the Board the following particulars which relate to medicinal product—

(*a*) the name and address of the owner of the medicinal product;

(*b*) the name and address of the manufacturer of the medicinal product;

(*c*) the approved name of the active ingredient of the medicinal product and the proprietary name or trade mark, if any, of the medicinal product;

(*d*) the logo, if any, of the owner of the medicinal product or manufacturer of the medicinal product;

(*e*) the name and percentage of any bacteriostatic or bactericidal agent which is added to the medicinal product as a preservative;

(*f*) the strength of the medicinal product, where applicable;

(*g*) the required storage conditions or other necessary precautions for the preservation of the medicinal product;

(*h*) the category of distribution of the medicinal product which may be represented by words or symbols as set out in the Third Schedule;

(*i*) the pharmacological classification of the medicinal product determined in accordance with regulation 11;

(*j*) the dosage of the medicinal product and the directions for use;

(*k*) the description of the pharmacological action of the medicinal product;

(*l*) indications of the medicinal product;

(*m*) contra-indications of the medicinal product;

(*n*) warnings relating to the use of the medicinal product;

(*o*) the side-effects and special precautions of the medicinal product;

(*p*) known symptoms of over-dosage and particulars of its treatment;

(*q*) the identification of the medicinal product;

(*r*) the form in which the medicinal product is presented, whether tablet, capsule or liquid and the colour thereof;

(*s*) the date of publication of the package insert;

(*t*) any necessary warning concerning the administration or use of the medicinal product by children, old people, pregnant women or patients suffering from certain diseases, or the use of the medicinal product in conjunction with the consumption of alcohol or any particular food or any other medicinal product;

(*u*) a summary of relevant information concerning the purpose and the beneficial, detrimental, injurious or other effects of the medicinal product, and the possible dangers that may arise from the prolonged use of the medicinal product;

(*v*) relevant information, including particulars in regard to a specific medicinal product as an antidote (if known), concerning the treatment of a patient in cases where an overdose of the medicinal product has been administered or where a patient reacts adversely to the medicinal product; and

(*w*) any other particulars or warning notices as may be directed by the Board.

Categories for distribution

15.—(1) Where the Board approves the registration of a medicinal product it shall fix, as a condition of registration, the appropriate category for distribution of that medicinal product, prescribed in the Third Schedule.

(2) The same categories for distribution of a medicinal product shall apply to veterinary medicines and shall be identified by the suffix "(VET)".

Medicinal products register

16. The Registrar shall enter in the register in respect of each medicinal product registered by the board—

(*a*) the date of the application for registration of the medicinal product;

(*b*) the number allocated to the application for registration;

(*c*) the proprietary name or trade mark of the medicinal product, if any;

(*d*) the logo of the owner of the medicinal product or manufacturer of the medicinal product, if any;

(*e*) the particulars of the patent of the medicinal product, if any;

(*f*) the approved name of the medicinal product;

(*g*) the form in which the medicinal product is presented, whether tablet, capsule or liquid and the colour thereof;

(*h*) the strength of the medicinal product;

(*i*) the qualitative and quantitative details of every ingredient in each dosage unit of the medicinal product;

(*j*) the name and business address of the owner of the medicinal product;

(*k*) the name and business address of the manufacturer of the medicinal product;

(*l*) the country of origin of the medicinal product;

(*m*) the name and address of the applicant;

(*n*) the number allocated to the inspection report of the place of manufacture, if applicable;

(*o*) the date of registration of the medicinal product;

(*p*) the registration number of the medicinal product;

(*q*) the shelf-life of the medicinal product;

(*r*) the category for distribution of the medicinal product fixed in accordance with regulation 15 and any other conditions of registration;

(*s*) the pharmacological classification of the medicinal product determined in accordance with regulation 11;

(*t*) the date and particulars of any variation in the conditions of registration of the medicinal product;

(*u*) the payment of any fee for the retention or registration of the medicinal product; and

(*v*) where applicable, the date of the cancellation of the registration of the medicinal product.

Certificate of registration for medicinal products

17. After registering a medicinal product, the Registrar shall issue a certificate of registration in the prescribed form.

Production and return of registration certificate for medicinal products

18.—(1) Whenever the Board—

(*a*) cancels the registration of any medicinal product;

(*b*) varies or amends the conditions of registration of any medicinal products; or

(*c*) imposes any new conditions on the registration of any medicinal product,

the Registrar shall request the holder of the registration certificate concerned to produce such certificate within a reasonable period as the Registrar may specify and the holder thereof shall produce such certificate within the specified period.

(2) Any person who fails to comply with a request made in accordance with subsection (1) shall be guilty of an offence.

(3) Whenever the Board varies, amends or imposes any new condition on any registration certificate, the Board shall return such certificate, duly endorsed, to the holder thereof within a reasonable period.

PART V

General, Conditions For Sale of Medicinal Products

Importation of medicinal products with less than one-half of shelf-life

19. No person shall, without the prior written approval of the Board, import into Malaŵi any medicinal product which has less than one-half of its shelf-life remaining upon arrival in Malaŵi.

Delivery and sale of medicinal products with less than one-half of shelf-life

20. No person shall, without the prior written approval of the Board, deliver, receive, accept or sell any medicinal product whose shelf-life is less than one-half.

Sale of expired medicinal products

21. No person shall sell any medicinal product on a date later than the expiry date which appears on the package of such medicinal product.

Medicinal products to be sold from licensed premises

22. No person shall sell any medicinal product unless the sale is effected on premises—

(*a*) licensed under the Act; or

(*b*) authorized in terms of these Regulations:

Provided that this regulation shall not apply to the sale of general sales list medicines.

Conditions of sale of medicinal products

23. No person shall sell any medicinal product unless—

(*a*) he is authorized to do so; or

(*b*) the sale is effected by or under the continuous personal supervision of an authorized person.

Disclosure of composition of medicinal product

24. No person shall sell any of the medicinal product which is not labelled in accordance with the requirements of regulation 13.

Safe-keeping of certain medicinal products

25.—(1) No person who sells any medicinal products listed in the Fifth, Sixth or Seventh Schedule shall keep such medicinal products on an open shelf in a part of his premises to which members of the public have access.

(2) Any person who has in his possession or under his control or uses any medicinal product shall exercise all reasonable care in the custody, safe-keeping and use thereof.

Return of medicinal products three months before expiry

26.—(1) Any person who practices or carries on the business of a pharmacy or dispenses any medicinal product may, where a medicinal product is due to expire, return such medicinal product, not less than three months before the expiry date of such medicinal product, to the manufacturer, agent or distributor, as the case may be:

Provided that the medicinal product shall be returned in its original unbroken package, as sealed by the manufacturer.

(2) On receipt of medicinal products returned pursuant to subparagraph (1), the manufacturer, agent or distributor, as the case may be—

(*a*) shall store such medicinal product in a quarantine area of his premises; and

(*b*) may reimburse the person who returned the medicinal products by—

(i) awarding a credit, or

(ii) replacing such surrendered or returned medicinal products,

to the person concerned.

Return of expired medicinal products

27.—(1) Any person who practises or carries on the business of a pharmacist or dispenses any medicinal product shall, where a medicinal product has expired—

(*a*) return such expired medicinal product to the manufacturer, agent or distributor, as the case may be; or

(*b*) destroy such expired medicinal product on site in accordance with standard operating procedures.

(2) On receipt of an expired medicinal product the manufacturer, agent or distributor, as the case may be, shall destroy the medicinal product in accordance with standard operating procedures.

Dispensing of medicinal products

28.—(1) No person shall dispense any medicinal product in or from an area to which members of the public have access.

(2) No person shall own, install or use or cause or permit the installation of, any machine designed or intended to be used to supply any medicinal product.

Labels for dispensed prescription only medicinal products

29. Every person who dispenses a prescription only medicine shall label such medicinal product with—

(*a*) the registered name, strength and form of the medicinal product;

(*b*) the total quantity of the medicinal product;

(*c*) the directions for use;

(*d*) any warnings;

(*e*) the name of the patient;

(*f*) the name of the prescriber;

(*g*) the prescription reference number allocated to the prescription by the person dispensing the medicinal product;

(*h*) the date on which the prescription only medicine is supplied; and

(*i*) the name and address of the supplier.

Limit of validity of prescription

30. No person shall dispense any prescription for the first time later than one month after the date of issue of the prescription.

Copy of prescription

31. A copy of a prescription marked "copy—for information—not to be dispensed" may be given to the patient by the person who dispenses the prescription.

Records of Prescription

32. The supplier of a prescription shall, on the day of which a prescription is dispensed or, if that is not reasonably practicable, on the business day next following that day, record in a manner acceptable to the Board, a complete copy of the prescription.

Preservation of records of prescription

33. Every person who dispenses any medicinal product shall keep or cause to be kept a record of such dispensing for a period of two years and shall preserve such record on the premises in which the dispensing takes place:

Provided that where the premises cease to be used or licensed such person shall make arrangements, acceptable to the Board, for the preservation or destruction of such records.

Restriction on advertising medicinal products

34.—(1) No person shall advertise any medicinal product without the prior written approval of the Board.

(2) No person shall advertise or sell any medicinal product to the public in connexion with any bonus offer or discount.

(3) No person shall advertise any medicinal products to members of the public in terms calculated to lead to its use for the treatment of human beings for any of the conditions set out in the Fourth Schedule.

PART VI

Special Conditions of Sale for Prescription only Medicines, Pharmacist Initiated Medicines and Pharmacy Medicines, General Sales List Medicines and Veterinary Medicines

Division 1—Prescription only Medicines (*POM*)

Possession of prescription only medicine

35.—(1) No person shall possess a prescription only medicine unless, in accordance with subregulation (2), he is a member of a class of persons authorized to be in possession thereof.

(2) The classes of persons who are authorized to be in possession of a prescription only medicine shall be—

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(*a*) in the case of a dangerous drug, any person who is authorized or licensed in terms of the Dangerous Drugs Act;

(*b*) in the case of a prescription only medicine other than a dangerous drug—

(i) prescriber;

(ii) any person in the employ and acting under the personal supervision of a prescriber in so far as is necessary in the execution of his duties; and

(iii) any person to whom the prescription only medicine has been supplied in accordance with a prescription by a prescriber.

Supply of prescription only medicine

36.—(1) Subject to this regulation and regulation 37, no person shall supply any prescription only medicine listed in the Fifth Schedule otherwise than in accordance with the written prescription of a prescriber:

Provided that where it is not reasonably practicable for a prescriber to furnish to the supplier such written prescription immediately, the prescription only medicine may be supplied on the oral direction of the prescriber on one occasion only, and the prescriber shall furnish to the supplier a written prescription within three days.

(2) For the purpose of this regulation, a prescription shall—

(*a*) bear the name, address and qualifications of the prescriber;

(*b*) specify the name and address of the person for whom it is given or, if the prescription is issued by a veterinary surgeon, of the person for whose animal the prescription is issued; and

(*c*) have written thereon—

(i) if issued by a dentist, the words "for dental treatment only"; or

(ii) if issued by a veterinary surgeon, the words "for animal treatment only"; or

(iii) if issued for topical application, the words "for external use only";

(*d*) if the person for whom the prescription is being issued is under the age of twelve years, state the person's age;

(*e*) be legibly written, in the handwriting of the prescriber, and contain the following particulars—

(i) the date on which the prescription is issued;

(ii) the registered name, strength and form of the medicinal product;

(iii) the total daily dose of the medicinal product;

(iv) the total quantity of the medicinal product; and

(v) the directions for use;

(*f*) where the medicinal product is packed otherwise than in ampoules, indicate the total amount to be supplied and, except in the case of a medicinal product which is to be used for external treatment only the dose to be taken;

(*g*) where the medicinal product is packed in ampoules, indicate either the total amount to be supplied or the total amount it is intended should be administered or injected and, in either case, the amount it is intended should be administered or injected in each dose;

(*h*) not be for more than thirty days' supply at the dosage indicated, and not authorize more than five further supplies of thirty days each:

P*r*ovided that nothing in this paragraph shall apply to the supply of reasonable quantities of medicinal product to persons who intend to depart temporarily from Malaŵi; and

(*i*) be signed in full by the prescriber issuing it.

(3) In an emergency any pharmacist may sell any medicinal product listed in the Fifth Schedule at the request of any person, subject to the following conditions—

(*a*) that the pharmacist by, or under whose supervision the medicinal product is to be sold, has satisfied himself—

(i) that there is an immediate need for the medicinal product requested and that it is impracticable in the circumstances to obtain a prescription without undue delay; and

(ii) that the medicinal product requested has on a previous occasion been prescribed by a medicinal practitioner, dentist or veterinary surgeon, as the case may be, for the person requesting it;

(*b*) that not more than three days quantity of the medicinal product is sold:

Provided that—

(i) where a public holiday falls within the three-day period, a sufficient quantity of such medicinal product may be sold; and

(ii) where the medicinal product is in a composite pack which exceeds three days supply a single pack may be sold;

(*c*) that the pharmacist by or under whose supervision the medicinal product is sold, before he delivers such medicinal product makes an entry in his records stating—

(i) the date on which the medicinal product is sold;

(ii) the registered name, quantity, form and strength of the medicinal product;

(iii) the name and address of the person requesting the medicinal product;

(iv) the nature of the emergency; and

(v) the name of the medicinal practitioner, dentist or veterinary surgeon, as the case may be, if ascertainable; and

(*d*) that the medicinal product is labelled—

(i) in accordance with regulation 29; and

(ii) with the words "Emergency Supply".

Dispensing of prescription only medicines

37. Every person who dispenses a prescription only medicine shall ensure that—

(*a*) the prescription is not dispensed more than once, unless the prescriber has directed otherwise and in such event the lawful instructions of the prescriber shall be complied with; and

(*b*) at the time of dispensing, or where a prescription preparation has been supplied in accordance with the proviso to regulation 36 (1), on the subsequent receipt of the prescription, there is noted on the prescription the name and address of the supplier and the date on which the prescription is dispensed.

Storage and safe custody of prescription only medicine

38.—(1) Every person who is authorized under regulation 35 (2) (*b*) to be in possession of a prescription only medicine keep such medicinal product in a place to which members of the public do not have access, and in a cupboard or drawer, or on a shelf reserved solely for the storage of such medicinal products.

(2) Any person who is in possession of a prescription only medicine shall keep such medicinal product in a place to which children do not normally have access.

Division 2—Pharmacist Initiated Medicines (PIM) and Pharmacy Medicines (PM)

Sale of pharmacist initiated and pharmacy medicines

39.—(1) No person other than a pharmacist shall sell a pharmacist initiated medicine listed in the Sixth Schedule at the request of any person, and every such sale shall be subject to the following conditions—

(*a*) that the pharmacist by or under whose supervision the medicinal product is sold, before he delivers such medicinal product, makes an entry in his records stating—

(i) the name and address of the person requesting the medicinal product and the person for whom it is intended;

(ii) if the person is under the age of twelve years, the age of the person;

(iii) the date on which the medicinal product is sold;

(iv) the registered name, quantity, form and strength of the medicinal product;

(v) the total daily dose of the medicinal product; and

(vi) the directions for use; and

(*b*) that the medicinal product is labelled in accordance with regulation 13 as may be appropriate.

(2) No person other than a pharmacist, or a person acting under the continuous personal supervision of a pharmacist medicines in a medicine store, shall sell a pharmacy medicine listed in the Seventh Schedule.

Division 3—General Sales List Medicines (GSL)

Sale of general sales list medicines

40. Any person may, subject to any other written law relating to the sale of goods, sell any general sales list medicine:

Provided that such medicinal product is labelled in accordance with regulation 13 and is sold in original unbroken packs.

Division 4—Veterinary Medicines

Sale of veterinary medicines

41. The provisions of Division 1, 2 and 3 shall apply, *mutatis mutandis,* to the sale of veterinary medicines.

Conditions of sale of veterinary medicines

42. The sale of veterinary medicines by an authorized dealer shall be in original unbroken packs, sealed by the manufacturer.

Use of veterinary medicines

43. No person shall use any veterinary medicine for the treatment of human beings.

PART VII

Special Provisions for Institutions

Supply of medicinal products from institutions to out-patients

44. The provisions of *Division* 1 of Part VI shall apply to any medicinal product dispensed from an institution to an outpatient.

Supply of medicinal products for use within institutions

45.—(1) In any institution in which medicinal products are dispensed in a dispensary or pharmaceutical department, no medicinal products shall be supplied from that dispensary or pharmaceutical department, except in cases of emergency, for use in wards, operating theatres or other sections of the institution, unless such medicinal product is supplied on the directions of a prescriber.

(2) Every package of a medicinal product supplied under subsection (1) shall be labelled with—

(*a*) the registered name, form, strength and quantity of the medicinal product;

(*b*) the directions for use;

(*c*) the name of the patient;

(*d*) the date on which such medicinal product is supplied; and

(*e*) the name of the prescriber.

Storage and handling of medicinal products in institutions

46.—(1) Every medicinal product in an institution shall be stored in place to which no unauthorized person has access.

(2) Every person who handles or distributes medicinal products in an institution shall ensure that no unauthorized persons have access to such medicinal products during the handling or distribution of such medicinal products.

PART VIII

Miscellaneous Provisions

Withdrawal of medicinal products

47.—(1) Where the Board is of the opinion that the withdrawal of any medicinal product is necessary for the protection of the public, the Board may require any person to withdraw such medicinal product in accordance with such procedures as the Board may determine.

(2) Every person who is in possession of a medicinal product required to be withdrawn under subregulation (1) shall comply with the procedure for the withdrawal of such medicinal product as determined by the Board.

Report of loss or theft of medicinal products

48. Any person, other than a person to whom a prescription preparation is lawfully dispensed, who is in possession of any medicinal product and who misplaces or loses such medicinal product or from whom such medicinal product is stolen, shall report such loss or theft, as the case may be, to a police officer and to the Registrar as soon as is reasonably practicable, and in any case within twenty-four hours of the occurrence of the loss or theft.

Disposal of existing stocks of prohibited medicinal products

49. If at any time any medicinal product becomes prohibited any person other than a person to whom a medicinal product is lawfully dispensed who is in possession of such medicinal product at the time shall inform the Board of his possession, and shall dispose of such medicinal product in such manner as the Board may direct.

Availability of Act and regulations

50. A copy of the Act and these Regulations shall be available at all premises licensed under the Act.

FIRST SCHEDULE

PART I

Minimum Requirements for Premises Used for Manufacturing Pharmacy Business

1. *Premises*

1.1 Premises should be sited to avoid contamination from the external environment or from other nearby activities and in existing premises, effective measures should be taken to avoid such contamination.

1.2 Animal houses should be well isolated from manufacturing areas.

1.3 Premises should be constructed and maintained so as to be protected against weather, ground seepage and the entrance and harbouring of vermin, birds and pests.

1.4 Premises should be designed and laid-out in such a way that the risk of mix-up or contamination of one product or material by another is minimized. This especially applies to premises for the handling of highly toxic or sensitizing materials such as hormones, cytotoxic agents and antibiotics.

1.5 Protection from the weather should be provided for receiving and despatch areas and for materials and products in transit.

1.6 Premises should be maintained in a good state of repair. The condition of buildings should be reviewed regularly and repairs effected where necessary. Special care should be exercised to ensure that buildings and repair or maintenance operations do not hazard products.

1.7 Premises should have sufficient space to suit the operations to be carried out, allow an efficient flow of work, and permit effective communication and supervision.

1.8 The processing of materials for non-medicinal use should be separated from the processing of medicinal products.

1.9 Cloakrooms should be separate from, or partitioned from processing areas. Toilets should be well ventilated and should not open directly to manufacturing areas.

1.10 Premises in which medicinal products are manufactured or stored should be made secure, with access restricted to authorized personnel.

1.11 Floors in processing areas should be made of impervious materials, laid on an even surface, free from cracks and open joints, and should allow prompt and efficient removal of any spillages. Walls should be sound and finished with a smooth, impervious and washable surface. Ceilings should be so constructed and finished that they can be maintained in a clean condition.

1.12 Pipework, light fittings, ventilation points and other services in manufacturing areas should be sited to avoid the creation of uncleanable recesses; and should be sealed into any walls and partitions through which they pass service should preferably be run outside the processing areas.

1.13 Drains should be of adequate size, and should have trapped quellies and proper ventilation. Open channels should be avoided where possible, but if they are necessary, they should be shallow to facilitate cleaning and disinfection.

1.14 Buildings should be effectively lit and properly ventilated, with air control facilities including temperature, humidity and filtration facilities appropriate both to the operations undertaken within them and to the external environment.

1.15 Air intakes and exhausts, and associate pipework and trucking should be sited to avoid product contamination hazards.

1.16 Manufacturing areas should not be used as a general right of way for personnel or except of materials used in the manufacturing process, for storage of materials.

1.17 All premises, including processing areas, laboratories, stores, passage ways, external surroundings should be maintained in a clean and tidy condition.

1.18 Waste material should not be allowed to accumulate but should be collected in suitable receptacles for removal to collection points outside the building, and disposed of at regular and frequent intervals. Special care is necessary over the disposal of waste containing dangerous, highly toxic or sensitizing materials such as hormones, cytotoxic agents, sensitizing antibiotics. Disposal of raw materials, printed packing materials and rejected products should be carefully controlled and documented.

1.19 There should be made available written cleaning procedures and schedules for manufacturing and storage areas.

1.20 Adequate space, preferably separated from processing areas, should be provided for cleaning and storing equipment, and the storage of cleaning materials.

2. *Storage areas*

2.1 Storage areas should be designed, laid-out and be of sufficient capacity to permit effective and orderly segregation of the various categories of material stored and allow rotation of stock.

2.2 Segregated storage should be provided for rejected, recalled, expired or returned goods. Where the maintenance quarantine status depends upon storage in separate areas, such areas should be provided with restricted access.

2.3 Labels and other printed packaging materials, including labels for starting materials and for bulk and intermediate products, should be stored in a secure manner that will permit issue only to authorized person in accordance with formal documented procedures. Storage arrangements should permit separation of different labels and other printed materials and avoidance of mix-up.

2.4 Goods should be stored off the floor. Provision should be made for shelving, racking and pelleting and in a manner that will permit easy cleaning and the use of pest control agents by trained personnel without risk of contamination.

2.5 All goods should be stored under cover.

2.6 All materials containers should be clean before they are admitted to stores and checked again for cleanliness before issued to manufacturing areas.

2.7 Where special storage conditions such as temperature, humidity and security are required, these should be provided, checked and monitored.

3. *Equipment*

3.1 Equipment should be designed and located to suit the process and products for which it is to be used. Equipment should be maintained so as to be fit to perform contemplated functions and present no hazard to the product and personnel.

3.2 Manufacturing equipment should be easily and conveniently cleanable, both inside and outside. There should be available written instructions for cleaning of equipment and suitable cleaning facilities should be provided.

3.3 Equipment should not be a hazard to products through leaking joints, lubricant drips, or through inappropriate modifications or adaptations.

3.4 Equipment used for weighing, measuring, testing and recording should be subject to regular recorded checks for accuracy and working order, in accordance with a written planned maintenance schedule.

4. *Qualifications of personnel*

4.1 The key personnel are the person responsible for production and the person responsible for quality control, who should be different persons, neither of whom should be responsible to the other, but who should both have a responsibility for achieving the requisite quality.

4.2 Manufacturing operations shall be carried out under the supervision of a registered pharmacist with adequate relevant postgraduate training with the support of suitably qualified personnel such as a pharmacy technologist or pharmacy assistant.

4.3 All quality control operations shall be carried out under the supervision of an appropriately trained pharmacist or chemist with relevant postgraduate training with the support of suitably qualified personnel such as pharmacy technologist, laboratory technologist or chemist.

4.4 All manufacturing and quality control processes should be done in accordance with Good Manufacturing Practices (GMP) as approved by Board.

PART II

Minimum Requirements for Premises for Wholesale Pharmacy Business (reg. 5)

1. *Premises and equipment*

1.1 Premises should be sited to avoid contamination from the external environment or from the nearby activities and in existing premises, effective measures should be taken to avoid such contamination.

1.2 Premises should be constructed and maintained so as to be protected against weather, ground seepage and the entrance and harbouring of vermin, birds, pests and pets.

1.3 Protection from the weather should be provided for receiving and dispatching areas and for materials and products in transit.

1.4 Premises should be maintained in good state of repair. The condition of buildings should be reviewed regularly, and repairs effected where necessary. Special care should be exercised to ensure that buildings, repair and maintenance operations do not hazard products.

1.5 Premises should provide sufficient space to suit the operations to be carried out, allow an efficient flow of work, and permit effective communication and supervision.

1.6 Cloakrooms should be separate from or partitioned from processing areas. Toilets should be well ventilated and should not open directly to storage areas.

1.7 Premises in which medicinal products are stored should be secure, with access restricted to authorized personnel.

1.8 Floors in processing areas should be made of impervious materials, laid on an even surface, free from cracks and open joints and should allow prompt and efficient removal of any spillages. Walls should be sound and finished with a smooth, impervious and washable surface. Ceilings should be so constructed and finished that they can be maintained in a clean condition.

1.9 Buildings should be effectively lit and properly ventilated, with air control facilities including temperature and humidity appropriate both to operations undertaken within them and to the external environment.

1.10 All premises, including processing areas, stores, passage ways and external surroundings, should be maintained in a clean and tidy condition.

1.11 Waste material should not be allowed to accumulate, but it should be collected in suitable receptacles for removal to collection points outside the building and disposed of at regular and frequent intervals. Special care is necessary over the disposal of waste containing dangerous, highly toxic or sensitizing materials such as hormones, cytotoxic agents, sensitizing antibiotics.

1.12 Segregated storage should be provided for rejected, expired or returned goods.

1.13 Goods should be stored off the floor. Provision should be made for shelving, racking and pelleting, and in a manner that will permit easy cleaning and the use of pest control agents by trained personnel without risk of contamination.

1.14 Where special storage conditions such as temperature, humidity and security are required; these should be provided, and checked and monitored regularly. In particular, controlled temperature environments should be equipped with temperature recorders.

1.15 Van selling should be restricted to items on the general sales list.

2. *Qualifications of personnel*

2.1 Wholesale operations shall be carried out under the direct full-time supervision of a registered pharmacist, with the support of a suitably qualified personnel such as a pharmacy assistant or pharmacy technologist, who shall be responsible for the funding, procurement, clearing, receipting, storage, distribution and documentation relating to medicinal products.

2.2 The services of a *locum* may be used.

3. *Records*

3.1 Adequate records shall be maintained for—

(*a*) receipts source, quantity, expiry dates and batch number of medicinal products;

(*b*) sales (source, quantity, expiry dates and batch number of medicinal products) despatches shall be countersigned by a pharmacist. Orders shall be signed by authorized persons known to the wholesaling unit;

(*c*) stock (balances) of each batch and consignment;

(*d*) disposal of rejected or/expired products and records shall be kept for a minimum period of 2 years. All expired products must be notified to the Board when destroyed plus method of destruction used.

PART III

Minimum Requirements for Premises Used for Retail Pharmacy Business (reg. 5)

1. *Premises*

1.1 Premises shall be constructed and maintained so as to be protected against weather, ground seepage and the entrance and harbouring of vermin, pest and pets.

1.2 Premises should be maintained in a good state of repair. The condition of buildings should be reviewed regularly, and repairs effected where necessary. Special care should be exercised to ensure that buildings, and repair or maintenance operations do not hazard products.

1.3 Premises should provide sufficient space to suit the operations to be carried out, allow an efficient flow of work, and permit effective communication and supervision.

1.4 Toilets should be well ventilated and should not open directly to storage areas.

1.5 Floors should be made of impervious materials, laid to an even surface, and should be free from cracks and open joints. If not carpeted floors should have tiles to facilitate easy cleaning. Walls should be sound and finished with a smooth, impervious and washable surface. Ceilings should be so constructed and finished that they can be maintained in a clean condition.

1.6 Buildings should be effectively lit and properly ventilated with air control facilities.

1.7 All premises, including stores, passage ways and external surroundings, should be maintained in a clean and tidy condition.

1.8 Premises in which medicinal products are stored should be made secure, with access restricted to authorized personnel.

1.9 Waste material should not be allowed to accumulate, but it should be collected in suitable receptacles for removal to collection points outside the building and disposed of at regular and frequent intervals.

1.10 The dispensary should be separate and independent from other operations, and should be locked when the pharmacist is not present. The dispensary should have running

water (cold and warm) and adequate working and cleaning benches with formica tops and adequate shelving.

1.11 The dispensary and consulting room should be elevated overlooking pharmacy and medicine counter.

2. *Equipment and reference books*

2.1 A Pharmacy shall, where relevant, have measuring cylinders, a stirring rod, counting trays, balance, fridge, a fixed lockable DDA cupboard, current edition of Martindale and other books such as British National Formulary (BNF). United States Pharmacopoeia (USP) and Malaŵi National Formulary (MNF).

3. *Records*

3.1 Patient profile cards should be kept where possible.

3.2 Prescriptions should be kept for a minimum period of two years and should be numbered and filed chronologically.

3.3 Record of receipts with expiry dates and Lot. No. should be kept for a minimum of two years.

4. *Labelling*

4.1 Labelling of dispensed medicine products should include—

(*a*) name of patient;

(*b*) name of medicine, its strength and quantity dispensed;

(*c*) directions for use;

(*d*) date of dispensing; and

(*e*) name of pharmacy or dispensing unit.

The Pharmacist shall communicate to the patient any other pertinent information.

5. *Prescription*

5.1 A prescription should have—

(*a*) name of patient;

(*b*) name of medicine, its strength and quantity dispensed;

(*c*) directions for use; and

(*d*) signature, date and address of the prescriber.

5.2 A prescription should be checked and endorsed after dispensing.

6. *Personnel*

6.1 A retail pharmacy should be under the direct supervision of a full-time registered pharmacist assisted by appropriately trained personnel approved by the Board.

PART IV

Minimum Requirements for Registered Dispensing Practitioner (reg. 5)

1. *Dispensary layout*

1.1 Dispensary shall be separated from the clinical areas.

1.2 Dispensary should be maintained in good state of repair. The general condition of the building should be reviewed regularly and repairs effected where necessary.

1.3 Dispensary should be clean and tidy at all times.

1.4 Floors and walls should be free from cracks and made of impervious material for easy cleaning.

1.5 Dispensary should be effectively lit and properly ventilated.

1.6 Dispensary should be made adequately secure with no access to unauthorized persons.

1.7 Dispensary should have running water (cold and warm), adequate shelving for medicines and other supplies, adequate patient waiting area with seats.

1.8 A toilet for staff with running water, must be provided but should not open directly to the dispensing area.

2. *Storage room (if separated from dispensary)*

2.1 The main storeroom for medicines should have adequate lighting and ventilation.

2.2 Medicines and other supplies should be arranged on shelves in an orderly manner.

2.3 Medicines should be protected from direct sunlight and excess heat and kept well out of reach of patients.

2.4 Storeroom should be provided with adequate security measures including adequate locking system, burglar bars and there shall be restricted entry into storeroom.

3. *Dispensing requirements*

3.1 Labelling of dispensed medicinal products must be legible and should include—

Name of patient;

Name of medicine, its strength and quantity dispensed;

Directions for use of medicine;

Date of dispensing;

Name of surgery or clinic or dispensing unit.

4. *Equipment and reference books*

4.1. Measuring cylinders for dispensing reconstituted powders must be made available.

4.2 Refrigerator in good working condition must be provided.

4.3 Medicine counting trays for tablets and capsules must be provided.

4.4 Dispensing packs or containers must be available.

4.5 A fixed lockable cupboard for controlled medicines, including narcotics must be provided.

4.6 Current editions of the following publications must be made available—

Current edition martindale;

Pharmacy, Medicines and Poisons Board Act and Regulations;

Pharmacy, Medicines and Poisons Board schedules of registered medicines;

Malaŵi National Formulary;

Malaŵi Standard Treatment Guidelines.

5. *Records*

5.1 Patient profile cards should be maintained.

5.2 Dispensed prescriptions should be kept for a minimum of 2 years and should be filed orderly.

5.3 Records of sources of medicinal products, receipt of goods, stock movement, should be available and kept for a minimum of 2 years.

6. *Human Resources*

6.1 A dispensary should be managed and supervised by a fulltime registered health professional in the medical, nursing or pharmacy field.

6.2 Other suitably qualified staff may also be employed to assist the supervisor.

PART V

Minimum Requirement for Operation of a Medicine Store

1. *Premises*

1.1 Premises should be constructed and maintained so as to be protected against weather, ground seepage and the entrance and harbouring of vermin and pests.

1.2 Premises should be maintained in a good state of repair. The condition of the buildings should be reviewed regularly, and repairs effected where necessary. Special care should be exercised to ensure that building, repair or maintenance operations do not hazard the products.

1.3 Premises should provide sufficient space to suit the operations to be carried out, allow an efficient flow of work and permit effective communication and supervision.

1.4 Toilets should be well ventilated and should not open directly to the medicine store.

1.5 Floors should be made of impervious material and should be free from cracks and open joints. Walls should be sound and finished with a smooth, impervious and washable surface. Ceilings should be so constructed and finished that they can be maintained in a clean condition.

1.6 The building should be effectively lit and properly ventilated.

1.7 All premises, including stores, passage ways and external surroundings, should be maintained in a clean and tidy condition.

1.8 Premises in which medicinal products are stored should be made secure, with access restricted to authorized personnel.

1.9 Waste material should not be allowed to accumulate, but should be collected in suitable receptacles for removal to collection points outside the building and disposed of at regular and frequent intervals.

1.10 Adequate shelving should be provided.

SECOND SCHEDULE (reg. 11)

Pharmacological Classification Categories of Medicinal Products

PART I

Human Classification

1. *Anaesthetics*
   - 1.1 General anaesthetics and medical gases
   - 1.2 Local anaesthetics
   - 1.2.1 Injectable
   - 1.2.2 Topical
   - 1.3 Cholinesterase inhibitors and muscle relaxants used in anaesthesia
2. *Analgesics and antipyretics*
   - 2.1 Single ingredient products
   - 2.2 Compound products
3. *Drugs used in rheumatism and gout*
   - 3.1 Nonsteroidal anti-inflammatory drugs
   - 3.2 Drugs for gout
   - 3.3 Special antirheumatic drugs
4. *Narcotic analgesics/Narcotic Antagonists*
   - 4.1 Narcotic analgesics
   - 4.2 Narcotics antagonists
5. *Anthistanines*
6. *Antidotes*
   - 6.1 General
   - 6.2 Specific
   - 6.3 Drugs used in the treatment of addictions—
     - 6.3.1 Alcohol
     - 6.3.2 Nicotine

6.3.3 Narcotis
6.3.4 Phychotropics
6.3.5 Others

7. *Anti-infective drugs*
7.1 Penicillins
7.1.1 Non beta-lactamase resistant
7.1.2 Beta-lactamase resistant
7.2 Other antibacterials
7.2.1 Aminoglycosides
7.2.2 Cephalosporins
7.2.3 Sulphonamides (including combinations with trimethoprim)
7.2.4 Tetracyclines
7.2.5 Others
7.3 Antituberculars
7.4 Antileprotics
7.5 Antimalarials
7.6 Antiprotozoals (other than antimalarials)
7.7 Anthelmintics
7.8 Antischistosomals
7.9 Antitrypanosomals
7.10 Leishmanicides
7.11 Antiflarials
7.12 Antifungals (systemic)
7.13 Antivirals
7.14 Urinary antiseptics

8. *Antimigraine drugs*

9. *Antineoplastic and immunosuppressive drugs*
9.1 Alkylating agents—
9.1.1 Nitrogen mustard
9.1.2 Alkyl sulphonates
9.1.3 Nitrosureas
9.1.4 Triazines
9.2 Antimetabolites—
9.2.1 Folic acid analogues
9.2.2 Pyrimidine analogues
9.2.3 Purine analogues
9.3 Natural products and their derivatives—
9.3.1 Vinca alkaloids

9.3.2 Antibiotics
9.3.3 Enzymes
9.4 Miscellaneous cytotoxic agents
9.5 Hormones and hormone inhibitors—
9.5.1 Hormones
9.5.2 Hormones inhibitors
9.6 Immunosupressive agents

10. *Drugs affecting the blood*
10.1 Anti-anaemia preparations—
10.1.1 Iron
10.1.2 Folates
10.1.3 Vitamin B12
10.1.4 Combinations
10.2 Anticoagulants
10.3 Anticoagulant antagonists
10.4 Haemostatics
10.5 Drugs modifying platelet function
10.6 Drugs altering blood viscosity

11. *Blood production/blood substitutes*
11.1 Plasma substitutes and expanders
11.2 Plasma fractions for specific uses

12. *Cardiovascular drugs*
12.1 Antianginal drugs
12.2 Antiarrhythmic drugs
12.3 Antihypertensive drugs—
12.3.1 Vasodilators
12.3.2 Beta blockers
12.3.3 Centrally acting antihypertensives
12.3.4 Ganglion blockers
12.3.5 Others
12.4 Cardiac glycosides
12.5 Diuretics and antidiuretics
12.6 Calcium antagonists
12.7 Sympathomimetic cardiac stimulants
12.8 Drugs modifying scrum lipids
12.9 Other cardiovascular drugs

13. *Central nervous system drugs*
13.1 Anticonvulsants
13.2 Psychotherapeutic drugs—

13.2.1 Antidepressants
13.2.2 Anxiolytics
13.2.3 Antipsychotics
13.3 Hypnotics
13.4 Antiparkinsonian drugs
13.5 Drugs for myaesthenia gravis
13.6 Muscle relaxants, centrally acting
13.7 CNS stimulants
13.8 Drugs improving cerebral blood flow or metabolism
13.9 Respiratory stimulants, centrally acting

14. *Dermatological and topical preparations*
14.1 Topical anti-infectives
14.1.1 Antibiotics
14.1.2 Sulphonamides
14.1.3 Antifungals
14.1.4 Antiseptics and disinfectants
14.1.5 Scabicides and pediculocides
14.2 Topical corticosteroids—
14.2.1 Plain
14.2.2 Combinations
14.3 Topical antihistamines
14.4 Topical local anaesthetics
14.5 Acne preparations—
14.5.1 Topical
14.5.2 Systemic
14.6 Preparations for psoriasis—
14.6.1 Topical
14.6.2 Systemic
14.7 Anti-dandruff preparations
14.8 Keratolytic
14.9 Topical cytotoxic
14.10 Sunscreen agents
14.11 McIanin stimulants
14.12 Melanin inhibitors
14.13 Astringents
14.14 Emollients
14.15 Rubefacients
14.16 Medicated dressings
14.17 Vaginal preparations

14.18 Heavy metal preparations
14.19 Others

15. *Diagnostic agents*
15.1 Miscellaneous—
15.1.1 Serological
15.1.2 Skin tests
15.1.3 Blood grouping
15.1.4 Others
15.2 Radiocontrast media
15.3 Reagent strips and tablets

16. *Gastrointestinal drugs*
16.1 Antacids
16.2 Antiemetics
16.3 Antihaemorrhoidals
16.4 Antispasmodics
16.5 Laxatives—
16.5.1 Lubricants and softeners
16.5.2 Stimulants
16.5.3 Bulking agents
16.5.4 Osmotic agents
16.5.5 Combinations
16.5.6 Others
16.6 Antidiarrhoeals
16.7 Gastric/peptic ulcer drugs
16.8 Gastrointestinal enzymes
16.8.1 Pancreatic enzymes
16.8.2 Other Glenzymes
16.9 Appetite depressants—
16.9.1 Centrally acting
16.9.2 Locally acting

17. *Endocrine system drugs*
17.1 Corticosteroids
17.2 Androgens
17.3 Oestrogens
17.4 Progestogens
17.5 Sex hormones combinations (excluding contraceptive preparations)
17.6 Insulins
17.7 Oral antidiabetic drugs

17.8 Thyroid hormones/inhibitors—
- 17.8.1 Thyroid hormones
- 17.8.2 Thyroid inhibitors

17.9 Parathyroid hormones/inhibitors—
- 17.9.1 Parathyroid hormones
- 17.9.2 Parathyroid inhibitors

17.10 Pituitary hormones/inhibitors—
- 17.10.1 Pituitary hormones
- 17.10.2 Pituitary inhibitors

17.11 Tropic hormones

17.12 Hormone inhibitors (other than the above)

17.13 Fertility stimulants

17.14 Others

18. *Immunologicals*

18.1 Sera/immunoglobulins—
- 18.1.1 Antitoxins
- 18.1.2 Antivenons
- 18.1.3 Immune globulins
- 18.1.4 Others

18.2 Vaccines

19. *Ophthalmic drugs*

19.1 Anti-infective
- 19.1.1 Antibiotics
- 19.1.2 Suphonamides
- 19.1.3 Antivirals
- 19.1.4 Antiseptic
- 19.1.5 Others

19.2 Corticosteroids—
- 19.2.1 Without antibiotics
- 19.2.2 With antibiotics

19.3 Local anaesthetics

19.4 Miotics

19.5 Mydriatics

19.6 Diagnostics

19.7 Systemic

19.8 Contact lens preparations

19.9 Topical decongestants and anti-allergies

19.10 Others

20. *Ear, nose, throat and mouth preparations*
    - 20.1 Ear—
        - 20.1.1 Anti-infective
        - 20.1.2 Anti-inflammatory
        - 20.1.3 Analgesic
        - 20.1.4 Wax removers
        - 20.1.5 Others
    - 20.2 Nose—
        - 20.2.1 Anti-infective
        - 20.2.2 Corticosteroid (plain and combination)
        - 20.2.3 Antihistamines (plain and combination)
        - 20.2.4 Other decongestants and anti-allergics
        - 20.2.5 Cauterising preparations
        - 20.2.6 Others
    - 20.3 Throat and mouth—
        - 20.3.1 Special dental preparations
        - 20.3.2 Mouth ulcer preparations
        - 20.3.3 Local analgesics/anaesthetics (including toothache and teething preparations)
        - 20.3.4 Antiseptic mouthwashes, gargles, sprays, paints, etc.
        - 20.3.5 Antiseptic lozenges
        - 20.3.6 Others
21. *Drugs used in labour, delivery and contraception*
    - 21.1 Labour and delivery—
        - 21.1.1 Pre-partum uterine contraction stimulants
        - 21.1.2 Post-partum uterine contraction stimulants
        - 21.1.3 Uterine contraction inhibitors
    - 21.2 Hormonal contraceptives—
        - 21.2.1 Combined oral contraceptives
        - 21.2.2 Progesterone-only oral contraceptives
        - 21.2.3 Injectables
        - 21.2.4 Others
    - 21.3 Spermicides
    - 21.4 Intrauterine devices
    - 21.5 Barrier devices
22. *Drugs acting on the respiratory tract*
    - 22.1 Anti-asthmatic drugs—
        - 22.1.1 Systemic bronchodilators
        - 22.1.2 Inhalation bronchodilators

22.1.3 Inhalation corticosteroids
22.1.4 Other inhalation products
22.1.5 Other systemic products
22.2 Cough and cold preparations—
22.2.1 Antitussives
22.2.2 Expectorants
22.2.3 Decongestants
22.2.4 Mucolytics
22.2.5 Combination products
22.3 Inhalations and vapour rubs

23. *Agents correcting or modifying body fluid composition*
23.1 Oral—
23.1.1 Oral rehydration products
23.1.2 Oral electrolyte replacement
23.2 Parenteral—
23.2.1 Large volume infusions
23.2.2 Injections
23.3 Dialysis products—
23.3.1 Peritoneal dialysis solutions
23.3.2 Haemodialysis solutions
23.4 Ion exchange resins
23.5 Agents modifying urinary pH
23.6 Haemoperfusion products

24. *Vitamins, minerals and tonics*
24.1 Vitamins (excluding combinations)—
24.1.1 Vitamin A and analogues
24.1.2 Vitamin B group (single compounds, except B12, *see* 10.1.3)
24.1.3 Vitamin C
24.1.4 Vitamin D and analogues
24.1.5 Vitamin E and analogues
24.1.6 Vitamin K and analogues
24.1.7 Other preparations of single vitamins (except folate, *see* 10.1.2)
24.2 Vitamin B compound preparations
24.3 Multivitamins (excluding vitamins plus minerals)
24.4 Minerals (except iron, see 10.1.1, and electrolytes, *see* 13.1.2)—
24.4.1 Single minerals
24.4.2 Compound preparations

24.5 Vitamins plus minerals

24.6 Tonics—

24.6.1 Tonics with vitamins

24.6.2 Tonics with minerals

24.6.3 Tonics with vitamins and minerals

24.6.4 Others

25. *Nutritional agents*

25.1 Intravenous nutrition preparations

25.2 Milk substitutes

25.3 Special oral foods

26. *Enzymes (excluding gi tract)*

27. *Enzymes inhibitors*

28. *Homeopathic, Herbal and dutch remedies*

28.1 Homeopathic remedies

28.2 Herbal remedies

28.3 Dutch remedies

29. *Radioactive isotopes, and kits for their preparations*

29.1 Diagnostic

29.2 Therapeutic

30. *Environmental disinfectants and decontaminants*

THIRD SCHEDULE (regs. 11, 12 and 13)

Categories for the Distribution of Medicinal Products

Prescription only Medicines (POM) are medicinal products controlled under *Division* 1 of Part VI.

Pharmacist Initiated Medicines or (PIM) are medicinal products controlled under *Division* 2 of Part VI.

Pharmacy Medicines are medicinal products controlled as such under *Division* 2 of Part VI.

General Sales List Medicines (GSL) are medicinal products suitable for self medication and which are controlled under *Division* 3 of Part VI.

Controlled Drugs (CD) are medicinal products listed in the Tenth Schedule.

FOURTH SCHEDULE (reg. 34 (3))

Conditions for Which Advertising is Prohibited

Alcoholism
Appendicitis
Arteriosclerosis

Cardiovascular disease
Cataract
Diabetes
Hernia
Kidney stone
Pneumonia
Prostrate gland disorders
Epilepsy
Gallstones
Gangrene
Glaucoma
Hypertension
Hypotension
Tuberculosis
HIV/Aids related diseases

FIFTH SCHEDULE (regs. 2 and 36)

Prescription Only Medicines (Pom)

Human Medicines
Acebutolol
Acetanilide
Acetazolamide
Acetohexamide
Acetylcarbromol
Acetylcysteine
Acetyldigoxin
Actinomycin-D
Acyclovir (excluding topical preparations)
Aescin, other than preparations for external use
Alclofenac
Alcuronium
Alfacalcidol
Alfadolonum
Alfaxalonum
Allopurinol
Alseroxylon
Amantadine
Amidopyrine
Amiloridеaminocarproic acid
Amineptile
Amitriptyline

Amoxapine
Amoxycillin
Amphotericin
Ampicillin
Anaesthetic agents (including local anaesthetics for oral inhalation and injection excluding preparations for local use and procaine for oral use).
Anti-microbial substances (including those synthesized naturally or in the laboratory for treatment of specific infections except when used topically and for application into eye/ear).
Antimony
Apronal
Atenolol
Atracurium
Atropine
Aurothiomalate
Azacyclonal
Azapropazone
Azathioprine
Baclofen
Beclomethasone
Benactyzine
Benzatropine
Benzoctamine
Benzydamine
Betahistine
Betamethasone
Betanidine
Biperiden
Bromocrptine
Bromvaletone
Brucine
Bumadizon
Bumetanide
Bupivacaine
Buserelin
Busulfan
Butriptyline
Calcitonin
Calcium dobesilate
Cantharidates (excluding for topical use)
Cantharidin

Captodiame
Captopril
Carbamazepine
Carbenicillin
Carbidopa
Carbimazole
Carbochol
Caribromal
Carisoprodol
Ceftriaxone
Cefuroxine
Cephalosporins (all generations)
Cetirizine
Chlorambucil
Chloramphenicol
Chlormethiazole
Chlorotrianisene
Chlorpromazine
Chlorpropamide
Chlorprothixene
Ciclosporin
Cilazapril
Cimetidine
Cinchophen
Cisapride
Clavulanic acid
Clfibrate
Clindamycin
Clioquinol
Clobetasol
Clofazimine
Clomifene
Clomipramine
Clonidine
Clopamide
Cloreolone
Clothiapine
Clotiapine
Clotrimazole
Cloxacillin
Clozapine

Colestyramine
Conjugated oestrogens
Corticosteroids (excluding hydrocortisone 1 per cent)
Cortisone acetate
Cotarnine
Co-trimoxazole
Cromoglycic aid
Curate
Cyclandelate
Cyclarbamate
Cyclopentolate
Cyclofenil
Cyclopenthiazine
Cyclophosphamide
Cycrimine
Cyproterone
Cytararabine
Dacarbazine
Danazol
Dapsone (except in combination with pyrimethamine for malaria prophylaxis)
Daunorubicin
Deanol
Debrisoquine
Demecarium bromide
Desferrioxamine
Desipramine
Desmopressin acatate
Dexamethasone
Dibenzepin
Dichloralphenazone
Diethylcarbamazine
Digitalis digoxin and other cardiac glycosides
Dihydralazine
Dihydroergocristine
Diloxanide furoate
Diltiazem
Dimercaprol
Dimetotiazine
Dinoprost
Dinoprostone
Dioxyanthanol (dithranol)

Diphenidol
Diprocetyl
Dipyridamole
Dipyrocetyl
Disopyramide
Disulfiram
Diuretics
Dobutamine
Domperidone
Dopamine
Dosulepin
Doxapram
Doxazosin
Doxepin
Doxorubicin
Doxycycline
Droperidol
Dyflos
Ectylurea
Edrophonium
Emetine
Emylcamate
Enalapril
Enzymes (for injection)
Erythrityl tetranitrate
Erythromycin
Ethacrinic acid
Ethambutol
Ethchlorvynol
Ethinamate
Ethoheptazine
Ethosuximide
Etomidate
Famciclovir
Famotidine
Fenbufen
Fencamfamin
Fenfluramine
Fenlofenac
Fenoprofen
Flucloxacillin
Fluconazole

Flucytosine
Fludrocortisone
Flufenamic acid
Flumazenil
Fluocinolone
Fluorouracil
Fluoxetine
Fluphenazine
Flurbiprofen
Fluticasone
Folic acid
Folinic acid
Framycetin (other than topical)
Furazolidine
Furosemide
Fusidic acid
Gallamine
Gamolenic acid
Gelsenium
Gemfibrozil
Gentamicin
Gilibornuride
Glafenine
Glibenclamide
Griseofulvin
Guanethidine
Guanidine
Halofantrine
Halometasone
Haloperidol
Halothane
Hapatitis-B vacc
Heparin
Hexamethonium
Hexapropymate
Hormones natural or synthetic
Human chrorionic gonadotropin
Hyaluronidase
Hycanthone
Hydralazine

Hydrochlorthiazide
Hydroxyprogesterone
Hydroxyzine
Hyoscine
Imipramine
Indapamide
Indinavir
Indomethacine
Indoprofen
Insulin
Iodozuridine
Iron injectabler preparations
Isoconazole
Isoetarine
Isoflurane
Isoniazid
Isopyrine
Isosorbide
Isradipine
Ketaconazole (except topical)
Ketamine
Ketoprofen
Ketorolac
Ketotifen
Labetalol
Lamivudine
Lanatoside
Laudezium
Levallorphan
Levobunolol
Levocastine
Levodopa
Levonorgestrel
Lidoflazine
Lincomycin
Lisinopril
Lithium
Lobella
Loratidine
Loxapine
Lucanthone

Maprotiline
Mazindol
Medroxyprogesterone
Mefloquine
Meglumine
Melphalan
Mephenesin
Mephenytoin
Mephonoxalone
Mercaptopurine
Mersalyl Mesna
Mesuximide
Metaraminol
Methamine
Methacarbamol
Methoxamine
Metformin
Methapyrilene
Methohexitone
Methofrexate
Metipranolol
Metoprol
Metrifonate
Metronidazole
Metyldopa
Metylsergide
Mexiletine
Mianserin
Milrinone
Minoxidil
Mitoxantrone
Moclobemide
Molindone
Monoamine oxidase inhibitors
Moxisylate
Mupirocin
Nadolol
Nalidixic acid
Naloxone
Natamyein

Neostigmine
Nicotine
Nifedipine
Niflumic acid
Niridazole
Nitrofurantoin
Nizatidine
Nomifensine
Norfloxacin
Nux vomica
Nystatin (for intra-oral use only)
Oestradiol
Ofloxacin
Olanzapine
Omeprazole
Orphenadrine
Oxamniquine
Oxolinic acid
Oxprenolol
Oxyphenisatin
Oxytetracycline
Oxytocin
Pancuronium
Paraldehyde
Pargyline
Pefloxacin
Penbutolol
Penciclovir
Penicillins
Penterythritol tetranitrate
Perhexiline
Phenacaine
Phenacemide
Phenacetin
Phenaglycodol
Phenbutrazate
Phenindione
Phenothiazines (except promethazine, anthelmintics)
Phensuximide
Phentolamine
Phenytoin

Physostigmine
Phytomenadione
Picrotoxin
Pimozide
Pindolol
Piracetam
Piroxicam
Pituitary gland extracts intended for topical use and inhalants
Pizotifen
Poldine
Plasma expanders
Potassium chloride (only injection)
Practolol
Pravastatin
Praziquantel
Praxosin
Prednisolone
Prednisone
Prenylamine
Primidone
Probenecid
Procaine hydrochloride
Procainamide
Procarbazine
Procaterol
Prochlorperazine
Procycline
Prolintane
Propanidid
Propofol
Propranolol
Propylthiouracil
Protamine
Prothipendyl
Protryptiline
Pyrazinamide
Pyridostigmine
Pyritinol
Quinapril
Quinethazone
Quinidine
Quinine

Ranitidine
Rauwolfia
Reserpine
Rifampicin
Ritodrine
Rosoxacin
Roxithromycin
Sabadilla
Seriraline
Sodium calcium edetate
Sodium pentosan polysulphate
Sotalol
Spectinomycin
Spironolactone
Streptodornase and other similar enzymes
Streptokinase
Strophathus
Styramate
Sulfinpyrazone
Sulfiram
Sulindac
Sulphinpyrazone
Sulphonal
Sulphonamides (including combinations with other active ingredients) except in combination with pyrimethamine for treatment of malaria and for topical use and ophthalmic use.
Sulpiride
Sulthiamine
Sumatriptan
Suxamethonium
Syrosingopine
Talozamide
Talozoline
Tamoxifen
Tenoxicam
Terfenadine
Tetrabenazine
Tetracycline
Thiacetazone
Thiamphenicol
Thioguanine
Thionamide

Thiopentone
Thioridazole
Thiotepa
Thiothixine
Thymoxamine
Thyroid gland extract
Thyroxine
Tiaprofenic acid
Timolol
Tinidazole
Tolbutamide
Tolfenamic acid
Tolmetin
Tranexamic acid
Tranylcypromine
Tretamine
Tretion
Triamcinolone
Triamterene
Tribromomethyl alcohol
Trichlorethyl alcohol
Trifluperidol
Trihexyphenidyl (benzhexol)
Trimethadion
Trimethaphan
Trimethoprim
Trimipramine
Trioxsalen
Tubocurarine
Turpicamide
Vaccines, Sera and Antigenes
Valacyclovir
Valproic acid
Vancomycin
Vasopressin
Verapamil
Veratrum
Viloxazine
Vinblastine
Vincristine
Vindesine

Warfarin
Xameterol
Zidovudine

SIXTH SCHEDULE (regs. 2 and 39)

Pharmacist Initiated Medicines (PIM)

Human Medicines
Acetarsol
Acyclovir (topical use only)
Alimezamine
All topical anti-fungal medicines (excluding whitfields, undecylenic acid)
All vaginal anti-fungal medicines
Astemisole
Belladonna
Bismuth suppository (in combination with steroids)
Caramiphen
Cetirizine
Chloral all salts and derivatives
Chloramphenicol (topical use)
Chlorbenoxamine
Chlormezanone
Chloroquin
Chlorphenoxamine
Cinnarizine
Codeine (less than 10 mg per unit dose)
Colchicin
Crotamiton
Cyanocobalamine (except injection)
Cyproheptadine
Diclofenac (except injectable form)
Diclofenamide
Ephedrine (containing less than 30 mg per unit dose)
Fenoterol
Glyceryl trinitrate
Hexachlorophene
Ibuprofen (more than 200 mg per unit dose)
Kaolin/pectin (oral preparations)
Loperamide
Mefenamic acid
Methenamine (hexamine)

Nephenesin
Orciprenaline
Pholcodine
Pirbuterol
Podophyllin
Potassium chloride (for oral use)
Povidone-iodide pessary
Pyrental pamoate
Rimiterol
Salbutamol (except injectable forms but including for inhalation)
Salmeterol
Sodium aescinate (topical use only)
Sulphomamides (including those in combinations for intra-vaginal and ophthalmic use)
Sucralfate
Terbutalin (except injection but including inhalation)
Terfenadine
Tetracycline (topical only)
Theophylline (except injectable forms)
Thiabendazole Vitamin E (more than 100 mg per unit dose)
Yohimbine

SEVENTH SCHEDULE (regs. 2 and 39)

Pharmacy Medicines

Human Medicines

The salts, preparations and admixtures of the following—

aconite
aescin, preparations intended for topical use only
albendazole
alkali fluorides other than dentifices containing not more than 0.3 *per centum* of the alkali salts of hydrofluoric acid

Aloxiprin
Aminopentamidine
Amino-alcohols, esterified with benzole acid, phenylacetic acid, phynylpropionic acid, cinnamic acid, or the derivatives of these acids, their salts, being preparations for oral use only.
P-Aminobenzic acid
Ammonia (*see* H.S.A)
Amyl nitrate
Anethole trithione
Anthraquinones

Antimirobial substances (chemotherapeutic substances) synthesized in nature or a laboratory, for use as eye ointment containing 1 per cent chloramphenicol tetracycline or oxytetracycline for use in eye infections other than eye ointments containing 1 *per centum* tetracycline or oxytetracycline for the use in trachoma.

Anthistamine substances, the following—

Antazoline
Bromazine
Buclizine
Carbenoxolone
Calamine (topical use)
Chlorphenamine
Chlorphenoxamine, preparations containing 10 mg or less per unit dose
Clemastine
Clemizole
Cyclizine
Dexchlorpheniramine
Diphenhydramine
Diphenylphyraline
Doxylamine
Isothipendyl
Mebhydrolin
Meclozine
Phenindamine
Pheniramine
Promethazine containing 25 mg or less per unit dose
Propylenediamine
Pyrrhobutamine
Thenalidine
Topropamine
Triprolidine
Tetra subsituted N derivatives of ethylenediamine or propylene-diamine

Apomorphine

Atropine for oral treatment and in combination with other active ingredients

Arsenic

Barium

Belladonna and the alkaloids thereof

Bemegride

Benzyl Benzoate (topical use)

Benzoyl peroxide

Benzoic acid (topical use)
Bephenium
Bisacodyl
Bitolterol mesylate
Bismuth subgallate
Bromelains
Bromhexine
Calciferol
Camylofin
Carbocisteine
Carbuterol
Cetrimide
Cetylpyridinium chloride
Chlorbutol, except when intended for use as a preservative
Chlormezanone, preparation containing 100 mg or less in combination with an analgesic or anti-asthmatic drug
Chloroform, other than preparations containing less than 10 *per centum* chloroform
Chlorhexidine
Chlorphenesin
Chlorphenoxamine
Choline theophyllinate
Chrysarobin
Clioquinol (lodochlorhydroxyqunoline)
Clobutinol
Colocynth
Creosote, obtained from wood, other than substances containing less than 50 *per centum* creosote
Dapsone, preparations in combination with pyrimethamine and intended for prohylaxis of malaria
Dequalinium
Dextromethorphan
Detrophan
Dibromopropamidine
Dicycloverine (Dicyclomine)
Diethylamine salicylate
Dimethicon
Diloxanide
Diphenoxylate, preparations containing 2.5 mg or less per unit dose in combination with other active ingredients
Domiphene bromide
Enzymes, except those intended for injection
Etafedrine

Ethylchloride
Fedrilate
Ferric and ferrous salts, and combinations
Floctafenine
Fluoride sodium, excluding dental pastes and gels
Folic acid
Formaldehyde, other than when used as a preservative
Gamma benzene hexachloride
Glucuronic acid
Halquinol (Chlorhydroxyquinoline) (Di-iadohydroxyqunoline)
Hexachlorophene, preparations containing less than 1 *per centum* hexachlorophene
Hexetidine
Hexoprenaline
Hydrochloric acid, as diluted solution for achlorhydria
Hydrotalcite
Iodine, iodides
Isoaminile
Jalap
Lead, salts, other than preparations for hair containing less than 0.5 *per centum* of lead
Mebendazole
Mefenamic acid
Mepyramine maleate
Methxyphenamine
Myrtecaine
Naphazoline
Niclosamide
Nicotinic acid
Nitric acid (*see* H.S.A.)
Noscapine
Oxalic acid
Oxetacaine
Oxyphencyclimine
Oxymetazoline
Pancreatin
Pantothenic acid
Pentiyllin
Pentoxyverine
Phenazone
Phenindamine
Phenolphthalcin

Phenylephrine, other than preparations containing less than 0.2 *per centum* phenylephrine intended for topical use

Phenylpropanolamine

Povidone iodine, other than preparations intended for topical application

Potassium hydroxide

Promethazine, preparations containing 25 mg or less

Proguanil

Propamidine

Propantheline bromide

Pyridoxine

Pyrimethamine

Selenium

Sodium hydroxide

Stavesacre (Staphisagria) and alkaloids thereof, other than in soaps, ointments and lotions

Sulphuric acid (*see* H.S.A.)

Terpine hydrate

Tolazoline (intended for topical use)

Tribenoside

Trichloracetic acid

Vitamin A other than preparations containing 10 thousand units or less of Vitamin A activity per unit dose

Xylometazoline

Zinc Sulphate

Any substance derived from any other substances referred to in any of the items in this Schedule unless expressly excluded therefrom.

EIGHTH SCHEDULE

General Sales List Medicines

Human Medicines

Acetylsalicylic acid (packs of less than 20 including strip or blister pack)

Aluminium hydroxide

Ascorbic acid (less than 500 mg per unit dose)

Caffeine

Camphor

Chlorinated xylenol

Dequalinium

Hexetidine

Hydroquinone (for external use only containing 2 *per centum* or less hydroquinone)

Ipecacuana
Liquid paraffin
Magnesium hydroxide
Magnesium sulphate
Magnesium Trisilicate
Menthol
Methyl salicylate (in liniments only)
Paracetamol (packs of less than 20 including strips or lister packs)
Piperazine
Psyllium
Sulphomanide (only in combination with pyramethamine for treatment of malaria)

NINTH SCHEDULE (reg. 2)

Prohibited Substances (PS)

Bufotenine
Glutethimide
Lysergamide
Lysergide and other N-alkyle derivatives of lysergamide which includes the drug commonly known as L.S.D., but not including methyaergide maleate
Mescaline
Methaqualone
Methyprylon
Psilocin
N.N-Diethyltryptamine
N.N.Dimethyltryptamine
2,5-Demethoxy-4, a, dimethylphenthylamine
Any sterioisomerio form, ester, ether or salt of a substance prohibited and any preparation containing any proportion of the abovementioned drugs.

TENTH SCHEDULE (reg. 2)

Controlled Drugs (CD)

PART I

Narcotics

Acetyldihydrocodeine
Alfentanil
Cocaine
Codeine
Dextropropoxyphene

Dihydrocodeine
Diphenoxylate
Fentanyl
Hydrocodon
Methadone
Morphine
Opium
Pethidine
Pholcodine
Tilidine

PART II

PSYCHOTROPIC SUBSTANCES

Alprazolam
Bromazepam
Buprenorphine
Chlordiazepoxide
Clobazam
Clonazepam
Clorazepate
Diazepam and other compounds containing the chemical structure of dihydro-1, 4-Benzo-diazepine substituted to any degree
Dipotassium Clonazepate
Flunitrazepam
Flurazepam
Ketazolam
Lorazepam
Lormetazepam
Medazepam
Meprobamate
Methylphenidate
Midazolam
Nitrazepam
Oxazepam
Pentazocin
Pentobarbitone
Phenobarbitone
Phentermine
Prazepam
Temazepam
Triazolam

DANGEROUS DRUGS

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CHAPTER 35:02

DANGEROUS DRUGS

ARRANGEMENT OF SECTIONS

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SECTION

18. Persons upon whom powers of inspection, etc., are conferred to produce proof of identity
19. Offences and penalties
20. Power of arrest
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28 of 1955(F)
25 of 1956(F)
20 of 1995
G.N.
224/1963(F)
219/1964(N)

An Act to control the importation, exportation, production, possession, sale, distribution, and use of dangerous drugs, and for matters incidental thereto

[1st April, 1956]

Preliminary

Short title

1. This Act may be cited as the Dangerous Drugs Act.

Interpretation

2.—(1) In this Act, unless inconsistent with the context—

"corresponding law" means a law stated in a certificate purporting to be issued by or on behalf of the government of another country to be a law providing for the control and regulation in that country of the manufacture, sale, use, export, and import of drugs in accordance with the Hague Convention, the Geneva Convention (No. 1), and the Geneva Convention (No. 2);

"Geneva Convention (No. 1)" means the International Opium Convention signed at *Geneva* on the 19th February, 1925;

"Geneva Convention (No. 2)" means the International Convention for limiting the manufacture, regulation, and distribution of narcotic drugs signed at Geneva on the 13th July, 1931;

"Hague Convention" means the International Opium Convention signed at the Hague on the 3rd January, 1912;

"inspector" means an inspector appointed under section 15;

"superior police officer" means a police officer above the rank of inspector of police.

(2) In any certificate such as is referred to in the definition of "corresponding law" in subsection (1), a statement as to the effect of the law mentioned in such certificate or a statement in any such certificate that any facts constitute an offence against that law shall be conclusive.

PART I

Coca Leaves, Indian Hemp, and Raw Opium

Application of this part

3.—(1) The drugs to which this Part applies are—

(*a*) coca leaves;

(*b*) "Indian hemp", "bhang", "camba", "dagga", "mbanje" or "intsangu", resins obtained therefrom and all preparations of which such resins form the base;

(*c*) raw opium.

(2) In this section—

"coca leaves" means the leaves of any plant of the genus of the erythroxylaceae from which cocaine can be extracted either directly or by chemical transformation;

"Indian hemp", "bhang", "camba", "dagga", "mbanje" or "intsangu" means the whole or any portion, whether green or dry, of the plant, including the seeds thereof, but excluding—

(*a*) any fibre extracted from the plant for use as or in the manufacture of cordage, canvas or similar products; or

(*b*) any seed which has been crushed, comminuted or otherwise processed in such a manner as to prevent germination; or

(*c*) the fixed oil obtained from the seed;

"medicinal opium" means raw opium which has undergone the processes necessary to adapt it for medicinal use in accordance with the requirements of the British Pharmacopoeia, whether it is in the form of powder or is granulated or is in any other form, and whether it is or is not mixed with neutral substances;

"raw opium" includes powdered or granulated opium, but does not include medicinal opium.

(3) Any reference in this Part or in any regulation made thereunder to plants from which such drugs are derived shall include a reference to the plant "Indian hemp", "bhang", "camba", "dagga", "mbanje" or "intsangu".

Restriction on import and export of drugs to which this Part applies and of plants from which such drugs are derived

4. No person shall import into or export from Malaŵi any drugs to which this Part applies, or plants from which such drugs are derived, except under and in accordance with the terms of a licence issued by the Minister.

Special restriction on export to certain countries of drugs to which this Part applies and of plants from which such drugs are derived

5. If at any time the importation into a foreign country of a drug to which this Part applies or plant from which any such drug is derived is prohibited or restricted by the laws of that country, there shall, while that prohibition or restriction is in force, be attached to every licence which is issued under this Act authorizing the export of that drug or plant from Malaŵi, such conditions as appear necessary for preventing or restricting, as the case may be, the exportation of that drug or plant from Malaŵi to that country during such time as the importation of that drug or plant into that country is so prohibited or restricted, and any such licences issued before the prohibition or restriction came into force shall, if the Minister by order so directs, be deemed to be subject to the like conditions.

Regulations

6. The Minister may by regulation—

(*a*) prohibit, control, or restrict the production, possession, sale, or distribution of drugs to which this Part applies, and the cultivation of plants from which such drugs are derived;

(*b*) prescribe measures to be taken for the eradication of plants, to which regulations made under paragraph (*a*) apply, found to be growing wild.

PART II

Prepared Opium

Interpretation in this Part

7. In this Part "prepared opium" means opium prepared for smoking and dross and any other residue remaining after opium has been smoked.

Import and export of prepared opium prohibited

8. No person shall import into or export from Malaŵi any prepared opium.

Offences

9. No person shall—

(*a*) manufacture, sell, or otherwise deal in prepared opium;

(*b*) have in his possession any prepared opium;

(*c*) being the occupier of any premises, permit those premises to be used for the purpose of the preparation of opium for smoking or the sale or smoking of prepared opium;

(*d*) be concerned in the management of any premises used for any purpose referred to in paragraph (*c*);

(*e*) have in his possession any pipes or other utensils for use in connexion with the smoking of opium or any utensils used in connexion with the preparation of opium for smoking; or

(*f*) smoke or otherwise use prepared opium or frequent a place used for the purpose of opium smoking.

PART III

Medicinal Opium, Cocaine, Morphine, and Other Drugs

Application of this Part

10.—(1) Save as is provided in Part IV, the drugs to which this Part applies are the drugs specified in the Schedule.

(2) If it appears to the Minister that any derivative of morphine or cocaine or of any salts of morphine or cocaine or any alkaloid of opium or any other drug of whatever kind not specified in the Schedule—

(*a*) is or is likely to be productive, if improperly used, of ill effects substantially of the same character or nature as or analagous to those produced by morphine or cocaine; or

(*b*) is capable of being converted into a substance which is likely to be productive, if improperly used, of such effects;

he may by notice published in the *Gazett*e apply this Part to such derivative or alkaloid or drug in the same manner as it applies to drugs specified in the Schedule.

(3) The Minister may by notice published in the *Gazett*e apply this Part, with such modifications as may be specified, to any of the following drugs—

(*a*) methylmorphine (commonly known as codeine); and

(*b*) ethylmorphine; and

(*c*) their respective salts.

(4) If it is made to appear to the Minister that a finding with respect to a preparation containing any of the drugs to which this Part applies has, in pursuance of article 8 of the *Geneva* Convention (No. 1), been communicated by the Economic and Social Council of the United Nations to the parties to the said Convention, the Minister may by notice published in the *Gazette*, declare that this Part shall, as from such date as may be specified in the notice, cease to apply to the preparation specified therein.

Restriction on import and export of drugs to which this Part applies

11. No person shall import into or export from Malaŵi any drugs to which this Part applies, except under and in accordance with the terms of a licence issued by the Minister.

Power to control manufacture, sale, etc., of drugs to which this Part applies

12.—(1) For the purpose of preventing the improper use of the drugs to which this Part applies, the Minister may by regulation prohibit, control, or restrict the manufacture, sale, possession, or distribution of those drugs and in particular, but without prejudice to the generality of the foregoing—

(*a*) prohibit the manufacture of any such drug except on premises licensed for the purpose by the Minister and subject to any conditions specified in the licence;

(*b*) prohibit the manufacture, sale, or distribution of any such drug except by persons licensed or otherwise authorized under the regulations by the Minister and subject to any conditions specified in the licence or authority;

(*c*) regulate the issue of prescriptions containing any such drug and the dispensing of any such prescriptions; and

(*d*) require persons engaged in the manufacture, sale, or distribution of any such drug to keep such books and furnish such information either in writing or otherwise as may be prescribed by the regulations.

(2) Regulations made under this section shall provide for authorizing a person lawfully carrying on business in accordance with any law relating to pharmacy and poisons as an authorized seller of poisons—

(*a*) in the ordinary course of his retail business to manufacture, at any premises duly registered under any such law, any preparation, admixture or extract of a drug to which this Part applies; or

(*b*) to carry on at any such premises as aforesaid the business of retailing, dispensing, or compounding any such drug,

subject to the power of the Minister to withdraw the authorization in the case of a person who has been convicted of an offence against this Act and who cannot, in the opinion of the Minister, properly be allowed to carry on the business of manufacturing or selling or distributing, as the case may be, any such drug.

(3) Nothing in any regulations made under this section shall be deemed to authorize the sale by retail of poisons by a person who is not qualified in that behalf under or otherwise than in accordance with any law relating to pharmacy and poisons or to be in derogation of any such law prohibiting, restricting, or regulating the sale of poisons.

PART IV

Control of Trade in New Drugs

Prohibition of trade, etc., in new drugs

13. No person shall trade in or manufacture for the purposes of trade any product obtained from any of the phenanthrene alkaloids of opium or from the ecgonine alkaloids of the coca leaf, not being a product which was on the 13th July, 1931, being used for medical or scientific purposes:

Provided that if the Minister is satisfied that any such product is of medical or scientific value, he may by notice published in the *Gazette* direct that this section shall cease to apply to that product.

Power to apply Part III to new drugs

14. If it is made to appear to the Minister that a decision with respect to any product mentioned in section 13 has, in pursuance of article 11 of the *Geneva* Convention (No. 2), been communicated by the Secretary-General of the United Nations to the parties to the said Convention, the Minister may by notice published in the *Gazette*, as the circumstances require, either declare that Part III shall apply to that product in the same manner as they apply to the drugs to which Part III applies, or apply Part III to that product with such modifications as may be specified in the notice.

PART V

General

Appointment of Inspectors

15.—(1) Subject to subsection (2), the Minister shall appoint one or more inspectors for the purpose of enforcing this Act.

(2) No person shall be qualified for appointment as an inspector unless he is a person duly authorized to act as a compounder or dispenser of poisons or drugs in terms of any law relating to pharmacy and poisons.

Powers of inspection

16.—(1) Any inspector shall, for enforcing this Act, have power at all reasonable times to enter the premises on which any chemist and druggist, general dealer, or licensed manufacturer of any drug to which this Act applies carries on business, and any premises owned or occupied by any person authorized to be in possession of any such drug, and to enter any other premises in which he has reasonable cause to suspect that an offence against this Act has been committed, and in either case shall have power to make such examination and inquiry and do such other things, including the checking of stocks and the taking, on payment therefor, of samples as may be necessary for ascertaining whether this Act is being complied with.

(2) All books, records, and documents required to be kept by any person under this Act shall be open to inspection by any superior police officer or by any other police officer authorized in writing by a magistrate or by a superior police officer.

(3) If any person wilfully delays or obstructs an inspector or a police officer in the exercise of his powers under this section, or refuses to allow any sample to be taken in accordance with this section, or fails without reasonable excuse to give any informa-

tion which he is duly required under this section to give, he shall be guilty of an offence.

Powers of search, seizure, and forfeiture

17.—(1) Any inspector, any customs officer, any police officer of or above the rank of sergeant, and any other police officer authorized thereto in writing by a magistrate or by a superior police officer may at any time—

(*a*) search any person suspected upon reasonable grounds of being in unlawful possession of drugs to which this Act applies or plants from which such drugs are derived: Provided that a person shall be searched only by a person of like sex;

(*b*) search any premises, place, receptacle, aircraft, ship, train, or other vehicle of whatsoever description wherein or whereby it is suspected upon reasonable grounds that such drugs are being produced, kept, used, sold, or distributed in contravention of this Act.

(2) Any inspector, any customs officer, any superior police officer, and any other police officer authorized thereto in writing by a magistrate or by a superior police officer may at any time enter upon and inspect any land, building, or other structure on or in which plants, from which drugs to which this Act applies are derived, may be found, for the purpose of ascertaining if any such plants are being cultivated in contravention of this Act.

(3) If on any search or inspection made under this section any drug to which this Act applies, pipe, receptacle, or appliance for smoking or using the same, or any plant which it is suspected upon reasonable grounds is being cultivated in contravention of this Act is found, it may be seized and removed, together with any books, accounts, or documents relating thereto.

(4) Notwithstanding subsections (1) and (2), if any delay involved in securing written authority from a magistrate or a superior police officer would defeat the objects of this section, it shall be lawful for any police officer who is required by those subsections to have that written authority, to exercise, on the production by him, if he is not in uniform, of proof of his identity, the powers conferred by this section without written authority, but he shall as soon as possible thereafter report to his commanding officer or to a magistrate what he has done.

(5) Any person who resists, hinders, or obstructs an inspector or other person in the lawful exercise of his powers under this section shall be guilty of an offence.

(6) If on the trial of any person for contravening or failing to comply with any provision of this Act or any condition of any authority or licence issued thereunder it is proved that any drug,

pipe, receptacle, appliance, or plant seized under this section was produced, possessed, kept, used, sold, distributed, or cultivated in contravention of this Act, it shall be forfeited.

Persons upon whom powers of inspection, etc., are conferred to produce proof of identity

18. Any person upon whom powers of inspection, search, seizure, or forfeiture are conferred under this Act who fails on demand to produce—

(*a*) in the case of an inspector, a certificate under the hand of the Secretary for Health of his appointment as an inspector;

(*b*) in the case of—

(i) a customs officer; or

(ii) a superior police officer, who is not in uniform, proof of his identity.

(*c*) in the case of a police officer authorized in writing by a magistrate or by a superior police officer to exercise those powers, his authority in writing;

shall not, save as is provided in section 17 (4), thereafter be entitled to exercise those powers until he has produced that certificate, proof of identity, or authority in writing, as the case may be.

Offences and penalties 20 of 1995

19.—(1) Any person—

(*a*) who acts in contravention of or fails to comply with any provision of this Act;

(*b*) who acts in contravention of, or fails to comply with, the conditions of a licence issued or authority granted under, or in pursuance of this Act;

(*c*) who for the purpose of obtaining, whether for himself or for any other person, the issue, grant, or renewal of any such licence or authority as aforesaid, makes a declaration or statement which is false in any particular, or knowingly utters, produces, or makes use of any such declaration or statement or a document containing the same; or

(*d*) who in Malaŵi aids, abets, counsels, or procures the commission in a place outside Malaŵi of an offence punishable under a corresponding law in force in that place, or does an act preparatory to or in furtherance of an act which, if committed in Malaŵi, would constitute an offence against this Act,

shall subject to subsection (2), be liable to a fine of K500,000 and to imprisonment for life. 20 of 1995

(2) No person shall, on conviction for any offence or contravening or failing to comply with any provisions of this Act relating to the keeping of books or the issuing or dispensing of prescriptions containing any drug to which this Act applies, be sentenced to imprisonment without the option of a fine or to

20 of 1995

pay a fine exceeding K2,000 if the court dealing with the case is satisfied that the offence was committed through inadvertence and was not preparatory to, or committed in the course of, or in connexion with, the commission or intended commission of any other offence against this Act.

(3) Any drug or other article forfeited under this Act shall, unless the court otherwise directs, be burned or otherwise destroyed in the presence of a police officer of or above the rank of sergeant, who shall transmit to the court a certificate under his hand stating the circumstances in which the forfeiture took place, the quantity forfeited, and other particulars showing his compliance with the Act.

Power of arrest

20. Any police officer may arrest without warrant a person who has committed, or attempted to commit, or is reasonably suspected by such officer of having committed or attempted to commit an offence against this Act if he has reasonable grounds for believing that that person will abscond unless arrested, or if the name and address of that person are unknown to, and cannot be ascertained by, him.

Licences and authorities

21.—(1) A licence or authority issued for the purposes of this Act by the Minister may be issued on such terms and subject to such conditions, including in the case of a licence, the payment of a fee, as the Minister may fix.

(2) Whenever the Minister is empowered under any provision of this Act to issue any licence or authority, he may delegate to the Secretary for Health such power, subject to the right of any person to whom the issue of such licence or authority has been refused to appeal in writing to the Minister against such refusal.

s. 10

SCHEDULE

Drugs to Which Part III Applies

1. Medicinal Opium.

2. Any medicinal extract or tincture derived from the plant *Cannabis sativa L*. and any preparation, not being a preparation capable of external use only, made from such medicinal extract or tincture.

3. Morphine and its salts.

4. Cocaine (including synthetic cocaine) and ecgonine and their respective salts, and the esters of ecgonine and their respective salts. (For the purposes of this Act, the expression "ecgonine" means laevoecgonine and includes any derivatives of ecgonine from which it may be recovered industrially).

5. Any solution or dilution of morphine or cocaine or their salts in an inert substance, whether liquid or solid, containing any proportion of morphine or cocaine, and any preparation, admixture, extract, or other substance (not being such a solution or dilution as aforesaid) containing not less than one-fifth per cent. of morphine or one-tenth per cent. of cocaine or of ecgonine.

6. Diacetylmorphine (commonly known as diamorphine or heroin) and the other esters of morphine and their respective salts.

7. Dihydrohydroxycodeinone (also known as Oxycodone);

Dihydrocodeinone (also known as Hydrocodone);

Dihydromorphinone (also known as Hydromorphone);

Acetyldihydrocodeinone;

Dihydromorphine;

their esters, and the salts of any of these substances and of their esters.

8. Morphine-N-oxide (commonly known as genomorphine) also the morphine-N-oxide derivatives, and the other pentavalent nitrogen morphine derivatives.

9. Thebaine and its salts, and (with the exception of methylmorphine, commonly known as codeine, and ethylmorphine, and their respective salts), benzylmorphine and the other ethers of morphine and their respective salts.

10. Any preparation, admixture, extract or other substance containing any proportion of any of the substances mentioned in paragraphs 6,7, 8 and 9.

11. The following substances and their salts, and any preparation, admixture, extract, or other substance containing any proportion of any of the substances or salts—

Pethidine (1-methyl-4-phenylpiperidine-4-carboxylic acid ethyl ester);

Ketobemidone (4-(3-hydroxyphenyl)-1-methyl-4-piperidyl ethyl ketone or 1-methyl-4-metahydroxyphenyl-4-propionyl-piperidine);

Hydroxypethidine (1-methyl-4-(3-hydroxyphenyl)-piperidine-4-carboxylic acid ethyl ester or 1-methyl-4-metahydroxyphenylpiperidine-4-carboxylic acid ethyl ester);

Alphaprodine (α-1,3-dimethyl-4-phenyl-4-proprionoxypiperidine);

Betaprodine (β-1,3-dimethyl-4-phenyl-4-propionoxypiperidine);

Betameprodine (β-1-methyl-3-ethyl-4-phenyl-4-proprionoxypiperidine);

Methadone (4,4-diphenyl-6-dimethylaminoheptanone-3 or 6-dimethylamino-4, 4-diphenyl-3-heptanone);

Isomethadone (4,4-diphenyl-5-methyl-6-dimethylaminohexanone-3 or 6-dimethylamino-5-methyl-4,4-diphenyl-3-hexanone);

Methadol (4,4-diphenyl-6-dimethylaminoheptanol-3 or 6-dimethylamino-4,4-diphenyl-3-heptanol);

α-Methadol(α-6-dimethylamino-4,4-diphenyl-3-heptanol);

Methadyl acetate (4,4-diphenyl-6-dimethylamino-3-acetoxyheptane or 6-dimethylamino-4,4-diphenyl-3-acetoxyheptane);

α-Acetylmethadol (α-6-dimethylamino-4, 4-diphenyl-3-acetoxyheptane);

β-Acetylmethadol (*β*-6-dimethylamino-4,4-diphenyl-3-acetoxyheptane);

Phenadoxone (4,4-diphenyl-6-morpholinoheptanone-3 or 6-morpholino-4,4-diphenyl-3-heptanone);

Racemorphan (d,1-3-hydroxy-N-methylmorphinan);

Levorphan (1-3-hydroxy-N-methylmorphinan);

Racemethorphan (d,1-3-methoxy-N-methylmorphinan);

Levomethorphan. (1 -3-methoxy-N-methylmorphinan);

3-dimethylamino-1,1-di- (2-thienyl)-1-butene;

3-ethylmethylamino-1,1-di- (2-thienyl-1-butene.

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DANGEROUS DRUGS REGULATIONS

under s. 2 (1)

PRELIMINARY

Citation

1. These regulations may be cited as the Dangerous Drugs Regulations.

Interpretation

2.—(1) In these Regulations, unless inconsistent with the context—

"authorized person" means a person authorized or treated as authorized in terms of regulation 8, 16 (1), 17, 18, 19, 20 or 39 (2), as the context in each case requires, to supply, administer, distribute, procure, advertise for sale, acquire, possess, carry on any process in the manufacture of or

manufacture any drug by virtue of being a person or a member of a class of persons specified in that section, and "authorized" shall be construed accordingly;

"authorized seller of poisons" means any person authorized to sell poisons in terms of any pharmacy or poisons law;

"dangerous drugs register" means the register required to be kept in terms of regulation 9,28 or 33;

"dental surgeon" means a person (registered or exempted from registration as a dental surgeon or dentist under the Medical Practitioners and Dentists Registration Act; Cap. 36:01

"drug" means any Part I drug, any Part III drug, any any Part III preparation or any partially controlled drug;

"licensed person" means a person authorized to supply, distribute, procure, advertise for sale, acquire, possess or, as the case may be, carry on any process in the manufacture of or manufacture any drug or cultivate any plant from which a drug is derived by virtue of the terms and conditions of a licence issued to him for that purpose, and "licence" and "licensed" shall be construed accordingly;

"medical practitioner" means a person registered or exempted from registration as a medical practitioner under the Medical Practitioners and Dentists Registration Act; Cap. 36:01

"midwife" means a fully trained practising midwife who is in possession of a valid midwife's supply order;

"midwife's supply order" means an order in the form prescribed in the First Schedule for the supply of tincture of opium and any preparation containing pethidine;

"Part I drug" means any drug to which Part I of the Act applies, other than an extract or tincture of Indian hemp;

"Part III drug" means any drug to which Part III of the Act applies which is not—

(*a*) a partially controlled drug; or

(*b*) a Part III preparation;

"Part III preparation" means a preparation containing such proportion of any drug to which Part III of the Act applies, other than a partially controlled drug, as is sufficient to make the preparation a drug to which Part III of the Act applies, but does not include—

(*a*) any preparation with respect to which the Minister has, in terms of section 10 (4) of the Act, declared that Part III of the Act shall not or shall cease to apply; or

(*b*) any preparation specified in the Second Schedule;

"partially controlled drug" means any drug or product to which the Minister has, in terms of section 10 (3) or, as the case may be, section 14 of the Act, applied Part III of the Act with the modification that the said drug or product shall not be treated as a drug to which Part III of the Act applies for the purposes of Part II of these Regulations;

"pharmacist" means a pharmacist or chemist and druggist registered or exempted from registration in terms of the Pharmacy and Poisons Act; Cap. 35:01

"prescription" means a prescription given for a single individual by—

(*a*) a medical practitioner for the purpose of medical treatment;

(*b*) a dental surgeon for the purpose of dental treatment;

(*c*) a veterinary surgeon for the purpose of animal treatment;

"register" means a bound book and does not include any form of loose leaf register or card index;

"registered premises" means premises registered in terms of the Pharmacy and Poisons Act; Cap. 35:01

"retail business" means the business of retailing, dispensing or compounding drugs carried on at a shop;

"wholesale dealer" means any person who carries on the business of selling drugs to persons who buy to sell again.

(2) Any reference in the Fourth Schedule to the percentage of a drug contained in any substance or preparation shall, unless it is otherwise expressly provided, be construed in the following manner, that is to say, a reference to a substance or preparation containing one per centum of any drug means—

(*a*) in the case of a solid, that one gramme of the drug is contained in every hundred grammes of the substance or preparation;

(*b*) in the case of a liquid, that one millilitre of the drug or, if the drug itself is a solid, one gramme of the drug is contained in every hundred millitres of the substance or preparation;

and so in proportion for any greater or lesser percentage.

PART I

PART I DRUGS

Occupier and owner

3. On this Part, in relation to land—

(*a*) "occupier" shall include any person in actual occupation of land or premises without regard to the title under which he occupies and, in case of premises subdivided and let to one or more tenants, the person receiving the rent payable by the tenants whether on his own account or as an agent for any person entitled thereto or interested therein;

(*b*) "owner" shall include any person, other than the Government, receiving the rent or profits of any land or premises from any tenant or occupier thereof, or who would receive such rent or profits if such land or premises were let whether on his own account or as agent for any person other than the Government, entitled thereto or interested therein. The term includes any lessee or licensee from the Government and any superintendent, overseer or manager of such lessee or licensee residing on the lands or premises.

Restrictions on authorized or licensed persons

4. No person who is not an authorized or licensed person shall—

(*a*) acquire or possess a Part I drug; or

(*b*) supply to or procure for any person including himself a Part I drug or advertise for sale a Part I drug.

Restrictions on authorized or licensed persons

5. No authorized or licensed person shall—

(*a*) acquire or possess a Part I drug otherwise than in accordance with this Part and, in the case of a licensed person, otherwise than in accordance with the terms and conditions of his licence; or

(*b*) supply to or procure for or offer to supply to or procure for any person who is not an authorized or licensed person a Part I drug.

Cultivation

6.—(1) No person who is not a licensed person shall cultivate any plant from which a Part I drug is derived.

(2) No licensed person shall cultivate any plant from which a Part I drug is derived otherwise than in accordance with the terms and conditions of his licence.

Clearing of land

7.—(1) Every owner or occupier of land shall clear or cause to be cleared from his land any plant from which a Part I drug is derived which is found to be growing wild or which is being cultivated in contravention of these Regulations.

(2) The owner or occupier of land who has cleared or caused to be cleared from his land any plants from which a Part I drug is derived shall destroy the plants so cleared by fire.

Persons permitted to acquire, possess, and supply Part I drugs

8.—(1) Subject to these Regulations, any person who is—

(*a*) a medical practitioner;

(*b*) a veterinary surgeon;

(*c*) a pharmacist and an authorized seller of poisons;

(*d*) a pharmacist—

(i) employed by an authorized seller of poisons;

(ii) employed in a hospital, clinic, dispensary or like institution administered by the Government or by a local authority or in any other hospital, clinic, dispensary or like institution approved by the Minister; or

(iii) employed in any medical store of the Government;

(*e*) a person in charge of a laboratory used for the purposes of research or instruction and attached to—

(i) a university, university college or other educational institution approved by the Minister; or

(ii) any hospital referred to in paragraph (*d*) (ii);

(*f*) an analyst employed by the Government; or

(*g*) an inspector appointed under the Act or under the Pharmacy and Poisons Act; Cap. 35:01

is authorized in that capacity and so far as is necessary for the practice or exercise of his profession, function or employment to acquire, possess and supply Part I drugs.

(2) Every person authorized in terms of subregulation (1) to possess a Part I drug shall, unless the exigencies of the practice or exercise of his profession, function or employment otherwise require, keep every Part I drug in his custody in a locked receptacle which can only be opened by him or another authorized person.

Records

9. Every person authorized or licensed to supply Part I drugs shall—

(*a*) keep in accordance with this regulation and regulation 42, a register and enter therein in chronological sequence in the form specified in the Third Schedule true particulars with respect to—

(i) every quantity of a Part I drug acquired by him;

(ii) every quantity of a Part I drug supplied by him;

(iii) every quantity of a Part I drug used by him;

(*b*) use a separate part of his register for entries relating to—

(i) raw opium;

(ii) coca leaves;

(iii) Indian hemp and the resins obtained from Indian hemp and all preparations, other than extract and tincture of Indian hemp, of which such resins form the base.

PART II

Part III Drugs

Manufacture only by authorized persons

10. No person who is not an authorized or licensed person shall manufacture or carry on any process in the manufacture of a Part III drug.

Conditions of manufacture

11. No authorized or licensed person shall manufacture or carry on any process in the manufacture of a Part III drug—

(*a*) otherwise than in accordance with this Part and, in the case of a licensed person, otherwise than in accordance with the terms and conditions of his licence; and

(*b*) otherwise than on authorized or licensed premises.

Supply by unauthorized person

12. No person who is not an authorized or licensed person shall supply to or procure for or offer to supply to or procure for any person including himself or advertise for sale a Part III drug or Part III preparation.

Supply and administration

13.—(1) Subject to subregulation (2), no authorized or licensed person shall supply to or procure for or offer to supply to or procure for any person a Part III drug or Part III preparation otherwise than in accordance with this Part and, in the case of a licensed person, otherwise than in accordance with the terms and conditions of his licence.

(2) The administration of a Part III drug or Part III preparation by or under the direct personal supervision of and in the presence of a medical practitioner or by or under the direct personal supervision of and in the presence of a dental surgeon or by a midwife in accordance with regulation 19 shall not be treated, for the purposes of subregulation (1), as the supply to any person of a Part III drug or Part III preparation.

Possession

14. No person who is not an authorized or licensed person shall possess a Part III drug or Part III preparation.

Conditions on authorized possession

15. No authorized or licensed person shall possess a Part III drug or Part III preparation otherwise than in accordance with this Part and, in the case of a licensed person, in accordance with the terms and conditions of his licence.

Treatment

16.—(1) Subject to subregulation (2), a person to whom a Part III drug or Part III preparation is lawfully supplied—

(*a*) by a medical practitioner or a veterinary surgeon; or

(*b*) on a prescription lawfully given by a medical practitioner, a dental surgeon or a veterinary surgeon,

shall be treated, for the purposes of this Part, as a person authorized to be in possession of that Part III drug or Part III preparation.

(2) A person who is supplied by a medical practitioner or on a prescription lawfully given by a medical practitioner with a Part III drug or Part III preparation shall not be treated, for the purposes of this Part, as a person authorized to be in possession of that Part III drug or Part III preparation if, at the time he is so supplied, he is also being supplied with a Part III drug or Part III preparation by or on a prescription given by another medical practitioner in the course of treatment and did not disclose that fact to the first-mentioned medical practitioner.

Persons authorized to administer treatment

17.—(1) Subject to these Regulations, any person who is—

(*a*) a medical practitioner;

(*b*) a dental surgeon;

(*c*) a veterinary surgeon;

(*d*) a pharmacist—

(i) employed by an authorized seller of poisons;

(ii) employed in a hospital, clinic, dispensary or like institution administered by the Government or by a local authority or in any other hospital, clinic, dispensary or like institution approved by the Minister; or

(iii) employed in any medical store of the Government;

(*e*) a qualified nurse in charge of a ward, theatre or out-patients department in any hospital referred to in paragraph (*d*) (ii);

(*f*) a person in charge of a laboratory used for the purposes of research or instruction and attached to—

(i) a university, university college or other educational institution approved by the Minister; or

(ii) any hospital referred to in paragraph (*d*) (ii);

(*g*) an analyst employed by the Government; or

(*h*) an inspector appointed under the Act or under the Pharmacy and Poison Act; Cap. 35:01

is authorized in that capacity and so far as is necessary for the practice or exercise of his profession, function or employment to acquire, administer, possess and supply Part III drugs and Part III preparations.

(2) Nothing in subregulation (1) contained shall authorize—

(*a*) the supply by a dental surgeon of a Part III drug or Part III preparation which is not administered by him or under his direct supervision and in his presence to persons receiving treatment from him; or

(*b*) any qualified nurse in charge of a ward, theatre or out-patients department in a hospital—

(i) to procure a Part III drug or Part III preparation otherwise than from a person employed or engaged in dispensing medicines at that hospital and except upon a written order signed by her;

(ii) to supply a Part III drug or Part III preparation otherwise than in accordance with the directions of a medical practitioner in charge of any patient in that ward, theatre or, as the case may be, out-patients department.

(3) The matron of any hospital referred to in subregulation (1) (*d*) (ii) in which no pharmacist is employed or engaged in dispensing medicines is authorized in her capacity as matron and so far as is necessary for the purposes of that hospital and the exercise of her duties to procure Part III drugs and Part III preparations on the order in writing of a medical practitioner employed or engaged in that hospital and to be in possession of and to supply Part III drugs and Part III preparations so procured.

(4) Every person authorized in terms of this section to acquire, administer, possess or supply a Part III drug or Part III preparation shall, unless the exigencies of the practice or exercise of his profession, function or employment otherwise require, keep every Part III drug and Part III preparation in his custody in a locked receptacle which can only be opened by him or another authorized person.

(5) An order in writing signed by a qualified nurse to which subregulation (2) (*b*) (i) relates shall be marked, in such a way as to show that it has been fulfilled, by the person employed or engaged in dispensing medicines who fulfils that order and be kept in the dispensary, and a copy or note of the order shall be kept by the qualified nurse in charge of the ward, theatre or out-patients department of the hospital for use in which that Part III drug or Part III preparation was procured.

Authority of authorized seller

18.—(1) Any person who is an authorized seller of poisons is authorized—

(*a*) in the ordinary course of his retail business to manufacture at his registered premises—

(i) any extract or tincture of Indian hemp; and

(ii) any Part III preparation;

(*b*) to carry on, subject to these Regulations, at his registered premises the business of retailing, dispensing and compounding Part III drugs and Part III preparations.

(2) Nothing in subregulation (1) contained shall be construed as authorizing any authorized seller of poisons to possess a Part III drug or Part III preparation otherwise than on his registered premises.

(3) Every authorized seller of poisons authorized in terms of subregulation (1) to manufacture and to carry on the business of retailing, dispensing and compounding Part III drugs and Part III preparations shall unless the exigencies of the exercise of his profession, function or employment otherwise require keep every Part III drug and Part III preparation in his possession in a locked receptacle which can only be opened by him or another authorized person.

Midwife's use of drugs

19.—(1) In this regulation—

"drug" means tincture of opium and any preparation containing pethidine.

(2) An application for a midwife's supply order shall be made in writing to the Secretary for Health.

(3) A midwife's supply order shall be valid until the thirty-first day of December in the year it is issued.

(4) Subject to subregulation (5), a midwife is authorized, so far as is necessary for the practice of her profession or employment, to procure, be in possession of and administer drugs.

(5) The following provisions shall apply to the supply to a midwife and the possession and administration by a midwife of drugs—

(*a*) on each occasion a midwife procures drugs she shall, in addition to a signed order referred to in regulation 24, produce her midwife's supply order;

(*b*) the supplier shall note on the midwife's supply order the date on which the drugs are supplied, the name and quantity of the drugs supplied, and his name and registered address;

(*c*) on each occasion a midwife procures a drug, she shall enter in a drugs book to be kept by her and used solely for the purposes of this section the name and amount of the drug and the form in which it is procured and the date and the name and address of the supplier;

(*d*) a midwife shall not in any one year procure a quantity of a drug greater than the total amount of that drug specified in her midwife's supply order;

(*e*) a midwife shall, when she administers a drug, as soon as practicable thereafter, enter in her drugs book the name of the drug administered, the name and address of the woman to whom it was administered, the amount administered and the form in which it was administered;

(*f*) a midwife shall, except when the exigencies of the practice or exercise of her profession or employment as a midwife otherwise require, keep every drug in her custody in a locked receptacle which can only be opened by her.

Use of drugs by an aircraft operator

20.—(1) In this regulation—

"aircraft" means any aircraft in which passengers are carried for hire or reward;

"operator" means any person who is the owner or operator of any aircraft;

"passengers carried for hire or reward" has the meaning assigned to it in regulation 2 of the Air Navigation Regulations.

Cap. 70:01, p. 14

(2) Subject to subregulation (3), an operator is authorized to procure and possess Part III drugs and Part III preparations for the purposes of regulation 34 of the Air Navigation Regulations.

(3) The following provisions shall apply to the supply to and the possession by an operator of Part III drugs and Part III preparations—

(*a*) an order referred to in regulation 24 for the supply of Part III drugs and Part III preparations shall be made in duplicate on the official notepaper of the operator and shall be signed and dated by the operator or his authorized representative;

(*b*) it shall be stated in the order whether the order is for the initial supply of Part III drugs or Part III preparations or for the replacement of any Part III drugs or Part III preparations previously supplied in terms of this regulation, and in the latter case, the reasons for the replacement;

(*c*) the order shall be countersigned by the Director of Civil Aviation who shall send the duplicate to the Secretary for Health;

(*d*) Part III drugs and Part III preparations shall be in single dose ampoule-syringe form and shall be kept in a sealed container, adequately labelled to indicate the method of use and the quantity and nature of the contents, in the first-aid kit of the aircraft;

(*e*) the quantity of Part III drugs and Part III preparations carried in any aircraft shall not amount to more than the equivalent of one-quarter grain of morphine for any person who may lawfully be on board that aircraft at any one time;

(*f*) a responsible official appointed by the operator shall—

(i) satisfy himself at intervals not exceeding one month that the Part III drugs and Part III preparations carried in each aircraft have not been removed from the first-aid kit for any unauthorized purpose;

(ii) inspect and check at intervals not exceeding six months the Part III drugs and Part III preparations carried in each aircraft;

(*g*) the operator shall keep a permanent record at his principal place of business in Malaŵi of the receipt, distribution and disposal of all Part III drugs and Part III preparations obtained in terms of this section;

(*h*) Part III drugs and Part III preparations procured by an operator in terms of this section shall not be transferred, on the change of ownership of any of his aircraft, to another person without the permission of the Secretary for Health.

(4) Any person who ceases to be an operator shall—

(*a*) notify the Secretary for Health of that fact; and

(*b*) dispose of the Part III drugs and Part III preparations in his possession in accordance with the directions of the Secretary for Health.

Licensing by the Minister

21.—(1) The Minister may at his discretion licence—

(*a*) any officer of the Government in charge of a station at

which no Government medical officer is stationed or from which a Government medical officer is for the time being absent;

(*b*) any officer of the Government who undertakes a journey on duty during which he will be more than twenty-four hours distance from any Government station;

(*c*) any person in charge of a mission station of a missionary society;

(*d*) a police officer in charge of a police station,

to procure, possess and administer Part III drugs and Part III preparations, subject to subregulation (2) and such terms and conditions as he may fix.

(2) The following provisions shall apply to the supply to and the possession and administration by a person licensed in terms of subregulation (1) of Part III drugs and Part III preparations—

(*a*) on each occasion he procures a Part III drug or Part III preparation, he shall, in addition to a signed order referred to in regulation 24, produce to the supplier his licence;

(*b*) on each occasion he procures a Part III drug or Part III preparation, he shall enter in a drugs book to be kept by him and used solely for the purposes of this regulation the name and the amount of the Part III drug or Part III preparation and the form in which it is procured and the date and the name and address of the supplier;

(*c*) he shall, when he administers a Part III drug or Part III preparation, as soon as practicable thereafter, enter in his drugs book the name of the Part III drug or Part III preparation administered, the name and address of the person to whom it was administered, the amount administered and the form in which it was administered;

(*d*) he shall, except when a Part III drug or Part III preparation is to be administered, keep every Part III drug or Part III preparation in his custody in a locked receptacle which can only be opened by him or another authorized person;

(*e*) he shall not administer a Part III drug or Part III preparation procured in terms of this regulation otherwise than for strictly medical, surgical or dental purposes.

Form of prescription

22.—(1) In this regulation—

"recognized preparation" means a preparation contained in the British Pharmacopoeia or the British Pharmaceutical Codex.

(2) The following provisions shall apply to prescriptions prescribing Part III drugs and Part III preparations—

(*a*) a prescription shall be in writing and shall be signed and dated by the person giving it;

(*b*) a prescription shall specify the address of the person giving it;

(*c*) a prescription shall specify the name and address of the person for whose treatment it is given or, if it is given by a veterinary surgeon, the name and address of the person to whom the Part III drug or Part III preparation is to be delivered;

(*d*) a prescription shall have endorsed thereon, if given by a dental surgeon, the words "for dental treatment only" and, if given by a veterinary surgeon, "for animal treatment only";

(*e*) if one or more recognized preparations are prescribed, the prescription shall specify the total amount of the preparation or, as the case may be, of each preparation, or, in the case of a preparation packed in ampoules, specify the total amount of the preparation or, as the case may be, of each preparation which it is intended to be administered;

(*f*) if the preparation prescribed is not a recognized preparation, the prescription shall specify the total amount of the Part III drug prescribed or, if the preparation is packed in ampoules, either the total amount to be supplied or the total amount intended to be administered.

(3) For the purposes of this Part, a prescription to be dispensed in a hospital and given for the treatment of a patient in that hospital which is written on the patient's bed-card or case-sheet and signed by the person giving it shall be treated as a prescription which complies with subregulation (2).

Preconditions to supplying Part III drug or preparation

23.—(1) No person shall supply a Part III drug or Part III preparation on a prescription unless—

(*a*) the prescription complies with this Part; and

(*b*) he is acquainted with the signature of the person by whom the prescription purports to be given and has no reason to suppose that it is not genuine; or

(*c*) he has taken reasonably sufficient steps to satisfy himself that it is genuine.

(2) Save as is provided in subregulation (3), no prescription shall authorize the supply of a Part III drug or Part III preparation more than once.

(3) If a prescription prescribing a Part III drug or Part III preparation states that it may, subject to the lapse of an interval or intervals specified in the prescription, be dispensed a second,

third or fourth time, the Part III drug or Part III preparation thereby prescribed may be supplied a second, third or, as the case may be, fourth time after the specified interval or intervals.

(4) A person dispensing a prescription prescribing a Part III drug or Part III preparation shall—

(*a*) at the time he dispenses it, mark thereon the date on which it is dispensed or, if it is a prescription which may be dispensed a second, third or fourth time, the date of each occasion on which it is dispensed; and

(*b*) retain and keep the prescription on the premises where it is dispensed and so as to be at all times available for inspection.

(5) No person shall make or supply a copy of any prescription prescribing a Part III drug or Part III preparation, other than a copy of a prescription for submission to the Government or a medical aid society for the purpose of receiving payment for Part III drugs or Part III preparations supplied thereon, unless he is requested to do so by the Secretary for Health, an inspector, a superior police officer or any other police officer authorized in writing by a magistrate or by a superior police officer.

(6) A copy of a prescription made in terms of subregulation (5) shall be clearly and indelibly marked "Copy only. Not to be dispensed".

(7) Notwithstanding anything contained in these Regulations, where an authorized seller of poisons is reasonably satisfied that a person ordering any Part III drug or Part III preparation is a medical practitioner who is by reason of some emergency unable to furnish a prescription immediately, he may, notwithstanding that no prescription has been given, if the said person undertakes to furnish him within the seven days next following with a prescription, deliver the Part III drug or Part III preparation ordered in accordance with the directions of the said person, so, however, that, notwithstanding anything in any such directions, the supply shall not be repeated unless such a prescription has been given.

If any person by whom any such undertaking has been given fails to deliver to the seller a prescription in accordance with the undertaking, or if any person for the purpose of obtaining delivery of any Part III drug or Part III preparation under this subregulation makes a statement which is to his knowledge false, he shall be deemed to have contravened this regulation.

Procurement by an authorized or licensed person

24. An authorized or licensed person shall not procure a Part III drug or Part III preparation unless he produces to the supplier an order in writing signed and dated by him in which is stated—

(*a*) the name and address of the person by whom the Part III drug or Part III preparation is required or the institution for which it is ordered;

(*b*) the name and quantity of the Part III drug or Part III preparation required;

(*c*) the use to which the Part III drug or Part III preparation is to be put; and

(*d*) the name, address and profession or qualification of the person signing the order.

Report of necessity of prescribing a Part III drug

25. Any medical practitioner who considers it necessary for the purpose of the treatment of any patient to prescribe for him a Part III drug or a Part III preparation for a period greater than four months shall report the case to the Secretary for Health.

Addiction

26.—(1) Save as otherwise provided in this regulation, no medical practitioner shall supply or administer to or prescribe for any person a Part III drug or Part III preparation merely for the purposes of addiction.

(2) A medical practitioner who considers it necessary for the purpose of the treatment or care of a patient who is a drug addict that he should receive rational supplies of a Part III drug or Part III preparation shall report the case to the Secretary for Health.

(3) Where a case is reported to the Secretary for Health in terms of subregulation (2), he may at his discretion permit, in writing, a medical practitioner to supply and additionally or alternatively administer and additionally or alternatively prescribe such quantities of the Part III drug or Part III preparation to which the patient is addicted as the Secretary for Health may in the circumstances consider necessary.

(4) No medical practitioner shall supply or prescribe for the treatment of a drug addict a Part III drug or Part III preparation in excess of the quantity permitted by the Secretary for Health.

(5) No person authorized or licensed to have in his possession a Part III drug or Part III preparation who is not a person referred to in subregulation 16 (1) shall use or prescribe that Part III drug or Part III preparation for the purposes of self-administration.

Marking of package or bottle

27.—(1) Subject to these Regulations, no person shall—

(*a*) supply a Part III drug unless the package or bottle in which it is contained is plainly marked with the amount of the Part III drug contained therein; or

(*b*) supply a Part III preparation unless the package or bottle in which it is contained is plainly marked—

(i) in the case of a powder, solution or ointment, with the total amount of the power, solution or ointment in the package or bottle and the percentage of the Part III drug contained in the powder, solution or ointment;

(ii) in the case of tablets or other similar articles, with the amount of the Part III drug in each article and the number of articles in the package or bottle.

(2) Nothing in this regulation contained shall apply to a Part III preparation lawfully supplied in accordance with this Part by or on a prescription lawfully given by a medical practitioner, a dental surgeon or a veterinary surgeon.

Register of quantity dispersed

28.—(1) Every person authorized or licensed to supply Part III drugs or Part III preparations shall—

(*a*) keep, in accordance with this regulation and regulation 42, a register and enter therein in chronological sequence in the form specified in the Third Schedule true particulars with respect to—

(i) every quantity of a Part III drug or Part III preparation acquired by him;

(ii) every quantity of a Part III drug or Part III preparation supplied by him;

(iii) every quantity of a Part III drug or Part III preparation used by him;

(*b*) use a separate page in the register for each Part III drug and Part III preparation specified in the Fourth Schedule.

(2) For the purposes of subregulation (1) (*b*)—

(*a*) any ester, ether or derivative specified in item (41) of the Fourth Schedule shall be treated as including its salts and any preparation containing any such ester, ether or derivative or its salts;

(*b*) any substance specified in items (46) to (72) of the Fourth Schedule shall be treated as including its salts and any preparation, admixture, extract or other substance containing any proportion of the substance or its salts.

(3) Tablets, and other similar articles shall be recorded in the register by number and not by number of packages, and liquids, extracts and powders shall be recorded in volume or weight, according to their nature.

(4) Notwithstanding subregulation (1) an authorized seller of poisons may transfer to his dispensary small quantities of Part III drugs and Part III preparations for the dispensing of prescribed medicines containing less than the amount of Part III drugs or Part III preparations as is sufficient to make the medicine a drug to which Part III of the Act applies, but only if the transfer and the date of the transfer are recorded in his register and a copy of each original prescription and a record of each repeat prescription is made in the prescription book.

Diacetylmorphine

29. No licence shall be issued to any person for the manufacture of diacetylmorphine or the import or export of diacetylmorphine or its preparations.

PART III

Partially Controlled Drugs

Possession and manufacture

30. No person who is not a licensed person shall—

(*a*) possess a partially controlled drug in a quantity exceeding one pound avoirdupois; or

(*b*) manufacture or carry on any process in the manufacture of a partially controlled drug.

Restrictions

31.—(1) A wholesale dealer shall not possess, sell, supply or distribute a partially controlled drug unless he is licensed and otherwise than in accordance with this Part and the terms and conditions of his licence.

(2) Nothing in subregulation (1) contained shall apply to any wholesale dealer who is an authorized seller of poisons.

Marking and quantity

32. No wholesale dealer in or manufacturer of partially controlled drugs shall—

(*a*) supply a partially controlled drug unless the package or bottle in which it is contained is plainly marked with the amount of the partially controlled drug contained therein;

(*b*) supply a partially controlled drug in a quantity exceeding one pound avoirdupois unless the person to whom it is supplied is a licensed person.

Register of quantity and purchase

33. Every wholesale dealer in and every manufacturer of partially controlled drugs shall—

(*a*) keep, in accordance with this regulation and regulation 42, a register and enter therein in chronological sequence in the

form specified in the Third Schedule true particulars with respect to—

(i) every quantity of a partially controlled drug manufactured or, as the case may be, acquired by him;

(ii) every quantity of a partially controlled drug supplied by him;

(iii) every quantity of a partially controlled drug used by him;

(*b*) use a separate part of his register for entries relating to each partially controlled drug.

Exceptions

34. It is hereby declared for the avoidance of doubt that nothing contained in regulations 31 to 33 inclusive shall apply—

(*a*) to the sale, supply or distribution of a partially controlled drug by any person who is not a wholesale dealer in or a manufacturer of a partially controlled drug; or

(*b*) to the carrying on at his registered premises by an authorized seller of poisons who is not a wholesale dealer of the business of retailing, dispensing or compounding a partially controlled drug.

PART IV

General

Possession

35. A person shall be treated as in possession of a drug for the purposes of these Regulations if that drug is in his actual custody or is held by some other person subject to his control or for him or on his behalf.

Interpretation

36. Save as is otherwise expressly provided in these Regulations and, in the case of a licensed person, subject to the terms and conditions of his licence—

(*a*) a person authorized or licensed to manufacture a drug shall be treated, for the purposes of these Regulations, as authorized or, as the case may be, licensed to supply that drug;

(*b*) a person authorized or licensed to supply a Part I drug, Part III drug or Part III preparation shall be treated, for the purposes of these Regulations, as authorized or, as the case may be, licensed to be in possession of, to procure, to offer to supply or to procure and to advertise for sale that Part I drug, Part III drug or Part III preparation;

(*c*) a wholesale dealer licensed to supply a partially controlled drug shall be treated, for the purposes of these Regulations, as licensed to be in possession of more than one pound avoirdupois of that drug.

Revocation

37. The Minister may revoke a licence or permit at any time.

Withdrawal of authority

38.—(1) If any authorized person is—

(*a*) convicted of an offence against the Act or these Regulations;

Cap. 34:02

(*b*) adjudged or certified or otherwise lawfully proved to be mentally disordered or defective under the Mental Treatment Act;

Cap. 34:02

(*c*) undergoing treatment as a temporary or voluntary patient in terms of the Mental Treatment Act; or

(*d*) proved to the satisfaction of the Minister to have become a drug addict,

the Minister may, if he is of the opinion that that person cannot properly be allowed to remain an authorized person, by notice published in the *Gazette* withdraw the authority of that person.

(2) If a person whose authority is withdrawn by the Minister in terms of subregulation (1) is a medical practitioner, a dental surgeon or a veterinary surgeon, the Minister may by notice published in the *Gazette* direct that it shall not be lawful for that person to give prescriptions prescribing a drug.

(3) The Minister may at any time—

(*a*) restore any authority withdrawn in terms of subregulation (1);

(*b*) suspend the withdrawal of any such authority; or

(*c*) cancel the suspension of the withdrawal of any such authority.

(4) If the withdrawal of the authority of a person is suspended by the Minister as in subregulation (3) (*b*) is provided, that person shall continue to be an authorized person as if the authority had not been withdrawn.

Delivery to an agent of the recipient

39.—(1) If a Part I drug, Part III drug or Part III preparation is to be lawfully supplied to a person (hereinafter in this regulation called the recipient) otherwise than by or on a prescription given by a medical practitioner, a dental surgeon or a veterinary surgeon, the person supplying that Part I drug, Part

III drug or Part III preparation (hereinafter in this section called the supplier) shall not deliver it to any person who purports to be sent by or on behalf of the recipient unless—

(*a*) that person is authorized or licensed to be in possession of that Part I drug, Part III drug or Part III preparation; or

(*b*) that person produces to the supplier a statement in writing signed by the recipient stating that he is empowered by the recipient to receive that Part I drug, Part III drug or Part III preparation on behalf of the recipient and the supplier is reasonably satisfied that the document is a genuine document.

(2) A person to whom a Part I drug, Part III drug or Part III preparation is lawfully delivered as in subregulation (1) is provided shall be treated, for the purposes of these Regulations, as authorized to be in possession of that Part I drug, Part III drug or Part III preparation for such period as in the circumstances is reasonably sufficient to enable delivery to be made to the recipient.

Export from another country

40.—(1) If a Part I drug, Part III drug or Part III preparation permitted under the law of any country outside Malaŵi to be exported therefrom to any destination outside Malaŵi is brought into Malaŵi no person shall cause or procure that Part I drug, Part III drug or Part III preparation to be diverted to any other destination unless he has been issued with a permit by the Minister and otherwise than in accordance with the terms and conditions of that permit.

(2) For the purposes of this regulation, the destination to which a Part I drug, Part III drug or Part III preparation is permitted to be exported shall be the destination stated in the permission for the export thereof from the country of export.

Exemption

41. No provision of these Regulations relating to the possession of any drug shall apply to a common carrier, his agent or servant who is in possession of a drug in the ordinary course of his business or, as the case may be, the business of his principal or employer.

Method of keeping a register

42. Any person required to keep a register in terms of regulation 9,28 or 33 shall—

(*a*) specify the type of drug to which the entries on any page of his register relate at the head of that page;

(*b*) make every entry required to be made in terms of regulation 9, 28 or 33, as the case may be, in his register on the day on which the drug is received, or as the case may be, on which the transaction with respect to the supply of the drug by

him takes place or, if that is not reasonably practicable, on the day next following that day;

(*c*) not make any cancellation, obliteration or alteration of any entry;

(*d*) make any correction to an entry only by way of a marginal note or footnote which shall specify the date on which the correction is made;

(*e*) make all entries and corrections in ink or otherwise so as to be indelible;

(*f*) not use his register for any purpose other than the purposes of these Regulations;

(*g*) on the demand of the Secretary for Health or of any person empowered in writing by the Secretary for Health in that behalf or of an inspector—

(i) furnish such particulars as may be required with respect to the procuring or supplying by him of any drug or with respect to any stock of drugs in his possession;

(ii) for the purpose of confirming any such particulars, produce any stock of drugs in his possession; and

(iii) produce his register and such other books or documents in his possession relating to any dealings in drugs as may be required;

(*h*) keep a separate register in respect of each set of premises at which he carries on business;

(*i*) keep each register at the premises to which it relates and so as to be at all times available for inspection;

(*j*) save as in paragraph (*h*) is provided, not keep more than one register for each class of drug with respect to which he is required to keep a separate register or a separate part of a register unless the Secretary for Health has approved the keeping of a separate register for each department of the business carried on by him;

(*k*) if he is a wholesale dealer, submit to the Secretary for Health by the 7th of each month details of all entries made in his register during the preceding month.

Preservation of records

43.—(1) All registers, records, books, prescriptions, signed orders and other documents issued, made or kept in pursuance of these Regulations or for the purposes of these Regulations shall be preserved—

(*a*) in the case of a register, book or other like record, for a

period of two years from the date on which the last entry therein is made;

(*b*) in the case of any other document, for a period of two years from the date on which the document is issued or made.

(2) Every person required by the Act or by these Regulations to be in possession of any permit, licence, order or prescription shall be deemed to be without such permit, licence, order or prescription unless he produces or gives satisfactory proof of possessing it.

Form of application for a licence or permit

44. An application for a licence under section 4 or 11 of the Act or for a licence or permit under these Regulations shall be—

(*a*) made in a form from which shall be obtained from the Secretary for Health;

(*b*) accompanied, if the application is for a licence to export any drug from Malaŵi, by the original copy of the certificate of the country of importation officially approving the import of that drug;

(*c*) accompanied by the appropriate fee, if any, prescribed in the Fifth Schedule.

Import and export restrictions

45. In addition to such terms and conditions as may be fixed in his licence to import or export any drug, the importer, or, as the case may be, the exporter shall comply with the following provisions—

(*a*) he shall not import or export any drug by ordinary or registered letter post;

(*b*) he shall, if he is an exporter of a drug—

(i) which is to be exported in one package, place the duplicate licence to export that drug inside the outer wrapper of that package;

(ii) which is to be exported in more than one package—

(A) place the duplicate licence to export that drug inside the outer wrapper of one package;

(B) consecutively number on the outer wrapper all the packages in which the drug is contained; and

(C) indicate on each package the number of the package in which the duplicate licence is to be found;

(*c*) he shall advise the Secretary for Health within seven days of the import or export of any drug imported or exported by him.

Consignment of drugs

46.—(1) No person shall in the course of supplying a drug to a person in Malaŵi consign that drug by road or rail by a route which entails the carriage of that drug beyond the borders of Malaŵi unless he is in possession of a movement licence.

(2) The holder of a movement licence shall comply with regulation 45 (*b*) and (*c*), as if the drugs to which that movement licence relates were drugs to be exported by him.

Cessation of practice

47. Any authorized or licensed person in possession of drugs shall, before ceasing to practise or exercise his profession, function or employment at any place—

(*a*) if he is being succeeded by an authorized or licensed person—

(i) physically check with and hand over to his successor all drugs in his possession;

(ii) submit to the Secretary for Health a statement, signed by himself and by his successor, certifying that the said drugs have been physically checked and handed over in accordance with subparagraph (i); and

(iii) after handing over the drugs, rule off each page of the dangerous drugs register on which an entry has been made, and both he and his successor shall, when satisfied that it is a true record of the drugs on hand, sign each such page. If either person is not satisfied that it is a true record, he shall refuse to sign such page and shall immediately inform the Secretary for Health of the reasons for his refusal;

(*b*) if he is not being succeeded by an authorized or licensed person, inform the Secretary for Health of the arrangements he has made for the disposal of the drugs in his possession. If such arrangements have not been made or are not to the satisfaction of the Secretary for Health, the drugs shall be disposed of in such manner as the Secretary for Health shall order. Immediately after disposing of the drugs in accordance with the arrangements or order, as the case may be, previously made, such authorized or licensed person shall notify the Secretary for Health that he has done so and shall, at the same time forward the dangerous drugs register and the supporting prescriptions and written orders to the Secretary for Health who shall retain them for a period of two years from the latest date of entry.

reg. 2

FIRST SCHEDULE

MIDWIFE'S SUPPLY ORDER

I hereby certify that .....
of .....

is a fully trained practising midwife and is authorized in pursuance of regulation 19 (4) of the Dangerous Drugs Regulations to procure during the period of validity of this supply order and for the purpose of her profession, tincture of opium and pethidine preparations not exceeding the quantities stated below.

.....

.....

This supply order shall remain valid until the 31st December of the year in which it is issued, and shall be returned to me immediately on becoming invalid.

Place ..... Signed .....

Date of Issue ..... Secretary for Health

MIDWIFE'S SUPPLY ORDER
(TO BE PRINTED ON REVERSE)

(1) This supply order shall be produced to the person from whom the drugs are procured.

(2) The supplier shall, at the time the transaction takes place, note under the appropriate heading in this order the date on which the drugs are supplied, the name and quantity of the drugs supplied, and his name and registered address.

PETHIDINE PREPARATIONS

Date Supplied	Details of preparation (strength of tablets, ampoules, etc.)	Quantity Supplied	Total Supplied to date	Name and Address of Supplier

TINCTURE OF OPIUM

Date Supplied	Quantity Supplied	Total Supplied to date	Name and Address of Supplier

SECOND SCHEDULE reg. 2

PREPARATIONS WHICH ARE NOT PART III PREPARATIONS

Ipecacuanha Pills with Squill B.P.C. 1934.
Pills of Mercury with Chalk and Opium B.P.C. 1949.

Aromatic Powder of Chalk with Opium B.P. 1953.
Powder of Ipecacuanha and Opium B.P. 1953.
Suppository of Lead with Opium B.P.C. 1949.
Eye-drops of Cocaine and Mercuric Chloride, Oily B.P.C. 1954.
Mixtures of Powder of Ipecacuanha and Opium B.P. 1953 with any of the following: —
Mercury with Chalk B.P. 1914 and B.P. 1948.
Acetylsalicylic Acid,
Phenacetin,
Quinine and its salts,
Sodium Bicarbonate.

NOTE.—Only those provisions of the Act and regulations which relate to the import or export of drugs and the movement of drugs by road or rail beyond the borders of Malaŵi apply to the preparations specified in this Schedule.

reg. 9, 28 and 33

THIRD SCHEDULE

FORM OF REGISTER

Name of drug or preparation .....

Date on which acquired or supplied	Name and address of person from whom acquired or to whom supplied	Reference	Amount acquired	Amount supplied	Amount on hand

reg. 2 and 28

FOURTH SCHEDULE

Part III drugs and Part III preparations with respect to which entries shall be made separately:

(1) medicinal opium;

(2) any extract or tincture of Indian hemp, and any preparation, not being a preparation capable of external use only, made from extract or tincture of Indian hemp;

(3) morphine and its salts, and any solution or dilution of morphine or its salts in an inert substance whether liquid or solid containing any proportion of morphine, and any preparation, admixture, extract or other substance (not being such a solution or dilution as aforesaid) containing not less than one-fifth of one per centum of morphine (calculated in respect of anhydrous morphine);

(4) diacetylmorphine (also known as diamorphine or heroin) and its salts, and any preparation, admixture, extract or other substance containing any proportion of diacetylmorphine;

(5) cocaine (including synthetic cocaine) and ecgonine and their respective salts, and any solution or dilution of cocaine or its salts in an inert substance, whether liquid or solid, containing any proportion of cocaine, and any preparation, admixture, extract or other substance (not being such a solution or dilution as aforesaid) containing not less than one-tenth of one per centum of cocaine or any proportion of ecgonine;

(6) dihydrohydroxycodeinone (also known as eucodal) and its salts, and any preparation, admixture, extract or other substance containing any proportion of dihydrohydroxycodeinone or its salts;

(7) dihydrocodeinone (also known as dicodide) and its salts, and any preparation, admixture, extract or other substance containing any proportion of dihydrocodeinone or its salts;

(8) dihydromorphinone (also known as dilaudide) and its salts, and any preparation, admixture, extract or other substance containing any proportion of dihydromorphinone or its salts;

(9) 6-methyldihydromorphine and its salts, and any preparation, admixture, extract or other substance containing any proportion of 6-methyldihydromorphine or its salts;

(10) acetyldihydrocodeinone and its salts, and any preparation, admixture, extract or other substance containing any proportion of acetyldihydrocodeinone or its salts;

(11) dihydromorphine and its salts, and any preparation, admixture, extract or other substance containing any proportion of dihydromorphine or its salts;

(12) morphine-N-oxide (also known as genomorphine) and any preparation, admixture, extract or other substance containing any proportion of morphine-N-oxide;

(13) thebaine and its salts, and any preparation, admixture, extract or other substance containing any proportion of thebaine or its salts;

(14) benzylmorphine and its salts, and any preparation, admixture, extract or other substance containing any proportion of benzylmorphine or its salts;

(15) dihydrodesoxymorphine (also known as desormorphine) and its salts, and any preparation, admixture, extract or other substance containing any proportion of dihydrodesoxymorphine or its salts;

(16) pethidine and its salts, and any preparation, admixture, extract or other substance containing any proportion of pethidine or its salts;

(17) the isopropyl and other esters of 1-methyl-4-phenylpiperidine-4-carboxylic acid (other than pethidine) and their salts, and any preparation, admixture, extract or other substance containing any proportion of the isopropyl or other esters of 1-methyl-4phenylpiperidine-4-carboxylic acid or their salts;

(18) methyldihydromorphinone (also known as metopon) and its salts, and any preparation, admixture, extract or other substance containing any proportion of methyldihydromorphinone or its salts;

(19) alphaprodine and its salts, and any preparation, admixture, extract or other substance containing any proportion of alphaprodine or its salts;

(20) methadone (also known as amidone) and its salts, and any preparation, admixture, extract or other substance containing any proportion of methadone or its salts;

(21) betaprodine and its salts, and any preparation, admixture, extract or other substance containing any proportion of betaprodine or its salts;

(22) hydroxypethidine and its salts, and any preparation, admixture, extract or other substance containing any proportion of hydroxypethidine or its salts;

(23) isomethadone (also known as isoamidone) and its salts, and any preparation, admixture, extract or other substance containing any proportion of isomethadone or its salts;

(24) ketobemidone and its salts, and any preparation, admixture, extract or other substance containing any proportion of ketobemidone or its salts;

(25) methadol and its salts, and any preparation, admixture, extract or other substance containing any proportion of methadol or its salts;

(26) α-methadol and its salts, and any preparation, admixture, extract or other substance containing any proportion of α-methadol or its salts;

(27) *β*-methadol and its salts, and any preparation, admixture, extract or other substance containing any proportion of *β*-methadol or its salts;

(28) methadyl acetate and its salts, and any preparation, admixture, extract or other substance containing any proportion of methadyl acetate or its salts;

(29) *α*-acerylmethadol and its salts, and any preparation, admixture, extract or other substance containing any proportion of α-acetylmethadol or its salts;

(30) *β*-acetylmethadol and its salts, and any preparation, admixture, extract or other substance containing any proportion of *β*-acetylmethadol or its salts;

(31) phenadoxone and its salts, and any preparation, admixture, extract or other substance containing any proportion of phenadoxone or its salts;

(32) betameprodine and its salts, and any preparation, admixture, extract or other substance containing any proportion of betameprodine or its salts;

(33) methorphinan other than dextrorphan (that is to say levorphan and racemorphan) and its salts, and any preparation, admixture, extract or other substance containing any proportion of methorphinan or its salts;

(34) 3-methoxy-N-methylmorphinan other than dextromethorphan (that is to say levomethorphan and racemethorphan) and its salts, and any preparation, admixture, extract or other substance containing any proportion of 3-methoxy-N-methylmorphinan or its salts;

(35) methyldesomorphine (6-methyl- Δ^{6}-desoxymorphine) and its salts, and any preparation, admixture, extract or other substance containing any proportion of methyldesomorphine or its salts;

(36) 3-dimethylamino-1, 1-di-(2′-thienyl)-1-butene and its salts, and any preparation, admixture, extract, or other substance containing any proportion of 3-dimethylamino-1, 1-di-(2′-thienyl)-1 butene or its salts;

(37) 3-ethylmethylamino-1, 1-di-(2′-thienyl)-1-butene and its salts, and any preparation, admixture, extract or other substance containing any proportion of 3-ethylmethylamino-1, 1-di-(2′-thienyl)-1-butene or its salts;

(38) 3-diethylamino-1, 1-di-(2′-thienyl)-1-butene (diethylthiambutene) and its salts, and any preparation, admixture, extract or other substance containing any proportion of 3-diethylamino-1, 1-di-(2′-thienyl)-1-butene or its salts;

(39) 4, 4-diphenyl -6- dimethylamino-3- hexanone and its salts, and any preparation, admixture, extract or other substance containing any proportion of 4, 4-diphenyl -6- dimethylamino -3- hexanone or its salts;

(40) 4, 4-diphenyl -6- piperidino -3- heptanone and its salts, and any preparation, admixture, extract or other substance containing any proportion of 4, 4-diphenyl -6- piperidino -3- heptanone or its salts;

(41) the esters of morphine (other than diacetylmorphine), ecgo-nine, dihydrohydroxycodeinone, dihydrocodeinone, dihydromorphinone, acetyldihydrocodeinone and dihydromorphine and their respective salts, the ethers of morphine (other than benzylmorphine, methylmorphine, ethylmorphine and morpholinylethylmorphine) and their salts, and the morphine-N-oxide derivatives and any other pentavalent nitrogen morphine derivatives, and any preparation, admixture, extract or other substance containing any proportion of any drug included in this paragraph.

(42) 1 : 3-Dimethyl-4-phenyl-4-propionyloxyhexamethyl-eneimine, its salts and any preparation, admixture, extract or other substance containing any proportion of 1 : 3-dimethyl-4-phenyl-4-propionyloxy-hexamethyleneimine.

(43) 3-Hydroxy-N-phenethylmorphinan, its salts and any preparation, admixture, extract or other substance containing any proportion of 3-hydroxy-N-phenethylmorphinan.

(44) 4-Morpholino-2: 2-diphenyl ethyl butyrate, its salts and any preparation, admixture, extract or other substance containing any proportion of 4-morpholino-2: 2-diphenyl ethyl butyrate.

(45) 4-Dimethylamino-1: 2-diphenyl-3-methyl-2-propionyloxybutane, its salts and any preparation, admixture, extract or other substance containing any proportion of 4-dimethylamino-1: 2-diphenyl-3-methyl-2-propionyloxybutane.

(46) Anileridine (1- [2- (p-aminophenyl)-ethyl]-4-phenylpiperidine-4-carboxylic acid ethyl ester).

(47) Etoxeridine (1- [2- (2-hydroxyethoxy)-ethyl]-4-phenylpiperidine-4-carboxylic acid ethyl ester).

(48) Dextromoramide, levomoramide and racemoramide [1- (3 methyl-4-morpholino-2: 2 diphenylbutyryl)-pyrrolidine].

(49) Morpheridine [1- (2-morpholinoethyl)-4-phenylpiperidine-4 carboxylic acid ethyl ester].

(50) Myrophine (myristyl ester of benzylmorphine).

(51) Oxymorphone (dihydro-14-hydroxymorphinone).

(52) Trimeperidine (1: 2: 5-trimethyl-4-phenyl-4-propionyloxy piperidine).

(53) Benzethidine [ethyl 1 (2-benzoyloxyethyl)-4-phenylpiperidine-4-carboxylate].

(54) Dimenoxadole (2-dimethylaminoethyl-2-ethoxy-2: 2 diphenylacetate).

(55) Furethidine [ethyl 1 (2-tetrahydrofurfuryloxyethyl)-4-phenylpiperidine-4-carboxylate].

(56) Norcodeine.

(57) Normorphine.

(58) Phenazocine [2′-hydroxy-5: 9 dimethyl-2- (2-phenylethyl)-6: 7-benzomorphan].

(59) Allyprodine (3 allyl-1 methyl-4 phenyl-4 propionoxypiperidine).

(60) Clonitazene (2-p-chlorobenzyl-1-1- (2-diethylaminoethyl)-5-nitrobenzimidazole).

(61) Diphenoxylate [ethyl 1- (3-cyano-3: 3 diphenylpropyl)-4-phenylpiperidine-4-carboxylate].

(62) Etonitazine [1- (2-diethylaminoethyl)-2-p-ethoxybenzyl-5-nitrobenzimidazole],

(63) Hydromorphinol (14-hydroxydihydromorphine).

(64) Levophenacylmorphan [(-)-3 hydroxy-N-phenacylmorphinan].

(65) Metazocine (2′-hydroxy-2: 5: 9-trimethyl-6:7-benzomorphan).

(66) Diampromide (N-[2- N-methylphenethylamino) propyl] propionanilide).

(67) Norlevorphanol [(-)-3 hydroxymorphinan].

(68) Phenampromide [N- (1-methyl-2-piperidincethyl) propionanilide].

(69) Phenoperidine (ethyl 1 [3-hydroxy-3-phenylpropyl)-4-phenylpiperidine-4-carboxylate].

(70) Piminodine [ethyl 1- (3-anilinopropyl)-4-phenylpiperidine-4-carboxylate].

(71) Nicocodine.

(72) Noracymethadol (oe-dl-3 acetoxy-6 methylamino-4:4 diphenylheptane).

NOTE.—No entries are required to be made with respect to any preparation containing a drug specified in this Schedule which is a preparation specified in the Second Schedule or a preparation specified in any notice published in terms of section 10 (4) of the Act.

FIFTH SCHEDULE

reg. 2

PRESCRIBED FEES

	t
Licence to Import	50
Licence to Export	25

APPLICATION OF PART III OF THE ACT

G.N. 57/1956(F) 226/1956(F) 4/1959(F) 96/1960(F) 222/1961(F) 249/1963(F) 104/1982

under s. 10 (2)

The Minister has applied Part III of the Act to the substances set out in the Schedule in the same manner as Part II of the Act applies to drugs specified in the First Schedule to the Act.

SCHEDULE

I. The following substances, namely—

(1) Allylprodine (3-allyl-1-methyl-4 phenyl-4-propionoxypiperidine);

(2) Anileridine (1-[2-(p-aminophenyl)-ethyl]-4-phenylpiperidine-4-carboxylic acid ethyl ester);

(3) Benzethidine (Ethyl 1(2-benzyloxyethyl)-4-phenylpiperidine-4-carboxylate);

(4) Clonitazene (2-p-chlorobenzyl-1-1(2-diethylaminoethyl)-5-nitrobenzimidazole);

(5) Dextromoramide, levomoramide and racemoramide 1-(3-methyl-4-morpholino-2:2-diphenylbutyryl)-pyrrolidine;

(6) Diampromide (N-[2-(N-methylphenethylamino)-propyl]-propionanilide);

(7) 3-Diethylamino-1, 1-di-(2'-thienyl)-l-butene (diethylthiambutene);

(8) Dimenoxadole (2-dimethylaminoethyl-2-ethoxy-2: 2-diphenylacetate);

(9) 3-Dimethyl-4-phenyl-4-propionyloxyhexamethyleneimine;

(10) Diphenoxylate (ethyl 1-(3-cyano-3 : 3-diphenylpropyl)-4-phenyl piperidine-4-carboxylate);

(11) 4,4-Diphenyl-6-dimethylamino-3-hexanone;

(12) 4,4-Diphenyl-6-piperidino-3-heptanone;

(13) Etonitazene (1-(2-diethylaminoethyl)-2-p-ethoxybenzyl-5-nitrobenzimidazole);

(14) Etoxeridine (1- [2- (2-hydroxyethoxy)-ethyl]-4-phenylpiperidine-4-carboxylic acid ethyl ester);

(15) Furethidine (Ethyl 1(2-tetrahydrofurfuryloxyethyl)-4-phenylpiperidine-4-carboxylate);

(16) Hydromorphinol (14-hydroxydihydromorphine);

(17) 3-Hydroxy-N-phenethylmorphinan;

(18) Levophenacylmorphan ((-)-3-hydroxy-N-phenacylmorphinan);

(19) Metazocine (2/-hydroxy-2 : 5 : 9-trimethyl-6 : 7-benzomorphan);

(20) *β*-methadol;

(21) N-[2-(N-methylphenethylainino) propyl] propionanilide;

(22) The esters of l-methyl-4-phenylpiperidine-4-carboxylic acid (other than pethidine);

(23) Morpheridine (1-(2-morpholinoethyl)-4-phenylpiperidine-4-carboxylic acid ethyl ester);

(24) 4-Morpholino-2: 2-diphenyl ethyl butyrate;

(25) Myrophine (myristyl ester of benzylmorphine);

(26) Noracymethadol (œ-3 acetoxy-6 methylamino-: 4-diphenylheptane);

(27) Norcodeine;

(28) Methaqualone (3, 4-dihydro-2-methyl-3-0-tolylquinazolin-4-one), its salts and any preparation, admixture, extract or other substance containing any proportion of Methaqualone.

(28) Norlevorphanol ((-)-3-hydroxymorphinan);

(29) Normorphine;

(30) Oxymorphone (dihydro-14-hydroxymorphinone);

(31) Phenampromide (N-(1-methyl-2-piperidinoethyl) propionanilide);

(32) Phenazocine (2'-hydroxy-5:9-dimethyl-2-(2-phenylethyl)-6 : 7-benzomorphan);

(33) Phenoperidine (ethyl 1(3-hydroxy-3-phenylpropyl)-4-phenylpiperidine-4-carboxylate);

(34) Piminodine (ethyl 1-(3-anilinopropyl)-4-phenylpiperidine-4-carboxylate);

(35) Trimeperidine (1:2:5-trimethyl-4-phenyl-4-propionyloxypiperidine).

II. Any salt of a substance specified in paragraph I above.

III. Any preparation, admixture, extract or other substance containing any proportion of a substance for the time being specified in paragraph I or II above.

APPLICATION OF PART III OF THE ACT

G.N. 57/1956(F)

under ss. 10 (3) *and* 14

The Minister has applied Part III of the Act to the drugs specified in the Schedule hereto and their preparations with the modifications that—

(*a*) those drugs and products and their preparations shall not be treated as drugs to which Part III of the Act applies for the purposes of Part II of the Dangerous Drugs Regulations;

Above p.13

(*b*) section 11 of the Act shall not apply to the import into or export from Malaŵi of Syrup of Codeine Phosphate B.P.C. 1954 or to any preparation containing not more than 2.5 per centum of methylmorphine, ethylmorphine or morpholinylethylmorphine calculated as a pure drug, associated with other medicinal substances.

SCHEDULE

Methylmorphine (commonly known as codeine);
Ethylmorphine;
Morpholinylethylmorphine;
Dihydrocodeine;
Acetyldihydrocodeine;

and their salts.

NOTE.—The drugs and products specified in the Schedule to this notice are the drugs and products defined as "partially controlled drugs" for the purposes of the Dangerous Drugs Regulations.

[Subsidiary] *Dangerous Drugs* (*Section 10 Exemption*) *Notice*

G.N. 58/1956(F) 223/1961(F)

DANGEROUS DRUGS (SECTION 10 EXEMPTION) NOTICE

under s. 10(4)

Citation

1. This notice may be cited as the Dangerous Drugs (Section 10 Exemption) Notice.

Application

2. The provisions of Part III of the Act shall cease to apply to the preparations specified in the Schedule hereto.

para. 2

SCHEDULE

A.—MORPHINE PREPARATIONS:

	Substance	*Formula*	
1.	Cereoli iodoformi et morphinae	Iodoform	0.320 gramme
		Morphine Hydrochloride ..	0.016 gramme
		Oil of theobroma, sufficient to fill a 1-gramme mould.	
2.	Emplastrum opii	Elemi	20 grammes
		Terebinthina	30 grammes
		Cera flava.	15 grammes
		Olibanum pulvis	18 grammes
		Benzoes pulvis.	10 grammes
		Opii pulvis	5 grammes
		Balsamum peruvianum.. ..	2 grammes
3.	Emplastrum opii	Extract of opium	25 grammes
		Refined elemi	25 grammes
		Diachylon plaster with gum	50 grammes
4.	Emplastrum opii	Elemi	8 grammes
		Terebinthinae communis ..	15 grammes
		Cerae flavae	5 grammes
		Olibani pulveratae	8 grammes
		Benzoes pulveratae	4 grammes
		Opii pulverati	2 grammes
		Balsami peruviani	1 gramme
5.	Emplastrum opii	Opium, in very fine powder	10 grammes
		Resin plaster	90 grammes
6.	Emplastrum opii (*see* formula under 5) mixed with other plasters contained in the British Pharmacopoeia or British Pharmaceutical Codex.		
7.	Linimentum opii	Tincture of opium	500 millilitres
		Liniment of soap	500 millilitres
8.	Linimentum opii (*see* formula under 7) mixed with any other liniment of the British Pharmacopoeia or of the British Pharmaceutical Codex.		
9.	Linimentum opii ammoniatum	Ammoniated liniment of camphor ..	30
		Tincture of opium	30
		Liniment of Belladonna	5
		Strong solution of ammonia.	5
		Liniment of soap to	100
10.	Linimentum opii ammoniatum (*see* formula under 9) mixed with any other British Pharmacopoeia or British Pharmaceutical Codex liniment.		
11.	Caustic "Nerve Pastes"	Preparations containing, in addition to morphine salts, or morphine and cocaine salts, at least 25 per centum of arsenious acid, and made up with the requisite proportion of creosote or phenol to produce the consistency of a paste.	

Substance	*Formula*		
12. Diarrhoea pills.	Camphor	0.0648	gramme
	Lead acetate	0.013	gramme
	Bismuth subnitrate	0.162	gramme
	Tannic acid	0.0648	gramme
	Opium powder	0.026	gramme
13. Pilulae digitalis et Opii compositae	Digitalis leaves, in powder	0.31	gramme
	Opium, in powder	0.19	gramme
	Ipecacuanha root, in powder ..	0.13	gramme
	Quinine sulphate	0.78	gramme
	Syrup of glucose, a sufficient quantity to make 12 pills.		
14. Pilulae hydrargyri cum Opio ..	Mercury pill	3.89	grammes
	Opium, in powder	0.19	gramme
	To make 12 pills. .		
15. Pilulae hydrargyri cum Creta et Opii	Mercury with chalk	0.78	gramme
	Compound powder of ipecacuanha*	0.78	gramme
	Milk sugar, a sufficient quantity		
	Syrup of glucose, a sufficient quantity		
	To make 12 pills.		
16. Pilulae ipecacuanhae cum Scilla	Compound powder of ipe cacuanha*	30	grammes
	Squill, in powder	10	grammes
	Ammoniacum, in powder	10	grammes
	Syrup of glucose, a sufficient quantity.		
17. Pilulae hydrargyri bichlorati cum Opii extracto	Bichloride of mercury triturated	10	centigrammes
	Extract of opium	20	centigrammes
	Extract of couchgrass	20	centigrammes
	Liquorice root in powder, *q.s.* for 10 pills.		
18. Pilulae hydrargyri iodati cum Opii pulvere	*Hydrargyrum iodatum* freshly prepared ..	50	centigrammes
	Opium powder ..	20	centigrammes
	Powdered Liquorice ..	30	centigrammes
	White honey, *q.s.* for 10 pills.		
19. Pilula plumbi cum Opio	Lead acetate, in powder	80	grammes
	Opium, in powder	12	grammes
	Syrup of glucose .. .. (or a sufficient quantity)	8	grammes
20. Pilulae terebinthinae compositae	Opium	0.5	gramme
	Chinina sulfas	2	grammes
	Styrax liquidus	2	grammes
	Terebinthina laricina	8	grammes
	Magnesii subcarbonas, a sufficient quantity to make 100 pills.		
21. Pulvis Ipecacuanhae et Opii. .. (Dover's Powder)	Powdered Ipecacuanha	100	grammes
	Powdered Opium	100	grammes
	Potassium sulphate in powder ..	800	grammes
22. Mixtures of Dover's Powder (*see* formula under 21) with mercury and chalk, aspirin, phenacetin, quinine and its salts, and sodium bicarbonate.			
23. Pulvis kino compositus	Kino, in powder	75	grammes
	Opium, in powder	5	grammes
	Cinnamon bark, in powder	20	grammes
24. Suppositoria plumbi composita. Syn.: Suppositoria plumbi cum opio	Lead acetate, in powder	2.4	grammes
	Opium, in powder	0.8	gramme
	Oil of theobroma, a sufficient quantity for 12 suppositories, each weighing about 1 gramme.		
25. Coryza Tablets, No. 2	Powdered opium	0.0043	gramme
	Quinine sulph.	0.022	gramme
	Ammon. chlor.	0.022	gramme
	Camphor	0.022	gramme
	Ext. belladonna leaves	0.0043	gramme
	Ext. aconite root	0.0043	gramme

* The formula of this powder is given under 21.

Substance	*Formula*
26. Diarrhoea Tablets, No. 2	Powdered opium .. .. 0.016 gramme Camphor.. .. .. 0.016 gramme Powdered ipecacuanha .. .. 0.008 gramme Lead acetate .. .. 0.011 gramme
27. Dysentery Tablets	Powdered opium .. .. 0.013 gramme Powdered ipecacuanha .. .. 0.0648 gramme Powdered calomel .. .. .. 0.0324 gramme Lead acetate .. .. 0.0324 gramme Bismuth betanaphthol. .. .. 0.1944 gramme
28. Tabella hydrargyri cum Opio	Mercurous chloride powder .. 0.065 gramme Antimony oxide powder .. .. 0.065 gramme Ipecacuanha-root powder.. .. 0.065 gramme Powdered opium .. .. 0.065 gramme Milk sugar .. .. 0.065 gramme Gelatine solution, a sufficient quantity to make one tablet.
29. Tabella plumbi. cum Opio ..	Sugar of lead.. .. .. 0.195 gramme Powdered opium .. .. 0.065 gramme Gelatine solution, a sufficient quantity to make 1 tablet.
30. Tablettae plumbi cum Opio	Lead acetate, in fine powder .. 19.44 grammes Opium, in powder . .. . 3.24 grammes Refined sugar, in powder .. .. 6.48 grammes Ethereal solution of theobroma broma .. .. 3.60 mils Alcohol .. .. 0.90 mil
31. Unguentum gallae compositum	Galls in very fine powder.. .. .. 20 Extract of opium .. .. 4 Distilled water .. .. 16 Wool fat .. .. 10 Soft paraffin, yellow 50
32. Unguentum gallae compositum (*see* formula under 31) mixed with other ointments and plasters contained in the British Pharmacopoeia or British Pharmaceutical Codex.	
33. Unguentum gallae cum Opio	Gall ointment .. .. 92.5 grammes Opium in powder .. .. 7.5 grammes
34. Unguentum gallae cum Opio (*see* formula under 33) mixed with other ointments and plasters contained in the British Pharmacopoeia or British Pharmaceutical Codex.	
35. Yatren—105 (lodooxyquinoline-sulphonic acid) with 5 per centum opiumadmixture.	
B.—Cocaine Preparations:	
1. Bernatzik's Injections	(*a*) *Hydrargyrum bicyanatum* 0.03 gramme *Cocainum*. .. .. 0.02 gramme (*b*) *Hydrargyrum succinatum* 0.03 gramme *Cocainum* .. .. 0.01 gramme
2. Stila's Injections	(*a*) *Hydrargyrum succinatum* 0.03 gramme *Cocainum muriaticum*. .. 0.01 gramme (*b*) *Hybrargyrum succinatum* 0.05 gramme *Cocainum muriaticum* 0.03 gramme
3. Natrium biboracicum compositum cum Cocaino	In tablets, compressed tablets, lozenges, pastilles and the like, difficult to break up,and containing not more than 0.2 per centum of cocaine salts in conjunction with not less than 20 per centum borax and not less than 20 per centum antipyrine, or some similar analgesic, and not more than 40 per centum of flavouring matter. Maximum weight of each tablet, etc., 1 gramme
4. Caustic "Nerve Pastes"	Preparations containing, in addition to cocaine salts or cocaine and morphine salts, at least 25 per centum of arsenious acid, and made up with the requisite proportion of creosote or phenol to produce the consistency of a paste.

Substance	*Formula*	
5. Cocaine and Atropine Tablets, with a content of not more than 0.0003 gramme of cocaine salts and not less than 0.0003 gramme of atropine salts to each tablet	*Atropinum sulphuricum*	0.0003 gramme
	Cocainum hydrochloricum ..	0.0003 gramme
	Mannite	0.0003 gramme
	Weight of one tablet	0.0036 gramme
	Cocaine content, 8.3 per centum.	
C.—Dicodide Preparations:		
1. Cardiazol-Dicodide Solutions	Solutions containing not less than 10 percentum of cardiazol and not more than 0.5 per centum of dicodide salts.	
D.—Eucodal Preparations:		
1. Anti-Opium Tablets	Eucodal	1 gramme
	Pulvis gentianae	35 grammes
	Pulvis ipecacuanhae	20 grammes
	Quinine sulphate	20 grammes
	Caffeine	5 grammes
	Sugar of milk	25 grammes
	Mix up and make up 5-grain tablets.	
2. Tablets B.B. Compound	*Berberis vulgaris powder*	0.0324 gramme
	Nux vomica	0.013 gramme
	Eucodal	0.0032 gramme
	Ipecacuanha	0.0648 gramme
	Rhubarb	0.013 gramme
	Pulvis cinnamoni compositus	0.0324 gramme
	Aromatic chalk	0.0032 gramme

E.—Diphenoxylate Preparations:

1. Tablets each weighing 0.8 gramme and containing 2.5 milligrammes of diphenoxylate hydrochloride and 0.025 milligramme of atropine sulphate.
2. Preparations containing 2.5 milligrammes of diphenoxylate hydrochloride 0.025 milligramme of atropine sulphate, 85 milligrammes of lactose 7 milligrammes of sugar, 21.6 milligrammes of starch, 3 milligrammes of talc, 1 milligramme of magnesium stearate and 0.7 milligramme of tartrazine.

DANGEROUS DRUGS (SECTION 13 EXEMPTION) NOTICE

G.N. 3/1959(F) 97/1960(F) 224/1961(F) 252/1963(F)

under s. 13

1. This notice may be cited as the Dangerous Drugs (Section 13 Exemption) Notice. Citation

2. Section 13 of the Act shall cease to apply to the products specified in the Schedule, being products obtained from any of the phenanthrene alkaloids of opium. Application

SCHEDULE para. 2

EXEMPTED PRODUCTS

1. Methyldesomorphine.
2. Dihydrodesoxymorphine.
3. 6-Methyldihydromorphine.
4. Methyldihydromorphinone.
5. N-allylnormorphine.
6. Diacetyl-N-allylnormorphine.

7. Myrophine (myristyl ester of benzylmorphine).
8. Oxymorphine (dihydro-14-hydroxymorphinone.
9. Norcodeine.
10. Normorphine.
11. Hydromorphinol (14-hydroxydihydromorphine).
12. Nicocodine.

G.N. 57/1956(F) 144/1961(F) 251/1963(F)

APPLICATION OF PART III OF THE ACT

under s. 14

The Minister has applied Part III of the Act—

(*a*) to the drugs and products specified in the First Schedule hereto without any modification; and

(*b*) to the products specified in the Second Schedule hereto with the modification that such products shall not be treated as a drug to which Part III of the Act applies for the purposes of Part II of the Dangerous Drugs Regulations.

Above p. 13

FIRST SCHEDULE

Methyldesomorphine (6-methyl- Δ^{6}-desoxymorphine) and its salts, and any preparation, admixture, extract or other substance containing any proportion of methyldesomorphine or its salts;

Dihydrodesoxymorphine and its salts, and any preparation, admixture, extract or other substance containing any proportion of dihydrodesoxymorphine or its salts;

6-Methyldihydromorphine and its salts, and any preparation, admixture, extract or other substance containing any proportion of 6-methyldihydromorphine or its salts;

Methyldihydromorphinone and its salts, and any preparation, admixture, extract or other substance containing any proportion of methyldihydromorphinone or its salts.

SECOND SCHEDULE

4-Dimethylamino-1:2 diphenyl-3-methyl-2-propionyloxybutane, its salts and any preparation, admixture, extract or other substance containing any proportion of 4-dimethylamino-1: 2-diphenyl-3-methyl-2-propionyloxybutane- commonly known as propoxyphene.

Nicocodine, and its salts, and any preparation, admixture, extract or other substance containing any proportion of nicocodine or its salts.

PESTICIDES

CHAPTER 35:03

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PESTICIDES

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12 of 2000
G.N. 14/2002

An Act to provide for the control and management of the import, export, manufacture, distribution, storage, disposal and use of pesticides; the establishment of a Pesticides Control Board; and further to provide for matters incidental thereto or connected therewith

[1st May, 2002]

PART I

PRELIMINARY

1. This Act may be cited as the Pesticides Act. Short title

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

"active ingredient" means the biologically and chemically active part of a pesticide present in a formulation;

"advertising" means the promotion of the sale and use of pesticides by print and electronic media, signs, displays, gift, demonstration or word of mouth;

"Board" means the Pesticides Control Board established under section 3;

"common name" means the name assigned to a pesticide active ingredient by the International Standards Organization to be used as a generic or non-proprietary name for that particular active ingredient only;

"environment" means the physical factors of the surroundings of the human being, including land, water, atmosphere, climate, sound, odour, taste and the biological factors of *fauna and flora*, and includes the cultural, social and economic aspects of human activity and the natural and built environment;

"formulation" means the combination of various ingredients designed to render the product useful and effective for the purpose claimed;

"inspector" means an inspector designated as such under section 38;

"label" means the written, printed or graphic matter on, or attached to a pesticide, or its immediate container and the outside container or wrapper of the retail package of the pesticide;

"manufacture", in relation to a pesticide, means to prepare, compound, formulate, mix, make, pack, label, or otherwise treat the pesticide with a view to its sale, but does not include the carrying out of bona fide research relating to the pesticide or any act incidental to such research;

"pest" means unwanted species of animals or plants, including vectors of human or animal disease, causing harm during or otherwise interfering with, the production, processing, storage, transportation or marketing of food, agricultural commodities, wood and wood products or animal feedstuffs;

"pesticide" means any substance or mixture of substances intended to be administered on animals, plants or humans for preventing, destroying or controlling any pest, and includes any substance intended for use as a plant growth regulator, defoliant, desiccant, or agent for thinning fruit or preventing the premature fall of fruit, and substances applied to crops either before or after harvest to protect the commodity from deterioration during storage and transport; and for purposes of this Act, any two pesticides which do not have the same manufacturer, formulation and trade name shall be treated as different pesticides;

"pictogram" means a symbol which conveys a message without words;

"Prior Informed Consent Procedure" means the procedure, provided for in the International Code of Conduct on the Distribution and Use of Pesticides, for formally obtaining and disseminating the decisions of importing countries as to whether they wish to receive future shipments of pesticides that have been banned or severely restricted in order to protect human health or the environment, in any other country;

"Registrar" means the Registrar of Pesticides appointed under section 10;

"restricted pesticide" means a pesticide registered for certain specific use or to be used only under stipulated conditions;

"sell" includes offer for sale and offer to provide goods as part of a service of pest control even if the goods are described as free or included in the service;

"trade name" means that name under which the pesticide is labelled, registered and promoted by the manufacturer and which can be used exclusively by the manufacturer to distinguish the product from other pesticides containing the same active ingredient;

"technical committee" means any committee established under section 8.

PART II

Establishment, Functions and Powers of the Pesticides Control Board

Establishment of Pesticides Control Board

3. There is hereby established a body to be known as the Pesticides Control Board (in this Act otherwise referred to as the "Board"), which shall be responsible for the control and management of all pesticides in Malaŵi and perform the functions assigned to it by this Act, and which shall be—

(*a*) a body corporate with perpetual succession and a common seal;

(*b*) in its corporate name, capable of suing and being sued;

(*c*) capable of holding, purchasing and otherwise acquiring and disposing of any property, moveable or immoveable, for the purposes of or in the course of carrying out its functions; and

(*d*) capable of doing and performing all acts and things as bodies corporate may by law do and perform.

Composition of the Board

4.—(1) The Board shall consist of—

(*a*) the Secretary for Agriculture;

(*b*) the Director of Agricultural Research;

(*c*) the Secretary for Commerce and Industry;

(*d*) the Director of Environmental Affairs;

(*e*) the Principal of Bunda College of Agriculture;

(*f*) the Chairman of the Pesticides Suppliers Association of Malaŵi;

(*g*) the Executive Secretary of the Consumers Association of Malaŵi;

(*h*) the Director of the Malaŵi Bureau of Standards;

(*i*) the Registrar of the Pharmacy, Medicines and Poisons Board;

(*j*) a public health officer, appointed by the Minister; and

(*k*) four other members representing the private sector, appointed by the Minister.

(2) The Minister shall designate the Chairperson of the Board from among members of the Board appointed under subsection (1) (*j*), and the term of office of the Chairperson shall be three years.

(3) A member of the Board appointed under subsection (1) (*j*) shall hold office for a period of not longer than three years, and may be removed from office by the Minister at any time.

(4) Each member of the Board may nominate a person by name from the same institution for appointment by the Minister as an alternate member, and if a member is unable to attend a meeting of the Board the appointed alternate member may attend, participate and vote in place of the absent member.

(5) The Board may invite any person to assist the Board in dealing with any matter, and the person invited may participate in the proceedings of the Board concerning that matter but shall not be entitled to vote.

Meetings of the Board

5.—(1) Subject to subsection (2), the Board shall hold ordinary meetings for the dispatch of business at least four times a year.

(2) An extraordinary meeting of the Board—

(*a*) may be convened by the Chairperson at anytime;

(*b*) shall be convened within twenty-one days of receipt by the Chairperson of a request in writing signed by at least four members and specifying the purpose for which the meeting is being convened.

(3) The Chairperson shall decide where and when the Board shall meet.

(4) At any meeting of the Board—

(*a*) the Chairperson shall preside;

(*b*) if the Chairperson is absent, the members present shall elect one of their number to preside at the meeting;

(*c*) five members, including the Chairperson or other member chairing the meeting, shall form a quorum; and

(*d*) all questions raised at the meeting shall be determined by the decision of the majority of members present and entitled to vote, but if there is a tie the matter shall be put to the vote and the Chairperson or other member presiding shall have a casting vote.

(5) The Registrar shall serve as secretary to the Board.

(6) Subject to this section, the Board may regulate its own procedure.

Allowances of members of the Board

6. A member of the Board shall be paid out of the funds of the Board, such allowances as the Minister may determine.

Non-liability of members of the Board, etc.

7. No member of the Board or any technical committee of the Board shall be liable for any act or default of his, or of the Board done in the exercise in good faith of the functions or powers of the Board.

Technical committees

8. The Board may establish one or more technical committees, to advise it in implementing the provisions of this Act.

Secretariat of the Board

9. There shall be a secretariat of the Board which shall consist of a Registrar of Pesticides (in this Act otherwise referred to as the "Registrar") and such other staff of the Board, subordinate to the Registrar, appointed in accordance with section 10.

Appointment of Registrar and other staff

10.—(1) The Board shall appoint, on such terms and conditions as it may determine, the Registrar who shall be the chief executive officer of the Board and shall in addition perform such duties as the Board may assign to his office and ensure the effective administration and implementation of this Act.

(2) Without prejudice to the generality of subsection (1), the Registrar shall—

(*a*) issue licences, permits and other authorizations required under the Act as directed by the Board;

(*b*) issue certificates of registration as directed by the Board;

(*c*) maintain a public register of registered pesticides;

(*d*) maintain registers of manufacturers, importers and commercial applicators of pesticides.

(3) The Board may appoint, on such terms and conditions as it may determine, such other staff, subordinate to the Registrar, as it considers necessary for the performance of its functions and to assist the Registrar in discharging his functions and responsibilities.

Functions of the Board

11.—(1) The Board shall be responsible for the registration, control and management of all pesticides in Malaŵi and perform such other functions assigned to it under this Act.

(2) Without prejudice to the generality of subsection (1), the Board—

(*a*) shall register pesticides and issue certificates and permits in accordance with this Act;

(*b*) shall monitor and control the import, export, manufacture, distribution, sale, storage, use and disposal of pesticides in Malaŵi;

(*c*) may issue guidelines on the environmentally sound handling and use of pesticides after consultation with such persons or bodies as seem to the Board to be broadly representative of the interests concerned;

(*d*) may, in consultation with the relevant authorities, conduct public educational campaigns on the safe handling and use of pesticides;

(*e*) may advise the Minister on whether or not the Minister should use the power granted under section 23 (3) to exempt a pesticide or class of pesticides from the licensing requirements under the Act, taking into consideration the potential implication for human and animal health and the environment;

(*f*) may advise the Minister in connexion with all matters relating to pesticides and the performance of functions assigned to the Minister under this Act;

(*g*) may propose regulations to be made under this Act by the Minister; and

(*h*) may, subject to the approval of the Minister, delegate any of its powers to any government officer.

PART III

Financial Provisions

Funds of the Board

12.—(1) The funds of the Board shall consist of—

(*a*) such money as may be appropriated by Parliament for the purposes of the Board;

(*b*) registration and licence fees prescribed under Parts IV and V;

(*c*) any levy imposed pursuant to section 13;

(*d*) such moneys as may be received by the Board under subsection (2); and

(*e*) such moneys as may otherwise vest in or accrue to the Board.

(2) The Board may—

(*a*) accept money by way of grants or donations from any source in or outside Malaŵi;

(*b*) with the approval of the Minister, raise by way of loans from any source in or outside Malaŵi, such money as it may require for the discharge of its functions; and

(*c*) charge and collect fees in respect of programmes, publications, documents and other services provided by the Board.

(3) The Board may invest in such manner as it thinks fit, such of its funds as it does not immediately require for the performance of its functions.

Levy

13. The Minister, acting on the advice of the Board, and in consultation with the Minister responsible for finance, may by order published in the *Gazette*, impose a levy on the importation into, or manufacturing in, Malaŵi of pesticides and the levy shall be appropriated for the general operations of the Board or for certain operations of the Board specified in the Order.

Books and other records of accounts and audit

14.—(1) The Board shall cause to be kept proper books of accounts and other records relating to its accounts.

(2) The accounts of the Board shall—

(*a*) be audited annually by independent auditors appointed by the Board; and

(*b*) be examined by the Auditor General before being presented to the Minister in accordance with section 15.

Annual reports

15.—(1) The Board shall as soon as practicable, but not later than three months after the expiry of each financial year, submit to the Minister a report concerning its activities during that financial year.

(2) The report referred to in subsection (1) shall be in such form as the Minister shall approve, and shall include information on the financial affairs of the Board, and there shall be appended to the report—

(*a*) an audited balance sheet;

(*b*) an audited statement of income and expenditure; and

(*c*) such other information relating to the Board as the Board may consider appropriate or as the Minister may require.

(3) The Minister shall, during the meeting of the National Assembly next following receipt by him of the report referred to in subsection (1), lay the report before the National Assembly, and the Board may publish the report for sale to the public.

Financial year

16. The financial year of the Board shall be a period of twelve months commencing on 1st July in each year, and ending on 30th June in the following year, or such other dates the Minister may specify by Order published in the *Gazette*:

Provided that the first financial year of the Board may be such shorter or longer period than twelve months as the Minister shall determine, but being not less than six months nor more than eighteen months.

PART IV

Registration of Pesticides

Registration of pesticides

17.—(1) Subject to subsection (2), no person shall import, manufacture or sell a pesticide which has not been registered under this Act.

(2) An unregistered pesticide may be—

(*a*) imported under an import permit issued under section 20 for the purpose of analysis, registration or research, or under a pest emergency permit issued under section 52; and

(*b*) manufactured for export in accordance with a licence to manufacture issued under section 24.

Application for registration of pesticides

18.—(1) An application for the registration of a pesticide shall be made to the Board in the prescribed manner and form and shall be accompanied by the prescribed fee.

(2) An application under subsection (1) shall furnish whatever information the Board may require in order to satisfy itself in respect of each of the matters set out in section 19 (3).

(3) Subject to subsection (4), the Board shall not disclose any confidential information submitted to it in connexion with an application for registration.

(4) For the purpose of subsection (3) "confidential information" shall not include—

(*a*) trade names or other commonly used names;

(*b*) broad or general descriptions on use;

(*c*) safe handling precautions to be observed in the manufacture, storage, transport and use of chemicals;

(*d*) recommended methods of disposal and elimination;

(*e*) safety measures in case of accident;

(*f*) physical and chemical data with the exception of data revealing the chemical identity of a pesticide;

(*g*) summaries of health, safety and environmental data, including precise figures and interpretations.

(5) The Board shall give the applicant a reasonable opportunity of participating in the preparation of the summaries referred to in subsection (4) (*g*).

Consideration of applications

19.—(1) The Board shall consider each application as soon as reasonably practicable and shall—

(*a*) register the pesticide, subject to any condition which the Board may consider appropriate; or

(*b*) refuse to register the pesticide; or

(*c*) direct that the applicant furnish additional information or undertake further investigations, tests, trails or analysis in connexion with the pesticide, and communicate its decision to the applicant in writing.

(2) If the Board gives directions to an applicant under subsection (1) (c), the Board shall reconsider the application in accordance with the procedure in subsection (1) after the Board has received the additional information required and evidence that the applicant has complied with directions.

(3) Subject to subsection (4), the Board shall register a pesticide if the Board is satisfied that the pesticide—

(*a*) is suitable and effective for the purposes for which it is intended;

(*b*) does not pose a significant danger to human or animal health or the environment;

(*c*) is desirable in that overall the effects of the pesticide are likely to be more beneficial than detrimental to Malaŵi, its people and the environment; and

(*d*) will be properly packaged and labelled in accordance with this Act.

(4) The Board shall not register a pesticide if the Board has reason to believe that information furnished or any representation made in, or in connexion with, the application is false or incorrect in a material respect.

(5) If the Board decides not to register a pesticide, it shall promptly notify the applicant in writing giving reason for its decision.

(6) If the Board decides to register a pesticide it shall—

(*a*) assign a registration number to the pesticide;

(*b*) enter the purchase in the register of pesticides; and

(*c*) issue a certificate of registration to the applicant.

(7) The Board shall cause to be published in the *Gazette* periodically a list of all pesticides registered under this section.

Importation of unregistered pesticides

20.—(1) The Board may issue a permit authorizing the importation of a pesticide which has not been registered if the Board is satisfied that the pesticide will be used solely for the purposes of analysis, registration or research.

(2) An application for a permit under subsection (1) shall be made to the Board in the prescribed manner and form and shall be accompanied by the prescribed fee.

(3) A permit issued under subsection (1) shall state—

(*a*) the period of validity, which shall not exceed one year;

(*b*) the maximum quantity of the pesticide covered by the permit; and

(*c*) any conditions which the Board considers appropriate to impose to protect human and animal health and the environment, and to give effect to this Act.

(4) A permit issued under subsection (1) shall only authorize the importation of a single consignment, which may contain more than one pesticide, which shall not exceed—

(*a*) in the case of a liquid pesticide, two litres; and

(*b*) in the case of a powder pesticide, one kilogram, and the permit shall be surrendered to an inspector at the place of importation.

Duration of registration and renewal of registration

21.—(1) The registration of a pesticide shall be valid for a period of five years.

(2) The Board may, upon the application of a person desiring to renew the registration of a pesticide, renew the registration for further period of five years if the Board continues to be satisfied in respect of the matters referred to in section 19 (3).

(3) If the Board refuses to renew the registration of the pesticide in accordance with subsection (2), it shall give its reasons in writing to the applicant.

Cancellation and suspension of registration and permits

22.—(1) The Board may suspend or cancel the registration of a pesticide or a permit to import an unregistered pesticide if—

(*a*) the registration or permit was secured in contravention of any of the provisions of this Act;

(*b*) the Board considers that continued registration or authorization under a permit is undesirable on the ground that the pesticide is harmful to human and animal health or the environment or is not effective for the intended use;

(*c*) the conditions subject to which the registration or permit was granted have not been complied with;

(*d*) the pesticide has fallen into disuse, or the pesticide is no longer required for the purpose for which the permit was granted;

(*e*) the pesticide has been withdrawn from the market and use and the person upon whose application the pesticide was registered has notified the Board in writing of such withdrawal;

(*f*) the Board is no longer satisfied in respect of any matter referred to in section 19 (3) as a result of the becoming aware new facts or of an unforeseen charge in circumstances.

(2) Before cancelling the registration of a pesticide or a permit, the Board shall give the party to whom the registration or permit was granted an opportunity to make representations as to why the registration or permit should not be cancelled.

(3) The Board shall give reasons in writing for the cancellation of a registration or permit to the party to whom the registration or permit had been granted.

PART V

Licensing of Manufacture, Export, Storage for Sale and Distribution of Pesticides

Prohibition on manufacture, sale, etc., of pesticides without a licence

23.—(1) Subject to subsection (3), no person shall manufacture, export, distribute, store for sale, or sell a pesticide without a licence issued by the Board and in accordance with any conditions prescribed by the Board.

(2) An application for a licence under subsection (1) shall be made in the prescribed manner and form to the Board and shall be accompanied by the prescribed fee.

(3) The Minister, acting on the advice of the Board, may by order published in the *Gazette*, prescribe that a pesticide or class of pesticides may be manufactured, exported, distributed, stored for sale, or sold without a licence.

Licence to manufacture pesticide

24.—(1) An application for a licence to manufacture a pesticide shall be made in the prescribed manner to the Board which, on payment of the prescribed fee, may issue a licence if the Board is satisfied that—

(*a*) the applicant is technically competent to manufacture the pesticide;

(*b*) the applicant is aware of the toxicity of the pesticide and of the risks involved in using and handling it, and is equipped and able to effectively avoid or minimize the risks; and

(*c*) the premises and manner in which, and conditions under which, the pesticide will be manufactured are appropriate for the purpose and will not endanger human or animal health or the environment and are in accordance with such conditions as may be prescribed.

(2) A licence under this section—

(*a*) shall specify the specific location and premises at which the manufacture of the pesticide is authorized and shall not apply to more than one premises;

(*b*) shall be valid for five years from the date of issue, but may be renewed on payment of the prescribed fee;

(*c*) may require the licensee to monitor the health of employees who may be exposed to the pesticide;

(*d*) may authorize the manufacture of more than one pesticide; and

(*e*) shall contain whatever terms and conditions the Board considers appropriate to achieve the purpose of this Act.

(3) The Board shall consider every application under this section as soon as practicable and shall promptly notify the applicant in writing of the grant or refusal of application, and where the Board refuses to grant an application it shall give reasons in writing for the refusal.

Licensing of premises to store for sale and sell pesticides

25.—(1) An application for a licence to store for sale or sell a pesticide at specified premises shall be made in the prescribed manner to the Board which shall, on payment of the prescribed fee, issue a licence if the Board is satisfied that—

(*a*) the application relates to a pesticide which is currently registered under the Act;

(*b*) the applicant is aware of the toxicity of the pesticide and of the risks involved in using and handling it;

(*c*) the premises and manner in which, and the conditions under which, the pesticide will be stored or offered for sale are

appropriate for the intended purpose, and will not endanger human or animal health or the environment, and are in accordance with such conditions as may be prescribed; and

(*d*) the applicant is a proper person to be granted a licence.

(2) A licence under this section—

(*a*) shall specify the location and premises at which the sale or storage for sale of the pesticide is authorized, and shall not apply to more than one premises;

(*b*) may authorize both the sale and storage for sale of one or more pesticides;

(*c*) shall be valid for the period specified in the licence which may not exceed three years from the date of issue but may be renewed on payment of the prescribed fee; and

(*d*) shall contain whatever terms and conditions the Board considers appropriate to achieve the purpose of this Act.

(3) The Board shall consider every application under this section as soon as practicable and shall promptly notify the applicant in writing of the grant or refusal of the application, and where the Board refuses to grant an application it shall give reasons in writing for the refusal.

Licensing of commercial applicators

26.—(1) No person shall apply pesticides for gain except in accordance with a commercial applicator's licence issued by the Board.

(2) An application for a licence under subsection (1) shall be made in the prescribed manner and form to the Board and shall be accompanied by the prescribed fee.

(3) The Board may issue a commercial applicator's licence if the Board is satisfied that—

(*a*) the applicant is aware of the beneficial uses and potential effects of the pesticides and of the risks involved in using and handling it and is equiped and able to effectively avoid or minimize the risks;

(*b*) the applicant and any employees who will be involved in handling or applying pesticides have been adequately trained in the safe handling and use of pesticides;

(*c*) the applicant has insurance which is adequate to cover any reasonably foreseeable legal liability which the applicant may incur in respect of death, injury or loss arising from the use, transportation or storage of pesticides by the applicant.

(4) The Board shall cause to be published in the *Gazette* periodically a list of the names of all commercial applicators licensed under this section.

Suspension and cancellation of licence

27.—(1) The Board may suspend, cancel or refuse to renew a licence issued under sections 24, 25 or 26 if the Board is satisfied that—

(*a*) the application for the licence contained a material misrepresentation;

(*b*) the conditions in the licence have not been complied with; or

(*c*) it is necessary to do so to protect human or animal health or the environment.

(2) Before taking any action under subsection (1), the Board shall give the licensee an opportunity to make representations as to why the contemplated action should not be taken.

(3) Where the Board has delegated its powers to issue a licence then the delegate may exercise the powers in subsection (1) and shall comply with subsection (2).

PART VI

Presentation of Pesticides

Pesticide containers

28.—(1) No person shall manufacture, import, export, sell, distribute or store any pesticide which is packed in a container which—

(*a*) is unsafe for storage, handling or use in that it is inadequate to prevent harm to human and animal health or to the environment; or

(*b*) does not meet any standards which may be prescribed under this Act; or

(*c*) is required to be approved under this Act and has not been approved.

(2) No person shall, contrary to any directions given by the Registrar, or an inspector, use a pesticide container for any purpose other than to contain pesticides.

Labels

29.—(1) No person shall distribute, sell, offer for sale, or hold in stock for sale, any pesticide unless it is in a container which prominently displays a clearly legible label which has been approved by the Board and is firmly attached to the container.

(2) The text of the label and of any publication relating to a pesticide which is intended to be distributed or displayed with the pesticide shall be in English and in any other language or languages spoken in Malaŵi which the Board may require, and shall comply with such other requirements as may be prescribed.

(3) No person shall alter or deface the label of any pesticide or of any publication referred to in subsection (2) in such a way as to cause it to contravene the Act.

Advertising of pesticides

30.—(1) No person shall advertise any pesticide which has not been registered under this Act.

(2) No person shall advertise any pesticide in a manner that—

(*a*) is false or misleading in any material particular or is intended to deceive;

(*b*) is inconsistent with the statement required under section 29 to be included in the label;

(*c*) employs any false or misleading comparisons with other pesticides; and

(*d*) is contrary to the conditions of registration of the pesticide and with such other requirements as may be prescribed.

PART VII

Health Environmental Matters

Control of pesticide residues in food

31.—(1) No person shall manufacture, export, sell or distribute any food or feed for human or animal consumption if a pesticide has been applied to it, or to the crops from which it was made, in contravention of this Act.

(2) The Minister, acting on the advice of the Board and in consultation with the Minister responsible for health and the Minister responsible for environmental affairs, may by regulation—

(*a*) prohibit or restrict the use of certain pesticides in any food products, feedstuffs or food by-products;

(*b*) prohibit or restrict the use of certain pesticides at any period in the growth of food crops; or

(*c*) establish standards of maximum residue limits of pesticides in food, food products, feedstuffs and food by-products.

Duty of care when selling food and animal feeds

32.—(1) Any person who sells food or animal feed and who has reason to suspect that the food or animal feed may contain an excessive level of pesticide shall not sell or dispose of the food or feed for human or animal consumption without taking all reasonable steps to ensure that it does not contain an excessive level of pesticide.

(2) If any person or domestic animal suffers ill-health or dies after consuming food or animal feed which contains an excessive level of pesticide, for the purposes of a prosecution under this Act, the seller of the food or animal feed shall be presumed to have contravened subsection (1) unless the seller satisfies the court that, on a balance of probabilities, the food or animal feed did not contain an excessive level of pesticides when sold.

(3) The Minister may by regulation prescribe steps which shall be taken to comply with the duty imposed by subsection (1) and if a person charged with contravening subsection (1) proves that all the relevant steps prescribed by regulation were complied with, that person shall be presumed to have complied with subsection (1).

(4) For the purposes of this section "an excessive level of pesticide" means a level of pesticide in food or animal feed which—

(*a*) exceeds the maximum pesticide residue limits prescribed by law regardless of the cause of the excessive level of pesticide; and

(*b*) is proved to have caused actual injury or death to any person or domestic animal.

Imposition and sampling

33.—(1) An inspector shall have power—

(*a*) to enter and inspect premises where food or animal feeds are stored or sold;

(*b*) to seize, detain, remove and take samples of any food or animal feed which the inspector reasonably believes may be contaminated by pesticides, wherever found; and

(*c*) to submit such samples for analysis.

(2) No person shall be entitled to charge or claim compensation for any reasonable amount of food or animal feed taken as a sample under this section.

(3) The Minister may by regulation prescribe procedures to be followed in taking samples and for analysis of food and animal feeds.

Duties of employers

34.—(1) No person shall use or require an employee to use a pesticide in a manner or for a purpose contrary to the manner or purpose permitted by the Board on the registration of the pesticide or as may be prescribed.

(2) No person shall compel an employee to use any pesticide in a manner or for a purpose contrary to the provisions of this Act.

(3) Every employer who requires or permits an employee to use a pesticide shall provide and require the employee to use facilities, equipment and clothing conducive to the safe handling of the pesticide.

(4) The Registrar may by written notice require any employer to take steps to reduce the risks to the health of employees from pesticides, including requiring the employer to monitor the health of employees exposed to pesticides.

Notification of death, ill-health or injury

35.—(1) If a person dies, becomes ill or is injured and there are grounds for believing that this was wholly or partially caused by exposure to a pesticide, the Registrar shall be notified immediately by—

(*a*) the owner or person in charge of premises, land, or a vessel, aircraft, vehicle or other mode of transport, where the exposure occurred;

(*b*) the employer of a person who was or may have been exposed to the pesticide in the course of his employment;

(*c*) any registered medical practitioner who, upon examination of a person, has reason to believe that such a person has died or suffered injury as a result of exposure to pesticide; or

(*d*) any public health officer who has reason to believe that exposure to a pesticide may be linked to any death or detrimental effects on human health in an area for which the officer is responsible.

(2) Any person responsible for livestock, wildlife or fisheries who has reason to believe that exposure to a pesticide may have caused the death of any mammal, bird, fish or reptile which is not a pest, whether domestic or wild, or may be harming animal health or the environment shall notify the Registrar as soon as possible.

Inquiries

36.—(1) If the Board has reason to believe that any pesticide or pesticides may be having a detrimental effect on human or animal health or the environment, the Board may appoint a suitably qualified person or persons to hold an inquiry into the matter.

(2) The person or persons appointed to hold the inquiry shall have the power of a magistrate to summon witnesses and compel the production of documents and material objects.

(3) The Registrar shall report to the Board on the findings and recommendations of the inquiry and the measures taken pursuant to them.

Disposal of pesticides and pesticide containers

37. No person shall dispose of any pesticide or pesticide container of or packaging in a manner that is unduly hazardous to human or animal health or the environment or is contrary to any written law.

PART VIII
Enforcement

Designation of inspectors

38. The Board may by notification in the *Gazette* designate any duly qualified person to be an inspector for the purposes of this Act.

Powers and duties of inspectors

39. An inspector may—

(*a*) enter on any land, premises, aircraft, vessel or vehicle, at or in which any pesticide is or may be reasonably suspected to be manufactured, stored, transported, sold, distributed or used to determine whether the provisions of this Act are being complied with;

(*b*) require the production of, inspect, examine and copy licences, registers, records and other documents relating to this act;

(*c*) make examinations and inquiries to discover whether this Act is complied with;

(*d*) take samples of any articles and substances to which this Act relates and, as may be prescribed, submit such samples for tests and analysis;

(*e*) carry out periodic inspections of all establishments which manufacture, import, export, store, sell, distribute or use pesticides to determine whether the provision of this Act are being complied with;

(*f*) enter and inspect farmers' fields to ensure that only the recommended pesticides are used on specific crops and according to the prescribed procedures;

(*g*) seize any equipment, pesticide, document, record or other things which the inspector believes has been used in, or which appears to afford evidence of, a contravention of this Act.

(*h*) require any person whom the inspector suspects of having committed, or of having knowledge of, an offence under this Act, to state his or her name and residential address; and

(*i*) cause a police officer to investigate any person whom the inspector on reasonable grounds suspects of having committed an offence against this Act.

(2) Notwithstanding subsection (1), any inspector shall—

(*a*) require a warrant to enter any private dwelling place without the consent of the occupier; and

(*b*) on request produce their authority to enter upon any premises, place, aircraft, vessel or vehicle.

(3) The inspector shall give a receipt to the person from whose custody any thing has been seized under subsection (1) (g), and the thing shall be returned to that person immediately if it is decided that no prosecution will be instituted or if the trial of the person has been concluded, unless the thing was declared forfeited under section 48.

Record keeping

40.—(1) The Board shall cause to be kept records of all pesticides manufactured in, imported into, and exported from, Malaŵi.

(2) Every person who manufactures, imports, or exports pesticides, or is a commercial applicator of pesticides, shall keep a record of the quantities of pesticides manufactured, imported, exported, or used by the commercial applicator, and of any other information that may be prescribed.

(3) The records kept in accordance with subsection (2) shall be made available to the Board or the Registrar upon request, and the Minister may by regulation require that the records be transmitted periodically to the Board.

(4) The Board and the Registrar shall keep confidential all information disclosed under subsection (3).

PART IX

Analysis

Procedure for taking samples of pesticides

41.—(1) Any sample of a pesticide taken under this Act shall be taken into three parts each of which shall immediately be sealed and suitably labelled or marked in the presence of the person in charge of or in possession of the pesticide, or their representative; one part shall be sent to an analyst together with a certificate in the prescribed form signed by the inspector or officer; the second part together with a copy of the certificate shall be delivered or posted in accordance with guidelines issued by the Board to the person in possession of the pesticide; the third part shall be retained by the Register.

(2) In the event of a dispute relating to a sample, the Board or the court may have both the sample delivered to the Registrar and the sample delivered to the person in possession of the pesticide, sent to a laboratory for analysis.

(3) No person shall be entitled to charge or claim compensation for any pesticide taken as a sample under this section.

(4) For purposes of this section "sample" means a quantity of pesticide not exceeding—

(*a*) in the case of a liquid pesticide, two litres; and

(*b*) in the case of a powder pesticide, one kilogram.

Analysis

42.—(1) The Minister may by notice published in the *Gazette* appoint any competent person to be a designated analyst and any suitable laboratory to be a designated laboratory for the purposes of this Act.

(2) Any analyst of a laboratory designated under section (1) may analyse any pesticide sample, food, water, air, or soil submitted by any court, the Board or an inspector for any purpose which they may consider necessary to implement the provisions of this Act.

43. After conducting any analysis under this Act the designated analyst or laboratory shall issue a certificate of analysis in the prescribed form; and the certificate of analysis shall state the method of analysis used and shall be signed by either the designated analyst or the chief chemist of the laboratory, as the case may be. Certificate of analysis

PART X

Offences and Penalties

44.—(1) Any person who— Offences

(*a*) give false information in an application for the registration of a pesticide;

(*b*) imports, manufactures, stores for sale, sells or advertises, an unregistered pesticide contrary to section 17;

(*c*) manufactures, exports, distributes, stores for sale, or sells a pesticides contrary to section 23;

(*d*) carries on the business of a commercial pesticides applicator without a licence contrary to section 26;

(*e*) manufactures, imports, exports, stores for sale, sells, or distributes a pesticide in contravention of section 28 or 29; and

(*f*) sells any food or feedstuff or human or animal consumption which that person knows to contain pesticides residue levels in excess of any limits prescribed by law or in contravention of section 30,

is guilty of an offence and is liable to imprisonment for two years and to a fine of K100,000.

(2) Any person who—

(*a*) manufactures, exports, distributes, stores for sale, sells or uses any pesticides, in contravention of the provisions of a licence issued under section 23, 24, 25 or 26;

(*b*) advertises a pesticide in contravention of section 30;

(*c*) manufactures, imports, exports, sells, distributes or stores any pesticide which has been adulterated, or which has decomposed or deteriorated so as to be ineffective, or is hazardous to human health or the environment or which is packed in containers which have deteriorated or have been damaged rendering them dangerous to store, handle or use safely,

is guilty of an offence and is liable to imprisonment for three years and to a fine of K150,000.

(3) Any person who—

(*a*) sells or disposes of any food or animal feed for human or animal consumption in contravention of section 32 (2);

(*b*) obstructs an inspector in the course of his or her duties contrary to section 38 or 41; or

(*c*) alters a sample or the seals placed on such a sample by an inspector or the Board under section 38 or 41,

is guilty of an offence and is liable to imprisonment for six months and to a fine of K20,000.

(4) Any person who contravenes any provision of this Act for which no other penalty is specifically provided is liable—

(*a*) on first conviction to imprisonment for three months and to a fine of K10,000; and

(*b*) on any subsequent conviction for the same offence to imprisonment for six months and to a fine of K20,000.

(5) If a person convicted of an offence under this Act continues to commit the offence after the conviction the person commits a further offence is liable to a fine of K1,000 for every day on which the offence is committed.

Fixed penalties

45.—(1) The Minister may by regulation—

(*a*) prescribe offences under this Act in respect of which a fixed penalty may be paid;

(*b*) prescribe the fixed penalty applicable to each such offence which may not exceed K2,000; and

(*c*) authorize government officers, other than inspectors under this Act, to receive payment of fixed penalties.

(2) An inspector who has reason to believe that a person has committed an offence prescribed by the Minister under subsection (1) may, as soon as reasonably possible after the alleged commission of the offence, give an infringement notice to the alleged offender.

(3) An infringement notice shall—

(*a*) describe the alleged offence; and

(*b*) state that if the alleged offender pays the fixed penalty specified in the notice to an authorized person identified in the notice within 30 days of the giving of the notice, the alleged offender will not be charged for the alleged offence before a court.

(4) An authorized person may, at any time—

(*a*) extend the period of 30 days for payment of the fixed payment in any particular case;

(*b*) send a letter to the alleged offender withdrawing the infringement notice in which case any amount paid in response to the infringement notice shall be refunded.

(5) If the prescribed fixed penalty is paid within the period allowed and the infringement notice is not withdrawn, the alleged offender shall not be prosecuted and if a person charged with committing an offence under this Act proves that a fixed penalty has been paid in respect of the offence in response to an infringement notice which has not been withdrawn, the accused shall be acquitted of the alleged offence.

(6) Any sum of money received under this section shall be dealt with as if it were a fine imposed by a court.

Personal liability of directors, partners and managers

46. If an offence under this Act that is committed by a corporation is proved to have been committed with the consent or connivance, or to be attributable to any neglect on the part of any director, partner or manager of the corporation, that person as well as the corporation, commits the offence.

Evidence

47.—(1) In any criminal proceedings under this Act—

(*a*) any quantity of pesticides in or upon any premises, place, aircraft, vessel or vehicle at the same time a sample of it is taken under this Act shall, unless the contrary is proven, be deemed to be of the same composition, to have the same degree of efficacy and to possess in all other respects the same properties as that sample;

(*b*) any person who is proved to have tampered with any sample or to have made a written statement falsely indicating that food or feedstuff did not contain pesticide residues in excess of any limits prescribed, shall be deemed to have acted with fraudulent intent unless the contrary is proved;

(*c*) any person who is proved to have sold food or feedstuffs for human or animal consumption which contains pesticide residues in excess of any limits prescribed shall be deemed to have known that the food or feedstuff contained excessive pesticide residues unless the contrary is proved;

(*d*) where a person is charged with having committed an offence under which a licence or the authorization of any person is required for the doing of any act, the burden shall be on the accused person to prove that at the time to which the charge relates, the requisite licence or authorization was duly held.

(2) Subject to subsection (3), in any prosecution under this Act the following documents shall be admissible in evidence and in the absence of evidence to the contrary, shall be sufficient proof of the facts stated in the document—

(*a*) a certificate stating the result of an analysis or test carried out under section 43 and purporting to be signed by the analyst who carried out the analysis or test:

Provided that a copy of the certificate of analysis has been transmitted to the person to be charged at least twenty-one days before the prosecution is instituted and the analyst shall be summoned to give oral evidence at the request of the accused made not less than ten days before the hearing; or

(*b*) any document kept by any pesticide dealer or by the owner of a pesticide or his employee or agent, around, on, in or upon any premises occupied by, or aircraft, vessel or vehicle used in the business of such person.

(3) Any document referred to in subsection (2) shall not be admissible unless the accused has been given ten days' written notice that it will be tendered as evidence and an opportunity to inspect and copy it and the court has not, on the application of the accused person brought before the trial, ruled the document inadmissible on the basis that there are reasonable grounds for doubting its accuracy or validity.

Closure of premises and seizure of pesticides, etc.

48. Where the Board believes, on reasonable grounds, that this Act or any regulations made thereunder have been contravened, the Board may, subject to subsection (2), order—

(*a*) the closure of any premises; and

(*b*) the seizure of any pesticide, equipment, instrument or any other thing,

by means of, or in relation to which, the Board reasonably believes the contravention was committed.

(2) The closure of any premises shall cease, and any pesticide, equipment, instrument or any other thing shall not be detained, after the provisions of this Act or any regulations made thereunder have, in the opinion of the Board, been complied with, unless before that time court proceedings have been instituted in respect of the contravention, in which event the premises shall remain closed and the pesticide, equipment, instrument or other thing may be detained until the proceedings are finally concluded.

(3) Where a person has been found guilty of an offence under this Act or regulations made thereunder, any pesticide, equipment, instrument or other thing by means of or in relation to which the offence was committed may, in addition to any other penalty imposed by the court, be forfeited to such person, and may be disposed of in such manner and at time and place, as the court may direct; but no such pesticide, equipment, instrument or other thing shall be disposed of pending an appeal against the decision of the court or before the time within which the appeal may be taken has expired.

Forfeiture, cancellation and other orders

49.—(1) Where a court convicts a person for an offence under this Act the court may, in addition to any other sentence, or that—

(*a*) any substance or equipment used in the commission of the offence be forfeited to the State and be disposed of as the court directs;

(*b*) the costs of disposing of any such substance or equipment be borne by the accused person;

(*c*) some or all of the reasonable costs of and incidental to any testing or analysis or other steps undertaken by or on behalf of the prosecution to investigate the alleged offence and obtain evidence, be borne by the accused person; or

(*d*) the registration of a pesticide, or a licence or permit granted to the person convicted under this Act be cancelled.

(2) If a person is convicted for a second or subsequent time of an offence under this Act the court may, in addition to any other sentence, order that the person convicted be disqualified from holding a licence or permit under this Act for a period not exceeding two years.

(3) If at the conclusion of the trial the court is satisfied that an offence was committed even though no person has been convicted of it, the court may, in addition to any other order, make one or more of the orders referred to in paragraphs (*a*), (*b*) and (*c*) of subsection (1).

PART XI

Miscellaneous Provisions

Appeals

50.—(1) An applicant for, or holder of, a pesticide registration or a licence or permit under this Act may appeal to the Minister against—

(*a*) the refusal of the Board to grant the registration, licence or permit;

(*b*) any conditions attached to the registration, licence or permit;

(*c*) the deregistration of a pesticide or the cancellation of a licence or permit.

(2) Every appeal under subsection (1) shall be made in writing within sixty days from the date the applicant or holder receives the reasons for the decision of the Board.

(3) Any person may appeal to the Minister against any decision of the Board on the basis that the decision of the Board does not adequately protect human or animal health or the environment as required by this Act.

(4) Every appeal under subsection (3) shall be made in writing within sixty days from the date the decision is made or the date the appellant receives notification of the decision of the Board, whichever is the later.

(5) The High Court in the exercise of its supervisory jurisdiction may review any decision made under this Act on matters of law.

Exemptions for Government activities

51. The Board may exempt any pesticide imported and distributed in Malaŵi by the Government from fees levied under this Act.

Pest emergencies

52.—(1) The Board may issue pest emergency permits if it is necessary—

(*a*) to deal effectively with a pest emergency which has been declared by the Minister [or any authorized organ of Government]; or

(*b*) to maintain stocks of pesticides held by the Government to deal with pest emergencies.

(2) An application for a pest emergency permit shall be made to the Board in the manner and form prescribed by the Board and shall be accompanied by the prescribed fee.

(3) A pest emergency permit—

(*a*) shall specify details of the pesticide concerned, the maximum quantity of pesticide to which it relates, and measures for dealing with unused pesticides after the expiry or lapsing of the permit;

(*b*) shall lapse when the pest emergency is terminated;

(*c*) may authorize the importation and use of an unregistered pesticide;

(*d*) may authorize a registered pesticide to be used for uses other than those for which it has been registered;

(*e*) may exempt any pesticide from the requirements under this Act to be licensed, labelled, or to have fees levied on it;

(*f*) may restrict the use of a pesticide to specified geographical areas or crops; and

(*g*) shall contain whatever terms and conditions the Board considers appropriate to protect human and animal health and the environment and to achieve the purpose of this Act.

(4) The Board shall only authorize the importation of a registered pesticide under a pest emergency permit if, and only to the extent that, it is not possible to obtain the pesticide in adequate quantities or sufficiently, quickly from the party who has registered the pesticide in Malaŵi.

Regulations

53. The Minister, on the advice of the Board, may make regulations for carrying out or giving effect to this Act and, without prejudice to the generality of this provision, the regulations may—

(*a*) prescribe the forms and contents of applications, certificates of registration, licences, permits, authorizations, labels, registers and other documents and records required for the purposes of this Act;

(*b*) prescribe the procedure and information to be given in connexion with applications or documents required under this Act and the evidence to be supplied in support;

(*c*) regulate commercial applicators of pesticides and the manufacture, import, export, storage, transportation, distribution and sale of pesticides;

(*d*) regulate the advertising of pesticides;

(*e*) regulate the maximum residue limits of pesticides in food and measures to minimize such residues such as dose rates, pre-harvest intervals and frequency of application;

(*f*) prescribe the requirements for pesticide containers and packaging and the procedures for approving pesticide containers and packaging;

(*g*) regulate the environmentally sound disposal of pesticides and their containers;

(*h*) prescribe the qualifications required and duties of inspectors and analysts;

(*i*) prescribe the qualifications required by persons involved in the commercial applications of pesticides;

(*j*) prescribe the methods of sampling and analysis to be followed;

(*k*) prescribe methods for field evaluation of pesticides;

(*l*) prescribe measures to be taken by employers to protect the health of employees who are or may be exposed to pesticides;

(*m*) provide for measures for the compensation of persons injured by pesticides;

(*n*) provide for the implementation of the Prior Informed Consent Procedure, including control over the export of, and notification procedures for, pesticides which are banned or severely restricted in other countries;

(*o*) prescribe measures to ensure that the confidentiality of information submitted to the Board is maintained;

(*p*) prescribe the fees or charges payable in respect of any application, registration, licence, permit, or document under this Act; and

(*q*) provide, that the contravention of any provision of the regulations constitutes an offence and may prescribe penalties for any offence not exceeding a fine of K2,000.

SUBSIDIARY LEGISLATION
PESTICIDES REGULATIONS

G.N. 5/2002
12/2017

under s. 53

PART I

Preliminary Provisions

Citation

1. These Regulations may be cited as the Pesticides Regulations.

Interpretation

2. In these Regulations, unless the context otherwise requires—

"permit" means a permit, under section 20 of the Act, authorizing the importation of a pesticide which has not been registered;

"registration" means registration of a pesticide under section 18 of the Act;

"sale licence" means a licence, under section 25 of the Act, authorizing the holder thereof to sell one or more pesticides; and

"storage licence" means a licence, under section 25 of the Act, authorizing the holder thereof to store for sale one or more pesticides.

PART II

Registration of Pesticides

Application for registration

3.—(1) An application for registration or re-registration shall be in the form set out in the First Schedule.

(2) Every application for registration shall be accompanied by—

(*a*) a commercial sample of the pesticide unless this requirement is waived by the Board in writing;

(*b*) three copies of the drafts of all labels intended to be used on the container of the pesticide; and

(*c*) any additional information relating to the physical and chemical properties, analytical method, efficacy, safety and environmental effects of the pesticide which is not included in or required by the application form.

Invalid application

4. An application for registration shall be invalid if—

(*a*) it relates to more than one pesticide; or

(*b*) it is not made by a company incorporated in Malaŵi.

Proprietary information

5. The Board shall treat any information submitted to it in connexion with an application for registration as proprietary information of the applicant for twenty years from the earliest date on which the pesticide was registered in any country and during this period of twenty years the information shall not be used in connexion with an application by another applicant without the written consent of the first applicant.

Form of certificate of registration

6. A certificate of registration of a pesticide issued under section 19 (6) of the Act shall be in the form set out in the Second Schedule.

PART III

Labelling

Information to be contained on a label

7.—(1) Every pesticide container shall bear a label containing—

(*a*) trade name of the pesticide;

(*b*) description, type or use of the pesticide;

(*c*) type of formulation of the pesticide;

(*d*) names, using common names approved by the International Standards Organization, of all active ingredients in the pesticides, together with the minimum guaranteed amount of each active ingredient present expressed as—

(i) grams per kilogram (g/kg) for solids, viscous liquids, aerosols and volatile liquids; and

(ii) grams per litre (g/l) for other liquids;

(*e*) net contents of the pack expressed in metric units;

(*f*) name and address of the individual or company in whose name the pesticide is registered;

(*g*) directions for use which shall clearly indicate how, when and where the product can be legally, effectively and safely used and shall, where applicable, include—

(i) warnings to prevent incorrect or inappropriate use;

(ii) stage of the crop and a description of the crop on which and the conditions under which it is recommended that the pesticide be used;

(iii) application rates, timing and method of application; and

(iv) a statement, where required, of the period which should elapse between last application, re-entry, harvest, grazing or slaughter;

(*h*) precautions to be taken in relation to preparing, mixing and applying the pesticide, storage and safe disposal of unwanted pesticides and used pesticide containers;

(*i*) incompatibility with other products, where appropriate;

(*j*) date of manufacture of the product;

(*k*) manufacturing/packaging lot or batch number;

(*l*) registration number,

(*m*) warnings and steps to take to prevent ill effects on beneficial organisms;

(*n*) safety precaution to inform the user on handling of the product with minimum hazard;

(*o*) first-aid advice and medical treatment to take in case of poisoning;

(*p*) safety pictograms in accordance with guidelines approved by the Board; and

(*q*) any other information which the Board may require.

Label to bear a band

8.—(1) A label shall bear a band—

(*a*) of the stipulated colour determined on the basis of the hazard of the formulation of the pesticide in accordance with the classification system in the Third Schedule;

(*b*) which shall comprise at least 15 per cent of the label area; and

(*c*) which shall appear at the bottom of the label.

(2) No label shall contain any information other than the information required under these Regulations unless the prior written permission of the Board has been obtained.

Hazard statement

9. The appropriate hazard statements and symbols based on the classification of pesticides in the Third Schedule shall be prominently printed on a label.

Terms not to be printed on label

10. The terms "safe", "harmless", "non-toxic", "non-poisonous", "non-injurious", "the best", "most effective", "superior control" or "unrivalled" or such other similar terms or their equivalents in another language, shall not be printed on the label.

PART IV

Importation, Manufacturing, Exportation, Sale, Storage and Application of Pesticides

Application for permit

11.—(1) An application for a permit shall be in the form set out in the Fourth Schedule.

(2) An application shall be made in respect of each and every single consignment.

Form of permit

12. A permit shall be in the form set out in the Fifth Schedule.

Limitation on use of imported pesticides

13.—(1) If a pesticide is imported for use by a person other than the permit holder, the permit holder shall not dispose of the pesticide except to the person.

(2) No person shall—

(*a*) apply a pesticide imported under a permit to a crop other than the crop specified in the application; or

(*b*) apply a pesticide with long persistence to a short-term crop.

Destruction of crop

14.—(1) Where a pesticide is applied to a crop in circumstances set out in regulation 13, the person entitled to the crop shall cause the whole crop to be destroyed.

Persistent pesticide

15. No person shall use as food or animal feed a crop that he knows or has reason to believe to be a crop harvested from a plant to which a persistent pesticide was applied.

Application for a licence to manufacture or export pesticides

16.—(1) An application for a licence to manufacture or export a pesticide shall be in the form set out in the Sixth Schedule.

(2) A licence to manufacture or export a pesticide shall be in form set out in the Seventh Schedule.

Application for a commercial applicator's licence

17.—(1) An application for a commercial applicator's licence shall be in the form set out in the Eighth Schedule.

(2) A commercial applicator's licence shall be in the form set out in the Ninth Schedule.

Application for a sale or storage licence

18.—(1) An application for a sale licence or storage licence shall be in the form set out in the Tenth Schedule.

(2) An applicant for a sale licence or storage licence shall furnish such further information as the Board may require.

(3) Where an applicant for a sale licence or storage licence is a body corporate, the application shall be completed and signed by a person or persons duly authorized in that behalf by the body corporate.

Extend of sale licence

19.—(1) In addition to authorizing sale of a pesticide, a sale licence shall authorize storage, at the premises specified in the licence, of the pesticide whose sale is thereby authorized.

(2) A storage licence shall extend to the sale of the pesticides whose storage is thereby authorized.

Form of sale or storage licence

20. A sale licence and storage licence shall be in the form set out in the Eleventh Schedule.

Persons to whom licence may be issued

21. A licence shall not be issued to a person unless—

(*a*) the person is registered under the Business Names Registration Act and he holds a licence issued under the Businesses Licensing Act; or

Cap. 46:02

Cap. 46:01

(*b*) the person has been exempted from the provisions of the Business Names Registration Act or the Businesses Licensing Act, as the case may be.

Cap. 46:02

Cap. 46:01

Display of licence, etc.

22.—(1) A licensee shall cause a licence to be displayed at all times in a conspicuous part of the premises.

(2) The licensee shall display such other information in such manner as the Registrar may from time to time require.

PART VI

Miscellaneous Provisions

Offence

23. Any person who contravenes regulation 13, 14 and 15 or any condition of any exemption shall be guilty of an offence and liable to a fine of K2,000.

Fees

24. The fees prescribed in the Twelfth Schedule shall be payable in respect of the matters specified therein in relation to such fees.

FIRST SCHEDULE

reg. 3

Application for Registration/Re-registration of a Pesticide

The Registrar
Pesticides Control Board
P.O. Box 5748
Limbe
Malaŵi.

1. I/We* .....
(*name of applicant*)

   of .....
(*Address of applicant*)

   hereby apply under section 18 of the Pesticides Act for registration/ re-registration* of the pesticide described in paragraphs 2 to 5 to enable the pesticide to be imported into*, or manufactured in *Malaŵi.

2. This pesticide has never been registered in Malaŵi*/was last registered/ re-registered* by the Pesticides Control Board on .... with registration number .....

3. Addresses of applicant's places of business—

   (*a*) .....
   (*b*) .....
   (*c*) .....
   (*d*) .....

4. (*This paragraph need only be completed if it is intended that the pesticide will be manufactured in Malaŵi*).

   (*a*) Name and address of the factory, building or premises at which the pesticide would be manufactured.

   .....
   .....
   (Applicable to a manufacturer only)

   (*b*) Nature of intended manufacturing activity:

   .....
   .....
   (*State whether preparing, compounding, formulating, mixing, making, packing, labelling or treating the pesticide in any other manner with a view to its sale*)

5. Names and addresses of premises at which the pesticide would be stored—

(*a*) .....

(*b*) .....

.....

.....

6. Trade name of the pesticide .....

7. Details of active ingredient(s)—

(*a*) common name .....

synonyms—

(*b*) chemical name(s) .....

.....

(*c*) structural formula .....

.....

.....

(*d*) Purity (g/kg; g/l; etc.) of the pesticide—

	Name	*Concentration*
(i)	.....	.....
	.....	.....
	.....	.....
(ii)	.....	.....
	.....	.....
	.....	.....
(iii)	.....	.....
	.....	.....
	.....	.....
	.....	.....
(iv)	.....	.....
	.....	.....
	.....	.....

8. Composition (g/kg; g/l; etc.) of the pesticide—

	Name	*Concentration*
(*a*)	.....	.....
	.....	.....
(*b*)	.....	.....
	.....	.....
(*c*)	.....	.....
	.....	.....
(*d*)	.....	.....
	.....	.....

9. Concentration of active ingredient in the pesticide .....

10. Formulation of the pesticide .....

11. Type of pesticides .....

(*fungicide, herbicide, nematicide, viricide, acaricide, growth regulators, insecticide, etc.*)

12. The following toxicological information on the active ingredient/ pesticide as a whole is given in Appendix ..... (*indicate with a tick*).

(*a*) acute toxicity—

(i) acute oral LD50 (in at least two unrelated species);

(ii) acute dermal LD50 (with name(s) of test animals);

(iii) inhalation toxicity;

(iv) toxicity to fish, bees and other non-target organisms.

(*b*) sub acute toxicity studies (90 days);

(*c*) Chronic toxicity studies (2 years);

(*d*) Poisoning symptoms and antidote statement;

(*e*) Protective clothing recommended when handling;

(*f*) Safety precautions to be observed in handling, use and storage;

(*g*) Precautions to be observed for the protection of wildlife, livestock and the environment.

13. Residue data on food crops .....

.....

.....

14. Proposed use (crop, pest, rate and mode of application).....

.....

.....

15. Recommended pre-harvest interval so that the residue remaining on the crop at harvest is within acceptable limits .....

.....

.....

16. The following information on efficacy is given in Appendix .....

..... (*Indicate with a tick*)—

(*a*) Evidence to show that the pesticide will perform as claimed;

(*b*) Phytotoxicity of the pesticide.

17. Details of net contents and nature of pesticide containers and retail packaging .....

.....

.....

18. Distribution of the pesticide will be throughout Malaŵi*/restricted to the following areas*—

.....

.....

(Please specify)

(*This information is required for the purposes of determining the language requirements for the labels*) .....

19. Name of distributor in Malaŵi .....

.....

.....

20. Pesticides and formulations with which the pesticide is known to be incompatible .....

.....

.....

21. The pesticide meets the following specifications (*indicate with a tick*)—

(*a*) FAO Specification;

(*b*) WHO Specification;

(*c*) any other .....

(*Identity of specification*)

22. The pesticide has been registered in the country of origin and an authenticated copy of the certificate of registration is attached as Appendix .....* has not been registered in the country of origin for the following reasons* .....
.....
.....

(*Country*)

Particulars .....
.....
.....

23. Particulars of registrations of the pesticide in other countries—

(a) countries .....

(i) trade name of pesticide .....

(ii) formulation of pesticide .....

(iii) uses allowed .....

(iv) restrictions (if any) .....

Country .....

(i) trade name of pesticide .....

(ii) formulation of pesticides .....

(iii) uses allowed .....

(iv) restrictions (if any) .....

.....

(*Copy of the certificate attached*)

24. I/We* ..... the applicants, hereby declare that all the information given in this application (which includes the annexes) is to the best of my/our* knowledge and belief, true and correct.

Dated this ..... day of ....., 20 .....

.....

(*Signature*)

Name of signatory (printed) .....

Capacity of signatory (if applicant is not an individual).....

(*Director/Secretary/duly authorized attorney*)

For and on behalf of .....

(*Name of applicant if applicant is not an individual*)

(Affix seal or stamp of applicant if not an individual) (.....)

** Delete if inapplicable.*

INSTRUCTIONS ON COMPLETING THIS FORM

An original and two copies of this form must be submitted for registration.

If the space provided in this form is insufficient to record the required information the information must be included in annexes attached to this form which must be numbered to correspond with the numbering on this form.

For Official Use only

Application received by ..... on .....

Fees paid MK ..... (in words)

Date: ....

Pesticides Control Board

SECOND SCHEDULE reg. 6

CERTIFICATE OF REGISTRATION OF A PESTICIDE

The Pesticides Control Board, in exercise of its powers under section 19 (*b*) of the Pesticides Act, has registered the pesticide described below in the name of the registrant, for a period of five years expiring on ..... subject to the conditions appearing below.

The registration number of the pesticides is .....

The name of distributor in Malaŵi is .....

.....

Particulars of the Pesticide

Registrant

Trade name

Active ingredient

Active ingredient content

Concentration

Formulation

CONDITIONS

1. The label(s), which have been approved by the Board for use in connexion with the pesticide, are attached.
2. Registration of this pesticide is subject to the special conditions, which appear on the reverse side of this certificate.

Issued this ..... day of ....., 20 .....

.....	.....
Chairman	*Registrar*
Pesticides Control Board	*Pesticides Control Board*

THIRD SCHEDULE reg. 8 and 9

Determination or WHO hazard classification based on acute LD_{50n} (rat) or Formulated product (mg/kg)

WHO Hazard Class	**Information to appear on label**
	Hazard Statement Band Colour Symbol Symbols and words
Ia Extremely hazardous	
	VERY TOXIC
PMS RED 199 C VERY TOXIC	
IB Highly hazardous	
	TOXIC
PMS RED 199 C TOXIC	
II Moderately hazardous	
HARMFUL PMS Yellow C X X HARMFUL	

III
Slightly hazardous

CAUTION

PMS Blue
293 C
Products unlikely
to present a hazard
in normal use
PMS Green
347 C

*PMS is a colour matching system, mainly used by printers, devised and patented by Pantone, Inc. USA. See Table 5 of the WHO Recommended Classification of Pesticides by Hazard: Bibliography reference 6.

Acute LD50 of information (mg/kg)

FOURTH SCHEDULE reg. 11

APPLICATION FOR A PERMIT TO IMPORT, MANUFACTURE AND USE OF UNREGISTERED PESTICIDES

(*Three copies to be completed*)

The Registrar
Pesticides Control Board
P.O. Box 5748
Limbe
Malaŵi

I/We .....

of .....

.....

desiring to import/manufacture/use the pesticide(s) whose particulars are given in the attached form(s), do hereby apply for a permit in that behalf under the Pesticides Act.

1. I/We intend to import/manufacture/use the pesticide(s) within six months.
2. I ..... the applicant/authorized agent of the applicant, hereby declare that all the information I have given in this application and the attached form(s) is to the best of my knowledge and belief true and correct.

.....
Signature of applicant or authorized agent
for and on behalf of:
(*Affix seal or stamp of applicant*)

Date:
Address:

For Official Use only

Application received by ..... on .....

Fee paid MK ..... (in words)

Date: ....

Registrar

Pesticides Control Board

PARTICULARS FORM

NOTE: *Each form is intended for one pesticide. Any information required, if cannot conveniently be given in the form, may be provided in appendices.*

1. Details of pesticides—

   (*a*) product or trade name .....

   (*b*) common name of active ingredient .....

   (*c*) code name of active ingredient .....

   (*d*) type of pesticide (e.g. insecticide, nematicide) .....

   (*e*) chemical group .....

   (*f*) type of formulation .....

   (*g*) percentage of active ingredient .....

   (*h*) quantity to be imported/manufactured .....

   (*i*) organization, institution, or person for whom imported/manufactured .....

2. Toxicological information on the pesticide as a whole (stating name/species of test animal) .....

   (*a*) acute oral LD_{50};

   (*b*) acute dermal LD_{50};

   (*c*) inhalation toxicity;

   (*d*) chronic toxicity;

   (*e*) fish toxicity;

   (*f*) other information.

3. Particulars where pesticide is sold in any other country—.....

   (*a*) country .....

   (*b*) uses allowed .....

   (*c*) country of manufacture .....

   (*d*) country where the pesticide is imported from .....

4. Particulars where pesticide is being experimented with, or being used in any other country .....

   (*a*) country .....

   (*b*) uses allowed (state whether commercial or experimental) .....

5. The experiment with the pesticide will be conducted in .....
   (*State locality*)

   on the following crops/animals .....

FIFTH SCHEDULE reg. 12

PERMIT TO IMPORT PESTICIDES

.....
of .....
is permitted under section 20 of the Pesticides Act to import in one consignment, manufacture or use the pesticide(s) whose particulars appear below.

This permit is valid within the period of six months from the date of permit subject to the conditions stated on the reverse of this permit.

PARTICULARS OF PESTICIDE(S)

Trade Name *Common Name* *Formulation* *Quantity per cent a.i.*

CONDITIONS

Date issued: ....
Registrar
Pesticides Control Board

SIX SCHEDULE

APPLICATION FOR A LICENCE TO MANUFACTURE OR EXPORT PESTICIDES

(*Three copies to be completed*)

The Registrar
Pesticides Control Board
P.O. Box 5748
Limbe
Malaŵi

1. I/We * .....
   of .....
   desiring to manufacture/export the pesticide(s) whose particulars are given in the attached form(s), do hereby apply for a licence in that behalf under the Pesticides Act.

2. I/We intend to manufacture/export the pesticide(s) within twelve months.
3. I/We* .....
   the applicant/authorized agent of the applicant, hereby declare that all the information I have given in this application and the attached form(s) is to the best of my knowledge and belief true and correct.

Date:
Address:

For Official Use only

Application received by ..... on .....

Fees paid MK ..... (in words)

Date: ....
Registrar Pesticides Control Board

PARTICULARS FORM

NOTE: Each form is intended for one pesticide. Any information required, if cannot conveniently be given in the form, may be provided in appendices.

1. Details of pesticides—
   (*a*) product or trade name .....
   (*b*) common name of active ingredient .....
   (*c*) code name of active ingredient .....
   (*d*) type of pesticide (e.g. insecticide, nematicide) .....
   (*e*) chemical group .....
   (*f*) type of formulation .....
   (*g*) percentage of active ingredient .....
   (*h*) quantity to be imported/manufactured .....
   (*i*) organization or person for whom imported/manufactured .....
   (*j*) organization or person for whom imported/manufactured .....
2. Toxicological information on the pesticide as a whole (stating name/species of test animal) .....
   (*a*) acute oral LD_{50}; .....
   (*b*) acute dermal LD_{50}; .....
   (*c*) inhalation toxicity; .....
   (*d*) chronic toxicity; .....
   (*e*) fish toxicity; .....
   (*f*) other. .....

3. Particulars where pesticide is registered in any other country—

   (*a*) country .....

   (*b*) uses allowed .....

   (*c*) country of manufacture .....

   (*d*) country where the pesticide is imported from .....

4. Particulars where pesticide is being experimented with, or being used in any other country .....

   (*a*) country .....

   (*b*) uses allowed (state whether commercial or experimental) .....

5. The experiment with the pesticide will be conducted in .....
   (*State locality*)
   on the following crops/animals .....

SEVENTH SCHEDULE reg. 16 (2)

LICENCE TO MANUFACTURE OR EXPORT PESTICIDES

LICENCE NO .....

1. Licence is hereby granted to .....
   of .....
   to manufacture/export *pesticides whose particulars appear below, subject to the conditions specified herein.

2. Unless earlier revoked or suspended, this licence is for one year from the date of issue.

3. The licence is not transferable.

PARTICULARS OF PESTICIDE(S)

Trade Name *Common Name* *Formulation* *Quantity per cent a.i.*

CONDITIONS

Date issued: ....

Registrar
Pesticides Control Board

EIGHTH SCHEDULE reg. 17 (1)

APPLICATION FOR A COMMERCIAL APPLICATOR'S LICENCE

(*Three copies to be completed*)

The Registrar
Pesticides Control Board
P.O. Box 5748
Limbe
Malaŵi

1. I/We* .....

   .....

   of .....

   desiring to apply for gain pesticides belonging to the type/types specified below at .....

   .....

   (*Address of premises*)

   do hereby apply for a Commercial Applicator's Licence under section 26 of the Pesticides Act.

2. This application is for .....
   (*a*) a new licence
   (*b*) renewal of licence Current licence No. .....
   (*Indicate with a tick*)

3. Period of licence: From ..... to ..... (annually)

4. The type of pesticides I/We desire to apply are—
   (*a*) fumigants;
   (*b*) insectides;
   (*c*) acaricides;
   (*d*) nematicides;
   (*e*) fungicides;
   (*f*) herbicides.

5. The intended purpose—
   (*a*) fumigation of produce;
   (*b*) field crops;
   (*c*) household pests;
   (*d*) termite proofing;
   (*e*) weed control.

6. I/We* also forward a certified copy of Competence Fumigation Certificate No ..... whose date of issue is .....
.....

7. I/We* also forward account payee bank draft/cash/money order/postal order to the value of ..... made payable to Pesticide Control Board as the application fee.

   I/We* declare that all the information given in this application is true and correct. Signature or thumbprint of the applicant/person duly authorized .....

.....
(*Means of identification*)
for and on behalf of:
(*Affix seal or stamp of applicant*)
Date: .....
**Delete whichever is not applicable.*

For Official Use only

Application received by ..... on .....

Fees paid MK ..... (in words)

Date: ....
Registrar
Pesticides Control Board

NINTH SCHEDULE reg. 17 (2)

COMMERCIAL APPLICATOR'S LICENCE

1. Commercial Applicator's Licence is hereby granted, under section 26 of the Pesticide Act, to .....
.....
of .....
to apply for gain pesticides whose particulars appear below, subject to conditions specified herein.
2. Unless earlier revoked or suspended, this licence is valid for one year from the date of issue.
3. This licence is not transferable.

PARTICULARS OF PESTICIDES

(*a*) fumigants
(*b*) insectides
(*c*) acaricides
(*d*) nematicides
(*e*) fungicides
(*f*) herbicides

CONDITIONS

Date issued: ....
Registrar
Pesticides Control Board

TENTH SCHEDULE reg. 18

APPLICATION FOR A SALE LICENCE OR STORAGE LICENCE

(*Three copies to be completed*)

The Registrar
Pesticides Control Board
P.O. Box 5748
Limbe
Malaŵi

1. I/We* .....
of ..... desiring to sale/store for sale* the pesticides belonging to the class/classes specified below at .....
.....
(*Address of premises*)
do hereby apply for a sale licence/storage licence* under section 19 of the Pesticides Act, to sell/store* the said pesticides.
2. This application is for—
(*a*) a new licence;
(b) renewal of licence. Current licence No. .....
(*Indicate with a tick*)
3. Period of licence: From ..... to ..... (annually)
4. The type of pesticides I/We* desire to sell/store are
**Delete whichever is not applicable*
(*a*) class Ia
(*b*) class Ib
(*c*) class II
(*d*) class III
(*e*) Restricted pesticides.

5. The floor area—
   (*a*) number of exit doors .....
   (*b*) ventilation .....
   (*c*) number of exit doors .....
   (*d*) type of floor .....
   (*e*) drainage system .....
   (*f*) distance from restaurants, canteens or any other eating houses .....
   .....
   (*g*) protective clothing .....
   (*h*) washroom(s) .....

6. Other items sold or stored at the premises are—
   (*Indicate with a tick*)
   (*a*) foodstuff;
   (*b*) sundries;
   (*c*) hardware;
   (*d*) pharmaceuticals;
   (*e*) clothing; or
   (*f*) other (specify)
   .....
   .....

7. I/We* forward a certified copy of the certificate of registration under the relevant law.

8. I/We* also forward account payee bank draft/money order/postal order* to the value of made payable to Pesticide Control Board as the application fee.

   I/We* declare that all information given in this application is true and correct.

   Signature or thumbprint of

   Applicant/person duly authorized

   .....
   (*Means of identification*)
   for and on behalf of:
   (*Affix seal or stamp of applicant*)

   Date .....

**Delete whichever is not applicable*

For Official Use only

Application received by ..... on .....

Fee paid MK ..... (in words)

Date: ....

Registrar

Pesticides Control Board

ELEVENTH SCHEDULE reg. 20

SALES/STORAGE* LICENCE

LICENCE No. .....

1. Licence is hereby granted
   to .....
   of .....
   to sell/store pesticides belonging to class/classes ..... __
   at .....
   .....
   (address of premises) subject to the conditions specified herein.
2. Unless earlier revoked or suspended, this licence is valid for one year from the date of issue.
3. This licence is not transferable.

CONDITIONS

Signature .....

Pesticides Control Board

.....

**Delete whichever is not applicable.*

G.N. 12/2017 reg. 24 TWELFTH SCHEDULE

Item	*Matter*	*Fees*
1.	*Manufacturing—*	
	(*a*) harmonized forms	MK 20,000
	(*b*) manufacturing licence for 5 years . .	MK 800,000
	(*c*) renewal of licence for 5 years	MK 500,000
2.	*Registration of Pesticides—*	
	(*a*) processing of dossier for a locally produced product	MK 300,000
	(*b*) processing of dossier for a foreign product	USD 550
	(*c*) registration certificate for 5 years . .	MK 150,000

	(*d*) retention of a product on the Pesticides Register for 1 year	MK	20,000
	(*e*) renewal of registration certificate for 5 years	MK	150,000
	(*f*) local agent fee for 1 year per registrant . .	MK	100,000
	(*g*) foreign agent fee for 5 years	USD	200
	(*h*) major variation of registration details, per product	USD	300
	(*i*) minor variation of registration details, per product	USD	150
3.	*Commercial Applicators Licence—*		
	(*a*) application form for 1 year	MK	20,000
	(*b*) fumigation licence for 1 year	MK	50,000
	(*c*) field applicator licence for 1 year . .	MK	30,000
	(*d*) domestic pest control licence for 1 year	MK	50,000
	(*e*) aerial commercial spraying for 1 year . .	MK	100,000
4.	*Importation of Pesticides—*		
	(*a*) import permit fees for pesticides per consignment	MK	50,000
	(*b*) import permit for unregistered pesticides per consignment	MK	50,000
5.	*Sales and Storage Licence—*		
	(*a*) sales and storage licence for wholesalers for 1 year	MK	100,000
	(*b*) sales and storage licence for retailers for 1 year	MK	30,000

MEDICAL PRACTITIONERS AND DENTISTS

CHAPTER 36:01

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MEDICAL PRACTITIONERS AND DENTISTS

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CHAPTER 36:01

MEDICAL PRACTITIONERS AND DENTISTS

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An Act to provide for the establishment of the Medical Council of Malaŵi, the registration and disciplining of medical practitioners and dentists, the licensing of private practice of medical practitioners and dentists, the regulation of training within Malaŵi of medical personnel and generally for the control and regulation of the medical profession and practice in Malaŵi and for matters incidental to or connected therewith

17 of 1987
22 of 1989
30 of 1991
19 of 1995
G.N. 18/1988

[5TH FEBRUARY, 1988]

PART I

PRELIMINARY

1. This Act may be cited as the Medical Practitioners and Dentists Act.

Short title

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

Interpretation
30 of 1991

"Council" means the Medical Council of Malaŵi established by section 3;

"dentist" means a person registered as such under section 17;

"medical practitioner" means a person registered as such under section 17;

"member" in relation to the Council means a member thereof appointed, elected, or ordained under section 4 (1) or (4) or section 6;

"Registrar" means the Registrar to the Council appointed under section 13;

PART II

The medical Council of Malaŵi

Establishment of the Medical Council

3. There is hereby established a council to be known as the Medical Council of Malaŵi, which shall be a body corporate having perpetual succession and a common seal and shall, under that name, be capable of suing and being sued and of purchasing or otherwise acquiring, holding and alienating movable or immovable property and, subject to the provisions of this Act, of performing all such acts as bodies corporate may by law perform.

Composition of the Council
22 of 1989
30 of 1991

4.— (1) The Council shall consist of the following members all of whom shall, save in the case of an *ex officio* member, be citizens of Malaŵi—

(*a*) the Chief of Health Services who shall be a member *ex officio;*

(*b*) one medical practitioner serving in the public service, appointed by the Minister;

(*c*) one dentist serving in the public service, appointed by the Minister;

(*d*) one medical practitioner nominated by the Private Hospitals Association of Malaŵi and appointed by the Minister;

(*e*) five members who shall be medical practitioners or dentists elected by the Medical Association of Malaŵi and at least one of whom shall be elected from amongst full-time private practitioners;

(*f*) one representative of the College of Medicine of the University of Malaŵi who shall be a medical practitioner nominated by the Faculty and appointed by the Minister;

(*g*) the Solicitor General or his duly designated alternate who shall be a member *ex officio*;

(*h*) not more than three other members appointed by the Minister from the general public all of whom shall be persons of good character and good standing in the community and at least one of whom shall be a medical practitioner or a dentist in the private sector.

(2) A member of the Council, not being a member *ex officio*, shall hold office for three years.

(3) The Minister may appoint to the Council for a period not exceeding three years such other persons, not exceeding two in number, from amongst the teaching or other staff of the University of Malaŵi as he considers suitably qualified to assist the Council in its work and deliberations, and such persons shall not have the right to vote at any meeting of the Council.

(4) Where the Medical Association of Malaŵi is for any reason whatsoever unable to elect any number of members of the Council it is required to elect under subsection (1), the Minister may appoint to the Council an equal number of members from amongst persons eligible for election under that subsection, and the members so appointed shall hold office until substituted by elected members or for such period, not exceeding three years, as the Minister may, either at the time of making the appointment or at any time thereafter, direct in writing.

(5) Upon the appointment or election to the Council of any member, the Minister shall cause notice of such appointment or election to be published in the *Gazette* and shall in such notice specify the current membership of the Council resultant upon such appointment or election.

Vacation, etc., of members from office

5.—(1) The Minister may require a member of the Council to vacate his office if the Minister is satisfied that the member—

(*a*) has become insolvent or has assigned his estate for the benefit of, or made a composition or other arrangement with, his creditors; or

(*b*) has been absent from three consecutive meetings of the Council, of which he has had notice, without the leave of the Council; or

(*c*) has been disqualified under this Act from carrying on his profession or calling; or

(*d*) has been convicted of an offence under this Act or the repealed Act or any law relating to poisons or drugs; or

(*e*) has been convicted—

(i) within Malaŵi of a criminal offence; or

(ii) outside Malaŵi of an offence by whatever name called which, if committed within Malaŵi, would have been a criminal offence,

and sentenced to imprisonment for a term of six months or more without the option of a fine, whether or not such sentence has been suspended, and has not received a free pardon; or

(*f*) is mentally or physically incapable of efficiently performing his duties as a member of the Council; or

(*g*) has had a penalty imposed upon him under this Act by the Council.

(2) The Minister may suspend from office a member of the Council against whom—

(*a*) criminal proceedings have been instituted for an offence in respect of which a sentence of imprisonment for a term of six months or more without the option of a fine may be imposed; or

(*b*) disciplinary proceedings under this Act are instituted by the Disciplinary Committee,

and while that member is so suspended he shall not carry out any duties as a member.

(3) A member of the Council may resign his office by notice in writing—

(*a*) in the case of an elected member, to the Chairman of the Council;

(*b*) in the case of an appointed member, to the Minister.

Filling of vacancies on the Council

6. On vacation of office by a member of the Council, the vacancy shall be filled by a person appointed or elected in accordance with the relevant provisions of section 4 (1) under which the former member was appointed or elected:

Provided that if the remaining period is less than six months, then—

(*a*) in the case of an appointed member, the Minister may decide not to have the vacancy filled until the expiry of the period; and

(*b*) in the case of an elected member, it shall not be necessary to hold an election and the Council may, if it sees fit, either decide not to have the vacancy filled or to co-opt a person to fill the vacancy until the expiry of the remaining period.

(2) If any member of the Council is granted leave of absence by the Council, the Council may, if it sees fit, co-opt a person who belongs to the same profession or calling as the member who has been granted leave to fill the vacancy during the absence of that member.

Co-opted persons

7. The Council may in its discretion at any time and for any length of period invite any person, and the Minister may in like manner nominate any officer in the public service, to attend any meeting of the Council and take part in the deliberations of the Council, but such person or officer shall not be entitled to vote at that meeting.

Chairman and Vice-Chairman

8.—(1) The Minister shall, by writing under his hand, designate one member of the Council to be the Chairman thereof.

(2) The Council shall elect a Vice-Chairman from amongst its members. The Vice-Chairman shall, subject to subsection (3), hold office for the duration of his membership on the Council.

(3) The office of the Vice-Chairman shall become vacant—

(*a*) if the holder resigns his office by notice in writing to the Council; or

(*b*) if the holder of the office ceases to be a member of the Council; or

(*c*) if the Council so directs.

(4) Wherever the Chairman is absent or is for any cause unable to discharge the functions of his office, the Vice-chairman shall discharge the fucntions of the Chairman.

Executive Committee of the Council 30 of 1991

8A.—(1) There shall be an Executive Committee of the Council which shall consist of—

(*a*) the Chairman and the Vice-chairman of the Council respectively as chairman and vice-chairman thereof; and

(*b*) such number of other members of the Council as the Council shall appoint.

(2) The Executive Committee shall have the following functions—

(*a*) to consider—

(i) all recommendations to the Council;

(ii) all reports of other committees to the Council;

(iii) any matter requiring a decision of the Council, and in appropriate cases make decision thereon on behalf of the Council, subject to the approval of the Council;

(*b*) to monitor and evaluate the implementation of the decisions of the Council; and

(*c*) in cases where any committee of the Council is unable to meet or otherwise transact its business, to deal with any matter before that committee, and the Executive Committee shall report to the Council any of its actions and decisions taken pursuant to this paragraph.

PART III

Meetings of the Council

Meetings of the Council 22 of 1989

9.—(1) Subject to the provisions to this Act, the Council shall hold ordinary meetings for the dispatch of business at least four times in each year.

(2) An extraordinary meeting of the Council—

(*a*) may be convened by the Chairman at any time; and

(*b*) shall be convened by the Chairman within twenty-one days of the receipt by him of a request in writing signed by not less than five members of the Council and specifying the purpose for which the meeting is to be convened.

(3) At any meeting of the Council—

(*a*) the Chairman or, in his absence the Vice-Chairman, shall preside;

(*b*) in the absence of both the Chairman and Vice-Chairman the members present and forming the quorum shall elect one of their number to preside; and

(*c*) the quorum shall be formed by any seven members. 22 of 1989

(4) At any meeting the decision of the Council on any matter

shall be that of the majority of the members present and voting at that meeting, and in the event af an equality of votes, the Chairman or the person presiding shall have a casting vote in addition to his deliberative vote.

(5) Subject to the provisions of this Act, the Council may make standing orders for the regulations of its proceedings and and may vary, suspend or revoke any such standing orders.

(6) The record of any meeting of the Council shall be made available to any person registered under this Act at all reasonable times at the offices of the Council:

Provided that the provisions of this subsection shall not be construed as entitling a registered person to peruse the records of—

(*a*) a meeting of the Disciplinary Committee or any other committee of the Council; or

(*b*) the Council where the Council has resolved that it shall sit as a committee.

PART IV

Functions and Powers of the Council

Functions of the Council

10. The Council shall be the sole registering authority of all persons required to be registered under this Act and shall have the following further functions—

(*a*) to assist in the promotion and improvement of the health of the population of Malaŵi;

(*b*) to control and to exercise authority affecting the training of persons in, and the performance of the practices pursued in connexion with, the diagnosis, treatment or prevention of physical or mental defects, illnesses or deficiencies in human beings;

(*c*) to exercise disciplinary control over the professional conduct of all persons registered under this Act and practising in Malaŵi;

(*d*) to promote liaison in the field of medical training both in Malaŵi and elsewhere and to promote the standards of such training in Malaŵi;

(*e*) to advise the Minister on any matter falling within the scope of this Act; and

(*f*) to communicate to the Minister any information acquired by the Council relating to matters of public health.

Powers of the Council

11. For the better performance of its functions, the Council shall, subject to the provisions of this Act, have power—

(*a*) to remove any name from any register or, subject to such conditions as the Council may impose, restore it thereto;

(*b*) to appoint examiners and moderators, conduct examinations and approve certificates, and charge such fee in respect of such examinations and certificates as may be prescribed;

(*c*) to approve of institutions in Malaŵi for the training of medical and related personnel;

(*d*) to acquire, hire or dispose of property, and borrow money on the security of the assets of the Council or accept and administer any trust or donation;

(*e*) to consider any matter affecting the medical, dental or psychology professions and make representations thereon to the Minister or take such action in connexion therewith as the Council considers necessary;

(*f*) upon aplication by any person, to recognize any qualifications held by that person (whether such qualifications have been obtained in Malaŵi or elsewhere) as being equal, either wholly or in part, to any prescribed qualifications, whereupon such person shall, to the extent to which the qualifications have been so recognized, be deemed to hold such prescribed qualifications;

(*g*) to perform such other functions as may be prescribed or assigned to the Council by the Minister; and

(*h*) generally, to do such things as the Council deems necessary or expedient to acheive the objects ot this Act.

Committees of the Council
22 of 1989
30 of 1991

12.—(1) In addition to Executive Committee, the Disciplinary Committee the Education and Training Committee and the Inspectorate Committee and save as otherwise provided in relation to each of those committees, the Council may establish any number of other committees to

carry out any special or general functions determined by the Council and may delegate to any such committee such of the functions of the Council as the Council may consider expedient.

(2) The Chairman of the Council shall by reason of his office be a member of every committee established under subsection (1).

(3) The chairman of each committee shall be appointed by the Council from amongst the members of the Council.

(4) Each committee may co-opt as members of such committee persons who are not members of the Council and any of such members so co-opted may or may not be officers in the public service.

(5) The chairman of a committee may, at any time and place, convene a meeting of the committee of which he is chairman.

(6) The Council may, at any time, direct the chairman of any committee to convene a meeting of such committee and such chairman shall, as soon as is practicable, comply with such direction.

(7) Every committee shall keep minutes of its meetings and shall inform the Council of its activities and shall conduct its proceedings in such manner as the Council may direct.

(8) Any member of a committee who is not an officer in the public service shall, in respect of expenses incurred by him in travelling and subsistence while discharging his duties as member of that committee, be paid out of the funds of the Council, such allowances as the Council may determine.

PART V

Management

Appointment of Registrar and other staff

13.—(1) Subject to the provisions of this section, the Council—

(*a*) shall appoint a Registrar upon terms and conditions approved by the Minister; and

(*b*) may appoint assistant registrars and such other employees as it considers necessary or desirable in the discharge of its duties and upon such terms and conditions as it may determine.

(2) The Registrar, after consultation with the Chairman of the Council, may appoint temporary employees at such daily rates of pay, not below the minimum rates otherwise prescribed by law, as he may consider appropriate and shall, after he has appointed any such employee, report the fact thereof to the Council at its next meeting.

(3) The Registrar shall be the secretary to the Council and to every committee thereof and shall, on the instructions of the Chairman of the Council or the chairman of any committee, convene a meeting of the Council or the committee, as the case may be.

(4) If the Registrar is absent or unable to carry out any of his functions under this Act or any other enactment, an assistant registrar or any other officer of the Council shall exercise, during the period that the Registrar is so absent or unable to act, such of the functions of the Registrar as the Chairman of the Council may designate.

PART VI

Financial Provisions

Funds, accounts, audit

14.—(1) The funds of the Council shall consist of—

(*a*) such sums as may be appropriated by Parliament for the purposes of the Council;

(*b*) all fees payable under this Act;

(*c*) such other moneys and assets as may vest in or accrue to the Council, whether in the course of its functions or otherwise, including any penalty or costs payable to the Council under this Act; and

(*d*) the levy imposed under section 15.

(2) The Council shall keep proper accounts and other records relating thereto in respect of its funds and shall in every respect comply with the provisions of the Finance and Audit Act.

Cap. 37:01

(3) The accounts of the Council shall be examined and audited annually by auditors appointed by the Council and approved by the Minister.

Levy

15. The Minister may from time to time, by Order published in the *Gazette*, impose a levy on gross or net income accruing to any person or class of persons registered under this Act and such levy shall be appropriated for the general operations of the Council or for such operations of the Council as the Minister may specify in the Order.

Remuneration and expenses of members of the Council

16. Members of the Council shall be paid from the funds of the Council such allowances as the Minister may determine and in determining the allowance the Minister may make provision for the reimbursement of any reasonable expenses incurred by a member of the Council or of a committee of the Council in connexion with the business of the Council or the committtee.

PART VII

Registers

Registers

17.—(1) Subject to the provisions of this Act, the Council shall continue to keep and maintain the registers which were established before the commencement of this Act relating to medical practitioners and dentists and may establish or continue to keep and maintain—

(*a*) a register of interns, being persons referred to in section 30;

(*b*) a register of vocational trainees, being persons referred to in section 37;

(*c*) a register of persons who may be provisionally registered under section 32; and

(*d*) a register of persons temporarily employed in Malaŵi, being persons referred to in section 33.

(2) The Council may establish a register of students who are undergoing training in Malaŵi or a qualification required for admission as a medical practitioner or dentist.

(3) There shall be entered in a register under this section in relation to a registered person his name, address, qualifications and date of first registration and such other particulars as the Council may from time to time determine.

(4) The Council may alter the title of any register and every person registered in a register bearing the former title shall for all purposes be considered as registered in the register bearing the new title.

(5) Where the Council intends to establish a register or to alter the name of a register, the Council shall cause to be published in the *Gazette* and in one issue of a newspaper in general circulation in Malaŵi notice of such intention and the date with effect from which it is intended that the register will be established or the name of the register will be altered.

Specialist Register

18.—(1) The Council may establish and keep a register of medical practitioners or dentists who have acquired special knowledge and experience in particular branches of surgery, medicine or dental surgery.

(2) If the Council establishes a register under subsection (1), it may, by rule or otherwise, determine—

(*a*) the requirements to be satisfied, including the experience to be acquired, the nature and duration of the training to be undertaken and the degree, diploma or certificate to be held by a medical practitioner or dentist before he can be registered on that register;

(*b*) the conditions which shall exempt any person from the requirement, experience or training referred to in paragraph (*a*);

(*c*) the conditions governing the practice of medical practitioners or dentists who have been registered on a register kept under subsection (1), including conditions restricting the practice of any such medical practitioner or dentist to a particular branch of surgery, medicine or dental surgery, as the case may be;

(*d*) the circumstances in which the Council may remove the name of a person from a register kept in terms of subsection (1).

(3) There shall be entered in a register kept under subsection (1) in relation to a registered person such particulars as the Council may from time to time determine.

Duties of Registrar

19.—(1) All registers shall be kept under the custody of the Registrar at the offices of the Council.

(2) It shall be the duty of the Registrar, under the direction of the Council, to—

(*a*) enter in any register the particulars required under this Act of every person whom he registers in that register;

(*b*) make in a register any necessary alterations in the name, address, qualifications and other particulars of a registered person;

(*c*) erase from a register the name of a registered person who dies; and

(*d*) when required to do so by or under this Act or in pursuance of an order of a court—

(i) to mark in a register the registration of an applicant or, as the case may be, the suspension from practice of a registered person; and

(ii) to erase from a register the name of a registered person;

(*e*) generally to comply with the requirements imposed on him by this Act.

(3) Where the Registrar erases from a register the name of a registered person he shall enter in that register a record of the reasons therefor.

Certificates

20.—(1) If, in the performance of the duties imposed upon him by or under this Act, the Registrar—

(*a*) registers any person, he shall issue to him a certificate of registration;

(*b*) erases from a register the name of a registered person or marks in a register the suspension from practice of a registered person, he shall, wherever possible, notify him in writing accordingly.

(2) On application by a registered person the Registrar may issue to that person a duplicate certificate of registration—

(*a*) if he is satisfied as to the identity of the applicant; and

(*b*) on production by the applicant of an affidavit certifying that the certificate of registration has been lost or destroyed; and

(*c*) on payment by the applicant of the appropriate prescribed fee, if any.

Offences in connexion with registers and certificates

21.—A person who—

(*a*) makes or causes to be made an unauthorized entry or alteration or deletion in a register or a certified copy thereof or an extract thereof or on a certificate of registration; or

(*b*) procures or attempts to procure for himself or another person registration or a certificate of registration by means of fraud or false representation or by the concealment of a material fact; or

(*c*) makes or causes to be made in connexion with an application for registration a false declaration in a document used for the purpose of establishing his identity; or

(*d*) wilfully destroys, defaces or renders illegible or causes to be destroyed, defaced or rendered illegible an entry in a register; or

(*e*) without the permission of the holder, wilfully destroys, defaces or renders illegible or causes to be destroyed, defaced or rendered illegible a certificate of registration; or

(*f*) forges or utters or, knowing the same to be forged, possesses or holds a document purporting to be a certificate of registration,

shall be guilty of an offence and liable to a fine of K1,000 and to imprisonment for six months.

Publication of registers

22.—(1) The Registrar shall, from time to time, under the authority of the Council, cause copies of the registers or of supplementary lists showing all alterations, additions, revisions and erasures made since the last publication of the complete registers to be published in the *Gazette*.

(2) Copies of the registers shall be published in such form as the Council may direct and may contain, in lists separate from the main registers, such particulars as the Council may require to be published.

Registers to be evidence

23.—(1) Subject to the provisions of subsection (2), the last published copy of a register, as read with any supplementary list, purporting to be published under the authority of the Council under section 22, shall be *prima facie* evidence in any legal proceedings of the facts therein recorded and the omission of the name of any person from such copy shall be evidence, *prima facie* evidence, that such person is not registered.

(2) In the case of a person—

(*a*) whose name does not appear in a published copy of a register and whose name has been added to a register after the date of the last published copy thereof, a certificate under the hand of the Registrar of the entry of the name of that person in that register shall be *prima facie* evidence that that person is so registered on that register; or

(*b*) whose name has been erased from a register since the date of the last published copy thereof and has not been restored thereto, a certificate under the hand of the Registrar that the name of that person has been erased from the register shall be *prima facie* evidence that that person is not registered on that register; or

(*c*) who has been suspended from practice in accordance with this Act, a certificate under the hand of the Registrar that that person has been so suspended from practice for a period specified in that certificate shall be *prima facie* evidence that that person has been suspended from practice for that period.

PART VIII

Registration

Persons registered before the commencement of this Act 30 of 1991

24. Every person who, immediately before the commencement of this Act was registered in any register of medical practitioners or dentists in Malaŵi and is resident in Malaŵi, shall be deemed to have been registered under this Act in that register.

Residence of registered persons

25.—(1) Subject to subsection (2), an applicant for registration shall not be registered unless at the time of his application—

(*a*) he resides in Malaŵi; or

(*b*) he intends, if he is registered, to take up residence in Malaŵi within six months of the date of his registration.

(2) Any person who resides in and is lawfully practising his profession or calling in such country as the Council may from time to time specify for the purposes of this subsection by notice in the *Gazette* may be registered if, but for residing outside Malaŵi, he is otherwise qualified for registration.

Persons eligible to be registered as medical practitioners or dentists

26.—(1) Subject to the provisions of this section, a person shall be eligible for registration under this Act as a medical practitioner or dentist if he is a holder of a degree, diploma or other qualification which is recognized by the Council as making him eligible for registration and—

(*a*) after obtaining such degree, diploma or other qualification, he has engaged as an intern in one or more institutions approved by the Council for such period, being not less than one year, as the Council may prescribe; and

(*b*) he satisfies the Council that, whilst engaged in training employment as required under paragraph (*a*), he has acquired sufficient knowledge of, and experience in, the practice of medicine or dentistry, as the case may be; and

(*c*) he satisfies the Council that he is a person of good moral character and is a fit and proper person to be registered under this Act.

(2) No qualification from an examining authority outside Malaŵi shall be recognized or accepted under subsection (1) as a qualification for registration of the holder, unless the qualification entitles the holder to registration in the country, state or territory in which the examining authority has jurisdiction.

(3) In any case where the Council does not recognize a degree, diploma or other qualification in medicine or dentistry held by any person as making him eligible for registration, the Council may take steps to assess his suitability for registration and for the purpose of so doing may require him to attend any interview or to undergo any oral or written examination.

(4) The Council may, after assessing the suitability for registration of a person under subsection (3), direct that before registration that person shall undergo such further period of training (hereinafter referred to as "vocational training") or pass such further examination as the Council may specify.

(5) The Council may, where it considers it expedient so to do, delegate the assessment of suitability for registration under subsection (3) to a committee of the Council which shall, after making such assessment, make such recommendations to the Council as it considers appropriate.

Person registered may have additional qualifications inserted in register

27. Every person registered under this Act who has obtained any higher or further degree or qualification than the degree or qualification in respect of which he has been registered shall be entitled, upon payment of the prescribed fee, to have such higher degree or additional qualification inserted in the register in substitution for or in addition to the qualification previously registered.

Certificate not valid unless signatory registered

28. No certificate or other document required by any law to be signed by a duly qualified medical practitioner or dentist shall be valid unless signed by a person registered as a medical practitioner or dentist under this Act.

Procedure for registration

29.—(1) Any person desiring to be registered under this Act may apply in writing to the Registrar and shall submit with his application—

(*a*) a certificate of any qualification on which he relies for registration or a certified photostat copy thereof:

P*r*ovided that a certificate showing his registration in the country, state or territory in which he qualified is submitted and that such certificate contains details of the qualifications on which registration was based; and

(*b*) if other practical experience or training is required in the country, state or territory in which he qualified before registration in that country, state or territory—

(i) evidence that such experience has been acquired or that such training has been obtained; and

(ii) a certificate of registration in that country, state or territory or a certificate photostat copy thereof; and

(*c*) if so required by the Council, such evidence of identity, of good character and reputation, of compliance with the conditions, if any, prescribed by the Council in relation to him and of

the authenticity and validy of the certificate submitted as the Council may require; and

(*d*) save in the case of a person referred to in section 25 (2), evidence that he resides or intends, if he is registered, to reside in Malaŵi.

(2) The Council may require any statement in connexion with an application under subsection (1) to be supported by a solemn or statutory declaration.

(3) If the Registrar is satisfied that the qualification and the particulars or documents submitted under subsection (1) are in accordance with the requirements of this Part, he shall, upon payment by the applicant of the appropriate prescribed fee, register the applicant in the appropriate register.

(4) If the Registrar is not satisfied that the qualification or the particulars or documents submitted with an application under subsection (1) are in accordance with the requirements of this Part, he shall refer the application to the Council for decision.

(5) The Council may refuse to register an applicant if in its opinion the applicant, notwithstanding that he is otherwise qualified, is not a fit and proper person to be registered by reasons of—

(*a*) his physical or mental health; or

(*b*) the fact that he is not of good character and reputation; or

(*c*) the fact that he does not have adequate knowledge of the English language; and

(*d*) any conduct of his which, if he had been registered, would have constituted improper or disgraceful conduct or conduct which, when regard is had to the profession for which that person has applied to be registered, is improper or disgraceful:

Provided that, before refusing registration under paragraph (*d*), the Council shall refer the matter to the Disciplinary Committee and the provisions of Part IX shall, *mutatis mutandis*, apply as if the applicant were registered on the register on which he has applied to be registered.

Register of interns

30.—(1) Any person having the qualifications referred to in section 26 (1) who is employed in Malaŵi in the practice of medicine, surgery or dentistry as an intern in a hospital or an institution approved by the Council shall, subject to the provisions of this Part, be entitled, on payment by him of the prescribed fee, to be registered in the register of interns.

(2) A person registered in the register of interns shall be deemed to be registered on the register of medical practitioners in so far as is necessary—

(*a*) to enable him to be employed in the practice of medicine, surgery or dentistry at a hospital or institution approved by the Council;

(*b*) for the purpose of any other enactment or such other purposes as the Council may specify.

Register of vocational trainees

31. Any person who is required under section 26 (4) after the acquisition of any qualification to undergo a period of training before he is entitled to be registered and who is employed otherwise than as an intern shall, subject to the provisions of this Part and if he satisfies the Registrar that he is employed at an institution or by an employer approved by the Council, be entitled, upon payment of the prescribed fee, to be registered in the register of vocational trainees appropriate to the profession or calling for which he intends to be registered.

Provisional registration

32.—(1) The Council may accept any qualification which has not been recognized under section 26 as entitling the holder to be registered if, in all other respects, he satisfies the conditions and requirements of this Part for registration on a register kept under this Act:

Provided that the acceptance of a particular qualification for provisional registration of one person shall not confer any right to any form of registration on any other person holding the same qualification.

(2) The Council may require an applicant for provisional registration as a condition of such registration—

(*a*) to undertake a specified period of practice on the staff of a hospital or other institution specified by the Council or with an employer approved by the Council; and

(*b*) to pass, during the period of his provisional registration, such examination as the Council may specify.

(3) An application for provisional registration under subsection (1) shall be made in writing to the Registrar and shall be accompanied with the prescribed fee.

Register of persons temporarily employed

33. Any person qualified to practise the profession or calling of a medical practitioner or dentist, who intends to practise that profession or calling in Malaŵi but does not intend to reside for a period exceeding twelve months in Malaŵi may, if he satisfies the Registrar that he is so qualified, be registered on a register of persons temporarily employed:

Provided that in circumstances considered by the Registrar to be exceptional, the Registrar may extend the period of registration for two months.

Erasures from register

34.—(1) The Council may direct the Registrar to erase from a register of medical practitioners or register of dentists—

(*a*) the name and all particulars of a person whose registration has been cancelled in accordance with this Act or who—

(i) not being a citizen of Malaŵi; has been absent from Malaŵi for a continuous period of three years preceding such erasure; or

(ii) fails to pay the prescribed fee payable under this Act within three months after the date on which that fee became payable; or

(iii) has failed within a period of six months after the date of an inquiry sent by the Registrar by registered letter to the address as shown in the register to notify the Registrar of his present address:

Provided that if such registered letter is returned to the Registrar by reason of it being unclaimed or for any other reason the Council may forthwith direct that the name of the person be erased from the register; or

(iv) has requested that his name be removed from the register and, if so required by the Council, has lodged an affidavit proceedings are being or are likely to be taken against him in connexion with the practice of his profession or calling; or

(v) is resident or practising in Malaŵi and whose name has been removed from the roll, register or record of any university, hospital, college, training school or institution, society or other body from which that person received the qualification on the basis of which he was registered; or

(*b*) any entry which is proved to the satisfaction of the Council to have been made in error or through fraudulent representation or concealment of material facts or in circumstances not authorized by this Act.

(2) The name and all particulars of a person shall be erased from—

(*a*) the register of interns, register of vocational trainees, provisional register or temporary register—

(i) when the person is registered on the register of medical practitioners or the register of dentists; or

(ii) on the expiration of the period of registration on such register;

(*b*) in case of the provisional register, on the cancellation of the registration of that person.

(3) If a person referred to in section 25 (1) fails to take up residence in Malaŵi within the period referred to in that paragraph, his name and particulars shall be erased from the register on the expiration of that period.

(4) The Registrar shall erase from the register of interns or register of vocational trainees, as the case may be, the name of a person who is registered on that register—

(*a*) who advises the Registrar that he is leaving Malaŵi whether after completion of his service as interns or trainee or otherwise; or

(*b*) on the expiration of eighteen months from the date of his registration unless he satisfies the Registrar that due to illness or other cause the period of his training has been extended; or

(*c*) on the termination of the period of training which has been extended in the circumstances referred to in paragraph (*b*); or

(*d*) if the Council instructs the Registrar to erase the name of that person from the register.

(5) Before the Council directs an erasure to be made under subsection (1) (*a*) (v) or subsection (4) (*d*) the Council shall afford the person concerned an opportunity of showing cause before the Council as to why the erasure should not be made.

Method of erasure

35. In order to effect the erasure of the name and particulars of a person from a register, a line of red ink shall be drawn through such name and particulars but so as to leave them remain legible.

Consequence of erasure

36. Any certificate of registration issued to a person whose name has been erased shall be deemed to have been cancelled on the date of erasure and the person concerned shall be deemed not to be registered with effect from that date.

Appeals against refusal to register or erasure from register

37.—(1) A person aggrieved by—

(*a*) the refusal of the Council to register him or any qualification or particular which he wishes to be registered in under this Act; or

(*b*) the erasure from a register of his name or of any qualification or particular which he considers he is entitled under this Act to have entered against his name in a register,

may after notice to the Council and within three months after the date on which notice is given to him by the Registrar of such erasure, appeal to the High Court in such manner as may be prescribed or as may be considered appropriate by the High Court against such erasure.

(2) On an appeal under subsection (1) the High Court may—

(*a*) dismiss the appeal; or

(*b*) if it is of opinion that the Council has not acted in accordance with the provisions of this Act, make an order that the name of the appellant or the qualification or particular, as the case may be, be entered in the appropriate register; or

(*c*) refer the matter back to the Council for further consideration, and may,

make such other order as to costs or otherwise as it may deem just.

PART IX

Private Practice

Licence for private practice 22 of 1989

38.—(1) The Council may authorize the Registrar to issue to a medical practitioner or a dentist who has applied in the prescribed manner and whom the Council considers has had suitable experience in medicine, surgery or dentistry, as the case may be, a licence to engage in private practice on his own behalf as a private practitioner or to be employed, either whole time or part time, by a private practitioner.

(2) A licence under subsection (1) shall—

(*a*) be subject to such conditions as the Council may either generally or specially determine;

(*b*) be issued upon payment of the prescribed fee;

(*c*) be in such form as may be prescribed;

(*d*) be valid from the date of issue to 31st March next following the date of issue; and

(*e*) state whether the person so licensed may practise as a private practitioner on his own behalf or may be employed by a private practitioner.

(3) The Council may, for good cause refuse to issue a licence to engage in private practice to any person or may withdraw or cancel such licence issued to any person either indefinitely or until such time as the conditions, if any, imposed by the Council have been fulfilled.

(4) No premises shall be habitually used for the purpose of private practice, unless they are authorized for such use by the Council, and any person duly authorized by the Council in that behalf may at any reasonable time enter upon and inspect such premises.

(5) Any person aggrieved by any decision of the Council under this section may appeal to the High Court, and in such appeal the High Court may annul or vary the decision as it thinks fit.

22 of 1989

(6) A person who engages in private practice without a licence authorizing him so to do issued in accordance with this Act or regulations made thereunder shall be guilty of an offence and liable to a fine of K2,000 and imprisonment for one year.

Issue, etc., of licences to be published in the Gazette

39. The issue, cancellation and withdrawal of any licence under section 38 of this Act shall be notified in the *Gazette*.

No fees recoverable unless practitioner licensed for private practice

40. No person in private practice shall be entitled to recover any charge for any medical treatment, operation, advice or other medical service which he has rendered, or for any medicine which he has prescribed or supplied, as a medical practitioner or dentist, unless he is at the time appropriately licensed under section 38 for private practice.

PART X

Education and Training

Education and Training Committee

41.—(1) There shall be an Education and Training Committee which shall consist of—

(*a*) one member of the Council appointed by the Council and designated by the Council as chairman of the committee;

(*b*) any number of other pesons appointed by the Council and who may or may not be members of the Council.

(2) Subject to the general direction of the Council, the functions of the Education and Training Committee shall be—

(*a*) to advise the Council on all matters relating to the education and training requirements of medical and related personnel in Malaŵi;

(*b*) to satisfy itself and the Council that the curricula in every teaching institution in Malaŵi in the medical field are such that graduates will have a sufficient basic knowledge for the practice of their profession or calling; and

(*c*) to satisfy itself and the Council in such other matters as may be vested in it by the Council in relation to the supervision of other aspects of medical education and training.

(3) For the purpose of carrying out its functions the Education and Training Committee may, subject to the general direction and guidance of the Council—

(*a*) on behalf of the Council, appoint inspectors to visit hospitals, or other institutions or premises where instruction is given to or examinations are conducted for students who intend to apply for registration under this Act and to evaluate such instructions or examinantions; and

(*b*) to submit reports to the Council on the courses and curriculum followed at, and examinations conducted by, any institution referred to in paragraph (*a*).

Reports on training qualifications and practice of persons who are registrable

42. The Council may, and if so required by the Minister shall, consider and report to the Minister and advise him upon any matter relating to professional or technical training to other qualifitions required for admission to a profession or calling in respect of which a register is kept and the conditions of practice after registration.

Approval of institutions, curricula and qualifications 30 of 1991

43. The Council shall have powers to approve of—

(*a*) teaching hospitals;

(*b*) medical and dental schools;

(*c*) a basic medical education curriculum;

(*d*) post-graduate medical education;

(*e*) the basic medical qualification of persons to be registered as medical practitioners or dentists;

(*f*) registration of medical practitioners and dentists as consultants after approving their post-graduate qualifications;

(*g*) and such other matter of training as may be within its competence under this Act or as may be expedient for the purposes and objects of this Act.

Degrees, diplomas and certificates instituted by the Council
30 of 1991

44.—(1) The Council may institute and issue degrees, diplomas and certificates of competence for any class of medical personnel trained or employed at an approved institution in Malaŵi other than medical practitioners, dentists and personnel of a class for which there is established a separate examining or qualifying authority:

Provided that degrees, diplomas or certificates of competence of the College of Medicine of the University of Malaŵi shall be instituted with the approval of the Council.

(2) The Registrar shall keep lists of all persons to whom a degree, diploma or certificate instituted under this section has been issued.

Rules for training and examinations
30 of 1991

45. The Council may, by notice in the *Gazette*, make rules as to—

(*a*) the form of degrees, diplomas and certificates of competence instituted by the Council;

(*b*) the issue of duplicates and certified copies of degrees, diplomas and certificates of competence issued by the Council and the fees payable to the Council therefor;

(*c*) the requirements to be fulfilled by persons as a condition of the issue of a degree, diploma or certificate of competence to them, including the training and courses of instruction to be undergone and the examinations to be passed, and exemptions from the fulfilment of such requirements;

(*d*) the institutions and other places at which the training and courses of instruction referred to in paragraph (*c*) shall be undergone, the standards of education and character required to qualify persons to undergo such training and courses of instruction and the supervision of persons undergoing such training and courses of instruction;

(*e*) the holding of examinations referred to in paragraph (*c*) including—

(i) the appointment and remuneration of examiners and invigilators;

(ii) the entry and disqualification of candidates for examination;

(iii) the fees payable to the Council by candidates for examination; and

(iv) the publication of the results of examinations.

PART XI

Disciplinary Provisions

Disciplinary Committee

46.—(1) There shall be a Disciplinary Committee of the Council which shall consist of—

(*a*) the Chairman of the Council who shall be the Chairman of that committee; and

(*b*) not less than two and not more than four other persons specially appointed by the Chairman of the Council for the particular inquiry, who shall—

(i) in the case of an inquiry into the conduct of a medical practitioner, be members of the Council who are medical practitioners;

(ii) in the case of an inquiry into the conduct of a dentist, be members of the Council who are dentists;

(iii) in the case of an inquiry concerning an allegation implicating one or more medical practitioners jointly with one or more dentists, be members of the Council representing both callings;

(*c*) two other members who may or may not be members of the Council.

(2) In any disciplinary inquiry the Council may request the Attorney General to nominate a legally qualified person serving in the public service to assist the Disciplinary Committee in the proceedings of the inquiry.

(3) At any meeting of the Disciplinary Committee the Chairman and two other members shall form a quorum.

(4) For the purposes of any inquiry the Chairman of the Council may appoint to the Disciplinary Committee any other person he considers reasonably qualified to assist the committee in the conduct of the inquiry.

(5) All acts, matters or things authorized or required to be done by the Disciplinary Committee shall be decided by a majority vote at a meeting of the Disciplinary Committee at which a quorum is present.

(6) At all meetings of the Disciplinary Committee each member present, being a member by virtue of subsection (1), shall have one vote on a question before the Disciplinary Committee and, in the event of an equality of votes, the Chairman shall have, in addition to a deliberative vote, a casting vote.

(7) The Disciplinary Committee shall have power to regulate its own procedure.

Function of Disciplinary Committee

47.—(1) Subject to the provisions of subsection (2), the function of the Disciplinary Committee shall be to inquire into an allegation referred to it under section 50 (2) alleging that a registered person—

(*a*) has been guilty of improper or disgraceful conduct or conduct which, when regard is had to the profession or calling of that person, is improper or disgraceful; or

(*b*) is grossly incompetent or has performed any act pertaining to his profession or calling in a grossly incompetent manner.

(2) Before exercising its function with respect to any person, the Disciplinary Committee shall—

(*a*) cause to be served upon him a notice setting out the allegations against him; and

(*b*) afford him a reasonable opportunity of being heard either by himself or, if he so wishes, by a legal representative.

Taking of evidence by Disciplinary Committee

48.—(1) For the purposes of any inquiry, the Disciplinary Committee may take evidence and may—

(*a*) under the hand of the Chairman of the Council or the Registrar summon witnesses and require the production of any book, record, document or thing; and

(*b*) administer an oath or affirmation to any person; and

(*c*) examine any book, record, document or thing which a witness has been required to produce.

(2) A summons for attendance before the Disciplinary Committee or for the production to it of any book, record, document or thing shall be—

(*a*) in the form prescribed; and

(*b*) signed by the Chairman or the Registrar.

(3) Any person who—

(*a*) has been summoned under subsection (2) and who—

(i) refuses or fails without sufficient cause to attend and give evidence relevant to the inquiry at the time and place specified in the summons; or

(ii) refuses to be sworn or to affirm; or

(iii) refuses or fails without sufficient cause to produce any book, record, document or thing which he has been required by that summons to produce; or

(*b*) attends a witness before the Disciplinary Committee and refuses to answer or to answer fully and satisfactorily to the best of his knowledge and belief any question properly put to him,

shall be guilty of an offence and liable to a fine of K200 and to imprisonment for three months.

(4) Any person who gives false evidence on oath at an inquiry held under this Part, knowing such evidence to be false or not believing it to be true, shall be guilty of an offence and liable to a fine of K400 and to imprisonment for six months.

(5) The Disciplinary Committee shall, in any inquiry held by it under this Part, record the proceedings and any evidence heard by it and the decision made by it and the reasons therefor.

Exercise of disciplinary powers on conviction for offence

49.—(1) A registered person who has been convicted of an offence by a court of law within or outside Malaŵi, whether before, on or after the date of his registration, shall be liable to disciplinary inquiry by the Disciplinary Committee in accordance

with the provisions of this Part if the Disciplinary Committee is of opinion that such offence constitutes—

(*a*) improper or disgraceful conduct; or

(*b*) conduct which, when regard is had to the profession or calling of that person, is improper or disgraceful.

(2) The Disciplinary Committee may, if it thinks fit on proof before it of a conviction referred to in subsection (1) and without hearing further evidence, deal with the convicted person in accordance with the provisions of this Part:

Provided that the convicted person shall be afforded an opportunity of tendering, in writing or in person or by his legal representative as he may elect, an explanation to the Disciplinary Committee in extenuation of his conduct.

(3) If, after the termination of proceedings before a court in Malaŵi—

(*a*) it appears to the court that there is *prima facie* evidence of improper or disgraceful conduct on the part of a registered person, the court shall direct that a copy of the record of the proceedings or a copy of such part of the record of the proceedings as is material to the issue shall be transmitted to the Council; or

(*b*) the Council requests that a record of the proceedings before a court in Malaŵi or part of such record be supplied to it on the ground that it is of direct interest to the Council in the exercise of its functions under this Act, the court shall transmit to the Council a copy of the record of the proceedings or a copy of such part of the record of the proceedings as is material.

Council to refer cases to Disciplinary Committee

50.—(1) Whenever there is brought to the notice of the Council an allegation which might be the subject of inquiry by the Disciplinary Committee the Council shall have power to call for information, to cause such investigation to be made as it thinks necessary and to seek such legal advice or other assistance as it may require.

(2) After any investigation pursuant to subsection (1) the Council—

(*a*) may refer the allegation to the Disciplinary Committee for inquiry under this Part and in that case the Registrar shall present a charge, in such form as may be prescribed, to the registered person against whom the allegation is made;

(*b*) if it considers that—

(i) the conduct complained of would not constitute improper or disgraceful conduct; or

(ii) for any other reason the allegation should not be the subject of inquiry by the Disciplinary Committee,

may dismiss the allegation or take such other action as it deems fit and may, after first allowing the person concerned to make written representation, authorize the Chairman of the Council to admonish that person and the Chairman shall report the fact thereof to the Council;

(*c*) if it considers that the allegation forms or is likely to form the subject of criminal proceedings already before a court, may postpone referring the matter to the Disciplinary Committee until such criminal proceedings have been determined.

Exercise of disciplinary powers

51.—(1) After due inquiry, the Disciplinary Committee shall report its findings to the Council with such recommendations as the Disciplinary Committee considers appropriate.

(2) After considering the findings and recommendations of the Disciplinary Committee the Council—

(*a*) if it is satisfied that the registered person—

(i) has been guilty of improper conduct or disgraceful conduct or conduct which, when regard is had to the profession or calling of that person, is improper or disgraceful and that such conduct warrants the cancellation of his registration; or

(ii) is grossly incompetent or has performed any act pertaining to his profession or calling in a grossly incompetent manner,

the Council shall direct the Registrar to cancel the registration of the registered person and, if it thinks fit, order that person to pay to the Council any costs or expenses incidental to the inquiry;

(*b*) if it considers that the registered person has been guilty of improper or disgraceful conduct or conduct which, when regard is had to his profession or calling, is improper or disgraceful but that such conduct does not warrant the cancellation of the registration of that person, shall do one or more of the following—

(i) order his suspension for a specified period from practising or performing acts specially pertaining to his profession or calling;

(ii) impose such conditions as it deems fit subject to which he shall carry on his profession or calling;

(iii) order him to pay to the Council a penalty not exceeding K 1,000;

(iv) order him to pay any costs or expenses of and incidental to the inquiry;

(v) censure him; and

(vi) caution him and postpone, for a specified period not exceeding three years any further action against him on such conditions as the Council may determine as to his future

conduct, including conduct or nature of his practice during that period.

(*c*) if it considers that the allegations against the registered person have not been established, shall dismiss the allegations and in such case the Council may if it is of the opinion that the allegations were frivolous or vexatious, order the complainant to pay the costs of the inquiry.

(3) If at any time the Council is satisfied that during the period of any postponement under subsection (2) (*b*) (vi) a registered person has not complied with the conditions imposed under that paragraph, the Council after giving reasonable notice to the registered person concerned, may proceed to inflict further upon him more of the measures specified in that subsection.

Appeal to High Court

52.—(1) Any person who is aggrieved by the findings of the Disciplinary Committee or the decision reached, or penalty or measure imposed, by the Council under this Part may, within three months after the date of such findings or the imposition of such penalty or measure, appeal to the High Court.

(2) On an appeal under subsection (1) the High Court may—

(*a*) confirm, vary or set aside any finding, decision or penalty appealed against; or

(*b*) refer the matter back to the Council, for further consideration, and in either case may make such order as to the costs of the appeal or otherwise as it may deem just:

Provided that the High Court shall not set aside any finding or penalty by reason only of an informality or irregularity in the proceedings of the Council or of the Disciplinary Committee which did not embarrass or prejudice the appellant in answering the charge or in the conduct of his defence.

(3) For the purposes of any appeal under this section the High Court may, if it considers it expedient so to do, sit with one or more persons as assessors, being persons whom it considers specially qualified to assist it in hearing the appeal, and may hear the appeal wholly or partly with such persons, but the decision in such appeal shall be that of the presiding judge or judges.

Publication of result of disciplinary proceedings

53.—(1) The Registrar shall by notice in the *Gazette* publish the name of any person—

(*a*) whose registration has been cancelled; or

(*b*) who has been suspended from practice and shall, in such notice, specify the period of suspension.

Council or Disciplinary Committee not to be liable

54.—(1) Save as is provided in this Act, no legal proceedings whether civil or criminal shall lie against the Council or the Disciplinary Committee or any member or officer thereof in respect of any act or duty done or performed in accordance with the provision of this Part.

(2) The Council shall not be responsible for any loss of earnings by a person as a result of action taken under this Part, whether by the Council or the Disciplinary Committee, and whether or not a particular finding, decision or penalty is subsequently varied or set aside.

Improper or disgraceful conduct

55.—(1) The Council may in regulations made under this Act—

(*a*) define what, in the case of any class of registered persons shall constitute improper or disgraceful conduct;

(*b*) provide for the manner in which complaints or charges against a registered person may be lodged; and

(*c*) provide for any other matter incidental to the investigation of an inquiry into a complaint or charge against a registered person.

(2) If any registered person has counselled or knowingly been a party to the performance of any act in respect of which an unregistered person has been convicted of an offence under Part XII the conduct of such registered person shall, for the purposes of this Part, constitute improper or disgraceful conduct:

Provided that the provisions of this subsection shall not be construed as exempting such registered person from prosecution in a court for any offence which such conduct may constitute.

(3) Regulations referred to in subsection (1) shall not limit the general power conferred on the Disciplinary Committee or on the Council to inquire into allegations of improper or disgraceful conduct not covered by such regulations and to impose any penalty under this Part on any person guilty of such conduct.

PART XIA

Inspectorate Provisions

Inspectorate Committee 22 of 1989

55A.—(1) There shall be an Inspectorate Committee appointed by the Council which shall, subject to the general or special directions of the Council, perform all such inspectorate functions for the purpose of setting and maintaining the standards of health care in relation to—

(*a*) premises, equipment and supplies;

(*b*) qualifications and credentials of personnel employed at health establishments;

(*c*) behaviour and conduct of health personnel towards patients and clients; and

(*d*) such other matters as the Council may deem expedient, and to report its findings to the Council.

(*2*) A person who wilfully obstructs any person duly authorized to perform inspectorate functions pursuant to subsection (1) shall be guilty of an offence and liable to a fine of K2,000 and imprisonment for one year.

PART XII

Offences and Penalties by Unregistered Persons

Remuneration not recoverable by unregistered persons

56. No remuneration shall be recoverable in respect of any act pertaining to a profession or calling in respect of which a register is kept under this Act when performed by a person who is not registered on the appropriate register.

Certain certificates invalid if signed by unregistered person

57. No certificate required by law from any member of a profession or calling in respect of which a register is kept under this Act shall be valid unless the person signing such certificate is registered on the appropriate register.

Proof required for issue of licences

58. No licence required under any law to be obtained by a registered person shall be issued to such person unless the person applying for such licence produces proof that he is registered on the appropriate register.

Unregistered persons practising as medical practitioners 30 of 1991

59.—(1) Subject to the provisions of subsection (2) and to any exemption granted under this Act any person who, not being registered as a medical practitioner—

(*a*) for gain, practises or carries on business as a medical practitioner, whether or not purporting to be registered or performs or undertakes to perform any act specially pertaining to the practice of a medical practitioner; or

(*b*) pretends or, by any means whatsoever, holds himself out to be a medical practitioner, whether or not purporting to be registered; or

(*c*) uses the title "medical practitioners" or any name, title description or symbol indicating or calculated to lead any person to enter that he possesses a degree, diploma or other qualification as a medical practitioner, doctor of medicine, physician or surgeon or that he is registered as a medical practitioner under this Act,

shall be guilty of an offence and liable to a fine of K2,000 or to imprisonment for one year.

(2) The provisions of subsection (1) shall not apply in relation to—

(*a*) a body corporate which is a local authority in respect of which there is a medical practitioner appointed, engaged, employed or otherwise to supervise the health services provided by that local authority; or

(*b*) a body corporate which—

(i) employs a medical practitioner principally for the purpose of providing health services for its employees; and

(ii) is exempted under subsection (4).

(*c*) any person who, or any body corporate or unincorporate which, establishes a health facility and in respect thereof employs persons registered to practise in accordance with this Act and that the health facility so established meets the minimum requirements prescribed by or under this Act for the category of such health facility. 30 of 1991

(3) In paragraph (*a*) of subsection (2)—

"local authority" means—

(*a*) a city or municipal council, a town council or a district council; or

(*b*) any other body or organization which the Minister may, by notice in the *Gazette*, declare to be a local authority for the purposes of that paragraph.

Unregistered persons practising as dentists 30 of 1991

60.—(1) Subject to the provisions of subsections (3) and (4) and to any exemption granted under this Act, any person who, not being registered as a dentist—

(*a*) for gain, practises or carries on business as a dentist, whether or not purporting to be registered, or performs or undertakes to perform any act specially pertaining to the practice of dentistry; or

(*b*) pretends or, by any means whatsoever, holds himself out to be a dental surgeon, whether or not purporting to be registered, or to be entitled to practise dentistry or to perform any act specially pertaining to the practice of dental surgery; or

(*c*) uses the title "dental surgeon" or "dentist" or any name, title, description or symbol indicating or calculated to lead any person to infer that he possesses a degree, diploma or other qualification as a dental surgeon or dentist or that he is registered under this Act; or

(*d*) by any means whatsoever gives advice in dentistry or in any act specially pertaining to the practice or dentistry,

shall be guilty of an offence and liable to a fine of K2,000 or to imprisonment of one year.

(2) For the purposes of subsection (1), the following acts are specified as specially pertaining to the practice of dental surgery—

(*a*) the performance of any operation and the treatment of any disease, deficiencies or lesions on or of the human teeth or jaws, the correction of the malpositions thereof and the performance of radiographic work in connexion with the human teeth or jaws;

(*b*) the giving of any anaesthetic in connexion with any operation on the human teeth or jaw;

(*c*) the making, repairing, re-alteration or supply of artificial dentures, restorative dental appliances or other similar dental appliances;

(*d*) the taking in the mouth of any impression or bite with a view to the making, repairing, altering or supplying any artificial dentures, restorative dental appliances or other similar dental appliances;

(*e*) the trying or fitting in the mouth of any artificial dentures, restorative dental appliances or other similar dental appliances;

(*f*) the performance of any such operation, treatment, attendance or the giving of such advice as is usually performed or given by a dentist or any operation, treatment, advice or attendance preparatory to or for the purpose of or in connexion with the making, repairing, altering, supplying, fitting, inserting or fixing of artificial dentures, restorative dental appliances or other similar dental appliances;

(*g*) cleaning and polishing teeth; and

(*h*) scaling teeth, that is to say, the removal of tartar deposits, accretions and stains from those parts of the surfaces of the teeth which are exposed or which are directly beneath the free margins of the gums, including the application of medicaments appropriate thereto.

(3) Nothing in this section shall be constructed as preventing—

(*a*) the—

(i) performance of any operation or the treatment of any disease, deficiency or lesion of the jaws and soft tissue of the mouth; or

(ii) giving of any anaesthetic in connexion with a dental operation; or

(iii) performance of any rediographic work, by a medical practitioner in the ordinary course of his practice;

(*b*) the extraction of a tooth—

(i) by a medical practitioner, where the services of a dentist are not readily available; or

(ii) by any person, where the case is urgent and no registered medical practitioner or dentist is available and the operation is performed without the application of a local or general anaesthetic;

(*c*) the performance in any public service of dental work by any person in accordance with conditions of his employment;

(*d*) the carrying on, in accordance with conditions approved by the Minister, of the practice of dental surgery at any hospital or other institution approved for the purpose of this paragraph by the Minister;

(*e*) the performance, in relation to the practice of dental surgery, of any radiographic work at a hospital or nursing home or at the request or under the direction of a registered medical practitioner or dentist; and

(*f*) the making, repairing or altering of artificial dentures, restorative dental appliances or other similar dental appliances by any person who is registered as a dental technician:

Provided that nothing in this paragraph shall be construed as permitting a registered dental technician to perform an operation in the mouth of any person including the taking of an impression or a bite.

(4) The provisions of paragraph (*a*) of subsection (1) shall not apply in relation to—

(*a*) a body corporate which is a local authority in respect of which there is a dentist appointed, employed or otherwise engaged to supervise the dental services provided by that local authority; or

(*b*) a body corporate which—

(i) employs a dentist principally for the purpose of providing dental services for its employees; and

(ii) is exempted under subsection (6);

(*c*) any person who, or any body corporate or unincorporate which, establishes a health facility and in respect thereof employs persons registered or otherwise qualified to practise in accordance with this Act and that the health facility so established meets the minimum requirements prescribed by or under this Act or required by the Council for the category of such health facility.

(5) In paragraph (*a*) of subsection (4)—

"local authority" means—

(*a*) a city or municipal council, a town council or a district council, or

(*b*) any other body or organization which the Minister may by notice in the *Gazette*, declare to be local authority for the purposes of that paragraph.

PART XIII
Miscellaneous Provisions

African systems of therapeutics allowed

61. Nothing contained in this Act shall be construed to prohibit or prevent the practice of any African system of therapeutics by any person in Malaŵi:

Provided that nothing in this section shall be construed to authorize the performance by a person practising any African system of therapeutics of any act which is dangerous to life.

Exemptions from registration

62.—(1) Notwithstanding anything to the contrary contained in this Act, if, with the consent of the Chairman of the Council—

(*a*) a registered medical practitioner or dentist calls in as consultant, a medical practitioner or dentist who is neither resident nor registered in Malaŵi, such consultant shall not be held to require registration in Malaŵi, in respect of his attendance upon the patient with respect to whom he has been called in consultation;

(*b*) a person registered in any country as a medical practitioner or dentist but who is neither resident nor registered in Malaŵi and who is called into Malaŵi on the *bona fid*e request of a patient shall not be held to require registration in Malaŵi in respect of his attendance on such patient;

(*c*) a person practising a profession or calling in respect of which a register is kept who is neither resident nor registered in Malaŵi and who is appointed by the Council or other body approved by the Council to conduct an examination in Malaŵi shall not be held to require registration in Malaŵi in respect of his duties in connexion with the conduct of such examination;

(*d*) a person practising a profession or calling in respect of which a register is kept under this Act who is—

(i) a member of a naval, military, air or police force of a country other than Malaŵi and temporarily stationed on duty in Malaŵi; or

(ii) a delegate of the International Committee of the Red Cross and has entered Malaŵi with the consent, or at the invitation, of the Government,

shall not be held to require registration in Malaŵi in respect of his duties as a member of that force or as such delegate, as the case may be;

(*e*) the Council may exempt from the provisions of this Act regarding registration any person not permanently resident in Malaŵi who is engaged solely in teaching or research work affecting any or the professions or calling in respect of which a register is kept under this Act for a period not exceeding four months.

(2) Any prescription or order signed by a person exempted from registration in accordance with subsection (1) and given by him in the course of his practice under that subsection, but not otherwise, shall, for the purposes of any law relating to drugs, have same force and effect as a prescription or order signed by a registered person.

Registered persons becoming unfit to practice

63.—(1) Whenever there is brought to the notice of the Council an allegation that a registered person has—

(*a*) become mentally or physically disabled to such an extent that it would be contrary to the public interest to allow him to continue to practice; or

(*b*) become unfit to purchase, acquire, keep, use, prescribe, order, supply or possess any drug; or

(*c*) been using a drug in contravention of any law relating to the use of drugs; or

(*d*) become addicted to or dependent upon the use of drugs, the Council shall have power to call for such information and to cause such investigation to be made as it thinks necessary and to seek such legal advice or other assistance as it may require.

(2) In consequence of an investigation under subsection (1), the Council may—

(*a*) direct that such person shall cease to practice and that his registration be cancelled; or

(*b*) suspend such person from practice for such period, and subject to such conditions, as the Council may determine; or

(*c*) impose such conditions respecting the practise of such person as it may deem necessary and in the event of failure by such person to comply with such conditions, the Council may direct that such person shall cease to practise and that his registration shall be cancelled.

Restoration to register

64. Where the name of a person has been erased from the register, the Council may, if it thinks fit, authorize the

restoration to the register of the name of such person if representations are made by the person concerned after the expiration of such period as the Council may determine in that particular case.

Burden of proof on unregistered persons

65. In any criminal proceedings against any person upon a charge of having performed any act which constitutes an offence under this Act, if performed by a person alleged to be not registered, the person charged shall be deemed to be not registered unless he proved the contrary.

Personation of registered person or misrepresentation

66. Any person who impersonates a registered person, shall be guilty of an offence and liable to a fine of K2,000 and to imprisonment for one year.

Registered person using unregistered title or qualification

67. A registered person who takes, uses or publishes in any way whatsoever a name, title, description or symbol indicating or calculated to lead any person to infer that he possesses a qualification which relates to a profession or calling in respect of which a register is kept and which is not shown in the register in connexion with his name shall be guilty of an offence and liable to a fine of K1,000 and to imprisonment for one year.

Notification of change of address or death

68.—(1) A registered person who changes his address shall notify that fact to the Registrar within one month after such change.

(2) If the registrar of births and deaths receives notice of a death which shows that the deceased belonged to a profession or calling in respect of which a register is kept, he shall forthwith notify the Registrar of such death.

Closure of premises and seizure of equipment, etc.
19 of 1995

68A.—(1) Where the Council believes, on reasonable grounds, that this Act or any regulations made thereunder have been contravened, the Council may, subject to subsection (2), order—

(*a*) the closure of any premises; and

(*b*) the seizure of any equipment, instrument or any other thing,

by means of or in relation to which the Council reasonably believes the contravention was committed.

(2) The closure of any premises shall cease, and any equipment, instrument or any other thing seized shall not be detained, after the provisions of this Act or any regulations made thereunder have, in the opinion of the Council, been complied with, unless before that time disciplinary or court proceedings, as the case may be, have been instituted in respect of the contravention, in which event the premises shall remain closed and the equipment, instrument or other thing may be detained until the proceedings are finally concluded.

(3) Where a person has been found guilty of an offence or disciplinary misconduct under this Act or any regulations made thereunder, any equipment, instrument or other thing by

means of or in relation to which the offence or misconduct was committed may, in addition to any other penalty imposed by the court or the Council, be forfeited to such person, and may be disposed of in such manner and at such time and place, as the court or the Council, as the case may be, may direct; but no equipment, instrument or other thing shall be disposed of pending an appeal against the decision of the court or the Council or before the time within which the appeal may be taken has expired.

PART XIV
Regulations and Savings

Regulations

69. The Minister may, with the advice of the Council, make regulations for carrying out or giving effect to the provisions of this Act, and without prejudice to the generality of the foregoing such regulations may—

(*a*) prescribe the fees payable—

(i) upon registration or renewal of registration in a register; or

(ii) on transfer from one register to another register; or

(iii) for restoration to a register; or

(iv) for registration of an additional or specialist qualification; or

(v) for the issue of a duplicate certificate of registration or a certificate extract from a register or other certificate issued by the Registrar; or

(vi) in respect of private practice; or

(vii) for any other matter under this Act;

(*b*) prescribe the forms required to be prescribed under this Act;

(*c*) prescribe the acts considered to be or not to be acts specially pertaining to profession or calling in respect of which a register is kept under this Act;

(*d*) make provision for the conduct, supervision of private practice and other matters relating thereto; and

(*e*) make provision for the registration, control and regulation of persons who practice professions or callings allied to medicine and dentistry and whose work is concerned closely with the prevention or treatment of any physical or mental ailment in human beings.

Repeal and savings

70. Repeal and savings.*

*The Medical Practitioners and Dentists Registration Act was repealed. Any subsidiary legislation made thereunder shall remain in force unless in conflict with this Act and be deemed to be subsidiary legislation made under this Act and may be replaced, amended or repealed by subsidiary legislation made under this Act.

SUBSIDIARY LEGISLATION

MEDICAL PRACTITIONERS AND DENTISTS (PRIVATE PRACTICE) REGULATIONS

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under s. 69

G.N. 127/1988 84/1989 19/1991 120/1993 40/1994 27/1997 30/2004 35/2004 8/2005 48/2007 10/2009 1/2016

PART I

PRELIMINARY

1. These Regulations may be cited as the Medical Practitioners and Dentists (Private Practice) Regulations. Citation

2. In these Regulations, unless the context otherwise requires— Interpretation

"approved institution" means an institution specified in the First Schedule; *First Schedule*

"institutional facility" means a clinic or dispensary operated by a company or other organization solely for providing services to its employees and any dependants living with the employees; G.N. 10/2009

"locum" means a medical practitioner or dentist substituting or providing service for another medical practitioner or dentist in the absence of that other;

Third Schedule G.N. 84/1989

"notifiable disease" means a disease specified in the Third Schedule;

"private practice" means the giving of medical, surgical or dental advice or treatment by a medical practitioner or a dentist for a fee, but does not include such activity if undertaken by a medical practitioner or dentist as part of his duties as an employee at an institution specified in the Sixth Schedule.

Sixth Schedule

PART II
Eligibility for a Private Practice Licence

Eligibility for a private practice licence under Part IX of the Act G.N. 40/1994

3.—(1) Subject to subregulation (2), no person shall be issued with a licence authorizing him to engage in private practice on his own behalf as a private practitioner or to be employed, either whole time or part-time, as a private practitioner unless he has served as a medical practitioner or dentist in an approved institution for a continuous period of not less than two years.

(2) Where the Council is satisfied that an applicant for a private practice licence has, from his practice undertaken wholly in another country or partly in Malaŵi and partly in another country, obtained sufficient experience appropriate to the conditions in Malaŵi in relation to the kind of private practice in which he intends to engage, the Council may, notwithstanding that the applicant has not served the minimum period specified under subregulation (1), issue to him a private practice licence subject to such conditions as the Council may impose; and the Council may require such conditions to be fulfilled either prior or subsequent to the grant of the licence.

Specialists engaging in general practice G.N. 48/2007

3A. All specialists who want to engage in general practice work except for specialists in paediatrics, surgery, medicine and obstetrics and gynaecology shall be required to undergo an orientation for a minimum period of six (6) months at a hospital approved by the Council before being allowed to practice as such.

Practitioners in public service eligible for a practice licence G.N. 84/1989

4. Save as otherwise provided in the contract of employment in the case of a contract or an expatriate officer, a medical practitioner or dentist employed in the public service or other organization owning or operating an establishment specified in the Sixth Schedule shall be eligible for a private practice licence under these Regulations if he satisfies the other requirements of these Regulations, but a licence issued to him shall be subject to such arrangements as may be approved by the Minister (in the case of those in the public service) or by or on behalf of the organization (in the case of those in such other organization) with regard to—

(*a*) the time when such medical practitioner or dentist may or may not engage in private practice;

(*b*) the use, by such medical practitioner or dentist for the purposes of his private practice, of any premises, equipment and facilities within, or forming part of, a hospital, clinic or other health establishment of the Government or of such other organization; and

(*c*) such other matters as deemed expedient in the interest of medical and dental service to the general public.

Absence from active clinical practice

5.—(1) A medical practitioner or dentist who has been absent from clinical practice for a continuous period of more than three years shall not be eligible for a private practice licence unless immediately prior to the grant of the licence he has undergone full-time clinical orientation at an approved hospital for a period of not less than six months; and such person may be attached to such hospital as an employee or otherwise:

Provided that nothing in this subregulation shall be construed as imposing an obligation on the Government, the Council, a hospital or any person to employ or otherwise engage any medical practitioner or dentist.

(2) For the purposes of subregulation (1), a person shall not be considered to have been absent from clinical practice if he satisfies the Council that while substantively engaged on non-clinical duties he was regularly performing clinical duties at an approved institution and the head of that institution certifies to that effect in writing to the Council.

PART III
Private Practice Licence

Application for issue or renewal of licence
Second Schedule, Form PP 1
Fifth Schedule

6.—(1) An application for a private practice licence shall be in Form PP 1 set out in the Second Schedule.

(2) Every application shall be accompanied with the appropriate application and licence fee specified in the Fifth Schedule; but the application fee so paid shall not be refundable.

(3) An application for renewal of a private practice licence shall be made in writing and submitted to the Registrar thirty days before the expiry of the current licence period; and the Council shall not be obliged to consider an application for renewal if submitted after the thirty days' period, or may consider such application subject to such conditions as the Council may impose in relation to the operation of the licence or otherwise.

Form, validity and renewal of licence
Second Schedule
Form PP 2
G.N. 84/1989

7.—(1) Every private practice licence shall be in Form PP 2 set out in the Second Schedule.

(2) A private practice licence shall be valid from the date of issue to 31st March next following the date of issue and may be renewed from time to time:

Provided that where the expired period of validity of the licence was twelve months, the licence shall not be renewed unless the Council is satisfied that during the expired period the licensee attended at least one approved conference of the medical profession in Malaŵi held when he was available to attend.

G.N. 84/1989

(3) The Registrar shall, soon after 31st March every year, publish in the *Gazette* a list of names, address, callings and other particulars of all persons licensed to operate a private practice for the ensuing period ending 31st March the following years.

Licence fees
Fifth Schedule

8. The fees specified in the Fifth Schedule shall be payable in respect of the matters relatively specified in that Schedule.

Replacement of licence
Fifth Schedule
G.N. 18/1991

9. A licence or a premises registration certificate may be replaced upon proof to the satisfaction of the Registrar that the licence or certificate has been lost, destroyed or defaced and upon payment by the licensee of the replacement fee specified in the Fifth Schedule.

Number of clinics

10.—(1) Save as provided in subregulation (2), a private practice licence shall authorize the medical practitioner or dentist to whom it is issued to operate his private practice at not more than one place, being the place located at the premises specified in the licence.

(2) Nothing in subregulation (1) shall be construed as prohibiting a private practitioner from—

(*a*) undertaking clinical visits away from his licensed premises to any hospital, clinic, health centre or other health establishment for the limited purpose of seeing his out-patients or in-patients or conducting any surgical, diagnostic or therapeutic procedures in relation to his patients; and

(*b*) being engaged in a supervisory, advisory, consultative or other appropriate capacity by or for any hospital, clinic or health centre or for the performance of his professional duties.

Types of clinics
G.N. 35/2004

11.—(1) A private practice licence shall authorize the medical practitioner or dentist to whom it is issued to provide either out-patient services or in-patient services or both out-patient and in-patient services.

(2) A private practice licence shall authorize the medical practitioner or dentist to whom it is issued to provide in-patient services provided he has a minimum of five years experience obtained in a hospital. G.N. 35/2004

12.—(1) A licensee may employ as an assistant any person who has undergone recognized training in medicine, dentistry, nursing or midwifery in an approved training institution and who is not registered as a medical practitioner or dentist, to undertake duties appropriate to his calling under the immediate supervision of the licensee or a medical practitioner or dentist employed by the licensee. Assistants G.N. 35/2004

(2) In the case of in-patient services, an assistant shall include a medical practitioner or dentist who is registered with the Council after successful completion of internship. G.N. 35/2004

(3) Where, in circumstances other than those of an emergency, any assistant employed by a licensee undertakes or offers to undertake any form of medical or dental treatment independently without the immediate supervision of a medical practitioner or dentist, he shall be guilty of an offence. G.N. 35/2004

PART IV
Locum Practice

13.—(1) A medical practitioner or dentist who wishes to work as a locum for another medical practitioner or dentist holding a private practice licence shall first satisfy the requirements for his own eligibility for a private practice licence under these Regulations and shall make his application to the Council in writing: Locums

Provided that in the case of an emergency a medical practitioner or dentist may act as a locum for a period not exceeding fourteen days during which time he shall inform the Council of his action in that behalf and make a formal application under this subregulation.

(2) Where the duration of a locum practice—

(*a*) is not to exceed sixty days, whether consecutive or cumulative, the Registrar may issue to the applicant a permit in Form PP 3 set out in the Second Schedule authorizing the applicant to practice as a locum, subject to payment of the relevant fee specified in the Third Schedule; *Second Schedule, Form PP 3*

(*b*) is to exceed sixty days, consecutive or cumulative, the applicant shall require to be issued with a private practice licence in accordance with these Regulations.

PART V
X-Ray Facilities and Clinical Laboratories

X-ray facilities

14.—(1) A private practice shall not include X-ray facilities, unless the medical practitioner or dentist who carries on the practice or is employed thereat—

(*a*) is himself qualified in the use of ionizing radiation; or

(*b*) employs a radiographer,

and in either case the person referred to in paragraph (*a*) or (*b*) personally undertakes the radiological examination of patients.

Clinical laboratories

15. A private practice shall not include a clinical laboratory, unless the examination in that laboratory of specimens obtained from patients is—

(*a*) undertaken personally by the licensee or a medical practitioner or a qualified medical laboratory assistant, technician or technologist employed thereat; and

(*b*) limited to the purposes of undertaking minimum investigations required for the diagnosis of his patients.

Use of X-ray facilities and clinical laboratories for referred cases

16.—(1) The X-ray facilities or a clinical laboratory of a private practice operated by a medical practitioner or dentist may be used for referred cases of another medical practitioner or dentist only upon satisfactory proof that the patients concerned are patients of that other medical practitioner or dentist and that the examination is to be limited to the purposes specified in regulation 15 (*b*).

Unlawful use of X-ray facilities or clinical laboratories G.N. 35/2004

17. Any person who uses the X-ray facilities or a clinical laboratory of a private practice—

(*a*) for the examination of any person, or specimens from any person, who is not a patient of the private practice concerned or who has not been referred thereto in accordance with subregulation (1); or

(*b*) otherwise than in accordance with the provisions of this Part,

shall be guilty of an offence and liable to a penalty of K20,000 and to one month imprisonment.

PART VI
General

The Council to approve premises

18.—(1) No private practitioner shall operate a private practice unless the premises at which the private practice is to be or is being operated have been approved by the Council.

(2) For the purpose of the Council's approval under subregulation (1), a person applying for a private practice licence or for a renewal thereof shall, when making his application, separately apply in writing for the Council's approval of the premises used or to be used for his private practice; and the Council shall not be obliged to consider his application for a private practice licence before it approves the premises.

G.N. 19/1991

(3) The Council shall keep and maintain a register of all premises approved by the Council under this regulation and shall issue in respect of every such premises a registration certificate in Form PP 5A set out in the Second Schedule which shall be renewable annually upon payment, by the private practitioner concerned, of the application and premises registration fees specified in the Fifth Schedule but the application fee so paid shall not be refundable, and the Council shall once every year publish in the *Gazette* the list of all premises registered under this subregulation.

Second Schedule

Fifth Schedule

Conditions of licence G.N. 35/2004

19. Every private practice licence shall be issued subject to any special condition endorsed thereon by the Council and to the following general conditions, that is to say—

(*a*) that the premises used for the private practice are—

(i) at all times kept in good order and good state of repair and are kept reasonably secure from unauthorized entry;

(ii) not to be used as residential premises except with the permission in writing of the Council;

(*b*) that the premises and the private practice shall be open at any reasonable time for inspection by any person duly authorized in that behalf by the Council; and any person who willfully obstructs or hinders any such duly authorized person from conducting the inspection shall be guilty of an offence and liable to a penalty of K40,000 and one year imprisonment;

(*c*) that the premises and the private practice conform to the minimum standards and facilities specified—

(i) in Part I of the Fourth Schedule in respect of a private practice providing out-patient services only;

Fourth Schedule Part I

Fourth Schedule Part II

(ii) in Part II of the Fourth Schedule in respect of a private practice providing in-patient services,

and further conform to any public health requirements prescribed by or under the Public Health Act or any other written law; and

Cap. 34:01

(*d*) that by reason of proximity of his place of residence to the premises of his private practice, the licensee is able to be in regular attendance at his private practice during the hours it is open to the general public.

Council to inspect and register health facilities G.N. 30/2004

19A.—(1) In the exercise of its powers of inspection, the Council shall at least once every year undertake visits to every health facility in Malaŵi and the Council shall, unless Regulations made under the Act otherwise provide, prescribe in respect of every such facility the minimum requirements and standards of practice according to its class as determined by the Council.

(2) The Council shall keep and maintain a register of all health facilities in Malaŵi and shall once every year publish in the *Gazette* the list of all registered health facilities.

(3) There shall be payable annually to the Council in respect of every health facility in Malaŵi the premises registration fees specified in the Fifth Schedule.

Fifth Schedule

Notification of diseases, etc., and monthly returns

20. Every licensee shall—

Third Schedule

(*a*) immediately upon treating any person for, or identifying any person as having, any notifiable disease specified in the Third Schedule at his private practice, notify the Secretary for Health, either directly or through such health officers as the Secretary for Health may designate, of such disease and the treatment, if any, given to such person;

(*b*) immediately upon the occurrence of the death of any patient at his private practice, notify the police of the event of such death and furnish to them all relevant information concerning the death;

(*c*) submit to the Secretary for Health monthly returns in Form PP 4 or Form PP 5, as the case may be, set out in the Second Schedule with particulars of diseases, ailments or injuries treated by him in his private practice.

Second Schedule, Forms PP 4 and PP 5

Restriction on practice outside field of specialization

21. No licensee or locum, and no assistant employed at the private practice of the licensee, shall engage in practice outside his area of specialization or professional or technical competence except—

(*a*) in cases of emergency; or

(*b*) in cases where practitioners with requisite specialization are not reasonably available,

and it shall be the duty of the licensee to ensure strict observation of this regulation:

Provided that a person registered under the Specialist Register kept by the Council under section 18 of the Act and in accordance with the provisions of the Medical Practitioners and Dentists (Specialist Register) (Qualifications) Rules, 1988, shall be deemed also to possess the professional competence of a general practitioner.

Personal conduct

22. Every licensee shall at all times whilst on duty be dressed and groomed and generally conduct himself in such a manner as to portray to the public a respectable image of himself and the profession he is practising and observe the standards of ethics of his profession.

Manner of indicating name, etc., of the licensee *Fourth Schedule*

23. A licensee shall indicate his name and qualifications on the outside of the premises of his private practice in an unostentatious manner and in accordance with item 4 of Part IA of the Fourth Schedule, modified as the case may be.

Change of premises and other particulars relating to a licence

24. On application by a licensee, the Council may in writing authorize change of premises or other particulars of the licensee and in such event, either—

(*a*) the written authority of the Council shall be attached to the licence; or

(*b*) the Council may as it sees fit direct that the licence be replaced to reflect the new premises or particulars, subject to payment by the licensee of the replacement fee specified in the Fifth Schedule.

Fifth Schedule

Cancellation of licence

25. For the purpose of cancelling a private practice licence under section 38 (3) of the Act the expression "good cause" shall include—

(*a*) failure by the licensee to comply with the provisions of the Act or of these Regulations or any other subsidiary legislation made under the Act;

(*b*) contravention by the licensee of any condition imposed under the licence;

(*c*) cancellation of the licensee's registration under the Act as a medical practitioner or dentist;

(*d*) willful obstruction or hindrance by the licensee or his employee of a duly authorized person from inspecting the licensee's premises or private practice, whether or not proceedings for an offence arising therefrom are pending; and

(*e*) conviction for an offence under the Act, these Regulations or any other subsidiary legislation made under the Act.

Penalty

26. Where a person is guilty of an offence under these Regulations for which no penalty is specifically provided, he shall be liable to a fine of K500.

PART VII
Transitional Provisions

Transitional provisions

27.—(1) Notwithstanding regulation 3 (1) a person who at the commencement of these Regulations was operating, or was engaged in, a private practice in Malaŵi as a medical practitioner or dentist shall be deemed eligible for a private practice licence under these Regulations and may continue with his practice until 31st March, 1989, after which date he shall not so practice except under a licence issued under these Regulations.

(2) Notwithstanding regulation 8 (1), in the case of a medical practitioner or dentist who at the commencement of these Regulations was operating his private practice at more than one place he may continue with his private practice at each of those places until 31st March, 1989, after which date he may be licensed in respect only of one place specified in the licence.

(3) A person who contravenes subregulation (1) or (2) shall be guilty of an offence.

reg. 2

FIRST SCHEDULE
Approved Institutions

G.N. 84/1989
35/2004

Any hospital with the following Specialists—

(*a*) Paediatrician;

(*b*) Physician;

(*c*) Obstetrician and Gynaecologist; and

(*d*) Surgeon

SECOND SCHEDULE regs. 6, 7, 13 and 20

FORMS

Form of Application for a Private Practice Licence.

FORM PP 1

MEDICAL PRACTITIONERS AND DENTISTS ACT
(CAP. 36:01)

MEDICAL PRACTITIONERS AND DENTISTS (PRIVATE PRACTICE) REGULATIONS

APPLICATION FOR A PRIVATE PRACTICE LICENCE
(*Regulation* 6)

1. Surname: ..... and
   (*where applicable*) maiden name: .....
2. Other names: .....
3. Address: .....
   .....
4. Place and date of birth: .....
   .....
5. Nationality: .....

6. Registration No. and Date .....
.....
7. Particulars of Experience (*e.g. posts held and types of practice in which the applicant has been engaged and countries in which the applicant has practised*):
Medicine .....
.....
Surgery .....
Paediatrics .....
Obstetrics and Gynaecology .....
.....
Others (*please specify*) .....
.....
Dentistry .....
8. Do you propose to practise on your own behalf or to be employed whole-time or part-time by a private practitioner (*give details*) .....
.....
.....
.....
.....
.....
9. What type of practice do you propose to engage in—
Specialist or General Practice? .....
If Specialist, specify the discipline: .....
.....
10. Place of practice (*give details of District, Town, City or Municipality and plot number*) .....
.....
.....
.....
.....
.....

Signature of Applicant .....

Date .....

Form of a Private Practice Licence

FORM PP 2

MEDICAL PRACTITIONERS AND DENTISTS ACT

(CAP. 36:01)

MEDICAL PRACTITIONERS AND DENTISTS (PRIVATE PRACTICE) REGULATIONS

PRIVATE PRACTICE LICENCE

(*Regulation* 7)

LICENCE NO.: .....

..... (*full name of Licensee with titles and qualifications held*) is hereby licensed to engage in private practice on his/her own behalf or employed—

(*a*) as a ..... (see note (1))

(*b*) of ..... (see note (2))
(*c*) at ..... (see note (3))
Date of issue ....
Registrar
.....
Chairman

SPECIAL CONDITIONS

1. .....
2. .....
3. .....
4. .....

NOTES:
(1) *State whether Medical Practitioner or Dentist*.
(2) *Specify the nature, i.e., whether General Practice or Specialist Practice. If Specialist Practice, specify speciality*.
(3) Description of the premises relating to the Licence.

Form of permit relating to Locum Practice
(*Regulation* 13) FORM PP 3

THE MEDICAL COUNCIL OF MALAŴI
P.O. BOX 30787
CAPITAL CITY
LILONGWE 3
MALAŴI

Ref. No. ..... Date .....
Dr. ..... (Registration No. .....)
Address: .....
.....
.....

Sir,

RE: YOUR APPLICATION FOR LOCUM PRACTICE

I acknowledge your letter dated .....
Ref. No. ..... applying for locum practice.

Permission is hereby granted for you to work as a locum in the place of Dr. ..... at his (*hospital, clinic, surgery*, etc.) during his absence from .... to .....

Yours faithfully
Registrar

Forms of Medical Statistical Returns

FORM PP 4

MEDICAL PRACTITIONERS AND DENTISTS ACT
(CAP. 36:01)
MEDICAL PRACTITIONERS AND DENTISTS PRIVATE) PRACTICE) REGULATIONS

MONTHLY RETURN OF OUT-PATIENTS
(*under regulation* 20)

Month of ....., 19.....
Name of Private Practice .....

Address .....

Instructions:—

1. Two copies of this return should be completed and sent to your District Health Officer (DHO) not later than 7th day of the following month. The DHO will forward one copy to the Secretary for Health.
2. Only new patients attending your practice should be entered and each patient should be entered only once. If a patient has more than one diagnosis, enter him under the one that caused him to come for treatment.
3. Subsequent attendances need not be reported any more.
4. Make as complete a diagnosis as possible. Wherever possible, a diagnosis should be entered under category 1–12. If the diagnosis does not fall into any of these categories, then enter it under any one of the categories.

Date ....

Medical Practitioner / Dentist

Forwarded to Secretary for Health by:

Date ....

District Health Officer

(Official stamp)

OUT-PATIENT MONTHLY REPORT FORM

Name of Clinic, Private Practice .....month of ....., 19 .....

	Diagnosis abbreviations	*Under 5*	*5 and over*	*Total*
1.	Cholera			
2.	Diarrhoea			
3.	Whooping cough			
4.	Chickenpox			
5.	Measles			
6.	Malaria			
7.	Gonorrhoea			
8.	Syphilis			
9.	Other venereal diseases . .			
10.	Bilharzia.			
11.	Malnutrition			

	Diagnosis abbreviations	*Under 5*	*5 and over*	*Total*
12.	Diseases of the eye			
13.	Diseases of the ear			
14.	Gynaecological			
15.	Hookworm and other helimithiasis			
16.	Dental diseases			
17.	Scabies			
18.	Other conditions of the skin			
19.	Meningitis			
20.	Hypertension			
21.	Upper respiratory infection			
22.	Lower respiratory infection			
23.	Tuberculosis			
24.	Abdomen and Gastrointenstinal			
25.	Genito-urinary tract. . ..			
26.	Muscles/Skeleton			
27.	Traumatic conditions . .			
28.	Other diagnosis			
29.	III defined			
30.	Referrals			
	TOTAL			
Re-attendances				
Number of Out-Patients				
Attending Clinic/Hospital				
This Year for the first time				

Comments: .....
.....

Compiled by: ..... Signature: .....
Name of Officer: .....
Date of Report: .....

FORM PP 5

MEDICAL PRACTITIONERS AND DENTISTS ACT
(CAP. 36:01)

MEDICAL PRACTITIONERS AND DENTISTS (PRIVATE PRACTICE) REGULATIONS

MONTHLY RETURN OF IN-PATIENTS

(*under regulation* 20)

Month of ....., 19.....

Name of Private Practice .....

Address .....

Signature of Medical Practitioner/Dentist .....

Instructions for completion:

(1) The morbidity return should show all patients who have left the hospital during the month (i.e. discharged, absconded or died).

(2) The diagnosis should be the final diagnosis. Therefore every patient should be entered only once. No multiple diagnosis is required.

(3) Part I of this form is compiled in accordance with the WHO list of 70 causes for the tabulation of morbidity in Volume I of the International Classification of Diseases (1965 Revision). The serial numbers C1, C2, etc., refer to this list. The small 3-figure numbers are the detailed list numbers and indicate which diseases fall in the categories of the C list.

(4) If in difficulty in deciding under which category a disease should be entered, look up the diagnosis in the Alphabetic Index of the International Classification of Diseases and find the ‘‘detailed list numbers”.

(5) The number of patients admitted should be found in a wardbook.

(6) In-patient days is obtained by totalling the number of in-patients each day of the month. The figures should be obtained from the ward records.

(7) Patients who are admitted following road traffic accidents should be entered twice: first by nature of injury and second under road transport accidents.

(8) Submit two copies and return to your District Health Officer (DHO) not later than the 7th day of the following month. The DHO will forward one copy to the Secretary for Health.

I: MORBIDITY AND MORTALITY RETURN

Code	Diseases	IN-PATIENTS														
		Under 1 year		1–4 years		5–14 years			15–44 years			45 years and over			Total	
		All Patients	Died	All Patients	Died	Male	Female	Died	Male	Female	Died	Male	Female	Died	Patients	Died
I	**Infective and parasitic diseases**															
C 1	Typhoid, paratyphoid fever and other salmonella infections. . . . 001–003															
C 2	Bacillary dysentry and amoebiasis. 004,006															
C 3	Enteritis and other diarrhoeal diseases 008,009															
C 4	Tuberculosis of respiratory system 010–012															
C 5	Other tuberculosis including late effects 013–019															
C 7	Diphtheria 032															
C 8	Whooping cough. 033															
C 9	0 Streptococcal sore throat and scarlet fever 034															
	1 Tetanus 037															
C 10	Smallpox 050															
C 11	Measles 055															
C 13	Infectious hepatitis 070															
C 15	0 Cerebral malaria 084															
	1 Other malaria 084															
C 16	Syphilis and late effects . . 090–097															
C 17	Gonococcal infections. 098															
C 18	0 Schistosomiasis 120															
	1 Ancylostomiasis (hook-worm) 126															
	2 Other helminthiases 121–125,127–129															

I: MORBIDITY AND MORTALITY RETURN —*(continued)*

Code	Diseases	IN-PATIENTS														
		Under 1 year		1–4 years		5–14 years			15–44 years			45 years and over			Total	
		All Patients	Died	All Patients	Died	Male	Female	Died	Male	Female	Died	Male	Female	Died	Patients	Died
C 19	All other infective and parasitic diseases, remainder of. . . 000–136															
II	**Neoplasms**															
C 20	Malignant neoplasms . . . 140–209															
C 21	Benign neoplasms and neoplasms of unspecified nature. . . . 210–239															
III	**Endocrine, nutritional and metabolic diseases**															
C 22	Thyrotoxicosis with or without goitre. 242															
C 23	Diabetes mellitus. 250															
C 24	Avitaminosis and other nutritional deficiency 260–269															
C 25	Other endocrine and metabolic diseases 240, 241, 243–246, 251–258, 270–299															
IV	**Diseases of blood and forming organs**															
C 26	Anaemias 280–285															
V	**Mental disorders**															
C 27	O Psychose and non-psychotic mental disorders 290–309															
	1 Epilepsy. 345															
VI	**Diseases of nervous system and sense organs**															
C 28	Inflamatory diseases of eye 360–369															
C 29	Cataract 374															
C 30	Otitis media and mastoiditis 381–383															
C 31	Other diseases of nervous system and sense organs 320–344, 346–358, 370–373 375–380, 384–390															

I: MORBIDITY AND MORTALITY RETURN —*(continued)*

Code	Diseases	IN-PATIENTS														
		Under 1 year		1–4 years		5–14 years			15–44 years			45 years and over			Total	
		All Patients	Died	All Patients	Died	Male	Female	Died	Male	Female	Died	Male	Female	Died	Patients	Died
VII	**Diseases of the circulatory system**															
C 32	Active rheumatic fever . . 390–392															
C 33	Chronic rheumatic heart disease 393–398															
C 34	Hypertensive disease. . . . 400–404															
C 35	Ischaemic heart disease . . 410–414															
C 36	Cerebrovascular disease . . 430–438															
C 37	Venous thrombosis and embolism 450–453															
C 38	Other diseases of circulatory system 420–429, 440–448, 464–458															
VIII	**Diseases of the respiratory system**															
C 39	Acute upper respiratory infection 460–466, 470–474															
C 41	Pneumonia 480–486															
C 42	Bronchitis, emphysema and asthma 490–493															
C 43	Hypertophy of tonsils and adenoids 500															
C 44	Pneumoconioses and related diseases 515–516															
C 45	Other diseases of respiratory system 510–514, 517–519															
IX	**Diseases of digestive system**															
C 46	Diseases of teeth and supporting structures 520–525															
C 47	Peptic ulcer 531–533															
C 48	Appendicitis 540–543															
C 49	Intestinal obstruction and hernia 550–553,560															

I: MORBIDITY AND MORTALITY RETURN —*(continued)*

Code	Diseases	IN-PATIENTS														
		Under 1 year		1–4 years		5–14 years			15–44 years			45 years and over			Total	
		All Patients	Died	All Patients	Died	Male	Female	Died	Male	Female	Died	Male	Female	Died	Patients	Died
C 51	Other diseases of digestive system 526–530, 534–537, 561–577															
X	**Diseases of genito-urinary system**															
C 52	Nephritis and nephrosis . . 580–584															
C 53	0 Calculus of urinary system 592–594 1 Other diseases of urinary system 590, 591, 595–599															
C 55	0 Cysts and other diseases of breast 610, 611															
	1 Infectious diseases of female organs (excl. V.D.) . . 612–614, 616, 620, 622, 629–631															
	2 Other diseases of female organs, remainder of . . . 620–629															
	3 Diseases of male genital organs (excel. V.D.) 600–607															
XI	**Delivery and complications of pregnancy, childbirth and the puerperium**															
C 56	Abortion 640–645															
C 57	Other complications of pregnancy, child birth and pureperium 630–639, 651–678															
C 58	Delivery without mention of complication 650															
XII	**Diseases of the skin and subcutaneous tissue**															
C 59	Infections of skin and subcutaneous tissue 680–686															
C 60	Other diseases of skin and subcutaneous tissue 690–709															

I: MORBIDITY AND MORTALITY RETURN —*(Continued)*

Code	Diseases	IN-PATIENTS														
		Under 1 year		1–4 years		5–14 years			15–44 years			45 years and over			Total	
		All Patients	Died	All Patients	Died	Male	Female	Died	Male	Female	Died	Male	Female	Died	Patients	Died
XIII	**Diseases of musculo skeletal system and connective tissue**															
C 61	Arthritis and spondylitis 710–715															
C 62	Other diseases of musculoskeletal system and connective tissue 716–738															
XVI	**Other diseases**															
C 63	Congenital anomalies . . . 740–759															
C 64	Certain causes of perinatal morbidity 760–799															
C 65	Other specified and ill-defined diseases 286–289, 310–315, 780–796															
XV	**Accident, etc. (Nature of injury)**															
CN 66	Fractures N800–N829															
CN 67	Intracranial and internal injuries N850–N869															
CN 68	Burn N940–N949															
CN 69	Adverse effects of chemicals substances N960–N989															
CN 70	All other injuries N830–N848, N870–N939, N950–N959, N990–N999															
CE 66	Road transport accidents															

ii: WORKLOAD

		Patients admitted				In-patient days			
		Full pay	Reduced fee	Free	Total	Full pay	Reduced fee	Free	Total
Surgical Ward	Male								
	Female								
Medical Ward	Male								
	Female								
Children's Ward									
Maternity Ward									
Other Wards									

Number of major operations

Form of a Premises Registration Certificate.

MEDICAL PRACTITIONERS AND DENTISTS ACT
(CAP. 36:01)

MEDICAL PRACTITIONERS AND DENTISTS (PRIVATE PRACTICE) REGULATIONS

PREMISES REGISTRATION CERTIFICATE

(*Regulation* 18 (3))

CERTIFICATE NO. .....

This is to certify that the Medical Council of Malaŵi has approved the use of the premises situated at .....

in the District/City/Municipality/Township of .....

by ..... as

(*Name of practitioner*)

.....

(*Nature of private practice*)

LICENCE NO. .....

Dated .....

.....

Registrar

G.N. 35/2004

THIRD SCHEDULE

NOTIFIABLE DISEASES

1. Cholera
2. Typhoid fever
3. Meningitis
4. Tuberculosis
5. Acute poliomyelitis
6. Rabies
7. Trypanosomiasis
8. Measles
9. Acute placid paralysis
10. Viral haemorrhagic fever
11. Plague (Bubonic or Pneumonic)
12. Shigellosis.

FOURTH SCHEDULE G.N. 35/2004

MINIMUM REQUIREMENTS FOR A PRIVATE PRACTICE

PART I

FOR A PRIVATE PRACTICE PROVIDING OUT-PATIENT SERVICE ONLY

A. MEDICAL PRACTITIONERS

1. PREMISES—

(1) Premises should contain the following accommodation—

(*a*) a waiting room;

(*b*) a consulting room which should be reasonably soundproofed so that conversations taking place therein are not easily audible outside the consulting room;

(*c*) an examination room which should be either a separate room or a curtained-off part of a consulting room;

(*d*) a treatment room in which such procedures as the giving of medications and the carrying out of minor surgical operations can be undertaken; and

(*e*) adequate toilet facilities.

(2) All rooms should be clean and adequately furnished, and—

(*a*) there should be sufficient sitting accommodation in the waiting room for the size of the practice;

(*b*) the consulting room should have a desk for the practitioner, a chair for the practitioner and at least two or three chairs for the patient and persons accompanying the patient; and further, a consulting room should have a facility for the practitioner to wash his hands. For example, where there is no running water there should be a wash-basin with a jug of water which is periodically drained, cleaned and topped up; and

(*c*) there should be an examination couch in the consulting or examination room and another couch in the treatment room and the couches ought to be so designed that it is easy for an infirm patient to get on to them, and further there should be adequate lighting, either daylight or artificial light, to enable the practitioner to see his patient fully.

2. EQUIPMENT—

The practitioner shall have the following equipment available at his private practice—

(*a*) diagnostic instruments such as stethoscope, syphygmomanometer, foetal stethoscope, torch, patella hammer, auroscope, opthalmoscope, proctoscope, vaginal speculum, disposable tongue depressors;

(*b*) instruments for carrying out certain procedures, for example, draining absesses and stitching wounds;

(*c*) sterilizers for surgical instruments and containers, etc.;

(*d*) a facility to examine urine on the premises, as for example, by the use of "labstix" or equivalent reagents;

(*e*) a cabinet for patients' records;

G.N. 19/1991 (*f*) a refrigerator for the storage of drugs requiring refrigeration;

(*g*) resuscitation equipment;

(*h*) appropriate and current reference books for the practice; and

(*i*) two bins for the disposal of waste, one of which shall be for the disposal of sharp instruments and the other for the disposal of waste material in either case using an incinerator of the ordinary type or of a 44-gallon drum with specifications approved by the Council.

3. Stocking of Drugs—

Cap. 35:01 (1) Subject to the relevant provisions of the Pharmacy, Medicines and Poisons Act, the Practitioner should attempt to keep in his premises a stock of those essential drugs which he considers should be administered to his patients in his premises and especially if his practice is not in a location where there may be dispensing pharmacy. The range of drugs that he should have is wide, but he ought to have at least the following—

(*a*) injections of analgesics (for example, pethidine, morphine, etc.); and

(*b*) antibiotics, antihistamines, bronchodilators, antiemetics, antispamodics, local anaesthetics and corticosteroids.

(2) For the purpose of administering injections, a practitioner should have sterile syringes and needles, or standard and surgical spirit or other appropriate skin antiseptic.

(3) The practitioner should provide himself with a bag which he can carry with him when visiting patients or when travelling or to be available for him to use whenever his services may be needed. The bag should contain, as a minimum, the following—

(*a*) such drugs as injections of analgesics, antibiotics, bronchodilators, tranquilizers, local anaesthetics, antispasmodics, antiemetics and similar drugs; and

(*b*) oral preparations such as antipyretics, analgesics, gastrointestinal sedatives, antihistamines, bronchodilators, antibiotics, muscle relaxants, and others.

(4) For the purpose of the doctor's bag, it should be the practice to carry disposable syringes and needles rather than steel and glass syringes which require sterilization. The bag will be adequately furnished if it carries a supply of 2 ml disposable syringes and 25 g (1 in.) and 21 g (1½ inches) disposable needles. Practitioners shall take steps to destroy all disposable equipment to avoid their possible re-use.

4. Approved Description of Name—

Dr./Mr. ..... M.B.B.S., B.D.S.* MEDICAL PRACTITIONER/DENTIST; or

Dr./Mr. ..... M.B.B.S., D.C.H., M.R.C.P.; F.R.C.S., M.Med.; F.R.C.P., etc.*

(*Specify the Specialist*: PHYSICIAN, PAEDIATRICIAN, OBSTETRICIAN/GYNAECOLOGIST, etc., as recognized under the Medical Practitioners and Dentists (Specialist Register) (Qualifications) Rules.

**As applicable*

B. DENTISTS

1. Waiting Room: With basic furniture, and other necessary facilities.

2. Laboratory/Workshop:

(1) Basic laboratory requirements, as follows—

(*a*) investing flasks;

(*b*) press and clamp;

(*c*) polishing motor;

(*d*) laboratory motor and hand piece;

(*e*) bunsen burner;

(*f*) pliers, wax, knife, etc.

(*g*) denture materials;

(*h*) plaster for models; and

(*i*) polishing brushes, cone felt, etc.

(2) Basic requirements in filling materials—

(*a*) Amalgams

(*b*) Dental cements as follows—

(i) zinc oxide engenel;

(ii) zinc and copper phosphates;

(iii) calcium, hydroxides;

(iv) silicate and silicophosphate cements; and

(v) composites.

3. Toilet: This should have a wash basin and water-borne sanitation.

4. Surgery: The dental surgery should consist of the following basic essentials, as a minimum—

(*a*) dental unit with low and high speed drills which are water cooled;

(*b*) wash-basin with running water;

(*c*) sterilizer unit;

(*d*) cabinet with basic dental instruments;

(*e*) basic drugs and medicaments used in dentistry including antimicrobials, corticosteroids, analgesics, haemostatic and anaesthetic drugs, in addition to antiseptics disinfectants;

(*f*) lockable cabinet, containing essential emergency drugs;

(*g*) emergency oxygen cylinder; and

(*h*) cabinet for patients records and card system.

5. INTRAORAL RADIOLOGICAL UNIT: This unit must be available at every dental surgery.

G.N. 19/1991
35/2004

6. WET WASTE DISPOSAL EQUIPMENT: This should consist of two bins, one of which shall be for the disposal of sharp instruments and the other for the disposal of waste material, in either case using an incinerator of the ordinary type or of a 44-gallon drum with specifications approved by the Council.
7. Appropriate and current reference books.
8. REFRIGERATOR: This should be available for the storage of drugs requiring refrigeration.

C. OPHTHALMOLOGISTS

The Ophthalmologist would need the following in the clinic—

1. a good light source;
2. ophthalmoscope;
3. schiotz tonometer;
4. magnifying loopes;
5. Bp machine;
6. snellen chart;
7. trial flame;
8. slit lamp;
9. epilation forceps;
10. artery forceps;
11. lid retractors;
12. blade holder;
13. gallipots; and
14. cannulas for syringing.

All conditions including refractive errors which do not require surgery can be treated in the out-patient set up. However, the following surgical procedures can be done in the clinic—

1. epilation;
2. I & D for stye and lid abscess;
3. removal of foreign body;
4. removal of sutures;
5. corneal scrapings; and
6. syringing of the punctum.

PART II

For a Private Practice Providing In-Patient Service

G.N. 19/1991
35/2004

(In this Part referred to as a "Private Hospital".)

All the requirements specified in Part I of this Schedule and, in addition, the following requirements shall, subject to these Regulations, be observed for the relevant departments—

1. Laboratory

Private hospitals should have clinical laboratories located within the premises to be staffed by suitably qualified personnel depending on the type of services offered.

(1) Premises—

(*a*) permanent building material;
(*b*) adequate size for tests to be carried out;
(*c*) adequate lighting;
(*d*) good ventilation;
(*e*) each room must have a fire extinguisher;
(*f*) supply of running water with wash basin;
(*g*) bench tops must be made of cleanable and non-corrosive materials;
(*h*) a specimen reception area for preparation and performance of tests;
(*i*) toilet facilities for patients;
(*j*) waiting room for patients; and
(*k*) a place for handling dangerous specimens.

(2) Laboratory Tests and Equipment—

The range of tests to be performed includes—

(*a*) *Haematology*—
Haemoglobin—colorimetric;
White cell count—manual;
Hematocrit—centrifugal;
White cell—differential count.

(*b*) *Parasitology*—
Routine urinalysis;
Examination of stool for cysts and parasites;
Blood films for malaria parasites;

(*c*) *Bacteriology*—
Gram stains;
Acid fast bacilli staining;
Culture and sensitivity;

(*d*) *Bio-chemistry*—
The laboratory may be able to do—
Blood and CSF proteins-colorimetric;

Birilibin—colorimetric is recommended;
Urea—colorimetric is recommended;
The laboratory should be able to do blood and CSF glucose.

(*e*) *Serology*—
The laboratory may do—
VDRL tests for syphilis;
pregnancy test; and HIV tests.

(3) Blood Transfusion—
All private hospitals should have facilities for blood grouping and cross-matching.

(4) Laboratory equipment and other procedures—
(*a*) laboratory equipment should be appropriate for the range of tests to be performed;
(*b*) the equipment should be regularly serviced;
(*c*) every laboratory should be able to participate in the national laboratory quality assurance scheme (where any has been established with approval of the Council) to ensure that standards are maintained; and
(*d*) all tests done in the laboratory should be properly documented and monthly returns should be made to the Secretary for Health.

2. Operating Theatre:
All categories of private hospitals may have a suitable operating theatre approved by the Council from time to time.

3. Wards:
Minimum requirements are—
(*a*) where there are open wards at least 2 rooms for isolation as necessary;
(*b*) there should be 1 toilet to 10 patients with separation of male and female toilets;
(*c*) a curtain or other partitions, etc., to separate beds;
(*d*) an admissions/examination room;
(*e*) a separate maternity room to be provided where such services are offered with a delivery room which shall consist of a delivery bed/couch, suction machine, nursery and a vacuum extractor;
(*f*) at least one nurses station in every ward; and
(*g*) there shall be a wash hand basin within the wards of the hospital.

4. Kitchen:
(*a*) where food is provided, necessary equipment for providing the food should be available depending on the size of the hospital and a balanced diet should be provided; and
(*b*) the kitchen must always be kept clean and hygienic.

5. LAUNDRY:
   Private hospitals should provide a suitable area for washing, hanging and ironing linen. Hospital linen supplies must be adequate to meet the needs in the wards.
6. PATIENTS' UNIFORM:
   Every private hospital should provide uniform to be worn by patients in the hospital. The hospital should also provide separate space for storage of the patients' clothes.
7. IN-SERVICE TRAINING:
   All professional and technical staff should be given the opportunity for in-service training in their fields at regular intervals.
8. PHARMACY:
   (1) it should be of adequate size for the practice;
   (2) the internal walls and the floors should be easily cleanable;
   (3) it should be partitioned in such a way that there will be enough storage space and a dispensing area where prescription drugs can be collected;
   (4) it should be constructed in such a manner that moisture is excluded;
   (5) it should be adequately lit with approved fittings so as to facilitate easy identification of drugs;
   (6) it should have a provision of wash basin;
   (7) it should have cold storage facilities for storing heat sensitive drugs;
   (8) it should be kept free of vermin;
   (9) all areas in the pharmacy should be adequately and suitably shelved to enable proper and hygienic storage of drugs and any other items stored therein;
   (10) all drug containers should be clearly labelled;
   (11) the doors and windows or any other openings in the pharmacy should be properly and adequately secured;
   (12) access to the pharmacy area shall be strictly limited to authorized personnel only;
   (13) the pharmacy should be staffed by persons with adequate and approved pharmaceutical training as required by the Pharmacy, Medicines and Poisons Act; Cap. 35:01
   (14) proper inventory should be maintained of all drugs kept in the pharmacy;
   (15) the pharmacy should at all times be kept clean and tidy;
   (16) a prescription record should be maintained in the pharmacy;
   (17) all drugs should be dispensed in clean and tidy containers which shall bear the name and strength of the drug, quantity dispensed, directions for use, name of hospital, name of patient and expiry date; and

(18) a lockable controlled drug cupboard and register for such drugs should be provided to avoid abuse.

9. MORTUARY:

Where a private hospital has a mortuary the mortuary shall be in a separate building, preferably with a cold room.

10. PREMISES:

(1) *General cleanliness of the hospital—*

(i) hospital grounds should always be kept clean;

(ii) dust bins should be emptied at least twice a week for appropriate final disposal of waste; and

(iii) an adequate number of ward attendants should be employed to keep the wards and floors always clean.

(2) *Toilet Facilities:*

The Toilet/patient ratio should be 1–10.

(3) *Floor Area:*

Minimum floor area should be 4 square metres for patient's bed to facilitate movement.

(4) *Lighting and Ventilation—*

(i) minimum of 1/10 floor area should be provided for ventilation and half of it shall be made openable for lighting; and

(ii) permanent ventilation should be made available by provision of air vents on opposite walls.

(5) *Prevention of Fire and Fire Fighting Facilities—*

(i) fire-extinguishers should be provided at appropriate points;

(ii) emergency exit doors should be provided; and

(iii) wherever possible alarm system should be provided.

(6) *Water Supply—*

(i) adequate running water supply;

(ii) provision of wash basins in the treatment, examination and consultation room; and

(iii) water drums could be used for storing water.

11. STAFFING LEVELS:

(1) All staff working in private hospitals should be registered with the appropriate authorities—

(*a*) doctor/clinical officer to patient ratio should be 1–50;

(*b*) general nurse to patient ratio should be 1–10;

(*c*) nurse/midwife working in maternity shall be 1–7; and

(*d*) minimum of two clinicians.

(2) *Ward attendants, cleaners and labourers:*

Private hospitals should engage an adequate number of such personnel to keep the hospital premises clean at all times.

(3) *Watchmen:*

An adequate number of watchmen should be engaged for the size of the hospital.

(4) *Other Support Staff:*

Other support staff should be engaged to suit the size of the hospital.

12. Sterilization:

(1) All private hospitals should provide adequate sterilization equipment having regard to the size of the hospital.

(2) Both hot water and cold water should be available in a running state.

13. Minimum Standard Equipment:

(1) Wheel chair.
(2) Emergency drug tray.
(3) Resuscitation equipment.
(4) Supply of oxygen.
(5) Blood pressure machine.
(6) Suction machines.
(7) Patient's stretcher.
(8) A designated vehicle for transporting referred patients to other hospitals.
(9) Diagnostic sets.
(10) Lockable drug cabinet.
(11) ECG machine (optional).
(12) Weighing scales and thermometers.

FIFTH SCHEDULE regs. 6, 8 and 11

G.N. 19/1991
120/1993
27/1997
30/2004
8/2005
48/2007
10/2009
1/2016

Licence and Premises Registration Fees

Matter	*Fees* K	t
1. For an application for a private practice licence in the case of—		
(*a*) Doctors, Dentists or Opticians	60,000	00
(*b*) Specialists (full time)	70,000	00
(*c*) Specialists (part time)	70,000	00
(*d*) Specialists (licence only)	70,000	00
(*e*) Doctors, Dentists or Opticians (licence only)	60,000	00
2. For a private practice licence—		
(*a*) in the case of Doctors, Dentists or Opticians:		
(i) upon issue	60,000	00
(ii) upon every renewal	60,000	00

Matter	*Fees* K	t
(*b*) in the case of Specialists (full time):		
(i) upon issue	60,000	00
(ii) upon every renewal	80,000	00
(*c*) in the case of Specialists (part time):		
(i) upon issue	60,000	00
(ii) upon every renewal	80,000	00
(*d*) in the case of Locum permit	60,000	00
(*e*) Specialists (licence only):		
(i) upon issue	60,000	00
(ii) upon every renewal	80,000	00
(*f*) Doctors, Dentists or Opticians (licence only):		
(i) upon issue	60,000	00
(ii) upon every renewal	60,000	00
3. For an application for registration of premises for private practice providing out-patient services only, in the case of—		
(*a*) institutional facility	60,000	00
(*b*) institutional facility (fee paying)	100,000	00
(*c*) doctors, dentists or opticians	70,000	00
(*d*) specialists	100,000	00
4. For registration of premises for private practice providing out-patient services only—		
(*a*) in the case of institutional facility (non fee paying):		
(i) upon issue	40,000	00
(ii) upon every renewal	80,000	00
(*b*) in the case of institutional facility (fee paying):		
(i) upon issue	150,000	00
(ii) upon every renewal	200,000	00
(*c*) in the case of Doctors, Dentists or Opticians:		
(i) upon issue	60,000	00
(ii) upon every renewal	100,000	00
(*d*) in the case of Specialists (full time):		
(i) upon issue	70,000	00
(ii) upon every renewal	120,000	00
(*e*) in case of Specialists (part-time):		
(i) upon issue	70,000	00
(ii) upon every renewal	120,000	00
5. For an application for registration of premises for private practice providing in and out-patient services—		
(*a*) for those with not more than 10 beds	160,000	00
(*b*) for those with 11-25 beds	160,000	00
(*c*) for those with 26-50 beds	160,000	00
(*d*) for those with more than 50 beds	360,000	00
(*e*) for commercial ambulance	100,000	00

Matter	*Fees* K	t
6. For registration of premises for private practice providing out-patient and in-patient services—		
(*a*) for those with not more than 10 beds:		
(i) upon issue	100,000	00
(ii) upon every renewal	200,000	00
(*b*) for those with 11-25 beds:		
(i) upon issue	140,000	00
(ii) upon every renewal	250,000	00
(*c*) for those with 26-50 beds:		
(i) upon issue	180,000	00
(ii) upon every renewal	300,000	00
(*d*) for those with more than 50 beds:		
(i) upon issue	240,000	00
(ii) upon every renewal	400,000	00
(*e*) for commercial ambulance:		
(i) upon issue	100,000	00
(ii) upon every renewal	100,000	00
7. For replacement of private practice licence or premises registration certificate	20,000	00
8. For transfer of premises	Treat as new premises	

In this schedule—

"Institutional facility" means a clinic or dispensary operated by a company or other organization solely for providing services to its employees and their dependants living with the employees.

PARAMEDICALS AND ALLIED HEALTH PROFESSIONALS (PRIVATE PRACTICE) REGULATIONS

ARRANGEMENT OF REGULATIONS

REGULATION

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REGULATION

10. Range of drugs
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Fifth Schedule—Licence and Premises Fees
Sixth Schedule—Maximum Fees chargeable for services rendered

G.N. 128/1988, 82/1989, 18/1991, 121/1993, 122/1993, 25/1997, 29/2004, 33/2004, 9/2005, 50/2007, 12/2009

PARAMEDICALS AND ALLIED HEALTH PROFESSIONALS (PRIVATE PRACTICE) REGULATIONS

under s. 69

Citation

1. These Regulations may be cited as the Paramedicals and Allied Health Professionals (Private Practice) Regulations.

Interpretation

2. In these Regulations, unless the context otherwise requires—

"approved institution" means a hospital or other health establishment recognized by the Council under subregulation (2) of regulation 3 as an approved institution for the purposes of subregulation (1) of that regulation.

Paramedicals and allied health professionals may engage in private practice
G.N. 33/2004, 50/2007
First Schedule

3.—(1) Save as provided in subregulation (3), a person registered under the Medical Practitioners and Dentists (Registration and Miscellaneous Fees) Regulations as a paramedical or an allied health professional in a calling specified in the First Schedule hereto may be licensed by the Council to operate a private practice appropriate to his calling if he has served in an approved institution—

(*a*) in the case of Clinical Officers and Dental Therapists, six years experience;

(*b*) in the case of Medical Assistants, eight years experience;

(*c*) in the case of Dental Technicians, Laboratory Technicians, Physiotherapists, Opticians and other Allied Health Professionals, two years experience.

(2) For the purpose of subregulation (1) the Council may, under its working procedures, recognize as approved institutions particular hospitals or other health establishments in Malaŵi or outside Malaŵi:

Provided that in the case of an applicant whose service was wholly or for a greater part undertaken outside Malaŵi, the Council may require him to undergo either—

(*a*) properly supervised orientation in his calling for such period and subject to such conditions as the Council may generally or specially deem appropriate;

(*b*) an oral examination or a written examination or both; or

(*c*) a combination of (*a*) and (*b*).

(3) Special medical assistants and clinical officers who want to engage in general clinical work shall be required to undergo an orientation for a minimum period of six (6) months at a hospital approved by the Council before being allowed to practice as such.

Absence from active practice

4. No person shall be eligible for a licence under regulation 3 if immediately prior to making his application he has been absent from the practice of his calling for a continuous period—

(*a*) exceeding three years but not exceeding five years, unless immediately prior to the grant of the licence he has undergone full-time orientation; or

(*b*) exceeding five years but not exceeding ten years, unless he has passed an oral examination or a written examination or both conducted for the purpose by or on behalf of the Council and subsequent thereto he has undergone full-time orientation, in either case for a period of not less than six months at an approved institution in Malaŵi under the supervision of a medical practitioner or dentist or other suitable person, as the case may be; and

(*c*) exceeding ten years.

Type and number of clinics
G.N. 33/2004

5.—(1) No person shall be licensed under these Regulations to operate more than one private practice and such practice shall be operated solely at the premises named in the licence.

(2) A licence issued under these Regulations shall authorize the licensee to operate only an out-patient private practice and to

provide only the services of a kind appropriate to his calling and limited in scope to the extent, if any, specified in Part I of the Third Schedule except in the case of general Clinical Officers the Council may authorize the licensee to operate an in-patient private practice under conditions that the Council may determine from time to time.

Third Schedule, Part I

Practice Licence G.N. 33/2004

6. The Council may licence an applicant to operate his practice in such place subject to such special conditions as the Council may impose having regard, among other factors, to the need to foster and ensure wider distribution of medical and health services in Malaŵi or in any locality concerned.

Applications

Second Schedule, Form PP 6, Fifth Schedule

7.—(1) Every application for a licence under these Regulations shall be in Form PP 6 set out in the Second Schedule and shall be accompanied with the application fee and the licence fee specified in the Fifth Schedule.

(2) The application fee payable under subregulation (1) shall not be refundable, whether or not the licence is granted.

(3) The Registrar shall, soon after 31st March every year, publish in the *Gazette* a list of names, addresses, callings and other particulars of all persons licensed to operate a private practice for the ensuing period ending 31st March the following year.

Licences

Second Schedule, Form PP 7

8.—(1) Every licence issued under these Regulations—

(*a*) shall be in Form PP 7 set out in the Second Schedule;

(*b*) shall be valid from the date of issue to 31st March next following the date of issue; and

(*c*) may, subject to subregulation (2), be renewed from time to time upon payment by the licensee of the appropriate annual licence fee specified in the Fifth Schedule.

Fifth Schedule

(2) Where the expired period of validity of a licence was twelve months the licence shall not be renewed, unless the Council is satisfied that during the expired period the licensee attended at least one approved conference of the medical profession held in Malaŵi at a time when he was available to attend.

Conditions of licence

9.—(1) Every licence issued under these Regulations shall be subject to any special condition endorsed thereon by the Council and to the following general conditions, that is to say—

(*a*) that the premises used for the private practice are—

(i) at all times kept in good order and good state of repair and are kept reasonably secure from unauthorized entry;

(ii) not to be used as residential premises except with the permission of the Council.

(iii) in conformity with the minimum requirements, if any, specified in the Fourth Schedule in relation to the particular calling; *Fourth Schedule*

(*b*) that the premises and the private practice shall be open at any reasonable time for inspection by any person duly authorized in that behalf by the Council;

(*c*) that by reason of proximity of his place of residence to the premises of his private practice, the licensee is able to be in regular attendance at his private practice during the hours it is open to the general public.

(2) A person who willfully obstructs any person duly authorized by the Council to inspect the premises of a licensed private practice shall be guilty of an offence.

(3) In relation to an application for a private practice licence, the Council may issue a letter in Form PP 9 set out in the Second Schedule. G.N. 82/1989 *Second Schedule*

(4) The Council shall keep and maintain a register of all premises approved by the Council for the private practice of paramedicals and allied health professionals and shall issue in respect of every such premises a registration certificate in Form PP 10 set out in the Second Schedule upon payment by the licensee of the premises application and registration fees specified in the Fifth Schedule, but the application fee so paid shall not be refundable, and the Council shall once every year publish in the *Gazette* the list of all premises registered under this subregulation. G.N. 18/1991 *Second Schedule* *Fifth Schedule*

10. The drugs to be administered by a person licensed under these Regulations shall be those specified in Part II of the Third Schedule in relation to a particular calling. Range of drugs *Third Schedule, Part II*

11. A licence or a premises registration certificate may be replaced upon proof to the satisfaction of the Registrar that the licence or certificate is lost, destroyed or defaced and upon payment by the licensee of the replacement fee specified in the Fifth Schedule. Replacement of licence or certificate G.N. 18/1991 *Fifth Schedule*

12. A licensee may employ as assistants only such persons as are properly trained and qualified for the duties they are required to perform in relation to the practice operated by the licensee and where registration under any written law is required for the performance of such duties, no person shall be so employed unless duly registered under such written law. Employment of assistants

Notifiable diseases and monthly returns

13. Regulation 20 (providing for notification of certain diseases and submission of monthly returns) regulation 22 (relating to the personal conduct of a licensee) and regulation 23 (providing for the manner of indicating name and other particulars of a licensee) of the Medical Practitioners and Dentists (Private Practice) Regulations, shall apply, *mutatis mutandis*, to a person licensed under these Regulations as if they were provisions made under these Regulations.

Locums
G.N. 33/2004

14.—(1) A Paramedical or Allied Health Professional who wishes to work as a locum for another Paramedical or Allied Health Professional holding a private practice licence shall first satisfy the requirements for his own eligibility for a private practice licence under these Regulations and shall make his application to the Council in writing:

Provided that in the case of an emergency, a Paramedical or Allied Health Professional may act as a locum for a period not exceeding fourteen days during which time he shall inform the Council of his action in that behalf and make a formal application under this subregulation.

(2) Where the duration of a locum practice is not to exceed ninety days, whether consecutive or cumulative, the Registrar may issue to the applicant a permit in Form PP 3 set out in the Second Schedule authorizing the applicant to practice as a locum, subject to payment of the relevant fee specified in the Fifth Schedule.

Offences and penalty
G.N. 33/2004

15.—(1) A person who contravenes the provisions of these Regulations shall be guilty of an offence.

(2) A person guilty of an offence under these Regulations for which no other penalty is provided shall be liable to a fine of K40,000 and to imprisonment for two years.

G.N. 121/1993 33/2004

reg. 3

FIRST SCHEDULE

Prescribed Callings for Private Practice Licence

1. Medical Assistants
2. Clinical Officers
3. Dental Technicians
4. Physiotherapists
5. Opticians
6. Laboratory Technicians
7. Doctors of Osteopathy
8. Laboratory Assistants
9. Dental Therapists

10. Dental Assistants
11. Radiographers
12. Radiography Technicians
13. Sonographers
14. Laboratory Technologists

SECOND SCHEDULE regs. 6, 7 and 8 G.N. 82/1989 33/2004

FORMS

Form of Application for a licence

FORM PP 6

MEDICAL PRACTITIONERS AND DENTISTS ACT

(CAP. 36:01)

PARAMEDICALS AND ALLIED HEALTH PROFESSIONALS (PRIVATE PRACTICE) REGULATIONS

APPLICATION FOR A LICENCE

(*Regulation* 7)

PARTICULARS OF THE APPLICANT

1. Name (*in full*):..... and
   (*Where applicable*) maiden name: .....
2. Address: .....
   .....
   .....
3. Registered under the Register of .....
   Registration No. .....
4. Former Employer(s): .....
   .....
   .....
5. Period of employment as paramedical or allied health professional:
   .....
   .....
6. Particulars of experience in the following domains—
   (*a*) surgery: .....
   (*b*) paediatrics: .....
   (*c*) obstetrics and gynaecology: .....
   (*d*) medicine: .....

7. Reasons for termination of employment: .....
.....

(*If other than retirement give brief details*): .....
.....

PARTICULARS OF THE PRIVATE PRACTICE APPLIED FOR

8. To engage in private practice (*specify the calling*) .....
.....

9. Place (*including plot number where applicable*) .....
.....

10. *District/Municipality/City: .....
.....

11. Supporting documents attached, if any:
    (1) .....
    (2) .....
    (3) .....

Dated: ....., 20 ..... Signed .....
Applicant

FOR OFFICIAL USE
Application fee paid: K .....

Form of Licence

FORM PP 7

MEDICAL PRACTITIONERS AND DENTISTS ACT
(CAP. 36:01)

PARAMEDICALS AND ALLIED HEALTH PROFESSIONALS
(PRIVATE PRACTICE) REGULATIONS

LICENCE
(*under regulation* 8)

LICENCE NO. .....
..... (*full name of licensee*) is hereby licensed to operate a private practice as ..... at ..... in the *District/Municipality/City of .....
Date of issue: ....
Registrar

.....
Chairman

**Delete which does not apply*

SPECIAL CONDITIONS

(*under regulation* 9 (1))

1. .....
2. .....
3. .....
4. .....

Form of Statutory Declaration

FORM PP 8

MEDICAL PRACTITIONERS AND DENTISTS ACT
(CAP. 36:01)

PARAMEDICALS AND ALLIED HEALTH PROFESSIONALS
(PRIVATE PRACTICE) REGULATIONS

STATUTORY DECLARATION

(*under regulation* 6)

I, (1) ....., a registered (2) ..... Reg. No. ....., having applied to the Council for a private practice licence under the above cited Regulations, do solemnly and sincerely declare as follows—

THAT my normal place of residence in Malaŵi is at ..... (3) Plot No. ..... in the *Municipality/City of ..... and that I hold the same in my name under a freehold*/leasehold title number ..... and do live in it with my immediate family.
**Delete which does not apply*

NOTES:

(1) Name of applicant.

(2) Specify the calling in which registered (i.e. *whether Medical Assistant, Clinical Officer or Dental Technician*).

(3) Specify the particular location in the City or Municipality where residing.

FORM PP 9 G.N. 82/1989

MEDICAL PRACTITIONERS AND DENTISTS ACT
(CAP. 36:01)

PARAMEDICALS AND ALLIED HEALTH PROFESSIONALS
(PRIVATE PRACTICE) REGULATIONS

(*Regulation* 9 (3))

TO WHOM IT MAY CONCERN

This is to certify that the Medical Council of Malaŵi intends to license (*name of applicant* ..... of (*address*).....
to engage in private practice as a (*nature of private practice*).....
..... at (*place*) ..... in the
*District/Municipality/City of .....

Date: ....

Registrar

**Delete which does not apply*

G.N. 18/1991

FORM PP 10

MEDICAL PRACTITIONERS AND DENTISTS ACT
(CAP. 36:01)

PARAMEDICALS AND ALLIED HEALTH PROFESSIONALS
(PRIVATE PRACTICE) REGULATIONS

PREMISES REGISTRATION CERTIFICATE

(*Regulation* 9 (4))

CERTIFICATE NO. .....

This is to certify that the Medical Council of Malaŵi has approved the use of the premises situated at ..... in the *District/City/Municipality/Township of .....
by .....

(*name of licensee*)

as .....

(*nature of practice*)

under Licence No. .....

Date: ....

Registrar

**Delete which does not apply*.

AND I make this solemn declaration conscientiously believing the same to be true and by virtue of the Oaths, Affirmations and Declarations Act (Cap. 4:07).

Signed: .....

Applicant

Declared at ..... this ..... day of ....., 20 .....

BEFORE me: .....

Commissioner for Oaths

THIRD SCHEDULE reg. 5 G.N. 33/2004

PART I

SCOPE OF SERVICES TO BE RENDERED

A. MEDICAL ASSISTANTS AND CLINICAL OFFICERS

(1) *Medical Services:*

Treatment of common and simple diseases and ailments.

(2) *Surgical Procedures—*

(*a*) suturing of minor lacerations;
(*b*) removal of foreign body from the nose;
(*c*) incision drainage of carbuncle abscess;
(*d*) ear syringing;
(*e*) wound dressing;
(*f*) catheterization;
(*g*) nasogastic tube insertion; and
(*h*) other procedures related to first aid;

B. DENTAL TECHNICIANS

Fabrication of dental appliances as prescribed by a dentist and in no case shall a dental technician take impressions or insert appliances in a patient's mouth.

C. PHYSIOTHERAPISTS

Such services as are professionally limited to the calling of a physiotherapist.

D. OPTICIANS

Such services as are professionally limited to the calling of an optician.

E. DOCTORS OF OSTEOPATHY

Such services as are professionally limited to the calling of a doctor of osteopathy.

F. DENTAL THERAPISTS AND DENTAL ASSISTANTS

(*a*) tooth extractions;
(*b*) simple restoration of tooth cavities using amalgam, composite chemically cured, glass ionometer;
(*c*) X-ray—bite wings and periapicals;
(*d*) intra oral incision and drainage; and
(*e*) history, examination and diagnosis, dental health education and oral prophylaxis.

G. DENTAL TECHNICIANS

Fabrication of dental appliances in prosthetics, orthodontics, restorative dentistry and any other work as prescribed by a dentist.

H. RADIOGRAPHERS AND RADIOGRAPHY TECHNICIANS

(*a*) skeletal imaging;
(*b*) chest imaging;
(*c*) abdomen and pelvis imaging; and
(*d*) contrast studies in the company of attending Physician.

I. SONOGRAPHERS

(*a*) ultra sound of abdomen;
(*b*) ultra sound of pelvis;
(*c*) ultra sound of cardiac; and
(*d*) ultra sound—guided aspiration/biopsy in the company of attending Physician.

PART II
Range of Drugs

A. CLINICAL OFFICERS

A Clinical Officer licensed for private practice may administer only the following range of drugs—

	Drug	*Dose Form*
1.	Local Anaesthetics	
	(*a*) Lignocaine hydrochloride.	injection 2% 25 ml
	(*b*) Lignocaine hydrochloride.	jelly 2% 30 g
	(*c*) Lignocaine hydrochloride + Adrenaline . .	2% + 1/80,000 dental cartridges
2.	Analgesics Antipyretics and Related Agents	
	(*a*) Acid acetylsalicylic.	tablets 300 mg (Aspirin)
	(*b*) Acid acetylsalicylic.	tablets 75 mg (Aspirin)
	(*c*) Methyl salicylate	liniment 24%
	(*d*) Paracetamol	tablets 500 mg
	(*e*) Paracetamol	syrup 120 mg/5 ml
	(*f*) Indomethacin.	tablet 25 mg
	(*g*) Diclofenac	tablet 25 mg
	(*h*) Ibruprofen	tablet 200 mg
	(*i*) Codeine	tablet 30 mg
3.	Antihistamines	
	(*a*) Chlorpheniramine malcate	tables 4 mg
	(*b*) Promethazine hydrochloride	tablets 25 mg
	(*c*) Promethazine hydrochloride	syrup 5 mg/5 ml
	(*d*) Astemizole	tablets 10 mg
4.	Antiepileptics	
	(*a*) Paraldehyde	injection 10 ml
	(*b*) Phenobarbitone sodium	tablets 30 mg and 60 mg
	(*c*) Phenytoin sodium	tablets 25 mg and 100 mg

Drug	*Dose Form*
5. ANTI-INFECTTVE AGENTS	
(1) *Antihelmintic Agent—*	
(*a*) Albendazole	tablets 200 mg
(*b*) Mebendazole	tablet 100 mg
(*c*) Levamisole	tablet 40 mg
(2) *Antischistosomal Agents—*	
(*a*) Metrifonate	tablets 100 mg
(*b*) Praziquantel	tablets 600 mg
(3) *Antibacterial Agents—*	
(*a*) Penicillins:	
(i) Penicillin G potassium/sodium (penicillin crystalline/Benzylpenicillin) . .	injection 600 mg (1 mega unit)
(ii) Penicillin G procaine (Benzylpenicillin procaine/procaine penicillin)	injection 300 mg/ml (300,000 u/ml) 10 ml and 100 ml
(iii) Penicillin V (Phenoxymethyl-penicillin	tablets 250 mg
(iv) Penicillin V (Phenoxymethyl-penicillin)	suspension 125 mg 5 ml
(v) Benzatine benzyl-penicilline	injection, 1.44 g vial PFR (2.4 MU)
(vi) Amoxycillin	capsule 250 mg
(vii) Amoxycillin	Elixir 125 mg/5 ml
(viii) Cloxacillin	capsule 250 mg
(ix) Ampicillin	capsule 250 mg/ elixir 125 mg/5 ml
(x) Chloramphenicol	capsule 250 mg/ syrup 125 mg/5 ml
(*b*) Other Antibacterial Drugs:	
(i) Co-trimoxazole	tablets 480 mg (suphamethoxazole 400 mg + tri-methoprim 80 mg)
(ii) Co-trimoxazole	tablets 240 mg (sulphamethoxazole 200 mg + trimethoprim 40 mg
(iii) Erythromycin	tablet, e/c 250 mg base
(iv) Gentamycin	injection 40 mg (as sulphate)/ml, 2 ml vial
(v) Metronidazole	tablet 200 mg
(vi) Doxcycline	tablet/capsule 100 mg

Drug	*Dose Form*
(vii) Nalidixic	tablet 500 mg
(viii) Sulphadimadine	tablets 500 mg
(3) *Antifungal Agents—*	
(*a*) Nystatin.	oral suspension 100,000 units/ml
(*b*) Nystatin.	pessaries 100,000 units (with applicator)
(*c*) Nysatin	tablet 500,000 units
(*d*) Gentian violet 0.5%	paint (aqueous)
(4) *Amoebicide:*	
Metranidazole	tablets 200 mg
(5) *Antimalarials—*	
(*a*) Pyrimethamine + sulphadoxine	tablets 25 mg pyrimethamin sulphadoxine 500 mg
(*b*) Halfantrine	tablet 250 mg/ suspension 125/5 ml
(*c*) Quinine sulphate	tablets 300 mg
(*d*) Quinine dihydrochloride	injection 300 mg/ml, 2 ml amp.
6. Antianaemia Agents	
(*a*) Folic acid	tablets 5 mg
(*b*) Ferrous sulphate	tablets 200 mg
(*c*) Ferrous sulphate	mixture, paediatric 60 mg/5 ml
(*d*) Ferrous sulphate with folic	tablet
7. Antihypertensive Agents	
(*a*) Propranolol Hcl	tablet, 40 mg
(*b*) Methyldopa	tablets 125 mg, 250 mg, 500 mg
(*c*) Bendrofluziade	tablet 5 mg
(*d*) Hydrochlothiazide	tablet 25 mg
8. Cardiac Glycosides	
(*a*) Digoxin	tablets 25 micrograms elixir
(b) Digoxin	50 micrograms/ml
9. Agent Used in Anaphylaxis	
Adrenaline	injection 1/1,000 1ml
10. Dermatological Preparations	
(1) *Anti-fungal Agents—*	
(*a*) Acid benzoic 6%+Acid salicylic 3% . .	ointment 50 g

	Drug	*Dose Form*
(*b*)	Sodium thiosulphate	crystals 30 g
(*c*)	Nystatin	Cream
(*d*)	Iconazole	Cream
(*e*)	Miconazole	Cream
(*f*)	Ketaconazole	Cream/tablets
(2)	*Anti-infective and Cleansing Agents*—	
(*a*)	Acid salicylic 5% + Sulphur 5%	ointment 50 g (with emulsifying ointment base)
(*b*)	Alcohol 70% (or surgical spirit)	500 ml
(*c*)	Gentian violet 0.5% (crystal violet)	paint 20 ml (aqueous)
(*d*)	Iodine, weak	solution 500 ml
(*e*)	Potassium permanganate concentrate 3%	solution for dilution 500 ml
(*h*)	Zinc paste compound + precipitated sulphur 5%	paste 100 mg
(*g*)	Zinc ointment + precipitated sulphur 5%	ointment 50 g
(*h*)	Hydrocortisone 1%	cream 30 g
(i)	Oral gel	Gel
(j)	Cotrimazole	Cream
(3)	*Anti-inflamatory and Antipruritic Agents*—	
(*a*)	Calamine	lotion 100 ml
(*b*)	Hydrocortisone 1%	cream 30 g
(4)	*Keratoplastics and Keratolytic*	
(*a*)	Acid salicylic 5% in alcohol 70%	lotion 100 ml
(*b*)	Acid salicylic 2% + Sulphur 2% + Coal tar solution 15% in Soap spirit	shampoo 100 ml
(*c*)	Zinc paste compound + Crude coal tar 5%	paste 100 g
(5)	*Scabicides and Pediculocides*	
(*a*)	Benzyl benzoate 25%	application 100 ml
(*b*)	Benzyl benzoate 12.5%	application 50 ml
(6)	*Other preparations*	
(*a*)	Ethyl chloride	spray unit
(*b*)	Paraffin gauze	dressing
(*c*)	Silver nitrate	stick toughened (pencil)
11.	DISINFECTANTS	
(*a*)	Cetrimide + Chlorheixidine	solution concentrate 15%+1.5%
(*b*)	Disinfectant, black	solution
(*c*)	Hypochloride	solution
12.	DIAGNOSTIC SUBSTANCES	
(*a*)	Clinistix (glucose in urine)	strips
(*b*)	Dextrostix (glucose in blood)	strips

Drug	*Dose Form*
(*c*) Haemastix (blood in urine)	strips
(*d*) Ictotest (bilirubin in urine)	tablets
(*e*) Keto-diastix (ketone bodies/glucose in urine)	strips
(*f*) Uristix (protein/glucose in urine)	strips
(*g*) Pregnancy test	strips
13. IMMUNOLOGICAL DIAGNOSTIC AGENT	
Tuberculin	PPD
14. DIURETIC	
(*a*) Bendrofluazide	tablets 5 mg
(*b*) Frusemide tablet 40 mg/i.m	. .
(c) Hydrochlothiazide	tablet 25 mg
15. GASTROINTESTINAL AGENTS	
(1) *Antiacids and other Antiulcer Agents—*	
(*a*) Magnesium hydroxide	mixture equivalent to Magnesium oxide 550 mg/10 ml
(*b*) Magnesium trisilicate co	tablets (chewable)
(*c*) Cemetidine	tablet 200/400 mg
(*d*) Ratidin	150/300 mg
(2) *Antispasmodic Agent—*	
(*a*) Propantheline bromide	tablets 15 mg
(*b*) Hyoscine Butylbromide	tablet 10 mg
(3) *Cathartic Agents—*	
(*a*) Cascara	tablets 120 mg
(*b*) Glycerine	suppository, child (2 g)
(*c*) Glycerol	suppository, adult (4 g)
(*d*) Magnesium sulphate	mixture 4 g/10 ml
(*e*) Bisacodyl	tablet
(4) *Replacement Fluids and Electrolytes—*	
(*a*) Oral rehydration salts	Powder in sachet for 1 litre (per litre): Sodium chloride 3.5 g Trisodium citrate 2.9 g Potassium chloride 2.5 g Glucose 20 g
(*b*) Sodium lactate compound (Ringer's solution)	IV infusion 1 litre
(*c*) 1⁄2 strength Darrow's solution in 5% dextrose	IV infusion 1 litre
(*d*) Thanzi ORS	Powder in sachet
16. CONTRACEPTIVES	
All oral contraceptives except permanent ones	

Drug	*Dose Form*
17. SERA AND IMMUNOGLOBULINS	
(*a*) Antirabies hyperimmune serum	injection 1,000 IU/5 ml
(*b*) Antisnake bite (antivenom) serum	injection
(*c*) Antitetanus toxoid	injection
18. OPHTHALMOLOGICAL PREPARATIONS	
Anti-infectives—	
(*a*) Chloramphenical	eye ointment 1.0% 3.5 g
(*b*) Tetracycline	eye ointment 1.0% 3.5 g
(*c*) Hydrocortisone	Eye ointment 1%
(*d*) Gentamycin	Eye ointment 1%
19. PSYCHOTHERAPEUTIC AGENT	
(*a*) Chloropromazine	tablets 10 mg
(*b*) Chloropromazine	25mg, 100 mg
20. RESPIRATORY AGENTS	
(1) *Antiasthmatic Agents—*	
(*a*) Aminophylline	tablets 100 mg
(*b*) Aminophylline	injection IV 25 mg/ml 10 ml
(*c*) Aminophylline	elixir 50 mg/5 ml
(d) Salbutamol	tablets 2 mg and 4 mg
(*e*) Salbutamol	syrup 2 mg/5 ml
(f) Nebuliser Salbutamol	Salbutamol Nebuliser
21. REPLACEMENT FLUIDS—ELECTROLYTES	
(1) *Oral Preparations—*	
(*a*) Oral rehydration salts (ORS)	powder in sachet for 1 litre
(*b*) Potassium chloride	tablets 450 mg (slow release)
(2) *Parenteral Preparations—*	
(*a*) Dextrose	IV infusion 5% litre
(*b*) Dextrose	injection 50% 20 ml
(*c*) ½ strength Darrow's in 5% dextrose	IV infusion 1 litre
(*d*) Sodium lactate compound (Ringer's solution)	IV infusion 1 litre
(*e*) Water for injection	IV 5 ml
(*f*) Water for injection	IV 10 ml
22. VITAMINS AND MINERALS	
(*a*) Vitamin A	Capsule
(*b*) Vitamin B Compound	tablet/injection

Drug	*Dose Form*
(*c*) Vitamin multiple	paediatric drops
(*d*) Vitamin multiple	paediatric syrup

23. PREPARATIONS FOR EAR NOSE AND OROPHARYNX

(1) *Ear Preparations—*

(*a*) Aluminium acetate	ear drops 13%
(*b*) Chloramphenical	ear drops 1%
(*c*) Neomycin + Corticosteroid	ear drops
(*d*) Sodium bicarbonate	ear drops 5%
(*e*) Spirit (alcohol)	ear drops 5%
(*f*) Gentian violet	paint 0.5% (aqueous)
(*g*) Wax softening drops	ear drops

(2) *Nasal Preparations—*

(*a*) Adrenaline	solution 1/1,000
(*b*) Silver nitrate	caustic pencil
(*c*) Nasal decongestants	

(3) *Orophalyngcal Preparations—*

(*a*) Gentian violet	paint 0.5 (aqueous)
(*b*) Nystatin	oral suspension 100,000 units/ml
(c) Thymol	mouthwash solution tablet

B. MEDICAL ASSISTANTS

A Medical Assistant licensed for private practice may administer only the following range of drugs:

1. LOCAL ANAESTHETICS

(*a*) Lignocaine hydrochloride + Adrenaline	2% + 1/80,000 dental cartridges
(*b*) Lignocaine hydrochloride	jelly 2% 30 g
(*c*) Lignocaine hydrochloride	injection 2% 25 ml

2. ANALGESICS, ANTIPYRETICS AND RELATED AGENTS

(*a*) Acid acetylsalicylic	tablets 300 mg (Aspirin)
(*b*) Acid acetylsalicylic	tablets 75 mg (Aspirin)
(*c*) Methyl salicylate	liniment 25%
(*d*) Paracetamol	tablets 500 mg
(*e*) Paracetamol	syrup 120mg/5 ml

3. ANTIHISTAMINES

(*a*) Promethazine hydrochloride	tablets 25 mg
(*b*) Promethazine hydrochloride	syrup 5 mg/ml
(*c*) Mepyrarnine Meleate	tablet 25 mg

Drug	*Dose Form*
4. ANTIEPILEPTICS	
(*a*) Paraldehyde	injection 10 ml
(*b*) Phenobarbitone	tablets 30 mg and 60 mg
5. ANTI-INFECTIVE AGENTS	
(1) *Antihelmintic Agent*—	
(*a*) Albendazole	tablets 200 mg
(*b*) Mebendazole	tablets 200 mg
(*c*) Levamisole (Ketrax)	tablets 40 mg
(2) *Antischistosomal Agents*—	
(*a*) Metrifonate	tablets 100 mg
(*b*) Praziquantel	tablets 600 mg
(3) *Antibacterial Agents*—	
(*a*) Penicillins:	
(i) Penicillin G Potassium/sodium (penicillin) crystalline/Benzylpenicilli)	injection 600 mg (1 mega unit)
(ii) Penicillin G procaine (Benzyl penicillin) procaine/procaine penicillin) and—100 ml	injection 300 mg/ml (300,000 ulml) 10 ml
(iii) Penicillin V (Phenoxymethylpenicillin)	tablets 250 mg
(iv) Penicillin V (Phenoxymethylpenicillin)	suspension 125 mg/ 5 ml
(v) Benzathine benzylpenicillin	injection, 1.44 g vial PFR (2.4 MU)
(vi) Amoxycillin	Capsule 250 mg
(vii) Amoxycillin	Elixir 125 mg/5 ml
(viii) Ampicillin	Capsule 250 mg/ Elixir 125 mg/5 ml
(*b*) Other Antibacterial Drugs:	
(i) Sulphadimidine	tablets 500 mg
(ii) Co-trimoxazole	tablets 480 mg (sulphamethoxa-zole 200 mg + trimethoprim 80 mg)
(iii) Co-trimoxazole	tablets 240 mg (sulphametho-xazole 200 mg + trimethoprim 40 mg)
(iv) Doxycycline	capsules or tablets 100 mg
(4) *Antifungal Agents*—	
(*a*) Gentian violet 0.5%	Paint (aqueous)

Drug	*Dose Form*
(b) Nystatin	suspension 100,000 u/ml
(5) *Antimalarials—*	
(*a*) Pyrimethamine + sulphadoxine	tablets 25 mg pyrimethamine + sulphadoxine 500 mg
(*b*) Proguanil Hcl	tablet 100 mg suspension 125/5ml
(*c*) Quinine sulphate	tablets 300 mg
(*d*) Quinine dihydrochloride	injection 300 mg/ml, 2 ml amp.
6. Antianaemia Agents	
(*a*) Folic acid tablets 5 mg	. .
(*b*) Ferrous sulphate.	tablets 200 mg
(*c*) Ferrous sulphate.	mixture, paediatric 60mg/5ml
(*d*) Ferrous sulphate with folic acid.	tablet
7. Dermatological Preparations	
(1) *Antifungal Agents—*	
(*a*) benzoic 6% + Acid salicylic 3%	ointment 50 g
(*b*) Sodium thiosulphate	crystals
(2) *Anti-infective and Cleansing Agents—*	
(*a*) Alcohol 70% (or surgical spirit)	500 ml
(*b*) Gentian violet 0.5%	paint 200 ml (aqueous)
(c) Potassium permanganate concentrate 3% . .	solution for dilution 500 ml
(*d*) Iodine, weak	solution
(*e*) Zinc paste compound + precipitate sulphur 5%	paste
(f) Zinc paste compound + precipitate sulphur 5%	ointment
(*g*) Hydrocortisone 1%	cream 30 mg
(3) *Anti-inflamatory and Antipruritic Agents—*	
(*a*) Calamine	lotion 100 ml
(*b*) Hydrocortisone 1%	cream 30 mg
(4) *Keratoplastics and Keratolytics—*	
(*a*) Acid salicylic 5% in alcohol	lotion
(*b*) Acid salicylic 2% + sulphur 2% + Coal tar solution 15% in soap spirit	Shampoo 100 ml
(c) Zinc paste compound + crude coal tar 5%	paste
(5) *Scabicides and Pediculocides—*	
(*a*) Benzyl benzoate 25%	application 100 ml
(b) Benzyl benzoate 12.5%	application 50 ml
(6) *Other Preparations—*	
(*a*) Ethyl chloride	spray

Drug	*Dose Form*
(*b*) Paraffin gauze	dressing
(c) Silver nitrate	stick toughened (pencil)
8. DISINFECTANTS	
(*a*) Centrimide + Chlorhexide	solution concentrate 15% = 1.5%
(*b*) Disinfectant black	solution
(*c*) Chlorine solution	
9. GASTROINTESTINAL AGENTS	
(1) *Antacids and other Antiulcer Agents—*	
(*a*) Magnesium hydroxide	mixture equivalent to Magnesium oxide 550 mg/10 ml
(*b*) Magnesium trisilicate co	tablets (chewable)
(2) *Antispasmodic Agent—*	
(*a*) Propantheline bromide	tablet 15 mg
(*b*) Hyoscine butylbromide	tablet 10 mg
(3) *Cathartic Agents—*	
(*a*) cascara	tablet 120 mg
(*b*) Glycerol	suppository child 2 mg
(*c*) Glycerol	suppository adult 4 mg
(*d*) Magnesium sulphate	mixture 4 mg/10 ml
(e) Biascodyl	tablet 5 mg
(4) *Diarrhoea Agents used in Replacement Solutions—*	
(*a*) Oral rehydration salts	powder in sachet for 1 litre (per litre Sodium Chloride 3.5 g, Trisodium citrate 2.9 g, Potassium chloride 1.5 g, Glucose 20 g)
(*b*) Sodium lactate compound IV infusion	1 litre
(*c*) ½ strength Darrow's solution in 5% Dextrose	IV infusion 1 litre
10. OPHTHALMOLOGICAL PREPARATIONS	
Anti-infectives—	
(*a*) Chloramphenicol	eye ointment 1.0% 3.5 g
(*b*) Tetracycline	eye ointment 1.0% 3.5 g
11. PSYCHOTHERAPEUTIC AGENTS	
(*a*) Chlorpromazine	tablets 10 mg, 25 mg

Drug	*Dose Form*
(*b*) Chlorpromazine	injection 2.5% (25 mg/ml 2 ml)
12. Respiratory Agents	
(1) *Antiliasthmatic Agents—*	
(*a*) Aminophylline	tablets 100 mg
(*b*) Aminophylline	injection IV 25 mg/ 10 ml
(*c*) Aminophylline	Elixir 50 mg/5 ml
(*d*) Salbutamol	tablet 2 mg and 4 mg
(*e*) Salbutamol	syrup 2 mg/5 ml
(*f*) Theophylline	syrup 125 mg/5 ml
(*g*) Adrenaline	injection
(*h*) Salbutamol sulphate	Aerosol inhalation 100 microgram/ dose, 200 dose unit
(2) *Antitussive Agents—*	
(*a*) Simple linctus, adult	linctus
(*b*) Simple linctus, paediatric	linctus
13. Replacement Fluids—Electrolytes	
Parenteral Preparations—	
(*a*) Dextrose IV 5% 1 litre	
(*b*) Sodium lactate compound (Ringer's solution)	IV infusion 1 litre
(*c*) ½ strength Darrow's solution	IV solution 1 litre
14. Vitamins And Minerals	
(*a*) Vitamins, multivite	tablets
(*b*) Vitamins, multivite	syrup
(*c*) Vitamin B compound	tablet
(*d*) Vitamin A	capsule 200,000 IU
(*e*) Pyridoxine Hcl	tablet 20 mg
(*f*) Nicotinamide	tablet 50 mg
(*g*) Calcium gluconate	tablet chewable 500 mg
(*h*) Ascobic acid	tablet 50 mg
15. Preparations for Ear, Nose and Oropharynx	
(*a*) Chloramphenicol	ear drops
(*b*) Chloramphenicol	ear drops 1%
(*c*) Spirit (alcohol)	ear drops 50%
(*d*) Sodium bicarbonate	ear drops 5%
(*e*) Aluminium acetate	ear drops
(*f*) wax softening	ear drops
(*g*) Adrenaline	solution
(*h*) Nasal decongestants	solution
(*i*) Gentian Violet	0.5% 10 ml

Drug	*Dose Form*
(*j*) Nystatin	suspension, oral
(*k*) Thymol	mouthwash solution/ tablet

16. CONTRACEPTIVES (IN LIAISON WITH FAMILY PLANNING UNIT AT DHO)
All oral contraceptives except for permanent methods.

C. DENTAL THERAPISTS AND DENTAL ASSISTANTS

Dental Therapists and Dental Assistants licensed for private practice may administer the following range of drugs—

1. LOCAL ANAESTHETICS

(*a*) Lignocaine	Cartridge 2% with adrenaline 1:80,000
(*b*) Lignocaine	Gel
(*c*) Prilocaine (Citanest)	cartridge 3% with feypressin 0.03 unit/ml
(*d*) Ethyl Chloride	Spray
(*e*) Benzocaine	Lozenges

2. ANALGESICS

(*a*) Acetylsalicylic acid	tablet 300 mg
(*b*) Paracetamol	tablet. 500 mg; Elixir 120 mg/5 ml
(*c*) Indomethacin	capsule/tablet 25 mg
(*d*) Ibuprofen tablet 200 mg; syrup 100 mg/5 ml	

3. ANTIBIOTICS

(*a*) Penicillin V	tablet 250 mg; suspension 125 mg/ 5 ml
(*b*) Amoxycillin	capsule 250 mg; elixir 125 mg/5 ml
(*c*) Cloxacillin	capsule 250 mg
(*d*) Ampicillin	capsule 250 mg; elixir 125 mg/5 ml
(e) Erythromycin	tablet e/c 250 mg base
(*f*) Metronidazole	tablet 200 mg
(*g*) Doxycyline	tablet/capsule 100 mg

4. ANTIFUNGAL DRUGS

(*a*) Nystatin	oral drops 100,000 units/ml

	Drug	*Dose Form*
	(*b*) Iconazole cream/gel	
	(*c*) Miconazole.	cream/gel
5.	STEROIDS	
	(*a*) Triamsonolone	oral base paste
	(*b*) Hydrocortisone	lozenges
	(*c*) Hydrocortisone sodium succinate	Vial 100 mg
	(*d*) Prednisolone	tablet 5 mg
6.	DISINFECTANTS	
	(*a*) Alcohol	70% sol. Concentrate
	(*b*) Cetrimide	15% sol. Concentrate +
7.	MOUTHWASHES	
	(*a*) Hydrogen peroxide.	6% sol. Concentrate
	(*b*) Chlorhexidine	0.2% Concentrate
	(*c*) Betadine	1 % sol. Concentrate
8.	HAEMOSTATIC AGENTS	
	(*a*) Surgicel	spongy/gauze
	(*b*) Tannic acid.	powder/liquid
	(c) Bone wax	wax
9.	ANTISEPTICS	
	(*a*) Alvogyl	spongy/fibres
	(*b*) Euginol with zinc oxide	oil/powder
	(*c*) Betadine	10% sol. Concentrate
	(*e*) Chlorhexidine	1% sol. Concentrate
10.	EMERGENCY DRUGS	
	(*a*) Adrenaline.	1:1000
	(*b*) Salbutamol	inhaler
	(*c*) Promethazine	tablets 10 mg; 25 mg/ml
	(*d*) Glucose	50mg/ml
	(*e*) Glyceryl trinitrate	tablets 300 microgram.

reg. 9

G.N. 18/1991
121/1993
33/2004

FOURTH SCHEDULE

MINIMUM REQUIREMENTS FOR PRIVATE PRACTICE CLINICS OF PARAMEDICALS AND ALLIED HEALTH PROFESSIONALS

PART I

Premises

A. (1) Out-Patient Clinics for Medical Assistants, Clinical Officers, Dental Therapists

The clinic should—

(*a*) be built with permanent materials;
(*b*) have a plastered interior;
(*c*) have adequate ventilation;
(*d*) have at least four rooms of 4 × 3 metres divided as follows:
  (i) an examination room;
  (ii) a treatment room;
  (iii) a patients' registration room; and
  (iv) procedure room.
(*e*) have toilet facilities consisting of either—
  (i) a ventilated pit latrine; or
  (ii) a sanitation platform latrine; or
  (iii) a water closet.
(*f*) have an adequate supply of clean and safe water nearby or running water within the building.
(*g*) have a wash basin or sink and a large container for storing water.

(2) In-Patient Facilities for General Clinical Officers

As required for Medical Practitioners and Dentists under the Medical Practitioners and Dentists (Private Practice) Regulations.

B. Dental Technicians

As in A above in addition to the following—

(*a*) Wax room;
(*b*) Plaster room;
(*c*) Fume cabinet/fume extractor;
(*d*) Fire fighting equipment.

C. Physiotherapists

(*a*) be built with permanent materials;
(*b*) have a plastered interior;
(*c*) have adequate ventilation and lighting;
(*d*) have a gymnastic area of at least 15 square metres;
(*e*) have a treatment room of at least 10 square metres;
(*f*) have a waiting and reception room;
(*g*) have toilet facilities consisting of either—
  (i) a ventilated pit latrine; or
  (ii) a sanitation platform latrine; or

(iii) a water closet;

(*h*) have an adequate supply of clean and safe water nearby or running water within the building; and

(*i*) have a wash basin or sink and a large container for storing water.

D. Opticians

Premises should be of permanent building materials and should be of adequate size for the number and range of activities to be performed. There should be distinct area for—

(*a*) waiting/reception of clients;

(*b*) examination;

(*c*) lense laboratory preparation;

(*d*) store room;

(*e*) toilet facilities for patients and staff; and

(*f*) other rooms deemed necessary for the practice.

E. Radiographers and Radiography Technicians

Premises should—

(*a*) be built with permanent materials;

(*b*) have waiting room of adequate size to hold 10 people, with adequate ventilation and toilet facilities;

(*c*) have X-ray room of at least 30 square metres with length at least 4–6 m;

(*d*) have wall thickness of 9 inches plastered brick wall all round or; 4.5 inches brick wall plastered with 1.25 mm barium plaster or; 150 mm concrete or; other equivalents of 22 mm Pb;

(*e*) have doors lined with Lead of 2 mm Pb or Brick 9 inches with maze format all 3 m high;

(*f*) have viewing window for control panel should be of 1.6 mm Pb glass or equivalent radiation protection window or surrounded in a maze format of equivalent brick or potable radiation protection shield;

(*g*) have ventilation provided by window on the side of the room that is *NOT* used by persons or by air-conditioner;

(*h*) have at least one change room for patients;

(*i*) have dark room should be of adequate size for purposes automatic or manual film processing with a window painted black;

(*j*) have workbenches in the darkroom must be made of cleanable and non-corrosive material;

(*k*) have film storage of hopper or equivalent holder to avoid light fogging;

(*l*) have supply of running water;

(*m*) have washing hands facilities: sink or washing basin.

F. Sonographers

The premises should have all the above in "E" in addition to the following:

Adequate ultrasound room to fit a patient's couch, scanner, stools, small table and three persons; well ventilated.

PART II

WATER SUPPLY

All clinics should have—

(*a*) a source of safe drinking water nearby or running water within the building (especially dental practice);

(*b*) a wash-basin or sink and a large container for storing water.

PART III

EQUIPMENT AND SUPPLIES

A. (1) MEDICAL ASSISTANTS AND CLINICAL OFFICERS OUT-PATIENT FACILITIES

The following should be available—

(*a*) Lockable drug cupboard;

(*b*) Examination couch/bed;

(*c*) Good examination light;

(*d*) Table in the registration room;

(*e*) Seats for patients in the waiting room;

(*f*) Stethoscope;

(*g*) Autoscope;

(*h*) Blood pressure machine;

(*i*) Torch or other source of light for throat examination;

(*j*) Weighing scale;

(*k*) Adequate stocks of disinfectants, e.g. Jik;

(*l*) At least two basins for disinfection;

(*m*) At least two thermometers;

(*n*) A minimum of 100 disposable syringes as follows—

(i) 40 × 2 ml syringes;

(ii) 40 × 5 ml syringes;

(iii) 20 × 10 ml syringes.

(*o*) At least 100 needles for injection;

(*p*) At least one sterilizer (e.g. fish kettle type);

(*q*) At least one stove;

(*r*) At least two needle holders;

(*s*) At least one sterile syringes tray;

(*t*) At least two pairs of dressing scissors;

(*u*) At least two dissecting forceps;

(*v*) Cheatle forceps × 2;

(*w*) At least 25 metal spatulae or a box of disposable spatulae;

(*x*) A microscope for examination of stool and urine (optional);

(*y*) Refrigerator for the storage of drugs requiring refrigeration;

(*z*) Resuscitation equipment;

(*aa*) Appropriate and current reference books for the practice;

(*bb*) Two bins for the disposal of waste, one of which shall be for the disposal of sharp instruments and the other for the disposal of waste material in either case using an incinerator of the ordinary type or of a 44 gallon drum with specifications approved by the Council;
(*cc*) Registers of patients;
(*dd*) Patient's prescription tickets;
(*ee*) Case record cards to be carried by patients or to be kept by the clinic;
(*ff*) Reporting forms for submission for clinic statistics to the Ministry of Health;
(*gg*) Rubbish disposal pit or rubbish bin;
(*hh*) At least fifty pairs of surgical and sterile gloves;
(*ii*) Receipt book for the fees charged;
(*jj*) Receipt of drugs purchased; and
(*kk*) Record of drugs purchased.

(2) General Clinical Officers In-Patient Facilities
As required for Medical Practitioners under the Medical Practitioners and Dentists (Private Practice) Regulations.

B. Dental Therapists and Dental Assistants
The following should be available—
(*a*) Dental unit with low and high speed drills which are water cooled;
(*b*) Wash basin;
(*c*) Autoclave;
(*d*) Cabinet with basic dental instruments;
(*e*) Basic drugs and medications used in dentistry;
(*f*) Intra oral radiological unit and a developing unit;
(*g*) Basic requirements in filling materials—
(i) amalgams;
(ii) dental cements;
(iii) composite chemically cured; and
(iv) glass ionomer.

C. Dental Technicians
The following should be available—
(1) *Prosthetics*—
(*a*) Bunsen burner;
(*b*) Articulator;
(*c*) Suspension motor;
(*d*) Model trimmer;
(*e*) Polishing lathe;
(*f*) Crylic curing appliance;
(*g*) Mixing bowl;
(*h*) 2 flasks with a clamp;
(*i*) Casting machine;
(*j*) Vibrator;
(*k*) Duplicating flasks;
(*l*) Surveyor;

(*m*) Electro polishing bath;
(*n*) Bench press;
(*o*) Protective eye ware;
(*p*) Dental Technician's kit which should include—
(i) Lecron;
(ii) Plaster knife;
(iii) Spatula;
(iv) Ash five; and
(v) wire cutters.

(2) *Orthodontics*—
(*a*) 64 and 65 orthodontic pliers;
(*b*) Technicians kit as in prosthetics; and
(*c*) Model trimmer.

(3) *Crown and Bridge*—
(*a*) Ceramic kit;
(*b*) Ceramic firing furnace;
(*c*) Technician's kit;
(*d*) Centrifugal casting machine;
(*e*) Sand blasters;
(*f*) Model trimmer; and
(*g*) Burn out furnaces.

D. PHYSIOTHERAPISTS

The clinic should have at least—
(*a*) One treatment couch;
(*b*) Two sets of linen—blanket, sheets, towels;
(*c*) Four pillows;
(*d*) One wheelchair;
(*e*) Two pairs of crutches—adjustable;
(*f*) One adjustable walking frame;
(*g*) One set of parallel bars;
(*h*) One wall bar;
(*i*) One full-length exercise mirror;
(*j*) One exercise mat;
(*k*) Toys;
(*l*) Two gymnastic balls;
(*m*) Weights, e.g. sandbags;
(*n*) One foot/arm bath;
(*o*) One measuring tape;
(*p*) One Goniometer;
(*q*) One Stethoscope;
(*r*) One Sphygmomanometer;
(*s*) One complete First Aid box; and
(*t*) Disinfectants and other cleaning materials.

E. Opticians

The practice should have—

(*a*) snellen test chart types;
(*b*) a slit lamp;
(*c*) an opthalmometer;
(*d*) a photoptometer;
(*e*) a set of trial lens;
(*f*) a trial frame;
(*g*) an edger machine;
(*h*) a lens meter;
(*i*) a refractometer;
(*j*) fluorescein drops;
(*k*) amethocaine;
(*l*) artificial tears; and
(*m*) a sink.

FIFTH SCHEDULE

reg. 9 (4)

G.N. 18/1991
122/1993
25/1997
29/2004
50/2007
12/2009

Licence and Premises Fees

Matter	*Fee* K t
1. For an application for a private licence in the case of—	
(*a*) paramedicals (degree)	6,000 00
(*b*) other paramedicals	6,000 00
(c) opticians	6,000 00
2. For a private practice licence—	
(*a*) in the case of paramedicals (degree):	
(i) upon issue	10,000 00
(ii) upon every renewal	15,000 00
(*b*) in the case of other paramedicals:	
(i) upon issue	8,000 00
(ii) upon every renewal	10,000 00
(*c*) in the case of opticians:	
(i) upon issue	12,000 00
(ii) upon every renewal	15,000 00

Matter	*Fee* K t
3. For an application for registration of premises for private practice in the case of—	
(*a*) paramedicals (degree)	10,000 00
(b) other paramedicals	10,000 00
(*c*) opticians	10,000 00
(*d*) institutional facility (non-fee paying).	10,000 00
(*e*) institutional facility (fee paying)	15,000 00
4. For a premises registration certificate—	
(*a*) in the case of paramedicals (degree):	
(i) upon issue	10,000 00
(ii) upon every renewal	10,000 00
(*b*) in the case of other paramedicals:	
(i) upon issue	8,000 00
(ii) upon every renewal	10,000 00
(*c*) in the case of opticians:	
(i) upon issue	10,000 00
(ii) upon every renewal	15,000 00
(*d*) in the case of institutional facility (non-fee paying):	
(i) upon issue	10,000 00
(ii) upon every renewal	15,000 00
(*e*) in the case of institutional facility (fee paying):	
(i) upon issue	15,000 00
(ii) upon every renewal	20,000 00
5. For replacement of licence or premises registration certificate	10,000 00
6. For transfer of premises	20,000 00

SIXTH SCHEDULE

reg. 2 G.N. 82/1989

Maximum Fees Chargeable for Services Rendered

1. Any Government hospital or other health establishment.
2. A hospital, clinic or other health establishment of a local authority.
3. A hospital having full membership with the Private Hospitals Association of Malaŵi.
4. A hospital, clinic or dispensary operated by a statutory body, a company or other organization solely for providing services to its employees and their immediate families living with them.

[Subsidiary]

G.N. 17/1991
34/2004

Medical Laboratories (Private Practice) Regulations

MEDICAL LABORATORIES (PRIVATE PRACTICE) REGULATIONS

under s. 69

Citation

1. These Regulations may be cited as the Medical Laboratories (Private Practice) Regulations.

Classification of medical laboratories for private practice

2. Medical laboratories for private practice shall be classified as—

(*a*) Category 'A' laboratories;

(*b*) Category 'B (1)' laboratories; and

(*c*) Category 'B (2)' laboratories.

Category 'A' laboratories
G.N. 34/2004

3.—(1) A category 'A' laboratory shall be a laboratory operated by a registered Laboratory Assistant or Laboratory Technician as part of the private practice of—

sub. leg. p. 36

(*a*) a medical practitioner or dentist licensed under the Medical Practitioners and Dentists (Private Practice) Regulations; or

sub. leg. p. 67

(*b*) a paramedical licensed under the Paramedicals and Allied Health Professionals (Private Practice) Regulations.

(2) Except as otherwise provided in the Regulations cited in subregulation (1) or in addition to such provision—

(*a*) the tests to be performed in a Category 'A' laboratory shall be such tests as are necessary for the immediate management of the practitioner's own patients and shall be limited to—

(i) full blood count differential;

(ii) urinalysis;

(iii) blood smear for malaria parasites;

(iv) blood sugar;

(v) pregnancy tests;

(vi) wet preparations for Candida, T. Vaginals and skin microfilaria;

(vii) stool for microscopy;

(viii) gram stain;

(ix) VDLR; and

(x) other tests as approved by the Council from time to time;

(*b*) there shall be maintained in respect of a Category 'A' laboratory the following minimum equipment—

(i) a binocular microscope with at least three objective lenses, including a X40 and X100 oil immersion;

(ii) a centrifuge; and

(iii) a heamoglobinometer or a lovibond comparator.

Category 'B (1)' laboratories sub. leg. p. 118 G.N. 34/2004

4.—(1) A Category 'B (1)' laboratory shall be a laboratory which may be operated as a private practice for service to the general public only by a person registered as a pathologist under the Specialist Register kept and maintained by the Council in accordance with the Medical Practitioners and Dentists (Specialist Register) (Qualifications) Rules.

(2) The range of tests to be performed in a Category 'B (1)' laboratory shall be all or any of the following types—

(*a*) clinical chemistry;

(*b*) haematology;

(*c*) histopathology;

(*d*) microbiology; and

(*e*) parasitology,

as the Council may endorse on the licence of the practitioner having regard to his training and experience.

(3) The premises for use by a practitioner licensed to operate a Category 'B (1)' laboratory shall, as a minimum, comply with the requirements specified in Part I of the Schedule and there shall be kept and maintained for use at every such laboratory, as a minimum, the equipment specified in that Part.

(4) A licence to operate the private practice of a Category 'B (1)' laboratory shall—

(*a*) if the applicant is a medical practitioner, be issued under the Medical Practitioners and Dentists (Private Practice) Regulations; and sub. leg. p. 36

(*b*) if the applicant is not a medical practitioner, be issued under the Paramedical and Allied Health Professional (Private Practice) Regulations. sub. leg. p. 36

Category 'B (2)' laboratories sub. leg. p. 103

5.—(1) A Category 'B (2)' laboratory shall be a laboratory which may be operated by a person registered as a laboratory technician under the Medical Practitioners and Dentists (Registration and Miscellaneous Fees) Regulations.

(2) The range of tests to be performed in a Category 'B (2)' laboratory shall be limited to any or all of the following types—

(*a*) clinical chemistry;

(*b*) haematology;

(*c*) microbiology; and

(*d*) parasitology,

as the Council may endorse on the licence of the practitioner having regard to his training and experience.

(3) The premises for use by a practitioner licensed to operate a Category 'B (2)' laboratory shall, as a minimum, comply with the requirements specified in Part II of the Schedule and there shall be kept and maintained for use at every such laboratory, as a minimum, the equipment specified in that Part.

sub. leg. p. 67

(4) A licence to operate a private practice of a Category 'B (2)' laboratory shall be issued under the Paramedicals and Allied Professionals (Private Practice) Regulations.

Limitation as to the conduct of tests in a Category 'B (1)' or 'B (2)' laboratory G.N. 34/2004

6.—(1) All tests in a Category 'B (1)' or 'B (2)' laboratory shall be performed only at the request of the medical practitioner, dentist or paramedical treating the patient concerned and the result of any such test shall be sent to only such medical practitioner, dentist or paramedical.

(2) A person who contravenes subregulation (1) shall be guilty of an offence and liable to a fine of K20,000 and to imprisonment for one month.

Confidentiality of laboratory test results

7.—(1) Every document relating to the care of a patient shall be treated as strictly confidential and the results of any laboratory test performed in relation to any patient shall be released only to the patient's clinical practitioner either directly or through the patient and no person shall allow any other person to have access to any such document or communicate to any other person the results of such tests except under the authority of law.

(2) A person who contravenes subregulation (1) shall be guilty of an offence and liable to a fine of K40,000 and imprisonment for three months.

Establishment of a quality assurance scheme regs. 4 (3) and 5 (3)

8. The Council may establish a scheme for the quality control of results of tests performed at any category of laboratories as classified in these Regulations or at any other laboratory.

SCHEDULE G.N. 34/2004

MINIMUM REQUIREMENTS AS RESPECTS PREMISES AND EQUIPMENT OF CATEGORIES 'B (1)' AND 'B (2)' LABORATORIES

PART I

CATEGORY 'B (1)' LABORATORIES

PREMISES

1. Premises should be of permanent building materials and should be of adequate size for the number and range of tests to be performed.

There should be distinct area for—

(*a*) specimen reception, preparation of tests;

(*b*) collection of specimens from patients, e.g. blood samples;

(*c*) waiting room for patients to wait for urgent specimen results; and

(*d*) toilet facilities for patients and staff.

2. Arrangements must be made for disposal of examined specimen. Some may require decontamination before final disposal, e.g. autoclaving, incineration, pit latrine or sewer disposal.

EQUIPMENT

1. Equipment will depend on tests allowed by the Council on the basis of applicant's training and experience. The following equipment is required as a minimum—

(*a*) binocular microscope with built-in light source and at least three objective lenses including a x40 and xl00, oil immersion lens, and where there is no electricity a 6 volt or 12 volt car battery and AC/DC transformer should be used;

(*b*) centrifuge—electrical or manual;

(*c*) waterbath or heating block, preferably with a thermostat;

(*d*) spectrophometer or calorimeter for biochemistry tests and or haemoglobin measurement;

(*e*) refrigerator for reagents and specimens requiring to be stored at refrigeration temperature;

(*f*) hot boiler for sterilization;

(*g*) bunsen burner or spirit lamp;

(*h*) waste disposal bucket with appropriate liners or waste bin bags; and

(*i*) assorted glassware, pipettes, etc.

2. Other essential equipment would depend on the type of work done in the laboratory, as follows—

(*a*) for microbiology:

(i) incubator with thermostat;

(ii) autoclave or steam sterilizer;

(iii) hot air oven for drying glassware;

(iv) media sterilizer;

(v) anaerobic jar; and

(vi) safety cabinet with UV-sterilization for mycobacterial work.

(*b*) for serology—shaker (VDRL type);

(*c*) for histology cytology:

(i) microtome with appropriate microtome knives;

(ii) floating bath;

(iii) hot plate;

(iv) wax dispenser;

(v) tissue processor;

(vi) knife sharpener with leather strap or automatic machine;

(vii) cytology centrifuge;

(viii) slide filing cabinet; and

(ix) assorted items, e.g. scalp blade with handle, pair of scissors, forceps, weighing scales, dissecting board, etc.

(*d*) for haematology—

(i) haemogotinometer;

(ii) haematocrite centrifuge and reader;

(iii) differential counter;

(iv) haemocytometer; and

(v) ESR apparatus.

3. A number of small items, though not essential, improve the safety working conditions in the laboratory. These include—

(*a*) reagent dispensers;

(*b*) variable volume pipettes;

(*c*) pipette fillers;

(*d*) slide filing cabinets;

(*e*) fire-extinguisher; and

(*f*) laboratory safety posters.

4. Appropriate and current reference books.

PART II

CATEGORY 'B (2)' LABORATORIES

PREMISES

As for Category 'B (1)' laboratories.

EQUIPMENT

As for Category 'B (2)' laboratories.

MEDICAL PRACTITIONERS AND DENTISTS (REGISTRATION AND MISCELLANEOUS FEES) REGULATIONS

under s. 69

G.N. 19/1988
125/1988
16/1991
123/1993
114/1995
26/1997
31/2004
7/2005
31/2005
49/2007
11/2009

Citation

1. These Regulations may be cited as the Medical Practitioners and Dentists (Registration and Miscellaneous Fees) Regulations.

Application

2. These Regulations shall apply in respect of the Registration of medical practitioners, dentists, paramedicals, allied health professionals, and students who are undergoing training in Malaŵi for a qualification that requires registering with the Council.

Interpretation
G.N. 11/2009

3. In these Regulations—

"allied health professional" means a person qualified to practise in a class of health personnel specified in Part II of the First Schedule;

"paramedical" means a person qualified to practise in a class of medical personnel specified in Part I of the First Schedule;

"professional officer grade" means the grade of paramedical or allied health professional with a degree;

"technical assistant grade" means the grade of medical assistants, medical laboratory assistants, physiotherapy or occupational therapy assistants, radiography assistants, health assistants and leprosy control assistants;

"technical officer grade" means the grade of clinical officers, radiographers, medical laboratory technicians, physiotherapists, occupational therapists, environmental health officers,

chiropodists, clinical nutritionists, clinical psychologists, dieticians, speech therapists and operating theatre technicians without degrees and dental technologists.

Prohibition respecting paramedicals and allied health professionals

4.—(1) No person shall be employed, whether as a self-employed person or as an employee, or in the services, of any other person or body of persons corporate or unincorporate or any organization whatsoever, as a paramedical or an allied health professional, unless he is registered as such under these Regulations and holds a currently valid registration certificate in respect of such registration.

(2) A person who, being an employee, self-employed person or an employer, contravenes subregulation (1) shall be guilty of an offence and liable—

(*a*) if he is an employee, to a fine of K300 and to imprisonment for two months;

(*b*) if he is self-employed person or an employer, to a fine of K500 and to imprisonment for three months.

Application for registration

5.—(1) An application for registration on any register shall be made in Form I set out in the Second Schedule and shall be signed by the applicant.

(2) There shall be submitted in support of any application for registration—

(*a*) a statutory declaration made by the applicant in Form 2 set out in the Second Schedule;

(*b*) any degrees, diplomas or certificates in which the applicant relies as qualifications for registration;

(*c*) where the degrees, diplomas or certificates on which the applicant relies as qualifications for registration were granted in a country, state or territory in which English is not an official language, a certificate issued by the authority before whom the statutory declaration referred to in paragraph (*a*) was made, stating whether the applicant's knowledge of the English language is excellent, good, fair or poor;

(*d*) in the case of an applicant for full registration, either—

(i) a certificate issued by a competent authority in the country, state or territory in which his primary qualification was granted, stating that the applicant has, after passing a qualifying examination, completed such course of training or had such experience as is required by law in that country, state or territory to entitle him to full registration in that country, state or territory, or

(ii) a certificate issued by the superintendent of a hospital or other institution in Malaŵi approved by the Council, stating the period or periods during which the applicant has been engaged in employment at that hospital or other institution in a resident capacity; and

(*e*) in the case of an applicant for registration whose name has changed since the grant of his qualification, the marriage certificate or other document which provides evidence of such change of name.

(3) Where any document referred to in paragraphs (*b*), (*d*) or (*e*) of subregulation (2) is in a language other than English, there shall be submitted with that document a translation of the document into the English language properly certified as a true translation by a person competent to do so.

(4) Unless the Registrar otherwise requires in any particular case, a duplicate or properly certified copy of an original document referred to in paragraphs (*b*), (*d*) or (*e*) of subregulation (2) may be submitted in lieu of the original document.

(5) Every person deemed by section 24 of the Act to be registered under the Act shall submit to the Registrar particulars of his registration in the form of an application made in Form 1 set out in the Second Schedule and, upon payment of the prescribed fee, shall be entitled to be issued with a certificate of registration.

(6) Nothing in this regulation shall preclude the Council or the Registrar from requiring an applicant for registration or a person deemed to be registered to produce such further documents or such further or other evidence as the Council or the Registrar may deem necessary for the purpose of being satisfied as to any matter related to the application.

Form of registers

6. The Registrar shall keep and maintain in Form 3 set out in the Second Schedule—

(*a*) each of the registers required under Part VII of the Act;

(*b*) a separate register for each class of paramedicals;

(*c*) a separate register for each class of allied health professionals,

and subject thereto, every register shall be in the form of a looseleaf volume, one page of which shall be set aside for entries relating to each registered person and any alteration in particulars relating to that person shall be endorsed on the page so set aside.

Manner of effecting erasures

7. Every erasure from a register of the name or particulars of a registered person shall be effected in the manner provided by section 35 of the Act, and when effecting erasure the Registrar shall endorse on the page containing the entries relating to that person the circumstances in which and the date on which the erasure was made.

Certificate of registration

8.—(1) Every certificate of registration in any register shall be in Form 4 set out in the Second Schedule.

(2) A certificate of registration may be replaced upon written application of the registered person and upon payment by him of the prescribed fee if the Registrar is satisfied that the certificate is lost, destroyed or damaged; and in order to satisfy himself, the Registrar may require such further or other evidence on oath or otherwise as he deems necessary.

Registration fees
G.N. 83/1989

9.—(1) The fees set out in the Third Schedule shall be payable in respect of the matters respectively specified in that Schedule.

(2) In the case of application fees, once payment of a fee has been receipted, the fee shall not be refundable whether the applicant withdraws his application or the application has been refused by the Council or has for any reason whatsoever not been granted.

(3) In the case of registration fees—

(*a*) the fee shall be payable annually not later than 31st March of each year;

(*b*) where the fee or any part thereof remains unpaid for more than thirty days after the due date, a penalty of fifty per cent of the amount due shall be imposed and shall become part of the due amount payable; and

(*c*) there shall be no reduction, proportionate or otherwise, in the amount of the fee payable even if the remaining period to the next 31st March from the date of registration or from the date of payment of the amount due is less than twelve months.

G.N. 83/1989

(4) In the case of registered persons in employment, every employer shall, unless he is reasonably satisfied that the fees have already been paid, deduct the annual renewal fees payable by such persons from their salaries or other emoluments and shall remit the amounts so deducted to the Council not later than one month before the date of next renewal.

Disciplinary provisions for paramedicals and allied health professionals G.N. 83/1989

10.—(1) Every paramedical and allied health professional shall observe the professional ethics, conduct and discipline of his calling.

(2) Where the Council is, after inquiry, satisfied that a paramedical or an allied health professional is guilty of improper or disgraceful conduct in a professional respect relative to his calling, the Council may, having regard to the gravity of the conduct—

(*a*) cancel his registration either indefinitely or for a specified period; or

(*b*) warn or reprimand him, and may impose on him such Conditions as the Council may determine.

(3) The person whose conduct is being inquired into shall be given a reasonable opportunity of being heard by the Council either by written representation or by appearing before the Council in person or by his legal practitioner.

(4) For the purposes of an inquiry under this regulation the Council may administer an oath and may enforce the attendance of persons as witnesses and the production of books, documents and other articles of evidence.

(5) The Council shall have the power to regulate its own procedure in any disciplinary proceedings under this regulation.

(6) A person aggrieved by the decision of the Council under this regulation may appeal to the High Court within thirty days of the date of notification of the decision and the High Court may confirm, vary or annul the decision of the Council.

(7) A person who, when summoned, fails to appear before the Council as witness or to produce any book, document or other article of evidence in disciplinary proceedings under this regulation shall be guilty of an offence and liable to a fine of K200 and to imprisonment for one month.

(8) The Council may, upon the application of person concerned showing cause why he should be considered for reinstatement to the appropriate register and if the Council is satisfied with the cause shown, reinstate the registration of a person cancelled under this regulation.

List of current registered paramedicals, etc., to be published in the *Gazette* G.N. 83/1989

11.—(1) The Registrar shall, soon after 31st March every year, publish in the *Gazette* lists containing names, addresses, callings, qualifications and other particulars of all persons registered under these Regulations as paramedicals or allied health professionals.

(2) The Registrar shall give notice in the *Gazette* of any cancellation or reinstatement of registration effected pursuant to regulation 10.

Council to inspect all health facilities in Malaŵi G.N. 16/1991

12.—(1) In the exercise of its powers of inspection under section 55A the Council shall at least once every year undertake visits to every health facility in Malaŵi and the Council shall, unless Regulations made under the Act otherwise prescribe, in respect of every such facility the minimum requirements and standards of practice according to its class as determined by the Council.

(2) The Council shall keep and maintain a register of all health facilities in Malaŵi and shall once every year publish in the *Gazette* the list of all registered health facilities.

(3) There shall be payable annually to the Council in respect of every health facility in Malaŵi, except a health facility operated by the Government, a local authority and the Private Hospital Association of Malaŵi, the premises registration fee specified in the Third Schedule.

Third Schedule

FIRST SCHEDULE reg. 3

G.N. 125/1988 16/1991 114/1995

CLASSES OF PARAMEDICALS AND ALLIED HEALTH PROFESSIONALS

PART I

PARAMEDICALS

A. *General Paramedicals*

1. Medical Assistants
2. Clinical Officers
3. Dental Hygienists
4. Dental Assistants
5. Dental Technicians

G.N. 125/1988 16/1991

6. Leprosy Control Assistants (to be registered only while employed as such in an organization)

B. *Specialized Paramedicals* (being persons who, subsequent to general qualifications have obtained specialized qualifications the relevant training for which is of a duration of at least one academic year at an institution recognized by the Council)

1. Medical Assistants (Anaesthetic)
2. Medical Assistants (Ophthalmic)
3. Medical Assistants (Psychiatric)
4. Clinical Officers (Anaesthetic)

5. Clinical Officers (Ophthalmic)
6. Clinical Officers (Orthopaedic)
7. Clinical Officers (Psychiatric)
8. Clinical Officers (Paediatric)
9. Clinical Officers (Tuberculosis and Leprosy)

9A. Clinical Officers (Dermatologist)

10. Dental Technicians (Maxillo-facial)
11. Dental Technicians (Prosthodontic)
12. Dental Technicians (Orthodontic)
13. Dental Technicians (Crown and Bridge)
14. Operating Theatre Technicians G.N. 83/1989

PART II
Allied Health Professionals

1. Physiotherapists
2. Physiotherapy Assistants
3. Radiographers
4. Radiography Assistants
5. Medical Laboratory Assistants
6. Medical Laboratory Technicians
7. Opticians
8. Orderlies, being persons who have received in-service training at a hospital approved by the Council for a minimum period of six months and have passed the Council certifying examination and have qualified under following classes— G.N. 114/1995

   (i) Medical Orderlies
   (ii) Dental Orderlies
   (iii) Laboratory Aides.

9. Orthopaedic Technicians G.N. 125/1988
10. Occupational Therapists 83/1989
11. Health Assistants
12. Environmental Health Officers
13. Speech Therapists
14. Chiropodists
15. Dieticians
16. Clinical Nutritionists
17. Clinical Psychologists

SECOND SCHEDULE reg. 6

PRESCRIBED FORMS

Form of Application for Registration FORM 1

MEDICAL PRACTITIONERS AND DENTISTS ACT

(CAP. 36:01)

MEDICAL PRACTITIONERS AND DENTISTS (REGISTRATION AND MISCELLANEOUS FEES) REGULATIONS

APPLICATION FOR REGISTRATION

To: The Registrar,

Medical Council of Malaŵi, P.O. Box 30787, Capital City, Lilongwe 3

1. Full names of the applicant: Dr./Mr./Mrs./Miss .....
   .....
2. Date of Birth: .....
3. Marital status: single [ ], married [ ], widowed [ ] divorced [ ], other [ ].....
   .....
   | .....
4. Address of the applicant: .....
   .....
   .....
5. Nationality of the applicant: .....
6. Profession in respect of which the application for registration is made
   .....
   .....
7. Application for registration on the .....
   .....

I, the above-named applicant, hereby apply for registration on the aforementioned register and submit herewith—

*(*a*) the prescribed application fee of K .....

*(*b*) the prescribed registration fee of K .....; and the following documents in support of my application: .....

.....

.....

.....

Dated: ....

Signature of Applicant

[*NOTE: 1. Fee must be payable only by cheque or postal order made in favour of the Medical Council of Malaŵi.

2. Application fee is not refundable, but registration fee shall be refunded where application for registration has not been accepted.]

FORM 2

MEDICAL PRACTITIONERS AND DENTISTS ACT

(CAP. 36:01)

MEDICAL PRACTITIONERS AND DENTISTS (REGISTRATION AND MISCELLANEOUS FEES) REGULATIONS

STATUTORY DECLARATION

I, ... do solemnly and sincerely declare as follows:

1. THAT I am the holder of the following degrees, diplomas or certificates granted to me after examination by a university, college, medical or dental school, or other examining authority, and that the courses of study in the professional subjects with respect to which the degrees, diplomas or certificates which I hold were granted covered the following periods—

University, college, medical or dental school or other institution	Period		Degree Diploma or Certificate	Examining Authority
	From	to		
1.	.....	.....	.....	.....
2.	.....	.....	.....	.....
3.	.....	.....	.....	.....
4.	.....	.....	.....	.....

2. THAT I have completed the following additional courses of training and had the following experience in the practice of my profession, namely—

Description of Training or Experience	Period	
	From	To
.....	.....	.....
.....	.....	.....
.....	.....	.....
.....	.....	.....

3. THAT I would, so far as professional qualifications are concerned, be entitled to practise my profession in the country, state or territory in which my professional qualifications were granted.

4. THAT—

(*a*) I have never been debarred from practising my profession on the grounds of professional misconduct; and

(*b*) my name has never been removed from any register of members of my profession kept in accordance with the laws of any country or state in which I have practised my profession; and

(*c*) no inquiry is pending which may result in an action being taken which is referred to in subparagraph (*a*) or (*b*).

AND I make this solemn declaration conscientiously believing the same to be true.

.....
Signature

DECLARED at ..... this day of ....., 20 .....

Before me

.....
Signature of Attesting Authority

.....
Capacity of Attesting Authority (e.g. Notary Public, Commissioner for Oaths, etc.)

NOTE: This declaration, if made—

(*a*) in Malaŵi, must be made under the Oaths, Affirmations and Declarations Act (Cap. 4:07);

(*b*) in any other country of the Commonwealth, must be made before a Notary Public, Commissioner for Oaths or other person having authority in that country under any law for the time being in force to take or receive an oath, an affirmation or a declaration; and

(*c*) in any other place, must be made before a British consul or vice-consul or before any person having authority under any Act of Parliament of the United Kingdom for the time being in force to take or receive an oath, an affirmation or a declaration.

FORM 3

MEDICAL PRACTITIONERS AND DENTISTS ACT

(CAP. 36:01)

MEDICAL PRACTITIONERS AND DENTISTS (REGISTRATION AND MISCELLANEOUS FEES) REGULATIONS

FORM OF REGISTERS

Name of Registered person	*Date of Registra-tion*	*Registra-tion Number*	*Address*	*Nationality*	*Date of Birth*	*Qualifications*		*University College, School or other institution*	*Date of cancellation of registration, if any*	*Remarks if any*
						Upon registration	*Subsequent to registration*			
						1. ..... 2. ..... 3.	1. ..... 2. ..... 3.			

FORM 4

MEDICAL PRACTITIONERS AND DENTISTS ACT

(CAP. 36:01)

MEDICAL PRACTITIONERS AND DENTISTS(REGISTRATION AND MISCELLANEOUS FEES) REGULATIONS

CERTIFICATE OF REGISTRATION

REGISTRATION NO. ..... CERTIFICATE NO . .....

This is to certify that .....

is this ..... day of ....., 20 ..... registered on the

.....

kept by the Medical Council of Malaŵi in accordance with the provisions of the Medical Practitioners and Dentists Act, 1987, and the Regulations made thereunder.

.....

Registrar

Medical Council of Malaŵi

COMMON SEAL OF THE COUNCIL

G.N. 16/1991
123/1993
26/1997
31/2004
7/2005
31/2005
49/2007
11/2009

THIRD SCHEDULE reg. 9

REGISTRATION AND MISCELLANEOUS FEES

Matter	*Fees* K t
1. For an application for registration—	
(*a*) for applicants who are nationals of Malaŵi:	
(i) in the Technical Assistants grade	1,500 00
(ii) in the Technical Officer grade	2,000 00
(iii) in the Professional Officer grade	2,500 00
(iv) as an optician	4,000 00
(v) as an intern (Technical Officer grade)	2,000 00
(vi) as an intern (Professional Officer grade)	2,500 00
(vii) on provisional registration	4,000 00
(viii) as a medical practitioner or dentist on a register specified in section 17 of the Act	4,000 00
(ix) on the Specialists Register under section 17 of the Act	4,500 00
(x) as an intern medical practitioner	2,500 00

Matter	*Fees*
(*b*) for applicants who are not nationals of Malaŵi:	
(i) in the Technical Assistance grade	US$80 00
(ii) in the Technical Officer grade	US$80 00
(iii) in the Professional Officer grade	US$90 00
(iv) as an optician	US$100 00
(v) as an intern (Technical Officer grade)	US$80 00
(vi) as an intern (Professional Officer grade)	US$90 00
(vii) on a temporary appointment	US$100 00
(viii) on provisional registration	US$100 00
(ix) as a medical practitioner or dentist on any register specified in section 17 of the Act	US$100 00
(x) on the Specialists Register under section 17 of the Act	US$150 00
(xi) as an intern medical practitioner	US$90 00

	Fee per Annum	
	Upon registration K t	*Upon renewal Malaŵians* K t
2. For registration—		
(*a*) for nationals of Malaŵi:		
(i) in any class of Technical Assistant grade	2,000 00	2,000 00
(ii) in any class of Technical Officer grade	2,500 00	2,500 00
(iii) in a Professional Officer grade . .	3,000 00	3,500 00
(iv) as an optician	4,500 00	6,000 00
(v) as a medical practitioner or dentist on the:		
(A) Main Register under section 26 of the Act	4,500 00	6,000 00
(B) Register of Interns under section 30 of the Act	3,000 00	3,500 00
(C) Register of Vocational Trainees under section 31 of the Act . .	4,500 00	6,000 00
(D) Provisional Register under section 33 of the Act	4,500 00	6,000 00
(E) Temporary Register under section 33 of the Act	4,500 00	6,000 00
(F) Specialists Register under section 18 of the Act in addition to the fee in respect of the Main Register	5,500 00	6,000 00

	Fee per Annum	
	Upon registration US$	*Upon renewal Malaŵians* US$
(*b*) for persons working in the Public Service (non-Malaŵians):		
(i) in any class of Technical Assistant grade	100 00	100 00
(ii) in any class of Technical Officer grade	100 00	110 00
(iii) in a Professional Officer grade	120 00	120 00
(iv) as an optician	150 00	130 00
(v) as a medical practitioner or dentist on the:		
(A) Main Register under section 26 of the Act	150 00	130 00
(B) Register of Interns under section 30 of the Act	120 00	—
(C) Provisional Register under section 32 of the Act	150 00	—
(D) Temporary Register under section 33 of the Act	150 00	130 00
(E) Specialists Register under section 18 of the Act in addition to the fee in respect of the Main Register . .	100 00	130 00

	Fee per Annum			
	Upon application US$	*Upon registration* US$	*Private practice* US$	*Private sector* US$
3. For persons who are not nationals of Malaŵi working in private practice and in the private sector—				
(*a*) in any class of Technical Assistant grade	120 00	150 00	150 00	150 00
(*b*) in any class of Technical Officer grade	120 00	150 00	150 00	150 00
(*c*) in a Professional Officer grade	120 00	170 00	170 00	170 00
(*d*) as an optician	200 00	300 00	400 00	400 00
(*e*) as a medical practitioner or dentist on the—				
(i) Main Register under section 26 of the Act	200 00	300 00	400 00	400 00
(ii) Temporary Register under section 33 of the Act . .	200 00	300 00	—	300 00
(iii) Specialist Register under section 18 of the Act in addition to the fee in respect of the Main Register	200 00	200 00	300 00	300 00

		K t
4.	On indexing in a register by students whose training leads to—	
	(*a*) Technical Assistant grade	250 00
	(*b*) Technical Officer grade	300 00
	(*c*) Professional Officer grade	350 00
	(*d*) a Medical Doctor	450 00
	(*e*) Foreign students	US$100 00

		Non-Malaŵian US$	*Malaŵian* K t
5.	For Certificate of Good Standing	100 00	10,000 00
6.	For replacement of certificate	—	10,000 00
7.	For making an application for registration of premises for public service facility providing out-patient and in-patient services	—	8,000 00
8.	For registration of public service facilities providing out-patient services only—		
	(*a*) upon issue	—	10,000 00
	(*b*) upon every renewal	—	8,000 00
9.	For registration of public service facilities providing out-patient and in-patient services—		
	(*a*) for rural hospitals:		
	(i) upon issue	—	10,000 00
	(ii) upon every renewal	—	13,000 00
	(*b*) for district hospitals:		
	(i) upon issue	—	25,000 00
	(ii) upon every renewal	—	25,000 00
	(*c*) for urban hospitals:		
	(i) upon issue	—	40,000 00
	(ii) upon every renewal	—	40,000 00
10.	For replacement of premises registration certificate	—	10,000 00

[Subsidiary]

G.N. 20/1988
15/1991

Medical Practitioners and Dentists (*Specialist Register*) (*Qualifications*) *Rules*

MEDICAL PRACTITIONERS AND DENTISTS (SPECIALIST REGISTER) (QUALIFICATIONS) RULES

under s. 18 (2)

Citation

1. These Rules may be cited as the Medical Practitioners and Dentists (Specialist Register) (Qualifications) Rules.

Recognized specialist qualifications

2. Specialist qualifications recognized by the Council as entitling a person to be registered under the Specialist Register shall be as specified in the Schedule:

Provided that no such qualification shall be so recognized unless—

(*a*) the training therefor was of at least three years duration;

(*b*) it entitles the holder thereof to specialist registration in the country, state or territory where it was obtained.

SCHEDULE reg. 2

RECOGNIZED SPECIALIST QUALIFICATIONS

PART I

MEDICAL

Speciality	*Designation of the Specialist*	*Qualifications*
Medicine	Physician	M.R.C.P. (U.K.), M.R.A.C.P., Dip. Am. Board of Int. Medicine, M.Med. (Medicine), F.R.C.P.C. or equivalent
Paediatrics	Paediatrician	M.R.C.P. (U.K.), M.R.A.C.P., F.R.C.P.C., Dip. Am. Board of Paediatrics, M.Med. (Paediatrics) or equivalent
Obstetrics and Gynaecology	Obstetrician/ Gynaecologist	M.R.C.O.G., F.R.C.S.C., M.R.A.C.O.G., Dip. Am. Board of Obstet./ Gyn. M.Med (Obstet./Gyn.) or equivalent
Surgery	Surgeon	F.R.C.S., F.R.A.C.S., F.R.C.S.C., Dip. Am. Board of Surgeons, M.Med. (Surgery) or equivalent
Pathology	Pathologist	M.R.C. (Path.), F.R.C.P.C., Dip. Am. Board of Pathology or equivalent

MEDICAL—(*continued*)

Speciality	*Designation of the Specialist*	*Qualifications*
Psychiatry	Psychiatrist	M.R.C. (Psych.) F.R.C.P.C., Dip. Am. Board of Psychiatry, M.Med. (Psychiatry) or equivalent
Anaesthesia	Anaesthetist	F.F.A.R.C.A., F.F.A.A.R.C.S., Dip. Am. Board of (Anaesthesiology, M.Med. (Anaesthesia), F.R.C.P.C. or equivalent
Radiology	Radiologist	F.R.C.P.C., Dip. Am. Board of Radiology, M.Med. (Radiology) or equivalent
Ophthal-mology	Ophthalmolo-gist	F.R.C.S., F.R.A.C.S., F.R.C.S.C, Dip. Am. Board of Surgeons, M.Med. Ophthalmology or equivalent
Community Medicine	Specialist in Community Medicine	M.F.C.M., (U.K.) or equivalent
Family Medicine	Specialist in Family Medicine	M.R.C.G.P. (U.K.) F.A.A.F.P. or equivalent

G.N. 15/1991

PART II

DENTAL

Speciality	*Designation of the Specialist*	*Qualifications*
Oral and Maxillo Facial Surgery	Oral and Maxillo Facial Surgeon	F.D.S.R.C.S., F.F.D.R.C.S., Dip Am. Board of Oral and Maxillo Facial Surgery or equivalent
Orthodontics	Orthodontist	F.D.S.R.C.S. or equivalent
Prosthodontics	Prosthodontist	F.D.S.R.C.S. or equivalent
Paedodontics	Paedodontist	F.D.S.R.C.S. or equivalent
Community Dentistry	Specialist in Community Dentistry	F.F.D or equivalent

PARAMEDICALS AND ALLIED HEALTH PROFESSIONALS (TRAINING) RULES

ARRANGEMENT OF RULES

PART I

RULE

1. Citation
2. Interpretation

PART II

DIPLOMA AND CERTIFICATE COURSES OF TRAINING

3. Courses for which the Council shall institute diplomas and certificates
4. Titles and forms of diplomas and certificates

PART III

APPROVED TRAINING INSTITUTIONS

5. Training institutions
6. Admission to approved training institutions
7. Period of training at an approved training institution
8. Instructions to students

PART IV

EXAMINATIONS

9. Entry into examinations
10. Pass mark
11. Approval of examiners and panels of examiners
12. Appointment of the Board of Examiners [*Deleted by G.N.* 31/2006]
13. Approval of external examiners
14. Dates for sitting examinations [*Deleted by G.N.* 31/2006]
15. Appointment of invigilators [*Deleted by G.N.* 31/2006]
16. Examination centres
17. Balance between theory and practicals and continuous assessment
18. Approval of markers
19. Publication of examination results [*Deleted by G.N.* 31/2006]
20. Supplementary examinations, repetition and withdrawal [*Deleted by G.N.* 31/2006]

RULE

PART V

INSPECTION OF TRAINING INSTITUTIONS

21. Inspection

PART VI

INTERNSHIP FOR THE DIPLOMA COURSES IN CLINICAL MEDICINE, DENTISTRY, OPHTHALMOLOGY AND DENTAL TECHNOLOGY

22. Internship for Diploma Courses in Clinical Medicine, Dental Therapy and Ophthalmology
First Schedule
Second Schedule
Third Schedule
Fourth Schedule
Fifth Schedule
Sixth Schedule
} [*Revoked by G.N.* 31/2006]

PARAMEDICALS AND ALLIED HEALTH PROFESSIONALS (TRAINING) RULES

G.N. 80/1993
34/1994
31/2006

under s. 45

PART I

Citation

1. These Rules may be cited as the Paramedicals and Allied Health Professionals (Training) Rules.

Interpretation

2. In these Rules, unless the context otherwise requires—

"approved training institution" means an institution approved by the Council under subrule (1) of rule 5 or recognized as such under subrule (3) of rule 5;

"student" means a person pursuing a course of training at an approved training institution;

"training period" means the period of training in respect of a course of training as prescribed in the Third Schedule; and *Third Schedule*

"course of training" means a course of training specified in rule 3.

PART II

DIPLOMA AND CERTIFICATE COURSES OF TRAINING

Courses for which the Council shall institute diplomas and certificates G.N. 31/2006

3. Pursuant to section 44 of the Act, the following courses are prescribed as the courses for which the Council shall be the body to authorize the institutions to award diplomas and certificates subject to, and in accordance with these Rules, that is to say, diploma and certificate courses in—

(*a*) Clinical Medicine;

(*b*) Ophthalmology;

(*c*) Dental Therapy;

(*d*) Radiography;

(*e*) Laboratory Technology;

(*f*) Environmental Health;

(*g*) Anaesthesiology;

(*h*) Clinical Orthopaedics;

(*i*) Rehabilitation;

(*j*) Optometry; and

(*k*) Dental Technology.

Titles and forms of diplomas and certificates G.N. 31/2006

4. Diplomas and certificates to be recognized by the Council under these Rules shall be specified in the First Schedule.

PART III
Approved Training Institutions

Training institutions G.N. 31/2006

5.—(1) A course shall not be recognized by the Council for awards of diplomas and certificates by the institutions under these Rules unless the basic training in that course is conducted at an institution approved by the Council (in these Rules referred to as an "approved training institution").

Second Schedule, Part I

(2) The Council shall not approve an institution for the purpose of subrule (1) unless the institution meets, as a minimum, the requirements specified in Part I of the Second Schedule.

Second Schedule, Part II

(3) The institutions specified in Part II of the Second Schedule shall be recognized as approved training institutions for the purposes of subrule (1).

Admission to approved training institutions G.N. 31/2006

6.—(1) Save as provided in subrules (1) and (2), no person shall qualify to be admitted to an approved training institution unless he has obtained the Malaŵi Certificate of Education, or its equivalent, with credits in English, Mathematics, Biology and any two science subjects.

(2) A person who holds a Medical Assistant Certificate or a Nurses Certificate obtained from a recognized institution may be admitted for training in Ophthalmology at an approved training institution notwithstanding that he does not otherwise qualify in accordance with subrule (1).

(3) A person may be admitted to an approved training institution to embark on training at any stage of the course of training if the Council is satisfied that his previous training or experience is such that it may justify his exemption from the requirements of subrule (1).

(4) Any person who holds a certificate from an approved training institution shall be eligible for upgrading courses.

Period of training at an approved training institution

7.—(1) The period of training at an approved training institution for a course for which a diploma or certificate may be awarded under these Rules shall be the period stated in the Third Schedule in relation to such course, inclusive of—

(*a*) periods of vacation leave as may normally occur from year to year; and

(*b*) periods of sick leave granted to a student not amounting to a period long enough to substantially adversely affect the training of such student as determined by the teaching staff of the relevant approved training institution.

(2) If the course of training is interrupted for reasons other than those mentioned in paragraphs (*a*) and (*b*) of subrule (1) the Principal of the relevant approved training institution shall determine whether to recognize the whole or part of the period of training undergone by the student before such interruption as forming part of the period of training stipulated under subrule (1).

(3) Except for the periods of vacation or sick leave stated in subrule (1) or any period approved by the Council under subrule (2), a student shall be required to undergo continuous training throughout the whole period of the course of training to be eligible for the award of a certificate or diploma in accordance with these Rules.

Instructions to students G.N. 31/2006

8.—(1) A student shall, during his course of training, be given theoretical and practical instruction in every subject prescribed for any course of training in which he is a student.

(2) All instructions shall be given to students in accordance with the syllabus approved by the Council from time to time.

(3) The teaching staff of an approved training institution shall be appointed by the body responsible for the administration of the institution and the appointments shall be made in accordance with the requirements prescribed by the Council with regard to qualifications for such appointments.

(4) All instructions given to students shall, save as otherwise approved by the Council, be supervised by a medical practitioner, dentist, paramedical or allied health professional, as the case may be, registered as such under the Act.

PART IV
EXAMINATIONS

Entry into examinations G.N. 31/2006`

9.—(1) In order to qualify for entry into an examination to be held under these Rules for any class of persons the following conditions shall apply—

(*a*) in the case of internal candidates, such candidates must have—

(i) attended an approved training institution;

(ii) fulfilled all the requirements for any particular course of training as certified by the Principal of the institution on the candidates application for sitting the examination.

(*b*) in the case of external candidates, being those candidates who receive their training in a country other than Malaŵi and wish to sit for the Council's examinations under these Rules, they must submit to the Council the relevant curricula and transcripts from their training institutions in order to establish their eligibility for such examinations and the Council may contact such institution so as to establish whether the training institution is recognized by the governing body of that country.

Pass mark

10.—(1) The pass mark for every examination shall be fifty per cent.

(2) No candidate shall be credited with passing a final examination unless he has satisfied the examiners in all the papers and tests of the examinations or has passed the requisite number of supplementary tests, as provided for in these Rules.

Approval of examiners and panels of examiners G.N. 31/2006

11.—(1) The Council shall approve the appointment of a panel of examiners for each course of training and shall appoint from amongst members of such panel one examiner for each subject in that course.

(2) The function of a panel of examiners shall be to assess the standard of examinations set by examiners for the course of training concerned and to evaluate the performance of candidates in all the examinations conducted in respect of such course.

(3) The function of an examiner shall be to set examination papers and marking guides for examinations to be taken by

candidates under these Rules and every examiner shall ensure that the examination paper is ready three months before the date of sitting the examination.

(4) An examiner shall be appointed for a period of three years at a time and shall be eligible for reappointment, but the training institution may sooner terminate his appointment.

(5) An examiner shall be paid a fee as prescribed by the training institution.

12. [*Deleted by G.N. 31/2006*]

Approval of external examiners G.N. 31/2006

13.—(1) The Council shall approve an external examiner for each subject whose function shall be to provide independent assessment and evaluation of examination papers for such subject and the performance of candidates in the examinations in such subject.

(2) One person may be appointed as external examiner for more than one subject.

(3) An external examiner shall be appointed for a period of three years at a time and shall be eligible for reappointment, but the training institution may sooner terminate his appointment.

(4) An external examiner shall be paid a fee as prescribed by the training institution.

14.—15. [*Deleted by G.N. 31/2006*]

Examination centres G.N. 31/2006

16. All approved training institutions shall qualify as examination centres and the Council may establish additional centres throughout Malaŵi as it considers are required for any particular examination.

Balance between theory and practicals and continuous assessment G.N. 31/2006

17.—(1) The Council shall give due recognition to the importance of practicals in the training of health professionals and shall ensure that more weight is given to practical examinations than to written examinations but may vary such proportions from one examination to another as it sees fit.

(2) Continuous assessment of a student's performance throughout the training period shall form forty per cent of the final grade.

Approval of markers G.N. 31/2006

18.—(1) All examiners shall participate in the marking.

(2) The examiners shall ensure that a marking scheme is available before the commencement of the marking.

(3) A marker shall be paid a fee as prescribed by the training institution.

19.—20. [*Deleted by G.N. 31/2006*]

PART V
Inspection of Training Institutions

Inspection

21.—(1) For the purposes of subsections of the Act, an inspectorate team appointed by the Council shall, at least once every year, inspect every approved training institution, including any hospital or other health centre connected with training at that institution, and all such inspectorate teams shall consist of suitably qualified persons to conduct such inspection, but in no case shall a person be part of an inspectorate team inspecting the institution at which such person is a member of the teaching staff.

(2) A member of an inspectorate team shall be paid such allowances as are payable to the staff of the Council when on duty away from duty station.

G.N. 31/2006

PART VI
Internship for the Diploma Courses in Clinical Medicine, Dentistry, Ophthalmology and Dental Technology

Internship for Diploma courses in Clinical Medicine, Dental Therapy and Ophthalmology

22.—(1) Internship for Diploma in Clinical Medicine and Dental Therapy shall be undertaken for period of twelve months and six months for internship in Ophthalmology and Dental Technology, at hospitals recognized for this purpose by the Council and during the period, an intern shall be regarded as duly employed and shall be entitled to receive a full salary.

(2) A person undergoing a period of internship pursuant to this rule shall be registered in a register of interns which the Council shall separately establish and maintain in respect of such interns.

FIRST SCHEDULE reg. 4 G.N. 34/1994 31/2006

PART I

TITLES OF DIPLOMAS AND CERTIFICATES TO BE RECOGNIZED BY THE COUNCIL

Class of Personnel	*Title of Award*
1. Medical Assistants	Certificate in Clinical Medicine
2. Clinical Officers	Diploma in Clinical Medicine
3. Radiography Technicians	Diploma in Radiography
4. Medical Laboratory Assistants	Certificate in Medical Laboratory Technology
5. Medical Laboratory Technicians	Diploma in Medical Laboratory Technology
6. Health Assistants	Certificate in Environmental Health
7. Assistant Environmental Health Officer	Diploma in Environmental Health
8. Dental Assistants	Certificate in Dental Therapy
9. Dental Therapists	Diploma in Dental Therapy
10. Ophthalmic Clinicians	Diploma in Ophthalmology
11. Orthopaedic Clinical Therapists	Diploma in Clinical Orthopaedics
12. Anaesthetic Clinical Officers	Diploma in Anaesthesiology
13. Optometry	Diploma in Optometry
14. Rehabilitation Technicians	Diploma in Rehabilitation
15. Dental Technicians	Diploma in Dental Technology

PART II

FORM OF DIPLOMAS AND CERTIFICATES

COUNCIL SEAL

CERTIFICATE NO. .....

MEDICAL COUNCIL OF MALAŴI

This is to certify that

..... has successfully completed a course of training at ..... from ..... to ..... and, having satisfied the Council's requirements, has passed the prescribed examination and is

hereby awarded a

CERTIFICATE/DIPLOMA
in
.....
in accordance with the provisions of the Medical Practitioners and Dentists Act (Cap. 36:01)

.....
Chairman

.....
Registrar

Date: .....

G.N. 31/2006

SECOND SCHEDULE reg. 5 (2) and (3)

PART I

MINIMUM REQUIREMENTS FOR RECOGNITION OF A TRAINING INSTITUTION

1. *General*
The training institution must provide the facilities necessary for the training of any specified class of paramedicals and allied health professionals in the courses of training carried on at the institution.

2. *Personnel*
(*a*) The administrative head of the training institution shall have appropriate qualification and experience;
(*b*) There must be a sufficient number of teaching staff as shall satisfy the Council that in the prevailing circumstances the ratio of teachers to students is one to ten; and
(*c*) The teaching staff shall have knowledge in teaching methodology.

3. *Physical Facilities*
The training institution must have—
(*a*) offices for members of the teaching staff to enable them to carry out their duties efficiently;
(*b*) an adequate number of, and specious, classrooms so as to permit reasonable comfort to teachers and students;
(*c*) what, in the opinion of the Council, is a minimum supply of appropriate teaching aids and equipment;
(*d*) a library with current or updated reference books, periodicals and other literature necessary for the teaching of subjects relevant to various curricula;
(*e*) a well equipped laboratory; and
(*f*) a hospital suitable for practical experience.

PART II
Approved Training Institutions

The following institutions are recognized by the Council as approved training institutions in Malaŵi—

(*a*) the Malaŵi School of Health Sciences;
(*b*) the Malamulo School of Medical Sciences;
(*c*) the Rehabilitation (Assistants) Training School; and
(*d*) any other Training School approved by the Council.

THIRD SCHEDULE reg. 7
Prescribed Period of Training G.N. 31/2006

Course of training	*Period of training*
Certificate in Clinical Medicine	2 years plus 12 months of internship
Diploma in Ophthalmology	1 year plus 6 months of internship
Diploma in Clinical Medicine	3 years plus 12 months of internship
Diploma in Radiography	3 years
Diploma in Dental Therapy	3 years plus 12 months of internship
Diploma in Dental Technology	3 years plus 6 months of internship
Certificate in Medical Laboratory Technology	2 years
Diploma in Medical Laboratory Technology	3 years
Diploma in Medical Laboratory Technology upgrading	1 year
Diploma in Clinical Medicine upgrading	1½ years plus 12 months of internship
Diploma in Orthopaedic Clinical Therapy	1½ years
Diploma in Anaesthesiology	1 year
Certificate in Rehabilitation	2 years
Diploma in Rehabilitation	3 years

FOURTH SCHEDULE

FIFTH SCHEDULE

SIXTH SCHEDULE

[*Revoked by G.N. 31/2006*]

G.N. 32/2004

MEDICAL IMAGING (PRIVATE PRACTICE) REGULATIONS

under s. 69

Citation

1. These Regulations may be cited as the Medical Imaging (Private Practice) Regulations.

Classification of medical imaging for private practice

2. Medical imaging for private practice shall be classified as—

(*a*) Category A—Radiography;

(*b*) Category B—Sonography; and

(*c*) Category C—Radiology.

Category 'A' Radiography

3.—(1) A Category 'A' Radiography practice shall be a private practice which may be operated as a private practice for service to the general public only by a person registered as a Radiography Technician or Radiographer under the Medical Practitioners and Dentists (Registration and Miscellaneous Fees) Regulations.

(2) A Licence to operate a Category 'A' Radiography private practice shall be issued under the Paramedicals and Allied Health Professionals (Private Practice) Regulations.

(3) The tests to be performed in a Category 'A' Radiography private practice shall be as listed in the Third Schedule, Part I, G of the Paramedicals and Allied Health Professionals Regulations.

(4) The premises for use by a practitioner licensed to operate a Category 'A' Radiography private practice shall, as a minimum, comply with the requirements specified in Part II, E of the Fourth Schedule to the Paramedicals and Allied Health Professionals (Private Practice) Regulations and shall be kept and maintained for use at every such practice, as a minimum, the equipment specified in that Schedule.

Category 'B' Sonography

4.—(1) A Category 'B' Sonography private practice shall be a private practice by a person registered as a Sonographer under the Medical Practitioners and Dentists (Registration and Miscellaneous Fees) Regulations.

(2) A licence to operate a Category 'B' Sonography private practice shall be issued under the Paramedicals and Allied Health Professionals (Private Practice) Regulations.

(3) The tests to be performed in a Category 'B' Sonography private practice shall be as listed in Part I, H of the Third Schedule to the Paramedicals and Allied Health Professionals (Private Practice) Regulations.

(4) The premises for use by a practitioner licensed to operate a Category 'B' Sonography private practice shall, as a minimum, comply with the requirements specified in Part II, F of the Fourth Schedule to the Paramedicals and Allied Health Professionals (Private Practice) Regulations and shall be kept and maintained for use at every such practice, as a minimum, the equipment specified in that Schedule.

Category 'C' Radiology

5.—(1) A Category 'C' Radiology private practice shall be a private practice which may be operated for the service of the general public by a person registered as a Radiologist under the Specialist Register kept and maintained by the Council in accordance with the Medical Practitioners and Dentists (Specialist Register) (Qualifications) Rules.

(2) A licence to operate Category 'C' Radiology private practice shall be issued under the Medical Practitioners and Dentists (Private Practice) Regulations.

(3) The range of tests to be performed in a Category 'C' Radiology private practice shall include all or any of those applicable in Categories 'A' and 'B' and as the Council may endorse on the licence of the practitioner having regard to his training, experience and equipment.

(4) The premises for use by a practitioner licensed to operate a Category 'C' Radiology private practice shall, as a minimum, comply with the requirements specified in Part I of these Schedule Regulations and there shall be kept and maintained for use at every such practice, as a minimum, the equipment specified in that Schedule.

SCHEDULE

Minimum Premises Requirements for a Radiology Private Practice

PART I
Premises

The premises shall have—

(*a*) permanent building materials;

(*b*) waiting room of adequate size to hold ten people with adequate ventilation and toilet facilities;

(*c*) X-ray room of at least thirty square metres with length of at least four by six metres;

(*d*) wall thickness of nine inches plastered brick wall all round or four and a half inches wall plastered with 1.25 mm barium plaster or 150 mm concrete or other equivalents of 22 mm pb;

(*e*) doors lined with lead of 2 mm pb or brick 9 inches with a maze format all 3 m high;

(*f*) viewing window for control panel should be of 1.6 mm pb glass or equivalent radiation protection window or, surrounded in a maze format of equivalent brick or, potable radiation protection shield;

(*g*) ventilation provided by window on the side of the room that is NOT used by persons or by air-conditioner;

(*h*) at least one change room for patients;

(*i*) dark room should be of adequate size for purposes of automatic or manual film processing with a window painted black;

(*j*) workbenches in the darkroom must be made of cleanable and non-corrosive material;

(*k*) film storage of hopper or equivalent holder to avoid light fogging;

(*l*) supply of running water;

(*m*) washing hands facilities: sink or washing basin; and

(*n*) adequate ultrasound room.

PART II
Equipment and Supplies

The following X-ray equipment shall be available—

(*a*) stationery or mobile X-ray unit in good working order, one per room;

(*b*) patient couch;

(*c*) erect chest stand, gotional;

(*d*) pb gown;

(*e*) various sizes of cassettes;

(*f*) grids, optional;

(*g*) automatic processor in good working order;

(*h*) manual processing facility;
(*i*) at least one viewing box;
(*j*) sonar scanner in good working order;
(*k*) printer, optional;
(*l*) CT Scan, optional;
(*m*) MRI Scanner, optional; and
(*n*) Coupling, medium.

NURSES AND MIDWIVES

CHAPTER 36:02

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CHAPTER 36:02

NURSES AND MIDWIVES

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16 of 1995
G.N. 23/1996

An Act to provide for the establishment of the Nurses and Midwives Council of Malaŵi, the registration and disciplining of nurses and nursing technicians, the licensing of private practice, the regulation of education and training of nurses and nursing technicians and generally for the control and regulation of the nursing profession and practice in Malaŵi and for matters incidental thereto or connected therewith

[1st April, 1996]

PART I

Preliminary

Short title

1. This Act may be cited as the Nurses and Midwives Act.

Interpretation

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

"certificate" means a certificate of registration issued by the Council to a person entitled to be registered in accordance with this Act;

"Council" means the Nurses and Midwives Council of Malaŵi established by section 3;

"Executive Committee" means the committee established by section 13;

"medical practitioner" means a person registered as such under section 17 of the Medical Practitioners and Dentists Act; Cap. 36:01

"nurse" means a person registered as such under section 26 and includes a midwife;

"nursing agency" means practice registered as such under section 42;

"nursing technician" means a person registered as such under section 26 and includes a midwife;

"pharmacist" means a person registered as such under section 4 of the Pharmacy, Medicines and Poisons Act; Cap. 35:01

"register" means any of the registers required to be kept under sections 18 and 19;

"Registrar" means the Registrar of the Council appointed under section 15.

PART II

The Nurses and Midwives Council of Malaŵi

Establishment of the Council

3. There is hereby established a Council to be known as the Nurses and Midwives Council of Malaŵi, which shall be a body corporate having perpetual succession and a common seal and

shall, under that name, be capable of suing and being sued and of purchasing or otherwise acquiring, holding and alienating movable or immovable property and, subject to the provisions of this Act, of performing all such acts as bodies corporate may by law perform.

Composition of the Council

4.—(1) The Council shall consist of the following members all of whom shall, save in the case of an *ex officio* member, be citizens of Malaŵi—

(*a*) the Secretary for Health and Population who shall be a member ex *officio*;

(*b*) the Controller of Nursing Services in the Ministry of Health and Population who shall be a member ex *officio*;

(*c*) the Principal of Kamuzu College of Nursing who shall be a member ex *officio*;

(*d*) the Chairperson of the National Association of Nurses of Malaŵi who shall be a member ex *officio*;

(*e*) one medical practitioner nominated by the Medical Council of Malaŵi and appointed by the Minister;

(*f*) one member appointed by the Minister from the general public who shall be a person—

(i) of good character and good standing in the community;

(ii) knowledgeable in consumer health concerns; and

(iii) with no direct or indirect financial interest in health care services;

(*g*) five nurses and one nurse technician elected by the National Association of Nurses of Malaŵi;

(*h*) the Registrar of the Pharmacy, Medicines and Poisons Board or his duly designated alternate who shall be a member ex *officio*;

(*i*) the Executive Secretary of the Christian Hospitals Association of Malaŵi or his duly designated alternate who shall be a member ex *officio*;

(*j*) the Solicitor General or his duly designated alternate who shall be a member ex *officio*.

(2) Subject to section 5, a member, of the Council, not being a member ex *officio*, shall hold office for three years but shall be eligible for re-nomination, re-appointment or re-election, as the case may be, for only one term of office;

(3) At least three months prior to the date of expiry of the term of office of the members of the Council, the Medical Council of Malaŵi in subsection (1) *(d)*, and the National Association of Nurses of Malaŵi in subsection (1) (*f*) shall inform the Registrar in writing of the names of persons nominated or elected by them in terms of the provisions referred to.

(4) Where the Medical Council of Malaŵi or the National Association of Nurses of Malaŵi, as the case may be, is for any reason whatsoever unable to nominate or elect any number of members of the Council it is required to nominate or elect under subsection (1), the Minister may appoint to the Council an equal number of members from amongst persons eligible for nomination or election, as the case may be, under that subsection, and the members so appointed shall hold office until substituted by nominated or elected members or for such period, not exceeding three years, as the Minister may, either at the time of making the appointment or at any time thereafter, direct in writing.

(5) Before appointing a person to be a member of the Council the Minister shall satisfy himself that that person shall have no such financial or other interest as is likely to affect prejudicially the exercise and performance by him of his functions as a member of the Council, and the Minister shall also satisfy himself from time to time with respect to every member of the Council that he has no such interest; and a person who is, or whom the Minister proposes to appoint to be a member of the Council shall, whenever requested by the Minister so to do, furnish to him such information as the Minister considers necessary for the performance by the Minister of his duties under this subsection.

(6) If the Minister is not satisfied as to the suitability of a person nominated for appointment he may inform the appointing body, by notice in writing, that he rejects the nomination and may include in that notice a further request for a nomination.

(7) After consultation with the Council, the Minister may vary its composition by order published in the *Gazette*.

(8) Upon the appointment or election to the Council of any member, the Minister shall cause notice of such appointment or election to be published in the *Gazette* and shall in such notice specify the current membership of the Council resultant upon such appointment or election.

Vacation, etc., of members from office

5.—(1) The Minister may require a member of the Council to vacate his office if the Minister is satisfied that the member—

(*a*) has become insolvent or has assigned his estate for the benefit of, or made a composition or other arrangement with, his creditors;

(*b*) has been absent from three consecutive meetings of the Council, of which he has had notice, without the leave of the Council;

(*c*) has been disqualified under this Act from carrying on his profession or calling;

(*d*) has been convicted under this Act or the repealed Act or any law relating to poisons or drugs;

(*e*) has been convicted—

(i) within Malaŵi of a criminal offence; or

(ii) outside Malaŵi of an offence by whatever name called which, if committed within Malaŵi, would have been a criminal offence,

and sentenced to imprisonment for a term of six months or more without the option of a fine, whether or not such sentence has been suspended, and has not received a free pardon;

(*f*) is mentally or physically incapable of efficiently performing his duties as a member of the Council;

(*g*) has had a penalty imposed upon him under this Act by the Council; or

(*h*) has financial or other interest that is likely to affect prejudicially the exercise and performance by him of his functions as a member of the Council.

(2) The Minister may suspend from office a member of the Council against whom—

(*a*) criminal proceedings have been instituted for an offence in respect of which a sentence of imprisonment for a term of six months or more without the option of a fine may be imposed; or

(*b*) disciplinary proceedings under this Act are instituted by the Disciplinary Committee,

and while that member is so suspended he shall not carry out any duties as a member.

(3) A member of the Council may resign his office by notice in writing—

(*a*) in the case of an elected member, to the Chairperson of the Council;

(*b*) in the case of an appointed member, to the Minister.

Filling of vacancies on the council

6.—(1) On vacation of office by a member of the Council, the vacancy shall be filled by a person appointed or elected in accordance with the relevant provisions of section 4 (1) under which the former member was appointed or elected:

Provided that if the remaining period is less than six months, then—

(*a*) in the case of an appointed member, the Minister may decide not to have the vacancy filled until the expiry of the period; and

(*b*) in the case of an elected member, it shall not be necessary to hold an election and the Council may, if it sees fit, either decide not to have the vacancy filled or to co-opt a person to fill the vacancy until the expiry of the remaining period.

(2) If any member of the Council is granted leave of absence by the Council, the Council may, if it sees fit, co-opt a person who belongs to the same profession or calling as the member who has been granted leave to fill the vacancy during the absence of that member.

Co-opted persons

7. The Council may in its discretion at any time and for any length of period invite any person, and the Minister may in like manner nominate any officer in the public service, to attend any meeting of the Council and take part in the deliberations of the Council, but such person or officer shall not be entitled to vote at that meeting.

Chairperson and Vice-Chairperson

8.—(1) The Minister shall, by writing and under his hand, designate one member of the Council to be the Chairperson thereof.

(2) The Council shall elect a Vice-Chairperson from amongst its members. The Vice-Chairperson shall, subject to subsection (3), hold office for the duration of his membership on the Council.

(3) The office of the Vice-Chairperson shall become vacant—

(*a*) if the holder resigns his office by notice in writing to the Council;

(*b*) if the holder of the office ceases to be a member of the Council; or

(*c*) if the Council so directs.

(4) Whenever the Chairperson is absent or is for any cause unable to discharge the functions of his office, the Vice-Chairperson shall discharge the functions of the Chairperson.

(5) If the office of Chairperson or Vice-Chairperson becomes vacant, the members of the Council shall at the first meeting after such vacancy has occurred, elect from among themselves a new Chairperson or Vice-Chairperson, as the case may be, and the member so elected shall, subject to section 5, hold office for the unexpired portion of the period for which his predecessor was elected.

(6) A Chairperson or Vice-Chairperson may vacate office as such without such vacation by itself terminating his membership of the Council.

PART III

Meetings of the Council

Meetings of the Council

9.—(1) Subject to the provisions of this Act, the Council shall hold ordinary meetings for the dispatch of business at least three times in each year.

(2) An extraordinary meeting of the Council—

(*a*) may be convened by the Chairperson at any time; and

(*b*) shall be convened by the Chairperson within twenty-one days of the receipt by him of a request in writing signed by not less than five members of the Council and specifying the purpose for which the meeting is to be convened.

(3) At any meeting of the Council—

(*a*) the Chairperson or, in his absence the Vice-Chairperson, shall preside;

(*b*) in the absence of both the Chairperson and Vice-Chairperson the members present and forming the quorum shall elect one of their number to preside; and

(*c*) the quorum shall be formed by seven members.

(4) At any meeting the decision of the Council on any matter shall be that of the majority of the members present and voting at that meeting, and in the event of an equality of votes, the Chairperson or the person presiding shall have a casting vote in addition to his deliberative vote.

(5) Subject to the provisions of this Act, the Council may make standing orders for the regulation of its proceedings and business and may vary, suspend or revoke any such standing orders.

(6) The record of any meeting of the Council shall be made available to any person registered under this Act at all reasonable times at the offices of the Council:

Provided that the provision of this subsection shall not be construed as entitling a registered person to peruse the records of—

(*a*) a meeting of the Disciplinary Committee or any other committee of the Council; or

(*b*) the Council where the Council has resolved that it shall sit as a committee.

(7) Subject to subsection (8) all proceedings before the Council shall be held in public.

(8) If the Council is satisfied, either by reason of the confidential nature of the matter or otherwise, that it is appropriate to do so, the Council may direct that a matter, or part of a matter, shall be held in private.

Disclosure of interest of member

10.—(1) A member of the Council who is in any way directly or indirectly interested in any matter being considered or about to be considered by the Council shall, as soon as possible after the relevant facts have come to his knowledge, disclose the nature of his interest at a meeting of the Council.

(2) The disclosure shall be recorded in the minutes of the meeting.

(3) A member shall not take part in the deliberations on or decision about the matter if the Council decides that the member's interest might prejudicially affect—

(*a*) his consideration of the matter; or

(*b*) the Council's consideration of the matter.

(4) For the purpose of the making of a determination by the Council under subsection (3) in relation to a member who has made a disclosure under subsection (1), the member shall not—

(*a*) be present during any deliberation of the Council for the purpose of making the determination; or

(*b*) take part in the making by the Council of the determination:

Provided that the absence of the member in accordance with this subsection shall not invalidate a meeting otherwise validly convened.

PART IV

Functions and Powers of the Council

Functions of the Council

11. The Council shall be the sole registering authority of all persons required to be registered or licensed under this Act and shall have the following further functions—

(*a*) to assist in the promotion and improvement of the health of the population in Malaŵi;

(*b*) to control and to exercise authority affecting the education, training and practice of persons in, and the performance of, the practices pursued by nurses and nurse technicians.

(*c*) to exercise disciplinary control over the professional conduct of all persons registered under this Act and practising in Malaŵi;

(*d*) to promote liaison of the education and training, and the manner of the exercise of the practices, referred to in paragraph (b) both in Malaŵi and elsewhere, and to promote the standards of such education and training and the manner of the exercise of such practices in Malaŵi;

(*e*) to advise the Minister on any matter falling within the scope of this Act; and

(*f*) to communicate to the Minister any information acquired by the Council relating to matters of public health.

Powers of the Council

12. For the better performance of its functions, the Council shall, subject to the provisions of this Act, have power to—

(*a*) where authorized by this Act, remove from or restore to a register any name;

(*b*) appoint examiners and moderators, set and conduct examinations and grant certificates;

(*c*) approve nursing schools in accordance with the prescribed conditions, inspect such schools, or withdraw or suspend approval of any such school if the education or training thereat is not, in the opinion of the Council, satisfactorily carried out, or if any condition imposed has not been complied with:

Provided that the Council shall not refuse to approve, or shall not withdraw or suspend the approval of, any such school without the consent of the Minister;

(*d*) carry out any inspection it may deem necessary to enable it to consider an application for the approval of a nursing school or any variation of a condition imposed in respect of an approved nursing school;

(*e*) acquire, hire or dispose of property, borrow money on the security of the assets of the Council, accept any donation or accept and administer any trust;

(*f*) subject to the prescribed conditions, issue or renew a licence to carry on the business of a nursing agency, inspect the records and accounts, and investigate the activities, of a nursing agency, require any person licensed to carry on the business of a nursing agency to submit to the Council such information as it may deem necessary, and, in the prescribed circumstances, suspend or cancel a licence to carry on the business of a nursing agency;

(*g*) consider any matter affecting the nursing or midwifery profession, and make representations or take such action in connexion therewith as the Council may deem advisable;

(*h*) upon application of any person, recognize a qualification held by him (whether such qualification has been obtained in Malaŵi or elsewhere), as being equal, either wholly or in part, to any prescribed qualification, whereupon such person shall, to the extent to which the qualification has so been recognized, be deemed to hold such prescribed qualification;

(*i*) require approved nursing schools to submit annual returns of students registered under section 33 and pupils registered under section 34 and such other information as may become necessary at any time;

(*j*) cause copies of the registers and supplementary lists, and copies thereof, showing all alterations to the registers, to be printed and published;

(*k*) make extracts from the registers;

(*l*) perform such other functions as may be prescribed or assigned to the Council by the Minister; and

(*m*) generally, do all such things as it may deem necessary or expedient to achieve the objects of this Act.

Executive Committee

13.—(1) There shall be an Executive Committee of the Council consisting of the Chairperson and the Vice-Chairperson

of the Council, the Chairperson of Committees established under this Act, and such other members of the Council as the Council may designate.

(2) The Executive Committee may, subject to the directions of the Council, exercise all the powers, other than the powers referred to in section 61 (2) and perform all the functions of the Council, but shall not have the power, save in so far as the Council otherwise directs, to set aside or amend any decision of the Council, and any act performed or decision taken by the Executive Committee shall be of force and effect unless it is set aside or amended by the Council at its next ensuing meeting.

(3) At any meeting of the Executive Committee—

(*a*) the Chairperson or, in his absence the Vice-Chairperson, shall preside;

(*b*) in the absence of both the Chairperson and Vice-Chairperson the members present and forming the quorum shall elect one of their number to preside; and

(*c*) the quorum shall be formed by any four members.

(4) At any meeting the decision of the Executive Committee on any matter shall be that of the majority of the members present and voting at the meeting, and in the event of an equality of votes, the person presiding shall have a casting vote in addition to his deliberative vote.

(5) Subject to the provisions of this Act, the Council may make standing orders for the regulation of the proceedings and business of the Executive Committee and may vary, suspend or revoke any such standing orders.

Committees of the Council

14.—(1) In addition to the Executive Committee, the Education and Examination Committee, the Investigating Committee, the Disciplinary Committee, the Appointment and Finance Committee, the Professional Practice Committee and save as otherwise provided in relation to those six committees, the Council may establish any number of other committees to carry out any special or general functions determined by the Council and may delegate to any such committee such of the functions of the Council as the Council may consider expedient.

(2) The Chairperson of the Council shall by reason of his office be a member of every committee established under subsection (1).

(3) The Chairperson of each committee shall be appointed by the Council from amongst the members of the Council.

(4) Each committee may co-opt as members of such committee persons who are not members of the Council and any of such members so co-opted may or may not be officers in the public service.

(5) The Chairperson of a committee may, at any time and place, convene a meeting of the committee of which he is Chairperson.

(6) The Council may, at any time, direct the Chairperson of any committee to convene a meeting of such committee and such Chairperson shall, as soon as is practicable, comply with such direction.

(7) Every committee shall keep minutes of its meetings and shall inform the Council of its activities and shall conduct its proceedings in such manner as the Council may direct.

(8) Any member of a committee shall, in respect of expenses incurred by him in travelling and subsistence while discharging his duties as member of that committee, be paid out of the funds of the Council such allowance as the Council may determine.

PART V

Management

Appointment of Registrar and other staff

15.—(1) Subject to the provisions of this section, the Council—

(*a*) shall appoint a Registrar upon terms and conditions approved by the Minister; and

(*b*) may appoint assistant registrars and such other employees as it considers necessary or desirable in the discharge of its duties and upon such terms and conditions as it may determine.

(2) Before appointing a person to be a Registrar, the Council shall satisfy itself that the person has at least a degree in nursing and five years experience in nursing practice, education or administration.

(3) The Registrar, after consultation with the Chairperson of the Council, may appoint temporary employees at such daily rates of pay, not below the minimum rates otherwise prescribed by law, as he may consider appropriate and shall, after he has appointed any such employee, report the fact thereof to the Council at its next meeting.

(4) The Registrar shall be the Secretary to the Council and to every committee thereof and shall, on the instructions of the Chairperson of the Council or the Chairperson of any committee, convene a meeting of the Council or the committee, as the case may be.

(5) If the Registrar is absent or unable to carry out any of his functions under this Act or any other enactment, an assistant registrar or any other officer of the Council shall exercise, during the period that the Registrar is so absent or unable to act, such of the functions of the Registrar as the Chairperson of the Council may designate.

PART VI

Financial Provisions

Funds, accounts, audit

16.—(1) The funds of the Council shall consist of—

(*a*) such sums as may be appropriated by Parliament for the purposes of the Council;

(*b*) all fees payable under this Act;

(*c*) such other moneys and assets as may vest in or accrue to the Council, whether in the course of its functions or otherwise, including any penalty or costs payable to the Council under this Act; and

(2) The Council shall keep proper accounts and other records relating thereto in respect of its funds and shall in every respect comply with the provisions of the Finance and Audit Act.

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(3) The accounts of the Council shall be examined and audited annually by auditors appointed by the Council and approved by the Minister.

Remuneration and expenses of members of the Council

17. Members of the Council shall be paid from the funds of the Council such allowance as the Minister may determine and in determining the allowance the Minister may make provision for the reimbursement of any reasonable expenses incurred by a member of the Council or of a committee of the Council in connexion with the business of the Council or the committee.

PART VII

Registers

Registers

18.—(1) Subject to the provisions of this Act, the Council shall continue to keep and maintain the registers which were established before the commencement of this Act and may establish or continue to keep and maintain—

(*a*) a register of nurse midwives;

(*b*) a register of nursing midwife technicians;

(*c*) a register of persons temporarily employed in Malaŵi, being persons referred to in section 36.

(2) The Council may establish a register of students who are undergoing training in Malaŵi or a qualification required for admission as a nurse or nurse technician.

(3) There shall be entered in a register under this section in relation to a registered person, address, qualification and date of first registration, date of first licence, date of renewal of licence and such other particulars as the Council may from time to time determine.

(4) The Council may alter the title of any register and every person registered in a register bearing the former title shall for

all purposes be considered as registered in the register bearing the new title.

(5) Where the Council intends to establish a register or to alter the name of a register, the Council shall cause to be published in the *Gazette* and in one issue of a newspaper in general circulation in Malaŵi notice of such intention and the date with effect from which it is intended that the register shall be established or the name of the register shall be altered.

Specialist Register

19.—(1) The Council may establish and keep a register of nurses or nursing technicians who have acquired special knowledge and experience in a particular branch of nursing.

(2) If the Council establishes a register under subsection (1), it may, by rule or otherwise, determine—

(*a*) the requirements to be satisfied, including the experience to be acquired, the nature and duration of the training to be undertaken and the degree, diploma or certificate to be held by a nurse or nursing technician before he can be registered on that register;

(*b*) the conditions which shall exempt any person from the requirement, experience or training referred to in paragraph (*a*);

(*c*) the conditions governing the practice of nurses or nursing technicians who have been registered on a register kept under subsection (1), including conditions restricting the practice of any such nurse or nursing technician to a particular branch of nursing;

(*d*) the circumstances in which the Council may remove the name of a person from a register kept in terms of subsection (1).

(3) There shall be entered in a register kept under subsection (1) in relation to a registered person such particulars as the Council may from time to time determine.

Duties of Registrar

20.—(1) All registers shall be kept under the custody of the Registrar at the offices of the Council.

(2) It shall be the duty of the Registrar, under the direction of the Council, to—

(*a*) enter in any register the particulars required under this Act of every person whom he registers in that register;

(*b*) make in a register any necessary alterations in the name, address, qualifications and other particulars of a registered person;

(*c*) erase from a register the name of a registered person who dies; and

(*d*) when required to do so by or under this Act or in pursuance of an order of a court—

(i) to mark in a register the registration of an applicant or, as the case may be, the suspension from practice of a registered person; and

(ii) to erase from a register the name of a registered person;

(*e*) generally to comply with the requirements imposed on him by this Act.

(3) Where the Registrar erases from a register the name of a registered person he shall enter in that register a record of the reasons therefor.

Certificate and licence

21.—(1) If, in the performance of the duties imposed upon him by or under this Act, the Registrar—

(*a*) registers or licenses any person, he shall issue to him a certificate of registration or a licence, as the case may be;

(*b*) erases from a register the name of a registered person or a licensee; or marks in a register the suspension from practice of a registered person he shall, wherever possible, notify him in writing accordingly.

(2) On application by a registered person the Registrar may issue to that person a duplicate certificate of registration or licence—

(*a*) if he is satisfied as to the identity of the applicant; and

(*b*) on production by the applicant of an affidavit certifying that the certificate of registration or licence has been lost or destroyed; and

(*c*) on payment by the applicant of the appropriate prescribed fee, if any.

Publication of registers

22.—(1) The Registrar shall, from time to time, under the authority of the Council, cause copies of the registers or of supplementary lists showing all alterations, additions, revisions and erasures made since the last publication of the complete registers to be published in the *Gazette*.

(2) Copies of the registers shall be published in such form as the Council may direct and may contain, in lists separate from the main registers, such particulars as the Council may require to be published.

Registers to be evidence

23.—(1) Subject to the provisions of subsection (2), the last published copy of a register, as read with any supplementary list, purporting to be published under the authority of the Council under section 22, shall be *prima facie* evidence in any legal proceedings of the facts therein recorded and the omission of the name of any person from such copy shall be *prima facie* evidence, that such person is not registered.

(2) In the case of a person—

(*a*) whose name does not appear in a published copy of a register and whose name has been added to a register after the date of the last published copy thereof, a certificate under the hand of the Registrar of the entry of the name of that person

in that register shall be *prima facie* evidence that that person is so registered on that register; or

(*b*) whose name has been erased from a register since the date of the last published copy thereof and has not been restored thereto, a certificate under the hand of the Registrar that the name of that person has been erased from the register shall be *prima facie* evidence that that person is not registered on that register; or

(*c*) who has been suspended from practice in accordance with this Act, a certificate under the hand of the Registrar that that person has been so suspended from practice for a period specified in that certificate shall be *prima facie* evidence that that person has been suspended from practice for that period.

PART VIII

Registration

Persons registered under the repealed Act

24. Every person who, immediately before the commencement of this Act, was registered in any register under the repealed Act and is resident in Malaŵi, shall be deemed to have been registered under this Act in the appropriate register.

Residence of registered persons

25.—(1) Subject to subsection (2), an applicant for registration shall not be registered unless at the time of his application—

(*a*) he resides in Malaŵi; or

(*b*) he intends, if he is registered, to take up residence in Malaŵi within six months of the date of his registration.

(2) Any person who resides in and is lawfully practising his profession or calling in such country as the Council may from time to time specify for the purposes of this subsection by notice in the *Gazette* may be registered if, but for residing outside Malaŵi, he is otherwise qualified for registration.

Registration and licensing prerequisites for practising

26. No person shall be entitled to practise within Malaŵi the profession of a nurse or nursing technician, or to practise within Malaŵi as a student nurse or as a pupil nursing technician, unless he is in terms of this Act registered and licensed as a nurse, a nursing technician, a student nurse or a pupil nursing technician, as the case may be.

Persons entitled to be registered

27. Except as otherwise provided by or under this Act, every person shall be entitled to be registered in the appropriate register if he—

(*a*) has undergone the prescribed courses of instruction, education and training in Malaŵi and has passed the prescribed final examination conducted by the Council in respect of that register; or

(*b*) has undergone a course of instruction, education and training and passed examination elsewhere than in Malaŵi which the Council recognizes as equivalent to the instruction, education and training and examination required under paragraph (*a*).

Use of titles

28. Any person registered under this Act may take and use the title appropriate to the register on which his name appears.

Registered persons entitled to practice

29. Every person registered under this Act shall be entitled to practice nursing of the category in respect of which he is registered.

Licensing of registered persons

30.—(1) Except as otherwise provided by this Act, every person registered under this Act shall, immediately at the expiration of the year in which he is registered, apply for a licence to practise.

(2) An applicant for a licence to practise shall—

(*a*) complete the prescribed application form for licence to practise;

(*b*) pay the prescribed fee; and

(*c*) submit evidence that he has complied with section 31, where it is applicable.

Refresher courses and inservice education

31. Except as otherwise provided by this Act, every person registered under this Act shall—

(*a*) within two years of his being registered, attend an in service education, in any field of nursing, lasting not less than one day; and

(*b*) within five years of his being registered, attend a refresher course in any field of nursing.

Registration of additional qualification

32.—(1) Every person registered under this Act who has obtained any post basic qualification that is higher than the qualification that constituted the basic qualification in respect of which he has been registered shall be entitled subject to subsection (2), to register such a qualification.

(2) Only such qualifications as may be prescribed may be registered under this section.

Registration of student nurses

33.—(1) The Council shall register as a student nurse a person undergoing education and training at an approved nursing school who has complied with the prescribed conditions and has furnished the prescribed particulars.

(2) Every person shall on commencing or resuming education and training as a student nurse at an approved nursing school apply for registration with the Council.

(3) The person in charge of an approved nursing school shall forthwith notify the Council of the termination of the education and training of a student nurse, whether by reason of

abandonment or completion of education and training or a transfer or for any other reason.

(4) A person registered under subsection (1) shall be deemed to be registered on the register of nurse midwives in so far as is necessary—

(*a*) to enable him to be employed in nursing practice at a hospital or institution approved by the Council:

Provided that a student nurse shall not be employed in nursing practice unless he is at all material times during such employment under the supervision of a nurse;

(*b*) for the purpose of any other enactment or such other purposes as the Council may specify.

Registration of pupil nursing technicians

34.—(1) The Council shall register as a pupil nursing technician a person undergoing education and training at an approved nursing school who has complied with the prescribed conditions and has furnished the prescribed particulars.

(2) Every person shall, on commencing or resuming education and training as a pupil nursing technician at an approved nursing school, apply for registration with the Council.

(3) The person in charge of an approved nursing school shall notify the Council of the termination of the education and training of a student nursing technician, whether by reason of abandonment or completion of education and training or a transfer or for any other reason.

(4) A person registered under subsection (1) shall be deemed to be registered on the register of nursing midwife technicians in so far as is necessary—

(*a*) to enable him to be employed in nursing practice at a hospital or institution approved by the Council:

Provided that a pupil nursing technician shall not be employed in nursing practice unless he is at all material times during such employment under the supervision of a qualified nurse;

(*b*) for the purpose of any other enactment or such other purposes as the Council may specify.

Limited registration

35.—(1) The Council may accept any qualification which has not been recognized under section 27 as entitling the holder to be registered if, in all other respects, he satisfies the conditions and requirements of this part for registration on a register kept under this Act:

Provided that the acceptance of a particular qualification for limited registration of one person shall not confer any right to any form of registration on any other person holding the same qualification.

(2) The Council may require an applicant for limited registration as a condition of such registration—

(*a*) to undertake a specified period of practice on the staff of a hospital or other institution specified by the Council or with an employer approved by the Council; and

(*b*) to pass, during the period of his limited registration, such examination as the Council may specify.

(3) An application for limited registration under subsection (1) shall be made in writing to the Registrar and shall be accompanied with the prescribed fee.

Registration of persons temporarily employed

36. Any person qualified to practise the profession or calling of a nurse or nurse technician, who intends to practice that profession or calling in Malaŵi but does not intend to reside for a period exceeding twelve months in Malaŵi may, if he satisfies the Registrar that he is so qualified, be registered on a register of persons temporarily employed:

Provided that in circumstances considered by the Registrar to be exceptional, the Registrar may extend the period of registration for twelve months.

Procedure for registration

37.—(1) Every person who wishes to be registered or licensed in terms of this Act, shall apply to the Council and shall submit the qualifications which, in his submission, entitle him to registration or licensing, together with such proof of identity and of the authenticity and validity of the qualification submitted as may be required by the Council.

(2) If the Council is satisfied that the qualifications and the other documents submitted in support of the applications under this Act, it shall upon payment of the prescribed fee, register or license the applicant in the appropriate register, and issue a registration certificate or licence, authorizing the applicant, subject to the provisions of this Act and to any other legal provisions, to practise within Malaŵi the profession in respect of which he has applied for registration or licence.

(3) The Council may refuse to register or license an applicant if in its opinion the applicant, notwithstanding that he is otherwise qualified, is not a fit and proper person to be registered or licensed by reasons of—

(*a*) his physical or mental health;

(*b*) the fact that he is not of good character and reputation;

(*c*) the fact that he does not have adequate knowledge of the English language; and

(*d*) any conduct of his which, if he had been registered, would have constituted improper or disgraceful conduct or conduct which, when regard is had to the profession for which that person has applied to be registered, is improper or disgraceful:

Provided that, before refusing registration or licensing under paragraph (*d*), the Council shall refer the matter to the Disciplinary Committee and the provisions of Part XII shall, *mutatis mutandis*, apply as if the applicant were registered or licensed on the register on which he had applied to be registered.

Erasures from register

38.—(1) The Council may direct the Registrar to erase from a register of nurse midwives or register of nursing midwife technicians—

(*a*) the name and all particulars of a person whose registration or licence has been cancelled in accordance with this Act, or who—

(i) has requested that his name be removed from the register, in which case such person may be required by the Registrar to lodge with the Registrar an affidavit or affirmation to the effect that no disciplinary or criminal proceedings are being or are likely to be taken against him;

(ii) not being a citizen of Malaŵi; has been absent from Malaŵi for a continuous period of three years preceding such erasure;

(iii) fails to pay the prescribed fee payable under this Act within three months after the date on which that fee became payable;

(iv) has failed within a period of three months after the date of an inquiry sent by the Registrar by registered letter to the address as shown in the register to notify the Registrar of his present address:

Provided that if such registered letter is returned to the Registrar by reason of it being unclaimed or for any other reason the Council may forthwith direct that the name of the person be erased from the register; or

(v) is resident or practising in Malaŵi and whose name has been removed from the roll, register or record of any university, hospital, college, training school or institution, society or other body from which that person received the qualification on the basis of which he was registered; or

(*b*) any entry which is proved to the satisfaction of the Council to have been made in error or through fraudulent representation or concealment of material facts or in circumstances not authorized by this Act.

(2) The name and all particulars of a person shall be erased—

(*a*) from the register of nurse student, register of pupil nursing technician, limited register or temporary register—

(i) when the person is registered on the register of nurse midwives or nursing midwife technicians; or

(ii) on the expiration of the period of registration on such register;

(*b*) in case of limited register, on the cancellation of the registration of that person.

(3) If a person referred to in section 25 (1) fails to take up residence in Malaŵi within the period referred to in that paragraph, his name and particulars shall be erased from the register on the expiration of that period.

(4) The Registrar shall erase from the register of nurse student or register of pupil nursing technician, as the case may be, the name of a person who is registered on that register—

(*a*) who advises the Registrar that he is leaving Malaŵi after completion of his training as nurse student or pupil nursing technician or otherwise; or

(*b*) on the expiration of thirty-six months from the date of his registration unless he satisfies the Registrar that due to illness or other cause the period of his training has been extended; or

(*c*) on the termination of the period of training which has been extended in the circumstances referred to in paragraph (*b*); or

(*d*) if the Council instructs the Registrar to erase the name of that person from the register.

(5) Before the Council directs an erasure to be made under subsection (1) (*a*) (v) or subsection (4) (*d*) the Council shall afford the person concerned an opportunity of showing cause before the Council as to why the erasure should not be made.

Method of erasure

39. In order to effect the erasure of the name and particulars of a person from a register, a line of red ink shall be drawn through such name and particulars but so as to leave them remain legible.

Consequence of erasure

40. Any certificate of registration or licence issued to a person whose name has been erased shall be deemed to have been cancelled on the date of erasure and the person concerned shall be deemed not to be registered or licensed with effect from that date.

Appeals against refusal to register or erasure from register

41.—(1) A person aggrieved by—

(*a*) the refusal of the Council to register him or any qualification or particular which he wishes to be registered under this Act; or

(*b*) the erasure from a register of his name or of any qualification or particular which he considers he is entitled under this Act to have entered against his name in a register, may after notice to the Council and within three months after the date of erasure, appeal to the High Court in such manner as may be prescribed or as may be considered appropriate by the High Court against such erasure.

(2) On an appeal under subsection (1) the High Court may—

(*a*) dismiss the appeal; or

(*b*) if it is of the opinion that the Council has not acted in accordance with the provisions of this Act, make an order that the name of the appellant or the qualification or particular, as the case may be, be entered in the appropriate register; or

(*c*) refer the matter back to the Council for further consideration, and may, make such other order as to costs or otherwise as it may deem just.

PART IX

Private Practice

Licence for private practice

42.—(1) The Council may authorize the Registrar to issue to a person registered under this Act, who has applied in the prescribed manner and whom the Council considers has had suitable experience in nursing or midwifery, as the case may be, a licence to engage in carrying out the practice of a nursing agency or midwifery on his own behalf as a private practitioner or to be employed, either whole time or part time, by a private practitioner.

(2) A licence under subsection (1) shall—

(*a*) be subject to such conditions as the Council may generally or specially determine;

(*b*) be issued upon payment of the prescribed fee;

(*c*) be in such form as may be prescribed;

(*d*) be valid from the date of issue to 31st March next following the date of issue; and

(*e*) state whether the person so licenced may practice as a private practitioner on his own behalf or may be employed by a private practitioner.

(3) The Council may, for good cause, refuse to issue a licence to engage in private practice to any person or may withdraw or cancel such licence issued to any person either indefinitely or until such time as the conditions, if any, imposed by the Council have been fulfilled.

(4) For private nursing or midwifery, no premises shall be used for the purpose of private practice, unless they are authorized for such use by the Council.

(5) Any person aggrieved by any decision of the Council under this section may appeal to the High Court, and in such appeal the High Court, may annul or vary the decision of the Council as it thinks fit.

(6) A person who engages in private practice without a licence authorizing him so to do issued in accordance with this Act or regulations made thereunder shall be guilty of an offence and liable to a fine of K2,000 and imprisonment for one year.

Issue, etc., of licences to be published in the *Gazette*

43. The issue, cancellation and withdrawal of any licence under section 42 shall be notified in the *Gazette*.

No fees recoverable unless nurse licensed for private practice

44. No person in private practice shall be entitled to recover any charges for any nursing or midwifery advice or other service which he has rendered in the performance of an act as a nurse unless he is at the time appropriately licensed under section 41 for private practice.

PART X

Education and Examination

Education and Examination Committee

45.—(1) There shall be an Education and Examination Committee which shall consist of—

(*a*) one member of the Council appointed by the Council and designated by the Council as Chairman of the Committee; and

(*b*) six other persons appointed by the Council and who may or may not be members of the Council.

(2) Subject to the general direction of the Council, the functions of the Education and Examination Committee shall be—

(*a*) to advise the Council on all matters relating to the education and training requirements of nursing and related personnel in Malaŵi;

(*b*) to satisfy itself and the Council that the curricula in every teaching institution in Malaŵi in the nursing field are such that graduates will have a sufficient basic knowledge, skills and attitudes for the practice of their profession or calling; and

(*c*) to satisfy itself and the Council in such other matters as may be vested in it by the Council in relation to the supervision of other aspects of nursing education and training.

(3) For the purpose of carrying out its functions the Education and Examination Committee may, subject to the general direction and guidance of the Council—

(*a*) on behalf of the Council, appoint inspectors to visit hospitals, or other institutions or premises where examinations are conducted for students who intend to apply for registration under this Act and to evaluate such instructions or examinations;

(*b*) to submit reports to the Council on the courses and curricula followed at, and examinations conducted by, any institution referred to in paragraph (*a*); and

(*c*) perform all such inspectorate functions for the purpose of setting and maintaining the standards of health care in relation to—

(i) premises, equipment and supplies;

(ii) qualifications and credentials of personnel employed at nursing and midwifery establishments;

(iii) courses and curricula followed at any of the institutions referred to in paragraph (*a*) including the student-teacher ratio;

(iv) human and material resources at any of the institutions referred to in paragraph (*a*);

(v) such other matters as the Council may deem expedient, and to report its findings to the Council.

(4) A person who wilfully obstructs any person duly authorized to perform inspectorate functions pursuant to paragraph (*c*) of subsection (3) shall be guilty of an offence and liable to a fine of K2,000 and imprisonment for one year.

Reports on training qualifications and practice of persons who are registrable

46. The Council may, and if so required by the Minister, consider and report to the Minister and advise him upon any matter relating to professional or technical training or other qualifications required for admission to a profession or calling in respect of which a register is kept and the conditions of practice after registration.

Approval of institutions, curricula and qualifications

47.—(1) While the Council may not institute diplomas or certificates of competence to nurses and nursing technicians, the Council shall have powers to approve of—

(*a*) teaching hospitals;

(*b*) nursing schools;

(*c*) a basic nursing education curriculum;

(*d*) post basic nursing education curriculum;

(*e*) the basic qualification of persons to be registered as nurses or nursing technician; and

(*f*) such other matter of training as may be within its competence under this Act or as may be expedient for the purposes and objects of this Act.

Certificate of attendance of courses

48.—(1) The Council may issue certificates of attendance to any class of nursing personnel that attends a course instituted by the Council.

(2) The Registrar shall keep lists of all persons to whom a certificate under this section has been issued.

Rules for training

49.—(1) The Council may, be notice in the *Gazette*, make rules as to—

(*a*) the form of certificates issued by the Council;

(*b*) the issue of duplicates and certified copies of certificates issued by the Council and the fees payable to the Council therefore;

(*c*) the requirements to be fulfilled by persons as a condition of the issue of a certificate to them;

(*d*) the institutions and other places at which the courses shall be undergone, the standards of education and character required to qualify persons to undergo such courses and the supervision of persons undergoing such courses.

PART XI

Investigation Provisions

Investigation Committee

50.—(1) There shall be an Investigation Committee of the Council which shall consist of five persons who shall be appointed by the Council from amongst members of the Council.

(2) The Committee shall elect its own Chairperson and Vice-Chairperson.

(3) At any meeting of the Committee three members shall form a quorum.

(4) For the purposes of any investigation the Chairperson of the Council may appoint to the Investigation Committee any other person he considers reasonably qualified to assist the Committee in the conduct of the investigation.

(5) All acts, matters or things authorized or required to be done by the Investigation Committee shall be decided by a majority vote at a meeting of the Investigation Committee at which a quorum is present.

(6) At all meetings of the Investigation Committee each member present, being a member by virtue of subsection (1), shall have one vote on a question before the Investigation Committee and, in the event of an equality of votes, the Chairperson shall have, in addition to a deliberative vote, a casting vote.

(7) The Investigation Committee shall have power to regulate its own procedure.

Functions of Investigation Committee

51.—(1) The Investigation Committee shall have jurisdiction to consider and investigate any matter delegated to it by the Council.

(2) Without prejudice to the generality of subsection (1), the Investigation Committee shall consider and investigate any matter in which a person registered under the Act—

(*a*) is alleged—

(i) to have procured registration or licence by misrepresentation or fraud;

(ii) to have been guilty of malpractice or negligence in respect of his practice;

(iii) to have been convicted of an offence for practice or conduct that is, in public interest, at variance with his continuity to practice under this Act;

(iv) to be incapable of properly discharging his practice by reason of his—

(*a*) mental or physical illness; or

(*b*) consumption of intoxicants;

(*v*) to have contravened this Act or any regulation made thereunder; or

(*b*) applies for the lifting of suspension against him.

Reporting of complaint

52.—(1) A patient, client, professional colleague or any other person who has a substantial interest in the practice and conduct of a person registered under this Act may lodge a complaint with the Investigation Committee.

(2) The complaint shall be in writing and shall state in clear terms the specific acts or omissions complained of.

Duty to investigate complaint

53. Where a complaint is lodged with the Investigation Committee, the Investigation Committee shall cause a preliminary investigation into the complaint unless the Investigation Committee is of the opinion that the complaint—

(*a*) is trivial;

(*b*) is frivolous or vexatious;

(*c*) mischievous, malicious or not made in good faith; or

(*d*) has been too long delayed to justify present examination of its merit.

Powers of the Council and Investigation Committee during investigative stage

54.—(1) The Council shall refuse to register or to renew the registration of an accused until the complaint against him before the Investigation Committee is determined.

(2) The Investigation Committee may interdict an accused from exercising the powers and functions of his practice pending the determination of the complaint against him by the Investigation Committee.

Action after preliminary investigation

55.—(1) Where in the opinion of the Investigation Committee such preliminary investigation discloses that the exercise of disciplinary control by the Council is not warranted, the Investigation Committee shall take no further action except reporting to the Council.

(2) If the Investigation Committee, after the preliminary investigation, is of the opinion that the exercise of disciplinary control is necessary it shall refer the matter to the Disciplinary Committee.

PART XII

Disciplinary Provisions

Disciplinary powers of the Council

56. The Council shall have the power to warn, suspend, revoke, or refuse to renew any registration or licence, or to place on probation or discipline in any manner specified under this

Part a person registered under this Act, or to deny an application for registration or licence upon proof that such person has—

(*a*) committed fraud or deceit in securing or attempting to secure such registration or licence;

(*b*) been convicted of a crime of moral turpitude;

(*c*) negligently or wilfully acted in a manner inconsistent with the health or safety of a person under the nurse's care;

(*d*) has a licence to practice as a nurse or nursing technician suspended or revoked in any jurisdiction;

(*e*) violated any provisions of this Act;

(*f*) negligently or wilfully practised nursing in a manner that fails to meet generally accepted standards of such nursing practice;

(*g*) negligently or wilfully violated any order, rule or regulation of the Council pertaining to nursing practice;

(*h*) knowingly allowed the continuation of unsafe practice of anyone who assists in the practice of nursing;

(*i*) falsified or, in a repeatedly negligent or wilful manner, made incorrect entries or failed to make essential entries on essential patient records;

(*j*) a physical or mental disability or is addicted to or dependant on alcohol or other drugs which render the registered person or licensee unable to perform nursing services with reasonable skill and safety to the patient, and which endanger the health or safety of a person under the nurse's care;

(*k*) engaged in unprofessional conduct of a nature likely to deceive, defraud, or harm the public; or

(*l*) engaged in any other improper or disgraceful conduct as identified by the Council in regulations.

Disciplinary Committee

57.—(1) There shall be a Disciplinary Committee of the Council which shall consist of—

(*a*) the Chairperson of the Council who shall be the Chairperson of that Committee; and

(*b*) four other members appointed by the Council from amongst members of the Council.

(2) In any disciplinary inquiry the Council may request the Attorney General to nominate a legally qualified person serving in the public service to assist the Disciplinary Committee in the proceedings of the inquiry.

(3) At any meeting of the Disciplinary Committee the Chairperson and two other members shall form a quorum.

(4) For the purposes of any inquiry the Chairperson of the Council may appoint to the Disciplinary Committee any other

person he considers reasonably qualified to assist the committee in the conduct of the inquiry.

(5) A member who is absent at any stage of a disciplinary inquiry shall cease to be a member of the Disciplinary Committee for that inquiry.

(6) All acts, matters or things authorized or required to be done by the Disciplinary Committee shall be decided by a majority vote at a meeting of the Disciplinary Committee at which a quorum is present.

(7) At all meetings of the Disciplinary Committee each member present, being a member by virtue of subsection (1), shall have one vote on a question before the Disciplinary Committee and, in the event of an equality of votes, the Chairperson shall have, in addition to a deliberative vote, a casting vote.

(8) The Disciplinary Committee shall have power to regulate its own procedure.

Function of Disciplinary Committee

58.—(1) Subject to the provisions of subsection (2), the function of the Disciplinary Committee shall be to inquire into an allegation referred to it under section 55 (2) or in a case where it is alleged that a registered person—

(*a*) has been guilty of improper or disgraceful conduct or conduct which, when regard is had to the profession or calling of that person, is improper or disgraceful; or

(*b*) is grossly incompetent or has performed any act pertaining to his profession or calling in a grossly incompetent manner.

(2) Before exercising its function with respect to any person, the Disciplinary Committee shall—

(*a*) cause to be served upon him a notice setting out the allegations against him; and

(*b*) afford him a reasonable opportunity of being heard either by himself or, if he so wishes, by a legal representative.

Taking of evidence by Disciplinary Committee

59.—(1) For the purposes of any inquiry, the Disciplinary Committee may take evidence and may—

(*a*) under the hand of the Chairperson of the Council or the Registrar summon witnesses and require the production of any book, record, document or thing;

(*b*) administer an oath or affirmation to any person; and

(*c*) examine any book, record, document or thing which a witness has been required to produce.

(2) A summons for attendance before the Disciplinary Committee or for the production to it of any book, record, document or thing shall be—

(*a*) in the form prescribed; and

(*b*) signed by the Chairperson or the Registrar.

(3) Any person who—

(*a*) has been summoned under subsection (2) and who—

(i) refuses or fails without sufficient cause to attend and give evidence relevant to the inquiry at the time and place specified in the summons; or

(ii) refuses to be sworn or to affirm; or

(iii) refuses or fails without sufficient cause to produce any book, record, document or thing which he has been required by that summons to produce; or

(*b*) attends as a witness before the Disciplinary Committee and refuses to answer fully and satisfactorily to the best of his knowledge and belief any question properly put to him,

commits an offence and is liable to a fine of K200 and to imprisonment for three months.

(4) Any person who gives false evidence on oath at an inquiry held under this Part, knowing such evidence to be false or not believing it to be true, shall be guilty of an offence and liable to a fine of K400 and to imprisonment for six months.

(5) The Disciplinary Committee shall, in any inquiry held by it under this Part, record the proceedings and any evidence heard by it and the decision made by it and the reasons therefor.

Exercise of disciplinary powers on conviction for offence

60.—(1) A registered person who has been convicted of an offence by a court of law within or outside Malaŵi, whether before, on or after the date of his registration, shall be liable to disciplinary inquiry by the Disciplinary Committee in accordance with the provisions of this Part if the Disciplinary Committee is of the opinion that such offence constitutes—

(*a*) improper or disgraceful conduct; or

(*b*) conduct which, when regard is had to the profession or calling of that person, is improper or disgraceful.

(2) The Disciplinary Committee may, if it thinks fit on proof before it of a conviction referred to in subsection (1) and without hearing further evidence, deal with the convicted person in accordance with the provisions of this Part:

Provided that the convicted person shall be afforded an opportunity of tendering, in writing or in person or by his legal representative as he may elect, an explanation to the Disciplinary Committee in extenuation of his conduct.

(3) If, after the termination of proceedings before a court in Malaŵi—

(*a*) it appears to the court that there is *prima facie* evidence of improper or disgraceful conduct on the part of a registered

person, the court shall direct that a copy of the record of the proceedings or a copy of such part of the record of the proceedings as is material to the issue shall be transmitted to the Council; or

(*b*) the Council requests that a record of the proceedings before a court in Malaŵi or part of such record be supplied to it on the ground that it is of direct interest to the Council in the exercise of its functions under this Act, the court shall transmit to the Council a copy of the record of the proceedings as is material.

Council to refer cases to Disciplinary Committee

61.—(1) Whenever there is brought to the notice of the Council an allegation which might be the subject of inquiry by the Disciplinary Committee, the Council shall have power to call for information, to cause such investigation to be made as it thinks necessary and to seek such legal advice or other assistance as it may require.

(2) After any investigation pursuant to subsection (1), the Council—

(*a*) may refer the allegation to the Disciplinary Committee for inquiry under this Part and in that case the Registrar shall present a charge, in such form as may be prescribed, to the registered person against whom the allegation is made;

(*b*) if it considers that—

(i) the conduct complained of would not constitute improper or disgraceful conduct; or

(ii) for any other reason the allegation should not be the subject of inquiry by the Disciplinary Committee, may dismiss the allegation or take such other action as it deems fit and may, after first allowing the person concerned to make written representation, authorize the Chairperson of the Council to admonish that person and the Chairperson shall report the fact thereof to the Council;

(*c*) if it considers that the allegation forms or is likely to form the subject of criminal proceedings already before a court, may postpone referring the matter to the Disciplinary Committee until such criminal proceedings have been determined.

Exercise of disciplinary powers

62.—(1) After due inquiry, the Disciplinary Committee shall report its findings to the Council with such recommendations as the Disciplinary Committee considers appropriate.

(2) After considering the findings and recommendations of the Disciplinary Committee the Council—

(*a*) if it is satisfied that the registered person—

(i) has been guilty of improper conduct or disgraceful conduct or conduct which, when regard is had to the profession or calling of that person, is improper or

disgraceful and that such conduct warrants the cancellation of his registration; or

(ii) is grossly incompetent or has performed any act pertaining to his profession or calling in a grossly incompetent manner,

the Council shall direct the Registrar to cancel the registration of the registered person and, if it thinks fit, order that person to pay to the Council any costs or expenses incidental to the inquiry;

(*b*) if it considers that the registered person has been guilty of improper or disgraceful conduct or conduct which, when regard is had to his profession or calling, is improper or disgraceful but that such conduct does not warrant the cancellation of the registration of that person, shall do one or more of the following—

(i) order his suspension for a specified period from practising or performing acts specially pertaining to his profession or calling;

(ii) impose such conditions as it deems fit subject to which he shall carry on his profession or calling;

(iii) order him to pay to the Council a penalty not exceeding K1,000;

(iv) order him to pay any costs or expenses of and incidental to the inquiry;

(v) censure him; and

(vi) caution him and postpone, for a specified period not exceeding three years, any further action against him on such conditions as the Council may determine as to his future conduct, including conduct or nature of his practice during that period;

(*c*) if it considers that the allegations against the registered person have not been established, shall dismiss the allegations and in such case the Council may, if it is of the opinion that the allegations were frivolous or vexatious, order the complainant to pay the costs of the inquiry.

(3) If at any time the Council is satisfied that during the period of any postponement under subsection (2) (*b*) (vi) a registered person has not complied with the conditions imposed under that paragraph, the Council after giving reasonable notice to the registered person concerned, may proceed to inflict further upon him more of the measures specified in that subsection.

Appeal to High Court

63.—(1) Any person who is aggrieved by the findings of the Disciplinary Committee or the decision reached, or penalty or measure imposed, by the Council under this Part may, within three months after the date of such findings or the imposition of such penalty or measure, appeal to the High Court.

(2) On an appeal under subsection (1), the High Court may—

(*a*) confirm, vary or set aside any finding, decision or penalty appealed against; or

(*b*) refer the matter back to the Council, for further consideration,

and in either case may make such order as to the costs of the appeal or otherwise as it may deem just:

Provided that the High Court shall not set aside any finding or penalty by reason only of an informality or irregularity in the proceedings of the Council or of the Disciplinary Committee which did not embarrass or prejudice the appellant in answering the charge or in the conduct of his defence.

(3) For the purposes of any appeal under this section the High Court may, if it considers it expedient so to do, sit with one or more persons as assessors, being persons whom it considers specially qualified to assist it in hearing the appeal, and may hear the appeal wholly or partly with such persons, but the decision in such appeal shall be that of the presiding judge or judges.

Publication of result of disciplinary proceedings

64.—(1) The Registrar shall by notice in the *Gazette* publish the name of any person—

(*a*) whose registration has been cancelled; or

(*b*) who has been suspended from practice and shall, in such notice, specify the period of suspension.

Council or Disciplinary Committee or Investigation Committee not to be liable

65.—(1) Save as is provided in this Act, no legal proceedings whether civil or criminal shall lie against the Council or the Disciplinary Committee or the Investigation Committee or any member or officer thereof in respect of any act or duty done or performed in accordance with the provision of this Part or Part XI.

(2) The Council shall not be responsible for any loss of earnings by a person as a result of action taken under this Part or Part XI, whether by the Council, or the Disciplinary Committee, or the Investigation Committee and whether or not a particular finding, decision or penalty is subsequently varied or set aside.

Improper or disgraceful conduct

66.—(1) The Council may in regulations made under this Act—

(*a*) define what, in the case of any class of registered persons, shall constitute improper or disgraceful conduct;

(*b*) provide for any other matter incidental to the investigation of an inquiry into a complaint or charge against a registered person.

(2) If any registered person has counselled or knowingly been a party to the performance of any act in respect of which

an unregistered person has been convicted of an offence under Part XIV the conduct of such registered person shall, for the purpose of this Part, constitute improper or disgraceful conduct.

(3) Regulations referred to in subsection (1) shall not limit the general power conferred on the Investigation Committee, the Disciplinary Committee or on the Council to inquire into allegations of improper or disgraceful conduct not covered by such regulations and to impose any penalty under this Part on any person guilty of such conduct.

PART XIII

Professional Practice

Professional Practice Committee

67.—(1) There shall be a Professional Practice Committee which shall consist of—

(*a*) one member of the Council appointed by the Council and designated by the Council as Chairperson of the Committee; and

(*b*) four other persons appointed by the Council and who may or may not be members of the Council.

(2) Subject to the general direction of the Council, the functions of the Professional Practice Committee shall be—

(*a*) to advise the Council on all matters relating to the professional practice of nursing and related personnel in Malaŵi;

(*b*) to develop minimum nursing practice standards for nursing and related personnel in Malaŵi; and

(*c*) to monitor nursing practice standards.

(3) For the purpose of carrying out its functions the Professional Practice Committee may, subject to the general direction and guidance of the Council—

(*a*) on behalf of the Council, appoint inspectors to visit hospitals, or other institutions or premises where persons registered under this Act conduct their practice and evaluate the standard of practice of nursing and related personnel thereat; and

(*b*) perform all such inspectorate functions for the purpose of setting and maintaining professional nursing standards in relation to behaviour and conduct of nursing and related personnel towards patients, clients and guardians, and to report its findings to the Council.

(4) A person who wilfully obstructs any person duly authorized to perform inspectorate functions pursuant to paragraph (*b*) of subsection (3) shall be guilty of an offence and liable to a fine of K2,000 and imprisonment for one year.

68. Subject to the provisions of the Pharmacy, Medicines and Poisons Act, a person registered under this Act shall be entitled to prescribe drugs and other medicines.

Prescription of drugs and other medicines Cap. 35:01

PART XIV

Offences and Penalties

69.—(1) Subject to any exemption granted under this Act any person who, not being registered as a nurse or nursing technician—

Unregistered persons practising as nurses or nursing technicians

(*a*) for gain, practises or carries on business as a nurse or nursing technician, whether or not purporting to be registered or performs or undertakes to perform any act specially pertaining to the practice of a nurse or nursing technician; or

(*b*) pretends or, by any means whatsoever, holds himself out to be a nurse or nursing technician whether or not purporting to be registered; or

(*c*) uses the title ''nurse'', ''nursing technician'' or any name, title, description, symbol, dress or device indicating or calculated to lead any person to infer that he possesses a degree, diploma or other qualification as a nurse, nursing technician or that he is registered as a nurse or nursing technician under this Act,

shall be guilty of an offence and liable to a fine of K2,000 and to imprisonment for one year.

(2) Subsection (1) (*a*) shall apply to a nurse and nursing technician, registered under this Act, whose right to practise is suspended or whose licence to practise has expired:

Provided that nothing in this subsection shall apply to a nurse or nursing technician rendering assistance in an emergency.

70. A person who—

Falsification of registers, etc.

(*a*) makes or causes to be made an unauthorized entry or alteration or deletion in a register or a certified copy thereof or an extract thereof or on a certificate of registration or on a licence;

(*b*) procures or attempts to procure for himself or another person registration or a certificate of registration or a licence by means of fraud or false representation or by the concealment of a material fact;

(*c*) makes or causes to be made in connexion with an application for registration or a licence a false declaration in a document used for the purpose of establishing his identity;

(*d*) wilfully destroys, defaces or renders illegible or causes to be destroyed, defaced or rendered illegible an entry in a register;

(*e*) without the permission of the holder, wilfully destroys, defaces or renders illegible or causes to be destroyed, defaced or rendered illegible a certificate of registration or a licence; or

(*f*) forges or utters or, knowing the same to be forged, possesses or holds a document purporting to be a certificate or registration or a licence,

shall be guilty of an offence and liable to a fine of K1,000 and to imprisonment for six months.

Persons conducting education, training, etc., without authority

71.—(1) Any person who, being in charge of a hospital, nursing home or institution which is not approved by the Council as an institution for the education and training of persons seeking registration under this Act—

(*a*) admits to the institution under his charge persons for education and training in any of the categories of the nursing professions in respect of which provision is made for registration in this Act;

(*b*) purports to be conducting courses of education and training or examination under this Act;

(*c*) issues any certificate, badge, seal or uniform implying that the institution under his charge is approved by the Council as an institution for the education and training of persons seeking registration under this Act; or

(*d*) issues any certificate, badge, seal or uniform implying that the holder thereof has undergone a course of instruction or passed an examination prescribed by the Council,

shall be guilty of an offence and liable to a fine of K2,000 and to imprisonment for one year.

(2) Any person purporting to be conducting examinations on behalf of the Council and not being authorized by the Council so to do shall be guilty of an offence and liable to a fine of K2,000 and to imprisonment for one year.

Employment of unregistered or unlicensed persons.

72. Any employer who engages a nurse or nursing technician who is not registered or licensed under this Act shall be guilty of an offence and liable to a fine of K2,000 and to imprisonment for one year.

Unregistered substitutes

73. Any person who is registered under this Act who employs as his substitute a person who is not appropriately registered shall be guilty of an offence and liable to a fine of K2,000 and to imprisonment for one year.

Personation of registered person or mis-presentation

74. Any person who impersonates a registered person shall be guilty of an offence and liable to a fine of K1,000 and to imprisonment for two years.

75. A registered person who takes, uses or publishes in any way whatsoever a name, title, description or symbol indicating or calculated to lead any person to infer that he possesses a qualification which relates to a profession or calling in respect of which a register is kept and which is not shown in the register in connexion with his name shall be guilty of an offence and liable to a fine of K1,000 and to imprisonment for one year.

Registered person using unregistered title or qualification

76. No remuneration shall be recoverable in respect of any act pertaining to a profession or calling in respect of which a register is kept under this Act when performed by a person who is not registered on the appropriate register.

Remuneration not recoverable by unregistered persons

77. No certificate required by law from any member of a profession or calling in respect of which a register is kept under this Act shall be valid unless the person signing such certificate is registered on the appropriate register.

Certain certificates invalid if signed by unregistered person

78. No licence required under any law to be obtained by a registered person shall be issued to such person unless the person applying for such licence produces proof that he is registered on the appropriate register.

Proof required for issue of licence

PART XV

Miscellaneous Provisions

79. Nothing contained in this Act shall be construed to prohibit or prevent the practice of any African system of nursing or midwifery by any person in Malaŵi:

African systems of nursing and midwifery allowed

Provided that nothing in this section shall be construed to authorize the performance by a person practising any African system of nursing or midwifery of any act which is dangerous to life.

80.—(1) Notwithstanding anything to the contrary contained in this Act, if, with the consent of the Chairperson of the Council—

Exemptions from registration

(*a*) an establishment or a registered nurse calls in as a consultant, a medical practitioner, whether resident in Malaŵi or otherwise, such consultant shall not be held to require registration in Malaŵi, in respect of his attendance upon the patient with respect to whom he has been called;

(*b*) a nurse who is neither resident nor registered in Malaŵi who is called into Malaŵi on the *bona fide* request of a patient shall not be held to require to register in Malaŵi in respect of his attendance on such patient;

(*c*) a person practising a profession or calling in respect of which a register is kept who is neither resident nor registered

in Malaŵi and who is appointed by the Council or other body approved by the Council to conduct an examination in Malaŵi shall not be required to register in Malaŵi in respect of his duties in connexion with the conduct of such examination;

(*d*) a person practising a profession or calling in respect of which a register is kept under this Act who is—

(i) a member of a naval, military, air or Police force of a country other than Malaŵi and temporarily stationed on duty in Malaŵi; or

(ii) a delegate of the International Committee of the Red Cross, International Council of Nurses or International Confederations of Midwives and has entered Malaŵi with the consent, or at the invitation, of the Government shall not be required to register in Malaŵi in respect of his duties as a member of that force or as such delegate, as the case may be;

(*e*) the Council may exempt for a period not exceeding four months from the provisions of this Act regarding registration any person not permanently resident in Malaŵi who is engaged solely in teaching or research work affecting any of the profession or calling in respect of which a register is kept under this Act.

(2) Any prescription or order signed by a person exempted from registration in accordance with subsection (1) and given by him in the course of his practice under that subsection, but not otherwise, shall, for the purposes of any law relating to drugs, have same force and effect as a prescription or order signed by a registered person.

Registered persons becoming unfit to practise

81.—(1) Whenever there is brought to the notice of the Council an allegation that a registered person has

(*a*) become mentally or physically disabled to such an extent that it would be contrary to the public interest to allow him to continue to practise; or

(*b*) become unfit to purchase, acquire, keep, use, prescribe, order, supply or possess any drug; or

(*c*) been using a drug in contravention of any law relating to the use of drugs; or

(*d*) become addicted to or dependent upon the use of drugs, the Council shall have power to call for such information and to cause such investigation to be made as it thinks necessary and to seek such legal advice or other assistance as it may require.

(2) In consequence of an investigation under subsection (1), the Council may—

(*a*) direct that such person shall cease to practise and that his registration be cancelled; or

(*b*) suspend such person from practice for such period, and subject to such conditions, as the Council may determine; or

(*c*) impose such conditions respecting the practice of such person as it may deem necessary and in the event of failure by such person to comply with such conditions, the Council may direct that such person shall cease to practise and that his registration shall be cancelled.

Restoration to register

82. Where the name of a person has been erased from the register, the Council may, if it thinks fit, authorize the restoration to the register of the name of such person if representations are made by the person concerned after the expiration of such period as the Council may determine in that particular case.

Burden of proof on unregistered persons

83. In any criminal proceedings against any person upon a charge of having performed any act which constitutes an offence under this Act, if performed by a person alleged to be not registered, the person charged shall be deemed to be not registered unless he proved the contrary.

Notification of death or change of address

84.—(1) A registered person who changes his address shall notify that fact to the Registrar within one month after such change.

(2) If the Registrar of births and deaths receives notice of a death which shows that the deceased belonged to a profession or calling in respect of which a register is kept, he shall forthwith notify the Registrar of such death.

Regulations

85. The Minister may, with the advice of the Council, make regulations for carrying out or giving effect to the provisions of this Act, and without prejudice to the generality of the foregoing such regulations may—

(*a*) prescribe the fees payable—

(i) upon registration or renewal of registration in a register;

(ii) on transfer from one register to another register; or

(iii) for restoration to a register;

(iv) for registration of an additional or specialist qualification;

(v) for issue of a duplicate certificate of registration or a certificate extract from a register or other certificate issued by the Registrar;

(vi) in respect of private practice;

(vii) in respect of licences; or

(viii) for any other matter under this Act;

(*b*) prescribe the forms required to be prescribed under this Act;

(*c*) subject to the proviso of section 27 the qualifications required for entitlement to registration;

(*d*) the conditions under which training schools for persons desirous of obtaining registration under this Act shall be approved and the courses of education and training and instruction to be undergone by persons seeking such registration;

(*e*) the subject matter of examinations to be conducted by Council;

(*f*) the conditions of admission or entry to education and training courses and examinations to be conducted by the Council;

(*g*) badges, insignia and uniforms which may be worn by persons registered under this Act;

(*h*) the standard and conditions of professional practice of persons registered under this Act.

Repeal and savings

86.—(1) The Nurses and Midwives Act is repealed.

(2) Any subsidiary legislation made under the Nurses and Midwives Act repealed by subsection (1), in force immediately before the commencement of this Act—

(*a*) shall remain in force unless in conflict with this Act and be deemed to be subsidiary legislation made under this Act; and

(*b*) may be replaced, amended or repealed by subsidiary legislation made under this Act.

SUBSIDIARY LEGISLATION

NURSES AND MIDWIVES (FEES) REGULATIONS

G.N. 33/1998
4/2005

under s. 85

Citation

1. These Regulations may be cited as the Nurses and Midwives (Fees) Regulations.

Fees

2. The fees set out in the Schedule shall be payable in respect of the matters to which they relate—

SCHEDULE reg. 2

Item	*Matter*	*Amount* K t
1.	On indexing in a register by—	
	(*a*) registered nursing/midwifery student	600 00
	(*b*) nursing/midwifery technician student	600 90
	(*c*) non-national	US$100 00
2.	On registration for professional examinations for—	
	(*a*) registered nurse/midwife Part I	4,000 00
	(*b*) registered nurse/midwife Part II	4,500 00
	(*c*) registered nurse/midwife (upgrading)	4,000 00
	(*d*) nursing/midwifery technician certificate . .	2,500 00
	(*e*) community health nursing certificate	5,000 00
	(*f*) psychiatric nursing certificate	5,000 00
	(*g*) nursing technician (without practicals) . .	2,500 00
	(*h*) midwifery technician (without practicals) . .	2,500 00
3.	Annual registration and practice fees—	
	(*a*) registered nurse/midwife	800 00
	(*b*) nursing/midwifery technician	650 00
	(*c*) additional qualification	400 00
4.	Penalty for delayed payment of registration and professional practice fees	2,000 00
5.	On replacement of registration certificate	2,000 00
6.	On registration for a private nursing/midwifery practice and for operating a nursing agency by a registered nurse/midwife and nursing midwifery technician—	
	(*a*) initial registration	6,000 00
	(*b*) annual registration and licence	10,000 00
	(*c*) inspection fees	1,000 00

		K	t
7.	For verification of the authenticity and validity of qualifications of a nurse/midwife trained outside Malaŵi—		
	(*a*) national	5,000	00
	(*b*) non-national	US$200	00
	(*c*) non-national (volunteer)	US$150	00
8.	For verification of the authenticity and validation of qualifications and registration of a nurse/midwife intending to practice outside Malaŵi—		
	(*a*) national	15,000	00
	(*b*) non-national	US$200	00

GN. 12/2002

NURSES AND MIDWIVES (SCOPE OF NURSING PRACTICE) REGULATIONS

under s. 85

Citation

1. These Regulations may be cited as Nurses and Midwives (Scope of Nursing Practice) Regulations.

Interpretation

2. In these Regulations, unless the context otherwise require—

"assessment" means collection of data about a person relating to the person's status;

"dependent functions" means those activities performed by a nurse based on the physician's prescription;

"decision-making" means a deliberative cognitive process consisting of sequential steps that can be analyzed, refined and integrated to yield greater precision and accuracy in solving problems and initiating action;

"evaluation" means the process of determining to what extent the goals of nursing care have been attained;

"implementation" means the initiation of the nursing care plan to achieve specific client or patient outcomes;

"independent functions" means those activities considered to be within nursing or midwifery scope of practice and not requiring a physician's prescription or instructions;

"interdependent function" means those activities carried out in conjunction with other health team members;

"intervention" means an action or series of actions which include the independent, dependent and interdependent functions of nursing; expected to effect change in client or patient outcomes;

"nursing care plan" means the written blue print which lists nursing diagnoses in order of priority and desired patient outcomes, describes the nursing interventions directed at addressing the client's or patient's health needs and indicates the criteria by which nursing care will be evaluated;

"nursing diagnosis" means actual or potential problems related to the client's or patient's health status or needs;

"nursing functions" means the roles of the nurse or midwife in practice which are independent, dependent and interdependent; and

"nursing management process" means a deliberative problem solving approach which consists of assessing, planning, implementing and evaluating care in order to meet the needs of the client or patient.

Nursing Management process

3.—(1) Any nurse registered under the Act shall use the nursing management process in giving care to individuals, families, groups of people and communities.

(2) The nursing management process referred to in sub-regulation (1) shall involve assessment, planning, implementation, evaluation and professional responsibility.

Assessment

4. A nurse registered under the Act shall, in carrying out assessment related aspects of the nursing management process—

(*a*) assess the biophysical, psychological, socio-economical and spiritual status of clients and patients;

(*b*) make nursing diagnosis based on—

(i) analysis of data collected;

(ii) knowledge of normal findings and deviations from normal; and

(iii) risk factors.

Planning

5. A nurse registered under the Act shall in carrying out planning related aspects of the nursing management process—

(*a*) prioritize nursing diagnoses or problems;

(*b*) establish goals and objectives in respect of identified problems;

(*c*) plan care with individuals, families, groups of people and communities according to priorities and health needs; and

(*d*) make plans for—

(i) appropriate use of available material and human resources;

(ii) teaching;

(iii) counselling;

(iv) safe and therapeutic environment;

(v) potential emergencies;

(vi) prevention and control of infection and communicable diseases;

(vii) discharging clients and patients; and

(viii) referral, where appropriate.

Implementation

6. A nurse registered under the Act shall, in earring out implementation related aspects of the nursing management process—

(*a*) provide care to—

(i) maintain respiratory function or patient airway;

(ii) maintain or restore nutrition;

(iii) maintain or restore fluids and electrolyte balance;

(iv) monitor or assess elimination function;

(v) maintain and promote a balance of exercise, rest and sleep;

(vi) maintain and promote comfort and relief from pain;

(vii) maintain and promote all aspects of hygiene;

(viii) maintain and promote physical and psychological safety; and

(x) promote appropriate expression of sexuality;

(*b*) participate in disease control;

(*c*) manage human and material resources efficiently and effectively;

(*d*) implement appropriate teaching plans for individuals, families, groups of people and communities;

(*e*) participate in implementing plans based on community's identified needs;

(*f*) participate in research activities;

(*g*) collaborate with other health care team members in meeting client or patient needs;

(*h*) develop nursing care plans that provide for continuity of nursing care;

(*i*) counsel individuals, families, groups of people and communities;

(*j*) intervene in emergency situations;

(*k*) prescribe medication as stipulated in the Act;

(*l*) administer or prescribe medication safety to adults and children;

(*m*) assist patients and families to cope with death and grieving; and

(*n*) provide care for dying patient and perform last offices to the deceased.

Evaluation

7. A nurse registered under the Act shall, in carrying out evaluation related aspects of the nursing management process, determine the extent to which nursing interventions have achieved the objectives of care.

Professional responsibility

8. A nurse registered under the Act shall in pursuance of professional responsibility related aspects of the nursing management process—

(*a*) accept responsibility and accountability for professional practice;

(*b*) know the relevant legislation for nursing practice;

(*c*) adhere to ethical standards in the nursing practice;

(*d*) respect the rights of a client, patient, workmate or any other person, as appropriate;

(*e*) collaborate with colleagues and other stakeholders in improving nursing practice;

(*f*) practice nursing in a non-discriminatory and non-judgmental manner;

(*g*) document relevant data related to client or patient care;

(*h*) act as role model for other health care personnel, clients, patients and families;

(*i*) be responsible for self-development;

(*j*) assume responsibility and accountability for carrying out independent, dependent and interdependent nursing functions;

(*k*) be an active member of nursing professional bodies;

(*l*) maintain confidential information relating to clients or patients unless, in the particular circumstances, breach of confidentiality is required; and

(*m*) report to an appropriate person where it appears that the health or safety of colleagues is at risk.

G.N. 13/2002

NURSES AND MIDWIVES (PROFESSIONAL PRACTICE STANDARDS) REGULATIONS

under s. 85

Citation

1. These Regulations may be cited as Nurses and Midwives (Professional Practice Standards) Regulations.

Interpretation

2. In these Regulations, unless the context otherwise require—

"distinguishing device" includes badge and any other device as may be determined by the Nurses and Midwives Council.

Collegiality

3. Every nurse registered under the Act shall contribute to the professional development of his or her peers and colleagues.

Grooming

4.—(1) Every nurse registered under the Act shall be groomed in such a manner as to reflect his or her professionalism.

(2) Every nurse registered under the Act shall—

(*a*) keep his or her uniform clean and well pressed at all material times;

(*b*) have his or her hair well kept;

(*c*) not use hair accessories unless the accessories are in black or white colour; and

(*d*) wear distinguished device at all material times.

Colours of uniform

5.—(1) Every nurse, midwife shall wear a white uniform when working in a clinical setting.

(2) A community nurse shall wear—

(*a*) a green uniform when working in a community setting; and

(*b*) a white uniform when working in a clinical setting.

(3) Matrons and tutors shall wear blue uniform.

6. Every nurse registered under the Act shall contribute to ongoing quality improvement and cost effectiveness in nursing practice. Quality of care

7.—(1) Every nurse registered under the Act shall, in taking action or making decisions on behalf of a patient or client, act or decide in an ethical manner. Code of ethics

(2) Every nurse registered under the Act shall demonstrate courteous behaviour, based on culture, tradition and respect to a patient, client or any senior person.

8. Every nurse registered under the Act shall evaluate his or her practice in relation to relevant regulations. Performance appraisal

9. Every nurse registered under the Act shall conduct research to enhance nursing knowledge. Research

10. Every nurse registered under the Act shall acquire current knowledge, skills and attitudes in his or her nursing practice. Continuing education

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NURSES AND MIDWIVES (DISCIPLINARY INQUIRY) RULES

G.N. 11/2003

1. These Rules may be cited as the Nurses and Midwives (Disciplinary Inquiry) Rules. Citation

2. In these Rules, unless the context otherwise requires— Interpretation

"respondent" means a person registered under the Act against whom a complaint is made;

"complaint" includes an allegation or a charge.

3.—(1) A respondent shall be summoned to attend the hearing of an inquiry by a summons. Summons for respondent

(2) The summons referred to in subrule (1) shall be in the form set out in Form I in the Schedule.

4.—(1) A party to an inquiry may request the Disciplinary Committee to assist him to summon a witness. Summons for witness

(2) A summons to a witness shall be in the form set out in Form 2 in the Schedule.

(3) A summons to a witness shall—

(*a*) identify the person required to attend the inquiry;

(*b*) show the necessary details of the matter to be inquired into;

(*c*) identify a book, record, document or state the thing required to be produced; and

(*d*) state the date, time and place of the inquiry.

(4) In deciding whether to issue a summons under this rule, the Disciplinary Committee shall take into account the nature, gravity and urgency of the matter.

Reasonable time to be given to attend inquiry

5. Parties and witnesses shall be given a reasonable time to enable them to attend the hearing of the inquiry:

Provided that the notice period shall not be less than seven days from the date of service of the notice.

Mode of service of summons

6.—(1) A summons may be served on a person in any one of the following ways—

(*a*) by handing a copy of the summons to the person;

(*b*) by leaving a copy of the summons at the person's reputed place of residence or business with any person who is apparently at least 16 years old and apparently in-charge of the premises at the time;

(*c*) by leaving a copy of the summons at the person's reputed place of employment with any person who is apparently at least 16 years old and apparently in authority;

(*d*) by faxing a copy of summons to the person, if the person has a facsimile number or using other electronically printed transmission;

(*e*) by handing a copy of the summons to any representative authorized in writing to accept service on behalf of the person; and

(*f*) if the person has chosen an address or facsimile number for service, by leaving a copy of the summons at that address or by faxing it to that facsimile number.

(2) Officers on whom service shall be effected where the person to be served is a company, trade union, partnership, firm, association, municipality, statutory body or government shall be as follows—

(*a*) if the person is a company or other body corporate, by serving a copy of the summons on a responsible employee of the company or body corporate at its registered office or its principal place of business or, if there is no employee willing to

accept service, by affixing a copy of the summons to the main door of the office or place of business;

(*b*) if the person is a trade union or employers' organization, by serving a copy of the summons on a responsible employee who at the time of service is apparently in-charge of the reputed main office of the union or employers' organization or, if there is no person willing to accept service, by affixing a copy of the summons to the main door of the office;

(*c*) if the person is a partnership, firm or association, by serving a copy of the summons on a person who at the time of service is apparently in-charge of the premises and apparently at least 16 years of age at the reputed place of business of such partnership, firm or association or, if such partnership, firm, or association has no place of business by serving a copy of the summons on a partner, the owner of the firm, the chairperson, secretary or the manager of the controlling body of the partnership, firm or association, as the case may be;

(*d*) if the person is an assembly, by serving a copy of the summons on the chief executive or assistant chief executive or any person acting on behalf of the chief executive or assistant chief executive;

(*e*) if the person is a statutory body, by serving a copy on the secretary or similar officer, a member of the board or committee of the body or any person acting on behalf of the body; or

(*f*) if the person is the Government, by serving a copy at the office of the Attorney General or other person authorized to act on behalf of the Government in respect of such proceedings.

Proof of service of summons

7.—(1) Service shall be proved in any one of the following ways—

(*a*) by an affidavit by the person who effected service;

(*b*) if the service was effected by a facsimile or other electronically printed transmission by an affidavit of the person who effected service which must provide proof of the correct facsimile number and confirmation that the whole of the transmission was completed; and

(*c*) if the person on whom the summons has been served is already on record as a party, by a signed acknowledgement or receipt by the party on whom the summons was served.

(2) If the Disciplinary Committee is not satisfied that service has taken place in accordance with this rule, it may make any order as to service that it deems fit.

Personal service of summons

8. Where service of summons is effected personally—

(*a*) the person named in the summons shall sign at the back of the summons; and

(*b*) the person serving the summons shall endorse at the back of the signed copy, the time, date and place of service of the summons and shall, return it to the Council.

Service by post

9.—(1) Service of a summons by post shall be effected by posting the envelope containing the summons to the address of the person named in the summons.

(2) Summons served in terms of subrule (1) shall be deemed to have been duly served after the expiration of 15 days from the date of posting the envelope containing the summons.

Appearance of legal practitioners Cap. 3:04

10.—(1) A legal practitioner entitled under the Legal Education and Legal Practitioners Act to practice before the courts in Malaŵi shall be entitled to represent a party during the inquiry.

(2) A legal practitioner referred to in subrule (1) shall have a right to—

(*a*) examine his client and his witnesses in chief;

(*b*) cross-examine the other witnesses; and

(*c*) make submissions before the Disciplinary Committee.

Where respondents disobeys summons

11.—(1) Where a respondent who was duly served with summons fails to attend the hearing of the inquiry, the Disciplinary Committee may—

(*a*) proceed to hear the inquiry and make its finding in the absence of the respondent;

(*b*) adjourn the hearing of the inquiry to another date to give another chance to the respondent to attend the hearing of the inquiry; or

(*c*) initiate contempt proceedings before the High Court against the respondent.

(2) Where a finding is made by the Disciplinary Committee in the absence of a respondent who failed to attend the hearing of an inquiry, a copy of the finding shall be served on him as soon as possible.

Setting aside finding made in absence of a party

12. A finding made by the Disciplinary Committee in the absence of the respondent may, upon application by the respondent showing good cause why he failed to attend the hearing of the inquiry, be set aside on such terms and conditions as the Disciplinary Committee deems fit.

Oath

13.—(1) Subject to subrule (5), no person shall give evidence in any inquiry unless he takes an oath or affirmation.

(2) An oath shall be taken by a person who believes in God and an affirmation shall be taken by a person who does not believe in God.

(3) A person to be sworn shall hold his right hand uplifted and say the words "I swear by Almighty God that the evidence I shall give shall be truth, the whole truth and nothing but the truth.".

(4) A person to be affirmed shall raise his right hand and say the words "I solemnly, sincerely and truly declare and affirm that the evidence I shall give shall be the truth, the whole truth and nothing but the truth,".

(5) Where the Disciplinary Committee considers that a respondent or witness is unable by reason of youth to understand the nature of either an oath or affirmation, the Disciplinary Committee may receive his evidence, though not given on an oath or affirmation, if, in the opinion of the Disciplinary Committee, he has sufficient intelligence to justify the reception of his evidence.

Disciplinary Committee not bound by strict rules of evidence and practice

14.—(1) In conducting an inquiry, the Disciplinary Committee shall not be required to follow the strict rules of evidence and practice.

(2) An inquiry may be conducted by the Disciplinary Committee in an informal manner, without regard to legal forms and solemnities.

Expert witness

15.—(1) Any party intending to call an expert witness shall deliver a notice to that effect together with a summary of the evidence of the expert to both the Disciplinary Committee and the other party at least 14 days before the date of the inquiry.

(2) If a party fails to comply with subregulation (1), the Disciplinary Committee may—

(*a*) decline to admit the evidence of the expert witness; or

(*b*) admit the evidence of the expert witness if he is satisfied that the failure was due to a good reason.

Language to be employed

16.—(1) The language to be employed in the inquiry shall be English and the evidence, all processes and all the records of proceedings in the Court shall be in English.

(2) If any of the parties or witnesses in the inquiry does not understand English, then the proceedings shall be interpreted from English into the language understood by the parties or the witnesses concerned, as the case may be, and vice versa.

Oath of office for interpreter

17. Before any interpreter may interpret, he shall take an oath or make an affirmation in the following form—

"I, ...
(*Full names*)

do hereby swear/solemnly, sincerely and truly affirm and declare that whenever I may be called upon to perform the functions of an interpreter in an inquiry, I shall truly and correctly and to the best of my ability interpret from the language I am called upon to interpret into English and vice versa.".

Conduct of the inquiry

18.—(1) The Registrar or any other officer appointed by the Council for the purpose shall state the facts alleged against the respondent and shall call and examine such witnesses and produce such documentary evidence as he considers necessary to substantiate the charges and the respondent, if present, shall be given an opportunity to cross-examine such witnesses and to produce such oral or written evidence as he desires:

Provided that—

(*a*) no documentary evidence shall be used against a respondent unless not less than 48 hours before it is so used the copy thereof has been furnished to him or he has been given an opportunity to inspect it; and

(*b*) the Disciplinary Committee may refuse to admit any evidence which is not relevant to the complaint under consideration.

(2) If, during the course of inquiry, grounds for the framing of additional charges are disclosed, the Disciplinary Committee shall so inform the Registrar who shall follow the same procedure as was adopted in framing the original charges.

(3) The Disciplinary Committee, having inquired into the matter, shall deliberate thereon and make its decision in the absence of any unauthorized person including the Registrar and shall, not later than twenty-eight days after inquiry into the matter, forward to the Council its report thereon together with the record of the charges framed, the evidence given, the defence and any other matter relevant to the inquiry.

(4) The report of the Disciplinary Committee shall include—

(*a*) a statement whether in the opinion of the Disciplinary Committee the respondent has or has not committed the offence or offences charged and a brief statement of the reasons for its opinion;

(*b*) details of any matters which in the opinion of the Disciplinary Committee aggravate or alleviate the gravity of the case;

(*c*) a summing up and such comments as will indicate clearly the opinion of the Disciplinary Committee on the matter under inquiry; and

(*d*) the penalty, if any, recommended for infliction on the respondent.

Respondent to surrender licences and certificates

19. Where a respondent has been suspended by Council, he shall not later than fourteen days after being notified of the decision of the Council return licences or certificates, issued to him under the Act, by registered post or personal delivery to the Registrar.

Communication of decision

20. The Registrar shall communicate to the respondent the decision of the Council in writing and in either event the reason for the decision shall be given.

Restoration or lifting of suspension

21.—(1) Where the Council has inflicted on a respondent the penalty of suspension or cancellation of licence or certificate, the respondent may apply to the Registrar for lifting of suspension or restoration.

(2) The application under subrule (1) shall—

(*a*) be in writing; and

(*b*) contain names and addresses of at least two persons who are able and willing to attest to the character of the applicant and his manner of conducting the affairs of his practice.

Service of documents

22. Where under the provisions of these Rules, it is necessary either—

(*a*) to serve any notice, complaint or other document on any person; and

(*b*) to communicate any information to any person,

it shall be sufficient if such notice, complaint or other document, or a letter containing such information, is sent by registered post in a cover addressed to such person at his last known address.

Procedure in other cases

23. The procedure in cases not provided for in these Rules shall be such as the Disciplinary Committee may determine on reference of the cases being made to it.

Records

24.—(1) The Registrar shall keep a record of—

(*a*) any decision before the Disciplinary Committee;

(*b*) any evidence given before the Disciplinary Committee;

(*c*) any objection made to any evidence received or tendered;

(*d*) any on-the-spot inspection and any matter recorded as a result thereof; and

(*e*) the proceedings of the inquiry generally:

Provided that the Disciplinary Committee may direct that argument need not be recorded.

(2) Records of an inquiry shall be kept by such means, including handwritten notes, shorthand notes or electronic recording as the Disciplinary Committee may deem expedient.

(3) Handwritten notes, shorthand notes and electronic recordings shall be filed as part of the record after they have been certified as correct by the person who made them.

(4) A transcript of the notes or record or a part thereof may be made on request to the Disciplinary Committee upon payment of such fees as may be prescribed from time to time.

(5) After the person who made the transcription has certified it as correct, the transcript together with the handwritten notes, shorthand notes or electronic record shall be returned to the Registrar.

(6) The transcript of the handwritten notes, shorthand notes or electronic record certified as envisaged in subrule (5) shall be deemed to be correct until the contrary is proved.

SCHEDULE

rule 3 (2)

Form I

HEADED

Ref. No. Date: .....

Mr./Mrs./Miss: .....

.....

.....

.....

Dear Sir/Madam,

NOTICE OF DISCIPLINARY INQUIRY

In accordance with rule 3 (2) of the Nurses and Midwives (Disciplinary Inquiry) Rules, you are hereby informed that you are required to appear on ..... day of ..... at ..... before the Disciplinary Committee which is to inquire into an allegation made against you. The allegation is set out hereunder—

ALLEGATION

.....
.....
.....
.....
.....

PARTICULARS OF ALLEGATION

.....
.....
.....
.....

Your attention is drawn to the provisions of Part XII of the Nurses and Midwives Act to which it is important in your own interest that you immediately refer.

Dated ..... Signed .....
Registrar

FORM II rule 4 (2)

HEADED

Ref. No. Date: .....

Mr./Mrs./Miss: .....
.....
.....
.....

Dear Sir/Madam,

SUMMONS TO A WITNESS

In accordance with rule 4 (2) of the Nurses and Midwives (Disciplinary Inquiry) Rules, you are required to come to ..... on the ..... day of ..... at ..... o'clock in the ..... noon as a witness on behalf of .....

You are further required to bring with you the following documents and things—

(*a*) .....
.....
.....

(*b*) .....
.....
.....

If you do not come or bring the aforementioned documents or things you may be liable to be committed to prison for contempt.

Dated ..... Signed .....
Registrar

PUBLIC AUDIT

CHAPTER 37:01

Containing Pages 1–18

CHAPTER 37:01

PUBLIC AUDIT

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6 of 2003
G.N. 44/2003

An Act to reform the law relating to Public Audit

[8TH JULY, 2003]

PART I

PRELIMINARY

Short title

1. This Act may be cited as the Public Audit Act.

Interpretation

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

"agency" includes an office or instrument of the Government, other than a Ministry, Government Department or statutory body;

"Appropriation Act" means an Act of Parliament the principal purpose of which is the application of public moneys for such goods and services as are specified in the Act;

"Auditor General" means the person appointed as Auditor General under section 184 (3) of the Constitution and this Act, and is head of the National Audit Office;

"books and accounts" or "books or accounts" includes all books, accounts, rolls, files, vouchers, receipts, cheques, records, registers, papers, documents, photographic plates, microfilms, photo-static negatives, prints, tapes, disks, computer reels, diskettes and hard disk, perforated rolls, and any other type of written or electronic record whatsoever, and also includes all papers and other records relating to accounting operations and practice;

"Chairperson" means the Chairperson of the Committee;

"Committee" means the Public Accounts Committee of the National Assembly referred to under Part IV;

"Controlling Officer" means any person appointed by the President who is—

(*a*) the head or principal person in charge of a Ministry or Department; and

(*b*) charged with a duty to, or who actually does, collect, receive, disburse or deal in any way with any public money, or a person who is charged with the purchase, receipt, custody, or disposal of, or the accounting for, any public resources or public securities;

"document" means a document in any form, and includes—

(*a*) any writing, printing or images on any material; or

(*b*) any information recorded or stored by means of any tape-recorder, computer, diskette, tape or other device, and any material subsequently derived from information so recorded or stored; or

(*c*) any label, marking, or other writing that identifies or describes anything of which it forms part, or to which it is attached by any means; or

(*d*) any book, map, plan, graph, or drawing; or

(*e*) any photograph, film, negative, tape, or other device in which one or more visual images are embodied so as to be capable (with or without the aid of some other equipment) of being reproduced;

"Estimates" means the statement of the proposed public revenue and expenditure during any financial year, as approved by the National Assembly, through the passing of an Appropriation Act;

"generally accepted auditing practice" means—

(*a*) approved auditing standards as determined by the international community, and in particular those promulgated by the International Organization of Supreme Audit Institutions for application to the public sector and in so far as those standards apply in the application of this Act; and

(*b*) in relation to matters for which no provision is made in approved auditing standards, and which are not subject to any applicable rules of law, auditing policies, concepts or principles which may be regarded as appropriate in relation to the application of this Act and having the authoritative support of the auditing profession;

"Government contract" means any contract concerning the use of public resources or for the supply of goods, services or the execution of any works in consideration of any payment of public money or any money, and includes any sub-contract made in relation to such contract, whether or not the contract

or sub-contract has been wholly or partly performed or executed;

"Ministry" means a Ministry of Government, and includes a Government Department, or branch or division within a Ministry or Department, whether established by a written law or otherwise;

"National Assembly" means the National Assembly established under Part VI of the Constitution;

"National Audit Office" means that part of the Office of the Auditor General charged with the responsibility of audit under this Act;

"public expenditure" means the commitment or expenditure of public money, and includes—

(*a*) any loan obtained for or given by; or

(*b*) any public security provided to or by,

the Government, a Minister, Ministry or agency;

"public money" means all money, other than trust money, received by the Government, including all revenue, grants, loans and other moneys, and all bonds, debentures, and any other securities received by, or on account of, or payable to, or belonging to, or deposited with the Government or any Ministry by—

(*a*) any officer of Government in his capacity as such; or

(*b*) any person on behalf of Government;

"public resources" means all real and personal property that belongs to, or is owned or held, by the State or held by any Ministry, agency, statutory body or other person for and on behalf of the State or the Government, and includes long-term investment of the Government in statutory bodies;

"statutory body" means any body of persons, whether corporate or unincorporated, other than the Reserve Bank of Malaŵi, established by any written law, and includes an Assembly established under the Local Government Act, and any corporation or a subsidiary of a corporation where the Government, directly or indirectly—

Cap. 22:01

(*a*) controls the composition of any board of directors of the body; or

(*b*) controls more than 50 per cent of the voting power of the body; or

(*c*) holds more than 50 per cent of any of the issued share capital of the body either directly or through another agency or statutory body (excluding any part of it that carries no

right to participate beyond a specific amount in a distribution of either profits or capital).

(2) Where a document is held by a board, committee, subcommittee, or other body—

(*a*) which is established for the purpose of assisting or advising, or performing functions connected with any Minister, Ministry, agency or statutory body; and

(*b*) which is established in accordance with the provisions of any written law or by the Cabinet, a Minister, Ministry, agency or statutory body,

that document shall, for the purposes of this Act, be deemed—

(i) in any case where that body is established in respect of any Ministry, agency or statutory body, to be a document held by that Ministry, agency or statutory body; and

(ii) in any case where that body is established in respect of a Minister, to be a document held by that Minister.

(3) Where subsection (2) applies in respect of any body and that body is established for the purpose of assisting, advising, or performing functions conducted with any Ministry, agency or statutory body, that body shall for the purposes of this Act, be deemed to be part of that Ministry, agency or statutory body.

(4) A document held by an officer or employee of a Ministry, agency or statutory body in his capacity as such, or in his capacity as a statutory officer shall, for the purposes of this Act, be deemed to be held by the Ministry, agency or statutory body of which he is an officer or employee or statutory office holder.

(5) Any document held by any independent contractor engaged by any Minister, Ministry, agency or statutory body shall, for the purposes of this Act, be deemed to be held by the Minister, Ministry, agency or statutory body by whom the independent contractor is engaged.

Purpose of this Act

3. The purpose of this Act is to give effect to the principle of the accountability of the Government to the public through the National Assembly to—

(*a*) make available such information as will enable the National Assembly to be informed of the scrutiny of public expenditures, revenues, assets, liabilities and the management of public money;

(*b*) promote the accountability of Ministers of the State and Ministries where public expenditure, revenues, assets, liabilities and public money are concerned; and

(*c*) promote the accountability of agencies and statutory bodies in the management of public money, other money and the resources of such agencies and statutory bodies.

PART II
The Auditor General

Auditor General

4. The Auditor General shall be responsible for carrying out the duties and responsibilities conferred on him under the Constitution, this Act, or any other written law, and shall be responsible for the National Audit Office.

Appointment, qualifications, tenure, removal and salary of the Auditor General

5.—(1) The Auditor General shall be appointed in accordance with subsection (3) of section 184 of the Constitution.

(2) No person shall be appointed as Auditor General unless that person has formal relevant qualifications, significant experience in audit work and has and maintains no interest in the undertaking or outcome of any work required by this Act or the National Audit Office other than an interest in common with members of the public generally.

(3) The Auditor General shall have independence of office in accordance with subsections (7) and (8) of section 184 of the Constitution.

(4) In accordance with subsection (4) of section 184 of the Constitution, the Auditor General shall serve for a term of five years, and may be reappointed for such further term not exceeding five years as the President deems appropriate.

(5) No person shall be appointed or reappointed as Auditor General if he has attained or is over the age of sixty-five years.

(6) The Auditor General may only be removed from office by the President in accordance with subsection (6) of section 184 of the Constitution.

(7) The salary of the Auditor General shall be fixed by the National Assembly, and shall be a charge against the Consolidated Fund.

(8) The salary of the Auditor General fixed under subsection (7) shall be reviewed at two yearly intervals and shall not be reduced during his term of office.

Duties of the Auditor General

6.—(1) Without limiting any other written law and subject to subsection (2), the Auditor General shall undertake a programme of audits, and in accordance with section 7 (2), examine transactions, books and accounts, and other public records of every Ministry, statutory office, office, agency, board, commission

and bureau of the Government, and public funds received by a non-profit organization, including relevant international organizations.

(2) The Auditor General shall undertake an audit programme to review and approve the audited accounts of statutory bodies and conduct audits of any statutory body that has not had its financial statements audited by a firm of public auditors, and where the Auditor General does not approve the audited financial statements of a statutory body, he shall commence an independent audit of the statutory body within thirty days of rejecting the private audit report.

(3) The Auditor General shall audit and examine transactions, books and accounts, and other financial records associated with any project, programme, and other activity receiving funding in whole or in part from public moneys.

(4) Without limiting the general duties of the Auditor General under subsections (1) to (3), the Auditor General shall—

(*a*) monitor compliance with the requirements of any written law governing the management and control of public money and public resources;

(*b*) examine and review the estimates of revenue and expenditure of the Consolidated Fund, and other funds operated by the Government, accounts of Ministries, agencies, statutory bodies and other entities receiving public moneys;

(*c*) review and confirm the discharge of financial management obligations, including maintenance of accounting records and adequate controls in the accounting system, to ensure that Controlling Officers, Ministries, agencies and statutory bodies have complied with their financial management obligations under the law; and

(*d*) in reviewing financial management obligations, determine whether the procedures and systems of internal control of each Ministry, agency and statutory body does ensure—

(i) revenue is properly assessed and collected;

(ii) expenditure is validly and correctly authorized;

(iii) revenue, expenses, assets and liabilities are properly recorded and accounted for;

(iv) financial and operating information is reliable;

(v) assets are safeguarded against loss or destruction;

(vi) resources are employed and managed in an effective, economic and efficient manner;

(vii) there has been no waste or extravagance;

(viii) outcomes or provisions produced are consistent with those specified in any Appropriation Act;

(ix) relevant Government policies and legislation are being complied with;

(x) all expenditure is charged against the relevant allocation appropriated by the National Assembly; and

(xi) the accounts and records have been properly kept;

(*e*) arrange for all audits to be undertaken and confirm that such audits are completed to a standard consistent with generally accepted audit practice;

(*f*) pursue any concern that arises in respect of the management of public resources which, in the Auditor General's opinion, justifies further investigation;

(*g*) perform follow-up audits when the Auditor General considers it appropriate; and

(*h*) carry out such other audits or reviews as may, from time to time, be necessary.

(5) Subject to agreement of priorities and the allocation of budgeted funds and resources for this purpose, the Auditor General shall—

(*a*) assist the Committee in its scrutiny of adherence to any written law dealing with the administration and management of public money and public property;

(*b*) assist the Committee to discharge its obligations, functions and responsibilities under section 19, including—

(i) conducting audits, reviews, investigations and inquiries into matters referred to the Auditor General by the Committee;

(ii) furnish the Committee with such information, analysis, appraisals, recommendations and advice that will assist in the performance of the duties and functions of the Committee;

(iii) consider issues and recommendations contained in the report of the Committee to Parliament and other audit reports concerning Ministries, agencies, statutory bodies and ministerial offices and, where applicable, take the appropriate follow-up action; and

(iv) ensure that every reference to the Auditor General by the Committee shall contain specific terms upon which the Auditor General shall be expected to undertake any audit, review, investigation or inquiry.

Powers of the Auditor General

7.—(1) For the purpose of fulfilling the functions and duties lawfully conferred or imposed on the Auditor General, the Auditor General and every person authorized by him—

(*a*) shall have full access at all reasonable times to all documents, books and accounts, public funds, public securities, Government contracts and books and accounts relating thereto and subject to audit, and to any place where they are kept;

(*b*) may require any person to supply any information or answer any questions relating to documents, books and accounts, money, or operations subject to audit and examination by the Auditor General;

(*c*) may, by notice in writing, require any person having possession or control of any documents, books and accounts subject to audit and examination by the Auditor General to deliver all or any of them, at a time and place and to such person specified in the notice;

(*d*) may inspect, measure or test any real or personal property to which any Government contract relates; and

(*e*) may enter any land, building, or place, other than a dwelling-house, where a Government contract is being performed that is subject to audit and examination by the Auditor General.

(2) The Auditor General may, if required in order to perform his duties under this Act, by written request require for examination, documents, books and accounts from any person or entity who is for the time being liable for the payment of any money to the Government, or any royalties under any lease or licence.

(3) The Auditor General shall have all such other powers as are conferred by this Act or any other written law.

Power to summon

8.—(1) The Auditor General may by subpoena summon any person to appear at a reasonable time before him and administer an oath to such person, and further may question such person, under oath, regarding receipts and expenditures of money and any other reasonable and relevant matters necessary for the execution of the duties vested in the Auditor General by this Act.

(2) The Auditor General may issue a subpoena within a reasonable time requiring the production of books or accounts, records, documents, or other relevant financial papers or objects necessary for the performance of his duties.

(3) Any subpoena issued under the authority of the Auditor General pursuant to subsections (1) and (2), shall be—

(*a*) in the name of the Auditor General of Malaŵi, and a copy provided to the Solicitor General before it is served; and

(*b*) signed by the Auditor General and shall identify the witnesses to be served or the books or accounts, records, documents, or other relevant financial papers or objects to be produced together with a reference to the account subject to inspection or audit.

(4) Any officer to whom a subpoena is directed shall forthwith serve or execute the same upon delivery of it to him.

(5) Any person who willfully fails or refuses to appear upon receiving service of a subpoena, or who willfully fails or refuses to produce any books or accounts, records, documents, or other relevant financial papers or objects designated in a subpoena properly issued by the Auditor General, shall be guilty of an offence.

(6) Any failure by the Auditor General to comply in any material aspects with the requirements of this section shall relieve any person of the obligation to appear or the obligation to produce designated materials, and such failure shall be a defence in any proceedings against such person.

(7) Any person subject to a subpoena under this section shall have only those privileges against producing books or accounts, records, documents, or other relevant financial papers or objects which are authorized under the rules of evidence of the High Court as applied in Malaŵi, the Constitution or any other applicable law.

No civil liability

9. Neither the Auditor General nor any employee of the National Audit Office shall have any civil liability for any act or omission done in good faith in the course of his duties and functions under this Act.

Contracting out audits and purchasing services

10.—(1) The Auditor General may, as he thinks fit, contract out to any other person or organization of established competence and reputation any of the activities of the Auditor General under this Act.

(2) The Auditor General shall in any one financial year contract out sufficient number of the audits of the Auditor General in order to ensure that all his responsibilities are being carried out efficiently.

(3) The Auditor General shall contract out audits of a specialized nature that require particular expertise where the National Audit Office does not possess that expertise.

(4) Any person or organization appointed in accordance with subsections (1) and (2) shall, after consultation with the Auditor General, but before commencement of the work, agree with the Auditor General upon a fee, which represents a reasonable charge for the work to be undertaken.

(5) The Auditor General may second or employ on contract any person to assist him in undertaking any audit or review of a specialized nature.

Conduct of audits

11.—(1) In carrying out all audits the Auditor General shall, where appropriate, express an opinion on the reliability of the information contained in statements produced under any written law governing the management and control of public money and public resources and shall ensure—

(*a*) that the audit is properly specified, planned and managed, so as to ensure that the audits are completed to the required standard in the time specified;

(*b*) that all audits contracted out to a person or organization in accordance with section 10 shall include an agreement as to all the necessary terms and conditions of that audit;

(*c*) that the audit is the subject of a formal opinion and report which shall include a statement that generally accepted auditing standards have been complied with; and

(*d*) that the Auditor General shall remain responsible to ensure that audits contracted out under section 10 are undertaken in accordance with the provisions of this Act.

(2) The Auditor General and employees of the National Audit Office shall have all such other functions and duties as are lawfully conferred upon that person.

(3) All provisions relating to auditors contained in any written law concerning provisions and regulation of companies and corporations shall not derogate from the functions, duties and powers of the Auditor General under this Act.

Incompatible functions

12.—(1) Neither the Auditor General nor any employee of the National Audit Office shall undertake, perform or engage in any duty or function that is inconsistent with the performance by him of the duties or functions imposed on him under this Act.

(2) Neither the Auditor General nor any employee of the National Audit Office shall hold any other public office or other Government position while holding the position of Auditor General or employed in the National Audit Office, as the case may be.

Procedures

13.—(1) The Auditor General shall, subject to the provisions of this Act, establish, review and regulate the procedures of his office in accordance with generally accepted auditing practice.

(2) The Auditor General shall maintain a continual programme of audits and reviews, which will provide for the regular and systematic review of all Ministries, agencies and statutory bodies.

PART III
Reporting

Reporting

14.—(1) The Auditor General shall separately report to the Controlling Officer, head of an agency, statutory body or other affected person in respect of any matters that may relate to an audit, review, investigation or inquiry, and may require that person to respond to the Auditor General within fourteen days of receiving the report.

(2) The Auditor General shall in the annual report, or in any other report which the Auditor General may elect to provide to the President or the Speaker of the National Assembly, make such recommendations as the Auditor General deems appropriate.

Annual reports

15.—(1) Without limiting the right to report at any other time, the Auditor General shall by 31 December of each year forward to the President and to the Speaker of the National Assembly, a report containing such information relating to the audits and reviews undertaken under this Act or any other written law as the Auditor General deems appropriate, together with such other information as the Auditor General considers desirable.

(2) Without limiting the generality of subsection (1), the Auditor General shall provide in the report required under subsection (1) a signed statement in respect of every account of a Ministry, agency, statutory body or other organization audited that shall—

(*a*) comment on the audit undertaken, containing such information as will fairly disclose the compliance by the Ministry, agency, statutory body or organization with the matters referred to in section 6, together with such other information and comments relating thereto as the Auditor General thinks fit; and

(*b*) a statement or statements containing such matters as the Auditor General thinks fit relating to—

(i) any accounts or transactions that are required to be audited under this Act; or

(ii) the performance or exercise by the Auditor General of any of the functions, duties, or powers under this Act or any other written law.

(3) The Speaker of the National Assembly shall, when the National Assembly is in session, forthwith present the report referred to under subsection (1) to the members of the National Assembly and give the members the opportunity to comment on the report, and where the National Assembly is not in session the Speaker shall forthwith present the report to the members at the

start of the next ensuing session of the National Assembly and give the members the opportunity to comment on the report.

Auditor General may communicate with the President and others

16.—(1) The Auditor General may communicate with the President, a Controlling Officer or any other person upon any matter which is the subject to audit, review, investigation or inquiry.

(2) The Auditor General may report to the responsible person the name of any person failing to comply with the requirements of this Act or any other written law, or of any failure by any person to comply with the recommendations or otherwise address the concerns that the Auditor General has raised in any report.

Budget support

17. The National Assembly shall appropriate sufficient moneys, on a timely basis, to enable the effective and efficient operation of the Auditor General and the National Audit Office.

PART IV
The Public Accounts Committee

Purposes and objectives

18. The purposes and objectives of this Part are to give effect to the principle of the accountability of Government to the public, acting through the Public Accounts Committee (in this Act otherwise referred to as the "Committee"), by—

(*a*) making available such information as will enable the National Assembly to be informed of the management of public expenditure, public money and public resources;

(*b*) promoting the accountability of Ministers and members of the National Assembly, where public expenditure, public money and public resources are concerned;

(*c*) holding accountable Ministries, agencies and other entities controlled by Government for the lawfulness, economy, efficiency and effectiveness with which they use public money and public resources; and

(*d*) promoting the accountability of statutory bodies and those other persons charged with the management of public money and public resources.

Functions of the Committee

19.—(1) The functions of the Committee are—

(*a*) to examine and report to the National Assembly on the financial statements of the Government generally; and in particular to examine and report on the financial statements of the Government in the light of the outputs proposed and the performance criteria in the relative Estimates, together with

each statement and report of the Auditor General presented to the National Assembly;

(*b*) to examine and report to the National Assembly on the financial statements of statutory bodies;

(*c*) to examine and report to the National Assembly on the transactions and financial statements of any body other than a Ministry or Government Department or statutory body for whose purposes a specified sum of money, or a sum not exceeding a specified sum, has been appropriated by the National Assembly by way of grant, subsidy or loan or to which a grant, subsidy or loan has been made out of the Consolidated Fund (but only so far as it relates to the application of the money appropriated or granted or lent for that purpose);

(*d*) to report to the National Assembly, with such comments as it thinks proper, any items or matters in any financial statements and reports or any circumstances connected with them, to which the Committee is of the opinion that the attention of the National Assembly should be directed, and to report to the National Assembly any alteration that the Committee thinks desirable—

(i) in the form of the annual Estimates or financial statements;

(ii) in the method of accounting for Government financial transactions;

(iii) in the method of collection, receipt, expenditure or issue of public moneys; or

(iv) for the receipt, custody, disposal, issue or use of public resources;

(*e*) to inquire into any question in connexion with the financial management of the Government that is referred to it by the National Assembly, and to report to the National Assembly on the question;

(*f*) to pursue any concerns that the Committee believes are justified; and

(*g*) to undertake such other duties as are assigned to the Committee by the Standing Orders.

(2) Any member of the National Assembly may move for a question in connexion with the financial management of the Government to be referred to the Committee and for the Committee to report back on that question to the National Assembly by an agreed date.

Powers of the Committee

20.—(1) For the purpose of fulfilling any function or duty lawfully conferred or imposed on it, the Committee—

(*a*) shall have full access at all times to Government records relating to revenue and expenditure, public money and public resources which are relevant to any inquiry;

(*b*) may, by notice in writing signed by the Chairperson of the Committee, require any person having possession or control of any Government records relating to revenue or expenditure, public money or public resources to deliver to the Committee at a time and place specified in the notice, all or any such records; and

(*c*) may cause extracts to be taken from any Government records relating to revenue and expenditure, public money or public resources without the payment of any fee.

(2) No member of the Committee shall have any civil liability for any act or omission done in good faith under this Part.

Sittings to be in public except in certain cases

21.—(1) Subject to subsections (2) to (4), the Committee shall take all evidence in public.

(2) The Committee may, of its own volition, or at the request of any witness, take the evidence, oral or documentary, of that witness in private where the Committee is of the opinion that the evidence relates to a secret or confidential matter.

(3) Where, pursuant to subsection (2), evidence is taken by the Committee in private, no person, including a member of the Committee, may, without the authority of the Committee, disclose or publish the whole or a part of that evidence, other than evidence that has already been lawfully published.

(4) A person who discloses or publishes evidence in contravention of subsection (3) is guilty of an offence and on conviction is liable to a fine of K50,000 and imprisonment for two years.

Evidence before the Committee Cap. 2:04

22. Part III of the National Assembly (Powers and Privileges) Act shall apply to meetings of the Committee.

Reports of the Committee

23.—(1) In addition to the reports required by section 19 (1) (*a*) and (*b*), the Committee shall at least twice in every year prepare a written report signed by the Chairperson of the Committee on all matters considered by the Committee.

(2) Every report, including every interim report, shall be submitted to the Controlling Officer of a Ministry, head of a statutory body or organization, or Minister affected thereby, who may add comments thereto within seven days of receiving the report.

(3) The Committee shall forward the report, together with the comments made under subsection (2) to the Speaker of the National Assembly who shall forthwith present it to the National Assembly if the Assembly is in session, and if not, at the start of the next ensuing session.

(4) The Committee shall in each of its reports indicate the dissenting views of a member if that member so requests.

(5) Except in the performance of the duties, functions and powers conferred by this Act or by Standing Orders on the Committee or a member of the Committee, it shall not be lawful for the Committee or any member of the Committee to disclose to any person any information that shall come to the attention of the Committee or member of the Committee pursuant to this Act, and all such information shall remain confidential.

Assistance generally

24.—(1) It shall be the duty of every Minister, and every person in control of, employed in or engaged by every Ministry, Department, agency or statutory body, and every agent thereof to give assistance to the Committee and to every member acting on behalf of the Committee.

(2) The Committee shall be entitled to enlist the assistance of any person, authority or organization in the performance of its functions, duties and powers.

PART V
Miscellaneous

Confidentiality

25. Except than in the performance of the duties, functions and powers conferred by this Act or by any other written law on the Auditor General or employee of the National Audit Office, the Auditor General or any employee shall not disclose to any person any information that shall come to the attention of the Auditor General or employee of the National Audit Office pursuant to this Act, and all such information shall remain confidential.

Reference to relevant Bills

26. The Auditor General shall have the right to review and comment on any Bill that affects his office and when doing so shall provide his comments in writing to the Minister responsible for the introduction of the Bill and to the Speaker of the National Assembly who shall present the same to the National Assembly at the first reading of the Bill.

Fees for audits

27.—(1) The Auditor General may, with the approval of the Minister responsible for finance, charge a fee for undertaking specified audits, reviews, inquiries or examinations.

(2) Any fee charged for an audit, review, inquiry or examination pursuant to subsection (1) shall be based on full cost recovery.

External audit

28.—(1) There shall be conducted by competent public auditors appointed by the Committee, an annual audit of the financial statements of the National Audit Office, and the audit report together with the annual financial statements shall be forwarded to the Speaker of the National Assembly not later than six months from the end of the financial year to which they relate, and the Speaker shall present them to the National Assembly forthwith if the National Assembly is in session, and if the National Assembly is not in session, at the start of the next ensuing session.

(2) The cost of the external audit under subsection (1) shall be charged to a separate appropriation under the vote of the Auditor General.

Offences

29.—(1) A person commits an offence who—

(*a*) refuses to attend at a time and place required by the Auditor General in accordance with this Act;

(*b*) refuses to produce any document in that person's possession or under that person's control when required to do so under this Act;

(*c*) refuses to answer any question by any person lawfully entitled to do so under this Act;

(*d*) makes any statement or declaration or gives any information, certificate or document required by this Act knowing it to be false or misleading;

(*e*) resists, obstructs, deceives or attempts to deceive the Auditor General or any employee of the National Audit Office in the discharge of his functions, duties or powers under this Act; and

(*f*) aids, abets, counsels or procures the commission of an offence under this Act.

(2) A person who commits an offence against this section is liable on conviction—

(*a*) in the case of an individual, to a fine of K50,000 and imprisonment for two years, and if the offence is a continuing one, to a further fine not exceeding K10,000 for every day that the offence continues; or

(*b*) in the case of a body corporate (including a statutory body), to a fine of K100,000 and if the offence is a continuing one to a further fine of K20,000 for every day that the offence continues.

(3) Where the body corporate commits an offence under this Act, every director, secretary or other officer of a body corporate and every person purporting to act in such capacity shall also be guilty of an offence unless that person satisfies the Court that either—

(*a*) the offence was committed without that person's knowledge, consent or not through that person's gross negligence; or

(*b*) that person took all reasonable steps to prevent the commission of the offence.

Regulations

30.—(1) The Minister responsible for finance may, on the recommendation of the Auditor General, make all such regulations as may be necessary or expedient for giving full effect to the provisions of this Act and the due administration thereof.

(2) Any regulations made pursuant to subsection (1) may prescribe offences against contravention of the regulations for which the penalty shall not exceed K20,000 and imprisonment for twelve months.

Transitional

31.—(1) The person holding office as Auditor General immediately before the commencement of this Act shall continue to hold office as the Auditor General in accordance with the provisions of this Act.

(2) Every person holding office as an officer or employee of the National Audit Office immediately before the commencement of this Act shall continue to hold office as an officer or employee of the National Audit Office upon the same terms and conditions of employment, in accordance with the provisions of this Act.

(3) Every audit, review, investigation, inquiry or examination undertaken or being undertaken by the Auditor General on or before the commencement of this Act shall continue to have effect or be undertaken by the Auditor General in accordance with the provisions of this Act.

Repeal and savings
Cap. 37:01

32.—(1) Part VI of the Finance and Audit Act is repealed.

(2) All subsidiary legislation made under Part VI of the Finance and Audit Act repealed by subsection (1) and in force immediately before the commencement of this Act, shall so far as it is not inconsistent with the provisions of this Act, continue in force as if made under this Act.

PUBLIC FINANCE MANAGEMENT

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7 of 2003
14 of 2006
G.N. 45/2003

An Act to foster and enhance effective and responsible economic and financial management by Government, including adherence to policy objectives; to provide accompanying accountability arrangements together with compliance with those arrangements; to require the Government to produce statements of proposed budget policy, confirmation of adherence to fiscal discipline, economic and fiscal statements, including economic and fiscal forecasts and updates, and performance information, including comprehensive financial statements; and for matters connected therewith and incidental thereto

[8TH JULY, 2003]

PART I

PRELIMINARY

Short title

1. This Act may be cited as the Public Finance Management Act.

Interpretation

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

"Appropriation Act" means an Act of Parliament the principal purpose of which is the application of public moneys for such goods and services as are specified in the Act;

"bank" means—

(*a*) a financial institution whose operations include the acceptance of deposits subject to withdrawal or transfer by cheque or other means of third party transfer; and

(*b*) any financial institution in Malaŵi or outside Malaŵi in which any public money is deposited or kept in accordance with the provisions of this Act, and includes an international financial institution;

"Cabinet" means the Cabinet of Ministers appointed in accordance with section 92 of the Constitution;

"chief executive" means the head, however called, of a statutory body;

"Consolidated Fund" means the Consolidated Fund established by section 172 of the Constitution;

"Controlling Officer" means any person appointed by the President who is—

(*a*) the head or principal person in-charge of a Ministry or Department; and

(*b*) charged with a duty to, or who actually does collect, receive, disburse or deal in any way with any public money, or a person who is charged with the purchase, receipt, custody, or disposal of, or the accounting for, any public resources or public securities;

"Estimates" means the statements of the proposed public revenues and expenditure in any financial year as approved by the National Assembly through the passing of an Appropriation Act;

"expenditure" means the actual payment of moneys by Government, whether requited or unrequited and whether for current or capital transactions;

"financial statements" means the financial statements required under Part IX and the Third Schedule;

"financial year" means—

(*a*) in relation to the Government and Government financial statements, a period of twelve months ending on 30th June; and

(*b*) in relation to a statutory body, the annual accounting period of the statutory body;

"generally accepted accounting practice" means—

(*a*) standards and practices promulgated by the International Federation of Accountants as applicable to Governments and statutory bodies; or

(*b*) if no standard or practice exists, then accounting principles or practices which have the authoritative support of the accounting profession in Malaŵi or in countries that maintain accounts and records and prepare financial statements similar to the Government of Malaŵi and its statutory bodies;

"Government" means the executive Government of Malaŵi established under Chapter VIII of the Constitution;

"Government agency" or "agency" means an office, entity or instrument of the Government, other than a Ministry, or statutory body;

"grants" means—

(*a*) non-repayable receipts from other Governments, international institutions or domestic institutions or individuals; or

(*b*) non-repayable payments made by the Government to other Governments, international institutions or domestic institutions or individuals;

"imprestee" means a person in whose hands any public money is placed for expenditure;

"internal control" includes the controls adopted to ensure that within Government—

(*a*) revenue is properly assessed and collected;

(*b*) expenditure is validly and correctly authorized;

(*c*) revenue, expenditure, assets and liabilities are properly recorded and accounted for;

(*d*) financial and operating information is accurate and reliable;

(*e*) assets are safeguarded against loss or destruction;

(*f*) public resources are employed and managed in an effective, economic and efficient manner;

(*g*) there is no waste or extravagance with respect to public resources;

(*h*) outcomes or provisions produced are consistent with those specified in an Appropriation Act;

(*i*) relevant Government policies and legislation are being complied with; and

(*j*) there is effective and efficient management of the financial resources of Government;

"National Assembly" or "Assembly" means the National Assembly established under Chapter VI of the Constitution;

"National Audit Office" means that part of the office of the Auditor General charged with the responsibility of audit;

"officer" includes an officer, a contract officer and an employee of the Public Service of Malaŵi ;

"outcomes" mean the impacts or consequences for the people of Malaŵi of the outputs or activities of Government or the results of the outputs produced;

"outputs" means the goods and services that are produced by a Ministry or other person or body who receives an appropriation;

"personal emoluments" includes salaries, wages, fees, contract payments for the provision of personal services, and taxable allowances, but does not include any payment in the nature of reimbursement for expenses incurred;

"public debt" means all liabilities of the Executive Government and other branches of Government, but does not include liability where the Government is trustee for another person, or the liabilities of any statutory body;

"public interest" means something that is to the advantage, direct or indirect, of the people of Malaŵi ;

"public money" means all money, other than trust money, received by the Government, including all revenue, grants, loans and other moneys, and all bonds, debentures, and any other securities received by, or on account of, or payable to, or belonging to, or deposited with the Government or any Ministry by—

(*a*) any officer of Government in his capacity as such; or

(*b*) any person on behalf of Government;

"public resources" means all real or personal property that belongs to or is owned or held by the State or held by any Ministry, agency or other person for and on behalf of the State or the Government;

"public securities" means securities representing the investment, or securing the payment, of any public money;

"records" means information recorded and kept by any means, and includes all books, accounts, rolls, files, vouchers, receipts, cheques, records, registers, papers, documents, photographic plates, microfilms photostatic negatives prints, tapes, disks, computer reels, diskettes and hard disk, perforated rolls, and any other type of written, printed, copied, magnetic tape, electronic data record or other information whatsoever, and all papers and other records relating to accounting operations and practice or information recorded and kept by any means;

"revenue" means all non-repayable Government receipts;

"Secretary to the Treasury" means the Principal Secretary having supervision for the time being of the Ministry of Finance;

"State" means the independent State of Malaŵi, established under the Constitution and includes the Government;

"statutory body" means a body of persons, whether corporate unincorporated, other than the Reserve Bank of Malaŵi,

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established by any written law, and includes a Council established under the Local Government Act, and any corporation or a subsidiary of a corporation where the Government, directly or indirectly—

(*a*) controls the composition of any board of directors of the body; or

(*b*) controls more than fifty per cent of the voting power of the body; or

(*c*) holds more than fifty per cent of any of the issued share capital of the body either directly or through another agency or statutory body (excluding any part of it that carries no right to participate beyond a specific amount in a distribution of either profits or capital);

"statutory expenditure" means—

(*a*) expenditure which is not subject to the vote of the National Assembly; and

(*b*) expenditure charged on the Consolidated Fund under the provisions of the Constitution or charged on the Consolidated Fund or any other public fund or account by any other written law in which it is expressly stated to be statutory expenditure;

"trading revenue" means the revenue received from the supply of goods or services in a contestable environment;

"transactions on behalf of the State" or "payments on behalf of the State" means the categories of appropriations listed in section 23 (3) (*c*), (*d*) and (*e*);

"Treasury Instructions" means Treasury Instructions issued under section 92;

"trust account" means a trust account established under section 41;

"Trust Fund" means the Trust Fund established under section 41;

"unclaimed money" means unclaimed money defined under section 44;

"Vote" means a sum of money authorized to be spent under section 23 (2).

PART II

Responsibility for Financial Management

General responsibilities of the Minister

3.—(1) The Minister is responsible to the Cabinet and to the National Assembly for—

(*a*) the preparation and presentation of economic and fiscal policy in accordance with this Act;

(*b*) ensuring adequate procedures, internal controls and guidelines exist for the use of public money and public resources; and

(*c*) the compliance by the Ministry of Finance with its responsibilities under this Act.

(2) When submitting the draft Estimates to Cabinet the Minister shall provide—

(*a*) a detailed assessment of the economic and fiscal impact of the projected revenue in relation to the projected expenditure contained in the Budget Policy Statement required under section 15; and

(*b*) where appropriate, details of options to change the draft Estimates including details of possible changes in Government expenditure and programmes to make them compatible with the Budget Policy Statement.

Specific responsibilities of the Minister

4. The Minister is responsible for—

(*a*) the formulation of economic and fiscal policy of the Government of Malaŵi, and for the financial management of ongoing operational activities, both annually and for such longer periods as he considers appropriate, specifying agreed policies, outcomes and outputs to be achieved, and taking into account the views of prior policy consultations;

(*b*) the preparation of the annual draft Estimates and such other Estimates as may be necessary and overseeing their implementation on behalf of the Government;

(*c*) the supervision of the finances, assets and liabilities of the State so as to ensure that a full accounting is made to the National Assembly of all transactions involving public moneys or the disposition of public resources;

(*d*) the oversight of the finances of statutory bodies; and

(*e*) the publication in the *Gazette* and by whatever other means he considers appropriate, of information as to economic plans and projects approved by the National Assembly or Government and the progress made in their implementation.

Minister may delegate powers

5.—(1) Subject to subsection (2), the Minister may in writing delegate his powers under this Act where he is unable, for the time being, to exercise those powers.

(2) The Minister shall not delegate any power under subsection (1) where this Act prohibits the power of delegation.

(3) The responsibility of the Minister under this Act shall not be derogated merely by his having exercised his power of delegation under this section.

General responsibilities of Ministers

6.—(1) Each Minister of Government is responsible to Cabinet and the National Assembly for ensuring that Controlling Officers coming within the area of the assigned responsibilities of the Minister comply with their responsibilities under this Act for the effective and efficient financial management of all public money and public resources under their control.

(2) Each Minister shall ensure that all estimates of revenue and expenditure provided from entities that comprise the assigned responsibilities of the Minister are realistic, practicable and fully consistent with the budget policy statement of the Government published under section 15.

(3) Each Minister shall ensure that the financial management of the public money and public resources that are allocated to the assigned responsibilities of the Minister in an Appropriation Act achieves the objectives and outputs approved for each vote.

(4) Each Minister shall ensure compliance with all reporting responsibilities coming within the assigned area of responsibility of the Minister under this Act.

Secretary to the Treasury

7.—(1) There shall be the office of Secretary to the Treasury, who shall be the principal financial adviser to the Government and the administrative head of Treasury, responsible for the administration of this Act.

(2) The Secretary to the Treasury shall report and is responsible to the Minister for compliance by Treasury with its obligations under this Act.

Specific responsibilities of the Secretary to the Treasury

8. In addition to the responsibilities of Controlling Officers set out in section 10 (with the necessary modifications to paragraphs (k) and (o) in subsection (1)), the Secretary to the Treasury is responsible for—

(*a*) providing economic, fiscal and financial advice to and assisting the Minister in presenting the draft Estimates, supplementary Estimates and periodic and annual financial statements for Government;

(*b*) setting policies, practices and procedures for all financial management;

(*c*) providing the information required by this Act in accordance with generally accepted accounting principles;

(*d*) monitoring the accounting systems for Government;

(*e*) coordinating and monitoring systems of financial management, internal control and reporting in all Government ministries;

(*f*) exercising and maintaining control and direction of all matters relating to the financial management of the Government in accordance with Government policy as communicated by the Minister; and

(*g*) collection of revenue owing to the State.

Secretary to the Treasury may delegate powers

9.—(1) Subject to subsection (2), and excepting his powers under Part VII, the Secretary to the Treasury may in writing delegate to a senior officer of Treasury his powers under this Act so as to ensure the effective and efficient operation of the Treasury, or where he is unable, for the time being, to exercise any powers under this Act.

(2) The Secretary to the Treasury shall not delegate any power under subsection (1) where this Act prohibits the power of delegation.

(3) The responsibilities of the Secretary to the Treasury under this Act shall not be derogated merely by his having exercised his power of delegation under this section.

Responsibilities of Controlling Officers

10.—(1) Each Controlling Officer is responsible for ensuring that, in relation to his Ministry—

(*a*) the provisions of this Act are complied with;

(*b*) advice on financial management is provided to the responsible Minister;

(*c*) all accounts and records relating to the functions and operations of the Ministry are properly maintained;

(*d*) all necessary precautions are taken to safeguard the collection and custody of public money;

(*e*) all expenditure, including salaries and other personal emoluments, is properly authorized and applied to the specific purposes for which it is appropriated;

(*f*) there is no over-expenditure or over-commitment of funds and a review is undertaken each month to ensure that there is no such over-expenditure or over-commitment;

(*g*) the collection of public moneys is according to approved plans and the Estimates;

(*h*) all expenditure is incurred with due regard to economy, efficiency and effectiveness and the avoidance of waste;

(*i*) all necessary precautions are taken to safeguard public resources;

(*j*) any tax, duty, fee, levy or other charge imposed by legislation for which the Ministry is responsible is collected promptly and to the fullest extent;

(*k*) any tax, duty, fee, levy or other charge imposed by legislation for which the Ministry is responsible is reviewed and reported upon in the format specified by the Secretary to the Treasury or in Treasury Instructions at least once in each year in order to establish—

(i) whether the level of such tax, duty, fee, levy or other charge is adequate; and

(ii) whether such tax, duty, fee, levy or other charge should be varied and, if so, by what amount;

(*l*) any proposal to charge for the supply of goods or services confirms that the charge is consistent with the economic and fiscal policy of the Government;

(*m*) any financial information required by any Standing Committee of the National Assembly is submitted to that Committee accurately and promptly;

(*n*) estimates and forecasts in respect of collection and expenditure of public moneys are prepared in the format specified in Treasury Instructions;

(*o*) after the first six months of each financial year and at such other times as required by the Secretary to the Treasury he shall submit reports, as may be specified in Treasury Instructions, of the management of funds provided for the achievement of the outputs of the Ministry and the collection of revenues;

(*p*) an effective system of internal control is developed and maintained and, unless the Secretary to the Treasury approves otherwise in circumstances provided for in Treasury Instructions, an effective internal audit function is developed and maintained; and

(*q*) all officers in his Ministry are aware of their duties and responsibilities under this Act and any other written law for which the Ministry is responsible.

(2) The responsibility of a Controlling Officer under subsection (1) is not derogated or reduced by reason of any delegation of functions by him to another person.

(3) Responsibilities other than those listed in subsection (1) may be conferred or imposed on a Controlling Officer by this or any other Act.

(4) A Controlling Officer in breach of his responsibilities under this section is liable to disciplinary action under section 87.

Access to information

11.—(1) The Secretary to the Treasury has power—

(*a*) to obtain full and free access at all times to all accounts and records of Controlling Officers that relate, directly or indirectly, to—

(i) the collection, receipt, expenditure, issue or use of public money; and

(ii) the receipt, custody, disposal, issue or use of public resources,

and to inspect and inquire into and call for any information arising from, those accounts and records; and

(*b*) where he has reason to believe that a Controlling Officer has been or may have been in breach of this Act, recommend to the Secretary of the Office of the President and Cabinet that the Controlling Officer be suspended from all financial duties and responsibilities, pending an investigation.

(2) In the exercise of his powers under this section, the Secretary to the Treasury may appoint any person by writing under his hand to inquire into and report to him on any matter or matters specified in the instrument of appointment.

PART III
Economic, Fiscal and Financial Policy

Principles of responsible fiscal management

12.—(1) Subject to subsection (4), the Government shall pursue its policy objectives in accordance with the principles of responsible fiscal management specified in subsection (2).

(2) The principles of responsible fiscal management are—

(*a*) managing total public debt at prudent levels so as to provide a buffer against factors that may impact adversely on the level of total public debt in the future;

(*b*) ensuring that within any borrowing programme the total overall expenditures of the State in each financial year is in the public interest and designed to achieve long-term fiscal stability;

(*c*) achieving and maintaining levels of the State's net worth that provide a buffer against factors that may impact adversely on the State's net worth in the future;

(*d*) managing prudently the fiscal risks facing the State;

(*e*) pursuing policies that are consistent with a reasonable degree of predictability about the level and stability of tax rates for future years; and

(*f*) agreement of Government on the fiscal limits that will apply to the current and future financial expenditure on Ministries and Government projects.

(3) The Government may depart from the principles of responsible fiscal management specified in subsection (2) only in cases of exceptional circumstances, and when the Government does so—

(*a*) any such departure shall be temporary;

(*b*) the Minister shall specify—

(i) the detailed reasons for the Government's departure from those principles, including justification of those exceptional circumstances;

(ii) the approach the Government intends to take to return to those principles; and

(iii) the period of time that the Government expects to take to return to those principles.

(4) Where such exceptional circumstances arise which force a departure from the principles of responsible fiscal management specified in subsection (2) during the financial year, those exceptional circumstances shall be disclosed to the National Assembly forthwith if the Assembly is in session, and if not, at the commencement of the next ensuing session, and the exceptional circumstances shall also be included in the next ensuing economic and fiscal update.

Generally accepted accounting practice

13. Financial reports, financial statements, associated information and accounting procedures required by this Act shall be in accordance with generally accepted accounting practice.

Economic and fiscal policy statement

14.—(1) The Minister shall submit to the National Assembly and publish, not later than 1st April of each year, an economic and fiscal policy statement for the financial year commencing on 1st July after publication, and forecasts for the two years following that financial year, and the economic and fiscal policy statement shall—

(*a*) specify the economic and fiscal policy that the Government will follow in all economic and fiscal dealings, and disciplines that the Government will adhere to;

(*b*) specify or re-affirm the Government's long-term fiscal policy objectives and in particular, provide for the principal variables specified in sections 18 and 19;

(*c*) specify the broad strategic priorities by which the Government will be guided in preparing the Estimates for that fiscal year; and

(*d*) indicate by appropriate means the Government's intentions regarding the variables specified in sections 18 and 19.

(2) The economic and fiscal policy statement shall also—

(*a*) assess the extent to which the objectives, priorities, and intentions referred to under subsection (1) are consistent with the requirement to produce a fiscally responsible budget under section 12 (2) (*b*); and

(*b*) assess the consistency of the objectives, priorities, and intentions referred to under subsection (1) with the objectives, priorities, and intentions indicated in the immediately preceding economic and fiscal policy statement, or, if amended, the amended statement and, where these are not consistent, justify the difference.

(3) Any member of the public may, within twenty-eight days of the economic and fiscal policy statement being published, deliver in writing to the office of the Minister any submission that that person may have in respect of that statement.

Budget policy statement

15.—(1) The Minister shall lay before the National Assembly, with the Estimates, a written budget policy statement.

(2) The budget policy statement shall include—

(*a*) a budget message, which shall include such supporting financial, statistical, output performance, and other information, data and recommendations as the Minister may determine are in the public interest and consistent with the principles of fiscal responsibility set out in section 12; and

(*b*) a statement, including forecasts, providing a projection of expenditures for each category of outputs for the ensuing financial year and the two years following that financial year including—

(i) the details of the estimated revenue of the Government;

(ii) the details of the estimated expenditures of the Government;

(iii) the Government's debt management responsibilities and, where applicable, the details of a financial plan to meet those responsibilities; and

(iv) a statement that the annual budget is fiscally responsible in accordance with the principles set out in section 12.

Fiscal strategy

16.—(1) The Minister shall submit to the National Assembly, at the same time as, and in addition to, the budget policy statement referred to in section 15 a report on the Government's fiscal strategy.

(2) The report on the fiscal strategy shall—

(*a*) include an assessment of the extent to which the budget policy statement is consistent with the economic and fiscal policy statement required under section 14;

(*b*) include an explanation of the reasons for any significant differences between the current economic and financial situation

of the State and the information and intentions presented in the previous economic and fiscal policy statement required under section 14;

(*c*) where the circumstances have changed, present an amended set of intentions; and

(*d*) provide projections of movements in the variables specified in sections 18 and 19 which demonstrate intended progress towards achieving the longer-term objectives specified in the economic and fiscal policy statement most recently published and state the significant assumptions on which the projections are based.

Economic and fiscal update

17.—(1) The Minister shall, no later than 30th June in each year, publish a report updating the economic and fiscal policy statement for the following financial year.

(2) The economic and fiscal update report shall contain—

(*a*) an economic and fiscal update for the current financial year, and forecasts for the following two financial years, containing the information specified in sections 18 and 19; and

(*b*) a statement of the date on which the contents were finalized confirming that the data used was the most recent available.

Economic and fiscal data

First Schedule

18.—(1) Economic reports required under this Part shall include, where available, forecasts of projected movements in Malaŵi of the information specified in Part I of the First Schedule.

First Schedule

(2) Fiscal forecasts required under this Part shall include, where available, the information specified in Part I of the First Schedule.

(3) Economic forecasts shall include a statement of all significant assumptions underlying them.

(4) Where information to be included in reports and statements under this section is not available, the Minister shall provide in the report or statement required the reason why the information is not available.

Reporting requirements

First Schedule

19.—(1) Any forecast or statement required under this Part shall include, where available, details of the information specified in Part II of the First Schedule.

(2) Where information to be included in reports and statements under this section is not available, the Minister shall provide in the report or statement required the reasons why the information is not available.

Provision of relevant information

20. Every Controlling Officer and the head of every agency of Government shall provide to the Secretary to the Treasury such relevant information, as may be in his possession, that will assist the Secretary to the Treasury to produce the economic and fiscal data and reporting information required under this Part.

PART IV
Parliamentary Appropriation and Budget

Estimates

21.—(1) The Minister shall, not less than fourteen days before introducing the Estimates to the National Assembly, prepare and submit to Cabinet a statement of anticipated revenue for the forthcoming financial year together with a statement of the anticipated budgetary appropriations.

(2) The Cabinet shall consider and approve a proposed budget and the Minister shall then cause the Ministry of Finance to prepare the Estimates, in accordance with the budget approved by Cabinet, for introduction to the National Assembly for the forthcoming financial year.

(3) The Minister shall, on behalf of the Government, lay before the National Assembly a statement of the estimated receipts, grants, all other revenue and expenditure for the forthcoming financial year.

(4) Details of statutory expenditure, shall be included in the Estimates in order to present the total expenditure proposed in the Government's programmes or activities, but shall not be submitted to the vote of the National Assembly.

(5) The statement of statutory expenditure shall include a brief description of all projected statutory expenditures for the forthcoming financial year, stating the authority for any payment to be made and showing comparative revised estimates figures for each item in respect of the previous appropriation period.

Form of the Estimates

22. The Estimates shall include the following information in respect of each Vote—

(*a*) the Minister responsible for the Vote;

(*b*) the Ministry and Controlling Officer administering the Vote;

(*c*) a brief description of each output to be delivered by the Ministry together with an estimate of the expenditures to be made and any receipts from charges made for the delivering of that output;

(*d*) all other revenues to be collected on behalf of the State;

(*e*) a brief description of any output to be provided by a third party on behalf of Government together with an estimate of the expenditures to be made;

(*f*) a brief description of any transaction on behalf of the State together with an estimate of the expenditures to be made;

(*g*) comparative revised estimates figures for each of the items in paragraphs (*c*) to (*f*) of this subsection for the previous appropriation period; and

(*h*) any other relevant information as directed by the Minister.

Appropriation required

23.—(1) Subject to section 178 of the Constitution, no public money shall be expended unless the expenditure has been authorized by an Appropriation Act in accordance with subsection (2) or is statutory expenditure.

(2) No expense or liability will be incurred unless the expenditure in relation to such expense or liability is chargeable to a category specified in subsection (3).

(3) A separate appropriation shall be made for each of the following—

(*a*) each category and output to be delivered by a Ministry;

(*b*) any payment to a non-government agency or person by way of grant or otherwise;

(*c*) loans by Government to any third party; and

(*d*) capital contributions and capital purchases; and

(*e*) each item of statutory expenditure or any other payment on behalf of the State.

(4) The authority to expend cash or incur expenses or liabilities under an Appropriation Act will lapse at the end of the financial year to which that Act relates.

(5) Subject to this Part, any money appropriated under this section shall be expended only in relation to that appropriation, and for no other purpose.

(6) Each expenditure of public money made in respect of statutory expenditure shall be managed and accounted for in the same manner as public money expended under an Appropriation Act.

Adjustment for unforeseen expenditure

24.—(1) The annual Estimates presented to the National Assembly shall contain a Vote for Unforeseen Expenditure, with a proposed appropriation not exceeding two per cent of the total appropriation for outputs.

(2) The Minister may only use funds from the unforeseen expenditure vote in exceptional circumstances and any expenditure of unforeseen expenditure shall be first approved by the Cabinet.

(3) Subject to subsection (2), where the Minister considers that expenditure from the Consolidated Fund in any financial year in excess of, or without, appropriation by the National Assembly should be approved, he may transfer to one or more nominated Votes from the Unforeseen Expenditure Vote such sum or sums as he considers necessary up to but not exceeding the amount of the balance from time to time available in the Unforeseen Expenditure Vote.

(4) If during any regular or other review of budget performance, it appears to the Cabinet that any vote or votes may be under-spent during the financial year, the Cabinet may direct the Minister to transfer any such surplus to the Unforeseen Expenditure Vote and such sum or sums shall be available for transfer as provided in subsection (3).

(5) No expenditure in excess of, or without, appropriation other than is provided in this section, is permitted.

(6) This section does not apply to statutory expenditure.

(7) Without affecting the validity of any transfers approved under subsections (1) and (2), the financial statements for the financial year in which any such transfer occurs shall disclose each instance of a revised appropriation, (regardless of whether such sum has been subsequently appropriated during the course of the financial year in an amended or Supplementary Appropriation Act) together with an explanation of the reasons for such revision.

Transfer between outputs

25.—(1) The Secretary to the Treasury may, with the approval of the Minister at the request of a Controlling Officer, direct that an amount appropriated for a specified output to be delivered by a Ministry be transferred to another output to be delivered by that Ministry where—

(*a*) the amount transferred does not increase an appropriation for the financial year for an output by more than twenty per cent;

(*b*) the transfer does not conflict with performance of the outputs or policy specified in the Estimates; and

(*c*) the total appropriation for that financial year for that Ministry is unaltered.

(2) Without limiting the validity of the transfers made under subsection (1), a clause recording any transfers made under subsection (1) in that financial year shall be made in an

Appropriation Act for the same or the succeeding financial year, and all such budget variations shall be noted in the financial statements for that year.

Approval of Appropriation Bill

26. Upon an Appropriation Bill receiving the assent of the President, the Secretary to the Treasury shall make funds available to the respective votes according to the cashflow forecasts agreed between the head of the entity responsible for the Vote and the Secretary to the Treasury, and if agreement cannot be reached, as approved by the Minister.

Charge for supply of goods or services

27. Save as expressly otherwise provided in any other written law, a Ministry may, with the approval of the Minister, charge for the provision of goods or services:

Provided that, if the recipient of the goods or services is another Ministry, there is a prior agreement to charge the costs incurred to an output of the recipient Ministry.

PART V
Public Money and the Consolidated Fund

Consolidated Fund

28.—(1) The Secretary to the Treasury may establish such accounts as may be deemed necessary for the proper accounting of moneys in the Consolidated Fund.

(2) Subject to any other written law and the terms of any trust, the Secretary to the Treasury shall in respect of any such account or class of accounts referred to in subsection (1) specify the person by whom and the manner in which such account or class of accounts shall be controlled.

(3) Subject to any other written law and the terms of any trust, the Secretary to the Treasury may direct that any deposit account shall be closed and after all liabilities of the account have been met, the account shall be closed and any balance of moneys standing to the credit of such account shall be transferred to the Consolidated Fund.

Development Fund

29.—(1) There shall be paid into the Development Fund all moneys held by the Treasury for the purposes of such Fund immediately prior to the coming into operation of this Act, and all moneys subsequently received or appropriated for the purposes of the Fund, including the proceeds of any loan which may be raised for general development purposes.

(2) Moneys held for the purposes of the Development Fund shall be accounted for in a separate account in the Consolidated Fund.

(3) The estimates of expenditure to be made from the Development Fund shall show the total estimated cost of each project and the amount estimated to be required for expenditure during the current year in respect of such projects.

(4) The amount applied in respect of any project during any year shall be in accordance with the directions of the Secretary to the Treasury but shall not exceed the unexpended balance of the total estimated cost of the project as shown in the latest estimates approved by the National Assembly.

(5) Where it is expedient in the public interest for sums to be spent on a project for which no total estimated cost has been approved in any Development Estimates laid before the National Assembly, the Minister of Finance may direct that an additional item be created to provide for such project with such particulars, including an estimate of the total cost, as may be appropriate and may authorize the issue of sums to be applied to such purpose out of the total appropriated by the National Assembly:

Provided that in any case where the Minister has so directed a supplementary Development Estimate providing for such project shall be laid before the National Assembly not later than the next meeting of the National Assembly occurring after the expiration of seven days from the date of the direction.

(6) Where it is expedient in the public interest for the total estimated cost shown in the Development Estimates in respect of any project to be varied the Minister may direct that it be varied accordingly.

(7) The powers conferred by subsections (5) and (6) shall not be exercised so as to increase the total estimated cost of the projects provided for in the Development Estimates approved by the National Assembly by an amount exceeding one million Kwacha, nor so as to cause the amount authorized to be spent in the Appropriation (Development Fund) Act to be exceeded.

Treasury Funds

30.—(1) The Minister may, on the recommendation of the Secretary to the Treasury, by Order published in the *Gazette*, establish special funds to be known as Treasury Funds, and may make orders for the regulation and management of such Treasury Funds.

(2) Where a Treasury Fund is established pursuant to subsection (1), the Secretary to the Treasury shall cause to be maintained separate accounts within the Consolidated Deposit Account in respect of the Treasury Fund which shall be regulated and managed in accordance with orders made by the Minister for that purpose.

(3) Section 175 (1), (2), (3) and (4) of the Constitution shall not apply to receipts and expenditure of Treasury Funds.

Dealing with public money

31.—(1) Public money is the property of the State.

(2) Public money shall, except as otherwise provided in this Act, be paid into bank accounts designated by the Secretary to the Treasury for that purpose and such accounts shall form part of the Consolidated Fund.

(3) Money paid into any designated bank account is public money, and shall not be removed except as provided by the Constitution or this Act.

(4) Notwithstanding any other written law to the contrary and except as permitted in subsection (5), no bank account shall be opened or operated or continue to be operated for the deposit or withdrawal of public money without the express authority of and on such conditions as the Secretary to the Treasury determines.

(5) No Ministry shall continue to operate after three months from the commencement of this Act, any bank account other than in accordance with subsection (4).

(6) The Secretary to the Treasury may make demand on the manager of a bank operating in Malaŵi for disclosure of the records of the accounts current or otherwise operated by a Ministry or statutory body and on receiving such demand, the manager shall comply with the demand accordingly.

Banking business of the Government

32.—(1) The Secretary to the Treasury may agree with any bank upon terms and conditions for the conduct of the banking business of Government, including arrangements for deposits to be made under the authority of this Act or any other written law and for interest to be payable by the bank on balances held.

(2) The Consolidated Fund shall be kept at the Reserve Bank of Malaŵi, and the Secretary to the Treasury may transfer money within the Consolidated Fund from the Reserve Bank of Malaŵi to another or other banks.

(3) The Secretary to the Treasury may make arrangements with any bank for the receipt, custody, payment and transmission of public money within or outside Malaŵi.

Banks to furnish statements

33.—(1) Every bank at which any Government account of any nature is kept shall send to the Ministry of Finance and to the National Audit Office, statements of such accounts as the Secretary to the Treasury or the Auditor General may require.

(2) All such statements shall show such particulars of the accounts concerned as the Secretary to the Treasury or the Auditor General may require.

Overseas imprests and other accounts

34.—(1) The Secretary to the Treasury may direct that any public money received outside Malaŵi be paid into a bank account for the credit of such imprest account or other account as he may determine.

(2) Any bank account referred to in subsection (1) may be operated by any person appointed for that purpose by the Secretary to the Treasury, who may cancel the authority of any person to operate any bank account, and may remove the money in any account, or such amount as he thinks fit, from any bank to any other bank.

(3) No money shall be withdrawn from any bank account referred to in subsection (1) except in the manner provided by this Act.

(4) Subject to the provisions of Part IV, any money in an overseas account may be utilized for expenditure approved under the provisions of the Constitution or this Act or any other written law, and shall be deemed to have been issued by way of imprest under section 37 and the provisions of that section shall, with the necessary modification, apply accordingly.

Balances may be invested

35.—(1) The Secretary to the Treasury may invest any balances of the Consolidated Fund, or any part thereof, at call or for such period and on such terms as he thinks fit at any bank and in such other securities as the Minister may declare to be securities consistent with the financial policies of Government.

(2) Interest earned on investments made pursuant to subsection (1) shall be credited to the Consolidated Fund and may be used only in accordance with an Appropriation Act.

(3) The Secretary to the Treasury may sell and convert into money any such securities, and that money shall be paid into the Consolidated Fund to the credit of the fund to which it belongs.

Temporary transfers from one fund to the other

36.—(1) Subject to any other provision of this Act, the Secretary to the Treasury may transfer any balances or any part of any balances of any fund or account within the Consolidated Fund to another fund or account within the Consolidated Fund for such periods and on such terms as he thinks fit.

(2) Any money transferred pursuant to subsection (1) shall be deemed to have been borrowed by the fund or account into which the transfer has been made, and shall be paid out and restored to the fund or account from which the transfer was made, together with any interest thereon, before the end of the financial year in which the transfer was made.

(3) Particulars of every such transfer made in any financial year pursuant to subsection (1) shall be reported in the financial statements for that year.

(4) No transfer shall be made from or between trust accounts.

Imprests

37.—(1) Money may be issued by way of imprest in the name of the Government from the Consolidated Fund for the purpose of effecting payment of amounts payable by the Government to such persons or to such accounts within or outside Malaŵi.

(2) The Secretary to the Treasury may, in such cases as he thinks fit, authorize an imprest account to be opened at a bank and such account shall be identified as a Government of Malaŵi account.

(3) Except in special circumstances approved in writing by the Secretary to the Treasury, all withdrawals from an imprest account shall be made by the imprestee and another designated officer.

(4) Money required to be issued by way of imprest shall as far as practicable be charged against the other Vote or other authority for the service for which the imprest is required, but the Secretary to the Treasury may charge money by way of general imprest against the relative fund or account instead of a Vote or other authority, and in any such case the amount so charged shall be issued accordingly; and expenditure against money so issued to general imprest shall in due course be transferred to the several votes or authorities for the purposes of which the money is expended:

Provided that money issued by way of general imprest shall not at any time exceed ten per cent of the total amount of all sums appropriated by all Appropriation Acts for the current financial year.

Remission or refund of revenue
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38.—(1) The Minister may, in cases of national disaster or calamity, authorize any public officer to remit any revenue, which may be due, or to refund any sum received, by way of revenue, if he is satisfied that such remission or refund is desirable and in the public interest.

(2) Subsection (1) shall not apply to the remission or refund of non-tax revenue.

(3) Where the Minister has exercised the power conferred by subsection (1) notification thereof shall be published in the *Gazette*.

Refunds and corrections

39.—(1) Within six years of any sum being paid into the Consolidated Fund, the Secretary to the Treasury may refund as statutory expenditure all or so much of such sum as was not

properly payable to the Government, whether or not application has been made for a refund.

(2) The Secretary to the Treasury shall record the payment of the amount against the appropriate Vote or other authority or fund or account.

(3) Where any person has become indebted to the Government and it is subsequently discovered that there is an error in the amount of the debt or the identity of the debtor, the Secretary to the Treasury on being satisfied as to the facts may amend the records to reflect the true position.

PART VI
Trust Moneys and Unclaimed Money

Trust money

40.—(1) For the purposes of this Part trust money means—

(*a*) money that is deposited with the State pending the completion of a transaction or dispute and which may become repayable to the depositor or payable to the State or any other person;

(*b*) money that is paid into Court for possible repayment to the payer or a third party, by virtue of any written law, judicial direction or other authority;

(*c*) unclaimed money that is due to or belongs to any person and is deposited with the State;

(*d*) money that is paid to the State in trust for any purpose as approved by the Secretary to the Treasury; and

(*e*) money that belongs to or is due to any person and is collected by the State under any agreement between the State and that person

(2) Trust money shall be held and accounted for separately from public money.

(3) Trust money shall be used only in accordance with the provisions of this Part.

Establishment of a Trust Fund and trust accounts

41.—(1) Secretary to the Treasury may establish a Trust Fund and trust accounts under the Fund to receive trust moneys, and all such moneys shall be paid into trust accounts constituting the Trust Fund established for that purpose.

(2) For each trust account established or to be established within the Trust Fund there shall be prepared by the Controlling Officer or the appropriate officer of the organization responsible for the account an instrument, signed by that person, setting out—

(*a*) a request for the establishment of the account;

(*b*) the name of the account;

(*c*) the name of the Ministry or organization operating the account;

(*d*) any legal requirement to set up or manage a trust account, citing the name and relevant section of the Act;

(*e*) the names and designations of not less than two authorized signatories;

(*f*) the purpose of the account;

(*g*) the source or sources of funds to be deposited in the account;

(*h*) the approved categories of expenditure to be paid from the account;

(*i*) any particular conditions; and

(*j*) instructions for the disposal of funds on the completion of the purpose or the closure of the account.

(3) The Secretary to the Treasury shall endorse approval or disapproval of the request on the face of the instrument:

Provided that the Secretary to the Treasury shall not disapprove the request where the money has already and unavoidably been received by the department and is trust money as defined by section 40.

(4) Where the Secretary to the Treasury approvals a request for a trust account, the instrument shall constitute an agreement for the operation of the relevant account which shall be established forthwith.

Operation of trust accounts

42.—(1) There shall be paid to the credit of a trust account, which shall always be in credit, all moneys paid by any person for the purposes of the account and there shall be issued and paid to or on behalf of that person such amounts, in such manner and at such times as may be set forth in any agreement; and the Government shall not be liable to any such person for any money so payable into the Trust Fund except for money actually received under any such agreement.

(2) Moneys may be paid out of a trust account only—

(*a*) for the purposes of the account or as authorized by law;

(*b*) if sufficient credit is available in the account; and

(*c*) in accordance with Treasury Instructions or, if no Treasury Instructions exist, then in accordance with the rules and procedures prescribed for the payment of public moneys.

(3) The Secretary to the Treasury may appoint an agent to manage some or all trust moneys on such terms and conditions as

he may determine, subject to the requirements of this section, and to the requirement that the agent is a recognized professional institution of a kind and with experience in the handling of trust moneys.

Investment of trust account money

43.—(1) The Secretary to the Treasury or any trust agent appointed under section 42 (3) may invest any trust account money for such periods, and on such terms and conditions as are consistent with sound trust investment practice.

(2) No person shall have any right of action against the Secretary to the Treasury or against the Government in respect of the investment or non-investment of any trust money.

(3) Subject to subsection (4), when any trust account money becomes payable or repayable to the depositor or other person entitled thereto, there shall be added any amount of interest certified by the Secretary to the Treasury to have been earned thereon.

(4) When any trust account money becomes payable or repayable to the depositor or any other person entitled thereto under subsection (3), a reasonable charge may be deducted for the services of the Secretary to the Treasury, which sum may be established in accordance with Treasury Instructions.

(5) The provisions of subsections (2), (3) and (4) shall apply to an agent appointed under section 42 (3) in the same manner as if the agent were the Secretary to the Treasury.

Unclaimed money—interpretation

44. In sections 44 to 53, unless the context otherwise requires—

"holder" includes—

(*a*) every bank (including any savings bank) carrying on business in Malaŵi ;

(*b*) every person, partnership, company and corporation carrying on business in Malaŵi ; and

(*c*) the Secretary to the Treasury, in respect of money to which in this Part, trust funds apply;

"owner" means the person entitled to any unclaimed money, and includes his executors, administrators or assigns, or his or their lawful attorney or agent;

"unclaimed money" means, subject to sections 45 and 49, all principal and interest money, and all unclaimed dividends, bonuses, profits and other sums of money whatsoever owing to any owner which, on the coming into force of this Act or at any time before the coming into force of this Act, have been in the possession of any holder for a period of six years or more

after the time when the money became payable, and in respect of which no claim has been made by the owner against the holder.

Period after which money becomes unclaimed

45. The following money deposited in any bank (including any savings bank) shall become unclaimed money within the meaning of this Act at the following times, whether or not it has at any prior time become payable, namely—

(*a*) money deposited so as to bear interest for a fixed term, at the expiration of six years from the date when such fixed term expired;

(*b*) money deposited so as to bear interest without any limitation of time, at the expiration of twenty-five years from the date when the account was last operated on by the customer; and

(*c*) money deposited on current account or otherwise and not bearing interest, at the expiration of six years from the date when the account was last operated on by the customer, in the case of a bank other than a savings bank, and at the expiration of twenty-five years, in the case of a savings bank.

Register to be kept

Second Schedule

Second Schedule

46.—(1) It shall be the duty of every holder, on the first day of July in each year, to enter in a register to be kept by such holder at his principal office in Malaŵi, in the form provided in the Second Schedule or to the like effect, and with the particulars therein specified in the form provided in the Second Schedule, all unclaimed money in Malaŵi then held by the holder.

(2) From and after 8th July in each year, each such register shall be open to the inspection of all persons at such office during ordinary business hours on payment of a fee from time to time determined by the Secretary to the Treasury.

(3) On ceasing to carry on business in Malaŵi, a holder shall deposit his register in the custody of the Secretary to the Treasury and pay all unclaimed money to the credit of the Consolidated Fund:

Provided that any holder may at any time so deposit his register or any part of it, if no entry has been made in it for a period of not less than six years immediately preceding the date of such deposit.

Holder to notify Secretary to the Treasury and owner of entry

47. Not later than 15th July in each year, or such later date as the Secretary to the Treasury approves in writing, every holder shall—

(*a*) furnish to the Secretary to the Treasury a copy of every entry made on the first working day of that month in the register kept by him under section 46; and

(*b*) send to every person in respect of whom any such entry was made as the owner of unclaimed money a notice in writing specifying the amount of money that is held as unclaimed money.

Payment of unclaimed money to the Consolidated Fund

48.—(1) All unclaimed money that has not been paid by a holder to the owner within three months after the posting to the owner of the notice prescribed by section 47 shall be paid by the holder to the credit of the Consolidated Fund, and the holder shall thereupon be relieved from all further liability in respect of the money so paid.

(2) All money payable to the credit of the Consolidated Fund in accordance with this section shall be recoverable in any court of competent jurisdiction as a debt due to the State.

Unclaimed trust money

49.—(1) Any trust money that is unclaimed for a period of three years after having become repayable to the depositor or payable to any other person entitled thereto, and after due inquiry and notice by publication, shall, together with interest (if any) added in accordance with section 43 (3) be deemed to be public money and shall, subject to section 43 (4) be transferred to the Consolidated Fund.

(2) Where any trust money is claimed within six years of being deposited under subsection (1) and the Secretary to the Treasury is satisfied that the trust money is payable to the claimant then that money shall be paid to the claimant together with any interest thereon in accordance with section 43 (3) but subject to section 43 (4).

Offences

50. If any default is made in complying with sections 46, 47 or 48, the holder, and every director, manager, secretary, and other officer of the holder who knowingly and willfully authorizes and permits the default, shall be liable to a fine of K50,000 for every day during which the default continues.

Examination of accounts

51.—(1) The Secretary to the Treasury may, at any time of accounts examine any register kept by a holder under section 46 and any accounts of the holder relating to unclaimed money, and may, for that purpose require the production before him or any of his officers of any records relating to such money.

(2) The Secretary to the Treasury or any officer authorized by him shall at all times have full and free access to all records and have the right to make copies.

(3) Every person shall as required by the Secretary to the Treasury furnish in writing any information which may be in his knowledge, or produce any records in his possession or control that relates to money which is or may be unclaimed money.

(4) If any error is found in any such register or accounts or notice sent to the owner, or copy of any such document, the Secretary to the Treasury may require it to be amended.

(5) The Secretary to the Treasury and every officer authorized by him shall maintain and assist in maintaining the secrecy of all matters which come to his knowledge in the course of any inspection under this section, and shall not communicate any such matter to any person, except for the purpose of carrying this Part into effect.

(6) Every person who fails to comply with any of the requirements of this section commits an offence, and is liable to a fine of K50,000.

Secretary to the Treasury may make payment to claimant

52. If any claimant makes any demand on any unclaimed money within six years of its having been paid to the Consolidated Fund under section 48, the Secretary to the Treasury, on being satisfied that the claimant is the owner of the money demanded by him, shall order and direct payment of the money to be made to him and the payment shall be statutory expenditure.

Responsibility to second claimant

53. Where any unclaimed money paid to a claimant is afterwards claimed by another person, the Secretary to the Treasury shall not be responsible for the payment of the amount, but that person may have recourse against the claimant to whom the Secretary to the Treasury has paid the unclaimed money.

PART VII
Borrowing, Loans and Guarantees

Government not to borrow except under an Act

54. The Government may only borrow in accordance with this Act and under an Act authorizing it to do so.

Instrument of loan agreement

55. Every loan under this Part shall be in the name of the Republic of Malaŵi, and every document required to be signed evidencing the terms of the loan shall be executed by the Minister or by any other person authorized in writing by the Minister.

Minister may borrow when authorized

56.—(1) Subject to this Part, the Minister is empowered to borrow by way of term loan within Malaŵi or elsewhere, as the National Assembly shall determine by an authorizing Act, not more than such sums of money as that Act authorizes.

(2) Prior to raising a loan the Minister shall first—

(*a*) ensure that it is in the public interest to do so;

(*b*) ensure that it is fiscally responsible in accordance with section 12;

(*c*) ensure it is consistent with Government economic and fiscal policy;

(*d*) satisfy himself that the Government has or is likely to have on current projections the financial ability to meet all the obligations under the loan including future loan payments; and

(*e*) consult with the Attorney General and obtain in writing from the Attorney General, an opinion approving the legal aspects of the loan agreement.

(3) All money received by the Government under the loan agreement shall be paid into an account within the Consolidated Fund, and the proceeds shall only be expended for the purposes for which it was borrowed.

(4) All principal, interest and other money payable under the loan agreement shall be a charge on the public revenues of Malaŵi and on the Consolidated Fund or such other fund or account as the Minister determines, and shall be statutory expenditure payable at the time or times provided in the loan agreement.

Provisions for general borrowing

57.—(1) When exercising his power to borrow under section 56 the Minister may, with the approval of Cabinet and after consultation with the Secretary to the Treasury, raise loans in currency other than that of Malaŵi.

(2) When an Act authorizing the borrowing of money other than from a foreign government or an international agency becomes law and the Minister decides to raise a loan accordingly, subject to any regulation that provides for the same, the provisions (where applicable) of Part II of the Third Schedule shall apply.

Subsidiary loan agreement

58. The Minister may on-lend loan to another body, including a statutory body, under a written subsidiary loan agreement, such amounts of money on such terms and conditions as are specified in the subsidiary loan agreement.

Borrowing on overdraft

59.—(1) Subject to the provisions of this section, the Minister may, from time to time, borrow money from the Reserve Bank of Malaŵi by way of overdraft to meet expenditure that has been appropriated, and in anticipation of revenue payable into the Consolidated Fund:

Provided that on receipt of the anticipated revenue the overdraft shall be reduced by the full amount of the revenue received.

(2) The amount owing on overdraft at any time during the financial year shall not exceed the aggregate total amount permitted to be advanced to the Government by the Reserve Bank of Malaŵi in accordance with section 40 of the Reserve Bank of Malaŵi Act.

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(3) All amounts borrowed under this section shall be repaid, together with any interest thereon, not later than the end of the current financial year.

Treasury Bills

60.—(1) The Secretary to the Treasury may, with the prior approval of the Minister, borrow for and on behalf of the Government by the issue of Treasury Bills payable at the Reserve Bank of Malaŵi, sums not exceeding the sum prescribed in paragraph 45 of the Third Schedule or such further sums as may from time to time be directed by the Minister in accordance with a resolution of the National Assembly.

Third Schedule

(2) The principal moneys represented by the Treasury Bills issued under this section shall form part of the public debt.

(3) Subject to any regulation providing for the same, the rules and procedures for the issuing and management of Treasury Bills shall be as prescribed in Part V of the Third Schedule.

Third Schedule

Borrowing by stocks, bonds or promissory notes

61.—(1) The Minister may, from time to time, raise money in the currency of Malaŵi by the issue of stocks, bonds or promissory notes not exceeding the aggregate amount as may be authorized by an Act of Parliament.

(2) The principal moneys and interest represented by stocks, bonds and promissory notes issued under this section shall form part of the public debt.

(3) All expenditure in connexion with the raising of such loans may, if the Minister so directs, be paid out of the principal moneys raised.

(4) Subject to any regulation providing for the same, the terms and conditions on which any stock, bonds or promissory notes shall be issued are set out in the Third Schedule.

Third Schedule

(5) The Reserve Bank of Malaŵi shall be appointed Registrar of all registered stocks or bonds issued under this section.

Liability of the State

62. The Government shall not be liable to contribute towards the payment of any debt or liability of the State unless the State is liable to contribute under any other written law, or is, liable to contribute under any guarantee or indemnity given under section 63, or is liable to pay to any creditor.

Power to give guarantees and indemnities

63.—(1) Subject to subsection (2), the Minister, on behalf of the State, may, if it appears to the Minister to be in the public interest and necessary to do so, give in writing a guarantee or indemnity upon such terms and conditions as the Minister thinks fit, in respect of the performance of any person, company or body corporate, organization or statutory body, but may only do so—

(*a*) with the prior approval of the Cabinet; and

(*b*) where such guarantee or indemnity is consistent with section 12.

(2) The Minister shall report the giving of the guarantee or indemnity within seven days to the National Assembly if the Assembly is then in session, and if not, at the commencement of the next ensuing session, and shall give reasons as to why it was in the public interest and necessary to give the guarantee or indemnity, and provide an assessment of the risks associated with the guarantee or indemnity.

(3) Any money paid by the State under a guarantee or indemnity given under this section will constitute a debt due to the State from the person, company or body corporate, organization or statutory body in respect of whom the guarantee or indemnity was given, and may be recoverable in any court.

(4) Where a guarantee is given to a company or body corporate the Minister shall, in addition to the matters he is required to consider under subsection (1), satisfy himself that the guarantee will facilitate such company or body corporate in the initiation or advancement of any enterprise conducive to national economic development or growth in Malaŵi.

(5) No guarantee involving a financial liability shall be binding upon the State or the Government unless entered into in accordance with this section.

Taking and releasing of securities by the State

64.—(1) Wherever security is taken in respect of an advance of public money, unless the Act authorizing the advance provides otherwise, the security shall be given to and taken in the name of the Republic of Malaŵi.

(2) Where any security is for the time being vested in the State, whether it has become so vested before or after the commencement of this Act, the Minister may, on behalf of the Government, exercise any powers, functions and rights (including any power of disposal), and undertake and perform any liabilities in respect of or in connexion with the security which could be exercised, undertaken, or performed by the State.

(3) Any document purporting to be executed by the Minister under this section shall be deemed to have been duly executed on behalf of, and shall bind, the State.

Expenditure for protection of public securities

65.—(1) Subject to Part IV and to the provisions of this section, money may be expended out of any fund or account in the Consolidated Fund for the protection, preservation and improvement of any real or personal property on the security of which any money in that fund or account has been lawfully invested, whether

before or after the commencement of this Act; and the authority conferred by this section may be exercised notwithstanding the prior exercise in respect of the mortgaged property of any power of sale or entry into possession.

(2) No amount shall be expended under this section in respect of any property without the specific approval of the Minister acting on the recommendation of the responsible Minister, if that amount, together with all other amounts advanced or expended in respect of that property and still outstanding, would exceed the amount of the valuation of the property.

(3) This section is in addition to and not in substitution for any powers or authorities conferred otherwise than by or under this section.

Power to lend money

66. Subject to section 23, where it is in the public interest to do so, the Minister may on behalf of the State, on terms and conditions approved by the National Assembly, lend money to any organization whether within or outside of Malaŵi.

PART VIII
Statutory Bodies

Application of this Part

67.—(1) This Part applies to all statutory bodies.

(2) A body ceasing to comply with the definition of statutory body in section 2 shall cease to be a statutory body.

(3) In this Part, a "subsidiary" means a subsidiary of a statutory body, which shall itself be a statutory body for the purposes of this Part.

Performance, management plan and budget

68.—(1) The head of every statutory body, however called, shall within three months before the end of its financial year submit to the Minister and to the Secretary to the Treasury a performance and management plan, including projected financial statements for the following financial year.

(2) Where a statutory body seeks Government assistance by way of appropriation, grant, subsidy or otherwise, it shall not later than three months before the end of the Government financial year submit to the Secretary to the Treasury its performance and management plan together with estimates of its revenue, expenditure and cash flows for the following financial year, in such form as the Secretary to the Treasury approves.

Financial activities

69.—(1) The head of the statutory body shall advise the Minister and the responsible Minister by notice in writing immediately upon a significant event occurring or becoming known which adversely affects the financial position of the statutory body.

(2) The notice shall specify the nature of the event, quantify when practicable the likely effect of the event on the statutory body and what steps have been taken, or are being taken or proposed, to rectify any adverse effects.

(3) The head of the statutory body shall at the same time as delivering the notice to the Minister and responsible Minister under subsection (1), deliver a copy to the Secretary to the Treasury.

Bank accounts

70.—(1) A statutory body shall at all times maintain at least one bank account.

(2) Subject to sections 75 and 81, a statutory body shall pay all its moneys into an account referred to in subsection (1).

Moneys payable to statutory bodies

71. Where money is appropriated by the National Assembly for the purposes of a statutory body, such money shall be payable at such times and in such amounts as the Secretary to the Treasury determines.

Private loans

72.—(1) A statutory body may, with the prior written approval of the Minister, borrow money for its purposes, on such terms as are agreed between the statutory body and the lender.

(2) The statutory body shall repay a loan made under subsection (1) in accordance with the terms on which it was made.

(3) Where a statutory body raises a loan under subsection (1) there shall be no liability attached to the State or Government by virtue only of the approval of the Minister.

Borrowing on overdraft by statutory body

73. A statutory body may, with the prior written approval of the Minister, borrow for its purposes, by overdraft, within such limits as the Minister approves, and there shall be no liability attached to the State or Government by virtue only of the approval of the Minister.

Guarantees

74.—(1) A statutory body shall not give a guarantee without the prior written approval of the Minister.

(2) Before giving approval of a statutory body giving a guarantee under subsection (1), the Minister shall first ascertain from the Secretary to the Treasury the financial implications on Government of the statutory body giving the guarantee, and ensure that the giving of the guarantee is in the public interest.

(3) There shall be no liability attached to the State or Government by virtue only of the approval of the Minister.

Investment

75.—(1) Moneys of a statutory body that are not immediately required may be invested—

(*a*) in any securities of, or guaranteed by, the Government;

(*b*) in any manner in which a trustee may, under any law, invest trust moneys;

(*c*) on deposit with a bank; or

(*d*) in any other manner approved by the Minister.

(2) The Secretary to the Treasury may issue investment guidelines and reporting requirements as a Treasury Instruction.

Application of resources

76. The resources of a statutory body may be applied only for the purposes specified in its empowering Act, this Act or otherwise lawfully conferred on the body.

Contracts for works, supplies and services

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77. A statutory body may enter into contracts for the works, acquisition, disposal or management of goods, services and construction works in accordance with the provisions of the Public Procurement Act.

Accounts and records

78.—(1) A statutory body or a subsidiary shall keep proper accounts and records of its transactions and financial position, and shall do all things necessary to ensure that all payments are correctly made and properly authorized and shall maintain adequate internal control over its assets, or assets in its custody, and over the incurring of liabilities by it.

(2) A statutory body or a subsidiary shall keep the accounts and records referred to in subsection (1) in such a way as to facilitate the preparation of financial statements required by section 79 and enable them to be conveniently and properly audited.

(3) The accounts and records required by subsection (1) shall be kept in accordance with generally accepted accounting practice.

(4) A statutory body or a subsidiary shall retain all the accounts and records referred to in subsection (1) for at least seven years after the completion of the transactions to which they relate.

(5) Every statutory body shall within two years of the coming into force of this Act adopt an accounting period ending 30th June.

Reports and financial statements

79.—(1) Notwithstanding the provisions of any other written law, a statutory body shall prepare and furnish to the Minister and the responsible Minister, within four months of the end of the financial year of the statutory body, a performance and management report of its operations for that financial year, together with its financial statements.

(2) Before furnishing financial statements to the Minister and the responsible Minister, a statutory body shall submit the financial statements to the Auditor General who may report on the extent to which they present fairly the financial operations and

financial position of the statutory body and comply with its performance and management plan.

(3) On receipt, the Minister shall cause the report and financial statements, together with any report of the Auditor General, to be laid before the National Assembly forthwith if it is in session, and if the National Assembly is not in session, at the commencement of the next ensuing session.

(4) When the report or financial statement of a statutory body is reproduced for publication or for other purposes, the report of the Auditor General shall be included in the reproduction.

Powers of inspection of the Secretary to the Treasury

80.—(1) Where the Secretary to the Treasury considers it appropriate or has reason to believe that a statutory body has or may have failed to implement the performance and management plan as submitted under section 68, the Secretary to the Treasury may carry out a performance review or initiate an investigation into, or inspection of, the records of that statutory body.

(2) Where an investigation into, or inspection of, the records of a statutory body is being carried out, the Secretary to the Treasury has power to obtain full and free access at all times to all accounts and records of such statutory body and any subsidiary that relate, directly or indirectly to—

(*a*) the collection, receipt, expenditure and issue of moneys of the statutory body and any subsidiary;

(*b*) the receipt, custody, disposal, issue or use of public resources or other property of, or property in the custody of the statutory body and any subsidiary; and

(*c*) the incurring of any liabilities by the statutory body or any subsidiary.

(3) The Secretary to the Treasury may, by written instrument, delegate to a person specified in the instrument, all or any of his powers under this section, other than this power of delegation, in respect of all statutory bodies or of specified statutory bodies or of a specified statutory body.

(4) Except in the performance of the duties, functions and powers under this Part, the Secretary to the Treasury or any delegate shall not disclose to any person any information that shall come to his attention, and all such information shall remain confidential.

Payment of surplus funds to Consolidated Fund

81.—(1) Subject to the principles of responsible fiscal management in section 12, the Minister may direct a statutory body to pay into the Consolidated Fund any money determined to be surplus to the purposes of such statutory body.

(2) Any money paid into the Consolidated Fund in accordance with subsection (1) shall be first applied towards the discharge of any obligation of the statutory body concerned to the Government.

Investments in corporations other than statutory bodies

82. Details of investments in corporations in which the Government owns a shareholding but are not otherwise deemed to be a statutory body shall be disclosed in the financial statements in accordance with section 83.

PART IX
Financial Reporting

Financial statements

Fourth Schedule

83.—(1) The Secretary to the Treasury shall, as soon as practicable, but not later than 31 October of each year, prepare in accordance with section 13, and send to the Auditor General the financial statements for that year in the form specified in the Fourth Schedule, including statements of any such funds and accounts as are by this Act or any other written law required to be included in the financial statements.

(2) The Auditor General shall examine the financial statements and provide a written report to be attached to the financial statements for presentation to the National Assembly, and the report shall state whether, in the opinion of the Auditor General the financial statements—

(*a*) have been prepared in accordance with this Act and any other written law; and

(*b*) present fairly the matters required by this Act and any other written law.

(3) If the Auditor General is not able to report in terms required by subsection (2), he shall state the reasons, and if the Auditor General is of the opinion that he did not obtain all necessary information and explanations, he shall give particulars of the shortcomings.

(4) The financial statements together with the report of the Auditor General shall be returned to the Secretary to the Treasury not later than six months from the end of the financial year to which they relate, and the Minister shall lay them before the National Assembly forthwith if the Assembly is then in session, and if the National Assembly is not in session at the commencement of the next ensuing session.

(5) The financial statements, in such summarized form as may be authorized by the Minister, shall be published in the *Gazette* and in a newspaper with a wide circulation in Malaŵi.

Quarterly summaries and monthly reporting

84.—(1) The Secretary to the Treasury shall within one month of the end of each quarter, except the last quarter of every financial year, prepare and send to the Auditor General a summary of the receipts and payments of the Consolidated Fund from the beginning of the financial year to the end of that quarter.

(2) Each summary referred to in subsection (1) after being certified by the Auditor General shall be returned not later than two months after the end of the quarter to which it relates to the Secretary to the Treasury, who shall forthwith publish the summary certified as aforesaid in the *Gazette*, and in a newspaper with a wide circulation in Malaŵi.

(3) Every Controlling Officer shall supply to the Secretary to the Treasury, within fourteen days of the end of the month, a monthly summary of financial transactions in the form specified by the Secretary to the Treasury.

Details to be included in quarterly and monthly statements

85.—(1) All quarterly and monthly summaries required under section 84 shall include all receipts and payments brought to charge by the Treasury during the period to which the summaries relate.

(2) Imprests unaccounted for at the end of any quarter shall not be included in the payments, but shall be shown as balances in hand.

Annual reports

86.—(1) Every Controlling Officer shall, within four months of the end of the financial year submit to the responsible Minister and to the Minister an annual report in a form approved by the Minister.

(2) Annual reports required under this section to be submitted by a Ministry shall include information relevant to that Ministry taken from the financial statements required by section 83, and the Secretary to the Treasury shall certify the information contained in the statement as being a true extract from the financial statements.

(3) On receiving the report under subsection (1) the Minister shall forward a copy to the President and at the same time table a copy in the National Assembly if it is in session, and it if it is not in session, at the commencement of the next ensuing session.

PART X
Offences and Discipline

Disciplining of Controlling Officers and chief executives in certain circumstances

87.—(1) For the purposes of this section, "appointing authority" means the authority by whom, under the Constitution or any other written law, a Controlling Officer or chief executive is appointed.

(2) Where a Controlling Officer or chief executive authorizes expenditure or commitment of funds in excess of the approved

limit or commits or expends funds where there is no appropriation permitting such expenditure by the Ministry or statutory body, the appointing authority may suspend without pay the Controlling Officer or the chief executive, as the case may be, with effect on and from the date on which the Secretary to the Treasury certifies the unauthorized expenditure or commitment.

(3) A Controlling Officer or chief executive suspended under subsection (2) may within fourteen days of the date of such suspension make written submissions to the appointing authority as to the circumstances giving rise to the unauthorized expenditure or commitment.

(4) After the expiry of fourteen days from the date of the suspension the appointing authority, may after considering any submission made under subsection (3), remove the suspension or terminate the appointment of the Controlling Officer or chief executive.

(5) A person subject to disciplinary action under this section may also be liable to sanction under section 88.

Offences

88.—(1) A person commits an offence who—

(*a*) in connexion with an inspection or inquiry under this Act refuses, or without reasonable excuse fails, to attend at a time and place required of him by the Secretary to the Treasury;

(*b*) refuses to produce any records in his possession when required to do so under this Act;

(*c*) refuses or neglects to pay any public money or trust money into the account or fund into which it is payable;

(*d*) refuses to provide reports under this Act;

(*e*) intentionally or recklessly over-commits or overspends funds under his control or expends funds where there is no appropriation permitting such expenditure;

(*f*) makes any statement or declaration or gives any certificate required to be made or given by or under this Act, knowing it to be false;

(*g*) does any act or omission for the purpose of procuring for that person or for any other person or organization—

(i) the improper payment of public money or trust money; or

(ii) the improper use of public resources; or

(*h*) willfully fails to meet any obligation imposed on him under this Act.

(2) A person who commits an offence under subsection (1) is liable on conviction to a fine of K100,000 and to imprisonment for

five years or where the person is a statutory body to a fine of K500,000.

(3) Where any statutory body or body corporate commits an offence against this Act, every director, chief executive, or other officer of the statutory body or body corporate and every person purporting to act in any such capacity shall also be guilty of an offence unless that person satisfies the Court that either—

(*a*) the offence was committed without the knowledge or consent of that person or not through the gross negligence of that person; or

(*b*) that person took all reasonable steps to prevent the commission of the offence.

(4) The Director of Public Prosecutions shall convey details of offences and penalties in each case under this section to the Public Accounts Committee of the National Assembly.

Obligation to report

89.—(1) A person who has knowledge of any circumstances which may cause him to consider that an offence under section 88 may have occurred shall report those circumstances to the Secretary to the Treasury.

(2) A person who, without malice, alleges a breach of this Act to the Secretary to the Treasury shall not be penalized in any way whether the allegation is proved or not.

PART XI
Miscellaneous Provisions

Write-off of losses

90.—(1) A Controlling Officer shall report promptly, in the prescribed form, to the Secretary to the Treasury, any—

(*a*) losses or deficiencies of public moneys;

(*b*) irrecoverable amounts of revenue;

(*c*) irrecoverable debts and overpayments;

(*d*) the value of lost, deficient, condemned, unserviceable or obsolete public property;

(*e*) investments to be written off.

(2) The Secretary to the Treasury may, following any investigation that he thinks necessary in a particular case—

(*a*) approve the write-off of an amount not exceeding K10,000;

(*b*) refer to the Minister any case in which the amount exceeds K10,000; and

(*c*) take such action under Part X as he considers appropriate.

(3) In any case referred by the Secretary to the Treasury to the Minister pursuant to subsection (2) (*b*), the Minister may—

(*a*) approve the write-off of an amount, not exceeding K50,000; or

(*b*) in a case in which the amount exceeds K50,000, refer the matter to the Cabinet who shall approve or decline the proposed write-off; or

(*c*) take such action under Part X as he considers appropriate.

(4) All amounts approved for write-off by the Secretary to the Treasury, the Minister or Cabinet respectively, shall be reported in the financial statements.

(5) The Minister may, by notice published in the *Gazette*, amend the figures prescribed in this section.

Regulations

91. The Minister may make such regulations as are deemed necessary or expedient for the purpose of giving full effect to this Act and for the due administration of this Act, and in general for the better control and management of public money and public resources and, without limiting the generality of this section, such regulations may include the following matters—

(*a*) the registration of stocks and bonds;

(*b*) the issue, transfer, conversion replacement and redemption of stocks or bonds;

(*c*) prescribing the method of redemption of stock by drawing;

(*d*) prescribing the method by which any payment in respect of any stock or bond may be made;

(*e*) providing for the payment of interest, repayment of principal and transfer of stock or bonds in the case of persons who are or may be under any legal liability;

(*f*) providing for the replacement of certificates which have been lost or destroyed;

(*g*) providing for registers of stockholders or bondholders upon whose stocks or bonds the interest has been unclaimed;

(*h*) providing the fees and charges for any services rendered pursuant to this Act; and

(*i*) providing for the periodical closing of any register.

Treasury Instructions

92.—(1) The Secretary to the Treasury may issue Treasury Instructions setting out detailed procedures and requirements not inconsistent with this Act as to any matter prescribed by this Act to be so provided for, or that is necessary or desirable for carrying out or giving effect to this Act and in general for the better control and management of public moneys and public resources.

(2) The Treasury Instructions referred to in subsection (1) may be issued and distributed in printed, electronic or other form.

(3) Treasury Instructions shall—

(*a*) be headed "Treasury Instruction" with an identifying number, and contain an explanatory headnote;

(*b*) state a commencement date;

(*c*) make reference to the enabling section of the authorizing Act and to any other statutory provision or regulation to which the content relates;

(*d*) state whether the Treasury Instruction is new, adds to or replaces a previous Instruction and refer to the previous Instruction being added to or replaced; and

(*e*) be signed by the Secretary to the Treasury.

Transitional provisions

93.—(1) No person in the preparation of financial statements, budgets or forecasts, unless it is shown that that person acted intentionally, shall be convicted of any offence under section 88 for any act or failure to act by that person in respect of the reporting provisions in Parts III and IX during the period of eighteen months from the coming into force of this Act.

(2) Where, during the period of eighteen months from the coming into force of this Act, any report, statement or update required by this Act is not provided by the due date in accordance with this Act, the Minister shall report the circumstances to the National Assembly forthwith, and if the Assembly is not in session, at the commencement of the next ensuing session.

(3) Every act, matter or thing done in the name of the Minister, the Secretary to the Treasury, the Treasury or the Ministry of Finance before the commencement of this Act will, if validly done continue to have effect as if done in the name of the Minister, the Secretary to the Treasury, the Treasury or Ministry of Finance after the commencement of this Act, and every act, matter or thing in progress before the commencement of this Act and which is affected by this Act may continue in progress after the commencement of, but subject to, this Act.

This Act to prevail

94. Where any provision of this Act conflicts with a provision of any other written law, other than the Constitution, the provisions of this Act shall prevail.

Repeals and savings Cap. 37:01

95.—(1) Parts I, II, III, IV, V, VA, VII, and VIII, and sections 33, 34 and 45 of the Finance and Audit Act are repealed.

(2) All subordinate legislation made under the Finance and Audit Act repealed by subsection (1) and in force immediately before the coming into force of this Act, shall so far as it is not inconsistent with the provisions of this Act, continue in force as if made under this Act.

FIRST SCHEDULE ss. 18 and 19

Contents to be Included in Reports and Statements under Part III

PART I
Economic and Fiscal Data

1. Economic reports required under Part III of this Act shall include forecasts of projected movements in Malaŵi, of—
   (*a*) gross domestic product, including the major components of gross domestic product;
   (*b*) consumer prices;
   (*c*) employment levels;
   (*d*) balance of payments; and
   (*e*) such other information deemed necessary by the Minister to provide a comprehensive economic forecast.
2. Fiscal forecasts required under Part III of this Act shall include—
   (*a*) forecast information with respect to the statements required under section 19;
   (*b*) forecast information with respect to the current year fiscal update and comparative budgeted and actual (where available) or provisional (where not) figures for the immediately preceding financial year; and
   (*c*) details of fiscal risks and, where they cannot be quantified, a statement of possible impacts.

PART II
Reporting Requirements

1. Any forecast or statement required under Part III of this Act shall include details of—
   (*a*) the total trading revenues;
   (*b*) all other revenue;
   (*c*) the total grants or subsidies;
   (*d*) the total operating expenditures;
   (*e*) all other expenditures;
   (*f*) the difference between all expenditure and all revenue;
   (*g*) the level of total public debt; and
   (*h*) the level of asset values, including a statement of Government policy for the maintenance of asset values.

SECOND SCHEDULE

s. 46

Register of Unclaimed Money

Register of Unclaimed Money held by

(insert name of holder)

Name, Occupation and last known Address of Owner	*Total Amount due to Owner*	*Description of Unclaimed Money*	*Date of Last Claim*

THIRD SCHEDULE ss. 60 and 61

PROVISIONS FOR GENERAL BORROWING

PART I

Preliminary

Interpretation

1. In this Schedule, unless the context otherwise requires—

"book-entry securities" means securities which are issued, held or transferred through the book-entry system;

"book-entry system" means a system whereby Government securities are issued; held or transferred by crediting or debiting, as the case may be, the securities accounts maintained by the Registrar without requiring the issuance, holding, or transfer of paper, and if transfer certificates are issued immobilizing the certificates in a central depositary;

"holder" means any person registered as the holder of any stock;

"prescribed" means prescribed by the Minister;

"Registrar" means the Registrar in whose register any stock issued under the provisions of this Schedule is for the time being registered;

"securities" means Treasury Bills, Treasury Notes, Treasury Bonds, local registered stock, debentures, promissory notes, and other long-term debt instruments issued by, or on behalf of, the Treasury, from time to time.

PART II

Terms and Conditions of Loans

Cabinet to determine certain matters

2. When an Act authorizes the borrowing of money and the Minister decides to raise a loan accordingly, the Cabinet shall determine the following matters—

(*a*) the price of the securities (if any);

(*b*) the date or dates on which the money is to be repaid;

(*c*) whether the Government will reserve the right to repay the loan before maturity, and if so, on what notice;

(*d*) the rate or rates of interest to be paid on the amount borrowed;

(*e*) the date or dates from which interest is to be computed and the half-yearly dates on which interest is to be paid;

(*f*) the amount of the loan within the limit set by the authorizing Act;

(*g*) whether or not the Minister may accept subscriptions in excess of the amount of the loan within the limit set by the authorizing Act: and

(*h*) any other special conditions which shall apply to money borrowed in terms of the authorizing Act.

Receipt and expenditure of loan money

3. All money borrowed under the authority of an authorizing Act shall be received into the Consolidated Fund or into such other fund or account as the authorizing Act empowers or directs and may be expended from that fund or account only in accordance with an Appropriation Act or as statutory expenditure for which provision is made in this Schedule or the authorizing Act.

Issue of securities

4. Securities may be issued and registered for any amount borrowed under the provisions of this Schedule, and where securities are issued, shall be known as Malaŵi Government securities.

Securities not to be free of income tax

5. Unless expressly stated to the contrary, no securities shall be issued with the condition that the interest derived therefrom shall be exempt from income tax.

Loans to be charged on public revenue

6. All principal and interest payable under any securities are declared to be a charge upon the public revenues of Malaŵi and to be payable as statutory expenditure out of the Consolidated Fund or such other fund or account as the Minister thinks fit.

Security converted for lenders

7. All money borrowed and all securities issued under this Schedule and an authorizing Act shall, so far as concerns the lender or holder, be deemed to have been lawfully borrowed, issued or converted within the powers conferred by this Schedule and that authorizing Act, and no such lender or holder shall be concerned to inquire whether or to what extent authority has been given or occasion has arisen for the exercise of any such powers.

Prior securities not affected

8. Neither the authority to borrow any money given by any authorizing Act nor the exercise of any such authority under this Schedule and that Act shall alter or affect or vary any security theretofore issued.

Saving of existing claims

9. Nothing in this Schedule and nothing done under this Schedule, except by agreement, shall take away, abridge, or prejudicially affect any right or interest, by way of priority or otherwise, of any person in or against the Consolidated Fund, or the public revenues of Malaŵi, or any of them, or any remedy which any person would have had or might have exercised in respect of any such right or interest if this Act had not been passed.

Authorized investment for trust funds

10. Securities issued under this Act are declared to be an authorized investment for trust funds and the relevant provisions of any written law relating to trustee investments shall apply in respect of such securities accordingly.

Payment of loan before due date

11. The Minister may repay the whole or part of any loan before the due date, on such terms as he shall think fit.

Agreement with Registrar as to securities

12.—(1) The Minister, acting on the advice of the Cabinet, may from time to time, enter into an agreement with any Registrar in or outside Malaŵi providing for all or any of the following matters—

(*a*) for registering any securities in a register kept by the Registrar at his principal place of business, and for issuing certificates of title relating to any such securities;

(*b*) for managing the creation, registration, and issue of securities;

(*c*) for receiving any money borrowed under this Schedule;

(*d*) for paying such money into the Consolidated Fund, or into such other fund or account as is duly appointed for that purpose;

(*e*) for issuing script for deposits on loans;

(*f*) for managing transfer of securities;

(*g*) for paying interest on securities;

(*h*) for reissuing, or re-registering securities, and reissuing certificates of title;

(*i*) for redeeming securities;

(*j*) for generally conducting all business connected with securities; and

(*k*) for the protection and remuneration of the Registrar under and in respect of any such agreement.

(2) Every agreement made with any Registrar under this section shall be as valid and effectual as if the terms thereof had been set forth and enacted in this Act, and all remuneration payable under any such agreement to any Registrar shall be statutory expenditure and be charged upon and be paid out of the Consolidated Fund or such other fund or account as the Minister thinks fit,

Register of securities

13. Each Registrar shall keep a register of securities in which shall be entered with respect of every holder of securities registered therein, the following particulars—

(*a*) the full name and address of the holder;

(*b*) the amount of securities held by him;

(*c*) the rate of interest payable in respect of those securities;

(*d*) the date or dates in each year on which the interest is payable;

(*e*) the due date for repayment of the principal; and

(*f*) such other special conditions as apply to those securities.

Application for securities

14. Any person who desires to lend to the Minister any money on the security of securities under this Schedule may apply to the appropriate Registrar in the prescribed form, and that Registrar may, on payment of the price of the securities and subject to the provisions of this Schedule, register the name of that person in the register kept by him as the holder of the securities accordingly.

No notice of trust to be received or registered

15. No notice of any trust in respect of any securities or certificate of title shall be entered in any register or be receivable by any Registrar; and no liability shall attach to the Government or to any Registrar, by reason

of any express, implied or constructive notice of any trust affecting any such securities or certificate of title.

Registered holder of securities

16. Every person whose name is for the time being on any register as the holder of any securities shall be deemed to be the holder of that securities for that amount standing to his credit in the register, with the right, subject to the provisions of this Schedule, to receive the interest thereon.

Certificates of title to securities

17.—(1) Each Registrar shall, on application in writing by the registered holder of any securities registered in his register, issue to him a certificate of title in the prescribed form certifying that the applicant is the registered holder of the securities referred to in it, being the whole or any part of the amount of securities of which he is the registered holder.

(2) Any such certificate of title shall be conclusive evidence of the ownership of the securities to which it relates by the person named in it as the holder,

(3) Where the Registrar is satisfied that any such certificate of title has been lost or destroyed, the Registrar may, on such terms and subject to such conditions as may be prescribed, issue a substitute certificate of title with the word "Substituted" stamped or written on it, and shall record the issue of it in the register accordingly.

(4) Every substituted certificate of title shall have the same effect to all intents and purposes as the original certificate of title for which it is substituted.

(5) The Registrar shall enter in the register full particulars of the issue of certificates of title under this section.

(6) The transfer, whether by delivery or otherwise, of any such certificate of title shall not operate as a transfer of the legal or equitable interest of the holder in the securities to which it relates, and no dealing with any securities to which any such certificate of title relates shall be recorded by the Registrar unless and until the certificate of title has been produced to and cancelled by the Registrar.

Infants may be registered as holders of securities

18. Any infant of the age of ten years or upwards may be registered as the holder of any securities under this Schedule, and apply for the issue of certificates of title in relation to securities, or may execute a memorandum of transfer of any securities, as effectually in all respects as if he were of the age of twenty-one years.

Application of book-entry system

19.—(1) Where Government securities are issued, held or transferred in book-entry form—

(*a*) the Registrar may issue to the security-holder, once a month, a statement which shall indicate the type of security, its nominal value, the date of its acquisition or disposal, its maturity date and a running nominal balance:

Provided that any additional statement requested by any security-holder during the month shall be provided at such fee which reflects the cost of producing such a statement as the Registrar may, from time to time, require.

(*b*) the Registrar may issue a paper certificate to the security-holder and such certificate shall be registered in the name of the Registrar or his appointed agent as nominee and deposited in a central depository for depositing such certificates and established for that purpose; and

(*c*) the Registrar shall not be liable for any claim or demand which may be brought against the Registrar by reason or in consequence of book-entry securities information acquired from the security-holder and used to unlawfully acquire or transfer book-entry securities.

Transfer of securities

20.—(1) The registered holder of any securities under this Schedule may, by memorandum of transfer, transfer to any other person the whole of the securities or any part thereof, being an amount of K10,000 or a multiple of K1,000, or such other amount as the Registrar may in any particular case agree to.

(2) On application to the Registrar, either by the registered holder or by the transferee, and on production to the Registrar of a duly executed memorandum of transfer of securities and any outstanding certificate of title to those securities, the Registrar shall enter in the register the name of the transferee as the registered holder of the securities to which the memorandum of transfer relates.

(3) Every such entry shall operate as a transfer of the securities to which it relates and shall vest those securities in the transferee.

(4) No transfer of securities shall be made under this section while any certificate of title is outstanding in respect of the securities, unless the amount of the securities proposed to be transferred is not more than the amount standing on the register and unaffected by the outstanding certificate.

Acquisition of securities by operation of law

21. When the right to any securities under this Schedule is acquired by any person on the death or bankruptcy of the registered holder, or under a writ of execution, or in any manner other than by way of a transfer under paragraph 20 of this Schedule, the Registrar, on application by or on behalf of the person entitled, and on being satisfied that he is legally entitled to be registered as the holder of the securities, shall enter his name in the register as the holder of the securities accordingly.

Vesting of securities of deceased holder without requiring probate or letters of administration

22.—(1) Where the registered holder of any securities under this Schedule has died, and the total nominal amount of the securities does not exceed K10,000, the Registrar shall have a discretion, without requiring the production of probate or letters of administration, to register as the holder of the securities any person who proves to the satisfaction of the Registrar—

(*a*) that he is entitled to the securities under the will or on the intestacy of the deceased security-holder; or

(*b*) that he is entitled to obtain probate of the will of the deceased security-holder, or letters of administration of his estate; and

(*c*) that in neither case has any grant been made of any such probate or letters of administration.

(2) Notice of any exercise of the powers conferred by this section shall within fourteen days thereafter be given by the Registrar to the Administrator General.

Payment of interest

23.—(1) The Registrar shall, from time to time, according to the terms of the loan issue cheques for the payment of interest on any securities registered in his register.

(2) Every such cheque shall be drawn in favour of the registered holder of the securities to which it relates or, in the case of securities held jointly or otherwise by two or more persons, may be in the name of the security-holder first named in the register.

(3) Nothing in this section shall preclude the Registrar from paying interest otherwise than by cheque if he thinks fit, or from accepting a direction from a security-holder or security-holders, as the case may be, for payment to be made to an agent,

(4) All payments authorized by this section shall be statutory expenditure.

Closing of register

24.—(1) The Registrar shall, for a period of fourteen days before each payment of interest on any securities registered in his register, close the register of that securities as regards transfers.

(2) The persons who on the day of such closing are registered as security-holders shall, as between them and their transferees, be entitled to the interest then next payable on the security.

Power of attorney

25.—(1) Any person may, by power of attorney in the prescribed form, appoint any other person to be his attorney for any purpose in relation to securities under this Schedule.

(2) Every power of attorney under this section shall be deposited in the office of the Registrar.

(3) Every such power of attorney that is deposited with office of the Registrar shall be valid and effectual for all the purposes mentioned in it until notice in writing of its revocation, or of the death, disability, bankruptcy, winding up or dissolution of the principal has been received in the office of the Registrar.

Redemption, conversion or renewal of securities

26.—(1) The Cabinet may authorize the Minister to issue, in Malaŵi or elsewhere, on such terms as he thinks fit, new securities for such amount as may be necessary for the purpose of redeeming or converting any securities; and the Minister may, from time to time, by agreement with the holders, renew any securities by extending the currency of it for such period as he thinks fit.

(2) The Cabinet may authorize the Minister to pay to the holder of any securities being converted such amount by way of premium or bonus as may be necessary to effect the conversion, and every such premium or bonus shall be deemed to be part of the costs, charges, and expenses of the conversion.

(3) In every case where money is borrowed under this section it shall not be applied other than in redeeming or converting the securities for

which it was borrowed and defraying the costs, charges, and expenses incurred in connexion with the borrowing and the redemption or conversion:

Provided that nothing in this subsection shall be construed to prevent the temporary investment of any such money pending its application to the purpose aforesaid.

(4) Trustees and other persons acting in a fiduciary capacity are expressly authorized to convert under this section any securities held by them, and shall not be liable for any loss resulting from any such conversion.

Interest on securities sold to redeem outstanding securities

27. In every case where securities are disposed of in order to provide money to redeem outstanding securities, interest may be paid on the securities so disposed of notwithstanding that interest is still payable under the outstanding securities.

Auditor General to be notified

28. The Secretary to the Treasury shall notify the Auditor General of all issues, renewals, conversions and redemptions of securities under this Schedule.

Costs, charges and expenses

29. The costs, charges and expenses incurred in connexion with raising any loan under this Schedule or converting, redeeming or renewing any securities shall be statutory expenditure and may at the discretion of the Minister, be charged upon and be paid out of the Consolidated Fund, or such other fund or account as the Minister thinks fit.

PART III
Loans Raised in Malaŵi

Subscriptions from non-Malaŵian or non-residents

30. The Minister is empowered on borrowing in Malaŵi under the authority of this Schedule and an authorizing Act, to accept subscriptions to the loan from persons who are not Malaŵian citizens, or from persons who are not for the time being residents of Malaŵi, but no securities issued for such subscription shall provide for the payment of interest, or the repayment of principal in any currency other than that of Malaŵi, and the transfer from Malaŵi of any interest or principal will be subject to any written law in this respect then in force.

Registrar of securities

31. The Reserve Bank of Malaŵi shall be the Registrar of securities under this Part of this Schedule,

Statements by Registrar

32. The Registrar shall, from time to time, furnish to the Secretary to the Treasury certified statements as to the amount of securities registered under this Part of this Schedule, with such other particulars relating to it as the Secretary to the Treasury may require, and the Auditor General may for all purposes accept any such certified statements as correct.

Exemption from stamp duty

33. Notwithstanding any written law to the contrary no stamp duty shall be payable on the transfer of any securities registered under this Part, or on any power of attorney given under paragraph 26 of this Schedule and relating exclusively to any such securities.

High Court may prohibit dealings with securities

34.—(1) The High Court, on the application of an interested person made either *ex parte* or on notice to any other person as the Court may direct, may make an order prohibiting, for the time and subject to the conditions specified in the order, any dealings with any securities specified in the order, and may discharge any such order, with or without costs, and generally act in the premises in such manner as in the opinion of the Court the justice of the case requires.

(2) The Registrar, without being made a party to the proceedings shall, on being served with any such order, obey it, and make an entry of the order in the register.

(3) No liability shall attach to the Government or to the Registrar for any entry made or anything done by the Registrar pursuant to an order made under this section.

Evidence of contents of register

35. Any extract from the register, certified as correct by the Registrar, shall, for all purposes and in all courts, be conclusive evidence of the entry in the register to which the extract relates at the date when the extract was so certified.

PART IV
Loans Raised Outside Malaŵi

Determination of certain terms for borrowing outside Malaŵi

36. Each Act authorizing the Minister to borrow money outside Malaŵi shall state the following matters—

(*a*) the country in which the money is to be borrowed and the securities issued and registered for all amounts so borrowed;

(*b*) the place for the payment of interest and the repayment of principal respectively;

(*c*) the currency in which the money is to be borrowed; and

(*d*) the currency or money of account in which the securities is to be issued and in which the interest, principal and any other money thereby secured is expressed to be measured or to be payable or repayable in, whether that of Malaŵi or of any other country or whether or not that in which the money thereby secured was originally borrowed.

Agreements relating to loans raised outside Malaŵi

37.—(1) The Minister, acting on the advice of the Cabinet, may enter into any agreement with the Government or a Government agency of a country other than Malaŵi which he considers would facilitate the raising of a loan on reasonable terms in that country by the Government of Malaŵi.

(2) Without restricting the generality of subsection (1) any such agreement may provide for the giving of consideration to obtain a guarantee of the loan, and for the ultimate protection of the guarantor.

(3) A copy of any agreement entered into by the Minister under this section shall be laid before the National Assembly within fourteen days after the date of the execution of the agreement if the Assembly is then in

session, and if the National Assembly is not in session, at the commencement of the next ensuing session.

Appointment of Registrars

38. The Minister, acting on the advice of Cabinet, may from time to time appoint in a country other than Malaŵi a Registrar of securities to be issued and registered in that country.

Loans agents for raising loans outside Malaŵi

39. If any loan authorized to be raised, or any securities authorized to be issued, under this Schedule is to be raised or issued outside Malaŵi, the Minister may by warrant under his hand, appoint any two or more persons as joint loan agents for raising the loan or issuing the securities and may also in like manner confer upon them all such powers as he thinks necessary in order to carry into effect the purposes of this Schedule and any authorizing Act, and notice of such appointment shall be published in the *Gazette*.

Removal of loan agents

40. The Minister may remove or accept the resignation of any loan agent; and in any such case, or if any loan agent dies, the Minister may appoint another person in his stead.

Minister's power not limited

41. The authority of the Minister to raise the whole or any part of the loans authorized to be raised, and generally to exercise all the powers conferred on him by this Act, shall be in no way limited or affected by the fact that he has made any appointment of a loan's agent.

Cost of stamp duty on transfers of certain securities

42.—(1) The cost of composition of any stamp duty payable in a country other than Malaŵi in respect of transfers of any securities issued upon the raising of any loan or upon the conversion of any securities shall be deemed, for the purposes of this Schedule, to be part of the costs, charges and expenses of raising the loan or issuing the securities.

(2) In any case where any stamp duty in respect of such transfers is not compounded the Minister may estimate the amount required for the payment of the stamp duty during the first twelve months after the raising of the loan or the issuing of the securities, and the amount so estimated shall be deemed, for the purposes of this Schedule, to be part of the costs, charges and expenses of raising the loan or issuing the securities.

(3) All sums paid as stamp duty on transfers in excess of the amount estimated under subparagraph (2) of this paragraph, and all other sums so paid in cases where no estimate is made, shall be deemed, for the purposes of this Schedule, to be part of the costs, charges and expenses of raising the loan or issuing the securities.

Transfer of securities from overseas to Malaŵi

43.—(1) Subject to such conditions and on payment of such fees as may, from time to time, be prescribed, the holder of any securities repayable in a country other than Malaŵi may transfer the securities from the register kept in that country to the register kept in Malaŵi.

(2) After the registration in Malaŵi of any such securities so transferred, the securities shall at maturity be redeemable in Malaŵi, and all interest falling due thereon after the date of that registration shall be payable in Malaŵi, notwithstanding anything to the contrary printed on any certificate of title or contained in a prospectus issued in connexion with the raising of the loan.

(3) Any securities so transferred to the register kept in Malaŵi shall not at any later date be transferred to any register kept outside Malaŵi.

PART V
Treasury Bills

Interpretation

44. In this Part, unless the context otherwise requires—

"redemption date" means the date for the redemption of Treasury Bills determined by the Minister under paragraph 48 of this Schedule;

"Treasury Bill" means a Treasury Bill issued under paragraph 61 and pursuant to this Part and includes any coupon in connexion with it.

Issue of Treasury Bills

45.—(1) The Minister may, on behalf of the Government, borrow by the issue of Treasury Bills in Malaŵi such amounts as may be authorized by a resolution of the National Assembly.

(2) The amount of Treasury Bills outstanding at any time shall not exceed twenty-five per cent of annual budgeted revenue.

Application to Treasury Bills

46. The provisions of paragraphs 2, 11 and 24 of this Schedule shall not apply to Treasury Bills.

Value and form of Treasury Bills

47. Every Treasury Bill shall—

(*a*) be for a sum of K10,000 or a multiple thereof which sum shall be recoverable by the Reserve Bank of Malaŵi which may recommend amendment of the sum to the Minister;

(*b*) be repayable at par at such time or times as the Minister shall, before the issue of the Treasury Bill, determine, being not later than one year from the date of issue of the Treasury Bill;

(*c*) be in such form as the Minister may determine; and

(*d*) be issued by such method as the Minister may determine.

Treasury Bills to be a charge on public revenue

48. The par value of Treasury Bills is hereby declared to be secured by way of charge upon the public revenues of Malaŵi and shall be payable as statutory expenditure.

Appointment of agent

49. The Reserve Bank of Malaŵi shall be the agent of the Government for the purposes of the issue and redemption of Treasury Bills.

Audit Office to be notified

50. The Reserve Bank of Malaŵi shall upon request notify the Auditor General of the par value of Treasury Bills outstanding at the time of notification.

Cancellation, redemption and discounting Bills

51.—(1) Upon the redemption date Treasury Bills shall be delivered to the Reserve Bank of Malaŵi for cancellation and the par value shall be paid.

(2) The Reserve Bank of Malaŵi may at its discretion purchase Treasury Bills at a discount prior to the redemption date.

PART VI
Miscellaneous

Forms and other matters may be prescribed

52. Subject to the provisions of this Schedule, the Secretary to the Treasury may, from time to time, in such manner as he thinks fit—

(*a*) prescribe the forms of application for securities, certificate of title, transfer of securities and other instruments under this Schedule; and

(*b*) prescribe all such other matters as may be deemed necessary or expedient for giving full effect to the provisions of this Schedule.

FOURTH SCHEDULE s. 83
FORM AND CONTENT OF FINANCIAL STATEMENTS

1. The financial statements must include the following information—
   (*a*) a Consolidated Operating Statement showing revenue and expenditure and the surplus or deficit for the reporting period;
   (*b*) a Statement of Financial Position showing the assets, liabilities and net financial position as at balance date of the reporting period;
   (*c*) a Statement of Cash Flows showing the cash receipts and cash payments during the reporting period, and the cash balance as at balance date of the reporting period;
   (*d*) a Statement of Funds showing, for each Fund, balances at the beginning and end of the reporting period, and the nature of the movement in the reporting period;
   (*e*) a Statement of Cash Balances showing a breakdown of the balances held by type of holding;
   (*f*) a Statement of Service Performance showing appropriated budgets, approved variations to appropriated budgets, actual performance and variation between actual and budget;
   (*g*) Disaggregated Statements of Service Performance for each Ministry and agency showing appropriated budgets and variations to those budgets, actual receipts and payments for appropriated items, including third party outputs and transactions on behalf of the State, and the variation between appropriated budget and actual performance;
   (*h*) a Statement of Statutory Expenditure showing details of domestic debt servicing, external debt servicing, statutory remuneration and other material items of expenditure;
   (*i*) a Statement of Investments showing the nature or type of investments and current and non-current investments;

(*j*) a Statement of Borrowings showing total debt and the break-down of current and non-current debt, and for each debt showing the opening and closing balances for the reporting period and the nature of the movement during the period, the impact of exchange rate movements, average interest rate, and loan balances available for drawdown (if applicable);

(*k*) a Statement of Contingent Gains and Liabilities' showing where possible an indication of the gain or cost;

(*l*) a Statement of *Ex-gratia* Payments approved under the provisions of this Act; and

(*m*) a Statement of Write-offs approved under section 90 showing in aggregate losses and deficiencies of public money, irrecoverable amounts of revenue, irrecoverable debts and overpayment, the value of assets including investments written off; and detailing all individual items with a value greater than K50,000 which have been written-off;

2. A statement showing for each account in the Trust Fund, balances at the beginning and end of the reporting period, and the nature of the movement in the reporting period.

3. A Statement of Accounting Policies setting out the significant accounting policies on which the financial statements are prepared, and other information specified by the Secretary to the Treasury in Treasury Instructions as are required to provide more detailed information or explanations.

4. Comparative Amounts—

(1) Comparative amounts for the corresponding previous reporting period must be shown in the Statements, except where inappropriate or the item has not previously existed.

(2) Where items included in the current reporting period have been reclassified, the comparative amount of the previous reporting period should be similarly reclassified.

(3) Where respective reporting periods are not equal in length, the period covered must be clearly identified.

(4) An amount in relation to the previous reporting period must be shown notwithstanding that there is no corresponding amount for the current reporting period.

5. Certification—

(1) There must be attached to the front of the financial statements—

(*a*) a statement, signed by the Secretary to the Treasury as to whether in his opinion, the financial statements present fairly the matters required by this Schedule; and

(*b*) a copy of the report by the Auditor General required by section 83 (2);

(2) At the same time that the financial statements are laid before the National Assembly, the Auditor General through the Speaker of the National Assembly shall lay before the National Assembly a return of public securities held in Malaŵi or elsewhere at the end of the financial year to which those financial statements relate; and every such return shall include a full account of all investments made under section 35, and of all securities redeemed or otherwise disposed of during that financial year.

SUBSIDIARY LEGISLATION

PUBLIC FINANCE MANAGEMENT (AGRICULTURAL EXTENSION MANAGEMENT FUND) ORDER

ARRANGEMENT OF PARAGRAPHS

PARAGRAPH

1. Citation
2. Establishment and purpose of the Fund
3. Capital of the Fund
4. Expenditure from the Fund
5. Responsibility for the Fund
6. Use of an overdraft facility
7. Annual estimates
8. Surpluses and deficiencies
9. Remittances to the Consolidated Fund

PUBLIC FINANCE MANAGEMENT (AGRICULTURAL EXTENSION MANAGEMENT FUND) ORDER

G.N. 35/2015

under s. 30

Citation

1. This order may be cited as the Public Finance Management (Agricultural Extension Management Fund) Order.

Establishment and purpose of the Fund

2. There is hereby established the Agricultural Extension Management Fund (hereinafter referred to as the "Fund") which shall be used for the purpose of operation, maintenance and upgrading of agricultural extension infrastructure and equipment.

Capital of the Fund

3. The Fund shall consist of such moneys received for the purpose of the Fund, including such sums as may be received from—

(*a*) accommodation services;

(*b*) hall hiring;

(*c*) catering services from day and residential training centres; and

(*d*) communication services such as printing, mobile vans, hire of public address equipment, radio and video productions.

Expenditure from the Fund

4. Any payment from the Fund of an amount exceeding K15,000,000 shall only be made upon prior approval of the Secretary to the Treasury.

Responsibility for the Fund

5. The Principal Secretary responsible for agricultural extension services shall be responsible for administering the Fund and shall,

subject to the supervision and direction of the Secretary to the Treasury, maintain all necessary books and accounts to enable him produce annually, or at such other period as the Secretary to the Treasury may direct, an Income and Expenditure Account and such other accounts as may be required.

Use of an overdraft facility

6. No money shall be raised for the purposes of the Fund by means of an overdraft at any bank unless the permission of the Secretary to the Treasury has first been obtained.

Annual estimates

7. Annual Estimates of Revenue and Expenditure of the Fund shall be submitted, in quadruplicate, by the Principal Secretary responsible for agricultural extension services for the approval of the Secretary to the Treasury.

Surpluses and deficiencies

8. When submitting Estimates in accordance with paragraph 7, the Principal Secretary shall submit proposals for dealing with any actual or expected surplus or deficiency of the Fund and shall conform to such directions as the Secretary to the Treasury may think fit to give in relation thereto.

Remittances to the Consolidated Fund

9. The Fund shall remit ten per cent of its total revenue to the Consolidated Fund and the remaining ninety per cent shall be retained by the Fund for its operational costs.

PUBLIC PROCUREMENT AND DISPOSAL OF PUBLIC ASSETS

CHAPTER 37:03

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CHAPTER 37:03

PUBLIC PROCUREMENT AND DISPOSAL OF PUBLIC ASSETS

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CHAPTER 37:03

PUBLIC PROCUREMENT AND DISPOSAL OF PUBLIC ASSETS

An Act to provide for the establishment of the Public Procurement and Disposal of Assets Authority; to provide for its functions and powers; to maximize economy and efficiency in public procurement and disposal of public assets; to provide for, and regulate, a decentralized institutional structure for the public procurement and disposal of public assets; and to provide for matters connected with or incidental thereto

27 of 2017
G.N. 71/2017

[21st December, 2017]

PART I

PRELIMINARY

1. This Act may be cited as the Public Procurement and Disposal of Public Assets Act. Short title

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

"Authority" means the Public Procurement and Disposal of Assets Authority established under section 4;

"award" means the granting of a contract by a procuring and disposing entity to a supplier for purposes of entering into a procurement contract;

"bid" means an offer to provide goods, works and services submitted by a bidder in response to an invitation from a procuring and

disposing entity and includes a tender, proposal, quotation and, where applicable, an application to pre qualify;

"bidder" means any participant who has expressed interest in procurement proceedings by submitting a bid;

"bidding document" means a tender solicitation document or any other document for solicitation of offers, proposals or quotations;

"bid notice" means any advertisement by which eligible bidders are invited to submit written offers to provide or acquire works, services and goods or any combination of them in case of procurement and disposal respectively;

"bid security" means a security bond required to ensure that a bid will remain valid during the period stated in the bidding document;

"bid securing declaration" means a declaration specified under the regulations;

"chairperson" means the chairperson of the Authority;

"close relative" means a spouse, child, sibling or parent or guardian;

"Controlling Officer" means the head or principal person who is in charge of procuring and disposing entity;

"coercive practices" mean practices intended at harming or threatening to harm, directly or indirectly, a person, or a person's asset, to influence that person's participation in a procurement or disposal proceeding or to effect the execution of a procurement contract;

"collusive practices" mean a scheme or arrangement between two or more bidders, with or without the knowledge of the procuring and disposing entity, designed to establish bid prices at artificial or non-competitive levels;

"consultant" means a person who is under a procurement contract to provide consultancy services to a procuring and disposing entity;

"consultancy services" means services of an intellectual or advisory nature;

"contract" means a legally binding agreement between two or more parties formed by the mutual consent of the parties;

"contractor" means a natural or legal person who is registered with a relevant authority to perform construction works;

"corrupt practice" has the meaning ascribed to the term by the Corrupt Practices Act; Cap. 7:04

"Director General" means the Director General appointed under section 10;

"disposal" means the divestiture of public assets, including intellectual and proprietary rights and goodwill, and any other rights of a procuring and disposing entity by any means of sale, auction or any combination of these;

"disposal process" means the successive stages in the disposal cycle;

"domestic bidder" means any bidder whose principal place of business is within Malaŵi;

"domestic supplier" means any supplier whose principal place of business is within Malaŵi;

"donor organization" means an organization which provides, or joins in providing, grants, credits or loans to the Government or its agencies;

"due diligence" means the assessment of a bidder's or supplier's technical, financial and management capabilities and the bidder's or supplier's governance record to effectively execute a procurement contract;

"emergency" means a situation which poses an imminent threat to the physical safety of a population or damage to property;

"e-procurement" means the process of procurement using the internet or other information and communication technologies;

"foreign bidder" means a bidder other than a domestic or regional bidder;

"foreign supplier" means a supplier other than a domestic or regional supplier;

"framework agreement" means an agreement between a procuring and a disposing entity and a supplier and a contractor through which a supplier or contractor undertakes to supply goods, works or services on indefinite quantity basis at an agreed unit price for an agreed period of time;

"fraudulent practice" means a misrepresentation of facts in order to influence a procurement or disposal process or the execution of a contract;

"goods" means objects of every kind and description, including raw materials, products and equipment, and objects in solid, liquid or gaseous form, and electricity, as well as services incidental to the supply of the goods if the value of those incidental services does not exceed the value of the goods themselves;

"information" includes written, visual, oral and electronic information;

"Internal Procurement and Disposal Committee" means a committee constituted under section 26;

"joint venture" means an association of two or more bidders for the purposes of participating in and carrying out a procurement contract;

"local authority" has the meaning assigned to it in the Local Government Act; Cap. 22:01

"local enterprise" means supplier, contractor or consulting firm registered and operating in Malaŵi and whose shareholding is held in majority by Malaŵian nationals;

"lowest evaluated bidder" means a bidder ranked as first, following the application of the specified evaluation methodology and criteria;

"misprocurement" means a procurement that has not followed the laid down procedures and guidelines;

"national supplier" means a supplier registered and operating in Malaŵi;

"non-consulting services" means any object of procurement other than goods, works and consulting services;

"no objection" means permission to proceed with the intention for contract award;

"officer" means a person who is assigned to, or employed by, the Authority;

"post-qualification evaluation" means the conduct of due diligence to determine whether the bidder is qualified to perform the procurement contract effectively;

"pre-qualification documents" means documents issued by the procuring and disposing entity that set out the terms and conditions of the pre-qualification proceedings;

"procurement contract" means an agreement between a procuring and disposing entity and a bidder, supplier, or consultant resulting from the procurement proceedings and includes a framework agreement or an agreement to dispose public assets, if applicable in the context;

"procurement professional" means a member of the cadre of procurement professionals;

"Procurement and Disposal Unit" means a division or section in each procuring and disposing entity responsible for the execution of the procurement and disposal function;

"procuring and disposing entity" means a Government ministry, department, agency, any other public body or any sub division thereof engaging in procurement or disposal of public assets;

"public interest" means something that is to the advantage, direct or indirect, of the people of Malaŵi;

"public procurement" means acquisition by a procuring and disposing entity, of goods, works, services or any combination thereof, funded in whole or in part by public funds;

"public asset" means any property, tangible or intangible, owned by the Government or by a procuring and disposing entity, including physical property, shares, proprietary rights and land;

"public body" means any organ or agency of the Government and includes—

(*a*) a statutory body;

(*b*) local authorities; and

(*c*) such other bodies as may be prescribed;

"public official" means—

(*a*) an officer; or

(*b*) a public officer or other person employed by a public body;

"public funds" means any monetary resources appropriated to procuring and disposing entities through budgetary processes, grants and credits, put at the disposal of procuring and disposing entities by donor organizations or revenues of procuring and disposal entities;

"record" means any recorded information, in any format, including an electronic format;

"regional bidder" means a bidder from countries in the region or regional block as prescribed in the regulations;

"regional preference" means the margin of preference applicable to bidders and suppliers from the countries in the region or regional block, as stipulated in the bidding document;

"responsive" means satisfying the minimum requirements of a bidding process as stipulated in the bidding document;

"reverse auction" means an online real-time sourcing technique utilized by a procuring and disposing entity to select the successful bid, which involves presentation by suppliers or contractors of successively lowered bids during a scheduled period of time and automated evaluation of the bids;

"Review Committee" means the independent Review Committee constituted under Part IX;

"socio-economic policies" means environmental, social, economic and other policies of the Government which a procuring and disposing entity is required to take into account in the procurement and disposal proceedings;

"small and medium enterprises" means an enterprise including its affiliates that is independently owned and operated, not dominant in the field of operation in which it is bidding on Government contracts and qualified as such under the criteria and size standards in the relevant instruments of the Ministry responsible for industry and trade or the National Construction Industry Council of Malaŵi;

"statutory body" has the meaning assigned to it in the Public Audit Act; Cap. 37:01

"supplier" means a natural, or legal person, who has entered into a procurement contract with a procuring and disposing entity;

"undue influence" means pressure or influence exerted on a public officer to make a decision in favour of the person exerting such pressure or influence or anyone connected to him;

"user department" means any department, division, branch or section of the procuring and disposing entity, including any project unit working under the authority of the procuring and disposing entity, which initiates procurement and disposal requirements and is the user of the requirements;

"vice-chairperson" means the person appointed as vice-chairperson of the Authority; and

"works" means works associated with the construction, re-construction, demolition, repair or renovation of a building, road, structure or works, such as site preparation, excavation, erection, building, installation of equipment or materials, decoration and finishing, as well as services incidental to construction such as drilling, mapping, satellite photography, seismic investigations, and related services provided pursuant to a procurement contract, if the value of those services does not exceed that of the works themselves.

Application of this Act

3.—(1) This Act applies to all procurement involving public funds and disposal of public assets.

(2) Notwithstanding the provision of subsection (1) the Act shall not apply to—

(*a*) employment contracts;

(*b*) lease or rental of real property, subject to approval of the Director General;

(*c*) contracting for procurement of financial services relating to the issue, urgency or assignment of securities or other financial instruments; and

(*d*) procurement and disposal of assets under the Public-Private Partnership Act. Cap. 46:07

PART II

The Public Procurement and Disposal of Assets Authority

Establishment of the Public Procurement and Disposal of Assets Authority

4. There is hereby established the Public Procurement and Disposal of Assets Authority (in this Act otherwise referred to as the "Authority"), which shall be—

(*a*) a public body responsible for the administration of this Act;

(*b*) a body corporate with perpetual succession and a common seal; and

(*c*) capable of doing or performing all such acts and things as bodies corporate may, by law, do or perform.

Functions of the Authority

5.—(1) The Authority shall be responsible for the regulation, monitoring and oversight of public procurement and disposal of assets in Malaŵi.

(2) Without prejudice to the generality of subsection (1), the functions of the Authority shall be—

(*a*) to develop and enhance the efficiency and effectiveness of public procurement and disposal of assets operations;

(*b*) to develop standardized and unified procurement and disposal of assets regulations, instructions, and bidding documents which shall be binding on all procuring and disposing entities, in consultation with concerned professional and official entities, for issuance by the relevant authorities for use throughout Malaŵi;

(*c*) to establish and maintain institutional linkages with Malaŵi Institute of Procurement and Supply and other professional

bodies having interest in regulating the ethical behaviour and standards of supply chain management professionals;

(*d*) to collect and establish a data and information base on public procurement and disposal of assets and monitor the performance of procuring and disposing entities and suppliers, contractors, consultants and other service providers so as to ascertain efficiency and compliance with applicable legislation;

(*e*) to maintain and circulate lists of debarred bidders, suppliers, contractors, consultants and other service providers;

(*f*) to provide an annual report of procurement and disposal activities carried out by procuring and disposal entities within three months of the close of the financial year through the Authority to the Minister, who shall lay it before the National Assembly, not less than six months from the date of report;

(*g*) to refer some violations of this Act and the regulations relating to public procurement and disposal of public assets to the relevant budgetary and law enforcement authorities for appropriate action;

(*h*) to facilitate administrative review of bid protests in accordance with Part IX; and

(*i*) to carry out economic studies on public procurement and disposal of assets, comparisons, and future projections, so as to provide advice to the Government in respect of the mid-term and long-term policy it may formulate in public procurement and disposal of assets' matters.

(3) In the exercise of its functions under this Act, the Authority shall act in a manner that is impartial and independent.

Powers of the Authority

6.—(1) The Authority shall, through subsidiary legislation—

(*a*) set and enforce monetary thresholds for regulating procurement and disposal functions;

(*b*) subject to paragraph (*a*), issue a "No Objection" for procurements above the set prior review thresholds;

(*c*) subject to paragraph (*a*), the Authority shall set a limit below which a "No Objection" shall be considered or issued by the Director General; any "No Objection" above the limit shall be subject to the approval of the Authority;

(*d*) in some cases issue a *subpoena* within a reasonable time requiring the production of books or accounts, records, documents,

or other relevant financial papers or objects necessary for the performance of its duties;

(*e*) access, at any reasonable time, the premises of any procuring and disposing entity whose procurement is being monitored and request for any relevant information from any person, including a Controlling Officer and the head of Procurement and Disposal Unit;

(*f*) summon and examine witnesses regarding any procurement proceeding or disposal process;

(*g*) suspend or debar any bidder, supplier, contractor, consultant and any other service provider that breaches any provision of this Act from participating in procurement proceedings or disposal process;

(*h*) institute procurement or disposal reviews at any time before, during or after contract award;

(*i*) declare misprocurement where applicable and impose appropriate disciplinary and punitive measures;

(*j*) investigate and sanction any procuring and disposing entity or individual involved or suspected to have been involved in misprocurement and any other misconduct;

(*k*) set special conditions for targeted procurement in enhancement of the capacity and performance of micro, small and medium enterprises in consultation with other regulatory bodies; and

(*l*) do all such acts and things as it may consider incidental or conducive to the exercise of its functions under this Act.

(2) In exercising its powers and functions, the Authority may cooperate with other bodies exercising oversight functions over procuring and disposing entities and may, for that purpose, establish mechanisms for sharing information and working jointly with those bodies.

(3) The Authority shall provide strategic direction in order to ensure the attainment of their functions under this Act.

Membership of the Authority

7.—(1) The Authority shall consist of—

(*a*) the following five members appointed by the Minister from the following organizations—

(i) one member nominated by the Malaŵi Law Society;

(ii) one member nominated by the Malaŵi Institute of Procurement and Supply;

(iii) one member nominated by the Malaŵi Institute of Engineers;

(iv) one member nominated by Malaŵi Confederation of Chambers of Commerce and Industry; and

(v) one member nominated by the Institute of Chartered Accountants in Malaŵi; and

(*b*) the following *ex officio* members—

(i) the Chief Secretary or his representative;

(ii) the Secretary to the Treasury or his representative; and

(iii) the Solicitor General or his representative.

(2) The members of the Authority other than *ex officio* members, shall have a minimum of bachelor's degree in their respective fields, obtained from a reputable institution and their appointment shall be subject to the approval of the Public Appointments Committee.

(3) The Minister shall appoint the chairperson and vice-chairperson from amongst the members appointed under subsection (1).

(4) With the exception of the *ex officio* members of the Authority, the rest of the members shall hold office for a period of three years, on such terms and conditions as the Minister may determine, and shall be eligible for reappointment for one further term only:

Provided that when electing members into office after the expiry of the three year term the Minister shall have regard to the need to maintain a reasonable degree of continuity on the membership of the Authority so that at least one half of the members or whose terms has expired shall be reappointed for the next term of office.

(5) Every member of the Authority shall be paid by the Authority such allowances as the Authority may, with the approval of the Minister, determine.

(6) The Minister may, on the advice of the Authority, terminate the appointment of a member who—

(*a*) has been declared bankrupt;

(*b*) has, within the last five years, been convicted by a competent court of a crime which is punishable with imprisonment without an option of a fine;

(*c*) is otherwise incapacitated;

(*d*) is in default or breach of trust in the discharge of the members' duties under this Act; or

(*e*) if appointed under subsection (1) (*a*), has ceased to be a member of the professional body which nominated him.

(7) A member may resign from the Authority upon giving a written notice of one month to the Minister.

(8) On occurrence of a vacancy in the membership of the Authority due to death or vacation of office by a member, the professional body that nominated the outgoing member shall within six months of such death or vacation of office, nominate other persons from which the Minister shall appoint a new member for the remainder of the term for the outgoing member.

Meetings of Authority

8.—(1) The Authority shall meet to conduct its business at least once every three months at such place and time, as the chairperson may determine.

(2) An ordinary meeting of the Authority shall be convened with at least fourteen days written notice to the members.

(3) The chairperson, in consultation with the Director General, or at the written request of two or more members of the Authority may cause an extraordinary meeting of the Authority to be summoned at such place and time as the chairperson may appoint within seven days.

(4) The *quorum* at any meeting of the Authority shall be at least five members.

(5) The chairperson, or in his absence the vice-chairperson, shall preside at the meetings of the Authority and in absence of both the chairperson and vice-chairperson, the members present and forming a *quorum* shall elect one of their number to preside over such meeting, and the member so elected shall exercise all the powers and perform all the duties of the chairperson.

(6) The Authority may make standing orders for the regulation of its proceedings and business of any of its committees, and may vary, suspend or revoke any such standing orders.

(7) Minutes of each meeting of the Authority and a committee of the Authority shall be kept by the secretary to the Authority and shall be confirmed at the succeeding meeting.

(8) The decision of the Authority at any meeting on any matter shall be that of the majority of the members present and voting, and at all meetings, the person presiding shall have, in the event

of an equality of votes, a casting vote in addition to his or her deliberate vote.

(9) The Authority may, at its discretion, at any time co-opt any person to attend any meeting of the Authority for the purpose of assisting or advising the Authority in respect of any matter under consideration by the Authority but such a member shall not be entitled to vote.

(10) Subject to the provisions of this section, the Authority shall regulate its meetings and proceedings in such a manner as it deems fit.

Committees of the Authority

9.—(1) For the proper exercise of its functions, the Authority may establish such number of committees whose chairpersons shall be members of the Authority in which it may vest such functions as it deems fit.

(2) Notwithstanding the provisions of subsection (1) above, the Authority may itself exercise that function, and may amend or rescind any decision of the committee.

(3) The Authority may, as it deems fit, co-opt persons who are not its members to be part of the committee.

(4) The chairperson of a committee may at any reasonable time and place convene a meeting of that committee.

(5) The procedures to be followed at a meeting of a committee shall be prefixed by the Authority.

Director General

10.—(1) The Authority shall, in consultation with the Minister, appoint the Director General through a competitive selection process on such terms and conditions as the Authority may determine.

(2) The Director General shall be a person with—

(*a*) sufficient qualifications and experience in any of the following areas—

(i) finance;

(ii) economics;

(iii) engineering;

(iv) accountancy;

(v) commerce;

(vi) law; or

(vii) procurement;

(viii) administration; and

(*b*) demonstrable knowledge and experience in procurement.

(3) The Director General shall be the Chief Executive Officer of the Authority and shall, subject to the general supervision and control of the Authority, be in overall in charge of—

(*a*) day to day operations of the Authority;

(*b*) management of the funds, property and business of the Authority;

(*c*) effective administration and implementation of the provisions of this Act; and

(*d*) provision of secretarial functions to the Authority.

(4) The Director General shall hold office for a term of four years, and shall be eligible for re-appointment for a further term.

(5) The Director General or, in his absence, such other employee of the Authority as he may designate, shall attend meetings of the Authority and acting as the secretary for such meetings, and may address the meetings, but shall not vote on any matter transacted at the meeting.

Tenure of office of the Director General

11. The Director General shall be appointed to a term of office of four years, and may be re-appointed for a further term.

Removal of the Director General

12.—(1) The Authority may terminate the Director General's appointment on the following grounds—

(*a*) incompetence;

(*b*) inability to perform the functions of his office by reason of a mental or physical infirmity;

(*c*) conviction of an offence which is punishable with imprisonment without an option of a fine;

(*d*) involvement in a corrupt transaction;

(*e*) misconduct that brings the Authority into disrepute;

(*f*) non-disclosure of interest; and

(*g*) undischarged bankruptcy.

(2) The Authority, if it considers desirable in the public interest so to do, may suspend the Director General from exercising the duties of his office for up to sixty days pending investigations to determine whether or not he may be removed from the office under subsection (1).

(3) The Director General shall not be removed from office unless he has been given an opportunity to be heard.

Deputy Director General

13.—(1) The Authority shall appoint the Deputy Director General of the Authority through competitive selection process on such terms and conditions as the Authority shall determine.

(2) The Deputy Director General shall perform such functions and duties as may be assigned to him by the Director General.

(3) Sections 11 and 12 shall apply *mutatis mutandis* in respect of tenure of office and removal of the Deputy Director General.

Acting Director General

14.—(1) If the office of the Director General is vacant or the Director General is absent from duty or unable for any other reason to perform the functions of his office, the Deputy Director General shall act as Director General.

(2) If both the Director General and the Deputy Director General are absent from duty or unable for any other reason to perform the functions of their offices, the Authority shall appoint another duly qualified person within the Authority to act as Director General during such temporary absence or vacancy:

Provided that where the period of such temporary absence has exceeded twenty-one days, the Authority shall, within fourteen days thereafter, furnish to the Minister the reasons why the vacancy in both or either of the two offices cannot be substantively filled with immediate effect and an estimate of the time within which the vacancy shall be filled, being not longer than six months from the expiry of twenty-one days herein referred to.

Other staff of the Authority

15.—(1) The Director General shall appoint other members of staff as may be required for the performance of the functions of the Authority on such terms and conditions determined by the Authority.

Funds of the Authority

16. The operational and financial costs of the Authority shall be provided through—

(*a*) advances made to the Authority under section 18;

(*b*) fees, levies and other moneys payable to the Authority under this Act or regulations;

(*c*) fines payable to the Authority in respect of breaches of the Act or other conditions imposed by the Authority;

(*d*) grants or donations received by the Authority;

(*e*) such sums as shall be appropriated to the Authority by Parliament; and

(*f*) proceeds from the sale by the Authority of any of its assets or equipment to which it has title.

Borrowing by the Authority Cap. 37:02

17. Subject to the Public Finance Management Act, the Authority may borrow such amounts of money as it may require for the performance of its functions under this Act.

Advances to the Authority

18. Where in any financial year the income of the Authority, together with any surplus income brought forward from a previous year, is insufficient to meet the actual or estimated liabilities of the Authority, the Minister may make advances to the Authority out of moneys appropriated for that purpose by Parliament.

Books of accounts

Cap. 37:01
Cap. 37:02

19.—(1) The Authority shall cause to be kept proper books and other records of account in respect of receipts and expenditures of the Authority in accordance with the Public Audit Act and the Public Finance Management Act.

(2) The Authority may charge fees in respect of publications, seminars, documents, advisory and other services provided by the Authority.

(3) The moneys of the Authority which are not immediately required for the performance of its functions may be invested on short-term deposit with any bank or financial institution in Malaŵi.

(4) All moneys of the Authority which, in the opinion of the Minister, are in excess of its budgetary requirements shall be paid into the Consolidated Fund, but the Authority shall be entitled to retain such sums as it reasonably requires for its operations.

Financial year of the Authority

20.—(1) The financial year of the Authority shall be the same as the financial year of the Government.

(2) The Minister shall cause to be prepared, as soon as practicable, but not later than six months after the end of the financial year, an annual report on all the financial transactions of the Authority.

(3) The report under subsection (2) shall include—

(*a*) an audited statement of financial position;

(*b*) an audited statement of income and expenditure;

(*c*) an annual report of the Auditor General; and

(*d*) any justification for retention of any monies by the Authority, where applicable.

(4) The Minister shall lay before the National Assembly, the report referred to in subsection (2).

Audit of accounts Cap. 37:01

21. The Authority shall be audited in accordance with the Public Audit Act.

Disclosure of interest

22.—(1) Where any member of the Authority, a committee of the Authority, any employee of the Authority, any public official or member of an Internal Procurement and Disposal Committee has any direct or indirect pecuniary interest in relation to any matter before the Authority, any of its committees, or the procuring and disposing entity, he shall—

(*a*) disclose at or before the meeting convened to discuss that matter, the nature of his interest; and

(*b*) not take part in any deliberation or any decision-making process in relation to that matter.

(2) A disclosure of interest made under this section shall be recorded in the minutes of the meeting of the Authority, or a committee as the case may be.

(3) A person who fails to disclose an interest as required under this section commits an offence and shall, upon conviction, be liable to a fine of K1,000,000 and to imprisonment for five years.

Post engagement restrictions

23.—(1) Every member of the Authority or committee of the Authority, shall maintain, during or twenty-four months after a person's relationship with the Authority, or the committee the confidentiality of any matter relating to this Act which comes to that person's knowledge in the course of duty.

(2) Any person who, without lawful excuse, contravenes subsection (1) commits an offence and shall, upon conviction, be liable to a fine of K500,000 or to imprisonment for two years.

Immunity of members and employees of the Authority

24. A member or every member of the Authority or employee shall not, in his personal capacity, be liable in civil or criminal proceedings in respect of any act or omission done in good faith in the performance of his duties or functions under this Act.

PART III

Responsibility of Controlling Officers, Internal Procurement and Disposal Committees, Procurement and Disposal Units and *Ad Hoc* Evaluation Teams

Responsibility of a Controlling Officer

25.—(1) A Controlling Officer shall ensure that the procuring and disposing entity complies with this Act.

(2) Without prejudice to the generality of subsection (1), a Controlling Officer shall be responsible for—

(*a*) appointing members of the Internal Procurement and Disposal Committee;

(*b*) submitting annual procurement and disposal plans, quarterly reports and other statutory reports as may be prescribed from time to time;

(*c*) to providing corrective measures to prevent misconducts throughout the procurement and disposal processes;

(*d*) to managing bidders' protests and grievances;

(*e*) to reporting misconducts by bidders, suppliers or public officials, to the Authority and other relevant bodies;

(*f*) to implementing disciplinary measures against public officials and suppliers;

(*g*) to ensuring that procurement and disposal documentation is made available to the Authority and other oversight institutions whenever required; and

(*h*) to providing leadership and oversight role of the procuring and disposing entity.

(3) Where a Controlling Officer fails to comply with his responsibilities as provided in this section, the Authority shall recommend imposition of any of the following sanctions—

(*a*) withholding of the procuring and disposing entity's annual budget for procurement from Treasury;

(*b*) reprimand by the appointing authority; and

(*c*) bearing of any loss suffered by the procuring and disposing entity or part thereof by the Controlling Officer.

Establishment of Internal Procurement and Disposal Committees

26.— (1) There shall be established in all procuring and disposing entities Internal Procurement and Disposal Committees.

(2) The functions of the Internal Procurement and Disposal Committees shall include—

(*a*) ascertaining the availability of funds to pay for each procurement;

(*b*) approving the methods of procurement and disposal to be used in each case;

(*c*) approving the procurement and disposal plans for the procuring and disposing entity;

(*d*) appointing the chairperson of the bid opening from amongst its membership;

(*e*) appointing *ad hoc* evaluation team for the examination, evaluation and comparison of bids;

(*f*) reviewing and approving bid evaluation reports;

(*g*) reviewing and approving any contract amendments; and

(*h*) such other functions as may be prescribed for the committees by the Regulations.

Composition of Internal Procurement and Disposal Committees

27.—(1) An Internal Procurement and Disposal Committee shall comprise senior personnel appointed by the Controlling Officer who shall be well informed of public procurement and disposal of public assets matters, and shall meet the minimum qualifications set by regulations.

(2) Notwithstanding the generality of subsection (1), membership of the Internal Procurement and Disposal Committee shall at a minimum comprise the following—

(*a*) a senior officer designated by the Controlling Officer as the chairperson of the Internal Procurement and Disposal Committee;

(*b*) head of the Procurement and Disposal Unit or his representative;

(*c*) an accountant or other budget professional; and

(*d*) other senior officers.

(3) Except in very exceptional circumstances and with the prior approval of the Director General, the Internal Procurement and Disposal Committee shall comprise a maximum of seven members.

(4) The *quorum* shall be made up of the chairperson of the Internal Procurement and Disposal Committee, head of the procurement and disposal unit and the accountant or budget professional.

(5) The term of members of the Internal Procurement and Disposal Committee shall be two years and members may be re-appointed to the Committee.

(6) The procuring and disposing entities that do not have a Procurement and Disposal Unit shall seek guidance from the Authority on how to execute its procurement and disposal activities.

Ad hoc evaluation teams

28.—(1) The Internal Procurement and Disposal Committee shall appoint an *ad hoc* evaluation team whenever there is a procurement or disposal proceeding.

(2) An *ad hoc* evaluation team shall have maximum of five members, comprising—

(*a*) the head or representative of the Procurement and Disposal Unit who shall be the secretary;

(*b*) member from the user or disposing department; and

(*c*) three Non-Internal Procurement and Disposal Committee members who have technical knowledge of the procurement or disposal bids to be evaluated.

(3) Use of external evaluation teams or consultants shall only be resorted to in very exceptional circumstances and only upon prior approval of the Director General.

Procurement and Disposal Unit

29.—(1) Procuring and disposing entities shall establish Procurement and Disposal Units which shall be staffed by qualified procurement and disposal professionals, and assign to such units authority to conduct procurement and disposal activities in accordance with this Act.

(2) Notwithstanding the generality of subsection (1), the functions of the Procurement and Disposal Units shall include—

(*a*) preparing procurement and disposal plans and reports for the procuring and disposing entities;

(*b*) preparing bidding documents;

(*c*) facilitating Internal Procurement and Disposal Committee meetings;

(*d*) keeping records of all procurement and disposal activities carried out by the procuring and disposing entity;

(*e*) acting as the secretariat to the meetings of the Internal Procurement and Disposal Committee and the *ad hoc* Evaluation Team;

(*f*) evaluating simple low value procurements as prescribed in the Act; and

(*g*) preparing contract documentation and managing the resultant contract in conjunction with user departments.

PART IV

Principles Procurement and Disposal of Assets

Principles of public procurement

30. All public procurement proceedings shall be conducted in a manner which promotes transparency, accountability, non-discrimination, fairness, open competition, anonymity, economy, efficiency and responsiveness to modern information and communications technology.

Principles of disposal of assets

31.—(1) All disposal proceedings shall be conducted in a manner which promotes transparency, accountability and fairness.

(2) All disposal proceedings shall be conducted in a manner to maximize competition and achieve value for money.

(3) A bidder shall not be excluded from participating in disposal on the basis of nationality, race, religion, gender or any other criterion not related to qualification, except to the extent provided for in this Act.

(4) A procuring and disposing entity shall, in all disposal proceedings, choose appropriate procedures and cause the disposal of assets to be carried out diligently and efficiently, so that the prices received by the procuring entity represent the best value or net outcome that can reasonably be obtained for the assets disposed of.

(5) Procuring and disposing entities shall plan disposal activities with a view to achieving maximum value from any such disposals and other objectives set forth in this Act.

(6) A procuring and disposing entity shall, take due care of all assets earmarked for disposal its public assets until such time the actual disposal is concluded as prescribed in this Act.

Records of procurement and disposal proceedings

32.—(1) A procuring and disposing entity shall maintain records of all procurement and disposal proceedings for a period of five years from the date of—

(*a*) contract completion or termination;

(*b*) the decision to cancel the procurement proceedings or disposal process;

(*c*) the settlement of any dispute under a procurement contract; or

(*d*) the resolution of any complaint, challenge or appeal made under this Act.

(2) In an event that the period referred to in subsection (1) has expired but the documentation has not been subjected to an audit, the records of procurement and disposal proceedings shall still be maintained by the procuring and disposing entity.

Mode of communication

33. All communication, including electronic communication, between a procuring and disposing entity and a bidder, supplier or contractor shall be in English and in writing.

Confidentiality

34.—(1) All public officials shall keep confidential, the information that comes into their possession relating to the procurement and disposal proceedings and to bids, including any bidder's proprietary information:

Provided that the procuring entity shall upon request for an unsuccessful bidder communicate to the bidder the grounds for the rejection of its application to pre-qualify all of its bid.

(2) Any person who contravenes subsection (1) commits an offence, and shall, upon conviction, be liable—

(*a*) to a fine of K500,000 and to imprisonment for two years; and

(*b*) disciplinary action.

Limitation on contracts with employees

35. A procuring and disposing entity shall not enter into a procurement or disposal contract with its employee, or any close relative of any employee.

Participation by micro, small and medium enterprises

36.—(1) A procuring and disposing entity may, in the prescribed manner—

(*a*) grant a margin of preference for the benefit of a bid by a micro, small and medium enterprise offering goods, works, consultancy services or other services manufactured, grown or performed by a local enterprise; and

(*b*) reserve or set aside certain procurement requirements for micro, small and medium enterprises by restricting bidding to those enterprises as prescribed in the Act.

(2) Notwithstanding the provisions of subsection (1), the Director General, in consultation with the Ministers responsible for trade, economic or social policy may, by order published in the *Gazette*, prescribe any preference or reservation for micro, small and medium enterprises.

PART V

Procurement and Disposal Methods

Methods of procurement

37.—(1) Public procurement shall be realized by means of open tender proceedings, subject to the exceptions provided in this section, and as may be prescribed in the regulations.

(2) Subject to the approval of the Director General, the application of subsection (1) may be waived in the case of national defence or national security related procurement to the extent that such procurement is determined to be of a sensitive nature, in accordance with regulations.

(3) Restricted tender may be used in the following cases—

(*a*) when the goods, works or services are only available from a limited number of suppliers, all of whom are known to the procuring and disposing entity; and

(*b*) the time and cost of considering a large number of bids is disproportionate to the value of the procurement.

(4) A tender may be held in two stages in the following cases—

(*a*) when it is not feasible at the outset of the procurement proceedings to define fully the technical or contractual aspects of the procurement; or

(*b*) when, because of the complex nature of the goods, works and services to be procured, the procuring and disposing entity wishes to consider various technical or contractual solutions, and to negotiate with bidders about the relative merits of those variants, before deciding on the final technical or contractual specifications.

(5) An international tender (otherwise referred to as an "international competitive bidding") shall involve publication in the international media of the invitation to submit bids, or to apply for pre-qualification.

(6) International competitive bidding shall be held in the following cases—

(*a*) where the estimated value of the stated procurement exceeds the amount set by regulations;

(*b*) where the goods, works or services are not available under competitive price and other conditions from more than two suppliers in Malaŵi; or

(*c*) where a supplier was not identified by a national tender proceeding.

(7) Request for proposals is the method to be used for the procurement of consultancy services.

(8) The request for quotations method may be used for the procurement of goods, works and routine services when the estimated value of the procurement does not exceed the amount set by the regulations.

(9) Single-source method is permitted only in the following circumstances—

(*a*) where the estimated value of the procurement does not exceed the amount set in the regulations;

(*b*) where only one supplier has the technical capability or capacity to fulfill the procurement requirement, or only one supplier has the exclusive right to manufacture the goods, carry out the works, or perform the services to be procured;

(*c*) where there is an emergency need for the goods, works and services; or

(*d*) where the procuring and disposing entity, having procured goods, works and services from a supplier, determines that additional goods, works or services need to procured from the same source for reasons of standardization or because of the need for compatibility with existing goods, equipment, technology, or services, taking into account the effectiveness of the original procurement in meeting the needs of the procuring and disposing entity, the limited size of the proposed procurement in relation to the original procurement, the reasonableness of the price and the unsuitability of alternatives to the goods or services in question.

(10) Use of the method of procurement other than open tender or, in the case of procurement of consultancy services, a method other than request for proposals, is subject to approval by the Director General; and the procuring and disposing entity shall note in the record of the procurement proceedings the grounds for the choice of the procurement method:

Provided that when seeking approval from the Director General to use the method other than open tender or the case of procurement of consultancy services, a method other than request of proposal, the procuring and disposing entity shall provide written reasons with sufficient clarity to the Director General for the choice of the procurement method.

(11) Single source method of procurement or any high value procurement shall be subject to vetting by the Anti-Corruption

Bureau, pursuant to the powers conferred on the Bureau under section 10 of the Corrupt Practices Act.

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(12) The Authority shall by regulations prescribe the threshold for the high value procurements referred to under subsection (11).

Disposal of assets

38.—(1) Public assets shall be disposed of by open means such as public auction or tendering with sealed bids.

(2) Notwithstanding subsection (1), a procuring and disposing entity may, upon obtaining prior approval from the Director General, use alternative means including—

(*a*) transfer the asset to another procuring and disposing entity;

(*b*) destruction or writing off of the asset;

(*c*) trade-in; or

(*d*) conversion or classification of asset into another form.

PART VI

Procurement and Disposal Planning and Proceedings

Planning of procurement and disposal activities

39.—(1) Procuring and disposing entities shall plan procurement and disposal activities with a view to achieving maximum value from both public expenditures and disposal proceedings including other objectives set forth in this Act.

(2) Procuring and disposing entities shall not artificially split procurement or disposal requirements with a view to circumventing the use of competitive methods of procurement or disposal as prescribed by the Authority.

(3) Any person who contravenes either subsection (1) or (2) shall be guilty of an offence and shall, upon conviction, be liable to a fine of K500,000 and imprisonment for two years.

(4) The annual procurement and disposal plans shall be submitted to the Authority by the last date of the first month of the financial year failing which the Authority shall impose necessary sanctions to the procuring and disposing entity and the Controlling Officer.

(5) The Authority shall report the Controlling Officer to relevant authorities for disciplinary sanctions in case of non-compliance with the sanctions imposed pursuant to subsection (4).

Publication of invitation to bid

40.—(1) An invitation to tender, or an invitation to prequalify, shall be published in two national widely circulated newspapers and, in the case of international tendering, shall also be published

in internationally recognized papers in the English language, and in other media of wide international circulation, and the website of the Authority.

(2) Notwithstanding the generality of subsection (1), the procuring and disposing entity shall publish in the *Gazette* all procurements of values and nature as may be prescribed from time to time by the Authority.

(3) In addition to the publication referred to in subsection (1), the invitation to tender, or an invitation to prequalify, shall be displayed in the head office of the procuring and disposing entity in a publicly accessible place.

Issuance of bidding document

41.—(1) A procuring and disposing entity shall ensure that bidding documents—

(*a*) are provided to all bidders responding to the invitation, to tender or, in the event of pre-qualification proceedings, to all bidders that have been pre-qualified;

(*b*) provide bidders with the information that they require in order to submit bids that are responsive to the needs of the procuring and disposing entity; and

(*c*) include the terms and conditions of the resultant contract.

(2) Where a fee is charged for the bidding documents, such a fee shall only reflect the cost of printing and distributing the documents.

(3) All bidders' shall be provided with the same information.

(4) A procuring and disposing entity shall respond promptly to any request by a bidder for clarification of the bidding documents that is received by the procuring and disposing entity prior to the deadline for the submission of bids, and responses to such requests for clarification shall be circulated to all participating bidders.

Submission of bids

42.—(1) A bid shall be submitted in written form as instructed in the bidding document.

(2) A bidding document may provide for submission of bids electronically:

Provided that measures are put in place to protect the confidentiality of bidders' bids, and to ensure their authenticity and integrity.

(3) A procuring and disposing entity shall, upon request, provide to a bidder a receipt showing the date and time when its tender was received.

(4) The deadline for submission of bids shall be set taking into account the nature of the procurement or disposal process and the time required for the preparation of bids.

(5) The minimum bidding periods for the various procurements shall be as follows—

(*a*) international competitive bidding – forty-five days;

(*b*) national competitive bidding – thirty days;

(*c*) restricted tender – twenty-one days;

(*d*) request for proposals – twenty-one days;

(*e*) request for quotation method – five days;

(*f*) single sourcing – five days; and

(*g*) single sourcing in an emergency – twenty-four hours:

Provided that the procuring and disposing entity may seek a waiver from the Director General to carry out specific procurement for a shorter period than provided in this section.

Bid opening

43.—(1) Bids shall be opened at the time and place indicated in the bidding document, and the time of opening of the bids shall coincide with the deadline for submission of bids.

(2) Bidders or their respective representatives may attend the opening of bids at which the names and addresses of the bidders submitting bids, and their prices, shall be read out and recorded.

Bid evaluation

44.—(1) The choice of evaluation methodology shall be determined by the type, value and complexity of the procurement or disposal requirement and shall be done in accordance with this Act and as may be prescribed in regulations.

(2) Bids shall be evaluated and compared only in accordance with the criteria, and their relative weight, as set forth in the bidding document.

(3) Bids containing non-material deviations may be evaluated, with the deviations being quantified in the manner indicated in the bidding documents.

(4) Subject to section 47, no negotiations whatsoever may be held with bidders as to the substance or prices of their bids.

(5) A procuring and disposing entity may only seek clarifications of bids, and may not solicit or accept changes in the substance or prices of bids.

(6) In the evaluation of bids, a procuring and disposing entity may apply a margin of price preference in favour of domestic or regional bidders in accordance with the regulations, provided that such application has been disclosed in the bidding documents.

(7) A successful bid shall be the lowest evaluated bidder subject to any margin of preference provided in the bidding documents. Alternatively, if so stipulated in the bidding documents, the successful bid shall be the lowest evaluated on the basis of price and subject to any margin of preference, and non-price criteria specified in the bidding documents.

(8) Non-price criteria shall, to the extent practicable, be objective and quantifiable, and shall be given a relative weight in the evaluation procedure or be expressed in monetary terms, wherever practicable.

(9) Prior to the entry into force of the procurement contract and, if so required, the successful bidder shall provide security for the performance of the contract.

(10) A procuring entity shall ensure prioritization of all bids submitted to give preference to sixty per cent indigenous black Malaŵians and forty per cent others for national competitive bidding.

Use of standard bidding documents

45.—(1) The Director General shall issue standard bid documents to procuring and disposing entities for use in procurement and disposal proceedings.

(2) The use of such standard bidding documents shall be mandatory on all procuring and disposing entities.

Cancellation of procurement proceedings

46. A procuring and disposing entity may—

(*a*) reject all bids at any time prior to the acceptance of a bid, without incurring thereby any liability to the bidders;

(*b*) cancel the procurement proceedings in the public interest, without incurring thereby any liability to the bidders; and

(*c*) terminate a procurement contract for convenience, if it is determined to be in the public interest, and subject to payment for work satisfactorily completed, or services satisfactorily performed prior to the effective date of termination and for reimbursable expenses actually incurred, or for any goods specially manufactured under the procurement contract, and reasonable termination costs, but excluding lost profit.

Negotiations

47.—(1) A procuring and disposing entity may invite the lowest evaluated bidder for negotiations aimed at finalizing the award of the contract.

(2) Negotiations shall not relate to the price of the bid, except in the case of single sourcing or where the price of the bid has not been taken into account in the evaluation methodology.

(3) If the negotiations with the lowest evaluated bidder fail to result in an acceptable contract, the procuring and disposing entity shall, by letter addressed to that bidder, terminate the negotiations and invite the next ranked bidder for negotiations.

Intention to award a contract

48. The procuring and disposing entity shall publish the intention to award contract in two widely circulated newspapers and on the Authority's website for a period of fourteen days for any procurement contract above a threshold to be set by the Director General before signing the contract.

Procurement contract

49.—(1) Subject to a no objection be issued in pursuance of this Act or subsidiary legislation thereunder, and to section 47 in notice of acceptance of the bid, shall be given to the successful bidder and the procuring and disposing entity shall prepare and sign the contract with the such bidder prior to its institution.

(2) All contracts shall be prepared in the manner prescribed in the appropriate standard bidding document issued by the Director General or any other document approved by the Director General.

Amendment of a signed procurement contract

50.—(1) All amendments to a signed procurement contract shall require the prior approval of the responsible authorities and shall be effected as prescribed in the regulations.

(2) For the purpose of this section, "responsible authority" means the Internal Procurement Disposal Committee or the Director General.

Contract management

51.—(1) A procuring and disposing entity shall be responsible for the administration of procurement contracts into which they enter, and to that end, they shall establish procedures for contract administration and provide the necessary material and human resources for their implementation.

(2) A procuring and disposing entity may appoint a contract manager, depending on the nature and complexity of the contract, whose main responsibility shall be to ensure that the supplier, contractor or consultant performs the contract in accordance with the terms and conditions specified therein.

PART VII

Suppliers and Bidders

Eligibility criteria of suppliers

52. In order to be eligible to be awarded a procurement contract, a bidder shall—

(*a*) be registered, depending upon the nature of the contract, with the Registrar of Companies, or with the National Construction Industry Council of Malaŵi, or such other entity as may be prescribed by regulations;

(*b*) be tax compliant; and

(*c*) not be debarred from participating in procurement proceedings under this Act:

Provided that the sole absence of an application for entry in the registry or classification system is not ground for exclusion of a bidder from participation in procurement proceedings.

Qualification of bidders

53.—(1) In order to enter into a procurement contract, a bidder shall qualify by meeting the criteria the procuring and disposing entity considers appropriate.

(2) The criteria referred to in subsection (1) may concern—

(*a*) the legal capacity;

(*b*) professional and technical qualifications;

(*c*) financial resources and condition;

(*d*) equipment and other physical facilities;

(*e*) personnel and managerial capability; and

(*f*) past performance, including history of legal disputes, conviction of a bidder, or its directors or officers, of any criminal offence related to their professional conduct or the making of false statements or misrepresentations as to its qualifications to enter into a procurement contract within a period of three years preceding the commencement of the procurement proceedings.

Supplier databases or lists

54.—(1) The Director General shall organize and maintain a centralized system, in the form of a database or list, to provide centralized information on potential suppliers of goods, works or services.

(2) A procuring and disposing entity may organize and maintain its own system or database of potential suppliers and shall submit such list to the Director General for approval prior to its use.

(3) Entry into database or list shall be open at any time to potential suppliers and requests to register shall be acted upon within fourteen days from receipt of request at a fee to be set by the Director General.

(4) The detailed procedures for compilation and maintenance of such databases and lists shall be prescribed in the regulations.

Conduct of bidders and suppliers

55.—(1) Bidders and suppliers shall not engage in or abet—

(*a*) corrupt practices, such as the offering of improper inducements;

(*b*) fraudulent practices, including misrepresentation of facts in order to influence a procurement process or the execution of a contract; and

(*c*) collusion among bidders, prior to or after bid submission, designed to establish bid prices at artificial, non-competitive levels and to deprive the procuring and disposing entity of the benefits of free and open competition.

(2) Any information concerning the occurrence or attempt of malpractices in subsection (1) shall be reported immediately to the head of the procuring and disposing entity, to the Authority and to the relevant law-enforcement authorities.

Debarment of suppliers and contractors

56.—(1) The Director General may exclude a supplier, contractor, consultant or any bidder from participation in public procurement for any misconduct prescribed in this Act in accordance with procedures set out in the Regulations.

(2) A supplier or a bidder may be excluded from participation in public procurement proceedings on the following grounds—

(*a*) refusal by a successful bidder to sign a procurement contract or furnish a performance security in accordance with the terms of the bidding documents;

(*b*) supplying false information supplied in its bid;

(*c*) collusion between the bidder and a public official pertaining to the bidding process;

(*d*) collusion amongst bidders aimed at fixing prices at artificial and non-competitive levels;

(*e*) conviction of a criminal offence relating to obtaining or attempting to obtain a contract or subcontract; or

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(*f*) conviction of an offence under the Corrupt Practices Act or the Financial Crimes Act; or

(*g*) breach of contractual obligations.

(3) A bidder or supplier who has been found liable for the misconduct after the hearing shall be excluded from public procurement for a period commensurate with the gravity of the misconduct as prescribed in the regulations.

(4) A bidder or supplier aggrieved by a decision of the Authority may appeal to High Court for a judicial review.

PART VIII

Procurement Integrity

Conduct of public officials

57.—(1) Public officials involved in requisitioning, planning, preparing and conducting procurement proceedings, disposal processes, and implementation of procurement and disposal contracts, shall—

(*a*) discharge their duties impartially so as to ensure fair and competitive access to procurement opportunities by suppliers;

(*b*) always act in the public interest, and in accordance with the objectives and procedures set out in this Act;

(*c*) at all times, avoid conflicts of interest, and the appearance of impropriety in carrying out their duties and conducting themselves, and shall not interfere in the work of the Internal Procurement and Disposal Committee;

(*d*) not commit or abet any corrupt or fraudulent practice, including the solicitation or acceptance of improper inducements;

(*e*) not interfere with or exert undue influence on any person to effect a procurement or disposal activity or decision;

(*f*) keep confidential any information that comes into their possession relating to procurement proceedings or disposal processes, including bidders' proprietary information; and

(*g*) not, for a period of two years after leaving the public service, get involved in the implementation of a procurement contract on behalf of a private organization with their previous employer.

(2) A procuring and disposing entity shall disclose to any party with an interest in the procurement or disposal process, during and after the procurement or disposal proceedings, all the information which may materially affect the implementation of the procurement or disposal process as prescribed in the regulations.

(3) A procuring entity carrying out a procurement for works or consultancy services in the construction industry shall disclose all material project information and shall comply with the principles of

transparency and accountability at all stages of the project life cycle inclusive of pre-contract and post-contract process as prescribed in the regulations.

Codes of conduct for public officials and suppliers

58. The Director General may promulgate codes of conduct to guide the behaviour of public officials and bidders and suppliers involved in public procurement or disposal processes.

PART IX

Administrative Review and Appeal

Right to review

59.—(1) Any bidder that claims to have suffered, or that may suffer loss or injury due to breach of a duty imposed on the procuring and disposing entity, or Director General may seek a review in accordance with this Part.

(2) The following do not constitute grounds for the review under subsection (1)—

(*a*) the choice of a selection procedure in request for proposals for services, in accordance with the regulations;

(*b*) a decision by the procuring and disposing entity under section 46 to reject all bids, proposals, offers or quotations; and

(*c*) a refusal by the procuring and disposing entity to respond to an expression of interest in participating in requests for proposals for services under section 37 (7).

Review procedures

60.—(1) An application for a review pursuant to section 59 shall be made during the period of intention to award a contract or within fourteen days of the bidder submitting the application becoming aware of the circumstances giving rise to the application, or of when that bidder should have become aware of those circumstances, whichever is earlier.

(2) An application in subsection (1) shall be made, in the first instance, and in writing, to the Controlling Officer or head of the procuring and disposing entity or the Authority.

(3) Where an application for review is made to the Authority, the Director General shall convene three-member *ad hoc* committee from an established standing review committee (in this Act otherwise referred to as the "Review Committee") which shall hear and decide upon applications for review brought to the Authority.

(4) A Review Committee shall consist of members of high integrity with experience in different fields of procurement and procurement procedures but who should not have participated in procurement or

disposal proceedings in question in any capacity as bidders, suppliers or perform any procurement functions on behalf of the procuring and disposing entity in respect of the proceedings in question.

(5) The manner in which a Review Committee shall conduct its hearings shall be as prescribed in the regulations.

(6) A Controlling Officer or head of the procuring and disposing entity or the Authority shall not entertain the application for review unless—

(*a*) it was submitted within the period of the publication of an intention to award contract for procurement or disposal proceedings whose estimated values are above a set threshold; or

(*b*) for all procurement and disposal processes below the set threshold, within fourteen days of the bidder submitting the application becoming aware of the circumstances giving rise to the application, or when the bidder should have become aware of those circumstances, whichever is earlier.

(7) Upon receipt of the application for review, the procurement or disposal proceedings shall be suspended for ten days.

(8) The suspension period in subsection (7) may be extended to thirty days in cases where the dispute has not been resolved.

(9) A Controlling Officer or head of the procuring and disposing entity or the Review Committee established under subsection (3) shall render a decision on the application within fourteen days of the submission of such application.

(10) An appeal against a decision of a Controlling Officer or head of a procuring and disposing entity shall be made to the Director General and the decision of the Review Committee shall be subject to review by the High Court.

(11) Any application submitted to the Director General in the first instance or by way of appeal, shall attract a fee prescribed by the Director General.

(12) Unless an application is dismissed, the remedies that may be ordered by the Review Committee may include—

(*a*) prohibiting the procuring and disposing entity from acting or deciding unlawfully or from following an unlawful procedure;

(*b*) annulling, in whole or in part, an unlawful act or decision of the procuring and disposing entity, other than any decision bringing the procurement contract into force;

(*c*) revising an unlawful decision by the procuring and disposing entity or substituting its own decision for such decision, other than any decision bringing the procurement contract into force;

(*d*) compelling the procuring and disposing entity to pay the successful applicant its costs of preparing and submitting a bid and application for the review;

(*e*) reporting the public official who committed the misconduct to relevant oversight bodies for proper action like disciplinary action and prosecution; and

(*f*) any other remedy which may be prescribed by regulations.

PART X

Miscellaneous

Framework agreements

61.—(1) A procuring and disposing entity may engage in a framework agreement procedure, as prescribed under the regulations.

(2) The procuring and disposing entity may enter into a public private partnership arrangement based on an open competitive method except as otherwise provided in the Public Private Partnerships Act.

Cap. 46:07

(3) Public procurement by means of community participation shall be used where the participation of the beneficiary community of a project may result in enhancing the economy, quality or sustainability of the service to be procured, or the very objective of the project is to create employment and involvement of the beneficiary community, the community may participate in the delivery of services in accordance with such procedures to be prescribed by the Authority.

Oath by members and employees of the Authority

62.—(1) Every member and employee of the Authority shall, on assumption of duty, take an oath of secrecy as may be prescribed in regulations.

(2) Any officer who fails to comply with subsection (1) shall be guilty of an offence and shall be liable to a fine of K100,000 or six months imprisonment.

Offences

63.—(1) Any person who contravenes the provisions of this Act shall be guilty of an offence.

(2) A person guilty of an offence under subsection (1), whose penalty has not been prescribed, shall be liable to a fine not less than K500,000 but not exceeding K5,000,000 or, in case of an individual, to imprisonment for five years and to such fine.

Regulations

64.—(1) The Minister may make regulations for the better carrying into effect the provisions of this Act.

Cap. 1:01

(2) Notwithstanding section 21 (*e*) of the General Interpretation Act, the regulations made under this Act may create offences in respect of any contravention to the regulations, and may for any such contravention impose a fine of up to K500,000, and to imprisonment for up to two years.

Repeal and savings Cap. 37:03

65.—(1) Subject to section 66, the Public Procurement Act, is hereby repealed.

(2) All subsidiary legislation made under the repealed Act and in force immediately before the commencement of this Act, shall so far as it is not inconsistent with the provisions of this Act, continue in force as if made under this Act.

(3) Notwithstanding subsection (1) every prior review, investigation, inquiry, administrative review, debarment proceedings, procurement contract, post procurement review, order, direction or appointment issued, given or made pursuant to the provisions of the repealed Act shall be valid until otherwise cancelled, revoked or varied under the provisions of this Act.

Transitional provisions

66.—(1) The person holding the office of Director of Public Procurement immediately before the commencement of this Act shall assume the office of the Director General in accordance with the provisions of this Act.

(2) The person holding office of Deputy Director of Public Procurement immediately before the commencement of this Act shall assume the office of the Deputy Director General in accordance with the provisions of this Act.

(3) Every person holding office as an employee of the Office of Director of Public Procurement immediately before the commencement of this Act shall continue to hold such office in the Authority on no less favourable terms and conditions of employment than those under the employment with the Office of Director of Public Procurement established under the repealed Act.

(4) Every undertaking by the Director of Public Procurement shall continue to have effect or be undertaken by the Director General in accordance with the provisions of this Act.

(5) Except as otherwise provided in this Act, all the capital assets of the Office of Director of Public Procurement shall become the property of the Authority.

GOVERNMENT SECURITIES

CHAPTER 38:01

Containing Pages 1—2

CHAPTER 38:01

GOVERNMENT SECURITIES

ARRANGEMENT OF SECTIONS

SECTION
1. Short title
2. Application of Act
3. Provision for payment of money due to stockholder
4. Certificate of paying agent
5. Certain legislation to be agreed with the United Kingdom Government

An Act to make a further and better provision to facilitate the Investment of Trust and other Funds, held in the United Kingdom, in Malaŵi Government Securities 25 of 1964

[6TH JULY, 1964]

1. This Act may be cited as the Government Securities Act. Short title

2. This Act shall apply to all securities heretofore or hereafter created or issued in the United Kingdom on behalf of the Government of Malaŵi— Application of Act

(*a*) in which a trustee might at any time have invested by virtue of section 2 of the Colonial Stock Act, 1900; or

(*b*) by the conditions of issue of which it is provided that this Act shall apply to them, each and all of which securities are hereinafter referred to as ''Malaŵi Government Securities". 63 and 64 Vict. c. 62

3.—(1) Whenever, by the final judgment, decree, rule or order of any court of competent jurisdiction in the United Kingdom, any sum of money is adjudged or declared to be payable by the Government of Malaŵi in respect of any Malaŵi Government Securities, that sum shall, without further appropriation than this Act, be charged upon and paid out of the Consolidated Fund, and adequate funds (as and when required) shall be made available in the United Kingdom by the Government of Malaŵi to meet any such final judgment, decree, rule or order. Provision for payment of money due to stockholder

(2) For the purpose of this section, ''final judgment, decree, rule or order'' means, in case of appeal, the final judgment, decree, rule or order of the ultimate court hearing the appeal.

Certificate of paying agent

4. A certificate specifying the sum paid under order of any such court as aforesaid to satisfy any such final judgment, decree, rule or order and issued by the agent in the United Kingdom of the Government of Malaŵi authorized to make such payment shall be sufficient authority to the Auditor General or other officer having the auditing of accounts of such agent for passing such sum without further appropriation.

Certain legislation to be agreed with the United Kingdom Government

5. Legislation which appears to the Government of the United Kingdom to alter any of the provisions affecting Malaŵi Government Securities to the injury of the holders thereof, or to involve a departure from the original contract in regard to those Securities, shall not become law save after agreement with the Government of the United Kingdom, and if attention is drawn to such legislation after the passing thereof, the Government of Malaŵi will take the necessary steps to ensure such amendment thereto as may be requested by the Government of the United Kingdom.

NATIONAL PLANNING COMMISSION

CHAPTER 39:01

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NATIONAL PLANNING COMMISSION

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CHAPTER 39:01

NATIONAL PLANNING COMMISSION

12 of 2017
G.N. 22/2017

An Act to provide for the establishment of the National Planning Commission and matters connected therewith and incidental thereto

[2nd May, 2017]

PART I

Preliminary

Short title

1. This Act may be cited as the National Planning Commission Act.

Interpretation

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

"chairperson" means the chairperson of the Board of the Commission appointed under section 4 of this Act;

"Commission" means the National Planning Commission established under section 3 of this Act;

"committee" means a committee of the Board of the Commission established under section 7 of this Act;

"Director General" means the Director General appointed under section 19 of this Act; and

"member" means a member of the Board of the Commission appointed under section 4 (1) of this Act.

PART II

The National Planning Commission

Establishment of National Planning Commission

3. There is hereby established a Commission to be known as the National Planning Commission (hereinafter referred to as "the Commission") which shall be a body corporate with perpetual succession and a common seal and be capable of—

(*a*) acquiring, holding and disposing of real and personal property;

(*b*) suing and being sued in its own name; and

(*c*) doing or performing all such acts and things as bodies corporate may by law do or perform.

Board of the Commission

4.—(1) The Board of the Commission shall consist of—

(*a*) a chairperson appointed by the President;

(*b*) five other members appointed by the President in consultation with relevant professional and other bodies; and

(*c*) the Secretary responsible for planning and development.

(2) The appointment of members of the Board of the Commission under subsections (1) (*a*) and (*b*) shall be confirmed by the Public Appointments Committee of the National Assembly.

(3) A member of the Board of the Commission, other than the *ex officio* member shall not, by reason only of his appointment as a member of the Board of the Commission, be deemed to be an employee in the public service.

(4) The Minister shall publish names of all members of the Commission, as first constituted, and every change in the membership, in the *Gazette*.

(5) A person, other than an *ex officio* member shall not be qualified for appointment as a member of the Board of the Commission if he—

(*a*) does not possess—

(i) a minimum educational qualification of a master's degree or its equivalent obtained subsequent to a bachelor's degree from a recognized and reputable educational institution; and

(ii) expertize and experience in a field relevant to the functions and responsibilities of the Commission;

(*b*) holds a political office or is an active member of a political party;

(*c*) is an officer, member or employee in a public institution;

(*d*) is adjudged or declared bankrupt; and

(*e*) would for any other reason be disqualified by law from serving as a director of a company or as trustee.

(6) The Commission may, where necessary taking into account the nature of the matter to be deliberated, invite any person to attend a meeting of the Commission or any of its committees and participate in the deliberations or to make a presentation or to be asked questions, on any matter, but the person so invited shall not be entitled to vote.

(7) The Secretary responsible for planning and development shall be the deputy chairperson of the Commission.

(8) At least three members of the Commission appointed under section 4 (1) shall be women.

Tenure of office

5.—(1) A member of the Board of the Commission, other than an *ex officio* member shall hold office for a period of five years and shall be eligible for re-appointment for a further and final term of five years.

(2) When making an appointment after the expiry of five years, the President shall have regard to the need for continuity in the membership of the Board of the Commission so that at least half of the appointed members shall be re-appointed for the next term of office.

Vacancies

6.—(1) A vacancy in the office of a member of the Board of the Commission shall occur if the member—

(*a*) dies;

(*b*) is adjudged or declared bankrupt;

(*c*) is convicted and sentenced for an offence against any written law to a term of imprisonment without the option of a fine;

(*d*) fails, without good and justifiable reasons, to attend three consecutive meetings of the Board of the Commission of which he had notice;

(*e*) is certified by a medical practitioner to be incapacitated by reason of physical or mental disability;

(*f*) resigns in accordance with subsection (2);

(*g*) is removed by the President in accordance with subsection (3); or

(*h*) if a situation arises that if the person was not appointed, would have disqualified him from being appointed as a member of the Board of the Commission.

(2) A member of the Board of the Commission, other than an *ex officio* member, may at any time resign his office by giving one month written notice to the Chairperson, who shall then forward the resignation to the President, through the Minister.

(3) The President may remove any member of the Board of the Commission, except an *ex officio* member, of the Commission on any of the following grounds—

(*a*) misconduct or misbehavior that brings the office of the member into disrepute;

(*b*) incompetence in the execution of the functions of his office as a member of the Board of the Commission;

(*c*) in circumstances where the member is compromised to the extent that his ability to impartially and effectively exercise the duties of his office is seriously in question:

Provided that—

(*a*) before a member is removed from office, he shall be given an opportunity to be heard; and

(*b*) the Public Appointments Committee of the National Assembly shall confirm the removal of a member of the Board of the Commission.

(4) A vacancy in the membership on the Board of the Commission shall be filled by the appointment of a new member by the President in accordance with section 4 (1) (*b*).

(5) A person appointed to fill a vacancy shall serve for the remainder of the term of office but no person may be appointed to fill a vacancy of the remainder of a term of office where the remainder of the term is less than six months.

(6) The period served by a person appointed under subsection (4) shall not be regarded as a term for the purposes of section 5 (1).

(7) Subject to section 13 (4), a vacancy in the membership of the Board of the Commission shall not affect its decisions, the performance of its functions or the exercise of its powers under this Act or any other written law.

Committees of the Board

7.—(1) For the better carrying into effect of its functions, the Board of the Commission may establish such number of committees as may be considered necessary to perform such functions and responsibilities as may be determined by the Commission.

(2) A committee may consist of either members of the Board of the Commission only or members of the Board of the Commission and such other suitably qualified persons other than members of staff of the Commission as the Commission may deem fit.

(3) The Board of the Commission shall appoint the chairperson and deputy chairperson of each committee from only amongst the members of the Board of the Commission.

(4) The provisions of this Act relating to the meetings of members of the Board of the Commission shall apply *mutatis mutandis* to the meetings of its committees.

(5) Every committee shall act in accordance with any directions given to it in writing by the Board of the Commission.

Allowances and expenses

8.—(1) Members of the Board of the Commission and of any of its committees shall be paid sitting and other allowances as the Minister responsible for finance may determine.

(2) The Board of the Commission may make provision for the reimbursement of any reasonable expenses incurred by a member of the Board of the Commission or a member of a committee or a person invited under section 4 (6) in connexion with the business of the Commission or a committee.

Independence of the Commission

9. Every member and employee of the Commission and every member of a committee shall perform the functions and exercise the powers provided for in this Act independent of the direction, undue influence or interference of—

(*a*) any public office;

(*b*) any organ of the Government;

(*c*) any political party; or

(*d*) any person whosoever or organization whatsoever:

Provided that solely for purposes of accountability, the Commission shall be answerable, and report bi-annually and directly to the President who shall, through the Minister responsible for planning and development, present such reports to the National Assembly on the overall fulfillment of the functions and powers of the Commission.

Functions of the Commission

10. The functions of the Commission shall be to—

(*a*) identify Malaŵi's socio-economic development priorities and formulate the national vision and strategy for social and economic goals taking into account the country's resource potential and comparative advantage;

(*b*) oversee the implementation of long-term national vision and strategies and the medium-term development plans;

(*c*) formulate innovative and progressive flagship projects and programmes for implementation in line with the national vision and strategies for the country;

(*d*) identify and commission research on any matter the Commission deems relevant to the attainment of the objects of this Act;

(*e*) engage relevant individuals and institutions in all sectors of the economy in the conduct of its functions under this Act;

(*f*) apprise the President and the National Assembly annually on the progress made with regard to the implementation of plans, programmes and projects; and

(*g*) perform any other functions in relation to national planning as it may deem appropriate for achieving the purposes of this Act.

Powers of the Commission

11. The Commission shall, in the discharge of its functions, have power to—

(*a*) engage persons of suitable qualifications and experience as consultants to the Commission;

(*b*) request the production by any person, of any document or information which, in the opinion of the Commission, is necessary for the execution of its functions under this Act;

(*c*) promote its functions and objectives, or any matter under its consideration, through sponsorship, support or organization of conferences, workshops or meetings;

(*d*) receive donations of funds, materials and technical assistance for the furtherance of its work;

(*e*) carry out consultations regarding any matter under its consideration and for the general conduct of its work and determine the procedure for carrying out such consultations; and

(*f*) do and perform all such things or acts as are necessary or expedient for the execution of its functions, duties and powers under this Act.

Approval of plans and strategies

12. The Commission shall prepare and submit a long-term national vision and strategy or a medium-term development plan to Cabinet, through the Minister, for its consideration and approval.

Meetings

13.—(1) The Commission shall meet at least once every three months at a place and at a time as the Chairperson may determine.

(2) The Chairperson shall convene ordinary meetings of the Commission by giving the members of the Commission not less than fourteen days written notice and may, on his own motion, convene an extraordinary meeting of the Commission at a place and time as he may determine in consultation with the Director General.

(3) The Chairperson or in the absence of the Chairperson, the Deputy Chairperson shall at the written request of more than three

members of the Commission and within seven days of a request, call for an extraordinary meeting of the Commission, at a place and time as the Chairperson or Deputy Chairperson may determine, in consultation with the Director General.

(4) The *quorum* at every meeting of the Commission or a committee shall be constituted by a simple majority of the members.

(5) The Chairperson or, in his absence, the Deputy Chairperson, shall preside at all meetings of the Commission:

Provided that in the absence of both the Chairperson and Deputy Chairperson at a particular meeting of the Commission, the members of the Commission present and forming a *quorum* shall elect one of their number to preside over the meeting of the Commission.

(6) At any meeting of the Commission, the decision of the Commission on any matter shall be that of the majority of the members of the Commission present and voting, and at all the meetings, the person presiding shall have, in the event of an equality of votes, a casting vote in addition to a deliberative vote.

(7) Minutes of each meeting of the Commission or a committee shall be kept by the Director General and shall be confirmed at the subsequent meeting of the Commission or committee, as the case may be.

(8) Subject to the provisions of this Act, the Commission may make rules to regulate its proceedings and business or the proceedings and business of any of its committees.

Personal attendance of meetings

14. A member of the Board of the Commission or committee shall not attend a meeting of the Commission or committee by proxy and where a member of the Board of the Commission is unable to attend any meeting of the Commission, he may request that his apologies for failure to attend be recorded.

Disclosure of interest

15.—(1) If a member of the Board of the Commission or a committee is present at a meeting of the Commission or at a meeting of a committee at which any matter which is the subject of consideration is a matter in which that member or his immediate family member or his professional or business partner is directly or indirectly interested, he shall, as soon as practicable, after the commencement of the meeting, disclose his interest and that member shall not take part in any consideration or discussion of, or vote on, any question relating to the matter.

(2) A disclosure of interest by a member of the Board of the Commission or a committee shall be recorded in the minutes of the meeting at which it is made.

Oath of secrecy

16. Every—

(*a*) member of the Board of the Commission;

(*b*) member of a committee;

(*c*) member of staff or service provider of the Commission; or

(*d*) person invited under section 4 (6),

shall, upon assumption of his office, before attending a meeting, take an oath of secrecy in the form set out in the Schedule to this Act and the oath shall be administered by a commissioner of oaths. *Schedule*

Protection from liability

17.—(1) A court action or other proceedings shall not be brought personally against any member, a member of a committee or member of staff of the Commission in respect of any act or omission done in good faith in the course of carrying out the provisions of this Act.

(2) Where, in any proceedings, a question arises on whether or not an act or an omission was done in good faith in the course of carrying out the provisions of this Act, the burden of proving that the act or the omission was not done in good faith in the course of carrying out the provision of this Act shall be on the person alleging that it was not so done.

PART III

Administration

Secretariat

18. The secretariat of the Commission shall consist of the Director General and other employees of the Commission appointed under this Act.

Director General

19.—(1) The Director General shall be appointed by the Commission through an open, strenuous and competitive process on terms and conditions as the Commission may, in consultation with the Minister, determine.

(2) The office of the Director General shall be a public office.

(3) The Director General shall be the chief executive officer of the Commission and the chief economic adviser to the Commission on all matters pertaining to planning and development.

(4) A person shall not be appointed as Director General, unless he—

(*a*) possesses a minimum qualification of a master's degree or its equivalent obtained subsequent to a bachelor's degree obtained from a recognized and reputable educational institution;

(*b*) has proven and shown demonstrable expertize and experience in executive management, administration and economic or development planning, or in a field relevant to the functions and responsibilities of the Commission; and

(*c*) does not hold and has not held in the past a political office.

(5) The Director General shall hold office for a term of five years and shall be eligible for re-appointment for one final term of five years.

Duties and responsibilities of Director General

20.—(1) Subject to the general and special directions of the Commission and without prejudice to the generality of section 19 (3), the Director General shall be responsible for—

(*a*) the day-to-day operations and management of the Commission;

(*b*) the effective management of the funds, property and business of the Commission;

(*c*) the administration, organization and control of the other officers and staff of the Commission; and

(*d*) the effective administration and implementation of the provisions of this Act.

(2) The Director General shall devote his full time to the duties of his office and shall ensure that the Commission is provided with all the information, data, statistics, documents and other materials pertinent to the efficient performance by the Commission of its functions and responsibilities under this Act or any other written law.

Removal of Director General

21.—(1) The Commission may remove the Director General from office on the following grounds—

(*a*) misbehavior or misconduct that brings the office of the Director General into disrepute;

(*b*) incompetence in the execution of his functions as Director General;

(*c*) incapacity by reason of physical or mental illness as certified by a medical practitioner or medical board;

(*d*) if he is declared or adjudged bankrupt by a competent court; and

(*e*) if he is sentenced for an offence against any written law to any term of imprisonment without the option of a fine.

(2) The Commission shall notify the Minister in writing of its decision to remove the Director General from office under subsection (1) and the reason or reasons therefor:

Provided that before the Director General is removed from office, the Commission shall give him an opportunity to be heard.

Secretary to the Commission

22.—(1) The Director General shall be the secretary to the Commission.

(2) The Director General shall have custody of the common seal of the Commission.

(3) The Director General may, with the approval of the Chairperson, delegate senior members of staff of the Commission to act as secretaries to the committees of the Commission.

Other staff of the Commission

23.—(1) There shall be employed in the service of the Commission, subordinate to the Director General, other management, professional, research, technical, administrative and other support staff as the Commission shall consider necessary for the exercise of its powers and performance of its duties and functions.

(2) The staff of the Commission referred to in subsection (1) shall be appointed by the Board of the Commission on terms and conditions as the Commission shall determine in consultation with the Government department responsible for human resource management and development:

Provided that the Commission may, by directions in writing, delegate to the Director General, the appointment of its staff in specified junior ranks and the Director General shall report to the Board of the Commission every appointment made pursuant to this subsection.

(3) Every member of staff of the Commission shall, on first appointment, take an oath of secrecy in the form set out in the Schedule to this Act and a Commissioner of Oaths shall administer the oath. *Schedule*

(4) The Director General or other officer of the Commission as the Commission or the Director General may designate, may attend meetings of the Commission and of any of its committees and may address the meetings, but shall not vote on any matter.

(5) Where, in any meeting, the deliberations of the Commission or any of its committee concerns the Director General or any officer of the Commission designated to attend the meeting, the Commission or the committee, as the case may be, may exclude the Director General or the officer from the meeting.

(6) Section 14 shall apply *mutatis mutandis*, to the Director General and any other officer referred to in this section.

PART IV

Financial Provisions

Funds of the Commission

24.—(1) The funds of the Commission shall consist of—

(*a*) sums appropriated by Parliament for purposes of the Commission;

(*b*) sums or assets that may accrue to or vest in the Commission, whether in the course of the performance by the Commission of its functions or the exercise of its powers or otherwise;

(*c*) sums or assets that may accrue to or vested in the Commission by way of grants, subsidies, bequests, donations, gifts and subscriptions, from the Government or any other person;

(*d*) sums that are received by the Commission by way of voluntary contributions; and

(*e*) sums or assets as may be donated to the Commission by any foreign government, international agency or other external body of persons.

(2) The Commission may receive the sums or assets referred to in subsection (1) from a source other than the Government provided that no sums or assets so received shall jeopardize or compromise the independence of the Commission.

(3) The Commission shall, within a reasonable period not exceeding one month, provide the Minister responsible for finance in writing details of the sums or assets received by the Commission under subsection (1) from a source other than the Government.

(4) For the purposes of this section , "an external body of persons", means any body of persons, incorporated or unincorporated, formed under or by virtue of the laws of any country other than Malaŵi.

(5) The Government shall adequately fund the Commission to enable it exercise its powers and perform its functions and duties so as to ensure its independence.

(6) The funds and assets of the Commission shall exclusively be under the control of the Commission and shall be utilized solely for the purposes of this Act in accordance with the written directions of the Commission and for no other purpose.

(7) The Commission shall at all times comply with the provisions of the Public Audit Act, the Public Finance Management Act and the Public Procurement Act.

Cap. 37:01
Cap. 37:02
Cap. 37:03

Accounting and audit

25.—(1) The Commission shall be liable to account to the National Assembly in the manner applicable to Government departments.

(2) The accounts of the Commission shall be liable to audit annually by the Auditor General or by independent professional auditors appointed by the Commission in consultation with the Auditor General, and the expenses of the audit shall be paid out of the funds of the Commission.

PART V

Miscellaneous

Duty to cooperate

26. Every relevant or competent public officer and public or private entity shall accord the Commission, any assistance or cooperation as may be reasonably required for the exercise of its powers and performance of its functions and responsibilities and for the protection of its independence.

Offences

27. A person who—

(*a*) without reasonable excuse, refuses to produce any information or documentation when required by the Commission to do so under this Act;

(*b*) makes any statement knowing it to be false, or provides any information or documentation that is materially incorrect with the intention of misleading the Commission;

(*c*) without a written permission of the Commission, publishes or discloses to any unauthorized person or otherwise than in the course of duty, the contents of any document, communication or information of any kind which has come to his knowledge in the course of his duty under this Act,

commits an offence and shall, upon conviction, be liable to a fine of K7,000,000 and to imprisonment for seven years.

Obstruction: an offence

28. Any person who obstructs or interferes with the Commission, a member, employee, agent or service provider in the performance of any function under this Act or other written law, commits an offence and shall, upon conviction, be liable to a fine of K10,000,000 and to imprisonment for ten years.

Annual reports

29.—(1) The Commission shall—

(*a*) from time to time and in consultation with the Minister, apprise the Cabinet, Members of Parliament, Principal Secretaries and Local Government Authorities and Councillors on the work of the Commission and in particular on matters that could affect

the national development policy and on the priorities to be set by the Commission;

(*b*) prepare and submit to the President within four months after the end of every financial year, a comprehensive annual report on the general conduct of the affairs of the Commission and the activities it has carried out during that financial year; and

(*c*) prepare and submit to the National Assembly, through the Minister, within four months after the end of every financial year, a comprehensive annual report on the general conduct of the affairs of the Commission and the activities it has carried out during that financial year.

(2) The Minister shall lay a copy of every annual report referred to in subsection (1) (*c*) in Parliament.

Powers of the Minister

30. The Minister may, by notice published in the *Gazette*—

(*a*) on the advice of the Commission, make regulations for the better carrying out of the provisions of this Act; and

Schedule

(*b*) amend any Schedule to this Act.

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ss. 16 and 23

SCHEDULE

Oath of Secrecy

I, ..., being a member/having been employed in the service, of the National Planning Commission, do hereby swear/affirm that 1 will freely without fear or favour, affection or ill will, discharge the functions of a member/an employee, of the Commission, and that I will not directly, or indirectly reveal any matters related to such functions to any unauthorized person or otherwise than in the course of my duty.

SWORN at ..... this ..... day of ..... , 20 .....

Signature: .....

Before:. .....

Commissioner for Oaths

CAPITAL CITY DEVELOPMENT CORPORATION

CHAPTER 39:02

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CHAPTER 39:02

CAPITAL CITY DEVELOPMENT CORPORATION

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CHAPTER 39:02

CAPITAL CITY DEVELOPMENT CORPORATION

10 of 1968
30 of 1969
28 of 1971
8 of 1980

An Act to provide for the establishment, development and Administration of a Capital City at Lilongwe and for the establishment of a Capital City Development Corporation and to define the functions of that Corporation and for purposes connected therewith and incidental thereto

[23rd August, 1968]

PART I

Preliminary

Short title

1. This Act may be cited as the Capital City Development Corporation Act.

Interpretation

2. In this Act, except where the context otherwise requires—

"Capital City" means the area of land designated by the President under section 9 as the Capital City of Lilongwe;

"Chairman" means the Chairman of the Corporation designated under section 4 and any person acting as such;

"Corporation" means the Capital City Development Corporation established under this Act;

"development" includes redevelopment;

30 of 1969

"financial year" means such year or other period as the Minister may from time to time, by notice published in the *Gazette*, determine to be the financial year of the Corporation.

PART II

Establishment and Conduct of Corporation

Establishment of the Corporation

3. There is hereby established the Capital City Development Corporation which shall be a body corporate by that name with perpetual succession and a common seal, with the power to alter and change the same from time to time and which shall, subject to this Act, be capable in law of suing and being sued, of acquiring, holding, letting and otherwise disposing of land, and of doing and performing such acts and things as bodies corporate may by law do and perform.

Membership of Corporation
28 of 1971

4.—(1) The Corporation shall consist of not less than six and not more than ten members, none of whom shall be a Minister or a member of the Parliament of Malaŵi.

(2) Members of the Corporation shall be appointed by the Minister who shall designate one member to be the Chairman and another member to be the Deputy Chairman.

(3) No person shall be appointed a member if he—

(*a*) has been adjudged or otherwise declared bankrupt under any law in force in any part of the Commonwealth and has not been discharged or has made a composition with his creditors and has not paid his debts in full;

(*b*) is certified to be insane or otherwise adjudged to be of unsound mind under any law for the time being in force in Malaŵi;

(*c*) is under sentence of death imposed on him in a court in Malaŵi or is under sentence of imprisonment (by whatever name called) imposed on him by such court or substituted by competent authority for some other sentence imposed on him by such court.

(4) A member shall hold office for two years from the date of his appointment unless he sooner resigns or his appointment is terminated by the Minister under section 5.

(5) The Chairman, Deputy Chairman and all other members shall be eligible for re-appointment at the conclusion of their respective terms of office.

(6) No member shall participate in the consideration or discussion of or vote on any decision of the Corporation in respect of any matter in which he has a direct or indirect pecuniary interest.

Resignation and vacation

5.—(1) A member may at any time by writing, under his hand addressed and delivered to the Minister, resign his membership.

(2) A member shall vacate his membership if—

(*a*) any circumstance has arisen which if such person were not a member of the Corporation would cause him to be disqualified for appointment under section 4;

(*b*) such member has been absent from three consecutive meetings of the Corporation without permission of the Chairman; or

(*c*) such member is in the opinion of the Minister unable or unfit to discharge the functions and duties of a member,

and such member has been instructed by the Minister to vacate his membership.

(3) When the Minister has terminated the appointment of any member under subsection (2) or when the Minister has received

written resignation under subsection (1), the Minister shall declare the office of that member to be vacant and may fill such office by a new appointment. A person appointed under this subsection shall serve as a member for the unexpired portion of the term of the former member in whose place he has been appointed.

Remuneration

6. There shall be payable to a member out of the funds of the Corporation such remuneration and allowances, if any, in respect of his services as the Minister may from time to time determine.

Meetings

7.—(1) When the Chairman is temporarily absent from Malaŵi or is absent on leave within Malaŵi or is temporarily incapacitated from performing the functions of his office, all the powers and duties of the Chairman shall devolve upon the Deputy Chairman during such period of absence or incapacity and the Minister may appoint another member to be Deputy Chairman during such period.

(2) When a member is temporarily incapacitated from performing his functions as a member by reason of his absence from Malaŵi or any other cause, the Minister may appoint a person to be a member during such period of incapacity and during such period all the powers and duties of the member so temporarily incapacitated shall devolve upon the member so temporarily appointed.

(3) The Chairman shall, at any meeting of the Corporation, have an original vote and, where the votes are equally divided, a casting vote, in addition to his original vote.

(4) Where upon any special occasion the Corporation desires to obtain the advice of any person on any particular matter, the Corporation may co-opt such a person to be a member of such meeting or meetings as may be required and such person while so co-opted shall have all the rights and privileges of a member save that he shall not be entitled to vote on any question.

(5) Unless otherwise provided in standing orders made under section 8, a quorum at a meeting of the Corporation shall be the Chairman and three members.

(6) The Corporation shall meet at least quarterly and at such other times as may be required by standing orders made under section 8.

(7) Any four members may by notice in writing signed by them request the Chairman to call a special meeting of the Corporation for the purpose set out in such notice. On receipt of any such notice the Chairman shall call a special meeting. Such special meeting shall be called for a day that is not less than seven nor more than thirty days from the date on which the notice was received.

Standing orders

8. Subject to this Act, the Corporation may with the approval of the Minister from time to time make standing orders providing for—

(*a*) the proper conduct of the business and meetings of the Corporation;

(*b*) the method of entering into contracts and other legal transactions and the execution of documents connected therewith;

(*c*) the signing of cheques and other similar instruments;

(*d*) the execution of documents by an agent;

(*e*) the procedure of any committee; and

(*f*) the management and administration of the Corporation generally.

PART III

Designation of Capital City etc.

Designation of Capital City and vesting of land

Cap. 57:01

9.—(1) The President may, from time to time, by order designate any land to form part of the Capital City of Lilongwe.

(2) The land so designated shall form part of the Capital City but such designation shall, subject to the Land Act, in no way affect the title of any person to any part of such land or any right of occupation thereof.

(3) The President may, by order, vest in the Corporation such public land within the Capital City as is specified in the order and the reversion to any lease, issued by the Government or its predecessors in title, of any land in the Capital City specified in the order.

(4) All land vested in the Corporation under subsection (3) shall remain subject to the overall authority of the Minister provided for in sections 10, 11 and 24.

Cap. 57:01

(5) When the reversion to any lease granted under the Land Act is or has been vested in the Corporation under subsection (3), the provisions of section 6 and of Part IV of that Act shall, to such extent as the circumstances shall admit, continue to apply to such lease subject to the following modifications—

(*a*) the rights, duties and powers of the Minister under such provisions (other than those under section 15 (*a*) and (*b*)) shall from the time of such vesting be enjoyed, performed or exercised, as the case may be, by the Corporation;

(*b*) section 13 shall not apply in relation to any implied covenants prescribed after the date of such vesting;

(*c*) section 23 shall apply as if there were substituted for the words ''addressed to him by prepaid registered post at the Central Government Offices, Zomba'' the words ''addressed by prepaid registered post to the Chairman of the Corporation at its principal office in Malaŵi"; and

(*d*) section 24 shall cease to apply.

PART IV

Purposes and Powers

Purposes of Corporation

10.—(1) The purposes of the Corporation are, as agent of the Government and subject to the general and special directions of the Minister—

(*a*) to administer and supervise the orderly construction, development and maintenance of the Capital City, including buildings for the Government and for industrial, commercial and other purposes, the construction, maintenance, repair and renewal of dwelling-houses, factories, stores and other buildings, roads, transport facilities, water supplies, surface drains, sewage disposal works and services of any other description and the provision of community centres, theatres, libraries, halls, gardens, swimming pools and amenities of every description;

(*b*) to promote and develop commercial and industrial activities in any area of the District of Lilongwe specified from time to time by the Minister and for any such purpose to acquire land, erect buildings thereon and otherwise develop such land;

(*c*) initiate, carry on, manage and dispose of any business, trade, industry, service, amenity or other enterprise approved by the Minister;

(*d*) with the prior approval of the Minister to acquire, hold, sell, let, donate or otherwise dispose of any land, building, enterprise or other property of the Corporation;

(*e*) to investigate and formulate schemes for any of the foregoing purposes and to do all manner of other things conducive or incidental to such purposes;

(*f*) to do such other things as the Minister may from time to time direct.

(2) The Corporation shall not exercise its power to acquire, sell, let, donate or otherwise dispose of land or buildings except with the written approval of the Minister.

(3) The Corporation may, with the approval of the Minister, do any of the things specified in subsection (1) either alone or in association with or as agent of any person.

11. For any of the purposes specified in section 10 the Corporation shall have power to— Powers of Corporation

(*a*) purchase or sell any materials, stores, plant or equipment;

(*b*) employ consultants;

(*c*) undertake surveys and the preparation of plans and drawings;

(*d*) charge fees;

(*e*) do such other things as may be provided for under this Act or as are conducive or incidental to any of the purposes or powers of the Corporation.

PART V

Financial Provisions

12.—(1) Subject to the Finance and Audit Act and with the prior approval of the Minister, the Corporation may enter into agreements for the borrowing of money to enable the Corporation to fulfil its functions under this Act and it shall be the duty of the Corporation so to manage the exercise of its powers as to ensure that its revenues are not less than sufficient to enable the Corporation to repay such loans and the interest thereon when such repayments fall due. Conduct of financial affairs Cap. 37:01

(2) For the purposes of fulfilling the duty specified in subsection (1), the Corporation shall charge to its revenue account in every year all expenses and charges which, in the normal conduct of a commercial business, are regarded as proper to be made to a revenue account, including, in particular, proper provision for depreciation or diminution of value of assets and for the redemption of loans at due times and all charges and expenses incurred in connexion with any loans and for transfers to the general reserve fund and such other reserves as may be approved by the Minister.

(3) The sums transferred to the general reserve fund under subsection (2) may be used for the proper carrying out of the purposes of the Corporation, including the development of its undertakings.

Revenue of the Corporation

13.—(1) The revenues of the Corporation shall include—

(*a*) the rents derived from all leases of land and buildings in the Capital City and in the District of Lilongwe the immediate reversion to which is vested in the Corporation or in the Government;

(*b*) all moneys derived from facilities, services and amenities provided by the Corporation and from any business or other enterprise carried on by the Corporation;

(*c*) such moneys as may be provided by the Government for revenue purposes;

(*d*) such other sources of revenue as may be approved from time to time by the Minister.

(2) The Corporation may provide to any lender, with the prior approval of the Minister, a first or other charge upon the revenues of the Corporation to secure the repayment of a loan and the interest thereon.

Annual estimates

14.—(1) The Corporation shall, before the beginning of each financial year, submit to the Minister estimates of capital and revenue expenditure and the financing thereof in such form as the Minister may approve.

(2) The Corporation shall, whenever required to do so, furnish to the Minister such further information in relation to its receipts and expenditure as the Minister may require.

(3) The Corporation shall not incur expenditure otherwise than in accordance with estimates approved by the Minister except with his approval in writing.

Keeping of accounts

15.—(1) The Corporation shall cause a true account to be kept of all its financial transactions during each financial year.

(2) The Corporation may keep such special accounts, including capital and renewals accounts, as it may consider necessary, and shall keep such further or other accounts as the Minister may from time to time direct.

(3) All accounts of the Corporation shall be open to inspection by any member.

Bank accounts
Cap. 44:01

16. All moneys received by the Corporation shall, unless the Minister otherwise permits, be paid into an account of the Corporation with a bank registered under the Banking Act.

Investments

17. The Corporation may invest all or any of its moneys not immediately required for the purposes of the Corporation—

(*a*) in the purchase of any security issued by the Government of Malaŵi;

(*b*) in deposits in any bank or building society authorized to carry on business as such under any law for the time being in force in Malaŵi;

(*c*) in such other manner as may be approved in writing by the Minister.

Security for loans

18. Loans made to the Corporation may be secured on the property and revenues of the Corporation.

Audit

19.—(1) The accounts of the Corporation shall be audited forthwith at the end of every one of the Corporation's financial years by an auditor approved by the Minister in accordance with such rules as may be made by the Minister.

(2) The Corporation shall pay in respect of any audit held under this Part such fees, costs and expenses as may be approved from time to time by the Minister.

(3) The auditor may by writing under his hand require the production of all books, deeds, contracts, vouchers, receipts and other documents relating to the accounts or investments of the Corporation which he may deem necessary for the purpose of the audit. He may summon in writing all such persons as he may think proper to appear before him personally, at the offices of the Corporation at a time to be fixed in such summons for examination in connexion with any documents or matter relating to the audit.

(4) Any person who, without just cause, fails or refuses to produce any document the production of which has been duly required by the auditor, or who, having been so summoned—

(*a*) without just cause neglects or refuses to comply with the summons;

(*b*) having appeared before the auditor, without just cause refuses to be examined; or

(*c*) without just causes refuses to answer such questions pertaining to the audit as are put to him,

shall be liable, for every such refusal or neglect incurred, to a fine of £50 and imprisonment for three months:

Provided that conviction under this section shall not exempt the person convicted from the liability to do or perform the act, matter or thing required of him.

Report of auditor

20.—(1) After the completion of the audit of the accounts of the Corporation, the auditor shall report thereon in writing to the Corporation about the audit generally and on such specific matters in relation thereto as the Minister may direct. The Corporation shall take the report into consideration within two months after the date of the receipt thereof, and thereupon a copy of such report, together with the Corporation's comments thereon, shall be sent by the Corporation to the Minister.

(2) The Minister shall forthwith lay before the National Assembly a copy of the accounts of the Corporation for each financial year, together with the auditor's report thereon.

PART VI

Staff and Agents

Employment of officers and staff
30 of 1969

21.—(1) The Minister may appoint and may terminate the appointment of a General Manager of the Corporation who may be the chief executive officer.

(2) The Corporation may, with the approval of the Minister, appoint and terminate the appointment of any such other officers and servants as may be necessary for the due and proper carrying out of its purposes or the appropriate exercise of its powers.

(3) The Corporation shall, with the approval of the Minister, regulate the duties, terms and conditions of service for all its officers.

(4) No officer or servant of the Corporation shall have the right to bind the Corporation to the terms of any contract without the general or special authority of the Minister.

(5) Any contract entered into in violation of subsection (4) shall be null and void.

(6) Any member, officer, agent or servant of the Corporation shall, if so required by the Minister, take and subscribe before a commissioner for oaths such oath of fidelity or secrecy as the Minister may prescribe.

Pensions and provident funds

22.—(1) The Corporation may, with the approval of the Minister, establish and maintain pension, superannuation, provident and other funds as it may consider desirable for the

provision of payments or other allowances on death, sickness, injury, superannuation, resignation or retirement or discharge of its officers and servants.

(2) The Corporation may, with the approval of the Minister, make rules providing for the payment of moneys out of the revenue of the Corporation to such funds and providing for the contribution of moneys to such funds by the officers and servants of the Corporation, and contract with insurance companies and other bodies for the maintenance of such funds.

Agents

23.—(1) The Corporation may, with the consent of the Minister, entrust to and confer upon any person as agent of the Corporation any of the powers exercisable by the Corporation upon such terms and conditions as the Corporation may, with the approval of the Minister, think fit, but only collaterally with and not to the exclusion of the Corporation's own powers. The Corporation may from time to time revoke, withdraw, alter or vary any or all of such powers.

(2) Any such agent shall receive such remuneration (whether by way of salary, fee, commission or participation in profits or partly in one way and partly in another) as may, subject to the approval of the Minister, be agreed between the agent and the Corporation.

PART VII

General

Regulations

24.—(1) The Minister may, from time to time, make regulations for any of the purposes of this Act and to give effect to the provisions thereof.

(2) Such regulations may require any person to comply with reasonable and proper requirements or directions of the Corporation of a nature similar to the requirements or directions of the by-laws of a local authority and may impose a penalty not exceeding a fine of £100 and imprisonment for six months, and may also impose a fine of £1 for every day during which an offence continues.

(3) Such regulations may also provide for the recovery by the Corporation of its expenses arising out of any act or omission constituting an offence under the regulations.

Power of court to cancel licence or permit

25. Where any person is convicted of contravening or failing to comply with any condition subject to which a licence or permit has been granted to him under any regulation made under section 24, the court which convicted him may, in addition to or in substitution for any penalty prescribed in such regulation, cancel the licence or permit in respect of which the offence was committed.

Minister may give directions

26. Without prejudice to any provision of this Act requiring the consent or approval of the Minister to be obtained for anything to be done by the Corporation, the Minister may give directions to the Corporation for restricting the exercise by it of its powers under this Act, or for requiring it to exercise those powers in any manner specified in the direction.

Dissolution of the Corporation

27. Where the Minister is satisfied that the purposes of the Corporation have been achieved or is satisfied that it should cease operating, the Minister shall by order provide for the winding up and dissolution of the Corporation. The assets of the Corporation at the time of dissolution shall, subject to the payment of the liabilities of the Corporation, be disposed of in the manner prescribed by the Minister.

G.N. 246/1969

NOTICE

under s. 2

The Minister has determined that the financial year of the Corporation after the financial year ending on the 31st day of March, 1970, shall be the twelve month period commencing on the 1st day of April in each year.

SUBSIDIARY LEGISLATION

G.N. 160/1968

CAPITAL CITY DEVELOPMENT CORPORATION DESIGNATION ORDER

under s. 9

Citation

1. This Order may be cited as the Capital City Development Corporation Designation Order.

Designation of land

2. The land described in the Schedule hereto is hereby designated as part of the Capital City of Lilongwe.

SCHEDULE

Commencing at the junction of the Lilongwe-Salima road approximately four and a half miles north of the Lingadzi Bridge with the road from Chitedze via Mbabzi and the road from Kasungu, the boundary proceeds in an easterly direction to the source of the Machendza/Kananga stream; thence by the Machendza/Kananga stream downstream to its confluence with the Mchenzi stream; thence by the Mchenzi stream downstream to its confluence with the Lilongwe River; thence by the Lilongwe River downstream to its confluence with the Nankhwali stream; thence by the Nankhwali stream upstream to its source on the road from Lilongwe to Mndondwe; thence in a south-westerly direction along the said road for approximately one mile to its junction with the roads running north to Kalonga village and south to Chambala village; thence in a south-westerly direction on an approximate true bearing of 233° through Nchesi Hill to the main Lilongwe-Dedza road near Katanta village at a point marked by a beacon approximately two miles south of the Nchesi Quarry road turn-off, thence due west along a line of beacons to the confluence of the Kawala Dambo and the Kadakale stream, thence by the Kadakale stream downstream to its confluence with the Lilongwe River near Borehole No. D. 17 on its northern bank; thence in a northerly direction along the Fire-break through the Chinsapo Forest to the Lilongwe-Likuni road, thence east along the road to the western boundary of Chankhandwe Veterinary Station, thence in a northerly direction along the western boundary fence of Chankhandwe Veterinary Station and an extension thereof to its junction with the Chankhandwe Dambo, thence by the Chankhandwe Dambo upstream to its junction with the Machenga Dambo, thence by the Machenga Dambo upstream until it meets the LilongweMchinji road; thence following the said road in an easterly direction to its junction with the Lilongwe Airport turn-off, thence in a northerly direction to the source of the Kamankuku Dambo, thence by the Kamankuku Dambo downstream to its confluence with the Lingadzi River, thence by the Lingadzi River downstream to its confluence with the Nankhaka Dambo, thence by the Nankhaka Dambo upstream to its junction with the Chitedze-Salima road via Mbabzi, thence following the said road in an easterly direction to the main Lilongwe-Salima road, the point of commencement.

CAPITAL CITY DEVELOPMENT CORPORATION (SUPPLEMENTAL DESIGNATION) ORDER

G.N. 40/1972

under s. 9

1. This Order may be cited as the Capital City Development Corporation (Supplemental Designation) Order. Citation

2. The land described in the Schedule hereto is hereby designated as part of the Capital City of Lilongwe. Designation of land

SCHEDULE

FIRST ALL THAT piece or parcel of land containing an area of seven thousand eight hundred and sixty (7,860) acres or thereabouts situate at Lilongwe the boundaries whereof are more particularly described and delineated on Survey Department Sketch Plan No. 93/71 and are thereon edged with red colour.

SECONDLY ALL THAT piece or parcel of land containing an area of one thousand one hundred and sixty-four (1,164) acres or thereabouts situate at Lilongwe and known as Chinsapo block the boundaries whereof are more particularly described and delineated on Survey Department Sketch Plan No. 92/71 and thereon edged with red colour.

CAPITAL CITY DEVELOPMENT CORPORATION (SUPPLEMENTAL DESIGNATION AND LAND VESTING) ORDER

G.N. 132/1980

under s. 9

1. This Order may be cited as the Capital City Development Corporation (Supplemental Designation and Land Vesting) Order. Citation

2. The land described in the First and the Second Schedules is hereby designated part of the Capital City of Lilongwe. Designation of land

3. The land described in the First and the Second Schedules is hereby vested in the Corporation in fee simple. Vesting of land in the Corporation

4. There is excepted and reserved out of and excluded from this vesting the mines and minerals and ancillary rights set out in the Third Schedule. Exception of mines and minerals

FIRST SCHEDULE

ALL THAT piece or parcel of land containing an area of eleven thousand five hundred and twenty-eight (11,528) hectares or thereabouts situate in the Lilongwe District the boundaries whereof are more particularly described and delineated on Survey Department Sketch Plan No. 4/78 and thereon edged in red.

SECOND SCHEDULE

ALL THAT piece or parcel of land containing an area of one thousand six hundred and eighty decimal point five six (1,680.56) hectares or thereabouts situate in the Lilongwe District the boundaries whereof are more particularly described and delineated on Survey Department Sketch Plan No. 9/78 and thereon edged in red.

THIRD SCHEDULE

ALL MINES, minerals, oil, silver, gold and precious stones within under or upon the said land or any part thereof and all mining rights and other rights whatsoever of like nature relating thereto with full and unrestricted liberty and power for the Minister and his successors and assigns and his or their prospectors or agents to enter upon the said land and any part thereof to prospect search for dig raise win or work (whether by means of open working or otherwise) and to lay dress manufacture use make merchantable and keep thereon and to remove and carry away all or any of the said mines, minerals, oil, gold, silver and precious stones without leaving any support for the surface of the said land with full liberty and power to make sink drive maintain and use all such pits, drifts, shafts, tunnels, levels, drains, watercourses and reservoirs and to construct erect maintain and use all such spoil-banks railroads, tramroads, and other roads, bridges, buildings, works, engines, machinery and conveniences whatsoever and to do all such things in under upon through or over the said land or any part thereof as may be necessary or convenient for all or any of the purposes aforesaid provided always that the Minister or his successors or his assigns (as the case may be) shall from time to time make to the Corporation its successors and assigns and their lessees and tenants reasonable and adequate compensation for all damage done or occasioned by the Minister or his successors or assigns to the said land by the exercise of the powers rights and liberties or any of them hereinbefore in this Schedule excepted and reserved.

CAPITAL CITY DEVELOPMENT CORPORATION (LAND VESTING) ORDER

G.N. 228/1969

under s. 9

Citation

1. This Order may be cited as the Capital City Development Corporation (Land Vesting) Order.

Vesting of certain land etc. in Corporation

2. The land (hereinafter called ‘‘the said premises") more particularly described in the First Schedule hereto together with the several messuages buildings erections and structures thereon and all other the hereditaments demised by or now subject to the several leases mentioned in the Second Schedule hereto are hereby vested in the Capital City Development Corporation (hereinafter called ‘‘the Corporation") in fee simple subject as to such parts of the said premises as are respectively comprised in the several Indentures of Lease specified in the Second Schedule hereto to such Indentures respectively and with the benefit of the several rents thereby reserved and of the covenants conditions and stipulations therein respectively contained and on the part of the lessees to be observed and performed and subject also to and with the benefit of all agreements to which the Government may be a party and which touch and concern the said premises.

Exception of mines and minerals

3. There is excepted and reserved out of and excluded from this vesting the mines and minerals and ancillary rights set out in the Third Schedule hereto.

FIRST SCHEDULE

All land (other than private land held under a freehold title) within the area of which the boundary commences at the junction of the Lilongwe-Salima road approximately four and a half miles north of Lingadzi Bridge with the road from Chitedze via Mbabzi and the road from Kasungu, and proceeds in an easterly direction to the source of the Machendza/Kananga stream; thence by the Machendza/Kananga stream downstream to its confluence with the Mchenzi stream; thence by the Mchenzi stream downstream to its confluence with the Lilongwe River; thence by the Lilongwe River downstream to its confluence with the Nankhwali stream; thence by the Nankhwali stream upstream to its source on the road from Lilongwe to Mndondwe; thence in a south-westerly direction along the said road for approximately one mile to its junction with the roads running north to Kalonga Village and south to Chambale Village; thence in a south-westerly direction on an approximate true bearing of 233° through Nchesi Hill to the main Lilongwe-Dedza road near Katanta Village at a point marked by a beacon approximately two miles south of the Nchesi Quarry road turn-off, thence due west along a line of beacons to the confluence of the Kawala Dambo and the Kadakale stream, thence by the Kadakale stream downstream to its confluence with the Lilongwe River near Borehole No. D. 17 on its northern bank; thence in a northerly direction along the Fire-break through the Chinsapo Forest to the Lilongwe-Likuni road, thence east along the road to the western boundary of Chankhandwe Veterinary Station, thence in a northerly direction along the western boundary fence of Chankhandwe Veterinary Station and an extension thereof to its junction with the Chankhandwe Dambo, thence by the Chankhandwe Dambo upstream to its junction with the Machenga Dambo,

thence by the Machenga Dambo upstream until it meets the Lilongwe-Mchinji road; thence following the said road in an easterly direction to its junction with the Lilongwe Airport turn-off, thence in a northerly direction to the source of the Kamankuku Dambo, thence by the Kamankuku Dambo downstream to its confluence with the Lingadzi River, thence by the Lingadzi River downstream to its confluence with the Nankhaka Dambo, thence by the Nankhaka Dambo upstream to its junction with the Chitedze-Salima road via Mbabzi, thence following the said road in an easterly direction to the main Lilongwe-Salima road, the point of commencement.

SECOND SCHEDULE

Lands Dept File No.	*Plot Description*	*Date of Lease*	*Deed No.*	*Lessee*
32092	2242	3- 7-64	29775	Lilongwe Town Council
32092	3287	3- 7-64	29775	Lilongwe Town Council
32092	2243	3- 7-64	29775	Lilongwe Town Council
32092	2244	3- 7-64	29775	Lilongwe Town Council
32092	2245	3- 7-64	29775	Lilongwe Town Council
32092	3108	3- 7-64	29775	Lilongwe Town Council
32092	2080	3- 7-64	29775	Lilongwe Town Council
17465	2030	6- 3-65	30305	A.L.H. and O.H. Jagot
40645	4006	31-12-64	30228	Costantini and Co. Ltd.
40815	4079	22- 5-65	30470	Shire Construction Co. Ltd.
31885	4048	12- 3-66	31290	W.N.L.A.
26960	4025	30- 4-66	31378	I. I. Bheda
41486	3221	9- 1-68	33398	Portland Cement Co. (Malaŵi)
25170	2063	27- 6-66	31541	C. Ibrahim
34916	3282	2- 5-64	29571	Lilongwe Water Board
24622	2002	9- 8-29	7930	Indian Mohamedan Mosque
21541	4116	7-12-53	17839	Mobil Oil (Malaŵi) Ltd.
25295	2128	8- 4-54	18158	O. A. Karim
25306	2097	3- 8-55	19414	Y. M. Patel
28306	624–625	30-11-63	29132	M. A. Sattar/G. H. Nabibhai
32059	514	24-12-58	23975	Seventh Day Adventists
29909	2215	28- 8-59	24789	United Transport (Malaŵi) Ltd.
34791	636	5-5-60	25528	N.L.Pashu
34792	641	17- 3-69	35130	M. C. Mdumuka
40626	3288	3- 7-64	29773	Lilongwe Town Council
32059	685	30- 1-65	30216	Seventh Day Adventists
40721	525	23- 1-65	30202	Shell (Malaŵi) Ltd.
40990	14	12- 7-66	31578	A. R. Elias
27356	10–11	11-2-60	25296	B. S. Tafatatha
21430	4129	22-11-52	16946	Bookers (Malaŵi) Ltd.
16189	3073	6-8-41	11716	United Transport (Malaŵi) Ltd.
41057	3226	18- 1-69	34914	J. E. Gill
41047	2230–2231	4- 6-66	31478	D. H. Gelu
41486	3205	9- 1-68	33397	Portland Cement Co. (Malaŵi)
41220	2037	21- 8-68	34198	I. T. Karatela
40965	2235–2236	8-11-66	31971	S. A. Manyethera
41059	4026	4-11-66	31955	A. D. Sacranie
41052	2229	2- 7-66	31562	J. Jagjivan
41046	2227	2- 7-66	31561	M. H. Kassam
41109	3128	20- 8-66	31700	J. Morgado

Lands Dept File No.	*Plot Description*	*Date of Lease*	*Deed No.*	*Lessee*
41045	2228	30- 7-66	31641	K. M. M. Shah
41269	4075–4077	27- 5-67	32594	Shire Construction Co. Ltd.
41264	3129	11-10-67	33068	H. G. da Silva
41266	3127	4- 3-67	32277	Standard Bank Ltd.
41267	3232	18- 3-67	32324	Standard Bank Limited
41274	3139	8- 4-67	32409	R. C. R. Partridge
20361	110	29-3-52	16368	Brown and Clapperton Ltd.
20160	4126	23- 7-52	16661	Farmers Marketing Board
21542	4120–4121	5- 4-54	18147	Cold Storage Co. Ltd.
28383	4083	19- 3-57	21520	M. P. de Noronha
20160	4124	1-10-56	20942	Farmers Marketing Board
10835/III	3247	20- 5-58	23142	United Transport Co. Ltd.
33276	4108–4109	24-12-58	23999	Lilongwe Garage Ltd.
34214	4084	18- 3-59	24238	Paramount Bakery (1963)
34841	4112	4- 3-60	25339	M. M. Patel
26387	4001	24- 4-61	26657	Lilongwe Diocese
10835/III	3245–3246	17- 7-62	27837	United Transport (Malaŵi)
24376	4117	17-10-62	27891	W.N.L.A.
26387	4134	26-10-63	29065	Lilongwe Diocese
40853	4097	23-11-65	30876	A. N. de Oliveira Silva
32092	4132	3- 7-64	29775	Lilongwe Town Council
32092	3286	3- 7-64	29775	Lilongwe Town Council
41194	4138	9-1-68	33401	Portland Cement Co. (Malaŵi)
40963	4086	27- 2-66	31539	J. D. da Fonseca
32531	4099	30- 7-66	31643	G. C. Antoine
41107	4105–4106	3-12-66	32025	J. Margado
41205	3222	7-1-67	32113	Shire Construction Co. Ltd.
41631	4090	1- 6-68	33927	Horacio Construction Ltd.
41176	3224	6- 2-67	32208	C. Morgante
41392	4094–4095	19- 6-67	32654	General Construction Co. Ltd.
41395	4100	14-10-67	33092	General Construction Co. Ltd.
41409	4092–4093	14-10-67	33087	Chibuku Products Ltd.
41215	3243	14-10-67	33085	General Construction Co. Ltd.
41311	4085	25-11-67	33245	J. D. da Fonseca
41603	4139	19-12-67	33311	M.A.R.T.A.
41177	3223	3- 2-68	33495	Mandala Building and Construction Co.
31805	4098	19-11-66	31987	A. A. Ismail
41416	3242	4- 5-68	33991	M. Morgante
39636	4110–4111	12-11-68	34605	Horacio Construction Ltd.
20160	4141	23-11-68	34638	Farmers Marketing Board
16728	2034	11-10-67	33070	K. Ahmed
17362	2033	12- 9-66	31747	M. H. Kassam
17453	4012	22- 8-29	7932	W. H. Stansfield
16729	4008	25- 5-68	33933	Road Motor Services
24652	2022	8- 2-30	8084	Mrs. B. K. Patel
17454	2008	20-10-56	20994	I. S. Jasat
17361	2010	26- 3-31	8556	Lilongwe Community Trust
17326	2032	2-11-68	34551	C. Adam Ltd.
17381	2024	7-9-40	11428	P. H. Patel
41006	2062	3-12-66	32017	A. M. Osman

Lands Dept File No.	*Plot Description*	*Date of Lease*	*Deed No.*	*Lessee*
41282	4036–4037	11-5-68	33825	Universal Industries Ltd.
41056	3126	3-12-66	32026	A. G. da Silva
30693	2059	19-12-67	33307	A. G. Afghan
41206	3230	21- 1-67	32174	E.S.C.O.M.
30415	2083	12- 3-57	21501	O. Nurmahomed
40991	2238	20- 2-67	32241	H. A. Mkanda
29925	2061	25- 2-67	32265	I. Hassam/A. Issa
35570	642 & 5	1- 4-67	32376	M.A.R.T.A.
41147	2237	4- 3-67	32387	G. K. Banda
41293	3240	16- 5-67	32541	Advanx Ltd.
41329	3122	6- 5-67	32521	Barclays Bank
41329	3123	6- 5-67	32522	Barclays Bank
41023	2079	6- 5-67	32519	Hindu Seva Samaj
23012	LE 874	5- 6-65	30530	R. C. Calvert
40806	LE 905	25- 9-65	30774	Malaŵi Broadcasting Corporation
41167	2225	27-5-67	32593	N. V. Patel
28587	2045	27- 5-67	32592	Gill Bros. (1964) Ltd.
41215	3241	14-10-67	33086	General Construction Co. Ltd.
41447	3209	11-12-67	33265	General Construction Co. Ltd.
41394	3200	11-12-67	33269	General Construction Co. Ltd.
41456	3217	11-12-67	33270	General Construction Co. Ltd.
41443	3206	29-12-67	33345	General Construction Co. Ltd.
41458	3219	29-12-67	33365	General Construction Co. Ltd.
41455	3216	29-12-67	33367	General Construction Co. Ltd.
41453	3214	29-12-67	33360	General Construction Co. Ltd.
41448	3210	29-12-67	33351	General Construction Co. Ltd.
41446	3208	29-12-67	33353	General Construction Co. Ltd.
41440	3202	29-12-67	33362	General Construction Co. Ltd.
41445	3207	29-12-67	33347	General Construction Co. Ltd.
41439	3201	29-12-67	33364	General Construction Co. Ltd.
41442	3204	29-12-67	33346	General Construction Co. Ltd.
41441	3203	29-12-67	33363	General Construction Co. Ltd.
41454	3215	29-12-67	33366	General Construction Co. Ltd.
41642	2060	19-12-67	33308	K. M. M. Shah
41383	4028–4034	16- 3-68	33655	Shire Trading Co. (1964) Ltd.
41548	3125	16- 3-68	33653	Mandala Building and Construction Co. Ltd.
41376	3124	16-3-68	33660	Air Malaŵi Ltd.
41027	4046	11-2-69	34841	V. J. Mamtora
41027	4047	11-2-69	34842	V. J. Mamtora
41216	3235–3236	19-12-67	33412	R. B. Chidzanja
20585	LE 526	31-12-54	18939	Lilongwe Agricultural Society
41817	2113	21-8-68	34228	O. Nurmahomed and Co.
16192	2004	12- 2-44	12509	Lilongwe District Council
25350	2129	21- 8-68	34202	K. I. and D. Ismail
16193	2239	6- 2-57	21389	I. Conforzi (TAT) Ltd.
28930	3107	24- 4-56	20289	United Transport (Malaŵi) Ltd.
24748	2084	19- 7-56	20668	C. L. Patel
29923	3085	7- 1-57	21270	Northern Trust Co. Ltd.
29145	3074	18- 8-56	20779	Road Motor Services
29144	3027	18- 8-56	20778	Road Motor Services

Lands Dept File No.	*Plot Description*	*Date of Lease*	*Deed No.*	*Lessee*
24373	2072	18- 8-56	20792	United Transport (Malaŵi) Ltd.
19463	2038	23- 5-57	21756	G. Pradrudas
30418	3083	12- 3-57	21483	United Transport (Malaŵi) Ltd.
30534	2099	14- 2-57	21408	Y. M. Tutla
30416	2086	31- 1-57	21369	G. Jevant
41457	3218	29-12-67	33384	General Construction Co. Ltd.
29622	3028	23-10-56	20995	Lilongwe Town Council
22614	A283–297	23-10-56	20997	Lilongwe Town Council
21333	2005	1-10-56	21032	Lilongwe Town Council
30710	3084	22- 5-57	21750	Standard Bank Ltd.
30828	3089	17- 4-57	21643	United Transport (Malaŵi) Ltd.
30825	2041	17- 4-57	21642	United Transport (Malaŵi) Ltd.
30067	2131	19- 3-57	21519	I. I. Bheda
30665	2076	31- 1-57	21366	Lilongwe Hardware Centre
26582	3051	23- 5-57	21758	United Transport (Malaŵi) Ltd.
24860	2108–2109	31- 1-57	21367	C. S. Patel
30925	2135	23- 5-57	21753	Y. M. Tutla
29883	3284	31- 1-57	21368	Lilongwe Town Council
30926	2114	15-7-57	21944	D. T. Nathenie and Co.
31273	2049	26-8-57	22114	D. H. Gelu
31272	2048	26-8-57	22116	D. H. Gelu
31047	2069	30- 7-57	22037	R. Sharma
31274	2053	26-8-57	22115	D. H. Gelu
31271	2052	19-11-57	22475	I. N. Makda and Co.
17357	2029	23- 5-57	21760	Mrs. B. K. Kokri
29952	2042	22- 5-57	21757	United Transport (Malaŵi) Ltd.
30031	3088	22-5-58	23117	A. C. Omar
31327	3071A	7-10-57	22292	E. M. Hendry
25403	2116	1-11-57	22378	M. M. Bhayat
23052	2130	14- 3-58	22904	D. H. H. Thandar
32184	3008	14- 3-58	22869	Road Motor Services
19906	3145	2- 4-58	22948	Barclays Bank
31046/II	4080–4082	14- 4-58	23018	Road Motor Services
32817	2074	20-12-58	23953	M. I. Lorgat
16183	2031	13- 1-58	22647	M. A. Karim
29308	2035	28- 2-58	22808	R. Purshottam
19068	2077	7- 7-58	23280	I. M. Makda and Co.
25402	2101	9- 7-58	23333	A. L. A. Karim
23693	2006	1-10-58	23671	I. Hassam
24633	2027	21- 7-33	9194	D. I. and K. I. Bheda
16188	4009	20- 8-53	17565	Mrs. J. Patridge
24392	4013	2-8-39	11075	Bookers (Malaŵi) Ltd.
20290	2007	13- 3-39	10955	H. L. Dossani
16729	4007	5-4-40	11312	Road Motor Services
24383	3070	6-12-39	11166	W.N.L.A.
16250	2089	28-11-45	13345	I. M. Makda
16252	2068	6- 9-54	18550	Road Motor Services
17342	3058	3- 3-52	16293	Bookers (Malaŵi) Ltd.
16489	3029	18-9-51	15935	United Transport (Malaŵi) Ltd.
16488	3030	30- 6-52	16600	United Transport (Malaŵi) Ltd.
15426	3055	9- 9-52	16787	U.M.C.A.

Lands Dept File No.	*Plot Description*	*Date of Lease*	*Deed No.*	*Lessee*
18854	4063–4065	16- 2-52	16259	Brown and Clapperton Ltd.
18869	3031	16-10-51	16008	Brown and Clapperton Ltd.
19274	2078	17-10-55	19682	Bookers (Malaŵi) Ltd.
19115	4061	16-2-52	16239	Road Motor Services
19116	4062	16-2-52	16237	Road Motor Services
19470	3069	31-12-51	16146	Road Motor Services
19109	4066	4- 7-52	16618	Advanx Ltd.
19627	3141	22- 8-51	15903	Farmers Marketing Board
16481	3147	28- 8-51	15902	Halls Holdings Ltd.
17247	4068–4070	25- 4-52	16455	Costantini and Co. Ltd.
19665	2065	6- 9-54	18541	Mrs. M. A. Sattar
19614	3057	29- 3-52	16369	W.N.L.A.
19909	3144	9- 9-52	16791	Universities Mission Trust
19490	4003	14- 3-52	16329	Oilcom
19491	4004	14- 3-52	16329	Oilcom
19775	3072	21- 2-52	16249	Halls Holdings Ltd.
19907	3143	21- 2-52	16258	Standard Bank Ltd.
20032	3056	3- 3-52	16290	Bookers (Malaŵi) Ltd.
19469	3045	16- 2-52	16240	Road Motor Services
19752	3142	3- 3-52	16291	Farmers Marketing Board
20049	4114	3-3-52	16292	Bookers (Malaŵi) Ltd.
19152	3146	21- 3-52	16338	Lilongwe Town Council
19699	4042–043	8- 4-52	16397	Bookers (Malaŵi) Ltd.
20874	3148	21- 6-52	16566	Farmers Marketing Board
21142	4115	30-6-52	16598	United Transport (Malaŵi) Ltd.
20950	3053–3054	12- 7-52	16641	Lilongwe Town Council
19424	3061	2- 8-52	16707	W.N.L.A.
21252	3005	19- 9-52	16813	Brown and Clapperton Ltd.
21296	4072–4073	7-10-52	16845	Lilongwe Town Council
21230	3034	18-12-52	17007	Costantini and Co. Ltd.
21231	4071	18-12-52	17006	Costantini and Co. Ltd.
20257	4044	25- 2-53	17160	Blantyre Printing and. Publishing Co. Ltd.
31049	3090	11-6-58	23179	Brown and Clapperton Ltd.
16196	3068	3-11-58	23787	W.N.L.A.
30535	2066	19- 7-58	23361	M. A. Desai
25167	2044	25-11-58	23933	P. Kaur
33049	3121	27- 6-58	23249	Road Motor Services
33563	3165	28- 7-58	23372	African Lakes Corporation
24632	4021	20-5-58	23135	United Transport (Malaŵi) Ltd.
25351	2117	29-9-58	23652	D. H. Gelu
25481	2055	29- 9-58	23660	M. M. Chunara and Co.
25396	2132	1- 9-58	23506	M. M. Patel
33890	3234	25-7-59	24672	Assemblies of God
33838	2092	3-12-60	26278	D. H. Gelu
17335	3149	11-11-59	25000	Lodge Angoni
25346	2123	20- 8-59	24765	M. A. Karim
16104	2090	12- 5-59	24416	I. M. Sidat
25450	2119	2-4-59	24286	K. Tarmahomed
24857	2104	2- 4-59	24287	K. Tarmahomed
33822	3169	8- 6-59	24498	E.S.C.O.M.

Lands Dept File No.	*Plot Description*	*Date of Lease*	*Deed No.*	*Lessee*
34312	3233	13- 7-59	24625	McConnell and Co.
16224	2091	12- 9-60	26021	D. Issa and Co.
31598	2085	4- 8-59	24710	Y. M. Limbada
30797	2050	27- 4-59	24364	R. C. Morgan
24851	2081	30-11-59	25053	M. M. Chunara and Co.
28221	2075	1- 3-60	25410	M. M. Chunara and Co.
35039	3032	10-1-61	26360	Lilongwe Water Board
35329	3150	20-1-60	25197	Bookers (Malaŵi) Ltd.
22650	4054	15-1-60	25207	Lilongwe Town Council
25383	2118	9- 3-60	25359	I. M. Randera
16211	4016	9-3-60	25348	United Transport (Malaŵi) Ltd.
16211	4058–4060	9-3-60	25348	United Transport (Malaŵi) Ltd.
36611	3229	18- 3-61	26541	C.A.T.C.O.
23731	2046	15- 8-60	25925	R. Purshottam
27893	2036	30- 9-60	26084	G. Prabhudas
24395	3001	8-11-60	26195	Lilongwe Golf Club
29924	3086	15-4-61	26622	Baptist Mission of C.A.
26612	4067	24- 4-61	26656	R. C. Morgan
32086	2039	2- 1-62	27260	Girl Guides Association
37045	3154	10- 2-62	27415	Lilongwe Town Council
39490	4078	26- 9-62	28034	Shire Construction Co.
39604	2240	16-10-63	29026	Lilongwe District Council
39791	4074	31-12-62	28360	Lilongwe Town Council
16297	2025	16- 1-65	30165	D. H. Gelu
17388	2023	28-12-64	30158	H. Ahmed Bros.
40254	3228	16-9-63	28952	Baptist Mission of C.A.
32092	3285	3- 7-64	29775	Lilongwe Town Council
32092	2241	3- 7-64	29775	Lilongwe Town Council
32092	4133	3- 7-64	29775	Lilongwe Town Council
24853	2110	29-3-54	18115	K. T. Nathanie and Co.
24856	2088	29-3-54	18118	M. M. Bayhat
24858	2098	1- 5-54	18208	Y. I. Dakri
24855	2107	29-3-54	18113	D. H. Gelu
25172	2067	12- 4-54	18167	Road Motor Services
25307	2120	3- 3-54	18042	K. Tarmahomed
25292	2105	29-3-54	18112	E. M. Makda
25349	2106	3- 5-54	18209	I. Dawood
24854	2100	23- 2-54	18035	D. H. H. Thandar
25360	2133	1- 5-54	18210	A. Alimahomed
25373	2121	8- 4-54	18156	A. N. Coccolis
25301	2102–2103	31- 7-54	18435	A. N. Coccolis
25442	2056	23- 2-54	18062	M. S. Lambert
25296	2057	3- 5-54	18259	C. L. Patel
25604	3071	17- 7-54	18387	C.C.A.P.
24859	2095	3- 3-54	18041	I. M. Sidat
25453	3036	15- 7-54	18374	W.N.L.A.
19776	4113	9-8-54	18455	Bookers (Malaŵi) Ltd.
41818	2112	27-7-68	34137	A. M. Osman
25408	2093	6- 9-54	18562	Y. M. Randera
25384	4024	31-12-54	18884	Bata Shoe Co. (Malaŵi) Ltd.

Lands Dept File No.	*Plot Description*	*Date of Lease*	*Deed No.*	*Lessee*
26133	3063	18-11-54	18727	Road Motor Services
25441	2122	14- 7-54	18375	A. L. A. Karim
25382	2094	31- 7-54	18433	M. A. Chunara
25841	3077	1-11-54	18675	W.N.L.A.
25347	2134	17- 2-68	33558	M. A. Chunara
26134	3026	17-12-54	18808	Road Motor Services
25168	2115	23-7-54	18517	M. M. Chunara and Co.
26788	3025	3- 3-55	19094	Road Motor Services
25338	2111	6-9-54	18561	A. G. Omar
26656	2051	19- 5-55	19188	M. Shah
26374	2087	23-5-55	19211	M. M. Chunara and Co.
26546	2054	23-9-55	19611	I. M. Randera
26937	2064	19- 4-55	19133	Muslim Community Trust
27947	3048	15-11-55	19781	Lilongwe Town Council
27857	2047	31- 8-56	20823	Lilongwe Indian School
16485	2043	25-8-55	19495	Bookers (Malaŵi) Ltd.
20984	3067	18- 6-55	19288	Road Motor Services
27926	A.99	28- 2-56	20064	Assemblies of God Mission
28307	3087	9- 7-56	20670	Farmers Marketing Board
28246	3152	15-11-55	19780	Lilongwe Water Board
16955	2058	13- 8-55	19452	C. S. Patel
25834	3106	24- 4-56	20290	Dutch Reformed Church Mission
27033	3064	25- 8-55	19491	Road Motor Services
21859	2019	18-7-38	10727	Indian Country Club
24622	2147	19- 8-29	7931	Indian Mohamedan Cemetery
25361	2127	29- 3-54	18117	A. I. Tataria
25297	2125	8- 4-54	18157	H. Omar
25298	2126	29-3-53	18111	S. K. Dhada
25328	2136	21- 8-68	34203	O. Mussa
25309	2124	3- 3-54	18045	A. E. Badat
25310	2137	3- 3-54	18044	I. M. Sidat
25345	2138	31-12-54	18919	I. M. Hansrod
26295	2139	1-10-57	22265	H. A. Gani
27759	472–490	3-10-57	22255	Lilongwe District Council
31482	434–443	19- 3-58	22902	Lilongwe Town Council
24616	2146	31-12-57	22607	Muslim Sports Club Trust
31481	430–433			
	450	14- 4-58	23015	Lilongwe Water Board
31864	463–464	9- 3-60	25349	A. P. Mballah
32400	615–616	19- 2-59	24171	Farmers Marketing Board
33721	612	12-12-58	23941	Dutch Reformed Church
34241	549—550	16- 2-60	25289	B. S. Tafatatha
34348	458, 467	22- 2-60	25309	H. B. Phiri
34844	644	21-12-59	25108	E.S.C.O.M.
34643	649	28-11-60	26274	M. A. Latif
35222	2014	12- 5-60	25520	I. A. Aziz
35300	497–498	19- 8-60	25935	Lilongwe District Council
34648	646	21- 1-60	25209	Church of Christ
32111	465	21-12-59	25109	M. Kadango
24622	2220,2226	5- 6-61	26774	Muslim Community
34695	505–513	5- 6-61	26771	Lilongwe Diocese

Lands Dept File No.	*Plot Description*	*Date of Lease*	*Deed No.*	*Lessee*
38552	656A	11-1-62	27297	Lilongwe Diocese
31827	551	17- 1-62	27324	J. J. Mpita
38907	2216	1- 8-62	27868	I. O. Adam Ltd.
39133	4	17- 3-62	27503	E.S.C.O.M.
16222	2021	19- 3-62	27505	P. Kaur
39767	677/1–2	3-7-64	29772	Baptist Mission of C.A.
31608	3	9- 2-63	28390	Lilongwe District Council
40163	670	4- 5-63	28614	Lilongwe Town Council
32092	675	3- 7-64	29775	Lilongwe Town Council
32092	684	3- 7-64	29775	Lilongwe Town Council
39133	659,669	18- 3-63	28472	E.S.C.O.M.
24631	2011	10-8-63	28871	O. Nurmahomed and Co.
40550	502-504	26-10-63	29064	Lilongwe Diocese
34916	650	2-5-64	29571	Lilongwe Water Board
40279	645	3-7-64	29771	Church of the Nazarene
40632	471	4- 7-64	29802	B. M. & K. B. Mbewe
40536	555	9- 6-64	29640	J. S. Ndau
40701	499-501	17-10-64	29954	Lilongwe Diocese
18964	2013	11-12-65	31021	M. A. Karim
36526	654	10-11-65	30920	Dutch Reformed Church
16223	2018	12- 9-60	26019	Dutch Reformed Church
11898/II	2012	4-10-57	22253	I. O. Adam Ltd.
16208	2020	27- 5-61	26757	Lilongwe Diocese
24852	2096	23- 2-54	18036	S. Osman
24374	2016	24- 1-44	12475	Hindu and Sikh Indian Community
34376	2181	18-10-66	31891	A. R. M. Shah
41219	2142	21- 8-68	34213	I. A. Aziz
41219	2143	21- 8-68	34214	I. A. Aziz
41071	2140	13- 8-66	31686	J. S. Sacranie
41400	2169	18-11-67	33202	B. Bonelli
41372	2168	28-10-67	33145	Mr. & Mrs. M. A. Girrash
41864	543	21-12-68	34757	S. L. Phiri
34916	LE.880	2- 5-64	29570	Lilongwe Water Board
30997	LE.729	25-11-58	23908	Marist Bros. of the Schools
30997	LE.817	31-12-61	27312	Marist Bros. of the Schools
17430	LE. 170	10- 1-35	9572	S. Kour
29284	LE.624	12-12-56	21236	Lilongwe District Council
40621	LE.890	18-4-64	29517	Shell (Malaŵi) Ltd.
40581	LE.898	9- 1-65	30142	E.S.C.O.M.
16030	LE.916	13- 6-66	31504	Shell (Malaŵi) Ltd.
34649	2180	12- 8-66	31745	S. Nurmahomed
41726	563	8- 2-69	34998	M. R. da S. Carvalho
16180	2028	31- 5-54	18299	Bookers (Malaŵi) Ltd.
16181	2026	31- 5-54	18277	Bookers (Malaŵi) Ltd.
22650	4131	11- 3-58	22865	Lilongwe Town Council
23056	4039–4040	16- 7-53	17486	Costantini and Co. Ltd.
24747	2082	19- 7-54	18474	P. H. Patel
16194	4020	24- 4-56	20397	J. Abegg
18868	3047	17-10-55	19681	United Transport (Malaŵi) Ltd.
41250	2182	15- 2-69	35043	M. I. Lorgat
17430	LE.675	5- 6-58	23169	S. Kour

Lands Dept File No.	*Plot Description*	*Date of Lease*	*Deed No.*	*Lessee*
40890	3225	2- 9-66	31770	K. L. Chimbiri
41143	4045	17-3-69	35128	V. J. Mamtora
41916	3237	17- 3-69	35129	B.A.T. (Malaŵi) Ltd.
34792	641	17- 3-69	35130	M. C. Mdumuka
41786	459 } 466 }	25- 3-69	35197	F. Mkandawire
41932	454	28- 4-69	35338	B. M. & K. B. Mbewe
16253/II	4107	9- 6-69	35495	J. Morgado
42097	643 655–657	9- 6-69	35506	E.S.C.O.M.
41893	617	28- 6-69	35576	A. R. Elias
15426	3400	18-8-69	35742	Diocese of Malaŵi
41889	3238	18-8-69	35744	The Church of the Nazarene

THIRD SCHEDULE

ALL MINES minerals mineral oil gold silver and precious stones (other than earth clay gravel and sand lime and stone for the purpose of building bridge-building roadmaking and other constructional purposes) within under or upon the said premises or any part thereof and all mining rights and other rights whatsoever of like nature relating thereto with full and unrestricted liberty and power for the Minister and his successors and assigns and his or their prospectors or agents to enter upon the said premises and any part thereof to prospect search for dig raise win or work (whether by means of open working or otherwise) and to lay dress manufacture use make merchantable and keep thereon and to remove and carry away all or any of the said mines minerals mineral oil gold silver and precious stones (other than as aforesaid) without leaving any support for the surface of the said premises with full liberty and power to make sink drive maintain and use all such pits drifts shafts tunnels, levels drains watercourses and reservoirs and construct erect maintain and use all such spoilbanks railroads tramroads and other roads bridges buildings works engines machinery and conveniences whatsoever and to do all such things in under upon through or over the said premises or any part thereof as may be necessary or convenient for all or any of the purposes aforesaid provided always that the minister or his successors or his assigns (as the case may be) shall from time to time make to the Corporation its successors and assigns and their lessees and tenants reasonable and adequate compensation for all damage done or occasioned by the Minister or his successors or assigns to the said premises or any buildings or other erections thereon by the exercise of the powers rights and liberties or any of them hereinbefore in this Schedule excepted and reserved.

CAPITAL CITY DEVELOPMENT CORPORATION (SUPPLEMENTAL LAND VESTING) ORDER

G.N. 28/1972

under s. 9

Citation

1. This Order may be cited as the Capital City Development Corporation (Supplemental Land Vesting) Order.

Vesting of certain land in the Corporation

2. The land (hereinafter called "the said premises") more particularly described in the First Schedule hereto together with the several messuages buildings, erections and structures thereon are hereby vested in the Capital City Development Corporation (hereinafter called "the Corporation") in fee simple subject to and with the benefit of all agreements to which the Government may be a party and which touch and concern the said premises.

Exception of mines and minerals

3. There is excepted and reserved out of and excluded from this vesting the mines and minerals and ancillary rights set out in the Second Schedule hereto.

FIRST SCHEDULE

Firstly all that piece or parcel of land containing an area of seven thousand eight hundred and sixty (7,860) acres or thereabouts situate at Lilongwe the boundaries whereof are more particularly described and delineated on Survey Department Sketch Plan No. 93/71 and are thereon edged in red.

Secondly all that piece or parcel of land containing an area of one thousand one hundred and sixty-four (1,164) acres or thereabouts situate at Lilongwe and known as Chisapo Block the boundaries whereof are more particularly described and delineated on Survey Department Sketch Plan No. 92/71 and thereon edged in red.

SECOND SCHEDULE

All Mines minerals mineral oil gold silver and precious stones (other than earth clay gravel sand lime and stone for the purpose of building bridge-building road-making and other constructional purposes) within under or upon the said premises or any part thereof and all mining rights and other rights whatsoever of like nature relating thereto with full and unrestricted liberty and power for the Minister and his successors and assigns and his or their prospectors or agents to enter upon the said premises and any part thereof to prospect search for dig raise win or work (whether by means of open working or otherwise) and to lay dress manufacture use make merchantable and keep thereon and to remove and carry away all or any of the said mines minerals mineral oil gold silver and precious stones (other than as aforesaid) without leaving any support for the surface of the said premises with full liberty and power to make sink drive maintain and use all such pits drifts shafts tunnels levels drains watercourses and reservoirs and construct erect maintain and use all such spoil-banks railroads tramroads and other roads bridges buildings works engines machinery and conveniences whatsoever and to do all such things in

under upon through or over the said premises or any part thereof as may be necessary or convenient for all or any of the purposes aforesaid provided always that the Minister or his successors or his assigns (as the case may be) shall from time to time make to the Corporation its successors and assigns and their lessees and tenants reasonable and adequate compensation for all damage done or occasioned by the Minister or his successors or assigns to the said premises or any buildings or other erections thereon by the exercise of the powers rights and liberties or any of them hereinbefore in this Schedule excepted and reserved.

G.N. 115/1975

CAPITAL CITY DEVELOPMENT CORPORATION (SUPPLEMENTAL LAND VESTING) ORDER

under s. 9

Citation

1. This Order may be cited as the Capital City Development Corporation (Supplemental Land Vesting) Order.

Vesting of certain land in the Corporation

2. The land (hereinafter called "the said premises") more particularly described in the First Schedule hereto together with the several messuages buildings, erections and structures thereon are hereby vested in the Capital City Development Corporation (hereinafter called "the Corporation") in fee simple subject to and with the benefit of all agreements to which the Government may be a party and which touch and concern the said premises.

Exception of mines and minerals

3. There is excepted and reserved out of and excluded from this vesting the mines and minerals and ancillary rights set out in the Second Schedule hereto.

FIRST SCHEDULE

ALL THAT piece or parcel of land containing an area of two thousand one hundred and sixty-three (2,163) hectares or thereabouts situate at Lilongwe the boundaries whereof are more particularly described and delineated on Survey Department Sketch Plan No. 179/74 and thereon edged in red.

SECOND SCHEDULE

ALL MINES minerals mineral oil gold silver and precious stones (other than earth clay gravel sand lime and stone for the purpose of building bridge-building road-making and other constructional purposes) within under or upon the said premises or any part thereof and all mining rights and other rights whatsoever of like nature relating thereto with full and unrestricted liberty and power for the Minister and his successors and assigns and his or their prospectors or agents to enter upon the said premises and any part thereof to prospect search for dig raise win or work (whether by means of open working or otherwise) and to lay dress manufacture use make merchantable and keep thereon

and to remove and carry away all or any of the said mines, minerals, mineral oil, gold, silver and precious stones (other than as aforesaid without leaving any support for the surface of the said premises with full liberty and power to make, sink, drive, maintain and use all such pits, drifts, shafts, tunnels, levels, drains, watercourses and reservoirs and construct, erect, maintain and use all such spoil-banks, rail-roads, tram roads and other roads, bridges, buildings, works, engines, machinery and conveniences whatsoever and to do all such things in, under, upon, through or over the said premises or any part thereof as may be necessary or convenient for all or any of the purposes aforesaid provided always that the Minister or his successors or his assigns (as the case may be) shall from time to time make to the Corporation, its successors and assigns and their lessees and tenants reasonable and adequate compensation for all damage done or occasioned by the Minister or his successors or assigns to the said premises or any buildings or other erections thereon by the exercise of the power, rights and liberties or any of them hereinbefore in this Schedule excepted and reserved.

CAPITAL CITY DEVELOPMENT CORPORATION (SUPPLEMENTAL DESIGNATION) ORDER

G.N. 86/1977

under s. 9

Citation

1. This Order may be cited as the Capital City Development Corporation (Supplemental Designation) Order.

Designation of land

2. The land described in the Schedule hereto is hereby designated as part of the Capital City of Lilongwe.

SCHEDULE

ALL THAT piece or parcel of land containing an area of two thousand one hundred and sixty-three (2,163) hectares or thereabouts situate at Lilongwe the boundaries whereof are more particularly described and delineated on Survey Department Sketch Plan No. 179/74 and thereon edged in red.

CAPITAL CITY DEVELOPMENT CORPORATION (SUPPLEMENTAL DESIGNATION AND LAND VESTING) ORDER

G.N. 132/1980

under s. 9

Citation

1. This Order may be cited as the Capital City Development Corporation (Supplemental Designation and Land Vesting) Order.

Designation of land

2. The land described in the First and the Second Schedule is hereby designated part of the Capital City of Lilongwe.

Vesting of land in the Corporation

3. The land described in the First and the Second Schedule is hereby vested in the Corporation in fee simple.

Exception of mines and minerals

4. There is excepted and reserved out of and excluded from this vesting the mines and minerals and ancillary rights set out in the Third Schedule.

FIRST SCHEDULE

ALL THAT piece or parcel of land containing an area of eleven thousand five hundred and twenty-eight (11,528) hectares or thereabouts situate in the Lilongwe District the boundaries whereof are more particularly described and delineated on Survey Department Sketch Plan No. 4/78 and thereon edged in red.

SECOND SCHEDULE

ALL THAT piece or parcel of land containing an area of one thousand six hundred and eighty decimal point five six (1,680.56) hectares or thereabouts situate in the Lilongwe District the boundaries whereof are more particularly described and delineated on Survey Department Sketch Plan No. 9/78 and thereon edged in red.

THIRD SCHEDULE

ALL MINES minerals oil silver gold and precious stones within under or upon the said land or any part thereof and all mining rights and other rights whatsoever of like nature relating thereto with full and unrestricted liberty and power for the Minister and his successors and assigns and his or their prospectors or agents to enter upon the said land and any part thereof to prospect search for dig raise win or work (whether by means of open working or otherwise) and to lay dress manufacture use make merchantable and keep thereon and to remove and carry away all or any of the said mines minerals oil gold silver and precious stones without leaving any support for the surface of the said land with full liberty and power to make sink drive maintain and use all such pits drifts shafts tunnels levels drains watercourses and reservoirs and to construct erect maintain and use all such spoil-banks railroads tramroads and other roads bridges buildings works engines machinery and conveniences whatsoever and to do all such things in under upon through or over the said land or any part thereof as may be necessary or convenient for all or any of the purposes aforesaid provided always that the Minister or his successors or his assigns (as the case may be) shall from time to time make to the Corporation its successors and assigns and their lessees and tenants reasonable and adequate compensation for all damage done or occasioned by the Minister or his successors or assigns to the said land by the exercise of the powers rights and liberties or any of them hereinbefore in this Schedule excepted and reserved.

CAPITAL CITY DEVELOPMENT CORPORATION (SUPPLEMENTAL DESIGNATION) ORDER

G.N. 88/1984

under s. 9

1. This Order may be cited as the Capital City Development Corporation (Supplemental Designation) Order. Citation

2. The land described in the Schedule hereto is hereby designated as part of the Capital City of Lilongwe. Designation of land

SCHEDULE

ALL THAT piece or parcel of land containing an area of nine two four (924) hectares or thereabouts situate at Lumbadzi in the Lilongwe and Dowa Districts the boundaries whereof (the same to be more precisely ascertained and defined by survey) are more particularly described and delineated on Survey Sketch Plan No. 125/83.

CAPITAL CITY DEVELOPMENT CORPORATION (WINDING-UP) ORDER

G.N. 25/1984
118/1986

under s. 27

1. This Order may be cited as the Capital City Development Corporation (Winding-up) Order. Citation

2. In this order— Interpretation

"corporation" means the Capital City Development Corporation; G.N. 118/1986

"date of dissolution" means the date of dissolution of the corporation as published in the *Gazette* by notice pursuant to paragraph 14;

"General Manager" means the general manager of the corporation.

"Malaŵi Housing Corporation" means the Corporation established under Malaŵi Housing Corporation Act; Cap. 32:02

"traditional housing area" means an area specified in the Schedule. *Schedule*

3. The winding-up of the corporation commences on 1st April, 1984. Date of commencement of winding-up

4.—(1) Subject to paragraph 5, and with effect from 31st March, 1984, all appointments to the corporation and to the Board of the corporation are terminated. Termination of appointment

(2) All assets in the staff pension fund of the corporation shall be distributed among the pensionable employees of the corporation in accordance with their rights in the fund after deduction of any debts which the employees may owe to the corporation.

Continuation of certain appointments

5.—(1) The General Manager and Chief Accountant of the corporation shall continue in office until the date of dissolution or the date of expiration of their contracts of employment, whichever be the earlier, for the purpose only of winding-up the business of the corporation and shall be subject to the control and supervision of the Comptroller for Statutory Bodies.

(2) The Comptroller for Statutory Bodies shall, in relation to the conduct of the winding-up affairs of the corporation, have the same powers as the Chairman of the corporation had in relation to the conduct of the corporation's affairs.

(3) The Assistant Landscape Manager of the corporation shall, with effect from 1st April, 1984, until the date of expiry of his contract, assist the Lilongwe City Council in matters relating to landscape management.

(4) The General Manager may, if he deems it necessary to the purpose of winding-up the affairs of the corporation, employ such temporary staff as he may require.

Continuation of sponsorships

6.—(1) Without prejudice to paragraph 4 (1), employees of the corporation at present overseas on various training courses who are being sponsored, or whose salaries are being paid, by the corporation shall continue to be so sponsored or paid until two months after the completion of their courses or the date of dissolution, whichever be the earlier.

(2) Subsequent to the date of dissolution the responsibility of the corporation under sub-paragraph (1) shall be that of the Government, but the Government's liability towards payment of salaries shall endure no further than two months after the date on which the employees concerned are due to complete their respective courses.

Transfer of assets, etc. G.N. 118/1986

7. With effect from 1st April, 1984, and subject to the exceptions contained in this Order, all property, assets, rights, liabilities, obligations and agreements vested in, acquired, incurred or entered into by or on behalf of the corporation shall—

(*a*) in the case of those situated, or related to the property or assets situated, in any area other than a traditional housing area, be deemed to have been acquired, incurred or entered into by or on behalf of the Government;

(*b*) in the case of those situated, or relating to the property or assets situated, in any traditional housing area, be deemed to have vested in or to have been acquired, incurred or entered into by or on behalf of the Malaŵi Housing Corporation,

and accordingly every such right, liability or obligation may be enforced by or against the Government or the Malaŵi Housing Corporation, as the case may be, to the same extent as it could have been enforced by or against the corporation.

Retention of moneys for winding-up purposes

8. Notwithstanding paragraph 7, the General Manager may retain in the bank account of the corporation a sum not exceeding K800,000 which shall be used—

(*a*) to purchase for a sum not exceeding K320,000 an option on preference shares in Industrial Developments Limited, which shares shall, upon their purchase, be vested in the Government;

(*b*) to meet all the expenses relating to the winding-up of the corporation and to the obligations of the corporation under this order.

Recovery of mortgaged property and bad debts

G.N. 118/1986

9.—(1) The General Manager shall during the winding-up period—

(*a*) where a mortgagor has made default in payment of a mortgage debt owed to the corporation pursue any or all of the remedies which the corporation had at law or under the mortgage deed to recover the mortgaged debt, the interest thereon and all the expenses incurred in recovery of the debt;

(*b*) take the necessary steps to ensure the recovery of all debts due to the corporation prior to 1st April, 1984.

(2) Nothing in sub-paragraph (1) shall be construed as precluding the Government or the Malaŵi Housing Corporation from taking action in enforcing the rights vested or acquired under paragraph 7, and where action is taken by the General Manager under sub-paragraph (1) such action shall be deemed to be taken by him for and on behalf of the Government or the Malaŵi Housing Corporation.

Charges

Cap. 58:01

10. All charges of land or leases of land registered in favour of the corporation under the Registered Land Act and vesting in the Government pursuant to paragraph 7 shall be enforced by the Lands Division of the Department of Lands and Valuation.

Landscape department and nurseries

11. The area of land which the landscape department and nurseries of the corporation occupy in Area 13 at Lilongwe, though vesting in the Government pursuant to paragraph 7, shall, as from 1st April, 1984, be under the control and management of the Lilongwe City Council.

Retention of certain assets

12.—(1) Notwithstanding paragraph 7, the corporation shall, during the winding-up period, retain—

(*a*) for the use of the officers remaining in office the house furniture which may have been allocated to them;

(*b*) such vehicles, office furniture and equipment as may be required for the purposes of winding-up its affairs.

(2) None of the assets retained under sub-paragraph (1) shall be disposed of by the corporation, but these assets shall be transferred to the Government at the date of dissolution.

Statement of accounts, audit, etc.

13. The General Manager shall, before the date of dissolution, produce to the Comptroller for Statutory Bodies—

(*a*) a full statement of the conduct of the corporation's affairs during the winding-up period;

(*b*) a true account of all receipts and disbursements of the corporation during the same period;

(*c*) an audit of the accounts of the corporation during the same period and the auditor's report thereon;

(*d*) a list of all assets retained by the corporation under paragraph 12.

Notice of dissolution

14. The Comptroller for Statutory Bodies shall, upon being satisfied that the affairs of the corporation have been satisfactorily wound-up, by notice in the *Gazette*, declare the dissolution of the corporation specifying the date thereof.

SCHEDULE

G.N. 118/1986

Traditional Housing Areas

paras. 2 and 7

1. Area 7 (Kawale)
2. Area 8 (Biwi and Mchesi)
3. Area 21 (Chilinde)
4. Area 22
5. Area 23 (Tsabango)
6. Area 25 (Mkomachi)
7. Area 49
8. Area 53 (North-East Lumbadzi)

EXPORT PROMOTION COUNCIL

CHAPTER 39:03

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CHAPTER 39:03

EXPORT PROMOTION COUNCIL

ARRANGEMENT OF SECTIONS

SECTION

PART I

PRELIMINARY

1. Short title
2. Interpretation

PART II

THE COUNCIL

3. Establishment of Council
4. Composition of the Council
5. Council may co-opt advisers to attend meetings
6. Tenure of office of Council members
7. Remuneration of members of the Council
8. Meetings of the Council
9. Member to declare pecuniary interests

PART III

FUNCTIONS AND POWERS OF THE COUNCIL

10. Functions and powers

PART IV

FUNDS OF THE COUNCIL

11. Funds of the Council
12. Annual budget
13. Books, accounts, audit and reports
14. Regulations

Schedule

An Act to provide for the establishment of an Export Promotion Council of Malaŵi and for matters connected therewith and incidental thereto

32 of 1971
8 of 1980
16 of 1983
G.N. 46/1986

[31ST DECEMBER, 1971]

PART I

PRELIMINARY

1. This Act may be cited as the Export Promotion Council Act. Short title

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

"Council" means the Export Promotion Council of Malaŵi established by section 3;

"financial year" means the period commencing on the date of commencement of this Act and ending on the 31st March, 1972, and thereafter the period of twelve months ending on the 31st March each year.

PART II

The Council

Establishment of Council

3. There is hereby established a body to be known as the Export Promotion Council of Malaŵi (hereinafter referred to as "the Council") which shall be a body corporate with perpetual succession and a common seal, capable of suing and being sued in its corporate name and, subject to this Act, of doing all such acts and things as a body corporate may lawfully do and perform.

Composition of the Council

4.—(1) The Minister shall, by notice published in the *Gazette*, appoint the members of the Council other than the ex *officio* members.

(2) The Council shall consist of—

(*a*) one member designated as Chairman by the Minister;

(*b*) one member designated as Vice-Chairman by the Minister;

(*c*) the Principal Secretary of the Ministry of Trade and Industry, ex *officio*;

(*d*) the Secretary to the Treasury, ex *officio*;

(*e*) the Chief Information Officer, ex *officio*;

(*f*) the Chief Tourism Officer, ex *officio*;

(*g*) one member representing the Malaŵi Development Corporation, appointed from a panel of three individuals nominated by the said Corporation;

(*h*) one member representing the Chamber of Commerce and Industry of Malaŵi, appointed from a panel of three individuals nominated by the said Chamber of Commerce;

(*i*) one member representing the Tea Association (Central Africa) Limited, appointed from a panel of three individuals nominated by the said Association;

(*j*) one member representing the Tobacco Control Commission appointed from a panel of three individuals nominated by the said Commission;

(*k*) one member representing the Agricultural Development and Marketing Corporation, appointed from a panel of three individuals nominated by the said Corporation;

(*l*) three ordinary members.

(3) The Minister may appoint to the Council such additional members as he deems essential to the Council in the exercise of its powers and functions.

(4) No person shall be appointed to the Council who—

(*a*) is an undischarged bankrupt;

(*b*) has, during the preceding three years, been sentenced for an offence against any written law to a term of imprisonment of, or exceeding, six months, otherwise than as an alternative to, or in default of, the payment of a fine;

(*c*) has, during the preceding five years, been convicted of an offence involving fraud or dishonesty.

(5) Members of the Council shall not, by virtue only of their appointments to the Council, be deemed to be officers in the public service.

(6) The names of all members of the Council as first constituted and every change in membership thereof shall be published in the *Gazette*.

Council may co-opt advisers to attend meetings

5.—(1) The Council may, with the consent of the Minister, co-opt any one or more persons as advisers, to attend any particular meeting or series of meetings for the purpose of assisting or advising the Council in respect of any matter under consideration by the Council.

(2) Any adviser co-opted pursuant to subsection (1) may take part in the deliberations of the Council at any meeting he attends, but shall have no voting powers.

(3) Advisers co-opted pursuant to subsection (1) shall not, by virtue of such co-option, be deemed to be members of the Council.

Tenure of office of Council members 8 of 1980

6.—(1) Members of the Council, other than *ex officio* members, shall, subject to this section, hold office for two years from the date of their respective appointments.

(2) *Ex officio* members of the Council shall hold office as such so long as they hold the public office by virtue of which they are members of the Council pursuant to section 4.

(3) The office of a member, other than an *ex officio* member, shall be vacated—

(*a*) upon the expiry of two years from the date of his appointment;

(*b*) upon his death;

(*c*) if he is adjudged a bankrupt;

(*d*) if he is sentenced for an offence against any written law to a term of imprisonment of, or exceeding, six months, otherwise than as an alternative to, or in default of, the payment of a fine;

(*e*) if he is convicted of an offence involving fraud or dishonesty;

(*f*) in the case of a member other than the Chairman, if he is absent, without the permission of the Chairman, from three successive meetings of the Council of which he has notice;

(*g*) upon the expiry of one month's notice in writing of his intention to resign his said office given by him to the Minister;

(*h*) upon his being given notice by the Minister of the termination of his appointment;

(*i*) if, in the opinion of the Minister, he becomes, by reason of mental or physical infirmity, incapable of performing his duties as a member of the Council;

(*j*) if the Minister, or the association by which he is nominated, is satisfied that the private interests of the member conflict or are liable to conflict with his duties as a member and that consequently it is inexpedient for him to continue to hold office as a member.

(4) Upon the expiry of the period for which a member of the Council, who is not a member *ex officio*, is appointed he shall continue to hold office until his successor has been appointed, but in no case shall such further period exceed three months.

(5) A retiring appointed member shall be eligible for reappointment if not disqualified under section 4 (4).

(6) Where the office of any member of the Council appointed under section 4 (2) (*g*), 4 (2) (*h*), 4 (2) (*i*), 4 (2) (*j*) or 4 (2) (*k*) is vacated pursuant to subsection (3) of this section, the Minister shall require the relevant body to submit to him a panel of three names for the purposes of appointment of a new member.

Remuneration of members of the Council 16 of 1983

7. A member of the Council shall be paid by the Council such remuneration and allowances, if any, as the Minister may in his case fix.

Meetings of the Council

8.—(1) The Council may meet at such places and times as the Chairman may determine or as he may be directed by the Minister, and shall meet at least once in every month unless, in the opinion of the Minister, there are valid reasons for not so doing.

(2) Meetings of the Council shall be convened by at least two days' notice thereof in writing being given to the members by the Chairman.

(3) The Chairman shall preside at meetings of the Council or, in his absence from any meeting, the Vice-Chairman, who, for the purposes of that meeting, shall exercise all of the powers and perform all of the duties of the Chairman.

(4) The Chairman, or, in his absence, the Vice-Chairman, together with six other members shall form a quorum.

(5) Meetings of the Council shall be conducted in such manner as may be directed by the Minister or, in the absence of such direction, in such manner as the Council deems meet.

(6) Minutes of each meeting shall be kept by the Secretary and shall be confirmed at the succeeding meeting by the Chairman, or, in his absence, by the Vice-Chairman.

(7) Decisions of the Council shall be made by a majority of the members present at a meeting of the Council; at all such meetings the person presiding shall have a deliberative vote and, in the event of an equality of votes, shall also have a casting vote.

(8) The Council may appoint an Executive Committee and such other committees as it may deem fit. The Executive Committee shall consist of not less than five members of whom any three shall form a quorum. The Council may, with the consent of the Minister, delegate to the Executive Committee such of its powers as it may from time to time determine.

Member to declare pecuniary interests

9.—(1) If a member of the Council or his spouse, or any company of which he or she is a director or major shareholder, or any partner of such member or of his spouse, has or acquires any pecuniary interest, direct or indirect, in any matter in which his private interests conflict with his duties as a member and which is the subject of consideration by the Council he shall, as soon as is practicable after becoming aware of such interest in such matter, disclose the facts relating thereto to the Chairman and to the Minister.

(2) A member referred to in subsection (1) shall not take part in the consideration of, or vote on, any question before the Council which relates to the matter referred to in that subsection, without the written permission of the Chairman and the Minister.

(3) For the purposes of this section, the expression "major shareholder" means any person who, at the relevant time, in his own right or by right of any other person, has the power to exercise or control not less than ten *per centum* of the voting rights in the relevant company, whether by reason of share holdings, debenture holdings, proxy or otherwise.

PART III

Functions and Powers of the Council

Functions and powers

10.—(1) The functions of the Council shall be to promote the export of agricultural and manufactured goods produced in Malaŵi, to co-ordinate the operations of statutory bodies and of other persons directed towards the export of Malaŵi products, to gather, collate and make available to exporters in Malaŵi information and statistics on export marketing and export market trends; to organize and operate trade fairs inside or outside Malaŵi and to organize and arrange for representation by Malaŵi exhibitors at trade fairs organized by other bodies both in Malaŵi and elsewhere, and otherwise to implement Government export policy.

(2) The Council shall have the powers set out in the Schedule.

(3) The Minister may, at any time, by notice published in the *Gazette*, alter or amend the Schedule.

PART IV

Funds of the Council

Funds of the Council

11. The funds of the Council shall consist of—

(*a*) such sums as may be payable to the Council from moneys appropriated by Parliament for the purpose;

(*b*) such moneys or assets as may accrue to or vest in the Council whether in the course of the exercise of its functions or powers, or otherwise;

(*c*) such moneys or other assets as may accrue to or vest in the Council by way of grants, subsidies, bequests, donations, gifts, subscriptions, rents, interest or royalties, from the Government or any other person;

(*d*) such sums as are derived from the sale of any property, real or personal, by or on behalf of the Council;

(*e*) such sums as are received by the Council by way of voluntary contributions;

(*f*) such moneys or other assets as may be donated to the Council by any foreign government, international agency or other overseas body.

Annual budget

12. The Council shall draw up, in respect of each financial year, an annual budget showing the estimated expenditure on capital and revenue account, respectively, and shall submit the said budget for the approval of the Minister.

Books, accounts, audit and reports

13.—(1) The Council shall cause to be kept proper books of account and other books in relation thereto.

(2) The accounts of the Council shall be audited annually by professional auditors appointed by the Council with the approval of the Minister. The expenses of the audit and incidental thereto shall be paid from the funds of the Council.

(3) The Council shall, as soon as is practicable, but not later than six months after the end of each financial year, submit to the Minister an annual report upon its work and operations.

(4) Such report shall include a balance sheet, an income and expenditure account and the annual report of the auditors, and shall be laid by the Minister before the National Assembly pursuant to section 32F of the Finance and Audit Act.

Cap. 37:01

Regulations

14. The Minister may, by notice published in the *Gazette*, make regulations for the better carrying into effect of this Act.

SCHEDULE

POWERS OF THE COUNCIL

(SECTION 10)

G.N. 46/1986

1. To appoint and employ, with the approval of the Minister, a General Manager, Deputy General Manager, Executive Secretary and such professional, technical and administrative officers, clerks and other servants as it may deem requisite.

2. To pay any person in its employ such salary, wages or other remuneration as it may deem fit, and to grant him such leave as it may deem fit.

3. To provide for persons in its employ or their dependants, by means of insurance with an insurance company or a pension or provident fund

or in any other manner whatsoever, pecuniary benefits upon retirement, death or termination of service or in the event of any sickness or injury.

4 To purchase, take on lease or in exchange or otherwise acquire dwelling-houses for persons in its employ.

5. To purchase land and construct thereon dwelling-houses for persons in its employ.

6. To sell or lease dwelling-houses and land for residential purposes to persons in its employ.

7. Subject to the Finance and Audit Act to raise moneys by way of loan or bank overdraft. Cap. 37:01

8. To purchase, take on lease or in exchange, hire, or otherwise acquire any real or personal, movable or immovable property, and any rights or privileges in or over any such property, which it considers necessary for the purpose of performing its functions.

9. To construct, maintain, alter and improve any buildings, works, machinery and plant necessary or expedient for the purpose of performing its functions.

10. To work or otherwise beneficially use, to exchange, let, sell or mortgage any property, rights or privileges acquired or constructed under paragraphs 4, 5, 8 or 9.

11. To invest and deal with any of its moneys not immediately required in such securities and in such manner as it may think fit and to vary or realize such investments.

12. To invite and receive donations from any person towards its expenses and to award bursaries and to make grants towards export marketing research or to any other such project as it deems conducive towards the promotion of export marketing.

13. To enter into agreements to facilitate the voluntary transfer of professional, technical or other staff between itself and any other employer.

14. For the better performance of its functions, to co-operate with Government departments, universities, technical colleges, persons engaged in export marketing research, Chambers of Commerce, manufacturers, exporters, producers and such other associations, organizations or persons as may desire to avail themselves of its facilities inside and outside Malaŵi.

15. To obtain and collate all available information concerning export market opportunities for existing and potential Malaŵi export goods, and to advise exporters thereon.

16. To organize, or assist in the organization of, export promotion missions abroad.

17. To make available to Malaŵi commercial firms and to potential exporters from Malaŵi, advice and assistance in relation to international trade and all aspects of such trade.

18. To advise the Minister, whenever so requested by him, on such export incentives as, in its opinion, are desirable to further and promote exports from Malaŵi.

19. To advise the Minister on export trends and on all matters concerning the promotion of exports from Malaŵi.

20 To publish from time to time, such technical and commercial information as it deems necessary or expedient for the promotion of exports.

21. To do all things incidental or conducive to the performance of its functions under this Act and its approved programme of export promotion.

EXPORT INCENTIVES

CHAPTER 39:04

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EXPORT INCENTIVES

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CHAPTER 39:04

EXPORT INCENTIVES

6 of 1988
24 of 1988
22 of 1989
6 of 1990
G.N. 41/1989
39/1992

An Act to provide for export incentives, for the establishment of a National Export Policy Committee and for matters incidental thereto or connected therewith

[1st June, 1989]

PART I

PRELIMINARY

Short title

1. This Act may be cited as the Export Incentives Act.

Interpretation

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

"Bank" means the Reserve Bank of Malaŵi established by the Reserve Bank of Malaŵi Act; Cap. 44:02

"Committee" means the National Export Policy Committee established by section 4;

"Council" means the Export Promotion Council of Malaŵi established by the Export Promotion Council Act; Cap. 39:03

"export sales" mean a value determined from invoices, bills of lading, inward letters of credit, landing certificates and other commercial documents of products of Malaŵi exported directly from Malaŵi by a registered exporter in a financial year;

"Foreign Exchange Revolving Fund" means the Fund established under section 11;

"production" means any process by which value is created or added to the value of products already in existence, to transform or change the nature or state of the products;

"Minister" means the Minister responsible for trade and industry;

"registered exporter" means a person registered by the Council under Part V to report products of Malaŵi;

"financial year" means any period of twelve months in respect of which export incentives are claimable under this Act.

PART II

Administration of this Act

Duties and powers of the Minister

3.—(1) It shall be the duty of the Minister to supervise the implementation of this Act and he shall have power to do all such acts and things as are necessary to develop and foster exports of Malaŵi.

(2) In the exercise of any power and performance of any duty under this Act, the Minister may have due regard to any recommendations made to him in that behalf by the Committee and the Council so far as such recommendations are compatible with the efficient promotion of exports of Malaŵi.

(3) Without prejudice to the generality of subsections (1) and (2), the Minister shall—

(*a*) supervise the Committee and the Council in the performance of their functions under this Act;

(*b*) review programmes of the Council in the light of national policies and annual priority programmes designed to develop and foster the production and exportation of products of Malaŵi and in reviewing such programmes the Minister may take such action or consider such measures as in his opinion are necessary to ensure that the programmes are adequately funded; and

(*c*) review legislative and administrative obstacles to export expansion of all products and where necessary to formulate and adopt measures for the removal of such obstacles.

(4) The Minister may, where he considers it necessary so to do, delegate the performance of any duty and the exercise of any power conferred under this Act, to the Committee and the Council subject to such general and special directions as he considers appropriate.

Establishment and composition of the Committee

4. There is hereby established a committee to be known as the National Export Policy Committee which shall consist of—

(*a*) the Secretary to the President and Cabinet, who shall be the Chairman of the Committee;

(*b*) the Secretary for Trade, Industry and Tourism, who shall be the secretary of the Committee;

(*c*) the Secretary for Economic Planning and Development;

(*d*) the Secretary to the Treasury;

(*e*) the Secretary for Agriculture;

(*f*) the Comptroller of Statutory Bodies;

(*g*) the General Manager of the Council;

(*h*) the General Manager of the Bank;

(*i*) the General Manager of the Agricultural Development and Marketing Corporation, a corporation established under the Agricultural Development and Marketing Act; and

Cap.67:03
24 of 1988

(*j*) not more than three other members as the Minister may appoint from the export trade sector in Malaŵi.

Functions of the Committee

5. Subject to any general or special directions of the Minister, the functions of the Committee shall be—

(*a*) to review, for the purpose of making appropriate recommendations to the Minister—

(i) programmes of the Council in the light of national policies and annual priority programmes designed to develop and foster the production and exportation of all products so that the Council's programmes are adequately funded;

(ii) legislative and administrative obstacles to export expansion of products of Malaŵi and where necessary to formulate and adopt measures for the removal of such obstacles;

(*b*) to do all other acts and things as are required under this Act to be done by the Committee or are necessary or conducive to the performance of its functions.

Proceedings of the Committee

6.—(1) Subject to the provisions of this section, the Committee may regulate its own procedure.

(2) For the transaction of its business, the Committee shall meet at least once every three months, at such times and places as the Chairman may determine.

(3) Any six members of the Committee shall form a quorum at any meeting of the Committee.

(4) A meeting of the Committee may be called by the Chairman, or in his absence by a Committee member designated by the Chairman, upon giving fourteen days notice to its members:

Provided that if the urgency of any particular matter does not permit the giving of fourteen days notice, a special meeting may be called upon giving a shorter notice.

(5) There shall preside at any meeting of the Committee—

(*a*) the Chairman; or

(*b*) in the absence of the Chairman, any member of the Committee designated by the Chairman; or

(*c*) where no member has been designated under paragraph (b) a member elected by the members present from among their number to preside at that meeting.

(6) A decision of the Committee on any question shall be by a majority of the members present and voting at the meeting and, in the event of an equality of votes, the person presiding at the meeting shall have a casting vote in addition to his deliberative vote.

(7) Where a member of the Committee, who is a member ex *officio*, is for any reasonable cause unable to attend a meeting of the Committee, his ministry or organization, as the case may be, may in writing designate another senior officer to attend such meeting in his stead and such other senior officer shall be deemed to be a member of the Committee for the purpose of such meeting.

(8) The Committee may invite any person whose presence is in its opinion desirable to attend, and to participate in the deliberations of, a meeting of the Committee but such person shall not be entitled to vote thereat.

(9) The validity of any proceedings, act or decision of the Committee shall not be affected by any vacancy in the membership of the Committee or by defect in the appointment of any member or by reason that any person not entitled so to do took part in the proceedings.

(10) The Committee shall cause minutes to be kept of the proceedings of every meeting of the Committee.

Disclosure of interest

7.—(1) If a person is present at a meeting of the Committee at which any matter is the subject of consideration and in which matter the person or his spouse is directly or indirectly interested in a private capacity he shall, as soon as practicable after commencement of the meeting, disclose such interest and may thereafter only participate at the discretion of the Chairman.

(2) Disclosure of interest made under this section shall be recorded in the minutes of the meeting at which it is made.

Immunity of committee members

8. No action or other proceedings shall lie or be instituted against any member of the Committee for or in respect of any act or thing done or omitted to be done in good faith in the exercise or purported exercise of his functions under this Act.

Secretarial of the Committee

9. The Ministry of Trade, Industry and Tourism shall form the secretariat of the Committee.

Functions of the Council

10.—(1) Subject to any general and special directions of the Committee, the functions of the Council under this Act shall be—

(*a*) to receive and investigate every application made by any person or company for registration as an exporter of products of Malaŵi;

(*b*) to register exporters upon such terms and conditions as the Committee may determine;

(*c*) to issue certificates of registration to registered exporters; and

(*d*) to maintain a register of all registered exporters and of all certificates of registration issued under this Act.

(2) In addition to the performance of the functions set out in subsection (1), the Council shall render to registered exporters the services specified in section 16 and shall perform all such functions as are assigned to it in this Act.

PART III
Foreign Exchange Revolving Fund

Foreign Exchange Revolving Fund

11.—(1) There shall be established a fund to be known as the Foreign Exchange Revolving Fund for the purpose of facilitating foreign exchange requirements of registered exporters.

(2) The Foreign Exchange Revolving Fund shall consist of—

(*a*) such sums as may from time to time be appropriated for the purpose by Parliament;

(*b*) all repayments of advances or in respect of facilities granted to registered exporters out of the funds of the Foreign Exchange Revolving Fund together with accrued interest thereon, if any;

(*c*) such sums as may, with the approval or agreement of the Committee, be received or otherwise become payable for the purposes of the Foreign Exchange Revolving Fund.

(3) the Foreign Exchange Revolving Fund shall be maintained in an account with the Bank and shall be administered by the Bank in accordance with the standing orders of the Committee.

Registered exporters to have access to the Foreign Exchange Revolving Fund

12.—(1) Every registered exporter shall have access to the facilities under the Foreign Exchange Revolving Fund.

(2) Any advance or other facility granted to a registered exporter out of the Foreign Exchange Revolving Fund shall be subject to such terms and conditions as the Committee or the Bank may deem necessary to impose either generally or in relation to a particular registered exporter or class or classes of registered exporters; and such terms and conditions may be imposed to be fulfilled prior or subsequent to the grant of an advance or any facility.

Standing orders for the administration of the Foreign Exchange Revolving Fund

13. The Committee may, under the hand of the Chairman, make standing orders containing provisions for the administration of the Foreign Exchange Revolving Fund and may, in such standing orders—

(*a*) specify the class or classes of registered exporters or the class or classes of exports which may enjoy overriding preference;

(*b*) prescribe ceilings of advances or other facilities out of the Foreign Exchange Revolving Fund available to a registered exporter or to a class or classes of registered exporters or available in respect of any class or classes of exports.

(*c*) provide for any thing or matter deemed by the Committee to be necessary or expedient for the administration of the Foreign Exchange Revolving Fund.

PART IV

Export Incentives and Technical Assistance to Registered Exporters

Income tax allowance
24 of 1988
G.N. 39/1992

14.—(1) A registered exporter shall, in every financial year during which he exports products of Malaŵi, be entitled to an income tax allowance of twelve per cent of his taxable income derived from his export sales.

(2) Upon the recommendation of the Committee, the Minister, after consultation with the Minister of Finance, may, by order published in the *Gazette*, revise the rate of income tax allowance prescribed in subsection (1)

(3) A registered exporter who, for the purpose of claiming an income tax allowance under subsection (1), makes a false claim as to the amount of the gross proceeds of his export sales, shall be guilty of an offence and liable to a fine of K5,000 or an amount three times the amount of income tax allowance falsely claimed, whichever is greater and to imprisonment for one year. 24 of 1988

15.—(1) A registered exporter who exports products of Malaŵi which are manufactured or otherwise produced in Malaŵi and for the manufacture, processing or production of such products raw materials, including packaging materials on which duty was paid were used shall be entitled to drawback of duty under section 97 of the Customs and Excise Act, which for the purposes of this Act, shall be determined in accordance with the succeeding provisions of this Act. Duty drawback 24 of 1988 22 of 1989

(2) The drawback of duty under subsection (1) shall be computed on the basis of a ratio prescribed by the Minister; and the Minister may prescribe different ratios for different products.

(3) Upon the recommendation of the Committee, the Minister, after consultation with the Minister of Finance, may, by order published in the *Gazette*, prescribe the ratio or ratios applicable in respect of this section.

(4) For the purposes of this section, reference in section 97 of the Customs and Excise Act to "such limitations and conditions as may be prescribed in regulations made under this Act" shall, in relation to drawback of duty to be effected pursuant to this section, be construed to be reference to any ratio or ratios prescribed by order made under subsection (2) and to other provisions contained in such order.

(5) The Controller of Customs and Excise shall effect a drawback of duty within sixty days after receipt by him of the presentation of the claim for drawback of duty, but subject to proof to his satisfaction being made by a registered exporter claiming drawback of duty—

(*a*) that the registered exporter exported the products in question; and

(*b*) that the duty being claimed was paid.

(6) Any registered exporter who, for the purpose of obtaining drawback of duty under section (1), makes a false claim as to the amount of duty paid by him on the raw materials, machinery, equipment and other items shall be guilty of an offence and liable to a fine of K5,000 or an amount three times the amount of the duty drawback falsely claimed, whichever is greater and imprisonment for one year.

Council to provide technical assistance to registered exporters

16. The Council shall provide technical assistance to registered exporters in the following activities—

(*a*) diversification of export products and export markets;

(*b*) improving existing methods of production so as to reduce cost of export products;

(*c*) promoting effective marketing of export products abroad;

(*d*) developing export packaging and product design;

(*e*) conducting seminars, training, courses and other training events on functional aspects of exports;

(*f*) promoting investments in export-oriented enterprises; and

(*g*) promoting improvements in the quality of export products.

PART V

Registration of Exporters

Application for registration

17.—(1) An application for registration as an exporter of products of Malaŵi shall be accompanied with the prescribed fee and shall be made to the Council and shall be in the prescribed form and shall include the following particulars—

(*a*) the name and address of the applicant;

(*b*) the nature of business activity in which the applicant is engaged and the principal place where the business activity is carried on;

(*c*) the date of issue and duration of licence, if any, authorizing the applicant to carry on the business activity specified pursuant to paragraph (*b*); and

(*d*) the description of products of Malaŵi to be exported.

(2) Any particulars contained in the prescribed form of application which are not specified in subsection (1) or not specifically prescribed under this Act, shall be deemed to be particulars required for the purposes of this Part.

(3) Notwithstanding that an application has been made in the prescribed form, the Council may call upon the applicant or upon any other person to provide such further or other information or particulars as the Council may deem necessary for the proper consideration of the application.

Processing applications

18. Upon receipt of an application, the Council shall consider the application and register the applicant as a registered exporter if it is satisfied that—

(*a*) the application is made in accordance with section 17 (1); and

(*b*) the business activities of the applicant will contribute towards the economic development of Malaŵi and are generally in the interest of the national economy.

Certificate of registration

19.—(1) Upon registration, the Council shall issue to the registered exporter a certificate of registration in the form prescribed and shall in writing or in such form as may be prescribed give notification of such registration to—

(*a*) the Secretary of the Committee;

(*b*) the General Manager of the Bank;

(*c*) the Commissioner of Taxes; and

(*d*) the Controller of Customs and Excise.

(2) A certificate of registration issued under subsection (1) shall, upon production to the Bank and other appropriate authorities and subject to the provisions of this Act, entitle the holder thereof to the grant of export incentives and facilities and other benefits provided under this Act.

Refusal of application for registration

20.—(1) Where after due consideration of an application for registration under this Part, the Council decides to refuse the application it shall refer the matter to the Committee together with its comments on the application and its reasons for the intended refusal.

(2) The Committee shall, at its meeting next occurring after a matter has been referred to it under subsection (1) or at a specially convened meeting to be held earlier, consider the matter and for that purpose may call for any information from any person or hear representations from any person as it deems necessary for its consideration of the matter, and thereupon the Committee may—

(*a*) accept the recommendations of the Council in which case the application shall stand refused and the Council shall with due dispatch notify the applicant accordingly; or

(*b*) direct the Council to register the applicant as a registered exporter with or without conditions;

(*c*) require the applicant to fulfill, prior to his registration, such conditions as the Committee may deem necessary to impose.

Registered exporter to keep and maintain books of account and to furnish returns

21. Every registered exporter shall keep and maintain proper books of account and shall, within such period and in such form as may be prescribed, submit returns to the Council on products of Malaŵi exported by him.

Confidentiality of information

22. Any information given by a registered exporter in his application for registration and in any periodic returns submitted by him to the Council under section 21 shall be confidential.

Cancellation and withdrawal of a certificate of registration

23.—(1) Where a certificate of registration has been issued and it is subsequently found that such certificate was issued as a result of any fraudulent representation made or incorrect information supplied by any holder thereof in his application for registration to the Council, the Council may give written notice to the holder of

such certificate requiring him to show cause within a period of thirty days, or such longer period as the Council may specify, why his certificate of registration should not be withdrawn and his registration cancelled.

(2) Where a registered exporter fails to export any products of Malaŵi within such period as may be prescribed either generally or in relation to him and does not notify the Council of the reasons of his failure so to do, the Council may give notice to such registered exporter requiring him to show cause within a period of thirty days, or such longer period as the Council may specify, why his certificate of incentives should not be withdrawn and his registration cancelled.

(3) If the registered exporter to whom notice has been given under subsection (1) or subsection (2) fails to show cause as required within the time specified or if the Council deems the cause shown to be inadequate, the Council shall, with the prior approval of the Committee, cancel the certificate of registration of such registered exporter; and in the notice of cancellation the Council shall require the registered exporter forthwith to surrender the certificate to the Council.

Cancellation in other circumstances

24. Where a registered exporter—

(*a*) fails to comply with the provisions of this Act or with any condition imposed in respect of his registration or;

(*b*) has committed an offence under this Act; or

(*c*) has committed an offence under the Exchange Control Act or is otherwise in breach of the provisions of that Act or the regulations made thereunder,

the Council may, with the prior approval of the Committee, cancel the registration of that registered exporter; and in the notice of cancellation to the registered exporter, the Council shall require the registered exporter forthwith to surrender the certificate to the Council.

Failure to surrender a certificate where registration cancelled

25. A person who, without valid excuse, fails forthwith to surrender to the Council a certificate of registration where the registration has been cancelled shall be guilty of an offence.

Cancellation of not to debar future registration

26. A cancellation of registration shall not disqualify the former registered exporter from being considered for fresh registration in accordance with this Act.

PART IV

Miscellaneous

Appeals to the Minister

27. An aggrieved registered exporter or former registered exporter may appeal to the Minister against the decision of the Council or the Committee and the decision of the Minister upon such appeal shall be final and shall not be subject to review by, or to any question in, any court.

28.—(1) A person guilty of an offence under this Act for which a penalty has not been specified shall be liable to a fine of K2,000 and to imprisonment for six months. Penalties

(2) Any regulations made under this Act, may notwithstanding the provisions of section 21 (*e*) of the General Interpretation Act, prescribe a fine of up to K1,000 and imprisonment of up to three months for an offence committed against the provisions of such regulations. Cap. 1:01

29. The Minister may make regulations for carrying out or giving effect to the provisions of this Act and, without prejudice to the generality of the foregoing, such regulations may— Regulations

(*a*) prescribe registration fees payable upon application for registration or upon registration;

(*b*) prescribe forms of application, certificates of registration and forms of returns to be submitted by registered exporters;

(*c*) anything which by this Act is required or permitted to be prescribed.

30. The Minister may, by order published in the *Gazette*, exclude from the application of all or any of the provisions of this Act— Non-application of the Act to certain products, etc. 24 of 1988

(*a*) any products specified in such order, either by reference to the name, use, nature, class or description of such products;

(*b*) any registered exporter or class of registered exporters.

SUBSIDIARY LEGISLATION

G.N. 42/1989
66/1995

EXPORT INCENTIVES (FEES AND FORMS) REGULATIONS

under s. 29

Citation

1. These Regulations may be cited as the Export Incentives (Fees and Forms) Regulations.

Fees Forms

2. The fees prescribed in the First Schedule shall be payable in respect of the matters specified in relation to such fees.

3. The forms set out in the Second Schedule shall be used for purposes of the Act.

G.N. 66/1995 r. 2

FIRST SCHEDULE

	Matter	*Fee* K	t
1.	Upon application for registration as an exporter of products in Malaŵi	20	00
2.	Upon issue of a Certificate of Registration	130	00

r. 3

SECOND SCHEDULE

FORM EIR 1

EXPORT INCENTIVES ACT

(CAP. 39:04)

EXPORT INCENTIVES (FEES AND FORMS) REGULATIONS

APPLICATION FOR REGISTRATION
AS AN EXPORTER OF PRODUCTS OF MALAŴI

NOTE: This application shall be submitted to the General Manager of the Council at such addresses as shall be notified in the *Gazette* and shall be accompanied with a non-refundable application fee of K10.

1. Name of applicant .....
2. Full postal address .....
   .....
3. Location of office/factory (Plot No.).....
4. Name of industry .....
5. Nature of business activity .....
6. Products to be exported.....
   (*a*) .....
   (*b*) .....
   (*c*) .....
   (*d*) .....
7. Business registration/incorporation No. .....

8. Licence No. .....
   Date of issue ..... Expiry date .....
9. Size of capital investment .....
   (a) Authorized.....
   (b) Issued and fully paid up.....
   (c) Loans.....
   (d) Other.....
10. No. of employees: .....

11. Names and postal addresses of directors (where applicable)—
    (1) .....
    (2) .....
    (3) .....
12. Names and residential addresses of shareholders/partners and percentage of share-holding .....
    .....
    .....
    .....
13. Export performance
    Value of: (CIF) or (FOR)
    (a) Existing export orders MK .....
    (b) Total value of export sales over each of the last 3 years MK .....
    .....
14. Bankers .....
    Branch .....
15. Declaration—.....

I/We hereby, declare that the above information is true and correct to the best of my/our knowledge and belief.

Place ..... *Signature*(*s*).....
Date ..... *Names* (*in block letters*) .....
.....
.....

Registration approved/not approved .....
Certificate No. ....
Date ..... *Signature of General Manager for the Council*

FORM EIR II

EXPORT INCENTIVES ACT

(CAP. 39:04)

EXPORT INCENTIVES (FEES AND FORMS) REGULATIONS

CERTIFICATE OF REGISTRATION

I hereby certify that .....
.....
.....
.....
.....
.....
this ..... day of ....., 19 ..... have/has been duly registered pursuant to and in accordance with the provisions of the Export Incentives Act, and rules made thereunder, and have/has been registered under the number ..... in this Register of exporters of products of Malaŵi.

Given under my hand this ..... day of ..... one thousand, nine hundred and .....
.....

General Manager for the Council

FORM EIR III

EXPORT INCENTIVES ACT

(CAP. 39:04)

EXPORT INCENTIVES (FEES AND FORMS) REGULATIONS

ANNUAL RETURN

1. Name of Exporter .....
2. Status of Exporter: (Please tick appropriate box)
   [ ] General Merchant
   [ ] Manufacturer
   [ ] Grower
3. Nature of goods exported (*value in Kwacha*)

	19	19	19 .....
(1)			
(2)			
(3)			
TOTAL			

4.—(1) Annual Turnover (both domestic and export sales)

Nature of goods:	19	19	19 .....
(*a*)			
(*b*)			
(*c*)			
(*d*)			
TOTAL			

(2) Percentage of Exports to Total Business turnover

Nature of goods:	19	19	19 .....
(*a*)			
(*b*)			
(*c*)			
(*d*)			
TOTAL			

5.—(1) Particulars of credit/bank facilities enjoyed
   (*a*) Trade Credit (state period) .....
   (*b*) Money Lender .....
   (*c*) Bank Finance .....
   (*d*) Export Incentives (please specify) .....
   .....
   (*e*) Other (please specify) .....
   (2) Manner of receipt of payment
   (*a*) in advance [ ]
   (*b*) against confirmed/unconfirmed LC [ ]
   (*c*) on documents against acceptance [ ]
6. Areas of concern [ ]
   export licensing [ ]
   drawback of duty [ ]
   storage before shipment [ ]
   freight costs [ ]
   low overseas prices [ ]
   bank finance [ ]
   foreign exchange availability [ ]
   tax allowance [ ]

Other (*please specify*) .....
.....
.....

7. Overseas experience non-payment [ ]
   protracted delays [ ]
   refusal to accept goods [ ]
   import controls [ ]
   delays in transfer of proceeds [ ]

8. Suggestions for improvements in existing facilities (*please give a brief narration*) .....
   .....
   .....
   .....

   Date: ..... *Signature:* .....
   Designation: .....

EXPORT INCENTIVES (EXCLUSION) ORDER

G.N. 23/1990

under s. 30

Citation

1. This Order may be cited as the Export Incentives (Exclusion) Order.

Exclusion of certain products from section 14 para. 2

2. Export sales of the products specified in the Schedule shall not be eligible for the income tax allowance under section 14 of the Act.

SCHEDULE

1. Unmanufactured tobacco and tobacco refuse
2. Tea
3. Coffee
4. Cane sugar

[Subsidiary] *Export Incentives (Duty Drawback Ratio) Order*

G.N. 23/1990

EXPORT INCENTIVES (DUTY DRAWBACK RATIO) ORDER

under s. 15

Citation

1. This Order may be cited as the Export Incentives (Duty Drawback Ratio) Order.

Duty drawback ratio

2. Duty drawback in respect of raw materials and packaging materials used in the manufacture or production of goods that are subsequently exported from Malaŵi shall be claimed, computed and paid on the basis that duty paid on raw materials and packaging materials used in the manufactured or produced goods less duty paid on raw materials and packaging materials used in the manufacture or production of goods that have been disposed of in Malaŵi multiplied by 100 per cent.

INVESTMENT PROMOTION

CHAPTER 39:05

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CHAPTER 39:05

INVESTMENT PROMOTION

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28 of 1991
12 of 1992
19 of 1995
G.N. 49/1992

An Act to accord paramount status to the investment policies and procedures contained in the Statement of Investment Policies and the Investors Guide issued by the Government and revised from time to time; to establish the Malaŵi Investment Promotion Agency and to provide for its powers, duties and general authority; and to provide for matters connected with or incidental to the foregoing

[16TH MARCH, 1992]

PART I

PRELIMINARY

Short title

1. This Act may be cited as the Investment Promotion Act.

Interpretation

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

"Agency" means the Malaŵi Investment Promotion Agency established by section 5;

"appropriate Minister" means the Minister responsible for the subject matter in question;

"Board" means the board of directors of the Agency established by section 10;

"Chairman" means the chairman of the Board;

"investment" means private investment, and other grammatical variations or cognate expressions thereof shall be construed accordingly;

"investor" means an existing or potential investor;

Schedule

"Investors Guide" or "Guide" means the publication as set out in the Schedule to this Act as a supplement to the Statement of Investment Policies and as from time to time revised;

"Minister" means the President in his ministerial responsibility for the Office of the President and Cabinet;

Schedule

"Statement of Investment Policies" or "Statement" means the statement of the Government as set out in the Schedule to this Act and as from time to time revised, being a statement containing the principles of the Government aimed at promoting and assisting investment in Malaŵi.

PART II

Promotion of Investment in Malaŵi

Statement and the Investors Guide to rank paramount

3. Every public officer and any authority in Malaŵi exercising or performing powers, duties or functions in connexion with or concerning the commitment of the Government in promoting and assisting investment in Malaŵi as declared in the Statement of Investment Policies (in this Act otherwise referred to as the ''Statement") and in the Investors Guide (in this Act otherwise referred to as the ''Guide") shall, in the exercise of his powers or the performance of his duties or functions, consider and treat the Statement and the Guide as ranking paramount in the business of the Government and shall further consider it to be his or its paramount duty to act with all due diligence and dispatch in taking such action as is required or necessary to give effect to the Statement and the Guide.

Publication and revision of the Statement and the Investors Guide

4.—(1) The Statement and the Investors Guide shall be published respectively by the Minister and the Agency for general distribution and, in the case of the Investors Guide, copies of its publication shall be made freely available and without charge in and outside Malaŵi to investors in Malaŵi.

(2) Following any change in the Statement, or following any legislative or statutory action or other action having similar effect taken by the Government in pursuance or in the implementation of the Statement or the Investors Guide, the Minister shall, by order published in the *Gazette*, amend the Schedule to this Act so as to revise the Statement or the Investors Guide accordingly.

Schedule

PART III

The Malaŵi Investment Promotion Agency

Establishment of the Agency

5. There is hereby established a body to be known as the Malaŵi Investment Promotion Agency (in this Act otherwise referred to as the ''Agency'') which shall be a body corporate by that name, having perpetual succession and a common seal and which shall, by that name, be capable of suing and being sued and of acquiring, holding and alienating movable or immovable property and, subject to the provisions of this Act, of doing or performing all such acts or things as bodies corporate may by law do or perform.

General authority of the Agency

6. In addition to any other powers, duties and functions conferred on the Agency by or under this Act, it shall be the principal object of the Agency to ensure the giving of practical and prompt effect to the commitment of the Government on investment in Malaŵi as declared in the Statement of Investment Policies and the Investors Guide and, for that purpose, the Agency shall have power—

(*a*) to receive queries and complaints by, or on behalf of, an investor against any public officer or any authority in dealing with any matter submitted to the public officer or to the authority by, or on behalf of, the investor;

(*b*) to summon or call upon any public officer or any authority to promptly decide, in accordance with the relevant written law, on any matter submitted to the public officer or authority by, or on behalf of, an investor and to communicate the decision to the investor or to show cause, satisfactory to the Agency, why a decision on the matter cannot be promptly made or communicated to the investor, and further to request for an indication as to when a decision or the communication will be made;

(*c*) to inquire into the reasons for any negative decision by any public officer or any authority on any matter submitted by, or on behalf of, an investor to the public officer or authority and, where the Agency is not satisfied with the reasons given, to make representations to the public officer or authority or to the appropriate Minister on behalf of the affected investor;

(*d*) to report to the Minister cases of inefficiency, laxity and ineptitude by any public officer or any authority in the exercise of his or its powers or the performance of his or its duties and functions bearing upon the purposes and objects of this Act, the Statement of Investment Policies or the Investors Guide; and

(*e*) to do all such things as the Agency considers to be necessary for its objectives and functions and conducive to the fulfilment of the purposes of this Act, the Statement and the Investors Guide.

Compliance with the requirements of written laws

7. Nothing contained in this Act shall be construed as exempting any investor, any public officer, any authority or any person from complying with the requirements of any written law.

PART IV

Objectives and Functions of the Agency

General objectives and functions of the Agency 19 of 1995

8.—(1) The general objective of the Agency shall be to promote, attract, encourage and facilitate local and foreign investment in Malaŵi and, without prejudice to the generality of that objective, the Agency shall have the following functions—

19 of 1995

(*a*) to facilitate and support all aspects of the investment process in Malaŵi including, but not limited to, the timely receipt of Government approvals, permits, licences, registrations and the fulfilment of any other regulatory authorizations;

(*b*) to provide courtesy services to investors;

(*c*) to provide information relating to investment in Malaŵi;

(*d*) to identify partners in or outside Malaŵi for joint venture business opportunities in Malaŵi;

(*e*) to liaise and generally interact with local and intenational financial institutions for the benefit of investors;

(*f*) encourage expansions and new investments by existing investors in Malaŵi;

(*g*) to develop a favourable investment image of Malaŵi regionally and outside the region;

(*h*) to undertake investment promotion missions within the region and outside the region;

(*i*) to recommend to the Government changes in the statutory and administrative framework relevant to the investment climate of Malaŵi and to make representations against or regarding any changes to any such statutory or administrative framework; and

(*j*) to consult with private sector entities with a view to enabling the Agency to make recommendations to the Government for the improvement of the investment climate of Malaŵi.

(2) For purposes of this Act, the Agency shall accord priority to investment in— 19 of 1995

(*a*) manufacturing;

(*b*) agriculture;

(*c*) mining;

(*d*) fisheries;

(*e*) tourism;

(*f*) forestry; and

(*g*) such other productive sectors as the Agency may, from time to time, determine with the approval of the Minister.

PART V

Organization and Administration of the Agency

Board of Directors

9. There shall be a Board of Directors of the Agency (in this Act otherwise referred to as the "Board") which shall be responsible for the administrative and management policies of the Agency.

Composition of the Board 19 of 1995

10. The Board shall consist of—

(*a*) the following public officers as members ex *officio*—

(i) the Secretary to the President and Cabinet;

(ii) the Secretary for Economic Planning and Development;

(iii) the Secretary for Commerce and Industry;

(iv) the Secretary to the Treasury; and

(v) the Controller of Lands and Valuation;

(*b*) three persons representing the private sector in Malaŵi nominated by the Malaŵi Chamber of Commerce and Industry and appointed by the Minister;

(*c*) two persons of prominent status appointed by the Minister from amongst persons in the private sector in Malaŵi who have had managerial experience and shown capacity in matters relating to business operations in the private sector; and

(*d*) one person appointed by the Minister from amongst serving chief executives of statutory bodies undertaking commercial operations.

(2) The Chairman and Vice Chairman of the Board shall be elected by members from amongst their number appointed from the private sector in Malaŵi.

Tenure of office
19 of 1995

11.—(1) A member of the Board appointed under paragraphs (b), (c) or (d) of section 10—

(*a*) shall hold office for two years from the effective date of his appointment and shall be eligible for reappointment;

(*b*) may resign his office by giving one month written notice to the Minister.

(2) In making appointments to the Board under paragraphs (*b*), (*c*) and (*d*) of section 10 the Minister shall have regard to the need to ensure a reasonable degree of continuity in the membership of the Board and also expertise, knowledge and experience in matters relating to private sector development and private investment.

Members not to delegate attendance to the business of the Board

12. No member of the Board shall attend to the business of his office as member of the Board by representation, and where a member is unable to attend any meeting of the Board he may request that his apologies for failure to attend be registered.

Co-opted persons

13. The Board may in its discretion at any time and for any length of time invite any person to attend any meeting of the Board and take part in the deliberations of the Board, but such person shall not be entitled to vote at that meeting.

Meetings of the Board

14.—(1) The Board shall hold its ordinary meetings at least six times a year.

(2) An extraordinary meeting of the Board—

(*a*) may be convened by the Chairman at any time;

(*b*) shall be convened by the Chairman within fourteen days of receipt by him of a request in writing signed by any two members of the Board and specifying the purpose for which an extraordinary meeting of the Board is to be convened.

(3) At any meeting of the Board—

(*a*) the quorum necessary for the dispatch of the meeting shall be formed by any six members at least two of whom shall be members appointed under paragraph (d) or (e) of section 10;

(*b*) the Chairman or, in the absence of the Chairman, the Vice-Chairman shall preside;

(*c*) if both the Chairman and the Vice-Chairman are absent, the members present and forming the quorum shall elect one of their number to preside;

(*d*) the decision on any subject shall be that of the majority of the members present and voting and in the event of a tie in the votes the person presiding shall have a casting vote in addition to his deliberative vote;

(*e*) a member who is aware that he has a personal, proprietary or pecuniary interest in a matter which is to be or is being considered by the Board shall declare the interest to the Chairman or other person presiding and shall not be entitled to take part in the deliberations or to vote on the matter; and

(*f*) a member who is unable to attend the meeting may submit to the Board, in writing, his views on any matter before the Board but shall not be entitled to have his vote registered on any matter considered at the meeting.

Powers and functions of the Board

15. The Board shall have power—

(*a*) to determine policy and courses of action for giving effect to the objectives and purposes of the Agency and generally of this Act;

(*b*) to appoint committees to assist the Board in the performance of its functions, and the membership of such committees may include persons who are not members of the Board;

(*c*) to assign to committees of the Board any of its powers and functions but the Board shall not be divested of any power or functions so assigned and may approve, vary or revoke any decision of a committee;

(*d*) to require the General Manager or any officer of the Agency to make reports to the Board respecting the financial, administrative and other affairs of the Agency and to direct any action to be taken by the General Manager or other officers with regard thereto; and

(*e*) to determine its own procedure to be followed at its meetings and in dispatching its other business.

General Manager of the Agency

16.—(1) There shall be an officer of the Agency to be designated as the General Manager of the Agency who shall be appointed by the Minister.

(2) The terms and conditions of service of the General Manager shall be determined by the Minister on the recommendations of the Board.

(3) In determining the terms and conditions of service of the General Manager the Board and the Minister shall have regard to—

(*a*) the need to ensure the recruitment and retention of a person, from amongst nationals of Malaŵi, who has shown the highest qualities of institutional management or who is a person

of recognized standing, educational or professional qualifications or experience necessary to achieve the ideals of business efficacy in private sector management and in either case is a person of proven integrity;

(*b*) the need to provide for an appropriate method of assessing the performance of the office holder and, for that purpose, the Minister may prefer appointment on contract to appointment on permanent terms.

(4) The Minister shall exercise disciplinary control over the General Manager and may act on the recommendations of the Board.

Other staff of the Agency

17.—(1) The Board shall appoint such other staff of the Agency subordinate to the General Manager as the Board considers necessary for the proper discharge of the functions of the Agency and the Board may delegate to the General Manager the appointment of certain categories of the staff of the Agency.

(2) The General Manager may appoint temporary employees of the Agency at such daily rates of pay, not below the minimum rates prescribed by written law, as he considers to be required for the discharge of the functions of the Agency.

(3) The General Manager shall report to the Board every appointment by him of any person under subsection (1) or (2).

(4) The Board shall exercise disciplinary control over the staff appointed by the Board and by the General Manager under subsection (1) and the General Manager shall, at his sole discretion, exercise disciplinary control over the staff appointed by him under subsection (2).

Duties of the General Manager

18. The General Manager shall—

(*a*) be the chief executive officer of the Agency and as such he shall be responsible for the day-to-day administration of the Agency and in that regard he shall be answerable to the Board;

(*b*) serve as secretary to the Board and to any committee of the Board and shall, on the instructions of the Chairman or the chairman of any committee of the Board, as the case may be, convene meetings of the Board and meetings of the committees and in carrying out his duties as secretary, the General Manager and such other officers of the Agency as he may designate, shall be entitled to attend all meetings of the Board and of the committees;

(*c*) subject to the special or general directions of the Board, do or perform any thing or act which he considers to be expedient for the purposes of the Agency.

Salaries

19. The salaries, wages or other remuneration of the General Manager and other staff of the Agency shall be determined so as to be competitive with those in the private sector in Malaŵi.

20. Every member of the Board, whether or not serving in an *ex officio* capacity and including a member who is a public officer, shall be entitled to receive in his personal capacity an honorarium determined by the Minister and paid out of the funds of the Agency. Honorarium for Board members

PART VI

Financial Provisions

21. The funds of the Agency shall consist of— Funds of the Agency

(*a*) such sums as shall be appropriated annually by Parliament for the purposes of the Agency;

(*b*) the levy payable under section 22; and

(*c*) such other sums and assets as may vest in or accrue to the Agency, whether in the course of discharging its functions or otherwise.

22.—(1) The Minister may, by order published in the *Gazette*, impose on any company, corporation, professional or business partnership or any business proprietor a levy to be paid to the Agency and the Minister may impose different amounts or rates of levy for different classes of business and may, in such order, prescribe the manner of collecting such levy. Levy

(2) The amount of levy payable by any person under this section shall be deductible in computing the taxable income of that person for purposes of payment of income tax under the Taxation Act. Cap. 41:01

(3) An order made under this section may prescribe a penalty of sums of money to be paid to the Agency for non-payment or delayed payment of levy.

(4) The amount of levy and the penalty payable to the Agency shall, if not paid, constitute a debt owing to the Agency by the company, corporation, partnership or business proprietor from whom it is due and shall be recoverable by the Agency by civil proceedings.

23. The financial year of the Agency shall be a period of twelve months determined by the Board: Financial year

Provided that the first financial year of the Agency may be a period shorter or longer than twelve months, but in any event not longer than eighteen months.

24. The Agency shall— Books and other records of account

(*a*) keep and maintain proper books and other records of account in respect of every financial year relating to the funds and other assets of the Agency;

(*b*) in every respect comply with the Finance and Audit Act as that Act applies to statutory bodies; and Cap. 37:01

(*c*) furnish to the Minister in every financial year or as often as the Minister may direct accounts in respect of its funds and

other assets including an estimate of income and expenditure for the following financial year.

Audit

25. The accounts of the Agency in respect of every financial year shall be audited by auditors appointed annually by the Board and approved by the Minister.

Pensions and other funds 12 of 1992

26.—(1) The Agency may, out of its revenues, establish and maintain pension, superannuation, provident or other funds as it may consider desirable for the provision of payment or benefits or other allowance on death, sickness, injury, superannuation, resignation, retirement or discharge of its staff and may make rules providing for payment of money out of its revenues to such funds and providing for contributions to such funds by its staff.

(2) The Agency may contract with insurance companies or other bodies for the maintenance and administration of the funds authorized under subsection (1).

PART VII

Miscellaneous

Regulations, rules or orders 12 of 1992

27. The Minister may make regulations, rules or orders for the purposes of this Act and to give effect to its provisions.

SCHEDULE

s. 2

Statement of Investment Policies

1. This policy statement sets forth the Malaŵi Government's principal policies for encouraging and assisting private investment. The Government is fully committed to enacting these policies and will take whatever measures may be necessary to ensure their prompt implementation. This statement is supplemented by the Investors Guide containing detailed information of importance to investors.

2. The Government seeks to encourage the private sector to assume the leading role in developing the national economy. The thrust of the Government's efforts will be to facilitate, rather than to regulate, private investment. This is consistent with the Statement of Development Policies issued by the Government in 1987.

3. To create a more conducive investment climate, the Government will continue to pursue stable macro-economic policies by exercising fiscal and monetary discipline and maintaining a realistic exchange rate of Malaŵi Kwacha (MK), the country's currency. Specific measures to deregulate the private sector and create new investment opportunities have already been enacted, including elimination of price controls, termination of import restrictions and of the accompanying need import licences, divestiture of state-owned companies and steps to rectify the external transport situation.

4. To further encourage and assist private investment, the Government announces the following new initiatives:

Freedom to Invest

5. Investors, both domestic and foreign, may invest in any sector of the economy, with no restriction on ownership. Further there are no

restrictions on the size of investment, the source of funds or whether products are destine for export or for the domestic market. Domestic investors are encouraged to join with foreign investors to pursue investment opportunities in Malaŵi.

Industrial Licensing and Company Formation

6. The industrial licence is to be eliminated, except for investments in such industries as the Government may place on a short negative list Procedures for company formation and business registration will be simplified to permit prompt establishment. Investors will only be required to provide the Registrar of Companies with basic information on proposed business activities.

Transfer of Land

7. The Government is committed to ensure that land for industrial and commercial uses is readily available to investors. Accordingly, the Government will accelerate land transfer procedures to expedite granting approvals and consents. To better provide serviced land to investors, the Government will develop new industrial sites. In addition, the Government will provide the necessary framework to enable private investors to develop industrial sites, including sub-leasing to other investors.

Taxes and Duties

8. To further enhance Malaŵi's investment climate and international competitiveness, the Government is committed to continue the process of reducing rates of taxes and duties. This is to be achieved through the ongoing tax and trade reform programmes.

External Transport Routes

9. The Government is aware that access to efficient and secure transport routes, both within the country and to foreign markets, is of vital importance. To ensure such access, the Government is undertaking a number of initiatives, including the expansion of the domestic transportation network, the development of the Northern Corridor route to the port of Dar-es-Salaam in Tanzania and the rehabilitation of the Nacala Railway Line to the port of Nacala in Mozambique.

Availability of Foreign Exchange

10. The Government recognizes that the availability of foreign exchange is critical to investors. The Government will, therefore ensure that foreign exchange is available for business transactions and remittances. The Reserve Bank of Malaŵi has granted, and will continue to grant, commercial banks the authority, as foreign exchange dealers, to approve such transactions and remittances according to set procedures.

Access to Local Financing

11. The Government has embarked on a reform programme to modernize and liberalize the financial sector. With the enactment of the Capital Market Development Act, 1990, both foreign and domestic investors will have greater access to sources of local financing The Government is committed to foster competition in the banking sector including the establishment of new banking institutions.

Labour Practices

12. The Government will not interfere in employer's choice of workforce. Further, the Government recognizes that investments may require expertize not available in Malaŵi. Accordingly, it will continue to make Temporary Employment Residence Permits for expatriate personnel readily available for key positions in investments.

Encouragement of Small-Scale and Medium-Scale Enterprises

13. Malaŵi's small-scale and medium-scale enterprises hold great potential for rapid economic growth and employment creation. The Government is, therefore, dedicated to continuing with various programmes to assist these enterprises, including entrepreneurship training and technical and financial assistance.

Encouragement of Export-Oriented Investments

14. To encourage export-oriented investments, the Government will offer incentives competitive to those found in other countries. At present, these incentives include—

(i) an income tax allowance based on export sales of non-traditional products (i.e. products other than tobacco, tea, sugar and coffee);

(ii) rebates of import duties, surtaxes, and local taxes on most inputs used in production for export.

15. In addition, the Government is considering establishing other incentives, including export financing and guarantee schemes, further developing a manufacturing-in-bond programme, creating export processing zones, and introducing measures to eliminate the payment of duties at the time of importation.

Investment Assistance and Promotion

16. In order to increase awareness of the investment opportunities in Malaŵi, as well as to provide greater assistance to existing and potential investors, the Government has established an investment promotion agency. This agency has been given sufficient authority and operational autonomy to fulfil its mandate of promoting investment and assisting investors.

Investment Protection

17. The Government recognizes that the security of assets is of primary importance to investors. The Malaŵi Constitution and existing laws and regulations provide further assurance that investors' assests are protected. In addition, the Government will actively pursue the process of concluding bilateral investment treaties with other Governments. Malaŵi is also a member of the Multilateral Investment Guarantee Agency (MIGA), and is an eligible country under a number of other investment insurance programmes.

ACCESS TO INTERNATIONAL ARBITRATION

18. The Government acknowledges that investors must have an acceptable forum to resolve disputes that cannot be settled amicably. Parties to disputes may agree to pursue arbitration and to choose an appropriate forum, including international arbitration. The Government is a member of the International Centre for the Settlement of Investment Disputes (ICSID).

Supplement

INVESTORS GUIDE

Malaŵi Welcomes Private Investors

The Government of Malaŵi encourages local and foreign investment in any sector of the economy, with no restrictions on ownership.

This Guide presents information or the incentives and other advantages available to investors. Malaŵi offers an attractive investment climate, featuring:

*A stable political and economic environment
*Competitive investment incentives
*Minimal requirements for company incorporation
*Low cost, productive labour force
*Modern telecommunications
*Daily international flight connexions
*Industrial estates and prospective export processing zones
*Preferential access to regional and international markets

One-Stop Assistance to Investors

The Malaŵi Investment Promotion Agency (MIPA) has been established to provide free assistance to investors. It is directed by a high-level board consisting of private sector, parastatal and Government representatives.

MIPA assists foreign and local investors by:

*Providing courtesy services to visiting investors
*Supplying information about Malaŵi
*Identifying joint venture partners, when requested
*Making introductions to the financial community and providers of professional and business services
*Facilitating all aspects of the investment process, including relations with Government agencies

MIPA is located at—

(1) .....
.....
.....

Lilongwe

(2) .....
.....
.....

Blantyre

Investment Incentives

G.N. 65/1992 A. *General Incentives*

Malaŵi has a competitive corporate tax rate of 35 per cent and low import duties. In addition, Malaŵi offers an array of incentives, which often give new businesses an effective tax holiday for the first several years of operation. These include:

Supplement

*Generous tax allowances:

†40 per cent investment allowance on qualifying expenditures for new buildings and machinery

†an additional 15 per cent allowance for investments in designated areas of the country

†up to 20 per cent investment allowance on qualifying expenditures for used buildings and machinery

†an additional 50 per cent allowance for qualifying training costs

†allowance for manufacturing companies to deduct all operating expenses incurred up to 18 months prior to the start of operation

†indefinite loss carry forward to enable companies to take full advantage of their tax allowances

†agreements for the avoidance of double taxation (*see Appendix* A)

†agreements for reduction of withholding taxes on remittances and payments (*see Appendix* B)

†deferred duties on machinery and equipment for up to 2 years

†Full rebate of duties on heavy commercial vehicles

B. Additional Incentives for Export G.N. 65/1992

To encourage exports, Malaŵi offers special incentives—

*Export Processing Zones:

†corporate tax rate of 15 per cent

†no withholding tax on devidends

†no duty on capital equipment and raw materials

†no excise taxes on purchases of raw materials and packaging materials made in Malaŵi

†no surtaxes (value added tax)

†transport tax allowance in the amount of 25 per cent international transport costs

*For all other exporters, including manufacturing in bond:

†export tax allowance in the amount of 12 per cent of export revenues for non-traditional exports (i.e. other than tobacco, tea, sugar and coffee)

†transport tax allowance in the amount of 25 per cent of international transport costs, excluding traditional exports

†no duties on imports of capital equipment used mainly in the manufacture of exports for those manufacturing in bond

†no surtaxes (value added tax)

†no excise taxes on purchases of raw materials and packaging materials made in Malaŵi for those manufacturing in bond

†timely refund of all duties (duty drawback) on imports of raw materials and packaging materials used in the production of exports

Supplement

†no duties on raw materials and packaging materials for those manufacturing in bond

Information on eligibility for export processing zones and manufacturing in bond is available from MIPA.

Liberal Trade and Foreign Exchange Remittances

Investors in Malaŵi have free access to foreign exchange, both for paying for imports and transferring financial payments abroad. This free access include the following:

*No licence requirement to import goods into Malaŵi

*Full remittance of:

†dividends

†investment capital on repatriation

†interest and principal payments for approved international loans

†approved fees for management, licences, royalties and similar obligations

Legal Framework

Malaŵi maintains a legal system based on English common law. Its Constitution protects investment, irrespective of ownership. Malaŵi is also a signatory to international treaties for the protection of foreign investment and the settlement of investment disputes including:

*The Convention Establishing the Multilateral Investment Guarantee Agency (MIGA), 1986

*Bilateral Investment Guarantee and Protection Agreements

*The Convention establishing the International Centre for the Settlement of Investment Disputes between States and Nationals of Other States, (ICSIDS), 1965

Local and Expatriate Labour

A. *Local Labour*

†Malaŵi has a hard-working skilled labour force

*Average wages are low by regional and international standards

†Malaŵi has had no history of industrial or labour boycotts

†Free vocational training for company employees at national training centres

B. *Expatriate Labour*

†Work permits are routinely granted where foreign expertise is needed

†Two-thirds of after tax salary is remittable

Availability of Land

†Land is readily available to investors in Malaŵi

†Developed industrial estates will offer factory shells with necessary infrastructure close to labour pool and transport links

†Serviced land for all uses may be leased from the Government and private leaseholders. Additionally, freeholds and leaseholds exist and may be purchased or leased from the private owners

Supplement

†Government approval for any transfer of land can be obtained within 90 days of an application

ACCESS TO CAPITAL

A. *Local Financing Facilities*

Both local and foreign investors have unrestricted access to local financing facilities. The financial system has been liberalized and special features include:

†sound commercial banks and finance houses which adhere to international standards

†no direct Government controls on credit

†market based interest rates

B. *Securities Markets*

The Government encourages the development of securities markets. Under the new enabling legislation, the Capital Market Development Act, there are:

†no restrictions on issues of securities to the public

†no restrictions on private placement of securities to Malaŵi residents. Transfer of securities to non-residents should be registered with the Reserve Bank of Malaŵi

EASE OF INVESTMENT PROCESS

The investment process in Malaŵi is simple. All new companies need to be registered with the Registrar of Companies, and the process takes no more than 15 days.

Manufacturing does not require a licence, except for a small number of industries (*see Appendix* C) which raise concerns of health and safety. However, trading activities are licensed.

For data collection purposes, foreign investment capital needs to be registered with the Reserve Bank of Malaŵi. The terms and conditions of international loans, management contracts, licensing and royalty arrangements and similar technology transfers require Reserve Bank of Malaŵi approval. These approvals are automatically granted within internationally prevailing standards.

APPENDIX A

AGREEMENTS FOR THE AVOIDANCE OF DOUBLE TAXATION

Malaŵi has entered into Agreements for the Avoidance of Double Taxation with the following countries:

Denmark
France
Kenya
Netherlands
Norway
South Africa
Sweden
Switzerland, and
United Kingdom

Supplement

APPENDIX B

Agreements for Reduction of Withholding Taxes

Malaŵi has entered into Agreements for the Reduction of Withholding Taxes with the following countries which have resulted in the following tax rate reductions—

Treaty Country recipient	*Balance of earnings* %	*Dividends* %	*Interest* %	*Royalty* %
Denmark	Nil	15	15	15
France	Nil	15	15	15
Kenya	Nil	15	15	15
Netherlands	Nil	15	15	15
Norway	Nil	15	15	15
South Africa	Nil	15	15	15
Switzerland	Nil	15	15	15
United Kingdom	Nil	Nil	Nil	Nil

APPENDIX C

Industries Requiring an Industrial Licence

(1) Firearms, ammunition and chemical and biological weapons;

(2) Explosives;

(3) Manufacturing involving hazardous waste treatment or disposal; and

(4) Manufacturing involving radioactive material.

EXPORT PROCESSING ZONES

CHAPTER 39:06

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CHAPTER 39:06

EXPORT PROCESSING ZONES

ARRANGEMENT OF SECTIONS

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11 of 1995
7 of 2013
G.N. 94/1995

An Act to provide for the establishment, operation and administration of export processing zones, and for matters ancillary thereto or connected therewith

[25TH AUGUST, 1995]

PART I

PRELIMINARY

Short title

1. This Act may be cited as the Export Processing Zones Act.

Interpretation
7 of 2013

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

"adequate security" means security which has been accepted as adequate by the Controller pursuant to section 16;

"bonded factory" means a factory situated in an export processing zone;

"certificate" means an export enterprise certificate issued under section 10;

7 of 2013
Cap. 39:07

"Commissioner-General" means the Commissioner-General of the Malaŵi Revenue Authority appointed under section 17 (1) of the Malaŵi Revenue Authority Act;

"Committee" means the Export Processing Zones Appraisal Committee established under section 3;

7 of 2013
Cap. 42:01

"Customs area" has the same meaning as ascribed to that term in the Customs and Excise Act;

"duty" has the same meaning as in section 2 of the Customs and Excise Act;

"enforcement officer" means a customs and excise officer, or an officer designated in writing by the Minister as an enforcement officer for the purposes of this Act pursuant to section 19;

"export" has the same meaning as in section 2 of the Customs and Excise Act;

"export enterprise" means a company in respect of which a certificate is in force;

"export processing zone" means any area or building declared to be an export processing zone under section 8;

"export product" means a product or produce declared to be an export product under section 9;

"import" has the same meaning as in section 2 of the Customs and Excise Act;

"manufacture" has the same meaning as in section 2 of the Customs and Excise Act;

"production day" means the day on which an export enterprise commences, or is deemed to commence, its operations;

"scheduled equipment" means the capital equipment, machinery and spare parts required by an export enterprise for equipping and operating a bonded factory;

"scheduled materials" means the materials, components, substances, matters or other things required by an export enterprise for the manufacture of export products.

PART II

Establishment of Export Processing Zones Appraisal Committee

Establishment of the Export Processing Zones Appraisal Committee 7 of 2013

3.—(1) There is hereby established a committee to be known as the Export Processing Zones Appraisal Committee (in this Act otherwise known as the "Committee") consisting of—

(*a*) the Secretary for Industry and Trade who shall be designated by the Minister as Chairperson;

(*b*) the following *ex-official* members—

(i) the Secretary to the Treasury, or his designated representative;

(ii) the Secretary for Economic Planning and Development, or his designated representative;

(iii) the Secretary for Agriculture and Food Security, or his designated representative;

(iv) the Secretary for Labour, or his designated representative;

(v) the Commissioner-General, or his designated representative; and

(vi) the Chief Immigration Officer, or his designated representative;

(*c*) the Chief Executive Officer of the Malaŵi Investment and Trade Centre;

(*d*) one member representing the private sector in Malaŵi nominated by Malaŵi Confederation of Chambers of Commerce and Industry and appointed by the Minister; and

(*e*) one member representing the Reserve Bank of Malaŵi, nominated by the Governor and appointed by the Minister.

(2) A representative of an *ex officio* member referred to in subsection 1 (*b*) shall be designated by, or on behalf of the *ex officio* member, by a notice in writing to the Chairman of the Committee, and when so designated such representative shall not attend to the business of the Committee by representation.

(3) The Committee may, in its discretion, at any time and for any period invite any person, and the Minister may in like manner nominate any person in the public service, to attend any meeting of the Committee and to participate in the deliberations of the Committee, but such person or officer shall not be entitled to vote at that meeting.

Tenure of office of members of the Committee

4. A member of the Committee, other than an *ex officio* member—

(*a*) shall hold office for two years from the effective date of his appointment, and shall be eligible for re-appointment;

(*b*) may resign his office by giving one month's notice in writing to the Minister.

Allowances of members of the Committee

5. A member of the Committee, other than an *ex officio* member, shall be paid such allowances as the Minister may determine.

Meetings of the Committee

6.—(1) The Committee shall hold its ordinary meetings at least six times a year.

(2) An extraordinary meeting of the Committee—

(*a*) may be convened by the Chairman at any time;

(*b*) shall be convened by the Chairman within fourteen days of receipt by him of a request in writing signed by any two members of the Committee, and specifying the purpose for which an extraordinary meeting of the Committee is to be convened.

(3) At any meeting of the Committee—

(*a*) the quorum necessary for the dispatch of business shall be formed by any six members;

(*b*) the Chairman, or in his absence the member elected by members present and forming the quorum, shall preside;

(*c*) the decision on any subject shall be that of the majority of members present and voting and, in the event of a tie in the votes, the person presiding shall have a casting vote in addition to his deliberative vote;

(*d*) a member who is aware that he has a personal, proprietary or pecuniary interest in any matter which is to be or is being considered by the Committee shall declare the interest to the Chairman or other person presiding, and shall not be entitled to participate in the deliberations of the Committee or to vote on that matter; and

(*e*) a member who is unable to attend the meeting may submit to the Committee, in writing, his views on any matter before the Committee but shall not be entitled to have his vote registered on any matter considered at that meeting.

Functions of the Committee

7.—(1) The Committee shall be responsible for appraising and reviewing applications for the establishment and operation of export processing zones and the production or manufacture of export products, and making appropriate recommendations to the Minister.

(2) In making recommendations to the Minister regarding any application, the Committee shall have regard to the following considerations—

(*a*) labour intensive activities of the project and its propensity to contribute to employment;

(*b*) use of advanced technology;

(*c*) utilization of local raw materials;

(*d*) export-oriented activities other than the production for export of tobacco, tea, coffee, and sugar;

(*e*) the availability of sufficient warehouses for storage of raw materials and export products;

(*f*) documentary evidence of export markets for the export products.

PART III

Declaration of Export Processing Zones and Export Products

Declarations of export processing zones

8. The Minister may, on the recommendation of the Committee, for the purpose of attracting, promoting or increasing the manufacture of export products or with the object of promoting economic development generally, by notice published in the *Gazette*, declare—

(*a*) any area of land on which a factory has been or is being or is likely to be built;

(*b*) any factory;

(*c*) any area of land which immediately surrounds a factory or the plot on which a factory is being or is likely to be built,

to be an export processing zone.

Declaration of export products

9. Where, upon application by a company in the prescribed form, the Minister considers it expedient in the economic interest of Malaŵi so to do, he may, on the recommendation of the Committee, by notice published in the *Gazette*, declare—

(*a*) any manufactured article, substance or other item intended for export, other than tobacco, tea, coffee or sugar;or

(*b*) any service,

to be an export product.

Issuance of certificates
7 of 2013

10.—(1) Where, upon application by a company which manufactures or provides, or proposes to manufacture or provide, an export product, the Minister, on the recommendation of the Committee, considers it expedient in light of such rules and regulations relating to exports as may be prescribed—

(*a*) upon payment of the prescribed fees, issue to that company an export enterprise certificate, subject to such terms and conditions as he thinks fit to impose; and

(*b*) by notice published in the *Gazette*, declare the company to be an export enterprise for so long as the certificate remains in force.

(2) Every application made pursuant to subsection (1) shall be in the prescribed form and be accompanied by the prescribed fee.

(3) Where an application has been made pursuant to subsection (1), the Minister shall communicate his decision within forty-five days from the date of receipt of the application.

(4) A certificate shall be in the prescribed form and shall specify—

(*a*) the production day of the export enterprise;

(*b*) the export product which the export enterprise is or will be manufacturing;

(*c*) the scheduled equipment required by the export enterprise for equipping and operating the enterprise;

(*d*) the scheduled materials required by the export enterprise for the manufacture of export products;

(*e*) that company export enterprise shall be domiciled in Malaŵi;

(*f*) such other term or condition as the Minister may deem appropriate.

(5) A certificate shall be valid for a period of five years and may thereafter be renewed for successive periods of two years.

Amendment of certificate

11.—(1) Subject to subsection (2), the Minister may, by notice in writing addressed to the export enterprise, at any time amend any certificate or any condition attached to a certificate.

(2) No amendment shall be made to a certificate so as to place an export enterprise in a less favourable position than it was prior to the amendment of the certificate.

(3) Where the Minister amends a certificate by substituting for the production day specified another earlier or later production day, this Act shall have effect in relation to that certificate as if the production day so specified had been originally specified.

Revocation of certificate
7 of 2013

12.—(1) Where the Minister, on the recommendation of the Committee is satisfied that an export enterprise has contravened this Act or any condition attached to a certificate, he may, by notice in writing, require the export enterprise, within thirty days from the date of the service of the notice, to show cause why the certificate should not be revoked, and where the Minister, on the recommendation of the Committee is satisfied that having regard to all the circumstances the certificate should be revoked, he shall do so.

(2) Where a certificate is revoked under subsection (1), the Minister shall specify the date from which the revocation shall become operative and this Act shall from that date cease to have effect in relation to the certificate so revoked.

Register of certificates

13. Every certificate issued under this Act shall be recorded in a Register in the prescribed form.

PART IV

Restrictions on Carrying on Business in Export Processing Zones

Restrictions on carrying on business in export processing zones

14. No person shall carry on, in an export processing zone, any trade, business or manufacturing, unless there is in relation to such trade, business or manufacturing, a certificate authorizing the carrying on of such trade, business or manufacturing.

Restriction on trading

15. No export enterprise shall carry on any trade or business other than that specified in its certificate.

PART IVA

Goods Within Export Processing Zones

Goods deemed to be exported and imported into Malaŵi
7 of 2013

15A. Unless otherwise provided under this Act or under any other written law—

(*a*) raw materials which are taken out from any part of the customs area and brought into the export processing zone shall be deemed to have been exported from Malaŵi and shall be paid for in freely convertible currency; and

(*b*) goods which are brought out of an export processing zone and taken into any part of the customs area for use therein shall be deemed to be imported but shall be paid for in Malaŵi Kwacha.

PART IVB

Benefits to Export Enterprises

Benefits accruing to export enterprises 7 of 2013

15B.—(1) An export enterprise shall be entitled to such benefits as may be specified under—

Cap. 41:01 (*a*) the Taxation Act;

Cap. 42:01 (*b*) the Customs and Excise Act;

Cap. 42:02 (*c*) the Value Added Tax Act;

Cap. 45:01 (*d*) the Exchange Control Act; or

(*e*) any other written law.

(2) The following goods shall not be imported free of import duty and value added tax by an export enterprise—

(*a*) a vehicle not used solely within an export processing zone and, in any case, a passenger car or a mini bus;

(*b*) fuel for use in generators and boilers, in quantities and subject to such conditions as the Commissioner-General may, from time to time, determine; and

(*c*) spare parts for motor vehicles, including tyres.

Restriction on quantities of export products to be sold locally 7 of 2013

15C.—(1) An export enterprise may sell an export product in Malaŵi, but the quantities of the products to be sold shall not exceed percentages prescribed under this Act or on a certificate issued under this Act.

(2) Any sale effected pursuant to subsection (1) shall be subject to payment of the appropriate duty excise and tax.

PART V

Duty

Duty relief 7 of 2013

16.—(1) Where an export enterprise imports or purchases any dutiable goods to be used in a bonded factory or export processing zone, no duty shall be paid on the goods if the goods are transported directly and forthwith to a bonded factory or export processing zone and placed there under such conditions as the Commissioner-General may impose.

(2) The Commissioner-General may require an export enterprise to enter into a bond in the prescribed form, in such amount as he

may determine, whereby the export enterprise undertakes to obtain, receive, keep, use or dispose of scheduled equipment or scheduled materials only in accordance with conditions specified in its certificate or this Act, or the Customs and Excise Act. Cap. 42:01

Removal of goods from a bonded factory 7 of 2013

17.—(1) No scheduled equipment shall be removed from a bonded factory or an export processing zone, except with the written authorization of the Commissioner-General.

(2) No scheduled materials or export product shall be removed from a bonded factory or an export processing zone except—

(*a*) for the purpose of being exported;

(*b*) for transfer to another bonded factory or export processing zone; with the permission and according to the directions of the Commissioner-General;

(*c*) for consumption in Malaŵi with the approval of the Minister and subject to the payment of the appropriate duty;

(*d*) for destruction in such manner as the Commissioner-General may direct.

(3) Any person who, without lawful authority or reasonable excuse—

(*a*) removes any scheduled equipment, scheduled materials or export product from a bonded factory;

(*b*) is found in possession of any scheduled equipment, scheduled materials or export product outside a bonded factory or export processing zone,

shall be guilty of an offence.

Payment of duty 7 of 2013

18.—(1) Where there is in any bonded factory a deficiency in the quantity of dutiable scheduled equipment or scheduled materials which ought to be found there, the export enterprise shall, without prejudice to any other proceedings under this Act or any other written law, be liable to pay to the Commissioner-General the duty leviable on the goods not satisfactorily accounted for.

(2) Where the Commissioner-General is satisfied that the deficiency has been caused by reasonable wastage or unavoidable breakage, leakage or other accident, he may remit the whole or any part of the duty leviable on the goods found deficient.

(3) The Commissioner-General shall, by notice in writing, require an export enterprise to pay any duty under this section and the duty shall be paid within thirty days of the issue of the notice.

PART VI

Miscellaneous

Enforcement officers

19.—(1) The Minister may, by notice published in the *Gazette*, designate any public officer or class of public officers to be enforcement officers for the purposes of this Act.

(2) Any enforcement officer may, at all reasonable and, if so required, on showing proof of his identity, enter any export processing zone or bonded factory for the purpose of ensuring that the provisions of this Act are being complied with.

(3) Any enforcement officer may require an export enterprise or any person who is director, secretary or other officer of an export enterprise to furnish him with any information concerning the business or activities of the export enterprise.

(4) Any person who wilfully obstructs or hinders an enforcement officer acting in the exercise of his functions under this section or, without reasonable excuse, fails or refuses to give to an enforcement officer any information required of him under this section shall be guilty of an offence.

Offences and penalties
7 of 2013

20. Any person who—

(*a*) in any application, declaration or statement made for the purposes of this Act, makes a statement which is false or misleading in any material particular;

(*b*) keeps any record or account relating to an export enterprise which is false or misleading; or

(*c*) otherwise contravenes any provision of this Act,

7 of 2013

shall be guilty of an offence and shall on conviction be liable to a fine or administrative penalty of the equivalent of ten per cent of the annual turnover of the business and to imprisonment for five years.

Regulations
7 of 2013

21.— (1) The Minister may after consultation with the Committee make rules for the proper establishment and administration of the export processing zones including—

(*a*) the procedure for application, issuance, revocation or cancellation of an export processing zones certificate;

(*b*) prescribing the fees to be paid in respect of any matter or thing done under this Act or the Regulations;

(*c*) prescribing the forms to be used under this Act and the conditions to be complied with in applying for an export processing zones certificate;

(*d*) providing for the time frame within which specific obligation shall be carried out;

(*e*) the procedure for the imposition of a penalty by the Committee for breaches of the Act or any subsidiary legislation; and

(*f*) providing anything which, under this Act, may be prescribed.

(2) Notwithstanding the provision of section 21 (*e*) of the General Interpretation Act, a person who commits an offence against any provision of subsidiary legislation made under subsection (1), shall be liable to a fine or penalty not exceeding K20,000,000 and to imprisonment not exceeding one year. Cap. 1:01

G.N. 96/1995

EXPORT PROCESSING ZONES (FEES AND FORMS) REGULATIONS

under s. 21

Citation

1. These Regulations may be cited as the Export Processing Zones (Fees and Forms) Regulations.

Fees

2. The fees prescribed in the First Schedule shall be payable in respect of matters specified in relation to such fees.

Forms

3. The forms set out in the Second Schedule shall be used for purposes of the Act, and such particulars as are contained in those forms and not particularly prescribed by the Act are hereby prescribed as particulars required under the Act—

FIRST SCHEDULE r. 2

FEES

Matter	*Fee*	
	K	*t*
1. Upon application for export enterprise certificate	500	00
2. Upon issue of export enterprise certificate (valid for 5 years)	5,000	00
3. Upon renewal of export enterprise certificate (valid for 2 years)	3,000	00

SECOND SCHEDULE r. 3

FORMS

FORM EPZ I

EXPORT PROCESSING ZONES ACT

(Cap. 39:06)

APPLICATION FOR AN EXPORT ENTERPRISE CERTIFICATE

(under section 10)

Note: *This application is intended to collect sufficient information for the purpose of enabling the Minister to consider the issuance of an export enterprise certificate. All information collected shall be treated in the strictest confidence. This application should be submitted in duplicate to the following address—*

The Secretary for Commerce and Industry
P.O. Box 30366
Lilongwe 3
Malaŵi

PROFILE OF INVESTOR

1. Name of Company .....

2. Company Domicile .....
   Postal Address: .....
   .....
   Plot No. ..... Street/Road .....
   Telephone ..... Fax ..... Telex .....
   District .....
   Region .....

3. Date of incorporation (*attach copy of certificate of incorporation*) .....

4. Details of Directors and Shareholders: .....

Full Name	*Nationality*	*Contact Address*
.....	.....	.....
.....	.....	.....
.....	.....	.....

5. Applicant's Bankers: .....
   .....
   .....

PROFILE OF PROPOSED INVESTMENT

6. Proposed location of export enterprise:
   Plot No. ..... Town .....
   District ..... Region .....

7. List of Products/Services to be exported:

Description of Products/Services	*HS Code*
.....	.....
.....	.....
.....	.....
.....	.....
.....	.....
.....	.....
.....	.....
.....	.....
.....	.....

8. Estimated production capacity and sales:

Product/ Services		Year 1		Year 2		Year 3		Year 4		Year 5	
Qty.	Value	Qty.	Value	Qty.	Value	Qty.	Value	Qty.	Value	Qty.	Value

9. Indicate prospects of export markets for the above stated products (*attached documentary evidence where available*).

.....

.....

10. Inputs sources and quantities:

Description of inputs, raw materials and components	HS Code	Source Country	Year 1	Year 2	Year 3	Year 4	Year 5

Electricity .....

Water .....

Fuel .....

11. Labour requirements and costs:

Category Level	Year 1		Year 2		Year 3		Year 4		Year 5	
	Nos.	Cost	Nos.	Cost	Nos.	Cost	Nos.	Cost	Nos.	Cost
Managerial Local Foreign										
Skilled Local Foreign										
Unskilled Local Foreign										

12. Proposed training of Malaŵians:

Category	*Number of staff to be trained*	*Duration of training (months per person)*
Technical supervision	.....	.....
	.....	.....
Skilled production	.....	.....
	.....	.....
Semi-skilled production	.....	.....
	.....	.....
Managerial	.....	.....

13. Fixed Capital Investment:

Item	Year 0	Year 1	Year 2	Year 3	Year 4	Year 5
Land preparation						
Building						
Machinery						
Other equipment						
Tools, fixtures						
Furniture						
Other (specify)						

14. Finance Requirements:
Particulars of the capital structure:
(*a*) Issued and paid up capital—

Amount

Resident . . . .
Non-resident . . . .

(*b*) Loans—

Amount..... *Country of Lender*

(i) ....
(ii) ....
(iii) ....
(iv) ....
(v) ....

15. List of Technological and Management Agreements: .....
Please give a brief statement on each— .....
(i) .....
(ii) .....
(iii) .....
(iv) .....
(v) .....
(vi) .....

16. Expected date of commencement: .....
.....
.....

17. Additional Information: .....
.....
.....
.....
.....

Declaration

I, ..., declare that the information given above is correct to the best of my knowledge and belief, I further declare that I have not previously submitted any application in respect of the same project.

Date ....
(*Signature of Applicant*)

.....
(*Title of Signatory*)

FORM EPZ II

EXPORT PROCESSING ZONES ACT
Cap. 39:06
CERTIFICATE

(*UNDER SECTION* 10)

Certificate No. ..... issued at ..... under section 10 of the Export Processing Zones Act.

This is to certify that ..... has been granted authority to operate an export enterprise for a period of ..... years at the location specified hereunder—

Name of Company .....
Business Enterprise .....
Products .....
Location Plot No. ..... District.....
Production Date .....
This certificate is granted subject to the following conditions— .....

(*a*) that the Company shall engage solely in the export activity listed above; .....

(*b*) that the scheduled materials and equipment listed on the reverse side of the certificate shall not be changed save with express written approval of the Minister.

Dated this ..... day of ....., 20 .....

.....
(*Official Stamp*) *Minister of Commerce and* Industry

Scheduled materials:

Scheduled equipment:

MALAŴI REVENUE AUTHORITY

CHAPTER 39:07

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CHAPTER 39:07

MALAŴI REVENUE AUTHORITY

ARRANGEMENT OF SECTIONS

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14 of 1998
26 of 2004
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20/2001
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An Act to provide for the establishment of the Malaŵi Revenue Authority as a main body responsible for the assessment and collection, on behalf of the Government, of specified revenue; for the administration and enforcement of laws relating to such revenue; and to provide for matters incidental thereto or connected therewith

[15TH FEBRUARY, 2000]

PART I

PRELIMINARY

Short title

1. This Act may be cited as the Malaŵi Revenue Authority Act.

Interpretation

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

"Authority" means the Malaŵi Revenue Authority established under section 3;

"Board" means the Board of the Authority established under section 9;

"Chairman" means the Chairman of the Board designated as such under section 9 (2);

"Commissioner-General" means the Commissioner-General of the Authority appointed under section 17 (1);

"Deputy Commissioner-General" means the Deputy Commissioner-General of the Authority appointed under section 17 (11);

"member" means a member of the Board;

"revenue" means the taxes, duties, fees, fines or other monies imposed by or collected under the written laws, or the specified provisions of the written laws, set out in the Schedule.

PART II

ESTABLISHMENT OF THE MALAŴI REVENUE AUTHORITY

Establishment of the Authority

3. There is hereby established a body to be known as the Malaŵi Revenue Authority (in this Act otherwise referred to as the "Authority") which shall be—

(*a*) a body corporate with perpetual succession and a common seal;

(*b*) in its corporate name, capable of suing and being sued;

(*c*) capable of holding, purchasing and otherwise acquiring and disposing of any property, moveable and immoveable, for purposes of, or in the course of carrying out its functions; and

(*d*) doing or performing all such acts and things as bodies corporate may by law do or perform.

Functions of the Authority

4.—(1) The Authority shall be an agency of the Government responsible for the assessment, collection and receipt of specified revenue, and shall be accountable to and operate under the general supervision of the Minister.

(2) Without prejudice to the generality of the foregoing, the functions of the Authority shall be—

(*a*) to administer and enforce the laws or the specified provisions of the laws set out in the Schedule;

(*b*) to promote voluntary tax compliance to the highest degree possible;

(*c*) to take such measures as may be required to improve the standards of service given to taxpayers with a view to improving efficiency and effectiveness and maximizing revenue collection;

(*d*) to take such measures as may be required to counteract tax fraud and other forms of fiscal evasion;

(*e*) to advise the Minister on matters of revenue policy and matters relating to the administration and collection of revenue under the laws listed in the Schedule; and

(*f*) to perform such other functions in relation to revenue as the Minister may direct.

(3) The Minister may, by notice published in the *Gazette*, amend the Schedule.

Powers of the Authority

5. The Authority shall, in the discharge of its functions, have power—

(*a*) to study revenue laws and identify amendments which may be made to any law for the purpose of improving the administration of, and compliance with, revenue laws;

(*b*) to study the administrative costs, compliance costs and the operational impact of intended legislative changes, and to advise the Minister accordingly;

(*c*) to collect and process statistics needed to provide forecasts of revenue receipts and the effect on yield of any proposals for changes in revenue laws, and to advise the Minister accordingly; and

(*d*) to take such other measures as the Authority deems necessary or desirable for the achievement of the purposes or provisions of this Act.

Taxpayer identification and exchange of information

6.—(1) The Authority shall, with the approval of the Minister, by notice in the *Gazette*, provide for the establishment, maintenance, and application of systems for the convenient and effectual identification of taxpayers for the purpose of co-ordinated administration of the revenue laws of Malaŵi.

(2) Without prejudice to subsection (1), it shall be lawful for officers in the revenue departments of the Authority to exchange or furnish each other with information or documents concerning any taxpayer and for the purposes of the discharge of functions under this Act.

Duty of the Minister to determine fiscal policies, etc.

7. Notwithstanding the provisions of this Part, it shall be the duty of the Minister—

(*a*) subject to any written law, to determine and ensure the effective application of the fiscal policies of Malaŵi; and

(*b*) to ensure the effective co-ordination of the policies for the collection and preservation of revenue accounts.

PART III

Establishment of the Board of the Authority

Establishment of the Board

8.—(1) There is hereby established a Board of the Authority (in this Act otherwise referred to as the "Board") which shall be the governing body of the Authority and which shall consist of—

(*a*) the Secretary to the Treasury;

(*b*) the Secretary for Commerce and Industry;

(*c*) the Accountant General;

Cap. 44:02

(*d*) the Governor of the Reserve Bank, who shall be a member of the Board notwithstanding section 12 (4) of the Reserve Bank of Malaŵi Act;

(*e*) one member nominated by the Society of Accountants of Malaŵi, and appointed by the Minister;

(*f*) one member nominated by the Malaŵi Chamber of Commerce and Industry, and appointed by the Minister; and

(*g*) two other members appointed by the Minister from private sector, and who shall be appointed on the basis of their professional knowledge and experience in finance, commerce, legal or economic affairs.

(2) Every member appointed under subsection (1) (*e*) (*f*) and (*g*) shall be a person of high integrity and shall have no record of tax evasion.

(3) The Minister shall designate the Chairman of the Board from amongst the members of the Board and the members of the Board shall elect a Vice Chairman from amongst their number.

(4) An *ex officio* member of the Board or any person employed in the public service shall not be eligible to be designated Chairman or elected Vice Chairman of the Board, but shall have the right to vote on any matter at the meetings of the Board.

(5) Every member shall personally attend meetings of the Board, and where a member is unable to attend any meeting of the Board he may request that his apologies for failure to attend be registered.

(6) A member shall not, by virtue only of his appointment to the Board, be deemed to be an officer in the public service.

(7) A member, other than an *ex officio* member, shall hold office for a period of three years from the date of his appointment and shall be eligible for reappointment at the expiry of that period.

(8) The names of all members as first constituted, and every change in the membership thereof, shall be published in the *Gazette*.

Vacation of members from office

9.—(1) The office of a member, other than an *ex officio* member, shall be vacated—

(*a*) upon the expiry of the period of his appointment;

(*b*) upon his death;

(*c*) if he is adjudged a bankrupt;

(*d*) if he is sentenced for an offence—

(i) under section 11 (2);

(ii) against any written law to a term of imprisonment of, or exceeding six months;

(*e*) if he is convicted of an offence involving fraud or dishonesty;

(*f*) if he is absent, without the permission of the Board, from three successive meetings of the Board of which he has had notice;

(*g*) upon notice in writing of his intention to resign his office;

(*h*) if he becomes, by reason of mental or physical infirmity, incapable of performing his duties as a member;

(*i*) if any circumstances arise that, if he were not a member, would cause that member to be disqualified for appointment as a member; and

(*j*) if, on the recommendation of the majority of members, the Minister so directs.

(2) Whenever there is a vacancy in the office of a member, the Minister shall, by notice published in the *Gazette*, appoint—

(*a*) in the case of a member referred to in section 8 (1) (*e*) and (*f*), another person, nominated by the authority or institution which nominated the original member, to fill the vacancy; and

(*b*) in the case of a member referred to in section 8 (1) (*g*) appoint another person to fill the vacancy.

(3) Subject to section 10 (4), the Board may act notwithstanding any vacancy in the membership of the Board.

Meetings of the Board

10.—(1) The Board shall meet at such place or places, and at such time or times, as the Chairman may determine, and shall meet at least once in every three months.

(2) An ordinary meeting of the Board shall be convened by at least fourteen days written notice to the members.

(3) The Chairman may, at his discretion, and shall at the written request of four or more members of the Board and within seven days of such request, cause an extraordinary meeting of the Board to be summoned at such place and time as he may appoint.

(4) The Chairman, or in his absence, the Vice Chairman shall preside at meetings of the Board, and the quorum at any meeting of the Board shall be four members.

(5) In the absence of both the Chairman and Vice Chairman, the members present and forming a quorum shall elect one of their number to preside over a meeting of the Board, and the member so elected shall exercise all the powers and perform all the duties of the Chairman.

(6) Subject to this Act, the Board may make standing orders for the regulation of its proceedings and business or the proceedings and business of any of its committees and may vary, suspend or revoke any such standing orders.

(7) Minutes of each meeting of the Board or a committee of the Board shall be kept by the secretary and shall be confirmed at the succeeding meeting.

(8) The decision of the Board at any meeting on any matter shall be that of the majority of the members present and voting, and at all meetings the person presiding shall have, in the event of an equality of votes, a casting vote in addition to his deliberative vote.

Disclosure of interest

11.—(1) If a member acquires any pecuniary interest, direct or indirect, in any matter and is present at a meeting of the Board at which the matter is the subject of consideration by the Board, he shall, as soon as practicable after the commencement of the meeting, disclose the fact to the Board, and shall not take part in the consideration or discussion of, or vote on any question with respect to, the matter.

(2) Any member who contravenes subsection (1) shall be guilty of an offence and liable to imprisonment for twelve months and a fine of K10,000.

Invited persons

12.—(1) The Board may, in its discretion, at any time and for any length of period, invite any person to attend any meeting of the Board for the purpose of assisting or advising the Board in respect of any matter under consideration by the Board.

(2) Any person invited pursuant to subsection (1) may take part in the deliberations of the Board at any meeting he attends, but shall not be entitled to vote on any matter at any meeting of the Board.

Committee of the Board

13.—(1) For the better carrying into effect of the purposes for which the Board is established, the Board may establish such number of committees as the Board shall deem appropriate to perform such functions and responsibilities as the Board shall determine.

(2) The Board shall appoint the Chairman of each committee from amongst the members.

(3) The provisions of section 10 relating to the meetings of the Board shall apply *mutatis mutandis* to the meetings of any committee.

Remuneration and expenses of members

14.—(1) Members shall be paid from the funds of the Authority such allowances as the Board may, subject to the approval of the Minister, determine.

(2) The Board may make provision for the reimbursement of any reasonable expenses incurred by a member or a member of a committee of the Board in connexion with the business of the Board or the committee.

Powers of the Board

15.—(1) In the discharge of its functions under this Act, the Board may—

(*a*) direct the Commissioner-General to furnish it with any information, reports or other documents which the Board considers necessary for the performance of its functions;

(*b*) give instructions and orders to the Commissioner-General in connexion with the management, performance and operational policies of the revenue departments of the Authority;

(*c*) formulate and devise a system for securing, through internal audit systems, and verifying the correct processing of various tax cases, and in accordance with the law the relevant directions of the Minister; and

(*d*) on the recommendation of the Commissioner-General, approve such organizational structures as the Commissioner-General may consider necessary for the discharge of the functions of the Authority.

(2) Notwithstanding any provision of this Act to the contrary, the Board shall have no power to intervene in the determination of any revenue assessment or revenue liability of any taxpayer.

Exemptions, etc.

16.—(1) The Board shall recommend to the Minister—

(*a*) criteria or factors by reference to which any exemption, mitigation, deferment or remission of any revenue may be granted; and

(*b*) procedures to be followed in granting any exemption, mitigation, deferment or remission of revenue,

and the Minister shall by Order published in the *Gazette* specify the criteria or factors and the procedures so recommended.

(2) The Minister may, by Order published in the *Gazette*, exempt, mitigate, defer or remit any revenue in accordance with the criteria published pursuant to subsection (1).

(3) The Commissioner-General shall submit to the Board quarterly reports on the total amount of revenue remitted or foregone in respect of each of the criteria specified under subsection (1).

(4) The Board shall within three months of the end of the financial year of the Authority submit to the Minister a report setting out the total amount remitted or foregone in pursuant to subsection (2) and the report shall be published in the *Gazette*.

PART IV

Administration of the Authority

Appointment of Commissioner-General and Deputy Commissioner-General

17.—(1) There shall be a Commissioner-General of the Authority (in this Act otherwise referred to as "Commissioner-General") who shall be appointed by the Board on such terms and conditions as the Board shall determine.

(2) The appointment and terms and conditions of service of the Commissioner-General shall be subject to approval by the Minister.

(3) The Commissioner-General shall be the chief executive officer of the Authority and, subject to the general supervision and control of the Board, shall be responsible for—

(*a*) the day to day operations of the Authority;

(*b*) the management of the funds, property and business of the Authority;

(*c*) the administration, organization and control of the other officers and staff of the Authority; and

(*d*) the effective administration and implementation of the provisions of this Act.

(4) The Commissioner-General shall, subject to subsection (5), hold office for a period of four years and shall be eligible for reappointment for one additional term of four years.

(5) The Board may, subject to the approval of the Minister, terminate the appointment of the Commissioner-General for—

(*a*) misconduct or misbehaviour in terms of the code of conduct of the Authority; or

(*b*) inability, incapacity or incompetence to perform the duties of his office.

(6) The Commissioner-General shall devote his full time to the duties of his office and shall not, without the prior approval of the Board, hold any office of trust or profit, other than that of Commissioner-General, or engage in any occupation for reward outside the office of Commissioner-General.

(7) The Commissioner-General may, subject to this Act and to any general or specific directions of the Board, delegate any of his functions in relation to a revenue law to a revenue commissioner or any other commissioner or officer.

(8) The Commissioner-General or, in his absence such officer of the Authority as the Commissioner-General may designate in writing, shall attend meetings of the Board and any committee of the Board but shall not vote on any matter:

Provided that the person presiding at any meeting may, for good cause, require the Commissioner-General or such other officer to withdraw from the meeting.

(9) The Commissioner-General shall, on the instructions of the Chairman, convene meetings of the Board; and an officer of the Authority duly designated in writing by the Commissioner-General shall be secretary to the Board.

(10) An officer of the Authority duly designated in writing by the Commissioner-General shall be secretary to any committee of the Board, and shall, on the instructions of the chairman of the committee convene meetings of the committee.

(11) There shall be a Deputy Commissioner-General of the Authority who shall—

(*a*) be appointed by the Board on such terms and conditions as the Board shall determine; and

(*b*) perform such functions and duties as may be assigned to him by the Commissioner-General from time to time.

(12) The appointment and terms and conditions of service of the Deputy Commissioner-General shall be subject to approval by the Minister.

(13) The Deputy Commissioner-General shall—

(*a*) hold office for a period of four years, and shall be eligible for reappointment for one additional term of four years; and

(*b*) be eligible to be appointed Commissioner-General.

(14) Subsections (5) and (6) shall apply *mutatis mutandis* to the Deputy Commissioner-General.

Appointment of revenue commissioners, etc.

18.—(1) The Board may, on the recommendation of the Commissioner-General, and on such terms and conditions as the Board may determine, appoint on the basis of merit, such number and grades of revenue commissioners or other commissioners in relation to any revenue law as the Board may think necessary or desirable for the efficient and effective discharge of the business and purposes of the Authority.

(2) The Commissioner-General may, on such terms and conditions as the Board may determine, appoint other officers and staff of the Authority subordinate to the Commissioner-General as may be required for the performance of the functions of the Authority.

PART V
Financial Provisions

Revenue to be paid into the Consolidated Fund

19. All revenue collected by, or due and payable to the Authority under this Act shall be paid into the Consolidated Fund.

Funds of the Authority
G.N. 20/2001
21/2007
9/2015

20.—(1) The funds of the Authority shall consist of—

(*a*) 2.5 per cent of the revenue estimated in the financial estimates for each financial year to be collected by the Authority under this Act;

(*b*) 5.0 per cent of the revenue actually collected in each successive three-month period in the financial year in excess of the amount estimated to be collected during that period:

Provided that the amount payable under this paragraph and paragraph (*a*) shall not exceed 3.5 per cent of the actual amount collected in respect of any three-month period;

(*c*) such moneys as may be received by the Authority under subsection (5); and

(*d*) such moneys as may otherwise vest in or accrue to the Authority.

(2) The funds of the Authority—

(*a*) specified in subsection (1) (*a*) shall be payable to the Authority in monthly installments on or before the beginning of each month; and

(*b*) specified in subsection (1) (*b*) shall be payable to the Authority within one month after the end of the three-month period.

(3) The Minister may, on the recommendation of the Board, by order published in the *Gazette*, revise the percentages of revenue referred to in subsections (1) (*a*) and (*b*).

(4) Any funds received by the Authority in respect of a financial year which are not expended by the end of that financial year shall be placed in a reserve fund to be expended subject to the budget of the Authority for the ensuing financial year.

(5) The Authority may—

(*a*) accept money by way of grants or donations from any source in or outside Malaŵi;

(*b*) subject to the approval of the Minister, raise by way of loans from any source in or outside Malaŵi, such money as it may require for the discharge of its functions; and

(*c*) charge and collect fees in respect of programmes, publications, seminars, documents, consultancy services and other services provided by the Authority.

(6) The Authority may, subject to the approval of the Minister, invest in such manner as it thinks fit such of its funds as it does not immediately require for the performance of its functions.

Books and other records of accounts and audit

21.—(1) The Authority shall cause to be kept proper books of accounts and other records relating to its accounts.

(2) The accounts of the Authority shall—

(*a*) be audited annually by independent auditors appointed by the Board and approved by the Minister; and

(*b*) be examined by the Auditor General before being presented to the Minister in accordance with section 22.

Annual reports

22.—(1) The Authority shall as soon as practicable, but not later than three months after the expiry of each financial year, submit to the Minister a report concerning its activities during that financial year.

(2) The report referred to in subsection (1) shall be in such form as the Minister shall approve, and shall include information on the financial affairs of the Authority and there shall be appended to the report—

(*a*) an audited balance sheet;

(*b*) an audited statement of income and expenditure;

(*c*) the total amount of revenue remitted or foregone pursuant to section 16 (2); and

(*d*) such other information as the Authority may consider appropriate or as the Minister may direct.

(3) The Minister shall, during the meeting of the National Assembly next following receipt by him of the report referred to in subsection (1), lay the report before the National Assembly, and the Authority may publish the report for sale to the public.

Financial Year

23. The financial year of the Authority shall be a period of twelve months commencing on 1st July in each year, and ending on 30th June in the following year, or on such other dates the Minister may specify by Order published in the *Gazette*:

Provided that the first financial year of the Authority may be such shorter or longer period than twelve months as the Minister shall determine but being not less than six months nor more than eighteen months.

PART VI
Miscellaneous Provisions

Confidentiality

24.—(1) Every member of the Board, revenue commissioner or any other person employed by the Authority in the carrying out of the provisions of this Act, shall regard and deal with as secret to any unauthorized person all documents and information relating to the income, expenditure or other financial dealings or status of any taxpayer or other person involved in any operations in furtherance of the purposes of this Act, and all confidential instructions in respect of the administration of this Act which may come into his possession or to his knowledge in the course of his duties.

Cap. 41:01

(2) The provisions of the Taxation Act relating to the preservation of secrecy by officers and other persons discharging functions under that Act shall apply *mutatis mutandis* to persons discharging functions under this Act.

Exemption from personal liability

25. No member of the Board, any committee of the Board, or an employee of the Authority shall, in his personal capacity, be liable in civil or criminal proceedings in respect of any act or omission done in good faith in the performance of his duties or functions under this Act.

Regulations 26 of 2004

26.—(1) The Minister may, on the recommendation of the Board, make regulations for the carrying into effect the provisions of this Act.

(2) Without prejudice to the generality of subsection (1), the Minister may make regulations—

(*a*) respecting the terms and conditions of service, including pensions, gratuities and other retirement benefits, of all members of staff of the Authority;

(*b*) prescribing the procedure for the appointment of all members of the staff of the Authority;

(*c*) prescribing the code of conduct and discipline of members of staff of the Authority;

(*d*) respecting the administration and management of the funds of the Authority;

(*e*) respecting the performance targets of the Authority; and

(*f*) respecting the offer or order of such rewards as he may think fit to be paid to any officer or other person for services rendered in connexion with the detection of any offence against the revenue laws or in connexion with any seizure under the customs laws. 26 of 2004

Vesting of assets, liabilities, etc.

27.—(1) All property, except any such property as the Minister may determine, by notice published in the *Gazette*, which immediately before the commencement of this Act was vested in the Government for the use of the Department of Customs and Excise and the Department of Income Tax for purposes of the written laws set out in the Schedule, shall, on the commencement of this Act, and without further assurance, vest in the Authority, subject to all interests, liabilities, charges, obligations and trusts affecting such property.

(2) Except as otherwise provided in subsection (1) in relation to property, all contracts, debts, obligations and liabilities of the Government attributable to the Department of Customs and Excise and the Department of Income Tax before the commencement of this Act shall remain vested in the Government and may be enforced by or against the Government.

(3) All legal proceedings and claims which before the commencement of this Act are pending in respect of revenue to which the written laws set out in the Schedule apply shall be continued or enforced by or against the Authority in the same manner as they would have been continued or enforced before the commencement of this Act.

(4) Unless the Board otherwise determines, all persons who before the commencement of this Act are employed by the Government for the purposes of the written laws specified in the Schedule shall, on the commencement of this Act, be deemed to be on secondment to the Authority until they are employed in the service of the Authority in accordance with this Act or their secondment with the Authority otherwise ceases in accordance with the terms of the secondment.

Construction and modification of other written laws

28. On the coming into force of this Act—

(*a*) all references to the Controller of Customs and Excise or the Commissioner of Taxes in any written law specified in the Schedule or any other law shall be construed as references to the Commissioner-General;

(*b*) any reference to Customs and Excise Department or Income Tax Department in the written laws specified in the Schedule or in any other law be deemed to be reference to the Authority; and

(*c*) except as provided in paragraph (*a*) any reference to an officer of the Customs and Excise Department or Income Tax Department howsoever designated in the written laws specified in the Schedule or in any other law shall be deemed to be reference to such officer of the Authority.

G.N. 24/2002 14/2015 ss. 2 and 4

SCHEDULE

Written Laws Relating to Revenue

Cap. 42:01 1. Customs and Excise Act

Cap. 41:01 2. Taxation Act

Cap. 42:02 3. Value Added Tax Act

G.N. 14/2015 Cap. 55:06 4. Technical, Entrepreneurial and Vocational Education and Training Act

G.N. 14/2015 Cap. 69:08 5. Roads Fund Administration Act

INVESTMENT DISPUTES (ENFORCEMENT OF AWARDS)

CHAPTER 40:01

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CHAPTER 40:01

INVESTMENT DISPUTES (ENFORCEMENT OF AWARDS)

ARRANGEMENT OF SECTIONS

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2. Interpretation
3. Binding effect of Award
4. Application for registration
5. Effect of registration
6. Rules
7. Act binding on the Government

An Act to make provision for the enforcement in Malaŵi of Awards of the Tribunal of the International Centre for Settlement of Investment Disputes and for purposes connected therewith and incidental thereto 46 of 1966

[10TH JANUARY, 1967]

1. This Act may be cited as the Investment Disputes (Enforcement of Awards) Act. Short title

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

"Award" means an Award made in accordance with the Convention;

"Convention" means the Convention on the Settlement of Investment Disputes between States and Nationals of Other States dated 18th March, 1965;

"Investment Dispute" means a legal dispute arising directly out of an investment which is within the scope of the Convention;

"party" means a person who has had an Investment Dispute which has resulted in an Award;

"Secretary General" means the Secretary General of the International Centre for Settlement of Investment Disputes established under the Convention.

3. Every Award shall be binding on the parties. Binding effect of Award

4.—(1) Where an Award has been obtained, a party may apply to the High Court for registration of the Award at any Application for registration

time within six years after the date of the Award, or within such longer period as the High Court may in its discretion allow.

(2) An application under subsection (1) shall be accompanied by—

(*a*) a copy of the Award certified by the Secretary General;

(*b*) a sworn statement made by the applicant or his duly authorized officer that no application is pending under Article 52 of the Convention and that enforcement of the Award has not been stayed;

(*c*) if the party against whom it is sought to enforce the Award is not the Government, a statement of the property which it is proposed should be the subject of proceedings for enforcement.

(3) In any case where any document required to be furnished under subsection (2) is in a foreign language, it shall be the duty of the applicant to produce a translation certified as correct in such manner as may be approved by the Court.

(4) Where the Court is satisfied in relation to an Award of the truth of the sworn statement made in accordance with subsection (2) and—

(*a*) that the Government is a party; or

(*b*) that there is property in Malaŵi which can properly be the subject of execution proceedings,

the Court shall direct registration of the Award.

Effect of registration

5. Where an Award is registered under section 4, then—

(*a*) the Award shall, as from the date of registration, have the same effect as a judgment of the High Court so far as relates to the enforcement in Malaŵi of pecuniary obligations imposed by the Award;

(*b*) the reasonable costs of and incidental to the registration of the Award (including the cost of obtaining a certified copy thereof and of the application for registration) shall be recoverable in the like manner as if they were sums payable under the Award.

Rules

6. The Chief Justice may make rules of court prescribing the procedure to be followed and the fees to be paid in proceedings under this Act.

Act binding on the Government

7. This Act shall bind the Government.

SUBSIDIARY LEGISLATION

INVESTMENT DISPUTES (ENFORCEMENT OF AWARDS) RULES

G.N. 19/1969

under s. 6

Citation

1. These Rules may be cited as the Investment Disputes (Enforcement of Awards) Rules.

Application

2. An application under section 4 of the Act for leave to have an Award registered shall be made ex parte or by summons to a judge of the High Court. If an application is made ex parte, the judge to whom it is made may direct a summons to be issued.

Documents to accompany application

3. An application under rule 2 shall be accompanied by—

(*a*) the copy of the Award in question duly certified as required by section 4 (2) (a) of the Act;

(*b*) an affidavit exhibiting the statement required under section 4 (2) (*b*) of the Act; and the statement, if any, required by section 4 (2) (*c*) of the Act.

Title of affidavit and summons Cap. 40:01

4. The affidavit and summons (if any) shall be entitled—

"In the Matter of the Investment Disputes (Enforcement of Awards) Act

and

In the Matter of an Award made in accordance with the Convention on the Settlement of Disputes between States and Nationals of other States dated 18th March, 1965, between

and

.".

Service of summons

5. The summons (if any) for leave to register an Award shall be an originating summons and (unless otherwise ordered by a judge) be served in the same manner as a summons is required to be served. The party against whom the Award in question was made shall not be required to enter any appearance thereto.

The order

6. An order giving leave to register an Award shall be drawn up by or on behalf of the party in whose favour it was made, and shall be served upon the party against whom it was made. Where the order is made on an ex parte application, no service of the order on the party against whom the Award was made shall be required.

Register

7. A register of Awards ordered to be registered under the Act shall be kept in the Registry of the High Court. An Award shall be registered there in accordance with the order giving leave to register it.

Form of the register

8. Entries in the register shall be arranged in alphabetical order in the name of the party against whom each Award was made and there shall be shown in the register the date of the order for registration.

Notice

9. Notice in writing of the registration of the Award must be served on the party against whom the Award was made within a reasonable time after such registration. Such notice shall (in the absence of an order by the judge as to the mode of service thereof) be served on the party against whom an Award was made by personal service (with power to order substituted service or service out of the jurisdiction or both) as in the case of a summons, but the judge may at any stage of the proceedings authorize or direct some other mode of service and if he does so the service shall be effected in accordance with such authority or direction.

Form of notice

10. The notice of registration shall contain full particulars of the Award registered and of the order for such registration and shall state the name and address of the party in whose favour the Award was given or of his legal practitioner or agent.

Fees

11. The fees set out in the Schedule shall be payable in respect of the registration of Awards under these Rules.

r. 11

SCHEDULE

	£	s	d
On filing an application for leave to have an Award registered whether made ex parte or by summons . .	2	0	0
On filing an affidavit in support		10	0
On the order for registration	1	0	0
On issuing execution	. . The same fee as on a judgment of the High Court.		

Other fees the same as those payable in the High Court.

BRETTON WOODS AGREEMENT

CHAPTER 40:02

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CHAPTER 40:02

BRETTON WOODS AGREEMENT

ARRANGEMENT OF SECTIONS

SECTION

1. Short title
2. Interpretation
3. Acceptance of Agreement
4. Financial and other provisions
5. Reserve Bank of Malaŵi authorized to as depository
6. Regulations
Schedule

An Act to provide for acceptance by Malaŵi of the Agreements for the International Monetary Fund and the International Bank for Reconstruction and Development and to provide for matters related thereto

7 of 1965
40 of 1968
31 of 1974
8 of 1977
12 of 1991
10 of 2002
3 of 2010
19 of 2012

[19TH FEBRUARY, 1965]

Short title

1. This Act may be cited as the Bretton Woods Agreement Act.

Interpretation
40 of 1968

2.—(1) In this Act unless the context otherwise requires—

"Bank" means the International Bank for Reconstruction and Development;

"Bank Agreement" means the agreement for the establishment and operation of the Bank;

"Fund" means the International Monetary Fund;

"Fund Agreement" means the agreement for the establishment and operation of the Fund.

(2) For the purposes of sections 4, 5, 6 and the Schedule—

(*a*) "Fund Agreement" shall mean the Fund Agreement as read and construed with the amendments approved by the Board of Governors of the Fund in Resolution 23–5 of 31st May, 1968, and with the further amendments approved by the said Board of Governors in Resolution 29–10 of 30th April, 1976;

(*b*) The Special Drawing Rights Department established to implement the special drawing rights facility in accordance with the Fund Agreement shall be and be deemed to be part of the Fund.

Acceptance of Agreement
8 of 1977
10 of 2003

3. The Minister, or such person as may be authorized by him in that behalf in writing, shall be empowered on behalf of the Government of Malaŵi—

(*a*) to sign the Articles of the Fund Agreement and the Articles of the Bank Agreement, respectively;

(*b*) to deposit with the Government of the United States of America instruments of acceptance of the Fund Agreement and of the Bank Agreement stating that the Government of Malaŵi accepts in accordance with its law the respective Agreements and the terms and conditions prescribed under the Resolution of the Board of Governors of the Fund relating to membership of Malaŵi in the Fund and under the Resolution of the Board of Governors of the Bank relating to membership of Malaŵi in the Bank as the terms upon which the Government of Malaŵi shall be admitted to membership of the Fund and of the Bank;

(*c*) to accept the amendments to the Fund Agreement approved by the Board of Governors of the Fund in Resolution 23–5 of 31st May, 1968, and to execute and deposit with the Fund an instrument in which the Government of Malaŵi undertakes all of the obligations of a participant in the Special Drawing Account in accordance with its laws, and confirm that it has taken all steps necessary to enable Malaŵi to carry out all such obligations and to give effect to such amendments;

8 of 1977

(*d*) to accept the amendments to the Fund Agreement approved by the Governors of the Fund in Resolution 29–10 of 30th April, 1976, and to execute and deposit with the Fund an instrument in which the Government of Malaŵi undertakes all of the obligations of a participant in the Special Drawing Rights Department in accordance with its laws, and confirm that it has taken all steps necessary to enable Malaŵi to carry out all such obligations and to give effect to such amendments:

12 of 1991

(*e*) to accept the Third Amendment to the Fund Agreement approved by the Board of Governors of the Fund in Resolution 45–3 of 28th June, 1990, and to execute and deposit with the Fund an instrument in which the Government of Malaŵi accepts the Third Amendment;

10 of 2002

(*f*) to accept the Fourth Amendment to the Fund Agreement approved by the Board of Directors of the Fund in Resolution No. 52–4 on 23rd September, 1997, and to execute and deposit with the Fund an instrument in which the Government of Malaŵi accepts the Fourth Amendment;

3 of 2010

(*g*) to accept the Voice and Participation Amendment to the Fund Agreement approved by the Board of Governors of the Fund in Resolution No. 63 (2) of 28th March, 2008, and to

execute and deposit with the Fund an instrument in which the Government of Malaŵi accepts the Voice and Participation Amendment; and

(*h*) to accept the Investment Authority Amendment to the Fund Agreement approved by the Board of Governors of the Fund in Resolution No. 63 (3) of 5th May, 2008, and to execute and deposit with the Fund an instrument in which the Government of Malaŵi accepts the Investment Authority Amendment. 3 of 2010

(*i*) to accept the amendment to the Fund Agreement contained in resolution No. 66-2 of 15th December 2010—Proposed Amendment on Reform of the Executive Board, and to execute and deposit with the Fund an instrument in which the Government of Malaŵi accepts the Proposed Amendment on Reform of the Executive Board. 19 of 2012

Financial and other provisions 31 of 1974 8 of 1977

4.—(1) Subject to section 5, there shall be charged on and paid out of the Consolidated Fund without further appropriation than this Act—

(*a*) all payments required to be made from time to time to the Fund under the Fund Agreement and the Resolution of the Board of Governors of the Fund relating to membership of Malaŵi in the Fund; and

(*b*) all payments required to be made from time to time to the Bank under the Bank Agreement and the Resolution of the Board of Governors of the Bank relating to membership of Malaŵi in the Bank.

(2) The Minister may, on behalf of the Government, create and issue to the Fund or the Bank such non-interest-bearing and non-negotiable notes or other obligations as are provided for by section 4 of Article III of the Fund Agreement and section 12 of Article V of the Bank Agreement, and, subject to section 5, any payments in respect of any such notes or obligations so created and issued shall be charged on and paid out of the Consolidated Fund.

(3) For the purpose of providing any sums required for making any payments under this section, the Minister may, on behalf of the Government, raise loans by the creation and issue of securities bearing such rates of interest and subject to such conditions as to repayment, redemption or otherwise as he may think fit and the principal and interest of such securities and the charges and expenses incurred in connexion with their issue shall be charged on and paid out of the Consolidated Fund:

Provided that in order to assure all payments resulting from the participation of Malaŵi in the Special Drawing Rights Department of the Fund the Minister may borrow from the public or from the Reserve Bank of Malaŵi an amount up to twice the net cumulative allocation of special drawing rights to Malaŵi, and the powers of the Minister to borrow and of the Reserve Bank of Malaŵi to lend for the purposes of this proviso shall not be subject to any general limitations which have been or may be imposed, whether by written law or by agreement, upon the powers of the Minister or the Government to borrow and of the Reserve Bank of Malaŵi to lend. 40 of 1968 8 of 1977

(4) Subject to section 5, any moneys received by the Government from the Fund or the Bank or raised under subsection (3) shall be paid into and form part of the Consolidated Fund and shall be available in any manner in which that Fund is available.

(5) The provisions of the Fund Agreement and the Bank Agreement set out in the Schedule to this Act shall have the force of law in Malaŵi:

Provided that nothing in section 9 of Article IX of the Fund Agreement or in section 9 of Article VII of the Bank Agreement shall be construed as—

(a) entitling the Fund or Bank to import goods free of customs duty without any restrictions on their subsequent sale in the country to which they were imported;

(b) conferring on the Fund or the Bank any exemption from duties or taxes which form part of the price of goods sold; or

(c) conferring on the Fund or the Bank any exemption from taxes or duties which are in fact no more than charges for services rendered.

Reserve Bank of Malaŵi authorized to act as depository 40 0f 1968

5.—(1) The Reserve Bank of Malaŵi shall become a depository of the Fund in application of section 2 of Article XIII of the Fund Agreement, and a depository of the Bank in application of section 11 of Article V of the Bank Agreement.

(2) Special drawing rights and any proceeds from their use shall be kept in a special account in the Reserve Bank of Malaŵi, and that bank will be authorized, on behalf of Malaŵi, to acquire or dispose of special drawing rights and of any proceeds from their use and to make payments in or in respect of any acquisition of special drawing rights.

(3) Any provisions of section 4 to the contrary notwithstanding, the Reserve Bank of Malaŵi shall, on behalf of Malaŵi—

(*a*) make all payments required to be made from time to time to the Fund under the Fund Agreement and the Resolution of the Board of Governors of the Fund relating to membership of Malaŵi in the Fund;

(*b*) make all payments due and payable to the Fund in respect of any non-interest-bearing and non-negotiable notes or other obligations created and issued, or hereafter created or issued, by the Minister under section 4 (2); and

(*c*) receive and account for any moneys receivable by Malaŵi from the Fund;

and to such extent only as such payments are so made, or such moneys are so received, by the Reserve Bank of Malaŵi, they shall not be charged on and paid from, or received into, the Consolidated Fund, as the case may be.

Regulations

6. The Minister shall make regulations to carry out the obligations of Malaŵi under the Fund Agreement, the Bank Agreement and the resolutions on Malaŵi's membership in the Fund and the Bank.

s. 4 (5)

SCHEDULE

Provisions of Agreements Which are to Have the Force of Law

THE FUND AGREEMENT

Article VIII—General Obligations of Members

Section 2. Avoidance of restrictions on current payments—

Exchange contracts which involve the currency of any member and which are contrary to the exchange control regulations of that member maintained or imposed consistently with this Agreement shall be unenforceable in the territories of any member.

Article IX—Status, Immunities and Privileges

Section 2. Status of the Fund—

The Fund shall possess full juridical personality and, in particular, the capacity—

(i) to contract;

(ii) to acquire and dispose of immoveable and moveable property;

(iii) to institute legal proceedings.

Section 3. Immunity from judicial process—

The Fund, its property and its assets, wherever located and by whomsoever held, shall enjoy immunity from every form of judicial process except to the extent that it expressly waives its immunity for the purpose of any proceedings or by the terms of any contract.

Section 4. Immunity from other action—

Property and assets of the Fund, wherever located and by whomsoever held, shall be immune from search, requisition, confiscation, expropriation or any other form of seizure by executive or legislative action.

Section 5. Immunity of archives—

The archives of the Fund shall be inviolable.

Section 6. Freedom of assets from restrictions—

To the extent necessary to carry out the operations provided for in this Agreement, all property and assets of the Fund shall be free from restrictions, regulations, controls and moratoria of any nature.

Section 7. Privilege for communications—

The official communications of the Fund shall be accorded by members the same treatment as the official communications of other members.

Section 8. Immunities and privileges of officers and employees—

All Governors, Executive Directors, Alternates, members of committees, representatives appointed under Article XII, section 3 (j), advisors of the foregoing persons, officers and employees of the Fund—

(i) shall be immune from legal process with respect to acts performed by them in their official capacity except when the Fund waives this immunity;

(ii) not being local nationals, shall be granted the same immunities from immigration restrictions, alien registration requirements and national service obligations and the same facilities as regards exchange restrictions as are accorded by members to the representatives, officials and employees of comparable rank of other members;

(iii) shall be granted the same treatment in respect of travelling facilities as is accorded by members to representatives, officials and employees of comparable rank of other members.

SECTION 9. Immunities from taxation—

(*a*) The Fund, its assets, property, income and its operations and transactions authorized by this Agreement shall be immune from all taxation and from all customs duties. The Fund shall also be immune from liability for the collection or payment of any tax or duty.

(*b*) No tax shall be levied on or in respect of salaries and emoluments paid by the Fund to Executive Directors, Alternates, officers or employees of the Fund who are not local citizens, local subjects or other local nationals.

(*c*) No taxation of any kind shall be levied on any obligation or security issued by the Fund, including any dividend or interest thereon, by whomsoever held—

(i) which discriminates against such obligation or security solely because of its origin; or

(ii) if the sole jurisdictional basis for such taxation is the place or currency in which it is issued, made payable or paid, or the location of any office or place of business maintained by the Fund.

8 of 1977

ARTICLE XXI—ADMINISTRATION OF THE GENERAL DEPARTMENT AND THE SPECIAL DRAWING RIGHTS DEPARTMENT

In addition to the privileges and immunities that are accorded under Article IX of this Agreement no tax of any kind shall be levied on special drawing rights or on operations or transactions in special drawing rights.

THE BANK AGREEMENT

ARTICLE VII—STATUS, IMMUNITIES AND PRIVILEGES

SECTION 2. Status of the Bank—

The Bank shall possess full juridical personality and, in particular, the capacity—

(i) to contract;

(ii) to acquire and dispose of immoveable and moveable property;

(iii) to institute legal proceedings.

SECTION 3. Position of the Bank with regard to judicial process—

Actions may be brought against the Bank only in a court of competent jurisdiction in the territories of a member in which the Bank has an office, has appointed an agent for the purpose of accepting service or notice of process or has issued or guaranteed securities. No action shall, however, be brought by members or persons acting for or deriving claims from members. The property and assets of the Bank shall, wheresoever located and by whomsoever held, be immune from all forms of seizure, attachment or execution before the delivery of final judgment against the Bank.

SECTION 4. Immunity of assets from seizure—

Property and assets of the Bank, wherever located and by whomsoever held, shall be immune from search, requisition, confiscation, expropriation or any other form of seizure by executive or legislative action.

SECTION 5. Immunity of archives—

The archives of the Bank shall be inviolable.

SECTION 6. Freedom of assets from restrictions—

To the extent necessary to carry out the operations provided for in this Agreement and subject to the provisions of this Agreement, all property and assets of the Bank shall be free from restrictions, regulations, controls and moratoria of any nature.

SECTION 7. Privilege for communications—

The official communications of the Bank shall be accorded by each member the same treatment that it accords to the official communications of other members.

SECTION 8. Immunities and privileges of officers and employees—

All Governors, Executive Directors, Alternates, officers and employees of the Bank—

(i) shall be immune from legal process with respect to acts performed by them in their official capacity except when the Bank waives this immunity;

(ii) not being local nationals, shall be accorded the same immunities from immigration restrictions, alien registration requirements and national service obligations and the same facilities as regards exchange restrictions as are accorded by members to the representatives, officials, and employees of comparable rank of other members;

(iii) shall be granted the same treatment in respect of travelling facilities as is accorded by members to representatives, officials and employees of comparable rank of other members.

SECTION 9. Immunities from taxation—

(*a*) The Bank, its assets, property, income and its operations and transactions authorized by this Agreement shall be immune from all taxation and from all customs duties. The Bank shall also be immune from liability for the collection or payment of any tax or duty.

(*b*) No tax shall be levied on or in respect of salaries and emoluments paid by the Bank to Executive Directors, Alternates, officials or employees of the Bank who are not local citizens, local subjects or other local nationals.

(*c*) No taxation of any kind shall be levied on any obligation or security issued by the Bank (including any dividend or interest thereon) by whomsoever held—

(i) which discriminates against such obligation or security solely because it is issued by the Bank; or

(ii) if the sole jurisdictional basis for such taxation is the place or currency in which it is issued, made payable or paid, or the location of any office or place of business maintained by the Bank.

(*d*) No taxation of any kind shall be levied on any obligation or security guaranteed by the Bank (including any dividend or interest thereon) by whomsoever held—

(i) which discriminates against such obligation or security solely because it is guaranteed by the Bank; or

(ii) if the sole jurisdictional basis for such taxation is the location of any office or place of business maintained by the Bank.

INTERNATIONAL FINANCE CORPORATION AND THE INTERNATIONAL DEVELOPMENT ASSOCIATION AGREEMENTS

CHAPTER 40:03

Containing Pages 1–7

L.R.O. 1/1968

CHAPTER 40:03

INTERNATIONAL FINANCE CORPORATION AND THE INTERNATIONAL DEVELOPMENT ASSOCIATION AGREEMENTS

ARRANGEMENT OF SECTIONS

SECTION
1. Short title
2. Interpretation
3. Acceptance of agreements
4. Financial and other provisions
5. Reserve Bank of Malaŵi authorized to act as depository
6. Regulations

An Act to provide for acceptance by Malaŵi of the international agreements for the establishment and operation of the International Finance Corporation and the International Development Association and to provide for matters related thereto or connected therewith 9 of 1965

[26TH FEBRUARY, 1965]

WHEREAS on the 11th day of April, 1955, and on the 26th day of January, 1960, respectively, the Executive Directors of the International Bank for Reconstruction and Development approved Articles of the following respective Agreements, that is to say—

(*a*) an agreement (hereafter in this Act referred to as "the Finance Corporation Agreement"), which term shall be taken to include all subsequent amendments thereof, for the establishment and operation of an international body to be known as the International Finance Corporation (hereafter in this Act referred to as "the Corporation"); and

(*b*) an agreement (hereafter in this Act referred to as "the Development Association Agreement"), which term shall be taken to include all subsequent amendments thereof, for the establishment and operation of an international body to be called the International Development Association (hereafter in this Act referred to as "the Association"):

AND WHEREAS copies of the text of the articles of the Finance Corporation Agreement and the Development Association Agreement have been laid before the National Assembly:

AND WHEREAS it is expedient that Malaŵi becomes a member of the Corporation and of the Association and that provision be made for acceptance by Malaŵi of the Finance Corporation Agreement and the Development Association Agreement and for carrying out the obligations of Malaŵi thereunder:

NOW, THEREFORE, be it enacted by the Parliament of Malaŵi—

Short title

1. This Act may be cited as the International Finance Corporation and the International Development Association Agreements Act.

Interpretation

2. In this Act, unless the context otherwise requires, ''Minister'' means the Minister for the time being responsible for the administration of the Act.

Acceptance of Agreements

3. The Minister, or such person as may be authorized by him in that behalf in writing shall be empowered on behalf of the Government of Malaŵi—

(*a*) to sign the Articles of the Finance Corporation Agreement and the Articles of the Development Association Agreement respectively; and

(*b*) to deposit with the International Bank for Reconstruction and Development instruments of acceptance of the Finance Corporation Agreement and of the Development Association Agreement stating that the Government of Malaŵi accepts in accordance with its law the respective Agreements and the terms and conditions prescribed under the Resolution of the Board of Governors of the Corporation relating to membership of Malaŵi in the Corporation and under the Resolution of the Board of Governors of the Association relating to membership of Malaŵi in the Association as the terms upon which the Government of Malaŵi shall be admitted to membership of the Corporation and of the Association.

Financial and other provisions

4.—(1) There shall be charged on and paid out of the Consolidated Fund without further appropriation than this Act—

(*a*) all payments required to be made from time to time to the Corporation under the Finance Corporation Agreement and the Resolution of the Board of Governors of the Corporation relating to membership of Malaŵi in the Corporation; and

(*b*) all payments required to be made from time to time to the Association under the Development Association Agreement and the Resolution of the Board of Governors of the Association relating to membership of Malaŵi in the Association.

(2) The Minister may, on behalf of the Government, create and issue to the Association such non-interest-bearing and non-negotiable notes or other obligations as are provided for by section 2 (e) of Article II of the Development Association Agreement, and any payments in respect of any such notes or obligations so created and issued shall be charged on and paid out of the Consolidated Fund.

(3) For the purpose of providing any sums required for making any payments under this section, the Minister may, on behalf of the Government, raise loans by the creation and issue of securities bearing such rates of interest and subject to such conditions as to repayment, redemption or otherwise as he may think fit and the principal and interest of such securities and the charges and expenses incurred in connection with their issue shall be charged on and paid out of the Consolidated Fund.

(4) Any moneys received by the Government from the Corporation or the Association or raised under subsection (3) shall be paid into and form part of the Consolidated Fund and shall be available in any manner in which moneys from that Fund are available.

(5) The provisions of the Finance Corporation Agreement and the Development Association Agreement set out in the Schedule to this Act shall have the force of law in Malaŵi:

Provided that nothing in section 9 of Article VI of the Finance Corporation Agreement or in section 9 of Article VIII of the Development Association Agreement shall be construed as—

(*a*) entitling the Corporation or the Association to import goods free of customs duty without any restrictions on their subsequent sale in the country to which they were imported;

(*b*) conferring on the Corporation or the Association any exemption from duties or taxes which form part of the price of goods sold; or

(*c*) conferring on the Corporation or the Association exemption from taxes or duties which are in fact no more than charges for services rendered.

Reserve Bank of Malaŵi authorized to act as depository

5. The Reserve Bank of Malaŵi shall become a depository of the Corporation in application of section 9 of Article IV of the Finance Corporation Agreement, and a depository of the Association in application of section 9 of Article VI of the Development Association Agreement.

Regulations

6. The Minister may make such regulations as he may deem necessary or expedient to carry out the obligations of Malaŵi under the Finance Corporation Agreement, the Development

Association Agreement and the Resolutions in accordance with those Agreements on Malaŵi's membership in the Corporation and the Association.

s. 4 (5)

SCHEDULE

Provisions of Agreements Which are to have the Force of Law

THE FINANCE CORPORATION AGREEMENT

Article VI—Status, Immunities and Privileges

Section 2. Status of the Corporation

The Corporation shall possess full juridical personality, and in particular, the capacity—

(i) to contract;

(ii) to acquire and dispose of immovable and movable property;

(iii) to institute legal proceedings.

Section 3. Position of the Corporation with regard to judicial process

Actions may be brought against the Corporation only in a court of competent jurisdiction in the territories of a member in which the Corporation has an office, has appointed an agent for the purpose of accepting service or notice of process, or has issued or guaranteed securities. No actions shall, however, be brought by members or persons acting for or deriving claims from members. The property and assets of the Corporation shall, wheresoever located and by whomsoever held, be immune from all forms of seizure, attachment or execution before the delivery of final judgment against the Corporation.

Section 4. Immunity of assets from seizure

Property and assets of the Corporation, wherever located and by whomsoever held, shall be immune from search, requisition, confiscation, expropriation or any other form of seizure by executive or legislative action.

Section 5. Immunity of archives

The archives of the Corporation shall be inviolable.

Section 6. Freedom of assets from restrictions

To the extent necessary to carry out the operations provided for in this Agreement and subject to the provisions of Article III, section 5, and the other provisions of this Agreement, all property and assets of the Corporation shall be free from restrictions, regulations, controls and moratoria of any nature.

Section 7. Privilege for communications

The official communications of the Corporation shall be accorded by each member the same treatment that it accords to the official communications of other members.

Section 8. Immunities and privileges of officers and employees.

All Governors, Directors, Alternates, officers and employees of the Corporation—

(i) shall be immune from legal process with respect to acts performed by them in their official capacity;

(ii) not being local nationals, shall be accorded the same immunities from immigration restrictions, alien registration requirements and national service obligations and the same facilities as regards exchange restrictions as are accorded by members to the representatives, officials and employees of comparable rank of other members;

(iii) shall be granted the same treatment in respect of travelling facilities as is accorded by members to representatives, officials and employees of comparable rank of other members.

Section 9. Immunities from taxation

(*a*) The Corporation, its assets, property, income and its operations and transactions authorized by this Agreement, shall be immune from all taxation and from all Customs duties. The Corporation shall also be immune from liability for the collection or payment of any tax or duty.

(*b*) No tax shall be levied on or in respect of salaries and emoluments paid by the Corporation to Directors, Alternates, officials or employees of the Corporation who are not local citizens, local subjects or other local nationals.

(*c*) No taxation of any kind shall be levied on any obligation or security issued by the Corporation (including any dividend or interest thereon) by whomsoever held—

(i) which discriminates against such obligation or security solely because it is issued by the Corporation; or

(ii) if the sole jurisdictional basis for such taxation is the place or currency in which it is issued, made payable or paid, or the location of any office or place of business maintained by the Corporation.

(*d*) No taxation of any kind shall be levied on any obligation or security guaranteed by the Corporation (including any dividend or interest thereon) by whomsoever held—

(i) which discriminates against such obligation or security solely because it is guaranteed by the Corporation; or

(ii) if the sole jurisdictional basis for such taxation is the location of any office or place of business maintained by the Corporation.

THE DEVELOPMENT ASSOCIATION AGREEMENT

Article VIII—Status, Immunities and Privileges

Section 2. Status of the Association

The Association shall possess full juridical personality and, in particular, the capacity—

(i) to contract;

(ii) to acquire and dispose of immovable and movable property;

(iii) to institute legal proceedings.

Section 3. Position of the Association with regard to judicial process

Actions may be brought against the Association only in a court of competent jurisdiction in the territories of a member in which the Association has an office, has appointed an agent for the purpose of accepting service or notice of process, or has issued or guaranteed securities. No actions shall, however, be brought by members or persons acting for or deriving claims from members. The property and assets of the Association shall, wheresoever located and by whomsoever held, be immune from all forms of seizure, attachment or execution before the delivery of final judgment against the Association.

Section 4. Immunity of assets from seizure

Property and assets of the Association, wherever located and by whomsoever held, shall be immune from search, requisition, confiscation, expropriation or any other form of seizure by executive or legislative action.

Section 5. Immunity of archives

The archives of the Association shall be inviolable.

Section 6. Freedom of assets from restrictions

To the extent necessary to carry out the operations provided for in this Agreement and subject to the provisions of this Agreement, all property and assets of the Association shall be free from restrictions, regulations, controls and moratoria of any nature.

Section 7. Privilege for communications

The official communications of the Association shall be accorded by each member the same treatment that it accords to the official communications of other members.

Section 8. Immunities and privileges of officers and employees

All Governors, Executive Directors, Alternates, officers and employees of the Association—

(i) shall be immune from legal process with respect to acts performed by them in their official capacity except when the Association waives this immunity;

(ii) not being local nationals, shall be accorded the same immunities from immigration restrictions, alien registration requirements and national service obligations and the same facilities as regards exchange restrictions as are accorded by members to the representatives, officials and employees of comparable rank of other members;

(iii) shall be granted the same treatment in respect of travelling facilities as is accorded by members to representatives, officials and employees of comparable rank of other members.

Section 9. Immunities from taxation

(*a*) The Association, its assets, property income and its operations and transactions authorized by this Agreement, shall be immune from all taxation and from all Customs duties. The Association shall also be immune from liability for the collection or payment of any tax or duty.

(*b*) No tax shall be levied on or in respect of salaries and emoluments paid by the Association to Executive Directors, Alternates, officials or employees of the Association who are not local citizens, local subjects or other local nationals.

(*c*) No taxation of any kind shall be levied on any obligation or security issued by the Association (including any dividend or interest thereon) by whomsoever held—

(i) which discriminates against such obligation or security solely because it is issued by the Association; or

(ii) if the sole jurisdictional basis for such taxation is the place or currency in which it is issued, made payable or paid, or the location of any office or place of business maintained by the Association.

(*d*) No taxation of any kind shall be levied on any obligation or security guaranteed by the Association (including any dividend or interest thereon) by whomsoever held—

(i) which discriminates against such obligation or security solely because it is guaranteed by the Association; or

(ii) if the sole jurisdictional basis for such taxation is the location of any office or place of business maintained by the Association.

AFRICAN DEVELOPMENT BANK

CHAPTER 40:04

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CHAPTER 40:04

AFRICAN DEVELOPMENT BANK

ARRANGEMENT OF SECTIONS

SECTION
1. Short title
2. Malaŵi's accession to the Bank Agreement
3. Financial provision
4. Certain provisions of the Bank Agreement to have force of law

FIRST SCHEDULE
SECOND SCHEDULE

An Act to provide for Malaŵi's accession to the African Development Bank Agreement, to provide for the carrying out of Malaŵi's obligations arising under the agreement and for matters related thereto or connected therewith 16 of 1968

[26TH JULY, 1968]

WHEREAS at the Conference of African Finance Ministers held at Khartoum in the Sudan in July and August, 1963, there were drawn up Articles of an Agreement (hereinafter referred to as the Bank Agreement which term shall include all subsequent amendments to the Bank Agreement) for the establishment and operation of the African Development Bank (hereinafter referred to as the Bank):

AND WHEREAS on the 25th July, 1966, Malaŵi acceded to the Bank Agreement and acquired full membership status in the Bank with effect from the 1st August, 1966:

AND WHEREAS Malaŵi's instrument of accession has been deposited with the Secretary General of the United Nations and Malaŵi has paid to the Bank the first two instalments of its paid-up subscription totalling $150,000.

NOW, THEREFORE BE IT ENACTED by the Parliament of Malaŵi as follows—

1. This Act may be cited as the African Development Bank Act. Short title

2. The accession of Malaŵi to the Bank Agreement is hereby ratified, and the payment of the first two instalments of Malaŵi's paid-up subscription as set out in the First Schedule is approved. Malaŵi's accession to the Bank Agreement

Financial provision

3.—(1) There shall be charged on and paid out of the Consolidated Fund without further appropriation than this Act all payments required to be made from time to time by the Government to the Bank under the terms of the Bank Agreement and in accordance with the resolution of the Board of Governors of the Bank relating to the membership of Malaŵi in the Bank.

(2) The payments referred to in subsection (1) include payments of the instalments of Malaŵi's paid-up subscription to the Bank, as set out in the First Schedule and all administrative costs arising out of such payments to the Bank.

Certain provisions of the Bank Agreement to have force of law

4. The provisions of the Bank Agreement set out in the Second Schedule shall have the force of law in Malaŵi:

Provided that nothing in the Bank Agreement shall be construed as—

(*a*) entitling the Bank to import goods free of customs duty without any restrictions on their subsequent sale in Malaŵi;

(*b*) conferring on the Bank any exemption from duties or taxes which form part of the price of goods sold;

(*c*) conferring on the Bank exemption from taxes or duties which are in fact no more than charges for services rendered.

ss. 2 and 3

FIRST SCHEDULE

Instalments of Malaŵi's Paid-up Subscription

	U.S.Dollars
First Instalment (already paid) 5 %.	50,000
Second Instalment (already paid) 10% August, 1967	100,000
Third Instalment 15% payable August, 1968	150,000
Fourth Instalment 20% payable August, 1969	200,000
Fifth Instalment 25 % payable August, 1970	250,000
Sixth Instalment 25% payable August, 1971	250,000
TOTAL	$1,000,000

s. 4

SECOND SCHEDULE

Provisions of the Bank Agreement which are to have the force of law in Malaŵi.

Article 23—General Powers

In addition to the powers provided elsewhere in this Agreement, the Bank shall have power to—

(*a*) borrow funds in member countries or elsewhere, and in that connexion to furnish such collateral or other security as it shall determine, provided always that:

(i) before making a sale of its obligations in the market of a member, the Bank shall have obtained its approval;

(ii) where the obligations of the Bank are to be denominated in the currency of a member, the Bank shall have obtained its approval; and

(iii) where the funds to be borrowed are to be included in its ordinary capital resources, the Bank shall have obtained, where appropriate, the approval of the members referred to in subparagraphs (i) and (ii) of this paragraph that the proceeds may be exchanged for any other currency without any restrictions;

(*b*) buy and sell securities the Bank has issued or guaranteed or in which it has invested, provided always that it shall have obtained the approval of any member in whose territory the securities are to be bought or sold;

(*c*) guarantee or underwrite securities in which it has invested in order to facilitate their sale;

(*d*) invest funds not needed in its operations in such obligations as it may determine and invest funds held by the Bank for pensions or similar purposes in marketable securities;

(*e*) undertake activities incidental to its operations such as, among others, the promotion of consortia for financing which serves the purpose of the Bank and comes within its functions;

(*f*) (i) provide all technical advice and assistance which serve its purpose and come within its functions; and

(ii) where expenditure incurred by such a service is not re-imbursed, charge the net income of the Bank therewith and, in the first five years of its operations, use up to one per cent. of its paid-up capital on such expenditure; provided always that the total expenditure of the Bank on such services in each year of that period does not exceed one-fifth of that percentage; and

(*g*) exercise such other powers as shall be necessary or desirable in furtherance of its purpose and functions, consistent with the provisions of this Agreement.

Article 24—Special Borrowing Powers

(1) The Bank may request any member to loan amounts of its currency to the Bank in order to finance expenditure in respect of goods or services produced in the territory of that member for the purpose of a project to be carried out in the territory of another member.

(2) Unless the member concerned invokes economic and financial difficulties which, in its opinion, are likely to be provoked or aggravated by the granting of such a loan to the Bank, that member shall comply with the request of the Bank. The loan shall be made for a period to be agreed with the Bank, which shall be in relation to the duration of the project which the proceeds of that loan are designed to finance.

(3) Unless the member agrees otherwise, the aggregate amount outstanding in respect of its loans made to the Bank pursuant to this Article shall not, at any time, exceed the equivalent of the amount of its subscription to the capital stock of the Bank.

(4) Loans to the Bank made pursuant to this Article shall bear interest, payable by the Bank to the lending member, at a rate which shall correspond to the average rate of interest paid by the Bank on its borrowings for Special Funds during a period of one year preceding the conclusion of the loan agreement. This rate shall in no event exceed a maximum rate which the Board of Governors shall determine from time to time.

(5) The Bank shall repay the loan and pay the interest due in respect thereof, in the currency of the lending member or in a currency acceptable to the latter.

(6) All resources obtained by the Bank by virtue of the provisions of this Article shall constitute a Special Fund.

ARTICLE 27—USE OF CURRENCIES

(1) Members may not maintain or impose any restrictions on the holding or use by the Bank or by any recipient from the Bank, for payments anywhere, of the following—

(*a*) gold or convertible currencies received by the Bank in payment of subscriptions to the capital stock of the Bank from its members;

(*b*) currencies of members purchased with the gold or convertible currencies referred to in the preceding subparagraph;

(*c*) currencies obtained by the Bank by borrowing, pursuant to paragraph (2) of Article 23 of this Agreement, for inclusion in its ordinary capital resources;

(*d*) gold or currencies received by the Bank in payment on account of principal, interest, dividends or other charges in respect of loans or investments made out of any of the funds referred to in subparagraphs (a) to (c) or in payment of commissions or fees in respect of guarantees issued by the Bank; and

(*e*) currencies, other than its own, received by a member from the Bank in distribution of the net income of the Bank in accordance with Article 42 of this Agreement.

(2) Members may not maintain or impose any restrictions on the holding or use by the Bank, or by any recipient from the Bank, for payments anywhere, of currency of a member received by the Bank which does not come within the provisions of the preceding paragraph, unless—

(*a*) that member declares that it desires the use of such currency to be restricted to payments for goods or services produced in its territory; or

(*b*) such currency forms part of the special resources of the Bank and its use is subject to special rules and regulations.

(3) Members may not maintain or impose any restrictions on the holding or use by the Bank, for making amortization or anticipatory payments or for repurchasing—in whole or in part—its obligations, of currencies received by the Bank in repayment of direct loans made out of its ordinary capital resources.

(4) The Bank shall not use gold or currencies which it holds for the purchase of other currencies of its members except—

(*a*) in order to meet its existing obligations; or

(*b*) pursuant to a decision of the Board of Directors adopted by a two-thirds majority of the total voting power of the members.

Article 28—Maintenance of Value of the Currency Holdings of the Bank

(1) Whenever the par value of the currency of a member is reduced in terms of the unit of account defined in paragraph (1) (*b*) of Article 5 of this Agreement, or its foreign exchange value has, in the opinion of the Bank, depreciated to a significant extent, that member shall pay to the Bank within a reasonable time an amount of its currency required to maintain the value of all such currency held by the Bank, excepting currency derived by the Bank from its borrowing.

(2) Whenever the par value of the currency of a member is increased in terms of the said unit of account, or its foreign exchange value has, in the opinion of the Bank, appreciated to a significant extent, the Bank shall pay to that member within a reasonable time an amount of that currency required to adjust the value of all such currency held by the Bank, excepting currency derived by the Bank from its borrowing.

(3) The Bank may waive the provisions of this Article where a uniform proportionate change in the par value of the currencies of all its members takes place.

Article 51—Status of Bank

In the territory of each member the Bank shall possess full juridical personality and, in particular, full capacity—

(*a*) to contract;

(*b*) to acquire and dispose of immovable and movable property; and

(*c*) to institute legal proceedings.

Article 52—Position of Bank With Regard to Judicial Proceedings

(1) The Bank shall enjoy immunity from every form of legal process except in cases arising out of the exercise of its borrowing powers when it may be sued only in a court of competent jurisdiction in the territory of a member in which the Bank has its principal office, or in the territory of a member or non-member State where it has appointed an agent for the purpose of accepting service or notice of process or has issued or guaranteed securities. No actions shall, however, be brought by members or persons acting for or deriving claims from members.

(2) The property and assets of the Bank shall, wherever located and by whomsoever held, be immune from all forms of seizure, attachment or execution before the delivery of final judgment against the Bank.

Article 53—Immunity of Assets and Archives of Bank

(1) Property and assets of the Bank, wherever located and by whomsoever held, shall be immune from search, requisition, confiscation, expropriation or any other form of taking or foreclosure by executive or legislative action.

(2) The archives of the Bank and, in general, all documents belonging to it, or held by it, shall be inviolable, wherever located.

Article 54—Freedom of Bank Assets From Restriction

To the extent necessary to carry out the purpose and functions of the Bank and subject to the provisions of this Agreement, all property and other assets of the Bank shall be exempt from restrictions, regulations, controls and moratoria of any nature.

Article 55—Privilege for Communications of Bank

Official communications of the Bank shall be accorded by each member the same treatment that it accords to the official communications of other members.

Article 56—Personal Immunities and Privileges

(1) All governors, directors, alternates, officers and employees of the Bank—

(i) shall be immune from legal process with respect to acts performed by them in their official capacity;

(ii) where they are not local nationals, shall be accorded the same immunities from immigration restrictions, alien registration requirements and national service obligations, and the same facilities as regards exchange regulations as are accorded by members to the representatives, officials and employees of comparable rank of other members; and

(iii) shall be granted the same treatment in respect of travelling facilities as is accorded by members to representatives, officials and employees of comparable rank of other members.

(2) Experts and consultants performing missions for the Bank shall be accorded such immunities and privileges as are, in the opinion of the Bank, necessary for the independent exercise of their functions during the period of their mission, including the time spent on journeys in connexion therewith.

Article 57—Exemption of Bank from Taxation

(1) The Bank, its property, other assets, income and its operations and transactions, shall be exempt from all taxation and from all customs duties. The Bank shall also be exempt from any obligation relating to the payment, withholding or collection of any tax or duty.

(2) No tax shall be levied on or in respect of salaries and emoluments paid by the Bank to directors, alternates, officers and other professional staff of the Bank.

(3) No tax of any kind shall be levied on any obligation or security issued by the Bank, including any dividend or interest thereon, by whomsoever held—

(i) which discriminates against such obligation or security solely because it is issued by the Bank; or

(ii) if the sole jurisdictional basis for such taxation is the place or currency in which it is issued, made payable or paid, or the location of any office or place of business maintained by the Bank.

(4) No tax of any kind shall be levied on any obligation or security guaranteed by the Bank, including any dividend or interest thereon, by whomsoever held—

(i) which discriminates against such obligation or security solely because it is guaranteed by the Bank; or

(ii) if the sole jurisdictional basis for such taxation is the location of any office or place of business maintained by the Bank.

ARTICLE 59—APPLICATION OF IMMUNITIES, EXEMPTIONS AND PRIVILEGES

The immunities, exemptions and privileges provided in this Chapter are granted in the interests of the Bank. The Board of Directors may waive, to such extent and upon such conditions as it may determine, the immunities and exemptions provided in Articles 52, 54, 56 and 57 of this Agreement in cases where its action would, in its opinion, further the interests of the Bank. The President shall have the right and the duty to waive the immunity of any official in cases where, in his opinion, the immunity would impede the course of justice and can be waived without prejudice to the interests of the Bank.

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WITHHOLDING TAX-RATE OF DEDUCTION

FIFTEENTH SCHEDULE

SIXTEENTH SCHEDULE

SEVENTEENTH SCHEDULE

An Act to provide for the taxation of incomes and for purposes ancillary thereto

[1st January, 1964]

46 of 1963
12 of 1964 (N)*
19 of 1964
37 of 1964 (N)
10 of 1964 (M)
5 of 1965
33 of 1965
11 of 1966
7 of 1968†
18 of 1968‡
14 of 1969§
16 of 1969
19 of 1969
27 of 1970
14 of 1971
6 of 1972
25 of 1972
15 of 1973
10 of 1975
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1 of 1985
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17 of 2012
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25 of 2016
24 of 2017
G.N. 219/1964(N)
137/1966
194/1967

PART I
PRELIMINARY

Short title

1. This Act may be cited as the Taxation Act.

Interpretation of certain general terms
12 of 1987
1 of 1990
1 of 1991
7 of 1992
10 of 1993
2 of 1994
18 of 1998
6 of 2005
13 of 2006
7 of 2007
29 of 2010
17 of 2012
12 of 2015
25 of 2016

2. In this Act, unless inconsistent with the context—

"adjusted basis", in relation to an asset, means the basis of the asset—

(*a*) in case of corporate shares, other than additional shares, increased by the amount of any contributions to the capital of the corporation made by the taxpayer who owns such shares;

(*b*) in any other case, reduced by the amount of the initial allowance, investment allowance or annual allowance given to the taxpayer in respect of the asset, or increased by the cost of improvements and additions, excluding maintenance or repair costs, made to the asset by the taxpayer;

*Ordinances No. 12 of 1964(N) and No. 19 of 1964(N) came into operation on 1st January, 1964 (*see* Ordinance No. 5 of 1965, s. 18).

†The amendments of this Act sections 17, 26, 39 and 70, in the First Schedule and in the Eleventh Schedule have effect in respect of income tax for the year of assessment ending 31st March, 1968, and subsequent years of assessments. The amendments of this Act in the Appendix to the Eleventh Schedule have effect in respect of income tax for the year of assessment ending 31st March, 1969, and subsequent years of assessment.

‡The amendments of this Act in section 16 and the Fifth Schedule have effect in respect of income tax for the year of assessment commencing 1st April, 1965, and subsequent years of assessment. The amendment of this Act, in section 124 and in the First Schedule have effect in

respect of income tax for the year of assessment commencing 1st April, 1968, and subsequent years of assessment.

§The amendment to section 109 of this Act is deemed to have come into operation on the 1st of April, 1963. The amendments made by the Act to section 105 and the First Schedule have effect for the year of assessment commencing on the 1st April, 1967, and all subsequent years. The provisions of the new section 29 added by the Act apply for the year of assessment commencing on the 1st of April, 1969. The amendment by section 22 (the repeal and re-enactment of Part X—Appeals—is effective from 1st May, 1969). Other amendments effected by the Act apply to the year of assessment commencing on the 1st of April, 1969, and subsequent years.

The amendments effected by this Act to sections 26, 28, 39, 72, 73 and to the Eleventh Schedule apply for the year of assessment commencing on the 1st of April, 1970, and all subsequent years. The amendment to paragraph 3 of the Third Schedule is deemed to have applied for the year of assessment commencing on the 1st of April, 1968, and to all subsequent years. The amendment to paragraph 2 of the Fifth Schedule is deemed to have applied to the year of assessment commencing on the 1st of April, 1963, and for all subsequent years. The amendments to the Second Schedule and to paragraph 1 (*c*) and 1 (*d*) of the Eleventh Schedule apply for the year of assessment commencing on the 1st of April, 1969, and all subsequent years. The amendments to section 61 of the Principal Act, paragraph (*b*) of the First Schedule, subparagraph (1) (*b*) of the Eleventh Schedule, and the insertion of a new section 62, and the provision to subparagraph (ix) of the First Schedule are effective from 1st August, 1969.

The amendments effected by this Act to section 56 and the First Schedule apply for the year of assessment commencing on the 1st of April, 1970, and all subsequent years, save that the amendment which inserted paragraph (ii) immediately following paragraph (i) is deemed to have come into operation on the 1st of July, 1966.

The amendment to section 105 (6) effected by this Act is deemed to have come into operation on the 1st of April, 1967. The amendment to section 58 (3) by this Act is effective from 1st April, 1970, save any balance of expenditure remaining in respect of water conservation works carried out in previous years is to be allowed in the assessment made for the year ending 31st March, 1971. The amendment to paragraph 1 (*d*) (ii) of the Twelfth Schedule effected by this Act is deemed to have applied for the year of assessment commencing on the 1st of April, 1970, and all subsequent years of assessment. The amendments effected by this Act to sections 40 and 56, the Second Schedule and the Eleventh Schedule Part 1 (Appendix) shall come, or be deemed to have come into operation for the year of assessment commencing on the 1st of April, 1971, and all subsequent years of assessment.

"agent" includes any partnership, company or any other body of persons, corporate or unincorporated, when acting as an agent;

"amount realized"—

(*a*) in the case of disposal of an asset by sale for cash, means the case received or contracted to be received;

(*b*) in the case of an exchange of the asset for other property, means that open market price of such other property received on the date of the exchange;

(*c*) in the case of an asset which is subject to a debt which is forgiven or assumed by another upon disposal of the asset, includes the amount of such debt; and

(*d*) in the case of an asset disposed of without any consideration, including disposal by gift, bequest or as a corporate distribution with respect to shares, means the open market price of the asset so disposed of on the date of disposal;

"assessable income" means assessable income as defined in section 11;

"assessed loss" means any amount by which the amounts allowed to be deducted under Part III, Division 2, and Part IV, from assessable income (as defined in Part III, Division 1) of any person exceed such income;

"bank rate" means the rate of interest which the Reserve Bank of Malaŵi charges on its loans to commercial banks; 12 of 2015

"basis", in relation to an asset, means (except as otherwise specified in this Act)— 10 of 1993 6 of 2005 13 of 2006 7 of 2007

(*a*) in the case of an asset purchased or constructed by the taxpayer, the cost of that asset;

(*b*) in the case of any other asset, the open market price of the asset on the date of its acquisition by the taxpayer:

Provided that the basis of any capital asset held by the taxpayer, other than an asset used in trade or business and in respect of which an initial allowance, investment allowance or annual allowance has been granted under this Act, shall—

(i) be equal to its basis as determined in paragraph (*a*) or (*b*) adjusted by the consumer price index, published by the National Statistical Office at the date of disposal of the asset and applicable to the year in which the purchase or the construction of the asset was effected or completed, as the case may be; or

(ii) where the taxpayer so opts, be equal to the valuation value as of April 1, 1992, which was submitted to and accepted by the Commissioner by 30th September, 1995, adjusted by the Consumer Price Index published by the National Statistical Office at the date of disposal of the asset;

"beneficiary with a vested right" in relation to income the subject of a trust created by a trust instrument, means a person named or identified in the trust instrument who has at the time the income is derived an immediate certain right to the present or future enjoyment of the income;

17 of 2012 "business asset" means an asset which is used or is held ready for use in a business, and includes any asset which is held for sale in a business, but does not include shares, treasury bills, bonds, debentures and any other investment assets;

"capital asset" means all property held by the taxpayer, whether or not connected with a trade or business, excluding—

(*a*) stock in trade and property held primarily for sale to customers in the course of business, including timber and crops or other plants grown primarily for sale; and

(*b*) receivable accounts or notes acquired in the course of business in exchange for services rendered or property described in paragraph (*a*);

"capital gain" means the excess of the amount realized on disposal of a capital asset over its adjusted basis or, where there is no adjusted basis, over its basis;

"capital loss" means the excess of the adjusted basis, or where there is no adjusted basis the excess of the basis, of a capital asset over the amount realized on disposal of the capital asset;

''child'' includes a step-child, a lawfully adopted child, and a child for whom by custom an individual is responsible;

''collector'' means a person other than a tax authority to whom the Commissioner has delegated any of the functions conferred or imposed upon the Commissioner by this Act;

12 of 2015 "commercial rate of interest" means the average rate of interest at which commercial banks lend money to the public;

"company" includes any association wheresoever incorporated;

12 of 2015 "debt" means the total of long term or short term interest bearing loans, or non-interest bearing loans or trade credit;

25 of 2016 "derivative transaction'' means a financial instrument or other contract within the scope of Accounting Standard IAS 9 and with all three of the following characteristics—

(*a*) its value changes in response to the change in an underlying measure (the underlying) which may be a specified interest rate, a financial instrument price, a commodity price, a foreign exchange rate, an index of prices or rates, a credit rating or credit index, or another variable, provided that if it is a non-financial variable then the variable is not specific to a party to the contract;

(*b*) it requires no initial net investment or an initial net investment that is smaller than the potential response of its value to changes in market factors; and

(*c*) it is settled at a future date;

"disposal" in relation to an asset, means the transfer of ownership of the asset by any means whatsoever, including, but not limited to, sale, gift, bequest, distribution or exchange;

"dividend" means any distribution, whether in cash or in property by a company to a shareholder thereof with respect to the shareholder's interest in the company, other than distributions in complete liquidation of the company or bonus shares as described in section 70C and for purposes of this Act the existence of a dividend shall be determined without regard to whether or not the company has current or accumulated profits; 10 of 1993

"earnings" means the total amount in cash paid at a rate which does not exceed K1,400 per annum received by or accrued to or in favour of an employee in respect of work done or services rendered in Malaŵi, and whether paid or payable daily, weekly, monthly or at other intervals, including any cash paid in lieu of notice to terminate employment, but excluding any amount received as a war disability pension or widow's war pension, or as an old age pension paid out of public funds or as an award, benefit, or compensation paid under any written law in respect of injury, disease or disablement suffered in employment.

"employee or employed person" means any person who has entered into or works under a contract or agreement, expressed or implied, oral or written, for any work or labour whatsoever;

"employer" includes any person or public authority who pays a wage or salary to an employee in Malaŵi;

"equity" refers to— 12 of 2015

(*a*) total share capital including reserves and retained earnings or profits;

(*b*) for a company, its minimum paid-up capital while it existed during the year; and

(*c*) for a trust, the *corpus* of the trust".

"foreign currency" means a currency other than the Malaŵi currency;

"foreign currency asset" means an asset denominated in, or the amount of which is otherwise determined by reference to, a foreign currency and includes the notes and coins of such foreign currency;

"foreign currency liability" means a liability denominated in or the amount of which is otherwise determined by reference to a foreign currency and includes the notes and coins of such foreign currency;

"foreign exchange gain" or "foreign exchange loss" means the amount determined in accordance with section 26;

"fringe benefit" means any asset, service or other benefit in kind provided by or on behalf of an employer to an employee, if such benefit includes an element of personal benefit to the employee; and

"fringe benefits tax" means tax payable by employers as provided in section 94A.

"functions" includes powers and duties;

"income" means income as defined in section 11;

18 of 1998 "income tax" means tax payable under this Act;

"income the subject of a trust to which no beneficiary is entitled" means income the subject of a trust created by a trust instrument which—

(*a*) is not paid to or applied to the benefit of—

(i) a beneficiary with a vested right; or

(ii) a person who would but for—

(A) the conferment on the trustee by the trust instrument of a discretion so to pay or apply the income; and

(B) the happening of some event stipulated in the trust instrument other than the exercise of that discretion, be a beneficiary with a vested right; or

(*b*) is not income deemed by virtue to section 72 to have been received or have accrued to or in favour of the person by whom the trust instrument was made; or

(*c*) is not accumulated in terms of the trust instrument for the future benefit of a beneficiary with a vested right;

25 of 2016 "independent personal services" include professional services and other services of an independent character excluding management fees;

"insolvency and bankruptcy" shall be construed in accordance with any enactment in force in Malaŵi relating to insolvency and bankruptcy and as including an assignment to or arrangement or composition with creditors made in terms of any enactment in force in Malaŵi relating to those matters and "insolvent" and "bankrupt" shall be construed accordingly;

2 of 1994 "involuntary conversion", in relation to an asset, means the conversion of an asset by whatever means which, in the opinion of the Commissioner, is beyond the control of the taxpayer, including, but not limited to, destruction in whole or in part, theft, seizure, requisition, condemnation, or threat or imminence of destruction, seizure, requisition or condemnation;

"Malaŵi currency" has the meaning assigned thereto in the Reserve Bank of Malaŵi Act; Cap. 44:02

25 of 2016 "management fees" means payments to a person for any services of an administrative, technical or managerial nature, if such services

make available administrative, technical or managerial knowledge, experience, skills or know-how, and that are not payments to the person as an employee;

"married woman" means a woman married by a law or by custom, who is not a woman referred to in paragraphs (*c*) and (*d*) of the definition of "spouse";

"mineral" includes any valuable crystalline or earthly substance forming part of or found within the earth and produced or deposited there by natural agencies but does not include any clay (other than fire-clay), gravel, sand, stone (other than limestone) or other like substance ordinarily won by the method of surface-working known as quarrying;

"mineral royalty" means the payment for the right to extract minerals from the ground; 25 of 2016

"mining operations" means—

(*a*) any operations for the purpose of winning a mineral from the earth;

(*b*) any operations for the purpose of winning a mineral from any substance or constituent of the earth which are carried on in conjunction with operations referred to in paragraph (*a*) by the person carrying on those operations; and

(*c*) such operations for the purpose of winning a mineral from any substance or constituent of the earth which are not carried on in conjunction with operations referred to in paragraph (*a*) or by a person carrying on those operations as the Commissioner may determine to be mining operations for the purposes of this Act; and "mine" whether used as a noun or a verb, shall be construed accordingly;

"mining permit" means— 25 of 2016

(i) a mineral tenement or an artisanal mineral permit as defined under the Mines and Minerals Act, and includes such a right as may be renewed or varied from time to time; and Cap. 61:01

(ii) where a mining permit covers an area taken from another mining permit while that permit was held by the taxpayer, the area of the other mining permit during the period before the later mining permit was taken from it;

"mining project" means— 25 of 2016

(*a*) the holding of a mining permit; and

(*b*) the conduct of activity under that permit including reconnaissance for, exploration for, and mining operations for minerals and including like operations for clay, sand, gravel, stone, or for any substance commonly won by quarrying; and

(*c*) the financing of any of activities in (*a*) or (*b*) whether by debt or by equity; and

(*d*) the supply by sale or otherwise of anything resulting from those activities or of anything used, created or acquired in those activities;

"minor child" means a child who is under twenty-one years of age and is unmarried;

"open market price", in relation to an asset, means the price which the asset would fetch if sold on the open market at the time of the event in question;

"parent" includes a person liable at law or by custom to maintain a child;

"pension fund" means—

(*a*) a superannuation, pension, widows' or orphans' fund established by any enactment whatsoever, whether in force in Malaŵi or elsewhere;

(*b*) a scheme or fund, other than a fund defined in paragraph (*a*), which the Commissioner approves or is deemed to have approved as a pension fund under section 65;

"period of assessment" means any period in respect of which any tax leviable under this Act is chargeable and includes for the purposes of the charging, levying and collection of tax in respect of any period ended on or before the 31st day of March, 1963, any period in respect of which tax was chargeable under the Income Tax Act, of the former Federation of Rhodesia and Nyasaland;

16 of 1954 (F)

12 of 1987

"permanent establishment" includes an office or other fixed place of business through which business activity is carried on;

18 of 1998
25 of 2016

"person" includes an individual, a partnership, a company, a corporation, a trust, a club, a society, an organization, a public authority, an association and an unincorporated joint venture of persons who are not partners so far as they together have a mining project and, in respect of each mining project that they have, a person is a separate taxpayer from being a taxpayer in any other respect;

12 of 1987

"person resident in Malaŵi" includes—

29 of 2010

(*a*) any individual present in Malaŵi for an aggregate of 183 days or more in any twelve months period commencing or ending in the year of assessment concerned;

(*b*) any trust, estate or partnership established or otherwise organized under any written law of Malaŵi; and

(*c*) any company incorporated in Malaŵi;

"previous law" means any law relating to income tax applicable in the former Nyasaland, or the former Federation of Rhodesia and

Nyasaland, or in Malaŵi, which was in force before the coming into operation of this Act;

"professional services" include independent scientific, literary, artistic, educational or teaching activities as well as the independent activities of physicians, lawyers, engineers, architects, dentists and accountants; 25 of 2016

"provident fund" means a fund approved by the Commissioner as a provident fund under section 65;

"royalty" means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work including cinematograph films, any patent, trade mark, design or model, plan, secret formula or process, or for information concerning industrial, commercial or scientific experience; 25 of 2016

"spouse" does not include—

(*a*) a husband who is separated from his wife under a judicial order or written agreement of separation; or

(*b*) a husband who—

(i) is living apart from his wife; and

(ii) is not wholly maintaining his wife; or

(*c*) a wife who is separated from her husband under a judicial order or written agreement of separation; or

(*d*) a wife who—

(i) is living apart from her husband; or

(ii) is not wholly maintained by her husband;

"statutory corporation" means a body, other than a private society, incorporated by or in terms of a law in force in Malaŵi for special purposes specified in or under the law;

"tax" or "the tax" means the appropriate tax payable under this Act;

"taxpayer" means any person chargeable with tax, and, for the purposes of any provision relating to any return, includes every person required by this Act to furnish such return;

"taxable income" means income as defined in section 28 and is assessable income after deduction of allowable deductions;

"this Act" includes any rules made under this Act;

"trade" includes every profession, trade, business, employment, calling, occupation, or venture, including the letting of any property;

"trustee" includes—

(*a*) the administrator or executor of a deceased estate; and

(*b*) the trustee of an insolvent or bankrupt estate or assignee, person having the conduct of an order of composition or trustee under a deed of arrangement in an insolvent or bankrupt estate; and

(*c*) the legal representative of any individual under a legal disability or other person having, whether in an official or private capacity, the possession, disposal, control or management of the property of an individual under a legal disability; and

(*d*) the person having the administration or control of property subject to a *usufruct, fidei-cummissum* or other limited interest; and "trust;", "property the subject of a trust" and "income the subject of a trust" shall be construed accordingly;

"trust instrument" means a deed, will, contract of settlement or other disposition, including a verbal declaration, by which a trust is created;

"withholding tax" means the amount of tax deductible under section 102A; 1 of 1985

"year of assessment" means any period of twelve months in respect of which the tax leviable under this Act is chargeable.

Commissioner of Taxes G.N. 194/1967

3.—(1) There shall be constituted the office of Commissioner of Taxes (hereinafter referred to as "the Commissioner") which shall be a public office the holder of which shall be charged with the general administration of this Act.

(2) The Commissioner shall at all times conform with the general directions of the Minister.

PART II

Administration

Delegation of functions by Commissioner 14 of 1969

4.—(1) All officers appointed for the purpose of carrying out this Act shall be under the direction and control of the Commissioner and shall perform such duties as the Commissioner may direct, and the Commissioner may, in writing and subject to such limitations as he may think fit, delegate to such officers or to any administrative officer any of the functions conferred or imposed on him by this Act.

(2) Nothing in this section shall be deemed to confer upon any person other than the Commissioner any of the functions of the Commissioner under this section or section 5 or to prevent the exercise of any function by the Commissioner in person and the Commissioner shall have in relation to any act of any

other officer the same powers as if the act had been done by himself.

(3) Any reference in this Act to the Commissioner shall be deemed to include in respect of matters as to which any other officer has exercised any function conferred upon him by this Act a reference to that other officer.

Report by Commissioner

5.—(1) The Commissioner shall furnish to the Minister annually for presentation to the National Assembly a report on the working of this Act.

(2) In such report the Commissioner shall draw attention to any breaches or evasions of this Act which have come under his notice.

Officers to observe secrecy 10 of 1993

6.—(1) For the purposes of this section, ''officer'' means a person who is or has been appointed or employed by the Government, and who by reason of that appointment or employment, or in the course of that employment, may acquire or has acquired information respecting the affairs of any other person, disclosed or obtained under this Act or any previous law and shall include a Special Arbitrator and any assessor appointed under section 98 (3).

14 of 1969

(2) Subject to this section, every officer shall preserve and aid in preserving secrecy with regard to all matters that may come to his knowledge in the performance of his duties in connexion with this Act, and shall not communicate any such matter to any person whomsoever other than the taxpayer concerned, or his lawful representative, nor suffer or permit any person to have access to any records in the possession or custody of the Commissioner except in the performance of his duties under this Act:

Provided that the Commissioner may prepare and publish statistics showing the total amount of income or taxable income received by any class or classes of persons from all or any particular sources during any year of assessment as declared in returns made to the Commissioner.

(3) No officer appointed or employed in carrying out this Act shall be required to produce in any court any return, document or assessment or to divulge or to communicate to any court any matter or thing coming under his notice in the performance of his duties under this Act except as may be necessary for the purposes of carrying this Act into effect or for the purpose of any prosecution for an offence committed in relation to any tax on income:

Provided that nothing in this provision shall prevent such officer from being required to disclose such information relating to any taxpayer as that taxpayer may request or authorize to be disclosed.

(4) Where any agreement or arrangement with any other country with respect to relief for double taxation of income or profit includes provision for the exchange of information with that country for the purpose of implementing that relief or preventing avoidance of tax, the obligations as to secrecy imposed by this section shall not prevent the disclosure of such information to the authorized officers of the Government of such country.

(5) Notwithstanding anything contained in this section the Commissioner shall permit the Auditor General or any officer duly authorized in that behalf by the Auditor General to have such access to any records or documents as may be necessary for the performance of his official duties and the Auditor General and any such officer shall be deemed to be an officer employed in carrying out this Act for the purposes of this section.

(6) The Commissioner and every officer shall, before acting under this Act, take and subscribe, before a magistrate or commissioner for oaths, the appropriate oath of fidelity or secrecy set out in the Ninth Schedule.

(7) Every person who, in contravention of this section or of the true intent of the oath of fidelity or secrecy taken by him and without lawful excuse, reveals to any person whomsoever any matter or thing which has come to his knowledge in the course of his official duties, or suffers or permits any person to have access to any records in the possession or custody of the Commissioner, shall be liable to a fine of K1,000 and to imprisonment for two years. 10 of 1993

(8) Any person who acts in the execution of his office before he has taken the oath prescribed in terms of this section shall be liable to a fine of K20.

7. The Commissioner may from time to time approve the form of returns, claims, statements, notices and all such other forms as may be required for the administration of this Act. Forms 14 of 1969

8. Any notice or document required or authorized under this Act to be served upon any person shall be sufficiently and effectively served— Service of documents

(*a*) if personally served upon him; or

(*b*) if left with some adult person apparently resident at, occupying, or employed at his last known abode, office or place of business in Malaŵi; or

(*c*) if sent by post addressed to such last known place of abode, whether inside or outside of Malaŵi, office or place of business, or to any post office box rented in the name of such person or the employer of such person, in which case the term "post" means registered or unregistered post and, unless the contrary is proved, the service shall be deemed to have been

effected at the time at which the notice would be delivered in the ordinary course of post;

(*d*) if affixed at such last known place of abode, office or place of business in which case such person shall be deemed to have received the notice or document on the fourteenth day after the affixing.

Service of oral notices

9.—(1) Where a collector is of the opinion that by reason of the illiteracy or infirmity of any person, such person would not understand the meaning of any written notice, request, advice, decision, form or other document, he may direct that the substance of such document shall be communicated to such person in such manner as he may deem fit and section 8 shall not apply.

(2) A certificate in the prescribed form by any Chief, SubChief, village headman, or by a messenger in the public service or in the employment of a Chief or a local authority that, in accordance with the direction of a collector, the effect of any such document has been communicated to such person shall be admitted as evidence that such communication was made on the date specified on the certificate without proof of the signature of the person signing it.

Validity of documents

10.—(1) Notices given by the Commissioner under this Act may be signed by any officer authorized by him on his behalf and any notice purporting to be signed by order of the Commissioner shall be as valid and effectual as if signed by himself.

(2) Every form, notice, demand, or other document issued or given by or on behalf of the Commissioner or any other officer authorized under this Act shall be valid if the name of the Commissioner or officer by whom the same is issued or given is printed or written thereon.

PART III

Income

Division 1—*Determination of Assessable Income*

Income and assessable income
7 of 1992

11. The income of a person shall include the total amount in cash or otherwise, including any capital gain, received by or accrued to or in favour of the person in any year or period of assessment from a source within or deemed to be within Malaŵi and his assessable income shall be that income excluding any amount exempt from tax under this Act.

Special circumstances in which income deemed to have accrued

12.—(1) Income shall be deemed to have accrued to a person notwithstanding that such income has been invested, accumulated or otherwise capitalized by him or that such income has not been actually paid over to him but remains due and payable to him or has been credited in an account or re-invested or accumulated or capitalized or otherwise dealt with in his name or on his

behalf, and a complete statement of all such income shall be included by any person in the returns by him under this Act.

(2) Income, other than earned income (as defined in section 73), received by or accrued to or in favour of a married woman shall be deemed to be income received by or accrued to or in favour of her husband. 1 of 1995

13.—(1) There shall be exempt from tax all that income specified in the First Schedule. Exemption *First Schedule*

(2) Where any income is exempt from income tax, the exemption shall be limited to the specified or original recipient of the income and shall not extend to persons receiving payments from that recipient, although the payments may be made wholly or in part out of that income.

(3) The exemption of any income from income tax shall not exempt any person from furnishing any return or information which is required by the Commissioner.

14. [*Repealed by* 17 *of* 2012].

15.—(1) No capital gain and no capital loss shall be recognized for the purposes of this Act in respect of the transfer of any capital asset— Non-recognition of capital gain or capital loss in certain cases 7 of 1992 10 of 1993 5 of 1997 13 of 2006

(*a*) between spouses; or

(*b*) between former spouses; or

(*c*) to a spouse from the estate of a deceased spouse; or

(*d*) to a child from the estate of a deceased parent;

(*e*) from an individual to a trust, 12 of 2015

and the adjusted basis, if any, of such asset in the hands of the transferor shall be the basis of the asset in the hands of the transferee.

(2) No capital gain and no capital loss shall be recognized upon the disposal of the principal residence of an individual and for this purpose an individual shall be taken to have not more than one principal residence at a time, and the determination of the Commissioner with respect to any issue relating to the principal residence of an individual shall be final. 10 of 1993 5 of 1997

15A.—(1) Where an asset of a taxpayer is involuntarily converted— Involuntary conversion of assets 2 of 1994

(*a*) into an asset similar to, or related in service or use to, the asset so converted, no capital gain shall be recognized;

(*b*) into an asset not similar to, or related in service or use to, the asset so converted, or into money, capital gain, if any, shall be recognized, subject to subsections (2) and (3).

(2) Where a taxpayer whose asset has been involuntarily converted makes a valid and timely election and timely acquires an asset that is similar to, or related in service or use to, the asset so converted

(hereinafter referred to as the "qualifying replacement asset"), capital gain, if any, shall be recognized only to the extent that the amount realized as a result of such conversion exceeds the cost of the qualifying replacement asset.

(3) The election by a taxpayer whose asset has been involuntarily converted to limit any capital gain recognized as a result of such conversion shall be valid if the taxpayer, in a timely filed income tax return for the taxable year during which the conversion occurred—

(*a*) briefly describes the type of involuntary conversion;

(*b*) identifies the asset so converted;

(*c*) indicates the adjusted basis of the asset; and

(*d*) states an intention to acquire a qualifying replacement asset.

(4) For purposes of the section—

(*a*) the acquisition of a qualifying replacement asset shall be timely if such acquisition is made within two years after the close of the first year of assessment in which any part of capital gain is realized;

(*b*) the basis of—

(i) a qualifying replacement asset received in the conversion shall be the adjusted basis of the asset so converted, less the open market value of any other asset and any money received by the taxpayer that was not spent on the qualifying replacement asset, plus any capital gain or less any capital loss recognized upon such conversion;

(ii) an asset received in the conversion that does not qualify as a replacement asset shall be equal to its open market value;

(iii) a qualifying replacement asset shall be equal to its cost less the amount of any capital gain not recognized.

(5) Subject to the provisions of this Act, where the basis of the qualifying replacement asset exceeds the adjusted basis of the replaced asset, the investment allowance or the initial allowance shall be claimable on the difference.

(6) This section shall not apply to motor vehicles not used in the business of transporting passengers or goods.

Capital gains on disposal of business assets
13 of 2006
7 of 2007

15B.—(1) Subject to subsection (2), no capital gain shall be recognized on the disposal of a business asset, if the gain has been used to acquire a qualifying replacement asset similar to, or related in service or use to, the asset so disposed.

(2) The taxpayer whose business asset has been disposed of, shall acquire the qualifying replacement asset within eighteen (18) months from the date the disposal occurred and shall declare in his return of income.

Income—payments for services 29 of 2010

***16.**—(1) The income of a taxpayer shall include any amount received or accrued in respect of services rendered or to be rendered whether due and payable under any contract of employment or service or not including any contract gratuity.

29 of 2010

(2) For the purposes of this section—

18 of 1968

"contract gratuity" means a gratuity paid under a written contract of employment upon expiry, termination, renewal or extension of such contract, which is paid to an employee who is not during such employment a member of a pension fund other than a pension fund to which he is a voluntary contributor and in respect of which no contributions are payable by his employer out of which a pension will be paid to such employee in respect of such employment.

(3) No amount paid as a contract gratuity by an employer other than the Government shall be excluded from the assessable income of a taxpayer, unless the provision of the contract providing for the payment of such contract gratuity is similar to and comparable with such provision in contracts between the Government and its employees and has been approved by the Commissioner. The Commissioner shall not approve any provision for the payment of a contract gratuity contained in a contract entered into between a company and any person other than a person—

(*a*) whose time, in the opinion of the Commissioner, is wholly or almost wholly occupied in the service of the company; and

(*b*) who is unable either directly or indirectly to control more than five per centum of the voting rights attaching to all classes of shares of the company.

Assessment to tax for single terminal 17 of 2012

17. A single terminal payment to an employee in lieu of paid leave shall be assessed to tax as if such leave had been taken by the employee immediately after cessation of employment and after he had been paid accordingly.

Sums payable by an employer for expenses of an employee 1 of 1991

18. Any sum paid by an employer to an employee in respect of expenses shall be treated as a prerequisite of the office or employment of that employee and shall be included in the employee's assessable income:

Provided that the employee may claim as a deduction the amount of any such payment as is expended by him wholly and exclusively in performing the duties of his office.

19.–21. [*Repealed by* 1 *of* 1991]

Income—passages

22. Any amount paid by the Government to its employees in respect of or in connexion with leave passages to any country outside Malaŵi and any comparable amounts similarly paid by any other employer under a contract with an employee, which has been approved by the Commissioner, shall not be treated as a benefit within the meaning of section 18.

Premiums

23. There shall be included in income any amount received or accrued from another person as a premium or like consideration paid by such other person for the right to use or occupation of land or buildings or for the right of use of plant or machinery or for the use of any patent, design, trade-mark or copyright or any other property which, in the opinion of the Commissioner is of a similar nature.

Timber sales
14 of 1971

24. Where land is sold or otherwise disposed of for valuable consideration and there is timber growing on such land which, in the opinion of the Commissioner, has been grown as timber for sale, the market selling value as defined in section 50 of such timber at the time such land is sold or so disposed of shall be included in income.

General
7 of 1992

25. There shall be included in income any amount recovered or recouped during the year of assessment in respect of amounts allowed as deduction under division 2 of this Part of this Act or under any previous law whether in that or any previous year of assessment.

Foreign exchange gain and foreign exchange loss
7 of 1968
19 of 1969
5 of 1977
4 of 1982
10 of 1983
1 of 1991
7 of 1992

26.—(1) There shall be included in computing income for the purposes of this Act any foreign exchange gain and any foreign exchange loss, as determined in accordance with subsection (2), which arises from a source in Malaŵi.

(2) The amount of foreign exchange gain or foreign exchange loss shall be determined in accordance with the following formula—

$a \times r1$ minus $a \times r2$,

where

"*a*" is the amount of foreign currency received, paid or otherwise computed with respect to a foreign currency asset or liability in the

**See* section 3 of Act No. 11 of 1966 for transitional provisions in respect of 14 of 1969 contract gratuities in the year of assessment ended 31st March, 1966, and between 1st April and 31st December, 1966.

transaction in which the foreign currency asset or liability is disposed of, converted, repaid, or otherwise eliminated;

"*r*1" is the official rate of exchange for the foreign currency with respect to the Malaŵi currency at the date on which the foreign currency asset or liability was obtained or established by the taxpayer; and

"*r*2" is the official rate of exchange for the foreign currency with respect to the Malaŵi currency at the date of satisfying the transaction.

Income deemed to have accrued in Malaŵi 7 of 1992

27.—(1) An amount shall be deemed to have accrued to any person from a source within Malaŵi whenever it has been received by or has accrued to or in favour of such person—

(*a*) as remuneration for any services rendered or work of labour done by such person in the carrying on in Malaŵi of any trade, whether the payment for such service or work or labour is made or is to be made by a person resident in or out of Malaŵi, and wherever payment for such services or work or labour is made or is to be made;

(*b*) by virtue of any pension or annuity granted to such person by—

(i) any person wheresoever resident; or

(ii) the Government for services rendered, wheresoever payment of such pension or annuity is made and wheresoever the funds from which payment is made are situated:

Provided that—

(i) no pension or annuity shall be deemed to be derived from a source within Malaŵi if the service or employment for which it was granted was performed wholly outside Malaŵi. For the purposes of this proviso the service or employment in respect of which a pension or annuity was granted shall be deemed to have been performed within Malaŵi if the remuneration for the service or employment was deemed to have accrued from a source within Malaŵi by virtue of paragraph (*c*);

(ii) if the service or employment in respect of which any pension or annuity (other than a pension or annuity granted in respect of employment by the Government or any local authority or any statutory corporation) was granted, was performed partly within Malaŵi and partly elsewhere, only a proportionate part of such pension or annuity shall be deemed to be derived from a source within Malaŵi. Such proportionate

part shall be calculated in accordance with the ratio that the period of service or employment within Malaŵi bears to the total period of service or employment in respect of which such pension or annuity was granted;

(*c*) by virtue of any services rendered by such person to the Government or any local authority or any statutory corporation, notwithstanding that such services are rendered outside Malaŵi:

Provided that this provision shall apply only if the person rendering the services is resident outside Malaŵi solely for the purpose of rendering such service;

12 of 1987

(*d*) from a person in or out of Malaŵi who may claim or would otherwise claim a deduction for such amount, in connexion with a permanent establishment in Malaŵi, as remuneration for services rendered or work of labour done, wherever such services, work or labour may have been rendered or done.

(2) Pensions payable to pensioners of the Government of the former Federation of Rhodesia and Nyasaland shall be deemed to arise or not to arise from a source within Malaŵi in accordance with the provisions contained in the Twelfth Schedule.

(3) Any interest paid by reason of the deferment of the payment of any amount or any part of any amount referred to in paragraph (r) of the First Schedule shall be deemed to have accrued from a source within Malaŵi notwithstanding that such interest shall have been paid outside Malaŵi from a source outside Malaŵi.

First Schedule

12 of 1987
7 of 1992

(4) Any dividend attributable to taxable income of a company incorporated in Malaŵi shall be deemed to accrue from source within Malaŵi.

7 of 1992

(5) Any amount incurred, claimed or claimable in connexion with a permanent establishment in Malaŵi shall be deemed to accrue from a source within Malaŵi, regardless of the place of residence of the recipient, or the place of payment, of such amount.

7 of 1992

(6) Any foreign exchange gain or foreign exchange loss realized in connexion with a permanent establishment in Malaŵi or arising in connexion with foreign currency assets or liabilities held in Malaŵi shall be deemed to accrue from a source in Malaŵi.

7 of 1992

(7) Any capital gain or capital loss realized in respect of tangible property located in Malaŵi or property representing an interest in a company incorporated in Malaŵi shall be deemed to accrue from a source within Malaŵi.

12 of 2015

(8) Any interest not charged on a loan by a lender to another person shall be deemed as income to have accrued from a source within Malaŵi.

(9) The Commissioner General shall determine the amount of interest forgone in subsection (8) by using a prevailing Banking lending rate plus five per cent per annum. 12 of 2015

Division 2—Deductions

Determination of Taxable Income

Allowable deductions in determining taxable income 1 of 1991 7 of 1992 1 of 1995

28.—(1) For the purpose of determining the taxable income of any taxpayer, there shall be deducted from the assessable income of such taxpayer the amounts of any expenditure and losses (not being expenditure of a capital nature) wholly and exclusively and necessarily incurred by the taxpayer for the purposes of his trade or in the production of the income.

(2) Where a taxpayer claims to deduct an amount which might be regarded as deductible under two or more headings by virtue of any of the provisions of this Act, he shall not be entitled to claim that such amount shall be deducted more than once but shall elect under which one of these headings he wishes to claim such amount as a deduction.

(3) For the purpose of determining the taxable income of any taxpayer, there shall be deducted from the assessable income of such taxpayer the amount of any capital loss realized by the taxpayer in the year of assessment, but to the extent only of either— 7 of 1992

(*a*) the capital loss; or

(*b*) any capital gain realized by the taxpayer in that year of assessment,

whichever is the lesser:

Provided that any loss realized with respect to an asset used in a trade or business and in respect of which an initial allowance, investment allowance or annual allowance has been given under this Act shall not be subject to the limitation under this subsection but shall be deducted in accordance with subsection (1).

(4) The whole or any part of the capital loss not deducted by reason of the limitation imposed under subsection (3) shall be carried forward to the following year of assessment and shall continue to be so carried forward until fully deducted from the taxpayer's assessable income in accordance with that subsection.

(5) The deduction of any foreign exchange loss shall be subject to the limitation that any realized foreign exchange loss shall not be deductible from assessable income of a taxpayer in the year of assessment to the extent of his unrealized foreign exchange gain which would otherwise be realized if all foreign currency assets and liabilities of the taxpayer were disposed of or satisfied on the last day of the taxpayer's year of

assessment in which the loss was realized, and the whole or part of any such loss which is not deducted by reason of this limitation shall be carried forward to the following year of assessment and continue to be so carried forward until fully deducted from the taxpayer's assessable income in accordance with the limitation imposed by this subsection.

(6) The limitation on the extent of deduction imposed by subsections (3) and (4) shall not apply in respect of the year of assessment in which the taxpayer dies or ceases to exist.

29.–30. [*Repealed by* 10 *of* 1983].

31. [*Repealed by* 4 *of* 1988].

Allowable deductions—repairs

32. Sums actually expended by the taxpayer during the year of assessment for repairs not being expenditure of a capital nature—

(*a*) to any premises or part of premises occupied for the purpose of his trade; or

(*b*) resulting from the letting of property; or

(*c*) of articles, implements, plant, machinery and utensils employed by him for the purpose of his trade,

shall be an allowable deduction.

Allowable deductions—capital allowances 1 of 1991

33. There shall be allowed as a deduction from assessable income capital allowances as provided in the Second Schedule:

Provided that the Minister may, by regulations, determine ceilings of capital allowances deductible in any given year of assessment in respect of certain assets.

Allowable deductions—premiums paid

34.—(1) An allowance shall be made in respect of any premium or consideration in the nature of a premium paid by any taxpayer for the right of use or occupation of land or buildings, or for the right of use of plant or machinery, or for the use of any patent, design, trade-mark, copyright or any other property which, in the opinion of the Commissioner, is of a similar nature, where such land, buildings, plant, machinery, patent, design, trade-mark, copyright, or property is used for the production of income or from which income is derived but such allowance shall not exceed for any year of assessment such portion of the amount so paid as is equal to the amount of the premium or consideration divided by the number of years for which the right of occupation or use is granted:

Provided that—

(*a*) where the period for which the right of occupation or use is granted exceeds 25 years, the deduction shall be one twenty-fifth of such premium or consideration; and

(*b*) where the taxpayer acquires the ownership of land or buildings, plant or machinery, patent, design, trade-mark, or copyright or other property in respect of which an allowance has been made in terms

of this paragraph, then from the date he acquires such ownership he shall cease to be entitled to any allowance under this paragraph in respect thereof.

(2) For the purposes of this section, the amount of any premium or consideration in the nature of a premium shall be reduced by the total amount of any similar allowance made under any previous law.

Mineral royalty allowable deduction 25 of 2016

34A. Sums actually expended by the taxpayer during the year of assessment by way of payment of mineral royalty under section 64A shall be an allowable deduction.

Allowable deductions—bad debts

35. There shall be allowed as a deduction bad debts proved to be such to the satisfaction of the Commissioner and which have become bad during the year of assessment if the amount of the debt is included in the current year of assessment or was included in any previous year in the taxpayer's assessable income either in terms of the Act or any previous law.

Allowable deductions—doubtful debts

36.—(1) There shall be allowed as a deduction doubtful debts to the extent that they are estimated to be doubtful if the amounts of such debts are included in the current year of assessment or were included in the previous year of assessment in the taxpayer's income either in terms of this Act or any previous law. Such allowance shall be included in the income of the taxpayer in the following year. For the first year of assessment under this Act any such allowance made for the last year of assessment in terms of any previous law shall be deemed to have been made in terms of this Act.

(2) Where in any year of assessment a taxpayer receives an amount in respect of a debt for which a deduction has been allowed to him under this Act or any previous law, his assessable income shall include that amount.

Allowable deductions—export allowance Cap. 39:04 4 of 1988 17 of 2012

36A.—(1) There shall be allowed as a deduction an amount (hereinafter referred to as an "export allowance") equivalent to twenty-five *per centum* of the taxable income as determined under section 14 of the Export Incentives Act in respect of exports of non-traditional goods made during the year of assessment.

(2) No deduction of an export allowance shall be made unless the Commissioner is satisfied that the taxable income from which the deduction is to be made has been determined in accordance with the provisions of this Act.

Allowable deductions—payroll levy 9 of 2000 Cap. 55:06

36B. There shall be allowed as a deduction an amount paid by an employer, who is also a taxpayer, as payroll levy determined under section 20 of the Technical, Entrepreneurial and Vocational Education and Training.

Allowable deductions—pension funds and provident funds
14 of 1969

37. There shall be allowed as a deduction—

(*a*) an amount to be determined in accordance with the provisions of the Fifth Schedule in respect of ordinary contributions as defined in that Schedule which are made in the year of assessment to a pension fund;

Fifth Schedule

(*b*) any contribution, other than any ordinary contribution as defined in the Fifth Schedule, by an employer to a pension fund which is made for the purpose of ensuring that the moneys in the fund are sufficient to meet all payments to be made in terms of the rule of the fund:

Provided that the Commissioner may direct that such a contribution by an employer to a pension fund shall be treated as an expense to be spread over such period of years as the Commissioner may determine;

14 of 1969

(*c*) an amount contributed by an employer to a provident fund; and

4 of 1981

Cap. 2:06

(*d*) contributions to the Parliamentary Pensions Premium Fund made by a member of the National Assembly pursuant to section 11 of the Parliamentary Pensions (Enabling Provisions) Act.

Allowable deductions—sale of timber

38. Where income arises from the sale of timber a deduction shall be allowed—

(*a*) in respect of such income from the sale of, or the sale of the right to fell, timber which was growing on the land at the

time of the acquisition of the ownership of such land by the taxpayer, an amount determined as follows—

(i) where such land was acquired by the taxpayer for valuable consideration, so much of the value of such consideration as the Commissioner thinks just and reasonable as representing the cost of the standing timber;

(ii) where no valuable consideration was given by the taxpayer for such land, an allowance fixed by the Commissioner as representing the value of the standing timber at the time that the taxpayer acquired such land;

(iii) where the taxpayer sells the timber the amount to be deducted for any year of assessment shall be the portion attributable to the timber sold during that year; and

(*b*) in respect of income from the sale by the taxpayer of timber, the right to fell and dispose of which was not acquired with the land on which the timber was grown, so much of the consideration for which the timber was acquired as is attributable to the amount of the timber sold by the taxpayer in the year of assessment.

Allowable deductions—research, etc.
1 of 1990
7 of 1992
2 of 1996

39. There shall be allowed as a deduction—

(*a*) the amount of any expenditure, not being expenditure of a capital nature, incurred by the taxpayer during the year of assessment on experiments and research relating to his trade;

(*b*) any sum contributed by the taxpayer during the year of assessment to any scientific or educational society or institution or other body of a public character approved by the Minister if the taxpayer has stipulated that the sum must be utilized by such society, institution, or body, as the case may be, solely for the purpose of industrial research or scientific experimental work connected with the trade of the taxpayer;

(*c*) any sum contributed by the taxpayer during the year of assessment in the form of a grant, bursary, or scholarship to enable any other person to take a course of technical education related to the trade of such taxpayer at any educational institution approved by the Minister;

19 of 1969
7 of 1992

(*d*) individual donations of not less than K250 made during the year of assessment by the taxpayer to any such charitable organization as the Minister may from time to time by notice published in the *Gazette* approve for the purposes of this paragraph; and

2 of 1996

(*e*) individual donations of not less than K500 made during the year of assessment by the taxpayer to any such non-profit institution operated solely or principally for social welfare, civic improvement, educational development, or other similar purposes as the Minister may, from time to time, by notice

published in the *Gazette* approve for the purposes of this paragraph.

Allowable deductions—social contribution 17 of 2012

39A. There shall be allowed as a deduction of fifty *per centum* for any amount paid as a social contribution directly into the building of a public hospital or school, or the sponsoring of youth sporting development activities.

Allowable deductions—annuity payment

40. Any amount paid by way of annuity, allowance or pension during the year of assessment by any taxpayer—

(*a*) to a former employee who has retired from the taxpayer's employ on the grounds of ill-health, infirmity or old age; or

(*b*) to any person who is dependent for his maintenance upon a former employee of such taxpayer or (where such former employee of such taxpayer is deceased) was so dependent immediately prior to his death,

shall be allowed as a deduction:

Provided that the deduction under paragraph (*b*) shall not exceed in respect of persons so dependent on any one retired or deceased employee the sum of K1,200.

Allowable deductions—new businesses initial expenditure

41.—(1) In arriving at the taxable income of a taxpayer derived from a manufacturing business begun on or after the 1st day of April, 1963, there shall be allowed the amount of any expenditure which—

(*a*) is incurred by the taxpayer, not more than eighteen months before beginning the business, in the course of establishing the business; and

(*b*) would have been allowed as a deduction had it been incurred after the beginning of the business.

(2) For the purpose of this section a "manufacturing business" is one carried on in buildings within the definition of industrial building contained in paragraph 8 of the Second Schedule.

41A. [*Repealed by* 24 *of* 2011].

Allowable deductions—transport allowance 7 of 1992 24 of 2011 17 of 2012 G.N. 23/1990 Cap. 39:04

41B. There shall be allowed as a deduction an additional twenty-five *per centum* of the international transport costs incurred by the taxpayer for his exports, whether produced by manufacturing in bond or otherwise, but other than exports of products specified in the Schedule to the Export Incentives (Exclusion) Order, made under the Export Incentives Act.

Allowance of losses—general 6 of 2005 19 of 2013

42. There shall be deducted, from any amount of assessable income, any assessed loss arising solely out of operations in Malaŵi, whether determined under this Act or any previous law, incurred by the taxpayer in any previous year of assessment to the extent to which such assessed loss has not been allowed as a deduction from his income of a previous year of assessment:

Provided that—

(*a*) a deduction under this section shall, as far as possible, be made in the first year of assessment after the year in which the assessed loss was incurred and, in the next year of assessment up to a period of the six years;

(*b*) no person who—

(i) has been adjudged or otherwise declared or has become insolvent or bankrupt; or

(ii) has made a conveyance or assignment of his property or estate for the benefit of his creditors, or an arrangement with his creditors releasing him, wholly or partially from his debts,

shall be entitled to carry forward an assessed loss incurred before the date he was adjudged or otherwise declared or became insolvent or bankrupt or made the conveyance, assignment arrangement, as the case may be; and

(*c*) an assessed loss shall be reduced by the amount or value of any benefit received by, or accruing to, a person resulting from a concession granted by, or a compromise made with, any of his creditors whereby his liabilities have been reduced or extinguished, if such liabilities arose in the ordinary course of operations.

Allowance of losses—change in shareholding in company

43.—(1) If during any year of assessment there is a change in the shareholding of a company with an assessed loss or in the shareholding of a company which directly or indirectly controls any company with an assessed loss and the Commissioner is satisfied that such change has been effected solely or mainly in pursuance of or in connexion with any scheme for taking advantage of such assessed loss no assessed loss incurred prior to that change shall be deductible.

(2) For the purposes of this section a company shall be deemed to be controlled by another company if the majority of the voting rights attaching to all classes of its shares are held directly or indirectly by such other company.

Allowance of losses—formation of new company

44. If a company with an assessed loss (hereinafter referred to as the "old company")—

(*a*) was incorporated outside Malaŵi;

(*b*) carried on its principal business within Malaŵi;

(*c*) is about to be wound up voluntarily in its country of incorporation for the purpose of the transfer of the whole of its business and property wherever situated to a company which will be or has been incorporated under Malaŵi law (hereinafter

referred to as the "new company") for the sole purpose of acquiring the whole of the business and property wherever situated of the old company;

(*d*) the sole consideration for the transfer referred to in paragraph (*c*) will be the issue to the members of the old company of shares in the new company in proportion to their shareholding in the old company; and

(*e*) no shares in the new company will be available for issue to any persons other than members of the old company,

the new company shall be allowed as a deduction after the transfer referred to in paragraph (*c*) has been effected the assessed loss of the old company to the extent to which that assessed loss has not been allowed as a deduction to the old company in a previous year of assessment.

Deductions not to be made
14 of 1969
10 of 1983
1 of 1991

45. No deduction shall in any case be made in respect of any of the following matters—

(*a*) the cost incurred by any taxpayer in the maintenance of himself, his family or establishment;

(*b*) domestic or private expenses of the taxpayer including the cost of travel between the taxpayer's residence and place of work;

(*c*) any loss or expense which is recoverable under any insurance contract or indemnity;

(*d*) tax upon the income of the taxpayer or interest payable thereon whether charged in terms of this Act or any law of any country whatsoever;

(*e*) income carried to any reserve fund or capitalized in any way;

(*f*) any expenses incurred in respect of any amounts received or accrued which are not included in the term "income" as defined in this Act;

(*g*) save as is provided in section 37 any contribution made by a taxpayer to a fund established for the purpose of providing pensions for employees or the windows, children, dependants or nominees of deceased employees or for all or any of those purposes;

14 of 1969

(*h*) save as is provided in section 37 any contribution made by a taxpayer to a fund established for the purpose of providing sickness, accident, unemployment or other benefits for employees or the widows, children or nominees of deceased employees or for all or any of these purposes;

(*i*) any expense in respect of which a subsidy has been or will be received; and

1 of 1991

(*j*) fringe benefits tax and any penalty chargeable thereon.

46. No deduction shall, as regards income derived from any trade, be made in respect of any of the following matters—

Deductions not admissible as regards income derived from trade

(*a*) the rent of, or cost of repairs to, any premises not occupied for the purposes of trade, or any dwelling house or domestic premises, except such part thereof as may be occupied for the purposes of trade;

(*b*) interest which might have been earned on any capital employed in trade.

Division 3—*Stock and Work in Progress*

47.—(1) Where a taxpayer carries on any business, the value, ascertained under this Division, of all trading stock and work in progress on hand at the end of any accounting year shall be taken into account in ascertaining whether or not the taxpayer has a taxable income.

Trading stock and work in progress to be taken into account

(2) Where the value of all trading stock and work in progress on hand at the end of the accounting year exceeds the value of all trading stock or work in progress on hand at the beginning of that year, the assessable income of the taxpayer shall include the amount at the excess.

(3) Where the value of all trading stock and work in progress on hand at the beginning of the accounting year exceeds the value of all trading stock and work in progress on hand at the end of that year, the amount of the excess shall be an allowable deduction.

48. Trading stock and work in progress shall be valued on the basis of the cost price or market selling value of each item of trading stock or of all work in progress, as the case may be, at the end of the accounting year:

Valuation of stock and work in progress at end of year

Provided that, by agreement with the Commissioner, a taxpayer may elect to adopt any basis which conforms to recognized accountancy practice and is not contrary to this Act, but where such basis is elected the election shall be binding for future accounting periods unless the Commissioner otherwise agrees and any change shall be upon such terms and conditions as he may impose.

49. The value of trading stock and work in progress to be taken into account at the beginning of the accounting year shall be its value as ascertained under this Act or any previous law at the end of the immediately preceding accounting year.

Valuation of stock and work in progress at beginning of year

50. For the purpose of this Division—

Definition of cost and market selling value

"cost" means the historical cost of bringing the relevant item of stock to its existing condition and location;

"market selling value" means the expected realizable value of the relevant item of stock in the taxpayer's normal selling market, 14 of 1971

the value of work in progress shall include overhead charges to the extent of the recognized accountancy practice for the type of business.

Domestic consumption

51. The value of trading stock taken by the taxpayer for his domestic or private consumption or use shall be—

(*a*) in the case of non-farming stock an amount equal to the cost price to the taxpayer or the market selling value of such stock at the time the stock was taken, whichever the taxpayer may elect;

(*b*) in the case of farming stock an amount which the Commissioner accepts to be a fair and reasonable valuation at the time such stock was taken.

Gifts and sales

52. Where—

(*a*) the taxpayer disposes by sale, gift or otherwise of property being trading stock, standing or growing crops or trees which have been planted and tended for the purpose of sale; and

(*b*) that property constitutes or constituted the whole or part of the assets of a business which is or was carried on by the taxpayer; and

(*c*) the disposal was not in the ordinary course of carrying on that business,

the market selling value of that property at the date of disposal shall be included in the assessable income of the taxpayer, and the person acquiring that property shall be deemed to have purchased at a price equal to that value.

Valuation of livestock
14 of 1971

53. Livestock shall be valued at cost or market selling value and sections 47 to 52 inclusive shall apply.

Division 4—*Determination of Taxable Income where adequate Books and Records are kept*

Books of accounts

54.—(1) Every person carrying on a business shall keep sufficient records of his income and expenditure to enable his assessable income and allowable deductions to be readily ascertained and shall retain such records for at least seven years after the completion of the transaction, acts or operation to which they relate:

Provided that this subsection shall not require the preservation of any records—

(*a*) in respect of which the Commissioner has notified the taxpayer that their preservation is not required; or

(*b*) of a company which has gone into liquidation and which has been finally dissolved.

14 of 1969

(2) If a taxpayer fails or refuses to keep books or accounts which, in the opinion of the Commissioner, are adequate for the purposes of this Act the Commissioner shall by notice in writing

require such person to keep such records, books and accounts as the Commissioner considers to be adequate in such form and in such language as may be specified in the said notice.

Period of accounts
13 of 2006

55.—(1) Where a taxpayer makes up his accounts for a period of 12 months ending on some day other than the 30th June, the Commissioner may in his discretion accept such accounts for assessment in respect of the assessment year ending the 30th June prior or subsequent to the closing date of such accounts, and no part of such assessment shall be charged to tax in any other year of assessment. Any return in respect of which accounts have been so accepted shall be deemed for all purposes of this Act to be a return for such year of assessment:

Provided that where the accounts of any taxpayer have been accepted for a year or period ending on some date other than the 30th June, either under this Act or any previous law, all subsequent accounts of such taxpayer shall, unless the Commissioner otherwise agrees, and upon such terms and conditions as he may impose, be made up for each succeeding period of 12 months ending on such other date.

(2) Where a taxpayer whose accounts have been accepted in terms of subsection (1) ceases to trade, there shall be returned for assessment accounts which shall include all income which has been received by or accrued to such taxpayer in the period between the closing date of the last accounts so accepted for the immediately preceding year of assessment and the date when such taxpayer ceased to trade.

(3) Where such period exceeds 12 months, separate accounts shall be rendered for a 12-month period ending on the date accepted as the closing date of his accounts under subsection (1) and for the balance of the period in excess of 12 months.

(4) The taxable income determined on the basis of such accounts shall be charged to tax as follows—

(*a*) if the period is in excess of 12 months, the taxable income determined on the basis of the accounts rendered for 12 months as required in terms of subsection (3) shall be deemed to be the taxable income for the year of assessment succeeding that in which the taxable income based on the accounts for the immediately preceding year of assessment was assessed, and the taxable income for the remaining period shall be deemed to be the taxable income of the following year of assessment;

(*b*) if the period is one of less than 12 months, the taxable income based on the accounts rendered in terms of paragraph (*a*) shall be deemed to be the taxable income of the year of assessment succeeding that in which the taxable income based on the accounts for the immediately preceding year was assessed:

Provided that, where a taxpayer has rendered accounts for assessment and the whole or part of the taxable income

determined from such accounts has been charged to tax in more than one year of assessment, either under this Act or under any previous law, then when such taxpayer ceases to operate the taxable income for the last year of assessment shall be reduced by an estimate of the taxable income which has been so charged to tax in more than one year of assessment. If such estimate exceeds the taxable income for the last year of assessment the taxable income for the penultimate year of assessment shall be reduced by the amount of such excess.

The said taxable income shall be assessed as the taxable income of such taxpayer notwithstanding that such taxpayer may not have been in existence during any portion of such year of assessment.

Division 5—Businesses carried on Partly in and Partly out of Malaŵi and Businesses Controlled Abroad

Profits of non-resident persons from sale of exported produce
14 of 1971

56.—(1) Where a non-resident person produces, grows, mines, creates, manufactures, fabricates, improves, packs, preserves, or constructs in whole or in part anything within Malaŵi, and exports the same without sale prior to the export thereof, he shall be deemed to have derived from a source within Malaŵi a taxable income corresponding to the proportionate part of any profit ultimately derived from the sale thereof outside Malaŵi.

(2) The taxpayer shall submit to the Commissioner proposals for the determination of the taxable income deemed to be derived from a source within Malaŵi.

(3) The Commissioner shall consider the proposals submitted under the provisions of subsection (2) and, if he is of the opinion that the taxable income calculated in accordance therewith approaches as closely as possible to that which might be expected to ensure if the general provisions of this Act were applied, he may accept the same, and the taxable income as determined for any year of assessment shall be deemed to be the taxable income of such person or company for that year.

(4) Should no such proposals be submitted, or if the Commissioner is not satisfied with the proposals so submitted, the Commissioner may determine the taxable income in such manner as appears to him most appropriate, having regard to the circumstances of the case.

1 of 1995

(5) Where a person sells, exports, transfers or otherwise disposes of goods, property or services, to a person whether resident or not, who is directly or indirectly related to such person, at a price which is lower than the market value of such goods, property or services, he shall be required to include the market value of such goods, property, or services in his assessable income.

1 of 1995

(6) Where the Commissioner is of the opinion that any goods, property or services have been sold, exported, transferred, or disposed of at a value lower than the market value, the Commissioner may determine the market value of such goods,

property or services in such manner as appears to him appropriate having regard to the circumstances of the case, and shall adjust the taxable income of such person accordingly.

(7) The foregoing provisions of this section shall apply *mutatis mutandis* to the determination of an assessed loss. 1 of 1995

Persons carrying on business which extends beyond Malaŵi

57.—(1) Where the trade of any person, other than a person carrying on the business of insurance, extends to any country outside Malaŵi and the Commissioner is satisfied that it is impossible or impracticable to ascertain the taxable income derived by such person from sources in Malaŵi in the manner otherwise provided in this Act, such person shall submit to the Commissioner proposals for the determination of his taxable income in some alternative manner.

(2) The Commissioner shall consider the proposals submitted in terms of subsection (1) and, if of opinion that the taxable income calculated in accordance therewith approaches as closely as possible to that which might be expected to ensure if the general provisions of this Act were applied, may accept the same, and the taxable income so determined for any year of assessment shall be deemed to be the taxable income of such person or company for that year.

(3) Should no such proposals be submitted, or if the Commissioner is not satisfied with the proposals so submitted, the Commissioner may determine the taxable income in such manner as appears to him most appropriate, having regard to the circumstances of the case.

(4) The foregoing provisions shall apply, *mutatis mutandis*, to the determination of an assessed loss.

PART IV

Special Trades and Cases

Taxation of income derived from farming

58.—(1) Notwithstanding anything contained in this Act, this section shall apply to the determination of the taxable income derived by any person (hereinafter referred to as a "farmer") from pastoral, agricultural, or other farming operations.

(2) There shall be admissible as a deduction in the determination of the taxable income derived by any farmer during any year of assessment expenditure incurred during that year of assessment on—

(*a*) the stumping, levelling and clearing of lands; 27 of 1970

(*b*) works for the prevention of soil erosion;

(*c*) boreholes; 27 of 1970

(*d*) wells;

(*e*) aerial and geophysical surveys;

27 of 1970 (*f*) any water control work in connexion with the cultivation and growing of rice, sugar or such other crop as the Minister may approve.

For the purposes of this paragraph "water control work" includes any canal, channel, dyke, furrow and any flood control structure, whether of a permanent nature or otherwise.

14 of 1971 (3)—(*a*) In this subsection, unless inconsistent with the context—

"expenditure incurred", in relation to the cost of any work done by any other person for which a farmer has become liable in terms of any law relating to natural resources, means the amounts actually paid by him during the year of assessment in respect of such costs;

"water conservation work" means any reservoir, weir, dam or embankment constructed for the impounding of water.

(*b*) Subject to this subsection there shall be admissible as a deduction in the determination of taxable income derived by any farmer any expenditure incurred by him on any water conservation work during the year of assessment, and any amounts paid by him during the year of assessment towards the cost of any water conservation work done by any person for which such farmer has become liable in terms of any Malaŵi law relating to natural resources.

(4)—(*a*) Any farmer who derives taxable income from the growing of timber may elect that such taxable income shall be determined in accordance with the following rules—

(i) the cost of planting the timber shall be carried forward until such time as the timber has reached maturity;

(ii) to the cost of planting mentioned in subparagraph (1) there shall be added annually until the timber has reached maturity an amount (hereinafter called the "fixed percentage") equal to five per centum of such cost;

(iii) whenever timber which has been grown by such farmer is sold, there shall be deducted from the proceeds of such sale a proportionate part of the sum of the cost of planting and the total of the fixed percentage added annually, and the remaining amount shall be included in the taxable income or assessed loss, as the case may be, of such farmer;

(iv) there shall be added to the taxable income or deducted from the assessed loss, as the case may be, of such farmer in each year of assessment the amount of the annual fixed percentage determined under subparagraph (ii);

(v) there shall be deducted from the taxable income or added to the assessed loss, as the case may be, of such farmer all expenditure including deductions made under

sections 33 and 34 and the Second Schedule incurred on the maintenance and upkeep of such timber;

(vi) any election made in terms of this subsection or under any similar provisions of any previous law shall be binding in respect of all subsequent years of assessment and may be made only in respect of timber planted after the 1st day of April, 1950.

(*b*) For the purposes of the first year of assessment under this Act the opening value of any timber to which this subsection applies shall be deemed to be the closing value in the last year of assessment under any previous law.

(5) Notwithstanding any provisions in this Act no expenditure incurred by a farmer shall be allowed as a deduction from assessable income or form the subject of capital allowances to the extent that it has been recovered by means of a subsidy.

Co-operative agricultural societies

59.—(1) The assessable income of any producers' co-operative agricultural society registered under the provisions of any Malaŵi law relating to such society shall be exempt from income tax if such assessable income is derived from transactions or dealings carried out in furtherance of all or any of the objects set out in the Sixth Schedule.

(2) Every producers' co-operative agricultural society registered under any Malaŵi law which is not exempt from income tax on certain of its assessable income under subsection (1) shall submit proposals to the Commissioner for the determination of its taxable income.

(3) The Commissioner shall consider the proposals submitted in terms of subsection (2) and, if of opinion that the taxable income calculated in accordance therewith approaches as closely as possible to that which might be expected to ensue if the general provisions of this Act were applied, may accept the same, and the taxable income so determined for any year of assessment shall be deemed to be the taxable income of such society for that year.

(4) Should no such proposals be submitted, or if the Commissioner is not satisfied with the proposals so submitted, the Commissioner may determine the taxable income in such manner as appears to him most appropriate having regard to the circumstances of the case.

(5) The foregoing provisions shall apply, *mutatis mutandis*, to the determination of an assessed loss.

Consumers' co-operative societies
16 of 1969

60.—(1) The taxable income of any co-operative society other than a co-operative society within section 59 shall be liable to income tax notwithstanding that it arises from transactions of the co-operative society with its members.

19 of 1969

(2) The taxable income of any co-operative society other than one within section 59 shall be deemed to be an amount

equivalent to six and one-quarter per centum of the turnover of such co-operative society and shall be charged at the rate applicable to companies.

(3) No rebate or bonus based on purchases made by a member from a co-operative society to which this section applies shall be included in his assessable income except where the price of such purchases is allowable as a deduction in ascertaining his taxable income of any year of assessment.

(4) For the purposes of this section "turnover" means the total amount in cash or otherwise received by or accrued to the co-operative society in question from the sale of goods or from services rendered.

Clubs, etc., formed, etc., for pleasure or recreation 19 of 1969

61.—(1) The taxable income of any club, society or association formed, organized or operated solely or principally for pleasure or recreation shall be liable to income tax notwithstanding that it arises from transactions of such club, society or association with its members.

19 of 1969

(2) The taxable income of any such club, society or association shall be deemed to be an amount equivalent to six and one-quarter per centum of all receipts by, or accruals to, or in favour of, it from sales of goods, cinematograph performances, stage plays, and gambling machines, and shall be charged at the rate applicable to companies. Receipts and accruals of the kind hereinbefore mentioned may be taken into account in determining the liability under this subsection of any such club, society or association notwithstanding that they are received by, or accrue to, or in favour of, any person in his capacity as a trustee for such clubs, society or association.

(3) For the purposes of this section "stage play" includes any tragedy, comedy, play, opera, farce, revue, variety, burlesque, interlude, melodrama, pantomime, dialogue, prologue, epilogue or other dramatic entertainment.

(4) The Commissioner may make Rules with respect to the assessment, charge, collection and recovery of income tax in respect of all taxable income to which this section applies and, in particular, and without prejudice to the generality of the foregoing power, such Rules may include provision—

(*a*) for determining when such income tax shall be payable;

(*b*) for the production to, and inspection by, persons authorized by the Commissioner of documents and records for the purpose of satisfying themselves that such income tax has been, and is being, paid and accounted for in accordance with the Rules; and

(*c*) for appeals with respect to matters arising under the Rules which would not otherwise be the subject of an appeal.

62. Interest received from a building society registered in Malaŵi shall be included in the assessable income of the recipient.

Building society interest

63.—(1) The taxable income or assessed loss of any person carrying on the business of insurance, other than life assurance, including funeral insurance shall, insofar as it is derived from such business, be determined in accordance with the provisions of the Seventh Schedule:

Insurance business
4 of 1982
10 of 1983
13 of 2006

Seventh Schedule

Provided that where any such person derived income from any source other than insurance, the total taxable income or total assessed loss of such person shall, subject to the special determination of that part thereof which relates to the business of insurance, be determined in accordance with the general provisions of this Act.

(2) Income from investments, including the letting of any property arising from the business of life assurance shall be liable to income tax.

1 of 1985
13 of 2006

64.—If any taxpayer has entered into any agreement with any other person in respect of any property the effect of which is that, in the case of movable property, the ownership shall pass or, in the case of immovable property, transfer shall be effected from the taxpayer to that other person upon or after receipt by the taxpayer of the whole or a certain portion of the amount payable to the taxpayer under the agreement, the whole of that amount shall, for the purposes of this Act, be deemed to have accrued to the taxpayer on the date on which the agreement was entered into:

Hire purchase or other agreements providing for postponement of ownership of property

Provided that—

(*a*) in the case of movable property—

(i) the Commissioner, taking into consideration any allowance he has made under section 35 or section 36 may make such further allowance as under the special circumstances of the trade of the taxpayer seems to him reasonable in respect of all amounts which are deemed to have accrued under such agreement but which have not been received at the close of the taxpayer's accounting period;

(ii) any allowance so made shall be included as assessable income in his return for the following year of assessment and shall form part of the assessable income of the said taxpayer;

(iii) if any such agreement has been ceded or otherwise disposed of for valuable consideration by the taxpayer, then no such allowance shall be made by the Commissioner in the year of assessment in which cession or disposal took place;

(*b*) in the case of immovable property—

(i) the Commissioner shall deduct an allowance determined by the fraction which has as its numerator that portion of the amount deemed to have accrued under such agreement which is not receivable at the close of the taxpayer's accounting period, multiplied by an amount equal to the difference between the sum receivable under the agreement and the cost to the taxpayer of the immovable property so disposed of and as its denominator the sum receivable by the taxpayer under the agreement.

For the purposes of this subparagraph, "cost to the taxpayer of the immovable property" shall include such proportion of development and other charges as, in the opinion of the Commissioner, is fair and reasonable;

(ii) any allowance so deducted shall be included as assessable income in his return for the following year of assessment and shall form part of such income of the said taxpayer;

(iii) if any such agreement is ceded or otherwise disposed of for valuable consideration by the taxpayer, then no such allowance shall be made by the Commissioner in the year of assessment in which such cession or disposal took place.

Taxation of mining project
25 of 2016
Sixteenth Schedule

64A. A person shall be taxed in respect of each mining project they have in accordance with the Sixteenth Schedule.

PART IVA

Mineral Royalty

Mineral royalty
25 of 2016
Seventeenth Schedule

64B.—(1) Royalty is payable as a tax in respect of the products of mining in accordance with the Seventeenth Schedule.

(2) A taxpayer in respect of a mining project shall pay royalty to the Commissioner General for all minerals taken from the earth as part of their mining project during each royalty period.

(3) A taxpayer in respect of a mining project for which the only mining permit is a non-exclusive prospecting licence or a small-scale mining licence need not pay royalty for reserved minerals taken from the earth as part of that mining project, if the minerals are disposed of to the holder of a reserved minerals licence.

(4) The holder of a reserved minerals licence shall pay mineral royalty to the Commissioner General for all minerals held under the licence at the end of each royalty period and all minerals held under the licence but disposed of during the royalty period.

(5) Subject to the provisions of this Act, every person chargeable with mineral royalty under this Act shall pay such royalty on quarterly basis within twenty days after the end of each quarter of that year of assessment.

*__65.__ [*Repealed by* 17 *of* 2012].

*Any pension fund approved by the Commissioner under section 65 (now repealed) shall, immediately before the commencement of this Act, be deemed to have been registered under the Pension Act (Cap. 55:02).

PART V

Taxation of Companies

Division 1—*Income Tax*

Charge
1 of 1990

66. Subject to this Act income tax shall be charged, levied and paid for each year of assessment upon the income of every company at the company rate of income tax as specified in the Eleventh Schedule upon the taxable income of any company received or accrued from sources within or deemed to be within Malaŵi.

Public officers of companies

67.—(1) Every company which carries on a trade or has an office or other established place of business in Malaŵi shall at all times be represented by an individual residing therein.

(2) Such individual shall be a person approved by the Commissioner and shall be appointed by the company or by an agent or attorney who has authority to appoint such a representative for the purposes of this Act:

Provided that, in the event of any company being placed in voluntary or compulsory liquidation the receiver or liquidator duly appointed shall be required to exercise in respect of that company all the functions and assume all the responsibilities of a public officer under this Act during the continuance of such liquidation.

(3) The representative shall be called the public officer of the company and shall be appointed in the case of a company which on the 1st day of January, 1964, so carried on a trade, or had an office or other established place of business in Malaŵi, within two months after such date and in the case of a company which thereafter begins to carry on a trade, or establishes an office or other place of business in Malaŵi, with in one month from the establishment of such office or other place of business.

(4) In default of any such appointment, the public officer of any company shall be such managing director, director, secretary or other officer of the company as the Commissioner may designate for that purpose.

(5) Every such company, within the period prescribed by subsection (3), shall also appoint a place within Malaŵi at which any notice or other instruments under this Act affecting the company may be served or delivered, or to which any such notice or documents may be sent.

(6) No appointment shall be deemed to have been made under subsection (3) or (5) until notice thereof specifying the name of the public officer and an address for service or delivery of notices and documents has been given to the Commissioner.

(7) Every such company shall keep the office of the public officer constantly filled and shall at all times maintain a place

for the service or delivery of notices in accordance with subsection (5) and every change of public officer or of the place for the service or delivery of notices shall be notified to the Commissioner within 30 days of such change taking effect.

(8) Every notice, process or proceeding which under this Act may be given to, served upon, or taken against any company may be given to, served upon, or taken against its public officer, and if at any time there is no public officer then any such notice, process or proceeding may be given to, served upon, or taken against any officer or person acting or appearing to act in the management of the business or affairs of such company or as agent for such company.

(9) Every public officer shall be answerable for the doing of such acts, matters, or things as are required to be done under this Act by a taxpayer, and in the case of default shall be liable to the penalties provided in respect of defaults by a taxpayer.

(10) Everything done by any public officer which he is required to do in his representative capacity shall be deemed to have been done by the company which he represents.

(11) The absence or non-appointment of a public officer shall not exonerate any company from the necessity of complying with this Act, but the company shall in all respects be subject to and liable to comply with this Act, as if there were no requirement to appoint such officer.

(12) Any public officer appointed under the provisions of any previous law, and holding office on the 1st day of January, 1964, shall, provided that no objection to his continuance in office is raised by the Commissioner, be deemed to be a public officer appointed under this Act.

Duty of companies to furnish returns

68.—(1) Every company incorporated or registered under any law which awards any bonus shares, debentures, or securities, or pays any liquidation dividends to shareholders in such company in respect of shares held by them, shall furnish to the Commissioner, upon such payment or award, a return giving the full name and address of each shareholder and the amount or value of such payment or award to each such shareholder.

(2) Every company shall file with the Commissioner a copy of the memorandum and articles of association constituting the company and copies of all amendments thereto.

Notification of dividend declared 7 of 1968

69. The public officer of a company incorporated in Malaŵi shall, within 30 days of the declaration by the company of a dividend furnish to the Commissioner—

(*a*) a copy of the resolution declaring the dividend; and

(*b*) a statement containing in respect of each person to whom a dividend has accrued—

(i) the name and address of the person;

(ii) the amount of the dividend accrued; and

(iii) the date on which the dividend was declared.

Dealings by a company in another company's shares
7 of 1992

70. Where a company dealing in shares and liable to tax in respect of profits arising from such dealing (hereinafter referred to as "the first company") purchases a controlling interest in a company with an undistributed profit (hereinafter referred to as "the second company") and the second company declares a dividend payable to the first company, the shares of the second company then being sold by the first company at a loss, such loss shall not be deductible from the taxable income of the first company.

Taxation of dividends
7 of 1992
14 of 1999
10 of 2001
11 of 2002

70A.—(1) Every company incorporated in Malaŵi shall, uphold distribution of any dividend, withhold ten per cent of such dividend and remit the amount to the Commissioner within fourteen days from the date of distribution:

Provided that there the dividend is distributed by a subsidiary or a holding company to a holding or related company and the income being distributed is derived from a dividend which was subject to withholding tax in the first instance, no withholding tax shall be deducted.

(2) The amount of tax withheld from a dividend under subsection (1) shall be a final tax and the recipient of the dividend shall not be required to include the dividend received in his taxable income.

(3) Any company which fails to withhold tax at the time of distribution of any dividend as required by subsection (1) shall be liable to pay the tax due and an additional sum equal to twenty per cent of the tax due.

Recognition of gain or loss on distribution of property with respect to shares
10 of 1993

70B. If property is distributed by a company to a shareholder with respect to his shares (whether as a dividend, a liquidating distribution or otherwise), the company shall recognize gain or loss in the same manner as if the property had been sold to that shareholder at its open market price.

Effect of a distribution of shares of a company to its shareholders
10 of 1993

70C. Where a distribution of the shares of a company to its shareholders is in a way which does not alter the proportionate ownership interest of any of its shareholders, then—

(*a*) the distribution shall not be included in the income of the shareholders and shall not be treated as a dividend for purposes of this Act;

(*b*) the overall basis of the shares of the shareholders, following such bonus issue of shares, shall remain unchanged; and

(*c*) the basis of the old shares shall be allocated between the old and the new shares in proportion to their respective values.

Distribution in complete liquidation of a company
10 of 1993

70D. In the case of a complete liquidation of a company, any distribution to shareholders shall be treated as if the shareholders had sold their shares in the company in exchange for the property or the cash received, but such distribution shall not be treated as a dividend and a gain or loss shall be recognized accordingly.

No gain or loss on certain contributions to capital
10 of 1993

70E. No capital gain or loss shall be recognized upon the contribution by one or more persons of assets to the capital of a company where, upon such contribution, the contributing person or persons own at least eighty per cent of the equity interest in the company; and in such case, the basis of the contributed assets in the hands of the company shall be the adjusted basis in the hands of the person or persons immediately prior to the contribution.

Reorganization and qualified reorganization of a company
10 of 1993
12 of 2015

70F.—(1) For the purposes of this Act—

"qualified reorganization" means a reorganization of a company or companies resident in Malaŵi pursuant to a written plan undertaken for valid business purposes and which does not have as its purpose, tax avoidance by any person who is a party to the reorganization;

"reorganization" means—

(*a*) a mere change in a company's form;

(*b*) a recapitalization of a company;

(*c*) a combination of two or more companies into a single company;

(*d*) a division of a company into two or more companies;

(*e*) the acquisition of at least eighty per cent of the equity interests in a company in exchange solely for equity interests in the acquiring company; or

(*f*) the acquisition of at least eighty per cent, by value, of the assets of a company in exchange solely for equity interests in the acquiring company.

(2) In determining whether a transaction is a qualified reorganization or not, the Commissioner General shall disregard the form of the transaction where the form is inconsistent with the substance of the transaction.

(3) In the case of a qualified reorganization of a company, as defined in subsection (1), the basis of an asset so acquired shall be determined by reference to the adjusted basis of the asset immediately before the reorganization.

(4) Except as otherwise provided in this Act, the acquiring company shall take into account the tax attributes of the acquired entity.

(5) Distributions of equity shares in a company, which is a party to a qualified reorganization, to any shareholder of any company, which is also a party to the same qualified reorganization, shall not be taxable to the receiving shareholder, but any other distributions of cash or other property shall be taxed to the recipient as consideration received in a sale or exchange.

(6) Any reorganization which is not a qualified reorganization shall be treated as a sale of the company and of all of its assets.

PART VI

Individuals

Charge
10 of 1983
1 of 1995

71. Subject to this Act income tax shall be charged, levied and paid for each year of assessment upon the income of any individual received or accrued from a source within or deemed to be within Malaŵi upon that individual's total taxable income ascertained under this Act at the rate specified in the Eleventh Schedule.

Eleventh Schedule

Deemed taxable income

72.—(1) If, in pursuance or by reason of a gift, donation, settlement or other disposition taxable income accrues to or in favour of or is paid to or applied to the benefit of or is accrued for the future benefit of a minor child, whether legitimate or illegitimate, of the person by whom the gift, donation, settlement or other disposition was made, the taxable income so accruing, paid, applied or accumulated shall be deemed to be taxable income received by or accrued to or in favour of the person by whom the gift, donation, settlement or other disposition was made.

(2) If— 19 of 1969

(*a*) in pursuance or by reason of a gift, donation, settlement or other disposition made by a person taxable income accrues to or in favour of or is paid to or applied to the benefit of a minor child, whether legitimate or illegitimate, of some other person; and

(*b*) the parent or the spouse or a near relative of the parent of the child has made a gift, donation, settlement, or other disposition or given some consideration to or in favour of the person or the spouse or a near relative of the person by whom the gift, donation, settlement or other disposition referred to in paragraph (*a*) was made, such income so accruing, paid, applied or accumulated, shall be deemed to be taxable income received by or accrued to or in favour of the parent of the child.

(3) If any person has made in any deed of gift, donation, settlement or other disposition, a stipulation to the effect that the beneficiaries thereof, or some of them, shall not receive the taxable income thereunder, or some portion of that income, until the happening of some event, whether fixed or contingent, so much of any taxable income as would, in consequence of the gift, donation, settlement or other disposition, but for such stipulation, be received by or accrued to or in favour of or be deemed to be received by or to accrue to or in favour of the beneficiaries, shall, until the happening of that event, or the death of that person, whichever first takes place, be deemed to be the taxable income of that person.

(4) If any deed of gift, donation, settlement or other disposition contains any stipulation that the right to receive any taxable income thereby conferred may, under powers retained by the person by whom that right is conferred, be revoked or conferred upon another, so much of any taxable income as in consequence of the gift, donation, settlement or other disposition, is received by or accrues to or in favour of or is deemed to be received by or to accrue to or in favour of the person on whom that right is conferred, shall be deemed to be the taxable income only of that person by whom it is conferred, so long as he retains those powers.

Income of married women and minor children
19 of 1969
1 of 1995

73.—(1) Income deemed to be the income of a taxpayer under section 12 (2) shall be included in his return of income required to be furnished by him under this Act.

(2) If the Commissioner thinks fit he may by notice in writing require a married woman to whose income the provisions of subsection (1) apply to furnish such information as he may require.

1 of 1995

(3) Where a married couple has elected to file a joint return and the wife's income comprises in whole or in part the wife's earned income the liability to tax of such taxpayer shall, instead of being determined under the other provisions of this Act, be determined as if—

(*a*) his income does not include the wife's earned income; and

(*b*) there were added to the tax payable by him an amount equal to the tax which would be payable by him if his only income were the wife's earned income.

(4) In this section "wife's earned income" means— 1 of 1995

(*a*) income derived from any business carried on by the wife in her own right and in which her husband is not employed and is not a partner;

(*b*) emoluments received by, or accrued to, the wife in respect of services rendered or to be rendered by her whether payable under any contract of employment or service or not and any amounts assessable under sections 16, 17, 18, 19 or 20 other than any such emoluments or amounts accrued to, or received by the wife from, or paid to, or in favour of, the wife by—

(i) her husband;

(ii) a partnership in which her husband is a partner;

(iii) a company in which the husband is a director who controls either directly or indirectly more than five per centum of the voting rights attaching to all classes of shares of the company; or 1 of 1995

(iv) a company in which the wife is a director who controls either directly or indirectly more than five per centum of the voting rights attaching to all classes of shares of the company and in which the husband is employed, or is also a director. 1 of 1995

(5) In the event of the death of the husband during any year in respect of which income of his wife is deemed his income, the income of the wife for the period elapsing between the date of such death and the last day of the year of assessment shall be returned as the separate taxable income of such wife.

(6) Every parent shall be required to include in his return—

(*a*) any taxable income received by or accrued to or in favour of, or deemed to have been received by or accrued to or in favour of any of his minor children, either directly or indirectly, from the parent, together with such particulars thereof as may be prescribed or required by the Commissioner; and 1 of 1995

(*b*) any taxable income deemed to be his in terms of section 72.

74. Persons carrying on any trade in partnership shall make a joint return as partners in respect of such trade, together with such particulars as may from time to time be prescribed and each partner shall be separately and individually liable for the rendering of the joint return, but the partners shall be liable to income tax only in their separate individual capacities. Separate assessments shall be made upon partners. Partnership

PART VII

TRUSTEES

Special provisions in connexion with income derived from assets in deceased and insolvent or bankrupt estates

75.—(1) In this section—

"ascertained beneficiary", in relation to assessable income received or accruing by virtue of an asset in a deceased estate or the proceeds or any part of the proceeds of an asset in a deceased estate, means a person named or identified in the will of the deceased person who, by reason of the provisions of the will, acquires on the death of the deceased person an immediate certain right to claim the present or future enjoyment of the assessable income so received or accruing;

"asset in a deceased estate" does not include a right to claim an amount which became due and payable before the death of the deceased person.

(2) So much of the assessable income received or accruing by virtue of an asset in a deceased estate of the proceeds or any part of the proceeds of an asset in a deceased estate during the period beginning immediately after the death of the deceased person and ending immediately before a person, other than a person who acquires the asset in pursuance of the realization of the assets in the deceased estate, becomes entitled to the transfer from the deceased estate of the asset or the proceeds or part of the proceeds of the asset, as the case may be, as is received by or accrues to or in favour of an ascertained beneficiary shall be treated for the purposes of this Act as assessable income of the ascertained beneficiary and not as assessable income received in or accruing to the deceased estate.

(3) Assessable income received or accruing by virtue of an asset in a deceased estate or an asset in an insolvent or bankrupt estate or the proceeds or any part of the proceeds of an asset in a deceased or insolvent or bankrupt estate during the period beginning immediately after a person becomes entitled to the transfer from the deceased or insolvent or bankrupt estate of the asset or the proceeds or part of the proceeds of the asset, as the case may be, and ending immediately before the transfer from the deceased or insolvent or bankrupt estate of the asset or the proceeds or part of the proceeds of the asset, as the case may be, shall, unless the effect of a condition governing the transfer is to provide that the assessable income so received or accruing shall continue to be assessable income of the deceased or insolvent or bankrupt estate, be treated for the purposes of this Act—

(*a*) in the case of assessable income which is not assessable income the subject of a trust to which no beneficiary is entitled as assessable income of the person who has immediately after the transfer an immediate certain right to

the present or future enjoyment of the assessable income so received or accruing; and

(*b*) in the case of assessable income the subject of a trust to which no beneficiary is entitled, as assessable income of the trust,

and not as assessable income received in or accruing to the deceased or insolvent or bankrupt estate.

(4) For the avoidance of doubt it is declared that—

(*a*) an amount received or accruing by virtue of a right forming part of the assets in a deceased estate which did not become due and payable before the death of the deceased person shall, subject to paragraph (*b*), be assessable income for the purposes of this Act if the amount would have been assessable income of the deceased person had it been received or been deemed to have been received by him or accrued or been deemed to have accrued to him or in his favour in his lifetime; and

(*b*) an amount received in a deceased estate which would have been assessable income of a deceased person had it been received or been deemed to have been received by him or accrued or been deemed to have accrued to him or in his favour in his lifetime shall not be assessable income for the purposes of this Act if—

(i) the deceased person had no right to claim the amount in his lifetime; and

(ii) the amount is received *ex gratia* or in pursuance of a gratuitous promise made after the death of the deceased person; and

(*c*) an amount received or forming part of the assets in a deceased estate—

(i) which became due and payable before the death of the deceased person; and

(ii) which the deceased person had a right to claim in his lifetime,

shall be assessable income received by or accruing to or in favour of the deceased person on the date the amount became due and payable if the amount would have been assessable income of the deceased person had it been received by him in his lifetime.

Tax payable by trust *Eleventh Schedule*

76. Tax shall be payable by a trust for each year of assessment at the rate specified in the Eleventh Schedule.

PART VIIA

Non-Residents

Liability for non-resident tax 12 of 1987 20 of 1987 1 of 1990 25 of 2016

76A.—(1) Subject to subsection (3), any income payable to a person, not being a person resident in Malaŵi, arising from a source within Malaŵi and not attributable to a permanent establishment of that person in Malaŵi shall be liable to a final tax at the rate of—

(*a*) 15 per cent of the gross amount of such income;

(*b*) 15 per cent in relation to management fees; and

(*c*) 10 per cent in relation to income derived from a mining project by way of interest, royalty, payment for independent personal services, or dividend.

1 of 1990

(2) The tax payable under subsection (1) shall be deducted from the amount referred to therein upon—

(*a*) accrual of the amount to such person; or

(*b*) payment of the amount to such person whether directly to him or to his account in or outside Malaŵi; or

(*c*) remittance of the amount to such person; or

(*d*) crediting of the amount or of the value thereof in favour of such person,

and it shall be the responsibility of the person from whom the amount is due to deduct the tax and to remit it forthwith to the Commissioner.

(3) The tax payable under subsection (1) is not payable in respect of—

First Schedule

(*a*) income and other amounts exempt from tax under the provisions of the First Schedule; and

(*b*) any pension or annuity payment.

PART VIII

Representative Taxpayers

Representative taxpayers

77.—(1) For the purpose of this Act—

"representative taxpayer" in relation to the assessable or taxable income—

(*a*) of a company, means the public officer of the company; and

(*b*) of a trust, means the trustee; and

(*c*) controlled or managed by an agent, including an agent to whom the provisions of section 81 relate, means the agent; and

(*d*) remitted or paid by a person in Malaŵi to a person temporarily or permanently absent from Malaŵi, means the person remitting or paying such income; and

(*e*) paid under a decree or order of a court or judge to a receiver or other person, means the receiver or other person whether or not—

(i) the receiver or other person is entitled to the benefit of such income; or

(ii) such income is receivable by or accrues to the beneficiary on a contingency or on the happening of an uncertain event; and

(*f*) in any year of assessment of a person whose property becomes the subject of a trust during that year by reason of his death or his becoming subject to a legal disability or of that person in any other year of assessment in respect of which a return was not made to the satisfaction of the Commissioner, means the trustee.

(2) Nothing contained in subsection (1) shall be construed as releasing a person of any liability, responsibility or duty imposed upon him by this Act.

Liability of representative taxpayer 15 of 1973

78.—(1) Subject to section 76 every representative taxpayer, in respect of the assessable or taxable income to which he is entitled in his representative capacity, or of which in such capacity he has the management, receipt, disposal, remittance, payment, or control, shall be subject in all respects to the same duties, responsibilities and liabilities as if such income were received by or accruing to or in favour of his beneficially and shall be liable to assessment in his own name in respect of such income, but any such assessment shall be deemed to be made upon him in his representative capacity only.

(2) Any allowance, deduction, exemption, or right to deduct a loss which could be claimed by the person represented by him shall be allowed in the assessment made upon the representative taxpayer in his representative capacity.

(3) Any tax payable in respect of any assessment shall, save in the case of an assessment upon the public officer of a company, be recoverable from the representative taxpayer, but to the extent only of assets belonging to the person whom he represents which are in his possession or under his management, disposal or control.

(4) Any tax payable in respect of any assessment made upon a public officer of a company in his capacity as such shall be recoverable from the company of which he is the public officer.

Protection for certain trustees 15 of 1973

78A. A trustee who has authorized the receipt of profits arising from trust property by, or by the agent of, the person entitled thereto, shall not, if—

(*a*) that person or agent actually received the profits under that authority; and

(*b*) the trustee makes the return as required by section 84 (1) of this Act,

be required to do any other act for the purpose of the assessment of that person to income tax.

Right and personal liability of representative taxpayer

79.—(1) Every representative taxpayer who as such pays any tax shall be entitled to recover from the person on whose behalf it is paid, or to retain out of any moneys that may be in his possession or may come to him in his representative capacity, so much as is required to indemnify him for payment.

(2) Every representative taxpayer shall be liable personally for any tax payable by him in his representative capacity, if, while it remains unpaid—

(*a*) he alienates, charges or disposes of taxable income in respect of which the tax is chargeable; or

(*b*) he disposes of, or parts with, any funds or money which is in his possession or comes to him after the tax is payable when from or out of such fund or money the tax could lawfully have been paid.

Company regarded as agent for absent shareholder

80. Where a shareholder or member of a company is absent from Malaŵi, such company shall, for the purposes of this Act, be deemed to be the agent for such shareholder or member and in respect of any income received by or accruing to him or in his favour as shareholder or member, have and exercise all the powers, duties and responsibilities of an agent for a taxpayer absent from Malaŵi.

Power to appoint agent

81.—(1) The Commissioner may, if he thinks it necessary, declare any person to be the agent of any other person, and the person so declared an agent shall be the agent of such other person for the purposes of this Act, and may be required to pay any tax due from any moneys, whether pensions, salaries, wages or any other assets of any kind whatsoever, which may be held by him for, or due by him to, the person whose agent he has been declared to be.

(2) For the purposes of facilitating the assessment of the taxable income of any person residing in the United Kingdom, and the collection of any tax payable by such person, the Commissioner may appoint an agent in the United Kingdom who shall perform such duties as may be assigned to him by the Commissioner.

Remedies of Commissioner against agent and trustee

82. Against all property of any kind vested in or under the control or management of any agent or trustee the Commissioner shall have the same remedies and in as full and ample a manner as he has against the property of any other person who is liable to pay tax.

Power to require information

83. For the purposes of sections 81 and 82 the Commissioner may require any person to give him information in respect of any moneys, funds, or other assets which may be held by him for, or due by him to, any other person.

PART IX

Returns, Provisional Tax and Assessments

Return of income
1 of 1985
4 of 1988
1 of 1991
2 of 1994
1 of 1995

84.—(1) Every person chargeable with income tax under this Act, shall within 90 days from the end of the year of assessment, as defined in this Act, or such longer time as the Commissioner may allow, prepare and deliver to the Commissioner a return of income in the form approved by the Commissioner for such year of assessment computed in accordance with the provisions of this Act:

Provided that a married couple may elect to make a joint return of income:

Provided further that this subsection shall not apply, except of his own volition, to an individual whose total income is only from employment or pension or from both employment and pension and does not exceed K30,000, from which P.A.Y.E. has been deducted.

(2) The Commissioner may, by notice in writing require any person to prepare and deliver to him, within thirty days of the date of issue of such notice, or such longer time as the Commissioner may allow, a return of income in the form approved by him for a year of assessment.

(3) Any person signing any such return of income shall be deemed for all purposes in connexion with this Act to be cognizant of all statements therein.

(4) All returns of income required to be furnished under this Act shall be delivered at or sent by post to the address given in the approved form:

Provided that in the case of an individual chargeable with income tax under this Act in respect only of his income from employment or pension or from both and in relation to which income P.A.Y.E. tax has been deducted, he shall not, except of his own volition, be required to prepare and deliver to the Commissioner a return in respect of such income. 4 of 1988

(5) A return of income prepared and delivered by a taxpayer in accordance with the provisions of this Act shall constitute a self-assessment by the taxpayer. 14 of 2009

(6) Where a taxpayer has delivered a return of income, the Commissioner may accept the return and deem the amount the taxpayer has declared as the self-assessment of the taxpayer. 14 of 2009

(7) Every person chargeable with income tax who— 1 of 1991 2 of 1994 14 of 2009

(*a*) is required to prepare and deliver a return of income; or

(*b*) is not required to prepare and deliver a return of income but opts to do so under the provisions of this Act,

shall apply in the prescribed form to, and obtain from the Commissioner a permanent taxpayer identification number for use in all correspondence for the purpose of this Act.

(8) The Commissioner General may specify that returns of a particular kind, or by a particular taxpayer or class of taxpayer (whether identified by size or otherwise), or relating to liabilities of a particular size, must be made in a particular manner (which manner may include delivery in a particular electronic form or to a particular electronic address or otherwise). 25 of 2016

Payment of provisional tax 4 of 1988 18 of 1998 6 of 2005 29 of 2010

84A.—(1) Subject to the other provisions of this Act, every person chargeable with income under this Act shall, at the beginning of every year of assessment, estimate the total amount of income tax (herein referred to as "provisional tax") payable by him in respect of that year of assessment and shall, save as otherwise provided in subsection (2) in

respect of seasonal income, pay such tax in quarterly installments within twenty-five days after the end of each quarter of that year of assessment.

18 of 1998

(2) A person whose income for the year of assessment in question is estimated to include seventy-five per cent or more or seasonal income shall, before the end of the first quarter of that year of assessment, notify the Commissioner in writing of the time or times within that year when he shall pay his provisional tax either in whole or in part; but so, however, that the Commissioner may, either generally or specially having due regard to the circumstances in which the seasonal income in question is received, specify the date by which every such person shall be deemed able to pay a substantial part of his provisional tax; and, notwithstanding any written notification to the Commissioner, every such person shall, within fourteen days from the date specified by the Commissioner, pay his provisional tax in accordance with subsection (3).

18 of 1998

(3) The aggregate of the installments of provisional tax payable under subsection (1) or the total amount of provisional tax payable under subsection (2), as the case may be, shall be an amount equal to not less than ninety per cent of the actual tax liability for the year of assessment.

(4) In this section—

"seasonal income" means income that is ordinarily received from a given source during any period of six consecutive months of the year of assessment of the person receiving such income.

Exemption from provisional tax
4 of 1988
7 of 1992
11 of 2002
13 of 2006
7 of 2007
14 of 2009
24 of 2011
Eleventh Schedule

84B. Section 84A shall not apply to any individual whose taxable income for the year of assessment in question is estimated—

(*a*) not to exceed the amount specified in Part I paragraph A in the Appendix to the Eleventh Schedule as attracting the zero per cent rate of taxable income;

(*b*) to exceed the amount specified in Part I paragraph A in the Appendix to the Eleventh Schedule as attracting the zero per cent rate of taxable income but the whole of the income is from employment or from pension or from both employment and pension and in relation to which P.A.Y.E. tax is being deducted; and

Eleventh Schedule

(c) to exceed the amount specified in Part I paragraph A in the Appendix to the Eleventh Schedule as attracting the zero per cent rate of taxable income and to include non-employment or non-pension income of not more than the amount specified in Part I paragraph A in the Appendix to the Eleventh Schedule as attracting the zero per cent rate of taxable income.

Eleventh Schedule

Payment of balance of income tax
4 of 1988

84C. When submitting a return of income under section 84, the person submitting the return shall pay the difference, if any, between—

(*a*) the amount of tax calculated on the total taxable income as computed and disclosed in the return being submitted, on the one hand; and

(*b*) on the other hand, the aggregate of— 24 of 2017

(i) the provisional tax paid under section 84A;

(ii) the withholding tax paid under section 102A; and

(iii) any one or any combination of (i) and (ii).

Payment of tax
4 of 1988

84D. Every person not otherwise covered by section 84C, except the person whose taxable income substantially comprises income from which P.A.Y.E. tax has been deducted, shall, at the time of submitting a return of income under section 84, pay income tax calculated on the total taxable income as computed and disclosed in the return being submitted.

Penalty for failure to pay taxes
4 of 1988
7 of 1992
18 of 1998

84E.—(1) Subject to subsection (2), a person who fails to pay any amount of tax in accordance with sections 84A, 84C or 84D shall be liable to a penalty as follows—

If the amount of tax unpaid, as a percentage of total tax liability—

	Penalty
(*a*) does not exceed 10 per cent	Nil
(*b*) exceeds 10 per cent but does not exceed 50 per cent	25 per cent of the unpaid amount of tax
(*c*) exceeds 50 per cent	30 per cent of the unpaid amount of tax.

(2) The Commissioner may reduce or waive the amount of penalty chargeable under subsection (1) if in his opinion a satisfactory explanation for failure to pay the tax is given.

Duty to furnish returns as to employees, their earnings and other matters
14 of 1969

85.—(1) Every person shall, if required by notice in writing by the Commissioner, furnish to him, in such form and at such time as may be prescribed or as the Commissioner may require, returns of all or any particular class of persons employed by him, and the earnings, salaries, wages, allowances, or pensions whether in money or otherwise, paid or allowed to each person so employed.

(2) Every person carrying on a trade in Malaŵi shall, in such manner and form and at such times as may be prescribed, furnish to the Commissioner returns showing—

(*a*) all payments made to any person in respect of any share or interest in such trade;

(*b*) all moneys received by him from any person on deposit for any fixed time or period, with or without interest, and any amount of interest received or paid by him; and

(*c*) all such other information in his possession with regard to the income received by or accruing to or in favour of himself or

any other person as may be prescribed or may be required by the Commissioner.

Tax clearance certificate
5 of 1997
13 of 2006
Fifteenth Schedule

85A.—(1) Notwithstanding anything to the contrary contained in any other written law, the conclusion of any transaction specified in the Fifteenth Schedule shall be subject to a tax clearance certificate to be issued by the Commissioner.

(2) A person requiring a tax clearance certificate shall apply in writing for such certificate either by himself or through his representative or agent to the Commissioner stating the reasons thereof.

(3) A tax clearance certificate shall be issued by the Commissioner only where conditions as may be prescribed by the Commissioner are satisfied, and such conditions shall include evidence that—

(*a*) the applicant is a registered taxpayer, except where the applicant is not subject to, or is exempt from, income tax;

(*b*) the income tax returns of the applicant that are due have been submitted to the Commissioner;

(*c*) the applicant has no outstanding income tax.

13 of 2006
25 of 2016

(4) Any person who concludes, or causes the conclusion of a transaction referred to in subsection (1) without a tax clearance certificate shall—

(*a*) be liable to a penalty imposed by the Commissioner General of five times the amount of tax prejudiced or K2,000,000, whichever is greater; or

(*b*) upon conviction, be liable to a fine of not less than ten times but not exceeding twenty times the amount of tax prejudiced or K10,000,000, whichever is greater, and to imprisonment for two years.

Commissioner to have access to all public records
14 of 2009

86.—(1) Notwithstanding anything to the contrary contained in any law relating to banks or the Financial Intelligence Unit or any other law, any officer in the public service of Malaŵi (in this section referred to as an officer in the public service) having in his custody any registers, books, accounts, records, returns, papers, documents, or proceedings, the inspection whereof may tend to secure any tax or to give proof or lead to the discovery of any fraud, offence, or omission in relation to any tax, shall, without fee or charge, permit the Commissioner, or any person authorized by the Commissioner, to inspect for such purpose such registers, books, accounts, records, returns, papers, documents or proceedings, and to take such notes and extracts as he may deem necessary.

14 of 2009

(2) Every officer in the public service a bank, company or any other person shall, if required by the Commissioner, furnish to him in such form and at such time as the Commissioner may require, such information as such officer in the public service a bank, company or any other person is able to give from the registers, books, accounts, records, returns, papers, documents, or proceedings in his custody.

(3) In any legal proceedings, under this Act, civil or criminal, any such document as is referred to in subsection (1) which purports to be signed by the taxpayer or the accused, as the case may be, may on its mere production be received in evidence, unless such taxpayer or accused raises an objection that the signature is not his signature, in which case the court, before receiving such document in evidence, shall hear evidence as to whether or not the signature is that of the taxpayer or the accused, as the case may be:

Provided that no such document shall be tendered in evidence unless the taxpayer or accused, as the case may be, has been given not less than ten days' written notice of the intention so to produce such document and an opportunity to inspect the same and make a copy thereof.

(4) Notwithstanding anything to the contrary contained in any law relating to banks, the Financial Intelligence Unit or organizations, in any legal proceedings under this Act whether civil or criminal, evidence may, if relevant to the inquiry, be admitted in regard to the transactions with any savings bank, of the spouse or minor children of the taxpayer or accused, as the case may be. 14 of 2009

Duty of person submitting accounts in support of return or preparing account for other persons

87.—(1) Every return required to be rendered by a taxpayer under this Act shall be accompanied by all such balance sheets, trading accounts, profits and loss accounts, and other accounts of whatsoever nature, as are necessary to support the information contained in the return, and all such accounts shall be authenticated by the signature of the person rendering the return.

(2) If any person submits in support of any return furnished by him under this Act any balance sheet, statement of assets and liabilities, or account prepared by any other person, he shall, together with such balance sheet, statement, or account, submit a certificate or statement by such other person recording the extent of the examination by such other person of the books of account and of the documents from which the books of account were written up.

(3) Any person who has prepared any balance sheet, statement of assets and liabilities, or account for any other person shall furnish such other person with the certificate or statement required under subsection (2).

Production of documents and evidence on oath 14 of 1969 25 of 2016

88.—(1) For the purpose of obtaining full information in respect of any part of the income and the liability to mineral royalty of any person, the Commissioner General may by notice in writing require any person to produce for examination by the Commissioner General, or by any person appointed by him for that purpose, at such time and place as may be appointed by the Commissioner General for that purpose any deeds, plans, instruments, books, accounts, trade lists, stock lists, or documents which the Commissioner General may deem necessary for the purposes of this Act. Any person so producing any deed, plan,

instrument, book, account, trade list, stock list or document which is not a ledger, cash book, journal, paid cheque, bank statement, deposit slip, stock sheet, invoice or other book of account required by this Act to be kept and retained by a person whose assessable income does not consist of salary, wages or similar compensation for personal services, may be allowed by the Commissioner General any reasonable expenses necessarily incurred in producing it or obtaining and producing a copy of it.

25 of 2016

(2)—(*a*) The Commissioner General may, by reasonable notice in writing, require any person entitled to or in receipt of any income or of any mineral or of any product of mining operations, whether on his own behalf or as the representative of any person, or any person whom the Commissioner General may deem able to furnish information, to attend at a time and place to be named by the Commissioner General for the purpose of being examined on oath respecting the income of any such person, or any transactions or matters affecting the same, or any of them, or any part thereof.

(*b*) Where any statement has been made by any person as a result of his being examined on oath under this subsection, such statement shall be recorded in writing and shall be read over to or by the person making it, who, after making such corrections therein as he may think necessary, may sign it.

14 of 1969

(3) If any officer engaged in carrying out this Act who has, in relation to the affairs of a particular person, been authorized thereto by the Commissioner in writing or by telegram, satisfies a magistrate by statement made on oath that there are reasonable grounds for suspecting that such person has rendered himself liable to a penalty under this Act, the magistrate may authorize such officer by warrant to exercise the following powers—

(*a*) without previous notice, at any reasonable time during the day enter any premises whatsoever and on such premises search for any moneys, books, records, accounts, or documents;

14 of 2009

(*b*) in carrying out any such search, open or cause to be removed and opened any article or device in which he suspects any moneys, books, records, accounts or documents to be contained;

14 of 2009

(*c*) seize any such books, records, accounts, device or documents as in his opinion may afford evidence which may be material in assessing the liability of any person for any tax;

(*d*) retain any such books, records, accounts or documents for as long as they may be reasonably required for any assessment or for any criminal or other proceedings under this Act.

(4) Any officer authorized in accordance with subsection (3), when exercising any power under such subsection, shall on demand produce the warrant issued to him thereunder.

(5) The person to whose affairs, any books, records, accounts or documents seized under subsection (3) relate shall be entitled to examine and make extracts from them during office hours or such further hours as the Commissioner may, in his discretion, allow and under such supervision as the Commissioner may determine.

(6) The Commissioner, or any person authorized by him in writing, may administer oaths to persons examined in terms of this section. Any person who, after having been duly sworn, wilfully makes a false statement on any matter relevant to the inquiry, knowing such statement to be false or not knowing or believing it to be true, shall be liable to a fine of K200,000 and to imprisonment for one year. 14 of 2009

89.—(1) In the following cases, namely where in respect of a year of assessment— Estimated income 14 of 1969

(*a*) a taxpayer makes default in furnishing any return or information; or

(*b*) the Commissioner is not satisfied with the return or information furnished by a taxpayer; or

(*c*) the Commissioner has reason to believe that a taxpayer is about to leave Malaŵi without furnishing a return or a satisfactory return,

the Commissioner may estimate the taxpayer's taxable income or assessed loss, notice whereof shall be given to the taxpayer.

(2) If it appears to the Commissioner that any taxpayer is unable for any cause to furnish an accurate return of income, the Commissioner may accept the taxpayer's estimate of the amount of his taxable income.

90.—(1) The Commissioner shall proceed to assess the liability to tax of every taxpayer as expeditiously as possible after the expiry of the time allowed to such taxpayer under section 84 for the delivery of a return of income. Assessment to tax 10 of 1983

(2) Where the Commissioner has estimated the taxable income or assessed loss of a taxpayer under section 89 (1) he may assess his liability to tax on the basis of such estimation.

(3) Where the Commissioner accepts the taxpayer's estimate under section 89 (2) he may assess him on such estimate, but may subsequently adjust such assessment upon the taxpayer submitting a satisfactory return of income.

Additional assessment 14 of 1969

91.—(1) If the Commissioner discovers or is of the opinion at any time that any taxpayer has not been assessed or has been assessed at a less amount than that which ought to have been charged he may within the year of assessment or within six years after the expiration thereof and as often as may be necessary assess such person at such amount or additional amount as according to the best of his judgment ought to have been charged, and the provisions of this Act as to notice of assessment, appeal and other proceedings under this Act shall apply to such assessment or additional assessment and to the tax charged thereunder.

(2) Where any fraud or wilful default has been committed by or on behalf of any person in connexion with or in relation to tax for any year of assessment the Commissioner may, for the purpose of making good to the revenue of Malaŵi any loss of tax attributable to the fraud or wilful default, exercise the powers conferred by this section at any time, whether before or after the expiration of the period specified in this section:

14 of 1971

Provided that where the person by or on whose behalf the fraud or wilful default was committed has died an assessment on his personal representatives to tax for any year of assessment ending not earlier than six years before his death shall be made at any time before the end of the third year next following the year of assessment in which he died.

Turnover tax 14 of 2009

91A.—(1) Notwithstanding any other provision of this Act, a tax to be known as turnover tax shall be payable by any person whose income from business is accrued in or derived from Malaŵi, and such income is above two million Kwacha (K2,000,000) but does not exceed six million Kwacha (K6,000,000) during any year of assessment:

Provided that a person who would otherwise be liable to pay tax under this section may; by notice in writing addressed to the Commissioner, elect not to be subject to turnover tax, in which case the other provisions of this Act shall apply to such person.

(2) Turnover tax shall be payable for each year of assessment at the rate specified in the Eleventh Schedule.

(3) Notwithstanding subsection (1), turnover tax shall not apply to—

(*a*) rental income and management or professional fees or training fees;

(*b*) the income of incorporated companies; and

(*c*) any income which is subject to a final withholding tax under this Act.

(4) For the better carrying out of the provisions of this section, the Minister shall prescribe rules and regulations governing the administration of turnover tax.

Assessments and notices thereof

92.—(1) All assessments required to be made under this Part shall, subject to section 4, be made by the Commissioner or under his direction.

(2) Notice of assessment and of the amount of tax payable, where tax is payable, shall be given to the taxpayer assessed.

(3) The Commissioner shall, in the notice of assessment, give notice to the taxpayer that any appeal against the assessment must be sent to him within 30 days after the date of such notice.

Register of assessments

93. Complete copies of all notices of assessment made under this Part shall be filed in the office of the Commissioner and shall constitute the register of assessments for the purposes of this Act.

Inspection of register

94. The register of assessments shall not be open to public inspection, but every taxpayer shall be entitled to copies certified by or on behalf of the Commissioner of his own notice of assessment.

PART IXA
Taxation of Fringe Benefits

Liability of employers to pay fringe benefits tax
1 of 1991

94A.—(1) Every employer, other than the Government, who provides fringe benefits to any of his employees shall be liable to pay fringe benefits tax on the total taxable value of such fringe benefits at the rate specified in the Eleventh Schedule subject to and in accordance with regulations made under this Act.

(2) Regulations made with respect of the payment of fringe benefits tax may include provisions—

(*a*) for requiring any employer to whom this part applies to calculate the total taxable value of all fringe benefits to his employees in receipt thereof and to pay fringe benefits tax on such value in accordance with this Act or regulations made under this Act;

(*b*) requiring the production to, and inspection by any person authorized by the Commissioner of records and other documents for purposes of verifying that correct taxable values are being calculated and tax is being paid on those taxable values;

(*c*) rendering employers liable to a penalty for delayed payment of fringe benefits tax payable under this Act.

Section 94A not to apply in certain cases
2 of 1994
6 of 2005
14 of 2009

94B. Section 94A shall not apply to fringe benefits provided to an employee whose annual taxable income does not exceed the amount specified in paragraph A of the Appendix to the Eleventh Schedule as attracting the zero per cent rate of taxable income.

Employee defined

94C. In this Part, "employee" includes a "director".

Fringe benefits tax not to be imposed on employees

94D. For the avoidance of doubt, nothing in this Act shall be construed to impose liability for fringe benefits tax on an employee in receipt of any fringe benefit in respect of which his employer is liable to fringe benefits tax.

PART X

Appeals

Burden of proof 14 of 1969

95. In any appeal under this Act the burden of proof that any amount is exempt from or not liable to income tax, or is subject to any deduction or allowance in accordance with this Act shall be upon the person claiming such exemption, non-liability, deduction or allowance.

Procedure on appeals

96.—(1) An appeal under this Act shall be made in accordance with the provisions of this Part and of the Eighth Schedule.

(2) The President may, from time to time, by order, amend the Eighth Schedule.

Appeal to Commissioner

97.—(1) A taxpayer who is aggrieved by—

(*a*) any assessment made upon him by the Commissioner under this Act;

(*b*) any decision of the Commissioner in relation to an assessment; or

(*c*) the determination of a reduction of tax under section 123 or section 124,

may appeal to the Commissioner against such assessment, decision or determination in the prescribed manner.

(2) Where an appeal is made to the Commissioner under subsection (1) he—

(*a*) may amend the assessment, decision or determination or disallow the appeal;

(*b*) shall send to the appellant written notice of his decision on the appeal;

(*c*) shall record any amendment of the assessment in the assessment register.

Appeal to Special Arbitrator

98.—(1) A taxpayer aggrieved by a decision of the Commissioner under section 97 may appeal in the prescribed manner to a Special Arbitrator appointed either generally or specially for the purpose by the President.

(2) A Special Arbitrator shall have the powers of the High Court to summon and enforce the prompt attendance of witnesses to hear and take evidence, and to control proceedings before it.

(3) A Special Arbitrator may appoint assessors to advise at any hearing but such assessors shall act solely in an advisory capacity and shall have no right of decision.

(4) Proceedings before a Special Arbitrator shall not be public and a Special Arbitrator shall exclude or require to withdraw from the place of hearing all or any persons whose attendance is not considered by him to be necessary, and shall take appropriate measures to preserve the anonymity of the taxpayer.

(5) A Special Arbitrator shall have power on an appeal duly made to him to amend the assessment, decision or determination in respect of which the appeal is made, may refer the matter back to the Commissioner for further investigation, or may disallow the appeal.

(6) A Special Arbitrator shall set out his findings of fact and decisions on points of law in a written judgment, a copy of which shall be supplied to the taxpayer and to the Commissioner on application and payment of any prescribed fee.

(7) The findings of fact contained in a judgment of a Special Arbitrator shall be final and conclusive:

Provided that the High Court, in the course of an appeal under section 101, may require the Special Arbitrator to make such further findings of fact as may be necessary for the determination of the appeal.

(8) The register of assessments shall be amended where necessary to give effect to the decision of a Special Arbitrator on an appeal.

Publication of decisions of Special Arbitrator

99.—(1) A Special Arbitrator may authorize the publication in such form as he may determine of any points of law or procedure decided by him. Particulars of the identity of the taxpayer and so far as possible of any information relating to his private affairs shall be excluded from any such publication.

(2) Any person who, without the authority of the Special Arbitrator, publishes any report of the proceedings before him shall be guilty of an offence and liable to a fine of K1,000.

Appeals from assessments, etc., by administrative officers

100.—(1) Notwithstanding the provisions of sections 97 and 98, an appeal by a taxpayer who is aggrieved by—

(*a*) any assessment made upon him by an administrative officer under powers delegated to him under this Act; or

(*b*) any decision of such administrative officer in relation to an assessment,

shall lie in the first place to the administrative officer concerned and the administrative officer shall have the same powers in respect of such appeal as are conferred on the Commissioner under section 97 (2).

(2) A taxpayer aggrieved by a decision of an administrative officer under subsection (1) may appeal in the prescribed manner to the Traditional Appeal Court exercising jurisdiction in the District concerned.

(3) In relation to appeals to a Traditional Appeal Court under subsection (2) the provisions of subsections (3), (4), (5), (6), (7) and (8) of section 98 and the provisions of section 99 shall apply with all necessary modifications as though for the references to "Special Arbitrator" there were references to "Traditional Appeal Court"

Appeal to High Court

101.—(1) Either party to proceedings before a Special Arbitrator under section 98 or a Traditional Appeal Court under section 100 may appeal in the prescribed manner to the High Court on a point of law:

Provided that in appeals from a Traditional Appeal Court the Commissioner shall replace the administrative officer as a party thereto.

(2) Proceedings before the High Court under this section shall not be public and the High Court shall exclude or require to withdraw from the place of hearing all or any persons whose attendance is not considered necessary, and shall take appropriate measures to preserve the anonymity of the taxpayer.

(3) The High Court may on an appeal—

(*a*) affirm, reverse or amend the decision on the point of law in respect of which the appeal is made;

(*b*) give such directions as it considers proper to ensure that effect is given to its decisions;

(*c*) refer the matter back to the Special Arbitrator or Traditional Appeal Court from which the appeal was made, for further investigation and further findings of fact; and

(*d*) make such order as to costs as it deems fit.

(4) The register of assessments shall be amended where necessary to give effect to the decision of the High Court on the appeal.

(5) The High Court may authorize publication in such form as it may determine of any points of law or procedure decided by it. Particulars of the identity of the taxpayer and, so far as possible, of any information relating to his private affairs shall be excluded from any such publication.

(6) Any person who, without the authority of the High Court, publishes any report of the proceedings before it shall be guilty of an offence and liable to a fine of K1,000.

PART XI
Collection and Recovery of Tax

Division 1—*Withholding Taxes*

Deduction of tax from salaries and wages—Pay As You Earn
6 of 1972
1 of 1985
1 of 1990
2 of 1994
10 of 2001
13 of 2006
14 of 2009
24 of 2011

102.—(1) On the making of any payment of, or on account of, any emolument at a rate exceeding the amount specified in Part I paragraph A of the Appendix to the Eleventh Schedule as attracting the zero per cent rate of taxable income per annum received or accrued in respect of services rendered, whether payable under any contract of employment or service or not, whether paid or payable weekly or monthly or at other intervals, and including any amounts assessable under sections 16, 17 and 18, income tax shall, subject to and in accordance with any regulations

made by the Minister under section 146, be deductible by the person making the payment, notwithstanding that when the payment is made no assessment has been made in respect of the emoluments and notwithstanding that the emoluments are in whole or in part emoluments for some year or period of assessment other than the year or period during which the payment is made:

Provided that where the recipient produces a valid withholding tax exemption certificate issued by the Commissioner, withholding tax shall not be deducted but so, however, that no exemption from payment of withholding tax shall be granted in respect of bank interest and rent, and the expression "bank interest" shall have the meaning assigned to it in the Fourteenth Schedule.

(2) Regulations made with respect to the assessment, charge, collection and recovery of income tax in accordance with this section may in particular include provision for—

(*a*) requiring any person making any payment of, or on account of, emoluments to which this section applies, when he makes the payment to make a deduction calculated by reference to tax tables prepared by the Commissioner, and for rendering persons who are required to make any deduction accountable to the Commissioner;

(*b*) the production to an inspection by persons authorized by the Commissioner of wages sheets and other documents and records for the purpose of satisfying themselves that tax has been and is being deducted and accounted for in accordance with the regulations;

(*c*) the collection and recovery, whether by deduction from emoluments paid in a later period or otherwise of tax in respect of emoluments to which this section applies, which has not been deducted or otherwise recovered during the year;

10 of 1983

(*d*) the personal liability of an employer to pay to the Commissioner the amount of any tax which the employer may fail to deduct contrary to this section or any regulation in respect thereof, and for the recovery by such employer of the amount of any tax so paid from the employee in respect of whose emoluments that amount was so paid, and any such regulations shall have effect notwithstanding anything in this Act relating to other methods of assessment and collection of income tax.

10 of 1993

(3) The tax tables referred to in subsection (2) (*a*) shall be constructed so as to show that the income tax payable in respect of the year of assessment is at the rates for the time being; specified in the Eleventh Schedule and that the income tax payable in respect of any week or month of that year is one fifty-second or one twelfth, respectively, of the income tax payable for that year.

(4) The year of assessment for income tax payable under this section (otherwise referred to as P.A.Y.E.) shall be the year ending the 30th June in each year.

Deduction of tax from certain payments
1 of 1985
4 of 1988
1 of 1995
5 of 1997
23 of 1997
18 of 1998
10 of 2003
29 of 2010
24 of 2011

102A.—(1) Every person who makes any payment specified in the Fourteenth Schedule to any other person shall, before making such payment withhold tax in accordance with the rates specified in that Schedule subject to and in accordance with any regulations made by the Minister under section 146, notwithstanding that the recipient has not been assessed in respect of the amount in question:

Provided that where the recipient produces a valid withholding tax exemption certificate issued by the Commissioner, withholding tax shall not be deducted but so, however, that no exemption from payment of withholding tax shall be granted in respect of bank interest and rent, royalties, fees, commissions and payment of casual labour, payment to contractors and sub-contractors, payment for tobacco and other products and the expression "bank interest" shall have the meaning assigned to it in the Fourteenth Schedule.

Fourteenth Schedule

(2) Regulations made with respect to deduction of tax (otherwise referred to as withholding tax) from certain payments in accordance with this section may include provision for—

(*a*) requiring any person making any payment to which this section applies to deduct tax in the manner provided and for rendering persons required to withhold tax accountable to the Commissioner;

(*b*) the production to and inspection by persons authorized by the Commissioner of records and other documents for the purpose of satisfying themselves that tax is being withheld and accounted for in accordance with the regulations; and

(*c*) the personal liability of any person required to withhold tax to pay to the Commissioner the amount of any tax which that person may fail to withhold contrary to this section or any regulation in respect thereof.

Payment of withholding tax
19 of 2013

102B.—(1) Any person who imports goods shall be required to pay withholding tax at three *per centum* of the value of goods at the port of entry into Malaŵi.

(2) Withholding tax shall be charged and payable on the importation of goods and for that purpose any written law applicable to collection of customs duties and other taxes on importation of goods shall apply with modifications as are necessary.

(3) A person who imports goods under subsection (1) shall be exempted where—

(*a*) the person has produced a withholding tax exemption certificate issued by the Commissioner General;

(*b*) the person is a Government Ministry;

(*c*) the person is a tax exempt under this Act; and

(*d*) the importation is done under section XXII of PART III of the Customs and Excise (Tariff) Order.

Priority of tax deduction at source
1 of 1983

103. Every sum required to be deducted under sections 102 and 102A shall be a first charge on the payment to the recipient and shall be deducted prior to any other deduction whether such other deduction be deductible under any court order or under any other law.

Formal assessment to be unnecessary
6 of 1972
10 of 1983

104. No assessment need be made on a person in respect of his emoluments for any period during which tax was deducted from his emoluments if the tax deducted each week or month was the correct amount to be deducted in accordance with the tables and regulations prescribing their use:

Provided that if such deductions were incorrect in whole or in part with the result that tax has been overpaid the error may be corrected by means of an assessment and the tax overpaid shall be repaid to that person.

Credit for tax deducted at source
1 of 1985
19 of 2013

104A. Where withholding tax has been deducted or paid under sections 102, 102A and 102B, the tax so deducted or paid shall be allowed as a credit against tax charged on assessments issued under sections 90 and 91 of this Act.

25 of 2016

Division 1A—Mineral Royalty

Mineral royalty
25 of 2016

104B. Where a mining project or a holder of a reserved minerals licence is liable to pay royalty on products of mining, the mineral royalty shall constitute a tax chargeable under this Act and shall be paid to the Commissioner General.

25 of 2016

Division 2—General

Payment of Tax on assessment
1 of 1985
10 of 1993
18 of 1998
19 of 2013

105.—(1) Any tax chargeable under this Act is payable by the due date as provided in this Act.

(2) Notwithstanding that an appeal against an assessment has been made under section 97 the tax shall be paid as provided in subsection (1) unless the Commissioner General otherwise directs:

Provided that, if the Commissioner General has reason to believe that the taxpayer may attempt to leave Malaŵi without intending to return without settling his liabilities under this Act, the Commissioner General may require the taxpayer to pay the whole of such tax forthwith.

10 of 1993

(3) When an appeal is settled any balance of tax shall be due and payable upon notification of settlement of the appeal.

(4) Where the assessment is reduced on appeal with the result that too much tax has been paid under subsection (2) the excess shall be refunded.

(5) If tax is not paid on or before the dates provided in subsection (1), (2) or (3), a penalty and interest shall be charged as prescribed in subsection (6). 14 of 1969 10 of 1993 24 of 2017

(6) The penalty and interest referred to in subsection (5) shall be— 14 of 1969 10 of 1993 19 of 2013 12 of 2015 24 of 2017

(i) an additional sum of twenty *per centum* of the amount of tax which was due to be paid in the first month or part thereof; and

(ii) a further interest charged on the outstanding amount of tax at the prevailing bank lending rate plus five per cent per annum for each month or part thereof during which the tax remains unpaid,

and such additional sums together with the amount of the tax shall be summarily recovered by Commissioner General in his own name:

Provided that the Commissioner General may reduce or waive the amount of such additional sums if a satisfactory explanation for the delay is given.

(7) Any interest payable under subsections (5) and (6) shall be recoverable as if it was tax payable under this Act and shall not be allowable as a deduction in computing taxable income. 10 of 1993

(8) Where a payment of tax has been made by cheque and the cheque is dishonoured by the bank, a penalty equal to thirty *per centum* of the amount in the cheque shall be charged, and collected summarily together with the amount of tax in cash. 18 of 1998

Mutual assistance to recover outstanding tax 18 of 1998

105A.—(1) If the Commissioner General has, in accordance with any arrangement made with the Government of any other country or by an agreement entered into in accordance with section 122 with a view to rendering reciprocal assistance in the collection of taxes, received a request for the collection from any person in Malaŵi of an amount alleged to be due by him under the income tax laws of such other country, the Commissioner General may, by notice in writing, call upon such a person to state, within a period specified in the notice, whether or not he admits liability for the said amount or for any lesser amount.

(2) The Commissioner General may—

(*a*) if such person so admits liability; or

(*b*) if such person fails to comply with the notice or in answer to the notice denies his liability for the said amount or for any part thereof, and a Special Arbitrator has certified that he has afforded the person concerned an opportunity of presenting his case, and that on the information submitted to him by the Commissioner General and by such person, if any, the amount specified in the certificate appears to be payable by such person in terms of a final determination under the income tax laws of such other country,

by notice in writing, require such person to pay the amount for which he has admitted liability or the amount so specified, as the case may be, on a date, at a place and to a person specified in the notice, for transmission to the proper authority in such other country.

(3) If such person fails to comply with the notice under subsection (2) the amount in question may, subject, in the case of any amount to which any such certificate relates, to the outcome of any proceedings which such person may institute in such other country for determining his liability for the said amount, be recovered for transmission to the said authority as if it were a tax payable by such person under this Act.

(4) No steps taken in any other country under any arrangement referred to in subsection (1), for the collection of an amount alleged to be due by any person in pursuance of such arrangement in such other country for any such amount, shall affect his right to have his liability for any such amount determined in Malaŵi in accordance with the provisions of the relevant law.

Persons by whom the tax is payable

106. Subject to this Act the tax shall be payable—

(*a*) by a representative taxpayer in respect of any taxable income received or controlled by him in such representative capacity;

(*b*) in respect of every other taxable income and in all other cases by the person by whom the taxable income is received or is deemed to have been received or to whom or in whose favour it accrues or is deemed to accrue or who is legally entitled to the receipt thereof:

Provided that any person may recover so much of the tax paid by him under this Act as is due to the inclusion in his taxable income of any such income deemed to have been received by him or to be such income of his, as the case may be, in terms of section 72 (1), (2), (3) or (4) from the person entitled, whether on his own behalf or in a representative capacity, to the receipt of the taxable income so included.

Partial payment
25 of 2016

106A.—(1) Where tax is due in accordance with more than one of sections 102 (1), 102A (1), 102B (1), 104B, 70A, 78, 65, 66, 71, 76, 76A, 84A, 91A, and 94A, and the taxpayer makes payment which is insufficient to discharge all the tax then due, the Commissioner General shall allocate the payment between the different tax obligations of the taxpayer according to the following order—

(*a*) partial payment shall be allocated first to tax due (if any) for which other taxpayers are credited. Where the partial payment is insufficient to discharge all such tax due, the Commissioner General shall allocate the payment between tax liabilities of this kind as the Commissioner General sees fit;

(*b*) the balance of the partial payment shall be allocated next to tax due (if any) which is a final withholding tax in relation to other taxpayers. Where the partial payment is insufficient to discharge all such tax due, the Commissioner General shall allocate the payment between tax liabilities of this kind as the Commissioner General sees fit;

(*c*) the balance of the partial payment shall be allocated next to tax due (if any) which is imposed on the taxpayer as a representative taxpayer. Where the partial payment is insufficient to discharge all such tax due, the Commissioner General shall allocate the payment between tax liabilities of this kind as the Commissioner General sees fit;

(*d*) the balance of the partial payment shall be allocated next to tax due (if any) by way of royalty by a mining project or for products of mining. Where the partial payment is insufficient to discharge all such tax due, the Commissioner General shall allocate the payment between tax liabilities of this kind as the Commissioner General sees fit; and

(*e*) the balance of the partial payment shall be allocated next to all other tax liabilities of the taxpayer. The Commissioner General shall allocate the payment between tax liabilities of this kind as the Commissioner General sees fit.

(2) For all purposes of this Act, the taxpayer shall be taken to have made payments of particular tax due in accordance with the allocation so made, and not in accordance with any different allocation directed or nominated by the taxpayer.

(3) Where tax is due and the Commissioner General would otherwise make a payment to the taxpayer, the Commissioner General may elect to make the payment by offset of the payment amount (in part or in full) against the tax due, and the offset amount shall be taken to be a payment by the taxpayer for the purposes of this Act.

Recovery of tax
25 of 2016

107.—(1) (*a*) Any tax or liability shall when it becomes due or is payable, be deemed to be a debt due to the Malaŵi Government and shall be payable to the Commissioner General in the manner and at a place prescribed, and may be sued for and covered by the Commissioner General in any court of competent jurisdiction.

(*b*) The Commissioner General may specify that payment of a particular kind of tax or any liability, or by a particular taxpayer or class of taxpayer (whether identified by size or otherwise), or a payment of a particular size, shall be made in a particular manner (which manner may include payment by electronic transfer of a particular kind).

(2) Notwithstanding anything contained in any Malaŵi law relating to magistrates' courts any amount whatsoever due and payable under this Act shall be recoverable by action in the court of the magistrate having jurisdiction in respect of the person by whom such amount is payable under this Act.

10 of 1993

(3)—(*a*) If any person neglects or refuses to pay any tax due and payable upon demand made by the collector, the collector may, upon the authority of a certificate by the Commissioner General that such tax is due and payable, for non-payment thereof distrain such person by any of his property, both real and personal without any further authority than such certificate and his warrant of appointment.

(*b*) A distress levied by the collector shall be kept by the collector for five days at the costs and charges of the person neglecting or refusing to pay, and if the person aforesaid does not pay the sum due, together with the costs and charges, within the said five days, the distress shall be sold by public auction for payment of the sum due and all costs and charges. The costs and charges of taking, keeping and selling the distress shall be retained by the collector, and any overplus coming by the distress, after the deduction of the costs and charges and of the sum due, shall be restored to the owner of the goods distrained.

(4) If any tax due and payable by a man in respect of the income of a woman which is deemed in terms of section 12 (2) to be income accrued to him during a period while he was married to that woman is outstanding after his assets in Malaŵi have been distrained or otherwise attached in any manner whatso-

ever, that woman shall be chargeable with such tax and, after a notification to her by the Commissioner for the purposes of section 105 (1) that outstanding tax shall become due and payable by her in accordance with such notification and that man shall be released from the payment of the amount of such outstanding tax as is recovered by the Commissioner from such woman.

(5)—(*a*) If any tax due and payable by a partner in any business, which is referable to the taxable income derived from the partnership business is outstanding after his assets in Malaŵi, other than his interest in the assets of the partnership, have been distrained or otherwise attached in any manner whatsoever, the partnership shall be chargeable with such tax, and after a notification to it by the Commissioner for the purposes of section 105 (1), that outstanding tax shall become due and payable by it in accordance with such notification and that partner shall be released from the payment of the amount of such outstanding tax which is recovered by the Commissioner from the partnership: 10 of 1993

Provided that the amount of tax recoverable from the partnership shall not exceed the value of such partner's interest in the assets of the partnership;

(*b*) the amount of tax so referable in terms of paragraph (*a*) shall be the proportion of the total tax due by the partner determined in accordance with the ratio that the partner's taxable income derived from the partnership business bears to his total income.

(6) So much of any tax payable by any person under this Act as is due to the inclusion in his income of any income deemed to have been received by or accrued to him or to be his income, as the case may be, in terms of section 72 (1), (2), (3) or (4), may be recovered by the Commissioner from the assets by which the income so included was produced.

Creation of a lien 10 of 1993

107A.—(1) If any person liable to pay tax imposed by this Act neglects or refuses to pay the tax after it has become due and payable, the amount (including any interest, additional charge or penalty, together with any costs that may accrue in addition thereto) shall constitute a lien in favour of the Government on all the property, both real and personal, belonging to that person.

(2) If in the opinion of the Commissioner it is in the best interest of the Government so to do, he may cause to be filed a notice of the lien created under subsection (1) in the appropriate public records.

(3) Upon filing, a lien shall be valid against all other rights, and have priority, over all subsequently filed liens.

(4) Upon satisfaction of the tax obligation, the Commissioner shall promptly issue a release of the filed lien.

Form of proceedings

108.—(1) Proceedings in any court for the recovery of any tax shall be deemed to be proceedings for the recovery of a debt validly acknowledged in writing by the debtor.

(2) In any action or proceedings for the recovery of any tax it shall not be competent for the defendant to question the correctness of any assessment, notwithstanding that an appeal may have been lodged thereto.

Production of register of assessments 14 of 1969

109. The production of any register of assessments or of any document under the hand of the Commissioner or of any officer duly authorized by him purporting to be a copy of, or extract from, any such register of assessments shall be conclusive evidence of the making of any assessment referred to therein and, except in the case of proceedings on appeal against an assessment, shall be conclusive evidence that the amount and all the particulars of such assessment appearing in such register or document are correct.

Payment of tax by persons leaving Malaŵi

110.—(1) Any person who shall leave or attempt to leave Malaŵi by land, water or air without intending to return without settling his liabilities under this Act or making such arrangements for the payment of any tax which is or may become due as are satisfactory to the Commissioner shall be liable to a penalty of K100.

(2) The Commissioner shall give a tax clearance certificate to any such person when either he has settled his liability or made satisfactory arrangements for the payment of tax.

Security for payment of tax 14 of 1969

111.—(1) For the purpose of securing the payment of tax a taxpayer who is the owner of any land situated in Malaŵi may, by notice in writing to the Commissioner, request that his interest in such land be the subject of security for tax of an amount specified therein.

(2) If the Commissioner in his discretion accepts such security for the payment of such tax he may, by notice in writing, notify the Registrar responsible for the registration of titles to such land and encumbrances thereover of such request and such Registrar shall, without fee, register such notification as if it were an instrument of mortgage over or charge on, as the case may be, such land duly made in accordance with the laws of Malaŵi and thereupon such notification shall, subject to subsection (3) and any prior mortgage or charge, operate as a legal mortgage over or charge on such land to secure such amount.

(3) On being satisfied that any such tax has been paid or that security therefore is no longer required, the Commissioner shall notify the Registrar responsible of the cancellation of such

notification and such Registrar shall, with fee, record such cancellation and thereupon such notification shall cease to operate as a mortgage over or charge on such land.

PART XII
Penalties

Liability for penalties
14 of 1969
1 of 1990
10 of 1993
2 of 1994
18 of 1998
11 of 2002
14 of 2009
24 of 2017

112.—(1) Any person who—

(*a*) fails to comply with any notice served on him by the Commissioner General under this Act or any rules made thereunder;

(*b*) gives any incorrect information or omits any relevant information from any statement required to be made to the Commissioner General;

(*c*) fails to keep records, books or accounts required to be kept under section 54;

(*d*) fails to comply with any of the provisions of section 67 relating to the appointment of public officers;

(*e*) fails to furnish any other person with a certificate or statement as required under section 87 (3),

commits an offence and shall be liable to a penalty of K200,000 for companies and K50,000 for individuals for the first month or part thereof, and a further penalty of K50,000 for companies and K10,000 for individuals for each month or part thereof during which the failure continues.

(2) Any person who—

(*a*) fails to furnish or makes default in furnishing to the Commissioner General, with a return of income in respect of any year of assessment; or

(*b*) fails to furnish the Commissioner General with a return of payments made to shareholders as required under section 68 (1);

(*c*) fails to file with the Commissioner General a copy of the memorandum and articles of association or any amendments thereto as required under section 68 (2);

(*d*) being an officer of a company, fails to furnish to the Commissioner General documents and particulars relating to the notification of dividend declared, as required under section 69; or

(*e*) fails to furnish to the Commissioner General returns or particulars relating to persons employed by him as required under section 85,

commits an offence and shall be liable to a penalty of K300,000 for companies and K75,000 for individuals for the first month or part thereof, and a further penalty of K50,000 for companies and K10,000 for individuals for each month or part thereof during which the failure continues.

(3) Any person who—

(*a*) omits from his return of income in respect of any year of assessment, any amount which should have been included therein;

(*b*) in his return of income in respect of any year of assessment, deducts or sets off any amount the deduction or setting off of which is not allowed under the Act;

(*c*) claims any allowance in respect of any year of assessment, which he is not entitled to claim under this Act; or

(*d*) fails to deduct the tax due, or to remit tax deducted, under section 76A,

shall be liable to pay to the Commissioner General—

(i) an additional sum of twenty *per centum* of the amount of tax which he has failed to pay in the first month or part thereof; and

(ii) a further interest charged on the outstanding amount of tax at the prevailing bank lending rate plus five per cent per annum for each month or part thereof during which the tax remains unpaid,

and such additional sums together with the amount of the tax shall be summarily recovered by Commissioner General in his own name:

Provided that the Commissioner General may reduce or waive the amount of such additional sums if a satisfactory explanation for the delay is given.

(4) Any person who with intent to defraud—

(*a*) commits any of the acts or omissions referred to in subsections (2) and (3);

(*b*) makes any false statement or gives any false information when complying with any notice served on him under this Act;

(*c*) in relation to any year of assessment, prepares, maintains, or authorizes or causes the preparation or maintenance of any false books or accounts or other records, or falsifies or authorizes or causes the falsification of any books, accounts or other records; or

(*d*) makes any false claim for repayment of any tax for any year of assessment,

commits an offence and shall be liable—

(i) to a penalty imposed by the Commissioner General of K200,000 or twice the difference between the amount of the tax with which he ought to be charged and the amount of the tax, if any, with which he has been charged for such year of assessment, whichever is the greater; or

(ii) upon conviction, to imprisonment for one year.

Imposition of penalty

113.—(1) Any penalty incurred under this Act shall be imposed by the Commissioner and any such imposition of a penalty shall be subject

to the same rights of appeal as if it were an assessment under this Act, and all the provisions of this Act relating to assessments, appeals and the collection and recovery of tax shall apply to such imposition and penalty.

(2) Payment of a penalty imposed under this Act shall in no way operate as a discharge of the liability of a taxpayer to pay the full amount of tax chargeable under this Act.

Accounts deemed to have been submitted by person
14 of 1969

114. For the purposes of section 112 of this Act, any accounts submitted on behalf of any person shall be deemed to have been submitted by him unless he proves that they were submitted without his consent or connivance.

Assisting in making incorrect returns
11 of 2002
24 of 2017

115. Any person who assists in or induces the making or delivery for any purposes, of income, tax of any return, accounts, statement or declaration which he knows to be incorrect, shall be liable to a penalty of K200,000 for the first month or thereof, and a further penalty of K10,000 for each month or part thereof during which the penalty is not paid.

Obstruction of officers
11 of 2002
24 of 2017

116. Any person who obstructs or hinders an officer in the discharge of his duty under the Act shall be liable—

(*a*) to a penalty imposed by the Commissioner General of K1,000,000; or

(*b*) upon conviction, to imprisonment for twelve months.

Forceful rescue of seized property
10 of 1993
11 of 2002
24 of 2017

116A. Any person who forcibly rescues or attempts to rescue any property, article, or object which has been taken, detained, or seized by any officer pursuant to this Act commits an offence and shall be liable—

(*a*) to a penalty imposed by the Commissioner General of K1,000,000; or

(*b*) upon conviction, to imprisonment for one year.

Physical assault of officers
10 of 1993
11 of 2002
24 of 2017

116B. Any person who physically assaults an officer discharging his duties under this Act commits an offence and, on conviction, shall be liable to a fine of K1,000,000 or to imprisonment for twelve months.

Inciting a person to refuse to pay tax
2 of 1996
11 of 2002
24 of 2017

117. Any person who, without lawful justification or excuse, incites any person to refuse to pay any tax payable by him under this Act, commits an offence and shall be liable—

(*a*) to a penalty imposed by the Commissioner General of K1,000,000; or

(*b*) upon conviction, to imprisonment for twelve months.

Time limit for penalty proceedings 14 of 1969

118.—(1) Proceedings for the recovery of any penalty incurred under this Act in connexion with or in relation to assessments of income tax made by the Commissioner General may be commenced at any time within six years next after the date on which it was incurred:

Provided that where the amount of the penalty to which a person is liable under this Act is to be determined by reference to tax charged in an assessment for any year, proceedings for the recovery of the penalty shall not be out of time by reason that they are commenced after such period if they are commenced within three years from the first determination of the amount of that tax.

14 of 1969

(2) The time limited by subsection (1) for commencing proceedings for the recovery of any penalty from any person in connexion with or in relation to any income tax covered by any assessment shall, where any form of fraud or willful default has been committed by him or on his behalf in connexion with or in relation to that tax, be extended so as to authorize the commencement of such proceedings at any time within three years from the final determination of the amount of tax covered by the assessment.

For the purposes of this subsection, the amount of the tax covered by any assessment shall not be deemed to be finally determined until the assessment can no longer be varied, whether on appeal or by the order of any court.

(3) Nothing in subsection (2) shall extend the time for the bringing of any proceedings against the personal representatives of any person by whom or on whose behalf any form of fraud or willful default has been committed.

Liability of officers of company 14 of 1969

119. Where a company is liable to a penalty under this Act every person who, at the time of the act or omission rendering the company liable to such penalty was a public officer, director, general manager, secretary or other similar officer of such company or was purporting to act in such capacity shall also be liable to the same penalty unless he proves that such act or omission was done or omitted without his knowledge or consent and that he exercised due diligence to prevent such act or omission having regard to the nature of his functions in such capacity and in all the circumstances.

Recovery of tax repaid in consequence of fraud or negligence

120. Where in consequence of a person's fraud, willful default or negligence, any tax has been repaid which ought not to have been repaid the amount thereof may be recovered by assessment, but without prejudice to the right of the Commissioner General to recover such tax by means of civil proceedings.

Saving for criminal proceedings, etc. 14 of 1969

121.—(1) Save as is otherwise provided, none of the provisions of this Act, including the imposition of penalties shall affect or be a bar to criminal proceedings for any offence.

(2) Statements made or documents produced to the Commissioner General by or on behalf of any person for the purposes of this Act, shall be admissible in any criminal proceedings against such person for any form of fraud in connexion with or in relation to income tax, or in any proceedings for the recovery of any penalty.

PART XIII
General

Relief from double taxation

122.—(1) If the Minister by Order declares that arrangements specified in that Order have been made with the Government of any country with a view to the prevention, mitigation or discontinuance of the levying under the laws of Malaŵi and of such other country of taxes in respect of the same income, or to the rendering of reciprocal assistance in the administration of this Act or any previous law and taxes on income levied under the laws of such other country, and that it is expedient that those arrangements should have effect, the arrangements shall have effect notwithstanding anything in this Act.

(2) The Commissioner General may make rules for carrying out any arrangements having effect under this section.

(3) An order made under subsection (1) may have retrospective effect.

Reduction of tax payable as a result of agreements entered into in terms of section 122

123.—(1) This section shall apply where, under any agreement entered into with any other country or territory in terms of section 122 the tax (hereinafter referred to as "foreign tax") payable to that other country or territory in respect of any income (hereinafter referred to as "foreign income") is to be allowed as credit against tax chargeable in terms of this Act in respect of such foreign income.

(2) Subject to subsection (3), the amount of the tax chargeable under this Act in respect of such foreign income shall be reduced by the amount to be allowed as a credit in terms of any agreement.

(3) Any reduction granted in terms of subsection (2) shall be subject to the provisions set out in this subsection—

(*a*) a reduction in the income tax, shall not exceed an amount arrived at by applying the formula— 14 of 1969

$$\frac{A \times B}{C}$$

in which—

A is the amount of the foreign income included in the taxable income; and

B is the income tax which would have been payable in terms of this Act had no reduction been granted; and 14 of 1969

C is the taxable income;

(*b*) the total reduction to be allowed to any person for any year of assessment shall not exceed the total tax chargeable in terms of this Act in respect of that year of assessment;

(*c*) where the amount of any reduction given in terms of any such agreement is rendered excessive or insufficient by reason of any subsequent adjustment of the amount of any foreign tax applicable to such foreign income or to any tax chargeable in terms of this Act in respect of such foreign income, nothing in this Act limiting the time for the raising of additional assessments, the reduction of an assessment, or of the granting of refunds shall prevent a subsequent adjustment of the amount of such reduction, and any tax underpaid as a result of such adjustment shall be recoverable and any tax overpaid shall be refundable.

Relief from double taxation in cases where no agreements have been made under section 122 18 of 1968

124. If any person in or any person outside Malaŵi who is deemed to have derived income from a source within Malaŵi in terms of section 27 (1) (*c*) who has paid or is liable to pay tax for any year of assessment on income which is derived from a country or territory which has not entered into an agreement with Malaŵi in terms of section 122 proves to the satisfaction of the Commissioner that he has paid tax on the same income in the country or territory from which such income was derived and requests relief in respect of that tax then the tax chargeable under this Act in respect of such income shall be reduced by the amount of foreign tax paid or payable on such income as if section 123 (3) was applicable thereto. For the purpose of this section, tax in respect of such income, which is deducted from such income in such country or territory, shall be deemed to be tax paid by such persons.

Error or mistake

125.—(1) If a taxpayer who has paid tax for any year of assessment alleges that any assessment made upon him for that year was excessive by reason of some error or mistake in the return, statement or account made by or on behalf of such taxpayer for the purposes of the assessment, he may at any time not later than six years after the end of the year of assessment within which the assessment was made, make an application in writing to the Commissioner for relief.

(2) On receiving any such application the Commissioner shall inquire into the matter and shall give by way of repayment of tax such relief in respect of the error or mistake as appears to be reasonable and just:

Provided that no relief shall be given under this section in respect of an error or mistake as to the basis on which the liability of the applicant ought to have been computed where the return, statement or account was in fact made on the basis or in accordance with the practice generally prevailing at the time when the return, statement or account was made.

(3) A determination by the Commissioner under this section shall be final and conclusive.

Repayment of tax

126.—(1) Save as is otherwise expressly provided in this Act, no claim for repayment of tax shall be allowed unless it is made in writing within six years after the end of the year of assessment to which it relates.

(2) The Commissioner shall give a certificate of the amount of tax to be repaid under any of the provisions of this Act or under any order of a court of competent jurisdiction and shall issue a repayment order to the person to be repaid.

Transfers to defraud, and artificial transactions

127.—(1) Where, when any proceedings are pending under this Act, any taxpayer creates a charge on or parts with the possession by way of sale, mortgage, exchange or any other mode of transfer whatsoever of any of his assets in favour of any other person with the intention to defraud the Government such charge or transfer shall be void as against any claim in respect of any tax or any other sum payable by such taxpayer as a result of the completion of such proceedings:

Provided that such charge or transfer shall not be void if made for valuable consideration and without notice of the proceedings pending under this Act.

14 of 1969

(2) Where the Commissioner is of the opinion that the main purpose or one of the main purpose for which any transaction or transactions was or were effected (whether before or after the passing of this Act) was the avoidance or reduction of liability to tax for any year, or that the main benefit which might have been expected to accrue from the transaction or transactions was the avoidance or reduction of liability to tax, he may, if he

determines it to be just and reasonable, direct that such adjustments shall be made as respects liability to tax as he considers appropriate to counteract the avoidance or reduction of liability to tax which would otherwise be effected by the transaction or transactions:

Provided that no such direction shall require that adjustments shall be made as respects liability to tax for any year of assessment prior to the year of assessment commencing on the 1st April, 1968.

(3) Without prejudice to the generality of the powers conferred by subsection (2) the powers conferred thereby extend—

(*a*) to the charging with tax of persons who, but for the adjustments, would not be chargeable with any tax or would not be chargeable to the same extent;

(*b*) to the charging of a greater amount of tax than would be chargeable but for the adjustments; and

(*c*) to the giving of a direction under this section by reason of the fact that in the case of any company no distribution of dividends has been made or only a smaller distribution has been made than might have been made without detriment to the development of the business of the company:

Provided that—

(i) where a charge is made under this section on any company in respect of adjustments which relate to the liability of any shareholder, such company shall be entitled to recover from such shareholder the amount of tax attributable to the adjustment made in respect of such shareholder; and

(ii) where an adjustment made under this section relates to any distributable profits of a company and such profits are subsequently distributed the proportionate share therein of any shareholder shall be excluded in computing the income of such shareholder.

(4) Any direction of the Commissioner General under this section shall specify the transaction or transactions giving rise to the direction and the adjustments as respects liability to tax which the Commissioner considers appropriate.

(5) Any person aggrieved by any direction of the Commissioner General made under subsection (2) may appeal therefrom either on the grounds that no direction ought to have been given or that the adjustments directed to be made are inappropriate; and all the provisions of this Act relating to appeals against assessments, shall, so far as they are applicable, have effect with respect to any such appeal as if such appeal were an appeal against an assessment:

Provided that any direction made under subsection (2) shall not be the subject of any appeal except under this subsection.

Transfer to defraud and artificial transactions
14 of 2009
19 of 2013
12 of 2015
24 of 2017

127A.—(1) For the purposes of this Act, where—

(*a*) a person liable to tax in Malaŵi engages directly or indirectly in one or more transactions, operations or schemes, in this section referred to as a transaction with a related person or a controlled transaction; or

(*b*) a person not liable to tax in Malaŵi engages directly or indirectly in one or more transactions with a related person not liable to tax in Malaŵi where the transaction is in relation to a permanent establishment in Malaŵi of one of the two related persons,

the amount of each person's taxable income shall be determined in a manner that is consistent with the arm's length principle.

(2) The amount of such taxable income in subsection (1) (*b*) shall be consistent with the arm's length principle if the conditions of those transactions do not differ from the conditions that would have applied between independent persons in comparable transactions carried out under comparable circumstances.

(3) Where the conditions of a transaction between related persons "controlled transaction" to which subsection (1) applies are not consistent with the arm's length principle and the effect of that inconsistency is reducing or postponing the liability to tax of any person for any year of assessment, the taxable income of that person shall be computed as though the conditions of the transaction are consistent with the arm's length principle.

(4) The determination of whether the conditions of a controlled transaction are consistent with the arm's length principle and of the quantum of any adjustment made under subsection (3), shall be in the manner as prescribed by the Minister.

(5) For purposes of this section—

(*a*) two persons are considered to be related where—

(i) one person participates directly or indirectly in the management, control or capital of the other; or

(ii) a third person participates directly or indirectly in the management, control or capital of both.

(*b*) A person participates directly or indirectly in the management, control or capital of another person where the person—

(i) owns, directly or indirectly, more than fifty per cent of the share capital of the other person; or

(ii) has the practical ability to control the business decisions of the other person;

(*c*) The rights or powers attributed to the person include the rights or powers of any person associated to the person by marriage, consanguinity or affinity.

(6) The provisions of subsections (1) and (2) shall also apply where a person—

(*a*) liable to tax in Malaŵi engages in one or more transactions with another person located in a tax jurisdiction that, according to criteria set out in the regulations, provides that other person with a beneficial tax regime, whether or not such person is a related person; or

(*b*) located in a tax jurisdiction that, according to criteria set out in the regulations, provides that person with a beneficial tax regime when the person engages in one or more transactions that relates to a permanent establishment of a non-resident person in Malaŵi, whether or not such a person is a related person.

(7) Notwithstanding the provisions of subsections (1), (2) and (3), where—

(*a*) a person liable to tax in Malaŵi engages directly or indirectly in a transaction with a related person; or

(*b*) a non-resident person engages directly or indirectly in a transaction relating to a permanent establishment in Malaŵi with a related person,

for the export or import, involving grains, oil seeds, other agricultural products obtained from the land, hydrocarbons and derivatives thereof, and, in general, goods where prices can be obtained at the date of the transaction from an international or domestic commodity exchange market, or from recognized and transparent price reporting or statistical agencies, or from governmental price-setting agencies, or from any other index but excluding all auctions in Malaŵi trading coffee, macadamia nuts, tea or tobacco, that is used as a reference by unrelated parties to determine prices in transactions between them (hereinafter referred to as the "publicly quoted price"), the monthly average of that publicly quoted price of the month in which the goods are shipped, regardless of the means of transport, shall be, without considering the price that was agreed upon with the related person, the sale price used for the purposes of computing the taxable income of that person unless the person provides all of the evidence needed to show that adjustments are appropriate to that quoted price to be consistent with the arm's length principle:

Provided that in the case of goods exported from Malaŵi where the price agreed upon between the person and the related person is higher than the publicly quoted price at the above-mentioned date, the agreed price in this case will be considered as the sale price for the purposes of computing the seller's taxable income in Malaŵi.

(8) Every person who engages in a transaction to which this section applies shall keep documentation in the prescribed manner as may be required by regulations.

(9) The regulations made pursuant to this section may provide for—

(i) the production of documentation, and the form and time within which such documentation shall be provided; and

(ii) the penalties for non-compliance with transfer pricing requirements.

(10) This section shall not apply in respect of transactions between related persons who are both liable to tax in Malaŵi where the persons are able to satisfy the Commissioner General that the value of all of the transactions between those persons in the year of assessment is less than the threshold specified by the regulations, unless the Commissioner General directs the taxpayer in writing, prior to the year of assessment, that this section shall apply.

(11) This section shall apply to the attribution of profit to a permanent establishment on the assumption that the permanent establishment and other parts of a legal person are treated as separate enterprises. No deduction shall be allowed in respect of amounts, if any, paid or payable, otherwise than towards reimbursement of actual expenses, by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents or other rights, or by way of commission, for specific services performed or for management, or, except in the case of a banking enterprise, by way of interest on moneys lent to the permanent establishment.

(12) For the purposes of subsection (11), an enterprise refers to any commercial or business activity carried on by any person.

(13) To the extent that there is a difference between—

(*a*) any amount that is, after taking subsection (2) into account, applied in the calculation of the taxable income of any resident person that is a party to a controlled transaction; and

(*b*) any amount that would, but for subsection (2), have been applied in the calculation of the taxable income of the resident person contemplated in paragraph (*a*),

the amount of that difference shall, for purposes of subsection (2), be deemed to be a dividend that has been distributed for the purposes of section 70A.

Ratio of debt to equity
12 of 2015

127B.—(1) Where a person or enterprise incurs or accumulates a debt due from a related or connected party through direct or indirect financing or supply of goods or services, the ratio of debt to equity shall be as prescribed by the Minister by order published in the *Gazette*.

(2) Where the ratio of the debt to equity exceeds the one prescribed by the Minister, interest in excess of the proportion of debt to equity shall not be allowed as a deduction notwithstanding the provisions of section 28.

Errors, etc., in assessment and notice may be rectified, and Commissioner may remit tax

128.—(1) No assessment, warrant or other proceeding purporting to be made in accordance with this Act shall be quashed, or deemed to be void or voidable for want of form, or be affected by reason of a mistake, defect or omission therein, if the same is in substance and effect in conformity with or according to the intent and meaning of this Act, and if the person assessed or intended to be assessed or affected thereby is designated therein according to common intent and understanding.

(2) An assessment shall not be impeached or affected by reason of any variance between the assessment and the notice thereof, or by reason of a mistake therein as to—

(*a*) the name of a taxable person or of a person in whose name a taxable person is chargeable;

(*b*) the description of any income; or

(*c*) the amount of tax charged or shown to be payable:

Provided that in cases of assessment the notice thereof shall be duly served upon the taxable person intended to be charged or the person in whose name such taxable person is chargeable, and such notice shall contain in substance and effect the particulars on which the assessment is made.

(3) The Commissioner may remit, in whole or in part, any tax outstanding which he is of the opinion cannot be recovered:

Provided that this power shall be exercised by the Commissioner in person and shall not be delegated.

PART XIV

Graduated Tax

[*Sections* 129–145 *repealed by* 2 *of* 1994.]

PART XV

Regulations

Regulations by Minister 12 of 2015

146.—(1) The Minister may make regulations for the better carrying out of the purposes and provisions of this Act, and without prejudice to the generality of the foregoing such regulations may make provision for—

(*a*) any matter for which the Act provides for regulations to be made;

(*b*) prescribing anything to be or which may be prescribed under this Act; and

(*c*) appeals in respect of any matters arising under the Act or any regulations made thereunder for which provision for appeals has not already been made.

12 of 2015
Cap. 1:01

(2) Notwithstanding the provisions of section 21 (*e*) of the General Interpretation Act, the regulations made under this Act may create offences in respect of any contraventions to the regulations and may for any such contravention impose a fine of up to the maximum fixed amount or proportional amount imposable under the Act and to imprisonment for up to three years.

Saving

147. All subsidiary legislation made under the Taxation Act, (now repealed) shall, until replaced or revoked under this Act, continue in operation as if they were regulations made by the Minister under powers conferred upon him under this Act.

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7 of 1968
18 of 1968
14 of 1969
16 of 1969
27 of 1970
10 of 1983
12 of 1987
20 of 1987
4 of 1988
7 of 1992
1 of 1995
19 of 1995
5 of 1997
10 of 2001
6 of 2005
7 of 2007
29 of 2010
24 of 2011
17 of 2012
25 of 2016

FIRST SCHEDULE ss. 13 and 27 (3)

General Exemptions

There shall be exempt from income tax—

(*a*) the revenues of local authorities;

(*b*) the receipt and accruals of—

(i) land and agricultural banks specifically constituted by any law of Malaŵi, any board or other body constituted under any such law having as its main object the fostering or controlling of the primary production, manufacture, or marketing of any commodity, or the stabilizing of the price of any commodity;

(ii) a registered trade union;

(iii) agricultural, mining and commercial institutions or societies not operating for the private pecuniary profit or gain of the members;

(iv) clubs, societies and associations, not being clubs, societies or associations to which the provisions of section 61 apply, formed, organized or operated solely or principally for social welfare, civic improvement or other similar purposes, if such receipts or accruals, whether current or accumulated, may not be divided amongst or credited to or ensure to the benefit of any member or shareholder,

6 of 2005
7 of 2007
29 of 2010
17 of 2012

(v) any payments of pension or annuity, whether paid as a lump sum or periodically;

17 of 2012

(v*a*) a payment on account of ill-health or disability;

(vi) building societies and friendly societies;

(vii) employees' savings schemes or funds approved by the Commissioner,

(viii) statutory corporations and bodies and associations as may be specified by the Minister by notice published in the *Gazette*;

(ix) ecclesiastical, charitable and educational institutions of a public character, and trusts of a public character:

Provided that this subparagraph shall not apply to receipts or accruals derived from the carrying on of any business; 16 of 1969

(*c*) any amount received as a war disability pension or war widows pension, or as an old age pension paid out of public funds, or as an award, benefit, or compensation paid under any law of Malaŵi in respect of injury, disease or disablement suffered in employment;

(*d*) interest on Savings Certificates issued by the Government or interest on so much of any tax reserve certificate as is accepted in payment of income tax or any other tax the assessment and collection of which is vested in the Commissioner; 5 of 1997

(*e*) interest received by or accrued to or in favour of any person from any public loan raised by the Government and issued subject to a condition that such interest shall be exempt from income tax in the hands of such person;

(*f*) interest received by or accrued to or in favour of any person from any stock or bonds issued by the Government which the Minister has directed shall be exempt from tax under the powers vested in him by section 26 of the Finance and Audit Act to the extent that he shall so direct; Cap. 37:01

(*g*) interest received by or accrued to or in favour of any person from Malaŵi Development Bonds;

(*h*) interest received by or accrued to or in favour of any person not being a resident of Malaŵi from four per cent African Development Loan (Registered Bond) issued on the 1st day of July, 1960;

(*ha*) interest received by or accrued to or in favour of any person on any sums deposited with such institution, and held by that institution on an account of such type, as may be specified by the Minister by Order published in the *Gazette*; and the Minister may, in such Order, prescribe the minimum amount which may be held on an account for the purposes of the exemption granted under this paragraph; 4 of 1988 25 of 2016

(*hb*) gains from sale of shares traded on the stock exchange if those shares are held by a tax payer for not less than twelve months; 7 of 1992 10 of 1993 1 of 1995 19 of 1995 5 of 1997 24 of 2011 17 of 2012 25 of 2016

(*hc*) housing allowance of up to K200 per month received by or accrued to or in favour of an employee from his employer; 1 of 1995 19 of 1995 25 of 2016

18 of 1968
27 of 1970
1 of 1995

(*i*) the gratuity, pension and other benefits granted by Government to a former President or a former Vice-President;

1 of 1995

(*j*) the salary and emoluments of the President and a Vice-President received from the Government in respect of their offices as President and Vice-President, respectively;

(*k*) any amount payable to any person or his dependents or heirs on account of his injury or sickness by any benefit fund or any trade union or under any policy of insurance covering accident or sickness;

(*l*) the interest received by, or accrued to, or in favour of the Commonwealth Development Corporation or any other similar body which the Minister by notice published in the *Gazette* may specify on loans made by those bodies to the Government or to any corporate body established by a law of Malaŵi;

(*m*) the salaries and emoluments payable in respect of their offices to such officers in the service Government of countries outside Malaŵi or such agencies of such Governments or of such international organizations as the Minister may by notice published in the *Gazette* approve;

(*n*) the value of any education allowance and the passages connected therewith paid by the Government in respect of its employees;

(*o*) the salaries and emoluments payable in respect of their offices to any members of the United Kingdom Armed Forces serving in Malaŵi which are subject to income tax in the United Kingdom;

(*p*) such foreign service allowances as may from time to time for this purpose be specified by the Minister, paid by the Government to any member of a Government mission outside Malaŵi;

(*q*) such allowances made to members of the National Assembly as may from time to time be specified by the Minister for the purposes of this Schedule;

(*r*) any amount paid for loss of career of concomitant disturbance made by the Government to a member of its permanent pensionable staff, not being an amount paid by way of interest by reason of the deferment of the payment of any such amount or any part of such amount;

5 of 1997

(*ra*) up to K50,000 of any amount paid by any employer to an employee who has been declared redundant, not being notice pay or commutation of leave;

25 of 1972

(*s*) such income payable to any person as is, pursuant to any arrangement, agreed to be exempted.

In this paragraph the term "arrangement" means any arrangement between the Government and any other Government, or any international organization, institution or body, or any person;

(*t*) [*Deleted by* 10 *of* 2001].

(*u*) any scholarship, exhibition, bursary or similar educational endowment paid to a person receiving full-time instruction at a university, college, school or other educational establishment approved by the Minister, and such allowances connected therewith as may be approved by the Minister;

(*v*) where an agreement is in force between the Government and the government of any other country whereby the income or part thereof derived from the business of air transport is agreed to be exempt from tax, the income of such business as are specified in the agreement to the extent provided in the agreement; 27 of 1970

(*w*) the receipts and accruals of life assurance companies or societies or of life departments of companies carrying on both life and non-life business as such, except as provided in section 63 (2); 4 of 1982

(*x*) any income arising from the rendering international transport service by, and payable to, a resident of country which exempts from tax any amount payable to residents of Malaŵi for rendering similar service; 12 of 1987

(*y*) amounts received and credited by the Trustees of the Parliamentary Pensions Premium Fund for the account of that Fund in furtherance of the objects specified in section 4 of the Parliamentary Pensions (Enabling Provisions) Act; Cap. 2:06

(*z*) amounts received by a member of the National Assembly or any dependant of his as a pension, lump sum benefit or refund of contributions, in accordance with any pension scheme or other scheme formulated by the Trustees of the Parliamentary Pensions Premium Fund under the provisions of the Parliamentary Pensions (Enabling Provisions) Act. 4 of 1981 Cap. 2:06

SECOND SCHEDULE

ss. 25, 33, 41 and 58 (4) (v)

1 of 1991
7 of 1992
18 of 1996
6 of 2005
13 of 2006
7 of 2007
24 of 2011
17 of 2012
25 of 2016

Capital Allowances

GENERAL

Initial allowance
19 of 1969
14 of 1970
18 of 1998

1.—(1) Subject to the Schedule where the taxpayer so elects an allowance (hereinafter called an initial allowance) shall be made in respect of capital expenditure incurred by the taxpayer during the year of assessment on the construction of new farm improvements, farm fencing, industrial buildings, railway lines, as the case may be and in respect of articles, implements, machinery, or utensils purchased and used by the taxpayer for the purposes of his trade or for farming purposes:

Provided that no initial allowance shall be made in respect of private passenger motor vehicle and an asset upon which investment allowance has been claimed under paragraph 4. 4 of 1988 18 of 1998

For the purpose of this paragraph "private passenger vehicle" includes any saloon, sedan, station wagon, double cabin pick-up and vehicles generally known as Land Cruiser, Pajero, Prado and any such other makes of a similar nature, excluding those used for hiring purposes.

(2) The initial allowances shall be—

(*a*) in respect of farm improvements, industrial buildings, railway lines a sum equal to ten per cent of the capital expenditure incurred by the taxpayer;

(*b*) in respect of articles, implements, machinery, and utensils a sum equal to twenty per cent of the cost thereof to the taxpayer; and

(*c*) in respect of farm fencing, a sum equal to thirty-three and one-third per cent of the cost thereof to the taxpayer.

(3) An initial allowance may be made to a person in respect of any machinery or plant notwithstanding that it appears that, during the period during which the machinery or plant will be used for the purposes of the trade, it will also be used for other purposes, but the allowance in any such case shall be so much only of the allowance that would be made if the machinery or plant were to be used only for the purposes of the trade as may be just and reasonable having regard to all the relevant circumstances of the case and, in particular, to that extent to which it appears that the machinery or plant is likely to be used for the said other purposes during that period.

Annual allowances

2.—(1) Subject to this Schedule an allowance (hereinafter called an annual allowance) shall be made in respect of capital expenditure incurred in respect of—

14 of 1971
6 of 2005

(*a*) farm improvements, farm fencing, industrial buildings, newly constructed buildings, railway lines; and

19 of 1969

(*b*) articles, implements, machinery and utensils belonging to and used by the taxpayer for the purposes of his trade, the value of which, in either case, has been diminished by reason of wear and tear and such allowance shall be subject to, and calculated in accordance with, paragraph 3 in the case of articles, implements, machinery and utensils.

(2) An annual allowance may be made in respect of any asset for any year of assessment notwithstanding that the asset is also used in that year for purposes other than those of the trade, but where, in the year of assessment, the asset is used for purposes other than those of that trade, the annual allowance to be made in respect thereof shall be so much only of the allowance that otherwise would be made as may be just and reasonable having regard to all the relevant circumstances of the case and, in particular, to the extent of the use for the said other purposes during the said basis period.

(3) Where an initial allowance has been made to a person in respect of any machinery or plant but the amount thereof has been reduced under paragraph 1 (3) on the ground that the machinery or plant will be used for purposes other than those of the trade, any annual allowance falling to be made in respect of that machinery or plant to that person shall be calculated as if the reduction had not been made.

(4) In the case of any asset ranking for annual allowances in respect of which capital expenditure was incurred prior to the 1st day of April, 1963, and which was not the subject of a similar allowance under any previous law, the allowance in the year of assessment ended on the 31st day of March, 1964, shall be made on the original cost of such assets reduced as if the allowance had been made each year in terms of this Act since the expenditure was incurred and thereafter on the balance of the original cost which remains after the sum allowed in the previous year or years as the case may be have been deducted therefrom. If for any reason such original cost cannot be ascertained such original cost shall be deemed to be such sums as the Commissioner shall determine.

Methods of computing annual allowances

3.—(1) The annual allowance in respect of an asset for any year of assessment shall be computed by reference to the amount by which the capital expenditure of the person to whom the allowance is to be made in providing the asset exceeds the total amount of any initial allowance or investment allowance, as the case may be, and any annual allowances made to him in respect of that asset for previous years of assessment and shall be the percentage of that amount specified in subparagraph (2).

(2) The said percentage is—

(*a*) in the case of farm improvements, railway lines and industrial building five per cent;

(*b*) in the case of farm fencing ten per cent; 14 of 1971

(*c*) in the case of newly constructed commercial buildings whose cost is one hundred million Kwacha or above, two and half per cent; 6 of 2005

(*d*) in all other cases such percentage as may be determined by the Commissioner to be appropriate to be applied for the purposes of this section in relation to assets of the class in question for the year of assessment in question:

Provided that it shall not be necessary for the Commissioner to redetermine every such percentage yearly and any determination of a percentage under this subsection for any year of assessment shall apply also to subsequent years except so far as it is superseded by any subsequent determination.

Investment allowance 4 of 1988 7 of 1992 7 of 2007 24 of 2011 17 of 2012

4.—(1) Subject to this Schedule, an allowance (hereinafter called the "investment allowance") shall be given to a taxpayer who is also a manufacturer equal to one hundred per cent of the cost of new and unused industrial buildings, and plant or machinery, and equal to forty per cent of the cost of used industrial buildings and plant or machinery which in either case—

(*a*) is brought into use by the taxpayer during the year of assessment; and

(*b*) is used by the taxpayer in the process of manufacture for the purpose of his business of a manufacturer:

Provided that for the purpose of this paragraph—

(i) plant and machinery shall not include motor vehicle intended or adapted for use or capable of being used on roads; and

(ii) manufacturer shall include the owner of a business carried on in buildings within the definition of "industrial building" contained in paragraph 8 and the owner of a plantation producing tea, coffee, tobacco, sugar, cocoa or such other crop as the Minister may approve.

7 of 1992

(2) A taxpayer who is eligible for the investment allowance under subparagraph (1) shall, in addition, be given an allowance equal to fifteen per cent for investment in an area designated for the purpose of such additional allowance by the Minister by order published in the *Gazette*.

5.–6. [*Repealed by* 7 *of* 1992].

Sales of assets

7.—(1) Where assets in respect of which capital allowances have been given are sold for a lump sum the seller and the buyer shall furnish the Commissioner with a statement in writing giving details of the allocation of the agreed price between the various assets sold.

(2) Where—

(*a*) the buyer is a body of persons over whom the seller has control, or the seller is a body of persons over whom the buyer has control, or both the seller and the buyer are bodies of persons and some of other person has control over them; and

(*b*) it appears with respect to the sale, or with respect to transactions of which the sale is one, that the sole or main benefit which apart from this Schedule might have expected to accrue to the parties or any of them was the obtaining of an allowance under this Schedule, if the assets or any of them are sold at a price other than they would have fetched in the open market then—

(i) the sale shall be deemed to have taken place at the open market price or the original cost of the asset whichever is the lessor; and

(ii) the initial allowance shall be due to the buyer.

Meaning of industrial building
15 of 1973
4 of 1982

8.—(1) A building shall be deemed to be an industrial building for the purpose of this Schedule where it is in use for the purpose of—

(*a*) the making of any article or part of an article; or

(*b*) the subjection of goods or materials to any process including the breaking up or demolition of the article; or

(*c*) the adapting for sale of any article; or

(*d*) the generation of power; or

(*e*) a transport, dock, inland navigation, water refrigeration or electricity hydraulic power tunnel or bridge undertaking; or

(*f*) a hotel; or

(*g*) the processing and distributing of fish, including shellfish; or

(*h*) any activity which the Minister declares in writing to be making an important contribution to national development.

(2) Notwithstanding anything in subparagraph (1) but subject to subparagraph (3), the expression "industrial building" does not include any building or structure in use as, or as part of, a dwelling house, retail shop, showroom, storehouse or office or for any purpose ancillary to the purposes of a dwelling house, retail shop, showroom, storehouse or office, but shall include an essential protective fencing enclosing any building deemed by subparagraph (1) to be an industrial building:

Provided that this subparagraph shall not apply in respect of a building or structure in use primarily for the purposes of trade which consists in the carrying on of a hotel, or in respect of any building to which subparagraph 1 (*h*) applies.

(3) Where part of the whole of a building is, and part thereof is not, an industrial building, and the capital expenditure which has been incurred on the construction of the second mentioned part is not more than one-fifth of the total capital expenditure which has been incurred on the construction of the whole building, the whole building and every part thereof shall be treated as an industrial building.

Interpretation

9.—(1) For the purposes of this Schedule—

"farm improvement" means any building or structure or work of a permanent nature, including any water furrow which is used in the carrying on of farming operations, but does not include—

(*a*) any building, structure or work of a permanent nature to which section 58 applies;

(*b*) staff housing; or

(*c*) any building which is used by the taxpayer as the homestead of himself and his family;

"farm fencing" means fencing which is used in the carrying on of farming operations;

"railway lines" means the rails, sleepers and equipment pertaining thereto of any railway track, but does not include ballast, embankments, bridges, culverts and other railway constructions.

(2) Any reference to any initial allowances or any annual allowances made in respect of any asset includes any such allowances made under any previous law.

Allowances for staff housing 1 of 1991

10.—(1) The capital allowances other than an investment allowance provided for by this Schedule shall be given to a taxpayer who is also a manufacturer or a person carrying on farming operations in respect of staff housing erected after the 1st day of April, 1965.

(2) The rates of allowances shall be those allowed for industrial buildings and paragraphs 5, 6 and 7 shall apply accordingly:

14 of 1969

Provided that any expenditure on staff housing occupied by an employee other than an employee—

(*a*) whose time, in the opinion of the Commissioner, is wholly or almost wholly occupied in the service of the company; and

(*b*) who is unable either directly or indirectly to control more than five per cent of the voting rights attaching to all classes of shares in the company,

shall only rank for allowance as to one-third of such allowance.

(3) In this paragraph—

"staff housing" means any dwelling erected for occupation by an employee engaged in the business or farming operations, as the case may be, of the taxpayer who is also a manufacturer or a person carrying on farming operations;

"manufacturer" shall include the owner of a business carried on in buildings within the definition of "industrial building" contained in paragraph 8 and the owner of a plantation producing tea, coffee, tobacco, sugar, cocoa, or such other crop as the Minister may approve.

25 of 2016

MINING

Meaning of "mining expenditure" 19 of 1969 13 of 2006

11. In this Part "mining expenditure" means capital expenditure incurred in Malaŵi by a person carrying on or about to carry on mining operations in Malaŵi—

(*a*) in searching for or in discovering and testing or in winning access to deposits of minerals;

(*b*) in the acquisition of or of rights in or over such deposits, other than the acquisition from a person who has carried on mining operations in relation to such deposits;

13 of 2006

(*c*) in the provision of plant and machinery, and industrial buildings, which would have little value or no value to such person if the mine ceased to work;

(*d*) on the construction of any buildings or works which would have little or no value if the mine ceased to be worked; and

(*e*) on development, general administration and management prior to the commencement of mining operations.

Allowance in respect of mining expenditure 13 of 2006

12. Subject to this Part, where a person carrying on mining operations incurs mining expenditure in any year of assessment, he shall be entitled to an allowance equal to 100 per cent of such expenditure in the first year of assessment.

Allowance apportioned on transfer, etc.

13. Where a person is entitled to an allowance under this Part in respect of any mining expenditure and his interest in the asset represented by such expenditure is transferred to some other person then—

(*a*) the amount of the allowance, if any, due for the year of assessment in which the transfer takes place shall be apportioned in such manner as the Commissioner may determine to be just and reasonable between the person from whom the interest is transferred and the person to whom the interest is transferred; and

(*b*) the transferee shall, to the exclusion of the transferor, be entitled to the allowance which but for the transfer would have been allowed to the transferor for any subsequent year of assessment.

Ineligibility for export allowance and transport allowance 13 of 2006

14. Notwithstanding anything to the contrary provided in this Act, a person engaged in mining operations shall not be eligible to claim any export allowance or any transport allowance for goods, materials or products exported from Malaŵi.

When expenditure incurred before mining operations, etc.

15.—(1) Any mining expenditure incurred after the 1st of November, 1969, for the purpose of mining operations before such operations commence shall be treated as incurred on the day on which such mining operations commence.

(2) Where a person incurs expenditure to which this Part applies on searching for or on discovering and testing or winning access to deposits of minerals and without having carried on mining operations he sells any assets representing such expenditure, then, if the purchaser carries on mining operations in relation to those deposits such purchaser shall for the purposes of such operations be deemed to have incurred mining expenditure equal to the price paid by him for such assets.

Expenditure recovered deemed income in certain circumstances

16. Where under paragraph 15 (2) the price paid is deemed to be mining expenditure of the purchaser that price shall, after deduction of any allowable expenditure attributable thereto, be deemed to be income of the vendor subject to tax under this Act:

Provided that on the request in writing of the vendor the Commissioner may apportion such net income over such period not exceeding six years as, having regard to the period during which the expenditure was incurred, he may think fit.

Exceptions

17.—(1) No allowance shall be made under this Part in respect of any expenditure on which an allowance is due under Part I:

Provided that allowances in respect of machinery to which paragraph 11 (*c*) applies shall be made under this Part and not under Part I.

(2) No allowance shall be made under this Part in respect of any expenditure incurred before the 1st of November, 1969.

THIRD SCHEDULE

Pension Funds and Provident Funds

[*Repealed by* 24 *of* 2011].

FOURTH SCHEDULE

Amounts Received or accrued by way of a Terminal Benefit which shall not be included in Assessable Income

[*Repealed by* 17 *of* 2012].

FIFTH SCHEDULE s. 37

1 of 1990
17 of 2012

Deduction in Respect of Ordinary Contributions to Pension Funds and under Contributory Pension Provisions

Interpretation
14 of 1969
6 of 2005

1. In this Schedule unless inconsistent with the context—

"annual emoluments" in relation to a member of a pension fund, other than a self-employed persons fund, or an officer, means—

(*a*) so much of the emoluments of the member or officer in the year of assessment as are emoluments for the purposes of calculating the amount of ordinary contributions to the fund or the Government, as the case may be; or

(*b*) such sum, exceeding the amount of his emoluments referred to in paragraph (*a*) as the Commissioner may, in the case of the member or officer fix;

"ordinary contribution", in relation to a member of a pension fund or an officer, means a contribution to the fund or the Government, as the case may be, which—

(*a*) is not an arrear contribution;

(*b*) is made by or in connexion with the member or the officer as the case may be;

(*c*) is not revocable by the contributor; and

(*d*) is required to be made at intervals fixed by the rules of the fund or at a rate and at intervals fixed by a pensions law of Malaŵi, as the case may be;

"pensions law of Malaŵi" means a law applicable to Malaŵi the provisions of which required a person in the service of the Government to contribute to the funds of the Government for the purpose of securing a pension for himself, his widow or children;

"self-employed persons fund" means a pension fund approved in terms of paragraph 2 of the Third Schedule.

2. The amount to be allowed as a deduction to an employer of an employee who is a member of one or more pension funds in any one year of assessment shall be—

Ordinary contributions by employer to pension funds
19 of 1969
1 of 1990
6 of 2005
17 of 2012

(*a*) the employer's actual contributions; or

(*b*) up to 15 per cent of the employee's annual salary,

whichever is the lesser amount.

3.–5. [*Deleted by* 6 *of* 2005]

s. 59(1)

SIXTH SCHEDULE

Approved Objects for a Co-operative Agricultural Society

(1) To dispose of the agricultural products or livestock of its members in the most profitable manner.

(2) To manufacture or treat the agricultural or livestock products of its members and to dispose of the products so manufactured or partly manufactured in the most profitable manner.

3. To purchase or otherwise acquire on behalf of and to supply to its members agricultural implements and machinery, livestock, feeding stuffs, seeds, fruit trees, manure or other farming requisites.

4. To manufacture or treat feeding stuffs, manure or other farming requisites.

5. To purchase, hire or otherwise acquire, and to work on behalf of its members, agricultural implements or machinery.

6. To purchase, hire, or otherwise acquire, and to use and control on behalf of its members, breeding stock.

7. To commence, acquire and carry on supply stores under a co-operative system for disposing of and supplying agricultural products.

8. To provide by purchase, hire, construction, or otherwise, cold storage for the products of its members.

9. To commence and carry on crop, produce or livestock insurance, orchard spraying or cleansing, fruit packing, ploughing and other farming operations for its members under a cooperative system.

10. To engage competent persons to carry out any of its objects and to give instruction and advice to its members on farming operations.

11. To acquire and distribute information as to the best manner of carrying on farming operations profitably.

12. To acquire and distribute information on the markets of the world, and cooperation in general.

13. To acquire by lease, purchase, or donation, and to hold, any movable and immovable property for the better carrying on of any objects of the company.

14. To recruit and supply labourers for its members.

15. To acquire by purchase or otherwise shares in any central co-operative agricultural company formed under the provisions of any law for the time being in Great Britain or in any other cooperative agricultural company with limited liability or cooperative society registered under any Malaŵi law relating to such type of company or society.

SEVENTH SCHEDULE

s. 63, 112 (1) and 3rd Sch. para. 2 (*b*)

Determination of Taxable Income or Assessed Losses Derived or Incurred in Carrying on Insurance Business

1. In this Schedule—

"life insurance business" means the business of assuming the obligations of an insurer under life policies but does not include funeral insurance;

"received in Malaŵi" means—

(*a*) received at an office of an insurer in Malaŵi without the intervention of an agent; or

(*b*) received by or through an agent of an insurer in Malaŵi;

"short term insurance business" means insurance business in Malaŵi which is not life insurance business.

2. Nothing in this Schedule shall be construed as relieving an insurer from—

(*a*) the obligation of rendering returns of income which is not derived from insurance business; or

(*b*) any liability to tax in respect of income referred to in subparagraph (*a*).

3. An insurer shall specify separately in a return rendered in respect of his insurance business in Malaŵi the gross income derived by the insurer from—

(*a*) fire insurance business;

(*b*) accident insurance business, including employers' liability insurance business;

(*c*) marine insurance business;

(*d*) funeral insurance business;

(*e*) fidelity or guarantee insurance business; and

(*f*) all classes of insurance business other than those specified in subparagraphs (*a*) to (*e*) inclusive:

Provided that this paragraph shall not apply to any income derived from life assurance business.

4. The taxable income or assessed loss of an insurer in respect of short term insurance business other than life assurance shall be determined by charging the losses, expenses and deductions in respect of his short term insurance business which are specified in paragraph 5 against the sum of—

(*a*) premiums received in Malaŵi in respect of his short term insurance business; and

(*b*) amounts, other than premiums, received in Malaŵi from the carrying on of his short term insurance business; and

(*c*) the amount of a reserve allowed as a deduction in the previous year of assessment for unexpired risks at the percentage for such risks adopted by the insurer in relation to his short term insurance operations as a whole.

5. The losses, expenses and deductions in respect of short term insurance business of an insurer to which paragraph 4 relates shall be—

(*a*) premiums paid on reinsurance; and

(*b*) actual losses in Malaŵi less losses recoverable on reinsurance; and

(*c*) expenses of management in Malaŵi other than those of a capital nature; and

(*d*) commission in Malaŵi, that is to say, net commission after deduction of commission received on reinsurance; and

(*e*) expenditure, other than expenditure of a capital nature, expenses referred to in subparagraph (*c*) or commission referred to in subparagraph (*d*), which is incurred in Malaŵi in the production of income; and

(*f*) an allowance of such an amount as the Commissioner may approve in respect of expenses incurred outside Malaŵi in connexion with premiums and other amounts referred to in paragraph 4 (*a*) and (*b*); and

(*g*) the amount of a reserve for unexpired risks at the percentage adopted for such risks by the insurer in relation to his insurance operations as a whole which is set aside by the insurer at the end of the year of assessment.

6. In calculating the taxable income of an insurer there shall be deducted any assessed loss arising solely out of short-term insurance business in Malaŵi, whether determined under paragraph 5 or the corresponding provisions of any previous law, incurred by the insurer in any previous year of assessment, not being earlier than the year of assessment which commenced on the 1st day of April, 1945, to the extent to which such assessed loss has not been allowed as a deduction from his income of a previous year of assessment; and sections 42, 43 and 44 of this Act shall apply thereto.

EIGHTH SCHEDULE
SECTIONS 96–101

Rules of Procedure for Appeals

PART I

Procedure for Appeal to the Commissioner or an Administrative Officer

Written statement required

1. A taxpayer who wishes to appeal under section 97 or section 100 shall within 30 days from the date when notice of the assessment, decision or determination of reduction was dispatched to him by the Commissioner or administrative officer cause to be delivered to the office of the Commissioner or administrative officer, as the case may be, a statement in writing specifying the grounds on which the appeal is made. The Commissioner or administrative officer may, before or after the expiration of the 30 days, extend the time for appealing if satisfied that reasonable grounds exist for delay.

Attendance of appellant

2. On receipt of such written statement the Commissioner or administrative officer may require the personal attendance of the appellant.

Failure to attend

3. If an appellant who has been required to attend fails to do so the appeal may be dealt with in his absence.

Further procedure

4. Save as is provided in this Ordinance the Commissioner or administrative officer shall decide his own rules of procedure.

PART II

Procedure for Appeal to a Special Arbitrator or to a Traditional Appeal Court

Notice of appeal

5. A taxpayer wishing to appeal against a decision of the Commissioner given under section 97 shall, within 21 days of the date of the written notice issued under section 97 (2), give written notice to the Commissioner of his intention to appeal, specifying also his address for service.

Grounds of appeal

6. Within 42 days of the date of the written notice issued under section 97 (2) the taxpayer shall lodge with the Commissioner in duplicate a statement containing his grounds of appeal. Such statement shall be in English, and in typescript on foolscap paper of good quality. The grounds of appeal shall be set out in numbered paragraphs and shall contain the contentions of fact and the arguments in law upon which the taxpayer will rely at the hearing of the appeal. The grounds of appeal shall not, without leave of the Special Arbitrator, include any grounds not included in the statement delivered to the Commissioner under rule 1.

Reply

7. Within 42 days of receiving the appellant's grounds of appeal, the Commissioner shall lodge with the Special Arbitrator the appellant's grounds of appeal and the Commissioner's reply, which shall state which of the appellant's arguments in law and contentions of fact are admitted, and which are denied, and shall set out all such other facts and arguments as the Commissioner considers relevant and material to the determination of the appeal. A copy of the reply shall be sent by registered post to the appellant at his address for service.

Notice of hearing

8. Upon receipt of the grounds of appeal and reply the Special Arbitrator shall notify the Commissioner and the appellant of the date and place of hearing. Such notice of hearing may be served personally or may be sent by registered post to the address for service specified by the appellant in his notice of appeal, and to the address of the Commissioner.

Failure to attend

9. At the time and place specified in the notice of hearing, the Special Arbitrator shall call on the appeal, and if any party is not present the Special Arbitrator may decide the appeal in his absence.

Representation of parties

10. Either party may appear in person or by legal practitioner; either party may apply in writing to the Special Arbitrator at least 7 days before the hearing for leave to be represented by a named person other than a legal practitioner. The Special Arbitrator may grant or refuse such application, and his decision shall be final.

Language

11. Proceedings before the Special Arbitrator shall be in English; all documents, books and accounts produced to the Special Arbitrator shall be in English or shall have attached to them a translation into English certified on oath as correct.

Sequence to be followed

12.—(1) The taxpayer shall address the Special Arbitrator, shall explain the grounds of his appeal and shall call his witnesses if there is any dispute as to fact. The Commissioner shall have the right to cross-examine and the appellant the right to re-examine. The Commissioner shall then call his witnesses who shall be examined in like manner. Witnesses shall give their evidence on oath or affirmation.

(2) A party may, at least three days before the date of hearing, apply to submit evidence on affidavit, having supplied a copy of such affidavit to the other party, and the Special Arbitrator may, in his discretion permit the submission of such affidavit.

(3) The Special Arbitrator may at any stage re-call any witness called by one of the parties.

(4) When the Commissioner has called his witnesses, the Special Arbitrator shall call on the Commissioner and then on the taxpayer to address him; he may call on either party for further argument.

(5) The Special Arbitrator shall be bound by the rules of evidence normally applying in a court of law.

(6) The Special Arbitrator may adjourn the proceedings of his own motion, or at the request of the parties at any time.

(7) When the Special Arbitrator has heard all the evidence, and the submission of the parties, he may reserve his decision. If the decision is reserved to an unspecified date notice shall be given to the parties of the date when the decision will be read out and the place.

Costs

13. The Special Arbitrator shall not make any order as to costs, save when the grounds of appeal are held to be frivolous or the reply unreasonable.

Further procedure

14. Save as is provided in this Act the Special Arbitrator shall decide his own rules of procedure.

Appeals to Traditional Appeal Court

15. Where a taxpayer wishes to appeal from a decision of an administrative officer under section 100 the provisions of this Part shall apply with necessary modification to such appeal as though for references to the Commissioner there were references to the administrative officer concerned, and for references to the Special Arbitrator there were references to the Traditional Appeal Court exercising jurisdiction in the District concerned.

PART III

Procedure on Appeal to the High Court

Notice of appeal

16.—(1) A party to proceedings before a Special Arbitrator or a Traditional Appeal Court who desires to appeal to the High Court shall within 21 days from the date when the decision of the Special Arbitrator or Traditional Appeal Court was given lodge with the High Court in triplicate a notice of his intention to appeal. Such notice shall specify an address for service. The address so specified shall not consist of a Post Office box but a place of residence or business. A Post Office box may in addition be specified and if specified shall be deemed an agreement to the dispatch of any document by post addressed to that Post Office box being equivalent to service at the address for service. If the appellant is the Commissioner he shall in the notice of intention to appeal specify the address for service of the taxpayer concerned in the appeal specified under rule 5.

Grounds of appeal

17. Within 42 days from the date when the decision of the Special Arbitrator or Traditional Appeal Court was given the appellant shall lodge with the High Court in quintuplicate a statement in writing to be headed "Grounds of Appeal". The grounds of appeal shall specify the points of law which the appellant considers were wrongly decided by the Special Arbitrator or the Traditional Appeal Court and the grounds upon which the appellant will rely in support of his appeal. Except by special leave of the High Court the appellant shall not be entitled at the hearing of the appeal to rely upon any ground not specified in such written statement.

Service of notice and grounds of appeal

18. Upon receipt of a notice of appeal lodged under rule 16 and upon receipt of grounds of appeal lodged under rule 17 the High Court shall cause a copy of the notice or the grounds, as the case may be, to be served on the respondent at his address for service. Delivery at the address for service shall be sufficient service and personal service shall not be necessary.

Reply

19. Within 42 days of the service on the respondent of the grounds of appeal the respondent shall lodge with the High Court in quintuplicate a statement in writing to be headed "Reply" and the reply shall specify the grounds upon which the respondent will rely on the hearing of the appeal. Except by special leave of the High Court the respondent shall not be entitled to rely upon any ground not specified in such written statement.

Service of reply

20. Upon receipt of a reply lodged under rule 19 the High Court shall cause a copy of the reply to be served on the appellant at his address for service. Delivery at the address for service shall be sufficient service and personal service shall not be necessary.

Normal rules of procedure

21. Save as provided in this Part the normal rules of procedure relating to appeals to the High Court shall apply.

s. 6 (6)

NINTH SCHEDULE

Declarations

PART I

Form of declaration to be made by the Commissioner

I, A.B., do solemnly declare that I will truly, faithfully, impartially and honestly, according to the best of my skill and knowledge, execute the powers and authorities vested in me by the Taxation Act, and that I will exercise the powers entrusted to me by the said Act in such manner only as shall appear to me necessary for the due execution of the same; and that I will judge and determine upon all matters and things which shall be brought before me under the said Act without favour, affection, or malice; and that I will not disclose any particular contained in any schedule, statement, return or other document delivered with respect to any tax charged under the said Act or any evidence or answer given by any person who shall be examined, or shall make affidavit or deposition, respecting the same, in pursuance of the said Act, except to such persons only as shall act in the execution of the said Act and where it shall be necessary to disclose the same to them for the purposes of the said Act or in order to facilitate, or in the course of, a prosecution for perjury committed in such examination, affidavit or deposition.

Form of declaration to be made by officers

I, ..., do solemnly and sincerely declare that I shall regard and deal with all documents and information relating to matters dealt with by me in the course of my duties and all confidential instructions in respect of the administration of the Taxation Act which may come into my possession or to my knowledge as secret, and that I shall not reveal any such document or information to any person nor permit any person to have access to any such document save in the circumstances permissible under the provisions of the said Act.

TENTH SCHEDULE

PERSONAL ALLOWANCES

[*Repealed by* 10 *of* 1983]

ELEVENTH SCHEDULE ss. 66, 71, 76 and 94 A

RATES OF INCOME TAX

1 of 1990
1 of 1991
7 of 1992
2 of 1994
1 of 1995
19 of 1995
5 of 1997
23 of 1997
14 of 1999
9 of 2000
10 of 2001
11 of 2002
6 of 2005
13 of 2006
7 of 2007
11 of 2008
14 of 2009
29 of 2010
24 of 2011
17 of 2012
19 of 2013
11 of 2014
12 of 2015
25 of 2016
24 of 2017

Income tax shall be charged, subject to the Appendix to this Schedule as follows—

(*a*) in the case of individual income other than employment income, at the rates laid down in paragraph A of the Appendix to this Schedule;

(*b*) in case of employment income, at the rates laid down in paragraph B of the Appendix to this Schedule;

(*c*) in the case of ecclesiastical, charitable or educational institutions of a public character or of trusts, at thirty per cent of the taxable income;

(*d*) in the case of all companies other than companies engaged in mining operations under a licence issued under Mines and Minerals Act, thirty per cent of taxable income except that in the case of companies operating in priority industries, so designated by the Minister for this purpose by order published in the *Gazette*, the applicable rate shall be either— Cap. 61:01

(i) 0 per cent for such period, not exceeding ten years, as the Minister may grant in the order; or

(ii) 15 per cent:

Provided that an additional tax of five per cent of taxable income shall be charged in respect of all companies not incorporated in Malaŵi;

(*e*) in the case of a taxpayer in respect of their mining project—

(i) 30 per cent of taxable income:

Provided that an additional tax of five per cent of taxable income shall be charged in respect of all such taxpayers who, if a company, are not incorporated in Malaŵi, and who, if other than a company, are not resident in Malaŵi;

(ii) An additional resource rent tax at a minimum rate of fifteen per cent on after tax project resource rent in respect of their mining project determined by using the formula—

where—

$$r = \frac{40.5 - t}{100 - t} \times 100$$

"r" is the rate of RRT, expressed as a percentage; and

"t" is the rate applicable for income tax on companies.

(*f*) in the case of life assurance business, at thirty per cent of the taxable income;

(*g*) in the case of fringe benefits, at thirty per cent of the taxable value of fringe benefits;

(*h*) in the case of Turnover Tax, at the rate of two per cent of the taxable turnover;

(*i*) in the case of earnings on investment of pension funds, at fifteen per cent

APPENDIX

A—TABLE OF RATES OF INCOME TAX ON TAXABLE INCOME OTHER THAN EMPLOYMENT INCOME

Annual Taxable Income	Rate
First K360,000	0%
Next K60,000	15%
Excess of K420,000	30%

B—TABLE OF RATES OF INCOME TAX ON EMPLOYMENT INCOME

Annual Taxable Income	Rate
First K360,000	0%
Next K60,000	15%
Next K35,580,000	30%
Excess of K36,000,000	35%

10 of 1983 TWELFTH SCHEDULE s. 27 (2)

ASSESSMENT OF FEDERAL PENSIONERS

1.—(1) Pensions payable to pensioners of the Government of the former Federation of Rhodesia and Nyasaland in respect of service with that Government notwithstanding anything in section 27 of this Act to the contrary shall be deemed to arise from a source in Malaŵi where—

(*a*) the pensioner retired as a result of the dissolution of the former Federation and was ordinarily resident in Malaŵi on 31st day of March, 1964;

(*b*) the pensioner retired as a result of the dissolution of the former Federation, is not ordinarily resident in either Zambia or Zimbabwe and Malaŵi was his home territory;

(*c*) the pensioner retired prior to the dissolution of the former Federation and he served in the Public Service of Malaŵi prior to joining the former Federal Republic Service; or

(*d*) the pensioner retires at some future date and he is then serving in the Public Service of Malaŵi.

(2) Pensions deemed under subparagraph (1) to arise from a source in Malaŵi shall be assessable at the appropriate rate of tax applicable to the individual, which shall be calculated by dividing the total tax payable on his taxable income, excluding any such pension, by that taxable income. 10 of 1983

2. In the case of an officer who was born in the area of the former Federation of Rhodesia and Nyasaland, his "home territory" shall be the Territory of his birth:

Provided that if an officer was serving with the Government of a Territory other than that in which he was born immediately prior to his joining the Public Service of the former Federation of Rhodesia and Nyasaland then that Territory shall be taken as being his "home territory".

3. In the case of an officer who was not born in the area of the former Federation of Rhodesia and Nyasaland his "home territory" shall be the Territory in which he has had the longest Government service whether in the Public Service of the former Federation of Rhodesia and Nyasaland or in the Public Service of a Territory:

Provided that—

(*a*) where an officer's length of service in two Territories differs by less than twelve months and his service, if any, in the third Territory is less than his service in either of those two Territories he may choose either of those two Territories as his "home territory"; or

(*b*) where an officer joined the Public Service of a Territory before he joined the Public Service of the former Federation of Rhodesia and Nyasaland, he may choose the Territory whose service he originally joined as his "home territory".

4. In this Schedule "Territory" means Malaŵi, Zambia or Zimbabwe.

THIRTEENTH SCHEDULE

Table of Rates of Graduated Tax

[*Deleted by* 13 *of* 2006]

FOURTEENTH SCHEDULE

s. 102A

1 of 1985
4 of 1988
1 of 1990
7 of 1992
2 of 1996
5 of 1997
10 of 2001
10 of 2003
6 of 2005
7 of 2007
29 of 2010
24 of 2011
17 of 2012
25 of 2016
24 of 2017

Withholding Tax—Rate of Deduction

Nature of payment	*Notes*	*Rates of Withholding Tax on gross payment*
(*a*) Royalties	—	20%
(*b*) Rents	1	15%
(*c*) Payment for any supplies to traders and institutions—		
(i) foodstuff	—	3%
(ii) other	—	3%
(*d*) Commission	2	20%

	Nature of payment	*Notes*	*Rates of Withholding Tax on gross payment*
	(*e*) Payment for carriage and haulage	—	10%
25 of 2016	(*f*) Interest	5	20%
	(*g*) Contractors in the building and construction industries . .	3	10%
	(*h*) Payment for public entertainment	4	20%
	(*i*) Payment of K15,000 for casual labour	—	0%
	(*ia*) payment in excess of K15,000 for casual labour	—	20%
	(*ib*) payment for services	—	20%
25 of 2016	(*j*) interest	5	20%
24 of 2017	(*k*) Fees	2	10%

NOTES:

1. Includes rent for movable and immovable property, whether paid under a lease or otherwise, but excludes rent payable by an individual whose source of income is only from employment and the rent is payable in respect of property used as a dwelling house and at a rate not exceeding K6,000 per annum.

2. Excludes fees and commissions on which P.A.Y.E. is being operated, but includes technical fees and management fees to the extent they do not relate to reimbursement of expenses.

3. Includes contractors and subcontractors of any category.

4. Includes payment to musicians, radio and television artists, athletes and theatres, but excludes payments to radio and television artists which are subject to P.A.Y.E.

24 of 2017 5. Excludes—

(*a*) interest payable to a person exempt from income tax under the First Schedule; and

First Schedule

(*b*) interest payable to a person, not being a person resident in Malaŵi, whose income is liable to non-resident tax under section 76A.

FIFTEENTH SCHEDULE

5 of 1997
18 of 1998
14 of 2009
24 of 2011
25 of 2016

List of transactions in respect of which a tax clearance certificate is required—

1. Transfer of land and building.

2. Renewal of Certificate of Fitness for commercial vehicles.

3. Renewal of Business Residence Permit.

4. Renewal of professional business licences and permits of medical practitioners or dentists, legal practitioners (lawyers), engineers and architects who are engaged in private practice on his or her own behalf as a private practice or in partnership with another private practitioner.

5. Renewal of a certificate of registration under the National Construction Industry Act. Cap. 53:05

6. Transfer of a company as a going concern.

7. Externalization of funds to non-resident service providers whose source is deemed to be Malaŵi.

8. Renewal of Temporary Employment Permits.

9. Renewal of business licenses by the Ministry responsible for industry and trade.

10. Renewal of tourism licences by the Ministry responsible for tourism.

11. Renewal, extension or transfer of mining licences, or transfer of mineral rights by the Ministry responsible for energy and natural resources.

12. Renewal of telecommunications licences by the Malaŵi Communications Regulatory Authority.

13. Renewal of energy licences by the Malaŵi Energy Regulatory Authority.

14. Change of ownership of a company.

15. Renewal of registration of public transport conveyances by the Road Traffic Directorate.

16. Supply of goods or services to Malaŵi Government and its agencies. 25 of 2016

SIXTEENTH SCHEDULE 25 of 2016

Taxation of Mining Projects

Determining taxable income

1. The taxable income or assessed loss of a taxpayer for their mining project shall be determined by allowing deductions according to this Act for expenditure of the taxpayer directly in carrying on or providing the activities of the project and by including in taxable income their receipts in relation to the activities of the project, the produce and assets of the project, and the expenditure of the project. Mining royalty paid by a taxpayer is deductible in determining taxable income or assessed loss.

2. The taxable income or assessed loss of a taxpayer for their mining project shall include deductions according to the lower of cost or market value of any assets, goods or services provided by them to or for the mining project as any other taxpayer and shall include taxable income according to the market value of any assets, goods or services provided to them in their capacity other than as the mining project whether provided by or for the mining project.

3. Where the income or deductions of a person in relation to their mining project include gains or losses from derivative transactions, the

amount of any loss from derivative transactions shall be allowed as a deduction only to the extent of the lesser of either—

(*a*) the loss realized from derivative transactions; or

(*b*) the gain realized from derivative transactions in that year of assessment.

4. Where the whole or a part of a loss from derivative transactions of the mining project has not been deducted by reason of the limitation imposed under clause 3, the undeducted amount of the loss shall be carried forward to the following year and included in the loss from derivative transactions of the mining project in that year, and so on until fully deducted against the gains of the mining project from derivative transactions.

Meaning of Mining Capital Expenditure

5. For the purposes of this Schedule, "mining capital expenditure" is capital expenditure of a mining project incurred directly in carrying on or providing the activities of the project.

6. For the purposes of this Schedule, "mine specific expenditure" is mining capital expenditure of a mining project on capital assets of the mining project which assets would have little or no value if the activities of the mining project ceased.

7. For the purposes of this Schedule, "mine start-up expenditure" is mining capital expenditure of a mining project which is incurred before a small-scale mining licence, a medium-scale mining licence, a large-scale mining licence, or an artisanal mining permit first applies to the mining project, or within four years after such a licence or permit first applies to the mining project.

8. Mine specific expenditure is the subject of an annual allowance according to expected life of the mining project, with the allowance being the percentage of so much of the expenditure as has not yet been allowed as is the percentage of the year of tax as a share of the expected life of the mining project including that year and worked out at the end of the year in which the mine specific expenditure was incurred:

Provided that it shall not be necessary for the Commissioner General to re-determine the expected life of the mining project yearly and any determination of the period at the end of which the expected life of the mining project will end may be relied on until a year in which the expected life is re-determined.

9. So far as losses are attributable to mine start-up expenditure, or to deductible expenditure incurred before a small-scale mining licence, a medium-scale mining licence, a large-scale mining licence, or an artisanal mining permit first applies to the mining project, the losses shall be deducted in the year that the losses arise and in the next year up

to a period of ten years after the losses arise, or in the next year up to a period of ten years after a mining permit applies to the mining project, whichever is the later. The taxpayer may choose which losses to deduct so as to gain most deductions for these and other losses.

10. Expenditure on mining information, rights or licenses acquired before a small-scale mining licence, a medium-scale mining licence, a large-scale mining licence, or an artisanal mining permit first applies to the mining project shall be included in mine specific expenditure.

11. When a mining project ceases to be subject to any mining permit, all assets are taken to be disposed of by the taxpayer in relation to their project at their market value, all liabilities are taken to be discharged by the person in relation to their project at their then value, and for the purposes of this Act the mining project is taken to continue for all purposes connected with the person's obligations as a taxpayer in relation to its tax affairs.

Mine Closure Funds

12. Where a person pays a contribution to a qualifying mine closure fund in respect of their mining project, the contribution shall be deducted as expenditure directly in carrying on or providing the activities of the project.

13. Where a qualifying mine closure fund pays a person in respect of their mining project, including where a mine closure fund discharges liabilities in relation to which the person is entitled to a deduction in respect of their mining project or where a mine closure fund reimburses the person for expenditure the person has incurred or paid or where the mine closure fund pays the person to enable them to make expenditure, the payment is a receipt in relation to the activities of the project and the expenditure of the project.

Qualifying Mine Closure Fund

14.—(*a*) A qualifying mine closure fund is a fund which is not controlled by the person and which cannot become controlled by the person, which is able to pay to a contributor only in relation to closing down expenditure for the contributor's mining project and for no other purpose, and which is otherwise able to pay only for closing down expenditure of mining projects and for environmental rehabilitation and environmental management, and which cannot be enabled to make any other payments to or for the benefit of the contributor.

(*b*) A qualifying mine closure fund is able to pay only to reimburse closing down expenditure of mining projects which has already been paid, or to pay directly closing down expenditure of mining projects, or to pay for environmental rehabilitation and environmental management which is part of the conduct of a mining project.

15. A contribution is paid to a qualifying mine closure fund only if it is received by the fund and cannot be returned by the fund or recovered by or on behalf of the payer of the contribution.

16. Any deduction for a contribution is limited to the current total contributions endorsed by the Minister responsible for the Environment as reasonable in relation to the mining project, reduced by any contributions already made to the qualifying mine closure fund.

Additional Income on Change of Control

17. If control or effective control of the conduct of the taxpayer's mining project, or of the taxpayer, or of the benefit of the conduct of the taxpayer's mining project changes, whether by a transaction to which the taxpayer is a party or by some other transaction, the taxpayer shall include in their income in relation to their project the excess of the value of the assets of the project over the value of the liabilities of the project.

Debt Deduction Limit

18. In working out deductions for a taxpayer's mining project, deductions for expenditure in relation to debt in directly carrying on or providing the activities of the project shall be limited in proportion as the debt, at any time during the year, exceeds the debt to equity ratio for the year.

19. The debt to equity ratio for a taxpayer's mining project is 3 to 1 (3:1) for the first five years in which a small-scale mining licence, a medium-scale mining licence, a large-scale mining licence, or an artisanal mining permit applies to the project and 1.5 to 1 (1.5:1) thereafter.

20. For the purposes of the debt to equity ratio, the taxpayer's debt in relation to their mining project includes all debt so far as its proceeds are employed in carrying on or providing the activities of the project.

21. For the purposes of the debt to equity ratio, the taxpayer's equity in relation to their mining project includes for—

(*a*) a trustee, the corpus of the trust;

(*b*) any other taxpayer, the total paid up capital including reserves and retained earnings or profits:

Provided that in each case only so far as this is available to meet liabilities of their mining project and where this is available to meet other liabilities only the proportion of the equity that the lowest liabilities in relation to the mining project bear to the highest liabilities not in relation to the mining project during the year.

Advance Pricing Agreements

22.—(1) The Commissioner General may agree to substitute an agreed amount which may be fixed or may vary on an agreed basis for

actual expenditure and for actual receipt, accrual or value in working out a taxpayer's income and deductions in relation to their mining project.

(2) An agreement shall apply only to the stated taxpayer and to a period stated by the Commissioner General which shall not be longer than five successive years of tax including the year in which the Commissioner General states the agreement.

(3) An agreement may be stated to apply on the basis that particular conditions, including conditions of fact, are satisfied.

(4) An agreement shall bind the Commissioner General and the taxpayer in working out the stated taxpayer's income and deductions in relation to the taxpayer's mining project for the stated period, unless—

(*a*) conditions on which the agreement applies are no longer met, in which case the agreement shall bind up to the point at which the conditions are not met;

(*b*) material information has been withheld from the Commissioner General in the making of the agreement;

(*c*) the agreement was procured by fraud, bribery or deception;

(*d*) the Commissioner General and the taxpayer agree that it is fair in the interests of both parties to waive the agreement, in which case it shall not bind either of them from the time they agree it should not bind.

Determination of After Tax Project Resource Rent

23. The after tax project resource rent in respect of a mining project shall be worked out from the assessable income and deductions under this Schedule with the following adjustments—

(1) For each year, the assessable income in respect of the mining project shall be decreased by omitting any income in relation to financing arrangements and shall be increased by adding any net input tax credits received for VAT and any refunds of income tax in respect of the mining project. The resulting income shall be the adjusted assessable income.

(2) For each year, the deductions under this Schedule shall be decreased by omitting any deductions in relation to financing arrangements and shall be increased by adding any payments of income tax in respect of the mining project (but not any payments of after tax project resource rent tax, which shall be excluded). The resulting deductions shall be the adjusted deductions arising in the year.

(3) In each year, any excess of adjusted deductions over adjusted assessable income shall be carried forward to the following year, uplifted by twenty per cent and added to the adjusted deductions arising in the following year to form the adjusted deductions of the following year.

(4) In each year, any excess of adjusted assessable income over the adjusted deductions of the year (including excess deductions uplifted and carried forward) shall be the after tax project resource rent of the year.

Mining Project Tax Reporting

24.—(1) The Commissioner General shall publish annually the amount of taxable income during the year from each mining project and from each holder of a reserved minerals licence and the amount collected during the year from each mining project and from each holder of a reserved minerals licence.

(2) Each holder of a mining permit and each holder of a reserved minerals licence shall report annually to the Commissioner for Mines and Minerals the amount of taxable income during the year derived by them in respect of each mining project and the amount paid by them during the year in respect of each mining project.

Investment, Export and Transport allowances

25. Investment, Export and Transport allowances are not applicable to any mining project.

Stabilization Term

First Schedule

26. The provisions of the First Schedule to the principal Act, paragraph "s" are not applicable to any mining project.

27.—(1) The rates of fiscal imposts applicable to mining projects shall be stabilized and so fixed at the rates applicable to mining projects under this Act for a period of ten years.

(2) The rates so fixed shall apply to each mining project so far as it applies to that project, during the ten year period, to the exclusion of any variations to any of those rates whether by way of increase or exemption.

(3) For purposes of this Act, the stabilized and so fixed rates shall become applicable from the time the mine is commissioned.

25 of 2016

SEVENTEENTH SCHEDULE

Mineral Royalty

Timing for Payment

1. In this Schedule—

"acquired" means acquisition by sale, barter, import, holding on deposit as a pledge or security, receipt as a gift, or receipt under any other supply or disposition, whether for consideration or otherwise;

"disposal" means sale, barter, export, deposit as a pledge or security, donation as a gift, or other supply or disposition, whether with or

without consideration and includes loss by theft or misappropriation and "disposed of" has the corresponding meaning;

"mine gate" is the point at which a mineral is disposed of from a mining project, or the point at which a mineral last leaves a site of the mining project, whichever is the later;

"reference price" is the price of a mineral, or of a product derived from that mineral, that obtains in a market with a significant number of sellers, a significant number of buyers, and an open price according to objective criteria and arrived at on arm's length terms;

"semi-precious stones" include all stones which are not reserved minerals but which are valued according to their potential to be polished or to be cut and polished and to be used in jewellery or in decorative craftsmanship.

2.—(1) Mineral royalty is payable as prescribed in section 64B (5). Where an additional liability to royalty is assessed by the Commissioner General, that additional royalty is payable within twenty days after the assessment.

(2) If any minerals subject to royalty are disposed of for export before royalty has been paid for them, the amount of the royalty shall be paid or security for payment to the satisfaction of the Commissioner General shall be given before the minerals are disposed of.

(3) Where the taxpayer has overpaid, credit for such payment shall be given in working out the liability to royalty.

Filing of Returns

3.—(1) A taxpayer in respect of a mining project and each holder of a reserved minerals licence shall furnish the Commissioner General a return within twenty days after the end of the royalty period to which the return relates, stating the type and volume of minerals subject to royalty for that return period, the royalty due, and such other information as the Commissioner General may approve, specify, or require.

(2) A taxpayer in respect of a mining project and the holder of a reserved minerals licence shall furnish the Commissioner General a return required by the Commissioner General for such period as the Commissioner General may require, stating the type and volume of minerals subject to royalty for that period, the royalty due, and such other information as the Commissioner General may approve, specify or require, within twenty days after the Commissioner General notifies the taxpayer of the requirement to furnish that return.

Mineral Royalty Calculation

4. The mineral royalty due shall be worked out at the rate, and according to the method, specified under Paragraphs 5, 6, 7, 8 and 9.

Commercial Value

5.—(1) All minerals shall be valued according to their full commercial value at the mine gate or, for reserved minerals, their full commercial value at the time they are acquired by the holder of a reserved minerals licence.

(2) If minerals are disposed of at the mine gate or are acquired by the holder of a reserved minerals licence for a reference price, their commercial value shall be that reference price. If reserved minerals are so acquired by the holder of a reserved minerals licence their commercial value shall be the reference price at which similar minerals are sold at the end of the royalty period at the end of which the reserved minerals are held.

(3) If minerals are disposed of or are acquired by the holder of a reserved minerals licence but not at a reference price, their commercial value when they are disposed of is the reference price that would have applied at that time. If reserved minerals are so acquired by the holder of a reserved minerals licence their commercial value shall be the reference price that would have applied at the end of the royalty period at the end of which the reserved minerals are held.

(4) If there is no reference price applicable to minerals in the state and at the time they are disposed of or at the end of the royalty period in which they are acquired by the holder of a reserved minerals licence, their commercial value is worked out by deducting from the reference price of the minerals or of other mineral products commercially capable of being produced from the minerals the cost of bringing the minerals from the state at which they are disposed of into the state to which a reference price applies ('netback value') and by adding to the value of the minerals all the costs of bringing them to the state at which they are disposed of ('cost plus value') and averaging the netback value and the cost plus value if they differ.

(5) If the netback value or the cost plus value cannot be ascertained, the Commissioner General may determine the commercial value of the minerals.

Royalty Base

6.—(1) The royalty base is the commercial value of all minerals taken from the earth by a taxpayer as part of their mining project during a royalty period and, for the holder of a reserved minerals licence, is the commercial value of all reserved minerals acquired by the holder during a royalty period. All reserved minerals held by the holder of a reserved minerals licence at the end of a royalty period or disposed of by the holder during that royalty period shall be subject to royalty as having been acquired during that period except so far as the holder establishes affirmatively that the reserved minerals were acquired in an

earlier royalty period, and from whom and on what terms the minerals were acquired.

(2) Where royalty has already been paid for minerals in respect of an earlier royalty period, the royalty paid for those minerals shall be credited against the liability for royalty in the current royalty period.

(3) Royalty credited as paid for minerals in an earlier royalty period is limited to so much royalty as is established to the satisfaction of the Commissioner General to have been paid for those minerals, whether by the taxpayer or by another taxpayer.

(4) Where royalty is due for minerals for a royalty period both from a taxpayer and from any other taxpayer, and one or another taxpayer pays any part of the royalty, credit shall be given for that payment in working out the royalty due for the minerals from any other taxpayer for that period; and this shall be without prejudice to any right of contribution any of these taxpayers may have against another.

Standard Royalty Rates

7. The royalty rate for all minerals other than precious stones and semi-precious stones, and commercial minerals exported in an unmanufactured state, shall be five per cent of their royalty base.

8. The royalty rate for precious stones and semi-precious stones shall be ten per cent of their royalty base with their commercial value worked out as rough stones, that is, immediately before they are polished (if they are not to be cut) or immediately before they are first polished or cut (if they are to be cut, before or after polishing).

9. The royalty rate for commercial minerals exported in an unmanufactured state shall be 7.5% of their royalty base.

Samples

10. Where minerals are held or are disposed of solely as samples of minerals, for the purposes of assay, analysis or other examination, and not for any commercial production of minerals or of final mineral products or other products from the minerals, the taxpayer shall be credited for the purposes of working out royalty for the royalty period in which royalty is due for those minerals with the royalty due in relation to those minerals.

11. The taxpayer must report the results of the assays, analysis or other examination of the minerals to the Commissioner General immediately the results are obtained and must report on the final destruction or disposition of the minerals.

12. If the Commissioner General is not satisfied that a part of those minerals was held or disposed of solely for the purposes of assay, analysis or other examination, then the royalty credit given for that part of those minerals shall be added to the royalty due for the royalty period

in which the Commissioner General forms the view that one cannot be satisfied in respect of that part of those minerals.

13. Failure to provide the results of assay, analysis or other examination within a reasonable time may provide sufficient reason not to be satisfied that the part of the minerals for which results have not been provided was held or disposed of solely for the purposes of assay, analysis or other examination.

Calculation Records

14.—(1) For the purpose of determining the gross value payable in respect of any sale of mineral product, the mining project shall take reasonable steps, either by the certificate of a competent independent party acceptable to the Commissioner General or otherwise to satisfy the Commissioner General as to the correctness of all relevant weights, assays and analyses for the purposes of the mineral royalty calculation and shall give due regard to any objection or representation made by the Commissioner General as to any weight, assay or analysis affecting the mineral royalty calculation.

(2) The gross sum calculation of the gross value shall be supported by such information as the Commissioner General may reasonably require, including information and documentation about the gross sum realized and about any claimed deduction from the gross sum realized in calculation of the gross value, and where calculation is not supported by all the information the Commissioner General reasonably requires the Commissioner General may set the gross value as the Commissioner General chooses. Any information supporting calculation of the gross value may be subject to audit by the Commissioner General and if the information is not established on audit the Commissioner General may adjust the gross value as the Commissioner General chooses.

(3) Any information obtained by the Commissioner General under this clause shall not be disclosed to any other taxpayer for any purpose other than so far as is required for the correct application of the taxation law in relation to that taxpayer in relation to the actual transactions to which the information relates.

Royalty Reporting

15.—(1) The Commissioner General shall publish annually the amount of royalty due during the year from each mining project and from each holder of a reserved minerals licence and the amount collected during the year from each mining project and from each holder of a reserved minerals licence. The Commissioner General shall report at least annually to the Commissioner of Mines and Minerals Act, the identity of each mineral tenement holder required during the year to pay any royalty, and any payment of royalty made during the year on account of any mineral tenement, and when the payment was made.

Cap. 61:01

(2) Each holder of a mining permit and each holder of a reserve minerals licence shall report annually to the Commissioner for Mines and Minerals the amount of royalty due during the year from them in respect of each permit and the amount paid by them during the year in respect of each permit.

Amended Liability to Royalty and Assessment

16.—(1) If the Commissioner General discovers or is of the opinion at any time that any taxpayer has not correctly returned their liability for royalty he may, within the year the royalty was due or within six years after the expiration thereof and as often as may be necessary, assess such person to royalty at such amount or additional amount as according to the best of his judgment was due, and the provisions of this Act as to notice of assessment, appeal and other proceedings under this Act shall apply to such assessment and to the tax charged thereunder.

(2) Where any fraud or wilful default has been committed by or on behalf of any person in connexion with or in relation to royalty for any year of assessment the Commissioner General may, for the purpose of making good to the revenue of Malaŵi any loss of royalty attributable to the fraud or wilful default, exercise the powers conferred by this section at any time, whether before or after the expiration of the period specified in this section:

Provided that where the person by or on whose behalf the fraud or wilful default was committed has died an assessment on his personal representatives to royalty for any year of assessment ending not less than six years before the person's death shall not be made.

17.—(1) All assessments of royalty required to be made shall, subject to section 4 of this Act, be made by the Commissioner General or under his direction.

(2) Notice of assessment and of the amount of royalty payable, where royalty is payable, shall be given to the taxpayer assessed.

(3) The Commissioner General shall, in the notice of assessment, give notice to the taxpayer that any appeal against the assessment must be sent to him within thirty days after the date of such notice.

18. Complete copies of all notices of assessment to royalty shall be filed in the office of the Commissioner General and shall be included in the register of assessments for the purposes of this Act.

19. The register of assessments shall not be open to public inspection, but every taxpayer shall be entitled to copies certified by or on behalf of the Commissioner General of his own notice of assessment.

SUBSIDIARY LEGISLATION

G.N. 196/1964 (N) 136/1980

APPOINTMENT OF SPECIAL ARBITRATOR

under s. 98

The Minister has appointed as the Special Arbitrators for the purposes of the Act the persons for the time being performing the duties of—

(*a*) Chief Resident Magistrate;

(*b*) Principal Resident Magistrate; and

(*c*) Senior Resident Magistrate.

G.N. 243/1965 172/1967 33/1983 24/1996 23/2006 30/2017

INCOME TAX (P.A.Y.E.) (DEDUCTION AND PAYMENT) RULES

under s. 102 (2)

Citation

1. These Rules may be cited as the Income Tax (P.A.Y.E.) (Deduction and Payment) Rules.

Application of Rules

2. These Rules shall apply to all emoluments to which section 102 of the Act applies.

Deduction of income tax G.N. 23/2006

3.—(1) Every employer, whether he be registered under the Income Tax (P.A.Y.E.) (Information) Rules, or not, shall deduct income tax at the rates specified in tax tables prepared by the Commissioner General from the emoluments of every person in his employment to whom these Rules apply.

G.N. 30/2017

(2) If an employer fails to deduct income tax under subrule (1) he shall be personally liable to pay to the Commissioner General—

(*a*) an additional sum of twenty *per centum* of the amount of tax which he has failed to pay in the first month or part thereof; and

(*b*) a further interest charged on the outstanding amount of tax at the prevailing bank lending rate plus five per cent per annum for each month or part thereof during which the tax remains unpaid,

and such additional sums together with the amount of the tax shall be summarily recovered by Commissioner General in his own name:

Provided that the Commissioner General may reduce or waive the amount of such additional sums if a satisfactory explanation for the delay is given.

Variation in amount of P.A.Y.E. deductions

4.—(1) The Commissioner General is authorized to permit an employer to vary the amount of deductions under rule 3 (1) in the case of any employee in circumstances of exceptional hardship.

(2) The Commissioner General is authorized to repay to an employee any amount of income tax deducted under rule 3 (1) as varied under subrule (1) of this rule. G.N. 33/1983

5. Without prejudice to the right of appeal conferred under the Act after the end of a year of assessment, any employee who is dissatisfied with the amount of any deduction made under rule 3 (1) may make an objection thereto to the Commissioner General during the currency of a year of assessment and the decision of the Commissioner General with regard to any objection made under this rule shall be final and not subject to appeal until the end of the year of assessment in respect of which the objection is made. Objections during tax year

6.—(1) Every employer of an employee to whom this Part applies shall keep a record showing— Records to be maintained G.N. 24/1996 23/2006

(*a*) the emoluments paid or payable to such employee;

(*b*) the amount of income tax deducted from the emoluments of such employee under rule 3 (1),

in such form as the Commissioner General may approve.

(2) The record maintained under subrule (1) shall be available for inspection by the Commissioner General, or by any public officer authorized in that behalf by the Commissioner General at any reasonable time.

(3) Every employer of an employee to whom this Part applies shall, within fourteen days after the end of each month, or within such further time as the Commissioner General may in any case allow, furnish to the Commissioner General a statement in a form approved by the Commissioner General setting forth the name and address of every employee, the emoluments paid or payable to him and the total amount of tax deducted from such emoluments.

7.—(1) The Commissioner General shall supply to every employer of an employee to whom this Part applies a sufficient supply of Tax Deduction (P.A.Y.E.) Certificates for the purposes of this rule. Tax deduction certificates

(2) Every employer shall complete a Tax Deduction (P.A.Y.E.) Certificate in respect of each employee to whom this Part applies and shall dispose of such certificates in the manner specified therein.

(3) A copy of the Tax Deduction (P.A.Y.E.) Certificate maintained in respect of him shall be handed to the employee by the employer on the date of the cessation of his employment or within twenty-one days from the end of the year of assessment to which it relates, whichever is the later.

(4) No employer shall furnish to any employee any document purporting to show the amount of tax deducted under rule 3 (1) other than a certificate supplied under subrule (1).

(5) No employer shall furnish a duplicate of a copy of a Tax Deduction (P.A.Y.E.) Certificate to an employee except with the consent of the Commissioner General.

(6) Every employer to whom Tax Deduction (P.A.Y.E.) Certificates are supplied under subrule (1) shall be required to account for the disposal thereof to the Commissioner General within twenty-one days of the end of the year of assessment in respect of which they are supplied and shall return to the Commissioner General every unused certificate.

Death of an employee

8. Where an employee to whom this Part applies dies, his employer shall not pay any emoluments due and payable to the estate of that employee until the Commissioner General has been notified of the amount so to be paid and he has given his direction as to the amount of income tax, if any, to be deducted from such emoluments.

Liability for income tax on total income

9. Where any income tax has been deducted by an employer under rule 3 (1), the amount of such tax shall be deemed to have been actually received by the person from whose emoluments such tax was deducted at the time that it was deducted.

Payment to Commissioner of income tax deducted
G.N. 33/1983
24/1996
23/2006

10.—(1) Every employer shall pay to the Commissioner General the amount of any income tax deducted under rule 3 within fourteen days of the end of the month in which it was deducted or should have been deducted.

(2) Any employer who fails to comply with subrule (1) shall pay to the Commissioner General—

G.N. 23/2006

(*a*) an additional sum of twenty per cent of the amount of the tax which he shall have failed to pay in the first month or part thereof; and

(*b*) a further additional sum of five per cent per any additional month or part thereof for the period during which the amount of the tax remains unpaid,

and such additional amounts together with the amount of the tax shall be summarily recovered by the Commissioner General in his own name:

Provided that the Commissioner General may reduce the amount of such additional sums if a satisfactory explanation of the reasons for the delay are made.

(3) The additional amount imposed under subrule (2) shall be borne personally by the employer and no part thereof shall be recoverable from any employee in respect of whom income tax was not paid by an employer contrary to subrule (1) and not part of such additional sum shall be deemed to have been suffered by the employee for credit against any assessment for income tax.

Offences
G.N. 23/2006

11. Any person who—

(*a*) makes any false declaration in any form, record or return completed, kept or made for the purposes of this Part;

(*b*) fails to comply with rule 3;

(*c*) fails to pay the amount of any income tax deducted under rule 3 in accordance with rule 10;

(*d*) fails to provide copies of Tax Deduction (P.A.Y.E.) Certificates to employees in accordance with rule 7 (3);

(*e*) fails to account for and return to the Commissioner General every unused Tax Deduction (P.A.Y.E.) Certificate;

(*f*) fails to make the returns required under rule 6;

(*g*) fabricates or uses any colourable imitation of any form, record, return or certificate approved by the Commissioner General for the purposes of this Part;

(*h*) alters, without reasonable cause, any form, record, return or certificate approved by the Commissioner General for the purposes of this Part,

commits an offence and, in addition to any other penalty prescribed under these Rules, be liable to a fine of K100,000. G.N. 30/2017

NOTE

Orders made under section 122 *providing for relief from double taxation are not published here.*

Orders have been made in respect of the following countries—

The United Kingdom	*G.N.* 108/1964(*M*)
as amended by	*G.N.* 164/1968
Sweden	*G.N.* 167/1967
Denmark	*G.N.* 168/1967
Switzerland	*G.N.* 169/1967
Norway	*G.N.* 170/1967
France	*G.N.* 210/1967
United States of America	*G.N.* 167/1968
Kingdom of the Netherlands ..	*G.N.* 30/1970
Kenya	*G.N.* 269/1970
Republic of South Africa	*G.N.* 254/1971
United Kingdom of Great Britain and Northern Ireland	*G.N.* 105/1978

G.N. 192/1969

INCOME TAX (FURNISHING OF CERTIFICATE) RULES

under s. 146

Citation

1. These Rules may be cited as the Income Tax (Furnishing of Certificate) Rules.

Furnishing of certificate

2. The certificate furnished under section 87 (2) of the Act shall—

(i) specify the nature of the books of account and documents produced to the person signing the certificates;

(ii) state the extent of the examination and verification thereof undertaken by the person who signs the certificate; and

(iii) state whether, and subject to what reservations, if any, the person signing the certificate considers that such accounts present a true and fair view of all transactions of the business or of the person to which the accounts refer, for the period stated in the certificate.

G.N. 25/1964(N)
34/1983
25/2006
29/2017

INCOME TAX (P.A.Y.E.) (INFORMATION) RULES

under s. 146

Citation

1. These Rules may be cited as the Income Tax (P.A.Y.E.) (Information) Rules.

Interpretation

2. In these Rules, unless the context otherwise requires—

"employee" means any individual to whom remuneration is paid or payable in the period of assessment;

"employer" means—

(*a*) any person who is liable to pay remuneration to any other person; and

(*b*) in the case of remuneration by way of pension or superannuation payable on behalf of another person by a life insurance company, the life insurance company, but does not include the person on whose behalf such remuneration by way of pension or superannuation is paid or payable;

"employer's representative" means a person approved as such a representative by the Commissioner General for the purposes of paying remuneration, and includes an employer;

"remuneration" means any amount of taxable income which is paid or payable to an employee as salary, leave pay, an allowance,

wages, overtime pay, a bonus, a gratuity, a commission, a fee, an emolument, pension, superannuation, a retiring allowance or a stipend, whether in cash or otherwise and whether in respect of services rendered or otherwise, and, without prejudice to the generality of the foregoing, includes—

(*a*) any amount included in taxable income under sections 18, 19, 20 and 21 of the Act;

(*b*) any amount paid or payable by a trustee in bankruptcy appointed under the Bankruptcy Act, an administrator or an executor in respect of remuneration; but does not include— Cap.11:01

(i) any amount paid or payable in respect of services rendered or to be rendered by any person in the course of any trade conducted by him independently of the person by whom such amount is paid or payable;

(ii) any amount paid or payable to any director of any company in respect of services rendered or to be rendered to the company by the director as such director, unless the Commissioner General otherwise directs;

(iii) any amount paid or payable to any employee wholly in reimbursement of expenditure actually incurred by such employee in the course of his employment;

(iv) any amount of alimony or similar allowance paid or payable under any order of a court of competent jurisdiction, or under any written agreement of separation or under any decree or order of divorce;

(v) such other amounts as the Commissioner General may direct.

Duty of employers to furnish information G.N. 34/1983 25/2006

3.—(1) For the purposes of subrule (2), "employer" means a person who is liable to pay remuneration of or exceeding K72,000 in any year and who has not at any time previously furnished information to the Commissioner General in the Form P.1 of the Schedule.

(2) Every employer shall furnish the information in the Form P. 1 of the Schedule to the Commissioner General within twenty-one days of his becoming an employer.

(3) Any person who fails to comply with subrule (2) shall be liable to a penalty of K300,000 for companies and K75,000 for individuals for the first month or part thereof, and a further penalty of K50,000 for companies and K10,000 for individuals for each month or part thereof during which the failure continues: G.N. 29/2017

Provided that the Commissioner General may reduce or waive the amount of penalty if a satisfactory explanation for the delay is given.

Duty of employers to notify change of circumstances G.N. 34/1983

4. Every employer who has at any time previously furnished information to the Commissioner General in the Form P.1 of the Schedule shall, in the Form P.3 of the Schedule, notify him of any circumstance affecting the accuracy of that information and shall do so within fourteen days of the happening of such circumstance.

Disqualification of employer's representative

5. No person shall be or continue to be an employer's representative if he is not resident in Malaŵi.

6. [*Revoked by G.N.* 34/1983.]

7. [*Revoked by G.N.* 34/1983.]

Penalty G.N. 34/1983 25/2006 29/2017

8. Every employer who—

(*a*) fails to comply with rules 3 and 4; or

(*b*) employs any person as an employer's representative who is disqualified as such under rule 5,

commits an offence and on conviction, shall be liable to a fine of K10,000 or, in default of payment, to imprisonment for three months.

FORM P.1 SCHEDULE rr. 3 and 4 G.N. 34/1983

For official use

Regd. No.	
P. 3	
A/C	

MALAŴI GOVERNMENT

DEPARTMENT OF TAXES

P.A.Y.E.: REGISTRATION OF EMPLOYERS WITH EMPLOYEES PAID AT A RATE IN EXCESS OF K900 PER ANNUM

(Please read the notes before completing this form)

1. DETAILS OF EMPLOYER (OR BRANCH EMPLOYER)
   (*a*) Trade name .....
   (*b*) Name(s) of employer (*in full*) .....
   (*c*) Business address .....
   (*d*) Postal address .....
   (*e*) Business telephone number .....
2. EMPLOYER'S REPRESENTATIVE (*See note* 2)
   (*a*) Name (*in full*) .....
   (b) Address .....
3. BRANCHES OF EMPLOYER'S ACTIVITIES (*See note 3*)
   (*a*) .....
   .....
   (*b*) .....
   .....
   (*c*) .....
   .....

   Will each branch be registered as a separate employer?

YES	NO

   Tick the answer which is applicable.

   If you have no branches write "NIL" above.

   If the answer is "YES" complete a separate form P.1 for each branch and submit with the main form.
4. (This section to be completed only where a "Branch Employer" is separately registered.)
   State trade name and address of Head Office .....
   .....
5. EMPLOYEES (*See note* 4)
   State the approximate number of employees in your employ who will be paid *at a rate of or exceeding K900 per year.* .....
   .....
   I declare that the information given above is correct and complete.
   Date ....., 20.....

   .....
   Employer or Employer's Representative

This form is to be returned to the Inspector of Taxes, P.O. Box 250, Blantyre.

NOTES TO BE READ BEFORE COMPLETING THE FORM

1. The form should be completed by all employers commencing business after 1st April, 1983, who pay any of their employees' salaries or wages at a rate of or exceeding K900 per year, within 21 days of commencing business.

2. EMPLOYER'S REPRESENTATIVE

   (*a*) The person chosen can be the employer himself if he wishes. If any person other than the employer is chosen, he should be the person who is responsible for the payment of salaries and wages, such as the manager, for example. In the case of a company, the "Employer's Representative" would normally be the public officer of the company.

   (*b*) The "Employer's Representative" (the approval of whose appointment will be at the discretion of the Department of Taxes) will be the person who is responsible for the operation of the P.A.Y.E. scheme, the deduction of the tax due, and the remittance of such tax to the Inspector of Taxes at weekly or monthly intervals.

   (*c*) The "Employer's Representative" will be responsible for keeping the information filed with the Department of Taxes up to date. Any changes of address, etc., or the cessation of the employer's activities should be notified (on the Form P. 3 which will be provided) within 14 days of any such change.

3. BRANCHES OF EMPLOYER'S ACTIVITIES

   If you have a branch or branches of your business at separate address from your main centre, you may arrange for the payment of salaries and wages from a central point, in which case *only one* form P.1 should be completed. If, however, each branch is responsible for the payment of its own salaries and wages, a *separate Form* P.1 should be completed for each branch, with a separate "Employer's Representative" for each branch.

4. EMPLOYEES

Enter in question 5 overleaf the approximate number of employees in your employ who are expected to receive salaries or wages *of or exceeding K900 per year*.

FORM P.3 *Income Tax (P.A.Y.E.) (Information) Rules* **[Subsidiary]**

For official use

P.1	
A/C	

MALAŴI GOVERNMENT

DEPARTMENT OF TAXES

P.A.Y.E. CHANGE OF REGISTERED PARTICULARS OF AN EMPLOYER

Reference No.

1. EXISTING PARTICULARS

The following particulars are on record at your office—

(*a*) Trade Name .....

(*b*) Name of Employer .....

(*c*) Name of Employer's Representative (*in full*): .....
.....

(*d*) Business Address .....
.....

(*e*) Postal Address .....
.....

(*f*) Business Telephone Number .....

*Please change these particulars as indicated in Paragraph 2 below

or

*Delete these particulars as I ceased to be an Employer on ..... and I return herewith Tax Tables and Forms .....

2. NEW PARTICULARS

(*a*) New Trade Name .....

(*b*) Name of Employer .....

(*c*) Name of Employer's Representative (*in full*): .....
.....

(*d*) New business address .....

(*e*) New postal address .....
.....

(*f*) New business telephone number .....
.....

I declare that the information given above is correct and complete.

*Delete whichever is not applicable

Date ....., 20..... .....

Employer/Employer's Representative

To the Inspector of Taxes, P.O. Box 250, Blantyre.

G.N. 50/1990

TAXATION (STATUTORY BODIES) (EXEMPTION SPECIFICATION) NOTICE

under First Schedule para. (b) (viii)

Citation

1. This Notice may be cited as the Taxation (Statutory Bodies) (Exemption Specification) Notice.

Exemption from, and liability for, tax: statutory bodies
G.N. 50/1990
14/1991

2. The receipt and accruals of any statutory body, except those named in the Schedule hereto, shall be exempt from income tax.

SCHEDULE

Agricultural Development and Marketing Corporation
Air Malaŵi Limited
Blantyre Water Board
Electricity Supply Commission of Malaŵi
Lilongwe Water Board
Malaŵi Book Service
Malaŵi Dairy Industries Corporation
Malaŵi Development Corporation
Malaŵi Housing Corporation
Malaŵi Railways Limited
Mining Investment and Development Corporation Limited
Wood Industries Corporation Limited

G.N. 129/1967

INTEREST ON GOVERNMENT LOAN (EXEMPTION) NOTICE

under First Schedule para. (k)

The Minister, under paragraph (*k*) of the First Schedule to the Act, has specified the KREDITANSTALT FUR WIEDERAUFBAU to be a body to which such provision applies so that the interest received or accrued to or in favour of such body on any loan made by such body to the Malaŵi Government or to any corporate body established by a law of Malaŵi shall be exempt from income tax.

APPROVAL OF INTERNATIONAL ORGANIZATIONS AND AGENCIES OF GOVERNMENTS FOR THE EXEMPTION OF THE OFFICERS THEREOF FROM INCOME TAX

G.N. 199/1964(N)

under First Schedule para. (l)

The Minister, under paragraph (*l*) of the First Schedule to the Act, has approved the international organizations and agencies of Governments of countries outside Malaŵi set out in the Schedule as being international organizations and agencies of such Governments the salaries and emoluments of whose officers shall be exempt from income tax. *First Schedule*

SCHEDULE

All Agencies of the United Nations Organization
The United States Peace Corps
The United States Agency for International Development
Voluntary Service Overseas

SPECIFICATION OF PERSONS EXEMPTED FROM INCOME TAX

G.N. 109/1980

under First Schedule para. (s)

The Minister, under paragraph (*s*) of the First Schedule to the Act, has specified the names of persons named in the Schedule hereto as being persons whose income shall be exempt from income tax. *First Schedule*

SCHEDULE

Leland Dresser
Barbara Campbell

TAXATION (WITHHOLDING TAX) (INFORMATION, DEDUCTION AND PAYMENT) REGULATIONS

G.N. 28/1985
43/1985
24/2006
15/2011
27/2017

under s. 146

1. These Regulations may be cited as the Taxation (Withholding Tax) (Information, Deduction and Payment) Regulations. Citation

2. These Regulations shall apply to all payments to which section 102A of the Act applies. Application of Regulations

3.—(1) A person who makes any payment specified in the Fourteenth Schedule to the Act shall deduct withholding tax in Deduction of withholding Tax

accordance with the rates specified in that Schedule and shall, for the purposes of these Regulations, make an application to the Commissioner General for a supply of withholding tax certificates under regulation 4.

(2) A person who fails to deduct withholding tax pursuant to subregulation (1), shall himself be personally liable to pay to the Commissioner General the amount of any withholding tax which he has failed to deduct plus an additional penalty as determined under regulation 6 (4).

Withholding Tax certificate

4.—(1) The Commissioner General shall, on application, supply to every person to whom section 102A applies a sufficient number of withholding tax certificates, which certificates shall be in the form set out in the First Schedule.

First Schedule

(2) Every person supplied with withholding tax certificates shall complete a withholding tax certificate in respect of each payment and shall forward or retain the copies thereof in the manner specified therein:

Provided that where it is anticipated that several payments may be made to the same recipient in one month, only one withholding tax certificate may be completed in respect of all those payments.

(3) Except with the approval of the Commissioner General, no person shall use any document, not being a withholding tax certificate supplied under subregulation (1), for the purpose of showing or in purporting to show the amount of withholding tax withheld under regulation 3 (1), and any document so used shall not be valid for what it purports to show.

Amount deemed to have been received by recipient of payment

5. Any amount deducted from any payment to any person as withholding tax shall be deemed to have been actually received by that person as part of the whole payment.

Remittance of withholding tax to the Commissioner

6.—(1) Subject to subregulation (3), a person who, under regulation 3 (1), has deducted from a payment to any other person an amount representing withholding tax shall remit such amount to the Commissioner General within fourteen days from the end of the month in which such deduction was made.

G.N. 27/2017

(2)—(*a*) Every remittance to be made to the Commissioner General under subregulation (1) shall be accompanied with all withholding tax certificates completed during the month to which the remittance relates together with a summary, in the form set out in the Second Schedule to these Regulations, summarizing the particulars of all deductions of withholding tax made in that month;

Second Schedule

(*b*) any person who fails to comply with subparagraph (*a*) shall be liable to a penalty of K300,000 for companies and K75,000 for individuals for the first month or part thereof, and further penalty of K50,000 for companies and K10,000 for individuals for each month or part thereof during which the failure continues.

(3) No withholding tax shall be deducted from any payment to a person who is a holder of a valid withholding tax exemption certificate issued under regulation 7 and who produces the certificate to the person making the payment; but so however that the person making the payment shall, nonetheless, furnish the Commissioner General with a summary required under subregulation (2) containing such applicable particulars as are required therein.

(4) A person who fails to remit the amount of withholding tax within the time specified in subregulation (1) shall be personally liable to pay to the Commissioner General— G.N. 27/2017

(*a*) an additional sum of twenty *per centum* of the amount of tax which he has failed to pay in the first month or part thereof; and

(*b*) a further interest charged on the outstanding amount of tax at the prevailing bank lending rate plus five per cent per annum for each month or part thereof during which the tax remains unpaid,

and such additional sums together with the amount of the tax shall be summarily recovered by Commissioner General in his own name:

Provided that the Commissioner General may reduce or waive the amount of such additional sums if a satisfactory explanation for the delay is given.

Withholding tax exemption certificate *Third Schedule* G.N. 15/2011

7.—(1) Subject to subregulation (2), the Commissioner General may, on application, issue a withholding tax exemption certificate, in the form set out in the Third Schedule, to any person who has fulfilled all of the following conditions (other than a person who is tax exempt), that is to say—

(*a*) that the applicant has timely filed a return of income which is due;

(*b*) that the applicant has filed returns of income for all the years since commencement of business;

(*c*) that the applicant has paid all outstanding taxes due, including Value Added Tax and customs duties;

(*d*) that the applicant has been audited for tax, if the Commissioner General so directs; and

(*e*) that the applicant has complied with any special or general directions, or has fulfilled any conditions, which the Commissioner General considers necessary to give or impose, having regard to the circumstances of the application.

(2) The issue of a withholding tax exemption certificate does not exempt the holder from being taxable on the income upon which the certificate is issued but authorizes payment to the holder without the need to deduct withholding tax.

(3) A withholding tax exemption certificate shall be issued for a particular year of assessment or for such other period as the Commissioner General may determine:

Provided that the Commissioner General may, by notice in writing, order the withdrawal or cancellation of any withholding tax exemption certificate and, upon such notice, any person in possession of such certificate shall surrender it to the Commissioner General within such period as the Commissioner General shall specify in the notice.

(4) A withholding tax exemption certificate may be renewed from time to time.

Offences
G.N. 24/2006

8. Any person who—

(*a*) fails to comply with regulation 3 (1);

(*b*) fails to pay the amount of withholding tax deducted under regulation 3 (1);

(*c*) fails to comply with regulation 4 (2);

(*d*) fails to remit withholding tax in accordance with regulation 6;

(*e*) fails to surrender to the Commissioner General a withholding tax exemption certificate which the Commissioner General has ordered to be withdrawn or cancelled under regulation 7 (3);

(*f*) uses a withholding tax exemption certificate otherwise than for the purposes for which it is issued,

G.N. 27/2017

commits an offence and shall be liable, in addition to any other penalty prescribed under these Regulations, to a fine of K100,000.

FIRST SCHEDULE W.T.F. 1

reg. 4 (1)

MALAŴI GOVERNMENT—DEPARTMENT OF TAXES

WITHHOLDING TAX CERTIFICATE

Gross amount due K_____

Less withholding tax at .....% K_____

Withholding tax as shown above has been deducted from—

*.....

due to the recipient named below.

Full Particulars of Recipient

(Name in full): .....

Postal Address: .....

.....

Income Tax Ref. No.: .....

Paid by: .....

(*Signature*)

On behalf of: .....

.....

.....

Date: .....

**Describe nature of payment or nature of service for which payment is made.*

NOTES:

1. The amount of tax withheld must be paid to the Inspector of Taxes, P.O. Box 250, Blantyre, within fourteen days from the end of the month in which such withholding tax was deducted.
2. The tax withheld is not final but will be credited against total tax liability of the recipient upon submission of his income tax return for the year in question.
3. This Certificate is to be distributed as follows—

   Copy A—To accompany remittance to the Inspector of Taxes, P.O. Box 250, Blantyre.

   Copy B—To be handed to recipient.

   Copy C—To be retained by payer.

SECOND SCHEDULE W.T.F. 2

reg. 6 (2)

MALAŴI GOVERNMENT—DEPARTMENT OF TAXES

SUMMARY OF WITHHOLDING TAX

PART I

PERIOD

Return for the month of ..... or for the period from ..... to .....

PART II

Organization Remitting

Name of the organization remitting withholding tax .....

.....

Address .....

.....

PART III

Total Amount

Amount of withholding tax being remitted with this form is K .....

PART IV

Particulars

Column 1	*Column 2*	*Column 3*	*Column 4*	*Column 5*	*Column 6*	*Column 7*
Name of recipient	*Nature of payment*	*Gross payment due*	*Tax withheld*	*Net payment made*	*With-holding tax certificate No.*	*With-holding tax exemption certificate No. **

** The withholding tax exemption certificate number must be quoted in cases where no withholding tax has been made.*

W.T.F. 3 THIRD SCHEDULE
reg. 7
G.N. 43/1985

MALAŴI GOVERNMENT—DEPARTMENT OF TAXES

Withholding Tax Exemption Certificate

Valid only for payment made between ..... to .....

Name of holder: .....

Postal Address: .....

.....

.....

Signature of holder or on behalf of holder }

Designation where applicable .....

Income Tax Reference Number .....

Nature of income in respect of which this exemption is issued:

(*a*) .....

(*b*) .....

(*c*) .....

(*d*) .....

Issued this day of , 19 by:

Name of issuing officer .....

Signature of issuing officer .....

Official Date Stamp

NOTES:

1. This certificate authorizes payment to the holder of the full amount of the payment to which section 102A of the Act applies without deduction therefrom of withholding tax.
2. This certificate is property of the Malaŵi Government and, if found, it should be sent to the Inspector of Taxes, P.O. Box 250, Blantyre.

TAXATION (PROVISIONAL TAX) (INFORMATION AND PAYMENT) REGULATIONS

G.N. 66/1988

under s. 146

Citation

1. These Regulations may be cited as the Taxation (Provisional Tax) (Information and Payment) Regulations.

Application

2. These Regulations shall apply in relation to payment of provisional tax under Part IX of the Act.

Amounts of quarterly instalments of provisional tax

3.—(1) Where the amount of provisional tax for the relevant year of assessment—

(*a*) is based on the income tax actually paid for the previous year of assessment in accordance with section 84A (3) (*a*), the quarterly instalments of provisional tax shall be in equal amounts;

(*b*) is based on the taxpayer's own estimate of taxable income for that year of assessment in accordance with section 84A (3) (*b*)—

(i) the first quarterly instalment shall be an amount not less than one-fifth of the amount of provisional tax as initially estimated;

(ii) the second or any subsequent quarterly instalment may be varied to an amount greater or lesser than the amount of the first or previous instalment in accordance with variations in the income from time to time estimated by the taxpayer to be earned for the year of assessment in question.

(2) For the avoidance of doubt, a taxpayer may, from time to time during the year of assessment, review the estimate of provisional tax made at the beginning of that year or subsequent thereto and may, for the purposes of subregulation (1) (*b*) (ii), vary the amount of his quarterly instalments accordingly; but so, however, that at the end of the year of assessment he shall have complied fully with the provisions of section 84A (3) (*b*).

Provisional tax forms *Schedule*

4.—(1) Every payment of provisional tax instalment shall be accompanied with a completed provisional tax payment form in Form PTF 1 set out in the Schedule.

(2) In calculating the amount of any instalment of provisional tax, a taxpayer may make such calculation in accordance with the particulars prescribed in Form PTF 2 set out in the Schedule.

Transitional arrangements

5.—(1) Notwithstanding any other provision of these Regulations, in the first four years of assessment from the commencement of these Regulations, the total amount of provisional tax for the year of assessment specified in *Column 1* of the Table set out hereunder shall—

(*a*) if the provisional tax is based on the income tax actually paid for the previous year of assessment in accordance with section 84A (3) (*a*), be an amount equal to the percentage specified, in relation to that year, in *Column 2* of that Table;

(*b*) if the provisional tax is based on the taxpayer's own estimate of taxable income for that year of assessment in accordance with section 84A (3) (*b*), be an amount equal to the percentage specified, in relation to that year, in *Column 3* of that Table:

Provided that in either case a taxpayer may in his discretion opt to make payments of larger amounts for the purpose of sooner liquidating his tax liability.

(2) The total amounts of provisional tax specified under sub-regulation (1) shall be paid in quarterly instalments in accordance with the provisions of the Act and of these Regulations.

TABLE OF PROVISIONAL TAX TRANSITIONAL ARRANGEMENTS

In this Table, "First Year" means the year of assessment beginning on or after 1st April, 1988, or having at least the last two of its quarters beginning on or after 1st April, 1988.

Column 1	*Column* 2	*Column* 3
Year of Assessment	If under s. 84A (3) (*a*) (*% of the income tax actually paid for the previous year of assessment*)	If under s. 84A (3) (*b*) (*% of the provisional tax estimated for the year of assessment*)
First Year . .	25%	20%
Second Year . .	50%	40%
Third Year . .	75%	60%
Fourth Year and Subsequent years	100%	80%

SCHEDULE reg. 4

FORM PTF 1

MALAŴI GOVERNMENT—DEPARTMENT OF TAXES

PROVISIONAL TAX PAYMENT FORM

(To be completed in duplicate and original copy to be sent to the Commissioner of Taxes, P.O. Box 250, Blantyre, accompanying your payment of provisional tax instalment).

For the year of assessment ending ....., 20.....

1. Taxpayer's identification number [ ][ ][ ][ ][ ][ ]
2. Name(s) (*in print and, in case of individuals, surname first*) .....
   .....
   .....
3. Address (*in print*) .....
   .....
   .....

4. Basis of calculation of instalment (*mark with x in box as applicable*) (*a*) Previous year's tax [ ] (*b*) Current year's estimated tax [ ] 5. Accounting date..... (e.g. 31.12)	6. Instalment number 1 2 3 4 (*circle the number*) 7. Amount of this instalment [ ] 8. Totals: (*a*) previous instalments (excluding this one) [ ] (*b*) Instalments to date (*i.e. amount at 7 plus amount at* 8 (*a*))

FORM PTF 2

MALAŴI GOVERNMENT—DEPARTMENT OF TAXES

CALCULATION OF PROVISIONAL TAX INSTALMENTS

(This form *need not* be sent to the Commissioner of Taxes)

Year of assessment ending	

A. For use by persons basing provisional tax instalments on previous year's income tax liability—

Year of assessment ending	

1. Amount of income tax liability for the year of assessment	1.
2. Enter 25 per cent of line 1	2.
3. Amount of quarterly instalments (*enter line* 2)	3.

B. For use by persons basing provisional tax instalments on their estimated income tax liability for the current year of assessment—

1. Taxable income expected in the year	1	
2. Income tax thereon. . . .	2	
3. Estimated credits	3	
4. Estimated tax (*line* 2 *minus line* 3)	4	
5. Total amount of previous instalments	5	
6. Balance of estimated tax (*line* 4 *minus line* 5) (If line 6 is zero or below, do not continue)	6	
7. Number of remaining quarterly instalments . .	7	
8. Amount of each instalment (*line* 6 *divided by line* 7)	8	
9. Amount of each instalment being made now (*enter line* 8)	9	

G.N. 30/1995
59/1998
16/2005
8/2016
28/2017

TAXATION (FRINGE BENEFITS TAX) (INFORMATION AND PAYMENT) REGULATIONS

under s. 146

Citation

1. These Regulations may be cited as the Taxation (Fringe Benefits Tax) (Information and Payment) Regulations.

Application

2. These Regulations shall apply in relation to payment of fringe benefits tax by employers to whom Part IXA of the Act applies.

Interpretation

3. In these Regulations—

"employer" means an employer to whom Part IXA of the Act applies.

Compulsory registration of employers

Schedule

4. Every employer shall, within the month in which he begins to provide fringe benefits to employees, register with the Commissioner General for the purposes of these Regulations and shall do so by completing a fringe benefits tax form in Form FBT 1 set out in the Schedule obtainable upon application therefor by the employer:

Provided that in the case of an employer already providing fringe benefits to employees at the date of publication of these Regulations he shall apply for registration and be registered within fourteen days from that date and, in any event, not later than 31st May, 1991.

Calculation of taxable value of fringe benefits

G.N. 30/1995
59/1998
16/2005
25/2016

5. Calculation of taxable values of fringe benefits for the purpose of arriving at the total thereof on which fringe benefits tax, at the rate specified in paragraph (e) of the Eleventh Schedule to the Act, is payable under section 94A shall be as follows—

(*a*) for housing accommodation, the taxable value shall be—

(i) for property owned by the employer—

(*aa*) the open market value for the use (rental value) of such property;

(*bb*) 20 per cent of the employee's salary where unfurnished housing accommodation is provided; or

(*cc*) 22 per cent of the employee's salary where furnished housing accommodation is provided, whichever is greater:

Provided that the taxable value so determined under this subparagraph may be reduced by fifty per cent;

(ii) for property rented by the employer, the taxable value shall be—

(*aa*) the rental paid by the employer;

(*bb*) 20 per cent of the employee's salary where unfurnished housing accommodation is provided; or

(*cc*) 22 per cent of the employee's salary where furnished housing accommodation is provided, whichever is the greater;

(*b*) for motor vehicles the taxable value shall be fifteen per cent of the original cost of each vehicle;

(*c*) for school fees and related expenses paid by the employer directly to institutions, the taxable value shall be fifty per cent of the cost to the employer;

(*d*) for other fringe benefits, including but not limited to—

(i) utilities such as electricity, water and telephone;

(ii) household items of any kind;

(iii) vacations, travel and any other provisions;

(iv) domestic services of any kind, such as gardeners, maids, cooks, nannies and housekeepers, security guards and watchmen, the taxable value shall be the entire cost to the employer:

Provided that where the property is owned by the employer the cost of a gardener, security guard and watchman shall not constitute a taxable benefit.

(e) where the interest rate charged on a loan is given to an employee is lower than the commercial rate, the difference shall be a taxable benefit.

The taxable values determined in this paragraph shall be reduced by an amount equal to the contribution made by the employee in respect thereof.

Payment of fringe benefits

6. The sums due as fringe benefits tax shall be paid to the Commissioner General in quarterly instalments not later than fourteen days after the end of each quarter of a period of twelve months ending 31st March each year and the remittance of such sums shall be accompanied with a duly completed fringe benefits tax return in Form FBT 2 set out in the Schedule.

Schedule

Records

7.—(1) Every employer shall keep and maintain proper records showing—

(a) the nature of the fringe benefits provided;

(*b*) the names of employees to whom fringe benefits are provided; and

(*c*) the taxable values of fringe benefits as determined in accordance with these Regulations,

and such records shall be made available by the employer for inspection at any reasonable time by the Commissioner General or by any public officer authorized in that behalf by the Commissioner General.

G.N. 28/2017

(2) Any person who fails to comply with subregulation (1) shall be liable to a penalty of K300,000 for companies and K75,000 for individuals for the first month, or part thereof and a further penalty of K50,000 for companies and K10,000 for individuals for each month or part thereof during which the failure continues:

Provided that the Commissioner General may reduce or waive the amount of penalty if a satisfactory explanation for the delay is given.

Penalty
G.N. 28/2017

8. An employer who fails to register in accordance with regulation 4 shall be liable to a penalty of K200,000 for companies and K50,000 for individuals for the first month, or part thereof and a further penalty of K50,000 for companies and K10,000 for individuals for each month or part thereof during which the failure continues.

Delay or failure to pay fringe benefits G.N. 28/2017

9. An employer who fails or delays to pay fringe benefits tax due in accordance with these Regulations shall be liable to pay to the Commissioner General—

(*a*) an additional sum of twenty *per centum* of the amount of tax which he has failed to pay in the first month or part thereof; and

(*b*) a further interest charged on the outstanding amount of tax at the prevailing bank lending rate plus five per cent per annum for each month or part thereof during which the tax remains unpaid,

and such additional sums together with the amount of the tax shall be summarily recovered by Commissioner General in his own name:

Provided that the Commissioner General may reduce or waive the amount of such additional sums if a satisfactory explanation for the delay is given.

SCHEDULE regs. 4 and 6

FRINGE BENEFITS TAX FORMS FORM FBT 1

MALAŴI GOVERNMENT—DEPARTMENT OF TAXES

FRINGE BENEFITS TAX REGISTRATION FORM
Employer's Taxpayer Identification Number (TPIN)

1. Name of employer .....

2. Address .....
.....

3. Location of offices .....
.....

4. Nature of fringe benefits provided (*tick as appropriate*)
   (*a*) Housing ☐
   (*b*) Motor Vehicle ☐
   (*c*) Other (specify) ☐
   ..... ☐
   ..... ☐
   ..... ☐
   ..... ☐

5. Approximate number of employees to whom fringe benefits are provided
   .....

Date ..... Signature of employer's representative .....
.....

FORM FBT 2

MALAŴI GOVERNMENT—DEPARTMENT OF TAXES

FRINGE BENEFITS TAX QUARTERLY RETURN AND REMITTANCE FORM

Quarter ending ..... Number of Employees .....

Nature of Benefit	*Month* 1 *Taxable Value*	*Month* 2 *Taxable Value*	*Month* 3 *Taxable Value*	*Total Taxable Value*
1. Housing				
2. Motor Vehicles				
3. Other				
4. Total				
Tax (at ..... per cent of the total as shown at 4 above)				

I declare that this return contains the correct taxable values of fringe benefits provided by this employer.

Name of employer .....

Address .....

Date ..... Signature of employer's representative .....

TAXATION (DIVIDEND TAX ACCOUNT) (ESTABLISHMENT AND MAINTENANCE) REGULATIONS

G.N. 41/1995

under s. 146

Citation

1. These Regulations may be cited as the Taxation (Dividend Tax Account) (Establishment and Maintenance) Regulations.

Application of Regulations

2. These Regulations shall apply to every company which, in accordance with section 70A of the Act, is required to establish and maintain in its books of account a dividend tax account.

Determination of opening balance of dividend tax account for 1992/1993 year of assessment

3.—(1) Every company shall, in respect of the 1991/1992 year of assessment to that company, determine whether or not there is a retained profits account in the accounts of the company.

(2) Where the accounts of the company show no retained profits or show accumulated losses, the opening balance of the dividend tax account at the beginning of the 1992/1993 year of assessment of the company shall be zero, and shall be so recorded.

(3) Where the accounts of the company show retained profits, the opening balance of the dividend tax account at the beginning of the 1992/1993 year of assessment of the company shall be calculated at the rate of seven-thirteenths of the retained profits, and the amount so calculated shall be recorded as the opening balance of the dividend tax account of the company.

Balances of the dividend tax account

4. The balance of the dividend tax account of the company shall be increased or reduced, as the case may be, in accordance with subsection 70A (2) of the Act, and where any income tax has been refunded to the company, the balance of the dividend tax account shall further be reduced by an amount equal to the amount of income tax which has been refunded.

Maintaining of dividend tax account

5. A dividend tax account shall be maintained on the basis of an accounting year or a year of assessment and, in accordance with subsection 70A (3) of the Act, shall be carried forward from year to year, but income tax paid in respect of income earned in any subsequent year of assessment shall not be used to increase a dividend tax account of a previous year of assessment.

G.N. 46/2013

TAXATION (DESIGNATION OF PRIORITY INDUSTRIES) ORDER

under Eleventh Schedule para. (*c*) (ii)

[1st July, 2013]

Citation

1. This Order may be cited as the Taxation (Designation of Priority Industries) Order.

Designation of priority industries

2. The following are industries designated as priority industries for the purposes of assessment of income tax—

(*a*) Agro-Processing Industries; and

(*b*) Electricity Generation, Transmission and Distribution Industries.

G.N. 47/2013
20/2017

TAXATION (PRIORITY INDUSTRIES) REGULATIONS

under s. 146

ARRANGEMENT OF REGULATIONS

REGULATION

1. Citation
2. Interpretation
3. Application
4. Application for priority industry status
5. Powers and functions of the committee
6. Minimum threshold
7. Validity of the designation granted to a person

7A. Guidelines to clearing capital goods and building materials for priority industry

8. Rate of income tax applicable
9. Compliance with the requirements of other written laws
10. Revocation of priority industry status
11. Review
12. Appeals

[1st July, 2013]

Citation

1. These Regulations may be cited as Taxation (Priority Industries) Regulations.

Interpretation

2. In these Regulations, unless the context otherwise requires—

"agro-processing" means the process of converting primary or raw agricultural products into consumable commodities;

"generation" means the production of electricity for sale and the term "generate" and "generating" shall have corresponding meanings;

"priority industry" means agro-processing industry or electricity generation, transmission and distribution industries;

"transmission" means the conveyance of electricity at 66,000 volts or more, from generators or an import point to distributors or large customers or an export point through a transmission power system, and the terms "transmit" and "transmitting" shall have corresponding meanings.

Application

3.—(1) These Regulations shall apply to any person operating in the priority industry and who, from 1st July, 2013—

(*a*) is a natural person or any legal entity;

(*b*) has obtained a tax identification personal number; and

(*c*) has either —

(i) commenced trading; or

(ii) obtained an investment certificate in accordance with the Investment and Export Promotion Act, 2012. 11 of 2012

(2) A taxpayer who has met the requirements prescribed in paragraphs (*a*), (*b*) and (*c*) (ii) of subregulation (1) shall be granted a provisional investment certificate for priority industry status.

(3) A provisional certificate granted under subregulation (2) shall remain valid until the taxpayer has commenced trading and has met all other requirements under these Regulations.

(4) These Regulations shall not apply to a taxpayer who—

(*a*) has been involved in reorganization as defined in section 70F (5) and (6) of the Act; or

(*b*) has qualified for tax incentives that have the same effect and purpose intended to be achieved by the priority industry status.

Application for priority industry status

4.—(1) A taxpayer who intends to be granted a priority industry status may file a written application with the Commissioner General for consideration.

(2) The Commissioner General shall constitute a committee to assess the applications taking into account all factors necessary for a taxpayer to be granted such a status.

(3) The committee constituted pursuant to this regulation shall comprise not more than three representatives of the Commissioner

General, one representative of the Secretary to the Treasury, one representative of the Secretary for Industry and Trade, one representative of the Governor of the Reserve Bank of Malaŵi, and one representative of the Chief Executive Officer of the Malaŵi Investment Trade Centre:

Provided that only one representative of the Commissioner General shall have a voting right on decision making of the committee.

Powers and functions of the committee

5.—(1) The committee constituted pursuant to regulation 4 shall have the mandate to require production of relevant documents, permits or any other document that it considers necessary for the purpose of making an objective assessment of the application.

(2) Prior to consideration of an application, the committee shall develop an objective assessment criteria to be applied to applications before it, including determining number of years to be accorded to an applicant based on the amount invested.

(3) After assessing an application, the committee shall make recommendations to the Commissioner General.

(4) The Commissioner General shall make his decision on the application based on the recommendations from the committee pursuant to subregulation (3) and he shall state his ground for approval or rejection of the application.

(5) The committee shall conduct periodic reviews provided for in these Regulations.

Minimum threshold

6. The Commissioner General may consider a taxpayer who has qualified under regulation 3 for priority industry status where—

(*a*) the taxpayer has invested in agro-processing industry with a minimum capital of—

(i) US$500,000 or its equivalent in plant and machinery with one hundred per cent shareholding by Malaŵian citizens, and subject to verification, there is value addition of thirty-five per cent to the final product;

(ii) US$5 million or its Kwacha equivalent in plant and machinery in any other case, and subject to verification, there is value addition of thirty-five per cent to the final product; or

(*b*) US$30 million or its Kwacha equivalent in plant and machinery for electricity generation, distribution and transmission industry.

Validity of the designation granted to a person

7.—(1) Where a person has been granted a priority industry status, such status shall be valid for any number of years not exceeding ten years.

(2) The priority industry certificate shall be valid from the date endorsed by the Commissioner General and shall automatically terminate at the expiry of the period prescribed in the certificate.

(3) A taxpayer who has obtained a certificate and is complying with conditions prescribed in the certificate shall be recognized to have the certificate as valid until the period prescribed in it has expired.

Guidelines to clearing capital goods and building materials for priority industry G.N. 20/2017

7A. Where a person has been granted priority industry status, clearance of capital goods and building materials for the priority industry shall be in accordance with the Guidelines to Customs Procedure Code (CPC) 4000.445 (*a*) in the Customs and Excise (Tariffs) Order.

Rate of income tax applicable

8. The rate of tax applicable to priority industries in agro-processing and electricity generation, distribution and transmission shall be zero for the whole period granted.

Compliance with the requirements of other written laws

9. A taxpayer who is operating in the priority industry shall not be exempted from complying with the requirements of any other written law.

Revocation of priority industry status

10.—(1) Where the Commissioner General is satisfied that a taxpayer who has been granted the status to operate in a designated priority industry is acting in any of the manners outlined in subregulation (2), the Commissioner General may, by written notice, require the person to show cause within 30 days why the status should not be revoked.

(2) The Commissioner General may revoke the status to operate in a designated priority industry pursuant to subregulation (1) where the taxpayer—

(*a*) acts in breach of any terms and conditions of his status;

(*b*) acts in contravention of these Regulations;

(*c*) acts in breach of any other written law;

(*d*) has extended the application of his status to other non-designated industries;

(*e*) has invested less than a required minimum capital;

(*f*) has contravened any other written law under which a relevant permit of its respective industry was issued; or

(*g*) has failed to disclose any material fact which if disclosed would prevent the granting of the status.

Review

11.—(1) The committee appointed under regulation 4 shall, jointly with other regulatory bodies, review the progress that a taxpayer operating in the priority industry has made since the date of issuing him with a certificate, and such review shall be conducted every six months.

(2) The chairperson of the committee shall inform the other members of the committee when the committee intends to review the progress of a taxpayer.

(3) The committee shall make its findings and inform the taxpayer whether the committee is satisfied with the progress or not.

(4) Where the committee is not satisfied with the progress made by the taxpayer, it may suspend the priority industry status of the taxpayer before requiring the taxpayer to show cause why the certificate shall not be revoked.

Appeals

12. A taxpayer, who has been refused the priority industry status or is aggrieved with the decision of the Commissioner General in the Commissioner General's application of these Regulations, may appeal using the same procedure provided for in Part X of the Act.

TAXATION (TRANSFER PRICING DOCUMENTATION) REGULATIONS

ARRANGEMENT OF REGULATIONS

REGULATION

1. Citation
2. Required documents
3. Language of documentation
4. Contemporaneous documentation
5. Time limit for submission of documentation
6. Power to request additional information
7. Penalties

TAXATION (TRANSFER PRICING DOCUMENTATION) REGULATIONS

G.N. 36/2017

under s. 146

[1st July, 2017]

Citation

1. These Regulations may be cited as the Taxation (Transfer Pricing Documentation) Regulations.

Required documents

2.—(1) A taxpayer shall have in place contemporaneous documentation that verifies that the conditions in its controlled transactions for the relevant tax year are consistent with the arm's length principle.

(2) Documentation under these Regulations shall include—

(*a*) an overview of the taxpayer's business operations (history, recent evolution and general overview of the relevant markets of reference) and organizational chart (details of business units or departments and organizational structure);

(*b*) a description of the corporate organizational structure of the group that the taxpayer is a member (including details of all group members, their legal form, and their shareholding percentages) and the group's operational structure (including a general description of the role that each of the group members carries out with respect to the group's activities, as relevant to the controlled transaction);

(*c*) a description of the controlled transaction(s), including analysis of the comparability factors specified in regulation 4 of the Taxation (Transfer Pricing) Regulations;

G.N. 37/2017

(*d*) details of the functions undertaken by the connected parties in relation to the controlled transaction, which shall include details of assets in relation to the controlled transaction as well as risk assumed by each party;

(*e*) an explanation of the selection of most appropriate transfer pricing method, and, where relevant, the selection of the tested party and the financial indicator;

(*f*) financial statements for the parties to the controlled transaction including where the tested party has been selected as a party outside the country;

(*g*) comparability analysis, including—

(i) description of the process undertaken to identify comparable uncontrolled transactions;

(ii) explanation of the basis for the rejection of any potential internal comparable uncontrolled transactions (where applicable);

(iii) description of the comparable uncontrolled transactions;

(iv) analysis of comparability of the controlled transaction(s) and the comparable uncontrolled transactions, taking into account regulation 4 of the Taxation (Transfer Pricing) Regulations; and

G.N. 37/2017

(v) details and explanation of any comparability adjustments made;

(*h*) details of any industry analysis, economic analysis, budgets or projections relied on;

(*i*) details of any advance pricing agreements or similar arrangements in other countries that are applicable to the controlled transactions;

(*j*) a conclusion as to consistency of the conditions of the controlled transactions with the arm's length principle, including details of any adjustment made to ensure compliance; and

(*k*) any other documentation or information that is necessary for determination of the taxpayer's compliance with the arm's length principle with respect to the controlled transactions.

Language of documentation

3. Documentation under these Regulations shall be submitted in the English language.

Contemporaneous documentation

4. Documentation for a relevant tax year shall be considered to be contemporaneous where it is in place at the statutory tax return's filing date.

Time limit for submission of documentation

5. The documentation required under these Regulations shall be submitted to the Commissioner General within forty-five days of the written request being duly issued by the Commissioner General.

Power to request additional information

6. The obligation of the taxpayer to provide the documentation under these Regulations shall be without prejudice to the power of the Commissioner General to request additional information that in the course of audit procedures he deems necessary to carry out his functions.

Penalties

7.—(1) Any person who fails to comply with a notice served on him by the Commissioner General under regulation 5 shall be liable to—

(*a*) an initial penalty not exceeding the Malaŵi Kwacha equivalent of 1,400 United States Dollars at the prevailing exchange rate; and

(*b*) further penalties not exceeding the Kwacha amount equivalent of 2,100 United States Dollars at the prevailing exchange rate to for each period of one month where the failure Continues.

(2) Any person who has been subject to an initial penalty for failure to comply with a notice, and subsequent penalties in subregulation (1), and continues to fail to comply with that notice shall be liable to further penalties in an unlimited amount to be determined by the Commissioner General in accordance with criteria set out by the Commissioner General.

TAXATION (TRANSFER PRICING) REGULATIONS

ARRANGEMENT OF REGULATIONS

REGULATION

1. Citation
2. Interpretation
3. Arm's length principle
4. Comparability
5. Transfer pricing methods
6. Evaluation of taxpayer's combined controlled transactions
7. Arm's length range
8. Sources of information on comparable uncontrolled transactions
9. Services between related persons
10. Transactions involving intangible property
11. Disregarding a controlled transaction for tax purposes
12. Corresponding adjustments for domestic transactions
13. Corresponding adjustments for international transactions
14. Relevance of OECD Transfer Pricing Guidelines
15. Beneficial tax regimes
16. Threshold for application of section 127A of the Act to domestic transactions
17. Revocation of the Cap. 41:01 Sub. leg. p. 129

G.N. 37/2017

TAXATION (TRANSFER PRICING) REGULATIONS

under s. 146

[1st July, 2017]

Citation

1. These Regulations may be cited as the Taxation (Transfer Pricing) Regulations.

Interpretation

2. In these Regulations, unless the context otherwise requires—

"arm's length price" means the price payable in a transaction between independent enterprises;

"comparable transactions" means transactions that are comparable in accordance with regulation 4;

"controlled transaction" means any transaction between related persons;

"financial indicator" means—

(*a*) in relation to the comparable uncontrolled price method, the price;

(*b*) in relation to the cost plus method, the mark up on costs;

(*c*) in relation to the resale price method, the resale margin;

(*d*) in relation to the transaction net margin method, the net profit margin; or

(*e*) in relation to the transactional profit split method, the division of the operating profit and loss;

"related persons" shall have the meaning ascribed to that term in section 127A of the Act; and

"uncontrolled transaction" means any transaction between independent persons.

Arm's length principle

3. The determination of whether the conditions of a controlled transaction are consistent with the arm's length principle under section 127A of the Act and of the quantum of any adjustment made under section 127A (1), shall be made in accordance with the provisions of regulation 5.

Comparability

4.—(1) An uncontrolled transaction is comparable to a controlled transaction within the meaning of section 127A (1) where—

(*a*) there are no differences between the transactions that could materially affect the financial indicator being examined under the appropriate transfer pricing method; or

(*b*) such differences exist, if a reasonably accurate comparability adjustment is made to the relevant financial indicator of the uncontrolled transaction in order to eliminate the effects of such differences on the comparison.

(2) For purposes of determining whether two or more transactions are comparable, the following factors shall be considered to the extent that they are economically relevant to the facts and circumstances of the transactions—

(*a*) the characteristics of the property or services transferred;

(*b*) the functions undertaken by each person with respect to the transactions, taking into account assets used and risks assumed;

(*c*) the contractual terms of the transactions;

(*d*) the economic circumstances in which the transactions take place; and

(*e*) the business strategies pursued by each of the related persons in relation to the transactions.

(3) For the purposes of determining whether two transactions are comparable, the allocation of risk between related persons shall take into account how economically significant the risk is allocated in contracts between those persons, including which person—

(*a*) bears the financial risk;

(*b*) performs the relevant risk control and risk mitigation functions; and

(*c*) has the financial capacity to assume the risk.

(4) In cases where the contractual allocation of risk diverges from the factors described under this regulation, the risk shall be allocated to the persons that perform the relevant risk control and risk mitigation functions, and have the financial capacity to assume the risk.

(5) Where a person does not in fact control the financial risks associated with its funding activities, for tax purposes, it shall not be allocated the profits associated with those risks and shall be entitled to no more than a risk-free return.

(6) Where a person that performs the relevant risk control and risk mitigation functions does not have the financial capacity to assume the risk, the Commissioner General shall determine what adjustments to the transaction are needed for the transaction to result in an arm's length outcome.

Transfer pricing methods

5.—(1) The arm's length remuneration of a controlled transaction shall be determined by applying the most appropriate transfer pricing method to the circumstances of the case.

(2) The most appropriate transfer pricing method shall be selected from among the approved transfer pricing methods set out in regulation 5 (3), taking into consideration the following criteria—

(*a*) the respective strengths and weaknesses of the approved methods;

(*b*) the appropriateness of an approved method in view of the nature of the controlled transaction, determined in particular, through an analysis of the functions undertaken by each person in the controlled transaction, taking into account assets used and risks assumed;

(*c*) the availability of reliable information needed to apply the selected transfer pricing method; and

(*d*) the degree of comparability between the controlled and uncontrolled transactions, including the reliability of comparability

adjustments, if any, that may be required to eliminate differences between them.

(3) The following shall be the approved transfer pricing methods for the purposes of regulation 5 (1)—

(*a*) the comparable uncontrolled price method, which consists of comparing the price charged for property or services transferred in a controlled transaction with the price charged for property or services transferred in a comparable uncontrolled transaction;

(*b*) the resale price method, which consists of comparing the resale margin that a purchaser of property in a controlled transaction earns from reselling that property in an uncontrolled transaction with the resale margin that is earned in comparable uncontrolled purchase and resale transactions;

(*c*) the cost plus method, which consists of comparing the mark up on those costs directly and indirectly incurred in the supply of property or services in a controlled transaction with the mark up on those costs directly and indirectly incurred in the supply of property or services in a comparable uncontrolled transaction;

(*d*) the transactional net margin method, which consists of comparing the net profit margin relative to an appropriate base, such as costs, sales or assets, that a person achieves in a controlled transaction with the net profit margin relative to the same base achieved in comparable uncontrolled transactions; and

(*e*) the transactional profit split method, which consists of allocating to each associated person participating in a controlled transaction the portion of common operating profit (or loss) derived from such transaction that an independent person would expect to earn from engaging in a comparable uncontrolled transaction. When it is possible to determine an arm's length remuneration for some of the functions performed by the associated persons in connexion with the transaction using one of the approved methods described in paragraphs (*a*) to (*d*), the transactional profit split method shall be applied based on the common residual profit that results once such functions are so remunerated.

(4) A transfer pricing method other than the approved methods contained in subregulation (3) may be applied where the Commissioner General is satisfied that—

(*a*) none of the approved methods can be reasonably applied to determine arm's length conditions for the controlled transaction; and

(*b*) such other method yields a result consistent with that which would be achieved by independent persons engaging in comparable uncontrolled transactions under comparable circumstances.

(5) In cases where other methods are used, their selection shall be supported by an explanation of why methods in regulation 5 (3) were regarded as less appropriate or non-workable in the circumstances of the case, and of the reasons why the selected other method was regarded as providing a better arm's length price.

(6) As regards transactions involving the acquisition of new or used assets by taxpayers from related persons not resident in Malaŵi—

(*a*) the application of the Comparable Uncontrolled Price method shall require the invoice for the acquisition of the asset and proof of payment when it was purchased from an independent third party and in case of a used asset, the subsequent application of the decline in value already amortized since the asset was purchased, as allowed under accounting principles generally accepted in Malaŵi; and

(*b*) this notwithstanding, and only if the asset in question is sold in a different state from the one in which it was purchased, barring ordinary wear and tear, or if there is no third-party invoice, or in the case of an asset built or assembled using a number of components and thus with several invoices, a technical appraisal may be performed by a third-party expert not employed by the company, providing details of the characteristics, scope and other conditions considered in the appraisal, for the purposes of this point and pursuant to this Regulation.

(7) Choice of Tested Party—When applying a cost plus, resale price or transactional net margin method, provided under regulation 5, it shall be necessary to select the party, hereinafter referred to as the "tested party", to the transaction for which a financial indicator, mark-up on costs, gross margin, or net profit indicator, is tested under the most appropriate transfer pricing method in the circumstance,

(8) The selection of the tested party should be consistent with the functional analysis of the transaction.

(9) The tested party is the party to which a transfer pricing method can be applied in the most reliable manner and for which the most reliable comparables can be found, i.e. it will most often be the one that has the less complex functional analysis.

(10) Where the most appropriate transfer pricing method in the circumstances of the case, determined following the guidance at regulation 5, above, is a one-sided method, financial information on the tested party shall be submitted in addition to the information referred to in subregulation (11) irrespective of whether the tested party is a domestic or foreign entity.

(11) Where the most appropriate method is a cost plus, resale price or transactional net margin method and the tested party is the foreign entity, sufficient information shall be submitted to be able to reliably

apply the selected method to the foreign tested party and to enable a review by the Commissioner General of the application of the method to the foreign tested party.

Evaluation of taxpayer's combined controlled transactions

6. If a taxpayer carries out, under the same or similar circumstances, two or more controlled transactions that are economically closely linked to one another or that form a continuum such that they cannot reliably be analyzed separately, those transactions may be combined to—

(*a*) perform the comparability analysis set out in regulation 4; and

(*b*) apply the transfer pricing methods set out in regulation 5.

Arm's length range

7.—(1) An arm's length range is a range of relevant financial indicator figures (e.g. prices, margins or profit shares) produced by the application of the most appropriate transfer pricing method as set out in regulation 5 to a number of uncontrolled transactions, that are all comparable, and equally comparable to the controlled transaction based on a comparability analysis conducted in accordance with regulation 4:

Provided that the highest point in the range is no more than twenty-five per cent greater than the lowest point in the range.

(2) Where the application of the most appropriate method results in a number of financial indicators for which the degree of comparability of each to the controlled transactions, and to each other, is uncertain, or the highest point in the range exceeds twenty-five per cent of the lowest point in the range, a statistical approach shall be used. Where such an approach is used, the interquartile range shall be considered to be an arm's length range.

(3) A controlled transaction, or a set of controlled transactions that are combined according to regulation 6, shall not be subject to an adjustment under section 127A of the Act where the relevant financial indicator derived from the controlled transaction or set of controlled transactions and being tested under the appropriate transfer pricing method is within the arm's length range.

(4) Where the relevant financial indicator derived from a controlled transaction, or from a set of controlled transactions that are combined according to regulation 6, falls outside the arm's length range, the taxable profit of the taxpayer shall be computed on the basis that the relevant financial indicator is the median of the arm's length range.

(5) For the purposes of regulation 7 (4), the median of the arm's length range shall be the fiftieth percentile of the financial indicator figures derived from the comparable uncontrolled transactions forming the arm's length range. For this purpose, the fiftieth percentile is the lowest financial indicator figure such that at least fifty per cent of the financial indicator figures are at or below the value of that figure.

However, if exactly fifty percent of the results are at or below a financial indicator figure, then the fiftieth percentile is equal to the arithmetic mean of that figure and the next highest figure.

Sources of information on comparable uncontrolled transactions

8.—(1) Sources of information on comparable uncontrolled transactions include—

(*a*) internal uncontrolled transactions, which are uncontrolled transactions where one of the parties to the controlled transaction is also a party to the uncontrolled transaction; and

(*b*) external uncontrolled transactions, which are uncontrolled transactions to which neither of the parties to the controlled transaction is a party.

(2) Information concerning a comparable external uncontrolled transaction shall not be relied upon by the Commissioner General for the purposes of making an adjustment under section 127A of the Act if the information concerning the transaction is not available to the taxpayer.

(3) Information concerning a comparable uncontrolled transaction shall not be relied upon by a taxpayer for the purposes of demonstrating the consistency of a transaction with section 127A of the Act if the information on the transaction is not made available to the Commissioner General.

(4) In the absence of information on uncontrolled transactions from the same geographic market as the controlled transaction, comparable uncontrolled transactions from other geographic markets may be accepted by the Commissioner General.

(5) A determination of whether comparables from other geographic markets are reliable shall be made on a case-by-case basis, and by reference to the extent to which they satisfy regulation 4.

(6) For the avoidance of doubt, use of these comparables is subject to adjustment under regulation 4 (1).

Services between related persons

9.—(1) A service charge between a taxpayer and a related person shall be considered consistent with the arm's length principle where—

(*a*) it is charged for a service that is actually rendered;

(*b*) the service provides, or when rendered was expected to provide, the recipient with economic or commercial value to enhance its commercial position;

(*c*) it is charged for a service that an independent person in comparable circumstances would have been willing to pay for, if performed for it by an independent person, or would have performed in-house for itself; and

(*d*) its amount corresponds to that which would have been agreed between independent persons for comparable services in comparable circumstances.

(2) A service charge made to a person shall not be consistent with the arm's length principle where it is made by a related person solely because of the shareholder's ownership interest in one or more other group members, including for any of the following costs incurred or activities undertaken by such related person—

(*a*) costs or activities relating to the juridical structure of the parent company of the first-mentioned person, such as meetings of shareholders of the parent, issuing of shares in the parent company, and costs of the parent company's supervisory board;

(*b*) costs or activities relating to reporting requirements of the parent company of the first-mentioned person, including the consolidation of reports; and

(c) costs or activities related to raising funds for the acquisition of participations, unless those participations are directly or indirectly acquired by the first-mentioned person and the acquisition benefits or is expected to benefit that first-mentioned person.

(3) Where it is possible to identify specific services provided by a taxpayer to a related person, the determination whether the service charge is consistent with the arm's length principle shall be made for each specific services, subject to the provisions of regulation 9 (4).

(4) Where services are rendered by a taxpayer jointly to various related persons and it is not possible to identify specific services provided to each of them, the total service charge shall be allocated among the related persons that benefit or expect to benefit from the services according to reasonable allocation criteria.

(5) For the purpose of subregulation (4), allocation criteria shall be viewed as reasonable where they are based on a variable or variables that—

(*a*) take into account the nature of the services, the circumstances under which they are provided, and the benefits obtained or that were expected to be obtained by the persons for which the services are intended;

(*b*) relate exclusively to uncontrolled, rather than controlled, transactions; and

(*c*) are capable of being measured in a reasonably reliable manner.

Transactions involving intangible property

10.—(1) The determination of arm's length conditions, for controlled transactions involving the exploitation of an intangible property by a person shall take into account the contractual arrangements and the following factors with regard to the development, enhancement, maintenance, protection and exploitation of the intangible property—

(*a*) the functions performed by the person;

(*b*) the management and control of those functions;

(*c*) the contribution by the person of assets, including financial assets;

(*d*) the management and control regarding the contribution of assets, including financial assets;

(*e*) the risks assumed by that person; and

(*f*) the management and control of those risks.

(2) In cases where the contractual arrangements diverge from the factors listed above, regard shall be taken of those factors in determining the aim's length reward from the exploitation of the intangible.

(3) The determination of aim's length conditions for controlled transactions involving licenses, sales or other transfers of intangible property between related persons shall take into account both the perspective of the transferor of the property and the perspective of the transferee, including in particular the pricing at which a comparable independent person would be willing to transfer the property and the value and usefulness of the intangible property to the transferee in its business.

(4) In applying the provisions of regulation 4 to a transaction involving the license, sale or other transfer of intangible property, consideration shall be given to any special factors relevant to the comparability of the controlled and uncontrolled transactions, including—

(*a*) the expected benefits from the intangible property;

(*b*) the commercial alternatives otherwise available to the acquirer or licensee derived from the intangible property;

(*c*) any geographic limitations on the exercise of rights to the intangible property;

(*d*) the exclusive or non-exclusive character of the rights transferred; and

(*e*) whether the transferee has the right to participate in further developments of the intangible property by the transferor.

Disregarding a controlled transaction for tax purposes

11. Where the arrangements made in relation to a transaction between related persons, viewed in their totality, differ from those which would have been adopted by independent persons behaving in a commercially rational manner in comparable circumstances, thereby preventing determination of a price that would be acceptable to both of the parties taking into account their respective perspectives and the options realistically available to each of them at the time of entering into the transaction, the actual transaction as structured by the taxpayer may be disregarded for the purposes of these Regulations, in which case the arm's length position would be as if the transaction had not occurred. In other cases, if appropriate, the transaction shall be replaced by an alternative transaction.

Corresponding adjustments for domestic transactions

12.—(1) Where an adjustment is made by the Commissioner General under section 127A to the taxable income of a taxpayer in relation to a domestic transaction, then the Commissioner General shall allow an appropriate adjustment to the taxable income of the other party to the transaction, unless otherwise provided by the Act.

(2) For the purposes of this regulation, a domestic transaction is one between parties that are liable to tax in Malaŵi.

Corresponding adjustments for international transactions

13.—(1) Where—

(*a*) an adjustment to the conditions of transactions between a person liable to tax in Malaŵi and a related person is made or proposed by a tax administration in a country other than Malaŵi;

(*b*) this adjustment results in the taxation in that other country of an amount of income on which the person liable to tax in Malaŵi has already been charged to tax in Malaŵi; or

(*c*) the country making or proposing the adjustment has a treaty with Malaŵi that reflects an intention to provide for the relief of economic double taxation,

the Commissioner General shall, after a request is made by the person liable to tax in Malaŵi, examine the consistency of that adjustment with the arm's length principle provided for under section 127A, consulting as necessary with the competent authority of the other country.

(2) If the adjustment proposed or made by the other country is consistent with the arm's length principle both in principle and as regards the amount, the Commissioner General shall make a corresponding adjustment to the amount of the tax charged in Malaŵi to that person on those profits, in order to eliminate the economic double taxation that would result from the inclusion of the same profits in the taxable income of both that person and the related person.

(3) A request under this regulation shall include the information necessary for the Commissioner General to examine the consistency of the adjustment made by the tax administration of the other country with the arm's length principle, including—

(*a*) the name, registered address and, where applicable, trading name(s) of the related person;

(*b*) evidence of the tax residence of the related person;

(*c*) the year in which the adjusted controlled transaction(s) took place;

(*d*) the amount of the requested corresponding adjustment and the amounts of the adjustment made by the tax administration of the other country;

(*e*) evidence of the adjustment made by the tax administration of the other country and the basis for the adjustment, including details of comparability analysis relied upon and the transfer pricing method applied;

(*f*) confirmation that the related person party will not, or is unable to, pursue any further recourse under the domestic law of the other country that may result in the adjustment made by the tax administration of the other country being reduced or reversed; and

(*g*) any other information that may be relevant for examining the consistency of the adjustment with the arm's length principle.

(4) The request under this regulation shall be made within three years of the adjustment decision made by the tax administration of the other country, or within the applicable time period for making a request for the case to be resolved by way of mutual agreement procedure if specified under the applicable tax treaty.

Relevance of OECD Transfer Pricing Guidelines

14.—(1) These Regulations shall be interpreted in accordance with the Organization for Economic Cooperation and Development (OECD) Transfer Pricing Guidelines for Multinational Persons and Tax Administrations (in these regulations otherwise referred to as the "OECD Guidelines").

(2) Where there is any inconsistency between the Act and these Regulations, on the one hand, and the OECD Guidelines, on the other hand, the Act and the Regulations shall prevail.

Beneficial tax regimes

15. For the purposes of section 127A (5), a tax jurisdiction provides a beneficial tax regime to a person where the amount of tax due on that person's income is fifty per cent or less of the amount of income tax that would be due if the person's income were liable to tax in Malaŵi.

16. For the purposes of section 127A (8), the threshold shall be the Malaŵi Kwacha equivalent of 135,000 United States Dollars at the prevailing exchange rate.

Threshold for application of section 127A of the Act to domestic transactions

17. The Taxation (Transfer Pricing) Regulations are hereby revoked.

Revocation of the Cap. 41:01 Sub. leg. p. 129

ACCOMMODATION AND REFRESHMENT TAX

CHAPTER 41:02

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CHAPTER 41:02

ACCOMMODATION AND REFRESHMENT TAX

ARRANGEMENT OF SECTIONS

SECTION

1. Short title and application
2. Interpretation
3. Imposition and calculation of tax, payment, etc.
4. Responsibility of the manager
5. Collection of tax
6. Liability for payment of tax
7. Liability of company and body corporate
8. Powers of Commissioner
9. Regulations

SCHEDULE

An Act to provide for the imposition, payment and collection of a tax on the cost of hiring accommodation and obtaining freshment from certain premises, and for matters incidental to and connected with the foregoing

21 of 1981
G.N. 56/1982
116/1982
24/1983

[1st May, 1982]

Short title and application

1.—(1) This Act may be cited as the Accommodation and Refreshment Tax Act.

(2) The provisions of this Act apply with respect to the hiring of accommodation and the obtaining of refreshment after the date of commencement from any of the premises listed in the Schedule.

(3) The Minister has power, by Order, to amend the Schedule.

Interpretation

2. In this Act—

"accommodation," includes any bedroom, and any room, building or place used for the purpose of any business or social gathering, or for entertainment of any kind whatsoever, but does not include any room, building or place set aside and equipped, whether permanently or temporarily, and used solely for the purpose of any sporting or other similar recreational activity;

"bill" means any account, bill, cash sale slip, invoice, or other similar document requiring payment for the hiring of accommodation or obtaining of refreshment;

"Commissioner" means the Commissioner of Taxes and includes any officer authorized by him in writing to exercise his functions under this Act;

"manager" means any person who exercises overall control over the day-to-day operation of premises, whether or not he is the owner;

"Minister" means the Minister for the time being responsible for matters relating to finance;

"owner" includes any company or association or body of persons, whether corporate or unincorporate, and an individual;

"premises" means any of the premises listed in the Schedule;

"refreshment" means food or drink obtained from premises in exchange for money or other valuable consideration, whether consumed on the premises or not, but does not include food obtained in consideration of any sum lawfully deducted in pursuance of a Wages Order or Wages Regulation Order made under the Regulation of Minimum Wages and Conditions of Employment Act, nor to food obtained from premises for his own consumption on those premises by any person who is employed therein;

Cap. 55:01

"tax" means accommodation and refreshment tax payable under this Act.

Imposition and calculation of tax, payment, etc.

3.—(1) Tax, to be known as accommodation and refreshment tax, is payable by or on behalf of every person by whom accommodation is hired or refreshment is obtained from any of the premises listed in the Schedule.

(2) The amount of tax payable under subsection (1) is ten *per centum* of the total amount charged in respect of the hire of accommodation and the supply of refreshment to such person, calculated to the nearest tambala.

(3) In calculating—

(*a*) the amount of tax payable, any sum included or to be included in the bill by way of service charge shall be disregarded;

(*b*) the amount of service charge, the amount of tax payable shall be disregarded.

(4) The current amount of tax payable—

(*a*) shall be clearly shown as a separate item on the bill, and charged, at the time of presentment of the bill to the person by whom the bill is payable; and

(*b*) shall be paid by that person not later than the time of settlement of the bill.

(5) Any person who—

(*a*) knowingly contravenes the provisions of subsection (3); or

(*b*) without lawful excuse fails so to show, charge or pay tax in accordance with the provisions of subsection (4),

is guilty of an offence cognizable to the police and liable to a fine of K1,000 or to imprisonment for a term of three months.

Responsibility of the manager

4. Where tax is payable by virtue of section 3 (1), it is the responsibility of the manager to take reasonably practicable steps to ensure—

(*a*) that the amount of tax is correctly calculated in accordance with subsections (2) and (3) of section 3;

(*b*) that the amount of tax so calculated is shown in the manner, and at the time, provided in paragraph (*a*) of section 3 (4);

(*c*) that the amount of tax is charged.

Collection of tax

5.—(1) A sum in payment of tax, equal to the total amount of tax charged in each month, shall be sent by the manager by cheque to the Commissioner within 30 days after the last day of that month.

(2) A manager who, without reasonable cause, fails to send a sum equal to the total amount of tax in accordance with the provisions of subsection (1) is guilty of an offence and liable to a fine of five thousand Kwacha or to imprisonment for a term of six months.

(3) A manager who, whether knowingly or by nelgect—

(*a*) causes or permits the commission by any person of an offence under section 3 (5); or

(*b*) fails to take such steps as are reasonably practicable to ensure compliance with the requirements of paragraph (*a*), (*b*) or (*c*) of section 4,

is guilty of an offence and liable to a fine of two thousand Kwacha or to imprisonment for a term of three months.

Liability for payment of tax

6.—(1) Where the person by whom accommodation is hired or refreshment is obtained, and the person by whom the amount charged in respect thereof is payable, are not the same person, they shall each be liable to pay tax but the payment of tax by one operates so as to discharge the liability of the other.

(2) For the purpose of section 5, an owner of premises who employs any manager shall be answerable for the acts and omissions of such manager, and if such manager does any act or makes any omission which is an offence under that section, or if such owner does any act or makes any omission which is an offence under that section or which would be an offence if committed or made by such manager or which causes the commission of such an offence, such owner and such manager are, on conviction, jointly and severally guilty of the offence and liable to the penalties therein prescribed:

Provided that it shall be a defence for such owner to prove that he did not know and could not reasonably be expected to know that the act or omission was taking or was likely to take place and that he took all reasonable steps to ensure that the provisions of that section were being and would be complied with.

Liability of company and body corporate

7. Where the owner is a company or a body corporate and an offence under this Act is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a director, or other officer, of the company or body corporate, or any manager employed by it, the company or body corporate as well as such director or other officer or manager is guilty of that offence and liable to be proceeded against and punished accordingly.

Powers of Commissioner

8.—(1) The Commissioner may at all reasonable times—

(*a*) enter without warrant any room, building or place at any premises on which he has reasonable ground for believing that an offence under this Act or the regulations has been or is being committed, and shall have power—

(i) to examine and take copies of any register, book, account or document found on the premises relating to or appearing to relate to the business being carried on thereat;

(ii) to take possession of and detain any register, book, account or document found on the premises which he suspects on reasonable grounds to be, or to contain, evidence of an offence under this Act or the regulations;

(*b*) require any person who appears to be carrying on business at or to be employed in any premises to render such explanation and give such information relating to such business or employment as he may reasonably and lawfully require in order to ascertain whether the provisions of this Act and the regulations are being or have been complied with;

(*c*) require any person who appears to be carrying on business at any premises, by notice in writing given to that person, to produce to him, at a particular time and place, all or any of the registers, books, accounts and documents relating to or appearing to relate to that business for the purpose of ascertaining whether an offence under this Act or the regulations has been committed:

Provided that nothing in paragraph (*a*) of this subsection shall authorize entry into any lawfully hired bedroom without the permission of its current occupier if any.

(2) Any person who—

(*a*) resists, hinders or obstructs any person acting in pursuance of subsection (1); or

(*b*) fails to the fullest extent of his knowledge and truthfully to comply with any requirement made of him under that subsection,

is guilty of an offence and liable to imprisonment for a term of six months or to a fine of five thousand Kwacha.

Regulations

9.—(1) The Minister may make regulations generally for the better carrying out of the provisions and purposes of this Act.

(2) Without prejudice to the generality of subsection (1), regulations under this section may—

(*a*) prescribe the procedure to be followed and the forms to be used in respect of things to be done under this Act or the regulations;

(*b*) make provision for the keeping of records and accounts of tax charged and received at premises;

(*c*) make provision for the audit of such records and accounts, in such manner and by such persons as may be prescribed;

(*d*) provide for and prescribe returns to be submitted to the Commissioner;

(*e*) make provision for the exemption, from all or any of the provisions of this Act or the regulations, of any specified transaction or class of transaction.

SCHEDULE

section 3 (1)
G.N. 116/1982
24/1983

Hotels	*Restaurants*
Bangwe Inn	Causerie
Capital	Chileka Airport Caterers
Chisakalime	China Bar and Restaurant
Club Makokola	Gazeebo
Grand Beach	Golden Dragon Chinese
Ku Chawe Inn	Golden Peacock
Kudya Motel	Golden Egg II
Lifupa Wildlife Lodge	Hong Kong
Lilongwe	Hot Gossip
Lingadzi Inn	Kudu
Mount Soche	Malaŵi Catering Services
Muona Inn	Maxim's
Mzuzu Hotel	
Nkopola Lodge	
Ryall's	
Shire Highlands	

Government Rest Houses

Chitipa Inn	Mzuzu
Dedza	Ngabu
Karonga	Nkhata Bay
Kasungu Inn	Nkhotakota
Kasungu Rest House	Ntcheu
Likoma	Rumphi
Mzimba I	Zomba Government Hostel
Mzimba II	

SUBSIDIARY LEGISLATION

G.N. 55/1982

ACCOMMODATION AND REFRESHMENT TAX (EXEMPTED TRANSACTIONS) REGULATIONS

under s. 9 (2)

Citation

1. These Regulations may be cited as the Accommodation and Refreshment Tax (Exempted Transactions) Regulations.

Exempted Transactions

2. The following transactions are exempted from the provisions of the Act—

(*a*) purchases of drink supplied otherwise than as an accompaniment to a meal taken in a dining-room, or other place set apart for the consumption of food, within the premises;

(*b*) purchases of factory-wrapped or factory-packed confectionery supplied, within the premises, in any shop or kiosk which is leased to a person not being the owner or manager of the premises nor a servant or agent of his;

(*c*) contracts and agreements, for the supply of accommodation only or accommodation and refreshment at the premises, made in writing and concluded before the date of commencement of the Act:

Provided that details of such contract or agreement together with the bill relating thereto shall be furnished to the Commissioner at the same time as the relevant record is sent to him in pursuance of regulation 3 of the Accommodation and Refreshment Tax (Records and Returns) Regulations.

G.N. 54/1982

ACCOMMODATION AND REFRESHMENT TAX (RECORDS AND RETURNS) REGULATIONS

under s. 9 (2)

Citation

1. These Regulations may be cited as the Accommodation and Refreshment Tax (Records and Returns) Regulations.

Records

2.—(1) The manager of premises shall, in respect of transactions for the supply of accommodation only or accommodation and refreshment, cause to be maintained in duplicate at the premises a record in the Form A set out in the Schedule hereto, containing the following particulars—

(*a*) in respect of each day of the current month—

(i) the total amount charged to customers on presentation of bills that day in respect of accommodation only, or accommodation and refreshment, and service charge;

(ii) the total amount of tax charged calculated by adding together the total amounts of tax charged to customers on presentation of bills that day;

(*b*) in respect of each month—

(i) the name and address of the premises;

(ii) the name of the month, and the year, to which the record relates;

(iii) the total amount of tax charged during the month to customers on presentation of bills:

Provided that Commissioner may, in writing, approve some other form of record in the case of any particular premises.

(2) The manager of premises shall, in respect of transactions for the supply of refreshment only, cause to be maintained in duplicate at the premises a record in the Form B set out in the Schedule hereto, containing the following particulars—

(*a*) in respect of each day of the current month—

(i) the number of the first and of the last bill presented that day;

(ii) the total amount charged to customers on presentation of bills that day in respect of refreshment, and service charge;

(iii) the total amount of tax charged calculated by adding together the amounts of tax charged to customers on presentation of bills that day;

(*b*) in respect of each month—

(i) the name and address of the premises;

(ii) the name of the month, and the year, to which the record relates;

(iii) the total amount of tax charged during that month to customers on presentation of bills:

Provided that the Commissioner may, in writing, approve some other form of record in the case of any particular premises.

(3) In this regulation, "presentation of bills" includes the dispatch, and the making ready in all respects for dispatch, from premises of bills for the purpose of obtaining payment.

Returns

3. Within 30 days after the last day of each month the original copy of the record kept under regulation 2 (1) and, as the case may be, 2 (2) shall be signed and sent by the manager to the Commissioner together with the sum required by section 5 (1) of the Act.

Reduction and refund of tax charged

4.—(1) A manager who is of the opinion that an amount of tax charged to a customer was excessive or cannot, or will not, be paid may apply in writing to the Commissioner for a reduction or refund of the whole or any part thereof.

(2) Every application by a manager under subregulation (1) shall give, to the best of his knowledge, information and belief, full and proper particulars of—

(i) the customer, the transaction and the amount of tax concerned;

(ii) the reason for his opinion that the amount was excessive or cannot, or will not, be paid; and

(iii) the steps taken to reimburse, or recover that amount from, the customer.

(3) The Commissioner, in his absolute discretion, shall either allow or disallow the application without stating his reasons therefor, and he may before doing so require the manager to furnish him with such further information as shall be specified in writing.

(4) In allowing the application the Commissioner may reduce, or refund the whole or any part of, the amount of tax and shall in the case of a refund remit the balance by cheque to the manager as soon as is reasonably practicable; and the Commissioner may attach to the grant of such reduction or refund such conditions as he may, in his discretion, think fit to impose.

Offences

5.—(1) A manager who, without reasonable cause, fails to ensure that the provisions of regulation 2 are complied with, or that the original copy of the record is sent to the Commissioner as required by regulation 3, is guilty of an offence and liable to a fine of two hundred Kwacha.

(2) A manager who, for the purpose of obtaining any reduction or refund in pursuance of regulation 4, makes any application or gives any information which he knows or believes to be false or misleading is guilty of an offence and liable to a fine of two hundred Kwacha or to imprisonment for a term of two months.

FORM A

ORIGINAL

Serial No. A0000000

REPUBLIC OF MALAŴI

DEPARTMENT OF TAXES

ACCOMMODATION AND REFRESHMENT TAX ACT

(CAP. 41:02)

ACCOMMODATION AND REFRESHMENT TAX (RECORDS AND RETURNS) REGULATIONS

(REGULATIONS 2 AND 3)

RECORD

(To be maintained and submitted monthly in respect of transactions for the supply of *accommodation only* or *accommodation and refreshment*)

Name of Premises:

Address:

Month ....., 19.....

Date	*Total Amount Charged on Bills*		*Total Amount of Tax Charged*	
	K	t	K	t
1st				
2nd				
3rd				
4th				
5th				
6th				
7th				
8th				
9th				
10th				
11th				
12th				

Date	*Total Amount Charged on Bills*		*Total Amount of Tax Charged*	
	K	t	K	t
13th				
14th				
15th				
16th				
17th				
18th				
19th				
20th				
21st				
22nd				
23rd				
24th				
25th				
26th				
27th				
28th				
29th				
30th				
31st				
		TOTAL TAX CHARGED K		

Date ....., 19..... .....
Signature of Manager

(*Name in block capitals*)

NOTES—

(1) In the column headed "*Total Amount Charged on Bills*" enter the total amount for each day charged in respect of accommodation only, or accommodation and refreshment, *and* service charge.

(2) This original copy must be sent by or on behalf of the manager (within 30 days after the last day of the month to which it relates) to "The Inspector of Taxes, P.O. Box 250, Blantyre" together with a cheque made payable to the "Malaŵi Government" for a sum equal to the total amount of tax charged in the month. The envelope will be carried free through the post if clearly marked "On Malaŵi Government Service".

FORM B

ORIGINAL

Serial No. B0000000

REPUBLIC OF MALAŴI

DEPARTMENT OF TAXES

ACCOMMODATION AND REFRESHMENT TAX ACT

(CAP. 41:02)

ACCOMMODATION AND REFRESHMENT TAX (RECORDS AND RETURNS) REGULATIONS

(REGULATIONS 2 AND 3)

RECORD

(To be maintained and submitted monthly in respect of transactions for the supply of *refreshment only*)

Name of Premises:

Address:

Month ....., 19.....

Date	*First Bill No.*	*Last Bill No.*	*Total Amount Charged on Bills*		*Total Amount of Tax Charged*	
			K	t	K	t
1st						
2nd						
3rd						
4th						
5th						

Date	*First Bill No.*	*Last Bill No.*	*Total Amount Charged on Bills*		*Total Amount of Tax Charged*	
			K	t	K	t
6th						
7th						
8th						
9th						
10th						
11th						
12th						
13th						
14th						
15th						
16th						
17th						
18th						
19th						
20th						
21st						
22nd						
23rd						
24th						
25th						
26th						

Date	*First Bill No.*	*Last Bill No.*	*Total Amount Charged on Bills*		*Total Amount of Tax Charged*	
			K	t	K	t
27th						
28th						
29th						
30th						
31st						
			TOTAL TAX CHARGED K			

Date ....., 19.....

.....
Signature of Manager
(Name in block capitals)

NOTES—

(1) In the column headed "*Total Amount Charged on Bills*" enter the total amount for each day charged in respect of refreshment *and* service charge.

(2) This original copy must be sent by or on behalf of the manager (within 30 days after the last day of the month to which it relates) to "The Inspector of Taxes, P.O. Box 250, Blantyre" together with a cheque made payable to the "Malaŵi Government" for a sum equal to the total amount of tax charged in the month. The envelope will be carried free through the post if clearly marked "On Malaŵi Government Service".

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CHAPTER 42:01

CUSTOMS AND EXCISE

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G.N. 26/1989
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An Act providing for the administration, management and control of customs and excise, the imposition and collection of customs, excise and other duties and for matters connected therewith

[1st June, 1969]

PART I
Preliminary

Short title

1. This Act may be cited as the Customs and Excise Act.

Interpretation
25 of 1988
14 of 2001
11 of 2003
28 of 2010
18 of 2013
11 of 2015

2.—(1) In this Act, unless the context otherwise requires—

28 of 2010

"Advisory Committee" means the Committee appointed by the Commissioner General under section 128A (1);

"aircraft" includes balloons, kites, gliders, and every description of airship and flying machine, whether designed to be lighter or heavier than air and the equipment and furnishings thereof;

"air freight licensee" means any person licensed as such under section 10;

"allowable deficiency" means any deficiency of which the Controller is satisfied in accordance with section 103;

"Appeals Committee" means the Committee appointed by the Minister under section 128A (2); 28 of 2010

"approved wharf" means any place appointed as such under section 9;

"associated", in relation to a manufacturer, means—

(*a*) being owned, wholly or partially, by the manufacturer; or

(*b*) having common directors or shareholding with the manufacturer; or

(*c*) purchasing more than 30 per cent of the manufacturer's total output in any three consecutive months;

"authorized agent" means any agent authorized as such in accordance with section 127; 25 of 1988

"bank lending rate" means the rate of interest which the Reserve Bank of Malaŵi charges on its loans to commercial banks; 11 of 2015

"boarding station" means any place appointed as such under section 9;

"bonded warehouse" means any place licensed as such under section 41; 25 of 1988

"business" means any trade, commerce or manufacture;

"by authority" means by the authority of the Controller or of any person lawfully performing his duty in the matter in relation to which the expression is used;

"cargo" includes all goods imported or exported in any conveyance, other than such goods as are required as stores for consumption or used by or for that conveyance, its crew and passengers, and the *bona fide* personal baggage of such crew and passengers;

"carriage coastwise" means all transportation of goods subject to customs control, other than goods in transit, by air or by water, from any place within Malaŵi to any other place within Malaŵi;

"coastwise aircraft or vessel" means any aircraft or vessel while engaged in carriage coastwise;

"consumption" means consumption or use in Malaŵi;

"Controller" means the person appointed to be or to act as Controller of Customs and Excise under section 6;

"conveyance" means any aircraft, vessel or vehicle;

"crew" means every person employed in any capacity on any conveyance;

"customs agent" means any person licensed as such by the Controller under section 128;

"customs airport" means any port appointed as a customs airport under section 8;

"customs area" means any place licensed, appointed or approved for the inspection, deposit, storage or manufacture of goods subject to customs control;

"customs laws" means this Act and any other written law relating to the Department or to the import, exportation, carriage coastwise or carriage in transit of any goods;

"customs warehouse" means any place appointed as such under section 9;

11 of 2003 "declaration" means a statement, written, including by means of computer data transfer or oral, to an officer of information required to be supplied under any of the customs laws together with any other document or statement as may be prescribed, or required by the proper officer, under the customs laws;

"Department" means the Department of Customs and Excise of Malaŵi;

"distiller" means any person who either by himself or through his agent or servant in any way manages, supervises or carries on any distillery;

"distillery" means any place where any process of distillation of spirits is carried on, or where any process of rectification of spirits is carried on, or where any spirits are manufactured or produced from any substance by any process other than fermentation;

"drawback" means a refund of all or part of any customs or excise duties paid in respect of goods where such goods are exported or used in a manner or for a purpose prescribed as a condition for granting drawback;

"dutiable goods" means any goods in respect of which the full duties have not been paid;

3 of 1993
18 of 2013 "duty" includes any duty, cess, excise, value added tax, or withholding tax imposed by or under the customs laws;

"enter" in relation to goods means to enter such goods for—

(*a*) consumption;

(*b*) temporary importation;

(*c*) warehousing in a bonded warehouse;

(*d*) rewarehousing;

(*e*) carriage coastwise;

(*f*) transit; or

(*g*) exportation,

as appropriate, in accordance with the provisions of section 5;

"entry" means a declaration accepted and, where appropriate, signed in accordance with section 5, and in the case of a declaration made by computer data transfer, upon registration of such declaration; 11 of 2003

"entry of premises" for the purpose of Part XI means an entry of premises approved by the Controller in accordance with section 66, and includes any approved amendments thereto;

"entered premises" means premises described in an entry of premises;

"excisable goods" means any goods in respect of which the full excise duties have not been paid;

"excise licence" means a licence granted under section 64;

"excise warehouse" means any entered premises approved as an excise warehouse under section 73;

"export" means to take or cause to be taken out of Malaŵi by any means or to load for use as stores on an aircraft or vessel proceeding to a foreign port either directly or indirectly;

"foreign port" means any place beyond the territorial limits of Malaŵi;

"goods" includes all wares, articles, merchandise, currency, baggage, stores, conveyances, animals, matter or things of any description;

"goods in transit" means goods imported for the sole purpose of being exported after transportation through or transhipment in Malaŵi;

"goods grown or produced" does not include goods which have been subjected to any process of manufacture;

"import" means to bring or cause to be brought into Malaŵi by any means;

"imported by" means importations by or on behalf of a person and clearances of imported goods out of a bonded warehouse by or on behalf of a person;

"licensed private siding" means any place licensed as such under section 10;

"manufacturer" means any person who manufactures goods and includes any person selling or otherwise dealing in goods manufactured by a manufacturer and who is associated with the manufacturer;

"master" in respect of—

(*a*) a vessel means the person, other than a pilot or harbour-master, for the time being having or taking control, charge or command of such vessel;

(*b*) an aircraft means the person for the time being having or taking control, charge or command of such aircraft;

"merchandise" means goods for sale, resale, barter, exchange or for any other commercial or industrial transaction or use, or being the subject of any mercantile transaction;

"officer" means any person upon whom the powers and duties of an officer are conferred or imposed under section 7;

"owner" in relation to—

(*a*) a conveyance, includes any authorized agent of the owner, or any person who receives freight or other charges payable in respect of such conveyance and includes the master or person in charge of such conveyance;

(*b*) goods, includes any person (other than an officer acting in his official capacity) being or holding himself out to be the owner, importer, exporter, consignee, authorized agent, or in possession of, or beneficially interested in or having control of or power of disposition over, the goods;

"package" means any container, wrapping or outer cover and its contents, or any bundle or single piece where the goods are not packed;

"person" includes a partnership of two or more persons properly constituted under any written law; 25 of 1988

"person in charge" in respect of a vehicle means the driver or person having control of such vehicle;

"place" includes any building, premises, structure or area of land or water;

"port" other than a foreign port, means any place appointed as such under section 8, and includes any customs airport;

"port of exportation" in relation to goods or a person means the port from which such goods are exported or such person departs to a foreign port;

"port of importation" in relation to goods or a person means the port where such goods are imported or such person arrives from a foreign port;

"postal article" means any letter, post card, newspaper, book, document, pamphlet, pattern, sample packet, small packet, parcel, package or other article in course of transmission by post;

"post office" means the Department of Posts and Telecommunications;

30 of 1969 "prohibited goods" means any goods the importation or exportation of which is prohibited by or under the customs laws, and includes any restricted goods imported or exported otherwise than in accordance with any conditions imposed under the customs laws;

"proper officer" in relation to any power or duty under the customs laws, means any officer who by instruction, or with the concurrence, of the Controller exercises or performs that power of duty;

"quantity" includes capacity and measures;

"rate of duty" includes free of duty;

"restricted goods" means any goods the importation or exportation of which is prohibited save in accordance with any conditions imposed under the customs laws;

"revenue" means any amounts collectable by the Department in accordance with customs laws;

"rewarehousing" means the removal of goods from one bonded warehouse to another;

5 of 1972 "smuggling" means the importation or exportation, or the loading onto or unloading from any conveyance, or the diversion for consumption, of any goods subject to customs control with intent either to defraud the Government of any duty payable thereon or to evade any of the provisions of the customs laws;

"specified country" means a country specified by the Minister for the purposes of section 89;

"still" includes any distilling apparatus and any part thereof;

"stores" means stores of or for an aircraft or vessel;

"surety" means any person who accepts legal responsibility for the financial consequences of the non-fulfilment of another's obligations under the customs laws;

"tariff" means one of the tariffs prescribed by the Minister under section 83;

"temporary store" means any place appointed as such under section 9;

"train" includes every rail unit whether alone or not and whether self-propelled or otherwise;

"uncustomed goods" means dutiable goods and any goods, whether dutiable or not, which are in any way dealt with contrary to the provisions of the customs laws;

"vehicle" means any train, motor car, van, lorry, trailer, cart, car, bicycle, animal or other similar means of conveyance drawn or propelled along or under the ground whether by direct or transmitted mechanical, electrical or animal power, and any such means of conveyance drawn or propelled through the air by means of, or along, an overhead cable or rail or other such system, whether by direct or transmitted mechanical, electrical or animal power, and includes the equipment, furnishings, harness, tackle and fittings thereof, but does not include an aircraft or vessel, except any such aircraft or vessel adapted for use on land while it is being so used; 10 of 1995

"vessel" means any ship, boat or craft of any description used in water navigation whether self-propelled or otherwise and includes the equipment, furnishings, tackle and fittings thereof;

"warehoused" means deposited in a bonded warehouse with the authority of the owner of the warehouse or the person in charge thereof.

Goods subject to customs control

3. Goods subject to customs control include the following—

(*a*) all imported goods (whether imported temporarily or otherwise) from the time of importation, and all excisable goods, until they are accounted for to the satisfaction of the proper officer;

(*b*) all conveyances within Malaŵi—

(i) from the time of importation, until released from customs control by the proper officer;

(ii) proceeding to a foreign port from anywhere within Malaŵi, until exportation; or

(iii) carrying goods subject to customs control;

(*c*) all goods under drawback from the time of their entry for exportation until exportation;

(*d*) all goods entered under rebate of duty, until the conditions under which such rebate was granted are fulfilled;

(*e*) all goods being exported, and all goods intended for exportation from the time they are accepted for carriage for exportation, until duly exported;

(*f*) all uncustomed goods;

(*g*) all goods which are under embargo, which are seized, forfeited or abandoned, or which are in a state warehouse.

Time of importation and exportation

4.—(1) The time of importation of any goods shall be the time at which such goods cross the border into Malaŵi.

(2) The time of exportation of any goods shall be the time at which such goods cross the border out of Malaŵi.

Entered goods

5 of 1972

5. For the purposes of the customs laws, goods shall be deemed to be entered when the appropriate declaration is presented in accordance and in compliance with the customs laws and is accepted and, if appropriate, signed by the proper officer, and when any duty due in respect of such goods has been paid or security has been accepted for the compliance with the provisions of the customs laws by the proper officer, or where such security has been waived by the proper officer in such case as he thinks fit.

PART II

Administration

Appointment and Controller

6. There shall be appointed a Controller of Customs and Excise who shall, subject to any written law relating to the public service, and to the special and general directions of the Minister, be in charge of the Department and shall be responsible for—

(*a*) the administration of the customs laws;

(*b*) the collection of and accounting for revenue; and

(*c*) the administration of the Department and the persons employed therein.

Delegation

7.—(1) Except where otherwise specifically provided, where under the customs laws any power or duty is conferred or imposed on the Controller then, subject to such conditions as he may specify, the Controller may delegate to any person on whom the powers and duties of an officer are conferred or imposed under subsection (2) the exercise of such power or the performance of such duty and thereupon from the date specified by the Controller the person to whom the delegation is made shall have and may exercise such powers and shall perform such duties subject to any such conditions.

(2) The Controller may, subject to the consent of the Minister and to such conditions as the Minister may decide, confer or impose any power or duty of an officer under the customs laws upon—

(*a*) any public officer or class of public officers, whether or not an officer or class of officers of the Department;

(*b*) any police officer;

(*c*) any person, not being a public officer, who has consented thereto.

Prescriptions and appointments by Minister

8.—(1) The Minister may prescribe—

(*a*) ports at or through which goods shall be imported or exported;

(*b*) ports known as customs airports at which aircraft from foreign ports shall land, from which aircraft leaving for foreign ports shall depart, and through which goods shall be imported or exported by air;

(*c*) roads or routes over which goods subject to customs control shall be conveyed to or from a particular port;

(*d*) customs offices for the collection of the revenue and the general administration of the customs laws;

(*e*) the hours during which goods shall not be imported or exported without the special permission in writing of a proper officer;

(*f*) generally or in particular the places at which goods shall be entered.

(2) The Minister may, in writing, appoint—

(*a*) ports;

(*b*) customs offices;

(*c*) roads or routes,

for particular or limited purposes and for such periods as may be specified in the appointment.

(3) Any prescription or appointment made under this section shall be subject to such conditions as the Minister may specify.

Appointments by Controller 20 of 1975

9. The Controller may appoint—

(*a*) boarding stations for conveyances arriving at or departing from any port or place for the purpose of boarding by or disembarkation of officers;

(*b*) temporary stores for the deposit of goods subject to customs control;

(*c*) customs warehouses for the deposit of unentered, unexamined, detained, abandoned, seized or forfeited goods for the security thereof or of the duties due thereon;

(*d*) approved wharves for the loading and unloading of goods subject to customs control;

(*e*) places at any port for the landing or embarkation of persons or for the loading or unloading of goods subject to customs control;

(*f*) places for the examination of goods subject to customs control generally or any kind of such goods;

(*g*) entrances and exits, whether general or special, to and from any customs area. 30 of 1969

Licensed private sidings and air freight licensees

10.—(1) The Controller may, on application—

(*a*) license places as licensed private sidings where imported goods subject to customs control may be delivered to the licensee:

Provided that no goods so delivered shall be unpacked, taken into stock, sold or otherwise disposed of except as permitted by the proper officer;

(*b*) license any person as an air freight licensee for the purpose of removal and handling of goods imported by air freight and the collection of duties due thereon. 5 of 1972

(2) A licence issued under this section shall be subject to such conditions as the Controller may impose.

(3) The Controller may, without assigning any reason, refuse to issue any licence under this section, impose such further conditions to or authorize such exceptions from any such licence as he considers necessary, and may revoke or refuse to renew any such licence which has been issued.

(4) An applicant or licensee shall furnish such security as the Controller thinks appropriate for the protection of the revenue and compliance with the customs laws in respect of goods delivered or removed in accordance with any licence issued under this section.

(5) An applicant or licensee shall pay such fee, not exceeding fifty pounds, as may be prescribed, and every licence shall expire on the 31st day of December next following the date of issue.

Conditions in respect of customs areas

11.—(1) The owner or occupier of any customs area licensed, appointed or approved under the customs laws shall provide such facilities for the examination and taking account of goods as the Controller may require.

(2) Any customs area licensed, appointed or approved under the customs laws shall be subject to the following general conditions and such other conditions including the provision of suitable office, sanitary and lavatory accommodation and services therefor as the Controller may impose—

(*a*) no person or conveyance shall enter or leave, and no goods shall be brought into or taken out of, a customs area otherwise than through an entrance or exit so appointed under section 9 (*g*) or in accordance with the written permission of the proper officer;

(*b*) any person or conveyance entering or leaving, and all goods which are being brought into or taken out of, a customs area may be detained by an officer for the purpose of search or examination;

(*c*) no person shall enter into any part of a customs area contrary to any sign or notice clearly displayed or the direction of an officer, nor shall any person remain in a customs area or any part thereof, when requested by an officer to leave;

(*d*) the master or person in charge of any conveyance which is within or is entering or leaving a customs area shall, when so requested by any sign or notice clearly displayed or by an officer by word or signal, cause such conveyance to stop for the purpose of search and examination, and no person shall cause the vehicle to be set in motion again until so permitted by the proper officer.

Hours of service

12.—(1) The working days and hours for service of the public shall be such as may be prescribed.

(2) Where any person requests the attendance of an officer outside the hours for service of the public such request shall be dealt with in accordance with such conditions and upon the payment of such fees as may be prescribed.

PART III

General Powers of Officers

Powers in respect of persons
5 of 1972

13.—(1) An officer may in the course of his duty put such questions to any person entering or leaving Malaŵi or to any person whom the officer has reasonable grounds to suspect of being in possession of or harbouring or knowing the whereabouts of any goods subject to customs control or being in possession of information on any subject into which it is such officer's duty to enquire, as may be necessary for obtaining all information required under the customs laws, and such person shall then and there, or at a time and place specified by such officer, fully and truthfully answer all questions put to him by such officer, to the best of his knowledge and belief.

(2) An officer may in the course of his duty stop and search or cause to be searched any person, including any person within or upon any conveyance, whom the officer has reasonable grounds to suspect of having in his possession or secreted about him any goods subject to customs control :

Provided that—

(*a*) before being searched, such person may demand to be taken before the senior officer at that place who may, at his discretion, discharge such person or direct that he be searched;

(*b*) a female shall be searched only by a female;

(*c*) any such search shall be carried out in private.

(3) An officer may in the course of his duty require from any person the production then and there, or at a time and place specified by such officer, of any book, document or thing which is

required under the customs laws to be kept or exhibited and which is in the possession or custody or under the control of such person, and may require such person to explain any entry therein.

Powers in respect of packages

14.—(1) An officer may in the course of his duty require the owner of any package containing or reasonably suspected of containing any goods subject to customs control to open such package and such officer may examine, weigh, measure, mark or seal the package or any of the goods contained therein and such owner shall not in any manner dispose of or remove any such package or goods until they have been released by the proper officer.

(2) An officer may, in the absence of the owner of any such package mentioned in subsection (1), open and examine, weigh, measure, mark or seal such package or any of the goods contained therein:

Provided that, except in the case of a postal article or any package imported or to be exported by air freight, the officer shall not exercise the power conferred by this subsection until all reasonable efforts have been made to ascertain the whereabouts of the owner and to afford him, unless he is reasonably believed by the officer to have absconded, an opportunity to appear before the officer and to open the package concerned.

Powers of entry, etc., of proper officers 11 of 2003

15.—(1) The proper officer may in the course of his duty—

(*a*) enter any customs area or any place used for the reception or storage of goods in use for or intended for trade or of documents or computer records and other electronic data relating to such goods, or any place in respect of which a search warrant has been issued, supervise any operations therein and carry out such examination and inquiry as he considers necessary and lock, seal or otherwise secure any part of such area or place or any goods there found for so long as he deems fit;

(*b*) take with him into such area or place any number of assistants or police officers as he may reasonably consider necessary;

(*c*) examine and make extracts from and copies of any book, document or computer records and other electronic data or thing which is required under the customs laws to be kept or exhibited in such area or place or which in his opinion may afford evidence of an offence under the customs laws;

(*d*) seize such books, documents or computer records and other electronic data or things as in his opinion may afford evidence of an offence under the customs laws;

(*e*) station immediately outside or close to any place where uncustomed goods or books, documents or computer records and other electronic data or things relating to uncustomed goods are suspected to be stored or kept, any officer or police

officer as the officer may consider necessary for ensuring that no such goods or documents are removed therefrom until such time as the officer returns with a search warrant to enter the place.

(2) Any person who is in occupation, ownership, or control of any customs area or any such place as is referred to in subsection (1) (*a*) and every person employed by him shall at all reasonable times furnish such facilities as are required by an officer for entering such place in the course of his duty and for the exercise of the powers conferred by subsection (1).

(3) If an officer, having identified himself, and declared his official capacity and purpose, and having demanded admission into any place and having produced a search warrant when the circumstances so require, is not immediately admitted thereto, he and any person assisting him may at any time open or break open any door or window or break through any wall on such place for the purpose of entry and search:

Provided that no such entry and search may be made during the hours of darkness except in the presence of a police officer.

(4) For the purpose of any search under this section, if any part of the place or any safe, chest, box or package is locked or otherwise secured and the keys thereof or other means of opening it are not produced upon demand, an officer and any person assisting him may open or break open such part, safe, chest, box or package in such manner as he may think appropriate.

Powers in respect of conveyances, etc.
5 of 1972

16.—(1) An officer may in the course of his duty—

(*a*) stop, enter and search any aircraft or vehicle arriving from or being about to depart to a foreign port, or any aircraft or vehicle within Malaŵi which he reasonably suspects may be carrying imported goods or goods to be exported;

(*b*) stop, board and search any vessel within Malaŵi.

(2) The master or the person in charge of a conveyance shall cause his conveyance to stop and remain stationary for such period as an officer may require for the purposes of subsection (1).

(3) The proper officer may station an officer on or in the vicinity of any conveyance while such conveyance is within Malaŵi and the master of any aircraft or vessel and the person in charge of any train upon or in the vicinity of which an officer is so stationed shall provide for such officer such accommodation and board as the Controller may reasonably require.

(4) The proper officer shall, in the course of his duty on a vessel or vehicle, be entitled to travel free of charge as a passenger of such class as the Controller may direct.

(5) The proper officer may stay on board any conveyance for so long as he deems necessary for the proper performance of his duties, and such officer—

(*a*) shall have free access to and the right to search every part of the conveyance and to examine all goods on board;

(*b*) shall have power to fasten down hatchways, doors and other openings, to lock up, seal, mark or otherwise secure any radio communications equipment, rooms, compartments, doors, windows or other openings and any packages or goods, including personal property on board; and

(*c*) for the purposes of the examination or security of any goods, may require such goods to be unloaded, or removed, at the expense of the owner of such conveyance.

(6) An officer, in the course of his duty, who is unable to obtain free access to any part or place of a conveyance or to any package therein, may enter such part or place or open or break open such package in such manner as he thinks appropriate if the keys thereto or other means of opening such part, place or package are not produced on demand :

Provided that in the case of a part or place in an aircraft or vessel, force may be used only in the presence of a qualified pilot or engineer of an aircraft or the master or qualified officer or engineer of a vessel.

(7) The Controller may establish customs barriers on any road or route for the control of imports and exports.

Power to patrol freely

17.—(1) An officer in the course of his duty, and any person assisting him, may enter upon, patrol and pass freely within any place other than a building.

(2) An officer in charge of any conveyance employed in the prevention of smuggling, may take such conveyance to such place as he considers most convenient for that purpose and may there keep such conveyance for such time as he considers necessary for that purpose.

Power to take samples

18. An officer may at any time take and retain, without payment, samples of any goods for examination or for ascertaining the duties payable thereon or for such other purposes as the Controller may consider necessary and any such samples shall be dealt with and accounted for in such manner as the Controller may direct:

Provided that any sample so taken shall be of the minimum quantity considered by the officer to be adequate for the purpose and shall, whenever possible, be returned to the owner.

Power of arrest

19.—(1) An officer or a police officer may, if he has reasonable grounds to believe that any person is committing, or has committed, or is connected with the commission of any offence under the customs laws, arrest such person, and may, for such purpose, use all reasonable force.

(2) An officer or police officer making any arrest in accordance with the customs laws may, where necessary, call upon any other person to assist him.

(3) A person arrested under this section shall forthwith be taken before a magistrate, or to a police station, to be dealt with according to law.

(4) Nothing in this section shall prejudice the power of a police officer to arrest any person for an offence against the customs laws which is cognizable to the police under any other written law.

Damage to premises etc. resulting from exercising of powers

20.—(1) If the exercise of powers under this Part reveals no breach of the customs laws, any physical damage done by an officer, police officer or other person properly assisting him, in respect of persons, goods or premises, resulting from the exercise of such powers shall be made good at the expense of the Department, unless such damage was caused by or attributed to the

obstruction of or the failure on the part of the person concerned to comply with the directions given by the proper officer, police officer or other person.

(2) An action shall lie against the Controller for any damages allowable under subsection (1).

PART IV

Importation

Prohibited and restricted imports

21.—(1) Subject to subsection (2) no goods shall be imported contrary to the provisions of any written law prohibiting or restricting the importation of such goods.

(2) The Minister may authorize the importation of any prohibited or restricted goods for the purpose of scientific investigation or study or for use as evidence in any judicial proceedings or for any other similar purpose.

(3) Save as may be otherwise provided in the customs laws the provisions of this Act relating to prohibited goods and restricted goods shall not apply to goods in transit provided that such goods are duly exported.

Arrival of aircraft and vessels

22. Except as provided in section 170 the master of every aircraft or vessel arriving from a foreign port—

(*a*) shall not, except with the prior permission of the Controller, cause or permit such aircraft or vessel to land or touch at any place within Malaŵi other than a port approved for such purpose;

(*b*) shall, on arrival at any port, as quickly as conditions of such port permit, and without landing or touching at any other place, cause his aircraft or vessel to stop at the boarding station appointed for such port or, if no boarding station has been appointed, at an approved wharf;

(*c*) shall, if required by the proper officer, disembark from such aircraft or vessel all passengers and their baggage for examination;

(*d*) shall not, after arriving at such boarding station, or approved wharf, cause or permit such aircraft or vessel to depart therefrom except with the approval of the proper officer.

Boarding of aircraft or vessels

23. Except with the permission of the proper officer no person other than a pilot, harbour master, health officer or other public officer in the exercise of his duties—

(*a*) shall board any aircraft which has arrived in Malaŵi from a foreign port until a declaration has been made in accordance with section 24 and the proper officer has carried out such examination of the aircraft and any goods contained therein as he considers necessary;

(*b*) shall board any aircraft which is carrying goods or passengers in transit through Malaŵi while such aircraft remains in Malaŵi; or

(*c*) shall board any vessel before the proper officer.

Declaration of master

24. Within three hours after the arrival in Malaŵi of any aircraft from any foreign port or within twenty-four hours after the arrival in Malaŵi of any vessel from any foreign port (or within such further period or periods after such arrival as the Controller may allow) and before the unloading of any goods from such aircraft or vessel, the master or agent of such aircraft or vessel shall, except as provided in section 25 or section 170—

(*a*) make a declaration to the proper officer in such manner and form as may be prescribed in respect of such aircraft or vessel and of the cargo and stores aboard; and

(*b*) produce any relevant book or document and answer fully and truthfully any relevant question as may be required or put to him by an officer.

Controller may dispense with declaration

25. When an aircraft or vessel arrives at a port and proceeds directly to another port without calling at a foreign port the Controller may, subject to such conditions as he may impose, dispense with the declaration or any part thereof at any port or approved wharf other than the first port of arrival.

Retention and unloading of cargo

26. The master of any aircraft or vessel at a port may not, without the prior permission of the proper officer and in accordance with such conditions as he may impose, retain on board any cargo consigned to that port or unload at that port any cargo not consigned thereto.

Arrival of trains
11 of 2003

27. The person in charge of any train shall, upon arrival in a port and before unloading or in any way disposing of any goods subject to customs control, report his arrival to the proper officer at such port, and shall produce to the proper officer such books and documents or computer records or other electronic data as may be prescribed.

Arrival of vehicles other than trains

28. The person in charge of any vehicle, other than a train, arriving from a foreign port, whether or not such vehicle is conveying goods—

(*a*) shall, before unloading or in any way disposing of such vehicle or any goods therein or disembarking any passenger—

(i) proceed immediately to the nearest port prescribed for the declaration of goods on importation;

(ii) report his arrival to the proper officer at such port;

(iii) make a declaration to the proper officer in such manner and form as may be prescribed in respect of such vehicle and of the goods carried by such vehicle;

(iv) produce any relevant book or document and answer fully and truthfully any relevant question as may be required or put to him by an officer;

(*b*) shall not, after arriving at such port, cause or permit such vehicle to depart therefrom except with the approval of the proper officer.

Arrival of persons
11 of 2003

29.—(1) Any person arriving from a foreign port, whether or not he has goods in his possession and before disposing of any goods which may be in his possession shall—

(*a*) proceed immediately to the nearest port prescribed for the declaration of goods on importation;

(*b*) report his arrival to the proper officer at such port;

(*c*) make a declaration to the proper officer, in such manner and form as may be prescribed, in respect of any goods in his possession;

(*d*) produce any relevant book or document or computer records and other electronic data and answer fully and truthfully any relevant question as may be required or put to him by an officer.

(2) No person arriving from a foreign port shall dispose of any goods in his possession until they have been released from customs control by the proper officer.

(3) The Controller may, subject to such conditions as he may impose, exempt any person or class of persons from any of the provisions of this section.

Imported goods
11 of 2003

30.—(1) All goods declared under this Part or shown in any document or computer records and other electronic data as having been consigned to Malaŵi from a foreign port shall be deemed to have been imported unless it is proved to the satisfaction of the proper officer that they were not imported.

(2) If the proper officer is satisfied that any imported dutiable goods are wrongly consigned or addressed to Malaŵi or have been imported through error or oversight of the owner of a conveyance, he may allow such goods to be exported without the payment of duty under such conditions as he may impose.

Unloading and removal of goods
20 of 1975

31. Save as otherwise provided in the customs laws, all goods imported, other than those removed into a licensed private siding, shall, upon being unloaded, be removed directly into—

(*a*) a temporary store;

(*b*) a customs warehouse; or

(*c*) such other place as the proper officer may direct, and no goods shall be removed therefrom except with the authority of the proper officer.

Entry of goods
5 of 1972
20 of 1975

32.—(1) Save as otherwise provided in the customs laws, the importer of any goods into Malaŵi shall, unless the Controller otherwise directs, cause entry of such goods to be effected at the

place prescribed for such purpose or at such other place as the Controller may direct, within such period as may be prescribed.

(2) Save as otherwise provided in the customs laws, goods subject to the provisions of subsection (1) shall be entered for—

(*a*) consumption;

(*b*) temporary importation;

(*c*) warehousing in a bonded warehouse;

(*d*) carriage coastwise; or

(*e*) transit.

(3) Declarations in respect of goods subject to the provisions of subsection (1) may be delivered to the proper officer prior to the arrival of the conveyance in which such goods are to be imported and in any such case the Controller may permit such goods to be entered before the arrival of such conveyance.

(4) Where any goods subject to the provisions of subsection (1) remain unentered at the expiration of the prescribed period, such goods shall, if the proper officer so requires, be removed to a customs warehouse or such other place as may be designated by him.

Exceptions to removal and entry requirements

33. Notwithstanding the provisions of sections 31 and 32—

(*a*) mail bags and postal articles in the course of transmission through the post may be unloaded and delivered to an officer of the post office without entry;

(*b*) the proper officer may permit the unloading and delivery to the owner of any bullion, currency, coin, perishable goods and such other goods as the Controller may authorize, without entry, subject to an undertaking being given by such owner to furnish the necessary declaration within forty-eight hours, or such other period as the Controller may authorize, of the time of delivery.

Entry in absence of documents 20 of 1975

34.—(1) If, for lack of sufficient documents or information, the owner of any goods is unable to furnish full particulars of such goods, the proper officer may permit the owner to examine such goods.

(2) Upon such examination being made the proper officer may, upon the production of any import authorization, permit or other document by which the importation of such goods is authorized, allow the owner to declare and enter such goods if the proper officer is satisfied—

(*a*) that the description and origin of the goods is correctly set out in the declaration;

(*b*) in the case of goods liable to any duty *ad valorem*, that the value stated in the declaration is approximately correct;

(*c*) in the case of goods liable to any other duty, that the weight, quantity, number, measurement, strength or other relevant specification stated in the declaration is approximately correct.

(3) Where any goods are entered in accordance with subsection (2), such entry may be effected under section 32, or provisional entry may be effected in such manner and form as may be prescribed.

(4) As a condition to any provisional entry the proper officer may require the owner to pay, in addition to the amount estimated as the duty for the purpose of making such provisional entry such further sum as the proper officer thinks fit; and such estimated duty and further sum shall be forfeited unless the owner within three months (or such further period not exceeding an additional three months as may be allowed by the proper officer) of the date of the provisional entry makes a supplementary declaration of all the goods included in such provisional entry.

(5) Where the owner makes a supplementary declaration under subsection (4), any claim for refund shall be made within one month from the date of such supplementary declaration.

(6) Where any goods are provisionally entered for warehousing under subsection (3), such goods shall not be cleared for consumption or for removal to another bonded warehouse until a supplementary declaration has been accepted and signed by the proper officer.

(7) Where the owner of any goods referred to under this section does not or is not permitted to enter such goods in accordance with subsection (3), then the proper officer shall cause such goods to be removed into a customs warehouse.

Responsibility for imported goods and duty
5 of 1972

35. Without prejudice to the liability of the importer of goods to cause entry to be effected in accordance with section 32 (1), goods which have been imported by any conveyance shall also remain the responsibility of the owner of the importing conveyance, and such owner shall be responsible for compliance with the customs laws and liable for the duty on all such goods until such goods have been entered or otherwise accounted for to the satisfaction of the Controller.

Temporary importation
5 of 1972

36.—(1) Goods may only be entered for temporary importation if so permitted by the Controller in accordance with this section.

(2) Subject to the provisions of the customs laws the controller may, under such conditions (including a condition that the goods shall be re-exported) and for such period as he thinks fit, permit the temporary importation of goods for such purposes as he may approve.

PART V

Customs Warehouses

Application of Part

37. This Part shall not apply to abandoned or forfeited goods.

Goods deposited in customs warehouses
20 of 1975

38.—(1) Goods deposited in a customs warehouse shall be subject to such rent and other charges as may be prescribed:

Provided that the Controller may, having regard to the circumstances of such deposit—

(i) instruct the proper officer to waive; or

(ii) himself remit or refund,

the whole or any part of the rent payable or, as the case may be, paid on such goods.

(2) Subject to the provisions of this Part any goods deposited in a customs warehouse under the provisions of Part IV or Part VI may be entered by the owner within one month after deposit, or such further period as the proper officer may permit:

Provided that if any such goods are unsuitable for storage or are of a perishable or dangerous nature, or if the Controller considers that unless the goods are sold the proceeds will not be sufficient to cover the full duty and expenses of removal and sale he may direct that they be sold, without notice, in such manner as he may deem fit, as soon as possible after deposit in a customs warehouse.

(3) No goods shall be removed from any customs warehouse without the permission of the proper officer who shall satisfy himself that—

(*a*) the person claiming such goods is lawfully entitled to them; and

(*b*) all the relative provisions of the customs laws including payment of or security for any expenses, rent, carriage or other charges have been satisfied and carriage charges due to any carrier have been paid.

(4) If the proper officer authorizes or requires the removal of any goods from a customs warehouse, the owner shall remove such goods within such period as the proper officer may allow.

Sale of goods
20 of 1975

39.—(1) The Controller may cause any goods which are not entered within the period provided or sold under section 38 (2) or are not lawfully removed from a customs warehouse within the period allowed under section 38 (4) to be sold or resold by public auction or by tender after not less than one month's notice thereof being given in the *Gazette*.

(2) Where any goods are sold or resold under this section or section 38 (2), the proceeds of such sale shall be applied in discharge of—

(*a*) the full duty;

(*b*) the expenses of removal and sale;

(*c*) carriage charges due to any carrier;

(*d*) the rent and other charges due to the Department; and

(*e*) rent and storage charges due to any carrier,

in that order, and any balance of the proceeds after making such payments shall, unless the Controller is satisfied that such goods were imported in contravention of any written law, be paid to the owner upon application by him.

(3) If the balance of the proceeds after making the payments referred to in paragraphs (*a*), (*b*) and (*c*) of subsection (2) is insufficient to make in full the payments referred to in paragraphs (*d*) and (*e*) thereof such balance shall be applied *pro rata* in making such last mentioned payments.

(4) No application under this section for payment of the proceeds or balance of proceeds of sale shall be accepted by the Controller unless submitted to him within six months of the date of such sale.

(5) Where any goods are subject to sale under this section and—

(*a*) they cannot be sold;

(*b*) the Controller considers that sale is unlikely to be effected within a reasonable time;

(*c*) the Controller considers that the goods cannot be sold for a sum sufficient to cover the full duty and expenses of removal and sale; or

(*d*) the Controller considers that the sale of the goods would be detrimental to the customs revenue or in contravention of any written law,

the goods may, without compensation, be appropriated to the Government, destroyed or disposed of in such manner as the Controller may direct.

Goods deemed to be in a customs warehouse 20 of 1975

40.—(1) Where under the customs laws any goods are required to be deposited in a customs warehouse, the proper officer may in his discretion decide that it is undesirable or inconvenient to deposit such goods in a customs warehouse and may direct that such goods remain in or be deposited in any other place, and thereupon such goods shall for all purposes be deemed to have been deposited in a customs warehouse from the time they were required to be so deposited.

(2) Where any goods are deemed to have been deposited in a customs warehouse, such goods shall, in addition to the provisions of this Part, be subject to such expenses incurred in the security, guarding and removing of them as the Controller considers necessary.

PART VI

Bonded Warehouses

Licensing of bonded warehouses

41.—(1) The Controller may, on application, license any place as a bonded warehouse for the deposit and security of dutiable goods.

(2) The Controller shall license every bonded warehouse as either—

(*a*) a general bonded warehouse for the warehousing of dutiable goods generally; or

(*b*) a private bonded warehouse for the warehousing of dutiable goods which are the property of the licensee only.

(3) A licence issued under this section shall be subject to such conditions as the Controller may impose.

(4) The Controller, without assigning a reason, may refuse to issue a licence under this section, may impose such further conditions to or authorize such exceptions from such licence as he considers necessary, or may revoke (on repayment of the *pro rata* proportion of any fee paid) or refuse to renew any such licence which has been issued.

(5) An applicant or licensee shall furnish such security as the Controller thinks appropriate for the protection of the revenue and compliance with the customs laws in respect of goods deposited or secured in accordance with any licence issued under this section.

(6) An applicant or licensee shall pay such fee as may be prescribed, not exceeding one hundred pounds, and every licence shall expire on the 31st day of December next following the date of issue.

Transfer of licence

42. A bonded warehouse licence may, on application to the Controller, be transferred to apply to a different place approved by the Controller in accordance with section 41 and which is in the possession of the person to whom the licence has been issued, but no licence may be transferred from one person to another.

Revocation or non-renewal of licences

43.—(1) When the Controller revokes or refuses to renew any bonded warehouse licence he shall cause to be served by post on the licensee notice of such revocation or refusal and thereupon such service shall be deemed to be notice of such revocation or refusal to the owners of all goods warehoused therein.

(2) When any licensee proposes not to renew his licence in relation to any bonded warehouse, he shall cause thirty days notice of such intention to be given to the Controller and to the owners of all goods warehoused therein.

(3) Where the licence in respect of any bonded warehouse has been revoked or has expired, then, within such time as the Controller may direct, all goods warehoused therein shall be entered and delivered in accordance with the provisions of section 47, and where any goods have not been so entered and delivered the proper officer may cause such goods to be taken to a state warehouse and such goods shall thereupon be dealt with in accordance with the provisions of Part V.

Licensees to provide facilities, and keep records etc.

44.—(1) The licensee of a bonded warehouse shall—

(*a*) provide such weights, scales, measures and other facilities for examining and taking account of goods and for securing them as the proper officer may reasonably require;

(*b*) keep such records of all goods warehoused therein as the Controller may require and keep such records at all reasonable times available for examination by any officer;

(*c*) stack and arrange the goods warehoused therein so as to permit reasonable access to and examination of every package at all times;

(*d*) provide all necessary labour and materials for the storing, examining, packing, marking, coopering, weighing and taking stock of the goods warehoused therein whenever the proper officer so requires;

(*e*) on request of the proper officer produce, subject to any allowable deficiencies, any goods deposited in such warehouse.

(2) Subject to any prescribed conditions or any directions of the Controller, the proper officer may direct in what part or division of a bonded warehouse and in what manner goods shall be deposited.

(3) The licensee of a bonded warehouse shall be liable for the duty in respect of all goods deposited therein and shall pay the duty forthwith in respect of all goods not produced in accordance with subsection (1) (*e*).

Entry for warehousing

45.—(1) The importer of any dutiable goods on first importation and the manufacturer or purchaser of any goods liable to excise duty or surtax may enter such goods for warehousing in a bonded warehouse without prior payment of the duty or surtax, other than any dumping duty, thereon:

Provided that if the manufacturer or purchaser of excisable goods wishes to remove such goods from an excise warehouse to a bonded warehouse he shall so enter them prior to their removal from the excise warehouse.

(2) The proper officer may at any time take an account of any goods entered for warehousing and such account, or, if no such account has been taken, the entry for warehousing shall, subject to any allowable deficiencies, be the basis upon which the duties in respect of such goods shall be ascertained and paid.

(3) Where any goods entered for warehousing in a bonded warehouse (which are not subsequently entered for the purpose of removal from the warehouse) are not deposited forthwith, or within such time as the proper officer may permit, in the bonded warehouse for which they were entered, the proper officer may cause them to be so deposited at the expense of the licensee of such warehouse and the licensee of such warehouse shall, upon paying such expenses, have a lien on such goods for the cost involved.

(4) Notwithstanding the provisions of this Part the Controller may permit, subject to such conditions as he may impose, any goods or class of goods not liable to duty to be entered for warehousing in a bonded warehouse and may specify the period during which such goods may be so warehoused.

(5) When goods entered for warehousing in a bonded warehouse cease thereafter to be liable to duty by reason of an amendment to the customs laws in relation thereto or for any other lawful reason then, unless the Controller otherwise permits, the owner of such goods shall cause them forthwith to be duly entered and removed from the bonded warehouse.

Operations in bonded warehouse

46. The Controller may permit, subject to such conditions as he may impose—

(*a*) spirits and wines in a bonded warehouse to be bottled from bulk stocks or to be broken down from greater to lesser strengths;

(*b*) any goods in a bonded warehouse to be assembled, blended, mixed, converted, manipulated or manufactured wholly or partly from warehoused goods:

Provided that—

(i) the provisions of this paragraph shall not apply if the finished products would be excisable goods; and

(ii) where the finished product is entered for consumption, duty shall be paid upon any warehoused goods contained therein or consumed in such operations, and, when such duty is payable on value, the value of such goods as accepted at the time of entry for warehousing shall be their value for duty purposes.

Entry of warehoused goods
20 of 1975
25 of 1988
3 of 1994

47.—(1) Except in respect of goods which, in accordance with the customs laws, are destroyed, abandoned, seized, temporarily removed or removed to a customs warehouse all goods which have been entered for warehousing shall, prior to removal from the bonded warehouse, be entered for—

(*a*) consumption;

(*b*) exportation; or

(*c*) rewarehousing.

(2) When any warehoused goods are entered for exportation or rewarehousing the proper officer may require the owner of the goods to give security in such amount, not being less than the duty payable on the goods, as he thinks fit and such security shall not be discharged until the goods have been exported or rewarehoused in accordance with the customs laws and such further conditions as the Controller deems desirable or until the duty payable on such goods has been paid in accordance with the customs laws.

(3) Where any goods remain in any bonded warehouse for a period of more that fourteen days, or such further period as the proper officer may allow in any particular case, after they have been entered for removal from such warehouse in accordance with subsection (1) such goods shall, unless the Controller otherwise directs, be removed to a customs warehouse;

25 of 1988
3 of 1994

(4) All warehoused goods which have not been entered for removal from a bonded warehouse in accordance with the provisions of this Part within six months of the date on which they were entered for warehousing shall be removed to a customs warehouse by the owner thereof:

Provided that the Controller may permit any particular kind of goods to be re-entered for warehousing after the initial period of six months for a further period, not exceeding six months, as he considers desirable.

Sampling of warehoused goods

48.—(1) An officer may permit—

(*a*) the taking, subject to such conditions as may be prescribed, of samples of warehoused goods by the owner or importer of the goods; and

(*b*) the payment of duty on samples taken in terms of paragraph (*a*) to be deferred until the consignment of the records from which the samples were taken is entered for consumption or for exportation.

(2) The Controller may at his discretion remit the duty on samples taken in terms of subsection (1).

PART VII

Carriage Coastwise

Carriage coastwise

49.—(1) Except in such circumstances as the Controller may allow, goods subject to customs control may not be loaded on or unloaded from a coastwise aircraft or vessel at any place other than a port.

(2) Where any aircraft or vessel arrives from a foreign port or departs to a foreign port, the proper officer may permit such aircraft or vessel to carry goods from any port at which such aircraft or vessel calls to any other port within Malaŵi subject to the complete separation, to the satisfaction of the proper officer if he so requires, of such goods from the remainder of the cargo, if any, aboard such aircraft or vessel.

(3) All goods intended for carriage coastwise shall in addition to any other requirements under the customs laws be declared by the master or agent of the coastwise aircraft or vessel in the manner prescribed.

(4) Goods carried coastwise shall not be diverted for the consumption except in accordance with the customs laws.

PART VIII

Exportation

Prohibited and restricted exports

50.—(1) Subject to subsection (2) no goods shall be exported contrary to the provisions of any written law prohibiting or restricting the exportation of such goods.

(2) The Minister may authorize the exportation of any prohibited or restricted goods for the purpose of scientific investigation or study or for use as evidence in any judicial proceedings or for any other similar purpose.

(3) This section shall not apply to goods in transit.

Entry for exportation

51.—(1) No goods shall be exported or accepted for carriage for exportation until they have been entered for exportation at the place prescribed for such purpose or at such other place as the Controller may direct:

Provided that the Controller may authorize such exportation or acceptance, subject to subsequent entry, in such cases as he considers desirable.

(2) Upon entering goods for exportation, the owner of such goods shall—

(*a*) make a declaration in such manner and form as may be prescribed;

(*b*) produce any relevant book or document and answer fully and truthfully any relevant question as may be required or put to him by an officer.

(3) Notwithstanding the provisions of subsections (1) and (2), the Minister may prescribe goods, either generally or specifically, which may be exported without being entered.

Loading of goods

52.—(1) No goods shall be put on board an aircraft or vessel for exportation except at a port or such other place as may be prescribed or may be approved by the proper officer.

(2) No person shall cause or permit any goods to be put on board an aircraft or vessel for exportation except with the prior permission of an officer.

(3) No goods which have been—

(*a*) put on board an aircraft or vessel for exportation; or

(*b*) loaded on any vehicle for exportation and entered for exportation,

shall, save with the permission of the proper officer and in accordance with such conditions as may be imposed, be unloaded or removed at any place within Malaŵi.

Failure to export

53.—(1) Where any goods entered for exportation are not exported in accordance with such entry the owner thereof shall forthwith notify the proper officer, who may direct that the goods shall remain within, or shall be removed into, a customs area appointed by the proper officer and shall remain therein pending re-entry for exportation, such re-entry to be completed within 10 days or within such further period not exceeding 30 days as the proper officer may allow.

(2) Where any goods entered for exportation are exported contrary to any provision of their entry for exportation, the owner shall forthwith notify the proper officer.

Departure of aircraft and vessels

54.—(1) The master of any aircraft or vessel shall not, except with the prior permission of the Controller, cause or permit his aircraft or vessel to depart to a foreign port except from a port approved for the exportation of goods by aircraft or vessels.

(2) The master of every aircraft or vessel proceeding to a foreign port shall, prior to departure—

(*a*) make a declaration to the proper officer in such manner and form as may be prescribed in respect of such aircraft or vessel and of the cargo and stores aboard;

(*b*) produce any relevant book or document and answer fully and truthfully any relevant question as may be required or put to him by an officer;

(*c*) obtain outward clearance for the intended voyage from the proper officer.

(3) If an aircraft or vessel in respect of which outward clearance has been issued does not depart within thirty-six hours of the time when the clearance was issued, or within such further period as the proper officer may allow, such clearance shall lapse and the master shall, before the aircraft or vessel departs to a foreign port, obtain a new outward clearance.

Departure of vehicles and persons

55.—(1) Before crossing the frontier the person in charge of any vehicle departing overland to a foreign port shall, unless the Controller has granted prior permission to the contrary—

(*a*) report his intended departure to the proper officer at the nearest port to the point of departure from Malaŵi;

(*b*) make a full declaration in such manner and form as may be prescribed in respect of such vehicle and any goods on board;

(*c*) produce any relevant book or document and answer fully and truthfully any relevant question as may be required or put to him by an officer;

(*d*) not cause such vehicle to be removed from such port except with the prior permission of the proper officer and in accordance with any conditions he may impose.

(2) Every person shall, before departure to a foreign port, report to an officer and declare all goods in his possession which he proposes to export, produce all such goods for examination, and produce any relevant book or document and answer fully and truthfully any relevant question as may be required or put to him by an officer.

Procedure to a foreign port

56. The master or person in charge of any conveyance shall not, after departure to a foreign port, cause or permit such conveyance to land, touch or enter at any place within Malaŵi except in accordance with the customs laws.

57. For the purposes of the customs laws, the entry of goods for exportation, the loading, taking or placing of any goods upon a conveyance which is about to leave Malaŵi or has other goods in it which are to be exported, the handing of any goods to any carrier or transport company or to the master or owner of a vessel or aircraft for the purpose of exportation or the placing in the post of a package addressed to a place outside Malaŵi, shall be deemed to be an attempt to export. Attempts to export

PART IX

Stores

58.—(1) The owner of goods which are for use as stores on an aircraft or vessel proceeding to a foreign port, either directly or indirectly, shall cause such goods to be entered before departure : Entry of goods for use as stores

Provided that imported goods remaining on board any aircraft or vessel for use as stores shall not be entered unless an officer so requires.

(2) Officers shall not allow goods for use as stores to be entered unless they are satisfied, from the intended duration of the flight or voyage and the number of passengers and crew to be carried, that it is appropriate to allow such goods to be so entered.

59. The proper officer may permit surplus stores to be entered for warehousing for future use as stores even if they are prohibited or restricted goods. Surplus stores

PART X

Transit

60.—(1) Except as otherwise provided, all goods in transit shall, on importation, be entered for transit by the owner. Goods in transit

(2) All goods in transit shall be exported within such time as the proper officer may allow, not exceeding two months from the date of their importation or such further period as the Controller may allow. 30 of 1969

(3) Goods in transit shall not be diverted for consumption or warehousing without the prior written authority of the Controller or the proper officer and, if such authority is granted, such goods shall be so re-entered forthwith by the owner.

61. Subject to such conditions as the Controller may impose goods imported on any conveyance which are intended to remain in and do remain in that conveyance may, subject to the approval of the proper officer, pass through Malaŵi without entry and be deemed to be goods in transit. Transit without entry

Security for goods in transit

62.—(1) The owner of any goods in transit shall give security in such sum as the proper officer may require for the protection of the revenue and compliance with the customs laws in respect of such goods. Such security shall not be released until evidence has been produced to the satisfaction of the Controller that such goods have been duly exported. Upon failure to give such security, such goods shall be unloaded and removed into a customs area appointed by the proper officer and shall be dealt with in accordance with the provisions of Part IV.

(2) Notwithstanding the provisions of subsection (1) the proper officer may, in his discretion, dispense with security in respect of goods in transit which are to be conveyed through Malaŵi in such manner that the whole of such goods can be locked or sealed by an officer within a conveyance so that no access to such goods can be had without opening or breaking such lock or seal, or in respect of goods in transit which, in the opinion of the proper officer, will otherwise be secure from unauthorized access.

PART XI

Excise Management

Minister may make regulations

63. The Minister may make regulations providing for—

(*a*) the manufacture and disposal of excisable goods;

(*b*) the materials which may, or may not, be used in such manufacture;

(*c*) the type, fitting, pattern, installation and placement of all premises, machinery, utensils, pipes and receptacles used in such manufacture;

(*d*) notices which the holder of an excise licence must give to the proper officer in respect of his intended operations; and

(*e*) the method of taking account of excisable goods,

and different regulations may be made in respect of different excisable goods or in respect of different premises.

Excise licences

64.—(1) Except as otherwise provided in the customs laws no person shall manufacture any excisable goods either in whole or in part unless authorized by, and in accordance with the conditions of, a valid excise licence issued by the Controller :

Provided that no such licence shall be required—

(i) by a private individual in respect of excisable goods, other than spirits, manufactured by him for his own use or for the use of his family and not for sale or disposal for profit;

(ii) by a person authorized by the Controller to manufacture excisable goods for experimental purposes and not for sale or disposal for profit subject to such conditions as the Controller may direct.

Licences, issue, conditions, etc.

65.—(1) Every applicant for an excise licence shall make application in writing to the Controller and shall provide such information in respect of the application as the Controller may require, and the Controller may issue such licence or may refuse to issue such licence at his discretion.

(2) No excise licence shall be issued in respect of any premises until an appropriate entry of premises has been made.

(3) An excise licence shall specify the class or classes of excisable goods to which it refers.

(4) No excise licence shall be granted in respect of any premises which appear to the Controller from their situation or otherwise with reference to surrounding or adjacent buildings or places of business to be so constructed or arranged as to jeopardize the protection of the revenue.

(5) Every excise licence shall expire on the 31st day of December next following the date of issue and the licence fee for each excise licence shall be such sum, not exceeding two hundred Kwacha, as may be prescribed either generally or in respect of any excisable goods separately.

(6) Where any applicant includes or requires to be included in the entry of premises any premises which in the opinion of the Controller—

(*a*) are remote from the premises where the main processes of manufacture are to be carried on; or

(*b*) are separated from other entered premises by a distance which is such as to cause protection of the revenue to be difficult or less effective without special measures,

a separate excise licence in respect of each such premises shall be required.

(7) An excise licence may be transferred by the Controller to an approved successor of the licence holder under such conditions as the Controller deems fit.

(8) If the holder of an excise licence obtains the permission of the Controller to remove his business to other premises, such change of premises may be noted by the Controller on such licence after a new entry of premises has been submitted and accepted by the Controller in respect of the new premises.

(9) The Controller shall cause the serial number of every excise licence, the name and address of the licensee and the class of excisable goods such licensee is licensed to manufacture to be published in the *Gazette* at such intervals each year as may be expedient.

(10) If any licensee fails to carry out any duty imposed upon him by this Act or by any regulations made thereunder with respect to his premises or any security, buildings, appliances, stock books, returns or the like, or the mode of conducting his business, the Controller may,

after having given one month's notice in writing requiring the omission to be rectified or the irregularities to be corrected, and upon failure by the licensee to comply with the notice, declare in writing that the excise licence is suspended and therefore invalid, and such suspension shall continue until withdrawn by the Controller upon full compliance with the requirements of the law.

(11) If the requirements of the law are not complied with within a period to be specified by the Controller, he may cancel or refuse to renew the licence.

(12) If the Controller in his discretion refuses to issue any excise licence or refuses to renew any such licence or cancels any such licence the applicant or licensee, as the case may be, may appeal to the Minister against such action by the Controller and the decision of the Minister shall be final and shall not be questioned in any court.

Renewal of licences
10 of 2014

65A.—(1) Upon expiry of his or her licence, a licensee shall immediately cease to manufacture any excisable goods, unless his or her licence has been renewed by the Controller in accordance with this Act.

(2) Any person who contravenes subsection (1) is guilty of an offence and, shall be liable to a fine of K200,000.

Entry of premises, etc.

66.—(1) Every applicant for an excise licence shall deliver to the Controller an entry of premises in the prescribed form containing such information and accompanied by such plans as the Controller may require concerning the goods to be manufactured and the processes, premises and plant to be used.

(2) Unless he has obtained the written permission of the Controller, no holder of an excise licence shall carry on any business on his entered premises other than the business for which such licence was issued.

(3) No alterations shall be made to any entered premises or to the plant, machinery or apparatus therein except with the prior consent of the Controller.

(4) No room, plant, machinery or apparatus shall be used for the production or storage of excisable goods unless such room, plant, machinery or apparatus has been specified for that purpose in the appropriate entry of premises.

(5) The Controller may at any time require the holder of an excise licence to make a new entry of premises within such period as the Controller may direct.

(6) Except with the prior permission of the proper officer no plant, machinery, room or other part of entered premises shall be used for any purpose other than that specified for such plant, machinery, room or part in the entry of premises.

(7) All machinery, plant and utensils used in the manufacture or storage of excisable goods on entered premises shall be so

placed to the satisfaction of the Controller as to allow full examination by an officer at any time.

Marking of rooms etc.

67. Every holder of an excise licence shall mark the rooms, stores, plant, equipment, vessels and warehouses referred to on his entry of premises in such manner as may be prescribed or as the Controller may direct and shall not remove, obliterate or erase such mark except with the consent of the proper officer.

Accommodation etc.

68.—(1) Every holder of an excise licence shall provide free of charge such lighting, office and sanitary accommodation, equipment, assistance and other facilities as may be required by the Controller to enable officers to exercise their powers under the customs laws.

(2) If the Controller is satisfied that no suitable living accommodation can be found or provided for officers having control over any entered premises he may, as a condition for the grant of an excise licence, require the licensee to provide, to the satisfaction of the Controller, lodgings for those officers conveniently situated with respect to such premises but not forming part thereof or of the licensee's dwelling house at a rent to be agreed between the licensee and the Controller.

(3) If an applicant for or the holder of an excise licence—

(*a*) fails to provide any facilities required by the Controller under subsection (1);

or

(*b*) fails to provide lodgings required by the Controller under subsection (2); or

(*c*) fails to keep and maintain such lodgings in good repair; or

(*d*) in any way interferes with the use and enjoyment of such lodgings by the officer residing therein,

the Controller may refuse to issue or renew or may suspend or cancel such excise licence.

Excise bond

69. Every applicant for an excise licence shall furnish such security, and in such amount, as the Controller considers appropriate as a condition to the grant of the excise licence; and such security shall be subject to such conditions for compliance with the customs laws as the Controller may specify either generally or in any particular case.

Name of licence holder to be exhibited

70. Every holder of an excise licence shall, if required by the Controller, have his name affixed in a conspicuous place on the outside of the entered premises in such form and manner as the Controller may direct.

Security of buildings etc.

71.—(1) The Controller may require the holder of an excise licence to provide any store or room and to lock or secure any building, store room, place, still, utensil or fitting, or to provide and affix an approved meter to any receptacle or pipe on the entered premises and such licence holder shall, to the satisfaction of the proper officer, provide, affix, repair and renew all plugs, cocks, taps, covers, fastenings, and other requisites for the purpose of enabling officers to affix locks or seals thereto or otherwise to secure the same.

(2) If on any entered premises any meter, rod, lock, key or fitting is tampered with, damaged or broken and if any fastening or fitting used to affix a customs lock or seal is damaged or broken, the licence holder shall if the proper officer so directs forthwith repair or renew the article in question to the satisfaction of the proper officer.

(3) All keys or other means of opening any locks, doors or fastenings within the entered premises other than customs locks or fastenings shall be kept by the licensee in such secure place as shall be available for use by any officer in the course of his duty at any time he may deem fit.

Tables

72. For the purpose of calculating the full quantity of excisable goods produced on any entered premises, tables may be prescribed showing the quantity of such goods which shall be deemed to have been produced from a given quantity of material, or the quantity of fully manufactured goods which shall be deemed to have been produced from a given quantity of partly manufactured goods subject to such allowances as may be prescribed therewith.

Stores and excise warehouses

73.—(1) Every holder of an excise licence shall provide on his entered premises to the satisfaction of the Controller—

(*a*) a store or stores where he shall deposit and store all materials for the manufacture of excisable goods;

(*b*) a store or stores where he shall store all excisable goods in an intermediate stage of manufacture or process; and

(*c*) an excise warehouse or excise warehouses where he shall store all finished products.

(2) The Controller may direct that only certain goods and no others may be stored in any of the stores or excise warehouses provided under subsection (1).

(3) Save as may be allowed by the proper officer no excisable goods may be stored on entered premises except in a store or warehouse provided under subsection (1).

(4) Save as may be allowed by the proper officer no excisable goods—

(*a*) may be moved from a store or warehouse provided under subsection (1);

(*b*) shall be removed from the entered premises except from an excise warehouse;

(*c*) after removal from an excise warehouse shall be returned thereto.

(5) No holder of an excise licence shall store duty paid goods on his entered premises except in a store or place approved for that purpose by the Controller and subject to such conditions as the Controller may specify.

Prohibitions in respect of excisable goods

74.—(1) Except with the permission of the Controller, no holder of an excise licence shall have on his entered premises excisable goods other than those manufactured on such entered premises.

(2) No person shall conceal, interfere with, or, without the permission of the proper officer, mix any other substance with, any excisable goods in any manner which may prevent the proper officer taking a true account thereof.

Stock books, etc.
11 of 2003

75.—(1) Subject to the provisions of this section, every holder of an excise licence shall keep a stock book or computer records in English to be written up legibly and clearly not less frequently than each working day, in such form as the Controller may approve and in as many copies as the Controller may require.

(2) In each such stock book or computer records there shall be recorded in respect of each kind and each brand and each packing of excisable product separately, details of receipts into and disposals from the excise warehouse by reference to factory records and invoices respectively; and separate stock books or computer records may be kept if one is insufficient to include all the required details.

(3) Every person licensed to manufacture tobacco products shall keep an operations account legibly in English, in such form and in as many copies as the Controller may require and therein shall record not less frequently than each working day an accurate account by description and weight of all receipts of raw or leaf tobacco into the entered premises and all disposals thereof whether for manufacturing purposes on his premises or otherwise.

(4) Every holder of an excise licence shall, if required to do so by the Controller, keep such other books and records instead of, or in addition to, or supplemental to the stock book or computer records as the Controller may direct.

(5) Every stock book or computer records and such books as may be required under subsections (3) and (4) hereof shall be ruled

off, itemized, totalled, and balanced at the end of each month in such manner and to such extent as the Controller may direct and such copies of such sheets or pages as may have been used in that month as the Controller may require shall be transmitted to the Controller with the excise return for that month.

(6) Where the proper officer is satisfied that it is necessary for the purpose of securing the collection of duty, he may require any holder of an excise licence to produce forthwith to an officer any book or document whatsoever relating to his business.

(7) Every holder of an excise licence shall keep all books and records which may be required under the provisions of the customs laws on the entered premises to which such books and records refer, shall at all times keep them accessible to an officer for his inspection, and shall allow such officer at any time to inspect them or to make notes therefrom or copies thereof or to remove them if the officer considers it necessary to do so.

Liability to excise duty

76.—(1) Subject to the provisions of this Act, excise duties shall be due and payable immediately upon the removal of excisable goods from the excise warehouse.

(2) For the avoidance of doubt, any goods liable to excise duty in a finished or semi-completed state and whereof the manufacture has begun shall from that time onwards be deemed to be excisable goods to be dealt with in accordance with the provisions of this Act and such goods shall not cease to be excisable goods if they are dealt with contrary to the provisions of this Act.

(3) When excisable goods are removed from an excise warehouse—

(*a*) for exportation; or

(*b*) for sale to a person entitled to purchase excisable goods at a reduced rate of duty; or

(*c*) for removal into a bonded warehouse; or

(*d*) for removal to other entered premises for further manufacture or for blending or packing,

such goods shall be recorded in all books, returns and documents as dutiable goods until such time as they have been duly accounted for to the satisfaction of the Controller.

(4) Any excisable goods except beer and spirits may be removed under prescribed conditions from one entered premises to another entered premises for the purpose of further manufacture and the duty on such goods shall, subject to any allowable deficiency, be paid at the time of and in addition to any other duty which may be payable on the finished product.

(5) Excisable goods of beer and spirits may be removed from one entered premises to another entered premises and from one part of entered premises to another part thereof only in accordance with prescribed conditions, or when no conditions are prescribed in accordance with such conditions as the Controller may deem fit and subject always to the provisions of this Act and in particular the liability for duty of such goods.

Excise return and payment of excise duty

77. Unless the Controller directs to the contrary either generally or in any particular case or for any particular period of time, the payment of duty on excisable goods may be deferred for a period not exceeding twenty days from the end of each month in respect of disposals of excisable goods during that month and the duty on all such disposals during that month shall be paid to the Controller no later than the twentieth day of the succeeding month supported by—

(*a*) a correct and legible excise return and declaration in the prescribed form together with such additional copies thereof as may be required; and

(*b*) the copies of the sheets or pages of the stock book and other records specified in section 75 (5),

in respect of the month to which the payment of duty refers.

Order to pay duty, etc. and request for information
13 of 2016

77A—(1) Where any excise duty, penalty or interest is due and payable from a holder of an excise licence or person, the Commissioner General may order—

(*a*) any individual or business from whom any money is due or is accruing or may become payable due to the holder of an excise licence or person; or

(*b*) any individual or business who holds or who may subsequently hold money for or on account of a holder of an excise licence or person, to pay the Commissioner General that money, or so much of it as is sufficient to discharge the excise duty, penalty or interest due and payable.

(2) The Commissioner General shall, in respect of an individual or a business that fails to comply with subsection (1), have the same remedies as he has against the property of any other person who is liable to pay duty.

(3) Notwithstanding the provisions of subsections (1) and (2), the Commissioner General may require any person to give him information in respect of any money, funds, or other assets which may be held by that person for, or on account of a holder of an excise licence or person.

Levy of distress
13 of 2016

77B.—(1) The Commissioner General may in writing authorize the levying of distress in accordance with this section.

(2) Where any excise duty, penalty or interest due under this Act remains unpaid after the time by which this Act requires it to be paid, the Commissioner General may, in writing and with notice to the holder of an excise licence or person, authorize the levying of distress—

(*a*) upon the goods, chattels and effects of the holder of an excise licence or person; and

(*b*) upon—

(i) all assets, property, building, factory, machinery, plant, tools, means of transport and communication, accessories, animals, and all goods used in Malaŵi in the manufacture, production, sale or distribution of any excisable goods; or

(ii) any commodity or items found in any premises or any land owned by or in use or in possession of the holder of an excise licence or of any person on his or her behalf or in trust for him or her.

Ninth Schedule

(3) The written authority of the Commissioner General to distrain under this Act shall be a warrant as in Form A set out in the Ninth Schedule, and shall be the authority to levy by distress the amount of any excise duty, penalty or interest due.

(4) The distress warrant so taken shall be executed on only the assets of the holder of an excise licence or person and the Commissioner General shall take possession of the properties specified in subsection (2) exclusive of all liabilities.

(5) For the purpose of levying the distress, any person authorized in writing by the Commissioner General may execute the warrant of distress on the goods and assets of the holder of an excise licence or person specified under subsection (2) wherever the property may be and where necessary break open any building or place in the day-time for the purpose.

(6) Any authorized person who executes a warrant of distress under this section may call to his or her assistance any police officer, and it shall be the duty of the police officer when required to assist in the execution of the warrant of distress and in levying the distress to do so.

(7) The distress taken under this section may, at the cost of the holder of an excise licence or person, be kept for fourteen days, and if the amount due in respect of excise duty, interest or penalty and the cost and charges of and incidental to the distress are not then paid, the property distrained may be sold.

(8) Where any goods are sold or resold under this section, the proceeds of such sale shall be applied in discharge of—

(*a*) the amount due in respect of excise duty, interest and penalty; and

(*b*) the costs or charges of the distress and incidental to the sale and keeping of the distress, in that order, and the residue, if any, shall be paid to the owner of the property.

(9) Where any property seized in the execution of the distress warrant under this section is under a mortgage, charged by way of security for any debt, or is in any way encumbered, the sale of the property shall be made subject to the prior interest of the Commissioner General which shall have precedence over all other interests.

Cigarette tax stamps
12 of 2008
13 of 2016

77C.—(1) Subject to section 77, any person who manufactures, distributes or imports cigarettes shall, upon application in the prescribed form, affix a cigarette tax stamp, on to each individual purchase of cigarettes in such a manner as may be prescribed by the Commissioner General.

(2) For the purposes of this section, "cigarette tax stamp" means such mark whether in electronic form or otherwise, as the Minister may, by order published in the *Gazette*, prescribe.

(3) Any person who contravenes subsection (1) commits an offence.

(4) The Commissioner General shall not grant an application for cigarette tax stamps to an applicant unless the Commissioner General is satisfied that—

(*a*) the applicant is licensed under section 64; or

(*b*) in the case of an importer or distributor, is duly registered for that purpose.

Samples

78. Subject to such conditions as the Controller may approve, a holder of an excise licence may take such samples from his products, at any stage of their manufacture, as may be necessary for the proper conduct of this business as a manufacturer of excisable goods and the Controller may remit the duty on such samples.

Responsibility for losses, etc.

79. No action shall lie against the Government or any officer or person in the employ of Government in respect of the loss of or damage to any excisable goods in entered premises, or in respect of any incorrect or improper delivery therefrom or thereto.

Procedure upon termination of licence

80.—(1) If the holder of an excise licence intends to cease the manufacture of excisable goods he shall inform the Controller in writing of the date on which he will cease manufacture.

(2) A licensee shall cease manufacture—

(*a*) on the date notified to the Controller under subsection (1); or

(*b*) on the 31st day of December next following notification by the Controller that the licence will not be renewed; or

(*c*) forthwith upon notification by the Controller that the licence is suspended or cancelled.

(3) Within one month of the cessation of manufacture under subsection (2) the licensee shall render to the proper officer a true and complete return, as required under section 77 of his transactions in excisable goods since his last monthly return and of his stock of excisable goods on hand, and shall with that return pay the duty on such excisable goods to the proper officer:

Provided that if a licence has been cancelled as a result of noncompliance by the licensee with the provisions of the customs laws the whole of the stock on hand at the time of cancellation shall be liable to forfeiture.

(4) If a licensee fails or neglects to render the return required under subsection (3) within the time allowed the proper officer may seize the stock of excisable goods on hand and may sell them and the proceeds of the sale shall be applied in accordance with section 39 (2) and (3).

(5) Nothing contained in this section shall be deemed to deprive the Government of any right it may have against the property of the estate of the manufacturer or those of its sureties in respect of any duty which may remain unpaid after such sale or forfeiture as provided for in this section, nor shall such sale or forfeiture relieve the manufacturer of liability to prosecution under this Act.

Keeping of stills

81.—(1) The Controller may permit the keeping and using of a still or stills without licence—

(*a*) for experiments in chemistry or experiments in the distillation of spirits; or

(*b*) by persons carrying on trade or otherwise for the manufacture of any articles other than spirits.

(2) Every person permitted to keep a still under the provisions of this section shall conform to such conditions as the Controller may specify and shall receive a certificate of registration, which may be cancelled by the Controller on any failure to conform to such conditions.

(3) Any person other than a licensed distiller who imports or is found in possession of or uses a still for which he has no certificate of registration shall, for the purpose of this Act, be deemed to be a distiller and to distil spirits.

PART XII
DUTIES

82. Subject to the provisions of the customs laws, there shall be charged, levied, collected and paid under this Act— Duties payable 3 of 1993

(*a*) in respect of goods imported into or manufactured or produced in Malaŵi, surtax in accordance with the provisions of a surtax tariff prescribed by the Minister;

(*b*) in respect of goods imported into or sold in Malaŵi dumping duties in accordance with the provisions of a dumping duties tariff prescribed by the Minister;

(*c*) in respect of goods imported into Malaŵi, customs duties in accordance with the provisions of a customs tariff prescribed by the Minister;

(*d*) in respect of imported goods and goods manufactured or produced in Malaŵi, excise duties in accordance with the provisions of an excise tariff prescribed by the Minister; and 3 of 1993

(*e*) in respect of goods manufactured or produced in Malaŵi, export duties in accordance with the provisions of an export duties tariff prescribed by the Minister. 5 of 1985

(*f*) in respect of airtime, television subscriptions, gaming and betting, including lotteries, excise duties in accordance with the provisions of an Excise Tariff prescribed by the Minister. 12 of 2008 20 of 2017

83.—(1) The Minister may, subject to section 84, by order published in the *Gazette*, prescribe a surtax tariff, a dumping duties tariff, a customs tariff and excise tariff and an export duties tariff for the purposes of this Act, and may similarly amend any such tariff. Tariffs prescribed 5 of 1985

(2) Until the Minister prescribes as tariff under subsection (1) the relevant tariff in force at the date of commencement of this Act shall be deemed to be the appropriate tariff prescribed under subsection (1) and may be amended in like manner as though it were so prescribed.

84.—(1) An order made under section 83 shall not be made retrospective and shall cease to be of effect upon the expiration of the period specified in subsection (2) unless approved by a resolution of the National Assembly passed in accordance with the conditions referred to in subsection (2). Procedure for prescribed or amending tariff

(2) For the purposes of subsection (1) a resolution of the National Assembly approving an order made under section 83 shall be passed before the expiration of the period of twenty-eight days from the date of commencement of such order:

Provided that—

(*a*) if, before the expiration of the said period of twenty-eight days the National Assembly is dissolved or is prorogued or adjourned for more than seven days, such resolution shall be passed before the end of the next meeting of the National Assembly; or

(*b*) if, on the date of commencement of the order the National Assembly stands dissolved or is prorogued or adjourned, such resolution shall be passed before the expiration of the period of twenty-eight days from the date of commencement of the next meeting of the National Assembly, or if the National Assembly is earlier dissolved or is earlier prorogued or adjourned for more than seven days, then before the end of the next following meeting of the National Assembly.

(3) Where an order ceases to be of effect under this section—

(*a*) any person who has paid a new duty or increase of duty in accordance with such order shall, subject to the provisions of section 100, be entitled to a refund—

(i) in the case of such new duty, of the amount of such duty paid by him;

(ii) in the case of such increase of duty, of an amount of equal to the difference between the duty paid by him and the duty in force immediately before the date of commencement of such order;

(*b*) no payment by way of duty under-collected or duty not collected shall be required from any person in respect of goods properly entered at the reduced rate of duty during the period when the rate of duty was reduced in accordance with such order; and

(*c*) the amended provisions of the tariff or tariffs shall revert to those in force immediately before the date of commencement of such order.

Investigations as to dumping

85. The Minister may make regulations governing the manner in which complaints as to the dumping of goods shall be made and investigated and such regulations may provide, *inter alia*, that—

(*a*) the board or person charged with the investigation of a complaint as to dumping shall have any or all of the powers, rights, privileges and duties conferred upon a Commissioner by the Commissions of Inquiry Act, with or without modifications; and Cap. 18:01

(*b*) any or all of the provisions of the Commissions of Inquiry Act shall apply to an inquiry held for the purpose of investigating a complaint referred to in paragraph (*a*) and to persons summoned to give evidence or giving evidence at such an inquiry. Cap. 18:01

Payment of dumping duties

86. Dumping duties shall be payable by the importer on the importation of the goods concerned except that in the case of sales dumping duty, such duty shall be payable by the seller of such goods within Malaŵi, and dumping duties shall be payable in addition to any other duty payable or paid on such goods:

Provided that where goods are imported under rebate of the ordinary duty for use in manufacture in Malaŵi no dumping duty shall be payable unless it is prescribed that the dumping duty shall apply to such goods.

Seller under contract may recover any increase and purchaser may deduct any decrease of duty

87.—(1) When any duty is imposed or increased on any goods and such goods, in pursuance of a contract made before the duty or increased duty became payable, are thereafter delivered to and accepted by the purchaser, the seller of the goods may, in the absence of agreement to the contrary, recover from the purchaser as an addition to the contract price a sum equal to any amount paid by him by reason of the said duty or increase.

(2) Whenever any duty is withdrawn or decreased on any goods and such goods, in pursuance of a contract made before such withdrawal or decrease becomes effective are delivered thereafter, the purchaser of the goods may, in the absence of agreement to the contrary, if the seller has in respect of those goods had the benefit of the withdrawal or decrease, deduct from the contract price a sum equal to the said duty or decrease.

(3) The provisions of this section shall also apply to a contract for the hiring of any goods, and the words "seller" and "purchaser" shall be construed as including the person from whom and the person to whom the goods are hired.

(4) For the purposes of this section, "duty" includes any duty which was leviable immediately prior to the date of commencement of this Act.

Rate of duty in relation to time of importation, exportation or entry

88. Unless otherwise provided under this Act—

(*a*) goods which are imported into Malaŵi other than goods referred to in paragraph (*b*) shall be liable to the rates of duty which are in force at the time when they are imported or at the time of the receipt by a proper officer of the declaration for the purpose of entry for consumption, whichever shall be the later, so, however, that in no case, except in the case of goods which are lawfully removed from a bonded warehouse, shall the rate of duty be less than that in force at the time of importation;

(*b*) goods which are imported into Malaŵi by post, as air freight or in accompanied baggage shall be liable to the rates of duty applicable when such goods are presented to the proper officer for assessment of duty; and

(*c*) goods which have been manufactured in Malaŵi shall be liable to the rates of duty which are applicable to those goods at the time when they are delivered for consumption or are used or otherwise disposed of by the manufacturer.

Rebates in respect of specified countries

89. Subject to the provisions of sections 117 and 118, rebates of customs duties may be allowed in respect of goods imported into Malaŵi which have been grown, produced or manufactured in countries specified for the purpose in the customs tariff.

Sellers of goods to produce proof of payment of duty

90. Any person being in possession or control of imported goods or goods which are liable to duty under the provisions of this Act, and any person who offers for sale, exports, or attempts to export such goods or has such goods entered in his books or mentioned in any document referred to in section 167 shall, when requested by an officer so to do, produce proof as to the place and date of entry of the goods and that duty due thereon was paid. If he himself did not pay the duty or make entry of the goods, such person shall produce such evidence as the officer may require to enable him to discover the person who did make such entry and payment in respect of the goods.

Short levy or erroneous refund
11 of 2003
8 of 2005

91.—(1) Where any amount of duty has been underpaid or not paid, the person who should have paid such duty or the person in whose possession the goods in respect of which the underpayment was made shall pay such outstanding amount.

(2) Where any amount of duty has been erroneously refunded, the person to whom the refund has erroneously been made shall repay the amount erroneously refunded.

Liens and preferences
25 of 1988

92. The correct amount of duty payable in respect of any goods or services shall, from the time when it should have been paid, constitute a debt due to the Government by the person concerned, and shall, at any time after it becomes due, be recoverable in court by proceedings in the name of the Controller, and any goods in a bonded warehouse or in the custody of the Department or any

goods used or produced in the business concerned and belonging to that person, and any goods afterwards imported or entered for exportation by the person by whom the duty is due, shall, while still under the control of the Department, be subject to a lien for such debt and may be detained by the Department until such debt is paid, and the claims of the Government shall have priority over the claims of all persons upon the said goods of whatever nature and may be enforced by sale or other proceedings if the debt is not paid within three months after the date upon which it became due.

Payment of fines and duty instalments
6 of 1987
25 of 1988

93.—(1) Subject to such conditions, including the payment of interest at the rate specified in subsection (2), the Controller may permit any fine imposed by him under this Act or any duty payable under customs laws, other than surtax payable under Part XIIA, to be paid by instalments of such amounts and at such times as he may determine.

25 of 1988
11 of 2015

(2) The interest payable under subsection (1) shall be charged on the tax that remains unpaid at the prevailing bank lending rate prevailing plus five percent per annum.

Provisions relating to collection of duties
40 of 1970

94. Notwithstanding the provisions of this Act—

(*a*) if the value for duty purposes of any goods is not an exact number of Kwacha, then, for the purposes of assessing the amount of duty payable, such value shall be calculated to the nearest Kwacha, fifty tambala being deemed to be less than one half of one Kwacha; and

(*b*) the Controller may in his discretion remit the customs duty on any single consignment of goods where the total amount of such duty is less than ten tambala.

Re-imports

95.—(1) Subject to the production to the proper officer of satisfactory proof of origin and identity, goods grown, produced or manufactured in Malaŵi, exported therefrom and subsequently returned thereto shall—

5 of 1972

(a) in the case of dutiable goods originally lawfully exported without payment of duty or goods exported on drawback of that duty, be liable to the payment of such duty as may be applicable on similar goods grown, produced or manufactured in Malaŵi at the time of re-importation;

(*b*) in the case of other goods originally exported under drawback, be liable to an amount of duty equal to the amount of drawback paid or payable;

(*c*) in the case of other goods, be admitted free of duty.

(2) Where any goods other than those provided for in subsection (1) are re-imported after having been exported from Malaŵi and the Controller is satisfied—

(*a*) that any customs duty to which the goods were liable prior to their exportation was paid; and

(*b*) that no drawback or other refund of such customs duty was paid or is payable on account of their exportation; and

(*c*) that any conditions governing their original importation at a reduced rate of duty remain applicable; and

(*d*) that, subject to any particular waiver by the Controller, the owner of such goods, prior to their exportation, gave notice thereof in writing to the proper officer and produced such goods for inspection by him at the port or place from which they were exported,

the goods shall be admitted free of duty.

(3) Notwithstanding the provisions of this section, any re-imported goods which were subjected to any process of repair, renovation or alteration while abroad shall be subject to any special conditions in relation thereto contained in the customs tariff.

Suspensions, rebates, remissions and refunds of duty

96.—(1) The Minister may, by regulations made under section 175 and subject to such conditions as he may prescribe—

(*a*) suspend wholly or in part any of the duties appearing in any tariff;

(*b*) grant a rebate, remission or refund of the duty otherwise payable, or already paid, on such goods, in such circumstances or to such classes of persons as he may specify,

and such suspension, rebate, remission or refund may be granted with retrospective effect.

(2) The Minister may by notice published in the *Gazette* withdraw any suspension, rebate, remission or refund of duty prescribed in terms of subsection (1) :

Provided that such notice shall not be made retrospective.

(3) No duty shall be payable on goods imported or taken out of a bonded or excise warehouse for the use of the President, and a refund shall be made of any duty paid on goods acquired for the use of the President.

Drawback

97. Where goods are exported from Malaŵi in accordance with this Act, drawback of any duty paid on such goods or on any materials used in the manufacture or processing of such goods in

Malaŵi may be granted in accordance with and subject to such limitations and conditions as may be prescribed in regulations made under this Act.

Remission of duty on goods exported

98. Subject to compliance with the provisions of any security or undertaking required by the Controller in accordance with this Act, the duties otherwise payable shall be remitted on goods which are entered for

(*a*) transit; or

(*b*) temporary importation; or

(*c*) exportation from a bonded warehouse or from entered premises,

where the Controller is satisfied that they have been duly exported.

Remission or refund of duty upon loss etc. of goods

99.—(1) Where any goods subject to customs control, other than goods which are placed under embargo under section 149 or in respect of which an offence has been committed, are lost or destroyed by accident and the officer is satisfied—

(*a*) that the goods did not go into consumption; and

(*b*) that evey reasonable effort was made and precaution taken to prevent their loss or destruction,

the Controller may, subject to such conditions as may be prescribed, remit or refund the duty payable or paid on such goods.

(2) Where any goods subject to Customs control, other than goods which are placed under embargo under section 149 or in respect of which an offence has been committed, are damaged by accident or other unavoidable cause and the officer is satisfied that every reasonable effort was made and precaution taken to prevent such damage the Controller may, subject to such conditions and limitations as may be prescribed, remit or refund such part of the duty otherwise payable or paid as he considers equitable in the circumstances.

(3) The Controller may, subject to compliance by the owner with such conditions as may be prescribed, grant a refund of duty paid on any goods which are imported under a firm contract of sale and which, after release from customs control, are found not to be in accordance with the terms of that contract in respect of their description, quality, state or condition and with the consent in writing of the owner and the foreign supplier—

(*a*) are produced to an officer and destroyed under his supervision; or

(*b*) are surrendered to the Controller to deal with as he thinks fit; or

(*c*) are returned to the foreign supplier and on exportation are entered and produced to an officer as goods to which this subsection applies :

Provided that—

(i) any refund granted shall be limited to that proportion of the duty paid which the credit or other allowance made by the supplier to the importer in respect of the defect bears to the price originally paid for the goods; and

(ii) this section shall not apply where the goods have been put into use in Malaŵi, or are brought to the attention of an officer more than three months, or such further period as the Controller may in any particular case allow, after the payment of duty, or when such goods are imported on approval or on sale or return or on any similar terms.

(4) Subject to compliance by the owner with the provisions of this Act and any prescribed conditions, the Controller may remit or refund the duty payable or paid, in whole or in part, on any goods which are shown to his satisfaction to have been damaged, diminished or pilfered before importation.

Refund of moneys paid to Department

100.—(1) No moneys paid to the Department shall be refunded except in accordance with the provisions of this Act or of any other written law authorizing the same.

(2) If the Controller is satisfied that any person has paid moneys to the Department exceeding the amount properly due he shall authorize refund of the amount overpaid provided that application in the prescribed manner for such refund is received by an officer within six months of the date of such payment or within such further period as the Controller may in any particular case allow.

(3) No refund shall be granted in accordance with this section where the amount overpaid is less than ten tambala.

Refund of cash deposits

101.—(1) No refund of any cash deposited as security shall be granted unless—

(*a*) an application in the prescribed manner for such refund is received by the proper officer within the prescribed period; and

(*b*) the applicant proves to the satisfaction of the Controller that he has complied with all of the provisions of this Act and of any conditions which were imposed in respect of the security.

(2) Any cash deposited as security and not refunded in accordance with subsection (1) shall be forfeited.

Goods returned for destruction or further manufacture

102. Subject to such conditions and limitations as may be prescribed, there shall be granted to the holder of an excise licence a refund of excise duty and surtax paid by him on any goods manufactured by him which, after being found defective or otherwise unsuitable for consumption—

(*a*) are returned to his entered premises for destruction or for further manufacture and are so destroyed or taken into stock for further manufacture; or

(*b*) are, with the approval of the Controller, destroyed at any other place under such conditions as the Controller may impose.

Deficiencies in goods subject to customs control

103.—(1) Subject to the provisions of the customs laws, where the Controller is satisfied that any deficiency in goods subject to customs control has been occasioned—

(*a*) by natural wastage; or

(*b*) in the course of, or by reason of, the process of manufacture or the storage or the manipulation of the goods; or

(*c*) by accident or other similar cause,

and that the goods have not gone into consumption, that the deficiency is not excessive and that every reasonable effort was made and precaution taken to prevent it, he shall grant a refund or remission of the duty paid or payable in respect of such deficiency.

(2) Where any deficiency arises in any goods subject to customs control and the Controller is not satisfied in accordance with subsection (1) the owner shall, if the duty has not been paid on the goods, enter and pay duty in respect of such deficiency forthwith upon demand being made by the proper officer.

(3) Nothing in this section shall prejudice the right of the Controller to institute proceedings for any infringement of the customs laws which gave rise to any deficiency.

Surpluses in goods subject to customs control

104. Where any surplus is found in goods subject to customs control the owner shall forthwith upon demand being made by the proper officer enter and pay duty on so much of the surplus as is not accounted for to the satisfaction of the Controller:

Provided that nothing in this section shall prejudice the right of the Controller to institute proceedings for any infringement of the customs laws which gave rise to such surplus.

Destruction of goods subject to customs control

105. If the owner of any goods subject to customs control wishes to destroy such goods or any portion of them, the Controller may, upon written request by the owner, allow such destruction under the supervision of an officer and upon being satisfied that the goods concerned or any portion of them have been destroyed shall remit or refund the duty payable or paid on such goods, but without prejudice to the claim of duty on such portion of the goods as remain. If the destruction takes place in any place other than a customs area the owner shall pay such fees as may be prescribed in respect of the attendance of an officer.

Bringing into force and publication of agreements

106.—(1) Subject to the provisions of subsection (2) the provisions of any agreement concluded by the Government with the government of any other country whereby concessions are required to be allowed in respect of goods grown, produced or manufactured in or imported from such other country, may be brought into force by the Minister by notice published in the *Gazette* as from such date, which may be retrospective, as he may in such notice declare.

(2) Every agreement brought into force under the powers conferred by subsection (1) shall be published in the *Gazette* on or before the date on which the notice referred to in subsection (1) is so published.

(3) The Minister shall lay a copy of an agreement referred to in subsection (1) before the National Assembly—

(*a*) in the case of an agreement concluded when the National Assembly is meeting, within twenty-eight days of the conclusion of the agreement or, if before the copy of the agreement is so laid the National Assembly is dissolved or is prorogued or adjourned for more than seven days, before the end of the next meeting of the National Assembly; and

(*b*) in the case of an agreement concluded when the National Assembly is not meeting, within twenty-eight days of the next meeting of the National Assembly, or, if before the copy of the agreement is so laid the National Assembly is dissolved or is prorogued or adjourned for more than seven days, before the end of the next meeting of the National Assembly.

(4) The National Assembly may, before it is next dissolved or is next adjourned or prorogued for more than seven days, by resolution decline to approve an agreement a copy of which is laid before it in accordance with subsection (3) and may resolve that it shall cease to be of force from the day on which such resolution is approved. Otherwise, the agreement shall be of full force and effect.

Duties under agreements may be suspended etc.

107. Any suspension, rebate, remission or refund of customs duty granted in accordance with section 96 shall be extended to any corresponding special rate of duty which may be applicable under any agreement to goods grown, produced or manufactured in any particular country unless the Minister by notice published in the *Gazette* otherwise directs.

Agreements to prevail

108. The provisions of any agreement brought into force in accordance with section 106 shall have force and effect notwithstanding anything inconsistent therewith contained elsewhere in the customs laws.

Burden of proof in respect of claims

109. Where any claim is made for exemption from or suspension, drawback, rebate, remission or refund of any duty, fee or charge in accordance with the provisions of this Act, the burden of proof shall lie upon the claimant to show that he is entitled to such exemption, suspension, drawback, rebate, remission or refund.

Classification of goods

110.—(1) The interpretation of and classification of goods in any tariff shall be governed in accordance with any principles set out in such tariff.

(2) Save as provided in Part XIV, if any practice relating to the interpretation or classification of any goods for the purpose of the liability to duty is altered with the result that less duty is thereafter charged on goods of the same class or description, no person shall thereby become entitled to any refund of any duty paid before such alteration took place.

25 of 1988
14 of 2001

PART XIIA

Surtax

[Sections 110A-110R repealed by section 65 of the Surtax Act, Cap.42:02]

PART XIII

Value, Quantity and Origin

Value of imported goods
25 of 1988

111.—(1) The proper officer may value or cause to be valued, in accordance with the provisions of this Act, any imported goods and such valuation shall be presumed to be the correct valuation of the goods until the contrary is proved.

25 of 1988
10 of 2014

(2) The value of imported goods shall be determined in accordance with the provisions of Schedule A and customs duties *ad valorem or ad rem* shall be paid on that value.

Appeals against valuation

112. If an owner or importer is of the opinion that goods have been incorrectly valued under section 111 (1) he may appeal to the Controller.

113. The rate of exchange to be used for the conversion of any value expressed in the currency of a foreign country shall be the rate of exchange, as the Controller may determine after consultation with the Reserve Bank of Malaŵi, at the time when the duty becomes payable.

Rate of exchange
3 of 1993

114.—(1) The proper officer may value or cause to be valued, in accordance with the provisions of this Act, any exported goods, and such valuation shall be presumed to be the correct valuation of the goods until the contrary is proved.

Valuation of exported goods
10 of 2014

(2) The value of exported goods shall be determined in accordance with the provisions of Schedule B to this Act.

115.—(1) Unless otherwise specially provided, where goods are subject to duty by weight or quantity, such weight or quantity shall be the net weight or quantity, and duty shall be charged in proportion on any fraction of a whole unit of such weight or quantity. The weight of any goods may be ascertained by weighing net or by deducting from the gross weight the actual tare or an allowance therefor. The Controller may fix such allowances for tare and may, in his discretion, grant such allowances subject to such conditions as he may impose.

Weights and measures

(2) Unless otherwise specially provided, where the duty or the rate of duty on goods is determined by reference to weight or quantity, the Controller may determine that a package of such goods shall be deemed to contain a specified weight or quantity of such goods.

(3) Unless otherwise specially provided, a package of a declared weight or quantity, containing not more than such weight or quantity, shall be deemed to contain not less than such weight or quantity.

116. Unless otherwise specially provided, all spirits shall be deemed to be of such strength as is ascertained by such tests as are prescribed.

Strength of spirits
9 of 1979

117. For the purposes of this Act, the country of origin of any goods, shall be deemed to be, in the case of goods not manufactured, the country in which such goods were grown or produced, or, in the case of manufactured goods, the country in which the last process of manufacture was performed.

Origin of goods

Specified country content of goods on which preferential rates of duty are allowed

118.—(1) The rebates of duty mentioned in section 89 shall be allowed only—

(*a*) in respect of goods which have been grown or produced in a specified country; or

(*b*) in the case of manufactured goods, in respect of—

(i) goods which have been subjected to the last process of manufacture in a specified country and contain not less than such proportion of the material or labour of that specified country as may be specified in the customs tariff; or

(ii) goods which have been subjected, in a specified country in which the last process of manufacture has been performed, to such processes of manufacture as may be specified in the customs tariff.

(2) The content referred to in subsection (1) (*b*) (i) may be fixed at varying scales for different classes of goods and shall be related to the factory or works cost of the finished articles.

(3) This section shall apply in respect of any goods covered by any agreement brought into force in accordance with section 106 unless stated to the contrary in such agreement.

Burden of proof of origin

119. When, for any purpose under the provisions of this Act, it is necessary to prove the country of origin of any goods, the onus of proof of such origin shall be upon the owner or importer of such goods.

PART XIV

Disputes as to Amount of Duty Payable

Appointment of Special Referee

120. For the purpose of hearing and determining appeals under section 121 the Minister shall appoint a Special Referee.

Determination of disputes

121.—(1) If a dispute arises between the owner of any goods and the Controller as to the amount of duty payable on those goods, the owner may, if he pays the amount demanded as duty by the Controller or furnishes security to the satisfaction of the Controller for the payment of that amount, within three months after the payment or furnishing of security, appeal to the Special Referee against such demand.

(2) If a dispute arises as to the amount of duty payable in respect of goods which a person proposes to import or manufacture he may appeal to the Special Referee at any time prior to such importation or manufacture but if he imports or manufactures the goods before the dispute has been determined he shall pay such amount of duty as the Controller shall demand or give security therefor.

(3) A notice of appeal shall be in writing and shall state clearly and specifically the grounds of the appeal.

(4) The date of the hearing of any appeal shall be determined by the Special Referee.

(5) Where the appeal arises solely as a result of the Controller's classification of goods for tariff purposes the Special Referee shall publish in the *Gazette* the date of the hearing of the appeal at least one month prior to that date, and any person who satisfies the Special Referee that he has a legitimate trade interest in the appeal and who not later than ten days before that date enters an appearance in the manner specified in the notice may be heard on the appeal.

(6) On the hearing and determination of any appeal the Controller, or any person authorized by him, may appear in support of his decision, and the appellant and any person who has entered an appearance in accordance with the provisions of subsection (5) may appear either in person or by a legal practitioner.

(7) The Special Referee may on any appeal confirm or set aside the demand or assessment made by the Controller and, if he sets aside such demand or assessment, shall refer the matter back to the Controller with such observations as he considers proper.

(8) Where the Special Referee refers the matter back to the Controller, the Controller shall make a new demand or assessment and if such new demand or assessment is for a lesser amount of duty or no duty, then notwithstanding the provisions of section 100 any amount of duty overpaid shall be repaid by the Controller.

Procedure

122. The procedure on any appeal shall be as determined by the Special Referee, who may permit evidence to be led by the Controller, the appellant and any person who has entered an appearance in accordance with the provisions of section 121 (5).

PART XV

Securities

Controller may require security

123. The Controller may require the owner of any goods subject to customs control to give security in respect of such goods for the protection of the revenue and compliance with the customs laws, and, pending the giving of any such security, the Controller may refuse to permit their unloading, removal, delivery or exportation.

Securities generally

124.—(1) Where any security is required to be given under the customs laws, then such security may, as the Controller may require, be given either—

(*a*) by cash deposit;

(*b*) by bond in such sum and subject to such conditions and with such sureties as the Controller may reasonably require;

(*c*) partly by cash deposit and partly by bond; or

(*d*) with the special permission of the Controller and subject to such conditions as he may impose, by bank or other guarantee.

(2) Where any security is required to be given under the customs laws for any particular transaction, such security may be given to cover any other similar transactions which the person giving such security may enter into within such period as the Controller may approve.

(3) The Controller may refuse to recognize any surety to any bond required under the customs laws.

(4) Any bond required to be given under the customs laws shall be so framed that the person giving such bond, and any surety thereto, is bound to the Controller for the due performance of the conditions of such bond, and any such bond or any guarantee may, unless sooner discharged by the due performance of the conditions thereof, be discharged by the Controller on the expiration of three years from the date thereof, but without prejudice to the right of the Controller at any time to require new security prior to discharge, or to require that the form or amount of such security shall be altered in such manner as he shall determine.

(5) Where any bond or guarantee given under the customs laws is discharged, the Controller shall cause such bond or guarantee to be cancelled and an endorsement to that effect shall be made thereon.

(6) Any bond or guarantee given under the customs laws shall, notwithstanding that any such bond or any surety thereto or any such guarantee is given by any person under the age of twenty-one years, be valid and enforceable as if it were so given by a person of full age.

(7) The conditions of any security given under the customs laws and the endorcement thereof shall not be construed as exempting any person from any prosecution to which he may be liable under the customs laws or any other written law in respect of matters provided in such conditions.

(8) Unless otherwise provided therein, the subscribers to any bond or guarantee executed in terms of this Act shall be liable thereon jointly and severally for the full amount stated therein.

Provisions relating to sureties

125.—(1) Without prejudice to any right of a surety to any bond given under the customs laws against the person for whom he is surety, a surety shall, for all the purposes of any bond, be deemed to be the principal debtor and accordingly the surety shall not be discharged, nor his liability affected, by the giving of time for payment, or by the omission to enforce the bond for any breach of any conditions thereof, or by any other act which would not have discharged the bond if he had been the principal debtor.

(2) If any person being a surety—

(*a*) dies;

(*b*) becomes a bankrupt or enters into any arrangement or composition with, or for the benefit of, his creditors; or

(*c*) departs from Malaŵi without leaving sufficient property therein to satisfy the whole amount of the bond,

the Controller may require the person giving the bond to enter into new security.

Enforcement of bond or guarantee
11 of 2003

126.—(1) Where the conditions of any bond or guarantee have not been complied with, the Controller may take legal proceedings for the enforcement thereof.

(2) If any goods which have been lawfully permitted to be removed for any purpose without payment of duty are unlawfully taken from any conveyance or place before that purpose is accomplished, the Controller may if he sees fit take legal proceedings for the enforcement of any bond or guarantee given in respect thereof notwithstanding that any time set out in the bond or guarantee for accomplishing that purpose has not expired.

(3) Where any proceedings are taken under this section for the enforcement of a bond, then production of the bond shall, without further proof, entitle the Controller to judgment for the stated liability, which shall be deemed to be liquidated damages calculated to reimburse the Government for loss occasioned by breach of the conditions of the bond, unless the person against whom such proceedings are taken proves compliance with all the conditions of the bond, or that the bond or surety was not executed by him, or that he has been leased from the provisions of the bond or surety, or that he has already made satisfaction for the full amount thereof.

(4) Bonds and guarantees executed under any of the legislation repealed under this Act shall, notwithstanding such repeal, remain in force for the period during which they would have remained in force but for such repeal or until varied, replaced, or cancelled under this Act.

11 of 2003

(5) Notwithstanding any legal proceedings that the Commissioner-General may take in respect of any bond or guarantee, the Commissioner-General may require that the liability under the bond be liquidated by guarantor.

PART XVI
Agents

Authorized agents

127.—(1) Where under the provisions of the customs laws the owner of any goods or conveyance or the licensee of any bonded warehouse or the holder of an excise licence (hereinafter collectively referred to in this Part as "the principal") is required or authorized to perform any act, then such act may be performed on his behalf by an authorized agent:

Provided that the Controller may direct that certain matters be dealt with exclusively by the principal and the performance of such matters by an authorized agent shall not be recognized.

(2) A person shall not be an authorized agent unless he is—

(*a*) exclusively in the employment of his principal; or

(*b*) a customs agent,

and, in either case, such person is authorized in writing by the principal, either generally or in relation to any particular act, to perform the act in question on behalf of the principal.

(3) An officer may require from any person purporting to be an authorized agent the production of written authority of his principal and in default of the production of such authority such officer may refuse to recognize the person as an authorized agent.

Customs agents
8 of 2005
28 of 2010

128.—(1) The Commissioner General may, on application, license persons as customs agents for the purpose of transacting business with the Malaŵi Revenue Authority on behalf of other persons.

(2) An application for a licence under subsection (1) shall be subject to such conditions as may be prescribed.

(3) An applicant for a licence, or a licensee under this section, shall furnish security; and pay such fees as may be prescribed.

11 of 2015
13 of 2016

(4) The Commissioner General may, in the course of further investigations of any alleged offence, issue an administrative penalty such as suspension of the operations of a customs agent to a customs agent suspected of having violated any conditions attached to a licence of a customs agent.

11 of 2015
13 of 2016

(5) The Commissioner General may issue a penalty or revoke a licence that was issued to a customs agent where he has established that such agent has violated the conditions attached to his licence.

Appointment of Advisory Committee and Appeals Committee
28 of 2010

128A.—(1) The Commissioner General shall, every two years, appoint an Advisory Committee comprising officers of the Malaŵi Revenue Authority, whose functions shall include—

(*a*) conducting interviews for persons wishing to transact business of customs agents;

(*b*) ensuring compliance by customs agents with tax laws and customs procedures;

(*c*) assessing applications for renewal of customs agents licence; and

(*d*) performing such other functions as may be assigned to the Committee by the Commissioner General.

(2) The Minister shall, every two years, appoint an Appeals Committee comprising—

(*a*) three officers of the Malaŵi Revenue Authority;

(*b*) one representative of the Malaŵi Confederation of Chambers of Commerce and Industry;

(*c*) two representatives of any association of customs agents; and

(*d*) one representative of the Ministry of Industry and Trade.

(3) The Appeals Committee shall be responsible for considering appeals from an aggrieved customs agent or an applicant for a licence for a customs agent.

Master may appoint agent

129.—(1) The master of any aircraft or vessel may, instead of himself performing any act, including the answering of questions, required by or under this act to be performed by him, appoint an agent on his behalf and at his risk to perform any such act, and any such act performed by such agent shall in all respects and for all purposes be deemed to be the act of the master, so, however, that

the personal attendance of the master may be demanded at any time by the proper officer at any port.

(2) An agent appointed under the terms of subsection (1) shall furnish security to the satisfaction of the Controller for the protection of the revenue and compliance with the customs laws.

Liability of agent

130. Any authorized agent or an agent appointed under section 129 who performs any act on behalf of his principal or of the master of an aircraft or vessel shall, for the purposes of the customs laws, be deemed to be such principal or master in respect of such act and shall, accordingly be personally liable for the performance of all related acts and obligations including the payment of any duty and the answering of any questions which may be required of the principal or master under the provisions of the customs laws, and may be prosecuted for any offence committed by the principal or master as if he had himself committed the offence:

Provided that nothing herein contained shall relieve the principal or master from liability for the performance of any act or obligation under the customs laws or from prosecution under the customs laws.

Liability of principal for acts of other persons

131. Any principal or master of an aircraft or vessel who authorizes any other person to act for him for any purpose under the customs laws shall be liable for the acts and statements of such other person in respect of that authorization and may accordingly be prosecuted for any offence committed by such other person as if the principal or master had himself committed the offence:

Provided that—

(*a*) nothing herein contained shall relieve such other person from any liability to prosecution in respect of any such offence;

(*b*) neither the principal or master nor the other person shall be sentenced to imprisonment for any such offence unless it is shown that he was knowingly concerned in the act which constituted such offence.

PART XVII

Offences and Penalties

Offences in respect of persons

132. Any person who—

(*a*) being required by or in accordance with the customs laws to answer any question or supply any information fails or neglects to do so or gives or makes any untrue, incorrect, false or incomplete answer or representation;

(*b*) being required by or in accordance with the customs laws to perform any act or to comply with any provision or condition thereof, fails or neglects to do so;

(*c*) assaults, abuses, resists, obstructs, hinders or interferes with any officer or police officer, or any person aiding or assisting an officer or police officer, in the exercise of his powers or the performance of his duties under the customs laws;

(*d*) rescues any person apprehended for any offence against the provisions of the customs laws or who prevents such apprehension;

(*e*) counterfeits or without authority uses any seal, signature, initials or other mark of, or used by, any officer for any purpose relating to the customs laws;

(*f*) removes, breaks, damages, defaces, destroys, cuts away, casts adrift, maliciously shoots at, or in any way interferes or tampers with any lock, seal, sign, mark, fence, barrier, rope, chain, anchor, buoy, conveyance or other thing used by the Department for any purpose under the customs laws;

30 of 1969

(*g*) fails to stop at a customs barrier established in accordance with section 16 (7);

(*h*) falsely holds himself out to be an officer;

(*i*) uses any place as a customs area unless it is properly licensed, appointed or approved under the customs laws as such; or

(*j*) conspires with another to commit an offence against the customs laws,

shall be guilty of an offence.

Accessories etc.

133. Any person who—

(*a*) is an accessory before or after the fact to the commission of;

(*b*) counsels or procures any other person to commit; or

(*c*) attempts, causes, permits, aids, connives at or abets the commission of,

any offence against the customs laws shall be deemed to have committed such offence and shall be punishable as if he had himself committed such offence.

Offences in respect of goods
30 of 1969
11 of 2003

134. Any person who—

(*a*) imports, exports, carries coastwise or in transit, loads, unloads, removes, possesses or conveys goods contrary to the provisions of the customs laws;

(*b*) imports or exports any goods in pursuance of any document or computer records and other electronic data in which a false declaration has been made;

(*c*) except in accordance with the customs laws, buys, receives, harbours, offers for sale or deals in, or has in his possession any goods subject to customs control;

(*d*) except in accordance with the customs laws, conceals, moves, alters, damages, destroys, removes, disposes of or in any way interferes or tampers with goods subject to customs control;

(*e*) offers for sale or deals in or possesses any goods under the pretence that they are smuggled goods whether or not they are in fact smuggled goods,

shall be guilty of an offence.

Offences in respect of documents, books, licences, etc. 11 of 2003

135.—(1) Any person who—

(*a*) makes or signs any declaration, bill of entry, certificate or other document or computer records and other electronic data made for submission to an officer which is untrue or incorrect;

(*b*) being required by or in accordance with the customs laws to produce any book, document or computer records and other electronic data or other thing within his possession or control, fails or neglects to do so;

(*c*) being required by, or in accordance with, the customs laws to keep or submit any book or document or computer records and other electronic data—

(i) fails or neglects to keep or submit such book or document or computer records and other electronic data;

(ii) fails or neglects to make an entry in such book or document or computer records and other electronic data in good time;

(iii) with intent to deceive erases or obliterates any entry in such book or document or computer records and other electronic data;

(iv) with intent to deceive mutilates or tears any page or leaf in or from such book or document or computer records and other electronic data;

(v) with intent to deceive destroys, conceals or makes away with any such book or document or computer records and other electronic data;

(vi) forges, falsifies or frames so as to deceive any entry in such book or document or computer records and other electronic data;

(vii) procures or attempts to procure any such book or document or computer records and other electronic data which is forged, falsified or framed so as to deceive;

(*d*) knowingly uses or attempts to use for any purpose of the customs laws any book or document or computer records and other electronic data which has been forged, falsified or framed so as to deceive;

(*e*) with intent to deceive, brings into Malaŵi or has in his possession any blank or incomplete invoice, bill head or other similar document or computer records and other electronic data capable of being filled out and used as an invoice for imported goods; or

(*f*) uses any licence, permit, certificate or other document or computer records and other electronic data issued under the customs laws in any manner contrary to the provisions or conditions of the customs laws or of such licence, permit, certificate or other document or computer records and other electronic data;

13 of 2016

(*g*) makes a payment of duty by cheque and the cheque is dishonoured by the bank,

shall be guilty of an offence.

(2) For the purposes of this section, the forgery of a document or computer records and other electronic data is the making of a false document or computer records and other electronic data, knowing it to be false, with the intention that it shall in any way be used or acted upon as genuine whether within Malaŵi or not, and making a false document or computer records and other electronic data includes making any false material alteration in a genuine document or computer records and other electronic data, whether by addition, insertion, obliteration, erasure, removal, or otherwise.

Offences in respect of conveyances

136.—(1) Any person who uses a conveyance having a false bulkhead, false bow or stern, double side or bottom, or any secret or disguised place, adapted for the purpose of smuggling goods, shall be guilty of an offence unless he proves that he was unaware of such condition of such conveyance.

(2) Where, on any conveyance being boarded by an officer, any goods subject to customs control are found therein, and on such conveyance being subsequently boarded, whether by the same or another officer, such goods or any part thereof are no longer therein or additional goods subject to customs control are found therein, then unless the master of such aircraft or vessel or the person in charge of such vehicle accounts for such goods to the satisfaction of the officer or proves that he took all reasonable precaution to prevent the removal or addition of such goods, such master or person in charge shall be guilty of an offence.

Offences by masters or persons in charge of conveyances

137.—(1) Whenever any lock, mark or seal has been placed by an officer upon any part of a conveyance or upon any goods on board any conveyance the master of the aircraft or vessel or the person in charge of the vehicle, as the case may be, shall ensure that such lock, mark or seal

is not opened, altered or broken except with the authority of an officer and if he fails so to ensure he shall be guilty of an offence unless he proves that he took all reasonable precautions to prevent such act.

(2) If—

(*a*) any conveyance is used in smuggling or in the carriage of smuggled goods;

(*b*) any vessel fails to stop for boarding when lawfully required to do so;

(*c*) any ship fails to depart from Malaŵi within twenty-four hours after being so required by an officer; or

(*d*) any goods on any conveyance are thrown overboard, staved or destroyed to prevent seizure,

the master of the aircraft or vessel or the person in charge of the vehicle, as the case may be, shall be guilty of an offence unless he proves that he took all reasonable precautions to prevent the act which constituted the offence.

Offences in respect of customs areas

138. Any person who—

(*a*) uses, or permits to be used, any customs area in contravention of any of the terms of the licence, appointment or approval for such customs area;

(*b*) not being an officer in the course of his duty, or the licensee or owner of a customs area, or the authorized employee of such licensee or owner, opens or enters any part of that customs area without lawful excuse or without the permission of the proper officer;

(*c*) opens or enters any part of a customs area contrary to the orders of an officer or refuses to leave any part of a customs area when lawfully directed to do so by an officer; or

(*d*) removes any goods from a customs area without the permission of the proper officer,

shall be guilty of an offence.

Offences by or in relation to officers

139.—(1) Any officer who—

(*a*) directly or indirectly asks for or takes, in connexion with any of his duties, any payment or other reward whatsoever, whether pecuniary or otherwise, or any promise or security for such payment or reward, not being a payment or reward which he is lawfully entitled to claim or receive; or

(*b*) enters into or acquiesces in any agreement or conspires with any person to do, abstain from doing, permit, conceal, or connive at, any act or thing whereby the revenue is or may be defrauded, or which is contrary to the provisions of the customs laws or the proper execution of his duty; or

(*c*) discloses, except for the purposes of the customs laws, or when required to do so as a witness in any court, or with the approval of the Controller, any information relating to any person acquired by him in the performance of his duties,

shall be guilty of an offence.

(2) Any person who, without lawful authority—

(*a*) directly or indirectly offers or gives to any officer any payment or reward whatsoever, whether pecuniary or otherwise, or any promise or security for any such payment or reward; or

(*b*) proposes or enters into any agreement or conspires with any officer,

in order to induce him to do, abstain from doing, permit, conceal or connive at, any act or thing whereby the revenue is or may be defrauded, or which is contrary to the provisions of the customs laws or the proper execution of the duty of any officer, shall be guilty of an offence.

Special offences in respect of excise
25 of 2011

140. Any person who—

(*a*) manufactures any excisable goods contrary to the provisions of the customs laws;

(*b*) is found without lawful excuse in any place where the illegal manufacture of excisable goods is being carried out;

(*c*) without lawful authority deals in or has in his possession, custody or control any manufactured or partially manufactured excisable goods upon which duty has not been paid;

(*d*) without lawful authority or payment of any duty which may be due, imports any excisable goods after they have been exported;

(*e*) imports, keeps, possesses or uses any still, the keeping, possession or use of which is not authorized in accordance with a certificate issued by the Controller, or an excise licence;

(*f*) supplies the means or materials for, or assists in establishing, repairing, maintaining or working any still, the keeping and using of which has not been authorized under the customs laws, knowing at the time when he so supplies or assists that it was such a still;

(*g*) contravenes the provisions of section 82 (f);

(*h*) fails to pay excise tax;

(*i*) makes a late payment of excise tax;

(*j*) makes an underpayment of excise tax;

(*k*) makes a late submission of a return;

(*l*) fails to submit a return;

(*m*) submits an incorrect return; or

(*n*) issues a cheque that is subsequently dishonoured by a bank, regardless of the reason for the bank dishonouring the cheque,

shall be guilty of an offence.

Offences by officers of corporations, etc.

141. Any contravention of the customs laws by a person acting in his capacity as a director, manager, secretary or other similar officer or a partner of a company, firm, society or other body of persons shall be deemed to be a contravention by such company, firm, society or other body of persons as the case may be.

142.—(1) Any person guilty of an offence under this Act with intent to defraud the Government of any duty or to evade any restriction or prohibition on the importation or exportation of any goods shall— Penalties for certain offences 5 of 1972 37 of 1998

(*a*) in the case of dutiable goods which are not prohibited goods, be fined not less than three times and not more than ten times the amount of the duty, or K100,000, whichever is the greater, and shall be liable to imprisonment for three years; 11 of 2015

(*b*) in the case of prohibited goods, be fined not less than three times and not more than five times the amount of the duty, or K100,000 whichever is the greater, and shall be liable to imprisonment for three years; 11 of 2015

(*c*) in the case of an offence punishable under paragraphs (*a*) or (*b*), where such person has previously been convicted of such an offence the minimum fine shall be double that otherwise provided for;

(*d*) in the case of goods which are neither dutiable nor prohibited be liable to the penalties provided for in section 143;

(*e*) in the case of taxable goods or taxable services, to be fined not less than three times and not more than ten times the amount of the duty, or K100,000, whichever is the greater, and shall be liable to imprisonment for three years. 37 of 1998 11 of 2015

(2) Where a payment of duty has been made by cheque and the cheque is dishonoured by the bank, a penalty equal to thirty per cent of the amount on the cheque shall be charged and collected summarily together with amount of duty in cash. 13 of 2016

(3) Notwithstanding any other provisions of the customs laws the amount of duty or the value of goods for the purposes of this section and of sections 143, 146 (5) and 162 may be determined by the Controller, and a certificate of such amount of duty or value under the hand of the Controller shall be *prima facie* evidence of the amount of duty or the value of such goods. 13 of 2016

143. Any person guilty of an offence against this Act for which no penalty is otherwise specifically provided shall be liable to a fine of K100,000 or to three times the value of the goods in respect of which the offence was committed, whichever is the greater, and to imprisonment for three years. General penalty 37 of 1998 11 of 2015

143A. Any person who commits an offence under section 140 (*g*) shall be liable on conviction to a fine of five times the Excise or revenue involved in the commission of the offence and to imprisonment for two years. Penalty for offences committed under s. 140 12 of 2008

Administrative penalties 25 of 2011

143B. Any person who contravenes—

(*a*) section 140 (*h*) shall be liable to pay the excise tax plus a penalty of twenty per cent of the excise tax;

(*b*) section 140 (*i*) shall be liable to pay the total excise tax plus a penalty of twenty per cent of the excise tax, and an additional penalty of five per cent of the total excise tax due, for every month that lapses after the month when payment of the total excise tax became due;

(*c*) section 140 (*j*) shall be liable to pay the total excise tax underpaid plus a penalty of twenty per cent of the underpaid excise tax;

(*d*) section 140 (*k*) shall be liable to a penalty of K20,000, and K1,000 for each additional day;

(*e*) section 140 (*l*) shall be liable to a penalty of K100,000;

(*f*) section 140 (*m*) shall be liable to a penalty of twenty per cent of the total excise tax which would otherwise have been payable if the return was correct; and

(*g*) section 140 (*n*) shall be liable to pay in cash or through a bank certified cheque the total amount referred to drawer plus a penalty of thirty per cent of the value of the cheque.

Offences cognizable

144. All offences under the customs laws shall be cognizable to the police.

PART XVIII

Forfeiture, Seizure, Embargo and Abandonment

Goods liable to forfeiture

145.—(1) Any goods in respect of which an offence has been committed under the customs laws shall be liable to forfeiture.

(2) Any conveyance which has been used without lawful authority for the importation, landing, removal, conveyance, exportation or carriage coastwise or in transit of goods liable to forfeiture, shall be liable to forfeiture:

Provided that no conveyance engaged in any public service for the conveyance of passengers or goods and operated in accordance with a public timetable shall be liable to forfeiture except on the specific authority of the Minister.

13 of 1973

(3) In addition to any other forfeiture under this section—

(*a*) where any manufacturer of dutiable goods is guilty of an offence under the customs laws in respect of those goods, all goods in respect of which excise duty or surtax is payable or has been paid and all substances, spirits, mixtures or compounds used in the preparation of dutiable goods found in the possession of the manufacturer or on his premises, and all machinery, utensils and materials for the manufacture of such goods shall be liable to forfeiture;

(*b*) where any goods are liable to forfeiture, then the package, cask, receptacle or utensil in which such goods are contained, and all the contents of such package, cask, receptacle or utensil shall also be liable to forfeiture therewith; and

(*c*) any security retained by the Controller in respect of any goods or conveyance liable to forfeiture shall itself be liable to forfeiture.

Seizure of goods
5 of 1972

146.—(1) An officer or police officer may seize any goods or conveyance which he reasonably suspects may be liable to forfeiture.

(2) Where any goods or conveyance are seized under the customs laws, the proper officer shall, within 30 days of such seizure, give notice to the owner in writing of such seizure:

Provided that no notice shall be required where—

(*a*) within such period of 30 days either a person has been prosecuted for an offence by reason of which such goods or conveyance were seized or such offence has been dealt with under Part XIX; or

(*b*) no owner can with reasonable diligence be found.

(3) Notice of seizure given to any person coming within the definition of owner in respect of the goods or conveyance seized shall be deemed to be notice to all persons coming within such definition.

(4) Any goods or conveyance which have been seized shall, as soon as convenient, be delivered into the care of the proper officer or, in the event of their being of such nature that they cannot be so delivered, the officer seizing such goods or conveyance may declare them as having been so delivered in the place where he found them.

(5) If any goods or conveyance which are liable to forfeiture cannot be found or recovered, the Controller, without delegation, may declare that the person from whom such goods or conveyance would have been seized shall deposit with the Controller a sum of money equal to the duty paid value of such goods or conveyance at that time and the Controller may recover such amount by civil

action in a court of competent jurisdiction. Any such amount so deposited or recovered shall be dealt with as if it were itself such seized goods or conveyance.

Detention and disposal of seized goods

147.—(1) Where any goods or conveyance are seized in accordance with the customs laws, then—

(*a*) they shall be restored immediately to the owner if proceedings for an offence in respect thereof are time-barred;

(*b*) if any person is prosecuted for an offence by reason of which such goods or conveyance were seized, such goods or conveyance shall be detained until the determination of such prosecution and thereupon dealt with in accordance with section 159;

(*c*) in any other case, such goods or conveyance shall be detained until 30 days after the date of the seizure or the giving of any required notice of seizure, whichever is the later, and, if no claim is made therefor in accordance with subsection (2), such goods or conveyance shall be forfeited:

Provided that where any goods are seized which are of a perishable nature or are animals, the Controller, without delegation, may direct that such goods be sold forthwith in such manner as he may deem fit and the net proceeds of such sale, after the deduction of the duty, if any, and the expenses of such sale, shall be retained and dealt with as if they were such seized goods.

(2) Where any goods or conveyance are seized in accordance with the customs laws and no proceedings have been instituted in respect of an offence by reason of which such goods or conveyance were seized, the owner thereof may claim such goods or conveyance within 30 days of the date of the seizure or of the giving of any required notice of seizure, whichever is the later, by notice of claim in writing to the Controller.

(3) The Controller may within three months of the date of seizure or of the giving of any notice of seizure, whichever is the later, permit any goods or conveyance which have been seized in accordance with the customs laws and for which a notice of claim in accordance with subsection (2) has been received by him—

(*a*) to be restored conditionally or unconditionally to the claimant; or

(*b*) to be delivered to the claimant upon the payment by him of any duty payable; or

(*c*) to be delivered to the claimant upon the giving by him of such security as the Controller may think appropriate for the payment of the full duty-paid value of such goods or conveyance in the event of their forfeiture, and upon compliance with and subject to such conditions as the Controller may impose.

(4) If, within 30 days after the making of a claim for any goods or conveyance in accordance with subsection (2), the Controller does not restore or deliver them to the claimant or delivers them upon the giving of security under subsection (3) (*c*), the claimant may, within three months of the date of seizure, or of the giving of any required notice of seizure, whichever is the later, institute proceedings for the recovery of such goods or conveyance or of any security given therefor, giving notice in writing to the Controller of the institution of such proceedings.

(5) Where a claimant does not institute proceedings in accordance with subsection (4) such goods or conveyance or any security given therefor shall be forfeited.

(6) Where a conveyance to be restored or delivered to the claimant under subsection (3) has a false bulkhead, false bow or stern, double side or bottom, or any secret or disguised place, adapted for the purpose of smuggling goods, the owner of such conveyance shall, as a condition of such restoration or delivery of the conveyance to him remove such false bulkhead, false bow or stern, double side or bottom or such secret or disguised place to the satisfaction of the Controller and if the owner refuses, fails or neglects to effect such removal within such reasonable period as the Controller may direct, the conveyance shall be forfeited.

Forfeited goods

148. Where any goods are forfeited under the customs laws such goods shall, without compensation, vest in the Government and may be sold, destroyed or otherwise disposed of as the Controller thinks fit. If the goods are sold the Controller may make such payments out of the proceeds of the sale as he thinks fit in respect of expenses incurred in the sale, carriage charges claimed by and due to any carrier, or warehouse rent, storage charges and porterage charges :

Provided that any claim for such payment shall be made in writing and shall be delivered to the Controller not later than six months after the sale of the goods.

Embargo on goods

149.—(1) Where an officer has reason to believe that an offence has been committed under the customs laws in respect of any goods which have been released from customs control and in respect of which any proceedings could be commenced under the customs laws, he may, instead of seizing such goods, place an embargo on them regardless of where or in whose possession such goods are found.

(2) Where an embargo has been placed on goods by an officer, that officer shall forthwith give notice to the owner in writing of such embargo.

(3) Notice of embargo given to any person coming within the definition of owner in respect of the goods upon which the

embargo has been placed shall be deemed to be notice to all persons coming within such definition.

(4) Except with the permission in writing of the proper officer no person shall remove or in any way deal with goods upon which embargo has been placed until the embargo has been withdrawn in writing by the proper officer.

Abandonment of goods

150. Where any goods are subject to customs control the Controller may, subject to such conditions as he may impose, permit the owner of such goods to abandon them to the Department and in that case the Controller shall, if so requested at the time, remit or refund the duty payable or paid on such goods, as the case may be. Upon such abandonment such goods shall, without compensation, vest in the Government and may, at the expense of the owner thereof, be sold, destroyed or otherwise disposed of in such manner as the Controller may direct :

Provided that this section shall not apply to goods which are seized or forfeited or which are placed under embargo under section 149, or in respect of which an offence has been committed.

Saving

151. For the avoidance of doubt, any action taken in accordance with this Part shall not—

(*a*) prevent or effect the institution of any proceedings or any action taken under any written law against any person from whom goods or any conveyance are liable to forfeiture or have been seized, or in respect of any such goods or conveyance;

(*b*) prevent the settlement of any case by the Controller under Part XX;

(*c*) affect liability for the payment of any duty in respect of goods seized or forfeited;

(*d*) entitle any person to claim any refund or remission of duty paid or payable in respect of goods seized or forfeited or otherwise dealt with under this Part; or

(*e*) authorize the sale or disposal of prohibited goods except in accordance with the written law under which they are so prohibited.

PART XIX

Legal Proceedings

Jurisdiction in respect of claims

152. Any civil proceedings under the customs laws relating to any claim to any goods which have been seized under the customs laws, and any claim to any duty, rent, charge, expense or other sum, payable under the customs laws, may be heard and determined without limit of amount before a court of a Resident Magistrate.

General immunity from legal proceedings

153. Except as otherwise specifically provided in the customs laws, no claim shall lie against the Government, the Department, the Controller, nor any officer for anything done in good faith under the powers conferred by the customs laws.

Actions by or against the Controller

154.—(1) Where under the provisions of the customs laws any proceedings may be brought by or against the Controller, then the Controller may sue or be sued by the name of the Controller of Customs and Excise, and may for all purposes be described by that name.

(2) Where any proceedings are brought against the Controller under the customs laws and judgment is given against the Controller then, if the court before which such proceedings are heard is satisfied that there were reasonable grounds for the action giving rise to the institution of the proceedings, the plaintiff shall be entitled to recover anything seized, or the value thereof, but shall not otherwise be entitled to any damages, and no costs shall be awarded to either party :

Provided that this subsection shall not apply to any action brought in accordance with sections 20 and 174.

(3) Except as provided in subsection (2), where any proceedings are brought by or against the Controller, costs may be awarded to or against the Controller.

(4) Where under the provisions of the customs laws any proceedings are brought by or against the Controller and—

(*a*) any sums or costs are recovered by the Controller, such sums or costs shall be credited to the revenue;

(*b*) any damages or costs are ordered to be paid by the Controller, such damages or costs shall be paid out of moneys appropriated for the administration of the Department and the Controller shall not be personally liable therefor.

Limitation of proceedings

155.—(1) Any proceedings for an offence against the customs laws may be commenced within two years of the date of the offence and the powers of seizure under section 146 may be exercised within two years of the date when the goods first became liable to seizure:

Provided that—

(i) in any case where fraud is a material element the said periods of two years shall be extended to five years; and

(ii) prohibited goods may be seized at any time.

(2) For the purposes of this section, the date when any goods are seized shall be deemed to be the date of commencement of any proceedings for an offence in respect of such goods.

Provisions relating to burden of proof

156. In any proceedings under the customs laws—

(*a*) it shall not, unless it is expressly so provided, be necessary to prove guilty knowledge;

(*b*) the burden of proving—

(i) the place of origin of any goods;

(ii) the payment of the proper duties;

(iii) lawful permission or authority; or

(iv) the lawful importation, exportation, carriage coastwise or in transit, loading, unloading, removal, possession, disposal, use or conveyance of goods,

shall be on the person prosecuted or on the claimant of any goods seized under the customs laws;

(*c*) the fact that security has been given for the payment of any duty or for the compliance with any condition in respect of the non-payment of which or non-compliance with which the proceedings were brought, shall not be a defence.

Provisions relating to evidence
25 of 1988
11 of 1989

157. In any proceedings under the customs laws—

(*a*) an averment—

(i) that the proceedings were instituted on the direction of the Controller;

(ii) that any person is or was an officer or is or was employed in the prevention of smuggling;

(iii) that any person is or was authorized or appointed to discharge or was engaged on the direction or concurrence of the Controller in the discharge of, any duty;

(iv) that any goods which were thrown overboard, staved, broken or destroyed were so dealt with in order to prevent or avoid seizure of those goods;

(v) that any act was done within the limits of any customs area or at, in or over any part of Malaŵi; or

(vi) that the Controller, or any other officer, is or is not satisfied as to any matter as to which he is required to be satisfied under the customs laws,

shall be *prima facie* evidence thereof;

(*b*) a certificate purpoting to be signed by a government analyst or a government chemist shall be receivable in evidence and shall be *prima facie* evidence of the matters recorded therein;

(*c*) any entry in any book or document required to be kept for the purposes of the customs laws, or any copy thereof certified under the hand of the Controller, shall be receivable in evidence by or on behalf of the Controller or the prosecutor and shall be *prima facie* evidence of the matters recorded therein;

(*d*) any certificate or copy of an official document purporting to be certified under the hand and seal or stamp of office of any public officer or of an officer of the customs and excise of any country shall be receivable in evidence and shall be *prima facie* evidence of the matters recorded therein;

(*e*) any invoice or other document submitted or used by any person for any purpose under the customs laws, and any copy thereof, may be produced as evidence by or on behalf of the Controller or the prosecution in any proceedings without calling the person who prepared or signed it;

(*f*) when any goods reasonably believed to be liable to forfeiture are seized, it shall be sufficient to open and examine 10 per cent only of each description of package or receptacle in which such goods are contained and, if necessary, to test only a representative sample of the contents thereof, chosen at random, and the court shall presume that the goods contained in the unopened packages and receptacles of the same description, and the balance of the contents when tested, are of the same nature, quantity and quality as those found in similar packages or receptacles which have not been opened or tested as the case may be;

25 of 1988

(*g*) a certificate signed by the Controller—

(i) that a person was or was not, at any date, registered under Part XIIA; or

(ii) that any return required by or under Part XIIA has not been made or had not been made at any specified date;

11 of 1989

(iii) that any surtax shown as due on any return or assessment made in pursuance of section 110L has not been paid,

shall be *prima facie* evidence thereof.

Provisions relating to witnesses

158.—(1) No witness on behalf of the Government or of the Controller in any proceedings under the customs laws shall be compelled to disclose the fact that he received any information relating to any customs or excise matter, or the nature of any such information, or the name of the person who gave any such information, or any matter which might lead to his discovery.

(2) No officer or police officer appearing as a witness in any proceedings under the customs laws shall be compelled to produce any report, or any information received by him in his official capacity.

Effect of conviction or acquittal on goods or conveyance liable to forfeiture

159.—(1) Where any person is prosecuted for any offence against the customs laws and any goods or any conveyance have been seized by reason of the commission of such offence, then, on the conviction of such person of such offence, such goods and conveyance shall without further order, be forfeited.

(2) If any goods or conveyance liable to forfeiture under section 145 cannot be found or recovered, the court convicting the offender may order him to pay to the Controller an amount equal to the duty-paid value of such goods or conveyance at the time of the offence.

(3) Where any person is prosecuted for any offence against the customs laws and goods have been seized under section 146, then on the acquittal of such person the court may order such goods either—

(*a*) to be released to the person from whom they were seized, or to the owner thereof, subject to payment of any duty payable and to such conditions as the court may impose; or

(*b*) to be forfeited where the court is satisfied that, notwithstanding such acquittal, an offence has been committed in respect of such goods,

but where the court does not at that time make such an order then such goods shall be released to the person from whom they were seized.

Proceedings for recovery of goods etc.

160. Where proceedings have been instituted pursuant to a notice under section 147 (4) for the recovery of such goods, conveyance or security, then—

(*a*) if the claimant fails to satisfy the court that such goods, conveyance or security were not liable to forfeiture under the customs laws, they shall be forfeited;

(*b*) if the claimant does so satisfy the court, such goods, conveyance or security shall be released to the claimant subject to payment of any duty payable and to such conditions as may be imposed :

Provided that a court shall not release such goods, conveyance or security to any claimant unless it is satisfied that the claimant is the owner thereof or, by reason of any interest therein is entitled to the possession thereof. If the court is not so satisfied, such goods, conveyance or security shall be forfeited as if no claim thereto had been made.

Innocent owners to be heard before forfeiture

161.—(1) Notwithstanding the provisions of sections 159 (1) and 160, where a conveyance is liable to forfeiture under section 145 (2) such conveyance shall not be forfeited—

(*a*) unless and until the owner of the conveyance (if he can with reasonable diligence be found) has been given an opportunity of being heard; and

(*b*) if the said owner satisfies the court that the offence in respect of which the conveyance was rendered liable to forfeiture was committed without his knowledge or consent, and that he was unable to prevent it.

(2) Notwithstanding the provisions of sections 159 (1) and 160, goods (other than prohibited goods), or a conveyance liable to forfeiture shall not be forfeited if the owner thereof satisfies the court that the offence in respect of which they were rendered liable to forfeiture was committed without his knowledge or consent and that he was unable to prevent it, or if such goods or conveyance were acquired by him after the commission of the said offence, that they were acquired for their true value and without knowledge that they were liable to forfeiture.

(3) For the purpose of subsections (1) and (2) "owner" shall not include the lessor or seller under a hire purchase agreement or an instalment sale agreement, or a principal acting through an authorized agent.

PART XX

Settlement of Cases by the Controller

Settlement by agreement

162.—(1) Where any person in writing admits that he has committed an offence against the customs laws and agrees to pay any duty payable and a specified sum of money, not exceeding the amount of the fine to which he would have been liable if he had been prosecuted and convicted for the offence, the Controller may, without delegation, settle the case on such terms, or the Controller may order any goods liable to forfeiture in connection therewith to be forfeited.

(2) If criminal proceedings have been instituted against a person for an offence under the customs laws, the powers of settlement conferred by subsection (1) shall not be exercised without the prior approval of the Director of Public Prosecutions.

Orders of settlement

163. Where the Controller makes an order of settlement under this Part, then—

(*a*) such order shall be put into writing;

(*b*) such order shall specify the offence which the person committed and the penalty imposed by the Controller including the details and value of any goods forfeited;

(*c*) a copy of such order shall be given to the offender if he so requests;

(*d*) the offender shall not be liable thereafter to prosecution in respect of such offence and if any such prosecution is brought it shall be a good defence for the offender to prove that the offence with which he is charged has been settled in accordance with this Part;

(*e*) such order shall be final and not subject to appeal;

(*f*) such order may be enforced in the same manner as an order of a court of competent jurisdiction;

(*g*) the settlement shall not be treated as a conviction of an offence.

PART XXI

General

Declarations and signing of documents

164.—(1) Where in the customs laws any declaration is authorized or required to be made, then such declaration may, in addition to the provisions of any other written law, be made before the proper officer.

(2) Where in the customs laws any document is authorized or required to be signed in the presence of any particular officer, then if such document is signed in the presence of a witness who is approved by, and whose signature is known to, that particular officer, such document shall be deemed for the purposes of the customs laws to have been signed in the presence of that particular officer.

Invalid declaration

165.—(1) A declaration, other than a declaration in respect of a provisional entry under section 34, which contains any omission, inconsistency, error or misrepresentation shall be invalid whether or not such declaration has been accepted by an officer or the goods declared therein entered:

Provided that such invalidity shall not affect the use of such declaration as evidence of the commission of any offence under the customs laws.

(2) An invalid declaration shall be validated by the person making such declaration in such manner and within such period as may be prescribed.

(3) Any goods while invalidly declared shall be deemed to be uncustomed goods.

Translation of foreign documents

166. Where any document written in a language other than English is presented to any officer for any purpose connected with the customs laws, such officer may require a translation into English to be made, at the expense of the owner or person presenting such document, by such person as the Controller may approve.

Persons carrying on business to keep proper records
11 of 2003

167. Every person carrying on any business which involves handling or dealing with goods shall keep or cause to be kept within Malaŵi, in the English language, reasonable and proper records and accounts in indelible writing or in electronic data of all his transactions, to the satisfaction of the Controller. Every such person shall, if so required at any time within a period of two years after the date of the importation or purchase of any goods, produce any bills of lading, rail notes, invoices and all other documents and books containing any particulars regarding those goods, and shall allow such documents and books at all reasonable times within such period to be open for inspection by an officer in the course of his duty.

Operations in respect of goods subject to customs control

168. Subject to such conditions as he may impose and to the giving of such security as he may think appropriate, the proper officer, in respect of any goods subject to customs control, may permit—

(*a*) such goods to be packed, skipped, bulked, sorted, separated, put into lots, repacked or altered, in a customs area;

(*b*) such arrangements to be made as may be necessary for the preservation of such goods or for the sale, exportation or other disposal thereof in accordance with the customs laws;

(*c*) the removal of such goods from a customs area, without entry or the payment of duty, for such purposes and for such period and in such quantities as he may think fit.

Transfer of ownership

169. The owner of any goods subject to customs control may transfer the ownership to any other person who may lawfully own such goods, but the proper officer may refuse to recognize any such transfer of ownership unless notice thereof has been given to him, prior to the transfer, by the owner.

Wrecked, abandoned, etc. conveyances

170.—(1) Where any conveyance, subject to customs control, is lost, stranded, wrecked or abandoned or is compelled to land or stop within Malaŵi due to accident, stress of weather or other unavoidable cause, the owner, or the master or person in charge of such conveyance shall—

(*a*) with all reasonable speed report such occurrence to the nearest officer, police officer or administrative officer; and

(*b*) produce any relevant book or document and answer fully and truthfully any relevant question as may be required or put to him by an officer.

(2) Neither the owner nor the master or person in charge shall cause or permit any goods to be removed further from the vicinity of such conveyance than is necessary for the health or safety of persons or the safety of the conveyance or goods, without the consent of the officer to whom report is made under subsection (1) and shall not, save for reasons of health or safety or in order to make such report, cause or permit any person to leave the vicinity of such conveyance without the consent of such officer.

Uncustomed flotsam, jetsam and wrecks

171.—(1) Any person who finds or has in his possession any uncustomed flotsam or jetsam or any uncustomed portions of a lost, stranded, wrecked or abandoned conveyance or the cargo, stores or baggage thereof shall with all reasonable speed give notice thereof to the nearest officer, police officer or administrative officer and shall, if so required, cause or permit such goods to be delivered to such officer, police officer or administrative officer.

(2) No person shall, without the permission of the proper officer, remove or alter in quantity or quality any goods subject to the provisions of subsection (1) unless it is necessary for the preservation or safe keeping of such goods.

Power of Controller in special cases

172. Notwithstanding any provisions of the customs laws to the contrary, the Controller may, in order to meet the exigencies of any special case—

(*a*) permit any goods to be loaded on to, or unloaded and removed from, any conveyance at such times and places, and under such conditions, as he may either generally or in any particular case direct;

(*b*) permit any goods to be entered, and the report or clearance of any conveyance to be made, in such form and manner, and by such person, as he may either generally or in any particular case direct.

Rewards

173. The Controller may, with the approval of the Minister, offer and order such rewards as he may think fit to be paid to any officer or other person for services rendered in connexion with the detection of smuggling or any other offence against the customs laws, or in connexion with any seizure made under the customs laws.

Handling etc. of goods, at risk and expense of owner

174. Except as otherwise specifically provided in the customs laws, all handling, storage and transportation of goods for the purposes of the customs laws shall be performed at the risk and expense of the owner of such goods:

Provided that an action shall lie against the Controller for any loss or damage to goods or additional expense caused by the gross negligence or wilful misconduct of an officer acting or purporting to act in his official capacity.

Regulations 11 of 2015

175.—(1) The Minister may make regulations prescribing all matters which by this Act are required to be or may be prescribed (except as otherwise provided under section 83) or which, in his opinion, are necessary or convenient for the better carrying out or giving effect to the provisions of this Act, and without prejudice to the generality of the foregoing any regulations made under this section may provide for fees or other charges in respect of any act done or service rendered by any officer.

11 of 2015 Cap. 1:01

(2) Notwithstanding the provisions of section 21 (*e*) of the General Interpretation Act, any regulations made under subsection (1) may impose a fine not exceeding ten times the duty payable and imprisonment for not more than three years.

SCHEDULE A

(Section 111) 10 of 2014

Value of Imported Goods

1.—(*a*) The value of any imported goods shall be taken to be the normal price, that is to say, the price which they would fetch at the time when the duty becomes payable, or in the case of warehoused goods, at the time of their entry for warehousing, on a sale in the open market between a buyer and a seller independent of each other.

(*b*) the normal price of any imported goods shall be determined on the following assumptions—

(i) that the goods are delivered to the buyer at the port or place of introduction into Malaŵi;

(ii) that the seller bears all costs, charges and expenses incidental to the sale and to the delivery of the goods at the port or place of introduction, which are hence included in the normal price;

(iii) that the buyer bears all duties or taxes applicable in Malaŵi, which are hence not included in the normal price.

2.—(*a*) A sale in the open market between a buyer and a seller independent of each other pre-supposes—

(i) that the price is the sole consideration;

(ii) that the price is not influenced by any commercial, financial or other relationship, whether by contract or otherwise between the seller or any person associated in business with him and the buyer or any person associated in business with him, other than the relationship created by the sale itself;

(iii) that no part of the proceeds of any subsequent resale, other disposal or use of the goods will accrue, either directly or indirectly, to the seller or any person associated in business with him.

(*b*) Two persons shall be deemed to be associated in business with one another, if, whether directly or indirectly, either of them has an interest in the business or property of the other or both have a common interest in any business or property or some third person has an interest in the business or property of both of them.

3. When the goods to be valued—

(i) are manufactured in accordance with any patented invention or are goods to which any protected design has been applied; or

(ii) are imported under a foreign trade mark; or

(iii) are imported for sale, other disposal or use under a foreign trade mark,

the normal price shall be determined on the assumption that it includes the value of the right to use the patent, design or trade mark in respect of the goods.

4. For the purposes of paragraph 3, the expression "trade mark" includes a trade name and style, and a trade mark shall be treated as a foreign trade mark if it is the mark of—

(i) any person by whom the goods to be valued have been grown, produced, manufactured, offered for sale or otherwise dealt with outside Malaŵi; or

(ii) any person associated in business with any person referred to in (i) above; or

(iii) any person whose rights in the trade mark are restricted by an agreement with any person referred to in (i) or (ii) above.

5. In order to arrive at the assumed costs, charges and expenses as set out in paragraph 1 (*b*) (ii), the Controller may accept such deduction from the actual cost of the delivery of the goods to any other place in Malaŵi as he may consider equitable.

6. When the Controller is satisfied that documentary evidence relating to the clearance of goods through a foreign port of arrival in Africa cannot reasonably be expected to be available at the time of duty payment, he may, at the request of the importer, determine the costs, charges and expenses set out in paragraph 1 (*b*) (ii) and such determination in any particular case shall not be voided if the actual costs, charges and expenses are subsequently discovered to be greater or lesser.

SCHEDULE B

section 114 10 of 2014

Customs Valuation for Goods Exported From Malaŵi

1. In this Schedule, unless the context otherwise requires—

"goods of like kind and quality" means export goods which are identical or similar in physical characteristics, quality and reputation as the goods being valued, and perform the same functions or are commercially interchangeable with the goods being valued, produced by the same person or a different person; and

"transaction value" means the value of export goods within the meaning of subsection (1) of section 114 of this Act.

2. For the purposes of this Schedule, persons shall be deemed to be related only if—

(*a*) they are officers or directors of one another's businesses;

(*b*) they are legally recognized partners in business;

(*c*) they are employer and employee;

(*d*) a person directly or indirectly owns, controls or holds five per cent or more of the outstanding voting stock or shares of both of them;

(*e*) one of them directly or indirectly controls the other;

(*f*) both of them are directly or indirectly controlled by a third person;

(*g*) together they directly or indirectly control a third person; or

(*h*) they are members of the same family.

3. Subject to paragraph 7, the value of export goods shall be the transaction value.

4. The transaction value shall be accepted even where the buyer and seller are related, provided that their relationship shall not influence the price.

5. If the value cannot be determined under the paragraphs 1 and 2, the value shall be determined by proceeding sequentially through paragraphs 3 to 5.

6. The value of the export goods shall be based on the transaction value of goods of like kind and quality exported at or about the same time to other buyers in the same destination country of importation or in its absence another destination country of importation adjusted in accordance with paragraph 2.

7. In determining the value of export goods under paragraph 1, the proper officer shall make such adjustments as it appears reasonable to

him or her, taking into consideration the relevant factors, including the difference in—

(i) the dates of exportation;

(ii) commercial levels and quantity levels;

(iii) composition, quality and design between the goods to be assessed and the goods with which they are being compared; and

(iv) domestic freight and insurance charges depending on the place of exportation.

8. If the value cannot be determined under paragraph 3, it shall be based on a computed value, which shall include the following—

(*a*) cost of production, manufacture or processing of export goods;

(*b*) charges, if any, for the design or brand; or

(*c*) an amount towards profit.

9.—(1) Subject to the provisions of paragraph 2, where the value of the export goods cannot be determined under the provisions of paragraphs 3 and 4, the value shall be determined using reasonable means consistent with the principles and general provisions of this Schedule: Provided that local market price of the export goods may not be the only basis for determining the value of export goods.

(2) An exporter shall furnish a declaration relating to the value of export goods in the manner specified in this behalf.

10. When the proper officer has reason to doubt the truth or accuracy of the value declared in relation to any export goods, he or she may ask the exporter of such goods to furnish further information including documents or other evidence and if, after receiving such further information, or in the absence of a response of such exporter, the proper officer still has reasonable doubt about the truth or accuracy of the value so declared, the transaction value shall be deemed to have not been determined in accordance with subparagraph (1) of paragraph 2.

11. At the request of an exporter, the proper officer shall provide the exporter, in writing, the ground for doubting the truth or accuracy of the value declared in relation to the export goods by such exporter and provide a reasonable opportunity of being heard, before taking a final decision under subparagraph (1).

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111/1972	138/1980	109/1990	5/1994	35/2001	
112/1972	146/1980	110/1990	17/1994	18/2002	
126/1972	161/1980	3/1991	59/1994	20/2002	
144/1972	198/1980	7/1991	60/1994	21/2002	

1. These Regulations may be cited as the Customs and Excise Regulations. Citation

2. In these Regulations, unless the context otherwise requires— Interpretation

"absolute alcohol" means one hundred per cent of ethyl alcohol by volume;

G.N. 25/1989 "Carrier" includes the master of a vessel and the person in charge of a vehicle;

"content" means the capacity of a cask, drum or similar container;

"customs tariff" means the customs tariff prescribed or deemed to be prescribed under section 83 of the Act;

"degree of alcohol" in relation to liquids containing ethyl alcohol, means the volume of alcohol content as ascertained by the Gay-Lussac's hydrometer;

"denatured" in relation to spirits means mixed to the satisfaction of the Controller with some other substance so as to render the mixture unfit for drinking;

"ex" immediately preceding a section, chapter, heading or item number of a tariff means that the goods referred to form only part of the goods classified under that section, chapter, heading or item in that tariff;

"excise tariff" means the excise tariff prescribed or deemed to be prescribed under section 83 of the Act;

"feints" means any liquid which, in the course of distillation, redistillation or rectification is conveyed to a feints receiver or a feints vessel entered for use as such in the appropriate entry of premises;

First Schedule "form" means the appropriate form specified in the First Schedule;

"frontier road or waterway" means any part of the length of a road or waterway which forms part of a boundary with a foreign country or follows such boundary in generally close proximity thereto and includes the whole length of any section of such road or waterway from the place where the line of such road or waterway first begins to follow or be part of the boundary to the place where the line of such road or waterway departs from the boundary:

Provided that "waterway" shall not include Lake Malaŵi;

"licensee"—

(*a*) in relation to bonded warehouse means the holder of the licence for that bonded warehouse;

(*b*) in relation to entered premises means the holder of the excise licence for those premises;

"hl" means hectolitre;

"kg" means kilogram;

"l" means litre;

"laa" means litres of absolute alcohol;

"low-wines" means spirits of first extraction by a single still and conveyed into a low-wines receiver;

"m^2" means square metres;

"methylated" means denature by any prescribed method;

"normal station" in relation to an officer means the customs office or customs area to which such officer is assigned by the Controller;

"raw materials", subject to any order made pursuant to section 30 of the Export Incentives Act, includes imported goods and packaging material incorporated in, attached to, or directly consumed in the manufacture or production of goods for export; G.N. 31/1991 Cap. 39:04

"rebate" means a reduction of duty, or freedom from duty, in accordance with the Seventh Schedule or the Eighth Schedule;

"registered person" means a person registered or deemed to be registered under regulation 132;

"schedule service" means any public service for the conveyance of passengers and their effects operated in accordance with a timetable, two copies of which, and of any amendments made thereto, shall be lodged not less than 10 days in advance with the Controller;

"specified form" means any form specified or approved in accordance with Part I, or any variation thereof of substitute therefor, directed or authorized by the Controller under regulation 8;

"tonne" means a metric tonne of one thousand kilograms;

"wash" means the liquid from any substance prepared for distillation after fermentation has commenced;

"working day" means any day except a Sunday, Saturday or public holiday;

"wort" means any liquid substance containing saccharine matter before fermentation has commenced;

"*%*" means *per centum ad valorem.*

PART I

Forms

Forms

3. Subject to regulation 8 the forms to be used for the transaction of business with the Department shall be those specified in the First Schedule.

Specimens to be available

4. Specimen copies of all specified forms shall be available for inspection on request being made to the Controller.

Persons to supply forms at own expense

5. With the exception of forms numbered 1, 31, 47, 48, 49, 50, 51 and 52, all persons transacting business with the Department shall provide the specified forms at their own expense.

Forms 49

6. No person other than the Government Printer shall print or reproduce form No. 49.

Completion and legibility of forms

7. All persons required to complete any specified form shall do so fully, legibly and indelibly and shall submit as many completed copies of each form as the proper officer may require.

Controller may vary, substitute, authorize or specify forms

8. Notwithstanding any other provision in these Regulations the Controller may—

(*a*) direct that some other form specified by him may be used and accepted in lieu of any form required by these Regulations, and he may direct that such other forms shall be used only in respect of particular transactions or purposes or kinds of transactions or purposes;

(*b*) authorize such minor variations from the specified forms as he considers expedient;

(*c*) himself specify or approve forms, certificates and returns for the purposes of the customs laws in cases where no such form, certificate or return is already prescribed in those laws.

PART II

Ports, etc.

Ports

9.—(1) The places specified in Part I of the Second Schedule are appointed to be ports for the declarations in respect of vehicles other than trains, arriving from or departing to a foreign port by land transportation and of goods so imported or to be so exported.

(2) The places specified in column 1 of Part 2 of the Second Schedule are appointed to be ports for the declarations in respect of trains arriving from or departing to a foreign port and of goods carried or to be carried thereon:

Provided that in respect of goods consigned on importation to or loaded for exportation at places specified in column 2, the customs office at the port listed in column 1 opposite thereto or such other place as the Controller may direct shall be the customs office at which such declaration shall be made.

(3) The places specified in Part 3 of the Second Schedule are appointed to be ports for the declarations in respect of vessels arriving from or departing to a foreign port and of goods imported or to be exported by water transportation.

(4) The places specified in Part 4 of the Second Schedule are appointed to be ports for the declarations in respect of vessels arriving from or departing to a foreign port and of the goods carried or to be carried thereon during such times as a vessel carrying an officer is at such places.

(5) The places specified in Part 5 of the Second Schedule are appointed to be ports for the declarations in respect of vehicles and goods provided that report for customs clearance is made to the nearest administrative officer or police post within 24 hours of arrival or immediately prior to departure.

Customs airports

10. The places specified in the Third Schedule are appointed to be customs airports and ports for the declarations in respect of aircraft arriving from or departing to a foreign port and of the goods carried or to be carried thereon.

Customs offices

11. The customs offices at the ports specified in the Fourth Schedule are appointed for the collection of revenue, the declarations of persons, conveyances and goods and the general administration of the provisions of the Act under the general or particular control of the Controller.

Frontier roads and waterways

12. No goods shall be imported from any foreign port on to any frontier road or waterway unless the importation thereof shall have been specifically and previously authorized in writing by the Controller or by a proper officer; such authorization of importation shall be carried on the conveyance concerned and shall specify the route or routes to be taken between the place of importation of the goods or conveyance and the customs office where the declaration in respect of such goods or conveyance is to be made within any time limit specified in the written authorization of importation.

PART III

Hours of Attendance, etc.

Hours of general attendance

13.—(1) Subject to the provisions of the customs laws the hours of general attendance of officers at customs offices for the service of the public shall be on working days only and shall be those set out in the Fifth Schedule.

(2) The Controller may by notice exhibited at any port vary the hours of general attendance of officers at such port in order to meet the convenience of the public or the exigencies of the Department.

Extra attendance

14.—(1) Attendance by officers for the convenience of the public outside the limits of their normal stations or at customs offices outside the hours of general attendance shall be deemed to be extra attendance and shall be given only on prior application by the person requesting the attendance.

(2) The proper officer may require a request for extra attendance to be made in form No. 8 and may determine the number of officers deemed necessary for such attendance. The grant of such request shall not—

(*a*) in the case of any person not conveying merchandise arriving or departing overland (other than by train) or by inland or territorial waters, be refused by the proper officer;

(*b*) in any other case, be unreasonably refused by the proper officer.

(3) Applications for extra attendance shall not be required in respect of scheduled services and such persons as the Controller may direct.

(4) The proper officer may, as a condition for the grant of an application for extra attendance—

(*a*) require prior payment of the prescribed fees or security therefor;

(*b*) in respect of attendance outside the limits of an officer's normal station, require the applicant to provide the necessary transportation and accommodation for such officer or such travelling and other expenses for such officer at current Government rates as the proper officer may consider reasonable.

Fees for extra attendance
G.N. 63/1983
25/1996
14/2005

15.—(1) The following fees shall be payable by persons requesting the extra attendance of officers—

(*a*) for the clearance of road vehicles and of the goods carried thereon at the places specified in Part I of the Second Schedule—K500 per vehicle;

(*b*) for other attendance, K500 per hour in respect of each officer giving the attendance:

Provided that no fees shall be payable in respect of—

(i) the clearance of conveyances engaged in scheduled services and of the travellers and their accompanied baggage carried or to be carried thereon;

(ii) privately owned passenger vehicles not carrying merchandise;

(iii) the examination and assessment of air-freight in accordance with regulation 34;

(iv) diplomatic personnel; and

(v) such other attendance as the Controller may direct.

(2) For the purposes of subregulation (1) (*b*) any part of an hour shall count as an hour.

(3) In respect of extra attendance by an officer outside the limits of his normal station the time to be charged shall be the time of necessary absence from his station for the service requested.

(4) The applicant for the extra attendance of officers shall, in addition to the fees for the services of such officers pay fees at the

rate of K500 per hour for such supervisory visits as the proper officer may deem necessary.

(5) No fee shall be charged for extra attendance if the service for which extra attendance is given commences during the hours of general attendance and such extra attendance does not exceed half an hour.

PART IV
Importation

Declarations of aircraft, vessels and vehicles

16. The declarations required by sections 24 and 28 of the Act shall be made—

(*a*) in respect of road vehicles in form No. 1;

(*b*) in respect of aircraft in form No. 2;

(*c*) in respect of vessels in form No. 3:

Provided that the Controller may authorize the proper officer to dispense with such forms and to accept such declarations in such other manner as he may specify.

Documents to be produced with declarations

17. The following documents, with as many copies as the proper officer may require, shall be produced with, and shall form part of a declaration made under regulation 16—

(*a*) in respect of road vehicles, a complete list of the goods carried and, if appropriate, copies of all waybills and consignment notes;

(*b*) in respect of aircraft and vessels—

(i) manifests of the cargo on board which, if required by the proper officer in respect of aircraft, shall be signed by the person authorized to sign such manifests at the foreign port from which the aircraft departed for Malaŵi;

(ii) if required by the proper officer, lists of the passengers and crew and of any other goods on board whether such goods are stores, baggage or the personal property or in the possession of any crew or passenger;

(iii) if required by the proper officer, the clearance, if any, from the last foreign port from which the aircraft or vessel has arrived;

(*c*) in respect of aircraft, if required by the proper officer, the journey log book.

Documents to be produced in respect of trains

18. Upon the arrival at any port of any train carrying unentered imported goods the station master or other person in charge of the railway station or train shall deliver to the proper officer—

(*a*) copies of all invoices, waybills or other documents received by him and relating to the goods carried on that train and required to be entered at that port;

(*b*) copies of all delivery and advice notes relating to the goods required to be entered at that port;

(*c*) if required by the proper officer, lists of all goods carried on the train other than cargo; and

(*d*) advices of all goods delivered to licensed private sidings.

Documents to be produced by owner of licensed private siding

19. Where any unentered imported goods are received at a licensed private siding, the owner or occupier of such siding shall, if so required by the Controller and within such time after the receipt of such goods as the Controller may direct, submit to the proper officer lists containing particulars of all such goods.

Wrecked or abandoned aircraft, etc., and wrecks

20. Upon receipt of a report in accordance with section 170 or section 171 of the Act, the police or administrative officer concerned shall make such arrangements as are in his power to secure the revenue and shall forthwith report the facts to an officer and carry out such instructions concerning the matter as that officer may give.

Declarations of persons

21. The declaration required under section 29 of the Act by a person arriving from a foreign port shall be either verbal or in form No. 47, or both, as the officer may direct.

Discharge of vessels

22. Except with the permission of the proper officer no goods shall be discharged from a vessel except between sunrise and sunset.

Goods short or in excess of declarations

23. As soon as the discharge of a conveyance is complete the owner shall, if so required by the proper officer deliver, to the proper officer a statement of any packages declared for discharge at that port but not discharged or discharged but not declared for such discharge.

Period allowed for entry of goods at importation G.N. 24/2002

24.—(1) Goods removed to a private licensed siding under the provisions of section 10 of the Act shall be entered within 5 days of the date of importation.

(2) Other goods shall be entered within 10 days of the date of importation.

(3) The proper officer may allow such extensions of the periods specified in subregulations (1) and (2) as he considers expedient.

Retention of documents

25. The proper officer may retain any document submitted in support of any declaration but, in his discretion, may either supply the owner with a certified true copy thereof or may himself accept such certified true copy if the owner particularly requests the return of the original.

Entry for consumption at importation G.N. 14/2005

26. Save as otherwise provided in the customs laws entry of goods for consumption at importation shall be effected—

(*a*) in the case of non-merchandise imported in the baggage of travellers by the making of the declarations required under regulation 21 supported by such evidence of the nature, quantity, origin and value of the goods as the proper officer may require and the payment to such officer of such duty as is due on the goods;

(*b*) in the case of goods to be entered under industrial rebate, by the completion and submission to the proper officer of a declaration in Form No. 82 supported by such invoices and other documents as the proper officer may require and the payment to that officer of such duty as is due on the goods;

(*c*) in the case of—

(i) merchandise of a value not exceeding K30,000; and

(ii) non-merchandise other than that contained in traveller's baggage,

by the submission to the proper officer of proper invoices or such other evidence as to the nature, quantity, origin and value of the goods as such officer may accept and the payment to that officer of such duty as is due on the goods:

Provided that this paragraph shall not apply to goods to be entered under industrial rebate;

(*d*) in the case of goods imported after temporary exportation in such manner as the Controller may direct;

(*e*) in the case of goods to be entered provisionally under section 34 of the Act by the completion and submission to the proper officer of a declaration in Form No. 21 supported by such documents as the proper officer may require and the payment to

that officer of the estimated duty and such further sum as he thinks fit;

(*f*) in the case of other goods, by the completion and submission to the proper officer of a declaration in form No. 21 supported by such invoices and other documents as the proper officer may require and the payment to that officer of such duty as is due on the goods.

Entry for warehousing

27. Entry for the warehousing of imported goods shall be effected by the completion and submission to the proper officer of a declaration in form No. 24 supported by such other documents as the proper officer may require.

Entry for temporary importation

28. Entry of goods for temporary importation shall be effected—

(*a*) in the case of goods enumerated in any document issued in pursuance of any international convention concerning temporary importation to which Malaŵi has acceded, by the submission to the proper officer of that document duly completed;

(*b*) in the case of travellers' samples not dealt with under subsection (*a*) by the completion and submission to the proper officer of lists in duplicate of the goods concerned and by the giving of such security for their due exportation as the proper officer may require;

(*c*) in the case of the effects of *bona fide* tourists by a verbal declaration or a declaration in form No. 47, or both, as the proper officer may require, and by the giving of such security for their due exportation as he deems necessary;

(*d*) in the case of merchandise allowed to be entered for temporary importation by the Controller and not entered in accordance with subsection (*a*), by the completion and submission to the proper officer of a declaration in form No. 21 supported by such documents as the proper officer may require and by the giving of such security for the due exportation of the goods as the Controller may direct;

(*e*) in the case of other goods, in such manner as the Controller may direct.

Entry for transit
G.N. 25/1989

29. Entry for goods in transit shall be effected—

(*a*) in the case of air and rail traffic, by the completion and submission to the proper officer of a declaration in Form No. 30 supported by such documents and by the giving of such security for the due exportation of the goods as the proper officer may require;

(*b*) in the case of road traffic, by the completion and submission to the proper officer of a declaration in Form RCTD

supported by such documents and by the giving of such security for the due exportation of the goods as the proper officer may require:

Provided that the Controller may allow entry in such other manner as he may approve in relation to particular parts of Malaŵi or to particular types of traffic.

Entry for use as stores

30. Entry for goods to be removed directly upon importation to an aircraft or vessel for use as stores shall be effected by the completion and submission to the proper officer of a declaration in form No. 30 and by the giving of such security for the due exportation of the goods as the proper officer may require. The provisions of regulation 88 shall apply to goods entered under this regulation.

Security for production of documents

31. If an importer is unable, when effecting entry of his goods, to present to the proper officer invoices relating to the goods, or any other documents which may be required to be produced in accordance with these Regulations, or if an invoice or other document submitted to the proper officer is incomplete or fails to disclose all the information which that officer may require, the officer may, pending the production of proper invoices or other documents, accept security sufficient to safeguard the revenue and shall, thereafter, allow entry of the goods to be made.

Goods imported by post

32.—(1) All imported postal articles containing goods shall be made available to an officer for examination and assessment of duty at such places as may be agreed between the Controller and the Postmaster-General.

(2)—(*a*) The officer may require the importer to make such declarations as he considers necessary in order to assist him in assessing the duty on any imported postal article.

(*b*) If the importer wishes the goods to be warehoused without payment of duty or to be delivered for transit or to be entered under industrial rebate, or if the officer considers it necessary for the goods to be entered, the importer shall enter them in the prescribed manner.

(3) The officer shall record on a form or label pertaining to each consignment of packages containing goods—

(*a*) in the case of goods entered in accordance with subregulation (2) (*b*) the number and date of the relative entry;

(*b*) in other cases particulars of the assessment of the duty payable on the goods:

Provided that the Controller may dispense with the completion of such form or label in respect of goods not liable to duty and of small value.

(4) With the exception of postal articles required to be detained by the Department, postal articles which have been examined and assessed by an officer, or which have been entered in accordance with subregulation (2) (*b*) shall be released to the postal authorities

who shall be responsible for their delivery and for the collection of duty on the goods in such parcels as has been assessed by an officer.

(5) All duties collected by postal officials on goods imported by post shall be paid to the Controller in such manner as may be agreed upon by the Controller and the Postmaster-General.

(6) The correction of any assessment of duty on goods imported by post, or of the particulars recorded by the officer on the form or label mentioned in subsection (3), shall be effected in such manner as the Controller may direct.

Air-freight licensees

33.—(1) Any person wishing to be licensed as an air-freight licensee in accordance with section 10 of the Act shall make written application to the Controller and shall furnish such information in respect of the application as the Controller may require.

(2) No goods shall be delivered by an air-freight licensee until the duties thereon have been paid and the requirements of the Act have been satisfied.

(3) Where the Controller revokes or refuses to renew an air-freight licence, any goods subject to customs control in the licensee's custody at the time of revocation or non-renewal shall be removed to a customs warehouse or other place authorized by the proper officer and all duties outstanding shall be paid to the proper officer on demand.

(4) Cargo imported by air-freight licensees shall be dealt with in accordance with the provisions of regulation 34.

Cargo imported by air-freight licensees

34.—(1) All cargo imported by air-freight licensees shall be held by the licensee in a temporary store and shall be made available to an officer for examination and assessment of duty, if any.

(2) (*a*) The officer may require the importer to make such declarations as he considers necessary in order to assist him in assessing the duty on any goods imported as air-freight.

(*b*) If the importer wishes the goods to be warehoused without payment of duty or to be delivered for transit or to be entered under industrial rebate, or if an officer considers it necessary for the goods to be entered the importer shall enter them in the prescribed manner.

(3) The officer shall record on a form or label pertaining to each consignment of goods dealt with under this regulation—

(*a*) in the case of goods entered in accordance with subregulation (2) (*b*), the number and date of the entry;

(*b*) in the case of other goods, particulars of the assessment of the duty payable on the goods:

Provided that the Controller may dispense with the completion of such form or label in respect of goods not liable to duty and of small value.

(4) With the exception of packages required to be detained by the Department packages which have been examined and assessed by an officer, or which have been entered in accordance with subregulation (2), shall be released to the licensee who shall be responsible for their delivery and for the collection of duty on the goods in such packages as has been assessed by an officer.

(5) All packages released in accordance with subregulation (4) and all duties due thereon shall be accounted for by the licensee in such manner as the Controller may require and such duties shall be paid to the Controller within such period as he may specify.

(6) The correction of any assessment of duty on goods imported as freight in aircraft or of the particulars recorded by the officer on the form or label mentioned in subregulation (3) shall be effected in such manner as the Controller may direct.

(7) Any dutiable goods dealt with under the provisions of this regulation and on which the duty has not been paid which are not delivered in accordance with subregulation (4) within 10 days after the date on which duty was assessed shall be removed to a customs warehouse and there dealt with under the provisions of Part V of the Act.

Provisional declaration

35. A provisional entry made under section 34 of the Act shall be made in form No. 21 supported by such documents as are available in respect of the goods.

Supplementary declaration

36. A supplementary declaration made in accordance with section 34 of the Act shall be made in form No. 23.

Authority for delivery and removal

37. Save as otherwise provided in the customs laws no goods which have been entered in accordance with regulations 26, 27, 28, 29 and 30 shall be delivered or removed from a customs area until such delivery or removal has been authorized by an officer by the impression of an official customs stamp over his signature on the waybill, consignment note, advice note or other document issued by the carrier in relation to the goods or by such other method as the Controller may direct.

Onward carriage of unentered imported goods

38.—(1) The Controller may authorize, subject to such conditions as he considers proper, the onward carriage of unentered goods imported by road to a port other than the port of importation. The goods shall be conveyed direct to the other port by such routes as the Controller may specify and upon arrival at such port shall be deposited in such customs area or other place as the proper officer may direct and shall not be removed therefrom except with the permission of the proper officer.

(2) A carrier or importer seeking authority for the onward carriage of unentered goods imported by road to a port other than the port of importation shall complete the appropriate portion of Form No. 1 and one copy of such completed form, when signed by an officer and returned to the carrier or importer shall, subject to such conditions as may be imposed by the proper officer, constitute the authority for such onward carriage.

PART V

Customs Warehouses

Customs warehouse rent G.N. 156/1977 14/2005

39.—(1) Subject to the provisions of this regulation, rent on goods placed in a customs warehouse shall be charged at the following rates—

		K	t
for the first week or part thereof	per tonne	500	00
for the second week or part thereof	per tonne	750	00
for the third week or part thereof	per tonne	1,000	00
for the fourth week or part thereof	per tonne	1,250	00
for the fifth week or part thereof and for each succeeding week or part thereof	per tonne	1,500	00

(2) For the purpose of this regulation, a tonne shall be deemed to be 1,000 kg., 1 cubic metre or 1,000 litres, whichever occupies the least space.

(3) If goods placed in a customs warehouse are less than one tonne, proportions of the rates set out in subregulation (1) shall be paid as follows—

(*a*) one-quarter of a tonne or less shall be charged as one quarter of a tonne;

(*b*) more than one-quarter of a tonne but not exceeding half a tonne shall be charged as half a tonne;

(*c*) more than half a tonne but not exceeding three-quarters of a tonne shall be charged as three-quarters of a tonne; and

(*d*) more than three-quarters of a tonne but less than one tonne shall be charged as one tonne,

but the minimum amount to be paid on any goods shall not be less than one hundred twenty-five Kwacha.

(4) If goods placed in a customs warehouse are more than one tonne but not an exact number of tonnes the residual fraction of a tonne shall be deemed to be one tonne for the assessment of rent.

(5) Rent shall be charged from the date on which the first part of any goods is placed in a customs warehouse up to and including the date of final delivery thereof, or the date of sale, as the case may be.

Receipt for goods received

40. At the request of the owner of the goods the officer in charge of the customs warehouse shall give a receipt showing the number and distinguishing marks of packages deposited therein.

Entry of goods in customs warehouse

41. The entry of goods in a customs warehouse shall be effected in the manner prescribed in regulations 26, 27, 28, 29 or 30 according to the purpose for which they are entered, together with the payment of such expenses, rents, carriage and other charges as are due.

Application for proceeds of sale

42. Any person wishing to claim any part of the proceeds of the sale of goods sold in accordance with section 38 or 39 of the Act shall make application in writing to the proper officer and shall produce to that officer such proof of his entitlement to that part of the proceeds which he claims and such other relevant documents as the proper officer may require.

PART VI
Bonded Warehouses

Application for licences

43. An applicant for a licence for a bonded warehouse shall apply in writing to the Controller and shall supply such plans of the warehouse and such other information as the Controller may require.

Considerations prior to issue of licence

44. In considering an application submitted under regulation 43, the Controller shall, in particular, have regard to—

(*a*) the financial standing of the applicant;

(*b*) the amount of revenue involved in the goods proposed to be warehoused;

(*c*) the situation of the proposed warehouse;

(*d*) the security arrangements at the proposed warehouse; and

(*e*) the bonded warehouse facilities already available to the public in the area,

and if he is satisfied that it is in the public interest that the licence should be issued he shall call upon the applicant to submit a bond in such sum as the Controller deems appropriate.

Issue of licence

45. If he is satisfied in accordance with regulation 44, and upon receipt of the completed bond and the prescribed fee, the Controller shall issue the licence.

Licences to be displayed

46. Licences issued under regulation 45 shall be prominently displayed in the bonded warehouses to which they refer.

Marking and calibration of vats, etc.

47. Any vat, tank or similar container used in a bonded warehouse for the storage or manipulation of liquids shall be marked, numbered and calibrated to the satisfaction of the Controller, and the licensee shall deliver to the Controller such copies of the calibration tables as he may require:

Provided that if the Controller directs that an officer calibrate or gauge any such container then such reasonable calibration or gauge shall take precedence over any calibration tables supplied by the licensee.

Receipt for goods warehoused

48. The licensee shall give a receipt to the proper officer in form No. 26 for all goods placed in the bonded warehouse.

Transfer of ownership of goods in warehouse

49. If the ownership of any goods in a bonded warehouse changes the licensee shall forthwith advise the proper officer of the name of the new owner and, in respect of goods in a private bonded warehouse, shall cause them to be entered and removed in accordance with section 47 of the Act.

Goods in warehouse to be marked

50. The date of warehousing, and in the case of a public bonded warehouse, the name of the owner or importer, shall be clearly marked on each consignment of goods warehoused.

Dangerous goods

51. Goods of an inflammable or dangerous nature or goods likely to cause damage to other goods shall not be kept in a bonded warehouse containing other goods unless segregated to the satisfaction of the proper officer.

Naked lights

52. Naked lights shall not be allowed in bonded warehouses except in emergency or under the authority of the proper officer.

Public sales

53. Except with the authority and in the presence of an officer, public sales shall not be held in a bonded warehouse.

Manipulation of goods

54. Save as permitted by an officer goods in a bonded warehouse shall not be examined, opened or altered except in case of emergency, when the licensee shall immediately report the occurrence to the nearest available officer.

Goods to be stored in bonded warehouse

55. When the Controller has, as a condition of the issue of a licence, directed that only certain goods, or certain classes of goods, shall be stored in a bonded warehouse then only those goods, and no others shall be stored therein:

Provided that if the licensee desires to extend the range of goods for which his warehouse is licensed then such extension may be permitted by the Controller upon written application.

Warehousing of goods

56. Save as otherwise provided in the customs laws—

(*a*) no goods shall be deposited in a bonded warehouse unless such goods are entered for that purpose;

(*b*) no goods entered for warehousing shall be deposited and stored except in the bonded warehouse for which they are entered;

(*c*) all goods entered for warehousing shall be deposited without delay in the warehouse for which they are entered.

Losses in transit

57. Subject to any allowable deficiencies, the duty on any losses which occur during the transportation of goods to a bonded warehouse or between bonded warehouses shall be paid forthwith by the owner of the goods, who shall submit to the proper officer a declaration in form No. 32 or form No. 39, whichever is appropriate.

Free goods deposited in warehouse

58. If for any reason a licensee wishes non-dutiable goods to be deposited in his bonded warehouse the Controller may in his discretion allow such deposit subject to such conditions as he thinks fit.

Damaged packages

59. All packages—

(*a*) entered for warehousing shall, if damaged, be repaired before or immediately after being deposited in a bonded warehouse;

(*b*) damaged while in a bonded warehouse shall, as soon as possible, be drawn to the attention of the proper officer and made good under his supervision.

Warehousing of excisable goods

60.—(1) Excisable goods may be entered for warehousing upon the submission to the proper officer of a declaration in form No. 24.

(2) The goods shall be removed forthwith from the excise warehouse to the bonded warehouse for which they are entered upon the officer returning to the owner a copy of the form No. 24, stamped and signed by such officer, as authority for removal.

(3) The manufacturer of any excisable goods which have been warehoused in terms of this regulation shall record full particulars

of the goods, together with the number and date of the entry relative to their warehousing, in the records to be kept under section 75 and in the returns to be rendered under section 77 of the Act.

Sampling of warehoused goods G.N. 156/1977

61.—(1) Upon written application and the giving of security to cover the duty involved an officer may permit the owner of warehoused goods to take samples thereof in his presence and if the samples are not returned to the warehouse within such reasonable period as the officer directs the duty shall be paid by the owner forthwith :

Provided that one sample, not exceeding one litre, may be taken from each cask, drum, vat, tank or mixing vessel containing liquids without payment of duty and without being returned to the warehouse.

(2) The licensee shall note in the records required to be kept under section 44 of the Act the taking, and if such is the case, the return of samples taken under this regulation.

Operations on warehoused goods

62. If the owner of any warehoused goods wishes to re-gauge, rack, blend, mix, reduce, fine, bottle or otherwise manipulate such goods in a bonded warehouse he shall give not less than 24 hours notice of his intention by the submission to the proper officer of form No. 51, and shall not proceed with any such operation without the approval of the proper officer.

Marking of packages containing liquids G.N. 156/1977

63.—(1) All casks, drums or similar containers containing liquids manufactured or manipulated in a bonded warehouse shall, unless the Controller otherwise directs, immediately after such goods have been placed therein and before removal from the bonded warehouse, be marked and numbered with the following particulars—

(*a*) the name of the manufacturer or owner or licensee;

(*b*) the description of the goods;

(*c*) the quantity in litres;

(*d*) the progressive number of each container, commencing with the number one for the first container filled each year, together with the number of the year or the last two figures of the number of the year in which the container was filled.

(2) All cases and similar containers containing liquids bottled in a bonded warehouse shall, unless the Controller otherwise directs, immediately after such goods have been placed in such containers, and before removal from the warehouse, be marked and numbered with the following particulars—

(*a*) the name of the manufacturer or owner or licensee;

(*b*) the description of the goods;

(*c*) the quantity in imperial gallons;

(*d*) the bottling operation number, and the progressive number of each case within the bottling operation.

(3) Particulars required to be marked under subregulations (1) and (2) shall be legibly printed on the containers or cases in letters and figures of not less than half an inch in height.

Allowable deficiencies

64. If any deficiencies or losses are found in any liquids in cask, drum or other bulk container in a bonded warehouse or if any losses occur in any operation undertaken in accordance with regulation 62 and the officer is satisfied that such deficiencies or losses were not caused wilfully or negligently he may, subject to the directions of the Controller, write off such deficiencies or losses and a copy of the relevant customs document signed by the officer shall be the authority for such write off in the records kept by the licensee and by the officer and for the remission of the amount of duty involved.

Payment of duty on deficiencies

65. Deficiencies or losses in warehoused goods other than those allowable under the customs laws shall be entered in form No. 32 or form No. 39, whichever is appropriate, or in such other manner as the Controller may direct, and a copy of such entry shall be the authority for writing off such deficiencies or losses in the records kept by the licensee and the officer.

Surplus goods in bonded warehouse

66. Any goods found in a bonded warehouse which cannot be properly accounted for, to the satisfaction of the Controller, by their owner or by the licensee shall be deemed to be un-customed and shall be—

(*a*) entered for warehousing and duly warehoused; or

(*b*) entered for consumption and removed from the warehouse,

unless they are prohibited goods, in which case they shall be delivered into the custody of the Department as goods liable to forfeiture.

Destruction etc. of warehoused goods

67.—(1) If an owner—

(*a*) wishes to destroy warehoused goods; or

(*b*) wishes the duty to be remitted on goods accidentally lost or destroyed while in transit to a bonded warehouse or after lawful delivery from a bonded warehouse other than for consumption; or

(*c*) wishes to abandon warehoused goods to the Department without payment of duty thereon,

he shall submit to the proper officer a request in form No. 43 together with a full written explanation of the reason for such

request and the Controller may, after considering all the circumstances, refuse the request or grant it in whole or in part.

(2) If the Controller grants, in whole or in part, a request made in accordance with subregulation (1) his signature on the form shall be the authority for the remission of the duty involved.

Re-entry for warehousing

68. Goods in a bonded warehouse which are required to be re-entered for warehousing by virtue of section 47 (4) of the Act shall be entered in form No. 24.

Entry of warehoused goods for consumption

69. The entry of goods for removal from a bonded warehouse for consumption shall be effected by the completion and submission to the proper officer of—

(*a*) a declaration in form No. 39, if the goods are liable to customs duty; or

(*b*) a declaration in form No. 32, if the goods are liable to excise duty; or

(*c*) a declaration in form No. 82, if the goods are to be entered under rebate of duty,

and by the payment of any duty due on the goods.

Entry of warehoused goods for exportation

70. The entry of warehoused goods for exportation shall be effected by the submission to the proper officer of a completed form No. 36 and by the giving of such security for the duty on the goods and for their due exportation as the proper officer may require.

Goods for exportation to be marked

71. The containers of all goods entered for exportation in accordance with regulation 70 shall be marked conspicuously with the words "In Bond" so far as this is practicable.

Proof of exportation

72.—(1) Warehoused goods entered in accordance with regulation 70 shall not be regarded as exported, neither shall the owner be released from his security, until—

(*a*) in the case of goods exported by aircraft, vessel or unlocked road transport the goods have been produced to, and certified exported, on a copy of the appropriate export bill of entry, by the officer at the port of exportation;

(*b*) in the case of goods exported by post there has been produced to the proper officer a certificate of posting certified by the postal official who accepted them for despatch;

(*c*) in the case of other goods there has been received by the proper officer—

(i) signed declaration of despatch for exportation by the carrier who accepted the goods for exportation; and, if the proper officer so requires,

(ii) a certificate of due receipt at a foreign port signed by a customs official on a copy of the appropriate form No. 36 at that foreign port:

Provided that the Controller may require different, or further evidence of due exportation in cases where he considers such to be necessary.

(2) The onus of proof of due exportation shall be with the exporter.

Entry for re-warehousing

73.—(1) The entry of goods for re-warehousing shall be effected by the completion and submission to the proper officer of a form No. 24 and by the giving of such security for the due deposit in the warehouse to which the goods are to be removed or the payment of the duty as the officer may require.

(2) The authority for the deposit of the goods in the bonded warehouse in which they are re-warehoused shall be a copy of the relevant form No. 24 signed by the officer for the warehouse from which they have been removed.

(3) Goods entered for re-warehousing under this regulation shall be conveyed to the other warehouse without delay and by the quickest practicable means.

Authority for delivery for warehoused goods

74. Authority for the delivery of goods from a bonded warehouse shall be given by the officer signing and returning to the owner of the goods, or to the licensee, a copy of the relevant entry, or in such other manner as the Controller may direct.

Goods not exported, etc.

75. If warehoused goods entered for exportation or for re-warehousing are not so exported or re-warehoused they shall be delivered into the custody of an officer who may direct that they be deposited in a bonded warehouse or in a customs warehouse, or that the duty be paid, according to the circumstances of the case.

Power of Controller to vary regulations

76. In respect of bonded warehouses licensed for the storage of—

(*a*) unpacked petroleum products; and

(*b*) such other goods as the Controller considers require special revenue treatment,

the Controller may vary the requirements of regulations 62 to 75 to such extent as he considers expedient:

Provided that the licensees of such bonded warehouses shall comply with any conditions that the Controller or the proper officer may impose in relation to such variation.

PART VII
Carriage Coastwise

Coastwise declarations

77.—(1) Before a coastwise vessel or aircraft departs from any port the master shall deliver to the proper officer a declaration—

(*a*) in the case of a vessel, in Form No. 4;

(*b*) in the case of an aircraft, in Form No. 2,

supported by separate manifests detailing the goods to be unloaded at each other port in Malaŵi:

Provided that the Controller may authorize the proper officer to dispense with such forms and to accept such declarations in such other manner as he may specify.

(2) The proper officer shall stamp, sign and return to the master copies of the declarations and manifests submitted to him under subregulation (1).

Procedure at destination

78.—(1) Upon arrival at the port of destination in Malaŵi the master of a coastwise vessel or aircraft shall unload the goods due for discharge at that place and shall surrender to the proper officer the copies of the documents returned to him under the provisions of regulation 77.

(2) No goods carried coastwise shall be removed from the place of discharge without the prior permission of the proper officer.

Exemption from requirements

79. The Controller may exempt from the requirements of this Part such aircraft or vessels or such classes of aircraft or vessels as he considers expedient.

PART VIII
Exportation

Entry of goods for exportation

80.—(1) Subject to the provisions of regulation 81, the entry of goods for exportation shall be effected—

(*a*) in the case of goods to be exported from a bonded warehouse or from an excise warehouse, in the manner set out in regulation 70;

(*b*) in the case of goods to be exported after transit, by the surrender to the proper officer of a copy of the entry in Form No. 30 stamped and signed by the officer at the port at which the goods were entered at importation;

(*c*) in the case of—

(i) travellers' samples to be exported temporarily;

(ii) vehicles to be exported temporarily by road;

(iii) goods to be exported after temporary importation; or

(iv) the accompanied baggage of travellers, not being merchandise,

in such manner as the Controller may direct;

(*d*) in the case of other goods, by the completion and submission to the proper officer of a declaration in Form No. 34.

(2) Except as may be allowed by the Controller, each separate consignment of goods for exportation shall be entered separately.

Minor consignments G.N. 14/2005

81.—(1) Notwithstanding the provisions of regulation 80, entry for exportation of the following goods may be effected by the completion and submission to the proper officer, to a postal official in the case of goods to be posted, or to the carrier, of a declaration in Form No. 38—

(*a*) goods for exportation by post;

(*b*) merchandise, of a value not exceeding K10,000, for exportation by air-freight or by rail; and

(*c*) other goods, not elsewhere provided for and not being merchandise or the accompanied baggage of travellers:

Provided that—

(i) this regulation shall not apply to warehoused goods or to goods for exportation on drawback;

(ii) the Controller may, in his discretion, dispense with the submission of a declaration in Form No. 38 in the case of goods of a value not exceeding K30,000 if the exportation of such goods is not specifically restricted; and

(iii) any declaration or description of goods attached to or accompanying any goods for which entry for exportation is not required shall be deemed to be a declaration for customs purposes.

(2) Declarations in Form No. 38 accepted by a postal official or by an official of the carrier shall be transmitted by such official to the proper officer without delay.

Authority for exportation

82.—(1) With the exception of the accompanied baggage of travellers and goods in respect of which, under the provisions of regulation 81, a declaration on Form No. 38 has been accepted by the postal authorities or by the carrier, or has been dispensed

with, goods shall only be accepted by a carrier for exportation after such exportation has been authorized by an officer in the following manner—

(*a*) by the impression of the official customs stamp and the signature of the officer on any consignment note, waybill, bill of lading or other document relative to the despatch of the goods and required by the carrier before he will undertake the carriage of the goods; or

(*b*) by permission in writing, in such form as the officer considers suitable, signed by the said officer and bearing the impression of the official date stamp, if the carrier himself is the exporter or for any reason does not require a document such as is mentioned in paragraph (*a*) above.

(2) In the case of goods to which regulation 81 applies—

(*a*) the acceptance by a postal official or by an official of the carrier of a declaration in form No. 38; or

(*b*) the direction of the Controller that a declaration in form No. 38 may be dispensed with,

shall be deemed to be the authority in accordance with section 51 of the Act for the acceptance of the goods for exportation:

Provided that the postal authorities or the carrier, as the case may be, shall make the goods available for examination by an officer prior to exportation at such place or places as the Controller directs.

Registration on exportation

83.—(1) Articles which are to be exported from and returned to Malaŵi may be registered, before exportation takes place, at a customs office or, in places where there is no customs office and if the goods are to be exported by post, at the nearest post office:

Provided that—

(i) the articles shall be produced for inspection by the officer or postal official registering them;

(ii) articles shall not be registered unless they can be accurately described when registered and are capable of being identified on their return.

(2) Evidence of registration in form No. 48 or in such other form as the Controller may direct shall be supplied, on request, to persons registering articles in accordance with subregulation (1).

Loading of ships

84.—(1) No goods shall be loaded in any ship, whether such ship is engaged in the exportation of goods or in carriage coastwise, until application has been made in form No. 5 to the proper officer for permission to load the said ship and the proper officer has granted such permission and, if he so requires, has appointed an officer to supervise the loading operation.

(2) Except with the written permission of the proper officer goods shall only be loaded in a ship between sunrise and sunset.

(3) The loading of goods into a ship shall be carried out in accordance with any instructions given by any officer appointed under subregulation (1).

Outward clearance of ships

85.—(1) Prior to departure of a ship to a foreign port the master shall submit to the proper officer a declaration in form No. 6 and one copy of such declaration, signed, stamped and returned to the master by the officer, shall constitute outward clearance of the ship from that port.

(2) When submitting a declaration in form No. 6 the master shall submit therewith copies of the export entries of all the goods mentioned in the declaration which are required to be entered.

(3) If a ship bound for a foreign port calls at an intermediate port within Malaŵi the master shall obtain a fresh outward clearance from the proper officer of the intermediate port before causing or permitting the ship to depart therefrom.

Outward clearance of aircraft

86.—(1) Prior to the departure of an aircraft to a foreign port the master shall submit to the proper officer a declaration in form No. 7 or in such other form or manner as the officer may require and one copy of such declaration, signed, stamped and returned to the master by the officer, shall constitute outward clearance of the aircraft from that port.

(2) If, after outward clearance has been effected under subregulation (1), the aircraft lands at any other place within Malaŵi prior to proceeding to a foreign port the master shall obtain fresh outward clearance before causing or permitting the aircraft to leave Malaŵi.

Departure of vehicles and persons

87. The declarations required to be made by the person in charge of any vehicle, or by any person, about to depart to a foreign port shall be made in such form and manner as the Controller may direct.

PART IX

Stores

Warehoused and drawback goods for use as stores

88. In respect of warehoused goods, or goods on drawback or goods entered in accordance with regulation 30 for use as stores on an aircraft or vessel about to depart to a foreign port—

(*a*) the proper officer may, in his discretion and subject to the directions of the Controller, limit the quantity of such goods

which may be entered for use as stores on any particular aircraft or vessel;

(*b*) upon arrival at the place at which they are to be loaded the goods shall, pending loading on to the aircraft or vessel for which they are entered, be deposited in such secure place as the officer may direct;

(*c*) prior to loading, the goods shall be produced for examination by an officer and after loading the officer may place them under seal and such seal shall not be broken until the aircraft or vessel has finally departed to a foreign port;

(*d*) the master shall give written acknowledgement to the proper officer of the receipt of the goods on board his aircraft or vessel.

Other goods for use as stores

89. Goods other than those provided for in regulation 88 for use as stores on an aircraft or vessel about to depart for a foreign port shall be entered in such manner as the Controller directs.

PART X

Transit

Transit routes

90. Goods entered in transit shall be transported without delay to the port through which they are to be exported by such routes as the proper officer may direct.

Transit goods not exported in time allowed

91. If goods entered in transit are not exported within the time allowed by the officer the owner of such goods shall, unless he explains the delay to the satisfaction of the proper officer and is allowed an extension of such time by that officer, and subject to compliance with any other written law, enter the goods for consumption on demand.

Diversion from transit

92.—(1) Any person wishing to divert goods for consumption or warehousing after such goods have been entered for transit shall deliver such goods into the custody of an officer and, if permission for such diversion is granted, shall forthwith enter them in accordance with the provisions of regulation 26 or regulation 27, as the case may be.

(2) Upon release of the goods by an officer for consumption or warehousing in consequence of an entry made in accordance with subregulation (1) the transit entry in respect of the goods shall be cancelled and the owner shall be released from such security as he may have given in respect of their transit.

PART XI

Excise

Entry of premises

93.—(1) The entry of premises required under section 65 of the Act shall describe accurately the situation and purpose of all

rooms, stores, warehouses, plant and apparatus to be used in connexion with the manufacture and storage of excisable goods. The entry shall be accompanied by such plans of the premises as the Controller may require.

(2) If the holder of an excise licence, with the consent of the Controller, makes any alterations to his entered plant or premises then he shall submit to the Controller an amendment to his entry or a fresh entry as the Controller may require.

Transfer of licence

94. If the Controller, under section 65 (7) of the Act, consents to the transfer of an excise licence to a successor that successor shall forthwith enter the premises in accordance with section 66 of the Act and provide security in accordance with section 69 of the Act.

Appeal against revocation or refusal to issue or renew

95. If, after notification by the Controller of his refusal to issue or to renew a licence or of his intention to revoke a licence, the holder of the licence or applicant wishes to appeal to the Minister under section 65 (12) of the Act he shall make such appeal in writing within one month of the date of such notification.

Apparatus, etc.

96. A licensee shall—

(*a*) empty any part of his plant or apparatus if the Controller has directed that such part be re-gauged;

(*b*) if required by an officer, stop the working of any machinery or apparatus for the purpose of examining such machinery or apparatus or of testing or gauging the output thereof:

Provided that the officer shall not interfere unduly with the legitimate operations of the licensee.

Marking of entered rooms, etc. G.N. 156/1977

97.—(1) Each entered room, store or warehouse, or the doors leading thereto, and all major items of plant and equipment shall be marked, to the satisfaction of the proper officer, with the purpose for which they are entered to be used and if more than one place or item is used for the same purpose then such places or items shall, in addition, be marked with consecutive numbers starting at the number one.

(2) The capacity of all vats, receivers or other bulk storage containers shall be ascertained by such methods as the Controller may specify and the licensee shall, if so required by the Controller, mark indelibly such capacity in litres on each such vat, receiver or other bulk storage container.

(3) Pipes in a distillery shall be painted and kept painted—

(*a*) red if they are for the conveyance of wine, wort or wash;

(*b*) blue if they are for the conveyance of low-wines or feints;

(*c*) black if they are for the conveyance of spirits;

(*d*) white if they are for the conveyance of water;

(*e*) green if they are for the conveyance of gas;

(*f*) yellow if they are for the conveyance of air; and

(*g*) silver if they are for the conveyance of steam:

Provided that, subject to the discretion of the Controller, any or all of the hot pipes of any distilling apparatus may not be required to be so painted.

(4) The Controller may dispense with the provisions of subregulation (1), (2) or (3) in relation to any particular premises.

Entry for consumption

98. The return and declaration required under the provisions of section 77 of the Act in relation to excisable goods delivered for consumption shall be made on form No. 32 supported by such other documents as the Controller may require:

Provided that in respect of each delivery of excisable goods to a person entitled to receive such goods at a reduced rate of duty a form No. 82 properly completed by the person so entitled, shall accompany the return.

Requirement for registration G.N. 26/2008

98A.—(1) Every application required under section 64 of the Act shall not be processed unless the applicant is—

(*a*) licensed as a manufacturer under section 77A of the Act; and

(*b*) in the case of an importer or distributor, is duly registered with the Malaŵi Revenue Authority for that purpose.

(2) Every application made under these Regulations shall be lodged at the nearest Malaŵi Revenue Authority office.

Application G.N. 26/2008

98B.—(1) Every application required under regulation 98A shall be in the format of Form CE 28C and shall comply with all the requirements specified in Part A of the Schedule hereto.

(2) Every application made in the form specified in regulation 98B shall contain all information specified in the instructions on how to complete Form CE 28C attached to Form CE 28C.

Documentation to accompany registration Cap. 46:03 G.N. 26/2008

98C.—(1) The application for registration as an importer or distributor of cigarettes in Malaŵi shall be accompanied by valid certified copies of—

(*a*) certificate of incorporation, issued pursuant to the Companies Act;

(*b*) Tax Payer Identification Number (TPIN) Certificate issued by the Malaŵi Revenue Authority; and

(*c*) Tax Clearance Letter from the Domestic Taxes Division of the Malaŵi Revenue Authority.

(2) Every application for renewal of registration as an importer or distributor of cigarettes shall be accompanied by Tax Clearance Letters from both the Customs and Excise and Domestic Taxes Divisions of the Malaŵi Revenue Authority.

(3) All applicants shall provide the most current information and other relevant details of their company at the time of making a new application, renewal or whenever there are changes to the company name or profile.

Validity period of licence G.N. 26/2008

98D. The Cigarette Importer or Distributor's Licence issued under section 77A of the Act and Regulation 98A shall expire on 31st December next following the date of issue.

Time of lodgment of application G.N. 26/2008

98E. Every application under these Regulations shall be submitted—

(*a*) in the case of new application, at any time of the year; and

(*b*) in the case of applications for renewal, such applications shall be lodged by the 31st October in the year in which the licence expires.

Procedure for obtaining Tax Stamps G.N. 26/2008

98F.—(1) Any person duly registered in accordance with regulation 98A may apply to the Commissioner General for Cigarette Tax Stamps for the purpose of—

(*a*) affixing on packets of locally manufactured cigarettes; or

(*b*) affixing on packets of imported cigarettes prior to importation.

(2) The Cigarette Tax Stamps shall be issued upon receipt of an application in the format of Form CTS 1, set out in Part B of the Schedule hereto, being the Requisition in Respect of Cigarette Tax Stamps for locally manufactured or imported cigarettes:

Provided that the applicant shall pay the prescribed application stamp fees.

(3) Only properly completed applications shall be accepted by the Commissioner General and any application with inaccurate or incorrect information shall not be accepted and shall be returned to the applicant

(4) Upon approval of the quantities ordered and receipt of payment for the stamps from an importer or a manufacturer, the Commissioner General shall inform the designated printer to print and deliver the stamps to the local or foreign manufacturer of cigarettes intended for consumption in Malaŵi.

(5) The designated printer referred to in subregulation (4) shall only print any stamps at the written Commissioner General's request.

(6) The printer shall consign the stamps directly to the manufacturer who applied for the stamps, anywhere in the world within the agreed time frame and notify the Commissioner General of the number of stamps supplied to manufacturer within two days of dispatch.

(7) The manufacture, importer or distributor shall ensure that every cigarette packet is affixed with stamps prior to importation, distribution or sale in Malaŵi.

Accounting for purchased cigarette tax stamps G.N. 26/2008

98G.—(1) Every cigarette tax stamp duly issued under section 77A of the Act shall constitute revenue due to Government, therefore even purchaser shall submit—

(*a*) in the case of the manufacturer: a monthly reconciliation statement done by the twentieth of the month following the month in which it became due showing—

(i) stamps in stock on the last day of the previous month and carried forward to the following month;

(ii) a summary of usage of cigarette tax stamps during the month, including what was brought forward from previous month; and

(iii) spoiled or damaged stamps, certified as such by an officer from the Customs and Excise Division of the Malaŵi Revenue Authority;

(*b*) in the case of an importer or distributor: a reconciliation statement done by the fifteenth working day from the date of importation showing—

(i) a summary of usage of cigarette tax stamps for the current importation, including that which was brought forward from previous importation;

(ii) stamps in stock as confirmed by manufacturer;

(iii) spoiled or damaged stamps confirmed by manufacturer, which shall be submitted together with the reconciliation statement or mailed to the Malaŵi Revenue Authority, Customs and Excise Division within fifteen days from the date of receipt of the statement.

(2) Where the reconciliation statement is not received in accordance with regulation 98G above, the Commissioner General shall make an assessment of the duties due which shall constitute a debt to the Government and shall be subject to recovery as prescribed under the Act.

Keeping of records G.N. 26/2008

98H.—(1) Every licensed manufacturer, importer or distributor of cigarettes shall keep and preserve such adequate and complete records for a period of not less than seven years of all sales and purchases and such other books of accounts as may be necessary to determine compliance with this Act.

(2) The records and other books of accounts referred to in subregulation (1) includes all invoices, origin certificates. pertinent records whether stored electronically or otherwise. papers and memoranda reflecting sales and purchases, operating and proprietary ledgers, and any other documents of information that maybe required by the Commissioner General, and all the books and records shall be open to examination upon demand by the Commissioner General.

Entry for exportation

99. The provisions of regulations 70, 71 and 72 shall apply, with any necessary modifications, to goods delivered from an excise warehouse for exportation.

Entry for removal to other entered premises

100. The provisions of regulation 73 shall apply, with any necessary modifications, to excisable goods lawfully removed from entered premises to other entered premises.

Loss or destruction of excisable goods

101. The provisions of regulation 67 shall apply, with any necessary modifications, to excisable goods accidentally lost or accidentally destroyed prior to having been delivered for consumption and to waste products destroyed by authority of the proper officer.

Deficiencies

102. If the proper officer is satisfied that any deficiencies in excisable goods may properly be allowed under section 103 (1) of the Act he may, subject to the directions of the Controller, write off such deficiencies and his signature on the relevant customs document shall be the authority for such write off in the records kept by the licensee and by the officer and for the remission of the amount of duty involved.

Defective, etc., goods returned to entered premises

103.—(1) Refund of excise duty and surtax paid on goods found, after delivery for consumption, to be defective or otherwise unfit for consumption shall be granted only if such goods are returned to the entered premises at which they were manufacture or are, with the consent of the Controller, destroyed elsewhere than at such entered premises, not later than 12 months after their delivery for consumption.

(2) The applicant for refund shall make written application therefor to the proper officer and such application shall—

(*a*) be accompanied by copies of credit notes or similar documents issued to the persons by whom the goods were returned;

(*b*) specify the date or dates upon which the goods were delivered for consumption;

(*c*) if the goods were delivered for consumption from a bonded warehouse quote the number of the entry by virtue of which they were so delivered; and

(*d*) include such other information as the Controller may require.

(3) The licensee shall give the officer such assistance as he may require in taking an account of the goods.

(4) The goods mentioned in subregulation (2) shall be destroyed or further manufactured under the supervision of an officer or such other person as the Controller may nominate.

(5) No refund on such defective goods shall be allowed unless the Controller is satisfied that the licensed manufacturer has made an allowance therefor to the original purchaser.

(6) The amount of refund which may be allowed in respect of such defective goods shall be limited to the amount of duty paid on the goods or to the amount of duty which would be payable on such goods according to the tariff in force at the date of destruction or further manufacture, whichever shall be the less.

Keeping of stills

104.—(1) If any person, not being the holder of an excise licence or a licence to distil *kachasu* in terms of the Intoxicating Liquor Ordinance, wishes to import or keep or use a still he shall make application therefor to the Controller and shall supply such information relative to his application as the Controller may require.

(2) The Controller may, subject to such conditions as he may impose, issue a certificate authorizing any person to import or keep a still for the purpose of—

(*a*) resale;

(*b*) the manufacture of goods other than spirits; or

(*c*) the performance of laboratory work, analysis and experiments, including experiments in the manufacture of spirits and the purification of alcohol for those purposes,

and may, at any time, cancel or vary the conditions of any such certificate.

Distilling apparatus

105.—(1) Only such stills, pipes, cocks, valves, receivers and other apparatus as have been approved by the Controller shall be used in a distillery.

(2) The Controller may require a distiller to provide such apparatus as the Controller considers expedient for the proper protection of the revenue and may specify the order in which and conditions under which raw materials or products shall be moved successively from one part of the plant or apparatus to another.

(3) A distiller shall not, unless with the approval and in the presence of an officer—

(*a*) remove or cause to be removed any lock or seal, or any flange, pipe or fitting giving access to spirits; or

(*b*) carry out any alterations to any pipe, still, safe, receiver or vessel through which spirits are conveyed or in which spirits are contained.

(4) Except with the permission of the Controller no spirit receiver which is not built wholly above ground level shall be used as a spirit receiver and no spirits shall be stored in ungauged vessels on the premises of a distiller.

Notification of spirits received

106. Every distiller who acquires spirits in any manner other than by production on his own premises shall submit to the proper officer, not later than the day following such acquisition, a written return in which shall be specified—

(*a*) the quantity and strength of such spirits; and

(*b*) the name and full address of the person from whom he acquired such spirits.

Notices to be given by distiller

107. A distiller shall give the following written notices to the proper officer on a form or in a book approved by the Controller—

(*a*) not less than twenty-four hours' notice of intention to distil or re-distil;

(*b*) not less than eight hours' notice of intention to remove wash or spirits from a fermenter for distillation or re-distillation, as the case may be;

(*c*) not less than four hours' notice of intention to rack, re-gauge, blend, mix, reduce, fine or bottle spirits.

Declarations by distiller

108. A distiller shall make the following declarations to the proper officer in a form or in a book approved by the Controller—

(*a*) a declaration of the description and quantity of materials used in making up a fermenter, the estimated yield of proof spirits from such materials, other than spirits for re-distillation, and the quantity and strength of wash or spirits collected in the fermenter; and

(*b*) at the end of each distillation period a declaration of the total quantity of spirits used in re-distillation, and the total quantity of spirits and feints produced from such distillation, or re-distillation, as the case may be.

Additional records to be kept by distiller

109. Every distiller shall keep a still-house book in which he shall record daily—

(*a*) the description and the quantity of the materials used by him and the quantity and strength of wash sent to distillation and the quantity and strength of spirits obtained from the materials used; and

(*b*) the quantity of spirits used in re-distillation and the quantity and strength of rectified spirits obtained therefrom.

Methylation

110.—(1) Methylation of spirits shall take place only in rooms or places specially entered for that purpose and no other.

(2) No denaturants shall be used in the methylation of spirits unless first approved for such use by the Controller and, pending use, denaturants shall be kept in a store specially entered for that purpose and no other.

(3) The proportions of denaturants to be added to spirits in the manufacture of methylated spirits shall be as approved by the Controller, who may specify different denaturants and different proportions thereof according to the purpose for which the methylated spirits are to be used.

True strength of spirits to be shown

111. In every case where a distiller is required under the customs laws to show the strength of spirits in any book or document he shall state such strength as ascertained in accordance with section 116 of the Act.

Controller's power to vary

112. The Controller may, in his discretion, vary the requirements of regulations 104 to 111 in relation to any particular distillery:

Provided that the distiller shall comply with any conditions that the Controller may impose in relation to such variation.

PART XII
Duties, Rebates, Refunds, etc.

Complaints and investigations as to dumping

113.—(1) Any person who considers that detriment to an industry in Malaŵi in which he has an interest is being, or is likely to be, caused by one or more of the conditions set out in the table in Part III of the Schedule to the Dumping Duties Tariff Order, 1969, may make a complaint to the Controller and may request that an investigation be made into the matter.

(2) Any person who makes a complaint under subregulation (1) shall furnish the Controller with such information as the Controller may require and which it is in the person's power to give, in relation to the complaint.

(3) Upon receipt of a complaint under subregulation (1) the Controller shall make an investigation as to—

(*a*) the domestic market value; and

(*b*) the export price,

of the goods concerned and shall report the result of such investigation to the Minister.

(4) Upon receipt of a report made by the Controller under subregulation (3) the Minister may appoint a board or person further to inquire into the matter and to report whether, in all the circumstances, it would be in the public interest to impose one or more of the dumping duties provided for in the Dumping Duties Tariff Order, 1969.

(5) The board or person appointed under subregulation (4) shall have all the powers, rights, privileges and duties conferred or imposed upon a Commissioner by sections 7, 8, 9 and 10 of the Commissions of Inquiry Act. Cap. 18:01

(6) The provisions of sections 11,12 and 13 of the Commissions of Inquiry Act shall apply to an inquiry held under subregulation (4).

Suspensions of duties

114. The provisions of the Sixth Schedule shall have effect in relation to the suspension of duties on the goods specified therein.

Rebates, remissions and refunds

115. The provisions of the Seventh Schedule shall have effect in relation to rebates, remissions and refunds of duty on the goods, in the circumstances and to the persons specified therein.

Industrial rebates and drawbacks

116. The provisions of the Eighth Schedule shall have effect in relation to rebates of duty on materials used in industry in Malaŵi and in relation to drawback of duty on materials used in Malaŵi in the manufacture of goods exported therefrom.

Drawback of duty under Export Incentive Act G.N. 31/1991

116A.—(1) Notwithstanding regulation 116, drawback of duty on raw materials including packaging used in Malaŵi in the manufacture or production of goods exported therefrom shall be claimed computed and paid subject to the following conditions—

(*a*) the duty being claimed as drawback of duty was actually paid;

(*b*) the raw materials on which the duty was paid are in accordance with section 15 (1) of Export Incentives Act provided that such materials shall not be fuels or lubricants;

(*c*) the amount of duty payable as being drawback where waste of commercial value or by-products result from the process of manufacture shall be reduced by the same proportion that the waste or by-products bear to the total value of all goods manufactured from those raw materials unless the waste or by-products are exported.

(2) Goods on which drawback of duty is claimed shall be exported in accordance with regulation 80 (1) (*d*) prior to the submission of an application for duty drawback and further that—

(*a*) the goods were not used in Malaŵi or otherwise dealt with; and

(*b*) the bill of entry relating to the exportation is marked ‘‘subject to Duty Drawback".

(3) A proper officer may at any time prior to exportation of the goods require that the goods be made available for examination.

Applicant for duty drawback

116B.—(1) An applicant for drawback of duty under regulation 116A shall be a person registered under the Export Incentives Act as a registered exporter.

(2) Where the applicant is not the person who imported the raw materials, the person who imported the raw materials shall provide the applicant with all information necessary on Form 45 to enable the applicant claim drawback of duty.

Application for duty drawback

116C. An application for drawback of duty shall be made within two years from the time the duty being claimed was paid and submitted to a proper officer in six copies accompanied with the following—

(*a*) a list of numbers of bills of entry on which the duty being claimed was paid;

(*b*) copies of all bills of entry for export to which the application relates;

(*c*) such other documents as shows the relationship between the imported materials used and the goods exported; and

(*d*) where the applicant is not the importer of the raw materials, a properly completed Form No. 45.

Part payment of duty drawback

116D.—(1) Subject to section 15 (5) of Export Incentives Act, the Controller may, upon receipt of a properly completed application for drawback of duty, pay to the applicant an amount equal to 75 *per centum* of the total amount being claimed as duty paid on raw materials used in the manufacture of goods that have been exported.

(2) If upon examination of the records of the applicant for duty drawback it transpires that by virtue of subregulation (1) there has been an overpayment, such overpayment shall be reimbursed by the applicant within fourteen days of his being notified of the discovery of the overpayment.

(3) If an applicant, having been informed of the overpayment fails to make reimbursement within the period allowed for such purpose, he shall, in addition to the overpayment, pay interest at the rate which is three percentage points above the prevailing commercial bank interest rate.

Records of transactions

116E. Records of transactions relating to drawback of duty shall be kept and maintained in accordance with section 167 of the Act.

Draw back of duty G.N. 34/1993

116F. Notwithstanding regulations 116, 116A, and 116B, payment of drawback shall be made in respect of materials used in the manufacture of goods supplied under tariff headings 100.02, 100.03 and 101.05.

Other drawbacks

117.—(1) The payment of drawback on goods exported from Malaŵi, other than goods provided for in regulation 116, shall be subject to the following conditions—

(*a*) the goods shall not have been taken into consumption in Malaŵi;

(*b*) the goods shall be exported as merchandise not later than 2 years after the date of payment of the duty;

(*c*) the person to whom the refund is made shall be the person who paid the duty;

(*d*) except as the Controller may allow, the goods shall be in the same condition, and in the same packages, as at the time when the duty was paid;

(*e*) the goods shall be entered for exportation in the manner provided for in regulation 80 and the form required by that regulation shall be prominently marked ‘‘drawback claimed";

(*f*) when entering the goods for exportation, or with such period thereafter as the Controller may allow, the exporter shall submit to the proper officer a claim for drawback in the specified form;

(*g*) the goods shall be made available for examination by an officer prior to packing and loading for exportation;

(*h*) the exporter shall prove payment of duty to the satisfaction of the Controller; and

(*i*) exportation of the goods shall be proved in the manner set out in regulation 72.

(2) Notwithstanding the provisions of subregulation (1), the Controller may approve other procedures in respect of goods for exportation on drawback.

(3) The amount of drawback which may be allowed under this regulation shall be limited to the amount of duty paid on the goods or to the amount of duty which would be payable on such goods according to the tariff in force at the time of exportation, whichever shall be the less.

Goods destroyed, lost or damaged by accident

118.—(1) If any person wished to claim a remission or refund of duty, in accordance with subsection (1) or subsection (2) of section 99 of the Act on goods destroyed, lost or damaged by accident while under customs control he shall, as soon as the occurrence comes to his notice forward to the proper officer a written claim for such remission or refund accompanied by an explanation of the circumstances and shall afford the proper officer such assistance and facilities as the proper officer may require to investigate the matter.

(2) If the Controller is satisfied in accordance with subsection (1) of section 99 of the Act, that the goods have been totally lost or destroyed without going into consumption he shall authorize remission or refund of the duty, as the case may be.

(3) If the Controller is satisfied in accordance with subsection (2) of section 99 of the Act, that the value of the goods has been reduced as a result of an unavoidable accident while such goods were under customs control he shall re-assess the amount of duty otherwise payable or paid and shall authorize such remission or refund as he considers equitable in the circumstances.

(4) If any person is aggrieved at any decision made by the Controller under subregulation (2) or subregulation (3) he may appeal to the Minister, whose decision shall be final and shall not be challenged in any court.

Goods found defective after release from customs control

119.—(1) If the importer of any goods wishes to claim refund of duty under the provisions of section 99 (3) of the Act he shall make written application to the Controller and shall produce such evidence to substantiate his claim as the Controller may require.

(2) If the goods are to be destroyed or if they are to be surrendered to the Controller, the importer shall deliver them, at his own risk and expense, to such place as the Controller may require and if the goods are to be destroyed their destruction shall take place at the expense of

the owner and in the presence of an officer or such other person as the Controller may designate.

(3) If the goods are to be returned to the foreign supplier they shall be entered before exportation in accordance with the provisions of regulation 80, the entry being marked prominently to the effect that refund of duty is claimed under section 99 (3) of the Act, and the goods shall be produced for examination by an officer prior to loading for exportation.

(4) If the Controller is satisfied as to the identity of the goods destroyed, surrendered or exported and that all the requirements of the law have been carried out in relation to such goods he shall authorize refund of that proportion of the duty paid on the goods which the credit or other allowance made by the supplier to the importer in respect of the defect bears to the price originally charged for the goods.

Goods damaged or pilfered before importation

120.—(1) No cognizance shall be taken of any damage to or pilferage or diminution of goods alleged to have taken place prior to importation unless the attention of an officer is drawn thereto as soon as practicable after the goods are unloaded in Malaŵi and unless the goods, or the remainder of them, or the packages in which they had been contained, are thereupon produced for examination by an officer.

(2) Before accepting a claim for remission or refund of duty on account of damage to or pilferage of goods prior to importation the Controller may require such other evidence to substantiate the claim as he considers necessary.

Claims for refund

121.—(1) All claims for refund of any duty, deposit, fees or charges shall be made by the claimant in the specified form or in such other manner as the Controller may approve and shall be supported by such evidence, including evidence that any obligation undertaken has been fulfilled, as the Controller may require.

(2) When he is satisfied that any cash deposited as security may properly be refunded the proper officer shall give authority for such refund in such manner as the Controller may approve and any claim for such refund shall be made within 2 months of the date of the giving of such authority or within such further period as the Controller may in any particular case allow.

PART XIII
Value and Origin

Declaration of value
G.N. 25/1989

122.—(1) Every person importing goods shall, in respect of each importation and if required by the proper officer, deliver to such officer a declaration of value in form No. 19 or form No. 19A Separate declarations shall be given in respect of different sellers or suppliers.

(2) The Controller, if he is satisfied that a person is a regular importer of goods from the same supplier and that the terms and conditions of trading are identical in respect of all such importations, may accept a declaration given by that person in form No. 20 and in that event he may in writing permit separate declarations of value in respect of such importations to be dispensed with for such period as he may direct.

(3) The Controller may at any time in writing withdraw any permission given by virtue of subregulation (2) and from the date of such withdrawal the importer shall observe the terms of subregulation (1).

Certificate of origin

123. Every person importing goods shall deliver to the proper officer a certificate of origin in respect of such goods prepared in form No. 18 by the grower, producer, manufacturer, processor, seller or supplier of the goods, together with such other evidence as to the origin of the goods as the officer may require:

Provided that—

(*a*) the Controller may, if he is satisfied that such other certificate contains all the essential particulars contained in Form No. 18, authorize the officer to accept a certificate of origin other than that set out in Form No. 18; and

(*b*) the Controller may, in the case of such goods as he may determine, dispense with the production of a certificate of origin.

PART XIV
SECURITIES

Cash security

124. When security for compliance with any of the provisions of the customs laws is given by cash deposit the person giving the security shall, when making the deposit, complete and submit to the proper officer an application in Form No. 122.

Security by bond

125. Any bond given in accordance with the customs laws shall be in the specified form completed in such manner as the Controller may direct and, except as otherwise provided, shall be in such sum as the Controller may direct.

Sureties to bonds

126. The Controller may direct the number of sureties required to subscribe to any bond and may refuse to accept any bond if he is not satisfied as to the financial standing of any surety.

Security by guarantee

127. A guarantee given as security for compliance with any of the provisions of the customs laws shall be in such form as the Controller may direct.

PART XV
AGENTS

Application for customs agent licence G.N. 20/2010

128.—(1) A person wishing to be licensed as a customs agent under section 128 shall make an application to the Commissioner General by filling in Form C 25 in the Schedule and submitting the form to the Commissioner General.

(2) The application for a customs agent licence shall be accompanied by—

(*a*) a valid certified copy of the certificate of registration or incorporation under—

(i) the Business Names Registration Act;

(ii) the Partnership Act; or

(iii) the Companies Act;

(*b*) where applicable under the Companies Act, names of shareholders of the company of the applicant or its holding company, if any;

(*c*) clearance certificates issued by the Domestic Taxes division and Customs division confirming that the applicant has no outstanding tax liabilities;

(*d*) Taxpayer Identification Number or a copy of Value Added Tax certificate; and

(*e*) a non-refundable application fee, as shall be determined from time to time by the Commissioner General.

Procedure for recruiting customs agents G.N. 20/2010

128A.—(1) The Commissioner General shall advertise by publishing in a public newspaper in general circulation request for applications from any person wishing to transact business of a customs agent.

(2) The advertisement shall remain open for a period of twenty-one days from the first day of publication, and any application submitted after the twenty-one days have expired shall not be considered by the Commissioner General.

(3) An applicant who satisfies the requirements of regulation 128 shall, by publication in a public newspaper in general circulation and; any other public media, be invited to attend an interview.

(4) Upon receiving applications the Commissioner General shall forward the applications to the Advisory Committee for assessment.

(5) The Advisory Committee shall conduct the interviews and names of any successful applicants shall be published in a public newspaper in general circulation.

(6) The Advisory Committee shall, when conducting the interviews, consider whether an applicant being interviewed has among other requirements—

(*a*) a clean record of compliance to all tax laws and regulations;

(*b*) a physical place where the applicant would transact business of a customs agent;

(*c*) not been dismissed as an employee of Malaŵi Revenue Authority for fraud or fraud-related matter and, if ever dismissed, at least two years have elapsed from the date of the dismissal; and

(*d*) not been convicted of an offence under any tax law and, if convicted of any such offence, at least a period of seven years has elapsed from the date of the conviction.

(7) The Advisory Committee may come up with its own terms of reference as long as the terms of reference are not inconsistent with the Act and these regulations.

(8) An applicant aggrieved with the results of the interviews may appeal in writing to the Commissioner General within twenty-one days from the day of publication of names of successful applicants, and any appeal made after expiration of the twenty-one days shall not be considered for determination by the Commissioner General.

Appeals
G.N. 20/2010

128B.—(1) Where a person appeals pursuant to regulation 128A (8) or regulation 129 (6), the Commissioner General shall forward the appeal to the Appeals Committee for determination.

(2) The Appeals Committee shall forward its determination to the Commissioner General.

(3) The Commissioner General shall communicate the decision of the Appeals Committee to the applicant in writing within twenty-one days after the date of the receipt of the determination of the Appeals Committee.

Conditions for issuance of a licence
G.N. 20/2010
G.N. 42/2013

128C.—(1) The Commissioner General shall issue the customs agent licence to a successful applicant on condition that the applicant has—

(*a*) entered into a bond in the sum of one million five hundred thousand Kwacha and paid a fee of one hundred and fifty thousand Kwacha for the issuance of the licence;

(*b*) in the case of removal in bond, an established office and a licensed temporary store at an inland port for the storage of goods under customs control;

(*c*) in the case of removal in transit, an established office at any port of entry and port of exit;

(*d*) at least an employee at such established office to transact the business on behalf of the applicant;

(*e*) reported in writing to the Commissioner General names of employees of the applicant in the prescribed form VB4 in the Schedule; and

(*f*) in authorized case of an applicant who would be removing goods in bond, submitted to the Commissioner General—

(i) a letter from surety of the applicant confirming issuance of bond for that fiscal year;

(ii) a letter of confirmation from prospective surety of the applicant indicating willingness to provide security, and stating amount of security to be assured per station where the applicant wants to remove goods from; and

(iii) proof of ownership or occupancy of a licensed customs area at each inland station where the applicant wishes to operate as a customs agent.

(2) The Commissioner General may review the bond or the fee stipulated in regulation (1) (*a*), and may amend any requirement for the purposes of effecting these Regulations.

(3) The Commissioner General shall award the licence to a successful applicant within two months after the date of publishing in a public newspaper the names of successful applicants, and the licence shall be valid for twelve months from the date of issue.

(4) The Commissioner General shall publish in the *Gazette* names of all customs agents licensed to conduct the business of customs agent by the last instance of a financial year preceding the financial year for which the licence is valid.

Renewal of licence G.N. 20/2010

129.—(1) Any customs agent wishing to renew his or her licence shall, at least three months before the expiry of the licence, apply to the Commissioner General for renewal of the licence.

(2) The Commissioner General shall refer any application for renewal of licence to the Advisory Committee for consideration.

(3) The Advisory Committee shall, when assessing the application for reward of a licence, consider, among other factors, if the customs agent has—

(*a*) in case of any general customs agent, demonstrated the ability to process not less than an average of twenty declarations every month;

(*b*) in case of any private customs agent, made payments of duties of not less than fifty million Kwacha over the period of twelve months;

(*c*) met the specified conditions for operating Remote Direct Trader Input;

(*d*) maintained good compliance record relating to tax laws and regulations; and

(*e*) not made transactional errors of more than thirty per cent that affected or would have affected the amount of revenue collected.

(4) Subregulations (1) (*c*) and (*d*) shall not apply to a customs agent operating an Export Processing Zone or a manufacturer-in-bond.

(5) The Advisory Committee shall communicate its decision to the Commissioner General who shall inform the applicant of the decision in writing within ninety days of the submission of the application.

(6) Any applicant aggrieved by the decision of the Advisory Committee may appeal against the decision to the Commissioner General, and such appeals shall be determined in accordance with regulation 128B.

(7) If renewed, the licence shall be valid for a period of twelve months.

Non-transferability of licence G.N. 20/2010

130.—(1) A customs agent shall not transfer his or her licence to any other person.

(2) In this regulation, "transfer" includes—

(*a*) permitting any other person to use title, identity or signature of a customs agent for purposes of transacting any business of a customs agent or any other activity related to customs;

(*b*) complete change of ownership of the business in the case of sole trader to another;

(*c*) sale of a partnership, or a transfer of either partner's shares to a person other than his or her partner;

(*d*) the conversion of a sole trade or a partnership to a limited company;

(*e*) change of ownership from one limited company in a group of companies to another in the same group;

(*f*) where the majority shareholder or shareholders in a limited company have sold their shares to any other person; and

(*g*) where a director acquires shares, whether a minority or a majority, in a company holding a valid customs agent licence.

(3) An occurrence of any situation in subregulation (2) shall render a licence invalid and a fresh application for a new licence shall be required if any person intends to become or continue to be a customs agent.

Revocation or non-renewal of licence G.N. 20/2010 7/2016

131.—(1) The Commissioner General may issue a penalty of five times the duty prejudiced or K2,000,000, whichever is the greater, or K1,000,000 where there is no duty prejudiced to a customs agent upon establishing that such agent has—

(*a*) failed to account for or remit duty; or

(*b*) made a false claim for refund of duty.

(2) Notwithstanding the provisions of subregulation (1), the Commissioner General may revoke or refuse to renew a licence of any customs agent where the Commissioner General has established that the agent—

(*a*) is by the operation of any law of Malaŵi unable to perform his duties under the licence;

(*b*) is incapacitated;

(*c*) has made transactional errors of more than thirty per cent that affected or would have affected the amount of revenue collected or information pertaining to revenue statistics;

(*d*) is convicted by a competent court of law for violating any tax law;

(*e*) is not compliant with customs laws, regulations and procedures;

(*f*) voluntarily ceases to be a customs agent;

(*g*) has died;

(*h*) in case of a corporation, the corporation has been dissolved;

(*i*) has obtained the licence fraudulently;

(*j*) has connived with a customs officer or any officer of the Malaŵi Revenue Authority to defraud the Government of revenue; or

(*k*) has failed, deliberately or not, to pay penalties for offences previously committed.

(3) Any person who fails to renew his licence, or whose licence the Commissioner General revokes or refuses to renew shall cease forthwith to act as a customs agent, and any person whose licence is revoked shall surrender the licence to the Commissioner General on demand.

(4) The Commissioner General may give notice of revocation or expiration of any licence by publication in the *Gazette*.

PART XVI

SURTAX

Registration for surtax
G.N. 38/1970
25/1989
32/1991
34/1993

132.—(1) A person required under section 110E to be registered for purposes of surtax shall apply for such registration—

(*a*) if during a period specified in the Table hereunder the turnover of his taxable goods or taxable services, as the case may be, has exceeded the amount shown in that Table in relation to that period:

TABLE

Prescribed Period	*Prescribed turnover*
3 months	K26,250
6 months	K45,000
9 months	K60,000
12 months	K75,000; or

(*b*) at any time when there is reasonable ground for believing that the turnover of his taxable goods or taxable services in the current or ensuing period of twelve months will exceed K75,000:

Provided that a person shall not be liable to be registered in accordance with paragraph (*a*) of this subregulation if, although the value of his taxable goods or taxable services, as the case may be, in a prescribed period of less than twelve months has exceeded the prescribed turnover for that period, the Controller is satisfied that the aggregate value of taxable goods or taxable services in that prescribed period and the remaining period aggregating to twelve months will not exceed K10,000.

(2) A registered person shall cease to be liable to be registered at any time that he satisfies the Controller that the value of his taxable goods or taxable services in the period of twelve months then beginning will be less than K60,000 and is unlikely to exceed K75,000 in the following period of twelve months.

Application for registration
G.N. 25/1989

133.—(1) An application for registration under section 110E shall be made in Form No. S.T. 1 and shall be submitted to the Controller within thirty days or the earliest date on which the person liable to be registered knew, or ought with reasonable diligence to have known, that he will be so liable.

(2) A person who intends to manufacture taxable goods or to provide taxable services and who will be liable to be registered when he does so may notify the Controller of that fact by making an application in Form No. S.T. 1 and thereupon the Controller may, subject to such conditions as he thinks fit to impose, register such person from such date as the Controller may agree with him.

(3) An application for registration under section 110F shall be made in Form No. S.T. 1 and shall be accompanied with particulars justifying the registration.

Notification of change of particulars G.N. 25/1989

134. When a registered person—

(*a*) changes his name or trading name;

(*b*) changes the address of any of his business premises;

(*c*) opens any new business premises;

(*d*) closes any business premises; or

(*e*) changes the nature of his business,

he shall notify the Controller, in writing, within ten days of the date of that change.

Registration certificates G.N. 25/1989

135.—(1) Upon registering any person under this Part the Controller shall issue to such person a certificate of registration, which shall be in Form No. S.T. 2.

(2) A certificate or registration shall be numbered in such manner as the Controller may direct and shall continue in force until cancelled by the Controller.

(3) A certificate of registration shall be exhibited at the principal place of business specified thereon, with copied exhibited at other places of business; and such certificate or copies shall be produced on demand to a proper officer at any reasonable time and shall be surrendered to that officer if he so requires.

Surtax invoice G.N. 25/1989

136.—(1) When a registered person supplies taxable goods or taxable services, he shall, not later than seven days after the time of the supply, deliver to the purchaser a serially numbered surtax invoice, marked prominently as such, containing the following particulars—

(*a*) his name and address;

(*b*) his business trading name if different from (*a*);

(*c*) his surtax registration number which is his taxpayer's identification number, which number is properly described in Form PFT 1 under the Taxation (Provisional Tax) (Information and Payment) Regulations, 1988; Cap. 41:01 G.N. 66/1988

(*d*) the serial number of the invoice;

(*e*) the date of issue of the invoice;

(*f*) the name and address of the person to whom the goods or services have been supplied and, if known, that person's surtax registration number;

(*g*) the quantity, description and selling price of the goods or services and the appropriate rate of surtax;

(*h*) the total value of the invoice excluding surtax;

(*i*) the value for surtax purposes, if different from the amount at (*h*);

(*j*) the amount of surtax payable; and

(*k*) the date of supply of the goods or services if different from the date of issue of the invoice.

(2) The Controller may waive one or more of the requirements of subregulation (1) in such cases and subject to such conditions as he thinks fir.

(3) The registered person shall keep copies of all surtax invoices issued in serial number order and make them available for inspection by a proper officer on demand.

(4) If, after delivery of the surtax invoices referred to in sub-regulation (1), a registered person allows a credit or other similar allowance on account of the return of the goods or for any other reason

satisfactory to the Controller, such registered person shall issue a credit note amending the surtax invoice and containing a reference to the surtax involved from the amount payable in respect of the tax period in which the credit or other allowance was given.

(5) If, after delivery of the surtax invoice referred to in subregulation (1), any further charge is made for the supply, it shall, subject to the satisfaction of the Controller, be regarded as fresh supply and a further surtax invoice shall be issued making reference to the surtax invoice for the original supply of the goods or services and surtax shall be payable accordingly.

Surtax records G.N. 25/1989

137.—(1) Every registered person shall keep records to the satisfaction of the Controller showing—

(*a*) supplies made by him of taxable goods or taxable services and the surtax charged thereon; and

(*b*) supplies made to him of taxable goods or taxable services and the surtax charged thereon.

(2) The Controller may require separate records to be kept of different classes of taxable goods and different kinds of taxable services.

Payment of surtax

138. When rendering the return referred to in regulation 137 (1) the registered person shall remit to the Controller the total amount of surtax shown as payable on such return.

Assessment by Controller

139. If a registered person fails to render the return referred to in regulation 137 (1) within the period required the Controller may, without prejudice to any other action he may take in respect of the failure to render such return, make an assessment of the amount of surtax payable by the registered person for the period in question. Such assessed amount of surtax shall be paid to the Controller by the registered person on demand and shall be presumed to be the correct amount of surtax payable in respect of such period until the contrary is proved.

Adjustment of amount of surtax paid

140. If it is found that the amount of surtax paid by any registered person in respect of any period is incorrect the necessary adjustment shall be made in the next return rendered by the person or in such other manner as the Controller may direct, and such adjustment shall be without prejudice to any other action the Controller may take in respect of the error which gave rise to the adjustment.

Exports

141. Entry of taxable goods for exportation by a registered person shall be effected by the completion and submission to the proper officer of a declaration in the specified form. Such form shall, in addition to the other particulars required, be endorsed with the number of the certificate of registration of the registered person.

Drawback

142. Regulation 117 shall apply to goods exported on drawback of surtax.

Cancellation of registration

143.—(1) A registered person shall notify the Controller forthwith upon ceasing to manufacture taxable goods and shall at the same time surrender his certificate of registration to the Controller.

(2) Upon being satisfied that a registered person has ceased to manufacture taxable goods the Controller shall cancel the relative certificate of registration with effect from the date of such cessation and from that date the person shall cease to be a registered person.

(3) If the sales or other disposals of taxable goods by a registered person decline to such an extent that only a small amount of surtax is involved and if the Controller decides in consequence to cancel the registration of that registered person, the Controller shall give the registered person at least ten days notice of his intention to cancel the registration.

(4) The Controller shall cancel such certificate of registration with effect from the date notified to the registered person under subregulation (3) and from that date the person shall cease to be a registered person, and shall forthwith surrender his certificate of registration to the Controller.

(5) Within twenty days of the effective date of the cancellation of his certificate of registration or within such further period as the Controller may allow the person concerned shall render to the Controller a return on the prescribed form showing—

(*a*) the amount of surtax payable in respect of his sales or other disposals of taxable goods from the date of his last return until the effective date of cancellation of his certificate of registration;

(*b*) the amount of surtax represented by the taxable goods of his own manufacture on hand on the effective date of cancellation of his certificate of registration but not sold or otherwise disposed of by that date;

(*c*) the amount of surtax represented by taxable materials imported or otherwise acquired by him without the payment of surtax for use by him for the manufacture of taxable goods by him or for the packaging of such goods but not so used by the effective date of cancellation of his certificate of registration, and shall, with the return, pay to the Controller the total amount of surtax represented by paragraphs (*a*), (*b*) and (*c*).

(6) If it is found that the amount of surtax paid to the Controller under subregulation (5) does not represent the correct amount payable the adjustment shall be made either by a further payment or by a refund, as the case may be, and if a further payment is due such further payment shall be made by the person to the Controller on demand.

PART XVII
General

Validation of declarations

144.—(1) The validation of invalid declarations required by section 165 of the Act shall be effected by either—

(*a*) the completion and submission to the proper officer of a completely fresh, and correct, declaration; or

(*b*) by the completion and submission to the proper officer of a declaration in the specified form; or

(*c*) in any other manner, approved by the Controller, as the proper officer may direct.

(2) The proper officer may require any person seeking to validate an invalid declaration to submit an explanation in Form No. 45 or otherwise of the reason for the original error.

(3) Invalid declarations shall be validated within one month of the discovery of the error or within such further period as the proper officer may allow.

Processing fees
G.N. 25/1996
53/1997
18/2002
12/2004
7/2016

145. For the processing, validation or issuing of any document the Commissioner General may, in his discretion, charge a processing fee of K10,000.

COMESA simplified trade regime charge
G.N. 42/2013

145A. For processing, validation and issuing of COMESA simplified trade regime, a charge of US$1 or its equivalent in Malaŵi Kwacha.

SADC certificate of origin fee
G.N. 42/2013

145B. For issuing a SADC certificate of origin, a fee of US$2 or its Malaŵi Kwacha equivalent.

Licensing fees
G.N. 125/1975
114/1981
32/1991
28/1995
14/2005
42/2013

146. The following fees shall be paid in respect of licences issued or renewed under the Act—

(*a*) for every licence for a private siding under section 10 of the Act the sum of K15,000 shall be paid;

G.N. 14/2005
42/2013

(*b*) for every licence to an air-freight licensee under section 10 of the Act the sum of K15,000 shall be paid;

(*c*) for every licence for a bonded warehouse under section 41 of the Act the sum of K30,000 shall be paid, so, however, that if a licence is issued after the 30th June in any year the sum of K15,000 shall be paid; G.N. 125/1975 32/1991 28/1995 14/2005 42/2013

(*d*) for every customs agent's licence under section 128 of the Act the sum of K150,000 shall be paid: G.N. 28/1995 32/1995 14/2005 42/2013

Provided that if the applicant for the issue or renewal of such licence is licensed as a travel agent or forwarding agent under the Businesses Licensing Act no fee in respect of the customs agent's licence shall be payable; Cap. 46:01

(*e*) for every licence to manufacture excisable goods under section 64 the sum of K15,000 shall be paid; G.N. 14/2005 42/2013

(*f*) for every licence to operate a temporary store for one year under section 31 of the Act the sum of K60,000 shall be payable; G.N. 32/1991 28/1995 14/2005 42/2013

(*g*) for every licence to manufacture goods under the industrial rebate, an annual fee of K15,000 shall be paid; and G.N. 42/2013

(*h*) for every licence to operate a container depot terminal for one year, the sum of K60,000 shall be paid. G.N. 42/2013

Escort fees G.N. 12/2004 42/2013 7/2016

147. For the purposes of escorting any conveyance or goods, the Commissioner General may charge a fee of K40,000.

Minimum threshold for entry of goods G.N. 13/2015

148. The minimum threshold value for entry of goods Customs Declaration Form (Form 12) shall be K500,000.

Minimum threshold for entry of goods under COMESA simplified trade regime G.N. 13/2015 53/2017

149. The minimum threshold value for entry of goods under COMESA simplified trade regime (STR) shall be US$2,000.

FIRST SCHEDULE

reg. 3, G.N. 25/1989 23/2000 24/2008 26/2008 20/2010 42/2013

Forms

Form No.		*Title*	
	1.	Vehicle declaration and report order	
C.T.S.	1.	Requisition in Respect of Cigarette Tax Stamps	G.N. 26/2008
	2.	Report on arrival of aircraft	G.N. 25/1989
	3.	Report on arrival of ship	
	4.	Report of coastwise ships	
VB	4.	Authorized signatories: Bills of Entry and Value Declarations	G.N. 20/2010
	5.	Application for permission to load ships leaving Malaŵi	
	6.	Report on departure of ships	

	Form No.	*Title*
	7.	Report on departure of aircraft and statement of stores on board
	8.	Overtime request
G.N. 23/2000	12.	Malaŵi Customs Declarations
	18.	Goods exported to Malaŵi—certificate of origin
	19.	Declaration of value
	19A.	Declaration of value
G.N. 25/1989	20.	Value of imported goods—general declaration, request and undertaking
	20.	Bill of entry for the clearance of goods for consumption
G.N. 24/2008	21.	COMESA Simplified Customs Document
	23.	Bill of entry supplementary to entry on Form 21
G.N. 20/2010	24.	Bill of entry for the warehousing/rewarehousing of goods
	C 25.	Application for Registration/Renewal as Customs Clearing Agent
	26.	Proprietor's receipt for goods warehoused
	27.	Bill of entry supplementary to entry on Form 24 or 30
G.N. 26/2008	CE 28C.	Application for Registration as an Importer or Distributor of cigarettes in Malaŵi
	30.	Bill of entry for the removal of goods in transit through Malaŵi
	31.	Bill of entry supplementary to assessment on petty Consignment/baggage/postal parcel/air-freight
	32.	Bill of entry for payment of excise duty
	33.	Bill of entry supplementary to entry on Form 32
	34.	Bill of entry for the export of goods from open stocks
	35.	Bill of entry supplementary to entry on Form 34
	36.	Bill of entry for export of goods (as stores) from bonded/excise warehouses
	37.	Bill of entry supplementary to entry on form 36
	38.	Goods declaration (outwards)—minor consignments
	39.	Bill of entry for the clearance of goods for consumption from bonded warehouse
G.N. 31/1991	40.	Bill of entry supplementary to entry on Form 39
	43.	Voucher for writing-off warehoused goods
	44.	Application for drawback of duty
	45.	Duty drawback import information
G.N. 42/2013	47.	Notice and warning to travelers: The Currency and Goods Declaration Form shall be in the manner prescribed in the Appendix to this Schedule
	48.	General registration certificate
	49.	Receipt for duty paid on consignments for which a bill of entry is not required
	50.	Return of duty-free consignments for which a bill of entry is not required
	51.	Operation warrant and voucher for writing-off wet goods
	52.	Visitors to Malaŵi: currency certificate
	81.	Application to the Controller of Customs and Excise to be Registered as a manufacturer under rebate
G.N. 25/1989	82.	Bill of entry for the clearance of goods under industrial Rebate
	82.	Bill of entry supplementary to entry on Form 82
	86.	Application to transfer goods imported under rebate from one registered manufacturer to another
	122.	Cash deposit—request and undertaking
	123.	Bond
	RCTD.	Road Customs Transit Declaration

APPENDIX

G.N. 42/2013

FORM NO. 47

REPUBLIC OF MALAŴI

CURRENCY AND GOODS DECLARATION FORM

Declaration of Import/Export of Currencies, Negotiable Instruments, Precious Stones, other Valuables in excess of USD5,000 or Local Currency in excess of K5,000. Pursuant to Money Laundering Act, section 38, Immigration Act, section 18 and Exchange Control Act, section 25 (1) and Customs and Excise Act, sections 29, 30, 50 and 51.

Please print clearly when completing this form and tick where appropriate:

Arrival ☐ Departure ☐

Flight ☐ Vehicle ☐ Ship ☐ Number: .....

1. Surname: …….....……..

2. Other Names: …….....……

3. Male ☐ Female ☐

4. Date of Birth: ..... Country of Birth: .....……

5. Nationality: .....

6. Address and Phone Number in Malaŵi: .....

.....

7. Purpose of the trip:

Holiday ☐ Business ☐ Study ☐ Conference ☐ Employment ☐

Diplomat ☐ Other (Specify): .....

8. Traveling Alone? Yes ☐ No ☐

9. If accompanied, by whom?

Full Name	*Relationship*	*Date of Birth*

10. Country of Residence: .....

11. If not resident in Malaŵi, provide expected length of stay in Malaŵi: .....

12. Occupation: .....

13. Passport Number: ..... Place of Issue: .....……....…

14. Passport date of Issue: ..... Date of Expiry: ..……..……

15. Malaŵi is ☐ Final destination or ☐ In-Transit to: .....

16. Port of Entry/Exit and Date: .....

17. Countries visited during the last 6 months: .....

.....

.....

.....

18. Are you carrying any valuables e.g. travelers cheques, precious stones/metals, share certificates, money/postal orders?

(i) ☐ No

(ii) ☐ Yes (Specify):

Currency: ..... Amount: .....

Where did you get the valuables from (copy of other justifying documents if available):

☐ Bank

☐ Forex Bureau

☐ Other (Specify) .....

Name of owner of each valuable (if different): .....

Particulars: .....

.....

19. How much money are you carrying?

Currency: ..... Amount: .....

Where did you get the money from? (copy of other justifying documents if available):

☐ Bank

☐ Forex Bureau

☐ Other (Specify) .....

20. All goods I/We obtained abroad and am/we are bringing to Malaŵi are listed below:

Description of Articles	*Value (Price paid)*	*OFFICIAL USE*

TOTAL		

Please use additional sheet for extra declarations.

WARNING: Failure to make a full declaration is an offence and can result into seizure of the currency and goods and prosecution.

21. Declaration by traveler or (legal) guardian:

I declare that I have read and understood this form and that the information given is correct and complete.

I understand that I will commit an offense if I fail to complete this form or give false information.

Signature: ..... Date: .....

(Completed form to be submitted to the customs officer).

Prohibited and Restricted Goods (Indicative list is not exhaustive, if in doubt, consult a customs officer).

All passengers arriving in Malaŵi, aged 16 years or above may bring with them free of import duty, the following items.

ALCOHOL	• Up to one litre of spirit • Up to one litre of wine or beer	TOBACCO	• Either 200 cigarettes OR • 250 grammes of tobacco in any form
PERFUME	• Up to 50 grammes and • 0.25 litre of toilet water (EDT)		

PERSONAL ALLOWANCE (No age limit)	Residents: Other dutiable goods, purchased or otherwise obtained outside Malaŵi of total value not exceeding K20,000 per person. Visitors: Other dutiable goods, purchased or otherwise obtained outside Malaŵi of total value not exceeding K10,000 together with the items of a personal nature for use during a temporary stay and which will be re-exported at the end of the stay.

Providing that goods are neither prohibited, restricted nor for commercial purposes.
PROHIBITED OR RESTRICTED GOODS INCLUDE:

Drugs—psychotropic substances: (chemical substances that alter mood, behavior, perception, or mental functioning)	Firearms, ammunitions and explosives (including fireworks) unless accompanied by a valid licence)

Obscene items of pornographic literature, films, video tapes, CD or DVDs

SECOND SCHEDULE reg. 9

G.N. 60/1977 22/1982 9/2006 33/2006 *Part* 1: *Ports for road vehicles* (*subregulation* (1))

Balaka	MarkaNyathando
Biriwiri	Mchinji
Chikombe	Mquocha
Chiponde	Muloza
Chisenga	Mwanza
Chitipa	Namizana
Dedza	Nayuci
Katumbi	Nsanje
Kibwe (Kaporo)	Songwe

G.N. 178/1970 *Part* 2: *Ports for trains (subregulation (*2))
Accompanied baggage imported or exported through Border Siding

Column 1 (*Port of clearance*)	*Column* 2 (*Consigned to or loaded at*:)
Border siding	
Nsanje	All places in Malaŵi except Border Siding, including baggage in transit.

Accompanied baggage imported or exported through Nayuci

Column 1 (*Port of clearance*)	*Column* 2 (*Consigned to or loaded at*:)	
Nayuci	All places in Malaŵi, including baggage in transit.	
Nsanje	Any place from Border Siding up to but excluding Sandama Station.	

Unaccompanied baggage imported or exported through Border Siding

Column 1 (*Port of clearance*)	*Column* 2 (*Consigned to or loaded at*:)	
Luchenza	Any place between Sandama Station and Malabvi Station inclusive.	
Blantyre	Any place between Limbe and Balaka stations but not including Balaka Station.	
Balaka	Any place between Balaka and Chipoka stations but not including Chipoka Station.	G.N. 186/1975
Liwonde	Any place between Nkaya and Nayuci stations but not including Nkaya.	
Salima	Any place between Chipoka and Salima stations inclusive, provided that any unaccompanied baggage for Chipoka may, at the discretion of the Controller, be cleared through Customs at Chipoka.	
Lilongwe	Any place between Salima and Lilongwe stations but not including Salima Station	G.N. 56/1978
Mchinji	Any place between Lilongwe and Mchinji stations but not ncluding Lilongwe Station.	G.N. 22/1982

Unaccompanied baggage imported or exported through Nayuci

Column 1 (*Port of clearance*)	*Column* 2 (*Consigned to or loaded at*:)	
Nayuci	Nayuci Station.	
Liwonde	Any place between Nayuci and Nkaya stations but not including Nayuci and Nkaya Stations.	
Blantyre	Any place between Limbe and Balaka stations but not including Balaka Station.	
Balaka	Any place between Balaka and Chipoka stations but not including Balaka Station.	G.N. 186/1975
Salima	Any place between Chipoka and Salima stations inclusive, provided that any unaccompanied baggage for Chipoka may, at the discretion of the Controller, be cleared through Customs at Chipoka.	
Luchenza	Any place between Malabvi and Sandama stations inclusive.	
Nsanje	Any place from Sandama to Border Siding but not including sandama station and Border siding	
Lilongwe	Any place between Salima and Lilongwe stations but not including Salima Station	G.N. 56/1978
Mchinji	Any place between Lilongwe and Mchinji stations but not including Lilongwe Station.	G.N. 22/1982

All other goods imported or exported through Border Siding

Column 1 (*Port of clearance*)	*Column* 2 (*Consigned to or loaded at*:)
Nsanje	Any place from Border Siding up to but excluding Luchenza Station.

	Luchenza	Any place from Luchenza Station up to but excluding Limbe Station.
G.N. 186/1975	Blantyre	Any place from Limbe Station up to but excluding Balaka Station
	Balaka	Any place from Balaka Station up to but excluding Salima Station.
	Liwonde	Any place between Nkaya and Nayuci stations but excluding Nkaya.
G.N. 56/1978	Salima	Salima.
	Lilongwe	Any place between Salima and Lilongwe stations but excluding Salima Station.
G.N. 22/1982	Mchinji	Any place between Lilongwe and Mchinji stations but excluding Lilongwe Station.

All other goods imported or exported through Nayuci

	Column 1 (*Port of clearance*)	*Column* 2 (*Consigned to or loaded at*:)
G.N. 186/1975	Liwonde	Any place from Nayuci to but excluding Nkaya Station.
	Blantyre	Any place between Limbe and Balaka stations but excluding Balaka Station.
	Balaka	Any place between Balaka and Salima stations but excluding Salima Station.
	Salima	Salima.
	Luchenza	Any place between Malabvi and Sandama stations inclusive.
	Nsanje	Any place between Sandama station and Border siding but excluding Sandama Station.
G.N. 56/1978	Lilongwe	Any place between Salima and Lilongwe stations but excluding Salima Station.
G.N. 22/1982	Mchinji	Any place between Lilongwe and Mchinji stations but excluding Lilongwe.

Part 3: *Ports for vessels* (*subregulation* (3))

Chipoka	Nsanje
Karonga	Sandama
Kibwe (Kaporo)	
and at the discretion of the Controller,	
Salima	

Part 4: *Ports for vessels when an officer is on board* (*subregulation* (4))

Chirumba	Monkey Bay
Chitimba	Ngara
Kambwe	Nkhata Bay
Likoma Island	Nkhotakota

and such other places as may be authorized by the Controller.

G.N. 60/1977 *Part* 5: *Ports with no customs officer* (*subregulation* (5))

Chikwawa	Mangochi
Chiromo	Rumphi

G.N. 12/2005 THIRD SCHEDULE reg. 10

Customs airport

The aerodromes at—

Chileka	Salima
Club Makokola	Lilongwe
Karonga	Luchenza

FOURTH SCHEDULE reg. 11 G.N. 60/1977

Customs Office

Balaka	Karonga	Muloza	
Biriwiri	Katumbi	Mwanza	
Blantyre	Kibwe (Kaporo)	Mzuzu	G.N. 22/1982
Border Siding	Lilongwe	Namizana	
Chiponde	Liwonde	Nayuci	
Chisenga	Luchenza	Nsanje	
Chitipa	Mchinji	Salima	
Dedza	Mquocha	Sandama	

and, subject to such conditions as the Controller may impose—

Chileka	Limbe
Chipoka	Marka Nyathando

FIFTH SCHEDULE reg. 13 G.N. 63/1982 9/2006

Hours of General Attendance

1. At the following customs offices—

Blantyre	Liwonde
Chileka	Luchenza
Karonga	Nsanje
Lilongwe	Salima

(*a*) for the receipt of duties on import entries for merchandise—Mondays to Fridays, from 7.30 a.m. to 12.00 noon and from 1.00p.m. to 3.00p.m.

(*b*) for all other business—

Mondays to Fridays, from 7.30 a.m. to 12.00 noon and from 1.00 p.m. to 5.00 p.m.,

and, in addition, at Chileka, Nsanje and Nayuci, at any hours of the day, or night for the clearance of aircraft or, as the case may be, trains engaged on scheduled services and of the travellers and their accompanied baggage carried or to be carried thereon.

2. At the places listed in Part 4 of the Second Schedule at any hour of the day or night when a ship carrying an officer on board is in port and at such other times and places as the Controller may determine.

3. At all other customs offices—

Mondays to Fridays, from 6.00 a.m. to 6.00 a.m. the following day:

Provided that such offices shall remain open from 6.00 a.m. to 6.00 a.m. the following day daily throughout the year subject to the payment of the fees provided for in regulation 15 for attendance outside the hours of general attendance.

SIXTH SCHEDULE reg. 114 G.N. 41/1988 107/1996

SUSPENSIONS OF DUTIES

Part 1: *Suspensions of Customs Duties*

1. The rates of duty appearing in Part III of the Customs Tariff, in so far as they relate to the goods appearing in the table set out hereunder, are suspended to an extent sufficient to reduce such rates to the rates shown in the table set out hereunder—

	1	2	3	4	5
G.N. 156/1977 132/1978 38/1980 19/1981 35/1983	ex 17.01.01	Mill white or refined granulated sugar packed for retail sale	per tonne	K11.00	K11.00
	ex 39.00.01	Raw materials for the manufacture of plastic pipes	—	Free	Free
	ex 40.11.99	Motor vehicle tyres and tubes: for incorporation on vehicles imported under heading 87.02.07 or 87.14.02, subject to such post-importation conditions as the Controller may impose	—	15%	10%
	ex 46.00	Tea plucking baskets made of bamboo	—	Free	Free
	ex 48.01.95	Paperboard coated on both surfaces with plastic: being container manufacturing material—	Free	Free	—
G.N. 146/1980	ex 59.05.10	Fishing nets and netting (not being sports requisites): manufactured of polyethylene fibre	—	Free	Free

Part 2: *Suspensions of Excise Duties*
[*Revoked by G.N.* 31/1999]
Part 3: Suspensions of Surtax
[*Revoked by G.N.* 36/1992]

G.N. 47/1979 reg. 115

SEVENTH SCHEDULE

Rebates, Remissions and Refunds

1. *Traveller's accompanied baggage*

A rebate of duty, the total amount of which shall not exceed one Kwacha for each traveller, shall be granted in respect of dutiable goods other than merchandise imported by a traveller in his accompanied baggage:

Provided that—

(*a*) the rebate shall not be granted in respect of goods imported by a person returning to Malaŵi after an absence therefrom of less than 24 hours;

(*b*) if the amount of duty payable by a traveller after the deduction of the rebate is less than ten tambala, that amount shall also be rebated.

2. *Aircraft stores, fuel and equipment*

A refund of the duty paid shall be granted in respect of stores, aircraft equipment, ground equipment, spare parts, lubricants and fuel supplies for use in or for the maintenance of aircraft—

(*a*) engaged in international air navigation;

(*b*) engaged in the operation of a commercial air service; and

(*c*) temporarily imported and engaged in the search, rescue, investigation, repair or salvage of lost or damaged conveyances provided that such goods are exported within one month of the conclusion of such search, rescue, investigation, repair or salvage.

3. *Vessels and Parts thereof* G.N. 47/1979

A refund of the duty paid shall be granted in respect of vessels, and parts for vessels—

(*a*) engaged in commercial fishing;

(*b*) engaged in the operation of a commercial service for the transportation of passengers or goods.

4. *Agreements*

A refund of the duty paid shall be granted in respect of any goods where such refund is required in terms of an agreement between the Government and any other government, organization, institution, body or person.

EIGHTH SCHEDULE reg. 116 G.N. 122/1971 114/1981 14/2005 42/2013

Industrial Rebates and Drawbacks

Part 1: *Industrial Rebates*

1. In this Part, unless inconsistent with the context— G.N. 122/1971 114/1981

"manufacture" includes to refine, and cognate expressions shall be construed accordingly.

2. Where the expression "Description of Industry" set out in Appendix A to this Schedule includes more than one product the description used shall be deemed to include any or all of the products individually or collectively specified in that Appendix under that heading.

3. A person who wishes to manufacture goods under rebate in an industry specified in Appendix A or Appendix B shall apply to the Controller on Form No. 81 for registration in that industry. G.N. 122/1971

4. An applicant for registration in accordance with paragraph 3 shall supply such information as the Controller may require as to the conduct or proposed conduct of his manufacturing business and no application shall be approved without the consent of the Minister for the time being responsible for trade and industry.

5. A registered manufacturer shall enter into a bond with sufficient surety and for an amount, not being less than K200, to be determined by the Controller.

6. Subject to the provisions of paragraph 10 a registered manufacturer shall not, without the written permission of the Controller or proper officer, sell, use, remove from his factory or dispose of any rebated material except for the purpose for which the rebate was granted:

Provided that—

(i) the Controller or proper officer may allow waste rebated material to be disposed of without payment of duty if he is satisfied that it will not be used, without further manufacture, for the same purpose as material which is not in the form of waste; and

(ii) if the registered manufacturer is permitted or properly required to pay the full duty on any rebated material which thereafter is to be released from the terms of the bond, the registered manufacturer shall enter such material in accordance with the provisions of regulation 26 or regulation 98, as the case may be.

7. A manufacturer may, before or after registration, be required to provide on the premises approved by the Controller for the purpose a

properly secured store, adequate for the safe storage of materials on which duty may be rebated, and to provide at his own expense any necessary fastenings so that the store may be locked with a customs lock.

8. A registered manufacturer shall—

(*a*) when effecting entry on importation; or

(*b*) on removal from bond; or

(*c*) on removal from the premises of a licensed excise manufacturer,

of materials intended for manufacture under rebate, declare on the relative bill of entry that the goods are to be used solely for the purpose specified.

9. A registered manufacturer shall keep a stock book, in a form approved by the Controller, showing full particulars of all receipts and disposals of materials entered for manufacture under rebate, in such manner that the materials can be readily accounted for to the satisfaction of an officer. If a manufacturer fails to keep a stock book in the manner prescribed in this paragraph, any rebated material received by the registered manufacturer during the period when the stock book was not so kept shall be deemed to have been used for a purpose other than that for which the rebate was granted unless the manufacturer satisfies the Controller that the material was used, transferred or disposed of for the purpose for which the rebate was granted.

10. With the written permission of the proper officer, a registered manufacturer may transfer to another registered manufacturer materials entered under rebate of duty if a declaration of transfer on Form No. 86 is furnished to an officer at the port at which entry of the materials on importation or removal from bond or from the premises of the licensed excise manufacturer was effected.

11. The receipt on the declaration of transfer referred to in paragraph 10 shall be completed by the registered manufacturer to whom the materials have been transferred who shall thereafter assume the obligation in respect of the materials in the transfer and, failing the return of the receipted declaration to the officer within 14 days after the transfer was authorized, the person transferring the materials shall be liable for the duty otherwise payable thereon and shall pay such duty on demand.

12. A registered manufacturer shall, when required by the Controller to do so, carry out under the supervision of an officer, at such times as the Controller may consider necessary, any manufacturing operation in which materials entered under rebate are used.

13. The Controller may at any time cancel the registration of a manufacturer if he is satisfied that such manufacturer is not complying with the conditions of the bond.

G.N. 114/1981 14/2005 42/2013

14.—(1) At the time of registration and annually thereafter not later than the 1st day of January in each year the manufacturer shall pay to the Controller a fee of K15,000:

Provided that if the manufacturer is registered after the 30th day of June in any year he shall pay a fee of K2,500 in respect of that year.

(2) If a registered manufacturer does not pay the annual fee on or before the 1st day of January in any year the registration of such

Manufacturer shall be cancelled on and with effect from the 1st day of January of that year.

(3) Where a manufacturer is registered in more than one industry specified in Appendix A or Appendix B the total initial or annual fee shall not exceed the fee referred to in subparagraph (1).

15.—(1) The rates of duty in Part III of the Customs Tariff on goods specified in Appendix A when imported by a registered manufacturer for use in the industry for which he is registered and to which such goods relate, shall be rebated to an extent sufficient to reduce the rate of duty thereon to the rates specified in Appendix A.

(2) The rates of duty in Part III of the Excise Tariff on goods specified in Appendix B when delivered to a registered manufacturer for use in the industry for which he is registered and to which such goods relate, shall be rebated to an extent sufficient to reduce the rates of duty thereon to the rates specified in Appendix B.

Part 2: *Industrial Drawbacks*

1. In this Part, unless inconsistent with the context—

"manufacture" includes to process and cognate expressions shall be construed accordingly.

2. Where the term "Goods manufactured or processed in Malaŵi" set out in Appendix C includes more than one product the term shall be deemed to include any or all of the products individually or collectively specified in that Appendix under that heading.

3. Subject to the provisions of this Part, if the goods specified in column 1 of Appendix C are manufactured within Malaŵi from any of the materials specified in column 2 of that Appendix in relation to those goods, those goods shall, when exported to any country, be subject to a drawback of customs or excise duty paid on such material to the extent shown in column 3 of the Appendix:

Provided that, except in such cases as the Controller may allow, no drawback shall be payable if the goods are exported more than 2 years after the date of payment of the duty.

4. Subject to such exceptions as the Controller may allow, a manufacturer who intends to claim drawback under the provisions of this part shall, before entering materials imported or taken out of bond for the purpose of manufacture in accordance with this Part, register with the Controller his name and address and shall make a note on the face of the relative bill of entry to the effect that the materials or part of them are intended for manufacture and may be exported under drawback.

5. Every registered manufacturer shall keep a stock book, in a form approved by the Controller, showing full particulars of all receipts and disposals of materials entered under paragraph 4 in such manner that the material may be readily accounted for to the satisfaction of an officer.

6. For the purpose of this Part the Controller may, after consultation with the manufacturer, determine the quantity, origin and value of any material or parts and accessories required to be used or consumed in the manufacture of any goods and may authorize drawback in accordance therewith. The quantity, value and origin so determined and authorized

shall be presumed, in the absence of evidence to the contrary, to have been used or consumed in the manufacture of such goods.

7.—(1) Any person who wishes to export goods under drawback in accordance with this Part shall—

(*a*) present to an officer an application for drawback in the specified form together with the original invoices relative to the material consumed in the manufacture of the goods, in addition to the declaration or other document required to be presented prior to exportation;

(*b*) produce the goods for examination by an officer, before the goods are exported.

(2) Upon receipt of an application and such evidence of export and other evidence of entitlement as may be required by the Controller, the Controller shall authorize payment of the drawback that is due.

8. Notwithstanding the provisions of paragraph 7 the Controller may, in his discretion, approve other procedures for the export of such goods under drawback.

APPENDIX A

Eighth Schedule: Part I

INDUSTRIAL REBATES: CUSTOMS DUTIES

G.N. 143/1975	103/1991	56/1996	21/2002
49/1979	104/1991	61/1996	1/2003
63/1979	8/1992	62/1996	23/2003
38/1980	19/1992	9/1997	46/2003
133/1980	24/1992	33/1997	47/2003
138/1980	36/1992	55/1997	12/2005
146/1981	73/1992	57/1997	32/2005
53/1982	79/1992	8/1998	2/2006
177/1983	80/1992	9/1998	9/2006
29/1984	87/1992	10/1998	19/2006
97/1987	88/1992	11/1998	21/2006
110/1988	89/1992	37/1998	22/2006
25/1989	111/1992	38/1998	34/2006
80/1989	120/1992	39/1998	22/2007
92/1989	123/1992	40/1998	36/2007
6/1991	1/1993	45/1998	2/2008
24/1991	22/1993	46/1998	4/2008
25/1991	33/1993	70/1998	22/2008
26/1991	5/1994	6/1999	23/2008
27/1991	17/1994	27/1999	27/2008
28/1991	59/1994	38/1999	28/2008
43/1991	60/1994	42/1999	29/2008
45/1991	39/1995	43/1999	30/2008
62/1991	78/1995	56/2000	58/2013
64/1991	107/1995	61/2000	35/2014
66/1991	5/1996	35/2001	34/2016

Note 1: For convenience of reference, the items shown in this Appendix are arranged in accordance with the form of the Customs Tariff.

Note 2: For the purposes of this Appendix the expression "protected goods" means the goods of Subheadings Nos. 55.09.31, 55.09.37, 56.07.31 and 56.07.39.

1	2	3	4	5	
AGRICULTURAL TOOLS MANUFACTURING INDUSTRY:					G.N. 6/1999
ex Chapters 28 and 29	Foundry Chemical	—	Free	Free	
ex 38.24	Foundry Preparations	—	Free	Free	
ex Chapters 72 and 75	Bars	—	Free	Free	
ALCOHOLIC BEVERAGES MANUFACTURING INDUSTRY:					G.N. 32/2005
ex 21.02	Yeast	—	Free	Free	
2918.11.00	Lactic acid	—	Free	Free	
3507.90.00	Enzymes (amylaglucosidase)	—	Free	Free	
1007.00.00	Sorghum	—	Free	Free	
ALUMINIUM, HOLLOW AND ENAMEL WARE MANUFACTURING INDUSTRY:					G.N. 34/2016
7206.10.00	Ingots	—	Free	Free	
7218.10.00	Ingots and other primary forms	—	Free	Free	
AUDIO, VIDEO AND CD MANUFACTURING INDUSTRY:					G.N. 45/1998
ex 32.15	Ink	—	Free	Free	
ex Chapters	Materials for manufacturing audio and				
BLOCKBOARDS, PLYWOOD, SAWN TIMBER AND ALLIED WOOD PRODUCTS MANUFACTURING INDUSTRY:					G.N. 28/1991 34/1993
28.42	Salts	—	15%	10%	58/1993
2912.60.00	Paraformaldehyde	—	Free	Free	83/1993
ex Chapter 35	All goods in this Chapter	—	15%	10%	84/1993
ex Chapter 38	Anti Blue	—	15%	10%	130/1993
3823.90.00	Hardner	—	15%	10%	4/2008
ex Chapter 39	Resin and Strappings	—	15%	10%	
4405.00.00	Wood Flour	—	15%	10%	
4408.90.00	Venneers	—	15%	10%	
ex 48.21	Labels	—	15%	10%	
4823.90.90	Phenolic film and decorative lamination (impregnated) paper	—	Free	Free	G.N. 34/2016
ex Chapters 54 and 55	Polyster Yarns	—	15%	10%	
ex 59:06	Veneer Gum Tape	—	15%	10%	
ex Chanter 72	Strappings	—	15%	10%	
39, 48 and 85	video cassettes and CDs	—	Free	Free	
BOOT AND SHOE MANUFACTURING INDUSTRY:					
ex 34.05	Dressings, in bulk	—	15%	10%	
ex 40.07.99	Rubber randing; rubber soling in the piece	—	15%	10%	
ex 41.02	Leather, in the piece	—	Free	Free	
ex 50.07 ex 51.04	Woven fabrics of silk or of silk waste	—	Free	Free	G.N. 56/2000
ex 53.09	Woven fabrics of man-made	—	Free	Free	G.N. 56/2000
ex Chapters 54 and 55	Fibres of flax; for inner linings of boots and shoes	—	Free	Free	G.N. 56/2000
ex 54.05 ex 56.07.99	Woven fabrics of man-made fibres or of flax; for the inner lining of boots and shoes	—	15%	10%	
ex 55.09.99	Woven fabrics of cotton being bleached or dyed canvas or duck or combined canvas and drill	—	15%	10%	
ex 58.04	Cotton velvets and velveteens, plain, dyed or printed corduroys and needle cords	—	15%	10%	
ex 58.05	Tape bindings	—	15%	10%	
5806 to 5808	Shoe ribbons and decorations	—	Free	Free	G.N. 34/2016
ex 59.02.99	Thermoplastic counter material	—	15%	10%	
ex 59.07.99	Textile fabrics impregnated or coated with preparations of cellulose derivatives or of other artificial plastic materials	—	15%	10%	
ex 59.11	Textile fabrics laminated with rubber	—	15%	10%	
49.11.00	Semiflex toe puff material	—	15%	10%	
ex 64.05	Rubber soles; shoes stiffener; fibre or wooden Shanks, plastic heels, plastic or rubber straps	—	15%	10%	
	Uppers (of leather Pu and PVC)	—	15%	10%	
	Soles and heels (of rubber and plastic)	—	—	—	
	Insoles, crew on heels, soles and heels	—	—	—	

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G.N. 177/1983	BUTTON MANUFACTURING INDUSTRY:				
	ex 34.05	Polishing cream	—	15%	10%
	ex 98.01	Button Blanks	—	15%	10%
G.N. 34/2016	5806 to 5808	Shoe ribbons and decorations	—	Free	Free
G.N. 33/2002	CABLE MANUFACTURING INDUSTRY:				
	ex 3901 to 3902	Polythene	—	Free	Free
	ex 7217	Wire of iron or non-alloy steel	—	Free	Free
	ex 7229	Wire of other alloy steel	—	Free	Free
	ex 7401 to 7419	Copper wire	—	Free	Free
	ex 7605	Aluminium wire	—	Free	Free
G.N. 6/1999	CANDLES, POLISHES AND SKIN LOTIONS MANUFACTURING INDUSTRY:				
30/2008	1302.12.00	Licorice extract	—	Free	Free
G.N. 34/2016	1302.19.00	Aloe Vera extract	—	Free	Free
G.N. 34/2016	1505.00.00	Lanoline Anhydrous	—	Free	Free
	1512.19.00	Sunflower seed oil	—	Free	Free
G.N. 34/2016	1520.00.00	Glycerin	—	Free	Free
G.N. 34/2016	1804.00.00	Cocoa butter, fat and oil	—	Free	Free
	ex 2846	Foam Paste Jelly	—	Free	Free
	2710.00.30	White spirit	—	Free	Free
G.N. 34/2016	2710.20.00	White oil/White spirit	—	Free	Free
	ex 27.12	Petroleum jell, waxes and oils	—	Free	Free
G.N. 34/2016	2712	Emulsifying wax BP; microcrystalline; LLPO/ white spirit	—	Free	Free
	ex Chapters 28 and 29	Chemicals for manufacturing candles lotions and polishes	—	Free	Free
G.N. 34/2016	Chapter 29	BHT; Camphor; Capric; Capriylic; Triglyceride; Cetyl Alcohol; Cetyl Pyridinium Chloride; Citric acid finex 300; Dipropylene Glycol; Niacinamide	—	Free	Free
G.N. 34/2016	3301.29.90	Fresh Scent Jasmine	—	Free	Free
G.N. 34/2016	3301.90.90	Lavender Rose	—	Free	Free
	3302.90.90	Odoriferous mixture	—	Free	Free
G.N. 34/2016	3302.90.90	Allantoin	—	Free	Free
G.N. 34/2016	3302.90.90	VE Acetate	—	Free	Free
G.N. 34/2016	3304.99.20	Finex Talc	—	Free	Free
G.N. 34/2016	3823.13.00	Grade of Tall; Super max grade tall	—	Free	Free
	3404.00.00	Artificial waxes	—	Free	Free
	3901.10.10	Shrink film sleeve roll	—	Free	Free
G.N. 34/2016	3904	Polymers	—	Free	Free
	4819.50.00	Mono carton	—	Free	Free
	5908.00.00	Candle wicks	—	Free	Free
	7612.10.00	Tubes	—	Free	Free
G.N. 34/2016	7210.90.00	Printed metal flat sheets	—	Free	Free
G.N. 34/2006	CEMENT AND ALLIED PRODUCTS MANUFACTURING INDUSTRY:				
36/2007	2520.10.00	Gypsum	—	Free	Free
	2523.10.00	Clinker	—	Free	Free
	7205.10.00	Iron ore	—	Free	Free
G.N. 1/2003	CHALK MANUFACTURING INDUSTRY:				
	2509.00.00	Chalk moulder	—	Free	Free
	2522.10.00	Gypsum	—	Free	Free
	2522.10.00	Plaster	—	Free	Free
G.N. 38/1999	CHEMICAL MANUFACTURING INDUSTRY:				
	ex Chapter 25	All goods in this Chapter	—	Free	Free
	ex Chapter 28	All goods in this Chapter	—	Free	Free
	ex Chapter 29	All goods in this Chapter	—	Free	Free
G.N. 33/1993	CLIPS, PINS AND STAPLES MANUFACTURING INDUSTRY:				
	2806.10.00	Hydrochloric acid	—	15%	10%
	2810.10.00	Boric acid	—	15%	10%
	2827.35.00	Nickel Chloride	—	15%	10%
	ex Chapter 35	Glue	—	15%	10%
	ex 38.10	Pickling preparations	—	15%	10%
	ex.72.17	wire	—	15%	10%

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CLOTHING MANUFACTURING INDUSTRY:					G.N. 56/2000
NOTE: This industry covers the manufacture of clothing and articles of apparel of or included in Headings Nos. 39.07.07. 40.13, 42.03, 43.02, 60.02, to 60.06, 61.01 (other than babies napkins and the goods of Subheading No. 61.01.02), 61.09 and of such other articles of clothing and apparel as may be approved by the Minister, of headgear of Chapter 65 (other than the goods of Subheading No.65.06.02); of made up accessories or parts directly for use on or for such clothing and headgear including the covering of such accessories or parts; or umbrella coverings: subject to such limitations and exclusions as the Minister may Consider desirable.					
ex 29.15.21.00	Acetic Acid	—	15%	10%	G.N 45/1991
ex Chapter 32	Dye	—	15%	10%	
ex 38.09.91.00	Dye carriers	—	15%	10%	
ex 39.00.13	P.V.C./Nylon laminated fabric	—	15%	10%	
ex 39.00.13	P.V.C. fabric	—	15%	10%	
ex 40.07.99	Rubber-proofed fabrics: in the piece	—	15%	10%	
ex 40.07.99	Textiles backed with rubber foam: in the piece	—	15%	10%	
ex 40.14.99	Rubber bands	—	15%	10%	
ex 49.11	Printed cloth name or size labels	—	15%	10%	G.N. 97/1987
	Woven fabrics other than protected goods	—	35%	30%	36/1999
		and in addition			G.N. 45/1991
		per m^2	6t	6t	83/1993
	Nylon netting	—	35%	30%	97/1987
ex Chapters 51 to 58	Woven fabrics	—	Free	Free	
ex 52.05	Cotton yarn	—	15%	10%	G.N. 39/1995
ex 58.04	Corduroys and velveteens	—	15%	10%	
		and in addition			
		per m^2	6t	6t	
ex 58.06	Waist banding	—	Free	Free	
ex 58.08.99	Lace and embroidery in the piece or in the form of medallions	—	15%	10%	
ex 59.02.99	Fabrics of felt	—	15%	10%	
ex 59.07.99					
ex 59.11	Plastic leather cloth, other proofed fabrics in the piece	—	15%	10%	
ex 60.01	All goods in this heading	—	15%	10%	
ex 60.02	Knitted or crocheted fabrics	—	Free	Free	G.N. 56/2000
ex 61.01	Collar Interlinings	—	15%	10%	G.N. 45/1991
ex 61.15	All partially finished articles in this heading	—	15%	10%	
ex 17.04	Liquorice in sheet or rope form	—	15%	10%	
ex 20.03	Ginger preserved in syrup: in bulk	—	15%	10%	
CORDAGE AND NETS MANUFACTURING INDUSTRY:					
ex 54.02	High tenacity yarn of nylon, polysters and other polyamides	—	15%	10%	G.N. 19/1992
CYCLE PARTS AND ACCESSORIES MANUFACTURING INDUSTRY:					
83.14.99	Cycle badges	—	15%	10%	
ex 87.12.03	Cycle frame parts for fabrication, namely brackets, crowns, lugs, race seatings and stays: cycle fork parts for fabrication, namely-blades and covers: cycle mudguards of metal, unpainted and without holes; mudguard clips	—	15%	10%	
DENTAL OR ORAL HYGIENIC PREPARATIONS MANUFACTURING INDUSTRY:					G.N. 22/2008
2811.22.00	Silicon Dioxide	—	Free	Free	
2811.22.00	Silica abrasive	—	Free	Free	G.N. 34/2016
2823.00.00	Titanium Dioxide	—	Free	Free	
2826.19.00	Sodium Fluoride	—	Free	Free	G.N. 34/2016

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G.N. 34/2016	2835	Phosphates	—	Free	Free
	2835.22.00	Sodium Monofluorophosphate	—	Free	Free
	2836.50.00	Calcium Carbonate	—	Free	Free
	2905.44.00	Sorbitol	—	Free	Free
	2909.50.00	Triclosan	—	Free	Free
	2912.11.00	Methanal	—	Free	Free
	2916.31.00	Sodium Benzoate	—	Free	Free
	2925.11.00	Sodium Saccharin	—	Free	Free
G.N. 34/2016	3204.19.00	Ponceau 4R	—	Free	Free
	3302.10.00	Flavors	—	Free	Free
	3402.11.00	Sodium Lauryl Sulphate	—	Free	Free
	3912.31.00	Sodium Carboxymethylcellulose	—	Free	Free
G.N. 34/2016	3912.31.00	Sodium carboxyl methyl cellulose SCMC-9MF	—	Free	Free
G.N. 34/2016	3921.90.00	Printed plastic based web roll	—	Free	Free
G.N. 34/2016	7607.19.00	Printed aluminum based web roll	—	Free	Free
		Domestic and Industrial Electrical Appliance Manufacturing Industry:			
G.N. 24/1992	ex 32.08	Epoxy powder paints	—	15%	10%
	ex 34.02	Cleaning and degreasing preparations	—	15%	10%
	ex 38.14	Degreasing chemicals and thinners	—	15%	10%
G.N. 104/1991	4011.90.20	Tyres of a kind used on wheel burrows	—	15%	10%
	ex Chapters 72 and 73	Reinforcing wire, wheel discs and steel washers	—	15%	10%
G.N. 26/1991	ex Chapters 72 and 73	Angles, bars, bolts, hinges, nuts, rivets screws, pipes and sheets	—	15%	10%
	ex 74.07	Copper bars	—	15%	10%
	ex 74.09	Copper sheets	—	15%	10%
G.N. 26/1991	ex 83.07.99	Components for incorporation into fluorescent light fittings manufactured in Malaŵi from sheet metal: excluding lighting tubes and plug-in components	—	15%	10%
G.N. 26/1991	8415.90.00	All goods in this heading	—	15%	10%
G.N. 24/1992	8504.10.00	Ballats/chokes	—	15%	10%
G.N. 26/1999	ex 85.12	Elements	—	15%	10%
G.N. 24/1992	ex 85.32	Capacitors	—	15%	10%
	ex 8535 and 8536	Circuit breakers and insulators	—	15%	10%
G.N. 24/1992	ex 85.44	Cables	—	15%	10%
	ex 8716.90.00	Steel wheel for wheelbarrows	—	15%	10%
	ex 90.24.01	Thermostats	—	15%	10%
G.N. 9/1998		Edible Fats and Oils Manufacturing Industry:			
42/1999	1206.00.00	Sunflower seeds	—	Free	Free
2/2006	ex 15.07.99	All goods in this subheading except castor oil	—	Free	Free
	ex 21.07.99	Emulsifying agents	—	Free	Free
	ex 28.15	Caustic soda	—	Free	Free
	ex 28.35	Phosphoric acid	—	Free	Free
	2918.14.00	Citric acid	—	Free	Free
	2936.21.00	Vitamins A Palmitate	—	Free	Free
	3205.00.00	Beta carotene	—	Free	Free
	3802.90.00	Bleaching earth	—	Free	Free
	ex 39.20	Laminated sheets	—	Free	Free
G.N. 9/2006		Electrical and Gas Generation Industry:			
		Enamelware and Halloware Manufacturing Industry:			
G.N. 104/1991	ex Chapter 28 and 29	Chemicals for use in the manufacturing domestic articles of enamelware	—	15%	10%
	ex Chapter 32	Screening paste	—	15%	10%
	ex 32.07	Uverite, enamel oxides and enamel transfers	—	15%	10%
	3306.10.00	Gum traganath	—	15%	10%
	ex 38.14	Screening oil	—	15%	10%
	3917.40.00	Plastic knobs and handles	—	15%	10%
	4828.60.00	Labels	—	15%	10%

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7228.60.00	Re-inforcing wire	—	15%	10%	
ex Chapters 72 and 73	Sheets of iron or steel	—	15%	10%	G.N. 25/1991
73.38.99	Black pressings in the shape of spouts and handles for incorporation in the manufacture of domestic articles of enamelware	—	15%	10%	
7604.10.00	Aluminium Circles	—	Free	Free	G.N. 40/1998
76.16.10.00	Aluminium rivets	—	15%	10%	104/1991
80.04.00.00	Tinplate sheets	—	15%	10%	
83.05.90.00	Wing levers	—	15%	10%	
Fertilizer Manufacturing Industry:					G.N. 70/1998
2503.00.00	Sulphurs	—	Free	Free	
2507.00.00	Kaolin	—	Free	Free	
2802.00.00	Sulphur	—	Free	Free	
ex 28.33	Sulphites	—	Free	Free	
ex 28.40	Borates and peroxoborates	—	Free	Free	
Fishing Fly Manufacturing Industry:					
ex 0505.90.00	Feathers	—	Free	Free	G.N. 24/1991
ex 32.05	Dye	—	Free	Free	
ex 34.04	Wax	—	Free	Free	
ex 35.06	Bostic (glue)	—	Free	Free	
ex 38.07	Turpentine	—	Free	Free	G.N. 110/1988
ex 39.02.05	Polythene sheets	—	Free	Free	
ex 43.02.00	Various hairs and furs on the skin	—	Free	Free	
ex 48.16.99	Sachets (pockets/envelopes)	—	Free	Free	
ex 5004.00.00	Gossamer silk	—	Free	Free	
ex 50.04	Silk yarns	—	Free	Free	
ex 50.09	Florist tape	—	Free	Free	
ex 51.2	Nylon yarns	—	Free	Free	
ex 52.04	Cotton threads	—	15%	10%	G.N. 120/1992
ex 53.08	Yarn of vegetable textile fibres	—	Free	Free	
ex Chapters 54 and 55	Rayon floss and polyester tying thread	—	Free	Free	G.N. 83/1993
ex 5606.00.00	Chenille	—	Free	Free	
ex 71.16.99	Parts of imitation salmon book brooches	—	Free	Free	
7408.10.00	Copper wire	—	Free	Free	G.N. 24/1991
ex 74.03	Florist wire	—	Free	Free	G.N. 87/1987
ex 74.10	Copper foil	—	Free	Free	
ex 76.07	Aluminium foil	—	Free	Free	
7803.00.00	Lead wire	—	Free	Free	
ex 83.05	Paper clips	—	Free	Free	G.N. 25/1989
ex 97.07.01	Fish hooks	—	Free	Free	110/1988
Food Manufacturing Industry:					
0207.14.00	Cuts and offal, frozen	—	Free	Free	G.N. 92/1989
0406.20.00	Cheese powder	—	15%	10%	12/2005
0408.91.00	Egg powder	—	15%	10%	
ex 04.02	Skimmed and sweetened milk	—	15%	10%	
0714.90.00	Irish Potatoes	—	Free	Free	
ex 08.00.99	Almonds, apricot kernels in bulk	—	15%	10%	G.N. 104/1991
ex 08.00.99	Desiccated coconut powder	—	15%	10%	
0801.11.00	Desiccated coconut powder	—	Free	Free	G.N. 34/2016
ex 0802	Confectionery nuts	—	15%	10%	G.N. 138/1980
0806.20.00	Sultanas	—	15%	10%	
0810.30.00	Currants	—	15%	10%	G.N. 92/1989 177/1883
ex 09.04.01	Spices, ground, crushed or rubbed	—	15%	10%	G.N. 104/1991 G.N. 97/1987 G.N. 92/1989
1104.12.00	Rolled oats	—	15%	10%	G.N. 104/1991
1104.23.00	Maize grits	—	Free	Free	

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	ex 1301.90.00	Edible gum	—	15%	10%
G.N. 97/1987	ex Chapter 15	Refined cooking oil and palm oil	—	15%	10%
32/2005	ex 15.13	Baking fat	—	15%	10%
G.N. 34/2016	1511.90.00	Palm stearin	—	Free	Free
G.N. 34/2016	1514.11.00	Canola oil	—	Free	Free
G.N. 34/2016	1515.90.00	Flax seed oils	—	Free	Free
	17.01.99	All goods in this subheading	—	15%	10%
G.N. 92/1989	ex 17.04	Liquorice: in sheet or rope form	—	15%	10%
G.N. 104/1991	ex 1702	Liquid glucose	—	15%	10%
	1702.90.00	Food colours	—	15%	10%
G.N. 130/1993	ex 1803	Cocoa paste	—	15%	10%
	1805.00.00	Cocoa powder	—	15%	10%
G.N. 58/1993	1901.20.00	Malt extract	—	15%	10%
G.N. 32/2005	1901.90.00	Cereal pellets	—	Free	Free
	ex 20.03	Ginger preserved in syrup; in bulk	—	15%	10%
	2002.90.00	Tomato purse	—	15%	10%
G.N. 32/2005	2102.30.00	Baking powder	—	Free	Free
G.N. 21/2006	2103.90.00	Spices (ready pack)	—	Free	Free
G.N. 32/2005	2106.90.00	Cream of tartar and chicken spice	—	Free	Free
G.N. 28/2008	2106.90.00	Fortivim, vitamin and mineral premix	—	Free	Free
G.N. 34/2016	2106.90.10	Flavours	—	Free	Free
G.N. 34/2016	2106.90.90	Vitamin and mineral premix	—	Free	Free
G.N. 92/1989	283210.00	Sodium metasulphite	—	15%	10%
G.N. 104/1991	2836.10.00	Ammonium bicarbonate	—	15%	10%
G.N. 58/1993	2836.30.00	Sodium bicarbonate	—	15%	10%
	2915.21.00	Acetic acid	—	15%	10%
G.N. 2/2008	2916.19.00	Potasium sorbate, termamil	—	Free	Free
G.N. 104/1991	2916.31.00	Benzoic acid	—	15%	10%
G.N. 2/2008	2918.11.00	Lactic acid	—	Free	Free
	2918.14.00	Citric acid	—	15%	10%
G.N. 5/1996	3205.00.00	Food colours	—	15%	10%
G.N. 34/2016	3205.00.00	Food color	—	Free	Free
	3302.10.00	Food essence	—	15%	10%
G.N. 32/2005	3302.10.00	Talc powder	—	Free	Free
G.N. 34/2016	3506.99.00	Hot melt labeling Glue	—	Free	Free
G.N. 34/2016	3824.90.00	Myverol	—	Free	Free
G.N. 21/2006	3917.10.00	Casings (synthetic, artificial or cottagen)	—	Free	Free
G.N. 34/2016	3919.90.00	Buff Tape	—	Free	Free
G.N. 34/2016	3921	Plastic wrapping materials	—	Free	Free
G.N. 2/2006	3923.21.10	Pouches	—	Free	Free
G.N. 2/2008	ex 35.07	Enzymes, attenuzyme	—	Free	Free
	ex 39.20	Cellulose paper Popyropylene, PVC shrink film and polythene	—	15%	10%
	3923.50.00	Slip-top caps	—	15%	10%
G.N. 104/1991	3926.90.00	Polyethylene seal washer	—	15%	10%
	ex Chapter 48	Corrugated paperboard, waxed paper, printed paperboard, kraft paper and grease proof paper	—	15%	10%
G.N. 130/1993	4823.90.10	Sausage cases	—	15%	10%
G.N. 5/1996	ex 48.23	Lollipop sticks	—	15%	10%
G.N. 1/1993	ex 48.31	Labels	—	15%	10%
	ex 5403.10.00	Ivory Sol (Food lubricant)	—	Free	Free
	ex 5608.19.90	Meat netting	—	Free	Free
G.N. 2/2008	ex 76.07	Foil seal	—	Free	Free
	7607.20.90	Aluminium foil	—	Free	Free
	Fuel Manufacturing Industry:				
	ex 2207	Ethanol	—	Free	Free
	ex 3204	Colorants	—	Free	Free
	ex 3811	Hardener	—	Free	Free

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FURNITURE AND MATTRESS MANUFACTURING INDUSTRY:					G.N. 59/1994
ex 32.04	Dyes	—	15%	10%	8/1998
ex 32.08 and 32.09	Lacquers	—	15%	10%	56/2000 33/2002
ex Chapter 35	Glues	—	15%	10%	
ex 39.00.13	Decorative plastic laminated sheets	—	15%	10%	
ex 40.07.99	Furniture webbing	—	15%	10%	
ex 44.10	Particle boards	—	Free	Free	G.N. 19/2006
ex 44.11	Fibre boards	—	Free	Free	
ex 44.12	Decorative oak blockboard	—	15%	10%	
ex 44.12	Mukwa blockboard	—	15%	10%	
44.12.11.00	Sapelli blockboard	—	15%	10%	
ex 44.28	Wooden dowels, unshaped	—	15%	10%	
ex Chapters 51 to 58	Woven fabrics	—	Free	Free	
ex 59.02.99	Fabrics of felt	—	15%	10%	
ex 59.07.99	Textile fabric coated with PVC: PVC leather cloth strip or sheet	—	15%	10%	
60.01	All goods in this heading	—	15%	10%	
ex 62.05.99	Tufts for mattresses and upholstery	—	15%	10%	
ex 68.05	Abrassives	—	15%	10%	G.N. 27/1991
ex 7003	Cast and rolled glass in sheets	—	Free	Free	G.N. 84/1993
ex Chapter 73	Tubes and pipes	—	Free	Free	
ex 7317	Nails	—	Free	Free	G.N. 33/2002
73.20	Springs	—	15%	10%	
83.01	All goods in this heading	—	15%	10%	
83.02.19	All goods in this subheading	—	15%	10%	
ex 83.02.99	Base metal fittings, for furniture	—	15%	10%	
ex 94.03	Plastic ferrules for the legs of cabinets wooden dowels, shaped	—	15%	10%	
ex 98.01	Buttons for mattresses and up holstery	—	15%	10%	
HAIR MESH MANUFACTURING INDUSTRY:					G.N. 21/2002 12/2005
4016.99.00	Rubber bands	—	Free	Free	G.N. 34/2016
4916.99.00	Golden steel string	—	Free	Free	G.N. 34/2016
54.02.49.00	Synthetic filament yarn.	—	Free	Free	
ex 55.01 and 55.03	Synthetic filament filter	—	Free	Free	
7408.29.00	Aluminum wire	—	Free	Free	G.N. 34/2016
9615.90.00	Reband MEAS 43x33x45 centimeters	—	Free	Free	G.N. 34/2016
INDUSTRIAL FASTENING MANUFACTURING INDUSTRY:					G.N. 60/1994
ex Chapter 72	Wire	—	15%	10%	78/1995
ex 72.07	Roundwire	—	15%	10%	
ex 72.09	Coil	—	15%	10%	
ex 72.13	Round bars	—	15%	10%	
ex 72.13	Steel flat bars	—	15%	10%	
KNITWEAR MANUFACTURING INDUSTRY:					G.N. 79/1992
ex Chapter 54	Polyester filaments	—	15%	10%	
ex 58.06	Lining tape	—	Free	Free	
ex 58.08.99	Lace in the piece	—	15%	10%	
LEATHER TANNING INDUSTRY:					G.N. 43/1991
ex 15.07.99	Oils for tanning, except castor oil	—	15%	10%	
ex Chapters 28 and 29	Chemicals for tanning	—	15%	10%	
ex 32.09.99	Leather paints, in bulk	—	15%	10%	
ex Chapter 38	Products and preparations for tanning	—	15%	10%	G.N. 43/1991
MATCH MANUFACTURING INDUSTRY:					G.N. 22/2008
2503.00.00	Sulphurs	—	Free	Free	
2505.10.00	Silica sands	—	Free	Free	
2507.00.00	Kaolin	—	Free	Free	
3204.17.00	Pigments (Toluidine Red)	—	Free	Free	
3920.10.00	Plastic Shrink Wrap	—	Free	Free	

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G.N. 25/1989	MEDICAMENTS AND PHARMACEUTICALS MANUFACTURING INDUSTRY:				
83/1963	4.06	Honey	—	15%	10%
	ex 11.08	Starches	—	15%	10%
	ex 17.02	Caramel, dextrose monohydrate, liquid glucose, lactose anhydrous	—	15%	10%
G.N. 34/2016	1702	Aci-Di-Sol/Cross Caramel Sodium	—	Free	Free
	ex 28.01	Piperazine citrate	—	15%	10%
	ex 28.10	Dibasic calcium phosphate	—	15%	10%
	ex 28.18	Magnesium hydroxide	—	15%	10%
	ex 28.30	Ammonium Chloride	—	15%	10%
	ex 28.38	Magnesium sulphate	—	15%	10%
	29.01	All goods in this heading	—	15%	10%
G.N. 34/2016	2905.43.00	Mannitol	—	Free	Free
G.N. 34/2016	2914.50.00	Ketoconazole	—	Free	Free
	29.16	Acelty salicylic, alginic, ascorbic, salicylic, stearic and tartaric acids, aspirin crystals and granules	—	15%	10%
G.N. 34/2016	2916	Metronidazole and Metronidazole Benzoate	—	Free	Free
G.N. 34/2016	2921.19.00	Methydopa Usp	—	Free	Free
G.N. 34/2016	2922	Diclofenac Sodium	—	Free	Free
G.N. 34/2016	2922.12.00	Aspartame	—	Free	Free
G.N. 34/2016	2922.12.00	Phenylephrine Hydro Chloride	—	Free	Free
G.N. 34/2016	2922.12.00	Pridoxine Hydrochloride	—	Free	Free
G.N. 34/2016	2922.12.00	Quinine Dihydrochrolide	—	Free	Free
G.N. 34/2016	2924.00.00	Carbamazepine	—	Free	Free
	ex 29.26.01	Saccharin sodium	—	15%	10%
G.N. 34/2016	2933.29.00	Albendazole Cp	—	Free	Free
G.N. 34/2016	2933.29.00	Diphenhydramine Hydrochloride	—	Free	Free
G.N. 34/2016	2933.39.00	Nalidixic Acid	—	Free	Free
G.N. 34/2016	2933.59.00	Trimethoprime	—	Free	Free
G.N. 34/2016	2933.99.00	Dextromethorphan Hydrobromide	—	Free	Free
G.N. 34/2016	2935.00.00	Sulphamethoxazole	—	Free	Free
G.N. 34/2016	2936.21.00	Dry Va Acetate (Vitamine)	—	Free	Free
G.N. 34/2016	2936.29.00	Folic Acid	—	Free	Free
G.N. 34/2016	2939.29.00	Aminophyiline Anhyd	—	Free	Free
G.N. 34/2016	2939.99.00	Nicotinamide	—	Free	Free
G.N. 34/2016	2939.99.00	Quininesulphate	—	Free	Free
G.N. 34/2016	2940.00.00	Lactose Monohydrate	—	Free	Free
G.N. 34/2016	2941.40.00	Chloramphenicol Leo Bp	—	Free	Free
G.N. 34/2016	2941.40.00	Chloramphenicol Maleate	—	Free	Free
G.N. 34/2016	2941.40.00	Chloramphenicol Palmitate	—	Free	Free
G.N. 34/2016	2941.50.00	Erythromicin Stearate	—	Free	Free
G.N. 34/2016	2941.90.00	Doxcycline Hyclate	—	Free	Free
G.N. 34/2016	2941.90.00	Azithromycin	—	Free	Free
G.N. 34/2016	2941.90.00	Ciprofloxacin	—	Free	Free
G.N. 34/2016	2941.90.00	Praziquantel	—	Free	Free
G.N. 34/2016	2942.00.00	Metformin Hydro Chloride	—	Free	Free
G.N. 34/2016	2942.00.00	Atenolol	—	Free	Free
G.N. 34/2016	2942.00.00	Artermether	—	Free	Free
G.N. 34/2016	2942.00.00	Fluconazole	—	Free	Free
G.N. 34/2016	2942.00.00	Cotrimazole	—	Free	Free
G.N. 34/2016	3004.39.00	Prenidisolen	—	Free	Free
G.N. 34/2016	3004.90.90	Indomethacin Bp	—	Free	Free
	32.05	Dyes	—	15%	10%
	33.01	All goods in this heading	—	15%	10%
G.N. 56/1996	ex Chapter 35	Gelatin	—	15%	10%
	39.01.01	Bakelite caps, stretch warp film	—	15%	10%
	48.16.99	Laminate/polycote packets	—	15%	10%
G.N. 27/2008	METALLURGY MANUFACTURING INDUSTRY:				
	2508.10.00	Bentonite	—	Free	Free
	2508.30.00	Fire Clay	—	Free	Free
	2806.10.00	Hydrochloric acid	—	Free	Free
	2807.00.00	Sulphuric acid	—	Free	Free
	2815.11.00	Sodium Hydroxide	—	Free	Free

1	2	3	4	5	
2815.20.00	Potassium Hydroxide	—	Free	Free	
3816.00.00	Refractory Mortars, Ramming Mass.	—	Free	Free	
ex 38.24	Prepared binders for foundry moulds	—	Free	Free	
6902.90.00	Refractory Bricks	—	Free	Free	
ex 72.02	Ferro Alloys	—	Free	Free	
ex 72.03	Direct Reduced Iron (Sponge Iron)	—	Free	Free	
ex Chapter 72	Ingets and Gillets	—	Free	Free	G.N. 2/2006
ex Chapter 72	Scrap Metal, Steel Slabs and Mild Steel Plates	—	Free	Free	
7313.00.90	Binding Wire	—	Free	Free	
8311.10.00	Welding Rods	—	Free	Free	
8311.30.00	Brazing Rods	—	Free	Free	
Mineral and Aerated Water Manufacturing and Bottling Industry:					G.N. 97/1987
ex 04.02	Milk in powder form	—	Free	Free	57/1997
17.01.99	All goods in this subheading	—	15%	10%	11/1998
ex 20.09	Concentrated fruit juices	—	Free	Free	
2106.90.00	Cola concentrates	—	Free	Free	
2522.30.00	Hydrated lime	—	Free	Free	
2801.10.00	HTM chlorine	—	Free	Free	
2806.10.00	Hydrochloric	—	Free	Free	
2815.11.00	Caustic soda	—	Free	Free	
2833.29.00	Ferrous sulphate	—	Free	Free	
2847.00.00	Hydrogen peroxide	—	Free	Free	
2916.31.00	Sodium benzoate	—	Free	Free	
2918.14.00	Citric acid	—	Free	Free	
ex 32.15	Ink	—	Free	Free	
3302.10.00	Odoriferous substance	—	Free	Free	
3802.10.00	Activated carbon	—	Free	Free	
4821.10.00	Fitter sheets	—	Free	Free	
ex 76.07	Foils	—	Free	Free	
Mining Industry:					G.N. 47/2003
Nails, Brickforce and Weldmesh Manufacturing Industry:					G.N. 130/1993
2811.29.00	Hydrochloric acid	—	Free	Free	62/1996
2815.12.00	Liquid sodium hydroxide	—	Free	Free	
ex Chapter 72	Wire	—	Free	Free	
7905.00.00	Zinc plate	—	Free	Free	
8311.90.00	Washers of metal	—	Free	Free	
Packaging Manufacturing Industry:					G.N. 80/1989
1108.12	Corn starch	—	Free	Free	21/2002
2815.10	Caustic soda	—	Free	Free	12/2005
ex 28.40	Borax powder	—	Free	Free	
2912.11.00	Fermalin	—	Free	Free	
ex 32.15	Printing ink	—	Free	Free	
ex Chapter 35	Adhesives	—	Free	Free	
3701.09.00	Developer	—	Free	Free	
3701.30.00	Cyrel plates	—	Free	Free	
3809.92.00	Corwet resin	—	Free	Free	
ex Chapter 48	Sackkraft, kraftliner and fluting papers	—	Free	Free	
ex Chapter 72	Stitching wire	—	Free	Free	
Paints Colours, Thinners and Putty Manufacturing Industry:					G.N. 80/1989
ex 15.07.99	Vegetable oils, except tung oil	—	15%	10%	21/2002
1515.19.00	Linseed oil	—	15%	10%	12/2005
1515.30.00	Castor oil	—	15%	10%	
2507.00.00	Kaolin	—	Free	Free	
2518.20.00	Dolomite	—	Free	Free	
2526.20.00	Talc	—	Free	Free	
2814.20.00	Ammonia	—	Free	Free	
2821.10.00	Iron oxide and hydroxides	—	Free	Free	
2836.50.00	Calcium carbonate	—	Free	Free	
2902.90.00	Solvents	—	Free	Free	
2905.19.00	Acrylic alcohols	—	Free	Free	
2905.32.00	Propylene glycol	—	Free	Free	
2905.42.00	Pentacrythritol	—	Free	Free	
2917.14.00	Maleic anhydride	—	Free	Free	

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	2917.35.00	Pthalicanhydride	—	Free	Free
	3806.90.00	Gum rosin	—	Free	Free
	3811.19.00	Viscosity improvers additives	—	Free	Free
	3903.90.00	Styrene acrylic polymers	—	Free	Free
	3905.12.00	Polymers of vinly acetate	—	Free	Free
	3905.30.00	Polymers of vinly alcohol	—	Free	Free
	3906.90.00	Styrene acrylic latex	—	Free	Free
	Chapter 29	Chemical compounds	—	Free	Free
	3206.10.00	Ti-dioxide	—	15%	10%
	32.11	Driers	—	Free	Free
	3212.90.00	Alkopal Nogo; Aluminium paste; colanyl hostaperm; monolite, toluidine, lead cromate and prepared pigments	—	15%	10%
	3402.19.00	Nopco-ante foaming agent, syn-peronic NPG	—	15%	10%
	3814.00.00	Thiners	—	Free	Free
	3905.10.00	PVA emulsion	—	15%	10%
	3907.50.00	Alkyd resins	—	15%	10%
G.N. 123/1992	PLASTIC PRODUCTS MANUFACTURING INDUSTRY:				
	2815.30.00	Mek Peroxide HP 3	—	15%	10%
	2823.00.00	Titanium Oxides	—	15%	10%
	2836.50.00	Calcium Carbonate	—	15%	10%
	ex 29.05	Propanol	—	Free	Free
	ex 29.14	ME Keyton and cyclone xanone	—	15%	10%
	ex 29.17	Plasticisers and Polimix Oil	—	15%	10%
	2915.31.00	Ethyl acetate	—	Free	Free
	2915.70.00	Stearic acid	—	15%	10%
	2923.21.10	Sacks and bags packaging industry	—	Free	Free
	2923.30.10	Bottles for packaging industry	—	Free	Free
	2923.50.00	Shoppers, lids, caps and other closures	—	Free	Free
	2929.10.00	Isocyanates	—	Free	Free
	2932.11.00	Tetrahydrofuran	—	15%	10%
	3020.20.00	Trespaphan	—	Free	Free
	3204.90.00	Pigments	—	15%	10%
	3209.90.00	Gelcoate	—	15%	10%
	3214.90.00	Plastic Putty	—	15%	10%
	ex 3215.19.00	Ink	—	15%	10%
G.N. 80/1992	ex 3403.99.00	Mould release preparation	—	15%	10%
G.N. 123/1992	3812.30.00	Stabilisers, Chemstab oil, plasticlor oil, spicco and tinuvin P	—	15%	10%
	ex 38.15	Accelerations and Catalysts	—	15%	10%
G.N. 34/2016	3826.90.90	Plastic water taps	—	Free	Free
G.N. 103/1991	ex 39.01 to 39.14	Plastics	—	15%	10%
G.N. 103/1991	3909.20.00	Melamine resins	—	15%	10%
G.N. 80/1992	3917.40.00	Pipe fittings	—	15%	10%
	4005.90.00	Masterbatch	—	15%	10%
G.N. 12/2005	4006.90.00	Unvulcanized rubber rings	—	15%	10%
	4016.93.00	Vulcanized rubber rings	—	15%	10%
		Fibre glass	—	15%	10%
G. N. 27/1999	7010.20.00	Glass inners for vacuum flasks	—	Free	Free
G.N. 12/2005	ex 73.07	Pipe fittings	—	15%	10%
G.N. 10/1998	7323.90.00	Bucket handles	—	Free	Free
G.N. 34/2016	8421.21.10	Water filter	—	Free	Free
	9608.10.00	Ball point refils	—	Free	Free
G.N. 32/2005	POTTERY MANUFACTURING INDUSTRY:				
	ex Chapter 25	Bentonite, Petalite, Feldspar, Soda, ash and Clay	—	Free	Free
	ex Chapter 28	Metal oxides and dioxides	—	Free	Free
	2836.60.00	Barium cobonate	—	Free	Free
	2839.19.00	Sodium silicate	—	Free	Free
	ex 32.07	Frits, ceramic colours and lustres	—	Free	Free
G.N. 26/1990	3404.90.00	Bush wax	—	Free	Free
	2923.50.00	Plastic stoppers	—	Free	Free
	ex 49.08	Transfers	—	Free	Free

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PRIMARY CELLS AND BATTERY MANUFACTURING INDUSTRY:					G.N. 111/1992
1108.11.10	Neo electrolytic starch	—	15%	10%	G.N. 111/1992
2803.00.00	Carbon	—	15%	10%	G.N. 111/1992
2804.80.00	Arsenic	—	15%	10%	
2807.00.00	Sulphuric acid	—	15%	10%	G.N. 111/1992
2820.10.00	Electrolytic managanese dioxide	—	15%	10%	
2824.90.00	Greylead oxides	—	15%	10%	
2827.10.00	Ammonium Chloride	—	15%	10%	
2827.36.00	Zinc oxide	—	15%	10%	G.N. 47/2003
2833.27.00	Barium Sulphate	—	15%	10%	
2836.99.00	Sodium carbonate	—	15%	10%	G.N. 12/2005
ex Chapter 35	Adhesives	—	15%	10%	
3801.10.00	Graphite	—	15%	10%	G.N. 12/2005
3811.90.00	Oxidation inhibitors	—	15%	10%	
3912.30.00	Carboxymethyl cellulose	—	15%	10%	
3920.42.00	Shrink film	—	15%	10%	
3921.90.00	PVA Tubing labels	—	Free	Free	
3923.50.00	Plastic washers	—	Free	Free	
3923.50.00	Plastic red tops	—	Free	Free	
ex 39.23	Containers, vents, plugs and lids.	—	15%	10%	
3923.50.00	Plastic caps	—	15%	10%	
3923.90.00	Plastic bottom washer	—	Free	Free	
ex 4804	Kraft paper	—	15%	10%	
4807.99.00	Poly sandwiched paper and chip board paper	—	15%	10%	
4818.90.00	Paper tissues	—	15%	10%	
4821.10.00	Paper labels	—	15%	10%	
4823.90.30	Paper washer	—	Free	Free	
7211.49.00	Tinned steel strip	—	15%	10%	
7907.90.10	Zinc calots	—	15%	10%	
8001.10.00	Unalloyed tin ingots	—	15%	10%	G.N. 111/1992
8110.00.00	Antimony	—	15%	10%	
8309.90.00	Metal tops caps	—	15%	10%	
8506.90.00	Electrolytic coated paper	—	15%	10%	
8507.90.00	Battery grids, plates and separators	—	15%	10%	G.N. 37/1998
8545.19.00	Carbon rods	—	15%	10%	
PRINTING INDUSTRY:					G.N. 32/2005
ex Chapters 28 and 29	Chemicals	—	Free	Free	G.N. 9/2006
ex 32.15	Printing ink	—	Free	Free	
ex Chapter 35	Self adhesives	—	Free	Free	
ex Chapter 48	News print	—	Free	Free	
ex Chapter 48	NCR paper, bank paper core board, art board, art paper calendar rims	—	Free	Free	
ex Chapter 59	Binding cloth	—	Free	Free	
ex Chapter 72	Stitching wire	—	Free	Free	
ex Chapter 72	Calendar spiral wire	—	Free	Free	
PRINTING PUBLISHING AND BOOK BINDING INDUSTRY:					G.N. 34/2016
3920	Other plates, sheets, film, foil and strip, of plastics, non-cellular and not reinforced, laminated, supported or similarly combined with other materials	—	Free	Free	
4802.69.00	Bond paper	—	Free	Free	
PUBLIC SEWERAGE DISPOSAL WORKS INDUSTRY:					G.N. 9/2006
PUBLIC WATER SUPPLY INDUSTRY:					G.N. 12/2005
RADIO SOUND REPRODUCER, TELEVISION IMAGE AND SOUND REPRODUCER AND ALLIED PRODUCTS MANUFACTURING INDUSTRY:					
NOTE: The rebates are applicable only to parts and materials imported for the manufacture of units of which at least the basic chassis or such alternative parts, components or accessories as may be approved by the Minister will be manufactured in Malaŵi.					G.N. 12/2005
ex 39.00.12	Acrylic sheet of the kind suitable for use in the manufacture of radios and radio components	—	15%	10%	

	1	2	3	4	5
	ex 39.00.13	Plastic laminated sheets	—	15%	10%
	ex 39.07.19	Handles and plastic cabinets	—	15%	10%
	ex 44.28	Unshaped leg dowels	—	15%	10%
G.N. 29/1984	ex Chapters 51 to 57, 5473.30.00	Parts and accessories of the machines of Heading No. 84.71	—	Free	Free
G.N. 97/1987	ex 59.07.99 ex 59.11	Grill cloth	—	15%	10%
G.N. 88/1992	ex 51.04	Woven fabric for covering radio cabinets	—	15%	10%
	ex 59.07.99	Textile fabrics coated with P.V.C.; P.V.C. leather cloth strip or sheet: for covering radio cabinets	—	15%	10%
G.N. 88/1992	ex 76.04	Aluminium profiles	—	15%	10%
	ex 76.08	Aluminium pipes and tubes	—	15%	10%
	7616.90.30	Aluminium wire mesh	—	15%	10%
	ex Chapter 83	Cabinets fittings	—	15%	10%
	ex 83.14.99	Metal name plates	—	15%	10%
	ex Chapter 85	Components other than cabinets, n.e.s	—	15%	10%
	ex 85.14.04, ex 85.23.02	Modules and other chassis	—	15%	10%
	ex 85.14.99, ex 92.13, ex 94.03	Cabinet fittings	—	15%	10%
	ex 92.13	Tape decks, turntables, pick-ups and pick-up and turntable units; imported in a knocked-down form approved by the Controller	—	15%	10%
	ex 92.13	Cartridges	—	15%	10%
	Refrigerator and Refrigeration Equipment Manufacturing Industry:				
	Note: The rebates are applicable only to parts and materials imported for the manufacture of units of which at least the cabinet and door or lid or such alternative parts, components or accessories as may be approved by the Minister, will be manufactured in Malaŵi.				
	ex 39.00.02	Darvie and similar P.V.C. sheeting	—	15%	10%
	ex 39.07.19	Trays, baskets, door gaskets	—	15%	10%
	73.38.99	Wire baskets	—	15%	10%
	ex 82.02.01	Bottle openers	—	15%	10%
	ex 83.01.00	Door handles incorporating locks: locks	—	15%	10%
	ex 83.02.99	Hinges, door handles; adjustable feet	—	15%	10%
	ex 83.14.99	Name and data plates	—	15%	10%
	ex 84.10.09	Compressors under 1/4 horsepower	—	15%	10%
	ex 84.15.99	Absorption units; burners—paraffin or gas; condensers, plastic liners; defrost elements; driers; tanks; runners; being component parts for refrigerators and refrigeration equipment	—	15%	10%
	ex 90.24.01	Thermostats	—	15%	10%
	Roofing Sheets and Allied Products Manufacturing Industry:				
G.N. 87/1992 5/1994	ex Chapter 72	Galvanized coils	—	Free	Free
	Rubber Products Manufacturing Industry:				
G.N. 63/1979	ex 13.01	Cushion gums	—	15%	10%
	ex 13.02	Gums	—	15%	10%
	25.03	Sulphur	—	Free	Free
	2803.00.00	Carbon	—	Free	Free
	2817.00.00	Zinc oxide	—	Free	Free
	2902.20.00	Benzo	—	Free	Free
	2915.70.00	Stearic	—	Free	Free

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ex 29.21	Diphenylkamine acetone and rephenylenediamine	—	15%	10%	
2924.29.00	Bengo thiagole sulfenamide	—	Free	Free	
ex 35.06	Vulcanizing cement	—	15%	10%	
3812.10.00	Prepared rubber accelerators	—	Free	Free	
ex 40.05.03	The goods in this subheading for the manufacture of accessories for railway track	—	Free	Free	
ex 40.07	Vulcanized rubber thread and cord	—	15%	10%	
ex 40.08	Thread rubber	—	15%	10%	
4012	Used Tyre Casing	—	Free	Free	G.N. 34/2016
4012.20.00	Used Pneumatic tyres (casings)	—	Free	Free	G.N. 58/2013
4016.99.90	Patch tyre repairs	—	15%	10%	
Sack Manufacturing Industry:					
ex 53.09 to 53.11	Woven fabrics	—	15%	10%	
5408.21.00	Polypropylene woven fabric	—	Free	Free	G.N. 83/1993
Slide Fasteners Manufacturing Industry:					G.N. 83/1993 103/1991
58.05	All goods in this heading	—	15%	10%	
ex 98.01	Pin-locks and stoppers	—	15%	10%	
Soap and Soap Substitutes Manufacturing Industry:					G.N. 32/2005
ex 15.07.99	Oils, vegetables, in bulk	—	Free	Free	
2507.00.00	Kaolin	—	Free	Free	G.N. 28/2008
2526.20.00	Talc powder	—	Free	Free	
28.23.00.00	Titanium dioxide	—	Free	Free	
2833.19.00	Sodium laureth ethyl sulphate	—	Free	Free	G.N. 46/1998
2839.90.00	Alkaline Sodium	—	Free	Free	
ex 29.95	Caustic soda	—	Free	Free	
2916.19.00	Creyslic Acid	—	Free	Free	
ex Chapter 32	Organic colouring material, dyes and pigments	—	Free	Free	
33.02.90	Odoriferous substances and other perfume concentrates	—	Free	Free	
3401.02.00	Fatty acids	—	Free	Free	
ex 34.02.01	A.D. flakes	—	Free	Free	
3402.90.00	Sunlight dishwash liquid in crude form	—	Free	Free	
ex Chapter 39	Wrapping materials of plastic	—	Free	Free	
ex Chapter 48	Wrapping materials of paper	—	Free	Free	
Sports Balls Manufacturing Industry:					G.N. 22/2008
ex 95:06	Football panel sets	—	Free	Free	
Sugar Confectionary Manufacturing Industry:					G.N. 34/2016
1518.00.00	Animal or vegetable fats and oils and their fractions	—	Free	Free	
1702.90.00	Caramel	—	Free	Free	
1803	Cocoa paste, whether or not defatted	—	Free	Free	
3923.29.10	Articles for the conveyance or packing of goods, of plastics; stoppers, lids, caps and other closures, of plastic	—	Free	Free	
Sugar Manufacturing Industry:					G.N. 55/1997
2503.00.00	Sulphur granules	—	Free	Free	G.N. 34/2016
2522.10.00	Hydrated lime	—	Free	Free	
ex Chapter 28	All goods in this Chapter	—	Free	Free	
2832.10.00	Sodium Hydrosulphite	—	Free	Free	G.N. 34/2016
2936.21.00	Vitamins A and their derivatives	—	Free	Free	G.N. 34/2016
3824	Biocide-Neurosan + Busan 1035	—	Free	Free	G.N. 34/2016
3824	Nalco Chemserve	—	Free	Free	G.N. 34/2016
3906.90.00	Floccotan R300	—	Free	Free	G.N. 34/2016
3906.90.00	Rheofloc 5100 (decolourant)	—	Free	Free	G.N. 34/2016
3906.90.00	Rheofloc 5320 (Flocullent)	—	Free	Free	G.N. 34/2016
3906.90.00	Rheofloc 5996	—	Free	Free	G.N. 34/2016

	1	2	3	4	5
G.N. 34/2016	3906.90.90	Bufloc	—	Free	Free
G.N. 34/2016	3909	Floculent Anikem 4484	—	Free	Free
	8108.90.00	Titanium Trichloride	—	Free	Free
G.N. 104/1991	TEA MANUFACTURING INDUSTRY:				
	ex 27.12	Parrafin wax	—	Free	Free
	ex Chapters 28 and 29	Chemicals for manufacturing	—	Free	Free
	ex 32.15	Ink	—	Free	Free
	ex Chapter 35	Glues	—	Free	Free
	ex Chapter 48	Skillets, blueboard and wrappers	—	Free	Free
	TEXTILE MANUFACTURING INDUSTRY:				
G.N. 104/1991	ex 11.88	Starches	—	15%	10%
	ex Chapters 28 and 29	Chemicals for use in the manufacture of textiles	—	15%	10%
	ex 32.04	Dyes	—	15%	10%
	ex 34.02.01 ex 34.02.99	Synthetic detergents for use in the processing of raw cotton	—	Free	Free
G.N. 32/2005	ex 34.05	Scouring powders for scouring fabrics before dyeing	—	Free	Free
	35.05.10.00	Starches (modified)	—	15%	10%
	38.09.91.00	Chemicals for use in the manufacture of textiles	—	15%	10%
	ex headings 3901 to 39.14	Polyesters	—	15%	10%
G.N. 32/2005	ex 39.20 and ex 39.21	Plastic wrapping materials	—	Free	Free
	ex 49.11	Printed cloth name or size labels	—	Free	Free
G.N. 32/2005	ex. Chapter 51 and 58	Woven fabrics	—	Free	Free
G.N. 5/1996	5801.21.00	Uncut weft file fabrics	—	Free	Free
G.N. 5/1996	ex 52.05 and ex 52.96	Cotton yarn	—	15%	10%
	ex 54.02	Synthetic filament yarn	—	15%	10%
	ex 54.03	Artificial filament yarn	—	Free	Free
	ex 55.05 and ex 55.06	Wastes	—	Free	Free
G.N. 22/2007	ex 55.09	Yarn of synthetic staple fibres	—	Free	Free
	ex 55.10	Yarn of artificial staple fires	—	Free	Free
G.N. 56/1996	ex 55.12	Woven fabrics	—	Free	Free
	ex 58.05	Satin binding	—	Free	Free
	ex 58.05	Narrow woven fabrics for blanket binding	—	Free	Free
	ex 60.01 to 60.02	Knitted fabrics for blanket binding	—	Free	Free
G.N. 109/1990	TOBACCO PRODUCTS MANUFACTURING INDUSTRY:				
	2403.91.00	Homogenised or reconstituted tobacco	—	Free	Free
	2915.39.00	Triacetine	—	Free	Free
	ex Chapter 35	Glues	—	15%	10%
	ex 39.21	Tear Strip	—	15%	10%
	ex 39.23	Polypropylene packs	—	15%	10%
	4812.00.00	Cigarette filters	—	15%	10%
	ex 48.13	Cigarette and tiping paper	—	15%	10%
	ex 48.13	Filter paper	—	Free	Free
	ex 48.21	Brand labels	—	15%	10%
	5403.42.00	Acetate	—	Free	Free
	ex 76.07	Aluminium foil	—	15%	10%
	TRAILER AND MOTOR VEHICLE MANUFACTURING INDUSTRY:				
G.N. 73/1992	NOTE: These rebates are applicable only to parts and materials for the manufacture of goods-carrying vehicles or trailers or vehicles authorized by the Minister for the purpose of Note 6 to chapter 87 of the Customs Tariff, or for the manufacture of bodies or cabs for such vehicles.				

1	2	3	4	5	
3208.22.10	Paints	—	Free	Free	
ex 32.14	Body filler and putty	—	Free	Free	
ex 34.05	Polishes	—	Free	Free	
3814.00.00	Thinners	—	Free	Free	
ex 39.07	Resins	—	Free	Free	
ex 39.18	Vinyl flooring	—	Free	Free	
ex 39.20	Plastic sheets	—	Free	Free	
ex 40.07.02	Sponge, rubber, strip	—	15%	10%	
ex 40.07.99	Rubber windows gasketting and locking strip therefor	—	15%	10%	
40.11.39	All goods in this subheading	—	15%	10%	
ex 95.07.99	Textile fabrics coated with PVC or other artificial materials	—	15%	10%	
ex 70.07	All goods in this heading	—	Free	Free	
70.09.00	Mirrors	—	15%	10%	
ex 73.09.79	Tread plate, in the piece	—	15%	10%	
ex 73.35.99	Springs	—	15%	10%	
ex 73.40.99	Hose clips	—	15%	10%	
ex 83.01	Door locks	—	15%	10%	
ex 83.02.99	Anti-lure fasteners, handrail brackets, door handles (incorporating locks), door hinges, piano hinges	—	15%	10%	
83.14.99	Metal name plates	—	15%	10%	
84.06.99	All goods in this subheading	—	15%	10%	
ex 84.10.99	Fuel pumps	—	15%	10%	
ex 84.14	Fans	—	Free	Free	
ex 84.18.99	Air or oil filters	—	15%	10%	
ex 84.63.99	Universal joints, pulleys, gasket sets	—	15%	10%	
ex 85.08.99	All goods in this subheading	—	15%	10%	
ex 85.12	All goods in this heading	—	Free	Free	
ex 85.17.02	Electric bells	—	15%	10%	
ex 85.20.99	Bulbs	—	15%	10%	
85.23.01	All goods in this subheading	—	15%	10%	
8545.20.00	Carbon brushes	—	Free	Free	
8706.00.99	Chassis for conversion into goods carrying vehicles	—	15%	10%	G.N. 73/1992
87.06.99	All goods in this subheading	—	15%	10%	
ex 87.14.99	Parts of vehicles of subheadings 87.14.01, 87.14.03 and 87.14.04; excluding bodies and body sections	—	15%	10%	
ex 90.23.01	Motor vehicle temperature gauges	—	15%	10%	
ex 90.24.01	Motor vehicle thermostats, fuel gauges and oil pressure gauges	—	15%	10%	
ex 90.27.01	Motor vehicle speedometers	—	15%	10%	
TRANSFER PRINTING INDUSTRY:					G.N. 177/1983
ex Chapters 51 to 58	Woven fabrics	—	Free	Free	
ex 60.02	All goods in this heading	—	Free	Free	
TRANSFORMER MANUFACTURING INDUSTRY:					G.N. 34/2016
3209	Varnish	—	Free	Free	
3926.90.90	Other articles of plastics	—	Free	Free	
4811.90.00	Insulation paper	—	Free	Free	
7229	Core steel	—	Free	Free	
8536.30.00	Tap Changer	—	Free	Free	
TRAVEL CASES AND SIMILAR CONTAINERS MANUFACTURING INDUSTRY:					
ex 59.11	Rubberised canvas	—	15%	10%	
ex 41.02	Leather in the piece	—	15%	10%	
ex 42.02	Plastic handles	—	15%	10%	
ex 48.09	Fibre board	—	15%	10%	
ex Chapters 52, 54 and 55	Linings	—	Free	Free	
ex 55.09.30 ex 55.09.39	Canvas	—	15%	10%	

	1	2	3	4	5
G.N. 25/1989	ex 56.07.99	Viscose linings	—	15%	10%
	ex 58.04	Velveteens	—	15%	10%
	ex 59.07.99	P.V.C. leather cloth	—	15%	10%
	ex 73.40.99, ex 83.02	Metal fittings	—	15%	10%
	ex 83.01	Locks	—	15%	10%
G.N. 66/1991	ex 98.02	Slide fasteners	—	15%	10%
	VINYL COATED FABRIC MANUFACTURING INDUSTRY:				
G.N. 133/1980	ex Chapter 32	Pigments	—	15%	10%
	ex 39.01 to 39.14	Plastics	—	15%	10%
G.N. 35/2014	5208.21.00	Bleached woven fabrics of cotton	Free	Free	Free
G.N. 35/2014	5208.22.00				
G.N. 35/2014	5208.23.00				
G.N. 35/2014	5208.29.00				
G.N. 35/2014	5209				
G.N. 35/2014	5210				
G.N. 35/2014	5211				
G.N. 35/2014	5212				
	ex Chapters 54 and 55	Woven fabrics of man-made fibres	—	Free	Free
G.N. 198/1980	WATCH MANUFACTURING INDUSTRY:				
	91.07.99	All goods in this subheading	—	15%	10%
G.N. 28/1981	ex 42.03	Watch straps	—	15%	10%
	ex 62.05.99	Watch straps	—	15%	10%
G.N. 28/1981	ex 71.12	Watch straps	—	15%	10%
	71.16.99	Watch straps	—	15%	10%

APPENDIX B

EIGHTH SCHEDULE: PART 1

INDUSTRIAL REBATES: EXCISE DUTIES

NOTE: For convenience of reference, the items shown in this Appendix are arranged in accordance with the form of the Excise Tariff.

	1	2 Item	3	4 Duty
		CLOTHING MANUFACTURING INDUSTRY:		
	8	Woven fabrics	—	Free
		Waist handling	—	Free
		Knitted or crocheted fabrics	—	Free
		FOOD MANUFACTURING INDUSTRY:		
G.N. 25/1989	8	Cane sugar, solid	—	Free
		Wheat or meslin flour	—	Free
		MEDICAMENTS AND PHARMACEUTICAL MANUFACTURING INDUSTRY:		
G.N. 177/1983		22.08.01 Ethanol	—	Free
		MINERAL AND AERATED WATER MANUFACTURING AND BOTTLING INDUSTRY:		
	8	Cane sugar, solid	—	Free
		SPIRITS MANUFACTURING INDUSTRY:		
	8	Cane sugar, solid	—	Free

APPENDIX C G.N. 101/1983

EIGHTH SCHEDULE: PART 2

INDUSTRIAL DRAWBACK

Goods manufactured or processed in Malaŵi	*Materials in respect of which drawback is allowed*	*Extent of drawback*	
Agricultural handtools and animal draw implements	All materials and components	The whole duty	
Articles made up from netting	Netting made up from yarn, twine, cordage, rope or cables containing more than 50 per cent by weight of man made fibres produced by polymerisation or condensation of organic monomers (for example, nylon)	The whole duty	G.N. 177/1983
Biscuits	Baking fat, glucose, paper, packaging cartons and foil wrappers	The whole duty	G.N. 177/1983
Blankets	Blanketing and blanket cloth	The whole duty	
Cigarettes	Packaging materials	The whole duty	
Cleartone skin toning cream and Envi skin toner	All materials and packaging materials	The whole duty	G.N. 177/1983
Clothing	Textile fabrics: in the piece, Lace and embroidery	The whole duty	
Curtains	Curtaining polyester thread and rufflette type	The whole duty	G.N. 84/1986
Cycles	Cycle parts and accessories	The whole duty	G.N. 79/1976
Dhall	All materials and components	The whole duty	G.N. 79/1976
Dry cell batteries	All materials and components	The whole duty	
Electric fires	All materials and components	The whole duty	
Enamelled hollow ware of iron and steel	Rough worked, uncoated, iron or steel shapes, parts and blanks	The whole duty	
Fishing nets, sports nets and twine . .	Yarn of man-made fibres continuous	The whole duty	G.N. 161/1980
Fluorescent light fittings	All materials and components	The whole duty	G.N. 44/1978
Footballs	All materials and components	The whole duty	
Footwear	All materials and components		
	All materials (whether prefabricated or not)	The whole duty	
Furniture	Textile fabrics: in the piece, component parts	The whole duty	
Motor vehicle trucks and buses	Chassis with or without cabs	The whole duty	G.N. 135/1987

[Subsidiary] *Customs and Excise Regulations*

	Goods manufactured or processed in Malaŵi	*Materials in respect of which drawback is allowed*	*Extent of drawback*
G.N. 85/1986	Petroleum Jelly; Menthol Rub; Perfumery, Hair Skin and Toilet Preparations	All Materials and packaging material	The whole duty
G.N. 28/1987	Plastic containers . .	Polypropylene granules	The whole duty
		Polystyrene Polyvinyl Chloride compound High Density Polyethylene Low Density Polyethylene Polypropylene colouring pigments	The whole duty
G.N. 41/1983	Plastic products . .	Polyethylene Polypropylene Polyvinylchloride	The whole duty
G.N. 23/1976	Polypropylene bags	Polypropylene granules . .	The whole duty
G.N. 161/1980	Prepared foodstuffs beverages	Tomato paste	The whole duty
G.N. 177/1983	Printed textile fabrics	Woven textile fabrics knitted and crocheted fabrics	The whole duty
G.N. 115/1981	P.V.C. Tarpaulins . .	Woven nylon textile fabrics in the piece and plasticisers . .	The whole duty
G.N. 17/1979	P.V.C. Tarpaulins . .	Woven nylon textile fabrics: in the piece	The whole duty
G.N. 17/1979	Radios, tape recorders and combinations thereof	All materials and components	The whole duty
G.N. 99/1975	Refigerators, deep freezers and coolers	All meterials and components	The whole duty
G.N. 99/1975	Stationery, being lever arch files and flat files	All meterials and components	The whole duty
G.N. 99/1975	Tents and tarpaulins	Canvas cloth and P.V.C. sheeting	The whole duty
	Timber products	Plywood, hardboard, chip-board and similar boards veneers	The whole duty
	Umbrellas	Textile fabrics in the piece Component parts	The whole duty
G.N. 115/1981	Watches	All materials and Components	The whole duty

NINTH SCHEDULE 13 of 2016

FORM A

WARRANT OF DISTRESS

CUSTOMS AND EXCISE ACT

To .....

I, ... Commissioner General by virtue of the powers vested in me by section 77B, do hereby authorize you to collect and recover the sum of MK ..... due for duty/penalty/interest from Messrs ..... (duty debtor), TPIN ..... of address ..... and for the recovery of this sum I further authorize you, with the aid if necessary of your assistants to levy this sum forthwith by distress together with the costs and charges of and incidental to the keeping of the distress on all distrainable things specified under section 77B, the property of and belonging to the said debtor wherever they may be found and on all such distrainable things as specified under the said section 77B used in Malawi in the manufacture, production, sale or distribution of any excisable supplies which you may find in any premises or on any land owned by or in possession of the said debtor on his behalf or in trust for him.

For the purpose of levying the distress you are hereby authorized to call to your assistance any police officer to break open any building or place in the daytime.

Given under my hand at .....

this ..... day of ..... 20.....

.....
Commissioner General

NOTE

CUSTOMS AND EXCISE (TARIFFS) ORDER G.N. 160/1970

see SUPPLEMENT

APPOINTMENT OF SPECIAL REFEREE

under s. 120

The Senior Resident Magistrate at Blantyre has been appointed to be the Special Referee for the purpose of hearing and determining appeals under section 121 of the Act.

CUSTOMS AND EXCISE (PRESHIPMENT INSPECTION OF IMPORTED GOODS) REGULATIONS

under s. 175

Citation and application

1. These Regulations may be cited as the Customs and Excise (Preshipment Inspection of Imported Goods) Regulations, and shall apply to—

(*a*) all orders or contracts for imported goods made after the 1st day of April, 2000; and

(*b*) all goods shipped to Malaŵi after the 1st day of April, 2000.

Interpretation

2. In these Regulations, unless the context otherwise requires—

"Authority" means the Malaŵi Revenue Authority established under section 3 of the Malaŵi Revenue Authority Act; Cap. 39:07

"company" means the company for the time being contracted by the Government to carry out preshipment inspection services on behalf of the Government.

"Order" means the Customs and Excise (Tariffs) Order, 1999.

Inspection of goods

3.—(1) Except as provided in these Regulations, all goods imported into Malaŵi shall be subject to inspection in the country of supply by the company.

(2) The company shall carry out preshipment inspection in respect of quality, tariff classification, quantity, value and related services.

(3) The company shall perform inspection of the goods before dispatch in the country of supply or at some other appropriate location.

Goods excluded from inspection

4. The company shall inspect all imports into Malaŵi except—

(*a*) goods with an FOB value not exceeding US$2,000 (or equivalent). Partial shipments covering goods having value below the threshold value, shall be nevertheless subject to intervention by the company if the total value of goods under the contract covering such shipments is equal or superior to such amount;

(*b*) aids and grants in kind and goods covered under Customs Procedure Codes numbers C403, C405, C406, C408, C410, C411, C412, C414, C415, C421, C422, C423, C424, C425, C426, C427, C430, C433, C434, C436, C441, C442, C443, C445, C446, C447, C448, C449, C473, C474, C475, C476, C477, C478, C479 and heading numbers 101.16, 101.19 and 102.04.

(*c*) arms and ammunition; parts and accessories thereof imported by Government and intended for military or paramilitary use (Tariff Chapter 93);

(*d*) commercial samples covered under special transactions No. C412 of the Order.

(*e*) goods destined for enterprises operating as a Duty Free Shop or in an approved Export Processing Zone;

(*f*) newspapers and periodicals (Tariff Heading 49.02);

(*g*) petroleum products (Tariff Headings 27.09, 27.10, 27.11, 27.12, 27.13, 27.14 and 27.15);

(*h*) previous metals, precious and semi-precious stones (Tariff Headings 71.01, 71.02, 71.03, 71.04, 71.05, 71.06, 71.07, 71.08, 71.09, 71.10, 71.11 and 71.12);

(*i*) scrap metals (Tariff Headings 72.04, 74.04, 75.03, 76.02, 78.02, 79.02, 80.02 and scrap metals of Chapter 81);

(*j*) works of art, collectors' pieces and antiques (Tariff Heading 97);

(*k*) bank notes, travellers cheques and cheque books.

Security label to be affixed

5. All purchase contracts concluded by importers in Malaŵi with suppliers shall stipulate the presentation of goods to the company's inspection in the country of supply and that a security label must be affixed by the company or its affiliates on a copy of their invoices as part of the documents for negotiating payment.

Clean Report of Findings to be presented with other documents

6. No payment shall be made to the credit of any person or legal entity outside Malaŵi by or on the authority of any licensed bank in Malaŵi unless a Clean Report of Findings (CRF), bearing a security label affixed by the company or its affiliates in respect thereof, is presented together with the other shipping documents.

Clearance of goods into bond

7.—(1) No importer shall be permitted to clear goods into bond without a CRF which shall be a document necessary to support import entry declaration.

(2) A CRF shall be used by the Authority as the minimum basis for the assessment of import duties and taxes payable.

(3) Where goods are subsequently taken out of bond, an importer shall apply for an additional CRF but a re-inspection of the goods shall not be required and the additional CRF shall be provided by the company free of charge.

Tender documents to be supplied

8. Where goods are supplied as a result of tender, the tender documents shall be submitted to the company with the order.

Contracts of sale, etc., to be submitted

9. In cases where the goods to be supplied are usually sold on the basis of contracts of sale, such contracts, sale notes and confirmation advice shall be submitted to the company.

Notice

10. The seller shall give the company at least four working days notice before the proposed date of physical inspection.

Documents to be provided

11. When requesting the company's intervention, the seller shall provide the company with a copy of the proforma invoice, purchase order, price list, letter of credit, contract and/or any other document, which the company may deem necessary for the execution of its mandate.

Seller to provide facilities and documents

12. The seller shall provide all necessary facilities and documents so that the company can perform physical identification, price verification, tariff classification and other related services and conduct all such tests as may be required.

Seller to make arrangements

13.—(1) The seller shall make the necessary arrangements for handling, presentation, sampling, shop testing, etc., of the goods for the purpose of the company's intervention, and any expenses incurred therefor shall be for the account of the seller.

(2) If the seller has called the company without having prepared the goods for intervention, or if the goods have been verified and are found not in accordance with the documentation, the cost of any additional intervention of the company shall be for the account of the seller.

Inspection not to relieve contractual obligations

14. The seller shall be warned that the intervention of the company under the preshipment inspection programme shall not be intended to relieve the seller of his contractual obligations to the buyer.

Inspection not override import Regulations

15. The importer is warned that the intervention of the company under the preshipment inspection programme shall not be intended to override the importer of his obligations in respect of compliance with the import regulations of Malaŵi.

Goods not submitted to preshipment inspection

16. Where goods are not submitted to preshipment inspection in accordance with these Regulations, importers may apply to their Authorized Dealer Bank for approval by the Reserve Bank of Malaŵi and the Authority for a destination inspection subject to the payment of an additional 100 per cent of the inspection order-processing fee and other penalties as may be determined under the Act. Such cases will also be notified to the Commissioner General.

Standards Cap. 51.02

17. Every importer is advised that, where goods are subject to the Malaŵi Bureau of Standards Act, the inspection order shall state the applicable standard.

Customs clearance

18.—(1) No importer shall be permitted to clear goods through customs without the company's CRF which shall be a document necessary to support entry declaration.

(2) The Authority shall use a CRF as the minimum basis for the assessment of customs payable.

Discrepancies arising from quality, etc.

19. The company shall issue a Non-Negotiable Report of Findings (NNRF) where it is not possible to transfer data on a CRF owing to any discrepancy arising from quality, quantity and pricing anomalies.

Issuance of NNRF

20. An NNRF shall be issued by the company in the absence of a seller's final invoice and certificate or origin if the aforementioned documentation is not received within five working days of the physical inspection.

CUSTOMS AND EXCISE (EXPORT OF TEXTILES) REGULATIONS

under s. 175

Citation

1. These Regulations may be cited as the Customs and Excise (Export of Textiles) Regulations.

Interpretation

2. In these Regulations, unless the context otherwise requires—

"African Growth and Opportunity Act" means legislation enacted by United States of America under the Trade and Development Act;

"bonded factory licence" means a licence issued under section 41 of the Act;

"export enterprise certificate" means a certificate issued under section 10 of the Export Processing Zones Act;

"export incentives certificate" means a certificate issued under section 19 of the Export Incentives Act;

"industrial licence" means a licence issued under the Industrial Licensing Act;

"registered exporter" means a person registered as a manufacturer or an exporter of textiles under these Regulations;

Exportation of textile

3. No textile shall be exported to United States of America under the African Growth Opportunity Act unless the exporter—

(*a*) holds a bonded factory licence, an export enterprise certificate, an industrial licence or an export incentives certificate; and

(*b*) is registered as an exporter under these Regulations.

Application for registration

4.—(1) Any person who desires to be registered as an exporter under these Regulations may make an application to the Commissioner General.

(2) An application shall be accompanied by such plans, documents, approvals and information as may be determined by the Commissioner General.

(3) An application shall be in the form set out in the First Schedule.

(4) On receipt of an application, the Commissioner General may make such investigations or require the submission of such declaration as he may deem necessary to enable him examine the application.

Consideration of application

5.—(1) In considering an application for registration under these Regulations, the Commissioner General shall take into account, *inter alia*—

(*a*) the production capacity of the applicant;

(*b*) rules of origin and other requirements under the African Opportunity Growth Act;

(*c*) the risk of trans-shipment; and

(*d*) compliance by the applicant of the requirements of these Regulations.

(2) After making the investigations and considering the application, including any information or declaration as may have been required in terms of regulation 4 (4), the Commissioner General may grant or refuse to grant the application.

(3) The Commissioner General shall not refuse an application without giving the applicant and opportunity of being heard.

Certificate of registration

6.—(1) Where the Commissioner General grants an application under regulation 5 (2), he shall issue to the applicant a certificate of registration.

(2) The certificate of registration shall be in the form set out in the Second Schedule.

Duration of certificate of registration

7. Every certificate of registration issued under these Regulations shall, unless therein otherwise provided, be valid for one year from the date of issue.

Exportation documents

8. A registered exporter shall prior to the exportation of each and every consignment of textiles to the United States of America present to the Commissioner General an original copy of the commercial invoice and three copies of the certificate of origin.

Record keeping

9.—(1) A registered exporter who is a manufacturer shall keep the following records—

(*a*) importation documents in respect of imported raw materials used in the production of exported textiles;

(*b*) exportation documents in respect of all exported textiles;

(*c*) documents pertaining to textiles produced by him;

(*d*) production records, including—

(i) materials used in the production of textiles;

(ii) number and type of machinery used in the production of textiles; and

(iii) number of workers employed in the production of textiles; and

(*e*) bank statements in respect of proceeds from exported textiles.

(2) A registered exporter who is not a manufacturer shall keep—

(*a*) exportation documents in respect of all exported textiles; and

(*b*) bank statements in respect of proceeds from exported textiles.

(3) The documents referred to in subregulations (1) and (2) shall be kept for at least five years.

Returns

10.—(1) A registered exporter who is a manufacturer shall submit to the Commissioner General a monthly return in respect of—

(*a*) materials that he has imported during the month in question; and

(*b*) textiles that he has exported during the month in question.

(2) A registered exporter who is not a manufacturer shall submit to the Commissioner General a monthly return in respect of textiles that he has exported during the month in question.

(3) A return under subregulations (1) and (2) shall be submitted not later than ten days after the expiry of the month to which the return relates.

(4) A return under subregulations (1) and (2) shall be in the form set out in the Third Schedule.

Transshipment prohibited

11.—(1) A registered exporter shall not—

(*a*) unlawfully trans-ship textiles to United States of America;

(*b*) use counterfeit documents; or

(*c*) keep false information concerning country of origin, manufacture, processing or assembly of textiles.

(2) For purposes of this regulation, trans-shipment shall be deemed to have occurred when preferential treatment for a textile article has been claimed on the basis of material false information concerning the country of origin, manufacture, processing or assembly of the article or any of its components.

FIRST SCHEDULE reg. 4(3)

APPLICATION FOR REGISTRATION AS AN EXPORTER OF TEXTILES TO UNITED STATES OF AMERICA

To: The Commissioner General
Malaŵi Revenue Authority
Private Bag 247
Blantyre

1. Pursuant to the Customs and Excise (Export of Textiles) Regulations, I,

.....
(*name of the person completing the Application*)

of .....
(*Address*)

*(duly authorized in that behalf by the partnership/body corporate specified in paragraph 2) hereby apply, for and on behalf of the said partnership/body corporate, for the issue/renewal of a certificate of registration authorizing the said partnership/body corporate to export textiles to the United States of America under the African Growth Opportunity Act.

2. Full name and address of applicant .....

.....

.....

3. Where the applicant is a body corporate—

(*a*) type of incorporation and registration.....

(*b*) date and place of incorporation .....

(*c*) shareholding, if the body corporate is a limited company .....

4. Number and type of machinery to be used in the production of textiles, in case of a manufacturer.....

.....

5. Number of workers employed in the production of the textiles, in case of a manufacturer.....

.....

6. Description of imported materials to be used in the production of the textiles, in case of a manufacturer .....

.....

7. Name and address of the supplier of imported materials, in case of a manufacturer .....

   .....

8. Description of the textiles to be produced, in case of a manufacturer

   .....

   .....

9. Monthly production capacity, in case of a manufacturer .....

   .....

   .....

10. Name and address of the manufacturer where the exporter is not the manufacturer .....

    .....

    .....

11. Name and address of the importer/consignee in the United States of America .....

    .....

    .....

Date this ..... day of ....., 20....

.....
Signature

.....
Designation

*Delete as necessary

Where the application is made for and on behalf of a partnership of body corporate, it must be signed by a partner or the secretary of the body corporate, as the case may be.

The following must accompany this application—

(*a*) proof that the applicant holds a bonded factory licence, an export enterprise certificate, an industrial licence or export incentives certificate;

(*b*) a sketch plan of the premises where the textiles shall be manufactured, in case of a manufacturer; and

(*c*) an affidavit in which the applicant attests to the validity and accuracy of information contained in this application.

NOTE: Applications should use attachments where the space provided on this form is insufficient.

SECOND SCHEDULE

reg. 6 (2)

Certificate of Registration

It is hereby certified that .....

.....

.....

has been registered under the Customs and Excise (Export or Textiles) Regulations as an exporter of textiles to United States of America under the African Growth Opportunity Act.

This certificate of registration shall expire on .....

Number of certificate of registration .....

Date at ..... this ..... day of ....., 20....

.....
Commissioner General

THIRD SCHEDULE

reg. 10 (4)

Customs and Excise (Export of Textiles) Regulations

Monthly Return in Respect of the Month of .....

1. Name of Registered Exporter .....
2. Status of Registered Exporter (please tick appropriate box)

   [ ] Manufacturer

   [ ] Not a manufacturer
3. Visa number .....
4. Date of issuance of visa .....
5. Grouping number .....
6. Value of goods .....
7. Quantity/unit measure .....
8. Importer/consignee in United States of America (if known)

   .....
9. United States of America Harmonized Tariff Schedule number to the 6-digit level .....

   Date ..... Signature .....

   Designation .....

VALUE ADDED TAX

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CHAPTER 42:02

VALUE ADDED TAX

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An Act to provide for the imposition and collection of Value Added Tax; and to provide for matters relating to or incidental to Value Added Tax

[12TH AUGUST, 2005]

PART I
PRELIMINARY

Short title

1. This Act may be cited as the Value Added Tax Act.

Interpretation
23 of 2011
18 of 2012
10 of 2015

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

"appropriation to own use", in relation to goods, means applying the goods to personal use, including personal use by a relative or any other non-business use;

"Authority" means the Malaŵi Revenue Authority established under section 3 of the Malaŵi Revenue Authority Act; Cap. 39:07

10 of 2015 "bank lending rate" means the rate of interest which the Reserve Bank of Malaŵi charges interest on its loans to commercial banks;

"betting" means risking money or other property in forecasting the outcome of some event;

"business" means the carrying on of any form of commercial activity, by a corporate body, individual, partnership or any organization;

"Commissioner General" means the Commissioner General of the Malaŵi Revenue Authority appointed under section 17 of the Malaŵi Revenue Authority Act; Cap. 39:07

"consideration", in relation to a supply of goods or services, means the total amount in money or kind paid or payable for the supply by any person, directly or indirectly, including any duties, levies, fees and charges paid or payable on, or by reason of, the supply, other than Value Added Tax, reduced by any discounts or rebates allowed and accounted for at the time of the supply;

10 of 2015 "customer" means a person that buys goods or services from a business;

"exempt import" means goods to which section 22 applies;

"exempt supply" means a supply of goods or services to which section 20 applies;

"finance lease", in relation to goods, includes the lease of goods where—

(*a*) the lease term exceeds seventy-five per cent of the expected life of the goods;

(*b*) the lessee has an option to purchase the goods for a fixed or determinable price at the expiration of the lease;

(*c*) the estimated residual value of the goods to the lessor at the expiration of the lease term, including the period of any option to renew, is less than twenty per cent of its fair market value at the commencement of the lease;

"gaming" has the same meaning as ascribed to that term in the Gaming Act; Cap. 47:03

"gaming machine" has the same meaning as ascribed to that term in the Gaming Act; Cap. 47:03

"goods" includes all kinds of moveable and immoveable property, thermal and electrical energy, heating, gas, refrigeration, air conditioning and water, but does not include money;

"hire purchase agreement" means an agreement that is a hire purchase agreement within the meaning of the Hire Purchase Act; Cap. 48:05

"importer", in relation to import of goods, includes the person who owns the goods or any other person who is for the time being in possession of, or beneficially interested in, the goods;

"input tax" means tax payable by a taxable person in respect of taxable received goods and services or imports;

"lotteries" means a scheme whereby the right is purchased to take part in a draw by lot for a prize;

"officer" means any member of the staff of the Authority performing duties under this Act and regulations made under this Act or delegated to him by the Commissioner General or any senior officer of the Authority or any other person appointed or authorized by an officer to perform any official duty connected with Value Added Tax; and includes an officer performing any duty under this Act on behalf of the Commissioner General;

"relative", in relation to an individual, includes an ancestor of the individual, a descendant of the individual's grandparents, or the spouse of the individual;

"rental agreement" means any agreement for the letting of goods other than a hire-purchase agreement or finance lease;

"return" means a return of Value Added Tax due, or claim for Value Added Tax return;

"tax invoice" means a fiscal receipt or invoice generated by electronic fiscal device upon supply of taxable goods or services in accordance with this Act and regulations made under this Act; 10 of 2015

"taxable person" means a person registered under section 11, and includes an individual, partnership, group of persons, company or corporation registered by the Commissioner General under that section;

"tax period" means one calendar month;

"taxable transaction" means a taxable supply or an import of goods or services that is subject to Value Added Tax under this Act;

10 of 2015

"user" means a person who is owner or employee who is required to use electronic fiscal device and includes the persons registered under this Act.

Application of this Act to partnerships

3.—(1) Where a firm consisting of two or more individuals in partnership is a registered supplier, the firm shall be taken for the purposes of this Act, to be the supplier of any goods and services supplied in the course of the business of the firm; but in default of such registration, each partner shall be deemed to be the supplier of any such goods and services.

(2) Without prejudice to any other written law providing for the sufficiency of any means of giving notice to a partnership, any notice of assessment or other notice given under this Act to a partnership may be addressed to the partnership in the name under which it is registered under this Act.

(3) Subject to this section, in determining for the purposes of this Act whether any goods or services are supplied to, or by, a partnership, no account shall be taken of any change in the partnership.

(4) Without prejudice to any written law providing for the imposition of liability of members of a partnership, until the date on which a change in the partnership is notified to the Commissioner General, a person who has ceased to be a member of a partnership shall be regarded as continuing to be a partner for the purposes of this Act and, in particular, for the purpose of any liability for Value Added Tax or interest due from the partnership under this Act—

(*a*) arising within or in connexion with the tax period during which he or she so ceased to be a member of the partnership; or

(*b*) arising within or in connexion with any earlier tax period during which, or during any part of which, he or she was for the purposes of this Act a member of the partnership.

(5) Where a person ceases, for the purposes of this Act, to be a member of a partnership, any notice of assessment or other notice given to the partnership under this Act that relates to any matter—

(*a*) arising within or in connexion with the tax period during which he or she so ceased to be a member of the partnership; or

(*b*) arising within or in connexion with any earlier tax period during which, or during any part of which, he or she was for the purposes of this Act a member of the partnership,

shall be deemed to have been served on him or her.

Application of this Act to unincorporated organizations

4.—(1) Where a club, association or other unincorporated organization is a registered supplier, the organization shall be taken, for the purposes of this Act, to be the supplier of any goods and services supplied in the course of the business of the organization;

but in default of such registration, the management of the organization shall be deemed to be the supplier of such goods and services.

(2) The names and other particulars of the members of the management of an unincorporated organization that is a registered supplier shall be recorded in the register, and such members shall bear the liabilities of the organization under this Act.

(3) Until the date on which a change in the management of an unincorporated organization is notified to the Commissioner General, a person who has ceased to be a member of the management of an unincorporated organization that is a registered supplier shall be regarded as continuing to be such a member for the purposes of this Act and, in particular, for the purposes of any liability for Value Added Tax or interest due from the organization under this Act—

(*a*) arising within or in connexion with the tax period during which he or she so ceased to be a member of the management; or

(*b*) arising within or in connexion with any earlier tax period during which, or during any part of which, he or she was for the purposes of this Act a member of the management.

(4) Where a person ceases, for the purposes of this Act, to be a member of the management of an unincorporated organization that is a registered supplier, any notice of assessment or other notice given to the organization under this Act that relates to any matter—

(*a*) arising within or in connexion with the tax period during which he or she so ceased to be a member of the management; or

(*b*) arising within or in connexion with any earlier tax period during which, or during any part of which, he or she was for the purposes of this Act a member of the management,

shall be deemed to have been served on him or her.

(5) Where a person is a member of the management of an unincorporated organization during part only of a tax period, his or her liability for Value Added Tax on the supply by the organization of goods or services during that period, and any liability for payment of any interest or additional Value Added Tax as a consequence, shall be limited to such proposition of the organization's liability as may be just in the circumstances.

Application of this Act to groups of companies

5.—(1) For the purposes of this Act, two or more companies incorporated in Malaŵi are eligible to be treated as a recognized group if—

(*a*) one of them controls each of the others;

(*b*) one person, whether a company or an individual, controls them all; or

(*c*) two or more individuals carrying on a business in partnership control them all.

(2) On application made by a company naming itself and other companies in the application, or by the person or persons controlling the companies named in the application, the Commissioner General, if satisfied that the companies named in the application are eligible to be treated as a recognized group, may by notice in writing—

(*a*) declare that, as from a date specified in the notice, the companies shall form a recognized group for the purposes of this Act; and

(*b*) designate the representative member for the group.

(3) Where two or more companies form a recognized group, then, for the purposes of this Act, any business carried on by a member of the group shall be regarded as carried on by the representative member, and—

(*a*) any supply of goods or services by a member of the group to another member of the group shall be disregarded;

(*b*) any other supply of goods or services by or to a member of the group shall be regarded as a supply by or to the representative member; and

(*c*) any Value Added Tax paid or payable by a member of the group on the importation of any goods shall be regarded as paid or payable by the representative member, by whom the goods shall be deemed to have been imported.

(4) Notwithstanding subsection (3), all members of a recognized group shall be jointly and severally liable for any Value Added Tax due from the representative member.

(5) The Commissioner General may, on application made on behalf of a recognized group by notice declare that, as from a date specified in the notice—

(*a*) a further eligible company shall be included in the group;

(*b*) a specified member of the group shall be excluded from the group; or

(*c*) another member of the group shall be substituted as representative member; or

(*d*) the group shall no longer be a recognized group for the purposes of this Act.

(6) An application under this section shall not be refused unless the Commissioner General considers it necessary to refuse the application for the purposes of the protection of the revenue.

(7) The Commissioner General may, of his or her own motion, by notice exclude from membership of a recognized group any company which has ceased to be a member.

(8) For the purposes of this section—

(*a*) one company shall be taken to control another if it is empowered by any written law to control the other's activities or if it is the other's holding company within the meaning of the Companies Act; and Cap. 46:03

(*b*) one or more individuals shall be taken to control a company if, apart from being an individual, he or she or they satisfy the criteria for being its holding company under the Companies Act. Cap. 46:03

Application of this Act to Government agencies

6.—(1) Except to the extent to which provision is otherwise made by or under this Act, this Act applies to a Government agency as though a supply of goods or services to it for the purposes of the performance of its official functions were a supply of goods or services for the purposes of a business carried on by it.

(2) The Minister may by Order published in the *Gazette*, provide for the modification of any provision of this Act, or of any regulation or rule made under this Act, in its application to a Government agency.

PART II
Imposition of Value Added Tax

Imposition of Value Added Tax

7.—(1) There is hereby imposed a tax to be known as value added tax (in this Act otherwise called "Value Added Tax") which shall in accordance with this Act be charged on—

(*a*) every supply of goods and services made in Malaŵi;

(*b*) every importation of goods; and

(*c*) the supply of any imported service, other than exempt goods and services.

(2) Unless otherwise provided in this Act, Value Added Tax shall be charged on supply of goods and services where the supply is taxable supply and made by a taxable person in the course of his or her business.

(3) Value Added Tax shall be charged and payable on the importation of goods and for that purpose any written law applicable to collection of customs duties and other taxes on importation of goods shall apply with such modifications as are necessary.

Persons liable to pay Value Added Tax

8. Except as otherwise provided in this Act, Value Added Tax shall be paid—

(*a*) in the case of a taxable supply, by the taxable person making the supply;

(*b*) in the case of imported goods, by the importer; and

(*c*) in the case of imported services, by the receiver of the services.

Rate of Value Added Tax
10 of 2008

9. Except as otherwise provided in this Act, the rate of Value Added Tax shall be 16.5 per cent, calculated on the value of the taxable supply of the goods, services or import.

PART III
Taxable Person

Taxable person

10.—(1) A taxable person is a person registered under section 11.

(2) The Commissioner General shall notify a taxable person when registered and shall issue a certificate of registration, in the prescribed form, which shall be exhibited at the principal place of business of the taxable person.

(3) The effective date of registration as a taxable person shall be such date as shall be specified in the certificate of registration issued by the Commissioner General.

Registration as taxable person
15 of 2009
23 of 2011
20 of 2013

11.—(1) A person is registrable as a taxable person if he or she is a person who makes taxable supply of goods or services and, whose business turnover is, or exceeds, K10,000,000 per annum.

(2) The Minister may, by order published in the *Gazette*, revise the threshold amount specified in subsection (1).

(3) For purposes of determining the threshold amount under subsection (1), separate businesses under the same ownership may be treated as owned by one person.

(4) Any person who qualifies as a taxable person, or has grounds to believe that he or she will qualify as a taxable person, shall apply on such form as shall be prescribed for registration by the Commissioner General.

(5) A person who is not registered, but who is liable to apply to be registered under this Act, is a taxable person from the beginning of the tax period immediately following the period in which the duty to apply for registration arose.

23 of 2011
18 of 2012

(6) An applicant shall make the application for registration under this Act within thirty days of becoming qualified and upon acquisition of an electronic fiscal device or having reason to believe that he or she will so qualify.

(7) The Commissioner General may by notice in writing notify any person that the person has within a tax period specified in the notice made taxable supplies—

(*a*) in excess of the turnover figure; or

(*b*) below the turnover figure, specified in subsection (1), and is registrable as a taxable person or not registrable, and shall act accordingly by registering or cancelling the registration of a taxable person, as the case may be.

(8) Any national, regional, local or other authority or body which carries on any business activity which make it registrable as a taxable person shall apply for registration.

(9) A group of taxable persons may, with the approval of the Commissioner General be treated for the purposes of Value Added Tax as one designated taxable person:

Provided each member of the group undertakes to be jointly and severally liable for any contravention under this Act and regulations made under it.

(10) A taxable person whose business is structured into distinct divisions may apply to the Commissioner General for each division to be registered for Value Added Tax.

(11) Notwithstanding any provision of this section—

(*a*) any business with a turnover below the registrable threshold amount provided in subsection (1) may apply voluntarily to be registered by the Commissioner General; and

(*b*) the Commissioner General may by notice in writing notify the proprietor and register any class or category of businesses specified in the notice as registrable under this Act.

(12) The Commissioner General shall register a person who qualifies under subsection (11) as a taxable person unless the Commissioner General—

(*a*) is satisfied that the person has no fixed place of abode or business; or

(*b*) has reasonable ground to believe that the person—

(i) will not keep proper accounting records relating to any business activity carried on by that person; or

(ii) will not submit regular and reliable returns as required by or under this Act; or

(iii) is not a fit and proper person to be registered.

Use of information technology 23 of 2011

11A.—(1) Subject to such conditions as the Commissioner General may prescribe, Value Added Tax formalities or procedures may be carried out by use of information technology.

(2) For purposes of subsection (1), the Commissioner General may, by notice published in the *Gazette*, specify—

(*a*) the tax formalities or procedures; and

(*b*) the persons authorized to carry out such formalities or procedures.

Registration as user of Value Added Tax computerized system 23 of 2011

11B.—(1) A person who wishes to be registered as a user of a Value Added Tax computerized system may apply, in writing, to the Commissioner General for computerized registration, and the Commissioner General may—

(*a*) grant the application, subject to such conditions as he may deem necessary; or

(*b*) reject the application.

(2) A person shall not access, transmit or receive information from a Value Added Tax computerized system unless that person is a registered user of the system.

Cancellation of registration 23 of 2011

11C. The Commissioner General may cancel the registration of a user of a Value Added Tax computerized system, or impose a penalty on the user, if the Commissioner General is satisfied that the user has—

(*a*) failed to comply with any condition of registration imposed by the Commissioner General under section 11B;

(*b*) failed to comply with, or has acted in contravention of, any condition under the Value Added Tax (Electronic Fiscal Devices) Regulations; or

(*c*) been convicted of an offence under this Act relating to improper access to, or interference with, a Value Added Tax computerized system.

Supply, operation and service of electronic fiscal devices 18 of 2012

11D.—(1) The Minister may, on the advice of the Authority, make regulations providing for the supply, operation and service of electronic fiscal devices.

(2) The Authority may, on application, issue a licence for the supply, operation and service of electronic fiscal devices.

(3) The Authority may issue any of the following types of electronic fiscal device licences—

(*a*) a Local Distributor's or Supplier's licence; or

(*b*) a Manufacturer's license.

(4) The Authority may only issue a single licence at a particular time.

(5) The Authority shall publish a list of approved electronic fiscal devices which may be supplied under any of the types of licences referred to in subsection (3).

12. The Commissioner General shall keep a register in the prescribed form in which shall be recorded the particulars of every taxable person.

Register and particulars of taxable persons

13.—(1) Every taxable person shall notify the Commissioner General in writing—

Change in business
11 of 2006

(*a*) if the business ceases to operate or is sold; or

(*b*) if there is a change in the location of the business; or

(*c*) if there is material change in the ownership of the business; or

(*d*) of any change—

(i) in the name or address of that person; or

(ii) in circumstances which makes that person no longer qualified for registration as a taxable person; or

(iii) of a material nature in the business activities or in the nature of taxable supplies being made.

(2) Where a taxable person dies or becomes bankrupt or incapacitated, the Commissioner General may, from the date on which the taxable person died or became bankrupt or incapacitated treat as a taxable person any person carrying on that business until some other person is registered in respect of the taxable supplies made or intended to be made by that taxable person in the course of his business, and the provisions of this Act shall apply to the person so treated as though he were a registered person; and any person carrying on such business shall inform the Commissioner General in writing of the fact and the date of the death or bankruptcy, or of the nature of the incapacity and the date on which it began, as the case may be.

(3) A notification under subsection (1) shall be made within thirty days of the cessation, sale, change of location, change in the business, or ownership or any other change, as the case may be.

14.—(1) The registration of a taxable person shall be cancelled by the Commissioner General where the Commissioner General is satisfied that the registered person no longer exists.

Cancellation of registration

(2) A taxable person shall, within thirty days of ceasing to carry on business in relation to which a registration is made, apply in writing for the cancellation of the registration.

(3) Any cancellation under this section shall take effect from the end of the tax period in which the registration is cancelled.

(4) A taxable person whose registration has been cancelled under this section shall be regarded as having made a taxable supply of all goods on hand (including capital goods) and the person shall be

liable for output tax, at the time the registration is cancelled on all goods in respect of which he or she received input tax credit under section 30; the output tax payable being based on the open market value of the goods at the time his or her registration was cancelled.

(5) The obligations and liabilities of a person under this Act and regulations made under this Act, including the submission of returns required under section 34, in respect of anything done or omitted to be done by that person while a taxable person shall not be affected by cancellation of the registration of that person.

(6) The Commissioner General shall serve a notice in writing on a person of the decision to cancel or refuse to cancel any registration under this Part within thirty days of the making of the decision or of receipt of the application, as the case may be.

PART IV

Supply of Goods and Services

Supply of goods

15. Subject to this Act and regulations made under this Act, a supply of goods means any arrangement under which the owner of the goods parts with or will part with possession of the goods, including provision of goods by sale, barter, lease, transfer, exchange, gift or similar disposition, and appropriation to own use.

Supply of services

16. Subject to this Act and regulations made under this Act, supply of services means any supply which is not a supply of goods or money and includes—

(*a*) the performance of services for another person;

(*b*) the making available of any facility or advantage; or

(*c*) tolerating any situation or refraining from the doing of any activity.

(2) A supply of services made by an employee to his or her employer by reason of the employment is not a supply made by the employee.

Mixed supplies

17.—(1) A supply of services incidental to the supply of goods is part of the supply of goods.

(2) A supply of goods incidental to the supply of services is part of the supply of services.

(3) A supply of services incidental to the import of goods is part of the import of the goods.

Supply by agent

18. A supply of goods or services made by a person as agent for another person who is the principal is a supply by the principal:

Provided that where a supply of goods or services is made by an agent, on behalf of a principal who is resident outside Malaŵi, the supply of goods for services shall be deemed to be made by the agent.

PART V
Taxable Supplies

Taxable supply
10 of 2008

19.—(1) Except as otherwise provided in this Act or regulations made under this Act, a taxable supply is a supply of goods or services made by a taxable person for consideration in the course of, or as apart of his or her business activities and includes—

(*a*) the processing of data or supply of information or similar service;

(*b*) the supply of staff;

(*c*) the making of gifts or loans of goods;

(*d*) the leasing or letting of goods on hire;

(*e*) the appropriation of goods for personal use or consumption by the taxable person or by any other person;

(*f*) the sale, transfer, assignment, or licensing of patents, copyrights, trade marks, computer software, and other proprietary information; and

(*g*) exports.

(2) A supply is made as part of the business activities of a person if the supply is made by him or her as part of or incidental to any economic activity he or she conducts.

(3) Where a person produces goods by processing or treating the goods of another person, the supply of the goods shall be regarded as supply of goods.

(4) The supply of any form of power, heat, refrigeration or ventilation shall be regarded as supply of goods.

(5) A supply is made for consideration, if the supplier, directly or indirectly, receives payment wholly or partly in money or in kind from the person supplied or any other person.

Exempt supply
First Schedule

20. The supply of the goods and services specified in the First Schedule is exempt supply and not subject to Value Added Tax.

Zero-rated supply
Second Schedule

21. Output tax shall be at zero on the supply of the goods and services specified in the Second Schedule.

Exempt import
First Schedule

22. An import of goods is an exempt import if the goods are exempted under the First Schedule and classified in conformity with the Harmonized Commodity Description and Coding System also known as "the Harmonized System".

Relief supply
Third Schedule

23. There shall be relief from Value Added Tax on taxable supply to the individuals, organizations and businesses specified in the Third Schedule.

PART VI
Time and Place of Supply

Time of supply

24.—(1) Except otherwise provided in this Act or regulations made under this Act, a supply of goods or services occurs—

(*a*) where the goods or services are appropriated to own use, on the date on which the goods or services are first applied to own use;

(*b*) where the goods or services are supplied by way of gift, on the date on which ownership in the goods passes or the performance of the services is completed, as the case may be;

(*c*) in any other case, the earliest of the date on which—

(i) the goods are removed from the premises, or from other premises of the taxable person where the goods are under the control of the taxable person; or

(ii) the goods are made available to the person to whom they are supplied; or

(iii) the services are supplied or rendered; or

(iv) payment is received for all or part of the supply; or

(v) a tax invoice is issued.

(2) Where supplies are made on a continuous basis or by metered supplies, the time of supply shall be the determination of the supply or the first meter reading following the introduction of Value Added Tax and subsequently at the time of each determination or meter reading.

(3) The supply of goods under a hire purchase agreement or finance lease occurs on the date the goods are made available under the hire purchase agreement or lease finance, as the case may be.

(4) Where—

(*a*) goods are supplied under a rental agreement; or

(*b*) goods or services are supplied under an agreement or written law which provides for periodic payment, the goods or services shall be treated as successively supplied for successive

parts of the period of the agreement or as determined by that law, and each successive supply occurs on the earlier of the date on which payment is due or received.

(5) For the purposes of this section, where two or more payments are made or are to be made for a supply of goods or services, other than a supply to which subsection (3) or (4) applies, each payment shall be regarded as made for a separate supply to the extent of the amount of the payment on the earlier of the date the payment is due or received.

(6) Where the supply of goods or services is ancillary to another supply, the time of supply of the ancillary supply shall be deemed to be the same as the time of supply for the main goods or services.

Issue of an electronic fiscal device generated tax invoice or a tax invoice
23 of 2011
18 of 2012
10 of 2015

25.—(1) Subject to section 11A, every taxable person shall, on making taxable supply of goods or services, issue to the customer or the person supplied, an electronic fiscal device generated tax invoice or a tax invoice.

(2) Every taxable person shall, upon issuing of the electronic fiscal device generated tax invoice, retain a copy of the electronic fiscal device generated tax invoice in a serial number order.

(3) Notwithstanding the provisions of subsection (1), the Commissioner General may—

(*a*) on application by a registered person; and

(*b*) if he is satisfied that owing to the nature of a business, it is impracticable for the registered person to issue an electronic fiscal device generated tax invoice,

allow the registered person to account for Value Added Tax in such other manner as the Commissioner General may authorize.

10 of 2015

(4) Notwithstanding subsection (1), the Commissioner General may, on application in writing by a taxable person, allow the person to issue an invoice other than a tax invoice where, owing to the nature of the business or malfunctioning of the electronic fiscal device as may be certified by the approved technician, or loss of the device, it is impracticable for the person to issue a tax invoice.

Place of supply

26.—(1) The place of supply of goods shall be the place from which the goods are supplied.

(2) Unless otherwise provided in regulations made under this Act, the place of supply of a service shall be the place of business of the supplier or the place from which the service is supplied or rendered.

PART VII
Taxable Value

Value of taxable supply

27.—(1) The value of a taxable supply is—

(*a*) where the supply is for money consideration, the amount of the consideration with the addition of all duties and taxes but excluding Value Added Tax;

(*b*) where the supply is not for money consideration or is only partly for money consideration, the open market value of similar supply excluding Value Added Tax.

(2) For the purposes of subsection (1) "similar supply" in relation to a taxable supply, means a supply that is identical to or closely or substantially resembles the taxable supply, having regard to the characteristics, quality, quantity supplied, functional component, reputation of, and materials comprising the goods or services which are the subject of the taxable supply.

(3) For the purposes of this Act, the open market value of supply of goods or services is the value determined under subsection (1) (*a*), if the supplier, purchaser or any other person concerned in the

transaction were completely independent of each other and did not in any way influence the transaction.

(4) Where the open market value of a taxable supply cannot be determined under subsection (3), the open market value of the supply shall be the amount that, having regard to all the circumstances of the supply, in the opinion of the Commissioner General, is the fair market value of the supply.

(5) The taxable value of—

(*a*) a taxable supply of goods under a hire purchase agreement or finance lease;

(*b*) a taxable supply of goods by way of an application to own use;

(*c*) a taxable supply for reduced consideration; or

(*d*) a taxable supply described in section 14 (4), is the open market value of the goods or services at the time the supply is made, excluding, in the case of a hire purchase agreement or finance lease, any interest or finance charges.

(6) Where a taxable supply is made without a separate amount of the consideration being identified as a payment of Value Added Tax, the taxable value of that supply shall be the amount of the consideration paid excluding Value Added Tax.

Taxable value for determining Value Added Tax on imported goods Cap. 42:01

28. The value for determining the tax chargeable on taxable imports shall be the import value calculated in accordance with the Customs and Excise Act with the addition of all import duties and taxes, but excluding Value Added Tax.

Adjustments

29.—(1) This section shall apply where, in relation to a taxable supply by a taxable person—

(*a*) the supply is cancelled; or

(*b*) the nature of the supply has been fundamentally varied or altered; or

(*c*) the previously agreed consideration for the supply has been altered by agreement with the recipient of the supply, whether due to an offer of a discount or for any other reason; or

(*d*) the goods or services or part thereof have been returned to the supplier.

(2) Where the taxable person making the supply—

(*a*) in giving a tax invoice in relation to the supply, has shown an incorrect amount on the invoice as Value Added Tax charged

on the supply because of the occurrence of any one or more of the events mentioned in subsection (1); or

(*b*) has filed a return for the period in which the supply occurred and has accounted for an incorrect amount of output tax on that supply because of the occurrence of any one or more of the events mentioned in subsection (1), the taxable person making the supply shall make an adjustment in accordance with subsections (3) and (4).

(3) Where the output tax properly chargeable in respect of the supply exceeds the output tax actually accounted for by the taxable person making the supply, the amount of the excess shall be regarded as Value Added Tax charged by the person in relation to a taxable supply made in the tax period in which the events referred to in subsections (1) and (2) occurred.

(4) Subject to subsection (6), where the output tax actually accounted for exceeds the output tax properly chargeable in relation to that supply, the taxable person making the supply shall be allowed a credit for the amount of the excess in the tax period in which the events referred to in subsections (1) and (2) occurred.

(5) The credit allowed under subsection (4) shall for the purpose of this Act be treated as a reduction of output tax.

(6) No credit shall be allowed under subsection (4) where the supply has been made to a person who is not a taxable person, unless the amount of the excess Value Added Tax has been repaid by the taxable person to the recipient, whether in cash or as a credit against any amount owed to the taxable person by the recipient.

PART VIII

Deduction of Input Tax and Refunds

Credit for deductible input tax

30.—(1) At the end of the tax period, a taxable person may deduct from the output tax deductible due for the period, Value Added Tax on goods and services purchased in Malaŵi or goods and services imported by him or her and used wholly, exclusively and necessarily in the course of his or her business:

Provided that—

(*a*) the supply is a taxable supply;

(*b*) in respect of purchases made in Malaŵi, the taxable person is in possession of a tax invoice issued in accordance with section 25; and

(*c*) in respect of importation or removal of goods from bonded warehouse, the taxable person is in possession of the relevant customs entries indicating that Value Added Tax was paid.

(2) Value Added Tax deducted from the output tax under subsection (1) shall be known as input tax.

(3) No input tax deduction shall be made on purchases or imports in respect of exempt supplies by the taxable person.

(4) No input tax deduction shall be taken more than once nor shall it be taken after the expiration of a period of twelve months from the date the deduction accrued.

(5) A taxable person does not qualify for input tax deduction in respect of taxable supply or import of motor vehicles or motor vehicle spare parts unless the taxable person is in the business of dealing in or hiring of motor vehicles or selling motor vehicle spare parts; but motor vehicles and motor vehicle spare parts used wholly, exclusively and necessarily for the business shall qualify for input tax deduction.

(6) A taxable person does not qualify for input tax deduction in respect of taxable supply in respect of entertainment, including restaurant, meals and hotel expenses, unless the taxable person is in the business of providing entertainment.

(7) Where a taxable supply to, or an import of goods by, a taxable person is partly for business use and partly for personal or other use, the amount of input tax allowed as a credit shall be restricted to that part of the supply that relates to the business use.

(8) If goods for which a credit has been allowed under this Act cease to be applied to taxable transactions before the end of their life, the goods shall be treated as sold for the open market value at the time of the cessation.

(9) In the case of a taxable person who regularly resells used goods purchased from consumers, the Commissioner General may determine the procedures for allowing such person input tax credit.

(10) The Minister may, by Order published in the *Gazette*, prescribe other classes, types or description of goods and services on which input tax is non-deductible.

Refund or credit of excess tax paid
11 of 2006

31.—(1) Where the amount of input tax which is deductible exceeds the amount of output tax due in respect of the accounting period, the excess amount shall be credited by the Commissioner General to the taxable person:

Provided that—

(*a*) in the case of exports, the Commissioner General may refund the excess credit to the taxable person where his or her exports exceed 70 per cent of the total supplies within the accounting period; and

(*b*) a refund shall be made by the Commissioner General to the taxable person where the excess credit remains outstanding for a continuous period of three months or more.

(2) A taxable person who is registered from a specified effective date and who has in stock on the effective date goods on which Value Added Tax has been paid may claim credit or refund of Value Added Tax in such form as shall be prescribed:

Provided that—

(*a*) the supply or import occurred not more than four months prior to the date of his or her registration; or

(*b*) in the case of capital goods, the goods have been held for a period not exceeding six months from the date of his or her registration.

(3) For the purpose of this section, a completed refund or credit claim form, in the prescribed form, together with the relevant tax invoices or, in the case of imported goods the relevant customs document for Value Added Tax paid, shall be submitted to the Commissioner General by the taxable person.

(4) Where the Commissioner General subsequently rejects the claim under subsection (2), any Value Added Tax previously treated as a credit or a refund shall be recovered by the Commissioner General in accordance with this Act.

(5) Where a taxable person has issued a tax invoice and has paid the appropriate tax for a supply, and—

(*a*) the purchaser becomes insolvent; or

(*b*) the purchaser fails to pay all or part of the taxable amount of the supply in addition to the tax imposed and the debt is a bad debt proved to be such to the satisfaction of the Commissioner General,

the taxable person shall be allowed to take as credit the portion of the tax paid or imposed on the supply which is attributable to the debt that becomes irrecoverable.

(6) Where a debt previously written off as a bad debt and for which credit has been given is later recovered, the tax due on amount recovered shall be paid to the Commissioner General in the tax period in which the recovery has been made.

Deductible tax for mixed taxable and exempt supply
23 of 2011
18 of 2012

32.—(1) A taxable person who makes both taxable and exempt supplies may deduct the input tax on the taxable purchases and imports which are directly attributed only to the taxable supplies made.

(2) Where a taxable person has made both taxable and exempt supplies, but cannot directly attribute the input tax to the taxable

and exempt supplies under subsection (1), he or she may deduct as input tax an amount that bears the same ratio as the taxable supplies bear to the total supplies, applying the apportionment formula specified in the Fourth Schedule.

Fourth Schedule

(3) Where the fraction in subsections (1) and (2) is less than five per cent, the taxable person may not take credit for any input tax for the tax period.

(4) Where, in applying the formula referred to in subsection (2), the fraction under subsections (1) and (2) is less than five per cent, the taxable person may not take credit or any input tax for the tax period.

(5) Where in applying the formula under subsections (1) and (2) the fraction is more than 95 per cent, the taxable person may take credit for all input tax for the tax period.

(6) The Commissioner General may approve or direct alternative methods of apportioning input tax where he or she considers that the methods described in this section will result in an unreasonable calculation of the input tax which may be deducted.

(7) [*Deleted by* 18 *of* 2012].

Time for payment of refund

33.—(1) Subject to subsection (2), where a taxable person is entitled to a refund of Value Added Tax under this Act, the refund shall be paid by the Commissioner General on an application by the taxable person within thirty days of receipt of the application.

(2) No refund shall be made pursuant to subsection (1) to a taxable person unless—

(*a*) all previous returns by the taxable person have been submitted by the due dates and no Value Added Tax for any period is outstanding; and

(*b*) Value Added Tax, penalties and interest from the previous tax period have been paid by the taxable person by the due dates.

(3) Where the conditions specified in subsection (2) have not been fulfilled, the Commissioner General shall reject the claim for refund and shall inform the applicant accordingly in writing within thirty days of receipt of the application.

PART IX
Tax Returns, Records and Assessment

Submission of tax return and date of payment of Value Added Tax
30 of 2010

34.—(1) Unless otherwise directed in writing by the Commissioner General, a taxable person shall account for Value Added Tax each calendar month on a return.

(2) The return shall be in the prescribed form and shall state—

(*a*) the amount of Value Added Tax payable for the tax period;

(*b*) the amount of input tax credit or refund claimed; and

(*c*) such other matters as may be prescribed.

(3) In addition to any return required under subsection (2), the Commissioner General may require any person, whether a taxable person or not, to submit, whether on that person's own behalf or as agent or trustee of another person, to the Commissioner General such further or other return in the prescribed form as and when required by the Commissioner General for the purposes of this Act.

(4) A return shall be submitted to the Commissioner General not later than the twenty-fifth day of the month immediately following the month to which the return relates.

(5) Upon application in writing by a taxable person, the Commissioner General may, where good cause is shown by the taxable person, extend the period in which a return is to be submitted.

(6) The payment of Value Added Tax due in the tax period shall be made to the Commissioner General not later than the twenty-fifth day of the month immediately following the tax period to which the return relates.

(7) A taxable person directed to make his or her return other than in accordance with subsection (4) shall be informed of the date by which the return and payment shall be made to the Commissioner General.

25 of 2017

(8) A taxable person who, without lawful excuse or justification, fails to submit to the Commissioner General his return on the due date shall be liable to a penalty of K300,000 for companies and K75,000 for individuals for the first month, and a further penalty of K50,000 for companies and K20,000 for individuals for each month or part thereof during which the failure continues.

30 of 2010

(9) Any refer to drawer cheque for payment of Value Added Tax shall attract a penalty of thirty per cent of the value of the cheque, regardless of the reason for the bank dishonoring the cheque.

Records to be kept for purposes of Value Added Tax

35.—(1) Every taxable person shall—

(*a*) keep such records and books of accounts as the Minister may prescribe or as the Commissioner General may direct; and

(*b*) produce such records and books of accounts at such place and time as the Commissioner General may by general notice publish in the *Gazette*, any newspaper in general circulation, or in writing to taxable person, require.

(2) In respect of the records to be kept under subsection (1), a taxable person shall not destroy any book, document, account or record which is less than six years old without the written permission of the Commissioner General.

(3) Any permission granted by the Commissioner General under subsection (2) shall specify the book, document, account or records to which the permission relates.

Assessment of Value Added Tax and correction of return
6 of 2007

36.—(1) Where a taxable person fails to submit a tax return by the date required under section 34 or the Commissioner General has grounds to believe that a return is incorrect or that any due Value Added Tax has not been paid, the Commissioner General—

(*a*) may based on any information available to him or her assess Value Added Tax due; and

(*b*) shall notify his or her assessment in writing to the taxable person stating that Value Added Tax shall be paid within twenty-one days of the date, of the notice:

Provided that the Commissioner General shall not raise an assessment after a period of six years after the Value Added Tax was due and payable unless fraud is a material element of the assessment.

(2) Where a taxable person notified of Value Added Tax assessment under subsection (1) provides information which the Commissioner General accepts as justifying the withdrawal or amendment of the assessment, the Commissioner General may withdraw or amend the assessment.

(3) Any Value Added Tax payable pursuant to an amended assessment under subsection (2) shall be paid within fourteen days of the date of the amendment.

(4) A taxable person who is not satisfied with the return submitted by him or her may apply in writing to the Commissioner General to make any addition or alteration to the return; and any such application shall—

(*a*) state in detail the grounds, supported by documentary evidence, upon which the application is made; and

(*b*) be submitted not more than three months after the submission of the original return.

PART X

Recovery of Due Value Added Tax, Interest and Other Liabilities

Recovery of Value Added Tax due

37.—(1) Any Value Added Tax due under this Act, and any penalty and interest which remains unpaid after the due date under this Act, or under any other written law in respect of Value Added Tax, may be recovered by the Commissioner General as a debt.

(2) Any amount shown on an invoice as Value Added Tax on a supply of goods or services shall be recoverable as Value Added Tax due from the person issuing the invoice, whether or not—

(*a*) the invoice is a tax invoice issued under this Act or in accordance with regulations made under this Act; or

(*b*) an amount of Value Added Tax is chargeable on the supply; or

(*c*) the person issuing the invoice is a taxable person.

(3) Where any body, corporate or unincorporated, liable for the payment of Value Added Tax, or of any penalties or interest arising under this Act, defaults in payment, in whole or in part, after written demand, the directors, partners, and the person in control of the body, shall be jointly and severally liable to pay the sum due.

Payment of interest on outstanding Value Added Tax
10 of 2008
10 of 2015
25 of 2017

38.—(1) A taxable person who fails to pay any Value Added Tax payable by the due date shall be liable to pay to the Commissioner General—

(*a*) an additional sum of twenty *per centum* of the amount of tax which he has failed to pay in the first month or part thereof; and

(*b*) a further interest charged on the outstanding amount of tax at the prevailing bank lending rate plus five per cent per annum for each month or part thereof during which the tax remains unpaid,

and such additional sums together with the amount of the tax shall be summarily recovered by Commissioner General in his own name:

Provided that the Commissioner General may reduce or waive the amount of such additional sums if a satisfactory explanation for the delay is given.

(2) Any interest charged under this section and any penalty payable that remains unpaid shall be recoverable as a civil debt by the Commissioner General.

Garnishment
10 of 2008
23 of 2011

39. Where any Value Added Tax, penalty or interest is due and payable from a taxable person, the Commissioner General may order—

(*a*) any individual or business from whom any money is due or is accruing or may become due to the taxable person; or

(*b*) any individual or business who holds or who may subsequently hold money for or on account of the taxable person, to pay the Commissioner General that money, or so much of it as is sufficient to discharge the Value Added Tax, interest or penalty due and payable;

(*c*) the Commissioner General shall, in respect of an individual or a business that fails to comply with paragraph (*b*), have the same remedies as he has against the property of any other person who is liable to pay Value Added Tax; 23 of 2011

(*d*) for purposes of paragraphs (*b*) and (*c*), the Commissioner General may require any person to give him information in respect of any money, funds, or other assets which may be held by that person for, or on account of, the taxable person. 23 of 2011

Distraint for liability

40.—(1) The Commissioner General may in writing authorize the levying of distress in accordance with this section.

(2) Where any Value Added Tax, penalty or interest due under this Act remains unpaid after the time by which this Act requires it

to be paid, the Commissioner General may in writing and with notice to the taxable person authorize the levying of distress—

(*a*) upon the goods, chattels and effects of the taxable person; and

(*b*) upon—

(i) all assets, property, building, factory, machinery, plant, tools, means of transport and communication, accessories, animals, and all goods used in Malaŵi in the manufacture, production, sale or distribution of any taxable supplies;

(ii) any commodity or items found in any premises or any land owned by or in use or in possession of the taxable person or of any person on his or her behalf or in trust for him or her.

(3) The written authority of the Commissioner General to distrain under this Act shall be a warrant as in Form A set out in the Fifth Schedule, and shall be the authority to levy by distress the amount of any Value Added Tax, penalty or interest due. *Fifth Schedule*

(4) The distress warrant so taken shall be executed on only the assets of the taxable person and the Authority shall take possession of the properties specified in subsection (2) exclusive of all liabilities.

(5) For the purpose of levying the distress, any person authorized in writing by the Commissioner General may execute the warrant of distress on the goods and assets of the taxable person specified under subsection (2) wherever the property may be and where necessary break open any building or place in the day-time for the purpose.

(6) Any authorized person who executes a warrant of distress under this section may call to his or her assistance any police officer, and it shall be the duty of the police officer when required to assist in the execution of the warrant of distress and in levying the distress to do so.

(7) The distress taken under this section may at the cost of the taxable person, be kept for fourteen days, and if the amount due in respect of Value Added Tax, interest or penalty and the cost and charges of and incidental to the distress are not then paid, the property distrained may be sold.

(8) There shall be paid out of the proceeds of the sale, under subsection (7), first the costs or charges of the distress and incidental to the sale and keeping of the distress, next the amount due in respect of Value Added Tax, interest and penalty, and the residue, if any, shall be paid to the owner of the property; and any

payment to the owner shall be made subject to the prior interest of the Authority which shall have precedence over all other interests.

(9) Where any property seized in the execution of the distress warrant under this section is under a mortgage, charged by way of security for any debt, or is in any way encumbered, the sale of the property shall be made subject to the prior interest of the Authority which shall have precedence over all other interests.

Recovery in respect of a person under liquidation

41.—(1) Where any tax, penalty or interest is due from a taxable or other person who is subject to liquidation or bankruptcy proceedings, the liquidator, receiver, or other person responsible for winding up the affairs of the debtor shall not distribute any assets until full payment has been made of Value Added Tax, penalty or interest due under this Act.

Cap. 46:03

(2) For the purpose of this section, the Commissioner General shall be deemed to be a creditor for purposes of the Companies Act.

Payment of Value Added Tax into Consolidated Fund

42.—(1) All Value Added Tax, interest and penalties collected under this Act shall be paid into the Consolidated Fund.

(2) Notwithstanding subsection (1), the Minister may set aside a percentage of Value Added Tax, interest and penalties collected under this Act in an account designated as "Value Added Tax Refund Account" out of which refunds due under this Act proven overpayment of Value Added Tax, payment made by non-taxable persons and payments made on non taxable supply may be refunded.

PART XI

Appeals

Appeal to decision of an officer other than the Commissioner General
10 of 2008

43.—(1) A person who is dissatisfied with any decision of an officer of the Authority other than the Commissioner General, may lodge an appeal with the Commissioner General within thirty days after notice of the decision has been served on him or her or upon his or her becoming aware of the decision.

(2) The Commissioner General may for good cause, accept an appeal lodged out of the time stipulated under subsection (1).

(3) Every appeal under subsection (1) shall be in writing, and shall specify in detail the grounds, supported by relevant documents, upon which it is made.

(4) The Commissioner General shall make a decision on an appeal within thirty days after receipt of the appeal and, where necessary, after interviewing the objector.

Appeal to court

44.—(1) A person dissatisfied with the decision of the Commissioner General may lodge an appeal with any court of a Resident Magistrate.

(2) An appeal under this section shall be lodged by the aggrieved person within thirty days after being notified of the decision of the Commissioner General.

(3) No appeal lodged with the court shall be heard unless all returns due under this Act have been submitted to the Commissioner General and all Value Added Tax assessed or due has been paid:

Provided that the court may, for good cause, waive the requirement to pay all or part of the Value Added Tax due before hearing the appeal.

(4) Where, after hearing the appeal the appellant is found to be entitled to any refund of Value Added Tax, interest shall be paid on the refund at the prevailing bank rate from the date of the judgment.

PART XII

Offences and Penalties

Failure to register
30 of 2010

45.—(1) A person who fails—

(*a*) to apply for registration as required under section 11; or

(*b*) to notify the Commissioner General of a change in his business as required under section 13; or

(*c*) to apply for cancellation of registration as required under section 14, commits an offence.

(2) Where the failure under subsection (1)—

(*a*) is deliberate or reckless, the person shall be liable to a penalty of K100,000; and 30 of 2010

(*b*) for any other reason, the person shall be liable to a penalty of K20,000. 30 of 2010

Unlawful use of Value Added Tax computerized system
23 of 2011

45A.—(1) A person who—

(*a*) knowingly or recklessly and without lawful authority, gains access to or attempts to gain access to any Value Added Tax computerized system; or

(*b*) having lawful access to any Value Added Tax computerized system, knowingly uses or discloses information obtained from such system for a purpose that is not authorized; or

(*c*) knowing that he is not authorized to do so, receives information obtained from any Value Added tax computerized system, and uses, discloses, publishes, or otherwise disseminates such information,

commits an offence and shall be liable on conviction to—

(i) in the case of a natural person, a fine of K500,000 and imprisonment for two years; and

(ii) in the case of a body corporate, a fine of K1,000,000 and imprisonment for two years on the part of directors of such a body corporate.

Falsification, damage or impairment of record or information 23 of 2011

45B. Any person who—

(*a*) falsifies any record or information stored in any Value Added Tax computerized system;

(*b*) damages or impairs any Value Added Tax computerized system; or

(*c*) damages or impairs any duplicate tape, disc or other medium on which information obtained from a Value Added Tax computerized system is held or stored, otherwise than with the permission of the Commissioner General,

commits an offence and shall be liable on conviction to imprisonment for ten years.

Failure to issue tax invoice 30 of 2010 23 of 2011 18 of 2012 10 of 2015

46. A person who fails to issue a tax invoice as required under section 25 for goods supplied or services rendered commits an offence, and shall—

(*a*) be liable to a penalty imposed by the Commissioner General of ten times the value of Value Added Tax invoiced in the transaction or K500,000, whichever is greater; or

(*b*) upon conviction, be liable to a fine of twenty times the value of the Value Added Tax invoiced in the transaction or K1,000,000, whichever is the greater, and to imprisonment for two years.

Failure to use electronic fiscal device 10 of 2015

46A. A user of an electronic fiscal device or any person who is required to use an electronic fiscal device, who fails to do so without approval, commits an offence, and shall—

(*a*) be liable to a penalty imposed by the Commissioner General of K500,000; or

(*b*) upon conviction, be liable to a fine of K1,000,000 and to imprisonment for two years.

Fraudulent use of electronic fiscal device 10 of 2015

46B. A person who, with intent to defraud, takes steps to use electronic fiscal device in a manner that is aimed at misleading, deceiving, or manipulating information sent to a system or the Commissioner General, commits an offence and shall, in addition to payment of tax which is payable—

(*a*) be liable to a penalty imposed by the Commissioner General of twenty times the value of Value Added Tax or K5,000,000, whichever is greater; or

(*b*) upon conviction, be liable to a fine of K10,000,000 and to imprisonment for five years.

Tampering with electronic fiscal device and software 10 of 2015

46C. A person who tampers with or causes electronic fiscal device to perform improperly, commits an offence and shall—

(*a*) be liable to a penalty imposed by the Commissioner General of twenty times the Value of Value Added Tax or K5,000,000 whichever is greater; or

(*b*) upon conviction, be liable to a fine of K10,000,000 and to imprisonment for five years.

Failure to comply with any obligation as a user or supplier 10 of 2015

46D. A person who violates any obligation as a user or local supplier under this Act or the Value Added Tax (Electronic Fiscal Devices) Regulations, commits an offence and shall be liable to a penalty imposed by the Commissioner General of K500,000.

Failure to demand or keep a fiscal receipt 10 of 2015

46E.—(1) A person who, before or after purchasing goods or services, connives not to demand and retain a fiscal receipt or fails to report a refusal by a user to issue a fiscal receipt as required under this Act or the Value Added Tax (Electronic Fiscal Devices) Regulations, commits an offence and shall be liable to a penalty imposed by the Commissioner General, of three times the tax payable.

(2) A person who, after selling goods or services, fails to issue and retain a duplicate fiscal receipt or fiscal invoice or refuses to issue a fiscal receipt or invoice upon demand as required by this Act or the Value Added Tax (Electronic Fiscal Devices) Regulations, commits an offence and shall—

(*a*) be liable to a penalty imposed by the Commissioner General of K500,000; or

(*b*) upon conviction, be liable to a fine of K1,000,000 and to imprisonment for two years.

General offence 10 of 2015

46F. A person who commits an offence under this Act or the Value Added Tax (Electronic Fiscal Devices) Regulations, for which no specific penalty is provided shall—

(*a*) be liable to a penalty imposed by the Commissioner General, of K500,000; or

(*b*) upon conviction, be liable to a fine of K1,000,000 and to imprisonment for three years.

False or misleading statement

47.—(1) A person who in any matter relating to Value Added Tax—

(*a*) makes a statement to an officer of the Authority which is false or misleading in any material particular; or

(*b*) omits from a statement made to the officer of the Authority any matter or thing without which the statement is misleading in any material particular,

commits an offence.

(2) Where a statement or omission under subsection (1)—

(*a*) was made knowingly or recklessly, the person shall be liable on conviction to a fine of K100,000 and to imprisonment for five years; and

(*b*) in any other case, the person shall be liable on conviction to a fine of K20,000 and, to imprisonment for twelve months.

(3) For the purposes of this section a statement made to an officer of the Authority means a statement made in writing, orally or in any other form to the officer acting in the performance of his or her duties under this Act and regulations made thereunder and includes statements made—

(*a*) in an application, certificate, declaration, notification, return, objection or other document made, prepared, given, filed or furnished under this Act and regulations made thereunder; or

(*b*) in information required to be furnished under this Act and regulations made thereunder; or

(*c*) in answers to a question asked by an officer of the Authority.

Falsification and alteration of documents

48.—(1) Any person who—

(*a*) forges, falsifies or willfully uses a forged or falsified certificate or other document required by or under this Act, or by or under the directions of the Commissioner General or any instrument used in the transaction of any business or matter relating to Value Added Tax; or

(*b*) alters any document or instrument relating to Value Added Tax after it has been officially issued, or forges the seal, signature, initials or, other mark of or used by any officer for the verification of any document or instrument or for the security of the Value Added Tax relating to any other sum payable under this Act; or

(*c*) on any document or instrument required for the purposes of this Act, forges or imitates the seal, signature, initials or other mark of or made use of by any other person whatsoever, whether with or without the consent of that person,

commits an offence and shall be liable on conviction to a fine of K200,000 and to imprisonment for ten years; and any goods involved in the commission of the offence shall be forfeited to the Government.

Evasion of Value Added Tax payment 10 of 2015

49.—(1) A person who is knowingly concerned in, or takes steps with a view to fraudulently evade Value Added Tax payable by him or her or any other person, commits an offence and shall, on conviction, be liable to a fine of not less than twenty times but not more than thirty times the amount of Value Added Tax evaded or MK5,000,000, whichever is the greatest and to imprisonment for five years.

(2) A person who acquires possession of or deals with any goods, or accepts the supply of any goods or services having reason to believe that Value Added Tax on the supply of the goods or services has not been, or will not be paid or that Value Added Tax has been, or will be, falsely reclaimed, commits an offence and is liable on conviction to a fine of not less than twenty times but not exceeding thirty times, the amount of Value Added Tax involved or MK1,000,000, whichever is greater, and to imprisonment for two years. 10 of 2015

50.—(1) A person who fails to maintain proper records as required under this Act shall be liable— Failure to maintain proper records 30 of 2010 23 of 2011

(*a*) where the failure was deliberate or reckless, a penalty of K500,000; and

(*b*) in any other case, a penalty of K200,000.

51. A person who assaults, abuses, resists, obstructs, hinders or interferes with the Commissioner General or an officer authorized by the Commissioner General or any person aiding or assisting the Commissioner General, or any person authorized by the Commissioner General in the performance of his or her duties under this Act commits an offence and is liable on conviction to a fine of K500,000 and to imprisonment for twelve months. Obstruction etc., of officer of the Authority 10 of 2015

51A. A person who assaults, abuses, resists, obstructs, hinders or interferes with, a person who is buying taxable goods or services under this Act commits an offence and shall, on conviction, be liable to a fine of MK500,000, and to imprisonment for twelve months. Obstruction, etc., of a customer 10 of 2015

52.—(1) An officer of the Authority who, in connexion with any of his or her duties, takes or seeks, directly or indirectly, any payment or other reward, pecuniary or otherwise, on account of anything relating to his or her office or employment, including the failure to carry out his or her proper duties, commits an offence and is liable on conviction to a fine not exceeding three times value of the Value Added Tax involved and to imprisonment for three years; and further shall be dismissed from the employment of the Authority. Offences relating to officers

(2) A person who, directly or indirectly, offers to any officer of the Authority any payment or other reward whatsoever, whether pecuniary or otherwise, in order to induce the officer not to perform his or her proper duties commits an offence and is liable on conviction to a fine not exceeding three times any Value Added Tax involved and to imprisonment for three years.

(3) Any person who for the purposes of this Act or regulations made under this Act, impersonates an officer of the Authority in any way commits an offence and is liable on conviction to a fine of K100,000 and to imprisonment for five years.

Protection of officers

53. An officer of the Authority shall not be liable for any act or omission in respect of any matter or thing done by him or her in good faith in the performance of his or her duties under this Act and regulations made under this Act.

Relationship of the Authority and other public services

54.—(1) The Commissioner General may authorize the provision of any information about the taxes and duties on request of the Commissioner of another Department or Division of the Authority when the information requested will assist the Commissioner seeking the information to fulfill his or her statutory responsibilities; and the information shall be provided without undue delay.

(2) The Commissioner General may require any officer in the public service or any local authority, other public body, or private institution to supply such particulars as may be required in respect of Value Added Tax and which may be in the possession of that officer or person.

(3) Every person who under this section is required by the Commissioner General to provide information shall, orally or in writing, as may be required, give all such information as may be required of him or her by the Commissioner General for the purpose of enabling the Commissioner General to make an assessment or to collect Value Added Tax.

Taking of samples

55.—(1) An officer of the Authority may take samples of goods from the possession of any person where he or she considers it necessary to protect revenue against mistake or fraud.

(2) The officer of the Authority who takes samples under subsection (1) shall provide a receipt for any samples taken, and the samples may, except where there is an offence, be returned to the owner or be disposed of by the Commissioner General with the consent of the owner.

Power of inspection and warrants

56.—(1) For the purpose of exercising any power given by or under this Act, an officer of the Authority may at any reasonable time enter premises used in any way for business purposes, including premises, where taxable goods are stored; and the officer may open any packaging and inspect and take stock of any goods and examine business records (including records stored in or on any computer system), accounts, and correspondence on the premises.

(2) Where the Commissioner General is satisfied that there are reasonable grounds to suspect that any premises contain taxable goods on which Value Added Tax has been evaded or fraudulently over-claimed, or documents or other evidence of failure to pay Value Added Tax legally due, he or she may authorize an officer to seek a warrant to search the premises and things and persons therein.

(3) No search of any business premises, persons or things therein shall be made by any officer under this section, except under a warrant issued by a judge or magistrate.

(4) No person shall, pursuant to subsection (1), be searched by a person of the opposite sex.

(5) An authorized officer may for the purpose of entering the premises use such reasonable force as may be necessary.

(6) When exercising his or her powers under this section an authorized officer may remove any goods or documents or other evidence which he or she has reasonable grounds to believe will provide assistance in assessing Value Added Tax due, or have been, or will be, the subject of, or relevant to, the commission of an offence under this Act and regulations made under this Act.

(7) An officer who exercises powers under subsection (6) shall provide a receipt for anything removed.

Power to seal off premises
10 of 2015

57.—(1) The Commissioner General or an officer authorized in writing by the Commissioner General, may seal off, lock up premises, or in any physical manner prevent any person from entering or gaining access to the premises of any person or taxable person who, there is a reasonable ground to believe—

(*a*) has failed to account for Value Added Tax;

(*b*) has not remitted Value Added Tax due;

(*c*) has made a false claim for refund of Value Added Tax;

(*d*) has failed to procure and use the electronic fiscal device;

(*e*) has failed, deliberately or not, to pay penalties for offences previously committed; or

(*f*) despite not being a convict for offences under this Act, there is proof that he has committed various offences related to the use of an electronic fiscal device.

(2) Where the Commissioner General or an officer authorized by the Commissioner General intends to lock the premises, the Commissioner General, or the officer authorized by him, may give seven days' notice to the concerned taxpayer before sealing off or locking up premises.

(3) The Commissioner General or an officer authorized by the Commissioner General in writing shall deliver to the taxpayer the sealed off or locked up premises, or allow access to the premises in subsection (1) upon the taxpayer—

(*a*) accounting for the Value Added Tax;

(*b*) remitting the Value Added Tax due;

(*c*) correcting the claim for refund;

(*d*) procuring for use the electronic fiscal device;

(*e*) paying all the outstanding penalties for the offences committed; or

(*f*) having committed various offences, complying with or fulfilling the conditions the Commissioner General may prescribe.

(4) In the performance of his duties under this section, the Commissioner General or an officer authorized by him may seek the assistance of the police.

Provision of information

58.—(1) Where an officer of the Authority has reasonable grounds to believe that an offence has been or will be committed in relation to any supply of goods or services under this Act, the officer may require—

(*a*) any person concerned in whatever capacity in the supply of the goods or services; or

(*b*) any person to whom the supply is made, to provide all records and documents relating to the supply of goods or services.

(2) Every person or taxable person shall, on request by an officer under subsection (1), provide the information and answer any question.

Penalty for unauthorized collection of Value Added Tax

59. Any person, whether a taxable person or not, who unlawfully charges and collects Value Added Tax on supply of goods or services commits an offence and is liable on conviction to a fine of ten times the amount of the Value Added Tax involved in the commission of the offence and to imprisonment for five years.

General penalty

60. Any person who does any act or makes an omission which constitutes a contravention of any provision of this Act for which no penalty is provided or is concerned in the doing or making of any such act or omission, or who does any such act or makes any such omission with intent to facilitate evasion of Value Added Tax by himself or herself or any person, commits an offence and is liable on conviction to a fine of five times the Value Added Tax or revenue involved in the commission of the offence and to imprisonment for two years.

Compounding of offences
6 of 2007
23 of 2011

61.—(1) Where any person commits an offence under this Act which amounts to failure to pay Value Added Tax or which results in loss of revenue to the Government, the Commissioner General may at any time before proceedings are commenced in court, compound the offence and order the person to pay a sum of money not exceeding three times the amount of Value Added Tax or revenue involved in the commission of the offence or K100,000, whichever is the greater.

(2) The Commissioner General shall only compound an offence under this section if the person concerned admits in writing that the person has committed the offence.

(3) Where the Commissioner General compounds an offence under this section, the order referred to in subsection (1) shall be—

(*a*) in writing and specify the offence committed, the sum of money to be paid, and the due date for the payment; and shall have attached the written admission referred to in subsection (2);

(*b*) served on the person who committed the offence; and

(*c*) enforced in the same manner as an order of a court for the payment of the amount stated in the order.

(4) Where the Commissioner General compounds an offence under this section, the person shall not be liable for prosecution in respect of the offence.

PART XIII

Miscellaneous Provisions

Evidence in proceedings

62.—(1) A certificate by the Commissioner General that—

(*a*) a person or taxable person was or was not registered on any date by or under this Act; or

(*b*) any return required by or under this Act has not been made or had not been made by any date; or

(*c*) Value Added Tax shown as due in any return or assessment made under this Act has not been paid, shall be sufficient evidence in civil or criminal proceedings of that fact unless the contrary is proved.

(2) A photocopy of document furnished to the Commissioner General or any other member of the Authority under the requirements of this Act and certified to that effect by the Commissioner General, shall be admissible as evidence in civil or criminal proceedings to the same extent as would the original document.

(3) A statement or other information contained in a document produced by a computer shall be admissible as evidence in civil or criminal proceedings provided it is certified as correct by the Commissioner General.

Regulations

63.—(1) The Minister may make regulations as he or she considers necessary for the carrying out of the purposes of this Act.

(2) Without prejudice to the generality of subsection (1), the Minister may make regulations—

(*a*) prescribing anything that is required to be prescribed under this Act;

(*b*) relating to time of supply for such goods and services as may be prescribed in the regulations;

(*c*) relating to the form of return and payment of Value Added Tax;

(*d*) in respect of time and method of claiming refund of tax;

(*e*) in respect of issue of tax invoice and the production to officers;

(*f*) for forms to be issued for the purposes of this Act;

(*g*) in respect of records to be kept;

(*h*) for the apportionment of input tax between taxable and exempt supplies, where applicable;

(*i*) for the recovery, where applicable, of any tax paid on goods in stock at the start of business on the effective date of Value Added Tax; and

(*j*) for the application of special schemes for the collection of Value Added Tax in specified cases.

10 of 2015
Cap. 1:01

(3) Notwithstanding section 21 (*e*) of the General Interpretation Act, the regulations made under this Act may create offences in respect of any contravention to the regulations, and may for any such contravention impose a fine not exceeding the maximum fine imposable under the Act and to imprisonment for up to five years.

Directives and other powers of the Commissioner General

64.—(1) Subject to this Act, the Commissioner General may in writing give such administrative directives as he or she considers necessary for the implementation of the provisions of this Act.

(2) The Commissioner General may, where he or she considers it necessary for the protection of revenue, in writing request a taxable person to provide such security as the Commissioner General considers adequate.

Consequential amendments and savings Cap. 42:01

65.—(1) On the date that Value Added Tax becomes chargeable under this Act, the Customs and Excise Act shall be deemed to be amended—

(*a*) in section 2, by deleting the definition of the terms "manufacture", "registered person", "supply", "taxable goods", "tax period" "taxable person"; "taxable services", and "turnover"; and

(*b*) by repealing Part XIIA.

Cap. 42:01

(2) Notwithstanding the repeal of Part XIIA of the Customs and Excise Act, repealed under subsection (1), any person liable to register for Value Added Tax under the Customs and Excise Act before the coming into force of this Act shall on the coming into force of this Act be deemed to be liable for registration under this Act.

Cap. 42:01

(3) Notwithstanding subsection (1), Part XIIA of the Customs and Excise Act, repealed under subsection (1), shall remain in force for the purpose of—

(*a*) verifying any return filed or required to be filed thereunder;

(*b*) the assessment and recovery of any Value Added Tax or penalty payable thereunder; and

(*c*) prosecuting any offence committed thereunder;

(*d*) processing claims for refunds thereunder.

Repeal and Savings Cap. 42:02

66.—(1) Subject to subsection (2), the Surtax Act is hereby repealed.

(2) Anything done in accordance with the Surtax Act repealed by subsection (1), prior to the commencement of this Act and which may be done in accordance with the provisions of this Act, shall be deemed to have been done in accordance with this Act.

(3) Any subsidiary legislation made or deemed to have been made under the Surtax Act, repealed by subsection (1), in force immediately before the commencement of this Act—

(*a*) shall remain in force, unless in conflict with this Act, and shall be deemed to be subsidiary legislation made under this Act;

(*b*) may be replaced, amended or repealed by subsidiary legislation made under this Act.

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11 of 2006
10 of 2008
15 of 2009
23 of 2011
7 of 2012
18 of 2012
20 of 2013
24 of 2016
25 of 2017

s. 20

FIRST SCHEDULE

Exempt Supplies

1. *Live Animals*

Exemption covers live animals under Customs Tariff Headings 0102.10.00 to 0106.00.00.

2. *Animal Products*

Exemption covers—

(*a*) meat and edible meat offals in raw form under Customs Tariff Headings 0201.10.00 to 0210.90.00;

(*b*) fish and crustaceans molluses and other aquatic invertebrates under Customs Tariff Headings 0301.91.00 to 0307.99.00; and

(*c*) dairy produce, birds' eggs, natural honey and infant milk under Customs Tariff Subheadings 0401.10.00, 0401.20.00, 0401.40.00, 0401.50.00, 0407.11.00 to 0407.90.00, 0409.00.00 and 1910.10.10.

3. *Vegetable Products in Raw State*

Exemption covers—

(*a*) live trees and other plants, bulbs, roots and the like under Customs Tariff Headings 0601.10.00 to 0602.40.00, but excluding cut flowers and ornamental foliage under Customs Tariff Headings 0603.10.00 to 0604.99.00;

(*b*) edible vegetables and certain roots and tubers under Customs Tariff Headings 0701.10.00 to 0714.90.00;

(*c*) edible fruit and nuts, peel of citrus fruits or melons under Customs Tariff Headings 0801.11.00 to 0805.90.00, 0807.11.00 to 0807.20.00, and 0809.10.00 to 0814.00.00;

(*d*) coffee and tea under Customs Tariff Headings 0901.11.00, 0901.12.00, 0902.10.00 and 0902.20.00;

(*e*) cereals under Customs Tariff Headings 1001.10.00 to 1008.90.00;

(*f*) products of the milling industry, malt starches, inulin and wheat gluten under Customs Tariff Headings 1102.10.00 to 1107.20.00; and

(*g*) oil seeds and oleaginous fruit, miscellaneous grains seeds and fruit, industrial or medicinal plants, straw and folder under Customs Tariff Headings 1201.00.00 to 1214.90.00, but excluding products under Customs Tariff Headings 1208.10.00, 1208.90.00 and 1210.10.00 to 1210.20.00;

(*ga*) animal or vegetable fats and oils and their cleavage products; prepared edible fats; animal or vegetable waxes under Customs Tariff Subheadings 1501.00.00 to 1522.00.00;

(*h*) unmanufactured tobacco refuse of Customs Tariff Heading 24.01.

4. [*Deleted by* 24 *of* 2016].

5. *Printed Matter—Books*

Exemption covers printed books under Customs Tariff Headings 4901.10.00 to 4901.99.00, 4903.00.00, 4905.10.00 to 4905.99.00 and 4907.00.90.

6. *Petroleum Products*

Exemption covers petroleum oils under Customs Tariff Headings 2710.00.11 to 2710.00.20 and 2710.00.41 to 2710.00.50.

7. *Vehicles other than railway and train way rolling-stock*

Exemption covers ambulances under Customs Tariff Heading—8703.90.10.

8. *Industrial Machinery and Construction Machinery Exemption covers—*

(*a*) nuclear reactors; fuel elements (cartridges), non-irradiated, for nuclear reactors; machinery and apparatus for isotopic separation under Customs Tariff Subheadings 8401.10.00, 8401.20.00 and 8401.30.00;

(*b*) steam or other vapour generating boilers (other than central heating hot water boilers capable also of producing low pressure steam); super-heated water boilers under Customs Tariff Subheadings 8402.11.00, 8402.12.00, 8402.19.00 and 8402.20.00;

(*c*) central heating boilers under Customs Tariff Subheading 8403.10.10;

(*d*) auxiliary plant for use with boilers of Heading 84.02 or 84.03 (for example, economizers, super-heaters, soot removers, gas recovers); condensers for steam or other vapour power units under Customs Tariff Subheadings 8404.10.10 and 8404.20.00;

(*e*) producer gas or water gas generators, with or without their purifiers; acetylene gas generators and similar water process gas generators, with or without their purifiers under Customs Tariff Subheading 8405.10.10;

(*f*) steam turbines and other vapour turbines under Customs Tariff Subheadings 8406.10.00, 8406.81.00 and 8406.82.00;

(*g*) hydraulic turbines, water wheels, and regulators therefor under Customs Tariff Subheadings 8410.11.00, 8410.12.00 and 8410.13.00;

(*h*) pumps for liquids, whether or not fitted with a measuring device liquid elevators under Customs Tariff Subheadings 8413.20.10, 8413.50.10, 8413.50.20, 8413.60.10, 8413.60.20, 8413.70.10, 8413.81.20 and 8413.82.20;

(*i*) air or vacuum pumps, air or other gas compressors and fans; ventilating or recycling hoods incorporating a fan, whether or not fitted with filters under Customs Tariff Subheadings 8414.10.10, 8414.30.10 and 8414.40.00;

(*j*) furnace burners for liquid fuel, for pulverised solid fuel or for gas; mechanical stokers, including their mechanical grates, mechanical ash dischargers and similar appliances under Customs Tariff Subheadings 8416.10.00, 8416.20.00 and 8416.30.00;

(*k*) industrial or laboratory furnaces and ovens, including incinerators, non-electric under Customs Tariff Subheadings 8417.10.00, 8417.20.00 and 8417.80.00;

(*l*) machinery, plant or laboratory equipment, whether or not electrically heated (excluding furnaces, ovens and other equipment of Heading 85.14), for the treatment of materials by a process involving a change of temperature such as heating, cooking, roasting, distilling, rectifying, sterilising, pasteurising, steaming, drying, evaporating, vaporising, condensing or cooling, other than machinery or plant of a kind used for domestic purposes, instantaneous or storage water heaters, non-electric under Customs Tariff Subheadings 8419.31.00, 8419.32.00, 8419.39.00, 8419.40.00, 8419.50.00, 8419.60.00, 8419.81.00, 8419.89.00 and 8420.10.00;

(*m*) centrifuges, including centrifugal dryers; filtering or purifying machinery and apparatus, for liquids or gases under Customs Tariff Subheadings 8421.11.10, 8421.12.10, 8421.19.10, 8421.21.10 and 8421.22.10;

(*n*) dish washing machines, machinery for cleaning or drying bottles or other containers; machinery for filling, closing, sealing or labelling bottles; cans, boxes, bags or other containers, machinery for capsuling bottles, jars, tubes and similar containers; other packing or wrapping machinery (including heat-shrink wrapping machinery); machinery for aerating beverages under Customs Tariff Subheadings 8422.20.90, 8422.30.00 and 8422.40.00;

(*o*) ships' derricks; cranes, including cable cranes; mobile lifting frames, straddle carriers and works trucks fitted with a crane under Customs Tariff Subheadings 8426.11.00, 8426.12.00, 8426.19.00, 8426.20.00, 8426.30.00, 8426.49.00, 8426.91.00 and 8426.99.00;

(*p*) fork-lift trucks; other works trucks fitted with lifting or handling equipment under Customs Tariff Subheadings 8427.10.00, 8427.20.00 and 8427.90.00;

(*pa*) exemption covers other lifting, handling, loading, or unloading machinery (such as lifts, escalators, conveyors, teleferics) under Customs Tariff Headings 8428.10.00, 8428.20.00, 8428.31.00, 8428.32.00, 8428.33.00, 8428.39.00, 8428.40.00, 8428.60.00, 8428.90.00;

(*pb*) exemption covers self-propelled bulldozers, angledozers, graders, levellers, scrapers, mechanical shovels, excavators, shovel loaders, tamping machines and road rollers under Customs Tariff Heading 8429.19.00;

(*q*) self-propelled bulldozers, angledozers, graders, levellers, scrapers, mechanical shovels, excavators, shovel loaders, tamping machines and road rollers under Customs Tariff Subheadings 8429.11.00, 8429.20.00, 8429.30.00, 8429.40.00, 8429.51.00, 8429.52.00 and 8429.59.00;

(*r*) other moving, grading, levelling, scraping, excavating, tamping, compacting, extracting or boring machinery, for earth, minerals or ores; pile-drivers and pile-extractors; snow-ploughs and snow-blowers under Customs Tariff Subheadings 8430.10.00, 8430.20.00, 8430.31.00, 8430.39.00, 8430.41.00, 8430.49.00, 8430.50.00, 8430.61.00 and 8430.69.00;

(*s*) milking machines and dairy machinery under Customs Tariff Subheadings 8434.10.00 and 8434.20.00;

(*t*) presses, crushers and similar machinery used in the manufacture of wine, cider, fruit juices or similar beverages under Customs Tariff Subheading 8435.10.00;

(*u*) other agricultural, horticultural, forestry, poultry-keeping or bee-keeping machinery, including germination plant fitted with mechanical or thermal equipment; poultry incubators and brooders under Customs Tariff Subheadings 8436.10.00, 8436.21.00 and 8436.29.00;

(*v*) machines for cleaning, sorting or grading seed, grain or dried leguminous vegetables; machinery used in the milling industry or for the working of cereals or dried leguminous vegetables, other than farm-type machinery under Customs Tariff Subheadings 8437.10.00 and 8437.80.00;

(*w*) machinery, not specified or included elsewhere in the Chapter, for the industrial preparation or manufacture of food or drink, other than machinery for the extraction or preparation of animal or fixed vegetable fats or oils under Customs Tariff Subheadings 8438.10.00, 8438.20.00, 8438.30.00, 8438.40.00, 8438.50.00, 8438.60.00 and 8438.80.00;

(*x*) machinery for making pulp of fibrous cellulosic material or for making or finishing paper or paperboard under Customs Tariff Subheadings 8439.10.00, 8439.20.00 and 8439.30.00;

(*y*) book-binding machinery, including book-sewing machines under Customs Tariff Subheading 8440.10.00;

(*z*) other machinery for making up paper pulp, paper or paperboard, including cutting machines of all kinds under Customs

Tariff Subheadings 8441.10.00, 8441.20.00, 8441.30.00, 8441.40.00 and 8441.80.00;

(*aa*) machinery, apparatus and equipment (other than the machine-tool of Headings 84.56 to 84.65), for preparing or making plates, cylinders and other printing components, plates, cylinders and other printing components, plates, cylinders and lithographic stones, prepared for printing purposes (for example, planed, grained or polished) under Customs Tariff Subheadings 8442.30.00 and 8442.50.00;

(*bb*) printing machinery used for printing by means of plates cylinders and other printing components of Heading 84.42, other printers, copying machines and facsimile machines, whether or not combined, parts and accessories thereof under Customs Tariff Subheadings 8443.11.00, 8443.12.00, 8443.13.00, 8443.14.00, 8443.15.00, 8443.16.00, 8443.17.00 and 8443.19.00;

(*cc*) machines for extruding, drawing, texturing or cutting man-made textile materials under Customs Tariff Subheading 8444.00.00;

(*dd*) machines for preparing textile fibres; spinning, doubling or twisting machines and other machinery for producing textile yarns; textile reeling or winding (including weft-winding) machines and machines for preparing textile yarns for use on the machines of Heading 84.46 or 84.47 under Customs Tariff Subheadings 8445.11.00, 8445.12.00, 8445.13.00, 8445.19.00, 8445.20.00, 8445.30.00, 8445.40.00 and 8445.90.00;

(*ee*) weaving machines (looms) under Customs Tariff Subheadings 8446.10.00, 8446.21.00, 8446.29.00 and 8446.30.00;

(*ff*) knitting machines, stitch-bonding machines and machines for making gimped yarn, tulle, lace, embroidery, trimmings, braid or net and machines for tufting under Customs Tariff Subheadings 8447.11.00, 8447.12.00, 8447.20.00 and 8447.90.00;

(*gg*) auxiliary machinery for use with machines of Heading 84.44, 84.45, 84.46 or 84.47 (for example, dobbies, Jacquards, automatic stop motions, shuttle changing mechanisms), parts and accessories suitable for use solely or principally with the machines of this Heading or of Headings 84.44, 84.45, 84.46 or 84.47 (for example, pindles and spindle flyers, card clothing, combs, extruding nipples, shuttles, healds and heald-frames, hosiery needles) under Customs Tariff Subheadings 8448.11.00 and 8448.19.00;

(*hh*) machinery for the manufacture or finishing of felt or non-wovens in the piece or shapes, including machinery for making felt hats; blocks for making hats under Customs Tariff Subheading 8449.00.00;

(*ii*) machinery for preparing, tanning or working hides, skins or leather or for making or repairing footwear or other articles of hides,

skins or leather, other than sewing machines under Customs Tariff Subheadings 8453.10.00, 8453.20.00 and 8453.80.00;

(*jj*) converters, ladles, ingot moulds and casting machines, of a kind used in metallurgy or in metal foundries under Customs Tariff Subheadings 8454.10.00, 8454.20.00 and 8454.30.00;

(*kk*) metal-rolling mills and rolls therefor under Customs Tariff Subheadings 8455.10.00, 8455.21.00, 8455.22.00 and 8455.30.00;

(*ll*) machine-tools for working any materials by removal of material, by laser or other light or photon beam, ultrasonic, electro-discharge, electrochemical, electron beam, ionic-beam or plasma are processes under Customs Tariff Subheadings 8456.10.00, 8456.20.00, 8456.30.00 and 8456.90.00;

(*mm*) machining centres, unit construction machines (single station) and multi-station transfer machines, for working metal under Customs Tariff Subheadings 8457.10.00, 8457.20.00 and 8457.30.00;

(*nn*) lathes (including turning centres) for removing metal under Customs Tariff Subheadings 8458.11.00, 8458.19.00, 8458.91.00 and 8458.99.00;

(*oo*) machine-tools (including way-type unit head machines) for drilling, boring, milling, threading or tapping by removing metal, other than lathes (including turning centres) of Heading 84.58 under Customs Tariff Subheadings 8459.10.00, 8459.21.00, 8459.29.00, 8459.31.00, 8459.39.00, 8459.40.00, 8459.51.00, 8459.59.00, 8459.61.00, 8459.69.00 and 8459.70.00;

(*pp*) machine-tools for deburring, sharpening, grinding, honing, lapping, polishing or otherwise finishing metal or cermets by means of grinding stones, abrasives or polishing products, other than gear cutting, gear grinding or gear finishing machines of Heading 84.61 under Customs Tariff Subheadings 8460.11.00, 8460.19.00, 8460.21.00, 8460.31.00, 8460.39.00, 8460.40.00 and 8460.90.00;

(*qq*) machine-tools for planing, shaping, slotting, broaching, gear cutting, gear grinding or gear finishing, sawing, cutting-off and other machine tools working by removing metal or cermets, not elsewhere specified or included under Customs Tariff Subheadings 8461.20.00, 8461.30.00, 8461.40.00, 8461.50.00 and 8461.90.00;

(*rr*) machine-tools (including presses) for working metal by forging, hammering or die-stamping; machine-tools (including presses) for working metal by bending, folding, straightening, flattening, shearing, punching or notching; presses for working metal or metal carbides, not specified above under Customs Tariff Subheadings 8462.10.00, 8462.21.00, 8462.29.00, 8462.31.00, 8462.39.00, 8462.41.00, 8462.49.00, 8462.91.00 and 8462.99.00;

(*ss*) other machine-tools for working metal or cermets, without removing material under Customs Tariff Subheadings 8463.10.00, 8463.20.00, 8463.30.00 and 8463.90.00;

(*tt*) machine-tools for working stone, ceramics, concrete, asbestos-cement or like mineral materials or for cold working glass under Customs Tariff Subheadings 8464.10.00, 8464.20.00 and 8464.90.00;

(*uu*) machine-tools (including machines for nailing, stapling, glueing or otherwise assembling) for working wood, cork, bone, hard rubber, hard plastics or similar hard materials under Customs Tariff Subheadings 8465.10.00, 8465.91.00, 8465.92.00, 8465.93.00, 8465.94.00, 8465.95.00, 8465.96.00 and 8465.99.00;

(*vv*) machinery for sorting, screening, separating, washing, crushing, grinding, mixing or kneading earth, stone, ores or other mineral substances, in solid (including powder or paste) form; machinery for agglomerating, shaping or moulding solid mineral fuels, ceramic paste, unhardened cements, plastering materials or other mineral products in powder or paste form; machines for forming foundry moulds of sand under Customs Tariff Subheadings 8474.10.00, 8474.20.00, 8474.31.00, 8474.32.00, 8474.39.00 and 8474.80.00;

(*ww*) machines for assembling electric or electronic lamps, tubes or valves or flashbulbs, in glass envelopes; machines for manufacturing or hot working glass or glassware under Customs Tariff Subheadings 8475.10.00, 8475.21.00 and 8475.29.00;

(*xx*) machinery for working rubber or plastics or for the manufacture of products from these materials, not specified or included elsewhere in this Chapter under Customs Tariff Subheadings 8477.10.00, 8477.20.00, 8477.30.00, 8477.40.00, 8477.51.00, 8477.59.00 and 8477.80.00;

(*yy*) machinery for preparing or making up tobacco, not specified or included elsewhere in this Chapter under Customs Tariff Subheading 8478.10.00;

(*zz*) machines and mechanical appliances having individual functions, not specified or included elsewhere in this Chapter under Customs Tariff Subheadings 8479.10.00, 8479.20.00, 8479.30.00, 8479.40.00, 8479.50.00, 8479.60.00, 8479.81.00, 8479.82.00, 8479.89.10 and 8479.89.70;

(*aaa*) moulding boxes for metal foundry; mould bases; moulding patterns; moulds for metal (other than ingot moulds), metal carbides, glass, mineral materials, rubber or plastics under Customs Tariff Subheadings 8480.10.00, 8480.20.00, 8480.30.00, 8480.41.00, 8480.49.00, 8480.50.00, 8480.60.00, 8480.71.00 and 8480.79.00;

(*bbb*) machines and apparatus of a kind used solely or principally for the manufacture of semiconductor boules or wafers, semiconductor devices, electronic integrated circuits or flat panel display machines and apparatus and specified in NOTE 9 (C) to this Chapter, parts and accessories under Customs Tariff Subheadings 8486.10.00, 8486.20.00, 8486.30.00 and 8486.40.00;

(*ccc*) industrial or laboratory electric furnaces and ovens (including those functioning by induction or dielectric loss); other industrial or laboratory equipment for the heat treatment of materials by induction or dielectric loss under Customs Tariff Subheadings 8514.10.00, 8514.20.00, 8514.30.00 and, 8514.40.00.

9. [*Deleted by* 24 *of* 2016].

10. *Coin*

Exemption covers "Other coins" under Customs Tariff Heading 7118.90.00.

11. [*Deleted by* 20 *of* 2013].

12. [*Deleted by* 23 *of* 2011].

13. *Medical Equipment*

Exemption covers optical, photographic, cinematographic, measuring, checking instruments and apparatus under Customs Tariff Headings 9001.10.00 to 9001.40.90, 9001.50.10, 9001.90.10 to 9001.90.20, 9002.19.10, 9004.90.10 and 9018.11.00 to 9023.00.00.

14. *Educational Services*

15. *Banking and Life Insurance Services*

16. *Postal Services*

17. *Funeral Services*

Exemption includes provision of vehicles, coffins, wreaths and tombstones.

18. *Medical Services*

Syringes with or without needles under Customs Tariff Heading—9018.31.00.

19. *Transport of Exports*

20. *Rentals and sale of properties used for residential purposes*

21. [*Deleted by* 23 *of* 2011].

22. [*Deleted by* 23 *of* 2011].

23. Betting and gaming including lotteries

24. *Rail locomotives and parts*

Exemption covers rail locomotives and parts thereof under Chapter 86 of Customs and Excise (Tariffs) Order.

25. *Medical surgical or laboratory sterilizers*

Exemption covers medical, surgical or laboratory sterilizers under Customs Tariff Heading 8419.20.00.

26. [*Deleted by* 23 *of* 2011].

SECOND SCHEDULE s. 21

11 of 2006
6 of 2007
10 of 2008
15 of 2009
23 of 2011
20 of 2013
24 of 2016

ZERO-RATED SUPPLIES

1. *Export of goods and services*

2. *Goods shipped as stores on aircraft and vessels leaving the territory of Malaŵi.*

3. *Fertilizers*

Zero rating covers fertilizers under Customs Tariff Headings 3101.00.00 to 3105.90.00.

4. *Sheath Contraceptives (Condoms*)

Zero rating covers condoms under Customs Tariff Heading 4014.10.00.

5. *Exercise Books*

Zero-rating covers exercise books under Customs Tariff Subheading 4820.20.00.

6. [*Deleted by* 24 *of* 2016].

7. *Salt*

Zero-rating covers salt under Customs Sub-heading 2501.00.00.

8. *Motor Vehicles for transport of goods*

(*a*) zero-rating covers motor vehicles under Customs Tariff Headings—

8704.22.90_GVW > 15 tonnes < 20 tonnes

8704.23.00_GVW > 20 tonnes

8704.32.30_GVW > 15 tonnes < 20 tonnes

8704.32.90_GVW > 20 tonnes

(*b*) zero-rating covers trailers, semi trailers under Customs Tariff Heading—

8716.31.30_GVW > 15 tonnes.

9. Zero-rating covers special purpose motor vehicles, other than those principally designed for the transport of persons or goods under Customs Tariff Headings 8705.10.00, 8705.20.00, and 8705.40.00.

10. *Pharmaceutical Products*

Zero-rating covers pharmaceutical products of Customs Tariff Subheadings 3001.10.00 to 3006.60.00.

6 of 2007

11. *Buses*

Zero-rating covers buses with seating capacity of forty-five or more persons, including driver under Customs Tariff Subheadings 8702.10.30 and 8702.90.30.

12. *Military Equipment*

Zero-rating covers military equipment including vehicles, armoured vehicles, uniforms and appointments for air force, military or naval personnel for use of the Malaŵi Defence Force, Malaŵi Police Service, Prisons and Immigration as specified in Customs Procedure Codes 4000.421 and 4071.421.

13. *Building Materials for Factories and Warehouses*

Zero-rating covers building materials for construction of factories and adjoining warehouses as specified in Customs Procedure Codes 4000.425 and 4071.425.

14. *Goods for use in Tourism Industry*

Zero-rating covers goods for use in the tourism industry as specified in Customs Procedure Codes 4000.442 and 4071.442 including the following—

(*a*) building materials, industrial catering equipment, motor boats, scuba diving, jet skis, kayaks, wind surfers, pedallos and marked linen: and

(*b*) glass, china porcelain, earthenware and stone articles of tableware; enamelware and hollowware for table use, electro plated nickel-silver and plated ware, knives, forks, spoons and similar articles for cutlery.

(*c*) hotels, inns and lodges gym equipment, massage equipment, sauna baths, industrial washing machines, generators, bar refrigerators and air conditioners.

(*d*) furniture and furnishings, public address systems, video conferencing equipment; television screens, amplifiers, LCD equipment, for use in hotels with room capacity of not less than 50 under Customs Procedure Code 4000.442 or 4071.442.

15. *Miscellaneous Chemical Products*

Zero-rating covers insecticides, fungicides and herbicides under Customs Tariff Subheadings 3008.50.00, 3808.91.00, 3808.92.00 and 3808.93.00.

16. *Cycle Ambulances*

Zero-rating covers cycle ambulances under Customs Tariff Subheading 8712.00.11.

17. *Motorcycle Ambulances*

Zero-rating covers motorcycle ambulances under Customs Tariff Subheadings 8711. 10.10, 8711.20.01, 8711.30.01, 8711.40.01 and 8711.50.01.

18. *Syringes with or without needles under customs tariff headings* 9018.31.00.

19.–24. [*Deleted by* 23 *of* 2011].

25. *Mosquito and sandfly nets*

Zero-rating covers mosquito and sandfly nets under Customs Tariff Headings 6304.91.10, 6304.92.10, 6304.93.10 and 6304,99.10.

26.–28. [*Deleted by* 23 *of* 2011].

THIRD SCHEDULE

s. 23 10 of 2008 15 of 2009 23 of 2011 12 of 2014

Relief Supplies

1. Goods and services for official use of—

(*a*) the President of the Republic of Malaŵi; and

(*b*) the Vice-President of the Republic of Malaŵi.

2. Goods and services supplied to the organizations other than the Government of Malaŵi, individual and businesses covered under section XXII of the Customs and Excise (Tariffs) Order.

3. Goods and services for use of diplomatic staff in terms of the Immunities and Privileges Act. Cap. 16:01

4. Goods for use of International Agencies or Technical Assistance Schemes where the terms of the Agreement made with the Malaŵi Government include exemption from taxes.

5. Goods specified under Customs Procedure Code C403 of the Customs and Excise (Tariffs) Order.

6. Raw materials, as approved under Customs Procedure Code (CPC) 401, for the manufacturing of fertilizer, medicaments and pharmaceuticals.

FOURTH SCHEDULE s. 32 (2)

Apportionment of Input Tax

For the purpose of determining the deductible input tax under section 32 (2), the following formula shall apply—

$$\frac{A \times B}{C}$$

Where

A is the total amount of input tax for the period; and

B is the total amount of taxable supplies made by the taxable person during the period; and

C is the total amount of all supplies made by the taxable person during the period.

FIFTH SCHEDULE Form A

Warrant of Distress s. 40 (3)

Value Added Tax Act

To . .....

I, ... Commissioner General by virtue of the powers vested in me by section 40 (3) of the Value Added Tax Act. 2005, do

hereby authorize you to collect and recover the sum of ..... Due for tax/penalty/interest from ..... Value Added Tax debtor of ..... and for the recovery of this sum I authorize you, with the aid if necessary of your assistants to levy this sum forthwith by distress together with the costs and charges of and incidental to the keeping of the distress on all distrainable things specified under section 40 (2) of the Value Added Tax Act, the property of and belonging to the said debtor wherever they may be found and on all such distrainable things as specified under the said section 40 (2) used in Malaŵi in the manufacture, production, sale or distribution of any taxable supplies which you may find in any premises or on any land owned by or in possession of the said debtor on his behalf or in trust for him.

For the purpose of levying the distress you are hereby authorized to call to your assistance any police officer to break open any building or place in the daytime.

Given under my hand at ..... this .....

day of ..... 20.....

.....

Commissioner General

SUBSIDIARY LEGISLATION

VALUE ADDED TAX REGULATIONS

REGULATION

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SCHEDULE

[Subsidiary] *Value Added Tax Regulations*

G.N. 11/2006
6/2016

VALUE ADDED TAX REGULATIONS

under s. 63 (1)

PART I

Preliminary

Citation

1. These Regulations may be cited as the Value Added Tax Regulations.

Interpretation

2. In these Regulations unless the context otherwise requires—

"daily gross takings" include—

(*a*) all payments, including Value Added Tax received by or on behalf of, a taxable person from cash customers for retail supplies made to such customers;

(*b*) the full value, including Value Added Tax, of all credit or other non-cash retail sales at the time the sale is made; and

(*c*) any other adjustment made to the record of daily gross takings;

"effective date" means the date these Regulations enter into force;

"retailer" means any taxable person making supplies of taxable goods or services mainly or exclusively directly to private consumers;

"special retail scheme" means one of the methods of accounting for Value Added Tax set out in regulation 32;

"Value Added Tax office" means the local Value Added Tax office nearest to a taxable person's principal place of business; and

"takings" means all forms of payment, including cash, cheques, bank drafts, credit cards and postal orders.

PART II

Registration of Taxable Persons

Application for registration

3.—(1) A person who, on the effective date—

(*a*) qualifies as a taxable person; or

(*b*) has grounds to believe that he will qualify as a taxable person,

shall, not less than thirty days after the effective date, apply to the Commissioner-General for registration as a taxable person in the prescribed form contained in the Schedule hereto.

(2) A person who, after the effective date—

(*a*) qualifies as a taxable person; or

(*b*) has grounds to believe that he will qualify as a taxable person,

shall, within thirty days of qualifying or having grounds to believe he will qualify as a taxable person, apply to the Commissioner-General to be registered as a taxable person in the prescribed form contained in the Schedule hereto.

Registration name

4. The name for registration as a taxable person shall—

(*a*) in the case of an individual, be the name of the individual;

(*b*) in the case of an individual who indicates a business registered name in the application, be both the individual and the business names;

(*c*) in the case of a partnership, be the name of the partnership; and

(*d*) in any other case, be the name submitted on the application form for registration.

Group registration

5.—(1) Two or more corporate bodies may apply to be registered as members of a group if—

(*a*) each is a registered corporate body in Malaŵi and has an established place of business in Malaŵi; and

(*b*) one of them controls the other or others in the group or one corporate body controls all the members of the group.

(2) Subject to subregulations (3) and (4), where a group of corporate bodies apply under subregulation (1) to be treated for the purposes of payment of the Value Added Tax as one designated taxable person, the Commissioner-General may, by written notice to the applicants—

(*a*) approve that the corporate bodies form a registrable group;

(*b*) nominate a representative member for the group; and

(*c*) register the corporate bodies as a group.

(3) The Commissioner-General may before registering a number of corporate bodies as a group under subregulation (2), direct that a specified corporate body be included in the group or be excluded from the group.

(4) The Commissioner-General may after the registration of a group under this regulation, in writing to the group—

(*a*) substitute another member of the group as the representative member of the group;

(*b*) include a further body corporate in the group;

(*c*) exclude a body corporate from the group; or

(*d*) where he considers it necessary to do so for the effective collection of the Value Added Tax cancel the registration of the group.

Separate registration of branches of business

6. A taxable person shall, in his application for separate registration of branches of his business, state the branches and divisions, including self-accounting branches, where there are more than two branches or divisions of his business.

Transfer of a going concern

7.—(1) Where a business carried on by a taxable person is transferred to another person as a going concern and the transferee is not a registered person at the time of transfer, the transferee shall upon the transfer—

(*a*) become liable to be registered and apply for registration;

(*b*) notify the Commissioner-General within thirty days of the transfer.

(2) The transaction of transferring the going concern shall be a zero rated supply and no tax invoice issued.

Notification of registration and non-registration

8.—(1) The Commissioner-General shall upon registering a taxable person, notify the person that he has been registered for Value Added Tax and shall issue to the taxable person a certificate of registration in the prescribed form contained in the Schedule hereto.

(2) The Commissioner-General may refuse to register an applicant if he—

(*a*) is satisfied that the applicant has no fixed place of business or abode;

(*b*) has reasonable grounds to believe that, the applicant—

(i) will not keep proper accounting records relating to any business carried on by him;

(ii) will not submit regular, or reliable tax returns as required under the Act; or

(iii) is not a fit and proper person to be registered, and shall within thirty days of receipt of the application notify the applicant of his decision in this regard.

Request for further information

9.—(1) The Commissioner-General may, at any time before registration of an applicant, request an applicant to provide such further information as the Commissioner-General may consider necessary for the purposes of processing the application for registration.

(2) Any person requested to provide further information under subregulation (1) shall do so within twenty-one days from the date the request was made.

Taxpayer identification number

10.—(1) The Commissioner-General shall upon the registration of a taxable person or group of taxable persons issue him or them with a tax identification number which shall be indicated on the certificate of registration.

(2) The tax registration number issued upon registration of a taxable person under these Regulations shall be the same identification number for any other tax purposes.

Display of registration certificate

11. A taxable person shall keep exhibited, in a conspicuous position, at his principal place of business his certificate of registration as a taxable person.

PART III

Supply of Goods and Services

Supplies made by a partnership

12. Where two or more persons in a partnership make a taxable supply, the partnership shall be the supplier of the goods or services and each partner shall also be deemed to be the supplier of the goods or services made by the partnership.

Supplies made by members of a group

13. Where two or more corporate bodies have been registered as members of a group under these Regulations—

(*a*) any business carried on by a member of the group shall be treated as being carried on by the representative member;

(*b*) any supply of goods or services by a member of the group to another member of the group shall be disregarded for the purposes of the Value Added Tax;

(*c*) any supplies made by or to a member of the group shall be treated as supplies made by or to the representative member; and

(*d*) any Value Added Tax paid or payable by a member of the group on the importation of goods from a place outside Malaŵi shall be treated as paid or payable by the representative member and the goods shall be treated as imported by the representative member.

PART IV

Taxable Supplies

Supplies made by non-resident persons

14. A transaction involving either goods or services supplied in Malaŵi by a non-resident person shall be considered to be made in Malaŵi if—

(*a*) the transaction is made in the course of a business carried on in Malaŵi; and

(*b*) at the time of the transaction, the person is a taxable person.

PART V

Time and Place of Supply

Places of supply of services

15. The place of supply for any service shall—

(*a*) in the case of services specified in section 19 (1) of the Act for a customer operating outside Malaŵi, be the place of business of the customer to which the services are supplied;

(*b*) in the case of cultural, sporting, artistic, educational or similar activities, be the place where the services are physically carried out;

(*c*) in the case of services connected with movable goods be the place where the services are physically carried out;

(*d*) in the case of services connected with immovable property be the place where the property is situated; or

(*e*) in the case of telecommunication services, be where the facility or instrument for the emission, transmission or reception of the services in respect of which the invoice for the supply is issued, or is to be issued, is ordinarily situated in Malaŵi.

Deposits

16. Any deposit, whether refundable or not, given in respect of supply of goods or services, shall not be regarded as a payment for the supply of goods or services or a taxable transaction unless the supplier applies the deposit as payment or part-payment for the supply.

Goods supplied on sale or return

17. Where goods are supplied on sale or return, the tax point shall be the earliest of—

(*a*) the date when the purchaser chooses to keep the goods;

(*b*) the issue of a tax invoice by the seller;

(*c*) the receipt of payment by the seller;

(*d*) the expiry of the period within which the customer may return the goods; or

(*e*) twelve months after the date of dispatch of the goods by the seller.

Imported goods

18. The time of supply for imported goods shall be the time at which the import duties on the goods become due under the Customs and Excise Act.

Cap. 42:01

Tax invoices

19.—(1) A taxable person shall on supply of taxable goods or services to a customer, issue to the customer a tax invoice prescribed by the Commissioner-General.

(2) A prescribed tax invoice shall contain the following information—

(*a*) the name of the registered person supplying the goods or services, his address and taxpayer identification number;

(*b*) the date of supply;

(*c*) the number of the invoice, taken from a consecutive series;

(*d*) the name or business name of the customer and his address, and taxpayer identification number, if the customer is a taxable person;

(*e*) a description, sufficient to identify the goods or services supplied including the quantity of the goods or the extent of the services supplied;

(*f*) the type of transaction by reference to the following categories—

(i) sale;

(ii) hire purchase, hire, lease or rental;

(iii) exchange; or

(iv) goods and services supplied from the customer's own supplies;

(*g*) the Value Added Tax exclusive charge for each description of goods or services supplied;

(*h*) the rate of Value Added Tax;

(*i*) the total charge on the invoice, exclusive of Value Added Tax;

(*j*) the rate of any discount;

(*k*) the total Value Added Tax charge; and

(*l*) the total charge inclusive of the Value Added Tax.

(3) A tax invoice shall not be provided in any circumstance other than that specified in subregulation (1).

(4) Where a taxable person loses a tax invoice, the supplier shall on request provide a duplicate copy clearly marked "copy" within thirty days of the receipt of the request.

(5) Taxable person who does not receive a tax invoice, as required by subregulation (1) may request the taxable person who supplied the goods or services to him to provide a tax invoice in respect of the supply.

(6) A request for a tax invoice under subregulation (5) shall be made within thirty days of the date of the supply.

(7) A taxable person who receives a request under subregulation (6) shall comply with the request within fourteen days of receipt of the request.

(8) In the case of supplies made at the retail stage where most recipients are non-taxable persons, Value Added Tax may be charged in accordance with regulations 30 to 35.

(9) In the case of import of goods, the appropriate customs bills of entry certifying payment of the Value Added Tax shall be used as the control document for establishing eligible input tax credit.

Retention of tax invoices, etc.

20.—(1) All tax invoices received by a taxable person from his suppliers, customs entries, credit and debit notes and supporting evidence of purchase or importation under these Regulations shall, subject to section 35 of the Act, be retained for a period of not less than six years from the date of receipt, in chronological or serial number order either by date or receipt or under supplier's name.

(2) All copies of tax invoices issued to customers, credit and debit notes shall, subject to section 35 of the Act, be retained by a taxable person for a period of not less than six years from the date of receipt in chronological or serial number order either by date or receipt or under each supplier's name.

PART VI

Taxable Value

Adjustment of value debit and credit notes

21.—(1) For the purposes of making any adjustments required under section 29 of the Act, where—

(*a*) a tax invoice has been issued and the amount shown as Value Added Tax charged in the tax invoice exceeds the Value Added Tax properly chargeable in respect of the supply, the taxable person making the supply shall issue to the recipient of the supply a credit note; and

(*b*) a tax invoice has been issued and the Value Added Tax properly chargeable in respect of the supply exceeds the amount shown as Value Added Tax charged in that tax invoice, the taxable person making the supply shall issue to the recipient of the supply a debit note.

(2) A credit note or debit note issued under subregulation (1) shall be clearly identified as such, and shall contain the following particulars—

(*a*) a sequential identifying number;

(*b*) the date of issue;

(*c*) the name, address and the taxpayer identification number of the supplier;

(*d*) the name and address of the recipient, and if the recipient is registered for Value Added Tax, his taxpayer identification number;

(*e*) the identifying number and date of issue of the tax invoice relating to the transaction;

(*f*) a description sufficient to identify the goods or services supplied and the reason for the credit or debit;

(*g*) the amount being credited or debited; and

(*h*) the amount of Value Added Tax being credited or debited.

(3) A taxable person shall maintain a record of all credit and debit notes issued during the month.

(4) A debit or credit note shall not be issued in any circumstances other than those specified in this Regulation.

(5) Where a taxable person loses the original debit or credit note the person who issued the debit or credit note shall, on request, provide a duplicate copy clearly marked "copy".

PART VII

Deduction of Input Tax and Refunds

Non-deductible input tax

22.—(1) The restriction of deduction of input tax on motor vehicles and vehicle spare parts, specified in section 30 (5) of the Act, shall not apply to—

(*a*) motor vehicles purchased or imported by a taxable person who is in the business of dealing in or hiring of motor vehicles for the purposes of his business; or

(*b*) motor vehicles, other than motor cars, purchased or imported by a taxable person wholly, exclusively and necessarily for use in his business.

(2) For the purposes of this regulation, "motor car" means any motor vehicle of a kind normally used on public roads which has three or more wheels and is constructed or adapted solely or mainly for the carriage of passengers; or has, to the rear of the driver's seat, roofed accommodation which is fitted with side windows or which is constructed or adapted for the fitting of side windows, but does not include—

(*a*) a vehicle capable of accommodating only one person or suitable for carrying twelve or more persons;

(*b*) a vehicle of not less than three tonnes unladen weight;

(*c*) an ambulance or prison van;

(*d*) a vehicle constructed for a special purpose other than the carriage of persons and has no other accommodation for carrying persons than such as is incidental to the purpose.

Purchase prior to registration

23.—(1) A taxable person may recover the Value Added Tax on stock and capital goods purchased prior to registration, if the goods are still in the ownership and possession of the taxable person at the time of registration and—

(*a*) in the case of stock, the purchase or importation occurred not more than four months prior to the date of registration;

(*b*) in the case of capital goods, the purchase or importation occurred not more than six months prior to the date of registration;

(*c*) the taxable person is in possession of a tax invoice or the relevant customs bill of entry; and

(*d*) the taxable person produces an inventory of all goods on hand on the effective date of registration.

(2) A claim for recovery of Value Added Tax under subregulation (1) shall be submitted to the Commissioner-General in the prescribed form contained in the Schedule hereto.

Refunds

24. For the purposes of section 31 of the Act, where the amount of input tax deductible in an accounting period exceeds the output tax due, in addition to submitting the return for that accounting period, the taxable person shall—

(*a*) submit a claim for refund to the Commissioner-General; and

(*b*) retain the tax invoices which relate to the accounting period for examination by the Commissioner-General.

25. For the purposes of determining the deductible input tax under section 32 (2) of the Act, the expression "C" in the formula for apportionment of input tax under the Fourth Schedule of the Act shall include exempt supplies under the First Schedule of the Act.

Deductible tax for mixed taxable and exempt supplies
G.N. 6/2016
Fourth Schedule
First Schedule

PART VIII

Value Added Tax Returns, Records and Assessment

26. The tax return required to be filed under section 34 of the Act shall be submitted in the prescribed form contained in the Second Schedule hereto.

Tax return form
Second Schedule

27.—(1) A taxable person who is a retailer of goods may apply to the Commissioner-General for approval to use a special retail scheme.

Special retail scheme

(2) The Commissioner-General may, in any prescribed accounting period, permit the value of taxable supplies by a retailer to be determined by one of the methods described in subregulations (4) and (5).

(3) A special retail scheme shall require the taxable person to—

(*a*) record the value and brief details of each supply as it occurs and before the goods leave the business premises;

(*b*) keep copies of all purchase invoices issued by suppliers;

(*c*) keep a cash register, book or other suitable record at each point of sale in which shall be entered details of all daily gross takings received and cash payments made at the time that they are made and at the end of each day the record shall be totalled and a balance shall be struck; and

(*d*) record in the appropriate records at the end of each month the output tax chargeable on supplies made and deductible input tax shown on tax invoice in respect of supplies received.

(4) Where a retailer takes only taxable supplies at the standard rate, the output tax shall be calculated by applying the following method—

step 1. add up the total daily gross takings in the month; and

step 2. multiply the total under step 1 by the Value Added Tax fraction;

where the formula for the Value Added Tax fraction is—

$$\frac{\text{the rate of Value Added Tax}}{100 + \text{the rate of Value Added Tax}}$$

(5) Where taxable person to whom this regulation applies makes both taxable and exempt supplies, he shall first apportion his daily gross takings between taxable and exempt supplies, and for this purpose the taxable person shall—

(*a*) keep a separate record of exempt supplies and deduct the total of these from the daily gross takings in the month, the output tax shall be calculated by applying step 2 in under subregulation (4) to the balance; or

(*b*) calculate from his purchase records, the total value of all goods purchased for resale in the month and also the total value of taxable goods purchased in the month.

(6) For purposes of subregulation (5) (*b*) the output tax shall be calculated by applying the following method—

step 1. divide the total taxable purchases for resale in the month by the total purchases for resale in the month;

step 2. multiply the result of *step 1* by the total daily gross takings in the month;

step 3. apply the Value Added Tax fraction specified in subregulation (4) to the result of *step 2*.

Annual adjustments

28.—(1) A taxable person who calculates his output tax using the method specified in regulation 27 (5) (*b*) shall, on the anniversary of starting to use the method and on each subsequent anniversary, make an annual adjustment to his output tax for that year.

(2) The adjustment shall be calculated by applying the same method but substituting purchases for resale in the year for purchases for resale in the month in step 1 in regulation 27 (6) and substituting total daily gross takings in the year for the total daily gross takings in the month in step 2 in regulation 27 (6); and the taxable person shall compare the result of this adjustment with the total output tax previously calculated for that year and adjust the difference on the return for the next accounting period.

(3) In the event of a change in the rate of Value Added Tax, a taxable person shall make an adjustment to his output tax to cover the period from the date of his last adjustment until the date of the change in the rate of Value Added Tax and on each anniversary of the change.

Decision on special retail scheme

29. The Commissioner-General shall notify any person in writing the decision to approve or reject an application to operate a special retail scheme within thirty days of receipt of the application.

Retail sales receipt

30.—(1) Where a taxable person is registered under a retail scheme, he shall issue to a purchaser a retail sales receipt printed in duplicate and containing the following minimum information, in place of a tax invoice—

(*a*) the name and full address of the seller;

(*b*) the description of the goods sold;

(*c*) the taxpayer identification number of the seller,

(*d*) the serial number of the receipt; and

(*e*) the date of the transaction.

(2) A retail sales receipt issued under subregulation (1) shall also state either the gross amount of the transaction, including Value Added Tax or the amount of the transaction and Value Added Tax.

(3) Upon request by a purchaser who is registered for Value Added Tax, the taxable person shall issue a tax invoice showing the information required by or under section 25 of the Act.

(4) All copies of the retail receipts issued under this regulation shall be retained by the supplier in accordance with regulation 20.

Use of electronic cash registers

31.—(1) A taxable person registered under a special retail scheme may install an electronic cash register to record all sales and tax liability in lieu of the issuance of retail sales receipts.

(2) An electronic cash register sales receipt shall contain the information specified in regulation 30 (1).

(3) Where an electronic cash register is used, it shall be programmed to retain information for purpose of verifying all transactions.

(4) Where requested by a purchaser who is a registered person, the taxable person shall issue a tax invoice showing the information specified in regulation 19 (2).

Authorization of other schemes by Commissioner General

32.—(1) The Commissioner-General may, in accordance with section 64 (1) of the Act authorize the use of appropriate schemes by registered retailers to ensure the proper accounting for the Value Added Tax.

(2) The Commissioner-General may issue directives authorizing other methods of taking account of the output tax chargeable and input tax deductible by other registered persons.

Withdrawal of privilege

33. The Commissioner-General may withdraw the privilege to operate special retail scheme or other scheme from a registered person at any time where the registered person does not comply with the conditions specified under these Regulations or in any directives.

Value Added Tax and other records

34.—(1) Every registered person shall, for the purpose of accounting for Value Added Tax, keep the following records—

(*a*) a Value Added Tax account to show total output tax, total input tax and the amount of Value Added Tax due or refundable for each month;

(*b*) relevant business and accounting records including sales and purchase journals, cash books, ledgers and other subsidiary books of accounts;

(*c*) copies of all tax invoices issued;

(*d*) all tax invoices received;

(*e*) documentation relating to the importation and exportation of goods and services;

(*f*) all debit and credit notes or other documents providing evidence of any increase or decrease in the value of goods and services purchased or sold by him; and

(*g*) such other records as the Commissioner-General may specify.

(2) On application by a registered person, the Commissioner-General may permit the records required to be kept under the Act or these Regulations to be maintained on computer, subject to the conditions that—

(*a*) the Commissioner-General shall have unrestricted access to the registered person's records during normal business hours;

(*b*) print-outs of any information required by Commissioner-General shall be provided at the registered person's expense

(*c*) the registered person shall, at his expense, provide competent computer staff to assist the Commissioner-General in any verification or audit he may wish to conduct; and

(*d*) the accounting programme used by the registered person is one that is approved by the Commissioner-General.

(3) A taxable person shall on request make available his records for examination by the Commissioner-General during normal working hours.

Records to be maintained by independent units

35. Where a taxable person opts to register each branch or division separately, the taxable person shall maintain separate accounting records for each branch or division for the purpose of Value Added Tax and shall file its returns accordingly.

Record to be maintained by a registered group

36.—(1) Where a group of corporate bodies opt to be registered as a single unit under section 5 of the Act, all members of the group shall adopt the same accounting period and the same accounting basis for Value Added Tax.

(2) Notwithstanding that no output tax shall be paid in transactions involving members of the group, each member of the group shall maintain distinct records, including tax invoices, for all such transactions.

Assessment to include interest and penalties

37. The amount of an assessment issued under section 36 of the Act shall include any interest payments and penalties incurred by the taxable person up to the date of issuance of the assessment.

PART IX

Recovery of Value Added Tax Due, Interest and Other Liabilities

Liability of persons ceasing to be partners

38. Any person who notifies the Commissioner-General of his intention to cease to be a partner in a business shall remain jointly and severally liable for the payment of any taxes due from the business in any accounting period up to the time he ceases to be a member of the partnership.

Liability of members of a registered group

39. Where any number of corporate bodies have been registered as members of a group under these Regulations, each member of the group shall be held liable for any Value Added Tax due from the representative member.

PART X

Miscellaneous Provisions

Use of banks

40.—(1) The Commissioner-General may enter into an agreement with any bank under which the bank agrees to receive Value Added Tax returns and to make Value Added Tax payments on behalf of the Commissioner-General.

(2) The use of a bank under an agreement under this regulation shall not relieve the Commissioner-General of his responsibility to collect and account for the Value Added Tax.

Credit for Value Added Tax paid

41.—(1) A taxable person may recover the Value Added Tax paid by him on goods, subject to output Value Added Tax, which are in stock at the start of business on the effective date, and subject to the following conditions that—

(*a*) the taxable person making a claim for goods held for resale is registered by the effective date;

(*b*) the goods on which the credit is claimed are in the possession of the taxable person at start of business on the effective date;

(*c*) the taxable person is in possession of a tax invoice or customs bill of entry showing the charge of Value Added Tax in respect of all goods for which he seeks to recover Value Added Tax and retain that evidence for inspection by the Commissioner-General for the period specified in section 35 of the Act;

(*d*) the taxable person shall have no reason for believing that the Value Added Tax has not been or will not be paid by his supplier; and

(*e*) the supply or importation must have occurred not more than six months before the effective date.

(2) A taxable person shall submit a claim for recovery of the Value Added Tax under subregulation (1) in the prescribed form contained in the Schedule hereto, to the tax office not later than thirty days from the effective date.

(3) A taxable person who claims input tax credit under this regulation shall produce an inventory of all goods on hand within thirty days from the effective date, supported by an audit certificate issued by a qualified accountant or the managing director of the company.

(4) Any Value Added Tax certified by the Commissioner-General as deductible may be treated as an input tax deduction against future Value Added tax liabilities:

Provided the deduction is made on the tax return form for any accounting period ending six months after the effective date unless taxable person is instructed otherwise by the Commissioner-General in writing.

(5) Where, following an audit inspection, certification under subregulation (4) is revoked by the Commissioner-General, any

Value Added Tax previously treated as credit may be recovered by the Commissioner-General in accordance with the provisions of the Act and these Regulations.

Contract entered into before and after the effective date

42.—(1) Where a contract was concluded between two or more parties before the effective date and no provision relating to the Value Added Tax was made in contract, the supplier shall recover the Value Added Tax due on any taxable supplies made under the contract after the effective date.

(2) Where a contract concluded after the effective date does not include a provision relating to Value Added Tax, the Contract price shall be deemed to include the Value Added Tax and the supplier under the contract shall account for the Value Added Tax due.

Relief of Value Added Tax

43. Where a person, an organization or a business is eligible for relief of Value Added Tax under the Third Schedule of the Act, the person, organization or business may apply to the Commissioner-General for the relief of the Value Added Tax in the prescribed form contained in the Schedule hereto.

Manuals and circulars

44. The Commissioner-General may issue administrative accounting and operational manuals or circulars as he considers necessary for collecting and accounting for the Value Added Tax

Revocation and Savings of Surtax Regulations G.N. 25/2002

45.—(1) The Surtax Regulations are hereby revoked.

(2) Notwithstanding subregulation (1), the Surtax Regulations, revoked by subregulation (1) shall remain in force for the purposes of—

(*a*) verifying any return filed or required to be filed thereunder;

(*b*) the assessment and recovery of any surtax or penalty payable thereunder;

(*c*) processing claims for refunds thereunder; and

(*d*) prosecuting any offence committed thereunder.

SCHEDULE FORM VAT 1

VALUE ADDED TAX ACT

(CAP. 42:02)

MALAŴI REVENUE AUTHORITY

VALUE ADDED TAX DIVISION

APPLICATION FOR REGISTRATION FOR VALUE ADDED TAX reg. 3 (1)

The completed form should be sent to: The Commissioner-General Malaŵi Revenue Authority Chayamba Building Private Bag 247 Blantyre	**FOR OFFICIAL USE ONLY** Date of receipt ..... Application checked by ..... Registration recommended by ..... Not recommended by..... Effective Date of Registration .....

1. Identification of person to be registered:

   Taxpayer Identification Number (TPIN)

Name of person to be registered	

2. Status of person to be registered:

   Limited Company/Sole Proprietor/Partnership/Other .....

   .....

   If partners, provide name, address and signature of partners

   Full name: .....

   Address: .....

   Signature: ..... Date: .....

   Full name: .....

   Address: .....

   Signature: ..... Date: .....

   Full name: .....

   Address: .....

   Signature: ..... Date: .....

3. Full address of principal place of business

4. Location of main premises .....

5. Nature of business .....

6. Trading name (if any)

7. Name of person making application:

Surname

Other names

Status: Proprietor ☐ Partner ☐ Director
Company Secretary ☐ Authorized officer ☐

Telephone No.: .....

8. Annual turnover of taxable supplies:

(*a*) Actual turnover in the past twelve months: .....

(*b*) Expected turnover in the next twelve months: .....

9. If 8 (*a*) or (*b*) are less than K2,000,000 give the following:

Actual turnover for past four quarters:

Quarter ending: ..... / ..... /.....

Quarter ending: ..... / ..... /.....

Quarter ending: ..... / ..... /.....

Quarter ending: ..... / ..... /.....

10. Annual turnover of exempt supplies expected in the next twelve months:

11. Current value of stock:

Purchase and expenses

12. Associated business, if any:

(*a*) Give TPIN: .....

(*b*) Other details:.....

13. Declaration:

I, Mr./Mrs./Miss * (Full name of Signatory in block letters): .....

.....

(*a*) Hereby declare that the information given in this form and any accompanying correspondence is true and complete, and

(*b*) Hereby apply for registration under section 11 (4) or 11 (11) of the Value Added Tax Act.

Signature: .....

Date: .....

*Delete as necessary

For Official Use Only

Registration approved/Not approved

Signed: .....

Official Stamp .....

Commissioner-General

VALUE ADDED TAX ACT — FORM VAT 2

(CAP. 42:02)

MALAŴI REVENUE AUTHORITY

CERTIFICATE OF REGISTRATION FOR VALUE ADDED TAX — reg. 8 (1)

Name of Person Registered: .....

.....

.....

.....

.....

Address of Business: .....

.....

.....

.....

.....

Taxpayer Identification Number (TPIN) | | | | | | | | | | |

Effective Date of Registration: .....

Principal Place of Business: .....

.....

.....

.....

I hereby certify that the above-named person has been registered for Value Added Tax under the Value Added Tax Act.

Date: ....

Commissioner-General

FORM VAT 3

VALUE ADDED TAX ACT

(Cap. 42:02)

MALAŴI REVENUE AUTHORITY

VALUE ADDED TAX DIVISION

VALUE ADDED TAX RETURN reg. 26

(USE BLOCK LETTERS)

NAME OF REGISTERED PERSON: .....

(*Full Names*)

ADDRESS: .....

TPIN | | | | | | | | | | |

Value Added Tax Return for the Month of ..... , 20.....

	Goods and Services supplied and Purchased	*Value*	*Value Added Tax Rate*	*Value Added Tax*
1.	Value and Value Added Tax due on sales and other outputs			
2.	Underpayment from previous tax period(s)			
3.	Value of supplies exported under customs control			
4.	Value of zero rated supplies			
5.	Total value and Value Added Tax due (box 1 plus box 2 plus box 3 and plus box 4)			
6.	Value of exempt supplies			
7.	Value and input Value Added Tax on purchases and other expenses			
8.	Value and input Value Added Tax on capital goods			

	Goods and Services supplied and Purchased	*Value*	*Value Added Tax Rate*	*Value Added Tax*
9.	Over payment from previous tax period(s)			
10.	Excess Value Added Tax brought forward from previous tax period Less application for refund			
11.	Value of zero rated purchases and other expenses			
12.	Total value and Value Added Tax on inputs (box 7 plus box 8 plus box 9 plus box 10 and plus box 11)			
13.	Value of exempt purchases and other expenses			
14.	Value Added Tax payable (box 5 minus box 12) leave blank if box 5 is less than box 12			
15.	Excess Value Added Tax-credit (box 12 minus box 5) leave blank if box 12 is less than box 5 carry this figure forward to box 10 of next Value Added Tax return			

TRANSACTION INFORMATION

Enter here details of four LARGEST input Value Added Tax amounts on either invoices or bills of entry included in box 7 and 8 above.

Invoice or Bill of Entry Number	*Date of Invoice or Bill of Entry*	*Name of Supplier*	*Supplier's TPIN*	*Description of Taxable Supply*	*Value Added Tax on Supplies Purchased*
1.					
2.					
3.					
4.					

DECLARATION

I, ... (*Full name*)

DECLARE that the information given on this VAT return is true and correct.

Signature: ..... Date.....

Amount Paid (MK): .....

Position in Company: .....

OFFICIAL
DATE STAMP

FOR OFFICIAL USE ONLY

Receiving Officer's Name	*Officer's Name*	*Date Received*	*Cheque Number*
Amount Received	Computer Operator's Initials And Date	Docket Number	Serial Number

FORM VAT 4

VALUE ADDED TAX ACT

(Cap. 42:02)

MALAŴI REVENUE AUTHORITY

VALUE ADDED TAX DIVISION

VALUE ADDED TAX REFUND OR CREDIT FORM ON
VALUE ADDED TAX—PAID STOCK reg. 23 (2)

(to be submitted with Form VAT 3)

INSTRUCTIONS: In each section, insert the appropriate value and VAT amount

[Subsidiary] *Value Added Tax Regulations*

TPIN | | | | | | | | | | |

Name of Person _____ Registered

Postal Address _____

PART A: VAT Paid on Goods on Hand (Effective Date of Registration) .....

Supplier's TPIN (1)	*VAT Invoice or Bill of Entry Number* (2)	*Date of Invoice* (3)	*Quantity of Goods* (4)	*Description of Goods* (5)	*Value of Goods* (6)	*VAT Rate* (7)	*VAT Paid* (8)
PART B: Reconciliation with Form VAT 3							
Enter the amount of Value Added Tax paid on goods on hand at the date of registration (Total of Column 8. This amount should also be entered in Column 7 of VAT Form VAT 3							

PART C: Declaration

I, ... (full name) hereby declare that the above is full and true account of the Value Added Tax paid on taxable supplies purchased prior to the date of registration and remaining in stock on that date.

Signature: .....

Position of signatory: .....

FOR OFFICIAL USE ONLY

Officer/Accepting this Form: .....

(*Name in full*)

Signature: .....

DATE STAMP

Bills of Entry and Purchase
Invoices Verified and
Compared With Stock on Hand
By:

(Name in full).....

Signature: .....

Date:.....

FORM VAT 5

VALUE ADDED TAX ACT

(Cap. 42:02)

MALAŴI REVENUE AUTHORITY

VALUE ADDED TAX DIVISION

APPLICATION TO PURCHASE GOODS FREE OF VALUE ADDED TAX reg. 43

(*To be completed in triplicate by the purchaser/purchasing organization*)

Purchaser's Name: ..... Supplier's Name: .....

TPIN Address: ..... TPIN Address: .....

....

....

Proforma Invoice Number: ..... Date: .....

Payment by: (*a*) Cheque ☐ (*b*) Cash ☐ (*c*) Other (state) .....

Full Name of Person submitting the Form: .....

Signature: .....

Mode of Identification: (ID, Passport, Driving Licence) No.: .....

Order/LPO No.	*Date*	*Description of Goods*	*Unit Price*	*Quantity*	*Total Value (Kwacha)*
				TOTAL VALUE	

Total value (in words) .....

I declare the goods listed above eligible for entry under Customs Procedure Code No.

.....

And are for exclusive use for/by: .....

Place of use: .....

Address: .....

.....

.....

.....

The above information is, to my best knowledge, true and correct

Full Name in print: .....

Signature: .....

Office Title: .....

DATE STAMP

<table>
<tr><th>FOR OFFICIAL USE ONLY</th><th>FOR MANUFACTURER'S USE ONLY</th><th>FOR OFFICIAL USE</th></tr>
<tr><td>Approved ☐
Not Approved ☐</td><td>Goods Supplied Yes / No</td><td>Trading Records Verified and Certified Correct</td></tr>
<tr><td>Full name: .....
.....
Signature: .....</td><td>Invoice No. .....
and Date .....
Delivery Note No. .....
and Date .....</td><td>By: .....
VAT Officer</td></tr>
<tr><td>Expiry Date: .....
DATE STAMP</td><td>Vehicle No. | Quality | Ref.
OFFICIAL DATE STAMP</td><td>DATE STAMP</td></tr>
</table>

VALUE ADDED TAX (ELECTRONIC FISCAL DEVICES) REGULATIONS

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VALUE ADDED TAX (ELECTRONIC FISCAL DEVICES) REGULATIONS

under s. 63(1) G.N. 10/2014

PART I
PRELIMINARY

1. These Regulations may be cited as the Value Added Tax (Electronic Fiscal Devices) Regulations. Citation

2. In these Regulations, unless the context otherwise requires— Interpretation

"certified electronic fiscal device" means an electronic fiscal device that has passed through a certification procedure as established by the Electronic Fiscal Devices Technical Committee;

"certified technician" means an employee of a licensed supplier who is a qualified technician and has been trained and certified by the licensed manufacturer to perform maintenance services on electronic fiscal devices under the instructions of his employer;

"Commissioner General" means the Commissioner General of the Malaŵi Revenue Authority appointed under section 17 of the Malaŵi Revenue Authority Act;

Cap. 39:07

"daily gross takings" means all payments received for goods or services supplied for each day;

"Electronic Fiscal Devices Technical Committee" means a Committee appointed pursuant to under regulation 18 of these Regulations;

"electronic fiscal device" (in these Regulations, otherwise referred to as "EFD") means a machine designed for use in business for efficient management controls in areas of sales analysis and stock control system which conforms to requirements specified in these Regulations and duly registered under regulation 4, and it includes electronic tax register, electronic fiscal printer and electronic signature device;

"electronic fiscal journal" means a device that forms part of the electronic fiscal device and it stores sales transaction details and allows easier searching for fiscal data inside it in a read-only mode;

"electronic signature device" means a record-signing device used in conjunction with a personal computer system that runs the accounting software that issue letter-headed pre-printed fiscal documents;

"fiscal document" means a fiscal sales receipt, fiscal invoice, fiscal refund receipt, fiscal daily sales, or fiscal periodical summary report;

"fiscal management software" means a computer software of the system which is used to receive all transactions including Z-reports from all electronic fiscal devices connected to it and can generate various reports as required;

"fiscal receipt" means a fiscal document printed by electronic fiscal device for a customer for the supply of goods or services supplied to him bearing the contents as specified by the Commissioner General under the Third Schedule to these Regulations and whose record is stored in the memory of the Electronic Fiscal Device;

Third Schedule

"general packet radio service" (in these Regulations, otherwise referred to as "GPRS")has the meaning as described by the general information and communication technology discipline;

"GSM" means global system for mobile communication as used in general information and communication technology discipline;

"licensed manufacturer" means a person approved by the Malaŵi Revenue Authority to manufacture, produce and supply electronic fiscal devices to licensed distributors;

"licensed supplier or distributor" means a person approved by the Malaŵi Revenue Authority to supply, distribute, operate and service electronic fiscal devices in accordance with these Regulations;

"Malaŵi Revenue Authority" has the meaning ascribed to it under the Malaŵi Revenue Authority Act; Cap. 39:07

"sim card" means a hardware assigned to each user's electronic fiscal device that enables it to communicate with the system in a GSM network;

"system" means an electronic information system established by the Commissioner General under these Regulations;

"taxable person" has the meaning as provided under section 2 of the Act;

"user" means a person who is the owner, or employee who is required to use electronic fiscal device and includes the persons registered under the Act and these Regulations;

"Z" has the meaning as an ordinary meaning of the word "summary"; and

"Z-report" means a summary sales report printout generated by an electronic fiscal device on daily, monthly, or annual basis.

Application

3. These Regulations shall apply to any person who, under section 11 (6) of the Act, is required to acquire and use an electronic fiscal device.

PART II
Registration and Licensing

Registration of a user

4.—(1) Each of the following persons shall register to the Commissioner General as a user—

(*a*) a taxable person; or

(*b*) any other person who may be appointed by the Commissioner General to be eligible for registration as a user for purposes of the Act.

(2) In order to qualify for registration as a user, a person shall satisfy the following conditions—

(*a*) submit to the Commissioner General the following documents—

(i) a fiscal receipt or fiscal invoice;

(ii) a delivery note;

(iii) a job card or installation sheet from a licensed supplier; and

(iv) a first Z-report generated at installation; and

(*b*) any other requirement as may be prescribed by the Commissioner General.

(3) Upon registration, a person shall be issued with an identification number as prescribed by the Commissioner General and shall become a registered user.

(4) A registered user shall comply with the terms and conditions issued together with the identification number.

Certification of electronic fiscal device

5.—(1) The Commissioner General shall certify an electronic fiscal device before it is used and connected to the system for use by a user.

(2) The certificate prescribed under subregulation (1) shall be permanently marked at a conspicuous place on the electronic fiscal device.

(3) A local supplier shall ensure that certification is obtained prior to the electronic fiscal device being handed over to a user.

(4) The Commissioner General shall not issue a certificate to electronic fiscal device that has not been submitted for certification in accordance with these Regulations, and any user who is found using or attempting to use such a device commits an offence.

Application for a local supplier's certificate
First Schedule

6.—(1) A person may apply to the Commissioner General in writing to be granted a local supplier's licence to supply electronic fiscal devices and the application shall be made in the manner prescribed in the First Schedule to these Regulations.

(2) A person who has applied to the Commissioner General pursuant to subregulation (1), may be granted a licence as a local supplier where such person has complied with the following requirements—

(*a*) he has a minimum working capital, confirmed by a recent audit of his accounting books, as prescribed by the Commissioner General;

(*b*) he has a highly qualified technical staff properly trained and certified by the electronic fiscal devices manufacturers to install, configure, repair and service the electronic fiscal devices supplied by the local supplier;

(*c*) he undertakes to train and support a user as per the terms of the licence;

(*d*) he has at least five years' experience in supplying fiscal devices or similar information communications technology equipment;

(*e*) he has passed through all the licensing procedures as set out under the First Schedule to the Regulations;

First Schedule

(*f*) the application is made in response to a public advertisement calling for such applications; and

(*g*) he has satisfied any other requirements as may be prescribed by the Commissioner General.

(3) Upon being satisfied with an application under this regulation, the Commissioner General may issue a licence to the applicant.

(4) A local supplier who has been issued with a licence is bound by the terms and conditions stipulated in the Act, these Regulations and the licence.

(5) Where the Commissioner General has established that a local supplier has breached the terms and conditions of a licence, whether intentionally or not, he may—

(*a*) suspend the licence;

(*b*) withdraw the licence;

(*c*) review the terms and conditions of the licence;

(*d*) issue a monetary penalty;

(*e*) revoke the licence ; or

(*f*) cancel the licence.

(6) The Commissioner General, in exercising the powers under subregulation (5), shall take into account the nature and gravity of the breach.

Licensed local supplier's rights and obligations

7.—(1) A licensed local supplier shall—

(*a*) comply with the bond requirements fee as provided for in the licence before rolling out;

(*b*) enter into a binding contractual agreement with any licensed manufacturer for the supply of electronic fiscal devices, and deposit a copy of such agreement to the Commissioner General;

(*c*) purchase, sell, distribute, operate and service the electronic fiscal devices to any user in Malaŵi;

(*d*) obtain approval from the Commissioner General prior to selling or distribution to any intended user;

(*e*) submit a sample of the model of each electronic fiscal device, together with relevant device instruction manual to the Commissioner General for the purpose of approval;

(*f*) submit to the Commissioner General relevant data or evidence related to electronic fiscal devices sales he has made to users and such information should relate to all sales invoices, job cards, each user's particulars including each Taxpayer Identification Number (TPIN);

(*g*) install, configure and activate the supplied electronic fiscal device at a his place of business or user's premises;

(*h*) provide to a user an inspection booklet for each electronic fiscal device supplied and installed at a user's premises;

(*i*) keep stock of spare parts and accessories for each model of electronic fiscal devices to be made available to any user for a period of not less than five years from the time when the last batch of the model of the electronic fiscal device and accessories was supplied;

(*j*) train any user to whom he has supplied the devices on the best ways of administering and operating the electronic fiscal devices;

(*k*) promptly responds to any call for fix, repair or maintain electronic fiscal devices made by a user to him within 24 hours of receiving such a call;

(*l*) report to the Commissioner General any call or request received to fix, repair or maintain electronic fiscal devices;

(*m*) provide an alternative electronic fiscal device, with prior approval obtained from the Commissioner General, where a user's device is under maintenance;

(*n*) provide after-sales support at an agreeable fee and maintain the supplied electronic fiscal devices at a users' premises to ensure smooth operation and running of the devices; and

(*o*) submit to the Commissioner General any changes relating to the details of his certified technical personnel at all times.

(2) A licensed local supplier shall, after presenting a sample of the electronic fiscal devices to the Commissioner General for certification and testing purposes and after the Electronic Fiscal Device Technical Committee has recommended for approval of the sample, surrender the sample free of charge to be kept in the Commissioner General's custody as evidence of the supplier's product that has been approved or rejected for use by users.

(3) A licensed local supplier shall not sell or distribute electronic fiscal devices to a user without obtaining a prior written approval for such specific sale from the Commissioner General.

(4) A licensed local supplier may, in compliance with the terms and conditions of his licence or upon request by the Commissioner General, open up outlets or branches in various regions within Malaŵi for convenient, efficient and effective discharge of his obligations stated in the licence and these Regulations.

(5) A licensed supplier shall fix any malfunctions on any electronic fiscal device at a cost to be borne by a user, either as agreed for a specific task or under an annual service level agreement, of the malfunctioning device within a maximum of 48 hours from the time of reporting or the time when the reporting was due.

(6) A licensed supplier shall provide an alternative means of transacting business to a user whose device is going through maintenance and such alternate means shall be used after obtaining approval from the Commissioner General.

Licensing of electronic fiscal devices manufacturers

8.—(1) A person may apply to the Commissioner General in writing to be granted a licence to manufacture electronic fiscal devices to be supplied to licensed local suppliers.

(2) A person who has applied to the Commissioner General pursuant to subregulation (1), may be granted the licence as a manufacturer where such person has—

(*a*) a reputable financial position as determined by the Commissioner General at the time when calls for applications are being made;

(*b*) a proven record of possessing a highly technical expertise in manufacturing, research and development of electronic fiscal devices;

(*c*) a minimum of six years' experience in manufacturing, research and development of electronic fiscal devices;

(*d*) a standard policy of product guarantees and warranties covering a period of not less than three years;

(*e*) undertaken and guaranteed to enter into a contract of supply and service support with licensed local suppliers to supply both certified electronic fiscal devices and spare parts for a period of at least five years regardless of the change of technology, a copy of which contract shall be deposited with the Commissioner General; and

(*f*) any other requirements as may be prescribed by the Commissioner General.

(3) The Commissioner General may issue a manufacturer's licence to a manufacturer who has applied and has qualified, permitting the manufacturer to—

(*a*) produce;

(*b*) sell;

(*c*) supply; and

(*d*) develop electronic fiscal devices.

(4) A manufacturer shall produce electronic fiscal devices in accordance with the terms and conditions of his licence and the requirements set out in the Second Schedule to these Regulations. *Second Schedule*

(5) A licensed manufacturer may, after being issued with a licence under subregulation (4), enter into a supply agreement with any licensed supplier as the manufacturer deems it fit and necessary.

PART III
Electronic Fiscal Device System

Establishment of the system of fiscal information

9.—(1) The Commissioner General shall establish a system for transmission, receipt, storage and monitoring of fiscal information relating to sales transactions done by users of electronic fiscal devices in the course of their daily business.

(2) The system referred to in subregulation (1) shall—

(*a*) be electronically connected, be it real time or not, to all users of electronic fiscal devices by using GPRS connexion mode as registered under these Regulations;

(*b*) use a secure fiscal management software compatible with a user's electronic fiscal devices software, be it the software embedded in the device or the accounting package customized for use by the user; and

(*c*) be managed, controlled, secured administered by the Commissioner General.

(3) The system established under subregulation (1) shall have the following features—

Second Schedule

(*a*) the technical specifications set out in the Second Schedule to these Regulations;

(*b*) relevant hardware and software capable of receiving, analyzing, manipulating, disseminating and storing all information generated by registered electronic fiscal devices throughout Malaŵi;

(*c*) storage capacity of keeping information for a period of more than six years;

(*d*) security measures for its hardware and software that will ensure that fiscal receipts and fiscal invoices issued by the system through users' electronic fiscal devices may not be printed unless the flow of command is through the system;

(*e*) be able to send commands and messages electronically to a user through an electronic fiscal devices without requiring approval from a user; and

(*f*) inscribe a secure signature on the fiscal receipt or fiscal invoice indicating that the sale transaction and its corresponding taxes have been officially captured.

PART IV
Users' Obligations

Users' requirements and obligations

10.—(1) A person who has qualified for registration under regulation 4 (2) as read with Section 11 of the Act, shall use electronic fiscal devices in his daily business transactions.

(2) A person who is registered under these Regulations, shall conduct all his business transactions within Malaŵi and shall print a receipt or tax invoice of the transaction using electronic fiscal devices.

(3) A user shall purchase a complete set of electronic fiscal devices from a licensed supplier.

(4) A user shall connect his electronic fiscal devices to the Malaŵi Revenue Authority's system and ensure that all his business transactions are electronically recorded and transmitted through a GPRS link into the system through the electronic fiscal devices.

(5) A user shall issue a fiscal receipt or invoice generated by the electronic fiscal device for the consideration paid to him for supplies made to a customer.

(6) A user with compatible accounting software to the system may be allowed to continue issuing fiscal receipts or invoices using such accounting system:

Provided that the receipt or invoice shall bear an electronic signature issued by electronic signature devices.

(7) A user shall acquire, keep, handle and use electronic fiscal devices with diligence and standard of care as prescribed by licensed manufacturer's operational manuals.

(8) A user who has electronic signature device shall, for purposes of business continuity and continuous availability of data, back up data on daily basis on his personal computer which the electronic signature device is connected and is required to store the backed up data in a secure place.

(9) Where a user's electronic fiscal device fails to operate for any reason, the user shall, within a period of 24 hours from such failure—

(*a*) report the incidence in writing to a licensed supplier and the Commissioner General; and

(*b*) record in the inspection booklet—

(i) time and kind of failure; and

(ii) time of notification to a local supplier and the Commissioner General.

Inspection booklet

11.—(1) A licensed supplier shall provide an inspection booklet to a user and such a booklet shall be provided together with the electronic fiscal devices at installation.

(2) Once the inspection booklet for each electronic fiscal device is provided, a user shall ensure that the booklet is at a place where the electronic fiscal device is installed.

(3) A user shall, in case of a failure of an electronic fiscal device to operate, immediately stop using the device and record in the inspection booklet the time and kind of the failure and the exact time of notification to a local supplier and the Commissioner General;

(4) A user shall ensure that every record entered into the inspection booklet is legible and appropriately signed, listing the name and identity

of the person responsible for entering the records, date and time of the incident of the failure.

(5) An inspection booklet provided under subregulation (1) shall contain the following information—

(*a*) details of inspections made and the findings by a licensed supplier or his certified technician with regard to the proper keeping of the inspection booklet, the general condition of the machine and the condition of its seal and the times of the machine breakdown, if any;

(*b*) explanation for any unreported defect and a copy of such explanation, where the machine is found to be defective; and

(*c*) notification of machine failure, the time of removal and attachment of the seal, the time the machine is put to use after repair, description of the defect, the period for which the machine was not in use, as well as other relevant information about the machine as may be required by the Commissioner General.

PART V
Electronic Fiscal Device Operations

Procurement of electronic fiscal devices

12. A user may procure and purchase electronic fiscal devices from any licensed supplier as is convenient for his business dealings.

Erroneous entry of electronic fiscal devices

13.—(1) Where a user has erroneously entered data or information into an electronic fiscal device, he shall proceed to print the erroneous information and keep the record thereof for further reconciliation and rectification with the Commissioner General.

(2) Where an error referred to in subregulation (1) has occurred, a user shall proceed to enter correct data and information into his electronic fiscal device and thereby issue a correct fiscal receipt to his intended customer.

User not to transfer electronic fiscal devices

14. A user shall not transfer any electronic fiscal device to any other person for resale or any use, be it temporary or permanent and the electronic fiscal device shall only be used by the user who purchased it.

Electronic fiscal devices to be at a conspicuous place

15. A user shall ensure that an electronic fiscal device is at a place which is accessible and conspicuous to customers at his place of business.

Functions of electronic fiscal devices

16.—(1) A licensed supplier shall supply electronic fiscal devices capable of performing the following electronic operations—

(*a*) receiving, manipulating, transmitting to the system, storing, and printing information as entered into it by a user;

(*b*) recording sales and issue fiscal receipts in form and manner prescribed in the Third Schedule to these Regulations; *Third Schedule*

(*c*) keeping memory as a read only fiscal memory and capable of storing data for at least five years;

(*d*) cannot reverse entered sales data or any other information including dates and time of completed transaction;

(*e*) create an in built reconnexion reports of fiscal memory;

(*f*) using approved paper rolls that can capture all important details of a users' business transactions;

(*g*) cannot delete any information or data that entered into the electronic fiscal device;

(*h*) send an alarm to alert operators in case of memory disconnexions;

(*i*) receiving and displaying alert messages from operations resulted from any malpractice, error, or any inconsistent action noticed in the system;

(*j*) allowing Commissioner General and his officers to view, read, and print all on-going daily business transactions performed by users;

(*k*) creating an in built link device that connects the user with the system;

(*l*) providing security features for both hardware and software;

(*m*) capable of being used for instant recording of sales via electronic journal, instant issuance of fiscal receipts and instant storage of tax information.

(*n*) capable of issuing Z-sales reports; and

(*o*) capable of recording errors that occur in the course of a user's transactions.

17.—(1) Electronic fiscal devices shall be used in all categories of business transactions relating to supply of goods or services involving users whereby each user shall use an electronic fiscal device suitable to the category, operation and type of his business transactions. Use of electronic fiscal devices

(2) A user shall enter into his electronic fiscal device all required information relating to his business transactions and issue fiscal receipts or invoices to his customers.

(3) Where user's customers are not present during or after sale or purchase transactions, the user shall proceed to enter into his electronic fiscal device all required information pertaining to the transactions made and keep any generated fiscal receipts thereof.

(4) Each generated fiscal receipt or invoice shall bear a fiscal logo.

PART VI
Administration

Electronic Fiscal Device Technical Committee

18.—(1) Commissioner General shall appoint Electronic Fiscal Device Technical Committee (in these Regulations otherwise referred to as the "Committee"), which shall be responsible for all matters relating to technical aspects of electronic fiscal devices and its administration under these Regulations.

(2) The Committee shall consist of the following members—

(*a*) the Commissioner of Domestic Taxes at the Malaŵi Revenue Authority;

(*b*) the Director of Information and Communication Technology at the Malaŵi Revenue Authority;

(*c*) the Director of Corporate and Legal Services at Malaŵi Revenue Authority;

(*d*) the Director General of the Malaŵi Bureau of Standards; and

(*e*) any other person as the Commissioner General may appoint to represent any of the members from the Malaŵi Revenue Authority or in addition to the members.

(3) Where the Commissioner General has appointed additional member to the Committee pursuant to subregulation (2) (*e*), the total number of members shall not exceed seven.

(4) The Committee shall advise the Commissioner General on all matters pertaining to implementation of these Regulations including—

(*a*) advising on all matters pertaining to the governance of electronic fiscal devices operations;

(*b*) advising on the issuance of electronic fiscal devices certificate of usage upon satisfaction of the specified technical and functional characteristics;

(*c*) inspecting the electronic fiscal device for which the certificate is issued as well as the repair activity operations;

(*d*) rejecting the usage of defective electronic fiscal device; and

(*e*) advising to cancel a licence of a supplier where there is proof of noncompliance with these Regulations.

(5) The secretary to the Committee shall be accountable to the chairman of the Committee and shall have the following duties and responsibilities—

(*a*) properly register applications for licences submitted to the Committee;

(*b*) prepare agenda for Committee meetings;

(*c*) keep minutes of Committee meetings;

(*d*) prepare periodical performance reports as may be required; and

(*e*) carry out any other tasks assigned by the chairman of the Committee.

(6) The Committee shall submit report to the Commissioner General from time to time as may be required.

(7) The advice of the Committee shall not be binding but shall be a guide to the decision to be made by the Commissioner General.

Fiscal logo

19.—(1) The Commissioner General shall create or select a specific mark and register it with the Registrar of Trade Marks for purposes of establishing a fiscal logo or may opt to use any of the already registered marks of the Malaŵi Revenue Authority.

(2) The fiscal logo referred to in subregulation (1) shall be a duly registered business mark to be used as an identification emblem in all fiscal documents.

(3) Every document printed and issued by an electronic fiscal device shall have a fiscal logo.

(4) The Commissioner General shall, prior to the use of the selected fiscal logo, issue a public notice in the newspaper of wide national circulation in order to inform the public on the selection of fiscal logo and its use.

(5) The Commissioner General may, at any time and after having sufficiently informed the general public, for reasons he deems fit, change a fiscal logo.

Requirement to keep records

20.—(1) A user shall ensure that all records entered into his electronic fiscal devices are safely kept and secured by the authorized security measures provided by the Commissioner General.

(2) A user shall not tamper with records kept in his electronic fiscal devices and shall ensure that the records are retained therein for at least five years from the date of entering the records in pursuant to subregulation (1).

Inspection

21.—(1) The procedure provided for in the Act shall apply when the Malaŵi Revenue Authority conducts inspections.

(2) The Commissioner General may, in case of detention or seizure of an electronic fiscal device for any reason, issue a notice in writing to a user authorizing the use of manual receipts and invoices or provide the user with temporary electronic fiscal device for use pending the outcome of the investigation or closure of the matter that caused the detention or seizure.

(3) Where an electronic fiscal device is restored to a user after detention or seizure, the user shall key in the electronic fiscal device all the information contained in the manually issued receipts and invoices at the start of operation of an electronic fiscal device.

Investigation

22.—(1) The Commissioner General may launch an investigation on a user, where he has reasonable grounds to believe that the conduct of the user in dealing or handling electronic fiscal devices is contrary to the Act or these Regulations.

(2) Where the Commissioner General in the course of investigations against a user, discovers that any provision of the Act or these Regulations has been contravened, he may notify the user, in writing, the contravention committed and a penalty imposed as a result of the contravention.

(3) Where a user receives the notification referred to in subregulation (2), he may, within a period of seven days, respond to the notice, either denying the alleged infringement, stating his grounds for the denial in writing, or admit and request the Commissioner General to compound the offences committed and settle in accordance with the provisions of sections 46 to 49 of the Act.

(4) Where a user denies all the allegations contained in the notification referred to in subregulation (2), the Commissioner General may proceed to take any enforcement action as authorized by the Act and the Regulations or institute criminal proceedings against the user.

Periodic maintenance

23.—(1) The Commissioner General shall set periodic technical maintenance for users' electronic fiscal devices by way of notice issued through the system, or to the public through a newspaper with a national wide circulation.

(2) A user shall ensure that his electronic fiscal device undergoes periodic technical maintenance service within the time frame prescribed by the Commissioner General in a notice issued either through the system or the public.

(3) The technical maintenance service mentioned in subregulation (2) shall be performed by a licensed supplier's certified technician.

(4) A user may request a licensed supplier to provide maintenance services of the electronic fiscal device, provided that a copy of the request shall be sent to the Commissioner General, specifying the user's physical address and the nature of the request.

(5) The expenses for periodic maintenance of an electronic fiscal device and any other maintenance on request shall be borne by the user of the serviced device.

(6) A user shall, during maintenance services, use alternative means of transacting business as provided for in these Regulations.

(7) A licensed supplier shall, once an approved technician has been appointed by the supplier, immediately and in writing, notify the Commissioner General the name, qualifications, and the authorization of the technician and such details shall be recorded and kept in the Commissioner General's register.

(8) Where the Commissioner General has reasons to believe that any approved technician is not suitable, or capable of performing any of the functions and duties required under these Regulations, he may prohibit such technician from conducting maintenance services of the electronic fiscal devices or activities relating to the administration of these Regulations and shall strike out the name of such technician from the register.

(9) A licensed supplier and the user shall notify the Commissioner General in writing of each technical maintenance done on users' electronic fiscal device, notwithstanding inspection booklet, within a period of fourteen days from the date of the maintenance service.

PART VII
Offences

Failure to use electronic fiscal device

24. A user of an electronic fiscal device or any person who is required to use an electronic fiscal device, who fails to do so without approval, commits an offence and, shall be liable to—

(*a*) a penalty imposed by the Commissioner General of K500,000; or

(*b*) upon conviction, to a fine of K 1,000,000 or imprisonment for two years.

Fraudulent use of electronic fiscal device

25. Any person who, with intent to defraud, takes steps to use electronic fiscal device in a manner that is aimed at misleading, deceiving, or manipulating information sent to a system or the Commissioner General, commits an offence and shall, in addition to payment of tax which is payable, be liable to—

(*a*) a penalty imposed by the Commissioner General of twice the amount of tax involved or K5,000,000, whichever amount is greater; or

(*b*) upon conviction to imprisonment for two years.

Tampering with electronic fiscal device and software

26. Any person who, without prior authorization, tampers with or causes an electronic fiscal device to perform improperly, commits an offence and shall be liable to—

(*a*) a penalty imposed by the Commissioner General of K500,000; or

(*b*) upon conviction, to a fine of K1,000,000 or to imprisonment for two years.

Failure to comply with any obligation as a user or supplier

27. A person who violates any obligation as a user or local supplier under these Regulations, shall be liable to a penalty imposed by the Commissioner General of K500,000.

Failure to demand or keep a fiscal receipts

28.—(1) A person who, after purchasing goods or services, fails to demand and retain a fiscal receipt or fails to report a refusal by a user to issue a fiscal receipt as required by these Regulations, commits an offence and shall be liable to a penalty imposed by the Commissioner General of the three times the tax payable.

(2) A person who, after selling goods or services, fails to issue and retain a duplicate fiscal receipt or fiscal invoice or refuses to issue a fiscal receipt or invoice upon demand as required by these Regulations, commits an offence and shall be liable to—

(*a*) a penalty imposed by the Commissioner General of K500,000; or

(*b*) upon conviction, a fine of K1,000,000 or to imprisonment for two years.

General offence

29. A person who commits an offence under these Regulations for which no specific penalty is provided shall be liable to—

(*a*) a penalty imposed by the Commissioner General of a minimum K500,000; or

(*b*) upon conviction to a fine of K1,000,000 or to a term of imprisonment for two years.

PART VIII
General Provisions

Deregistration of user's identification number

30.—(1) The Commissioner General may, for any good reason, deregister any identification number issued to a user under these Regulations.

(2) Where the Commissioner General deregisters an identification number pursuant to subregulation (1), the person whose number has been deregistered shall stop using the device on which the identification number had been issued.

(3) Where a user has been deregistered under these Regulations, the electronic fiscal device shall be disconnected from the system.

(4) Where a user's device has been disconnected in accordance with subregulation (3) above, the user may apply to have the electronic fiscal device reconfigured by the Commissioner General for further usage.

Appeals

31.—(1) A person who is dissatisfied with a decision of an officer of the Malaŵi Revenue Authority, other than the Commissioner General,

in administration of these Regulations may lodge an appeal to the Commissioner General in accordance with the procedure provided for in section 43 of the Act.

(2) An appeal under subregulation (1) shall be in writing, and shall specify in detail the grounds, supported by relevant documents, upon which the appeal is founded.

(3) The Commissioner General shall determine the appeal within thirty days of receipt of the appeal and, where necessary, after oral submissions by the appellant.

(4) Any person dissatisfied with the determination of the Commissioner General on any appeal lodged may appeal in accordance with Section 44 of the Act.

Recovery of costs of acquiring initial electronic fiscal devices

32.—(1) A user is authorized to recover the cost of the initial purchase or first batch against value added tax return on the month immediately after the purchase.

(2) A user shall off-set any money spent in purchasing the initial or first batch of electronic fiscal devices in the manner set out in the Fourth Schedule to these Regulations.

(3) For avoidance of any doubt, the term "first batch" as applied in these Regulations means the first purchase order of electronic fiscal devices to be made by the identified user in subregulation (1).

Obligation to retain fiscal receipt by a customer

33.—(1) A person to whom a fiscal receipt or invoice is issued as a customer shall demand and retain the receipt or invoice in his possession or at a reasonable place and shall, upon request made by the Commissioner General, or any officer authorized by the Commissioner General, produce and deliver the required receipt or the invoice.

(2) A customer who, having demanded a fiscal receipt or invoice after obtaining goods or services, is refused to be issued with such receipt or invoice, shall immediately report to the Commissioner General through the quickest means of such refusal or denial.

Repeal of G.N. 16/2011

34. The Value Added Tax (Electronic Tax Registers) Regulations, 2011 are hereby repealed.

PART IX
Transitional Arrangements

Transitional provision

35. A user who has not acquired an electronic fiscal devices shall, upon coming into force of these Regulations, continue to use manual tax invoices or receipts until such a period as the Commissioner General may, by notice issued in the newspaper of national wide circulation, authorize.

FIRST SCHEDULE reg. 6 (1) and (2)

ELECTRONIC FISCAL DEVICE SUPPLIER'S LICENSING PROCEDURE

For the purpose of suppliers licensing/registration/certification and EFD certification, the following documentation and process is adopted before the device is certified and the supplier is licensed by the Commissioner General—

(*a*) a detailed specification of the machines the supplier plans to introduce in the market, in compliance with the specifications prescribed in these Regulations;

(*b*) names of the licensed manufacturers of the devices;

(*c*) certificate of the licensed manufacturers;

(*d*) names of countries where the devices have successfully been operating;

(*e*) a brief explanation of its security features for both the software and hardware;

(*f*) information on whether the devices can securely interface with users' accounting systems in case a user is already using other devices capable of transmitting information to the Malaŵi Revenue Authority's central database;

(*g*) brief background of the supplier's business and experience in dealing with similar devices;

(*h*) supplier's detailed training program for the operation and programming of the devices, the length of time required for this training, the training fees, if any;

(*i*) the technical, maintenance and repair services that the supplier shall provide and the replacement parts the supplier shall keep in their inventory;

(*j*) the minimum amount of capital the supplier plans to allocate to the project;

(*k*) expected minimum and maximum selling price of the devices;

(*l*) a bank guarantee which the supplier shall provide;

(*m*) supplier's bankers;

(*n*) a list of qualified technical staff with details of their qualifications, capable of performing periodic maintenance and carry out any repair works on the devices;

(*o*) any other relevant information the supplier's may wish to include in the business plan or as requested; and

(*p*) further to the above mentioned information, the following documents shall also be required—

(i) operation and maintenance catalogues;

(ii) photographs/block diagram;

(iii) components lists;

(iv) descriptive reports and security features write-up;

(v) sample of all documents printed by the devices, if any; and

(vi) a certificate of the safety of the electronic fiscal device.

SECOND SCHEDULE

reg. 8 (4)

Technical Specifications for Electronic Fiscal Devices

PART I
General Technical Requirements

1. An electronic fiscal device shall have the following general technical requirements—

(*a*) language support—all information technologies must provide support for English. Specifically, all display technologies and software must be certified by the International Organization for Standardization;

(*b*) dates—all information technologies must properly display, calculate, and transmit date data, including, but not restricted to 21st century date data;

(*c*) electrical power—all active equipment must have in-built power adapter or external power adapter to operate on: voltage range and frequency range of AC 220v 41- 20v, 50Hz - 60Hz to 6, or + 24. All active equipment must include power plugs in British standard;

(*d*) environmental—unless otherwise specified, all equipment must operate in environments of temperature, humidity, and dust conditions of, -10 to + 60 degrees centigrade, 20–80 per cent relative humidity, and 0–40 grams per cubic meter of dust; and

(*e*) safety—

(i) unless otherwise specified, all equipment must operate at noise levels no greater than 65 decibels; and

(ii) all electronic equipment that emit electromagnetic energy must be certified as meeting emission standard; US FCC class B or EN 55022 and EN 50082-1, or the equivalent.

PART II
Hardware Specifications

Physical Features

2. An electronic fiscal device shall have the following physical features—

(*a*) to have a fiscal memory in-built in Raisin Epoxy that cannot be erased by mechanical, chemical or electromagnetic interference;

(*b*) to have a screw with a sealable top that can be sealed with lead or wax and sealed with a unique seal issued to the supplier. The machine should not be opened unless the seal is broken and screw removed;

(*c*) to have a port preferred USB and ETHERNET or RS 232 ports that can facilitate connexion to the computer;

(*d*) to have display screen showing the inputs and output of the electronic fiscal device to user and customer at the same time;

(*e*) to have display screen capable of taking up to 13 digits inclusive of 2 decimal places;

(*f*) to have back up battery which can go for at least forty-eight hours without external power supply or can use external battery in areas without electricity; and

(*g*) to have real time clock.

Electronic Journal Capabilities

3. An electronic fiscal device shall have the following electronic journal capabilities—

(*a*) shall have multi-media card, electronic fiscal journal or signal device electronic fiscal journal that records all the transactions and other information that are printed on the electronic fiscal device;

(*b*) the first electronic journal shall activate the start of fiscalization and hence begin recording the Sales data and produce fiscal receipts without which a machine cannot function;

(*c*) the activated electronic fiscal device shall send a message to the system for registration to enable it send the daily Z-sales report. The message shall contain at least a serial number, date and time of activation, and licence number of the electronic fiscal device;

(*d*) the electronic journal data should neither be deleted nor re-used;

(*e*) electronic fiscal journal cannot be reused when it is full;

(*f*) the electronic fiscal devices should record the data as from the date when the electronic journal was last updated and keep a record of all previous changes; and

(*g*) the electronic fiscal journal can be moved to a card reader to allow viewing of the transactions details stored. The data inside electronic fiscal journal is automatically managed in a read-only memory.

Fiscal Memory Capabilities

4. An electronic fiscal device shall have a fiscal memory capable of recording the following data—

(*a*) the date and time of commencing and ceasing the daily operations;

(*b*) the EFDs identification number. This is a unique number that identifies the user and the EFD itself;

(*c*) the tax rates assigned to the description of goods and services;

(*d*) the value of the sales without the tax, the value of sales exempted from tax divided into categories of individual tax rates, total amount of the tax and the total amount of the sales, including tax;

(*e*) the serial numbers and the dates for the resetting of the report every twenty-four hours;

(*f*) the numbers and dates of the resetting of the register memory and the information on the initiation of resetting and the methods of its performance;

(*g*) all amendments, corrections and cancellations;

(*h*) a minimum of 2,400 daily Z-sales reports;

(*i*) reconnexion reports each time the fiscal memory is disconnected; and

(*j*) the recorded data in the memory and record that data in the control paper roll electronic fiscal journal.

Printing Capabilities

5. An electronic fiscal device shall have the following printing capabilities—

(*a*) print the daily, monthly and annual reports;

(*b*) print the sales records from its memory as per standard time units (day, month, year);

(*c*) automatic self-generation of daily Z-reports every twenty-four hours;

(*d*) print on every receipt the words "MRA" with a non-standard font;

(*e*) print data recorded in the memory and by commands given through the keyboard;

(*f*) inserting the unique licence number of the electronic fiscal device on each issued fiscal receipt;

(*g*) use of fiscal paper and ink with ultra violet the Malaŵi Revenue Authority logo made in a unique, non-standard form on the electronic fiscal device in order to allow inspectors to identify genuine fiscal receipts;

(*h*) reprint a fiscal receipt or any other document in case of disconnexion or paper jam;

(*i*) ability to easily replace paper rolls;

(*j*) equipped with sharp paper cutters; and

(*k*) use English language.

Security and Reliability

6. An electronic fiscal device shall have the following security and reliability—

(*a*) has a password—

(i) that will be uniquely used by a user and the facility to change password; and

(ii) with a minimum length of six digits;

(*b*) must be registered on protected memory and not modified;

(*c*) must be kept free from computer virus attack;

(*d*) has internal authentic data management;

(*e*) has intrinsic protection against unauthorized actions;

(*f*) has application upgrades that run independently without confronting security functions;

(*g*) can automatically save configured data and records on permanent memory;

(*h*) can automatically handle electronic journal memory of all sorts;

(*g*) has rechargeable internal batteries as well as power supplies;

(*h*) can print Z-sales report before any configuration change;

(*i*) cannot allow update of stored data or reverse of transactions; and

(*j*) has a unique serial number from the manufacturer allocated for Malaŵi, signifying that it can only be used in Malaŵi.

Connectivity

7. An electronic fiscal device shall have the following connectivity—

(*a*) an internal GPRS modem that allows transmission of data upon every daily Z-closure to the Malaŵi Revenue Authority over GSM Network using a SIM card issued by approved GSM network provided by the Malaŵi Revenue Authority and encrypted with a unique algorithm;

(*b*) all Z-data should be transmitted to and confirmation received from the system. The EFD should be capable of re-transmitting the "Z"-report in case a network failure occurs; and

(*c*) shall allow status queries to be made using the GPRS modem from the Commissioner General and be able to transmit requested information on transactions and statistics upon request immediately. A detailed exhaustive description of the protocol must be provided and secured with unique encrypted codes.

Programming Capabilities

8. An electronic fiscal device shall have the following programming capabilities—

(*a*) programming of taxes with only twenty changes and ten changes for headers. These changes must be recorded on electronic fiscal memory;

(*b*) configuration in the electronic fiscal device via a connected keypad and through a standard personal computer;

(*c*) programming of at least six different tax codes;

(*d*) a date format for all printed documents to be in the form of DD-MM-YYYY:HH:MM:SS;

(*e*) should not erase the programmed and recorded data when the internal battery of the machine becomes weak or discharged completely;

(*f*) allow direct printing of all recorded data on both fiscal memory and electronic journal from the electronic fiscal device using a keypad device or viewing and printing from a standard personal computer by connecting the device using a personal computer interface such as USB, RS232 or Ethernet; and

(*g*) should not reverse the electronic fiscal device dates and time less than last transactional date.

Devices Compliance

9. An electronic fiscal device shall have the following device compliance—

(*a*) approved by internationally recognized bodies; and evidence must be provided to the Commissioner General for the accreditation of such bodies prior to approving the use of electronic fiscal devices in Malaŵi;

(*b*) certified as relevant device for performance of work intended. A certificate with full annexes of all tests performed on the electronic fiscal device and results thereon must be submitted to the Commissioner General for approval; and

(*c*) supplied with its manual, software, accessories and all necessary documentations.

PART III
Fiscal Management Software

10. A fiscal management software is intended to run on the system that shall be used to receive all transactions or Z-reports from all electronic fiscal

devices and generate various required reports. The software shall have the following minimum features—

1. architectural requirement: must be able to run in 64x bits servers;

2. operating system platform requirement—

(i) must be able to run in either Linux or Windows platform; and

(ii) must be a web based application to enable the Commissioner General's officers access central server remotely;

3. database requirement: must be able to connect on the oracle 11g database;

4. interface requirement: must be able to interface with the system running on the above mentioned platforms and database;

5. security requirement: must have user management console and authenticate Commissioner General's officers on login;

6. operational requirements—

(i) The software must be capable of browsing and connecting to an electronic journal of any fiscal device in the network and retrieve in a read-only mode the transactions entered;

(ii) must allow the Commissioner General's officers to change tax rates to all electronic fiscal devices centrally as required by the tax laws;

(iii) the software shall send a confirmation message to newly activated devices to enable them send daily Z-report; and

(iv) must allow the Commissioner General's officers to produce customized reports.

7. operational reports—

The fiscal software must allow the Commissioner General's officers to produce the user defined reports described as follows—

(*a*) Daily Gross Sales—

The daily report shall contain the following information for any given trader—

(i) serial number of the transaction, location of the taxpayer;

(ii) user identification number of the electronic fiscal device;

(iii) taxpayer identification number (TPIN) of the customer and gross sales amount;

(iv) discounts (if any);

(v) net value—number of transactions between every two hours;

(vi) value added tax rate;

(vii) value added tax amount; and

(viii) total gross sales and cumulative totals by distinguishing between taxable, exempt and zero rated.

The system must allow a user to filter the daily report according to taxable, exempt, zero rated sales, or any required label.

(*b*) Weekly Gross Sales—The weekly gross sales shall contain daily gross sales (Z-daily transaction records).

(*c*) Monthly Gross Sales—monthly gross sales shall contain daily gross sales (Z-daily transaction records) with weekly sub totals.

(*d*) Annual Gross Sales—The annual gross sales shall contain daily gross sales (Z-daily transaction records) with monthly sub totals.

(*e*) Number of EFD interruptions—The electronic fiscal devices interruption report shall contain the following information—

(i) serial numbers of electronic fiscal devices interventions;

(ii) number of interventions;

(iii) licence number of the machine intervened;

(iv) serial number of the machine disconnected;

(v) number of disconnexions;

(vi) number of electronic journal replacement;

(vii) date and time;

(viii) type of errors and number of errors; and

(ix) receipts/invoices in which errors occurred.

This report must be able to distinguish between disconnexions, errors, change of name and interventions to the device.

The system should allow a user to filter report according to taxable, exempt, zero rated sales or any required label.

(*f*) Daily, Monthly and annual comparable report by sector—number of receipts/invoices issued: sales made in terms of taxable, zero rated and exempt supplies.

(*g*) Daily, Monthly and Annual Comparable Report by Location—number of receipts/invoices issued; and sales made in terms of taxable, zero rated and exempt supplies.

(*h*) Daily, Monthly and Annual Comparable Report by Products/Items—number of receipts/invoices issued—sales made in terms of taxable, zero rated and exempt supplies;

The comparable report by sector, location, and item/product as referred in appendix III, IV and V respectively must distinguish between taxable, exempt and zero rated supplies, and contains the following information—

(i) date/period selected for comparison;

(ii) number of receipt/invoice issued;

(iii) sales made; and

(iv) total and cumulative totals.

(*i*) Comparison between amounts declared in value added tax monthly Return against sales

The comparison report between the amount declared in value added tax monthly return and electronic fiscal devices sales as referred in Appendix IV shall contain the following information—

Sales as per value added tax return (taxable, exempt and zero rated)—

• sales as per electronic fiscal device (taxable, exempt and zero rated); and variance (taxable, exempt and zero rated).

reg. 16 (1) (*b*)

THIRD SCHEDULE

Required Records and Information to be Generated by Electronic Fiscal Devices

PART I

Fiscal Receipt (Electronic Fiscal Device Receipt)

1. The fiscal receipts generated by electronic fiscal device shall have the following contents—

(i) the words: "START OF LEGAL RECEIPT" at the top and "END OF LEGAL RECEIPT" at the bottom;

(ii) the name and address of the user of the registered device;

(iii) taxpayer identification number (TPIN) of the user of the registered device;

(iv) name, address and TPIN of the purchaser;

(v) the identification number of the device;

(vi) the name, quantity, unit price, item description, tax rate chargeable on and the value of the recorded sale of goods or services;

(vii) the tax amount payable;

(viii) discounts, mark ups, changes, corrections;

(ix) the date and time of issue of the receipt;

(x) the total amount payable, tax inclusive;

(xi) daily ascending serial number for a legal fiscal receipt; and

(xii) the fiscal logo.

2. The fiscal invoice generated by electronic fiscal device shall have the following contents—

(i) the name and address of the user of the registered device;

(ii) the identification number of the device;

(iii) taxpayer identification number (TPIN) of the user of the registered device;

(iv) name, address and TPIN of the purchaser;

(v) the name, quantity, unit price, item description, tax rate chargeable on and the value of the recorded sale of goods or services;

(vi) daily ascending serial numbers for legal fiscal invoice;

(vii) the tax amount payable;

(viii) discounts, mark ups, changes, corrections;

(ix) the date and time of issue of the invoice;

(x) the total amount payable, tax inclusive; and

(xi) electronic signature beneath or after the end of the business transactions.

Daily Report

3. The electronic fiscal device shall generate "Z"-daily transaction report, even where no daily transaction has taken place and the daily running totals in the working memory give zero.

The information printed on the "Z"-report shall be contained between the phrase "START OF LEGAL RECEIPT' and "END OF LEGAL RECEIPT".

The information to be contained in a daily Report ("Z"-Daily transaction record) from electronic fiscal device shall be as follows—

(i) name or trading name and address of the business;

(ii) taxable goods/services;

(iii) taxpayer identification number (TPIN);

(iv) tax offices which assess the taxpayer/user of the approved electronic fiscal device;

(v) heading "Z"-daily transaction report;

(vi) the serial number of the Z-daily transaction report;

(vii) the identification number of the approved electronic fiscal device;

(viii) the time and date the "Z"-daily transaction report was generated;

(ix) the daily running and cumulative totals, such as—

- taxable supplies;
- total gross sales;

- any reports from the tax data memory since the previous (last) "Z"-daily transaction report was generated stating—

  —the number of revenue receipts generated for the day;

  —changes in value added tax prices (in details from to);

  —discounts, mark ups, changes, corrections;

  —number of working memory errors, name changes (in details from ..... to .....);

  —number of printer disconnexions; and

  —number of interventions by authorized engineer or technician;

(x) the reports from the data memory from when the approved electronic fiscal device was registered including the current tax daily transaction, stating—

- the running value added tax totals (one for each value added tax rate);
- total gross supplies the electronic fiscal device was commissioned distinguishing between zero-rated, taxable and exempt supplies;

  —number of revenue receipts generated;
- total number of value added tax rate charges;
- total number of working memory errors;
- total number of name changes;
- total number of spontaneous printer disconnexions; and
- number of interventions by authorized engineer or technician;

(xi) the licence number of the approved electronic fiscal device.

Monthly Report

4.—(1) The approved electronic fiscal device must be capable of reading and printing the contents of the data memory at all times by selecting any calendar period (from ..... to .....) or by selecting two different "Z"-daily transaction record numbers (the first and the last).

(2) The information to be found in a monthly report should include—

(*a*) name or trading name and address of the business;

(*b*) taxable goods/services;

(*c*) taxpayer identification number (TPIN);

(*d*) tax offices which assess the taxpayer/user of the approved electronic fiscal device;

(*e*) heading "Z"-monthly report;

(*f*) the identification number of electronic fiscal device;

(*g*) the time and date the "Z"-daily transaction report was generated;

(*h*) for each "Z"-daily transaction record—

(i) the serial number of the "Z"-daily transaction report and the date it was generated;

(ii) the amounts of value added tax for the day covered by the daily transaction report in question (one for each rate);

(iii) the total gross sales covered by the "Z"-daily transaction report in question, distinguishing between zero-rated, taxable and exempt supplies;

(iv) the number of revenue receipts generated for the day covered by the "Z"-daily transaction report in question;

(v) the number of value added tax rate changes for the day covered by the "Z"-daily transaction report in question;

(vi) the number of working memory errors for the day covered by the "Z"-daily transaction report in question;

the number of name changes for the day covered by the "Z"-daily transaction report in question;

(vii) the number of spontaneous printer disconnexions for the day covered by the "Z"-daily transaction report in question; and

(viii) number of interventions by the authorized engineer or technician;

(*i*) the approved electronic fiscal device tax data memory reports for the period in question, stating—

(i) the running value added tax totals (one for each value added tax rate);

(ii) total gross sales distinguishing between zero-rated, taxable and exempt supplies;

(iii) total of number of value added tax rate changes; total number of working memory errors;

(iv) total number of name changes;

(v) total number of spontaneous printer disconnexions;

(vi) total number of interventions by authorized engineer or technician; and

(*j*) the registration number of the electronic fiscal device.

Annual Report

5.—(1) The approved electronic fiscal device must be able to read and print a summary report of the content of the tax data memory at all times by selecting any calendar period (from ..... to .....) or by selecting two different "Z"-daily transaction report numbers (the first and the last).

(2) The annual report shall contain the following—

(*a*) name or trading name and address of the business;

(*b*) taxable goods/services;

(*c*) taxpayer identification number (TPIN);

(*d*) tax office which assesses the owner/user of the Commissioner General approved electronic fiscal device;

(*e*) the heading "annual report";

(*f*) the identification number of the approved electronic fiscal device;

(*g*) the time and date the "Z"-daily transaction report was generated;

(*h*) the approved electronic fiscal device tax data memory reports for the period in question, stating—

(i) the running value added tax totals (one for each value added tax rate);

(ii) total gross revenue distinguishing between zero-rated, taxable and exempt supplies;

(iii) number of revenue receipts generated;

(iv) total number of value added tax changes;

(v) total number of working memory errors;

(vi) total number of name changes;

(vii) total number of spontaneous printer disconnexions; and total number of "interventions" by authorized engineer or technician; and

(*i*) the registration number of the electronic fiscal device.

PART II
Operational Reports

6. The following reports shall be generated by the system from the Malaŵi Revenue Authority's database—

Daily Gross Sales

The daily report shall contain the following information for any given trader—

(*a*) serial number of the transaction;

(*b*) number of transaction between every two hour period;

(*c*) location of the taxpayer;

(*d*) licence number of the electronic fiscal device;

(*e*) taxpayer identification number (TPIN) of the customer;

(*f*) receipt/invoice number;

(*g*) items sold;

(*h*) quantity;

(*i*) unit price;

(*j*) value;

(*k*) date of the transaction;

(*l*) discounts, if any;

(*m*) net value;

(*n*) value added tax rate;

(*o*) value added tax amount; and

(*p*) total gross sales and cumulative totals by distinguishing between taxable, exempt and zero rated.

The system should allow a user to filter report according to taxable, exempt or zero rated sales, or any required label.

Weekly Gross Sales

The weekly gross sales shall contain daily gross sales (Z-daily transaction records).

Monthly Gross Sales

Monthly gross sales shall contain daily gross sales (Z-daily transaction records) with weekly sub totals.

Annual Gross Sales

The annual gross sales shall contain daily gross sales (Z-daily transaction records) with monthly sub totals.

Number of Electronic Fiscal Device Interruptions

The electronic fiscal device interruption report shall contain the following information—

(*a*) serial numbers of electronic fiscal device interventions;

(*b*) number of interventions;

(*c*) licence number of the electronic fiscal device intervened;

(*d*) serial number of the machine disconnected;

(*e*) number of disconnexions;

(*f*) number of electronic journal replacement;

(*g*) date and time;

(*h*) type of errors and number of errors; and

(*i*) receipts/invoices in which errors occurred.

This report should be able to distinguish between disconnexions, errors, change of name and interventions to the device.

The system shall allow user to filter report according to taxable, exempt or zero rated sales or any required label.

Daily, monthly and annual comparable report by sector, location and products/items—

(*a*) Daily, Monthly and annual Comparable report by sector—

- number of receipts/invoices issued; and
- sales made in terms of taxable, zero rated and exempt supplies.

(*b*) Daily, Monthly and annual Comparable report by location—

- number of receipts/invoices issued; and
- sales made in terms of taxable, zero rated and exempt supplies.

(*c*) Daily, Monthly and annual comparable report by products/items—

- number of receipts/invoices issued; and
- sales made in terms of taxable, zero rated and exempt supplies.

(*d*) Total gross supplies since the electronic fiscal device was commissioned, distinguishing between—

- taxable;
- exempt; and
- zero rated supplies.

The comparable report by sector, location, and item/product should contain the following information—

- date/period selected for comparison;
- number of receipt/invoice issued;
- sales made (taxable, exempt or zero rated); and
- total and cumulative totals.

Comparison between amount declared in value added tax monthly return against sales

The comparison report between the amount declared in value added tax monthly return and electronic fiscal device sales shall contain the following information—

- sales as per value added tax return (taxable, exempt and zero rated);
- sale as per electronic fiscal device (taxable, exempt and zero rated); and
- variance (taxable, exempt and zero rated).

reg. 32 (2)

FOURTH SCHEDULE

Cost for Acquisition of Electronic Fiscal Devices

1. Cost incurred by a user for the purchase of electronic fiscal devices from a licensed supplier for the first time shall be borne by the Malaŵi Government. The cost shall be set off from the output tax on submission of the value added tax return, one month following the month of the purchase under the normal refund system.

TEA CESS

CHAPTER 42:03

Containing Pages 1–2

CHAPTER 42:03
TEA CESS
ARRANGEMENT OF SECTIONS

SECTION

1. Short title
2. Imposition of cess
3. Restriction on sale or export of tea
4. Purpose of cess
5. Power to make rules

An Act to levy cess on tea grown in Malaŵi

[1st June, 1958]

10 of 1958
12 of 1961
29 of 1969
G.N. 22/1963
166/1967

1. This Act may be cited as the Tea Cess Act. Short title

2.—(1) There shall be raised, levied, collected and paid in respect of all tea manufactured in Malaŵi a cess at such rate as the Tea Association (Central Africa) Limited, with the approval of the Minister, shall, by notice in the *Gazette*, prescribe. Imposition of cess 29 of 1969

(2) If in any year the expenditure of the Tea Association (Central Africa) Limited exceeds its income, it may, during the next succeeding year, at an extraordinary general meeting specially convened for the purpose, resolve to impose in respect of all tea manufactured in Malaŵi during the first mentioned year a special cess at a rate not exceeding two tambala for each one hundred pounds net weight of tea so manufactured:

Provided that no cess imposed under this subsection shall become due and payable without the approval of the Minister.

3. No tea manufactured in Malaŵi shall be sold or exported unless and until the amount due in respect of the cess or special cess has been paid, and any person selling or exporting tea in contravention of the provisions of this section shall be liable to a fine of K200 and to imprisonment for three months. Restriction on sale or export of tea 29 of 1969

4. The proceeds of the cess or special cess shall be used inclusively for the benefit of the tea industry carried on in Malaŵi ex such manner as the Tea Association (Central Africa) Limited may determine. Purpose of cess 29 of 1969

5. The Minister may make rules governing the collection and payment of the cess or special cess and generally for the better carrying out of the purposes of this Act and may prescribe in such rules the penalties which may be imposed for the breach or contravention of any rule, which penalties shall not exceed a fine of K50 and imprisonment for three months. Power to make rules 29 of 1969

G.N. 142/1977 33/1980 45/1986 10/1994

SUBSIDIARY LEGISLATION
TEA CESS (IMPOSITION OF CESS) NOTICE
under s. 2

Citation

1. This notice may be cited as the Tea Cess (Imposition of Cess) Notice.

Imposition of cess G.N. 33/1980 45/1986 117/1988 10/1994

2. The cess to be raised, levied, collected and paid in respect of all tea manufactured in Malaŵi shall, with effect from 1st March, 1993, be at the rate of K9 per one hundred kilos net weight.

G.N. 268/1969

TEA CESS RULES
under s. 5

Citation

1. These Rules may be cited as the Tea Cess Rules.

Payment of cess or special cess

2.—(1) All monies due and payable in respect of the cess prescribed under section 2 (1) of the Act shall be paid to the Tea Association (Central Africa) Limited before the end of the month following the month in which the tea in respect of which cess was payable was manufactured.

(2) All monies due and payable in respect of the special cess prescribed under section 2 (2) of the Act shall be paid to the Tea Association (Central Africa) Limited within 30 days from the date that such special cess is approved by the Minister.

HIDES AND SKINS (CESS)

CHAPTER 42:04

Containing Pages 1–2

L.R.O. 1/1968

CHAPTER 42:04

HIDES AND SKINS (CESS)

ARRANGEMENT OF SECTIONS

SECTION
1. Short title
2. Interpretation
3. Minister may impose cess
4. (1) Restriction on exportation of hides and skins
   (2) Penalty

An Act to Provide for the Levy of a Cess on Hides and Skins exported from Malaŵi

4 of 1951
G.N. 22/1963

[11TH JANUARY, 1951]

1. This Act may be cited as the Hides and Skins (Cess) Act. Short title

2. In this Act— Interpretation

"hide" means the hide of a bovine animal, not being a game animal;

"skin" means the skin of a goat or sheep.

3.—(1) The Minister may, by order published in the *Gazette*, impose a cess to be raised, levied, collected and paid in respect of all hides and skins exported from Malaŵi. Minister may impose cess

(2) Any cess imposed under this section—

(*a*) shall be of such amount as may be stated in the order imposing the same but shall not exceed fifteen shillings per hundred pounds avoirdupois dry net weight in the case of hides and sixty shillings per hundred pounds avoirdupois dry net weight in the case of skins; and

(*b*) shall be levied and collected in such manner as may be provided in the order imposing the same.

4.—(1) No person shall export any hide or skin from Malaŵi unless and until the amount due in respect of any cess imposed thereon has been paid. Restriction on exportation of hides and skins

(2) If any person exports or attempts to export any hide or skin from Malaŵi in contravention of subsection (1), such person shall be guilty of an offence, and without prejudice to his liability to pay any cess due thereon, shall be liable to a fine of £100 and to imprisonment for three months. Penalty

[Subsidiary] *Hides and Skins* (*Cess*) *Order*

SUBSIDIARY LEGISLATION

G.N. 85/1951 139/1953

HIDES AND SKINS (CESS) ORDER

under s. 3 (1)

Citation

1. This Order may be cited as the Hides and Skins (Cess) Order.

Cess

2. There is hereby imposed, as from the 1st May, 1951, a cess in respect of all hides and skins exported from Malaŵi which shall be paid at the following rates per hundred pounds avoirdupois dry net weight—

(*a*) Cattle hides . . . . . seven shillings;

(*b*) Goat skins . . . . . sixteen shillings;

(*c*) Sheep skins . . . . . seven shillings:

Provided that the cess payable on the export of wet-salted hides shall be calculated at half the above rates only.

Payment

3. All moneys due and payable in respect of the cess imposed under paragraph 2 shall be paid to the Controller of Customs.

STAMP DUTIES

CHAPTER 43:01

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CHAPTER 43:01

STAMP DUTIES

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Schedule

CHAPTER 43:01

STAMP DUTIES

10 of 1969
G.N. 27/1971
148/1981
15/1982
44/1984
45/1984
60/1985
30/1986
29/2009
13/2013

An Act to provide for the imposition of stamp duties, fees and penalties in respect of certain instruments, to provide for the stamping of such instruments, to provide for the management of stamp duties, fees and penalties and for other matters incidental thereto and connected therewith

[16TH MAY, 1969]

PART I

PRELIMINARY

Short title

1. This Act may be cited as the Stamp Duties Act.

Interpretation

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

"adhesive stamp" means a stamp which may be securely fixed by means of an adhesive paste and by no other means;

"banker" includes the Reserve Bank of Malaŵi, any banking business registered under the Banking Act, and any person conducting such a banking business: "bill of lading" includes a through bill of lading, but does not include a mate's receipt;

Cap. 44:01

"bond" includes—

(*a*) any instrument whereby a person obliges himself to pay money to another, on condition that the obligation shall be void if a specified act is performed, or is not performed, as the case may be;

(*b*) any instrument (other than a bill of exchange or promissory note) attested by a witness and not payable to order or bearer, whereby a person obliges himself to pay money to another; and

(*c*) any instrument so attested, whereby a person obliges himself to deliver any agricultural produce to another;

"chargeable", as applied to an instrument executed or first executed after the commencement of this Act, means chargeable under this Act, and, as applied to any other instrument means chargeable under the law in force in Malaŵi when

such instrument was executed, or where several persons executed the instrument at different times, first executed;

"cheque" has the meaning assigned to that expression in the Bills of Exchange Act; Cap. 43:01

"the Commissioners" means the Commissioners of Stamp Duties appointed, or deemed to have been appointed under section 4, and includes one or any of them;

"consideration" or "valuable consideration" includes valuable consideration in money or money's worth, marriage or natural love and affection;

"die" includes any plate, type, tool or implement whatever used under the direction of the Commissioners for expressing or denoting any duty, or rate of duty, or the fact that any duty or rate of duty or penalty has been paid, or that any instrument is duly stamped, or is not chargeable with any duty or for denoting any fee, and includes any part of any such plate, type, tool or implement;

"duty" and "stamp duty" means any stamp duty for the time being leviable by means of stamps under any written law;

"executed" and "execution" used with reference to any instrument not under seal means "signed" and "signature" respectively;

"franked stamp" means a stamp denoted by means of a stamp franking machine in accordance with this Act or any regulations made thereunder;

"impressed stamp" includes—

(*a*) labels affixed and impressed by the proper officer;

(*b*) stamps embossed or engraved on stamped paper;

(*c*) adhesive stamps over-embossed; and

(*d*) franked stamps;

"instrument" includes every kind of written document;

"marketable security" includes a security of such a description as to be capable of being sold on any stock exchange;

"material" includes every sort of material on which words and figures can be expressed or denoted;

"money" includes all sums expressed in Malaŵi currency, or in the currency of any country;

"power of attorney" includes any instrument empowering a specified person to act for and in the name of the person executing it;

"settlement" means any non-testamentary disposition in writing of movable or immovable property made—

(*a*) in consideration of marriage;

(*b*) for the purpose of distributing property of the settler among his family or those for whom he desires to provide, or for the purpose of providing for some person dependent on him; or

(*c*) for any religious or charitable purpose, and includes an agreement in writing to make such a disposition, and, where any such disposition has not been made in writing, any instrument recording, whether by way of declaration of trust or otherwise, the terms of any such disposition;

"stamp" means an impressed stamp, or an adhesive stamp used for denoting the payment of any stamp duty or fees or penalty under this Act;

"stamped" or "duly stamped" means that the instrument referred to is stamped with the required and sufficient stamp and that such stamp has been cancelled, if necessary, in accordance with this Act;

"stock" includes any share in the stock transferable at the Bank of England, and any share in the stocks or funds of the government of any Commonwealth or foreign country, or in the capital stock or funded debt of any local authority, corporation, company or society in Malaŵi or any Commonwealth country, or of any foreign corporation, company or society;

"write", "written", and "writing" includes every mode in which words or figures can be expressed or denoted upon material.

Application of Act

3. This Act shall apply to all stamp duties and to all fees and penalties which are for the time being directed to be collected or received by means of stamps under or by virtue of any written law.

Appointment of Commissioner of Stamp Duties

4. The Minister may, by notice published in the *Gazette*, appoint such public officers as he deems necessary to be Commissioners of Stamp Duties, who shall have the care and management of all stamp duties, fees and penalties to be collected or received under or by virtue of this Act:

Provided that, until such time as the Minister appoints Commissioners under this section, the Commissioners appointed under section 4 of the Stamps Ordinance, repealed by this Act, shall be deemed to have been appointed Commissioners under this Act.

Cap. 162

PART II

Provisions Applicable to Instruments Generally

Charge of Duty upon Instruments

Liability to stamp duty and alterations of stamp duty

5.—(1) Subject to the provisions of, and to the exemptions contained in, this Act and any other written law, every instrument specified in the Schedule, wheresoever executed, which relates to property situate, or any matter or thing done or to be done, in Malaŵi, shall be chargeable with the stamp duty specified in the Schedule.

(2) The Minister may by order published in the *Gazette* amend the Schedule, imposing new stamp duties, or increasing, diminishing or repealing existing stamp duties or granting new exemptions.

(3) An order made under subsection (2) shall not be made retrospective and shall cease to be of effect on the expiration of the period provided under subsection (4) unless approved by a resolution of the National Assembly in accordance with that subsection.

(4) A resolution of the National Assembly approving an order made under subsection (2) shall be passed within 28 days of the date of commencement of such order:

Provided that—

(i) if before the expiration of the said 28 days the National Assembly is dissolved or is prorogued or adjourned for more than 7 days such resolution shall be passed before the end of the next meeting of the National Assembly; or

(ii) if, on the date of commencement of the order the National Assembly is dissolved or is prorogued or adjourned such resolution shall be passed within 28 days of the next meeting of the National Assembly, or if the National Assembly is earlier dissolved or is earlier prorogued or adjourned for more than 7 days then before the end of the next following meeting of the National Assembly.

(5) Where an order ceases to be of effect under subsection (3) the Schedule shall revert to what it was immediately before it was amended by such order.

Time of stamping and liability for stamping

6.—(1) Subject to this Act or any other written law, every instrument, unless it is written on duly stamped material, shall be duly stamped with the proper duty before the expiration of thirty days after it is first executed, or after it has been first received in Malaŵi where it is first executed at any place outside Malaŵi, unless the opinion of the Commissioners with respect to the amount of duty with which the instrument is chargeable has, before the expiration of such period, been required under section 16.

(2) If the opinion of the Commissioners with respect to the amount of duty with which any instrument is chargeable has been required under section 16, such instrument shall be stamped in accordance with the assessment of the Commissioners within thirty days of the date of notice of the assessment.

(3) Where, in the Schedule or in any other written law, it is specified that an instrument is to be stamped before execution,such instrument shall be stamped before execution by any party thereto.

(4) If any instrument which is chargeable with stamp duty is not duly stamped, the person or persons respectively specified in the Schedule or in any other written law as being liable for stamping shall be liable, or jointly and severally liable, as the case may be, to the Commissioners for the payment of the specified duty.

(5) If any instrument which is liable to stamp duty is not duly stamped, every person specified in the Schedule or in any other written law as being responsible for stamping shall also be guilty of an offence and liable to a fine of £100.

(6) Where in the Schedule or in any other written law the responsibility for stamping is imposed upon more persons than one, every person on whom the said responsibility is imposed may, if the instrument is not duly stamped, be proceeded against either civilly or criminally without reference to any civil liability of the parties *inter se* for the payment of the stamp duty.

Duties, how to be paid

7.—(1) Except as otherwise expressly provided in this Act, all duties with which any instruments are chargeable shall be paid, and such payment shall be denoted upon such instruments, by means of stamps in such manner as the Minister may, in regulations made under this Act, prescribe.

(2) Regulations made under subsection (1) may, *inter alia*, provide for—

(*a*) in the case of each kind of instrument, the description of stamps which may be used;

(*b*) in the case of instruments stamped with impressed stamps, the number of stamps which may be used.

(3) Until regulations are made under this section any stamps which might lawfully be used immediately before the commencement of this Act for the payment of stamp duties may be used for the purposes of this Act.

How instruments are to be written and stamped

8.—(1) Every instrument written upon stamped material shall be written in such manner, and every instrument partly or wholly written before being stamped shall be so stamped, that the stamp may appear on the face of the instrument, and cannot be used for, or applied to, any other instrument written upon the same piece of material.

(2) If more than one instrument is written upon the same piece of material, every one of the instruments shall be separately and distinctly stamped with the duty with which it is chargeable.

Instruments to be separately charged in certain cases

9.—(1) An instrument containing or relating to several distinct matters shall be separately and distinctly charged, as if it were a separate instrument, with duty in respect of each of the matters.

(2) An instrument made for any consideration in respect whereof it is chargeable with *ad valorem* duty, and also for any further or other valuable consideration or considerations, shall be separately and distinctly charged, as if it were a separate instrument, with duty in respect of each of the considerations.

Facts and circumstances affecting duty to be set forth in instruments

10.—(1) All the facts and circumstances affecting the liability of any instrument to duty, or the amount of the duty with which any instrument is chargeable, shall be fully and truly set forth in the instrument; and every person who with intent to defraud the Government—

(*a*) executes any instrument in which all the said facts and circumstances are not fully set forth; or

(*b*) being employed or concerned in or about the preparation of any instrument, fails fully and truly to set forth therein all the said facts and circumstances,

shall be guilty of an offence and liable to a fine of £500.

(2) The Commissioners may require any person executing, or any person employed or being concerned in or about the preparation of any instrument, to give evidence on oath, or by statutory declaration, as to the fullness and truth of the facts and circumstances set forth; and for the purpose of taking such evidence the Commissioners may summon any such person to appear before them, and the person so summoned shall be legally bound to appear and to answer such questions and to produce such documents as the Commissioners may put to him or require to be produced, as the case may be, relating to the facts and circumstances aforesaid.

Mode of calculating *ad valorem* duty in certain cases

11.—(1) Subject to subsection (2), where an instrument is chargeable with *ad valorem* duty in respect of—

(*a*) any money in any currency other than that of Malaŵi; or

(*b*) any stock or marketable security,

the duty shall be calculated on the value, on the day of the date of the instrument, of the money in Malaŵi currency according to the current rate of exchange, or of the stock or security according to the average price thereof:

Provided that where such stock or security is the consideration for any conveyance or transfer of property, and, in the opinion of the Commissioners, such consideration is inadequate having regard to the actual value of the stock or security, *ad valorem* duty shall be chargeable on the value of the property to be conveyed or transferred.

(2) The current rate of exchange for the purpose of the conversion of any value expressed in a foreign currency shall be the rate of exchange on the particular day as the Commissioners may determine after consultation with the Governor of the Reserve Bank of Malaŵi.

(3) Where an instrument contains a statement of current rate of exchange, or average price, as the case may require, and is stamped in accordance with that statement it shall, so far as regards the subject-matter of the statement, be deemed to be duly stamped, unless or until it is shown that the statement is untrue and that the instrument is in fact insufficiently stamped.

Instruments to be in English

12. Every instrument chargeable with duty shall be written in the English language, or shall have annexed thereto a full and accurate translation thereof into the English language, certified to the satisfaction of the Commissioners.

Use of Adhesive Stamps

General directions as to cancellation of adhesive stamps

13.—(1) Where stamp duty is required or permitted by any written law to be denoted by adhesive stamps, each and every such stamp shall be cancelled in such manner as to render it incapable of being used again for any revenue purpose.

(2) Where an instrument, the stamp duty on which is required or permitted by any written law to be denoted by adhesive stamps, is to be stamped before execution, or before issue, or before being parted with by the maker, or before the doing of any other act, the first person so executing, issuing or parting with such instrument or doing such other act, as the case may be, shall cancel such adhesive stamps.

(3) Where an instrument, the stamp duty on which is required or permitted by any written law to be denoted by adhesive stamps, is to be stamped within a certain period after any event, the person

affixing the adhesive stamps shall cancel them forthwith and before he parts with the instrument.

(4) Subject to sections 19, 20, 32 and 34, an instrument, the stamp duty on which is denoted by an adhesive stamp, shall not be deemed to have been duly stamped unless such stamp has been cancelled as required by this section.

(5) The person required by the foregoing provisions of this section to cancel an adhesive stamp shall cancel it by writing on or across the stamp his name or initials or the name or initials of his firm with the true date of his so writing.

(6) Any person who neglects or refuses duly and effectively to cancel an adhesive stamp in accordance with the provisions of this section shall be guilty of an offence and liable to a fine of £25.

Penalty for frauds in relation to adhesive stamps

14. If any person—

(*a*) fraudulently removes or causes to be removed from any instrument any adhesive stamp, or affixes to any other instrument or uses for any other purpose any adhesive stamp which has been so removed with intent that the stamp may be used again; or

(*b*) sells, or offers for sale, or utters, any adhesive stamp which has been so removed, or utters any instrument, having thereon any adhesive stamp which has to his knowledge been so removed as aforesaid,

he shall be guilty of an offence and liable, in addition to any other fine or penalty to which he may be liable, to a fine of £100.

Denoting Stamps

Denoting stamps

15. Where the duty with which an instrument is chargeable depends in any manner upon the duty paid upon another instrument, the payment of the last-mentioned duty shall, upon application to the Commissioners and production of both the instruments, be denoted upon the first-mentioned instrument in such manner as may be prescribed.

Adjudication Stamps

Adjudication

16.—(1) Subject to any regulations made under this Act, the Commissioners may be required by any person to express their opinion with reference to any executed instrument upon the following questions—

(*a*) whether it is chargeable with any duty;

(*b*) with what amount of duty it is chargeable.

(2) If the Commissioners are of the opinion that the instrument is not chargeable with any duty, it shall be stamped with a particular stamp denoting that it is not chargeable with any duty.

(3) If the Commissioners are of the opinion that the instrument is chargeable with duty, they shall assess the duty with which it is, in their opinion, chargeable, and when the instrument is stamped in accordance with the assessment it shall be stamped with a particular stamp denoting that it is duly stamped.

(4) Every instrument stamped with the particular stamp, denoting either that it is not chargeable with any duty or that it is duly stamped, shall be admissible in evidence and available for all purposes notwithstanding any objection relating to duty.

(5) Nothing in this section shall extend to any instrument chargeable with *ad valorem* duty, and made as a security for money or stock without limit; or shall authorize the stamping after the execution thereof of any instrument which by law cannot be stamped after execution.

(6) A statutory declaration made for the purpose of this section shall not be used against any person making the same, in any proceedings whatever, except in an inquiry as to the duty with which the instrument to which it relates is chargeable; and, if such declaration is true, every person by whom it is made shall, on payment of the duty chargeable upon the instrument to which it relates, be relieved from any fine or disability to which he may be liable by reason of the omission to state truly in the instrument any fact or circumstance required by this Act to be stated therein.

Persons dissatisfied may appeal

17.—(1) Any person who is dissatisfied with the assessment of the Commissioners may, within 14 days after the date of the assessment, and on payment of duty in conformity therewith, or on securing the same to the satisfaction of the Commissioners, appeal against the assessment to the High Court, and may for that purpose require the Commissioners to state and sign a case, setting forth the question upon which their opinion was required, and the assessment made by them.

(2) A sum of fifteen pounds shall be lodged with the Commissioners as security for the costs referred to in subsection (6).

(3) The Commissioners shall thereupon state and sign a case and deliver the same to the person by whom it is required, and the case may, within seven days thereafter, and after service thereof upon the Attorney-General, be set down by such person for hearing.

(4) Upon the hearing of the case the court shall determine the question submitted, and, if the instrument in question is in the

opinion of the court chargeable with any duty, shall assess the duty with which it is chargeable.

(5) If it is decided by the court that the assessment of the Commissioners is erroneous, any excess of duty which may have been paid in conformity with the erroneous assessment, together with any fine or penalty which may have been paid in consequence thereof, shall be ordered by the court to be repaid to the appellant, with or without costs as the court may determine.

(6) If the assessment of the Commissioners is confirmed wholly or in part, the court may make an order for payment to the Commissioners of the costs incurred by them in relation to the appeal.

Production of Instruments in Evidence and Instruments not duly Stamped

Non-admissibility of unstamped instruments in evidence; and penalty

18.—(1) Subject to subsection (3) and to sections 19 and 20 no instrument chargeable with stamp duty shall be received in evidence in any proceedings whatsoever, except—

(*a*) in criminal proceedings; and

(*b*) in civil proceedings by the Commissioners to recover stamp duty,

unless such instrument is duly stamped.

(2) No instrument chargeable with stamp duty shall be filed, enrolled, registered or acted upon by any person unless such instrument is duly stamped.

(3) Upon the production to any court (other than a criminal court), arbitrator, referee, or to any officer or servant of the Government of any instrument which is chargeable with stamp duty and which is not duly stamped, it shall be the duty of such court, arbitrator, referee, or officer or servant, to take notice of the omission or insufficiency of the stamp on such instrument and thereupon to take action in accordance with the following provisions—

(*a*) if the period of time within or before which the instrument should have been stamped has expired and the instrument is one in respect of which a person is specified in the Schedule as being liable for the stamping thereof, the instrument shall be impounded and, unless the instrument has been produced to the Commissioners, shall forthwith be forwarded to the Commissioners;

(*b*) in any such case, before the exclusion or rejection of the instrument, the person tendering such instrument shall, if he desires, be given a reasonable opportunity of applying to the

Commissioners for leave under section 19 or of obtaining a certificate under section 20;

(*c*) in all other cases, unless otherwise expressly provided in this Act, the instrument shall, saving all just exceptions on other grounds, be received in evidence upon payment to the court, arbitrator or referee of the amount of the unpaid duty and of the penalty specified in subsection (5) and such duty and penalty, if any, shall forthwith be remitted to the Commissioners with the instrument to be stamped after the instrument has been admitted in evidence.

(4) If any person is empowered or required by any written law to act upon, file, enrol or register a duplicate or copy of any instrument, and if the original of such instrument would require to be duly stamped if acted upon, filed, enrolled or registered by such person, such person may call for the production of the original instrument or for evidence to his satisfaction that it was duly stamped, and no person shall act upon, file, enrol or register any such duplicate or copy without production of the original instrument duly stamped or of evidence as aforesaid.

(5) The penalty on stamping any instrument out of time referred to in subsection (3) (*c*) shall be ten shillings in respect of every pound and of any fractional part of one pound of the duty chargeable thereon and in respect of every period of three months or any part of such a period after the expiration of the time within or before which the instrument should have been stamped.

Stamping out of time

19.—(1) Where an instrument is chargeable with stamp duty under this Act and should have been stamped before a certain event or before the expiration of a certain period, but has not been so stamped, the Commissioners may give leave for the stamping of such instrument if they are satisfied—

(*a*) that the omission or neglect to stamp did not arise from any intention to evade payment of stamp duty or otherwise to defraud; and

(*b*) that the circumstances of the case are such as to justify leave being given.

(2) If the Commissioners grant leave under subsection (1) for the stamping of any instrument, such instrument shall be stamped on payment of the unpaid duty and of a penalty of five shillings in respect of every pound and of any fractional part of one pound of the duty chargeable thereon and in respect of every period of three months or any part of such period after the expiration of the time within or before which the instrument should have been stamped:

Provided that the Commissioners may, in their discretion, remit the whole or any part of the penalty provided by this sub-section.

(3) Where an instrument has been stamped by leave under this section, such instrument shall be deemed to have been duly stamped.

(4) Notwithstanding the provisions of this section, no bill of exchange or promissory note shall, except as provided in sections 20, 21, 32 and 34 be stamped after execution.

Certain improperly stamped instruments

20. Subject to this Act, where an instrument bears a stamp of sufficient amount but of improper description, it may, on payment of the duty with which the same is chargeable and of a penalty of ten shillings, be certified to be duly stamped, and any instrument so certified shall then be deemed to have been duly stamped.

Effect of non-compliance in case of certain bills of exchange

21. Notwithstanding any written law to the contrary, a bill of exchange, which is presented for acceptance, or accepted, or payable, outside Malaŵi, or a cheque, whether presented for acceptance, or accepted, or payable, outside or inside Malaŵi, shall not be invalid by reason only that it is not stamped in accordance with this Act, and any such bill of exchange or cheque which is unstamped or not properly stamped may be received in evidence on payment of the proper duty and penalties as provided by sections 18 and 19.

Instruments executed out of Malaŵi

22. Every instrument executed out of Malaŵi by any person, not being a bill of exchange or a promissory note, shall, before being used, brought into force or registered, within Malaŵi be stamped according to the rate of duty chargeable thereon in accordance with this Act, whatever the provision of the Schedule may be with regard to the time before which or the period within which such an instrument, if executed in the first instance within Malaŵi, should be stamped.

Miscellaneous

Refund where instrument erroneously assessed

23. Where the Commissioners are satisfied that an instrument has been erroneously assessed with duty or penalty, they may, if application for a refund is made at any time within one year after the date of the payment of that duty or penalty, refund the amount thereof to the person by whom it was paid.

Splitting

24.—(1) Where any minimum amount is prescribed below which stamp duty shall not be payable, no person shall execute more instruments than would ordinarily be necessary for the transaction in question, in order to evade stamp duty by such splitting.

(2) Where a scale is prescribed under which the rate of stamp duty is increased after passing certain limits, no person shall

execute more instruments than would ordinarily be necessary for the transaction in question, in order to evade stamp duty by such splitting.

(3) In any question whatsoever arising under this section the onus of proof shall lie upon the person who asserts that there has been no splitting in order to evade stamp duty.

Penalty for evasion of duty by splitting

25. Any person executing an instrument in contravention of section 24 shall be guilty of an offence and liable to a fine of £250.

Stamp where value of subject-matter is indeterminate

26. Where the amount or value of the subject-matter of any instrument chargeable with *ad valorem* duty cannot be, or (in the case of an instrument executed before the commencement of this Act) could not have been, ascertained at the date of its execution, or first execution, nothing shall be claimable under such instrument more than the highest amount or value for which, if stated in an instrument of the same description, the stamp actually used would, at the date of such execution, have been sufficient:

Provided that if the owner of an instrument which was duly stamped in accordance with the information then available to him receives information showing that the instrument is insufficiently stamped, and produces the instrument with the information to the Commissioners within fourteen days after such receipt, the instrument may be stamped without penalty for such further sum as is proper, but this proviso shall not apply to instruments which are required to be stamped before execution.

Recovery of Stamp Duty

Recovery of stamp duty

27. Stamp duty in arrear may be recoverable by civil suit as a debt due to the Commissioners from any person liable, or, on the *ex parte* application of the Commissioners to any competent court and without the institution of a suit, may be recovered from the person liable in manner following—

(*a*) a statement in writing by any Commissioner shall be sufficient evidence of the amount of stamp duty in arrear and payable by the person therein named;

(*b*) on production of the statement of the Commissioner and on proof of service of the statement on the person liable to pay the stamp duty, the court shall make an order for the payment by such person of the stamp duty in arrear together with the costs of the application, and may direct the immediate execution of the order;

(*c*) the order shall as soon as possible be served on the person concerned who may at any time within fourteen days after such

service apply to the court for the order to be discharged, and the order may then be discharged on any ground which would be a valid defence to proceedings for recovery of stamp duty;

(*d*) property liable to attachment and sale in execution of the order may be seized immediately after the order is made, but shall not be sold until the time for applying for discharge of the order has elapsed and any application for such a discharge has been disposed of.

Stay of execution pending appeal

28. Where, in any proceedings for the recovery of stamp duty or for the discharge of an order for payment of stamp duty, it appears that an appeal against the assessment is pending or that the time for so appealing has not yet elapsed, the court may, if it thinks fit, grant a stay of execution for such period and on such terms as it thinks just.

PART III

Regulations Applicable to Particular Instruments

Agreements

Certain mortgages of stock to be chargeable as agreements

29.—(1) Every instrument under hand only (not being a promissory note or bill of exchange) given upon the occasion of a deposit of any share warrant or stock certificate to bearer, or Commonwealth or foreign share certificate, or any security for money transferable by delivery, by way of security for any loan, shall be deemed to be an agreement, and shall be charged with duty accordingly.

(2) Every instrument under hand only (not being a promissory note or bill of exchange) making redeemable or qualifying a duly stamped transfer intended as a security of any registered stock or marketable security shall be deemed to be an agreement and shall be charged with duty accordingly.

(3) A release or discharge of any such instrument shall be charged with the like duty.

Hire purchase or instalment sale agreement to be stamped

30. The exemption numbered (1) under the heading Agreement or any Memorandum of an Agreement in the Schedule shall not apply in the case of any agreement for or relating to the supply of goods on hire, whereby the goods, in consideration of periodical payments, become or may become the property of the person to whom they are supplied.

Bills of Exchange and Promissory Notes

Meaning of "bill of exchange" and "promissory note" Cap. 48:02

31. For the purposes of this Act, "bill of exchange" and "promissory note" shall have the meanings assigned to these expressions in the Bills of Exchange Act.

Provisions as to stamping foreign bills and notes

32.—(1) Every person into whose hands any bill of exchange or promissory note drawn or made outside Malaŵi comes into Malaŵi before it is stamped shall, before he presents it for payment, or endorses, transfers or in any manner negotiates, or pays, the bill or note, affix thereto the proper stamp, and, if an adhesive stamp, cancel the same:

Provided that—

(i) if at the time when any such bill or note comes into the hands of any *bona fide* holder there is affixed thereto an adhesive stamp effectually cancelled, the stamp shall, so far as relates to the holder, be deemed to be duly cancelled, although it may not appear to have been affixed or cancelled by the proper person; and

(ii) if at the time when any such bill or note comes into the hands of any *bona fide* holder there is affixed thereto an adhesive stamp not duly cancelled, the holder may cancel the stamp as if he were the person by whom it was affixed, and upon his so doing the bill or note shall be deemed to be duly stamped, and as valid and available as if the stamp had been cancelled by the person by whom it was affixed.

(2) Nothing contained in subsection (1) shall relieve any person from any fine or penalty to which he may be liable for not cancelling an adhesive stamp.

As to bills and notes purporting to be drawn abroad

33. A bill of exchange or promissory note which purports to be drawn or made outside Malaŵi shall, for the purpose of determining the mode in which the stamp duty thereon is to be denoted, be deemed to have been so drawn or made, although it may in fact have been drawn or made within Malaŵi.

Penalty for issuing, etc., any unstamped bill or note

34.—(1) Every person who issues, endorses, transfers, negotiates, presents for payment or pays any bill of exchange or promissory note liable to duty and not being duly stamped shall be guilty of an offence and liable to a fine of £25, and the person who takes or receives from any other person any such bill or note either in payment or as a security, or by purchase or otherwise, shall not be entitled to recover thereon or to make the same available for any purpose whatever:

Provided that if any bill of exchange payable on demand or at sight, or on presentation, or within three days after date or sight,

is presented for payment unstamped the person to whom it is presented may affix thereto an adhesive stamp of threepence, and cancel the same as if he had been the drawer of the bill, and may thereupon pay the sum in the bill mentioned and charge the duty in account against the person by whom the bill was drawn, or deduct the duty from the said sum, and the bill shall, so far as respects the duty, be deemed valid and available.

(2) Nothing contained in subsection (1) shall relieve any person from any fine or penalty incurred by him in relation to such bill.

One bill only of a set need be stamped

35. Where a bill of exchange is drawn in a set according to the custom of merchants, and one of the set is duly stamped, the others of the set shall, unless issued or in some manner negotiated apart from the stamped bill, be exempt from duty; and, upon proof of the loss or destruction of a duly stamped bill forming one of the set, any other bill of the set which has not been issued or in any manner negotiated apart from the lost or destroyed bill may, although unstamped, be admitted in evidence to prove the contents of the lost or destroyed bill.

Conveyances on Sale

Meaning of "conveyance on sale"

36.—(1) For the purposes of this Act, "conveyance on sale" includes—

(*a*) any instrument whereby any property, or any estate or interest in any property, upon the sale thereof is transferred to or vested in a purchaser, or any other person on his behalf or by his direction;

(*b*) a decree or order for, or having the effect of an order for, foreclosure:Provided that—

(i) the *ad valorem* duty upon any such decree or order shall not exceed the duty on a sum equal to the value of the property to which the decree or order relates, and where the decree or order states that value that statement shall be conclusive for the purpose of determining the amount of duty; and

(ii) where *ad valorem* duty is paid upon such decree or order any conveyance following upon such decree or order shall be exempt from *ad valorem* duty.

(2) Any vesting order by the court shall bear the same stamp as if it were a conveyance on sale.

How *ad valorem* duty is to be calculated in respect of stock and securities

37.—(1) Where the consideration, or any part of the consideration, for a conveyance on sale consists of any stock or marketable security, the conveyance shall be charged with *ad valorem* duty in respect of the value of the stock or security.

(2) Where the consideration, or any part of the consideration, for a conveyance on sale consists of any security not being a

marketable security, the conveyance shall be charged with *ad valorem* duty in respect of the amount due on the day of the date thereof for principal and interest upon the security.

How consideration consisting of periodical payments to be charged

38.—(1) Where the consideration, or any part of the consideration, for a conveyance on sale consists of money payable periodically for a definite period not exceeding twenty years, so that the total amount to be paid can be previously ascertained, the conveyance shall be charged in respect of that consideration with *ad valorem* duty on such total amount.

(2) Where the consideration, or any part of the consideration, for a conveyance on sale consists of money payable periodically for a definite period exceeding twenty years or in perpetuity, or for any indefinite period not terminable with life, the conveyance shall be charged in respect of that consideration with *ad valorem* duty on the total amount which will or may according to the terms of sale be payable during the period of twenty years next after the day of the date of the instrument.

(3) Where the consideration or part of the consideration for a conveyance on sale consists of money payable periodically during any life or lives, the conveyance shall be charged in respect of that consideration with *ad valorem* duty on the amount which will or may, according to the terms of sale, be payable during the period of twelve years next after the day of the date of the instrument.

(4) Notwithstanding the foregoing provisions of this section, no conveyance on sale chargeable with *ad valorem* duty in respect of any periodical payments and containing also provision for securing the payments shall be charged with any duty in respect of such provision, and no separate instrument made in that case for securing repayment shall be charged with any higher duty than ten shillings.

Conveyance on sale with further covenant

39. A conveyance on sale made for any consideration in respect whereof it is chargeable with *ad valorem* duty, and in further consideration of a covenant by the purchaser to make, or of his having previously made, any substantial improvement of or addition to the property conveyed to him, or of any covenant relating to the subject-matter of the conveyance, shall not be chargeable, and shall be deemed not to have been chargeable, with any duty in respect of such further consideration.

How conveyance in consideration of a debt etc., to be charged

40. Where any property is conveyed to any person in consideration, wholly or in part, of any debt due to him, or subject either certainly or contingently to the payment or transfer of any money or stock, whether being or constituting a charge or encumbrance or not, the debt, money or stock shall be deemed to be the whole or part, as the case may be, of the consideration in

respect whereof the conveyance is chargeable with *ad valorem* duty.

Direction as to duty in certain cases of conveyances, mortgages and settlements

41.—(1) Where property contracted to be sold for one consideration for the whole is conveyed to the purchaser in separate parts or parcels by different instruments, the consideration shall be apportioned in such manner as the parties think fit, so that a distinct consideration for each separate part or parcel is set forth in the conveyance relating thereto, and such conveyance shall be charged with *ad valorem* duty in respect of such distinct consideration.

(2) Where property contracted to be purchased for one consideration for the whole by two or more persons jointly or by any person for himself or others or wholly for others is conveyed in parts or parcels by separate instruments to the persons by or for whom the same was purchased for distinct parts of the consideration, the conveyance of each separate part or parcel shall be charged with *ad valorem* duty in respect of the distinct part of the consideration therein specified.

(3) Where there are several instruments of conveyance for completing the purchaser's title to property sold, the principal instrument of conveyance only is to be charged with *ad valorem* duty, and the other instruments are to be respectively charged with such other duty as they may be liable to, but the last-mentioned duty shall not exceed the *ad valorem* duty payable in respect of the principal instrument.

(4)—(*a*) Where any property is conveyed by one person to another by the direction, or at the request, or with the consent, of an intermediary or intermediaries, the conveyance shall be charged with duty as if it were both a conveyance of the property by the transferor to the intermediary or, as the case may be, to the first intermediary, and also a number of conveyances whereby each intermediary conveys the property to the next intermediary or, in the final case, to the transferee.

(*b*) Every conveyance to which this subsection refers shall recite the fact of each such direction, request or consent; and, if the instrument is executed without that recital, every person executing the same knowing that it does not contain that recital (which knowledge shall be presumed unless the contrary is proved) shall be guilty of an offence and liable to a fine of £250.

(*c*) In this subsection, "intermediary" means a person, other than the transferee, who since the commencement of this Act acquired the right to call for a conveyance of any property under an agreement for sale, trust or otherwise howsoever, and includes two or more such persons acting jointly.

(5) If the holder of a registered claim, mining lease or exclusive prospecting licence has granted to any person the right to purchase such claim, lease or licence, and if the said right to purchase becomes vested in some other person by the surrender or transfer of the said right, then, upon the exercise of the said right to purchase, any sums paid for such surrender or transfer shall be deemed to form part of the consideration in the transfer of such claim, lease or licence.

Certain contracts to be chargeable as conveyances on sale

42.—(1) Any contract or agreement for the sale of any equitable estate or interest in any property whatsoever, or for the sale of any estate or interest in any property except lands, tenements, hereditaments, or property locally situate outside Malaŵi, or goods, wares or merchandise, or stock, or marketable securities, or any ship or vessel, or part interest, share, or property of or in any ship or vessel, shall be charged with the same *ad valorem* duty, to be paid by the purchaser, as if it were an actual conveyance on sale of the estate, interest, or property contracted or agreed to be sold.

(2) Where the purchaser has paid the said *ad valorem* duty and, before having obtained a conveyance or transfer of the property, enters into a contract or agreement for the sale of the same, the contract or agreement shall be charged, if the consideration for that sale is in excess of the consideration for the original sale, with the *ad valorem* duty payable in respect of such excess consideration, and in any other case with the fixed duty of ten shillings.

(3) Where duty has been duly paid in conformity with the foregoing provisions, the conveyance or transfer made to the purchaser or sub-purchaser, or any other person on his behalf or by his direction, shall not be chargeable with any duty, and the Commissioners, upon application, either shall denote the payment of the *ad valorem* duty upon the conveyance or transfer, or shall transfer the *ad valorem* duty thereto upon production of the contract or agreement, or contracts or agreements, duly stamped.

(4) Where any such contract or agreement is stamped with the fixed duty of ten shillings the contract or agreement shall be regarded as duly stamped for the mere purpose of proceedings to enforce specific performance or recover damages for the breach thereof.

(5) Where any such contract or agreement is stamped with the said fixed duty, and a conveyance or transfer made in conformity with the contract or agreement is presented to the Commissioners for stamping with the *ad valorem* duty chargeable thereon within the period of six months after the first execution of the contract or agreement, or within such longer period as the Commissioners think reasonable in the circumstances of the case, the conveyance or transfer shall be stamped accordingly, and the same, and the said contract or agreement, shall be deemed to be duly stamped:

Provided that nothing in this subsection shall alter or affect the provisions as to the stamping of a conveyance or transfer after the execution thereof.

(6) The *ad valorem* duty paid upon any such contract or agreement shall be returned by the Commissioners in case the contract or agreement be afterwards rescinded or annulled.

As to sale of an annuity or right not before in existence

43.—(1) Where upon the sale of any annuity or other right not before in existence, such annuity or other right is not created by actual grant or conveyance, but is only secured by bond, warrant of attorney, covenant, contract or otherwise, the bond or other instrument, or some one of such instruments if there are more than one, shall be charged with the same duty as an actual grant or conveyance and shall for the purposes of this Act be deemed to be an instrument of conveyance on sale.

(2) Notwithstanding the provisions of subsection (1), an instrument being a grant or contract for payment of a purchased life annuity shall be chargeable with stamp duty under paragraph (3) of the heading Bond, Covenant or Instrument of any Kind Whatsoever in the Schedule, whether or not the annuity is a superannuation annuity as defined in that paragraph.

(3) In this section, "purchased life annuity" means a life annuity granted for consideration in money or money's worth in the ordinary course of a business of granting annuities on human life.

Principal instrument how to be ascertained

44. The parties may determine for themselves which of several instruments shall be deemed to be the principal instrument and may pay the *ad valorem* duty thereon accordingly:

Provided that the duty chargeable on the instrument so determined shall be the highest duty which would be chargeable in respect of any of the said instruments.

Duty on gifts *inter vivos*

45.—(1) Any conveyance or transfer operating as a voluntary disposition *inter vivos* shall be chargeable with the like stamp duty as if it were a conveyance or transfer on sale, with the substitution in each case of the value of the property conveyed or transferred for the amount or value of the consideration for the sale.

(2) Notwithstanding the provisions of subsection (1), a conveyance or transfer, or an agreement for a conveyance or transfer, operating as a voluntary disposition of property shall not be chargeable with any duty, if such conveyance or transfer is in favour of—

(*a*) any body of persons incorporated by a written law and that body is by its written law precluded from dividing any profit amongst its members and the property conveyed is to be held for the purposes of its preservation for the benefit of Malaŵi; or

(*b*) any body of persons established for charitable purposes only or the trustees of a trust so established.

(3) Notwithstanding anything contained in section 17, the Commissioners may be required to express their opinion under that section on any conveyance, transfer or agreement mentioned in the foregoing provisions of this section, and no such conveyance, transfer or agreement shall be deemed to be duly stamped unless the Commissioners have expressed their opinion thereon in accordance with that section and the instrument has been stamped accordingly.

(4) Where any instrument is chargeable with duty both as a conveyance or transfer under this section and as a settlement under the heading SETTLEMENT in the Schedule, the instrument shall be charged with duty as a conveyance or transfer under this section and not as a settlement.

(5) Any conveyance or transfer (not being a disposition made in favour of a purchaser or encumbrancer or other person in good faith and for valuable consideration) shall, for the purposes of this section, be deemed to be a conveyance or transfer operating as a voluntary disposition *inter vivos*, and (except where marriage is the consideration) the consideration for any conveyance or transfer shall not for this purpose be deemed to be valuable consideration where the Commissioners are of opinion that by reason of the inadequacy of the sum paid as consideration or other circumstances the conveyance or transfer confers a substantial benefit on the person to whom the property is conveyed or transferred.

(6) The foregoing provisions of this section shall not apply to a conveyance or transfer made for a nominal consideration for the purpose of securing the repayment of an advance or loan or made for effectuating the appointment of a new trustee or the retirement of a trustee, whether the trust is expressed or implied, or under which no beneficial interest passes in the property conveyed or transferred, or made to a beneficiary by a trustee or other person in a fiduciary capacity under any trust, whether express or implied, and this subsection shall have effect notwithstanding that circumstances exempting the conveyance or transfer from charge under this section are not set forth in the conveyance or transfer.

Conveyances on any Occasion except Sale or Mortgage

What is to be deemed a conveyance on any occasion not being a sale or mortgage

46. Every instrument, and every decree or order of any court, whereby any property on any occasion, except a sale or mortgage, is transferred to or vested in any person, shall be charged with duty as a conveyance or transfer of property:

Provided that a conveyance or transfer made for effectuating the appointment of a new trustee, or for effectuating the retirement of a trustee although no new trustee is appointed, shall not be charged with any higher duty than thirty shillings.

Leases and Licences

Agreements to be charged as leases

47.—(1) An agreement for a lease, or in respect of any letting, shall be charged with the same duty as if it were an actual lease made for the term and consideration mentioned in the agreement.

(2) A lease made subsequently to, and in conformity with, such an agreement duly stamped shall be charged with the duty of five shillings.

Duty on leases in other cases

48. A lease shall, so far as the consideration therefor consists of any premium or other consideration whatsoever other than rent, moving either to the lessor or to any other person, be charged with *ad valorem* stamp duty computed on that consideration, as if it were a conveyance on sale for the amount of that consideration.

Duty on leases granted in perpetuity

49. A lease granted in perpetuity shall be charged with *ad valorem* stamp duty as if it were a conveyance on sale, and the duty shall be computed on the value of the property.

Leases, how to be charged in respect of produce, etc.

50.—(1) Where the consideration, or any part of the consideration, for which a lease is granted or agreed to be granted, consists of any produce or other goods, the value of the produce or goods shall be deemed a consideration in respect of which the lease or agreement is chargeable with *ad valorem* duty.

(2) Where it is stipulated that the value of the produce or goods is to amount at least to, or is not to exceed, a given sum, or where the lessee is specially charged with or has the option of paying after any permanent rate of conversion, the value of the produce or goods shall, for the purpose of assessing the *ad valorem* duty, be estimated at the given sum, or according to the permanent rate.

(3) A lease or an agreement for a lease made either wholly or partially for any such consideration, if it contains a statement of the value thereof, and is stamped in accordance with the statement, shall, so far as regards the subject-matter of the statement, be deemed to be duly stamped, unless or until it is otherwise shown that the statement is incorrect, and that the lease or agreement is in fact not duly stamped.

Directions as to duty in certain cases

51.—(1) A lease made for any consideration in respect whereof it is chargeable with *ad valorem* duty, and in further consideration either of a covenant by the lessee to make, or of his having previously made, any substantial improvement of or addition to the property demised to him, or of any covenant relating to the matter of the lease, is not to be charged with any duty in respect of such further consideration:

Provided that this subsection shall not apply in respect of any further consideration in the lease consisting of a covenant which, if it were contained in a separate deed would be chargeable with *ad valorem* stamp duty, and accordingly the lease shall in any such case be charged with duty in respect of any such further consideration under section 5.

(2) An instrument, whereby the rent reserved by any other instrument chargeable with duty and duly stamped as a lease is increased, shall not be charged with duty otherwise than as a lease in consideration of the additional rent thereby made payable.

Duty on leases granted for inadequate consideration

52. A lease granted for a consideration which in the opinion of the Commissioners is inadequate, unless it is a lease granted by the Government or its predecessors in title, shall, in respect of the consideration therefor, be charged in accordance with the foregoing provisions; and such a lease shall also be charged as if it were an instrument operating as a voluntary disposition *inter vivos* in respect of the value of the leasehold interest after deducting the amount of the consideration.

Duty where consideration cannot be fixed with accuracy

53. Where, in the opinion of the Commissioners, the amount of the consideration for a lease cannot be ascertained with reasonable accuracy, they may, in their discretion, either disregard that consideration to the extent to which its amount is deemed to be unascertainable and stamp the lease as if it were a voluntary disposition *inter vivos* in accordance with section 45, or they may assess the lease with a fixed duty of five pounds in respect of the consideration so far as it is deemed to be unascertainable.

Licences

54.—(1) Every licence relating to immovable property shall for the purposes of this Act be deemed to be a lease by the grantor of the licence to the grantee, and shall be charged with duty accordingly.

(2) In the application to licences of this Act with respect to leases, every consideration which would have been rent if the licence had been a lease shall be deemed to be rent, and duty shall be charged accordingly.

Marketable Securities

Meaning of marketable securities for charge of duty and foreign and Common-wealth share certificate

55. Marketable securities, for the purpose of the charge of duty thereon, whether or not transferable by delivery, include—

(*a*) a marketable security, made or issued by or on behalf of any company or body of persons corporate or unincorporate formed or established in Malaŵi; and

(*b*) a marketable security by or on behalf of any foreign state or government, or Commonwealth or foreign municipal body, corporation or company (hereinafter called a foreign security)—

(i) which is made or issued in Malaŵi; or

(ii) which, though originally issued out of Malaŵi, is offered for subscription, and is given or delivered to a subscriber in Malaŵi; or

(iii) which is assigned, transferred or in any other manner negotiated in Malaŵi; and

(*c*) a marketable security by or on behalf of the government of any country in the Commonwealth (hereinafter called a Commonwealth government security) which if the borrower were a foreign government, would be a foreign security; and

(*d*) a share warrant or stock certificate to bearer, or any other instrument to bearer, by means of which any share or stock of any company or body of persons formed or established out of Malaŵi is assigned, transferred or in any manner registered in Malaŵi.

Meaning of marketable security transferable on delivery and instrument to bearer

56. An instrument used for the purpose of assigning, transferring or in any manner negotiating the right to any marketable security, share or stock shall, if the delivery thereof is by usage treated as sufficient for the purpose of a sale on the market, whether that delivery constitutes a legal assignment, transfer or negotiation or not, be deemed to be a marketable security transferable on delivery, or an instrument to bearer, as the case may be, and the delivery thereof an assignment, transfer or negotiation.

Mortgages, etc.

Meaning of "mortgage" and "equitable mortgage" and provisions in relation to equitable mortgages

57.—(1) For the purposes of this Act, "mortgage" means a legal charge or security by way of mortgage for the payment of any definite or certain sum of money advanced or lent at the time, or previously due and owing or foreborne to be paid, being payable, or for the repayment of money to be thereafter lent, advanced or paid, or which may become due upon an account current, together with any sum already advanced or due, or without, as the case may be; and includes—

(*a*) any conditional surrender by way of mortgage, charge, further charge or disposition; and

(*b*) any conveyance of any property in trust to be sold or otherwise converted into money intended only as a security, and redeemable before the sale or other disposal thereof, either by express stipulation or otherwise; and

(*c*) any instrument in writing for defeating or making redeemable or explaining or qualifying any conveyance,

transfer, disposition or assignation of any immovable property, apparently absolute, but intended only as a security; and

(*d*) any agreement (other than an agreement chargeable with duty as an equitable mortgage), contract or bond accompanied with a deposit of title deeds or with other instruments evidencing a right to property, for making a mortgage, or any other security or conveyance as aforesaid of any property comprised in the title deed, or for pledging or charging the same as a security; and

(*e*) any deed operating as a mortgage of any stock or marketable security,

but does not include an instrument registrable under the Bills of Sale Act.

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(2) For the purpose of this Act, ''equitable mortgage'' means an agreement or memorandum relating to the deposit of any title deeds or instruments constituting or being evidence of the title to any property (other than any stock or marketable security) or creating a charge on such property.

(3) (*a*) There shall be embodied in every equitable mortgage a certificate setting forth the amount secured thereby, or, if such be the case, that the amount secured is uncertain.

(*b*) In the case of an equitable mortgage to which section 59 (2) applies, where any advance or loan is made in excess of the amount covered by the *ad valorem* duty impressed thereon, there shall be presented with or endorsed on the equitable mortgage, when it is presented for stamping, a certificate setting forth the amount of the advance or loan so made.

(*c*) There shall be embodied in every discharge of an equitable mortgage a certificate setting forth the greatest amount which was at any time secured by the mortgage.

(*d*) Nothing shall be claimable under any equitable mortgage more than the highest amount for which the stamp actually used would, at the date of the stamping thereof, have been sufficient.

Direction as to duty in certain cases

58.—(1) A security for the transfer or retransfer of any stock shall be charged with the same duty as a similar security for a sum of money equal in amount to the value of the stock; and a transfer, assignment or disposition of any such security, and a reconveyance, release, discharge, surrender, resurrender, warrant to vacate or renunciation of any such security, shall be charged with the same duty as an instrument of the same description relating to a sum of money equal in amount to the value of the stock.

(2) A security for the payment of any rentcharge, annuity or periodical payments, by way of repayment, or in satisfaction or discharge of any loan, advance or payment intended to be so

repaid satisfied or discharged, shall be charged with the same duty as a similar security for the payment of a sum of money so lent, advanced or paid.

(3) A transfer of a duly stamped security, and a security by way of further charge for money or stock added to money or stock previously secured by a duly stamped instrument, shall not be charged with any duty by reason of it containing any further or additional security for the money or stock transferred or previously secured, or the interest or dividends thereof, or any new covenant, proviso, power, stipulation or agreement in relation thereto, or any further assurance of the property comprised in the transferred or previous security.

(4) An instrument chargeable with *ad valorem* duty as a mortgage shall not be charged with any further duty by reason of the equity of redemption in the mortgaged property being thereby conveyed or limited in any other manner than to a purchaser, or in trust for, or according to the direction of, a purchaser.

Security for future advances, how to be charged

59.—(1) A security for the payment or repayment of money to be lent, advanced or paid, or which may become due upon an account current, either with or without money previously due, shall be charged, where the total amount secured or to be ultimately recoverable is in any way limited, with the same duty as a security for the amount so limited.

(2) Where such total amount is unlimited, the security shall be available for such an amount only as the *ad valorem* duty impressed thereon extends to cover, but where any advance or loan is made in excess of the amount covered by that duty the security shall, for the purpose of stamp duty, be deemed to be a new and separate instrument bearing the date of the day on which the advance or loan is made.

(3) Notwithstanding the foregoing provisions of this section, no money to be advanced for the insurance of any property comprised in the security against damage by fire, or for keeping up any policy of life insurance comprised in the security, or for effecting in lieu thereof any new policy, or for the renewal of any grant or lease of any property comprised in the security upon the dropping of any life whereon the property is held, shall be reckoned as forming part of the amount in respect whereof the security is chargeable with *ad valorem* duty.

Partitions

Partitions

60.—(1) Every instrument whereby the co-owners of any property divide or agree to divide such property in severalty, shall be charged with duty as a partition.

(2) For the purpose of computing the duty on an instrument of partition, the largest share remaining after any property has been

divided (or, if there are two or more shares of equal value and not smaller than any of the other shares, then one of such equal shares) shall be deemed to be that from which the other shares are separated.

(3) When an instrument of partition containing an agreement to divide property in severalty is executed and a partition is effected in pursuance of such agreement, the duty chargeable upon the instrument effecting such partition shall be reduced by the amount of duty paid in respect of the first instrument, but shall not be less than one pound.

(4) Where a final order for effecting a partition passed by any civil court, or an award by an arbitrator directing a partition, is stamped with the stamp required for an instrument of partition and an instrument of partition in pursuance of such order or award is subsequently executed, the duty on such instrument shall be reduced by the amount of the duty paid in respect of the first instrument, but shall not be less than one pound.

Policies of Insurance

Meaning of "policy of insurance", "policy of life insurance" and "policy of insurance against accident"

61.—(1) For the purposes of this Act, "policy of insurance" includes every writing whereby any contract of insurance is made or agreed to be made, or is evidenced; and "insurance" includes assurance.

(2) For the purposes of this Act, "policy of life insurance" means a policy of insurance upon any life or lives or upon any event or contingency relating to or depending upon any life or lives except a policy of insurance against accident; and "policy of insurance against accident" means a policy of insurance for any payment agreed to be made upon the death of any person only from accident or violence or otherwise than from a natural cause, or as compensation for personal injury.

Penalty for not making out policy or making, etc., any policy not duly stamped

62. Every person who—

(*a*) receives, or takes credit for, any premium or consideration for any insurance and does not within three months after receiving, or taking credit for, the premium or consideration make out and execute a duly stamped policy of insurance or endorsement or renewal document, as may be appropriate; or

(*b*) makes, executes or delivers out or pays or allows in account, or agrees to pay or allow in account, any money upon or in respect of any such policy, endorsement or renewal document which is not duly stamped,

shall be guilty of an offence and liable to a fine of £10.

Assignment or surrender of policy of life insurance to be stamped

63.—(1) No assignment or surrender of a policy of life insurance shall confer on the assignee or surrenderee therein named, or his executors, administrators or assigns, any right to sue for the money assured or secured thereby, or to give a valid discharge for the same, or any part thereof, unless the assignment or surrender is duly stamped, and no payment shall be made to any person claiming under any such assignment or surrender unless the same is duly stamped.

(2) If any payment is made in contravention of this section, the duty not paid upon the assignment or surrender, together with the penalty payable on stamping the same, shall be a debt due to the Government from the person by whom the payment is made.

Receipts

Provisions as to duty upon receipts

64. For the purposes of this Act, "receipt" includes any note, memorandum or writing whereby any money amounting to K4 or upwards, or any bill of exchange, cheque or promissory note for money amounting to K4 or upwards, is acknowledged or expressed to have been received or deposited or paid, or whereby any debt or demand, or any part of a debt or demand, of the amount of K4 or upwards is acknowledged to have been settled, satisfied or discharged, or which signifies or imports any such acknowledgement, and whether the same is or is not signed with the name of any person.

Obligation to give receipt in certain cases, and penalty for offences in relation to receipts

65.—(1) Any person receiving any money of K4 or upwards in amount, or any bill of exchange (other than a cheque) or promissory note for an amount of K4 or upwards, or receiving in satisfaction or part satisfaction of debt any moveable property of K4 or upwards in value, shall, on demand by the person paying or delivering such money, bill, note or property, give a duly stamped receipt for the same.

(2) If any person—

(*a*) fails to give a receipt, as required by subsection (1); or

(*b*) gives a receipt liable to duty and not duly stamped; or

(*c*) upon a payment to the amount of K4 or upwards, gives a receipt for a sum not amounting to K4, or separates or divides the amount paid with intent to evade the duty,

he shall be guilty of an offence and liable to a fine of K20.

Settlements

As to settlement of policy or security

66. Where any money which may become due or payable upon any policy of life insurance, or upon any security, not being a marketable security, is settled or agreed to be settled, the instrument whereby the settlement is made or agreed to be made shall be charged with *ad valorem* duty in respect of that money:

Provided that—

(*a*) where, in the case of a policy, no provision is made for keeping up the policy, the *ad valorem* duty shall be charged only on the value of the policy at the date of the instrument;

(*b*) where, in any such case, the instrument contains a statement of the said value and is stamped in accordance with the statement, it shall, so far as regards the policy, be deemed to be duly stamped, unless or until it is shown that the statement is untrue, and that the instrument is in fact insufficiently stamped.

Settlements, when not to be charged as securities

67. An instrument chargeable with *ad valorem* duty as a settlement in respect of any money, stock or security shall not be charged with any further duty by reason of containing provision for the payment or transfer of the money, stock or security, or by reason of containing, where the money, stock or security is in reversion or is not paid or transferred upon the execution of the instrument, provision for the payment by the person entitled in possession to the interest or dividends of the money, stock or security during the continuance of such possession of any annuity or yearly sum not exceeding interest at the rate of four per centum per annum upon the amount or value of the money, stock or security.

Where several instruments one only to be charged with *ad valorem* duty

68.—(1) Where several instruments are executed for effecting the settlement of the same property, and the *ad valorem* duty chargeable in respect of the settlement of property exceeds K2, one only of the instruments is to be charged with the *ad valorem* duty.

(2) Where a settlement is made in pursuance of a previous agreement upon which *ad valorem* settlement duty exceeding K2 has been paid in respect of any property, the settlement is not to be charged with *ad valorem* duty in respect of the same property.

(3) In each of the aforesaid cases the instruments not chargeable with *ad valorem* duty are to be charged with the duty of K2.

PART IV

Allowances for Stamps in Certain Cases

Allowance for spoiled stamps

69. Subject to the provisions of section 70, and of any regulations made under this Act, and to the production of such evidence by statutory declaration or otherwise as the Commissioners may require, allowance shall be made by the Commissioners for stamps spoiled in the cases hereinafter mentioned—

(*a*) an impressed stamp on any material inadvertently and undesignedly spoiled, obliterated or by any means rendered unfit for the purpose intended, before the material bears the signature of any person or any instrument written thereon is executed by any party;

(*b*) an impressed stamp on any bill of exchange signed by or on behalf of the drawer which has not been accepted or made use of in any manner whatever or delivered out of his hands for any purpose other than by way of tender for acceptance;

(*c*) an impressed stamp on any promissory note signed by or on behalf of the maker which has not been made use of in any manner whatever or delivered out of his hands;

(*d*) an impressed stamp on any bill of exchange or promissory note which from any omission or error has been spoiled or rendered useless, although the same, being a bill of exchange, may have been accepted or endorsed or, being a promissory note, may have been delivered to the payee, provided that another completed and duly stamped bill of exchange or promissory note is produced identical in every particular, except in the correction of the error or omission, with the spoiled bill or note;

(*e*) an impressed stamp used for any instrument executed by any party thereto—

(i) but afterwards found to be absolutely void from the beginning;

(ii) but afterwards found unfit, by reason of any error or mistake therein, for the purpose originally intended;

(iii) which has not been made use of for any purpose whatever and which, by reason of the inability or refusal of some necessary party to sign the same or to complete the transaction according to the instrument, is incomplete and insufficient for the purpose for which it was intended;

(iv) which by reason of the refusal of any person to act under the same, or for want of enrolment or registration within the time required by law, fails of its intended purpose or becomes void;

(v) which is inadvertently and undesignedly spoiled, and in lieu whereof another instrument made between the same parties and for the same purpose is executed and duly stamped, or which becomes useless in consequence of the transaction intended to be thereby effected being effected by some other instrument duly stamped.

Conditions upon which applications under section 69 shall be granted

70. No application for relief under section 69 shall be granted—

(*a*) unless the application is made within two years after the stamp has been spoiled or becomes useless or, in the case of an executed instrument, after the date of the instrument or, if it is not dated, within two years after the execution thereof by the person by whom it was first or alone executed, or within such

further time as the Commissioners may allow in the case of any instrument sent out of Malaŵi for execution or when from unavoidable circumstance any instrument, for which another has been substituted, cannot be provided within the said period;

(*b*) if, in the case of an executed instrument, any legal proceedings have been commenced in which the instrument could or would have been given or offered in evidence and unless the instrument is given up to be cancelled.

Allowance for misused stamps

71. Where any person has inadvertently used for an instrument liable to duty an impressed stamp of sufficient amount but of improper description or an impressed stamp of greater value than was necessary, or has inadvertently used an impressed stamp for an instrument not liable to any duty, the Commissioners may, on application made within one year after the date of the instrument, or, if it is not dated, within six months after the execution thereof by the person by whom it was first or alone executed, and upon the instrument, if liable to duty, being stamped with the proper duty, and subject to the provisions of section 21, cancel and allow as spoiled the stamp so misused.

Allowance for spoiled or misused stamps, how to be made

72. In any case in which allowance is made for spoiled or misused stamps, the Commissioners may give in lieu thereof—

(*a*) other stamps of the same description and value; or

(*b*) if required, and they think fit, stamps of any other description to the same amount in value; or

(*c*) at their discretion, the value in money of the spoiled or misused stamps less five per centum for each shilling or fractional part of a shilling, or paper bearing impressed stamps to the value of the spoiled or misused stamps less five per centum for each shilling or fractional part of a shilling.

PART V

Miscellaneous

As to discontinuance of dies

73. Whenever the Commissioners determine to discontinue the use of any die and provide a new die to be used in lieu thereof and give public notice thereof in the *Gazette*, then from and after any day to be stated in the notice (such day not being within one month after the same is so published) the new die shall be the only lawful die for denoting the duty chargeable in any case in which the discontinued die would have been used; and every instrument first executed by any person or bearing date after the day so stated and stamped with the discontinued die shall be deemed to be not duly stamped:

Provided that—

(i) if any instrument stamped as last aforesaid, and first executed after the day so stated at any place outside Malaŵi, is

brought to the Commissioners within fourteen days after it has been received in Malaŵi, then upon proof of the facts to the satisfaction of the Commissioners the stamp thereon shall be cancelled and the instrument shall be stamped with the same amount of duty by means of the lawful die, without payment of any penalty;

(ii) all persons having in their possession any material stamped with the discontinued die, and which by reason of the providing of such new die has been rendered useless, may, at any time within six months after the day stated in the notice, send the same to the Commissioners, who may thereupon cause the stamp on such material to be cancelled and the same material, or if the Commissioners think fit any other material, to be stamped with the new die, in lieu of and to an equal amount with the stamp so cancelled.

Conditions and agreements as to duty void

74. Every condition of sale framed with the view to precluding objection or requisition upon the ground of absence or insufficiency of stamp upon any instrument executed after the commencement of this Act, and every contract, arrangement or undertaking for assuming the liability on account of absence or insufficiency of stamp upon any such instrument or indemnifying against such liability, absence or insufficiency, shall be void.

Compounding duty on cheques

75.—(1) The Commissioners may enter into an agreement with any banker for the composition of the stamp duty on unstamped cheques on the following conditions—

(*a*) that the said cheques shall be drawn and issued on forms to be supplied or adopted by the said banker;

(*b*) that the said banker shall levy upon or charge to the person to whom such cheques are issued the stamp duty mentioned in the Schedule;

(*c*) that the said banker shall as soon as possible pay to the Commissioners the amount due and collected thereon as duties on such unstamped cheques issued during the immediately preceding quarter, and shall render with each such payment an account in such form as the Commissioners may require;

(*d*) that the said banker shall deposit with the Commissioners, as security for the due payment of any moneys payable under paragraph (*c*), such sum (if any) as the Commissioners may direct.

(2) Cheques drawn and issued on forms supplied or adopted by such bank in accordance with this section shall be deemed to be duly stamped.

The Commissioners may call for, and refuse to proceed without, evidence

76. With reference to any instrument, the Commissioners may require to be furnished with such evidence as they may deem necessary in order to show to their satisfaction whether all the facts and circumstances affecting the liability of the instrument to duty, or the amount of the duty chargeable thereon, are fully and truly set forth therein, and may refuse to proceed upon any application to them under this Act until such evidence has been furnished accordingly.

Registers, books, etc., to be open to inspection

77. Every officer or servant of a local authority or statutory corporation having in his custody any registers, books, records, papers, documents or proceedings, the inspection whereof may tend to secure any duty, or to prove or lead to the discovery of any fraud or omission in relation to any duty, shall at all reasonable times permit any person thereto authorized by the Commissioners to inspect the registers, books, records, papers, documents and proceedings, and to take such notes and extracts as he may deem necessary, without fee or reward, and in case of refusal shall be guilty of an offence and liable to a fine of £25.

Search

78.—(1) If it appears to a magistrate upon the oath of any person that there is reason to believe that there are or may be upon or in the possession or under the control of any person, or on any premises, any books of account or other instruments whatsoever of which any of the contents may tend to show that an offence under this Act has been committed, such magistrate may issue a search warrant authorizing any person named or referred to in the said warrant to search any such person, and to enter and search any such premises and any person found therein, and to inspect and without fee or reward take copies or extracts of any books of account or other instruments found on such premises or upon such person.

(2) Any copies so taken shall be admissible in evidence in any proceedings under this Act.

(3) If any person obstructs any such inspection or taking of copies in any manner whatsoever he shall be guilty of an offence and liable to a fine of £100.

Penalty for enrolling, etc., instrument not duly stamped

79. If any person, whose office it is to enrol, register or enter in or upon any rolls, books or records any instrument chargeable with duty, enrols, registers or enters any such instrument not being duly stamped, he shall be guilty of an offence and liable to a fine of £25.

Responsibility for loss of or damage to instrument

80.—(1) If any instrument sent to the Commissioners under section 18 (3) is lost, destroyed or damaged during transmission, the person sending the same shall not be liable for such loss, destruction or damage.

(2) When any instrument is about to be sent, the person from whose possession it came into the hands of the person impounding the same may require a copy thereof to be made at the expense of such first-mentioned person and authenticated by the person impounding such instrument:

Provided that in the event of the loss, destruction or damage of the original instrument such authenticated copy shall be admissible in evidence in any court, but such copy shall be chargeable with duty and penalty as if it were the original.

Commissioners may administer oaths

81. The Commissioners may administer any oath or affirmation which may be necessary for the purposes of this Act.

Power to reward informers

82. The Commissioners may in their discretion reward any person who informs any Commissioner of any offence under this Act or assists in the recovery of any fine or penalty, but a reward exceeding £5 shall not be paid in any case without the consent of the Treasury.

PART VI

Criminal Offences and Procedure

Penalty for not drawing full number of bills purporting to be in sets

83. Any person drawing or executing a bill of exchange purporting to be drawn or executed in a set of two or more and not at the same time drawing or executing, on paper duly stamped, the whole number of bills of which such bill purports the set to consist shall be guilty of an offence and liable to a fine of £500.

Penalty for post-dating bills and for other devices to defraud the revenue

84. Any person who—

(*a*) with intent to defraud the Government of duty, draws, makes or issues any bill of exchange or promissory note, bearing a date subsequent to that on which such bill or note is actually drawn or made; or

(*b*) knowing that such bill or note has been so post-dated, endorses, transfers or presents for acceptance or payment, or accepts, pays or receives payment of, such bill or note, or in any manner negotiates the same,

shall be guilty of an offence and liable to a fine of £500.

Penalty for frauds in relation to stamp duties

85.—(1) Any person who practises or is concerned in any fraudulent act, contrivance or device, not specially provided for by any written law, with intent to defraud the Government of any stamp duty or penalty shall be guilty of an offence and liable to imprisonment for one year and to a fine of £500.

(2) Any person who, for the purpose of evading any stamp duty or penalty, falsifies, mutilates or destroys any book of

account or other instrument whatsoever shall be guilty of an offence and liable to imprisonment for one year and to a fine of £200.

Liability in the case of corporate bodies and firms

86.—(1) Where any obligation or liability is under this Act imposed upon a corporate body and such obligation or liability is not discharged, every director, manager, secretary and other officer of the corporate body who is wilfully a party to the default, and the said corporate body, shall be guilty of an offence and liable to a fine of £250.

(2) Where any obligation or liability is under this Act imposed upon a firm and such obligation or liability is not discharged, every partner in the said firm, and every servant of the said firm, who is wilfully a party to the default, and the person appearing to have the management of the said firm within Malaŵi shall be guilty of an offence and liable to a fine of £250.

General penalty for acting and practising, etc., without licence

87. If any person practises or acts in any capacity, or does anything in respect of which a licence subject to stamp duty is required without having such a licence duly stamped, he shall, in the absence of a specific penalty in any other law provided, be guilty of an offence and liable to a fine of £50.

Exemptions from stamp duty

88.—(1) There shall be exempt from stamp duty under this Act—

(*a*) any instrument on which stamp duty would be payable by the Government;

(*b*) any instrument for the sale, transfer or other disposition, either absolutely or by way of mortgage, or otherwise, of any ship or vessel or of any part, interest, share or property of or in any ship or vessel;

(*c*) any pension warrant issued by any government;

(*d*) any bond given by a public officer for the due execution of his duties;

(*e*) any will, codicil or other testamentary disposition;

(*f*) all instruments for the conveyance or transfer, or for the lease of premises for use as an Embassy or High Commission office, or as a residence for the head or any member of the staff (whether diplomatically privileged or not) of such Embassy or High Commission, such exemption to apply to such governments as shall appear to the Minister to have granted a like exemption to the Government of Malaŵi, and only to instruments in respect of which duty would be payable by such government; and

(*g*) any instrument generally or specially exempted in the Schedule.

(2) In addition to subsection (1) the Minister may, by notice published in the *Gazette,* direct that any instrument or any class of instruments shall be exempt from stamp duty or from any of the provisions of this Act. The power conferred on the Minister by this subsection may be exercised with retrospective effect.

Regulations

89. The Minister may make regulations as may appear to him to be necessary or expedient for the proper carrying out of the intent and provisions of this Act, and, without prejudice to the generality of the foregoing, may make regulations respecting—

(*a*) the supply and sale of stamps and stamped papers;

(*b*) the persons by whom alone such supply or sale is to be conducted;

(*c*) the duties and remuneration of such persons; and

(*d*) the licensing, control and use of stamp franking machines.

G.N. 29/2009
13/2013

SCHEDULE

(sections 5, 6 (3) and (4) and 88)

STAMP DUTIES ON INSTRUMENTS

Instrument	*Duty*	*Persons responsible for stamping*	*Time for stamping if other than that generally or specially provided in this Act*
Administration Bond	*See* Bond, etc.		
Agreement for Dissolution of Partnership	*See* Partnership and Conveyance, etc.		
Agreement to Divide	*See* Partition		
Agreement for Exchange	*See* Exchange of Property and Agreement and section 42		
Agreement for Hire of Goods	*See* Agreement and section 30		
Agreement for Lease, Letting or Tenancy	*See* Lease		
Agreement or Contract accompanied with a deposit	*See* Mortgage, etc.		
Agreement for Partition	*See* Partition		
Agreement for Partnership	*See* Partnership		
Agreement to Sell Property	*See* Agreement and Conveyance, etc., and section 42		

Instrument	*Duty*	*Persons responsible for stamping*	*Time for stamping if other than that generally or specially provided in this Act*
1. AGREEMENT OR ANY MEMORANDUM OF AN AGREEMENT under hand only and not otherwise specifically charged with any duty, whether the same be only evidence of a contract or obligatory upon the parties from its being a written instrument.	K500	The person first executing	
Exemptions—			
(1) Agreement, letter or memorandum of agreement made for or relating to the sale of any goods, wares or merchandise (except as chargeable under any other heading).			
(2) Agreement or memorandum for the hire of any labourer, artificer, manufacture or menial servant.			
(3) Agreement or memorandum the matter whereof is not of the value of K10.			
(4) Agreement or contract exempted under section 65 of the Employment Act.			
Annuity			
(1) Conveyance in consideration of	*See* Conveyance, etc.		

Instrument	*Duty*	*Persons responsible for stamping*	*Time for stamping if other than that generally or specially provided in this Act*
(2) Creation of, by way of security	*See* Mortgage, etc.		
(3) Purchase of	*See* Conveyance, etc.		
(4) Instrument relating to, upon any other occasion	*See* Bond, Covenant, etc.		
2. APPOINTMENT OF A NEW TRUSTEE AND APPOINTMENT in execution of a power of any property, or of any use, share or interest in any property, by any instrument not being a will;	K600	The appointer	
And *See* section 46.			
3. (1) BILL OF EXCHANGE payable on demand, other than a cheque, or at sight or on presentation or within three days after date of sight And *See* sections 31,32, 34 and 75.	K200	All persons executing	(*a*) If drawn in Malaŵi, before execution
(2) BILL OF EXCHANGE, being a cheque drawn, on a banker payable on demand And *See* sections 31,32, 34 and 75.	30t		(*b*) If drawn out of Malaŵi in accordance with section 32
Exemption— Any cheque drawn on any of the official banking accounts of any government.			

Instrument	*Duty*	*Persons responsible for stamping*	*Time for stamping if other than that generally or specially provided in this Act*
4. BILL OF EXCHANGE of any other kind whatsoever and PROMISSORY NOTE of any kind whatsoever drawn, or expressed to be payable, or actually paid or endorsed, or in any manner negotiated in Malaŵi—		All persons executing	(*a*) If drawn in Malaŵi, before execution
For every K50 and also for every fractional part of K50 of the amount or value	20t		(*b*) If drawn out of Malaŵi in accordance with section 32
And *See* sections 31 to 35 and section 75.			
Exemption—			
Any cheque drawn on any of the official banking accounts of any government.			
5. BILL OF LANDING	K500	All persons executing	Before executing
Bill of Sale—			
(1) Absolute	*See* Conveyance, etc.		
(2) As security	*See* Mortgage, etc.		
Bond—			
(1) For securing the payment or repayment of money	*See* Mortgage, etc.		
(2) For securing the transfer or retransfer of stock	*See* Marketable Security		
(3) In relation to any annuity upon the original creation and sale thereof.	*See* Conveyance, etc.		

Instrument	*Duty*	*Persons responsible for stamping*	*Time for stamping if other than that generally or specially provided in this Act*
6. BOND, COVENANT OR SIMILAR INSTRUMENT of any kind whatsoever—			
(1) Being the only or principal or primary security for any annuity (except upon the original creation thereof by way of sale or security and except a superannuation annuity), or for any sum or sums of money at stated periods, not being interest for any principal sum secured by a duly stamped instrument, nor rent reserved by a lease—			
For a definite and certain period so that the total amount to be ultimately payable can be ascertained.	The same *ad valorem* duty as a Mortgage, Bond, Debenture or Covenant for such total amount (*See* Mortgage, etc.)	The obligee, covenantee, or other person taking the security.	
For a term of life or any other amount any other indefinite period, for every K10 and also for any fractional part of the annuity or sum periodically payable.	K2	The obligee, covenantee, or other person taking the security.	

Instrument	*Duty*	*Persons responsible for stamping*	*Time for stamping if other than that generally or specially provided in this Act*
(2) Being a collateral or auxiliary or additional or substituted security for any of the above-mentioned purposes where the principal is duly stamped			
Where the total amount to be ultimately payable can be ascertained	As above (*See* Mortgage, etc.)		
In any other case, for every K10, and also for any fractional part of K10.00 of the annuity or sum periodically payable	K2	The obligee, covenantee, or other person taking the security.	
(3) Being a grant or contract for payment of a superannuation annuity, that is to say, a deferred life annuity granted or secured to any person in consideration of annual premiums payable until he attains a specified age, and so to commence on his attaining that age			
For every K10, and also for any fractional part of K10, of the annuity	K2	The grantor	

Instrument	*Duty*	*Persons responsible for stamping*	*Time for stamping if other than that generally or specially provided in this Act*
(4) Of any kind whatsoever, not specifically charged with any duty	K500	The obligee, covenantee, or other person taking the security.	
Exemption—			
Rail Bond			
7. CONVEYANCE OR TRANSFER ON SALE OF ANY PROPERTY Where the amount or value of the consideration			
Does not exceed K50	K5	The purchaser or transferee	
Exceeds K50 but does not exceed K100	K10		
Exceeds K100 but does not exceed K150	K20		
Exceeds K150 but does not exceed K200	K50		
Exceeds K200, for every K100 and also for any fractional part of K100	K1.50		
And *See* sections 36 to 46, 55 and 57.			
Conveyance or transfer by way of security of any property of any security	*See* Mortgage, etc., and Marketable Security		
8. CONVEYANCE OR TRANSFER or any kind not hereinbefore described	K500	The purchaser or transferee	
9. COPY OR EXTRACT Certified to be a true copy by, or by order, of, any public officer and not charged for under any written law.	K500	The person for or on whose behalf the copy or extract is made	Within thirty days of certification.

Instrument	*Duty*	*Persons responsible for stamping*	*Time for stamping if other than that generally or specially provided in this Act*
Exemptions—			
1. Any copy or extract which a public officer is expressly required by any written law to make and to furnish for record in any Government Department or for any public purpose.			
2. Any copy of, or extract from, any register relating to births, baptisms, marriages, adoptions, divorces, deaths or burials.			
Covenant for securing the payment or repayment of money, or the transfer or retransfer of stock	*See* Mortgage, etc.		
Covenant in relation to any annuity upon the original creation and sale thereof	*See* Conveyance, etc., and section 43		
Covenant in relation to any annuity (*except upon the original creation and sale thereof*) *or to other periodical payments*	*See* Bond, etc.		
10. COVENANT: Any separated deed of covenant (not being an instrument chargeable with *ad valorem* duty as a conveyance on sale or mortgage) made on the sale or mortgage of any property, and relating solely to the conveyance or enjoyment of, or the title to, the property			

Instrument	*Duty*	*Persons responsible for stamping*	*Time for stamping if other than that generally or specially provided in this Act*
sold or mortgaged, or to the production of the documents of title relating thereto, or to all or any of the matters aforesaid			
Where the *ad valorem* duty in respect of the consideration or mortgage money does not exceed K100	A duty equal to the amount of such *ad valorem* duty	The covenantee	
In any other case	K500		
Counterpart Debenture for securing the payment of repayment of money, or the transfer or retransfer of stock	*See* Duplicate *See* Marketable Security and Mortgage, etc.		
11. DECLARATION of any use or trust of or concerning any property by any instrument, not being a will or any instrument chargeable with *ad varolem* duty as a settlement.	K600	The declarer	
12. DEED or other SIMILAR INSTRUMENT of any kind whatsoever not described in this Schedule and not generally or specially exempted from duty.	K500	All persons executing	
13. DEED OF ARRANGEMENT registered under the Deeds of Arrangement Act—			

Instrument	*Duty*	*Persons responsible for stamping*	*Time for stamping if other than that generally or specially provided in this Act*
For every K200, and also for any fractional part of K200, computed as provided by section 7 (2) of the said Act.	K100	The debtor	Before registration under the said Act.
Deposit of Title Deeds	*See* Mortgage, etc., and section 57		
Draft for money	*See* Bill of Exchange		
14. DUPLICATE OR COUNTERPART of any instrument chargeable with any duty—			
Where such duty does not amount to K200	The same duty as the original instrument	The person for whose benefit the duplicate or counterpart was executed	The time allowed for stamping the original instrument.
In any other case	K200		
Equitable Mortgage	*See* Mortgage, etc., and sections 29 and 57.		
15. EXCHANGE OF PROPERTY	The same duty as on a Conveyance, etc., for a consideration equal to the value of the property of greatest value.	All persons executing	
Extract	*See* Copy or extract		
Foreign Security	*See* Marketable Security and section 55		
Further Charge or Further Security	*See* Mortgage, etc., and sections 57		

Instrument	*Duty*	*Persons responsible for stamping*	*Time for stamping if other than that generally or specially provided in this Act*
16. HIRE PURCHASE AND INSTALMENT SALE AGREEMENTS			
Insurance	*See* Policy of Insurance	All persons executing	
17. LEASE OR LICENCE			
(1) For any definite term less than a year—			
Where rent does not exceed K50	K50	The lessee or licensee	
Where rent exceeds K50, for every K50 and also for every fractional part of K50	K5		
(2) For any other definite term—			
For each K50 and also for every fractional part of K50 of the annual rent—			
Where the term does not exceed 7 years	K1.20		
Where the term exceeds 7 years but does not exceed 21 years	K2		
Where the term exceeds 21 years	K1	The lessee or licensee	
(3) For an indefinite term—	K50		
Where the rent does not exceed K2 per annum	K5		
For each K50 and also for every fractional part of K50 of the annual rent	K1.50		

Instrument	*Duty*	*Persons responsible for stamping*	*Time for stamping if other than that generally or specially provided in this Act*
(4) For any other kind whatsoever not herein before described	K500		
And *See* sections 47 and 54			
Letter of Credit	*See* Bill of Exchange		
Letter of Guarantee	*See* Agreement		
Letter of Indemnity	*See* Agreement		
Letter or power of Attorney	*See* Power of Attorney		
18. MARKETABLE SECURITY—			
Transfer, assignment or disposition of a marketable security of any description:			
(1) Upon a sale thereof	*See* Conveyance, etc.		
(2) Upon a mortgage thereof	*See* Mortgage, etc.		
(3) In any other case than sale or mortgage And *See* sections 55 and 56	K500	The transferee, assignee, etc.	
Marriage Settlement	*See* Settlement		
19. MORTGAGE, BOND, DEBENTURE OR COVENANT (not being a marketable security otherwise specifically charged with duty).			

Instrument	*Duty*	*Persons responsible for stamping*	*Time for stamping if other than that generally or specially provided in this Act*
(1) Being the only or principal or primary security (other than an equitable security) for the payment or repayment of money—			
Not exceeding K1,000—			
For every K100 and also for every fractional part of K100 of the amount secured	K500		
Exceeding K1,000—			
For every K200 and also for every fractional part of K200 of the amount secured	K1.20		
(2) Being a collateral or additional or substituted security (other that an equitable mortgage), the principal security having been duly stamped			
For every K200 and also for any fractional part of K200 of the amount secured	30t		
(3) Being an equitable mortgage—			
Deed of pledge or hypothecation to a banking company of goods, merchandise,	K500		

Instrument	*Duty*	*Persons responsible for stamping*	*Time for stamping if other than that generally or specially provided in this Act*
stocks, shares, bills, notes and other marketable securities (including power of attorney therein)			
Deed of pledge or hypothecation or assignment or cession, to a banking company of policies of insurance (including power of attorney therein)	K500	The mortgagee, chargee, etc.	
Of any other kind	50t		
Under hand—			
For every K200 and also for any fractional part of K200 of the amount secured under Seal	The same *ad valorem* duty as upon a security chargeable under Head 1 hereof		
(4) Transferred or assignment of any mortgage, bond, debenture or covenant (except a marketable security)			
For every K200 and also for any fractional part of K200 of the amount transferred or assigned	50t	The transferee	

Instrument	*Duty*	*Persons responsible for stamping*	*Time for stamping if other than that generally or specially provided in this Act*
(5) Reconveyance, release, discharge, surrender or renunciation, of any such security as aforesaid, or of the benefit thereof or of the money thereby secured—			
For every K200 and also for any fractional part of K200 of the total amount or value of the money at any time secured	30t	The mortgagor, charger, etc.	
Exemptions—			
(1) Bond given by a public officer for the due execution of his duty.			
(2) Bond on which a fee is chargeable under the provisions of the Courts Act.			
(3) Bond given solely in relation to any payment due to the Consolidated Fund And *See* sections 57, 58 and 59.			
Mortgage of Stock or Marketable Security			
(1) Under hand only	*See* Mortgage and section 29		
(2) By Deed	*See* Mortgage, etc., and section 57		

Instrument	*Duty*	*Persons responsible for stamping*	*Time for stamping if other than that generally or specially provided in this Act*
20. NOTARIAL ACT OR INSTRUMENT	K500		
Order for payment of money	*See* Bill of Exchange		
21. PARTITION, INSTRUMENT of			
For every K200 and also for any fractional part of K200 of the amount or value of the separated share or shares of the property And *See* section 60	K10	All persons executing	
22. PARTNERSHIP			
(1) Instrument of	K2,000	All persons executing	
(2) Instrument of dissolution of, including an agreement to dissolve, without consideration	K500		
(3) Instrument of dissolution of, including an agreement to dissolve with consideration	*See* Conveyance, etc.		
Pawn or pledge	*See* Mortgage, etc.		

Instrument	*Duty*	*Persons responsible for stamping*	*Time for stamping if other than that generally or specially provided in this Act*
23. POLICY OF INSURANCE			
(1) Policy of Life Insurance			
For every K200 and also for any fractional part of K200 of the amount insured	80t	The insurer, or in the case of a policy issued outside Malaŵi and sent to the insured or his agent, the insured.	
(2) Any other policy of insurance issued for a specified period—			
Upon the issue or the renewal or the extension thereof for any period of 12 months and also for any part thereof	K 1,000		
(3) Any other policy of insurance issued for the term of a journey or journeys			
For each journey	K 1,000		
(4) Any other policy of insurance not specifically mentioned—			
Upon the issue, or the renewal of the extension thereof.			
(5) Any endorsement on a policy of the insurance—			
To increase the amount of insurance, or to make any other material addition to or a substantial change in the policy.	The same duty as for the issue of a new policy.		

Instrument	*Duty*	*Persons responsible for stamping*	*Time for stamping if other than that generally or specially provided in this Act*
Exemptions—			
(1) Policy of insurance on baggage or personal or personal and household effects only, if made or executed outside Malaŵi.			
(2) Letter or cover or engagement to issue a policy of insurance—			
Provided that unless such letter or cover or engagement is duly stamped for such policy, nothing shall be claimable thereunder nor, shall it be available for any purpose except to compel the delivery of the policy therein mentioned.And *See* sections 61 to 63.			
24. POWER OR LETTER OF ATTORNEY or other instrument in the nature thereof other than the appointment of a proxy to vote at any meeting or revocation thereof—			
For the issue thereof in respect of each donor	K 1,000	The person executing	
For the revocation thereof in respect of each person revoking	K1,000		
Promissory Note	*See* Bill of Exchange		

Instrument	*Duty*	*Persons responsible for stamping*	*Time for stamping if other than that generally or specially provided in this Act*
25. RECEIPT given for, or upon the payment of, money, or for movable property, amounting to K4 and upwards. Exemptions— (1) Receipt given for or on account of any salary, pay, or wages or for or on account of any other like payments made to or for the account or benefit of any person, being the holder of an office or an employee, in respect of his office, or employment, or for or on account of money paid in respect of any pension, superannuation allowance, compassionate allowance or other like allowance. (2) Receipt endorsed or otherwise written upon or contained in any instrument liable to stamp duty, and duly stamped, acknowledging the receipt of the consideration money therein expressed, or the receipt, of any principal money, interest, or annuity thereby secured or therein mentioned:	K1,000	The person giving the receipt	Before being parted with by the person giving the receipt

Instrument	*Duty*	*Persons responsible for stamping*	*Time for stamping if other than that generally or specially provided in this Act*
Provided that this exemption shall not extend to any receipt merely by reason of its being written or endorsed upon a bill of exchange or promissory note.			
(3) Receipt given for money deposited in any bank or with any bank or with any banker to the account of any person and for money withdrawn from a savings bank account with any bank.			
(4) Receipts given for money paid out of any court by way of compensation or damages.			
(5) Receipt given for any refund from the general revenues of Malaŵi.			
(6) Receipts given by any ecclesiastical, charitable or educational institution of a character.			
And *See* sections 64 and 65.			
Reconveyance, Release or Renunciation of any security	*See* Mortgage, etc.		

Instrument	*Duty*	*Persons responsible for stamping*	*Time for stamping if other than that generally or specially provided in this Act*
26. RELEASE OR RENUNCIATION of any property or of any right or interest in any property			
(1) Upon a sale	*See* Conveyance, etc.		
(2) By way of security	*See* Mortgage, etc.		
(3) In any other case	K 1,000	All persons executing	
27. REVOCATION of any use or trust or any property by any writing not being a will.	K 1,000		
28. SETTLEMENT—			
Any instrument, whether voluntary or upon any good or valuable consideration, other than a *bona fide* pecuniary consideration, whereby any definite and certain principal sum of money (whether charged or chargeable on any immovable property or not, or to be laid out in the purchase of immovable property or not), or any definite and certain amount of stock, or any security, is settled in any manner whatsoever—			
For every K200 and also for any fractional part of K200 of the amount or value of the property settled or agreed to be settled.	K10	The Settler	

Instrument	*Duty*	*Persons responsible for stamping*	*Time for stamping if other than that generally or specially provided in this Act*
And *See* sections 66, 67 and 68.	*See* Bond, etc.		
Superannuation Annuity			
29. SURRENDER of any kind whatsoever not chargeable with duty as a conveyance on sale or mortgage.	K500	The surrenderee	
Temporary Occupation Licence	*See* Lease		
Transfer	*See* Conveyance, etc.		
Trust	*See* Declaration		
Voluntary Conveyance and Transfer (*including assignment*) *operating as a Gift Inter Vivos.*	*See* Conveyance		

G.N. 28/1971
44/1984

SUBSIDIARY LEGISLATION
STAMP DUTIES (METHOD OF PAYMENT) REGULATIONS

under s. 7

Citation

1. These Regulations may be cited as the Stamp Duties (Method of Payment) Regulations.

Use of adhesive postage stamps
Cap. 68:01
G.N. 44/1984

2. Any stamp duties of an amount not exceeding K2.00 upon instruments which are permitted by law to be denoted by adhesive stamps may be denoted by adhesive postage stamps issued under the Posts and Telegraphs Act.

G.N. 174/1969
197/1969
147/1973
10/1995

NOTICE OF EXEMPTION

under s. 88 (2)

The Minister has directed that the following classes of instrument shall be exempt from stamp duty—

(*a*) all licences for the occupation of land issued by the Minister under the powers conferred upon him by section 5 of the Land Act (Cap. 57:01) in connexion with agricultural settlement and resettlement in any part of Malaŵi;

(*b*) any instrument whereby any advance to a local authority from the Local Authorities Loans Fund under the Local Authorities' Loans Fund Act, 1971, is acknowledged or secured;

(*c*) any instrument whereby any security for any such advance is released or the repayment of any such advance is acknowledged; or

(*d*) any instrument whereby any property, whether real or personal, is conveyed by way of security for any such advance or reconveyed upon the repayment thereof.

N.B. The exemption has application in respect of instruments referred to in paragraph (*a*) with effect from 16th May, 1969, and in respect of instruments referred to in paragraphs (*b*), (*c*) and (*d*) from 31st December, 1971.

NOTICE OF EXEMPTION

under s. 88 (2)

The Minister has directed that the following classes of instrument shall be exempt from stamp duty—

(*a*) The Trust Deed dated 21st April, 1977, made between Dwangwa Sugar Corporation Limited and National Bank of Malaŵi creating a legal mortgage and floating charge in favour of National Bank of Malaŵi as trustee;

(*b*) each and every debenture issued or to be issued pursuant to the said Trust Deed.

NOTICE OF EXEMPTION

G.N. 10/1995

under s. 88 (2)

1. This Notice may be cited as the Stamp Duties (Exemption) Notice. Citation

2. The following instruments required or necessary to effect the restructuring of Malaŵi Railways Limited shall be exempt from stamp duty— Exemption of certain instruments from stamp duty

(*a*) any instrument relating to the incorporation of Malaŵi Railways (1994) Limited and Malaŵi Lake Services Limited under the Companies Act;

(*b*) any instrument relating to the transfer of movable and immovable property by Malaŵi Railways Limited to the Government;

(*c*) any instrument relating to the transfer of movable and immovable property by the Government to Malaŵi Railways (1994) Limited and Malaŵi Lake Services Limited; and

(*d*) any instrument relating to the discharge of any security issued by Malaŵi Railways Limited directly or indirectly in favour of the Government.

STAMP DUTIES (LICENSING, CONTROL AND USE OF STAMP FRANKING MACHINES) REGULATIONS

G.N. 240/1969 29/1969

under s. 89

1. These Regulations may be cited as the Stamp Duties (Licensing, Control and Use of Stamp Franking Machines) Regulations. Citation

2. No stamp franking machine shall be used by any person for the purposes of the Act without a licence for its use having been obtained from the Registrar General who is hereby authorized to issue licences under these Regulations. Use of stamp franking machine without licence prohibited

3. Application for a licence to use a stamp franking machine shall be made in writing and addressed to the Registrar General, P.O. Box 100, Victoria Avenue, Blantyre. Application

4. A licence to use a stamp franking machine shall be in the form in the Schedule hereto. Form

5. Where a licence for the use of a stamp franking machine has been granted and is in force such machine shall not be used for denoting payment of stamp duty on any documents save the following— Restriction on use

(*a*) Bankers' Stop Orders

(*b*) Bills of Exchange
(*c*) Bankers' Drafts
(*d*) Pledge of Policy of Assurance or Insurance
(*e*) Promissory Notes
(*f*) Security, Pledge, Suretyship, Indemnity or Guarantee.

SCHEDULE

This licence grants permission to ..... to use a stamp franking machine, number ..... of the type known as ..... for the purpose of making impressions to denote the payment of stamp duty chargeable upon the following documents and no others.

CONDITIONS

1. The machine shall be presented for setting at the office of the Registrar General, Victoria Avenue, Blantyre.

2. The seal shall not be broken nor the machine in any way interfered with except by an authorized officer of the Ministry of Finance or the Department of the Registrar General. In the event of the machine becoming out of order its use shall be discontinued forthwith and the Registrar General shall be informed at once. The machine shall be open to inspection at any reasonable time by an authorized officer as aforesaid.

3. The licensee undertakes to make good to the Malaŵi Government any loss of revenue which may arise because of the failure of the meter to record the full number of impressions made.

4. The impressions must be clearly legible and made only on the face of the document.

5. Allowances may be made at the discretion of the Commissioners for stamp duty for any impression made in error or spoiled pursuant to the provisions of Part IV of the Stamp Duties Act.

6. The licensee shall not authorize the use of the machine for the stamping of cheques or cheque forms for which provisions for the payment of duty has been made in section 75 of the Stamp Duties Act.

7. The licensee undertakes to produce to the Registrar General for assessment of penalty all documents coming within the scope of this authority which are not duly stamped within the time limits prescribed by the Stamp Duties Act.

8. The licensee shall, as soon as possible, pay to the Commissioners for Stamp Duty the amount due and collected as duties on the said instrument or documents issued during the immediately preceding quarter and shall render with each such payment an account supported by an affidavit, or statutory declaration in such form as the Commissioners may require.

ESTATE DUTY

CHAPTER 43:02

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CHAPTER 43:02

ESTATE DUTY

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An Act to provide for duties on estates of deceased persons

[19th February, 1946]

Short title

1. This Act may be cited as the Estate Duty Act.

Interpretation

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

"Commissioners" means the Estate Duty Commissioners;

"deceased person" and "the deceased" means a person dying after the commencement of this Act;

"estate duty" means estate duty under this Act;

"estate duty affidavit" means an affidavit made or required under this Act and shall include any inventory or account of property with or without a valuation thereof with reference to which such an affidavit is made or required;

"executor" means the executor or administrator of a deceased person and includes, as regards any obligations under this Act, any person who takes possession of or intermeddles with the property of a deceased person;

"incumbrances" includes mortgages and terminable charges;

"property" includes immovable and real property and movable and personal property and the proceeds of sale thereof respectively and any money or investment for the time being representing the proceeds of sale, and an undivided share in any property held jointly or in common with any other person;

"representation" means probate, letters of administration, confirmation, or other instrument appointing a person the executor, administrator, or other representative of the deceased or to administer any of his assets.

Commissioners

Constitution of Board of Commissioners

3.—(1) There is hereby established a Board of Commissioners who shall administer this Act and collect estate duty.

(2) The Board shall consist of the following members—

(*a*) the Attorney General who shall be Chairman of the Board;

(*b*) the Secretary to the Treasury;

(*c*) the Registrar General who shall be Secretary and executive officer of the Board;

(*d*) such other members as the Minister may, by notice published in the *Gazette*, appoint.

(3) Two members of the Board shall constitute a quorum.

(4) The Commissioners may sue and be sued by the name of "The Estate Duty Commissioners".

(5) The Secretary shall, subject to the directions of the Commissioners assess the estate duty and be responsible for the collection of the duty on behalf of the Estate Duty Commissioners.

(6) Any act, matter or thing done by the Secretary shall be deemed to be within the scope of his authority unless the contrary is proved.

Charge of Estate Duty

Charge of estate duty

4. In the case of every person dying after the commencement of this Act, there shall, save as hereinafter mentioned, be levied and paid to the Government upon the principal value of all property belonging to the deceased at his death (in this Act referred to as the "estate of the deceased") a duty, called "estate duty", at the graduated rates set forth in the Schedule.

What property is included in an estate

5.—(1) The estate of the deceased shall include—

(*a*) property which vests in the executor of the deceased;

(*b*) property of which the deceased was at his death competent to dispose;

(*c*) property in which the deceased or any other person had an interest ceasing on the death of the deceased, to the extent to which a benefit accrues or arises by the cesser of such interest; but exclusive of property the interest in which of the deceased or other person was only an interest as holder of an office, or recipient of the benefits of a charity, or as a corporation sole;

(*d*) money payable to the deceased's estate under any policy of insurance;

(*e*) property taken as a *donatio mortis causa* made by the deceased;

(*f*) property which belonged to the deceased or of which the deceased was competent to dispose at any time within three years before his death, and of which the deceased had disposed in any manner other than for full consideration in money or money's worth:

Provided that this provision shall not apply to gifts which are made in consideration of marriage, or which are proved to the satisfaction of the Commissioners to have been part of the normal expenditure of the deceased, and to have been reasonable, having regard to the amount of his income or to the circumstances, or which, in the case of any donee, do not exceed in the aggregate £100 in value or amount;

(*g*) personal property not within the limits of Malaŵi but only in cases where the deceased was domiciled in Malaŵi at the date of his death; and

(*h*) any annuity or other interest purchased or provided by the deceased, either by himself alone or in concert or by arrangement with any other person, to the extent of the beneficial interest accruing or arising by survivorship or otherwise on the death of the deceased.

(2) The estate of the deceased shall not be deemed to include—

(*a*) property held by the deceased as trustee for another person under a disposition not made by the deceased or under a disposition made by the deceased more than three years before his death;

(*b*) any gratuity paid by the Government to the personal representatives, heirs or dependants of a deceased public officer after his death under— 1 of 1969

(i) section 16 of the European Officers' Pensions Ordinance; or Cap. 59

(ii) the Malaŵi Public Service Regulations.

(3) For the purposes of this Act a person shall be deemed competent to dispose of property if he has such an estate or interest therein or such general power, whether exercisable by instrument *inter vivos* or by will, or both, as would, if he were *sui juris* enable him to dispose of the property for his own benefit.

Interest on estate duty

6.—(1) Simple interest at the rate of three pounds ten shillings per centum per annum or such other rate as the Minister may, from time to time, by notice published in the *Gazette*, prescribe shall be payable upon all estate duty from the date of the death of the deceased, and shall be payable and recoverable in the same manner as if it formed part of the estate duty.

(2) The Commissioners may, if they think fit, remit the interest on any estate duty where the amount appears to them to be so small as not to repay the expense and trouble of calculation and collection.

Exemptions from Estate Duty

Power to remit estate duty where death is caused by operations of war

7. Where—

(*a*) any person has, on or after the 3rd September, 1939, died from wounds inflicted, accident occurring, or disease contracted, within three years before death, while on active service against an enemy, whether on sea, land or in the air, or on service which, in the opinion of the Commissioners, is of a warlike nature or involves the same risks as active service, and was, when the wounds were inflicted, the accident occurred or the disease was contracted, subject to any naval, military or air force law; or

(*b*) any person, other than a person referred to in paragraph (*a*) of this section, has, on or after the 3rd September, 1939, died from injuries received within three years of his death and which were, in the opinion of the Commissioners, caused by the operation of war,

23 of 1969

the Commissioners may, if they think fit, remit, or, in the case of estate duty already paid, repay, in any one case, an amount not exceeding one half of the estate duty leviable under this Act in respect of the estate of the deceased to the widow or widower of the deceased, as the case may be, or to the lineal descendants or lineal ancestors, or to the brothers or sisters of the deceased or the lineal descendants of such brothers or sisters.

Remission of estate duty in case of property passing more than once owing to deaths caused by operations of war

8.—(1) Where the Commissioners are satisfied that estate duty leviable under this Act has become payable on the estate of any deceased person to which section 7 applies and that subsequently such estate duty has again become payable on the same property or any part thereof forming part of the estate of some other deceased person to which section 7 applies, the whole of such estate duty payable on such subsequent death in respect of such property shall be remitted, or, in case such estate duty has been paid, repaid, and the property shall not be aggregated with any other property forming part of the estate of the deceased on such subsequent death for the purpose of determining the rate of such estate duty.

(2) This section shall apply whether or not on any such death any property passes to the widow or widower, lineal descendants, lineal ancestors, brothers or sisters, or the lineal descendants of such brothers or sisters, of the deceased.

Reduction of rate for quick successions

9. Where the Commissioners are satisfied that estate duty has become payable on any property consisting of land or a business (not being a business carried on by a company) or any interest in land or such a business, and that subsequently estate duty has again become payable on the same property or any part thereof by reason of the death of the person to whom the property passed on the first death, the amount of estate duty payable on that property by reason of the second death shall be reduced as follows—

where the second death occurs within one year of the first death, by fifty per centum;

where the second death occurs within two years of the first death, by forty per centum;

where the second death occurs within three years of the first death, by thirty per centum;

where the second death occurs within four years of the first death, by twenty per centum;

Where the second death occurs within five years of the first death, by ten per centum:

Provided that where the value, on which the duty is payable, of the property on the second death exceeds the value, on which the duty was payable, of the property on the first death, the latter value shall be substituted for the former for the purpose of calculating the amount of duty on which the reduction under this section is to be calculated.

Aggregation of Estate

Aggregation of deceased's property to determine rate of duty

10.—(1) For determining the rate of estate duty to be paid on the estate of the deceased, all property forming the estate shall be aggregated so as to form one estate, and the duty shall be levied at the proper graduated rate on the principal value thereof.

Marginal relief

(2) But the amount of estate duty payable on an estate at the rate applicable thereto under the scale of rates of duty shall, where necessary, be reduced so as not to exceed the highest amount of estate duty which would be payable at the next lower rate, with the addition of the amount by which the value of the estate exceeds the value on which the highest amount of duty would be so payable at the lower rate.

Principles for Determining Value of Estate

Principles for determining value of estate

11.—(1) The principal value of any property for the purposes of estate duty shall be the price estimated by the Commissioners to be the price which it would fetch if sold in the open market at the time of the death of the deceased, and no reduction shall be made in the estimate on account of the assumption that the whole property would be placed on the market at one and the same time.

(2) But when it is proved to the Commissioners that the value of the property has been depreciated by reason of the death of the deceased, the Commissioners in fixing the price shall take such depreciation into account.

Allowance for debts

12.—(1) In determining the principal value of an estate for the purpose of estate duty, allowance shall be made for reasonable funeral expenses and for debts and incumbrances; but an allowance shall not be made—

(*a*) for debts incurred by the deceased unless such debts were incurred *bona fide* for full consideration in money or money's worth wholly for the deceased's own use and benefit; or

(*b*) for any debt in respect whereof there is a right to reimbursement from any other estate or person, unless such reimbursement cannot be obtained; or

(*c*) more than once for the same debt or incumbrance charged upon different portions of the estate;

and any debt or incumbrance for which an allowance is made shall be deducted from the value of the land or other subjects of property liable thereto:

Provided that an allowance shall not be made for incumbrances created by a disposition made by the deceased within three years before his death unless such incumbrances were created *bona fide* for full consideration in money or money's worth wholly for the deceased's own use and benefit or in consideration of his marriage and take effect out of his interest.

(2) An allowance shall not be made for debts due from the deceased to persons resident outside Malaŵi unless contracted to be paid in Malaŵi or charged on property situated within Malaŵi, or unless and to the extent to which it is shown to the satisfaction of the Commissioners that the personal property of the deceased situated in the country in which the person to whom such debts are due resides is insufficient for their payment.

LIABILITIES OF EXECUTORS OR BENEFICIARIES

Executor to ascertain value of estate, and to make affidavit

13.—(1) It shall be the duty of the executor of the deceased as soon as possible after the death to ascertain the particulars and principal value of the estate of the deceased, and to make and deliver to the Commissioners an estate duty affidavit giving such particulars and value so far as known to him, and from time to time to make and deliver to the Commissioners any further estate duty affidavit which may be necessary to supplement any omission from or mistake in any previous estate duty affidavit:

Provided that the Commissioners may, if they think fit, accept a statement as a correction of an estate duty affidavit, without requiring that statement to be verified on oath.

(2) Any executor who wilfully fails to perform any duty imposed on him by this section or who fails to make and deliver an estate duty affidavit within fourteen days after service of a notice from the Commissioners requiring him so to do shall be guilty of an offence against this Act.

Duty to be paid on delivery of estate duty affidavit

14.—(1) Estate duty shall in the first instance be calculated at the appropriate rate according to the value of the estate of the deceased as set forth in the original estate duty affidavit and shall be payable by the executor on delivery of that affidavit.

(2) On the delivery of every subsequent estate duty affidavit

the executor shall pay any estate duty payable on any property disclosed by that affidavit, and also any additional estate duty payable on any property disclosed by any previous affidavit.

Liability of executor for duty

15. The executor of the deceased shall be liable for all estate duty payable in respect of the estate of the deceased but his liability shall not exceed the assets which he has received as executor or might but for his own neglect or default have received.

Liability of beneficiaries and trustees

16. Every beneficiary of the estate of the deceased up to the amount of his interest in the estate, and also to the extent of the property actually received or disposed of by him, every trustee, guardian, committee, or other person in whom any interest in the estate of the deceased or the management thereof is at any time vested, and every person who takes possession of or administers any part of the estate of the deceased, and every person in whom the same is vested by alienation or other derivative title shall each be liable for all the estate duty payable on the estate of the deceased:

Provided that nothing in this section shall render a person accountable for duty who acts merely as agent or bailiff for another person in the management of property.

Estate duty when deemed to be in arrear

17. Except as hereinafter mentioned, the whole estate duty payable on the estate of the deceased shall be due and payable at the end of six months from the death of the deceased or on the delivery of the original estate duty affidavit, whichever first occurs, and any estate duty which is not so paid shall be deemed to be duty in arrear and recoverable accordingly.

Power to permit postponement of payment

18. Where the Commissioners are satisfied that any estate duty cannot without excessive sacrifice be raised at once, they may allow payment to be postponed for such period, to such extent, and on payment of such interest, and on such terms as the Commissioners think fit.

Power for person liable to raise duty by sale or mortgage

19. Any person liable for and required to pay estate duty on any part of the estate of the deceased shall have power, whether the estate is or is not vested in him, to raise the amount of such duty and expenses incurred by him in connexion therewith by sale or mortgage of that part of the estate of the deceased.

Estate duty to be borne by beneficiaries rateably

20.—(1) Subject to this Act and any will of the deceased, estate duty shall be borne by the beneficiaries of the estate in proportion to the value of their respective interests, and the executor in distributing the estate of the deceased shall make such payments, deductions, and adjustments as may be necessary for that purpose.

(2) In the case of property which does not pass to the executor as such, an amount equal to the proper rateable part of the estate duty may be recovered by the person, who, being authorized or required to pay the estate duty in respect of any property, has paid such duty, from the person, up to the amount of his interest therein, entitled to any such property or to any interest therein, or who takes possession or administers such property, or in whom such property is vested by alienation or other derivative title, other than a purchaser for valuable consideration without notice.

(3) Any dispute as to the proportion of the estate duty to be borne by any property or person may be determined upon application to the High Court in manner directed by Rules of Court made under this Act.

(4) Any person from whom a rateable part of the estate duty can be recovered under this section shall be bound by the accounts and valuations as settled between the person entitled to recover the same and the Commissioners.

Executors and persons having possession of estate to produce documents and attend for examination if required

21.—(1) Every executor or other person who is liable for payment of any estate duty or has any part of the estate of the deceased or any documents relating thereto in his possession, power, or control shall, whenever required by the Commissioners—

(*a*) make and deliver to the Commissioners an affidavit giving, to the best of his knowledge and belief, answers to any questions as to the estate of the deceased which may be put to him by the Commissioners;

(*b*) disclose by such an affidavit and produce to and allow the Commissioners to inspect and take copies of any such documents as aforesaid; and

(*c*) attend before the Commissioners and be examined by them on oath (which any Commissioner is hereby authorized to administer) as to any matter in connexion with the estate of the deceased.

(2) Any executor or other person who fails to comply with the requirements of the Commissioners under this section within fourteen days after service of a notice from the Commissioners of their requirements shall be guilty of an offence against this Act.

Valuation and Assessment by Commissioners

Valuation by Commissioners

22.—(1) Subject to this Act, the Commissioners shall ascertain the principal value of the estate of the deceased in such manner and by such means as they think fit, and may, if they think fit, as

respects any property, accept the value estimated by the executor or the valuation of any person approved by the Commissioners as a valuer for the purposes of this Act, or so approved for the purpose of making that valuation.

(2) Where the Commissioners require a valuation to be made by a person named by them, the reasonable cost of such valuation shall be defrayed by the Commissioners.

(3) Any person authorized by the Commissioners to value any property for the purpose of this Act shall at all reasonable times have power to enter and inspect the property.

Assessment by Commissioners

23.—(1) Subject to the right of appeal conferred by this Act, the assessment by the Commissioners that any estate duty is payable in respect of any property shall be conclusive evidence that that duty is payable in respect of that property.

(2) But the Commissioners may at any time revoke or reduce an assessment where it is shown to their satisfaction to be erroneous or excessive, and may make a further assessment in respect of the same property where, by reason of the value of other property of the deceased not being accurately known, the duty has not been assessed at the proper rate, or where a further assessment is justified by facts not known to the Commissioners at the date of the original assessment.

Refund of overpaid duty

24. Where it is shown to the satisfaction of the Commissioners that too much estate duty has been paid, the excess shall be repaid by them.

Appeals against Assessments, Etc., of Commissioners

Appeals against assessments, etc.

25.—(1) Any person aggrieved by any assessment or other decision of the Commissioners or by their refusal to refund any estate duty, may, within one month after notice of the assessment or decision has been served on the executor of the deceased or within one month after notice of refusal has been served on the applicant for the refund, give notice in writing to the Commissioners specifying his objections to the assessment, decision, or refusal to refund and his reasons for such objections, and, if any such objection is disallowed by the Commissioners, may within one month after service of notice of such disallowance on the person aggrieved, appeal to the High Court against the assessment, decision or refusal.

(2) No appeal against an assessment shall be entertained unless the duty assessed is paid into Court or security for the payment of the duty is given to the satisfaction of the High Court.

(3) On an appeal, no objection to an assessment, decision, or refusal to refund shall be entertained unless it has been previously disclosed to the Commissioners in accordance with the foregoing provisions or unless the failure to do so is accounted for to the satisfaction of the High Court.

(4) Subject to the foregoing provisions of this section, the High Court may, on an appeal, reverse or alter an assessment, decision or refusal to refund to such extent and in such manner as the circumstances require.

(5) The High Court may, if it thinks the interests of justice so require, extend the time for appealing under this section notwithstanding that the time for appealing has elapsed.

(6) The costs of the appeal shall be at the discretion of the High Court.

(7) The Chief Justice may make Rules of Court for regulating appeals before the High Court under this section, and for the fees payable in respect thereof.

Recovery of Estate Duty

Recovery of estate duty by civil suit

26. Estate duty in arrear shall be recoverable by civil suit as a debt due to the Government from any person liable.

Summary recovery of estate duty

27. Estate duty in arrear may, on the *ex parte* application of the Commissioners to any competent court and without the institution of a suit, be recovered from the executor in manner following—

(*a*) on production of the assessment and on proof of service of the assessment on the executor and that the duty is in arrear, the court shall make an order for the payment by the executor of the duty in arrear and the costs of the application out of the estate of the deceased and may direct the immediate execution of the order;

(*b*) a statement in writing by any Commissioner shall be sufficient evidence of the amount of duty in arrear;

(*c*) the order shall as soon as possible be served on the executor who may at any time within fourteen days after such service apply to the court for the order to be discharged, and the order may then be discharged on the ground which would be a valid defence to proceedings for recovery of the duty;

(*d*) property liable to attachment and sale in execution of the order may be seized immediately after the order is made, but shall not be sold until the time for applying for discharge of the order has elapsed and any application for such a discharge has been disposed of.

Stay of execution pending appeal

28. Where, in any proceedings for the recovery of estate duty or for the discharge of an order for payment of estate duty, it appears that an appeal against the assessment is pending or that the time for so appealing has not yet elapsed, the court may, if it thinks fit, grant a stay of execution for such period and on such terms as it thinks just.

Estate duty a charge on deceased's estate

29.—(1) The whole estate duty shall be a first charge on the estate of the deceased:

Provided that no property shall be so chargeable as against a *bona fide* purchaser thereof for valuable consideration without notice.

(2) For the purpose of enforcing such a charge the High Court shall have jurisdiction to appoint a receiver of the property and of the rents, profits, and income thereof, and to order a mortgage or sale of the property.

(3) The High Court may also appoint such a receiver as aforesaid where it considers payment of any estate duty to be in jeopardy although it has not yet become due.

Certificates of Discharge and Compositions

Certificate of discharge from estate duty

30.—(1) The Commissioners on being satisfied that the full estate duty has been or will be paid in respect of the whole estate of the deceased may, if they think fit, give a certificate discharging from any further claim for estate duty the property specified in the certificate.

(2) Where a person, other than an executor, liable for any estate duty applies after the lapse of two years from the death of the deceased to the Commissioners, and delivers to them and verifies a full statement to the best of his knowledge and belief of the estate of the deceased and the several persons entitled thereto, the Commissioners may, if they think fit, on receiving from that person such part of the estate duty as, in the opinion of the Commissioners, ought to be borne by him, give a certificate discharging from any further claim for estate duty that person and also the property specified in the certificate.

(3) A certificate of the Commissioners under this section shall not discharge any person or property from estate duty in case of fraud or failure to disclose material facts, and shall not affect the rate of duty payable in respect of any other part of the estate of the deceased, and the duty in respect of such other part shall be at such rate as would be payable if the value thereof were added to the value of the property in respect of which a certificate of discharge has been given.

(4) Provided nevertheless that a certificate purporting to be a

discharge of the whole estate duty payable in respect of any property included in the certificate shall exonerate a *bona fide* purchaser for valuable consideration without notice from the duty notwithstanding any such fraud or failure.

Power to accept composition for estate duty

31.—(1) Where for any reason it is difficult to ascertain exactly the amount of estate duty payable in respect of any property, or so to ascertain the same without undue expense in proportion to the value of the property, the Commissioners, on the application of any person liable for the duty thereon, and upon his giving to them all the information in his power affecting the liability of the property for estate duty, may, if they think fit, assess such sum as they consider proper as the estate duty on that property and accept payment of that sum as a composition for and in full discharge of all claims for estate duty in respect of that property, and shall then give a certificate of discharge accordingly.

(2) Provided that the certificate shall not discharge any person from any duty in case of fraud or failure to disclose material facts.

Fixed Duty on small Estates

Option to pay fixed duties on estates not exceeding £500

32.—(1) Where the gross value of the property in respect of which duty is payable on the death of the deceased, exclusive of property settled otherwise than by the will of the deceased, does not exceed £500, the executor may, if he thinks fit, instead of paying duty at the graduated rates, pay a fixed duty as follows— where the gross value does not exceed £300, a fixed duty of £1 10s., and where the gross value exceeds £300 and does not exceed £500, a fixed duty of £2 10s.

(2) Where the fixed duty of £1 10s. or £2 10s. has been deposited or paid, and it is afterwards found that the gross value of the property on which duty is payable exceeds £300 or £500, as the case may be, the Commissioners, if they are satisfied that there were reasonable grounds for the original estimate of the value of the property, may allow an amount equal to the fixed duty deposited or paid to be deducted from the estate duty payable in respect of the property.

(3) Where the fixed duty of £1 10s. or £2 10s. is paid within twelve months of the death of the deceased interest on such duty shall not be payable.

Miscellaneous Provisions

No grant of representation to be made without certificate of Commissioners

33.—(1) No grant of representation to the deceased shall be made unless a certificate of the Commissioners is produced to the effect that a proper estate duty affidavit as to the estate of the deceased has been made and delivered to the Commissioners, or, where the executor or other person accountable for duty does not know the value of any property and undertakes to the satisfaction of the Commissioners to pay all estate duty in any manner

arising in respect thereof, or for any other reason, the Commissioners permit the grant to be made.

(2) And the Commissioners may, if they think fit, refuse to give such a certificate until the estate duty has been paid or security for the payment thereof has been given to the satisfaction of the Commissioners.

(3) Every grant of representation after the commencement of this Act shall state that the certificate required by this section has been produced and shall give its date and such other particulars as to the certificate or the estate of the deceased as may be prescribed.

(4) The foregoing provisions of this section shall not apply where a fixed duty is paid and accepted in lieu of estate duty, or where the estate appears to the Court or authority granting representation to be exempt from estate duty.

(5) Particulars of any fixed duty accepted in lieu of estate duty or that the estate appears to be exempt from estate duty shall be stated in the grant of representation.

Duty of court administering estate to direct payment of duty

34. Where any part of the estate of the deceased is administered by any court, it shall be the duty of the court to give directions for the due payment of all unpaid estate duty payable on the estate of the deceased.

Service of notices

35. Where notice of any act, decision, requirement, valuation, or assessment of or by the Commissioners is by this Act required or authorized to be served on or given to any person, the notice shall be sufficient if it records the substance of that act, decision, requirement, valuation or assessment and is signed by the secretary to the Commissioners or by any Commissioner, and shall be sufficiently served if it is left at the last known place of abode or business in Malaŵi of the person to be served, or if it is sent by post in a registered letter addressed to him by name at his last known place of abode or business, and if that letter is not returned through the post office undelivered; and service by post shall be deemed to be made at the time at which the registered letter would in the ordinary course be delivered.

Proof of Commissioners' acts

36. Any document purporting to record, contain, or be any act, decision, requirement, notice, valuation, or assessment of or by the Commissioners and purporting to be signed by one Commissioner or by the secretary to the Commissioners, shall be received in evidence without proof, and shall be *prima facie* evidence of that act, decision, requirement, notice, valuation, or assessment.

Affidavit to be free of stamp duty

37. Every estate duty and other affidavit required to be made by this Act shall be free of stamp duty.

Exception as to property in the United Kingdom and Commonwealth countries

38.—(1) Where the Commissioners are satisfied that in the United Kingdom, or in any Commonwealth country to which this section applies, estate duty is, by reason of a death, payable in respect of any property situate in the United Kingdom or in such Commonwealth country, they shall allow a sum equal to the amount of that duty to be deducted from the estate duty payable in respect of that property on the same death.

(2) The Minister may, by notice published in the *Gazette*, apply this section to any Commonwealth country where he is satisfied that by the law of such country either no estate duty is leviable in respect of property situate in Malaŵi when passing on death, or that the law of such Commonwealth country as respects any estate duty so leviable is to the like effect as the provisions contained in subsection (1).

(3) The Minister may revoke any such notice where it appears that the law of the Commonwealth country has been so altered that it would not authorize the making of a notice under this section.

Arrangements for relief from double estate duty

39.—(1) If the Minister declares by order that arrangements specified in the order have been made with the Government of any country outside Malaŵi with a view to affording relief from double taxation in relation to estate duty payable under this Act and any duty of a similar character imposed under the laws of that country, and that it is expedient that those arrangements should have effect, the arrangements shall, notwithstanding anything in this Act contained, have effect so far as they provide for relief from estate duty or for determining the place where any property is to be treated as being situated for the purpose of estate duty.

(2) On the making of an order under this section with respect to arrangements relating to the United Kingdom or a Commonwealth country, section 38 shall cease to have effect in respect of property to which such arrangements apply except in so far as such arrangements otherwise provide.

Power to make Regulations

40. The Minister may make Regulations for carrying this Act into effect, and in particular and without prejudice to the generality of the foregoing power, prescribing—

(*a*) anything which by this Act is to be prescribed;

(*b*) the accounts to be kept by the Commissioners and the procedure to be observed by them in carrying out the provisions of this Act;

(*c*) the forms of estate duty and other affidavits;

(*d*) the manner in which documents are to be delivered to the Commissioners;

(*e*) the manner in which estate duty is to be paid;

(*f*) the method of carrying out any arrangements having effect under section 39.

General penalty

41.—(1) Every person who wilfully fails to perform any duty imposed on him by this Act or who contravenes this Act or any regulation made thereunder shall be guilty of an offence against this Act.

(2) Any person who attempts to commit or abets an offence against this Act shall himself be guilty of an offence against this Act.

15 of 1997

(3) Every person guilty of an offence against this Act shall be liable to a fine of K5,000, or, if in the opinion of the court, the offence was committed with a view to hindering or preventing the collection or evading the payment of any estate duty or with a fraudulent intent, to such fine and to imprisonment for one year.

SCHEDULE

s. 4

18 of 1997
1 of 2016

The rates *per centum* of estate duty shall be according to the following scale—

	Rate per cent
Where the principal value of the estate does not exceed K20,000,000	Nil
exceeds K20,000,000 but does not K25,000,000	4
exceeds K25,000,000 but does not exceed K35,000,000 . .	5
exceeds K35,000,000 but does not exceed K50,000,000 . .	6
exceeds K50,000,000 but does not exceed K70,000,000 . .	7
exceeds K70,000,000 but does not exceed K90,000,000 . .	8
exceeds K90,000,000 but does not exceed K100,000,000	9
exceeds K100,000,000	10

G.N. 8/1964(N) 83/1966

SUBSIDIARY LEGISLATION
APPOINTMENT TO BOARD OF COMMISSIONERS

under s. 3 (2) (*d*)

The following persons have been appointed to be members of the Board of Commissioners—

The Commissioner of Taxes.

The Senior Resident Magistrate.

G.N. 83/1948

DOUBLE DUTY RELIEF (COMMONWEALTH) NOTICE

under s. 38 (2)

APPLICATION OF s. 38

It has been proclaimed and declared that section 38 of the Act shall apply to Southern Rhodesia and Zambia with effect from the 7th March, 1946.

G.N. 44/1963

THE ESTATE DUTY (APPEALS) RULES

under s. 25 (7)

Citation

1. These Rules may be cited as the Estate Duty (Appeals) Rules.

Filing of petition

2. Every appeal against an assessment shall be by way of petition to the High Court, such petition to be filed in the Registry and a copy thereof served by the appellant upon the Commissioners.

Grounds must be in writing

3. Subject to these Rules the appellant shall not in his petition state or at the hearing be allowed to rely upon any grounds of appeal not specifically set forth in the notice in writing to the Commissioners specifying his objections to the assessment, decision or refusal to refund.

Service

4. Upon the filing of the petition and the service of a copy thereof upon the Commissioners the matters shall be deemed to be completely at issue, and within seven days thereafter the appellant, or in default thereof the Commissioner, may set the petition down for hearing.

5. Unless by consent or otherwise ordered only oral evidence shall be admitted at the hearing. In cases where evidence may be by affidavit, the affidavit shall be filed in the Registry at least two clear days before the date of hearing. Evidence

6. The Commissioners shall have the same right as an ordinary suitor of administering interrogatories and of obtaining discovery and inspection of documents. Right to gather information

7. The Court may at any time before or at the hearing allow the appellant to amend his petition upon such terms as the Court or Judge may think right. Amendments

8. Order 19 rule 27 of the Rules of the Supreme Court, 1883, of England shall apply to the petition which shall be deemed to be a pleading within that Rule. Order 19 Rule 27

9. Subject to these Rules the procedure, fees, and costs, shall be as prescribed by or under the High Court Act. Fees and costs

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ESTATE DUTY REGULATIONS

G.N.108/ 1946

under s. 40

1. These Regulations may be cited as the Estate Duty Regulations.

2. Every certificate, assessment and affidavit under the Act shall be made in the appropriate forms set out in the Schedule.

3. All Communications to the Commissioners shall be addressed to the Secretary, Estate Duty Commissioners, P.O. Box 100, Blantyre.

SCHEDULE

FORM I

THE ESTATE DUTY ACT

(Cap. 43:02)

CERTIFICATE OF COMMISSIONERS

(Section 33 (1))

To

Ref .....

The Estate of ..... *Deceased.*

IT IS CERTIFIED under section 33 (1) of the Estate Duty Act that proper estate duty affidavit as to the estate of the above deceased has been made and delivered to the Estate Duty Commissioners.

Dated this ..... day of ..... 19 .....

Secretary to the Estate Duty Commissioners

FORM II

THE ESTATE DUTY ACT

(Cap. 43:02)

ASSESSMENT BY COMMISSIONERS

(Section 23)

Date .....

Ref .....

To

The Estate of ..... *Deceased.*

Upon a preliminary examination of the estate duty affidavits submitted in connexion with the estate of the above deceased a provisional assessment of ..... duty has been made upon the estate as at present disclosed. This assessment is made without prejudice to the right of the Commissioners to make further assessments as a result of further examinations and charge further duty thereby disclosed as payable.

Secretary, Estate Duty Commissioners

FORM III

THE ESTATE DUTY ACT

(Cap. 43:02)

ESTATE DUTY AFFIDAVIT

(Section 13)

The Estate of ..... *Deceased.*

I/We (1) ..... make oath/ do solemnly and sincerely affirm and say that the above-named deceased of ..... died on the ..... day of ..... one thousand nine hundred and ..... aged ..... at ..... in .....

This account annexed hereto is a full and true account of the particulars and value at the date of deceased's death, so far as ..... have been able to ascertain the same, of all the estate of the deceased in possession or reversion and the gross value thereof at the date of deceased's death was £ ..... and the debts and funeral expenses as shown in the accounts annexed hereto were £ ..... The said debts were created by the deceased for full consideration in money or money's worth wholly for deceased's own use and benefit and are not subject to re-imbursement by any other person or out of any other property.

Sworn by the above-named (1) ..... at ..... this ..... day of ..... before me.

A Commissioner for Oaths

ACCOUNT OF DECEASED'S ESTATE AND OF HIS DEBTS AND FUNERAL EXPENSES (2)

1. *Property situated in Malaŵi*

Items	Nominal amount or value	Market Price at date of death	Value at date of death £ s. d.	£ s. d.
Government or Municipal Stocks, Bonds, etc., and shares or stock in companies and other securities (3)				

	£ s. d.
Dividends and interest received and accrued due on the above investments to date of death as per list annexed	.....
Cash in hand	.....
Cash at Bank— I. on current account with interest (if any)	.....
II. on deposit account with interest (if any)	.....
Money out on mortgage and interest thereon to date of death as per list attached	.....

	£ s. d.	£ s. d.
Money out on bills, promissory notes, and other securities with interest thereon to death as per list attached		.....
Other debts as per list attached		.....
Unpaid purchase money of property sold and interest thereon to death		.....
Policies of insurance and bonuses on deceased's life		.....
Saleable value of policies of insurances and bonuses on the life of any other insured by deceased . .		
Household goods, pictures, linen, plate, jewels, carriages, etc.—	£ s. d.	
If sold, realized gross	.....	
If unsold, estimated.	.....	.....
Stock in trade	. . . . .	.....
Live and dead farming stock, implements of husbandry, etc.—		
If sold, realized gross	.....	
If unsold, estimated.	.....	.....
Goodwill of business, if taken over at a price		
Goodwill of business, if valued according to custom of trade . .		
If neither, estimated at	.....	
years purchase	.....	.....
Profits from business from ..... to death per trade account and balance sheet	.....	
Share in partnership property of the firm of ..... as per balance sheet signed by surviving partner	.....	.....
Lease hold property as per list— . .		
If sold, realized gross	.....	
If unsold, estimated at	.....	.....
Less mortgage debt of	.....	.....
Freehold property as per list—		
If sold, realized gross	.....	
If unsold, estimated at as per valuation attached.	.....	.....
Less mortgage debts of	.....	.....
Total property in Malaŵi	. . . . .	£

2. *Personal property situated outside Malaŵi* (4)

Items	Nominal amount or value	Market Price at date of death	Gross value at date of death £ s. d.	£ s. d.
Government or Municipal Stocks or Bonds and Shares or Stock in companies and other securities (3) . .				
Dividends, interest, etc., accrued and due on the above investments to date of death as per list attached.				
Other personal property situated outside Malaŵi as per list attached.				
Total property within Malaŵi				
Total personal property outside Malaŵi				
TOTAL PROPERTY				£

3. *An account of debts and Funeral Expenses due and owing by the deceased in Malaŵi* (5)

Name and address of creditor and description and amount of debt	£ s. d.	£ s. d.
Total debts and funeral expenses		£

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	£ s. d.
Value of deceased's estate for estate duty	.....
Estate duty at rate ..... per centum	.....
Interest (if any) at ..... per centum from . .	.....
(date of death) to date of payment, i.e., ... years ..... months ..... days	.....
Total amount of Estate Duty payable	.....

NOTES.—

(1) Enter here the names and addresses of the executors or administrators.

(2) Separate schedules should be attached where necessary.

(3) If the space is insufficient a separate schedule should be attached.

(4) The country in which the property is situated should be stated and the items listed accordingly. This part need not be completed where the deceased was not domiciled in Malaŵi.

(5) Supporting vouchers shall be attached.

(6) If communications respecting the estate duty in this case are to be sent to a legal practitioner, the executor or administrator should give his name and address and sign at the foot of the affidavit.

FORM IV

THE ESTATE DUTY ACT

(Cap. 43:02)

FURTHER ESTATE DUTY AFFIDAVIT

(Section 14 (1))

Estate of ..... *Deceased.*

1. I/We ..... $\frac{\text{Make Oath And Say}}{\text{Do Solemnly And Sincerely Affirm}}$ as follows—

2. This deceased, late of ..... died on ..... the ..... day of ..... 19 .....

3. Account(s) of the property of the deceased has/have been delivered by .....

4. It has been discovered that in the circumstances hereinafter set out $\frac{\text{TOO LITTLE}}{\text{TOO MUCH}}$ Estate Duty has been paid upon the Account(s) which has/have already been delivered.

5. The corrected particulars and values of the properties included in the Account(s) which has/have already been delivered, which should have been included the values whereof were $\frac{\text{incorrectly}}{\text{not}}$ stated thereon are shown hereinafter.1

6. The debts and incumbrances not hitherto deducted and comprised in the Schedule annexed to this Account, were at the time of the deceased's death payable out of property comprised in this Account or in the Account(s) which has/have already been delivered, or on some part(s) thereof. The particulars of the instruments by which they were secured or created and the names and addresses of the several persons to or in whom the debts and incumbrances are now due or vested, are stated.

7. The said debts and incumbrances were incurred or created by the deceased or by some one or more of his predecessors in title. In so far as they were incurred by the deceased or were created by a disposition made by him they were created or incurred *bona fide* for full consideration in money or money's worth, wholly for the deceased's own use or benefit, and they take effect out of his interest. The debts and incumbrances are not, nor are any of them, primarily chargeable upon any other property passing on the death of the deceased. There is no right to re-imbursement from any other estate or person whatsoever in respect of them.

8. So far as I/we know or believe, save as appears in and by this Account, and the Account(s) which has/have already been delivered, no property chargeable with Estate Duty belonged to the deceased at the death of the deceased or formed part of the estate of the deceased within the meaning of the Estate Duty Act.

9. It now therefore appears that in the circumstances stated herein $\frac{\text{TOO LITTLE}}{\text{TOO MUCH}}$ Estate Duty has been paid, all which is submitted to the Estate Duty Commissioners, in order that the deficient duty, with interest thereon, may be accepted, or that the overpaid duty may be returned to ..... whose receipt shall be a sufficient discharge for the same.

All which is true to the best of my ..... knowledge and belief.

Sworn by the above-named ..... at ..... this ..... day of ..... 19 .....

Before me .....

A Commissioner for Oaths

SCHEDULE

Items in Estate Duty Affidavit or further Estate Duty Affidavit needing correction (2) and omitted property and deductions (if any)	Value as last previously shown	Increase	Decrease	Value as now corrected
	£ s. d.	£ s. d.	£ s. d.	£ s. d.
Total				

Here state what correction has become necessary and in what circumstances—

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Capital		As last previously shown £ s. d.	Increase £ s. d.	Decrease £ s. d.	As now corrected £ s. d.
Total Property Chargeable	Gross				
	Deductions				
	Total net Property chargeable				£

Rate	£ s. d.	£ s. d.	£ s. d.	£ s. d.
Duty.				
Interest				
Total				

On the basis of this affidavit and subject to rectification if found necessary the amount of Estate Duty and Interest to be now paid is returned as £ ..... as shown above.

By the Commissioners,

Examiner

..... 19 .....

NOTES.—

(1) This further estate duty affidavit when filled up, should be sent to the Secretary of the Estate Duty Commissioners. In suitable cases an interview will be arranged. If a Return of Duty is applied for, the form should be accompanied by evidence in support of the claim and the original receipted accounts should be sent. If further duty is to be paid the form should be filled up in duplicate.

(2) Items not needing correction should not be inserted.

BANKING

CHAPTER 44:01

Containing Pages 1–32

CHAPTER 44:01

BANKING

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CHAPTER 44:01

BANKING

An Act to provide for the regulation of the business of banking in Malaŵi, and to provide for matters incidental thereto and connected therewith 10 of 2010

[11TH JANUARY, 2010]

PART I

PRELIMINARY

1. This Act may be cited as the Banking Act. Short title

2.—(1) In this Act, unless the context otherwise requires— Interpretation

"bank" means a person who conducts banking business in Malaŵi, including by accepting funds withdrawable by cheque or transferable by other means;

"banking business" means the business of receiving deposits or deposit substitutes from the public that are—

(*a*) payable, with or without interest, on demand, or after the expiration of a stated period; and

(*b*) transferable by cheque or by other means.

"banking licence" means a licence granted by the Reserve Bank of Malaŵi and issued under the Financial Services Act to carry on banking business; Cap. 44:05

"capital" includes paid-up capital and unimpaired reserves;

"close relation" means spouse, brother, sister, parent, child, child of the spouse and the spouse of any of these and also includes a business partner and the close relations of the business partner;

"controlling party" has the meaning ascribed to that term in the Financial Services Act; Cap. 44:05

"company" means any company incorporated or registered as such under the Companies Act; Cap. 46:03

"core capital" means paid-up share capital and disclosed reserves, with the latter being defined as the total of statutory reserves, retained profits from prior years, share premium, and sixty per cent of after tax profits in the current year to date (or in the case of loss, one

hundred per cent of that loss), less unconsolidated investments in financial companies;

"credit facility" includes financing by means of loans, leases, advances, establishing a line of credit, factoring, hire purchase, accepting of trade and other bills, discounting of such bills and notes, the opening or confirming of documentary credit, the issue of other letters of standby, guarantee or surety, the undertaking to pay on account of another person, and such other similar undertakings as may be prescribed by the Registrar in the Registrar's directives from time to time;

"deposit" means money entrusted to a bank and accepted by it for credit to a depositor's account, which is payable, with or without interest, on demand or after the expiration of a stated period of time;

"deposit substitutes" means funds received from the public through the issue, endorsement or acceptance of debt instruments of any kind other than deposits, or through the issue of participations, certificate of assignment, repurchase agreements or similar instruments;

"executive officer" means an officer at the most senior levels of the management of a bank, whether or not the officer is a director, who effectively manages the affairs of the bank;

"group of related debtors" means a group of debtor companies or enterprises operating under common control of an individual or of a group of related individuals, or of a corporate body acting as a controlling party as defined in the Financial Services Act;

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"insider" includes any of the following—

(*a*) principal shareholders;

(*b*) members of the board of directors or audit committee;

(*c*) executive officer; and

(*d*) senior management officials;

"liabilities to the public", in relation to a bank means all claims against such bank payable on demand or at a determinate future date, whether or not the precise date of payment is fixed;

"non-performing loan" means a credit facility that is not paying principal or interest according to the terms of the borrower's financing agreement;

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"Registrar's directive" means a directive issued under the Financial Services Act;

"related party" includes any of the following—

(*a*) a person who is related to an insider of a licensed institution by marriage or consanguinity to the second degree;

(*b*) a legal person in which an insider has a business interest, including as a partner, director, manager or guarantor;

(*c*) an individual person for whom an insider is a guarantor;

(*d*) a subsidiary of the licensed institution or of an insider;

(*e*) a company or undertaking in which at least a ten per cent interest is held by the licensed institution or by an insider;

(*f*) a parent company of the licensed institution or of an insider;

(*g*) a company that is under common control with the licensed institution or of an insider;

(*h*) a company that holds at least a ten per cent interest of another company in which the licensed institution or an insider holds at least a ten per cent interest;

(*i*) company that has common management or common directors with the licensed institution, an insider, or another related party of the licensed institution; and

(*j*) a political party that is controlled by an insider or related party or whose funds or services shall benefit an insider or related party;

"reserves", in relation to a bank, means all funds which have been built up out of earnings, premiums on shares, profits from the realization of assets, and increase of the value of assets upon revaluation of such assets, and which have been set aside as a general or special reserve and are available for meeting the liabilities of the bank;

"significantly undercapitalized bank" means a bank which has the following characteristics—

(*a*) has capital ratios that are less than fifty per cent of the requirement prescribed in the Registrar's directive on capital;

(*b*) holds core capital of less than fifty per cent of the requirement prescribed in the Registrar's directive on capital; or

(*c*) holds total capital of less than fifty per cent of the requirement prescribed in the Registrar's directive on capital.

"unsecured", in relation to credit facilities, means credit facilities made without collateral, guarantee or other personal security, or if made against a collateral, guarantee or other personal security, such part of the credit facility which at any time exceeds the market value of the collateral or the amount recoverable from the guarantor or surety as the case may be.

(2) For the purposes of this Act, a person shall be deemed to be accepting deposits of money if such person accepts from the general

public deposits of money as a feature of his business, or if such person solicits such deposits, irrespective of the terms and conditions under which such deposits are accepted or solicited and whether or not certificates or other instruments are issued in respect of any such deposit:

Provided that the acceptance of insurance premiums by an insurer, shall not be deemed to constitute acceptance of deposits of money for the purposes of this Act.

(3) Words and expressions used in this Act have the meanings ascribed to them in the Financial Services Act.

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Application of the Financial Services Act Cap. 44:05

3. This Act shall apply in addition to the Financial Services Act.

PART II

Licensing of Banks

Licensing of banks

4.—(1) A person shall not—

(*a*) conduct banking business in Malaŵi; or

(*b*) indicate to the public that he is conducting or is about to conduct banking business,

unless licensed as a bank under the Financial Services Act.

(2) The Registrar shall not license a person as a bank unless the person is a body corporate.

(3) The Registrar may, by Registrar's directive, determine that other entities accepting funds from the public, including those that borrow from the public or other banks, and that employ such funds in whole or in part, by granting loans, advances and other credit facilities and by investing or by any other means at the risk of the person conducting such business, is engaged in banking business and shall require that entity to be licensed.

(4) A person who contravenes this section commits an offence and on conviction shall be liable to a fine of K10,000,000 and to four years imprisonment.

Conditions for licensing of banks

5.—(1) In considering an application for a banking licence, the matters that the Registrar shall take into account include—

(*a*) the validity and accuracy of the documents and information submitted therewith;

(*b*) the financial condition, resources, integrity and previous banking or non-banking business ventures of direct and indirect shareholders associates and affiliates of the proposed bank;

(*c*) the integrity, working experience and qualifications of the proposed directors and executive officers of the proposed bank and their competence to conduct the proposed business;

(*d*) the capacity of the applicant—

(i) to maintain an adequate capital at all times;

(ii) to comply with the provisions of this Act and of any other Act relevant to its business;

(*e*) the adequacy of the capital, and earning prospects resulting from the intended operation;

(*f*) the nature and scope of the proposed operation;

(*g*) the needs and convenience of the community or sector to be served;

(*h*) the structure of its organization;

(*i*) the interests of depositors and creditors of the applicant;

(*j*) the interest of the national economy and the public interest;

(*k*) the structure and shareholding of the proposed group of companies of which the proposed bank forms part or intends to form part;

(*l*) the sources and nature of capital to be used to finance the proposed bank;

(*m*) whether the applicant is or will be able to apply and maintain effective and proper internal control systems and sound principles of corporate governance; and

(*n*) other matters that may be deemed essential by the Registrar.

(2) The Registrar may interview the promoter, directors and proposed senior management personnel in the course of an appraisal and also inspect their books and records to satisfy himself about the representations made or information furnished by the applicant.

Limitation on shareholding

6.—(1) A person or group of persons who do not satisfy the criteria for the fit and proper test relating to controlling shareholders, as determined by the Registrar in the Registrar's directives shall not acquire more than ten per cent of the shares of a bank.

(2) A bank shall not transfer any shares referred to in subsection (1) without obtaining written approval from the Registrar.

(3) The Registrar of Companies shall not register any transfer of shares of a bank referred to in subsection (1) without receiving a notice of no objection from the Registrar.

(4) A person who is a controlling party of a bank shall not be a controlling party of another bank

Licensing criteria

7.—(1) The Registrar shall not grant a licence unless he is satisfied that—

(*a*) the banking business to be conducted under the licence shall be effectively managed by at least two persons as executive officers of the bank; and

(*b*) the bank has minimum start-up capital as stipulated in the Registrar's directive on capital.

(2) A bank shall not engage in any business other than the business designated in its licence.

Suspension or revocation of licence Cap. 44:05

8. Where a banking licence is suspended or revoked, the power of the Registrar to give written direction to the bank under the Financial Services Act, shall extend to—

(*a*) the disposal of its assets; and

(*b*) its entering into any transaction or a transaction of any kind specified in the directions.

Register

9.—(1) The Registrar shall keep a register of banks, consisting of a separate part for each class of banking business.

(2) The Registrar shall publish in the *Gazette*—

(*a*) the entry of a bank, or the cancellation of any entry, in the register;

(*b*) a copy of the register as at 31st December of the preceding year.

PART III
Prudential Supervision
Division I
Obligations of Banks

Capital funds and minimum capital ratios

10.—(1) Every bank shall at all times maintain adequate capital for the conduct of its business.

(2) The Registrar may prescribe higher on-going capital requirements for a specific bank where the supervisory review process reveals existing risks in the bank warranting the increase.

11. Without limiting the power of the Registrar under the Financial Services Act, to issue Registrar's directives, the Registrar's directives may make provision with respect to any of the following— Directives related to accounting policies of bank Cap. 44:05

(*a*) valuation of assets and liabilities;

(*b*) depreciation of assets;

(*c*) impairment of assets;

(*d*) provision for contingent losses and litigation;

(*e*) provision for tax payable;

(*f*) amortization of goodwill;

(*g*) net positions on foreign currencies;

(*h*) foreign currency loans;

(*i*) recognition of income and expenses;

(*j*) amortization of pre-incorporation expenses; or

(*k*) such other items as may be prescribed by the Registrar.

12.—(1) A bank shall not declare, credit or pay any cash dividends or make any transfer from the surplus if to do so would result in a breach of its capital adequacy requirements under this Act or the Financial Services Act. Restriction of cash dividends Cap. 44:05

(2) Notwithstanding the provisions of the Companies Act, a bank shall not increase its paid-up share capital out of revaluation reserves. Cap. 46:03

(3) A bank shall not pay any cash dividend on its shares if the bank's capital requirements under section 10 or the Financial Services Act, are not met. Cap. 44:05

13.—(1) Every bank shall submit to the Registrar all information and data on its operations in Malaŵi including periodic returns and those of any company which is a subsidiary, affiliate, associate or holding company to the bank which the Registrar may require for proper discharge of its functions under this Act or the Financial Services Act. Submission of periodic returns to the Registrar Cap. 44:05

(2) The format of the periodic returns required under subsection (1) and the periods within which they shall be submitted shall be determined by the Registrar in a Registrar's directive.

(3) Any bank which, without reasonable cause, fails to comply with subsections (1) and (2) of this section, or submits inaccurate returns, shall pay to the Registrar an administrative penalty per day of default as determined in the Registrar's directives.

(4) The Registrar shall, if he deems necessary for the safety and soundness of the bank, or for the safety of the depositors or to determine whether the provisions of this Act or the Financial Services Act are being duly complied with, require in writing any affiliates, associates, holding or subsidiary companies or any person who controls a bank to provide the Registrar or its appointed agent such information or documents as may be necessary including the financial statements and other financial records within the period specified in the notice.

Supervision of banks and financial institutions Cap. 44:05

14.—(1) The Registrar may periodically, or at his discretion, examine or cause to be examined the business of any bank in order to determine whether the bank is in a sound financial condition and complies with the requirements of this Act or the Financial Services Act, or any other Act relevant to its banking business.

(2) In addition to subsection (1), the Registrar may, on a consolidated basis, carry out an examination of any affiliates, associates, holding or subsidiary companies or any person who controls a bank, whether they are domiciled within or outside Malaŵi.

(3) A bank shall, periodically, as prescribed in the Registrar's directive or on request by the Registrar, provide any information or data requested by the Registrar for purposes of carrying out an examination in pursuance of subsection (2).

Exchange of information

15.—(1) The Registrar may upon request made to him by any monetary, supervisory or other regulatory authority in the ordinary course of business, disclose any of the information provided under section 13 to that monetary, supervisory or regulatory authority within or outside Malaŵi; except that the Registrar shall, before disclosing any information under section 13, satisfy itself that the information is required for the proper discharge of the requesting monetary, supervisory or regulatory authority's duties.

(2) The Registrar shall rely on foreign monetary, supervisory, or regulatory authorities on matters of cross-border supervision of banks.

Appointment of external auditor by the Registrar Cap. 44:05

16.—(1) Where a bank fails to nominate or obtain approval of an external auditor, as required under the Financial Services Act, within two months after the lapse of the term of its previous auditor, or fails to fill a vacancy for an external auditor, the Registrar may appoint a qualified firm of external auditors whose remuneration shall be paid by the bank.

(2) A person appointed as an external auditor under subsection (1) shall—

(*a*) for the purposes of the Companies Act be deemed to have been appointed as an external auditor at the immediately preceding annual general meeting of the bank; Cap. 46:03

(*b*) be deemed to be an external auditor appointed by the bank and approved by the Registrar as required by the Financial Services Act. Cap. 44:05

(3) The Registrar may for sufficient cause withdraw its approval of the appointment of an external auditor previously granted, and upon the withdrawal, the external auditor concerned shall vacate office.

(4) For the purposes of subsection (3), sufficient cause shall relate to any of the following—

(*a*) failure to comply with the requirements of this Act;

(*b*) breach of duty as imposed by this Act;

(*c*) inability to perform in accordance with international accounting standards as prescribed by the Society of Accountants in Malaŵi; or

(*d*) any other reason that the Registrar may, in his discretion consider applicable.

Duties of external auditors to a bank Cap. 44:05

17.—(1) In addition to the requirements under the Financial Services Act, the duties of an external auditor in relation to a bank shall include the following—

(*a*) to warn the board of directors of a bank of—

(i) the bank's ability or inability to meet the capital requirements;

(ii) the bank's ability or inability to meet the reserve and liquidity requirements;

(iii) the bank's risk exposures;

(iv) any other matter which the external auditor becomes aware of in the performance of his or her functions as an auditor which may—

(*aa*) prejudice the ability of the bank to continue conducting business as a going concern;

(*bb*) be detrimental to the interest of the depositors; or

(*cc*) violate the principles of sound financial management or the maintenance of adequate internal controls and systems by the bank;

(*b*) to obtain sufficient, relevant and reliable evidence to satisfy themselves of the various matters necessary to form their opinion;

(*c*) to ascertain, evaluate and test internal controls before placing audit reliance on them;

(*d*) to exercise reasonable care and skill in accordance with the current professional standards and practices and to perform the audit in accordance with international auditing standards and such other regulations, directives, policies, guidelines as the Registrar may issue;

(*e*) to assess, and in writing comment on, the report of the board of directors before the report is tabled at the annual general meeting; and

(*f*) to report to the Registrar any of the following—

(i) facts or decisions that constitute a material breach of laws or regulations;

(ii) information that indicates failure to fulfill any of the requirements for a banking licence;

(iii) any indications that may affect the bank's ability as a going concern;

(iv) matters of serious conflict within decision making bodies;

(v) the intention of the auditor to resign or the removal of the auditor from office;

(vi) where after discussing the audit findings with a bank, the external auditors conclude that they will give a negative or adverse opinion as opposed to one qualified by exceptions; or

(vii) material adverse changes in current or potential risks of the bank's business.

(2) External auditors shall not be exonerated by disclaimer clauses in the statements they endorse if the statements contain material errors and gross misrepresentation.

(3) External auditors of banks shall be subject to an audit quality monitoring review as implemented by the Malaŵi Accountancy Board or its delegated authority.

(4) The Registrar may in his discretion require that audited financial statements of each bank be reviewed by the Malaŵi Accountants Board or his delegated authority and all the costs arising from such a review shall be met by the bank.

Requirements on bad debt provisions

18.—(1) Every bank shall, before annual accounts are finalized, dividends paid, and the capital requirements in section 10 are met, satisfy the Registrar in respect of—

(*a*) sufficiency of provisions for bad debts;

(*b*) existence and enforcement of a proper policy on non-accrual of interest on non-performing loans; and

(*c*) amortization of preliminary expenses, goodwill and similar expenses.

(2) The Registrar may, in a Registrar's directive, set out the requirements to be fulfilled by a bank in order to comply with subsection (1).

Records, books of account and information to be kept

19.—(1) Every bank shall keep in Malaŵi such records, books of account and information as necessary to exhibit clearly and correctly the state of its business and to explain its transactions and financial position, and to enable the Registrar to determine whether it has complied with the provisions of this Act.

(2) The records, books of account and information referred to in subsection (1) shall be preserved for a period of at least seven years from the date of the last entry therein.

Division II
Structural Matters and Limitations

Prohibited transactions

20. A company licensed under this Act to conduct banking business shall not—

(*a*) purchase shares in its own business or make loans or advances against such shares as collateral;

(*b*) hold shares in a company that is a controlling party of the bank, irrespective of whether the shares are to be held for trading or equity investment.

Equity investments privately held by liquidated or divested investor

21.—(1) Where any shareholder of a privately held equity investment in a bank is liquidated or divests his interest, such investment shall with immediate effect—

(*a*) be offered to existing shareholders on a right-of-first-refusal basis, and at a consideration to be agreed among the parties;

(*b*) be offered to other external parties where for any reason the existing shareholders are not willing to take up the shares.

(2) Such equity shall be offered to existing shareholders in proportion to their shareholding.

(3) Such equity shall not, for any reason whatsoever, be warehoused.

(4) Approval shall be sought from the Registrar regarding persons wishing to take up such equity investment in a bank.

(5) If the Registrar is satisfied that existing shareholders have failed or may fail to take up their allocated shares, nominate or obtain approval for an external investor to take up such equity investment, the Registrar shall advertise for potential investors to take up such equity.

Restricted transactions

22. Except with the prior approval of the Registrar, a bank shall not—

(*a*) engage on its own account in wholesale or retail trade, including import and export trade, except in so far as may be necessary in the course of the satisfaction of debts due to it;

(*b*) purchase, acquire or hold immovable property other than for the purpose of conducting its business or providing housing or amenities for its staff;

(*c*) have investments in land, buildings and other immovable property which in aggregate exceeds the sum of its capital and reserves:

Provided that paragraph (*b*) and paragraph (*c*) shall not prevent a bank from enforcing a security by acquiring immovable property and reselling it within two years; and

(*d*) own shares in the capital of any company, firm or enterprise the aggregate value of which is more than the percentage of the bank's core capital specified in Registrar's directives.

Matters that may be covered by the Registrar's directives Cap. 44:05

23. Without limiting the power of the Registrar under the Financial Services Act, to issue Registrar's directives, the Registrar's directives may make provision with respect to any of the following—

(*a*) the solvency, liquidity and sound operating practices of banks, including any of the following—

(i) regulating the minimum liquidity requirements as a percentage or percentages of liabilities to the public;

(ii) regulating the minimum capital requirements as a percentage or percentages of a specified class or classes of assets and risk bearing commitments;

(iii) regulating the minimum and maximum ratios to be maintained between specified classes of assets and liabilities including on commitments to provide loans, advances and credit facilities;

(iv) specifying the composition of liquidity, capital, classes of assets and liabilities and risk bearing commitments, as well as the method of their computation;

(*b*) prohibiting or restricting—

(i) specified classes of loans, advances, credit facilities, investments and risk bearing commitments, including in excess of a specified limit;

(ii) uncovered positions in foreign currency, including in excess of a specified limit; or

(iii) other specified transactions that may affect the solvency or liquidity of a bank.

Restrictions on loans to shareholders, directors, officers, employees and to their relations, etc. Cap. 44:05

24.—(1) Without limiting the power of the Registrar under the Financial Services Act, a bank shall not grant or permit to be outstanding a loan or credit accommodation to any of its shareholders, directors, executive officers, employees or to any of their related party except on terms which are non-preferential in all respects including creditworthiness, term, interest rate and the value of the collateral.

(2) For the purpose of subsection (1), "non-preferential" means upon terms no more favourable than those which would be offered under prevailing conditions to persons other than those referred to under subsection (1).

(3) A bank shall not grant or permit to be outstanding loans or credit accommodations to shareholders, directors, executive officers, employees or to any of their related party which exceed ten per cent of its core capital.

(4) Every loan or credit accommodation by a bank to any of its shareholders, directors, executive officers, employees or to any of their related party shall be secured at all times.

(5) Any loans, advances or credit facility granted by a bank to any of its shareholders, directors, executive officers, or to any of their related party shall—

(*a*) require a unanimous approval of the board of directors of the bank with the director, shareholder or executive officer or employee concerned not participating in the deliberations of the board with respect thereto; and

(*b*) be extended on non-preferential terms.

(6) A bank shall not grant a loan or credit accommodation to a director, shareholder, executive officer, or employee of the bank while another loan or credit accommodation to that person is non-performing.

(7) A director of a bank who at any time—

(*a*) defaults on a loan or credit accommodation granted to him by the bank; or

(*b*) has subsisting, a non-performing loan or credit accommodation obtained from the bank,

shall—

(i) immediately cease to be a "fit and proper" person for purposes of this Act;

(ii) cease to be a member of the board of directors of the bank; and

(iii) not be eligible for appointment to the board of directors of any bank in Malaŵi for a period of seven years.

(8) Any person who grants a loan or credit accommodation which contravenes any of the provisions of this section commits an offence and shall be liable to administrative penalties under the Financial Services Act.

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(9) Notwithstanding subsection (8), the Registrar may order for—

(*a*) repayment by the offending officer and director of any amount which exceeds the legal lending limits prescribed in subsection (3) above;

(*b*) the execution of proper security documentation where applicable;

(*c*) the regularization of any preferential terms or conditions of a loan as the case may be;

(*d*) the dismissal from the bank of the offending officer;

(*e*) barring the offending officer from any future employment at any bank for a specified or indefinite period.

(10) Where a loan extended to an insider becomes non-performing, the bank shall deduct the outstanding amount of the loan or sum granted or extended to the insider when computing the on-going capital requirements of the bank.

(11) Subject to the Registrar's directive on insider lending, this section shall not apply to loans that a bank may grant to its officers or employees as part of their terms and conditions of employment.

Actions requiring prior approval

25. No bank shall without prior written permission of the Registrar—

(*a*) grant or permit to be outstanding any loan, advance or credit facility in excess of twenty-five per cent of its core capital to any debtor or group of related debtors;

(*b*) change its articles of association;

(*c*) reduce its capital base by repayment of capital or distribution of its reserves;

(*d*) open and close branches and static or mobile agencies;

(*e*) open an establishment abroad;

(*f*) introduce a new product;

(*g*) participate in any other company to an extent of becoming a controlling party as defined in the Financial Services Act;

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(*h*) go into restructuring;

(*i*) go into liquidation;

(*j*) arrange for transfer or sale or disposal of its shares or business;

(*k*) enter into a management agreement with any party; or

(*l*) amalgamate or merge with any other institution wherein the whole or a considerable part of the business or property of the bank will be transferred to that other institution.

Division III
Enforcement and Other Remedial Measures

Enforcement action by the Registrar

26.—(1) Whenever the Registrar determines that a bank or a person affiliated with the bank—

(*a*) has violated any law, prudential rule, or Registrar's directive applicable to a bank;

(*b*) has engaged or is engaging in a practice that the Registrar believes is unsafe or unsound and threatens the interests of a bank, its depositors, or creditors or the public;

(*c*) has caused the bank to be in an unsafe or unsound condition that the Registrar believes threatens the interests of a bank, its depositors, or creditors or the public;

(*d*) is significantly under-capitalized; or

(*e*) is insolvent,

the Registrar may institute an enforcement action against the bank or such person affiliated with the bank as provided under this section, which enforcement action shall be effective immediately.

(2) The type of enforcement actions the Registrar may take shall include—

(*a*) an order to cease and desist which may require the bank or person affiliated with the bank to refrain from any violation or unsafe or unsound activity or practice or take such corrective action as shall be necessary to remedy effects of such violation or unsafe or unsound practice or activity, including making restitution or reimbursement for losses that may have resulted therefrom;

(*b*) an order requiring a person affiliated with the bank to cease such affiliation. In egregious cases, the Registrar may preclude such person from being or becoming a person affiliated with any bank in Malaŵi;

(*c*) an order requiring the payment of a monetary penalty as determined by the Registrar in the Registrar's directives;

(*d*) placing a bank under statutory management as stipulated in section 27; and

(*e*) closing the bank.

(3) For purposes of this section, "closing a bank" means physically barring any access to a bank.

(4) Prior to imposing an enforcement action as provided for in subsection 2 (*a*), (*b*) and (*c*) above, the Registrar shall provide written notice to the bank or person affiliated with the bank setting forth the proposed enforcement action and the basis thereof.

(5) Any bank or person affiliated with the bank wishing to contest the proposed enforcement action may request for a hearing on the matter as provided by the the Financial Services Act.

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(6) Where a bank is significantly undercapitalized, the Registrar shall immediately—

(*a*) take any or all of the actions outlined in the Registrar's directive on capital;

(*b*) enter into an agreement with the board of directors of the bank requiring the bank to rectify its significant undercapitalization within ninety days, and to restore capital adequacy within one hundred and eighty days, or within such shorter periods as the Registrar shall order.

(7) If at any time—

(*a*) after the period specified in subsection (6) (*b*) the bank has failed to raise its capital to the levels necessary to rectify its significant undercapitalization; or

(*b*) before the end of the period specified in subsection (6) (*b*), the financial position of the institution continues to deteriorate,

the Registrar may place the bank under statutory management or revoke the licence and close the bank.

(8) This section shall not be construed so as to preclude the Registrar from closing any bank under any other provision of this Act.

Provisions relating to statutory management or closure of banks Cap. 44:05

27.—(1) In addition to the provisions of the Financial Services Act, the Registrar may place a bank under statutory management if it appears to the Registrar that the bank—

(*a*) is significantly undercapitalized;

(*b*) is unlikely to meet the demands of its depositors or pay its obligations in the normal course of business; or

(*c*) has incurred or is likely to incur losses that will deplete all or substantially all of its capital.

(2) Upon placing a bank under statutory management, the Registrar or his appointed agent, shall be the statutory manager and shall have exclusive powers to manage and control the affairs of the bank.

(3) The appointment of any person under this section shall not be construed so as to exclude the Registrar from performing any of the functions that a statutory manager may perform.

(4) No suit or other legal proceedings shall lie against any person appointed as a statutory manager by the Registrar for anything which is done or is intended to be done in good faith in the exercise of his duties as a statutory manager.

(5) The Registrar may at any time after placing a bank under statutory management, close the bank.

(6) Where the Registrar places the bank under statutory management or closes the bank, the following shall apply—

(*a*) any term whether statutory, contractual or otherwise on the expiration of which a claim of right of the bank would expire or be extinguished, shall be extended one hundred and eighty days from the date of taking over;

(*b*) any attachment or lien existing one hundred and eighty days prior to the take over of the bank by the Registrar shall be vacated;

(*c*) any transfer of any asset of the bank made one hundred and eighty days before the takeover by the Registrar, with intent to effect a preference or at less than the appraised book value shall be void;

(*d*) any gratuitous transfer of any asset of the bank made within one hundred and eighty days before the takeover by the Registrar shall be annulled and all such assets shall be surrendered to the Registrar; and

(*e*) any lending to any director, officer or any close relation of a director or officer on preferential terms or without adequate security made within one hundred and eighty days prior to the take over by the Registrar of the bank shall be rescinded; and that director or officer or close relation to the director or officer shall immediately refund the moneys advanced and the interest accrued at the going rate in the bank.

(7) For the purposes of discharging his functions, the Registrar may declare a moratorium on the payment by the institution of its liabilities to depositors and other creditors.

(8) The declaration of a *moratorium* shall—

(*a*) be applied equally and without discrimination to all classes of depositors and creditors;

(*b*) limit the maximum rate of interest which shall accrue on deposits and other debts payable by the bank during the period of the moratorium to the minimum rate as may be prescribed by the Registrar by notice for the purposes of this section except that this paragraph shall not be construed so to impose an obligation on the institution to pay interest or interest at a higher rate to any depositor or creditor than would otherwise have been the case;

(*c*) suspend the running of time for the purposes of any law of limitation in respect of any claim by any depositor, or creditor of the bank; or

(*d*) cease to apply upon the termination of the statutory manager's appointment in which case the rights and obligations of the bank, its depositors and creditors shall, except to the extent provided in paragraphs (*b*) and (*c*), be the same as if there had been no declaration under this subsection.

(9) Where a bank is placed under statutory management—

(*a*) the board of directors shall stand suspended and the statutory manager appointed under section 26 (2) shall perform the functions of the members of the board of directors until such a time as the Registrar shall direct otherwise;

(*b*) no steps may be taken by any person to enforce any security over the property of the bank;

(*c*) no other proceedings and no execution or other legal process may be commenced or continued against the bank or its property.

Registrar to determine action on bank placed under statutory management

28.—(1) The Registrar or his appointed agent, shall, within twelve months from the date of taking over as statutory manager, consider and implement any or all of the following options either singly or in combination—

(*a*) arrange a merger with another bank;

(*b*) arrange for the purchase of assets and assumption of all or some of the liabilities by other banks;

(*c*) arrange to sell the bank;

(*d*) liquidate the assets of the bank; and

(*e*) any other option that the Registrar may decide.

(2) The Registrar or his appointed agent shall take the action described in subsection (1) which in the opinion of the Registrar—

(*a*) is most likely to result in marshalling the greatest amount of the bank's assets; or

(*b*) protects the interests of depositors including their interest in the unprotected deposit amounts; or

(*c*) ensures stability of the financial sector.

(3) In determining the amount of assets that is likely to be realized from the bank's assets, the statutory manager shall—

(*a*) evaluate the alternatives on a present value basis, using a realistic discount rate; or

(*b*) document the evaluation and the assumptions on which the evaluation is based, including any assumptions with regard to interest rates, asset recovery rates, inflation, asset holding and other costs.

PART IV
Winding-Up

Liquidation or winding-up of a bank

29.—(1) Notwithstanding the provisions of any other law, no proceedings for winding-up or liquidation of a bank shall be commenced except—

(*a*) where the proceedings are commenced by the Registrar or its appointed agent; or

(*b*) where the proceedings are commenced by a bank under subsection (4);

(2) Where proceedings for winding-up of a bank are commenced under subsection (1) (*b*) above, the Registrar or its appointed agent may permit the winding-up to proceed on such terms and conditions as the Registrar may determine.

(3) Notwithstanding any provisions in this Act, any bank that is insolvent and which the Registrar believes will not be restored to solvency within a reasonable period, shall have its license revoked and be subjected to the provision of subsection (1) (*a*) above.

(4) A bank shall with the prior approval of the Registrar, apply to the High Court for voluntary liquidation.

(5) Where the Registrar is satisfied that the assets of a bank which has applied for voluntary liquidation of its operations under subsection (4) are not sufficient to pay its depositors and other creditors in full, or that the completion of the liquidation of its operations is unduly delayed, the Registrar may, if it deems fit, place the bank under compulsory liquidation in line with subsection (1) (*a*).

(6) Subject to subsection (4) of this section, a bank under voluntary liquidation shall immediately cease all activities except those which are incidental to the orderly realization, conservation and preservation of its assets and the settlement of its obligations.

(7) In case of a liquidation under this section—

(*a*) the liability of the shareholders for uncalled subscriptions to the capital stock of the bank shall continue until the end of the liquidation process;

Cap. 46:03

(*b*) notwithstanding the provisions of the Companies Act, where a bank is in liquidation, whether voluntary or involuntary, the ranking of claims shall be in accordance with section 32 or as may be stipulated in the Registrar's directives.

Powers of a liquidator

30.—(1) The liquidator may, with the approval of the Registrar—

(*a*) bring or defend any action or other legal proceedings in the name and on behalf of the bank;

(*b*) carry on the business of the bank so far as may be necessary for the beneficial winding-up of the bank;

(*c*) retain advocates, notaries, accountants, appraisers and other professional advisers as may be approved by the Registrar;

(*d*) make any compromise or arrangement with creditors, or persons claiming to be creditors, or having or alleging themselves to have any claim, present or future, certain or contingent, ascertained or sounding only in damages against the bank or by which the company may be rendered liable;

(*e*) compromise all calls and liabilities to calls, debts and liabilities capable of resulting in debts, and all claims, present or future, certain or contingent, ascertained or sounding only in damages, subsisting or supposed to subsist between the bank and a contributory or alleged contributory or other debtor or person apprehending liability to the bank and all questions in any way relating to or affecting the assets or the liquidation of the bank on such terms as may be agreed, and take any security for the discharge of any such call, debt, liability or claim and give a complete discharge in respect of it.

(2) The liquidator may—

(*a*) sell the movable and immovable property of the bank by public auction or private contract, with power to transfer the whole of it to any person or company or to sell the same in parcels;

(*b*) do all acts and execute in the name and on behalf of the bank, all deeds, receipts and other documents, and for that purpose to use, when necessary, the seal;

(*c*) draw, accept, make and endorse any bill of exchange or promissory note in the name and on behalf of the bank with the same effect with respect to the liability of the bank as if the bill or note had been drawn, accepted, made or endorsed by or on behalf of the bank in the course of its business;

(*d*) raise on the security of the assets of the bank any money required;

(*e*) take out in his official name letters of administration to any deceased contributory, and do in his official name any other act necessary for obtaining payment of any money due from a contributory or his estate which cannot be conveniently done in the name of the company, and in all such cases the money due shall, for the purpose of enabling the liquidator to take out the letters of administration or recover the money, be deemed to be due to the liquidator; but nothing in this paragraph shall be deemed to affect the rights, duties and privileges of the Administrator General;

(*f*) appoint an agent to do any business which the liquidator is unable to do himself;

(*g*) enforce the individual liability of the shareholders and directors of the bank;

(*h*) eliminate the interests of shareholders;

(*i*) generally realize the assets of the insolvent bank;

(*j*) arrange, negotiate and conclude in the interests of the depositors of an insolvent bank an agreement to the benefit of the depositors and for the purposes of—

(i) releasing the liquidator from its obligations in respect of the depositors' claims for payment of their deposits out of the liquidation proceeds;

(ii) impose those obligations on any third party as shall be agreed;

(*k*) by notice in writing require any person who is or has been a director, executive officer, agent or auditor of the bank or any person who has custody of any funds or other assets of the institution being liquidated, to—

(i) give to the liquidator all reasonable assistance in connexion with the liquidation;

(ii) appear before the liquidator for examination concerning matters relevant to the liquidation; or

(iii) produce any books or documents that relate to the affairs of the institution being liquidated.

(3) The exercise by a liquidator of the powers conferred by this section shall be subject to the control of the Registrar; and any creditor may apply to the High Court for review with respect to any exercise or proposed exercise of any of those powers.

(4) No review under subsection (3) shall be allowed except where the action complained of is arbitrary and capricious.

(5) In exercise of its powers as a liquidator, the Registrar or its appointed agent shall carry out a forensic investigation to determine the causes of failure of the bank and report on among other things, significant related party transactions, violations of the law and the bank's governing policies and regulations, and unsound business and lending practices.

(6) A person who—

(*a*) refuses or fails to comply with a requirement of the liquidator which is applicable to him, to the extent to which he is able to comply with it;

(*b*) obstructs or hinders a liquidator in the exercise of the powers conferred under this Act; or

(*c*) furnishes information or makes a statement which he knows to be false or misleading in any material particular; or

(*d*) when appearing before a liquidator for examination in accordance with such requirement, makes a statement which he knows to be misleading in any material particular,

commits an offence and on conviction is liable to a fine of K10,000,000 and to two years imprisonment.

(7) Any person who, following the forensic investigation, is found to have contravened this Act and the bank's policies and regulations or significantly contributed to the failure of the institution shall cease to be a fit and proper person for the purposes of this Act.

(8) Notwithstanding anything to the contrary in any other law, a court shall not entertain any application for stay of proceedings in relation to the liquidation or winding-up of a bank under this Act.

(9) Subsection (8) does not apply to an application filed by the Registrar.

Liquidator to report on custodial assets and liabilities

31.—(1) The liquidator shall within a period not exceeding five months from the date of his appointment, submit to the Registrar a report detailing the assets of the bank in his or her custody or control and their value, and as far as can be established the liabilities to its depositors and other creditors.

(2) Where a bank is under liquidation, every depositor of the bank shall be deemed to have filed his claim for the amount shown in the books of the bank as standing to his credit;

(3) The liquidator shall in the administration of the assets of the bank and in the distribution of those assets among its creditors, comply with the directions of the Registrar.

Preference of certain claims

32.—(1) The liquidator shall, within ninety days after submission of a report of the assets and liabilities of the bank commence the payment to depositors and creditors of the bank in the following priorities—

(*a*) payment shall be made first to the liquidator for all expenses incurred in the process of liquidating the bank;

(*b*) second, to depositors in *pari passu*;

(*c*) third, to secured creditors;

(*d*) fourth, to employees for all wages and salaries due net of any liabilities to the bank; and

(*e*) then to other creditors to rank in *pari passu*.

Cap. 46:03

(2) Provisions of the Companies Act, or any other Act relating to ranking of claims shall not apply to the liquidation of a bank.

(3) Where any assets remain after the payment by the liquidator of all claims against the bank, the remaining assets shall be distributed among the shareholders in accordance with their respective rights and interests.

(4) Where the liquidator has made payments to all depositors and creditors, the liquidator shall cause audited financial statements to be submitted to the Registrar.

(5) Subsection (4) shall not apply where the liquidator is the Registrar.

Financial records, audit and release of liquidator

33.—(1) A liquidator shall maintain proper financial records in a manner prescribed by the Registrar in which shall be recorded all financial transactions relating to the liquidation.

(2) The release of the liquidator shall operate as his removal from office.

Companies Act applicable in case of winding-up Cap. 46:03

34. Subject to the provisions of this Part, the provisions of the Companies Act relating to the winding-up of companies shall be applicable to licensed banks which are companies within the meaning of that Act:

Cap. 46:03

Provided that the provisions of the Companies Act, especially applicable to a creditor's voluntary winding-up shall not apply to banks.

Entries in bank books and evidence of depositor claim Cap. 46:03 Cap. 11:01

35. For the purpose of any winding-up and notwithstanding anything to the contrary contained in the provisions of the Companies Act or in the Bankruptcy Act, any entry in the books, accounts or records of a bank relating to deposits shall be *prima facie* evidence of the claims of the depositors.

Unclaimed funds after winding-up

36.—(1) Any sums of money remaining unclaimed after the winding-up of a bank shall be deposited in the Bankruptcy Estates Account at the Reserve Bank of Malaŵi.

(2) Any other property held by a bank as a trustee, fiduciary, lessor of a safe deposit box or bailee, which has not been returned to its rightful owner in course of the winding-up of such Bank, shall, together with the inventories pertaining thereto, be placed in the custody of the Registrar, and if unclaimed after a period of not less than two years shall be disposed of in such a manner as may be prescribed.

Expenses relating to liquidation

37. The remuneration of the liquidator appointed under this Act, the cost and expenses of his establishment and all the costs and expenses of the liquidation shall be met out of the assets of the bank under liquidation.

PART V
Monetary Supervision

Monetary directives Cap. 41:01

38.—(1) The Registrar, performing the duties conferred upon him under the provisions of the Reserve Bank of Malaŵi Act, may, with a view to the protection of the external value of the national currency, the monetary equilibrium, and other economic objectives, issue and amend directives and regulations to banks, regarding the following matters—

(*a*) liquidity reserve requirements to be met by banks;

(*b*) minimum liquidity requirement as a percentage of liabilities to the public to be maintained at all times;

(*c*) ceilings for loans and advances outstanding, for such specific periods as the Registrar may determine from time to time;

(*d*) restrictions and conditions for specific categories of loans, guarantees and other commitments of banks;

(*e*) foreign assets and foreign liabilities of banks;

(*f*) interest rates, charges, commissions and other conditions to be observed by banks in relation to their customers.

(2) Directives under subsection (1) may be different for different classes of banking business.

(3) The Registrar may in writing grant full or partial dispensation from a directive under subsection (1) to one or more banks in special cases or under special circumstances.

(4) The Registrar shall publish the directives under subsection (1) in the *Gazette* and shall further communicate the directives to all banks.

(5) The Registrar may require any bank to furnish such information as the Registrar may deem necessary to satisfy himself that the directives, referred to in subsection (1), have been complied with.

Administrative penalty

39.—(1) If a bank has not complied with the directives issued under section 38, the Registrar may order the bank to pay an administrative penalty as determined by the Registrar in the Registrar's directives.

(2) For the purposes of subsection (1), "amount of non-compliance", in relation to a prescribed amount, means any excess over a set maximum or any shortfall under a set minimum as the case may be.

PART VI

Abandoned Property

Abandoned property to be delivered

40.—(1) The following items held by a bank shall be presumed to have been abandoned—

(*a*) any deposit, including interest, in respect of which the depositor has not for seven years after the last deposit transaction in his account increased or decreased the amount of the deposit or presented the passbook or other record for the crediting of interest, or corresponded with the bank concerning such deposit; and

(*b*) other property deposited with the bank including the contents of any safe deposit box upon which the lease or rental period has expired and in respect of which the owner thereof has not for seven years following such expiry, corresponded with such bank or in any other manner indicated an interest.

(2) Any bank holding items presumed to have been abandoned under subsection (1) shall report such holdings to the Registrar and thereafter—

(*a*) in the case of any money deposits, pay such deposits into the Abandoned Property Account at the Reserve Bank as if they were unclaimed or undistributed funds under the Bankruptcy Act, and the provisions of that Act shall apply accordingly; Cap. 11:01

(*b*) in the case of any other property, deliver such property to the Registrar, together with the name and last-known address of the owner thereof.

(3) Upon paying abandoned deposits and delivery of other abandoned property to the Registrar, a bank shall be relieved of all liability for any claim in respect thereof to the extent of the value of such deposits or other property.

(4) Any person claiming to be entitled to any abandoned property and providing evidence of such entitlement to the satisfaction of a competent court shall have the abandoned property returned to him by the Registrar.

PART VII

Fiduciary Operations

Fiduciary operations to be specially permitted

41.—(1) A licensed bank shall not, directly or indirectly, engage in regular and recurrent business of fiduciary nature unless expressly permitted to do so by the Registrar.

(2) A banking licence may specially authorize a bank to act as trustee, executor, administrator, registrar or custodian of stocks and bonds, guardian of estates, assignee, receiver, committee of estates for infants or for absent or incompetent individuals, or for persons of unsound mind or in any similar fiduciary capacity.

PART VIII

Miscellaneous Provisions

Identification of depositor by thumb impression

42. In all transactions connected with the opening of, deposit into or withdrawal from an account with a bank, whenever the depositor is unable to sign his name, his thumb impression may be affixed in the presence of an officer of the bank, and if so affixed shall have the same force and effect as if it were the depositor signature.

Use of the word "bank"

43.—(1) Save with the consent of the Registrar who may impose such conditions as he thinks fit, no person, other than a bank, shall use in the description or title under which such person is conducting its business in Malaŵi the word "bank", "banker", "banking", "saving", "deposit", "credit", or literal translation of such words or any combination of letters in which such words appear.

(2) A person who contravenes subsection (1) commits an offence and shall be liable to a fine of K10,000,000 and to imprisonment for four years.

Advertisement of financial services

44. No person, other than a licensed bank, shall advertise that he performs banking services in Malaŵi normally rendered by banks.

Board of directors for a bank
Cap. 44:05

45. In addition to provisions of the Financial Services Act, the Registrar may in the interest of the bank or of the safety of depositors appoint a suitably qualified person to hold office as an additional director of the bank for such period as the appointment may specify.

Conflict of interest

46.—(1) No director or officer of a bank shall take part in the discussion of or taking a decision on any matter in which that person or any of his close relation has an economic interest.

(2) In any meeting where subsection (1) applies, every director or officer shall inform the meeting of his interest or that of any of the

parties mentioned in subsection (1) and to the extent that the discussion or decision concerns any matter in which he has an interest, shall exclude himself from further attendance at that meeting.

Additional responsibilities of the board Cap. 44:05

47.—(1) In addition to the provisions of the Financial Services Act, the board of directors of a bank shall be responsible for—

(*a*) good corporate governance and business performance of the bank;

(*b*) ensuring that the board is in full control of the affairs and business operations of the bank;

(*c*) ensuring that the business of the bank is carried on in compliance with all applicable laws and regulations and is conducive to safe and sound banking practices;

(2) For the purposes of this Act, "corporate governance" shall cover the overall environment in which the bank operates comprising a system of checks and balances which promotes a healthy balancing of risk and return.

Additional duties of directors Cap. 44:05

48.—(1) In additional to the provisions of the Financial Services Act, the board of directors and each director individually shall immediately report in writing to the Registrar if they have reason to believe that—

(*a*) the bank may not be able to properly conduct its business as a going concern;

(*b*) the bank does not, or may not be able to meet its capital requirements as prescribed in this Act.

(2) Where the board of directors or a director fails, omits or neglects to report to the Registrar any matter required to be reported under subsection (1), the Registrar may—

(*a*) withdraw its approval of the board of directors; or

(*b*) withdraw its approval of any of the directors.

(3) The Registrar may, for sufficient cause—

(*a*) remove a director of a bank;

(*b*) remove or suspend the whole board of directors of a bank;

(*c*) exclude any member of the board from qualifying to serve on a board of any bank in Malaŵi for a period of not less than ten years; or

(*d*) remove shareholders or direct specific shareholders to reduce their control of the bank.

(4) For the purposes of subsection (3), "sufficient cause" means—

(*a*) in relation to a director or directors', ceasing to comply with the fit and proper test;

(*b*) in relation to the board of directors—

(i) failure, omission or neglect of their responsibilities in subsection (1);

(ii) failure, omission or neglect to report to the Registrar as required under subsection (1);

(iii) failure or omission or neglect of duties as prescribed by the Financial Services Act; or

Cap. 44:05

(iv) failure to attend, without a valid reason, three consecutive meetings of the board, of which he has had notice.

(5) No director serving on the board of a bank shall simultaneously serve as a board member, or in any executive capacity, with any other bank or a subsidiary or affiliate of the other bank in Malaŵi.

Liability of executive officers, etc.

49. Any executive officer of a bank who—

(*a*) fails to take all reasonable steps to secure compliance by the bank with this Act, the other financial services laws, or any directives issued by the Registrar;

(*b*) fails to take all reasonable steps to ensure the accuracy, completeness and correctness of any statement submitted under this Act or another financial services law; or

(*c*) fails to supply any information required under this Act or another financial services law,

commits an offence and shall be liable to an administrative penalty as prescribed by the Registrar.

Prohibited remuneration of directors, officers and others

50. Any director, executive officer, officer or employee of a bank who solicits or receives, consents or agrees to receive any gift, commission, money, property or object of value for his own personal benefit or that of any of his close relations for permitting or procuring any loan, advance or credit facility from the bank commits an offence and on conviction shall be liable to the penalties prescribed under the Financial Services Act.

Cap. 44:05

Customer due diligence

51.—(1) A bank shall—

(*a*) demand proof of and record the identity of its clients or customers, whether usual or occasional when establishing business relations or conducting transactions in particular, opening of accounts or passbooks, entering into fiduciary transactions, renting of safe deposit boxes, performing large cash transactions; and

(*b*) together with its directors, officers and employees report promptly to the Financial Intelligence Unit any suspected money laundering activity related to any account held by the bank.

(2) A bank shall promptly report to the Financial Intelligence Unit any suspected money laundering activity related to any account held with the bank.

(3) For purposes of this Act, "money laundering" shall cover all activities and procedures designed to alter the identity of illegally obtained money so that it appears to have originated from a legitimate source.

(4) Any director, executive officer, officer or employee of a bank who makes or permits to be made any transaction including the opening of an account—

(*a*) without taking all reasonable steps to establish the true identity of the person concerned in the transaction;

(*b*) when he doubts or has reason to doubt the authenticity of documents and the truth of written or oral statements material to the transaction; or

(*c*) when he knows or has reason to suspect that any of the funds involved in the transaction have been obtained by any party as the direct or indirect result of an activity that is illegal inside or outside Malaŵi, commits an offence and on conviction shall be liable to the penalties prescribed under the Financial Services Act, and any other applicable laws. Cap. 44:05

52. The Registrar shall publish violations of this Act or of the Registrar's directives in at least two most widely circulated newspapers. Violations of this Act to be published

53. Wherever the provisions of this Act are inconsistent with the provisions of the Companies Act, the provisions of this Act shall apply. Inconsistency with the Companies Act Cap. 46:03

54.—(1) A person who contravenes any provision of this Act commits an offence. General offence and penalty

(2) A person who is convicted of an offence under this Act for which no other penalty is specified shall be liable to a fine of K10,000,000 and to imprisonment for four years.

55. The Minister may, upon the recommendation of the Registrar, make regulations for the better carrying out of the objectives of this Act and for its better administration. Regulations

56. Subject to section 57, any person who, or financial institution which, immediately before the commencement of this Act held a licence as defined in the Banking Act repealed under section 58 authorizing Continuity of banking licence Cap. 44:05

that person or financial institution to conduct banking business shall be deemed to hold a banking licence on the terms and conditions of this Act and the Financial Services Act.

Cap. 44:05

Transition period

57. If, on the commencement of this Act an existing financial institution does not meet the requirements under this Act or the Financial Services Act, the financial institution shall be required to meet the new requirements within the period specified under the Financial Services Act.

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RESERVE BANK OF MALAŴI

CHAPTER 44:02

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CHAPTER 44:02

RESERVE BANK OF MALAŴI

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CHAPTER 44:02

RESERVE BANK OF MALAŴI

An Act for the establishment of the Reserve Bank of Malaŵi; to regulate the issue of bank notes and coins; to confer and impose on the Reserve Bank of Malaŵi certain powers and duties; to provide for matters connected with banking, currency and coinage; and for matters connected therewith and incidental thereto

8 of 1989
12 of 1992
5 of 2011
14 of 2015
G.N. 50/1989
10/2011

[1st May, 1989]

PART I
PRELIMINARY

1. This Act may be cited as the Reserve Bank of Malaŵi Act. Short title

2. In this Act, unless the context otherwise requires— Interpretation 5 of 2011

"agency" means any institution, other than a bank, established or appointed under section 18;

"Bank" means the Reserve Bank of Malaŵi established under section 3;

"bank" means a company as a bank under the Banking Act; Cap. 44:01 5 of 2011

"Board" means the Board of Directors of the Bank established under section 6;

5 of 2011 "Code of Conduct" means the code of conduct provided for under section 15B and set out in the First Schedule;

Cap. 44:05 5 of 2011 "controlling party" has the meaning assigned thereto in the Financial Services Act;

"convertible currency" means any currency which is freely negotiable and transferable in international exchange markets at exchange rates consistent with the Articles of Agreement of the International Monetary Fund in force from time to time; "deposit liabilities" means liabilities arising from demand, time and savings deposits;

5 of 2011 "Deputy Governor" means a Deputy Governor of the Bank appointed under section 12;

5 of 2011 "director", in relation to the Bank, means a member of the Board and includes the Governor and Deputy Governors;

"external currency" means any currency, other than the currency issued by the Bank under this Act;

Cap. 44:05 5 of 2011 "financial institution" has the meaning assigned thereto in the Financial Services Act;

Cap. 44:05 5 of 2011 "financial services law" has the meaning assigned thereto in the Financial Services Act;

"Governor" means the Governor of the Bank appointed under section 12;

"Malaŵi currency" means the legal tender currency of Malaŵi issued by the Bank under this Act;

Cap. 37:01 "statutory body" has the meaning assigned thereto in the Finance and Audit Act.

PART II
Establishment of the Bank

Establishment

3.—(1) The Reserve Bank of Malaŵi shall be a body corporate with perpetual succession and a common seal, capable of suing and being sued in its own name, and which, subject to this Act, may acquire, hold and dispose of movable and immovable property for the purpose of its functions.

(2) The Bank shall have its head office in Lilongwe and may open branches in Malaŵi and appoint agents and correspondents in accordance with the decisions of the Board.

(3) The common seal shall be affixed under such conditions as the Board may from time to time determine.

PART III
Principal Objectives of the Bank

Principal objectives of the Bank 5 of 2011

4.—(1) The principal objectives of the Bank shall be—

(*a*) to issue legal tender currency in Malaŵi;

(*b*) to act as banker and adviser to the Government;

(*c*) to maintain external reserves so as to safeguard the international value of the Malaŵi currency;

(*d*) to implement measures designed to influence the money supply and the availability of credit, interest rates and exchange rates with the view to promoting economic growth, employment, stability in prices and a sustainable balance of payments position;

(*e*) to promote a sound financial structure in Malaŵi, including payment systems, clearing systems and adequate financial services;

(*f*) to promote a money and capital market in Malaŵi;

(*g*) to act as lender of last resort to the banking system;

(*h*) to support the regulation and supervision of Financial institutions in accordance with financial services laws; 5 of 2011

(*i*) to collect economic data of the financial and other sectors for research and policy purposes; and

(*j*) to promote development in Malaŵi.

(2) In pursuing, or in performing any functions in the pursuit of, its principal objectives, the Bank shall act with due regard to the interest of the national economy and to the economic policies of the Government.

Independence of the Bank 5 of 2011

4A.—(1) Except as provided by this Act, the Bank shall be independent and shall not be subject to direction by any person or authority.

(2) Any person who improperly seeks to influence the Bank, or a director or employee of the Bank, in the performance of its or his functions, commits an offence and shall, on conviction, be liable to a fine of K1,000,000 and to imprisonment for four years.

(3) If, after consultation with the Governor, the Minister is of the opinion that—

(*a*) a policy being pursued by the Bank is not adequate for, or conducive to, the achievement of the objects of the Bank as set out in Part III, or in a financial services law; or

(*b*) it is in the national interest to do so,

the Minister may, by written direction, determine the policy to be adopted by the Bank.

(4) A direction under subsection (3) shall not relate to an individual financial institution.

(5) A direction under subsection (3) shall state that the Government accepts responsibility for the policy determined in the direction.

(6) The Bank shall give effect to the policy set out in a direction under subsection (3) while the direction remains in force.

(7) A direction under subsection (3) shall be published in the *Gazette* within seven days after it is given to the Bank.

PART IV
Capital and Reserves

Capital and reserves

5.—(1) The capital of the Bank shall be three million Kwacha.

(2) The capital may, from time to time, be increased by such amount as the Board may resolve with the consent of the Minister, and the Government shall subscribe and pay up, at par, the amount of such increase; and the Government shall ensure that the Bank is kept solvent at all times.

(3) The capital shall be exclusively held by the Government.

(4) The Bank shall create and maintain reserves in accordance with section 54 of this Act.

PART V
Organization and Administration

Board of Directors
5 of 2011
14 of 2015

6.—(1) There shall be a Board of Directors of the Bank.

(2) The Board shall consist of the Governor, at least one but not more than three Deputy Governors, and at least four but not more than seven directors, who shall include the Secretary to the Treasury and the Secretary responsible for Economic Planning and Development:

Provided that at all times, the majority of the directors shall be non executive directors.

(3) The directors shall be appointed by the President for a term of three years and shall be eligible for re-appointment for one more term:

Provided that, with a view to ensuring continuity, appointments and re-appointments to the Board shall, wherever practicable, be made in such a way that at least one-half of the number of directors shall continue to serve on the Board.

(4) A person shall not be appointed a director unless the President is satisfied that the person is a fit and proper person to hold the office of a director and qualified for appointment by virtue of his knowledge of, or experience in, one or more of the following fields—

(*a*) economics;
(*b*) finance;
(*c*) financial markets, financial products or financial services;
(*d*) financial sector supervision and regulation;
(*e*) law;
(*f*) accounting; or
(*g*) other fields relevant to central banking.

(5) Appointments and reappointments to the Board shall be made with a view to ensuring that at all times the Board has an appropriate range of relevant skills and experience.

(6) The Board shall be responsible for the administrative and management policies of the Bank, and shall oversee the operations, administration and

management of the Bank and the exercise of the powers and functions of the Bank with a view to ensuring that the operations, administration and management of the Bank are being conducted in a proper, efficient and effective manner.

(7) Without limiting the generality of subsection (6), the Board shall have powers as outlined in the Second Schedule. *Second Schedule*

(8) The Minister may, on the recommendation of the Board, by order published in the *Gazette*, amend the Second Schedule. *Second Schedule*

(9) Every Director shall be entitled to such fees and allowances as the Board may, with the approval of the Minister, determine.

Persons not eligible for appointment as directors 5 of 2011

7. The following persons shall not be eligible to be appointed as director—

(*a*) a member of Parliament;

(*b*) a financial institution, or a director, salaried official or employee of a financial institution;

(*c*) a controlling party of a financial institution;

(*d*) a person who provides or is engaged to provide, whether as a member of a firm or not, professional services to the Bank;

(*e*) a public officer, other than the public officer mentioned in section 6 (2);

(*f*) a person who is disqualified, whether in Malaŵi or elsewhere, from acting as a director or official of a body corporate under a law relating to corporations or to the provision of financial services;

(*g*) a person who at any time has been adjudged bankrupt by a competent court, whether in Malaŵi or elsewhere, or who, whether in Malaŵi or elsewhere, has made an arrangement or composition with, or has suspended payment to, his creditors;

(*h*) a person who has at any time been convicted, whether in Malaŵi or elsewhere, of theft, any offence involving an element of dishonesty, fraud, forgery, issuing of a forged document, or perjury or any similar offence; and

(*i*) a person removed by a court of competent jurisdiction, whether in Malaŵi or elsewhere, from an office of trust on account of misconduct in the exercise of his duties in that office.

Resignation of directors 5 of 2011

8. A director may resign his office by giving one month's notice in writing to the President.

Termination of appointment as director 5 of 2011

9.—(1) The appointment of a director shall immediately terminate if the director—

(*a*) becomes a member of Parliament;

(*b*) becomes a financial institution, or a director, salaried official or employee of a financial institution;

(*c*) provides or is engaged to provide, whether as a member of a firm or not, professional services to the Bank or a financial institution;

(*d*) is disqualified in Malaŵi from acting as a director or official of a body corporate under a law relating to corporations or to the provision of financial services;

(*e*) becomes a public officer, other than one mentioned in section 6 (2);

(*f*) is adjudged bankrupt by a competent court in Malaŵi;

(*g*) in Malaŵi, makes an arrangement or composition with, or suspends payment to, his creditors;

(*h*) is convicted in Malaŵi of an offence of a kind referred to in section 7 (*h*); or

(*i*) is removed from office in Malaŵi as mentioned in section 7 (*i*).

(2) The President may terminate an appointment of a director on the ground that the director—

(*a*) has ceased to be fit and proper to be a director;

(*b*) is suffering from a mental or physical condition such that he cannot properly carry out the duties of the office;

(*c*) has failed, without leave of the Board, to attend more than three consecutive meetings of the Board of which he has had notice;

(*d*) is a controlling party of a financial institution;

(*e*) has been disqualified, outside Malaŵi, from acting as a director or official of a body corporate under a law relating to corporations or to the provision of financial services;

(*f*) has been adjudged bankrupt by a competent court outside Malaŵi;

(*g*) while outside Malaŵi, has made an arrangement or composition with, or has suspended payment to, his creditors;

(*h*) has been convicted outside Malaŵi of an offence of a kind referred to in section 7 (*h*);

(*i*) has been removed from office outside Malaŵi as mentioned in section 7 (*i*);

(*j*) has failed to comply with the Code of Conduct in a material particular;

(*k*) is incompetent; or

(*l*) is in breach of this Act or any other financial services law.

Procedure for removal of a director
5 of 2011

9A.—(1) Where the President has information that a director should be removed from office on any of the grounds listed in section 9 (2), the President shall appoint a committee to inquire into the information and furnish its findings to the President.

(2) The committee appointed under subsection (i) shall consist of—

(*a*) a person, who has sufficient knowledge of the law, who shall be the chairperson of the committee; and

(*b*) two other persons of good character, high integrity and with at least ten years experience in the field of economics or finance.

(3) Where the committee, on the basis of its findings, advises the President that the director concerned ought to be removed from office, the President shall terminate the appointment of that director.

(4) At the time of appointing the committee, the President may, where the director concerned is the Governor or Deputy Governor, send him on leave, and in the case of any other director, suspend him from office as director.

Filling of vacancy of a director

10. Upon the resignation of any director, or upon a director ceasing to hold office, before the expiry of the term for which he was appointed, another person shall be appointed in his place.

Meetings of the Board
5 of 2011

11.—(1) The Governor shall be chairman of the Board and, in his absence, a Deputy Governor nominated by the Governor shall be chairman.

(2) Meetings of the Board shall be called by the Chairman and shall be conducted in such manner as the Board may from time to time determine.

(3) The Chairman and three other directors shall form a quorum at any meeting of the Board and, unless otherwise provided or determined by the Board, the decision of the majority of the directors present at any meeting shall constitute the decision of the Board.

(4) The Chairman shall have a deliberative vote and, in addition, in the event of an equality of votes, a casting vote.

(5) No act or proceeding of the Board shall be invalidated merely by reason of the existence of a vacancy or vacancies among the directors.

(6) All *bona fide* acts of a director shall be valid notwithstanding any defect that may afterwards be discovered in his appointment or qualifications.

Disclosure of interest
5 of 2011

11A.—(1) Each director shall disclose in writing to the Bank all interests that the director has that may conflict with the proper performance of the functions of his office, whether the interest was acquired before or after appointment.

(2) A disclosure under subsection (1) shall be given as soon as practicable after the director becomes aware of the interest.

(3) The Bank shall record all disclosures under this section.

(4) A director who has an interest that may conflict with the proper performance of the functions of his office in relation to a particular matter shall not perform functions in relation to the matter.

(5) The Bank shall take reasonable steps to ensure that its employees and other persons performing or exercising functions or powers of the Bank under financial services laws make proper and adequate disclosure of their interest.

(6) For the purposes of subsections (1) and (4), it shall not matter whether the interest is direct, indirect, pecuniary or non-pecuniary, nor when the interest was acquired.

(7) For the purposes of this section—

(*a*) if an associate of a director has an interest; and

(*b*) if the director had the interest that could conflict with the proper performance of the functions of the director's office,

the director shall be deemed to have the interest, and this section shall apply accordingly.

(8) For the purposes of this section—

"associate of a director" means—

(*a*) a spouse, child or relative of the person; and

(*b*) a partner, or a spouse, child or relative of a partner, of the person.

Committees of the Board
5 of 2011

11B.—(1) The Board shall ensure that there are at all times the following committees of the Board—

(*a*) an Audit Committee;

(*b*) a Directors' Affairs and Remuneration Committee; and

(*c*) a Regulation and Supervision Committee.

(2) A committee mentioned in subsection (1) shall consist of such directors as the Board appoints to the committee and the Board may, by resolution, remove a director from a committee.

(3) Subject to any direction of the Board—

(*a*) a committee mentioned in subsection (1) may obtain assistance from employees of the Bank and other persons; and

(*b*) the procedure of a committee shall be as determined by the committee.

(4) The functions of the committees shall be as prescribed, and such other functions as the Board may confer on them.

(5) The Board may establish other committees, and confer functions on them, as it thinks fit.

The Governor and Deputy Governors
5 of 2011

12.—(1) There shall be a Governor of the Bank who shall be appointed by the President.

(2) There shall be up to three Deputy Governors of the Bank who shall be appointed by the President.

(3) The Governor and the Deputy Governors shall be appointed for a term of five years, and shall be eligible for reappointment for one more term.

(4) The Governor and the Deputy Governors shall be appointed on such terms and conditions as may be set out in the instrument of appointment, which terms and conditions shall not be altered to the disadvantage of the Governor or a Deputy Governor during the term for which they are appointed.

(5) The Governor and the Deputy Governors shall not occupy any other office or have any other employment, whether paid or otherwise:

Provided that the Minister may give his express approval to the Governor or a Deputy Governor to hold a particular office or employment.

(6) The provisions of section 9 and section 9A shall apply *mutatis mutandis* to the termination of appointment, and procedure for removal of, the Governor or a Deputy Governor.

Qualifications for appointment 5 of 2011

12A.—(1) A person shall not be appointed Governor unless the President is satisfied that the person is a fit and proper person to hold the office of Governor and qualified for the appointment by virtue of his or her knowledge of, or experience in, the fields of economics and finance.

(2) A person shall not be appointed Deputy Governor unless the President is satisfied that the person is a fit and proper person to hold the office of Governor or Deputy Governor qualified for the appointment by virtue of his or her knowledge of, or experience in, one or more of the following fields—

(*a*) economics;

(*b*) finance;

(*c*) financial markets, financial products or financial services;

(*d*) financial sector supervision and regulation;

(*e*) law;

(*f*) accounting; or

(*g*) other fields relevant to central banking.

Executive duties of Governor and Deputy Governor 5 of 2011

13.—(1) The Governor shall be responsible for the day-to-day management of the Bank and shall be answerable to the Board for his actions and decisions.

(2) In pursuing monetary and other related policies the Governor shall be guided by the need to achieve the objectives of the Bank as stipulated in section 4 of this Act.

5 of 2011

(3) The Deputy Governors shall perform such duties as the Governor may direct and, in the event of the absence or a vacancy in the office of the Governor, a Deputy Governor designated by the Governor shall perform the duties of the Governor and shall have and may exercise the powers and perform the functions of the Governor.

5 of 2011

(4) In the event of the temporary absence of both the Governor and the Deputy Governors, the Governor shall designate in writing a senior official of the Bank to perform the duties of Governor.

Resignation of the Governor or Deputy Governor 5 of 2011

13A. The Governor or a Deputy Governor may resign his office by giving three months' notice in writing to the President.

Appointment of officers and staff of the Bank
5 of 2011

14.—(1) The Governor shall appoint officers and other staff of the Bank as he considers necessary for the proper carrying out of the powers and functions of the Bank, and shall refer the appointment of senior officers to the Board.

(2) Officers and staff of the Bank shall be employed for such period or periods, receive such salaries and allowances and be subject to such other terms and conditions of service as may be determined by the Board.

(3) The Board—

5 of 2011

(*a*) may, out of the funds of the Bank, establish and maintain a pension fund for the officers and staff of the Bank and their dependants; and

5 of 2011

(*b*) may, out of the funds of the Bank, establish and maintain a pension fund for the Governor, Deputy Governors and their dependants.

Salaries

15. No salary, fees, wage, or other remuneration, or allowance paid by the Bank shall be computed by reference to the financial results of the Bank.

Protection of officers
5 of 2011

15A.—(1) None of the following shall be liable for any loss sustained by or damage caused to any person as a result of anything done or omitted to be done by it or him in the exercise or purported exercise of its or his powers, functions and duties—

(*a*) the Bank;

(*b*) a director or employee of the Bank;

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(*c*) an examiner or investigator appointed by the Registrar under the Financial Services Act.

(2) Subsection (1) shall not apply if it is established that the act or omission was done in bad faith.

Code of Conduct
First Schedule
5 of 2011

15B.—(1) There shall be a Code of Conduct as set out in the First Schedule, which shall apply to the directors and employees of the Bank.

(2) The Board may review the Code of Conduct at any time, but shall do so at least once a year.

(3) The Minister shall, on the recommendation of the Board after review of the Code of Conduct, by order published in the *Gazette*, amend the First Schedule.

First Schedule

(4) The Code of Conduct shall be consistent with this Act, and other financial services laws, and shall make provision for at least the following matters—

(*a*) use and disclosure of information by directors and employees of the Bank;

(*b*) reducing or eliminating improper influence on the Bank and on directors and employees of the Bank in carrying out their functions under financial services laws;

(*c*) trading in and ownership of securities or other financial instruments by directors and employees of the Bank;

(*d*) conflicts of interest; and

(*e*) receiving, keeping, holding and reporting gifts of any description by directors and employees of the Bank.

(5) A director or employee of the Bank shall not contravene the Code of Conduct.

(6) Contravention of the Code of Conduct shall not of itself amount to an offence, but, without limiting any other law, an employee of the Bank who contravenes the Code of Conduct commits a breach of his or her contract of service with the Bank.

PART VI
Legal Tender

Unit of Malaŵi currency

16. The unit of currency of Malaŵi shall be the Kwacha which shall be divided into one hundred tambala.

Sole right to issue legal tender

17. The Bank shall have the sole right of issuing bank notes and coins throughout Malaŵi and neither the Government nor any other person shall issue any notes and coins which are likely to pass as legal tender.

Provisions for issue of Malaŵi currency

18. The Bank shall—

(*a*) arrange for the printing of notes and minting of coins;

(*b*) issue, reissue and exchange notes and coins at the Bank's offices and at such agencies and banks as the Bank may, from time to time, establish or appoint in Malaŵi; and the establishment or appointment of an agency or a bank shall be on such terms and conditions as may be agreed upon between the Bank and such agency or bank;

(*c*) arrange for the safe custody of unissued stocks of currency and for the preparation, safe custody and destruction of plates and paper for the printing of notes and dies for the minting of coins.

Denomination, description and form of notes and coins

19. Notes and coins issued by the Bank shall be—

(*a*) in such denominations or fractions thereof;

(*b*) of such forms and designs bearing such devices;

(*c*) of such standard weight and composition, and of such an amount of remedy and variation,

as shall be approved by the Minister on the recommendation of the Bank.

Withdrawal

20. The Bank shall have the power to call in any of its notes and coins on giving not less than three months' notice in the *Gazette* and notes and coins shall cease to be legal tender on the expiry of the period for exchange announced at the time of such recall.

Lost and damaged currency

21. The Bank shall not be required to replace destroyed and mutilated currency, but may do so at its absolute discretion.

Exemption from stamp duty

22. The Bank shall not be liable to the payment of any stamp duties or other taxes in respect of its notes issued as currency.

Offences relating to bank notes

23.—(1) For the purpose of this section "note" means a note of the Bank, or any note which has at any time been legal tender in Malaŵi including any other note, by whatever name called, which is legal tender in the country in which it was issued.

(2) Any person who—

(*a*) without the authority of the Bank, engraves or makes upon any material whatsoever any words, figures, letters, marks, lines or devices, the print of which resembles in whole or in part any words, figures, marks, lines or devices peculiar to and used in or upon any note;

(*b*) without the authority of the Bank, uses or, knowing that it is to be used, for an unlawful purpose, has in his possession any material whatsoever upon which has been engraved or made any such words, figures, letters, marks, lines or devices as a mentioned in paragraph (*a*); or

(*c*) wilfully defaces, soils or damages any note or writes or places any drawing thereon or attaches thereto anything in the nature of an advertisement, or who uses such a note or part of such a note or any device resembling such a note or part of such a note as part of an advertisement without the authority of the Bank,

shall be guilty of an offence and liable—

(i) in the case of an offence referred to in paragraph (*a*) or (*b*), to imprisonment for seven years;

(ii) in the case of an offence referred to in paragraph (*c*), to a fine of K100.

PART VII
Foreign Assets

24. The international value of the Malaŵi currency shall be determined in accordance with the system designed by the Bank in consultation with the Minister, taking into account Malaŵi's general economic situation and its competitive position, with a view to ensuring a viable balance of payments position and sustainable economic growth. International value of Malaŵi currency

25.—(1) The Bank shall manage foreign assets and maintain foreign exchange reserves at a level which is, in the opinion of the Bank, adequate for Malaŵi's international transactions and such foreign assets shall consist of any or all of the following— Foreign assets 14 of 2015

(*a*) gold;

(*b*) foreign exchange in the form of—

(i) deposits with central, correspondent and other banks abroad;

(ii) documents and instruments customarily used for the making of payments or transfers in international transactions;

(iii) notes and coins;

(*c*) treasury bills issued by the government of any country whose currency is convertible currency; and

(*d*) securities issued by the government of any country whose currency is convertible currency.

(2) The Bank may include in its reserves of foreign assets any internationally recognized foreign assets, including—

(*a*) the reserve position of Malaŵi in the International Monetary Fund;

(*b*) any readily available international drawing facility; and

(*c*) other freely convertible foreign assets.

(3) The Bank shall hold the official international reserves in any currency or instrument that is approved by the Board for purposes of giving effect to the objects of the Bank, carrying out its functions under this Act and maintaining public confidence. 14 of 2015

(4) The Bank shall be the sole depository of official international reserves, and the Bank may designate agents with whom the reserves may be held. 14 of 2015

14 of 2015

(5) The Bank shall promulgate policies consistent with international best practices governing the vetting of agents.

Trade in foreign currency

26. Unless otherwise prohibited by any law relating to the control of foreign exchange, the Bank may—

(*a*) buy and sell Malaŵi currency against any convertible currency; and

(*b*) at its discretion, buy and sell currency against any currencies eligible for inclusion in the foreign exchange reserves specified in section 25.

Exchange control

27. The Bank shall exercise such functions as are necessary in the administration of any law relating to the control of foreign exchange transactions in accordance with such law.

PART VIII

Powers and Functions of the Bank

Division I—*General Powers and Functions*

General powers and functions

28. The Bank may—

(*a*) issue demand drafts and effect other kinds of remittances payable at its own offices or at the offices of agencies or correspondents;

(*b*) purchase and sell gold;

(*c*) open accounts for, and accept deposits from the Government, funds, corporations and institutions controlled by the Government, banks and other financial institutions in Malaŵi and act as banker to any such funds, corporations, institutions, banks or other financial institutions;

(*d*) maintain accounts with central banks and other banks abroad and act as correspondent, bank or agent for any central or other banks or other monetary authority and for any international bank or international monetary authority established under governmental auspices;

(*e*) purchase, sell, discount and rediscount domestic bills of exchange and promissory notes arising out of *bona fide* commercial transactions;

(*f*) purchase, sell, discount and rediscount domestic bills of exchange and promissory notes drawn or issued for the purpose of financing the transportation, marketing or processing of agricultural produce or minerals;

(*g*) purchase, sell, discount and rediscount Treasury Bills of the Government forming part of a public issue and maturing within ninety-one days;

(*h*) purchase, sell and manage securities of the Government having a definite maturity period;

(*i*) invest in securities for any amount, and to mature at any time, on behalf of staff funds and superannuation funds and other internal funds of the Bank;

12 of 1992

(*j*) with the approval of the Minister—

(i) subscribe to, hold and sell shares of any corporation set up with the approval of or under the authority of the Government for the purpose of facilitating economic development:

Provided that the total value, held by the Bank, of such shares shall not at any time exceed ten per cent of the aggregate amount of the capital and General Reserve Fund of the Bank;

(ii) purchase, sell and discount securities of any corporation or company primarily for the purpose of promoting capital market development;

(*k*) act as intermediary or agent between foreign lending institutions, organizations or governments and borrowing entities in Malaŵi;

(*l*) subject to the prior consent of the Minister, lend to any statutory body in such manner and on such terms and conditions as it may deem fit;

(*m*) purchase and sell external currencies and purchase, sell, discount foreign bills of exchange and foreign treasury bills maturing within one hundred and eighty days;

(*n*) purchase and sell government and government guaranteed securities denominated in convertible currency of any country and securities denominated in convertible currencies issued by international financial institutions of which Malaŵi is a member;

(*o*) on behalf of Malaŵi, make payments to, and receive moneys from, the International Monetary Fund and issue, purchase and sell any securities (whether expressed in Malaŵi currency or external currency and whether or not maturing at a fixed date) occasioned by, or arising from, the membership of Malaŵi in the International Monetary Fund and the participation of Malaŵi in the Special Drawing Rights Account thereof;

(*p*) accept from customers for custody securities and other articles of value;

(*q*) undertake on behalf of customers and correspondents the purchase, sale, collection and payment of securities;

(*r*) make arrangements or enter into agreements, subject to the consent of the Minister, with any bank or financial institution in a country outside Malaŵi, to borrow, on such terms and conditions as it may deem fit, any convertible currency; and

(*s*) issue promissory notes and other securities as it deems fit for open market operations.

Prohibited activities

29. The Bank may not—

(*a*) except as expressly authorized by this Act, engage in trade or otherwise have a direct interest in any commercial, agricultural, industrial or any other undertaking, except such interests as the Bank may in any way acquire in the course of the satisfaction of debts due to it, and provided that all such interests so acquired shall be disposed of at the earliest suitable moment;

(*b*) save as provided for in section 28 (*i*) and (*j*), purchase the shares of any corporation or company, including the shares of any bank, or grant loans upon the security of any such shares;

(*c*) subject to section 40 and section 46, grant unsecured advances or advances secured otherwise than as laid down under those sections:

Provided that in the event of any debts due to the Bank, becoming in the opinion of the Bank endangered, the Bank may secure such debts on any real or other property of the debtor and may acquire such property, which shall be sold at the earliest suitable moment;

(*d*) purchase, acquire or lease real property except in accordance with the proviso to paragraph (*c*) and except so far as the Bank shall consider necessary or expedient for the provision, or future provision, of premises for the conduct of its business the residence or amenities of staff or other similar requirements incidental to the performance of its functions under the terms to this Act;

(*e*) draw or accept bills payable otherwise than on demand;

(*f*) allow the renewal or substitution of maturing bills of exchange purchased, discounted or rediscounted by or pledged with the Bank save in exceptional circumstances with the explicit approval of the Board;

(*g*) pay interest on customers' balances except as may be determined by the Board; and

(*h*) accept for discount, or as security for an advance made by the Bank, bills or notes signed by members of the Board or by the Bank's officials or other employees, except such bills and notes as are signed by a member in his official capacity.

Division II—*Monetary Functions*

Monetary functions

30. In pursuance of its monetary policy the Bank shall influence the flow of money and credit, and may issue regulations with respect to the level of interest rates and foreign exchange rates.

Credit operations

31. For the purpose of influencing the flow of money and credit, the Bank may, in accordance with such operational procedure, if any, as the Bank may lay down from time to time, engage in the following credit operations—

(*a*) rediscount of domestic trade bills and bank drafts resulting from *bona fide* commercial transactions;

(*b*) rediscount of domestic trade bills and bank drafts drawn for the purpose of financing the transportation, marketing or processing of agricultural produce and minerals; and

(*c*) rediscount of treasury bills, forming part of a public Government issue and maturing in ninety-one days.

Rediscount rate

32. The Bank shall determine its rediscount and other rates which shall be made public by displaying such rates at its premises.

Credit ceilings

33. The Bank may prescribe credit ceilings for banks and financial institutions aimed at limiting the availability of credit in the economy.

Open market operations

34. To regulate the liquidity in the economy, the Bank may undertake open market operations as part of its monetary policy through the use of the following instruments—

(*a*) treasury bills issued by the Government under section 28 (*g*) for maturities of ninety-one days;

(*b*) treasury bills maturing in ninety-one days issued by the Government under section 40 (5) on request of the Bank against advances granted, in respect of temporary shortfalls of the budget revenue;

(*c*) treasury bills or other securities mobilized on the request of the Bank against its receivables from the devaluation of the Kwacha in the form of promissory notes issued by the Government under section 40 (5);

(*d*) treasury bills or other securities converted on request of the Bank under section 40 (5) from the Government's outstanding long-term loans;

(*e*) promissory notes or such other securities issued by the Bank for its open market operations under section 28 (*s*).

Use of instruments

35. The Bank may use the instruments specified in section 34 for monetary purposes and to ensure orderly market conditions. The Bank may conduct its open market operations through outright sale and purchase or repurchase agreements or other methods.

Reserve requirement

36.—(1) The Bank may require banks to hold a specific portion, expressed as a percentage, of the liabilities arising from demand, time and savings deposits, as well as from short-and medium-term borrowings, except borrowings from other banks, subject to reserve requirements, as deposits with the Bank.

(2) The percentage for the purposes of subsection (1), shall be set from time to time by the Bank.

(3) The Bank may also require financial institutions to maintain deposits as reserves with it.

Cash reserves

37.—(1) The Bank may require banks to maintain a prudential cash reserve as a deposit with it and such deposit may not exceed five per cent of demand liabilities.

(2) The Bank may also require financial institutions to maintain minimum cash reserves.

Interest to banks and financial institutions

38. Deposits under sections 36 and 37 of this Act shall not carry any interest except as the Bank shall otherwise decide, and such decisions shall be an integral part of the Bank's monetary policy.

Division III—Relations with the Government

Banker and adviser to the Government

39. The Bank shall act as a banker and adviser to the Government:

Provided that the Government may maintain accounts in Malaŵi with other Banks, and use their services in such cases and on such conditions as may be agreed upon between the Minister and the Bank.

Short-term advances to the Government 14 of 2015

40.—(1) The Bank may make short-term advances to the Government in respect of temporary shortfalls in budget revenues on such terms and conditions as the Bank may determine.

14 of 2015

(2) The total amount of advances outstanding at any time made by the Bank under this section shall not exceed ten per cent of the domestic revenue of the Government for the previous financial year.

(3) [*Delete by Act* 14 *of* 2015].

(4) All advances made under subsection (1) shall be repaid as soon as possible and, in any event, shall be repayable within four months of the end of the Government's financial year in which they are made, and if after the end of the financial year such advances remain outstanding, the power of the Bank to grant further such advances shall not be exercisable unless and until the outstanding advances have been repaid.

(5) If at any time the Bank has any Government loans and advances outstanding, irrespective of maturity, the Bank may require the Government to issue to it treasury bills or promissory notes and other instruments as the Bank may deem fit for open market policy purposes, and the terms and conditions shall be agreed upon between the Bank and the Minister.

Issue and management of Government securities

41.—(1) The Bank shall be entrusted with the issue and management of Government securities publicly issued in Malaŵi upon such terms and conditions as may be agreed upon between the Minister and the Bank.

(2) The Bank may purchase and sell securities of the Government maturing in not more than twenty-five years which have been publicly offered for sale or form part of an issue which is being made to the public at the time of acquisition:

Provided that at any particular date the total amount of such securities of a maturity exceeding two years in the ownership of the Bank (other than securities held in terms of section 28 (*i*) or held by the Bank as collateral under section 46 (*i*)(*b*) or held as a result of its open market operations under section 34 (*b*)), shall not together at any time exceed twenty per cent or such lower percentage as the Minister, after consulting the Governor, may from time to time determine by order published in the *Gazette*, of the total development budget of the Government for the current fiscal year.

(3) The Bank may upon request of the Government, guarantee the repayment of the principal and the payment of interest and charges of any external borrowing by the Government or by any statutory body and in the case of a statutory body the Bank shall be entitled to request the Government to counter guarantee such borrowing.

Agent of the Government

42. The Bank may generally act as agent of the Government—

(*a*) where it can do so appropriately and consistently with this Act and with its duties and functions as a central bank; and

(*b*) on such terms and conditions as may be agreed upon between the Minister and the Bank.

Government to consult the Bank on Government loans

43. The Minister shall, when contracting any external debt on behalf of the Government, consult the Bank on the terms and conditions of such debt relating to interest, fees and maturity.

Division IV—*Relations with Banks and other Financial Institutions*

Banker to other banks

44. The Bank may act as banker to other banks in Malaŵi.

Clearing systems

45. The Bank may promote money transfer and clearing systems and provide facilities therefor.

Lender to banks

46.—(1) The Bank may grant advances to banks or financial institutions for periods not exceeding three months against promissory notes secured by the pledge with the Bank of—

(*a*) publicly issued treasury bills maturing within ninety-one days;

(*b*) securities issued by the Government (Local Registered Stock) maturing within twenty-five years;

(*c*) other securities which may be declared eligible by the Bank from time to time, with the approval of the Minister;

(*d*) bills of exchange and promissory notes which are eligible for purchase, discount or rediscount by the Bank; and

(*e*) warehouse warrants or other documents of title to goods duly insured and with a letter of hypothecation from the owner:

Provided that no advance so secured shall at any time exceed—

(i) seventy-five per cent, in the case of those mentioned in subsections (*a*), (*b*), (*c*) and (*d*); or

(ii) sixty per cent in the case of those mentioned in subsection (*e*),

of the market value of the security pledged.

(2) Where in the opinion of the Bank there is no established market value for the securities mentioned in subsection (1), the value for the purpose of the proviso to that subsection shall be determined by the Bank.

(3) Notwithstanding the foregoing provisions of this section, the Governor may, with the approval of the Minister, grant advances to banks and financial institutions on the terms and conditions to be determined by the Bank.

Cooperation with banks

47. The Bank shall promote close co-operation with the banks and financial institutions in Malaŵi aimed at—

(*a*) maintaining and furthering satisfactory banking services for the public;

(*b*) ensuring high standards of conduct and management throughout the financial system; and

(*c*) furthering such policies which are in the national interest and which are not inconsistent with this Act.

PART IX
Supervision of Banks and other Financial Institutions

48.–49. [*Repealed by* 5 *of* 2011].

PART X
Accounts and Statements

Annual accounts

50. The financial year of the Bank shall begin on the 1st day of January and end on the 31st day of December.

Accounts and Audit
14 of 2015

51.—(1) The accounts of the Bank shall be kept in accordance with the international accounting practices relevant to central banking.

(2) The accounts of the Bank shall be audited in accordance with the International Standards on Auditing, or any other internationally applicable auditing standards, by internationally recognized public auditors appointed by the Board.

(3) Without prejudice to subsections (1) and (2), the Minister may at any time request the Auditor General to make an examination of, and submit a report on, the accounts relating to the issue, reissue, exchange and withdrawal of notes and coins by the Bank or, in what the Minister may consider to be exceptional circumstances, the accounts of the Bank as a whole, and the Auditor General shall do so accordingly, and the Bank shall provide all necessary and proper facilities therefor.

Establishment of the Internal Audit Department
14 of 2015

51A.—(1) There shall be a department of the Bank to be known as the Internal Audit Department.

(2) The Internal Audit Department shall have an independent management function, involving a continuous and critical appraisal of the functioning of the Bank with a view to strengthening the overall governance mechanism of the Bank.

(3) The Internal Audit Department shall carry out its functions in compliance with International Standards for the Professional Practice of Internal Auditing or any other internationally recognized internal auditing standards.

Accounts, annual reports and publication thereof 14 of 2015

52.—(1) The Bank shall, within four months from the close of each financial year of the Bank—

(*a*) submit to the Minister its annual report containing the annual accounts, and information on the operations of the Bank, the state of the economy and the conduct of monetary policy; and

(*b*) publish its annual report.

14 of 2015

(2) The Minister shall within four months after the close of each financial year of the Bank—

(*a*) cause a copy of the annual accounts and the report to be laid before the National Assembly; and

(*b*) cause a copy of the annual accounts to be published in the *Gazette* and in at least two newspapers of national circulation.

(3) The Bank shall, as soon as possible after the last working day of each month, prepare and publish a return of its assets and liabilities as at the close of business on that day and a copy of the return shall be submitted to the Minister, who shall cause it to be published in the *Gazette* and in such other publications as the Minister may decide.

Determination of net results of the bank

53. The net financial results of the Bank for each financial year shall be determined by the Bank after meeting all current expenditure for that year and making such provision as it thinks fit for bad and doubtful debts, depreciation of assets, pensions, gratuities or other benefits usually provided by bankers for their staff.

General Reserve Fund and appropriation of profits 5 of 2011 14 of 2015

54.—(1) The Bank shall establish a General Reserve Fund to which allocations shall be made in accordance with this section.

(2) The profit of the Bank shall be distributed in the following order—

(*a*) twenty-five per cent or four billion Kwacha, whichever is higher, to the General Reserve Fund until it reaches ten per cent of the amount of the currency (bank notes and coins) in circulation as at the end of the respective financial year:

5 of 2011

Provided that if the profit is less than one million Kwacha the whole of it shall be allocated to the General Reserve Fund;

(*b*) in the event of a loss incurred by the Bank, such loss shall be deducted from the General Reserve Fund and if the General Reserve Fund is exhausted, the Government shall immediately cover the remaining loss without an appropriation Act being necessary.

(3) With the approval of the Minister further allocations may be made from time to time to the General Reserve Fund.

(4) The remainder of the net profits shall be transferred to the Government:

14 of 2015

Provided that in the event of outstanding promissory notes issued by the Government to cover losses from currency devaluation, ten per cent of the net profit or one billion Kwacha, whichever is higher, shall be credited to a special account to be used to redeem such outstanding amounts of promissory notes, and if the remainder of the net profits would be less than one billion Kwacha the whole of the remainder shall be credited to the special account.

(5) Results from any devaluation or revaluation of the Malaŵi currency shall be posted directly into a special account without affecting the Bank's profit and loss account and any devaluation losses shall be covered by promissory notes of the Government on such terms and conditions as shall be agreed upon between the Minister and the Bank.

14 of 2015

(6) Any net unrealized gains in any financial year of the Bank, changes in the valuation of its assets or liabilities in or denominated in, gold, Special Drawing Rights, foreign currencies, or other financial instruments as a result of any change in the values or exchange rates of gold, Special Drawing Rights, foreign currencies or other financial instruments in terms of Malaŵi Currency shall not in any way be distributed to Government.

14 of 2015

(7) The Bank shall not pay interim dividends to Government under any circumstances.

PART XI
Miscellaneous

By-laws

55. The Board may, with the approval of the Minister, make by-laws for the administration and management of the Bank. Any such by-laws shall be authenticated by the Bank's seal and shall be published in the *Gazette*.

Regulations

56. The Minister may, after consultation with the Bank, make regulations for the better carrying out of the objectives and purposes of this Act, or to give force or effect to its provisions, or for its better administration.

Income tax

57. The profits of the Bank shall not be liable to income tax or other taxes in Malaŵi.

Prohibited banking names

58. Save with the written consent of the Minister on the recommendation, of the Bank, no bank shall hereafter be registered under the provisions of any legislation by a name which includes any of the words "Central", "Malaŵi", "National", "Reserve" or "State" or their equivalent in any other language or their derivatives.

Secrecy
5 of 2011

59.—(1) In this section—

"individual information" means information relating to the affairs of the Bank or another person, including a financial institution;

"officer" means a person who is or has been—

(*a*) a director or employee of the Bank;

(*b*) a person engaged by the Bank to provide services to it; or

(*c*) an examiner or investigator appointed under the Financial Services Act; Cap. 44.05

"protected information" means each of the following—

(*a*) individual information; or

(*b*) information that would have a commercial value if disclosed otherwise than in accordance with this Act or any other financial services law.

(2) An officer shall not disclose to any person orally or in writing, any protected information that the officer has acquired in the performance of his duties or functions as an officer.

(3) Subsection (2) shall not prevent—

(*a*) disclosure of a summary or collection of information of a kind referred to in paragraph (*b*) of the definition of the words "protected

information" in subsection (1) that is prepared so that information relating to any particular person cannot be found out from it;

(*b*) disclosure of the name of a licensed financial institution;

(*c*) disclosure of the addresses at which licensed financial institutions carry on business;

(*d*) disclosure of any other information reasonably necessary to enable members of the public to contact financial institutions; or

(*e*) disclosure of information to the Commissioner of Taxes.

(4) It shall be a defence to a prosecution for an offence under subsection (2) that—

(*a*) the disclosure was for the purposes and in the course of the exercise of the officer's duties or the performance of the officer's functions under a financial services law;

(*b*) the disclosure was made to or with the consent of the person concerned;

(*c*) the disclosure was made in accordance with a lawful requirement of a court of competent jurisdiction;

(*d*) the disclosure was authorized by a financial services law;

(*e*) the disclosure was required by another law; or

(*f*) the disclosure was authorized by regulations made for the purposes of this section.

(5) An officer who discloses information of a kind mentioned in subsection (2) may, at the time of the disclosure, impose conditions to be complied with in relation to the information.

(6) In addition to any disciplinary action that may be taken, any person who contravenes this section or fails to comply with a condition imposed under subsection (5) shall be guilty of an offence and shall, on conviction, be liable to a fine of K 1,000,000 and to imprisonment for four years.

Development 5 of 2011

60. The Bank shall within the framework of its powers, functions and objectives under this Act, and within the limitations of its position as a central bank, promote further development of trade, industry, agriculture, transport, financial and other sectors in Malaŵi.

Discharge of duties

61. Subject to the express provision of this Act, the Bank may do all such things as are incidental to or consequential upon the exercise of its powers or the discharge of its duties under this Act.

Submission of information to the Bank

62. The Bank may for monetary policy and research purposes require banks, other financial institutions and companies to submit within a reasonable period such information and in such format as may be prescribed by the Bank.

PART XII
Transitional Provisions

Transitional

63. Notwithstanding the term of office of the Governor or Deputy Governor prescribed in this Act, a person serving as Governor or Deputy Governor at the commencement of this Act shall continue to serve in accordance with the instrument of his appointment then subsisting and shall be eligible for reappointment under this Act.

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5 of 2011

FIRST SCHEDULE

ss. 2 and 15B

Code of Conduct for the Directors and Employees of the Bank

1. *Principal Standards of Conduct*

The directors and employees of the Bank shall be honest, objective, independent and impartial in the execution of their responsibilities, and shall subscribe to the highest standards of professional ethics, diligence, good faith and integrity. They shall avoid any action, or inaction, which in any way may impair the Bank's capacity to carry out its duties, or compromise its public standing and reputation.

2. *Conflict of Interest*

In the performance of their duties, the directors and the employees shall avoid any situation that may give rise to a conflict of interest. No discrepancies shall be allowed to exist between a director or an employee official responsibilities and any kind of personal or external interests which could jeopardize his impartiality and integrity in performing his responsibilities. The directors and employees shall not accept any gifts or favors that may have the appearance of influencing the performance of any of their functions or duties.

3. *Declaration of Interests*

To assist in the fulfillment of obligations in relation to conflicts of interests, directors and employees shall declare any situations where they have private or personal interest which may influence or appear to influence the impartial and objective performance of their duties.

4. *Immunity from Personal Liability*

Directors or employees shall not be personally liable for any civil or criminal proceedings, arrest, imprisonment or damages for anything done in the discharge of their duties, unless it is established that it was done in bad faith.

5. *Compliance*

The directors and employees shall strictly comply with this Code of Conduct. Deviation from the standards of this Code shall be deemed to be misconduct and shall be dealt with as misconduct, and the director or employee shall be disciplined in accordance with the provisions of the Act. Any investigation into a suspected or possible contravention of this Code shall be kept confidential.

6. *Independence*

Directors and employees shall be independent from any political influence in the performance of their duties and functions under this Act, and shall not act as delegates or representatives of any interest groups or industry in the discharge of their duties.

7. *Confidentiality*

Directors and employees are required to maintain strict confidentiality of the information acquired from the Bank in the performance of their duties and shall not divulge any such confidential information. Directors or employees shall not use such confidential information for purposes of carrying out direct or indirect private financial transactions.

8. *Continuance of Duties*

To avoid any situations of conflict of interest, the directors and employees shall maintain the confidentiality requirement for a period of one year from the date they cease to be directors or employees of the Bank.

SECOND SCHEDULE s. 6

Additional Powers and Duties of the Board 5 of 2011

The Board shall—

(*a*) monitor implementation of monetary policy in order to ensure compliance with this Act;

(*b*) approve all determinations, guidelines and instructions of general application that are to be issued by the Bank;

(*c*) approve all annual reports and recommendations that the Bank is required to make to the Minister or to Parliament;

(*d*) establish and monitor the implementation of financial sector development policy;

(*e*) establish appropriate supervisory and regulatory structures and regimes for all sectors of the financial services industry in order to meet the objectives of the financial services law;

(*f*) establish and monitor the implementation of financial sector stability and soundness policies;

(*g*) approve policies and directives relating to the supervision and regulation of the financial sector;

(*h*) determine the policies applicable to the administration and operations of the Bank;

(*i*) determine the organization structure of the Bank;

(*j*) establish and close subsidiaries, branch offices and agencies of the Bank;

(*k*) determine the terms and conditions of service of directors;

(*l*) approve the terms and conditions of employment of the Bank's agents and correspondents;

(*m*) propose increases in the authorised capital of the Bank, to establish special reserve on the books of the Bank, to determine the net income of the Bank and to determine what amount of such net income shall be transferred to any reserve;

(*n*) approve the Bank's budget;

(*o*) determine the accounting policies of the Bank and to approve the annual reports and financial statements of the Bank;

(*p*) determine and ensure the establishment of an effective risk management structure; and

(*q*) ensure good corporate governance of the Bank.

POST OFFICE SAVINGS BANK

CHAPTER 44:03

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CHAPTER 44:03

POST OFFICE SAVINGS BANK

ARRANGEMENT OF SECTIONS

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8. Security of moneys deposited and expenses
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10. Interest
11. Accounts not operated on for fifteen years
12. Books, accounts, records and reports
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15. Remittances to and from other savings banks
16. Disclosure of information
17. Exemption from stamp duty
18. Liability of Government etc.
19. Authorization of payment for loss

An Act to provide for the establishment and administration of a Post Office Savings Bank and for matters incidental thereto 40 of 1967, 1 of 1969, 44 of 1971, 19 of 1993

[23rd February, 1968]

1. This Act may be cited as the Post Office Savings Bank Act. Short title

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

"account" means an account in the Savings Bank;

"Board" means the Post Office Savings Bank Board established under section 4;

"officer" means any person employed or assigned in connexion with any business of the department responsible for postal services;

"principal office" means the principal Office of the Savings Bank situated in such place as the Postmaster-General may by notice, from time to time, specify; 19 of 1993

"Savings Bank" means the Post Office Savings Bank deemed to be established under section 3;

"Savings Bank year" means the period of twelve months beginning on the 1st January in any year and ending on the 31st December next following.

Establishment of Savings Bank
29 of 1954(F)
19 of 1993

3.—(1) The Post Office Savings Bank of Malaŵi, hereinafter referred to as the former Savings Bank, subsisting immediately before the commencement of this Act by virtue of the Post Office Savings Bank Ordinance (now repealed), hereinafter referred to as the repealed Ordinance, shall be deemed to be the Post Office Savings Bank established and constituted under this Act.

(2) Any person who, immediately before the commencement of this Act, had money in an account with the former Savings Bank shall be deemed to have such money in an account in the Post Office Savings Bank under this Act.

19 of 1993

(3) The Post Office Savings Bank established and constituted under this Act shall be a body corporate with perpetual succession and a common seal, capable of suing and being sued in its own name and which, subject to this Act, may acquire, hold or dispose of moveable and immoveable property for the purpose of its functions.

Establishment of Board

4.—(1) There is hereby established a Post Office Savings Bank Board which shall consist of the following members—

(*a*) the Secretary to the Treasury or his representative, who shall be Chairman;

(*b*) the Governor of the Reserve Bank of Malaŵi or his representative;

(*c*) the Postmaster-General or his representative; and

(*d*) two other members appointed by the Minister and holding office at the Minister's pleasure.

(2) The Chairman and any two other members shall constitute a quorum at any meeting of the Board, and unless otherwise provided or determined by the Board, the decision of the majority of the members present and voting at any meeting shall constitute a decision of the Board. The Chairman shall have a deliberative vote and, in addition, in the event of an equality of votes, a casting vote.

(3) Meetings of the Board shall be called by the Chairman and shall be conducted in such manner as the Board may, from time to time, determine.

(4) No act or proceeding of the Board shall be invalidated merely by reason of the existence of a vacancy or vacancies among the members, and all *bona fide* acts or proceedings of the Board shall be valid notwithstanding any defect that may afterwards be discovered in the appointment of any member of the Board.

(5) The Chairman may invite any person to attend a meeting of the Board, and any such person attending a meeting of the Board shall have the right to address the Board but not to vote on any matter before the Board.

Functions of Board 19 of 1993

5. In addition to any functions conferred on it by this Act or any regulations made thereunder, the Board shall be responsible for the policy and general administration of the Savings Bank, and with regard to these matters the Postmaster-General shall, in the exercise of his functions under this Act or any regulations made thereunder, be subject to any special or general directions of the Board.

Management of Savings Bank 19 of 1993

6.—(1) Subject to this Act and any regulations made thereunder, the Postmaster-General shall be responsible for the day to day management and control of the Savings Bank and may take such steps as may be necessary or desirable for the encouragement of thrift, for the proper management of the Savings Bank and otherwise for the promotion of the objects and purposes of this Act.

19 of 1993

(2) The Postmaster-General may open offices or branches of the Savings Bank at any place in Malaŵi and may close such offices or branches, and may cause the business of such offices or branches to be conducted on such days and during such hours as he considers necessary or desirable.

19 of 1993

(3) The Postmaster-General shall make available to the Savings Bank such officers as are necessary or desirable for the efficient conduct of the business of the Savings Bank.

Reserve Fund and Accumulated Deficit Fund

7.—(1) Profits of the Savings Bank in any year shall, after being used to offset any balance in the Accumulated Deficit Account, be placed to the credit of the Reserve Fund which shall be established for that purpose.

(2) Losses of the Savings Bank in any year shall be debited to the Reserve Fund:

Provided that if at any time the losses exceed the balance in the Reserve Fund, or if there is no balance in the Reserve Fund, such losses or such excess losses shall be charged to the Accumulated Deficit Account which shall be established for that purpose.

(3) Any profits or losses of the former Savings Bank subsisting immediately before the commencement of this Act shall be credited or debited in respect of the Savings Bank in accordance with subsections (1) and (2).

Security of moneys deposited and expenses

8.—(1) The repayment of all moneys deposited in the Savings Bank together with interest thereon shall be guaranteed by the Government.

(2) Where, at any time, the funds of the Savings Bank immediately available are insufficient to meet the lawful claims on an account, or to defray expenses, the deficiency shall be charged upon and paid out of the Consolidated Fund, and a report of such deficiency and payment shall be included in the annual report of the Savings Bank submitted to the Minister under section 11:

Provided that where sufficient funds are subsequently available, the sums charged upon and paid out of the Consolidated Fund shall so far as possible be repaid to the Consolidated Fund by the Savings Bank.

(3) For the purposes of subsection (2) ''expenses'' means the cost of all works done or services rendered in connection with the Savings Bank, including such sum or sums on account of administrative and other overhead expenses as may, with the approval of the Minister, be reasonably assigned to those works or services.

Investment of moneys
19 of 1993

9.—(1) Except to the extent of any sums required to be kept in hand for the day to day running and administration of the Savings Bank, the Postmaster-General shall, with the approval of the Board, invest the moneys held by the Savings Bank (which shall, for this purpose, include moneys in the Reserve Fund) in all or any of the following ways—

(*a*) in Treasury Bills or other securities issued by the Government or for which the Government is responsible;

(*b*) on deposit with the Reserve Bank of Malaŵi or with the Crown Agents for Oversea Governments and Administrations;

(*c*) on deposit with any registered commercial bank, financial institution, discount house or accepting house carrying on business in Malaŵi;

(*d*) with a building society registered in Malaŵi;

(*e*) in any other securities that may be approved by the Minister.

19 of 1993

(2) The Postmaster-General may, with the approval of the Board, and subject to this section, realize or otherwise deal with investments of Savings Bank moneys.

19 of 1993

(3) Any investments of the former Savings Bank which by virtue of this Act become the property of the Savings Bank may be retained by the Postmaster-General or realized or dealt with by him notwithstanding that they do not come within any of the classes or categories of investments specified in subsection (1).

(4) Any sums of money that may, from time to time, be required for the repayment of deposits under this Act or any regulations made thereunder, or for payment of interest thereon, or expenses under section 8, or repayments to the Consolidated Fund, may be raised by the sale of the whole or any part of the investments referred to in subsection (1).

Interest

10.—(1) Interest shall, subject to any regulations made by the Minister under section 14, be payable on deposits with the Savings Bank at such rate as the Minister shall from time to time, by notice published in the *Gazette*, determine:

1 of 1969

Provided that no decrease in the rate of interest payable under this subsection shall take place unless at least one month's notice of such decrease has been given in the *Gazette*.

(2) Interest on deposits shall, subject to any regulations made by the Minister under section 14, be calculated to the 31st December in each year and shall then be added to and become part of any principal money remaining on deposit, and any reference to deposit or deposits shall, unless the context otherwise requires, include any interest so added to the principal money.

Accounts not operated on for fifteen years
19 of 1993

11.—(1) Where, for a period of fifteen years there have been no transactions on an account, or the pass book relating to such account has not been presented to the principal office, the account shall cease to bear interest from the expiration of such period of fifteen years:

19 of 1993

Provided that such account shall not cease to bear interest unless and until the Postmaster-General, by notice published in the *Gazette*, specifying the account concerned, has given six months' notice of his intention to apply this subsection.

19 of 1993

(2) Where, upon the expiration of a further period of fifteen years after the expiration of the period of fifteen years referred to in subsection (1), there have still been no transactions on the account concerned, or the pass book has not been presented to the principal office, a sum equal to the amount standing to the credit of the account shall be transferred to the Reserve Fund, and the account shall be closed. Subsequent claims in respect of the account may be permitted by the Postmaster-General at his discretion.

Books, accounts, records and reports
19 of 1993

12.—(1) The Postmaster-General shall keep or cause to be kept proper books of account and all other records necessary properly to reflect all the operations and transactions of the Savings Bank.

19 of 1993

(2) The accounts of the Savings Bank shall be audited annually by the auditors appointed from time to time by the Board with the approval of the Minister.

19 of 1993

(3) The General Manager shall as soon as possible and not later than six months after the end of each financial year, prepare, or cause to be prepared, and submit to the Minister. audited annual accounts which shall include the following statements—

(*a*) the balance sheet as at the last day of the financial year;

(*b*) the income and expenditure account for the year;

(*c*) the Reserve Fund or Accumulated Deficit Account;

(*d*) the depositors account showing deposits and withdrawals made during the year and the balance due to depositors at the close of the year;

(*e*) a schedule of the securities in which Savings Bank funds are invested at the close of the year; and

(*f*) a report on the year's activities and such other information as may be required under this Act, or as the Minister may direct.

(4) As soon as practicable the Minister shall lay before the National Assembly a copy of the annual accounts and report, together with the report of the Auditor General.

Determination of disputes
19 of 1993

13. If any dispute arises between the Postmaster-General and any person having an account or any executor, administrator, trustee, or next-of-kin of such person, or any person appointed by a court to manage the affairs of such person, or any creditor, official receiver or trustee of any such person who has become bankrupt or insolvent, or any person claiming to be such executor, administrator, next-of-kin, manager, creditor, official receiver or trustee, or to be entitled to any moneys deposited in the Savings Bank, the matter so in dispute shall be referred in writing to the High Court, and the Court may inquire into and determine the matter in dispute, and such determination and adjudication in regard thereto shall be final and conclusive and binding on the parties.

Regulations

14. The Minister may, in consultation with the Board, make regulations for the better carrying into effect of the provisions and purposes of this Act, and without prejudice to the generality of the foregoing, such regulations may provide for the regulation or control of all or any of the following matters—

(*a*) deposits by minors, guardians, trustees, married women, friendly societies, charitable bodies or any other persons or bodies of persons of whatever description;

(*b*) conditions for the withdrawal of moneys by minors, guardians, trustees, married women, friendly societies, charitable bodies or any other persons or bodies of persons of whatever description;

(*c*) methods and the manner of dealing with the deposits of deceased persons, or persons presumed to be deceased, or insane or otherwise incapacitated persons;

(*d*) the form of acknowledgement which shall be evidence of claims to repayment of deposits with interest thereon;

(*e*) the maximum and minimum amounts which may be deposited or withdrawn at any one time;

(*f*) the maximum amounts which may be paid into an account in any one year;

(*g*) the withdrawal of moneys from accounts;

(*h*) the fees leviable under this Act;

(*i*) the remittance of deposits to the principal office by officers;

(*j*) the manner in which accounts shall be kept and the inspection and supervision thereof;

(*k*) forms for the purposes of this Act or any regulations made thereunder;

(*l*) the persons or classes of persons who shall not be entitled to open accounts;

(*m*) the calculation and payment of interest on accounts allowing for non-payment of interest on accounts below a prescribed minimum, and in respect of deposits made or withdrawn other than on the first or last day of a month, as the case may be. 44 of 1971

Remittances to and from other savings banks 19 of 1993

15.—(1) Where the Postmaster-General, with the approval of the Minister, has entered into reciprocal arrangements with any other country for the purposes of this section the Postmaster-General may, subject to the provisions of any written law relating to exchange control, permit transfer of moneys from an account in the Savings Bank to a post office savings bank account in such other country, or from a post office savings bank account in such other country to an account in the Savings Bank:

Provided that no amount shall be so credited which would make the total amount standing to the credit of an account exceed the maximum aggregate amount allowed to be deposited in an account under this Act.

(2) The conditions under which transfers may be made under this section shall be such as the Postmaster-General may, with the approval of the Board, decide. 19 of 1993

Disclosure of information 19 of 1993

16.—(1) No officer shall disclose the name of any person having an account, or depositing or withdrawing money in or from an account, or the amount which may have been deposited or withdrawn by any

person, or any other information regarding transactions with the Savings Bank except—

(*a*) to the Postmaster-General or such officer as he may appoint to assist in carrying out the purposes and provisions of this Act;

(*b*) when required by order of a court or under any written law;

(*c*) when required by the Attorney General for the purpose of an investigation or prosecution of an alleged offence:

Provided that nothing in this section shall be deemed to limit the authority of the Auditor General to require disclosure of such accounts and documents as may be necessary to enable him to carry out the duties imposed upon him by or under any written law.

(2) Any person who contravenes this section shall be liable to a fine of K200.

Exemption from stamp duty

17. No stamp duty shall be payable on any form prescribed for the use or purposes of the Savings Bank.

Indemnity in certain circumstances
44 of 1971
19 of 1993

18. When any payment is made or any act done by the General Manager or any officer acting under this authority in accordance with this Act, the Savings Bank, the General Manager, and such officer shall not be liable in respect of any claim on the part of any person in connexion with such payment or act, without prejudice to any right of such person to recover any sum lawfully due to him from the person to whom the Postmaster has paid the same:

Provided that nothing in this section shall be construed as exempting any officer from liability for damage or loss caused to any person by reason of fraud or theft committed by such officer in relation to or in connexion with his official duties.

Authorization of payment for loss
44 of 1971
19 of 1993

19. Where a person suffers any loss from his account without any fault or neglect on his part, the Postmaster-General may, at his discretion, authorize the payment to such person of the amount of the loss, or any part thereof, from the funds of the Post Office Savings Bank.

SUBSIDIARY REGISLATION

POST OFFICE SAVINGS BANK REGULATIONS

G.N. 35/1968 169/1968 14/1970 217/1971 20/1979 163/1980

under s. 14

ARRANGEMENT OF REGULATIONS

REGULATION

1. Citation
2. Interpretation
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Schedule

PRELIMINARY

Citation

1. These Regulations may be cited as the Post Office Savings Bank Regulations.

Interpretation

2. In these Regulations, unless the context otherwise requires—

"appropriate form" means such form obtainable at a Post Office as may be approved by the Postmaster-General for the purpose concerned;

"depositor" means the person or persons jointly or severally authorized to make withdrawals from an account in accordance with regulation 4 or regulation 11;

"joint account" means an account in the names of two individuals who may only operate the account or make withdrawals jointly;

"Post Office" means a Post Office or other place at which the business of the Savings Bank is conducted;

"working day" means any day on which the business of the Savings Bank is conducted.

Deposits and Pass Books

Application to open an account

3.—(1) An application to open an account in the name of an individual or a joint account may be made at any Post Office.

(2) An application to open any account other than an account referred to in subregulation (1) shall be made to the Postmaster-General, and shall require the approval of the Minister.

Procedure on making deposits

4.—(1) Before a first deposit is made into an account the person opening the account shall make and sign a declaration in the appropriate form.

(2) Such declaration shall specify the person or persons authorized to make withdrawals from the account, giving his or their full names, occupation and place of residence, shall contain copies of his signature or their signatures, as the case may be, and shall be witnessed.

(3) The Postmaster-General may require such evidence as he deems necessary to satisfy him as to the authority of the depositor to make withdrawals from the account

(4) The person making any deposit shall complete a deposit slip in the appropriate form.

Pass books

G.N. 169/1968

5.—(1) When a first deposit is made into an account, a numbered pass book relating to that account, on which there shall be affixed the signature or signatures of the depositor, shall as soon as practicable be handed to the person opening the account.

(2) Pass books shall remain the property of the Savings Bank and shall be surrendered to an officer when the account is closed.

Duties of officer receiving deposit

6.—(1) The officer receiving a deposit shall enter the amount of the deposit in the pass book, shall affix his initials and the date stamp of his office opposite such entry, and shall report the receipt of the deposit to the Postmaster-General:

G.N. 169/1968

Provided that the Postmaster-General may, in such circumstances as he may determine, authorize a number of deposits to be aggregated and the total amount to be entered in the pass book as a single deposit.

(2) The entry of the amount of a deposit in a pass book shall be an acknowledgment of the depositor's right to repayment of such amount, together with any interest payable thereon:

Provided that where the amount of such deposit recorded in the pass book differs from the amount shown on the deposit slip relating to such deposit, then the amount shown on the deposit slip shall, unless the contrary be proved to the satisfaction of the Postmaster-General, be deemed to be the amount to which the depositor shall be entitled to repayment together with any interest thereon.

Loss of pass book

7. Where the Postmaster-General is satisfied that a pass book is lost or destroyed or is so damaged or defaced as to be unfit for further use he shall, on application being made to a Post Office in the appropriate form, and upon payment of a fee of 50 tambala, issue a new pass book:

G.N. 163/1980

Provided that if the balance in the old pass book is less than K5, a new pass book shall not be issued and the fee shall not be payable, but the old pass book shall forthwith be withdrawn and submitted to the Postmaster-General for his consideration under regulation 21.

Delivery of pass book to Postmaster-General

8. Once in each year on the anniversary of the date indicated therein, and at any other time when so required by the Postmaster-General, each pass book shall be delivered or forwarded to the Postmaster-General.

Amount of deposits G.N. 20/1979

9.—(1) The minimum permissible amount of—

(*a*) any deposit upon opening an account shall be K5;

(*b*) any further deposit in an account shall be K2.

(2) The maximum aggregate amount which may be maintained on deposit in an account in the name of an individual or in a joint account shall be K20,000.

(3) The maximum aggregate amount which may be maintained on deposit in an account to which regulation 3 (2) applies shall be K60,000.

(4) For the purpose of calculating the maximum aggregate amount in any account, any amounts withdrawn in a Savings Bank year shall be deducted from any amounts deposited in the account in that year.

(5) Notwithstanding subregulations (2) and (3), any account which on the commencement of these Regulations has on deposit an aggregate amount in excess of that permitted under the appropriate paragraph, may retain such amount on deposit but no

further amounts may be deposited in the account until the aggregate amount has been reduced below the maximum permissible under the appropriate paragraph, and thereafter subregulation (2) or subregulation (3), as the case may be, shall apply.

Deposits made in error

10. Where any deposit is made in error, the Postmaster-General may return the deposit and cancel all matters relating thereto, or may take such other steps as may be necessary to give effect to the intention of the parties.

DEPOSITORS

Depositors

11.—(1) No withdrawals may be made from an account except in the name of the depositor so authorized in accordance with regulation 4 or this regulation, and a receipt in respect of a withdrawal in the name of and signed by such depositor shall be a complete discharge to the Postmaster-General in respect of such withdrawal.

(2) Upon application being made in the appropriate form the Postmaster-General may, on being satisfied of the authority of the applicant and upon production of such evidence as he may require, permit a depositor to be altered, either by the addition of a new depositor or by the replacement of any depositor. The Postmaster-General shall require copies of the signature of such additional or replacing depositor, duly witnessed, and shall cause the pass book relating to the account to be duly amended.

(3) Upon the death of a depositor his personal representative or the person lawfully entitled to manage institutional money in accordance with the Wills and Inheritance Act or, where the depositor is a trustee, any person appointed in accordance with the trust to be a trustee in his stead may, upon applying in accordance with subregulation (2), be permitted to become a depositor or replace such deceased depositor.

Cap. 10:02

(4) Where an account has been opened solely in the name of a child under the age of 7 years, the child shall be entitled, on attaining the age of 7 years, upon applying in accordance with subregulation (2), to become the sole depositor in respect of the account.

(5) Where an account has been opened in the name of a body corporate or an association or body of persons such, body corporate, association or body shall be entitled, in accordance with its own rules, and upon application being made under subregulation (2), to authorize any officer or person to become a depositor in respect of the account, and may from time to time, in like manner, vary such depositor.

(6) Where any depositor becomes of unsound mind, the person appointed in accordance with any law to manage his property shall upon applying in accordance with subregulation (2), be entitled to replace him as depositor, or, where no such person has been appointed and the account in respect of which he is a depositor does not exceed K200 the Postmaster-General may permit such person as he considers proper to replace the depositor.

Payment of Interest

12.—(1) [*Cancelled by G.N.* 217/1971]

Calculation of interest G.N. 169/1968

(2) Subject to the succeeding subregulations, interest on deposits in an account shall be calculated—

(*a*) in the case of deposits made on the first working day of a month, as from the first day of that month;

(*b*) in the case of deposits made at any other time, as from the first day of the month next succeeding the month in which the deposits are made.

(3) Where an amount is withdrawn from an account, no interest on that amount shall be calculated or payable in respect of the month in which the amount is withdrawn or any subsequent month.

(4) Where a warrant is issued for the closure of an account, no further interest shall be calculated or payable on moneys in that account from the date of the warrant.

(5) In the calculation of interest, fractional amounts of one tambala shall not be credited to any account.

Withdrawals

13.—(1) The minimum permissible amount of any withdrawal shall be K2.

General provisions relating to withdrawals G.N. 20/1979

(2) The Postmaster-General may require up to one month's notice of withdrawal if the amount to be withdrawn exceeds K2,000, and up to two months' notice of withdrawal if the amount to be withdrawn exceeds K20,000.

(3) Amounts deposited by cheque may not be withdrawn until ten working days have elapsed from the date of deposit of such cheque.

(4) No withdrawals in excess of K20 may be permitted from deposits made less than ten days prior to the date of the application for withdrawal.

14.—(1) Save as is provided in regulations 16 and 17, where the depositor wishes to withdraw the whole or part of an account he shall make application in the appropriate form, stating therein whether the amount payable shall be paid—

Withdrawals by warrant or crossed cheque

(*a*) by warrant; or

(*b*) by crossed cheque payable to the depositor or to a person or bank account in Malaŵi nominated by him:

Provided that where a crossed cheque is payable—

(i) to the depositor or to a bank account nominated by him such cheque shall be for an amount of not less than K20;

(ii) to any person, other than the Commissioner of Taxes, nominated by the depositor, such cheque shall be for an amount of not less than K100.

(2) Where the depositor applies for payment by crossed cheque he shall forward the pass book, together with the application form duly completed, to the Postmaster-General.

(3) On receipt of any application under this regulation, the Postmaster-General shall cause—

(*a*) a warrant for the amount so payable to be transmitted by post to the depositor concerned, where payment by warrant has been requested; or

(*b*) a crossed cheque for the amount payable to be transmitted by post to the depositor or to the person or bank account nominated by him, where payment by crossed cheque has been requested:

Provided that where any such application is made at the principal office, the Postmaster-General may cause such warrant or crossed cheque to be presented to the depositor at the principal office.

(4) Every warrant issued in accordance with this regulation shall be presented, with the pass book of the account to which it relates, at the Post Office specified in the warrant.

(5) The paying officer shall enter the amount withdrawn in the pass book and attest the entry with his initials and the date stamp of his office.

(6) The paying officer shall obtain a receipt on the warrant for the amount specified therein from the depositor or from the person authorized by or under these Regulations to receive such amount and such receipt shall be a complete discharge to the Postmaster-General in respect of the amount withdrawn.

Powers of attorney

15.—(1) Where the depositor desires some other person to receive an amount payable to him he shall authorize such other person to receive the amount either—

(*a*) by a power of attorney; or

(*b*) by an order in the form specified in the Schedule.

(2) The signature of the depositor on such a power of attorney or order may—

(*a*) where the depositor is a serving member of the armed forces or police force of Malaŵi, be witnessed by a commissioned officer or a police officer of or above the rank of subinspector, as the case may be;

(*b*) where the depositor is at sea, be witnessed by the Master or officer in charge of the vessel;

(*c*) where the depositor is within Malaŵi, be witnessed by a commissioner for oaths, magistrate, bank manager, medical practitioner, minister of religion, chartered accountant, commissioned officer of the armed forces of Malaŵi, police officer of or above the rank of sub-inspector, administrative officer or any officer other than the paying officer; or

(*d*) be authenticated in accordance with the Authentication of Documents Act. Cap. 4:06

(3) Any such power of attorney, or order signed in accordance with this regulation by a person who has attained the age of 7 years but who has not attained the age of 21 years, shall be as valid and binding upon him as if he were of or over the age of 21 years when he signed the power of attorney or order.

(4) Where any such power of attorney or order authorizes payment to be made to any association or body of persons or any body corporate, any person authorized to act on behalf of such association or body of persons, or any officer of such body corporate may apply for payment, and the signature of any such authorized person or officer signing as such shall be a complete discharge to the Postmaster-General in respect of the amount paid.

Withdrawals by telegraph

16.—(1) Where the depositor wishes to make a withdrawal from an account by telegraph he may make application in the appropriate form at a Post Office.

(2) Where the depositor makes an application under sub-regulation (1) an officer shall, if he is satisfied that a sufficient amount is standing to the credit of the account concerned, and upon receipt of the fees necessary to pay for the telegram, send a telegram to the Postmaster-General in the form approved by him stating the name of the depositor, the number of the pass book relating to the account, and the amount of the required withdrawal.

(3) Upon receipt of a telegram in reply from the Postmaster-General authorizing withdrawal of the amount required or any smaller amount, the officer shall, subject to subregulation (4), pay the sum authorized to the depositor.

(4) The following provisions shall apply to telegraphic withdrawals—

(*a*) the depositor requiring the withdrawal shall produce evidence to the satisfaction of the officer that he is entitled to receive the amount authorized to be paid, and shall sign a receipt in the appropriate form; and

(*b*) the paying officer shall enter the amount withdrawn in the pass book and attest the entry with his initials and the date stamp of his office.

(5) Payment of a withdrawal by telegraph under this regulation shall be subject to the condition that there are sufficient funds available at the Post Office concerned to meet the payment.

Withdrawals on demand G.N. 20/1979

17.—(1) The depositor may, on demand made at any Post Office in the appropriate form, withdraw any amount not exceeding K20, excluding fractions of a ten tambala, standing to the credit of an account in the name of an individual or a joint account:

Provided that—

G.N. 163/1980

(*a*) if the officer before whom the demand is made is sufficiently satisfied of the identity of the depositor, the depositor may, at such Post Offices as may be specified by the Postmaster-General, withdraw any amount not exceeding K50.

(*b*) no such withdrawal may be made if in making it no money would be left in the account; and

(*c*) not more than one such withdrawal may be made within a period of three days.

(2) The depositor may, on demand made at the principal office in the appropriate form, withdraw any amount not exceeding K2,000, excluding fractions of a tambala, standing to the credit of the account:

G.N. 14/1970

Provided that a depositor who is a migrant worker returning to Malaŵi may be allowed to make an initial withdrawal at any Post Office of an amount not exceeding the last fifty tambala of the total amount shown as standing to his credit.

(3) The paying officer shall enter any amount withdrawn in the pass book relating to the account, attest the entry with his initials and the date stamp of his office, and obtain from the depositor a receipt on the application form for the amount withdrawn.

Transfers

Transfers within Malaŵi

18.—(1) The depositor may make application in the appropriate form to the Postmaster-General for the transfer of any amount standing to the credit of the account into the account of any other person entitled to open an account.

(2) Any such application shall be accompanied by the pass book of the account from which the transfer is to be made, and such evidence as the Postmaster-General may require to satisfy him as to the authority of the depositor to make the transfer.

(3) Upon receipt of such application, the pass book and such satisfactory evidence as may be required, the Postmaster-General shall transfer the amount from the transferor's account to the account of the transferee:

Provided that no such transfer shall be made if the account of the transferee exceeds, or to the extent that it would by virtue of the transfer exceed, the maximum aggregate amount permissible under regulation 9.

(4) Where the transferee does not already have an account he shall, before the transfer is made, be required to take such steps as may be necessary under regulations 3 and 4 to open an account and to make deposits, and the transfer shall be treated as a first deposit under regulation 4.

Transfers from Malaŵi

19.—(1) Where the Postmaster-General has, in accordance with section 15 of the Act, entered into reciprocal arrangements for the purpose with any other country, the depositor may, subject to such terms and conditions as the Postmaster-General may impose, upon application being made in the appropriate form, and payment of the prescribed fee, have an amount standing to the credit of the account transferred to an account in the Post Office Savings Bank of such other country.

(2) The fees payable in respect of any such transfer shall be twenty-five tambala for the first K50 or any part thereof transferred and five tambala for every K10 or part thereof transferred in excess of K50.

(3) The amount to be transferred shall not exceed the maximum amount agreed upon between the Postmaster-General and such other country.

Transfers to Malaŵi

20. Upon application being made in the appropriate form, the Postmaster-General may accept the transfer of an amount standing to the credit of an account in the Post Office Savings Bank of any country with whom the Postmaster-General has entered into reciprocal arrangements in accordance with section 15 of the Act, to an account in the Savings Bank:

Provided that no such transfer may be accepted if the account in the Savings Bank exceeds, or to the extent that it would by virtue of the transfer exceed, the maximum aggregate amount permissible under regulation 9.

Miscellaneous

Closing an account G.N. 20/1979

21. Where the balance remaining in an account is less than K5, the Postmaster-General may close the account.

Person not to have more than one account

22.—(1) No person shall be a depositor in respect of more than one account:

Provided that a person may be a depositor in his personal capacity and also in a representative or trustee capacity.

(2) Any account in respect of which the depositor is in contravention of this regulation shall, if the Postmaster-General

so directs, be forfeited either in whole or in part, and any amount so forfeited shall be placed to the credit of the Reserve Fund.

Trustees

23. An account may be opened and deposits made therein by a trustee on behalf of any person who is entitled to open an account, in the joint names of such trustee and such person, but withdrawals from such account may be made in the name of such trustee only.

Withdrawals for maintenance of person under the age of 7 years

24. No withdrawals may be made from an account in the name of a child who has not attained the age of 7 years, except in respect of maintenance for such child.

Persons unable to write

25. A person unable to write may affix his mark or thumbprint on any receipt or appropriate form which he is required to sign, in the presence of a witness able to identify him, who shall certify to this effect and that the contents of the receipt or form have been read over to such person by or in the presence and hearing of the witness.

Married women

26. Any account in the name of a woman, whether made before or after marriage, shall, as against her husband or any person claiming through or under him, be deemed to be her separate property and to belong to her in her own right as if she were unmarried:

Provided that nothing in this regulation shall be deemed to affect the provisions of any written law relating to bankruptcy or insolvency in respect of any disposition of property not made for value or in so far as any such provisions apply to property which was disposed of without value.

Proof of identity

27. Notwithstanding anything in these Regulations contained, any officer in charge of a Post Office may—

(*a*) if he is unable to identify any person who alleges he is a depositor require such person to produce a certificate signed by a magistrate, a commissioner for oaths or by two responsible residents of the place in which such person resides identifying such person as being the depositor named in the pass book concerned or some other document of identity;

(*b*) if he is not satisfied that any person producing a pass book of another person and a warrant authorizing withdrawal from the account in question is entitled to payment of the amount specified in the warrant, retain the pass book and warrant and call upon such person to produce proof that he is entitled to payment of the amount or refuse to make payment of the amount save to the depositor named in the pass book.

SCHEDULE reg. 15

POST OFFICE SAVINGS BANK S.B. 13

Depositor's Book	This Form to be attached to the Warrant Order by a depositor who cannot attend personally to receive payment	
Office ..... No.		No. of Warrant ..... Date .....

To The Postmaster of .....

I, the undersigned, do hereby authorize and direct ..... the Bearer of this Order, to receive on my account the sum of ..... due to me under the above-described Warrant of the Post Office Savings Bank, for which sum the Receipt of the above-named person shall be a good and sufficient discharge.

As witness my hand this..... day of .....,19 .....

Witness:			
..... Signature	of Witness	..... Signature	of Depositor
..... Address		..... Address	
..... Office or Occupation		..... Qualification	

See Instructions at the back of this Form for competent witness to Depositor's Signature.

POST OFFICE SAVINGS BANK (RATE OF INTEREST ON DEPOSITS) NOTICE G.N. 97/1988

under s. 10

1. This notice may be cited as the Post Office Savings Bank (Rate of Interest on Deposits) Notice. Citation

2. The rate of interest on deposits with the Savings Bank payable in accordance with the provisions of the Act shall be ten and three quarters per cent ($10\frac{3}{4}$%). Rate of interest

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THE STANDARD BANK LIMITED AND BARCLAYS BANK D.C.O.

CHAPTER 44:04

Containing Pages 1–8

CHAPTER 44:04

THE STANDARD BANK LIMITED AND BARCLAYS BANK D.C.O.

ARRANGEMENT OF SECTIONS

SECTION

1. Short title
2. Interpretation
3. Transfer of the undertakings of The Standard Bank Limited and Barclays Bank D.C.O.
4. Trust property
5. Contracts, etc.
6. Banking business
7. Wills
8. Legal proceedings, etc.
9. Employees and pension schemes
10. Evidence of books, documents, etc.
11. Registration of transfers
12. Exemption from stamp duty, etc.

An Act to make provision to give effect to the intention of The Standard Bank Limited and Barclays Bank D.C.O. to transfer the assets and liabilities of the said Banks relating to their businesses in Malaŵi to the National Bank of Malaŵi, a new local commercial banking company of which the said Banks are to be members; and for purposes connected therewith and incidental thereto

13 of 1971
G.N. 146/1971

[1st July, 1971]

1. This Act may be cited as the Standard Bank Limited and Barclays Bank D.C.O. Act. Short title

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

"appointed day" means the day appointed as the date of commencement pursuant to section 1;

"Barclays Bank D.C.O." means Barclays Bank D.C.O., a company incorporated in England with limited liability, carrying on the business of banking in Malaŵi;

"customer" includes any person having an existing banking account or other dealing, transaction or arrangement with The Standard Bank Limited or with Barclays Bank D.C.O., as the case may be, in the course of business;

"excluded employee" means any person who, not being a citizen of Malaŵi, is, immediately before the appointed day, employed in the undertaking of The Standard Bank Limited or Barclays Bank D.C.O., as the case may be, and who has entered into a contract of service which requires him to serve The Standard Bank Limited or Barclays Bank D.C.O., as the case may be, in Malaŵi or elsewhere if called upon to do so;

"existing" means existing and in force immediately before the appointed day;

"liabilities" includes duties and obligations of every description;

"Minister" means the Minister for the time being responsible for finance;

"the new bank" means the National Bank of Malaŵi, a company incorporated in Malaŵi for the purpose of carrying on the business of banking in association with The Standard Bank Limited and Barclays Bank D.C.O.;

"property" means real and personal property of every description and includes securities and powers and property held in trust;

"security" includes a mortgage or charge, whether legal or equitable, a debenture, bill of exchange, promissory note, guarantee, lien, pledge, whether actual or constructive, hypothecation, indemnity or undertaking or any other means whatsoever of securing the payment or discharge of a debt, liability or obligation, whether present or future, actual or contingent;

"The Standard Bank Limited" means The Standard Bank Limited, a company incorporated in England, with limited liability, carrying on the business of banking in Malaŵi;

"the undertaking of Barclays Bank D.C.O." means the business of, and all of the property vested in, or belonging to, or held by Barclays Bank D.C.O. in Malaŵi immediately before the appointed day, and includes all such property, wherever situate, then so vested in, belonging to and held by Barclays Bank D.C.O. in respect of, or attributable to, its Malaŵi banking operations, and all of the liabilities to which Barclays Bank D.C.O. was subject in respect of its banking business in Malaŵi immediately before the appointed day, but does not include any property which by agreement between the Minister and Barclays Bank D.C.O. with the concurrence of The Standard Bank Limited, shall be excluded from the provisions of this Act, and which excluded property is specified by the Minister in a Notice published in the *Gazette* within seven days after notice of commencement of this Act is given pursuant to section 1;

"the undertaking of The Standard Bank Limited" means the business of, and all of the property vested in, or belonging to, or held by The Standard Bank Limited in Malaŵi immediately before the appointed day, and includes all such property, wherever situate, then so vested in, belonging to and held by The Standard Bank Limited in respect of, or attributable to, its Malaŵi banking operations, and all of the liabilities to which The Standard Bank Limited was subject in respect of

its banking business in Malaŵi immediately before the appointed day, but does not include any property which by agreement between the Minister and The Standard Bank Limited with the concurrence of Barclays Bank D.C.O., shall be excluded from the provisions of this Act, and which excluded property is specified by the Minister in a Notice published in the *Gazette* within seven days after notice of commencement of this Act is given pursuant to section 1;

"will" includes codicil and any other testamentary writing.

Transfer of the undertakings of The Standard Bank Limited and Barclays Bank D.C.O.

3.—(1) On the appointed day the respective undertakings of The Standard Bank Limited and of Barclays Bank D.C.O. shall be transferred to and vest in the new bank to the extent of the interests of The Standard Bank Limited and of Barclays Bank D.C.O. in such undertakings.

(2) The transfers and vestings referred to in subsection (1) shall operate by virtue of this Act and without further assurance to the intent that the new bank shall succeed to the whole of the respective undertakings of The Standard Bank Limited and Barclays Bank D.C.O.

(3) If any portion of the undertakings referred to in subsections (1) and (2) cannot be vested in the new bank by reason of the fact that a transfer of such portion is governed otherwise than by the law of Malaŵi then The Standard Bank Limited, or Barclays Bank D.C.O., as the case may be, shall, as soon as is practicable after the appointed day, take all necessary steps for the purpose of securing that such portion is effectively transferred to the new bank.

(4) A transfer or vesting effected by this Act—

(*a*) shall not operate as a breach of any covenant or condition against alienation, whether personal or otherwise, attaching to the title to any property so transferred or vested;

(*b*) shall not give rise to any forfeiture;

(*c*) shall not invalidate or discharge any contract or security;

(*d*) shall operate notwithstanding any caveat, caution or warning made, entered or registered under any written law relating to dealings with land.

Trust property

4.—(1) Any property or rights transferred to or vested in the new bank by virtue of this Act which, immediately before the appointed day, were held by The Standard Bank Limited or Barclays Bank D.C.O., respectively, whether solely or jointly with any other person—

(*a*) as trustee or custodian trustee under any trust deed, settlement, covenant or will, and whether originally so appointed or not, and whether appointed under hand or seal or by order of any court;

(*b*) as executor of the will of any person;

(*c*) as administrator of the estate of a deceased person;

(*d*) as guardian or curator of the estate of any infant or lunatic;

(*e*) as receiver of any property whether appointed under a deed or debenture or by any court or otherwise;

(*f*) as trustee in bankruptcy of the estate of any bankrupt person;

(*g*) in any other fiduciary capacity whatsoever, shall, on and after the appointed day, be held by the new bank, whether solely or jointly with such other person, in the same capacity upon the trusts, and with and subject to the powers, provisions, liabilities and obligations applicable thereto respectively.

(2) Any existing instrument or order of any court under or by virtue of which any property or rights became vested in The Standard Bank Limited or Barclays Bank D.C.O., respectively, in any such capacity as is mentioned in subsection (1) (including, in the case of a will, any grant of probate thereof), and any provision therein or any existing contract or arrangement for the payment to or retention by The Standard Bank Limited or Barclays Bank D.C.O., respectively, of remuneration for its services in any such capacity, shall, on or after the appointed day, be construed and have effect so far as the context permits, as if for any reference therein to The Standard Bank Limited or to Barclays Bank D.C.O., respectively, other than a reference (however worded and whether express or implied) to terms and conditions of The Standard Bank Limited or Barclays Bank D.C.O., respectively, or to a scale of fees of the said The Standard Bank Limited or Barclays Bank D.C.O., respectively, there were substituted a reference to the new bank.

Contracts, etc.

5. All contracts, agreements, conveyances, deeds, leases, licences, undertakings and other instruments, vested or transferred by this Act, whether analogous to the foregoing or not, entered into by, or made with, or addressed to The Standard Bank Limited or Barclays Bank D.C.O., respectively (whether solely or with any other person), before, and in force on, the appointed day shall, as from that day, be binding and of full force and effect in every respect against or in favour of the new bank as fully and effectively as if, instead of The Standard Bank Limited or Barclays Bank D.C.O., as the case may be, the new bank had been a party thereto or bound thereby, or entitled to the benefit thereof.

Banking business

6. Without prejudice to the generality of any other provision of this Act, the following provisions shall have effect with relation to the banking business of The Standard Bank Limited and Barclays Bank D.C.O., respectively, in Malaŵi—

(*a*) any account between The Standard Bank Limited and a customer or between Barclays Bank D.C.O. and a customer

shall, on and after the appointed day become an account between the new bank and such customer, with the same rights and subject to the same obligations and incidents (including rights of set-off) as would have been applicable thereto if such account between The Standard Bank Limited and the customer, or between Barclays Bank D.C.O. and the customer, as the case may be, had continued, and so that any existing instruction, order, direction, mandate or authority given by the customer in relation to the account shall continue to have full force and effect, and such account shall, for all purposes, be deemed to be a single continuing account:

Provided that—

(i) nothing in this paragraph shall affect any right of the new bank or of the customer to vary the conditions and incidents subject to which the account is kept; and

(ii) deposits transferred from The Standard Bank Limited or Barclays Bank D.C.O., respectively, to the new bank pursuant to this Act shall, during a period of thirty days from the date of commencement of this Act, be withdrawable on demand without prejudice to any right of set-off or charge which the new bank may have thereover;

(*b*) any security held by The Standard Bank Limited or by Barclays Bank D.C.O., respectively, as security for the payment of debts or liabilities, whether present or future, actual or contingent, of any person, which is transferred to the new bank by virtue of this Act shall, on and after the appointed day, be held by and be available to the new bank for the payment of such debts and liabilities to the said new bank, and, where the moneys secured by such a security include future advances to or liabilities of such person, the security shall, as from that day, be held and be available to the new bank as security for future advances to that person by, and future liabilities of that person to, the said new bank to the same extent to which future advances by, or liabilities to, The Standard Bank Limited or Barclays Bank D.C.O., respectively, were secured thereby immediately before the appointed day, and a transfer effected by this Act of any such security shall not operate as a release of such security notwithstanding any relevant rule of law or statutory provision to the contrary;

(*c*) the new bank shall, in relation to any security transferred to it by virtue of this Act, and to the moneys thereby secured, be entitled to the same rights and priorities, and be subject to the same obligations and incidents, as The Standard Bank Limited or Barclays Bank D.C.O., respectively, would have been entitled and subject to if the same had continued to be held by The Standard Bank Limited or Barclays Bank D.C.O., as the case may be;

(*d*) any negotiable instrument or order for the payment of money, whether drawn, given, accepted or endorsed before, on or after the appointed day, which is expressed to be drawn on, or given to, or accepted or endorsed by The Standard Bank Limited or Barclays Bank D.C.O., respectively, or payable at any place of business of The Standard Bank Limited or Barclays Bank D.C.O., as the case may be, shall, on and after the appointed day, have the same effect as if it had been drawn on, or given to, or accepted or endorsed by, the new bank, or payable at the same place of business of the said new bank;

(*e*) where, by the operation of any of the provisions of this Act, any right, liability or obligation becomes a right, liability or obligation of the new bank, that bank and all other persons shall, on and after the appointed day, have the same rights, powers and remedies (and in particular the same rights and powers as to taking or resisting any legal proceedings or any application to any authority) for ascertaining, perfecting or enforcing that right, liability or obligation as if it had at all times been a right, liability or obligation of the new bank;

(*f*) the custody of any document, goods or other property held by The Standard Bank Limited or Barclays Bank D.C.O., respectively, as bailee for any other person at any of their respective offices or branches in Malaŵi shall be transferred to the new bank on the appointed day, and the rights and obligations of The Standard Bank Limited or Barclays Bank D.C.O., respectively, under any contract of bailment relating to such document, goods or property shall be transferred to the said new bank on that day.

Wills

7.—(1) Where, on or after the appointed day, any person dies domiciled in Malaŵi, leaving property in Malaŵi and a will, whether executed before, on or after the said appointed day, which appoints or purports to appoint The Standard Bank Limited or Barclays Bank D.C.O. to be executor, or executor and trustee, thereof, such will shall be construed to have effect as if for any reference therein to The Standard Bank Limited or Barclays Bank D.C.O., as the case may be, as such executor or executor and trustee there were substituted a reference to the new bank.

(2) No testamentary gift shall be adeemed by reason only of the operation of any of the provisions of this Act.

Legal proceedings, etc.

8.—(1) Any legal proceedings, or any arbitration proceedings, or any application to any authority, pending immediately before the appointed day by or against The Standard Bank Limited or Barclays Bank D.C.O., respectively, shall not abate, be discontinued or be in any way prejudicially affected by reason only

of any of the provisions of this Act but the same may be prosecuted or continued by or against the new bank, and any judgment or award obtained by or against The Standard Bank Limited or Barclays Bank D.C.O., as the case may be, and not fully satisfied before the appointed day shall thereafter be enforceable by or against the said new bank.

(2) In any legal proceedings, or arbitration proceedings, concerning any right or liability transferred to or vested in the new bank by this Act, a certificate under the hand of the manager of a branch of the said new bank that such right or liability has been so transferred to or vested in the said new bank shall be admissible evidence of that transfer or vesting.

Employees and pension schemes

9.—(1) Any person, other than an excluded employee, who is employed in the undertaking of The Standard Bank Limited, or of Barclays Bank D.C.O., respectively, immediately before the appointed day, and who is not then under notice of dismissal or resignation, shall, in pursuance of this Act, on that day become an employee of the new bank on terms and conditions of service not less favourable than his existing terms and conditions, and such employment with The Standard Bank Limited or Barclays Bank D.C.O., as the case may be, and the new bank shall be deemed for all purposes to be a single continuing employment.

(2) Any reference to The Standard Bank Limited or to Barclays Bank D.C.O., respectively, in any trust deed or rules constituting or relating to any pension scheme or provident or superannuation fund established in Malaŵi of which persons, other than excluded employees, employed in the undertakings of The Standard Bank Limited or Barclays Bank D.C.O., respectively, are members shall, on and after the appointed day, be construed and have effect as if the same were a reference to the new bank of which such persons become employees under subsection (1), but so that, for the purpose of ascertaining and calculating any right to benefits under such scheme or fund, service with The Standard Bank Limited or Barclays Bank D.C.O., respectively, prior to the appointed day shall be taken into account as if it were service with the said new bank.

(3) The operation of any provision of this section shall not of itself give rise to a claim by any person to benefit under any scheme or fund such as is mentioned in subsection (2).

Evidence of books, documents, etc.

10.—(1) All documents, records and admissions which would before the appointed day have been evidence in respect of any matter for or against The Standard Bank Limited or Barclays Bank D.C.O., respectively, shall be admissible in evidence for or against the new bank.

(2) On and after the appointed day, the Bankers' Books Evidence Act shall apply to the books of The Standard Bank Cap. 4:05

Limited and Barclays Bank D.C.O., respectively, transferred to the new bank by virtue of this Act, and to existing entries therein, as if such books were the books of the said new bank.

Cap. 4:05

(3) For the purposes of sections 4 and 5 of the Bankers' Books Evidence Act, the books mentioned in subsection (2) shall be deemed to have been the ordinary books of the new bank to which they are transferred at the time of the making of any entry therein which purports to have been made before the appointed day, and any such entry shall be deemed to have been made in the usual and ordinary course of the banking business of the said new bank.

Cap. 4:05

(4) In this section "books" means "bankers' books" as defined in section 2 (4) of the Bankers' Books Evidence Act.

Registration of transfers

11. In the case of property transferred to and vested in the new bank pursuant to this Act, in respect of the transfer of which any written law provides for registration, it shall be the duty of the proper officer of the appropriate registration authority, upon request made by or on behalf of the said new bank, to make such entries in the appropriate register as shall give effect to such transfer and, where appropriate, to issue to the said new bank a certificate of title in respect of the said property or to make the necessary amendments to the register, as the case may be, and, if presented therefor, to make endorsements on the deeds relating to the title, right or obligation concerned.

Exemption from stamp duties, etc.

12. Notwithstanding the provisions of any other written law, no stamp or other duty, and no registration fee, filing fee or other fee of office, shall be charged or become payable solely on account of any transfer or vesting of any property effected by this Act or on account of anything done under section 11.

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CHAPTER 44:05

FINANCIAL SERVICES

26 of 2010

An Act to make provision for the supervision and regulation of financial institutions and for matters connected therewith and incidental thereto

[2ND JULY, 2010]

PART I

PRELIMINARY

Short title and application

1. This Act may be cited as the Financial Services Act and shall apply in addition to the provisions of other financial services laws.

Interpretation

2.—(1) In this Act, unless the context otherwise requires—

"administrative penalty" means a penalty that the Registrar may impose on any person who contravenes this Act or any financial services law;

"Appeals Committee" means the Financial Services Appeals Committee established by section 78;

"associate"—

(*a*) in relation to a body corporate, means a controlling party, a subsidiary or a related body corporate of the body corporate; and

(*b*) in relation to an individual, means—

(*i*) a close relation of the individual; or

(ii) a partner, or a close relation of a partner, of the individual;

Cap. 44:01

"bank" means a bank as defined in the Banking Act;

"close relation" means spouse, brother, sister, parent, child, child of the spouse and the spouse of any of these relations;

"controlling party", means a controlling party as described in section 5;

"Court" means the High Court of Malaŵi;

"complaint resolution scheme" means a scheme of the type mentioned in *Division 3* of Part X;

"compromise or arrangement" means—

(*a*) a compromise or arrangement in relation to a prudentially regulated financial institution, being a compromise or arrangement of a kind described in the Companies Act; and

Cap. 46:03

(*b*) any other arrangement, however described, for the amalgamation of a prudentially regulated financial institution with one or more other bodies corporate or the reconstruction of a prudentially regulated financial institution;

"credit reference bureau" means credit reference bureau as defined in the Credit Reference Bureau Act; Cap. 46:09

"custodian" means a person who, by way of business, holds property of other persons for safe-keeping;

"director", in relation to a body corporate, means each of the following—

(*a*) a person who is appointed to a position of director or alternate director of the body corporate;

(*b*) a person who, although not appointed to a position of director or alternate director, acts as a director of the body corporate;

(*c*) a person in accordance with whose instructions or wishes the directors of the body corporate are accustomed to act, provided that this paragraph shall not apply merely because the directors act on advice given by the person in the proper performance of functions attaching to the person's professional capacity, or the person's business relationship with the directors or the body corporate;

"examiner" means a person appointed as an examiner under section 41;

"executive officer" means an officer or manager at the most senior level of management of a financial institution, whether or not he is also a director, who effectively manages that financial institution;

"financial crime" means any of the following—

(*a*) a criminal offence, whether or not arising under a financial services law, that involves fraud or dishonesty relating to a financial institution;

(*b*) financing or facilitating a criminal offence, whether or not it arises under a financial services law, relating to a financial institution;

(*c*) dealing with the proceeds of a criminal offence, whether or not it arises under a financial services law and whether or not it relates to a financial institution;

(*d*) an offence against the Money Laundering, Proceeds of Serious Crime and Terrorist Financing Act, being an offence relating to a financial institution; or Cap. 8:07

(*e*) financing of terrorist activity in any place;

"financial group" means either of the following—

(*a*) a group consisting of a prudentially regulated financial institution and each body corporate of which that institution is a controlling party;

(*b*) a group consisting of two or more prudentially regulated financial institutions that have a common controlling party and the bodies corporate of which any of those institutions is a controlling party;

"financial institution" means each of the following—

(*a*) a bank;

Cap. 46:06 (*b*) each of the following as defined in the Securities Act—

(i) a securities dealer;

(ii) a securities broker;

(iii) a securities representative;

(iv) an investment adviser;

(v) a stock exchange;

(vi) a securities depository;

(vii) a collective investment scheme;

(viii) an investment company;

(ix) a portfolio manager;

(x) a securities market intermediary;

Cap. 46:06 (*c*) a person who provides securities registration services for the purposes of the Securities Act;

Cap. 47:01 (*d*) each of the following as defined in the Insurance Act—

(i) an insurer;

(ii) a reinsurer;

(iii) an insurance broker;

(iv) an agent for brokers;

(v) an insurance agent;

(vi) a loss assessor or adjustor;

(vii) a claims settling agent;

Cap. 46:08 (*e*) each of the following as defined in the Microfinance Act—

(i) a microcredit agency;

(ii) a microfinance institution;

Cap. 46:10 (*f*) each of the following as defined in the Financial Cooperatives Act—

(i) a primary SACCO;

(ii) a secondary SACCO;

(*g*) each of the following as defined in the Pension Act— Cap. 55:02

(i) a pension fund;

(ii) an umbrella fund;

(iii) an administrator of a pension fund;

(iv) an investment manager for a pension fund or an umbrella fund;

(v) a pension broker;

(*h*) a trustee of a collective investment scheme as defined in the Securities Act, or of a pension fund or an umbrella fund as defined in the Pension Act; Cap. 46:06 Cap. 55:02

(*i*) an actuary for an insurer as defined in the Insurance Act, or for a pension fund as defined in the Pension Act; Cap. 47:01 Cap. 55:02

(*j*) a custodian;

(*k*) a friendly society;

(*l*) a medical aid fund;

(*m*) a person who, by way of business, in Malaŵi—

(i) buys or borrows foreign currency from,

(ii) sells or lends foreign currency to, or

(iii) exchanges foreign currency with,

a person other than the Reserve Bank;

(*n*) a person who, by way of business, transfers funds to foreign countries, or carries out activities to the same, or to a similar, effect;

(*o*) a holding company;

(*p*) a credit reference bureau, as defined in the Credit Reference Bureau Act; Cap. 46:09

(*q*) a building society as defined in the Building Societies Act; Cap. 32:01

(*r*) finance or leasing company;

(*s*) the operator of a financial institution as defined in paragraphs (*a*) to (*r*) of this definition; and

(*t*) a person, business or fund declared by Registrar's directives or by another financial services laws to be a financial institution;

"financial services" means services relating to financial matters;

"financial services law" means any of the following—

(*a*) this Act;

(*b*) the Banking Act; Cap. 44:01

Cap. 32:01 (*c*) the Building Societies Act;

Cap. 47:01 (*d*) the Insurance Act;

Cap. 55:02 (*e*) the Pension Act;

Cap. 46:06 (*f*) the Securities Act;

Cap. 46:08 (*g*) the Microfinance Act;

Cap. 46:10 (*h*) the Financial Cooperatives Act;

Cap. 44:02 (*i*) the Reserve Bank of Malaŵi Act;

Cap. 46:09 (*j*) the Credit Reference Bureau Act;

(*k*) a law that declares itself to be a financial services law for the purposes of this definition;

(*l*) a law prescribed for the purposes of this definition; and includes regulations, the Registrar's directives and directions;

"financial year" means a period of twelve months starting on 1 January;

"finance or leasing company" means a body corporate that provides loans, advances or leasing products, but does not include a bank;

"friendly society" means an association established with no share capital for the purpose of aiding members of the association and their dependants, being an association that does not employ a person with the main occupation of canvassing for members of, or collecting contributions or subscriptions for, the association;

"holding company" means a body corporate the principal function of which is to act as controlling party for one or more prudentially regulated financial institutions;

"investigator" means a person appointed as an investigator under section 42;

"Levies Account" means the account established as required by section 16;

"licence" means a licence under this Act or under another financial services law;

"licensed" means licensed under this Act or under another financial services law;

"licensee" means a person licensed under this Act or under another financial services law;

"manager", in relation to a financial institution, includes a person, whether or not an employee, who exercises managerial functions in relation to the financial institution;

"medical aid fund" means a scheme that provides insurance or similar cover for financial or other assistance to persons in connexion with prescribed medical services;

"microcredit" means the provision of small loans to small or micro enterprises or to low income customers or as prescribed by the Registrar, where—

(*a*) such loans are granted to a natural person individually, or in a group, whose income depends on his, her or the group's own business or economic activity;

(*b*) security for such loans may include non-traditional instruments such as group guarantees or compulsory savings;

(*c*) the borrower may be required to make frequent repayments in small amounts; and

(*d*) such loans may take the form of microhousing or microleasing products designed for microfinance customers;

"operate", in relation to a financial institution, includes to—

(*a*) establish or administer the financial institution; and

(*b*) exercise managerial functions in relation to the financial institution;

"prudentially regulated financial institution" means each of the following—

(*a*) a bank;

(*b*) a licensed microfinance institution;

(*c*) each of the following as defined in the Securities Act— Cap. 46:06

(i) a securities exchange;

(ii) a securities depository;

(iii) a securities broker;

(*d*) each of the following as defined in the Insurance Act— Cap. 47:01

(i) an insurer;

(ii) a reinsurer;

(*e*) each of the following as defined in the Financial Cooperatives Act— Cap. 46:10

(i) a primary SACCO; and

(ii) a secondary SACCO;

Cap. 55:02 (*f*) each of the following as defined in the Pension Act—

(i) a pension fund; and

(ii) an umbrella fund;

Cap. 46:06 Cap. 55:02 (*g*) a trustee of a collective investment scheme as defined in the Securities Act, or of a pension fund or an umbrella fund as defined in the Pension Act;

(*h*) a custodian;

(*i*) a medical aid fund;

(*j*) a friendly society;

(*k*) a holding company;

Cap. 32:01 (*l*) a building society as defined in the Building Societies Act;

Cap. 46:09 (*m*) a credit reference bureau as defined in the Credit Reference Bureau Act;

(*n*) a financial institution declared by Registrar's directives or by another financial services law to be a prudentially regulated financial institution; and

(*o*) the operator of a financial institution as defined in paragraphs (*a*) to (*m*) of this definition;

"records" of a financial institution, means documents and information used in the ordinary course of the business of the institution, whether in written form or kept on microfilm, magnetic tape or any other form of mechanical or electronic medium;

"Registrar's directive" means a directive issued under this Act or another financial services law;

"registered" means registered under this Act or under another financial services law;

"Reserve Bank" means the Reserve Bank of Malaŵi established under the Reserve Bank of Malaŵi Act; Cap. 44:02

"savings and credit cooperative (SACCO)" means a cooperative, as defined in the Financial Cooperatives Act, whose principle object includes accepting deposits, advancing of loans, and providing other financial services to or for its members and is a licensee; Cap. 46:10

Cap. 46:06 "securities" bears the same meaning as in the Securities Act;

"self-regulatory organization" means a body declared to be a self-regulatory organization under section 45;

"self-regulatory organization arrangements" means arrangements described in section 45;

"share", in relation to a body corporate, means a share in the capital or stock of the body corporate;

"statutory manager", for a prudentially regulated financial institution, means a person appointed as statutory manager for the institution under section 68s;

"supervisory expenditure" means expenditure in connexion with the supervisory functions of the Registrar;

"supervisory functions"—

(*a*) in relation to the Registrar, means the functions of the Registrar under or in connexion with this Act or another financial services law; and

(*b*) in relation to a self-regulatory organization, means the functions of the organization in respect of which arrangements described in section 45 are in force;

"supervisory levy" means a levy imposed by regulations made for the purposes of section 13.

(2) A reference in this Act or in another financial services law to operating or conducting a financial institution includes a reference to operating the institution by providing financial services to a person outside Malaŵi, but this subsection does not limit the provision of this Act or the other financial services law in which the expression is used.

Principal object of this Act

3. The principal object of this Act is to provide for the regulation and supervision of financial institutions in Malaŵi to foster—

(*a*) the safety and soundness of financial institutions;

(*b*) the highest standards of conduct of business by financial institutions;

(*c*) the fairness, efficiency and orderliness of the financial sector;

(*d*) the stability of the financial system; and

(*e*) the reduction and deterrence of financial crime in financial institutions.

Subsidiaries, holding companies and related bodies corporate Cap. 46:03

4. For the purposes of a financial services law, the question whether a body corporate is a subsidiary, a holding company or a related body corporate of another body corporate shall be determined in accordance with the Companies Act as if both bodies corporate were companies for the purposes of that Act.

Controlling parties of financial institutions

5.—(1) For the purposes of a financial services law, a person is a controlling party of another person (the other person otherwise referred to as "the relevant person" in this section) if the first mentioned person is in a position to control or exert significant influence over the business or financial operations of the relevant person, whether or not that control is exercised.

(2) Without limiting subsection (1), each of the following is also a controlling party of a person—

(*a*) if the relevant person is a body corporate—

(i) a director or member of the governing body of the body corporate;

(ii) a person that has the power to appoint a person to be a director or member of the governing body of the body corporate;

(iii) a person whose consent is needed for the appointment of a person to a director of the body corporate;

(iv) a person that holds at least ten per cent of the shares of the body corporate;

(v) a person that has the power to control at least ten per cent of the voting rights attached to shares or other securities of the body corporate;

(vi) a person that holds rights in relation to the body corporate that, if exercised, would result in the person's holding at least ten per cent of the shares of the body corporate or having the power to control at least ten per cent of the voting rights attached to shares or other securities of the body corporate;

(*b*) if the relevant person is a subsidiary of another person, each person that is a controlling party of the other body;

(*c*) if the relevant person is a prudentially regulated financial institution, a person declared by the Registrar under subsection (5) to be a controlling party of the institution:

Provided that a Minister, the Registrar or the Reserve Bank, in that capacity, shall not be a controlling party of a relevant person in terms of this subsection.

(3) The provisions of subsection (2) are separate and independent, and none of those provisions affects the interpretation of any other provisions of this section.

(4) Registrar's directives may modify subsection (2) (*a*) (iv), (v) or (vi) by varying the percentage, either generally or in a class of cases specified in the directives.

(5) The Registrar may declare in writing that a specified person is or is not a controlling party of a prudentially regulated financial institution.

(6) The Registrar shall make a declaration under subsection (5) that a person is a controlling party of a prudentially regulated financial institution unless—

(*a*) the person has been given notice of the proposed declaration and a reasonable opportunity to make representations to the Registrar about the matter; and

(*b*) having regard to any such representations, the Registrar is satisfied that the person is in a position to control or exert significant influence over the business or financial operations of the institution.

References to obligations where financial institution is not a legal person

6. Where this Act or another financial services law imposes an obligation on or in respect of a financial institution that is not a legal person, such as a trust, the obligation shall be deemed to be imposed on or with respect to the person who operates the financial institution, such as, in the case of a trust, the trustee.

Financial services laws bind Government

7. Except to the extent specified in a financial services law, this Act and the other financial services laws bind the Republic and the Government.

PART II
The Reserve Bank and The Registrar

Division 1
Registrar to Regulate and Supervise Financial Institutions

Registrar of Financial Institutions

8.—(1) There is hereby appointed a Registrar of Financial Institutions for the purposes of this Act and all financial services laws, who shall be the regulatory and supervisory authority for the financial services industry.

(2) The Governor of the Reserve Bank shall be the Registrar.

(3) The Registrar shall be supported by adequate structures and employees with appropriate skills to enable him perform the duties of the Registrar.

(4) Without limiting the Registrar's powers to create appropriate structures, the Registrar shall establish departments to supervise the operations of banking, insurance, pension benefit fund schemes, securities market entities, and any other area deemed necessary by the Registrar for the better carrying out of the requirements of this Act.

Additional function of Reserve Bank of Malaŵi Cap. 44:02

9.—(1) In addition to the functions it has under the Reserve Bank of Malaŵi Act, the Reserve Bank has the function of supporting the Registrar in carrying out his functions under this Act and other financial services laws.

(2) In addition to the functions of the Registrar under this Act and the other financial services laws, the Registrar has the function of advising the Minister on matters related to financial institutions and financial services, whether of his own accord or at the request of the Minister.

Registrar's objectives

10. The Registrar shall perform his supervisory functions with a view to achieving—

(*a*) the safety and soundness of prudentially regulated financial institutions;

(*b*) the highest standards of conduct of business by financial institutions;

(*c*) the fairness, efficiency and orderliness of the financial sector;

(*d*) the stability of the financial system; and

(*e*) the reduction and deterrence of financial crime in financial institutions.

Registrar to report financially unsound financial institutions

11. If the Registrar believes that—

(*a*) a prudentially regulated financial institution is financially unsound; and

(*b*) the situation may impair the stability of the financial system or the safety and soundness of financial institutions generally,

the Registrar shall report the matter to the Minister and shall take such actions as the Registrar is authorized to take under any financial services law.

Division 2

Financial and Accountability Provisions

Funding for supervisory functions

12.—(1) The following funds may be applied to the Registrar's supervisory expenditure—

(*a*) supervisory levies imposed on financial institutions under section 13, and interest in respect of unpaid supervisory levies;

(*b*) money raised as fees, charges and fines, and interest from unpaid fees and charges, in respect of services rendered by the Registrar in performing his supervisory functions; and

(*c*) money otherwise paid in relation to the Registrar's supervisory functions.

(2) The funds referred to in subsection (1) (*a*) and (*c*) shall not be applied to any other purpose.

Supervisory levies to be prescribed

13.—(1) The Minister may, on recommendation of the Registrar, make regulations for, or with respect to, the imposition and collection of supervisory levies.

(2) The regulations shall set out the basis of calculation of supervisory levies for a financial year.

(3) Different bases of calculation, and different rates of supervisory levy, may be prescribed for different classes of financial institutions.

(4) The regulations may include provision for imposing interest on unpaid supervisory levy, and for imposing penalty levy for cases where a miss-statement or other non-compliance by a financial institution leads to an under-collection of supervisory levy.

Fees and charges to be prescribed

14.—(1) The Registrar may, through a Registrar's directive, impose fees and charges for licences and renewals of licences, and for other services provided by the Registrar in performing his supervisory functions.

(2) Different rates of fees and charges may be imposed for different classes of financial services, and different classes of licence or service.

Supervisory levies debt due to Registrar

15. An amount of a supervisory levy, penalty levy, fee or charge is a debt due to the Registrar and may be recovered by action in a court of competent jurisdiction.

Levies Account

16.—(1) The Registrar shall establish an account, to be called the Levies Account.

(2) The following shall be paid into the Levies Account—

(*a*) money paid to the Registrar as supervisory levies, penalty levies, fees or charges; and

(*b*) money paid to the Registrar in relation to the Registrar's supervisory functions.

Investment of Levies Account surplus

17. Money standing to the credit of the Levies Account but not immediately required may be invested as the Registrar may deem appropriate.

Registrar's annual report

18. The Registrar shall, within six months of the end of each calendar year submit an annual report to the Minister and a committee of Parliament responsible for financial matters, which shall include—

(*a*) details of the sources and application of supervisory funds for the year to which the report relates;

(*b*) an account of the performance of the Malaŵi financial sector over the year to which the report relates and of the way in which the Registrar has performed his supervisory functions in that year;

(*c*) an account of the Registrar's proposed supervisory activities and priorities for the year after the year to which the report relates; and

(*d*) details of any matter or circumstance that has arisen since the end of the year to which the report relates that has significantly affected, or may significantly affect, the performance by the Registrar of his supervisory functions in future financial years.

Division 3

Other Provisions

Arrangements with other agencies

19.—(1) In carrying out his supervisory functions, the Registrar shall consult, and may enter into arrangements with, other agencies of the Government that have functions related to the financial system, the regulation or supervision of financial services, taxation or social security.

(2) Without limiting what arrangements under subsection (1) may deal with, those arrangements may make provision with respect to—

(*a*) the exchange of information between the Registrar and the other agencies, with due regard for the need to protect appropriately personal information about individuals;

(*b*) consultation between the Registrar and the other agencies;

(*c*) enforcement of financial services laws and assistance with enforcement of other laws; and

(*d*) the conduct of examinations and investigations on a joint basis.

(3) The Registrar may enter into similar arrangements with organizations outside Malaŵi that have responsibilities under law for the regulation and supervision of financial institutions or similar institutions.

Delegation

20.—(1) The Registrar may delegate any of his supervisory functions, other than this power of delegation, to—

(*a*) a director or employee of the Reserve Bank;

(*b*) an examiner;

(*c*) an investigator; or

(*d*) a self-regulatory organization.

(2) A delegation under this section may be subject to conditions specified in the instrument of delegation.

(3) In performing or exercising a delegated function or power, the delegate shall comply with directions given by the person delegating the function or power.

(4) A delegation may be varied or revoked at will and does not prevent the Registrar from exercising the delegated power or performing the delegated function.

PART III
Licensing and Registration of Financial Institutions

Division 1
Licensing and Registration Requirements

Financial institutions to be licensed or registered

21.—(1) A person shall not operate, as a business, a financial institution unless—

(*a*) the financial institution is licensed or registered under this Act; and

(*b*) the financial institution is complying with the terms of the licence, including any conditions to which the licence is subject.

(2) Any person who contravenes subsection (1) commits an offence and shall, on conviction, be liable to a fine of K10,000,000 and to imprisonment for four years.

(3) In the case of a continued contravention by a person convicted under subsection (1), that person shall be guilty of a further offence and shall be liable to a fine of K50,000 for every day on which the contravention continues.

(4) Subsection (1) shall not apply in relation to a financial institution if another financial services law requires the institution to be licensed or registered under that law.

(5) The Registrar may, by directives not inconsistent with this Act or another financial services law, impose requirements with respect to licensing or registration of financial institutions.

Division 2
Licensing and Registration Procedures

Application of the Division

22. This Division shall apply in relation to a financial institution if, by or under this Act or another financial services law, there is a requirement for the financial institution to be licensed or registered.

Licensing and registration applications and procedure

23.—(1) The Registrar may, on application—

(*a*) grant a financial institution a licence;

(*b*) register a financial institution; or

(*c*) grant a renewal of such a licence or registration.

(2) An application shall be—

(*a*) made by the financial institution concerned;

(*b*) made to the Registrar as prescribed;

(*c*) accompanied by such documents, statements and other information as are prescribed; and

(*d*) accompanied by the prescribed fee, if any.

(3) The Registrar may require an applicant to provide further information in connexion with the application, and the Registrar need not deal further with that application until the requirement is satisfied.

(4) The Registrar shall not grant an application for a licence or registration unless satisfied that—

(*a*) the documents submitted by the applicant are valid and the information is not questionable;

(*b*) the business to be carried out by the financial institution will be conducted with integrity, prudence and professional skill;

(*c*) the nature and scope of the proposed operations shall meet the needs and convenience of the community or sector to be served;

(*d*) the financial institution has and will maintain a sound financial position and not cause or promote instability in the financial system; and

(*e*) the financial institution otherwise meets and will continue to meet the requirements of the relevant financial services laws.

(5) A financial services law may prescribe additional criteria for granting licences or procedures for registration.

(6) The Registrar may grant an application for a licence or registration subject to conditions specified in the licence or certificate of registration.

(7) Any person who knowingly or recklessly furnishes any document which is false or misleading in a material particular in connexion with an application for a licence or registration commits an offence and shall, on conviction, be liable to a fine of K10,000,000 and to imprisonment for four years.

Notification of a breach of licence or registration conditions

24. A licensed or registered financial institution shall, as soon as practicable after it becomes aware that a condition to which the licence or registration is subject has not been complied with, notify the Registrar of the matter, and give the Registrar such further information about the matter as the Registrar requires.

Issue and publication of licence

25.—(1) If the Registrar grants an application for a licence, he shall issue the licence to the applicant.

(2) If the Registrar grants an application for registration, he shall issue a certificate of registration to the applicant.

(3) The Registrar shall publish a notice of the grant of a licence or a registration in the *Gazette*.

(4) A licensed or registered financial institution shall publicly and prominently display a copy of its licence at all its places of business in Malaŵi.

(5) A licensed or registered financial institution that contravenes subsection (4) shall be liable to an administrative penalty.

Variation, suspension and revocation of licences and registrations on request

26.—(1) The Registrar may, on written request by a licensed or registered financial institution, or on his own initiative, by notice to the institution—

(*a*) vary the conditions of the licence or registration, including by imposing additional conditions;

(*b*) suspend the licence or registration for the period specified in the notice; or

(*c*) revoke the licence or registration.

(2) The Registrar shall cause notice of the suspension or revocation of a licence or registration under this section to be published in the *Gazette*, and may otherwise publish the notice, as he sees fit.

Variation, suspension and revocation of licences and registrations

27.—(1) This section applies if it appears to the Registrar that a licensed or registered financial institution—

(*a*) is not carrying on, or is likely not to carry on, the business in respect of which it is licensed or registered with integrity, prudence, professional skill or sound business principles;

(*b*) is in an unsound financial position or is likely to be in an unsound financial position;

(*c*) is causing or promoting instability in the financial system, or is likely to do so;

(*d*) is not complying or is likely not to comply with a financial services law;

(*e*) is or is likely to be involved in financial crime;

(*f*) has supplied false information in the application;

(*g*) has failed to commence financial services business under the licence within twelve months after the grant of the licence;

(*h*) has ceased to conduct financial services business in Malaŵi;

(*i*) has failed to comply with a condition to which the licence is subject;

(*j*) in the opinion of the Registrar, the financial institution is conducting business in a manner that is detrimental to consumers or the general public;

(*k*) in the opinion of the Registrar, the financial institution has engaged in serious deception of the Registrar or the general public in respect of its financial condition, ownership, management, operations or other facts material to its business; or

(*l*) has gone into liquidation, has wound-up or dissolved.

(2) If this section applies, the Registrar may, by notice to the financial institution—

(*a*) vary the licence or registration—

(i) by restricting the activities that can be carried on under the licence or registration; or

(ii) by imposing further conditions on the licence or registration;

(*b*) suspend the licence or registration for the period specified in the notice; or

(*c*) revoke the licence or registration.

(3) A financial services law may prescribe additional circumstances in which a licence or registration may be varied, suspended or revoked.

(4) The Registrar shall not vary, suspend or revoke a financial institution's licence or registration unless—

(*a*) the Registrar has given the institution written notice of the proposed action, setting out the reasons therefor and has given the institution twenty-one days within which to make representations to the Registrar on the matter; and

(*b*) the Registrar has taken into account any representations made by or for the institution within that period.

(5) The Registrar may suspend a financial institution's licence or registration without giving a notice under subsection (4) (*a*), but only if satisfied on reasonable grounds that it is necessary to do so to prevent or mitigate damage to the interests of financial institutions, clients of financial institutions or the financial system. In such a case the Registrar shall, as soon as practicable after the suspension—

(*a*) give the institution written notice of the suspension, setting out the reasons therefor and giving the institution twenty-one days within which to make representations to the Registrar on the matter;

(*b*) having considered any representations made by or for the institution, determine whether the suspension should be confirmed.

(6) The Registrar shall cause notice of the suspension or revocation of a licence under this section to be published in the *Gazette*, and may otherwise publish the notice, as he sees fit.

Exemptions from licensing and registration requirements

28.—(1) The Registrar may, by notice published in the *Gazette*—

(*a*) exempt a person wholly or partly, as specified in the notice, from the application of this Part; or

(*b*) declare that this Part applies in relation to a person as modified in the declaration.

(2) An exemption or declaration may—

(*a*) apply generally or to a specified case or class of cases; and

(*b*) apply unconditionally or subject to specified conditions.

PART IV

Corporate Governance

Board of directors

29.—(1) Without limiting the powers of the Registrar under this Act to issue directives relating to governance of prudentially regulated financial institutions, every prudentially regulated financial institution shall have a board of directors in accordance with the provisions of the Companies Act which shall be responsible for the management or supervision of the management of the business and affairs of the prudentially regulated financial institution.

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(2) The appointment of the directors shall be subject to the approval of the Registrar.

(3) The board of directors shall be headed by a Chairperson who shall be a non-executive director.

Appointment of executive offices and managers

30.—(1) The appointment of all executive officers and managers shall be subject to approval of the Registrar.

(2) All executive officers and managers of a prudentially regulated financial institution shall be resident in Malaŵi after their appointment.

Removal of executive officers or managers

31.—(1) The Registrar may disqualify and require a financial institution to remove from office a person holding the position of executive officer or manager of a prudentially regulated financial institution if the Registrar is of the opinion that on the basis of competence, business record or character, the person holding the position of executive officer and manager is unsuitable to discharge the duties and responsibilities associated with the position.

(2) The Registrar shall notify the prudentially regulated financial institution in writing, his intention to take the disqualification and removal action against the prudentially regulated financial institution's executive officer or manager and give the prudentially regulated financial institution fifteen days to make representations, prior to the finalization of the Registrar's decision.

Prohibition of self-dealing

32. Without limiting the Registrar's power under this Act to issue directives, a prudentially regulated financial institution shall not, directly or indirectly, enter into any transaction with a related party except where the value of the transaction is normal or immaterial, based on the criteria established by the prudentially regulated financial institution and approved by the Registrar.

Related party

33.—(1) A person is a related party of a prudentially regulated financial institution if the person—

(*a*) directly or indirectly owns, controls any class of voting securities of a financial institution of any company that controls the financial institution;

(*b*) is a director or officer of the entity that controls the prudentially regulated financial institution;

(*c*) is a close relation of the person in (*a*) or (*b*) above;

(*d*) is an entity in which a director or officer of the prudentially regulated financial institution or person has control of; or

(*e*) is an entity in which a close relation of a person described in (*d*) has control.

(2) The Registrar may designate any person or any entity in which he has a significant investment, as a related party of the prudentially regulated financial institution where such person or entity has direct or indirect interest in or relationship with the prudentially regulated financial institution that might reasonably be expected to affect the exercise of the best judgement of the prudentially regulated financial institution in respect of a transaction.

PART V
Supervision and Regulation of Financial Institutions

Division 1
Registrar's Directives

Registrar's directives

34.—(1) The Registrar may issue directives with respect to either of the following—

(*a*) the conduct of the affairs of financial institutions, or of the affairs of financial groups, with a view to ensuring that the financial

institutions and groups maintain a sound financial position and do not cause or promote instability in the financial system; or

(*b*) the conduct of the affairs of financial institutions and financial groups with integrity, prudence and professional skill.

(2) Without limiting the power of the Registrar to issue Registrar's directives, the Registrar's directives may make provision with respect to any of the following—

(*a*) fit and proper person requirements for controlling parties, directors, executive officers, managers, auditors and actuaries of financial institutions;

(*b*) the governance of financial institutions and financial groups;

(*c*) capital and liquidity requirements for financial institutions and financial groups:

(*d*) valuation requirements and methods for financial institutions and financial groups;

(*e*) standards of business conduct for financial institutions;

(*f*) requirements, including requirements to provide information, imposed on controlling parties of financial institutions;

(*g*) the use of financial instruments, including derivatives, by financial institutions and financial groups;

(*h*) the use of off balance sheet transactions by financial institutions and financial groups;

(*i*) insurance of financial institutions and, in the case of insurers, re-insurance arrangements;

(*j*) outsourcing by financial institutions;

(*k*) record keeping;

(*l*) preparation and scope of financial, audit and actuarial reports in relation to financial institutions and financial groups;

(*m*) disclosure of information to customers of financial institutions;

(*n*) provision of information about financial institutions and financial groups to the Registrar;

(*o*) the financial position of financial institutions and financial groups;

(*p*) the adequacy of resources, including human resources, technical resources, and financial resources, of, or available to, financial institutions and financial groups;

(*q*) funding and solvency of financial institutions and financial groups;

(*r*) winding-up of prudentially regulated financial institutions;

(*s*) actuarial standards and requirements for financial institutions and financial groups;

(*t*) how prudentially regulated financial institutions manage risks associated with their businesses;

(*u*) requirements or limitations of prudentially regulated financial institutions pertaining to their assets and liabilities;

(*v*) requirements relating to the manner in which audits and actuarial valuations of financial institutions are conducted;

(*w*) requirements relating to the interaction between the Registrar and auditors and actuaries of financial institutions;

(*x*) requirements relating to amalgamation and transfer of business of prudentially regulated financial institutions;

(*y*) requirements relating to the deterrence of financial crime by financial institutions;

(*z*) transactions between a prudentially regulated financial institution and a related party of a prudentially regulated financial institution, including specifying rules and maximum limits for exposure of the prudentially regulated financial institution to a related party;

(*aa*) requirements relating to handling of abandoned items by financial institutions;

(*bb*) requirements relating to the use of rating agencies by financial institutions;

(*cc*) requirements on pricing and other charges including specifying maximum interest spreads and charges by financial institutions; or

(*dd*) requirements aimed at protecting consumers of financial services from exploitation practices by financial institutions.

(3) A specification in this Act or another financial services law of a matter in respect of which the Registrar may issue directives shall not limit, by implication, the power of the Registrar to issue any other directives.

(4) The Registrar shall not issue a Registrar's directive unless—

(*a*) either—

(i) a draft of the directive has been published in a way that the Registrar considers will bring it to the attention of financial institutions to which it will apply;

(ii) those institutions have had at least twenty-one days after that publication to make representations about the matter to the Registrar; and

(iii) the Registrar had regard to those representations in deciding whether to issue the directive; or

(*b*) the Registrar considers on reasonable grounds that it is necessary to issue the directive urgently.

(5) Registrar's directives issued under subsection (4) (*b*) shall cease to have effect at the end of ninety days after they come into force, provided that this subsection shall not prevent the Registrar from acting under that paragraph again.

(6) Subsections (4) and (5) shall apply in respect of amendments to Registrar's directives.

(7) A Registrar's directive shall come into force—

(*a*) on the day on which it is published in the *Gazette*; or

(*b*) if the directive provides that it shall come into force on a later day, on that later day.

(8) Any person who refuses or fails to comply with Registrar's directives that are applicable to him, shall be liable to an administrative penalty.

Division 2

Information, Reports, etc.

Directions to licensed or registered institutions to provide information

35. The Registrar's may at any time give a written direction to—

(*a*) a licensed or registered financial institution;

(*b*) a director or executive officer or manager of, or an auditor of or actuary for, or any other person participating in the business or operations of a licensed or registered financial institution, regardless of the position; or

(*c*) a related party of a licensed or registered financial institution, requiring it to give information to the Registrar or to publish such information as directed by the Registrar relevant to the performance of the Registrar's supervisory functions.

Requirements to provide information

36.—(1) The Registrar may issue Registrar's directives that impose requirements on any of the following—

(*a*) a financial institution;

(*b*) an associate of a financial institution;

(*c*) a person who is or has at any time been a director or manager or any other person who participates or participated in the business or operations of a financial institution;

(*d*) a person who is or has at any time been an auditor of, or actuary for, a financial institution;

(*e*) in the case of a pension fund or an insurer, an actuary or auditor for the fund or the insurer;

(*f*) a controlling party of a financial institution;

(*g*) a related party of a financial institution,

to make reports to the Registrar, and to give information or documents to the Registrar, in connexion with the Registrar's supervisory functions.

(2) Without limiting subsection (1), the directives may do any of the following—

(*a*) require the lodgement of periodic and other returns at such times and such forms as may be determined;

(*b*) require changes in management and control of financial institutions to be reported to the Registrar;

(*c*) require financial difficulties or suspected financial difficulties in financial institutions to be reported to the Registrar;

(*d*) require that contraventions or suspected contraventions of financial services laws in relation to financial institutions to be reported to the Registrar.

(3) Any person who refuses or fails to comply with directives made for the purposes of this section shall be liable to an administrative penalty.

(4) A person who reports to the Registrar—

(*a*) financial difficulties or suspected financial difficulties in a financial institution;

(*b*) a breach or suspected breach of a financial services law in relation to a financial institution;

(*c*) the involvement or the suspected involvement of a financial institution in financial crime,

whether or not the report is required by law, shall not be liable for damages or other sanction in relation to a loss caused by the report unless it is established that the report was made in bad faith.

(5) Any person who subjects another person (in this subsection called a "reporter") to any prejudice in his employment, or penalizes a reporter in any way, on the ground that the reporter made a report of a kind mentioned in subsection (4), even if the report was not required

by law, commits an offence and shall, on conviction, be liable to a fine of K500,000 and to two years imprisonment, and may be liable to the reporter for damages.

Audited statements

37.—(1) A prudentially regulated financial institution shall, within three months after the close of its financial year, submit to the Registrar a copy of its audited financial statements in a prescribed format together with the report of the external auditor appointed in accordance with section 56.

(2) Unless exempted by the Registrar, a copy of the balance sheet and profit and loss account submitted under subsection (1) shall, within four months after the close of its financial year be published in at least two local news papers of wide circulation.

(3) A prudentially regulated financial institution shall exhibit, in a conspicuous place in all its places of business, a copy of the audited financial statements together with the external auditors report.

Exchange of information

38.—(1) Where a financial, monetary or regulatory authority or any other authority requests the Registrar in writing to provide it with assistance in connexion with the exercise of its functions, the Registrar may disclose information, or provide documentation in its possession to the financial, monetary or regulatory authority or any other authority, as the case my be, in accordance with this section.

(2) The Registrar shall not disclose information or provide documentation to the financial, monetary or regulatory authority or any other authority, as the case may be, under subsection (1) unless it is satisfied that the information or documentation is reasonably required by the financial, monetary or regulatory authority or any other authority, as the case may be, for the purposes of fulfilling its functions.

(3) In deciding whether or not to disclose information or provide documentation to the financial, monetary or regulatory authority or any other authority, as the case may be, under subsection (1), the Registrar may take into account—

(*a*) if the authority is from a foreign country, whether reciprocal treatment would be given to the Registrar by the foreign authority;

(*b*) whether the request involves a breach of law;

(*c*) the seriousness of the case and its importance to persons in Malaŵi; and

(*d*) whether it is otherwise appropriate in the public interest to provide the assistance sought.

(4) For the purposes of subsection (3) (*a*), the Registrar may request the financial, monetary or regulatory authority or any other authority, as the case may be, making the request to give a written undertaking, in the form that the Registrar may require to provide corresponding assistance to the Registrar.

(5) Where the financial, monetary or regulatory authority or any other authority, as the case may be, fails to comply with a requirement made under subsection (4), the Registrar may refuse to provide assistance sought by the financial, monetary or regulatory authority or any other authority, as the case may be.

(6) The Registrar shall not exercise its powers under subsection (1) unless it is satisfied that the information or documentation provided to the financial, monetary or regulatory authority or any other authority, as the case may be, will be subject to safeguards.

Division 3
Directions

Directions to licensed or registered financial institutions

39.—(1) If it appears to the Registrar that—

(*a*) a licensed or registered financial institution—

(i) has contravened or is likely to contravene this Act or another financial services law;

(ii) is conducting its affairs in an improper or in a financially unsound way;

(iii) is causing or promoting instability in the financial system, or is likely to do so;

(iv) is or is likely to be involved in financial crime;

(v) has refused to submit to inspection and examination; or

(vi) has provided false information;

(*b*) a direction is necessary to protect the interests of clients of a licensed or registered financial institution,

the Registrar may give the financial institution a written direction as to take an action specified in the direction about the way in which the affairs of the institution are to be conducted, being an action the Registrar considers necessary or desirable to deal with the case in the interests of the institution, the clients of the financial institution or the financial system.

(2) Without limiting subsection (1), a direction may require a financial institution to do any of the following—

(*a*) to comply with the whole or a specified part of a financial services law;

(*b*) to cause a person, such as an auditor, chosen by the Registrar to audit the records of the institution, at the expense of the institution, and give a report to the Registrar;

(*c*) to ensure that a specified director or employee of the institution does not take part in the management or conduct of the business of the institution except as permitted by the Registrar;

(*d*) to appoint a specified person to a specified office, including the office of director, of the institution for a period specified in the direction;

(*e*) to remove an auditor or actuary of the institution from office;

(*f*) not to borrow a specified amount, or any amount;

(*g*) not to pay a dividend;

(*h*) not to pay or transfer an amount to a person, or create an obligation, contingent or otherwise, to do so;

(*i*) not to undertake a financial obligation, contingent or otherwise, on behalf of another person;

(*j*) initiate a cease and desist order, of either temporary or indefinite duration requiring the prudentially regulated financial institution and its management to—

(i) stop the improper or unacceptable practice;

(ii) put a limit to the business activity;

(iii) stop any declaration of dividends; or

(iv) correct or remedy the impact of any impermissible action;

(*k*) remove or suspend any person, including a director, from the management of or participation in the affairs of the prudentially regulated financial institution;

(*l*) impose penalties on the offending member of the management to be paid personally;

(*m*) require the prudentially regulated financial institution to reconstitute its board of directors within such period as shall be specified;

(*n*) withhold approvals on establishment of new branches;

(*o*) require the prudentially regulated financial institution to add such capital as may be specified; or

(*p*) impose any other sanctions as the Registrar may deem appropriate in the circumstances.

(3) A direction not to pay or transfer an amount does not prevent the payment or transfer of money under an order of a court or a process of execution.

(4) A direction may specify the time by which, or period during which, it is to be complied with.

(5) Prior to giving a direction under subsection (1), the Registrar shall give the financial institution concerned written notice of the proposed action—

(*a*) specifying the grounds for it and the facts supporting those grounds; and

(*b*) allowing for the financial institution and the person to ask for a hearing, to be held in private, on the matter within twenty-one days of the notice.

(6) The Registrar, may, upon representations made to it, modify or uphold any direction issued under this section and upon such modification or revocation impose such condition as are necessary.

(7) A financial institution that has been given a direction under this section shall comply with the direction despite anything in its memorandum or articles of association or regulations, and despite any contract or arrangement to which it is a party.

(8) The Registrar may revoke a direction at any time, by written notice to the financial institution concerned.

(9) Any person to whom a direction under subsection (1) has been given who fails or refuses to comply with the direction, shall be liable to an administrative fine.

Directions not ground for terminating contracts or accelerating debt, etc.

40.—(1) A direction under section 39 shall not be a ground on which a person may terminate, repudiate or cancel a contract with the financial institution, accelerate a debt under such a contract, or close out a transaction with the institution, despite any provision to the contrary in any document.

(2) The Court may, on application by a party to a contract mentioned in subsection (1), make an order relating to the effect of the direction on the contract.

(3) Without limiting what an order under subsection (2) may do, the order may require the financial institution—

(*a*) to perform its obligations under the contract; or

(*b*) to compensate the applicant, as specified in the order,

provided however that the order may not require a person to take action that would contravene the direction.

Division 4
Examinations and Investigations

41.—(1) The Registrar may, by instrument in writing, appoint a person to be an examiner. Examiners

(2) An examiner may at any time examine the affairs or any part of the affairs of a person who is, or at any time has been, a licensed or registered financial institution, to check whether the institution—

(*a*) is complying or has complied with the financial services laws and the conditions of its licence or registration; or

(*b*) satisfies or satisfied criteria or standards set out in, or made under, a financial services law; or

(*c*) is or has been involved in financial crime.

(3) For the purpose of such an examination—

(*a*) the examiner may, at any reasonable times, enter any premises used or apparently used by the financial Institution for business purposes including business premises of an associate or any person who controls a financial institution to inspect and make copies, or take extracts from, any relevant records, documents or things in those premises; or

(*b*) require in writing, any associate or a person who controls the financial institution to provide the Registrar with information or documents as may be necessary, including financial statements and other financial records of the associate or person who controls the financial institution within a specified period.

(4) A licensed or registered financial institution, and its directors, executive officers, managers and employees, shall afford an examiner full and free access to the premises, records and documents of the institution as are relevant to the inspection, and shall permit the examiner to interview any officer, director, employee, agent, consultant, auditor, actuary or lawyer for the financial institution.

(5) Any person who, without reasonable excuse, contravenes subsection (4) commits an offence and shall be liable, in the case of—

(*a*) a licensed or registered financial institution, to an administrative penalty; or

(*b*) other entities, upon conviction, to K5,000,000 and to imprisonment for two years.

(6) Any controlling shareholder or director of a financial institution who—

(*a*) being a natural person fails, refuses, omits or neglects to provide information requested under subsection (3) and or (4) of this section or is party to a failure, refusal, omission, or neglect;

(*b*) being a company, fails, refuses, omits or neglects to provide information requested under subsection (3) and or (4) of this section or is party to a failure, refusal, omission, or neglect,

shall cease to be a fit and proper person and shall not remain a controlling shareholder or director in a financial institution.

Investigators

42.—(1) Where the Registrar has reasonable grounds to believe that—

(*a*) an offence under a financial services law has been or may have been committed;

(*b*) a financial institution is not complying with, or has not complied with, a financial services law; or

(*c*) a financial institution is or has been involved in financial crime,

the Registrar may, by instrument in writing, appoint a person to be an investigator in relation to the matter.

(2) In this section—

"relevant evidence", in relation to an investigation into a matter being carried out by an investigator, means anything that may afford evidence relevant to the matter;

"relevant person", in relation to an investigation into a matter being carried out by an investigator, means a person who the investigator has reasonable grounds to believe has relevant evidence in his possession or under his control.

(3) For the purpose of investigating the matter, the investigator may do any of the following—

(*a*) subject to subsection (7), enter any premises used or apparently used by the financial institution or a relevant person for business purposes, at any reasonable time, and search for any record, document or other thing that the investigator considers may be relevant to the investigation;

(*b*) inspect and make copies, or take extracts from, and where necessary in an appropriate case to take possession of, such records, documents or things;

(*c*) give a direction, orally or in writing, to any or all of the following—

(i) the financial institution;

(ii) a relevant person;

(iii) a director or employee of either the financial institution or a relevant person,

to produce the relevant evidence to the investigator as specified in the direction and to submit to an investigation or interrogation;

(*d*) give a direction, oral or written, to a relevant person to do any of the following—

(i) produce to the investigator, at a reasonable time and place specified in the direction, any relevant evidence;

(ii) give the investigator explanations or further information about the relevant evidence;

(iii) attend before the investigator at a reasonable time and place specified by the authorized person, and answer under oath questions relating to the matter.

(4) For the purposes of subsection (3), an investigator may administer an oath.

(5) A financial institution, and its directors, officers and employees, shall afford an investigator full and free access to the premises, records and documents of the institution as are relevant to an investigation under this section.

(6) Any person who, without reasonable excuse, contravenes subsection (5) shall be liable to an administrative penalty.

(7) An investigator shall not enter premises under subsection (3) (*a*) unless—

(*a*) with the consent of the person apparently in charge of the premises at the time of entry; or

(*b*) in accordance with a warrant; or

(*c*) in an emergency, under subsection (10).

(8) A warrant for the purposes of this section is a warrant issued by a magistrate on application by an investigator.

(9) A magistrate shall not issue a warrant under this section unless satisfied that there are reasonable grounds as mentioned in subsection (1).

(10) An investigator may enter premises and exercise powers under this section without the consent mentioned in subsection (7) (*a*) or a warrant only if he believes on reasonable grounds that it is necessary to do so to prevent loss or destruction of, or damage to, relevant evidence.

Power and protections of investigators Cap. 18:01

43. An investigator or an examiner acting under this *Division* shall have all the powers and protections of a Commissioner under the Commissions of Inquiry Act.

Identity cards

44.—(1) The Registrar shall give each examiner and investigator an identity card approved by the Registrar.

(2) An examiner or investigator, when exercising a power conferred by this Act, shall, on reasonable demand, produce his identity card for inspection, but failure to do so shall not make the exercise of the power invalid.

Division 5

Self-Regulatory Organizations

Declaration of Self-Regulatory Organizations

45.—(1) The Registrar may, by notice published in the *Gazette*, declare a person that has functions in relation to a class of financial institutions to be a self-regulatory organization for the purposes of this Act.

(2) The Registrar shall not make a declaration under subsection (1) unless the Registrar has entered into arrangements with the person or body for the performance by the person or body of regulatory or supervisory functions in relation to a class of financial institutions.

(3) The arrangements may, if the Registrar considers it appropriate, involve the delegation of the Registrar's powers under financial services laws to the self-regulatory organization.

(4) Without limiting what the arrangements may provide for, the arrangements shall provide for—

(*a*) the supervision by the Registrar of the performance of the self-regulatory organization's supervisory functions;

(*b*) the approval by the Registrar of any rules, and amendments of rules, of the self-regulatory organization for or with respect to the matters for which the self-regulatory organization has supervisory functions; and

(*c*) the variation or termination of the arrangements if the Registrar is not satisfied that the self-regulatory organization is performing, or is able to perform, its supervisory functions to the satisfaction of the Registrar.

Rules by Self-Regulatory Organizations

46.—(1) A self-regulatory organization may make rules, not inconsistent with the financial services laws, for or with respect to any matters for which the self-regulatory organization has supervisory functions.

(2) Rules made under subsection (1), and amendments of such rules, shall be of no effect unless approved by the Registrar.

Person affected to be heard

47. A self-regulatory organization shall not make a decision under its rules that adversely affects the rights of a person unless—

(*a*) it has given the person an opportunity to make representations to it about the matter; or

(*b*) it considers on reasonable grounds that delay in making the decision may prejudicially affect the protection of clients of financial institutions in relation to which arrangements mentioned in section 45 involving the self-regulatory organization are in force.

Self-Regulatory Organization to inform the Registrar of an appointment of director or executive

48. A self-regulatory organization shall notify the Registrar, as prescribed, as soon as practicable after a person is appointed a director or executive of the organization.

Declaration of Self-Regulatory Organization revocable by Registrar

49.—(1) The Registrar may revoke a declaration under section 45 at any time, but shall not do so unless—

(*a*) the self-regulatory organization consents; or

(*b*) the Registrar has notified the self-regulatory organization of his intention and the reasons for the Registrar's action, and given the organization at least fourteen days to make representations to the Registrar on the matter.

(2) The revocation of a declaration shall not affect a right of a person to apply to the Appeals Committee under section 83 for a review of a decision or action.

Amendment to Self-Regulatory Organization articles Cap. 46:03

50. Notwithstanding any provision in the Companies Act, an amendment to the memorandum or articles of association, or other constituent documents, of a self-regulatory organization shall be of no effect unless approved by the Registrar.

Protection for Self-Regulatory Organizations

51. None of the following—

(*a*) a self-regulatory organization;

(*b*) a director, executive or employee of a self-regulatory organization;

(*c*) a member of a committee of a self-regulatory organization,

shall be liable for any loss sustained by or damage caused to any person as a result of anything done or omitted by them in the performance in good faith of their powers, functions and duties in connexion with the performance of its supervisory functions.

Annual reports by Self-Regulatory Organizations

52.—(1) Each self-regulatory organization shall lodge with the Registrar, within ninety days after the end of the financial year, an annual report which shall include—

(*a*) a report on its exercise of its supervisory functions during the financial year to which the report relates;

(*b*) a report on its corporate governance policy;

(*c*) audited financial statements prepared in accordance with accounting standards, and other requirements, specified in the prudential rules; and

(*d*) a report on any other matter specified in the prudential rules, or in a direction by the Registrar to the organization, for the purposes of this section.

(2) Financial statements to be included in an annual report under subsection (1) shall be audited in accordance with accounting standards, and other requirements, specified in the prudential rules, by an auditor approved by the Registrar.

(3) The Registrar shall not approve an auditor under subsection (2) unless it is satisfied that the auditor has adequate experience, expertise and resources to carry on the audit.

Division 6

Controlling Parties of Prudentially Regulated Financial Institutions

Limitation on shareholding

53.—(1) Shares issued by a prudentially regulated financial institution shall be only of such class as may be approved by the Registrar.

(2) Unless exempted under a financial services law or approved by the Registrar, no—

(*a*) individual, or

(*b*) an entity,

shall own or acquire more than forty-nine per cent of the shares of a prudentially regulated financial institution.

(3) Except as approved by the Registrar under such terms and conditions which the Registrar may determine, a trust shall not own more than ten per cent shares in a prudentially regulated financial institution.

(4) If, at the commencement of this Act, any individual or body corporate controlled by one individual holds more than forty-nine per cent of shares in a prudentially regulated financial institution, that individual or body corporate shall—

(*a*) within a period not exceeding five years, reduce their shareholding in the prudentially regulated financial institution or the body corporate; and

(*b*) within six months after commencement of this Act, present to the Registrar a credible plan of action regarding the reduction of the shareholding.

(5) If any person fails to submit a plan of action as required by subsection 4 (*b*), the Registrar shall limit, with immediate effect, the voting rights that may be exercised by that person by virtue of their shareholding to such percentage of voting rights as the Registrar may by notice determine until such a time as a credible plan is submitted.

Controlling parties to require Registrar's approval

54.—(1) If a person takes a step intending thereby to become a controlling party of a prudentially regulated financial institution, then, unless the Registrar has approved the person's becoming a controlling party of the institution in terms of fit and proper requirements for controlling parties as prescribed in the Registrar's directive, the person contravenes this provision and shall be liable to an administrative penalty.

(2) If—

(*a*) a person is a controlling party of a prudentially regulated financial institution by virtue of the degree of voting power a person has or controls in relation to the institution; and

(*b*) the person takes a step as a result of which the degree of voting power he controls varies by more than the percentage specified in Registrar's directives issued for the purposes of this subsection,

then, unless the Registrar has approved the variation, the person contravenes this provision and shall be liable to an administrative penalty.

(3) If—

(*a*) a person becomes or ceases to be a controlling party of a prudentially regulated financial institution; and

(*b*) at the end of fourteen days after the event, the change has not been reported to the Registrar in accordance with the Registrar's directives,

the person contravenes this provision and shall be liable to an administrative penalty.

(4) If—

(*a*) a person is a controlling party of a prudentially regulated financial institution by virtue of the degree of voting power in relation to the financial institution that he has or controls;

(*b*) the degree of voting power in relation to the financial institution that he has or controls varies by more than the amount prescribed by Registrar's directives issued for the purposes of this subsection; and

(*c*) at the end of fourteen days after the event, the variation has not been reported to the Registrar in accordance with the Registrar's directives,

the person, and the prudentially regulated financial institution, each contravenes this provision and shall be liable to an administrative penalty.

(5) A variation mentioned in subsection (2) or (4) may be either by way of increase or decrease in the percentage of voting power the person has or controls.

PART VI
Auditors

Internal Auditor

55. Without limiting the powers of the Registrar under this Act to issue directives, the management of every prudentially regulated financial institution shall, unless exempted by the Registrar, appoint an internal auditor suitably qualified and experienced in financial services.

Appointment of an external auditor

56.—(1) Without limiting the powers of the Registrar under this Act to issue directives, the shareholders of a prudentially regulated financial institution shall, unless exempted by the Registrar, at their first meeting, and at each succeeding annual meeting, appoint an external auditor to hold office until the close of the next annual meeting:

Provided that the appointment of the external auditor shall be subject to approval of the Registrar.

(2) The prudentially regulated financial institution shall take all necessary steps to ensure that its external auditor is appointed as the external auditor of each of its subsidiaries, with the exception of a subsidiary located in another country where another external auditor may be appointed.

Auditor to report to Registrar

57. The Registrar may require an external auditor to report to him on the extent of the external auditor's procedures in the examination of the annual financial statements of a prudentially regulated financial institution and may direct him to expand the scope of that examination.

Meetings with Registrar

58. The Registrar may, if he considers it necessary, arrange, from time to time, meetings with the external auditor of the prudentially regulated financial institution.

Duties of external auditors to the Registrar

59.—(1) An external auditor appointed under this Act shall inform the Registrar if there are reasonable grounds to believe that—

(*a*) a prudentially regulated financial institution is insolvent, or there is a significant risk that a prudentially regulated financial institution will become insolvent; or

(*b*) a prudentially regulated financial institution has contravened a—

(i) requirement in this Act or any other financial services law; or

(ii) requirement in any regulation, notice or directive issued under this Act or any other financial services law; or

(iii) condition imposed on its licence.

(2) An external auditor shall verify returns and other reports of a prudentially regulated financial institution which the Registrar may, from time to time, require to be verified.

Change of external auditors to be approved by Registrar

60.—(1) No prudentially regulated financial institution shall, before the expiry of the term of the current auditor, remove or change its external auditor except with the prior written approval of the Registrar.

(2) Any person who is an external auditor of a prudentially regulated financial institution shall give adequate written notice to the prudentially regulated financial institution and the Registrar of—

(*a*) his decision to resign from office and the reasons for the resignation;

(*b*) his decision not to seek to be re-appointed and the reasons for that decision.

(3) If an external auditor is removed or resigns from his position before the expiry of his term, the directors shall fill the position as soon as possible for the remainder of the term of the outgoing external auditor.

(4) If the directors fail to fill the vacancy of an external auditor caused by resignation or termination of the external auditor or by the Registrar's rejection of the external auditor nominated by the prudentially regulated financial institution, the Registrar may fill the vacancy for the appropriate term.

PART VII
Regulating Market Practices of Financial Institutions

Application of Part VII

61.—(1) This Part shall apply in addition to the other financial services laws.

(2) If a provision of this Part is inconsistent with a provision of another financial services law the provision of this Part shall prevail to the extent of the inconsistency.

Misleading and deceptive conduct

62.—(1) A person shall not engage in conduct that is misleading or deceptive or is likely to mislead or deceive in relation to financial services, including financial services provided by another person.

(2) Without limiting subsection (1), a person shall not—

(*a*) falsely represent that a financial service is of a particular standard, quality, value or grade;

(*b*) falsely represent that a particular person has agreed to acquire or use a specified financial service;

(*c*) represent that a financial service has use, benefit, sponsorship, approval or performance characteristics that it does not have;

(*d*) represent that the person has. in relation to a financial service, a sponsorship, approval or affiliation it does not have;

(*e*) make a false or misleading representation with respect to the price of a financial service;

(*f*) make a false or misleading representation concerning the need for a specified financial service; or

(*g*) make a false or misleading representation concerning the existence, exclusion or effect of a condition, warranty, guarantee, right or remedy in relation to a financial service.

(3) Any person who contravenes subsections (1) and (2) shall be liable to an administrative penalty.

Prohibited practices

63.—(1) The Registrar may, by notice published in the *Gazette*, determine that a specified practice, pricing arrangement, pricing or fee or charges structure in relation to financial services and products is a prohibited practice if satisfied that the practice or pricing arrangement or structure—

(*a*) is unfair to consumers of financial services, or financial services of a particular kind;

(*b*) will tend to reduce competition in the financial service sector, or in a part of the financial service sector, contrary to the public interest;

(*c*) will result in exploitation of consumers; or

(*d*) is otherwise undesirable.

(2) Before making a determination under subsection (1), the Registrar shall consult any relevant advisory body established under section 95, unless the Registrar is satisfied that it is necessary to make the determination urgently to protect the financial system or the interests of clients and potential clients of financial institutions.

(3) Any financial institution that engages in a prohibited practice in relation to a financial service commits an offence and shall, on conviction, be liable to a fine of K10,000,000 and to imprisonment for

four years, and if the financial institution is not a natural person, then section 112 shall apply.

Disclosure by financial institutions

64. Without limiting the power of the Registrar to issue Registrar's directives, the Registrar's directives may impose requirements with respect to the disclosure of information to clients or other persons about financial services.

PART VIII
Amalgamations Transfers of Business, Statutory Management and Winding-Up of Prudentially Regulated Financial Institutions

Division 1
Compromises and Arrangements and Transfers of Business

Application of Part VIII

65. Without limiting the powers of the Registrar to issue directives, this Part shall apply to all prudentially regulated institutions.

Compromises and arrangements

66.—(1) Each prudentially regulated financial institution concerned in a proposed compromise or arrangement shall ensure that a copy of—

(*a*) all applications to the Court; and

(*b*) all documents to be given to members or creditors of the bodies corporate involved, either in relation to a meeting of members or creditors or otherwise,

are given to the Registrar before the application is made or the documents are sent to the members or creditors.

(2) The Registrar shall be entitled to be heard in any proceeding in the Court in relation to a compromise or arrangement.

(3) The Court shall not make an order under any Act or any order to a similar effect, in relation to a compromise or arrangement unless the Registrar has approved the compromise or arrangement in writing.

(4) Subsection (3) does not apply to an interlocutory or similar order.

(5) The Registrar's directive may make further provision about compromises and arrangements.

Transfer of business

67.—(1) None of the business of a prudentially regulated financial institution, being business in respect of which it is licensed, may be transferred to another person or amalgamated with the business of another person except under a scheme for the transfer or amalgamation that has been approved by the Registrar.

(2) A purported transfer or amalgamation contrary to subsection (1) shall be void.

Division 2

Statutory Management

Appointment of statutory managers

68.—(1) The Registrar may, on request by a prudentially regulated financial institution, place the prudentially regulated financial institution under statutory management on such terms and conditions as the Registrar may determine.

(2) The Registrar may place a prudentially regulated financial institution under statutory management if it appears to the Registrar that—

(*a*) the institution—

(i) is, not complying with a financial services law;

(ii) is, or is likely to be, in an unsound financial position; or

(iii) is, or may be, involved in financial crime;

(iv) is refusing to submit itself to inspection by the Registrar as is required under a financial services law;

(v) its licence has been suspended or revoked; or

(vi) is engaging itself in unsafe and unsound financial practices;

(*b*) the appointment will assist in protecting—

(i) the interests of the clients of the institution;

(ii) the stability, fairness, efficiency and orderliness of the financial system; or

(iii) the safety and soundness of financial institutions.

(3) If a prudentially regulated financial institution is placed under statutory management under this section, the Registrar or any other person appointed by the Registrar shall be the statutory manager of the prudentially regulated financial institution.

(4) An appointment of the statutory manager under subsection (3) shall take effect immediately, and the following shall apply—

(*a*) any lending to any director, officer, owner or any close relation of a director, officer or owner on preferential terms or without adequate security made within one hundred and eighty days prior to the statutory management shall be rescinded; and the director, officer, owner or close relation to the director officer or owner shall immediately refund the moneys advanced and the interest accrued at the going market rate;

(*b*) any transfer of any asset of the financial institution made within one hundred and eighty days before the statutory management shall be annulled and any such assets shall be surrendered to the statutory manager; and

(*c*) any transfer of any asset of the financial institution made within one hundred and eighty days before the statutory management with intent to effect a preference or at less than the appraise book value shall be void.

(5) The Registrar shall as soon as possible after placing a prudentially regulated financial institution under statutory management appoint an auditor at the cost of the prudentially regulated financial institution to make an inventory of the assets and liabilities of the prudentially regulated financial institution and submit a report to the Registrar.

(6) The Registrar shall upon placing a prudentially regulated financial institution under statutory management immediately inform the general public.

Statutory managers

69.—(1) A person shall not be appointed or hold office as a statutory manager of a prudentially regulated financial institution unless the Registrar has approved the person as the statutory manager of the institution.

(2) The statutory manager of a prudentially regulated financial institution—

(*a*) shall have the management of the affairs of the institution to the exclusion of its directors and other managers;

(*b*) shall have power to repudiate a contract to which the institution is a party, but only if the statutory manager considers the contract detrimental to the interests of clients of the institution; and

(*c*) shall be entitled to receive such remuneration from the institution as the Registrar determines in consultation with the Board of the prudentially regulated financial institution.

(3) A repudiation of a contract under subsection (2) (*b*) shall not affect any rights of the parties that have accrued before the repudiation.

(4) The statutory manager of a prudentially regulated financial institution shall manage the affairs of the institution with the greatest economy possible compatible with efficiency and, as soon as practicable, shall report to the Registrar—

(*a*) what steps shall be taken to ensure that the institution—

(i) complies with the financial services laws;

(ii) will be financially sound; or

(iii) will not be involved in financial crime;

(*b*) if the statutory manager considers that it is not practicable to take steps as mentioned in paragraph (*a*)—

(i) whether steps shall be taken to transfer the business of the institution to another appropriate person and, if so, to whom and on what terms; and

(ii) whether the institution shall be wound-up.

(5) A Statutory Manager may for the purpose of exercising his duties under this Act require any person who has at any time been an officer or director of the prudentially regulated financial institution to provide the statutory manager with information relating to the business of the prudentially regulated financial institution.

(6) Any person who refuses, neglects or wilfully fails to provide any information requested under subsection (5) commits an offence and shall, on conviction, be liable to a fine of K5,000,000 and to imprisonment for two years.

(7) The statutory manager of a prudentially regulated financial institution shall comply with written directions from the Registrar in relation to his functions.

(8) The statutory manager of a prudentially regulated financial institution may apply to the Court at any time for directions.

(9) The Registrar may, at any time, remove a statutory manager from office, and appoint a replacement.

(10) The statutory manager of a prudentially regulated financial institution shall not be liable for a loss that the institution suffers unless it is established that the loss was caused by the statutory manager's fraud, dishonesty, negligence or wilful failure to comply with the law.

Legal proceedings against a prudentially regulated financial institution under statutory management

70.—(1) A person shall not commence or continue with any legal proceeding in any court against a prudentially regulated financial institution while the prudentially regulated financial institution is under statutory management—

(*a*) except with leave of the Court, on grounds that he would be caused exceptional hardship if leave were not granted; or

(*b*) with the prior written consent of the Registrar.

(2) An application for leave under subsection (1) shall not be filed unless the Registrar receives twenty-one days notice of the intention to apply.

(3) The Registrar may apply to the Court to be joined as a party to the proceedings for leave.

(4) A party to a contract with a prudentially regulated financial institution shall not be relieved of his obligations on the ground that the prudentially regulated financial institution is under statutory management.

(5) All costs relating to statutory management of a prudentially regulated financial institution shall be payable by the prudentially regulated financial institution.

Period of statutory management

71.—(1) If a statutory manager is appointed to a prudentially regulated financial institution, the Registrar shall ensure that such a statutory manager remains appointed until the earlier of the times when—

(*a*) the Registrar is satisfied that the grounds for making the appointment no longer exist; or

(*b*) an application is made by or with the approval of the Registrar for the institution to be wound-up on the basis that it considers that the institution is insolvent and is unlikely to return to solvency within a reasonable time.

(2) Without limiting the powers of the Registrar in subsection (1), the Registrar may close the prudentially regulated financial institution where the period under which a prudentially regulated financial institution has been under statutory management has exceeded one hundred and twenty days.

Division 3

Winding-Up

Winding-up of prudentially regulated financial institutions

72.—(1) A resolution, demand or other step to wind-up a prudentially regulated financial institution shall be of no effect unless approved by the Registrar.

Cap. 46:03

(2) An application to the Court for an order to wind-up a prudentially regulated financial institution, whether under the Companies Act or under another law, shall not be made except where it is made by the Registrar, or with the Registrar's approval.

(3) The Registrar shall not give approval under subsection (2) unless the prudentially regulated financial institutions licence has been or is to be revoked and that the winding-up shall be on such terms and conditions as the Registrar may determine.

(4) The Registrar may apply to the Court for an order that a prudentially regulated financial institution be wound-up if the Registrar is satisfied that the institution is insolvent and will not be restored to solvency within a reasonable period.

(5) The order granted under subsections (2) and (4) shall be made public through print and electronic media in Malaŵi.

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(6) Notwithstanding any provision in the Companies Act, where any proceeding for the winding-up of a prudentially regulated financial institution is commenced, the Registrar or any other person appointed or approved by the Registrar shall be the liquidator of the prudentially regulated financial institution.

(7) The remuneration of the liquidator appointed under this section, the cost and expenses of his establishment, and the costs and expenses of the liquidation shall be met out of the assets of the prudentially regulated financial institution under liquidation.

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(8) Notwithstanding the provisions of the Companies Act, where a prudentially regulated financial institution is in liquidation, whether voluntary or involuntary, the ranking of claims shall be as follows—

(*a*) liquidator for all liquidation costs;

(*b*) depositors, policy holder claims and pension member benefits;

(*c*) secured creditors;

(*d*) employees for all wages, salaries and compensation due net of any liabilities to the financial institution;

(*e*) Government for all taxes, duty, rates and rent in respect of any period prior to the commencement of winding-up; and

(*f*) other creditors in *pari passu*.

PART IX

Enforcement of Financial Services Laws

Enforceable undertakings

73.—(1) The Registrar may accept a written undertaking from a person in connexion with a matter in relation to which the Registrar has a supervisory function.

(2) The person may withdraw or vary the undertaking at any time, but only with the Registrar's consent.

(3) If the Registrar considers that the person has breached the undertaking, the Registrar may apply to the Court for an order under subsection (4).

(4) If the Court is satisfied that the person has breached the undertaking, the Court may make all or any of the following orders—

(*a*) an order directing the person to comply with the undertaking;

(*b*) an order directing the person to do a specified act, or refrain from doing a specified act, for one or more of the following purposes—

(i) to remedy the effects of the breach;

(ii) to compensate persons who have suffered loss because of the breach; or

(iii) to ensure that the person does not commit further breaches of the undertaking or of a financial services law; and

(*c*) any other order that the Court considers appropriate.

(5) The Registrar may publish a copy of the undertaking.

(6) The Registrar shall delete from the copies information that the person who gave the undertaking has asked not to be published, but only if the Registrar is satisfied that the information—

(*a*) is confidential information that has a commercial value that would be diminished if it were to be published;

(*b*) consists of personal details of an individual; or

(*c*) should not be disclosed because it would be against the public interest to do so.

(7) If information has been deleted from a copy of an undertaking under subsection (6), the copy shall include a note stating that some information has been deleted.

Compensation for loss from breach of financial services laws

74.—(1) Any person who suffers loss as a consequence of a contravention of a financial services law by another person (in this section called a "claimant") may recover the amount of the loss by action in a court against any of—

(*a*) the other person; and

(*b*) any person who was knowingly involved in the contravention.

(2) The Registrar may institute an action of a kind mentioned in subsection (1) on behalf of one or more claimants if in its opinion it is proper to do so. Such an action is in this section called a "representative action".

(3) An action under subsection (1) or (2) may be commenced within twenty-one days after the day on which the cause of action that relates to the contravention occurred.

(4) In a representative action, the Court may make any appropriate order for the conduct of the action, including orders—

(*a*) for advertising the institution of the action;

(*b*) for the identification of claimants; and

(*c*) in respect of claimants who do not wish to pursue their claims through the action.

(5) If—

(*a*) the Registrar institutes a representative action in respect of a loss suffered by a claimant; and

(*b*) the claimant, either before or after the representative action is instituted but before it is determined, institutes an action under this section in respect of the same loss, the claimant shall not be entitled to recover in the representative action, and the Court may make any appropriate order for the conduct of the relevant actions.

(6) The Registrar shall have the conduct of a representative action to the exclusion of the claimants concerned, and may withdraw, abandon, settle or compromise the action, but a settlement or compromise of the action shall be subject to the approval of the Court.

(7) In a representative action, if the Court orders the payment of compensation, it may, in addition, if the Court thinks fit, order a defendant to pay—

(*a*) a penalty for punitive purposes not exceeding one and a half times the amount of the profit or gain that may have accrued to the defendant by the contravention; and

(*b*) interest on any amount ordered to be paid.

(8) In giving judgment in a representative action, or in approving a compromise or settlement in relation to a representative action, the Court shall make such orders for the publication of the judgment and any related matter in the *Gazette* and otherwise as the Court considers appropriate.

(9) A judgment in a representative action shall bind all claimants other than—

(*a*) those that the Court has by order excluded from the action, under subsection (4) (*c*) or otherwise; and

(*b*) claimants mentioned in subsection (5).

(10) Any amount recovered by the Registrar in a representative action shall be deposited into a specially designated account, and thereupon—

(*a*) the Registrar shall be entitled, as a first charge against the account, to reimbursement of all expenses reasonably incurred in bringing the representative action and in administering the distributions made under this subsection;

(*b*) the Registrar shall take reasonable steps to identify claimants and determine the amount of their losses in connexion with the contravention, including publishing the order of the Court; and

(*c*) the balance of the amount recovered, after making provision for expenses mentioned in paragraph (*a*), ("balance") shall be distributed among the claimants so that each claimant is paid the amount worked out using the formula:

$$\frac{\text{amount of the claimant's loss}}{\text{total amount or all claimants' losses}} \times \text{balance}$$

(11) A person knowingly involved in the contravention concerned is not entitled to a distribution under subsection (10).

(12) Distributions may be paid in stages.

(13) The surplus of the distributable balance not paid at the end of three years after the first payment under subsection (10) shall become funds of the Registrar.

Administrative penalties

75.—(1) If the Registrar is satisfied on reasonable grounds that a person has contravened a financial services law, the Registrar may impose administrative penalties on the person by doing one or more of the following—

(*a*) giving the person a written warning;

(*b*) directing the person to do a specified act, or refrain from doing a specified act, for one or more of the following purposes—

(i) to remedy the effects of the contravention;

(ii) to compensate persons who have suffered loss because of the contravention;

(iii) to ensure that the person does not commit further contraventions of financial services laws;

(*c*) requiring the person to pay a monetary penalty as may be determined in the Registrar's directives or as prescribed by the Minister.

(2) Without limiting subsection (1) (*b*), a direction may require the establishment of compliance programmes, corrective advertising or, in the case of a direction to a financial institution, changes in the management of the institution.

(3) A person on whom an administrative penalty has been imposed and who fails or refuses to comply with the administrative penalty commits an offence and shall, on conviction, be liable to a fine of K5,000,000 and to imprisonment for four years.

(4) In addition to subsection (3), where the administrative penalty imposed by the Registrar is a monetary penalty and the person on whom the monetary penalty has been imposed does not pay the monetary penalty for a period of more than twenty-one days from the date of first demand in writing by the Registrar, the amount in respect of the monetary penalty shall be recoverable by the Registrar as a civil debt.

Court Orders

76.—(1) Where a person is engaging, or proposes to engage, in conduct in contravention of a financial services law, the Court may, on application by the Registrar or a person authorized by the Registrar, make orders for the purposes of enforcing the financial services law.

(2) Without limiting subsection (1), an order may direct the person to do a specified act, or refrain from doing a specified act, for one or more of the following purposes—

(*a*) to remedy the effects of the contravention;

(*b*) to preserve the assets of a relevant financial institution;

(*c*) to compensate persons who have suffered loss because of the contravention; and

(*d*) to ensure that the person does not commit further contraventions of financial services laws.

(3) The Court may make an interim order pending the determination of an application, but so however that the Registrar shall be required, as a condition of the making of an interim order, to give an undertaking as to damages.

(4) The power of the Court under this section may be exercised—

(*a*) whether or not it appears to the Court that the person intends to engage again, or to continue to engage, in conduct of that kind; and

(*b*) whether or not the person has previously engaged in conduct of that kind.

(5) This section is in addition to any other power of the Court.

Exemptions

77.—(1) The Registrar may, by notice published in the *Gazette*—

(*a*) exempt a financial institution wholly or partly, as specified in the notice, from a financial services law; or

(*b*) declare that a financial services law applies in relation to a financial institution as modified in the declaration.

(2) An exemption or declaration may—

(*a*) apply generally or to a specified case or class of cases; or

(*b*) apply unconditionally or subject to specified conditions.

PART X
Review of Decisions

Division 1
Financial Services Appeals Committee

Financial Services Appeals Committee

78.—(1) There is hereby established a committee, to be called the Financial Services Appeals Committee.

(2) The Appeals Committee shall have the following functions—

(*a*) reviewing decisions made by the Registrar in accordance with the financial services laws;

(*b*) exercising and performing functions conferred on it by any other law.

(3) The appellant shall meet the costs and expenses of the Appeals Committee in the event that his appeal has not been successful, otherwise the Registrar shall meet the costs and expenses as supervisory expenditure.

Membership

79.—(1) The Appeals Committee shall consist of three members, appointed by the Minister, one of whom shall be designated as Chairperson.

(2) A person shall not be appointed as a member of the Appeals Committee unless the Minister is satisfied that the person is a legal practitioner of at least ten years standing, or has at least ten years experience in the financial services industry.

(3) Subject to this Act, a member of the Appeals Committee shall hold office for three years and shall be eligible for re-appointment.

(4) A member of the Appeals Committee shall be entitled to be paid fees and allowances as the Minister determines.

(5) The Chairperson of the Appeals Committee may co-opt other persons to advise the Appeals Committee in respect of a particular matter, on terms approved by the Chairperson. Such a person shall not by reason only of being co-opted, be a member of the Appeals Committee.

Vacation of office

80.—(1) A member of the Appeals Committee may resign office by one month notice in writing to the Minister.

(2) A member of the Appeals Committee shall cease to hold office if he—

(*a*) is disqualified in Malaŵi from acting as a director or official of a body corporate under a law relating to corporations or to the provision of financial services;

(*b*) comes under a legal disability;

(*c*) is convicted in Malaŵi of an offence of a kind referred to in section 7 (*f*) of the Reserve Bank of Malaŵi Act; Cap. 44:02

(*d*) is removed from office in Malaŵi as mentioned in section 7 (*g*) of the Reserve Bank of Malaŵi Act; or Cap. 44:02

(*e*) is adjudged bankrupt by a competent court in Malaŵi or, in Malaŵi, makes an arrangement or composition with, or has suspended payment to, his creditors.

(3) The Minister may, by notice, terminate the appointment of a member of the Appeals Committee on the ground that—

(*a*) without reasonable excuse, the member fails to perform the duties of his office;

(*b*) the member, in the opinion of the Minister, is unfit to be a member because of misconduct or default in the discharge of his duties as a member;

(*c*) the member is unfit to discharge his duties as a member because of a mental or physical infirmity;

(*d*) the member has been disqualified, outside Malaŵi, from acting as a director or official of a body corporate under a law relating to corporations or to the provision of financial services;

(*e*) the member has been adjudged bankrupt by a competent court outside Malaŵi or, outside Malaŵi, makes an arrangement or composition with, or has suspended payment to, his creditors;

Cap. 44:02

(*f*) the member has been convicted outside Malaŵi of an offence of a kind referred to in section 7 (*f*) of the Reserve Bank of Malaŵi Act; or

Cap. 44:02

(*g*) the member has been removed from office outside Malaŵi as mentioned in section 7 (*g*) of the Reserve Bank of Malaŵi Act.

Disclosure of interest

81.—(1) A member of the Appeals Committee who has or acquires an interest, pecuniary or otherwise, that may conflict with the proper performance of the member's functions in relation to a particular matter to be considered by the Appeals Committee—

(*a*) shall disclose the interest to the Chairperson of the Appeals Committee, or where the member is the Chairperson, the disclosure shall be to the Minister; and

(*b*) shall not participate as a member in any proceeding of the Appeals Committee in relation to the matter without the approval of the Minister.

(2) The Minister shall not give approval under subsection (1) (*b*) unless satisfied on reasonable grounds that the interest shall not prevent the member from acting impartially in relation to the matter.

Appeal to the Appeals Committee

82. Any person aggrieved by a decision of the Registrar to withdraw, cancel, suspend or revoke a licence or registration, or to refuse a licence application, or to impose a direction or administrative penalty under this

Act may appeal to the Appeals Committee within twenty-one days after being notified of the Registrar's decision.

Restriction on altering decisions under review

83. After an application is made to the Appeals Committee for a review of a decision, the decision may not be altered, set aside and a new decision made except—

(*a*) by the Appeals Committee; or

(*b*) with the consent of the parties to the proceeding and with the consent of the Appeals Committee.

Division 2
Conduct of Review Proceedings

Notice of, and parties to, review proceedings

84.—(1) The Chairperson of the Appeals Committee shall ensure that—

(*a*) the body whose decision is the subject of an application for review is properly notified of the application; and

(*b*) the Registrar is notified of all applications for review.

(2) The Registrar shall be entitled to be a party to the review proceeding for any decision.

(3) Parties to proceedings before the Appeals Committee may have legal representation.

Procedure

85.—(1) In a proceeding before the Appeals Committee—

(*a*) the procedure of the Appeals Committee shall be, subject to this Act, the regulations and any relevant financial services law, within the discretion of the Appeals Committee; and

(*b*) the proceeding shall be conducted with as little formality and technicality, and with as much expedition, as the requirements of the relevant financial services law and a proper consideration of the matters before the Appeals Committee permit; and

(*c*) the Appeals Committee shall not be bound by the rules of evidence but may inform itself on any matter as it thinks appropriate.

(2) The Chairperson of the Appeals Committee may give directions in relation to the proceeding, including directions—

(*a*) requiring a party to give further information;

(*b*) requiring the person who made the decision or the Registrar to give a statement of the grounds on which the application will be resisted at the hearing; and

(*c*) requiring a party to give a statement of matters or contentions it will rely on; and

(*d*) requiring the parties to hold a conference involving a member of the Appeals Committee.

(3) The Chairperson may vary or revoke a direction.

(4) At the hearing of a proceeding before the Appeals Committee, unless the parties otherwise agree, evidence shall not be given, and statements shall not be made, concerning anything done or said at a conference held under a direction under subsection (2) (*d*).

Hearings

86.—(1) Subject to this section, the Appeals Committee shall hold a hearing on an application for review of a decision unless the Chairperson of the Appeals Committee determines that the matter can be adequately determined in the absence of the parties and the parties agree.

(2) The Appeals Committee may hold a hearing or part of a hearing in private for any proper reason, and may give directions prohibiting or restricting the publication of evidence given in the hearing, whether orally or in writing.

(3) Any person who refuses or fails to comply with a direction under subsection (2) commits an offence and shall, on conviction, be liable to a fine of K5,000,000 and to imprisonment for two years, and if the person is not a natural person, then section 112 shall apply.

Rights of parties to review proceedings

87.—(1) Each party to a proceeding before the Appeals Committee shall be given a reasonable opportunity to present its case and, in particular, to inspect documents which the Appeals Committee proposes to consider in determining the matter.

(2) In considering an appeal, the Appeals Committee shall consider—

(*a*) the record considered by the Registrar;

(*b*) any written submissions the aggrieved person wishes to submit;

(*c*) any rebuttal materials the Registrar wishes to submit in response to submissions in paragraph (*b*) above; and

(*d*) the decision of the Registrar,

unless the Appeals Committee so determines in its sole and absolute discretion that there shall be no presentation of witnesses or other testimony.

Powers of the Appeals Committee

88.—(1) For the purposes of determining an application for review, the Appeals Committee shall have all the powers and authorities of the Registrar or the self-regulatory organization concerned and may—

(*a*) affirm the decision under review;

(*b*) vary the decision under review; or

(*c*) set aside the decision under review and—

(i) make a decision in substitution for the decision so set aside; or

(ii) remit the matter to the Registrar or the self-regulatory organization concerned for reconsideration in accordance with the decision of the Appeals Committee.

(2) A decision of the Appeals Committee shall be made by a majority of the votes of the members forming the Appeals Committee for the particular matter.

(3) For the purpose of reviewing a decision, the Appeals Committee may—

(*a*) take evidence on oath or affirmation;

(*b*) proceed in the absence of a party who has had reasonable notice of the proceeding; or

(*c*) adjourn the proceeding from time to time.

(4) The Chairperson may, for the purposes of a hearing, summon a person to appear before the Appeals Committee to do either or both—

(*a*) give evidence; or

(*b*) produce books, documents or things in the possession, custody or control of the person or persons named in the summons that are mentioned in the summons;

(5) The Chairperson may, for the purposes of a hearing—

(*a*) require a person appearing before the Appeals Committee to give evidence either to take an oath; and

(*b*) administer an oath.

Rights of legal practitioners, witnesses, etc.

89.—(1) A legal practitioner or other person appearing before the Appeals Committee on behalf of a party shall have the same protection and immunity as a legal practitioner has in appearing for a party in proceedings in the Court.

(2) Subject to this Act, a person summoned to attend or appearing before the Appeals Committee as a witness shall have the same protection, and shall be, in addition to the penalties provided by this Act, subject to the same liabilities, as a witness in proceedings in the Court.

Summons

90.—(1) A person served with a summons to appear as a witness before the Appeals Committee shall not, without reasonable excuse—

(*a*) fail to attend as required by the summons; or

(*b*) fail to appear and report himself or herself from day to day unless excused, or released from further attendance, by a member.

(2) A person served with a summons under this Part to produce a book, document or thing shall not, without reasonable excuse, fail to comply with the summons.

(3) A person appearing as a witness before the Appeals Committee shall not, without reasonable excuse—

(*a*) when required by the Appeals Committee to take an oath or make an affirmation, refuse or fail to do so;

(*b*) refuse or fail to answer a question that he or she is required to answer before the Appeals Committee; or

(*c*) refuse or fail to produce a document that he or she was required to produce by a summons under this Part.

(4) A person appearing as a witness before the Appeals Committee shall not give evidence that, to his knowledge, is false or misleading.

(5) Any person who contravenes subsection (1), (2), (3) or (4) commits an offence and shall, on conviction, be liable to a fine of K5,000,000 and to imprisonment for two years, and if it is not a natural person, then section 112 shall apply.

Decisions of Appeals Committee

91.—(1) A decision of the Appeals Committee shall be in writing, and shall include the reasons for the decision, and a statement of its findings on material questions of fact and a reference to the evidence or other material on which those findings were based.

(2) The Appeals Committee shall cause a copy of its decision to be served on each party to the proceeding.

(3) Subject to subsection (4), a decision of the Appeals Committee shall come into operation when it is given.

(4) The Appeals Committee may specify in a decision that the decision is not to come into operation until a later date specified in the decision and, where a later date is so specified, the decision shall come into operation on that date.

(5) Unless the decision of the Registrar is not supported by reasonable evidence, the decision shall be affirmed.

Appeal from decisions of Appeals Committee

92.—(1) A party to a proceeding before the Appeals Committee may appeal to the Court, on a question of law, from any decision of the Appeals Committee in that proceeding.

(2) An appeal shall be instituted no later than twenty-one days after notice of the Appeals Committee's decision was served on the party.

(3) The Court may hear and determine such appeals, and may make such orders as it thinks fit to dispose of the appeal.

Division 3
Complaints Resolution Schemes

Registrar to promote complaint resolution scheme

93.—(1) The Registrar shall promote and encourage the development and implementation, by financial institutions, of appropriate schemes to assist in informally resolving complaints by clients of financial institutions in relation to financial services provided by financial institutions.

(2) The Registrar may give a written direction to financial institutions of a particular kind, or a self-regulatory organization, requiring them or it to develop and implement a complaint resolution scheme.

Requirements for complaint resolution schemes

94.—(1) A complaint resolution scheme shall be consistent with the following requirements—

(*a*) the objective of the scheme shall be to facilitate the resolution of complaints by clients of the relevant financial institutions about the financial services covered by the scheme that are provided by those financial institutions in an informal and quick manner;

(*b*) any such client shall be entitled to make and pursue a complaint under the scheme without charge;

(*c*) the scheme shall encourage conciliation of complaints;

(*d*) all complaints under the scheme that are not resolved by conciliation shall be determined by a person who is independent of the financial institution the subject of the complaint;

(*e*) the procedures of the scheme in dealing with a complaint shall be as informal as is practicable, consistent with a fair resolution of the complaint;

(*f*) a determination under paragraph (*d*) shall bind the financial institution concerned but not the client.

(2) A complaints resolution scheme shall not be implemented unless the Registrar has approved the scheme.

(3) A complaints resolution scheme shall not be amended unless the Registrar has approved the amendment.

PART XI

Miscellaneous

Advisory bodies

95. The Registrar may establish advisory bodies to advise him in relation to the performance of his supervisory functions.

Guidelines and bulletins

96. In addition to his other powers under this Act and the other financial services laws, the Registrar may issue guidelines, bulletins and other information as he may consider desirable in relation to the administration of financial services laws.

Holding out

97. Where the Registrar has information indicating that a person is conducting any class of a financial services business or holding himself out as a financial institution without being licensed as a financial institution, the Registrar shall investigate the matter and take appropriate action including informing the general public of the same and petitioning the Court without first informing the person concerned.

Indemnity

98.—(1) The Registrar and any other officer, employee of the Registrar or any other person acting on behalf of the Registrar shall not be liable for damages for any act or omission done in good faith under this Act or any financial services law, unless it is proved that the act or omission was done in bad faith.

(2) No action shall lie against a financial institution, or an officer, employee or agent of a financial institution in relation to provision of information by the financial institution to the Registrar or any person approved by the Registrar in compliance with a financial services law unless it is proved that the provision of information was done in bad faith.

Confidentiality

99.—(1) Except when in the performance of his duties or the exercise of his functions, or when required to do so by any court or under any law, neither any examiner or investigator appointed under sections 41 and 42, respectively, nor any director, manager, officer or employee or agent of the Registrar, shall not disclose any information relating to the business of any financial institution which he has acquired in the performance of his duties or the exercise of his functions.

(2) Notwithstanding subsection (1), the Registrar may publish in whole or in part, in such form and at such time as he may deem fit, any information or data furnished or collected under this Act.

Customer due diligence

100.—(1) A financial institution in Malaŵi shall—

(*a*) demand proof of and record the identity of its clients or customers, whether usual or occasional, when establishing business relations or conducting transactions, and in particular, when performing large cash transactions; and

(*b*) together with its directors, officers and employees, report promptly to the Financial Intelligence Unit any suspected money laundering activity related to any client or customer of the financial institution.

(2) For purposes of this Act, "money laundering" shall cover all activities and procedures designed to alter the identity of illegally obtained money so that it appears to have originated from a legitimate source.

(3) Any director, manager, officer or employee of a financial institution who makes or permits to be made any transaction including the opening of an account—

(*a*) without taking all reasonable steps to establish the true identity of the person concerned in the transaction;

(*b*) when he doubts or has reason to doubt the authenticity of documents and the truth of written or oral statements material to the transaction; or

(*c*) when he knows or has reason to suspect that any of the funds involved in the transaction have been obtained by any party as the direct or indirect result of an activity that is illegal inside or outside Malaŵi,

commits an offence, and shall, on conviction, be liable to a fine of K5,000,000 and to imprisonment for two years.

Offences relating to failure to answer questions

101. Any person who, without reasonable excuse, fails to answer a question put to the person by the Registrar, an examiner or an investigator in connexion with the Bank's supervisory functions commits an offence and, on conviction, shall be liable to a fine of K5,000,0000 and to imprisonment for two years.

Offences relating to misleading answers and information

102.—(1) A person shall not—

(*a*) make a statement to the Registrar, examiner or investigator;

(*b*) give information to the Registrar, examiner or investigator; or

(*c*) produce or give a document to the Registrar, examiner or investigator;

(*d*) authorize or permit another person to make a statement or give information or a document to the Registrar, examiner or investigator,

in connexion with the Registrar's supervisory functions or for any purpose connected with a financial services law if he knows or ought reasonably to know that the statement, information or document is misleading in a material respect, including by omission.

(2) Any person who contravenes subsection (1) commits an offence and shall, on conviction, be liable to a fine of K5,000,000 and to imprisonment for two years.

Offences relating to failure to comply with directions

103. Any person who, without reasonable excuse, fails to comply with a direction, order or requirement given to the person under a financial services law, shall be liable to administrative penalties.

Self-incrimination

104.—(1) Any person who is required under a financial services law to answer a question or produce a document or thing shall not be excused from the requirement for reason only that compliance may incriminate him or expose him to a penalty.

(2) Notwithstanding subsection (1), if the person objects on that ground to complying, the answer, document or other thing given in compliance with the requirement shall not be admissible against him in a prosecution for an offence, except a prosecution for an offence of failing or refusing to comply with the requirement, or giving false or misleading information in purported compliance with the requirement.

Offences relating to holding out as licensed person

105. Any person who—

(*a*) not being licensed or registered as a financial institution, describes or holds himself out as so licensed or registered;

(*b*) not being licensed or registered as a financial institution of a particular kind, describes or holds himself out as being a financial institution of that kind;

(*c*) permits another person to do anything referred to in paragraph (*a*) or (*b*),

commits an offence and shall, on conviction, be liable to a fine of K10,000,000 and to imprisonment for four years.

Destroying documents

106. Any person who destroys, falsifies, conceals or disposes of, or causes or permits the destruction, falsification, concealment or disposal of, a document or thing that the person knows or ought reasonably to know is relevant to the performance or exercise of the Registrar's functions or powers commits an offence, and shall, on conviction, be liable to a fine of K10,000,0000 and to imprisonment for four years.

Obstruction

107.—(1) Any person who, without lawful excuse, obstructs or hinders—

(*a*) the Registrar;

(*b*) a member or employee of the Registrar; and

(*c*) an examiner or an investigator,

in the performance of the Registrar's supervisory functions commits an offence and shall, on conviction, be liable to a fine of K10,000,000 and to imprisonment for four years.

(2) Any person who, without lawful excuse, obstructs or hinders a statutory manager in the performance of his functions under this Act commits an offence and shall, on conviction, be liable to a fine of K10,000,000 and to imprisonment for four years.

Preventing compliance

108. Any person who knowingly hinders or prevents compliance with a direction, order or requirement given under a financial services law commits an offence and shall, on conviction, be liable to a fine of K10,000,000 and to imprisonment for four years.

Extension of time

109. The Registrar may, on application, extend any time for compliance with, or a period prescribed by, a provision of a financial services law, and may do so before or after the time for compliance or the period prescribed has passed.

Certificate by Registrar

110. A statement in writing signed by the Registrar—

(*a*) that a specified person was or was not, at a specified time, licensed or registered; or

(*b*) that a specified person was or was not, at a specified time, an examiner or an investigator,

shall be admissible evidence of the facts and matters stated in the certificate and, unless the contrary is established, shall be conclusive as to those facts and matters.

Offences by bodies corporate relating to state of mind

111.—(1) Where it is necessary to establish, for the purposes of a financial services law, the state of mind of a body corporate in relation to particular conduct, it is sufficient to show that—

(*a*) the conduct was engaged in by a director, employee or agent of the body corporate within the scope of his actual or apparent authority; and

(*b*) the director, employee or agent had the state of mind.

(2) A reference in subsection (1) to the state of mind of a person includes a reference to—

(*a*) the knowledge, intention, opinion, belief or purpose of the person; and

(*b*) the person's reasons for the intention, opinion, belief or purpose.

(3) A reference in this section to engaging in conduct includes a reference to failing or refusing to engage in conduct.

Offences by bodies corporate relating to liability of directors

112. Where an offence against a provision of this Act or another financial services law is committed by a body corporate, each director, employee or an agent of the body corporate shall also be guilty of the offence and on conviction shall be liable to the same penalty unless it is established that the director took reasonable precautions and exercised due diligence to avoid the commission of the offence.

Penalties for offences by bodies corporate

113. Notwithstanding any other provisions of this Act, where a body corporate is convicted of an offence against a financial services law, the court may, if the court thinks fit, impose a pecuniary penalty not exceeding an amount equal to five times the amount of the maximum pecuniary penalty that could be imposed by the court on an individual convicted of the same offence.

Offences relating to acts done partly outside Malaŵi

114. When an act that, if wholly done within Malaŵi, would be an offence against a financial services law, is done partly within and partly beyond Malaŵi, every person who within Malaŵi does any part of such act may be tried and punished under the financial services law in the same manner as if such act had been done wholly within Malaŵi.

Inconsistency with the Companies Act Cap. 46:03

115. Wherever the provisions of this Act are inconsistent with the provisions of the Companies Act, the provisions of this Act shall prevail to the extent of the inconsistency.

Regulations

116.—(1) The Minister may, in consultation with Registrar, make regulations for the purposes of this Act and the other financial services laws respecting any matter for which the power to make regulations or Registrar's directives has not been conferred by another provision of this Act or a provision of a financial services law.

(2) Without limiting subsection (1), regulations made under subsection (1) may provide for anything that by this Act or another financial services law may or is to be prescribed and generally for the effective administration of this Act.

(3) For the avoidance of doubt, the power to make regulations in this Act or another financial services law does not extend to making regulations about a matter in respect of which Registrar's directives may be issued.

PART XII
Transitional and Consequential Provisions

Transition period

117.—(1) On commencement of this Act, all financial institutions shall meet the requirements of this Act.

(2) The Registrar may, upon application by any financial institution, or by his own initiative allow a transition period to facilitate compliance with this Act.

SUBSIDIARY LEGISLATION

FINANCIAL SERVICES (SUPERVISORY LEVY FOR BANKS) REGULATIONS

G.N. 26/2012

under s. 13

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7. Penalty interest
8. Administrative penalty
9. Revocation

PART I
PRELIMINARY

1. These Regulations may be cited as the Financial Services (Supervisory Levy for Banks) Regulations. Citation

2. In these Regulations, unless the context otherwise requires— Interpretation

"bank" has the meaning ascribed to that term in the Banking Act; Cap. 44:01

"banking business" has the meaning ascribed to that term in the Banking Act; Cap. 44:01

"Registrar" means the Registrar of Financial institutions appointed under the Act; and

"regulatory governance" means the capacity to manage resources efficiently and to formulate, implement and enforce sound

prudential policies and regulations within the premises of legal mandate and in accordance with internationally accepted supervisory standards.

PART II
Objectives

Objectives

3. The objectives of these Regulations are to—

Cap. 44:01

(*a*) ensure that banks contribute towards the cost of administering the Act and the Banking Act; and

(*b*) strengthen and enhance a robust regulatory governance framework that will promote financial sector stability and soundness in Malaŵi.

PART III
Payment and Assessment of Supervisory Levy

Payment of supervisory levy

4.—(1) A bank shall pay an annual supervisory levy based on its audited annual after tax income of the preceding year to the Registrar.

(2) The supervisory levy shall be payable to the Registrar within six months after year end.

(3) In order to facilitate the assessment of the supervisory levy, a bank shall submit its audited accounts to the Registrar within three months from the end of its financial year in accordance with the requirements of the Act.

(4) The Registrar shall—

(*a*) debit the supervisory levy from the main account of the bank maintained at the Reserve Bank of Malaŵi; and

(*b*) notify the bank in writing prior to debiting the account.

(5) Where the bank does not maintain an account with the Reserve Bank of Malaŵi, the bank shall pay the supervisory levy through a bank certified cheque payable to the Reserve Bank of Malaŵi within ten working days after being notified by the Registrar.

Methodology for assessing supervisory levy

5.—(1) The methodology for assessing the supervisory levy shall be as follows—

(*a*) a bank with after tax income of equal to or greater than K500,000,000 shall pay a minimum supervisory levy of K10,000,000 or an amount equivalent to one and half per cent of its after tax income, whichever is greater, provided however that the amount shall not exceed K15,000,000; and

(*b*) a bank with after tax income of less than K500,000,000 shall pay a minimum supervisory levy of K5,000,000 or an amount equivalent of two percent of its after tax income whichever is greater, provided however that the amount shall not exceed K10,000,000.

(2) The methodology for assessing the supervisory levy shall be subject to review from time to time by the Registrar.

(3) A bank shall not be subject to assessment of a supervisory levy until after eighteen months of commencing its operations.

(4) The waiver in sub regulation (3) shall not apply to new entities arising from mergers, amalgamations, acquisitions, conversions or similar transactions.

Use of supervisory levy

6. All supervisory levies and penalties collected under these Regulations shall accrue for the benefit of the Registrar in his discharge of supervisory functions.

PART IV
Enforcement

Penalty interest

7. The Registrar shall impose a penalty interest, for each day of default, at the ruling bank rate on a bank which fails to pay the supervisory levy within the period stipulated under regulation 4.

Administrative penalty Cap. 44:01

8. In addition to the penalty interest prescribed in regulation 7, the Registrar may impose directions, administrative penalties and enforcement actions as provided for in the Act and the Banking Act.

Revocation

9. The Directive on Supervisory Fees for Banks and Other Financial Institutions, No. D06-2006/SF is hereby revoked.

G.N. 27/2012

FINANCIAL SERVICES (AGENT BANKING) REGULATIONS

under s. 116 (1)

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SCHEDULE

PART I
PRELIMINARY

1. These Regulations may be cited as Financial Services (Agent Banking) Regulations. Citation

2. These Regulations shall apply to banks and deposit taking microfinance institutions and their appointed agents. Application

3. In these Regulations, unless the context otherwise requires— Interpretation

"agent" means an entity that has been contracted by a bank, or a deposit taking microfinance institution and approved by the Registrar,

to provide banking services on behalf of the bank or deposit taking microfinance institution in the manner specified in these Regulations;

"agent banking business" means the business carried out by an agent on behalf of a bank or deposit taking microfinance institution as permitted under these Regulations;

Cap. 44:01 "bank" has the meaning ascribed to that term in the Banking Act;

"banking business" has the meaning ascribed to that term in the Banking Act;

"outlet" means an agent's place that is used for carrying out its commercial activity but does not include a mobile unit;

"real time" means the electronic processing of transactional data instantaneously upon data entry or receipt of a command; and

"Registrar" means the Registrar of Financial Institutions appointed under the Act.

PART II
Objectives

Objectives

4. The objectives of these Regulations are to provide—

(*a*) for agent banking as a delivery channel for offering banking services in a cost effective manner;

(*b*) a framework for offering agent banking services; and

(*c*) minimum standards on data and network security, customer protection and risk management in the conduct of agent banking business.

PART III
Application for Agent Banking Business

Registrar's approval

5. A bank or deposit taking microfinance institution wishing to conduct banking business through an agent shall obtain written approval from the Registrar before commencing the agent banking business.

Eligibility for appointment as an agent

6. The following entities may be eligible for appointment as agents—

(*a*) limited liability companies;

(*b*) merchant or retail shops;

(*c*) agro dealers;

(*d*) pharmacies;

(*e*) sole proprietorships;

(*f*) partnerships;

(*g*) cooperative societies;

(*h*) state corporations; and

(*i*) any other entity which the Registrar may prescribe.

Vetting of agents

7.—(1) A bank or deposit taking microfinance institution shall before seeking approval of the Registrar for an entity to be contracted as an agent, vet and satisfy itself as to the suitability of the proposed entity.

(2) A bank or deposit taking microfinance institution shall—

(*a*) be responsible for the accuracy of the information provided by an agent; and

(*b*) sensitize its agents on the provisions of these Regulations and the obligation to comply with them.

Completion of application form

8.—(1) A bank or deposit taking microfinance institution shall apply for agent banking business by completing the application form set out in the Schedule hereto.

(2) A bank or deposit taking microfinance institution may submit an application for several agents at one go.

Submission of business strategy

9. In addition to completing an application form, a bank or deposit taking microfinance institution shall, submit to the Registrar a business strategy for agent banking that articulates the following—

(*a*) the bank's or deposit taking microfinance institution's delivery channel, strategy and how agents fit in this strategy;

(*b*) an estimate of the total population and economically active population of the areas where the agents will operate;

(*c*) an estimate of the proposed agent's volumes or transactions;

(*d*) a description of the commercial activities the proposed agents have been conducting for the twelve months immediately preceding the date of the application;

(*e*) a copy of the standard contract with the agents; and

(*f*) a declaration by the Chief Executive Officer or Director of a bank or deposit taking microfinance institution confirming that the bank or deposit taking microfinance institution has carried out the suitability assessment of the proposed agents.

Notification to the Registrar

10. A bank or deposit taking microfinance institution shall notify the Registrar regarding the opening of any new agent.

PART IV
Approval Process of Agents

Approval period

11. The Registrar shall communicate to a bank or a deposit taking microfinance institution which applies for agent banking business the outcome of the application within ten days from the date of receipt of a complete set of accurate information.

Approval letter

12. Where the Registrar approves an agent, the Registrar shall issue an approval letter to the bank or deposit taking microfinance institution.

Refusal of application

13. Where the Registrar declines to approve an application, the Registrar shall communicate to the applicant, in writing, the reasons for declining the approval.

Resubmission of application

14. A bank or deposit taking microfinance institution whose application has been declined by the Registrar may resubmit the application upon fulfillment of the conditions specified by the Registrar.

PART VI
Agency Contract

Agency contract

15. A bank or deposit taking microfinance institution shall enter into a written contract with an entity for the provision, on behalf of the bank or deposit taking microfinance institution of any banking services.

Outlet of an entity to be part of entity

16. An outlet of an entity whose operations or activities are managed, supervised or is subject to the direction of its head office shall be regarded as part of the entity for purposes of an application to be appointed as an agent.

Termination of agency contract

17. Where an agency contract is terminated, the bank or deposit taking microfinance institution shall inform the general public of the cessation of the agent from offering banking services through publication of a notice—

(*a*) within the premises where the agent was operating; or

(*b*) in any other manner so as to inform the general public of the cessation of the agent from offering banking services.

PART VII
Permissible and Prohibited Activities

Services to be performed by agents

18. An agent may provide the following banking services as may be specifically agreed with the bank or deposit taking microfinance institution—

(*a*) cash deposit and cash withdrawal;

(*b*) cash disbursements and repayment of loans;

(*c*) payment of bills;

(*d*) cash payment of retirement and social benefits;

(*e*) cash payment of salaries;

(*f*) transfer of funds;

(*g*) balance enquiry;

(*h*) generation and issuance of mini bank statements;

(*i*) collection of documents in relation to account opening, loan applications, credit and debit card applications;

(*j*) collection of debit and credit cards;

(*k*) agent mobile phone banking services;

(*l*) cheque book request;

(*m*) cheque book collection by customers;

(*n*) collection of bank's mail or correspondence for customers; or

(*o*) any other activity as the Registrar may prescribe.

Prohibited activities

19. An agent shall not—

(*a*) carry out an electronic transaction when there is communication failure in the system;

(*b*) carry out a transaction when a transactional receipt or a Short Message Service (SMS) acknowledgement receipt cannot be generated;

(*c*) charge any fees directly to the customers;

(*d*) offer any type of guarantee in favour of a bank or a deposit taking microfinance institution or customer;

(*e*) offer banking services on its own accord by providing on its own account banking services similar to those provided by it under an agency contract;

(*f*) provide or hold itself out to be rendering a banking service which is not specifically permitted in the contract;

(*g*) open accounts, grant loans or carry out an appraisal function for purposes of opening an account or granting of a loan or any other facility;

(*h*) undertake cheque deposit and encashment of cheques on its own;

(*i*) transact in foreign currency;

(*j*) be run or managed by a bank's or deposit taking microfinance institution's employee or its associate; and

(*k*) subcontract another entity to carry out agent banking on its behalf.

Other prohibited activities

20. A bank or deposit taking microfinance institution may in the agency contract specify other activities which the agent is prohibited from undertaking.

PART VIII
Obligations of Banks

Policies, procedures and guidelines

21. The board of directors of a bank or deposit taking microfinance institution shall formulate policies, procedures and guidelines that ensure that—

(*a*) credible agents are identified;

(*b*) risks associated with agent banking are properly identified, documented and mitigated; and

(*c*) agents' activities are constantly monitored to ensure compliance with all financial services laws, agency contracts and any other applicable law.

Monitoring and supervision of agents

22. A bank or deposit taking microfinance institution shall be responsible for monitoring and supervising the activities of its agents.

Compliance with Anti-Money Laundering laws

23. A bank or deposit taking microfinance institution shall comply with all applicable Anti-Money Laundering (AML) and Combating Financing of Terrorism (CFT) laws and requirements. Among others, the bank or deposit taking microfinance institution shall take into account the following—

(*a*) Simplified Know Your Customer (KYC) requirements;

(*b*) Transactional limits per day, month or year for persons and corporate entities;

(*c*) Maximum balance limits on debit and credit;

(*d*) Minimum technological security requirements; and

(*e*) Authentication criteria per customer per transaction.

Training of agents

24. A bank or deposit taking microfinance institution shall train its agents on AML and CFT requirements and on use of simplified KYC requirements.

PART IX
Agent Operations

Non-exclusivity of agency contract

25.—(1) An agency contract between a bank or a deposit taking microfinance institution and an agent shall not be exclusive.

(2) An agent may provide agent banking services to multiple banks or deposit taking microfinance institutions provided that the agent has—

(*a*) separate contracts for the provision of such services with each bank or deposit taking microfinance institution; and

(*b*) the capacity to manage the transactions for the different institutions.

Information on transactions

26. A bank or deposit taking microfinance institution shall—

(*a*) maintain information on the numbers and volumes of transactions carried out for each type of service by each agent; and

(*b*) monitor effective compliance with set limits.

PART X
Settlement of Transactions by Agents

Transactions to be real time

27.—(1) All transactions by an agent involving deposit, withdrawal, payment or transfer of cash from, or to, an account shall be real time.

(2) A bank or deposit taking microfinance institution shall ensure that an agent is able to carry out real time transactions.

Transactions to be carried out with effective devices

28. A bank or deposit taking microfinance institution shall ensure that agent banking transactions are carried out with devices which are technically effective and can—

(*a*) transmit transaction information in code;

(*b*) carry out electronic transactions on real time basis;

(*c*) allow handling under different user profiles for administration, maintenance and operation;

(*d*) reverse incomplete transactions due to error, system failure, power outage or other defects;

(*e*) process or generate durable transactional documents or receipts;

(*f*) issue electronic receipts or acknowledgements such as Short Message Service (SMS) acknowledgement;

(*g*) automatically log off an agent once the agent exhausts his daily cash limit or displays an error message in case of an unauthorized transaction; and

(*h*) generate an audit trail.

Contract with third party service providers

29. A bank or deposit taking microfinance institution may enter into a written contract with a third party service provider for the provision of the following services in respect of its agent banking business—

(*a*) technology platform;

(*b*) agent selection;

(*c*) agent network management;

(*d*) agent training;

(*e*) equipment provision; and

(*f*) equipment maintenance.

PART XI
Consumer Protection

Consumer protection systems

30. A bank or deposit taking microfinance institution shall have appropriate consumer protection systems for purposes of establishing trust among consumers of agent banking services.

Minimum consumer protection requirements

31. At a minimum, an agent of banking services shall comply with the following consumer protection requirements—

(*a*) list the services or products being offered to enable customers or users to appropriately identify their agents and the services provided through them;

(*b*) have signs that are clearly visible to the public indicating that it is a provider of services of the bank or deposit taking microfinance institution with which it has an agency contract;

(*c*) display the name of the bank or deposit taking microfinance institution it is working for and the bank's or deposit taking microfinance institution's logo;

(*d*) display a written notice to the effect that if the electronic system is down, no transaction shall be carried out;

(*e*) display a written notice to the effect that services shall be provided subject to availability of funds;

(*f*) list charges or fees applicable for each service which are payable to the bank by the customers; and

(*g*) list the name, telephone numbers and location of the bank's or deposit taking microfinance institution's branch to which the agent reports its agent activities.

PART XII
Reporting Requirements

Submission of agent data and information

32.—(1) A bank or deposit taking microfinance institution shall submit to the Registrar, the following information on a quarterly basis—

(*a*) nature, value, volume and geographical distribution of operations or transactions;

(*b*) incidents of fraud, theft or robbery; and

(*c*) customer complaints and the remedial measures taken to address the complaints.

(2) The bank or deposit taking microfinance institution shall submit the information specified in sub regulation (1) within fifteen days after the end of the preceding quarter.

PART XIII
Enforcement

Registrar's powers

33. In addition to the powers conferred on the Registrar under any financial services law, the Registrar may—

(*a*) request for information from the bank or deposit taking microfinance institution or agent at any time;

(*b*) carry out impromptu or scheduled inspection of the books and premises of the agent;

(*c*) direct a bank or deposit taking microfinance institution or an agent to take such action or desist from such conduct as may be deemed necessary;

(*d*) direct the termination of the agency contract and closure of the agent business;

(*e*) direct a bank or deposit taking microfinance institution to take such action or measures against or on behalf of an agent as the Registrar may find appropriate;

(*f*) revoke the agent banking approval and prohibit a bank or deposit taking microfinance institution from engaging in agent banking business;

(*g*) prohibit a bank from contracting new agents; and

(*h*) impose directions, administrative penalties and enforcement actions as provided for under the Act.

SCHEDULE

reg. 8 (1)

Application Form for Approval of an Agent

1. Name of bank or deposit taking microfinance institution:
   …….....……

2. Name of Agent(s) (including postal address and contact details):
   …….....……
   …….....……
   …….....……

3. Exact location and name of district where the Agent(s) is/are located:
   …….....……
   …….....……

4. Proposed commencement date for each Agent:
   …….....……
5. Commercial activity of each Agent:
   …….....……
   …….....……
6. List of banking services to be provided by each Agent:
   …….....……
   …….....……
7. Responsible Branch(es):
   …….....……
   …….....……

Name: …….....……..... Signed: .....……

(*Chief Executive Officer/Managing Director*)*

Dated at ……..... this ….....…… day of ……..... 20…….

This Application form must be submitted together with a written declaration by the Chief Executive Officer of the bank or deposit taking microfinance institution or Director confirming that the bank or deposit taking microfinance institution has carried out the suitability assessment of the proposed agents and they have been found to have met the minimum requirements set out in these Regulations.

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*Tick the applicable.

FINANCIAL SERVICES (FINANCIAL SERVICES APPEALS COMMITTEE PROCEDURE) RULES

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RULE

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G. N. 13/2016

FINANCIAL SERVICES (FINANCIAL SERVICES APPEALS COMMITTEE PROCEDURE) RULES

PART I
PRELIMINARY

Citation

1. These Rules may be cited as the Financial Services (Financial Services Appeals Committee Procedure) Rules.

Interpretation

2. In these Rules, unless the context otherwise requires—

"Secretary" means an officer of FSAC appointed under rule 4;

"applicant" means a person eligible, under section 82 of the Act, to lodge an appeal to FSAC, who has filed, or is contemplating to file, a Notice of Appeal with FSAC in accordance with the financial services laws and these Rules;

"business day" means a normal working day in Malaŵi;

"Chairperson" means the Chairperson of FSAC;

"file" means to deliver documents to the Secretary in accordance with rule 5;

"FSAC" means the Financial Services Appeals Committee established under the Act;

"parties" include the applicant, the Registrar and any other person to whom FSAC has given standing to appear as a party to the appeal;

"proceedings" includes appeals and related applications brought before FSAC;

"record" means the record of the decision under appeal; and

"Registrar" means the Registrar of Financial Institutions as prescribed in the Act.

Application

3.—(1) These Rules prescribe the procedure for the conduct of proceedings brought before FSAC.

(2) In applying these Rules, FSAC shall ensure the just, efficient and expeditious resolution of proceedings. FSAC shall, insofar as it appears appropriate, seek to avoid unnecessary formality in its proceedings.

(3) Nothing in these Rules shall be taken as abridging the powers of FSAC under the Act or any other legislation.

(4) Where procedures are not provided for in these Rules, FSAC may do whatever is necessary and permitted by law to effectively determine the matter before it, including making procedural directions under rule 12.

Secretary and other officers of FSAC

4.—(1) There shall be appointed in the service of FSAC, on such terms and conditions of service as FSAC may determine—

(*a*) an officer designated as Secretary of FSAC who shall serve as head of the Secretariat of FSAC; and

(*b*) such other officers as FSAC may determine.

(2) FSAC shall be responsible for appointing officers in its service.

Filing of notices, etc.

5. All notices, applications and other documents required to be filed with FSAC shall be filed with the Secretary at the following address—

The Secretary

Financial Services Appeals Committee,

P.O. Box 31049,

Lilongwe 3.

Malaŵi.

Facsimile:

Email:

PART II
Powers of FSAC

Interim orders

6.—(1) Once a Notice of Appeal has been filed, and with the consent of the parties or in case of urgency, FSAC may make interim orders including order of stay, or give directions granting an interim relief sought, on such conditions as it considers appropriate, but in no case shall such interim orders or directions be made without hearing the Registrar and other parties to the application.

(2) Where a party fails to make an appearance to be heard after receipt of proper notice, FSAC may proceed to determine the application for the interim order.

(3) A decision subject to appeal is not automatically stayed upon the filing of a Notice of Appeal.

(4) Where FSAC has made an interim order of stay of the decision under appeal or of any related step proposed to be taken by the Registrar, the order shall subsist until FSAC has determined the appeal or may cease at an earlier date as FSAC may determine.

Hearing of proceedings

7.—(1) FSAC shall, on the application of a party or on its own motion, determine whether the hearing of proceedings shall be conducted *in camera* or be accessible to the public.

(2) FSAC may, on the application of a party or on its own motion, order that part or all of the information in the proceedings brought before it be treated confidentially and not disclosed publicly.

(3) An application under this rule shall state the grounds for objection to public hearing or public disclosure of information and, where applicable, shall be accompanied by a sealed copy of the information for which confidential treatment is sought.

(4) In determining an application for confidential treatment, FSAC shall consider, so far as it is practicable—

(*a*) whether the disclosure of information would, in its opinion, be contrary to the public interest;

(*b*) whether the disclosure of information which is of a commercial nature would or might, in its opinion, significantly harm the legitimate business interests of the undertaking to which it relates;

(*c*) whether the disclosure of information relating to the private affairs of an individual would, or might, in its opinion, significantly harm the person's interests; and

(*d*) the extent to which any such disclosure is necessary for the purpose of explaining the reasons for the decision.

(5) Pending the determination of an application for confidential treatment, transcripts, interim orders, including an initial decision, if any, and other materials in connexion with the application shall be for the confidential use only of FSAC and parties to the proceedings and their counsel, and shall be made available to the public only in accordance with orders of FSAC.

PART III
Commencement of Appeal Process

Notice of Appeal

8. A person directly affected by a decision of the Registrar that is subject to appeal to FSAC may appeal against the decision by filing a Notice of Appeal with the Secretary within twenty-one days of the date of the decision.

Form and content of a Notice of Appeal

9.—(1) The Notice of Appeal must contain the following information—

(*a*) name and address of the applicant;

(*b*) name and address of the applicant's legal representative, if any;

(*c*) applicant's physical address for service in Malaŵi, and in the event that the applicant is willing to accept service electronically, the applicant's email, facsimile, or other suitable communications technology;

(*d*) a copy of the disputed decision;

(*e*) grounds for the appeal;

(*f*) relief sought by the applicant, including whether the applicant is seeking a stay of the decision; and

(*g*) grounds and urgency for relief sought.

(2) A Notice of Appeal must be signed and dated by the applicant's duly authorized officer or legal representative.

(3) A Notice of Appeal shall be as prescribed in FSAC Form 1 set out in the Schedule to these Rules. *Schedule*

Filing fee

10. A Notice of Appeal shall not be considered as filed with FSAC unless a non-refundable filing fee of Malaŵi Kwacha equivalent of US$ 250, at the prevailing official exchange rate, has been paid.

Applicant to serve a Notice of Appeal

11. An applicant shall serve a copy of the Notice of Appeal on the Registrar within two business days of filing the Notice of Appeal.

PART IV
Pre-Hearing Procedures

Applications and procedural directions

12. FSAC, on its own motion or on application by a party may hear applications filed with the Secretary or give procedural directions in writing or in a pre-appeal conference concerning any matter related to the conduct of the appeal, including varying any of the requirements of these Rules.

Secretary to notify parties on procedural matters

13. The Secretary, following consultation with the parties and FSAC, shall notify the parties in writing of the manner in which applications will be considered and determined and procedural directions given.

Absence of a party at an application hearing

14. If a party fails to attend an application or pre-appeal conference for which it has received proper notice, FSAC may continue with the application or pre-appeal conference in the absence of that party.

The record

15.—(1) Within seven days of receiving the Notice of Appeal, the Registrar shall—

(*a*) file the record with the Secretary and shall supply four copies of the record; and

(*b*) provide a copy of the record to the applicant.

(2) The record shall include the decision, any documentary evidence, transcript of any oral evidence, and written submissions or record of oral submissions, which were considered by the Registrar in making the decision.

Statement of appeal

16. Within seven days of receiving the record, the applicant shall file with the Secretary a statement of appeal which shall contain the following information—

(*a*) a summary of the facts and the law upon which the applicant relies;

(*b*) whether the applicant intends to rely on the record or intends to rely on any evidence other than the record in support of the appeal; and

(*c*) a list of the additional evidence, including copies of documents, names and statements of witnesses of fact or expert witnesses to be called, if any.

Statement of response

17. Within seven days of receiving a statement of appeal, the Registrar shall file a statement of response which shall contain the following information—

(*a*) a summary of the facts and the law upon which the Registrar relies;

(*b*) whether the Registrar intends to rely on any other evidence in support of the decision under appeal; and

(*c*) a list of the additional evidence, including copies of documents, names and statements of witnesses of fact or expert witnesses to be called, if any.

Scheduling the appeal

Schedule

18. Once the record, the applicant's statement of appeal and the Registrar's statement of response and any other document ordered to be filed by FSAC have been filed, the Secretary shall schedule a date for hearing the appeal following consultation with FSAC and the parties.

Notice of time, date and place of hearing

19. The Secretary shall give notice of the time, date and place of the hearing to each party and publish this notice on FSAC website, unless directed otherwise.

Location and manner of proceedings

20.—(1) Save as provided in subrule (2), every oral hearing of an application or appeal shall take place in Malaŵi.

(2) FSAC may hold an oral hearing of an application or appeal by video link or telephone conference which the participants, including the members of FSAC, may attend whether or not they are physically present in Malaŵi.

(3) FSAC may dispense with an oral hearing of an application or of an appeal and make its decision on written submissions and evidence.

(4) Hearing of an appeal shall proceed as follows—

(*a*) the Registrar shall present his case first, justifying the decision under appeal;

(*b*) the applicant shall present its case next, justifying why the decision under appeal is wrong and why the appeal should be allowed;

(*c*) the Registrar shall then be given an opportunity to reply to the applicant's case; and

(*d*) the applicant shall be given an opportunity for a final reply.

PART V

Hearing and Conclusion of The Appeal

Receiving relevant evidence

21. FSAC may receive and consider any evidence relevant to the appeal whether the evidence was available to the Registrar at the time the decision under appeal was made and whether or not the evidence would be admissible in civil or criminal proceedings in a court of law.

Manner and receiving evidence

22. FSAC may determine the manner in which evidence is received and may require parties to produce documents in electronic form.

Witnesses

23.—(1) FSAC, before or during an appeal, on its own motion or on the application of a party, may summon a person to attend the appeal and give evidence and to produce documents or other relevant evidence.

(2) A party applying to summon a witness shall be required to show that the witness is likely to produce relevant evidence.

Schedule

(3) The summons under this rule shall be as prescribed in FSAC Form 2 set out in the Schedule to these Rules.

(4) FSAC may require a witness to take an oath or make an affirmation before giving oral evidence.

(5) FSAC may order a witness to answer questions in a truthful manner and may require the witness to provide evidence orally or by sworn statement.

(6) FSAC may order a person not to publish or disclose any material disclosed to FSAC during the proceedings.

(7) FSAC may dispense with the need to call a witness to give evidence if a witness statement has been submitted in respect of that witness.

Findings and decisions of FSAC

24.—(1) FSAC may determine all questions of fact and law that arise in an appeal or an application.

(2) Findings of fact shall be determined on a balance of probabilities.

(3) Subject to subrule (5), at the conclusion of the appeal, FSAC shall deliver its decision in writing, and shall deliver the decision to the parties.

(4) The decision of FSAC is the decision of all, or the majority, of its members.

(5) In the event that FSAC delivers its decision orally, the decision and the reasons for the decision shall subsequently be reduced to writing, and delivered to both parties.

(6) FSAC will issue its decision and reasons as soon as it is practicable and no later than thirty days following the conclusion of the hearing of the appeal.

(7) A copy of the decision and the reasons for the decision shall be published on FSAC website.

(8) In rendering its decision, FSAC shall consider section 88 of the Act.

PART VI
General

Filing and sending of documents

25.—(1) A document which is required under these Rules to be sent to any person other than the Secretary may be—

(*a*) delivered personally to the person's physical address for service;

(*b*) sent to the person's physical address for service by post;

(*c*) sent to the person electronically to any email address which the person has provided as an address for service; or

(*d*) sent to the person by facsimile at any facsimile address which the person has provided as an address for service.

(2) If an applicant has not provided an address for service, a document may be considered as sent if—

(*a*) in the case of a company, it is delivered personally or sent by post to the secretary of the company at the registered address or principal place of business of the company;

(*b*) in the case of a partnership, it is delivered personally or sent by post to the last known address of any one of the partners for the time being;

(*c*) in the case of any other person, it is delivered personally to the person or sent by post to the last known address of that person.

(3) A document shall be treated as having been sent at the time when, having regard to all the circumstances, including the method of sending and the incidence of non-working days, the document should in the ordinary course have come to the notice of the intended recipient.

(4) FSAC may dispense with the filing or sending of a document if the interests of justice so require.

(5) FSAC may, for good reason, authorize a document to be filed or sent by an alternative method to those prescribed by these Rules.

Representation

26.—(1) Parties to an appeal may be represented by any person, whether that person is a qualified legal practitioner or not. Where a lawyer is acting for a party, documents may be served on the party by delivering them to the lawyer.

(2) FSAC may refuse to permit a person to represent a party at the appeal if FSAC is satisfied that there are good and sufficient reasons for doing so.

Withdrawal and dismissal

27.—(1) The applicant may withdraw its Notice of Appeal, and the Registrar may withdraw his opposition to the appeal, prior to FSAC commencing the hearing by filing a notice to that effect.

(2) An appeal may be withdrawn during the hearing of the appeal with the permission of FSAC.

(3) FSAC may dismiss an appeal if the applicant has not filed all or any documents required under these Rules or in accordance with any directions given by FSAC.

Costs

28. When making awards on costs, FSAC shall be guided by section 78 (3) of the Act.

Conflict of interest

29. Issues of conflict of interests of members of FSAC shall be dealt with in accordance with section 81 of the Act.

Irregularities

30. Any irregularity resulting from failure to comply with these Rules shall not in itself render a decision relating to an application or the appeal invalid, and FSAC may give any directions it thinks appropriate to cure the irregularity.

Correction of clerical mistakes

31. Clerical mistakes or errors arising from any accidental error or omission in any document recording a decision of FSAC may be corrected by FSAC by a certificate signed by the Chairperson.

Calculation of time

32.—(1) Where the time for doing any act expires on a non-business day, the act is deemed have been done in time if done on the next business day.

(2) Subject to the Act, FSAC may extend or abridge the time for doing any act under these Rules.

Practice Direction

33. The Chairperson may issue Practice Directions relating to the procedures governed by these Rules.

SCHEDULE

FSAC FORM 1 r. 9 (3)
NOTICE OF APPEAL

FINANCIAL SERVICES APPEALS COMMITTEE

Appeal No. ..... of 20.....

IN THE MATTER OF SECTION 82 OF THE FINANCIAL SERVICES ACT, 2010

AND

IN THE MATTER OF [put the name of the applicant(s) i.e., the financial institution(s) appealing the decision, here]

NOTICE OF APPEAL

TAKE NOTICE that [put the name of the applicant(s) here] hereby appeals the decision of the Registrar made on [date of decision], [here briefly describe the decision of the Registrar].

The grounds of appeal are—

[List the grounds of appeal]

State how you are affected by the decision here.

The relief sought is —

[Here state what you want FSAC to do. See section 88 (1) of the Act which states what FSAC can do]

If you want FSAC to stay the decision under appeal (i.e. stop the decision from going into effect) ask for a stay order and describe the grounds and urgency for the stay here.

State the address of the applicant.

State the name and address of the applicant's legal representative, if any.

State the applicant's physical address for service in Malaŵi. (This is where you have agreed that documents concerning the appeal can be sent to you).

If the applicant is willing to accept service electronically, state the applicant's email or facsimile address of service.

Signed by [type name of applicant or applicant's duly authorized officer or legal representative]

On: [date]

Signature:

Further instructions

You must attach a copy of the written decision you want to appeal to your Notice of Appeal.

You must file your Notice of Appeal with the Secretary at this address—

The Secretary

Financial Services Appeals Committee

P.O. Box 31049,

Lilongwe 3.

Malaŵi.

Email:

Fax:

NOTE: You must pay a filing fee of Malaŵi Kwacha equivalent of US$250 when you file your Notice of Appeal. If you do not pay the filing fee, your Notice of Appeal shall not be considered as filed. You must serve a copy of your Notice of Appeal to the Registrar of Financial Institutions (Governor of the Reserve Bank of Malaŵi) as well within two days of filing your Notice of Appeal.

FSAC FORM 2

r. 23 (3)

SUMMONS TO ATTEND
FINANCIAL SERVICES APPEALS COMMITTEE

Appeal No. ... of 20...

IN THE MATTER OF SECTION 88 (4) OF THE FINANCIAL SERVICES ACT, 2010

AND

IN THE MATTER OF [put the name of the applicant i.e., the financial institution appealing the decision, here]

SUMMONS TO ATTEND BEFORE
THE FINANCIAL SERVICES APPEALS COMMITTEE (FSAC)

TO : (name and address, if known of person to be summoned)

TAKE NOTICE that you are required to attend to testify as a witness at the time, date and place set out below. You are also required to bring with you all documents in your possession or power relating to the matters in question in this appeal.

Time: .....

Date: .....

Place: .....

Dated at

.....

(*Signature of Chairperson of FSAC*)

Attached to this summons is an excerpt of relevant provisions of the Act [Attach an excerpt of sections 88 to 90 of the Act].

FINANCIAL SERVICES (INSURANCE SUPERVISORY LEVY) REGULATIONS

ARRANGEMENT OF REGULATIONS

REGULATION

PART I
PRELIMINARY

1. Short title
2. Application
3. Interpretation

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OBJECTIVES

4. Objectives

PART III
ASSESSMENT AND PAYMENT OF SUPERVISORY LEVY

5. Payment of supervisory levy
6. Methodology for assessing supervisory levy

PART III
ENFORCEMENT

7. Penalty for non-compliance
8. Administrative penalties

FINANCIAL SERVICES (INSURANCE SUPERVISORY LEVY) REGULATIONS

G. N. 45/2017

PART I
Preliminary

1. These Regulations may be cited as the Financial Services (Insurance Supervisory Levy) Regulations. Short title

2. These Regulations shall apply to all insurers, reinsurers and insurance brokers licensed to conduct insurance, reinsurance and insurance broking business in Malaŵi. Application

3. In these Regulations, unless the context otherwise requires— Interpretation

"insurer" has the meaning ascribed to that term in the Insurance Act; Cap. 47:01

"insurance broker" has the meaning ascribed to that term in the Insurance Act; Cap. 47:01

"Registrar" means the Registrar of Financial Institutions appointed under section 8 of the Financial Services Act; and Cap. 44:05

"reinsurer" has the meaning ascribed to that term in the Insurance Act. Cap. 47:01

PART II
Objectives

4. The objectives of these Regulations are to— Objectives

(*a*) provide for the imposition and collection of supervisory levies from every insurer, reinsurer and insurance broker in order to cover the cost of supervising insurers, reinsurers and insurance brokers by the Registrar;

(*b*) prescribe the different bases of calculation and different rates of supervisory levy to each insurer, reinsurer and insurance broker; and

(*c*) strengthen and enhance a sound regulatory and supervisory framework for each insurer, reinsurer and insurance broker that will promote financial sector soundness in Malaŵi.

PART III
Assessment and Payment of Supervisory Levy

5.—(1) An insurer, reinsurer or insurance broker shall pay an annual supervisory levy to the Registrar in the manner prescribed in regulation 6. Payment of supervisory levy

(2) The supervisory levy shall be payable to the Registrar within four months after the close of the insurer, reinsurer or the insurance broker's financial year.

(3) An insurer, reinsurer or insurance broker shall pay the supervisory levy to the Registrar through a bank certified cheque or an electronic funds transfer in favour of the Reserve Bank of Malaŵi.

(4) Where the Registrar notifies an insurer, reinsurer or insurance broker, that payment of a supervisory levy is due, the payment shall be made within ten working days from the date of notification.

Methodology for assessing supervisory levy

6.—(1) The methodology for assessing the supervisory levy shall be as follows—

(*a*) an insurer conducting general insurance business shall pay a minimum supervisory levy of K2,500,000 or an amount equivalent of one per cent of its audited annual profit for the preceding year, whichever is greater, provided that the amount shall not exceed K8,000,000;

(*b*) an insurer conducting life insurance business shall pay a minimum supervisory levy of K2,500,000 or an amount equivalent of one per cent of its audited annual profit for the preceding year, whichever is greater, provided that the amount shall not exceed K10,000,000;

(*c*) a reinsurer shall pay a minimum supervisory levy of K3,000,000 or an amount equivalent of one per cent of its audited annual profit for the preceding year, whichever is greater, provided that the amount shall not exceed K10,000,000; and

(*d*) an insurance broker shall pay a minimum supervisory levy of K500,000 or an amount equivalent of one per cent of its audited annual profit for the year, whichever is greater, provided that the amount shall not exceed K2,500,000.

(2) An insurer, reinsurer or insurance broker shall be exempted from payment of a supervisory levy until after a period of twenty-four months from commencing its operations.

(3) The waiver in subregulation (2) shall not apply to new entities arising from mergers, acquisitions, amalgamations, conversions or similar fundamental corporate transactions.

PART III
Enforcement

Penalty for non-compliance

7. The Registrar shall impose—

(*a*) a penalty interest, for each day of default, at the ruling bank rate on an insurer, reinsurer or insurance broker which fails to pay the supervisory levy within four months after the close of the insurer or the insurance broker's financial year as stipulated under regulation 5; and

(*b*) a fine of ten per cent of the assessed supervisory levy where a misrepresentation or other non-compliance by an insurer, reinsurer or insurance broker leads to under collection of a supervisory levy.

Administrative penalty

Cap. 44:05
Cap. 47:01

8. In addition to the penalties prescribed in regulation 7, the Registrar may impose directions, administrative penalties and other enforcement actions as provided for in the Financial Services Act and the Insurance Act on an insurer, reinsurer or insurance broker which does not meet the requirements of these Regulations.

EXCHANGE CONTROL

CHAPTER 45:01

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CHAPTER 45:01

EXCHANGE CONTROL

ARRANGEMENT OF SECTIONS

SECTION

1. Short title
2. Interpretation
3. Regulations
4. Evidence and presumption
5. Financial provision
6. Application to the Government

An Act to provide for exchange control and for matters incidental thereto, and to repeal the Exchange Control Act.

17 of 1984
G.N. 84/1984
79/1985

[1st November, 1984]

Short title

1. This Act may be cited as the Exchange Control Act.

Interpretation

2.—(1) In this Act, unless the context otherwise requires—

"bullion" means gold and includes any metal or coins declared under subsection (2) to be bullion for the purposes of this Act;

"currency" includes coins, currency notes, drafts, travellers' cheques, letters of credit, bills of exchange and promissory notes;

"foreign currency" means any currency that is not, or is payable or expressed otherwise than in, Malaŵi currency;

"foreign exchange" means foreign currency and foreign securities;

"foreign securities" includes—

(*a*) any securities the principal of or interest from which is repayable or payable in any country other than Malaŵi or in a foreign currency;

(*b*) any securities in respect of which the funds necessary for the repayment of the principal or the payment of the interest are provided from any country other than Malaŵi;

(*c*) any securities that are registered outside Malaŵi;

(*d*) any security, debt or right which may be prescribed under section 3 for the purposes of this definition;

"gold" means gold coin or gold bullion;

"Malaŵi currency" means any currency that is, or is payable or expressed in currency that is, legal tender in Malaŵi;

"the Regulations" means regulations made under section 3;

"securities" includes stocks, shares, bonds, debentures, debenture stock, unsecured notes transferable or negotiable deposits, treasury bills, units or sub-units of a unit trust and policies of life or endowment assurance, and also includes deposit receipts in respect of the deposit of any such securities and documents of title to any such securities.

(2) The Minister may, by Order published in the *Gazette*, declare any metal or coins to be bullion for the purposes of the definition of that word in subsection (1).

Regulations

3.—(1) The Minister may make regulations for the purpose of the control of foreign exchange, bullion and Malaŵi currency.

(2) In particular and without limiting the generality of sub-section (1), the Regulations may relate to—

(*a*) the powers, rights, duties and responsibilities of authorized dealers in bullion or foreign exchange and the rates at which they may enter into transactions in foreign exchange or bullion;

(*b*) the buying, selling, borrowing, lending or exchange of foreign currency or bullion;

(*c*) any dealing or transaction having the effect of a purchase, sale, borrowing, loan, or exchange of foreign currency or bullion;

(*d*) the taking of or sending out of Malaŵi, Malaŵi Currency, foreign currency or bullion;

(*e*) transactions in Malaŵi Currency with or on behalf of persons resident outside Malaŵi;

(*f*) a requirement that any person who has power to sell, or to procure the sale of, any foreign currency or bullion, shall sell or procure the sale of the currency or bullion in accordance with the Regulations;

(*g*) the taking, sending, transmission or transfer out of Malaŵi of securities prescribed in the Regulations, and other dealings with or transactions in securities so prescribed;

(*h*) the imposition by the Minister of restrictions and conditions on authorized dealers in bullion or foreign exchange;

(*i*) the imposition of any prohibition, restriction, or requirement on the import or export of moveable property;

(*j*) the appointment of persons to perform any prescribed functions for the purposes of the Regulations.

(3) The Regulations may—

(*a*) regulate or prohibit the carrying on of any dealings or transactions or the doing of any act;

(*b*) constitute offences and prescribe penalties therefor, in the case of an individual, not exceeding a fine of K100,000 and imprisonment for five years, and in the case of a body corporate a fine without limit;

(*c*) provide for the prosecution and punishment of the officers of bodies corporate convicted of an offence against the Regulations;

(*d*) empower a court to order the forfeiture of Malaŵi Currency, foreign currency, securities, bullion or goods in respect of which an offence has been committed against the Regulations;

(*e*) empower a court to order the sale to, or the vesting in, the Administrator General, of Malaŵi currency, foreign currency, securities, bullion or property, retained, obtained or dealt with in contravention of the Regulations.

(4) The Regulations may create offences with respect to acts done, or dealings or transactions carried out, in or outside Malaŵi or partly in and partly outside Malaŵi.

(5) The power under this section to make the Regulations may be exercised—

(*a*) either in relation to all cases to which the power extends, or in relation to all of those cases subject to specified exceptions, or in relation to any specified case or class of case; and

(*b*) so as to make, as respects the cases in relation to which it is exercised,—

(i) the same provision for all those cases, or different provisions as respects the same case or class of case for different purposes; or

(ii) any such provision either unconditionally or subject to any specified condition.

Evidence and presumption

4.—(1) Any document purporting to be an authority, permission, direction, notice or other instrument made or issued by or on behalf of any person in pursuance of any provision of this Act or the Regulations, and purporting to be signed by or on behalf of any such person, shall be received in evidence and shall, until the contrary is proved, be deemed to be such an instrument so made or issued and signed.

(2) Any person charged with any act or omission which is an offence under this Act or the Regulations if done or omitted to be done without an exemption, permission or other authorization, shall be presumed to have done or to have omitted to do such act without such exemption, permission or other authorization, as the case may be, unless it is proved that he was in possession of such exemption, permission or other authorization, as the case may be, when he performed or omitted to perform the act in question.

Financial provision

5. Any expense incurred under or by virtue of this Act or the Regulations by the Government or any department thereof shall be paid out of moneys provided for the purpose by Parliament.

Application to the Government

6. This Act and the Regulations bind the Government and apply to transactions by a Ministry or a department or other person acting on behalf of the Government, and the Minister shall not, by virtue of any contract made by them or on their behalf in relation to any bullion, currency or securities, be under any obligation to grant any permission or exemption under the Regulations.

SUBSIDIARY LEGISLATION

EXCHANGE CONTROL REGULATIONS

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EXCHANGE CONTROL REGULATIONS

G.N. 89/1984
79/1985
86/1986
26/1987
50/1993

under s. 3

PART I

PRELIMINARY

1. These Regulations may be cited as the Exchange Control Regulations. Citation

2.—(1) In these Regulations— Interpretation

"authorized dealer", in relation to any particular regulation, means a person appointed pursuant to regulation 4 for the purpose of that particular regulation;

"the Bank" means the Reserve Bank of Malaŵi established under section 3 of the Reserve Bank of Malaŵi Act. Cap. 44:02

(2) For the purposes of these Regulations, a personal representative of a deceased person shall, unless the Minister otherwise directs, be treated as resident where the deceased person was resident at the time of his death so far as relates to any matter in which the personal representative is concerned solely in that capacity.

(3) Notwithstanding any rule to the contrary, the Minister may give directions declaring that for all or any of the purposes of these Regulations a person is to be treated as resident or not resident in Malaŵi or any other territory, and the person shall be treated for the purposes of these Regulations as being so resident or, as the case may be, not so resident.

(4) Any permission under these Regulations—

(*a*) may be either general or specific;

(*b*) may be revoked or varied by the person giving the permission;

(*c*) may be absolute or conditional;

(*d*) may be limited to expire on a specified date, unless renewed; and

(*e*) shall be published in such a way as, in the opinion of the person giving the permission, to give any person entitled to the benefit of it an adequate opportunity of getting to know of it, unless in his opinion publication is not necessary for that purpose.

(5) Where the doing of an act by any person who has a particular attribute or stands in a specified relation to any property is prohibited by these Regulations, the doing of that act by two or more persons is likewise prohibited notwithstanding that only one or some of those persons have that attribute or stand in that relationship.

Authorized dealers

3. The Minister may appoint any person to be an authorized dealer for the purposes of any regulation, and may revoke or vary any such appointment.

Directions

4. The Minister may give—

(*a*) general directions indicating the considerations to which authorized dealers or the Bank should have particular regard in carrying out functions under these Regulations; or

(*b*) specific directions to an authorized dealer or the Bank with respect to the carrying out of any of those functions,

and an authorized dealer and the Bank shall comply with any such direction so given.

Exemptions

5.—(1) The Minister may, by Order published in the *Gazette*, exempt from the operation of any regulation any act or transaction, or any class of acts or transactions, either unconditionally or subject to such conditions as are specified in the Order.

(2) The Minister may, by Order published in the *Gazette*, vary or revoke any Order made under subregulation (1).

Power to obtain information

6.—(1) The Minister may, by notice in writing to any person, require that person to furnish within the period specified in the notice such information as the Minister requires with respect to any act, transaction, matter or thing to which any provision of these Regulations applies, and to produce books, documents or other records, relating to it, in his custody or under his control.

PART II

Bullion

Application of Part

7.—(1) In this regulation, "wrought gold" means gold and gold alloys which, on sight, appear to have been worked or manufactured for professional or trade purposes.

(2) This Part does not apply to wrought gold unless it is worked or manufactured in contravention of these Regulations.

Transfer of bullion out of Malaŵi

8.—(1) Subject to subregulation (2), a person who takes or sends, or attempts to take or send, bullion out of Malaŵi is guilty of an offence and liable to a fine of K25,000 and to imprisonment for three years.

(2) The Minister may give permission to a person to take or send bullion out of Malaŵi and, if he does so, subregulation (1) does not apply in relation to a thing done or transaction entered into in accordance with the permission.

Limitation on purchase of bullion, etc.

9.—(1) Subject to subregulation (2), a person, other than the Bank or an authorized dealer—

(*a*) who buys or otherwise obtains bullion from any person; or

(*b*) resident in Malaŵi who outside Malaŵi buys or otherwise obtains bullion from any person, is guilty of an offence and liable to a fine of K25,000 and to imprisonment for three years.

(2) A person may buy bullion for the purpose of its being worked or used by him in connexion with his profession or trade if the bullion is purchased from—

(*a*) the Bank;

(*b*) an authorized dealer; or

(*c*) a person resident outside Malaŵi,

with the consent of the Minister.

(3) A person who, in Malaŵi, works or uses in manufacture any bullion, not being bullion lawfully in his possession for the purposes of being worked or used by him in connexion with his profession or trade, is guilty of an offence and liable to a fine of K10,000 and to imprisonment for two years.

PART III

Monetary Control

Dealings in foreign currency

10.—(1) Subject to subregulation (3), a person, other than the Bank, who except with the permission of the Minister, in Malaŵi—

(*a*) buys or borrows any foreign currency from a person other than the Bank;

(*b*) sells or lends any foreign currency to a person other than the Bank; or

(*c*) exchanges any foreign currency with a person other than the Bank,

is guilty of an offence and liable to a fine of K10,000 and to imprisonment for two years.

(2) Subject to subregulation (3), a person, other than the Bank, who except with the permission of the Minister is a party to a transaction having the effect of a transaction prohibited by subregulation (1) is guilty of an offence and liable to a fine of K10,000 and to imprisonment for two years.

(3) The Minister may give permission to an authorized dealer to do anything in relation to or be a party to any transaction referred to in subregulation (1) or (2), and if permission is so given then, in relation to the thing done or transaction entered into in accordance with the permission, subregulation (1) or, as the case may be, subregulation (2) does not apply.

(4) Where foreign currency is made available to any person by the Bank or by an authorized dealer for use for a specified purpose or subject to any condition, then if that person—

(*a*) uses the foreign currency otherwise than for that purpose; or

(*b*) as the case may be, fails or refuses to comply with those conditions,

he is guilty of an offence and liable to a fine of K5,000 and to imprisonment for two years.

Transfer of foreign currency out of Malaŵi G.N. 50/1993

11.—(1) Subject to subregulations (2), (3) and (4), a person, other than the Bank, who takes or sends, or attempts to take or send, any foreign currency out of Malaŵi is guilty of an offence and liable to a fine of K25,000 and to imprisonment for three years.

(2) Where, pursuant to regulation 10, foreign exchange is made available to any person, subregulation (1) does not apply in relation to the taking or sending, or the attempted taking or sending, out of Malaŵi of that currency, but without prejudice to the operation of regulation 10 (4).

(3) Subregulation (1) does not apply in relation to a person—

(*a*) who is not resident in Malaŵi; and

(*b*) who takes or sends, or attempts to take or send, out of Malaŵi an amount of foreign exchange which is not in excess of the amount of foreign currency brought or sent by him into Malaŵi.

(4) The Minister or the Bank may give to any person permission to take or send foreign currency out of Malaŵi, and if permission is so given then, in relation to foreign currency taken or sent out of

Malaŵi in accordance with the permission, subregulation (1) does not apply.

Transfer of Malaŵi currency out of Malaŵi G.N. 50/1993

12.—(1) Subject to subregulation (2), a person, other than the Bank, who takes or sends, or attempts to take or send, any Malaŵi currency out of Malaŵi is guilty of an offence and liable to a fine of K25,000 and to imprisonment for three years.

(2) The Minister or the Bank may give to any person permission to take or send Malaŵi currency out of Malaŵi, and if permission is so given then, in relation to Malaŵi currency taken or sent out of Malaŵi in accordance with the permission, subregulation (1) does not apply.

PART IV

Control of Certain Payments, etc.

Exception G.N. 50/1993

13. Nothing in regulation 14, 15 or 16 prevents the making of any payment associated with an act permitted or authorized under regulation 10, 11 or 12.

Control of certain payments in Malaŵi

14.—(1) Subject to subregulation (2), a person who, except with the permission of the Minister or the Bank, in Malaŵi—

(*a*) makes any payment to or for the credit of a non-resident of Malaŵi;

(*b*) makes any payment to or for the credit of a resident of Malaŵi by order or on behalf of a non-resident of Malaŵi; or

(*c*) places any sum to the credit of a non-resident of Malaŵi, is guilty of an offence and liable to a fine of K5,000 and to imprisonment for two years.

(2) Where a non-resident of Malaŵi has paid a sum in or towards the satisfaction of a debt due from him, subregulation (1) (*c*) does not prohibit the acknowledgement or recording of the payment.

Control of certain payments outside Malaŵi

15. A person who, being a resident of Malaŵi, without the permission of the Minister or the Bank, makes outside Malaŵi any payment to or for the credit of a non-resident of Malaŵi is guilty of an offence and liable to a fine of K5,000 and to imprisonment for two years.

Control of certain transactions

16. A person who—

(*a*) in Malaŵi; or

(*b*) being a resident of Malaŵi, outside Malaŵi,

without the permission of the Minister or the Bank, makes any payment to or for the credit of a non-resident of Malaŵi as consideration for or in association with—

(*c*) the receipt by any person of a payment made outside Malaŵi;

(*d*) the acquisition by any person of property which is outside Malaŵi;

(*e*) the transfer to any person, or the creation in favour of any person of a right (whether present or future and whether vested or contingent) to receive a payment outside Malaŵi; or

(*f*) the transfer to any person, or the creation in favour of any person, of a right (whether present or future and whether vested or contingent) to acquire property which is outside Malaŵi,

is guilty of an offence and liable to a fine of K5,000 and to imprisonment for two years.

Certain loans prohibited G.N. 50/1993

17. Without prejudice to regulation 24, a person who, being a resident of Malaŵi, without the permission of the Minister, lends Malaŵi currency to a non-resident of Malaŵi is guilty of an offence and liable to a fine of K5,000 and to imprisonment for two years.

PART V

Securities and Foreign Securities Control

Issue, etc. or securities

18.—(1) A person who, without the permission of the Minister, in Malaŵi—

(*a*) allots, issues, transmits or transfers any securities to a non-resident of Malaŵi; or

(*b*) makes an entry in a register that recognizes or gives effect to the allotment, issue, transmission or transfer of any securities to a non-resident of Malaŵi, is guilty of an offence and liable to a fine of K25,000 and to imprisonment for three years.

(2) In subregulation (1), ''transfer'' includes transfer by way of loan or security.

Taking, etc., securities out of Malaŵi

19.—(1) A person who, without the permission of the Minister—

(*a*) takes or sends, or attempts to take or send, any securities out of Malaŵi;

(*b*) transmits or transfers any securities from a register in Malaŵi to a register outside Malaŵi; or

(*c*) makes an entry in a register that recognizes or gives effects to the transmission or transfer of securities from a register in Malaŵi to a register outside Malaŵi, is guilty of an offence and liable to a fine of K25,000 and to imprisonment for three years.

Foreign securities

20.—(1) Subject to subregulation (2), a person other than the Bank or an authorized dealer who, without the permission of the Minister, acquires, disposes of or otherwise deals with any foreign securities, whether within or outside Malaŵi, is guilty of an offence and liable to a fine of K25,000 and to imprisonment for three years.

(2) Subregulation (1) does not apply to the acquisition of foreign securities otherwise than for valuable consideration.

PART VI

Companies

Interpretation

21.—(1) For the purposes of this Part, "foreign company" means a body corporate (not incorporated under the law of Malaŵi) in the case of which any of the following conditions is fulfilled namely—

(*a*) that it is by any means controlled (whether directly or indirectly) by residents of Malaŵi;

(*b*) that more than one-half of the sums which, on a liquidation thereof, would be receivable by holders of share or loan capital would be receivable (whether directly or indirectly) by or for the benefit of residents of Malaŵi;

(*c*) that more than one-half of the assets which, on a liquidation thereof, would be available for distribution after the payment of creditors would be receivable (whether directly or indirectly) by or for the benefit of residents of Malaŵi; or

(*d*) that more than one-half—

(i) of the interest payable on its loans and loan capital, if any;

(ii) of the dividends payable on its preference share capital, if any; or

(iii) of the dividends payable on its share capital, if any, not being preference share capital,

is receivable (whether directly or indirectly) by or for the benefit of residents of Malaŵi.

(2) Where the identity of the persons by whom or for whose benefit any sum, assets, interest or dividends are directly or indirectly receivable depends on the exercise by a resident of Malaŵi of a power of appointment or similar power, the sum, assets, interest or dividends shall, for the purposes of this Part, be declared to be receivable directly or indirectly by or for the benefit of residents of Malaŵi.

(3) For the purposes of this Part, residents or non-residents of Malaŵi, as the case may be, shall be deemed to control a body corporate notwithstanding that other persons are associated with them in the control thereof if they can together override those other persons.

Foreign companies

22.—(1) Where there is served on any resident of Malaŵi a notice in writing that the Bank wishes any requirements of the kind referred to in subregulation (2) to be complied with by any foreign company, and that person can, by doing or refraining from doing any act—

(*a*) cause the foreign company to comply with any of those requirements;

(*b*) remove any obstacle to the foreign company complying with any of those requirements; or

(*c*) render it in any respect more probable that the foreign company will comply with any of those requirements,

then, except so far as permission to the contrary may be given by the Minister, that person shall do or, as the case may be, shall refrain from doing that act.

(2) The requirements with respect to which a notice under subregulation (1) may be given are as follows, that is to say, that the foreign company shall—

(*a*) furnish to the Minister such particulars as to its assets and business as may be mentioned in the notice;

(*b*) sell or procure the sale to an authorized dealer of any bullion or foreign currency which it is entitled to sell or of which it is entitled to procure the sale;

(*c*) declare and pay such dividend as may be mentioned in the notice;

(*d*)realize any of its assets mentioned in the notice is such manner as may be so mentioned;

(*e*) refrain from selling, transferring, or doing anything that affects its rights or powers in relation to, any such securities as may be mentioned in the notice.

Transfer of control of body corporate

23. (1) Subject to subregulation (2), no resident of Malaŵi shall, without the permission of the Minister, do any act whereby a body corporate which is by any means controlled (whether directly or indirectly) by residents of Malaŵi ceases to be so controlled.

(2) A person who has sought and has obtained the Minister's permission to offer a body corporate's securities and obligations for sale on an approved stock exchange shall, if the permission includes all the body corporate's securities and obligations, be deemed to be exempt from the provisions of subregulation (1) where such change in control derives from the acquisition of such securities.

(3) A person, being a resident of Malaŵi, who contravenes subregulation (1) shall be guilty of an offence and liable to a fine of K10,000 and to imprisonment for two years.

Loans to bodies corporate

24.—(1) Subject to subregulation (2), no resident of Malaŵi shall, without the permission of the Minister, lend any money or securities to a body corporate that is a non-resident of Malaŵi and which is by any means controlled (whether directly or indirectly) by persons who are non-residents of Malaŵi.

(2) Subregulation (1) does not apply in the case of a lender who, after making such inquiries as are reasonable in the circumstances of the case, does not know and has no reason to suspect that the body corporate concerned is controlled as provided in subregulation (1).

(3) A person who, being a resident of Malaŵi, without the permission of the Minister, lends any money or securities in contravention of subregulation (1) is guilty of an offence and liable to a fine of K25,000 and to imprisonment for three years.

Possession of foreign currency prohibited

25.—(1) A person shall not, without the permission of the Minister, be in possession in Malaŵi of foreign currency.

(2) Unless in possession with the permission of the Minister, a person in possession in Malaŵi of foreign currency shall offer such foreign currency, or cause it to be offered, for sale to an authorized dealer.

(3) In any proceedings in respect of a contravention of sub-regulation (2) the burden is upon the accused person to prove that the foreign currency in question has been offered for sale to an authorized dealer.

(4) A person shall be deemed to be in contravention of sub-regulation (2) if the offer made or caused to be made by him is at a price exceeding that authorized by the Minister or is without payment of any usual and proper charges of the authorized dealer or is otherwise on any unusual terms.

(5) Any person who contravenes subregulation (1) or (2) is guilty of an offence and liable to a fine of k10,000 and to imprisonment for two years.

(6) This regulation does not apply to—

(*a*) a person who is not ordinarily resident in Malaŵi;

(*b*) any authorized dealer;

(*c*) a person who under any written law or contract is for the time being lawfully exempted from the requirements of sub-regulations (1) and (2) either expressly or by necessary implication.

PART VII

MISCELLANEOUS

Blocked accounts

26.—(1) In this regulation, "blocked account" means an account conducted with the Bank, or with an authorized dealer, declared by the Minister to be a blocked account, but does not include an account which the Minister declares shall no longer be a blocked account.

(2) Where under any provision of these Regulations permission is required for the making of a payment to, or the placing of a sum to the credit of, a person who is a non-resident of Malaŵi, the Minister may direct that the sum be paid or credited to a blocked account and, in that event, such payment or credit shall be made accordingly.

(3) When the Minister directs that any sum be paid or credited to a blocked account, the sum may with the consent of the person to whom it is to be paid or credited and subject to these Regulations, be invested instead in the purchase for that person of any such investment as may be approved by the Minister for the purposes of this regulation; and where investments are so purchased nothing in this regulation restricts the manner in which the investment may be dealt with.

(4) Subject to subregulation (5), where the Minister directs that a sum be paid or credited to a blocked account, compliance, to the extent of the sum paid or credited, is a good discharge to the person making the payment or credit.

(5) In the case of a sum due under a contract subregulation (4) does not apply in so far as it is shown to be inconsistent with the intention of the parties that it should apply.

(6) Subject to subregulation (3), a person who, without the permission of the Bank—

(*a*) makes any payment out of, or is a party to any transaction having the effect of making a payment out of, a blocked account;

(*b*) assigns or charges any money standing to the credit of a blocked account; or

(*c*) makes any change in the name in which a blocked account stands,

is guilty of an offence and liable to a fine of K10,000 and to imprisonment for two years.

Travellers

27.—(1) In this regulation—

"officer" means an officer within the meaning of that word in the Customs and Excise Act or a member of the Malaŵi Police Force and includes a person authorized by the Minister to act as an officer for the purposes of this regulation;

Cap. 42:01

"traveller" means a person who is about to leave Malaŵi.

(2) A traveller shall, if requested to do so by an officer—

(*a*) declare whether or not he has any bullion, foreign currency, Malaŵi currency or securities with him;

(*b*) declare, whether or not he has with him anything prohibited by these Regulations to be exported from Malaŵi; and

(*c*) produce any such bullion, foreign currency, Malaŵi currency, securities and thing which he has with him.

(3) Subject to regulation (4), an officer and any person acting under the directions of an officer may search the traveller and examine and search any article which the traveller has with him, for the purpose of ascertaining whether he is conveying or has in his possession anything of the kind referred to in subregulation (2)(*a*) or (*b*).

(4) A person shall not be searched under subregulation (3) except by an officer or person of the same sex.

(5) An officer and any person acting under the directions of an officer may go on board or enter any aircraft, vehicle or vessel for the purpose of exercising the powers conferred on him by this regulation, and may examine or search the aircraft, vehicle or vessel and anything found on or in it, for the purpose of ascertaining whether there is anything of the kind referred to in subregulation (2) (*a*) or (*b*) on or in it to be taken or sent out of, or exported from, Malaŵi in contravention of these Regulations.

(6) An officer may seize anything found upon such examination or search which, in his opinion, is in the possession of any traveller, or on board or in any aircraft, vehicle or vessel, to be taken or sent out of, or exported from, Malaŵi in contravention of these Regulations.

(7) For the purposes of subregulations (5) and (6), the words "aircraft", "vehicle" and "vessel" have the same meaning as is respectively assigned thereto by section 2 (1) of the Customs and Excise Act. Cap. 42:01

Residents leaving Malaŵi

28.—(1) Where a resident of Malaŵi leaves Malaŵi for a destination outside Malaŵi (whether immediate or ultimate) the Minister may direct that, for such period as may be specified in the direction, payments by him or on his behalf and to him or his credit, and transactions in or in relation to securities in which he is in any way concerned, shall, whether or not he continues to be a resident of Malaŵi, be subject to such restrictions as may be specified in the direction.

(2) A direction given under subregulation (1)—

(*a*) may be either general or specific;

(*b*) may be given in relation to a resident about to leave or after he has left for a destination outside Malaŵi; or

(*c*) may be revoked or varied by a subsequent direction given by the Minister.

Payments for export of moveable property, etc. G.N. 26/1987 G.N. 50/1993

29.—(1) Except with the permission of the Minister, no person shall export moveable property of a value exceeding, in aggregate, K2,000 unless the Controller of Customs and Excise is satisfied that—

G.N. 26/1987

(*a*) payment in respect of the property has been made to a person resident in Malaŵi in accordance with the permission of the Minister or is to be so made within three working days after payment for the exports is made;

(*b*) the amount of the payment that has been made or is to be made is such as to represent a return for the property that, in all the circumstances, is satisfactory in the interests of Malaŵi;

(*c*) the exporter has completed, and complied with the requirements of form CD1 set out in the Schedule:

Provided that the Minister may direct that paragraph (*a*) shall have effect in any particular cases or class of cases as if for the reference to three working days there were substituted a reference to such longer or shorter period as may be specified in the direction.

G.N. 26/1987 50/1993

(2) The Controller of Customs and Excise, for the purpose of satisfying himself with respect to the matters specified in subregulation (1), may require the person making entry of the property for export to deliver to him, together with the entry, such declaration signed by such person as the Controller may require; and where such declaration has been required the property shall not be exported until the declaration has been delivered.

(3) If, with respect to any of the matters specified in subregulation (1) (*b*), the Controller of Customs and Excise is not satisfied, he shall give his reason to the person making entry of the property for export and shall take into consideration any representation made to him by that person.

(4) If payment in respect of any property exported is not made within the period within which it ought to be made under subregulation (1) the Minister may—

(*a*) give such directions as he deems expedient to any person for the purpose of obtaining or expediting the receipt of such payment; or

(*b*) if the property has not been sold, give such directions as he deems expedient as to how the property shall be dealt with, including if he thinks fit a direction that the property shall be assigned to the Minister or to such other person as may be specified therein to be dealt with in such manner as the Minister thinks fit.

(5) A person who contravenes subregulation (1) is guilty of an offence and liable to a fine of K50,000 or to a fine of an amount equal to the value of the property involved whichever amount is the greater and to imprisonment for two year. G.N. 50/1993

Provisions relating to the import of moveable property G.N. 86/1986

30.—(1) Every person—

(*a*) to whom permission has been given under these Regulations subject to a condition providing that, or on the faith of an application stating an intention that, any moveable property will be imported; or

(*b*) by whom any currency has been obtained in Malaŵi on the faith of an application stating an intention that any moveable property will be imported,

shall, if the property is not imported within three months of the date; when the permission was given or, as the case may be, when the currency was obtained, notify in writing all the material particulars with respect to such property to an authorized dealer, and the notification shall be given within the period of 7 days, immediately following the date of expiry of the three months.

(2) Where in any such case as is specified in paragraph (*a*) of subregulation (1) the moveable property concerned has not been imported within three months as aforesaid, the Minister may give to any person who appears to the Minister to be in a position to give effect thereto such directions as appear to the Minister to be expedient as to the manner in which the property is to be dealt with.

(3) Without prejudice to the generality of subregulation (2), the power thereby conferred on the Minister extends to the giving of a direction that the property shall be assigned to the Minister or to such other person as may be specified in the direction.

PART VIII

Legal Provisions and Offences

Legal proceedings G.N. 50/1993

31.—(1) The application of any of the provisions of Part III in relation to any sum is not affected by the fact—

(*a*) that the sum is required to be paid by a judgment or order of a court or by an award; or

(*b*) that the sum is paid out of a court, whether by order of the court or otherwise.

(2) Without prejudice to the provisions of any written law relating to the making of rules of court, rules of court may be made (as respects the High Court or any other court) by the Chief Justice—

(*a*) enabling any person who is required by any judgment, order or award to pay any sum, if he apprehends that the payment of that sum is unlawful under these Regulations except with the permission of the Minister, to pay that sum into court;

(*b*) declaring that payment of a sum into a court by virtue of rules made under subparagraph (*a*) together with the delivery to the other party concerned of such evidence of the payment as may be prescribed by the rules shall, to be extent of the payment, be a good discharge to the person making the payment; and

(*c*) so regulating the process of executions which may arise in respect of any sum required to be paid by any judgment, order or award as to secure that, unless it is shown, in such manner that the permission of the Minister for the payment of the sum is not required under these Regulations or has been given without conditions, the proceeds of the execution will be paid into court and, so far as necessary for that purpose, varying the form of any writ of execution or other similar document or the duties of the person to whom any such writ or other document is directed.

(3) In any proceedings in a court or tribunal, a claim for the recovery of a debt shall not be defeated by reason only of the debt not being payable without permission of the Minister and of that permission not having been given or having been revoked.

(4) Where any bankruptcy, winding up of a company, or administration of the estate of a deceased person, is carried on under the law of Malaŵi, a claim for a sum not payable without the permission of the Minister shall, notwithstanding that the permission has not been given or has been revoked, be admitted to proof as if it had been given and not been revoked, but without prejudice to the application of any of the provisions of Part III or IV to the payment of any sum pursuant to such a claim.

G.N. 50/1993

(5) A debt for the payment of which the permission of the Minister is required under these Regulations shall, if in other respects it is not to be precluded from being so under the provisions of any written law relating to bankruptcy for the time being in force in Malaŵi, be allowed to be a good petitioning creditor's debt notwithstanding that requirement if, and to the extent that, the debt can be satisfied either by a payment into court or to a blocked account so declared by the Minister in pursuance of regulation 26 (1).

Contracts, etc.

32.—(1) Subject to subregulation (2), it shall be an implied condition in any contract that where, by virtue of these Regulations, the permission of the Minister is at the time of the contract required for the performance of any term thereof, that term shall not be performed except in so far as the permission is given or not required.

(2) Subregulation (1) does not apply in any case where it is shown to be inconsistent with the intention of the parties that it should apply, whether by reason of their having contemplated the performance of that term notwithstanding the provisions of these Regulations, or for any other reasons.

(3) Notwithstanding anything in the Bills of Exchange Act, neither the provisions of these Regulations nor any conditions whether expressing or to be implied having regard to those provisions, that any payment shall not be made without the permission of the Minister under these Regulations, shall operate to prevent any instrument being a bill of exchange or a promissory note.

False statements G.N. 50/1993

33. A person who makes—

(*a*) to an officer within the meaning of regulation 27 (1);

(*b*) to an officer of the Bank; or

(*c*) to an authorized dealer,

any statement, whether oral or in writing, in pursuance of these Regulations or relating to any act, transaction, matter or thing to which any provision of these Regulations applies, which he knows to be untrue or which is misleading in any particular or which is made by him without his having first made proper inquiries to ascertain its truth, is guilty of an offence and liable to a fine of K5,000 and to imprisonment for two years.

Evasion of Regulations

34. A person who makes or enters into any arrangements, whether oral or in writing, for the purpose of, or which have the effect of, in any way, whether directly or indirectly, defeating, evading or avoiding, or preventing the operation of, these Regulations in any respect is guilty of an offence and liable to a fine of K5,000 and to imprisonment for two years.

Restrictions on disclosure of information

35.—(1) Any person who discloses information obtained by virtue of the provisions of these Regulations otherwise—

(*a*) than in the proper discharge of his functions;

(*b*) than for the purpose of any criminal proceedings;

(*c*) than when required to do so for the purposes of a statistical inquiry being conducted or directed under section 5 of the Statistics Act; Cap. 27:01

(*d*) than when ordered to do so by a court; or

(*e*) than for a specific purpose approved in writing by the Minister,

is guilty of an offence and liable to a fine of K2,000 and to imprisonment for two years.

Forfeiture, etc.

36.—(1) When a person is convicted of an offence against these Regulations the court, if it thinks fit, may in addition to any other punishment order the forfeiture of any bullion, foreign exchange or Malaŵi currency in respect of which the offence has been committed, whether the person convicted or some other person is the owner thereof.

(2) When a person convicted of an offence under these Regulations has acquired, whether directly or indirectly, any property by reason of his contravention of any of the provisions of these

Regulations, including non-compliance with the terms and conditions of any permission under these Regulations, the court may, in addition to any other penalty, direct that person to sell, or procure the sale of, the property and may, by the same or a subsequent direction, specify the manner in which, the person to whom, and the terms on which, the property shall be sold.

(3) Where a person fails or refuses to comply with a direction given under subregulation (2), the court may direct that the property vest in the Administrator General, subject to subregulation (4).

(4) Where, under subregulation (3), a court directs that any property vest in the Administrator General, it vests in the Administrator General free from any mortgage, pledge or charge, and the Administrator General may deal with it as he thinks fit, but he shall pay to any person, other than the person convicted, who would but for the vesting be entitled to the property, a sum in Malaŵi currency fixed by the court (or in the case of a non-resident person an equivalent sum in foreign currency) not being less than ninety *per centum* of the amount that, in the opinion of the court, represents the value of the property in the country in which he is resident at the time when the vesting occurred.

Offences by body corporate

37.—(1) Where an offence against these Regulations is proved to have been committed by a body corporate with the consent or connivance of any director, manager, secretary or other officer of the body corporate, he, as well as the body corporate, shall be guilty of that offence and liable to be proceeded against and punished accordingly.

(2) Notwithstanding anything to the contrary contained in these Regulations, where an offence against these Regulations is proved to have been committed by a body corporate there is no limit to the fine which may be imposed in respect thereof.

Forms
G.N. 50/1993

38. The forms set out in the Schedule shall be used for the purposes of these Regulations, and such particulars as are contained in those forms and are not particularly prescribed by these Regulations are hereby prescribed as particulars required under these Regulations.

SCHEDULE reg. 38 G.N. 50/1993

FORMS

Form CD1 (For Exports from Malaŵi)

(under regulation 29 (1) (*c*))

Consignor (Name: Address)	No. Date	Ref. No.	
	PURPOSE OF EXPORT Commercial Sample	Personal	Other
Consignee (Name: Address)	METHOD OF SALE Open Market Contract Other (state)	FOR CUSTOMS USE B/E Export No. Station	Date
Agent (Name: Address)		Customs Office Date	
	Country of Origin	Country of Destination	
Exporter's Bank and Address	TERMS OF PAYMENT Letter of Credit	Bill of Exchange Others*	
	Insured Value		
Branch Signature Date	*Payment Due Date of proceeds	Invoice Value	Currency
Shipping Marks	Number and Kind of Packages Goods	Gross Weight kg Net	Invoice Value MWK FOB/FOR TOT
Container No.		FOB Value	
Expected Date of Payment for Export	*Bank and Address abroad		Freight
			Insurance
			Other
Total			Invoice Value CIF

G.N. 50/1993

FOR USE OF AUTHORIZED DEALERS AND THE RESERVE BANK OF MALAŴI

EXCHANGE CONTROL

Date Proceeds Received	Amount in Foreign Currency	Date Exported	Exchange Rate	Amount MWK	Date Bank Sold to Reserve Bank	Amount MWK	Reason for Descrepancy
Total							

Declaration			Signature of Authorized Dealer		Date
I declare that the above particulars are true and correct					
			Reserve Bank Remarks		
Agent Signature Exporter Signature	Date Date			Signature	Date

NOTES ON THE USE OF FORM

GENERAL

1. This Form must be used for any export of goods from Malaŵi exceeding K2,000 in value, except in respect of the export of—

(*a*) goods shown to the satisfaction of the Department of Customs and Excise to have been previously imported as *bona fide* commercial travellers' samples;

(*b*) household and personal effects, including motor vehicles, of persons who have been granted emigrant status by the Exchange Control Department of the Reserve Bank of Malaŵi. Such persons or their agents should be in possession of a letter from their bankers authorizing the export of such effects;

(*c*) motor vehicles under a temporary export permit issued by the Department of Customs and Excise.

2. In the case of exports of *bona fide* commercial travellers samples or advertising matter supplied without charge, this Form when completed must bear a statement certifying such sample or advertising matter for

which no payment is to be received. The exporter's copy of this Form must subsequently be endorsed with the date of reimportation of the goods and be lodged with the Exchange Control Department of the Reserve Bank of Malaŵi. In the event of any goods being sold the bankers certification of the amount received must be obtained.

3. This Form must be submitted to the exporter's bankers, duly completed before the export is cleared by the Department of Customs and Excise. The exporter's bankers should put up an application for prior exchange control approval for any export of items wrongly supplied or those being sent for repair and return.

Distribution of this Form

4. This Form shall be completed in four copies to be distributed as follows—

(*a*) the exporter shall, at the time of export, present all the four copies to the Department of Customs and Excise for endorsements as required;

(*b*) the first copy shall be retained by the Department of Customs and Excise;

(*c*) the second copy shall be surrendered to the exporter for his retention;

(*d*) the third and fourth copies shall be forwarded by the Department of Customs and Excise to the Exchange Control Department of the Reserve Bank of Malaŵi which shall retain the third copy and forward the fourth copy to the exporter's bankers for their retention.

5. On receipt of export proceeds the exporter's bankers shall submit their copy of this Form together with invoices, credit slips and other relevant documents dully certified, to the Exchange Control Department of the Reserve Bank of Malaŵi.

Method of Receiving Payment

6. Repatriation of proceeds must take place within three (3) working days after payment has been made by the importer. If payment for the exporter is not made by the importer within two (2) months from the date of export, the exporter must report to the Exchange Control Department of the Reserve Bank of Malaŵi, through his bankers, giving reasons for the delay.

7. Payment for exports must be received through the exporter's bankers under normal banking procedures.

8. Payment for exports must not be received in cash or in kind, and exports shall not be traded by way of barter, unless written approval of the Exchange Control Department of the Reserve Bank of Malaŵi was obtained before the export took place.

9. The gross export proceeds realized must be repatriated to Malaŵi. Settlement of any expenses incurred externally in respect of the particular export may be made only with prior written approval of the Exchange Control Department of the Reserve Bank of Malaŵi.

Further Information

10. Any further information required by exporters regarding procedures may be obtained from the Department of Customs and Excise or from the exporter's bankers in Malaŵi.

EXCHANGE CONTROL (FOREX BUREAUX AND FOREIGN EXCHANGE FIXING SESSIONS) REGULATIONS

G.N. 35/1994

ARRANGEMENT OF REGULATIONS

REGULATION

PART I

PRELIMINARY

1. Citation
2. Interpretation

PART II

FOREIGN EXCHANGE ACCRUED TO RESIDENTS OF MALAŴI

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EXCHANGE CONTROL (FOREX BUREAUX AND FOREIGN EXCHANGE FIXING SESSIONS) REGULATIONS

Forms and procedure

PART I

PRELIMINARY

1. These Regulations may be cited as the Exchange Control (Forex Bureaux and Foreign Exchange Fixing Sessions) Regulations. Citation

2.—(1) In these Regulations, unless the context otherwise requires— Interpretation

"authorized dealer" has the meaning ascribed thereto in the Exchange Control Regulations, and "authorized dealer bank" shall be construed accordingly;

"the Bank" means the Reserve Bank of Malaŵi established under the Reserve Bank of Malaŵi Act; Cap. 44:02

"bank" has the meaning ascribed thereto in the Banking Act; Cap. 44:01

"convertible currency" means any of the currencies specified in the First Schedule and such other currency as the Bank may prescribe in its Guidelines; *First Schedule*

"Fixing Committee" means the committee established under regulation 37;

"Fixing Secretariat" means the unit in the Bank established pursuant to regulation 38;

"fixing session" means the process conducted under regulation 35 to fix the exchange rate of the Malaŵi Kwacha;

"foreign currency" is used interchangeably with the expression "foreign exchange";

"forex" is used as the short form of the expression "foreign exchange";

"forex bureau" means a business enterprise licensed under Part III to carry on the business of buying and selling foreign currency;

"licence fee" means the fee for a forex bureau licence specified in regulation 11 (4);

"prescribed" means prescribed in these Regulations or in guidelines issued by the Bank under these Regulations;

"Steering Committee" means the committee established under regulation 35 (2) (*a*);

"Policy Formulation Committee" means the committee established under regulation 35 (2) (*b*);

"these Regulations" includes any guidelines issued by the Bank under these Regulations.

(2) In these Regulations, a reference to any amount in United States dollars shall, unless the context otherwise requires, be construed as including a reference to an equivalent amount in any of the convertible currencies or any combination of them.

PART II

Foreign Exchange Accrued to Residents of Malaŵi

Repatriation and disposal of foreign exchange accrued to residents

3. Foreign exchange accrued abroad to residents of Malaŵi shall be repatriated to Malaŵi and disposed of in accordance with these Regulations of the objective to liberalize the financial and payment systems.

Period of repatriation of foreign exchange accrued to exporters

4.—(1) Except with the permission of the Minister, no person resident in Malaŵi shall hold abroad for more than three working days, and in any form whatsoever, any foreign exchange after receipt thereof, in return for export of goods or services of Malaŵi.

(2) Subject to subregulation (3), every exporter shall—

(*a*) cause the foreign exchange referred to in subregulation (1) to be transferred to the account of an authorized dealer bank in Malaŵi; or

(*b*) maintain a foreign currency denominated account with an authorized dealer bank in Malaŵi, to which the foreign exchange shall be credited.

(3) In the case of exporters of tobacco, tea and sugar ninety per cent of the foreign exchange received shall be credited to their foreign currency accounts with authorized dealer banks in Malaŵi and the banks shall surrender the balance to the Bank for the ultimate disbursement thereof to those exporters in Malaŵi Kwacha.

Selling, etc., of foreign exchange by exporters

5.—(1) In order to obtain the Malaŵi Kwacha equivalent, all exporters holding foreign currency accounts may sell the foreign currency they have in their foreign currency accounts to any authorized dealer bank or to a fixing session.

(2) An exporter may, subject to these Regulations, utilize the foreign currency held in an account with an authorized dealer bank under this regulation to pay for his own imports of goods or services through the bank.

Buying and selling of foreign exchange by residents

6.—(1) Residents of Malaŵi wishing to obtain foreign exchange for the purpose of making payments abroad in respect of imports of goods or services may purchase foreign exchange from—

(*a*) a fixing session;

(*b*) an authorized dealer bank;

(*c*) any forex bureau:

Provided that any such remittance shall be arranged through an authorized dealer bank, except where alternative transfer mechanisms have been provided for under these Regulations.

(2) In the buying and selling of foreign exchange under these Regulations—

(*a*) residents of Malaŵi wishing to buy or sell foreign currency shall be at liberty to do so at the exchange rates which in their opinion are favourable for their purpose; and

(*b*) transactions may take place at the exchange rates as quoted by an authorized dealer bank or a forex bureau, or at the exchange rate which the purchaser or seller has offered or asked for at a fixing session, or has offered to, or asked from, an authorized dealer bank or a forex bureau.

Guidelines for establishment of forex bureaux and development of foreign exchange market

7. The Bank—

(*a*) shall, in accordance with these Regulations, issue guidelines for the establishment and operation of forex bureaux and fixing sessions;

(*b*) may, in order to facilitate the development of the foreign exchange market, issue guidelines for the establishment and operation of foreign exchange brokers in Malaŵi.

PART III

Licensing of Forex Bureaux

Forex bureau business

8. A forex bureau may carry on the business of buying and selling foreign currency subject to the provisions of the Act, these Regulations and any other subsidiary legislation made under the Act.

Application to carry on a forex bureau business

9.—(1) A person who satisfies the requirements of these Regulations and wishes to carry on the business of a forex bureau may apply to the Bank for a licence to carry on such business

(2) An applicant for a licence for a forex bureau shall have at the time of application—

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(*a*) been registered in accordance with the Companies Act as a limited liability company whose sole object shall be to carry on the business of a forex bureau, and included in its registered name the words "Forex Bureau" or "Bureau de Change";

(*b*) an identifiable place of business which is accessible to the public and is, in the opinion of the Bank, suitable in all respects for the business of a forex bureau.

Form of application and particulars *Second Schedule*

10. An application for a licence shall be in the form set out in the Second Schedule addressed to the Bank and shall—

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(*a*) state the name of the forex bureau as registered under the Companies Act;

(*b*) state the name and address of the applicant's bankers;

(*c*) specify the proposed place of business of the forex bureau; and

(*d*) be accompanied with the specimen signature of each director or, as the case may be, each proprietor, of the bureau.

Forex bureau licence

11.—(1) The Bank shall, within twenty-one days of an application for a licence, consider the application and approve it if the Bank is satisfied that the applicant has complied with the requirements of these Regulations or refuse to grant the licence if not so satisfied.

(2) The Bank shall, before granting a licence under this regulation, cause to be made an inspection of the proposed place of business of the proposed forex bureau by an authorized officer of the Bank for the purpose of ascertaining whether or not the premises comply with the requirements of these Regulations.

(3) The Bank shall, within fourteen days after the expiration of the period prescribed by subregulation (1), inform the applicant of its decision, giving reasons where the Bank refuses to grant a licence.

(4) Where the Bank approves an application for a forex bureau, it shall issue to the applicant a forex bureau licence in the prescribed form upon payment by the applicant to the Bank of a licence fee of 500 United States dollars payable in that currency or in Malaŵi Kwacha.

Minimum requirements on being issued a forex bureau licence

12. A person issued with a forex bureau licence shall—

(*a*) prominently display and at all times keep so displayed a copy of the licence of his business premises;

(*b*) have identifiable employees of his forex bureau, by providing to the Bank their names, residential addresses, specimen signatures, and passport-size photographs;

(*c*) immediately inform the Bank of any change with regard to the composition of the employees;

(*d*) not permit any other person, other than those employees who have been registered with the Bank, to transact any business on behalf of the forex bureau;

(*e*) immediately on the commencement of the business of the forex bureau, open a foreign currency account, solely for the day-to-day operations of the forex bureau, with an

authorized dealer bank and report that fact in writing to the Bank within fourteen days from the commencement of business; and

(*f*) maintain on the account opened pursuant to paragraph (*e*) a minimum balance of 2,000 United States dollars or such higher amount as the Bank may, from time to time, prescribe in its guidelines.

Forex bureau licence not transferable

13.—(1) Each forex bureau shall be treated as an autonomous entity for the purposes of registration and operations.

(2) A forex bureau licence shall neither be transferable nor assignable and no forex bureau shall operate as an agent of another forex bureau.

Duration and renewal of a forex bureau licence

14.—(1) A forex bureau licence shall be valid for a period of twelve months from date of issue and may be renewed for similar periods upon payment of the licence fee.

(2) An application for renewal of a forex bureau licence, supported by a tax clearance certificate and other documents prescribed by the Bank in its guidelines, shall be submitted to the Bank at least two months before the expiry date of the forex bureau licence.

(3) At the expiration of its licence, a forex bureau shall forthwith cease operations, unless the licence has been renewed by the Bank.

(4) The renewal of a forex bureau licence shall be at the sole discretion of the Bank and shall be subject to the satisfactory conduct of the business of the forex bureau as determined by the Bank.

Revocation of a forex bureau licence

15.—(1) A forex bureau licence shall not be revoked except as provided in this regulation and regulation 17.

(2) Where a forex bureau licence has been issued and it is subsequently found that it was issued as a result of a materially false or fraudulent representation supplied to the Bank by the proprietor of the forex bureau or by any person acting under his instructions, the Bank shall give written notice to the forex bureau requesting it to show cause within a reasonable time specified in the notice why the licence should not be revoked.

(3) Where a forex bureau is in breach of any provision of these Regulations, the Bank shall give written notice to the forex bureau, specifying particulars of the breach and requiring the forex bureau to show cause within thirty days why the licence of the bureau should not be revoked.

(4) If—

(*a*) the Bank is not satisfied with the cause shown under subregulation (2) or (3); or

(*b*) in the opinion of the Bank, the conduct of a forex bureau is detrimental to the success of the whole or any aspect of the forex bureau scheme under these Regulations, the Bank may revoke the licence issued in respect of the forex bureau.

PART IV

Forex Bureau Operations

Operations of a forex bureau

16.—(1) A forex bureau licence shall authorize the holder to engage in spot transactions only.

(2) A forex bureau may deal only in convertible currencies and, subject thereto and to the restrictions specified in subregulation (4), may engage in—

(*a*) buying and selling foreign currency in cash;

(*b*) buying travellers' cheques of foreign currency;

(*c*) selling travellers' cheques of foreign currency on agency basis on behalf of authorized dealer banks.

(3) Where a forex bureau sells travellers' cheques on agency basis as provided in subregulation (2) (*c*) it shall, for every sale of such travellers' cheques, issue to the buyer a receipt in the prescribed form.

(4) A forex bureau, whether owned by a bank or not, shall not operate or be regarded as a bank and shall not perform any of the following functions—

(*a*) open foreign exchange or Malaŵi Kwacha accounts for any customer;

(*b*) establish a letter of credit; or

(*c*) perform any other banking business.

Prohibited transactions

17.—(1) No person shall—

(*a*) deposit, or accept a deposit of, Malaŵi Kwacha with a forex bureau with the intention of obtaining or supplying foreign exchange equivalent thereof wholly or in part at a future date;

(*b*) deposit, or accept a deposit of, foreign currency with a forex bureau with the intention of obtaining or supplying the Malaŵi Kwacha equivalent thereof either wholly or in part at a future date;

(*c*) at a forex bureau, refuse to sell foreign currency to any customer if such foreign currency is available at the forex bureau;

(*d*) fail to issue an accurate official receipt to cover purchase and sale of foreign currency at a forex bureau;

(*e*) issue an official forex bureau receipt for any purpose other than to cover the purchase and sale of foreign currency by the issuing forex bureau.

(2) A person who contravenes subregulation (1) shall be guilty of an offence and, on conviction of such person, in addition to any other penalty imposed, the licence issued in respect of the forex bureau shall be deemed revoked forthwith.

Buying and selling rates

18.—(1) Every forex bureau shall quote its foreign exchange buying and selling rates, which rates shall be prominently displayed in the premises of the forex bureau.

(2) A forex bureau shall prominently display at all times in its premises a notice informing its customers that they are entitled to be issued with an official receipt in the prescribed form for any purchase or sale of foreign currency made by them.

(3) A forex bureau shall report its buying and selling rates to the Bank as the Bank may require in its guidelines.

Forex bureau transactions to be confidential

19.—(1) All transactions conducted by a forex bureau shall be done and maintained in the strictest confidence as between the forex bureau and the other parties to the transactions and the forex bureau shall not make any disclosure thereof except as required by law.

(2) No information or document other than the information or document required for the completion of the foreign exchange purchase or sale receipts shall be demanded by any forex bureau.

(3) A forex bureau shall not be entitled to demand or seek an explanation from a customer as to the source of the funds involved in any transaction with it.

Registers and other records

20.—(1) Every forex bureau shall maintain—

(*a*) a register of purchases of foreign currency in cash;

(*b*) a register of purchases of travellers cheques; and

(*c*) a register of sales of travellers cheques.

(2) Every forex bureau shall maintain adequate accounting records to enable it to prepare its final accounts.

(3) All registers and other records of a forex bureau shall be made available for inspection by authorized officials of the Bank.

Inspection by the Bank

21. The Bank shall, at least once in each licence year of a forex bureau, examine the operations of a forex bureau and may do so at any time as the Bank considers necessary.

PART V

Foreign Currency for Travel or Imports

Personal travel allowance

22. A person who wishes to travel outside Malaŵi may purchase from a forex bureau for each trip up to 3,000 United

States dollars and shall, if so required at the exit point, furnish the foreign currency sale receipt in respect of the foreign currency purchased.

Foreign exchange for imports

23. Subject to the provisions of this Part, a person, firm or other organization may purchase any amount of foreign currency from a forex bureau for the purpose of importing goods into Malaŵi, but remittance of the foreign currency so purchased shall be made only through an authorized dealer bank.

Pre-shipment inspection of imports

24. Where the goods to be imported with foreign currency from a forex bureau under these Regulations are valued at 5,000 United States dollars or more, the goods shall be subject to pre-shipment inspection in accordance with the law on pre-shipment inspection for the time being in force or in accordance with the guidelines of the Bank.

Letters of credit

25.—(1) An importer who wishes to import goods through a letter of credit shall submit the following documents to the authorized dealer bank he is dealing with in respect of those goods—

(*a*) a proforma invoice;

(*b*) an import licence (where applicable), the face value of which does not exceed the value of the goods as stated in the proforma invoice; and

(*c*) the relevant form prescribed for imports.

(2) Where the authorized dealer bank is satisfied that the documents submitted by the importer are in order and that the importer has sufficient funds to pay for the imports, the bank shall establish a letter of credit on behalf of that importer in relation to the goods to which the import licence relates.

(3) The authorized dealer bank shall, immediately after establishing the letter of credit under subregulation (2), submit the import documents to the Bank.

Imports of goods on consignment basis or supplier's credit

26.—(1) An importer may transfer outside Malaŵi foreign currency obtained from a forex bureau to cover imports of goods on open account.

(2) A person who wishes to transfer foreign currency under this regulation shall provide to his authorized dealer bank, the appropriate documentation which shall include any or all of the following, as applicable—

(*a*) the customs and excise transit entry forms of the country of transit;

(*b*) the Malaŵi customs and excise import bill of entry;

(*c*) the supplier's final invoice;

(*d*) the ex-warehouse home consumption entry form;

(*e*) the Malaŵi Customs and Excise Department receipts for all taxes;

(*f*) the Malaŵi customs and excise warehousing entry form;

(*g*) the pre-inspection clean report of findings;

(*h*) a bill of lading, air waybill or road and railway consignment note;

(*i*) the relevant form prescribed for imports;

(*j*) a copy of the import licence; and

(*k*) the Malaŵi customs and excise verification certificate.

(3) The authorized dealer bank shall submit to the Bank for recording the documents provided to it under subregulation (2).

PART VI

Service Payments

Medical expenses allowance

27.—(1) A person resident in Malaŵi may, subject to the provisions of this regulation, transfer out of Malaŵi, without exchange control approval, foreign currency obtained from a forex bureau to cover costs of medical services incurred outside Malaŵi.

(2) A person who wishes to make a transfer under this regulation may purchase up to 4,000 United States dollars per trip upon the production to an authorized dealer bank of a referral letter from a medical practitioner.

(3) For any medical expenses in excess of the amount specified in subregulation (2), foreign currency shall be sold to the individual concerned only upon production of medical bills showing the excess amount.

(4) Every authorized dealer bank shall submit to the Bank documents produced to it under this regulation.

Educational expenses allowance

28.—(1) A person resident in Malaŵi may, subject to the provisions of this regulation, transfer out of Malaŵi, without exchange control approval, foreign currency obtained from a forex bureau to cover educational expenses for a person who is a dependant of a person resident in Malaŵi.

(2) A person who wishes to make a transfer under this regulation shall provide to an authorized dealer bank the following—

(*a*) documentary evidence that the student is a citizen of Malaŵi or a dependant of a resident of Malaŵi;

(*b*) documentary evidence that the beneficiary has a *bona fide* admission letter from a recognized institution of learning and evidence that the student has been enrolled for the period claimed;

(*c*) in the case of a continuing student, evidence that the student is still enrolled and attending the institution;

(*d*) the relative bills or statements of account from the educational institution showing the amount required for—

(i) tuition fees;

(ii) incidental expenses, including textbooks and stationery; and

(iii) boarding and lodging expenses where the student is living in a hall of residence.

(3) The expenses under this regulation shall be paid directly to the educational institution concerned.

(4) The authorized dealer bank shall submit to the Bank for recording the documents provided to it under subregulation (2).

Allowance for other expenses

29.—(1) A person resident in Malaŵi may, subject to this regulation, transfer out of Malaŵi, without exchange control approval, foreign currency obtained from a forex bureau to cover such other expenses than those specified in regulations 27 and 28 as may be specified by the Bank in its guidelines.

(2) A person who wishes to transfer foreign currency under this regulation shall present to the authorized dealer bank handling the transfer supporting documentary evidence in the prescribed form.

(3) The authorized dealer bank through which any transfer was made under this regulation shall, as soon as practicable, submit to the Bank for recording the documents relating to the transfer.

Transfer of foreign currency obtained from fixing sessions

30.—(1) A person resident in Malaŵi may, with the permission of the Bank, transfer out of Malaŵi foreign currency obtained from a fixing session for such expenses as the Bank may from time to time specify in its guidelines.

(2) A person who wishes to make a transfer under this regulation shall submit to the Bank, through an authorized dealer bank, relevant forms and other documentary evidence prescribed by the Bank.

PART VII

Remittances

Remittances from abroad

31. A person outside Malaŵi may make remittances in foreign currency to a beneficiary in Malaŵi directly or through an authorized dealer bank.

Diplomatic missions, etc.

32. An international organization, a diplomatic mission, or the employees thereof with diplomatic or similar accreditation

may sell foreign currency to a forex bureau but shall not be allowed to buy foreign currency from any forex bureau.

Foreign currency account of a forex bureau

33. A forex bureau shall maintain a foreign currency account with an authorized dealer bank for the following purposes—

(*a*) to receive inward foreign currency transfers on its own account; and

(*b*) for the settlement of its local foreign currency transactions.

Transfer of money by a forex bureau

34. A forex bureau shall not use its foreign currency account maintained under regulation 33 to transfer money outside Malaŵi, except in accordance with these Regulations.

PART VIII

Foreign Exchange Fixing Sessions

Fixing session

35.—(1) The Bank shall conduct foreign exchange fixing sessions once every week at its premises during which the exchange rate of the Malaŵi Kwacha shall be freely established on the basis of supply of, and demand for, foreign currencies by authorized participants.

(2) For the purposes of subregulation (1), there is hereby established—

(*a*) a body to be known as the Foreign Exchange Steering Committee (in these Regulations otherwise referred to as the "Steering Committee") which shall be the body to determine all issues relating to, and generally to oversee, the foreign exchange market in Malaŵi and which shall consist of—

(i) the Governor of the Bank who shall be Chairman thereof;

(ii) the Minister of Finance;

(iii) the Minister of Trade and Industry; and

(iv) the Secretary to the President and Cabinet;

(*b*) another body, as a committee of the Steering Committee, to be known as the Foreign Exchange Policy Formulation Committee (in these Regulations otherwise referred to as the "Policy Formulation Committee") to advise the Steering Committee on all aspects of foreign exchange policies and to implement the decisions of the Steering Committee, and which shall consist of—

(i) an officer of the Bank appointed by the Governor of the Bank and who shall be chairman thereof;

(ii) the Secretary to the Treasury;

(iii) the Secretary for Trade and Industry; and

(iv) the Secretary for Economic Planning and Development.

Authorized participants at fixing sessions

36. For the purpose of participation at a fixing session, the following categories of participants shall be recognized as authorized participants—

(*a*) the Bank;

(*b*) authorized dealer banks;

(*c*) forex bureaux;

(*d*) licensed brokers in foreign exchange transactions;

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(*e*) companies incorporated under the Companies Act and other enterprises, which companies and enterprises, in the opinion of the Bank, meet the operational requirements of the fixing session.

Fixing Committee

37.—(1) There shall be established a committee to be known as the Foreign Exchange Fixing Committee (in these Regulations otherwise referred to as the "Fixing Committee") which shall consist of—

(*a*) three officers of the Bank, appointed by the Governor of the Bank who shall designate one of them as chairman of the Fixing Committee;

(*b*) one member representing the Associated Chamber of Commerce and Industry, appointed by that body;

(*c*) a public officer representing the Secretary to the Treasury;

(*d*) a public officer representing the Secretary for Trade and Industry;

(*e*) a public officer representing the Secretary for Economic Planning and Development;

(*f*) one member representing authorized dealer banks;

(*g*) one member representing forex bureaux;

(*h*) one member representing licensed brokers in foreign exchange transactions.

(2) The functions of the Fixing Committee shall be—

(*a*) to supervise the conduct of fixing sessions;

(*b*) to make recommendations to the Policy Formulation Committee regarding issues necessary for the proper conduct and development of the fixing.

(3) At all fixing sessions, the chairman of the Fixing Committee shall—

(*a*) open boxes containing fixing orders;

(*b*) declare the rate that clears the buying and selling orders and announce the fixing statistics; and

(*c*) sign the prescribed document to confirm the official exchange rate up to the next fixing session.

Fixing Secretariat

38.—(1) For the purpose of facilitating the operations of fixing sessions, the Bank shall establish, within its establishment, a unit to be known as the Foreign Exchange Fixing Secretariat (in these Regulations otherwise referred to as the "Fixing Secretariat").

(2) The functions of the Fixing Secretariat shall be—

(*a*) to carry out administrative instructions of the Fixing Committee;

(*b*) to ensure the safe arrival of the buying and selling orders into the fixing room;

(*c*) to open all envelopes containing orders and vet the orders in accordance with the published guidelines for the fixing;

(*d*) to process all orders in order to establish the cumulative demand for and supply of foreign currency of participants;

(*e*) to print a fixing report giving details of all orders in such manner as to enable the Fixing Committee to determine the clearing rate at the particular fixing;

(*f*) to print other reports as may be required by the Fixing Committee and the Bank;

(*g*) to ensure that there is a press release on the results of the fixing; and

(*h*) to ensure that all buying and selling orders are processed quickly for settlement and accounting purposes.

PART IX

Miscellaneous

Returns

39.—(1) Every forex shall submit to the Bank, in the prescribed form, the following returns—

(*a*) a weekly return of its foreign exchange position, which return shall be submitted not later than 4.00 p.m. of every working Monday of the week; and

(*b*) a monthly return of total purchases and sales of foreign currency, which return shall be submitted not later than five working days after the end of the month for which the return is being made.

(2) Every authorized dealer bank shall submit to the Bank, in the prescribed form, a monthly return of all transfers made by it under Parts V and VI.

Inspection of books of accounts of a forex bureau

40.—(1) The Bank may, at any time, cause an inspection to be made by an officer of the Bank of any forex bureau and of its books of accounts.

(2) It shall be the duty of every employee of a forex bureau, within a reasonable time, to produce to the officer making an inspection under subregulation (1) all such books, accounts and other documents in the power or custody of the forex bureau and to furnish that officer with such statements or information relating to the affairs of the forex bureau as he may require.

Offences

41. Any person who—

(*a*) fails to maintain a foreign currency account contrary to regulation 12 (*e*);

(*b*) transfers or assigns a forex bureau licence contrary to regulation 13;

(*c*) deals in foreign currency contrary to regulation 16;

(*d*) transfers foreign currency out of Malaŵi for medical expenses contrary to regulation 27;

(*e*) transfers foreign currency out of Malaŵi for educational purposes contrary to regulation 28;

(*f*) transfers foreign currency out of Malaŵi to cover any expenses contrary to regulation 29;

(*g*) transfers foreign currency out of Malaŵi, contrary to regulation 30;

(*h*) fails to credit the account of a forex bureau upon receiving remittances from outside Malaŵi on behalf of the forex bureau contrary to regulation 33 (2); or

(*i*) fails to submit a weekly or monthly return contrary to regulation 39,

shall be guilty of an offence and liable to a fine of K500,000 or twice the value of the transaction, whichever is the higher amount and to imprisonment for ten years; and, where applicable, the court convicting such person shall, in addition, order that the funds involved in the transactions or otherwise connected therewith be forfeited to the Government.

Right of the Bank, etc., to buy and sell foreign currency

42. Nothing in these Regulations shall be construed as prohibiting or in any way restricting—

(*a*) the Bank from buying or selling foreign currency from or to any forex bureau or person; or

(*b*) any bank authorized to operate as an authorized dealer under the Exchange Control Regulations from continuing to operate as such.

Guidelines generally

43.—(1) The Bank may, from time to time, issue guidelines for the operation of these Regulations and may at any time revise the guidelines so issued.

(2) The Bank may in the guidelines issued under subregulation (1) prescribe any particulars or matter, including forms, it deems necessary or expedient for the operation, or use in the

operation, of these Regulations and any particulars or matter so prescribed shall be deemed to be particulars or matter required under these Regulations.

FIRST SCHEDULE reg. 2

AUTHORIZED CURRENCIES FOR TRANSACTIONS BY A FOREX BUREAU

Canadian Dollar
Deutschmark
French Franc
Japanese Yen
Pound Sterling
South African Rand
UAPTA
United States Dollars

SECOND SCHEDULE reg. 10

Form of Application for a Forex Bureau Licence

APPLICATION FOR A FOREX BUREAU LICENCE

NOTES—

(*a*) To be completed by the company applying for a forex bureau licence and submitted in a sealed envelope to the Governor, Reserve Bank of Malaŵi;

(*b*) Copy of Certificate of Registration must be attached. All information provided on this Form shall be treated as confidential and shall be used only for the processing of the application.

1. Full name of applicant (*block letters*) .....
2. Postal address of applicant (*block letters*) .....
3. Full name(s) of applicant's banker(s) (*block letters*) .....
4. Location of proposed forex bureau:
   (*a*) District .....
   (*b*) City/Town .....
   (*c*) Plot No. and Street .....
   (*d*) Other information on location (if any) .....
5. Company Certificate of Registration No. .....
6. Full names and addresses of directors/proprietors—

Name	*Address*	*Title* (*e.g. director or proprietor*)
1.....	.....	.....
2.....	.....	.....
3.....	.....	.....

7. Appended hereto is a declaration by each of the above-named directors/proprietors as follows—

I, the undersigned, hereby declare that the above particulars are correct and that I undertake to operate the forex bureau in accordance with the Exchange Control (Forex Bureaux and Foreign Exchange Fixing Session) Regulations, and any other written law and guidelines issued by the Reserve Bank of Malaŵi governing the operation of a foreign exchange bureau in Malaŵi.

Signature ..... Date .....

Full Name .....

Designation .....

Witness's Signature .....

Name and address of Witness .....

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G.N. 15/2006

EXCHANGE CONTROL (USE OF FOREIGN CURRENCY IN LOCAL TRANSACTIONS) REGULATIONS

under s. 3

Citation

1. These Regulations may be cited as the Exchange Control (Use of Foreign Currency in Local Transactions) Regulations.

Prohibition against use of foreign currency in local transaction

2. Except with the permission of the Minister, no person shall—

(*a*) quote or accept quotation of prices for payment in foreign currency; or

(*b*) demand or make payment in foreign currency,

for goods or services sold or provided in Malaŵi.

Offences

3. Any person who contravenes regulation 2 is guilty of an offence and shall be liable—

(*a*) in the case of an individual, to a fine of K100,000 and to imprisonment for two years; and

(*b*) in the case of a body corporate, to such a fine as determined by the Court that would deter the further commission of offences under regulation 2.

EXCHANGE CONTROL (FOREIGN EXCHANGE BUREAUX) REGULATIONS

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G.N. 4/2007

EXCHANGE CONTROL (FOREIGN EXCHANGE BUREAUX) REGULATIONS

under s. 3

PART I

PRELIMINARY

Citation

1. These Regulations may be cited as the Exchange Control (Foreign Exchange Bureaux) Regulations.

Interpretation

2. In these Regulations, unless the context otherwise requires—

"authorized dealer" has the meaning ascribed thereto in the Exchange Control Regulations, and "authorized dealer bank" shall be construed accordingly;

Cap. 44:01

"bank" has the meaning ascribed thereto in the Banking Act;

"convertible currency" means any of the currencies specified in the First Schedule hereto and such other currency as the Bank may prescribe in its Guidelines;

"fit and proper test" means a measure, examination or test subjected by the Bank to an applicant of a foreign exchange bureau licence or proposed director of a foreign exchange bureau with the purpose of determining the integrity, competence, financial soundness, propriety and general

capability of such applicant or director to operate or direct a foreign exchange bureau business;

"foreign currency" is used interchangeably with the expression "foreign exchange";

"foreign exchange bureau" means a business enterprise licensed under Part II to carry on the business of buying and selling foreign currency;

"licence fee" means the fee for a foreign exchange bureau licence specified in regulation 8 (4) prescribed in these Regulations or in Guidelines issued by the Bank under these Regulations;

"the Bank" means the Reserve Bank of Malaŵi established under the Reserve Bank of Malaŵi Act; Cap. 44:02

"these Regulations" includes any Guidelines issued by the Bank under these Regulations.

Guidelines for establishing foreign exchange bureaux

3. The Bank shall, in accordance with these Regulations, issue Guidelines for the establishment and operation of foreign exchange bureaux.

PART II

Licensing of Foreign Exchange Bureaux

Foreign exchange bureau business Cap. 45:01

4. A foreign exchange bureau may carry on the business of buying and selling foreign currency subject to the provisions of the Exchange Control Act, these Regulations and any other subsidiary legislation made under the Exchange Control Act.

Application to carry on a foreign exchange bureau business

5.—(1) An institution which satisfies the requirements of these Regulations and wishes to carry on the business of a foreign exchange bureau may apply to the Bank for a licence to carry on such business.

(2) An applicant for a licence for a foreign exchange bureau shall have at the time of application—

(*a*) been registered in accordance with the Companies Act as a limited liability company; Cap. 46:03

(*b*) be either an authorized dealer bank or other Financial Institution registered under the Banking Act; and Cap. 44:01

(*c*) have an identifiable place of business which is accessible to the public and is, in the opinion of the Bank, suitable in all respects for the business of a foreign exchange bureau.

Form of application and particulars

6. An application for a licence shall be in the form set out in the Second Schedule, addressed to the Bank, and shall—

(*a*) state the name of the foreign exchange bureau;

(*b*) state the name and address of the applicant's bankers;

(*c*) specify the proposed place of business of the foreign exchange bureau; and

(*d*) be accompanied with the specimen signature of each director, or as the case may be, each proprietor, of the proposed bureau.

Fit and proper test

7. In addition to the provisions of regulation 6, the directors and management of any proposed foreign exchange bureau shall undergo a fit and proper test as prescribed by the Bank from time to time.

Foreign exchange bureau licence

8.—(1) The Bank shall, within ninety days of an application for a licence, consider the application and—

(*a*) approve it if the Bank is satisfied that the applicant—

(i) has met the eligibility and competence requirements of the fit and proper test;

(ii) shall operate either as an extension of foreign exchange operations of an authorized dealer bank but limited to only selling and buying of foreign exchange for travel purposes; or as a subsidiary of an authorized dealer bank or other financial institution; and

(iii) has complied with the requirements of these Regulations; or

(*b*) refuse to grant the licence if not so satisfied.

(2) The Bank shall, before granting a licence under this regulation, cause to be made, an inspection of the place of business of the proposed bureau by an authorized officer of the Bank for the purpose of ascertaining whether or not the premises comply with the requirements of these Regulations.

(3) The Bank shall, within seven days after the expiration of the period prescribed by subregulation (1), inform the applicant of its decision, giving reasons where the Bank refuses to grant a licence.

(4) Where the Bank approves an application for a foreign exchange bureau, it shall issue to the applicant a foreign exchange bureau licence in the prescribed form upon payment by the applicant to the Bank of a licence fee to be determined by the Bank from time to time.

(5) The Bank shall issue an exchange control circular to notify all authorized dealers of the licensing of a new foreign exchange bureau.

(6) The Bank shall issue a press release to the general public informing the public of any new foreign exchange bureau.

Minimum requirements on being issued a foreign exchange bureau licence

9. An institution issued with a foreign exchange bureau licence shall—

(*a*) prominently display, and at all times keep so displayed, a copy of the licence on its business premises;

(*b*) have identifiable employees of its foreign exchange bureau, by providing to the Bank their names, *curriculum vitae*, residential addresses, specimen signatures, and passport-size photographs;

(*c*) immediately inform the Bank of any change with regard to the composition of the employees;

(*d*) not permit any other person, other than those employees who have been registered with the Bank, to transact any business on behalf of the foreign exchange bureau;

(*e*) immediately on the commencement of the business of the foreign exchange bureau, open a foreign currency account, solely for the day to day operations of the foreign exchange bureau, with an authorized dealer bank and report that fact in writing to the Bank within fourteen days from the commencement of business; and

(*f*) maintain on the account opened pursuant to paragraph (*e*), a minimum balance as the Bank may, from time to time, prescribe in its Guidelines.

Foreign exchange bureau licence not transferable

10.—(1) Each foreign exchange bureau or foreign exchange bureau branch shall be treated as autonomous for the purposes of licensing and operations.

(2) A foreign exchange bureau licence shall neither be transferable nor assignable and no foreign exchange bureau shall operate as an agent of another foreign exchange bureau.

Duration and renewal of a foreign exchange bureau licence

11.—(1) A foreign exchange bureau licence shall be valid for a period of twelve months from the date of issue and may be renewed for similar periods upon payment of the licence fee.

(2) An application for renewal of a foreign exchange bureau licence, supported by a tax clearance certificate and other documents prescribed by the Bank in its Guidelines, shall be

submitted to the Bank at least two (2) months before the expiry date of the foreign exchange bureau licence.

(3) At the expiration of its licence, a foreign exchange bureau shall forthwith cease operations, unless the licence has been renewed by the Bank.

(4) The renewal of a foreign exchange bureau licence shall be at the discretion of the Bank and shall be subject to satisfaction of all the requirements as provided in these Regulations and other relevant laws.

Suspension of a foreign exchange bureau licence

12.—(1) A foreign exchange bureau licence shall not be suspended except as provided in this regulation.

(2) Where a foreign exchange bureau licence has been issued and it is subsequently found that it was issued as a result of a materially false or fraudulent representation supplied to the Bank by the proprietor of the foreign exchange bureau or any person acting under his instructions, the Bank shall give written notice to the foreign exchange bureau requesting it to show cause within a reasonable time specified in the notice why the licence should not be revoked.

(3) Where a foreign exchange bureau is in breach of any provision of these Regulations, the Bank shall give written notice to the foreign exchange bureau specifying particulars of the breach and requiring the foreign exchange bureau to show cause within thirty days why the licence of the bureau should not be revoked.

(4) Where the Bank deems it necessary, the notice given under subregulation (3) may be accompanied with an order suspending the operations of the bureau for a period to be determined by the Bank.

(5) Notwithstanding subregulation (4), the Bank may suspend the operations of the bureau by following suspension procedures as follows—

(*a*) carry out, or cause to be carried out, an instant audit of the foreign exchange bureau's books and registers in order to take stock of the bureau's cash balances, assets and other holdings;

(*b*) physical sealing of the premises and confiscation of the operating licence of the foreign exchange bureau; and

(*c*) in the case of a foreign exchange bureau which is a subsidiary of a bank or non-bank financial institution, order the blocking of the Malaŵi Kwacha and Foreign Currency Denominated Accounts of the foreign exchange bureau.

(6) The Bank may issue a press release notifying and alerting the general public against dealing with a foreign exchange bureau over the period of the bureau's suspension.

Procedure for revocation

13.—(1) If—

(*a*) the Bank is not satisfied with the cause shown under Regulation 12; or

(*b*) in the opinion of the Bank, the conduct of a foreign exchange bureau is detrimental to the success of the whole or any aspect of the foreign exchange bureau scheme under these Regulations,

the Bank may revoke the licence issued in respect of the foreign exchange bureau.

(2) In addition to procedures for suspension of foreign exchange bureau operations under regulation 12, revocation of a foreign exchange bureau licence shall include—

(*a*) full payment of any fines to which the bureau or its directors may be liable under these Regulations; and

(*b*) winding-up the foreign exchange bureau through normal liquidation process of a private limited company.

(3) If, in the opinion of the Bank, the conduct of a foreign exchange bureau involves a slight first-time misdemeanor, the Bank shall issue a warning, cautioning the bureau of suspension or revocation for repeated offences.

PART III

Foreign Exchange Bureau Operations

Operations of a foreign exchange bureau

14.—(1) A foreign exchange bureau licence shall authorize the holder to engage in spot transactions only.

(2) A foreign exchange bureau may deal in any currencies and, subject thereto and to the restrictions specified in subregulation (4), may engage in—

(*a*) buying and selling foreign currency in cash;

(*b*) buying travellers cheques and other similar instruments of foreign currency; and

(*c*) selling travellers cheques and other similar instruments of foreign currency on agency basis on behalf of authorized dealer banks.

(3) Every foreign exchange bureau shall issue to a buyer a receipt in the prescribed form giving particulars of the customer for every transaction where the bureau—

(*a*) buys travellers cheques and other similar instruments of foreign currency;

(*b*) buys cash foreign currency equivalent to one thousand United States Dollars (US$1,000) and above, or any other amount as prescribed by the Bank from time to time; or

(*c*) sells travellers cheques under subregulation (2) (*c*) on agency basis.

(4) A foreign exchange bureau, whether owned by a bank or not, shall not operate or be regarded as a bank and shall not operate or be regarded as a bank and shall not perform any of the following functions—

(*a*) open foreign exchange or Malaŵi Kwacha accounts for any customer;

(*b*) establish a letter of credit; or

(*c*) perform any other banking business to sell or purchase foreign exchange for any other purposes except travel for holiday, business and medical expenses.

Prohibited transactions

15.—(1) No person shall—

(*a*) deposit, or accept a deposit of, Malaŵi Kwacha, with a foreign exchange bureau with the intention of obtaining or supplying foreign exchange equivalent thereof wholly or in part at a future date;

(*b*) deposit, or accept a deposit of, foreign currency, with a foreign exchange bureau with the intention of obtaining or supplying the Malaŵi Kwacha equivalent thereof either wholly or in part at a future date;

(*c*) refuse to sell foreign currency to any customer if such foreign currency is available at the foreign exchange bureau;

(*d*) fail to issue an accurate official receipt to cover purchase and sale of foreign currency at a foreign exchange bureau;

(*e*) issue an official foreign exchange bureau receipt for any purpose other than to cover the purchase and sale of foreign currency by the issuing foreign exchange bureau; or

(*f*) buy or sell foreign exchange which they know to be counterfeit or not legal tender in the country of issue.

Transferring of funds

16.—(1) No foreign exchange bureau shall be involved in transferring funds whether directly or indirectly in and out of the country in whatever manner on behalf of itself or any other parties.

(2) A person who contravenes subregulation (1) commits an offence and shall, on conviction, in addition to any other penalty imposed, be liable to the automatic revocation of its foreign bureau licence.

Buying and selling rates

17.—(1) Every foreign exchange bureau shall quote its foreign exchange buying and selling rates, which rates shall be prominently displayed in the premises of the foreign exchange bureau.

(2) A foreign exchange bureau shall prominently display at all times in its premises, a notice informing its customers that the customers are entitled to be issued with an official receipt in the prescribed form for any purchase or sale of foreign currency made by them.

(3) A foreign exchange bureau shall report its buying and selling rates to the Bank as the Bank may require in its Guidelines.

Foreign currency accounts

18. A foreign exchange bureau shall maintain a foreign currency account with an authorized dealer bank for the following purposes—

(*a*) to receive inward foreign currency transfers on its own account; and

(*b*) for the settlement of its local foreign currency transactions.

Transfer from foreign currency account

19. A foreign exchange bureau shall not use its foreign currency account maintained in accordance with regulation 18 to transfer money outside Malaŵi, except in accordance with these Regulations.

Foreign exchange transactions to be confidential

20.—(1) All transactions conducted by a foreign exchange bureau shall be done and maintained in the strictest confidence as between the foreign exchange bureau and the other parties to the transactions and the foreign exchange bureau shall not make any disclosure thereof except as required by law.

(2) No information or document other than the information or document required for the completion of the foreign exchange purchase or sale receipts shall be demanded by any foreign exchange bureau.

Registers and records

21.—(1) Every foreign exchange bureau shall maintain—

(*a*) a register of purchases of foreign currency in cash;

(*b*) a register of sales of foreign currency in cash;

(*c*) a register of purchases of travellers cheques; and

(*d*) a register of sales of travellers cheques.

(2) Every foreign exchange bureau shall maintain adequate accounting records to enable it prepare its final accounts.

(3) All registers and other records of a foreign exchange bureau shall be made available for inspection by authorized officers of the Bank.

Foreign exchange float

22.—(1) A foreign exchange bureau may not maintain foreign exchange float in excess of fifty thousand United States Dollars (US$50,000) of any stockpiled notes held.

(2) A foreign exchange bureau shall sell any foreign exchange balance in excess of fifty thousand United States Dollars (US$50,000) to an Authorized Dealer in foreign exchange.

Inspection of bureaux

23. The Bank shall, at least once in each licence year of a foreign exchange bureau, examine the operations of a foreign exchange bureau and may do so at any time as the Bank considers necessary.

PART IV

Foreign Currency for Travel

Personal travel allowances

24. A person who wishes to travel outside Malaŵi may purchase from a foreign exchange bureau for each trip, such holiday, business, or medical allowances whose limits shall be prescribed by the Bank from time to time, and shall, if so required at the exit point, furnish the foreign currency sale allowance receipt in respect of the foreign currency purchased.

Review of allowances

25. The Bank shall, from time to time, review the limits of the personal travel allowances and shall so advise through press releases to the general public and circulars to the foreign exchange bureaux.

PART V

Miscellaneous

Returns

26.—(1) Every foreign exchange bureau shall submit to the Bank, in the prescribed form, the following returns—

(*a*) a weekly return of its foreign exchange position, which return shall be submitted not later than 4.00 p.m. of every working Monday of the week; and

(*b*) a monthly return of total purchases and sales of foreign currency, which return shall be submitted not later than five working days after the end of the month for which the return is being made.

Inspection of books of accounts of a foreign exchange bureau

27.—(1) The Bank may, at any time, cause an inspection to be made by an officer of the Bank of any foreign exchange bureau and of its books of accounts.

(2) It shall be the duty of every employee of a foreign exchange bureau, within a reasonable time, to produce to the officer making an inspection under subregulation (1) all such books, accounts and other documents in the power or custody of the foreign exchange bureau and to furnish that officer with such statements or information relating to the affairs of the foreign exchange bureau as he may require.

Offences

28. Any person who—

(*a*) fails to maintain a foreign currency account contrary to regulation 9 (*e*);

(*b*) transfers or assigns a foreign exchange bureau licence contrary to regulation 10;

(*c*) deals in foreign currency in contravention of regulation 14;

(*d*) fails to credit the account of a foreign exchange bureau upon receiving remittances from outside Malaŵi on behalf of the foreign exchange bureau;

(*e*) fails to submit a weekly or monthly return contrary to regulation 26; and

(*f*) contravenes any of these Regulations,

commits an offence and shall, on conviction, be liable to a fine of five hundred thousand Kwacha (K500,000) or twice the value of the transaction, whichever is the higher amount, and to imprisonment for ten (10) years: and, where applicable, the court convicting such person shall, in addition, order that the funds involved in the transactions or otherwise connected therewith be forfeited to the Government.

Right of the Bank, etc., to buy and sell foreign currency

29.—Nothing in these Regulations shall be construed as prohibiting or in any way restricting—

(*a*) the Bank from buying or selling foreign currency from or to any foreign exchange bureau or person; or

(*b*) any bank authorized to operate as an authorized dealer under the Exchange Control Regulations from continuing to operate as such.

Guidelines generally

30.—(1) The Bank may, from time to time, issue Guidelines for the operation of these Regulations and may at any time revise the Guidelines so issued.

(2) The Bank may, in the Guidelines issued under subregulation (1) prescribe any particulars or matter, including forms, it deems necessary or expedient for the operation, or use in the operation, of these Regulations and any particulars or matter so prescribed shall be deemed to be particulars or matter required under these Regulations.

Revocation of the Exchange Control (Forex Bureaux and Foreign Exchange Fixing Sessions; Regulations sub. leg. p. 25

31. The Exchange Control (Forex Bureaux and Foreign Exchange Fixing Sessions) Regulations are hereby revoked.

FIRST SCHEDULE reg. 2

AUTHORIZED CURRENCIES FOR TRANSACTIONS BY A FOREIGN EXCHANGE BUREAU

Canadian Dollar

COMESA Dollar

EURO

French Franc

Japanese Yen

Pound Sterling

South African Rand

United States Dollar

Any currency of a Southern Africa Development Community (SADC) member state

SECOND SCHEDULE reg. 6

Form of Application for a Foreign Exchange Bureau Licence

APPLICATION FOR A FOREIGN EXCHANGE BUREAU LICENCE

NOTES:

(*a*) To be completed by the company applying for a foreign exchange bureau licence and submitted in a sealed envelope to the Governor, Reserve Bank of Malaŵi;

(*b*) Copy of Certificate of Registration must be attached. All information provided on this Form shall be treated as confidential and shall be used only for the processing of the application.

1. Full name of applicant (block letters) .....
2. Postal address of applicant (block letters) .....
3. Full name(s) of applicant's banker(s) (block letters) .....
4. Location of proposed foreign exchange bureau:
   (*a*) District .....
   (*b*) City/Town .....
   (*c*) Plot No. and Street .....
   (*d*) Other information on location (if any) .....
5. Company Certificate of Registration No. .....
6. Full names and addresses of directors/proprietors—

Name	*Title (e.g. Director or Proprietor)*	*Address*
1.....	.....	.....
2.....	.....	.....
3.....	.....	.....

[Subsidiary]

7. Appended hereto is a declaration by each of the above-named directors/proprietors as follows—

   I, the undersigned, hereby declare that the above particulars are correct and that I undertake to operate the foreign exchange bureau in accordance with the Exchange Control (Foreign Exchange Bureaux) Regulations, and any other written law and Guidelines issued by the Reserve Bank of Malaŵi governing the operation of a foreign exchange bureau in Malaŵi.

Signature ..... Date .....

Full Name .....

Designation .....

Witness's Signature .....

Name and address of Witness .....

.....

.....

DECIMAL CURRENCY

CHAPTER 45:02

Containing Pages 1–6

CHAPTER 45:02

DECIMAL CURRENCY

ARRANGEMENT OF SECTIONS

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16. Payments made after prescribed date
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18. Minister empowered to declare day or days for closure of financial institutions

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An Act to provide for the introduction of and conversion to the decimal currency system and for matters connected therewith and incidental thereto 30 of 1970 G.N. 193/1970

[PARTS I AND II — 15TH SEPTEMBER, 1970,
PART III — 15TH FEBRUARY, 1971]

PART I

PRELIMINARY

1. This Act may be cited as the Decimal Currency Act. Short title

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

"Board" means the Decimal Currency Board established by section 3;

"Chairman" means the Chairman of the Board;

"decimal currency system" means the system of currency provided for by Part III;

"Deputy Chairman" means the Deputy Chairman of the Board;

"existing currency system" means the system of currency in force in Malaŵi immediately before the date of commencement of Part III;

"former currency" means currency expressed in pounds, shillings and pence in accordance with the existing currency system;

"member" means a member of the Board;

"new currency" means currency expressed in Kwacha and tambala in accordance with the decimal currency system;

"prescribed machine" means a machine or instrument, designed to be used in connexion with the existing currency system or any similar system of currency, and used or intended for use solely or principally for the purpose of calculating or recording amounts of money (including an accounting machine, an adding machine or any similar machine, a machine for franking postal articles, a cash register, a price-computing scale and a price-computing petrol pump), which is declared by the Minister, by notice published in the Gazette, to be a prescribed machine for the purposes of this Act.

PART II

Decimal Currency Board

Establishment of Board

3.—(1) There is hereby established a Board, to be known as the Decimal Currency Board, which shall be a body corporate with perpetual succession and a common seal, with power to acquire, hold, charge and dispose of property, movable and immovable, to borrow money and to do or perform all such things and acts for the purpose of carrying out its functions as a body corporate may lawfully do.

(2) The Board may sue and be sued in its corporate name and may for all purposes be described by such name.

Constitution of Board

4.—(1) The Board shall consist of not more than eight members appointed by the Minister and holding office during the Minister's pleasure.

(2) The Minister shall appoint one of the members of the Board to be Chairman and the members of the Board shall elect one of their number to be Deputy Chairman.

(3) Any member who is absent for more than three successive meeting of the Board without permission from the Chairman, or who, in the opinion of the Chairman, is for any cause incapacitated so as to be unable to take a proper part in the affairs of the Board, may have his membership of the Board terminated by the Minister.

(4) Any member may, by notice under his hand addressed to the Chairman, resign from his membership of the Board and such resignation shall be effective from the date specified therein or 7 days after receipt of the notice by the Chairman, whichever is later.

(5) Members shall be entitled to such fees and allowances, if any, as the Board may, with the approval of the Minister, determine.

Secretary and officers

5. The Board shall on such terms and conditions as it thinks fit and with the approval of the Minister appoint a Secretary who shall be the chief executive officer of the Board, and may similarly appoint or employ such other officers or persons as may be necessary for the efficient performance of its functions.

Meetings and procedure

6.—(1) The Board shall meet at such times and places as may be necessary or expedient for the transaction of the business of the Board.

(2) Meetings shall be convened by the Chairman, or in the event of his absence or of a vacancy in his office, by the Deputy Chairman.

(3) The Chairman shall preside at all meetings of the Board at which he is present, but in the event of his absence from a meeting the Deputy Chairman shall preside at that meeting and in the absence of both the Chairman and the Deputy Chairman from any meeting, the members present and forming a quorum shall appoint one of their number to preside at that meeting.

(4) At any meeting of the Board, three members shall constitute a quorum.

(5) Any question arising at a meeting of the Board shall be decided by a majority of the votes of the members present and, for this purpose, the member presiding shall be entitled to a deliberative vote and also, in the event of an equality of votes, to a casting vote.

(6) The Board may in its discretion invite any person to attend a meeting of the Board, and such person may, with the consent of the Chairman, speak but shall have no power to vote at that meeting.

(7) Minutes in proper form of each meeting of the Board shall be kept, and shall be confirmed by the Board at its next meeting and signed by the person presiding at that meeting.

(8) Subject to the foregoing provisions the Board shall regulate its own procedure.

Powers of the Board

7.—(1) The Board may do such things, make such arrangements and enter into such agreements as it considers necessary

for the purpose of facilitating the transition from the existing currency system to the decimal currency system.

(2) Without prejudice to the generality of subsection (1), the Board may make such arrangements or enter into such agreements as it thinks fit for or in relation to the conversion, adaptation or replacement, for use in connexion with the decimal currency system, of all such prescribed machines as it thinks fit:

Provided that any such arrangement or agreement shall require owners of the machines concerned to bear the costs involved in the conversion, adaptation or replacement of the said machines.

Delegation

8.—(1) With the approval of the Minister, the Board may, either generally or in relation to any particular matter or class of matters, by writing under its common seal, delegate to any of its members or the Secretary all or any of its powers under this Act, except this power of delegation.

(2) A delegation of any power made under the provisions of this section may be revoked by the Board at any time and shall not prevent the exercise by the Board of any of its powers, whether delegated under the provisions of this section or not.

Committees

9.—(1) The Board may appoint such advisory or technical committees, whether from its own members or not, as it thinks fit for the purpose of assisting the Board in carrying out its functions.

(2) A member of any committee appointed under this section who is not a member of the Board or a public officer shall be paid such remuneration and allowances as the Board, with the approval of the Minister, may determine in each case.

Disclosure of interest in agreements etc.

10.—(1) Any member of the Board or of any committee appointed by the Board who, otherwise than as such member, is directly or indirectly interested in an arrangement or agreement made or entered into, or proposed to be made or entered into, by the Board, shall, as soon as possible after the relevant facts have come to his knowledge, disclose the nature of his interest to the Board or the committee as the case may be.

(2) Every disclosure made under the provisions of the last preceding subsection shall be recorded in the minutes of the Board or committee, and the member concerned—

(*a*) shall not take part after the disclosure in any deliberation or decision of the Board or committee relating to the arrangement, agreement or approval; and

(*b*) shall be disregarded for the purpose of constituting a quorum of the Board or committee for any such deliberation or decision.

(3) For the purpose of subsection (1) of this section, a member shall not be regarded as being interested in any arrangement or agreement made or entered into, or proposed to be made or entered into, by the Board with another person by reason only that he is the owner of a prescribed machine involved in such arrangement or agreement.

Finance

11.—(1) The expenses incurred by the Board in the performance of its functions under this Act shall be funded by the Reserve Bank of Malaŵi.

(2) For the purposes of the preceding subsection the Board shall open an account with the Reserve Bank of Malaŵi.

Accounts and returns

12.—(1) The Board shall cause to be kept proper accounts and other records relating to its operations including such particular accounts and records as the Minister may direct.

(2) Subject to any direction made by the Minister for the time being responsible for finance under section 45 of the Finance and Audit Act, the accounts of the Board shall be audited by auditors approved by the Minister.

Cap. 37:01

Abolition of Board

13.—(1) Whenever the Minister is satisfied that the Board has achieved its purpose or that the transition from the existing currency system to the decimal currency system has proceeded to a stage at which the further supervision of the Board is no longer necessary, he may, by notice published in the *Gazette*, dissolve the Board.

(2) As from the date on which the Board is dissolved under subsection (1) all the powers, functions, duties, assets, liabilities, rights and obligations of the Board shall vest in the Minister or in such person or authority as the Minister may appoint and accordingly any reference in this Act or in any document or otherwise to the Board shall thereafter be construed as a reference to the Minister or to the appointed person or authority.

Regulations

14. The Minister may make regulations for the better carrying out of the provisions or the purposes of this Act.

PART III

Conversion to the Decimal Currency System

Reference to former currency after prescribed date

15.—(1) From the date on which this Part comes into operation, hereinafter referred to as the prescribed date, any reference in a written law, bill of exchange, promissory note, security for money, bond, contract or agreement (whether in writing or not), deed or other instrument, or in any other manner whatsoever, to an amount of money in the former currency shall, unless the context is such that it would be inappropriate, or the contrary intention appears, be construed as a reference to a corresponding amount of money in the new currency.

(2) Where such a reference as is mentioned in subsection (1) is to a percentage or other proportion expressed in terms of money, the reference shall be construed as a reference to an equivalent percentage or proportion expressed in terms of money in the new currency.

(3) For the purpose of this section conversion from the former currency to the new currency shall be calculated on the basis that one pound and one shilling is the equivalent of two Kwacha (K2) and ten tambala (10t) respectively, and pence shall be converted proportionately.

Payments made after prescribed date

16.—(1) Every payment made in Malaŵi on or after the prescribed date shall, unless made according to the currency of any other country, be made according to the new currency.

(2) Where notes and coins of the former currency are used for the purpose of making payments after the prescribed date, the face value of such notes and coins shall be taken to be the equivalent in notes or coins of the new currency respectively shown in the tables hereunder.

TABLE 1

First Column	Second Column
Notes in the former currency	*Notes in the new currency*
Five pounds (£5)	Ten Kwacha (K10)
One pound (£1)	Two Kwacha (K2)
Ten shillings (10s)	One Kwacha (K1)
Five shillings (5s)	Fifty tambala (50t)

TABLE 2

First Column	Second Column
Coins in the former currency	*Coins in the new currency*
Half Crown (2s–6d)	Twenty-five tambala (25t)
Florin (2s)	Twenty tambala (20t)
One shilling (1s)	Ten tambala (10t)
Six pence (6d)	Five tambala (5t)
Three pence (3d)	Two and one half tambala ($2\frac{1}{2}$t)
Several coins of the denominations of halfpenny, penny or three pence, or any combination thereof, to a total aggregate value of six pence	Five tambala (5t)

Conversion in respect of several amounts etc.

17. Where conversion for the purpose of section 15 or section 16 is in respect of the total of a number of individual amounts expressed in, or a product to be calculated in or by reference to, the former currency, the calculations specified in those sections shall be applied to that total or product, and not to the individual amounts or the rate by reference to which such product is to be calculated.

BUSINESSES LICENSING

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BUSINESSES LICENSING

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CHAPTER 46:01

BUSINESSES LICENSING

27 of 2012
G.N. 10/2013

An Act to provide for licensing of the sale of goods and services by way of business; to provide for establishment of Business Licensing Centres; and to make provision for matters connected therewith or incidental thereto

[27TH MAY, 2013]

PART I
PRELIMINARY

1. This Act may be cited as the Businesses Licensing Act. Short title

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

"auxiliary business" means any business not specified in a business registration which may be lawfully carried on under such registration;

"business" means any form of trade, commerce, craftsmanship or specified profession carried on for profit and to which this Act applies;

"Business Licence" means a licence issued under section 16;

"Business Licensing Centre" means an organ of a Local Authority responsible for administration of this Act in a Local Government area, established under section 7 or a public agency appointed under this Act;

"Business Licensing Officer" means an officer appointed under section 9;

"Chief Business Licensing Officer" means a public officer designated as such under section 4 (1);

"company" means a company incorporated under the Companies Act; Cap. 46:03

"core activity" means the main activity of a business;

"inspector" means a person appointed by the Minister under section 31 and includes an officer in the Ministry;

Cap. 22:01

"Local Authority" means a City, Town, District or Municipal Council established under the Local Government Act;

Cap. 46:03

"Malaŵi Investment and Trade Centre" means the Malaŵi Investment and Trade Centre incorporated under the Companies Act on 2nd December 2010;

"publication" means publication of information relating to Business Licensing Centres in electronic form or through printed material to all Ministries and to the general public;

"regulated business" means a business regulated by any written law; and

"the Ministry" means the Ministry responsible for trade.

PART II
Administration

Responsibilities of the Minister

3.—(1) The Minister shall be responsible for—

(*a*) formulating a national policy and regulatory framework in relation to the business licensing system;

(*b*) providing the necessary technical support or assistance to local authorities for the implementation of their respective functions; and

(*c*) doing such other things as are incidental or necessary to reducing the cost of doing business in Malaŵi.

(2) The Minister, in consultation with the Minister responsible for Local Government, may, by notice published in the *Gazette*, revoke the authority of any Local Authority as a Business Licensing Centre and designate another Local Authority or a public agency in its place.

Functions of the Chief Business Licensing Officer

4.—(1) The Principal Secretary responsible for trade is hereby designated as the Chief Business Licensing Officer.

(2) The functions and powers of the Chief Business Licensing Officer shall be to—

(*a*) coordinate and monitor the performance of Business Licensing Centres for compliance with national policies, guidelines and standards;

(*b*) receive quarterly updated registers of licensed businesses from each Business Licensing Centre;

(*c*) establish and maintain in the Ministry one composite register of all businesses licensed under this Act;

(*d*) publish the composite registers of all Business Licensing Centres within three months after the end of each quarter;

(*e*) ensure that each Business Licensing Centre maintains minimum acceptable standards of licensing in its jurisdiction;

(*f*) act as a licensing authority for any local government area if the Minister exercises his powers under section 3 (2) until another Local Authority or public agency is designated in its place;

(*g*) supervise and issue general or special instructions to Business Licensing Officers in exercise of their functions under this Act;

(*h*) cooperate with the Malaŵi Investment and Trade Centre in carrying out its functions under the Investment and Export Promotion Act;

(*i*) do all such acts and things as are necessary, incidental or conducive to the better carrying out of his functions under this Act.

Main registry of Business Licences

5.—(1) There is hereby established within the Ministry, a main registry which shall consist of the registries of all of the Business Licensing Centres.

(2) The Chief Business Licensing Officer shall ensure that the main registry is kept and maintained using modern technology and skills and in accordance with prevailing international best practices.

Reports and financial statements

6.—(1) The Chief Business Licensing Officer shall, as soon as practicable, but not later than three months after the expiry of each financial year, submit to the Minister a report concerning his activities during that financial year.

(2) The report referred to in subsection (1) shall be in such form as the Minister shall approve, and shall include such information as the Minister may direct or as the Chief Business Licensing Officer may consider appropriate.

(3) The Minister shall, during the next National Assembly meeting, lay the report referred to in subsection (1) before the National Assembly, and the Chief Business Licensing Officer shall thereafter publish the report for sale to the public.

PART III
Business Licensing Centres

Establishment of Business Licensing Centres

7.—(1) There shall be established in each Local Authority, a Business Licensing Centre which shall be an organ of the Local Authority.

(2) Notwithstanding subsection (1), the Minister may, in consultation with the Minister responsible for Local Government, constitute any other public agency as a Business Licensing Centre for one or more Local Government areas.

Functions of Business Licensing Centres

8. The functions of a Business Licensing Centre shall be to—

(*a*) collect business information in the area of its jurisdiction for the purpose of public consumption;

(*b*) ensure that all the business information collected is available for the purpose of keeping public records;

(*c*) inform the Ministry and the Ministry responsible for local government of businesses licensed in the area under its jurisdiction;

(*d*) provide information and guidance to members of the public on the manner in, and the extent to which, businesses are to comply with legislation applicable to them; and

(*e*) provide a registry of information on all businesses operating within the area of its jurisdiction and ensure accessibility of such information to all branches and agencies of the Government and to all businesses.

Appointment and functions of Business Licensing Officers

9.—(1) The Minister shall, after consultation with the Minister responsible for Local Government, appoint any public officer as a Business Licensing Officer in respect of one or more local authorities.

(2) The Minister may appoint any public officer as a Business Licensing Officer in respect of any public agency designated as a Business Licensing Centre.

(3) The functions and powers of a Business Licensing Officer shall be to—

(*a*) license all businesses in the area of his jurisdiction;

(*b*) establish a register to be managed and maintained by the Business Licensing Centre;

(*c*) submit to the Chief Business Licensing Officer quarterly reports within one month after the end of each quarter;

(*d*) publish the current register of all businesses licensed in the area of his jurisdiction;

(*e*) cancel, revoke or amend any Business Licence as provided for under this Act;

(*f*) collect fees payable under this Act;

(*g*) cooperate with the Malaŵi Investment and Trade Centre in carrying out its functions under the Investment and Export Promotion Act;

(*h*) advise, free of charge, investors and members of the general public on any aspect of business licensing; and

(*i*) do all such acts and things as are necessary, incidental or conducive to the better carrying of his functions under this Act.

Registry of Business Licences

10.—(1) Every Business Licensing Officer shall establish a registry to be managed and maintained by the Business Licensing Centre under his authority.

(2) The Minister shall ensure that every registry established under subsection (1) is kept and maintained using modern technology and skills and in accordance with prevailing international best practices.

Correction of errors in registers

11. The following provisions shall apply to errors in any register managed and maintained under this Act—

(*a*) no alteration in any register shall be made except as authorised by this Act;

(*b*) any clerical error which may from time to time be discovered in any register, may be corrected by any person authorised by the Business Licensing Officer; and

(*c*) any error of fact or substance in any such register may be corrected by the Business Licensing Officer making an additional entry in the register without any alteration of the original entry, upon payment of the prescribed fee and upon production to him by the person requiring the error to be corrected, a statutory declaration setting forth the nature of the error and the true facts of the case, made by two credible persons having knowledge of the truth of the case.

PART IV

Licensing of Business Activities

Regulated and unregulated businesses

12.—(1) Subject to this Act, no person shall conduct a regulated or unregulated business in Malaŵi without obtaining a Business Licence, or otherwise than in accordance with the Business Licence.

(2) The owner, manager or person in charge of a regulated business who wishes to have his business licensed under this Act shall—

(*a*) produce to the Business Licensing Officer evidence of compliance with the relevant regulatory statute; and

Cap. 46:02

(*b*) produce to the Business Licensing Officer a certificate issued under the Business Registration Act,

before a Business Licence is issued under this Act.

(3) Subject to section 16, any business which is not regulated by any written law shall, upon application and payment of the prescribed fee, be issued with a Business Licence.

(4) A Business Licence shall authorise the holder thereof to carry on business at premises, stated in the Business Licence, issued to him in relation to the business.

Exemptions

13.—(1) No Business Licence under this Act shall be required by—

(*a*) any person specially appointed to conduct a sale of any goods in execution of any order of any court;

(*b*) a sheriff or his deputy selling in execution of his lawful duty;

(*c*) any person selling any goods solely as a necessary incident to the provision of any professional or other personal services;

(*d*) the owner or operator of any aircraft, ship, or railway coach in respect of sales made on board to passengers travelling thereon;

(*e*) any religious organization selling only religious literature;

(*f*) any person selling goods for charitable purposes only;

(*g*) any person selling goods to any member of any naval, military or police service in any canteen, institute or mess recognised as such by the Ministry:

Provided that this paragraph shall not apply to any person who is not a member of the force and who conducts the canteen for profit;

(*h*) any person who sells goods or carries on business in a market established under any Act;

(*i*) any person who sells goods by way of business, or carrying on any business from temporary premises, at a show or exhibition; or

(*j*) any person who sells otherwise by retail goods manufactured, grown or produced in Malaŵi by him.

(2) The Minister may, from time to time, by notice published in the *Gazette*, exempt from all or any of the provisions of this Act generally or in any area and subject to conditions that he may find fit, any person who sells goods by way of business or carries on a business, for which a licence is required under this Act, in circumstances that make it desirable in the public interest that the exemption be granted.

Application for issuing or renewal of a Business Licence

14.—(1) Any person who wishes to operate a business shall make an application for a Business Licence to the Business Licensing Centre in the Local Authority where the business is located or any public agency appointed as a Business Licensing Centre.

(2) Every application for issue, or renewal, of a Business Licence under this section shall be in a form and signed in a manner as may be prescribed by the Minister.

(3) For avoidance of doubt, application for issue or renewal of a Business Licence under this section may be made through a representative.

Particulars of an application

15.—(1) Every application for a Business Licence under this Act shall contain the following—

(*a*) the name of the business and an indication of whether the owner is a firm, a corporate entity or a natural person;

(*b*) the proposed date of commencement of the business;

(*c*) the name, physical and postal addresses of the owner of the business and, if the owner is an individual, his age;

(*d*) where the owner is a firm, the partners thereof;

(*e*) nationality of the owner;

(*f*) where the owner is a corporate entity, the registration number and date of registration of the company;

(*g*) certificate of the issued business under the Business Registration Act; Cap. 46:02

(*h*) in the case of a subsidiary business, the name and location of its head office;

(*i*) the nature of the core activity of the business;

(*j*) the nature of any auxiliary business;

(*k*) the number of employees in the business;

(*l*) the physical address, where applicable, postal address and telephone numbers of the business;

(*m*) the telefax number, e-mail and website address of the business, if any;

(*n*) the name of the chief executive officer or any other person in charge of the management of the business; and

(*o*) the extent to which, if any, that the business has been granted an applicable certificate of compliance or authorization to trade or operate under section 12 (2).

(2) The Minister may, by order published in the *Gazette*, vary, amend or revoke the requirements set out in subsection (1).

Grounds for refusal to issue or renew Business Licence

16.—(1) Where, when considering any application for the issue or renewal of any Business Licence, the Business Licensing Officer is satisfied that—

(*a*) the applicant is under the age of eighteen years;

(*b*) the applicant is an undischarged bankrupt;

(*c*) a receiving order in bankruptcy has been made out against the applicant within the last two years preceding his application;

(*d*) the applicant has been convicted of a bankruptcy offence within the last three years preceding his application;

(*e*) the applicant has been convicted of carrying on unlawful business within the last three years preceding his application;

(*f*) the applicant has failed to produce evidence of compliance with the relevant regulatory statute; or

(*g*) the information provided under section 15 (1) is incorrect, misleading, false or lacking in material particulars,

may refuse to issue or renew the Business Licence, as the case may be, or may issue or renew it subject to conditions as he may find appropriate.

(2) Before refusing to issue, renew, or imposing any conditions on the issue or renewal of, any Business Licence, the Business Licensing Officer shall give the applicant an opportunity to show cause why his application should not be refused or why such conditions should not be imposed.

(3) A decision on whether or not to issue or renew a Business Licence shall be made within seven working days of the receipt of the application and, where the decision is not made within the stipulated time, the business shall be deemed to be licensed for all purposes.

Validity of a Business Licence

17.—(1) A Business Licence shall be valid for a period of one year from the date of issue of the Business Licence.

(2) A business shall, at least one month before the expiry of a Business Licence and upon payment of the prescribed renewal fees, be issued a Business Licence in respect of the next following twelve months.

(3) For the avoidance of doubt, a Business Licence for a period of twelve months may be issued at any time.

(4) No refunds of fees shall be made in respect of a suspended, cancelled or revoked Business Licence.

(5) Unless otherwise provided, a Business Licence shall specify the premises on which the business shall be carried on.

Annual return

18. Every applicant for renewal of a Business Licence shall submit to the Business Licensing Centre in the Local Authority where the business is located or any public agency appointed as a Business Licensing Centre an annual return in the prescribed form showing, *inter alia*—

(*a*) annual turnover per business activity;

(*b*) changes in ownership; and

(*c*) outstanding credit obligations.

Extent of authority of a Business Licence

19. Nothing in this Act shall entitle any person to conduct business in contravention of any law governing activities of the business, including—

(*a*) town planning regulations;

(*b*) health regulations;

(*c*) safety regulations;

(*d*) environmental regulations;

(*e*) in relation to persons who are not of Malaŵian nationality, immigration requirements; or

(*f*) any regulation governing the conduct of any specific type of business or profession.

Premises to have a conspicuous sign

20. Every set of premises specified in a Business Licence under section 12 (4) shall bear, in legible alphabetical or numerical characters on a conspicuous part of the premises, the name of the licensee.

Exhibition of Business Licences

21. Every person who is issued with a Business Licence under this Act shall exhibit the Business Licence in a conspicuous place in the premises where the business is carried on.

Local Authority not to issue a Business Licence, permit or other authorization

22. Save as otherwise provided under any other written law, no Local Authority, its agent or any other person shall have the power to issue any Business Licence, permit or authorization that serves as a precondition for the right to conduct a business.

PART V

Suspension, Revocation and Cancellation of Business Licence

Amendment, cancellation, revocation or suspension of a Business Licence

23.—(1) The Business Licensing Officer may amend, suspend, revoke or cancel a Business Licence issued under section 12 where he is satisfied that—

(*a*) the premises have ceased to be used for the purpose for which the Business Licence was issued;

(*b*) the business owner, manager or person in charge has, since the Business Licence was issued, been convicted of any offence in this Act; or

(*c*) the business has failed to comply with any condition of the Business Licence.

(2) Any person who has been notified that the Business Licence in respect of his business has been suspended, revoked or cancelled under this Act shall surrender the business licence to the Business Licensing Officer who issued the Business Licence or the Chief Business Licensing Officer.

Notification of intention to amend, cancel, revoke or suspend a Business Licence

24. Where the Business Licensing Officer is satisfied that—

(*a*) the owner, manager or a person in charge of a business has failed to comply with any legislation specifically governing the activities of that type of business;

(*b*) a business has been liquidated or is no longer trading; or

(*c*) the owner, manager or any person in charge furnished false information during registration,

he shall issue to the owner, manager, or any person in charge as the case may be, of the business, a notice in writing, with reasons, of intention to amend, suspend, cancel or revoke the Business Licence.

25. Any person who has been served with a notice under section 24 shall be given an opportunity of appearing and making representation relevant to the proposed action, to the Business Licensing Officer who shall consider the representation and make his decision in writing within fourteen days. Right to be heard

26.—(1) Any person who is aggrieved by— Appeals

(*a*) an amendment, suspension, cancellation or revocation of a Business Licence;

(*b*) a refusal of the Business Licensing Officer to issue or transfer a Business Licence; or

(*c*) any decision made under this Act,

may, within thirty days from the date of the decision, appeal to the Minister in writing.

(2) Where the Business Licensing Officer has amended, suspended, cancelled or revoked a Business Licence under section 23, the suspension, cancellation or revocation shall not have effect until the period within which an appeal against suspension, cancellation or revocation may be made to the Minister has elapsed or, if the appeal has been made, until the appeal has been heard and determined:

Provided that this subsection shall not apply to a decision made under section 32.

(3) A person aggrieved by the decision of the Minister may within thirty days from the date of the decision appeal to the High Court against the decision of the Minister.

PART VI

Obligations of an Owner, Manager or Person in Charge of a Business

27.—(1) The owner, manager or any person in charge of a business shall notify the Business Licensing Officer for the Local Authority in which his business is licensed where— Notification to the Business Licensing Officer

(*a*) he ceases to operate the business;

(*b*) the business is placed under liquidation;

(*c*) the business premises are changed;

(*d*) the core activities of the business have changed;

(*e*) the Business Licence is misplaced, destroyed or lost;

(*f*) the business has moved to a different Local Authority; or

(*g*) there is any change in the particulars contained in the application for a Business Licence.

(2) Upon receipt of the information submitted pursuant to subsection (1), the Business Licensing Officer may amend, cancel or revoke the business licence or may, in cases of subsection (1) (*e*) and (*f*), issue a duplicate or a new business licence, as the case may be.

Replacement of a lost or destroyed Business Licence

28. Any person whose Business Licence has been defaced, lost or destroyed may, upon application and payment of the prescribed fee, obtain a duplicate business licence from the Business Licensing Officer for the Local Authority in which his business is licensed.

PART VII

Transfer of Business Licences

Transfer of a Business Licence

29.—(1) Subject to the provisions of this section, any person may apply to the Business Licensing Officer for the transfer of a Business Licence to him.

(2) An application under subsection (1) shall be accompanied by the Business Licence or, if that is not practicable, a statement of the reasons for the failure to provide the business licence.

(3) Subject to subsection (4), the Business Licensing Officer shall transfer the Business Licence in accordance with the application within seven days of receiving the application.

(4) The Business Licensing Officer shall reject the application where one or more of the following conditions are not met—

(*a*) the application fees have been paid;

(*b*) the holder of the Business Licence agrees in writing to the transfer; or

(*c*) the applicant has given a satisfactory explanation for his failure to obtain the consent of the holder of the Business Licence.

(5) The Business Licensing Officer shall exempt the applicant from the requirement to obtain the consent of the holder of the Business Licence where the applicant shows to the satisfaction of the Chief Licensing Officer that—

(*a*) he has taken all reasonable steps to obtain the consent; and

(*b*) if the application were granted, he would be in a position to use the premises for the licensable activity authorised by the Business Licence.

(6) Where the Business Licensing Officer refuses to transfer the Business Licence to an applicant under this section, he shall notify the applicant of his decision and the reasons therefor in writing within seven days.

(7) For avoidance of doubt, an application for issue or renewal of a Business Licence under this section may be made through a representative.

PART VIII

Businesses by Non-Malaŵians

Businesses by non-Malaŵians

30.—(1) No Business Licence shall be issued to a non-Malaŵian unless he holds a valid permit under laws relating to immigration, citizenship or refugees and otherwise satisfies the requirements of this Act.

(2) A Business Licence shall not be issued to a non-Malaŵian unless he provides evidence showing that he is investing Malaŵi capital of not less than $250,000 brought from outside Malaŵi.

(3) Where applicable, on application or renewal of a Business Licence under section 14, the applicant shall file a statement, in addition to any other documents, describing the participation in the management or finances of the business by a Malaŵian partner.

(4) The Minister may by order published in the *Gazette* vary the monetary limits referred to in subsection (2).

(5) For the purposes of this Part, "capital" means all cash contribution, plant, machinery, equipment, buildings, spare parts, and other business assets other than goodwill which are not consumed in the regular operations of the business and have a life of more than twelve months.

(6) Any person who knowingly or recklessly contravenes any provision of this Part commits an offence and shall be liable to a fine of K5,000,000 and to imprisonment for five years.

(7) The Minister shall, in collaboration with the Ministry responsible for immigration, publish guidelines for the operation of this Part.

PART IX

Appointment and Powers of Inspectors

Appointment of inspectors

31.—(1) The Minister may, by notice published in the *Gazette*, appoint inspectors for purposes of the execution of this Act.

(2) The Minister shall notify the Minister responsible for Local Government of the appointment of the inspectors under subsection (1).

(3) Every inspector shall be issued with an identity card and shall, when visiting business premises or any other place to which this Act applies, produce the identity card if so required by the owner, occupier or any other person having control of the premises or place.

(4) All officers in the Ministry shall be *ex officio* inspectors.

Powers of inspectors

32.—(1) An inspector shall, for purposes of the execution of this Act, have powers to—

(*a*) require the production of the Business Licence or any document required to be kept under this Act and to inspect, examine and make copies of the Business Licence or the document;

(*b*) take with him a police officer where he has reasonable cause to believe that he is likely to encounter obstruction in the execution of his duties;

(*c*) demand the owner, occupier or any other person having control of the premises to give any information that is in the power of the owner, occupier or person having control of the premises to give; and

(*d*) order the cessation of trading for a period not exceeding fourteen days and issue reasons therefor, subject to confirmation of the order in writing by the Chief Licensing Officer.

(2) An inspector shall issue a report to the Chief Business Licensing Officer in respect of each Business Licensing Centre in a Local Authority within fourteen days of completing an inspection of the Local Authority.

PART X

Offences

Offences

33.—(1) A person who—

(*a*) carries on business without being licensed under this Act;

(*b*) provides false information at any time during the process of making an application for a Business Licence;

(*c*) conducts a business without observing other legislation governing the business; or

(*d*) carries on business at any place not specified in the Business Licence,

commits an offence.

(2) A person convicted of an offence under subsection (1) shall be liable to a fine equivalent to ten per cent of the annual turnover of the business.

(3) A person who—

(*a*) willfully tampers with or destroys any information kept under this Act;

(*b*) willfully obstructs an inspector in the discharge of his duties under this Act;

(*c*) without reasonable cause, fails to give to an inspector assistance or information which an inspector may require of him for purposes of the performance of his duties under this Act; or

(*d*) in giving information required of him under paragraph (*c*), makes a statement which he knows to be false or which he does not believe to be true,

commits an offence and, on conviction, shall be liable to a fine of K50,000 and to imprisonment for one year.

Compounding offences

34.—(1) The Chief Business Licensing Officer may, where satisfied that a person has committed an offence under section 32 (1) or any regulation made under this Act, compound the offence by accepting from the person a sum of money not exceeding the amount of the fine to which the person would have been liable to pay if he had been prosecuted and convicted of the offence:

Provided that—

(*a*) the power provided under this section shall be exercised only where the person admits in writing to have committed the offence; and

(*b*) the Chief Licensing Officer exercising the power conferred by this section shall give the person from whom he receives the money a receipt thereof.

(2) Where an offence under this Act or any regulation made under this Act is compounded in accordance with subsection (1) and proceedings are instituted against the offender for the same offence, it shall be a good defence where the offender proves to the satisfaction of the court, that the offence with which he is charged has been compounded under subsection (1).

Failure to surrender a Business Licence

35. A person who fails, without a reasonable excuse, to surrender to the Business Licensing Officer a Business Licence that has been suspended, cancelled or revoked, commits an offence and, on conviction, shall be liable to a fine equivalent to ten per cent of the annual turnover of the business.

PART XI
Miscellaneous Provisions

Reserved businesses

36. The Minister may, for purposes of promoting the participation of Malaŵians in economic activity, by order published in the *Gazette*, reserve some businesses to be carried out by Malaŵians only.

Regulations

37.—(1) The Minister may make regulations for the purpose of carrying out the provisions of this Act.

(2) Without prejudice to the generality of subsection (1), the Regulations may—

(*a*) prescribe the forms to be used under this Act and the conditions to be complied with in applying for the licensing of a business and the procedure in the manner of the applications;

(*b*) prescribe the fees to be paid in respect of any matter or thing done under this Act or the Regulations;

(*c*) provide for the licensing of the sale of packaged foodstuffs and bottled or packed liquor for consumption off the premises of a business;

(*d*) specify professions to which the provisions of this Act shall apply;

(*e*) require Business Licensing Officers to submit returns to the Chief Business Licensing Officer;

(*f*) provide for the time frame within which specific obligation shall be carried out;

(*g*) prescribe the manner in which Business Licences are to be exhibited;

(*h*) prescribe the manner in which an application for a Business Licence in respect of a business without premises may be issued;

(*i*) provide for conditions that may be attached to a Business Licence;

(*j*) provide for activities that are exempted from the application of this Act;

(*k*) provide for the use of technology in making an application for a Business Licence or any other activity under this Act;

(*l*) in relation to businesses by non-Malaŵians, provide for—

(i) the type of businesses;

(ii) the minimum capital requirement;

(iii) the location of the businesses; and

(iii) any other requirement; and

(*m*) provide anything which, under this Act, may be prescribed.

(2) Notwithstanding the provisions of section 21 (*e*) of the General Interpretation Act, a person who commits an offence against any provision of subsidiary legislation made under subsection (1) shall be liable to a fine not exceeding K5,000,000 and to imprisonment not exceeding one year. Cap. 1:01

38. No person shall, in his personal capacity, be liable in civil or criminal proceedings in respect of any act or omission done in good faith in the performance of duties or functions under this Act. Immunity

39.—(1) The Businesses Licensing Act is repealed. Repeal and savings Cap. 46:01

(2) Any subsidiary legislation made under the Act repealed by subsection (1), in force immediately before the commencement of this Act—

(*a*) shall remain in force unless in conflict with this Act and shall be deemed to be subsidiary legislation made under this Act; and

(*b*) may be replaced, amended or repealed by subsidiary legislation made under this Act.

40. All Business Licences and exemptions granted under the Business Licensing Act shall remain in force until on such a date as the Minister shall appoint by notice published in the *Gazette* and whereupon they shall lapse and holders thereof shall be required to obtain licences in accordance with this Act. Transitional provisions Cap. 46:01

[Subsidiary]

Businesses Licensing Regulations

SUBSIDIARY LEGISLATION

G.N. 45/2014

BUSINESS LICENSING REGULATIONS

under s. 37

ARRANGEMENT OF REGULATIONS

REGULATION

1. Citation
2. Interpretation
3. Application for a Business Licence or renewal of a Business Licence
4. Production of identity documents on application for a licence
5. Issuance of a Business Licence
6. Business premises
7. Rectification of registry errors
8. Compounding offences
9. Businesses owned by non-Malaŵians
10. Fees payable
11. Appeals to the Minister
12. Record keeping
13. Inspections and orders
14. General penalty

FIRST SCHEDULE
SECOND SCHEDULE
THIRD SCHEDULE
FOURTH SCHEDULE
FIFTH SCHEDULE

Citation

1. These Regulations may be cited as the Business Licensing Regulations.

Interpretation

2. In these Regulations unless the context otherwise requires—

"ISIC" means the International Standard Industrial Classification of All Economic Activities Revision 4 in *Official Records of the Economic and Social Council, 2002, Supplement No.4 (E/2006/24)*

"person carrying on business" means—

(*a*) in the case of a single person or corporate body, such person or corporate body;

(*b*) in the case of a business carried on by a partnership, all partners; and

(*c*) in the case of a business carried on by any other body of persons, the principal officers of such body.

Application for a Business Licence or renewal of a Business Licence

3.—(1) An application for a Business Licence or for renewal of a Business Licence by a person, who is a citizen of Malaŵi, shall be made to a local authority in which the applicant intends to conduct a business.

(2) An application for a Business Licence or for renewal of a Business Licence by a person, who is not a citizen of Malaŵi, shall be made to the Chief Business Licensing Officer.

(3) An application for a Business Licence under subregulation (2) shall include a certificate issued under the Investment and Export Promotion Act.

(4) An application for a Business Licence shall be made in Forms 1 to 3 in the First Schedule hereto.

(5) An application for renewal of a Business Licence shall be made in Form 4 in the First Schedule hereto, and shall be submitted with an annual return made in Form 5 of the First Schedule hereto.

Production of identity documents on application for a licence

4.—(1) A person, who is a citizen of Malaŵi, shall upon application for, or on renewal of, a Business Licence, for purposes of identification, produce to the Chief Business Licensing Officer a valid identification document issued under the laws of Malaŵi or any other document which may be acceptable for the verification of the identity of that person.

(2) A person, who is not a citizen of Malaŵi, shall, upon application for, or on renewal of, a Business Licence produce, for the purposes of identification, to the Chief Business Licensing Officer a valid permit issued under laws relating to immigration, citizenship or asylum.

Issuance of a Business Licence

5. Where an application for a Business Licence is approved, the Chief Business Licensing Officer or the Business Licensing Officer shall issue a Business Licence to the applicant in Form 6 in the First Schedule hereto.

Business premises

6. A business that operates in more than one place of business shall have a licence for each place of business.

Rectification of registry errors

7. Subject to section 11 of the Act, the Chief Business Licensing Officer or the Business Licensing Officer, may rectify particulars furnished under the Act or in the register where there is a clerical or typographical error, or other error of similar nature, upon receipt of a notice in the Form set out in the Second Schedule hereto.

Compounding offences

8. Subject to section 34 of the Act, the Chief Business Licensing Officer may compound offences under regulations 9, 13 and 14:

Provided that the Chief Business Licensing Officer shall impose not more than ten per cent of the penalty provided for that offence.

Businesses owned by non-Malaŵians

9.—(1) A person, who is not a citizen of Malaŵi, who intends to carry out a business whose core activity is retail, in any local authority listed in the First Column of the Third Schedule hereto, shall operate within the areas designated for that purpose in the Second Column of the Third Schedule hereto.

(2) A person may carry on a business outside the areas designated under subregulation (1) upon approval of the Chief Business Licensing Officer and the Investment Approval Committee.

(3) The Chief Business Licensing Officer may revoke the Business Licence of a person who carries out business in contravention of this regulation.

(4) A person who carries on a business in contravention to this regulation commits an offence and shall be liable upon conviction to a fine of K500,000.00 and to imprisonment for twelve months.

Fees payable

10. The fees specified in the Fourth Schedule hereto shall be payable to the Business Licensing Officer of a designated area in which the Applicant intends to conduct a business.

Appeals to the Minister

11.—(1) A person who intends to lodge an appeal under section 26 of the Act to the Minister shall deliver to the Chief Business Licensing Officer a notice of appeal stating the grounds of appeal in the Fourth Schedule hereto.

(2) The Chief Business Licensing Officer shall submit to the Minister a copy of the notice of appeal together with the grounds of appeal.

Record keeping

12.—(1) A holder of a Business Licence shall keep records manually or electronically, in Chichewa or English language so as to enable any person to ascertain the nature of the business and the value of the business at the time of inspection of such records.

(2) The records in subregulation (1) shall include the Business Licence, annual turnovers, books of accounts and Tax Payer Identification Numbers.

Inspections and orders

13.—(1) An inspector shall issue an order of cessation of trading in the Form set out in the Fifth Schedule hereto, for a period not exceeding fourteen days where the order is issued under section 32 (1) (*d*) of the Act.

(2) An inspector may issue an order of cessation of trading for a period exceeding fourteen days subject to confirmation by the Chief Business Licensing Officer and the order shall be communicated to a holder of a licence within seven days.

(3) A person aggrieved by a cessation of trading order may apply to the High Court for judicial review of the decision.

(4) A person who fails to comply with an order under this regulation commits an offence and shall be liable upon conviction to a fine of K250,000.00 and to imprisonment for six months.

(6) Where a Court convicts a person under subregulation (4), the Court may, in addition to any fines provided for, order the revocation of a Business Licence and impose restrictions on trading for a period not exceeding three years.

General penalty

14. A person who contravenes any provision of these Regulations for which a penalty is not specifically provided commits an offence and shall be liable upon conviction to a fine of K100,000.00 and to imprisonment for three months.

regs. 3 and 5

FIRST SCHEDULE

REPUBLIC OF MALAŴI

BUSINESSES LICENSING ACT

(CAP. 46:01)

FORM 1

APPLICATION FOR A BUSINESS LICENCE BY A SOLE PROPRIETOR LICENCE

1. Full name .....

   Previous Names (if any): .....

2. (*a*) *Identity card number/Passport number/Driving licence number: .....

   *Delete as applicable

   (*b*) Gender .....

3. Residential and Postal Address: .....
.....
.....

4. (*a*) Name under which business is carried out: .....
(*b*) Address of place of business: .....
(*c*) Description and nature of business: .....
(*d*) ISIC Code(s): .....
(*e*) Commencement Date: .....
(*f*) Business Registration No: .....
(*g*) Details of any criminal convictions: .....
(*h*) Details of any insolvency proceedings: .....

CERTIFICATE OF APPLICANT

I certify that the particulars set out in this application are true and that I have no partner(s) in the said business.

Date: ..... Signed: .....

FOR OFFICIAL USE ONLY

Approved/Rejected: .....

If rejected, reason for rejection: .....

Name of Officer: .....

Signature: .....

FORM 2

REPUBLIC OF MALAŴI

BUSINESSES LICENSING ACT

(CAP. 46:01)

APPLICATION FOR A BUSINESS LICENCE BY A PARTNERSHIP OR BY OTHER BODY UNINCORPORATE

1. (*a*) Name under which business is carried out: .....
(*b*) Address and Place of business: .....
(*c*) Description and nature of business: .....
(*d*) Date business commenced: .....
(*e*) ISIC Code(s): .....
(*f*) Business Registration No: .....
(*g*) Details of any criminal convictions: .....
(*h*) Details of any insolvency proceedings: .....

2. *Partners/Principal officers:

(1) (*a*) Name: .....

(*b*) Previous Names (if any): .....

(*c*) *Identity card number/Passport number/Driver's Licence number: .....

(*d*) Business registration number: .....

(*e*) *Residential address/Registered office address: .....

(2) (*a*) Name: .....

(*b*) Previous Names (if any): .....

(*c*) *Identity card number/Passport number/Driver's Licence number: .....

(*d*) Business registration number: .....

(*e*) *Residential address/Registered office address: .....

(3) (*a*) Name: .....

(*b*) Previous Names (if any): .....

(*c*) *Identity card number/Passport number/Driver's Licence number: .....

(*d*) Business registration number: .....

(*e*) *Residential address/Registered office address: .....

(4) (*a*) Name: .....

(*b*) Previous Names (if any): .....

(*c*) * Identity card number/Passport number/Driver's Licence number: .....

(*d*) Business registration number: .....

(*e*) *Residential address/Registered office address: .....

Certificate of Applicant

I certify that—

(*a*) the particulars set out in this application are true; and

(*b*) (where the business is a partnership) I have listed all the partners of the business.

Date: ..... Signed: .....

Name in block letters: .....

Designation within the partnership or other body unincorporated: .... (i.e. partner (if a partnership)/principal officer)

FOR OFFICIAL USE ONLY

Approved/Rejected: .....

If rejected, reason for rejection: .....

Name of Officer: .....

Signature: .....

*Delete as appropriate.

FORM 3

REPUBLIC OF MALAŴI

BUSINESSES LICENSING ACT

(CAP. 46:01)

APPLICATION FOR A BUSINESS LICENCE BY A BODY CORPORATE

1. If body corporate is incorporated in Malaŵi:
   (*a*) Name of body corporate: .....
   (*b*) Postal and Physical Address of registered office: .....
   (*c*) Date of incorporation: .....
   (*d*) Registration No: .....
   (*e*) Business name (if any): .....
   (*f*) ISIC Code(s): .....
   (*g*) Details of any criminal convictions: .....
   (*h*) Details of any insolvency proceedings: .....
2. In the case of charities or non profit body corporate in Malaŵi:
   (*a*) Name of body corporate: .....
   (*b*) Postal and Physical Address of registered office: .....
   (*c*) Date of incorporation: .....
   (*d*) Registration No: .....

(*e*) Objectives: .....
.....
.....
.....
.....
.....

(*f*) ISIC Code(s): .....

3. If body corporate is not incorporated in Malaŵi and is one to which the foreign/ external companies part of the Companies Act applies:

(*a*) Name of body corporate: .....

(*b*) Place of incorporation: .....

(*c*) Names, occupation and addresses of person or persons resident in Malaŵi whose particulars have been delivered to the Registrar of Companies: .....

(*d*) Date of registration under the Companies Act: .....

4. (*a*) Name under which business is carried out: .....

(*b*) Address of place of business: .....

(*c*) Description and nature of business: .....

(*d*) ISIC Code(s): .....

Certificate of Applicant

I certify that the particulars set out in this application are true.

Date: .....

Signed: .....

Full name (in block letters): .....

Designation within the body corporate: .....
..... (i.e. director, manager or secretary)

For Official Use Only

Approved/Rejected: .....

If rejected, reason for rejection: .....

Name of Officer: .....

Signature: .....

FORM 4

BUSINESSES LICENSING ACT

(CAP. 46:01)

APPLICATION FOR RENEWAL OF A BUSINESS LICENCE

To: The Business Licensing Officer,

1. Full name of applicant: .....

   Previous Names (if any): .....

2. * Identity card number/Passport number/Driver's Licence number: ...
   .....
   *Delete as applicable

3. Residential address: .....
   .....

4. (*a*) Name under which business is carried out: .....
   (*b*) Address of place of business: .....
   (*c*) Description and nature of business: .....
   (*d*) ISIC Code(s): .....

CERTIFICATE OF APPLICANT

I certify that the particulars set out in this application are true and that I have no partner(s) in the said business.

Date: ..... Signed: .....

OR

(In case of a partnership or other unincorporated body)

CERTIFICATE OF APPLICANT

I certify that the particulars set out in this application are true

Date: ..... Signed: .....

Name in block letters: .....

Designation within the partnership or other body unincorporated: .....
.....

(i.e. partner (if a partnership)/principal officer)

OR

(In case of a body corporate)

CERTIFICATE OF APPLICANT

I certify that the particulars set out in this application are true.

Date: ..... Signed: .....

Full name (in block letters): .....

Designation within the
body corporate: .....
.....(i.e. director, manager or secretary)

FOR OFFICIAL USE ONLY.

Approved/Rejected: .....

If rejected, reason for rejection: .....

Name of Officer: .....

Signature: .....

FORM 5

REPUBLIC OF MALAŴI

BUSINESSES LICENSING ACT

(CAP. 46:01)

ANNUAL RETURN

To: The Business Licensing Officer,

1. Full name of applicant and Business Licence Number: .....
.....

   Previous Names (if any): .....

2. (*a*) Name under which business carried out: .....

   (*b*) Address of place of business: .....
.....

   (*c*) Annual Turnover: .....

   (*d*) Changes in Ownership: .....

   (*e*) Outstanding Credit Obligations: .....

FORM 6

REPUBLIC OF MALAŴI

BUSINESSES LICENSING ACT

(CAP. 46:01)

BUSINESS LICENCE

Licence No: .....

This is to certify that ..... is the holder of a Business Licence issued under the Business Licensing Act.

The Licence expires on: .....

This Licence is subject to the following conditions:

1. .....

Dated this ..... day of ..... 20.....

.....
Business Licensing Officer
(Stamp & Signature)

reg. 7

SECOND SCHEDULE

REPUBLIC OF MALAŴI

BUSINESSES LICENSING ACT

(CAP. 46:01)

NOTICE OF RECTIFICATION OF PARTICULARS

To: The Registrar,

We (I) the undersigned give notice of change of particulars of ..... duly licenced pursuant to the Business Licensing Act on the ..... day of ..... under Licence Number .....

A change (or changes) has (or have) occurred (or been made) in respect of the particulars registered as hereinafter mentioned.

We (I) the undersigned hereby give notice that on the date (or dates) hereunder specified the following change (or changes) occurred (or was or were made) in the particulars registered:

.....

.....

.....

CERTIFICATE OF APPLICANT

I certify that the particulars set out in this application are true

Date: ..... Signed: .....
*Full name (in block letters): .....

*Sign off as applicable for a sole proprietor, partnership or body corporate or personal representative or other capacity

FOR OFFICIAL USE ONLY.

Approved/Rejected: .....

If rejected, reason for rejection: .....

Name of Officer: .....

Signature: .....

reg. 9

THIRD SCHEDULE

REPUBLIC OF MALAŴI

BUSINESSES LICENSING ACT

(CAP. 46:01)

DESIGNATED AREAS FOR NON MALAŴIAN BUSINESS

First Column	*Second Column*
LOCAL AUTHORITY	DESIGNATED AREAS
Blantyre City Council	Central Business District
Zomba City Council	Central Business District
Lilongwe City Council	Central Business District
Mzuzu City Council	Central Business District
Kasungu Municipality Council	Central Business District
Luchenza Municipality Council	Central Business District

reg. 10 FOURTH SCHEDULE

Matter	*Fees*	
	K	t
Application for a Business Licence	1000	00
Issuance of a Business Licence for non-Malaŵians	60000	00
Issuance of a Business Licence for Malaŵians where the premises are in—		
(*a*) a City or Municipal Council	30000	00
(*b*) a Town Council	20000	00
(*c*) any other area	10000	00
Transfer of a Business Licence	5000	00
Filing an annual return	2500	00
Renewal of a Business Licence	5000	00

reg. 11 FOURTH SCHEDULE

REPUBLIC OF MALAŴI

BUSINESSES LICENSING ACT

(CAP. 46:01)

NOTICE OF APPEAL TO THE MINISTER

I, ... HEREBY APPEAL against the decision of the Business Licensing Officer to effect or cancel the following registration: .....

My grounds of appeal are as follows: .....

Dated this ..... day of ....., 20.....

My address for service is: .....

.....
Signature of Appellant

FIFTH SCHEDULE reg. 13

REPUBLIC OF MALAŴI

BUSINESSES LICENSING ACT

(CAP. 46:01)

ORDER OF CESSATION OF TRADING

Section 32 (1) (*d*)

To:

You are directed to forthwith cease trading on your premises. The reasons for the above order are as follows:

1. .....

2. .....

3. .....

This order is effective for ..... days. If this order is confirmed by the Chief Business Licensing Officer this order will continue until revoked. (Delete the latter statement if not applicable)

Name of Officer: .....

Designation: .....

Signature: .....

BUSINESS REGISTRATION

CHAPTER 46:02

Containing Pages 1–36

CHAPTER 46:02

BUSINESS REGISTRATION

ARRANGEMENT OF SECTIONS

SECTION

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CHAPTER 46:02

BUSINESS REGISTRATION

7 of 1922
7 of 1925
13 of 1941
16 of 1997
12 of 2012
G.N. 22/1963
219/1964 (N)
11/2013

An Act to provide for the registration of persons carrying on business in Malaŵi and of their business names, the allocation of a single business registration number; and for matters connected therewith and incidental thereto

[27TH MAY, 2013]

PART I
PRELIMINARY

Short title

1. This Act may be cited as the Business Registration Act.

Interpretation

2.—(1) In this Act, unless the context otherwise requires—

"authorised officer" means an officer duly authorised in writing by the Registrar;

"business" includes every form of trade, commerce or manufacture, craftsmanship, calling, profession, vocation or occupation or any other activity carried on by a person for the purposes of gain or profit;

"business name" means the name or style under which a person carries on business;

"business registration number" means the unique identification number allocated by the Registrar under section 12 (1);

"certificate" means a certificate of business registration issued under section 12 (2);

"electronic communication" means a communication transmitted, whether from one person to another, from one device to another device, or from a person to a device or *vice versa* by—

(*a*) means of a telecommunication system within the meaning of the Communications Act; or

Cap. 68:01

(*b*) any other means in an electronic form;

Cap. 46:03

"company" means a company incorporated under the Companies Act;

"electronic signature" means anything in electronic form as—

(*a*) is incorporated into or otherwise logically associated with any electronic communication or electronic data; and

(*b*) purports to be so incorporated or associated for the purpose of being used in establishing the authenticity of the communication or data, the integrity of the communication or data, or both;

"Database" means the Malaŵi Business Registration Database established by section 6;

"firm" means an unincorporated body consisting of two or more individuals, or one or more corporations, having constituted a partnership with a view to carrying on business;

"local authority" has the same meaning as in the Local Government Act; Cap. 22:01

"Malaŵi Investment and Trade Centre" means the Malaŵi Investment and Trade Centre incorporated under the Companies Act on 2nd December, 2010; Cap. 46:03

"Malaŵi Revenue Authority" means the Malaŵi Revenue Authority established under the Malaŵi Revenue Authority Act; Cap. 39:07

"National Statistical Office" means the National Statistical Office referred to in the Statistics Act; Cap. 27:01

"person" includes any company or association or body of persons, corporate or unincorporate;

"person responsible for the management of a business" includes every officer, individual, secretary, agent or employee who is at any time in charge, either solely or to a substantial extent, of the management of the business;

"public sector agency" includes any Ministry, Government Department, local authority or statutory body;

"Registrar" means the Registrar of Businesses under this Act; and

"relevant permit" includes any licence, approval or other written formal authorization required from a public sector agency under any written law.

(2) A person who has a place of business in Malaŵi shall be deemed to be carrying on business in Malaŵi for the purposes of this Act.

Application and scope of this Act

3.—(1) The provisions of this Act shall apply to registration of the following businesses—

(*a*) sole proprietors; and

(*b*) partnerships.

(2) This Act shall not exempt a person registered under this Act from complying with any other written law relating to businesses of a specific type.

(3) This Act shall not apply to—

(*a*) any person carrying on business for the purpose of his livelihood with a turnover below the amount prescribed by the Minister; and

(*b*) any office or employment of a person.

(4) Where a person carrying on business is required under this Act or any other Act or regulation to do any act, any person responsible for the management of the business for or on behalf of the first-mentioned person shall also be held liable for the doing of, or omission to do, that act.

PART II
The Registrar of Businesses

Registrar of Businesses

4.—(1) The Registrar of Companies or such other person as the Minister may appoint shall be the Registrar of Businesses (hereinafter referred to as "Registrar"), who shall be responsible for the effective administration and application of this Act.

(2) Anything in this Act authorised or required to be done by the Registrar or to be signed by the Registrar, may be done by or signed by the Deputy Registrar or Assistant Registrar and shall be valid and effectual as it done by or signed by the Registrar.

(3) The Registrar shall have a seal and such seal shall bear the words "Registrar of Businesses, Malaŵi".

(4) In the performance of the Registrar's duties under this Act, the Registrar shall be subject to—

(*a*) the general and special directions of the Minister, not inconsistent with the provisions of this Act; and

Cap. 1:03

(*b*) for avoidance of doubt, the provisions of the Public Service Act.

Powers of the Registrar

5.—(1) The Registrar or any authorised officer shall, for the purposes of ensuring compliance with this Act, have power at all reasonable times to inspect any premises at which the Registrar has reason to believe that business is being carried on in breach of this Act.

(2) When exercising the power under subsection (1), the Registrar or any authorised officer shall declare his office and shall produce a written authority to any person affected by the exercise of such power.

(3) Where the Registrar has reasonable cause to believe that any person registered under this Act is not carrying on business, he may send by registered post to the person a notice to the effect that if an answer showing cause to the contrary is not received within one month from the date thereof, the registration of the person and his certificate may be cancelled and the name under which the person carries on business removed from the Database.

(4) Where the Registrar has reasonable cause to believe that a person may be adversely affected by matters contained in subsection (3), the Registrar may send the address of such person as listed in the application documents and deemed to be the address for some of that person by registered post to the person a copy of the notice referred to in subsection (3).

(5) The Registrar shall have power at all times to—

(*a*) rectify any mistake in order to bring the entry in the Database relating to any person into conformity with the documents relating to the person furnished under this Act; and

(*b*) issue a new certificate to the person accordingly.

(6) The Registrar shall, by notification in the *Gazette*, publish such particulars as the Registrar thinks fit in respect of a person whose registration and certificate have been cancelled under this Act.

(7) Where the registration of a person is cancelled under this Act, the certificate issued to that person shall be deemed to have been cancelled.

PART III

The Malaŵi Business Registration Database

Establishment of the Malaŵi Business Registration Database

6.—(1) There is established for the purposes of this Act a central business registration Database, which shall be known as the Malaŵi Business Registration Database (hereinafter referred to as the "Database").

(2) The Registrar shall be the repository of the information entered into the Database.

(3) The Registrar shall manage the operation of the Database.

(4) The Database shall consist of registered information on all persons entered into the registry including all entries, required to be entered under this Act, kept on electronic means on computer or other approved electronic device.

(5) Any person may, upon payment of such fees and on such conditions as may be prescribed by the Registrar have access to the Database and obtain copies of any entry made or documents kept therein.

Cap. 46:03

(6) Subject to the Companies Act, the Registrar shall give, at all times, for the purposes of business facilitation, online access to the Database to—

(*a*) the Malaŵi Investment and Trade Centre;

(*b*) the Malaŵi Revenue Authority;

(*c*) the National Statistical Office;

(*d*) any local authority; and

(*e*) such other institution or authority as the Minister may designate by order published in the *Gazette*.

Use of technology and e-communications

7.—(1) Notwithstanding anything to the contrary in this Act, the Registrar may authorise—

(*a*) any application or notification required under this Act;

(*b*) the payment of any registration fee or other fee; and

(*c*) the performance of any other act or thing which is required to be done under this Act,

to be made, notified or done electronically in such manner and through such computer system as may be approved by the Registrar.

(2) With effect from such date as may be specified in the *Gazette*, the Registrar may direct that any matter, act or thing referred to in subsection (1) be made, notified or done electronically.

(3) The Minister may make regulations for the better carrying out of this section including provisions as to the electronic form to be taken by any electronic communication or electronic storage to the Registrar and the use of electronic signatures.

(4) For the purposes of this Act, an electronic signature incorporated into or associated with a particular electronic communication or particular electronic data is certified by any person if that person, whether before or after the making of the communication, has made a statement confirming that—

(*a*) the signature;

(*b*) a means of producing communicating or verifying the signature; or

(*c*) a procedure applied to the signature.

(5) In any legal proceedings—

(*a*) an electronic signature incorporated into or logically associated with a particular electronic communication or particular electronic data; and

(*b*) the certification by any person of such a signature, shall each be admissible in evidence in relation to any question as to the authenticity of the communication or data or as to the integrity of the communication or data.

Use of business registration number

8.—(1) Notwithstanding any written law, every person registered under this Act shall, in respect of every transaction he makes, use and indicate on any document, whether electronically or otherwise—

(*a*) his business registration number; and

(*b*) where the person with whom the transaction is made is registered under this Act, the business registration number of that person.

(2) A public sector agency shall not issue any permit, approval or authorization to any person who is required to be registered under this Act unless the person holds a certificate.

(3) Every public sector agency shall, in its dealings with a person who is required to be registered under this Act and in respect of whom a record is required to be kept under this Act, use and indicate in its records, whether electronically or otherwise, the business registration number of the person.

(4) For the purposes of this section, any person or public sector agency may, in reasonable circumstances and for the purposes of ascertaining the identity of another person who is required to be registered under this Act, request the other person to produce his certificate.

(5) Any person who fails to comply with subsection (1) commits an offence and shall be liable to a fine of K500,000.

Search of the Database

9.—(1) A person may, upon payment of the prescribed fee, search the Database, and obtain a printed search result, in accordance with this Act.

(2) The Database may be searched only by reference to the following criteria—

(*a*) the name and national identification number;

(*b*) the business name;

(*c*) any international standard industry code;

(*d*) the general nature of the business;

(*e*) the principal place of business and any other place where the business is carried on;

(*f*) the date or proposed date of commencement of the business; and

(*g*) such other information or particulars as may be prescribed.

(3) A search of the Database may be carried out by any person for any lawful purpose.

(4) Information in the Database shall have the same legal value as the information in the forms and documents submitted to the Registrar.

PART IV

Registration of Businesses

Duty to be registered

10.—(1) Subject to the provisions of this Act, a person shall not carry out any business in Malaŵi unless that person is registered under this Act.

(2) A person who is required to be registered under subsection (1) shall make an application to the Registrar for registration of his business and of his business name, including any name different from a name of an individual in cases of a partnership.

(3) Where a person makes an application under subsection (2), he shall, at the same time, pay such registration fee as may be prescribed by the Registrar.

(4) Where a person carries on business as a sole proprietor at more than one place of business or carries on two or more different commercial activities as a sole proprietor he shall register his business with the registry only once.

(5) Any person who fails to comply with subsection (1) commits an offence and shall be liable to a fine of K100,000.

Form and particulars of registration

11.—(1) An application to register a business shall be made in such form as may be prescribed by the Registrar and shall include—

(*a*) the full name and national identification number of the applicant;

(*b*) the business name of the applicant, if any;

(*c*) any international standard industry code;

(*d*) the general nature of the business;

(*e*) the principal place of business and any other place where the business is carried on;

(*f*) the date or proposed date of commencement of business; and

(*g*) such other information or particulars as may be required in the application form.

Registration of business and business name

12.—(1) Where the Registrar is satisfied with the particulars of registration provided under section 11, he shall, subject to the other provisions of this Act—

(*a*) register the business and business name of the applicant in the Database; and

(*b*) allocate a business registration number to the applicant.

(2) Upon the registration of a person in accordance with subsection (1) (*a*), the Registrar shall issue to the person a certificate.

(3) Every certificate shall—

(*a*) bear—

(i) the business registration number;

(ii) the full name of the person;

(iii) the business name of the person, if any;

(iv) any international standard industry code;

(v) a concise description of the general nature of the business; and

(vi) the address of business and any other place where the business is to be carried on;

(*b*) distinctly indicate its date of issue or renewal; and

(*c*) be signed by the Registrar.

(4) A person registered under this section shall not have more than one business registration number or more than one certificate in respect of the same business.

(5) A person registered under this Act who, for any reason, has been allocated more than one business registration number or has been issued with more than one certificate in respect of the same business shall immediately notify the Registrar in writing and return the certificates to enable the Registrar to take the actions set out under subsection (6).

(6) On receipt of a notification under subsection (5), the Registrar shall—

(*a*) cancel the returned certificates;

(*b*) allocate a new business registration number to the person mentioned in subsection (5);

(*c*) issue to the person mentioned in subsection (5) a new certificate; and

(*d*) amend the Database accordingly.

(7) Subject to the other provisions of this Act, any registration under subsection (1) (*a*) and any certificate issued under subsection (2) shall be valid for a period of three years and shall be renewable for unlimited further periods of three years each.

(8) On receipt of an application for the renewal of registration and certificate of Business Registration, the Registrar may require the applicant to furnish additional particulars or other information for the purposes of the renewal.

(9) Nothing in this section shall be construed to require the Registrar to register any person or issue a certificate or renew the registration of a person or the certificate if the Registrar is not satisfied with the particulars or other information furnished under this Act.

(10) The registration of a person or the issuance of a certificate, or the renewal of the registration of a person or the certificate, shall not be deemed to imply that the requirements of any enactment in relation to any business carried on by that person have been complied with.

(11) A holder of a certificate shall display in a conspicuous place at the principal place of business and at every other place where the person carries on business a certified copy of the business certificate of Business Registration in force.

Use of business names

13.—(1) A person who is registered under this Act shall not carry on business under a business name which has not been registered with the Registrar under section 12.

(2) The registration of a business name under this Act is prohibited where apart from such registration, the use of the name is prohibited under any other written law.

(3) Except with the written consent of the Minister and subject to any other written law, a person shall not be registered under a business name which includes—

(*a*) the word "Authority", "Corporation", "Government", "Malaŵi", "National", "President", "Presidential", "Regional", "Republic", "State", or any other word which is likely to suggest, that it enjoys the patronage of the Government or of a statutory corporation or of the Government of any other State; or

(*b*) the words "City", "Municipality" or "Council" or any other word which is likely to suggest, in connexion with a local authority in Malaŵi or elsewhere.

(4) Where the Registrar is satisfied that a person registered under this Act carries on business, or any person applying for registration under this Act intends to carry on business, under a business name which—

(*a*) is identical in writing to, or so nearly resembles, the name of any other person or company carrying on business or the business name or trademark under which another person carries on business,

the Registrar may cancel the registration or refuse to register the person, as the case may be, unless the person changes the business name to a name which may be registered under this section, within thirty days from the date the Registrar requests the person to do so.

(5) Any person aggrieved by a decision of the Registrar under subsection (4) may, within thirty days from the date of the notice of cancellation or refusal, appeal in writing to the Minister.

(6) A person who contravenes subsection (1) commits an offence and shall be liable to a fine of K50,000.

Registration of changes in particulars

14.—(1) Where a change is made, or occurs, in any of the particulars registered under this Act in respect of any person, the person shall, within fourteen days from the date he becomes aware of the change, notify the Registrar, in such medium and in such form as may be approved by the Registrar, of the nature and the date of the change.

(2) Where the change under subsection (1) requires a change in the certificate of a person, the person shall, at the same time, return his certificate and all copies thereof to the Registrar.

(3) On receipt of a notification under this section, the Registrar, upon being satisfied that the changes are according to the provisions of the current Act, shall—

(*a*) cancel the returned certificate;

(*b*) cause the Database to be amended accordingly; and

(*c*) where necessary, issue a new certificate.

(4) The issuance of a new certificate shall be subject to payment of such fees as may be prescribed by the Registrar.

(5) Any person who fails to comply with subsection (1) commits an offence and shall be liable to a fine of K50,000.

Cessation or transfer of business

15.—(1) Where a person registered under this Act ceases to carry on business or sells or otherwise transfers his business, he shall, within fifteen days from the date of cessation, sale or transfer, notify the Registrar in writing, in such medium and in such form as may be approved by the Registrar, of the date of the cessation, sale or transfer

and the full name of the buyer or transferee, as the case may be, and at the same time return his certificate and all copies thereof.

(2) Where a person purchases or takes over a business, he shall notify the Registrar in writing, in such medium and in such form as may be approved by the Registrar, of the date of the purchase or take over and the full name of the seller or transferor, as the case may be, and at the same time return his certificate or Business Registration and all copies thereof, if any.

(3) On receipt of a notification under subsection (1) or (2), the Registrar, upon being satisfied with the information provided, shall—

(*a*) cancel the returned certificate;

(*b*) cause the Database to be amended accordingly; and

(*c*) where necessary, issue a new certificate.

(4) A person who fails to comply with subsection (1) or (2) commits an offence and shall be liable to a fine of K50,000.

Copy of business certificate

16. A person registered under this Act may, upon payment of the prescribed fee, have a copy of his certificate duly certified by the Registrar.

PART V
Miscellaneous Provisions

Immunity

17.—(1) A person shall not bring an action against the Registrar or any officer in respect of any act done or omitted to be done by the Registrar or any of the Registrar's officers in the execution, in good faith, of functions under this Act.

(2) Where the Registrar furnishes, electronically or otherwise, information relating to a person registered under this Act to any other person, neither the Registrar nor any of the Registrar's officers who is involved in the furnishing of such information shall be liable for any loss or damage suffered by any person, by reason of any error or omission, of whatever nature or however caused, if the error or omission is made in good faith and in the ordinary course of the discharge of the duties of the Registrar or officer or authorised agent or has occurred or arisen as a result of any defect or breakdown in the service or in any of the equipment used for the service.

Persons carrying on unlawful business

18.—(1) Nothing in this Act shall be construed to require the Registrar to register a person who carries on any business which contravenes any written law.

(2) Where a person registered under this Act carries on any business which contravenes any written law, the Registrar may cancel the registration and the certificate of the person shall be deemed to have been cancelled.

(3) A person aggrieved by the decision of the Registrar under subsection (1) or (2) may make an application to the High Court for judicial review.

Compounding offences

19.—(1) The Registrar may, in his discretion, compound any offence under this Act which is prescribed as a compoundable offence by collecting from a person reasonably suspected of having committed the offence a sum not exceeding—

(*a*) one half of the amount of the maximum fine that is prescribed for the offence; or

(*b*) K75,000,

whichever is the lower.

(2) On payment of the sum of money under subsection (1), no further proceedings shall be taken against that person in respect of the offence.

Enforcement of duty to file returns

20.—(1) Any person, who makes default in complying with—

(*a*) any provision of this Act or of any other law which requires submitting or filing in any manner with the Registrar of any return, account or other document or the giving of notice to him of any matter; or

(*b*) any request of the Registrar to amend or complete and resubmit any document or to submit a fresh document,

and fails to make good the default within fourteen days after the service on the person of a notice requiring it to be done, shall be liable to an administrative penalty of K5,000 for each default:

Provided that the maximum penalty shall not exceed K1,000,000.

(2) A penalty under subsection (1) shall constitute a civil debt owed to the Government.

(3) Notwithstanding anything to the contrary in any written law any person who owes a debt referred to in subsection (2) above shall bear all the costs of and incidental to the application for collector of the debt.

(4) Nothing in this section shall limit the operation of any other provision of this Act or any written law imposing penalties on that person.

General offence and penalty

21. A person who contravenes a provision of this Act for which no offence is specifically provided commits an offence and shall be liable to a fine of K50,000.

Regulations

22.—(1) The Minister may, from time to time, make regulations for carrying out the purposes of this Act.

(2) Without prejudice to the generality of the powers conferred by subsection (1), such regulations may prescribe—

(*a*) the additional powers and duties of the Registrar;

(*b*) the internal procedures for business registration;

(*c*) the forms for the purposes of this Act, including the form of registers to be kept and the places at which the registers are to be kept;

(*d*) the fees to be charged in respect of anything done under or by virtue of this Act, and the method of payment of such fees;

(*e*) the persons or classes of persons who are to be exempted from the payment of any fee or part thereof;

(*f*) the penalties for the late submission of documents;

(*g*) the requirements for use of electronic signatures;

(*h*) the offences which may be compounded under section 20; and

(*i*) all matters and things which are required or permitted to be prescribed under or for the purposes of this Act.

(3) Notwithstanding the provisions of section 21 of the General Interpretation Act, a person who commits an offence against any provision of subsidiary legislation made under subsection (1) shall be liable to a fine not exceeding K500,000 and to imprisonment for twelve months. Cap. 1:01

Repeal and savings

23.—(1) The Business Names Registration Act is repealed.

(2) Any subsidiary legislation made under the Business Names Registration Act repealed by subsection (1), in force immediately before the commencement of this Act— Cap. 46:02

(*a*) shall remain in force unless in conflict with this Act and be deemed to be subsidiary legislation made under this Act; and

(*b*) may be replaced, amended or repealed by subsidiary legislation made under this Act.

Transitional provisions

24.—(1) All certificates granted under the Business Names Registration Act shall remain in force until the expiry of six months from coming into force of this Act whereupon they shall lapse and holders thereof shall be required to obtain certificates in accordance with this Act. Cap. 46:02

(2) On the commencement of this Act, every company incorporated under the Companies Act or a body corporate registered under any written law shall, within six months from the commencement of this Act, notify the Registrar, in the prescribed manner of— Cap. 46:03

(*a*) the business name of the company, if any;

(*b*) the general nature of the business;

(*c*) the address of business and any other place where the business is carried on; and

(*d*) any other information as may be required.

(3) The Registrar shall, subject to subsection (2)—

(*a*) register the company or other body corporate registered under any written law, as the case may be, in the Database;

(*b*) allocate a business registration number to the company or other body corporate; and

(*c*) issue a Certificate.

SUBSIDIARY LEGISLATION

G.N. 6/2014

BUSINESS REGISTRATION REGULATIONS

under s. 22

ARRANGEMENT OF REGULATIONS

REGULATION

1. Citation
2. Interpretation
3. Forms for application
4. Reservation of Business Names
5. Requirements relating to Forms
6. Identification
7. Rectification of particulars
8. Compounding offences
9. Registration by nominee
10. Identical names
11. Change of particulars
12. Appeals to Minister
13. Business names in legal proceedings
14. Registration agents
15. Governance of business
16. Fees

FIRST SCHEDULE
SECOND SCHEDULE
THIRD SCHEDULE
FOURTH SCHEDULE
FIFTH SCHEDULE
SIXTH SCHEDULE

Citation

1. These Regulations may be cited as the Business Registration Regulations.

Interpretation

2. In these Regulations, unless the context otherwise require—

"foreign firm" means any firm, individual or corporation whose principal place of business is situated outside Malaŵi;

"ISIC" means the International Standard Industrial Classification of All Economic Activities Revision 4 in Official Records of the Economic and Social Council, 2002, Supplement No. 4 (E/2006/24);

"person carrying on business" means—

(*a*) in the case of a single person or corporate body, such person or corporate body;

(*b*) in the case of a business carried on by a partnership, all partners; and

(*c*) in the case of a business carried on by any other body of persons, the principal officers of such body;

for purposes of section 3, the Act shall not apply to a business with an annual turnover of less than K2,000,000.

Forms for application

3.—(1) The Registrar may issue such forms in such medium as appropriate for the purposes of section 7 of the Act on the website: *www.registrargeneral.gov.mw.*

(2) For purposes of section 10 of the Act, a business registration application shall be made to the Registrar—

(*a*) in the case of a business carried on by a sole proprietor, in Form 1 (*a*); and

(*b*) in the case of a business carried on by a partnership or other body of persons, in Form 2.

(3) For purposes of section 24 (2) of the Act, an application form shall be in Form 3.

(4) Prescribed Forms shall be as appropriate in the Second Schedule.

Reservation of Business Names

4. A person may apply to the Registrar for the reservation of—

(*a*) the name of an intended business; or

(*b*) the new name of the registered business of the person.

Requirements relating to Forms

5. The following provisions shall apply in respect of any forms submitted under these Regulations—

(*a*) unless otherwise required, all particulars to be inserted in a form, electronic or otherwise, shall be in the English language;

(*b*) a form referred to in regulation 2 (2) shall be completed neatly and legibly in accordance with such directions as may be specified in that form;

(*c*) the prescribed form for use for the purposes of section 7 of the Act shall be that set out in the electronic filing system by the Registrar;

(*d*) an electronic transaction form shall be completed in accordance with such directions as may be specified in that form or by the Registrar;

(*e*) where strict compliance of an electronic transaction form in accordance with paragraph (*d*) is not practicable, the Registrar may allow the form to be filed in such manner or form as the Registrar thinks fit so long as substantial compliance is achieved;

(*f*) the Registrar may make any modification or amendment as he thinks necessary to any electronic transaction form for the purpose of facilitating the electronic filing of documents; and

(*h*) the Registrar may refuse to accept any form that is not in compliance with these Regulations.

Identification

6.—(1) Every application that requires identification shall be accompanied by a copy of a national identity card, passport, driver's licence or such other identification documents which are acceptable for the verification of the identity of the person to be registered under the Act.

(2) Every such copy referred to in paragraph (1) above shall be certified in accordance with the Authentication of Documents Act, or where the application is made electronically in such a manner as the Registrar may direct.

Cap. 4:06

Rectification of particulars

7. The Registrar may, upon receipt of a notice made by any person in the appropriate form set out in the electronic filing system of the Registrar rectify any particulars furnished under the Act or in the register where there is any clerical or typographical error, or other error of similar nature, in the relevant particulars furnished under the Act or in the register.

Compounding offences

8. The offences contained in the following section may be compounded by the Registrar in accordance with section 19—

(*a*) section 10 (5);

(*b*) section 13 (6); and

(*c*) section 14 (5).

Registration by nominee

9. Where a person carries on a business wholly or mainly as nominee or trustee of or for another person, or other persons, or acts as agent for any foreign firm for the general purposes of the business of that foreign firm in Malaŵi, the first-mentioned person shall, in addition to the particulars required by section 11, furnish the particulars mentioned in the Third Schedule.

Identical names

10.—(1) For the purposes of section 13 (4) of the Act—

(*a*) in determining whether one name is identical to another, the following shall be disregarded—

(i) "The," where it is the first word of the name;

(ii) "Private," "Pte," "Limited," "Ltd.," "Limited Liability Partnership" and "LLP";

(iii) the following words or expressions where they appear at the end of the name, except where the business or corporation concerned are related to each other: "company" "and company", or "corporation";

(iv) any word or expression which, in the opinion of the Registrar, is intended to represent any word or expression used in subparagraph (v), except where the business or corporation concerned are related to each other; and

(v) the type and case of letters, accents, spacing between letters, brackets, parenthesis and punctuation mark; and

(*b*) the symbol "&" shall have the same meaning as the word "and".

(2) For the purposes of paragraph (1) (*a*) (iii), a business is related to a corporation if the corporation is the person carrying on the business.

(3) Where parties to a name dispute so agree under these Regulations, the Registrar may mediate the dispute.

(4) The practice and procedure for mediation shall be that prescribed for mediation under the Courts (Mandatory) Mediation Rules, 2004.

(5) A settlement agreement in any mediation under paragraph (3) shall have effect as a judgment of Court.

Change of particulars

11.—(1) Whenever a change of registered particulars, including transfer of business due to death of a person, the personal representative of the deceased person or such other person as may be approved for that purpose by the Registrar, may submit the Form 4 to be filed for registration.

(2) For a notice of cessation, a person shall submit Form 5 for registration.

Appeals to Minister

12.—(1) Any person intending to lodge an appeal to the Minister under the Act shall deliver to the Registrar a notice of appeal stating the grounds of appeal, as set out in the Fourth Schedule.

(2) The Registrar shall submit to the Minister, a copy of the notice of appeal together with the grounds of appeal stated therein.

Business names in legal proceedings

13.—(1) If any firm or person is required under the Act to furnish a statement of particulars or change any particulars and this requirement results in a default, then the defaulter may apply to the Court for relief against the disability imposed by this section, and the Court, on being satisfied that the default was accidental, or due to inadvertence, or some other sufficient cause or that on other grounds it is just and equitable to grant relief—

(*a*) may grant such relief either generally, or

(*b*) as respects any particular contract, on condition of the costs of the application being paid by the defaulter, unless the Court otherwise orders, and on such other conditions (if any) as the Court may impose,

but such relief shall not be granted except on such service and such publication of notice of the application as the Court may order, nor shall relief be given in respect of any contract if any party to the contract proves to the satisfaction of the Court that, if this Act had been complied with, he would not have entered into the contract.

(2) If any action or proceeding shall be commenced by any other party against the defaulter to enforce the rights of such party in respect of such contract, nothing herein contained shall preclude the defaulter from enforcing in that action or proceeding, by way of counter-claim, set off or otherwise, such rights as he may have against that party in respect of such contract.

(3) Without prejudice to the power of the Court to grant such relief as aforesaid, if any proceeding to enforce any contract is commenced by a defaulter in a subordinate court, the subordinate court may, if it has jurisdiction in respect to that contract, grant such relief as aforesaid.

(4) In this section, the expression "Court" means the High Court of Malaŵi.

Registration agents

14.—(1) Any person who belongs to a profession that is regulated under any written law relating to provision of business or related advisory services, may apply to the Registrar for a licence as a registration agent for the purposes of the Act.

(2) An application for a registration shall be made to the Registrar and shall be accompanied by—

(*a*) a non-refundable application fee as prescribed; and

(*b*) evidence that the applicant belongs to a prescribed profession;

(3) Where the Registrar approves an application for registration, he shall issue to the applicant a notice in writing to that effect and the applicant shall pay the fee specified in regulation 15 (1) and collect a licence from the Registrar within three months from the date on which the notice is issued, failing which the licence shall lapse.

(4) A Registration agent shall, in writing, notify the Registrar of the following, as soon as practicable and in any event within ten days of becoming aware thereof—

(*a*) any change to—

(i) his name or address;

(ii) his business name or business address; and

(iii) the name, principal business address or registered office address of his firm or employer; and

(*b*) any matter relating to his firm or employer or any of his firm's or employer's partners, directors or employees which could render the licensee no longer fit and proper to hold a licence.

(5) A person may file with the Registrar, a complaint against a Registration agent and shall set out in the complaint such facts or matters as may indicate that the Registration agent may have become liable to have his licence suspended or revoked.

(6) The Registrar shall not proceed to consider a complaint unless—

(*a*) firstly, the complainant demonstrates, to the satisfaction of the Registrar, that the complainant has previously brought forth the complaint to the Registration agent and to the firm or employer of the Registration agent and that the matter has not been resolved to the satisfaction of the complainant; and

(*b*) the Registrar determines, having regard to all the circumstances of the matter, that a *prima facie* case has been made that the Registration agent has become liable to have his licence suspended or revoked.

(7) In considering a complaint, the Registrar may require the Registration agent or the complainant concerned to provide such information as the Registrar thinks necessary for the purpose of evaluating the merits of the complaint.

(8) Where a complaint is upheld by the Registrar, the Registrar may—

(*a*) issue to the Registration agent such directives under the Act as he or she thinks fit;

(*b*) suspend or revoke the certificate of the Registration agent;

(*c*) require the licensee to pay such administrative penalties under these Regulations;

(*d*) take such enforcement action as he thinks fit; or

(*e*) publish the details and outcome of the complaint.

(9) Where a complaint is upheld by the Registrar, the Registrar may charge the Registration agent concerned for some or all of the costs it incurred in dealing with that complaint.

(10) The Registrar may impose a penalty not exceeding K150,000 for any breach of these Regulations related to Registration agents or any directions issued under it.

(11) Maximum charges by a Registration agent are outlined in Schedule 5.

Governance of business Cap. 46:02

15.—(1) All businesses registered under the Act shall comply with the Governance Guidelines for Businesses Registered under the Business Names Registration Act, issued by the Institute of Directors (Malaŵi) as set out in the Sixth Schedule.

(2) In exercise of his powers, functions or discretion under this Act, the Registrar may have regard to the Guidelines referred to in subregulation (1).

Fees

16.—(1) The fees specified in the First Schedule shall be payable to the Registrar.

(2) The prescribed fee payable to the Registrar in respect of the lodgement of an electronic transaction form or document with the Registrar shall be paid before or at the time the form or document is lodged, unless otherwise directed by the Registrar.

(3) Where any person fails to comply with the time limit specified in the Act for the lodgement of a document for which no penalty is prescribed in the Act, the Registrar may impose the late penalty fee specified in the First Schedule in addition to the prescribed fee.

(4) Where an application for the renewal of registration is lodged after the date of expiry of the registration, the Registrar may impose the late renewal fee specified in the First Schedule.

(5) Where an electronic transaction form requires endorsements by more than one person, such endorsements shall be made within 3 business days from the point of the electronic transaction, and payment of the prescribed fee shall be made by the last person endorsing the electronic transaction.

(6) Any failure to pay the prescribed fee in subparagraph (5) shall render void the electronic transaction referred to in that subparagraph.

(7) Payment of fees shall be made in such manner as directed by the Registrar.

(8) Fees shall not be refundable in respect of any certificate surrendered or cancelled in accordance with provisions of the Act, or the withdrawal of any application or appeal.

FIRST SCHEDULE reg. 15

1.	For registration under section 10 of the Act	K2,000
2.	For renewal of registration under section 12 (7) of the Act . .	K1,500
3.	For lodging change of particulars under section 14 (1) of the Act	K1,000
4.	For lodging a notice of cessation of business under section 15 of the Act	K1,000
5.	Single registration database search (each search)	K1,000
6.	For supplying electronic extracts of forms filed with the Registrar (per transaction)	K500
7.	For application for reservation or change of business name (upon approval of each name)	K5,000
8.	For supplying an additional certified hard copy of certificate registration	K2,000
9.	For lodging a notice of error in lodged document	K1,000
10.	For late lodgement of document (per day up to K10,000) . .	K500

11. For late renewal of registration—
    (*a*) where application for renewal of registration is lodged within one month from the date of expiry of the registration . . K5,000
    (*b*) where application for renewal of registration is lodged after one month from the date of expiry of the registration . . K10,000
12. Application as a Registration agent K5,000
13. Issuance of a certificate as Registration agent K15,000

reg. 3 (2) (*a*)

SECOND SCHEDULE

BUSINESS REGISTRATION ACT

(Cap. 46:02)

Form 1

Application by a Sole Proprietor for Registration of Business

Part A

1. Full name of applicant: .....
   Previous names (if any): .....
   Phone number: ..... E-mail: .....
2. *National Identification Card Number/Passport Number/Driving Licence Number/Other: .....
   Date of Issue: ..... Date of Expiry: .....
3. Plot Number: ..... Area: .....
   City/Town: ..... or Village: .....
   T/A: ..... District: .....
4. Business carried on—
   (*a*) Name under which carried on (in order of priority preference):
   1. .....
   2. .....
   3. .....
   (*b*) Physical address of place of business: .....
   (*c*) Business postal address: .....
   (*d*) Description and nature of business: .....
   (*e*) ISIC Code(s): .....
   (*f*) Number of employees (or projected): .....
   (*g*) Commencement date: .....

CERTIFICATE OF APPLICANT

I certify that the particulars set out in this application are true and that I have no partner(s) in the said business.

Date: ..... Signed: .....

PART B

FOR OFFICIAL USE ONLY

Approved/Rejected: .....

If rejected, reason for rejection: .....

Name of Officer: .....

Signature: .....

*Delete as Appropriate

BUSINESS REGISTRATION ACT reg. 3 (2) (*b*)

(CAP. 46:02)

FORM 2

APPLICATION BY PARTNERSHIP OR BY OTHER BODY UNINCORPORATE FOR REGISTRATION OF BUSINESS CARRIED ON BY SUCH BODY

PART A

1. Business carried on:

   (*a*) Name under which carried on (in order of priority preference):

   1. .....

   2. .....

   3. .....

   (*b*) Postal address: .....

   .....

   (*c*) Physical place of business: .....

   .....

   (*d*) Description and nature of business: .....

   .....

   .....

   .....

   (*e*) ISIC Code(s): .....

   (*f*) Date business commenced: .....

2. *Partners/Principal Officers:

   (1) (*a*) Name: .....

   (*b*) Previous names (if any): .....

(*c*) E-mail: ..... Phone Number: .....

(*d*) *National Identity Card Number/Passport Number/
Business registration number: .....

(*e*) Residential address: .....
.....
Plot number: ..... Area: .....
City/Town: ..... or Village: .....
T/A: ..... District: .....
Registered office address: .....
.....

(2) (*a*) Name: .....

(*b*) Previous names (if any): .....

(*c*) E-mail: ..... Phone Number: .....

(*d*) *National Identity Card Number/Passport Number/
Business registration number: .....

(*e*) Residential address: .....
Plot number: ..... Area: .....
City/Town: ..... or Village: .....
T/A: ..... District: .....
Registered office address: .....
.....

(3) (*a*) Name: .....

(*b*) Previous names (if any): .....

(*c*) E-mail: ..... Phone Number: .....

(*d*) *National Identity Card Number/Passport Number/
Business registration number: .....

(*e*) Residential address: .....
Plot number: ..... Area: .....
City/Town: ..... or Village: .....
T/A: ..... District: .....
Registered office address: .....
.....

(4) (*a*) Name: .....

(*b*) Previous names (if any): .....

(*c*) E-mail: ..... Phone Number: .....

(*d*) *National Identity Card Number/Passport Number/
Business registration number: .....

(*e*) Residential address: .....
Plot number: ..... Area: .....
City/Town: ..... or Village: .....
T/A: ..... District: .....
Registered office address: .....
.....

*Delete as Appropriate

CERTIFICATE OF APPLICANT

I certify that—

(*a*) the particulars set out in this application are true; and

(*b*) (where the business is a partnership) I have listed all the partners of the business.

Date: ..... Authorized Signatory: .....

Name in block letters: .....

Designation within the partnership or other body unincorporate: .....
(i.e. Partner (if a partnership)/Principal Officer)

PART B

FOR OFFICIAL USE ONLY

Approved/Rejected: .....
If rejected, reason for rejection: .....
Name of Officer: .....
Signature: .....

BUSINESS REGISTRATION ACT reg. 3 (3)

(CAP. 46:02)

FORM 3

APPLICATION BY A BODY CORPORATE UNDER SECTION 24 (2) OF THE BUSINESS REGISTRATION ACT

PART A

1. If body corporate is incorporated in Malaŵi:
   (*a*) Name of body corporate: .....
   (*b*) Postal and physical address of registered office: .....
   .....

(*c*) Date of incorporation: .....

(*d*) Registration number: .....

(*e*) Business name (if any): .....

(*f*) ISIC Code(s): .....

(*g*) Directors Information:

Name	*Postal Address*	*Occupation*	*Signature*

(*h*) Shareholders Information:

Name	*Postal Address*	*Phone No.*	*% of Shares*	*Signature*

2. In the case of charities or not for profit body corporate in Malaŵi:

(*a*) Name of body corporate: .....

(*b*) Postal and physical address of registered office: .....

.....

(*c*) Trustees Information:

Name	*Postal Address*	*Occupation*	*Signature*

(*d*) Date of incorporation: .....

(*e*) Registration number: .....

(*f*) Objectives: .....
.....
.....
.....
.....
.....

(*g*) ISIC Code(s): .....

3. If body corporate is not incorporated in Malaŵi and is one to which the Companies Act applies:

(*a*) Name of body corporate: .....

(*b*) Place of incorporation: .....

(*c*) Names, Occupation and Addresses of person or persons resident in Malaŵi whose particulars have been delivered to the Registrar of Companies: .....
.....
.....

(*d*) Date of registration under the Companies Act: .....

4. Business carried on:

(*a*) Name under which carried on: .....

(*b*) Address of place of business: .....

(*c*) Description and nature of business: .....

(*d*) ISIC Code(s): .....

CERTIFICATE OF APPLICANT

I certify that the particulars set out in this application are true.

Date: ..... Signed: .....

Full Name (in block letters): .....

Designation within the body corporate: .....
(i.e. Director, Manager or Secretary)

PART B

FOR OFFICIAL USE ONLY

Approved/Rejected: .....

If rejected, reason for rejection: .....

Name of Officer: .....

Signature: .....

reg. 10 (1)

BUSINESS REGISTRATION ACT

(Cap. 46:02)

Form 4

Notice of Change in Particulars Registered

To: The Registrar:

We/(I) the undersigned give notice of change of particulars of: .... duly registered pursuant to the Business Registration Act on the ..... day of ....., under the Number: ..... A change (or changes) has (or have) occurred in respect of the particulars registered as hereinafter mentioned.

We/(I) the undersigned hereby give you notice that on the date (or dates) hereunder specified the following change (or changes) occurred in the particulars registered. **

Date: ..... Change: .....
Date: ..... Change: .....
Date: ..... Change: .....
Date: ..... Change: .....
.....
.....
.....

*Please consult Schedule 3 for additional particulars.

**In the event of transfer or sale please see Form 5 to fill out transferee information.

CERTIFICATE OF APPLICANT

I certify that the particulars set out in this application are true.

Date: ..... Signed: .....

*Full name (in block letters): .....

*Sign off as applicable for a sole proprietor, partnership or body corporate or personal representative or other authorized capacity.

FOR OFFICIAL USE ONLY

Approved/Rejected: .....

If rejected, reason for rejection: .....

Name of Officer: .....

Signature: .....

BUSINESS REGISTRATION ACT reg. 10 (2)

(CAP. 46:02)

FORM 5

SALE OR TRANSFER

In the event of transfer or sale, provide information of transferee:
Name: .....
National ID Card No./Passport No./Drivers License No./Other: .....
Residential address: .....
Postal address: .....
Phone number: .....

CERTIFICATE OF APPLICANT

I certify that the particulars set out in this application are true.

Date: ..... Signed: .....

FOR OFFICIAL USE ONLY

Approved/Rejected: .....

If rejected, reason for rejection: .....

Name of Officer: .....

Signature: .....

BUSINESS REGISTRATION ACT

(CAP. 46:02)

FORM 6

NOTICE OF CESSATION OF BUSINESS

To: The Registrar:
We/(I) the undersigned registered under the Number: ..... have ceased to carry on business.

We/(I) hereby give notice that We/(I) have ceased to carry on business as ..... from the ..... day of ....., 20..... save for the purpose of winding-up the business.

CERTIFICATE OF APPLICANT

I certify that the particulars set out in this application are true.
Date: ..... Signed: .....
*Full Name (in block letters): .....
Designation within the Body Corporate: .....

(i.e. Director, Manager or Secretary)

*Sign off as applicable for a sole proprietor, partnership or body corporate.

FOR OFFICIAL USE ONLY

Approved/Rejected: .....

If rejected, reason for rejection: .....

Name of Officer: .....

Signature: .....

BUSINESS REGISTRATION ACT

(CAP. 46:02)

FORM 7

RENEWAL OF BUSINESS REGISTRATION

PART A

To: The Registrar:

1. Full name of applicant: .....
   Previous names (if any): .....
2. *National Identity Card No./Passport No./Driver's Licence No: .....
3. Residential address: .....
   Business Carried On:
   (*a*) Name under which carried on:
   (*b*) Address of place of business:
   (*c*) Description and nature of business:
   (*d*) ISIC Code(s):
   (*e*) Commencement Date:

CERTIFICATE OF APPLICANT

I certify that the particulars set out in this application are true and that I have no partner(s) in the said business.

Date: ..... Signed: .....

OR

(in case of a partnership or other unincorporated body)

CERTIFICATE OF APPLICANT

I certify that the particulars set out in this application are true.

Date: ..... Signed: .....

Name in Block Letters: .....

Designation within the Partnership or Other Body Unincorporate: .....

(i.e. Partner (if a partnership)/Principal Officer)

PART B

FOR OFFICIAL USE ONLY

Approved/Rejected: .....

If rejected, reason for rejection: .....

Name of Officer: .....

Signature: .....

BUSINESS REGISTRATION ACT

(CAP. 46:02)

FORM 8

APPLICATION FOR RESERVATION OF A NAME

PART A

1. Name to be Reserved: .....
2. Purpose of Reservation: New Business Yes ☐ No ☐

OR

Change of Name of Existing Business: Yes ☐ No ☐

3. Business Registration Number (where applicable): .....
4. Details of Applicant:

   (*a*) Full name of applicant: .....

   Previous names (if any): .....

   (*b*) Identity Card No./Passport No./Driver's Licence No.: .....

   (*c*) Residential address: .....

   .....

PART B

FOR OFFICIAL USE ONLY

Approved/Rejected: .....

If rejected, reason for rejection: .....

Name of Officer: .....

Signature: .....

BUSINESS REGISTRATION ACT

(Cap. 46:02)

Form 9

Confirmation Notice of Name Reservation

Date: .....

Concerning: .....

The Registrar confirms that the application identified above has been *approved/rejected, and the name: .....* is/is not reserved for a period of ninety days from the date of this notice.

.....

Registrar

BUSINESS REGISTRATION ACT

(Cap. 46:02)

Form 10

Notice of Potentially Contested Name

To: .....

Concerning the Name: .....

Which has been reserved as notified in Confirmation Notice Number: ....., dated: .....

The Registrar advises that the Applicant's right to use the reserved name may be contestable by one of or more persons who appear to have an interest in the use of the name, or a substantially similar name.

Comparative Name: .....

The Registrar requires the Applicant to serve a copy of the Application and Confirmation Notice Number: ....., on the following:

(Name and Address of person or persons who may have an interest in the use of the reserved name)

Name: .....

Address: .....

.....

Registrar

BUSINESS REGISTRATION ACT

(Cap. 46:02)

Form 11

Certificate of Business Registration

It is Hereby Certified that ..... have/(has) been duly registered in accordance with the Business Registration Act, under the name of (where applicable) ....., and have/(has) been entered under the number: ..... in the Malaŵi Business Registration Database.

The address of the business is: .....
.....

The business is registered under ISIC ..... and will be carried out at: .....

The business was first registered on the ..... day of ....., 20.....
This certificate expires on the ..... day of ....., 20.....
Dated this ..... day of ....., 20.....

.....
Registrar for Businesses

BUSINESS REGISTRATION ACT

(Cap. 46:02)

Form 12

Certificate of Registration as a Registration Agent

This is to certify that: .....
of ..... is registered as a Registration Agent for the purposes of the Act.

This certificate expires one year from the date hereof.

Dated this ..... day of ....., 20.....

.....
Registrar

reg. 10

THIRD SCHEDULE

Additional Particulars

	Description of Person	*The Additional Particulars*
1.	Where the person carries on business as nominee or trustee of another person	The name, nationality and usual place of residence of every person on whose behalf the business is carried on and, if such person is a corporation, the name of the corporation, its registered office and the general nature of its business. Where the beneficiaries are a class of children or other persons, a description of the class.
2.	Where the person carries on business as agent for any foreign firm for the general purposes of the business of such foreign firm in Malaŵi	The business name and address of the foreign firm for whom the business is carried on and the general nature of that business except where the business is carried on as agent for 3 or more foreign firms, it shall be sufficient to state the fact that the business is so carried on, specifying the firms and the countries in which those firms carry on business.

reg. 11

FOURTH SCHEDULE

Appeal to the Minister

I, ... HEREBY APPEAL against the decision of the Registrar to effect or cancel the following registration: .....

My grounds for appeal are as follows: .....

.....

.....

.....

Dated this ..... day of ....., 20.....

My address for service is: .....

.....

Signature of Appellant: .....

reg. 13 (12)

FIFTH SCHEDULE

For any service under this Act (maximum fee excluding disbursements/expenses in relation thereto) K10,000

SIXTH SCHEDULE reg. 14

GOVERNMENT GUIDELINES FOR BUSINESS REGISTERED UNDER THE BUSINESS REGITRATION ACT ISSUED BY THE INSTITUTE OF DIRECTORS (MALAŴI)

1. Where there is more than one owner, an agreement should be reached as to who the decision-maker(s)/implementer(s) of the business should be. Where there is more than one decision-maker, the business may decide to form a Board. This Board should keep a record of its decisions and report on these to the owner(s) who are not included on the board (if any). A sole decision-maker should also report on a regular basis to the owner(s), if such owner(s) other than the sole decision-maker exist(s).
2. Those individuals appointed as decision-maker(s) i.e. entrusted by the owner(s) with the assets and resources of the business should diligently discharge their duties to the business.
3. Where there is more than one owner, the majority owners should ensure that minority owners are not excluded and receive relevant information as well as a fair part in any ownership benefits.
4. If an owner obtains funding from a third party for the business, there should be no confusion about the nature of such funding, and it should be declared as business funds and used for the benefit of the business. It should also be made clear whether the funds are being made available as a grant or a loan that has to be repaid.
5. Where authority is delegated from the owner(s) of the business to decision-maker(s) then this should be documented so that those within the business and third parties are aware of the authority of the decision-maker(s). It should also be made clear in the document what decisions should be made by the owner(s). The document may include the power to sub-delegate to committees or to individuals. Such further delegation will depend on the size and complexity of the business.
6. All businesses should consider what their purpose, vision, mission and values are and develop a strategy to meet them. In developing the strategy the business owner(s)/decision-maker(s) should consider the risks faced by the business and include within the strategy the acceptable level of risk and the appropriate responses to the risks. The business should not expose itself to risks that it does not understand or which are not relevant to the,success of its business.
7. All businesses should consider and implement the appropriate controls to protect the assets and resources of the business.

8. In order to understand and manage the profitability and sustainability of their business, the owner(s)/decision-maker(s)/implementer(s) are encouraged to distinguish clearly between the income and expenditure of their business and their personal income and expenditure. To assist with this, all businesses should produce a set of financial statements (at least an income and expenditure statement on a cash basis) so that they are able to judge the financial performance of their business.
9. In addition to distinguishing between business and personal income and expenditure, owners should also distinguish between personal and business assets and should consider keeping a register listing the assets of the business.
10. All businesses should ensure that they comply with all relevant laws, regulations and codes, including the Malaŵi Code II.
11. All businesses should consider what reporting and disclosure is required and ensure that these requirements are met.
12. All businesses, both owner(s), decision-maker(s), and/or implementer(s) should at least annually reflect on and self-assess their performance and skills in view of past and new developments.
13. If the business has a sole decision-maker, this single person should actively invite and take into account external feedback on the performance and strategy of the business.
14. An assessment of whether the governance structure of the business is still appropriate should be made at least annually.
15. To the extent possible, those individuals involved within the business as decision-maker(s)/implementers should be encouraged to undergo training and development so that they are able to fully carry out their role.
16. Conflicts of interest should be identified and disclosed.
17. All businesses should conduct their affairs in an ethical manner and as good citizens being aware of the social, economic and environmental impact of their business operations on the communities in which they operate. They should seek to eradicate or lessen the negative impact of their operations.
18. Businesses may find that their efforts to operate as a "good citizen" will provide them interesting long-term opportunities and comparative strengths. Businesses are therefore encouraged to communicate openly on how they are trying to positively impact the economic, environmental and social life of the community in which they operate and on how they are trying to eradicate or lessen the negative impacts (if any) of their operations; while at the same time pursuing their own long-term interests.
19. Businesses should be aware of how they can conduct their business in a sustainable manner ensuring continuity of succession, and of supplies of the resources and assets of the business.

COMPANIES

CHAPTER 46:03

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CHAPTER 46:03

COMPANIES

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CHAPTER 46:03

COMPANIES

15 of 2013
G.N. 40/2015
3/2016
4/2016
17/2016

An Act to consolidate the law relating to the incorporation, administration and regulation of companies, and to provide for matters incidental thereto and connected therewith

[20TH MAY, 2016]

PART I

Preliminary

1. This Act may be cited as the Companies Act. Short title

2.—(1) In this Act, unless the context otherwise requires— Interpretation

"accounting period" means, in relation to a company or any other body corporate, the period in respect of which the financial statements of the company or any other body corporate are made up, whether that period is a year or not;

"articles" means the articles of association of a company as originally framed or as altered by special resolution, including, so far as they apply to the company, the provisions contained in regulations made by the Minister;

"beneficial interest", when used in relation to a company's securities, means the right or entitlement of a person, through ownership, agreement, relationship or otherwise, alone or together with another person to—

(*a*) receive or participate in any distribution in respect of the company's securities;

(*b*) exercise or cause to be exercised, in the ordinary course, any or all of the rights attaching to the company's securities; or

(*c*) dispose or direct the disposition of the company's securities, or any part of a distribution in respect of the securities,

but does not include any interest held by a person in a unit trust or collective investment scheme in terms of the Securities Act. Cap. 46:06

"board" in relation to a company, means—

(*a*) the directors of the company where the number is not less than the required *quorum* acting together as a board of directors; or

(*b*) where the company has only one director, that director;

"company" means a body corporate, including a foreign company or any other body corporate incorporated outside Malaŵi;

"constitution" means the memorandum and articles of association of a company;

"contributory" means a person liable to contribute to the assets of a company in the event of its being wound-up, and includes the holder of fully paid shares in the company;

"convertible securities" means any securities of a company that may, by their terms, be converted into other securities of the company, including—

(*a*) any non-voting securities issued by a company and which will become voting securities—

(i) on the occurrence of a designated event; or

(ii) if the holder of those securities so elects at some time after acquiring them; and

(*b*) options to acquire securities to be issued by the company, irrespective of whether or not those securities may be voting securities or non-voting securities contemplated in paragraph (*a*);

"court" used in relation to a company, means the High Court;

"debenture" means a written acknowledgement of indebtedness issued by a company in respect of a loan made or to be made to it or to any other person or of money deposited or to be deposited with the company or any other person or of the existing indebtedness of the company or any other person whether constituting a charge on any of the assets of the company or not; and—

(*a*) includes—

(i) debenture stock;

(ii) convertible debenture;

(iii) a bond or an obligation;

(iv) loan stock;

(v) an unsecured note; or

(vi) any other instrument executed, authenticated, issued or created in consideration of such a loan or existing indebtedness; and

(*b*) does not include—

(i) a bill of exchange;

(ii) a promissory note;

(iii) a letter of credit;

(iv) an acknowledgement of indebtedness issued in the ordinary course of business for goods or services supplied;

(v) a policy of insurance; or

(vi) a deposit certificate, pass book or other similar document issued in connexion with a deposit or current account at a banking company;

"debenture holders' representative" means a person designated as such in an agency deed;

"debenture stock"—

(*a*) means a debenture by which a company or a debenture holder's representative acknowledges that the holder of the stock is entitled to participate in the debt owing by the company under the agency deed; and

(*b*) includes loan stock;

"distribution", in relation to a distribution by a company to a shareholder, means—

(*a*) the direct or indirect transfer of money or property, other than the company's own shares, to or for the benefit of the shareholder; or

(*b*) the incurring of a debt to or for the benefit of the shareholder, in relation to shares held by that shareholder, and whether by means of a purchase of property, the redemption or other acquisition of shares, a distribution of indebtedness, or by some other means;

"dividend" has the meaning set out in section 104;

"dormant company" means that a company is "dormant" during any period in which it has no significant accounting transaction;

"employees' share scheme" means a scheme for encouraging or facilitating the holding of shares in or debentures of a company by or for the benefit of—

(*a*) the *bona fide* employees or former employees of—

(i) the company;

(ii) any subsidiary of the company; or

(iii) the company's holding company or any subsidiary of the company's holding company; or

(*b*) the spouses, civil partners, surviving spouses, surviving civil partners, or minor children or step-children of such employees or former employees;

"International Financial Reporting Standards" or "IFRS", or such subsequent standards howsoever called, means Standards and Interpretations issued by the International Accounting Standards Board ("IASB") or its successor bodies and comprise—

(*a*) International Financial Reporting Standards ("IFRS");

(*b*) International Accounting Standards;

(*c*) IFRIC Interpretations; and

(*d*) SIC Interpretations;

"International Standards on Auditing" means the International Standards on Auditing issued by the International Auditing and Assurance Board;

"liquidator" includes the Official Receiver acting as the liquidator;

"member" means—

(*a*) a shareholder within the meaning of section 71; and

(*b*) in the case of a company limited by guarantee, a person whose name is entered in or who is entitled to have his name entered in the register of members;

"memorandum" means the memorandum of association of a company;

"nominee" means a person who, in exercising a right in relation to a share, debenture or other property, is entitled to exercise that right only in accordance with instructions given by some other person either directly or through the agency of one or more persons, and a person is the nominee of another person where he is entitled to exercise such a right only in accordance with instructions given by that other person;

"non-executive director" means a director who is not involved in the day-to-day management of the company;

"offer" includes an invitation to make an offer;

"offeree" means a holder of shares which are included in a takeover offer;

"officer", in relation to a company means a director, manager or a secretary or where the affairs of the company are managed by its members, a member;

"one person company"—

(*a*) means a private company in which the only shareholder is also the sole director of the company; and

(*b*) does not include a company in which the only shareholder is a company;

"ordinary resolution" means a resolution passed by a simple majority of votes cast by such shareholders of the company as are entitled to vote, voting in person or by proxy at a general meeting;

"par or nominal value" means the stated or face value;

"parent", in relation to another company, means that the other company is its subsidiary;

"pre-emptive rights" means the rights conferred on shareholders under section 92;

"pre-incorporation contract" means—

(*a*) a contract purporting to be made by a company before its incorporation; or

(*b*) a contract made by a person on behalf of a company before and in contemplation of its incorporation;

"public notice" means, in respect of any notice that is required to be given of any matter affecting a company, that notice shall be given by publishing a notice of the matter—

(*a*) in the *Gazette*; and

(*b*) in two daily newspapers in wide circulation in Malaŵi;

"Registrar" means the Registrar of Companies appointed pursuant to section 3;

"share" means a share in the share capital of a company;

"special resolution" means a resolution approved by a majority of not less than seventy-five per cent or, if a higher majority is required by the company constitution, that higher majority, of the votes cast of those shareholders as are entitled to vote and voting in person or by proxy;

"stated capital"—

(*a*) means subject to section 100, in relation to a class or classes of shares issued by a company including such no par value or nominal shares as may have been issued by the company before the commencement of this Act, means the total of all amounts received by the company or due and payable to the company in respect of—

(i) the issue of the shares; and

(ii) calls on the shares;

(*b*) subject to section 100, in relation to a class or classes of shares issued by a company including such par value or nominal shares as may have been issued by the company before the commencement of this Act, means the total of all amounts received by the company or due and payable to the company in respect of—

(i) the nominal paid-up value of the shares where applicable; and

(ii) the share premiums paid to the company in relation to those shares and required to be transferred to the share premium account under section 101;

"subsidiary" means—

(*a*) in relation to another company where—

(i) that other company, referred to as the parent—

(*aa*) controls the composition of the Board of the company;

(*bb*) is in a position to exercise, or control the exercise of, more than one-half of the maximum number of votes that can be exercised at a meeting of the company;

(*cc*) holds more than one-half of the issued shares of the company, other than shares that carry no right to participate beyond a specified amount in a distribution of either profits or capital; or

(*dd*) is entitled to receive more than one-half of every dividend paid on shares issued by the company, other than shares that carry no right to participate beyond a specified amount in a distribution of either profits or capital; or

(ii) the company is a subsidiary of a company that is the parent's subsidiary.

(*b*) in determining whether a company is a subsidiary of another company—

(i) shares held or a power exercisable by that other company only as a trustee not be treated as held or exercisable by it;

(ii) subject to paragraphs (iii) and (iv), shares held or a power exercisable—

(*aa*) by a person as a nominee for that other company, except where that other company is concerned only as a trustee; or

(*bb*) by, or by a nominee for, a subsidiary of that other company, not being a subsidiary which is concerned only as a trustee, shall be treated as held or exercisable by that other company;

(iii) shares held or a power exercisable by a person under the provisions of debentures of the company or of an agency deed for securing an issue of debentures shall be disregarded;

(iv) shares held or a power exercisable by, or by a nominee for, that other company or its subsidiary, not being held or exercisable in the manner described in paragraph (iii) shall not be treated as held or exercisable by that other company where—

(*aa*) the ordinary business of that other company or its subsidiary, as the case may be, includes the lending of money; and

(*bb*) the shares are held or the power is exercisable by way of security only for the purposes of a transaction entered into in the ordinary course of that business;

"substantial shareholder" means a person in Malaŵi or elsewhere, who holds by himself or his nominee, a share or an interest in a share which entitles him to exercise not less than five per cent of the aggregate voting power exercisable at the meeting of shareholders;

"unanimous resolution" means a resolution which has the assent of every shareholder entitled to vote on the matter which is the subject of the resolution, and either—

(*a*) given by voting at a meeting to which notice to propose the resolution has been duly given and of which the minutes of the meeting here duly recorded that the resolution was carried unanimously; or

(*b*) where the resolution is signed by every shareholder or his agent duly appointed in writing signed by him, one or more documents in similar form, including electronic communications, each signed by the shareholder concerned, or his agent;

"winding-up resolution" means a resolution passed for the winding up of a company;

"year" means a calendar year.

(2) For the purposes of this Act, a person controls a body corporate, or its business, if—

(*a*) in the case of a body corporate that is a company—

(i) that body corporate is a subsidiary of that first person; or

(ii) that first person together with any related or inter-related person, is—

(*aa*) directly or indirectly able to exercise or control the exercise of a majority of the voting rights associated with securities of that company, whether pursuant to a shareholder agreement or otherwise; or

(*bb*) has the right to appoint or elect, or control the appointment or election of, directors of that company who control a majority of the votes at a meeting of the board; or

(*b*) that first person has the ability to materially influence the policy of the body corporate in a manner comparable to a person who, in ordinary commercial practice, would be able to exercise control.

(3) For the purposes of this Act—

(*a*) an individual is related to another individual if they—

(i) are married, or live together in a relationship similar to a marriage; or

(ii) are separated by no more than two degrees of natural or adopted family relationship;

(*b*) an individual is related to a legal person if the individual directly or indirectly controls the legal person, as determined in accordance with subsection (2); and

(*c*) a body corporate is related to another body corporate if—

(i) either of them directly or indirectly controls the other, or the business of the other, as determined in accordance with subsection (2);

(ii) either is a subsidiary of the other; or

(iii) a person directly or indirectly controls each of them, or the business of each of them, as determined in accordance with subsection (2).

(4) For the purposes of this Act—

"hard copy" or "electronic form" and related expressions means—

(*a*) a document or information is sent or supplied in hard copy form if it is sent or supplied in a paper copy or similar form capable of being read, and, references to hard copy have a corresponding meaning;

(*b*) a document or information is sent or supplied in electronic form if it is sent or supplied—

(i) by electronic means (for example, by e-mail or fax); or

(ii) by any other means while in an electronic form (for example, sending a disk by post) and references to electronic copy have a corresponding meaning;

(*c*) a document or information is sent or supplied by electronic means if it is—

(i) sent initially and received at its destination by means of electronic equipment for the processing (which expression includes digital compression) or storage of data; and

(ii) entirely transmitted, conveyed and received by wire, by radio, by optical means or by other electromagnetic means and references to electronic means have a corresponding meaning;

(*d*) document or information authorized or required to be sent or supplied in electronic form shall be sent or supplied in a form, and by a means, that the sender or supplier reasonably considers will enable the recipient—

(i) to read it; and

(ii) to retain a copy of it;

(*e*) for the purposes of this subsection, a document or information can be read only if—

(i) it can be read with the naked eye; or

(ii) to the extent that it consists of images (for example photographs, pictures, maps, plans or drawings), it can be seen with the naked eye; and

(*f*) this interpretation applies whether the provision of this Act uses the words "sent" or "supplied", or uses other words such as "deliver", "provide", "produce" or, in the case of a notice, "give", to refer to the sending or supplying of a document or information.

(5) For the purposes of this Act—

"solvency test" means—

(*a*) the company is able to pay its debts as they become due in the normal course of business; and

(*b*) the value of the company's assets is greater than the sum of—

(i) the value of its liabilities; and

(ii) the company's stated capital;

(*b*) other than in relation to compromises, reconstructions and takeovers in determining whether the value of a company's assets is greater than the value of its liabilities, the board may take into account—

(i) in the case of a public company or a private company, the most recent financial statements of the company prepared in accordance with IFRS; and

(ii) a valuation of assets or estimates of liabilities that are reasonable in the circumstances;

(*c*) for the purposes of determining whether the value of the compromise, reconstruction or takeover company's assets is greater than the sum of the value of its liabilities and its stated capital, the directors of each compromise, reconstruction or takeover company—

(i) shall have regard to—

(*aa*) financial statements that are prepared in accordance with IFRS and that are prepared as if the compromise, reconstruction or takeover had become effective; and

(*bb*) all other circumstances that the directors know or ought to know would affect, or may affect, the value of the compromise, reconstruction or takeover company's assets and the value of its liabilities;

(ii) may rely on valuations of assets or estimates of liabilities that are reasonable in the circumstances.

PART II

The Office of the Registrar of Companies

Establishment of the office of the Registrar of Companies

3.—(1) (*a*) There shall be a Registrar of Companies who shall have legal qualifications and be an officer in the public service.

(*b*) shall be such Deputy Registrars of Companies and Assistant Registrars of Companies who shall have legal qualifications and be officers in the public service.

(2) Anything in this Act authorized or required to be done by the Registrar or to be signed by the Registrar, may be done by or signed by the Deputy Registrar or Assistant Registrar and shall be valid and effective as if done by or signed by the Registrar.

(3) The Registrar shall be supported by adequate structures and employees with appropriate skills to enable him to perform the duties of the Registrar.

(4) The Registrar shall have a seal and such seal shall bear the words "Registrar of Companies, Malaŵi."

Functions of the Registrar

4.—(1) The functions of the Registrar shall be to—

(*a*) administer this Act including the regulations made under it and the supervision of the incorporation and registration of companies under this Act;

(*b*) establish and maintain a company's registry in the Malaŵi Business Registration Database established under the Business Registration Act; Cap. 46:02

(*c*) perform such other functions as may be specified by this Act or any other written law; and

(*d*) undertake such other activities as may be necessary or expedient to give full effect to this Act.

Fees payable to the Registrar

5.—(1) The Minister, on the recommendation of the Registrar, shall have powers to require the payment of fees to the office of the Registrar in respect of the performance of any of the Registrar's functions or the provision of any services or facilities incidental to, or otherwise connected with, the performance of the Registrar's functions under this Act.

(2) The Minister may, on the recommendation of the Registrar, by order published in the *Gazette*, prescribe a schedule of penalties for non-compliance with the provisions of this Act.

Registration of documents

6.—(1) On receipt of a document for registration under this Act, the Registrar shall—

(*a*) subject to subsection (2), register the document; and

(*b*) issue to the person, from whom the document was received, a written acknowledgement of receipt of the document.

(2) The Registrar may refuse to register a document submitted to him for registration under this Act where the document—

(*a*) is not in the approved form;

(*b*) is not in accordance with this Act or any regulations made under this Act;

(*c*) is not in a form that enables particulars to be entered directly by electronic or other means in the device or facility where the register is kept wholly or partly by means of a device or facility referred to in section 7;

(*d*) has not been properly completed;

(*e*) contains matter contrary to law;

(*f*) contains any error, alteration or erasure;

(*g*) contains material that is not clearly legible; or

(*h*) is not in accordance with any directive or notice issued by the Registrar.

(3) Where the Registrar refuses to register a document under subsection (2), the Registrar shall, within fourteen days of the day on which the document was submitted for registration, in that behalf, in writing or by using such means of communication as may be determined by him, notify the person who submitted the document and may require—

(*a*) that the document be appropriately amended or completed and submitted for registration again; or

(*b*) that a fresh document be submitted in its place, on payment of the prescribed fee and within such time limit as may be determined by the Registrar.

(4) A document submitted under subsection (3) within the time limit provided there under shall, in all circumstances, be deemed to have been filed on the day the document was first submitted under subsection (1).

(5) Where a document is not collected for the purposes of subsection (3) (*a*), or is not resubmitted within the time limit specified in a notice under subsection (3) (*b*), the document shall—

(*a*) be deemed not to have been filed; and

(*b*) in the case of a document not collected for the purposes of subsection (3) (*a*), be disposed of by the Registrar in such manner as he may determine.

(6) The Registrar may, for the purposes of this section, issue such directions or guidelines as he considers necessary.

(7) For the purposes of this Act, a document shall be registered when—

(*a*) the document is filed in a register kept by the Registrar;

(*b*) particulars of the document are entered in any device or facility referred to in section 7 (2).

(8) The registration of a document or the refusal of registration of a document by the Registrar shall not—

(*a*) affect the validity of the document;

(*b*) create a presumption as to the correctness of the information contained therein.

(9) The Registrar may from time to time, by notice published in the *Gazette*, prescribe—

(*a*) the form of notices required to be given to the Registrar under this Act; or

(*b*) the procedure to be followed in registering documents or performing any act or thing required to be done under this Act.

Power to require delivery by electronic means

7.—(1) Notwithstanding anything to the contrary, the Registrar may authorize to be made, submitted or done electronically in such manner and through such computer system as may be approved by the Registrar—

(*a*) the incorporation or registration of a company;

(*b*) the payment of any fees;

(*c*) the undertaking of such other activities as may be necessary or expedient to give full effect to this Act;

(*d*) the performance of any act or thing which is required to be done in relation to paragraphs (*a*) to (*c*).

(2) For the purposes of this section, the Minister may make regulations—

(*a*) providing that any document reproduced electronically or by other means by the Registrar shall for all purposes be treated as if it were the original document, notwithstanding any law to the contrary;

(*b*) authorizing the destruction of any documents which have been recorded or stored electronically or by other means; and

(*c*) giving full effect to, and ensuring the efficient operation of, any device or facility of the kind referred to in subsection (1).

PART III

Registers

The Registers

8.—(1) The Registrar shall keep such registers as he considers necessary in such form and in such manner as he thinks fit.

(2) The registers referred to in subsection (1) may be kept in such manner as the Registrar thinks fit including, either wholly or partly, by means of a device or facility—

(*a*) that records or stores information electronically or by other means; and

(*b*) that permits the information so recorded or stored to be readily inspected or reproduced in usable form.

Allocation of unique identifiers

9. The Registrar shall assign unique identifiers to all registered companies.

Preservation of original documents and reconstitution of lost documents

10.—(1) The originals of documents delivered to the Registrar in hard copy shall be kept for seven years after they are received by the Registrar, after which they may be destroyed provided the information contained in them has been recorded.

(2) The Registrar is under no obligation to keep the originals of documents delivered in electronic form, provided the information contained in them has been recorded.

(3) Where the memorandum, articles, or any other document relating to a company required to be filed, has been lost or destroyed—

(*a*) the company may, with the approval of the Registrar, file a copy of the document;

(*b*) the Registrar may require the company to submit certified copies of the document within such time as the Registrar may decide.

(4) Where the Registrar gives his approval under subsection (3) (*a*), the Registrar may direct that a notice to that effect be given to such person and in such manner as the Registrar may decide.

(5) The Registrar may, on being satisfied—

(*a*) that the original document has been lost or destroyed;

(*b*) of the date of the filing of the original document; and

(*c*) that the copy of the document produced to him is a correct copy,

certify on that copy that the Registrar is so satisfied and direct that the copy be filed in the same manner as the original document.

(6) The copy shall, on being filed, from such date as is mentioned in the certificate as the date of the filing of the original, have the same force and effect as the original.

Records relating to dissolved companies

11.—(1) This section applies where—

(*a*) a company is dissolved;

(*b*) a foreign company ceases to have any connexion with Malaŵi by virtue of which it is required to register under this Act.

(2) The Registrar may direct that records relating to the company or institution may be removed from the register at any time after two years from the date on which it appears to the Registrar that—

(*a*) the company has been dissolved;

(*b*) the foreign company has ceased to have any connexion with Malaŵi by virtue of which it is required to register under this Act.

(3) Records in respect of which a direction is given shall be disposed of under the enactments relating to the institution or office under which the directive is made.

Searches and evidence of a register

12.—(1) Subject to the other provisions of this section, a person may, on payment of the prescribed fees and during such time as the Registrar may decide, search—

(*a*) any document in a register kept by the Registrar;

(*b*) the particulars of any registered document that have been entered on any device or facility referred to in section 7 (2);

(*c*) any registered document the particulars of which have been entered in any such device or facility.

(2) A person may, subject to the other provisions of this section, apply to the Registrar for—

(*a*) a certificate of incorporation of a company;

(*b*) a copy of, or extract from, a document in a register kept by the Registrar;

(*c*) the particulars of any registered document that have been entered in any device or facility referred to in section 7 (2) of this Act; or

(*d*) a copy of, or extract from, a registered document the particulars of which have been entered in any such device or facility.

(3) On an application under subsection (2), the Registrar shall, on payment by the applicant of the prescribed fee, issue the document, particulars or copy or certified copy applied for.

(4) Unless otherwise ordered by the Court, the Registrar shall not be required by any process of the Court to produce—

(*a*) a registered document kept by the Registrar; or

(*b*) evidence of the entry of particulars or a registered document in any device or facility referred to in section 7 (2), and the Court shall not issue such an order where it is not satisfied that the evidence is necessary for the purposes of the proceedings.

(5) The payment of the prescribed fees under subsections (1) and (3) shall not apply to the Government.

Material not available for public search

13.—(1) The following material shall not be made available by the Registrar for public inspection—

(*a*) the contents of any document sent to the Registrar containing views expressed pursuant to a proposal by company to use certain words or expressions in a company name;

(*b*) confidential or protected information relating to particulars of directors such as residential addresses;

(*c*) any applications for administrative action including correction of documents, rectification of the register, to the Registrar that have not yet been determined or were not successful;

(*d*) any material directed to be removed from the register by Court order;

(*e*) any e-mail address, identification code or password deriving from a document delivered for the purpose of authorizing or facilitating electronic filing procedures or providing information by telephone;

(*f*) any other material excluded from, public inspection by or under any other law.

Form of application for search

14. The Registrar may by order published in the *Gazette*, prescribe the format of the application for search of the register.

Certification of copies as accurate

15. A copy of, or extract from, a registered document—

(*a*) that constitutes part of a register kept by the Registrar; or

(*b*) particulars of which have been entered in any device or facility referred to in section 9 (2), certified to be a true copy or extract by the Registrar, is admissible in evidence in legal proceedings to the same extent as the original document.

Registrar's powers of inspection

16.—(1) For the purpose of ascertaining whether a company or an officer is complying with this Act or any regulations made under this Act, the Registrar may, on giving seventy-two hours' written notice to the company, call for the production of or inspect any book required to be kept by the company.

(2) Any person who—

(*a*) fails to produce any document under subsection (1); or

(*b*) obstructs or hinders the Registrar, or any person authorized by the Registrar, in the exercise of any powers under subsection (1), shall be liable to a fine in accordance with the prevailing schedule of penalties.

Power to require compliance

17.—(1) Where a person fails to comply with any requirement of this Act, the Registrar may require the person to make good the default within fourteen days of the service on the person of a notice requiring him to do so.

(2) Where, for any reason, it is not practicable for the Registrar to send individual notices under subsection (1) above, the Registrar may publish such failure to comply in relation to any persons in any newspaper of national circulation and in the *Gazette*.

(3) Any person who fails to comply with subsection (1) shall be liable to a fine in accordance with the prevailing schedule of penalties.

Power to extend time for doing any required act

18. Where a person is required by this Act to do any act within a specified time, the Registrar may, on good cause being shown, extend the time within which the act is required to be done.

Removal of material from the register

19.—(1) The Registrar may remove from the register—

(*a*) any unnecessary material; or

(*b*) any material derived from a document that has been replaced.

(2) Notwithstanding subsection (1), the Registrar shall not remove from the register any material whose registration has legal consequences in relation to the company as regards formation, registration, re-registration, change of name, change of status, reduction of capital, change of registered office, registration of a charge, or dissolution.

(3) On or before removing material from the Register, the Registrar shall give notice of particulars of the material to be removed to—

(*a*) the person who filed the material; and

(*b*) the company to which the material relates.

Rectification of the register

20.—(1) The Registrar may rectify the register by removing material that is or has been declared by Court to be—

(*a*) invalid; or

(*b*) factually inaccurate, or derived from something that is factually inaccurate or forged.

(2) On or before removing material from the register, the Registrar shall give notice of particulars of the material to be removed to—

(*a*) the person who filed the material; and

(*b*) the company to which the material relates.

(3) Notwithstanding subsection (1), no material shall be removed from the register whose registration has legal consequences in relation to the company as regards formation, registration, re-registration, change of name, change of status, reduction of capital, change of registered office, registration of a charge, or dissolution.

Application to foreign companies

21. The provisions in this Act, shall, unless the context otherwise requires, apply to foreign companies registered in Malaŵi.

Arrangements with other agencies

22.—(1) In carrying out his functions, the Registrar shall consult, and may enter into arrangements with other agencies of the Government.

(2) Notwithstanding subsection (1), the Registrar may enter into arrangements with other Government agencies with respect to—

(*a*) the exchange of information between the Registrar and other agencies, with due regard for the need to protect appropriately personal information about individuals;

(*b*) consultation between the Registrar and the other agencies;

(*c*) enforcement of this Act and assistance with enforcement of other laws; and

(*d*) the conduct of investigations.

(3) The Registrar may enter into similar arrangements with agencies outside Malaŵi that have responsibilities under the law for the enforcement of companies legislation, or exercise similar functions to those of the Registrar.

PART IV

Core Company Requirements

Division I—Types of Companies

Private limited liability company

23.—(1) A company shall be a private limited liability company if—

(*a*) its membership consists of a minimum of one person and a maximum of fifty persons;

(*b*) its memorandum prohibits it from offering any of its securities to the public.

(2) Where two or more persons hold one or more shares in a company jointly, they shall, for the purposes of this section, be treated as a single member.

(3) For the purposes of this section a single member company shall be taken to be a private company.

Public limited liability company

24. A company shall be a public limited liability company if—

(*a*) its membership consists of a minimum of three members;

(*b*) its memorandum permits offering its securities to the public; and

(*c*) its memorandum permits the transferability of its securities.

Company limited by guarantee

25. A company shall be limited by guarantee if—

(*a*) it is formed on the principle of having the liability of its members limited by its constitution to such amount as the members may respectively undertake to contribute to the assets of the company in the event of its being wound-up;

(*b*) it is formed for the sole purpose of operating as a charity or not for profit organization.

State owned companies

26.—(1) A company shall be a State Owned Company if it is controlled within the meaning of this Act by the Government.

(2) The provisions in this Act pertaining to public companies shall apply to all State Owned Companies.

(3) The Minister may, where appropriate, and by notice published in the *Gazette*, exempt State Owned Companies from the provisions of this Act.

Division II—Company Formation

Forming a company

27. A person may, subject to the provisions of this Act, apply to incorporate a company in any one of the categories provided for in sections 23 to 26 of this Act.

Requirements for incorporation

28.—(1) An application for incorporation of a company under this Act shall be sent or delivered to the Registrar, and shall be—

(*a*) in the prescribed form;

(*b*) signed by each applicant;

(*c*) accompanied by—

(i) a document in a form approved by the Registrar, signed by every person named as a director or secretary, containing his consent to be a director or secretary;

(ii) a declaration that the person is not disqualified from being appointed or holding office as a director or secretary of a company;

(iii) in the case of a company having a share capital, a document in a form approved by the Registrar, signed by every person named as a shareholder, or by an agent of that person authorized in writing, containing that person's consent to being a shareholder and to taking the class and number of shares specified in the document and stating the consideration to be provided by that shareholder for the issue of those shares;

(iv) in the case of a company limited by guarantee, a document signed by each person named as a member, or by an agent of that person authorized in writing, containing the matters set out in subsection (3);

(v) where the document has been signed by an agent, the instrument authorizing the agent to sign it;

(vi) a notice reserving a name for the proposed company if any; and

(vii) where the proposed company is to have a memorandum, a document certified by at least one applicant that the document is the company's memorandum.

(2) Without prejudice to subsection (1), the application shall state—

(*a*) the full name and address of each applicant;

(*b*) the present full name, any former name and the usual residential address of every director and of any secretary of the proposed company;

(*c*) particulars of any business occupation and directorships of any public company or subsidiary of a public company held by each director;

(*d*) the full name and residential address of every shareholder of the proposed company, and the number of shares to be issued to every shareholder and the amount to be paid or other consideration to be provided by that shareholder for the issue of those same shares;

(*e*) the type of company that is being formed;

(*f*) the registered office of the proposed company;

(*g*) such other information as may be prescribed;

(*h*) in the case of a one person company, the full name and residential address and occupation of the person nominated by the proposed director to be the secretary of the company pursuant to section 171 in the event of the death or incapacity of the sole shareholder and director; and

(*i*) a declaration made by the applicant that the information provided in the application is true and correct.

(3) A document submitted under subsection (1) (*c*) (iv) shall contain the consent of the person referred to therein to be a member and shall state a specified amount up to which the member undertakes to contribute to the assets of the company, in the event of its being wound up while that person is a member, or within one year after ceasing to be a member, for payment of the debts and liabilities of the company contracted before that person ceases to be a member, and of the costs, charges and expenses of the winding up, and for the adjustments of the rights among themselves of the other members who are similarly required to contribute.

(4) Where a person is a director of one or more subsidiaries of the same parent company it shall be sufficient for the purposes of subsection (2) (*c*) to state that the person is the holder of one or more directorships in that group of companies and the group may be described by the name of the parent company with addition of the word "Group".

Incorporation

29. Where the Registrar is satisfied that the application for incorporation of a company complies with this Act, the Registrar shall upon payment of the prescribed fee—

(*a*) enter the particulars of the company on the register;

(*b*) assign a unique number to the company as its company number; and

(*c*) issue a certificate of incorporation in the prescribed form.

Statement of capital

30. A company's statement of capital shall consist of—

(*a*) the total number of shares of the company;

(*b*) the aggregate par or nominal values of those shares, issued before the commencement of this Act;

(*c*) for each class of shares—

(i) prescribed particulars of the rights attached to the shares;

(ii) the total number of shares of that class;

(iii) the aggregate par or nominal value of those shares where applicable; and

(*d*) the amount paid up and the amount, if any, unpaid on each share, whether on account of the par or nominal value of the shares, as applicable or by way of premium.

Certificate of incorporation

31. A certificate of incorporation of a company issued under section 29 is conclusive evidence that—

(*a*) all the requirements of this Act as to incorporation have been complied with; and

(*b*) on and from the date of incorporation stated in the certificate, the company is incorporated under this Act.

Legal effects of incorporation

32. A company incorporated under this Act shall be a body corporate with the name by which it is registered and continues in existence until it is removed from the register of companies.

Division III—The Constitution of the Company

A company's constitution and its effect

33.—(1) The Memorandum and Articles of a company shall constitute the constitution of the Company.

(2) The constitution of a company shall be void to the extent that it contravenes, or is inconsistent with, this Act or any other written law.

(3) Subject to this Act, the constitution of a company shall have the effect of a contract—

(*a*) as between the company and each member or shareholder; and

(*b*) as between the members or shareholders themselves.

(4) The rights, powers, duties, and obligations of the company, the Board, each director, and each shareholder of the company shall be those set out in this Act except to the extent that they are restricted, limited or modified by the constitution of the company in accordance with this Act.

(5) The shareholders of a company may enter into any agreement with one another concerning any matter relating to the company, but any such agreement must be consistent with this Act and the company's constitution, and any provision of such an agreement that is inconsistent with this Act or the company's constitution is void to the extent of the inconsistency, and the provision shall, to the extent required, be severed from the agreement and rendered ineffective.

Power to adopt model constitution and default application of model constitution

34.—(1) A company may adopt as its constitution the model memorandum and articles of association applicable to it as prescribed in the regulations to this Act.

(2) Where a company does not file a memorandum and articles of association it shall be deemed to have adopted the provisions of the model memorandum and articles of association.

Adoption, alteration and revocation of constitution

35.—(1) Any company which was in existence as of the date of the coming into effect of this Act or a company incorporated under this Act may—

(*a*) by special resolution, adopt the model constitution as prescribed by the regulations to this Act;

(*b*) by special resolution and subject to sections 108 and 117 alter or revoke the provisions of its constitution.

(2) Within fourteen days of the adoption of a constitution by a company, or the alteration or revocation of the constitution of a company, as the case may be, the Board shall cause a notice in a form approved by the Registrar to be delivered to the Registrar for registration.

Constitutional documents to be provided to members

36.—(1) A company shall, on request by a member, provide the following documents in electronic or hard form—

(*a*) an up-to-date copy of the company's constitution;

(*b*) copies of any resolutions or agreements relating to the company's constitution that are for the time being in force;

(*c*) copies of any Court order sanctioning a compromise agreement or facilitating a reconstruction or takeover;

(*d*) copies of the certificate of incorporation;

(*e*) copies of the statement of capital;

(*f*) in the case of a company limited by guarantee, a copy of the guarantee statement.

(2) Where a company fails to comply with this section, the company and every officer of the company who is in default shall be liable to a fine in accordance with the prevailing schedule of penalties.

Right to participate in profits otherwise than as member is void

37. In the case of a company limited by guarantee and not having share capital, any provision in the articles or in any resolution of the company, purporting to give a person a right to participate in the distributable profits of the company is void.

Division IV—Capacity, Powers and Validity of Acts

A company's capacity and power of directors to bind the company

38.—(1) Subject to this Act and to any other enactment, a company shall have, both within and outside Malaŵi—

(*a*) full capacity to carry on or undertake any business or activity, do any act, or enter into any transaction; and

(*b*) for the purposes of paragraph (*a*), full rights, powers, and privileges.

(2) The constitution of a company may contain a provision relating to the capacity, rights, powers, or privileges of the company only where such provision restricts the capacity of the company or those rights, powers, and privileges.

Validity of company actions

39. Where the constitution of a company sets out the objects of the company, there is deemed to be a restriction in the constitution on carrying on any business or activity that is not within those objects, unless the constitution expressly provides otherwise.

Dealings between a company and any other person

40.—(1) A company or a guarantor of an obligation of a company shall not assert against a person dealing with the company or with a person who has acquired property, rights, or interests from the company that—

(*a*) this Act, in so far as it provides for matters of company meetings and internal procedure, or the constitution of the company, has not been complied with;

(*b*) a person named as a director or secretary of the company in the most recent notice received by the Registrar—

(i) is not a director or secretary of a company;

(ii) has not been duly appointed; or

(iii) does not have authority to exercise a power which a director of or secretary of a company carrying on business of the kind carried on by the company customarily has authority to exercise;

(*c*) a person held out by the company as a director, secretary, employee, or agent of the company—

(i) has not been duly appointed; or

(ii) does not have authority to exercise a power which a director, secretary, employee, or agent of a company carrying on business of the kind carried on by the company customarily has authority to exercise;

(*d*) a person held out by the company as a director, secretary, employee, or agent of the company with authority to exercise a power which a director, secretary, employee, or agent of a company carrying on business of the kind carried on by the company does not customarily have authority to exercise, does not have authority to exercise that power;

(*e*) a document issued on behalf of a company by a director, secretary, employee, or agent of the company with actual or usual authority to issue the document is not valid or not genuine, unless the person has, or ought to have, by virtue of his position with or relationship to the company, knowledge of the matters referred to in paragraphs (*a*), (*b*), (*c*), or (*d*), as the case may be.

(2) Subsection (1) shall apply even though a person of the kind referred to in paragraphs (*b*) to (*e*) of that subsection acts fraudulently or forges a document that appears to have been signed on behalf of the company, unless the person dealing with the company or with a person who has acquired property, rights, or interests from the company has actual knowledge of the fraud or forgery.

No constructive notice

41. A person shall not be affected by, or deemed to have notice or knowledge of, the contents of, the constitution of, or any other document relating to, a company merely because—

(*a*) the constitution or document is registered in a register kept by the Registrar; or

(*b*) the constitution or document is available for inspection at an office of the company.

Common seal

42.—(1) A company may have a common seal but is not obliged to have one.

(2) A company which has a common seal shall have its name engraved in legible characters on the seal.

(3) Where a company, or an officer of a company or any person acting on behalf of the company uses or authorizes the use of a seal purporting to be a seal of the company on which its name is not engraved as required by subsection (2) the company or the officer or person shall be liable to a fine in accordance with the prevailing schedule of penalties.

Official seal required for share certificates of public companies

43.—(1) A public company shall have an official seal for—

(*a*) sealing securities issued by the company; or

(*b*) sealing documents created or evidencing paper securities where so issued.

(2) The official seal—

(*a*) must have on its face the words "Common Seal"; and

(*b*) when duly affixed to the document has the same effect as the company's Common Seal.

Ratification of pre-incorporation contracts

44.—(1) Notwithstanding any enactment or rule of law, a pre-incorporation contract may be ratified within such period as may be specified in the contract, or if no period is specified, then within a reasonable time after the incorporation of the company in the name of which, or on behalf of which, it has been made.

(2) A contract that is ratified is as valid and enforceable as if the company had been a party to the contract when it was made.

(3) A pre-incorporation contract may be ratified by a company in the same manner as a contract may be entered into on behalf of a company under this Act.

(4) For the avoidance of doubt, if a pre-incorporation contract has not been ratified by a company, or validated by the Court, the company may not enforce it or take the benefit of it.

Division V—Company Names and Registered Office

Application for reservation of a name

45.—(1) Notwithstanding any enactment or rule of law, a pre-incorporation contract may be ratified within such period as may

be specified in the contract, or if no period is specified, then within a reasonable time after the incorporation of the company in the name of which, or on behalf of which, it has been made.

(2) The Registrar shall not reserve a name—

(*a*) which, or the use of which, would contravene this Act or any other law;

(*b*) that is identical or almost identical to a name that the Registrar has already reserved under this Act; or

(*c*) that, in the opinion of the Registrar, is offensive.

(3) The Registrar shall inform the applicant by notice in writing—

(*a*) whether or not the Registrar has reserved the name; and

(*b*) if the name has been reserved, that unless the reservation is sooner revoked by the Registrar, the name is available for incorporation of a company with that name or registration of a change of name, whichever be the case, for two months after the date stated in the notice.

(4) The reservation of a name under subsection (3) shall not by itself entitle the proposed company, the company or foreign company to be registered under that name, either originally or on a change of name.

Availability of name

46. The Registrar shall not register a company under a name or register a change of the name of a company, unless the name is available.

Prohibited names and power of the Registrar to refuse a company name

47.—(1) No company including a foreign company shall be registered under a name which is identical with that of an existing company, or any statutory body or so nearly resembles that name as to be likely to mislead, except where the existing company or statutory company is in the course of being dissolved and signifies its consent in such manner as the Registrar requires.

(2) Except with the Minister's written consent, no company including a foreign company shall be registered under a name which includes—

(*a*) the word "Authority", "Company", "Corporation", "Government", "Malaŵi", "National", "President", "Presidential", "Regional", "Republic", "State", or any other name protected under the Protected Flag, Emblems and Names Act, or any other word which in the Registrar's opinion suggests, or is likely to

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suggest, that it enjoys the patronage of the Government or of a statutory company, or of the Government of any other State;

(*b*) the word "Municipal" or "Chartered" or any other word which in the Registrar's opinion suggests, or is likely to suggest, connexion with a local authority in Malaŵi or elsewhere;

(*c*) the word "cooperative";

(*d*) the words "Chamber of Commerce".

(3) Except with the consent of the Registrar, no company including a foreign company shall be registered by a name which in the opinion of the Registrar is undesirable or misleading.

Public limited company's requirement to use plc

48. The name of a public limited liability company shall end with the words "public limited liability" or "plc".

Private limited company's requirement to use limited

49.—(1) Unless expressly exempted by application to the Registrar under this Act or any other law, the name of a private limited company shall end with the word "limited" or "ltd".

(2) A private company may be granted exemption from this section if—

(*a*) it is a charity; or

(*b*) it is exempted from the requirement of subsection (1) by regulations.

(3) The Registrar may refuse to register a private limited company by a name that does not include the word "limited" unless a statement has been delivered to him that the company meets the conditions for exemption.

(4) The Registrar may accept the statement as sufficient evidence of the matters stated in it.

Company limited by guarantee requirement to use limited

50.—(1) Unless expressly exempted by application to the Registrar under this Act or any other written law, the name of a company limited by guarantee shall end with the word "limited" or "ltd".

(2) A private company limited by guarantee may be granted exemption from this section if—

(*a*) it is a charity; or

(*b*) it is exempted from the requirement of subsection (1) by regulations.

(3) The Registrar may refuse to register a private company limited by guarantee by a name that does not include the word "limited" unless a statement has been delivered to him that the company meets the conditions for exemption.

(4) The Registrar may accept the statement as sufficient evidence of the matters stated in it.

Provision of misleading information as to activities

51.—(1) If it appears to the Registrar—

(*a*) that misleading information has been given for the purpose of a company's registration by a particular name; or

(*b*) that an undertaking or assurance has been given for that purpose and has not been fulfilled, the Registrar may direct that the company change its name.

(2) Any such direction—

(*a*) must be given within five years of the company's registration of that name; and

(*b*) must specify the period within which the company is to change its name.

(3) The Registrar may by further direction extend the period within which the company is to change its name.

(4) Where a company fails to comply with a direction under this section, the company and every officer of the company who is in default shall be liable to a fine in accordance with the prevailing schedule of penalties as issued by the Registrar.

Change of name

52.—(1) An application to change the name of a company shall—

(*a*) be in the form duly prescribed by the Registrar;

(*b*) be accompanied by a notice reserving the name if any; and

(*c*) subject to the constitution of the company, be made by passing a special resolution to that effect and filing a copy of the resolution.

(2) Where the Registrar is satisfied that a company has complied with subsection (1), the Registrar shall—

(*a*) record the new name of the company;

(*b*) record the change of name of the company on its certificate of incorporation;

(*c*) require the company to cause a notice to that effect to be published in such manner as the Registrar may direct.

(3) A change of name of a company shall—

(*a*) take effect from the date of the certificate issued under subsection (2); and

(*b*) not affect the rights or obligations of the company, or legal proceedings by or against the company, and legal proceedings that might have been continued or commenced against the company under its former name may be continued or commenced against it under its new name.

Direction to change name

53.—(1) Where the Registrar is satisfied that a company should not have been registered under a name, the Registrar may serve written notice on the company to change its name by a date specified in the notice, being a date not less than twenty-eight days after the date on which the notice is served.

(2) Where the company does not change its name within the period specified in the notice, the Registrar may register the company under a new name chosen by the Registrar, being a name under which the company may be registered under this Part.

(3) Where the Registrar registers a new name under subsection (2), he shall record the new name on the certificate of incorporation of the company and section 52 (3) shall apply in relation to the registration of the new name as if the name of the company had been changed under that section.

Requirement to use company name

54.—(1) A company shall ensure that its name is clearly stated—

(*a*) in every written communication sent by, or on behalf of, the company; and

(*b*) on every document issued or signed by, or on behalf of, the company and which evidences or creates a legal obligation of the company.

(2) Where the name of a company is incorrectly stated in a document which evidences or creates a legal obligation of the company and the document is issued or signed by or on behalf of the company, every person who issued or signed the document is liable to the same extent as the company unless—

(*a*) the person who issued or signed the document proves that the person in whose favour the obligation was incurred was aware at the time the document was issued or signed that the obligation was incurred by the company; or

(*b*) the Court before which the document is produced is satisfied that it would not be just and equitable for the person who issued or signed the document to be so liable.

(3) For the purposes of subsections (1) and (2) and section 51 a company may use a generally recognized abbreviation of a word or words in its name if it is not misleading to do so.

(4) Where, within the period of twelve months immediately preceding the giving by a company of any public notice, the name of the company was changed, the company shall ensure that the notice states—

(*a*) that the name of the company was changed in that period; and

(*b*) the former name or names of the company.

Requirement for company to have a current registered office in Malaŵi

55.—(1) Every company registered or incorporated under this Act or any other written law prior to the enactment of this Act shall continuously maintain at least one office in Malaŵi.

(2) Particulars of the registered office shall be provided in incorporation or registration documents of the company.

(3) A change in the particulars of the registered office shall be effected by filing a notice with the Registrar, together with payment of the prescribed fee.

Division VI—Alteration of Company Status by Re-registration

Re-registration of public company as private company

56.—(1) A public company may be re-registered as a private company if—

(*a*) a special resolution complying with subsection (2) that it should be so re-registered is passed and has not been cancelled by the Court;

(*b*) an application for the purpose in the prescribed form and signed by a director or the secretary of the company is delivered to the Registrar, together with a copy of the memorandum and articles of the company as altered by the resolution;

(*c*) the period during which an application for the cancellation of the resolution under this Act may be made has expired without any such application having been made; or

(*d*) where an application under this section is made and the application is withdrawn or an order is made following objection proceedings confirming the resolution and a copy of that order is delivered to the Registrar.

(2) The special resolution must alter the constitution so that it no longer states that the company is to be a public company and must

make such other alterations in the company's constitution as are required in the circumstances.

(3) A company shall not under this section be re-registered otherwise than as a company limited by shares or by guarantee.

(4) The re-registration of a public company as a private company shall not affect the rights or liabilities of the company in respect of any debt or obligation incurred or any contract entered into, by, with or on behalf of the company before the re-registration.

Objection to resolution for a public company to be re-registered as a private company

57.—(1) Where a special resolution by a public company to be re-registered as a private company has been passed, an application may be made to the Registrar for the cancellation of that resolution.

(2) The application under subsection (1) may be made—

(*a*) by the holders of not less in aggregate than five per cent in nominal value of the company's stated capital or issued capital as applicable for companies formed prior to this Act or any class of shares in the company;

(*b*) if the company is not limited by shares, by not less than five per cent of its members; or

(*c*) by not less than fifty of the company's members, but not by a person who has consented to or voted in favour of the resolution.

(3) The application must be made within twenty-eight days after the passing of the resolution and may be made on behalf of the persons entitled to make the application by such one or more of their number as they may appoint in writing for the purpose.

(4) Where such an application is made, the company shall give notice in the form prescribed by the Registrar of that fact to the Registrar.

(5) In determining the application, the Registrar shall make an order cancelling or confirming the resolution and—

(*a*) may make that order on such terms and conditions as he thinks fit and may adjourn the proceedings in order that an arrangement may be made to the satisfaction of the Registrar for the purchase of the interests of dissenting members; and

(*b*) may give such directions and make such orders as he thinks expedient for facilitating or carrying into effect the arrangement.

(6) The order of the Registrar may provide for the purchase by the company of the shares of any of its members and for the reduction

accordingly of the company's capital and may make such alterations in the company's constitution as may be required in consequence of that provision.

(7) Where the order of the Registrar requires the company not to make any or any specified alteration in its constitution, the company shall not without the leave of the Registrar make any such alteration.

(8) An alteration in the constitution made by virtue of an order under this section, if not made by resolution of the company, shall be of the same effect as if duly made by resolution and this Act shall apply accordingly to the constitution as so altered.

(9) A company which fails to comply with subsection (4) or (7) and any officer of the company who is in default is liable to a fine in accordance with the prevailing schedule of penalties.

(10) A person aggrieved by a decision of the Registrar made under this section may appeal to the Court.

Certificate of re-registration from a public to a private company

58.—(1) If the Registrar is satisfied that a public company may be re-registered as a private company, he shall—

(*a*) retain the application and other documents delivered to him under that section; and

(*b*) issue the company with a certificate of incorporation appropriate to a private company.

(2) On the issue of the certificate—

(*a*) the company by virtue of the issue becomes a private company; and

(*b*) the alterations in the constitution set out in the resolution under section 56 take effect accordingly.

(3) The certificate is conclusive evidence that—

(*a*) the requirements of section 56 in respect of re-registration and of matters precedent and incidental to it have been complied with; and

(*b*) the company is a private company.

Re-registration of private company as a public company

59.—(1) Subject to this section, a private company, other than a company limited by guarantee or a State Owned Company, may be re-registered as a public company if—

(*a*) a special resolution that it should be so re-registered is passed; and

(*b*) an application for re-registration is delivered to the Registrar, together with the documents specified in subsection (4).

(2) The special resolution under subsection (1) shall—

(*a*) alter the company's constitution so that it states that the company is to be a public company;

(*b*) make such other alterations in the constitution as are necessary to bring it, in substance and in form, into conformity with the requirements of this Act with respect to the constitution of a public company.

(3) The application shall be in the form prescribed by the Registrar and be signed by a director or secretary of the company and the documents to be delivered with it shall be—

(*a*) a copy of the constitution as altered in accordance with the resolution;

(*b*) a copy of a written statement by the company's auditors that in their opinion the relevant balance sheet shows that at the balance sheet date the amount of the company's net assets was not less than the aggregate of its stated capital and undistributable reserves;

(*c*) a copy of the relevant balance sheet, together with a copy of an unqualified report by the company's auditors in relation to that balance sheet; and

(*d*) a statutory declaration in the prescribed form by a director or secretary of the company stating—

(i) that the special resolution required by this section has been passed and that the conditions specified in sections 60 and 61 so far as applicable, have been satisfied; and

(ii) that between the date of the balance sheet and that of the application for re-registration, there has been no change in the company's financial position that has resulted in the amount of its net assets becoming less than the aggregate of its stated capital and undistributable reserves.

(4) In this section "relevant balance sheet" means a balance sheet prepared as at a date not exceeding seven months before the company's application under this section.

(5) A resolution that a company be re-registered as a public company may change the company name by deleting the word "company" or the words "and company" including any abbreviations of them.

(6) A private company not being a single member company which has two or more members at the commencement of this Act, shall not become a single member company.

Consideration for shares recently allotted to be valued

60.—(1) This section applies if shares have been allotted by a private company between the date as at which the relevant balance sheet was prepared and the passing of the special resolution to re-register as a public company and those shares were allotted as fully or partly paid up as to their par or nominal value if issued before the commencement of this Act or any premium on them otherwise than in cash.

(2) Subject to this section the Registrar shall not entertain an application by a private company to re-register as a public company unless—

(*a*) the consideration for the allotment has been valued in accordance with the valuation procedures in Part VII; and

(*b*) a report with respect to the value of the consideration has been made to the company in accordance with that section during the six months immediately preceding the allotment of the shares.

(3) Where an amount standing to the credit of any of the company's reserve accounts or of its profit and loss account has been applied in paying up to any extent any of the shares allotted or any premium on those shares, the amount applied does not count as consideration for the allotment and accordingly subsection (2) does not apply to it.

(4) Subsection (2) does not apply if the allotment is in connexion with an arrangement providing for it to be on terms that the whole or part of the consideration for the shares allotted is to be provided by the transfer to the company or the cancellation of all or some of the shares or of all or some of the shares of a particular class in another company.

(5) Subsection (4) does not exclude the application of subsection (2), unless under the arrangement it is open to all the holders of the shares of the other company in question or, where the arrangement applies only to shares of a particular class, all the holders of the other company's shares of that class take part in the arrangement.

(6) In determining whether subsection (2) is excluded under subsection (5), shares held by a company or by a nominee of the company allotting shares in connexion with the arrangement by a company or by a nominee of the company which is that company's

parent company or subsidiary or a company which is a subsidiary of its parent company shall be disregarded.

(7) Subsection (2) does not preclude an application by a private company to be re-registered as a public company if the allotment of the company's shares is in connexion with its proposed merger with another company where one of the companies concerned proposes to acquire all the assets and liabilities of the other in exchange for the issue of shares or other securities of that one to shareholders of the other, with or without any cash payment to shareholders.

Certificate of re-registration from a private to a public company

61.—(1) Where the Registrar is satisfied on application by a private company to re-register as a public company, that a company may be re-registered under that section as a public company, the Registrar shall—

(*a*) retain the application and other documents delivered to him under that section; and

(*b*) issue the company with a certificate of incorporation stating that the company is a public company.

(2) The Registrar may accept a statutory declaration as sufficient evidence that the special resolution required by that provision has been passed and the other conditions of re-registration have been satisfied.

(3) Upon the issue to a company of a certificate of incorporation under this section—

(*a*) the company by virtue of the issue of that certificate becomes a public company; and

(*b*) any alterations in its constitution as set out in the resolution take effect accordingly.

(4) The certificate shall be conclusive evidence—

(*a*) that the requirements of this Act in respect of re-registration, and of matters precedent and incidental thereto, have been complied with; and

(*b*) that the company is a public company.

Single member company changing status

62.—(1) A single member company may increase from a single member to two or more members if the single member has passed a resolution to that effect.

(2) Where the membership of a single member company increases from one to two or more there shall be entered in the company's register of members, the name and address of the person who was

formerly the single member, a statement that the company has ceased to have only a single member and the date on which the event occurred.

(3) Where the Registrar is satisfied that a single member company has satisfied the requirements of this Act the Registrar may re-register the company as a company with more than one member and shall issue a certificate of re-registration.

Division VII—Core Requirements for Private Companies

Number of shareholders

63.—(1) A private company shall not have more than fifty shareholders.

(2) Where two or more of the shareholders in a private company hold one or more shares jointly, they shall be deemed to be one shareholder.

Private company not permitted to make a public offer of securities

64. A private company shall not make any offer to the public to subscribe for its shares or debentures.

Exemption of a private company from the requirement to keep a register of shareholders

65. A private company shall be exempt from the requirement to keep a register of shareholders under section 145.

Exemption of a private company from the requirement to hold shareholders' meetings

66. A private company may dispense with the holding of shareholders' meetings provided the company's constitution permits resolutions which would otherwise require the holding of a meeting to be passed by not less than seventy-five per cent of the members.

Exemption of a private company from the requirement to have a company seal

67. A private company shall not, pursuant to section 42, be required to have a company seal.

Exemption of a private company from the requirement to have a company secretary

68.—(1) A private company shall not be required to have a secretary.

(2) Anything authorized or required to be given or sent to, or served on, the company by being sent to its secretary—

(*a*) may be given or sent to, or served on, the company itself; and

(*b*) if addressed to the secretary shall be treated as addressed to the company.

(3) Anything else required or authorized to be done by or to the secretary of the company may be done by or to—

(*a*) a director; or

(*b*) a person authorized generally or specifically in that behalf by the directors.

Permitted transactions

69. A private company may—

(*a*) issue shares;

(*b*) distribute dividends;

(*c*) repurchase shares;

(*d*) give financial assistance for the purchase of shares in the company;

(*e*) authorize a payment, loan or other benefit to a director, or enter into any transaction; provided—

(i) it is authorized to do so by a resolution of seventy-five per cent of the members; and

(ii) is able to satisfy the solvency test.

Directors of private companies to comply with applicable corporate governance standards

70. The directors of private companies shall be required to comply with corporate governance standards in force in Malaŵi that apply to private companies as directed by the Registrar.

PART V

Shareholders and Their Rights

Meaning of "shareholder"

71.—(1) For the purposes of this Act, "shareholder" means—

(*a*) a person whose name is entered in the share register, where applicable, as the holder for the time being of one or more shares in the company;

(*b*) until the person's name is entered in the share register, a person named as a shareholder in an application for the registration of a company at the time of incorporation of the company.

(2) Until the person's name is entered in the share register (where applicable), a person who is entitled to have his name entered in the share register, under a registered amalgamation proposal, as a shareholder in an amalgamated company.

Liability of shareholders

72.—(1) Subject to the constitution of a company, the liability of a shareholder to the company shall be limited to—

(*a*) any amount unpaid on a share held by the shareholder;

(*b*) any liability to repay a distribution received by the shareholder to the extent that the distribution is recoverable under section 107;

(*c*) any liability expressly provided for in the constitution of the company;

(*d*) any liability for calls on shares.

(2) Subject to the constitution of a company, a shareholder shall not be liable for an obligation of the company by reason only of being a shareholder.

Code of conduct for shareholders of private companies

73.—(1) The Minister may, by order published in the *Gazette*, publish a code of conduct for shareholders of private companies.

(2) The code of conduct shall regulate all the affairs of shareholders of a private company.

(3) Where a company or an officer of the company fails to comply with the code of conduct, the Court may, in certain circumstances, direct compliance with a provision of the code conduct and the Court or the Registrar may impose a fine in accordance with the prevailing schedule of penalties.

Code of conduct for shareholders of all public companies

74.—(1) The Minister may by order published in the *Gazette*, published for a code of conduct for shareholders of public companies.

(2) The code of conduct, shall regulate all the affairs of shareholders of a public company.

(3) Where a company or an officer of the company fails to comply with the code the Court may in certain circumstances direct compliance with a provision of the code of conduct and the Court or the Registrar may impose a fine in accordance with the prevailing schedule of penalties.

Subsidiary may not hold shares in holding company

75.—(1) Subject to this section, a subsidiary shall not hold shares in its holding company.

(2) An issue of shares by a parent company to its subsidiary shall be void.

(3) A transfer of shares from a parent company to its subsidiary shall be void.

(4) Where a company that holds shares in another company becomes a subsidiary of that other company, the company may, notwithstanding subsection (1), continue to hold those shares, but the exercise of any voting rights attaching to those shares shall be of no effect.

(5) This section applies to a nominee for a subsidiary in the same way as it applies to the subsidiary.

Prohibition in section 75 not to apply where a subsidiary is acting as personal representative or trustee

76. Notwithstanding section 75, nothing shall prevent a subsidiary from holding shares in its parent company in its capacity as a personal representative or a trustee unless the parent company or another subsidiary has a beneficial interest under the trust other than—

(*a*) any interest that arises by way of security for the purposes of a transaction made in the ordinary course of the business of lending money;

(*b*) any residual interest under a pension scheme or employees' share scheme or employer's rights of recovery under a pension scheme or employees' share scheme;

(*c*) any rights that the company or subsidiary has in its capacity as trustee, including in particular—

(i) any right to recover its expenses or be remunerated out of the trust property; and

(ii) any right to be indemnified out of the trust property for any liability incurred by reason of any act or omission in the performance of its duties as trustee.

Residual interest under pension scheme or employees' share scheme to be disregarded for purposes of section 75

77.—(1) Where shares in a company are held on trust for the purposes of a pension scheme or employees' share scheme, there shall be disregarded for the purposes of section 75 any residual interest that has not vested in possession.

(2) A "residual interest" means a right of the company or subsidiary ("the residual beneficiary") to receive any of the trust property in the event of—

(*a*) all the liabilities arising under the scheme having been satisfied or provided for; or

(*b*) the residual beneficiary ceasing to participate in the scheme; or

(*c*) the trust property at any time exceeding what is necessary for satisfying the liabilities arising or expected to arise under the scheme.

Employer's rights of recovery under pension scheme or employees' share scheme to be disregarded for purposes of section 75

78.—(1) Where shares in a company are held on trust for the purposes of a pension scheme or employees' share scheme, there shall be disregarded for the purposes of section 75 any charge or lien on, or set-off against, any benefit or other right or interest under the scheme for the purpose of enabling the employer or former employer of a member of the scheme to obtain the discharge of a monetary obligation due to him from the member.

(2) In the case of a trust for the purposes of a pension scheme there shall also be disregarded any right to receive from the trustee of the scheme, or as trustee of the scheme to retain, an amount that can be recovered or retained, under the pension schemes law in force in Malaŵi.

Subsidiary acting as authorized intermediary in securities

79.—(1) The prohibition in section 75 does not apply where the shares are held by the subsidiary in the ordinary course of its business as an intermediary.

(2) For this purpose a person is an intermediary if he—

(*a*) carries on a *bona fide* business of dealing in securities;

(*b*) is a member of or has access to a regulated market; and

(*c*) does not carry on an excluded business.

(3) The following are excluded businesses—

(*a*) a business that consists wholly or mainly in the making or managing of investments;

(*b*) a business that consists wholly or mainly in, or is carried on wholly or mainly for the purposes of, providing services to persons who are connected with the person carrying on the business;

(*c*) a business that consists in insurance business;

(*d*) a business that consists in managing or acting as trustee in relation to a pension scheme, or that is carried on by the manager or trustee of such a scheme in connexion with or for the purposes of the scheme;

(*e*) a business that consists in operating or acting as trustee in relation to a collective investment scheme, or that is carried on by the operator or trustee of such a scheme in connexion with and for the purposes of the scheme.

Application of provisions to companies limited by guarantee

80. In relation to a company limited by guarantee, the references in this Part to shares shall be read as references to the interest of its members as such, whatever the form of that interest.

Application of this Part to nominees acting on behalf of a subsidiary

81. The provisions of this Part shall apply to a nominee acting on behalf of a subsidiary as to the subsidiary itself.

PART VI

THE SHARES OF A COMPANY

Division I—Legal Nature, Types of Shares and Related Particulars

Legal nature of shares

82. The shares or other interest of a member in a company shall be personal property.

Classification of shares

83.—(1) Subject to any limitation in the constitution of a company with respect to the number of shares which may be issued and any pre-emptive rights, a company shall have the power at such times, and for such consideration as it shall determine, to issue shares.

(2) A company may, where so permitted by its constitution, issue classes of shares.

Preferences, rights and limitations in respect of shares

84.—(1) Subject to subsection (2), a share in a company shall confer on the holder—

(*a*) the right to one vote on a poll at a meeting of the company on any resolution;

(*b*) the right to an equal share in dividends authorized by the Board;

(*c*) the right to an equal share in the distribution of the surplus assets of the company.

(2) Subject to section 96, the rights specified in subsection (1) may be restricted, limited, altered, or added to by the constitution of the company or in accordance with the terms on which the shares are issued.

(3) Without limiting subsection (1), shares in a company may—

(*a*) be redeemable in accordance with section 112;

(*b*) confer preferential rights to distributions of capital or income;

(*c*) confer special, limited, or conditional voting rights; or

(*d*) not confer voting rights.

Statement of rights to be given to shareholders

85.—(1) Every company shall issue to a shareholder, on request, a statement that sets out—

(*a*) the class of shares held by the shareholder, the total number of shares of that class issued by the company, and the number of shares of that class held by the shareholder;

(*b*) the rights, privileges, conditions and limitations, including restrictions on transfer, attaching to the shares held by the shareholder; and

(*c*) the rights, privileges, conditions and limitations attaching to the classes of shares other than those held by the shareholder.

(2) The company shall not be under any obligation to provide a shareholder with a statement if—

(*a*) a statement has been provided within the previous six months;

(*b*) the shareholder has not acquired or disposed of shares since the previous statement was provided;

(*c*) the rights attached to shares of the company have not been altered since the previous statement was provided; and

(*d*) there are no special circumstances which would make it unreasonable for the company to refuse the request.

(3) The statement shall not be evidence of title to the shares or of any of the matters set out in it and the statement shall state in a prominent place that fact.

Transferability of shares

86. The shares or any interest of a member in a company are transferable according to its constitution.

No par or nominal value shares

87.—(1) Any shares created or issued after the commencement of this Act shall be shares which have no par or nominal value.

(2) Subject to subsection (3), the par or nominal value shares of a company incorporated prior to the commencement of this Act shall continue to be shares having a par or nominal value with that value, denominated in Malaŵi currency, or with the approval of the Registrar, in a foreign currency attached to those shares being the value carried by those shares immediately before the commencement of this Act.

(3) Any company incorporated prior to the commencement of this Act, with par or nominal value shares, may at any time, convert any class of shares of the company into shares of no par or nominal value provided that—

(*a*) all the shares of any one class of shares of the company consist of either par or nominal value shares or no par or nominal value shares; and

(*b*) where all the shares of the company—

(i) are of the one class, the conversion of the shares is approved by special resolution or by consent in writing of seventy-five per cent of the shareholders; or

(ii) comprise more than one class, the conversion of the shares is approved by the holders of each class to be converted by special resolution or by consent in writing of seventy-five per cent of the holders of that class; and

(*c*) notice of the terms of the conversion is given to the Registrar for registration within fourteen days of the approval of the conversion under paragraph (*b*).

(4) Notwithstanding subsection (1), a company incorporated prior to the commencement of this Act, may issue shares or a class or classes of shares having a par or nominal value.

(5) Upon registration of the notice under subsection (3) (*c*), the shares in question shall, subject to subsection (6), be deemed to have been converted into shares of no par or nominal value.

(6) The shares converted under subsection (3) shall not affect the rights and liabilities attached to such shares and in particular, without prejudice to the generality of this section, such conversion shall not affect—

(*a*) any unpaid liability on such shares; or

(*b*) the rights of the holders thereof in respect of dividends, voting or repayment on winding up or a reduction of capital.

(7) Where the share capital of a company is denominated in a foreign currency, it shall not, without the prior approval of the Registrar, change the denomination into another currency.

Numbering of shares

88.—(1) Each share in a company having share capital shall be distinguished by its appropriate number.

(2) If at any time all the issued shares in a company or all the issued shares in a company of a particular class are fully paid up and rank *pari passu* for all purposes, none of the shares need thereafter have a distinguishing number so long as it remains fully paid up and ranks *pari passu* for all purposes with all shares of the same class for the time being issued and fully paid up.

Issue of shares

89.—(1) Upon incorporation of the company, any person named in the application for incorporation as a shareholder shall be deemed to have been issued with the number of shares specified in the application.

(2) A company shall have powers to issue shares subject to section 83.

(3) Shares shall not be treated as being of the same class unless they rank equally for all purposes.

Alteration in number of shares

90.—(1) A company may by ordinary resolution—

(*a*) divide or subdivide its shares into shares of a smaller amount if the proportion between the amount paid, and the amount, if any, unpaid on each reduced share remains the same as it was in the case of the share from which the reduced share is derived;

(*b*) consolidate into shares of a larger amount than its existing shares.

(2) Where shares are consolidated, the amount paid and any unpaid liability thereon, any fixed sum by way of dividend or repayment to which such shares are entitled, shall also be consolidated.

(3) Where a company has altered its share capital in a manner specified in subsection (1), it shall within fourteen days of the date of the alteration file a notice to that effect with the Registrar.

(4) A notice under subsection (3) shall include particulars with respect to the classes of shares affected.

Fractional shares

91. A public company may, where its constitution so provides, issue fractions of shares which shall have corresponding fractional liabilities, limitations, preferences, privileges, qualifications, restrictions, rights and other attributes as those which relate to the whole share of the same class or series of shares.

Pre-emptive rights to new issues

92.—(1) Subject to its constitution, where a company issues shares which rank equally with, or in priority to existing shares as to voting or distribution rights, those shares shall be offered to the holders of existing shares in a manner which would, if the offer were accepted, maintain the relative voting and distribution rights of those shareholders.

(2) An offer under subsection (1) shall remain open for acceptance for a reasonable time, which shall not be less than fourteen days.

Consideration for issue of shares

93.—(1) Before it issues any shares, the Board shall determine the amount of the consideration for which the shares shall be issued and shall ensure that such consideration is fair and reasonable to the company and to all existing shareholders.

(2) The consideration for which a share is issued may take any form including payment in cash, promissory notes, contracts for future services, real or personal property, or other securities of the company.

Shares not paid in cash

94.—(1) Shares shall be deemed not to have been paid for in cash except to the extent that the company has actually received cash in

payment of the shares at the time of or subsequently to the agreement to issue the shares.

(2) Before shares that have already been issued are credited as fully or partly paid up other than for cash, the Board shall determine the reasonable present cash value of the consideration and shall ensure that the present cash value of the consideration is—

(*a*) fair and reasonable to the company and to all existing shareholders; and

(*b*) not less than the amount to be credited in respect of the shares.

(3) A certificate shall be signed by one of the directors or his agent authorized in writing describing the consideration in sufficient detail to identify it and state—

(*a*) the present cash value of the consideration and the basis for assessing it;

(*b*) that the present cash value of the consideration is fair and reasonable to the company and to all existing shareholders; and

(*c*) that the present cash value of the consideration is not less than the amount to be credited in respect of the shares.

(4) The Board shall deliver a copy of a certificate issued under subsection (3) to the Registrar for registration within fourteen days of its signature.

(5) Nothing in this section shall apply to the issue of shares in a company on—

(*a*) the conversion of any convertible securities; or

(*b*) the exercise of any option to acquire shares in the company.

(6) Where a shareholder of a company is dissatisfied with the value in subsection (2) he may apply to the Registrar for an assessment of the value in accordance with the provisions of Part VII.

(7) An officer who fails to comply with subsection (3) shall be liable to a fine in accordance with the prevailing schedule of penalties.

(8) Where the Board fails to comply with subsection (4), every officer of the company shall, be liable to a fine in accordance with the prevailing schedule of penalties.

Calls on shares

95. Where a call is made on a share or any other obligation attached to a share is performed by the shareholder, the company

shall within fourteen days give notice to the Registrar in a form approved by him of—

(*a*) the amount of the call or its value as determined by the Board under section 94 (2); and

(*b*) the amount of the stated capital of the company following the making of the call.

Consent to issue shares

96. The issue by a company of a share that—

(*a*) increases a liability of a person to the company; or

(*b*) imposes a new liability on a person to the company, shall be void where that person, or his agent who is authorized in writing, does not consent in writing to becoming the holder of the share before it is issued.

Time of issue of shares

97. A share is issued when the name of the holder is entered on the share register where a register is required to be kept.

Board may authorize distribution

98.—(1) A company shall not make any distribution to any shareholder unless that distribution—

(*a*) has been authorized by the Board under subsection (2); and

(*b*) subject to the constitution, has been approved by the shareholders by ordinary resolution; and

(*c*) is made out of profits available for that purpose.

(2) The Board may authorize a distribution at such time and of such amount as it thinks fit, provided it is of the opinion that the company shall, upon the distribution being made, satisfy the solvency test.

(3) The directors who vote in favour of a distribution shall sign a certificate stating that, in their opinion, the company shall, upon the distribution being made, satisfy the solvency test.

(4) Where, after a distribution is authorized and before it is made, the Board ceases to be satisfied that the company shall, upon the distribution being made, satisfy the solvency test, any distribution made by the company shall be deemed not to have been authorized.

Net asset restriction on distribution by public companies

99.—(1) A public company may only make a distribution—

(*a*) if the amount of its net assets is not less than the aggregate of its called up share capital and undistributable reserves, and

(*b*) if, and to the extent that, the distribution does not reduce the amount of those assets to less than that aggregate.

(2) For this purpose a company's "net assets" means the aggregate of the company's assets less the aggregate of its liabilities.

(3) A company's undistributable reserves are—

(*a*) its share premium account;

(*b*) its capital redemption reserve;

(*c*) the amount by which its accumulated, unrealized profits, so far as not previously utilized by capitalization, exceed its accumulated, unrealized losses, so far as not previously written off in a reduction or reorganization of capital duly made;

(*d*) any other reserve that the company is prohibited from distributing by any enactment or by its articles.

The reference in paragraph (*c*) to capitalization shall not include a transfer of profits of the company to its capital redemption reserve.

(4) A public company shall not include any uncalled share capital as an asset in any accounts relevant for purposes of this section.

Reduction of stated capital

100.—(1) Subject to subsection (3), a company may by special resolution reduce its stated capital to such amount as it thinks fit.

(2) Public notice of a proposed reduction of a company's stated capital shall be given not less than thirty days before the resolution to reduce its stated capital is passed.

(3) A company may agree in writing with a creditor of the company that it shall not reduce its stated capital—

(*a*) below a specified amount without the prior consent of the creditor; or

(*b*) unless specified conditions are satisfied at the time of the reduction.

(4) A resolution to reduce the stated capital passed in breach of any agreement referred to in subsection (3) shall be invalid and of no effect.

(5) A company shall not take any action—

(*a*) to extinguish or reduce a liability in respect of an amount unpaid on a share; or

(*b*) to reduce its stated capital for any purpose other than the purpose of declaring that its stated capital is reduced by an amount

that is not represented by the value of its assets, unless there are reasonable grounds on which the directors may determine that, immediately after the taking of such action, the company will be able to satisfy the solvency test.

(6) Where—

(*a*) a share is redeemed at the option of the shareholder under section 116 or on a fixed date under section 117; or

(*b*) the company purchases a share under section 109, and the board is satisfied that as a consequence of the redemption or purchase, the company would, but for this subsection, fail to satisfy the solvency test—

(i) the board shall resolve that the stated capital of the company shall be reduced by the amount by which the company would so fail to satisfy the solvency test; and

(ii) the resolution of the board shall have effect notwithstanding subsections (1) to (3).

(7) A company which has reduced its stated capital shall within fourteen days of the reduction give notice of the reduction to the Registrar, specifying the amount of the reduction and the reduced amount of its stated capital.

Application of premiums received on issue of shares

101.—(1) In relation to a company incorporated before the commencement of this act, where a company issues shares at a premium, whether for cash or otherwise, a sum equal to the aggregate amount or value of the premiums on those shares shall be transferred to an account, to be called "the share premium account", and the provisions of this Act relating to the reduction of the stated capital of a company shall, except as provided in this section, apply as if the share premium account were stated capital of the company.

(2) The share premium account may, notwithstanding anything in subsection (1), be applied by the company in paying up un-issued shares of the company to be issued to members of the company as fully paid bonus shares in writing off—

(*a*) the preliminary expenses of the company;

(*b*) the expenses of, or the commission paid or discount allowed on, any issue of shares or debentures of the company; or

(*c*) in providing for the premium payable on redemption of any redeemable preference shares or of any debentures of the company.

(3) Where a company has before the commencement of this Act issued any shares at a premium, this section shall apply as if the share had been issued after the commencement of this Act.

Power to issue shares at a discount

102.—(1) Subject to this section, a company may issue at a discount shares in the company of a class already issued, except that—

(*a*) the issue of the shares at a discount shall be authorized by resolution passed in a general meeting of the company and must be sanctioned by the Court;

(*b*) the resolution shall specify the maximum rate of the discount at which the shares are to be issued;

(*c*) not less than one year shall have elapsed at the date of the issue since the date on which the company was entitled to commence business; and

(*d*) the shares to be issued at a discount must be issued within one month after the date on which the issue is sanctioned by the Court or within such extended time as the Court may allow.

(2) Where a company has passed a resolution authorizing the issue of shares at a discount, it may apply to the Court for an order approving the issue and upon such application the Court, if having regard to all the circumstances of the case, thinks it proper so to do, may make an order approving the issue on such terms and conditions as the Court thinks fit.

Return as to allotment

103.—(1) Whenever a private company limited by shares makes any allotment of its shares, the company shall, within sixty days thereafter, deliver to the Registrar for registration—

(*a*) a return of the allotments, stating the number and amount of the shares comprised in the allotment, the names, addresses and descriptions of the allottees and the amount if any, paid or due and payable on each share; and

(*b*) in the case of shares allotted as fully or partly paid up otherwise than in cash, a contract in writing constituting the title of the allottee to the allotment together with any contract of sale or for services or other consideration in respect of which that allotment was made, such contract being duly stamped and a return stating the number and amount of shares so allotted, the extent to which they are to be treated as paid up and the consideration for which they have been allotted.

(2) Where default is made in complying with this section, every officer of the company who is in default shall be liable to a fine in accordance with the prevailing schedule of penalties.

Division II—Dividends and Distributions

Dividends

104.—(1) A dividend shall be a distribution other than a distribution to which sections 109 and 124 apply.

(2) The Board shall not authorize a dividend—

(*a*) in respect of some but not all the shares in a class;

(*b*) of a greater amount in respect of some shares in a class than other shares in that class except where—

(i) the amount of the dividend is reduced in proportion to any liability attached to the shares under the constitution;

(ii) a shareholder has agreed in writing to receive no dividend, or a lesser dividend than would otherwise be payable;

(*c*) unless it is paid out of profits.

(3) A public company that proposes to declare a dividend shall include declaration of dividends as an item on the agenda for the shareholders' meeting in the notice to shareholders.

Shares *in lieu* of dividends

105. Subject to the constitution of the company, the Board may issue shares to any shareholders who have agreed to accept the issue of shares, wholly or partly, *in lieu* of a proposed dividend or proposed future dividends provided that—

(*a*) the right to receive shares, wholly or partly, *in lieu* of the proposed dividend or proposed future dividends has been offered to all shareholders of the same class on the same terms;

(*b*) where all shareholders elected to receive the shares *in lieu* of the proposed dividend, relative voting or distribution rights, or both, would be maintained;

(*c*) the shareholders to whom the right is offered are afforded a reasonable opportunity of accepting it;

(*d*) the shares issued to each shareholder are issued on the same terms and subject to the same rights as the shares issued to all shareholders in that class who agree to receive the shares; and

(*e*) the provisions of section 93 are complied with by the Board.

Shareholder discounts

106.—(1) The Board may resolve that the company shall offer shareholders discounts in respect of some or all of the goods sold or services provided by the company.

(2) The Board shall not approve a discount scheme under subsection (1) unless it has previously resolved that the proposed discounts are—

(*a*) fair and reasonable to the company and to all shareholders; and

(*b*) made available to all shareholders or all shareholders of the same class on the same terms.

(3) A discount scheme shall not be approved, or where it had previously been approved shall not be continued by the Board, unless it has reasonable grounds to believe that the company satisfies the solvency test.

(4) Subject to subsection (5), a discount accepted by a shareholder under a discount scheme approved under this section shall not be a distribution for the purposes of this Act.

(5) Where—

(*a*) a discount is accepted by a shareholder under a scheme approved by the Board; and

(*b*) after the scheme is approved or the discount was offered, the Board ceases to be satisfied on reasonable grounds that the company would satisfy the solvency test, section 107 shall apply in relation to the discount with such modifications as may be necessary as if the discount were a distribution that is deemed not to have been authorized.

Recovery of distributions

107.—(1) A distribution made to a shareholder at a time when the company did not, upon distribution being made, satisfy the solvency test may be recovered by the company from the shareholder unless—

(*a*) the shareholder received the distribution in good faith and without knowledge of the company's failure to satisfy the solvency test;

(*b*) the shareholder has altered the shareholder's position in reliance on the validity of the distribution; and

(*c*) it would be unfair to require repayment in full or at all.

(2) Where, in relation to a distribution made to a shareholder—

(*a*) the procedure set out in section 104 has not been followed; or

(*b*) reasonable grounds for believing that the company would satisfy the solvency test in accordance with section 109 or 124, as the case may be, did not exist at the time the certificate was signed,

a director who failed to take reasonable steps to ensure the procedure was followed or who signed the certificate, as the case may be, shall be personally liable to the company to repay to the company so much of the distribution which cannot be recovered from shareholders.

(3) Where, by virtue of section 109 (4) distribution is deemed not to have been authorized, a director who—

(*a*) ceases after authorization but before the making of the distribution to be satisfied on reasonable grounds for believing that the company would satisfy the solvency test upon the distribution being made; and

(*b*) fails to take reasonable steps to prevent the distribution being made,

shall be personally liable to the company to repay to the company so much of the distribution which cannot be recovered from shareholders.

(4) Where, by virtue of section 106 (5) a distribution is deemed not to have been authorized, a director who fails to take reasonable steps to prevent the distribution being made shall be personally liable to the company to repay to the company so much of the distribution which cannot be recovered from shareholders.

(5) Where, in an action brought against a director or shareholder under this section, the Court is satisfied that the company could, by making a distribution of a lesser amount, have satisfied the solvency test, the Court may—

(*a*) permit the shareholder to retain; or

(*b*) relieve the director from liability in respect of, an amount equal to the value of any distribution that could properly have been made.

Reduction of shareholder liability treated as distribution

108.—(1) Where a company—

(*a*) alters its constitution;

(*b*) acquires shares issued by it; or

(*c*) redeems shares under section 115,

in a manner which would cancel or reduce the liability of a shareholder to the company in relation to a share held prior to that alteration, acquisition, or redemption, the cancellation or reduction of liability shall be treated for the purposes of section 109 as if it were a distribution and for the purposes of section 104 (2) as if it were a dividend.

(2) Where a company has altered its constitution, or acquired shares, or redeemed in a manner which cancels or reduces the liability of a shareholder to the company in relation to a share held prior to that alteration, acquisition, or redemption, that cancellation or reduction of liability shall be treated for the purposes of section 100 as a distribution of the amount by which that liability was reduced.

(3) Where the liability of a shareholder of a share held prior to that alteration, acquisition, or redemption of that company is—

(*a*) greater than the liability of that shareholder to the company in relation to a share or shares into which that share is converted; or

(*b*) cancelled by the cancellation of that share in the alteration, acquisition, or redemption,

the reduction of liability affected by the alteration, acquisition, or redemption shall be treated for the purposes of section 107 (1) and (3) as a distribution by the company to that shareholder, whether or not that shareholder becomes a shareholder of the company, of the amount by which that liability was reduced.

Division III—Acquisition and Redemption of Company's Own Shares

Company may acquire its own shares

109.—(1) Subject to subsection (4), a company shall not purchase or otherwise acquire any of its own shares except—

(*a*) as provided under sections 110 and 111 or sections 112 to 118;

(*b*) in the case of a private company, with the unanimous approval of all shareholders;

(*c*) with the approval of a unanimous resolution; or

(*d*) in accordance with an order made by the Court under this Act.

(2) A company may redeem a share which is a redeemable share in accordance with sections 112 to 118 but not otherwise.

(3) Where shares are acquired by a company pursuant to subsection (1), the stated capital of the class of shares so acquired, or in the case of a company having par value shares, the nominal issued share capital, so as to take into account the extent to which the amount received by the company as stated capital, is reduced by the company's acquisition of its own shares.

(4) A company shall not make any payment in whatever form to acquire any shares issued by the company where there are reasonable grounds for believing that the company is, or would after the payment, be unable to satisfy the solvency test.

(5) A company shall not acquire its own shares where, as a result of such acquisition, there would no longer be any shares on issue other than convertible shares.

(6) A company shall immediately following the acquisition of shares by the company give notice to the Registrar of the number and class of shares acquired.

(7) Where a company fails to comply with subsection (4), the company and every officer of the company who is in default shall be liable to a fine in accordance with the prevailing schedule of penalties.

Purchase of own shares

110.—(1) A company may, subject to—

(*a*) the approval of the Board; and

(*b*) its constitution authorizing it to do so, purchase or otherwise acquire its own shares.

(2) The company shall not offer or agree to purchase or otherwise acquire its own shares unless—

(*a*) the Board is satisfied that—

(i) the acquisition is in the best interests of the company;

(ii) the terms of the offer or agreement and the consideration to be paid for the shares are fair and reasonable to the company;

(iii) in any case where the offer is not made to, or the agreement is not entered into with, all shareholders, the offer or the agreement, as the case may be, is fair to those shareholders to whom the offer is not made, or with whom no agreement is entered into;

(iv) shareholders to whom the offer is made have available to them any information which is material to an assessment of the value of the shares; and

(v) the company shall immediately after the acquisition satisfy the solvency test; and

(*b*) the Board has disclosed to shareholders or members or otherwise has made available to them all information which is material to the assessment of the value of the shares.

(3) Any offer by a company to purchase or otherwise acquire its own shares on a securities exchange shall be made in accordance with the Securities Act, and in accordance with any other law regulating the securities markets in Malaŵi.

Cap. 46:06

Disclosure document

111.—(1) This section shall not apply to—

(*a*) an offer which—

(i) is made to all shareholders to acquire a proportion of their shares;

(ii) if accepted, would leave unaffected relative voting and distribution rights; and

(iii) affords a reasonable opportunity to shareholders to accept the offer;

(*b*) an offer to which all shareholders have consented in writing or which is the subject of unanimous approval by the shareholders;

(*c*) an offer made pursuant to a unanimous resolution;

(*d*) an offer where the purchase or acquisition is made on or any securities exchange whether within or outside Malaŵi is made in accordance with the Securities Act.

Cap. 46:06

(2) Subject to subsection (1), before an offer is made pursuant to a resolution under section 110, the company shall send to each shareholder a disclosure document that complies with subsection (3).

(3) A disclosure document issued under this section shall set out—

(*a*) the nature and terms of the offer, and, if made to specified shareholders only, the names of those shareholders;

(*b*) the nature and extent of any relevant interest of any director of the company in any shares which are the subject of the offer; and

(*c*) the text of the resolution required by section 110 (2), together with such further information and explanation as may be necessary to enable a reasonable shareholder to understand the

nature and implications for the company and its shareholders of the proposed acquisition.

(4) A reporting issuer may issue or transfer shares held by the reporting issuer itself subject to the provisions of the Securities Act. Cap. 46:06

Meaning of "redeemable"

112. A company may issue a redeemable share where—

(*a*) the constitution of the company makes provision for the company to issue redeemable shares;

(*b*) the shares are fully paid up at the time of redemption; and

(*c*) the constitution or the terms of issue of the share makes provision for the redemption of the share—

(i) at the option of the company;

(ii) at the option of the holder of the share; or

(iii) on a date specified in the constitution or in the terms of issue of the share for a consideration that is—

(*aa*) specified;

(*bb*) to be calculated by reference to a formula; or

(*cc*) required to be fixed by a suitably qualified person who is not associated with or interested in the company.

Application of this act to redemption of shares

113. The provisions of sections 114 and 118 shall apply to the redemption of shares.

Redemption of redeemable preference shares

114.—(1) Redemption of redeemable preference shares shall be made only out of—

(*a*) profits of the company which would otherwise be available for dividends; or

(*b*) the proceeds of a fresh issue of shares made for the purposes of the redemption, before the shares are redeemed, the premium if any, payable on redemption, shall be provided for out of the profits of the company or out of the company's share premium account.

(2) Where a company has redeemed or is about to redeem any preference shares under subsection (1) (*b*), the company may issue shares up to the amount of the shares redeemed, or to be redeemed as if those shares had never been issued, and, accordingly, the share capital of the company shall not for the purpose of any enactments

relating to stamp duty be deemed to be increased by the issue of shares under this subsection.

(3) Where new shares are issued before the redemption of the old shares, the new shares shall not, so far as relates to stamp duty, be taken to have been issued under subsection (3) unless the old shares are redeemed within one month after the issue of the new shares.

(4) Where shares are redeemed otherwise than out of the proceeds of a fresh issue, there shall, out of profits which should otherwise have been available for dividend, be transferred to a reserve fund to be called "the capital redemption reserve fund", a sum equal to the nominal amount of the shares redeemed, and the provisions of this Act relating to the reduction of the share capital of the company, shall, except as provided in this section, apply as if the capital redemption reserve fund were paid-up share capital of the company.

(5) The capital redemption reserve fund may, notwithstanding anything in this section, be applied by the company in paying up unissued shares of the company to be issued to members of the company as fully paid bonus shares.

(6) The redemption of preference shares under this section by a company shall not be taken as reducing the amount of the company's stated or authorized share capital in respect of companies formed before the commencement of this Act.

Redemption at option of company

115. A redemption of a share at the option of the company shall be deemed to be—

(*a*) an acquisition by the company of the share for the purposes of sections 110 (2) and 111; and

(*b*) a distribution within the meaning of this Act.

Redemption at option of shareholder

116.—(1) Where a share is redeemable at the option of the holder of the share, and the holder gives proper notice to the company requiring the company to redeem the share—

(*a*) the company shall redeem the share on the date specified in the notice, or if no date is specified, on the date of receipt of the notice;

(*b*) the share is deemed to be cancelled on the date of redemption; and

(*c*) from the date of redemption the former shareholder ranks as an unsecured creditor of the company for the sum payable on redemption.

(2) A redemption under this section—

(*a*) shall not be a dividend or distribution for the purposes of this Act; but

(*b*) shall be deemed to be a distribution for the purposes of sections 107 (1) and (5).

Redemption on fixed date

117.—(1) Subject to this section, if a share is redeemable on a specified date—

(*a*) the company shall redeem the share on that date;

(*b*) the share shall be deemed to be cancelled on that date; and

(*c*) from that date the former shareholder shall rank as an unsecured creditor of the company for the sum payable on redemption.

(2) A redemption under this section—

(*a*) shall not be a dividend or distribution for the purposes of this Act; but

(*b*) shall be deemed to be a distribution for the purposes of sections 107 (1) and (5).

Cancellation of shares repurchased

118.—(1) Subject to the provisions in this Act in relation to Treasury shares, shares that are acquired or redeemed by a company under this Act, are deemed to be cancelled immediately on acquisition.

(2) For the purposes of subsection (1), shares are acquired on the date on which the company would, in the absence of this section, become entitled to exercise the rights attached to the shares.

Rights of holders of special classes of shares

119.—(1) Where the share capital of a company is divided into different classes of shares, and provision is made by the constitution for authorizing the variation of the rights attached to any class of shares in the company, subject to the consent of any specified proportion of the holders of the issued shares of that class or the approval of a resolution passed at a separate meeting of the holders of those shares and in accordance with that provision, then if the rights attached to any such class of shares are at any time varied, the holders of not less in the aggregate than fifteen per cent of the issued shares of that class, being persons who did not consent to or vote in favour of the resolution for the variation, may apply to the Court to have the variation cancelled.

(2) Where an application is made under subsection (1), the variation shall not have effect unless and until it is confirmed by the Court.

(3) An application under this section shall be made by petition within thirty days after the date on which the consent was given or the resolution was passed as the case may be and may be made on behalf of the shareholders entitled to make the application by such one or more of their number as they may appoint in writing for the purpose.

(4) On an application under this section, the Court, after hearing the applicant and any other persons who apply to the Court to be heard and appear to the Court to be interested in the application may, if it is satisfied, having regard to all the circumstances of the case, that the variation would unfairly prejudice the shareholders of the class represented by the applicant, disallow the variation and shall, if not so satisfied, confirm the variation.

(5) The company shall within thirty days after the making of an order by the Court on an application under this section, forward a certified copy of the order to the Registrar.

(6) If default is made in complying with subsection (6) the company and every officer of the company who is in default is liable to a fine in accordance with the prevailing schedule of penalties as issued by the Registrar.

(7) In this section, "variation" includes abrogation and "varied" shall be construed accordingly.

Division IV—Treasury Shares

Company may hold its own shares

120.—(1) The provisions in this Act on cancellation of shares repurchased shall not apply to shares acquired by a company pursuant to section 109 or 110 where—

(*a*) the constitution of the company expressly permits the company to hold its own shares;

(*b*) the Board of the company resolves that the shares concerned shall not be cancelled on acquisition; and

(*c*) the number of shares acquired, when aggregated with shares of the same class held by the company pursuant to this section at the time of the acquisition, does not exceed fifteen per cent of the shares of that class previously issued by the company, excluding shares previously deemed to be cancelled under this Act.

(2) Any share acquired by a company pursuant to section 109 or 110 and, which is held by the company pursuant to subsection (1) shall be held by the company in itself.

(3) A share that a company holds in itself under subsection (2) may be cancelled by the Board resolving that the share is cancelled and the share shall be deemed to be cancelled on the making of such a resolution.

Rights and obligations of shares that company holds in itself suspended

121.—(1) The rights and obligations attaching to a share that a company holds in itself pursuant to section 120 shall not be exercised by or against a company while it holds the share.

(2) Without limiting subsection (1), while a company holds a share in itself pursuant to section 120, the company shall not—

(*a*) exercise any voting rights attaching to the share; or

(*b*) make or receive any distribution authorized or payable in respect of the share.

Reissue of shares that company holds in itself

122.—(1) Subject to subsection (2), section 93 shall apply to the transfer of a share held by a company in itself as if the transfer were the issue of the share under section 89.

(2) Subsection (1) shall not apply unless it is specifically provided in the constitution that the company may transfer the shares so held.

(3) A company shall not make an offer to sell any share it holds in itself or enter into any obligations to transfer such a share where the company has received notice in writing of a compromise, merger or takeover scheme.

Enforceability of contract to repurchase shares

123.—(1) A contract with a company for the acquisition by the company of its shares shall be specifically enforceable against the company except to the extent that the company would, after performance of the contract, fail to satisfy the solvency test.

(2) The company bears the burden of proving that performance of the contract would result in the company being unable to satisfy the solvency test.

(3) Subject to subsection (1), where the company has entered into a contract for the acquisition by the company of its shares, the other party to the contract shall, on the conclusion of the contract, become a creditor and shall—

(*a*) be entitled to be paid as soon as the company is lawfully able to do so; or

(*b*) prior to the removal of the company from the register of companies, be ranked subordinate to the rights of creditors but in priority to the other shareholder.

Division V—Financial Assistance in Connexion with Purchase of Shares

Restrictions on giving financial assistance

124.—(1) A company shall not give financial assistance directly or indirectly for the purpose of or in connexion with the acquisition of its own shares, other than in accordance with this section.

(2) A company may give financial assistance for the purpose of or in connexion with the acquisition of its own shares if the Board has previously resolved that—

(*a*) giving the assistance is in the interests of the company;

(*b*) the terms and conditions on which the assistance is given are fair and reasonable to the company and to any shareholders not receiving that assistance; and

(*c*) immediately after giving the assistance, the company shall satisfy the solvency test.

(3) Where the amount of any financial assistance approved under subsection (2) together with the amount of any other financial assistance which is still outstanding exceeds ten per cent of the company's stated capital, the company shall not give the assistance unless it first obtains from its auditor or, if it does not have an auditor, from a person qualified to act as its auditor, a certificate that—

(*a*) the person has inquired into the state of affairs of the company; and

(*b*) there is nothing to indicate that the opinion of the Board the company shall, immediately after giving the assistance, satisfy the solvency test, is unreasonable in all the circumstances.

(4) The amount of any financial assistance under this section shall not be a distribution for the purposes of sections 98 and 104.

(5) For the purposes of this section, the term "financial assistance" includes giving a loan or guarantee, or the provision of security.

Transactions not prohibited by section 124

125. Section 124 shall not apply to—

(*a*) a distribution, to a shareholder approved under section 98;

(*b*) the issue of shares by the company;

(*c*) a repurchase or redemption of shares by the company;

(*d*) anything done under a compromise under this Act or a compromise or arrangement approved under this Act; or

(*e*) where the ordinary business of a company includes the lending of money by the company in the ordinary course of business.

Division VI—Debentures

Issue of debentures

126.—(1) Where a company issues or agrees to issue debentures of the same class in accordance with Part XI, the company shall before issuing any of the debentures issue a trust deed for securing the issue of the debentures or a contract with the holders of debentures secured by a trust deed.

(2) For the purposes of this section, debentures shall not be deemed to be of the same class where—

(*a*) they do not rank equally for repayment when any security created by the debenture is enforced or the company is wound up; or

(*b*) different rights attach to them in respect of—

(i) the rate of, or dates for, payment of interest;

(ii) the dates when, or the instalments by which, the principal of the debentures shall be repaid, unless the difference is solely that the class of debentures shall be repaid during a stated period of time and particular debentures shall be selected by the company for repayment at different dates during that period by drawings, ballot or otherwise;

(iii) any right to subscribe for or convert the debentures into shares or other debentures of the company or any other company; or

(iv) the powers of the debenture holders to realize any security.

(3) For the purposes of this section—

(*a*) the trust deed shall not cover more than one class of debentures;

(*b*) any provision contained in the trust deed or any contract secured by the trust deed is void insofar as it would have the effect of exempting a trustee of the deed from, or indemnifying him against, liability for breach of trust; save where a release is given to a trustee having been agreed upon by more than seventy-five per cent of debenture holders at a meeting summoned for that purpose.

Cap. 48:03

(4) For the avoidance of doubt, secured debentures shall also be subject to the Personal Property Security Act.

Specific performance

127. A contract with a company to take up and pay for debentures may be enforced by an order of the High Court for specific performance.

Perpetual debentures

128. Notwithstanding any other enactment, a condition contained in a debenture or in an agency deed for securing a debenture, whether the debenture or agency deed is issued or made before or after the commencement of this Act, shall not be invalid by reason that the debentures are thereby made irredeemable only on the happening of a contingency, however remote, or on the expiration of a period however long.

Register of debenture holders

129.—(1) Every company which issues debentures shall at its registered office keep a register of debenture holders which shall contain—

(*a*) the names and addresses of the debenture holders;

(*b*) the amount of debentures held by them.

(2) The register shall, except when duly closed pursuant to subsection (3), be open to the inspection of a debenture holder or a member.

(3) For the purposes of this section, a register shall be deemed to be duly closed if closed in accordance with a provision contained in the constitution, the debenture, the debenture stock certificate, the trust deed or any other document relating to or securing the debenture, during such period, not exceeding thirty days in any year, as is specified in the document.

(4) Every company shall, at the request of a debenture holder or a member, provide a copy of the register of debenture holders and the copy need not include any particulars as to a debenture holder other than his name and address and the debenture held by him.

Reissue of redeemed debentures

130.—(1) Where a company has, whether before or after the commencement of this Act, redeemed a debenture, it shall be subject to subsection (2)—

(*a*) unless any provision to the contrary, whether express or implied, is contained in the constitution or in any contract entered into by the company; or

(*b*) unless the company has, by passing a resolution to that effect or by some other act, manifested its intention that the debentures

shall be cancelled, have and be deemed always to have had the power to reissue the debentures by reissuing the same debentures or by issuing other debentures in their place.

(2) The reissue of a debenture or the issue of one debenture in place of another under subsection (1) shall not be regarded as the issue of a new debenture for the purpose of any provision in the constitution or in any contract entered into by the company limiting the amount or number of debentures that may be issued by the company.

(3) After the reissue the person entitled to the debentures shall have and shall be deemed always to have had the same priorities as if the debentures had never been redeemed.

(4) Where, whether before or after the commencement of this Act, a company has given a debenture to secure advances on current account or otherwise, the debenture shall not be deemed to have been redeemed by reason that the account of the company with the debenture holder has ceased to be in debit while the debenture remains unsatisfied.

PART VII

Registered Valuers

Valuation by registered valuers

131. Where under any provision of this Act, valuation is required to be made in respect of any property, stocks, shares, debentures, securities or goodwill or net worth of a company or its assets, it shall be valued by a person registered as a valuer under this Part and appointed by the board.

Register of valuers

132.—(1) The Minister may by regulation require the Registrar to maintain a register to be called "The Register of Valuers" in which shall be entered the names and addresses of persons registered under subsection (2) as valuers.

(2) Any person with such professional qualifications as may be prescribed may apply to the Registrar in the prescribed form to be registered as a valuer under this section, provided that no company or body corporate shall be eligible to so apply.

(3) Every application under subsection (2) shall be accompanied by such fee as may be prescribed by the Registrar, and shall contain a declaration to the effect that the applicant shall—

(*a*) make an impartial and true valuation of any assets which may be required to be valued;

(*b*) make the valuation in accordance with such rules as may be prescribed; and

(*c*) shall not undertake valuation of any assets in which he has a direct or indirect interest or becomes so interested at any time during the valuation of the assets.

Practice as a registered valuer

133.—(1) No person, either alone or in partnership with any other person, shall practise, describe or project himself as a registered valuer for the purposes of this Act or permit himself to be so described or projected unless he is registered as a valuer, or, as the case may be, he and all his partners are so registered under this Part.

(2) The report of valuation of any assets by a registered valuer shall be submitted in such form as may be prescribed.

(3) A registered valuer shall be bound by the prevailing rates of fees as may be prescribed.

Removal and restoration of names of valuers from the register

134.—(1) The Registrar may remove the name of any person from the register of valuers where he is satisfied, after giving that person a reasonable opportunity of being heard and after such further inquiry, if any, as he thinks fit—

(*a*) that his name has been entered in the register by error or on account of misrepresentation or suppression of a material fact; or

(*b*) that he has been convicted of any offence and a term of imprisonment or has been guilty of misconduct in his professional capacity which, in the opinion of the Registrar, renders his name unfit to be kept in the register.

(2) The Registrar may on application and on sufficient cause being shown, restore in the register the name of any person removed therefrom.

PART VIII

Share Certification and Transfer

Division I—Securities by Written Instrument

Share certificate as evidence of title

135. A certificate under the common seal of the company registered in Malaŵi specifying any shares held by any member shall be *prima facie* evidence of title of the member to the shares.

Rights to a lien on shares

136.—(1) Notwithstanding any other law, a company shall, where the constitution so provides, be entitled to a lien, independently of and without the necessity for inscription, in priority to any other

claim, over every issued share, not being a fully paid share, and over any dividend payable on the share, for all money due by the holder of that share to the company whether by way of money called or payable at a fixed time in respect of that share.

(2) In the case of a company, other than a public company, the constitution may provide for a lien of the same kind as referred to in subsection (1) over fully paid shares and dividends on those shares for all money owing by the shareholders to the company.

(3) Subject to subsection (4), a company may, in such manner as the directors think fit, sell any share on which the company has a lien.

(4) No sale shall be made unless—

(*a*) a sum in respect of which the lien exists is presently payable; and

(*b*) until the expiry of fourteen days after a written notice, demanding payment of such part of the amount in respect of which the lien exists as is presently payable, has been given to the registered holder for the time being of the share, or the person entitled to the share by reason of the death or bankruptcy of the registered holder.

(5) The directors may, to give effect to any sale under subsection (3), authorize some person to transfer the shares sold to the purchaser of the shares.

(6) The purchaser referred to in subsection (5) shall be registered as the holder of the share comprised in any such transfer, and shall not be bound to see to the application of the purchase money, nor shall the title of the purchaser to the share be affected by any irregularity or invalidity in the proceedings relating to the sale.

(7) The proceeds of the sale shall be received by the company and applied for the payment of such part of the amount in respect of which the lien exists as is presently payable, and any residue shall, subject to a like lien for sums not presently payable as existed upon the share before the sale, be paid to the person entitled to the share at the date of the sale.

(8) The directors may, where the constitution so provides, decline to register the transfer of a share on which the company has a lien.

Requirement for instrument of transfer

137.—(1) Notwithstanding anything in the constitution of a company, the company may not register a transfer of shares in a

company unless a proper instrument of transfer has been delivered to the company.

(2) Nothing in this section shall prejudice any power of the company to register as a shareholder any person to whom the right to any shares in or debentures of the company has been transmitted by operation of the law.

Procedure on lodging of transfer

138. When a transfer of shares in a company has been lodged with a company, the company must—

(*a*) either register the transfer;

(*b*) or give the transferee notice of refusal to register the transfer, together with reasons for the refusal.

Request of transfer or for entry in the register

139.—(1) On the written request of the transferor of any share, debenture or other interest in a company, the company shall enter in the appropriate register the name of the transferee in the same manner and subject to the same conditions as if the application for the entry were made by the transferee.

(2) On the written request of the transferor of a share or debenture or other interest in a company, the company shall by written notice require the person having the possession, custody or control of the debenture or share certificate if a certificate has been issued and the instrument of transfer thereof or either of them, to deliver it or them to its registered office, within such period as may be specified in the notice, being not less than seven nor more than twenty-eight days after the date of the notice, to have the share certificate or debenture cancelled or rectified and the transfer entered in the appropriate register or otherwise dealt with.

(3) Where a person refuses or neglects to comply with a notice under subsection (2) the transferor may apply to the Registrar to show cause why the document mentioned in the notice should not be delivered or produced.

(4) The Registrar may require a person under subsection (3) to deliver a document referred to in subsection (2) to the company on such terms or conditions as the Registrar may direct.

(5) A list of all share certificates or debentures called for under this section and not delivered shall be exhibited at the registered office of the company and shall be advertised in such newspapers and at such times as the company thinks fit.

Transfer by personal representatives or on the grant of probate

140. A transfer of the share or other interest of a deceased member of a company made by his personal representative shall, although the personal representative is not himself or herself a member of the company, be as valid as if he had been a member at the time of the execution of the instrument of transfer.

Certification of transfers

141.—(1) The certification by a company of any instrument of transfer of shares in or debentures of the company shall be taken, as a representation by the company to any person acting on the faith of the certification that there have been produced to the company, such documents as on the face of them show a *prima facie* title to the shares or debentures to the transferor named in the instrument of transfer but not as a representation that the transferor has any title to the shares or debentures.

(2) Where a person acts on the faith of a false certification by a company made negligently, the company shall be under the same liability to him as if the certification had been made fraudulently.

(3) For the purposes of this section—

(*a*) an instrument of transfer shall be taken to be certified if it bears the words "certificate lodged" or words to the like effect;

(*b*) the certification of an instrument of transfer shall be taken to be made by a company if—

(i) the person issuing the instrument is a person authorized to issue certificated instruments of transfer on the company's behalf; and

(ii) the certification is signed by a person authorized to certificate transfers on the company's behalf or by any officer or servant either of the company or of a body corporate so authorized;

(*c*) a certification shall be taken to be signed by a person if—

(i) it purports to be authenticated by his or her signature or initials whether handwritten or not; and

(ii) it is not shown that the signature or initials was or were placed there by himself or herself or by any person authorized to use the signature or initials for the purpose of certificating transfers on the company's behalf.

Duties of company with respect to certificates

142.—(1) A company shall, within sixty days after the allotment of any of its shares, debentures or debenture stock and within two months after the date on which a transfer of the shares, debentures

or debenture stock is lodged with the company, complete and have ready for delivery the certificates of all shares, the debentures and the certificates of all debenture stock allotted or transferred, unless the conditions of issue of the shares, debentures or debenture stock otherwise provide.

(2) For the purposes of subsection (1), "transfer" means a transfer duly stamped and otherwise valid and does not include a transfer which the company is for any reason entitled to refuse to register and does not register.

(3) If a company on which a notice has been served requiring the company to make good any default in complying with subsection (1), fails to make good the default within ten days after the service of the notice, the Registrar may, on the application of the person entitled to have the certificates or the debentures delivered to him, make an order directing the company and any officer of the company to make good the default within the time specified in the order.

(4) The order may provide that all costs of and incidental to the application shall be borne by the company or by any officer of the company responsible for the default.

Transfer of shares in a single member company

143.—(1) A single member company may transfer or allot shares on the death of the single member, or by operation of law, or by a single member company changing status by transferring or allotting shares to more members.

(2) In the case of a transfer of shares or further allotment of shares the company shall—

(*a*) pass a special resolution for change of status from a single member company to a private company and alter its articles accordingly within thirty days of the transfer of shares or further allotment of shares; and

(*b*) appoint and elect one or more additional directors within fifteen days of the date of passing of the special resolution and notify the appointment to the Registrar.

(3) In the case of the death of a single member, the company may either be wound up or change its status from a single member company by transferring or allotting shares for which—

(*a*) the nominee director shall transfer the shares in the name of the legal heirs of the single member within thirty days;

(*b*) the company shall pass a special resolution for change of status from a single member company and alter its articles accordingly within thirty days of the transfer of shares; and

(*c*) the members shall appoint or elect one or more additional directors in accordance with this Act and within fourteen days of the date of passing of the special resolution notify the appointment to the Registrar.

(4) In the case of operation of the law the company shall—

(*a*) transfer the shares, within seven days, in the name of relevant persons to give effect to the order of the Court or any other authority;

(*b*) pass a special resolution for change of status from a single member and alter its articles accordingly within thirty days of the transfer of shares; and

(*c*) appoint an additional director or directors in accordance with this Act within fourteen days of the date of passing of the special resolution and notify the appointment within fourteen days of the date after the appointment.

(5) The persons becoming members due to the transfer or further allotment of shares, as the case may be, shall pass a special resolution to make the alterations in the constitution and appoint one or more additional directors.

(6) Where a single member company changes its status pursuant to subsection (1), it shall file a notice in writing with the Registrar within sixty days from the date of passing of the special resolution.

Private companies

144. Notwithstanding anything provided in this Division as to the requirement to keep a share register a private company shall not be under any obligation to maintain a share register but shall be under an obligation to keep and maintain proper records of shares and debentures it has issued and transferred.

Company to maintain share register

145.—(1) A company shall maintain an electronic or hard copy share register which shall record the shares issued by the company and which shall state—

(*a*) whether, under the constitution of the company or the terms of issue of the shares, there are any restrictions or limitations on their transfer; and

(*b*) the place where any document that contains the restrictions or limitations may be inspected.

(2) A public company or subsidiary or parent company of a public company shall maintain a register of substantial shareholders in which it shall enter the particulars specified in subsection (3) in respect of every share held by a substantial shareholder or in which

directly or indirectly he has an interest. Such register may be in electronic form.

(3) The share register under subsection (1) shall state, with respect to each class of shares—

(*a*) the names, in alphabetical order, and the last known address of each person who is, or has within the last seven years been, a shareholder;

(*b*) the number of shares of that class held by each shareholder within the last seven years; and

(*c*) the date of any—

(i) issue of shares to;

(ii) repurchase or redemption of shares from; or

(iii) transfer of shares by or to, each shareholder within the last seven years, and in relation to the transfer, the name of the person to or from whom the shares were transferred.

(4) An agent may maintain the share register of the company provided that the agent is qualified to be the secretary of a public company in accordance with this Act.

(5) Every company having more than fifty shareholders shall—

(*a*) unless the share register is in such a form as to constitute in itself an index, keep an index of the names of the shareholders of the company; and

(*b*) within fourteen days from the day on which any alteration is made in the share register, make any necessary alteration in the index.

(6) Notwithstanding subsection (5), where a company has more than fifty shareholders, the Registrar may require the company to keep the share register in such form as the Registrar deems fit.

(7) The index shall contain sufficient indication to enable the particulars of each shareholder to be readily found in the register.

Treasury shares to be entered on the register of shares

146.—(1) Where a company purchases its own shares in circumstances where section 145 applies, the requirements in section 145 need not be complied with if the company cancels all of the shares.

(2) Where a company holds shares as treasury shares, the company must be entered on the register as the member holding those shares.

(3) The treasury share register may be in electronic or hard copy form.

Share register to be kept available for search

147.—(1) A company's share register must be capable of search either by electronic means or by physical inspection.

(2) A company must give notice to the Registrar of the place where its share register is kept available for physical inspection and of any change in that place.

(3) No such notice is required if the register has, at all times since it came into being, been kept available for physical inspection at the company's registered office.

(4) If a company fails to comply with subsection (2) within fourteen days then the company and every officer of the company is liable to a fine in accordance with the prevailing schedule of penalties.

Place where register kept

148.—(1) Where kept in hard copy form the principal share register shall be kept in Malaŵi.

(2) Where a share register is divided into two or more registers kept at different places—

(*a*) the company shall, within fourteen days of the date on which the share register is divided, by notice in writing inform the Registrar of the places where the registers are kept;

(*b*) where the place where a register is kept is altered, the company shall, within fourteen days of the alteration, by notice in writing inform the Registrar of the alteration;

(*c*) a copy of every branch register shall be kept at the same place as the principal register; and

(*d*) if an entry is made in a branch register, a corresponding entry shall be made within fourteen days in the copy of that register kept with the principal register.

(3) In this section—

"principal register", in relation to a company, means—

(*a*) in case the share register is not divided, the share register;

(*b*) in case the share register is divided into two or more registers, the register described as the principal register in the last notice sent to the Registrar.

"branch register" means a register other than the principal register.

Right to search and require copies

149.—(1) The share register and index must be open to search by—

(*a*) any member of the company without charge; and

(*b*) any other person on payment of such fee as may be prescribed.

(2) Any person may require a copy of a company's register of members, or of any part of it, on payment of such fee as may be prescribed.

(3) A person seeking to exercise either of the rights conferred by this section must make a request to the company to that effect.

(4) The request must contain the following information—

(*a*) in the case of an individual, his name and address;

(*b*) in the case of an organization, the name and address of an individual responsible for making the request on behalf of the organization;

(*c*) the purpose for which the information is to be used; and

(*d*) whether the information will be disclosed to any other person, and if so—

(i) where that person is an individual, his name and address;

(ii) where that person is an organization, the name and address of an individual responsible for receiving the information on its behalf; and

(iii) the purpose for which the information is to be used by that person.

Public company's secretary's duty to keep, maintain and supervise share register

150.—(1) The secretary shall take reasonable steps to ensure that the share register is properly kept and that share transfers are promptly entered on it in accordance with section 139.

(2) A secretary who fails to comply with subsection (1) is liable to a fine in accordance with the prevailing schedule of penalties.

Power of Registrar to rectify share register

151.—(1) Where the name of a person is wrongly entered in, or omitted from, the share register of a company, the person aggrieved, or a shareholder, may apply to the Registrar for rectification of the share register.

(2) On an application under this section the Registrar may order the rectification of the register.

(3) On an application under this section, the Registrar may decide—

(*a*) any question relating to the entitlement of a person who is a party to the application to have his name entered in, or omitted from, the register; and

(*b*) any question necessary or expedient to be decided for rectification of the register.

(4) Where a person is aggrieved by any act or decision of the Registrar under this section, he may appeal to the Court.

Trusts not to be entered on register

152. No notice of any expressed, implied or constructive trust shall be entered in the share register or be receivable by the Registrar.

Share certificates

153.—(1) Subject to subsection (2), a public company shall, within twenty-eight days after the issue, or registration of a transfer, of shares in the company, as the case may be, send a share certificate to every holder of those shares stating—

(*a*) the name of the company;

(*b*) the class of shares held by that person; and

(*c*) the number of shares held by that person.

(2) Subsection (1) shall not apply in relation to a company the shares of which have been deposited under a system where title to securities may be evidenced and transferred without a written instrument.

(3) A shareholder in a company, not being a company to which subsection (1) or (2) applies, may apply to the company for a certificate relating to some or all of the shareholder's shares in the company.

(4) On receipt of an application for a share certificate under subsection (3), the company shall, within twenty-eight days after receiving the application—

(*a*) if the application relates to some but not all of the shares, separate the shares shown in the register as owned by the applicant into separate parcels, one parcel being the shares to which the share certificate relates, and the other parcel being any remaining shares; and

(*b*) send to the shareholder a certificate stating—

(i) the name of the company;

(ii) the class of shares held by the shareholder; and

(iii) the number of shares held by the shareholder to which the certificate relates.

(5) Notwithstanding section 137, where a share certificate has been issued, a transfer of the shares to which it relates shall not be registered by the company unless the instrument of transfer required by that section is accompanied—

(*a*) by the share certificate relating to the share; or

(*b*) by evidence as to its loss or destruction and, if required, an indemnity in a form required by the Board.

(6) Subject to subsection (1), where shares to which a share certificate relates are to be transferred, and the share certificate is sent to the company for registration of the transfer, the share certificate shall be cancelled and no further share certificate shall be issued except at the request of the transferee.

(7) This section shall not apply to an investment company either on issue of a share certificate or on registration of a transfer of shares.

Replacement of lost or destroyed certificates

154.—(1) Subject to subsection (2) where a certificate or other document of title to a share or a debenture is lost or destroyed, the company shall on application being made by the owner and on payment of the prescribed fee issue a duplicate certificate or document to the owner.

(2) The application shall be accompanied by a written undertaking that where the certificate or document is found, or received by the owner, it shall be returned to the company and the directors may also require the applicant to furnish such indemnity as the directors consider to be adequate against any loss following the production of the original certificate or document.

Share register as evidence of legal title

155.—(1) Subject to section 151, the entry of the name of a person in the share register as holder of a share shall be *prima facie* evidence that legal title to the share is vested in that person.

(2) A company may treat a shareholder as the only person entitled to—

(*a*) exercise the right to vote attaching to the share;

(*b*) receive notices;

(*c*) receive a distribution in respect of the share; and

(*d*) exercise the other rights and powers attaching to the share.

Division II—Securities Without Written Instrument

156.—(1) In this Part securities shall have the same meaning as in the Securities Act, and or any amendments thereto.

Meaning of securities Cap. 46:06

(2) References to—

(*a*) title to securities include any legal or equitable interest in securities;

(*b*) a transfer of title include a transfer by way of security; and

(*c*) transfer, without a written instrument include, in relation to bearer securities, transfer without delivery.

157. The Registrar of Financial Institutions may issue directives providing for—

Power to issue directives

(*a*) the title to securities to be evidenced and transferred without written instrument;

(*b*) procedures for recording and transferring title to securities; and

(*c*) the regulation of those procedures and the persons responsible for their operation.

PART IX

The Officers of a Company

Division I—Directors and the Board of Directors

158.—(1) For the purposes of this Act, "director"—

Meaning of "director"

(*a*) includes a person occupying the position of director of the company by whatever name called; and

(*b*) includes an alternate director; but

(*c*) does not include a receiver.

(2) For the purposes of sections 159 to 222, "directors" includes—

(*a*) a person in accordance with whose directions or instructions a person referred to in subsection (1) may be required or is accustomed to act;

(*b*) a person in accordance with whose directions or instructions the Board of the company may be required or is accustomed to act;

(*c*) a person who exercises or who is entitled to exercise or who controls or who is entitled to control the exercise of powers

which, apart from the constitution of the company, would fall to be exercised by the Board; and

(*d*) a person to whom a power or duty of the Board has been directly delegated by the Board with that person's consent or acquiescence, or who exercises the power or duty with the consent or acquiescence of the Board.

(3) For the purposes of sections 159 to 222 a director includes a person in accordance with whose directions or instructions a person referred to in subsections (1) and (2) may be required or is accustomed to act in respect of his duties and powers as a director.

(4) Where the constitution of a company confers a power on shareholders which is exercisable by the Board, any shareholder who exercises that power or who takes part in deciding whether to exercise that power shall be deemed, in relation to the exercise of the power or any consideration concerning its exercise, to be a director for the purposes of sections 176 to 182, 220 and 222.

(5) Where the constitution of a company requires a director or the Board to exercise or refrain from exercising a power in accordance with a decision or direction of shareholders, any shareholder who takes part in—

(*a*) the making of any decision that the power should or should not be exercised; or

(*b*) the making of any decision whether to give a direction, as the case may be, shall be deemed, in relation to the making of any such decision, to be a director for the purposes of sections 159 to 222.

(6) Subsection (2) shall not include a person to the extent that the person acts only in a professional capacity.

Powers of directors as to the management of the company

159.—(1) The business and affairs of a company shall be managed by, or under the direction or supervision of, the Board.

(2) The Board shall have all the powers necessary for managing, and for directing and supervising the management of, the business and affairs of the company.

(3) Subsections (1) and (2) shall be subject to any modifications, adaptations, exceptions, or limitations contained in this Act or in the company's constitution.

Substantial transactions

160.—(1) A company shall not enter into a substantial transaction unless the transaction is—

(*a*) approved by special resolution; or

(*b*) contingent on approval by special resolution.

(2) In this section—

"assets" includes property of any kind, whether tangible or intangible;

"substantial transaction", in relation to a company, means—

(*a*) the acquisition of, or an agreement to acquire, whether contingent or not, assets the value of which is more than seventy-five per cent of the value of the company's assets before the acquisition;

(*b*) the disposition of, or an agreement to dispose of, whether contingent or not, assets of the company the value of which is more than seventy-five per cent of the value of the company's assets before the disposition; or

(*c*) a transaction that has or is likely to have the effect of the company acquiring rights or interests or incurring obligations or liabilities the value of which is more than seventy-five per cent of the value of the company's assets before the transaction.

(3) A company shall not enter into a transaction of the kind referred to in subsection (1) which involves the acquisition or disposition or the acquiring of rights, interests or incurring obligations of, in any case, more than half the value of the company's assets unless the transaction is—

(*a*) approved by ordinary resolution; or

(*b*) contingent on approval by ordinary resolution, and the description of a substantial transaction in subsections (2) (*a*), (*b*) and (*c*) shall, in all respects, apply when determining the nature of such transaction except that "half of the value" shall be applied instead of "seventy-five per cent of the value".

(4) The provisions of subsection (5) shall apply to a transaction under subsection (3) in the same manner as they apply to a substantial transaction except that "seventy-five per cent of the value" shall be applied instead of "half of the value".

(5) Nothing in paragraph (*c*) of the definition of "substantial transaction" in subsection (2) shall apply by reason only of the company giving, or entering into an agreement to give, a charge secured over assets of the company, the value of which is more than seventy-five per cent of the value of the company's assets for the purpose of securing the repayment of money or the performance of an obligation.

(6) This section shall not apply to a substantial transaction or a transaction under subsection (3) entered into by a receiver appointed pursuant to an instrument creating a charge over all or substantially all of the property of a company.

(7) No lender or other person dealing with a company shall be concerned to see or inquire whether the conditions of this section have been fulfilled and no debt incurred or contract entered into with the company by a person dealing with it shall be invalid or ineffectual, except in the case of actual notice to that person, at the time when the debt was incurred or the contract was entered into, that the company was acting in breach of this section.

(8) This section shall not apply to a collective investment company licensed by the Registrar of Financial institutions.

Delegation of powers

161.—(1) The Board of a company may delegate to a committee of directors, a director or employee of the company, or any other person, any one or more of the powers conferred on them by the constitution of the company on such terms and conditions as they see fit.

(2) A Board that delegates a power under subsection (1) shall be responsible for the exercise of the power by the delegate as if the power had been exercised by the Board, unless the Board—

(*a*) believed on reasonable grounds at all times before the exercise of the power that the delegate would exercise the power in conformity with the duties imposed on directors of the company by this Act and the company's constitution; and

(*b*) has monitored, by means of reasonable methods properly used, the exercise of the power by the delegate.

Division II—Appointment and Removal of Directors

Number of directors

162.—(1) A private company shall have at least one director.

(2) A public company shall have at least three directors.

(3) A company shall have at least one director who shall be ordinarily resident in Malaŵi.

Direction for a company to make an appointment

163.—(1) If it appears to the Registrar that a company is in breach of section 162, the Registrar shall direct the company to comply with the provisions of this Act on appointment of directors within a specified period but not later than three months.

(2) A company shall comply with the direction of the Registrar by—

(*a*) making the necessary appointment or appointments; and

(*b*) giving notice of them in accordance with section 172 before the end of the period specified in the direction.

(3) A company and every officer of the company who fails to comply with a direction under this section is liable to a fine in accordance with the prevailing schedule of penalties.

Qualification and minimum age for appointment as director

164.—(1) A company shall appoint a natural person as director.

(2) No person shall be appointed, or hold office, as a director of a company if he is a person who—

(*a*) is under 18 years of age;

(*b*) subject to sections 169 (4) to (7), is, in the case of a public company, over seventy years of age;

(*c*) is an undischarged bankrupt;

(*d*) is prohibited from being a director or promoter of or being concerned or taking part in the management of a company;

(*e*) is not a natural person save in the case of State Owned Companies;

(*f*) has been adjudged to be of unsound mind;

(*g*) by virtue of the constitution of a company, does not comply with any qualifications for directors.

(3) A person who is disqualified from being a director but who acts as a director shall be deemed to be a director for the purposes of a provision of this Act that imposes a duty or an obligation on a director of a company.

Director's consent required

165. A person shall not be appointed a director of a company unless that person has consented in writing to be a director and certified that he is not disqualified from being appointed or holding office as a director of a company.

Appointment of first and subsequent directors

166.—(1) A person named as a director in an application for registration or in an amalgamation proposal shall hold office as a director from the date of registration or the date the amalgamation proposal is effective, as the case may be, until that person ceases to hold office as a director in accordance with this Act.

(2) All subsequent directors of a company shall, unless the constitution of the company otherwise provides, be appointed by ordinary resolution.

Court may appoint directors

167.—(1) Where—

(*a*) there are no directors of a company, or the number of directors is less than the *quorum* required for a meeting of the Board; and

(*b*) it is not possible or practicable to appoint directors in accordance with the company's constitution or under section 171 (3), a shareholder or creditor of the company may apply to the Court to appoint one or more persons as directors of the company, and the Court may make an appointment if it considers that it is in the interests of the company to do so.

(2) An appointment shall be made on such terms and conditions as the Court thinks fit.

Appointment of directors of public company to be voted on individually

168.—(1) Subject to the constitution of the company, the shareholders of a public company shall not vote on a resolution to appoint a director of the company unless—

(*a*) the resolution is in respect of the appointment of one director; or

(*b*) where the resolution is a single resolution for the appointment of two or more persons as directors of the company, a separate resolution that it be so voted on has first been passed without a vote being cast against it.

(2) A resolution in contravention of subsection (1) shall be void even though no objection was taken at the time it was passed.

(3) Subsection (2) shall not limit the operation of section 173.

(4) No provision for the automatic reappointment of retiring directors in default of another appointment shall apply on the passing of a resolution in contravention of subsection (1).

(5) Nothing in this section shall prevent the election of two or more directors by ballot or poll.

Removal of directors

169.—(1) Notwithstanding anything in its constitution or in any agreement between it and a director, a director of a public company may be removed from office by an ordinary resolution passed at a meeting called for that purpose.

(2) Subject to the constitution of a company, a director of a private company may be removed from office by special resolution passed

at a meeting called for the purpose that includes the removal of the director.

(3) The notice of meeting shall state that the purpose of the meeting is the removal of the director.

(4) The office of director of a public company or of a subsidiary of a public company shall become vacant at the conclusion of the annual meeting commencing next after the director attains the age of seventy years.

(5) Where the office of director has become vacant under subsection (4), no provision for the automatic reappointment of retiring directors in default of another appointment shall apply to that director.

(6) Notwithstanding anything in this section, a person of or over the age of seventy years may—

(*a*) by an ordinary resolution of which no shorter notice is given than that required to be given for the holding of a meeting of shareholders, be appointed or re-appointed as a director of that company to hold office until the next annual meeting of the company or be authorized to continue to hold office as a director until the next annual meeting of the company; or

(*b*) in the case of an application for incorporation of a public company, be appointed with the consent in writing of the proposed shareholders.

(7) Nothing in this section shall limit or affect the operation of any provision in the constitution of a company preventing any person from being appointed a director or requiring any director to vacate his office at any age below seventy years.

(8) The provisions of the constitution of a company relating to the rotation and retirement of directors shall not apply to a director who is appointed or re-appointed pursuant to subsections (5) to (7) but such provisions of the constitution shall continue to apply to all other directors of the company.

Director ceasing to hold office

170.—(1) The office of director of a company shall be vacated if the person holding that office—

(*a*) resigns in accordance with subsection (2);

(*b*) is removed from office in accordance with this Act or the constitution of the company;

(*c*) becomes disqualified from being a director pursuant to section 164;

(*d*) becomes disqualified from being a director pursuant to subsection (4);

(*e*) dies; or

(*f*) otherwise vacates office in accordance with the constitution of the company.

(2) A director of a company may resign office by signing a written notice of resignation and delivering it to the address for service of the company.

(3) A notice under subsection (2) shall be effective when it is received at that address or at a later time specified in the notice.

(4) Notwithstanding the vacation of office, a person who held office as a director shall remain liable under the provisions of this Act that impose liabilities on directors in relation to acts and omissions and decisions made while that person was a director.

Resignation or death of last remaining director

171.—(1) Where a company has only one director, that director shall not resign office until that director has called a meeting of shareholders to receive notice of the resignation, and to appoint one or more new directors.

(2) A notice of resignation given by the sole director of a company shall not take effect, notwithstanding its terms, until the date of the meeting of shareholders called in accordance with subsection (1).

(3) Every company which for a continuous period of six months has been a one person company shall, if it has not already made the nomination at the time of incorporation, file with the Registrar a notice nominating a person to be the secretary of the company in the event of the death of the sole shareholder and director.

(4) A notice under subsection (3) shall state the full name, residential address and occupation of the person nominated and shall be accompanied by the consent to act in writing signed by that person.

(5) The person nominated by a one person company pursuant to subsection (3) shall assume office as secretary of the company upon the death of the sole shareholder and director with the responsibility of calling as soon as practicable a meeting of persons who appear to be beneficiaries of the deceased's estate or other personal

representative of the deceased for the purpose of appointing a new director or directors.

(6) The secretary shall resign from office at the meeting referred to in subsection (5) and during the interim period until the meeting is called shall attend to the filing of any returns that may be required from the company.

(7) The secretary shall be entitled to be indemnified by the company in relation to any reasonable costs and expenses of acting together with the payment of such fee as shall be agreed in writing with the company at the time of appointment or at any subsequent time.

(8) Where a person who is the only director and shareholder of a private company dies, persons who appear to be beneficiaries of the deceased's estate, or where he leaves no person who appears to be a beneficiary of the deceased's estate, the Registrar may appoint a director.

(9) Where the persons who appear to be beneficiaries of the deceased's estate fail to appoint a director within three months of the death of the last director, the Registrar may appoint a fit and proper person to act as director, until the appointment of a director by the persons who appear to be beneficiaries of the deceased's estate.

(10) Where a person who is the only director and shareholder of a private company is unable to manage the affairs of the company by reason of his mental incapacity, the appointed guardian may act as director or appoint a person as director.

Notice of change of directors and secretaries

172.—(1) The Board shall deliver or cause to be delivered to the Registrar for registration notice in an approved form of—

(*a*) any change in the directors or the secretary of a company or person nominated pursuant to section 171 (3); or

(*b*) any change in the name or the residential address or other particulars of a director or secretary of a company or person nominated pursuant to section 171 (3).

(2) A notice under subsection (1) shall—

(*a*) specify the date of the change;

(*b*) include the full name and residential address of every person who is a director or secretary of the company or person nominated under section 171 (3) from the date of the notice;

(*c*) in the case of the appointment of a new director or secretary, or person nominated under section 171 (3), be accompanied by the form of consent and certificate required pursuant to section 165; and

(*d*) be delivered to the Registrar within twenty-eight days of—

(i) in the case of an appointment or resignation of a director or secretary, the date on which the change occurs;

(ii) in the case of the death of a director or secretary or a change in the name or residential address of a director or secretary, of the date on which the company becomes aware of the change.

(3) Where the company fails to comply with this section every officer of the company who is in default is liable to a fine in accordance with the prevailing schedule of penalties.

Validity of acts of directors

173. The acts of a director shall be valid even though—

(*a*) the directors' appointment was defective; or

(*b*) the director is not qualified for appointment.

Register of directors

174.—(1) Every company must keep a register of its directors.

(2) The register must contain particulars of each person who is a director of the company including but not limited to—

(*a*) names;

(*b*) address;

(*c*) nationality;

(*d*) country of residence;

(*e*) occupation or profession;

(*f*) date of birth.

(3) The register must be kept available for search—

(*a*) at the company's registered office; or

(*b*) other designated place.

(4) The company must give notice to the Registrar—

(*a*) of the place at which the register is kept available for search; and

(*b*) of any change in that place.

(5) The register must be open to the search—

(*a*) of any member of the company without charge; and

(*b*) of any other person on payment of such fee as may be prescribed.

(6) A company or every officer of the company who defaults in complying with subsection (1), (2) or (3) or defaults for fourteen days in complying with subsection (4), or refuses a search required under subsection (5) is liable to a fine in accordance with the prevailing schedule of penalties.

(7) In the case of a refusal of a search of the register, the Registrar may by order compel an immediate search of it.

Division III—Core Duties of Directors

Scope and nature of general duties

175.—(1) The general duties specified in sections 176 to 182 are owed by a director of a company to the company.

(2) A person who ceases to be a director continues to be subject—

(*a*) to the duty in section 180 as regards the exploitation of any property, information or opportunity of which he became aware at a time when he was a director; and

(*b*) to the duty in section 181 as regards things done or omitted by him before he ceased to be a director.

(3) Subsection (2) applies to a former director as to a director, subject to any necessary adaptations.

(4) The general duties are based on certain common law rules and equitable principles as they apply in relation to directors and have effect in place of those rules and principles as regards the duties owed to a company by a director.

(5) The general duties shall be interpreted and applied in the same way as common law rules or equitable principles, and regard shall be had to the corresponding common law rules and equitable principles in interpreting and applying the general duties.

(6) The general duties apply to shadow directors where, and to the extent that, the corresponding common law rules or equitable principles so apply.

Duty to act within powers

176. A director of a company shall—

(*a*) act in accordance with the company's constitution; and

(*b*) only exercise powers for the purposes for which they are conferred.

Duty to promote the success of the company

177.—(1) A director of a company shall act in the way he considers, in good faith, would be most likely to promote the success of the company for the benefit of its members as a whole, and in so doing have regard to factors including—

(*a*) the likely consequences of any decision in the long term;

(*b*) the interests of the company's employees;

(*c*) the need to foster the company's business relationships with suppliers, customers and others;

(*d*) the impact of the company's operations on the community and the environment;

(*e*) the desirability of the company maintaining a reputation for high standards of business conduct; and

(*f*) the need to act fairly as between members of the company.

(2) Where or to the extent that the purposes of the company consist of or include purposes other than the benefit of its members, subsection (1) has effect as if the reference to promoting the success of the company for the benefit of its members were to achieving those purposes.

(3) The duty imposed by this section has effect subject to any written law or rule of law requiring directors, in certain circumstances, to consider or act in the interests of creditors of the company.

Duty to exercise independent judgment

178.—(1) A director of a company must exercise independent judgment.

(2) This duty shall not be infringed by the director acting—

(*a*) in accordance with an agreement duly entered into by the company that restricts the future exercise of discretion by its directors; or

(*b*) in a way authorized by the company's constitution.

Duty to exercise reasonable care, skill and diligence

179.—(1) A director of a company shall exercise reasonable care, skill and diligence.

(2) This means the care, skill and diligence that would be exercised by a reasonably diligent person with—

(*a*) the general knowledge, skill and experience that may reasonably be expected of a person carrying out the functions carried out by the director in relation to the company; and

(*b*) the general knowledge, skill and experience that the director has.

Duty to avoid conflict of interest

180.—(1) A director of a company must avoid a situation in which he has, or can have, a direct or indirect interest that conflicts, or possibly may conflict, with the interests of the company.

(2) This applies in particular to the exploitation of any property, information or opportunity and it is immaterial whether the company could take advantage of the property, information or opportunity.

(3) This duty does not apply to a conflict of interest arising in relation to a transaction or arrangement with the company.

(4) This duty is not infringed—

(*a*) if the situation cannot reasonably be regarded as likely to give rise to a conflict of interest; or

(*b*) if the matter has been authorized by the directors.

(5) Authorization may be given by the directors—

(*a*) where the company is a private company and nothing in the company's constitution invalidates such authorization, by the matter being proposed to and authorized by the directors; or

(*b*) where the company is a public company and its constitution includes provision enabling the directors to authorize the matter, by the matter being proposed to and authorized by them in accordance with the constitution.

(6) The authorization shall be effective only if—

(*a*) any requirement as to the *quorum* at the meeting at which the matter is considered is met without counting the director in question or any other interested director; and

(*b*) the matter was agreed to without their voting or would have been agreed to if their votes had not been counted.

(7) Any reference in this section to a conflict of interest includes a conflict of interest and duty and a conflict of duties.

Duty not to accept benefits from third parties

181.—(1) A director of a company must not accept a benefit from a third party conferred by reason of—

(*a*) his being a director; or

(*b*) his doing, or failure to do, anything as director.

(2) A "third party" means a person other than the company, an associated body corporate or a person acting on behalf of the company or an associated body corporate.

(3) Benefits received by a director from a person by whom his services as a director or otherwise are provided to the company are not regarded as conferred by a third party.

(4) This duty is not infringed if the acceptance of the benefit cannot reasonably be regarded as likely to give rise to a conflict of interest.

(5) Any reference in this section to a conflict of interest includes a conflict of interest and duty and a conflict of duties.

Duty to declare interest in proposed transaction or arrangement

182.—(1) If a director is in any way, directly or indirectly, interested in a proposed transaction or arrangement with the company, he shall declare the nature and extent of that interest to the other directors.

(2) The declaration may be made—

(*a*) at a meeting of the directors; or

(*b*) by notice in writing to the directors.

(3) If a declaration of interest under this section proves to be, or becomes, inaccurate or incomplete, a further declaration shall be made.

(4) Any declaration required by this section shall be made before the company enters into the transaction or arrangement.

(5) This section does not require a declaration of an interest of which the director is not aware or where the director is not aware of the transaction or arrangement in question and for this purpose a director is treated as being aware of matters of which he ought reasonably to be aware.

(6) A director need not declare an interest—

(*a*) if it cannot reasonably be regarded as likely to give rise to a conflict of interest;

(*b*) if, or to the extent that, the other directors are already aware of it (and for this purpose the other directors are treated as aware of anything of which they ought reasonably to be aware); or

(*c*) if, or to the extent that, it concerns terms of his service contract that have been or are to be considered—

(i) by a meeting of the directors; or

(ii) by a committee of the directors appointed for the purpose under the company's constitution.

Consent, approval or authorization by members

183.—(1) In a case where—

(*a*) section 180 is complied with by authorization by the directors; or

(*b*) section 182 is complied with, the transaction or arrangement is not liable to be set aside by virtue of any common law rule or equitable principle requiring the consent or approval of the members of the company. This is without prejudice to any enactment, or provision of the company's constitution, requiring such consent or approval.

(2) The application of the general duties is not affected by the fact that the case also falls within Part IX except that where that Part applies and—

(*a*) approval is given under that Part; or

(*b*) the matter is one as to which it is provided that approval is not needed, it is not necessary also to comply with section 180 or section 181.

(3) Compliance with the general duties does not remove the need for approval under any applicable provision of Part IX.

(4) The general duties—

(*a*) have effect subject to any rule of law enabling the company to give authority, specifically or generally, for anything to be done or not to be done by the directors, or any of them, that would otherwise be a breach of duty; and

(*b*) where the company's articles contain provisions for dealing with conflicts of interest, are not infringed by anything done or omitted to be done by the directors, or any of them, in accordance with those provisions.

(5) The general duties shall have effect except as otherwise provided or the context otherwise requires, notwithstanding any enactment or rule of law.

Duty to comply with the prescribed code of corporate governance in Malaŵi

184.—(1) Directors shall comply with any code for corporate governance as may be prescribed.

(2) Where a specific sector code of corporate governance exists, directors shall also comply with the provisions of the sector code.

(3) Any code of corporate governance prescribed under this section shall be directory in nature but the Court, the Registrar or any

authority shall be entitled to have regard to such code in interpreting and applying any of the provisions of this Act.

Civil consequences for breach of general duties

185.—(1) The consequences of breach of sections 176 to 182 shall be the same as would apply if the corresponding common law rule or equitable principle applied.

(2) The duties in those sections, with the exception of section 179 shall, accordingly, be enforceable in the same way as any other fiduciary duty owed to a company by its directors.

Division IV—Core Disclosure Obligations in Transactions Involving Self-Interest

Meaning of "interested"

186.—(1) Subject to subsection (2), a director of a company shall be interested in a transaction or arrangement to which the company is a party where the director—

(*a*) is a party to, or shall or may derive a material financial benefit from, the transaction or arrangement;

(*b*) has a material financial interest in or with another party to the transaction or arrangement;

(*c*) is a director, officer, or trustee of another party to, or person who shall or may derive a material financial benefit from, the transaction, not being a party or person that is—

(i) the company's parent company being a parent company of which the company is a wholly-owned subsidiary;

(ii) a wholly-owned subsidiary of the company; or

(iii) a wholly-owned subsidiary of a parent company of which the company is also a wholly-owned, subsidiary;

(*d*) is the parent, child or spouse of another party to, or person who shall or may derive a material financial benefit from the transaction; or

(*e*) is otherwise directly or indirectly materially interested in the transaction or arrangement.

(2) A director of a company shall not be deemed to be interested in a transaction or arrangement to which the company is a party if the transaction or arrangement comprises only the giving by the company of security to a third party and at the request of that third party which has no connexion, with the director and in respect of a debt or obligation, of the company for which the director or another

person has personally assumed responsibility in whole or in part under a guarantee, indemnity, or by the deposit of a security.

Declaration of interest

187.—(1) A director of a company shall, forthwith after becoming aware of the fact that he is interested in a transaction or arrangement or proposed transaction or proposed arrangement with the company, cause to be entered in the register of interests where it has one, and, where the company has more than one director, disclose to the Board of the company—

(*a*) where the monetary value of the directors' interest is able to be quantified, the nature and monetary value of that interest; or

(*b*) where the monetary value of the directors' interest cannot be quantified, the nature and extent of that interest.

(2) A director of a company shall not be required to comply with subsection (1) where—

(*a*) the transaction or arrangement or proposed transaction or proposed arrangement is between the director and the company; and

(*b*) the transaction or arrangement or proposed transaction or proposed arrangement is or is to be entered into in the ordinary course of the company's business and on usual terms and conditions.

(3) For the purposes of subsection (1), a general notice entered in the interests register or disclosed to the Board to the effect that a director is a shareholder, director, officer or trustee of another named company or other person and is to be regarded as interested in any transaction which may, after the date of the entry or disclosure, be entered into with that company or person, is a sufficient disclosure of interest in relation to that transaction.

(4) A failure by a director to comply with subsection (1) shall not affect the validity of a transaction or arrangement entered into by the company or the director.

Voidability of transactions where no declaration has been made

188.—(1) A transaction or arrangement entered into by the company in which a director of the company is interested may be voided by the company at any time before the expiration of six months after the transaction or arrangement is disclosed to all the shareholders, whether by means of the company's annual report or otherwise.

(2) A transaction or arrangement shall not be voided where the company receives fair value under it.

(3) For the purposes of subsection (2), the question as to whether a company receives a fair value under a transaction or arrangement shall be determined on the basis of the information known to the company and to the interested director at the time the transaction or arrangement is entered into.

(4) Where a transaction is entered into by the company in the ordinary course of its business and on usual terms and conditions, the company shall be presumed to have received a fair value under the transaction.

(5) For the purposes of this section—

(*a*) a person seeking to uphold a transaction or arrangement and who knew or ought to have known of the directors' interest at the time the transaction was entered into shall have the onus of establishing a fair value; and

(*b*) in any other case, the company shall have the onus of establishing that it did not receive a fair value.

(6) A transaction or arrangement in which a director is interested shall only be voided on the ground of the directors' interest in accordance with this section or the company's constitution.

Effect on third parties

189. The voidability of a transaction or arrangement under section 188 shall not affect the title or interest of a person in or to property which that person has acquired where the property was acquired—

(*a*) from a person other than the company;

(*b*) for valuable consideration; and

(*c*) without knowledge of the circumstances of the transaction or arrangement under which the person referred to in paragraph (*a*) acquired the property from the company.

Application of sections 188 and 189 in certain cases

190. Sections 188 and 189 shall not apply in relation to—

(*a*) remuneration or any other benefit given to a director; or

(*b*) an indemnity given or insurance provided in accordance with section 221.

Interested director may vote

191. Subject to subsection (2) and to the constitution of the company, a director of a company who is interested in a transaction or arrangement entered into, or to be entered into, by the company, may—

(*a*) in the case of a public company, not vote on any matter relating to the transaction or arrangement, and if he does vote, his vote shall not be counted;

(*b*) in the case of a private company, vote on any matter relating to the transaction or arrangement provided he discloses his interest under section 187;

(*c*) attend a meeting of directors at which a matter relating to the transaction or arrangement arises and be included among the directors present at the meeting for the purpose of a *quorum*;

(*d*) sign a document relating to the transaction or arrangement on behalf of the company; and

(*e*) do any other thing in his capacity as a director in relation to the transaction or arrangement, as if the director were not interested in the transaction or arrangement.

Relevant interests to be disregarded in certain cases

192.—(1) For the purposes of section 193, no account shall be taken of a relevant interest of a person in a share if—

(*a*) the ordinary business of the person who has the relevant interest consists of, or includes, the lending of money or the provision of financial services, or both, and that person has the relevant interest only as security given for the purposes of a transaction or arrangement entered into in the ordinary course of the business of that person;

(*b*) that person has the relevant interest by reason only of acting for another person to acquire or dispose of that share on behalf of the other person in the ordinary course of business of licensed investment dealer;

(*c*) that person has the relevant interest solely by reason of being appointed as a proxy to vote at a particular meeting of members, or of a class of members, of the company and the instrument of that person's appointment is produced before the start of the meeting or by a time specified in the company's constitution, as the case may be;

(*d*) that person—

(i) is a trustee or a nominee company; and

(ii) has the relevant interest by reason only of acting for another person in the ordinary course of business of that trustee or nominee company; or

(*e*) the person has the relevant interest by reason only that the person is a bare trustee of a trust to which the share is subject.

(2) For the purposes of subsection (1) (*d*), a trustee company is a collective investment scheme licensed under the Financial Services Act. Cap. 44:05

(3) For the purposes of subsection (1) (*e*), a trustee may be a bare trustee notwithstanding that he is entitled as a trustee to be remunerated out of the income or property of the trust.

Disclosure of share dealing by directors

193.—(1) A person who—

(*a*) on the coming into operation of this section, is a director of a public company; or

(*b*) becomes a director of a public company; and who has a relevant interest in any shares issued by the company shall forthwith—

(i) disclose to the board the number and class of shares in which the relevant interest is held and the nature of the relevant interest; and

(ii) ensure that the particulars disclosed to the board under paragraph (2) (*a*) are entered in the register of interests.

(2) A director of a public company who acquires or disposes of a relevant interest in shares issued by the company shall forthwith, after the acquisition or disposition—

(*a*) disclose to the board—

(i) the number and class of shares in which the relevant interest has been acquired or the number and class of shares in which the relevant interest was disposed of, as the case may be;

(ii) the nature of the relevant interest;

(iii) the consideration paid or received; and

(iv) the date of the acquisition or disposition; and

(*b*) ensure that the particulars disclosed to the board under paragraph (*a*) are entered in the interests register.

Restrictions on share dealing by directors

194.—(1) Where a director of a company in his capacity as a director, or an employee of the company or a related company, has information which is material to an assessment of the value of shares or other securities issued by the company or a related company, being information that would not otherwise be available to him, the director may acquire or dispose of those shares or securities only where—

(*a*) in the case of an acquisition, the consideration given for the acquisition is not less than the fair value of the shares or securities; or

(*b*) in the case of a disposition, the consideration received for the disposition is not more than the fair value of the shares or securities.

(2) For the purposes of subsection (1), the fair value of shares or securities is to be determined on the basis of all information known to the director or publicly available at the time.

(3) Subsection (1) shall not apply in relation to a share or security that is acquired or disposed of by a director only as a nominee for the company or a related company.

(4) Where a director acquires shares or securities in contravention of subsection (1) (*a*), the director shall be liable to the person from whom the shares or securities were acquired for the amount by which the fair value of the shares or securities exceeds the amount paid by the director.

(5) Where a director disposes of shares or securities in contravention of subsection (1) (*b*), the director shall be liable to the person to whom the shares or securities were disposed of for the amount by which the consideration received by the director exceeds the fair value of the shares or securities.

(6) This section shall not apply in relation to a company listed on a stock exchange licensed under the Securities Act. Cap. 46:06

Division V—Transactions Involving Self-Interest which Require the Disclosure and Approval of Shareholders

Directors' long-term service contracts

195.—(1) This section applies to provision under which the guaranteed term of a directors' employment—

(*a*) with the public company of which he is a director; or

(*b*) where he is the director of a holding company, within the group consisting of that company and its subsidiaries is, or may be, longer than two years.

(2) A public company may not agree to such provision unless it has been approved—

(*a*) by resolution of the shareholders of the company; and

(*b*) in the case of a director of a holding company, by resolution of the shareholders of that company.

(3) The guaranteed term of a directors' employment is—

(*a*) the period, if any, during which the directors' employment—

(i) is to continue, or may be continued otherwise than at the instance of the company (whether under the original agreement

or under a new agreement entered into in pursuance of it); and

(ii) cannot be terminated by the company by notice, or can be so terminated only in specified circumstances; or

(*b*) in the case of employment terminable by the company by notice, the period of notice required to be given, or, in the case of employment having a period within paragraph (*a*) and a period within paragraph (*b*), the aggregate of those periods.

(4) If more than six months before the end of the guaranteed term of a directors' employment the company enters into a further service contract (otherwise than in pursuance of a right conferred, by or under the original contract, on the other party to it), this section applies as if there were added to the guaranteed term of the new contract the unexpired period of the guaranteed term of the original contract.

(5) A resolution approving provision to which this section applies must not be passed unless a memorandum setting out the proposed contract incorporating the provision is made available to members—

(*a*) in the case of a written resolution, by being sent or submitted to every eligible member at or before the time at which the proposed resolution is sent or submitted to him;

(*b*) in the case of a resolution at a meeting, by being made available for inspection by members of the company both—

(i) at the company's registered office for not less than fifteen days ending with the date of the meeting; and

(ii) at the meeting itself.

(6) No approval is required under this section on the part of the shareholders of a body corporate that—

(*a*) is not a company registered in Malaŵi; or

(*b*) is a wholly-owned subsidiary of another body corporate.

(7) In this section "employment" means any employment under a directors' service contract.

(8) If a company agrees to provision in contravention of this section—

(*a*) the provision is void, to the extent of the contravention; and

(*b*) the contract is deemed to contain a term entitling the company to terminate it at any time by the giving of reasonable notice.

Substantial property transactions

196.—(1) A public company may not enter into an arrangement under which—

(*a*) a director of the company or of its holding company, or a person connected with such a director, acquires or is to acquire from the company, directly or indirectly, a substantial non-cash asset; or

(*b*) the company acquires or is to acquire a substantial non-cash asset, directly or indirectly, from such a director or a person so connected, unless the arrangement has been approved by a resolution of the members of the company or is conditional on such approval being obtained.

(2) If the director or connected person is a director of the company's parent company or a person connected with such a director, the arrangement must also have been approved by a resolution of the members of the parent company or be conditional on such approval being obtained.

(3) A company shall not be subject to any liability by reason of a failure to obtain approval required by this section.

(4) No approval is required under this section on the part of the members of a body corporate that—

(*a*) is not a public company registered in Malaŵi; or

(*b*) is a wholly-owned subsidiary of another body corporate.

(5) For the purposes of this section—

(*a*) an arrangement involving more than one non-cash asset; or

(*b*) an arrangement that is one of a series involving non-cash assets,

shall be treated as if they involved a non-cash asset of a value equal to the aggregate value of all the non-cash assets involved in the arrangement or, as the case may be, the series.

(6) This section shall not apply to a transaction so far as it relates—

(*a*) to anything to which a director of a company is entitled under his service contract; or

(*b*) to payment for loss of office.

Meaning of "substantial"

197.—(1) An asset is a substantial asset in relation to a company if its value exceeds ten per cent of the value of the company's net assets determined by reference to its most recent audited accounts.

(2) Whether an asset is a substantial asset may be determined as at the time the arrangement is entered into.

Exception for transactions with shareholders or other group companies

198.—Approval shall not be required for substantial property transactions—

(*a*) between a public company and a person in his capacity as a shareholder of that company; or

(*b*) for a transaction between—

(i) a parent company and its wholly-owned subsidiary; or

(ii) two wholly-owned subsidiaries of the same holding company.

Exception in case of company in winding-up or administration

199.—(1) This section shall apply to a public company—

(*a*) that is being wound up (unless the winding-up is a members' voluntary winding-up); or

(*b*) that is in insolvency proceedings within the meaning of the Insolvency Act.

Cap. 11:01

(2) Approval shall not be required for substantial property transactions—

(*a*) on the part of the members of a company to which this section applies; or

(*b*) for an arrangement entered into by a company to which this section applies.

Exception for transaction on a licensed stock exchange

200.—(1) Approval shall not be required for substantial property transactions in respect of transactions on a licensed stock exchange effected by a director, or a person connected with him, through the agency of a person who in relation to the transaction acts as an independent broker.

(2) For this purpose—

(*a*) "independent broker" means a person who, independently of the director or any person connected with him, selects the person with whom the transaction is to be effected; and

(*b*) "licensed stock exchange" has the same meaning as in the Securities Act.

Cap. 46:06

Loans and quasi-loans to directors or connected persons

201.—(1) A public company may not—

(*a*) make a loan or quasi-loan to a director or a person connected with a director of the company or of its holding company; or

(*b*) give a guarantee or provide security in connexion with a loan or quasi-loan made by any person to such a director or a person connected with a director, unless the transaction has been approved by a resolution of the shareholders of the company.

(2) If the director is a director of the company's holding company, the transaction must also have been approved by a resolution of the shareholders of the holding company.

(3) A resolution approving a transaction to which this section applies shall not be passed unless a memorandum setting out the matters mentioned in subsection (4) is made available to members—

(*a*) in the case of a written resolution, by being sent or submitted to every eligible member at or before the time at which the proposed resolution is sent or submitted to him;

(*b*) in the case of a resolution at a meeting, by being made available for inspection by members of the company both—

(i) at the company's registered office for not less than fifteen days ending with the date of the meeting; and

(ii) at the meeting itself.

(4) The matters to be disclosed shall be—

(*a*) the nature of the transaction;

(*b*) the amount of the loan and the purpose for which it is required; and

(*c*) the extent of the company's liability under any transaction connected with the loan.

(5) No approval shall be required under this section on the part of the shareholders of a body corporate that—

(*a*) is not a company registered in Malaŵi; or

(*b*) is a wholly-owned subsidiary of another body corporate.

Meaning of "*quasi*-loan" and related expressions

202.—(1) A "*quasi*-loan" is a transaction under which one party ("the creditor") agrees to pay, or pays otherwise than in pursuance of an agreement, a sum for another party ("the borrower"), or agrees to reimburse, or reimburses, otherwise than in pursuance of an agreement, expenditure incurred by the borrower—

(*a*) on terms that the borrower or a person on behalf of the borrower will reimburse the creditor; or

(*b*) in circumstances giving rise to a liability on the borrower to reimburse the creditor.

(2) Any reference to the person to whom a *quasi*-loan is made is a reference to the borrower.

(3) The liabilities of the borrower under a *quasi*-loan include the liabilities of any person who has agreed to reimburse the creditor on behalf of the borrower.

Credit transactions

203.—(1) A public company to which this section applies may not—

(*a*) enter into a credit transaction as creditor for the benefit of a director of the company or of its holding company, or a person connected with such a director; or

(*b*) give a guarantee or provide security in connexion with a credit transaction entered into by any person for the benefit of such a director, or a person connected with such a director, unless the credit transaction, the giving of the guarantee or the provision of security, as the case may be has been approved by a resolution of the members of the company.

(2) If the director or connected person is a director of its parent company or a person connected with such a director, the transaction must also have been approved by a resolution of the members of the holding company.

(3) A resolution approving a transaction to which this section applies must not be passed unless a memorandum setting out the matters mentioned in subsection (5) is made available to members—

(*a*) in the case of a written resolution, by being sent or submitted to every eligible member at or before the time at which the proposed resolution is sent or submitted to him;

(*b*) in the case of a resolution at a meeting, by being made available for inspection by members of the company both—

(i) at the company's registered office for not less than fifteen days ending with the date of the meeting; and

(ii) at the meeting itself.

(4) The matters to be disclosed are—

(*a*) the nature of the transaction;

(*b*) the value of the credit transaction and the purpose for which the land, goods or services sold or otherwise disposed of, leased, hired or supplied under the credit transaction are required; and

(*c*) the extent of the company's liability under any transaction connected with the credit transaction.

(5) No approval shall be required under this section on the part of the members of a body corporate that—

(*a*) is not a public company registered in Malaŵi; or

(*b*) is a wholly-owned subsidiary of another body corporate.

Meaning of "credit transactions"

204.—(1) A "credit transaction" is a transaction under which one party ("the creditor")—

(*a*) supplies any goods or sells any land under a hire-purchase agreement or a conditional sale agreement;

(*b*) leases or hires any land or goods in return for periodical payments; or

(*c*) otherwise disposes of land or supplies goods or services on the understanding that payment, whether in a lump sum or instalments or by way of periodical payments or otherwise, is to be deferred.

(2) Any reference to the person for whose benefit a credit transaction is entered into shall be reference to the person to whom goods, land or services are supplied, sold, leased, hired or otherwise disposed of under the transaction.

Exceptions for expenditure on company business, etc

205.—(1) Approval shall not required under sections 201 and 203 for anything done by a public company—

(*a*) to provide a director of the company or of its holding company, or a person connected with any such director, with funds to meet expenditure incurred or to be incurred by him—

(i) for the purposes of the company; or

(ii) for the purpose of enabling him properly to perform his duties as an officer of the company, provided the value of the transaction in question, and the value of any other relevant transactions or arrangements, do not exceed the prevailing limit as established by regulations issued by the Registrar.

(*b*) to provide a director of the company or of its parent company with funds to meet expenditure incurred or to be incurred by him in defending any criminal or civil proceedings in connexion with any alleged negligence, default, breach of duty or breach of trust by him in relation to the company or an associated company;

(*c*) to provide a director of the company or of its parent company with funds to meet expenditure incurred, or to be incurred, by him in defending himself—

(i) in an investigation by a regulatory authority; or

(ii) against action proposed to be taken by a regulatory authority, in connexion with any alleged negligence, default, breach of duty or breach of trust by him in relation to the company or an associated company;

(*d*) for a company to make a loan, or quasi-loan, enter into a credit transaction, or to give a guarantee or provide security in connexion with a loan or quasi-loan, if the aggregate of—

(i) the value of the transaction; and

(ii) the value of any other relevant transactions or arrangements, does not exceed the prevailing limit as issued by the Registrar by way of Order;

(*e*) for the making of a loan or quasi-loan to an associated body corporate, or the giving of a guarantee or provision of security in connexion with a loan or quasi-loan made to an associated body corporate;

(*f*) to enter into a credit transaction as creditor for the benefit of an associated body corporate, or to give a guarantee or provide security in connexion with a credit transaction entered into by any person for the benefit of an associated body corporate;

(*g*) for a money lending company if the transaction or arrangement is entered into by the company in the ordinary course of the company's business, and the value of the transaction is not greater, and its terms are not more favourable, than it is reasonable to expect the company would have offered to a person of the same financial standing but unconnected with the company.

Other relevant transactions or arrangements

206.—(1) This section has effect for determining what are "other relevant transactions or arrangements" for the purposes of any exception to sections 201 and 203 and in the following provisions "the relevant exception" means the exception for the purposes of which that falls to be determined.

(2) Other relevant transactions or arrangements are those previously entered into, or entered into at the same time as the transaction or arrangement in question in relation to which the following conditions are met.

(3) Where the transaction or arrangement in question is entered into—

(*a*) for a director of the company entering into it; or

(*b*) for a person connected with such a director,

the conditions are that the transaction or arrangement was entered into for that director, or a person connected with him, by virtue of the relevant exception by that company or by any of its subsidiaries.

(4) Where the transaction or arrangement in question is entered into—

(*a*) for a director of the parent company of the company entering into it; or

(*b*) for a person connected with such a director,

the conditions are that the transaction or arrangement was entered into for that director, or a person connected with him, by virtue of the relevant exception by the parent company or by any of its subsidiaries.

(5) A transaction or arrangement entered into by a company that at the time it was entered into—

(*a*) was a subsidiary of the company entering into the transaction or arrangement in question; or

(*b*) was a subsidiary of that company's holding company,

shall not be a relevant transaction or arrangement if, at the time the question arises whether the transaction or arrangement in question falls within a relevant exception, it is no longer such a subsidiary.

The value of transactions and arrangements

207.—(1) For the purposes of the provision in this Division on loans, quasi-loans and credit transactions, the value of a transaction or arrangement shall be determined as follows—

(*a*) the value of any other relevant transaction or arrangement shall be taken to be the value so determined reduced by any amount by which the liabilities of the person for whom the transaction or arrangement was made have been reduced;

(*b*) the value of a loan shall be the amount of its principal;

(*c*) the value of a quasi-loan is the amount, or maximum amount, that the person to whom the quasi-loan is made shall be liable to reimburse the creditor;

(*d*) the value of a credit transaction shall be the price that it is reasonable to expect could be obtained for the goods, services or land to which the transaction relates if they had been supplied at the time the transaction is entered into, in the ordinary course of business and on the same terms apart from price as they have been supplied, or are to be supplied, under the transaction in question;

(*e*) the value of a guarantee or security shall be the amount guaranteed or secured:

(*f*) if the value of a transaction or arrangement shall not be capable of being expressed as a specific sum of money—

(i) whether because the amount of any liability arising under the transaction or arrangement is unascertainable, or for any other reason; and

(ii) whether or not any liability under the transaction or arrangement has been reduced, its value is deemed to exceed the prevailing limit as issued by the Registrar by way of Order.

Payments for loss of office

208.—(1) For purposes of this section, a "payment for loss of office" means a payment made to a director or past director of a company—

(*a*) by way of compensation for loss of office as director of the company;

(*b*) by way of compensation for loss, while director of the company or in connexion with his ceasing to be a director of it, of—

(i) any other office or employment in connexion with the management of the affairs of the company; or

(ii) any office, whether as director or otherwise, or employment in connexion with the management of the affairs of any subsidiary or undertaking of the company.

(2) The references to compensation and consideration include benefits otherwise than in cash and references in this Part to payment have a corresponding meaning.

(3) For the purposes of sections 210 to 214—

(*a*) payment to a person connected with a director; or

(*b*) payment to any person at the direction of, or for the benefit of, a director or a person connected with him is treated as payment to the director.

(4) References in sections 210 to 214 to payment by a person include payment by another person at the direction of, or on behalf of, the person referred to.

Amounts taken to be payments for loss of office

209.—(1) This section shall apply where, in connexion with any such transfer as is mentioned in section 211 or 212, a director of the company—

(*a*) is to cease to hold office; or

(*b*) is to cease to be the holder of—

(i) any other office or employment in connexion with the management of the affairs of the company; or

(ii) any office, as director or otherwise, or employment in connexion with the management of the affairs of any subsidiary or undertaking of the company.

(2) If in connexion with any such transfer—

(*a*) the price to be paid to the director for any shares in the company held by him is in excess of the price which could at the time have been obtained by other holders of like shares; or

(*b*) any valuable consideration is given to the director by a person other than the company,

the excess or, as the case may be, the money value of the consideration shall be taken, for the purposes of those sections, to have been a payment for loss of office.

Payments by company

210.—(1) A public company shall not make a payment for loss of office to a director of the company unless the payment has been approved by a resolution of the shareholders of the company.

(2) A public company shall not make a payment for loss of office to a director of its parent company unless the payment has been approved by a resolution of the shareholders of each of those companies.

(3) A resolution approving a payment to which this section applies must not be passed unless a memorandum setting out particulars of the proposed payment including the amount is made available to the shareholders of the company whose approval is sought—

(*a*) in the case of a written resolution, by being sent or submitted to every eligible shareholder at or before the time at which the proposed resolution is sent or submitted to him;

(*b*) in the case of a resolution at a meeting, by being made available for inspection by the shareholders both—

(i) at the company's registered office for not less than fifteen days ending with the date of the meeting; and

(ii) at the meeting itself.

(4) No approval shall be required under this section on the part of the members of a body corporate that—

(*a*) is not a public company registered in Malaŵi; or

(*b*) is a wholly-owned subsidiary of another body corporate.

Payment in connexion with transfer of undertaking, etc.

211.—(1) No payment for loss of office may be made by any person to a director of a public company in connexion with the transfer of the whole or any part of the undertaking or property of the company unless the payment has been approved by a resolution of the shareholder of the company.

(2) No payment for loss of office may be made by any person to a director of a public company in connexion with the transfer of the whole or any part of the undertaking or property of a subsidiary of the company unless the payment has been approved by a resolution of the members of each of the companies.

(3) A resolution approving a payment to which this section applies must not be passed unless a memorandum setting out particulars of the proposed payment including the amount, is made available to the shareholders of the company whose approval is sought—

(*a*) in the case of a written resolution, by being sent or submitted to every eligible member at or before the time at which the proposed resolution is sent or submitted to him;

(*b*) in the case of a resolution at a meeting, by being made available for inspection by the members both—

(i) at the company's registered office for not less than fifteen days ending with the date of the meeting; and

(ii) at the meeting itself.

(4) No approval shall be required under this section on the part of the members of a body corporate that—

(*a*) is not a public company registered in Malaŵi; or

(*b*) is a wholly-owned subsidiary of another body corporate.

(5) A payment made in pursuance of an arrangement—

(*a*) entered into as part of the agreement for the transfer in question, or within one year before or two years after that agreement; and

(*b*) to which the company whose undertaking or property is transferred, or any person to whom the transfer is made,

shall be privy, is presumed, except in so far as the contrary is shown, to be a payment to which this section applies.

Payment in connexion with share transfer

212.—(1) No payment for loss of office may be made by any person to a director of a public company in connexion with a transfer of shares in the company, or in a subsidiary of the company, resulting from a takeover bid unless the payment has been approved by a resolution of the relevant shareholders.

(2) The relevant shareholders are the holders of the shares to which the bid relates and any holders of shares of the same class as any of those shares.

(3) A resolution approving a payment to which this section applies must not be passed unless a memorandum setting out particulars of the proposed payment including the amount, is made available to the shareholders of the company whose approval is sought—

(*a*) in the case of a written resolution, by being sent or submitted to every eligible member at or before the time at which the proposed resolution is sent or submitted to him;

(*b*) in the case of a resolution at a meeting, by being made available for inspection by the members both—

(i) at the company's registered office for not less than fifteen days ending with the date of the meeting; and

(ii) at the meeting itself.

(4) Neither the person making the offer, nor an associate of that person, shall be entitled to vote on the resolution, but—

(*a*) where the resolution is proposed as a written resolution, they are entitled if they would otherwise be so entitled to be sent a copy of it; and

(*b*) at any meeting to consider the resolution they are entitled if they would otherwise be so entitled to be given notice of the meeting, to attend and speak and if present in person or by proxy to count towards the *quorum*.

(5) If at a meeting to consider the resolution a *quorum* is not present, and after the meeting has been adjourned to a later date, a *quorum* is again not present, the payment shall for the purposes of this section, be deemed to have been approved.

(6) No approval shall be required under this section on the part of shareholders in a body corporate that—

(*a*) is not a public company registered in Malaŵi; or

(*b*) is a wholly-owned subsidiary of another body corporate.

(7) A payment made in pursuance of an arrangement—

(*a*) entered into as part of the agreement for the transfer in question, or within one year before or two years after that agreement; and

(*b*) to which the company whose shares are the subject of the bid, or any person to whom the transfer is made, is privy,

shall be presumed, except in so far as the contrary is shown, to be a payment to which this section applies.

Exceptions for payments in discharge of legal obligations

213.—(1) Approval shall not be required under section 210, 211 or 212 for a payment made in good faith—

(*a*) in discharge of an existing legal obligation (as defined below);

(*b*) by way of damages for breach of such an obligation;

(*c*) by way of settlement or compromise of any claim arising in connexion with the termination of a person's office or employment; or

(*d*) by way of pension in respect of past services.

(2) In relation to a payment within section 210 an existing legal obligation means an obligation of the company, or anybody corporate associated with it, that was not entered into in connexion with, or in consequence of, the event giving rise to the payment for loss of office.

(3) In relation to a payment within section 211 or 212 an existing legal obligation means an obligation of the person making the payment that was not entered into for the purposes of, in connexion with or in consequence of, the transfer in question.

(4) In the case of a payment within both section 210 and section 211, or within both sections 210 and 212, subsection (2) above applies and not subsection (3).

(5) A payment part of which falls within subsection (1) above and part of which does not is treated as if the parts were separate payments.

Exception for small payments

214.—(1) Approval shall not be required under section 210, 211 or 212 if—

(*a*) the payment in question is made by the company or any of its subsidiaries; and

(*b*) the amount or value of the payment, together with the amount or value of any other relevant payments, does not exceed the prevailing small payments limit as issued by the Registrar by way of Order.

(2) For the purposes of this section, "other relevant payments" shall be payments for loss of office in relation to which the following conditions are met.

(3) Where the payment in question is one to which section 210 applies, the conditions are that the other payment was or is paid—

(*a*) by the company making the payment in question or any of its subsidiaries;

(*b*) to the director to whom that payment is made; and

(*c*) in connexion with the same event.

(4) Where the payment in question is one to which section 210 or 212, applies the conditions shall be that the other payment was paid in connexion with the same transfer—

(*a*) to the director to whom the payment in question was made; and

(*b*) by the company making the payment or any of its subsidiaries.

Payments made without approval

215.—(1) If a payment is made in contravention of section 210—

(*a*) it shall be held by the recipient on trust for the company making the payment; and

(*b*) any director who authorized the payment shall be jointly and severally liable to indemnify the company that made the payment for any loss resulting from it.

(2) If a payment is made in contravention of section 211, it shall be held by the recipient on trust for the company whose undertaking or property is or is proposed to be transferred.

(3) If a payment is made in contravention of section 212—

(*a*) it is held by the recipient on trust for persons who have sold their shares as a result of the offer made; and

(*b*) the expenses incurred by the recipient in distributing that sum amongst those persons shall be borne by him and not retained out of that sum.

(4) If a payment is in contravention of section 210 and section 211, subsection (2) of this section shall apply rather than subsection (1).

(5) If a payment is in contravention of section 210 and section 212, subsection (3) of this section shall apply rather than subsection (1), unless the Court directs otherwise.

Division VI—Directors' Service Contracts for Public Companies

Directors' service contracts

216.—(1) For the purposes of this Division, a directors' "service contract", in relation to a public company, means a contract under which—

(*a*) a director of the company undertakes personally to perform services (as director or otherwise) for the company, or for a subsidiary of the company; or

(*b*) services that a director of the company undertakes personally to perform are made available by a third party to the company, or to a subsidiary of the company.

(2) The provisions of this Part relating to directors' service contracts apply to the terms of a person's appointment as a director of a company and are not restricted to contracts for the performance of services outside the scope of the ordinary duties of a director.

Copy of contract or memorandum of terms to be available for inspection

217.—(1) A public company shall keep available for inspection—

(*a*) a copy of every directors' service contract with the company or with a subsidiary of the company; or

(*b*) if the contract is not in writing, a written memorandum setting out the terms of the contract.

(2) All the copies and memoranda shall be kept available for inspection at the company's registered office.

(3) The copies and memoranda shall be retained by the company for at least one year from, the date of termination or expiry of the contract and must be kept available for inspection during that time.

(4) If default is made in complying with subsection (1), (2) or (3), or default is made for fourteen days in complying with subsection (4), an offence is committed by every officer of the company who is in default.

(5) Every officer of the company who defaults in complying with subsection (1), (2) or (3), is liable to a fine in accordance with the prevailing schedule of penalties.

(6) The provisions of this section apply to a variation of a directors' service contract as they apply to the original contract.

Right of shareholder to inspect and request copy

218.—(1) Every copy or memorandum required to be kept under section 217 shall be open to inspection by any member of the company without charge.

(2) Any member of the company shall be entitled, on request and on payment of such fee as may be prescribed, to be provided with a copy of any such copy or memorandum, and a copy shall be provided within seven days after the request is received by the company

(3) A person who contravenes this section shall be liable to a fine in accordance with the prevailing schedule of penalties.

(4) In the case of any such refusal or default the Registrar may order an immediate inspection or, as the case may be, direct that the copy required be sent to the person requiring it.

Application to shadow directors

219. A shadow director shall be treated as a director for the purposes of the provisions in this Part.

Division VII—Directors' Liabilities

Standard of care and civil liability of directors and officers

220.—(1) Every director and officer of a company shall exercise—

(*a*) the powers and discharge the duties of his office honestly, in good faith and in the best interests of the company; and

(*b*) the degree of care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.

(2) Where a director or officer of a public company also holds office as an executive, the director shall exercise that degree of care, diligence and skill which a reasonably prudent and competent executive in that position would exercise.

(3) Where a director or officer commits a breach of any duty under this Division—

(*a*) the director or officer and every person who knowingly participated in the breach shall be liable to compensate the company for any loss it suffers as a result of the breach;

(*b*) the director or officer shall be liable to account to the company for any profit made by the officer as a result of such breach; and

(*c*) any contract or other transaction entered into between the director or officer and the company in breach of those duties may be rescinded by the company.

(4) A director or officer of a company who makes a business judgment shall be taken to meet the requirements of subsections (1) and (2) in respect of the judgment where the director or officer—

(*a*) makes the judgment in good faith for a proper purpose;

(*b*) does not have a material personal interest in the subject matter of the judgment;

(*c*) informs the company of the subject matter of the judgment to the extent he reasonably believes to be appropriate; and

(*d*) reasonably believes that the judgment is in the best interests of the company.

(5) The directors' or officer's belief that the judgment is in the best interests of the company shall be taken to be a reasonable one unless the belief is one that no reasonable person in his position would hold.

(6) In this section "business judgment" means any decision to take or not take action in respect of a matter relevant to the business operations of the company.

Indemnity and insurance

221.—(1) Except as provided in this section, a company shall not indemnify or directly or indirectly effect insurance for, a director, officer or employee of the company or a related company in respect of—

(*a*) liability for any act or omission in his capacity as a director, officer or employee; or

(*b*) costs incurred by that director, officer or employee in defending or settling any claim or proceedings relating to any such liability.

(2) An indemnity given in breach of this section shall be void.

(3) Subject to its constitution, a company may indemnify a director, officer or employee of the company or a related company for any costs incurred by him or the company in respect of any proceedings—

(*a*) that relate to liability for any act or omission in his capacity as a director, officer or employee; and

(*b*) in which judgment is given in his favour, or in which he is acquitted, or which is discontinued or in which he is granted relief or where proceedings are threatened and such threatened action is abandoned or not pursued.

(4) Subject to its constitution, a company may indemnify a director, officer or employee of the company or a related company in respect of—

(*a*) liability to any person, other than the company or a related company, for any act or omission in his capacity as a director, officer or employee; or

(*b*) costs incurred by that director, officer or employee in defending or settling any claim or proceedings relating to any such liability.

(5) Subsection (4) shall not apply to a director, officer or employee who exercises his powers honestly and in good faith, in the best interests of the company and for the respective purposes for which such powers are explicitly or implicitly conferred.

(6) Subject to its constitution, a company may with the prior approval of the Board, effect insurance for a director, officer or employee of the company or a related company in respect of—

(*a*) liability, not being criminal liability, for any act or omission in his capacity as a director or employee;

(*b*) costs incurred by that director or employee in defending or settling any claim or proceeding relating to any such liability; or

(*c*) costs incurred by that director or employee in defending any criminal proceedings—

(i) that have been brought against the director or employee in relation to any act or omission in that person's capacity as a director or employee;

(ii) in which that person is acquitted; or

(iii) in relation to which a *nolle prosequi* is entered.

(7) The Board shall—

(*a*) enter or cause to be entered in the register of interests where the company has one;

(*b*) record or cause to be recorded in the minutes of directors;

(*c*) disclose or cause to be disclosed in the annual report, the particulars of any indemnity given to, or insurance effected for, any director or employee of the company or a related company.

(8) Where an insurance is effected for a director or employee of a company or a related company and the provisions of subsection (6) or (7) have not been complied with, the director or employee shall be personally liable to the company for the cost of effecting the insurance unless the director or employee proves that it was fair to the company at the time the insurance was effected.

(9) In this section—

"director"—

(*a*) includes an officer of a company, a management company or registered agent; and

(*b*) includes a person formerly holding anyone of these offices.

"effect insurance" includes pay, whether directly or indirectly, the costs of the insurance;

"employee" includes a former employee;

"indemnify" includes relieve or excuse from liability, whether before or after the liability arises, and "indemnity" has a corresponding meaning.

Duty of directors as to the company's solvency

222.—(1) A director of a company who believes that the company is unable to pay its debts as they fall due shall forthwith call a meeting of the Board to consider whether the Board should appoint a liquidator or an administrator.

(2) Where a meeting is called under this section, the Board shall consider whether to appoint a liquidator or an administrator, or to carry on the business of the company.

(3) Where—

(*a*) a director fails to comply with subsection (1);

(*b*) at the time of that failure the company was unable to pay its debts as they fell due; and

(*c*) the company is subsequently placed in liquidation,

the Court may, on the application of the liquidator or of a creditor of the company, make an order that the director shall be liable for the whole or any part of any loss suffered by creditors of the company as a result of the company continuing to trade.

(4) Where—

(*a*) at a meeting called under this section the Board does not resolve to appoint a liquidator or an administrator;

(*b*) at the time of the meeting there were no reasonable grounds for believing that the company was able to pay its debts as they fell due; and

(*c*) the company is subsequently placed in liquidation,

the Court may, on the application of the liquidator or of a creditor of the company, make an order that the directors, other than those directors who attended the meeting and voted in favour of appointing a liquidator or an administrator, shall be liable for the whole or any part of any loss suffered by creditors of the company as a result of the company continuing to trade.

Division VIII—Company Secretaries

Public company required to have secretary

223. A public company shall have a secretary.

Direction requiring public company to appoint secretary

224.—(1) If it appears to the Registrar that a public company is in breach of section 223, the Registrar shall inform the company that it is in breach of the said provision and require the company to comply within a specified period of time.

(2) Where the company is in breach of section 223, the company shall comply with the direction of the Registrar by making the necessary appointment, and giving the Registrar notice of it before the end of the period specified in the direction.

(3) A company of every officer of the company who contravenes this section commits an offence and is liable to a fine in accordance with the prevailing schedule of penalties.

Qualifications of secretaries of public companies

225.—(1) It shall be the duty of the directors of a public company to take all reasonable steps to ensure that the secretary or each joint secretary of the company—

(*a*) is a person who appears to them to have the requisite knowledge and experience to discharge the functions of secretary of the company;

(*b*) is a person who, by virtue of his holding or having held any other position or his being a member of any other body, appears to the directors to be capable of discharging the functions of secretary of the company; or

(*c*) has the qualifications specified in subsection (2).

(2) The qualifications of the secretary include—

(*a*) that he has held the office of secretary of a public company for at least three of the five years immediately preceding his appointment as secretary; or

(*b*) that he is a member of any professional body of company secretaries in Malaŵi.

Discharge of functions where office vacant or secretary unable to act

226. Where in the case of any public company the office of secretary is vacant, or there is for any other reason no secretary capable of acting, anything required or authorized to be done by or to the secretary may be done—

(*a*) by or to an assistant or deputy secretary if any; or

(*b*) if there is no assistant or deputy secretary or none capable of acting, by or to any person authorized generally or specifically in that behalf by the directors.

Duty to keep register of secretaries

227.—(1) A public company shall keep a register of its secretaries.

(2) The register shall contain the particulars of the person who is, or persons who are, the secretary or joint secretaries of the company including but not limited to—

(*a*) name;

(*b*) address;

(*c*) any other relevant information.

(3) The register shall be kept available for inspection at the company's registered office.

(4) The register shall be open to the inspection—

(*a*) of any member of the company without charge; and

(*b*) of any other person on payment of such fee as may be prescribed.

(5) A company or every officer of the company who defaults in complying with subsection (1), (2) or (3), or defaults for fourteen days in complying with subsection (4), or refuses an inspection required under subsection (4) is liable to a fine in accordance with the prevailing schedule of penalties.

(6) In the case of a refusal of inspection of the register, the Court may by order compel an immediate inspection of it.

Duty to notify Registrar of changes

228.—(1) A public company shall, within the period of fourteen days from—

(*a*) a person becoming or ceasing to be its secretary or one of its joint secretaries; or

(*b*) the occurrence of any change in the particulars contained in its register of secretaries,

give notice to the Registrar of the change and of the date on which it occurred.

(2) Notice of a person having become secretary, or one of joint secretaries, of the public company shall be accompanied by the consent by that person to act in the relevant capacity.

(3) Where the company fails to comply with this section, every officer of the company who is in default shall be liable to a fine in accordance with the prevailing schedule of penalties.

PART X

Accounting Requirements

Division I—General Obligations for all Companies Except Private Companies

Requirement to keep accurate and complete accounting records

229.—(1) Subject to the other provisions of this section, the board of a company shall cause accounting records to be kept that—

(*a*) correctly record and explain the transactions of the company;

(*b*) shall at any time enable the financial position of the company to be determined with reasonable accuracy;

(*c*) shall enable the directors to prepare financial statements that comply with this Act; and

(*d*) shall enable the financial statements of the company to be readily and properly audited.

Place where accounting records shall be kept

230.—(1) A company shall keep its accounting records in Malaŵi.

(2) A company shall keep its accounting records outside Malaŵi, only in accordance with regulations made under this Act.

Appointment of auditor

231.—(1) A company shall at each annual meeting, appoint an auditor to—

(*a*) hold office from the conclusion of the meeting until the conclusion of the next annual meeting; and

(*b*) audit the financial statements of the company and, if the company is required to complete group financial statements, those group financial statements, for the accounting period next after the meeting.

(2) The Board of a company may fill any casual vacancy in the office of auditor, but while the vacancy remains, the surviving or continuing auditor, if any, may continue to act as auditor.

(3) Where—

(*a*) at an annual meeting of a company, no auditor is appointed or reappointed and no notice has been given; or

(*b*) a casual vacancy in the office of auditor is not filled within one month of the vacancy occurring, the Registrar may appoint an auditor.

(4) A company shall, within seven days of the power becoming exercisable, give written notice to the Registrar of the fact that the Registrar is entitled to appoint an auditor under subsection (3).

Auditor's fees and expenses

232. The fees and expenses of an auditor of a company shall be fixed—

(*a*) where the auditor is appointed at a meeting of the company, by the company at the meeting or in such manner as the company may determine at the meeting;

(*b*) where the auditor is appointed by the directors, by the directors; or

(*c*) where the auditor is appointed by the Registrar, by the Registrar.

Appointment of a partnership as auditor

233.—(1) A partnership may be appointed by the firm name to be the auditor of a company where—

(*a*) at least one member of the firm is ordinarily resident in Malaŵi;

(*b*) all or some of the partners including the partner who is ordinarily resident in terms of paragraph (*a*) are qualified for appointment under section 234;

(*c*) no member of the firm is indebted to the company or a related company unless the debt is in the ordinary course of business;

(*d*) no member of the firm is—

(i) an officer or employee of the company; or

(ii) a partner, or in the employment, of a director or employee of the company or a related company;

(*e*) no officer of the company receives any remuneration from the firm or acts as a consultant to it on accounting or auditing matters.

(2) The appointment of a partnership by the firm named to be the auditor of a company shall, notwithstanding section 234, be deemed to be the appointment of all the persons who are partners in the firm from time to time whether ordinarily resident or not in Malaŵi at the date of the appointment.

(3) Where a partnership that includes persons who are not qualified to be appointed as auditors of a company is appointed as auditor of a company, the persons who are not qualified to be appointed as auditors shall not act as auditors of the company.

(4) Where a firm has been appointed as auditor of a company and the members constituting the firm change by reason of the death, retirement, or withdrawal of a member or by reason of the admission of a new member, the firm as newly constituted shall, if it is not disqualified from acting as auditor of the company by virtue of subsection (1), be deemed to be appointed under this section as auditor of the company and that appointment shall be taken to be an appointment of all persons who are members of the firm as newly constituted.

(5) A report required to be signed on behalf of a firm appointed as auditor of a company shall be signed in the firm's name and in his own name by a member of the firm who is a qualified auditor.

Qualifications of auditor

Cap. 53:06

234.—(1) A person shall not be appointed or act as auditor of a company unless the person is qualified as an auditor under the Public Accountants and Auditors Act.

(2) None of the following persons shall be appointed or act as an auditor of a company—

(*a*) a director or employee of the company;

(*b*) a person who is a partner, or in the employment, of a director or employee of the company;

(*c*) a liquidator or a person who is a receiver in respect of the property of the company;

(*d*) a body corporate;

(*e*) a person who is not ordinarily resident in Malaŵi;

(*f*) a person who is indebted to the company, or to a related company unless the debt is in the ordinary course of business; or

(*g*) a person who, by virtue of paragraph (*a*) or (*b*), may not be appointed or act as auditor of a related company.

(3) No person shall—

(*a*) where he has been appointed auditor of a company, wilfully disqualify himself, while the appointment continues, from acting as auditor of the company; or

(*b*) where he is a member of a firm that has been appointed auditor of a company, wilfully disqualify the firm while the appointment continues, from acting as auditor of the company.

Approval of auditor

235.—(1) Every application by a person to be an auditor for the purposes of section 234 shall be made in the prescribed form.

Cap. 53:06

(2) The authority prescribed by the Public Accountants and Auditors Act, may, where it appears to it from an investigation under this Act that a qualified auditor is not a fit and proper person to continue to act as a qualified auditor, inquire into the conduct of an auditor and the authority may, where it is satisfied that the conduct of the auditor is such as to render him unfit to continue to discharge the function of a qualified auditor, declare by notice published in the *Gazette* that such person is no longer a qualified auditor and on publication of the notice he shall cease to be a qualified auditor under this Act.

Automatic reappointment of auditor

236.—(1) An auditor of a company, other than an auditor appointed under section 237, shall be automatically reappointed at an annual meeting of the company unless—

(*a*) the auditor is not qualified for appointment; or

(*b*) the company passes a resolution at the meeting appointing another person to replace him as auditor; or

(*c*) the auditor has given notice to the company that he does not wish to be reappointed.

(2) An auditor shall not be automatically reappointed where the person to be reappointed becomes incapable of, or disqualified from, appointment.

Appointment of first auditor

237.—(1) The first auditor of a company may be appointed by the directors of the company before the first annual meeting, and, if so appointed, holds office until the conclusion of that meeting.

(2) Where the directors do not appoint an auditor under subsection (1), the company shall appoint the first auditor at a meeting of the company.

Replacement of auditor

238.—(1) A company shall not remove or appoint a new auditor in the place of an auditor who is qualified for reappointment, unless—

(*a*) at least twenty-eight days' written notice of a proposal to do so has been given to the auditor; and

(*b*) the auditor has been given a reasonable opportunity to make representations to the shareholders on the appointment of another person either, at the option of the auditor, in writing or by the auditor or his representative speaking at the annual meeting of shareholders at which it is proposed not to reappoint the auditor or at a special meeting of shareholders called for the purpose of removing and replacing the auditor.

(2) An auditor shall be entitled to be paid by the company reasonable fees and expenses for making the representations to the shareholders.

(3) Where, on the application of the company or any other person who claims to be aggrieved by the auditor's representations being sent out or being read out at the meeting of shareholders, the Registrar is satisfied that the rights conferred by subsection (1) are being abused to secure needless publicity of defamatory matter, the Registrar may—

(*a*) order that the auditor's representations shall not be sent out or shall, not be read, at the meeting of shareholders; and

(*b*) order the costs of the application to the Registrar to be paid in whole or in part by the auditor.

Auditor not seeking reappointment or giving notice of resignation

239.—(1) Where an auditor gives the Board of a company written notice that he does not wish to be reappointed, the Board shall, if requested to do so by that auditor—

(*a*) distribute to all shareholders and to the Registrar, at the expense of the company, a written statement of the auditor's reasons for his wish not to be reappointed; or

(*b*) permit the auditor or his representative to explain at a shareholders' meeting the reasons for his wish not to be reappointed.

(2) An auditor may resign prior to the annual meeting by giving notice to the company calling on the board to call a special meeting of the company to receive the auditor's notice of resignation

(3) Where a notice is given by an auditor under subsection (2), the auditor may, at the time of giving his notice to the board, request the board to distribute a written statement providing him or his representative with the opportunity to give an explanation on the same terms as are set out in subsection (1).

(4) Where a written statement is provided for by an auditor under subsection (3), the provisions of section 239 (3) shall apply to that statement and explanation.

(5) Where a notice of resignation is given by an auditor under this section, the appointment of the auditor shall terminate at that meeting and the business of the meeting shall include the appointment of a new auditor to the company.

(6) An auditor shall be entitled to be paid by the company reasonable fees and expenses for making the representations to shareholders.

Auditor to avoid conflict of interest

240. An auditor of a company shall ensure, in carrying out the duties of an auditor under this Part, that his judgement is not impaired by reason of any relationship with or interest in the company or any of its subsidiaries.

Auditor's report

241.—(1) The auditor of a company shall make a report to the shareholders on the financial statements which have been audited.

(2) The auditor's report shall state—

(*a*) the scope and limitations of the audit;

(*b*) whether the auditor has obtained all information and explanations that the auditor has required;

(*c*) whether, in the auditor's opinion, the financial statements and any group financial statements give a true and fair view of the matters to which they relate, and where they do not, the respects in which they fail to do so and whether the financial statements have been prepared in accordance with IFRS and this Act.

(3) The audit of the financial statements shall be carried out in accordance with International Standards on Auditing.

Access to information

242.—(1) The board of a company shall ensure that an auditor of the company has access at all times to the accounting records and other documents of the company.

(2) An auditor of a company is entitled to receive from a director or employee of the company such information and explanations as he thinks necessary for the performance of his duties as auditor.

(3) Where the board of a company fails to comply with subsection (1), every director shall be liable to a fine in accordance with the prevailing schedule of penalties.

Auditor's attendance at shareholders' meeting

243. The board of a company shall ensure that an auditor of the company—

(*a*) is permitted to attend a meeting of shareholders of the company;

(*b*) receives the notices and communications that a shareholder is entitled to receive relating to a meeting of the shareholders; and

(*c*) may be heard at a meeting of the shareholders which he attends on any part of the business of the meeting which concerns him as auditor.

Division II—General Obligations for Private Companies

General obligations for private companies

244.—(1) A private company need not appoint an auditor, unless exempted by regulations made under this Act.

(2) Where the shareholders of a private company resolve to appoint an auditor, the appointment and removal of the auditor of a private company shall, subject to this section be made in accordance with sections 235 to 239 and the auditor shall carry out the auditor's duties in accordance with section 240.

(3) An auditor of a private company may resign by written notice to the directors.

(4) Where the auditor gives written notice to resign under subsection (3), the directors shall call a meeting of shareholders or circulate a resolution to the shareholders as soon as practicable for the purpose of appointing an auditor in the place of the auditor who desires to resign and on the appointment of another auditor, the resignation shall take effect.

(5) Where at, or before, the time for the holding of the annual meeting of a private company, notice is given to the board of the company, signed by a shareholder who holds at least five per cent of the shares of the company, the company shall appoint an auditor and such resolution shall cease to have effect at the next annual meeting and the auditor shall thereupon be reappointed unless the shareholders by unanimous resolution agree not to appoint the auditor.

Division III—Financial Statements

Obligation to prepare financial statements

245.—(1) The board of every company shall ensure that, within six months after the balance sheet date of the company, financial statements that comply with section 246 are—

(*a*) completed in relation to the company at its balance sheet date; and

(*b*) dated and signed on behalf of the board by two directors of the company, or, where the company has only one director, by that director.

(2) The Registrar may, where he considers it appropriate to do so, extend the period of six months specified in subsection (1).

Content and form of financial statements

246.—(1) Subject to the other provisions of this section, the financial statements of a company shall present a true and fair view of the state of affairs of the company at the balance sheet date and of its profit or loss and cash flows for the accounting period.

(2) The financial statements shall—

(*a*) be prepared in accordance with IFRS; and

(*b*) comply with any requirement which applies to the company's financial statements under any other enactment.

(3) The financial statements of a private company shall comply with any Orders made under this Act or any accounting standards issued by a prescribed body or authority, or with IFRS or the IFRS for SME's.

Financial statements to be prepared in Malaŵi currency

247.—(1) Subject to the other provisions of this section, a company shall present its financial statements in the Malaŵi currency.

(2) The Registrar may approve the presentation by a company of its financial statements in a foreign currency where the Registrar is satisfied—

(*a*) that the company's principal operational activity during the accounting year in question has been undertaken in that foreign currency; and

(*b*) that the presentation of the financial statements in that foreign currency provides a true and fair view of the company's affairs.

Presentation of group financial statements

248. The board of a company that has, on the balance sheet date of the company, one or more subsidiaries, shall, in addition to

complying with section 246, ensure that within six months after the balance sheet date, it prepares group financial statements.

Content and form of group financial statements

249.—(1) Subject to the other provisions of this section, the group financial statements shall present a true and fair view of the state of affairs of the group at the balance sheet date and of its profit or loss and cash flows for the accounting period.

(2) Except in the case of private companies the group financial statements shall—

(*a*) be prepared in accordance with IFRS; and

(*b*) comply with any requirement which applies to the group's financial statements under any other enactment.

(3) The group financial statements of a private company shall comply with any Orders made under this Act or any accounting standards issued by the prescribed body or authority, or with IFRS or the IFRS for SME's.

(4) Where a subsidiary becomes a subsidiary of a company during the accounting period to which the group financial statements relate, the consolidated profit and loss statement shall relate to the profit or loss of the subsidiary for each part of that accounting period during which it was a subsidiary, and not to any other part of that accounting period.

Right of member or debenture holder of a public company to copies of financial statements and reports

250. A member of, or holder of debentures of, a public company is entitled to be provided, on demand and without charge, with a copy of the company's last financial statements together with any directors' report and auditor's report on those financial statements.

Division IV—Filing of Annual Report and Accounts for Companies than Private Companies

Obligation to prepare an annual report and accounts

251.—(1) For the purposes of this Division, the annual report and accounts shall comprise a directors' report, the financial statements and the auditor's report.

(2) Subject to subsections (3) and (4), the Board of every company shall, within six months after the balance sheet date of the company, prepare an annual report and accounts.

(3) The shareholders of a private company may resolve by unanimous resolution that this section shall not apply to the company.

(4) This section does not apply to a one person company.

Content of directors' report

252.—(1) A directors' report is required for all public companies. It shall be in writing and be dated and, subject to subsection (3) shall set out—

(*a*) so far as the board reasonably believes is material for the shareholders to have an appreciation of the state of the company's affairs and is not harmful to the business of the company or of any of its subsidiaries, any change during the accounting period in—

(i) the nature of the business of the company or any of its subsidiaries; or

(ii) the classes of business in which the company has an interest, whether as a shareholder of another company or otherwise; and

(*b*) (i) the names of the persons who, at any time during the financial year, were directors of the company;

(ii) particulars of entries in the register of interests made during the accounting period;

(iii) with respect to the accounting period, the amount which represents the total of the remuneration and benefits received, or due and receivable, from the company by—

(*aa*) executive directors of the company engaged in the full-time or part-time employment of the company, including all bonuses and commissions receivable by them as employees; and

(*bb*) in a separate statement, non-executive directors of the company ;

(iv) in the case of a holding company, with respect to the accounting period, the amount which represents the total of the remuneration and benefits received, or due and receivable, from the parent company and from its subsidiaries by—

(*aa*) executive directors of the parent company engaged in the full-time or part-time employment of the holding company, including all bonuses and commission receivable by them as employees; and

(*bb*) in a separate statement, non-executive directors of the holding company;

(*c*) state the total amount of donations made by the company and any subsidiary during the accounting period;

(*d*) state the amounts payable by the company to the person or firm holding office as auditor of the company as audit fees and, as a separate item, fees payable by the company for other services provided by that person or firm; and

(*e*) be signed on behalf of the board by two directors of the company or, where the company has only one director, by that director.

(2) The information to be disclosed under subsection (1) (*b*) shall be—

(*a*) the term of the directors' service contract with its date of expiry;

(*b*) any notice period for termination of the contract;

(*c*) particulars of any provisions for predetermined compensation on termination exceeding one year's salary and of any benefits including benefits in kind.

(3) A company that is required to include group financial statements in its annual report shall include, in relation to each of its subsidiaries, the information specified in paragraphs (*b*) to (*e*) of subsection (1).

Sending annual report and accounts to shareholders

253.—(1) Subject to subsection (2), the Board of a company shall cause a copy of the annual report and accounts to be sent to every shareholder of the company not less than fourteen days before the date fixed for holding the annual meeting of the shareholders and such delivery may be made by electronic means.

(2) The board of a company shall not be required to send an annual report and accounts to a shareholder where—

(*a*) the shareholder has given notice in writing to the company waiving the right to be sent a copy of the annual report and accounts or copies of annual reports and accounts of the company generally; and

(*b*) the shareholder has not revoked that notice.

Failure to send an annual report and accounts

254. Subject to the constitution of a company, the failure to send an annual report and accounts, notice, or other documents to a shareholder in accordance with this Act shall not affect the validity of proceedings at a meeting of the shareholders of the company where the failure to do so was accidental.

Filing of annual report and accounts

255. Every company, other than a private company, shall ensure that, within twenty-eight days after the annual report and accounts of

the company and of the group are required to be signed, the annual report and accounts are filed with the Registrar.

Division V—Annual Return

Annual return

256.—(1) Subject to subsection (3), every company shall, once in every year, file with the Registrar for registration an annual return which may be in electronic form.

(2) Subject to subsection (3), the annual return shall be completed and filed with the Registrar within twenty-eight days of the date of the annual meeting of the company.

(3) A company which keeps a branch register outside Malaŵi shall comply with the requirements of subsection (2) within eight weeks after the dates referred to in subsection (2).

(4) The annual return shall be signed by a director or secretary.

(5) The annual return shall contain the information set out in the regulations save that where the matters required to be stated are in each case unchanged from the last preceding annual return, the company may present a "No change return" in which it is certified by a director or secretary of the company that there is no change with respect to any of the matters stated from, the last preceding annual return.

(6) A company may not make an annual return in the calendar year of its incorporation.

(7) A public company which—

(*a*) has more than five hundred members; and

(*b*) provides reasonable accommodation and facilities at a place approved by the Registrar for persons to inspect and take a list of its members and particulars of shares transferred,

shall not, unless the Registrar otherwise directs, be required to include a list of members with the annual return where a certificate by the secretary is included that the company is of a kind to which this subsection applies.

PART XI

Public Offerings of Securities

Public offers of securities in Malaŵi Cap. 46:06

257. All public offers of securities shall be made in accordance with the Securities Act.

Meaning of a "public offer"

258. An offer or invitation to make an offer of securities to the public shall be construed as including—

(*a*) offering securities to a section of the public, however selected, whether selected as clients, employees, or a purchaser of goods from the offeror or a promoter of the securities, or being the holder of securities previously issued by the issuer or promoter of the securities;

(*b*) offering the securities to individual members of the public selected at random; or

(*c*) offering the securities to a person if the person became known to the offeror as a result of an advertisement made by or on behalf of the offeror or that was intended or likely to result in the public seeking further information or advice about an investment opportunity or services.

Meaning of a "private offer"

259. An offer or invitation to make an offer of securities or debentures shall be construed as a private offer if—

(*a*) an offer of securities where the amount subscribed for the securities by each person to whom the securities are offered is not more than the prevailing limit as established by the Registrar of Financial Institutions;

(*b*) an offer of securities which is restricted to persons who are directors or executive officers of the company making the offer or are close relatives or business partners or close business associates of such director or executive officer;

(*c*) an offer of securities which is restricted to persons referred to in paragraph (*a*) and to a body corporate in which an executive officer or a close relative or business partner or associate of the kind referred to in paragraph (*b*) have a controlling interest;

(*d*) an offer of securities where no consideration is paid or provided in respect of the issue or allotment of the securities;

(*e*) an offer to enter into an underwriting agreement;

(*f*) an issue or allotment of securities to not more than one hundred persons who are professional investors or experienced investors as may be defined by the Registrar of Financial Institutions where the securities are allotted as a result of an invitation or offer made personally to that person or those persons; or

(*g*) an offer made to acquire all of the shares in a company which provides ownership of the whole of the assets and undertaking of a business enterprise or to acquire the whole of the undertaking and assets of a partnership or trust and which offer is capable of acceptance by and restricted to not more than ten persons and each person has reasonably available to him or her the financial and other information needed by that person to make a reasonably informed investment decision.

General duty of disclosure in a prospectus

260.—(1) A prospectus shall contain all such necessary information as investors and their professional advisers would reasonably require, and reasonably expect to find there, for the purpose of making an informed assessment of—

(*a*) the assets and liabilities, financial position, profits and losses, and prospects of the issuer of the securities; and

(*b*) the rights attaching to the securities, and "necessary information" means information which a person considering acquiring the securities of the kind in question would be likely to need in order not to be misled about any material facts which it is essential for him to know to make an informed assessment.

(2) The prospectus shall contain information or documents as may be necessary in respect of—

(*a*) the terms of the offer including, the identity of any underwriter and the method of the offer;

(*b*) information about the business and operations of the issuer;

(*c*) the identity of directors, senior management, promoters and auditors;

(*d*) capitalization and indebtedness of the issuer;

(*e*) risk factors;

(*f*) securities market data regarding any trading history of the issuer's shares;

(*g*) use of the proceeds of the offer;

(*h*) details of pending litigation;

(*i*) management discussion and analysis of the financial condition and results of the company's business operations;

(*j*) a forecast of estimated profit or loss for the year ending immediately before the date of the prospectus and the year ending immediately after the date of the prospectus;

(*k*) a certificate from the issuer's auditor stating any changes in directors and auditors during the last three years, indicating the reasons for any changes; and

(*l*) audited financial statements for the years and periods as required by the Registrar of Financial Institutions.

(3) The prospectus shall be signed by the company's senior management or persons performing similar functions accompanied by a duly verified resolution of the board of directors. Any written consent of an expert named as having certified any part of the prospectus or any document used in that connexion must also be delivered to the Registrar of Financial Institutions.

PART XII

Arrangements, Compromises and Reconstructions; Mergers and Divisions and Takeovers

Division I—Arrangements, Compromises and Reconstructions

Interpretation in this Division

261. In this Division, unless the context otherwise requires—

"arrangement" includes a reorganization of the share capital of the company by the consolidation of shares of different classes or by the division of shares into shares of different classes or by both those methods;

"company" includes a foreign company registered under Part XV;

"compromise" means a compromise between a company and its creditors, including a compromise—

(*a*) cancelling all or part of a debt of the company; or

(*b*) varying the rights of its creditors or the terms of a debt; or

(*c*) relating to an alteration of a company's constitution that affects the likelihood of the company being able to pay a debt;

"creditor" includes—

(*a*) a person who, in a liquidation, would be entitled to claim that a debt is owing to that person by the company; and

(*b*) a secured creditor;

"merger" means where two or more companies amalgamate and continue as one company, which may be one of the amalgamating companies, or may be a new company.

Power to refer any compromise to the Court

Cap. 11:01

262.—(1) Where a compromise or arrangement is proposed between a company and its creditors or any class of them or between the company and its members or any class of them, the proposed compromise shall be subject to the Insolvency Act and the Court may, on the application of the company or of any creditor or member of the company, or, in the case of a company being wound up, of the liquidator, order a meeting of the creditors or class of creditors, or of the members of the company or class of members, as the case may be, in accordance with that Act.

(2) Where a compromise or arrangement proposed under subsection (1) relates to a public company, that proposed compromise or arrangement is subject to the requirements of a stock exchange licensed under the Securities Act.

Cap. 46:06

(3) If a majority in number representing seventy-five per cent in value of the creditors or class of creditors, present and voting either in person or by proxy at that meeting, agree to any compromise or arrangement, the compromise or arrangement shall be binding on all the creditors or the class of creditors, or on the members or class of members, as the case may be, and also on the company.

(4) Any order made under subsection (3) shall have no effect until a copy of the order has been delivered to the Registrar for registration, and a copy of every such order shall be annexed to every copy of the constitution of the company issued after the order has been made.

(5) Upon the hearing by the Court of the application to sanction the compromise or arrangement any member or creditor of the company claiming to be affected thereby shall be entitled to be represented and to object.

(6) The Court may prescribe such terms as it thinks fit as a condition of its sanction including a condition that any members shall be given rights to require the company to purchase their shares at a price fixed by a registered valuer under Part VII.

(7) If a company defaults in complying with subsection (4), the company and every officer of the company who is in default shall be liable to a fine in accordance with the prevailing schedule of penalties.

Information as to compromises with creditors and members

263.—(1) Where a meeting of creditors or any class of creditors or of members or any class of members is summoned under section 262 there shall—

(*a*) with every notice summoning the meeting which is sent to a creditor or member, be sent also a statement explaining the

effect of the compromise or arrangement and in particular stating any material interests of the directors of the company, whether as directors or as members or as creditors of the company or otherwise, and the effect thereon of the compromise or arrangement, insofar as it is different from the effect on the like interests of other persons; and

(*b*) in every notice summoning the meeting which is given by advertisement, be included either such a statement as aforesaid or a notification of the place at which and the manner in which creditors or members entitled to attend the meeting may obtain copies of such a statement.

(2) Where the compromise or arrangement affects the rights of debenture holders of the company, the statement shall give the like explanation as respects the debenture holders of the company or any trustees of any instrument for securing the issue of the debentures as it is required to give as respects the company's directors.

(3) Where a notice given by advertisement includes a notification that copies of a statement explaining the effect of the compromise or arrangement proposed can be obtained by creditors or members entitled to attend the meeting, every such creditor or member shall, on making application in the manner indicated by the notice be furnished by the company free of charge with a copy of the statement.

(4) Where a company makes default in complying with any requirement of this section, the company and every officer of the company who is in default shall be liable to a fine in accordance with the prevailing schedule of penalties; and for the purpose of this subsection any liquidator of the company and any trustee of an instrument for securing the issue of debentures of the company shall be deemed to be an officer of the company.

(5) A person shall not be liable under subsection (4) if that person shows that the default was due to the refusal of any other person to supply the necessary particulars as to his interests.

(6) It shall be the duly of any director of the company and of any trustee for debenture holders of the company to give notice to the company of such matters relating to himself as may be necessary for the purposes of this section, and any person who makes default in complying with this subsection shall be liable to a fine in accordance with the prevailing schedule of penalties.

Provisions for reconstructions

264.—(1) Where an application is made to the Court under section 262 for the sanctioning of a compromise or arrangement

proposed and it is shown to the Court that the compromise or arrangement has been proposed for the purposes of or in connexion with a scheme for the reconstruction of any company or companies or the amalgamation of any two or more companies, and that under the scheme the whole or any part of the undertaking or the property of any company concerned in the scheme (in this section referred to as "a transferor company") is to be transferred to another company (in this section referred to as "the transferee company"), the Court may, either by the order sanctioning the compromise or arrangement or by any subsequent order, make provision for all or any of the following matters—

(*a*) the transfer to the transferee company of the whole or any part of the undertaking and of the property or liability of any transferor company;

(*b*) the allotting or appropriation by the transferee company of any shares, debentures, policies or other like interest in that company which under the compromise or arrangement are to be allotted or appropriated by that company to or for any person;

(*c*) the continuation by or against the transferee company of any legal proceedings pending by or against any transferor company;

(*d*) the dissolution, without winding-up, of any transferor company;

(*e*) the provision to be made for any persons who, within such time and in such manner as the Court directs, dissent from the compromise or arrangement; and

(*f*) such incidental, consequential and supplemental matters as are necessary to secure that the reconstruction or amalgamation shall be fully and effectively carried out.

(2) Where an order under this section provides for the transfer of property or liabilities, that property shall, by virtue of the order, be transferred to and vest in, and those liabilities shall, by virtue of the order, be transferred to and become the liabilities of, the transferee company, and in the case of any property, if the order so directs, be freed from any charge which is by virtue of the compromise or arrangement to cease to have effect.

(3) Where an order is made under this section, every company in relation to which the order is made shall cause a copy thereof to be delivered to the Registrar for registration within twenty-one days after the making of the order, and if default is made in complying with this subsection, the company and every officer of the company

who is in default shall be liable to a fine in accordance with the prevailing schedule of penalties.

(4) In this section the expression "property" includes property rights and powers of every description and the expression "liabilities" includes duties of every description.

Division II—Mergers and Divisions

Application of this Division

265.—(1) This Division shall apply where—

(*a*) a compromise or arrangement is proposed between a public company and—

(i) its creditors or any class of them; or

(ii) its members or any class of them, for the purposes of, or in connexion with, a scheme for the reconstruction of any company or companies or the amalgamation of any two or more companies;

(*b*) the scheme involves—

(i) a merger; or

(ii) a division; and

(*c*) the consideration for the transfer (or each of the transfers) envisaged is to be shares in the transferee company (or one or more of the transferee companies) receivable by members of the transferor company (or transferor companies), with or without any cash payment to members.

(2) In this Division—

(*a*) a "new company" means a company formed for the purposes of, or in connexion with, the scheme; and

(*b*) an "existing company" means a company other than one formed for the purposes of, or in connexion with, the scheme.

(3) This Division shall not apply where the company in respect of which the compromise or arrangement is proposed is being wound-up.

(4) The Court shall not sanction any compromise or arrangement under Division I of this Part unless the requirements of this Division have been complied with.

Mergers and merging companies

266.—(1) The scheme involves a merger where under the scheme—

(*a*) the undertaking, property and liabilities of one or more public companies, including the company in respect of which the

compromise or arrangement is proposed, are to be transferred to another existing public company (a "merger by absorption"); or

(*b*) the undertaking, property and liabilities of two or more public companies, including the company in respect of which the compromise or arrangement is proposed, are to be transferred to a new company, whether or not a public company, (a "merger by formation of a new company").

(2) References in this Division to "the merging companies" are—

(*a*) in relation to a merger by absorption, to the transferor and transferee companies;

(*b*) in relation to a merger by formation of a new company, to the transferor companies.

Draft terms of a merger

267.—(1) A draft of the proposed terms of the scheme shall be drawn up and adopted by the directors of the merging companies.

(2) The draft terms shall give particulars of at least the following matters—

(*a*) in respect of each transferor company and the transferee company—

(i) its name;

(ii) the address of its registered office; and

(iii) whether it is a company limited by shares or a company limited by guarantee;

(*b*) the number of shares in the transferee company to be allotted to members of a transferor company for a given number of their shares (the "share exchange ratio") and the amount of any cash payment;

(*c*) the terms relating to the allotment of shares in the transferee company;

(*d*) the date from, which the holding of shares in the transferee company will entitle the holders to participate in profits, and any special conditions affecting that entitlement;

(*e*) the date from, which the transactions of a transferor company are to be treated for accounting purposes as being those of the transferee company;

(*f*) any rights or restrictions attaching to shares or other securities in the transferee company to be allotted under the scheme to the holders of shares or other securities in a transferor

company to which any special rights or restrictions attach, or the measures proposed concerning them;

(*g*) any amount of benefit paid or given or intended to be paid or given—

(i) to any of the experts referred to in section 271 the expert's report; or

(ii) to any director of a merging company, and the consideration for the payment of benefit.

(3) The requirements in subsections (2) (*b*), (*c*) and (*d*) shall be subject to section 277 circumstances in which certain particulars are not required.

Publication of draft terms of a merger

268.—(1) The directors of each of the merging companies shall deliver a copy of the draft terms to the Registrar.

(2) The Registrar shall publish in the *Gazette* notice of receipt by him from that company of a copy of the draft terms.

(3) The notice shall be published at least one month before the date of any meeting of that company summoned for the purpose of approving the scheme.

Approval of members of a merging company

269.—(1) The scheme shall be approved by a majority in number, representing seventy-five per cent in value, of each class of members of each of the merging companies, present and voting either in person or by proxy at a meeting.

(2) This requirement shall be subject to section 279 with respect to circumstances in which meetings of members are not required.

Directors' report of a merging company

270.—(1) The directors of each of the merging companies shall draw-up and adopt a report.

(2) The report shall consist of—

(*a*) the statement required by section 267; and

(*b*) insofar as that statement does not deal with the following matters, a further statement—

(i) setting out the legal and economic grounds for the draft terms, and in particular for the share exchange ratio; and

(ii) specifying any special valuation difficulties.

(3) The requirement in this section is subject to section 277 with respect to circumstances in which reports are not required.

Expert's report on a merger

271.—(1) An expert's report shall be drawn up on behalf of each of the merging companies.

(2) The report required shall be a written report on the draft terms to the members of the company.

(3) The Court may, on the joint application of all the merging companies, approve the appointment of a joint expert to draw-up a single report on behalf of all those companies, provided that where no such appointment is made, there shall be a separate expert's report to the members of each merging company drawn up by a separate expert appointed on behalf of that company.

(4) The expert shall be a person who is eligible for appointment as a statutory auditor.

(5) The expert's report shall—

(*a*) indicate the method or methods used to arrive at the share exchange ratio;

(*b*) give an opinion as to whether the method or methods used are reasonable in all the circumstances of the case, indicate the values arrived at using each such method and (if there is more than one method) give an opinion on the relative importance attributed to such methods in arriving at the value decided on;

(*c*) describe any special valuation difficulties that have arisen;

(*d*) state whether in the expert's opinion the share exchange ratio is reasonable.

(6) The expert (or each of them) shall have—

(*a*) the right of access to all such documents of all the merging companies; and

(*b*) the right to require from the companies' officers all such information, as he thinks necessary for the purposes of making his report.

(7) The requirement in this section shall be subject to section 277 with respect to circumstances in which reports are not required.

Supplementary accounting statement for a merger

272.—(1) If the last annual accounts of any of the merging companies relate to a financial year ending more than seven months before the first meeting of the company summoned for the purposes of approving the scheme, the directors of that company shall prepare a supplementary accounting statement.

(2) The statement shall consist of—

(*a*) a balance sheet dealing with the state of affairs of the company as at a date not more than three months before the draft terms were adopted by the directors; and

(*b*) where the company would be required to prepare group accounts if that date were the last day of a financial year, a consolidated balance sheet dealing with the state of affairs of the company and the undertakings that would be included in such a consolidation.

(3) The requirements of this Act as to the balance sheet forming part of a company's annual accounts, and the matters to be included in notes to it, apply to the balance sheet required for an accounting statement under this section, with such modifications as are necessary by reason of its being prepared otherwise than as at the last day of a financial year.

Inspection of documents on a merger

273.—(1) The members of each of the merging companies shall, during the period specified below, be able—

(*a*) to inspect at the registered office of that company copies of the documents listed below relating to that company and every other merging company; and

(*b*) to obtain copies of those documents or any part of them on request free of charge.

(2) The period referred to above is the period—

(*a*) beginning one month before; and

(*b*) ending on the date of, the first meeting of the members, or any class of members, of the company for the purposes of approving the scheme.

(3) The documents referred to above shall be—

(*a*) the draft terms;

(*b*) the directors' explanatory report;

(*c*) the expert's report;

(*d*) the company's annual accounts and reports for the last three financial years ending on or before the first meeting of the members, or any class of members, of the company summoned for the purposes of approving the scheme; and

(*e*) any supplementary accounting statement required by section 272.

(4) The requirements of subsections (3) (*b*) and (*c*) shall be subject to section 277 with respect to circumstances in which reports are not required.

Approval of constitution of a new transferee company on a merger

274. In the case of a merger by formation of a new company, the constitution of the transferee company, or a draft of them, must be approved by ordinary resolution of the transferor company or, as the case may be, each of the transferor companies.

Protection of holders of securities to which special rights are attached in a merger

275.—(1) The scheme shall provide that where any securities of a transferor company other than shares, to which special rights are attached are held by a person otherwise than as a member or creditor of the company, that person is to receive rights in the transferee company of equivalent value.

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

(*a*) the holder has agreed otherwise; or

(*b*) the holder is, or under the scheme is to be, entitled to have the securities purchased by the transferee company on terms that the Court considers reasonable.

No allotment of shares to transferor company or its nominee in a merger

276. The scheme shall not provide for shares in the transferee company to be allotted to a transferor company or its nominee in respect of shares in the transferor company held by it, or its nominee.

Circumstances in which certain particulars and reports are not required in a merger

277.—(1) This section shall apply in the case of a merger by absorption where all of the relevant securities of the transferor company or, if there is more than one transferor company, of each of them are held by or on behalf of the transferee company.

(2) The draft terms of the scheme need not give the particulars mentioned in section 267 (2) (*b*), (*c*) or (*d*).

(3) The provisions of section 263 with respect to the explanatory statement to be circulated or made available shall not apply.

(4) The requirements of section 270 with respect to the directors' explanatory report, and section 271 with respect to the expert's report, shall not apply.

(5) The requirements of section 273 as to inspection of documents so far as relating to any document required to be drawn up under the provisions mentioned in subsection (3) shall not apply.

(6) In this section, "relevant securities", in relation to a company, means shares or other securities carrying the right to vote at general meetings of the company.

Circumstances in which a meeting of members of the transferee company is not required in a merger

278.—(1) This section shall apply in the case of a merger by absorption where ninety per cent or more of the relevant securities of the transferor company, or, if there is more than one transferor company, of each of them, are held by or on behalf of the transferee company.

(2) It shall not be necessary for the scheme to be approved at a meeting of the members, or any class of members, of the transferee company if the Court is satisfied that the following conditions have been complied with—

(*a*) *Condition One*: The publication of notice of receipt of the draft terms by the Registrar took place in respect of the transferee company at least one month before the date of the first meeting of members, or any class of members, of the transferor company summoned for the purpose of agreeing to the scheme.

(*b*) *Condition Two*: The members of the transferee company were able during the period beginning one month before, and ending on, that date—

(i) to inspect at the registered office of the transferee company copies of the documents listed in section 273 (3) (*a*), (*d*) and (*e*) relating to that company and the transferor company (or, if there is more than one transferor company, each of them); and

(ii) to obtain copies of those documents or any part of them on request free of charge.

(*c*) *Condition Three*—

(i) one or more members of the transferee company, who together held not less than five per cent of the paid-up capital of the company which carried the right to vote at general meetings of the company (excluding any shares in the company held as treasury shares) would have been able, during that period, to require a meeting of each class of members to be called for the purpose of deciding whether or not to agree to the scheme; and

(ii) no such requirement was made.

(3) In this section, "relevant securities", in relation to a company, means shares or other securities carrying the right to vote at general meetings of the company.

Circumstances in which no members' meetings are required in a merger

279.—(1) This section applies in the case of a merger by absorption where all of the relevant securities of the transferor company (or, if there is more than one transferor company, of each of them) are held by or on behalf of the transferee company.

(2) It shall not be necessary for the scheme to be approved at a meeting of the members, or any class of members, of any of the merging companies if the Court is satisfied that the following conditions have been complied with—

(*a*) *Condition One*: Publication of notice of receipt of the draft terms by the Registrar of the company took place in respect of all the merging companies at least one month before the date of the Court's order.

(*b*) *Condition Two*: Members of the transferee company were able during the period beginning one month before, and ending on, that date—

(i) to inspect at the registered office of that company copies of the documents listed in section 273 relating to that company and the transferor company (or, if there is more than one transferor company, each of them); and

(ii) to obtain copies of those documents or any part of them on request free of charge.

(*c*) *Condition Three*—

(i) that one or more members of the transferee company, who together held not less than five per cent of the paid-up capital of the company which carried the right to vote at general meetings of the company (excluding any shares in the company held as treasury shares) would have been able, during that period, to require a meeting of each class of members to be called for the purpose of deciding whether or not to agree to the scheme; and

(ii) no such requirement was made.

(3) In this section, "relevant securities", in relation to a company, means shares or other securities carrying the right to vote at general meetings of the company.

Other circumstances in which meetings of members of transferee company are not required in a merger

280. In the case of any merger by absorption, it is not necessary for the scheme to be approved by the members of the transferee company if the Court is satisfied that the following conditions have been complied with—

(*a*) *Condition One*: Publication of notice of receipt of the draft terms by the Registrar took place in respect of that company at least one month before the date of the first meeting of members, or any class of members, of the transferor company or, if there is

more than one transferor company, any of them, summoned for the purposes of agreeing to the scheme.

(*b*) *Condition Two*: Members of that company were able during the period beginning one month before, and ending on, the date of any such meeting—

(i) to inspect at the registered office of that company copies of the documents specified in section 273 (3) relating to that company and the transferor company, or, if there is more than one transferor company, each of them, and

(ii) to obtain copies of those documents or any part of them on request free of charge.

(*c*) *Condition Three*: that—

(i) one or more members of that company, who together held not less than five per cent of the paid-up capital of the company which carried the right to vote at general meetings of the company (excluding any shares in the company held as treasury shares) would have been able, during that period, to require a meeting of each class of members to be called for the purpose of deciding whether or not to agree to the scheme; and

(ii) no such requirement was made.

Division III—Mergers and Divisions for Public and Private Companies

Divisions and companies involved in a division

281.—(1) The scheme shall involve a division where under the scheme the undertaking, property and liabilities of the company in respect of which the compromise or arrangement is proposed are to be divided among and transferred to two or more companies each of which is either—

(*a*) an existing public company; or

(*b*) a new company, whether or not a public company.

(2) References in this Division to the companies involved in the division are to the transferor company and any existing transferee companies.

Draft terms of a division scheme

282.—(1) A draft of the proposed terms of the scheme shall be drawn up and adopted by the directors of each of the companies involved in the division.

(2) The draft terms shall give particulars of at least the following matters—

(*a*) in respect of the transferor company and each transferee company—

(i) its name;

(ii) the address of its registered office; and

(iii) whether it is a company limited by shares or a company limited by guarantee;

(*b*) the number of shares in a transferee company to be allotted to members of the transferor company for a given number of their shares (the "share exchange ratio") and the amount of any cash payment;

(*c*) the terms relating to the allotment of shares in a transferee company;

(*d*) the date from which the holding of shares in a transferee company will entitle the holders to participate in profits, and any special conditions affecting that entitlement;

(*e*) the date from which the transactions of the transferor company are to be treated for accounting purposes as being those of a transferee company;

(*f*) any rights or restrictions attaching to shares or other securities in a transferee company to be allotted under the scheme to the holders of shares or other securities in the transferor company to which any special rights or restrictions attach, or the measures proposed concerning them;

(*g*) any amount of benefit paid or given or intended to be paid or given—

(i) to any of the experts referred to in section 286 the expert's report; or

(ii) to any director of a company involved in the division, and the consideration for the payment of benefit.

(3) The draft terms shall further—

(*a*) give particulars of the property and liabilities to be transferred, to the extent that these are known to the transferor company, and their allocation among the transferee companies;

(*b*) make provision for the allocation among and transfer to the transferee companies of any other property and liabilities that the

transferor company has acquired or may subsequently acquire; and

(*c*) specify the allocation to members of the transferor company of shares in the transferee companies and the criteria upon which that allocation is based.

Publication of draft terms of a division

283.—(1) The directors of each company involved in the division shall deliver a copy of the draft terms to the Registrar.

(2) The Registrar shall publish in the *Gazette* notice of receipt by him from that company of a copy of the draft terms.

(3) That notice shall be published at least one month before the date of any meeting of that company summoned for the purposes of approving the scheme.

(4) The requirements in this section shall subject to section 296.

Approval of members of companies involved in the division

284.—(1) The compromise or arrangement shall be approved by a majority in number, representing seventy-five per cent in value, of each class of members of each of the companies involved in the division, present and voting either in person or by proxy at a meeting.

(2) Requirement in subsection (1) shall be subject to sections 293 and 294 as to the circumstances in which a meeting of members is not required.

Directors' explanatory report for a division

285.—(1) The directors of the transferor and each existing transferee company shall draw up and adopt a report.

(2) The report shall consist of—

(*a*) the statement required by section 263 as to the explaining the effect of the compromise or arrangement; and

(*b*) insofar as the statement does not deal with the following matters, a further statement—

(i) setting out the legal and economic grounds for the draft terms, and in particular for the share exchange ratio and for the criteria on which the allocation to the members of the transferor company of shares in the transferee companies was based; and

(ii) specifying any special valuation difficulties.

(3) The report shall further state—

(*a*) whether a report has been made to any transferee company in relation to any valuation of non-cash consideration for shares; and

(*b*) if so, whether that report has been delivered to the Registrar of companies.

(4) The requirement in this section shall be subject to section 295 as to an agreement to dispense with reports.

Expert's report in a division

286.—(1) An expert's report shall be drawn up on behalf of each company involved in a division.

(2) The report required under subsection (1) shall be a written report on the draft terms to the members of the company.

(3) The Court may, on the joint application of the companies involved in the division, approve the appointment of a joint expert to draw up a single report on behalf of all those companies. If no such appointment is made, there shall be a separate expert's report to the members of each company involved in the division drawn up by a separate expert appointed on behalf of that company.

(4) The expert shall be a person who is eligible for appointment as a statutory auditor.

(5) The expert's report shall—

(*a*) indicate the method or methods used to arrive at the share exchange ratio;

(*b*) give an opinion as to whether the method or methods used are reasonable in all the circumstances of the case, indicate the values arrived at using each such method and, if there is more than one method, give an opinion on the relative importance attributed to such methods in arriving at the value decided on;

(*c*) describe any special valuation difficulties that have arisen;

(*d*) state whether in the expert's opinion the share exchange ratio is reasonable.

(6) The expert or each of them has—

(*a*) the right of access to all such documents of the companies involved in the division; and

(*b*) the right to require from the companies' officers all such information, as he thinks necessary for the purposes of making his report.

(7) The requirement in this section shall be subject to section 295 an agreement to dispense with reports.

Supplementary accounting statement in a division

287.—(1) If the last annual accounts of a company involved in the division relate to a financial year ending more than seven months before the first meeting of the company summoned for the purposes

of approving the scheme, the directors of that company must prepare a supplementary accounting statement.

(2) That statement shall consist of—

(*a*) a balance sheet dealing with the state of affairs of the company as at a date not more than three months before the draft terms were adopted by the directors; and

(*b*) where the company would be required to prepare group accounts if that date were the last day of a financial year, a consolidated balance sheet dealing with the state of affairs of the company and the undertakings that would be included in such a consolidation.

(3) The requirements of this Act as to the balance sheet forming part of a company's annual accounts, and the matters to be included in notes to it, apply to the balance sheet required for an accounting statement under this section, with such modifications as are necessary by reason of its being prepared otherwise than as at the last day of a financial year.

(4) The requirement in this section shall be subject to section 296 as to an agreement to dispense with reports.

Inspection of documents in a division

288.—(1) The members of each company involved in the division shall be entitled be able, during the period specified below—

(*a*) to inspect at the registered office of that company copies of the documents listed below relating to that company and every other company involved in the division; and

(*b*) to obtain copies of those documents or any part of them on request free of charge.

(2) The period referred to above is the period—

(*a*) beginning one month before; and

(*b*) ending on the date of, the first meeting of the members, or any class of members, of the company for the purposes of approving the scheme.

(3) The documents referred to above are—

(*a*) the draft terms;

(*b*) the directors' explanatory report;

(*c*) the expert's report;

(*d*) the company's annual accounts and reports for the last three financial years ending on or before the first meeting of the

members, or any class of members, of the company summoned for the purposes of approving the scheme; and

(*e*) any supplementary accounting statement required by section 287.

(4) The requirements in subsections (3) (*b*), (*c*) and (*e*) are subject to section 295 and agreement to dispense with reports and section 296 the power of the Court to exclude certain requirements.

Report on material changes of assets of transferor company in a division

289.—(1) The directors of the transferor company shall report—

(*a*) to every meeting of the members, or any class of members, of that company summoned for the purpose of agreeing to the scheme; and

(*b*) to the directors of each existing transferee company, any material changes in the property and liabilities of the transferor company between the date when the draft terms were adopted and the date of the meeting in question.

(2) The directors of each existing transferee company shall, in turn—

(*a*) report those matters to every meeting of the members, or any class of members, of that company summoned for the purpose of agreeing to the scheme; or

(*b*) send a report of those matters to every member entitled to receive notice of such a meeting.

(3) The requirement in this section shall be subject to section 295 as to an agreement to dispense with reports.

Approval of constitution of new transferee company in a division

290. The constitution of every new transferee company, or a draft of them, shall be approved by ordinary resolution of the transferor company.

Protection of holders of securities to which special rights attach in a division

291.—(1) The scheme shall provide that where any securities of the transferor company other than shares to which special rights are attached are held by a person otherwise than as a member or creditor of the company, that person shall to receive rights in a transferee company of equivalent value.

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

(*a*) the holder has agreed otherwise; or

(*b*) the holder is, or under the scheme is to be, entitled to have the securities purchased by a transferee company on terms that the Court considers reasonable.

292. The scheme shall not provide for shares in a transferee company to be allotted to the transferor company or its nominee in respect of shares in the transferor company held by it or its nominee.

No allotment of shares to a transferor company or its nominee in a division

293.—(1) This section shall apply in the case of a division where all of the shares or other securities of the transferor company carrying the right to vote at general meetings of the company are held by or on behalf of one or more existing transferee companies.

Circumstances in which a meeting of members of transferor company is not required in a division

(2) It shall not be necessary for the scheme to be approved by a meeting of the members, or any class of members, of the transferor company if the Court is satisfied that the following conditions have been complied with.

(3) *Condition One*: Publication of notice of receipt of the draft terms by the Registrar took place in respect of all the companies involved in the division at least one month before the date of the Court's order.

(4) *Condition Two*: Members of every company involved in the division were able during the period beginning one month before, and ending on, that date—

(*a*) to inspect at the registered office of their company copies of the documents listed in section 288 (3) relating to every company involved in the division; and

(*b*) to obtain copies of those documents or any part of them on request free of charge.

(5) *Condition Three*: is that—

(*a*) one or more members of the transferor company, who together held not less than five per cent of the stated capital of the company (excluding any shares in the company held as treasury shares) would have been able, during that period, to require a meeting of each class of members to be called for the purpose of deciding whether or not to agree to the scheme; and

(*b*) no such requirement was made.

(6) *Condition Four*: The directors of the transferor company have sent—

(*a*) to every member who would have been entitled to receive notice of a meeting to agree to the scheme (had any such meeting been called); and

(*b*) to the directors, of every existing transferee company, a report of any material change in the property and liabilities of the transferor company between the date when the terms were adopted by the directors and the date one month before the date of the Court's order.

Circumstances in which a meeting of members of a transferee company are not required in a division

294.—(1) In the case of a division, it is not necessary for the scheme to be approved by the members of a transferee company if the Court is satisfied that the following conditions have been complied with in relation to that company.

(2) *Condition One*: Publication of notice of receipt of the draft terms by the Registrar took place in respect of that company at least one month before the date of the first meeting of members of the transferor company summoned for the purposes of agreeing to the scheme.

(3) *Condition Two*: Members of that company were able during the period beginning one month before, and ending on, that date—

(*a*) to inspect at the registered office of that company copies of the documents specified in section 288 (3) relating to that company and every other company involved in the division; and

(*b*) to obtain copies of those documents or any part of them on request free of charge.

(4) *Condition Three*: that—

(*a*) one or more members of that company, who together held not less than five per cent of the stated capital of the company which carried the right to vote at general meetings of the company, excluding any shares in the company held as treasury shares, would have been able, during that period, to require a meeting of each class of members to be called for the purpose of deciding whether or not to agree to the scheme; and

(*b*) no such requirement was made.

(5) Conditions One and Two shall be subject to section 296 as to the power of the Court to exclude certain requirements.

Agreement to dispense with reports in a division

295.—(1) If all members holding shares in and all persons holding other securities of, the companies involved in the division, being shares or securities that carry a right to vote in general meetings of the company in question, so agree, the following requirements set out in subsection (2) shall not apply.

(2) The requirements that may be dispensed with under this section are the requirements of sections 285, 286, 287, 289 and 288 so far as relating to any document required to be drawn up under sections 285, 286, 287 and 289.

(3) For the purposes of this section—

(*a*) the members, or holders of other securities, of a company; and

(*b*) whether shares or other securities carry a right to vote in general meetings of the company,

shall be determined as at the date of the application to the Court under section 296.

Power of Court to exclude certain requirements in a division

296.—(1) In the case of a division, the Court may by order, direct that—

(*a*) in relation to any company involved in the division, the requirements of section 283 and section 288; and

(*b*) in relation to an existing transferee company, section 294 relating to circumstances in which meeting of members of transferee company are not required, shall have effect with the omission of conditions one and two specified in that section, if the Court is satisfied that the following conditions will be fulfilled in relation to that company—

(A) *Condition One*: Members of that company will have received, or will have been able to obtain free of charge, copies of the documents listed in section 288—

(i) in time to examine them before the date of the first meeting of the members, or any class of members, of that company summoned for the purposes of agreeing to the scheme; or

(ii) in the case of an existing transferee company where in the circumstances described in section 294 no meeting is held, in time to require a meeting as mentioned in subsection (4) of that section.

(B) *Condition Two*: Creditors of that company will have received or will have been able to obtain free of charge copies of the draft terms in time to examine them—

(i) before the date of the first meeting of the members, or any class of members, of the company

summoned for the purposes of agreeing to the scheme; or

(ii) in the circumstances mentioned in subsection (2) (*b*), at the same time as the members of the company.

(C) *Condition Three*: No prejudice would be caused to the members or creditors of the transferor company or any transferee company by making the order in question.

Division IV—The Takeover Panel

The takeover Panel

297.—(1) The Minister may, by regulation, establish a body known as the Panel on Takeovers and Mergers ("the Panel") which is to have the functions conferred on it by or under this Part.

(2) The Panel may do anything that it considers necessary or expedient for the purposes of, or in connexion with, its functions.

(3) The Panel may make arrangements for any of its functions to be discharged by—

(*a*) a committee or subcommittee of the Panel; or

(*b*) an officer or member of staff of the Panel, or a person acting as such.

Panel rules

298.—(1) The Minister may make rules for the Panel—

(*a*) for or in connexion with the regulation of—

(i) takeover bids;

(ii) merger transactions; and

(iii) transactions not falling within subparagraph (i) or (ii) that have or may have, directly or indirectly, an effect on the ownership or control of companies;

(*b*) for or in connexion with the regulation of things done in consequence of, or otherwise in relation to, any such bid or transaction;

(*c*) about cases where—

(i) any such bid or transaction is, or has been, contemplated or apprehended; or

(ii) an announcement is made denying that any such bid or transaction is intended.

(2) The rules may—

(*a*) make different provision for different purposes;

(*b*) make provision subject to exceptions or exemptions;

(*c*) contain incidental, supplemental, consequential or transitional provision;

(*d*) authorize the Panel to dispense with or modify the application of rules in particular cases and by reference to any circumstances.

(3) The rules made by virtue of paragraph (*d*) shall require the Panel to give reasons for acting as mentioned in that paragraph.

(4) The rules may contain provision conferring power on the Panel to impose sanctions on a person who—

(*a*) acts in breach of rules; or

(*b*) fails to comply with a direction given by virtue of section 300.

(5) The rules may provide for fees or charges to be payable to the Panel for the purpose of meeting any part of its expenses.

(6) The rules shall be made available to the public, with or without payment, in whatever way the Panel thinks appropriate.

(7) A person shall not to be taken to have contravened a rule if he shows that at the time of the alleged contravention, the text of the rule had not been made available as required by subsection (6).

(8) The Panel may promulgate or adopt a code of practice on the conduct of takeovers and mergers.

Panel rulings

299.—(1) The Panel may give rulings on the interpretation, application or effect of the rules.

(2) To the extent and in the circumstances specified in the rules, and subject to any review or appeal, a ruling shall have binding effect.

Directions

300. Rules may contain provision conferring power on the Panel to give any direction that appears to the Panel to be necessary in order—

(*a*) to restrain a person from acting or continuing to act in breach of rules;

(*b*) to restrain a person from doing or continuing to do a particular thing, pending determination of whether that or any other conduct of his is or would be a breach of rules;

(*c*) otherwise to secure compliance with rules.

Power to require documents and information

301.—(1) The Panel may by notice in writing require a person—

(*a*) to produce any documents that are specified or described in the notice;

(*b*) to provide, in the form and manner specified in the notice, such information as may be specified or described in the notice.

(2) A requirement under subsection (1) shall be complied with—

(*a*) at a place specified in the notice; and

(*b*) before the end of such reasonable period as may be so specified.

(3) This section shall apply only to documents and information reasonably required in connexion with the exercise by the Panel of its functions.

(4) The Panel may require—

(*a*) any document produced to be authenticated; or

(*b*) any information provided whether in a document or otherwise to be verified, in such manner as it may reasonably require.

(5) The Panel may authorize a person to exercise any of its powers under this section.

(6) A person exercising a power by virtue of subsection (5) shall, if required to do so, produce evidence of his authority to exercise the power.

(7) The production of a document in pursuance of this section shall not affect any lien that a person has on the document.

(8) The Panel may take copies of or extracts from a document produced in pursuance of this section.

(9) A reference in this section to the production of a document includes a reference to the production of—

(*a*) a hard copy of information recorded otherwise than in hard copy form; or

(*b*) information in a form from which a hard copy can be readily obtained.

(10) A person is not required by this section to disclose documents or information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.

Restrictions on disclosure of information

302.—(1) This section shall apply to information—

(*a*) relating to the private affairs of an individual; or

(*b*) relating to any particular business, that is provided to the Panel in connexion with the exercise of its functions.

(2) No such information may, during the lifetime of the individual or so long as the business continues to be carried on, be disclosed without the consent of that individual or (as the case may be) the person for the time being carrying on that business.

(3) Subsection (2) shall not apply to any disclosure of information that—

(*a*) is made for the purpose of facilitating the carrying out by the Panel of any of its functions; or

(*b*) such information as the Minister may by regulation permit as likely to facilitate the exercise of a function of a public nature; or have the effect of permitting disclosures to be made to a body other than one that exercises functions of a public nature in a country outside Malaŵi;

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

(*a*) the disclosure by the Registrar under this Act, Registrar of Financial Institutions, or a licensed stock exchange, of information disclosed to it by the Panel in reliance of subsection (3);

(*b*) the disclosure of such information by anyone who has obtained it directly or indirectly from an authority within subsection (4) (*a*); or

(*c*) any other person or body that exercises functions of a public nature, under legislation in a country other than Malaŵi that are similar to the Panel's functions or those of the Registrar and of the Registrar of Financial Institutions.

(5) This section shall not prohibit the disclosure of information if the information is or has been available to the public from any other source.

Contravention of the restrictions on disclosure of information

303.—(1) Any person who discloses information in contravention of section 302 commits an offence, unless—

(*a*) he did not know, and had no reason to suspect, that the information had been provided as mentioned in section 302; or

(*b*) he took all reasonable steps and exercised all due diligence to avoid the commission of the offence.

(2) A person convicted of an offence under this section shall be liable to imprisonment for two years and a fine as shall be determined by the Court taking into account the gravity of the offence.

Panel's duty of cooperation

304.—(1) The Panel shall take such steps as it considers appropriate to cooperate with—

(*a*) the Registrar, the Registrar of Financial Institutions, and a licensed stock exchange;

(*b*) any other person or body that exercises functions of a public nature, under legislation in any country outside Malaŵi that appear to the Panel to be similar to its own functions or those under paragraph (*a*).

(2) Cooperation may include the sharing of information that the Panel is not prevented from disclosing.

Appeals

305. An appeal against the decision of the Panel shall lie to the Court.

Failure to comply with rules about bid documentation

306.—(1) This section shall apply where a takeover bid is made for a company that is publicly traded on a licensed exchange in Malaŵi.

(2) Where an offer document published in respect of the bid does not comply with offer document rules, an offence is committed by—

(*a*) the person making the bid; and

(*b*) where the person making the bid is a body of persons, any director, officer or member of that body who caused the document to be published.

(3) A person shall be in contravention of subsection (2) only if—

(*a*) he knew that the offer document did not comply, or was reckless as to whether it complied; and

(*b*) he failed to take all reasonable steps to secure that it did comply.

(4) Where a response document published in respect of the bid does not comply with response document rules, by any director or other officer of the company referred to in subsection (1) who—

(*a*) knew that the response document did not comply, or was reckless as to whether it complied; and

(*b*) failed to take all reasonable steps to secure that it did comply shall have contravened subsection (2).

(5) Where there is a contravention of subsection (2) (*b*) or (4) by a company or other body corporate ("the relevant body")—

(*a*) subsection (2) (*b*) has effect as if the reference to a director, officer or member of the person making the bid included a reference to a director, officer or member of the relevant body;

(*b*) subsection (4) has effect as if the reference to a director or other officer of the company referred to in subsection (1) included a reference to a director, officer or member of the relevant body.

(6) A person who contravenes the requirements of this section shall be liable to a fine in accordance with the prevailing schedule of penalties.

Panel as party to proceedings

307. The Panel shall be capable of—

(*a*) bringing proceedings under this Division in its own name;

(*b*) bringing or defending any other proceedings in its own name.

Enforcement by the Court

308. If, on the application of the Panel, the Court is satisfied—

(*a*) that there is a reasonable likelihood that a person will contravene a rule-based requirement; or

(*b*) that a person has contravened a rule-based requirement or a disclosure requirement,

the Court may make any order it thinks fit to secure compliance with the requirement.

Exemption from liability in damages

309.—(1) Neither the Panel, nor any person within subsection (2), is to be liable in damages for anything done or omitted to be done in, or in connexion with, the discharge or purported discharge of the Panel's functions.

(2) A person is within this subsection if—

(*a*) he is or is acting as, a member, officer or member of staff of the Panel; or

(*b*) he is a person authorized under section 298.

(3) Subsection (1) does not apply if the act or omission is shown to have been in bad faith.

Privilege against to be self-incrimination

310.—A statement made by a person in response to—

(*a*) a requirement under section 301 (1); or

(*b*) an order made by the Court under section 308 to secure compliance with such a requirement may not be used against him in criminal proceedings in which he is charged with an offence to which this subsection applies.

Division V—Takeover Offers

Meaning of "takeover offer"

311.—(1) For the purposes of this Part, an offer to acquire shares in a company is a "takeover offer" if the conditions set out in subsections (2) and (3) are satisfied in relation to the offer.

(2) The first condition is that it is an offer to acquire—

(*a*) all the shares in a company; or

(*b*) where there is more than one class of shares in a company, all the shares of one or more classes, other than shares that at the date of the offer are already held by the offeror.

(3) The second condition is that the terms of the offer are the same—

(*a*) in relation to all the shares to which the offer relates; or

(*b*) where the shares to which the offer relates include shares of different classes, in relation to all the shares of each class.

(4) In subsections (1) to (3), "shares" means shares, other than relevant treasury shares, that have been allotted on the date of the offer.

(5) A takeover offer may include among the shares to which it relates—

(*a*) all or any shares that are allotted after the date of the offer but before a specified date;

(*b*) all or any relevant treasury shares that cease to be held as treasury shares before a specified date;

(*c*) all or any other relevant treasury shares.

(6) In this section—

"relevant treasury shares" means shares that—

(*a*) are held by the company as treasury shares on the date of the offer; or

(*b*) become shares held by the company as treasury shares after that date but before a specified date;

"specified date" means a date specified in or determined in accordance with the terms of the offer.

(7) Where the terms of an offer make provision for their revision and for acceptances on the previous terms to be treated as acceptances on the revised terms, then, if the terms of the offer are revised in accordance with that provision—

(*a*) the revision is not to be regarded for the purposes of this Part as the making of a fresh offer; and

(*b*) references in this Division to the date of the offer are accordingly to be read as references to the date of the original offer.

Shares already held by the offeror

312.—(1) The reference in section 311 (2) to shares already held by the offeror includes a reference to shares that he has contracted to acquire, whether unconditionally or subject to conditions being met. This is subject to subsection (2).

(2) The reference in section 311 (2) to shares already held by the offeror shall not include a reference to shares that are the subject of a contract—

(*a*) intended to secure that the holder of the shares will accept the offer when it is made; and

(*b*) entered into—

(i) by deed and for no consideration;

(ii) for consideration of negligible value; or

(iii) for consideration consisting of a promise by the offeror to make the offer.

(4) The condition in section 311 (2) shall be treated as satisfied where—

(*a*) the offer does not extend to shares that associates of the offeror hold or have contracted to acquire whether unconditionally or subject to conditions being met; and

(*b*) the condition would be satisfied if the offer did extend to those shares.

Cases where offer treated as being in the same terms

313.—(1) The condition in section 311 (3) on terms of offer to be the same for all shares or all shares of particular classes, is treated as satisfied where subsection (2) or (3) below applies.

(2) This subsection shall apply where—

(*a*) shares carry an entitlement to a particular dividend which other shares of the same class, by reason of being allotted later, do not carry;

(*b*) there is a difference in the value of consideration offered for the shares allotted earlier as against that offered for those allotted later;

(*c*) that difference merely reflects the difference in entitlement to the dividend; and

(*d*) the condition in section 311 (3) would be satisfied but for that difference.

(3) This subsection shall apply where—

(*a*) the law of a country outside Malaŵi—

(i) precludes an offer of consideration in the form, or any of the forms, specified in the terms of the offer ("the specified form"); or

(ii) precludes it except after compliance by the offeror with conditions with which he is unable to comply or which he regards as unduly onerous;

(*b*) the persons to whom an offer of consideration in the specified form is precluded are able to receive consideration in another form that is of substantially equivalent value; and

(*c*) the condition in section 311 (3) would be satisfied but for the fact that an offer of consideration in the specified form to those persons is precluded.

Shares to which an offer relates

314.—(1) Where a takeover offer is made and, during the period beginning with the date of the offer and ending when the offer can no longer be accepted, the offeror acquires or unconditionally contracts to acquire any of the shares to which the offer relates but does not do so by virtue of acceptances of the offer, those shares shall be treated, for the purposes of this Division, as excluded from those to which the offer relates.

(2) For the purposes of this Division, shares that an associate of the offeror holds or has contracted to acquire, whether at the date of the offer or subsequently, shall not be treated as shares to which the offer relates, even if the offer extends to such shares.

In this subsection "contracted" means contracted unconditionally or subject to conditions being met.

(3) This section is subject to section 316 (8) and (9).

Effect of impossibility of communicating or accepting an offer

315.—(1) Where there are holders of shares in a company to whom an offer to acquire shares in the company is not communicated, that does not prevent the offer from being a takeover offer for the purposes of this Division if—

(*a*) those shareholders have no registered address in Malaŵi;

(*b*) the offer was not communicated to those shareholders in order not to contravene the law of a country outside Malaŵi; and

(*c*) the offer is published in the *Gazette*, or a notice is published in the *Gazette*, specifying the address a website containing the offer.

(2) Where an offer is made to acquire shares in a company and there are persons for whom, by reason of the law of a country outside Malaŵi, it is impossible to accept the offer, or more difficult to do so, that does not prevent the offer from being a takeover offer for the purposes of this Division.

(3) It is not to be inferred—

(*a*) that an offer which is not communicated to every holder of shares in the company cannot be a takeover offer for the purposes of this Part unless the requirements of paragraphs (*a*) to (*c*) of subsection (1) are met; or

(*b*) that an offer which is impossible, or more difficult, for certain persons to accept cannot be a takeover offer for those purposes unless the reason for the impossibility or difficulty is the one mentioned in subsection (2).

"SQUEEZE-OUT"

Right of offeror to buy out minority shareholder

316.—(1) Subsection (2) shall apply in a case where a takeover offer does not relate to shares of different classes.

(2) If the offeror has, by virtue of acceptances of the offer, acquired or unconditionally contracted to acquire—

(*a*) not less than ninety per cent in value of the shares to which the offer relates; and

(*b*) in a case where the shares to which the offer relates are voting shares, not less than ninety per cent of the voting rights carried by those shares, he may give notice to the holder of any shares to which the offer relates which the offeror has not acquired or unconditionally contracted to acquire that he desires to acquire those shares.

(3) Subsection (4) applies in a case where a takeover offer relates to shares of different classes.

(4) If the offeror has, by virtue of acceptances of the offer, acquired or unconditionally contracted to acquire—

(*a*) not less than ninety per cent in value of the shares of any class to which the offer relates; and

(*b*) in a case where the shares of that class are voting shares, not less than ninety per cent of the voting rights carried by those shares, he may give notice to the holder of any shares of that class to which the offer relates which the offeror has not acquired or unconditionally contracted to acquire that he desires to acquire those shares.

(5) In the case of a takeover offer which includes among the shares to which it relates—

(*a*) shares that are allotted after the date of the offer; or

(*b*) relevant treasury shares within the meaning of section 320 that cease to be held as treasury shares after the date of the offer, the offeror's entitlement to give a notice under subsection (2) or (4) on any particular date shall be determined as if the shares to which the offer relates did not include any allotted, or ceasing to be held as treasury shares, on or after that date.

(6) Subsection (7) applies where—

(*a*) the requirements for the giving of a notice under subsection (2) or (4) are satisfied; and

(*b*) there are shares in the company which the offeror, or an associate of his, has contracted to acquire subject to conditions being met, and in relation to which the contract has not become unconditional.

(7) The offeror's entitlement to give a notice under subsection (2) or (4) shall be determined as if—

(*a*) the shares to which the offer relates included shares falling within subsection (6) (*b*); and

(*b*) in relation to shares falling within that paragraph, the words "by virtue of acceptances of the offer" in subsection (2) or (4) were omitted.

(8) Where—

(*a*) a takeover offer is made;

(*b*) during the period beginning with the date of the offer and ending when the offer can no longer be accepted, the offeror acquires or unconditionally contracts to acquire any of the shares to which the offer relates, but does not do so by virtue of acceptances of the offer; and

(*c*) subsection (10) shall apply,

then for the purposes of this section those shares are not excluded by section 314 (1) from those to which the offer relates, and the offeror is treated as having acquired or contracted to acquire them by virtue of acceptances of the offer.

(9) Where—

(*a*) a takeover offer is made;

(*b*) during the period beginning with the date of the offer and ending when the offer can no longer be accepted, an associate of the offeror acquires or unconditionally contracts to acquire any of the shares to which the offer relates; and

(*c*) subsection (10) shall apply,

then for the purposes of this section those shares are not excluded by section 314 (2) from those to which the offer relates.

(10) This subsection shall apply if—

(*a*) at the time the shares are acquired or contracted to be acquired as mentioned in subsection (8) or (9) as the case may be, the value of the consideration for which they are acquired or contracted to be acquired ("the acquisition consideration") does not exceed the value of the consideration specified in the terms of the offer; or

(*b*) those terms are subsequently revised so that when the revision is announced the value of the acquisition consideration, at the time mentioned in paragraph (*a*), no longer exceeds the value of the consideration specified in those terms.

Further provisions about notices given under section 316

317.—(1) A notice under section 316 must be given in the prescribed manner.

(2) No notice may be given under section 316 (2) or (4) after the end of—

(*a*) the period of three months beginning with the day after the last day on which the offer can be accepted; or

(*b*) the period of six months beginning with the date of the offer, where that period ends earlier and the offer is one to which subsection (3) below applies.

(3) At the time when the offeror first gives a notice under section 316 in relation to an offer, he must send to the company—

(*a*) a copy of the notice; and

(*b*) a statutory declaration by him in the prescribed form, stating that the conditions for the giving of the notice are satisfied.

(4) Where the offeror is a company whether or not a company within the meaning of this Act the statutory declaration must be signed by a director.

(5) Where a person fails to send a copy of a notice or a statutory declaration as required by subsection (3), or makes such a declaration for the purposes of that subsection knowing it to be false or without having reasonable grounds for believing it to be true he shall be liable to a fine in accordance with the prevailing schedule of penalties.

(6) It is a defence for failing to send a copy of a notice as required by subsection (3) for a person to prove that he took reasonable steps for securing compliance with that subsection.

Effect of notice under section 316

318.—(1) Subject to section 323 this section applies where the offeror gives a shareholder a notice under section 316.

(2) The offeror is entitled and bound to acquire the shares to which the notice relates on the terms of the offer.

(3) Where the terms of an offer are such as to give the shareholder a choice of consideration, the notice must give particulars of the choice and state—

(*a*) that the shareholder may, within six weeks from the date of the notice, indicate his choice by a written communication sent to the offeror at an address specified in the notice; and

(*b*) which consideration specified in the offer will apply if he does not indicate a choice.

(4) Subsection (3) applies whether or not any time-limit or other conditions applicable to the choice under the terms of the offer can still be complied with.

(5) If the consideration offered to or as the case may be chosen by the shareholder—

(*a*) is not cash and the offeror is no longer able to provide it; or

(*b*) was to have been provided by a third party who is no longer bound or able to provide it, the consideration is to be taken to

consist of an amount of cash, payable by the offeror, which at the date of the notice is equivalent to the consideration offered or as the case may be chosen.

(6) At the end of six weeks from the date of the notice the offeror shall immediately—

(*a*) send a copy of the notice to the company; and

(*b*) pay or transfer to the company the consideration for the shares to which the notice relates.

Where the consideration consists of shares or securities to be allotted by the offeror, the reference in paragraph (*b*) to the transfer of the consideration shall be read as a reference to the allotment of the shares or securities to the company.

(7) If the shares to which the notice relates are registered, the copy of the notice sent to the company under subsection (6) (*a*) must be accompanied by an instrument of transfer executed on behalf of the holder of the shares by a person appointed by the offeror. On receipt of that instrument the company must register the offeror as the holder of those shares.

(8) If the shares to which the notice relates are transferable by the delivery of warrants or other instruments, the copy of the notice sent to the company under subsection (6) (*a*) must be accompanied by a statement to that effect. On receipt of that statement the company must issue the offeror with warrants or other instruments in respect of the shares, and those already in issue in respect of the shares become void.

(9) The company shall hold any money or other consideration received by it under subsection (6) (*b*) on trust for the person who, before the offeror acquired them, was entitled to the shares in respect of which the money or other consideration was received.

Further provisions about consideration held on trust

319.—(1) This section shall apply where an offeror pays or transfers consideration to the company under section 318 (6).

(2) The company shall pay into a separate bank account that complies with subsection (3)—

(*a*) any money it receives under paragraph (*b*) of section 318 (6); and

(*b*) any dividend or other sum accruing from any other consideration it receives under that paragraph.

(3) A bank account complies with this subsection if the balance on the account—

(*a*) bears interest at an appropriate rate; and

(*b*) can be withdrawn by such notice (if any) as is appropriate.

(4) If—

(*a*) the person entitled to the consideration held on trust by virtue of section 318 (9) cannot be found; and

(*b*) subsection (5) applies, the consideration, together with any interest, dividend or other benefit that has accrued from it, shall be paid into Court.

(5) This subsection shall apply where—

(*a*) reasonable enquiries have been made at reasonable intervals to find the person; and

(*b*) twelve years have elapsed since the consideration was received, or the company is wound-up.

(6) If the person entitled to the consideration held on trust by virtue of section 318 (9) cannot be found and subsection (5) applies—

(*a*) the trust terminates;

(*b*) the company or, if the company is wound up, the liquidator must sell any consideration other than cash and any benefit other than cash that has accrued from the consideration; and

(*c*) a sum representing—

(i) the consideration so far as it is cash;

(ii) the proceeds of any sale under paragraph (*b*); and

(iii) any interest, dividend or other benefit that has accrued from the consideration, must be deposited in the name of the Registrar of the Court in a separate bank account complying with subsection (3) and the receipt for the deposit must be transmitted to the Registrar of the Court.

"SELL-OUT"

Right of minority shareholder to be bought out by offeror

320.—(1) Subsections (2) and (3) shall apply in a case where a takeover offer relates to all the shares in a company.

(2) For this purpose a takeover offer relates to all the shares in a company if it is an offer to acquire all the shares in the company within the meaning of section 311.

(3) The holder of any voting shares to which the offer relates who has not accepted the offer may require the offeror to acquire those shares if, at any time before the end of the period within which the offer can be accepted—

(*a*) the offeror has by virtue of acceptances of the offer acquired or unconditionally contracted to acquire some but not all of the shares to which the offer relates; and

(*b*) those shares, with or without any other shares in the company which he has acquired or contracted to acquire whether unconditionally or subject to conditions being met—

(i) amount to not less than ninety per cent in value of all the voting shares in the company, or would do so but for section 327 (1); and

(ii) carry not less than ninety per cent of the voting rights in the company (or would do so but for section 327 (1)).

(4) The holder of any non-voting shares to which the offer relates who has not accepted the offer may require the offeror to acquire those shares if, at any time before the end of the period within which the offer can be accepted—

(*a*) the offeror has by virtue of acceptances of the offer acquired or unconditionally contracted to acquire some but not all of the shares to which the offer relates; and

(*b*) those shares, with or without any other shares in the company which he has acquired or contracted to acquire whether unconditionally or subject to conditions being met, amount to not less than ninety per cent in value of all the shares in the company or would do so but for section 327 (1).

(5) If a takeover offer relates to shares of one or more classes and at any time before the end of the period within which the offer can be accepted—

(*a*) the offeror has by virtue of acceptances of the offer acquired or unconditionally contracted to acquire some but not all of the shares of any class to which the offer relates; and

(*b*) those shares, with or without any other shares of that class which he has acquired or contracted to acquire whether unconditionally or subject to conditions being met—

(i) amount to not less than ninety per cent in value of all the shares of that class; and

(ii) in a case where the shares of that class are voting shares, carry not less than ninety per cent of the voting rights carried by the shares of that class, the holder of any shares of that class to which the offer relates who has not accepted the offer may require the offeror to acquire those shares.

(6) For the purposes of subsections (3) to (5), in calculating ninety per cent of the value of any shares, shares held by the company as treasury shares are to be treated as having been acquired by the offeror.

(7) Subsection (8) applies where—

(*a*) a shareholder exercises rights conferred on him by subsection (3), (4) or (5);

(*b*) at the time when he does so, there are shares in the company which the offeror has contracted to acquire subject to conditions being met, and in relation to which the contract has not become unconditional; and

(*c*) the requirement imposed by subsection (3) (*b*), (4) (*b*) or (5) (*b*) (as the case may be) would not be satisfied if those shares were not taken into account.

(8) The shareholder is treated for the purposes of section 322 as not having exercised his rights under this section unless the requirement imposed by paragraph (*b*) of subsection (3), (4) or (5) as the case may be would be satisfied if—

(*a*) the reference in that paragraph to other shares in the company which the offeror has contracted to acquire unconditionally or subject to conditions being met were a reference to such shares which he has unconditionally contracted to acquire; and

(*b*) the reference in that subsection to the period within which the offer can be accepted were a reference to the period referred to in section 321 (2).

(9) A reference in section 320 (3) (*b*), (4) (*b*), (5) (*b*), (7) or (8) to shares which the offeror has acquired or contracted to acquire includes a reference to shares which an associate of his has acquired or contracted to acquire.

Further provision about rights to be bought out by offeror

321.—(1) Rights conferred on a shareholder by subsection (3), (4) or (5) of section 320 are exercisable by a written communication addressed to the offeror.

(2) Rights conferred on a shareholder by section 320 (3), (4) or (5) shall not be exercisable after the end of the period of three months from—

(*a*) the end of the period within which the offer can be accepted; or

(*b*) if later, the date of the notice that must be given under subsection (3) below.

(3) Within one month of the time specified in subsection (2), (3) or (4) (as the case may be) of that section, the offeror must give any shareholder who has not accepted the offer notice in the prescribed manner of—

(*a*) the rights that are exercisable by the shareholder under that subsection; and

(*b*) the period within which the rights are exercisable.

If the notice is given before the end of the period within which the offer can be accepted, it shall state that the offer is still open for acceptance.

(4) Subsection (3) shall not apply if the offeror has given the shareholder a notice in respect of the shares in question under section 316.

(5) Where a person fails to comply with subsection (3), he shall be liable to a fine in accordance with the prevailing schedule of penalties.

(6) It shall be a defence to failure to comply with subsection (3) for a person to prove that he took reasonable steps for securing compliance with that subsection.

Effect of right to be bought out

322.—(1) Subject to section 323, this section applies where a shareholder exercises his rights under section 320 in respect of any shares held by him.

(2) The offeror shall be entitled and bound to acquire those shares on the terms of the offer or on such other terms as may be agreed.

(3) Where the terms of an offer are such as to give the shareholder a choice of consideration—

(*a*) the shareholder may indicate his choice when requiring the offeror to acquire the shares; and

(*b*) the notice given to the shareholder under section 321 (3)—

(i) must give particulars of the choice and of the rights conferred by this subsection; and

(ii) may state which consideration specified in the offer will apply if he does not indicate a choice.

The reference in subsection (2) to the terms of the offer is to be read accordingly.

(4) Subsection (3) shall apply whether or not any time-limit or other conditions applicable to the choice under the terms of the offer can still be complied with.

(5) If the consideration offered to, or as the case may be, chosen by, the shareholder—

(*a*) is not cash and the offeror is no longer able to provide it; or

(*b*) was to have been provided by a third party who is no longer bound or able to provide it,

the consideration is to be taken to consist of an amount of cash, payable by the offeror, which at the date when the shareholder requires the offeror to acquire the shares is equivalent to the consideration offered or as the case may be chosen.

Applications to the Court

323.—(1) Where a notice is given under section 316 to a shareholder the Court may, on an application made by him, order—

(*a*) that the offeror is not entitled and bound to acquire the shares to which the notice relates; or

(*b*) that the terms on which the offeror is entitled and bound to acquire the shares shall be such as the Court thinks fit.

(2) An application under subsection (1) must be made within six weeks from the date on which the notice referred to in that subsection was given.

If an application to the Court under subsection (1) is pending at the end of that period, section 318 (6) shall not have effect until the application has been disposed of.

(3) Where a shareholder exercises his rights under section 320 in respect of any shares held by him, the Court may, on an application made by him or the offeror, order that the terms on which the offeror is entitled and bound to acquire the shares shall be such as the Court thinks fit.

(4) On an application under subsection (1) or (3)—

(*a*) the Court may not require consideration of a higher value than that specified in the terms of the offer ("the offer value") to be given for the shares to which the application relates unless the holder of the shares shows that the offer value would be unfair;

(*b*) the Court may not require consideration of a lower value than the offer value to be given for the shares.

(5) No order for costs or expenses may be made against a shareholder making an application under subsection (1) or (3) unless the Court considers that—

(*a*) the application was unnecessary, improper or vexatious;

(*b*) there has been unreasonable delay in making the application; or

(*c*) there has been unreasonable conduct on the shareholder's part in conducting the proceedings on the application.

(6) A shareholder who has made an application under subsection (1) or (3) shall give notice of the application to the offeror.

(7) An offeror who is given notice of an application under subsection (1) or (3) shall give a copy of the notice to—

(*a*) any person, other than the applicant, to whom a notice has been given under section 316; and

(*b*) any person who has exercised his rights under section 320.

(8) An offeror who makes an application under subsection (3) shall give notice of the application to—

(*a*) any person to whom a notice has been given under section 315;

(*b*) any person who has exercised his rights under section 320.

(9) Where a takeover offer has not been accepted to the extent necessary for entitling the offeror to give notices under subsection (2) or (4) of section 316 the Court may, on an application made by him, make an order authorizing him to give notices under that subsection if it is satisfied that—

(*a*) the offeror has after reasonable enquiry been unable to trace one or more of the persons holding shares to which the offer relates;

(*b*) the requirements of that subsection would have been met if the person, or all the persons, mentioned in paragraph (*a*) above had accepted the offer; and

(*c*) the consideration offered is fair and reasonable.

(10) The Court may not make an order under subsection (9) unless it considers that it is just and equitable to do so having regard, in particular, to the number of shareholders who have been traced but who have not accepted the offer.

Joint offers

324.—(1) In the case of a takeover offer made by two or more persons jointly, this Division has effect in accordance with this section.

(2) The conditions for the exercise of the rights conferred by section 316 shall be satisfied—

(*a*) in the case of acquisitions by virtue of acceptances of the offer, by the joint offerors acquiring or unconditionally contracting to acquire the necessary shares jointly;

(*b*) in other cases, by the joint offerors acquiring or unconditionally contracting to acquire the necessary shares either jointly or separately.

(3) The conditions for the exercise of the rights conferred by section 320 shall be satisfied—

(*a*) in the case of acquisitions by virtue of acceptances of the offer, by the joint offerors acquiring or unconditionally contracting to acquire the necessary shares jointly;

(*b*) in other cases, by the joint offerors acquiring or contracting, whether unconditionally or subject to conditions being met, to acquire the necessary shares either jointly or separately.

(4) Subject to the following provisions, the rights and obligations of the offeror under sections 316 to 322 are respectively joint rights and joint and several obligations of the joint offerors.

(5) A provision of sections 316 to 323 that requires or authorizes a notice or other document to be given or sent by or to the joint offerors is complied with if the notice or document is given or sent by or to any of them.

(6) The statutory declaration required by section 317 (4) shall be made by all of the joint offerors and, where one or more of them is a company, signed by a director of that company.

(7) In sections 311 to 314, 316 (9), 318 (6), 320 (8) and 325 references to the offeror are to be read as references to the joint offerors or any of them.

(8) In section 318 (7) and (8) references to the offeror shall be read as references to the joint offerors or such of them as they may determine.

(9) In sections 318 (5) (*a*) and 322 (5) (*a*) references to the offeror being no longer able to provide the relevant consideration are to be read as references to none of the joint offerors being able to do so.

(10) In section 323 references to the offeror shall be read as references to the joint offerors, except that—

(*a*) an application under subsection (3) or (9) may be made by any of them; and

(*b*) the reference in subsection (9) (*a*) to the offeror having been unable to trace one or more of the persons holding shares shall be read as a reference to none of the offerors having been able to do so.

Associates

325.—(1) In this Division, "associate", in relation to an offeror, means—

(*a*) a nominee of the offeror;

(*b*) a holding company, subsidiary or fellow subsidiary of the offeror or a nominee of such a holding company, subsidiary or fellow subsidiary;

(*c*) a body corporate in which the offeror is substantially interested;

(*d*) a person who is, or is a nominee of, a party to a share acquisition agreement with the offeror; or

(*e*) where the offeror is an individual, his spouse or civil partner and any minor child or step-child of his.

(2) For the purposes of subsection (1) (*b*), a company shall be a fellow subsidiary of another body corporate if both are subsidiaries of the same body corporate but neither is a subsidiary of the other.

(3) For the purposes of subsection (1) (*c*) an offeror shall have a substantial interest in a body corporate if—

(*a*) the body or its directors are accustomed to act in accordance with his directions or instruction; or

(*b*) he is entitled to exercise or control the exercise of one-third or more of the voting power at general meetings of the body.

(4) For the purposes of subsection (1) (*d*) an agreement shall be a share acquisition agreement if—

(*a*) it is an agreement for the acquisition of, or of an interest in, shares to which the offer relates;

(*b*) it includes provisions imposing obligations or restrictions on any one or more of the parties to it with respect to their use, retention or disposal of such shares, or their interests in such shares, acquired in pursuance of the agreement, whether or not together with any other shares to which the offer relates or any other interests of theirs in such shares; and

(*c*) it is not an excluded agreement under subsection (5).

(5) An agreement shall be an "excluded agreement"—

(*a*) if it is not legally binding, unless it involves mutuality in the undertakings, expectations or understandings of the parties to it; or

(*b*) if it is an agreement to underwrite or sub-underwrite an offer of shares in a company, provided the agreement is confined to that purpose and any matters incidental to it.

(6) The reference in subsection (4) (*b*) to the use of interests in shares is to the exercise of any rights or of any control or influence arising from those interests including the right to enter into an agreement for the exercise, or for control of the exercise, of any of those rights by another person.

(7) In this section—

(*a*) "agreement" includes any agreement or arrangement;

(*b*) references to provisions of an agreement include—

(i) undertakings, expectations or understandings operative under an arrangement; and

(ii) any provision whether express or implied and whether absolute or not.

Convertible securities

326.—(1) For the purposes of this Division, securities of a company are treated as shares in the company if they are convertible into or entitle the holder to subscribe for such shares. References to the holder of shares or a shareholder are to be read accordingly.

(2) Subsection (1) shall not to be read as requiring any securities to be treated—

(*a*) as shares of the same class as those into which they are convertible or for which the holder is entitled to subscribe; or

(*b*) as shares of the same class as other securities by reason only that the shares into which they are convertible or for which the holder is entitled to subscribe are of the same class.

Debentures carrying voting rights

327.—(1) For the purposes of this Division, debentures issued by a company to which subsection (2) applies are treated as shares in the company if they carry voting rights.

(2) This subsection applies to a company that has voting shares, or debentures carrying voting rights, which are admitted to trading on a regulated market.

(3) In this Part, in relation to debentures treated as shares by virtue of subsection (1)—

(*a*) references to the holder of shares or a shareholder are to be read accordingly;

(*b*) references to shares being allotted are to be read as references to debentures being issued.

Interpretation in this Part

328.—(1) In this Part—

"the company" means the company whose shares are the subject of a takeover offer;

"date of the offer" means—

(*a*) where the offer is published, the date of publication;

(*b*) where the offer is not published, or where any notices of the offer are given before the date of publication, the date when notices of the offer (or the first such notices) are given; and references to the date of the offer are to be read in accordance with section 311 (7) (revision of offer terms) where that applies;

"non-voting shares" means shares that are not voting shares;

"offeror" means, subject to section 324, the person making a takeover offer;

"voting rights" means rights to vote at general meetings of the company, including rights that arise only in certain circumstances;

"voting shares" means shares carrying voting rights.

(2) For the purposes of this Part, a person contracts unconditionally to acquire shares if his entitlement under the contract to acquire them is not, or is no longer, subject to conditions, or if all conditions to which it was subject have been met, a reference to a contract becoming unconditional shall be read accordingly.

PART XIII

Winding-up and Liquidation

Application of the Insolvency Act Cap. 11:01

329. The provisions of the Insolvency Act, apply to all companies incorporated or registered under this Act.

Winding-up Cap. 11:01

330. A company may be wound up in accordance with the provisions of the Insolvency Act, where the company meets the requirements of that Act.

PART XIV

Remedies and Enforcement

Division I—Company Investigations

Power to appoint inspectors Cap. 46:06

331.—(1) The Minister, the Registrar or the Registrar of Financial Institutions where the company's securities are publicly traded within the meaning of the Securities Act, may appoint one or more competent inspectors to investigate the affairs of a company and to report on them in such manner as he may direct.

(2) The appointment may be made if it appears that there are circumstances suggesting—

(*a*) that the company's affairs have been or are being conducted with intent to defraud its creditors or the creditors of any other person, or otherwise for a fraudulent or unlawful purpose, or in a manner which is unfairly prejudicial to some part of its members; or

(*b*) that any actual or proposed act or omission of the company including an act or omission on its behalf is, or would be prejudicial, or that the company was formed for any fraudulent or unlawful purpose; or

(*c*) that persons concerned with the company's formation or the management of its affairs have in connexion therewith been guilty of, misfeasance or other deceitful misconduct towards it or towards its members; or

(*d*) that the company's members have not been given all the information with respect to its affairs which they might reasonable expect;

(*e*) any other circumstances that warrant an investigation of the company's affairs.

Power to make regulations for the investigation of companies Cap. 46:06

332. The Minister or the Registrar of Financial Institutions where the company's securities are publicly traded within the meaning of the Securities Act, shall make regulations providing for the investigation of companies.

Cost of investigations

333.—(1) The expenses of an investigation shall be defrayed in the first instance by the company and subsequently be recovered from persons found liable as a result of the investigation.

(2) A person convicted on a prosecution instituted as a result of the investigation, shall be ordered to pay, in whole or in part, the costs of the investigation.

(3) No prosecution for an offence under this section shall be instituted except by, or with the written consent of, the Director of Public Prosecutions.

(4) Where under subsection (3) the Director of Public Prosecutions withholds consent to any prosecution under this Act, he shall—

(*a*) provide to the Minister, or the Registrar of Financial Institutions reasons in writing, devoid of any consideration other than those of fact and the law, for the withholding of that consent; and

(*b*) inform the Legal Affairs Committee of Parliament of his decision within thirty days of the decision.

Report of inspector

334.—(1) An inspector who makes an investigation under section 331, may, and if so directed by the Minister, the Registrar or the Registrar of Financial Institutions, make interim reports.

(2) A copy of the inspector's final report shall be forwarded to the Registrar and to the registered office of the company.

(3) The Minister, the Registrar or the Registrar of Financial Institutions may, where he is of the opinion that it is necessary in the public interest to do so, cause the report to be published provided that where the report is not so published reason therefor shall be given in writing to the Legal Affairs Committee of Parliament within thirty days of the decision.

(4) Where, from a report of an inspector, it appears to the Minister, the Registrar or the Registrar of Financial Institutions that proceedings ought in the public interest to be brought by a company dealt with by the report—

(*a*) for the recovery of damages in respect of any fraud, misfeasance or other misconduct in connexion with—

(i) the promotion or formation of that company; or

(ii) the management of its affairs; or

(*b*) for the recovery of any property of the company which has been misapplied or wrongly retained, the Minister or Registrar of Financial Institutions may direct the Registrar to bring proceedings for that purpose in the name of the company.

(5) Where proceedings are brought in the public interest under subsection (4) the Registrar may, if he is not the party commencing the proceedings, if he so wishes, intervene as an interested party in any such proceedings.

(6) Where from a report of an inspector it appears that any qualified auditor—

(*a*) has been guilty of misconduct; or

(*b*) has conducted an audit in a manner which renders him in the opinion of the inspector unfit to be a qualified auditor, the Minister shall refer the matter to the Institute prescribed by the Public Accountants and Auditors Act for action.

Cap. 53:06

(7) Where from a report of an inspector it appears to the Registrar that in the case of any public company or private company—

(*a*) the use of—

(i) a parent company or any subsidiary company;

(ii) shares with restricted voting rights or special rights; or

(iii) any voting trust or arrangement, by any member has been made in order to confer or maintain control in that company; and

(*b*) such control unfairly discriminates against or is unfairly prejudicial to other members of the company, the Registrar may apply to the Court under section 343 for an order under that section.

(8) A report of inspectors appointed under section 331 shall, if certified by the Registrar as a true copy, be admissible in any legal

proceedings as evidence of the opinion of inspectors in relation to any matter contained in the report.

Duty to cooperate with inspectors

335. If in the course of an investigation, it appears to the inspectors that they may need information from a person, body corporate, association, statutory or enforcement body, it shall be under duty to cooperate with the inspectors.

Power to terminate or suspend any investigation in relation to a company

336. The Minister shall have powers to suspend or terminate an investigation if it appears that the matters in respect of which an investigation was commenced are the subject of criminal or civil proceedings.

Division II—Proceedings by Shareholders and Directors

Derivative actions

337.—(1) Subject to subsection (3), the Court may, on the application of a shareholder or director of a company, grant leave to that shareholder or director to—

(*a*) bring proceedings in the name and on behalf of the company or its subsidiary; or

(*b*) intervene in proceedings to which the company or any related company is a party for the purpose of continuing, defending, or discontinuing the proceedings on behalf of the company or its subsidiary, as the case may be.

(2) Without prejudice to subsection (1), in determining whether to grant leave under that subsection, the Court shall have regard to—

(*a*) the likelihood of the proceedings that may follow;

(*b*) the costs of the proceedings in relation to the relief likely to be obtained;

(*c*) any action already taken by the company or its subsidiary to obtain relief;

(*d*) the interests of the company or its subsidiary in the proceedings being commenced, continued, defended, or discontinued, as the case may be.

(3) Leave to bring proceedings or intervene in proceedings may be granted under subsection (1), only where the Court is satisfied that either—

(*a*) the company or related company does not intend to bring, continue or defend, or discontinue, the proceedings, as the case may be; or

(*b*) it is in the interests of the company or its subsidiary that the conduct of the proceedings should not be left to the directors or to the determination of the shareholders as a whole.

(4) Notice of the application shall be served on the company or its subsidiary.

(5) The company or related company—

(*a*) may appear and be heard; and

(*b*) shall inform the Court, whether or not it intends to bring, continue, defend, or discontinue the proceedings, as the case may be.

(6) Except as provided for in this section, a shareholder or director of a company is not entitled to bring or intervene in any proceedings in the name of, or on behalf of, a company or its subsidiary.

Cost of derivative action to be met by company

338. The Court shall, on the application of the shareholder or director to whom leave was granted under section 337 to bring or intervene in the proceedings, order that the whole or part of the reasonable costs of bringing or intervening in the proceedings, including any costs relating to any settlement, compromise, or discontinuance approved under section 337, shall be met by the company unless the Court considers that it would be unjust or inequitable for the company to bear those costs.

Powers of Court where leave granted

339. The Court may, at any time, make any order it thinks fit in relation to proceedings brought by a shareholder or a director or in which a shareholder or director intervenes, as the case may be, with leave of the Court under section 337, and without prejudice to the generality of this section may—

(*a*) make an order authorizing the shareholder or any other person to control the conduct of the proceedings;

(*b*) give directions for the conduct of the proceedings;

(*c*) make an order requiring the company or the directors to provide information or assistance in relation to the proceedings;

(*d*) make an order directing that any amount ordered to be paid by a defendant in the proceedings shall be paid, in whole or part, to former and present shareholders of the company or its subsidiary instead of to the company or the related company.

Compromise, settlement or withdrawal of derivative action

340. No proceedings brought by a shareholder or a director or in which a shareholder or a director intervenes, as the case may be, with leave of the Court under section 337, may be settled or compromised or discontinued without the approval of the Court.

Personal actions by shareholders against directors

341.—(1) A shareholder or former shareholder may bring an action against a director and in the case of section 145, a secretary, for breach of a duty owed to him as a shareholder.

(2) An action may not be brought under subsection (1) to recover any loss in the form of a reduction in the value of shares in the company or a failure of the shares to increase in value by reason only of a loss suffered, or a gain forgone, by the company.

(3) For the purposes of subsection (1), the duties set out in sections 150, 187 and 342 are duties owed to shareholders while the duties of directors set out in sections 176 to 180 are duties owed to the company and not to shareholders.

Personal actions by shareholders against company

342. Any shareholder of a company may bring an action against the company for breach of a duty owed by the company to him as a shareholder.

Unfairly prejudicial conduct

343.—(1) Any shareholder or former shareholder of a company, or any other entitled person, who considers that the affairs of a company have been, or are being, or are likely to be, conducted in a manner that is, or any act or acts of the company have been, or are, or are likely to be, oppressive, unfairly discriminatory, or unfairly prejudicial to that person in that capacity or in any other capacity, may apply to the Court for an order under this section.

(2) The provisions of this Division shall apply to a person who is not a member of a company but to whom shares in the company have been transferred or transmitted by operation of law as they apply to a member of a company.

(3) Where, on an application under this section, the Court considers that it is just and equitable to do so, it may make such order as it thinks fit including, without prejudice to the generality of this subsection, an order—

(*a*) requiring the company or any other person to acquire the shareholder's shares; or

(*b*) requiring the company or any other person to pay compensation to a person; or

(*c*) regulating the future conduct of the company's affairs; or

(*d*) altering or adding to the company's constitution; or

(*e*) appointing a receiver of the company; or

(*f*) directing the rectification of the records of the company; or

(*g*) putting the company into liquidation; or

(*h*) setting aside action taken by the company or the Board in breach of this Act or the constitution of the company.

(4) No order may be made against the company or any other person under subsection (2) unless the company or that person is a party to the proceedings in which the application is made.

(5) Where an order is made under this section the Court shall record on the order the date and time at which the order is made.

Remedies

344.—(1) If the Court is satisfied that a petition under sections 341 to 343 is well founded, it may make such order as it thinks fit for giving relief in respect of the matters complained of.

(2) Without prejudice to the generality of subsection (1), the Court's order may—

(*a*) regulate the conduct of the company's affairs in the future;

(*b*) require the company—

(i) to refrain from doing or continuing an act complained of; or

(ii) to do an act that the petitioner has complained it has omitted to do;

(*c*) authorize civil proceedings to be brought in the name and on behalf of the company by such person or persons and on such terms as the Court may direct;

(*d*) require the company not to make any, or any specified, alterations in its articles without the leave of the Court;

(*e*) provide for the purchase of the shares of any members of the company by other members or by the company itself and, in the case of a purchase by the company itself, the reduction of the company's capital accordingly.

Division III—Penalties

False or misleading statements provided under this Act

345.—(1) Any person who, with respect to a document required by or for the purposes of this Act—

(*a*) makes, or authorizes the making of, a statement that is false or misleading in a material particular knowing it to be false or misleading; or

(*b*) omits, or authorizes the omission of, any matter knowing that the omission makes the document false or misleading in a material particular, commits an offence and shall, on conviction,

be liable to imprisonment for a term not exceeding five years and a fine as shall be determined by the Court taking into account the gravity of the offence.

(2) Any director or employee of a company who knowingly makes or furnishes, or authorizes or permits the making or furnishing of, a statement or report that relates to the affairs of the company, that is false or misleading in a material particular, to—

(*a*) a director, employee, auditor, shareholder, debenture holder, or trustee for debenture holders of the company;

(*b*) a liquidator, liquidation committee, or receiver or manager of property of the company; or

(*c*) where the company is a subsidiary, a director, employee, or auditor of its holding company, commits an offence and shall, on conviction, be liable to imprisonment for five years and a fine as shall be determined by the Court taking into account the gravity of the offence.

Fraudulent trading

346.—(1) If any business of a company is carried on with intent to defraud creditors of the company or creditors of any other person, or for any fraudulent purpose, every person who is knowingly a party to the carrying on of the business in that manner commits an offence.

(2) Subsection (1) shall apply whether or not the company has been, or is, in the course of being, wound-up.

(3) A person guilty of an offence under this section shall be liable, on conviction, to imprisonment for ten years and a fine as shall be determined by the Court taking into account the gravity of the offence.

Director's disqualification

347.—(1) A person shall be disqualified from acting as a director of a company if—

(*a*) a Court order is issued against that person by reason of mental incapacity; or

(*b*) subject to subsection (2), the person—

(i) has been declared bankrupt or insolvent by the Court;

(ii) is prohibited by any other law from serving as a director of a company;

(iii) has been removed from an office of trust, on the grounds of misconduct involving dishonesty; or

(iv) has been convicted and imprisoned or fined for theft, fraud, forgery, perjury or an offence—

(*aa*) involving fraud, misrepresentation or dishonesty;

(*bb*) in connexion with the promotion, formation or management of a company.

(2) A disqualification in terms of subsection (2) (*b*) (iii) or (iv) shall expire at the later of—

(*a*) five years after the date of removal from office; or

(*b*) the completion of the sentence imposed for the relevant offence, as the case may be.

(3) Notwithstanding subsection (1), a person may act as a director of a private company if all of the shares of that company are held by that disqualified person alone, or by—

(*a*) that disqualified person; and

(*b*) persons related to that disqualified person, and each such person has consented in writing to that person being a director of the company.

(4) A notice of the disqualification shall be published in newspapers of general circulation and in the *Gazette* and the Registrar may make the notice available in electronic form.

Division IV—Removal from the Register of Companies

Grounds for removal from the register of companies

348.—(1) Subject to the other provisions of this section, the Registrar shall remove a company from the register of companies where—

(*a*) the company is an amalgamating company, other than an amalgamated company, on the day on which the Registrar issues a certificate of amalgamation under this Act; or

(*b*) the Registrar is satisfied that—

(i) the company has ceased to carry on business; and

(ii) there is no other reason for the company to continue in existence; or

(*c*) the company has been put into liquidation, and—

(i) no liquidator is acting; or

(ii) the Registrar has not been furnished with information within six months from the date on which the liquidation of the company is completed; or

(*d*) the Registrar receives a request, in a form approved by him, from—

(i) a shareholder authorized to make the request by a special resolution of shareholders entitled to vote and voting on the question; or

(ii) the Board or any other person, where the constitution of the company so requires or permits, that the company be removed from the register on any grounds specified in subsection (2); or

(*e*) a liquidator sends or delivers to the Registrar information indicating completion of the liquidation process.

(2) A request that a company be removed from the register under subsection (1) (*d*) may be made on the grounds—

(*a*) that the company has ceased to carry on business, has discharged in full its liabilities to all its known creditors, and has distributed its surplus assets in accordance with its constitution and this Act; or

(*b*) that the company has no surplus assets after paying its debts in full or in part, and no creditor has applied to the Court for an order putting the company into liquidation.

(3) A request that a company be removed from the register under subsection (1) (*d*) shall be accompanied by a written notice from the Malaŵi Revenue Authority stating that there is no objection to the company being removed from the register.

(4) The Registrar shall not remove a company from the register under subsection (1) (*b*) unless—

(*a*) the Registrar has issued a notice; and

(*b*) the company has satisfied the Registrar that it is carrying on business or that reasons exist for the company to continue in existence.

(5) The Registrar shall not remove a company from the register under subsection (1) (*c*) or (*e*) unless—

(*a*) the Registrar is satisfied that notice of intention to remove the company from the register has been given under section 349; and

(*b*) the Registrar—

(i) is satisfied that no person has objected to the removal under section 350; or

(ii) where an objection to the removal has been received, has complied with section 351.

Requirement for the Registrar to give the company notice of intention

349.—(1) Before removing a company from the register under section 348 (1) (*b*), the Registrar shall—

(*a*) give notice to the company in accordance with subsection (2);

(*b*) give notice of the matters set out in subsection (3) to any person who is entitled to register a charge; and

(*c*) give notice in the *Gazette* of the matters set out in subsection (3).

(2) The notice to be given under subsection (1) (*a*) shall—

(*a*) state the section under, and the grounds on, which it is intended to remove the company from the register; and

(*b*) state that, unless—

(i) by the date specified in the notice, which shall not be less than twenty-eight days after the date of the notice, the company satisfies the Registrar by notice in writing that it is still carrying on business or there is other reason for it to continue in existence; or

(ii) the Registrar shall not proceed to remove the company from the register under section 351, the company shall be removed from the register.

(3) The notice to be given under subsections (1) (*b*) and (*c*) shall specify—

(*a*) the name of the company and its registered office;

(*b*) the section under, and the grounds on, which it is intended to remove the company from the register; and

(*c*) the date by which an objection to the removal under section 348 shall be delivered to the Registrar, which shall not be less than twenty-eight days after the date of the notice.

Objection to removal from the register

350.—(1) Where a notice is given of an intention to remove a company from the register, any person may deliver to the Registrar, not later than the date specified in the notice, an objection to the removal on grounds that—

(*a*) the company is still carrying on business or there is other reason for it to continue in existence;

(*b*) the company is a party to legal proceedings;

(*c*) the company is in receivership, or liquidation, or both;

(*d*) the person is a creditor, or a shareholder, or a person who has an undischarged claim against the company;

(*e*) the person believes that there exists, and intends to pursue, a right of action on behalf of the company under this Act; or

(*f*) for any other reason, it would not be just and equitable to remove the company from the register.

(2) Where a person delivers an objection under subsection (1)—

(*a*) the person shall at the same time, serve a copy of same on the company;

(*b*) file proof of the ground of objection with the Registrar within six weeks of the date of the objection and shall, at the same time, serve a copy thereof on the company.

(3) Where a person fails to comply with subsection (2), the objection delivered under subsection (1) shall be deemed to have lapsed.

(4) For the purposes of subsection (1) (*d*)—

(*a*) a claim by a creditor against a company is not an undischarged claim where—

(i) the claim has been paid in full;

(ii) the claim has been paid in part under a compromise entered into under this Act or by being otherwise compounded to the reasonable satisfaction of the creditor;

(iii) the claim has been paid in full or in part by a receiver or a liquidator in the course of a completed receivership or liquidation; or

(iv) a receiver or a liquidator has notified the creditor that the assets of the company are not sufficient to enable any payment to be made to the creditor; and

(*b*) a claim by a shareholder or any other person against a company is not an undischarged claim unless—

(i) payment has been made to the shareholder or that person in accordance with a right under the company's constitution or this Act to receive or share in the company's surplus assets; or

(ii) a receiver or liquidator has notified the shareholder or that person that the company has no surplus assets.

Duties of Registrar where objection received

351.—(1) Where an objection to the removal of a company from the register is made on a ground specified in section 350 (1) (*a*), (*b*), or (*c*), the Registrar shall not proceed with the removal unless the Registrar is satisfied that—

(*a*) the objection has been withdrawn;

(*b*) any facts on which the objection is based are not, or are no longer, correct; or

(*c*) the objection is frivolous or vexatious.

(2) Where an objection to the removal of a company from the register is made on a ground specified in section 350 (1) (*d*), (*e*), or (*f*), the Registrar shall give notice to the person objecting that, unless notice of an application to the Court by that person for an order—

(*a*) that the company be put into liquidation; or

(*b*) that, on any ground specified in section 350, the company shall not be removed from the register, is served on the Registrar not later than twenty-eight days after the date of the notice, the Registrar intends to proceed with the removal.

(3) Where—

(*a*) notice of an application to the Court under subsection (2) is not served on the Registrar;

(*b*) the application is withdrawn; or

(*c*) on the hearing of such an application, the Court refuses to grant either an order putting the company into liquidation or an order that the company not be removed from the register, the Registrar shall proceed with the removal.

(4) Every person who makes an application to the Court under subsection (2) shall give the Registrar notice in writing of the decision of the Court within seven days of the decision.

(5) The Registrar shall send—

(*a*) a copy of an objection under section 350;

(*b*) a copy of a notice given by or served on the Registrar under this section; and

(*c*) where the company is removed from the register, notice of the removal, to a person who sent or delivered to the Registrar a request that the company be removed from the register under

section 348 (1) (*d*) or, while acting as liquidator, sent or delivered to the Registrar the documents referred to in section 348 (1) (*e*).

Circumstances where property of the company removed from the register vests in the state

352.—(1) Any property which, immediately before the removal of a company from the register of companies, had not been distributed or disclaimed, shall vest in a Consolidated Fund established by the Registrar with effect from the removal of the company from the register.

(2) The Registrar shall, forthwith on becoming aware of the vesting of the property—

(*a*) inform the Registrar of the High Court; and

(*b*) give public notice in daily newspapers in wide circulation in Malaŵi, of the vesting, setting out the name of the former company and particulars of the property.

(3) Where any property is vested in the Consolidated Fund under this section, a person who would have been entitled to receive all or part of the property, or payment from the proceeds of its realization, if it had been in the hands of the company immediately before the removal of the company from the register of companies, or any other person claiming on behalf of that person, may apply to the Court for an order—

(*a*) vesting all or part of the property in that person; or

(*b*) for payment to that person of compensation of an amount not greater than the value of the property.

(4) On an application made under subsection (3), the Court may—

(*a*) decide any question concerning the value of the property, the entitlement of any applicant to the property or to compensation, and the apportionment of the property or compensation among two or more applicants;

(*b*) order that the hearing of two or more applications be consolidated;

(*c*) order that an application be treated as an application on behalf of all persons, or all members of a class of persons, with an interest in the property; or

(*d*) make an ancillary order.

(5) Any compensation ordered to be paid under subsection (3) shall be paid out of the Consolidated Fund without further appropriation.

(6) For purposes of this section, "property" includes leasehold rights and all other rights vested in or held on behalf of or on trust for the company prior to its removal (referred to as "former company") but does not include property held by the former company on trust for any other person.

General power to restore to the register

353.—(1) A company shall be restored to the register of companies when a notice signed by the Registrar stating that the company is restored to the register is registered under this Act.

(2) A company that is restored to the register shall be deemed to have continued in existence as if it had not been removed from the register.

Division V—Dormant Companies

Meaning of dormant company

354.—(1) For the purposes of this Part, a company—

(*a*) shall be a dormant company for any period during which no significant accounting transaction occurs in relation to the company; and

(*b*) shall cease to be a dormant company when any significant accounting transaction occurs in relation to the company.

(2) In this Part—

(*a*) no significant accounting transaction shall be deemed to have occurred unless it is a transaction which is required to be entered in the accounting records of the company;

(*b*) a significant accounting transaction shall not include—

(i) any transaction which arises from the issue to a subscriber, of shares in the company in respect of the application for incorporation;

(ii) the payment of bank charges, licence fees or any other compliance costs.

Company may be recorded in the register as dormant company

355.—(1) Where a company has—

(*a*) been dormant from the time of its formation; or

(*b*) has been dormant since the end of its previous accounting period, and is not required to prepare group accounts for that period, the company may, by a special resolution passed at a meeting of shareholders of the company at any time after copies of the annual accounts and reports for that year have been duly sent to shareholders, declare itself to be a dormant company.

(2) A company shall not declare itself to be a dormant company where it is a company formed for the business of banking or insurance.

(3) The company shall, within fourteen days of the passing of the special resolution referred to in subsection (1), give notice to the Registrar of the passing of that resolution and the Registrar shall, on receipt of that resolution for registration, record the company in the register as being a dormant company.

(4) Where a company which has declared itself to be a dormant company under subsection (1) ceases to be dormant, the company shall, within fourteen days of any significant accounting transaction taking place which has resulted in the company ceasing to be dormant, give notice to the Registrar that the company has ceased to be dormant.

(5) Where the Registrar receives a notice under subsection (4), he shall enter in the register of companies the fact that the company has ceased to be dormant.

Exemption available to dormant companies

356. Any company, which is recorded by the Registrar as being a dormant company, shall, for so long as it continues to be a dormant company—

(*a*) be exempted from the requirement of having its accounts audited; and

(*b*) be exempted from the payment of specified fees.

PART XV

Foreign Companies

Application of this Part

357. Notwithstanding the generality of section 358, this Part shall apply to a foreign company only if it has a place of business or is carrying on business in Malaŵi.

Meaning of carrying on business

358. For the purposes of this Part—

(*a*) a reference to a foreign company carrying on business in Malaŵi includes a reference to the foreign company—

(i) establishing or using a share transfer office or a share registration office in Malaŵi; or

(ii) administering, managing, or dealing with property in Malaŵi as an agent, or personal representative, or trustee, and whether through its employees or an agent or in any other manner;

(*b*) a foreign company shall not be held to carry on business in Malaŵi merely because in Malaŵi it—

(i) is or becomes a party to a legal proceeding or settles a legal proceeding or a claim or dispute;

(ii) holds meetings of its directors or shareholders or carries on other activities concerning its internal affairs;

(iii) maintains a bank account;

(iv) effects a sale of property through an independent contractor;

(v) solicits or procures an order that becomes a binding contract only if the order is accepted outside Malaŵi;

(vi) creates evidence of a debt or creates a charge on property;

(vii) secures or collects any of its debts or enforces its rights in relation to securities relating to those debts;

(viii) conducts an isolated transaction that is completed within a period of thirty-one days, not being one of a number of similar transactions repeated from time to time; or

(ix) invests its funds or holds property.

Availability of name before carrying on business

359.—(1) A foreign company shall not carry on business in Malaŵi on or after the commencement of this Act unless the name of the foreign company is available.

(2) A foreign company registered under this Part that carries on business in Malaŵi shall not change its name unless the name is available.

(3) Sections 16 to 20 shall apply, subject to any necessary modifications to the reservation of the name, if any, of a foreign company, in the same way as they apply to the registration of companies under this Act and to the change of names of companies registered under this Act.

(4) Where a foreign company contravenes this section, the company and every director of the company commits an offence and is liable to a fine as provided in the prevailing schedule of penalties.

Registration of foreign companies

360.—(1) Every foreign company shall, within thirty days after it establishes a place of business or commences to carry on business in Malaŵi, file with the Registrar—

(*a*) a duly authenticated copy of the certificate of its incorporation or registration in its place of incorporation or origin or a document of similar effect;

(*b*) a duly authenticated copy of its constitution, charter, statute or memorandum and articles or other instrument constituting or defining its constitution;

(*c*) a list of its directors containing similar particulars with respect to directors as are, by this Act, required to be contained in the register of the directors and secretaries of a company;

(*d*) where the list includes directors resident in Malaŵi who are members of the local Board of directors of the company, a memorandum duly executed by or on behalf of the foreign company stating the powers of the local directors;

(*e*) a memorandum of appointment or power of attorney under the seal of the foreign company or executed on its behalf in such manner as to be binding on the company, stating the names and addresses of two or more persons resident in Malaŵi, not including a foreign company, authorized to accept on its behalf service of process and any notices required to be served on the company;

(*f*) notice of the situation of its registered office in Malaŵi and, unless the office is open and accessible to the public during ordinary business hours on each day, other than Saturdays and public holidays, the days and hours during which it is open and accessible to the public; and

(*g*) a declaration made by the authorized agents of the company.

(2) Where a memorandum of appointment or power of attorney filed under subsection (1) (*e*) is executed by a person on behalf of the company, a duly authenticated copy of the deed or document by which that person is authorized to execute the memorandum of appointment or power of attorney shall be filed.

(3) Where a foreign company has complied with subsection (1), the Registrar shall, subject to section 363 register the company under this Part and shall issue a certificate in the prescribed form.

(4) Where any document required to be submitted in not in the English language, the Registrar may require a copy of the document translated into English language and duly authenticated in accordance with the Authentication of Documents Act. Cap. 4:06

Registered office and authorized agents

361.—(1) A foreign company shall have a registered office in Malaŵi to which all communications and notices may be addressed and which shall be open and accessible to the public for not less than four hours on every day other than a Saturday, Sunday or a public holiday.

(2) An authorized agent shall, until he ceases to be such in accordance with subsection (4)—

(*a*) continue to be the authorized agent of the company;

(*b*) be answerable for the doing of all such acts, matters and things as are required to be done by the company by or under this Act.

(3) A foreign company or its authorized agent may file with the Registrar a written notice stating that the authorized agent has ceased to be the authorized agent or shall cease to be the authorized agent on a date specified in the notice.

(4) The authorized agent in respect of whom the notice has been filed shall cease to be an authorized agent—

(*a*) on the expiry of a period of twenty-one days after the date of filing of the notice or on the date of the appointment of another authorized agent, the memorandum of whose appointment has been filed in accordance with subsection (5), whichever is earlier; or

(*b*) where the notice states a date on which he or she is to so cease and the date is later than the expiry of that period, on that date.

(5) Where an authorized agent ceases to be the authorized agent and the company is then without an authorized agent in Malaŵi, the company shall, where it continues to carry on business or has a place of business in Malaŵi, within twenty-one days after the authorized agent ceased to be one, appoint an authorized agent.

(6) On the appointment of a new authorized agent the company shall file with the Registrar a memorandum of the appointment.

Return of alterations

362.—(1) Where any change or alteration is made in—

(*a*) the constitution, charter, statutes, memorandum or articles or other instrument filed;

(*b*) the directors;

(*c*) the authorized agents or the address of an authorized agent;

(*d*) the situation of the registered office in Malaŵi or of the days or hours during which it is open and accessible to the public;

(*e*) the address of the registered office in its place of incorporation or origin;

(*f*) the name of the company; or

(*g*) the powers of any directors resident in Malaŵi who are members of the local Board of directors, the foreign company shall, within thirty days file with the Registrar particulars of the change or alteration.

(2) Where a foreign company increases its stated share capital or authorized share capital as applicable, it shall, within thirty days file with the Registrar a notice of the amount from which and of the amount to which it has been so increased.

(3) Where a foreign company not having a stated share capital increases the number of its members beyond the registered number it shall, within thirty days file with the Registrar a notice of the increase.

(4) Where an order is made by a Court under any law in force in the country in which a foreign company is incorporated which corresponds to orders made under Part XII, the company shall, within thirty days, file with the Registrar a copy of the order.

Registrar's certificate

363. On the registration of a foreign company under this Part or the filing with the Registrar of particulars of a change or alteration in a matter referred to in section 362 the Registrar shall issue a certificate to that effect.

Validity of transactions not affected

364. A failure by a foreign company to comply with section 164 and section 347 shall not affect the validity or enforceability of any transaction entered into by the foreign company.

Financial statements

365.—(1) Every foreign company shall, in every calendar year—

(*a*) make out a balance sheet and profit and loss account in such form, containing such particulars including documents relating to every subsidiary company of the foreign company, as under the provisions of this Act it would, if it had been a company within the meaning of this Act, have been required to make; and

(*b*) deliver a copy of those documents to the Registrar.

(2) The Minister may, by order, direct that, in the case of any foreign company or class of foreign companies, the requirements of subsection (*a*) shall not apply, or shall apply subject to such exceptions and modifications as may be specified.

Notice by foreign company of particulars of its business in Malaŵi

366. A foreign company shall file with the Registrar in each year at the time its financial statements are filed, a notice containing particulars with respect to the business being carried out by the company in Malaŵi.

Name and country of incorporation

367.—(1) Except with the written consent of the Minister, a foreign company shall not be registered by a name or an altered name that, in the opinion of the Registrar, is undesirable or is a name, or a name of a kind, that he has directed the Registrar not to accept for registration.

(2) No foreign company shall use in Malaŵi any name other than that under which it is registered.

(3) Every foreign company shall—

(*a*) conspicuously exhibit on the outside of every office or place where it carries on business in Malaŵi the name of the company and the country in which it is incorporated, in letters easily legible in English characters, and also in the characters of the language or one of the languages in general use in the locality in which the office or place is situate;

(*b*) cause the name of the company and of the country in which the company is incorporated, to be stated in legible English characters in all business and other official publications of the company; and

(*c*) if the liability of the members of the company is limited, cause notice of that fact—

(i) to be stated in every such prospectus in all business and other official publications of the company, in legible English characters; and

(ii) to be conspicuously exhibited on the outside of every office or place where it carries on business in Malaŵi, in legible English characters and also in legible characters of the language or one of the languages in general use in the locality in which the office or place is situate.

Branch registers

368.—(1) Subject to the other provisions of this section, a foreign company which has a share capital and has a shareholder resident in Malaŵi shall keep at its registered office in Malaŵi or at some other place in Malaŵi a branch register for the purpose of registering shares of shareholders resident in Malaŵi who apply to have the shares registered therein.

(2) The company shall not be obliged to keep a branch register until after the expiry of two months from the receipt by it of a written application by a shareholder resident in Malaŵi for registration of his shares.

(3) This section shall not apply to a foreign company which by its constitution prohibits an invitation to the public to subscribe for shares in the company.

(4) (*a*) Every branch register shall be kept in the manner provided by section 145 and any transfer shall be effected in the same manner.

(*b*) Every transfer registered at its registered office in Malaŵi shall be binding on the company and the Court shall have the same powers in relation to rectification of the register as it has under section 151.

(5) Where a foreign company opens a branch register, it shall, within fourteen days of the date the branch register is opened, file with the Registrar a notice to that effect specifying the address where the register is kept.

(6) Where any change is made in the place where the register is kept or where the register is discontinued, the company shall, within fourteen days of the date of the change, file with the Registrar a notice to that effect.

(7) Where a company or corporation is entitled under a law of the place of incorporation of a foreign company to give notice to a dissenting shareholder in that foreign company that it desires to acquire any of his shares registered on a branch register kept in Malaŵi, this section shall cease to apply to that foreign company until—

(*a*) the shares have been acquired; or

(*b*) the company or corporation has ceased to be entitled to acquire the shares.

(8) On application made in that behalf by a member resident in Malaŵi, the foreign company shall register in its branch register the shares held by a member which are registered in any other register kept by the company.

(9) On application made in that behalf by a member holding shares registered in a branch register, the foreign company shall remove the shares from the branch register and register them in such other register within Malaŵi as is specified in the application.

(10) Part III of this Act shall apply with such adaptations and modifications as may be necessary to the register and branch register of a foreign company.

(11) A branch register shall be *prima facie* evidence of any matters under this Part directed or authorized to be inserted therein.

(12) A certificate under the seal of a foreign company or signed by a director of the company specifying any shares held by any shareholder of that company and registered in the branch register shall be *prima facie* evidence of the title of the shareholder to the shares and the registration of the shares in the branch register.

Cessation of business in Malaŵi

369.—(1) Where a foreign company ceases to have a place of business or to carry on business in Malaŵi, it shall, within seven days of the date of the cessation, file with the Registrar a notice to that effect, and as from the day on which the notice is filed, its obligation to file any document other than a document that ought to have been filed shall cease, and the Registrar shall on the expiry of three months after the filing of the notice remove the name of the company from his or her register.

(2) Where a foreign company goes into liquidation or is dissolved in its place of incorporation or origin—

(*a*) every person who immediately before the commencement of the liquidation proceedings was an authorized agent shall, within one month after the commencement of the liquidation or the dissolution, file or cause to be filed with the Registrar a notice to that effect and, where a liquidator is appointed, notice of the appointment; and

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(*b*) the liquidator shall, until a liquidator for Malaŵi is appointed by the Court, under the Insolvency Act, have the powers and functions of a liquidator for Malaŵi.

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(3) A liquidator of a foreign company appointed under the provisions of the Insolvency Act, shall—

(*a*) before any distribution of the foreign company's assets is made, by advertisement in a newspaper circulating generally in each country where the foreign company had been carrying on business before the liquidation and where no liquidator has been appointed for that place, invite all creditors to make their claims against the foreign company within a reasonable time before the distribution;

(*b*) not, subject to subsection (7), without leave of the Court, pay out any creditor to the exclusion of any other creditor;

(*c*) unless the Court otherwise directs, only recover and realize the assets of the foreign company in Malaŵi and shall, subject to paragraph (*b*) and to subsection (7), pay the net amount so recovered and realized to the liquidator of that foreign company in the place where it was formed or incorporated after paying any debts and satisfying any liabilities incurred in Malaŵi by the foreign company.

(4) Where a foreign company has been wound up so far as its assets in Malaŵi are concerned and there is no liquidator for the place of its incorporation or origin, the liquidator may apply to the Court for directions as to the disposal of the net amount recovered under subsection (3).

(5) On receipt of a notice from an authorized agent, that the company has been dissolved, the Registrar shall remove the name of the company from his register.

(6) Where the Registrar has reasonable cause to believe that a foreign company has ceased to carry on business or to have a place of business in Malaŵi, Division IV of Part XIII shall, with such adaptations and modifications as may be necessary, apply to a foreign company as they apply to a company.

Interpretation in this Part

370. For the purposes of this Part—

(*a*) the expression "certified" means certified in the prescribed manner to be a true copy or a correct translation;

(*b*) the expression "director", in relation to a foreign company, has the same meaning as in section 158 of this Act; and

(*c*) the expression "place of business" includes a share transfer or share registration office.

Prospectus

371. No person shall issue, circulate or distribute in Malaŵi any prospectus offering to subscribe for securities of a company incorporated or to be incorporated outside Malaŵi, whether the company has or has not established, or when formed will or will not establish, a place of business in Malaŵi save than in accordance with Part XI of this Act.

PART XVI

Service of Documents

Service of documents on company in legal proceedings

372.—(1) A document in any legal proceedings may be served on a company—

(*a*) by delivery to a person named as a director of the company on the register of companies;

(*b*) by delivery to an employee of the company at the company's head office or principal place of business;

(*c*) by leaving it at the company's registered office or address for service;

(*d*) by serving it in accordance with any directions as to service given by the Court having jurisdiction in the proceedings; or

(*e*) in accordance with an agreement made with the company.

(2) The methods of service specified in subsection (1) are, notwithstanding any other enactment, the only methods by which a document in legal proceedings may be served on a company in Malaŵi.

Service of other documents on company

373. A document, other than a document in any legal proceedings, may be served on a company—

(*a*) by any of the methods set out in section 372 (1) (*a*), (*b*), (*c*) or (*e*);

(*b*) by posting it to the company's registered office or address for service or delivering it to a post office box which the company is using at the time;

(*c*) by sending it by facsimile machine to a telephone number used for the transmission of documents by facsimile at the company's registered office or address for service or its head office or principal place of business.

Service of documents on foreign company in legal proceedings

374.—(1) A document in any legal proceedings may be served on a foreign company in Malaŵi as follows—

(*a*) by delivery to a person named in the register as a director of the foreign company and who is resident in Malaŵi;

(*b*) by delivery to a person named in the register as being authorized to accept service in Malaŵi of documents on behalf of the foreign company;

(*c*) by delivery to an employee of the foreign company at the foreign company's place of business in Malaŵi or, if the foreign company has more than one place of business in Malaŵi, at the foreign company's principal place of business in Malaŵi;

(*d*) by serving it in accordance with any directions as to service given by the Court having jurisdiction in the proceedings; or

(*e*) in accordance with an agreement made with the foreign company.

(2) The methods of service specified in subsection (1) are notwithstanding any other enactment, the only methods by which a document in legal proceedings may be served on a foreign company in Malaŵi.

Service of other documents on foreign company

375. A document other than a document in any legal proceedings, may be served on a foreign company—

(*a*) by any of the methods set out in section 372 (1) (*a*), (*b*), (*c*) or (*e*);

(*b*) by posting it to the address of the foreign company's principal place of business in Malaŵi or delivering it to a post office box which the foreign company is then using at the time; or

(*c*) by sending it by facsimile machine to a telephone number used for the transmission of documents by facsimile at the principal place of business in Malaŵi of the foreign company.

Service of documents on shareholders and creditors

376.—(1) A notice, statement, report, accounts, or other document to be sent to a shareholder or creditor who is a natural person may—

(*a*) be delivered to that person;

(*b*) be posted to that person's address or delivered to a post office box which that person is using at the time;

(*c*) be sent by facsimile machine to a telephone number used by that person for the transmission of documents by facsimile; or

(*d*) subject to subsection (5), be sent by email or other electronic form of communication to the address provided by that person for the transmission of documents by electronic means.

(2) A notice, statement, report, accounts, or other document to be sent to a shareholder or creditor that is a company or a foreign company may be sent by any of the methods of serving documents referred to in section 374 or 376 as the case may be.

(3) A notice, statement, report, accounts, or other document to be sent to a creditor that is a body corporate, not being a company or a foreign company, may—

(*a*) be delivered to a person who is a principal officer of the body corporate;

(*b*) be delivered to an employee of the body corporate at the principal office of principal place of business of the body corporate;

(*c*) be delivered in such manner as the Court directs;

(*d*) be delivered in accordance with an agreement made with the body corporate;

(*e*) be posted to the address of the principal office of the body corporate or delivered to a box at a document exchange which the body corporate is using at the time;

(*f*) be sent by facsimile machine to a telephone number used for the transmission of documents by facsimile at the principal office or principal place of business of the body corporate; or

(*g*) subject to subsection (5), be sent by email or other electronic form of communication to the address provided by that person for the transmission of documents by electronic means.

(4) Where a liquidator sends documents—

(*a*) to the last known address of a shareholder or creditor who is a natural person; or

(*b*) to the address for service of a shareholder or creditor that is a company and the documents are returned unclaimed three consecutive times, the liquidator need not send further documents to the shareholder or creditor until the shareholder or creditor gives notice to the company of his new address.

(5) A document may be sent under subsection (1) (*d*) or (3) (*g*) by electronic means of communication provided that—

(*a*) the shareholder has consented in writing to that form of communication being used by the company or other person providing the communication; and

(*b*) the shareholder or creditor has provided an electronic address to which such communication may be sent.

(6) Any consent under subsection (5) may be revoked at any time on the provision of five days' notice in writing to the person sending the document.

Additional provisions relating to service

377.—(1) Subject to subsection (2), for the purposes of

sections 372 to 376—

(*a*) where a document is to be served by delivery to a natural person, service shall be made—

(i) by handing the document to the person; or

(ii) where the person refuses to accept the document, by bringing it to the attention of, and leaving it in a place accessible to, the person;

(*b*) a document posted or delivered to a post office box is deemed to be received within seven days, or any shorter period as the Court may determine in a particular case, after it is posted or delivered;

(*c*) a document sent by facsimile machine is deemed to have been received on the working day following the day on which it was sent;

(*d*) in proving service of a document by post or by delivery to a post office box it shall be sufficient to prove that—

(i) the document was properly addressed;

(ii) all postal or delivery charges were paid; and

(iii) the document was posted or was delivered to any document exchange facility;

(*e*) in proving service of a document by facsimile machine, it is sufficient to prove that the document was properly transmitted by facsimile to the person concerned.

(2) A document shall not be deemed to have been served or sent or delivered to a person where the person proves that, through no fault on the person's part, the document was not received within the time specified.

PART XVII

Miscellaneous

Prohibition of large partnerships

378.—(1) No company, association or partnership consisting of more than twenty persons shall be formed for the purpose of carrying on any business that has for its object the acquisition of gain by the company, association or partnership, or by the individual members thereof, unless it is registered as a company under this Act, or is formed in pursuance of any other enactment.

(2) Subsection (1) shall not apply to the formation of any

association, or partnership for carrying on any regulated professions.

Jurisdiction

379. The High Court of Malaŵi shall have jurisdiction to try an offence under this Act and any subsidiary enactment made under this Act.

Periodic information to the Minister of Lands on status of shareholding of companies in Malaŵi

380.—(1) The Registrar shall, at the beginning of each calendar year, furnish the Minister of Lands with information regarding the status of shareholding of companies in Malaŵi.

(2) The information under subsection (1) shall include—

(*a*) membership of the company;

(*b*) nationality of the members of the company; and

(*c*) whether the company is Malaŵian or foreign owned.

General penalty

381. A person who is convicted of an offence under this Act for which no specific penalty is provided shall be liable to a fine of K5,000,000, or to an amount equivalent to the financial gain generated by the offence or the loss suffered due to the offence as the case may be, whichever is greater.

Regulations, rules, etc.

382.—(1) The Minister may make regulations for carrying out or giving effect to the provisions of this Act.

(2) Without prejudice to the generality of subsection (1), the regulations may prescribe—

(*a*) forms;

(*b*) time periods;

(*c*) information required;

(*d*) fees;

(*e*) access to confidential information;

(*f*) model memorandum articles of association for companies;

(*g*) the keeping of accounting records outside Malaŵi by companies;

(*h*) procedures relating to the exercise by the Registrar of any powers conferred on him;

(*i*) electronic registration of companies and filing of documents; and

(*j*) such other matters as are necessary or conducive for the better carrying out of the provisions of this Act.

(3) The Chief Justice may make rules with respect to proceedings, and the practice and procedures of the Court under this Act.

(4) Notwithstanding section 21 (*e*) of the General Interpretation Act, the regulations or rules made under this section may create offences in respect of any contraventions of the regulations or rules and may, for any such offences, impose a fine of up to K5,000,000, and to imprisonment for twelve months. Cap. 1:01

(5) The Registrar of Financial Institutions may issue directives for any matter required to be prescribed by him under this Act.

Repeal and savings Cap. 46:03

383.—(1) The Companies Act is hereby repealed.

(2) Any subsidiary legislation made under the Act repealed by subsection (1) in force immediately before the commencement of this Act—

(*a*) shall remain in force, unless in conflict with this Act, and shall be deemed to be subsidiary legislation made under this Act; and

(*b*) may be replaced, revoked, or amended by subsidiary legislation made under this Act.

(3) Any approval given, or authorization granted, and in force or any act or thing done under the Act repealed by subsection (1), shall be deemed to have been given, granted or done under the relevant provisions of this Act, and any such approval or authorization shall remain valid for the period specified therein.

(4) Any fee, charge or any sum paid or unpaid under the Companies Act repealed by subsection (1) shall, in respect of the corresponding period, be deemed to have been paid or unpaid under the provisions of this Act. Cap. 46.03

SUBSIDIARY LEGISLATION

G.N. 27/2016

COMPANIES (SHAREHOLDER'S CODE OF CONDUCT) ORDER

under ss. 73 and 74

Citation

1. This Order may be cited as the Companies (Shareholder's Code of Conduct) Order.

Scope of the Order

2. This Order prescribes codes of conduct for shareholders of a private and public companies under sections 73 and 74.

Codes of conduct for shareholders *Schedule*

3.—(*a*) The code of conduct for shareholders of a private company shall be as prescribed in Part A of the Schedule to this Order.

Schedule

(*b*) The shareholder's code of conduct for public company shall be as prescribed in Part B of the Schedule to this Order.

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para. 3

SCHEDULE

PART A

Code of Conduct for Shareholders of a Private Company This Code is applicable to all Private Companies

Interpretation

1. Any term used in this Code, and which has been defined in the Act has the meaning ascribed to that term under the Act.

Exemption from holding an annual general meeting

2. A private company need not hold an annual general meeting.

Resolution of a private company to comply with the Act

3.—(1) Where a private company elects to hold an annual general meeting, the procedures relating to meetings under the Act shall apply accordingly.

(2) A resolution of a private company shall be validly passed at a general meeting if—

(*a*) a notice of the meeting and of the resolution is given to the members; and

(*b*) the meeting is held and conducted in accordance with the provisions of this Act and the company's constitution.

Circulation of resolutions and related expenses

4.—(1) A private company shall, where requested, send a copy of its resolutions to every eligible member—

(*a*) by hard copy to the member's last known address; or

(*b*) in electronic format to a member's electronic address.

(2) The expenses of a company in complying with subsection (1) shall be met by the members who request the circulation of the resolution unless the company resolves otherwise.

(3) Electronic address means any address or number used for the purposes of sending or receiving documents or information by electronic means.

Resolution deemed an ordinary resolution unless specified

5. Where in the provisions of this Code a reference is made to a resolution of a company which is not specified, the resolution shall be deemed to be an ordinary resolution unless the company's constitution require a higher majority or unanimity, in which case it shall be a special resolution.

Ordinary resolution

6.—(1) An ordinary resolution means a resolution passed by a simple majority of votes cast by such members of the company, as being entitled to do so, voting in person or by proxy at a general meeting, or such higher majority as is required by the company's resolution.

(2) Anything that may be done by ordinary resolution may also be done by special resolution.

Special resolutions

7.—(1) A special resolution means a resolution passed by a majority of seventy-five per cent or, if a higher majority is required by a company's constitution, that higher majority, of the votes of those shareholders entitled to vote and voting on the matter which is the subject of the resolution.

(2) The notice for a meeting to pass a special resolution shall include the text of the resolution and specify the intention to propose the resolution as a special resolution.

(3) At any meeting at which a special resolution is passed, a declaration by the chairperson that the resolution is so passed, shall, unless a poll is demanded, be conclusive evidence of that fact without proof of the number or proportion of the votes recorded in favour or against the resolution.

(4) All special resolutions under this Code may be rescinded only by a special resolution except where the resolution relates to the liquidation of the company.

Voting to be by show of hands or poll

8.—(1) The manner of voting in a meeting of a private company shall be by the show of hands.

(2) A declaration by a chairperson of a meeting that a resolution is carried by the requisite majority shall be conclusive evidence of that fact unless a poll is demanded.

(3) A poll may be demanded either before or after a vote is taken on a resolution by—

(*a*) a shareholder or shareholders representing not less than ten per cent of the total voting rights of all shareholders having the right to vote at a meeting;

(*b*) a shareholder or shareholders holding shares in a company that confer a right to vote at a meeting and on which the aggregate amount paid up is not less than ten per cent of the total amount paid up on all shares that confer that right; or

(*c*) a chairperson of the meeting.

(4) The chairperson may withdraw a poll.

(5) A poll shall be taken in such manner as the chairperson directs and the result shall be deemed to be the resolution of the meeting at which the poll is demanded.

(6) With a poll, votes shall be counted according to the votes attached to the shares of each shareholder present in person or by proxy and voting.

(7) A chairperson of a shareholders' meeting shall not be entitled to a casting vote.

Proxies and electronic voting

9.—(1) A shareholder may exercise the right to vote by being present in person or by appointing a proxy or by voting electronically.

(2) A proxy form shall be sent with each notice calling a meeting of the company.

(3) A proxy for a shareholder may attend and be heard at a meeting of shareholders as if the proxy was the shareholder.

(4) A proxy shall be appointed by notice in writing signed by the shareholder and the notice shall state whether the appointment is for a particular meeting or a specified term.

(5) No proxy shall be effective in relation to a meeting unless—

(*a*) a copy of the notice of appointment is produced before the start of the meeting; and

(*b*) any power of attorney, or other authority under which the proxy is signed, is produced.

(6) An instrument appointing a proxy shall be in writing under the hand of the appointer or of his agent duly authorized in writing or, in the case of a company, under the hand of an officer or of an agent duly authorized.

(7) An instrument appointing a proxy shall be in the following form—

I/We ..... of ....., being shareholders of the above named company, hereby appoint ..... or failing him/her, ... of ..... as my/our proxy to vote for me/us at the meeting of the company to be held on ..... and at any adjournment of the meeting.

Signed this ..... day of ....., 20.....

(8) A constitution of a company may provide that the instrument appointing a proxy shall not be effective unless it is produced by a specified time before the start of a meeting where the time specified is not earlier than twenty-four hours before the start of the meeting.

(9) Where a company sets up an electronic interface in the conduct of its meetings, any member absent who follows the proceedings by way of such electronic communication shall also vote accordingly.

Votes of joint holders of shares

10.—(1) In the case of joint holders of shares of a company, only a vote of a senior holder who votes, or any proxies duly authorized by him, may be counted by the company.

(2) For the purposes of this section, a senior holder of a share is determined by the order in which the names of the joint holders appear in the register of members.

(3) Subsections (1) and (2) have effect subject to any provision of the company's constitution.

Determination of the entitlement to vote in the constitution

11. Nothing in this section shall affect—

(*a*) any of the provisions of a company's constitution—

(i) requiring an objection to a person's entitlement to vote on a resolution to be made in accordance with the constitution; and

(ii) for the determination of any such objection to be final and conclusive; or

(*b*) the grounds on which such a determination may be questioned in legal proceedings.

Duty to keep records of meetings and/or resolutions

12.—(1) A company shall cause to be kept, as part of its records, the minutes of all its meetings as well as resolutions that are passed in those meetings in electronic or hard copy format.

(2) All the records of the company shall be kept for at least ten years from the time when they are created.

(3) This section shall apply notwithstanding any contrary provision in any constitution adopted by a company.

PART B

Code of Conduct for Shareholders of a Public Company This Code is applicable to All Public Companies

Interpretation

1. Any term used in this Code, and which has been defined in the Act, has the meaning ascribed to that term in the Act.

Annual general meeting

2.—(1) Every public company shall in each year hold an annual general meeting in addition to any other meetings held in that year.

(2) If a company fails to comply with subsection (1), the company and every officer of the company in default shall be liable to a fine in accordance with the prevailing schedule of penalties prescribed under section 5 (2) of the Act.

Resolutions at general meetings

3. A resolution of the members of a company shall be deemed to be validly passed at a general meeting if—

(*a*) a notice of the meeting and of the resolution is given; and

(*b*) the meeting is held and conducted in accordance with the provisions of this Part and the company's constitution.

Director may call for a general meeting

4. A director of a public company shall have power to call a general meeting of the company for the better carrying into effect the provisions of this Code and for the conduct of the company's business.

Members may requisition for a general meeting

5.—(1) The members of a company may requisition a general meeting of the company from the directors.

(2) The members required to requisition a meeting pursuant to subsection (1) shall include—

(*a*) in the case of a company having share capital, members representing at least ten per cent of such of the paid-up capital of the company as carries the right of voting at general meetings of the company; or

(*b*) in the case of a company not having a share capital, members who represent at least ten per cent of the total voting rights of all the members having a right to vote at general meetings.

(3) A requisition for a meeting under this section shall—

(*a*) state the general nature of the business to be dealt with at the meeting; and

(*b*) may include the text of a resolution that may properly be moved and is intended to be passed at the meeting, provided that such resolution—

(i) shall not be inconsistent with any enactment or the company's constitution;

(ii) shall not be defamatory of any person; or

(iii) shall not be frivolous or vexatious.

(4) A requisition for a meeting under this section—

(*a*) may be in electronic or hard copy format; and

(*b*) shall be signed by the person or persons making it.

Directors to call for meetings requisitioned by members

6.—(1) Once the members of a company have requisitioned for a general meeting—

(*a*) the directors of the company shall call for the general meeting of the company within twenty-one days from the date of receipt of the requisition; and

(*b*) the meeting shall be held on a date not more than twenty-eight days after the date of the notice convening the meeting.

(2) Where a requisition involves a resolution proposed to be passed at a meeting, such resolution shall be included in a notice of the meeting.

(3) Where a proposed resolution is intended to be a special resolution, the directors shall comply with the required notice for such meeting as may be provided in this Code or in the company's constitution.

Members to call for meetings where directors are in default

7.—(1) Where directors of a company fail or neglect to call for a general meeting as provided in sections 5 and 6, the members who requisitioned for the meeting or any of them representing more than one half of the total voting rights of all of them, may themselves call for a general meeting.

(2) A general meeting called under this section shall be on a date not more than three months after the date on which the directors received the requisition to call for the meeting.

(3) A general meeting under this section shall be called in the same manner as, and as nearly as possible to, that in which meetings are required to be called by the directors.

(4) A company shall reimburse all reasonable expenses incurred by the members who call for the meeting by reason of the failure of the directors to so call.

Power of court to order for a company meeting

8.—(1) A court may on its own motion or on the application—

(*a*) of a director of the company; or

(*b*) of a member of the company who would be entitled to vote at the meeting,

order for a meeting of a company to be called, held and conducted in any manner that the court shall deem fit.

(2) The power of the court under this section shall be exercised where, for any reason it is impracticable—

(*a*) to call for a meeting of a company in any manner in which meetings of that company may be called; or

(*d*) to conduct a meeting in the manner prescribed by the company's constitution or this Code.

(3) A meeting called, held and conducted in accordance with an order under the powers referred to in this section shall, for all intents and purposes, be deemed to be a meeting of the company duly called, held and conducted.

Notice of meetings

9.—(1) Notice of a general meeting of a company shall be given either—

(*a*) in hard copy format; or

(*b*) in electronic format.

(2) The notice of a general meeting of a company shall among others state—

(*a*) the time and date of the meeting;

(*b*) the place of the meeting; and

(*c*) the general nature of the business to be dealt with at the meeting.

(3) Subsection (2) shall have effect subject to the provisions of the company's constitution.

Receipt of notice of meetings

10.—(1) It shall be the right of—

(*a*) every member of the company; and

(*b*) every director,

to receive the notices of all the meetings of the company.

(2) A member under this section includes any person who is entitled to a share in consequence of the death or bankruptcy of a member, where the company has been notified of such entitlement.

(3) This section has effect subject to the provisions of the company's constitution as well as the other written laws.

Resolutions requiring special notice

11.—(1) Where a special notice of a resolution is required, the resolution shall not be effective unless notice of the intention to move it has been given to the company at least twenty-eight days before the meeting at which it is moved.

(2) The company shall, where practicable, give its members notice of any such resolution in the same manner and at the same time as it gives notice of the meeting.

(3) Where the notice under subsection (2) is not practicable, the company shall give its members a notice of at least fourteen days before the meeting—

(*a*) by advertisement in a newspaper of wide circulation; or

(*b*) in any other manner as provided by the company's constitution.

(4) If, after notice of the intention to move a resolution under this section has been given to a company, a meeting is called for a date twenty-eight days or less after the notice has been given, the notice is deemed to have been properly given, though not given within the time required.

Accident failure to give notice of resolution or meeting

12.—(1) Where a company gives notice of—

(*a*) a general meeting; or

(*b*) a resolution intended to be moved at a general meeting,

any accidental failure to give notice to one or more persons shall be disregarded for the purpose of determining whether notice of the meeting or resolution, as the case may be, is duly given.

Members' power to requisition for statements

13.—(1) Members of a company may require the company to circulate to members of the company entitled to receive notice of a general meeting a statement of not more than one thousand words with respect to—

(*a*) a matter referred to in a proposed resolution to be dealt with at that meeting; or

(*b*) other business to be dealt with at that meeting.

(2) A company shall circulate a statement once it has received requests to do so from members representing at least five per cent of the total voting rights of all the members who have a relevant right to vote.

(3) In subsection (2), a "relevant right to vote" means—

(*a*) in relation to a statement with respect to a matter referred to in a proposed resolution, a right to vote on that resolution at a meeting to which the request relates; and

(*b*) in relation to any other statement, a right to vote at the meeting to which the requests relate.

(4) A request under this section—

(*a*) may be in hard copy or in electronic format;

(*b*) shall identify a statement to be circulated;

(*c*) shall be authenticated by a person or persons making it; and

(*d*) shall be received by the company at least one week before the meeting to which it relates.

Duty of a company to circulate statement

14.—(1) A company that is required under this section to circulate a statement shall send a copy of it to each member of the company entitled to receive a notice of the meeting—

(*a*) in the same manner as the notice of the meeting; and

(*b*) at the same time as, or as soon as reasonably practicable after, it gives notice of the meeting.

(2) Subsection (1) has effect subject to sections 16 and 17.

(3) If a company fails to comply with this section, the company and every officer of the company in default shall be liable to a fine in accordance with the prevailing schedule of penalties prescribed under section 5 of the Act.

Expenses of circulating statements

15.—(1) Expenses of a company in complying with section 14 need not be paid by the members who requested the circulation of the statement if—

(*a*) the meeting to which the requests relates is an annual general meeting of a public company; and

(*b*) sufficient requests to require the company to circulate the statement are received before the end of the financial year preceding the meeting.

(2) In any other cases—

(*a*) the expenses of the company in complying with that section 14 shall be paid by members who requested the circulation of the statement unless the company resolves otherwise; and

(*b*) unless the company has previously so resolved, it is not bound to comply with paragraph 14 unless there is deposited with or tendered to it, not later than one week before the meeting, a sum reasonably sufficient to meet its expenses in doing so.

Application not to circulate members' statement

16. A company shall not circulate a members' statement where, on an application by the company or another person who claims to be aggrieved, a court is satisfied that a statement has been properly circulated.

Quorum at meetings

17.—(1) Subject to the provisions of the company's constitution, three persons present at a meeting shall form a *quorum*, unless—

(*a*) each person is only present because he is authorized to act as the representative of a company in relation to the meeting, and they are representatives of the same company; or

(*b*) each is only present because he is appointed as proxy of a member in relation to the meeting, and they are proxies of the same member.

(2) For the purposes of this section, a "person" means—

(*a*) an individual who is a member of the company;

(*b*) a person authorized to act as a representative of a company in relation to the meeting; or

(*c*) a person appointed as proxy of a member in relation to the meeting.

Chairperson of a general meeting

18.—(1) A member may be elected to be a chairperson of a general meeting by a resolution of the company passed at the meeting.

(2) Subsection (1) is subject to any provision of the company's constitution that states who may or may not be a chairperson.

Voting by show of hands

19.—(1) On a vote on a resolution at a meeting on a show of hands, a declaration by a chairperson that the resolution—

(*a*) has or has not been passed; or

(*b*) has passed with a particular majority,

is conclusive evidence of that fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.

(2) An entry in respect of a declaration under this section in minutes of the meeting is conclusive evidence of that fact.

(3) This section shall not have effect if a poll is demanded in respect of a resolution and the demand is not subsequently withdrawn.

Right to demand a poll

20.—(1) A provision of a company's constitution is void insofar as it purports to exclude a right to demand a poll at a general meeting on any question other than—

(*a*) election of a chairman of the meeting; or

(*b*) an adjournment of the meeting.

(2) A provision of a company's constitution is void insofar as it purports to make ineffective a demand for a poll on any such question which is made—

(*a*) by not less than five members having the right to vote on the resolution; or

(*b*) by a member or members representing not less than ten per cent of the total voting rights of all the members having the right to vote on the resolution, excluding any voting rights attached to any shares in the company held as treasury shares; or

(*c*) by a member or members holding shares in the company conferring a right to vote on the resolution, being shares on which an aggregate sum has been paid up equal to not less than ten per cent of the total sum paid up on all the shares conferring that right, excluding shares in the company conferring a right to vote on the resolution which are held as treasury shares.

Voting on a poll

21. On a poll taken at a general meeting of a company, a member entitled to more than one vote need not, if he votes, use all his votes or cast all the votes he uses in the same way.

Representation of company at meetings

22.—(1) If a company is a member of another company, it may, by a resolution of its directors or other governing body, authorize a person or persons to act as its representative or representatives at any meeting of the company.

(2) Where a company authorizes only one person under subsection (1), the authorized person is entitled to exercise the same powers on behalf of the company as the company would exercise if it were an individual member of the other company.

(3) Where a company authorizes more than one person under subsection (1), any one of them is entitled to exercise the same powers on behalf of the company as the company would exercise if it were an individual member of the other company.

(4) Where a company authorizes more than one person and more than one of them purport to exercise a power under subsection (3)—

(*a*) if they purport to exercise the power in the same way, the power is treated as exercised in that way; and

(*b*) if they do not purport to exercise the power in the same way, the power is treated as not exercised.

Appointment of proxies

23.—(1) A member of a company is entitled to appoint another person as his proxy to exercise all or any of his rights to attend and to speak and vote at a meeting of the company.

(2) In the case of a company having a share capital, a member may appoint more than one proxy in relation to a meeting, provided that each proxy is appointed to exercise the rights attached to a different share or shares held by him.

Notice of meeting to contain statement of rights

24.—(1) Every notice calling a meeting of a company shall contain, with reasonable prominence, a statement informing the member of—

(*a*) his rights to appoint proxies; and

(*b*) any more extensive rights conferred by the company's constitution to appoint more than one proxy.

(2) Failure to comply with this section shall not affect the validity of the meeting or of anything done at the meeting.

(3) If a company fails to comply with subsection (1), the company and every officer of the company in default shall be liable to a fine in accordance with the prevailing schedule of penalties prescribed under section 5 of the Act.

Company-sponsored invitations to appoint proxies

25.—(1) If for the purposes of a meeting there are issued at the company's expense invitations to members to appoint as proxy a specified person or a number of specified persons, the invitations shall be issued to all members entitled to vote at the meeting.

(2) Subsection (1) shall be considered to be complied with if—

(*a*) there is issued to a member, at his request, a form of appointment naming the proxy or a list of persons willing to act as proxy; and

(*b*) the form or list referred to in paragraph (*a*) is available on request to all members entitled to vote at the meeting.

(3) If subsection (1) is contravened in relation to a meeting, every officer of the company who is in default commits an offence.

(4) A company and every officer of a company, who contravenes subsection (1), commit an offence and shall be liable to a fine in accordance with the prevailing schedule of penalties prescribed under section 5 of the Act.

Notice required of appointment of proxy

26.—(1) This section applies to—

(*a*) appointment of a proxy; and

(*b*) any document necessary to show the validity of, or otherwise relating to, the appointment of a proxy.

(2) Any provision of a company's constitution is void insofar as it purports to require an appointment of a proxy to be made or a document to be received by the company or another person earlier than the following time—

(*a*) in the case of a meeting or adjourned meeting, forty-eight hours before the time for holding the meeting or adjourned meeting;

(*b*) in the case of a poll taken more than forty-eight hours after it was demanded, twenty-four hours before the time appointed for the taking of the poll; and

(*c*) in the case of a poll taken not more than forty-eight hours after it was demanded, the time at which it was demanded.

(3) In calculating the periods mentioned in subsection (2), no account shall be taken of any part of a day that is not a working day.

Chairing meetings

27.—(1) A proxy may be elected to be a chairperson of a general meeting by a resolution of the company passed at the meeting.

(2) Subsection (1) is subject to any provision of the company's constitution that states who may or who may not be a chairperson.

A proxy may demand a poll

28.—(1) The appointment of a proxy to vote on a matter at a meeting of a company authorizes the proxy to demand, or join in demanding, a poll on that matter.

(2) A demand by a proxy counts for the purposes of paragraph (1)—

(*a*) as a demand by the member;

(*b*) as a demand by a member representing the voting rights that the proxy is authorized to exercise; and

(*c*) as a demand by a member holding the shares to which those rights are attached.

Notice for termination of a proxy's authority

29.—(1) This section applies to a notice that the authority of a person to act as proxy is terminated (in this Code otherwise referred to as the "notice of termination").

(2) The termination of the authority of a person to act as a proxy shall not affect—

(*a*) whether he counts in deciding whether there is a *quorum* at a meeting;

(*b*) the validity of anything he does as a chairman of a meeting; or

(*c*) the validity of a poll demanded by him at a meeting, unless the company receives notice of the termination before commencement of the meeting.

(3) Termination of authority of a person to act as a proxy shall not affect the validity of a vote given by that person, unless the company receives notice of the termination—

(*a*) before commencement of a meeting or adjourned meeting at which the vote is given; or

(*b*) in the case of a poll taken more than forty-eight hours after it is demanded, before the time appointed for taking the poll.

(4) If a company's constitution requires or permits members to give notice of termination to a person other than the company, the references in this section to the company receiving notice have the effect as if they were or, as the case may be, include a reference to that person.

(5) Subject to subsection (6), the applicability of subsections (2) and (3) is subject to any provision of the company's constitution which has the effect of requiring notice of termination to be received by the company or another person at a time earlier than that specified in those subsections.

(6) Any provision of the company's constitution is void insofar as it purports to require notice of termination to be received by the company or another person earlier than the following time—

(*a*) in the case of a meeting or adjourned meeting, forty-eight hours before the time for holding the meeting or adjourned meeting;

(*b*) in the case of a poll taken more than forty-eight hours after it was demanded, twenty-four hours before the time appointed for the taking of the poll; and

(*c*) in the case of a poll taken not more than forty hours after it was demanded, the time at which it was demanded.

(7) In calculating the periods mentioned in subsections (3) (*b*) and (6), no account shall be taken of any part of a day that is not a working day.

Resolution passed at adjourned meeting

30. Where a resolution is passed at an adjourned meeting of a company, the resolution is for all purposes to be treated as having been passed on the date on which it was in fact passed, and is not to be deemed passed on any earlier date.

Sending documents relating to meetings in electronic

31.—(1) Where a company has given an electronic address in a notice calling a meeting, it agrees that any document or information relating to proceedings at the meeting may be sent by electronic means to that address subject to any conditions or limitations specified in the notice.

(2) Where a company has given an electronic address—

(*a*) in an instrument of proxy sent out by the company in relation to the meeting; or

(*b*) in an invitation to appoint a proxy issued by the company in relation to the meeting,

it is deemed to have agreed that any document or information relating to proxies for that meeting may be sent by electronic means to that address, subject to any conditions or limitations specified in the notice.

(3) In subsection (2), documents relating to proxies include—

(*a*) the appointment of a proxy in relation to a meeting;

(*b*) any document necessary to show validity of, or otherwise relating to, the appointment of a proxy; and

(*c*) notice of the termination of the authority of a proxy.

(4) In this section "electronic address" means any address or number used for the purposes of sending or receiving documents or information by electronic means.

Application to class meetings

32.—(1) The provisions of this Code apply, with any necessary modifications, and subject to subsections (2) and (3), in relation to a meeting of holders of a class of shares as they apply in relation to a general meeting.

(2) Sections 6 to 9 of this Code do not apply in relation to a meeting of holders of a class of shares—

(3) The following provisions, in addition to those mentioned in subsection (2), shall not apply to a meeting in connexion with the variation of rights attached to a class of shares (a "variation of class rights meeting")—

(*a*) section 18; and

(*b*) section 21.

(4) A *quorum* for a variation of class rights meeting is—

(*a*) for a meeting other than an adjourned meeting, two persons present holding at least one-third of the issued shares of the class in question, excluding any shares of that class held as treasury shares; and

(*b*) for an adjourned meeting, one person present holding shares of the class in question.

(5) For the purposes of subsection (4), where a person is present by a proxy or proxies, he is treated as holding only the shares in respect of which those proxies are authorized to exercise voting rights.

(6) At a variation of class rights meeting, any holder of shares of the class in question present may demand a poll.

(7) For the purposes of this section—

(*a*) any amendment of a provision contained in a company's constitution for the variation of the rights attached to a class of shares, or the insertion of any such provision into the constitution is itself to be treated as a variation of those rights; and

(*b*) a reference to variation of rights attached to a class of shares shall include reference to their abrogation.

Duty to keep records of meetings and resolutions

33.—(1) Every company shall keep records in electronic or hard copy format comprising—

(*a*) copies of all resolutions of members passed otherwise than at general meetings; and

(*b*) minutes of all proceedings of general meetings.

(2) The records shall be kept for at least ten years from the date of the resolution, meeting or decision as appropriate.

COMPANIES (PANEL ON TAKEOVERS AND MERGERS) RULES

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COMPANIES (PANEL ON TAKEOVERS AND MERGERS) RULES

G.N. 28/2016

under s. 298 (1)

PART I
Preliminary

Citation

1. These Rules may be cited as the Companies (Panel on Takeovers and Mergers) Rules.

Interpretation

2. In these Rules, unless the context otherwise requires—

"Commission" means the Competition and Fair Trading Commission established by section 4 of the Competition and Fair Trading Act; Cap. 48:09

"custodian" means a person who, in the ordinary course of business, holds securities directly or indirectly on behalf of the beneficial owner of the securities;

"dissenting shareholder" means a shareholder who has not assented to the offer and a shareholder who has failed or refused to transfer his shares to the offeror in accordance with the terms of the offer;

"effective control" means the holding of securities by any person, either individually or together with a person acting in concert, which will result in that person, either individually or together with a person acting in concert, having the right to exercise, or control the exercise of, more than thirty per cent of the rights attached to the voting shares of a company;

"engaging in conduct" means doing or refusing to do an act, and includes—

(*a*) omitting to do an act; or

(*b*) making it known that an act will or will not be done;

"exchange of securities offer" means an offer in which the consideration includes securities of the offeror;

"firm intention" means a communication in writing, as referred to in rule 10;

"independent adviser" means an adviser whom the Panel considers as independent and who is approved by the Panel for the purposes of these Rules;

"offer" means an offer to which these Rules apply for voting securities and any other securities to which the offer is required to extend under these Rules;

"offer document" means the offer document as referred to in rule 14;

"offeree" means—

(*a*) before an offer is made, a person who holds securities in a target company that has received a takeover notice relating to those securities; or

(*b*) after an offer is made, a person to whom an offer is made;

"offeror" means the person by or on whose behalf the offer is made or is to be made;

"offer period" means the period from the time the offer document has been communicated to a shareholder of an offeree pursuant to rule 18 until the lapse of the offer or the closing date pursuant to rule 20;

"offer price" means the price per share offered by the offeror to the shareholder of the offeree;

"person acting in concert" means individuals who, or companies which, pursuant to an agreement or understanding, whether formal or informal, cooperate, through the acquisition by any of them of shares in a company, to obtain or consolidate effective control of that company;

"reply document" means the reply document of the offeree as referred to in rule 19;

"reporting issuer" has the same meaning as in the Act;

"target company" means a company—

(*a*) whose voting securities are the subject of an offer; or

(*b*) that has received a takeover notice; and

"voting right" means a currently exercisable right to cast a vote at meetings of shareholders of a company or security holders of another body corporate, not being a right to vote that is exercisable only in one or more of the following circumstances—

(*a*) during a period in which a payment or distribution or part of a payment or distribution in respect of the security that confers the voting right is in arrears or some other default exists;

(*b*) on a proposal that affects rights attached to the security that confers the voting right;

(*c*) on a proposal to put the company or body corporate into liquidation or voluntary administration;

(*d*) on a proposal for the disposal of the whole, or a material part, of the property, business, and undertaking of the company or body corporate;

(*e*) during liquidation or voluntary administration of the company or body corporate;

(*f*) in respect of a special, immaterial, or remote matter that is inconsequential to control of the company or body corporate.

Application of these Rules

3.—(1) These Rules apply to a company that—

(*a*) is a party to a listing agreement with a registered exchange and that has securities that confer voting rights quoted on the registered exchange's securities market; or

(*b*) was within paragraph (*a*) at any time during the period of twelve months before a date or the occurrence of an event referred to in these Rules; or

(*c*) has ten or more shareholders and ten or more share parcels;

(2) These Rules shall continue to apply to a transaction or an event regulated under these Rules even if a company that previously satisfied subparagraph (1) (*c*) ceases to have ten or more shareholders and ten or more share parcels.

(3) These Rules shall apply despite any provision to the contrary in any agreement, constitution of a company or similar document relating to another body corporate, resolution of the security holders of a company or of any other body corporate, deed, or otherwise.

(4) In this rule, shareholder means a shareholder holding a security that confers a voting right.

PART II

Designation of the Panel on Takeovers and Mergers

Competition and Fair Trading Commission to be Panel

4. For the purpose of section 297 of the Act, the Commission shall perform the functions of the Panel on Takeovers and Mergers and shall exercise all the functions and powers conferred on the Panel under the Act, until such a date as the Minister shall, by notice published in the *Gazette*, appoint for the Commission to cease to perform such functions.

PART III
General

Equality of treatment to shareholders

5.—(1) An offeror shall provide equal and fair treatment to all shareholders of the same class of an offeree, whether in relation to the consideration to be paid for their shares, the information to be supplied to them pursuant to these Rules, or otherwise.

(2) An offeree shall make available all information about companies involved in an offer to all shareholders at the same time and in the same manner.

(3) An offeree shall give all shareholders full, complete and timely information to enable them to make an informed decision concerning the merits or demerits of an offer.

(4) The obligations of an offeror towards shareholders of an offeree shall, for the purposes of these Rules, be no less than its obligations towards its own shareholders.

Duties and responsibilities of directors

6. Directors of an offeree shall, at all times when advising or informing the shareholders about a takeover—

(*a*) act only in their capacity as directors without regard to any personal or family interests;

(*b*) have regard only to the interests of the shareholders, employees and creditors; and

(*c*) act in good faith.

Standard of care and responsibility

7.—(1) A person who issues a document or a statement in relation to a firm intention or an offer or during an offer period shall satisfy the highest standard of accuracy and the information given shall be adequately and fairly presented.

(2) The standard required by subrule (1) shall apply whether the document is issued by the offeror or the offeree, or by an adviser on its behalf, or by any other person in relation to an offer.

Joint and several responsibility of directors

8.—(1) All documents issued in connexion with a takeover by an offeror or an offeree shall contain a statement signed by all the respective directors.

(2) The statement in subrule (1) shall contain—

(*a*) an undertaking by the directors that they jointly and severally accept full responsibility for the accuracy of the information contained in the documents;

(*b*) a confirmation by the directors that having made all reasonable inquiries and to the best of their knowledge, opinions expressed in the document have been arrived at after due and careful consideration; and

(*c*) confirmation that there are no other facts omitted from the document, which omission would make any statement in the document misleading.

Duty of confidentiality

9. A person involved in an offer shall take such measures as are necessary to prevent the creation of a false market in the shares of either the offeror or the offeree and ensure that confidentiality is maintained at all times until a public announcement is made in accordance with these Rules.

PART IV
Conduct of Offer

Firm intention to the board of the offeree

10. The offeror shall communicate its firm intention to make an offer to the board of the offeree, to the Panel and to the relevant securities exchange, as the case may be.

Contents of a firm intention

11.—(1) A firm intention shall contain—

(*a*) the proposed terms of the offer;

(*b*) the identity of the offeror or any person acting in concert;

(*c*) a confirmation by the board of the offeror that sufficient financial resources are available to satisfy the acceptance of the offer and where the offer includes non-cash consideration, that all reasonable measures have been taken to secure full payment of the shares acquired;

(*d*) details of any existing holding of shares by the offeror in the offeree, including—

(i) shares which are owned or controlled by the offeror; and

(ii) shares which are owned or controlled by any person acting in concert with the offeror;

(*e*) details of any agreement which exists between the offeree and the offeror or any person acting in concert in relation to the relevant shares, irrespective of whether or not any dealings have taken place; and

(*f*) all conditions which relate to the acceptances to which the offer is to be subject.

(2) Notwithstanding subrule (1), the Panel may request any other information which shall be communicated to the offeree.

No defensive tactics

12.—(1) Where a firm intention of an offer has been communicated to the board of an offeree or where the board of an offeree has reason to believe that an offer may be imminent, the board of the offeree or any member thereof shall not engage in any action in relation to the offeree's affairs which may directly or indirectly result in—

(*a*) the offer being frustrated; or

(*b*) the shareholders of the offeree being denied an opportunity to decide on the merits of an offer.

(2) Notwithstanding subrule (1), the board of an offeree may, with the approval of the shareholders of the offeree in a meeting—

(*a*) issue shares;

(*b*) issue or grant options in respect of any unissued shares;

(*c*) create, issue or permit the creation or issue of any securities carrying rights of conversion into, or subscription for the shares of the offeree;

(*d*) sell, dispose of or acquire or agree to sell, dispose of or acquire assets of a material amount, or otherwise than in the ordinary course of business;

(*e*) enter into contracts, including service contracts, otherwise than in the ordinary course of business; or

(*f*) cause the offeree, any of its subsidiaries or associated companies to purchase or redeem any shares in the offeree or provide financial assistance for any such purchase.

Public announcement

13.—(1) A public announcement is required to be published forthwith—

(*a*) by a board of an offeree, when a firm intention is made;

(*b*) by a board of an offeree, when there is undue movement in its share price or in the volume of shares traded, whether or not there is a firm intention;

(*c*) by an offeror where, before a firm intention has been made under rule 10, there is undue movement in its share price or in the volume of share turnover, and the Panel has reasonable cause to believe that it is the offeror's action which has led to the situation;

(*d*) by an offeror, upon an acquisition that gives rise to an obligation to make an offer under rule 33;

(*e*) by a board of an offeree, when an offeror has withdrawn its offer; or

(*f*) by an offeror or a board of the offeror upon direction being given by the Panel.

(2) The public announcement shall contain details as specified in rule 11.

(3) The public announcement shall be made—

(i) in the case of a company listed on an exchange in the manner required by that exchange for immediate public release after receiving the approval from the Panel; or

(ii) in any other case, in newspapers of general circulation in Malaŵi.

Offer document *First Schedule*

14. An offer document shall contain the information specified in the First Schedule to these Rules together with any other relevant information that may enable shareholders of the offeree to reach an informed decision.

Pricing mechanism

15.—(1) An offeror shall determine an offer price.

(2) Where an offeree is listed on a securities exchange, an offer price shall be the sum of any premium and of the highest of—

(*a*) a price paid by an offeror or a person acting in concert with the offeror for any acquisition, including by way of allotment in a public issue, if any, during the six months period prior to the date of public announcement;

(*b*) a price paid by an offeror under a preferential allotment made to him or to a person acting in concert at any time during the twelve months period up to the date of closure of the offer; or

(*c*) an average of the weekly high and low of the closing prices of the shares of the offeree as listed on the securities exchange where the shares of the offeree are most frequently traded during the six months preceding the date of public announcement.

(3) Where an offeree is not listed on a securities exchange, the offer document shall contain information as to the means by which the offeror has determined the offer price.

(4) An offeror shall ensure that the means referred to in subrule (3), shall be fair and reasonable.

Upward revision of price

16.—(1) Where an offeror or any person acting in concert with the offeror purchases shares in an offeree during an offer period at a price higher than an offer price, the offeror shall increase the offer to not less than the highest price paid for any shares so acquired.

(2) An offeror shall make a public announcement immediately following an acquisition giving rise to an obligation under subrule (1) stating the number of shares acquired.

Filing of the offer document

Second Schedule

17. Where a decision to make an offer has been made, an offeror shall file a copy of the offer document with the Panel and the relevant securities exchange and shall pay the relevant fee to the Panel as specified in the Second Schedule to these Rules.

Communication of the offer document to shareholders

18. Except where the Panel otherwise directs, an offeror shall, within fourteen days of filing a copy of an offer document with the Panel and relevant securities exchange, communicate a copy of the offer document by registered post or by any other expedient means of delivery to the shareholders of an offeree.

Reply document of an offeree

Third Schedule

19. The board of an offeree shall communicate to its shareholders, within twenty-one days of the date of the posting by an offeror of an offer document, a reply document containing—

(*a*) any information set out in the Third Schedule to these Rules;

(*b*) any other information that it considers relevant to enable its shareholders to reach an informed decision.

Communication to the Panel and publications

20.—(1) An offeror shall immediately inform the Panel and the securities exchange when an offer—

(*a*) has been revised or extended; or

(*b*) has expired,

and shall, within five days of informing the Panel, make a public announcement to that effect in at least two daily newspapers of general circulation in Malaŵi.

(2) The public announcement referred to in subrule (1), shall state the number of shares which the offeror or any person acting in concert with the offeror has or controls before the offer period, the number of

shares for which acceptance of the offer has been received, and the number of shares otherwise acquired by the offeror and any person acting in concert with him during the offer period.

(3) The public announcement made under this rule shall specify the percentages of the relevant classes of share capital, and the percentages of rights attached to voting shares, represented by the numbers.

Offer period

21.—(1) Subject to subrule (2), an offer shall be open for at least thirty-five days and shall not exceed sixty days following the date of communication of the offer document to the shareholders pursuant to rule 18.

Second Schedule

(2) The Panel may, upon application and payment of the fee prescribed in the Second Schedule to these Rules, provide for an extension of the offer period as it deems fit.

PART V
Independent Adviser

Appointment of an independent adviser

22.—(1) Following communication of the offer document pursuant to rule 18, a board of an offeree shall, in the interests of its shareholders, appoint an independent adviser, who shall be qualified and have the competence and experience necessary to—

(*a*) understand the type of arrangement proposed;

(*b*) evaluate consequences of the arrangement;

(*c*) assess effects of the arrangement on the value of securities and on rights and interests of a holder of any securities, or a creditor of the company; and

(*d*) express opinion, exercise judgment and make decisions impartially.

(2) An independent adviser shall not—

(*a*) have any relationship with the company or with a proponent of the arrangement, such as would lead a reasonable and informed third party to conclude that the integrity, impartiality or objectivity of that person is compromised;

(*b*) have had any relationship contemplated in paragraph (*a*) within the immediately preceding two years; or

(*c*) be related to a person who has or has had a relationship contemplated in paragraph (*a*) or (*b*) above.

(3) Where a board of an offeree has appointed an independent adviser, it shall, within four days of such appointment, notify the Panel of the appointment.

(4) The Panel may, if it deems fit, direct the board of an offeree to remove any person appointed as independent adviser.

Functions of an independent adviser

23.—(1) An independent adviser shall—

(*a*) advise a board of an offeree as to whether the offer is fair and reasonable;

(*b*) carry out or cause to be carried out a valuation of an offeree; and

Fourth Schedule

(*c*) submit a report to board of the offeree, which report shall be in the Form prescribed in the Fourth Schedule to these Rules.

(2) The report submitted by an independent adviser pursuant to subrule (1) (*c*) shall be in writing and shall contain the advice, the valuation and the method of valuation used, including reasons and assumptions made.

(3) A summary of the report, submitted by an independent adviser pursuant to subrule (1) (*c*), shall be attached to a reply document as specified in rule 19.

(4) A full report and any summary of a report of an independent adviser shall include—

(*a*) a statement of qualifications and expertise of the independent adviser;

(*b*) a statement that the independent adviser has no conflict of interest that might affect his ability to provide an unbiased report; and

(*c*) a statement that the summary of the report is fair and not misleading, where applicable.

(5) Notwithstanding paragraph (*b*) of subrule (1), a Panel may direct a board of the offeree to appoint an independent valuer.

Consultation of the report by shareholders

24. The report of the independent adviser shall be kept at the registered office of the offeree and be made available for consultation upon request by any shareholder or by any person authorized in writing by a shareholder.

Recommendation of directors to shareholders

25.—(1) Directors of an offeree shall consider a report of an independent adviser and make a recommendation in good faith to the shareholders.

(2) Where there is a divergence of views among directors of an offeree as on the merits of an offer, a statement of the divergent views shall be attached to the reply document.

PART VI
Restrictions on Dealings

Restrictions on dealings before an offer

26.—(1) No dealings of any kind in the shares of the offeree shall be made by any person who has confidential and price sensitive information concerning the offer between the time when there is reason to believe that an offer or a revised offer is contemplated, on the one hand, and the public announcement of the offer or revised offer, or of the termination of the takeover discussions, on the other hand.

(2) A restriction under subrule (1) shall not apply to an offeror, or a person acting in concert with the offeror, if such dealings are made for the purposes of an offer, unless the offeror or the person acting in concert with the offeror is a director or employee of the offeree.

Restrictions on dealings during the offer period

27. An offeror or a person acting in concert with the offeror shall not enter into any agreement relating to the purchase or sale of shares of an offeree at any time during offer period.

Restrictions on dealings by offeror during non-cash offers

28. Where consideration offered for shares of an offeree consists only of shares of an offeror which are traded on a securities exchange, the offeror, or any person acting in concert with the offeror shall not engage in any purchase of the shares of the offeror for the duration of offer period unless the offeror declines to proceed with the offer.

No withdrawal of offer without approval

29. Except with the prior approval of the Panel, any offer, which has been made in accordance with these Rules, shall not be withdrawn.

PART VII
Variation of an Offer

Variation of offer

30.—(1) Subject to prior approval of the Panel, an offer may be varied in terms of the consideration offered for the shares proposed to be acquired where—

(*a*) a cash sum is offered, by increasing the amount of that sum;

(*b*) shares are offered, by increasing the number of those shares;

(*c*) debentures are offered, by increasing the rate of interest payable under those debentures or by increasing the amount of those debentures;

(*d*) an option to acquire unissued shares is offered, by increasing the number of unissued shares that may be acquired under that option; and

(*e*) a combination of any of the above is offered, by increasing the amount or value of any component of the offer.

(2) Where the consideration offered for the shares to be acquired under an offer is varied under subrule (1), all the shareholders of the offeree shall be entitled to receive the consideration as so varied.

(3) Subject to the prior approval of the Panel and pursuant to rule 20, an offeror may vary an offer by extending the period during which it remains open.

(4) In the event of a variation of an offer, the offeror shall give to the offeree and its shareholders notice of the variation by post or by any other expedient means.

(5) Subject to rule 20, the revised offer shall remain open for at least fourteen days from the day of the notice of the variation.

(6) An offeror shall vary an offer not later than seven days after the communication of the reply document by the board of the offeree to the shareholders of the offeree pursuant to rule 18.

PART VIII
Conditional and Unconditional Offers

Conditional and unconditional offers

31.—(1) Except with the prior approval of the Panel, a voluntary offer to acquire all voting shares shall be conditional upon the offeror having received acceptances in respect of voting shares which, together with voting shares acquired or agreed to be acquired before or during the takeover offer, will result in the offeror and any person acting in concert with the offeror, holding more than fifty per cent of the voting shares of an offeree.

(2) If an offer under subrule (1) is conditional, an offer document shall specify the last date when the offeror can declare the takeover offer unconditional.

Period for acceptance when an offer becomes or is declared unconditional

32. Upon a conditional offer becoming or being declared unconditional, it shall remain open for acceptance for not less than fourteen days thereafter.

PART IX
Mandatory Offer

Mandatory offer

33.—(1) A person shall make an offer under subrule (2) where—

(*a*) before the commencement of these Rules, that person, either individually or together with a person acting in concert with him—

(i) holds more than thirty per cent of rights attached to voting shares of a company; and

(ii) acquires or contracts to acquire additional voting shares of the company;

(*b*) that person, either individually or together with a person acting in concert with him, acquires effective control of a company; or

(*c*) following a dealing in securities of a company, that person, either individually or together with a person acting in concert with him, acquires the right to exercise, or control the exercise of, more than fifty per cent of rights attached to the voting shares of the company.

(2) Subject to subrule (1), a person shall make an offer in accordance with these Rules, on all voting shares of the offeree not already held by the offeror.

(3) Where a person makes an offer under subrule (2), he shall immediately make a public announcement pursuant to rule 13.

(4) The Panel and the relevant securities exchange shall be notified of any public announcement made under subrule (3).

Waiver of a mandatory offer

34.—(1) The requirement to make a mandatory offer, pursuant to rule 33, may be waived by Panel—

(*a*) upon a change in control as a result of a restructuring of the offeree;

(*b*) where the Panel deems that an offer is unfair or contradictory to the market's interests; or

(*c*) in any other case as the Commission may deem fit.

(2) The Panel shall consider an application for waiver under subrule (1) subject to payment of the relevant fee as specified in the Second Schedule to these Rules.

Second Schedule

Mandatory offer to be unconditional

35. Notwithstanding rule 31, a mandatory offer shall not be subject to any condition.

PART X
Delay Before Subsequent Offer

Delay

Second Schedule

36.—(1) Except with the prior approval of the Panel and subject to the payment of the relevant fee as specified in the Second Schedule to these Rules, where a person, either individually or together with a person acting in concert with that person, has made an offer and the offer has been withdrawn, that person, or a person acting in concert with him, shall not, within twelve months of the date on which such offer is withdrawn or lapses, make a subsequent offer to an offeree.

Second Schedule

(2) Except with the prior approval of the Panel and subject to the payment of relevant fee as specified in the Second Schedule to these Rules, where a person, either individually or together with a person acting in concert with that person, has or is deemed to have effective control of a company, that person shall not, within six months of the closure of any previous offer made by him to the offeree which became or was declared unconditional, make a subsequent offer to the offeree.

PART XI
Dissenting Shareholders

Notice to dissenting shareholders

37.—(1) For the purposes of this Part, an offer means an offer to acquire all voting shares in a company other than voting shares that at the date of the offer are already held by an offeror.

(2) When an offeror has, by virtue of acceptance of an offer, acquired or contracted to acquire not less than ninety per cent of the voting shares to which the offer relates, he may give notice to any dissenting shareholder that he intends to acquire his voting shares.

(3) A notice under subrule (2) may be given within twenty-eight days from the last day on which the offer shall be accepted and shall be in the manner prescribed in the Fifth Schedule to these Rules.

Fifth Schedule

(4) Where an offeror has not issued a notice pursuant to subrule (2), he shall within twenty-eight days from the last day on which the offer shall be accepted, inform any dissenting shareholder of his rights provided under rule 41.

(5) At the time when an offeror is giving a notice under subrule (2), he shall furnish to the offeree a copy of the notice.

Request for statement

38.—(1) Any dissenting shareholder may request a statement in writing from the offeror within fourteen days of giving notice under rule 37.

(2) A statement requested under subrule (1), shall contain details of other dissenting shareholders as shown in the shareholders' register.

(3) An offeror shall, within fourteen days of the request under subrule (1), provide a statement in writing to the dissenting shareholder.

Compulsory acquisition

39. Unless there is an application to court under rule 40, an offeror shall acquire the shares of any dissenting shareholder on the same terms as for the approving shareholders within twenty days of issue once of a notice.

Application to court

40. Where a notice is given under rule 37, any dissenting shareholder may make an application by motion to court for an order within twenty-one days of the date on which the notice was given.

Protection of minority shareholders

41. Where an offeror, by virtue of acceptance of an offer, has acquired or contracted to acquire not less than ninety per cent of the rights attached to voting shares to which the offer relates, any dissenting shareholder may require the offeror to acquire his shares, within twenty-eight days from the day after which the dissenting shareholder has been informed under rule 37.

PART XII
Exemptions

Exemptions from these Rules

42. The Panel may, subject to such terms and conditions, grant an exemption from any requirement of these Rules where it is satisfied that such an exemption would be appropriate in the circumstances.

Application for exemptions

43.—(1) An offeror may apply to the Panel for exemption under rule 42.

(2) The application shall contain details of the proposed acquisition and the grounds on which the exemption is being sought.

(3) The offeror shall, along with the application referred to in subrule (2), pay the relevant fee as specified in the Second Schedule to these Rules.

Second Schedule

Communication of the decision of the Panel

44.—(1) The Panel shall notify the applicant of its decision within fourteen days of the date of its decision.

(2) The Panel may grant exemptions or impose any terms and conditions to the exemptions as it deems fit.

(3) The Chief Executive Officer of the Panel may publish a decision by notice, where he is satisfied on reasonable grounds, that it is urgent and necessary to do so.

PART XIII
Enforcement

Panel's powers in respect of compliance with these Rules

45.—(1) The Panel may at any time, if it considers that a person has not acted or is not acting or intends not to act in violation of the Act or these Rules, after giving that person such written notice of the meeting as the Panel considers appropriate in the circumstances, but in no case exceeding seven days, hold a meeting for the purpose of determining whether to exercise its powers under these Rules.

(2) Where the Panel gives a notice under subrule (1), it may make a temporary restraint order to expire on the close of Government business on the second day after the date for which the meeting was convened.

(3) For the purposes of this Part "contravene the Act or these Rules or not acting in compliance with the Act or these Rules" includes—

(*a*) a contravention of the Act or these Rules or a term or condition of an exemption from these Rules;

(*b*) an attempt to contravene the Act or these Rules or a term or condition of an exemption from these Rules; or

(*c*) aiding, abetting, counselling, or procuring any other person to contravene the Act or these Rules or a term or condition of an exemption from these Rules; or

(*d*) inducing, or attempting to induce, any other person, whether by threats or promises or otherwise, to contravene the Act or these Rules or a term or condition of an exemption from these Rules; or

(*e*) being in any way, directly or indirectly, knowingly concerned in, or a party to, the contravention by any other person of these Rules or a term or condition of an exemption from these Rules; or

(*f*) conspiring with any other person to contravene these Rules or a term or condition of an exemption from these Rules.

Determinations

46.—(1) Following the meeting specified in rule 45, the Panel may make a determination whether it is satisfied that a person has

acted or is acting or intends to act in compliance with the Act or these Rules.

(2) If the Panel makes a determination under subrule (1), the Panel shall, as soon as it is reasonably practicable, give written notice of its reasons for the determination to the person the determination concerns.

(3) Where the Panel makes a determination on reasonable grounds under subrule (1) (*b*), the Panel may, at any time before the close of the second day after the date for which the meeting was convened—

(*a*) make a temporary restraint order relating to the non-compliance with the Act and these Rules that shall expire on the close of such day as shall be specified in the order, not being a day that is later than twenty-one days after the date on which the temporary restraining order is made;

(*b*) make an order continuing any temporary restraining order relating to the non-compliance with the Act and these Rules made under rule 45 (2) until the close of such day as may be specified in the order, not being a day that is later than twenty-one days after the date on which the temporary restraining order is made;

(*c*) make a permanent compliance order relating to the non-compliance with the Act and these Rules;

(*d*) if it makes any order under this subrule, also make an order extending, for a reasonable time, the period for which a takeover offer must remain open.

(4) If the Panel makes an order under this rule, the Panel—

(*a*) shall immediately give written notice to the person to whom the order is directed of the terms and conditions of the order; and

(*b*) shall, as soon as is reasonably practicable, also give that person written notice of the reasons for the order; and

(*c*) may also give notice to any other person of those matters.

(5) An order made under this rule may be made on any terms and conditions that the Panel thinks fit.

Variations, revocation and suspension

47.—(1) The Panel may vary an order in the same way as it may be made under rule 46.

(2) The Panel may revoke or suspend an order on the terms and conditions it thinks fit.

Temporary restraining orders

48. For the purposes of rules 45 and 46, a temporary restraining order is an order for one or more of the following purposes—

(*a*) restraining a person from acquiring securities in the target company concerned or any interest in or rights relating to such securities;

(*b*) restraining a person from disposing of securities in the target company concerned or any interest in or rights relating to such securities;

(*c*) restraining a person from exercising the right to vote attaching to securities in the target company concerned or any other right relating to such securities;

(*d*) restraining a person from taking any action, including from making any statement or distributing any document that is or that may reasonably be expected to constitute a contravention of these Rules;

(*e*) directing the target company concerned not to make any payments in respect of any securities;

(*f*) directing the target company concerned not to register the transfer or transmission of any securities;

(*g*) directing the target company concerned not to issue or allot securities to any person; or

(*h*) securing compliance with any such order, an order directing a person to do or refrain from doing a specified act.

Permanent compliance orders

49. For the purposes of rules 45 and 46, a permanent compliance order is an order for one or more of the following purposes—

(*a*) prohibiting or restricting a person from making any statement or distributing any document that is or that may reasonably be expected to constitute a contravention of the Act or rules;

(*b*) directing a person to disclose in accordance with the order information for the purpose of securing compliance with the Act or these Rules;

(*c*) directing a person to publish, at the person's own expense, in the manner and at the times specified in the order, corrective statements that are specified in or are to be determined in accordance with the order; or

(*d*) securing compliance with any of those orders, an order directing a person to do or refrain from doing a specified act.

Witnesses and counsel to have privileges of witnesses and counsel in court

50.—(1) A person shall have the same privileges in relation to providing information and documents to, and answering questions before, the Panel, a member, officer, or employee of the Panel, or a person authorized by the Panel, as witnesses have in proceedings before a court.

(2) A person appearing as counsel before the Panel, or a member, officer, or employee of the Panel, shall have the same privileges as counsel have in proceedings before a court.

(3) A person has the same privileges in relation to providing information and documents to the Registrar, as witnesses have in proceedings before a court.

PART XIV
Procedures of the Panel

Receiving evidence

51.—(1) The Panel may receive evidence through a member, officer, or employee of the Panel, or any two or more of them.

(2) If a person who is summoned to give evidence requests that the evidence be received at a meeting of the Panel, then subrule (1) shall not apply, and the evidence must be received at a meeting of the Panel.

Admissibility of evidence

52. The Panel may receive in evidence, whether admissible in a court of law or not, any statement, document, information, or matter that, in the opinion of the person receiving it, may assist the Panel in dealing effectively with any matter before it.

Manner of giving evidence

53.—(1) The Panel may receive evidence—

(*a*) given on oath;

(*b*) if the person receiving the evidence thinks it is appropriate, given by a written statement verified on oath; or

(*c*) given by audio-visual communication, if the Panel and the person giving the evidence agree.

(2) A member, officer, or an employee of the Panel may administer an oath for the purpose of a person giving evidence on oath.

Power to summon witnesses

54.—(1) A member of the Panel may issue a summons to a person requiring that person to appear before the Panel, or a member, officer,

or employee of the Panel, in relation to any matter before the Panel and to do any of the following—

(*a*) give evidence; or

(*b*) provide any documents or information that are in the person's possession or control and that are relevant to the matter:

Provided that in the case of a body corporate, the body corporate shall appear by its authorized representative.

(2) The summons must be in writing, signed by a member of the Panel, and state—

(*a*) the date and time when, and the place where, the person must attend;

(*b*) the documents or information that a person is required to provide, either generally, specifically, or by class, nature, content, or effect;

(*c*) the person's right to request that the person do give evidence at a meeting of the Panel; and

(*d*) the penalty for failing to attend.

(3) A summons may be served—

(*a*) in the case of a natural person, by delivering it personally to the person summoned or by leaving it at his or her usual place of residence or business at least twenty-four hours before his attendance is required; or

(*b*) in the case of a body corporate, by leaving it at the body corporate's usual place of business at least twenty-four hours before its attendance is required.

Witness's expenses

55.—(1) If a person has appeared as a witness, whether summoned or not, the Panel may, if it thinks fit, order any sum to be paid to that witness for his expenses.

(2) That sum payable under subrule (1) shall not exceed the amount that would be payable to the witness if his attendance had been as a witness for the State in a criminal case in accordance with regulations for the time being in force for the payment of witnesses for the State in criminal cases.

Panel may accept undertakings

56.—(1) A Panel may accept a written undertaking given by, or on behalf of, a person in connexion with a matter in relation to which

the Panel is exercising any of its powers or performing any of its functions under the Act or these Rules.

(2) A person may withdraw or vary the undertaking with the consent of the Panel.

Enforcement of undertakings

57.—(1) If the Panel considers that a person who has given an undertaking under rule 56 has breached a term of that undertaking, the Panel may apply to the court for an order under subrule (2) below.

(2) A court may make any of the following orders if it is satisfied that a person has breached a term of the undertaking—

(*a*) an order directing a person to comply with that term;

(*b*) an order directing a person to pay an amount not exceeding the amount of any financial benefit that the person has obtained directly or indirectly and that is reasonably attributable to the breach;

(*c*) any order that the court thinks appropriate directing the person to compensate any other person who has suffered loss, injury, or damage as a result of the breach; or

(*d*) an order for any consequential relief that the court thinks appropriate.

Panel may hear proceedings in private

58. The Panel may decide whether to hold any meeting or any part of a meeting in public or in private.

Power to make confidentiality orders

59.—(1) The Panel may, on its own initiative or on the application of any person, make an order prohibiting—

(*a*) the publication or communication of any information, document, or evidence that is provided or obtained in connexion with any inquiry or other proceedings of the Panel; or

(*b*) the giving of evidence involving any such information, document, or evidence.

(2) The Panel may make an order under subrule (1) on the terms and conditions, that it thinks fit.

(3) An order under subrule (1) may be expressed to have effect from the commencement of any inquiry or other proceedings of the Panel to the end of that inquiry or proceedings.

PART XV
MISCELLANEOUS

Transfer of shares and settlement of consideration

60.—(1) Where an offeree is listed on a securities exchange, consideration for the shares shall be paid in accordance with any enactment, the rules of the relevant securities exchange and the rules of the relevant clearing and settlement facility.

(2) Where an offeree is not listed on a securities exchange, transfer of the shares shall be made in accordance with the provisions of any enactment and consideration for the shares shall be paid within three days from the receipt of the duly signed acceptance and transfer.

Fees *Second Schedule*

61. The fees set out in the Second Schedule to these Rules shall be paid to the Panel.

Costs

62. The Panel may require payment to it of the costs incurred by it in holding any meeting under rules 45 and 46.

Civil debt

63. The Panel may recover any money payable as a civil debt by a party responsible for payment under these Rules for any fees payable.

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r. 14

FIRST SCHEDULE
INFORMATION TO BE CONTAINED IN AN OFFER DOCUMENT

The offer document shall contain the following statements in a prominent position – "OFFER MADE BY OFFEROR TO THE SHAREHOLDERS OF OFFEREE"

Offer document on the takeover scheme proposed by the offeror for the shareholders of offeree whereby the offeror offers to the shareholders of the offeree to purchase their shares in offeree for a cash consideration of K ..... per share or alternatively in the case of non-cash consideration, the exchange of share ratio.

THIS DOCUMENT IS IMPORTANT AND REQUIRES YOUR IMMEDIATE ATTENTION

(i) "If you are in doubt as to any aspect of this offer, you should consult a professional adviser."

(ii) The shareholders of an offeree shall be registered at the close of business on a date, to be eligible for the offer.

(iii) An Acceptance and Transfer Form is attached with respect to your shareholding in offeree. To signify your acceptance, please sign

the form and return it to the offeror, through the address of offeror at latest, by ..... [date].

(iv) Last date for acceptance of the offer is ..... [date].

Disclaimer

This offer document is not a prospectus. This offer document sets out the terms of the offer made by the offeror and has been prepared in compliance with the laws of Malaŵi.

Panel on Takeovers Disclaimer

The no objection of the Panel for circulation of this offer document shall not in any way imply that the Panel has conveyed its approval, or otherwise, vouched for the financial soundness, accuracy or opinion expressed in this offer document with regards to this offer.

Directors Statement

The board of the offeror accepts full responsibility for the correctness of the information contained in the offer document, and having made all reasonable enquiries, states that to the best of its knowledge and belief, there is no material fact, the omission of which would make any statement herein, whether of fact or opinion, misleading.

Documents Available for Inspection

The original of the offer document is available for inspection during the normal business hours at the registered office of the offeror at an address of the offeror. The document shall include the following information, along with any further information which may be necessary and relevant to enable the shareholders to make an informed decision—

1. The Offeror

   The name and address of the offeror, any adviser or any other person who may be acting for the offeror, and any person acting in concert with the offeror. If either the offeror or any person acting in concert with the offeror is a company, the names and addresses of its directors and controlling shareholders.

2. Other parties related to the offer

   The names and addresses of the parties to any agreement, arrangement or understanding for the transfer of any shares to any other persons pursuant to the offer, together with particulars of all shares held by such persons in the offeree, or a statement that no such shares are held.

3. Offer date and closing date

   The date the offer is open for acceptance, its duration and the date and time of the closing of the offer.

4. Intention of the offeror—

(*a*) the offeror's intention regarding the continuation of the business of the offeree;

(*b*) the offeror's intention regarding any major changes to be introduced in the business, including any redeployment of the fixed assets of the offeree;

(*c*) the long-term commercial justification for the proposed offer;

(*d*) the offeror's intention with regard to the continued employment of the employees of the offeree and of its subsidiaries; and

(*e*) the object and purpose of the acquisition of shares and future plans, including disclosures of intended disposal of any assets in the succeeding two years except in the ordinary course of business and details about implementation of future plans.

5. Shareholdings and dealings—

(*a*) the shareholdings of the offeror in the offeree;

(*b*) the shareholdings of the directors of the offeror in the offeree;

(*c*) the shareholdings of any person acting in concert in the offeree;

(*d*) the shares in the offeror and in the offeree owned or controlled by a person with whom the offeror or any person acting in concert has any arrangement, or any other agreement or understanding, formal or informal, of whatever nature, which might be an inducement to deal or refrain from dealing.

If in any of the above categories, there is no shareholding, this fact shall be expressly stated.

Details including dates and prices of any dealing in shares made by any person, mentioned within the above categories taking place during the period beginning six months prior to the offer period until the communication of the offer document.

If no such dealings have taken place, this fact shall be expressly stated.

6. Dividend entitlement

Precise particulars of the shares in respect of which the offer is made and a statement whether they are to be acquired cum or ex any dividend or other distribution which has been or may be declared.

7. Offer price of offeree's shares

Detailed explanation of the mechanisms through which the offer price was reached.

8. Cash resources for offer

Where the offer is in cash, or includes an element of cash, the offer document shall include a confirmation by an adviser that the resources

available to the offeror are sufficient to satisfy full acceptance of the offer.

9. Exchange of securities offer—

(*a*) in the case of an exchange of securities offer the following information about the offeror—

(i) for the last three financial years, turnover, net profit or loss before and after taxation, the charge for tax, exceptional items, minority interests, dividends, earnings per share and dividends per share;

(ii) a statement of the assets and liabilities shown in the last published audited accounts;

(iii) all material changes in the financial or trading position of the offeror subsequent to the last published audited accounts or a statement that there are no known material changes;

(iv) details relating to the items referred to in (i) above in respect of any interim statement or preliminary public announcement made since the last published audited accounts; and

(v) significant accounting policies together with any points from the notes to the accounts which are of major relevance to an appreciation of the figures;

(*b*) where, because of a change in accounting policy, figures are not comparable to a material extent, this shall be disclosed and the approximate amount of the resultant variation shall be stated;

(*c*) the Panel may require that the offer document contains a description of the financing arrangements, if any.

10. Arrangements in connexion with offer—

(*a*) details of any benefit which will be given to any director of the offeree as compensation for loss of office or otherwise in connexion with the offer;

(*b*) details of any agreement or arrangement between the offeror and any of the directors of the offeree or any person which is conditional on the outcome of the offer or otherwise connected with the offer.

11. Regulatory obligations

A statement of the obligations of the offeror and the rights of the shareholders of the offeree under these Rules and any other relevant enactments.

12. Further information in cases of exchange of securities offers

The following additional information shall be given by the offeror when it is offering its securities in exchange for the securities of the offeree—

(*a*) the nature and particulars of its business;

(*b*) the date and country of its incorporation;

(*c*) the address of its registered office in Malaŵi;

(*d*) the stated capital and any options outstanding in respect thereof, and the rights of the shareholders in respect of capital, dividends and voting;

(*e*) whether or not the shares being offered will rank in *pari passu* with the existing issued shares of the company, and if not, a precise description of how the shares will rank for dividends and capital;

(*f*) the number of shares issued since the end of the last financial year of the company;

(*g*) the highest and lowest closing market prices in respect of the offeror's shares with the relevant dates during the period commencing six months preceding the commencement of the offer period and ending on the day prior to the posting of the offer document;

(*h*) details of any restructuring of capital during the two financial years preceding the date of the offer;

(*i*) details of any bank overdrafts or loans, or other similar indebtedness, mortgages, security interests, or guarantees or other material contingent liabilities of the offeror and any of its subsidiaries, or, if there are no such liabilities, a statement to that effect;

(*j*) details of any litigation to which the company is, or may become, a party;

(*k*) details of every material contract entered into by the offeror and its subsidiaries not more than two years before the date of the offer, not being a contract entered into in the ordinary course of the business carried on or intended to be carried on by the company;

(*l*) how and when the documents of title to the securities will be issued; and

(*m*) whether and in what manner the emoluments of the directors of the offeror will be affected by the acquisition of the offeree or by any other associated transaction. If there will be no effect, this fact shall be expressly stated.

13. Disclaimer

(1) The offeror shall in clear terms include, in the offer document, the following statement "to the best of my/our knowledge and belief, after making proper enquiry, the information contained in or accompanying the takeover notice of the offer document is, in all material respect true and correct and not misleading, whether by omission of any information or otherwise, and includes all the information required to be disclosed by the offeror under the Companies (Panel of Takeover and Mergers) Rules.

(2) Where the offeror is a company or corporate body, the statement under paragraph (1) shall be signed by at least two directors.

SECOND SCHEDULE

rr. 17, 21 (2), 34 (2), 43 (3) and 61

Prescribed Fees Payable to the Panel

Activity	*Fee payable*
	K
1. Filing of the offer document with Panel . .	0.25 of the value of the offer subject to a maximum of K500,000
2. Extension of the offer period	50,000
3. Waiver of the mandatory offer	100,000
4. Application for making a subsequent offer	100,000
5. Application for exemptions	100,000

THIRD SCHEDULE

r. 19

Information to be Contained in the Reply Document

The reply document of the offeree shall include the following information, along with any other information which may be necessary and relevant to enable the shareholders to make an informed decision—

1. Views of offeree's board—

   (*a*) whether the directors of the offeree recommend that the shareholders shall accept or reject the offer, with reasons for the recommendation;

   (*b*) the summary of the report of the independent adviser as to whether the offer is fair and reasonable and the reasons thereof;

   (*c*) whether the directors and any person dealing directly on their behalf intends to accept the offer.

2. Directors' interests in the offeree—

   (*a*) the aggregate shareholdings in the offeror and in the offeree in which the directors of the offeree have an interest shall be stated;

(*b*) if any securities in the offeree have been purchased or sold by the directors of the offeree within six months prior to the public announcement of the offer, details of the numbers, prices and dates shall be given.

3. Shareholdings in the offeror—

(*a*) the shareholdings of the offeree, the offeree's holding company or any of its subsidiaries in the offeror shall be disclosed;

(*b*) if any shares in the offeror have been purchased or sold by such persons within six months before the public announcement of the offer, details of the numbers, prices and dates shall be given.

4. Stated capital of offeree—

(*a*) the stated capital and the rights of the shareholders in respect of capital, dividends and voting;

(*b*) the number of shares issued since the end of the last financial year of the offeree;

(*c*) if any of the securities of the offeree are not listed on a securities exchange, any information available as to the number and price of transactions which have taken place during the period commencing six months preceding the commencement of the offer period shall be stated.

5. Financial information—

(*a*) the following information about the offeree—

(i) audited financial statements for the last three years;

(ii) all material changes in the financial or trading position or prospects of the company subsequent to the last published audited accounts or a statement that there are no known material changes;

(iii) any interim statement or preliminary public announcement made since the last published audited accounts; and

(iv) significant accounting policies together with any points from the notes to the accounts which are of major relevance to an appreciation of the figures.

(*b*) where, because of a change in accounting policy, figures are not comparable to a material extent, this shall be disclosed and the approximate amount of the resultant variation shall be stated.

6. Material contracts

Details of every material contract entered into by the offeree and its subsidiaries more than two years before the date of the offer, not being a contract entered into in the ordinary course of business carried on or intended to be carried on by the company.

7. Arrangements affecting directors—

(*a*) details of any benefit to be given to any director of the offeree as compensation for loss of office or otherwise in connexion with the offer;

(*b*) details of any agreement between any director of the offeree and any other person that is conditional on the outcome of the offer or otherwise connected with the offer;

(*c*) details of any material contract entered into by the offeror in which any director of the offeree has any interest.

8. Directors' service agreement

Details of any existing service contracts between the offeree or any of its subsidiaries or associated companies and directors of the offeree which have more than twelve months to terminate, or which have been entered into or amended within six months before the public announcement of the offer.

FOURTH SCHEDULE

r. 23 (1) (*c*)

Information that must be Contained in the Report of the Independent Adviser

1. Identity of adviser

The name of the adviser.

2. Adviser's qualifications and expertise

A statement of the adviser's qualifications and expertise.

3. No conflict of interest

A statement that the adviser has no conflict of interest that could affect the adviser's ability to provide an unbiased report.

4. Statement in relation to rule 23 report and further rule 23 report—

(1) This clause applies to a report that is required under rule 23 (a rule 23 report) or a further rule 23 report obtained under rule 30 (a further rule 23 report).

(2) A rule 23 report must contain the following statement in a prominent position at the front of the report—

Purpose of report—

1. This report is not a report on the merits of the offer.
2. This report has been obtained by the offeror.
3. The purpose of this report is solely to compare the consideration and terms offered for the different classes of securities, and to

certify as to the fairness and reasonableness of that consideration and terms as between the different classes.

4. A separate independent adviser's report on the merits of the offer, commissioned by the directors of [name of target company], must accompany [name of target company]'s target company statement.
5. The offer should be read in conjunction with this report and the separate independent adviser's report on the merits of the offer.

(3) A further rule 23 report must contain the following statement in a prominent position at the front of the report—

Purpose of report—

1. This report is not a report on the merits of the offer as varied by the variation notice dated [date of variation notice].
2. This report has been obtained by [name of offeror] in connexion with the variation to the offer.
3. The purpose of this report is solely to compare the consideration and terms offered for the different classes of securities, and to certify as to the fairness and reasonableness of that consideration and terms as between the different classes.
4. The offer should be read in conjunction with this report and the separate independent adviser's report on the merits of the offer (which you will have received with [name of target company]'s target company statement).
5. Explanation for further rule 23 report if the report is a further rule 23 report, an explanation of why the further rule 23 report is required in addition to the rule 23 report.

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r. 37 (3)

FIFTH SCHEDULE

Notice to Dissenting Shareholder

To .....

An offer was made on the ..... day of ..... 20.....
by .....
.....
.....
..... (the offeror)

for K ..... per share in .....
.....
.....

(the offeree) .....

(the offeror) has, within the relevant time period specified in rule 37 of the Companies (Panel on Takeovers and Mergers) Rules, satisfied the conditions contained in Part XI of the Companies (Panel on Takeovers and Mergers) Rules, ... (the offeror) gives notice that he now intends to exercise his right under Part X of the Companies (Panel on Takeovers and Mergers) Rules, to acquire shares held by you in ..... (the offeree). If you do not make application to court (see below) ..... (the offeror) will acquire your shares on the following terms:

.....

.....

.....

NOTE: You are entitled under rule 40 of the Companies (Panel on Takeover and Mergers) Rules, to make application to court within twenty-one days of the date of this notice for an order stating that either ..... (the offeror) shall not be entitled and bound to acquire your shares or that different terms to those of the offer shall apply to the acquisition. If you are contemplating such an action you may wish to seek legal advice.

Signed ..... Date .....

G.N. 29/2016

COMPANIES (CORPORATE GOVERNANCE) REGULATIONS

under s. 382 (1)

Citation

1. These Regulations may be cited as the Companies (Corporate Governance) Regulations.

Interpretation

2. In these Regulations—

"Malaŵi Code II" means the Code of Best Practice in Corporate Governance launched on 1st June 2010 by the Institute of Directors (Malaŵi) and where applicable includes sector specific guidelines such as the incorporated Micro, Small and Medium Enterprises guidelines, listed companies guidelines, parastatal organizations guidelines, member based organizations guidelines unless inconsistent with the Act or any Regulations made under the Act.

Application of the Malaŵi Code II
Schedule

3. The Malaŵi Code II as set out in the Schedule to these Regulations shall apply.

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reg. 3

SCHEDULE

1. Owners

The owners of an organization shall be understood as those who constitute the supreme authority of the organization, for example, Government, shareholders, holding or parent organization, and others. There may be a sole owner of the organization. The shareholders or the members might exercise their ownership role in the annual general meeting (or general assembly). The owners may entrust trustees to take on the ownership role on their behalf or there may be another ownership arrangement appropriate to the type of organization.

2. Boards

The board, often called board of directors, is a body of elected or appointed members who jointly oversee and direct the affairs of an organization. The body sometimes has a different name, such as board of trustees, board of governors, board of managers, governing board, governing council, board of commissioners, and others. It is often simply referred to as the "board."

A board's activities are determined by the powers, duties, and responsibilities delegated to or conferred on it by the owners of the organization and/or as specified by laws and regulations applicable to the

type of organization. While the "owners" constitute the supreme authority of the organization, they confer the supreme governing role to the board. The board therefore is the main governing body situated between the owners and the executive management of the organization.

3. Member of the board

A member of the board shall be understood as any individual elected to or appointed as member of the board as defined in paragraph 2, such as directors, members of governing councils, and others.

4. Private, public and not for profit sectors

Private sector is that part of the economy which is both run for private profit and is not controlled by the state. It includes family owned businesses, private companies, micro, CMK small and medium Enterprises, as well as the informal sector.

Public sector, sometimes referred to as the state sector, is a part of the state that deals with the production, delivery and allocation of goods and services by and for the government or its citizens, whether national, regional or local/municipal. It includes state owned enterprises, parastatal and public authorities or commissions.

Not for profit sector is that part of the economy where organizations are not for profit and are not part of the government. This sector is also called the third sector, in reference to the private sector and the public sector, or the civic sector emphasizing the sector's relationship to civil society. It includes non-governmental organizations (NGOs), community based organizations and other related organizations.

1. Compliance with the Malaŵi Code II

1.1 The Malaŵi Code II is concerned with the establishment of an environment conducive to enabling organizations to grow, thrive, survive and create sustainable development for Malaŵi, whilst acting as good corporate citizens.

1.2 These overarching provisions (OPs) should thus be applied in all organizations be they large, medium or small, in the private, public or not for profit sector.

1.3 Organizations in their annual or directors reports should state whether the Malaŵi Code II has been adhered to or, if not, explain with reasons in what respects it has not been adhered to.

2. Owners

The owners of the organization shall—

2.1 Jointly and severally protect, preserve and actively exercise the supreme authority of their organization.

2.2 Ensure that only competent and reliable persons with appropriate knowledge, skills and experience are elected or appointed to the board.

2.3 Decide the term to be served by non-executive members of the board and ensure that the board is refreshed on a regular basis; bringing new and unbiased viewpoints into discussions and decision-making.

2.4 Foster constructive relationships with the board in order to facilitate the success and sustainability of the organization.

2.5 Ensure that the board is constantly held accountable and responsible for the efficient and effective governance of the organization.

2.6 Change the chairman and/or the composition of a board that does not perform to expectations or in accordance with the mandate of the organization.

2.7 Ensure that their organization acts as a good corporate citizen, and in a sustainable manner, taking into consideration, as appropriate, the views of stakeholders.

2.8 Comply with all applicable pieces of legislation.

2.9 Respect the fiduciary duties of the members of the board.

2.10 Ensure that the level of remuneration for members of the board and top management is sufficient to attract and retain the quality and calibre of individuals needed to run the organization successfully.

2.11 The majority of owners and the members of the board should appropriately respect the rights of minority owners. The organization's affairs may not be conducted in a manner which is unfairly prejudicial to the interests of minority owners and/or to the purpose of the organization.

3. Board Structure

3.1 The unitary (or one tier) board structure, comprising executive and non-executive directors, rather than the dual (or two tier) board structure adopted in some countries, is considered appropriate for Malaŵi as it provides greater interaction among all board members when dealing with matters such as strategic planning, performance, standards of conduct, resource allocation and communication with stakeholders.

3.2 While the size of the board shall be determined by the organization, and shall vary from organization to organization, the size should be such that it ensures that the organization operates effectively.

4. The Role of the Board

The board shall—

4.1 Ensure that the organization complies with all relevant laws, regulations and codes, including the Malaŵi Code II, and, if appropriate, ask executive management to report periodically on such compliance.

4.2 Exercise leadership, enterprise, integrity and sound judgment in directing the organization; so as to achieve sustainable success for the organization.

4.3 Determine the organization's mission, values and objectives and ensure that a strategy is in place to achieve these and hold management accountable for its implementation.

4.4 Ensure that appropriate procedures and practices, to protect the organization's assets, resources and reputation, are in place and are effective.

4.5 Develop a board charter, based on the organization's constitution, articles of association, and the laws and regulations that apply to the organization, in which roles and responsibilities are clearly defined.

4.6 Retain full and effective control over the organization.

4.7 Ensure that decisions on material matters are in the hands of the board. The board shall have a definition of materiality on matters such as the acquisition and disposal of assets, investments, capital projects and authority levels. The level or definition of materiality is a matter for each organization to decide.

4.8 Define the responsibilities of, and requirements for, reporting by executive management and monitor their performance.

4.9 Ensure that plans are in place for orderly succession of members of the board and of the chief executive officer.

4.10 Ensure that every member of, the board is able to play a full and constructive role in the affairs of the organization.

4.11 Develop policies and processes to avoid or minimize conflict of interest.

4.12 As part of its decision making process, take into consideration wider societal interests and other circumstances affecting how the organization fulfills its license to operate.

4.13 Ensure that a dialogue, based on mutual understanding of the objectives of the organization, exists between the board itself and the owners of the organization.

4.14 Ensure that it acts in the best interests of the organization and that in doing so it meets the organization's purpose.

4.15 Meet regularly. Each board should decide how regularly it needs to meet to discharge its duties, having regard to the organization's own circumstances.

4.16 On the appointment and throughout the duration of tenure of its members ensure that the members are able to devote sufficient time to their responsibilities as members of the board.

4.17 Ensure that its members have among them the right mix of expertise, experience, skills and knowledge appropriate to the organization.

4.18 Ensure that it is adequately informed and where necessary invite executive management to clarify and/or provide additional information.

4.19 Ensure that its members are of sufficient calibre to bring independent judgment to bear on issues of strategy, performance, resources, standards of conduct, and evaluation of performance.

4.20 Ensure that the integrated reporting by the organization is accurate and truthful, at the time of disclosure.

4.21 Consider the use of alternative dispute resolution as a method of resolving disputes arising both within the organization and between the organization and other parties. Alternative dispute resolution comprises, among others, open communication, win-win arrangements, negotiations, mediation and arbitration.

5. Board Evaluation

5.1 It is good practice for boards to evaluate annually the mix of skills and experience of their members as well as the board's performance and processes. The level of evaluation would depend on the type of organization. Large organizations may also consider evaluating the chairman, other members of the board, board sub-committees and the chief executive officer.

5.2 Organizations should agree in advance the type of evaluation suitable for their organization and how to measure and report it in the organization's directors or annual report.

6. Board Sub-Committees

6.1 Boards may find it useful to establish board sub-committees to deal with matters that can best be dealt with in a small forum. The number and nature of sub-committees will depend on the type of organization. All sub-committees when established should be given, in writing, clear terms of reference.

6.2 Decisions of each sub-committee should be communicated to the board as recommendations for its further consideration.

6.3 When constituting sub-committees, the board shall ensure that the sub-committees members have the appropriate balance of skills, experience, independence and knowledge of the organization and the sub-committees' terms of reference to discharge their duties and responsibilities effectively.

6.4 Sub-committees shall also be provided with sufficient and appropriate resources to undertake their duties.

7. The Chairman

7.1 The chairman should preferably be non-executive.

7.2 The roles of the chairman and the chief executive officer shall preferably be separate, but where they are combined, it is important that the chairman encourages proper deliberation of all matters requiring the board's attention and obtains optimum input from all members of the board.

7.3 The chairman shall ensure that all board members are as fully informed as possible on any issue on which a decision is to be made and afford each board member a reasonable opportunity to contribute to the board's deliberations.

7.4 It is the responsibility of the chairman, following a board evaluation, to recommend to the owners the removal of board members who do not contribute effectively to the board.

7.5 Where the chairman is appointed by the board, the members of the board should ensure that only a person that can add value is appointed to the position. The organization should determine the length of service of the chairman.

7.6 Where the chairman is required to exercise a casting vote, he shall use it objectively.

8. Members of the Board

In carrying out their functions, members of the board shall—

8.1 Exercise reasonable care, skill and diligence. This means the care, skill and diligence that would be exercised by a reasonably diligent person with—

(*a*) the general knowledge, skill and experience that may reasonably be expected of a person carrying out the functions of a member of the board of the organization; and

(*b*) the general knowledge, skill and experience that the member has.

8.2 Both during and after their tenure of office, avoid using privileged information for their own personal benefit or that of other people associated with them.

8.3 Ensure that they devote sufficient time to their responsibilities.

8.4 Be diligent in discharging their duties to the organization, endeavour to attend meetings regularly and be prepared and able where necessary, to express disagreement with colleagues on the board including the chairman and the chief executive officer.

8.5 Be truthful and disclose all the information at their disposal to enable the board to make an informed decision.

8.6 At the expense of the organization, be entitled to seek independent professional advice about the affairs of the organization. Before seeking independent professional advice, however, the member concerned shall discuss and clear the matter with the chairman or the company secretary. If to approach either of them is inappropriate in the circumstances of the matter, the board member must act within the best interests of the organization.

9. Non-Executive Members of the Board

Non-executive members of the board shall—

9.1 Be independent in character and judgment, even where there are relationships or circumstances which are likely to affect, or could appear to affect the judgment of the members of the board.

9.2 Not take part in the day-to-day management of the organization.

9.3 Not have any benefits from the organization other than their fees and other approved expenses. All sitting allowances are deemed to be part of fees.

9.4 Not undertake any advisory work for the organization unless that work has been approved in advance by the board and is limited in scope and time in order not to compromise the non-executive status of that member and to avoid any conflict of interest.

9.5 Be of sufficient calibre to bring independent judgment to bear on issues of strategy, performance, resources, standards of conduct, and evaluation of performance.

9.6 Constructively challenge and contribute to the development of strategy.

9.7 Scrutinize the performance of management in meeting agreed goals and objectives, and monitor the reporting of performance.

9.8 Satisfy themselves that financial information is accurate and that financial controls and systems of risk management are robust and sound.

9.9 Be responsible for ensuring that plans are in place to ensure the long term sustainability of the organization. In this regard, they may have a role in appointing and, where necessary, removing senior management and determining their levels of remuneration.

10. Appointment of Members of the Board

10.1 The appointment of the board shall be appropriate for the organization taking into account good governance and the requirements for the organization to meet its goals and to ensure its long-term sustainability.

10.2 Appointments to the board should be planned with strategic considerations and objectives of the organization in mind.

10.3 The selection process must be managed by considering a balanced mix of experience and skills needed to add value to the strategic role of the board. Depending on the type of organization, the selection process may also consider appropriate diversity of gender and/or social and economic background.

10.4 An organization shall make appointments to the board on merit.

10.5 The term served by both executive and non-executive members of the board should be decided by the organization; taking into account the

period that could reasonably be perceived to materially interfere with the member's ability to act in the best interest of the organization's goals and long-term sustainability.

10.6 Where appointments to the board are done at an annual general meeting or general assembly, owners should be provided with a list of candidates from whom to elect members of the board.

11. Remuneration of Members of the Board

11.1 Remuneration of members of the board shall be appropriate to the organization and should take into account the long term sustainability of the organization.

11.2 There shall be a formal and transparent process for determining remuneration of members of the board and of top management.

11.3 Non-executive members of the board shall receive fees at levels that reflect time invested commitment, performance and responsibilities. Organizations may however choose for an arrangement where members of the board are fully committed to the mission of the organization and therefore agree to work *pro bono*.

11.4 An organization shall disclose, at least on an aggregate basis, in its director's or annual report, the remuneration, bonuses and other benefits received by members of the board. What is to be disclosed shall represent the total cost to the organization.

11.5 When considering appointing executive members of the board, the board should seek proper legal advice in relation to termination clauses to avoid the risk of paying excessive amounts on termination of service.

12. Training and Development of Members of the Board

12.1 Members of the board need proper knowledge of the organizations for which they are responsible. They should acquire a broad knowledge of—

12.1.1 The business of the organization so that they can provide meaningful direction to it;

12.1.2 The statutory and regulatory requirements affecting the direction of the organization and the environment in which the organization operates; and

12.1.3 Their role, duties, responsibilities, and obligations as well as board practices and procedures.

12.2 The board, in developing training needs, should take into account any training needs identified during a board evaluation.

12.3 The board shall ensure that new members undergo a tailored induction programme, particularly if the new members have no previous board experience.

12.4 Every member of the board shall keep abreast of both practical and theoretical developments affecting the environment in which the organization operates as well as to ensure that their expertise and experience remain relevant to the board and to the organization. Members of the board shall be regularly exposed to matters relevant to legal reforms, corporate governance, changing corporate environment, risks, opportunities and other matters that may be of interest in the execution of their duties.

12.5 Executive members of the board shall be encouraged by their organization to take non-executive appointments in other organizations. However, the number of non-executive appointments shall not be such that the member's executive responsibilities to their own organization are adversely affected.

13. The Company Secretary

13.1 All organizations, where required by law, shall ensure that they have access to a competent company secretary to render company secretarial services to the organization. The appointment and removal of the company secretary shall be a matter for the board as a whole.

13.2 The company secretary shall among other duties, be responsible for advising the chairman and the board on the implementation of the Malaŵi Code II.

13.3 All members of the board shall have access to advice and services of the company secretary.

13.4 The company secretary shall be responsible for ensuring effective information flows between the board and top management and between the board and its sub-committees.

13.5 Wherever possible, the role of the chief executive officer and that of the company secretary shall be separated.

14. Related Party Transactions

14.1 Organizations shall identify, manage and document related party transactions.

14.2 The following are related parties—

(*a*) a member of the board or of the key management personnel of the organization;

(*b*) any other person that significantly controls or influences the organization;

(*c*) any close member of the family (such as the individual's domestic partner and children, children of the individual's domestic partner and other dependants of the individual or of the individual's domestic partner) of any individual referred to in (*a*) or (*b*);

(*d*) any entity controlled or significantly influenced by the organization or by any individual referred to in (*a*) or (*b*);

(*e*) any entity under joint control with the organization; or

(*f*) any entity that significantly controls or influences the organization.

14.3 A related party transaction shall be understood as a transfer of resources, services or obligations between related parties and the organization, regardless of whether or not a price is charged. This includes, among others, purchases or sales of goods, property and other assets; rendering or receiving of services, leases, transfers of research and development; transfers under licence agreements, financial arrangements (including loans and equity contributions in cash or in kind), provision of guarantees or collateral, commitments to do something if a particular event occurs or does not occur in the future, including executory contracts, among other things.

14.4 Owners shall be informed of any related party transaction that may significantly affect the current and/or future financial position, the performance, the capacity, the opportunities and/or the risks of the organization. Such disclosure shall explain what the nature of the transactions is and how the potential conflicts of interest or other risks for the organization are being avoided and/or mitigated.

15. Risk Management and Internal Controls

15.1 The board shall be responsible for the governance of risk.

15.2 The board should regularly review the organization's risks, risk appetite and tolerance, and ensure that it has endeavoured to put in place measures to minimize or avert any identified risks. The board shall also regularly review the appropriateness of these measures.

15.3 The board of an organization that relies heavily on information technology (computer) systems shall ensure that appropriate back-up measures are adopted and that measures are put in place to safeguard all information stored by the organization.

16. Ethics

Organizations shall—

16.1 ensure that they act ethically; and

16.2 consider developing a code of ethics aimed at fostering an ethical culture within their organization.

Where adopted, a code of ethics shall—

16.2.1 commit the organization to the highest standards of behaviour;

16.2.2 be developed with the full participation of all parties expected to abide by it;

16.2.3 receive total commitment from the board and the chief executive officer of the organization; and

16.2.4 be sufficiently detailed as to give a clear guide to the expected standards of behaviour of all employees.

16.3 Allow African "umunthu" values to thrive within the ethical framework of the organization. Relationships within the organization and with its stakeholders shall therefore also be guided by the following concepts: thoroughly valuing others and, in doing so, valuing ourselves, cooperation, kinship and belonging within the community.

17. Good Citizenship

17.1 An organization as well as being an economic entity is also a citizen of Malaŵi and as such has a moral and social standing within Malaŵian society, with all the responsibilities attached to that status. As such, when making decisions, an organization shall consider the impact of its decisions on its stakeholders (both internal and external), the environment and society as a whole.

18. Sustainability

18.1 Organizations shall conduct their operations in a manner that meets existing needs without compromising the ability of future generations to meet their needs. It means having regard to the impact that the organizations' operations have on the environment, economic and social life of the community in which it operates. This shall include its supply chain, that is to say, access to the resources and raw materials it needs to carry out its operations.

18.2 Organizations shall report on how they have both positively and negatively impacted on the environment and on the economic and social life of the community in which they operate and how they believe they can improve the positive and eradicate or lessen the negative aspects in the coming year.

19. External Communications

19.1 Society is currently demands greater transparency, accountability and responsibility from organizations. Organizations should consider making regular, timely, balanced and understandable statements about their activities, performance and future prospects.

19.2 Organizations shall, where it is in their best interests, disclose publicly their reasons for making decisions which may appear compromised due to a perceived conflict of interest of the members making the decision.

20. Integrated Reporting and Auditing

20.1 Organizations shall produce financial statements appropriate to them. To the extent possible the financial statements should be prepared in accordance with nationally recognized standards.

20.2 Where there is a requirement for auditing the financial statements, the audit shall be done by an independent external auditor, who is provided with the opportunity to raise matters directly with the board.

20.3 Sustainability reporting and disclosure shall be integrated with the organization's financial reporting.

20.4 The financial statements of the organization shall also comply with any obligation to disclose related party transactions, as is, for their type of organization, specified in laws, regulations, directives or guidelines.

COMPANIES (MODEL ARTICLES AND MEMORANDA) REGULATIONS

ARRANGEMENT OF REGULATIONS

REGULATION

PART I
PRELIMINARY

1. Citation

PART II
MODEL ARTICLES AND MEMORANDA

2. Model articles of a private company limited by shares
3. Model articles of a public company
4. Model articles of a company limited by guarantee
5. Model memorandum of a company limited by shares
6. Model memorandum of a company limited by guarantee

G.N. 30/2016

COMPANIES (MODEL ARTICLES AND MEMORANDA) REGULATIONS

under s. 382

PART I
PRELIMINARY

Citation

1. These Regulations may be cited as the Companies (Model Articles and Memoranda) Regulations.

PART II
MODEL ARTICLES AND MEMORANDA

Model articles of a private company limited by shares *Schedule*

2. The articles of association of a private company limited by shares shall be in accordance with Table A in the Schedule to these Regulations.

Model articles of a public company *Schedule*

3. The articles of association of a public company shall be in accordance with Table B in the Schedule to these Regulations.

Model articles of a company limited by guarantee *Schedule*

4. The articles of association of a company limited by guarantee shall be in accordance with Table C in the Schedule to these Regulations.

5. The memorandum of association of a company limited by shares shall be in accordance with Table D in the Schedule to these Regulations.

Model memorandum of a company limited by shares *Schedule*

6. The memorandum of association for a company limited by guarantee shall be in accordance with the form in Table E in the Schedule to these Regulations.

Model memorandum of a company limited by guarantee *Schedule*

SCHEDULE

TABLE A

reg. 2

MODEL ARTICLES OF A PRIVATE COMPANY LIMITED BY SHARES

ARTICLE

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2. Liability of members

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4. Shareholder's reserve power
5. Delegation by a director
6. Committees
7. Collective decisions by directors
8. Unanimous decisions
9. Calling of directors' meeting
10. Participation in directors' meetings
11. *Quorum* for directors' meetings
12. Chairing of directors' meetings
13. Casting vote
14. Conflict of interest
15. Records of decisions to be kept
16. Directors may make rules
17. Methods of appointing directors

ARTICLE

18. Termination of director's appointment
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PART I
PRELIMINARY

Interpretation

1.—(1) In these Articles, unless the context requires otherwise—

"articles" means the company's articles of association;

"bankruptcy" includes individual insolvency proceedings;

"chairman" has the meaning given in article 12;

"chairman of the meeting" has the meaning given in article 39;

"director" means a director of the company, and includes any person occupying the position of director, by whatever name called;

"distribution recipient" has the meaning given in article 31;

"document" includes, unless otherwise specified, any document sent or supplied in electronic form;

"fully paid" in relation to a share, means that the nominal value and any premium to be paid to the company in respect of that share have been paid to the company;

"holder" in relation to shares means the person whose name is entered in the register of members as the holder of the shares;

"instrument" means a document in hard copy form;

"ordinary resolution" has the meaning given in section 2 of the Act;

"paid" means paid or credited as paid;

"participate" in relation to a directors' meeting, has the meaning given in article 10;

"proxy notice" has the meaning given in article 45;

"shareholder" means a person who is the holder of a share;

"shares" means shares in the company;

"special resolution" has the meaning given in section 2 of the Act;

"subsidiary" has the meaning given in section 2 of the Act;

"transmittee" means a person entitled to a share by reason of the death or bankruptcy of a shareholder or otherwise by operation of law; and

"writing" means the representation or reproduction of words, symbols or other information in a visible form by any method or combination of methods, whether sent or supplied in electronic form or otherwise.

(2) Unless the context otherwise requires, other words or expressions contained in these Articles bear the same meaning as in the Act as in force on the date when these Articles become binding on the company.

Liability of members

2. Liability of the members is limited to the amount, if any, unpaid on the shares held by them.

PART II
Director's Powers and Responsibilities

Director's general authority

3. Subject to the articles, a director shall be responsible for the management of the company's business, for which purpose he may exercise all the powers of the company.

Shareholder's reserve power

4.—(1) A shareholder may, by special resolution, direct the directors to take, or refrain from taking, specified action.

(2) A special resolution passed pursuant to paragraph (1) shall not invalidate anything which the directors have done before the passing of the resolution.

Delegation by a director

5.—(1) A director may delegate any of the powers which are conferred on him under these Articles—

(*a*) to such person or committee;

(*b*) by such means including by power of attorney;

(*c*) to such an extent;

(*d*) in relation to such matters or territories; and

(*e*) on such terms and conditions,

as he thinks fit.

(2) Where a director specifies in writing, any delegation of powers under this article may authorize further delegation of the director's powers by any person to whom they are delegated.

(3) A director may revoke any delegation of powers made under this article, in whole or part, or alter its terms and conditions.

Committees

6.—(1) Committees to which a director delegates any of his powers shall follow procedures which are based, insofar as they are applicable, on provisions of these Articles that govern the taking of decisions by directors.

(2) Directors of a company may make rules of procedure for all or any committees, which prevail over rules derived from the articles if they are not consistent with them.

Collective decisions by directors

7.—(1) The general rule about decision-making by directors is that any decision of the directors shall be either a majority decision at a meeting or a decision taken in accordance with Article 8.

(2) The general rule under this Article shall not apply, if—

(*a*) the company only has one director; and

(*b*) no provision of the Articles requires it to have more than one director.

(3) Where the general rule does not apply as envisaged in paragraph (2), the director may take decisions without regard to any of the provisions of the articles relating to directors' decision-making.

Unanimous decisions

8.—(1) A decision of the directors is taken in accordance with this article when all eligible directors indicate to each other by any means that they share a common view on a matter.

(2) Such a decision may take the form of a resolution in writing, copies of which have been signed by each eligible director or to which each eligible director has otherwise indicated agreement in writing.

(3) References in this article to eligible directors are to directors who would have been entitled to vote on the matter had it been proposed as a resolution at a directors' meeting.

(4) A decision may not be taken in accordance with this article if the eligible directors would not have formed a *quorum* at such a meeting.

Calling of a directors' meeting

9.—(1) Any director may call a directors' meeting by giving a notice of the meeting to the directors or by authorizing the company secretary, if any, to give such notice.

(2) Notice of any directors' meeting shall indicate—

(*a*) its proposed date and time;

(*b*) where it shall take place; and

(*c*) if it is anticipated that directors participating in the meeting will not be in the same place, how it is proposed that they should communicate with each other during the meeting.

(3) Notice of a directors' meeting shall be given to each director, but need not be in writing.

(4) Notice of a directors' meeting need not be given to directors who waive their entitlement to notice of that meeting, by giving notice to that effect to the company not more than seven days after the date on which the meeting is held. Where such notice is given after the meeting has been held, that shall not affect the validity of the meeting, or of any business conducted at the meeting.

Participation in directors' meetings

10.—(1) Directors participate in a directors' meeting, or part of a directors' meeting, when—

(*a*) the meeting has been called and takes place in accordance with these Articles; and

(*b*) the directors can each communicate to the others any information or opinions they have on any particular item of the business of the meeting.

(2) In determining whether directors are participating in a directors' meeting, the location of a particular director and the mode which the directors communicate to each other is irrelevant.

(3) If all the directors participating in a meeting are not at the same place, they may decide that the meeting shall be treated as taking place wherever any of them is.

Quorum for directors' meetings

11.—(1) At a directors' meeting, unless a *quorum* is participating, no proposal shall be voted on, except a proposal to call another meeting.

(2) The *quorum* for directors' meetings may be fixed from time to time by a decision of the directors, but it shall never be less than two, and unless otherwise fixed it shall be two.

(3) If the total number of directors for the time being is less than the *quorum* required, the directors shall not take any decision other than a decision—

(*a*) to appoint further directors; or

(*b*) to call a general meeting so as to enable the shareholders to appoint further directors.

Chairing of directors' meetings

12.—(1) The directors may appoint a director to chair their meetings.

(2) The person so appointed for the time being is known as the chairman.

(3) The directors may terminate the chairman's appointment at any time.

(4) If the chairman is not participating in a directors' meeting within ten minutes of the time at which it was to start, the participating directors shall appoint one of themselves to chair the meeting.

Casting vote

13.—(1) If the numbers of votes for and against a proposal are equal, the chairman or other director chairing the meeting has a casting vote.

(2) Paragraph (1) shall not apply if, in accordance with the articles, the chairman or other director is not to be counted as participating in the decision-making process for *quorum* or voting purposes.

Conflict of interest

14.—(1) Subject to paragraph (2), where a proposed decision of the directors is concerned with an actual or proposed transaction or arrangement

with the company in which a director is interested, that director shall not to be counted as participating in the decision-making process for *quorum* or voting purposes.

(2) A director who is interested in an actual or proposed transaction or arrangement with the company shall be counted as participating in the decision-making process for *quorum* and voting purposes when—

(*a*) the company, by an ordinary resolution, excludes the application of the provision of the articles which would otherwise prevent a director from being counted as participating in the decision-making process;

(*b*) the director's interest cannot reasonably be regarded as likely to give rise to a conflict of interest; or

(*c*) the director's conflict of interest arises from a permitted cause.

(3) For the purpose of this article, the following are permitted causes—

(*a*) a guarantee given, or to be given, by or to a director in respect of an obligation incurred by or on behalf of the company or any of its subsidiaries;

(*b*) subscription, or an agreement to subscribe, for shares or other securities of the company or any of its subsidiaries, or to underwrite, sub-underwrite, or guarantee subscription for any such shares or securities; and

(*c*) arrangements pursuant to which benefits are made available to employees and directors or former employees and directors of the company or any of its subsidiaries which do not provide special benefits for directors or former directors.

(4) For the purpose of this article, references to proposed decisions and decision-making processes include any directors' meeting or part of a directors' meeting.

(5) Subject to paragraph (6), if a question arises at a meeting of directors or of a committee of directors as to the right of a director to participate in the meeting, or part of the meeting, for voting or *quorum* purposes, the question may, before the conclusion of the meeting, be referred to the chairman whose ruling in relation to any director other than the chairman shall be final and conclusive.

(6) If any question as to the right to participate in the meeting, or part of the meeting, arises in respect of the chairman, the question shall be decided by a decision of the directors at that meeting, for which purpose the chairman is not to be counted as participating in the meeting, or that part of the meeting, for voting or *quorum* purposes.

Records of decisions to be kept

15. The directors shall ensure that the company keeps a record, in writing, for at least ten years from the date of recording the decision, of every unanimous or majority decision taken by the directors.

Directors may make rules

16. Subject to the articles, the directors may make any rule which they think fit about how they make decisions, and about how such rules are to be recorded or communicated to directors.

Methods of appointing directors

17.—(1) Any person who is willing to act as a director, and is permitted by law to do so, may be appointed to be a director—

(*a*) by ordinary resolution; or

(*b*) by a decision of the directors.

(2) In any case where, as a result of death, the company has no shareholders and no directors, the personal representatives of the last shareholder to have died have the right, by notice in writing, to appoint a person to be a director.

(3) For the purposes of paragraph (2), where two or more shareholders die in circumstances rendering it uncertain who was the last to die, a younger shareholder is deemed to have survived an older shareholder.

Termination of director's appointment

18. A person ceases to be a director as soon as—

(*a*) that person ceases to be a director by virtue of any provision of the Act or is prohibited from being a director by law;

(*b*) a bankruptcy order is made against that person;

(*c*) a composition is made with that person's creditors generally in satisfaction of that person's debts;

(*d*) a registered medical practitioner who is treating that person gives a written opinion to the company stating that that person has become physically or mentally incapable of acting as a director and may remain so for more than three months;

(*e*) by reason of that person's mental health, a court makes an order which wholly or partly prevents that person from personally exercising any powers or rights which that person would otherwise have; or

(*f*) a notification is received by the company from the director that the director is resigning from office, and such resignation has taken effect in accordance with its terms.

Director's remuneration

19.—(1) Directors may undertake any services for the company that the directors decide.

(2) Directors are entitled to such remuneration as the directors determine—

(*a*) for their services to the company as directors; and

(*b*) for any other service which they undertake for the company.

(3) A director's remuneration may take any form and may include any arrangements in connexion with the payment of a pension, allowance or gratuity, or any death, sickness or disability benefits, to or in respect of that director.

(4) Unless the directors decide otherwise, directors' remuneration accrues from day-to-day.

(5) Unless the directors decide otherwise, directors are not accountable to the company for any remuneration which they receive as directors or other officers or employees of the company's subsidiaries or of any other body corporate in which the company is interested.

Director's expenses

20. The company may pay any reasonable expenses which the directors properly incur in connexion with their attendance at—

(*a*) meetings of directors or committees of directors;

(*b*) general meetings; or

(*c*) separate meetings of the holders of any class of shares or of debentures of the company, or otherwise in connexion with the exercise of their powers and the discharge of their responsibilities in relation to the company.

PART III
Shares and Distributions

All shares to be fully paid-up

21.—(1) No share shall be issued for less than the aggregate of its nominal value and any premium to be paid to the company in consideration for its issue.

(2) This does not apply to shares taken on the formation of the company by the subscribers to the company's memorandum.

Powers to issue different classes of share

22.—(1) Without prejudice to the rights attached to any existing share, the company may issue shares with such rights or restrictions as may be determined by ordinary resolution.

(2) The company may issue shares which are to be redeemed, or are liable to be redeemed at the option of the company or the holder, and the directors may determine the terms, conditions and manner of redemption of any such shares.

Company not bound by less than absolute interests

23. Except as required by any written law or these Articles—

(*a*) no person shall be recognized by the company as holding any share upon any trust; and

(*b*) the company is not in any way to be bound by or recognize any interest in a share other than the holder's absolute ownership of it and all the rights attaching to it.

Share certificates

24.—(1) The company shall issue each shareholder, free of charge, with one or more certificates in respect of the shares which that shareholder holds.

(2) Every share certificate shall specify—

(*a*) in respect of how many shares, of what class, it is issued;

(*b*) the nominal value of those shares;

(*c*) that the shares are fully paid; and

(*d*) any distinguishing numbers assigned to them.

(3) No share certificate may be issued in respect of shares of more than one class.

(4) If more than one person holds a share, only one share certificate may be issued in respect of it.

(5) A share certificates shall—

(*a*) have affixed to them the company's common seal; or

(*b*) be otherwise executed in accordance with the Act.

Replacement of share certificates

25.—(1) If a certificate issued in respect of a shareholder's shares is—

(*a*) damaged or defaced; or

(*b*) said to be lost, stolen or destroyed,

the shareholder shall entitled to be issued with a replacement certificate in respect of the same shares.

(2) A shareholder exercising the right to be issued with a replacement certificate under this article—

(*a*) may at the same time exercise the right to be issued with a single certificate or separate certificates;

(*b*) shall return the certificate which shall be replaced to the company if it is damaged or defaced; and

(*c*) shall comply with such conditions as to evidence, indemnity and the payment of a reasonable fee as the directors may decide.

Share transfers

26.—(1) Shares may be transferred by means of an instrument of transfer in any usual form or any other form approved by the directors, which is executed by or on behalf of the transferor.

(2) No fee may be charged for registering any instrument of transfer or other document relating to or affecting the title to any share.

(3) The company may retain any instrument of transfer which is registered.

(4) The transferor remains the holder of a share until the transferee's name is entered in the register of members as holder of it.

(5) The directors may refuse to register the transfer of a share, and if they do so, the instrument of transfer shall be returned to the transferee with the notice of refusal, unless they suspect that the proposed transfer may be fraudulent.

Transmission of shares

27.—(1) If title to a share passes to a transmittee, the company may recognize the transmittee only as having title to that share.

(2) A transmittee who produces such evidence of entitlement to shares as the directors may properly require—

(*a*) may, subject to the articles, choose either to become the holder of those shares or to have them transferred to another person; and

(*b*) pending any transfer of the shares to another person, has the same rights as the holder had.

(3) A transmittee shall not have a right to attend or vote at a general meeting, or agree to a proposed written resolution, in respect of shares to which he is entitled, by reason of the holder's death or bankruptcy or otherwise, unless he becomes the holder of those shares.

Exercise of transmittees' rights

28.—(1) A transmittee who wish to become a holder of shares to which he has become entitled, shall notify the company in writing of that wish.

(2) If the transmittee wishes to have a share transferred to another person, the transmittee shall execute an instrument of transfer in respect of it.

(3) Any transfer made or executed under this article shall be treated as if it were made or executed by the person from whom the transmittee has derived rights in respect of the share, and as if the event which gave rise to the transmission had not occurred.

Transmittees bound by prior notices

29. If a notice is given to a shareholder in respect of shares and a transmittee is entitled to those shares, the transmittee is bound by the notice if it was given to the shareholder before the transmittee's name has been entered in the register of members.

Procedure for declaring dividends

30.—(1) The company may, by ordinary resolution, declare dividends, and the directors may decide to pay interim dividends.

(2) A dividend shall not be declared unless the directors have made a recommendation as to its amount. Such a dividend shall not exceed the amount recommended by the directors.

(3) No dividend may be declared or paid unless it is in accordance with shareholders' respective rights.

(4) Unless a shareholders' resolution to declare, or directors' decision to pay, a dividend, or the terms on which shares are issued, specify otherwise, it shall be paid by reference to each shareholder's holding of shares on the date of the resolution or decision to declare or pay it.

(5) If the company's share capital is divided into different classes, no interim dividend may be paid on shares carrying deferred or non-preferred rights if, at the time of payment, any preferential dividend is in arrears.

(6) The directors may pay at intervals any dividend payable at a fixed rate if it appears to them that the profits available for distribution justify the payment.

(7) If the directors act in good faith, they shall not incur any liability to the holders of shares conferring preferred rights for any loss they may suffer by the lawful payment of an interim dividend on shares with deferred or non-preferred rights.

Payment of dividends and other distributions

31.—(1) Where a dividend or other sum, which is a distribution, is payable in respect of a share, it shall be paid by one or more of the following means—

(*a*) transfer to a bank or building society account specified by the distribution recipient either in writing or as the directors may otherwise decide;

(*b*) sending a cheque made payable to the distribution recipient by post to the distribution recipient at the distribution recipient's registered address, if the distribution recipient is a holder of the share, or in any other case, to an address specified by the distribution recipient either in writing or as the directors may otherwise decide;

(*c*) sending a cheque made payable to such person by post to such person at such address as the distribution recipient has specified either in writing or as the directors may otherwise decide; or

(*d*) any other means of payment as the directors agree with the distribution recipient either in writing or by such other means as the directors decide.

(2) In these Articles, "distribution recipient" means, a share in respect of which a dividend or other sum is payable—

(*a*) to the holder of the share; or

(*b*) if the share has two or more joint holders, to whichever of them is named first in the register of members; or

(*c*) if the holder is no longer entitled to the share by reason of death or bankruptcy, or otherwise by operation of law, to the transmittee.

No interest on distributions

32. The company may not pay interest on any dividend or other sum payable in respect of a share unless otherwise provided by—

(*a*) the terms on which the share was issued; or

(*b*) the provisions of another agreement between the holder of that share and the company.

Unclaimed distributions

33.—(1) All dividends or other sums which are—

(*a*) payable in respect of shares; and

(*b*) unclaimed after having been declared or become payable,

may be invested or otherwise made use of by the directors for the benefit of the company until claimed.

(2) Payment of any dividends or other sum into a separate account shall not make the company a trustee in respect of it.

(3) A distribution recipient is no longer entitled to a dividend or other sum and consequently the dividend ceases to remain owing by the company if—

(*a*) twelve years have passed from the date on which a dividend or other sum became due for payment; and

(*b*) the distribution recipient has not claimed the dividend.

Non-cash distributions

34.—(1) Subject to the terms of issue of the share in question, the company may, by ordinary resolution on the recommendation of the directors, decide to pay all or part of a dividend or other distribution payable in respect of a share by transferring non-cash assets of equivalent value, including, without limitation, shares or other securities in any company.

(2) For the purposes of paying non-cash distribution, the directors may make whatever arrangements they think fit, including, where any difficulty arises regarding the distribution—

(*a*) fixing the value of any assets;

(*b*) paying cash to any distribution recipient on the basis of that value in order to adjust the rights of recipients; and

(*c*) vesting any assets in trustees.

Waiver of distributions

35. Distribution recipients may waive their entitlement to a dividend or other distribution payable in respect of a share by giving the company notice in writing to that effect, but if—

(*a*) the share has more than one holder; or

(*b*) more than one person is entitled to the share, whether by reason of the death or bankruptcy of one or more joint holders, or otherwise,

the notice is not effective unless it is expressed to be given, and signed, by all the holders or persons otherwise entitled to the share.

Authority to capitalize and appropriation of capitalized sums

36.—(1) The directors may, if they are so authorized by an ordinary resolution—

(*a*) decide to capitalize any profits of the company, whether or not they are available for distribution, which are not required for paying a preferential dividend, or any sum standing to the credit of the company's share premium account or capital redemption reserve; and

(*b*) appropriate any sum which they so decide to capitalize (a "capitalized sum") to the persons who would have been entitled to it if it were distributed by way of dividend (the "persons entitled") and in the same proportions.

(2) Capitalized sums shall be applied—

(*a*) on behalf of the persons entitled; and

(*b*) in the same proportions as a dividend would have been distributed to them.

(3) Any capitalized sum may be applied in paying up new shares of a nominal amount equal to the capitalized sum which are then allotted and credited as fully paid to the persons entitled or as they may direct.

(4) A capitalized sum which has been appropriated from profits available for distribution may be applied in paying up new debentures of the company which are then allotted and credited as fully paid to the persons entitled or as they may direct.

(5) The directors may—

(*a*) apply capitalized sums in accordance with paragraphs (3) and (4) partly in one way and partly in another;

(*b*) make such arrangements as they think fit to deal with shares or debentures becoming distributable in fractions under this article, including the issuing of fractional certificates or the making of cash payments; and

(*c*) authorize any person to enter into an agreement with the company on behalf of all the persons entitled which is binding on them in respect of the allotment of shares and debentures to them under this article.

PART IV
Decision-Making by Shareholders

Attendance and speaking at general meetings

37.—(1) A person is able to exercise the right to speak at a general meeting when that person is in a position to communicate to all those attending the meeting, during the meeting, any information or opinions which that person has on the business of the meeting.

(2) A person is able to exercise the right to vote at a general meeting when—

(*a*) that person is able to vote, during the meeting, on resolutions put to the vote at the meeting; and

(*b*) that person's vote can be taken into account in determining whether or not such resolutions are passed at the same time as the votes of all the other persons attending the meeting.

(3) The directors may make whatever arrangements they consider appropriate to enable those attending a general meeting to exercise their rights to speak or vote at the meeting.

(4) In determining attendance at a general meeting, it is immaterial whether any two or more members attending meeting are at the same place.

(5) Two or more persons who are not at the same place attend a general meeting if their circumstances are such that if they have, or were to have, rights to speak and vote at that meeting, they are, or would be able, to exercise them.

Quorum for a general meeting

38. No business other than the appointment of the chairman of the meeting shall be transacted at a general meeting if the persons attending it do not constitute a *quorum*.

Chairing general meetings

39.—(1) If the directors have appointed a chairman, the chairman shall preside at general meetings if present and willing to do so.

(2) If the directors have not appointed a chairman, or if the chairman is unwilling to chair the meeting or is not present within ten minutes of the time at which a meeting was due to start—

(*a*) the directors present; or

(*b*) if no directors are present,

the meeting shall appoint a director or shareholder to chair the meeting, and the appointment of the chairman of the meeting shall be the first business of the meeting.

(3) The person chairing a meeting in accordance with this article is referred to as "the chairman of the meeting".

Attendance and speaking by directors and non-shareholders

40.—(1) Directors may attend and speak at general meetings, whether or not they are shareholders.

(2) The chairman of the meeting may permit other persons who are not—

(*a*) shareholders of the company; or

(*b*) otherwise entitled to exercise the rights of shareholders in relation to general meetings,

to attend and speak at a general meeting.

Adjournment

41.—(1) If the persons attending a general meeting within half an hour of the time at which the meeting was due to start do not constitute a *quorum*, or if during a meeting a *quorum* ceases to be present, the chairman of the meeting shall adjourn it.

(2) The chairman of the meeting may adjourn a general meeting at which a *quorum* is present if—

(*a*) the meeting consents to an adjournment; or

(*b*) it appears to the chairman of the meeting that an adjournment is necessary to protect the safety of any person attending the meeting or ensure that the business of the meeting is conducted in an orderly manner.

(3) The chairman of the meeting shall adjourn a general meeting if directed to do so by the meeting.

(4) When adjourning a general meeting, the chairman of the meeting shall—

(*a*) either specify the time and place to which it is adjourned or state that it shall continue at a time and place to be fixed by the directors; and

(*b*) have regard to any directions as to the time and place of any adjournment which have been given by the meeting.

(5) Where the continuation of an adjourned meeting is to take place more than fourteen days after it was adjourned, the company shall give at least seven clear days' notice of it, excluding the day of the adjourned meeting and the day on which the notice is given—

(*a*) to the same persons to whom notice of the company's general meetings is required to be given; and

(*b*) containing the same information which such notice is required to contain.

(6) No business may be transacted at an adjourned general meeting which could not properly have been transacted at the meeting if the adjournment had not taken place.

Voting: general

42. A resolution put to the vote of a general meeting shall be decided on a show of hands unless a poll is duly demanded in accordance with the articles.

Errors and disputes

43.—(1) No objection may be raised to the qualification of any person voting at a general meeting except at the meeting or adjourned meeting at which the vote objected to is tendered, and every vote not disallowed at the meeting is valid.

(2) Any such objection shall be referred to the chairman of the meeting, whose decision shall be final.

Poll votes

44.—(1) A poll on a resolution may be demanded—

(*a*) in advance of the general meeting where it shall be put to the vote; or

(*b*) at a general meeting, either before a show of hands on that resolution or immediately after the result of a show of hands on that resolution is declared.

(2) A poll may be demanded by—

(*a*) the chairman of the meeting;

(*b*) the directors;

(*c*) two or more persons having the right to vote on the resolution; or

(*d*) a person or persons representing not less than one tenth of the total voting rights of all the shareholders having the right to vote on the resolution.

(3) A demand for a poll may be withdrawn if—

(*a*) the poll has not yet been taken; and

(*b*) the chairman of the meeting consents to the withdrawal.

(4) Polls shall be taken immediately and in such manner as the chairman of the meeting directs.

Content of proxy notices

45.—(1) Proxies may only validly be appointed by a notice in writing (a "proxy notice") which—

(*a*) states the name and address of the shareholder appointing the proxy;

(*b*) identifies the person appointed to be that shareholder's proxy and the general meeting in relation to which that person is appointed;

(*c*) is signed by or on behalf of the shareholder appointing the proxy, or is authenticated in such manner as the directors may determine; and

(*d*) is delivered to the company in accordance with the articles and any instructions contained in the notice of the general meeting to which they relate.

(2) The company may require proxy notices to be delivered in a particular form, and may specify different forms for different purposes.

(3) Proxy notices may specify how the proxy appointed under them shall vote or that the proxy is to abstain from voting on one or more resolutions.

(4) Unless a proxy notice indicates otherwise, it shall be treated as—

(*a*) giving the person appointed under it as a proxy discretion on how to vote on any ancillary or procedural resolutions put to the meeting; and

(*b*) appointing that person as a proxy in relation to any adjournment of the general meeting to which it relates as well as the meeting itself.

Delivery of proxy notice

46.—(1) A person who is entitled to attend, speak or vote either on a show of hands or on a poll at a general meeting remains so entitled in respect of that meeting or any adjournment of it, even though a valid proxy notice has been delivered to the company by or on behalf of that person.

(2) An appointment under a proxy notice may be revoked by delivering to the company a notice in writing given by or on behalf of the person by whom or on whose behalf the proxy notice was given.

(3) A notice revoking a proxy appointment shall only take effect if it is delivered before the start of the meeting or adjourned meeting to which it relates.

(4) If a proxy notice is not executed by the person appointing the proxy, it shall be accompanied by written evidence of the authority of the person who executed it to execute it on the appointor's behalf.

Amendment to resolutions

47.—(1) An ordinary resolution to be proposed at a general meeting may be amended by ordinary resolution if—

(*a*) notice of the proposed amendment is given to the company in writing by a person entitled to vote at the general meeting at which it shall be proposed not less than forty-eight hours before the meeting shall take place or such later time as the chairman of the meeting may determine; and

(*b*) the proposed amendment does not, in the reasonable opinion of the chairman of the meeting, materially alter the scope of the resolution.

(2) A special resolution to be proposed at a general meeting may be amended by ordinary resolution, if—

(*a*) the chairman of the meeting proposes the amendment at the general meeting at which the resolution shall be proposed; and

(*b*) the amendment does not go beyond what is necessary to correct a grammatical or other non-substantive error in the resolution.

(3) If the chairman of the meeting, acting in good faith, wrongly decides that an amendment to a resolution is out of order, the chairman's error does not invalidate the vote on that resolution.

PART V
Administrative Arrangements

Means of communication to be used

48.—(1) Subject to the articles, anything sent or supplied by or to the company under the articles may be sent or supplied in any way in which the Act provides for documents or information which are authorized or required by any provision of the Act to be sent or supplied by or to the company.

(2) Subject to the articles, any notice or document to be sent or supplied to a director in connexion with the making of decisions by directors may also be sent or supplied by the means by which that director has asked to be sent or supplied with such notices or documents for the time being.

(3) A director may agree with the company that notices or documents sent to that director in a particular way are to be deemed to have been received within a specified time of their being sent, and for the specified time to be less than forty-eight hours.

Company seals

49.—(1) Any common seal may only be used by the authority of the directors.

(2) The directors may decide by what means and in what form any common seal shall be used.

(3) Unless otherwise decided by the directors, if the company has a common seal and it is affixed to a document, the document shall also be signed by at least one authorized person in the presence of a witness who attests the signature.

(4) For the purposes of this article, an authorized person shall be—

(*a*) any director of the company;

(*b*) the company secretary, if any; or

(*c*) any person authorized by the directors for the purpose of signing documents to which the common seal is applied.

No right to inspect accounts and other records

50. Except as provided by any written law or authorized by the directors or an ordinary resolution of the company, no person is entitled to inspect any of the company's accounting or other records or documents merely by virtue of being a shareholder.

Provision for employees on cessation of business

51. The directors may decide to make provision for the benefit of persons employed or formerly employed by the company or any of its subsidiaries, other than a director or former director or shadow director in connexion with the cessation or transfer to any person of the whole or part of the undertaking of the company or that subsidiary.

Indemnity

52.—(1) Subject to paragraph (2), a relevant director of the company or an associated company may be indemnified out of the company's assets against—

(*a*) any liability incurred by that director in connexion with any negligence, default, breach of duty or breach of trust in relation to the company or an associated company;

(*b*) any liability incurred by that director in connexion with the activities of the company or an associated company in its capacity as a trustee of an occupational pension scheme; or

(*c*) any other liability incurred by that director as an officer of the company or an associated company.

(2) This article does not authorize any indemnity which would be prohibited or rendered void by any provision of the Act or by any other written law.

(3) In this article—

(*a*) companies are associated if one is a subsidiary of the other or both are subsidiaries of the same body corporate; and

(*b*) a "relevant director" means any director or former director of the company or an associated company.

Insurance

53.—(1) The directors may decide to purchase and maintain insurance, at the expense of the company, for the benefit of any relevant director in respect of any relevant loss.

(2) In this article—

(*a*) a "relevant director" means any director or former director of the company or an associated company;

(*b*) a "relevant loss" means any loss or liability which has been or may be incurred by a relevant director in connexion with that director's duties or powers in relation to the company, any associated company or any pension fund or employees' share scheme of the company or associated company; and

(*c*) companies are associated if one is a subsidiary of the other or both are subsidiaries of the same body corporate.

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PART I
PRELIMINARY

Interpretation

1.—(1) In these Articles, unless the context requires otherwise—

"alternate" or "alternate director" has the meaning given in article 25;

"appointor" has the meaning given in article 25;

"articles" means the company's articles of association;

"bankruptcy" includes individual insolvency proceedings;

"call" has the meaning given in article 54;

"call notice" has the meaning given in article 54;

"certificate" means a paper certificate (other than a share warrant) evidencing a person's title to specified shares or other securities;

"certificated" in relation to a share, means that it is not an uncertificated share or a share in respect of which a share warrant has been issued and is current;

"chairman" has the meaning given in article 12;

"chairman of the meeting" has the meaning given in article 31;

"company's lien" has the meaning given in article 52;

"director" means a director of the company, and includes any person occupying the position of director, by whatever name called;

"distribution recipient" has the meaning given in article 72;

"document" includes, unless otherwise specified, any document sent or supplied in electronic form;

"fully paid" in relation to a share, means that the nominal value and any premium to be paid to the company in respect of that share have been paid to the company;

"holder" in relation to shares means the person whose name is entered in the register of members as the holder of the shares, or, in the case of a share in respect of which a share warrant has been issued (and not cancelled), the person in possession of that warrant;

"instrument" means a document in hard copy form;

"lien enforcement notice" has the meaning given in article 53;

"member" has the meaning given in section 2 of the Act;

"ordinary resolution" has the meaning given in section 2 of the Act;

"paid" means paid or credited as paid;

"participate" in relation to a directors' meeting, has the meaning given in article 9;

"partly paid" in relation to a share means that part of that share's nominal value or any premium at which it was issued has not been paid to the company;

"proxy notice" has the meaning given in article 38;

"securities seal" has the meaning given in article 47;

"shares" means shares in the company;

"special resolution" has the meaning given in section 2 of the Act;

"subsidiary" has the meaning given in section 2 of the Act;

"transmittee" means a person entitled to a share by reason of the death or bankruptcy of a shareholder or otherwise by operation of law;

"uncertificated" in relation to a share means permitting title to shares to be evidenced and transferred without a certificate; and

"writing" means the representation or reproduction of words, symbols or other information in a visible form by any method or combination of methods, whether sent or supplied in electronic form or otherwise.

(2) Unless the context otherwise requires, other words or expressions contained in these Articles bear the same meaning as in the Act as in force on the date when these Articles become binding on the company.

Liability of members

2. The liability of the members is limited to the amount, if any, unpaid on the shares held by them.

PART II
Director's Powers and Responsibilities

Directors' general authority

3. Subject to the articles, the directors are responsible for the management of the company's business, for which purpose they may exercise all the powers of the company.

Members' reserve power

4.—(1) The members may, by special resolution, direct the directors to take, or refrain from taking, specified action.

(2) No such special resolution invalidates anything which the directors have done before the passing of the resolution.

Delegation by directors

5.—(1) Subject to the articles, the directors may delegate any of the powers which are conferred on them under the articles—

(*a*) to such person or committee;

(*b*) by such means, including by power of attorney;

(*c*) to such an extent;

(*d*) in relation to such matters or territories; and

(*e*) on such terms and conditions,

as they think fit.

(2) If the directors so specify, any such delegation may authorize further delegation of the directors' powers by any person to whom they are delegated.

(3) The directors may revoke any delegation in whole or part, or alter its terms and conditions.

Committees

6.—(1) Committees to which the directors delegate any of their powers shall follow procedures which are based as far as they are applicable on those provisions of the articles which govern the taking of decisions by directors.

(2) The directors may make rules of procedure for all or any committees, which prevail over rules derived from the articles if they are not consistent with them.

Directors to take decisions collectively

7. Decisions of the directors may be taken—

(*a*) at a directors' meeting; or

(*b*) in the form of a directors' written resolution.

8.—(1) Any director may call a directors' meeting.

(2) The company secretary shall call a directors' meeting if a director so requests.

(3) A directors' meeting shall be called by giving notice of the meeting to the directors.

(4) Notice of any directors' meeting shall indicate—

(*a*) its proposed date and time;

(*b*) where it shall take place; and

(*c*) if it is anticipated that directors participating in the meeting will not be in the same place, how it is proposed that they should communicate with each other during the meeting.

(5) Notice of a directors' meeting shall be given to each director, but need not be in writing.

(6) Notice of a directors' meeting need not be given to directors who waive their entitlement to notice of that meeting, by giving notice to that effect to the company not more than seven days after the date on which the meeting is held. Where such notice is given after the meeting has been held, that shall not affect the validity of the meeting, or of any business conducted at it.

Participation in directors' meetings

9.—(1) Subject to the articles, directors participate in a directors' meeting, or part of a directors' meeting, when—

(*a*) the meeting has been called and takes place in accordance with these Articles; and

(*b*) they can each communicate to the others any information or opinions they have on any particular item of the business of the meeting.

(2) In determining whether directors are participating in a directors' meeting, it is irrelevant where any director is or how they communicate with each other.

(3) If all the directors participating in a meeting are not in the same place, they may decide that the meeting shall be treated as taking place wherever any of them is.

Quorum for directors' meetings

10.—(1) At a directors' meeting, unless a *quorum* is participating, no proposal shall be voted on, except a proposal to call another meeting.

(2) The *quorum* for directors' meetings may be fixed from time to time by a decision of the directors, but it shall never be less than two, and unless otherwise fixed it is two.

Meetings where total number of directors less than *quorum*

11.—(1) This article applies where the total number of directors for the time being is less than the *quorum* for directors' meetings.

(2) If there is only one director, the director may appoint sufficient directors to make up a *quorum* or call a general meeting to do so.

(3) If there is more than one director—

(*a*) a directors' meeting may take place, if it is called in accordance with the articles and at least two directors participate in it, with a view to appointing sufficient directors to make up a *quorum* or calling a general meeting to do so; and

(*b*) if a directors' meeting is called but only one director attends at the appointed date and time to participate in it, that director may appoint sufficient directors to make up a *quorum* or call a general meeting to do so.

Chairing directors' meetings

12.—(1) The directors may appoint a director to chair their meetings.

(2) The person so appointed for the time being is known as the chairman.

(3) The directors may appoint other directors as deputy or assistant chairman to chair directors' meetings in the chairman's absence.

(4) The directors may terminate the appointment of the chairman, deputy or assistant chairman at any time.

(5) If neither the chairman nor any director appointed generally to chair directors' meetings in the chairman's absence is participating in a meeting within ten minutes of the time at which it was to start, the participating directors shall appoint one of themselves to chair it.

Voting at directors' meeting: general rules

13.—(1) Subject to these Articles, a decision is taken at a directors' meeting by a majority of the votes of the participating directors.

(2) Subject to these Articles, each director participating in a directors' meeting shall have one vote.

(3) Subject to these Articles, if a director has an interest in an actual or proposed transaction or arrangement with the company—

(*a*) the director and the director's alternate may not vote on any proposal relating to it:

Provided that this does not preclude the alternate from voting in relation to that transaction or arrangement on behalf of another appointor who does not have such an interest.

Chairman's casting vote at directors' meetings

14.—(1) If the numbers of votes for and against a proposal are equal, the chairman or other director chairing the meeting shall have a casting vote.

(2) Paragraph (1) shall not apply if, in accordance with the articles, the chairman or other director is not to be counted as participating in the decision-making process for *quorum* or voting purposes.

Alternates voting at directors' meetings

15. A director who is also an alternate director has an additional vote on behalf of each appointor who is—

(*a*) not participating in a directors' meeting; and

(*b*) would have been entitled to vote if they were participating in it.

Conflict of interest

16.—(1) If a directors' meeting, or part of a directors' meeting, is concerned with an actual or proposed transaction or arrangement with the company in which a director is interested, the director shall not be counted as participating in that meeting, or part of a meeting, for *quorum* or voting purposes.

(2) Where paragraph (3) applies, a director who is interested in an actual or proposed transaction or arrangement with the company shall be counted as participating in a decision at a directors' meeting, or part of a directors' meeting, relating to it for *quorum* and voting purposes.

(3) This paragraph shall apply when—

(*a*) the company by ordinary resolution disapplies the provision of the articles which would otherwise prevent a director from being counted as participating in, or voting at, a directors' meeting;

(*b*) the director's interest cannot reasonably be regarded as likely to give rise to a conflict of interest; or

(*c*) the director's conflict of interest arises from a permitted cause.

(4) For the purposes of this article, the following are permitted causes—

(*a*) a guarantee given, or to be given, by or to a director in respect of an obligation incurred by or on behalf of the company or any of its subsidiaries;

(*b*) subscription, or an agreement to subscribe, for shares or other securities of the company or any of its subsidiaries, or to underwrite, sub-underwrite, or guarantee subscription for any such shares or securities; and

(*c*) arrangements pursuant to which benefits are made available to employees and directors or former employees and directors of the company or any of its subsidiaries which do not provide special benefits for directors or former directors.

(5) Subject to paragraph (6), if a question arises at a meeting of directors or of a committee of directors as to the right of a director to participate in the meeting (or part of the meeting) for voting or *quorum* purposes,

the question may, before the conclusion of the meeting, be referred to the chairman whose ruling in relation to any director other than the chairman shall be final and conclusive.

(6) Where any question as to the right to participate in the meeting or part of the meeting arises in respect of the chairman, the question shall be decided by a decision of the directors at that meeting, for which purpose the chairman shall not be counted as participating in the meeting or that part of the meeting for voting or *quorum* purposes.

Proposing directors' written resolutions

17.—(1) Any director may propose a directors' written resolution.

(2) The company secretary shall propose a directors' written resolution if a director so requests.

(3) A directors' written resolution shall be proposed by giving notice of the proposed resolution to the directors.

(4) Notice of a proposed directors' written resolution shall indicate—

(*a*) the proposed resolution; and

(*b*) the time by which it is proposed that the directors should adopt it.

(5) Notice of a proposed directors' written resolution shall be given in writing to each director.

(6) Any decision which a person giving notice of a proposed directors' written resolution takes regarding the process of adopting that resolution shall be taken reasonably in good faith.

Adoption of directors' written resolutions

18.—(1) A proposed directors' written resolution shall be adopted when all the directors who would have been entitled to vote on the resolution at a directors' meeting have signed one or more copies of it, provided that those directors would have formed a *quorum* at such a meeting.

(2) It is immaterial whether any director signs the resolution before or after the time by which the notice proposed that it should be adopted.

(3) Once a directors' written resolution has been adopted, it shall be treated as if it had been a decision taken at a directors' meeting in accordance with these Articles.

(4) A company secretary shall ensure that the company keeps a record, in writing, of all directors' written resolutions for at least ten years from the date of their adoption.

Directors' discretion to make further rules

19. Subject to the articles, the directors may make any rule which they think fit about how they take decisions, and about how such rules are to be recorded or communicated to directors.

Methods of appointing directors

20. Any person who is willing to act as a director, and is permitted by law to do so, may be appointed to be a director—

(*a*) by ordinary resolution; or

(*b*) by a decision of the directors.

Retirement of directors by rotation

21.—(1) At the first annual general meeting of a company, all directors shall retire from office.

(2) At every subsequent annual general meeting any directors—

(*a*) who have been appointed by the directors since the last annual general meeting; or

(*b*) who were not appointed or reappointed at one of the preceding two annual general meetings,

shall retire from office and may offer themselves for reappointment by the members.

Termination of directors' appointment

22. A person ceases to be a director as soon as—

(*a*) that person ceases to be a director by virtue of any provision of the Act or is prohibited from being a director by law;

(*b*) a bankruptcy order is made against that person;

(*c*) a composition is made with that person's creditors generally in satisfaction of that person's debts;

(*d*) a registered medical practitioner who is treating that person gives a written opinion to the company stating that that person has become physically or mentally incapable of acting as a director and may remain so for more than three months;

(*e*) by reason of that person's mental health, a court makes an order which wholly or partly prevents that person from personally exercising any powers or rights which that person would otherwise have; or

(*f*) notification is received by the company from the director that the director is resigning from office as director, and such resignation has taken effect in accordance with its terms.

Directors' remuneration

23.—(1) A director may undertake any services for the company that the directors decide.

(2) A director shall be entitled to such remuneration as the directors determine—

(*a*) for their services to the company as directors; and

(*b*) for any other service which they undertake for the company.

(3) Subject to these Articles, a director's remuneration may—

(*a*) take any form; and

(*b*) include any arrangements in connexion with the payment of a pension, allowance or gratuity, or any death, sickness or disability benefits, to or in respect of that director.

(4) Unless the directors decide otherwise, directors' remuneration accrues from day-to-day.

(5) Unless the directors decide otherwise, directors are not accountable to the company for any remuneration which they receive as directors or other officers or employees of the company's subsidiaries or of any other body corporate in which the company is interested.

Directors' expenses

24. The company may pay any reasonable expenses which the directors properly incur in connexion with their attendance at—

(*a*) meetings of directors or committees of directors;

(*b*) general meetings; or

(*c*) separate meetings of the holders of any class of shares or of debentures of the company, or otherwise in connexion with the exercise of their powers and the discharge of their responsibilities in relation to the company.

Appointment and removal of alternates

25.—(1) Any director (the "appointor") may appoint as an alternate any other director, or any other person approved by resolution of the directors, to—

(*a*) exercise that director's powers; and

(*b*) carry out that director's responsibilities, in relation to the taking of decisions by the directors in the absence of the alternate's appointor.

(2) Any appointment or removal of an alternate shall be effected by notice in writing to the company signed by the appointor, or in any other manner approved by the directors.

(3) The notice shall—

(*a*) identify the proposed alternate; and

(*b*) in the case of a notice of appointment, contain a statement signed by the proposed alternate that the proposed alternate is willing to act as the alternate of the director giving the notice.

Rights and responsibilities of alternate directors

26.—(1) An alternate director has the same rights, in relation to any directors' meeting or directors' written resolution, as the alternate's appointor.

(2) Except as the articles specify otherwise, alternate directors—

(*a*) are deemed for all purposes to be directors;

(*b*) are liable for their own acts and omissions;

(*c*) are subject to the same restrictions as their appointors; and

(*d*) are not deemed to be agents of or for their appointors.

(3) A person who is an alternate director but not a director—

(*a*) may be counted as participating for the purposes of determining whether a *quorum* is participating (but only if that person's appointor is not participating); and

(*b*) may sign a written resolution (but only if it is not signed or to be signed by that person's appointor) and no alternate may be counted as more than one director for such purposes.

(4) An alternate director shall not be entitled to receive any remuneration from the company for serving as an alternate director except such part of the alternate's appointor's remuneration as the appointor may direct by notice in writing made to the company.

Termination of alternate directorship

27. An alternate director's appointment as an alternate terminates—

(*a*) when the alternate's appointor revokes the appointment by notice to the company in writing specifying when it shall terminate;

(*b*) on the occurrence in relation to the alternate of any event which, if it occurred in relation to the alternate's appointor, would result in the termination of the appointor's appointment as a director;

(*c*) on the death of the alternate's appointor; or

(*d*) when the alternate's appointor's appointment as a director terminates, except that an alternate's appointment as an alternate does not terminate when the appointor retires by rotation at a general meeting and is then reappointed as a director at the same general meeting.

PART III
Decision-Making by Members

Members can call general meeting if not enough directors

28. Where—

(*a*) the company has fewer than two directors; and

(*b*) the director (if any) is unable or unwilling to appoint sufficient directors to make up a *quorum* or to call a general meeting to do so,

then two or more members may call a general meeting (or instruct the company secretary to do so) for the purpose of appointing one or more directors.

Attendance and speaking at general meetings

29.—(1) A person is able to exercise the right to speak at a general meeting when that person is in a position to communicate to all those attending the meeting, during the meeting, any information or opinions which that person has on the business of the meeting.

(2) A person is able to exercise the right to vote at a general meeting when—

(*a*) that person is able to vote, during the meeting, on resolutions put to the vote at the meeting; and

(*b*) that person's vote can be taken into account in determining whether or not such resolutions are passed at the same time as the votes of all the other persons attending the meeting.

(3) The directors may make whatever arrangements they consider appropriate to enable those attending a general meeting to exercise their rights to speak or vote at it.

(4) In determining attendance at a general meeting, it is immaterial whether any two or more members attending it are in the same place as each other.

(5) Two or more persons who are not in the same place as each other attend a general meeting if their circumstances are such that if they have (or were to have) rights to speak and vote at that meeting, they are (or would be) able to exercise them.

Quorum for general meetings

30. No business other than the appointment of the chairman of the meeting shall be transacted at a general meeting if the persons attending it do not constitute a *quorum*.

Chairing general meetings

31.—(1) Where the directors have appointed a chairman, the chairman shall chair general meetings if present and willing to do so.

(2) Where the directors have not appointed a chairman, or if the chairman is unwilling to chair the meeting or is not present within ten minutes of the time at which a meeting was due to start—

(*a*) the directors present; or

(*b*) if no directors are present, the meeting,

shall appoint a director or member to chair the meeting, and the appointment of the chairman of the meeting shall be the first business of the meeting.

(3) The person chairing a meeting in accordance with this article is referred to as "the chairman of the meeting".

Attendance and speaking by directors and non-members

32.—(1) Directors may attend and speak at general meetings, whether or not they are members.

(2) The chairman of the meeting may permit other persons who are not—

(*a*) members of the company; or

(*b*) otherwise entitled to exercise the rights of members in relation to general meetings,

to attend and speak at a general meeting.

Adjournment

33.—(1) If the persons attending a general meeting within half an hour of the time at which the meeting was due to start do not constitute a *quorum*, or if during a meeting a *quorum* ceases to be present, the chairman of the meeting must adjourn it.

(2) The chairman of the meeting may adjourn a general meeting at which a *quorum* is present if—

(*a*) the meeting consents to an adjournment; or

(*b*) it appears to the chairman of the meeting that an adjournment is necessary to protect the safety of any person attending the meeting or ensure that the business of the meeting is conducted in an orderly manner.

(3) The chairman of the meeting shall adjourn a general meeting if directed to do so by the meeting.

(4) When adjourning a general meeting, the chairman of the meeting shall—

(*a*) either specify the time and place to which it is adjourned or state that it shall continue at a time and place to be fixed by the directors; and

(*b*) have regard to any directions as to the time and place of any adjournment which have been given by the meeting.

(5) If the continuation of an adjourned meeting shall take place more than fourteen days after it was adjourned, the company must give at least seven clear days' notice of it, excluding the day of the adjourned meeting and the day on which the notice is given—

(*a*) to the same persons to whom notice of the company's general meetings is required to be given; and

(*b*) containing the same information which such notice is required to contain.

(6) No business may be transacted at an adjourned general meeting which could not properly have been transacted at the meeting if the adjournment had not taken place.

Voting: general

34. A resolution put to the vote of a general meeting shall be decided on a show of hands unless a poll is duly demanded in accordance with the articles.

Errors and disputes

35.—(1) No objection may be raised to the qualification of any person voting at a general meeting except at the meeting or adjourned meeting at which the vote objected to is tendered, and every vote not disallowed at the meeting is valid.

(2) Any such objection shall be referred to the chairman of the meeting whose decision shall be final.

Demanding a poll

36.—(1) A poll on a resolution may be demanded—

(*a*) in advance of the general meeting where it shall be put to the vote; or

(*b*) at a general meeting, either before a show of hands on that resolution or immediately after the result of a show of hands on that resolution is declared.

(2) A poll may be demanded by—

(*a*) the chairman of the meeting;

(*b*) the directors;

(*c*) two or more persons having the right to vote on the resolution; or

(*d*) a person or persons representing not less than one tenth of the total voting rights of all the members having the right to vote on the resolution.

(3) A demand for a poll may be withdrawn if—

(*a*) the poll has not yet been taken; and

(*b*) the chairman of the meeting consents to the withdrawal.

Procedure on a poll

37.—(1) Subject to the articles, polls at general meetings shall be taken when, where and in such manner as the chairman of the meeting directs.

(2) The chairman of the meeting may appoint scrutineers (who need not be members) and decide how and when the result of the poll shall be declared.

(3) The result of a poll shall be the decision of the meeting in respect of the resolution on which the poll was demanded.

(4) A poll on—

(*a*) the election of the chairman of the meeting; or

(*b*) a question of adjournment,

shall be taken immediately.

(5) Other polls shall be taken within thirty days of their being demanded.

(6) A demand for a poll shall not prevent a general meeting from continuing, except as regards the question on which the poll was demanded.

(7) No notice need be given of a poll not taken immediately if the time and place at which it shall be taken are announced at the meeting at which it is demanded.

(8) In any other case, at least seven days' notice shall be given specifying the time and place at which the poll shall be taken.

Content of proxy notices

38.—(1) Proxies may only validly be appointed by a notice in writing (a "proxy notice") which—

(*a*) states the name and address of the member appointing the proxy;

(*b*) identifies the person appointed to be that member's proxy and the general meeting in relation to which that person is appointed;

(*c*) is signed by or on behalf of the member appointing the proxy, or is authenticated in such manner as the directors may determine; and

(*d*) is delivered to the company in accordance with the articles and any instructions contained in the notice of the general meeting to which they relate.

(2) The company may require proxy notices to be delivered in a particular form, and may specify different forms for different purposes.

(3) A proxy notice may specify how the proxy appointed under it shall vote or that the proxy is to abstain from voting on one or more resolutions.

(4) Unless a proxy notice indicates otherwise, it shall be treated as—

(*a*) giving the person appointed under it as a proxy discretion on how to vote on any ancillary or procedural resolutions put to the meeting; and

(*b*) appointing that person as a proxy in relation to any adjournment of the general meeting to which it relates as well as the meeting itself.

Delivery of proxy notice

39.—(1) Any notice of a general meeting shall specify the address or addresses ("proxy notification address") at which the company or its agents will receive proxy notices relating to that meeting, or any adjournment of it, delivered in hard copy or electronic form.

(2) A person who is entitled to attend, speak or vote (either on a show of hands or on a poll) at a general meeting remains so entitled in respect of that meeting or any adjournment of it, even though a valid proxy notice has been delivered to the company by or on behalf of that person.

(3) Subject to paragraphs (4) and (5), a proxy notice shall be delivered to a proxy notification address not less than forty-eight hours before the general meeting or adjourned meeting to which it relates.

(4) In the case of a poll taken more than forty-eight hours after it is demanded, the notice shall be delivered to a proxy notification address not less than twenty-four hours before the time appointed for the taking of the poll.

(5) In the case of a poll not taken during the meeting but taken not more than forty-eight hours after it was demanded, the proxy notice shall be delivered—

(*a*) in accordance with paragraph (3); or

(*b*) at the meeting at which the poll was demanded to the chairman, secretary or any director.

(6) An appointment under a proxy notice may be revoked by delivering a notice in writing given by or on behalf of the person by whom or on whose behalf the proxy notice was given to a proxy notification address.

(7) A notice revoking a proxy appointment only takes effect if it is delivered before—

(*a*) the start of the meeting or adjourned meeting to which it relates; or

(*b*) in the case of a poll not taken on the same day as the meeting or adjourned meeting the time appointed for taking the poll to which it relates.

(8) Where a proxy notice is not signed by the person appointing the proxy, it shall be accompanied by written evidence of the authority of the person who executed it to execute it on the appointor's behalf.

Amendments to resolutions

40.—(1) An ordinary resolution to be proposed at a general meeting may be amended by ordinary resolution if—

(*a*) notice of the proposed amendment is given to the company secretary in writing by a person entitled to vote at the general meeting at which it shall be proposed not less than forty-eight hours before the meeting is to take place or such later time as the chairman of the meeting may determine; and

(*b*) the proposed amendment does not, in the reasonable opinion of the chairman of the meeting, materially alter the scope of the resolution.

(2) A special resolution to be proposed at a general meeting may be amended by ordinary resolution, if—

(*a*) the chairman of the meeting proposes the amendment at the general meeting at which the resolution shall be proposed; and

(*b*) the amendment does not go beyond what is necessary to correct a grammatical or other non-substantive error in the resolution.

(3) If the chairman of the meeting, acting in good faith, wrongly decides that an amendment to a resolution is out of order, the chairman's error shall not invalidate the vote on that resolution.

No voting of shares on which money owed to company

41. No voting rights attached to a share may be exercised at any general meeting, at any adjournment of it, or on any poll called at or in relation to it, unless all amounts payable to the company in respect of that share have been paid.

Class meetings

42. The provisions of the articles relating to general meetings apply, with any necessary modifications, to meetings of the holders of any class of shares.

PART IV
Shares and Distributions

Powers to issue different classes of shares

43.—(1) Subject to these Articles, but without prejudice to the rights attached to any existing share, the company may issue shares with such rights or restrictions as may be determined by ordinary resolution.

(2) The company may issue shares which are to be redeemed, or are liable to be redeemed at the option of the company or the holder, and the directors may determine the terms, conditions and manner of redemption of any such shares.

Payment of commissions on subscription for shares

44.—(1) The company may pay any person a commission in consideration for that person—

(*a*) subscribing, or agreeing to subscribe, for shares; or

(*b*) procuring, or agreeing to procure, subscriptions for shares.

(2) Any such commission may be paid—

(*a*) in cash, or in fully paid or partly paid shares or other securities, or partly in one way and partly in the other; and

(*b*) in respect of a conditional or an absolute subscription.

Company not bound by less than absolute interests

45. Except as required by law, a person shall not be recognized by the company as holding any share upon any trust, and except as otherwise required by law or the articles, the company shall not in any way be bound by or recognize any interest in a share other than the holder's absolute ownership of it and all the rights attaching to it.

Certificates to be issued except in certain cases

46.—(1) The company shall issue each member with one or more certificates in respect of the shares which that member holds.

(2) This article does not apply to—

(*a*) uncertificated shares;

(*b*) shares in respect of which a share warrant has been issued; or

(*c*) shares in respect of which the Act permits the company not to issue a certificate.

(3) Except as otherwise specified in these Articles, all certificates shall be issued free of charge.

(4) No certificate may be issued in respect of shares of more than one class.

(5) If more than one person holds a share, only one certificate may be issued in respect of it.

Contents and execution of share certificates

47.—(1) Every certificate shall specify—

(*a*) in respect of how many shares, of what class, it is issued;

(*b*) the nominal value of those shares;

(*c*) the amount paid up on them; and

(*d*) any distinguishing numbers assigned to them.

(2) Every certificate shall—

(*a*) have affixed to it the company's common seal or an official seal which is a facsimile of the company's common seal with the addition on its face of the word "Securities" (a "securities seal"); or

(*b*) be otherwise executed in accordance with the Act.

Consolidated share certificates

48.—(1) Where a member's holding of shares of a particular class increases, the company may issue that member with—

(*a*) a single, consolidated certificate in respect of all the shares of a particular class which that member holds; or

(*b*) a separate certificate in respect of only those shares by which that member's holding has increased.

(2) When a member's holding of shares of a particular class is reduced, the company shall ensure that the member is issued with one or more certificates in respect of the number of shares held by the member after that reduction. But the company need not, in the absence of a request from the member, issue any new certificate if—

(*a*) all the shares which the member no longer holds as a result of the reduction; and

(*b*) none of the shares which the member retains following the reduction were, immediately before the reduction, represented by the same certificate.

(3) A member may request the company, in writing, to replace—

(*a*) the member's separate certificates with a consolidated certificate; or

(*b*) the member's consolidated certificate with two or more separate certificates representing such proportion of the shares as the member may specify.

(4) When the company complies with such a request it may charge such reasonable fee as the directors may decide for doing so.

(5) A consolidated certificate shall not be issued unless any certificates which it shall replace have first been returned to the company for cancellation.

Replacement share certificates

49.—(1) Where a certificate issued in respect of a member's shares is—

(*a*) damaged or defaced; or

(*b*) said to be lost, stolen or destroyed,

the member is entitled to be issued with a replacement certificate in respect of the same shares.

(2) A member exercising the right to be issued with such a replacement certificate—

(*a*) may at the same time exercise the right to be issued with a single certificate or separate certificates;

(*b*) shall return the certificate which shall be replaced to the company if it is damaged or defaced; and

(*c*) shall comply with such conditions as to evidence, indemnity and the payment of a reasonable fee as the directors decide.

Uncertificated shares

50.—(1) In this article, the "relevant rules" means—

(*a*) any applicable provision of the Act about the holding, evidencing of title to, or transfer of shares other than in certificated form; and

(*b*) any applicable legislation, rules or other arrangements made under or by virtue of such provision.

(2) The provisions of this article have effect subject to the relevant rules.

(3) Any provision of the articles which is inconsistent with the relevant rules shall be disregarded, to the extent that it is inconsistent, whenever the relevant rules apply.

(4) Any share or class of shares of the company may be issued or held on such terms, or in such a way, that—

(*a*) title to it or them is not, or shall not be, evidenced by a certificate; or

(*b*) it or they may or shall be transferred wholly or partly without a certificate.

(5) The directors have power to take such steps as they think fit in relation to—

(*a*) the evidencing of and transfer of title to uncertificated shares (including in connexion with the issue of such shares);

(*b*) any records relating to the holding of uncertificated shares;

(*c*) the conversion of certificated shares into uncertificated shares; or

(*d*) the conversion of uncertificated shares into certificated shares.

(6) The company may, by notice to the holder of a share, require the share—

(*a*) if it is uncertificated, to be converted into certificated form; and

(*b*) if it is certificated, to be converted into uncertificated form,

to enable it to be dealt with in accordance with the articles.

(7) Where—

(*a*) the articles give the directors power to take action, or require other persons to take action, in order to sell, transfer or otherwise dispose of shares; and

(*b*) uncertificated shares are subject to that power, but the power is expressed in terms which assume the use of a certificate or other written instrument, the directors may take such action as is necessary or expedient to achieve the same results when exercising that power in relation to uncertificated shares.

(8) In particular, the directors may take such action as they consider appropriate to achieve the sale, transfer, disposal, forfeiture, re-allotment or surrender of an uncertificated share or otherwise to enforce a lien in respect of it.

(9) Unless the directors otherwise determine, shares which a member holds in uncertificated form shall be treated as separate holdings from any shares which that member holds in certificated form.

(10) A class of shares shall not be treated as two classes simply because some shares of that class are held in certificated form and others are held in uncertificated form.

Share warrants

51.—(1) The directors may issue a share warrant in respect of any fully paid share.

(2) A share warrant shall be—

(*a*) issued in such form; and

(*b*) executed in such a manner as the directors may decide.

(3) A share represented by a share warrant may be transferred by delivery of the warrant representing it.

(4) The directors may make provision for the payment of dividends in respect of any share represented by a share warrant.

(5) Subject to these Articles, the directors may decide the conditions on which any share warrant is issued. In particular, they may—

(*a*) decide the conditions on which new warrants are to be issued in place of warrants which are damaged or defaced, or said to have been lost, stolen or destroyed;

(*b*) decide the conditions on which bearers of warrants are entitled to attend and vote at general meetings;

(*c*) decide the conditions subject to which bearers of warrants may surrender their warrant so as to hold their shares in certificated or uncertificated form instead; and

(*d*) vary the conditions of issue of any warrant from time to time, and the bearer of a warrant is subject to the conditions and procedures in force in relation to it, whether or not they were decided or specified before the warrant was issued.

(6) Subject to the conditions on which the warrants are issued from time to time, bearers of share warrants have the same rights and privileges as they would if their names had been included in the register as holders of the shares represented by their warrants.

(7) The company shall not in any way be bound by or recognize any interest in a share represented by a share warrant other than the absolute right of the bearer of that warrant to that warrant.

Company's lien over partly paid shares

52.—(1) The company shall have a lien ("the company's lien") over every share which is partly paid for any part of—

(*a*) that share's nominal value; and

(*b*) any premium at which it was issued, which has not been paid to the company, and which is payable immediately or at some time in the future, whether or not a call notice has been sent in respect of it.

(2) The company's lien over a share—

(*a*) takes priority over any third party's interest in that share; and

(*b*) extends to any dividend or other money payable by the company in respect of that share and (if the lien is enforced and the share is sold by the company) the proceeds of sale of that share.

(3) The directors may at any time decide that a share which is or would otherwise be subject to the company's lien shall not be subject to it, either wholly or in part.

Enforcement of the company's lien

53.—(1) Subject to the provisions of these Articles, if—

(*a*) a lien enforcement notice has been given in respect of a share; and

(*b*) the person to whom the notice was given has failed to comply with it,

the company may sell that share in such manner as the directors decide.

(2) A lien enforcement notice—

(*a*) may only be given in respect of a share which is subject to the company's lien, in respect of which a sum is payable and the due date for payment of that sum has passed;

(*b*) shall specify the share concerned;

(*c*) shall require payment of the sum payable within fourteen days of the notice;

(*d*) shall be addressed either to the holder of the share or to a person entitled to it by reason of the holder's death, bankruptcy or otherwise; and

(*e*) shall state the company's intention to sell the share if the notice is not complied with.

(3) Where shares are sold under this article—

(*a*) the directors may authorize any person to execute an instrument of transfer of the shares to the purchaser or a person nominated by the purchaser; and

(*b*) the transferee is not bound to see to the application of the consideration, and the transferee's title is not affected by any irregularity in or invalidity of the process leading to the sale.

(4) The net proceeds of any such sale (after payment of the costs of sale and any other costs of enforcing the lien) shall be applied—

(*a*) first, in payment of so much of the sum for which the lien exists as was payable at the date of the lien enforcement notice; and

(*b*) second, to the person entitled to the shares at the date of the sale, but only after the certificate for the shares sold has been surrendered to the company for cancellation or a suitable indemnity has been given for any lost certificates, and subject to a lien equivalent to the company's lien over the shares before the sale for any money payable in respect of the shares after the date of the lien enforcement notice.

(5) A statutory declaration by a director or the company secretary that the declarant is a director or the company secretary and that a share has been sold to satisfy the company's lien on a specified date—

(*a*) is conclusive evidence of the facts stated in it as against all persons claiming to be entitled to the share; and

(*b*) subject to compliance with any other formalities of transfer required by the articles or by law, constitutes a good title to the share.

Call notices

54.—(1) Subject to the articles and the terms on which shares are allotted, the directors may send a notice (a "call notice") to a member requiring the member to pay the company a specified sum of money (a "call") which is payable in respect of shares which that member holds at the date when the directors decide to send the call notice.

(2) A call notice—

(*a*) may not require a member to pay a call which exceeds the total sum unpaid on that member's shares, whether as to the share's nominal value or any amount payable to the company by way of premium;

(*b*) shall state when and how any call to which it relates shall be paid; and

(*c*) may permit or require the call to be paid by installments.

(3) A member shall comply with the requirements of a call notice, but no member is obliged to pay any call before fourteen days have passed since the notice was sent.

(4) Before the company has received any call due under a call notice, the directors may—

(*a*) revoke it wholly or in part; or

(*b*) specify a later time for payment than is specified in the notice, by a further notice in writing to the member in respect of whose shares the call is made.

Liability to pay calls

55.—(1) Liability to pay a call is not extinguished or transferred by transferring the shares in respect of which it is required to be paid.

(2) Joint holders of a share are jointly and severally liable to pay all calls in respect of that share.

(3) Subject to the terms on which shares are allotted, the directors may, when issuing shares, provide that call notices sent to the holders of those shares may require them—

(*a*) to pay calls which are not the same; or

(*b*) to pay calls at different times.

When call notice need not be issued

56.—(1) A call notice need not be issued in respect of sums which are specified, in the terms on which a share is issued, as being payable to the company in respect of that share, whether in respect of nominal value or premium—

(*a*) on allotment;

(*b*) on the occurrence of a particular event; or

(*c*) on a date fixed by or in accordance with the terms of issue.

(2) Where the due date for payment of such a sum has passed and it has not been paid, the holder of the share concerned shall be treated in all respects as having failed to comply with a call notice in respect of that sum, and shall be liable to the same consequences as regards the payment of interest and forfeiture.

Failure to comply with call notice: automatic consequences

57.—(1) Where a person is liable to pay a call and fails to do so by the call payment date—

(*a*) the directors may issue a notice of intended forfeiture to that person; and

(*b*) until the call is paid, the person shall pay the company interest on the call from the call payment date at the relevant rate.

(2) For the purposes of this article—

(*a*) the "call payment date" is the time when the call notice states that a call is payable, unless the directors give a notice specifying a later date, in which case the "call payment date" is that later date;

(*b*) the "relevant rate" is—

(i) the rate fixed by the terms on which the share in respect of which the call is due was allotted;

(ii) such other rate as was fixed in the call notice which required payment of the call, or has otherwise been determined by the directors; or

(iii) if no rate is fixed in either of these ways, five per cent per annum.

(3) The relevant rate shall not exceed by more than five percentage points the base lending rate most recently set by the Reserve Bank of Malaŵi.

(4) The directors may waive any obligation to pay interest on a call wholly or in part.

Notice of intended forfeiture

58. A notice of intended forfeiture—

(*a*) may be sent in respect of any share in respect of which a call has not been paid as required by a call notice;

(*b*) shall be sent to the holder of that share or to a person entitled to it by reason of the holder's death, bankruptcy or otherwise;

(*c*) shall require payment of the call and any accrued interest by a date which is not less than fourteen days after the date of the notice;

(*d*) shall state how the payment shall be made; and

(*e*) shall state that if the notice is not complied with, the shares in respect of which the call is payable will be liable to be forfeited.

Directors' power to forfeit shares

59. If a notice of intended forfeiture is not complied with before the date by which payment of the call is required in the notice of intended forfeiture, the directors may decide that any share in respect of which it was given be forfeited, and the forfeiture shall include all dividends or other moneys payable in respect of the forfeited shares and not paid before the forfeiture.

Effects of forfeiture

60.—(1) Subject to these Articles, the forfeiture of a share extinguishes—

(*a*) all interests in that share, and all claims and demands against the company in respect of it; and

(*b*) all other rights and liabilities incidental to the share as between the person whose share it was prior to the forfeiture and the company.

(2) Any share which is forfeited in accordance with the articles—

(*a*) is deemed to have been forfeited when the directors decide that it is forfeited;

(*b*) is deemed to be the property of the company; and

(*c*) may be sold, re-allotted or otherwise disposed of as the directors think fit.

(3) Where a person's shares have been forfeited—

(*a*) the company shall send the person notice that forfeiture has occurred and record it in the register of members;

(*b*) the person ceases to be a member in respect of those shares;

(*c*) the person shall surrender the certificate for the shares forfeited to the company for cancellation;

(*d*) that person remains liable to the company for all sums payable by that person under the articles at the date of forfeiture in respect of those shares, including any interest, whether accrued before or after the date of forfeiture; and

(*e*) the directors may waive payment of such sums wholly or in part or enforce payment without any allowance for the value of the shares at the time of forfeiture or for any consideration received on their disposal.

(4) At any time before the company disposes of a forfeited share, the directors may decide to cancel the forfeiture on payment of all calls and interest due in respect of it and on such other terms as they think fit.

Procedure following forfeiture

61.—(1) If a forfeited share is to be disposed of by being transferred, the company may receive the consideration for the transfer and the directors may authorize any person to execute the instrument of transfer.

(2) A statutory declaration by a director or the company secretary that the declarant is a director or the company secretary and that a share has been forfeited on a specified date—

(*a*) is conclusive evidence of the facts stated in it as against all persons claiming to be entitled to the share; and

(*b*) subject to compliance with any other formalities of transfer required by the articles or by law, constitutes a good title to the share.

(3) A person to whom a forfeited share is transferred shall not be bound to see to the application of the consideration, if any, nor is that person's title to the share affected by any irregularity in or invalidity of the process leading to the forfeiture or transfer of the share.

(4) If the company sells a forfeited share, the person who held it prior to its forfeiture is entitled to receive from the company the proceeds of such sale, net of any commission, and excluding any amount which—

(*a*) was, or would have become, payable; and

(*b*) had not, when that share was forfeited, been paid by that person in respect of that share:

Provided that no interest is payable to such a person in respect of such proceeds and the company is not required to account for any money earned on them.

Surrender of shares

62.—(1) A member may surrender any share—

(*a*) in respect of which the directors may issue a notice of intended forfeiture;

(*b*) which the directors may forfeit; or

(*c*) which has been forfeited.

(2) The directors may accept the surrender of any such share.

(3) The effect of surrender on a share is the same as the effect of forfeiture on that share.

(4) A share which has been surrendered may be dealt with in the same way as a share which has been forfeited.

Transfer of certificated shares

63.—(1) Certificated shares may be transferred by means of an instrument of transfer in any usual form or any other form approved by the directors, which is executed by or on behalf of—

(*a*) the transferor; and

(*b*) if any of the shares is partly paid, the transferee.

(2) No fee may be charged for registering any instrument of transfer or other document relating to or affecting the title to any share.

(3) The company may retain any instrument of transfer which is registered.

(4) The transferor remains the holder of a certificated share until the transferee's name is entered in the register of members as holder of it.

(5) The directors may refuse to register the transfer of a certificated share if—

(*a*) the share is not fully paid;

(*b*) the transfer is not lodged at the company's registered office or such other place as the directors have appointed;

(*c*) the transfer is not accompanied by the certificate for the shares to which it relates, or such other evidence as the directors may reasonably require to show the transferor's right to make the transfer, or evidence of the right of someone other than the transferor to make the transfer on the transferor's behalf;

(*d*) the transfer is in respect of more than one class of share; or

(*e*) the transfer is in favour of more than four transferees.

(6) Where the directors refuse to register the transfer of a share, the instrument of transfer shall be returned to the transferee with the notice of refusal unless they suspect that the proposed transfer may be fraudulent.

Transfer of uncertificated shares

64. A transfer of an uncertificated share shall not be registered if it is in favour of more than four transferees.

Transmission of shares

65.—(1) Where title to a share passes to a transmittee, the company may only recognize the transmittee as having any title to that share.

(2) Nothing in these Articles releases the estate of a deceased member from any liability in respect of a share solely or jointly held by that member.

Transmittees' rights

66.—(1) A transmittee who produces such evidence of entitlement to shares as the directors may properly require—

(*a*) may, subject to these Articles, choose either to become the holder of those shares or to have them transferred to another person; and

(*b*) subject to these Articles, and pending any transfer of the shares to another person, has the same rights as the holder had.

(2) A transmittee shall not have the right to attend or vote at a general meeting in respect of shares to which they are entitled, by reason of the holder's death or bankruptcy or otherwise, unless they become the holders of those shares.

Exercise of transmittees' rights

67.—(1) Transmittees who wish to become the holders of shares to which they have become entitled shall notify the company in writing of that wish.

(2) If the share is a certificated share and a transmittee wishes to have it transferred to another person, the transmittee shall execute an instrument of transfer in respect of it.

(3) If the share is an uncertificated share and the transmittee wishes to have it transferred to another person, the transmittee shall—

(*a*) procure that all appropriate instructions are given to effect the transfer; or

(*b*) procure that the uncertificated share is changed into certificated form and then execute an instrument of transfer in respect of it.

(4) Any transfer made or executed under this article shall be treated as if it were made or executed by the person from whom the transmittee has derived rights in respect of the share, and as if the event which gave rise to the transmission had not occurred.

Transmittees bound by prior notices

68. If a notice is given to a member in respect of shares and a transmittee is entitled to those shares, the transmittee is bound by the notice if it was given to the member before the transmittee's name has been entered in the register of members.

Procedure for disposing of fractions of shares

69.—(1) This article applies where—

(*a*) there has been a consolidation or division of shares; and

(*b*) as a result, members are entitled to fractions of shares.

(2) The directors may—

(*a*) sell the shares representing the fractions to any person including the company for the best price reasonably obtainable;

(*b*) in the case of a certificated share, authorize any person to execute an instrument of transfer of the shares to the purchaser or a person nominated by the purchaser; and

(*c*) distribute the net proceeds of sale in due proportion among the holders of the shares.

(3) Where any holder's entitlement to a portion of the proceeds of sale amounts to less than a minimum figure determined by the directors, that member's portion may be distributed to an organization which is a charity for the purposes of any written laws.

(4) A person to whom the shares are transferred shall not be obliged to ensure that any purchase money is received by the person entitled to the relevant fractions.

(5) The transferee's title to the shares shall not be affected by any irregularity in or invalidity of the process leading to their sale.

Procedure for declaring dividends

70.—(1) The company may by ordinary resolution declare dividends, and the directors may decide to pay interim dividends.

(2) A dividend shall not be declared unless the directors have made a recommendation as to its amount. Such a dividend shall not exceed the amount recommended by the directors.

(3) No dividend may be declared or paid unless it is in accordance with members' respective rights.

(4) Unless the members' resolution to declare or directors' decision to pay a dividend, or the terms on which shares are issued, specify otherwise, it shall be paid by reference to each member's holding of shares on the date of the resolution or decision to declare or pay it.

(5) If the company's share capital is divided into different classes, no interim dividend may be paid on shares carrying deferred or non-preferred rights if, at the time of payment, any preferential dividend is in arrears.

(6) The directors may pay at intervals any dividend payable at a fixed rate if it appears to them that the profits available for distribution justify the payment.

(7) If the directors act in good faith, they shall not incur any liability to the holders of shares conferring preferred rights for any loss they may suffer by the lawful payment of an interim dividend on shares with deferred or non-preferred rights.

Calculation of dividends

71.—(1) Except as otherwise provided by these Articles or the rights attached to shares, all dividends shall be—

(*a*) declared and paid according to the amounts paid up on the shares on which the dividend is paid; and

(*b*) apportioned and paid proportionately to the amounts paid up on the shares during any portion or portions of the period in respect of which the dividend is paid.

(2) If any share is issued on terms providing that it ranks for dividend as from a particular date that share ranks for dividend accordingly.

(3) For the purposes of calculating dividends, no account shall be taken of any amount which has been paid up on a share in advance of the due date for payment of that amount.

Payment of dividends and other distributions

72.—(1) Where a dividend or other sum which is a distribution is payable in respect of a share, it shall be paid by one or more of the following means—

(*a*) transfer to a bank account specified by the distribution recipient either in writing or as the directors may otherwise decide;

(*b*) sending a cheque made payable to the distribution recipient by post to the distribution recipient at the distribution recipient's registered address (if the distribution recipient is a holder of the share), or (in any other case) to an address specified by the distribution recipient either in writing or as the directors may otherwise decide;

(*c*) sending a cheque made payable to such person by post to such person at such address as the distribution recipient has specified either in writing or as the directors may otherwise decide; or

(*d*) any other means of payment as the directors agree with the distribution recipient either in writing or by such other means as the directors decide.

(2) In the articles, "the distribution recipient" means, in respect of a share in respect of which a dividend or other sum is payable—

(*a*) the holder of the share;

(*b*) if the share has two or more joint holders, whichever of them is named first in the register of members; or

(*c*) if the holder is no longer entitled to the share by reason of death or bankruptcy, or otherwise by operation of law, the transmittee.

Deductions from distributions in respect of sums owed to the company

73.—(1) If—

(*a*) a share is subject to the company's lien; and

(*b*) the directors are entitled to issue a lien enforcement notice in respect of it,

they may, instead of issuing a lien enforcement notice, deduct from any dividend or other sum payable in respect of the share any sum of money which is payable to the company in respect of that share to the extent that they are entitled to require payment under a lien enforcement notice.

(2) The sums of money deducted under paragraph (1), shall be used to pay any of the sums payable in respect of that share.

(3) The company shall notify the distribution recipient in writing of—

(*a*) the fact and amount of any such deduction;

(*b*) any non-payment of a dividend or other sum payable in respect of a share resulting from any such deduction; and

(*c*) how the money deducted has been applied.

No interest on distributions

74. The company may not pay interest on any dividend or other sum payable in respect of a share unless otherwise provided by—

(*a*) the terms on which the share was issued; or

(*b*) the provisions of another agreement between the holder of that share and the company.

Unclaimed distributions

75.—(1) All dividends or other sums which are—

(*a*) payable in respect of shares; and

(*b*) unclaimed after having been declared or become payable,

may be invested or otherwise made use of by the directors for the benefit of the company until claimed.

(2) The payment of any such dividend or other sum into a separate account shall not make the company a trustee in respect of it.

(3) If—

(*a*) twelve years have passed from the date on which a dividend or other sum became due for payment; and

(*b*) the distribution recipient has not claimed it,

the distribution recipient shall no longer be entitled to that dividend or other sum and it shall cease to remain owing by the company.

Non-cash distributions

76.—(1) Subject to the terms of issue of the share in question, the company may, by ordinary resolution on the recommendation of the directors, decide to pay all or part of a dividend or other distribution payable in respect of a share by transferring non-cash assets of equivalent value including, without limitation, shares or other securities in any company.

(2) If the shares in respect of which such a non-cash distribution is paid are uncertificated, any shares in the company which are issued as a non-cash distribution in respect of them shall be uncertificated.

(3) For the purposes of paying a non-cash distribution, the directors may make whatever arrangements they think fit, including, where any difficulty arises regarding the distribution—

(*a*) fixing the value of any assets;

(*b*) paying cash to any distribution recipient on the basis of that value in order to adjust the rights of recipients; and

(*c*) vesting any assets in trustees.

Waiver of distributions

77. Distribution recipients may waive their entitlement to a dividend or other distribution payable in respect of a share by giving the company notice in writing to that effect, but if—

(*a*) the share has more than one holder; or

(*b*) more than one person is entitled to the share, whether by reason of the death or bankruptcy of one or more joint holders, or otherwise,

the notice is not effective unless it is expressed to be given, and signed, by all the holders or persons otherwise entitled to the share.

Authority to capitalize and appropriation of capitalized sums

78.—(1) The directors may, if so authorized by an ordinary resolution—

(*a*) decide to capitalize any profits of the company whether or not they are available for distribution, which are not required for paying a preferential dividend, or any sum standing to the credit of the company's share premium account or capital redemption reserve; and

(*b*) appropriate any sum which they so decide to capitalize (a "capitalized sum") to the persons who would have been entitled to it if it were distributed by way of dividend (the "persons entitled") and in the same proportions.

(2) The sums capitalized under paragraph (1), shall be applied—

(*a*) on behalf of the persons entitled; and

(*b*) in the same proportions as a dividend would have been distributed to them.

(3) Any capitalized sum may be applied in paying up new shares of a nominal amount equal to the capitalized sum which are then allotted credited as fully paid to the persons entitled or as they may direct.

(4) A capitalized sum which was appropriated from profits available for distribution may be applied—

(*a*) in or towards paying up any amounts unpaid on existing shares held by the persons entitled; or

(*b*) in paying up new debentures of the company which are then allotted credited as fully paid to the persons entitled or as they may direct.

(5) Subject to these Articles, the directors may—

(*a*) apply capitalized sums in accordance with paragraphs (3) and (4) partly in one way and partly in another;

(*b*) make such arrangements as they think fit to deal with shares or debentures becoming distributable in fractions under this article including the issuing of fractional certificates or the making of cash payments; and

(*c*) authorize any person to enter into an agreement with the company on behalf of all the persons entitled which is binding on them in respect of the allotment of shares and debentures to them under this article.

PART V
Miscellaneous Provisions

Means of communication to be used

79.—(1) Subject to these Articles, anything sent or supplied by or to the company under the articles may be sent or supplied in any way in which the Act, provides for documents or information which are authorized or required by any provision of that Act to be sent or supplied by or to the company.

(2) Subject to these Articles, any notice or document to be sent or supplied to a director in connexion with the taking of decisions by directors may also be sent or supplied by the means by which that director has asked to be sent or supplied with such notices or documents for the time being.

(3) A director may agree with the company that notices or documents sent to that director in a particular way are to be deemed to have been received within a specified time of their being sent, and for the specified time to be less than forty-eight hours.

Failure to notify contact details

80.—(1) If—

(*a*) the company sends two consecutive documents to a member over a period of at least twelve months; and

(*b*) each of those documents is returned undelivered, or the company receives notification that it has not been delivered, that member ceases to be entitled to receive notices from the company.

(2) A member who has ceased to be entitled to receive notices from the company becomes entitled to receive such notices again by sending the company—

(*a*) a new address to be recorded in the register of members; or

(*b*) if the member has agreed that the company should use a means of communication other than sending things to such an address, the information that the company needs to use that means of communication effectively.

Company seals

81.—(1) Any common seal may only be used by the authority of the directors.

(2) The directors may decide by what means and in what form any common seal or securities seal shall be used.

(3) Unless otherwise decided by the directors, if the company has a common seal and it is affixed to a document, the document shall also be signed by at least one authorized person in the presence of a witness who attests the signature.

(4) For the purposes of this article, an authorized person is—

(*a*) any director of the company;

(*b*) the company secretary; or

(*c*) any person authorized by the directors for the purpose of signing documents to which the common seal is applied.

(5) If the company has an official seal for use abroad, it may only be affixed to a document if its use on that document, or documents of a class to which it belongs, has been authorized by a decision of the directors.

(6) If the company has a securities seal, it may only be affixed to securities by the company secretary or a person authorized to apply it to securities by the company secretary.

(7) For the purposes of these Articles, references to the securities seal being affixed to any document include the reproduction of the image of that seal on or in a document by any mechanical or electronic means which has been approved by the directors in relation to that document or documents of a class to which it belongs.

Destruction of documents

82.—(1) The company shall be entitled to destroy—

(*a*) all instruments of transfer of shares which have been registered, and all other documents on the basis of which any entries are made in the register of members, from six years after the date of registration;

(*b*) all dividend mandates, variations or cancellations of dividend mandates, and notifications of change of address, from two years after they have been recorded;

(*c*) all share certificates which have been cancelled from one year after the date of the cancellation;

(*d*) all paid dividend warrants and cheques from one year after the date of actual payment; and

(*e*) all proxy notices from one year after the end of the meeting to which the proxy notice relates.

(2) If the company destroys a document in good faith, in accordance with the articles, and without notice of any claim to which that document may be relevant, it is conclusively presumed in favour of the company that—

(*a*) entries in the register purporting to have been made on the basis of an instrument of transfer or other document so destroyed were duly and properly made;

(*b*) any instrument of transfer so destroyed was a valid and effective instrument duly and properly registered;

(*c*) any share certificate so destroyed was a valid and effective certificate duly and properly cancelled; and

(*d*) any other document so destroyed was a valid and effective document in accordance with its recorded particulars in the books or records of the company.

(3) This article shall not impose on the company any liability which it would not otherwise have if it destroys any document before the time at which this article permits it to do so.

(4) In this article, references to the destruction of any document include a reference to its being disposed of in any manner.

No right to inspect accounts and other records

83. Except as provided by any written law or authorized by the directors or an ordinary resolution of the company, no person shall be entitled to inspect any of the company's accounting or other records or documents merely by virtue of being a member.

Provision for employees on cessation of business

84. The directors may decide to make provision for the benefit of persons employed or formerly employed by the company or any of its subsidiaries, other than a director or former director or shadow director, in connexion with the cessation or transfer to any person of the whole or part of the undertaking of the company or that subsidiary.

Indemnity

85.—(1) Subject to paragraph (2), a relevant director of the company or an associated company may be indemnified out of the company's assets against—

(*a*) any liability incurred by that director in connexion with any negligence, default, breach of duty or breach of trust in relation to the company or an associated company;

(*b*) any liability incurred by that director in connexion with the activities of the company or an associated company in its capacity as a trustee of an occupational pension scheme; and

(*c*) any other liability incurred by that director as an officer of the company or an associated company.

(2) This article shall not authorize any indemnity which would be prohibited or rendered void by any provision of the Act or by any other law.

(3) In this article—

(*a*) companies are associated if one is a subsidiary of the other or both are subsidiaries of the same body corporate; and

(*b*) a "relevant director" means any director or former director of the company or an associated company.

Insurance

86.—(1) The directors may decide to purchase and maintain insurance, at the expense of the company, for the benefit of any relevant director in respect of any relevant loss.

(2) In this article—

(*a*) a "relevant director" means any director or former director of the company or an associated company;

(*b*) a "relevant loss" means any loss or liability which has been or may be incurred by a relevant director in connexion with that director's duties or powers in relation to the company, any associated company or any pension fund or employees' share scheme of the company or associated company; and

(*c*) companies are associated if one is a subsidiary of the other or both are subsidiaries of the same body corporate.

TABLE C

reg. 4

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PART I
PRELIMINARY

Interpretation

1.—(1) In these Articles, unless the context requires otherwise—

"articles" means the company's articles of association;

"bankruptcy" includes individual insolvency proceedings;

"chairman" has the meaning given in article 12;

"chairman of the meeting" has the meaning given in article 25;

"director" means a director of the company, and includes any person occupying the position of director, by whatever name called;

"document" includes, unless otherwise specified, any document sent or supplied in electronic form;

"member" has the meaning given in section 2 of the Act;

"ordinary resolution" has the meaning given in section 2 of the Act;

"participate" in relation to a directors' meeting, has the meaning given in article 10;

"proxy notice" has the meaning given in article 31;

"special resolution" has the meaning given in section 2 of the Act;

"subsidiary" has the meaning given in section 2 (5) of the Act; and

"writing" means the representation or reproduction of words, symbols or other information in a visible form by any method or combination of methods, whether sent or supplied in electronic form or otherwise.

(2) Unless the context otherwise requires, other words or expressions contained in these Articles bear the same meaning as in the Act, as in force on the date when these Articles become binding on the company.

Liability of members

2. The liability of each member is limited to the amount, being the amount that each member undertakes to contribute to the assets of the company in the event of its being wound up while he is a member or within one year after he ceases to be a member, for—

(*a*) payment of the company's debts and liabilities contracted before he ceases to be a member;

(*b*) payment of the costs, charges and expenses of winding up; and

(*c*) adjustment of the rights of the contributories among themselves.

PART II
Directors' Powers and Responsibilities

Director's general authority

3. Subject to the articles, the directors are responsible for the management of the company's business, for which purpose they may exercise all the powers of the company.

Members' reserve power

4.—(1) The members may, by special resolution, direct the directors to take, or refrain from taking, specified action.

(2) No such special resolution invalidates anything which the directors have done before the passing of the resolution.

Delegation by directors

5.—(1) Subject to these Articles, the directors may delegate any of the powers which are conferred on them under these Articles—

(*a*) to such person or committee;

(*b*) by such means including by power of attorney;

(*c*) to such an extent;

(*d*) in relation to such matters or territories; and

(*e*) on such terms and conditions as they think fit.

(2) If the directors so specify, any such delegation may authorize further delegation of the directors' powers by any person to whom they are delegated.

(3) The directors may revoke any delegation in whole or part, or alter its terms and conditions.

Committees

6.—(1) Committees to which the directors delegate any of their powers shall follow procedures which are based as far as they are applicable on those provisions of the articles which govern the taking of decisions by directors.

(2) The directors may make rules of procedure for all or any committees, which prevail over rules derived from the articles if they are not consistent with them.

Decision-Making by Directors

Director to take decisions collectively

7.—(1) The general rule about decision-making by directors is that any decision of the directors shall be either a majority decision at a meeting or a decision taken in accordance with article 8.

(2) If—

(*a*) the company only has one director; and

(*b*) no provision of the articles requires it to have more than one director,

the general rule shall not apply, and the director may take decisions without regard to any of the provisions of the articles relating to directors' decision-making.

Unanimous decisions

8.—(1) A decision of the directors is taken in accordance with this article when all eligible directors indicate to each other by any means that they share a common view on a matter.

(2) A decision referred to in paragraph (1) may take the form of a resolution in writing, copies of which have been signed by each eligible director or to which each eligible director has otherwise indicated agreement in writing.

(3) References in this article to eligible directors are to directors who would have been entitled to vote on the matter had it been proposed as a resolution at a directors' meeting.

(4) A decision may not be taken in accordance with this article if the eligible directors would not have formed a *quorum* at such a meeting.

Calling a directors' meeting

9.—(1) Any director may call a directors' meeting by giving notice of the meeting to the directors or by authorizing the company secretary, if any, to give such notice.

(2) Notice of any directors' meeting shall indicate—

(*a*) its proposed date and time;

(*b*) where it shall take place; and

(*c*) if it is anticipated that directors participating in the meeting will not be in the same place, how it is proposed that they should communicate with each other during the meeting.

(3) Notice of a directors' meeting shall be given to each director, but need not be in writing.

(4) Notice of a directors' meeting need not be given to directors who waive their entitlement to notice of that meeting, by giving notice to that effect to the company not more than seven days after the date on which the meeting is held. Where such notice is given after the meeting has been held, that shall not affect the validity of the meeting, or of any business conducted at it.

Participation in directors' meeting

10.—(1) Subject to these Articles, directors participate in a directors' meeting, or part of a directors' meeting, when—

(*a*) the meeting has been called and takes place in accordance with the articles; and

(*b*) they can each communicate to the others any information or opinions they have on any particular item of the business of the meeting.

(2) In determining whether directors are participating in a directors' meeting, it is irrelevant where any director is or how they communicate with each other.

(3) If all the directors participating in a meeting are not in the same place, they may decide that the meeting shall be treated as taking place wherever any of them is.

Quorum for directors' meeting

11.—(1) At a directors' meeting, unless a *quorum* is participating, no proposal shall to be voted on, except a proposal to call another meeting.

(2) The *quorum* for directors' meetings may be fixed from time to time by a decision of the directors, but it shall never be less than two, and unless otherwise fixed it is two.

(3) If the total number of directors for the time being is less than the *quorum* required, the directors shall not take any decision other than a decision—

(*a*) to appoint further directors; or

(*b*) to call a general meeting so as to enable the members to appoint further directors.

Chairing of directors' meetings

12.—(1) The directors may appoint a director to chair their meetings.

(2) The person so appointed for the time being shall be known as the chairman.

(3) The directors may terminate the chairman's appointment at any time.

(4) If the chairman is not participating in a directors' meeting within ten minutes of the time at which it was to start, the participating directors shall appoint one of themselves to chair it.

Casting vote

13.—(1) If the numbers of votes for and against a proposal are equal, the chairman or other director chairing the meeting shall have a casting vote.

(2) Paragraph (1) shall not apply if, in accordance with the articles, the chairman or other director is not to be counted as participating in the decision-making process for *quorum* or voting purposes.

Conflict of interest

14.—(1) If a proposed decision of the directors is concerned with an actual or proposed transaction or arrangement with the company in which a director is interested, that director shall not to be counted as participating in the decision-making process for *quorum* or voting purposes.

(2) Where paragraph (3) applies, a director who is interested in an actual or proposed transaction or arrangement with the company shall be counted as participating in the decision-making process for *quorum* and voting purposes.

(3) This paragraph applies when—

(*a*) the company by ordinary resolution disapplies the provision of the articles which would otherwise prevent a director from being counted as participating in the decision-making process;

(*b*) the director's interest cannot reasonably be regarded as likely to give rise to a conflict of interest; or

(*c*) the director's conflict of interest arises from a permitted cause.

(4) For the purposes of this article, the following are permitted causes—

(*a*) a guarantee given, or to be given, by or to a director in respect of an obligation incurred by or on behalf of the company or any of its subsidiaries;

(*b*) subscription, or an agreement to subscribe, for securities of the company or any of its subsidiaries, or to underwrite, sub-underwrite, or guarantee subscription for any such securities; and

(*c*) arrangements pursuant to which benefits are made available to employees and directors or former employees and directors of the company or any of its subsidiaries which do not provide special benefits for directors or former directors.

(5) For the purposes of this article, references to proposed decisions and decision-making processes include any directors' meeting or part of a directors' meeting.

(6) Subject to paragraph (7), if a question arises at a meeting of directors or of a committee of directors as to the right of a director to participate in the meeting or part of the meeting for voting or *quorum* purposes, the question may, before the conclusion of the meeting, be referred to the chairman whose ruling in relation to any director other than the chairman shall be final and conclusive.

(7) If any question as to the right to participate in the meeting or part of the meeting should arise in respect of the chairman, the question shall be decided by a decision of the directors at that meeting, for which purpose the chairman shall not be counted as participating in the meeting or that part of the meeting for voting or *quorum* purposes.

Records of decisions to be kept

15. The directors shall ensure that the company keeps a record, in writing, for at least ten years from the date of the decision recorded, of every unanimous or majority decision taken by the directors.

Directors' discretion to make further rules

16. Subject to these Articles, the directors may make any rule which they think fit about how they take decisions, and about how such rules are to be recorded or communicated to directors.

Methods of appointing directors

17.—(1) Any person who is willing to act as a director, and is permitted by law to do so, may be appointed to be a director—

(*a*) by ordinary resolution; or

(*b*) by a decision of the directors.

(2) In any case where, as a result of death, the company has no members and no directors, the personal representatives of the last member to have died shall have the right, by notice in writing, to appoint a person to be a director.

(3) For the purposes of paragraph (2), where two or more members die in circumstances rendering it uncertain who was the last to die, a younger member is deemed to have survived an older member.

Termination of director's appointment

18. A person shall cease to be a director as soon as—

(*a*) that person ceases to be a director by virtue of any provision of the Act or is prohibited from being a director by law;

(*b*) a bankruptcy order is made against that person;

(*c*) a composition is made with that person's creditors generally in satisfaction of that person's debts;

(*d*) a registered medical practitioner who is treating that person gives a written opinion to the company stating that that person has become physically or mentally incapable of acting as a director and may remain so for more than three months;

(*e*) by reason of that person's mental health, a court makes an order which wholly or partly prevents that person from personally exercising any powers or rights which that person would otherwise have;

(*f*) notification is received by the company from the director that the director is resigning from office, and such resignation has taken effect in accordance with its terms.

Directors' remuneration

19.—(1) Directors may undertake any services for the company that the directors decide.

(2) Directors shall be entitled to such remuneration as the directors determine—

(*a*) for their services to the company as directors; and

(*b*) for any other service which they undertake for the company.

(3) Subject to these Articles, a director's remuneration may—

(*a*) take any form; and

(*b*) include any arrangements in connexion with the payment of a pension, allowance or gratuity, or any death, sickness or disability benefits, to or in respect of that director.

(4) Unless the directors decide otherwise, directors' remuneration accrues from day to day.

(5) Unless the directors decide otherwise, directors shall not be accountable to the company for any remuneration which they receive as directors or other officers or employees of the company's subsidiaries or of any other body corporate in which the company is interested.

Directors' expenses

20. The company may pay any reasonable expenses which the directors properly incur in connexion with their attendance at—

(*a*) meetings of directors or committees of directors;

(*b*) general meetings; or

(*c*) separate meetings of the holders of debentures of the company, or otherwise in connexion with the exercise of their powers and the discharge of their responsibilities in relation to the company.

PART III

Members, Becoming and Ceasing to be a Member

Applications for membership

21. A person shall not become a member of the company unless—

(*a*) that person has completed an application for membership in a form approved by the directors; and

(*b*) the directors have approved the application.

Termination of membership

22.—(1) A member may withdraw from membership of the company by giving seven days' notice to the company in writing.

(2) Membership shall not be transferable.

(3) A person's membership terminates when that person dies or ceases to exist.

Attendance and speaking at general meetings

23.—(1) A person shall be able to exercise the right to speak at a general meeting when that person is in a position to communicate to all those attending the meeting, during the meeting, any information or opinions which that person has on the business of the meeting.

(2) A person shall be able to exercise the right to vote at a general meeting when—

(*a*) that person is able to vote, during the meeting, on resolutions put to the vote at the meeting; and

(*b*) that person's vote can be taken into account in determining whether or not such resolutions are passed at the same time as the votes of all the other persons attending the meeting.

(3) The directors may make whatever arrangements they consider appropriate to enable those attending a general meeting to exercise their rights to speak or vote at it.

(4) In determining attendance at a general meeting, it is immaterial whether any two or more members attending it are in the same place as each other.

(5) Two or more persons who are not in the same place as each other attend a general meeting if their circumstances are such that if they have or were to have rights to speak and vote at that meeting, they are (or would be) able to exercise them.

Quorum for general meetings

24. No business other than the appointment of the chairman of the meeting shall be transacted at a general meeting if the persons attending it do not constitute a *quorum*.

Chairing general meetings

25.—(1) Where the directors have appointed a chairman, the chairman shall chair general meetings if present and willing to do so.

(2) Where the directors have not appointed a chairman, or if the chairman is unwilling to chair the meeting or is not present within ten minutes of the time at which a meeting was due to start—

(*a*) the directors present; or

(*b*) if no directors are present,

the meeting shall appoint a director or member to chair the meeting, and the appointment of the chairman of the meeting shall be the first business of the meeting.

(3) The person chairing a meeting in accordance with this article shall be referred to as "the chairman of the meeting".

Attendance and speaking by directors and non-members

26.—(1) Directors may attend and speak at general meetings, whether or not they are members.

(2) The chairman of the meeting may permit other persons who are not members of the company to attend and speak at a general meeting.

Adjournment

27.—(1) If the persons attending a general meeting within half an hour of the time at which the meeting was due to start do not constitute a *quorum*, or if during a meeting a *quorum* ceases to be present, the chairman of the meeting shall adjourn it.

(2) The chairman of the meeting may adjourn a general meeting at which a *quorum* is present if—

(*a*) the meeting consents to an adjournment; or

(*b*) it appears to the chairman of the meeting that an adjournment is necessary to protect the safety of any person attending the meeting or ensure that the business of the meeting is conducted in an orderly manner.

(3) The chairman of the meeting shall adjourn a general meeting if directed to do so by the meeting.

(4) When adjourning a general meeting, the chairman of the meeting shall—

(*a*) either specify the time and place to which it is adjourned or state that it shall continue at a time and place to be fixed by the directors; and

(*b*) have regard to any directions as to the time and place of any adjournment which have been given by the meeting.

(5) If the continuation of an adjourned meeting is to take place more than fourteen days after it was adjourned, the company shall give at least seven clear days' notice of it, excluding the day of the adjourned meeting and the day on which the notice is given—

(*a*) to the same persons to whom notice of the company's general meetings is required to be given; and

(*b*) containing the same information which such notice is required to contain.

(6) Business may not be transacted at an adjourned general meeting which could not properly have been transacted at the meeting if the adjournment had not taken place.

Voting: general

28. A resolution put to the vote of a general meeting shall be decided on a show of hands unless a poll is duly demanded in accordance with the articles.

Errors and disputes

29.—(1) An objection may not be raised to the qualification of any person voting at a general meeting except at the meeting or adjourned meeting at which the vote objected to is tendered, and every vote not disallowed at the meeting is valid.

(2) Any such objection shall be referred to the chairman of the meeting whose decision is final.

Poll votes

30.—(1) A poll on a resolution may be demanded—

(*a*) in advance of the general meeting where it shall be put to the vote; or

(*b*) at a general meeting, either before a show of hands on that resolution or immediately after the result of a show of hands on that resolution is declared.

(2) A poll may be demanded by—

(*a*) the chairman of the meeting;

(*b*) the directors;

(*c*) two or more persons having the right to vote on the resolution; or

(*d*) a person or persons representing not less than one tenth of the total voting rights of all the members having the right to vote on the resolution.

(3) A demand for a poll may be withdrawn if—

(*a*) the poll has not yet been taken; and

(*b*) the chairman of the meeting consents to the withdrawal.

(4) A poll shall be taken immediately and in such manner as the chairman of the meeting directs.

Content of proxy notices

31.—(1) A proxy may only validly be appointed by a notice in writing (a "proxy notice") which—

(*a*) states the name and address of the member appointing the proxy;

(*b*) identifies the person appointed to be that member's proxy and the general meeting in relation to which that person is appointed;

(*c*) is signed by or on behalf of the member appointing the proxy, or is authenticated in such manner as the directors may determine; and

(*d*) is delivered to the company in accordance with the articles and any instructions contained in the notice of the general meeting to which they relate.

(2) The company may require proxy notices to be delivered in a particular form, and may specify different forms for different purposes.

(3) A proxy notice may specify how the proxy appointed under it shall vote or that the proxy shall abstain from voting on one or more resolutions.

(4) Unless a proxy notice indicates otherwise, it shall be treated as—

(*a*) allowing the person appointed under it as a proxy discretion as to how to vote on any ancillary or procedural resolutions put to the meeting; and

(*b*) appointing that person as a proxy in relation to any adjournment of the general meeting to which it relates as well as the meeting itself.

Delivery of proxy notice

32.—(1) A person who is entitled to attend, speak or vote, either on a show of hands or on a poll, at a general meeting remains so entitled in respect of that meeting or any adjournment of it, even though a valid proxy notice has been delivered to the company by or on behalf of that person.

(2) An appointment under a proxy notice may be revoked by delivering to the company a notice in writing given by or on behalf of the person by whom or on whose behalf the proxy notice was given.

(3) A notice revoking a proxy appointment only takes effect if it is delivered before the start of the meeting or adjourned meeting to which it relates.

(4) Where a proxy notice is not executed by the person appointing the proxy, it shall be accompanied by written evidence of the authority of the person who executed it to execute it on the appointor's behalf.

Amendments to resolutions

33.—(1) An ordinary resolution to be proposed at a general meeting may be amended by ordinary resolution if—

(*a*) notice of the proposed amendment is given to the company in writing by a person entitled to vote at the general meeting at which it shall be proposed not less than forty-eight hours before the meeting shall take place, or such later time as the chairman of the meeting may determine; and

(*b*) the proposed amendment does not, in the reasonable opinion of the chairman of the meeting, materially alter the scope of the resolution.

(2) A special resolution to be proposed at a general meeting may be amended by ordinary resolution, if—

(*a*) the chairman of the meeting proposes the amendment at the general meeting at which the resolution shall be proposed; and

(*b*) the amendment does not go beyond what is necessary to correct a grammatical or other non-substantive error in the resolution.

(3) If the chairman of the meeting, acting in good faith, wrongly decides that an amendment to a resolution is out of order, the chairman's error shall not invalidate the vote on that resolution.

PART IV
Administrative Arrangements

Means of communication to be used

34.—(1) Subject to these Articles, anything sent or supplied by or to the company under the articles may be sent or supplied in any way in which the Act provides for documents or information which are authorized or required by any provision of that Act to be sent or supplied by or to the company.

(2) Subject to the articles, any notice or document to be sent or supplied to a director in connexion with the taking of decisions by directors may also be sent or supplied by the means by which that director has asked to be sent or supplied with such notices or documents for the time being.

(3) A director may agree with the company that notices or documents sent to that director in a particular way are to be deemed to have been received within a specified time of their being sent, and for the specified time to be less than forty-eight hours.

Company seals

35.—(1) A common seal of a company may only be used by the authority of the directors.

(2) The directors may decide by what means and in what form any common seal shall be used.

(3) Unless otherwise decided by the directors, if the company has a common seal and it is affixed to a document, the document shall also be signed by at least one authorized person in the presence of a witness who attests the signature.

(4) For the purposes of this article, an authorized person is—

(*a*) any director of the company;

(*b*) the company secretary, if any; or

(*c*) any person authorized by the directors for the purpose of signing documents to which the common seal is applied.

No right to inspect accounts and other records

36. Except as provided by law or authorized by the directors or an ordinary resolution of the company, a person shall not be entitled to inspect any of the company's accounting or other records or documents merely by virtue of being a member.

Provision for employees on cessation of business

37. The directors may decide to make provision for the benefit of persons employed or formerly employed by the company or any of its subsidiaries, other than a director or former director or shadow director, in connexion with the cessation or transfer to any person of the whole or part of the undertaking of the company or that subsidiary.

Indemnity

38.—(1) Subject to paragraph (2), a relevant director of the company or an associated company may be indemnified out of the company's assets against—

(*a*) any liability incurred by that director in connexion with any negligence, default, breach of duty or breach of trust in relation to the company or an associated company;

(*b*) any liability incurred by that director in connexion with the activities of the company or an associated company in its capacity as a trustee of an occupational pension scheme; or

(*c*) any other liability incurred by that director as an officer of the company or an associated company.

(2) This article shall not authorize any indemnity which would be prohibited or rendered void by any provision of the Act or by any other written law.

(3) In this article—

(*a*) companies are associated if one is a subsidiary of the other or both are subsidiaries of the same body corporate; and

(*b*) a "relevant director" means any director or former director of the company or an associated company.

Insurance

39.—(1) The directors may decide to purchase and maintain insurance, at the expense of the company, for the benefit of any relevant director in respect of any relevant loss.

(2) In this article—

(*a*) a "relevant director" means any director or former director of the company or an associated company;

(*b*) a "relevant loss" means any loss or liability which has been or may be incurred by a relevant director in connexion with that director's duties or powers in relation to the company, any associated company or any pension fund or employees' share scheme of the company or associated company; and

(*c*) companies are associated if one is a subsidiary of the other or both are subsidiaries of the same body corporate.

TABLE D reg. 5

A MEMORANDUM OF ASSOCIATION OF
A COMPANY LIMITED BY SHARES

1. The name of the company is ..... Limited.

2. The business which the company is authorized to carry on is restricted as follows—

Or [The business which the company is authorized to carry on is unrestricted].

3. The liability of the members is limited.

4. The capital of the company is .....

5. The company is a public company.

[The company is a private company and accordingly—

(*a*) the number of members of the company (exclusive of persons who are *bona fide* in the employment of the company and persons who, having been formerly *bona fide* in the employment of the company, were while in that employment, and have continues after the employment to be, members of the company) is limited to fifty;

(*b*) the company is prohibited from making any invitation to the public to acquire any of its shares or debentures; and

(*c*) the right to transfer shares in the company is restricted by its articles of association.]

We the several persons whose names and addresses are subscribed, wish to be formed into a company in pursuance of this memorandum of association.

Name of each subscriber	*Authentication by each subscriber*

Date:.....

reg. 6

TABLE E

MEMORANDUM OF ASSOCIATION OF COMPANY LIMITED BY GUARANTEE

1. The name of the company is .....

2. The objects for which the company is established are—

(*a*) .....

(*b*) .....

(*c*) ....., etc.

3. The income and property of the company shall be applied solely towards the promotion of the object of the company, and no portion thereof paid or transferred directly or indirectly to the members of the company except as may be permitted by law.

4. The liability of the members is limited.

5. Each member of the company undertakes to contribute to the assets of the company in the event of its being wound up while he is a member for the payment of dents and liabilities of the company and of the costs of winding up and for the adjustment of the rights of members among themselves such amount as may be required not exceeding ..... Kwacha.

6. If upon the winding up or dissolution of the company there remains after the discharge of all its debts and liabilities any property of the company, such property shall not be distributed among the members but shall be transferred to some other company limited by guarantee having objects similar to the objects to the object of the company or applied to some charitable object, such other company or charity to be determined by an ordinary resolution of members in general meeting prior to the dissolution.

Name of each subscriber	*Authentication by each subscriber*

Date:.....

COMPANIES REGULATIONS

ARRANGEMENT OF REGULATIONS

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FIRST SCHEDULE

SECOND SCHEDULE

G.N. 6/2017

COMPANIES REGULATIONS

under s. 382

PART I
Preliminary

Citation

1. These Regulations may be cited as the Companies Regulations.

Interpretation

2. In these Regulations, unless the context otherwise provides—

"Registrar" shall mean the Registrar of Companies appointed under section 3 of the Act.

PART II
General

Office hours

3. The office of the Registrar shall be open to the public for the transaction of business on every working day, during such hours as the Registrar may fix from time to time, either generally or in any particular case.

Forms
First Schedule

4.—(1) The Forms set out in the First Schedule to these Regulations shall be used for the respective purposes prescribed in the Act, and the particulars contained in those Forms are prescribed as the particulars required under the Act.

(2) Where a prescribed form continues on two or more pages, the following heading shall appear at the top of each of the pages—

Name of Company/Proposed Company .....

Company No/Name Reservation No .....

(Delete as appropriate)

Fees
Second Schedule

5. The fees set out in Part I of the Second Schedule to these Regulations shall be payable to the Registrar in respect of the matters to which they relate.

Penalties for failure to deliver documents to the Registrar within prescribed time *Second Schedule*

6.—(1) Subject to subregulation (2), the amounts specified in Part II of the Second Schedule to these Regulations shall be payable by way of penalty for failure to deliver a document to the Registrar within the time prescribed by the Act.

(2) Where any document is delivered to the Registrar after the time specified in the Act in respect of the document, and the Registrar is satisfied that the omission to deliver the document within the time limit was accidental or due to inadvertence, or that it is just and equitable to do so, he may remit wholly or partly the fee payable in respect of the late delivery of the document.

General requirements for documents

7.—(1) All documents prepared to be registered or to be delivered, sent, or forwarded to the Registrar shall be legible.

(2) Where a document is required to be signed—

(*a*) the signature shall be an original signature; and

(*b*) the name of the signatory shall be legibly typed, printed, stamped, or written below the original signature.

Email address to be provided if using online service

8.—(1) Where an application for registration of a company is registered, delivered, sent, or forwarded to the Registrar using an online service—

(*a*) an email address for communication with the person who registers, delivers, sends, or forwards the application to the Registrar shall be provided with the application; and

(*b*) an email address for communication with the company shall be provided with the application.

(2) Where an annual return for a company is registered, delivered, sent, or forwarded to the Registrar using an online service—

(*a*) an email address for communication with the person who registers, delivers, sends, or forwards the annual return to the Registrar shall be provided with the annual return; and

(*b*) an email address for communication with the company shall be provided with the annual return.

(3) In this regulation, "online service" means a service provided by, or on behalf of, the Registrar that allows documents to be registered, delivered, sent, or forwarded to the Registrar by means of Internet.

Reservation of names

9.—(1) A reservation of a name of a company that is proposed to be registered or in respect of a proposed change of a name of an existing company, as the case may be, shall not give an applicant, or any proposed or existing company in respect of which the application is made, any proprietary right or interest in the name.

(2) On issuance of a notice to reserve a name, the Registrar shall advise an applicant in writing that the reservation of name shall not give the applicant, or any proposed or existing company in respect of which the application is made, any proprietary right or interest in the name.

Translations

10.—(1) A translation into the English language of any document evidencing incorporation of a company or a foreign company or of any instrument constituting or defining the constitution of a company or a foreign company, or any other document to be delivered to the Registrar for registration under the Act, shall be in accordance with the Authentication of Documents Act.

Cap. 4:06

(2) The Registrar may permit translations which are not certified in accordance with the requirement under subregulation (1), to be delivered to him upon such conditions as he thinks fit.

Requirements for preparation of concise annual reports

11. Every concise annual report for a company shall, for the purposes of sections 251 to 255 of the Act—

(*a*) be in writing;

(*b*) be dated;

(*c*) be signed on behalf of the board by two directors of the company or, if the company has only one director, by that director; and

(*d*) describe, so far as the board believes is material for the shareholders to have an appreciation of the state of the company's affairs and will not be harmful to the business of the company or of any of its subsidiaries, any change during the accounting period in—

(i) the nature of the business of the company or any of its subsidiaries; or

(ii) the classes of business in which the company has an interest, whether as a shareholder of another company or otherwise.

12. Accounting records of foreign companies or subsidiaries of foreign companies may be kept outside Malaŵi except for accounting records that— Keeping accounting records outside Malaŵi

(*a*) disclose, with reasonable accuracy, the financial position of the company;

(*b*) enable the preparation, in accordance with the Act, of the company's financial statements and any group financial statements and any other document required under the Act or any other written law, to be sent to, and kept at, a place in Malaŵi; or

(*c*) may be required by any legal authority in Malaŵi.

13.—(1) A private company with an annual turnover of twenty million Kwacha or less shall be exempted from having audited accounts. Audit for private companies

(2) Subject to any other written law, a company limited by guarantee with an annual income of twenty million Kwacha or less shall be exempted from having audited accounts.

PART III
Company Names

14.—(1) This Part sets out the characters, signs, symbols and punctuation that may be used in the name of a company registered under the Act (the "permitted characters"). Permitted characters

(2) The following permitted characters may be used in any part of the name—

(*a*) any character, sign or symbol set out in English alphabet;

(*b*) 0, 1, 2, 3, 4, 5, 6, 7, 8 or 9 or corresponding Roman numerals;

(*c*) full stop, comma, colon, semi-colon or hyphen; and

(*d*) any other punctuation.

(3) The signs and symbols referred to in subregulation (2) may be used but not as one of the first three permitted characters of the name.

(4) A name of a company shall not consist of more than fifty permitted characters.

15.—(1) A private company limited by guarantee shall be exempt from the requirement of section 49 of the Act (requirement to have name ending with "limited" or permitted alternative) so long as it meets the following two conditions— Exemption from requirement as to use of "limited"

(*a*) if the objects of the company are promotion or regulation of commerce, art, science, education, religion, charity, any profession

and other not for profit objective and anything incidental or conducive to any of those objects; and

(*b*) if the company's articles—

(i) require its income to be applied in promoting its objects;

(ii) prohibit the payment of dividends, or any return of capital, to its members; and

(iii) require all the assets that would otherwise be available to its members generally to be transferred on its winding up either—

(A) to another body with objects similar to its own; or

(B) to another body the objects of which are the promotion of charity and anything incidental or conducive thereto, whether or not the body is a member of the company.

Use of a name already existing in the Registrar's index

16.—(1) A company may be registered under the Act by a proposed name which is similar to a name that is already in the Registrar's index of company names (proposed same name), if the following conditions are met—

(*a*) the company or other body whose name already appears in the Registrar's index of company names ("Body X") consents to the proposed same name being the name of the other company ("Company Y");

(*b*) Company Y forms, or is to form, part of the same group as Body X; and

(*c*) Company Y provides to the Registrar a copy of a statement made by Body X indicating—

(i) the consent of Body X as referred to in paragraph (*a*); and

(ii) that Company Y forms, or is to form, part of the same group as Body X.

(2) If the proposed name is to be taken by a company which has not yet been incorporated, a copy of such statement to that effect shall be provided to the Registrar instead by the person who delivers to the Registrar the application for registration of the company (and the reference in subregulation (1) to the conditions in paragraphs (*a*) and (*b*) of the subregulation (1) shall be read accordingly).

(3) The Registrar may accept the statement referred to in paragraph (*c*) of subregulation (1) as sufficient evidence that

the conditions referred to in subregulation (1) (*a*) and (*b*) have been met.

(4) Where the consent referred to in subregulation (1) (*a*) is given by Body X, a subsequent withdrawal of that consent shall not affect the registration of Company Y by that proposed same name.

Treatment of similar names in the Registrar's index

17. In determining whether a name is the same as another name appearing in the Registrar's index of company names, the Registrar may disregard any word, expression or abbreviation that are commonly used in the English language.

Interpretation and permitted characters

18. Regulation 14 (2) and (3) and regulation 15 apply to the name of an FOREIGN company which is registered by that company under Part XV of the Act (Foreign Companies) as they apply to the name of a company formed and registered under the Act.

Interpretation and proposed same name

19.—(1) Regulation 16 applies to the proposed same name of a foreign company as it applies to the proposed same name of a company formed and registered under the Act.

(2) in this regulation "proposed same name" has the same meaning as in regulation 16.

PART IV
Foreign Companies

Particulars of the company

20. A foreign company shall deliver to the Registrar the following particulars—

(*a*) the company's name;

(*b*) the company's legal form;

(*c*) if it is registered in the country of its incorporation, the identity of the register in which it is registered and the number with which it is so registered;

(*d*) a list of its directors and secretary, containing—

(i) with respect to each director, name, physical and postal address, nationality and country of residence; and

(ii) with respect to the secretary (or where there are joint secretaries, with respect to each of them) name, physical and postal address, nationality and country of residence;

(*e*) the extent of the powers of the directors or secretary to represent the company in dealings with third parties and in legal

proceedings, together with a statement as to whether they may act alone or must act jointly and, if jointly, the name of any other person concerned;

Cap. 44:05

(*f*) whether the company is a financial institution within the meaning of the Financial Services Act;

(*g*) notice of the situation of its registered office in Malaŵi;

(*h*) a memorandum of appointment or power of attorney under the seal of the foreign company or executed on its behalf in such manner as to be binding on the company, stating the names and addresses of two or more persons resident in Malaŵi, not including a foreign company, authorized to accept on its behalf service of process and any notices required to be served on the company;

(*i*) where the list includes directors resident in Malaŵi who are members of the local board of directors of the company, a memorandum duly executed by or on behalf of the foreign company stating the powers of the local directors;

(*j*) a duly authenticated copy of the certificate of its incorporation or registration in its place of incorporation or origin or a document of similar effect; and

(*k*) a duly authenticated copy of its constitution, charter, statute or memorandum and articles or other instrument constituting or defining its constitution.

Annual return

21.—(1) A foreign company that carries on business in Malaŵi shall ensure that the Registrar receives each year no later than three months after its financial year, an annual return in the prescribed form confirming that the information on the foreign register in respect of the foreign company referred to in the return is correct at the date of the return.

(2) The annual return shall be dated as at a day within the month during which the return is required to be received by the Registrar.

Foreign company may register as a company

22.—(1) A foreign company may be registered as a company under this Act if—

(*a*) the company is authorized to transfer its incorporation under the law of the country in which it is incorporated;

(*b*) the company has complied with the requirements of that law in relation to the transfer of its incorporation;

(*c*) if that law does not require its shareholders, or a specified proportion of them, to consent to the transfer of its incorporation, the transfer has been consented to by not less than seventy-five per cent of its shareholders entitled to vote and voting in person or by proxy at a meeting of which not less than twenty-one days' notice is given specifying the intention to transfer the company's incorporation.

(2) A foreign company shall not be registered as a company under this Act if any insolvency proceedings have commenced or about to commence against it, in Malaŵi or elsewhere.

(3) A foreign company which has been registered as a company under the Act shall be deregistered if it would not satisfy the solvency test immediately after registered under this Act, satisfy the solvency test under the Act.

Registered valuer

23.—(1) For the purposes of section 131 of the Act, a person shall not be registered as a valuer unless the person—

(*a*) is a chartered accountant under the Public Accountants and Auditors Act, or any other qualifications acceptable to the Registrar; Cap. 53:06

(*b*) has been continuously in practice for a period of ten years; and

(*c*) is not disqualified under section 134 of the Act.

(2) The Registrar shall, every year in July, publish in the *Gazette* names of registered valuers.

Execution of documents by a company

24.—(1) A company shall execute its documents by—

(*a*) affixing its common seal, where it has a common seal; or

(*b*) affixing the signatures of its authorized signatories in accordance with subregulation (2) and (3), where the company does not have a common seal.

(2) A document shall be validly executed by a company if it is signed on behalf of the company by—

(*a*) two authorized signatories; or

(*b*) a director of a company in the presence of a witness who attests to the signature.

(3) For the purposes of subregulation (2), the following shall be authorized signatories—

(*a*) every director of the company; and

(*b*) in the case of public company, the secretary or any joint secretary of the company.

(4) A document signed in accordance with subregulation (2) and (3), and expressed, in whatever words, to be executed by the company shall have the same effect as if the document has been executed under the common seal of the company.

(5) A document shall be deemed to have been executed by a company in favour of a purchaser if it purports to be executed in accordance in subregulation (2) and (3).

(6) In subregulation (5), a "purchaser" means one who takes otherwise than by gift, in good faith and for valuable consideration.

(7) Where a document is to be signed by a person on behalf of more than one company, it shall not be duly signed by that person for the purposes of this regulation, unless the person signs it separately in each capacity.

(8) Reference in this regulation to a document being, or purporting to be, signed by a director or secretary, shall be construed, in the case where that office is held by a firm, as references to its being, or purporting to be, signed by an individual authorized by the firm to sign on its behalf.

(9) This regulation applies to a document that is, or purports to be, executed by a company in the name of, or on behalf of, another person, whether or not that person is also a company.

(10) A document shall be validly executed as a deed by a company for the purposes of any written law if—

(*a*) it is executed by the company; and

(*b*) it is delivered as a deed.

(11) For the purposes of subregulation (10), a document is presumed to be delivered upon its being executed unless a contrary intention is proved.

FIRST SCHEDULE

FORM 1

APPLICATION FOR REGISTRATION OF A COMPANY
SECTION 28 (1) OF THE COMPANIES ACT (CAP. 46:03)

[*If there is insufficient space on the form to supply the information required, attach a separate sheet containing the information set out in the prescribed format.*]

Name of Proposed Company: .....

Reservation Number/ Proposed Company Number: .....

Address of Registered Office: .....

.....

.....

Address for Service: .....

.....

Postal address to which communication from the Registrar may be sent .....

Email: .....

Completed by: .....

Address: .....

.....

Telephone: .....

Email: .....

Facsimile: .....

The following persons are the directors of the proposed company:

Full legal name:* .....

Residential address: .....

Email address [*optional*]: .....

Shares:

The following persons are the shareholders of the proposed company:

.....

*Please give first name(s) followed by surname is BLOCK letters.

Full legal name:* .....

Address:† .....

Number of shares [*please indicate if shares are held jointly*.]:

.....

.....

Total number of shares:

The following documents accompany this form:

1. The notice of name reservation.
2. Memorandum of association.
3. The consent and certificate of every director. [Please use form 2 for this purpose.]
4. The consent of every shareholder. [Please use form 3 for this purpose.]
5. The written authority of the agent that signed the form of consent referred to in paragraph 4 above. [*Delete if inapplicable*.]

Completed by:

Signature: .....

Date: .....

Full legal name: .....

Address: .....

.....

[*If there is more than one applicant, each must sign and provide full legal name and address in the prescribed format*.]

*In the case of a natural person, please give first name(s) followed by surname in BLOCK letters.

†In the case of a natural person, please give residential address. In the case of a body corporate, please give the address of its office or, if it does not have a registered office, of its principal place of business.

FORM 2

CONSENT AND CERTIFICATE OF A DIRECTOR OR DIRECTORS OF A PROPOSED COMPANY
SECTION 28 OF THE COMPANIES ACT (CAP. 46:03)

[*If there is more than one director, attach a separate sheet or sheets with the consent and certificate of the additional director or directors set out in the prescribed format*.]

Name of Proposed Company: .....

Reservation Number/ Proposed Company Number: .....

Director's First Name(s): .....

Director's Surname: .....

Date of Birth: .....

[*Please ensure your full legal name is provided—initials are not allowed.*]

[*Please read the disqualification details below.*]

I consent to be a director of the above proposed company and certify that I am not disqualified from being appointed or holding office as a director of a company.

Signature: .....

Name of signatory: .....

Director's residential address: .....

DISQUALIFICATION DETAILS

Please ensure that you are not disqualified from being a director of this company before signing this consent form.

A person cannot be a director of a company if he is any of the following—

(*a*) under eighteen years of age or over seventy years of age;

(*b*) an undischarged bankrupt or of unsound mind; or

(*c*) a prohibited person from being a director or promoter of, or being concerned or taking part in the management of, a company under any statutory provisions.

A person who is not a natural person cannot be a director of a company.

For more information refer to section 164 of the Companies Act.

Completed by:

Signature: .....

Date: .....

Full legal name: .....

Address: .....

.....

FORM 3

CONSENT OF A SHAREHOLDER OR SHAREHOLDERS OF PROPOSED COMPANY

SECTION 28 OF THE COMPANIES ACT (CAP. 46:03)

[*If there is more than one shareholder, attach a separate sheet or sheets with the consent of the additional shareholder or shareholders set out in the prescribed format. If there is insufficient space on the form to supply the information required, attach a separate sheet containing the information set out in the prescribed format.*]

Name of Proposed Company: .....

Reservation Number/Proposed Company Number: .....

Shareholder's full legal name: .....

Number of shares: ..... Class of shares: .....

The person named above consents to being a shareholder of the above proposed company and to taking the class and number of shares specified.

Signature: .....

Name of signatory: .....

Shareholder's address details: .....

IMPORTANT INFORMATION

- Initials of the person's name are not allowed. Full legal names must be provided.
- If the shareholder is a natural person, please give a residential address. If the shareholder is a body corporate, please give the address of its registered office or, if it does not have a registered office, the address of its principal place of business.
- If shares are held jointly by 2 or more persons, the consent of each of those persons must be provided in the prescribed format.
- If this consent form has been signed by an agent, it must be accompanied by the instrument authorizing the agent to sign it.

Completed by:

Signature: .....

Date: .....

Full legal name: .....

Address: .....

.....

FORM 4

APPLICATION FOR RESERVATION OF A COMPANY NAME
SECTION 45 OF THE COMPANIES ACT (CAP. 46:03)

Name of Proposed Company: .....

Reservation Number/Proposed Company Number: .....

Type of Company: Local/Foreign (*Delete as appropriate*)

Signature of applicant: .....

Date: .....

Full legal name of applicant: .....

IMPORTANT INFORMATION

The Registrar shall not reserve a name—

- the use of which would contravene a written law; or
- that is identical or almost identical to the name of another company; or
- that is identical or almost identical to a name that has already been reserved and that is still available for registration; or
- that, in the opinion of the Registrar, is offensive.

The Registrar will advise the applicant by written notice as to whether or not the Registrar has reserved the name. If the name has been reserved, then, unless the reservation is sooner revoked by the Registrar, the name is available for registration of a company with that name or on a change of name for twenty working days after the date stated in the notice.

A company name reservation does not provide any proprietary rights or interests in the name.

Completed by:

Signature: .....

Date: .....

Full legal name: .....

Address: .....

.....

FORM 5

APPLICATION TO CHANGE A NAME OF A COMPANY
SECTION 52 OF THE COMPANIES ACT (CAP. 46:03)

Company No: .....

Existing Name of the Company: .....

Proposed Name of Company: .....

Reservation No: .....

[*This application must be made by a director of the company with the approval of its board or by a person authorized by the company's constitution.*]

This application is accompanied by the notice reserving the proposed name of the company.

Signature of director/authorized person: .....

Date: .....

Full legal name of director/authorized person: .....

Signature .....

Date: .....

Full legal name: .....

Address: .....

.....

FORM 6

NOTICE OF ADOPTION, ALTERATION, OR REVOCATION OF CONSTITUTION
SECTIONS 34 AND 35 OF THE COMPANIES ACT (CAP. 46:03)

Company Name: .....

Company No: .....

The above company has (tick)—

.....	adopted a constitution	Date: .....
.....	altered its constitution	Date: .....
.....	revoked its constitution	Date: .....
.....	revoked its constitution and adopted the new attached constitution.	Date: .....

Please insert the date on which the company adopted, altered, or revoked its constitution (as the case may be).

A copy of the constitution as adopted/†alteration to the constitution† is attached to this notice.

†Delete if inapplicable.

Signature of director/authorized person: .....

Date: .....

Full legal name of director/authorized person: .....

Completed by :

Signature: .....

Date: .....

Full legal name: .....

Address .....

.....

FORM 7

NOTICE OF ISSUE OF SHARES AND OF APPROVAL FOR ISSUE ITS OF SHARES

SECTIONS 83, 89, 96, 102 AND 119 OF THE COMPANIES ACT (CAP. 46:03)

[*If there is insufficient space on the form to supply the information required, attach a separate sheet containing the information set out in the prescribed format.*]

Company Name: .....

Company No: .....

Issue of shares:

Shares prior to this issue: ..... (*a*)

Set out in the table below are particulars of the issue of shares by the above company.

Date of issue: ..... Number of shares: .....

Total shares issued in this issue: ..... (*b*)

Total company shares (a + b = c): ..... (*c*)

Approval:

[Complete only if shares cannot be issued by reason of any limitation or restriction in the company's constitution.]

Set out in the table below are the particulars of the approval by shareholders to the issue of shares by the above company.

Number of shares: ..... Terms of approval of issue (if any): .....

Date of approval: .....

Signature of director/authorized person: .....

Date: .....

Full legal name of director/authorized person: .....

Completed by:

Signature: .....

Date: .....

Full legal name: .....

Address: .....

.....

FORM 8

NOTICE OF PURCHASE OR ACQUISITION BY COMPANY OF ITS OWN SHARES

SECTION 109 OF THE COMPANIES ACT (CAP. 46:03)

[*If there is insufficient space on the form to supply the information required, attach a separate sheet containing the information set out in the prescribed format.*]

Company Name: .....

Company No: .....

Set out in the table below are particulars of the purchase or acquisition by the above company of its own shares.

Name of person(s) from whom shares purchased or acquired: .....

Number of shares purchased or acquired: .....

Date of purchase or acquisition: .....

Cancelled Shares (*tick if applicable*): .....

Treasury Shares (*tick if applicable*): .....

Total Number of Shares after cancellation: .....

Signature of director/authorized person: .....

Full legal name of director/authorized person: .....

Date: .....

Completed by:

Signature: .....

Date: .....

Full legal name: .....

Address: .....

.....

FORM 9

CONSENT AND CERTIFICATE OF A DIRECTOR
SECTION 165 OF THE COMPANIES ACT (CAP. 46:03)

Company Name: .....

Company No: .....

Director's First Name(s): .....

Director's Surname: .....

[*Please ensure your full legal name is provided—initials are not allowed.*]

[*Please read the disqualification details below.*]

I consent to be a director of the above company and certify that I am not disqualified from being appointed or holding office as a director of a company.

Signature: .....

Name of signatory: .....

Date of appointment: .....

Director's residential address: .....

DISQUALIFICATION DETAILS

Please ensure that you are not disqualified from being a director of this company before signing this consent form.

A person cannot be a director of a company if he or she is any of the following:

(*d*) under 18 years of age or over 70 years of age; or

(*e*) an undischarged bankrupt or of unsound mind; or

(*f*) prohibited from being a director or promoter of, or being concerned or taking part in the management of, a company under any statutory provisions.

A person who is not a natural person cannot be a director of a company.

For more information refer to section 164 of the Companies Act.

Completed by:

Signature: .....

Date: .....

Full legal name: .....

Address: .....

.....

FORM 10

NOTICE OF CHANGE OF DIRECTORS AND PARTICULARS OF DIRECTORS

SECTION 172 OF THE COMPANIES ACT (CAP. 46:03)

[*If there is insufficient space on the form to supply the information required, attach a separate sheet containing the information set out in the prescribed format.*]

Company Name: .....

Company No: .....

*Director(s) ceasing to hold office:

[*Please provide director's full legal name.*]

First name(s): ..... Surname: .....

Residential address: .....

Date on which director ceased to hold office: .....

*Complete only if applicable.

*Appointment of new director(s)

[*Please provide director's full legal name.*]

First name(s): ..... Surname: .....

Residential address: .....

Email [*optional*]: ..... Date of appointment: .....

[*In the case of the appointment of a new director, the consent and certificate of the new director must be attached to this Form. Please use Form 9 for this purpose.*]

*Complete only if applicable.

*Change of name or residential address of director

[*Attach separate sheets for multiple entries.*]

Director's Surname: .....

Former Surname: .....

Director's First Name: .....

Former First Name: .....

Address: .....

Former Address: .....

Date of Change: .....

Set out below are the names and residential addresses of every person who is a director of the company from the date of this notice.

Full legal name*: .....

Residential address: .....

*Please give first name(s) followed by surname in BLOCK letters.

Signature of director/authorized person: .....

Dated: .....

Full legal name of director/authorized person: .....

[*This form cannot be signed by a resigned director.*]

Completed by:

Signature: .....

Date: .....

Full legal name: .....

Address: .....

.....

FORM 11

NOTICE OF CHANGE OF REGISTERED OFFICE OR ADDRESS FOR SERVICE

SECTION 55 OF THE COMPANIES ACT (CAP. 46:03)

Company Name: .....

Company No: .....

Address for New Registered Office: .....

.....

The change in the address for service of the company takes effect on:

.....

IMPORTANT INFORMATION

- Refer to section 55 of the Companies Act.
- A company must have a registered office and an address for service in Malaŵi.
- The address for service may be the company's registered office or another place.
- If the registered office or the address for service is at the offices of any firm of accountants, legal practitioners, or any other person, you must state that the company's registered office or its address for service is at the offices of that firm or person and also state the particulars of the location in any building of those offices.
- If the registered office or the address for service is not at the offices of any such firm or person but is located in a building occupied by persons other than the company, you must state the particulars of its location in the building.

NOTE: The change in registered office or the change in address for service takes effect on a date stated in this notice not being a date that is earlier than five working days after this notice is registered.

Postal address to which communication from the Registrar may be sent: .....

Email: .....

Signature of director/authorized person: .....

Dated: .....

Full legal name of director/authorized person: .....

Completed by:

Signature: .....

Date: .....

Full legal name: .....

Address: .....

.....

FORM 12

ANNUAL RETURN
SECTION 256 OF THE COMPANIES ACT (CAP. 46:03)

Company Name: .....

Company No: .....

Address for communication

[*This is the postal address to which communication from the Registrar will usually be sent.*]

Current address: .....

.....

Updated address: .....

.....

Email reminder

[*To receive a reminder by email instead of by paper, provide your email address here.*]: .....
.....

Address of registered office:

[*This address must be a physical address and not a P.O. Box, Private Bag, or document exchange address.*]

Current address: .....

.....

Updated address: .....

.....

Address for service [*This address must be a physical address and not a P. O. Box, Private Bag, or document exchange address.*]

Current address: .....

.....

Updated address: .....

.....

Company Directors:

Full legal name: .....

Residential address: .....
Share parcels Total number of shares: .....

[*Please give in the table below the names and addresses of, and the number of shares held by, the persons holding the 10 largest numbers of shares. If*

the company is not a party to a listing agreement with a registered exchange, please give the names and addresses of and the number of shares held by, the other shareholders of the company on a separate sheet or sheets set out in the prescribed manner.]

[*Please tick the box if the company has more than 10 share parcels.*]

Number of Shares in Share Parcel	Full Legal Name of Shareholder	Address of Shareholder

If the shareholder is a natural person, please give a residential address. If the shareholder is a body corporate, please give the address of its registered office or, if it does not have a registered office, the address of its principal place of business.

NOTE: If the trustees of a trust (for example, a family trust) the names of all the trustees must be shown and the shares recorded as being jointly held by them.

Auditor and Annual Meeting:

Specify the date of the last annual meeting or resolution *in lieu* of a meeting: .....

Did the shareholders pass a unanimous resolution not to appoint an auditor for the current year? Yes/No (delete as applicable)

If you answered yes to the question above, specify the date of the resolution: .....

Date of Annual Return [*This is the date within the month that your return is due to be filed.*] .....

Authorized signature

I certify that the particulars contained in this annual return are correct.

Name of director/authorized person: .....

Signature of director/authorized person: .....

Completed by:

Signature: .....

Date: .....

Full legal name: .....

Address: .....

.....

FORM 13

REQUEST TO REMOVE COMPANY FROM THE REGISTER
SECTION 348 (1) (*d*) OF THE COMPANIES ACT (CAP. 46:03)

Company Name: .....

Company No: .....

I, [Full Legal Name], being a shareholder authorized by special resolution of the above company to make this application/* a director authorized by the board of the above company to make this application/* a person required or permitted by the constitution to make this application*, request that the above company be removed from the register.

The grounds on which this request is made are—

*The company has ceased to carry on business, has discharged in full its liabilities to all its known creditors, and has distributed its surplus assets in accordance with its constitution and the Companies Act.

or

*The company has no surplus assets after paying its debts in full or in part, and no creditor has applied to the court under for an order putting the company into liquidation.

The following documents accompany this request:

1. A written notice from the Malaŵi Revenue Authority stating that the Commissioner General has no objection to the company being removed from the Malaŵi register.

2. A copy of the special resolution of shareholders under section 348 (1) (*d*) (i) of the Companies Act.*

[*Delete as applicable.]

Signature of shareholder/* director/* authorized person*: .....

.....

Full legal name of shareholder/* director/* authorized person *: .....

Completed by:

Signature: .....

Date: .....

Full legal name: .....

Address: .....

.....

FORM 14

NOTICE OF CHANGE OF NAME OF A FOREIGN COMPANY
SECTION 359 (3) OF THE COMPANIES ACT (CAP. 46:03)

Registered Name of Foreign Company: .....

Company No: .....

The above company has changed its name to: .....

Name Reservation No: .....

Effective Date: .....

NOTE: This is the date of change in the country of incorporation.

This notice is accompanied by the notice reserving the name of the company.

Signature of director/authorized person: .....

Date: .....

Full legal name of director/authorized person: .....

Completed by:

Signature: .....

Date: .....

Full legal name: .....

Address: .....

.....

FORM 15

APPLICATION FOR REGISTRATION OF A FOREIGN COMPANY IN THE REGISTER
SECTION 360 OF THE COMPANIES ACT (CAP. 46:03)

[*If there is insufficient space on the form to supply the information required, attach a separate sheet containing the information set out in the prescribed format.*]

Company Name: .....

Company No: .....

Country Where Incorporated: .....

Date on which company commenced carrying on business in Malaŵi:

.....

Contact Name and Address for Communication:

Full Name: .....

Address: .....

.....

Email: .....

Directors:

The following persons are the directors of the company at the date of this application:

Full legal name:* .....

Residential address: .....

Email address [*optional*]: .....

*Please give first name(s) followed by surname in BLOCK letters.

Persons authorized to accept service:

The following person/* persons* resident/* incorporated* in Malaŵi is/* are* authorized to accept service in Malaŵi of documents on behalf of the company:

*Delete if inapplicable.

Full legal name*: .....

Address†: .....

The following documents accompany this application:

1. Any document that evidences the incorporation of the company.

2. A copy of the instrument constituting or defining the constitution of the company.

3. The notice of name reservation.

4. If the documents referred to in 1 and 2 above are not in English, a translation of the documents certified in accordance with regulation 10 of the Companies Regulations.

Signed by or on behalf of the foreign company: .....

Date: .....

Full legal name of signatory: .....

*In the case of natural person, please give first name(s) followed by surname in BLOCK letters.

†This address must be a physical address in Malaŵi and not a P. O. Box or Private Bag address.

FORM 16

NOTICE OF ALTERATION OF CONSTITUTION OF FOREIGN COMPANY, CHANGE OF DIRECTORS, CHANGE OF PLACE OF BUSINESS, OR CHANGE IN PERSONS AUTHORIZED TO ACCEPT SERVICE

SECTION 362 OF THE COMPANIES ACT (CAP. 46:03)

[*If there is insufficient space on the form to supply the information required, attach a separate sheet containing the information set out in the prescribed format.*]

Company Name: .....

Company No: .....

ALTERATION TO CONSTITUTION OF FOREIGN COMPANY

[*Complete only if applicable.*]

The instrument constituting/* defining the constitution of* the above company was altered on: .....

A copy of the document by which the alteration was made is attached.

*Delete if inapplicable.

CHANGE IN ADDRESS OF PLACE OF BUSINESS OR PRINCIPAL PLACE OF BUSINESS OF FOREIGN COMPANY

[*Complete only if applicable.*]

Old address: .....

New address of place of business or principal place of business in Malaŵi:
.....
.....

ADDRESS FOR COMMUNICATION

Old address: .....

[Please complete if the FOREIGN company has a new address for communications from the Registrar.]: .....

CHANGE IN DIRECTOR'S DETAILS

[*Complete only if applicable.*]

Director(s) ceasing to hold office [*Please provide director's full legal name.*]

First name(s): ..... Surname: .....

Residential address: .....

Date on which director ceased to hold office: .....

Appointment of new director(s) [*Please provide director's full legal name*.]

First name(s): ..... Surname: .....

Residential address: .....

Email [*optional*]: ..... Date of appointment: .....

CHANGE OF NAME OR RESIDENTIAL ADDRESS OF DIRECTOR

[*Attach separate sheet in the prescribed format for multiple entries.*]

Director's Surname: .....

Director's Former Surname: .....

Director's First Name(s): .....

Director's Former First Name(s): .....

Residential Address: .....

Former Residential Address: .....

Effective date of change of name or of residential address: .....

Set out below is a full list of the current directors of the company (including new appointments) at the date this notice is signed.

Full legal name*: .....

Residential address: .....

CHANGE IN PERSONS AUTHORIZED TO ACCEPT SERVICE IN MALAŴI OF DOCUMENTS ON BEHALF OF FOREIGN COMPANY

[*Complete only if applicable.*]

Person ceasing to be authorized to accept service:

Full name:* .....

Address:* .....

Date appointed: ..... Email address [*optional*]: .....

Appointment of person authorized to accept service

Full name:* .....

Address:* .....

Date appointed: ..... Email address [*optional*]: .....

*In the case of a natural person, give a residential address. In the case of a body corporate, please give the address of its registered office or, if it does not have a registered office, the address of its principal place of business.

DETAILS OF ANY OTHER PERSONS AUTHORIZED TO ACCEPT SERVICE IN MALAŴI OF DOCUMENTS ON BEHALF OF THE FOREIGN COMPANY AT THE DATE ON WHICH THIS NOTICE IS SIGNED

Full legal name:* .....

Address: .....

Email address [*optional*]: .....

Signature of director/authorized person: .....

Date: .....

Full legal name of director/authorized person: .....

Completed by:

Signature: .....

Date: .....

Full legal name: .....

Address: .....

.....

*In the case of a natural person, please give a residential address. In the case of a body corporate, please give the address of its registered office or, if it does not have a registered office, the address of its principal place of business.

FORM 17

ANNUAL RETURN OF A FOREIGN COMPANY
SECTION 256 OF THE COMPANIES ACT (CAP. 46:03)

Company Name: .....

Company No: .....

Date of annual return: .....

Address of place of business or principal place of business in Malaŵi:

.....

.....

Person authorized to accept service in Malaŵi of documents on behalf of the company

Name: .....

Address: .....

[*If more than one person is authorized to accept service in Malaŵi, information about only one of those persons must be provided.*]

Address for communication: .....

DIRECTORS

Full legal name:* .....

Residential address: .....

Email address [*optional*]: .....

The information on the foreign register in respect of the above company is correct at the date of this return.

Signature of director/authorized person: .....

Date: .....

Full legal name of director/authorized person: .....

FORM 18

NOTICE BY A FOREIGN COMPANY OF INTENTION TO CEASE TO CARRY ON BUSINESS IN MALAŴI

SECTION 369 OF THE COMPANIES ACT (CAP. 46:03)

Company Name: .....

Company No: .....

The above company will cease to carry on business in Malaŵi on: .....

Public notice under section 369 of the Companies Act of the intention of the above company to cease to carry on business in Malaŵi was given on .....

NOTE: Public notice (under section 369 of the Act) of the company's intention to cease carrying on business in Malaŵi must have been given at least 3 months before this notice is given to the Registrar.

Signature of director/authorized person: .....

Date: .....

Full legal name of director/authorized person: .....

FORM 19

APPLICATION BY A FOREIGN COMPANY TO REGISTER AS A COMPANY

SECTION 360 OF THE COMPANIES ACT (CAP. 46:03)

Company Name: .....

Company No: .....

[*If company is already on a foreign companies register.*]

Country in which company is incorporated: .....

The following documents must accompany this application:

1. A certified copy of the certificate of incorporation of the foreign company or any other similar document that evidences the incorporation of the foreign company.

2. A certified copy of the documents defining the constitution of the foreign company.

3. A statutory declaration by a director or authorized person that the foreign company is not prevented from being registered as a company under the Companies Act.

4. A completed application to register a company under the Companies Act.

5. If any document referred to above is not in English, a translation of the document certified in accordance with the Companies Regulations.

Signature of director: .....

Date: .....

Full legal name of director: .....

FORM 20

APPLICATION FOR REGISTRATION AS A VALUER

SECTION 134 OF THE COMPANIES ACT (CAP. 46:03)

This form, in duplicate, should be forwarded to the Registrar of Companies Post Office Box 100 Blantyre, accompanied by the prescribed fee

(PLEASE TYPE OR PRINT)

I .....

Full Name

Occupation of: .....

Postal Address: .....

.....

Physical Address: .....

hereby make application for registration as a valuer, under section 134 of the Companies Act, by virtue of my qualifications, which include not less than ten years' practical experience in Malaŵi; and I do solemnly and sincerely declare that:

1. I was born on ..... /..... / ..... at .....
Place of birth

2. I seek registration under section 134 of the Companies Act and the qualifications entitling me to such registration are the following:

(i) Academic/Educational

.....

.....

(*State recognized certificates held and request your university to forward a certified copy of academic record directly to Registrar*)

(ii) Evidence of practical experience is to accompany this application

.....

.....

3. For evidence that I am of good character and reputation, reference may be made to the following persons, viz. (*State names, addresses and occupations of no less than three persons*)

Name: .....

Occupation: .....

Address: .....

4. I have not been convicted of an indictable offence punishable by imprisonment for a term of two years or upwards and I have not been convicted of an offence which would tend to dishonour me in the public estimation.

And I make this solemn declaration, conscientiously believing the same to be true, by virtue of the Oaths Affirmations and Declarations Act.

Signature of Applicant: .....
(*Before Commissioner for Oaths*)

For Office Use

Approved/Rejected

Reason for Rejection

.....

.....

.....

.....

.....
Registrar

SECOND SCHEDULE

PART I
Fees Payable to Registrar of Companies

	K
For an application to register a company under section 28 (1) of the Act	50,000
For an application to reserve the name of a company under section 45 (1) of the Act	10,000
For registration of an annual return under section 256 (1) of the Act	10,000
For registration of documents to effect an amalgamation under the Act	50,000
For an application to restore a company to the Malaŵi register under section 353 of the Act	50,000
For an application to register a foreign company under section 360 (1) of the Act.	100,000
For registration of an annual return by a foreign company under the Act	10,000
For inspection under section 12 (1) of the Act of any number of documents contained in a single file that is part of the Malaŵi register or the foreign register	5,000
For certification of a copy of or extract from any document	1,000
For a copy of, or extract from, a document that is part of the Malaŵi register or the foreign register, in addition to any fee for certifying the copy or extract—	
(*a*) if a photocopy is made by a member of the public using a photocopy machine provided for public use, for each A4 sheet	500

(*b*) if a photocopy is made by the Registrar, for each A4 sheet 500

For any other electronic search 2,000

Registration of any other document 10,000

For Application as Registration as a Valuer . . 500,000

PART II

SCHEDULE OF PENALTIES

AMOUNTS PAYABLE TO THE REGISTRAR OF COMPANIES BY WAY OF PENALTY

1. For the delivery of a document after the time specified in the Act in respect of that document (whether or not any other fee is payable and in addition to any other fee payable)—

(*a*) if delivered not later than 25 working days after the time prescribed 50,000

(*b*) if delivered more than 25 working days after the time prescribed 100,000

COMPANIES (SHAREHOLDER ACTIONS) RULES

ARRANGEMENT OF RULES

RULE

1. Citation
2. Application
3. Derivative claim
4. Presentation of petition
5. Service of petition
6. Return of petition
7. Advertisement of the order

G.N. 7/2017

COMPANIES (SHAREHOLDER ACTIONS) RULES

under s. 382 (3)

Citation

1. These Rules may be cited as the Companies (Shareholder Actions) Rules.

Application

2.—(1) These Rules apply in relation to petitions presented to the Court under Division II, Part XIV of the Act.

(2) Except where they are inconsistent with the Act and these Rules, the rules of procedure applicable in the High Court or the Supreme Court of Appeal shall apply with necessary changes to proceedings under Division II, Part XIV of the Act.

Derivative claim

3.—(1) This rule shall apply where a company or other incorporated body is alleged to be entitled to claim a remedy and a petition is filed by one or more members of the company or other incorporated body for it to be given that remedy (a "derivative claim").

(2) A company or other incorporated body for whose benefit a remedy is sought shall be a respondent to a derivative claim under this rule.

(3) After a petition has been issued under subrule (1), the petitioner shall apply, by way of summons, to the Court for leave to continue the derivative claim under section 337 (2) and (3) of the Act, and shall not take any other step in the proceedings except—

(*a*) as provided by subrule (5); or

(*b*) where the Court grants leave.

(4) An application under subrule (3) shall be supported by written evidence.

(5) The petition, summons and written evidence in support of the summons, shall be served on the respondent within a period within which the petition is to be served and, in any event, at least fourteen days before a Court is to hear the application.

(6) Where a Court grants the petitioner leave to continue the derivative claim, the respondent shall file his defence within fourteen days of being granted leave or such period as the Court may specify.

(7) The Court may order a company or other incorporated body to indemnify the petitioner against any liability in respect of costs incurred in a claim under section 338 of the Act.

Presentation of petition

4.—(1) All shareholder actions shall be by way of petition.

(2) The petition shall specify the grounds on which it is presented and the nature of the relief which is sought by the petitioner, and shall be delivered to the Court for filing with sufficient copies for service under rule 5.

(3) The Court shall fix a date, time and venue for a hearing (the "return day") on which, unless the Court otherwise directs, the petitioner and any respondent including the company shall attend before the High Court Registrar or a Judge for directions to be given in relation to the procedure on the petition.

(4) At the time of fixing the return day, the Court shall return to the petitioner sealed copies of the petition for service, each endorsed with the return day and the time of hearing.

(5) For avoidance of doubt, leave shall not be required for any other shareholder action other than a derivative claim.

Service of petition

5.—(1) The petitioner shall, at least fourteen days before the return day, serve a sealed copy of the petition on the company.

(2) In the case of a petition based upon section 343 of the Act, the petitioner shall also, at least fourteen days before the return day, serve a sealed copy of the petition on every respondent named in the petition.

Return of petition

6. On the return day, or at any time after the return day, the Court shall give such directions as it considers appropriate with respect to the following matters—

(*a*) service of the petition on any person, whether in connexion with the date, time, and venue of a further hearing, or for any other purpose;

(*b*) whether points of claim and defence are to be delivered;

(*c*) whether, and if so by what means, the petition is to be advertised;

(*d*) the manner in which any evidence is to be adduced at any hearing before a Judge and in particular, but without prejudice to the generality of the foregoing, as to—

(i) the taking of evidence wholly or in part by witness statement or orally;

(ii) the cross-examination of any persons making a witness statement; and

(iii) the matters to be dealt with in evidence;

(*e*) any other matter affecting the procedure on the petition or in connexion with the hearing and disposal of the petition; and

(*f*) such orders, if any, including an order of stay of execution of judgment for any period, as the Court considers appropriate, with a view to mediation or other alternative dispute resolution mechanisms.

Advertisement of the order

7. Where the Court considers that an order made under paragraph (*f*) of rule 6 should be advertised, it shall give directions as to the manner and time of the advertisement.

PARTNERSHIP

CHAPTER 46:04

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CHAPTER 46:04

PARTNERSHIP

ARRANGEMENT OF SECTIONS

SECTION

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2. Interpretation

PART II

NATURE OF PARTNERSHIP

3. Definition of a partnership
4. Rules for determining existence of partnership
5. Postponement of rights of person lending or selling in consideration of share of profits in case of insolvency
6. Meaning of firm

PART III

RELATIONS OF PARTNERS TO PERSONS DEALING WITH THEM

7. Power of partner to bind the firm
8. Partners bound by acts on behalf of firm
9. Partner using credit of firm for private purposes
10. Effect of notice that firm will not be bound by acts of partner
11. Liability of partners
12. Liability of the firm for wrongs
13. Misapplication of money or property received for or in custody of the firm
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21. Variation by consent of terms of partnership
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SECTION

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38. Rights of person dealing with firm against apparent members of firm
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41. Rights of partners as to application of partnership property
42. Apportionment of premium where partnership prematurely dissolved
43. Rights where partnership dissolved for fraud or misrepresentation
44. Right of outgoing partner in certain cases to share profits made after dissolution
45. Retiring or deceased partner's share to be a debt
46. Rule for distribution of assets on final settlement of accounts
47. Saving for rules of equity and common law

CHAPTER 46:04

PARTNERSHIP

4 of 1969

An Act relating to partnerships and matters incidental thereto and connected therewith

PART I

PRELIMINARY

Short title

1. This Act may be cited as the Partnership Act.

Interpretation

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

"business" includes every trade, occupation or profession;

"Court" means the High Court.

PART II

NATURE OF PARTNERSHIP

Definition of a partnership

3.—(1) Partnership is the relation which subsists between persons carrying on business in common with a view to profit.

(2) The relation between members of any company or association which is—

(*a*) registered as a company under any written law for the time being in force in Malaŵi rating to the registration of joint stock companies; or

(*b*) formed or incorporated by or in pursuance of any other written law, letters patent or Royal Charter;

is not a partnership within the meaning of this Act.

Rules for determining existence of partnership

4. In determining whether a partnership does or does not exist,regard shall be had to the following rules—

(*a*) joint tenancy, tenancy in common, joint property, common property, or part ownership does not of itself create a partnership as to anything so held or owned, whether the tenants or owners do or do not share any profits made by the use thereof;

(*b*) the sharing of gross returns does not of itself create a partnership, whether the persons sharing such returns have or have not a joint or common right or interest in any property from which or from the use of which the returns are derived;

(*c*) the receipt by a person of a share of the profits of a business is *prima facie* evidence that he is a partner in the business, but receipt of such a share, or of a payment contingent on or varying with the profits of a business, does not of itself make him a partner in the business; and in particular—

(i) the receipt by a person of a debt or other liquidated amount by instalments or otherwise out of the accruing profits of a business does not of itself make him a partner in the business or liable as such;

(ii) a contract for the remuneration of a servant or agent of a person engaged in a business by a share of the profits of the business does not of itself make the servant or agent a partner in the business or liable as such;

(iii) a person being the widow or child of a deceased partner, and receiving by way of annuity a portion of the profits made in the business in which the deceased person was a partner, is not by reason only of such receipt a partner in the business or liable as such;

(iv) the advance of money by way of loan to a person engaged or about to engage in any business on a contract with that person that the lender shall receive a rate of interest varying with the profits, or shall receive a share of the profits arising from carrying on the business, does not of itself make the lender a partner with the person or persons carrying on the business or liable as such:

Provided that the contract is in writing, and signed by or on behalf of all the parties thereto;

(v) a person receiving by way of annuity or otherwise a portion of the profits of a business in consideration of the sale by him of the goodwill of the business is not by reason only of such receipt a partner in the business or liable as such.

Postponement of rights of person lending or selling in consideration of share of profits in case of insolvency

5. In the event of any person to whom money has been advanced by way of loan upon such a contract as is mentioned in section 4, or of any buyer of a goodwill in consideration of a share of the profits of the business, being adjudged a bankrupt, entering into an arrangement to pay his creditors less than twenty shillings in the pound, or dying in insolvent circumstances, the lender of the loan shall not be entitled to recover anything in respect of his loan, and the seller of the goodwill shall not be entitled to recover anything in respect of the share of profits contracted for, until the claims of the other creditors of the borrower or buyer for valuable consideration in money or money's worth have been satisfied.

Meaning of firm

6. Persons who have entered into partnership with one another are for the purposes of this Act called collectively a firm and the name under which their business is carried on is called the firm-name.

PART III

Relations of Partners to Persons Dealing with Them

Power of partner to bind the firm

7. Every partner is an agent of the firm and his other partners for the purpose of the business of the partnership. The acts of every partner who does any act for carrying on in the usual way business of the kind carried on by the firm of which he is a member bind the firm and his partners, unless the partner so acting has in fact no authority to act for the firm in the particular matter, and the person with whom he is dealing either knows that he has no authority, or does not know or believe him to be a partner.

Partners bound by acts on behalf of firm

8. An act or instrument relating to the business of the firm done or executed in the firm-name, or in any other manner showing an intention to bind the firm, by any person thereto authorized, whether a partner or not, is binding on the firm and all the partners:

Provided that this section shall not affect any general rule of law relating to the execution of deeds or negotiable instruments.

Partner using credit of firm for private purposes

9. Where one partner pledges the credit of the firm for a purpose apparently not connected with the firm's ordinary course of business, the firm is not bound, unless he is in fact specially authorized by the other partners; but this section does not affect any personal liability incurred by an individual partner.

Effect of notice that firm will not be bound by acts of partner

10. If it has been agreed between the partners that any restriction shall be placed on the power of any one or more of them to bind the firm, no act done in contravention of the agreement is binding on the firm with respect to persons having notice of the agreement.

Liability of partners

11. Every partner in a firm is liable jointly with the other partners for all debts and obligations of the firm incurred while he is a partner; and after his death his estate is also severally liable in a due course of administration for such debts and obligations, so far as they remain unsatisfied, but subject to the prior payment of his separate debts.

Liability of the firm for wrongs

12. Where, by any wrongful act or omission of any partner acting in the ordinary course of the business of the firm, or with the authority of his co-partners, loss or injury is caused to any person not being a partner in the firm, or any penalty is incurred, the firm is liable therefor to the same extent as the partner so acting or omitting to act.

Misapplication of money or property received for or in custody of the firm

13. In the following cases, namely—

(*a*) where one partner acting within the scope of his apparent authority receives the money or property of a third person and misapplies it; and

(*b*) where a firm in the course of its business receives money or property of a third person, and the money or property so received is misapplied by one or more of the partners while it is in the custody of the firm,

the firm is liable to make good the loss.

Liability for wrongs joint and several

14. Every partner is liable jointly with his co-partners and also severally for everything for which the firm while he is a partner therein becomes liable under section 12 or section 13.

Improper employment of trust property for partnership purposes

15. If a partner, being a trustee, improperly employs trust property in the business or on the account of the partnership, no other partner is liable for the trust property to the persons beneficially interested therein;

Provided that—

(i) this section shall not affect any liability incurred by any partner by reason of his having notice of a breach of trust; and

(ii) nothing in this section shall prevent trust money from being followed and recovered from the firm if still in its possession or under its control.

Persons liable by "holding out"

16. Everyone who by words spoken or written or by conduct represents himself, or who knowingly suffers himself to be represented, as a partner in a particular firm, is liable as a partner to any one who has on the faith of any such representation given credit to the firm, whether the representation has or has not been made or communicated to the person so giving credit by or with the knowledge of the apparent partner making the representation or suffering it to be made:

Provided that where after a partner's death the partnership business is continued in the old firm's name, the continued use of that name or of the deceased partner's name as part thereof shall not of itself make his executors or administrators, estate or effects, liable for any partnership debts contracted after his death.

Admissions and representations of partners

17. An admission or representation made by any partner concerning the partnership affairs, and in the ordinary course of its business, is evidence against the firm.

Notice to acting partner to be notice to the firm

18. Notice to any partner who habitually acts in the partnership business of any matter relating to partnership affairs operates as notice to the firm, except in the case of a fraud on the firm committed by or with the consent of that partner.

Liabilities of incoming and outgoing partners

19.—(1) A person who is admitted as a partner into an existing firm does not thereby become liable to the creditors of the firm for anything done before he became a partner.

(2) A partner who retires from a firm does not thereby cease to be liable for partnership debts or obligations incurred before his retirement.

(3) A retiring partner may be discharged from any existing liabilities by an agreement to that effect between himself and the members of the firm as newly constituted and the creditors, and this agreement may be either express or inferred as a fact from the course of dealing between the creditors and the firm as newly constituted.

Revocation of continuing guarantee by change of firm

20. A continuing guarantee or cautionary obligation given either to a firm or to a third person in respect of the transactions of a firm is, in the absence of agreement to the contrary, revoked as to future transactions by any change in the constitution of the firm to which, or of the firm in respect of the transactions of which, the guarantee or obligation was given.

PART IV

Relations of Partners to One Another

Variation by consent of terms of partnership

21. The mutual rights and duties of partners, whether ascertained by agreement or defined by this Act, may be varied by the consent of all the partners, and such consent may be either express or inferred from a course of dealing.

Partnership property

22.—(1) All property and rights and interests in property originally brought into the partnership stock or acquired, whether by purchase or otherwise, on account of the firm, or for the purposes and in the course of the partnership business, are called in this Act partnership property, and must be held and applied by the partners exclusively for the purposes of the partnership and in accordance with the partnership agreement:

Provided that the legal estate or interest in any land which belongs to the partnership shall devolve according to the nature and tenure thereof, and the general rules of law thereto applicable, but in trust, so far as necessary, for the persons beneficially interested in the land under this section.

(2) Where co-owners of an estate or interest in any land, not being itself partnership property, are partners as to profits made by the use of that land or estate, and purchase other land or estate out of the profits to be used in like manner, the land or estate so purchased belongs to them, in the absence of an agreement to the contrary, not as partners, but as co-owners for the same respective estates and interests as are held by them in the land or estate first mentioned at the date of the purchase.

Property bought with partnership money

23. Unless the contrary intention appears, property bought with money belonging to the firm is deemed to have been bought on account of the firm.

Conversion into personal estate of land held as partnership property

24. Where land or any heritable interest therein has become partnership property, it shall, unless the contrary intention appears, be treated as between the partners (including the representatives of a deceased partner), and also as between the heirs of a deceased partner and his executors or administrators, as personal and not real estate.

Procedure against partnership property for a partner's separate judgment debt

25.—(1) A writ of execution shall not issue against any partnership property except on a judgment against the firm.

(2) The Court, or judge, may, on the application by summons of any judgment creditor of a partner, make an order charging that partner's interest in the partnership property and profits with payment of the amount of the judgment debt and interest thereon, and may by the same or a subsequent order appoint a

receiver of that partner's share of profits (whether already declared or accruing) and of any other money which may be coming to him in respect of the partnership, and direct all accounts and inquiries, and give all other orders and directions which might have been directed or given if the charge had been made in favour of the judgment creditor by the partner, or which the circumstances of the case may require.

(3) The other partner or partners shall be at liberty at any time to redeem the interest charged, or in case of a sale being directed, to purchase the same.

(4) This section shall apply in the case of a cost-book company as if the company were a partnership within the meaning of this Act.

Rules as to interests and duties of partners subject to special agreement

26. The interests of partners in the partnership property and their rights and duties in relation to the partnership shall be determined, subject to any agreement express or implied between the partners, by the following rules—

(*a*) all the partners are entitled to share equally in the capital and profits of the business, and must contribute equally towards the losses whether of capital or otherwise sustained by the firm;

(*b*) the firm must indemnify every partner in respect of payments made and personal liabilities incurred by him—

(i) in the ordinary and proper conduct of the business of the firm; or

(ii) in or about anything necessarily done for the preservation of the business or property of the firm;

(*c*) a partner making, for the purpose of the partnership, any actual payment or advance beyond the amount of capital which he has agreed to subscribe, is entitled to interest at the rate of five per centum per annum from the date of the payment or advance;

(*d*) a partner is not entitled, before the ascertainment of profits, to interest on the capital subscribed by him;

(*e*) every partner may take part in the management of the partnership business;

(*f*) no partner shall be entitled to remuneration for acting in the partnership business;

(*g*) no person may be introduced as a partner without the consent of all existing partners;

(*h*) any difference arising as to ordinary matters connected with the partnership business may be decided by a majority of

the partners, but no change may be made in the nature of the partnership business without the consent of all existing partners; and

(i) the partnership books are to be kept at the place of business of the partnership (or the principal place, if there is more than one) and every partner may, when he thinks fit, have access to and inspect and copy any of them.

Expulsion of partner

27. No majority of the partners can expel any partner unless a power to do so has been conferred by express agreement between the partners.

Retirement from partnership at will

28.—(1) Where no fixed term has been agreed upon for the duration of the partnership, any partner may determine the partnership at any time on giving notice of his intention so to do to all the other partners.

(2) Where the partnership has originally been constituted by deed, a notice in writing, signed by the partner giving it, shall be sufficient for this purpose.

Where partnership for term is continued over, continuance on old terms presumed

29.—(1) Where a partnership entered into for a fixed term is continued after the term has expired, and without any express new agreement, the rights and duties of the partners remain the same as they were at the expiration of the term, so far as is consistent with the incidents of a partnership at will.

(2) A continuance of the business by the partners or such of them as habitually acted therein during the term, without any settlement or liquidation of the partnership affairs, is presumed to be a continuance of the partnership.

Duty of partners to render accounts, etc.

30. Partners are bound to render true accounts and full information of all things affecting the partnership to any partner or his legal representatives.

Accountability of partners for private profits

31.—(1) Every partner must account to the firm for any benefit derived by him without the consent of the other partners from any transaction concerning the partnership, or from any use by him of the partnership property, name or business connexion.

(2) This section applies also to transactions undertaken after a partnership has been dissolved by the death of a partner, and before the affairs thereof have been completely wound up, either by any surviving partner or by the representatives of the deceased partner.

Duty of partner not to compete with firm

32. If a partner, without the consent of the other partners, carries on any business of the same nature as and competing with that of the firm, he must account for and pay over to the firm all profits made by him in that business.

Rights of assignee of share in partnership

33.—(1) An assignment by any partner of his share in the partnership, either absolute or by way of mortgage or redeemable charge, does not, as against the other partners, entitle the assignee, during the continuance of the partnership, to interfere in the management or administration of the partnership business or affairs, or to require any accounts of the partnership transactions, or to inspect the partnership books, but entitles the assignee only to receive the share of profits to which the assigning partner would otherwise be entitled, and the assignee must accept the account of profits agreed to by the partners.

(2) In case of a dissolution of the partnership, whether as respects all the partners or as respects the assigning partner, the assignee is entitled to receive the share of the partnership assets to which the assigning partner is entitled as between himself and the other partners, and, for the purpose of ascertaining that share, to an account as from the date of the dissolution.

PART V

Dissolution of Partnership and its Consequences

Dissolution by expiration or notice

34. Subject to any agreement between the partners, a partnership is dissolved—

(*a*) if entered into for a fixed term, by the expiration of that term;

(*b*) if entered into for a single adventure or undertaking, by the termination of that adventure or undertaking; or

(*c*) if entered into for an undefined time, by any partner giving notice to the other or others of his intention to dissolve the partnership.

In the last-mentioned case the partnership is dissolved as from the date mentioned in the notice as the date of dissolution, or, if no date is so mentioned, as from the date of the communication of the notice.

Dissolution by bankruptcy, death, charge or subjection to forfeiture

35.—(1) Subject to any agreement between the partners, every partnership is dissolved as regards all the partners by the death or bankruptcy of any partner.

(2) A partnership may, at the option of the other partners, be dissolved if any partner suffers his share of the partnership property to be charged under this Act for his separate debt.

(3) If any member of a partnership (hereinafter called the forfeited partner) is declared to be a person subject to forfeiture under the Forfeiture Act, then—

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(*a*) If immediately prior to the date of such declaration (hereinafter called the date of forfeiture) the partnership consisted of only one person other than the forfeited partner, such person (hereinafter called the continuing proprietor) shall, subject to subsection (4), be solely entitled to all the assets of the partnership and solely responsible for all the liabilities of the partnership at the date of forfeiture: and

(*b*) if immediately prior to the date of forfeiture it consisted of two or more partners (hereinafter referred to as the continuing partners) other than the forfeited partner, the partnership shall be dissolved as to the forfeited partner but shall continue as regards the continuing partners as if the forfeited partner had retired from the partnership pursuant to an agreement between him and them and due notice of his retirement had been given.

(4) In any case to which subsection (3) applies the following provisions shall also apply—

(*a*) neither the Administrator General nor the forfeited partner shall be responsible for any liability incurred by the partnership or the continuing proprietor after the date of forfeiture;

(*b*) the continuing partners or the continuing proprietor shall with all reasonable speed furnish to the Administrator General a true account of the assets and liabilities of the partnership at the date of forfeiture and shall within six months of the date of forfeiture pay to the Administrator General the value of the share of the forfeited partner in the assets of the partnership at the date of forfeiture after taking into consideration the partnership debts at that date;

(*c*) the continuing partners or continuing proprietor shall not be liable for any debts incurred by the forfeited partner or the Administrator General on his behalf after the date of forfeiture;

(*d*) the Administrator General shall be entitled to inspection of the books of accounts, invoices, bank statements and all other records and papers of the partnership prior to the date of forfeiture;

(*e*) if payment is not made to the Administrator General in accordance with paragraph (*b*), the court may, on the application of the Administrator General, appoint a suitable person to be receiver or receiver and manager of the business of the sole proprietor referred to in subsection 3 (*a*) or of the partnership constituted under subsection (3) (*b*) and on the making of such order the amount due to the Administrator General shall be a debt due by such sole proprietor or, as the case may be, by each of the continuing partners jointly and severally, to the Administrator General and shall in addition be a first charge on the

assets of the business or partnership. If the amount due has not been agreed the Court may, in the same proceedings, decide any dispute and certify what is the amount due, and may also extend the time for payment thereof, by instalments or otherwise, subject to the furnishing of security;

(*f*) if, on taking the accounts of the partnership, it appears that the forfeited partner was, immediately before the date of forfeiture, indebted to the partnership in a sum greater than his share of the net assets thereof the Administrator General shall treat the balance so found due to the continuing partners or the continuing proprietor as one of the debts of the forfeited partner at the date of forfeiture.

Dissolution by illegality of partnership

36. A partnership is in every case dissolved by the happening of any event which makes it unlawful for the business of the firm to be carried on or for the members of the firm to carry it on in partnership.

Dissolution by the Court

37. On application by a partner the Court may decree a dissolution of the partnership in any of the following cases—

(*a*) when a partner is found of unsound mind by inquisition, or is shown to the satisfaction of the Court to be of permanently unsound mind, in either of which cases the application may be made as well on behalf of that partner by his committee or next friend or person having title to intervene as by any other partner;

(*b*) when a partner, other than the partner suing, becomes in any other way permanently incapable of performing his part of the partnership contract;

(*c*) when a partner, other than the partner suing, has been guilty of such conduct as, in the opinion of the Court, regard being had to the nature of the business, is calculated to affect prejudicially the carrying on of the business;

(*d*) when a partner, other than the partner suing, wilfully or persistently commits a breach of the partnership agreement, or otherwise so conducts himself in matters relating to the partnership business that it is not reasonably practicable for the other partner or partners to carry on the business in partnership with him;

(*e*) when the business of the partnership can only be carried on at a loss;

(*f*) whenever in any case circumstances have arisen which, in the opinion of the Court, render it just and equitable that the partnership be dissolved.

38.—(1) Where a person deals with a firm after a change in its constitution he is entitled to treat all apparent members of the old firm as still being members of the firm until he has notice of the change.

Rights of person dealing with firm against apparent members of firm

(2) An advertisement in the *Gazette* as to a firm whose principal place of business is in Malaŵi shall be notice as to persons who had no dealings with the firm before the date of the dissolution or change so advertised.

(3) The estate of a partner who dies, or who becomes bankrupt, or of a partner who, not having been known to the person dealing with the firm to be a partner, retires from the firm, is not liable for partnership debts contracted after the date of the death, bankruptcy or retirement respectively.

39. On the dissolution of a partnership or retirement of a partner any partner may publicly notify the same, and may require the other partner or partners to concur for that purpose in all necessary or proper acts, if any, which cannot be done without his or their concurrence.

Right of partners to notify dissolution

40. After the dissolution of a partnership the authority of each partner to bind the firm, and the other rights and obligations of the partners, continue notwithstanding the dissolution so far as may be necessary to wind up the affairs of the partnership, and to complete transactions begun but unfinished at the time of the dissolution but not otherwise:

Continuing authority of partners for purposes of winding up

Provided that the firm is in no case bound by the acts of a partner who has become bankrupt; but this proviso does not affect the liability of any person who has after the bankruptcy represented himself or knowingly suffered himself to be represented as a partner of the bankrupt.

41. On the dissolution of a partnership every partner is entitled, as against the other partners in the firm, and all persons claiming through them in respect of their interests as partners, to have the property of the partnership applied in payment of the debts and liabilities of the firm, and to have the surplus assets after such payment applied in payment of what may be due to the partners respectively after deducting what may be due from them as partners to the firm; and for that purpose any partner or his representatives may on the termination of the partnership apply to the Court to wind up the business and affairs of the firm.

Rights of partners as to application of partnership property

42. Where one partner has paid a premium to another on entering into a partnership for a fixed term, and the partnership is dissolved before the expiration of that term otherwise than by the death of a partner, the Court may order the repayment of the premium, or of such part thereof as it thinks just, having regard

Apportionment of premium where partnership prematurely dissolved

to the terms of the partnership contract and to the length of time during which the partnership has continued, unless—

(*a*) the dissolution is, in the judgment of the Court, wholly or chiefly due to the misconduct of the partner who paid the premium; or

(*b*) the partnership has been dissolved by an agreement containing no provision for a return of any part of the premium.

Rights where partnership dissolved for fraud or misrepresentation

43. Where a partnership contract is rescinded on the ground of the fraud or misrepresentation of one of the parties thereto, the party entitled to rescind is, without prejudice to any other right, entitled—

(*a*) to a lien on, or right of retention of, the surplus of the partnership assets, after satisfying the partnership liabilities, for any sum of money paid by him for the purchase of a share in the partnership and for any capital contributed by him, and is

(*b*) to stand in the place of the creditors of the firm for any payments made by him in respect of the partnership liabilities, and

(*c*) to be indemnified by the person guilty of the fraud or making the representation against all the debts and liabilities of the firm.

Right of outgoing partner in certain cases to share profits made after dissolution

44. Where any member of a firm has died or otherwise ceased to be a partner, and the surviving or continuing partners carry on the business of the firm with its capital or assets without any final settlement of accounts as between the firm and the outgoing partner or his estate, then, in the absence of any agreement to the contrary, the outgoing partner or his estate is entitled at the option of himself or his representatives to such share of the profits made since the dissolution as the Court may find to be attributable to the use of his share of the partnership assets, or to interest at the rate of five per centum per annum on the amount of his share of the partnership assets:

Provided that where by the partnership contract an option is given to surviving or continuing partners to purchase the interest of a deceased or outgoing partner, and that option is duly exercised, the estate of the deceased partner, or the outgoing partner or his estate, as the case may be, is not entitled to any further or other share of profits; but if any partner assuming to act in exercise of the option does not in all material respects comply with the terms thereof, he is liable to account under the foregoing provisions of this section.

Retiring or deceased partner's share to be debt

45. Subject to any agreement between the partners, the amount due from surviving or continuing partners to an outgoing partner or the representatives of a deceased partner in respect of the outgoing or deceased partner's share is a debt accruing at the date of the dissolution or death.

Rule for distribution of assets on final settlement of accounts

46. In settling accounts between the partners after a dissolution of partnership, the following rules shall, subject to any agreement, be observed—

(*a*) losses, including losses and deficiencies of capital, shall be paid first out of profits, next out of capital, and lastly, if necessary, by the partners individually in the proportion in which they were entitled to share profits; and

(*b*) the assets of the firm including the sums, if any, contributed by the partners to make up losses or deficiencies of capital, shall be applied in the following manner and order—

(i) in paying the debts and liabilities of the firm to persons who are not partners therein;

(ii) in paying to each partner rateably what is due from the firm to him for advances as distinguished from capital;

(iii) in paying to each partner rateably what is due from the firm to him in respect of capital;

(iv) the ultimate residue, if any, shall be divided among the partners in the proportion in which profits are divisible.

Saving for rules of equity and common law

47. The rules of equity and of common law applicable to partnership shall continue in force except so far as they are inconsistent with the express provisions of this Act.

PROPERTY AND BUSINESS (PRESUMPTIONS OF OWNERSHIP)

CHAPTER 46:05

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CHAPTER 46:05

PROPERTY AND BUSINESSES (PRESUMPTIONS OF OWNERSHIP)

ARRANGEMENT OF SECTIONS

SECTION

1. Short title
2. Interpretation
3. Presumptions of ownership of property by non-citizens

An Act to make provision for certain presumptions of ownership of property or businesses for the purpose of the prevention of the avoidance of the provisions of certain laws relating to forfeiture and to the licensing and registration of ownership and businesses and to make provision for matters arising therefrom and incidental thereto 11 of 1974

[26TH APRIL, 1974]

1. This Act may be cited as the Property and Businesses (Presumptions of Ownership) Act. Short title

2. In this Act save where the context otherwise requires— Interpretation

"appropriate Minister" means the Minister responsible for the administration of the Act under which the relevant order, licence or registration is made, issued or effected;

"citizen" means any person who is a citizen of the Republic of Malaŵi;

"non-citizen" means any person who is not a citizen of the Republic of Malaŵi.

3. Where, during the life time of any non-citizen— Presumptions of ownership of property and businesses by non-citizens

(*a*) any real property or any interest therein is, by any deed or other instrument of title, or by any lease or tenancy agreement, expressed to be owned or held under the terms thereof by, or where any such ownership or interest is, under the provisions of any written law, registered in the name of, any citizen who is—

(i) the spouse or child of such non-citizen; or

(ii) under any arrangement or agreement written or unwritten, holding title or possession of such land or interest, as the case may be, solely for and on behalf of such non-citizen; or

(iii) part owner only of such land or interest, the other part being in the disclosed or undisclosed ownership of such non-citizen; or

(*b*) any trade, business or occupation is being carried on in Malaŵi in the name of any citizen who is—

(i) the spouse or child of such non-citizen; or

(ii) under any arrangement or agreement, written or unwritten, carrying on such trade, business or occupation, as the case may be, solely for and on behalf of such non-citizen; or

(iii) in partnership with such non-citizen whether disclosed or undisclosed, in any such trade, business or occupation; or

(*c*) any bank account, thing in action, chattel or other personal property of any kind is credited in favour of, held, or possessed as owner by, or in the name of, any citizen who is—

(i) the spouse or child of such non-citizen; or

(ii) under any arrangement or agreement, written or unwritten, controlling, holding, or possessing such bank account, thing in action, chattel or other personal property as the case may be solely for and on behalf of such non-citizen; or

(iii) part owner only of such bank account, thing in action, chattel, or other personal property, the other part being in the disclosed or undisclosed ownership of such non-citizen,

such real property, or interest therein, or such trade, business or occupation, or such bank account, thing in action, chattel or other personal property shall, for the purposes of, and for the giving effect to any Order made under the Forfeiture Act declaring such non-citizen to be subject to forfeiture, be presumed to be in the sole ownership or possession of the said non-citizen; and where such trade, business or occupation is, under any written law, required to be licensed or registered, and is so licensed or registered in the name of such citizen, and such non-citizen commits any act or omission which, if he were the person so licensed or registered, would, under such law, or any other written law, constitute lawful grounds for the cancellation of such licence or registration, or which would cause the appropriate Minister to exercise the powers of cancellation conferred by section 62 of the General Interpretation Act, it shall be presumed that the said trade, business or occupation, for the purposes of cancelling such licence or registration, was at all times, and is, in the sole ownership of the said non-citizen, and the licence or registration, as the case may be, issued or entered in respect of such trade, business or occupation may be cancelled as if the said non-citizen were the person in whose name such licence or registration were effected; and if such trade, business or occupation be subject to the Businesses Licensing Act and licensed thereunder in the name of the said citizen, the said business, trade or occupation shall be presumed to be in the sole ownership of the said non-citizen, and the said non-citizen shall be presumed to be the licensee under the

Cap. 14:06

Cap. 1:01

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said Act for the purposes of the application and implementation of the provisions of Part VI of the said Businesses Licensing Act: Cap. 46:01

Provided, however, that any presumption imposed and enacted by this section may be rebutted by the citizen proving to the satisfaction of the appropriate Minister that his title to or possession of such real property, or interest therein, or to such trade, business or occupation, or to any share or partnership therein, or to such bank account, thing in action, chattel of other personal property was acquired by him legitimately and in good faith or validly for sufficient and adequate valuable consideration, and such presumption shall stand rebutted solely to the extent proved by such evidence.

SECURITIES

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CHAPTER 46:06

SECURITIES

An Act to provide for the regulation of capital and securities markets, and persons transacting business in or through capital and securities markets; to promote internal and external confidence in the integrity and proper functioning of the capital and securities markets; and to make provision for matters connected therewith or incidental thereto

20 of 2010
G.N. 14/2010

[1st October, 2010]

PART I
PRELIMINARY

1. This Act may be cited as the Securities Act. Short title

2.—(1) In this Act, unless the context otherwise requires— Interpretation

"associated person" means any person who is—

(*a*) an officer or director of a broker, dealer, investment adviser, portfolio manager or operator of a collective investment scheme;

(*b*) any person controlling, controlled by, or under common control with, a broker, dealer, investment adviser or portfolio manager; or

(*c*) any securities representative or other employee of a broker, dealer, investment adviser or portfolio manager, other than employees engaged solely in clerical or ministerial functions for such broker, dealer, investment adviser or portfolio manager;

"beneficial owner" means a person who, directly or indirectly, possesses or shares investment or voting power with respect to a security;

"broker" means any person engaged in the business of buying or selling securities for the account of others, but does not include an employee acting within the scope of his duties;

"collective investment scheme" means any arrangement made with respect to securities or property of any description under which—

(*a*) provision is made for participation by persons taking part in the arrangement to participate in profits or income and capital gains arising from the acquisition, holding, management or disposal of property, excluding securities held in majority owned subsidiaries which themselves are not collective investment schemes;

(*b*) property which is the subject of the arrangement is owned by a body corporate or held in trust by a body corporate; and

(*c*) the interests of persons participating in the arrangement are represented by shares of the body corporate or in the case of a unit trust by units;

"dealer" means any person engaged in the regular business of purchasing and selling securities for his own account, and licensed as such, but does not include an employee acting within the scope of his duties;

"exchange rule" in relation to a stock exchange, means any rule made by a stock exchange that is binding on its members;

"investment adviser" means any person who, for a fee, engages in the business of advising others on the purchase, sale or holding of, or advisability of investing in, securities, and licensed as such, but does not include—

(*a*) any broker or dealer who is licensed under this Act and is engaged in such business solely as an incident to the business of acting as a broker or dealer;

(*b*) any securities representative of a broker, dealer or investment adviser acting within the scope of his duty as such;

(*c*) any bank providing such services exclusively in a capacity as a trustee or other fiduciary;

(*d*) an advocate or accountant whose advice is incidental to his professional activities; or

(*e*) the proprietor or publisher of a newspaper, news-magazine, or business or financial publication of general and regular paid circulation distributed only to subscribers thereto or to purchasers thereof, in relation to any advice with respect to investigations given therein, where—

(i) the proprietor or publisher receives no commission or other consideration for giving or publishing the advice; and

(ii) the giving or publication of that advice is incidental to the conduct of the business of a newspaper proprietor or publisher;

"investment company" means a company that is the owner of property which is the subject of a collective investment scheme;

"issuer" means a person who issues or proposes to issue a security;

"licence" means a licence issued under the Financial Services Act; Cap. 44:05

"licensee" means any broker, dealer, investment adviser or securities representative licensed under this Act or the Financial Services Act; Cap. 44:05

"listed security" means a security which has been admitted to listing by a stock exchange for the purposes of dealing in the security on the exchange;

"open ended investment company" means an investment company whose collective investment scheme which offers for sale on continuous basis or has outstanding any security which is redeemable at the option of the holder;

"portfolio manager" means any person engaged in the management of funds and investment portfolios on behalf of customers as a regular part of his business for remuneration and licensed as such, but does not include—

(*a*) any broker or dealer who is licensed under this Act and is engaged in such business solely as an incident to the business of acting as a broker or dealer;

(*b*) any securities representative of a broker, dealer, investment adviser or portfolio manager acting within the scope of his duty as such; or

(*c*) any bank providing such services exclusively in a capacity as a trustee or other fiduciary;

"registered securities" means securities registered in accordance with Part V;

"Registrar" means the Registrar of Financial Institutions appointed under the Financial Services Act; Cap. 44:05

"registration statement" means the registration statement specified by the Registrar pursuant to section 29;

"securities" means—

(*a*) shares, debentures, stocks, bonds, notes or funds issued by a government or a body corporate;

(*b*) any warrant, right, option or interest, whether described as units or otherwise, in respect of any shares, debentures, stocks, bonds, notes or funds referred to in paragraph;

(*c*) any instrument, including a derivative instrument, contract, profit-sharing agreement, fractional interest, right to subscribe or any instrument commonly known as securities or which are prescribed by the Registrar to be securities for the purposes of this Act;

"securities market intermediaries" means underwriters, transfer secretaries, credit rating agencies and such other persons engaged in business in the securities market whom the Registrar may by directive prescribe;

"securities representative" means any person who is employed as such by a broker, dealer or investment adviser, portfolio manager or an operator of a collective investment scheme and who, depending on his employment—

(*a*) engages in the solicitation, purchase or sale of securities;

(*b*) provides advice or recommendations with respect to transactions in securities; or ,

(*c*) otherwise deals with members of the public with respect to the purchase or sale of securities;

"share" means a share in the capital of a body corporate, and includes a stock except where a distinction between stock and shares is expressed or implied, and a reference to a number of shares shall be construed as including an amount of stock;

"Stabilization Fund" means the Securities Stabilization Fund established under section 50;

"Stabilization Fund Committee" means the Stabilization Fund Committee established under section 51;

"statutory disqualification" means the disqualification of any person if the person—

(*a*) has been convicted of an offence involving fraud, dishonesty or moral turpitude;

(*b*) is subject to an order or directive, entered by consent or otherwise, of any Malaŵian or foreign regulatory authority or self-regulatory organization suspending or barring the person from conducting any securities, commodity trading, financial institutions, insurance or pension scheme business; or

(*c*) has associated with any person subject to a statutory disqualification;

"statutory restriction" means the restriction of any person if the person—

(*a*) has been adjudged bankrupt;

(*b*) has been adjudged or found in Malaŵi or elsewhere to have contravened, or caused the contravention of, any securities, commodities trading, banking, financial services, insurance or pension scheme law;

(*c*) has stipulated or consented to the entry of any order or finding with respect to a contravention described in paragraph (*b*); or

(*d*) has associated with any person subject to a statutory restriction;

"stock exchange" means a market or other place at which, or a facility by means of which—

(*a*) offers to sell or purchase securities are regularly made or accepted;

(*b*) offers or invitations, being offers or invitations that are intended, or may reasonably be expected, to result, whether directly or indirectly, in the making or acceptance of offers to sell or purchase securities, are regularly made; or

(*c*) information is regularly provided concerning the prices at which, or the consideration for which, particular persons or particular classes of persons propose, or may reasonably be expected, to sell or purchase securities and licensed as such;

"unit trust" means a collective investment scheme which is organized under a declaration of trust or similar instrument and issues units representing an interest in the underlying portfolio of securities.

(2) Subject to subsection (1) and except where a contrary intention appears, expressions used in this Act shall have the same respective meanings as in the Financial Services Act. Cap. 44:05

Application Cap. 44:05

3. This Act shall apply, in addition to the Financial Services Act, to all persons conducting securities business except to the extent that such persons are exempted by the Registrar pursuant to his authority under the Financial Services Act.

PART II

Powers of the Registrar

Powers of the Registrar Cap. 44:05

4. Without limiting the powers of the Registrar under the Financial Services Act, the Registrar shall have the following powers, duties and functions—

(*a*) to take all available steps to ensure that this Act is complied with;

(*b*) to license and supervise the activities of stock exchanges, brokers, dealers, investment advisers, portfolio managers, collective investment schemes, securities market intermediaries and their respective securities representatives;

(*c*) to approve the constitutions, charters, and articles governing and pertaining to any stock exchange;

(*d*) to issue directives implementing the requirements of this Act;

(*e*) to promote and encourage high standards of investor protection and integrity among persons licensed to operate in the securities market;

(*f*) to promote the operation of a free, orderly, fair, secure and properly informed securities market;

(*g*) to regulate the manner and scope for securities traded on any stock exchange;

(*h*) to take all reasonable steps to safeguard the interest of persons who invest in securities and to suppress illegal, dishonorable and improper practices in relation to dealings in securities, whether on a stock exchange or otherwise;

(*i*) to take all reasonable steps to promote and maintain the integrity of persons under Parts IV and IX and encourage the provision by such persons of balanced and informed advice to their clients and to the public generally;

(*j*) to consider and suggest proposals for the reform of the law relating to the securities industry;

(*k*) to encourage the development of securities markets in Malaŵi consistent with the purposes and standards of this Act;

(*l*) to promote and develop self-regulation by stock exchanges;

(*m*) to co-operate, by the sharing of information and otherwise, with other regulatory bodies within and without Malaŵi and such cooperation being either solicited or unsolicited;

(*n*) to exercise and perform such other powers, duties, and functions as may be conferred or imposed upon him by or under this Act or any other financial services law.

Directives relating to stock exchanges Cap. 44:05

5. Without limiting the power of the Registrar under the Financial Services Act to issue directives, the Registrar may issue directives in respect of the following—

(*a*) conduct of business by licensed brokers, dealers, investment advisers, portfolio managers and securities market intermediaries, operators of collective investment schemes and securities representatives;

(*b*) conditions subject to, and the circumstances in which, any stock exchange may permit, supervise and suspend dealings in securities;

(*c*) qualifications for membership of stock exchanges and determination of the maximum number of persons that may be admitted to membership of any stock exchange;

(*d*) type of business that may be carried on, and the services that may be provided by or at a stock exchange;

(*e*) requirements to be met before securities may be listed on a stock exchange;

(*f*) procedure for dealing with applications for the listing of securities on a stock exchange;

(*g*) cancellation or suspension of the listing of any specified securities at any stock exchange if the Registrar considers that such action is necessary to maintain an orderly market;

(*h*) amount of deposit required to be made for the purposes of section 26 and the application of deposits under that section;

(*i*) correction of any errors in any register or record kept under this Act;

(*j*) particulars of any books, accounts, reports or records prepared or maintained for the purposes of this Act;

(*k*) lodgement by persons under this Act of annual financial statements;

(*l*) lodgement of auditors' reports and the information to be contained in such reports;

(*m*) remuneration of any inspector appointed, and the costs of any inspection or audit carried out, for the purposes of this Act;

(*n*) forms to be used for the purposes of this Act, and the manner in which applications are to be made for licences;

(*o*) further defining or clarifying terms used in this Act;

(*p*) insurance by persons licensed under Part IV against negligence or default;

(*q*) the issue of duplicate licences in case of loss or destruction; and

(*r*) any other purpose which furthers the purposes of this Act and is in the public interest.

PART III

Stock Exchanges

Prohibition against operating stock exchange without licence Cap. 44:05

6.—(1) No person shall establish or assist in establishing or maintaining, or hold himself out as providing or maintaining, a stock exchange unless such stock exchange is a stock exchange licensed under the Financial Services Act.

(2) Any person who contravenes this section commits an offence.

Application for stock exchange licence Cap. 44:05

7.—(1) An applicant for a licence to establish and operate a stock exchange shall submit an application in writing in a form prescribed under the Financial Services Act and containing such information as the Registrar may specify.

(2) An application under subsection (1) shall be accompanied by a fee in a form specified by the Registrar.

(3) Upon receipt of an application under subsection (1), the Registrar may grant a licence to the applicant if the Registrar is satisfied that—

(*a*) establishment of the stock exchange is necessary in the public interest having regard to the nature of the securities industry; and

(*b*) the applicant satisfies the requirements set out in the Schedule.

(4) This section does not limit the power of the Registrar to deal with an application for a licence.

Management of stock exchange

8.—(1) The affairs of a stock exchange shall be managed by a board whose members shall comprise those elected or appointed in accordance with articles of association of the stock exchange.

(2) Subject to the provisions of this Act, the board of a stock exchange shall have power to administer the affairs of the stock exchange.

Transitional provisions in respect of licensing of stock exchanges

9.—(1) With effect from the date of commencement of this Act, any existing stock exchange in Malaŵi shall, subject to subsection (2) and (3), be deemed to be licensed under this Part for a period of six months after the commencement of this Act.

(2) An existing stock exchange in Malaŵi shall, not later than six months after the commencement of this Act or within such longer period as the Registrar may allow—

(*a*) adopt such rules, regulations and policies and take such other steps as are necessary to ensure that it satisfies the requirements set out in the Schedule; and

(*b*) apply and obtain a licence from the Registrar to function as a stock exchange in accordance with the provisions of section 7.

(3) If a stock exchange fails to take action in accordance with subsection (2) within the time specified by or under subsection (2), the Registrar may—

(*a*) direct the stock exchange to take such action as it seems fit to ensure compliance with subsection (2); or

(*b*) may declare the stock exchange to have ceased to be licensed under this Part.

Renewal of stock exchange licences

10.—(1) A stock exchange may, three months prior to the expiry date of the licence, make an application for renewal of the licence to the Registrar in the form prescribed by the Registrar.

(2) An application under subsection (1) shall be accompanied by a fee in a form prescribed by the Registrar.

(3) Section 6 (3) shall apply, *mutatis mutandis*, to an application for renewal of a licence under this section.

Power of the Registrar to issue directives to stock exchange Cap 44:05

11.—(1) Without limiting the power of the Registrar under the Financial Services Act to issue a directive to any person, where the Registrar is satisfied that it is in the interest of the investing public to give a directive under this section, or that it is appropriate to give such a directive for the protection of investors or for the proper regulation of a stock exchange, the Registrar may give a directive to a stock exchange with respect to—

(*a*) trading on the stock exchange generally or with respect to trading of a particular security listed on the stock exchange;

(*b*) the manner in which the stock exchange carries on any aspect of its business; or

(*c*) any other matter that the Registrar considers necessary for the effective administration of this Act.

Power of the registrar to close stock exchange

12.—(1) The Registrar may, on the grounds specified in subsection (2), by directive, close a stock exchange for the transaction of dealings in securities for such period as may be specified in the directive.

(2) A directive under subsection (1) may only be given if the Registrar, after consultation with the Minister, is satisfied that the orderly transaction of business on the stock exchange is being or is likely to be prevented as a result of—

(*a*) a natural disaster that has occurred in Malaŵi;

(*b*) an economic or financial crisis, whether in Malaŵi or elsewhere, or other like circumstance; or

(*c*) failure by the stock exchange to meet the requirement set forth in the Schedule.

(3) A broker or dealer who deals in securities at or through a stock exchange while a directive is in force under this section with respect to the stock exchange commits an offence.

Cap. 44:05

(4) The Registrar may take such action specified in this Act or the Financial Services Act as he considers necessary to ensure , compliance with a directive under this section and, without limiting the generality of the foregoing, may cause the premises of the stock exchange affected by the directive to be locked and secured.

Rules of stock exchange

13.—(1) Every stock exchange shall file with the Registrar, in a manner prescribed by the Registrar, copies of any proposed rule, or proposed change in an existing rule, of the stock exchange, with a written statement explaining the proposed rule or rule change, and the basis therefor.

(2) The Registrar may seek public comment on the proposed rule or rule change through publication in the *Gazette* or other means of general communication, if the Registrar determines that public comment will aid the review and evaluation of the proposed rule or rule change.

(3) Any proposed rule or rule change filed pursuant to subsection (1) shall become effective upon expiration of sixty days after receipt thereof by the Registrar, unless the Registrar—

(*a*) extends the period of time for consideration of the proposed rule or rule change, for a further period not exceeding sixty days;

(*b*) by order, declares the proposed rule or rule change to be effective prior to the expiration of the sixty day period or extension thereof; or

(*c*) by order, disapproves the proposed rule or rule change.

(4) The Registrar may, upon his own motion, by a notice published in the *Gazette* or by order, add to, amend, delete or nullify any rules of a licensed stock exchange as the Registrar determines is necessary and

appropriate for the protection of investors, the proper administration of this Act, or the fair administration of the activities of the stock exchange.

Stock exchange to assist the Registrar

14. A stock exchange shall provide such assistance to the Registrar as the Registrar may reasonably require for the performance of his functions and duties, including the furnishing of such returns and information relating to the business of the stock exchange or in respect of dealings in securities or any other specified information as the Registrar may require for the proper administration of this Act.

Enforcement of rules of stock exchange

15.—(1) A stock exchange shall, in relation to its members and their associated persons, enforce compliance with the requirements of this Act, and the rules of the stock exchange, by bringing appropriate action against any such person who has engaged in acts or practices, or omissions, thereof, constituting contraventions of this Act, or the rules of the stock exchange.

(2) If the stock exchange determines that a member or associated person of a member has contravened or failed to comply the requirements of this Act or the rules of the exchange, the stock exchange may—

(*a*) reprimand the person who has committed the contravention;

(*b*) limit, in a manner appropriate to the nature and gravity of the contravention, the activities of the person;

(*c*) suspend the person from membership of the stock exchange or, in the case of a securities representative, from being associated with a member of the stock exchange; or

(*d*) expel or bar the person from such membership or such association with a member.

(3) All actions taken by a stock exchange under this section shall be instituted and conducted pursuant to rules adopted by the stock exchange which shall—

(*a*) afford the person charged with a contravention with the right to written notification of the charges and particulars;

(*b*) afford the person charged with a contravention with the right to present his views and defend himself; and

(*c*) afford any person found to have committed a contravention with written notice of the findings, conclusions and sanctions with respect thereto.

(4) If a stock exchange fails in any case to take action under this section to enforce compliance with this Act, the Registrar may, by order, direct the stock exchange to take such action as will ensure compliance.

(5) Any failure by a stock exchange to comply with any order issued under subsection (4) shall constitute a contravention of this Act.

(6) Nothing in this section shall prevent or preclude the Registrar from pursuing a legal right or remedy, or taking any regulatory or remedial action permitted under this Act, with respect to a stock exchange, any member thereof or any person associated with such a member.

Prohibition against use of certain titles

16. Any person, other than a licensed stock exchange, who takes or uses, or has attached to or exhibited at any place—

(*a*) the title "securities exchange" or "stock exchange"; or

(*b*) any title which so closely resembles the title "securities exchange" or "stock exchange" as to be likely to be deceptive, commits an offence.

PART IV

Licensing of Brokers, Dealers, Investment Advisers, Portfolio Managers, Securities Representatives and Securities Market Intermediaries

Prohibition against carrying on business as a broker, etc., without licence

17.—(1) No person, other than the holder of a broker's licence, dealer's licence, investment adviser's licence, portfolio manager's licence or securities market intermediary's licence, shall—

(*a*) carry on business as a broker, dealer, investment adviser, portfolio manager or securities market intermediary; or

(*b*) hold himself out as carrying on business as a broker, dealer, investment adviser, portfolio manager or securities market intermediary.

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

Prohibition against acting as a securities representative without licence

18.—(1) No person shall be employed as, or act as, a securities representative unless he is the holder of a securities representative's licence.

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

(3) Subject to section 17, a securities representative's licence shall be granted only on the condition that the licensee is an employee of a broker, dealer, an investment adviser, a portfolio manager, or an operator of a collective investment scheme.

Applications for licences Cap. 44:05

19.—(1) An applicant for a licence under this Part shall submit an application in writing in a form prescribed under the Financial Services Act and containing such information as the Registrar may specify.

(2) Any application under subsection (1) shall be accompanied by a fee in a form prescribed by the Registrar.

(3) Unless specifically exempted by order of the Registrar as being consistent with the public interest and the protection of investors, every licensed broker or dealer shall, within sixty days or such longer period not exceeding an additional ninety days, as the Registrar may allow, of favorable action on an application reviewed under this section, become a member of a stock exchange.

(4) Any person who holds a licence issued under the Capital Market Development Act to act as a broker, dealer, investment adviser or portfolio manager shall be deemed, on and as of the date of coming into force of this Act, to be properly licensed under this Act: Cap. 46:06

Provided that the person shall thereafter, within one year, from the date of commencement of this Act, or such longer period not exceeding six months as the Registrar may by order prescribe, bring himself into compliance with the requirements of the Act.

(5) This section shall not prevent the Registrar from varying the licence of a person described in subsection (4).

(6) Any person described in subsection (4) who fails to bring himself into compliance with this Act within the time prescribed in subsection (4) shall be in contravention of the requirements of this Act and shall be subject to actions or administrative penalties prescribed by this Act or under the Financial Services Act with respect to such contravention. Cap. 44:05

Refusal of licence Cap. 44:05

20.—(1) Without limiting the grounds on which the Registrar may, under the Financial Services Act, refuse to grant a licence under this Part, the Registrar may refuse to grant a licence on the grounds that—

(*a*) the applicant has not provided the Registrar with such information relating to himself or any person employed by or associated with him, or to any circumstance likely to affect its method of conducting business, as may be prescribed;

(*b*) in the case of an individual, the applicant—

(i) has become incapable, mentally or physically, of performing the activities to which the licence relates; or

(ii) the person does not meet the fit and proper test;

(*c*) the applicant is subject to a statutory disqualification;

(*d*) the applicant is subject to a statutory restriction, and it appears to the Registrar that, because of such restriction, the applicant is not a fit and proper person to be licensed under this Act;

(*e*) it appears to the Registrar that the applicant is unwilling or unable to comply with the requirements of this Act;

(*f*) the Registrar has reason to believe that the applicant will not perform the duties of the holder of the licence efficiently, honestly and fairly;

(*g*) the applicant is unable to meet such minimum financial, solvency and liquidity requirements or other criteria as may be prescribed; or

(*h*) in the case of an individual, where the application is required to be made by a corporate body.

(2) The Registrar shall not grant a securities representative's licence to a company or to an individual who is under twenty one years of age or who does not meet the fit and proper test.

Validity period of licences

21. Unless sooner revoked, suspended or surrendered, a licence issued under this Part shall remain in force for the period specified in the licence.

Revocation or suspension of licences

22.—(1) Where any person licensed under this Part—

(*a*) being an individual, dies; or

(*b*) being a company, is dissolved, the licence of that person shall be deemed revoked without further action by the Registrar.

Cap. 44:05

(2) Without limiting the grounds on which the Registrar may suspend a licence under the Financial Services Act, the Registrar may suspend for a period of up to one year, or revoke a licence of a broker, dealer or investment adviser, portfolio manager, securities market intermediary or a securities representative, if such person—

(*a*) becomes mentally or physically incapable of performing the activities to which the licence relates;

(*b*) becomes bankrupt, or compounds with his creditors or makes an assignment of his estate for their benefit;

(*c*) becomes subject to, or engages in any act, practice or course of conduct which would result in a statutory disqualification or statutory restriction;

(*d*) is found or adjudged to have contravened, or caused the contravention of this Act;

(*e*) is or has been guilty of any misconduct in relation to the conduct of his business, or the pursuit of the occupation with reference to which he is licensed or, by reason of any other circumstance, is no longer a fit and proper person to hold a licence under this Part;

(*f*) is unable to meet such applicable financial, solvency and liquidity requirements or other criteria as may be prescribed;

(*g*) ceases to carry on business in Malaŵi; or

(*h*) being the holder of a securities representative's licence, the licence of the broker, dealer, investment adviser, portfolio manager or operator of a collective investment scheme with whom he is associated is revoked or suspended.

(3) For purposes of subsection (2) (*e*), "misconduct" means—

(*a*) any contravention of, or failure to comply with, the requirements of this Act or the Financial Services Act with respect to licensed persons; Cap. 44:05

(*b*) any failure to observe the terms and conditions of a licence; or

(*c*) any act or omission relating to the business or occupation of a licensed person which is, or is likely to be, prejudicial to the interests of members of the investing public.

(4) Any agreement, transaction or arrangement relating to a transaction in securities entered into by a person whose licence has been suspended or revoked, after the suspension or revocation of the licence, shall be voidable at the election of the person with whom such agreement transaction or arrangement was entered into.

(5) Except as provided under subsection (4), the suspension or revocation of a licence issued under this Part shall not affect any right, obligation or liability arising under any agreement, transaction or arrangement described in subsection (4), or any agreement, transaction or arrangement entered into before the suspension or revocation of a licence under this Part.

(6) A person whose licence is revoked under this section may not reapply to be licensed under this Part in any capacity until the expiration of at least twelve months from the date of the revocation.

Records to be kept by licensees

23.—(1) A person who is licensed under this Part shall maintain a record, in the prescribed form, of the publicly traded securities of which he is the beneficial owner.

(2) Particulars required by the form prescribed under subsection (1) shall be entered in the record within fourteen days of the acquisition of the beneficial ownership by the licensee.

(3) Where there is a change in the beneficial ownership of securities by a person licensed under this Part, he shall enter in the record, within

fourteen days after the date of the change, full particulars of the change, including the date of the change and the circumstances by reason of which that change has occurred.

(4) For purposes of subsection (3), where a person acquires or disposes of securities, there shall be deemed to be a change in the beneficial ownership of the person in the securities concerned.

(5) A person who fails to keep a record as required by this section commits an offence.

Information to be supplied by licensees

24.—(1) Every applicant for a licence under this Part shall, together with his application, give notice to the Registrar in the prescribed form containing such particulars as are prescribed, including the place at which he will keep the required record of his beneficial ownership of securities.

(2) A person who ceases to carry on the business authorized by a licence under this Part shall, within fourteen days of his so ceasing to carry on business, give notice of the fact to the Registrar.

(3) Every person licensed under this Part shall forthwith, in writing, notify the Registrar of any change which, while his licence is in force, may occur—

(*a*) in the address in Malaŵi at which he carries on the business to which the licence relates; or

(*b*) in any information supplied or in connexion with his application for his licence, being information prescribed.

(4) If at any time while a company is licensed under this Part, any person becomes or ceases to be director or officer of the company, the company shall, within seven days after the event, notify the Registrar in writing of the name and address of the person.

(5) The Registrar may, by directives made under this Act, require a person licensed under this Part to furnish the Registrar with additional information by way of periodic reports or otherwise.

(6) A person who neglects or fails to give any information as required by this section commits an offence.

(7) If a company neglects or fails to give any information as required by subsection (6), then in addition to the offence in subsection (6), the director or officer concerned commits an offence.

Renewal of Licence

25.—(1) A licensed broker or dealer, investment adviser, portfolio manager, securities representative and securities market intermediary may, two months prior to the expiry of the licence make an application for renewal of the licence, to the Registrar in a form prescribed by the Registrar under the Financial Services Act.

Cap. 44:05

(2) An application under subsection (1) shall be accompanied by a fee in a form specified by the Registrar.

Deposits by brokers, etc.

26.—(1) Every licensed broker, dealer and securities market intermediary shall deposit with the Registrar or a licensed stock exchange such amount as may be prescribed.

(2) Any licensed broker, dealer, investment adviser, portfolio manager or securities market intermediary that neglects or fails to comply with subsection (1), or is in arrears with respect to any deposit required under subsection (1), shall be liable to pay interest on the amount of the outstanding deposit at such rate as the Registrar may by directive prescribe.

(3) Any deposit or interest payable under this section shall be a debt due to the Registrar and may be recovered by a suit in any court of competent jurisdiction.

PART V

Registration of Securities

Securities to be registered

27.—(1) If a registration statement in the prescribed form relating to a security, signed by the issuer of the security or its representative and accompanied by the prescribed fee, has been filed with and approved by the Registrar, the Registrar may register the security.

(2) If—

(*a*) any security of a public company is publicly traded, or directly or indirectly promoted or advertised or offered for sale to the public; and

(*b*) the security has not been registered under this section, and is not exempted from the requirements of this section by the further provisions of this section, the issuer of the security commits an offence.

(3) For the purposes of this section, a security shall be deemed as being publicly traded if such security is traded on a stock exchange in Malaŵi.

(4) This section shall not apply to—

(*a*) any securities issued by the Government of Malaŵi or the Reserve Bank of Malaŵi;

(*b*) any security which is listed on a stock exchange in Malaŵi on the date of commencement of this Act; or

(*c*) any security which the Registrar has determined to be exempted from the requirements of this section, if the granting of such exemption is consistent with the purposes of this Act and the protection of investors.

Prospectus

28.—(1) No person shall sell, offer to sell or enter into a contract to sell any security required to be registered under section 27 unless such sale, offer or contract is preceded or accompanied by a prospectus, containing the information required to be contained therein under section 168 of the Companies Act.

Cap. 46:03

(2) This section shall not apply to any directly negotiated private transaction with any person—

(*a*) who possesses such knowledge and experience in financial and investment matters as to be able to assess the merits and risks of such security; and

(*b*) to whom has been provided such information concerning the security and its issuer as the person or his securities representative reasonably may have requested.

Registration Statement

29.—(1) The Registrar may, by written notice or directive, specify the content of any registration statement required under section 27.

(2) A security which is in effect under section 27 may, by order of the Registrar, be suspended from effectiveness if it appears to the Registrar, upon his own motion or upon petition by any person, that any registration statement or prospectus with respect to such security—

(*a*) is false or misleading in any material respect;

(*b*) contains any untrue statement of a material fact; or

(*c*) fails to comply in any material respect with the provisions of this Act or section 168 of the Companies Act.

Cap. 46:03

(3) The registration of any security which is suspended from effectiveness by the Registrar under subsection (2) shall, for purposes of section 27, not be in effect, and the issuer of the security commits an offence.

Reports of issuers

30.—(1) Any issuer of a security in respect of which a registration statement is in effect under section 28 shall—

(*a*) file with the Registrar annual, quarterly or current reports as may be required by the Registrar in such manner and containing such information as the Registrar may specify;

(*b*) simultaneously file with any stock exchange on which such securities are traded the reports specified in paragraph (*a*); and

(*c*) disseminate to shareholders, within ten business days after the filing with the Registrar thereof, the reports specified in paragraph (*a*).

(2) Any issuer of a security which is registered under section 27 may make written application to de-register the security on the ground that it no longer is, or no longer should be deemed, a publicly-traded security and shall, as part of its application, state all facts supporting the application.

(3) The Registrar may by order de-register a security which is the subject of an application under subsection (2) if the Registrar finds that the facts stated in the application, or other facts known to the Registrar, support the application and that the de-registration of the security is otherwise in the public interest.

Reporting of information by issuer

31.—(1) An issuer of any security registered under section 27 shall inform and keep the public informed, of all matters which affect the value of the security immediately upon their becoming known to the directors of the issuer, by placing an advertisement in a newspaper of general circulation and by reporting to the Registrar and to any stock exchange on which the securities are listed.

(2) The Registrar may prescribe further requirements to be met by the issuers of registered securities under subsection (1).

(3) An issuer of securities that neglects or fails to comply with this section or regulations made or directives issued for the purposes of this section commits an offence.

Acquisition of beneficial ownership of publicly-traded securities

32.—(1) Any person who acquires beneficial ownership of five per cent or more of any class of equity security which is publicly-traded, or issued by an issuer which is the issuer of a publicly-traded security, shall report—

(*a*) the identity, residence, background and ownership of the acquiring person; and

(*b*) the amount, purpose and details of such acquisition,

to the Registrar and any stock exchange where the security, or the equity securities of the issuer, is or are publicly-traded, within five business days after the acquisition.

(2) The Registrar may, by notice published in the *Gazette*, exempt from the application of this section, any transaction or classes of transactions which the Registrar determines are of a nature or kind which are not effected for the purpose of controlling or influencing or

changing the control of any issue or are otherwise consistent with the purposes of this Act and the protection of investors.

Regulation of proxy solicitation and tender offers Cap. 44:05

33.—(1) Without limiting the powers of the Registrar under the Financial Services Act to issue directives, the Registrar may prescribe the manner, form, and content of any solicitation by any issuer of any proxy, or consent or authorization in respect of any security which is publicly-traded or units issued by any collective investment scheme approved under Part IX.

(2) The Registrar may prescribe conditions governing the making of tender offers for, or requests or invitation for tenders of, any class of publicly-traded security, including requirements governing—

(*a*) the manner and timing of tender offers or requests for tenders; and

(*b*) the form and content of any statement with respect to a tender offer or request for tenders, and similar matters.

(3) No person shall—

(*a*) make any untrue statement of a material fact or omit to state any material fact, necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or

(*b*) engage in any fraudulent, deceptive or manipulative acts or practices, in connexion with any solicitation of any proxy or consent, or any tender offer, request or invitation for tender, with respect to a publicly-traded security issued by a collective investment scheme authorized or security issued by a collective investment scheme approved under Part IX.

(4) Any person who contravenes subsection (3) commits an offence.

Compliance with the Companies Act Cap. 46:03

34.—(1) Unless otherwise specified in this Act, the requirements of Part IX of the Companies Act shall apply to the offer and sale of any security under this Act.

(2) Nothing in this Part shall relieve any issuer or other person from its obligation to comply with any requirement of the Companies Act, nor shall any issuer or other person be relieved of any liability or penalty provided in the Companies Act, except where this Act specifically provides otherwise.

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(3) In the case of any conflict or inconsistency between this Act and the Companies Act, the requirements of this Act shall govern.

Cap. 46:03

PART VI
Conduct of Securities Business

Unlawful transactions

35.—(1) No licensed broker or dealer who is a member of a stock exchange shall effect any transaction in any security which is listed or traded on the listed stock exchange, except in compliance with directives prescribed by the Registrar or rules of such stock exchange.

(2) Any broker or dealer who contravenes this section commits an offence.

Capital and financial requirements

36.—(1) Every broker, dealer, investment adviser, portfolio manager, securities market intermediary, operator of a collective investment scheme and any other person licensed under this Act shall maintain, at all times, such capital, liquid assets and reserves in such manner and in such amounts as the Registrar may, specify.

(2) Without derogation from the generality of subsection (1) and without limiting the power of the Registrar under the Financial Services Act to issue directives, the Registrar may issue directives pertaining to capital, liquid assets and reserves requirements under subsection (1) which are absolute or which vary according to facts and circumstances, or different classes of licensed brokers, dealers, investment advisers, portfolio managers, securities market intermediaries, operators of collective investment schemes or any other licensees taking into account— Cap. 44:05

(*a*) the character and extent of the business in which the licensee is engaged;

(*b*) whether the licensee holds or maintains custody of customer funds or securities;

(*c*) whether the licensee engages in the clearance and settlement of securities transactions;

(*d*) the types of assets, liabilities and financial resources of the licensee; and

(*e*) whether the licensee is an external licensee or conducts business outside of Malaŵi.

(3) Every licensed broker, dealer, investment adviser, portfolio manager, securities market intermediary and any other person who holds or maintains custody of customer funds or securities shall comply with directives as may be specified by the Registrar pertaining to—

(*a*) the safekeeping of customer funds and securities;

(*b*) the separation of the funds and securities from those of the licensee and other customers;

(*c*) the lending or pledging of customer funds and securities;

(*d*) the prompt transmission of customer funds and securities; and

(*e*) the form and content of books records and accounts reflecting or relating to the holding or maintenance of customer funds and securities.

(4) Every broker, dealer, investment adviser, portfolio manager, operator of a collective investment scheme, securities market intermediary and any other person who at any time knows, or in the exercise of reasonable efforts should know, that it is not in compliance with any regulations or directives specified under this section shall promptly notify the Registrar and its customers in writing of such non-compliance.

(5) No regulation or directive adopted under this section shall impose any requirement or obligation on any broker, dealer, investment adviser, portfolio manager, operator of collective investment schemes, securities market intermediary or class of broker, dealer, investment adviser, portfolio manager, securities market intermediary, operator of a collective investment scheme or any other person licensed under this Act which is discriminatory or acts as a burden on competition, unless such requirement or obligation is determined by the Registrar to be manifestly necessary to carry out the purposes of this Act.

Code of conduct regarding securities business

37.—(1) Every licensed broker, dealer, investment adviser, portfolio manager and any securities market intermediary shall—

(*a*) subject to the requirements of this Act, deal with its customers fairly and justly and adhere to just and equitable principles of trading in all its business activities;

(*b*) prior to effecting any transaction with or for, or recommending any transaction to, a customer, make inquiries of the knowledge in financial and investment matters, background, financial conditions and investment objectives of the customer to determine whether such transaction is suitable for that customer and whether the customer understands the risks of such transaction;

(*c*) charge a customer only such commissions, mark-ups, mark-downs or fees as are fair and reasonable under the circumstances of the transaction;

(*d*) prior to effecting a transaction with, or recommending a transaction to, a customer, disclose to the customer any material interest which the licensee, or person associated with the licensee, has in such transaction, including any beneficial ownership or other interest in any security which is the subject of the transaction;

(*e*) take reasonable steps to ensure that all transactions effected for customers, whether by the licensee or a person acting at the direction of the licensee, are effected at the best price available for the customer under all the circumstances of that transaction, including the size thereof, the fees charged in relation thereto, and other relevant factors; and

(*f*) in the case of brokers and dealers, establish and adhere to written procedures reasonably designed to ensure that customer transactions are effected in fair sequence and are equitably allocated, and without giving preference to itself or any customer over another customer.

(2) No broker, dealer or investment adviser, portfolio manager or operator of collective investment scheme or securities market intermediary licensed under this Act shall, in connexion with any securities transaction effected or recommended by the licensee—

(*a*) engage in any fraudulent, deceptive or manipulative device or any scheme to defraud, or any act, practice, or course of conduct which would act as a fraud or artifice upon any person;

(*b*) effect in a discretionary capacity or recommend transactions to any customer which are excessive in volume and number, given the financial situation or investment objectives of the customer;

(*c*) share or offer to share in the profit or loss of any customer in any securities transaction, or guarantee any profit or protection from loss of any transaction;

(*d*) effect or recommend any securities transaction which has the purpose or effect of creating a false or misleading appearance of the volume of trading in any security, or the market for a price of a security; or

(*e*) engage in any act or course of conduct prohibited under Part VII.

(3) Any person who contravenes subsection (2) commits an offence.

(4) Without limiting the power of the Registrar under the Financial Services Act to issue directives, the Registrar may further specify or define the terms, conditions or requirements of this section, or specify additional rules of conduct with respect to the activities of persons licensed under this Act. Cap. 44:05

38.—(1) Every broker and dealer shall, in respect of every contract for the purchase, or sale of securities entered into by him, whether as principal or agent, not later than the end of the next trading day after the contract was entered into, make out a contract note which contains such information as the Registrar may specify. Contract notes

(2) Any contract note which seeks to exclude or disclaim any obligation required under this Act shall be void.

Compliance with directives of the Registrar

39. No broker, dealer, investment adviser, portfolio manager or securities market intermediary shall effect any transaction in any option, warrant, right or forward contract to buy or sell a security except in compliance with such directive as the Registrar may specify in the public interest and for protection of investors.

Short sales

40.—(1) A person who sells securities which he does not hold at or through a stock exchange commits an offence unless, at the time of sale he has, or, where he is selling as agent, his principal has, or he reasonably believes that he has, or, where he is selling as agent, that his principal has, a presently exercisable and unconditional right to vest the securities in the purchaser and has on deposit in the manner prescribed one hundred per cent collateral against the short sale, marked to market at the close of every trading day until the transaction is complete.

(2) For the purposes of subsection (1), "marked to market" means re-valued, for the purposes of the obligation of the seller, at the current market.

(3) A person who contravenes subsection (1) commits an offence.

(4) The Registrar may, by notice publish in the *Gazette*, exempt from the application of this section transactions or classes of transactions which he determines would not be inconsistent with the maintenance of fair and orderly securities markets and the protection of investors.

Trading outside stock exchange prohibited

41.—(1) No person shall trade in or otherwise deal in securities listed on a stock exchange except in compliance with the trading procedure adopted by the stock exchange:

Provided that—

(*a*) a person may gift such securities to a family member otherwise than in compliance with the trading procedure if prior approval is obtained from the Registrar;

(*b*) such securities may be transferred pursuant to an order of the court;

(*c*) such securities may be transmitted following the death of a person; or

(*d*) the Register may prescribe other instances when a person may trade in or otherwise deal in such securities.

(2) For the purpose of subsection (1), a "family member", in relation to a person, means a parent, spouse, child, brother or sister.

(3) The provisions of subsection (1) shall not apply to securities issued by the Government of Malaŵi.

Depositories, clearance and settlement Cap. 44:05

42.—(1) Without limiting the powers of the Registrar under the Financial Services Act to issue directives, the Registrar may direct the licensing of depositories.

(2) The Registrar may specify requirements governing the clearance and settlement of securities transactions, including requirements pertaining to—

(*a*) financial and operational standards or persons engaged in clearance and settlement activities;

(*b*) maintenance and safeguarding of share certificates and other evidence of ownership;

(*c*) books, records and internal controls relating to the clearance and settlement of securities;

(*d*) operation of book-entry systems in Government and other securities;

(*e*) reporting of lost and stolen securities;

(*f*) standardization of settlement periods in different types of securities; and

(*g*) such other matters as the Registrar determines are necessary in the public interest and the protection of investors.

Accounts to be kept by licensees

43.—(1) Every licensed broker, dealer, investment adviser, portfolio manager, securities market intermediary and operator of collective investment scheme shall keep, or cause to be kept, such accounting and other records as sufficiently explain the transactions and financial position of all business of the licensee and enable true and fair profit and loss accounts and balance sheets to be prepared from time to time, as the Registrar may specify by directive or notice, and shall cause those records to be kept in such manner and form as to enable them to be conveniently and properly audited.

(2) Without limiting the generality of subsection (1), each licensed person referred to in subsection (1) shall maintain such books and records, and file such reports, in any manner and form, as the Registrar may specify.

(3) A person who contravenes this section commits an offence.

Investment advisory contracts

44.—(1) An investment adviser shall not enter into an investment advisory contract with any person in Malaŵi (in this section referred to as the "client") or extend or renew the contract, or in any way perform

the contract entered into, extended or renewed after the commencement of this Act, if the contract—

(*a*) provides for remuneration to be paid by the client to the investment adviser on the basis of a share of capital gains of the funds or any part of the funds of the client;

(*b*) does not include a provision to the effect that an assignment of the contract by the investment adviser shall be made only with the consent of the client; or

(*c*) does not include a provision to the effect that the investment adviser, if a company, will notify the client of any change in control of the company, prior to the change within a specified time which time shall not be less than thirty days.

(2) Subsection (1) (*a*) shall not—

(*a*) prohibit an investment advisory contract which provides for remuneration based on the total assets held in the client's account averaged over a definite period or on definite dates, or taken on a definite date; or

(*b*) apply to an investment advisory contract with respect to participation in a collective investment scheme, as defined in Part IX, authorized by the Registrar under that Part, that provides for remuneration based on the asset value of the scheme or company under management averaged over a specified period and increasing or decreasing proportionately in accordance with the performance of the scheme or company over a specified period in relation to—

(i) the investment record of an appropriate index securities; or

(ii) such other measure of investment performance as the Registrar may approve in connexion with its licensing of the collective investment scheme concerned or on the application of either party to a contract or intended contract.

(3) Any investment adviser who knowingly enters into any contract in contravention of this section commits an offence.

(4) Any contract entered into in contravention of this section shall, notwithstanding any provision of the contract, be voidable at the option of the client.

(5) For the purposes of this section, "investment advisory contract" means a contract or agreement whereby a person agrees to act as investment adviser or to manage any investment or trading account of a client.

PART VII
Improper Trading Practices

False trading and manipulations

45.—(1) No person shall, directly or indirectly, create or cause to be created, or do anything with the intention of creating—

(*a*) a false or misleading appearance of the volume of trading in any securities on any stock exchange; or

(*b*) a false or misleading appearance of the market for, or the price of, any securities.

(2) No person shall, directly or indirectly, by means of the purchase or sale of any securities that does not involve a change in the beneficial ownership of the securities, or by any fictitious transaction or device, maintain, inflate, depress or cause fluctuations in the market price of any securities.

(3) A purchase or sale of securities by a person shall not, for the purposes of subsection (2), involve a change in the beneficial ownership of the securities after the purchase or sale.

(4) Any person who contravenes this section commits an offence.

Use of deceptive statements, etc., as inducements

46.—(1) No person shall, directly or indirectly, induce or attempt to induce another person to deal in securities—

(*a*) by making or publishing any statement, promise or forecast that he knows to be misleading, false or deceptive;

(*b*) by any dishonest concealment of material facts; or

(*c*) by recklessly or dishonestly making or publishing any statement, promise or forecast that is false or misleading.

(2) A person who contravenes subsection (1) commits an offence.

Fraudulent transactions

47.—(1) No person shall, directly or indirectly, in connexion with any transaction with any other person involving the purchase or sale of securities—

(*a*) employ any devise, scheme or artifice to defraud the other person;

(*b*) engage in any fraudulent, deceptive or manipulative device to defraud the other person; or

(*c*) engage in any act, practice or course of business which operates as a fraud or deception or is likely to operate as a fraud or deception on the other person.

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

False or misleading statements in connexion with sale of securities

48.—(1) No person shall, directly or indirectly, for the purpose of inducing the sale or purchase of the securities of any issuer, make with respect to the securities, or with respect to the operations or the past or future performance of the issuer—

(*a*) any statement which is at the time and in light of the circumstances in which it is made, false or misleading with respect to any material fact, and which he knows or has reasonable grounds to believe to be false or misleading; or

(*b*) any statement which is, by reason of the omission of a material fact, rendered false or misleading and which he knows or has reasonable grounds to believe is rendered false or misleading by reason of omission of the fact.

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

Insider trading

49.—(1) No person to whom this section applies shall, directly or indirectly, purchase or sell, or counsel or procure another person to purchase or sell, securities of an issuer concerning which he has knowledge that—

(*a*) is not publicly available; and

(*b*) would, if it were publicly available, materially affect the price of the security.

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

(3) This section applies to—

(*a*) any director, officer or employee of a relevant company;

(*b*) any person associated in a professional capacity with a relevant company; and

(*c*) any person who knowingly obtains such information from any of the persons mentioned in paragraph (*a*) or (*b*).

(4) In subsection (3), "relevant company" means—

(*a*) the issuer of the securities;

(*b*) a company that controls the issuer of the securities; or

(*c*) a company under the common control with the issuer of the securities.

PART VIII

Securities Stabilization Fund

Establishment of the Securities Stabilization Fund

50.—(1) There is hereby established a fund to be known as the Securities Stabilization Fund (in this Act otherwise referred to as the "Stabilization Fund").

(2) The Stabilization Fund shall consist of—

(*a*) such moneys recovered by way of penalties by the Registrar in furtherance of the powers vested in him by this Act or under the Financial Services Act; and

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(*b*) all other moneys otherwise accruing to the Stabilization Fund as the Registrar may determine.

Establishment of the Stabilization Fund Committee

51.—(1) There is hereby established a committee, to be known as the Stabilization Fund Committee, which shall be responsible for the administration of the Stabilization Fund and for the settlement of claims against the Fund.

(2) The Committee shall consist of—

(*a*) a person nominated by the Bankers Association of Malaŵi, and appointed by the Minister;

(*b*) a person nominated by a stock exchange in Malaŵi, and appointed by the Minister;

(*c*) a person nominated by the Malaŵi Law Society, and appointed by the Minister; and

(*d*) a person nominated by the Malaŵi Chamber of Commerce and Industry, and appointed by the Minister; and

(*e*) a person nominated by the Registrar, and appointed by the Minister.

(3) Members of the Stabilization Fund Committee shall elect one of their number to be the Chairman of the Committee.

(4) The Stabilization Fund Committee may, subject to this Act, regulate its own procedure.

Purpose of the Stabilization Fund

52.—(1) The Stabilization Fund shall be held and applied, on such terms and conditions as the Registrar may determine, for the purpose of compensating persons who suffer pecuniary loss occasioned by any default of a licensed investment broker, dealer, investment adviser, portfolio manager, operator of a collective investment scheme or any other licensee in the course of, or in connexion with any dealing in securities, being a loss in relation to any money, securities or other property which, in the course or in connexion with the business of any licensee, was entrusted to or received by the licensee or any such employee for and on behalf of the person.

Disbursement from the Stabilization Fund

53. Subject to this Part, there shall be paid out of the Stabilization Fund when required and in such order as the Stabilization Fund Committee considers proper—

(*a*) the amount of all claims, including costs, allowed by the Stabilization Fund Committee;

(*b*) all legal and other expenses incurred in investigating or defending claims under this Act or incurred in relation to the Stabilization Fund or in the exercise by the Stabilization Fund Committee of the rights, powers and authorities vested in it by this Act in relation to the Stabilization Fund;

(*c*) all premiums payable in respect of contract of insurance or indemnity entered into by the Stabilization Fund Committee;

(*d*) the expenses incurred or involved in the administration of the Stabilization Fund; and

(*e*) all other moneys lawfully payable out of the Stabilization Fund in accordance with the provisions of this Act.

Directives on management of Stabilization Fund Cap. 44:05

54. Without limiting the power of the Registrar under the Financial Services Act to issue directives, the Registrar may issue directives providing guidance on such matters and things as are necessary or expedient to be prescribed for or with respect to the administration, management and application of the Stabilization Fund.

Liability of the Stabilization Fund to be limited

55. Payment from the Stabilization Fund shall be limited, in respect of each licensee in default, to such amount as the Registrar may issue.

Recovery of fund disbursements from defaulters

56. Any disbursement from the Stabilization Fund shall be accountable to the default of any licensed person in debt due to the Stabilization Fund and shall be recoverable by suit of the Registrar in any court of competent jurisdiction.

PART IX
Collective Investment Schemes

Prohibition against operating as a collective investment scheme operator without licence

57.—(1) No person shall operate a collective investment scheme unless the person is licensed to operate a collective investment scheme.

(2) Without limiting the ordinary meaning of the word "operate", a person operates a collective investment scheme if the person—

(*a*) establishes or administers the collective investment scheme;

(*b*) induces or attempts to induce a person to be a member of the collective investment scheme or to make payments by way of investment in the collective investment scheme; or

(*c*) accepts or makes payments in connexion with the collective investment scheme otherwise than as a member.

(3) Any person who contravenes subsection (1) commits an offence.

Application for licence under this part Cap. 44:05

58.—(1) An applicant for a licence to operate a collective investment scheme shall submit an application in writing in a form prescribed by the Financial Services Act and containing such information as the Registrar may specify.

(2) Any application under subsection (1) shall be accompanied by a fee prescribed by the Registrar.

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(3) A person may be licensed under the Financial Services Act as an operator in respect of a collective investment scheme of a class specified in the licence.

(4) A licence under subsection (1) may be granted subject to such terms and conditions as the Registrar considers necessary or desirable for the protection of investors.

Revocation or suspension of licence under this part

59. The Registrar shall cancel or suspend the licence granted to an operator of a collective investment scheme, where the Registrar is satisfied that the licensee—

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(*a*) has acted in breach of any provision of this Act or the Financial Services Act;

(*b*) has ceased to be of good financial standing;

(*c*) is guilty of malpractice or irregularity in the management of its affairs; or

(*d*) has been dismissed by the trustee of a unit trust.

Approval of schemes

60. Every collective investment scheme operated by a licensed collective investment scheme operator, in the case of a unit trust, shall be approved by the Registrar.

Transitional provisions in respect of schemes

61.—(1) Any operator of a collective investment scheme duly authorized under any written law shall be required to obtain approval of the scheme from the Registrar within six months of the date of commencement of this Act and the operator of the collective investment scheme shall be required to apply and obtain a licence under the Financial Services Act within six months of the date of commencement of this Act.

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(2) Any person described in subsection (1) who fails to bring himself into compliance with this Act within the time prescribed in subsection (1) shall be in contravention of the requirements of this Act and shall be subject to such actions, remedies and penalties, and the operator of the collective investment scheme shall be prescribed by this Act or under the Financial Services Act with respect to the contravention.

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Directives on collective investment schemes Cap. 44:05

62.—(1) Without limiting the powers of the Registrar under the Financial Services Act to issue directives, the Registrar may issue directives with respect to—

(*a*) criteria for and conditions of any licences for the purposes of this Part;

(*b*) establishment and operation of a collective investment scheme;

(*c*) promotion, marketing and distribution of shares, securities or units representing the interest of participants in a collective investment scheme;

(*d*) the management and administration of collective investment schemes;

(*e*) the provision by any corporate or individual trustee, or custodial and operation services, or any other services, for or in connexion with collective investment schemes;

(*f*) any fee, remuneration or reward payable or obtainable for any services referred to in paragraph (*e*);

(*g*) books, accounts and records to be kept by collective investment schemes; and

(*h*) any other matter affecting the organization or operations of the collective investment scheme which the Registrar determines is necessary in the public interest or the protection of investors.

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(2) Without limiting the generality of subsection (1), and without limiting the powers of the Registrar under the Financial Services Act to issue directives, the directives issued for the purposes of subsection (1) with respect to any aspect of or matter concerning a collective investment scheme may be made to differ according to whether the collective investment scheme is operated by a unit trust or by an open-ended investment company or another kind of investment company.

Restrictions on promotions

63.—(1) No person shall—

(*a*) issue or cause to be issued any invitation or advertisement—

(i) inviting persons to become or offer to become participants in a collective investment scheme that is not approved under this Part; or

(ii) containing information calculated to lead directly or indirectly to persons' becoming or offering to become participants in a collective investment scheme that is not approved under this Part; and

(*b*) advise or procure any person to become or offer to become a participant in a collective investment scheme that is not approved under this Part.

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

(3) In addition to the requirement of this Part, any collective investment scheme which is organized and approved under this Part shall be subject to the requirements of Parts II, V, VI, VII, VIII, X and XI, and to any other requirements of law, including but not limited to the Companies Act. Cap. 46:03

(4) In case of any conflict between the requirements of this Part and any other written law, the provisions of this Part shall prevail.

PART X
Powers of Intervention

Administrative and monetary penalties

64. In addition to other remedies available under this Act or any other written law—

(*a*) the Registrar may impose an administrative penalty under the Financial Services Act and also impose monetary penalty on the person who contravenes Part VII in an amount not exceeding three times the amount of profit or gain obtained by the person with respect to the contravention; or Cap. 44:05

(*b*) a court may, on convicting a person for an offence against this section, in addition to any other penalty, impose a monetary penalty on the person who contravenes Part VII in an amount not exceeding three times the amount of profit or gain obtained by the person with respect to the contravention.

Restrictions on assets

65.—(1) The Registrar may, as regards any assets, whether within or without Malaŵi, if they are the assets of a person licensed under Part IV, by notice in writing—

(*a*) prohibit the person so licensed from disposing of the assets or prohibit him from dealing with them in a manner specified in the notice; or

(*b*) require the person so licensed to deal with the assets in, and only in, a manner specified in the notice.

Maintenance of assets in Malaŵi

66.—(1) The Registrar may, by notice in writing, require a person licensed under Part IV to maintain in Malaŵi assets of such value as appears to the Registrar to be desirable with a view to ensuring that the licensed person will be able to meet his liabilities in respect of the business to which the licence relates.

(2) The Registrar may direct that, for the purpose of any requirement under subsection (1), assets of any specified class or description shall not be taken into account.

PART XI

Miscellaneous Provisions

Registrar's powers to issue directives Cap. 44:05

67.—(1) Without limiting the powers of the Registrar under the Financial Services Act to issue directives, the Registrar may issue directives with respect to any matter which by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) Without limiting the generality of subsection (1), directives may be issued with respect to—

(*a*) conduct of business by licensed brokers, dealers, investment advisers, portfolio managers and securities market intermediaries, operators of collective investment schemes and securities representatives;

(*b*) matters incidental to the licensing of any person under this Act;

(*c*) class of persons in relation to whom, and the manner and circumstances in which, licensed brokers, dealers and their securities representatives may purchase or sell securities;

(*d*) types of securities which licensed brokers, dealers and their securities representatives may purchase or sell;

(*e*) class of persons in relation to whom, and the manner and circumstances in which, licensed investment advisers or securities representatives may conduct their business;

(*f*) amount of deposit required to be made for the purposes of section 26 and the application of deposits under the section;

(*g*) the exhibition, by persons licensed under Part IV, of their licences at their places of business;

(*h*) the correction of any errors in any register or record kept under this Act;

(*i*) particulars of any books, accounts, reports or records prepared or maintained for the purposes of this Act;

(*j*) lodgement by persons licensed under this Act of annual financial statements;

(*k*) lodgement of reports of auditors and the information to be contained in such reports;

(*l*) remuneration of any inspector appointed, and the costs of any inspection or audit carried out, for the purposes of this Act;

(*m*) forms to be used for the purposes of this Act, and the manner in which applications are to be made for licences;

(*n*) regulating or prohibiting the advertising of securities otherwise than by way of prospectus;

(*o*) maintenance of the confidentiality of clients or persons licensed under Part IV;

(*p*) information and the matters to be displayed on business stationery of persons licensed under this Act;

(*q*) regulating or prohibiting transactions with related persons;

(*r*) the extension of margin facilities to clients of persons licensed under Part IV;

(*s*) further defining or clarifying terms used in this Act;

(*t*) insurance by persons licensed under Part IV against negligence or default;

(*u*) issue of duplicate licences in case of loss or destruction of the original licences; and

(*v*) any other purpose which furthers the purposes of this Act and is in the public interest.

Guidance notes, etc.

68. In addition to the other powers granted to the Registrar, the Registrar may issue such guidelines, bulletins or other regulatory statements as the Registrar may consider necessary or desirable for the proper administration of this Act.

General offences and penalties

69.—(1) Any person who contravenes a provision of this Act for which no offence is specifically provided commits an offence.

Cap. 44:05

(2) The provisions of the Financial Services Act governing imposition of penalties shall apply to any person who commits an offence under this Act for which no penalty is specifically provided.

Repeal and savings Cap. 46:06

70.—(1) The Capital Market Development Act is hereby repealed.

(2) Notwithstanding the repeal of the Capital Market Development Act—

(*a*) any applications pending before any stock exchange under any provision of the repealed Act shall continue to be pending and shall be processed as if such applications were made under this Act;

(*b*) any court exercising jurisdiction conferred by the repealed Act, may continue to exercise its functions in relation to any matter pending or part-heard before it, and its decision shall be given effect and shall be binding on parties to any appeal or other proceedings, as if the repealed Act were still in force;

(*c*) any investigation or proceeding commenced under the repealed Act and not concluded at the commencement of this Act may be continued by the Registrar; and

(*d*) any subsidiary legislation made under the repealed Act shall, unless inconsistent with this Act, continue in force until revoked, as is made or issued under this Act.

Cap. 46:06

(3) On and from the commencement of this Act, there shall be transferred to, and there shall vest in or subsist against the Registrar by virtue of this Act, without further assurance or action, all powers, rights and obligations that immediately before the commencement of this Act, were the powers, rights and obligations of the Reserve Bank of Malaŵi under the Capital Market Development Act, repealed by subsection (1).

SCHEDULE

s. 7

Requirements to be Met by Applicants for Stock Exchange Licence

1. Trading in securities may be conducted only by brokers and dealers who are members of a stock exchange licensed under and meeting the standards prescribed in or under this Act.

2. A stock exchange may be licensed by filing with the Registrar an application for licensing in such form and manner an application in writing in a form and manner under the Financial Services Act and containing such information as the Registrar may specify.

3. A stock exchange shall not be registered unless the Registrar determines that it meets the requirements of Part III and that—

(*a*) it is so organized that it has the capability to carry out the purposes of this Act and to ensure compliance by its members and its employees with the provisions of this Act and with its own rules;

(*b*) its rules are designed to—

(i) promote development of the capital markets;

(ii) prevent fraudulent and manipulative acts and practices;

(iii) remove impediments to, and perfect the mechanism of, a free and open market; and

(iv) generally protect investors and the public interest;

(*c*) its rules are not designed to permit, and do not permit, discrimination between customers, issuers of securities, brokers, dealers, market makers and underwriters;

(*d*) its rules provide that its members and persons associated with the members, shall, for contravening those rules, the provisions of this Act, be appropriately disciplined by expulsion, suspension, limitation of activities and functions, or by suspending or barring them from being associated with the organization or a member thereof, or by any other fitting sanctions;

(*e*) its rules provide a fair procedure for the discipline of its members and persons associated with it or with its members; and

(*f*) its rules do not impose any undue burden in furtherance of the purposes of this Act.

4.—(1) A stock exchange shall take steps necessary to ensure compliance with the requirements of this Act, with its own rules and with the requirements of any other relevant written law.

(2) A stock exchange shall adopt all measures necessary to provide a fair, orderly, transparent, and properly regulated and disciplined market for the benefits of the public and investors, and as a minimum, shall have—

(*a*) rules establishing the manner in which business is to be transacted by its members;

(*b*) rules designed to ensure that the capital market functions for the benefit of investors and not solely for the special benefit or advantage of its members;

(*c*) rules establishing the rights and obligations between members and their customers, including rules for members acting in a fiduciary capacity and for members acting as agents;

(*d*) rules establishing trading procedures and requirements and record-keeping to provide for an adequate audit trail;

(*e*) rules establishing priority, parity and precedence among orders designed to ensure proper treatment of all orders;

(*f*) rules designed to ensure that all buying and selling interest is brought together and exposed sufficiently to lead to efficient pricing, and that transactions by investors obtain the best execution;

(*g*) rules establishing whether and in what circumstances members may trade for their own account and requiring disclosure of this fact, with the objective of ensuring that the self-regulatory trading system operates as a public market for the benefit of investors;

(*h*) rules establishing the obligations of those acting as market-makers;

(*i*) rules establishing trading procedures for less actively traded securities;

(*j*) rules establishing procedures to ensure efficient, prompt and orderly clearance, settlement and payment of transactions, including but not limited to—

(i) requirements that members must clear, settle and pay transactions among themselves independent of the obligations to or of their customers;

(ii) requirements, if determined appropriate by the stocky exchange, that members must receive from customers securities and payments before executing transactions; and

(iii) rules regulating transfer of ownership securities;

(*k*) rules designed to foster fair, honest, orderly and transparent markets, protect investors, promote high standards of commercial honor and fair principles of trade and conduct, and prevent manipulative, deceptive and fraudulent acts, practices and course of conduct by any person, and acts, practices and courses of conduct by any person determined by the stock exchange to be improper or contrary to the purposes of this Act;

(*l*) rules providing effective and fair procedures and standards under which members and their associated persons shall be appropriately disciplined, by expulsion, suspension, limitation of activities and functions, and other fitting sanctions in case of contravention of its own rules, any of the provisions of this Act or the regulations made or directives issued under this Act;

(*m*) rules providing for suspension or cancellation of trading;

(*n*) rules establishing the obligations of the issuers of publicly traded securities to provide disclosure of material information to investors, brokers, dealers, market makers, underwriters, investment advisers and portfolio advisers and portfolio managers and the market in general; and

(*o*) rules establishing the duties of its members to obtain and disseminate information provided by issuers securities.

5.—(1) A stock exchange shall file with the Registrar, in accordance with such requirements as may be prescribed by or under the Act, copies of any proposed rules or any proposed change in the rules of the organization.

(2) In the case of change in the rules, the submission to the Registrar shall be accompanied with a statement of the basis and purpose of each proposed change and an explanation of how the proposed change furthers the purposes and meets the requirements of this Act, all in sufficient detail to permit the Registrar to reach a finding on each proposed change.

(3) No proposed change of the rules of a stock exchange shall take effect unless approved by the Registrar.

6. For a secondary market transaction in securities fees and other charges may be payable in accordance with a minimum and maximum scale which shall be determined by the stock exchange and approved by the Registrar and which shall be

appropriate to the stage of development of the capital market and the provision of adequate compensation to brokers or dealers:

Provided the stock exchange and the Registrar shall not have authority to fix a Registrar, fees or charges for underwriting or similar services or for public offering.

7. Officials and personnel of a stock exchange shall maintain secrecy regarding any information which they have obtained as a result of the performance of their functions or otherwise, and shall not use the knowledge of such information for themselves personally or for others, whether in any way related or totally unrelated to the capital markets.

PUBLIC-PRIVATE PARTNERSHIP

CHAPTER 46:07

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CHAPTER 46:07

PUBLIC-PRIVATE PARTNERSHIP

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CHAPTER 46:07

PUBLIC-PRIVATE PARTNERSHIP

An Act to provide for partnerships between the public sector and private sector for the supply of infrastructure and delivery of services as means of contributing towards sustaining economic growth, social development and infrastructure development; to provide for the development and implementation of public-private partnership arrangements in Malaŵi for the delivery of infrastructure and services; to provide for the establishment of the Public-Private Partnership Commission; to provide for private sector participation in state-owned enterprises, commercial entities and commercial assets; and to provide for matters connected with or incidental to the foregoing

27 of 2011
G.N. 25/2012

[1st July, 2012]

PART I
PRELIMINARY

Short title

1. This Act may be cited as the Public-Private Partnership Act.

Interpretation

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

"Commission" means the Public-Private Partnership Commission established under section 4;

Cap. 44:01

"bank" has the meaning ascribed thereto in the Banking Act;

"Chairman" means the Chairman of the Commission as specified under section 5;

"Chief Executive Officer" means the head of the Secretariat of the Commission appointed under section 15;

"commercialization" means the re-organization of specified Government departments into commercialized enterprises which shall operate as profit making commercial ventures;

Cap. 46:03

"company" means a company within the meaning of section 2 of the Companies Act;

"concessionaire" means a Partner assigned through a long-term concession contract with a Contracting Authority, the right to invest and maintain an infrastructure project or provide a service to the public, and be compensated through charging of user fees directly to the public;

"consultant" means any person employed by the Commission to undertake any work of a specialized nature connected with the work of the Commission and includes banks, public accountants, economists, investment banks, doctors, architects, quantity surveyors, engineers, communication experts, lawyers and valuers;

"construction" includes building, refurbishment, rehabilitation, maintenance, repair, improvement, demolition, extension and replacement;

"Contracting Authority" means any Ministry, Government Department, Local Authority or state-owned enterprise;

"direct agreement" means an agreement entered into between a Contracting Authority and a person who has arranged or provided funding for a Partner for the carrying out of a particular public-private partnership arrangement;

"divestiture" means the disposing of the whole or part of the assets and shares of a state-owned enterprise;

"Divestiture Proceeds Account" means the account established under section 55;

"equity" means any financial interest resulting from the purchase of shares for consideration;

"established fund" includes a pension fund, contributory social security scheme, compensation fund and superannuation fund;

"financial institution" has the meaning ascribed thereto in the Financial Services Act; Cap. 44:05

"immediate family member", in relation to any person, means that person's spouse, child, parent, brother, sister, grandchild or grandparent;

"infrastructure facility" includes an existing asset or an asset to be provided under a public-private partnership arrangement and means physical facilities and systems that directly or indirectly provide services to the public;

"investor" means an individual, a company, an established fund, a mutual fund, a financial institution or any other institution, entity or commercial venture whether local or foreign, and in any format of enterprise recognized as a legal entity under the laws of Malaŵi, intending to invest in a state-owned enterprise or in an infrastructure facility under a public-private partnership arrangement, but does not include the Government, a Local Authority or a state-owned enterprise whether foreign or local;

"Local Authority" means a City, Town, District, or Municipal Council, established under the Local Government Act; Cap. 22:01

"market value" means the market value of a state-owned enterprise at the completion of the sale;

"mutual fund" means an investment fund which purchases shares in a portfolio of companies and subdivides such portfolio into individual units for sale of such units to investors;

"operation" includes management and maintenance;

"Partner" in relation to a public-private partnership arrangement, means a party to the arrangement other than a Contracting Authority;

"property" means all property, movable or immovable, and all estates, interests, easements and rights, whether legal or equitable into or out of property, chooses-in-action, money and good-will;

"public investments projects" includes projects involving public-private partnership arrangements;

"public-private partnership arrangement" refers to the arrangement provided for in Part V;

"public-private partnership" means a contract in which a Contracting Authority partners with a Partner to build, expand, improve, or develop infrastructure or service in which the Contracting

Authority and private sector partner contribute one or more of know-how, financial support, facilities, logistical support, operational management, investment or other input required for the successful deployment of a product or service, and for which the Contracting Authority and the private sector partner is compensated in accordance with a pre-agreed plan, typically in relation to the risk assumed and the value of the result to be achieved;

"Special Purpose Vehicle" means a Company incorporated for the purpose of implementing a public-private partnership arrangement including for raising finance for public-private partnership projects as anticipated in section 21;

"specified Government department" means a department specified by the Minister under section 48;

"state-owned enterprise" means a corporation, board, commission, company, parastatal body or similar body, corporate or unincorporate, in which the Government has direct or indirect ownership, equity or interest and includes partnerships, joint ventures or any other form of business arrangement or organization or any commercial entities or commercial assets howsoever held or created in which the Government has direct or indirect interest but does not include a Government department or a Local Authority;

"stocks" and "shares" in relation to a state owned enterprise includes loans, stocks, debentures and debenture stock and options on any stocks, shares, loan, debentures or debenture stock and rights; and

"stock broker" means a person who carries on the business of buying and selling stocks or shares for and on behalf of other persons.

PART II
Objectives of Public-Private Partnerships and Divestiture of State-Owned Enterprises

Objectives

3.—(1) This Act shall facilitate the development and implementation of public-private partnership arrangements for purposes of efficient delivery of infrastructure and services in order to achieve sustainable economic growth and social development including—

(*a*) to improve the delivery of public infrastructure and therefore access to services in Malaŵi;

(*b*) to assist in achieving better value for procurement of infrastructure and public expenditure by the Government through

efficient and optimal risk identification and transfer to the private sector;

(*c*) to leverage on private sector financing, management, technical know-how and technological innovation for delivery of efficient and affordable infrastructure and services;

(*d*) to encourage participation by resource owners in public-private partnerships and provide assurance for private interests in those partnerships;

(*e*) to encourage competitive and efficient markets for the provision of infrastructure and services in Malaŵi;

(*f*) to minimize the fiscal burden of providing infrastructure development and service delivery through the public treasury and thereby allowing resources to be freed for social services; and

(*g*) to promote private sector contribution towards the attainment of positive social indicators associated with optimal access to infrastructure and services.

(2) The objectives of this Act in relation to divestiture of state-owned enterprise shall be—

(*a*) to foster increased efficiency in the economy;

(*b*) to increase competition and reduce monopoly in the economy;

(*c*) to promote participation by the Malaŵian public in state-owned enterprises; and

(*d*) to raise revenue for the Government through divestiture of state-owned enterprises.

PART III
The Public-Private Partnership Commission

Establishment of the Commission

4. There is hereby established a body to be known as the Public-Private Partnership Commission (in this Act otherwise referred to as the "Commission") which shall be a body corporate with perpetual succession and a common seal capable of suing and being sued in its corporate name, and with power, subject to this Act, to do or perform all such acts and things as a body corporate may by law do or perform.

Composition of the Commission

5.—(1) The Commission shall consist of a Chairman and—

(*a*) four other members appointed by the President by notice published in the *Gazette*, and

(*b*) the following members *ex officio*—

(i) the Secretary to the Treasury;

(ii) the Solicitor General and Secretary for Justice;

(iii) the Principal Secretary responsible for planning and development; and

(iv) the Principal Secretary responsible for industry and trade.

(2) In appointing members under subsection (1), the President shall have regard to the need for continuity of service on the Commission, so that at least half of the members appointed thereunder shall be re-appointed for the next term of office.

(3) Members of the Commission appointed under subsection (1) shall be persons who—

(*a*) are citizens resident in Malaŵi; and

(*b*) possess qualifications, expertise and experience in any of the fields of economics, accountancy, law, engineering, project finance, public administration, public-private partnerships, mergers and acquisitions, and business management.

Tenure of office and vacancies

6. A member of the Commission shall hold office for a period of three years and shall be eligible for re-appointment, but the office of that member shall become vacant—

(*a*) if the member resigns by giving one month notice, in writing to the President;

(*b*) upon the member's death;

(*c*) if the member is absent, without the consent in writing of the Chairman, or without valid excuse, from three consecutive meetings of the Commission of which the member has had notice;

(*d*) if the member is convicted of a criminal offence without the option of a fine;

(*e*) if the member becomes an undischarged bankrupt; or

(*f*) if the member participates, directly or indirectly, in a public-private partnership arrangement or acquires shares or other interests in a state-owned enterprise in contravention of this Act.

Allowances of members

7. Members of the Commission shall be paid such allowances as the Minister shall determine.

Authority and functions of the Commission

8.—(1) The Commission shall facilitate the implementation of public-private partnership arrangements and shall be the sole authority to implement the divestiture of direct and indirect interests in state-owned enterprises.

(2) Without derogation from the generality of subsection (1), the Commission shall—

(*a*) facilitate the procurement of private sector investors in public-private partnership arrangements and other form of undertaking relating to public investments projects in Malaŵi;

(*b*) implement divestitures in direct or indirect Government ownership of, or interest in, any state-owned enterprise; and

(*c*) provide technical support to Contracting Authorities in the identification, initiation and development of public-private partnership arrangements.

(3) The functions of the Commission in relation to public-private partnerships shall be—

(*a*) to perform pre-feasibility and viability assessment in conjunction with a Contracting Authority, of a project submitted to it and give its recommendations to the Cabinet through the Minister, as to whether the project—

(i) is affordable to the Government, the Contracting Authority and ultimate users;

(ii) delivers value for money; and

(iii) presents optimum transfer of technical, operational and financial risks to the private party;

(*b*) in conjunction with a Contracting Authority, conduct full legal technical and financial feasibility studies on public-private partnership projects;

(*c*) planning, managing the procurement tender process from receipt of expressions of interest to selection of a preferred Partner and negotiations of the contract with the Partner;

(*d*) appropriate bidding documentation including the draft public-private partnership agreement, confidentiality undertakings, requests for proposal, and ensure that the requests for proposal conforms with the project model approved during the feasibility study stage;

(*e*) to advise the Minister on administrative procedures in relation to public-private partnership projects;

(*f*) to develop best practice guidelines in relation to all aspects of public-private partnerships;

(*g*) to propose to the Minister policy considerations in relation to accelerating bankable public-private partnership projects;

(*h*) to build public-private partnership awareness in the country;

(*i*) generally facilitate the implementation of public-private partnerships in Malaŵi from project identification to procurement of a Partner;

(*j*) to implement the public-private partnership programme in accordance with the policy guidelines approved by the Cabinet;

(*k*) to advise the Minister responsible for finance of what, in the opinion of the Commission, are the optimal means of financing the cost of public investment projects in order to achieve value for money;

(*l*) to implement public-private partnership arrangements in accordance with this Act and any regulations made hereunder;

(*m*) to provide advice to any Contracting Authority on all aspects of financing, refinancing and insurance of public investment projects to be duly undertaken by means of public-private partnership arrangements; and

(*n*) to monitor progress of the implementation of public-private partnership arrangements in Malaŵi and report the same to the Cabinet through the Minister, on a regular basis, in any case no less frequently than on a quarterly basis.

(4) The functions of the Commission in relation to divestiture of state-owned enterprises shall be—

(*a*) to prepare an annual working plan, annual budget, and a Corporate Strategic Plan;

(*b*) to oversee all aspects of private sector participation in state-owned enterprises and infrastructure;

(*c*) to monitor the impact and progress of the divestiture programme and to prepare the long-term divestiture sequence plan in relation to enterprises designated for divestiture and submit such plan to the Cabinet through the Minister for approval;

(*d*) to report the sale of each state-owned enterprise to the Cabinet, through the Minister, specifying the method of sale used and the reasons why such method was considered appropriate, the proceeds realized and other particulars;

(*e*) to carry out or cause to be carried out an assessment of the market value of the state-owned enterprise that is to be divested;

(*f*) subject to any existing rights, to ensure that the divestiture of each state-owned enterprise is carried out according to the following principles, that is to say, that—

(i) each transaction is fully transparent to the public at large;

(ii) participation is competitive by making it open to all investors;

(iii) the process is fair and efficient;

(iv) the transaction is such as to reduce concentration of ownership and marketing;

(*g*) to set pre-qualification criteria for the selection of potential buyers of, or investors in, a state-owned enterprise to be divested, and evaluate offers from them, in accordance with such criteria, with regard to—

(i) the ability and commitment of buyers to develop the enterprise;

(ii) the track record of buyers and their expertise in the type of enterprise on offer; and

(iii) the price;

(*h*) to ensure that monopolies are not created nor maintained in the process of divestiture in relation to consumer markets; but so, however, that concentrated production does not in itself constitute a monopoly for the purposes of this Act;

(*i*) to prepare or cause to be prepared the relevant documentation necessary to effect the divestiture of any state-owned enterprise;

(*j*) to seek potential investors in state-owned enterprises;

(*k*) to maintain records, safeguard information and establish such administrative procedures as shall ensure confidentiality of information;

(*l*) to maintain close liaison with all relevant institutions in the process of divestiture;

(*m*) to publicise activities of the divestiture programme; and

(*n*) to do all such things as are necessary or incidental or conducive to the better carrying out of the functions of the Commission specified in this Act.

(5) The Commission shall have all such other powers as are necessary or expedient for the performance of its functions, including the engagement from time to time of consultants and advisers and other service providers.

(6) In carrying out its functions, the Commission shall comply with all guidelines and instructions that the Minister may, from time to time, issue to the Commission.

(7) In the discharge of its functions, the Commission shall at all times exercise due care, skill, prudence and diligence, and act in the utmost good faith.

(8) Any recommendation or report by the Commission to the Cabinet under this Act shall be submitted through the Minister.

Provision of advice

9.—(1) In providing advice under this Act, the Commission shall have regard to—

(*a*) such policy directions as the Minister may issue for the purposes of this paragraph to Contracting Authorities from time to time in relation to the financing of public investment projects; and

(*b*) such policy guidance as the Minister may issue for the purposes of this paragraph to Contracting Authorities from time to time in relation to the process, procedures and regulations generally of public-private partnership arrangements.

(2) The Minister shall cause a copy of every policy direction and policy guidance issued under subsection (1) to be sent to the Commission.

(3) The provision of advice by the Commission under this Act may include, where appropriate, advice as regards the engaging of consultancy services across the range of technical and other relevant expertise necessary to undertake such projects.

(4) Subject to any guidelines that the Minister may, from time to time, issue for the purposes of this section and other provisions of this Act in respect of public investment projects, including—

(*a*) the type of projects;

(*b*) the size of the project;

(*c*) the stage of development of the project; and

(*d*) any other relevant factors that shall determine projects of which the Commission's advice and involvement shall be sought,

a Contracting Authority shall—

(*a*) seek the advice of the Commission as soon as is practicable before undertaking a public investment project; and

(*b*) on the basis of a pre-feasibility assessment, evaluate the feasibility of a public-private partnership approach in implementing the project.

Proceedings of the Commission

10.—(1) Subject to the other provisions of this Act, the Commission may regulate its own procedure.

(2) The Commission shall meet for the transaction of business at least once every three months at such places and at such times as the Chairman may determine.

(3) A special meeting of the Commission may be called by the Chairman upon written notice of not less than seven days received from any member of the Commission and shall be called if at least four members so request in writing:

Provided that if the urgency of any particular matter does not permit the giving of such notice, a special meeting may be called upon giving a shorter notice.

(4) Half of the members of the Commission shall form the quorum of any meeting of the Commission.

(5) There shall preside at any meeting of the Commission—

(*a*) the Chairman;

(*b*) in the absence of the Chairman such member as the Chairman may designate or such member as the members present and forming a quorum may elect from among their number for the purpose of that meeting.

(6) The decision of the Commission on any matter before any meeting shall be that of the majority of the members present and voting at the meeting and, in the event of an equality of votes, the person presiding shall have a casting vote in addition to that person's deliberative vote.

(7) No member of the Commission shall attend to the business of the member's office by representation, and where a member is unable to attend any meeting of the Commission, the member may request that the member's apologies for failure to attend be recorded.

Committees of the Commission

11.—(1) The Commission may, for the purpose of performing its functions under this Act, establish committees and delegate to any such committee such of its functions as it considers necessary, and the Commission may appoint as members of a committee established under this subsection persons who are or are not members of the Commission and such persons shall hold office for such period as the Commission may determine.

(2) Subject to any special or general directions of the Commission, any committee established under this section may regulate its own procedure.

Minutes of meetings

12. The Commission shall cause minutes to be kept of the proceedings of every meeting of the Commission and of every meeting of a committee of the Commission.

Disclosure of interest

13. If any member is present at a meeting of the Commission or of any committee of the Commission at which any matter which is the subject of consideration is a matter in which that person or that person's immediate family member, or that person's professional or business partner is directly or indirectly interested in a private or professional capacity, the person shall, as soon as is practicable after the

commencement of the meeting, disclose such interest and, unless the Commission or the committee otherwise directs, that person shall not take part in any consideration or discussion of, or vote on, any question touching on such matter.

Co-opted persons

14.—(1) The Commission may in its discretion at any time and for any period invite any person, and the Minister may in like manner nominate any officer in the public service, to attend any meeting of the Commission or of any of its committees and take part in the deliberations of the meeting, but such person or officer shall not be entitled to vote at the meeting.

(2) Section 13 shall apply, *mutatis mutandis*, to a person or an officer attending a meeting of the Commission pursuant to subsection (1).

PART IV

SECRETARIAT

Secretariat of the Commission

15. The Secretariat of the Commission shall consist of the Chief Executive Officer and other employees of the Commission appointed under this Part.

Chief Executive Officer of the Commission

16.—(1) The Commission shall appoint, on such terms and conditions as it may determine with the approval of the Minister, a Chief Executive Officer.

(2) The Chief Executive Officer shall perform such duties as the Commission shall assign to that office and ensure the effective administration and implementation of the provision of this Act.

(3) Without derogation from the generality of the responsibilities and duties of the Chief Executive Officer conferred under subsection (2), the duties of the Chief Executive Officer shall include the following—

(*a*) to formulate and submit to the Commission proposals and recommendations including programme strategies, selection criteria and annual targets for—

(i) public-private partnership arrangements;

(ii) financing of public-private partnership projects; and

(iii) divestiture and reform of state-owned enterprises;

(*b*) to prepare and update a database of state-owned enterprises that are subject to divestiture;

(*c*) to establish operational guidelines and transparent procedures and carry out studies for implementation of—

(i) public-private partnership arrangements:

(ii) financing of public-private partnership projects; and

(iii) the divestiture and reform of state-owned enterprises;

(*d*) to ensure that the functions of the Commission are being performed effectively;

(*e*) to prepare for approval by the Commission, the strategic objectives and targets to be met by the Commission; and

(*f*) any other function and duties as the Commission may assign to him from time to time for the purposes of the implementation of the Act.

(4) The Chief Executive Officer or, in the Chief Executive Officer's absence, such other officer of the Commission as the Chief Executive Officer may designate, shall attend meetings of the Commission and may address such meetings, but shall not vote on any matter:

Provided that the person presiding at any meeting of the Commission may, for good cause, require the Chief Executive Officer or such other officer to withdraw from such meeting.

(5) Section 13 shall apply, *mutatis mutandis*, to the Chief Executive Officer and to such other officer referred to in this section.

Other employees

17. The Commission may delegate to the Chief Executive Officer the employment, on such terms and conditions as the Commission may determine, such other employees, subordinate to the Chief Executive Officer, as the Commission considers necessary for the performance of the Chief Executive Officer's functions and to assist the Chief Executive Officer in the discharge of the Chief Executive Officer's duties and responsibilities.

Disclosure of interest by employees, etc.

18.—(1) An employee of the Commission or a consultant to the Commission who, or whose spouse, is directly or indirectly interested in a private or professional or official capacity in any matter relating to the divestiture programme or public-private partnership arrangement shall be required to disclose such interest.

(2) A disclosure of interest made under this section shall be made to the Chief Executive Officer who shall take such decision as the Chief Executive Officer considers appropriate in each case and submit a report thereon to the Commission.

Oath of secrecy

19. Every—

(*a*) member of the Commission;

(*b*) member of a committee of the Commission;

(*c*) employee of the Commission;

(*d*) consultant in the service of the Commission,

shall take such oath of secrecy as may be approved by the Commission or as may otherwise be prescribed under this Act.

Prohibition of publication or disclosure of information by unauthorized persons

20.—(1) No person shall, without the consent in writing given by or on behalf of the Commission, publish or disclose to any person, otherwise than in the course of the person's duties, the contents of any document, communication or information which relates to, and which has come to the person's knowledge in the course of the person's duties under this Act.

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

PART V
Public-Private Partnership Arrangements

Special purpose vehicle or joint venture

21.—(1) The public-private partnership arrangement may be implemented through a Special Purpose Vehicle incorporated under the Companies Act specifically for this purpose or it may be through a Joint Venture agreement between the Contracting Authority and the private Partner:

Provided that the Joint Venture provisions may be incorporated into the public-private partnership agreement.

(2) The Shareholders of the Special Purpose Vehicle shall be the Minister responsible for Finance and the private Partner and the two must enter into a Shareholders agreement the terms of which must be as prescribed by the Minister.

Public-Private Partnership agreement

22.—(1) Notwithstanding any other enactment but subject to this Act, a Contracting Authority, if authorized by the Minister, may enter into an agreement with a Partner for the performance of one or more of the functions of that Contracting Authority.

(2) Every Agreement shall—

(*a*) identify the responsibilities of the Contracting Authority and the Partner;

(*b*) specify the relevant financial terms;

(*c*) ensure the management of performance of the Partner;

(*d*) provide for the return of assets, if any and where applicable, to the Contracting Authority, at the termination or expiry of the agreement, in such manner as may be provided for in the Agreement;

(*e*) provide for the optimal sharing of risks between the Contracting Authority and the Partner;

(*f*) provide for the payment to the Partner by way of compensation from revenue or charges or fees collected by the Partner from users or customers of a service provided by it;

(*g*) provide for its duration; and

(*h*) contain such other information as may be prescribed.

(3) Every agreement shall be governed by and construed in accordance with the Laws of Malaŵi.

(4) Every agreement shall provide for disputes between the Partner and the Contracting Authority to be settled by exhausting alternative dispute resolutions mechanisms such as mediation, failing which matters will go for arbitration, according to the rules defined in the Agreement.

Functions of a Contracting Authority

23.—(1) Without prejudice to the functions of a Contracting Authority under any written law, the Commission or a Contracting Authority, with the support of the Commission, may, either itself or in conjunction with any other person or another Contracting Authority—

(*a*) identify, appraise, develop and monitor a project to be implemented under this Act;

(*b*) undertake or cause to be undertaken a feasibility study where it considers that a project may be implemented under a public-private partnership agreement;

(*c*) submit the feasibility study to the Minister responsible for Finance through the Commission for its approval;

(*d*) enter into a public-private partnership arrangement with a Partner, subject to the approval of the Minister responsible for finance and the Minister, for the performance of functions of the Contracting Authority specified in the arrangement in relation to—

(i) the design and construction of an infrastructure facility, together with the operation of services relating to it and the provision of finance, if required, for such design, construction and operation; and

(ii) the provision of services relating to an infrastructure facility and the provision of finance, if required, for such service;

(*e*) subject to subsection (4), arrange or provide for a payment to a Partner;

(*f*) transfer an interest, or part of an interest, of the Contracting Authority in an infrastructure facility or part of an infrastructure facility, to the Partner, or, subject to the prior consent of the appropriate Minister or, if the Contracting Authority is a ministry, subject to the consent of the Minister, to a nominee of the Partner by transfer, assignment, conveyance, grant of lease or licence or otherwise; and

(*g*) take a transfer of an interest of the Partner or a nominee of the Partner, in an infrastructure facility or part of an infrastructure

facility, by transfer, assignment, conveyance, grant or surrender of lease or licence or otherwise.

(2) Subject to subsections (3) and (4), the Contracting Authority may, whether or not for consideration, transfer, convey or assign its interest in any real or person property, including leasehold owned or held by such Contracting Authority to a company formed under section 21 for the purpose of enabling such a company to carry out its financing functions in connexion with public investment projects.

(3) A Contracting Authority shall not convey, assign or transfer any property under subsection (2) to any such company unless the consent of the Minister and the appropriate Minister has been obtained.

(4) A Contracting Authority may, with the approval of the Minister, attach such terms and conditions as it considers appropriate to any transfer, conveyance or assignment pursuant to subsection (1).

(5) A public-private partnership arrangement may include terms and conditions in relation to the performance by the Partner concerned of the Partner's obligations under the arrangement as agreed by the Contracting Authority.

(6)—(*a*) Where a payment is arranged or provided for pursuant to section 21, the Minister responsible for finance may, at any time until entry into the public-private partnership arrangement by the Contracting Authority, give directions to the appropriate Minister in relation to the aggregate value of the moneys committed to such arrangements, as the Minister considers necessary; and

(*b*) the appropriate Minister shall, in performing his functions, have regard to any directions given by the Minister responsible for finance under this section.

(7) Functions conferred on a Contracting Authority by this section shall be in addition to, and not in substitution for, any other functions of the Contracting Authority.

(8) The public-private partnership arrangements undertaken pursuant to the provisions of this Act shall be carried out based on the principles of fairness, transparency and accountability.

(9) The Contracting Authority shall ensure that risks and associated benefits of the public-private partnership arrangements are allocated to parties that are best placed to manage them.

Additional powers

24.—(1) A public-private partnership arrangement shall, whilst it is in force, operate to confer on the Partner concerned, the functions of the

Contracting Authority specified in the arrangement, subject to any terms and conditions so specified.

(2) A function conferred on a Partner by a public-private partnership arrangement—

(*a*) may be performed by the Partner in the Partner's own name, subject to the general superintendence and control of the Contracting Authority concerned; and

(*b*) shall, notwithstanding such arrangement, continue to be vested in the Contracting Authority concerned concurrently with the Partner and may be performed by either or both of them.

(3) The conferral of a function of a Minister on a Partner by a public-private partnership arrangement shall not affect the Minister's responsibility to Parliament or as a member of the Government for the performance of the function.

(4) In this section, "functions", in relation to a Contracting Authority, includes functions of any other Contracting Authority to be performed by it pursuant to an agreement or arrangement duly made by it with that other Authority.

Types of infrastructure facilities and services

25.—(1) A Contracting Authority, where authorized by the Cabinet, may enter into a public-private partnership arrangements for the delivery of infrastructure and services within the scope of Government's key priority areas aimed at achieving sustainable economic growth and social development.

(2) Without derogating from the generality of subsection (1), the key priority areas include—

(*a*) agriculture and food security;

(*b*) energy, industrial development, mining and tourism;

(*c*) transport infrastructure and inland ports;

(*d*) education, science and technology;

(*e*) public health, sanitation, malaria and HIV/AIDS management;

(*f*) integrated rural development;

(*g*) greenbelt irrigation and water development;

(*h*) child development, youth development and empowerment;

(*i*) climate change, natural resources and environmental management; and

(*j*) any other type of infrastructure and services as the Minister may, from time to time, designate by notice published in the *Gazette*.

(2) In the implementation of public-private partnership arrangements listed in subsection (1), the Commission may use any or a combination of the following modes of private sector involvement—

(*a*) Build Own Operate Transfer;

(*b*) Build Own Transfer;

(*c*) Build Own Operate;

(*d*) Design Finance Refurbish Operate Transfer;

(*e*) Design Finance Build Operate Transfer;

(*f*) Concession or Leases; and

(*g*) any other mode as the Commission shall determine.

PART VI
Procedures for Awarding Contracts

Feasibility study for public-private partnership

26.—(1) Every Contracting Authority shall, through the Commission or by itself if authorized by the Commission undertake or cause to be undertaken a feasibility study where it considers that a project may be implemented under an agreement to assess whether the proposed project is feasible as a public-private partnership project.

(2) The feasibility study shall—

(*a*) demonstrate comparative advantage in terms of strategic and operational benefits for implementation under a public-private partnership agreement;

(*b*) describe in specific terms—

(i) the nature of the Contracting Authority's functions, the specific functions to be considered in relation to the project, and the expected inputs and deliverables;

(ii) the extent to which those functions can lawfully and effectively be performed by a Partner in terms of an agreement; and

(iii) the most appropriate form by which the Contracting Authority may implement the project under an agreement;

(*c*) demonstrate that the agreement shall—

(i) be affordable to the Contracting Authority;

(ii) deliver value for money; and

(iii) transfer appropriate technical, operational or financial risk to the Partner; and

(*d*) explain the capacity of the Contracting Authority to effectively enforce the agreement, including the ability to monitor and regulate project implementation and the performance of the Partner in terms of the agreement.

Pre-selection of bidders

27.—(1) The Commission shall consider carrying out a pre-qualification exercise to select potential bidders or may delegate its powers under this subsection to the Contracting Authority where the Commission considers that the Contracting Authority has the necessary expertise to undertake the pre-qualification exercise.

(2) The invitation to bidders to submit bids shall be done through the request for proposal document which shall be prepared by the Commission and shall include a public invitation for bidders to submit bids.

(3) In the exercise of its powers under this section the Commission shall strive for the highest standard of equity by ensuring that all bidders are afforded equal opportunity and are treated fairly.

Evaluation criteria

28.—(1) The request for proposals shall clearly set out the evaluation criteria which shall form the basis for selection of a preferred bidder.

(2) Bids shall be evaluated by the Commission.

Contract award for public-private partnership

29.—(1) The public-private partnership contract may be concluded solely on the basis of a decision by the Commission having secured clearance from the Minister responsible for finance and the consent obtained from the Minister to the final draft contract.

(2) Where the Commission has delegated its function to the Contracting Authority, the Contracting Authority shall submit to the Commission for approval the final draft of the public-private partnership contract, including all the annexes thereto, evaluation reports prior to reaching a decision on the selection of a Partner.

(3) Within thirty days from the date of receipt of the final draft contract referred to in subsection (1) the Commission shall reach the decision on the granting of consent to the text of the draft contract.

(4) The Commission shall issue the decision referred to in subsection (2) on the basis of the assessment of compliance of the draft contract with the tender documents and the provisions of this Act and the Regulations made thereunder.

(5) Any amendments to a concluded public-private partnership contract, whereby the rights and obligations of the parties to the contract are being modified, shall be made according to a procedure that is in line with the provisions of this Act.

Register of public-private partnership contracts

30.—(1) The Contracting Authority shall submit to the Commission the concluded public-private partnership contract with all annexes, including changes to the contract and annexes thereto in the period that the Minister shall set.

(2) The concluded public-private partnership contract with all annexes thereto which are its integral part, and all changes to the contract and annexes thereto, shall be entered in the Register which is kept by the Commission.

Unsolicited bids

31.—(1) Any unsolicited bid or expression of interest for a public-private partnership by a prospective private Partner to a Contracting Authority shall be referred to the Commission and shall not be responded to by the Contracting Authority.

(2) Once the Commission receives the unsolicited bid or expression of interest, it shall consult with the relevant Contracting Authority for a preliminary assessment whether the public-private partnership of the type proposed is acceptable or not.

(3) If the assessment and consultation in subsection (2) determines that the public-private partnership type is acceptable, the Commission shall seek the approval of the Cabinet to conduct a feasibility study, and the unsolicited bidder shall be informed that bidders including the unsolicited bidder shall be invited to bid for the public-private partnership in accordance with the procedure laid down in this Act.

(4) If however the assessment and consultation in subsection (2) above determines that the public-private partnership being proposed is unacceptable the Commission shall advise the unsolicited bidder accordingly.

PART VII
Divestiture and Commercialization

Divestiture of state-owned enterprises

32. A state-owned enterprise shall be divested in accordance with the divestiture sequence plan or as the Cabinet may otherwise determine through the Minister.

Special rights of the Government

33. In any agreement for the sale of a state-owned enterprise, the parties may agree that the Minister responsible for Finance may retain, or at any time after the date of the agreement acquire, a share in the divested enterprise, which share shall confer special rights to enable the Government in the national interest to intervene in the operations of the enterprise where such intervention is necessitated by the specific actions or undertakings of the enterprise.

Allotment of shares

34. The shares of a state-owned enterprise shall be allotted by the Commission.

Obligations of shareholders

35. The shareholders in any state-owned enterprise, when so requested by the Commission, shall provide to the Commission such information as the Commission may reasonably require, subject to any prohibition or restrictions contained in any written law on the provision of such information.

Obligations of state-owned enterprises

36.—(1) A state-owned enterprise scheduled for divestiture, and in which there is no private ownership, shall—

(*a*) carry out any recommendations, made by the Commission, for preparing the enterprise for divestiture;

(*b*) keep up to-date all business records and books of accounts;

(*c*) make available to the Commission its manpower development, investment or financing plan if any has been developed;

(*d*) prepare the accounts and a financial statement of the enterprise for every financial year and cause them to be audited not later than four months after each financial year;

(*e*) maintain a register of its fixed assets, which register shall be reconciled with the financial statement;

(*f*) not perform any action that would result in the assets of the company being dissipated;

(*g*) not undertake any new capital investment programmes, unless a project appraisal report approved by the Commission, is prepared showing that—

(i) routine plant, equipment and vehicle renewal is required;

(ii) rehabilitation expenditure is essential to keep the operations of the state-owned enterprise running or to improve the marketability of the enterprise;

(iii) the new capital investment has a pay back period of less than two years;

(iv) the new capital investment will contribute to the promotion of export or import substitution; and

(v) the state-owned enterprise demonstrates that the new capital investment will not result in deterioration of its operations;

(*h*) as far as possible, establish and document all contractual, legal and other obligations;

(*i*) not give any person information which might give undue advantage to that person or to any potential investor; and

(*j*) if so requested by the Commission, disclose all of any information whatever about the enterprise.

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

Modes of divestiture

37.—(1) The Commission may employ the following modes of divestiture—

(*a*) public offering of shares;

(*b*) private sale of shares through negotiated or competitive bids;

(*c*) offer for sale of additional shares in a state-owned enterprise to reduce Government share holding;

(*d*) sale of the assets and business of the state-owned enterprise;

(*e*) re-organization of the state-owned enterprise before the sale of the whole or any part of the enterprise;

(*f*) buy outs of a state-owned enterprise by management or employees in that enterprise; and

(*g*) any other method the Commission may consider appropriate.

(2) Save as may otherwise be provided in regulations made under this Act, the Commission shall ensure that each state-owned enterprise is sold at its market value.

Valuation of state-owned enterprises

38. The valuation of state-owned enterprises shall be performed by independent valuers who shall issue a certificate of valuation or an opinion of the value.

Eligible shares to members

39. The shares in a state-owned enterprise shall be liable to be sold to any person whether or not such person is a citizen of Malaŵi. That notwithstanding, the Commission will make every effort to encourage Malaŵian participation in state-owned enterprise through various schemes approved by the Minister.

Sales of shares to Members of Cabinet, etc.

40. No member of the Cabinet or of the Commission or of a committee of the Commission and no employee of the Commission or consultant to the Commission or the spouse, child, mother, father, brother, sister or a professional or business partner or immediate family member thereof shall purchase shares or assets in a state-owned enterprise, unless the sale is by public offer of shares.

Established funds

41. An established fund may purchase shares in a state-owned enterprise on behalf of the contributors.

Purchase of shares by citizens of Malaŵi

42. Where the purchasers are citizens of Malaŵi, shares may be offered at a discount which shall be in accordance with prescribed guidelines, and it shall be a condition of every sale of shares at a discount that the shares so purchased shall not be disposed of within two years of the date of purchase.

43. The shares of a state-owned enterprise shall not be sold on credit, unless otherwise prescribed by regulations made under this Act.

Shares not to be sold on credit

44.—(1) The Commission shall appoint a competent negotiating team for each sale to act on behalf of the Commission.

Negotiations of sale

(2) A person appointed on the negotiating team shall—

(*a*) have proper professional qualifications and experience and shall not be a person held in bad business standing;

(*b*) take an oath of secrecy as approved by the Commission or as may be prescribed; and

(*c*) disclose any personal or professional interest the person may have, whether direct or indirect, before accepting the appointment.

45. The Commission may convert a state-owned enterprise scheduled for divestiture, which is not a company, into a private or public company in accordance with the provisions of the Companies Act.

Conversion of private companies to public companies Cap 46:03

46. The Commission may liquidate a state-owned enterprise in accordance with the provisions of the Companies Act.

Liquidation Cap. 46:03

47.—(1) The final sales agreement to transfer shares in a state-owned enterprise to the successful bidder shall be signed by—

Completion of sales

(*a*) the Minister responsible for finance or the Commission, where the shares sold were directly owned by the Government; or

(*b*) the respective shareholder, where the shares sold were not directly owned by the Government.

(2) The transfer of shares shall be in accordance with the provisions of the Companies Act.

Cap. 46:03

(3) The final sale or transfer of assets-owned by a state-owned enterprise to the successful bidder shall be signed by the Commission on behalf of the state owned enterprise.

48.—(1) The Minister, in consultation with the Minister responsible for the Government department to be commercialized, may specify, by notice in the *Gazette*, any Government department for purposes of commercialization under this Act.

Commercialization of specified Government departments

(2) A specified Government department shall be incorporated under the Companies Act.

Cap. 46:03

(3) A Government department specified under this section may,

subject to the approval of the Minister responsible for Finance—

(*a*) fix its own rates, prices and charges for goods and services provided;

(*b*) capitalize assets; and

(*c*) borrow debenture stocks.

PART VIII
Publications, Information and Reports

Publication and records of certain information

49.—(1) The Commission shall publish by notice in the *Gazette* and in at least two newspapers in general circulation in Malaŵi, or in any media, the names of the state-owned enterprises approved to be divested.

(2) The Commission shall keep and maintain proper records of—

(*a*) the names of the state-owned enterprises approved to be divested as published under subsection (1);

(*b*) public-private partnership arrangement transactions that have been undertaken;

(*c*) the registered consultants dealing with the divestiture process;

(*d*) the bidders and bid prices;

(*e*) the successful bidders and the reason for selecting such bidders;

(*f*) the cost of transactions and any other special conditions of the public-private partnership arrangement;

(*g*) the price of shares and any other special conditions of the sale of shares; and

(*h*) any other matters as the Commission may deem appropriate.

(3) Any person having or claiming to have an interest in a state-owned enterprise to be divested shall make a claim in writing to the Commission within a period of sixty days after the notice referred to in subsection (1) is published, and if the person fails to do so, the person shall be deemed to have relinquished all interests in the state-owned enterprise.

(4) The Commission may not be sued in relation to actions or debts incurred by state-owned enterprises.

(5) The Government shall be responsible for the debts and actions of state-owned enterprises.

Unauthorized persons not to publish or disclose information

50.—(1) Save as otherwise provided by law, a person shall not disclose confidential information obtained by that person while performing, or as a result of having performed, duties under this Act as—

(*a*) a member of the Commission;

(*b*) an employee of the Commission; or

(*c*) a consultant or an adviser to the Commission, or an employee of such person whilst performing duties relating to such advice or consultation, or obtained while in performance of a service contract, unless such person is duly authorized by the Commission to do so.

(2) A person who contravenes subsection (1) commits an offence and shall be liable, on conviction, to a fine of K500,000 and to imprisonment for two years.

(3) Nothing in subsection (1) shall prevent disclosure of information to the Commission, the Chief Executive Officer or the Minister.

Annual reports

51.—(1) As soon as practicable, but not later than six months after the expiry of each financial year, the Commission shall submit to the Minister, a report concerning its activities with respect to public-private partnership arrangements or divestiture of state-owned enterprises during that financial year.

(2) The report referred to in subsection (1) shall be in such form as the Minister shall approve and shall include information on the financial affairs of the Commission, and there shall be appended to the report—

(*a*) an audited balance sheet;

(*b*) an audited statement of income and expenditure; and

(*c*) such other information as the Commission may consider appropriate or as the Minister may direct.

(3) The Minister shall, during the meeting of the National Assembly next following receipt by the Minister of the report referred to in subsection (1), lay the report before the National Assembly.

Public-private partnership arrangements report

52. The Commission may annually publish a report of public-private partnership arrangements to the public.

Progress reports

53. The Commission shall, every six months, at the end of June and at the end of December, produce a report on its activities during that period, giving details of bids received and selected and other particulars and shall publish the report for sale to the public.

PART IX
Financial Provisions

Use of proceeds

54.—(1) Such amount of the proceeds of every sale of state-owned enterprises as the Minister shall determine with the advice of the Commission shall be paid into a fund to be known as the Divestiture Proceeds Account to be established by the Minister responsible for Finance and to be held at the Reserve Bank of Malaŵi or at such other bank or place as that Minister, on the advice of the Commission, may direct.

(2) With the prior approval of the Minister responsible for Finance, the funds held on the Divestiture Proceeds Account may be used for—

(*a*) funding the Commission;

(*b*) funding the cost of divestiture under this Act;

(*c*) funding the cost of public-private partnership development;

(*d*) funding the restructuring of public enterprise to be divested or commercialized;

(*e*) supporting payments for retrenchment, redundancy or other form of lay-off resulting from divestiture processes under this Act;

(*f*) funding of any project within the Government development plans.

Funds of the Commission

55.—(1) The funds of the Commission shall consist of such moneys as may—

(*a*) be appropriated by Parliament for the purposes of the Commission;

(*b*) be paid to the Commission by way of grants or donations or otherwise received by the Commission;

(*c*) be retained by the Commission out of the proceeds of sales of state-owned enterprises as may be approved by the Minister responsible for Finance;

(*d*) be received by the Commission under subsection (2);

(*e*) constitute proceeds of the sales of the annual progress reports of the Commission; and

(*f*) otherwise vest in or accrue to the Commission.

(2) The Commission may charge and collect fees in respect of programmes, publications, seminars, documents, consultancy services and other services provided by the Commission.

(3) The Commission may invest in such manner as it thinks fit such of its funds as it does not immediately require for the performance of its functions.

Funds for public-private partnership development

56.—(1) The Commission may—

(*a*) accept money by way of grants or donations from any source in or outside Malaŵi:

Provided that such source and their principals, immediate family members, related entities, representatives or affiliated parties of any type, have not participated directly or indirectly in any public-private partnership arrangement or divestiture of state-owned enterprise in Malaŵi.

(*b*) subject to the approval of the Minister and the Minister responsible for Finance, raise, by way of loans from any source in or outside Malaŵi, such money as it may require for the discharge of its functions:

Provided that such source shall comply with the restraints in paragraph (*a*) above; and

(*c*) charge and collect fees in respect of programmes, facilitating public-private partnership arrangements, publications, seminars, documents, consultancy services and other services provided by the Commission.

(2) The Commission may invest in such manner as it thinks fit such of its funds as it does not immediately require for the performance of its functions.

Raising resources for public-private partnership arrangements

57.—(1) Subject to subsection (2) and to such guidelines as the Minister may issue, the Commission may from time to time raise money for purposes of public-private partnership arrangements.

(2) The combined net aggregate of the principal of all moneys raised and outstanding by the Commission and any companies formed under section 8 shall not exceed such total sum as the Minister may, from time to time, set and publish by notice in the *Gazette*.

Minister may make available moneys from the Consolidated Fund Cap. 37:02

58. Subject to the provisions of the Public Finance Management Act, the Minister responsible for finance may make available moneys from the Consolidated Fund to the Commission or a company formed under section 8 on such terms and conditions as the Minister may determine.

Commission or Contracting Authority to keep record of costs of transactions

59. To the extent possible, the Commission or the Contracting Authority, as the case may be, shall prepare a statement of its costs up to and including closing related to a particular public-private partnership arrangement, in addition to anticipated post-transaction costs based on the obligations and commitments of the Contracting Authority entering into such a public-private partnership arrangement.

Financial Year

60. The financial year of the Commission shall be the period of twelve months ending on 30th June in each year or on such other date as the Minister may specify by Order published in the *Gazette*.

Accounts

61.—(1) The Commission shall cause to be kept proper books of accounts and other records relating to its accounts.

(2) The accounts of the Commission shall be audited annually by independent auditors appointed by the Commission and approved by the Minister.

Annual Financial Report

62.—(1) As soon as practicable, but not later than six months after the expiry of each financial year, the Commission shall submit to the Minister a report concerning its activities during that financial year.

(2) The report referred to in subsection (1) shall be in such form as the Minister shall approve and shall include information on the financial affairs of the Commission, and there shall be appended to the report—

(*a*) an audited balance sheet;

(*b*) an audited statement of income and expenditure; and

(*c*) such other information as the Commission may consider appropriate or as the Minister may direct.

(3) The Minister shall, during the meeting of the National Assembly next following receipt by the Minister of the report referred to in subsection (1), lay the report before the National Assembly, but otherwise the Commission may publish the report for sale to the public.

PART X

Miscellaneous Provisions

Prohibition against exerting undue influence on officers

63.—(1) A person who communicates with a member of the Commission, the Chief Executive Officer, an employee of the Commission, a consultant, or an adviser or other person engaged by the Commission, for the purpose of influencing improperly that person's consideration of any matter which falls to be considered or decided by the Commission, commits an offence.

(2) If a person referred to in subsection (1) to whom a communication is made of the opinion that the communication may be in contravention

of subsection (1), it shall be the duty of that person not to entertain the communication further and the person shall inform the Chairman of the Commission forthwith of the substance of such communication, and the Chairman shall acknowledge, in writing, receipt of such information.

Settlement of disputes

64.—(1) Any dispute between—

(*a*) an investor and the Commission arising from the divestiture process;

(*b*) an investor, a Partner, a Contracting Authority and the Commission arising from or relating to a public-private partnership arrangement,

shall be settled through negotiation, mediation, or, by arbitration in accordance with the Arbitration Act. Cap. 6:03

Falsification of information

65.—(1) A person who knowingly—

(*a*) falsifies any information;

(*b*) does not disclose any material facts when lawfully required to do so; and

(*c*) solicits for use by any person not authorized under this Act any confidential information, relating to the divestiture of a state-owned enterprise, commits an offence.

(2) A person convicted of an offence under subsection (1) shall not thereafter be eligible to participate in any public sector investment programme in Malaŵi.

Administrative penalties

66.—(1) If the Commission is satisfied on reasonable grounds that a person has contravened this Act or regulations made under it, the Commission may impose administrative penalties on the person by doing one or more of the following—

(*a*) giving the person a written warning;

(*b*) directing the person to do a specified act, or refrain from doing a specified act, for one or more of the following purposes—

(i) to remedy the effects of the contravention;

(ii) to compensate persons who have suffered loss because of the contravention;

(iii) to ensure that the person does not commit further contraventions;

(*c*) requiring the person to pay a monetary penalty as may be prescribed by the Minister.

(2) Without limiting subsection (1) (*b*), a direction may require the establishment of compliance programmes, corrective advertising or, in the case of a direction to a corporation, changes in the management of the institution.

(3) A person on whom an administrative penalty has been imposed and who fails or refuses to comply with the administrative penalty commits an offence and, on conviction, shall be liable to a fine of K1,000,000 and to four years imprisonment.

(4) Where the administrative penalty imposed by the Commission is a monetary penalty and the person on whom the monetary penalty has been imposed does not pay for a period of more than thirty days from the date of first demand in writing by the Commission, the amount in respect of the monetary penalty shall be recoverable by the Commission as a civil debt.

General penalties

67.—(1) A person convicted of an offence under this Act, for which no penalty has been specified, shall be liable to a fine not exceeding K1,000,000 and to imprisonment for four years.

(2) Where a body corporate is convicted of an offence under this Act, the court may, if the court thinks fit, impose a pecuniary penalty not exceeding an amount equal to five years times the amount of the maximum pecuniary penalty that could be imposed by the court on an individual convicted of the same offence.

Regulations

68. The Minister may, on the advice of the Commission, make regulations for carrying out or giving effect to the provisions of this Act, and without prejudice to the generality of the foregoing, such regulations may prescribe—

(*a*) the structure or general description of the structure of the partnership;

(*b*) capitalization requirements;

(*c*) debt level limitations;

(*d*) operating conditions;

(*e*) conditions as to the standard of maintenance and performance standards during the operation of the public-private partnership;

(*f*) conditions as to the transfer of ownership of any assets or liabilities to the State or a municipality, including inspection and valuation processes;

(*g*) conditions as to the transfer of risk to the Partner;

(*h*) conditions as to fixed or variable subsidy levels;

(*i*) conditions as to the need for performance bonds or guarantees from any party, its parent company or any other person;

(*j*) the level or kind of local involvement that is expected or preferred; and whether any concessions might be made in return for local involvement;

(*k*) conditions as to the step-in rights of the Government or any lender, which may include service level requirements;

(*l*) dispute resolution processes;

(*m*) circumstances in which the public-private partnership may be determined by the Government and the consequences of that termination;

(*n*) conditions that must be met before any part of the public-private partnership may become operative or before charges may be imposed for use of any infrastructure or services provided by the public-private partnership;

(*o*) tender procedures;

(*p*) public floatation procedures;

(*q*) pre-qualification and registration of bidders procedures;

(*r*) public announcement requirements;

(*s*) negotiation guidelines;

(*t*) final sale or transaction monitoring guidelines;

(*u*) pre and post-transaction audit requirements;

(*v*) approach to, and procedures for, dealing with unsolicited proposals and direct negotiations for selection of the private sector;

(*w*) risk sharing framework between a Contracting Authority and a Partner in a public-private partnership arrangement;

(*x*) any forms and anything required to be prescribed under, or for the purposes of this Act; and

(*y*) such other matters as are necessary or conducive for the better carrying out of this Act.

Oversight of public-private partnership arrangements by regulators

69.—(1) The respective responsible sector regulators shall, in consultation with the Commission, subject public-private partnership arrangements to consistent regulation to ensure that the public-private partnership arrangements are being managed such a way that they are achieving the purpose for which they were established and are giving acceptable returns.

(2) The appropriate Minister shall ensure that sector regulations are effective and impartial in order to promote public-private partnerships.

Guidelines, policy directives or objectives

70. The Minister may, on the advice of the Commission and with the approval of the Cabinet, from time to time, issue policy directions prescribing further objectives and forms of public-private partnership arrangements and the guidelines to be followed for the proper and effective implementation of the provisions of this Act, and such objectives or guidelines shall be valid for all purposes unless inconsistent with this Act and only on the extent of the inconsistency.

PART XI
Transitional Provisions, Repeal and Savings

Saving of existing agreements and arrangements

71. Subject to section 74, where an agreement or arrangement was entered into on a date before the commencement of this Act, and that agreement or arrangement would have been a public-private partnership arrangement or direct agreement if this Act had been in operation on such a date, then the agreement or arrangement, as the case may be, shall have effect and be taken always to have had effect as if this Act was in operation when the arrangement or agreement was entered into.

Existing public-private partnership arrangements

72. Any public-private partnership arrangement of any Contracting Authority effected at any time before the commencement of this Act shall comply with the provisions of this Act within twelve months from the commencement of this Act.

Vesting of assets of the Privatization Commission

73.—(1) Any property procured or acquired by the Privatization Commission shall vest in the Commission.

(2) On or after the appointed date, there shall be transferred to, and vested in, or subsisted against, the Commission by virtue of this Act and without further assurance—

(*a*) the affairs of the Privatization Commission; and

(*b*) subject to this Act, all property, rights and obligations which immediately before the appointed date were the property, rights and obligations of the Privatization Commission.

(3) Except as provided in this Act, every deed, bond and agreement (other than an agreement for personal service) to which the Privatization Commission was a party immediately before the appointed date, whether in writing or not, and whether or not of such nature that rights, liabilities and obligations thereunder could be assigned, shall, unless its subject matter or terms make it impossible that it should have effect as modified in the manner provided by this subsection, have effect from the date of the assignment thereof, as if—

(*a*) the Commission had been a party thereto;

(*b*) for any reference to the Privatization Commission there were substituted, as regards anything falling to be done on or after the appointed date, a reference to the Commission; and

(*c*) for any reference to any officer of the Privatization Commission not being a party thereto and beneficially interested therein there were substituted, as regards anything falling to be done on or after the appointed date, or reference to such officer of the Commission as the Commission shall designate.

(4) Subject to the provisions of subsection (2), documents, other than those referred to therein, which refer specifically or generally to the Privatization Commission shall be construed in accordance with subsection (2) as far as applicable.

(5) For the purposes of this Part—

"Privatization Commission" means the Privatization Commission established under the Public Enterprises (Privatization) Act. Cap. 46:07

Registration of property to be transferred by the Privatization Commission

74.—(1) Where under this Act, any property, rights, liabilities and obligations of the Privatization Commission are deemed to have been transferred to the Commission in respect of which transfer a written law provides for registration, the Commission shall make an application in writing to the appropriate authority for registration of such transfer.

(2) The registration authority referred to in subsection (1) shall make such entries in the appropriate register as shall give effect to such transfer and, where applicable, issue to the transferee concerned a certificate of title in respect of the property or make necessary amendments to the register, as the case may be, and shall make endorsement on the deeds relating to the title, right or obligation concerned, and no registration fees, stamp duty or other duties shall be payable in respect thereof.

Legal proceedings

75.—(1) Without prejudice to the other provisions of this Act, where any right, liability or obligation vests in the Commission by virtue of this Act, the Commission and all other persons shall, as from the appointed date, have the same rights, powers and remedies (and in particular the same rights as to the instituting or defending of legal proceedings or the making or resisting of applications to any authority) for ascertaining, perfecting that right, liability or obligation as they would have had if it had at all times been a right, liability or obligation of the Commission.

(2) Any legal proceedings or application of any authority pending immediately before the appointed date by or against the Privatization Commission may be instituted by or against the Commission.

(3) After the appointed date, proceedings in respect of any right, liability or obligation which was vested in, held, enjoyed, incurred

or suffered by the Privatization Commission may be instituted by or against the Commission.

Transfer of employees

76.—(1) Any person who immediately prior to the commencement of this Act is employed by the Privatization Commission shall be deemed to have been transferred to the employment of the Commission under the person's former terms and conditions of service, and for purposes of determining the person's rights thereunder, the service shall be regarded as being continuous from the time the person was appointed by the Privatization Commission.

(2) No employee of the Privatization Commission transferred to the Commission by virtue of this section shall be entitled to claim any payments merely by virtue of such transfer.

Repeal and savings

77.—(1) Subject to subsection (2), the Public Enterprises (Privatization) Act is hereby repealed.

Cap. 46:07

(2) Anything done in accordance with the Public Enterprises (Privatization) Act repealed by subsection (1), prior to the commencement of this Act and which may be done in accordance with the provisions of this Act, shall be deemed to have been done in accordance with this Act.

Cap. 46:07

(3) Any subsidiary legislation made or deemed to have been made under Public Enterprises (Privatization) Act repealed by subsection (1) in force immediately before the commencement of this Act—

(*a*) shall remain in force, unless in conflict with this Act, and shall be deemed to be subsidiary legislation made under this Act; and

(*b*) may be replaced, amended or repealed by subsidiary legislation made under this Act.

Cap. 46:07

(4) All contracts awarded by the Privatization Commission in accordance with Public Enterprises (Privatization) Act repealed by subsection (1), prior to the commencement of this Act, shall be deemed to be contracts awarded by the Commission in accordance with this Act.

MICROFINANCE

CHAPTER 46:08

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MICROFINANCE

21 of 2010
G.N. 15/2010

An Act to provide for the regulation and supervision of microfinance services and to make provision for matters connected therewith or incidental thereto

[1st October, 2010]

PART I

PRELIMINARY

Short title

1. This Act may be cited as the Microfinance Act.

Interpretation

2.—(1) In this Act, unless the context otherwise requires—

Cap. 44:01

"bank" has the meaning ascribed to it in the Banking Act;

"branchless service" means any microfinance service, as defined in this Act, which is offered by a microfinance service provider or an agent on behalf of a licensed financial institution, where the licensed institution is authorized to provide the service and is wholly responsible for its lawful provision to the same extent as if offering the service directly;

"capital" includes paid up capital and unimpaired reserves;

"certificate" means a certificate of registration issued under this Act;

"company" has the meaning ascribed to it in the Companies Act; Cap. 46:03

"compulsory savings" means a sum of money which is paid as security, as a partial guarantee or as a precondition for a loan granted or promised at a future date to be granted to the person making the payment;

"*de facto* control of a microfinance institution" means direct or indirect influence that results in the person having predominant decision-making power over the business or financial operations of the microfinance institution and includes powers exercisable over another microfinance institution by virtue of such influence;

"*de jure* control of a microfinance institution" means beneficial ownership of more than 50% of any class of the issued voting shares of a microfinance institution;

"deposit" means a sum of money received or paid on terms under which it will be repaid, with or without interest or a premium, and on demand or at a time or in circumstances agreed by or on behalf of the person making the payment and the person receiving it except that the following shall not qualify as deposits for the purposes of this Act—

(*a*) any sum of money which is paid by way of advance or part payment under a contract for the sale, hire or other provision of property or services, where the sum is repayable only if the property or services is not or are not in fact sold, hired or otherwise provided;

(*b*) a sum of money which is paid by way of security for performing a contract;

(*c*) compulsory savings, provided that any such amount is not on-lent and is immediately placed in an account at a bank or microfinance institution duly licensed to accept deposits;

(*d*) acceptance of funds placed by a body corporate or other investor, in large amounts, against the issue of shares, debentures, bonds, certificates, notes, or other instruments;

(*e*) acceptance of funds—

(i) by an agent for the provision of branchless services;

(ii) in the form of insurance premiums; or

(iii) for purposes of transfer or payment services, including conversion into electronic payment media ("e-money");

"deposit-taking" means accepting deposits for intermediation;

"director" means a member of the board of directors of a microfinance institution, microcredit agency or a savings and credit cooperative;

"financially underserved customer" means a person who is economically active and does not normally have access to formal financial institutions;

"group guarantee" means an agreement by a group of microfinance borrowers to be held jointly or severally liable for loan repayments in order to secure credit facilities;

Cap. 44:05 "licence" means a licence issued under the Financial Services Act;

"low-income customer" means a person who is economically active, receives annual income at or below the official poverty line for Malaŵi, and does not normally have access to formal financial institutions;

"microcredit" means the provision of small loans to small or micro enterprises, low-income customers, financially underserved customers, or as determined by the Registrar, where—

(*a*) such loans are granted to a person whose income depends on his own business or economic activity;

(*b*) security for such loans may include non-traditional instruments such as group guarantees or compulsory savings;

(*c*) the borrower may be required to make frequent repayments in small amounts; and

(*d*) such loans may take the form of micro-housing or micro-leasing products designed for microfinance customers;

"microcredit agency" means a registered provider of microcredit services;

"microfinance institution" means a licensed provider of microfinance services, whether deposit-taking or non-deposit-taking;

"microfinance services" means the provision of financial services to small or micro enterprises, low-income customers, financially underserved customers, or as prescribed by the Registrar, including the following—

(*a*) microcredit;

(*b*) deposit-taking;

(*c*) micro-insurance;

(*d*) micro-leasing;

(*e*) transfer and payment services, including conversion into electronic payment media (e-money);

(*f*) micro-pension; or

(*g*) any other service that the Registrar may designate;

"microfinance service provider" includes a microcredit agency, microfinance institution or any other licensed financial institution that has been granted approval to offer microfinance services by the Registrar;

"micro-housing" means loans to small or micro enterprises low-income customers, or financially underserved customers for renovation or expansion of an existing home, construction of a new home, land acquisition, and basic infrastructure;

"micro-insurance" means the protection of small or micro enterprises, low-income customers, or financially underserved customers against specific perils in exchange for regular premium payments proportionate to the likelihood and cost of the risk involved;

"micro-leasing" means provision of appropriate financial leasing products to small or micro enterprises, low-income customers, or financially underserved customers;

"micro-pension" means the provision of modest savings opportunities to low-income customers or financially underserved customers in order to secure old age or future needs;

"officer" includes a manager of a microfinance institution;

"person" includes an individual, a company, a partnership, an association, a government or agency of government, and any other group of persons acting in concert, whether incorporated or not;

"Register" means Microfinance Register established and maintained pursuant to section 21;

"rotating savings and credit associations" means any association formed by a core of participants who make regular contributions to a fund which is given, in part in whole, to each contributor in rotation.

(2) Subject to subsection (1) and except where a contrary intention appears, words or expressions used in this Act shall have the same respective meanings as in the Financial Services Act. Cap. 44:05

Application

3.—(1) This Act shall apply, in addition to the Financial Services Act, to all persons providing microfinance services as the whole or as part of their business except to the extent that such persons are exempted by the Registrar pursuant to his authority under the Financial Services Act. Cap. 44:05

(2) All deposit-taking microfinance institutions shall be deemed prudentially-regulated financial institutions under the Financial Services Act. Cap. 44:05

(3) Any other licensed microfinance institution may also be deemed prudentially-regulated at the determination of the Registrar under the terms of its licence.

Exemptions

4.—(1) The following shall be exempt from the application of this Act—

Cap. 44:05

(*a*) savings and credit co-operatives as defined in the Financial Services Act;

(*b*) small member-based schemes which are operating—

(i) in a single locality;

(ii) on a mutual benefit rather than on a for-profit basis; or

(iii) based on a common bond and rotating savings and credit association or similar form and methodology; and

(*c*) persons whose microfinance service operations do not surpass a threshold, as shall be determined by the Registrar, in terms of maximum number of customers, maximum value of outstanding loan portfolio, or other criteria.

(2) The exemptions provided in subsection (1) shall not prejudice the application of any other law that may apply to such exempt persons and their services and operations, by virtue of their not being licensed or registered under this Act.

PART II
Registration and Licensing

Division I
Microfinance Services Providers

Prohibition against carrying on microfinance business without certificate or licence

5.—(1) No person shall carry on business as a microfinance service provider unless he is—

(*a*) registered as a microcredit agency;

(*b*) licensed as a non-deposit-taking microfinance institution; or

(*c*) licensed as a deposit-taking microfinance institution,

Cap. 44:05

under the Financial Services Act.

(2) Notwithstanding subsection (1), a licensed financial institution not referred to in subsection (1) may offer microfinance services, subject to approval by the Registrar in accordance with his authority under the financial services laws.

(3) The Registrar may determine the type of microfinance services to be offered by the different categories of microfinance service providers.

(4) Any person who contravenes subsection (1) commits an offence.

6. The provisions relating to registration or licensing under the Financial Services Act shall apply, *mutatis mutandis*, to registration and licensing under this Act.

Registration or licensing under the Financial Services Act Cap. 44:05

7. Any licensee may apply to the Registrar for approval to offer products and services under—

Products and services under other laws

(*a*) the Banking Act; Cap. 44:01

(*b*) the Financial Cooperatives Act; or Cap. 46:10

(*c*) the Insurance Act. Cap. 47:01

8.—(1) The Registrar shall, within sixty days from the date of receipt of a complete application for certificate, licence or approval—

Issue of certificate, etc.

(*a*) grant, with or without conditions—

(i) a certificate to a microcredit agency;

(ii) a licence to a microfinance institution; or

(iii) approval to a licensed financial institution to provide microfinance services as appropriate, in accordance with the Registrar's authority under the relevant financial services law; or

(*b*) refuse to grant a certificate, licence or approval.

(2) The Registrar shall communicate his decision in writing to the applicant:

Provided that in case of refusal, the Registrar shall give reasons.

(3) A person aggrieved by the decision of the Registrar may appeal to the Appeals Committee in accordance with the Financial Services Act. Cap. 44:05

(4) A microfinance service provider shall not engage in any business other than the business specified in its certificate or licence.

9.—(1) A microfinance service provider shall conduct its business at the place of business, specified in its licence or certificate, and in and through branches and agencies approved by the Registrar.

Business to be conducted in approved premises

(2) A microfinance service provider may, upon giving prior written notice to the Registrar—

(*a*) change its place of business;

(*b*) open a new branch; or

(*c*) move or close an existing branch.

(3) The changes described in subsection (2)—

(*a*) shall be entered in the Register; and

(*b*) are, in the case of a licensed microfinance institution, subject to requirements that the Registrar may impose under Divisions II and III.

Restriction on transfer, etc. of certificate, etc.

10.—(1) A certificate, licence or approval shall not be transferred, assigned, or encumbered in any way, except in the event of an amalgamation or similar corporate restructuring transaction, on such terms and conditions as the Registrar may approve.

(2) The appointment of an agent approved by the Registrar and operating according to its approved terms shall not constitute an assignment, transfer or encumbrance of certificate, licence or approval.

(3) Any person who contravenes subsection (1) commits an offence.

Expiry of a certificate, etc.

11. A certificate, licence or approval shall automatically expire if the registered person or licensee fails to commence his business within a period of one year following the granting of the certificate, licence or approval.

Suspension or revocation of certificate, etc.

12.—(1) Where a certificate, licence or approval is suspended or revoked as provided under the Financial Services Act—

Cap. 44:05

(*a*) the Registrar shall record the revocation of the certificate, licence or approval in the Register; and

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(*b*) the Registrar shall, in addition to his powers under the Financial Services Act, give directions with respect, to the disposal of any assets, and the conduct of any transactions permitted under the certificate, licence or approval.

Cap. 44:05

(2) Any person aggrieved by the decision of the Registrar suspending or revoking a certificate, licence or approval may appeal to the Appeals Committee in accordance with the Financial Services Act.

(3) The decision of the Registrar shall remain in force unless reversed by the Registrar or set aside by the Appeals Committee.

(4) A person whose certificate, licence or approval is suspended or revoked shall not continue to operate as a microfinance provider or conduct any microfinance business.

(5) Any person who contravenes this section commits an offence.

Registered, licensed or approved person, etc. to honour obligations

13. The suspension or revocation of a certificate, licence or approval to operate shall not relieve a registered, licensed or approved person of any obligation incurred or assumed by the registered person, licensee or approved financial institution during the period of validity of the certificate, licence, or approval.

Division II
Microfinance Institutions

Primary business of microfinance institution

14. A microfinance institution shall have as its primary function or business the provision of microfinance services, as defined in this Act, and no more than five percent of the investible funds of a microfinance institution shall be invested in non-financial activities or assets, unless permitted by the Registrar.

Microfinance institution may offer services through an agent

15.—(1) Notwithstanding other provisions of this Act, a microfinance institution may, upon approval by the Registrar, contract with an agent for the provision of branchless services on behalf of the institution.

(2) In considering an application for approval of an agency, the Registrar may examine the fitness of the agent, including—

(*a*) the financial condition of the agent;

(*b*) record of experience of the agent;

(*c*) terms of the agency agreement;

(*d*) any equipment or premises to be used by the agent; and

(*e*) any other relevant factor the Registrar may determine from time to time.

Prudential regulation of non-deposit-taking microfinance institution
Cap. 44:05

16.—(1) The Registrar may determine a threshold in terms of assets or services for a licensed non-deposit-taking microfinance institution, as a group or individually, and upon attainment, the Registrar shall place such an institution under prudential regulation as defined in the Financial Services Act.

(2) Where the Registrar makes a determination under subsection (1) in respect of an institution—

(*a*) the institution shall be required to be incorporated as a company limited by shares, as defined in the Companies Act, or to become incorporated as such by a deadline to be set by the Registrar; Cap. 46:03

(*b*) the institution shall submit a formal application to the Registrar in accordance with requirements for licensing of a prudentially regulated microfinance institution; and

(*c*) the Registrar may carry out inspections on, and apply directives to, the institution as set forth in the Financial Services Act.

Microfinance institution not limited by shares to prioritize creditors
Cap. 46:03

17. A microfinance institution that is not incorporated as a company limited by shares under the Companies Act shall ensure the priority of claims by outside creditors in the event of insolvency, dissolution, or winding up, by subordinating all other claims on its assets to claims by outside creditors.

Division III
Deposit-taking Microfinance Institutions

Deposit-taking microfinance institutions to be limited by shares
Cap. 46:03

18. The Registrar shall not license any person as a deposit-taking microfinance institution unless the person is incorporated as a company limited by shares, as defined in the Companies Act.

Inspection of premises

19.—(1) The Registrar shall carry out an inspection of the premises of an applicant for a licence to operate as a deposit-taking microfinance institution to determine compliance with minimum standards referred to in subsection (2).

(2) The Registrar may determine minimum standards for the premises of a deposit-taking microfinance institution.

(3) Upon certifying the compliance of the premises with the determined minimum standards, the Registrar shall issue a premises certificate.

(4) The premises certificate shall indicate the—

(*a*) name of the licensee;

(*b*) class of microfinance business that the licensee is authorized to conduct;

(*c*) date of the certificate;

(*d*) place of business; and

(*e*) number of the certificate.

Deposit-taking microfinance institutions to operate in designated places

20.—(1) A deposit-taking microfinance institution shall conduct its business at the place of business specified in the premises certificate.

(2) A deposit-taking microfinance institution wishing to amend the place of business shall apply to the Registrar, on payment of the prescribed fee.

(3) Where the Registrar is satisfied with reasons for the amendment of the place of business and compliance of the new place of business with the minimum standards determined by the Registrar, a new premises certificate shall be issued.

PART III
Microfinance Register

21.—(1) The Registrar shall establish and maintain a register to be known as the Microfinance Register. Register

(2) The Registrar shall enter in the Register—

(*a*) particulars of all registered persons in accordance with this Act;

(*b*) particulars of all licensees and their licences; and

(*c*) particulars of all other licensed financial institutions approved to offer microfinance services.

(3) The Registrar may determine additional particulars of a registered person, licensee, or other approved financial institution and their operations to be included in the Register.

(4) Notwithstanding subsection (1), the Registrar may create separate registers for registered persons, licensees, and other approved providers.

22.—(1) The Register or a copy of the Register shall be available for inspection by the public at the offices of the Registrar during working hours. Inspection of Register

(2) The Registrar shall make public, through print and electronic media, particulars of all registered, licensed, and approved persons contained in the register.

23.—(1) For the purpose of ascertaining facts concerning registration, licensing or approval status of any person, entries made in the Register shall be *prima facie* evidence as to those facts. Evidence in Register

(2) A document certified by the Registrar as a true copy or extract of the Register shall be admissible in any proceedings, including in any court, as *prima facie* evidence of the contents of the Register.

PART IV
Governance of a Microfinance Institution

Division I
Microcredit Agencies

24. The Registrar may, from time to time, determine minimum governance standards to be applied by microcredit agencies. Minimum governance standards for microcredit agencies

Division II
Microfinance Institutions

Board of microfinance institution Cap. 46:03

25.—(1) Every microfinance institution shall have a board of directors in accordance with the provisions of the Companies Act.

(2) The Registrar may, by Registrar's directives, prescribe the composition of the board, frequency of board meetings, rules on appointment, responsibilities and additional qualifications of the directors of microfinance institutions.

Actions requiring prior approval

26.—(1) In addition to other provisions requiring approval under this Act, no microfinance institution shall, without written approval of the Registrar—

(*a*) change its articles of association;

(*b*) effect any changes in its shareholding that would result in a change in the composition of its controlling parties, as defined in the Financial Services Act;

Cap. 44:05

(*c*) appoint any directors;

(*d*) open a branch or an establishment;

(*e*) close a branch or an establishment;

(*f*) undertake restructuring; or

(*g*) go into liquidation.

(2) Notwithstanding other provisions of this Act, a microfinance institution may temporarily appoint an interim director if necessary due to a director's sudden death, resignation, or other unexpected circumstance that leaves the director unable or unwilling to perform his duties.

(3) On the occurrence of any circumstance mentioned in subsection (2)—

(*a*) the microfinance institution shall immediately notify the Registrar;

(*b*) the Registrar shall review the interim director's qualifications to determine the relevance of the appointment; and

(*c*) the microfinance institution shall within ninety days, nominate a permanent director and apply to the Registrar for approval of his appointment.

Management of a microfinance institution

27.—(1) The management of a microfinance institution shall comprise, at a minimum—

(*a*) a chief executive officer; and

(*b*) one other senior management officer such as a chief financial officer or head of operations.

(2) In addition to the directives on fit and proper test requirements under the Financial Services Act, the chief executive officer of a microfinance institution shall have a satisfactory record of experience in managing a financial institution. Cap. 44:05

(3) A microfinance institution shall obtain the approval of the Registrar prior to the appointment of key management officers, including the chief executive officer.

(4) The Registrar may determine responsibilities and qualifications of any of the officers referred to in subsection (3) in a microfinance institution.

(5) Notwithstanding subsection (3), a microfinance institution may appoint a person to temporarily operate or manage the institution on behalf of another person and such appointment shall not exceed thirty days without the prior written approval of the Registrar.

(6) Any person who contravenes subsection (3) or (5) commits an offence.

Disqualification from appointment

28. A person shall not be appointed as a director, chief executive officer, chief financial officer or manager of a microfinance institution unless the person meets minimum requirements stipulated in Registrar's directives.

Internal control systems

29.—(1) A microfinance institution shall, at all times, maintain internal control systems.

(2) A microfinance institution shall have an audit committee and a review committee which shall report to the board of directors on internal control systems and financial condition of the institution.

Inconsistency with other laws

30. Where provisions of this Act are inconsistent with governance of any microfinance institutions as provided in the law under which the entity was incorporated, provisions of this Act shall apply.

Division III
Deposit-taking Microfinance Institutions

Ownership Cap. 44:05

31.—(1) Notwithstanding provisions under the Financial Services Act, no person shall, without the written approval of the Registrar—

(*a*) acquire any beneficial interest in the voting shares of a deposit-taking microfinance institution; or

(*b*) enter into any voting trust or other agreement, that shall enable the person or another person to control more than forty nine per

centum of the total votes cast on any general resolution at a general or special meeting of a deposit-taking microfinance institution.

Control of a deposit-taking microfinance institution

32.—(1) A person who has *de jure* or *de facto* control of a deposit-taking microfinance institution shall not acquire or maintain *de jure* or *de facto* control of any other deposit-taking microfinance institution.

(2) Any person who has *de jure* or *de facto* control of more than one deposit-taking microfinance institution shall, within a period not exceeding five years from the date of commencement of this Act comply with the provisions of subsection (1).

Cap. 44:05

(3) A person who contravenes subsection (2) commits an offence and shall be liable to an administrative penalty under the Financial Services Act.

PART V
Microfinance Operations

Division I
Microfinance Service Providers

Conduct of business

33. A microfinance service provider shall—

(*a*) conduct its business with integrity, prudence and professional skill;

(*b*) engage only in *bona fide* transactions; and

(*c*) comply with such minimum standards of good practice as may be prescribed by the Registrar.

Disclosure of terms of credit and savings products

34. All microfinance service providers shall at all times disclose to the concerned customer, in writing, the terms of any credit or savings products being offered.

Division II
Microfinance Institutions

Display of information

35.—(1) All microfinance institutions including approved financial institutions shall display in a conspicuous place on the premises of every branch where they conduct business a notice containing—

(*a*) the provider's code of conduct;

(*b*) information on customer rights and responsibilities;

(*c*) financial statistics, such as balance sheet and income statement;

(*d*) microfinance products and services offered;

(*e*) certificate, licence, or approval, including company incorporation certificate; and

(*f*) terms under which microfinance products and services are offered.

(2) The information referred to in subsection (1) shall be displayed in the form and manner determined by the Registrar.

Minimum and other capital requirements

36.—(1) The Registrar shall determine minimum capital or loan fund requirements, whichever is applicable, for different categories of microfinance institutions.

(2) The Registrar may, from time to time, vary the required minimum capital or loan funds for microfinance institutions.

(3) The Registrar may determine on-going capital requirements for individual microfinance institutions where the supervisory-review process reveals risks warranting additional capital.

Additional directives for microfinance institutions Cap. 44:05

37. In addition to Registrar's directives issued under the Financial Services Act, the Registrar may determine and issue directives on aging and provisioning of loan losses for microfinance institutions.

Insider lending

38.—(1) The Registrar shall establish the extent or proportion of credit facilities which a microfinance institution may provide to any of its directors, trustees, related parties, or members of staff.

(2) All credit facilities referred to in subsection (1) involving any of a microfinance institution's related parties shall be disclosed.

(3) For the purposes of this subsection, "related party" has the same meaning as ascribed to it in the Financial Services Act. Cap. 44:05

(4) Notwithstanding subsection (1), the Registrar may determine that any proposal by a microfinance institution to grant a credit facility to any related party be unanimously approved by its board of directors, and the Registrar may monitor such credit facilities and make recommendations as it may deem appropriate.

Limits on loans Cap. 44:05

39.—(1) Without prejudice to the generality of the power of the Registrar to issue Registrar's directives under the Financial Services Act, no microfinance institution shall, without prior written permission of the Registrar—

(*a*) grant, or permit to be outstanding any credit facility to any debtor in excess of ten per centum of its capital, or such limit as may be determined by the Registrar from time to time;

(*b*) have investments in land, buildings, and other immovable property that in aggregate exceed the sum of its capital and reserves; and

(*c*) own shares in any company, firm, or enterprise that in aggregate value exceed ten per centum of the sum of its capital and reserves.

(2) Notwithstanding subsection (1), the Registrar may, having due regard to the nature of business carried on by certain microfinance institutions, exempt individual microfinance institutions or any class of microfinance institutions from all or any of the requirements under subsection (1).

Division III

Other Licensed Financial Institutions

Separation of operations and portfolios

40.—(1) Every licensed financial institution approved by the Registrar to offer microfinance services shall segregate the management of microfinance operations and portfolios from the rest of the activities of the institution.

(2) The Registrar may issue Registrar's directives for the separate management of microfinance operations and portfolios as set forth in subsection (1).

Divisions I and II to apply to other licensed financial Institutions

41. Divisions I and II shall also apply to the microfinance operations of other licensed financial institutions that have been approved by the Registrar to offer microfinance services.

PART VI
Accounts and Audit

Division I

Microfinance Service Providers

Financial year

42.—(1) The financial year for every microfinance service provider shall be the period of twelve months ending 31st December in each year, or as may be determined by the Registrar.

(2) Subsection (1) shall also apply to microfinance operations of other licensed financial institutions approved to offer microfinance services by the Registrar.

Accounts

43. A microfinance service provider shall keep accounts and records which—

(*a*) show a true and fair state of affairs of the institution; and

(*b*) explain all transactions, and the financial position of the institution to enable the Registrar to determine whether the institution has complied with the provisions of this Act.

Division II
Microfinance Institutions

Auditors of a microfinance institution

44.—(1) A microfinance institution shall have an internal audit section or committee.

(2) A microfinance institution shall appoint an external auditor in accordance with the Financial Services Act who shall annually provide a report to the Board of directors that includes— Cap. 44:05

(*a*) the audited annual balance sheet and profit and loss account;

(*b*) an examination of delinquent loans and loans to directors and employees and their related parties; and

(*c*) any other requirement as determined by the Registrar.

PART VII
REGULATION AND SUPERVISION OF MICROFINANCE INSTITUTIONS

Division I
Microcredit Agencies

Information disclosure by microcredit agencies

45.—(1) A microcredit agency shall, within four months after the close of its financial year, submit the following information in a prescribed format to the Registrar—

(*a*) annual financial statements; and

(*b*) such additional information as the Registrar may determine.

Division II
Licensed Microfinance Institutions

Reporting requirements for microfinance institutions

46.—(1) A microfinance institution shall submit to the Registrar information and data on its operations in Malaŵi, including periodic returns and information and data on the operations of any company which is a subsidiary, affiliate, associate, or holding company which the Registrar may require for proper discharge of his functions under this Act or the Financial Services Act. Cap. 44:05

(2) The format of the periodic returns required under subsection (1) and periods within which they must be submitted shall be determined by the Registrar and may vary for different categories of microfinance institutions.

(3) Any microfinance institution which, without reasonable cause—

(*a*) fails to comply with subsection (1) or (2); or

(*b*) submits inaccurate returns,

shall pay to the Registrar an administrative penalty as determined by the Registrar.

Division III
Other Licensed Financial Institutions

Section 40 to apply to other licensed financial institutions

47. Section 40 shall also apply to microfinance operations of other licensed financial institutions approved by the Registrar to offer microfinance services.

PART VIII
REMEDIAL MEASURES AND WINDING-UP OF MICROFINANCE SERVICE PROVIDERS

Division I
Microfinance Services Providers

Remedial measures

Cap. 44:05

48. Where it is discovered that a microfinance service provider is not conducting its business according to the standards set forth in section 33, remedial measures under the Financial Services Act shall apply.

Division II
Non-deposit-taking Microfinance Institutions and Microcredit Agencies

Winding-up non-deposit-taking microfinance institution or microcredit agency

49.—(1) Where the Registrar is satisfied or has reasonable cause to believe in respect of a non-deposit-taking microfinance institution or microcredit agency that—

(*a*) its capital is seriously affected and does not meet the prescribed requirements;

(*b*) the continuation of its activities is not in the best interest of its creditors;

(*c*) its assets are insufficient to cover its liabilities;

(*d*) it has refused or refuses to permit an inspection to be made of its business in accordance with this Act, or has otherwise obstructed such inspection; or

(*e*) it is involved in financial crime,

the Registrar may petition the High Court to sanction the winding-up of the microfinance service operations.

(2) The provisions of the law under which a non-deposit-taking microfinance institution or microcredit agency is incorporated shall apply in case of winding-up.

(3) Subsection (1) shall not apply to prudentially-regulated non-deposit-taking microfinance institutions.

Division III
Prudentially Regulated Microfinance Institutions

Winding-up of prudentially regulated microfinance institutions Cap. 44:05

50. Subject to the provisions of this Act, the provisions of the Financial Services Act shall apply, *mutatis mutandis*, with respect to the winding-up of prudentially-regulated microfinance institutions.

PART IX
Miscellaneous Provisions

51.—(1) Any officer of a microfinance service provider who willfully— False documents

(*a*) with intent to deceive, falsifies any book of account, report, statement, record or other document of the provider;

(*b*) signs, issues, publishes or transmits to a Government official any book of account, report, statement, record or other document which that person knows, or has reason to believe, to be false;

(*c*) with intent to deceive, knowingly obtains a forged signature on a document;

(*d*) with intent to deceive, destroys any book of account, report, statement, record, or other document of the provider; and

(*e*) engages in transaction or takes part in a deliberation in which there is a conflict of interest prohibited under this Act, commits an offence.

(2) Where an officer of a financial service provider is convicted of an offence under subsection (1), the court shall, in addition to the penalty that it may impose under subsection (1), order the convicted officer to be prohibited from holding office in any financial service provider.

52.—(1) A microfinance service provider and its staff shall ensure that all transactions are conducted in strict confidence, and that the confidentiality of customers is maintained. Confidentiality

(2) A microfinance service provider may, with the consent of the customer, provide any necessary information to third parties such as members of a group guarantee scheme or a credit register.

53. Every microfinance service provider shall furnish the Registrar or other enforcement agencies of the Government with relevant information pertaining to transactions deemed suspicious under the Money Laundering, Proceeds of Serious Crimes and Terrorist Financing Act. Money laundering transactions Cap. 8:07

54. Any person who— Obstruction of the Registrar, etc.

(*a*) obstructs the Registrar or his agent in the exercise of any power conferred upon the Registrar under this Act;

(*b*) fails to provide information required under this Act after written request by the Registrar or his agent;

(*c*) with intent to evade any provisions of this Act destroys, mutilates, or hides any document; or

(*d*) knowingly and intentionally contravenes a duty imposed by this Act,

commits an offence.

General offences and penalties

55.—(1) Any person who contravenes a provision of this Act for which no offence is specifically provided commits an offence.

Cap. 44:05

(2) The provisions of the Financial Services Act governing imposition of penalties shall apply to any person who commits an offence under this Act for which no penalty is specifically provided.

Regulations

56.—(1) The Minister may, upon the recommendation of the Registrar, make regulations for the better carrying out of this Act and for its better administration.

(2) The Minister may make different provisions for different categories of microfinance service providers in regulations made under subsection (1).

(3) Subject to Part X, the Minister may make regulations with respect to transitional provisions to enable existing microfinance service providers to comply with this Act.

(4) For avoidance of doubt, the power to make regulations in this Act does not extend to making regulations about a matter in respect of which the Registrar may issue Registrar's directives.

Directives and guidelines
Cap. 44:05

57.—(1) The powers conferred on the Registrar under this Act shall, without prejudice to the powers of the Registrar under the Financial Services Act, be exercised through issuance of Registrar's directives.

(2) The directives may prohibit, restrict or subject to conditions—

(*a*) certain classes of credit facilities, investments, and risk-bearing commitments; or

(*b*) any other transactions affecting the solvency or liquidity of a microfinance service provider.

(3) The directives may vary for different categories of microfinance service providers and licensed financial institutions as determined by the Registrar.

(4) The directives may include provisions on any corrective action or administrative sanctions which the Registrar considers appropriate.

(5) The Registrar may issue guidelines, bulletins or other regulatory statements as he may consider necessary or desirable for the implementation or explanation of any provision of this Act.

PART X
Transitional Provisions

Compliance by existing microfinance service providers

58.—(1) Any microfinance service provider operating at the date of commencement of this Act that does not meet the ownership and capital requirements specified in this Act shall build up its capital to the required and comply with this Act not later than three years from the commencement of this Act.

(2) The Registrar may determine institutional transformation methods for any category of microfinance service provider attempting to comply with subsection (1).

(3) Except for the requirement on ownership and capital, an existing microfinance service provider shall comply with the provisions of this Act within twelve months from the date of commencement of this Act.

(4) Subject to subsection (3), an existing microfinance service provider shall apply for an appropriate licence or certificate within twelve months from the date of commencement of this Act.

CREDIT REFERENCE BUREAU

CHAPTER 46:09

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CHAPTER 46:09

CREDIT REFERENCE BUREAU

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CHAPTER 46:09

CREDIT REFERENCE BUREAU

18 of 2010
6 of 2016
G.N. 13/2010

An Act to provide for the regulation and supervision of credit reference bureau business and to make provision for matters connected therewith or incidental thereto

[1ST OCTOBER, 2010]

PART I
PRELIMINARY

Short title

1. This Act may be cited as the Credit Reference Bureau Act.

Interpretation
6 of 2016

2.—(1) In this Act, unless the context otherwise requires—

"account holder" means any person whose credit information is administered by a credit reference bureau;

"credit facility" includes financing by means of loans, overdrafts, credit cards, factoring, leasing, hire purchase, accepting of trade and other bills, discounting of such bills and notes, the opening or confirming of documentary credit, the issue of letters of standby credit, guarantee or surety, the undertaking to pay on account of another person, and such other similar undertakings as may be prescribed by the Registrar from time to time;

"credit reference bureau" means a company that allows users to exchange information on their clients' repayment history and current debt profiles and which compiles a database that collects, stores, consolidates and processes information related to credit history of persons;

"credit reference bureau business" means the business of compiling and processing credit information and disseminating credit information among users for their businesses;

"credit information" means the history of a person with regard to credit and financial obligations that a credit reference bureau may collect pursuant to this Act;

"database" means a set of information administered by a credit reference bureau;

"financial services law" has the meaning ascribed to it in the Financial Services Act and includes this Act; Cap. 44:05

"information provider" means an institution or any person required under the Act or as prescribed by the Minister pursuant to section 13 to submit credit information or data to a credit reference bureau; 6 of 2016

"person" includes any company or association or body of persons, corporate or unincorporated;

"Registrar" means the Registrar of Financial Institutions appointed under the Financial Services Act; Cap. 44:05

"Reserve Bank" means the Reserve Bank of Malaŵi established under the Reserve Bank of Malaŵi Act; Cap. 44:02

"user" means any financial institution entitled, or any person authorized, to access credit information from a credit reference bureau.

(2) Subject to subsection (1) and except where a contrary intention appears, expressions used in this Act shall have the same respective meanings as in the Financial Services Act. Cap. 44:05

Application

3. This Act shall apply, in addition to the Financial Services Act, to all persons conducting credit reference bureau business except to the extent that such persons are exempted by the Registrar pursuant to his authority under the Financial Services Act. Cap. 44:05

PART II
Licensing

Prohibition against operating credit reference bureau business without licence Cap. 44:05

4.—(1) No person shall conduct credit reference bureau business unless he is licensed as a credit reference bureau under the Financial Services Act.

(2) No person, other than a limited liability company, shall be licensed as a credit reference bureau.

Application for licence

5.—(1) An applicant for a licence to operate a credit reference bureau shall submit an application in writing in a form prescribed by the Registrar under the Financial Services Act, and containing such information as the Registrar may specify. Cap. 44:05

(2) An application under subsection (1) shall be accompanied by such fee as the Registrar may specify.

Criteria for licensing Cap. 44:05

6. In considering an application for a licence to operate a credit reference bureau, the Registrar shall, in addition to the requirements stipulated under the Financial Services Act, take into account the following factors—

(*a*) the background, reputation, integrity, competence and expertise of the proposed owners, directors, board members and executive officers of the applicant;

(*b*) the business plan of the applicant, including the scope and capability of the business;

(*c*) the financial condition of the applicant;

(*d*) the adequacy, reliability and security features of the proposed management information systems; and

(*e*) any other matter that may be deemed essential by the Registrar.

Refusal to grant licence

7.—(1) Without limiting the powers of the Registrar, the Registrar may refuse to grant a licence to an applicant if he is not satisfied that the applicant has complied with the requirements of this Act:

Provided that reasons for the refusal shall be given to the applicant in writing.

(2) The decision to grant or refuse to grant a licence shall be communicated in writing by the Registrar within sixty days—

(*a*) after receipt of the application; or

(*b*) where further information has been required, after receipt of the last of such further information.

Revocation of licence

8.—(1) Without limiting the powers of the Registrar, the Registrar may revoke a licence if the licensee—

(*a*) supplied false information in its application;

(*b*) ceases to conduct business for which the licence has been granted;

(*c*) fails to comply with any condition of the licence;

(*d*) fails to comply with any written directive or instruction of the Registrar; or

(*e*) fails to comply with any provision of this Act or any other Act relevant to its business.

(2) The Registrar may, basing on a report produced in accordance with this Act establishing violations committed by a credit reference bureau, cancel the licence of the credit reference bureau.

Expiry of licence

9. A licence shall automatically expire if a credit reference bureau has not commenced business within six months of the date of issue of the licence.

10.—(1) A credit reference bureau may, two months prior to the expiry date of the licence, make an application for renewal of the licence to the Registrar in the form and manner which the Registrar shall prescribe by directive. Renewal of licence

(2) An application under subsection (1) shall be accompanied by such fee as the Registrar may specify.

(3) Sections 6, 7 and 8 shall apply, *mutatis mutandis*, to an application for renewal of licence.

11. The Registrar shall keep a register of credit reference bureaux and shall publish, in the *Gazette*, or in at least two newspapers of national circulation, the entry in, and cancellation from, the register, of any credit reference bureau. Register of credit reference bureaux

12. The Registrar shall prescribe the operational requirements for establishment of a credit reference bureau. Operational requirements

PART III
Operations of a Credit Reference Bureau

13.—(1) A credit reference bureau shall collect information on the background and credit history of persons required by this Act. Collection of information

(2) In obtaining information referred to in subsection (1), a credit reference bureau shall take all practicable steps to ensure that the information is accurate, and that the person providing the information has obtained the general particulars to enable identification and location of the account holder, including but not limited to—

(*a*) valid identification particulars;

(*b*) physical residential address; and

(*c*) postal address.

(3) A credit reference bureau may—

(*a*) collect credit information from financial institutions and any other institution as may be prescribed by the Minister, upon recommendation by the Registrar; and

(*b*) consult public sources of information for data in official records:

Provided that the rights and liberties of the account holder shall not be violated.

(4) A credit reference bureau shall report to the Registrar any financial institution which refuses or neglects to submit credit information to the credit reference bureau. 6 of 2016

Submission of information by financial institutions 6 of 2016

13A.—(1) A financial institution shall submit credit information of its customers to all credit reference bureaux.

(2) An information provider shall, on request, submit credit information to credit reference bureaux.

(3) The credit information referred to in in subsections (1) and (2) shall be submitted to the credit reference bureaux at no cost to the credit reference bureaux.

(4) A financial institution or information provider that contravenes this section commits an offence and shall be liable to an administrative penalty.

Financial institutions to update credit information on monthly basis 6 of 2016

13B. A financial institution shall, on a monthly basis, or within such earlier time as an update is necessary, ensure that the credit information furnished to credit reference bureaux is consistently updated in accordance with such procedures as may be prescribed by the Registrar through directives.

Exemption from legal suit for submission of credit information 6 of 2016

13C.—(1) A financial institution or information provider that submits information to a credit reference bureau in accordance with this Act does not contravene any law on privacy or confidentiality.

(2) No right of action shall lie against a financial institution or an information provider or its officers for breach of the duty of confidentiality or privacy for information submitted to a credit reference bureau in accordance with this Act.

Dissemination of credit information Cap. 44:05

14.—(1) Except as provided in subsection (2), a credit reference bureau shall provide credit information services only to financial institutions regulated under the Financial Services Act.

(2) In cases where providing information to users other than financial institutions is required, authorization by the account holder to provide the account holder's credit information shall be submitted by the user, in writing, to the credit reference bureau before accessing the information.

Financial institutions to obtain credit history before issuing loans to customers 6 of 2016

14A.—(1) A financial institution shall consult credit reports of a credit reference bureau before entering into a credit agreement or insurance contract with a customer of the financial institution.

(2) A financial institution that contravenes subsection (1) commits an offence and shall be liable to an administrative penalty.

Data security and system integrity

15. A credit reference bureau shall—

(*a*) establish controls and procedures in order to ensure the quality of its database and preserve the confidentiality of its information as prescribed by the Registrar; and

(*b*) utilize the information collected exclusively for the purpose of meeting the objectives of the credit reference bureaux business in accordance with this Act.

Accuracy of data provided

16.—(1) A credit reference bureau shall ascertain that it provides accurate, legitimate, reliable, truthful and current information that reflects the existing situation of the account holder at any given time.

(2) If after having provided information pursuant to subsection (1), the credit reference bureau discovers that the information in its custody is inaccurate or no longer valid, it shall promptly take the corrective measures necessary to remedy the deficiencies and update its database.

Actions requiring prior approval

17. A credit reference bureau shall obtain prior written approval of the Registrar for the following matters—

(*a*) appointment of directors, executive officers and senior officers;

(*b*) changes in the articles of association;

(*c*) reduction of its capital base by repayment of capital or distribution of reserves;

(*d*) opening and closing of branches;

(*e*) opening of establishments abroad;

(*f*) liquidation; and

(*g*) arrangement or agreement—

(i) for the sale or disposal of its shares or business; or

(ii) affecting voting power, management or other matters which may result in a change in the control or management of the company.

Prohibition of access for direct marketing

18.—(1) A credit reference bureau shall not request, collect or grant information, other than information related to its business.

(2) A credit reference bureau shall not provide credit information of persons held in its database, to a user or any other person for the purposes of offering or advertising the availability of goods, facilities or services to such persons.

Submission of information to Registrar

19. Every credit reference bureau shall—

(*a*) provide to the Registrar unrestricted access to all the information managed by the credit reference bureau, whether through access to its systems according to published services, or in the manner stipulated by the Registrar, for the purpose of supervision; and

(*b*) observe, through its shareholders, directors and officers, a perpetual duty of confidentiality with regard to the information divulged to them by information provider.

Inspection by the Registrar

20.—(1) The Registrar may, at his discretion, carry out on-site inspection of the premises of a licensee to determine the adequacy of the security system and to confirm the following matters—

(*a*) suitability of premises for the business operations;

(*b*) separation of credit reference bureau business from other business performed by the licensee;

(*c*) the adequacy of the management information system; and

(*d*) administrative and operational processes and the internal control systems.

(2) Examiners and investigators appointed by the Registrar for the purpose of subsection (1) may at any time examine or investigate, as the case may be, the business or any part of the business of a credit reference bureau.

Retention of data

21. A credit reference bureau shall maintain a historical database covering a seven year period for the purpose of providing detailed credit information.

Fees

22. A credit reference bureau may, on approval by the Registrar, charge fees for its services, which fees shall be agreed upon between the user and the credit reference bureau, and shall be denominated in Malaŵi Kwacha.

Rights of account holders

23.—(1) An account holder shall access any credit information relating to him that is registered in a database administered by a credit reference bureau.

(2) The information referred to in subsection (1) shall be obtained—

(*a*) free of charge, by viewing the data on a screen; or

(*b*) by paying a fee, prescribed by the credit reference bureau, for the issuance of a document containing credit information relating to the account holder.

Illegal or inaccurate information
6 of 2016

24.—(1) Where an account holder believes that the information contained in the database is illegal, inaccurate, erroneous or outdated, he may request a review by the credit reference bureau of the information, and any deficiency identified shall be promptly remedied, except that where any legal liability or cost arises from the illegal, inaccurate, erroneous or outdated information, the person providing the wrong information shall be liable for the relevant cost of reviewing the information.

(2) Where the illegal, inaccurate, erroneous or outdated information referred to in subsection (1) is as a result of an error and the error is attributable to the source from which the information originated, the information provider shall be liable for any claims arising therefrom.

(3) Where the illegal, inaccurate, erroneous or outdated information referred to in subsection (1) is as a result of an error and the error is attributable to a credit reference bureau, the credit reference bureau shall—

(*a*) at its own expense, rectify its database;

(*b*) promptly notify any person who may have used the information of the error and its rectification; and

(*c*) be liable for any claims arising therefrom.

(4) [*Deleted by* 6 *of* 2016]

Claim against information providers

25.—(1) With regard to the civil and criminal liability assumed by information providers, a credit reference bureau may file a claim against the information providers and users when ever the credit reference bureau is held liable for any responsibility to the account holder or to a third party as a result of having provided false information received from the providers and users.

(2) Users of information provided by a credit reference bureau shall be held liable—

(*a*) in the event of wrongful or fraudulent use of the information; or

(*b*) if the users cause damage to the account holder, in accordance with the law.

(3) Without prejudice to subsections (1) and (2), a credit reference bureau may take action against the information users in a case where it has assumed responsibility to the account holder or to a third party.

Claims and enquiries department
6 of 2016

26.—(1) A credit reference bureau shall have a customer claims and inquiry service section to attend to customers who may be negatively affected by the information contained in the database and who allege that the information is illegal, inaccurate, erroneous or outdated pursuant to section 24.

6 of 2016

(2) A credit reference bureau shall have staff of a number sufficient to provide the services referred to in subsection (1), and shall, within ten working days, remedy the corresponding errors in its database which supply the information.

(3) Any illegal, inaccurate, erroneous or outdated information shall not be used until corrected.

Information requirement

27. The Registrar may request, at any time, any information he may require in order to evaluate complaints, accusations or inconsistencies detected in a credit reference bureau.

Warning and revocation of licence for non-compliance

28. Where a credit reference bureau fails to comply with the requirements of this Act, the Registrar may—

(*a*) impose monetary penalties to the credit reference bureau;

(*b*) issue a warning, in writing, to the credit reference bureau; or

(*c*) revoke the licence of the credit reference bureau.

Immunity of credit reference bureau, etc.

29. No action shall lie against a credit reference bureau or officer or employee of credit reference bureau or any person acting under the direction of the credit reference bureau for anything done in good faith in the administration or discharge of any powers, duties or functions under this Act.

PART IV
Winding-up

Approval of winding-up

30.—(1) A resolution, demand or other step to wind-up a credit reference bureau shall be of no effect unless the Registrar has approved it.

Cap. 46:03

(2) An application to the Court for an order to wind-up a credit reference bureau, whether under the Companies Act or under any other law, shall not be made except by the Registrar, or with the Registrar's approval.

(3) The Registrar shall not give approval under subsection (2) unless the credit reference bureau's licence has been or is to be revoked and that the winding-up shall be on such terms and conditions as the Registrar may determine.

(4) The Registrar may apply to the Court for an order that a credit reference bureau be wound-up if the Registrar is satisfied that the institution is insolvent and will not be restored to solvency within a reasonable period.

(5) An order granted under subsections (2) and (4) shall be made public through print and electronic media in Malaŵi by the Registrar.

Cap. 46:03

(6) Notwithstanding any provision in the Companies Act, where any proceeding for the winding-up of a credit reference bureau is commenced under this section, the Registrar or any other person appointed or approved by the Registrar shall be the liquidator of the credit reference bureau.

(7) The remuneration of the liquidator appointed under this section, the cost and expenses of his establishment and the costs and expenses of the liquidation shall be met out of the assets of the credit reference bureau under liquidation.

PART V
Miscellaneous Provisions

Offences relating to information, etc.

31. A credit reference bureau which—

(*a*) delays in providing information and documents to the Registrar;

(*b*) wrongfully alters, modifies or deletes records from its database; or

(*c*) fails to adopt security and control measures that are necessary to prevent the wrongful use or lapse in management of information,

commits an offence.

General offences and penalties

32.—(1) Any person who contravenes a provision of this Act for which no offence is specifically provided commits an offence.

Cap. 44:05

(2) The provisions of the Financial Services Act governing imposition of penalties shall apply to any person who commits an offence under this Act for which no penalty is specifically provided.

Regulations

33.—(1) The Minister may, on the recommendation of the Registrar, make regulations for the better carrying out of this Act and for its better administration.

(2) For avoidance of doubt, the power to make regulations in this Act does not extend to making regulations about a matter in respect of which the Registrar may issue directives.

Directives, guidelines and instructions Cap. 44:05

34.—(1) The powers conferred on the Registrar under this Act shall, without prejudice to the powers of the Registrar under the Financial Services Act, be exercised through issuance of directives, guidelines or instructions.

(2) The Registrar may issue directives and instructions to a credit reference bureau in respect of the enforcement of any provision of this Act.

(3) The directives may include provisions on any corrective action or administrative sanctions which the Registrar considers appropriate.

(4) The Registrar may issue guidelines, bulletins or other regulatory statements as he may consider necessary or desirable for the implementation or explanation of any provision of this Act.

SUBSIDIARY LEGISLATION

G.N. 41/2011

CREDIT REFERENCE BUREAU (LICENSING, SUPERVISORY AND OPERATIONAL REQUIREMENTS) REGULATIONS

under s. 33

ARRANGEMENT OF REGULATIONS

REGULATION

1. Citation
2. Interpretation
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4. Application for a licence
5. Minimum capital requirements
6. Validity of a licence
7. Granting of licence
8. Permissible activities
9. Obligations of Credit Reference Bureaus with respect to operations
10. Obligations of Credit Reference Bureaus with respect to customer data
11. Obligations of Credit Reference Bureaus with respect to authorized users
12. Obligations of Credit Reference Bureaus in relation to data providers
13. Users access of the Credit Bureau Database
14. The right to inspect credit information
15. Right to challenge incorrect credit information
16. Process of dealing with challenges to incorrect credit information
17. Recording of challenges to incorrect information
18. Fee for a credit report
19. Penalties
20. Public awareness

SCHEDULE

Citation

1. These Regulations may be cited as the Credit Reference Bureau (Licensing, Supervisory and Operational Requirements) Regulations.

Interpretation

2. In these Regulations, unless the context otherwise requires—

"Act" means the Credit Reference Bureau Act;

"borrower" means a natural person or a legal person, and any other party to the credit, who has obtained a credit from the lending institution as a result of a legal agreement signed with them;

"credit agreement" means the contractual agreement between the lender and the borrower that sets out the rights and obligations of parties on the disbursement and the repayment of the credit;

"permissible purposes" means users allowed to obtain information from a credit reference bureau only for the following purposes—

(*a*) in compliance with a court order;

(*b*) in accordance with the written instructions of the consumer to whom it relates and as it relates to any type of credit transaction; or

(*c*) in accordance with the written request of the subject of a credit report in order to obtain a copy of their personal credit report;

"Registrar" means the Registrar of Financial Institutions appointed under the Financial Services Act; Cap. 44:05

"search inquiry" means a request, made by a user, for information from the credit reference bureau database.

Eligibility for a licence

3.—(1) Application for a credit reference bureau licence shall be restricted to limited liability companies.

(2) The licence shall not be transferred or sold.

Application for a licence *Schedule*

4.—(1) An application for a credit reference bureau licence shall be made in a form as prescribed in the Schedule.

(2) An applicant shall pay a non-refundable application fee of MK100,000 in a form of a bank certified cheque, payable to the Reserve Bank of Malaŵi.

Minimum capital requirements

5.—(1) A minimum start-up capital for a credit reference bureau business shall be an equivalent of Malaŵi Kwacha of US$50,000.

(2) The capital must be domiciled in Malaŵi.

(3) In case of a foreign investor, the capital shall be registered with Exchange Control Department of the Reserve Bank of Malaŵi.

Validity of a licence

6.—(1) A credit reference bureau licence shall be valid for a period of two years.

(2) An applicant for a renewal of a licence shall pay a non-refundable fee of MK100,000 in a form of a bank certified cheque, payable to the Reserve Bank of Malaŵi.

Granting of licence

7. Registrar may grant a credit reference bureau licence if he is satisfied that the following conditions exist—

(*a*) applicants, owners, directors, executive officers and senior management—

(i) have never been declared bankrupt by a court of law;

(ii) have not defaulted on any credit obligation;

(iii) have never been convicted of any criminal offence for the past seven years which affects their financial integrity;

(iv) have never been refused any licence under any financial service laws;

(v) have never been subjects of supervisory actions (cease and desist orders, licence suspensions or revocations, etc.); and

(vi) have never been liable of any breach in connexion with credit or credit reporting business;

(*b*) the applicant has human, technical, financial and operational resources that will enable the credit reference bureau to function effectively and efficiently;

(*c*) the applicant has put in place concise and detailed policies and procedures for the storage and use of credit data that would include ensuring the security, confidentiality and integrity of the credit data;

(*d*) the applicant has put in place detailed policies and procedures to ensure—

(i) the provision of accurate credit information and that it is only accessible by authorized users;

(ii) that access of credit information from the credit registry database is conducted in a secure and confidential manner;

(iii) the provision of robust consumer rights and protection related to their personal credit information;

(*e*) the credit reference bureau has certified hardware and software for its credit information database;

(*f*) proof of the existence of the minimum capital requirement; and

(*g*) the applicant has met any other conditions that the Registrar may have prescribed.

Permissible activities

8.—(1) A credit reference bureau shall not engage in any other activities other than those specified in these Regulations or as approved by the Registrar in writing.

(2) A credit reference bureau shall not transfer or provide credit information to any user outside Malaŵi, except with a written consent of the Registrar.

(3) The Registrar may withdraw the consent referred to in subregulation (2) above if deemed necessary.

Obligations of Credit Reference Bureaus with respect to operations

9. A credit reference bureau shall ensure that—

(*a*) all data received or collected is properly and accurately recorded, maintained, collated and processed in a timely manner;

(*b*) its premises are safe and conducive to operate its data systems, database and any other operations related to credit reference bureau business;

(*c*) it provides suitable policies and sufficiently trained personnel for the provision of adequate customer service;

(*d*) it uses hardware and software that ensure data security of users and providers;

(*e*) it prepares and maintains operational manuals that ensure the accuracy of information contained in its database including manuals for handling of queries, loading of data, source quality control, maintenance, security and procedure for handling complaints;

(*f*) through a written contract or agreement, data providers and users comply with provisions of the Credit Reference Bureau Act, these Regulations, and other financial sector laws;

(*g*) it adopts measures and systems for the recording of requests or queries from customers concerning credit reference bureau reports and misuse of data held in its database; and

(*h*) it provides to the Registrar all the data or information as may be required by the Registrar.

Obligations of Credit Reference Bureaus with respect to customer data

10. A credit reference bureau shall implement the following measures in relation to data obtained and stored in its database as well as data accessed by authorized users—

(*a*) establish controls and procedures to be applied when authorized data providers supply information to the credit reference bureau database;

(*b*) establish controls and procedures to be applied when authorized users request information from the credit reference bureau database;

(*c*) maintain automated logs of all accesses, amendment to credit file information and audit trails to data;

(*d*) maintain logs of proven or suspected breaches of security that would include details of files affected, details of the breach and any action taken as a result of an investigation;

(*e*) review, on a regular basis, password controls of all credit reference bureau personnel and authorized data providers and users;

(*f*) monitor, on a regular basis, patterns of usage of credit reports, with a view to detecting and investigating any unusual or excessive usage;

(*g*) communicate at least annually, to authorized data providers and users their responsibilities under these Regulations;

(*h*) as necessary, conduct workshops in relation to these Regulations and, in particular, good security practices for the benefit of authorized data providers and users and other stakeholders that may be deemed relevant;

(*i*) formulate guidelines, disciplinary and contractual procedures to be applied in relation to improper use of credit bureau database access by credit reference bureau personnel and by authorized data providers or users; and

(*j*) formulate operational guidelines to ensure adequate protection to minimize the risk of unauthorized entry into the information or interception of communications made to and from the credit reference bureau database.

Obligations of Credit Reference Bureaus with respect to authorized users

11.—(1) A credit reference bureau shall—

(*a*) only approve, as users, financial institutions and those entities or persons on which it has completed due diligence and has been satisfied that the prospective user maintains a good reputation, and conducts its business activities in a legally and responsible manner;

(*b*) develop and utilize a standard application form and contract for a potential user to complete when requesting for approval to access credit files;

(*c*) ensure that its relationship with a user is formalized in a contract that outlines the conditions for obtaining and use of credit reference bureau information as outlined in these Regulations;

(*d*) re-verify the qualifications of users on an annual basis;

(*e*) ensure that only users who provided their relevant proprietary credit information to the credit reference bureau access information from the credit bureau;

(*f*) ensure that access to the credit reference bureau database is only through user codes and passwords that must be changed on a regular basis;

(*g*) ensure that prior to accessing information from a credit reference bureau, the users have written and signed consent of the borrower;

(*h*) ensure that users do not sell, transfer or otherwise use the information obtained from the credit reference bureau for purposes other than outlined in the definition of permissible purposes; and

(*i*) ensure that users maintain a hard copy of the written consent, along with a copy of the subject's credit application, and be prepared to surrender the hard copy at the request of the Registrar.

(2) A credit reference bureau shall immediately suspend supply of credit bureau information to any authorized user who fails to comply with the provisions of regulation 12.

Obligations of Credit Reference Bureaus in relation to data providers

12. A credit reference bureau shall ensure that every data provider—

(*a*) provide complete, accurate and timely proprietary credit information to the credit reference bureau;

(*b*) promptly investigate any case on inaccurate credit information and conclude the investigation within ten working days;

(*c*) promptly eradicate the inaccuracy in its database and update customer's information;

(*d*) take responsibility for any errors or inaccuracies in the data provided to credit reference bureau; and

(*e*) fulfills any other obligations as specified by the Registrar.

Users access of the Credit Bureau Database

13.—(1) Users may only access a credit reference bureau database with the written consent of the subject on whom a search inquiry is being conducted.

(2) Users must maintain a hard copy of the written consent, along with a copy of the subject's credit application, and be prepared to surrender the hard copy at the request of the Registrar or the credit reference bureau.

The right to inspect credit information

14.—(1) A person shall have the right to request in writing to a credit reference bureau for a copy of any or all personal credit information stored in the credit reference bureau database.

(2) A credit reference bureau shall request the person to provide it with legally acceptable identity before releasing the information.

Right to challenge incorrect credit information

15. A person shall have a right to challenge any incorrect personal credit information provided by a credit reference bureau.

Process of dealing with challenges to incorrect credit information

16. Where a person challenges any inaccurate credit information, a credit reference bureau shall—

(*a*) institute corrective action within five working days from a day it received the concern;

(*b*) contact and direct the data provider to re-verify the accuracy of the credit information within ten working days;

(*c*) ensure that the credit information is immediately corrected both in the database of the data provider and credit reference bureau;

(*d*) notify all users who may have used the inaccurate information in the past twelve months;

(*e*) provide the subject of the credit file with a hard copy of the corrected report;

(*f*) report the matter to the Registrar if a data provider fails to correct the information upon the expiry of the stipulated period; and

(*g*) suspend the data provider's access to the credit reference bureau database where a data provider fails to correct the credit information within the stipulated period and without giving valid written reasons for the failure.

Recording of challenges to incorrect information

17.—(1) A credit reference bureau shall maintain records of—

(*a*) all challenges it receives concerning incorrect credit information; and

(*b*) all efforts taken to investigate challenges, results of the investigation and any action taken.

(2) The credit reference bureau shall, on quarterly basis, submit a report on the challenges, the investigations and action taken to the Registrar for a review.

Fee for a credit report

18. A credit reference bureau shall charge a reasonable fee for any credit report.

Penalties

19.—(1) Where a credit reference bureau or user is in violation of any of the provisions of these Regulations or the Act, the Registrar may—

(*a*) impose penalties or other remedial measures or enforcement actions as provided for in the Financial Services Act; or

Cap. 44:05

(*b*) impose a monetary penalty not exceeding MK1,000,000.

Public awareness

20. A credit reference bureaus shall develop a programme of public awareness relating to rights and obligations of users of credit reference bureau services.

reg. 4

SCHEDULE

Application Form for a Licence to carry out Credit Reference Bureau Business in Malaŵi

Section 1

This section requests information about the proposed Credit Reference Bureau (CRB) and its shareholders.

1. Name of proposed Credit Reference Bureau:
   .....
2. Date of Incorporation: .....
3. Physical Address of Business: .....
   .....
   Postal Address of Business: .....
   Telephone Number: ..... Fax Number: .....
   E-mail: ..... Website: .....
4. Software description (owned or leased), data centre and back-up installations:
   .....
   .....
5. Capital Structure:
   Please indicate the amount of capital for the proposed Credit Reference Bureau (CRB):
   .....
   Proof of such capital (cash, software, equipment and installations) will be verified by the Registrar. Borrowed funds are not allowed:
   .....
   .....
   .....
6. Subsidiaries and Affiliates:

Name and Type of Business	Amount of Shares	% of Shares Held
.....	.....	.....
.....	.....	.....
.....	.....	.....

7. Directors and Executive Officers:
   (*a*) Board of Directors:

Name:	Designation:	Physical Address:
.....	.....	.....
.....	.....	.....
.....	.....	.....
.....	.....	.....
.....	.....	.....

(*b*) Executive Officers:

Name:	Designation:	Physical Address:
.....	.....	.....
.....	.....	.....
.....	.....	.....
.....	.....	.....
.....	.....	.....

8. Principal Shareholders:

Name and Address	Amount of Shares	% of Shares Held
.....	.....	.....
.....	.....	.....
.....	.....	.....
.....	.....	.....

Other shareholders owning less than ten per cent (10%) (Total Shares: .....)

9. Attachments: Please attach the following—

(*a*) signed letter of commitment that the applicant agrees to be bound by terms and conditions of the Credit Reference Bureau Act, and regulations for CRB;

(*b*) organization chart indicating major departments or divisions with names, positions and titles of officers heading each department or division;

(*c*) Curriculum Vitae of each Director and Senior Management Official;

(*d*) audited financial statements of the proposed CRB for the past three years;

(*e*) if the proposed CRB is a newly established company and has no audited financial statements as stipulated in (*d*) above; then submit audited financial statements for each principal shareholder for the past three years;

(*f*) copy of Certificate of Incorporation;

(*g*) copies of Memorandum and Article of Association;

(*h*) Business Plan for the next three years including proforma statements of financial position, statement of comprehensive income and cash-flow projections;

(*i*) policies and procedures for storage and use of credit data to ensure security, confidentiality and integrity of the credit data including any agreements with software/hardware providers; and

(*j*) Business Continuity Policies and Procedures.

10. Applicant's shareholding in any other financial institution whether in Malaŵi or abroad.

Name of Financial Institution	Number of Shares	% of Shares Held
.....	.....	.....
.....	.....	.....
.....	.....	.....
.....	.....	.....
.....	.....	.....
.....	.....	.....

11. Name(s) and addresses of the applicant's bankers within the last five years (Also indicate the applicant's principal bankers): .....
.....

12. Name and address of the applicant's external auditors: .....
.....

13. Does the applicant or its shareholders hold, or ever held any authority from a supervisory body to carry on any business activity in Malaŵi or elsewhere? If so, give particulars. If any such authority has been revoked, give particulars:
.....
.....
.....

14. Has the applicant or its shareholder or any company in the same group within the last ten years failed to satisfy a judgment debt under a court in Malaŵi or elsewhere within a year of the making of the order? If so, give particulars:
.....
.....
.....
.....

15. Has the applicant or its shareholder or any company in the same group made any compromise or arrangement with its creditors within the last ten years or otherwise failed to satisfy its creditors in full? If so, give particulars:
.....
.....
.....
.....

16. Has a petition for an administrative order or notice of resolution for voluntary or compulsory winding-up been served in Malaŵi in relation to the applicant, its shareholders or company in the same group, or has the substantial equivalent of such a petition been served in any other jurisdiction, in the last ten years? If so, give particulars:
.....
.....
.....
.....

17. State whether the applicant or its shareholders have ever been under any criminal investigation, prosecution, disciplinary action(s) or trade sanctions in connexion with Credit Reference Bureau, banking or financial services in Malaŵi or elsewhere? If so, give particulars:
.....
.....
.....
.....

18. Are there any material matters in dispute between the applicant or its shareholders and the Malaŵi Revenue Authority or any equivalent tax authority in any other jurisdiction? If so, give particulars:
.....
.....
.....
.....

19. Is the business of the applicant's executive officers or of companies connected with the applicant guaranteed or otherwise underwritten or secured, or expected to be guaranteed or underwritten or secured, by the applicant or its shareholders? If so, give particulars:
.....
.....
.....
.....

20. Please provide any other information which may assist the Registrar in reaching a decision on the applicant:
.....
.....
.....
.....

DECLARATION

We certify that all the information contained in and accompanying this form is accurate and complete to the best of our knowledge, information and belief and that there are no other facts relevant to this application of which the Registrar should be aware. We undertake to inform the Registrar of any material changes to the application which may arise while the Registrar is considering the application. We further undertake that, in the event that the institution is granted a licence under these Regulations, we will notify the Registrar of any material changes to or affecting the completeness or accuracy of the answers to the questions above as soon as possible, but in any event not later than twenty-one days after the date that the changes come to our attention.

Name: ..... Position held: .....

Signature: ..... Date: .....

Section 2
Personal Declaration of Individual Shareholders, Directors and Executive Officers

*Section 2 must be filled by each individual, that is, principal shareholder, director or executive officer.

1. Please state the name and capacity in which you are completing this form, i.e. as a current or prospective executive officer or any combination of these:
   .....
   .....

2. Please state your full title and describe the particular duties and responsibilities attaching to the position(s) which you hold or will hold:
   .....
   .....
   .....

3. If you are completing this form in the capacity of director, indicate whether, in your position as director, you have or will have executive responsibility for the management of the applicant's business:
   .....
   .....
   .....

4. Nationality: ..... Passport Number: .....

5. Date and Place of Birth: .....

6. Please indicate your present business and residential address including house number, telephone, fax and e-mails as follows—
   (*a*) Present Business Address: .....
   .....
   (*b*) Residential Address: .....
   .....
   (*c*) House Number: ..... Telephone Number: .....
   (*d*) Fax Number: ..... E-mail: .....

7. Professional and Academic Qualifications:

Particulars	Year Obtained
.....	.....
.....	.....
.....	.....
.....	.....
.....	.....

*In addition, please provide a copy of your Curriculum Vitae.

(*a*) Highest Academic Qualification: .....
Issuing Institution: .....

(*b*) Special Awards or Honors (if any): .....
.....
.....
.....

(*c*) Training courses and seminars: .....
.....
.....
.....

(*d*) Membership in professional organizations: .....
.....
.....
.....

(*e*) Occupation or employment (present or most recent and for the past ten years):
.....
.....
.....

8. Names and address of your bankers within the last ten years:
.....
.....
.....
.....

9. Bodies corporate (other than the applicant) where you are now a shareholder or director or have been a shareholder or director in the past ten years:
.....
.....
.....
.....

10. Have you, in Malaŵi or elsewhere, been dismissed from any office or employment or been subjected to disciplinary proceedings by your employer or barred from entry to any profession or occupation? If so, give particulars:
.....
.....
.....
.....

11. Do you hold or have you ever held or applied for a licence or equivalent authorization to carry on any business activity in Malaŵi or any other country? If any such application was refused or withdrawn after it has been made or any authorization was revoked, please give particulars:

    .....
    .....
    .....
    .....

12. State whether the applicant with which you are, or have been, associated as a principal shareholder or executive officer holds, or has ever held or applied for licence or equivalent authorization to carry on any business activity in Malaŵi? If so, give particulars. If any such application was refused, or was withdrawn after it was made or any licence revoked, give particulars:

    .....
    .....
    .....
    .....

13. State whether any of your past or current employer(s) or institution in which you were affiliated as shareholder, executive officer, etc., has ever been under criminal investigation, placed under receivership or insolvent liquidation by any regulatory body or court of law:

    .....
    .....
    .....
    .....

14. Have you ever been adjudicated bankrupt or failed to satisfy any debt?

    .....
    .....

15. Has any body corporate, partnership or unincorporated institution with which you are associated as a director, shareholder, controller or manager, in Malaŵi or elsewhere, been wound-up, made subject to an administrative order, otherwise made any compromise or arrangement with its creditors or ceased to be associated with it or has anything analogous to any of these events occurred under the laws of any other jurisdiction? If so, give particulars:

    .....
    .....
    .....
    .....

16. Do you, in your private capacity, or do any of your related parties, undertake business with the applicant? If so, how many shares in the applicant are registered in your name or the name of a related party? Please give names in which the shares are registered and their classes:

    .....
    .....
    .....

17. Do you or does any related party, hold any shares in the applicant as trustee or nominee? If so, give particulars:

    .....
    .....
    .....

18. What proportion of the voting power at any general meeting of the applicant (or another body corporate of which it is a subsidiary) are you or any related party entitled to exercise or control the exercise of?

    .....
    .....
    .....

19. Documentary requirements: Please attach and submit the following for each director, individual principal shareholder and executive officer—

    (*a*) certified statement of assets and liabilities;

    (*b*) latest tax compliance certificate or certified true copy of income tax returns;

    (*c*) two letters of character references from individuals other than relatives who have personally known you for at least ten years; and

    (*d*) two letters, duly certified from financial institutions with whom you have had, dealings for the last two years on the performance of past and present accounts such as unauthorized overdrafts on deposit accounts, past due or delinquent accounts.

20. Please provide any other information which may assist the Registrar in reaching a decision on the application:

    .....
    .....
    .....
    .....

DECLARATION

I certify that all the information contained in and accompanying this form is complete and accurate to the best of my knowledge, information and belief and that there are no other facts relevant to this application of which the Registrar should be aware.

I further undertake that, in the event that the Bureau is granted a licence under these Regulations, I will notify the Registrar of any material changes to, or affecting the completeness or accuracy of the answers to the questions above as soon as possible, but in any event not later than twenty-one days from the date that the changes come to our attention.

Name: ..... Position held: .....

Signature: ..... Date: .....

FINANCIAL COOPERATIVES

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CHAPTER 46:10

FINANCIAL COOPERATIVES

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CHAPTER 46:10

FINANCIAL COOPERATIVES

An Act to provide for the regulation and supervision of financial savings and credit cooperative societies and to make provision for matters connected therewith or incidental thereto 8 of 2011 G.N. 5/2012

[1st October, 2011]

PART I
PRELIMINARY

1. This Act may be cited as the Financial Cooperatives Act. Short title

2.—(1) In this Act, unless the context otherwise requires— Interpretation

"Appeals Committee" means the Financial Services Appeals Committee established under the Financial Services Act; Cap. 44:05

"bank" has the meaning ascribed to it in the Banking Act; Cap. 44:01

"body corporate" means a company or corporation incorporated under or by virtue of the laws of Malaŵi or of any other state, but does not include a corporation sole;

"borrower" means a person who has concluded a loan agreement with a SACCO;

"capital" includes unimpaired reserves, retained earnings, donations to a SACCO and permanent and non-withdrawable shares;

"compulsory or collateral savings" means a sum of money which is paid to a SACCO as—

(*a*) security;

(*b*) partial guarantee of a loan; or

(*c*) a precondition for a loan granted or promised to be granted at a future date to a member making the payment;

Cap. 47:02 "cooperative society" means an entity registered under the Cooperative Societies Act;

"credit facility" means—

(*a*) the granting by a SACCO of an advance, loan or other facility which enables a member of the SACCO, or another person at the request of the member, to access funds or financial guarantees; or

(*b*) the incurring of an obligation by a SACCO on behalf of a member at the direction of the member;

"deposit" means money entrusted to a SACCO and accepted by it for credit to a depositor's account, without putting up any security for the deposit;

"director" means a member of the board of directors of a SACCO;

"dormant account" means an account that has been kept inactive for twelve months;

"licence" means a licence issued in accordance with this Act;

"licensee" includes a provisionally licensed SACCO;

"national association" means an umbrella body of all financial cooperatives in Malaŵi;

"officer" includes a manager of a SACCO;

"ownership share" means an amount held by a member and established by the SACCO as the member's ownership interest in the assets of the SACCO;

"permanent and non-withdrawable share" means a share of a SACCO that may not be redeemable or repurchased by the SACCO;

"person" includes an individual, a body corporate, a partnership, an association, and any other group of persons acting in concert, whether incorporated or not;

"primary SACCO" means a SACCO the membership of which consists of individual persons and includes any body of persons approved by the Registrar of Cooperative Societies;

"provisionally licensed SACCO" means a registered SACCO that, immediately before the coming into effect of this Act, is carrying on SACCO business;

"Register" means the SACCO Register established and maintained pursuant to section 16;

"Registrar of Cooperatives" means the Registrar of Corporatives as defined in the Cooperative Societies Act; Cap. 47:02

"SACCO" means a savings and credit cooperative society registered under the Cooperative Societies Act and licensed under the Financial Services Act, whose principal object includes accepting deposits, advancing of loans, and providing other financial services to, or for, its members; Cap. 47:02 Cap. 44:05

"secondary SACCO" means a SACCO, the membership of which is restricted to primary SACCOs;

"supervisory committee" means a supervisory committee elected by a SACCO under section 43.

(2) Subject to subsection (1) and except where a contrary intention appears, expressions used in this Act shall have respective meanings as in the Financial Services Act. Cap. 44:05

Application Cap. 44:05 Cap. 47:02

3. This Act shall apply in addition to the Financial Services Act, and the Cooperative Societies Act, to all persons providing member-based savings and credit services as a whole or as part of their business except to the extent that such persons are exempted by the Registrar pursuant to his authority under the Financial Services Act.

PART II
Licensing of Registered SACCOs

Prohibition against operating business without licence

4.—(1) No person shall engage in the business of receiving deposits, extending credit and providing other financial services to its members as a SACCO unless he is—

(*a*) firstly incorporated under the provisions of the Cooperative Societies Act; and Cap. 47:02

(*b*) licensed under the provisions of the Financial Services Act, as a— Cap. 44:05

(i) primary SACCO; or

(ii) secondary SACCO.

(2) Any person who contravenes section (1) commits an offence.

Application for licence Cap. 44:05

5.—(1) An applicant for a licence shall submit an application in writing in a form prescribed under the Financial Services Act, and containing such information as the Registrar may specify.

(2) An application under subsection (1) shall be accompanied by a fee as specified by the Registrar.

Criteria for licensing Cap. 44:05

6.—(1) In considering an application for a licence, the Registrar shall, in addition to the requirements stipulated in the Financial Services Act, take into account the following factors—

Cap. 47:02

(*a*) that the applicant is incorporated under the Cooperative Societies Act;

(*b*) that the applicant is a member of a national association of financial cooperatives;

(*c*) the financial condition and prospects of the applicant;

(*d*) that the applicant shall be governed by a board of directors elected from within its membership;

(*e*) that the by-laws of the SACCO provide for prudent governance in accordance with cooperative principles; and

(*f*) any other matter that the Registrar may consider necessary.

(2) A primary SACCO, or fifteen licensed primary SACCOs, in case of a secondary SACCO, shall submit to the Registrar a complete set of application for a licence.

(3) The Registrar may grant a licence to a primary or secondary SACCO upon being satisfied that the proposed business shall be financially viable.

Issue of licence

7.—(1) The Registrar shall, within sixty days from the date of receipt of a completed application for a licence—

(*a*) grant a licence with or without conditions; or

(*b*) refuse to grant a licence.

(2) The Registrar shall communicate his decision in writing to the applicant:

Provided that, in case of refusal, he shall give reasons.

Cap. 44:05

(3) A person aggrieved by the decision of the Registrar may appeal to the Appeals Committee in accordance with the Financial Services Act, within thirty days after being notified of the decision.

(4) The Appeals Committee may reverse the decision of the Registrar where—

(*a*) the Registrar failed to follow required procedures in making his decision;

(*b*) the Registrar's decision was contrary to this Act;

(*c*) there was no factual basis for the decision of the Registrar; or

(*d*) based on a review of the record, the Registrar—

(i) committed a manifest error in his assessment of facts; or

(ii) abused his discretion in making his decision.

(5) The Appeals Committee may, in consultation with the Registrar, specify further requirements to be fulfilled for the grant of a licence to a registered SACCO.

Conditions of licence Cap. 44:05

8. The Registrar may endorse on a licence granted under the Financial Services Act, such conditions as he considers necessary and may, from time to time, add, vary or substitute such conditions when deemed appropriate.

Prohibition against transfer or assignment of licence

9.—(1) A licence shall not be transferred, assigned or encumbered in any way.

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

Expiry of licence

10.—(1) A licence shall automatically expire where the licensee fails to commence its business within a period of one year following the granting of the licence.

(2) Where a licence has expired pursuant to subsection (1) and the applicant indicates to the Registrar his interest to operate the business, the applicant may submit a fresh application to the Registrar in accordance with section 5.

Suspension or revocation of licence Cap. 44:05

11.—(1) In addition to provisions under the Financial Services Act, the Registrar may, by notice in writing to a licensed SACCO, suspend or revoke the licence where the SACCO—

(*a*) is deregistered under the Cooperative Societies Act; or Cap. 47:02

(*b*) fails to comply with this Act or any financial services law.

(2) Upon suspension or revocation of a licence as provided under the Financial Services Act— Cap. 44:05

(*a*) the Registrar shall record the revocation of a licence in the Register; and

(*b*) in addition to the powers of the Registrar under the Financial Services Act, the Registrar shall give directions with respect to the disposal of any assets, and the conduct of any transactions permitted under the licence. Cap. 44:05

(3) Any person aggrieved by the decision of the Registrar to suspend or revoke a licence may appeal to the Appeals Committee in accordance with the provisions of the Financial Services Act.

Cap. 44:05

(4) The decision of the Registrar shall remain in force unless reversed by the Registrar or set aside by the Appeals Committee.

(5) The Registrar shall inform the Registrar of Cooperative Societies of his decision to suspend or revoke a licence within five days of making the decision.

(6) A SACCO whose licence is suspended or revoked shall immediately cease to provide, directly or indirectly, any financial service, including as an agent of any financial institution.

(7) Any person who contravenes this section commits an offence.

Revocation of licence not relief from obligations

12.—(1) Revocation of a licence shall not relieve the licensee of any obligation incurred or assumed by the licensee during the period of validity of the licence.

(2) The revocation of a licence shall not prevent a cooperative society from carrying out cooperative business under the Cooperative Societies Act.

Cap. 47:02

Protection of name

13.—(1) No person, other than a registered or licensed SACCO, shall—

(*a*) use a name or title containing the words "SACCO" or "Savings and Credit Cooperative";

(*b*) present himself as a SACCO; or

(*c*) conduct business as a SACCO.

(2) No person shall adopt a name that is identical to that of another SACCO or similar as to be misleading or cause confusion.

(3) Notwithstanding subsection (1), an apex society that is a federation or confederation of SACCOs or an organization whose membership or ownership consists primarily of SACCOs or SACCO organizations may use the words "SACCO" or "Savings and Credit Cooperative" in its official name.

(4) Any person who contravenes this section commits an offence and shall, upon conviction, be liable, to a fine of K1,000,000 and to imprisonment for four years.

PART III
Conduct of Business in Certified Premises

Premises Certificate

14.—(1) The Registrar may determine minimum standards for premises of a SACCO.

(2) The Registrar shall carry out an inspection of the premises of a SACCO to determine compliance with the minimum standards referred to in subsection (1).

(3) Upon certifying the compliance of the premises with the determined minimum standards, the Registrar shall issue a premises certificate.

(4) A premises certificate of a SACCO shall indicate—

(*a*) the name of the SACCO;

(*b*) the type of business that the licensee is authorized to conduct;

(*c*) the date of certificate;

(*d*) the number of certificate; and

(*e*) the place of business.

(5) A SACCO shall not engage in any business other than the business designated in its premises certificate.

Business to be conducted in certified premises

15.—(1) A SACCO shall conduct its business at the place of business specified in the premises certificate.

(2) A SACCO wishing to relocate from the place of business premises specified in the premises certificate shall make an application to the Registrar.

(3) Where the Registrar is satisfied with reasons for the relocation of the place of business of a SACCO, he shall issue a new certificate to the SACCO.

(4) A person who contravenes the provisions of this section commits an offence.

PART IV
Register of Licensed SACCOs

Register

16.—(1) The Registrar shall establish and maintain a register to be known as the SACCO Register.

(2) The Registrar shall enter into the Register particulars of all licensees and their licences.

(3) The Register or a copy of the Register shall be available for inspection by the public at the offices of the Registrar during working hours.

Publication of licensed SACCOs

17. The Registrar shall cause the list of all licensed SACCOs to be published once every year in at least one electronic or print media of national circulation.

Evidence of register

18.—(1) For the purpose of ascertaining the facts concerning licensing status of any person, entries made in the Register shall be *prima facie* evidence as to those facts.

(2) A document certified by the Registrar as a true copy or extract of the Register shall be admissible in any proceedings including in any court as *prima facie* evidence of the contents of the Register.

PART V
Permissible Activities of SACCOs

Permissible services for primary SACCOs

19.—(1) A primary SACCO may—

(*a*) provide deposit, credit and financial services to its members; and

(*b*) invest its funds,

as permitted under this Act:

Provided that no more than five per cent of its assets, or as may be determined by the Registrar, from time to time, shall be invested in non-financial activities.

(2) A SACCO may offer transactional services such as money transfers, automated teller machine services, to non-members provided that the services do not directly affect the balance sheet of the SACCO.

(3) An individual or body corporate may become a member of a SACCO or SACCOs subject to the same one-member one-vote restrictions, deposit and loan concentration limits.

(4) Notwithstanding any written law, but subject to any restrictions in its licence, a primary SACCO may offer any of the following services—

(*a*) credit facilities;

(*b*) shared branching among SACCOs;

(*c*) transfers;

(*d*) chequing;

(*e*) deposit taking;

(*f*) insurance agency;

(*g*) leasing;

(*h*) bill payments;

(*i*) automated teller machines and debit cards;

(*j*) participatory loans among other SACCOs; and

(*k*) any other financial services as the Registrar may approve, from time to time.

Permissible services for secondary SACCOs

20.—(1) Notwithstanding any written law, a secondary SACCO may provide all of the services permissible to primary SACCOs, in addition to liquidity management services, auditing services of primary SACCOs, clearing services and securitization.

(2) Notwithstanding any written law, a secondary SACCO may directly participate in any national payments, clearing and settlement system.

(3) Subject to prior written approval of the Registrar, a secondary SACCO may provide insurance services to a person that has a deposit with, or an investment in, the ownership shares of, a primary SACCO.

(4) The Registrar may issue Registrar's directives with respect to provision of insurance services by the secondary SACCOs.

(5) A SACCO may have access to the liquidity window of the Reserve Bank under such conditions as the Reserve Bank may define.

PART VI

Governance of SACCOs

Directors' terms of office, meetings, responsibilities

Cap. 44:05

21.—(1) In addition to the provisions of the Financial Services Act—

(*a*) with the exception of the chief executive officer, a term of office of any director shall not exceed three years;

(*b*) a director may serve up to a maximum of two consecutive terms of office after which time he can be re-elected to the board after sitting out one full term;

(*c*) the directors shall meet at least once every quarter or as may be determined by the Registrar for the transaction of SACCO business; and

(*d*) the Registrar may determine responsibilities and qualifications for the directors of a SACCO.

(2) Any appointee director deemed not to be fit and proper by the Registrar may be granted one year or such other time as may be directed by the Registrar to obtain the requisite skills.

Duties of management Cap. 44:05

22.—(1) Management of a SACCO shall prudently oversee the operations of the SACCO, in accordance with this Act, the Financial Services Act, and policies established by the board of directors of the SACCO.

(2) The Registrar may, through Registrar's directives, determine responsibilities and qualifications of any officer in the management of a SACCO.

No employee director in licensed SACCOs

23. No employee of a SACCO, other than the chief executive officer, shall serve as a director of the SACCO.

Disclosure of fees, expenses, paid to director

24. Any compensation, fee and travel or meeting expense or reimbursement paid to a director of a SACCO shall be disclosed to the members of the SACCO at the annual general meeting.

Internal control systems

25. A SACCO shall, at all times, maintain internal control systems.

PART VII

Regulation and Supervision of SACCOs

Capital requirements

Cap. 44:05

26.—(1) The Registrar shall, through Registrar's directives and without prejudice to the generality of his powers under this Act or the Financial Services Act, determine the minimum capital for SACCOs.

(2) The Registrar may, from time to time, determine on-going capital requirements for individual SACCOs where supervisory review process reveals risks warranting additional capital.

Minimum liquid assets

27.—(1) A SACCO shall maintain such minimum holding of liquid assets of deposits and borrowings of its members as may be prescribed, from time to time, by the Registrar.

(2) Every SACCO shall calculate the average period balance of its deposits and borrowings at the close of business for submission to the Registrar on such day as may be prescribed through directives.

Additional directives for SACCOs

Cap. 44:05

28.—(1) In addition to directives issued under the Financial Services Act, the Registrar may determine—

(*a*) levels of standards for the categories of SACCOs; and

(*b*) other financial and operational standards for SACCOs.

(2) The Registrar may take appropriate supervisory action in accordance with provisions of this Act in the case of a SACCO which contravenes the provisions of this section.

(3) Any director or person concerned in the management of a SACCO who fails to act reasonably to comply with subsection (1) may be liable to administrative penalties under the Financial Services Act. Cap. 44:05

Other permissible investment of funds

29.—(1) Any funds of a SACCO not committed in loans to its members may be invested in—

(*a*) securities, or other debt instruments issued or guaranteed by the Government or any agency of the Government;

(*b*) deposits, with banking institutions;

(*c*) shares, deposits in, loans to any secondary SACCO licensed under this Act; and

(*d*) other investments as may be determined by the Registrar from time to time.

(2) An investment made under this section shall not in the aggregate exceed such proportion of the total core capital and deposits of a SACCO as the Registrar may prescribe.

(3) A SACCO shall not purchase or acquire any land or any interest or right therein except as may be reasonably necessary for the purpose of conducting its business and where such investments do not exceed such proportion of the total assets of the SACCO as the Registrar may prescribe.

Insider lending

30.—(1) A licensed SACCO may make loans to its employees and members of its board of directors in an amount in the aggregate not exceeding such proportion of its total assets as the Registrar may, from time to time, prescribe.

(2) No director or employee of a SACCO shall receive any product or service from the SACCO on terms that are any more or less favorable than any other member of the SACCO with a similar credit history and capacity to repay.

(3) All loans of a SACCO involving any related party of a SACCO shall be disclosed to the board of directors and annually to the Registrar.

(4) No employer or director of a SACCO shall act as a guarantor of any person with respect to a loan advance or credit facility granted to a person by the SACCO.

(5) No employee, director or agent of a SACCO shall participate or be present in the deliberation upon or the determination of any question affecting that person's pecuniary interest or the pecuniary interest of any related party and in that event such person shall disclose any related parties or conflicts of interest annually to the board of directors.

(6) A person who fails to disclose the interests outlined in subsection (5) commits an offence.

Charge against shares and savings deposit

31.—(1) A SACCO shall hold a first charge against share capital, deposits and upon any dividends or interest payable to a member for any debt due to the SACCO from a member, as a guarantor or endorser of a loan, credit facility or any other obligation.

(2) A SACCO may refuse to allow withdrawals from any deposit account operated by a member where such member is in arrears on a debt owed to the SACCO.

Treatment of dormant accounts

32.—(1) The Registrar shall, upon expiry of three years of holding funds in SACCO member's account that is deemed dormant, determine, from time to time, direction on treatment of such funds.

(2) The direction shall be restricted to the promotion and development of SACCOs in Malaŵi.

Limits on loans and credit facilities

33. A SACCO shall not, without prior approval of the Registrar, grant or permit to be outstanding any credit facility to any member as may be determined, from time to time, by the Registrar.

Ownership shares

34.—(1) No member of a SACCO shall, without the approval of the Registrar, hold more than ten per cent of the ownership shares or deposits in the SACCO, individually or cumulatively through related parties.

(2) Subject to subsection (3), ownership shares in a SACCO are liabilities of the SACCO.

(3) Ownership shares shall be equity of the SACCO if the SACCO's by-law provides for the shares to be permanent and non-withdrawable.

Cap. 44:05

(4) Ownership shares that are redeemable may, subject to compliance with this Act and the Financial Services Act, be purchased at their issue price and in the event of insolvency, such ownership shares shall be redeemable at the discounted value of the insolvency.

(5) A SACCO shall, through by-laws, determine the value of ownership share in the SACCO.

Conduct of business

35. A SACCO shall—

(*a*) conduct business with integrity, prudence and professional skill;

(*b*) focus on the institutional sustainability of financial services to members; and

(*c*) engage only in *bona fide* transactions.

36. A SACCO shall at all times disclose, in writing, to the borrower, the cost of borrowing, including the interest rate and related fees. Disclosure of cost of borrowing

37.—(1) A SACCO shall exhibit, throughout the year, in a conspicuous position in every place of business— Exhibition of financial and other information

(*a*) a copy of its last audited financial statements in the prescribed format;

(*b*) code of conduct;

(*c*) information on member rights and responsibilities;

(*d*) financial products and services it offers; and

(*e*) terms under which products and services are offered.

(2) A SACCO that does not comply with the provisions of this section commits an offence and shall be liable to administrative penalty under the Financial Services Act. Cap. 44:05

38. In addition to provisions that require approval of the Registrar in this Act, a SACCO shall not, without prior written approval of the Registrar— Actions requiring approval

(*a*) open or close a place of business in Malaŵi;

(*b*) engage on its own account in wholesale or retail trade, including import and export trade, except insofar as may be necessary in the course of the satisfaction of debts due to it;

(*c*) purchase or acquire or hold immovable property other than for the purpose of conducting its business unless acquired in default of repayment in which case the immovable property be availed for resale as soon as possible thereafter;

(*d*) offer any deposit or credit products to a non-member or invest in the shares of another SACCO; and

(*e*) undertake amalgamation or similar corporate restructuring transaction.

39.—(1) A SACCO shall notify the Registrar of any amendments to its by-laws within thirty days of the adoption of such amendments by the membership. Amendment of by-laws

(2) A SACCO shall submit to the Registrar of Cooperatives, for approval, a copy of proposed amended by-laws.

PART VIII
Accounts and Audit

40. The financial year for a SACCO shall be the period of twelve months ending on the 31st of December in each year, or as may be determined by the Registrar. Financial year

Accounts

41. A SACCO shall keep accounts and records which—

(*a*) shall show a true and fair state of affairs of the institution; and

(*b*) shall explain all transactions, and the financial position of the SACCO to enable the Registrar to determine whether the institution has complied with the provisions of this Act.

Disclosure requirements

42. The financial statements of a SACCO shall include disclosures on—

(*a*) members, if any, who hold more than ten per cent of the share capital and deposits in the SACCO; and

(*b*) any advance or credit facility exceeding such limits of its core capital as may be determined by the Registrar.

Supervisory committee

43.—(1) A SACCO shall, at its annual general meeting, elect a supervisory committee from its membership who shall report to the board of directors on internal control systems and financial condition of the SACCO.

(2) The supervisory committee shall also present its findings to the members at the annual general meeting.

(3) Former, but not current, directors shall be eligible to run for election to the supervisory committee.

Duties of external auditor Cap. 44:05

44.—(1) In addition to the duties of an external auditor under the Financial Services Act, the supervisory committee, in consultation with the board of directors, shall appoint an external auditor who shall report to the board of directors on—

(*a*) profit and loss account;

(*b*) assets and liabilities of the SACCO;

(*c*) cash balances, securities and accounts;

(*d*) delinquent loans and loans to directors and employees and their related parties;

(*e*) any violation of prudential standards or a condition of the licence;

(*f*) any other contravention of this Act; and

(*g*) any other matter as may be determined by the Registrar.

(2) Where for any reason a casual vacancy occurs in the appointment of the external auditor in the course of the year of the appointment, the board of directors of the SACCO shall, with the approval of the Registrar, and subject to subsection (1), appoint another external auditor.

45. No person shall be qualified for appointment as an external auditor of a SACCO unless the person— Qualification of external auditor

(*a*) is qualified as an auditor under the Companies Act; and Cap. 46:03

(*b*) is not—

(i) an officer of a SACCO;

(ii) a partner of a director of a SACCO;

(iii) an employer or employee of an officer of a SACCO;

(iv) an officer or employee of an associate of a SACCO;

(v) a partner or an employer of a person who regularly performs the duties of secretary or book-keeper for a SACCO; or

(vi) a firm or member of a firm of auditors of which any partner or employee falls within the categories enumerated in this paragraph.

46.—(1) Where the Registrar is satisfied that the audited accounts of a SACCO do not comply with the requirements of this Act or that the audited accounts contain information that may be misleading, the Registrar may require the SACCO to— Rectification of audited accounts

(*a*) amend the audited accounts to comply with the requirements of this Act;

(*b*) correct the misleading information; or

(*c*) submit to the Registrar further documents or information relating to the accounts as the Registrar may deem appropriate.

(2) Where the Registrar is satisfied that the non-compliance with the requirements of this Act was deliberate and has been caused with *mala fide* intentions, he may revoke the licence of the SACCO or impose administrative penalties under the Financial Services Act. Cap. 44:05

47.—(1) A SACCO shall maintain books, records, accounting systems and procedures in the manner approved by the Registrar. Accounting records and retention

(2) The records relating to a SACCO may only be destroyed under such conditions, and after such period of retention of the records, as the Registrar may prescribe.

48.—(1) The Registrar shall publish in whole or in part, at such times and in such manner as he deems fit, any information furnished to him under this Act. Publication and sharing of information

(2) The information furnished under subsection (1) shall not be published if such disclosure details financial affairs of an individual account holder, unless written consent of the account holder has been granted.

(3) Except as provided in this Act, no person shall disclose or publish any information which comes into his possession in the course of the performance of his duties or responsibilities under this Act.

(4) A person who discloses or publishes any information in contravention of subsection (3) commits an offence.

(5) Notwithstanding the provisions of this section—

(*a*) the Registrar may disclose any information received under this Act to any financial regulatory authority, tax authority, fraud investigations authority or pursuant to a court order, within or outside Malaŵi, where such information is reasonably required for the proper discharge of the functions of the Registrar or the requesting regulatory authority, tax authority, investigation authority or court;

(*b*) a SACCO shall, in the ordinary course of business and in such manner and to such extent as the Registrar may prescribe, exchange such information on non-performing loans as may, from time to time, be specified by the Registrar; and

(*c*) the Registrar and any SACCO may, in the ordinary course of business in such manner and to such extent as the Registrar may prescribe, exchange such information as is reasonably required for the proper discharge of their functions.

(6) No duty to which a SACCO or its officers may be subject shall be breached by reason only of the disclosure, in good faith, of any information under this section to—

(*a*) the Registrar or to another SACCO; or

(*b*) a credit reference bureau,

in the course of the performance of their duties and no action shall lie against the SACCO or any of its officers on account of such disclosures.

PART IX
Remedial Measures and Winding-Up of SACCOs

Remedial measures Cap. 44:05

49.—(1) In addition to the provision of the Financial Services Act, the Registrar may issue an order directing a merger of a SACCO with any other SACCO that voluntarily agrees to the merger upon the Registrar being satisfied or where the Registrar has reasonable cause to believe that in respect of a SACCO—

(*a*) its capital is seriously affected and does not meet the prescribed requirements;

(*b*) the continuation of its activities is not in the best interest of its depositors or creditors;

(*c*) its assets and provisions are insufficient to cover its liabilities; or

(*d*) the SACCO has refused or refuses to permit an inspection to be made of its business in accordance with provisions of this Act, or has otherwise obstructed such inspection, or has failed to comply with any requirements of the Registrar:

Provided that the Registrar is satisfied that—

(*a*) a SACCO cannot reasonably be expected to operate as a viable stand-alone organization;

(*b*) other alternatives are not reasonably available;

(*c*) interest of members would be best served by the merger;

(*d*) a merger is acceptable to the receiving institution; and

(*e*) the merger would not severely impact the financial condition of the receiving SACCO.

(2) If no suitable merger partner can be identified, the Registrar may—

(*a*) identify a compromise or arrangement between the SACCO and its creditors; and

(*b*) wind-up a SACCO and appoint a liquidator.

(3) In the case of liquidation, the Registrar shall have full and exclusive powers to manage and control the SACCO in liquidation, including powers to—

(*a*) temporarily continue its operations;

(*b*) stop or limit the payment of its obligations;

(*c*) employ any necessary officers and employees;

(*d*) execute any instrument in the name of the SACCO; and

(*e*) initiate, defend and conduct in the name of the SACCO any action or proceedings to which it may be a party.

(4) Upon liquidation, the Registrar shall inform the Registrar of Cooperatives of the liquidation.

Winding-up

50.—(1) Upon liquidation or voluntary winding-up of a SACCO by its members, any remaining net assets after paying all deposits and creditors shall be used to—

(*a*) repurchase ownership shares at their issue price;

(*b*) if the SACCO is insolvent, repurchase at the discounted value of the insolvency; and

(*c*) any balance shall be donated to another cooperative, that members choose, for the expressed purpose of education on cooperatives.

(2) The Registrar may refuse to make any payments to any person who, in the opinion of the Registrar, had any responsibility for, or may have benefited directly or indirectly from the circumstances leading to, the SACCO becoming insolvent.

PART X
Deposit Guarantee Fund

Establishment of Deposit Guarantee Fund

51.—(1) There is hereby established a fund to be known as the Deposit Guarantee Fund.

(2) The Deposit Guarantee Fund shall vest in a Board of Trustees appointed under this Act.

(3) The funds under the Deposit Guarantee Fund shall be invested by the Board of Trustees in Government securities and in deposits with other financial institutions as directed by the Board of Trustees.

Appointment of Board of Trustees

52. The Minister shall appoint a Board of Trustees to exercise powers, functions and authority conferred on the Board of Trustees by or under this Act.

Composition of Board of Trustees

53.—(1) The Board of Trustees shall consist of—

(*a*) the Registrar's appointee;

(*b*) the Registrar of Cooperatives or his representative;

(*c*) the Secretary to the Treasury or his representative;

(*d*) four members nominated by licensed SACCOs and approved by the Registrar; and

(*e*) the chief executive officer of a national association who shall be *ex officio* member and secretary to the Board of Trustees.

(2) The Minister may, by regulations, provide for the manner of nominations under subsection (1)(*c*).

Powers and functions of Board of Trustees

54.—(1) The Board of Trustees shall be responsible for the management of the Deposit Guarantee Fund and shall in particular—

(*a*) provide oversight function in the management of the Fund;

(*b*) manage and apply the Fund in accordance with this Act; and

(*c*) levy contributions for the Fund in accordance with this Act.

(2) The Board of Trustees shall appoint an administrator of the Fund.

(3) The Board of Trustees shall regulate the conduct of its affairs.

Remuneration of Board of Trustees

55. The Board of Trustees shall pay its members such remunerations or allowances for expenses out of the Deposit Guarantee Fund as it may determine, after consultation with the Registrar.

Sources of Deposit Guarantee Fund

56. The Deposit Guarantee Fund shall consist of—

(*a*) funds contributed to the Deposit Guarantee Fund by SACCOs in accordance with this Act;

(*b*) income investment interest accruing to the Deposit Guarantee Fund;

(*c*) funds borrowed for the purposes of the Deposit Guarantee Fund; and

(*d*) funds received as donations or grants to the Deposit Guarantee Fund.

Protection of deposits

57.—(1) The Deposit Guarantee Fund shall provide protection for deposits of members, but not shares, up to an amount as determined by the Trustees, from time to time, and approved by the Registrar.

(2) The amount being the aggregate credit balance of any accounts maintained by a member to a SACCO, less any liability of the member to the SACCO, shall be a protected deposit.

(3) A deposits of a member shall be used to offset any liabilities owed by the SACCO under liquidation, including any liability under a loan guarantee by such member.

(4) If a member has outstanding loans or credit facilities owing to a SACCO, the deposit of the member or guarantor, as the case may be, shall offset the loan or credit facility before the member or guarantor may receive any net from the members' or guarantors' protected deposits.

(5) A SACCO may, upon becoming insolvent, lodge a claim with the Registrar, in such form as the Registrar may approve, for the payment of claims out of the Deposit Guarantee Fund of any guaranteed deposits.

(6) The Board of Trustees may, before paying any claim lodged under this Act, require the claimant to furnish such documentary proof to support such claim as may be prescribed by the Registrar.

(7) The Board of Trustees may refuse to make any payments to any person who, in its opinion, had any responsibility for, or may have benefited directly or indirectly from the circumstances leading to, the SACCO becoming insolvent.

(8) The Board of Trustees may at any time cause inspection to be carried out to ascertain the type, number and value of the protected deposits in any SACCO.

(9) Upon payment of protected deposits from the Deposit Guarantee Fund, the Board of Trustees shall be entitled to receive from the SACCO or its liquidator, as the case may be, the amount paid from the Deposit Guarantee Fund.

(10) Notwithstanding the provisions of any other law—

(*a*) a claim for payment of a protected deposit by a creditor of a SACCO shall not be brought after the expiry of two years from the date of publication of commencement of such payment by the Board of Trustees; and

(*b*) a claim for payment of a dividend by a creditor of a SACCO shall not be brought after the expiry of one year from the date of commencement of such payment by the Board of Trustees.

(11) Subsection (10) shall not apply to a person who has, for reasons beyond his control and to the satisfaction of the Board of Trustees, been unable to make his claim within the said period.

Contribution to Deposit Guarantee Fund

58.—(1) A SACCO shall contribute to the Deposit Guarantee Fund and shall pay into the Deposit Guarantee Fund such annual amount, and at such times, as the Board of Trustees may determine, in consultation with the Registrar from time to time.

(2) The Board of Trustees shall serve on every SACCO a notice specifying the amount and the period, which shall not be later than twenty-one days after the date of service of the notice, within which the amount shall be paid into the Deposit Guarantee Fund by the SACCO.

(3) A SACCO which, for any reason, fails to pay its contribution to the Deposit Guarantee Fund within the period specified in a notice issued under subsection (2) shall be liable to pay to the Fund a penalty interest charge not exceeding one-half per cent of the unpaid amount for every day outside the notice period on which the amount remains unpaid.

(4) Where it appears to the Board of Trustees that the affairs of a SACCO are being conducted in a manner detrimental to its own interests or to the interest of its members, the Board of Trustees may increase the contributions of that SACCO beyond the maximum amounts prescribed or terminate the protection of the deposits of such SACCO.

(5) The Board of Trustees shall, as soon as reasonably practicable after terminating the protection of the deposits of a SACCO under

subsection (4), cause the name of that SACCO to be published in the *Gazette* and in at least one daily newspaper of national circulation.

(6) The Board of Trustees shall cause a list of all SACCOs whose deposits are protected to be published in the *Gazette* and in at least one daily newspaper of national circulation annually.

Deposit Guarantee Fund annual report

59. The Board of Trustees shall, within four months after the close of each financial year, submit to the Minister a report on the operations of the Deposit Guarantee Fund for the year in question.

PART XI
Miscellaneous Provisions

Default by officers

60. Any officer of a SACCO who fails to—

(*a*) take all reasonable steps to secure the compliance of the SACCO with this Act;

(*b*) take all reasonable steps to secure the accuracy and correctness of any statement or information submitted under this Act; or

(*c*) supply any information required under this Act to the Registrar or his agent,

commits an offence.

Falsification of books, and other prohibited acts

61.—(1) Any officer of a SACCO who willfully—

(*a*) with intent to deceive, falsifies any book of account, report, statement, record or other document of the SACCO;

(*b*) signs, issues, publishes or transmits to a Government official any book of account, report, statement, record or other document which that person knows, or has reason to believe, to be false;

(*c*) with intent to deceive, knowingly obtains a forged signature on a document;

(*d*) with intent to deceive, destroys any book of account, report, statement, record, or other document of the SACCO; and

(*e*) engages in transaction or takes part in a deliberation in which there is a conflict of interest prohibited under this Act,

commits an offence.

(2) Where an officer of a SACCO is convicted of an offence under subsection (1), the court shall, in addition to the penalty that it may impose under subsection (1), order the convicted officer to be prohibited from holding office in any SACCO.

Employer or agent to deduct and remit

62.—(1) An employer or agent of a SACCO member shall, on being so requested in writing by the member, make deductions from the member's earnings and remit the deducted amount to the SACCO which the member directs, within fourteen days after the end of the month in which the deductions are made.

(2) Any principal officer who contravenes subsection (1) shall be liable to administrative penalties prescribed by the Registrar under the Financial Services Act.

Cap. 44:05

(3) An employer who contravenes subsection (1) shall, in addition to the penalty that the Registrar may impose under subsection (2), be liable to pay to the SACCO the sum requested to be deducted together with a compound interest on the sum at the rate of not less than the average commercial base rate.

(4) In this section, "employer" includes any person, body corporate or government entity.

(5) The Registrar, or a SACCO on its own, may institute legal proceedings in court for recovery of the sum owing under subsection (1) without prejudice to any other mode of recovery and such sum shall be a civil debt recoverable accordingly.

(6) The Registrar may, by written notice, appoint any person, to be an agent of any SACCO for the purposes of the collection and recovery of a debt owed to the SACCO.

Fee or commission for effecting deductions

63. An employer may, in consultation with the Registrar, charge a fee or commission, in whatever form, for effecting deductions from the salary of an employee who is a SACCO member and remitting the deducted amount to a SACCO for the purpose of recovering costs that may be incurred.

Voluntary mergers

64.—(1) A SACCO intending to enter into an arrangement to merge with, amalgamate with or transfer its assets to, another SACCO, shall notify the Registrar thirty days prior to the conclusion of the proposed agreement.

(2) The merger referred to in subsection (1) shall be conducted in accordance with such procedure as the Registrar may determine.

(3) Where a merger under this section is approved by the Registrar, all property, property rights and members' interest of the merging SACCOs shall vest in the continuing SACCO without any instrument of transfer.

(4) All debts, obligations and liabilities of the merging SACCOs shall be deemed to have been assumed by the continuing SACCO.

(5) The rights and privileges of the members of the merging SACCOs shall not be affected by the merger.

Confidentiality

65.—(1) A SACCO and its staff shall ensure that all transactions are conducted in strict confidence and that the confidentiality of members is maintained.

(2) A SACCO may, with the consent of the customer, provide any necessary information to third parties such as members of a group guarantee scheme or a credit register.

Money laundering transactions

Cap. 8:07

66. Every SACCO shall furnish the Registrar or other enforcement agencies of Malaŵi with relevant information for of transactions deemed suspicious under the Money Laundering, Proceeds of Serious Crimes and Terrorist Financing Act.

Obstruction of the Registrar and other acts

67. Any person who—

(*a*) obstructs the Registrar or his agent in the exercise of any power conferred upon him under this Act;

(*b*) fails to provide information required under this Act alter written request by the Registrar or his agent;

(*c*) with intent to evade any provisions of this Act destroys, mutilates, or hides any document; or

(*d*) knowingly and intentionally contravenes a duty imposed by this Act,

commits an offence.

General offences and penalties

68.—(1) Any person who contravenes a provision of this Act for which no offence is specifically provided commits an offence.

Cap. 44:05

(2) The provisions of the Financial Services Act, governing imposition of penalties shall apply to any person who commits an offence under this Act for which no penalty is specifically provided.

Regulations

69.—(1) The Minister may, on the recommendation of the Registrar, make regulations for the better carrying out of this Act and for its better administration.

(2) The Minister may make different provisions for different categories of SACCOs in regulations made under subsection (1).

(3) Subject to Part XII, the Minister may make regulations with respect to transitional provisions to enable existing SACCOs to comply with this Act.

(4) For avoidance of doubt, the power to make regulations in this Act does not extend to making regulations about a matter in respect of which the Registrar may issue directives.

Directives and guidelines

Cap. 44:05

70.—(1) The powers conferred on the Registrar under this Act shall, without prejudice to the powers of the Registrar under the Financial Services Act, be exercised through issuance of Registrar's directives.

(2) The directives may prohibit, restrict or subject to conditions—

(*a*) certain classes of credit facilities, investments, and risk bearing commitments; or

(*b*) any other transactions affecting the solvency or liquidity of a SACCO.

(3) The directives may vary for different categories of SACCOs as determined by the Registrar.

(4) The directives may include provisions on any corrective action or administrative sanctions which the Registrar considers appropriate.

(5) The Registrar may issue guidelines, bulletins or other regulatory statements as he may consider necessary or desirable for the implementation or explanation of any provision of this Act.

Voluntary membership withdrawal from SACCO

71. A SACCO shall pay out share deposits to a member who voluntarily decides to withdraw from a SACCO upon sale of the existing members shares to either existing or new SACCO members.

PART XII
Transitional Provisions

Transitional provisions

72.—(1) On commencement of this Act—

(*a*) each existing registered SACCO may continue as a provisionally licensed SACCO and shall automatically be granted a provisional licence to operate under this Act if the registered SACCO submits an application to the Registrar within six months of this Act coming into effect;

(*b*) every document validly filed by an existing registered SACCO shall be deemed to be filed by the relevant provisionally licensed SACCO pursuant to this section and a copy of each such file shall be transmitted to the Registrar;

(*c*) by-laws of an existing registered SACCO shall be the by-laws of the provisionally licensed SACCO;

(*d*) the persons elected or appointed as the members of the committee or to the board of directors of an existing registered SACCO shall be the directors of the provisionally licensed SACCO and may hold office as such during the term of election or appointment, but subject to any direction of the Registrar;

(*e*) the persons appointed as officers of an existing registered SACCO shall be the officers for the provisionally licensed SACCO;

(*f*) the person appointed as the auditor of an existing registered SACCO shall be the auditor for the provisionally licensed SACCO, during the term of appointment, subject to any direction of the Registrar;

(*g*) any notice, order or direction made by the Registrar of Cooperatives, in respect of an existing registered SACCO pursuant to the Cooperative Societies Act shall be deemed to be a direction made by the Registrar under this Act in respect of the relevant provisionally licensed SACCO; Cap. 47:02

(*h*) any charge registered, in respect to an existing Registered SACCO, pursuant to the Cooperative Societies Act shall be a charge binding on the relevant provisionally licensed SACCO; and Cap. 47:02

(*i*) a share issued by an existing registered SACCO shall be deemed to be a share issued by the relevant provisionally licensed SACCO and no approval shall be required pursuant to the Financial Services Act, to permit the issue of those shares. Cap. 44:05

(2) The Registrar shall issue a provisional licence to a registered SACCO and may specify the place(s) of business of the SACCO.

(3) The Registrar may issue a provisional licence with conditions and, in such circumstance, the provisions of section 11 (3) shall apply.

Compliance by existing SACCOs

73.—(1) A registered SACCO that is issued a provisional licence under this Act shall, not later than three years from the date of commencement of this Act, apply for a licence from the Registrar.

(2) To obtain a licence, a registered SACCO shall—

(*a*) be financially solvent; and

(*b*) have complied with minimum capital adequacy ratio defined by the Registrar.

(3) Notwithstanding subsection (2) and subject to subsection (4), the Registrar may grant a licence to a registered SACCO that has complied with minimum capital adequacy ratio as defined by the Registrar.

(4) Any provisionally licensed SACCO that obtains a licence prior to meeting minimum capital adequacy requirements as determined by

the Registrar through Registrar's directives shall have five years within which to attain the minimum standard.

(5) Except for the requirement on ownership and capital adequacy, an existing registered SACCO shall comply with the provisions of this Act within twelve months from commencement of the Act.

LAWS OF MALAŴI

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INSURANCE

CHAPTER 47:01

Containing Pages 1–33

CHAPTER 47:01

INSURANCE

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CHAPTER 47:01

INSURANCE

An Act to provide for the supervision and regulation of the insurance industry and for matters connected therewith or incidental thereto 9 of 2010 G.N. 12/2010

[1st OCTOBER, 2010]

PART I
PRELIMINARY

1. This Act may be cited as the Insurance Act. Short title

Interpretation

2.—(1) In this Act, unless the context otherwise requires—

"agent for brokers" means a person acting as an agent for a broker;

"approved securities" means securities issued by the Government and such other securities as the Registrar may approve;

"chairperson", includes an individual presiding over a board of directors or other governing body;

"executive officer", means any person who is an officer of an insurer, insurance broker or insurance agent, including the chief executive officer, deputy chief executive officer, financial controller, actuary, underwriting manager, claims manager (or their equivalents), and any other person who, alone or together with one or more others, has the authority to enter into commitments for the account of the licensed institution;

"existing insurer", in relation to an applicant for a licence as an insurer, means an applicant who is, at the date of his application for licence, carrying on insurance business inside or outside Malaŵi;

"external re-insurer" means a reinsurer whose head office is not in Malaŵi;

Cap. 44:05

"Financial Services Act" means the Financial Services Act;

"financial services law" bears the same meaning ascribed thereto in the Financial Services Act;

"financial year", in relation to a person, means each period at the end of which the balance of the accounts of the person is struck, and shall in the case of a licensed entity, end on 31 December of each year or alternatively such period as is approved by the Registrar of Insurance;

"general insurer" means an insurer carrying on general insurance business;

"holding company" bears the same meaning assigned thereto in the Companies Act;

Cap. 46:03

"insurance agent" means a person who—

(*a*) initiates insurance business; or

(*b*) does any act in relation to the receiving of proposals for insurance, the issue of policies or the collection of premiums,

on behalf of a person carrying on insurance business who has appointed the person to act as the insurer's agent;

"insurance broker" means a person who for any compensation, commission or other things of value, with respect to persons or property, deals directly with the public or in the case of a

reinsurance broker, deals directly with insurers, and—

(*a*) acts or aids in any manner in soliciting, negotiating or procuring the making of any contract of insurance or reinsurance whether or not the person has agreements with insurers allowing the person to bind coverage and countersign insurance documents on behalf of insurers;

(*b*) provides risk management services, including claims assistance where required; or

(*c*) provides consulting or advisory services with respect to insurance or reinsurance;

"insurance business" means the business of undertaking liability, under a contract of insurance to indemnify a person in respect of any loss or damage, including a liability to pay damages or compensation contingent upon the happening of a specified event, and includes reinsurance business;

"insurer" means a corporation incorporated under the Companies Act carrying on an insurance business, otherwise than as a broker, an agent for brokers or as an insurance agent and includes a reinsurer, a friendly society and a medical aid scheme unless this Act contains a separate provision specifically applicable to the reinsurer, the friendly society and the medical scheme in which case that provision shall apply; Cap. 46:03

"insurer" means an insurer licensed under this Act in accordance with the procedures laid down in the Financial Services Act; Cap. 44:05

"life insurance fund" means a fund to which the receipts and payments of an insurer in respect of his life insurance business are carried;

"life insurer" means an insurer carrying on life insurance business;

"local insurer" means a registered insurer whose head office is in Malaŵi;

"local policy" means a policy issued in or outside Malaŵi upon an application made or presented to a broker, an agent for brokers or an insurance agent at any place in Malaŵi and includes a life policy issued outside Malaŵi and subsequently made payable in Malaŵi at the request of the owner which the owner has agreed in writing shall be treated as a local policy for the purposes of this Act, but does not include a life policy made payable, after the date of its issue, outside Malaŵi at the request of the owner which the owner has agreed in writing shall not be treated as a local policy for the purposes of this Act;

"local reinsurer" means a reinsurer whose head office is in Malaŵi;

"new insurer", in relation to an applicant for licensing as an insurer, means an applicant who is not, at the date of his application for licence, carrying on insurance business inside or outside Malaŵi;

"owner", in relation to a policy, means the person who is entitled to enforce any benefit provided for in the policy;

"person" includes a company, corporate body, association, natural person, partnership and scheme;

"policy" means an insurance contract under terms which a person in return for a premium, receives policy benefits from an insurer or allows an organization to provide policy benefits to another person—

(*a*) upon the occurrence of a specified event, or in specified circumstances;

(*b*) at a specified date; or

(*c*) during, or upon the expiry of, a specified period;

"policy benefits" means money, services or other benefits including annuities, services or other benefits, paid or payable under an insurance policy;

"premium" means the consideration to be given in return for an undertaking to provide policy benefits;

"principal officer" means the principal officer of an insurer appointed under section 15;

Cap. 44:05 "Registrar" means the Registrar of Financial Service Institutions appointed under the Financial Services Act;

Cap. 44:05 "Registrar's directive" means a directive issued under the Financial Services Act, or any other financial services law;

"reinsurer" means a person whose predominant business is to carry on reinsurance or retrocession business and includes both a local reinsurer and an external reinsurer;

"reinsurance business" means the business of undertaking liability to pay money to insurers or reinsurers in respect of contractual liabilities or insurance business incurred by insurers or reinsurers and includes a retrocession;

Cap. 46:03 "share" bears the same meaning assigned thereto in the Companies Act;

3. The principal object of this Act is to make provision for the enhancement of the safety, soundness and prudent management of insurers and other persons involved in the insurance industry in Malaŵi with the aim of protecting the interests of insurance policyholders and ensuring the highest standard of conduct of business of insurance companies, brokers and agents.

Principal Object of this Act

4. This Act shall apply to the insurance industry in addition to the Financial Services Act.

Application of the Financial Services Act Cap. 44:05

5. The provisions relating to licensing and registration applications contained in the Financial Services Act, shall apply *mutatis mutandis* to this Act.

Licensing and registration procedures Cap. 44:05

PART II
Insurers

6.—(1) Insurance business in Malaŵi shall be categorized into the following—

Categories and classes of insurance

(*a*) Life insurance; and

(*b*) General insurance.

(2) The Registrar shall issue directives to divide each category into classes and each class may be divided further into sub-classes.

7.—(1) Subject to subsection (2), no person shall carry on insurance business in Malaŵi unless he is licensed as an insurer in the category of insurance business carried on by him.

Insurers to be licensed

(2) Nothing contained in subsection (1) shall apply to the carrying on of business by a person whose licence as an insurer in a class of insurance business has been cancelled relating to policies in that class of insurance business which were issued by him before the date of the cancellation of his licence as an insurer in that class of insurance business.

(3) No person shall—

(*a*) without the approval of the Registrar, apply to his business or undertaking a name or description which includes the words "assure" or any derivative thereof, unless he is an insurer in whatever class of insurance business; or

(*b*) perform any act which indicates that he carries on or is authorized to carry on any class of insurance business, unless he is an insurer licensed to carry on that class of insurance business.

(4) Any person who contravenes subsections (1) and (3) commits an offence and upon conviction shall be liable to a fine of K10,000,000 and to imprisonment for four years, or, if the offender is not a natural person the provisions of the Financial Services Act, shall apply.

Cap. 44:05

Registration criteria

8.—(1) If the Registrar is satisfied—

(*a*) that the applicant for a licence as an insurer, other than as an external reinsurer, is a company incorporated under the Companies Act;

Cap. 46:03

(*b*) that the applicant, if licensed, shall not conduct any business other than that for which it has been licensed;

(*c*) that the applicant has entered into or undertakes to enter into a reinsurance agreement with a reinsurer acceptable to the Registrar;

(*d*) that the applicant is not disqualified under section 9 to be licensed as an insurer in the class of insurance business with respect to which the application is made; and

(*e*) in the case of an applicant who is a new insurer, that the category of insurance business with respect to which the application is made shall be carried on by the applicant in accordance with sound insurance principles,

the Registrar may, licence the applicant, as an insurer in the category of insurance business with respect to which an application for a licence is made and the Registrar shall notify the applicant in writing of his decision within ninety days of the receipt of a complete application.

(2) The Registrar shall not license a person to carry out both life insurance business and general insurance business.

(3) Without limiting the matters that the Registrar may take into account in determining an application for a licence under this Part, the Registrar shall pay particular attention to—

(*a*) the nature and sufficiency of financial resources of the applicant;

(*b*) the soundness and feasibility of the applicant's plans for the future conduct of the insurer's business;

(*c*) the business record and experience of the applicant;

(*d*) whether the persons who shall operate the business are fit and proper persons, regarding their qualifications, character, competence and experience in managing financial institutions; and

(*e*) whether the establishment of the business is or is not contrary to the public interest in Malaŵi.

Reasons for rejecting an application for a licence

9.—(1) Without limiting the power of the Registrar to refuse to grant an application for a licence under this Part, the Registrar shall not grant an application for a licence under this Part if it appears to the Registrar that—

(*a*) it would be contrary to the public interest or policyholders' interests to do so;

(*b*) the name under which the applicant desires to be licensed is identical with the name of another insurer or so nearly resembles its name as likely to be mistaken for it, unless that insurer is being or is to be wound-up or dissolved or, has ceased to carry on insurance business in Malaŵi as the case may be, and consents to the licence of the applicant under the name in question;

(*c*) the applicant's margin of solvency as defined in section 13, is not sufficient for the purposes of the category or classes of insurance business as the case may be, for which an application is made;

(*d*) if the applicant is a corporate body with share capital, the applicant does not comply with the requirements of Registrar's directive as to capital and reserves.

(2) For the purposes of subsection (1) (*b*) an applicant who carries on, outside Malaŵi, a category of insurance business other than or those with respect to which an application for a licence is made shall be treated as if he had applied for a licence as an insurer both in the category of insurance business with respect to which his application for a licence is made and in the category of insurance business carried on by him outside Malaŵi.

(3) The Registrar shall inform an applicant of his decision not to licence the applicant as an insurer within ninety days from receipt of a complete application.

Commencement of business

10. No insurer shall commence his business until the Registrar has approved the commencement, which the Registrar shall not do unless satisfied that—

(*a*) the meeting of shareholders has been duly held and other legal formalities regarding the organization of the business have been complied with;

(*b*) the insurer has complied with the requirements of the Registrar's directives regarding capital and reserves;

(*c*) the insurer has entered into a reinsurance agreement with a reinsurer, acceptable to the Registrar;

(*d*) the external reinsurer has on deposit an amount acceptable to the Registrar;

(*e*) the expenses of incorporation and organization to be borne by the company are reasonable; and

(*f*) all other provisions of this Act and other relevant financial services laws have been complied with.

Suspension and revocation of licences Cap. 44:05

11.—(1) Without limiting the power of the Registrar under the Financial Services Act, to suspend or revoke a licence, the Registrar may suspend or revoke the licence of an insurer on the grounds that—

(*a*) the insurer is disqualified under section 9 to be licensed as an insurer in the category of insurance business with respect to which he is licensed;

(*b*) a category of insurance business with respect to which the insurer is licensed or any other category of insurance business carried on outside Malaŵi by the insurer, is not being carried on by the insurer in accordance with sound insurance principles;

(*c*) the insurer has failed to comply with any insurance law of a country outside Malaŵi applying to the insurer; or

(*d*) it is contrary to the interest of the public or policyholders in Malaŵi for the said licence to continue in force.

Revocation of licence on ceasing to carry on business

12.—(1) The Registrar shall revoke the licence of an insurer if he is satisfied that the insurer has ceased to carry on insurance business in Malaŵi.

(2) Where the Registrar revokes the licence of an insurer, the Registrar shall do so after satisfying himself that the insurer has met the requirements of section 60.

Margin of solvency sufficient for the purposes of carrying on insurance business

13. An insurer shall be treated as having a margin of solvency sufficient for the purposes of carrying on any class of insurance business if the insurer meets solvency conditions as set out in the Registrar's directives.

PART III
Provisions Governing the Carrying on of Insurance Business by Insurers

Application of Part III

14. This Part applies to insurers.

Insurers to maintain principal office and appoint principal officer

15.—(1) An insurer shall establish a principal office in Malaŵi and shall appoint a principal officer in Malaŵi:

Provided that the appointment of the principal officer shall be subject to prior approval of the Registrar in terms of fit and proper person requirements as determined in the Registrar's directives.

(2) Where an insurer has established a principal office, the insurer shall notify the Registrar in writing where the office is situated.

(3) If an insurer changes the place of his principal office in Malaŵi or closes the office or appoints a new principal officer, the insurer shall, within twenty-one days of such change, closure or new appointment, give notice thereof to the Registrar in writing.

(4) An insurer shall inform the Registrar in writing of the name and address of every director and executive officer and shall keep such information current by notifying the Registrar of any changes or additions or deletions with respect to the names and addresses of such persons as specified in the Registrar's directives.

Reinsurance

16.—(1) An insurer may enter into an agreement to reinsure risks undertaken by it with a reinsurer of adequate standing, taking into account the considerations of safety and soundness when such an agreement is made in the ordinary course of business.

Cap. 44:05

(2) Without limiting the Registrar's powers under the Financial Services Act, to issue Registrar's directives, and without limiting the Registrar's power under that Act to give direction to an insurer, the Registrar's directives or direction from the Registrar may specify the conditions under which reinsurance contracts may be entered into, and the extent to which an insurer may cause itself to be reinsured.

Reinsurance contracts of insurers

17.—(1) No life insurer shall enter into a contract of reinsurance against any liability in respect of his life insurance business in Malaŵi otherwise than with a life reinsurer.

(2) No general insurer shall enter into a contract of reinsurance against any liability in respect of his general insurance business in Malaŵi otherwise than with a general reinsurer.

(3) Subsections (1) and (2) shall not apply to a contract of reinsurance against any liability in respect of insurance business in Malaŵi the parties to which and the terms of which have been approved in writing by the Registrar.

Insurance business to be placed within Malaŵi

18. No insurer, insurance broker, insurance agent or any other person shall place insurance business, other than reinsurance business, outside Malaŵi unless it is approved in writing by the Registrar.

Annual financial statements

19.—(1) The directors of an insurer shall place before the shareholders at every annual meeting—

(*a*) comparative annual consolidated financial statements for the current year and the immediately preceding year, if any;

(*b*) the annual financial statements that shall contain—

(i) a balance sheet as at the end of the financial year;

(ii) a statement of profit and loss for the financial year;

(iii) a statement of change of financial position for the financial year;

(iv) a statement of changes in shareholders' equity for the financial year;

(v) a list of subsidiaries of the insurer with their addresses and percentage ownership of shares of the subsidiary by the insurer;

(vi) the report of the auditor;

(vii) the report of the actuary; if applicable; and

(viii) a description of the roles of the auditor and the actuary in the preparation and audit of financial statements.

(2) The directors shall approve the annual financial statements and their approval shall be evidenced by the signatures of the chief executive officer and one other director.

Request for audit by shareholders and policyholders

20. If required by the shareholders and policyholders, an external auditor of an insurer shall audit a report on any financial statements presented to them by the Board of Directors and the external auditor shall express an opinion on the fair presentation of the financial statements.

Audit for external reinsurer

21. An external reinsurer shall have the financial statements of its reinsurance business in Malaŵi audited by the auditors of the head office of the external reinsurer, and the auditors shall express an opinion on the fair presentation of the financial statements using the auditing and accounting standards applicable in the country of the head office.

Appointment of an actuary

22.—(1) Where the Registrar is of the opinion that actuarial review of an insurer's business is warranted, or that such review is warranted for all companies undertaking a particular class of insurance business, the Registrar may require an insurer to appoint an actuary to value, in accordance with the Registrar's directives, the insurer's liabilities either at a point in time or at regular intervals.

(2) An actuary appointed under this section shall comply with the provisions contained in section 25 of this Act, as if it applied to this section.

PART IV
Special Provisions Governing the Carrying on of Life Insurance Business by Insurers

23. This Part shall apply to life insurers.

Application of Part IV

24.—(1) A life insurer who carries on, in addition to his life insurance business, any other businesses, whether insurance business or otherwise, shall maintain separate books of accounts for all of his life insurance business in accordance with the Registrar's directives.

Life insurers carrying on business other than life insurance business

(2) The receipts and payments in respect of the life insurance business of a life insurer shall be carried to and form part of the life insurance funds.

(3) The life insurance funds of a life insurer referred to in subsection (2) shall be as absolutely the security of the owners of the life policies issued by the life insurer as though it belonged to a life insurer carrying on no other business than life insurance business.

(4) Payments from the life insurance funds of a life insurer referred to in subsection (2) which would not be made if the business of the life insurer were only that of life insurance, and the life insurance funds shall not be applied directly or indirectly to any purposes other than those of life insurance.

(5) Nothing contained in this section shall preclude a life insurer referred to in subsection (1) from investing the life insurance funds in the same investments as any other funds.

(6) Where the life insurer has invested life insurance funds in the same investments as other funds, the life insurer shall calculate the portion of any such investments belonging to the life funds, and record the amount attributable to the life funds in the books of accounts of the life insurance funds.

25.—(1) A life insurer shall appoint an actuary for a specific duration and such an appointment shall be subject to approval by the Registrar.

Actuaries of life insurers

(2) An individual shall be qualified to be the actuary of a life insurer if he is a member of an institute, society or association of actuaries acceptable to the Registrar.

(3) The Board of Directors may revoke the appointment of an actuary, in which case it shall notify the Registrar in writing immediately.

(4) An actuary whose appointment is revoked or who resigns shall submit to the Board of Directors of an insurer and the Registrar a written

statement of the circumstances and reasons why he resigned or why, in the actuary's opinion, his appointment was revoked.

(5) Where an actuary resigns or his appointment is revoked, or the Registrar withholds the approval of his appointment, the Board of Directors shall appoint another actuary as soon as possible.

(6) The actuary shall value, in accordance with Registrar's directives, the actuarial and other policy liabilities as at the end of the financial year and the Registrar may require the actuary to carry out a valuation in a specific area, in which case the expenses incurred shall be paid by the insurer.

(7) At the request of the actuary, the present or former Directors, officers or employees of a company shall provide him with access to the company's records as well as provide him with other information and explanations as are, in the opinion of the actuary, necessary to perform his duties.

(8) A life insurer shall ensure that an actuary so appointed shall within ninety days from the end of the financial year of the insurer, make a report, in the prescribed form under the Registrar's directives, on the valuations made and in his report, the actuary shall state whether, in his opinion, the annual financial statements present fairly the results of his valuations.

(9) Where the Registrar is of the opinion that an actuary other than the actuary of the insurer should value the actuarial and other policy liabilities of the insurer or conduct a valuation in a specific area, he may appoint another actuary and the expenses incurred in this respect shall be payable by the insurer.

(10) The actuary shall report in writing to the chief executive officer any matters that have come to his attention that, in his opinion, have material adverse effect on the financial condition of the insurer and require rectification and he shall forthwith provide a copy of his report to the Board of Directors and to the Registrar.

(11) Where an insurer is a subsidiary of a foreign insurance company and the foreign insurance company furnishes to the appropriate authority in the country in which its head office is located any report or statement reflecting the results of an actuarial investigation of the whole or part of its insurance business, it shall furnish a copy of such report or statement to the Registrar.

26. If the assets which a life insurer holds in its life insurance funds in respect of its liabilities to policyholders include shares in its holding company— Assets of insurer may include shares in holding company Cap. 46:03

(*a*) those shares shall be deemed, for the purpose of the Companies Act, to be held by the insurer as trustee for the benefit of the owners of the policies to which the liabilities relate;

(*b*) those shares shall only be held subject to such limitations and conditions as the Registrar may determine; and

(*c*) the insurer shall not have the right to vote at meetings of the company in which it holds such shares or at meetings of any particular class of members of that company.

PART V

Licensing of Insurance Brokers

27.—(1) (*a*) No person shall carry on the business of an insurance broker in Malaŵi unless that person is licensed as an insurance broker. Insurance brokers to be licensed

(*b*) Any person who contravenes subsection (1) (*a*) commits an offence and upon conviction shall be liable to a fine of K5,000,000 and to four years imprisonment, or, if the offender is not a natural person, then provisions of the Financial Services Act, shall apply. Cap. 44:05

(2) If an application is made in accordance with the Financial Services Act for a licence as an insurance broker, the Registrar may grant the licence if the applicant— Cap. 44:05

(*a*) holds professional insurance qualification recognized by the Insurance Institute of Malaŵi and acceptable to the Registrar, or has a minimum of five years experience in a managerial position in the insurance industry and a satisfactory record in such employment;

(*b*) does not own shares of an insurer or does not have financial interest in an insurer of more than five per cent or no insurer or an officer of the insurer owns shares or has financial interest in the applicant of more than five per cent;

(*c*) is not seeking to be licensed under a name identical or so nearly identical to the name of a person already licensed under this Act likely to be mistaken for it;

(*d*) is otherwise a fit and proper person to be licensed as an insurance broker in accordance with the Registrar's directives;

(*e*) has not entered into an agreement relating to the preferential offer of insurance business with any person carrying on insurance so as to impair his impartiality in placing insurance business;

(*f*) has secured appointment as a broker by not less than twenty-five per cent of insurers.

(3) Notwithstanding anything contained in subsection (2), if the Registrar is of the opinion that it would not be in the public interest or policyholders' interests to approve an application for a licence as an insurance broker, the Registrar shall refuse to grant the licence.

(4) The Minister may, by order published in the *Gazette*, revise the percentages referred to in paragraphs 2 (*b*) and 2 (*f*).

Insurance brokers to maintain professional indemnity and fidelity insurance policies

28.—(1) Every insurance broker shall effect and maintain professional indemnity and fidelity insurance policies with such limits of liability as may be prescribed in the directives of the Registrar.

(2) Every policy of insurance of the type referred to in subsection (1) shall be held with an insurer and shall be for no lesser sum than referred to in subsection (1).

Termination of an insurance broker's appointment

29.—(1) When a broker's appointment by an insurer is terminated, the insurer shall immediately notify the Registrar about the termination and thereupon inform the general public through a notice in at least two (2) newspapers of wide circulation.

(2) An insurance broker whose appointment by an insurer is terminated shall immediately cease to sell insurance policies on behalf of that insurer.

(3) Any violation of subsection (2) constitutes an offence and upon conviction the insurance broker shall be liable to a fine of K5,000,000 and to four years imprisonment, or, if the offender is not a natural person, then provisions of the Financial Services Act, shall apply.

Cap. 44:05

(4) The Registrar shall notify the insurance broker in writing that he intends to cancel the insurance brokers' licence as an insurance broker and of his reasons therefor, if at any time the Registrar is satisfied that a situation has arisen that if the insurance broker was an applicant for a licence under this Act, he would not be qualified to be licensed.

Revocation of licence at the request of an insurance broker, etc. Cap. 44:05

30. Notwithstanding provisions of the Financial Services Act, the Registrar shall not revoke an insurance broker's licence at the request of the broker unless satisfied that all liabilities of the broker in respect of his business are met or other provision is made for them by means acceptable to the Registrar.

31. All funds received or receivable by an insurance broker in the course of business on behalf of insurers from members of the public shall be treated as trust funds and no insurance broker shall assign, pledge or in any way charge the trust funds. Trust funds

32. Without limiting the Registrar's powers under the Financial Services Act to issue Registrar's directives, the Registrar's directives may make provision with respect to trust funds under section 31 and the keeping of trust accounts by insurance brokers. Directives for insurance brokers Cap. 44:05

PART VI

Licensing of Agents for Brokers

33.—(1) Unless licensed under this Part, no person, shall carry on the business of an agent for insurance brokers. Agents for brokers to be licensed

(2) Any person who contravenes subsection (1) commits an offence and upon conviction shall be liable to a fine of K1,000,000 and to four years imprisonment, or if the offender is not a natural person, then provisions of the Financial Services Act, shall apply. Cap. 44:05

34.—(1) If an application is made in accordance with the Financial Services Act, for a licence as an agent of a specified insurance broker, the Registrar shall grant the licence if— Licensing insurance agents for brokers, etc. Cap. 44:05

(*a*) the applicant holds a reasonable educational and professional qualification and has a minimum of two years experience in the insurance industry with satisfactory record of performance;

(*b*) the applicant is not seeking to be licensed under a name that closely resembles the name of an existing agent;

(*c*) the applicant is otherwise a fit and proper person to be licensed as an agent for an insurance broker;

(*d*) the applicant has entered into an agreement with the insurance broker in (*c*) above specifying the terms and conditions relating to the agency, including payment to the insurance broker of any premiums collected on his behalf;

(*e*) the applicant shall not conduct his business contrary to the interest of the public in Malaŵi; and

(*f*) the insurance broker has confirmed in writing to the Registrar that he has appointed the applicant as his agent.

(2) The licence shall specify the name of the insurance broker and the classes of insurance covered on behalf of such insurer.

Misrepresentation prohibited

35.—(1) No person shall make any representation to the public, by advertisement or otherwise, that he is an agent of an insurance broker unless he—

(*a*) is a licensed agent for an insurance broker; and

(*b*) has been appointed by the insurance broker to act as the insurance broker's agent which appointment has not been revoked.

(2) Any person who contravenes subsection (1) commits an offence and upon conviction shall be liable to a fine of K1,000,000 and to imprisonment for four years, or, if the offender is not a natural person, then provisions of the Financial Services Act, shall apply.

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Termination of agency

36.—(1) When the appointment of an agent for an insurance broker is terminated, an insurer shall forthwith notify the Registrar of the termination and thereupon the agent for an insurance broker's licence shall be automatically suspended.

(2) If the appointment of an agent for an insurance broker has been terminated, the agent shall immediately cease to operate as an agent for an insurance broker for that insurance broker and any violation thereof shall constitute an offence and upon conviction shall be liable to a fine of K500,000 and to imprisonment for two years or, if the offender is not a natural person, to a fine of K1,000,000.

Agent for broker

37.—(1) An agent for an insurance broker shall, for all purposes connected with payment or receipts of premium for an insurance policy, be deemed to be the agent for an insurance broker until the agency agreement is terminated.

(2) If such an agency is terminated the insurance broker shall within seven days issue a notice to the general public in at least two newspapers of wide circulation and inform the Registrar of the cancellation.

Suspension and revocation of insurance agent's for brokers licences Cap. 44:05

38.—(1) Without limiting the power of the Registrar under the Financial Services Act, to suspend or revoke a licence, the Registrar may suspend or revoke such a licence on the grounds that the continuation in force of the agent's licence would, in the opinion of the Registrar, be contrary to the public or policyholder's interest.

(2) Notwithstanding provisions of the Financial Services Act, the Registrar shall not revoke or suspend the licence of an agent for an insurance broker at the request of the agent unless satisfied that all liabilities of the agent are met or other appropriate arrangements are made.

PART VII
Licensing of Insurance Agents

Insurance agents, etc., to be licensed

39.—(1) Unless licensed under this Part, no person, whether or not he is licensed as an insurer or as an agent for brokers, shall carry on the business of an insurance agent.

(2) Any person who contravenes subsection (1) commits an offence and upon conviction shall be liable to a fine of K1,000,000 and to four years imprisonment, or if the offender is not a natural person, then provisions of the Financial Services Act, shall apply.

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Licensing insurance agents, etc. Cap. 44:05

40.—(1) If an application is made in accordance with the Financial Services Act, for a licence as an insurance agent of a specified insurer, the Registrar shall grant the licence if—

(*a*) the applicant holds a reasonable educational and professional qualification and has a minimum of two years experience in the insurance industry with satisfactory record of performance;

(*b*) the applicant is not seeking to be licensed under a name that closely resembles the name of an existing agent;

(*c*) the applicant is otherwise a fit and proper person to be licensed as an insurance agent;

(*d*) the applicant has undertaken not to be an agent for more than one insurer;

(*e*) the applicant has entered into an agreement with the insurer in (*d*) above specifying the terms and conditions relating to the agency, including payment to the insurer of any premiums collected on his behalf;

(*f*) the applicant shall not conduct his business contrary to the interest of the public in Malaŵi; and

(*g*) the insurer has confirmed in writing to the Registrar that he has appointed the applicant as his agent.

(2) The licence shall specify the name of the insurer and the classes of insurance covered on behalf of such insurer.

Misrepresentation prohibited

41.—(1) No person shall make any representation to the public, by advertisement or otherwise, that he is an insurance agent of an insurer unless he—

(*a*) is a licensed insurance agent; and

(*b*) has been appointed by the insurer to act as the insurer's agent which appointment has not been revoked.

(2) Any person who contravenes subsection (1) commits an offence and upon conviction shall be liable to a fine of K1,000,000 and to imprisonment for four years, or, if the offender is not a natural person, then provisions of the Financial Services Act, shall apply.

Cap. 44:05

Termination of agency

42.—(1) When the appointment of an insurance agent is terminated, an insurer shall forthwith notify the Registrar of the termination and thereupon the insurance agent's licence shall be automatically suspended.

(2) If the appointment of an insurance agent has been terminated, the insurance agent shall immediately cease to operate as an insurance agent for that insurer and any violation thereof shall constitute an offence and upon conviction shall be liable to a fine of K500,000 and to imprisonment for two years or, if the offender is not a natural person, to a fine of K1,000,000, and the provisions of the Financial Services Act, shall apply.

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Agent for insurer

43.—(1) An insurance agent shall, for all purposes connected with payment or receipts of premium for an insurance policy, be deemed to be the agent for an insurer until the agency agreement is terminated.

(2) If such an agency is terminated the insurer shall within seven days issue a notice to the general public in at least two newspapers of wide circulation and inform the Registrar of the cancellation.

Suspension and revocation of insurance agents licences

Cap. 44:05

44.—(1) Without limiting the power of the Registrar under the Financial Services Act, to suspend or revoke a licence, the Registrar may suspend or revoke such a licence on the ground that the continuation in force of the agent's licence would, in the opinion of the Registrar, be contrary to the public or policyholder's interest.

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(2) Notwithstanding provisions of the Financial Services Act, the Registrar shall not revoke or suspend the licence of an insurance agent at the request of the insurance agent unless satisfied that all liabilities of the agent are met or other appropriate arrangements are made.

PART VIII

Collection of Premiums by Brokers or Agents

Interpretation of terms in Part VIII

45. In this Part, unless the context otherwise requires—

"prescribed credit period" means the period that starts—

(*a*) in the case of a new policy, at the inception date of the policy;

(*b*) in the case of an existing policy which has been renewed, at the renewal date of the policy; and

(*c*) in the case of a policy endorsement and a declaration under an open cover policy, on the first day of the month following the date upon which documentation is issued by the insurer to the policyholder concerned,

and ends as specified in the agreement with the insurer.

Collection of premiums

46.—(1) An insurance broker or an insurance agent is responsible for the collection of premiums on behalf of an insurer and when he so collects the premiums he shall—

(*a*) close off his records of premium receipts within the prescribed credit period;

(*b*) pay the amount of such premiums to the insurer within that period and in any case not later than thirty days after receipt of the premium from the policyholder;

(*c*) simultaneously furnish the insurer with a detailed payment bordereau in respect of payment under paragraph (*b*);

(2) Payment of premium by policyholder under his insurance to an agent or broker shall be deemed to be specific performance under the policy.

(3) Registrar's directives may, in the interest of policyholders, insurers or intermediaries, prescribe different or additional requirements for the receipt of, retention of, or dealing with moneys in respect of premiums and, to the extent of any inconsistency between the other provisions of this section and the provisions of the Registrar's directives issued for this section, the provisions of the Registrar's directives shall prevail.

PART IX
Licensing of Loss Assessors/Adjustors, and Claims Settling Agents

Loss assessors/ adjustors and claims setting agents to be licensed

47.—(1) No person shall, unless he is licensed under this Part, carry on the business of loss assessor/adjustor or claims settling agent.

(2) Any person who contravenes subsection (1) commits an offence and upon conviction shall be liable to a fine of K1,000,000 and to imprisonment for four years, or if the offender is not a natural person then provisions of the Financial Services Act, shall apply.

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Licensing loss assessors/ adjustors and claims setting agents Cap. 44:05

48. If an application is made in accordance with the Financial Services Act for a licence to carry on the business of loss assessor/ adjustor or claims settling agent the Registrar may grant the licence if the applicant—

(*a*) holds reasonable educational and professional qualifications and has a minimum of five years of relevant experience with satisfactory record of performance;

(*b*) is not seeking to be licensed under a name that closely resembles the name of an existing loss assessor/adjustor or claims settling agent as to be likely mistaken for it;

(*c*) has entered into a valid working arrangement with an insurer or a number of insurers;

(*d*) has not been declared insolvent or bankrupt under the laws of any country or made arrangement with or assignment to his creditors which has not been set aside;

(*e*) has not been convicted by any court of an offence involving dishonesty and does not otherwise have a criminal record; and

(*f*) an insurer has confirmed in writing to the Registrar that he has appointed the applicant as a loss assessor/adjustor or claims settling agent.

PART X
Investments, Loans and Ownership

Investments and lending policies

49. The board of directors of an insurer shall establish and monitor, and an insurer shall implement investment and lending policies, standards and processes that a reasonable and prudent person would apply in respect of investments and loans to avoid undue risk of loss and obtain a reasonable return.

Approval of investments

50.—(1) Except as provided in the directives, an insurer shall not, without prior written approval of the Registrar, and subject to such terms and conditions as the Registrar may impose—

(*a*) acquire more than ten per cent of the outstanding voting share capital of a body corporate or ten per cent of beneficial interest in an unincorporated entity, the aggregate value of all such shares and beneficial interest not to exceed seventy-five per cent of the actuarial liabilities of the insurer; or

(*b*) purchase or otherwise acquire interest in real property or make an improvement to any real property if the aggregate value of all interests exceeds—

(i) in case of life insurer, twenty-five per cent of its actuarial liabilities; and

(ii) in case of general insurer ten per cent of its total assets.

(2) If the Registrar fails to respond to an insurer's request for approval of his investment within twenty-one days after the insurer provides all information required by the Registrar, the insurer may proceed with his investment without the Registrar's approval.

Acquiring ownership interest

51. Notwithstanding section 49, where an insurer has made a loan to an entity and a default has occurred, the insurer may acquire all or any of the ownership interest in the entity or its affiliates:

Provided that the insurer undertakes to the Registrar to do all things necessary to ensure that it divests itself of the ownership interest within two years.

Investment of assets

52. Subject to provisions of this Act, the articles of association of an insurer and any other reasonable constraints imposed on the insurer by other rules in respect of the manner in which it may invest its assets, the assets of the insurer shall be invested in Malaŵi with sufficient regard to the consideration of liquidity, return and security.

Prudential limit

53. The Registrar may by directives, prescribe prudential limits for consumer and commercial lending by insurers under the size of loans and aggregate exposure of an insurer to different types of lending, stated as a percentage of its local assets.

Disposal of loans and investments

54. The Registrar may, by order, direct an insurer to dispose of, within such period as the Registrar considers reasonable, any loan or investment made or acquired in contravention of this Act and directives.

Restriction of control

55.—(1) No person or entity controlled by a person, shall without the approval of the Registrar, acquire shares of an insurer or acquire control of any entity that holds shares of the insurer, if, in the opinion of the Registrar, the acquisition would cause the person to have significant interest in any class of shares of the insurer or increase the already existing significant interest.

(2) Where as a result of an amalgamation, merger or reorganization, the emerging entity would have a significant interest in a class of shares of an insurer, such a transaction, shall be deemed to be an acquisition of significant interest in that class of shares of the insurer and require the approval of the Registrar.

(3) Any arrangement or agreement between an insurer and another person that affects in a significant manner the voting power or management control of the insurer, shall require prior written approval of the Registrar.

Amalgamation or transfer of insurance business Cap. 44:05

56.—(1) Notwithstanding provisions of the Financial Services Act, the Registrar shall not approve a transfer or amalgamation of the business of an insurer if it appears to him that one fifth or more of the policyholders insured by any of the insurers involved dissent from the amalgamation or transfer.

PART XI
Winding-Up of Insurance Companies

Companies Act to apply Cap. 46:03 Cap. 44:05

57. Subject to the provisions of this Part, the provisions of the Companies Act and the Financial Services Act, relating to winding-up of companies shall be applicable to insurance companies and insurance brokers which are companies within the meaning of that Act:

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Provided that the provisions of the Companies Act, specifically applicable to creditors and members voluntary winding-up shall not apply to insurance companies.

Winding-up of an insurance company

Cap. 44:05

58. The Registrar shall not approve the winding-up of an insurer until such a time as all policyholders benefits are paid, or all policyholders are transferred to an alternative insurer under a scheme for the transfer or the amalgamation of policyholders in accordance with provisions of the Financial Services Act, and the Registrar's directives.

Rights of an insured person Cap. 46:03 Cap. 11.01

59. For the purposes of any winding-up and notwithstanding anything to the contrary contained in the Companies Act or in the Bankruptcy Act, any entry in the books, account or records of an insurer respecting receipt of premiums, assumption or risk in insurance contracts, liability on insurance claims and life insurance fund, shall be *prima facie* evidence of the rights of the insured person.

Distribution of insurer's assets Cap. 46:03 Cap. 11:01

60. Notwithstanding the provisions of the Companies Act and provisions of the Bankruptcy Act, in the winding-up of an insurer the assets of the insurer shall be distributed after payment of the secured and otherwise preferred claims in the following order—

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(*a*) all claims for losses covered under insurance contracts that occurred before the date on which the Registrar gave approval to the winding-up for the purposes of the Financial Services Act, whichever is earlier but remain unpaid;

(*b*) cash surrender value of unmatured full life policies;

(*c*) all claims for losses covered under insurance contracts that occurred before the date fixed by the court for winding-up of the insurer but remain unpaid;

(*d*) all claims of insurance persons for refunds of unearned premiums; and

(*e*) other claims.

Unclaimed money

61. Any sums of money remaining unclaimed after the winding-up of an insurer shall be deposited in the Bankruptcy Estates Accounts at the prescribed bank or with the Accountant General as if they were unclaimed and undistributed funds and provisions of the Bankruptcy Act and the provisions shall apply accordingly.

Cap. 11:01

PART XII
Miscellaneous Provisions

Other actions requiring prior approval of the Registrar Cap. 44:05

62. Without limiting the Registrar's powers under the Financial Services Act, an insurer, an insurance broker or insurance agent, as the case may be, shall obtain prior written approval of the Registrar for the following matters—

(*a*) appointment of executive officers and directors;

(*b*) change in the articles of association;

(*c*) reduction in capital base by repayment of capital or distribution of reserves;

(*d*) opening and closing of branches;

(*e*) opening of establishments abroad;

(*f*) takeover of assets or liabilities of other insurance entities;

(*g*) participation in any other company to an extent in excess of ten per cent of the paid up capital of such company;

(*h*) financial restructuring;

(*i*) liquidation;

(*j*) arrangement or agreement—

(i) for the sale or disposal of its shares or business; or

(ii) affecting voting power, management or other matters which may result in a change in the control or management of the company;

(*k*) amalgamation or transfer of life funds or classes of business between insurers;

(*l*) amalgamation or merger between the insurance entity and any other corporation wherein the whole or a considerable part of the business or property of the insurance entity will be transferred to that other corporation; or

(*m*) introduction of new insurance products.

Disqualification of directors Cap. 44:05

63. Without limiting the Registrar's power under the Financial Services Act to issue Registrar's directives, the following persons shall be disqualified from being appointed directors of an insurer—

(*a*) a person who is an insurance agent or broker of the company; or

(*b*) an employee, director or agent of an insurance broker.

Insurers to appoint licensed agents or brokers

64. Unless authorized by the Registrar, an insurer shall not appoint as an agent or a broker a person who is not licensed as such under this Act.

Settlement of claims by insurers

65.—(1) Every insurer shall in respect of claims arising out of policies of insurance issued by the insurer, pay the claims no later than fourteen (14) days after signing of a claim discharge certificate.

(2) The Registrar's directives may, in the interest of policyholders, insurers or intermediaries, further prescribe claims payment processes to be followed by insurers.

Service of process against licensed insurers

66.—(1) Process in any legal proceedings against an insurer may be served at the principal office of the insurer in Malaŵi or, in the absence of any such principal office, at the office of the Registrar.

(2) Service of process upon the Registrar, in accordance with subsection (1), shall be deemed to be service upon the insurer.

Action by policy-owners against insurers

67.—(1) The owner of a local policy shall, notwithstanding any contrary provision in the policy or in any agreement relating to the policy, be entitled to enforce his rights under the policy against the insurer liable under the policy in any competent court in Malaŵi.

(2) Any question of law arising in any action under a local policy which is instituted by the owner against the insurer liable under the policy shall, subject to this Act, be decided in accordance with the laws of Malaŵi.

(3) Notwithstanding subsection (1), a local policy may validly provide that the amount of any liability under the policy shall be determined in accordance with the Arbitration Act.

Cap. 6:03

Deposit of approved securities

68.—(1) The Registrar shall, at the request of an insurer who has deposited approved securities with the Registrar under this Act, furnish the insurer once each year with a certificate specifying the approved securities deposited by the insurer and their face value.

(2) An insurer who has deposited approved securities with the Registrar under this Act shall be entitled to the income derived from the approved securities.

(3) An insurer may at any time substitute for an approved security deposited by him with the Registrar under this Act any other approved security of like face value.

(4) If the licence of an insurer who has deposited approved securities with the Registrar under this Act is revoked, the Registrar may cause the approved securities deposited by the insurer to be realized to meet—

(*a*) the liabilities of the insurance business of the insurer in Malaŵi; and

(*b*) any penalty imposed on the insurer under a financial services law.

(5) When the Registrar is satisfied that the liabilities of the insurance business in Malaŵi of an insurer referred to in subsection (4) have been met, the Registrar shall return to the insurer such of the approved securities deposited by the insurer as have not been realized to meet those liabilities.

Documents to be signed and accompanied by copies

69.—(1) Subject to subsection (2), an insurer shall be regarded as having failed to comply with a provision of this Act requiring an insurer to furnish documents or copies of documents to the Registrar, unless—

(*a*) in the case of a document by the insurer which is not in a prescribed form—

(i) the document is signed—

(A) by the chairperson and one other director of the insurer or, if the insurer has no chairperson or director, by such other person or persons having control over the business of the insurer as the Registrar may specify;

(B) by such persons other than the persons referred to in paragraph (A) as are required by a provision of this Act to sign or certify the document; and

(ii) the document is accompanied by two copies;

(*b*) in the case of a document prepared by the insurer which is in a form prescribed—

(i) the document is signed by the persons specified in the form; and

(ii) the document is accompanied by two copies;

(*c*) in the case of an original document other than a document referred to in paragraph (*a*) or (*b*), the document is accompanied by two copies; and

(*d*) in the case of a copy of a document, the copy is accompanied by two other copies, one of which is certified as correct by the insurer or by an officer of the insurer.

(2) The Registrar may, in such cases as he deems expedient, direct that a lesser number of copies of documents than that specified in subsection (1) (*a*), (*b*), (*c*) or (*d*) or that no copy of a document referred to in subsection (1) (*a*), (*b*) or (*c*) be furnished to him.

Sums insured, etc., to be stated in currency of Malaŵi

70. Unless the exchange control authorities have approved the transaction in writing, insurers shall not quote insurance contracts in foreign currency.

Default of an insurer, etc., not to invalidate policy

71. Subject to this Act, failure on the part of an insurer, insurance broker or agent to comply with any provision of this Act shall not invalidate any policy issued by the insurer.

Policies to be printed in clearly legible letters, etc.

72. No insurer shall issue a policy in a form, the printed provisions of which, whatever their nature, are not put in a clear type face in letters of a uniform size of not less than ten points.

Persons acting on behalf of unlicensed insurers

73.—(1) A person who causes another person to enter into or make an application to enter into a contract of insurance with a person who is not a licensed insurer commits an offence and on conviction shall, subject to subsection (3), be liable to a fine of K10,000,000 and to four years imprisonment.

(2) A person shall, save as provided in subsection (3), be guilty of an offence under subsection (1) notwithstanding that—

(*a*) the insurance is placed by an insurance broker; and

(*b*) the contract of insurance is without his knowledge or consent effected with a person who is not a licensed insurer or a person referred to in section 7 (2).

(3) A person who causes another person to enter into a contract of insurance such as is referred to in subsection (1) shall not be guilty of an offence under that subsection if—

(*a*) a substantial portion of the risk is placed with a licensed insurer;

(*b*) the portion of the risk insured which is not placed in accordance with paragraph (*a*) is placed with an insurer who does not solicit business, either directly or indirectly, in Malaŵi or advertise his business in any newspaper or other publication in Malaŵi; and

(*c*) The transaction is approved by the Registrar in writing.

References to insurance companies in other written laws

74. Any reference in any written law in force in Malaŵi relating to companies or to a company carrying on insurance business under any other written law or to an insurance company registered or licensed under any other written law shall be read and construed as a reference or if the context so requires, as including a reference to a company on insurance business under this Act.

Inconsistency with the Companies Act Cap. 46:03

75. Wherever the provisions of this Act are inconsistent with or in addition to the provisions of the Companies Act, the provisions of this Act shall apply.

Contravention of this Act, regulations, or directives

76.—(1) Any person who contravenes the provisions of this Act, the regulations or directives made hereunder commits an offence.

(2) Every director, officer or employee of an insurer who wilfully gives or concurs in giving a creditor of the company a fraudulent, undue or unfair preference over other creditors, commits an offence.

(3) Every person who, without reasonable cause, refuses or fails to comply with the requirements of section 10 commits an offence.

(4) Every person who, fails to take all reasonable steps to ensure accuracy and completeness of returns or other reports submitted to the Registrar commits an offence.

Penalties

Cap. 44:05

77.—(1) Any person who commits an offence under this Act for which no penalty has been prescribed, shall be liable to administrative penalty prescribed under the Financial Services Act.

(2) A person on whom an administrative penalty has been imposed and who fails or refuses to comply with the administrative penalty commits an offence and, on conviction, shall be liable to—

(*a*) in case of a natural person, upon conviction, be liable to a fine of K1,000,000 or to four years imprisonment; and

(*b*) in case of a corporation, then provisions of the Financial Services Act, shall apply.

Cap. 44:05

(3) Where a person has been convicted of an offence under this Act, the court may, in addition to the punishment it may have otherwise

imposed, order the person to comply with the provisions of the Act or the regulations, or the directives which were contravened.

(4) Where a person has been convicted of an offence under this Act, the court may, notwithstanding the fine that may be imposed under subsection (1), assess an additional amount where the court is satisfied that the convicted person or his spouse or other dependent or other associated person has acquired monetary benefits, directly or indirectly, because of the commission of the offence, such additional fine may be up to the amount of the acquired benefits estimated by the court.

(5) In addition to any other remedies available under this Act or any other written law—

(*a*) a court may, on convicting a person for an offence under section 71, in addition to any other penalty, if satisfied that the convicted person or his spouse or other dependent or other associated person has acquired monetary benefits, directly or indirectly, because of the commission of the offence, also impose a monetary penalty on the person in an amount not exceeding the amount of the monetary benefits so acquired; and

Cap. 44:05

(*b*) the Registrar may, on imposing an administrative penalty under the Financial Services Act, if satisfied that the convicted person, his spouse or his other dependent has acquired monetary benefits, directly or indirectly, because of the Commission of the offence, also impose a monetary penalty on the person in an amount of the monetary benefits so acquired.

Regulations

78.—(1) The Minister may, in consultation with the Registrar, make regulations prescribing anything which under this Act is to be prescribed and generally for the better carrying out of the objectives and purposes of this Act.

(2) The Minister may make different provision for different classes of insurers and for different classes of insurance business in regulations made under subsection (1).

(3) The Minister may make regulations with respect to transitional provisions to enable existing insurance companies to comply with this Act.

Cap. 1:01

Cap. 44:05

(4) Notwithstanding provisions of the General Interpretation Act, any person who contravenes any regulations made under this Act shall be liable to such penalties as contained in the Financial Services Act.

Compliance with this Act

79.—(1) Upon coming into effect of this Act, all insurers, insurance agents, insurance brokers, agents for brokers, loss assessors/adjusters,

claims settling agents shall meet the requirements of the Act, including those respecting incorporation, capital and margin of solvency.

(2) The Registrar may upon application by an insurer, insurance broker or insurance agent allow a transition period to facilitate compliance by him with the Act.

(3) Without limiting the Registrar's power under the Financial Services Act, to issue Registrar's directives, the Registrar's directives may make provisions with the respect to— Cap. 44:05

(*a*) ownership matters of an insurer and a reinsurer;

(*b*) ownership matters of an insurance broker;

(*c*) ownership matters of a mutual insurer;

(*d*) minimum capital requirements for insurers and local reinsurers;

(*e*) minimum capital requirements for brokers;

(*f*) the maintenance by insurers and local reinsurers of adequate capital and appropriate forms of liquidity;

(*g*) the maintenance by brokers of adequate capital and appropriate forms of liquidity;

(*h*) the maintenance by insurers and local reinsurers of adequate value of assets corresponding to their liabilities;

(*i*) the maintenance by brokers of adequate value of assets corresponding to their liabilities;

(*j*) the margins of solvency required by an insurer and a local reinsurer for carrying on insurance business;

(*k*) the method of calculating, the following for the purposes of establishing the solvency position of an insurer—

(i) valuation of assets;

(ii) depreciation of assets;

(iii) determination and value of insurance liabilities;

(iv) provision of bad and doubtful debts;

(v) provision of contingent losses and litigation;

(vi) provision of tax payable;

(vii) amortization of deferred acquisition costs;

(viii) amortization of goodwill and other intangible assets;

(ix) calculation of technical provision;

(x) calculation of mathematical reserves; and

(xi) such other items as may be determined;

(*l*) the requirements of establishing and maintaining separate accounts for certain classes of life insurance policyholders;

(*m*) the margins of solvency required by an insurance broker;

(*n*) investments of insurers, local reinsurers and brokers;

(*o*) the classes of insurance products to be sold within each insurance category;

(*p*) the value of assets of an insurer and a local reinsurer to be held in Malaŵi and the manner in which these assets are to be held;

(*q*) the standards of sound business and financial practices of insurers, local reinsurers and brokers;

(*r*) the risk management frameworks and practices of insurers, local reinsurers and brokers;

(*s*) the standards of corporate governance of insurers, local reinsurers and brokers;

(*t*) the establishment, functions and duties of sub-committees of boards of directors of insurers, local reinsurers and brokers;

(*u*) the appointment processes, powers and responsibilities of auditors;

(*v*) the reporting requirements of auditors to the Registrar;

(*w*) the appointment processes, powers and responsibilities of actuaries;

(*x*) the reporting requirements of actuaries to the Registrar;

(*y*) the fair and equitable treatment of policyholders, including those of a mutual policy;

(*z*) the fair and timely payment of policyholder claims and benefits;

(*aa*) reinsurance conditions and arrangements for insurers;

(*bb*) the establishment of compulsory classes of business;

(*cc*) the approval process for insurers in respect of launching new products;

(*dd*) the approval processes and procedures relating to portfolio amalgamations and portfolio transfers;

(*ee*) the information of insurers, local reinsurers and brokers required to be maintained in the office of the Registrar;

(*ff*) the information of insurers, local reinsurers and brokers required to be provided to the office of the Registrar;

(*gg*) the actions to be taken by the Registrar in circumstances whereby an insurer, a local reinsurer or a broker has breached laws, solvency directives or other directives;

(*hh*) responsibilities and additional requirements of insurers, local reinsurers carrying on business outside Malaŵi;

(*ii*) responsibilities, conditions and requirements of foreign insurers, reinsurers and brokers carrying on business in Malaŵi;

(*jj*) the conversion of a mutual society into a mutual company and the conversion of other unincorporated entities into corporate entities;

(*kk*) the smooth transition of insurers, local reinsurers, insurance agents, brokers and agents for brokers to the requirements of this Act;

(*ll*) the transition period for insurers, local reinsurers, insurance agents, brokers and agents for brokers to the requirements of this Act;

(*mm*) requiring the payment of a fee in respect of the filing, examining or issuing of any document or in respect of any action the Registrar is required or authorized to take under this Act;

(*nn*) defining words and expressions to be defined for the purposes of this Act;

(*oo*) prescribing anything that is required or authorized by this Act to be prescribed; and

(*pp*) generally for carrying out the purposes and provisions of this Act.

Repeal and savings Cap. 47:01

80.—(1) The Insurance Act is repealed.

(2) Any subsidiary legislation made under the Act repealed by subsection (1), in force immediately before the commencement of this Act—

(*a*) shall remain in force unless in conflict with this Act, and shall be deemed to be subsidiary legislation made under this Act; or

(*b*) may be replaced, amended or repealed by subsidiary legislation made under this Act.

(3) Any agreement or similar arrangement made pursuant to the provisions of the Act repealed by subsection (1) shall continue in force until terminated in accordance with the terms and conditions thereof.

COOPERATIVE SOCIETIES

CHAPTER 47:02

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CHAPTER 47:02

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36 of 1998
G.N. 10/2000

An Act to consolidate the law relating to the constitution and regulation of cooperative societies and for other matters incidental thereto or connected therewith

[1ST APRIL, 2000]

PART I

PRELIMINARY

Short title

1. This Act may be cited as the Cooperative Societies Act.

Interpretation

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

"apex society" means a registered society under this Act, the membership of which is restricted to cooperative unions and includes a society established to serve the cooperative movement by providing facilities for banking, insurance and the supply of goods or services;

"bonus" means a share of the surplus of a registered society divided among its members in proportion to the volume of business done with the society by them from which the surplus of the society was derived;

"by-laws" means the registered by-laws made by a society in the exercise of any power conferred by this Act, and includes a registered amendment of such by-laws;

"committee" means the governing body of a registered society to which the management of its affairs is entrusted and includes a Board of Directors;

"Commissioner" means the Commissioner for Cooperative Development and includes the Deputy Commissioner for Cooperative Development and Assistant Commissioner for Cooperative Development when acting for the Commissioner;

"cooperative" means an autonomous association of persons united voluntarily to meet their common economic and social needs in accordance with cooperative principles through a jointly owned and democratically controlled enterprise;

"cooperative principles" means—

(i) membership of a society is voluntary and open;

(ii) the management of the society is carried out democratically whereby each member has one vote and there is no voting by proxy;

(iii) the distribution of surplus is done justly in proportion to the amount of the business contribution of each member;

(iv) there is payment of limited return on capital;

(v) there is self-reliance;

(vi) race, creed, ethnic origins, language or political beliefs are no bar to voluntary membership and membership is open to all who can use the services of the society;

"cooperative union" means a registered society under this Act, the membership of which is restricted to primary societies;

"date of dissolution" means the date on which the Registrar's order cancelling the registration of a society takes effect;

"dividend" means share of surplus of a registered society divided among its members in proportion to the share capital held by them;

"member" includes a person or a registered society joining in the application for the registration of a society and a person or registered society admitted to membership after registration in accordance with the by-laws;

"officer" includes a Chairman, Secretary, Treasurer, member of committee, employees, or other person empowered under any regulations made under the provisions of this Act or by-laws of a registered society to give directions in regard to the business of a registered society.

"primary society" means a registered society under this Act, the membership of which consists of individual persons and includes any body of persons and other bodies approved by the Registrar under section 16; of this Act.

"registered society" means a cooperative society registered under this Act;

"Registrar" means the Registrar of cooperative societies appointed under section 3 and includes any person when exercising such powers of the Registrar as may have been conferred upon him under that section;

"secondary society" means a registered society under this Act, the membership of which is restricted to primary societies;

"society with limited liability" means a society the liability of whose members is limited by its by-laws to—

(*a*) the amount if any unpaid on the shares respectively held by them; or

(*b*) such amount as the members may each undertake to contribute to the assets of the society in the event of its being wound up;

"society with unlimited liability" means a society not having limited on the liability of its members;

"winding-up" means all proceedings subsequent to the cancellation of the registration of a society.

PART II

Registration

Registrar and assistant registrar

3.—(1) There shall be a Registrar for cooperative societies who shall also be the Commissioner for Cooperative Development for the purposes of this Act.

(2) The Registrar shall be a public officer responsible for providing and administering services required by societies under this Act.

(3) There shall be assistant registrars who shall be assistant commissioners, who shall assist the Registrar in the administration of cooperative societies and the implementation of the provisions of this Act.

Societies which may be registered

4. Subject to the provisions of this Act, a society may be registered under this Act with or without limited liability:

Provided that a cooperative union or any apex society shall be registered with limited liability.

Conditions of registration

5.—(1) No society shall be registered under this Act unless—

(*a*) in the case of a primary society, it consists of at least ten persons all of whom are qualified for membership of the society under section 14; or

(*b*) in the case of a secondary society, it consists of at least two registered primary societies among its registered members;

(*c*) in the case of a tertiary society, it consists of at least two registered secondary societies among its registered members;

(*d*) in the case of an apex society, it consists of two or more secondary societies.

(2) All cooperative societies registered under this Act shall conform to the cooperative principles.

(3) When for the purposes of this section any question arises as to residence or occupation of land constituting the qualification of any person, that question shall be decided by the Registrar.

Application for registration

6.—(1) For the purpose of registration an application to register registration shall be made to the Registrar.

(2) The application shall be signed—

(*a*) in the case of a primary society, by at least ten persons qualified for membership of the society under section 14; and

(*b*) in the case of a secondary, tertiary or apex society, by a person duly authorized in that behalf by each registered society, as the case may be, who is a member of that society.

(3) The application shall be accompanied by three copies of the proposed by-laws of the society and the persons by whom or on whose behalf such an application is made shall furnish such information in regard to the society as may be prescribed under regulations made under this Act.

(4) An application for the registration of a society shall be accompanied by such registration fees as may be prescribed by regulations made under this Act.

Registration of Society

7.—(1) If the Registrar is satisfied that a society has complied with the provisions of this Act and regulations made thereunder and that its proposed by-laws are not contrary to the provisions of this Act, he shall register the society and its by-laws.

(2) The Registrar shall register a society within thirty days from the date the application is submitted failing which the society shall be deemed to have been registered.

Indication of registration

8.—(1) A society which is registered under section 7 shall state in legible letters in all its receipts, letter-heads, notices, advertisements or other official publications that it is registered and shall indicate the same on a signboard in a conspicuous position outside any premises or office in which it carries on its business.

(2) If a society registered under section 7 contravenes or fails to comply with the provisions of this section that society and any officer or person who purports to act on its behalf commits an offence and shall be liable after conviction to a fine not exceeding K3,000 and in the case of a continuing offence to a further fine not exceeding K500 for each day on which the offence is continued after conviction thereof.

Cancellation of registration

9.—(1) At any time during the period of registration of a society under section 7, the Registrar may, after giving notice in writing to the person responsible for the running of the society, cancel the registration of such society stating reasons for such cancellation and the society shall, from the date of service of the notice, cease to be a registered society.

(2) The cancellation referred to in subsection (1) shall be Published in the *Gazette*.

Amendment of by-laws of a registered society

10.—(1) Any registered society may, subject to the provisions of this Act, amend its by-laws, including the by-law which declares the name of the society.

(2) No amendment of the by-laws of a registered society shall be valid until the amendment has been registered under this Act or regulations made under this Act.

(3) If the Registrar is satisfied that an amendment of the by-laws is not contrary to the provisions of this Act, he shall register the amendment.

(4) An amendment which changes the name of a registered society shall not affect any right or obligation of the society or any of its members or past members, and any legal proceedings pending may be continued by or against the society.

(5) When the Registrar registers an amendment of the by-laws of a registered society, he shall issue to the society a copy of the amendment certified by him which shall be conclusive evidence of the fact that the amendment has been fully registered.

(6) If it appears to the Registrar that an amendment of the by-laws of a society is necessary or desirable in the interest of such society, he may call upon the society, subject to any regulations made under this Act, to make the amendment within such time as he may specify.

(7) If the society fails to comply with the Registrar's directive, the Registrar may cancel the registration of the Society under section 73 (*c*).

(8) With effect from the date of registration of an amendment under this Act, the by-laws shall be binding on the society and its members.

Appeal to the Minister

11. From every refusal of the Registrar to register a society or its by-laws or any amendment of its by-laws, an appeal shall lie to the Minister.

Name of society to be different from others

12.—(1) No society shall be registered under a name identical to any other existing society, or under any name likely to mislead members of the public as to its identity.

(2) The word "cooperative" shall form part of the name of every society registered under this Act, and the word "Limited" shall be the last word in the name of every society with limited liability registered under this Act.

Evidence of registration

13.—(1) A certificate of registration signed by the Registrar shall be conclusive evidence that the society mentioned therein is duly registered unless it is proved that the registration of the society has been cancelled.

(2) If the Registrar is satisfied that a society's original certificate of registration has been lost or destroyed, he may issue a duplicate certificate.

PART III

Rights and Liabilities of Members

Qualifications for membership

14. In order to be qualified for membership of a society, a person, other than a registered society shall—

(*a*) have attained the age of eighteen years; and

(*b*) be a resident within or in occupation of land within the society's area of operation as prescribed by the relevant by-laws;

(*c*) qualify under a common bond as specified by-lays.

15. No member shall hold more than one-fifth of the paid-up share capital of any cooperative society.

Restriction on shareholding Cap. 46:03

16. No company incorporated under the Companies Act, and no unincorporated body of persons, shall be entitled to become a member of a registered society except with the written permission of the Registrar.

Member not to exercise rights until due payment made

17. No member of a registered society shall exercise any of the rights rights of a member unless and until he has made such payment to the society in respect of membership or has acquired such interest in the society as may be prescribed by any regulations made under this Act or by the by-laws of the society.

Restriction of membership in more than one society

18.—(1) No person shall be a member of more than one registered society with unlimited liability.

(2) Save with the written consent of the Registrar, no person be a member of more than one registered society having the same or similar objects:

Provided that a person who is a member of a registered society and carries on business on land or at premises outside the area of operation of that registered society, may be a member of a registered society in whose area of operations that land or those premises are situated notwithstanding that its objects are the same as or similar to those of the list mentioned society.

Vote of members

19. Each member of a registered society shall have one vote only as a member in the affairs of the registered society:

Provided that a registered society, a cooperative union or an apex society which is a member of any registered society shall have as many votes as may be prescribed by the by-laws of such other society, and may, subject to such by-laws, appoint any number of its committee members, not exceeding the number of such votes, to exercise its voting power.

Restriction on shares or interest

20.—(1) The transfer of the share or interest of a transfer of member in the capital of a registered society shall be subject to the conditions as to maximum holding for which provision is made in section 15.

(2) In the case of a society registered with unlimited liability, a member shall not transfer or charge any share held by him, or his interest in the capital of the society or any part thereof, unless—

(*a*) he has held such share or interest for not less than one year; and

(*b*) the transfer of charge is made to the society or to a member of the society.

PART IV

Duties of Registered Societies

Address of societies

21.—(1) Every registered society shall have a registered address to which notices and communications may be sent and shall send to the Registrar notice of every change thereof within one month of such change.

(2) Every registered society shall display its name and address on a signboard in a conspicuous position outside its place of business.

Copy of the Act, regulations, by-laws, etc., to be open for inspection

22. Every registered society shall keep a copy of this Act and of the Regulations made thereunder and of its by-laws and a list of members open to inspection by any member, fee of charge, and any other person at a fee to be determined by the Society, at all reasonable times during business hours at the office of the society.

Audit and annual returns and accounts

23.—(1) It shall be the duty of every registered society to cause its accounts to be audited at least once in every year by an auditor from a list of registered auditors appointed by the annual general meeting and the cost of such audit shall be borne by the society:

Provided that—

(*a*) no auditor chosen by a registered society to audit its books shall perform that function for more than three consecutive annual audits;

(*b*) where the registered society is unable to appoint its own auditors, the Registrar may appoint such auditors or carry out the audit at a fee.

(2) Audits, shall be conducted in accordance with generally accepted professional auditing standards and shall include audit of management efficiency.

(3) The auditor shall at all times have access to all books, accounts, papers and securities of a registered society, and every officer of the society shall furnish such information in regard to the transactions and working of the society as the auditor may require.

(4) Every auditor appointed under subsection (1) shall submit a detailed audit report on the financial statements to the committee and a true copy of such financial statements to the Registrar within three months after its financial year and shall include the auditor's opinion on whether or not the business administration of the society has been conducted—

(*a*) efficiently;

(*b*) in accordance with cooperative principles and the auditing and accounting provisions of this Act; and

(*c*) in accordance with its objectives, by-laws and any other decisions made by the annual general meeting.

(5) The audited financial statements referred to in subsection (4) shall be open for inspection by any member of the public upon payment of such fee as may be fixed by the Registrar.

(6) Where a registered society fails to cause its accounts to be audited in accordance with subsections (1), (2) and (4), the committee of that society shall be deemed to have relinquished its office; and the Registrar shall convene a special general meeting to elect a new committee unless the Registrar is satisfied that the failure was due to circumstances beyond the committee's control.

Qualifications of auditors

24.—(1) No person shall be appointed or approved as an auditor for the audit of the accounts of a registered society unless that person, or in the case of a firm, is a member of a recognized accounting body.

(2) The Minister may, in consultation with the Registrar and by notice published in the *Gazette*, amend the qualifications of auditors specified in this section.

Estimates and expenditure

25.—(1) Every committee of a registered society shall cause estimates of the society's income and expenditure of both revenue and capital to be prepared for the coming twelve months at least three months before the end of its financial year. A copy of such estimates shall be sent to the Registrar.

(2) If a society contravenes or fails to comply with any provision of this section, every member of that Committee and any officer or person who purports to act on its behalf commits an offence and shall, upon conviction, be liable to a fine not exceeding K3,000 and in the case of a continuing offence to a further fine not exceeding K500 for each day on which the offence is continued.

Voluntary amalgamation of societies

26.—(1) Any or more registered societies (hereinafter referred to as the "amalgamating societies") may, by special resolution with the approval of the Registrar, (in this section referred to as the "preliminary resolution"), resolve to amalgamate as a single society (hereinafter referred to as the "amalgamated society").

(2) A copy of the preliminary resolution shall be sent to all the members and creditors of each of the societies, and to all other persons whose interest in any of the societies will be affected by the amalgamation.

(3) Any member of any of the societies concerned may, notwithstanding any by-law to the contrary, by notice in writing given to his society at least one month before the date specified as the date of amalgamation, intimate his intention not to become a member of the amalgamated society.

(4) Any creditor of any of the societies concerned may, notwithstanding any agreement to the contrary, by notice in writing given to such society at least one month before the date specified as the date of amalgamation, intimate his intention to demand the payment of any money due to him.

(5) Any other person whose interest will be affected by the amalgamation may, by notice in writing given to the society concerned not less than one month before the date specified as the date of amalgamation, object to the amalgamation unless his claim is satisfied.

(6) Not less than three months after the date of the meeting at which the preliminary resolution is passed, a further special general meeting of each of the societies shall be held to consider the preliminary resolution and any notices received under this section.

(7) At the special general meeting held under subsection (6) of this section, provision shall be made by a further resolution of the society (in this section referred to as the "secondary resolution") for—

(*a*) the repayment of the share capital of any member who has given notice under subsection (3);

(*b*) the satisfaction of any claims by creditors who have given notice under subsection (4); and

(*c*) the satisfaction of the claims of such other persons who have given notice under subsection (5) of this section as the Registrar determines, or the securing of their claims in such manner as the Registrar directs:

Provided that no member or creditor or other person shall be entitled to such repayment or satisfaction until the preliminary resolution is confirmed as provided in subsection (8).

(8) Each society may, by further resolution passed by a two-thirds majority of the members present and voting, confirm the preliminary resolution.

(9) If, within such time as the Registrar considers reasonable, the Registrar is satisfied that the provisions of the secondary resolutions of each of the societies, and the provisions of this section, have been complied with, he may register the amalgamated society and the by-laws of such thereupon—

(*a*) the registration of all the amalgamating societies shall be cancelled, and the amalgamating societies shall be dissolved;

(*b*) the registration of the amalgamated society shall be a sufficient conveyance to vest the assets and liabilities of the amalgamating societies in the amalgamated society;

(*c*) the remaining members of the amalgamating societies shall become members of the amalgamated society and subject to its by-laws in accordance with section 30; and

(*d*) any creditors of the amalgamating societies or any other persons who have claims against the amalgamating societies, and whose claims were not satisfied in accordance with the secondary resolution, may pursue such claims or causes of action against the amalgamated society.

Transfer of assets and liabilities to another society

27.—(1) Any registered society may by a resolution transfer its assets and liabilities to any other society which agrees to accept them.

(2) The transfer of liabilities referred to in subsection (1) shall not be made to any society without giving notice in writing of ninety days to the creditors of both or more societies concerned in the transfer of the liabilities.

(3) If a creditor objects to an amalgamation decided upon under section 26 or a transfer of liabilities under this section and gives notice in writing of one month before the date fixed for the amalgamation or transfer of liabilities to the society concerned, the amalgamation or transfer shall not take place until liabilities of the creditor have been satisfied or until an agreement for payment of the liabilities has been made by the society and the creditor.

(4) Any creditor who is not satisfied with the liabilities paid to him or who does not accept to enter into an agreement with the society concerned as provided under subsection (3) may appeal to the Registrar within ninety days from the date of his disagreement with the society.

Voluntary division of a society

28.—(1) Any registered society may, with the prior written approval of the Registrar, divide itself into two or more societies in accordance with the procedure laid down by regulations made under this Act.

(2) A division of a society referred to under subsection (1) shall not take place unless—

(*a*) a general meeting of the members of the society has been called;

(*b*) each member of the society has had a written notice of at least fifteen days of the meeting; and

(*c*) a resolution has been passed by a two-thirds majority of the members present at the meeting in support of the division.

(3) A resolution passed under subsection (2) (hereinafter referred to as a "preliminary resolution") shall contain proposals for the distribution of the assets and liabilities of the divided society among the societies in which it is proposed to be divided and shall prescribe the area of operation of, and specify the members who may constitute each of, the new societies.

(4) a copy of the preliminary resolution shall be sent to all the members of the society and its creditors and any other person whose interests may be affected by the division shall be informed in writing by the society.

(5) Any member of the divided society may notify the society in writing, within three months from the receipt of the preliminary resolution, of his intention not to belong to any of the new societies and any creditor may demand from the society within the said period a repayment of the amount due to him.

(6) Any other person whose interests are affected by the division of the society may submit his claim in writing to the society.

(7) After the period of three months from the sending of the resolution under subsection (4) to the members and creditors of the society, a special general meeting of the society shall be called to consider the preliminary resolution.

(8) A special meeting of the society shall not be held under subsection (7) unless each member of the society has had a notice of fifteen days in writing informing him of the meeting.

(9) If, at the meeting called under subsection (7), a preliminary resolution is confirmed by a two-thirds majority of the members present, either without any change or with such changes, which, in the opinion of the Registrar, are not material, the Registrar may register the new societies and their by-laws and on such registration, the registration of the old society shall be deemed to have been cancelled and the society shall be deemed to be dissolved from the date of the cancellation.

(10) At the special general meeting of the society held under subsection (7), provision shall be made by another resolution for—

(*a*) the repayment of the share capital of all the members who have given notice under subsection (5);

(*b*) the satisfaction of the claims of all the creditors who have given notice under subsection (5);

(*c*) the satisfaction of the claims of any other person who has given notice under subsection (6):

Provided that no member, creditor or any other person shall be entitled to any repayment or satisfaction until the preliminary resolution is confirmed under subsection (9).

(11) The registration of new societies under subsection (9) shall be sufficient to vest the assets and liabilities of the divided society in the new societies in accordance with the provisions of the preliminary resolution.

PART V

Duties and Privileges of Societies

Societies to be bodies corporate

29. A society on registration shall become a body corporate by the name under which it is registered, with perpetual succession and a common seal, and with power to hold moveable and immoveable property of every description, to enter into contracts, to institute and defend suits and other legal proceedings and to do all things necessary for the purpose of its constitution.

Registered by-laws to bind members

30. (1) The by-laws of a registered society shall, when registered, bind the society and the members thereof to the same extent as if they were signed by each member, and contain obligations on the part of each member, his heirs, executors, administrators and assignees, to observe all the provisions of the by-laws.

(2) No member of a registered society shall contest any suit, claim, action or proceedings between such member and the society or any other member of the society on the ground that any by-laws of the society constitutes a contract in restraint of trade.

Contract with members

31.—(1) A registered society, having as one of its objects the disposal of any agricultural produce, may contract with its members either in its by-laws or by a separate document, that they shall dispose of all their produce, or of such amounts or descriptions as may be stated therein, to or through the society, and may in contract provide for payment of a specific sum per unit of weight or other measure as liquidated damages for infringement of the contract, and such sum shall be a debt due to the society.

(2) Any such contract as is mentioned in subsection (1) shall create in favour of the society a first charge upon all produce mentioned therein, whether existing or future.

(3) The covenants obligations imposed by any contract as is mentioned in subsection (1) shall run with any assets and shall be binding on all assignees and transferees and any transfer or conveyance of property subject to such contract shall be deemed to operate also as alike transfer or assignment of the contract.

(4) No contract entered into under the provisions of this section shall be contested in any court on the ground that it constitutes a contract in restraint of trade.

Imposition of fines upon members

32. (1) The by-laws of a registered society may subject to the provisions of any regulations made under this Act, provide for the imposition of fines on its members for any infringement of its by-laws but no such fine shall be imposed upon any member until written notice of intention to impose the fine and the reason therefor has been served on him and he has had an opportunity of showing cause against the imposition of the fine, and if he so desires, of being heard with or without witnesses.

(2) Any such fine may be recovered by legal proceedings in a court of law.

(3) The whole or any part of such fine may be set-off against any moneys due to such member in respect of produce delivered by him to the society.

(4) A member shall not be deemed to have infringed the by-laws of a registered society by reason of his having failed to deliver produce to the society if such failure was due to the fact that before becoming a member of the society such member had contracted to deliver such produce to some other person.

(5) It shall be the duty of every person applying for membership of a registered society to disclose to the society particulars of all such contracts as are mentioned in subsection (4).

Charge on produce and certain other materials and articles

33. Subject to the prior claims of the Government on property of its debtors and of landlords in respect of rent, or any money recoverable as rent, or to any prior charge duly registered under this

Act or under any other law for the time being in force, a registered society shall have a first charge—

(*a*) upon produce of a member or past member, at any time within two years from the date when seed or fertilizer as advanced, or services were supplied, or money was lent to such member or past members in respect of the unpaid portion of such advance, supplies services on loan;

(*b*) in respect of the supply of agricultural or industrial implements or machinery, or raw material for manufacturing or building or for the loan of money for the purchase of any of such implements to be supplied or purchased in whole or in part from any such loan or any articles manufactured from raw materials supplied or purchased.

Charge and set-off in respect of shares or interest of member

34. A registered society shall have a first charge upon the shares or interest in the capital and on the deposits of a member or past member and upon any dividend, bonus or accumulated funds payable to a member or past member in respect of any debt due from such member or past member to the society, and may set-off any sum credited or payable to such member or past member in or towards payment of any such debt.

Share or interest not liable to attachment

35. Subject to the provisions of section 33, the share or interest of a member in the capital of a registered society shall not be liable to attachment or sale under any decree or order of a court in respect of any debt or liability incurred by such member, and a trustee in bankruptcy under the law relating to bankruptcy for the time being in force shall not be entitled to or have any claim on such share or interest:

Provided that where a society is dissolved, the property in the shares of any member who has been adjudicated as bankrupt under the provisions of any such law relating to bankruptcy shall vest in the trustee in bankruptcy.

Liability of past member

36. The liability of a past member for the debts of a registered society as they existed at the time when he ceased to be a member shall continue for a period of two years from the date of his ceasing to be a member.

Liability of estate of deceased

37. The estate of a deceased member shall be liable for a period of one year from the time of his demise for the debts of a registered society as they existed at the time of his death.

Transfer of interest on death of member

38.—(1) On the death of a member, a registered society may transfer the share or interest of the deceased member to the person nominated in accordance with any regulations made under this Act, or, if there is no person so nominated, to such person as may appear to the committee of the society to be the legal personal representative, of the deceased member or may pay to such nominee or legal

person representative as the case may be, a sum representing the value of such member's share or interest, ascertained in accordance with any regulations made under this Act or the by-laws of the society:

Provided that—

(*a*) in the case of a society with unlimited liability, such nominee or legal personal representative, as the case may be, may require payment by the society of the value of the share or interest of the deceased member ascertained in the manner mentioned in this subsection; or

(*b*) in the case of a society with limited liability, the society shall transfer the share or interest of the deceased member to such nominee or legal personal representative, as the case may be, being qualified in accordance with any regulations made under the provisions of this Act and the by-laws for membership of the society, or, on his application within one month of the death of the deceased member, to any person specified in the application who is so qualified.

(2) A registered society shall pay all other moneys due to the deceased member from the society to such nominee or legal personal representative, as the case may be.

(3) All transfers and payments made by a registered society in accordance with the provisions of this section shall be valid and effectual against any demand made upon the society by any other person.

Registers and books shall be received in evidence in certain circumstances

39. (1) Any register or list of members or of shares, which is kept by any registered society shall be *prima facie* evidence of any of the following particulars entered therein—

(*a*) the date on which the name of any person was entered in such register or listed as a member;

(*b*) the date on which any such person ceased to be a member.

(2) A copy of any entry in a book of a registered society regularly kept in the course of business shall, if certified in accordance with any regulations made under this Act, be received in any suit or legal proceedings as *prima facie* evidence of the existence of such entry, and shall be admitted as evidence of the matter, transactions and accounts therein accorded in every case where, and to the same extent as the original entry itself is admissible

Restriction on the production of societies books

40. No officer of a registered society shall, in any legal proceedings to which the society is not a party, be compelled to produce any of the society's books the contents of which can be proved under section 39, or to appear as a witness to prove the matter, transactions and accounts therein recorded unless by order of the court made for special cause.

Power to remit or refund revenue

41.—(1) The Minister responsible for finance may, by order published in the *Gazette*, in the case of a registered society or class of registered societies, remit or refund—

(*a*) any duty or tax which, under any law for the time being in force, may be payable in respect of the accumulated funds of the society or of the dividends or other payments received by members of the society on account of accumulated funds;

(*b*) the stamp duty with which, under any law for the time being in force, instruments executed by or on behalf of a registered society or by an officer or member and relating to the business of such society or any class of such instruments are respectively chargeable.

(*c*) any fee payable under any law relating to registration for the time being in force;

(*d*) the customs and excise duty on any development goods ordered or purchased by a registered society. For purposes of this paragraph "development goods" means agricultural equipment, vehicles and other goods which the Minister responsible for finance may declare to be development goods.

(2) In the case of a division, an amalgamation or transfer of some or all of the assets of a registered society, the Minister responsible for finance shall remit the stamp duty with which, under any law for the time being in force, instruments executed by or on behalf of such society or by its officer or member and relating to the business of such society or any class of such instruments are respectively chargeable.

PART VI

Property and Funds of Registered Societies

Restrictions on loans

42. A registered society shall not make a loan to any other person than a member:

Provided that—

(*a*) with the general or special sanction of the general meeting, a registered society may make loans to another registered society; and

(*b*) subject to the prior written approval of a general meeting and subject to such conditions as may be imposed, a registered society may stand surety for a loan to be granted to an employee of the society where such a loan is for the benefit of that society.

Restrictions on borrowing

43.—(1) A registered society shall receive deposits and loans from persons who are not members only to such extent and under such conditions as the general meeting of members may, from time to time, by resolution, approve.

(2) A depositor or lender shall not be required to know whether the resolution has been approved.

(3) For the purposes of this section, credit on current account for a period of more than ninety days and a deposit of money under a hire-purchase agreement shall be deemed to be a loan within the meaning of this section.

Restriction on other transactions with non-member

44.—(1) Save as provided in section 42 and 43 transactions of a registered society with persons other than members shall be subject to such prohibitions and restrictions, if any, as the general meeting may, from time to time, in writing, direct.

(2) The total value of transactions entered into by a registered society in respect of a particular kind of produce with persons other than members shall not exceed, in any one year, one-half of all transactions entered into by it in respect of that kind of produce.

(3) The net amount of all profits accruing from transactions with persons other than members shall be credited to the society's statutory reserve fund and shall not be available for distribution among members.

Investments of funds

45. A registered society may invest or deposit its funds only—

(*a*) in a registered cooperative bank;

(*b*) in any registered society, company or statutory corporation approved in writing by the Registrar;

(*c*) in any bank or financial institution incorporated in Malaŵi;

(*d*) in and upon such investment and securities as are by law allowed for the investment of trust funds; and

(*e*) in such other mode as specified by the by-laws of the society and approved by members in a general meeting.

Dividend or bonus

46.—(1) No registered society shall pay a dividend or bonus or distribute any part of its accumulated funds without the prior approval of the annual general meeting.

(2) No society shall pay a dividend to its members exceeding the maximum rate prescribed by the by-laws of the society.

(3) No society with unlimited liability shall advance money or goods to any member in excess of money or goods deposited by him.

Reserve and provident fund

47. (1) Every society which does or can derive a surplus from its transactions shall maintain a reserve fund.

(2) A society which advances money or goods to any member in excess of money or goods deposited by him shall carry at least one-fourth of the net surplus in each year to the reserve fund.

(3) All societies other than societies referred to in subsection (2) shall carry to the reserve fund such portion of the net surplus in each year as may be prescribed by any regulations made under this Act or by-laws of the registered society.

(4) Every society shall, with the approval of the general meeting, establish a contributory provident fund for payment of pensions to its permanent employees at the time of their retirement.

Distribution of net balance

48. Subject to the provisions of sections 46 and 47 the net balance of each year, with any sum available for distribution from previous years, may be distributed as may be prescribed by any regulations made under this Act or by the by-laws of the registered society.

PART VII

National Cooperative Education fund

Establishment of the Fund

49.—(1) There is hereby established a National Cooperative Education Fund (in this Act otherwise referred to as the "Fund").

(2) Every registered society shall contribute one *per centum* per annum of its net profit to the Fund.

Fund Committee

50.—(1) The Fund shall be vested in a Fund committee which shall consist of—

(*a*) a chairman elected from the cooperative movement; and

(*b*) three other persons elected from the cooperative movement; and

(*c*) the Registrar who shall provide secretarial services.

(2) The Fund committee shall administer the moneys in the Fund and shall—

(*a*) prepare an annual budget for the approval of the Minister; and

(*b*) submit an annual report on the Fund to the Minister.

(3) Three members of the Fund Committee shall constitute a quorum.

(4) Subject to the approval of the Minister, the Fund Committee shall determine its own procedure.

Account and audit

51.—(1) The Fund Committee shall cause proper books of accounts of the Fund to be kept together with adequate financial and other records relating to the Fund.

(2) The Fund Committee shall within three months after the end of the financial year have the books of the Fund audited by an auditor appointed by the Fund Committee and approved by the Minister.

Financial year

52. The financial year of the Fund shall be the period of twelve months ending on 30th June in each year.

Disbursement from the Fund

53. The Fund Committee may authorize payment from the Fund for educational costs and any reasonable and necessary expenses arising from the maintenance of the Fund.

Holdings of the Fund

54.—(1) All moneys received on behalf of the Fund shall be paid into a bank account and no moneys shall be withdrawn there from except by means of cheques signed by such persons as are authorized in that behalf by the Fund Committee.

(2) Any part of the Fund not immediately required for the purpose of the Fund may be invested as agreed upon by the Fund Committee.

PART VIII

Charges by Societies

Power to charge property

55.—(1) A registered society may, from time to time, with the consent of the Registrar, charge the whole or any part of its property, if its by-laws expressly empower it to do so and to the extent to which its by-laws empower it to do so.

(2) The chargee shall not be required to know whether the consent of the Registrar has been obtained or that the society's by-laws empower the society to charge its property.

Registration of charges

56.—(1) Subject to this Part, every charge to which this section applies created by a registered society shall, so far as any of the society's property is thereby charged, be void against the liquidator and any creditor of the society unless the prescribed particulars of the charge, together with the instrument, if any, by which the charge is created or evidenced, or a copy thereof verified in the prescribed manner, are delivered to the Registrar for registration within thirty days after the date of the creation of the charge or within three months after commencement of this Act, whichever is the later, but without prejudice to any contract or obligation for repayment of the money thereby secured, and when a charge so becomes void under this section the money secured thereby shall immediately become payable.

(2) this section shall apply to the following charges—

(*a*) a charge for the purpose of securing an issue of debentures;

(*b*) a charge created or evidenced by an instrument which, if executed by an individual, would require registration;

(*c*) a charge on immoveable property wherever situated;

(*d*) a charge on book debts of the society; and

(*e*) a floating charge on the property of the society.

(3) In this Part, "charge" includes a mortagage.

(4) Where a negotiable instrument has been given to secure the payment of any book debts of a registered society, the deposit of the instrument shall, for the purpose of this section, be treated as a charge on those book debts.

(5) The holding of debentures entitling the holder to a charge on immoveable property is not itself an interest in immoveable property for the purposes of this section.

(6) Where a series of debentures containing, or specifying by reference to any other instrument, any charges to the benefit of which the debenture holders of that series are entitled *pari passu* is created by a registered society, it shall for the purpose of this section be sufficient if there are delivered to the Registrar within thirty days after the execution of the deed containing the charges (or, if there is no such deed, after the execution of any debentures of the series), or within three months after the commencement of this Act, whichever is the later, the following particulars—

(*a*) the total amount secured by the whole series;

(*b*) the dates of the resolutions authorizing the issue of the series and the date of the covering deed, if any, by which the security is created or defined;

(*c*) a general description of the property charged; and

(*d*) the names of the trustees, if any, for the debenture holders, together with the deed containing the charge or a certified copy thereof, or if there is no such deed, one of the debentures of the series:

Provided that, where more than one issue is made of debentures in the series, there shall be sent to the Registrar for registration, within thirty days after the date of each issue or within three months after the commencement of this Act, whichever is the later, particulars of the date and the amount of the issue, but an omission to do so shall not affect the validity of the debentures issued.

Duty of society to register charges created by society

57.—(1) It shall be the duty of a registered society to send to the Registrar for registration the particulars of every charge created by it to which section 55 applies, but registration of any such charge may be effected on the application of any person interested therein.

(2) Where registration is effected on the application of some person other than the registered society, that person shall be entitled to recover from the society the amount of any fees properly paid by him to the Registrar on registration.

(3) If any registered society fails to send to the Registrar within the prescribed time for registration the particulars of any charge created by it to which section 55 applies, then, unless the registration has been effected by some other person within such time, the society and every officer thereof shall be guilty of an offence and liable to a fine not exceeding K3,000 for every day during which the default continues.

Duty of society to register charges existing on property acquired

58.—(1) Where a registered society acquires any property which is subject to a charge to which section 55 would apply if the charge had been created by the society, the society shall cause the prescribed particulars of the charge, together with a certified copy of the instrument, if any, by which the charge was created or evidenced, to be delivered to the Registrar for registration within thirty days after the date on which the acquisition is completed or within three months after the commencement of this Act, whichever is the later.

(2) If default is made in complying with this section, the registered society and every officer thereof shall be guilty of an offence and liable to a fine not exceeding K3,000.

Register of charges

59.—(1) The Registrar shall, with respect to each registered society, keep a register in such form as may be prescribed under this Act of all charges requiring registration under this Part, and shall enter in the register, with respect to every charge, the following particulars—

(*a*) if the charge is a charge created by the society, the date of its creation, and if the charge was a charge existing on property acquired by the society the date of the acquisition of the property;

(*b*) the amount secured by the charge;

(*c*) short particulars of the property charged; and

(*d*) the persons entitled to the charge;

(2) The Registrar shall issue a certificate under his hand of the registration of any charge registered under this Part, stating the amount secured, and the certificate shall be conclusive evidence that the requirements of this Part as to registration have been complied with.

(3) The register kept in pursuance of this section shall be open to inspection by any person on payment of the prescribed fee.

(4) The Registrar shall keep a chronological index containing the particulars of the charges entered in the register.

Endorsement of certificate of registration on debenture

60.—(1) Every registered society shall cause every certificate of registration issued under section 59 to be endorsed on the debenture or certificate of debenture stock which is issued by the society, and the payment of which is secured by the charge so registered:

Provided that nothing in this subsection shall require a society to cause a certificate of registration of any charge so given to be endorsed on any debenture stock issued by the society before the charge was created.

(2) If any person knowingly and willfully authorizes or permits the delivery of any debenture or certificate of debenture stock which has not endorsed on it the certificate of registration required by sub-section (1), he shall, without prejudice to any other liability, be guilty to an offence and liable on conviction to a fine not exceeding K3,000.

Entry of satisfaction

61. The Registrar may, on evidence being given to his satisfaction that the debt for which any registered charge was given has been paid or satisfied, order that a memorandum of satisfaction be entered on the register, and shall, if required, furnish the registered society concerned with a copy thereof.

Rectification of register of charges

62. The Registrar, on being satisfied that the omission to register a charge within the time required by this Act, or that the omission or mis-statement of any particulars with respect to any such charge or in a memorandum of satisfaction, was accidental or due to inadvertence or some other good cause, or is not of a nature to prejudice the position of creditors or members of the registered society, or that on other grounds it is just to grant relief, may, on the application of the registered society or any person interested, and on such terms and conditions as seem to the Registrar fair, order that the time for registration shall be extended or, as the case may be, that the omission or mis-statement shall be rectified.

Registration of appointment of receiver

63.—(1) If any person obtains an order for the appointment of a receiver or manager of the property of a registered society, or appoints such a receiver or manager under any powers contained in any instrument, he shall, within seven days from the date of the order or of the appointment under the said powers, give written notice of the fact to the Registrar, and the Registrar shall enter the notice in the register of charges.

(2) Where any person appointed receiver or manager of the property of a registered society under the powers contained in any instrument ceases to act as such receiver or manager, he shall, on so ceasing, give written notice of the fact to the Registrar, and the Registrar shall enter the notice in the register of charges.

(3) If any person makes default in complying with the requirements of this section, he shall be guilty of an offence and liable on conviction to a fine not exceeding K3,000 for every day during which the default continues.

Copy of instrument creating charge to be kept by society

64. Every registered society shall cause a copy of every instrument creating a charge which is required by this Part to be registered to be kept at the registered address of the society.

Society's register of charges

65.—(1) Every registered society shall keep at the registered address of the society a register of charges in which shall be entered all charges specifically affecting property of the society and all floating charges on the property or assets of the society, giving in each case a short description of the property charged, the amount of the charge and the name of the person entitled thereto.

(2) If any officer of a registered society knowingly omits, or permits the omission of any entry required to be made in any register in pursuance of this section, he shall be guilty of an offence and liable on conviction to a fine not exceeding K3,000.

Right to inspect copies of instruments creating charges and society's register of changes

66.—(1) The copies of the instruments creating charges which are required by this Part to be registered, and the register of charges kept by the registered society under section 65 shall be open to inspection during business hours by any creditor or member of the society without fee (subject to such reasonable restrictions as the society in general meeting and may impose, so, however, that not less than two hours in each day shall be allowed for inspection), and the register of charges shall also be open to changes inspection by any other person on payment of the prescribed fee.

(2) Any officer of the registered society who refuses to allow inspection of the register of charges or of copies of the instruments creating charges in accordance with subsection (1) or who permits such refusal, shall be guilty of an offence and liable to a fine not exceeding K3,000 for every day during which the refusal or permission continues, and the court may order an immediate inspection of such register or copies.

PART IX

Supervison and inspection of affairs

Production of cash and books of society

67. Any officer, agent, servant or member of a registered society who is required by the Registrar, or any person authorized in writing by the Registrar, so to do shall, at such place and such time as the Registrar may direct, produce all moneys, securities, books, accounts and documents the property of, or relating to the affairs of, such society which are in custody of such officer of such society, agent, servant or member and which are under his control.

Ad hoc committee of inquiry

68. (1) The Registrar may hold an inquiry or direct any person authorized by him by order in writing in that behalf to hold an inquiry into the constitution, working and financial conditions of a registered society.

(2) On receipt of a resolution demanding and inquiry passed by not less than two-thirds of the members present at a general meeting of the society which has been duly advertised, the Registrar shall cause such an inquiry

(3) during the period of inquiry referred to in subsections (1) and (2), the chief executive and other officers or employees may be suspended from duty by the Registrar if evidence is uncovered showing breach of this Act, regulation, rules or by-laws of the society by any of them to facilitate the smooth holding of the inquiry.

(4) (*a*) Where the chief executive has been suspended in accordance with subsection (3) a caretaker manager shall be appointed by the Registrar in consultation with the committee.

(*b*) Such caretaker manager shall remain in office until either the former chief executive is reinstated or a new one is appointed:

Provided, that he shall not stay in that office for more than three months after the report of the committee of inquiry has been submitted.

(5) If during the course of inquiry cause arises to dissolve the committee of the society, the Registrar shall dissolve such a committee and convene within thirty days, a special general meeting to replace such a committee.

(6) All officers and members of the society shall produce such cash, accounts, books, documents and securities of the society and furnish any information in regard to the affairs of the inspected society as the Registrar or such person authorized by the Registrar may require.

Inspection of books of indebted society

69.—(1) The Registrar may, if he thinks fit, on the application of a creditor or a registered society, direct a person authorized by him in writing in that behalf to inspect the books of the society:

Provided that—

(*a*) the application satisfies the Registrar that the debt is a sum then due, and that he has demanded payment thereof and has not received satisfaction within a reasonable time; and

(*b*) the applicant deposits with the Registrar such sum as security for the costs of the proposed inspection as the Registrar may require.

Cost of inquiry

70. Where an inquiry is held under section 68 or an inspection is made under section 69, the Registrar may make an award apportioning the costs or such part of the costs as he may think fit, between the society, the members or creditor demanding an inquiry or inspection, and the officer or former officers of the society.

Recovery of an award under section 70

71. Any award under section 70 may be recovered in any court of competent jurisdiction in the same manner as a judgment of such court.

PART X

Dissolution of a Registered Society

Cancellation of registration after inquiry or inspection

72.—(1) If the Registrar, after holding an inquiry under section 68 or after making an inspection under section 69, or on receipt of an application made by two-thirds of the members of a registered society, is of the opinion that the society ought to be dissolved, he may make an order for the cancellation of the registration of society.

(2) Any member of a registered society may, within two months from the date of an order made under subsection (1), appeal from such order to the Minister.

(3) Where no appeal is presented within two months from the making of an order under subsection (1) cancelling the registration of a society, the order shall take effect on the expiry of that period.

Cancellation for other reasons

73.—(1) The Registrar may, on his own motion or after hearing representations from the Society, by order in writing cancel the registration of any society, if satisfied that—

(*a*) the registration was obtained by fraud or mistake; or

(*b*) the society exists for illegal purposes; or

(*c*) the society has willfully, after notice by the Registrar, contravened any of the provisions of this Act, the regulations made thereunder or the by-laws or any direction given by the Registrar;

(*d*) the society is no longer operating in accordance with cooperative principles; or

(*e*) the number of members of the society has fallen below the minimum required by this Act; or

(*f*) the society has not commenced operations or has ceased to operate for one year.

(2) A society shall be liquidated when two-thirds of its share capital has been lost, unless the Registrar is satisfied that the loss will be made good within six months from the date of discovery of the insolvency.

(3) An appeal against an order made under subsection (1) or (2) shall be lodged with the Minister within sixty days from the date of receipt of the order.

(4) Where the Minister hears an appeal from the Registrar pursuant to subsection (3), the Minister may reverse the order, confirm the order or refer the order back to the Registrar.

Winding-up

74.—(1) Where the Registrar, after an inquiry has been held under section 68 is of the opinion that the society ought to be wound up, he may make an order directing it to be wound up and may appoint a liquidator for the purpose and fix his remuneration which shall be paid out of the funds of the society.

(2) Pending the appointment of the liquidator, the assets and liabilities of the society shall vest in the Registrar.

Application of certain provisions of Companies Act Cap. 46:03

75. Upon the winding-up of any registered society, the Minister may, by notice published in the *Gazette*, declare certain provisions of the Companies Act applicable to the society as if such society was registered under that Act.

Effect of cancellation

76. Where the registration of a society is cancelled, the society shall cease to exist as a corporate body as from the date of cancellation.

Copy of order to be filed by Registrar

77. On the making of an order to cancel the registration of a society, a copy of such order shall be placed on the file maintained by the Registrar in respect of the society and another copy shall be published in the *Gazette*.

Appointment of liquidator

78. Where the registration of a society is cancelled under section 73 or 74, the Registrar may appoint a liquidator of the society and all the property of the society shall vest in such liquidator with effect from the date of cancellation:

Provided that if the society is to be wound up voluntarily, the members may appoint a liquidator.

Powers of liquidator

79. A liquidator appointed under section 78 shall, subject to the guidance and control of the Registrar and to any limitation imposed by the Registrar or by an order made under section 80, have the following powers—

(*a*) to appoint a day, in the manner prescribed by regulations made under this Act, before which the creditor whose claims are not already recorded in the books of the society shall state their claims for admission, or be excluded from any distribution made before they have proved them;

(*b*) to institute and defend suits and other legal proceedings by and on behalf of the society by his name of office and appear in court as litigant in person on behalf of the society;

(*c*) to refer disputes to arbitration in the manner prescribed by regulations made under this Act;

(*d*) to determine from time to time the contributions to be made by the members and past members, and by the estate of deceased members of the society, respectively, to the assets of the society;

(*e*) to investigate all claims against the society and, subject to the provisions of this Act, decide questions of priority arising between claimants;

(*f*) to call such meetings of members as may be necessary for the proper conduct of the liquidation;

(*g*) to sell by public auction the assets of the society;

(*h*) to carry on the business of the society so far as may be necessary for the proper liquidation of the affairs of the society;

(*i*) to determine, from time to time, by what persons and in what proportion the costs of the liquidation are to be borne;

(*j*) to take possession of books, documents and assets of the society;

(*k*) to arrange for the distribution of the assets of the society in a convenient manner when a scheme of distribution has been approved by the Registrar;

(*l*) to give such directions in regard to the disposal of the books and documents of the society as may appear to him to be necessary for winding-up the affairs of the society;

(*m*) to compromise, with the approval of the Registrar, any claim by or against the society; and

(*n*) to apply to the Registrar for his discharge from the duty of liquidator after completion of the liquidation proceedings.

Powers of Registrar in liquidation

80.—(1) A liquidator shall exercise his powers subject to the control and revision by the Registrar.

(2) The Registrar may—

(*a*) rescind or vary any order made by a liquidator and make whatever new order if required;

(*b*) remove a liquidator from office for good cause and appoint a new liquidator;

(*c*) call for all books, documents and assets of the society;

(*d*) by order in writing, limit the powers of a liquidator under section 79;

(*e*) require accounts to be rendered to him by the liquidator;

(*f*) procure the auditing of the liquidator's accounts and to authorize the distribution of the assets of the society;

(*g*) make an order for the remuneration of the liquidator;

(*h*) grant a discharge to the liquidator on application by him after completion of the liquidation proceedings;

(*i*) require any member of a society and any trustee, banker, receiver, agent or officer of the society to pay, deliver, convey, surrender or transfer forthwith, or within such time as he shall direct, to the liquidator any money, property or books and papers in his hands to which the society is *prima facie* entitled;

(*j*) appoint a special manager of the business of a society whose registration has been cancelled and determine his remuneration and what, if any, security he shall give for the proper performance of his duties; or

(*k*) refer any subject of dispute between a liquidator and any third party to arbitration if that party shall have consented in writing to be bound by the decision of the arbitrator provided that the decision of an arbitrator on any matter shall be binding upon the parties and shall be enforceable in like manner as an order made by the Registrar under paragraph (*a*).

Appeal against an order of a liquidator or the Registrar

81. Any person aggrieved by an order of a liquidator or the Registrar given under section 79 or paragraph (*a*) of section 80 may appeal against such order to the Minister.

Closure of liquidation

82.—(1) In the liquidation of a society whose registration has been cancelled, the funds, including the reserve fund, shall be applied first to the costs of liquidation including the remuneration of the liquidator, then to the discharge of the liabilities of the society, then to the payment of the share capital and then, if the by-laws of the society so permit, to the payment of a dividend at a rate not exceeding ten *per centum* per annum for any period for which no disposal of the net surplus was made.

(2) When the liquidation of a society has been closed, the claim of any creditor of that society who has not received what is due to him under the approved scheme of distribution shall be barred by prescription on the expiry of one year from the date of the order cancelling the registration of the society.

(3) Any surplus remaining after the application of the funds to the purposes specified in subsection (1), and any sums unclaimed under subsection (2) shall—

(*a*) be distributed amongst the members at the time of dissolution or their legal personal representatives in proportion to

the value of the business of each such member with the society during the three years immediately preceding the date of dissolution or, if the society has not existed for such period, during the existence of the society, or if the society has done no business during these three years, then in proportion to the share capital held by them at such date;

(*b*) if it is impracticable to make a distribution in accordance with paragraph (*a*) whether through insufficiency of funds or otherwise, be paid, either in whole or as to any residue of a partial distribution, into the Fund.

Commission of offence

83. If the liquidator of a society whose registration has been cancelled alleges that any offences have been committed, he shall report the facts to the Registrar who shall forward a copy of such report to the Director of Public Prosecutions for the institution of such proceedings as may be necessary.

Convicted officers not to be officers of a society

84.—(1) Any person convicted of an offence under this Part shall not be eligible for appointment as an officer of a registered society or in any way whether directly or indirectly be concerned in or take part in the management of a society for a period of five years from the date he is released from prison or he pays a fine.

(2) Any person acting in contravention of the provisions of subsection (1) commits an offence and shall be liable on conviction to imprison for a period not exceeding two years.

Offences

85. Offences under this Part shall be tried by a court having jurisdiction over the place in which the alleged offence was committed.

PART XI

Surcharge and Attachment

Powers of Registrar to surcharge officers, etc.

86.—(1) Where it appears that any person who has taken part in the organization or management of a registered society or any past or present officer of the society has misapplied or retained or become liable or accountable for any money or property of that society or has been guilty of misfeasance, or breach of trust in relation to the society, the Registrar may, on his own motion or on the application of the liquidator or of any creditor or member, enquire into the conduct of that person and make an order requiring him to repay or restore the money or property or any part therefor with interest at such rate as the Registrar thinks just or to contribute such sum to the assets of the society by way of compensation in regard to the misapplication, retainer, dishonesty or breach of trust as the Registrar thinks just.

(2) Any moneys, including interest, awarded by an order made under subsection (1) to be repaid or contributed to a registered society shall, without prejudice to any other mode of recovery, be a civil debt recoverable summarily in any competent court.

(3) This section shall apply notwithstanding that the act in respect of which the Registrar has made an order under subsection (1) may constitute an offence under any other law for the time being in force.

Appeal to Minister

87. Any person aggrieved by an order of the Registrar made under section 86 may appeal to the Minister.

Attachment of property

88. Where the Registrar is satisfied that any person, with intent to defraud or delay the execution of any order which may be made against him under section 79 or section 86, or of any decision that may be given in a dispute referred to the arbitrators under the provisions of this Act or any other written law and for the time being in force, is about to dispose of the whole or any part of his property, the Registrar may, unless adequate security is furnished, order the conditional attachment of such property and such attachment shall have the same effect as if made by a competent court.

PART XII

Settlement of Disputes

Settlement of disputes

89.—(1) If any dispute touching the business of a registered society arises—

(*a*) among the members, past members or person claiming through members, past members and deceased members; or

(*b*) between a member, past members and persons claiming through a member, past member or deceased member and the society, its committee or nay officer or past officer of the society; or

(*c*) between the society or its committee and any officer or past officer of the society; or

(*d*) between the society and any other registered society,

such dispute shall be referred to an arbitrator for decision.

(2) A claim by a registered society for any debt or demand due to it from a member, past member or the nominee, heir or legal representative or a deceased member, whether such debt or demand be admitted or not, shall be deemed to be a dispute within the meaning of subsection (1).

(3) The parties to a dispute may agree upon an arbitrator or arbitrators for purposes of deciding the dispute.

(4) Where there is failure of agreement upon an arbitrator or arbitrators, each party shall appoint one arbitrator and the Registrar shall appoint a third arbitrator who will be the chairman to decide the dispute.

(5) If an appointed arbitrator refuses or neglects to act, or is incapable of acting or dies or is removed, the Registrar shall fill the vacancy.

Cap. 6:03

(6) The provisions of the Arbitration Act shall, to the extent that they are not inconsistent with this Act, apply to an arbitration under this Act.

(7) Any party aggrieved by an award made under this section may Appeal to the Registrar within Sixty days from the date of the award.

(8) An arbitrator appointed under the provisions of this section may—

(*a*) summon witnesses and call for any accounts, books, documents or any information which he considers relevant to the matter in question;

(*b*) administer an oath or affirmation to any witness giving evidence before him;

(*c*) refer any point of law to the High Court for its decision; and

(*d*) amend the terms of the order of reference with the consent of the parties to the dispute.

(9) When the arbitrator has made his award, he shall sign it, and shall give notice to the parties of the making thereof, and of the amount of the fees and charges payable to him in respect of the arbitration and award.

(10) The arbitrator shall, at the request of any party to the arbitration or any person claiming under him, and upon payment of the fees and charges due in respect of the arbitration and award, and of the costs and charges of filing the award, cause the award, or a signed copy of it to be filed in the court and notice or the filing shall be given to the parties by the arbitrator.

(11) Where the arbitrator refers a case to court on a point of law under paragraph (*c*) of subsection (8), the court shall make its decision and if the decision affects the amount of the award, it shall be increased or reduced, as case may be.

(12) The award of an arbitrator under this section shall, if no appeal is preferred to the Registrar under subsection (7) or if such appeal is abandoned or withdrawn, be final and shall be enforced in the same manner as if the award had been a judgment of a court.

(13) Notwithstanding the provisions of this section, any debt arising out of embezzlement, loss of cash or misappropriation of a registered society's funds shall not be the subject of settlement by arbitration, but shall be referred by the arbitrator to the Director of Public Prosecutions.

(14) The provisions of subsections (1) to (13) shall not apply to a cooperative bank, for the purpose of transacting banking or credit institution business in as far as the matter relates to that business.

Protection of arbitrator

90. No matter or thing done by the arbitrator under section 89 shall, if it is done bona fide for the purpose of executing any provisions of the said section, subject the arbitrator to any civil liability.

Appeal to court from decision of the Minister

91.—(1) Any decision of the Minister on an appeal to him from a decision of the arbitrator under section 89, or by virtue of any other provisions of this Act shall be subject to an appeal to a court of law.

(2) The Chief Justice may make rules of court regulating the procedure and practice of the hearing of appeals by a court under this section.

PART XIII

Regulations

Regulations

92.—(1) The Minister may make regulations for the carrying out of the provisions of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such regulations may—

(*a*) prescribe the forms to be used and the conditions to be complied with in the making of applications for the registration of a society and the procedure in the matter of such application;

(*b*) prescribe the matters in respect of which a society may or shall make by-laws and for the procedure to be followed in making, altering and the rescission of by-laws, and the conditions to be satisfied prior to such making, alteration or rescission;

(*c*) prescribe the conditions to be complied with by persons applying for admission or admitted as members and provide for the election and admission of members, and the payment to be made and the interest to be acquired before the exercise of the right of membership;

(*d*) regulate the manner in which funds may be raised by means of shares or debentures or otherwise;

(*e*) provide for general meetings of the members and for the procedure at such meetings and the powers to be exercised by such meetings;

(*f*) provide for the appointment, suspension and removal of members of a committee and other officers and for the procedure at meetings of a committee, for the powers to be exercised and the duties to be performed by a committee and other officers;

(*g*) provide for audit of the accounts and books to be kept by a society and the charges if any to be made for such audit;

(*h*) provide for the form of the final accounts and the balance sheet to be prepared annually and any other statements and schedules relating thereto;

(*i*) provide for the establishment of a supervision and audit fund;

(*j*) provide for the periodical publication of a balance sheet showing the assets and liabilities of a society;

(*k*) provide for the persons by whom and the form in which copies of entries in books of societies may be certified;

(*l*) provide for the inspection of documents and registers at the Registrar's office and the fees to be paid therefor and for the issue of copies of such documents or registers;

(*m*) provide for the formation and maintenance of a register of members and, where the liability of members is limited by shares, of the register of shares;

(*n*) provide for the resignation and expulsion of members and for the payments, if any, to be made to members who resign or are expelled and for the liabilities of past members;

(*o*) provide for the mode in which the value of deceased member's interest shall be ascertained and, subject to the provisions of section 38, for the nomination of a person to whom such interest may be paid or transferred;

(*p*) provide for the mode in which the value of the interest of a member who has become of unsound mind and incapable of managing his affairs shall be ascertained and for the nomination of any person to whom such interest may be paid or transferred;

(*q*) fix the conditions under which a society may grant loans to its members and the maximum amount of such loans and prescribe the payments to be made and the conditions to be complied with by members applying for loans the period for which the loans may be made and the amount which may be lent to an individual member;

(*r*) provide for the manner of formation and maintenance of reserve funds, and the objects to which such funds may be applied, and for the investment of any fund under the control of the society;

(*s*) prescribe the extent to which a society may limit the number of its members;

(*t*) prescribe the conditions under which accumulated funds may be distributed to the members of a society with unlimited liabilities, and subject to the provisions of subsection (2) of section 47, prescribe the maximum rate of dividend which may be paid by societies;

(*u*) prescribe the procedure to be followed in appeals made to the Registrar or the Minister under the provisions of this Act;

(*v*) prescribe the returns to be submitted by a society to the Registrar and the person by whom and the form in which such returns shall be submitted;

(*w*) prescribe the fees to be paid on applications, registrations and other acts undertaken by the Registrar or his representative under the provisions of this Act; and

(*x*) prescribe anything required by this Act to be prescribed.

(3) The Minister may cause any regulations made under this section to be translated into a language with which such members are acquainted and be made known to such members in a manner customary for the community to which such members belong:

Provided that on any matter of interpretation the English version of the regulations shall prevail.

PART XIV

Miscellaneous Provisions

Remuneration of officers

93.—(1) An officer or member of a registered society shall not receive any remuneration, commission or other payment from the society for services rendered to the society unless the society has, by resolution passed at a general meeting of the society, approved the payment of such remuneration, commission or other payment.

(2) An officer or member of a registered society shall not receive any remuneration, commission or other payment from any person other than the society in respect of any business or transaction entered into by the society:

Provided that in special circumstances the society may, by a resolution passed at a general meeting of the society, consent to such remuneration, salary, commission or other payment being made.

(3) Any officer or member of a registered society who receives any remuneration, salary, commission or other payment in contravention of the provisions of subsection (1) or (2) commits an offence and shall be liable on conviction to a fine not exceeding K10,000 or to imprisonment for a period not exceeding one year or to both such fine and imprisonment and shall, if convicted for contravening the provisions of subsection (1), be ordered to repay the remuneration, salary, commission or other payment received from the society, and default in such payment shall be treated in the same manner as default in paying a fine imposed by a competent court.

(4) Notwithstanding the provisions of subsections (1) and (2), where in the opinion of the Registrar a registered society has improperly paid or consented to the payment to an officer or member of any remuneration, salary, commission or other payment, the Registrar may report the matter to the Minister.

(5) If the Minister is satisfied that such remuneration, salary, commission or other payment has been improperly paid, or payment has been improperly consented to, he may declare that the society shall not, for a period to be stated, pay or consent to the payment to an officer or member of the society of any such remuneration, salary, commission or other payment except with the approval of the Registrar.

(6) Any society which contravenes any such order and any officer or member who is knowingly a party to such contravention commits an offence and shall be liable on conviction, to a fine not exceeding K10,000 or to imprisonment for a period not exceeding one year or to both such fine and imprisonment.

Prohibition of the use of the word "cooperative"

94.—(1) No person other than a registered society shall trade or carry on business under any name or title of which the word "cooperative" is part.

(2) Any person who contravenes the provisions of this section commits an offence and shall be liable on conviction to a fine not exceeding K2,000 for each day on which the offence is continued after conviction.

Offences and penalties

95.—(1) It shall be an offence under this Act if—

(*a*) a registered society or an officer or a member thereof fails to do or to allow to be done any act or thing which is required to be done by this Act or by any regulations made under this Act;

(*b*) a registered society or an officer or member thereof does anything prohibited by this Act or by regulations made under this Act;

(*c*) a registered society or an officer or member thereof neglects or refuses to do any act or to furnish any information required for the purposes of this Act by the Registrar, or any person duly authorized in that behalf by the Registrar;

(*d*) a registered society or any officer or member thereof makes a false return or furnishes false information;

(*e*) any person knowingly or without reasonable excuse disobeys any summons, requisition or lawful order issued under the provisions of this Act, or does not furnish any information lawfully required from him by a person authorized to do so, or which he is required to furnish, under the provisions of this Act;

(*f*) any person acts or purports to act as an officer of a registered society when not entitled to do so;

(*g*) a registered society or an officer or member thereof performs any act which requires the consent or approval of the Registrar without having first obtained such consent or approval.

(2) Every society, officer or member of a registered society or other person guilty of an offence under this section shall be liable on conviction, where no other penalty is provided under this Act, to a fine not exceeding K10,000 or to imprisonment for a period not exceeding one year or to both such fine and imprisonment.

Penalty for soliciting violation of contracts

96. Any person, firm or company having knowledge or notice of the existence of a contract described in section 31 who solicits or persuades or assists any person to sell or deliver a product or service in violation of that contract commits an offence and shall be liable on conviction to a fine not exceeding K10,000 for each offence and shall in addition be ordered to pay the society concerned such damages as the court may see fit to award.

Application of other laws

97.—(1) Nothing in this Act shall be deemed to relieve any society from any of its obligations under any other written laws governing or regulating its business activities.

(2) Where such written laws conflict with this Act, this Act shall be construed with such modifications, adaptation and qualifications as are necessary to enable the society to conform to the laws governing or regulating its business activities.

Certain laws not to apply
Cap. 46:03
Cap. 46:02
No. 16 of 1996

98.—(1) Subject to section 75 of this Act, the provisions of the Companies Act, the Business Names Registration Act and the Labour Relations Act shall not apply to a registered Society.

(2) No society registered under this Act shall be deemed to be a trade union.

Repeal and savings
Cap. 47:02

99.—(1) The Cooperative Societies Act is repealed.

(2) Any subsidiary legislation made under the Act repealed by subsection (1) in force immediately before the commencement of this Act—

(*a*) shall, unless in conflict with this Act, continue in force and be deemed to be subsidiary legislation made under this Act; and

(*b*) may be replaced, amended or repealed by subsidiary legislation made under this Act.

(3) Any agreement or similar arrangement made pursuant to the provisions of the Act repealed by subsection (1) shall continue in force until terminated in accordance with terms and conditions thereof.

(4) Any society and any by-law of a society registered under the Act repealed by subsection (1) shall be deemed to have been registered under this Act.

(5) Any orders, directions, appointments and other acts lawfully done under the Act repealed by subsection (1) and in force immediately before the commencement of this Act shall be deemed to have been made under the corresponding provisions of this Act and shall continue to have effect accordingly.

SUBSIDIARY LEGISLATION

COOPERATIVE SOCIETIES REGULATIONS

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G.N. 15/2002

COOPERATIVE SOCIETIES REGULATIONS

under s. 92

Citation

1. These Regulations may be cited as the Cooperative Societies Regulations.

Register of societies

2.—(1) The Registrar shall keep or cause to be kept at his office a Register to be called "the Register of Cooperative Societies" (hereinafter referred to as "the Register") wherein shall be entered particulars relating to the registration of societies and their by-laws and any amendments thereto.

(2) Every entry in the register shall be made by or under the direction of the Registrar and shall be signed by him.

Alterations, etc.

3. Every alteration, interlineations or erasure in the Register shall be initialed by the Registrar.

4. The Register shall be open to inspection by the public at all reasonable times and free of charge. Inspection

5.—(1) An application for registration of a society under section 6 of the Act shall be made to the Registrar using Form I in the First Schedule and shall be accompanied by an appraisal in writing of the viability of the society. Application

(2) Three copies of the by-laws in English or the local language which the society proposes to adopt shall be submitted together with the application.

6. The Registrar shall register a society which meets the prescribed requirements, and its by-laws, in the Register. Registration

7. Upon the registration of a society, the Registrar shall forward to the society— Forwarding of papers

(*a*) a certificate of registration in Form II in the First Schedule hereto;

(*b*) a copy of the by-laws of the society as approved and certified by him; and

(*c*) a copy of the Act and of the Regulations in English, together with an explanatory memorandum in the vernacular, where the Registrar considers it necessary.

8. Where the Registrar refuses to register a proposed society or its by-laws, he shall give the applicant his reasons in writing for such refusal. Refusal of registration

9. Every registered society shall keep a register to be called "the Register of Members" wherein shall be entered— Register of members

(*a*) the name, address and occupation of each member and a statement of the shares if any, held by him;

(*b*) the date on which each member's name was entered in the register;

(*c*) the date on which any member ceased to be a member; and

(*d*) a nominee, if any, appointed under regulation 15.

10. The election and admission of members to a registered society, other than original members, shall be in such a manner and on such conditions as prescribed by the by-laws. Election of members

11. A member may withdraw from a registered society by giving written notice to the secretary of the registered society but such withdrawal shall be without prejudice to section 36 of the Act. Withdrawal by members

12.—(1) Any member who acts in contravention of these regulations or the by-laws of the registered society or acts in any way detrimental to the interest of the registered society, may be expelled by a vote of two-thirds of the members present at a general meeting. Expulsion of members

(2) The committee shall send to such a member the charge in writing not less than one week before the meeting.

(3) Any expulsion under these regulations shall be without prejudice to any liabilities of the person under section 36 of the Act.

Loss of qualification

13. Any member of a registered society who ceases to qualify for membership shall forthwith cease to be a member of such registered society and the committee shall direct the secretary of the registered society to strike his name off the Register of Members.

Number of members

14. No registered society shall fix a limit to the number of its members.

Nominees

15.—(1) Every member of a registered society may upon admission appoint his nominee.

(2) Every appointment of a nominee by any member of a registered society shall be made in writing and signed by the member in the presence of two attesting witnesses.

(3) No member of a registered society shall be entitled to appoint more than one nominee unless that member holds more than one share.

(4) In any case where more than one nominee is appointed by any Member the number of shares to be transferred to each of these nominees shall be specified at the time of appointment.

(5) Every appointment of a nominee shall be recorded in the Register of members of the registered society.

(6) For the purposes of a transfer to a nominee, the value of any share or interest shall be represented by the sum actually paid for that share or interest by the member holding it unless the by-laws of the registered society provides otherwise.

(7) Where any money is paid to a nominee who is a minor, a receipt given either by the minor or by his guardian shall be sufficient discharge to the society.

(8) Where on the death of a member a nominee does not exist, the society may pay any money due to the deceased member to the personal representative or recognized heirs of that deceased member.

(9) In the event of any person so nominated dying or of the member desiring to cancel any such nomination, the member may nominate in writing another person in the same manner, and necessary alteration shall be made in the Register of Members.

Division of profits

16.—(1) Unless otherwise authorized under section 46 of the Act, no dividend or payment on account of profits shall be made by a society registered with unlimited liability until the reserve fund has reached a proportion of not less than one-tenth of the total liabilities of the registered society.

(2) No registered society shall pay a dividend if the rate of interest on loans granted by it to its members exceeds ten per centum per annum.

(3) No registered society shall pay a dividend on share capital exceeding five *per centum* per annum on the capital actually paid up.

(4) A bonus based on wages or on the value of the products of a member, or a bonus or rebate on patronage calculated in proportion to the amount of the business done by each member with the registered society may be distributed periodically to the members from surplus funds after the deduction of all expenditure and after making provision for bad and doubtful debts and making allocation to the reserve fund.

Maximum liability

17.—(1) Every registered society shall, from time to time, at a general meeting, fix the maximum liability it may incur in loans or deposits whether from members or non-members.

(2) The maximum liability fixed under subregulation (1) shall be subject to the approval of the Registrar, who may at any time reduce it.

(3) No registered society shall receive loans or deposits which will make its liability exceed the limit approved by the Registrar.

Supreme authority

18.—(1) The supreme authority in a registered society shall be vested in the general meeting, at which every member has the right to attend vote on all questions, unless the by-laws of the society provide for some alternative form of representation.

(2) Every member shall have one vote which shall be exercised in person and not by proxy.

First meeting

19. The first meeting of members shall have the same powers as are given to the annual general meeting, and shall be held immediately or not later than one month after the receipt of the certificate of registration of the society.

Annual general meeting

20.—(1) The committee shall convene the annual general meeting on receipt of the report of the audit of the accounts of the registered society from the Registrar or any person authorized by the Registrar in accordance with regulation 59:

Provided that the Registrar may at any time after the audit of the accounts has been completed convene the annual general meeting which shall proceed as if it has been convened by the committee.

(2) At least fifteen days notice shall be given before any annual general meeting is held.

Functions of annual general meeting

21. The functions of the annual general meeting shall be—

(*a*) to confirm the minutes of the previous annual general meeting and of any special general meeting;

(*b*) to consider the reports of the committee and the balance sheet together with the report of the audit of the accounts of the registered society for the previous year;

(*c*) to approve the accounts or if the accounts are not approved, cause to the secretary to notify the registrar who shall consider the matter and make his decision thereon, and such decision as to the correctness of the accounts shall be final and conclusive;

(*d*) to hear and decide upon any complaints brought by members aggrieved by a decision of the committee; and

(*e*) to transact any other general business of the registered society.

Special general meeting

22.—(1) A special general meeting may be convened at any time by the committee on receipt of a demand stating the object of the proposed meeting signed or attested by one fourth of the persons who are members of the registered society.

(2) It shall be the duty of the chairman of the committee to convene such a meeting giving eight days notice.

(3) Where the chairman of the committee fails to convene a meeting within fourteen days from the receipt of a demand as aforesaid, the members applying for such a meeting shall have the right to convene the meeting by notice which shall contain the object of the proposed meeting and a statement to the effect that the meeting is convened on the failure of the chairman to convene the meeting.

(4) Notwithstanding the provisions of subregulations (1), (2) and (3), the Registrar or a person authorized by him may at any time—

(*a*) summon a special general meeting of the registered society in such manner and at such time and place as he may direct; and

(*b*) direct what matters shall be discussed at the meeting, and such meeting shall have all the powers of a meeting called according to these regulations.

Quorum at general meeting

23.—(1) When a registered society consists of not more than forty members, one-half of the number of the members or ten members, whichever is the less, shall form a quorum for the purposes of the annual or special general meeting, and when a registered society consists of more than forty members, one-fourth of the total number of the members of such society shall form a quorum for the purposes of the annual or special general meeting.

Provided that—

(*a*) When any meeting is summoned by the Registrar, any members present at such meeting shall be deemed to form a quorum;

(*b*) in the case of a society of which a registered society is a member or of which there are branches, the quorum at an annual general meeting of the society shall be as provided for in the by-laws of the society.

(2) If within one hour after the time fixed for a general meeting other than a meeting convened by the Registrar the members present are not sufficient to form a quorum, such meeting shall be considered as dissolved if convened on the demand of members; in all other cases it shall stand adjourned to the same day in the next week at the same time and place and a notice to that effect shall be posted by the secretary within twenty-four hours, and if at the subsequent meeting a quorum is still not formed, the members present shall form a quorum.

Chairman of the general meeting

24.—(1) The chairman of the committee or in his absence any other person elected by a majority of those present shall preside at the annual or special general meeting.

(2)—(*a*) the secretary of the committee or in his absence any other person nominated in writing by the chairman of the committee shall act as secretary at the meeting; and

(*b*) the chairman of the committee, if necessary, may nominate other officers to assist at the meeting.

(3) The chairman may by the decision of the meeting adjourn the meeting to a different time and place but no other business shall be transacted at such a meeting other than the business left unfinished at the preceding meeting.

(4) The chairman shall have the right to order the closure of a discussion and put a matter to vote.

Voting at general meetings

25. Any question submitted to the decision of the members present at a general meeting unless otherwise dealt with in these Regulations, shall be decided by a majority of votes.

Method of voting

26.—(1) At any meeting a resolution put to the vote shall be decided on a show of hands unless voting by call of names or a ballot is demanded by the least five of the members present before the declaration of the result of the show of hands, and in such case voting by call of names or a ballot shall be taken as the case may be.

(2) The chairman of the committee shall have a deliberative vote and in case of an equality of votes, shall be entitled to a casting vote.

In the case of a meeting convened by the Registrar and presided over by him or his representative, he or his representative shall not be entitled to vote except on an equality of votes, in which case he shall have a casting vote.

(3) In respect of every resolution put to the vote—

(*a*) the chairman shall declare whether it has been carried or lost, whether on a show of hands, by call of names or by ballot and whether unanimously by a particular majority; and

(*b*) an entry to that effect in the minute book shall be conclusive evidence of anything therein contained.

Minutes of general meeting

27. Minutes of the meetings shall be entered in the minute book and signed for by the chairman and secretary and shall contain the following particulars—

(*a*) the number of the members present at the meeting and the name of the chairman or the person who presided over the meeting;

(*b*) time fixed for the meeting and the time the meeting commenced;

(*c*) the total number of members on the date on which the meeting was held; and

(*d*) all resolutions passed or decisions made at the meeting.

Election of committee

28.—(1) The committee shall be elected at the first meeting of the registered society and, subject to regulation 35, its members shall hold office until the election of a new committee and they shall be eligible for re-election.

(2) The committee shall consist of such number of members as may be provided in the by-laws of the registered society, which shall also specify the tenure and what number of members shall constitute a quorum.

Chairman of committee

29.—(1) The committee shall elect its own chairman, who shall have a deliberative vote and on an equality of votes shall be entitle to a casting vote.

(2) In the temporary absence of the chairman, the committee shall elect one of their number to perform the chairman's duties.

Duties of committee

30.—(1) The committee shall have the following functions and powers—

(*a*) represent the registered society before all competent public authorities and in all dealings and transactions with third persons;

(*b*) institute or defend suits brought in the name of or against the registered society; and

(*c*) generally carry out such functions in the management of the affairs of the registered society as have not been specially

assigned by these Regulations or the by-laws of the registered society to general meetings or to an officer of the registered society.

(2) The committee shall always keep a copy of the latest annual balance sheet of the registered society together with latest audit report of the registered society for inspection during office hours by any member of the registered society.

Meetings of committee

31.—(1) The committee shall meet as often as the business of the registered society may require and in any case not less frequently than once a month.

(2) The meetings of the committee shall be summoned by the secretary in writing.

Procedure at meetings of committee

32. At each committee meeting, the secretary shall—

(*a*) read the minutes of the preceding meeting;

(*b*) produce the cash book, details of the entries of receipts and payments made since the last meeting;

(*c*) together with the treasurer, produce cash in their possession for verification by the committee;

(*d*) produce a statement showing the loans due and unpaid, for determination by the committee as to what action to be taken in each case;

(*e*) produce applications for loans, if any, for determination by the committee in accordance with the priority of receipt; and

(*f*) submit any other business for consideration by the committee.

Voting at meetings of committee

33. Any question submitted to the committee for its decision shall be decided at a meeting by a majority of votes of those members present at the meeting.

Minutes of meetings of committee

34. Minutes of committee meetings shall be recorded by the secretary in the minute book and shall be signed by the chairman or the person who presided over the meeting and by the secretary and shall contain the following particulars.

(*a*) the name of the chairman or the person who presided over the meeting;

(*b*) the names of the members present and the date of the meeting; and

(*c*) a summary of all matters discussed and decisions made and a record as to whether each decision was made unanimously or by a majority.

Failure to attend meetings of committee

35. Any member of the committee who has had notice and without good reason in the opinion of the committee, fails to attend at least three consecutive meetings of the committee shall be deemed to have vacated his office which shall thereupon be filled as provided by regulation 36.

Vacancies on committee

36.—(1) The remaining members of the committee shall fill vacancies occurring on the committee within thirty days by election.

(2) Any member elected under subregulation (1) shall hold office until the expiration of the term of office of the committee member who has vacated.

Borrowing powers

37. The committee may borrow money on behalf of the registered society to an amount not exceeding such total amount as may have been fixed in accordance with regulation 17.

Banking account

38.—(1) The committee may open a banking account.

(2) All cheques shall be signed by two members of the committee and the treasurer.

Employees

39. The committee may—

(*a*) appoint such employees as it considers necessary; and

(*b*) fix the salaries, wages or remuneration of every employee, subject to any scales laid down by a resolution the members in a general meeting.

Application for a loan

40. Members who desire to obtain a loan from a registered society shall—

(*a*) submit an application to the committee stating the amount and the purpose for which the loan is required;

(*b*) the term for which it is asked;

(*c*) whether it shall be repaid by instalments; and

(*d*) the names of the proposed sureties or any other security which is offered.

Approval of a loan

41.—(1) The committee shall consider at a meeting every application for a loan and if the committee is satisfied with the trustworthiness of the applicant, the sufficiency of the security offered, and the prospects of advantage to the borrower in the way of increased production, or economy or otherwise, it may approve the loan.

(2) No person other than members of the committee and the secretary shall be present at any meeting of the committee when an application for a loan is under consideration.

(3) A member of the committee who applies for a loan or who is proposed as a surety for a loan shall withdraw while the relevant application is being discussed.

(4) Where there is a difference of opinion concerning the approval of a loan, the matter shall be put to vote by ballot.

(5) The proceedings with regard to loans at a committee meeting shall be kept secret, and any member of the committee or officer of the registered society who infringes this regulation shall be liable to immediate expulsion.

Security for loans

42. Loans approved by the committee shall only be granted to members who are able to obtain two sureties or who can give other security approved by the committee.

Purpose of loans

43.—(1) No loan shall be granted except for a purpose approved in each case by the committee.

(2) All loans granted shall be applied by the borrowing members to such purpose as approved by the committee.

Documents relating to loans

44. When a loan is approved by the committee, a notice shall be sent to the borrower to that effect, and before the amount is advanced, the borrower and his sureties shall execute an instrument in writing setting out the terms of repayment of the loan and containing such other terms and conditions as the committee may consider necessary.

Restrictions on loans to defaulters

45. A member who—

(*a*) is in default in the payment of a loan or of an instalment of a loan; and

(*b*) does not satisfy the committee that such default is due to a good cause,

shall not be entitled to receive another loan from the registered society.

Extension of a loan

46. Where by reason of any reasonable cause, a member is unable to discharge his obligations to the registered society and notifies the secretary in writing before a loan is due, the committee may extend the time fixed for payment on such conditions as it thinks fit.

Misapplication of a loan

47. Where the committee is satisfied that a member of the registered society who obtained a loan has applied the proceeds thereof to a purpose other than the purpose which was stated in the application thereof, the committee may, by notice in writing to such a member, demand payment of the loan before the agreed date of payment.

Recovery of loans

48. The committee shall take steps to recover a loan by referring the matter to the Registrar as provided under section 89 (2) of the Act where—

(*a*) a loan or an instalment of a loan has not been paid on the date on which it became due; and

(*b*) no extension for the repayment thereof has been given to the debtor by the committee under regulation 46.

Suspension and resumption of loans

49. Where the Registrar is of the opinion that the manner in which loans are being made by credit societies as disclosed by an examination or investigation under the Act, or that the amount of loans being made threaten the financial stability of the credit societies and interest of its members, he may—

(*a*) by written notice sent or delivered to the chairman and treasurer or the manager of the registered society, as the case may be, order the suspension of loaning operations during such period as he may prescribe;

(*b*) appoint an officer of a credit society or some other competent person as an administrator to collect loans in arrears, place other loans outstanding in a condition to ensure repayment and take charge of other operations of the credit society; and

(*c*) permit the resumption of loan operations after the financial position of the credit society has been restored to a satisfactory basis, under the direction of its own officer or subject to assistance from such special directors or other special officers as he may appoint.

Marketing

50.—(1) Every member of the society shall deliver to the society at such place as the committee shall direct such amount of articles produced or obtained by him as may be prescribed in the by-laws or in the relevant contract to be disposed of by the society.

(2) Any member who is approved or adjudged in accordance with section 89 of the Act to be guilty of a breach of the by-laws or a contract, as the case may be, shall pay to the registered society as liquidated damages such sums as may be specifically assessed or ascertained in a manner prescribed by the by-laws or by the relevant contracts and such sum shall be deemed to be a debt due to the registered society.

Bad debts

51. The committee may, with the approval of the Registrar, cause bad debts to be written off the books of the registered society.

Preparation of annual accounts and report

52. The committee shall in every year and as soon as conveniently possible within such time as the Registrar may direct—

(*a*) cause the secretary to prepare and send to the Registrar accounts and the yearly balance sheet closed on the last working day of the report preceding year together with a detailed statement of the profit and loss account; and

(*b*) prepare a report on the year's activities of the registered society to be presented to the annual general meeting.

Duties of manager

53. Where the committee appoints a manager to manage the business and the property of a registered society, the duties of the secretary or treasurer, may be modified or altered in accordance with allotment of such duties as may be assigned by the committee to the manager and other officers.

Appointment of officers

54.—(1) The committee shall appoint a secretary to the registered society who may be either a member of the committee or a paid employee of the registered society:

Provided that where the secretary is a paid employee of the Registered society, he shall not become a voting member of the Committee.

(2) The committee may, if it thinks fit, require the secretary or any other officer, on appointment, to give such security as it may determine.

Duties of a secretary

55. The duties of a secretary of a registered society shall be as specified in the by-laws of the society.

Treasurer

56. The committee shall appoint one of the members of the committee, not being the chairman, to be the treasurer.

Security by treasurer

57. The treasurer may be required to give security for such amount as may be determined by, and to the satisfaction of, the committee.

Duties of treasurer

58. The duties of the treasurer shall be—

(*a*) to receive from the secretary money collected by the secretary on behalf of the registered society, and to give the secretary a receipt;

(*b*) to advance money to the secretary necessary for the affairs of the registered society and obtain from the secretary a receipt;

(*c*) to deposit in the account of the registered society in its bank any amount not immediately required as determined by the committee;

(*d*) to keep separate the money belonging to the registered society and on no account to mix it with any other money;

(*e*) to produce at all times when called upon by the committee, the Registrar or any person authorized by the Registrar, the money in his possession which belongs to the registered society; and

(*f*) to keep a record of the money received by him from the secretary and of the money paid to the secretary.

Audit of accounts

59.—(1) Every registered society shall keep accounts in such a manner as may from time to time be prescribed by the Registrar.

(2) Every registered society shall cause its accounts to be audited by an auditor authorized by the Registrar at least once in every year.

(3) The auditor shall—

(*a*) have access to all the books and accounts of the registered society;

(*b*) examine every balance sheet and annual return of the receipts and expenditures, funds, and other effects of the registered society, and verify the balance sheet and annual return of receipts and expenditures with the accounts and vouchers relating thereto; and

(*c*) either—

(i) sign the balance sheet and annual return of receipts and expenditures as found by him to be correct, duly vouched for and report to the Registrar accordingly; or

(ii) report to the Registrar in what respects he finds the same incorrect, unvouched for or not in accordance with the Act.

(3) The Registrar shall thereupon forward the report of the auditor to the committee.

Audit and supervision fund

60.—(1) There shall be constituted a fund to be known as the Audit and Supervision fund ("the Fund") and every registered society shall, when called upon to do so by the Registrar, make an annual contribution to the Fund at a rate and in a manner as determined by the Minister by notice published in the *Gazette*.

(2) The fund shall be held and administered by the Registrar for the benefit of the contributing registered societies, and he shall make such payments from the Fund as he shall deem necessary.

(3) The Registrar shall report every year to the Minister in respect of the income derived from contributions, the expenditure he made from the Fund, and the balance.

By-laws

61.—(1) A registered society shall make by-laws in respect of the following matters—

(*a*) its name;

(*b*) its registered office and postal address;

(*c*) the area to which its operations and membership shall be confined;

(*d*) the objects of the society;

(*e*) the purpose for which its funds may be applied;

(*f*) the disposal of its accumulated funds;

(*g*) the qualifications for membership, the terms of admission of members, and the mode of their admission;

(*h*) the withdrawal and expulsion of a member and the payment, if any to be made to such a member and time within which such payment shall be made;

(*i*) the rights, liabilities and obligations of members;

(*j*) the transfer of shares or interest thereof of members;

(*k*) the manner of raising funds, including the maximum rate of interests on deposit;

(*l*) its committee meetings, the procedure and quorum at such meetings, the powers of such meetings and representation and voting at such meetings;

(*m*) the appointment, suspension and removal of members of the committee and officers;

(*n*) powers and duties of the committee and officers;

(*o*) the period of its financial year;

(*p*) the authorization of the officers to sign on its behalf; and

(*q*) the settlement of disputes.

(2) Where the objects of the society include the creation of funds to be lent or advanced to its members, the by-laws shall also be made in respect of the conditions on which loans or advances may be made to its members including—

(*a*) the rate of interest;

(*b*) maximum amount which will be lent to a member;

(*c*) extension, renewal and recovery of loans;

(*d*) the period and purpose of the loans;

(*e*) security for loans; and

(*f*) the consequence of default in the repayment of any sums due.

Amendment of by-laws

62.—(1) Where a registered society intends to amend its by-laws, the proposed amendment shall only be made—

(*a*) where the members of the society were given notice of the amendment of at least 15 clear days; and

(*b*) by a resolution of the members at a general meeting.

(2) a resolution under paragraph (*b*) of subregulation (1) shall not be valid and effective unless—

(*a*) in the case of the registered society with unlimited liability, half of the members of the society are present at the meeting and three quarters of them vote in favour of the resolution; or

(*b*) in the case of a registered society with limited liability, a majority of members present at the meeting vote in favour of the resolution;

(3) Notwithstanding subregulations (1) and (2) above, where an amendment has received prior approval of the Registrar, such amendment may be adopted by a two-thirds majority of the members present and voting at the meeting.

(4) An amendment sent to the Registrar shall be accompanied by a certificate in Form IV in the First Schedule to these Regulations together with a copy of the amendment in quadruplicate.

(5) The Registrar may by a written notice, call upon a registered society to make such amendments to its by-laws as he considers necessary or desirable in its own interest, within a period not exceeding two months from the date of the notice.

(6) The notice shall state the exact amendment which the society shall make.

(7) Where the registered society fails to make the amendment under subregulations (5) and (6) within the specified period, the Registrar may, after considering any objection put forward by the society in writing not later than fourteen days after the expiry of the specified period, proceed to make and register the amendment.

Copies of entries

63.—(1) A copy of an entry in the book of a registered society may be certified on the copy, by declaring that it is a true copy of such entry and that the book containing the entry is still in the custody of the registered society.

(2) A declaration made under subregulation (1) shall be dated and signed by the secretary and one member of the committee.

Reference of dispute to the Registrar for decision

64.—(1) The following may refer a dispute to the Registrar for his decision—

(*a*) the committee;

(*b*) the registered society in pursuance of a resolution in that behalf taken in a general meeting;

(*c*) any party to the dispute;

(*d*) any member of the registered society; or

(*e*) a liquidator.

(2) Where a matter is being referred to the Registrar, it shall—

(a) be dated;

(*b*) specify the dispute;

(*c*) set out full particulars of the dispute; and

(*d*) be signed by the party making it.

Reference to arbitration by the registrar

65.—(1) Where the Registrar decides to refer a dispute to arbitration, he shall make an order of reference.

(2) Every order of reference shall—

(*a*) specify the name, surname, place of abode and occupation of the arbitrator or arbitrators;

(*b*) set out the dispute and full particulars thereof; and

(*c*) limited the time within which the award shall be forwarded by the arbitrator or arbitrators to the Registrar.

(3) Where the Registrar decides to refer a dispute to more than one arbitrator, such reference shall be made to three arbitrators, each party to the dispute shall nominate one arbitrator and the third arbitrator shall be nominated by the Registrar and shall act as chairman.

(4) Where reference is made to three arbitrators, the following provisions shall apply—

(*a*) if a party to the dispute fails to nominate an arbitrator within such time as the Registrar may specify, the Registrar may make the nomination himself;

(*b*) if an arbitrator nominated by one of the parties to the dispute dies, or refuses or neglects to act, or by absence or otherwise becomes incapable of acting, the Registrar shall call upon the party concerned to nominate a new arbitrator within such time as the Registrar may specify and if no new arbitrator is nominated accordingly, the Registrar may nominate one himself; and

(*c*) if the arbitrator who dies, or refuses or neglects to act, or becomes incapable of acting, was nominated by the Registrar, a new arbitrator shall be nominated in his place by the Registrar.

Proceedings before an arbitrator or arbitrator

66.—(1) The proceedings before an arbitrator or arbitrators shall, as nearly as possible, be conducted in the same way as proceedings before a court of law, and in particular the following provision shall apply—

(*a*) the Registrar shall give at least ten days notice in writing to the parties in respect of the time and venue of the proceedings;

(*b*) a record of the evidence adduced before the arbitrator or arbitrators shall be made, dated and signed by the arbitrator or arbitrators;

(*c*) documents produced as exhibits before the arbitrator or arbitrators shall be marked, dated and initialed by the arbitrator or arbitrators and shall be attached to the file of the proceedings; and

(*d*) in the absence of any party duly notified to attend, the dispute may be decided by the arbitrators *ex parte*.

(2) The award of the arbitrator or arbitrators shall—

(*a*) in the case of three arbitrators, be reached by a majority;

(*b*) be in writing;

(*c*) be dated and signed by the arbitrator or arbitrators; and

(*d*) state the amount of the costs and expenses of the arbitration, if any, and by which party or parties to the dispute the costs and expenses are to be paid.

(3) Upon the completion of the proceedings, the arbitrator or arbitrators, shall forward to the Registrar, the file of the proceedings and the award.

Proceedings before the Registrar

67. Where the Registrar exercises the power of deciding a dispute himself, the proceedings before him in relation thereto shall, as nearly as possible, be conducted in the same way as proceedings before a court of law and regulation 66 shall apply, *mutatis mutandis*, to such proceedings.

Control of registered society by the Registrar

68.—(1) Where it appears to the Registrar that the committee of a registered society is unable to properly discharge its duties, or is unable to adequately safeguard the property and business interests of its members, he may assume control of such society and may exercise all or any of the powers and perform all or any of the functions of the committee of such society until such a time as he is satisfied that such committee is able to resume proper control of such society.

(2) Where the Registrar, assumes control of a registered society, the committee of such society may thereupon cease to exercise all or any of its powers or any of its functions.

(3) Whenever the Registrar assumes control of a registered society, he shall record such fact in writing and shall make a similar record when the control of such society is resumed by its committee

(4) The Registrar shall submit a report to the members of a registered society on his management of such society at the first available opportunity and at such times thereafter as are required by the Act.

Restriction of the taking of legal and other proceedings against Registrar

69.—(1) No action, suit, or other legal proceedings whatsoever, whether civil or criminal, shall be instituted against the Registrar and no claim to compensation or indemnity shall be entertained regarding any act, matter or thing done or purported to be done, in good faith by the Registrar under these Regulations.

(2) Subregulation (1) shall not prevent the institution of any proceedings, whether civil or criminal, by or on behalf of the Government or of the Registrar.

Fees and Forms

70. The fees specified in the Second Schedule shall be payable for the matters to which they relate, and the forms set out in the Third Schedule and such particulars contained in those forms and not particulary prescribed by the act are hereby prescribed as particulars required under the Act.

FIRST SCHEDULE

FORMS

FORM I

THE COOPERATIVE SOCIETIES ACT
(Cap. 47:02)

reg. 5 (1)

APPLICATION FOR REGISTRATION OF A COOPERATIVE SOCIETY

1. We, the undersigned, ...
.....
.....
.....
.....
.....
.....

(insert name, address and occupation of at least ten persons, or at least two officers of each society if application is made by registered cooperative societies) desire to form a cooperative society under the Cooperative Societies Act, and hereby apply for registration.

2. The name of the proposed society is (insert proposed name) .....
.....

3. The registered office of the society is to be at (insert proposed address) .....
.....

   and its postal address will be

4. Enclosed are three copies of the proposed by-laws which specify the objects of the society.

5. These proposed by-laws were approved by persons willing to become members, at a general meeting held at ..... on
....., ...

6. ..... persons, including the undersigned, are now willing to become members and have made the payment necessary for admission to membership as prescribed in the enclosed by-laws.

7. The registration fee is enclosed.

8. We, the undersigned, have consented to direct the affairs of the proposed society as required by regulation 29 (1) of the Cooperative Societies Regulations, until our successors are elected at the first annual general meeting held after registration of the society.

Dated at ..... the ..... day of .....

Witness ....

.....

.....

.....

Certified correct ....

Acting Chairman

.....

Acting Secretary

.....

Acting Treasurer

FOR USE OF REGISTRAR ONLY

1. Application for registration approved .....
2. Approval deferred pending receipt of further information .....
3. Application refused with reasons therefore given to the Minister and to the applicants, and registration fee refunded (regulations 8).....

FORM II

GOVERNMENT OF MALAŴI

COOPERATIVE SOCIETIES ACT

(CAP. 47:02)

CERTIFICATE OF REGISTRATION

reg. 7

This is to certify that

I have today the.....

registered the ..... Cooperative Society Limited as a Cooperative Society with limited liability under the provisions of the Cooperative Societies Act (Cap. 47:02), of the Laws of Malaŵi.

.....

Registrar of Cooperative Societies

FORM III

THE COOPERATIVE SOCIETIES ACT reg. 52

(CAP. 47:02)

ANNUAL RETURN FOR THE YEAR .....

(To be submitted within four months of the end of the financial year)

1. Name of the registered society .....
2. Registered number .....
3. Date of registration .....
4. Registered address .....
5. Type of society .....
6. The liability of the members is—
   (i) limited to the nominal value of each share held;
   (ii) limited to ..... times the nominal value of each share held;
   (iii) unlimited.
7. The number of members of the society is .....
8. The number of shares issued is .....
9. The nominal value of one share is MK .....
10. The maximum liability which the society may incur in loans or deposits is MK .....
11. The total indebtedness of the society secured by registered charges is MK .....
12. The date the annual general meeting was held .....
13. Particulars of officers for the financial year from ..... to ..... are as follows—

Title of office	*Name of Holder*
Chairman	.....
Vice-Chairman	.....
Secretary	.....
Committee members	.....

14. A certified true copy of the audited accounts and balance sheet is filed herewith.

Dated this ..... Day of .....

(Signed) .....

Secretary

FORM IV

THE COOPERATIVE SOCIETIES ACT

(CAP. 47:02)

CERTIFICATE OF AMENDMENT OF BY-LAWS reg. 62

We .....

Chairman and secretary of .....

Cooperative Society Limited hereby certify—

(1) that the enclosed amendment of the by-laws was made at a general meeting held on .....

(2) that on that date there were ..... members of the society of whom ..... were present at the meeting;

(3) that ..... members voted for the amendment;

(4) that proper notice of the meeting and the proposed amendment were given to all members of the society;

(5) that a voting paper was duly issued to every member;

(6) that the amendment has received the prior approval of the Registrar.

.....
Chairman

.....
Secretary

.....
Treasurer

Date .....

SECOND SCHEDULE

reg. 70

Fees

		K	t
1.	On registration of society	250	00
2.	On registration of union	500	00
3.	On registration of federation	1,000	00
4.	On inspection of by-laws by Registrar	100	00
5.	On registration of an amendment	150	00
6.	Replacement of lost certificate	100	00

THIRD SCHEDULE

General Forms

Form A

THE COOPERATIVE SOCIETIES ACT

(Cap. 47:02)

reg. 70

PARTICULARS OF CHARGE CREATED BY A REGISTERED SOCIETY

To: The Registrar of Cooperative Societies
P.O. Box 30366
Lilongwe 3

Name of registered society .....

Registered number .....

Date and description of the instrument creating or evidencing the mortgage or charge

.....

Amount secured by the mortgage or charge MK .....

Short particulars of the property mortgaged or charged—

.....

.....

.....

Land Registry particulars—

.....

.....

.....

Names, addresses and description of the mortgages or persons entitled to the charge—

.....

.....

.....

.....

Dated this ..... day of .....

.....

Secretary

FORM B

THE COOPERATIVE SOCIETIES ACT

(CAP. 47:02)

REGISTER OF CHARGES reg. 70

Name of registered society .....

Registered number .....

Date of charge .....

Date of acquisition of property .....

Amount secured by charge .....

Particulars of property charged .....

Person entitled to charge .....

Date of resolutions authorizing issue of series of debentures—

.....

Date of registration .....

Memorandum of satisfaction .....

Registration of notice of appointment of receiver or manager—

.....

Remarks .....

.....

.....

.....

.....

.....

.....

FORM C

THE COOPERATIVE SOCIETIES ACT

(CAP. 47:02)

CHRONOLOGICAL INDEX OF CHARGES s.59

Serial No. .....

Register of Charges folio number .....

Date of charge .....

Amount of charge .....

Particulars of charge .....

Person entitled to charge .....

Name of society creating the charge .....

.....

Date of registration .....

Remarks .....

.....

.....

GAMING

CHAPTER 47:03

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CHAPTER 47:03

GAMING

ARRANGEMENT OF SECTIONS

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---

26 of 1996
21 of 1998
G.N. 55/1998
56/1998

An Act to provide for the regulation of gaming; for the control and licensing of gaming premises; for the imposition and recovery of a tax on gaming; and for matters connected with or incidental to the foregoing

[1st August, 1998]

PART I

Preliminary

Short title

1. This Act may be cited as the Gaming Act.

Interpretation
21 of 1998

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

"Board" means the Gaming Board established under section 3 (1);

"Chairman" means the person designated as such under section 3 (2);

"game of chance" includes a game of chance and skill combined or a pretended game of chance, but does not include an athletic game or sport;

"gaming" means the playing of a game of chance for winnings in money or money's worth;

"gaming machine" means a machine for playing a game of chance, being a game which requires no action by a player other than the actuation or manipulation of the machine;

"gaming premises" means premises which are kept or used (whether on one occasion or more) for gaming, and to which the public has access for the playing therein of a game of chance, whether the game of chance be an unlawful game or not;

"instruments of gaming" includes cards, dice, counters, coins, tickets, gaming tables, boards, boxes, birds and animals, used for the purpose of gaming;

"licensed gaming premises" means premises licensed under section 14 as premises which the public may use for the purpose of gaming;

"licensee" means a person issued with a licence under section 14;

"money" includes a cheque, bank note, postal order or money order;

"newspaper" includes a journal, magazine or other periodical publication;

"tax" means the tax payable under section 17;

"unlawful game" means a game of chance the chances of which are not alike to all players, including the banker or other person or persons by whom the game is managed or against whom the other players stake or play;

"winning" includes winnings of any kind and a reference to the amount or to the payment of winnings shall be construed accordingly.

PART II

Gaming Board

Establishment of Board 21 of 1998

3.—(1) There is hereby established a board to be known as the Gaming Board (in this Act otherwise referred to as the "Board"), which shall be a body corporate having perpetual succession and a common seal and shall, under that name, be capable of suing and being sued and of purchasing or otherwise acquiring, holding and alienating movable or immovable property and, subject to the provisions of this Act, of performing all such acts as bodies corporate may by law perform.

(2) The Board shall consist of not more than nine and not less than seven members, to be appointed by the Minister.

(3) The Minister shall designate one of the members appointed under subsection (1) as Chairman.

(4) In making an appointment under this section, the Minister may require the person to be appointed to declare whether he has any, and if so what, financial interest in any gaming undertaking operating in Malaŵi.

(5) The members of the Board shall be paid such remuneration and allowances as the Minister may determine.

(6) The members of the Board shall hold office for a period of three years but shall be eligible for re-appointment.

(7) In the event of the Chairman being absent from any meeting of the Board, the members present shall elect from among themselves a person to act as chairman for that meeting.

(8) At all meetings of the Board, one-half of the Board members shall form a quorum.

(9) Meetings of the Board shall be held at least once in every three months and at such other times and at such places as the Chairman may determine.

(10) The Chairman shall have a deliberative vote and, in the case of an equality of votes, shall also have a casting vote.

(11) The Board may invite, for such length of time as it thinks fit, any person whose knowledge or advice it may require, but a person so invited shall not be entitled to vote at any meeting of the Board or be counted as a member for the purpose of forming a quorum.

(12) There may be seconded to the service of the Board such number of public officers as the Board may request and a public officer so seconded shall perform his duties solely under the directions of the Board.

(13) All permits and licences issued under this Act, and all communications from the Board, shall be under the hand of the Chairman or of some person duly authorized by him, and shall be published in the *Gazette*.

(14) The Chairman shall submit to the Minister for publication an annual report of the proceedings of the Board containing particulars with respect to such matters as the Minister may direct.

21 of 1998

(15) In order to carry out its purposes and exercise its powers the Board shall appoint a Chief Executive Officer and such other officers and servants as may be necessary for the due and proper carrying out of its purposes or the appropriate exercise of its powers.

21 of 1998

(16) The Board shall, with the approval of the Minister, fix the terms and conditions of service for the Chief Executive Officer and all its other officers and servants.

Powers of the Board
21 of 1998

4.—(1) The Board shall have power—

(*a*) to issue licences in accordance with this Act and any regulations made thereunder;

(*b*) during the subsistence of a licence to vary, or, for good cause, to suspend or cancel it:

Provided that the Board shall not suspend, cancel or vary a licence without giving—

(i) reason for its decision; and

(ii) the licensee an opportunity to show cause against the suspension, cancellation or variation;

(*c*) to inquire into complaints against licensees.

(2) Subject to any general or special direction by the Minister, the Board shall regulate its own procedure.

(3) The Board may authorize the Chief Executive Officer and other officers and servants of the Board to exercise on its behalf, at any time when it is not meeting, such of its powers as it may specify:

Provided that the exercise of those powers shall, to the extent required by the Board, be reported by the Chairman, without unreasonable delay, at the next meeting of the Board.

PART III

Control and Licensing of Gaming

Application for licences 21 of 1998

5.—(1) Any person who desires to obtain, renew, transfer or vary a licence under this Act shall make an application to the Board in the form and manner prescribed.

(2) On receipt of an application under subsection (1), the Board may make such investigations or require the submission of such declaration or further information as it may deem necessary to enable it examine the application.

(3) After making the investigations and considering any information or declaration as may have been required in terms of subsection (2), the Board may grant, renew or, with reasons, vary a licence, or refuse a licence or renewal or variation thereof:

Provided that no licence shall be issued under this act unless—

(*a*) the Board has satisfied itself that the applicant is a fit and proper person to hold the licence and, that the premises in respect of which the application is made are suitable for the purpose;

(*b*) the Board has sent a copy of the application for the licence to the local authority within whose area of jurisdiction the applicant proposes to conduct his business and, has given the local authority reasonable opportunity to make representations with respect to the application, and such representations shall be submitted within twenty-one days from the date of the application from the Board; and

(*c*) the applicant has furnished the Board with prescribed non-refundable deposit:

Provided that the security shall be refunded or cancelled on the expiration or cancellation of the licence in respect of which it has been deposited or given unless it is forfeited under section 27.

(4) Any person who makes a false statement or declaration in an application for, or a renewal or variation of, a licence shall be guilty of an offence and liable to a fine not exceeding K10,000 and to imprisonment not exceeding two years.

Provision of licences
21 of 1998

6.—(1) Every licence issued under this Act shall state the precise location and extent of the premises, if any, to which it relates and shall be endorsed with every condition imposed by the Board under this Act.

(2) A licensee who wishes to transfer the conduct of his business to premises other than those authorized in terms of his licence may apply to the Board for authority to do so.

(3) Upon receipt of such an application in accordance with subsection (2) the Board may vary the licence so as to authorize the conduct of the licensee's business at the premises the subject of the application.

Display of licence and surrender, suspension or cancellation
21 of 1998

7.—(1) Every licence issued by the Board under this Act shall, during the period of its validity, be prominently displayed by the licensee at his place of business in a part to which the public have access.

(2) On notification to a person that his licence has been cancelled or suspended, that person shall surrender his licence to the Board.

(3) Any person who, without reasonable cause or excuse, fails to comply with this section, or who displays a licence which is not currently valid, shall be guilty of an offence and liable to a fine not exceeding K2,000 and to imprisonment not exceeding six months.

Duration of licence
21 of 1998

8. Every licence issued under this Act shall, unless therein otherwise provided, expire on the 31st March next following the date of issue.

Books to be kept by licensee
21 of 1998

9.—(1) A licensee shall enter regularly, in a book kept for that purpose, all such particulars as may be prescribed.

(2) A licensee who—

(*a*) contravenes subsection (1);

(*b*) keeps any book, record or account required to be kept under this section which is false in any material particular; or

(*c*) makes in any such book an entry which is false in a material particular,

shall be guilty of an offence and liable to a fine not exceeding K50,000 and to imprisonment not exceeding five years.

Submission of accounts by licensees
21 of 1998

10.—(1) The Board shall at least once in every twelve months, require a licensee to submit to the Board a properly audited statement of accounts.

(2) The Board shall require accounts submitted to it under this section to be audited by an auditor qualified to audit under the Public Accountants and Auditors Act.

Cap 53:06

(3) Any person who, without the approval of the Board, refuses or fails to submit a statement of accounts when required

by the Board, or who submits a false or misleading statement, shall be guilty of an offence and liable to a fine not exceeding K50,000 and to imprisonment not exceeding five years.

Licences not to be transferred 21 of 1998

11. Any person who, without the approval of the Board, transfers or purports to transfer a licence issued under this Act to another person shall be guilty of an offence and liable to a fine not exceeding K5,000 and to imprisonment not exceeding twelve months.

Fees 21 of 1998

12. There shall be paid to the Board for every licence issued by the Board a fee to be prescribed by the Board.

Offences relating to unlicensed gaming premises 21 of 1998

13.—(1) Subject to this Act, any person who—

(*a*) being the owner or occupier of premises, or having the use of premises, keeps or uses the premises as unlicensed gaming premises;

(*b*) permits premises of which he is the owner or occupier, or of which he has the use, to be used as unlicensed gaming premises;

(*c*) has the care or management of, or in any manner assists or is engaged in the management of, premises kept or used as unlicensed gaming premises; or

(*d*) announces or publishes or causes to be announced or published, either orally or by means of any print, writing, design, sign or otherwise, that any premises are opened, kept or used as unlicensed gaming premises, or in any manner invites or solicits any person to play in unlicensed gaming premises; or

(*e*) advances, furnishes or receives money for the purpose of establishing or conducting the business of unlicensed gaming premises,

shall be guilty of an offence and liable to a fine not exceeding K20,000 and to imprisonment not exceeding five years.

(2) Any person who games in unlicensed gaming premises shall be guilty of an offence and liable to a fine not exceeding K2,000 and to imprisonment not exceeding six months.

(3) Where a person found in unlicensed gaming premises, or is found leaving therefrom he shall be presumed, until the contrary is proved, to be or to have been gaming therein.

(4) Any person who occupies or has the use of premises which are kept or used by another person as unlicensed gaming premises shall be presumed until the contrary is proved to have permitted that place to be so kept or used.

Board may license gaming premises 21 of 1998

14.—(1) The Board may, subject to any regulations made under this Act, issue a licence authorizing a person to organize and manage gaming on premises to which the public may resort for the purpose of gaming, not being unlawful gaming.

(2) A licence shall be issued in respect of each premises to be used for gaming and any licence to be issued under this section shall state the game or games which the licensee may, on the premises named therein, organize and manage.

(3) The Board shall, in respect of a licence issued under this section, impose conditions providing for—

(*a*) the manner in which a person may conduct his business and the suitability, condition and conduct of the premises and the hours during which the premises may be open for business;

(*b*) the protection of persons taking part in the gaming against fraud; and

(*c*) the payment of admission fees for persons using the premises.

(4) Where an admission fee is charged under subsection (3) (*c*) it shall be subject to the payment of tax.

Offences relating to unlicensed gaming premises 21 of 1998

15.—(1) Where a licensee uses or permits the use of licenced gaming premises for the playing of games which—

(*a*) are not authorized by the Board;

(*b*) are similar to a game authorized by the Board and which is played in a manner that the chances therein are not equally favourable to all the players; or

(*c*) contravene any condition imposed by the Board or by any regulations made under this Act,

the gaming shall be deemed unlawful gaming and the person shall be guilty of an offence.

(2) Any person who is present at gaming mentioned in subsection (1) for the purpose of taking part therein shall be guilty of an offence, and for the purpose of this subsection proof that a person was present at the gaming shall be evidence that he was present for the purpose of taking part therein unless he establishes the contrary.

(3) Any person who, in connexion with licensed gaming premises, without the approval of the Board—

(*a*) holds himself out by advertisement, notice or public placard, as willing to provide members of the public with premises for gaming;

(*b*) displays a written or printed placard notice relating to gaming so as to be seen in a public street or place; or

(*c*) prints or publishes, or causes to be printed or published, an advertisement or other notice,

shall be guilty of an offence and is liable to a fine not exceeding K2,000 and to imprisonment not exceeding three months.

Gaming with young persons an offence 21 of 1998

16.—(1) Any person who, on licensed gaming premises—

(*a*) plays a game with, or permits the playing of a game by a young person;

(*b*) allows a young person to come on to licensed gaming premises, whether for the purpose of gaming or otherwise; or

(*c*) employs a young person in the organization or management of gaming,

shall be guilty of an offence and liable to a fine not exceeding K10,000 and to imprisonment not exceeding two years.

(2) In this section, "a young person" means a person who is under the age of eighteen years.

Gaming tax 21 of 1998

17.—(1) Every licensee shall be liable, at such intervals as may be prescribed, to pay a gaming tax.

(2) A gaming tax referred to in subsection (1) shall be calculated on such basis and at such rate as may be prescribed by the Board and payable in such manner and before such date as may be prescribed:

Provided that different rates may be prescribed in respect of different types of licences.

(3) Any payment of the gaming tax referred to in subsection (1) shall be accompanied by a return in such form as may be determined by the Board.

(4) There shall be no period of grace for payment of the gaming tax referred to in subsection (1).

(5) If the gaming tax referred to in subsection (1) is not paid on the prescribed date, the Board shall suspend the licence until the gaming tax and the penalty payable under section 28 have been paid.

18–20. [*Repealed by* 21 *of* 1998].

Gaming machines 21 of 1998

21.—(1) Any person who—

(*a*) uses or permits the use of an unauthorized gaming machine;

(*b*) allows premises to be used for the purpose of gaming by means of an unauthorized gaming machine; or

(*c*) knowing or having reasonable cause to believe that premises would be used for gaming by means of an unauthorized gaming machine—

(i) caused or allowed the machine to be placed on the premises;

(ii) let the premises, or otherwise made the premises available, to a person by whom an offence in connexion with the machine was committed,

shall be guilty of an offence and liable to a fine not exceeding K5,000 and to imprisonment not exceeding six months.

(2) In this section, "unauthorized gaming machine" means a gaming machine in respect of which a licence has not been issued under this Act.

Board may authorize use of gaming machine
21 of 1998

22.—(1) The Board may, subject to any regulations made under this Act, issue a licence authorizing the use of a gaming machine on premises approved by it.

(2) A licence issued under this section shall be on condition that—

(*a*) the stake risked in order to play the game does not exceed one hundred kwacha at a time;

(*b*) not less than ninety per cent of all stakes risked are applied, in the payment of winnings to a player of the game;

(*c*) the premises on which the gaming machine is used are not wholly or mainly used by persons under the age of eighteen years; and

(*d*) the Board may impose any other conditions it may deem fit.

(3) Any person who contravenes any conditions provided for in subsection (2), or imposed by the Board, shall be guilty of an offence and liable to a fine not exceeding K2,000 and to imprisonment not exceeding six months.

Gaming in street an offence
21 of 1998

23.—(1) Subject to this Act, a person who takes part in gaming in a street to which, whether on payment or otherwise, the public have access, shall be guilty of an offence and liable to a fine not exceeding K2,000 and to imprisonment not exceeding six months.

(2) A police officer may arrest without warrant any person found in a street referred to in subsection (1) and whom the police officer suspects, with reasonable cause, to be committing an offence under this section.

(3) In this section, "street" means—

(*a*) a bridge, road, lane, footway, square, court, alley or passage, which is for the time being open to the public; and

(*b*) the doorway and entrances of premises bordering upon the ground adjourning and open to a street.

PART IV

Miscellaneous Provisions

Obtaining of money by cheating at a game
21 of 1998

24. Any person who—

(*a*) by any fraud or unlawful device or ill-practice in playing at or with an instrument of gaming; or

(*b*) in taking a part in the stakes or offence wagers on the sides or hands of those that are playing;

(*c*) or in wagering on lawful gaming, sport, part-time or exercise, wins from another person for himself, or for or on behalf of another person, a sum of money or valuable thing,

shall be guilty of an offence and liable to a fine not exceeding K5,000 and to imprisonment not exceeding twelve months.

Appeals from decision of Board

25. Any person aggrieved by a decision of the Board made under this Act may, within twenty-one days of the decision, apply to the High Court for review of the decision of the Board.

Power to enter and inspect land or premises 21 of 1998

26.—(1) Any person who—

(*a*) is authorized in writing in that behalf by the Board and on production of his authority if demanded;

(*b*) is appointed by the Secretary, and on production of his authority if demanded; or

(*c*) is a police officer of or above the rank of Assistant Inspector, may, on production of a warrant, enter and inspect premises in which he has reason to believe that an offence under this Act, or under any regulations made thereunder, has been or is about to be committed, and—

(i) examine and take copies of books, accounts and documents relating to or appearing to relate to gaming;

(ii) seize, remove or detain a book, account or document which he has reasonable cause to believe will reveal evidence of an offence under this Act or any regulations made thereunder;

(iii) require the owner or occupier of the premises to render such explanation and give such information relating to any betting transaction, lottery or gaming as may be reasonably required by him in the performance of his duties.

(2) The power to act under subsection (1) may be exercised without warrant—

(*a*) if the person so acting has reasonable cause to believe that the delay occasioned in obtaining a search warrant would seriously hinder him in the performance of his duties; and

(*b*) by or under the directions of a police officer of or above the rank of Inspector unless the person authorized in writing by the Board or the Secretary has reasonable cause to believe that the delay to be occasioned by the summoning of a police officer would defeat the purposes of this section.

(3) Any person who—

(*a*) resists, hinders or obstructs a person acting in pursuance of any of the provisions of this section; or

(*b*) on a requisition under subsection (1), wilfully withholds information, or gives information knowing or having reason to believe it to be false or misleading,

shall be guilty of an offence and liable to a fine not exceeding five thousand kwacha and to imprisonment not exceeding six months:

Provided that no person may be required to answer any question the answer to which may incriminate him.

(4) Before removing anything under subsection (1), the person removing it shall furnish the person in whose possession the article is at the time of removal with a written receipt therefor.

Cancellation of licence on conviction, etc.
21 of 1998

27.—(1) Where any person issued with a licence under this Act is convicted of an offence under this Act or of an offence involving fraud or dishonesty, the court before which he is convicted may order that his licence be cancelled.

(2) Any person whose licence is cancelled in pursuance of an order under subsection (1) shall, by virtue of that order, be disqualified from holding or obtaining a licence for a period of five years from the date of the conviction which gave rise to the order:

Provided that, where it appears to the court making the order to be just in all the circumstances, the court may include in the order a direction that the period of disqualification shall be such period not exceeding five years.

(3) An organizer or manager of licensed gaming premises, or a servant or agent of his, who employs in his business any person known to him to be disqualified by subsection (2) shall be guilty of an offence and liable to a fine not exceeding K2,000 and to imprisonment not exceeding six months.

Penalty for late payment of tax

28. Any person who fails to pay the whole of the tax due from him under this Act within the prescribed period shall be liable to pay, in addition to the amount in default, a penalty equal to five per centum of the amount for each week, or part thereof, during which the default continues.

Power of court to deal with anything produced to it

29. The court before which any person is convicted of any offence under this Act may order anything produced to the court, and shown to the satisfaction of the court to relate to the offence to be forfeited and destroyed or dealt with in such other manner as the court may order.

Power of Board to sue for recovery of any moneys due

30. Any fee due to the Board, and any tax or any penalty in respect therefor, may be sued for and recovered with costs by and in the name of the Board.

Funds, accounts and audit
21 of 1998

31.—(1) The Funds of the Board shall consist of—

(*a*) such sums as may be appropriated by Parliament for the purposes of the Board;

(*b*) all moneys received or recovered under this Act by or on behalf of the Board by way of fees and taxes, including any penalty in respect of such taxes; and

(*c*) such other moneys and assets as may vest in or accrue to the Board, whether in the course of its functions or otherwise.

(2) The Board shall keep proper accounts and other records relating thereto in respect of its funds and shall in every respect comply with the provisions of the Finance and Audit Act.

Cap. 37:01

(3) The accounts of the Board shall be examined and audited annually by auditors appointed by the Board and approved by the Minister.

Regulations

32. The Minister may, in consultation with the Board, make regulations providing for—

(*a*) the procedure to be followed by the Board in exercising any powers conferred upon it by this Act;

(*b*) the procedure to be followed in the making of an application for the issue, renewal or variation of a licence or licence issued under this Act;

(*c*) the advertisement of an application for a licence under this Act and of proceedings of the Board to consider and determine any such application;

(*d*) the right of a person interested to object to an application for the issue, renewal or variation of a licence under this Act, and for the form and manner of any such objection;

(*e*) the form and manner in which returns or statements of accounts shall be furnished to the Board;

(*f*) securing the payment of any tax and fee; and

(*g*) generally, the carrying out of the provisions and purposes of this Act.

Immunity

33. No member of the Board or any officer thereof shall be personally liable for any act or default done or omitted to be done, in good faith, in the course of his duties under the Act.

Penalty for an offence against a Regulation
Cap. 1:01
21 of 1998

34. Any regulation made under this Act may, notwithstanding the provisions of the General Interpretation Act, prescribe a fine not exceeding K10,000 and imprisonment not exceeding two years for an offence committed against any provision of such regulation.

SUBSIDIARY LEGISLATION

G.N. 62/1998
12/2015

GAMING REGULATIONS

under s. 32

PART I

Preliminary

Citation

1. These Regulations may be cited as the Gaming Regulations.

Interpretation

2. In these Regulations, unless the context otherwise requires—

"casino" means premises where casino games are played or available to be played for money or any other valuable consideration gambled on the possibility of winning a prize;

"casino game" means any game, played with playing cards, dice, machines or devices used to bring about the result of a wager by determining win or loss for money, property, cheque, credit or anything of value (other than an opportunity to play a further game), including, without derogating from the generality of the foregoing, roulette, bingo, blackjack and baccarat, but excluding any lottery;

"chip" means a non-metal representative of value, redeemable for cash, issued and sold by a licensee for use at the licensee's licensed gaming premises;

"device" means any equipment or mechanical, electrical, mechanical or electronic device, component or machine used remotely or directly in connexion with a casino game;

"machine" means any electronic, electro-mechanical device, contrivance or equipment which, upon insertion of a coin, token or similar object, or upon payment of any consideration, is available to play or operate on application of the element of chance or, may deliver or entitle the person playing or operating the machine or any other person to receive cash or anything of value (other than an opportunity to play a further game);

"member" means a member of the Board;

"junket agent" means a person who—

(*a*) approves or grants the extension of gaming credit on behalf of a casino licensee or collects a debt evidenced by a credit instrument; or

(*b*) contracts with a casino licensee or his affiliate to provide services outside of the country;

"token" means a metal representative of value, redeemable for cash, and issued and sold by a licensee for use in slot machines or for use in slot machines and at table games or counter games at the licensee's licensed gaming premises.

PART II

Licences

Type of games

3. Licences issued by the Board under section 14 shall be in respect of the following games—

(*a*) roulette;

(*b*) black jack;

(*c*) craps;

(*d*) punto banco;

(*e*) baccarat;

(*f*) poker;

(*g*) slot machines;

(*h*) *chemini de fer* and

(*i*) such other games as may be determined by the Board.

Licences G.N. 12/2015

4. The Board shall have the power to issue the following licences—

(*a*) Casino licence;

(*b*) Gaming machine operator licence;

(*c*) Gaming machine site licence;

(*d*) Bingo operator licence;

(*e*) Junket agent licence;

(*f*) Manufacturer licence;

(*g*) Maintenance licence;

(*h*) Supplier licence;

(*i*) Wide area progressive gaming licence; and

(*j*) any other licence as determined by the Board.

Casino licence

5.—(1) A casino licence shall authorize the licensee to organize and manage the playing, in or on the licensed gaming premises or such part thereof as specified in the licence, of any game specified in the licence.

(2) A casino licence shall only be issued to an applicant who satisfies the Board that he—

(*a*) has appropriate knowledge or experience, or is able to acquire such knowledge or experience, to operate a casino;

(*b*) shall have and maintain sole and exclusive legal possession of the gaming premises in respect of which the licence is to be granted; and

(*c*) has met all applicable requirements set out in these Regulations.

(3) A casino licence shall be in Form I set out in the First Schedule.

Gaming machine operator licence

6.—(1) A gaming machine operator licence shall authorize the holder thereof to operate, in or on the licensed gaming premises of the holder of a gaming machine site licence, any gaming machine specified in the licence.

(2) A gaming machine operator licence shall only be issued to an applicant who satisfies the Board that he—

(*a*) has appropriate knowledge and experience, or is able to acquire such knowledge and experience, to operate gaming machines; and

(*b*) has met all applicable requirements set out in these Regulations.

(3) A holder of a gaming machine operator licence may enter into agreement with a holder of a gaming machine site licence for the placement of gaming machines by the holder of gaming machine operator licence on the premises of the holder of gaming machine site licence.

(4) The holder of a gaming machine operator licence shall, if required by the Board, link all gaming machines in respect of which the licence has been granted to an electronic monitoring system if so required by the Board.

(5) A gaming machine operator licence shall be in Form II set out in the First Schedule.

Gaming machine site licence

7.—(1) A gaming machine site licence shall authorize the machine holder thereof to operate and keep, in or on the licensed gaming premises or such part thereof as specified in the licence, any gaming machine specified in the licence:

Provided that—

(*a*) the prize in respect of any one gaming machine shall not in the aggregate exceed the amount exhibited on the machine;

(*b*) there shall be displayed on any such gaming machine the value of the maximum prize prescribed under paragraph (*a*) which can be won by playing a game once by means of such a gaming machine; and

(*c*) any such gaming machine shall be placed in an area of the licensed gaming premises to which no child shall have access.

(2) A gaming machine site licence shall only be issued to an applicant who satisfies the Board that—

(*a*) he has met all requirements set out in these Regulations; and

(*b*) the premises in respect of which the licence is to be issued shall not be and are not primarily used for gaming:

Provided that this paragraph shall not apply to premises in respect of which a bingo operator licence has been issued.

(3) A gaming machine site licence shall be in Form III set out in the First Schedule.

Bingo operator licence

8.—(1) A bingo operator licence shall authorize the holder thereof to organize and manage the playing of the game of bingo in or on the licensed gaming premises or such part thereof as specified in the licence.

(2) A bingo operator licence shall be in Form IV set out in the First Schedule.

Junket agent licence

9.—(1) A junket agent licence shall authorize the holder thereof to receive commission on, or a share in, gaming profits raised by a junket.

(2) A holder of a junket agent licence may enter into agreement with a holder of a casino operator licence for the provision, by the holder of junket agent licence, of services consisting of arranging complimentary transport, food, lodging or similar benefits for one or more persons visiting the casino.

(3) A junket agent licence shall be in Form V set out in the First Schedule.

(4) No person shall, except under the authority of a junket agent licence, involve himself, directly or indirectly, in the planning, organization or operation of a junket for or on behalf of a holder of a casino licence.

Manufacturer licence

10.—(1) A manufacturer licence shall authorize the holder thereof to manufacture, sell, distribute, import and market gaming machines and devices.

(2) A manufacturer licence shall only be issued to an applicant who satisfies the Board that he—

(*a*) has appropriate knowledge and experience, or is able to acquire such knowledge and experience, to conduct business under the licence; and

(*b*) has met all applicable requirements set out in these Regulations.

(3) Subject to regulation 12, no person shall, except under the authority of a manufacturer licence, maintain or repair any gaming machine or device.

(4) A manufacturer licence shall be in Form VI set out in the First Schedule.

Maintenance licence

11.—(1) A maintenance licence shall authorize the holder thereof to maintain or repair gaming machines and devices.

(2) A maintenance licence shall only be issued to an applicant who satisfies the Board that he—

(*a*) has appropriate knowledge and experience, or is able to acquire such knowledge and experience, to conduct business under the licence; and

(*b*) has met all applicable requirements set out in these Regulations.

(3) No person shall, except under the authority of a maintenance licence, maintain or repair a gaming machine or device.

(4) A maintenance licence shall be in Form VII set out in the First Schedule.

Supplier licence

12.—(1) A supplier licence shall authorize the holder thereof to sell, distribute, import and market gaming machines and devices.

(2) A supplier licence shall only be issued to an applicant who satisfies the Board that he—

(*a*) has appropriate knowledge and experience, or is able to acquire such knowledge and experience, to conduct business under the licence; and

(*b*) has met all applicable requirement set out in these Regulations.

(3) No person shall, except under the authority of a supplier licence, sell, distribute, import or market a gaming machine or device.

(4) A supplier licence shall be in Form VIII set out in the First Schedule.

Wide area progressive gaming licence G.N. 12/2015

12A.—(1) A wide area progressive gaming licence shall authorize the holder thereof to organize and manage gaming conducted in separate sites that are linked by a wide area network and are monitored from a central point by a central monitoring system.

(2) A wide area progressive gaming licence shall only be issued to an applicant who satisfies the Board that—

(*a*) he has appropriate knowledge or experience, or is able to acquire such knowledge or experience, to conduct wide area progressive gaming; and

(*b*) he has met all applicable requirements set out in these Regulations.

(3) A holder of a wide area progressive gaming licence may enter into an agreement with a holder of a gaming machine site licence for the placement of gaming machines by the holder of the wide area progressive gaming licence on the premises of the holder of a gaming machine site licence.

(4) At the request of the Board, a holder of a wide area progressive gaming licence shall install an electronic monitoring system at the offices of the Board, for the purposes of monitoring all gaming machines in respect of which the licence has been granted.

(5) A holder of a wide area progressive gaming licence shall operate, or keep in, or on, the licensed gaming premises, or part thereof, as specified in the licence, a gaming machine specified in that licence, except that—

(*a*) the prize in respect of the gaming machine shall not in the aggregate exceed the amount exhibited on the machine;

(*b*) there shall be displayed on any such gaming machine, the value of the maximum prize prescribed under paragraph (*a*) which can be won by playing a game once by means of such a gaming machine;

(*c*) any such gaming machine shall be placed in an area of the licensed gaming premises to which no child shall have access; and

(*d*) the premises shall not be, and are not primarily used for, gaming.

(6) A wide area progressive gaming licence shall be in Form IX set out in the First Schedule hereto.

PART III

Applications for Licences

Application for a licence

13.—(1) No person shall make an application for a licence, and no such application shall be entertained, unless the application is lodged pursuant to and in accordance with a notice inviting applications which notice shall be published by the Board in the *Gazette* and in such other manner as the Board may determine and which notice may state—

(*a*) the type and number of licences to be issued and any conditions that may apply;

(*b*) the area to which the licence will relate;

(*c*) the application fee;

(*d*) any requirement that may be necessary or desirable;and

(*e*) the evaluation criteria to be applied.

(2) An application shall be accompanied by the prescribed fee and such plans, documents, approvals and information as may be determined by the Board.

(3) Subject to subregulation (6), an applicant may in the application concerned identify any document or information included in the application which in his opinion is confidential or should for any reason not be disclosed to the public, and show cause why the Board may determine that such document or information should not be open to public inspection.

(4) An application for a gaming machine operator licence and a gaming machine site licence shall be in the form set out in the Second Schedule.

(5) An application for a casino licence shall be in the form set out in Part I of the Third Schedule and there shall be attached to the application—

(*a*) a "Company Release Authorization" which shall be in the form set out in Part II of the Third Schedule; and

(*b*) a casino business proposal which shall be in the form set out in Part III of the Third Schedule.

(6) A "Company Release Authorization" and a casino business proposal shall not be open to public inspection.

(7) An application for a bingo operator licence shall be in the form set out in the Fourth Schedule.

(8) An application for a junket agent licence, manufacturer licence, maintenance licence and a supplier licence shall be made to the Board in writing.

(9) Nothing in this regulation shall preclude the Board from requiring an applicant to produce such further documents or such other evidence as the Board may deem necessary for the purpose of being satisfied as to any matter related to the application.

Amendment of an application

14.—(1) An application submitted to the Board may, with the approval of the Board, be amended in any respect at any time prior to its being determined by the Board.

(2) Where an application has been amended pursuant to subregulation (1), the application shall be deemed to have been made on the date the amendment was effected.

(3) Any person who, prior to his application being determined by the Board, wilfully withholds information or gives information knowing or having reason to believe it to be false or misleading shall be guilty of an offence and liable to a fine of K5,000 and to imprisonment for one year.

Grounds for refusing to issue, renew or transfer a licence

15.—(1) If, when considering any application for the issue, renewal or transfer of any licence, the Board is satisfied that the applicant—

(*a*) is not a fit and proper person;

(*b*) is not a person of good character and integrity;

(*c*) is not a person of good financial standing;

(*d*) is an unrehabilitated insolvent;

(*e*) is a minor;

(*f*) is of unsound mind; or

(*g*) has within the last seven years been removed from an office of trust on account of misconduct,

then the Board may refuse to issue, renew or transfer the licence, as the case may be, or may issue, renew or transfer it subject to such conditions relevant to the said grounds as it may think fit.

(2) For the avoidance of doubt, it is hereby declared that the provisions of subregulation (1) relating to grounds for refusing to issue, renew or transfer a licence are in addition to, and not in derogation of, any other grounds set out in these Regulations.

Prohibited applications

16.—(1) Any person whose—

(*a*) application has been refused by the Board; or

(*b*) licence has been revoked,

on any ground shall not apply again for any licence within one year from the date of such refusal or revocation.

(2) Any person who has a direct or indirect interest in the business, premises or licence of the person referred to in subregulation (1) shall not apply for any licence within one year from the date of the refusal or revocation referred to in subregulation (1).

(3) Any person whose—

(*a*) application has been refused by the Board; or

(*b*) licence has been revoked,

on any ground more than once shall not apply again for any licence within two years from the date of last refusal or revocation.

(4) Any person who has a direct or indirect interest in the business, premises or licence of the person referred to in subregulation (3) shall not apply again for any licence within two

years from the date of such last refusal or revocation referred to in subregulation (3).

Representation by interested parties

17.—(1) Any person wishing to make representations in relation to any application submitted to the Board shall make the representations to the Board within fourteen days of the submission of the application to the Board.

(2) The representations under subregulation (1) shall set fully—

(*a*) the name, address and telephone number of the person submitting the representations;

(*b*) the name of the applicant to whom the representation relates;

(*c*) the nature of the interest of the person submitting the representation;

(*d*) the facts upon which they are based; and

(*e*) the relief that is being sought.

(3) The representations made under subregulation (1) shall be accompanied by an affidavit verifying the facts set out therein.

(4) The representations and the relevant affidavit shall be served upon the applicant and any other person appearing from the register to be interested in the matter.

(5) At any time within ten days from the date of service of the representations on the applicant, the applicant or any other person who has a substantial interest in the matter and who wishes to oppose the representations shall deliver to the Board a counter statement, verified by affidavit, setting out fully the grounds on which the representations are opposed and copies of the same shall be served upon the person making the representations.

Application and objection to be open to public inspection

18.—(1) Any application, objection and response lodged in terms of regulations 13 and 17 shall, subject to sub-regulation (2), be open to public inspection by interested persons during the normal office hours of the Board and the Board shall, at the request of any interested person, and payment of such fees as may be prescribed, furnish him with a copy of, or extract from, any such application, response or information.

(2) The Board my determine that any document or information relating to the financial capacity of any person participating in an application, the names of the prospective employees or the business plans of an applicant, shall not be open to public inspection, provided such document or information can be separated from the remainder of the application and is marked confidential.

Investigation and police reports

19.—(1) In order to determine whether or not a licence should be granted to an applicant, the Board may, subject to any other law, gather such information from any source or person regarding the suitability of the applicant to hold the licence and the suitability of the premises in respect of which the application has been made.

(2) The Board may, upon receipt of an application for a licence, request the Police for a report stating—

(*a*) particulars of any convictions recorded against an applicant or any person who will be involved in the business in respect of whom the Board deems it necessary to obtain the police report; and

(*b*) such other matters which ought, in the opinion of the Police, to be taken into account in respect of the application.

(3) The report contemplated in regulation (2) shall be furnished to the Board within fourteen days or such extended period approved by the Board.

(4) For purposes of the report contemplated in subregulation (2), any member of the Police may require the applicant or person concerned to furnish such information and particulars (including any fingerprint or palmprint) as he may consider necessary.

Hearing of applications, etc.

20. When the Board has received any application, representations (if any) and counter statement (if any), the Chief Executive Officer shall, after taking directions from the Chairman, appoint a time and place for the hearing of the matter and shall give the parties at least ten days notice of the appointment.

Appearance before the Board

21.—(1) Any applicant or other person entitled to appear before the Board may appear personally or, with the leave of the Board, by—

(*a*) a legal practitioner; or

(*b*) any other agent or representative authorized in writing.

(2) The leave referred to in subregulation (1) may be given on such terms as the Board thinks fit and may at any time be withdrawn.

Non-appearance

22. Should a party not appear within a reasonable period as the Board may determine and not file an explanation for his non-appearance the hearing may be proceeded with forthwith.

Summoning of witnesses

23. The Board has, as regards the attendance, swearing and examination of witnesses, the production and inspection of documents, the enforcement of its orders and other matters necessary or proper for the due exercise of its functions, all such powers, rights and privileges as are vested in the High Court and, without limiting the generality of the foregoing, may—

(*a*) issue a summons to any person requiring him to appear at the time and place mentioned therein to testify to all matters within his knowledge relative to a subject matter before the Board and to bring with him and produce any document, book or paper that he has in his possession or under his control relative to such subject matter;

(*b*) administer oaths and examine any person upon oath or affirmation; and

(*c*) during a hearing receive such additional information as it may consider credible or trustworth and necessary for dealing with the subject matter before it.

Proceedings in public

24.—(1) Subject to subregulation (2), all proceedings before the Board shall be held in public.

(2) If the Board is satisfied, by reason of the confidential nature of the evidence or otherwise, that it is appropriate to do so, the Board may direct that a proceeding, or part of a proceeding, be held in private.

Procedure at hearing

25. The Board—

(*a*) shall act according to equity and the substantial merits of the case without regard to technicalities and legal forms;

(*b*) shall not be bound by rules of evidence and may inform itself on any matter as it thinks appropriate; and

(*c*) may give directions relating to procedure that it considers will enable delay and costs to be reduced and will facilitate a prompt hearing of the matter at issue.

Decision

26.—(1) Subject to subregulation (3), after hearing the parties desiring to be heard or, if none of the parties desires to be heard, then without hearing, the Board shall decide the case.

(2) The decision of the Board may be given orally or in writing and in either event shall contain the reasons for the decision.

(3) If it appears to the Board that the representations made under regulation 17 are frivolous or vexatious, the Board may dismiss the representations summarily without calling on any person to attend the hearing of such representations.

Costs witnesses expenses

27.—(1) Subject to the provisions of the Gaming (Tax and Fees) By-laws, 1998, no fees shall be payable for lodging any document.

(2) A person who appears as a party before the Board shall bear his own costs and the Board shall not award costs to or against a party.

(3) A person summoned under these Regulations to appear as a witness before the Board shall be entitled to be paid—

(*a*) where the witness was summoned on the application of a party to the proceedings, by that party; or

(*b*) in any other case, by the Board,

such allowances for his travelling, attendance and other expenses as are provided for in the Rules of the High Court.

Failure of a witness to attend

28. Any person served with a summons to appear as a witness before the Board who fails to attend as required by the summons, or having attended, fails to appear and report himself from day to day unless excused, or released from further attendance by the Board shall be guilty of an offence and liable to a fine of K2,000 and to imprisonment for six months.

Refusal to be sworn or answer questions

29. Any person appearing as a witness at a hearing who, without reasonable excuse—

(*a*) refuses or fails to be sworn or to make an affirmation;

(*b*) refuses or fails to answer a question lawfully put to him; or

(*c*) refuses or fails to produce a document that he was required to produce by a summons served on him,

shall be guilty of an offence and liable to a fine of K2,000 and to imprisonment for six months.

Contempt

30. Any person who—

(*a*) insults or disturbs a member in the exercise of his powers or the performance of his functions or duties as a member;

(*b*) interrupts a hearing;

(*c*) uses insulting language against a member;

(*d*) creates a disturbance, or takes part in creating or continuing a disturbance, in a place where the Board is holding a hearing; or

(*e*) does any other act or thing that would, if the Board were a court of record, constitute a contempt of that court,

shall be guilty of an offence and liable to a fine of K2,000 and to imprisonment for six months.

Validity of hearing not affected by defect in appointment or want of form

31. The validity of the proceedings of the hearing shall not be affected by any defect in the appointment of a member or by reason of the fact that a person not entitled to do so took part in the proceedings.

PART IV

Registration of Employees

Key employees

32.—(1) The following employees of a licensee shall be classified as key employees for the purposes of these Regulations—

(*a*) the senior management of the licensee;

(*b*) if the licensee is a corporate body, every director and any other officer of such corporate body;

(*c*) any person who has the authority to hire or terminate supervisory personnel;

(*d*) any person who has the authority to supervise or direct a shift of each gaming or security activity, including but not limited to the supervision or direction of the entire pit operation, gaming machines or their gaming operations, and any person having authority to supervise or direct such persons;

(*e*) any person having authority or the responsibility to manage one or more of the following types of departments or functions of the operation, including, but not limited to—

(i) the accounting department;

(ii) credit and collections department;

(iii) cage department;

(iv) personnel department;

(v) internal audit department;

(vi) security department; and

(vii) surveillance department;

(*f*) any person who has been specifically represented to the Board by a licensee, officer or director as being important or necessary to the operation of the establishment;

(*g*) all persons who individually or as part of a group formulate management policy; and

(*h*) any person holding a job position which upon written notification by the Board is considered to be a key position for purposes of these Regulations.

(2) For purpose of subregulation 1 (*h*), the Board shall not be restricted by the title of the job performed but shall consider the functions and responsibilities of the person or position involved.

(3) Subject to regulation 33, a licensee shall not employ a key employee until such time as the prospective employee has applied for and been granted registration as a key employee by the Board.

(4) A licensee shall, within 14 days of termination of the employment of a key employee, notify the Board in writing of such termination and the reasons thereof.

Temporary registration

33.—(1) Where application for registration has been made and the Board is satisfied that—

(*a*) the operation of the licensee's business will be seriously prejudiced or disadvantaged by a delay in the employment of the applicant; and

(*b*) the commencement of the employment of the applicant will not prejudice the integrity and proper operation of the licensee's business,

the Board may issue the applicant with a temporary certificate, pending the outcome of such applicant's application for registration.

(2) If the application for registration by the holder of a temporary certificate is denied by the Board, the licensee by whom such a person is employed shall summarily terminate the employment of that person in any capacity in which he is required to be so registered, without liability on the part of the licensee.

(3) The provisions of subregulation (2) shall be a condition of employment.

Proof of registration on employment record

34. A licensee shall in respect of every employee required to be registered in terms of this Part keep a copy of such employee's certificate on the employment record of that employee.

Suspension or revocation of registration

35.—(1) If an employee required to be registered in terms of this Part—

(*a*) has his registration revoked by the Board, the licensee by whom such a person is employed shall summarily terminate the employment of that person in any capacity in which he is required to be so registered; or

(*b*) has his registration suspended by the Board, the licensee by whom such a person is employed shall summarily suspend the employment of that person in any capacity in which he is required to be so registered, for the period of suspension by the Board,

without liability on the part of the licensee.

(2) The provisions of subregulation (1) shall be a condition of employment.

Registration of certain personnel

36.—(1) No person shall—

(*a*) perform any act pertaining to any gaming occupation;

(*b*) be engaged in the manufacture, sale, lease, making available, distribution, importing, marketing, maintenance or repair of any gaming machine or gaming device; or

(*c*) be engaged in any other occupation, as may be determined by the Board,

unless the person is registered with the Board.

(2) Any person desiring to be registered as contemplated in regulation (1) shall make application for registration to the Board.

(3) A licensee shall not employ any person to perform any act or be engaged in any activity or occupation contemplated in subregulation (1) unless the person is registered with the Board as provided in subregulation (1).

(4) Any person who contravenes regulation (1) shall be guilty of an offence.

Disqualified persons not to be registered

37.—(1) No application for registration contemplated in regulation 36 (2) shall be granted if the applicant is subject to any disqualification contemplated in regulation 15 which shall apply *mutatis mutandis*.

(2) The Board shall not refuse an application for registration without giving the applicant the opportunity of being heard.

(3) Where the Board refuses an application for registration, it shall, on request, furnish the applicant concerned in writing with the reasons for such refusal.

Certificate of registration

38.—(1) Where the Board grants an application for registration contemplated in regulation 36 (2), it shall issue to the applicant a certificate of registration in the form determined by the Board.

(2) The Board may grant an application for registration subject to such conditions as the Board may determine.

Duration of validity of registration

39.—(1) Registration in terms of this Part shall, subject to the provisions of sub-regulation (2) and regulation 40, endure indefinitely.

(2) The Board may determine that any particular applicant shall be registered for a specified period only:

Provided that—

(*a*) the Board shall, on request, furnish the applicant in writing with the reasons for such determination;

(*b*) the period so specified shall be stated in the certificate of registration issued in terms of regulation 38 (1); and

(*c*) a person who has been registered for a specified period may apply for the extension of such period or the substitution for such registration for an indefinite period, and if the Board grants such extension or substitution, the Board shall make the necessary alteration on the certificate of registration.

(3) The Board shall keep and maintain a register in which it shall enter the name and particulars prescribed or determined by the Board of each person to whom a certificate of registration has been issued in terms of this Part.

Suspension and revocation of registration

40. The Board may at any time suspend for a specified period or revoke the registration of any person in terms of this Part after giving the person concerned an opportunity of being heard—

(*a*) if any information contained in the application for registration was false in any material respect or was subject to any material omission;

(*b*) if the person registered has become subject to a disqualification contemplated in regulation 15, as applied *mutatis mutandis* by regulation 37 (1);

(*c*) if the person registered has performed any act or been engaged in any activity or occupation contemplated in regulation 36, whether as agent or employee or otherwise, for or on behalf of a person who is not a licensee; or

(*d*) if the person registered has contravened a provision of these Regulations or a condition of his registration.

PART V

Casinos

Approval of chips and tokens

41.—(1) A licensee shall not issue any chip or token for use on his licensed gaming premises or sell or redeem such chip or token, unless the chip or token has been approved in writing by the Board.

(2) A licensee shall not issue any chip or token for use on his licensed gaming premises or sell or redeem any such chip or token that is a modification of a chip or token previously approved by the Board unless the modification has been approved in writing by the Board.

Application for approval of chips, tokens, etc.

42.—(1) An application for approval of a chip, token or modification to previously approved chip or token shall be made, processed and determined in such manner and using such forms as the Board may determine.

(2) Each application shall include, in addition to such other items or information as the Board may require—

(*a*) an exact drawing, in colour, of each side and edge of the proposed chip or token, drawn to actual size or drawn to larger than actual size and in scale, and showing the measurements of the proposed chip or token in each dimension;

(*b*) written specifications for the proposed chip or token;

(*c*) the name and address of the manufacturer; and

(*d*) the licensee's intended use of the proposed chip or token.

(3) If, after receiving and reviewing the items and information described in sub-regulation (2), the Board is satisfied that the proposed chip or token conforms with the requirements of this Part, the Board shall notify the licensee in writing and shall request, and the licensee shall thereupon submit, a sample of the proposed chip or token in final manufactured form.

(4) If the Board is satisfied that the sample conforms with the requirements of this Part and with the information submitted with the licensee's application, it shall approve the proposed chip or token and notify the licensee in writing.

(5) As a condition of approval of chips or tokens issued for use at a specific table or counter game, the Board may prohibit the licensee from using the chip or token other than at the specified game.

(6) The Board may retain the sample chips and tokens submitted in terms of this regulation.

Specifications for chips and tokens

43.—(1) Chips and tokens shall be designed, manufactured and constructed in compliance with all applicable Laws of Malaŵi and these Regulations and so as to prevent counterfeiting of the chips and tokens to the extent reasonably possible.

(2) Chips and tokens shall not deceptively resemble any current or past coinage of Malaŵi or any other state.

(3) In addition to such other specifications as the Board may approve—

(*a*) the name of issuing licensee shall be inscribed on each side of each chip and token and the city or other locality where the establishment is located shall be inscribed on at least one side of each chip and token, other than chips used exclusively at roulette;

(*b*) the value of the chip or token shall be inscribed on each side of each chip and token, other than chips used exclusively at roulette;

(*c*) the manufacturer's name or a distinctive logo or other mark identifying the manufacturer shall be inscribed on at least one side of each chip and token, other than chips used exclusively at roulette; and

(*d*) each chip shall be designed so that when stacked with chips and tokens of other denominations and viewed on closed-circuit television, the denominations of the chip can be distinguished from that of the other chips and tokens in the stack.

Additional specification for tokens

44. Tokens shall not be manufactured from material possessing sufficient magnetic properties so as to be accepted by a coin mechanism, other than that of a gaming machine.

Use of chips and tokens

45.—(1) A licensee that uses chips or tokens at his licensed gaming premises shall—

(*a*) comply with all applicable laws of Malaŵi pertaining to chips or tokens;

(*b*) sell chips and tokens only to patrons of his licensed gaming premises and only at their request;

(*c*) promptly redeem his own chips and tokens from his patrons;

(*d*) post conspicuous signs at his establishment notifying patrons that the law prohibits the use of the licensee's tokens and that these Regulations prohibit the use of the licensee's chips, outside the premises for any monetary purpose whatever; and

(*e*) take reasonable steps, including examining chips and tokens and segregating those issued by other licensees to prevent sales to his patrons of chips and tokens issued by another licensee.

(2) A licensee shall not accept chips or tokens as payment for any goods or services, other than food and beverage, offered at his licensed gaming premises with the exception of the specific use for which the chips or tokens were issued and shall not give chips or tokens as change in any other transaction.

(3) A licensee shall not redeem his chips or tokens if presented by a person whom the licensee knows or reasonably should know is not a patron of his licensed gaming premises, except that a licensee shall promptly redeem his chips and tokens if presented by—

(*a*) another licensee who represents that he redeemed the chips and tokens from his patrons and received them unknowingly, inadvertently or unavoidably; or

(*b*) an employee of the licensee who presents the chips and tokens in the normal course of employment.

(4) A licensee shall not sell, use, permit the use of, accept or redeem chips or tokens issued by another licensee, except as follows—

(*a*) a licensee may redeem tokens issued by another licensee if—

(i) the tokens are presented by a patron for redemption to a cashier of the licensee and the patron states that he received the tokens at the licensee's gaming premises from the payout chutes of gaming machines or from an employee of the licensee; or

(ii) the tokens are presented by a patron at a table game and the licensee redeems the tokens with tokens of his own, places the redeemed tokens in the table's drop box, and

separates and properly accounts for the redeemed tokens during the count performed in terms of the licensee's system of internal control; and

(*b*) a licensee may redeem chips issued by another licensee if—

(i) the chips are presented by a patron for redemption at the cashier's cage of the licensee's gaming premises; or

(ii) the chips are presented by a patron at a table game and the licensee redeems the chips with chips of his own, places the redeemed chips in the table's drop box, and separates and properly accounts for the redeemed chips during the count performed in terms of the licensee's system of internal control.

(5) Chips whose use is restricted to uses other than at table games or other than at specified table games may be redeemed by the issuing licensee at table games or non-specified table games if the chips are presented by a patron, and the licensee redeems the chips with chips issued for use at the game, places the redeemed chips in the table's drop box, and separates and properly accounts for the redeemed chips during the count performed in terms of the licensee's system of internal control.

Redemption and disposal of discontinued chips and tokens

46.—(1) A licensee that permanently removes from use or replaces approved chips or tokens at his licensed gaming premises or that ceases operating his licensed gaming premises whether because of closure or sale of the premises or any other reason shall prepare a plan for redeeming discontinued chips and tokens that remain outstanding at the time of discontinuance.

(2) The licensee shall submit the plan in writing to the Board not later than thirty days before the proposed removal, replacement, sale, or closure, unless the closure or other cause for discontinuance of the chips or tokens cannot reasonably be anticipated, in which event the licensee must submit the plan as soon as reasonably practicable.

(3) The Board may approve the plan or require reasonable modifications as a condition of approval and upon approval of the plan, the licensee shall implement the plan as approved.

(4) In addition to such other reasonable provision as the Board may approve or require, the plan shall provide for—

(*a*) redemption of outstanding, discontinued chips and tokens in accordance with this Part for at least 120 days after the removal or replacement of the chips or tokens or for at least 120 days after operations cease, as the case may be, or for such longer or shorter period as the Board may for good cause approve or require;

(*b*) redemption of the chips and tokens at the licensed gaming premises or at such other location as the Board may approve;

(*c*) publication of notice of the discontinuance of the chips and tokens and of the redemption and the pertinent times and locations in at least two newspapers of general circulation in Malaŵi at least twice during each week of the redemption period, subject to the Board's approval of the form of the notice, the newspapers selected for publication and the specific days of publication;

(*d*) conspicuous posting of the notice described in paragraph (*c*) at the licensed gaming premises or other redemption location; and

(*e*) destruction or such other disposition of the discontinued chips or tokens as the Board may approve or require.

Destruction of counterfeit chips and tokens

47.—(1) Unless a court of competent jurisdiction orders otherwise in a particular case, a licensee shall destroy or otherwise dispose of counterfeit chips and tokens discovered at his licensed gaming premises in such manner as the Board may approve or require.

(2) Unless the Board or a court of competent jurisdiction orders otherwise in a particular case, a licensee may dispose coins of Malaŵi or any other state discovered to have been unlawfully used at his licensed gaming premises by including them in his coin inventories or, in the case of foreign coins, by exchanging them for local currency or coins and including the same in their currency or coin inventories, or by disposing of them in any other lawful manner.

(3) Each licensee shall record, in addition to such other information as the Board may require—

(*a*) the number and denominations, actual or purported, of the coins and counterfeit chips and tokens destroyed or otherwise disposed of in terms of this Part;

(*b*) the month during which they were discovered;

(*c*) the date, place, and method of destruction or other disposition, including, in the case of foreign coin exchanges, the exchange rate and the identity of the bank, exchange company or other business or person at which or with whom the coins are exchanged; and

(*d*) the names of the persons carrying out the destruction or other disposition on behalf of the licensee.

Promotional and tournament chips and tokens

48.—(1) Promotional chips and tokens shall be designed, manufactured, approved and used in accordance with the provisions of this Part applicable to chips and tokens, except as follows—

(*a*) promotional chips and tokens shall be of such shape and size and have such other specifications so as to be distinguishable from other chips and tokens as determined by the Board;

(*b*) each side of each promotional chip and token shall conspicuously bear the inscription "No Cash Value";

(*c*) promotional chips and tokens shall not be used, and licensees shall not permit their use, in transactions other than the promotions or tournaments for which they are issued; and

(*d*) the provisions of regulation 47 shall not apply to promotional chips and tokens.

Other value instruments

49. Other value instruments with which gaming is conducted shall be designed, manufactured, approved, used, discontinued, destroyed or otherwise disposed of in accordance with the provisions of this Part applicable to chips and tokens, except as follows—

(*a*) such other instruments shall be of such shape, size and design and have such other specifications as the Board may approve or require; and

(*b*) the Board, in its discretion, may deny approval of value instruments other than chips and tokens or may grant approval subject to such conditions as it considers appropriate.

Receipt of gaming chips or tokens from manufacturer or distributor

50.—(1) When chips or tokens are received from the manufacturer or distributor thereof, they shall be opened and checked by at least three employees of the licensee from different departments.

(2) Any deviation between the invoice accompanying the chips or tokens and the actual chips or tokens received or any defects found in such chips or tokens shall be reported promptly to the Board.

(3) After checking the chips received, the licensee shall cause to be reported in a chip inventory ledger the denomination of the chips received, the number of each denomination of chips received, the description of all chips received, the date of such receipt and the signature of the employees who checked the chips.

(4) If any of the chips received are to be held in reserve and not utilized, at the gaming tables or at a cashier's cage, they shall be stored in a separate locked compartment either in the vault or in a cashier's cage and shall be recorded in the chip inventory ledger as reserve chips.

Inventory of chips

51.—(1) Chips shall be taken from or returned to the reserve chip inventory in the presence of at least three employees from different departments.

(2) The denominations, number and amount of chips so taken or returned shall be recorded in the chip inventory ledger together with the date and signatures of the employees carrying out this process.

(3) Each licensee shall, on a daily basis, compute and record the unredeemed liability for each denomination of chips and cause to be made an inventory of chips in circulation and cause the result of such inventory to be recorded in the chip inventory ledger.

(4) On at least a monthly basis, each licensee shall cause an inventory of chips in reserve to be made and cause the result of such inventory to be recorded in the chip inventory ledger.

(5) The procedures to be utilized to compute the unredeemed liability and to inventory chips in circulation and reserve shall be submitted to the Board for approval.

(6) A physical inventory of chips in reserve shall be required at least annually if the inventory procedures incorporate the sealing of the locked compartment.

(7) During non-gaming hours all chips in the possession of the licensee shall be stored in a vault or in the cashier's cage, except that chips representing the table bankroll may be locked in a secure compartment:

Provided that there is adequate security as approved by the Board.

Surveillance and security

52.—(1) The Board may, in its discretion, require a licensee to comply with surveillance system requirements that are more stringent than those set out in these Regulations.

(2) Every licensee shall install, maintain and operate at all times a surveillance system, comprised of cameras, monitors, video recorders and video printers, that provides the coverage required in these Regulations.

(3) The surveillance system shall include date and time generators that display on each video tape date and time of the recorded events and the displayed date and time shall not obstruct the recorded view.

(4) All machines that may be utilized to monitor or record views obtained by the surveillance system shall be and remain located in a room used exclusively for casino surveillance purposes and the entrance to the surveillance room shall be located away from the view of casino employees and the general public.

(5) Surveillance system room machines shall have total override capability over other satellite monitoring machines in other offices.

(6) The Board and its agents shall at all times be provided with access to the surveillance room and other surveillance areas.

(7) The surveillance system room shall be staffed and the surveillance machines monitored at all times by trained surveillance personnel who shall be employed and trained by the licensee exclusively for surveillance purposes and shall possess knowledge of all table games and the regulations and rules pertaining to gaming operators.

(8) The surveillance system and its machines shall be directly and securely wired in a way to prevent tampering and an auxiliary power source capable of providing uninterrupted power to the surveillance system in the event of a power loss shall be available and provide sufficient lighting to operate the surveillance system.

(9) Each camera in the surveillance system located in a public area shall be placed behind a smoked glass dome, a one-way mirror or any other material which conceals the camera from view.

(10) Each monitor screen in the surveillance system shall be at least 30 centimetres, measured diagonally.

(11) The surveillance system may view and record in black and white except that pit transactions occurring at the casino cages, views of roulette tables, progressive jackpots, machines with bill validatory and soft count rooms shall be viewed and recorded in colour.

(12) The video printer used in the surveillance system shall have the capability to generate instantaneously, upon command, a clear still black and white or colour copy of photograph of the images depicted on a video tape recording.

(13) The licensees' shall have the capability of creating first generation copies of video surveillance tapes that are standard VHS format or such other format as may be approved by the Board.

Surveillance system on count rooms and casino cages

53.—(1) Every licensee shall install, maintain and operate at all times a surveillance system that monitors and records clear unobstructed view of all areas and transactions within—

(*a*) the hard count room and any area where uncounted coin is stored during the drop and count process, including walls, doors, scales, wrapping machines, coin sorters, vaults, cages and general work surfaces;

(*b*) the soft count room, including walls, doors, drop boxes, vaults, safes and count surfaces that shall be transparent; and

(*c*) the casino cage, including customer windows, employees' windows, cash drawers, vaults, safes, counters, chip storage and till windows.

(2) All transactions within the hard count room, soft count room and casino cage shall be recorded with sufficient clarity to permit identification of each employee and his movements and to permit identification of all currency, coins and paperwork.

(3) The soft count room shall have audio monitoring capabilities.

(4) The soft and hard count room tapes shall be retained for at least thirty days after the recording.

Surveillance systems on table games and card rooms

54.—(1) Every licensee who operates table games or a card room shall install, maintain and operate at all times a surveillance systems that possesses the capability to monitor and record clear and unobstructed views of the following—

(*a*) all table games and card room areas with sufficient clarity to permit identification of all dealers, patrons, spectators and fit personnel;

(*b*) all table games or card table surfaces, including table bank trays, with sufficient clarity to permit identification of all chips, cash, dice and card values and the outcome of the game;

(*c*) roulette tables and wheels with sufficient clarity so as to permit views of both the table and the wheel on one monitor screen;

(*d*) all drop boxes and table numbers; and

(*e*) all card room of podium banks, including any drawers, cabinets and safes contained therein:

Provided that, for each table, all table game play activities shall be individually monitored and recorded by a dedicated fixed camera.

(2) The surveillance system shall have the capability to view and record simultaneously the table game area and the table game surface.

Electronic monitoring

55.—(1) The Board may approve a central computer or such other monitoring system connected to all machines exposed to play to record and monitor the activities in such machines.

(2) A licensee may not, without the prior approval of the Board, alter or modify the approved monitoring system contemplated in subregulation (1).

(3) The monitoring systems contemplated in sub-regulation (1) shall provide—

(*a*) on-line real-time monitoring and data acquisition capability in the format and media, approved by the Board;

(*b*) dial-up monitoring and data acquisition capability in the format and media, approved by the Board; or

(*c*) such other monitoring and data acquisition capability as the Board may determine in the conditions of licence.

(4) The central computer or any other monitoring system required by subregulation (1) shall be designed and operated to perform and report functions relating to machine meters and other functions as follows—

(*a*) record the number and total value of tokens or coins placed in each machine for the purpose of activating play;

(*b*) record the number and total value of coins or tokens deposited in the drop box or each machine;

(*c*) record the number and total value of tokens or coins automatically paid out by each machine;

(*d*) record the number and total value of tokens to be paid normally;

(*e*) identify any gaming machine taken off-line or placed on-line of the computer monitor system, including date, time and machine identification number;

(*f*) be capable of reporting any revenue transaction not directly monitored by token coin meter, such as tokens or coins placed in the machine as a result of a hopper fill; and

(*g*) record such other information as the Board may require.

(5) A gaming machine operator licensee shall store—

(*a*) in machine-readable format, all information required by subregulation (4) for five years; and

(*b*) such other documentation as the Board may require.

(*6*) The central computer communications system contemplated in subregulation (1) shall be used exclusively for the operation of the gaming machine operator's gaming network and shall be capable of disabling any gaming machine from play which does not comply with the provisions of these Regulations.

Illegal machines

56.—(1) Any licensee or any other person who keeps or maintains any of the following machines which has not been separately approved and registered by the Board—

(*a*) roulette tables;

(*b*) roulette wheels;

(*c*) blackjack tables;

(*d*) craps tables;

(*e*) punto banco tables;

(*f*) baccarat tables;

(*g*) poker tables;

(*h*) gaming machines; and

(*i*) such other machine as the Board may determine,

shall be guilty of an offence and liable to a fine of K5,000 and to imprisonment for one year and to a further fine of K500 per day for each day that the offence continues after conviction.

(2) A licensee shall not alter the operation of a registered machine without the prior approval of the Board and shall maintain all machines in suitable condition.

(3) Subject to subregulation (1), a licensee shall not display or expose for play any other machine which may be used for gaming other than a machine which—

(*a*) has been supplied by a licensed manufacturer or supplier; and

(*b*) is identical in all material aspects to a machine approved by the Board for distribution by the manufacturer or supplier.

(4) A licensee shall, in respect of a machine contemplated in subregulations (1) and (3), keep such records as the Board may require or approve.

PART VI

Gaming machines

Machine devices and games to be approved

57.—(1) A licensee shall not distribute any gaming machine, device or game unless it has, on application in the manner and form determined by the Board, been approved by the Board and shall not maintain or repair any machine or device that is not registered with the Board in terms of these Regulations.

(2) Only machines, devices and games meeting the published technical standards of the Board shall be approved for distribution.

(3) The Board may require submission of not more than two working models of any new machine, devices or game to the designated testing laboratory of the Board for review and inspection.

(4) The licensee seeking approval of a machine, device or game shall pay to the designated testing laboratory the cost of inspection and investigation.

(5) the testing laboratory may dismantle the models and may destroy components in order to fully evaluate the machine, device or game.

(6) The Board may require that the licensee seeking approval of a machine, device or game provides specialized equipment or the services of an independent technical expert to evaluate the machine, device or game.

Alteration and modification prohibited

58. A licensee shall not alter the operation of, or modify, any gaming device, machine or game without prior written approval of the Board.

Summary suspension of approval

59.—(1) The Board may issue a summary order, with or without notice to the relevant licensee, suspending approval of a machine or device if—

(*a*) it determines that the machine or device does not operate as approved by the Board; or

(*b*) the manufacturer misrepresented the manner in which the machine or device operates.

(2) Where approval of a machine or device is suspended under subregulation (1), the Board shall direct the licensee to take corrective measures.

(3) If a direction given under subregulation (2) is not complied with within the time stipulated by the Board or, if no time is stipulated, within a reasonable time after the direction is given or if the licensee cannot be found, the Board may destroy the machine or device.

(4) No compensation shall be payable where a machine or device is destroyed pursuant to subregulation (3).

(5) After issuing an order in terms of subregulation (1), the Board may seal or seize all models of the machine or device.

PART VII

Miscellaneous

Disposal of gaming machines and devices

60.—(1) A holder of a casino licence, gaming machine operator licence, gaming machine site licence or bingo operator licence may—

(*a*) with the approval of the Board, dispose of, by way of sale in a manner approved by the Board, any or all of his gaming machines and devices; and

(*b*) maintain or repair to the extent approved by the Board, any or all of his gaming machines and devices.

(2) The Board shall, when requested so to do, approve, on payment of such fees as may be determined by the Board that any or all of gaming machines and devices of a licence holder be disposed of by way of sale in a manner approved by the Board, by any of the following persons in any of the following events—

(*a*) in the case of the death of the licence holder, the widow, widower or the legal personal representative of the deceased licence holder;

(*b*) in the case of the bankruptcy of the licence holder or assignment for the benefit of his creditors generally, the lawful appointed trustee or assignee;

(*c*) in the case of a company in liquidation, the lawfully appointed liquidator; and

(*d*) in any case where the licence holder becomes subject to any legal disability, any person lawfully appointed to administer his affairs.

Cheating

61.—(1) No person shall at a licensed gaming premises use, or possess with the intent to use, any machine or device to assist—

(*a*) in projecting the outcome of a game;

(*b*) in keeping track of the cards played;

(*c*) in analysing probability of the occurrence of an event relating to a game; or

(*d*) in analysing the strategy for playing or betting to be used in a game except as approved by the Board in writing, upon the written request of a licensee.

(2) The provision of subregulation (1) shall not be deemed to prohibit—

(*a*) the making of and referring to handwritten records of the cards played at punto banco or baccarat; or

(*b*) the making of and referring to handwritten records of roulette results.

(3) No person shall—

(*a*) alter or misrepresent the outcome of a casino game or other event on which wagers have been made after the outcome is determined but before it is revealed to the players;

(*b*) place, increase or decrease a bet or determine the course of a play after acquiring knowledge, not to all players, on the outcome of the game or any event that affects the outcome of the game or which is the subject of the bet or aid anyone in acquiring such knowledge for the purpose of placing, increasing or decreasing a bet or determining the course of play contingent upon that event or outcome;

(*c*) claim, collect or take, or attempt to claim, collect or take money, or anything of value in or from any gaming activity with the intent to defraud without having made a wager contingent thereon, or claim, collect or take an amount greater than the amount won;

(*d*) place or increase a bet after acquiring knowledge of the outcome of the game or other event which is the subject of the bet;

(*e*) reduce the amount wagered or cancel the bet after acquiring knowledge of the outcome of the game or other event which is the subject of the bet; and

(*f*) manipulate with the intent to cheat any component or a gaming device in a manner contrary to the designed and normal operation purpose for the component, with knowledge that the manipulation affects the outcome of the game or with knowledge of any event that affects the outcome of the game.

(4) No person shall use counterfeit chips or other counterfeit wagering instruments in a casino game or have such chips or wagering instruments in his possession.

(5) In addition to acts of cheating set out in subregulations 1, 3 and 4, the Board may, by written notice, declare other acts that, in its opinion, constitute cheating.

(6) No person shall engage in an act that has been declared, by the Board under subregulation (5), as constituting cheating.

Offences and penalties

62.—(1) Any person who fails to comply with any requirement of these Regulations, any condition of any licence issued under these Regulations or any order, requisition, or direction lawfully issued by the Board under these Regulations shall be guilty of an offence.

(2) Any person who is guilty of an offence under these Regulations shall, where no other penalty is provided, be liable to a fine of K2,000 and to imprisonment for six months.

(3) If any statement required to be furnished under these Regulations contains any matter which is false in any material particular to the knowledge of any person signing it that person shall be guilty of an offence.

Taxes and fees
G.N. 12/2015

63.—(1) Every licensee shall every month, not later than the 10th day of the month—

(*a*) pay to the Board, gaming tax in respect of the preceding month; and

(*b*) submit to the Board, a return containing a summary of gaming revenue during the preceding month.

(2) The gaming tax referred to in subregulation (1) (*a*) shall be calculated on the basis of the rate as set out in the Fifth Schedule hereto.

(3) The return referred to in subregulation (1) (*b*) shall be as set out in the Sixth Schedule hereto.

(4) The fees prescribed in the—

(*a*) Seventh Schedule shall be payable in respect of the licences specified therein; and

(*b*) Eighth Schedule shall be payable in respect of the matters specified therein.

FIRST SCHEDULE

Form I

reg. 5 (3)

Casino Licence

Name:.....
is hereby authorized, subject to the Gaming Act and regulations made thereunder and upon the conditions specified overleaf to organize and manage the following games—

.....
.....
.....
at.....

(*Premises*)

This licence shall expire on .....
Date of issue .....
Fee paid .....

.....
Chairman, Gaming Board

Form II

reg. 6 (5)

Gaming Machine Operator Licence

Name: .....
is hereby authorized, subject to the Gaming Act and regulations made thereunder and upon the conditions specified overleaf, to operate the following gaming machine(s)—

.....
.....
.....
at .....

(*Plot No., Street, Town*)

This licence shall expire on .....
Date of issue .....
Fee paid .....

.....
Chairman, Gaming Board

FORM III reg. 7 (3)

GAMING MACHINE SITE LICENCE

Name: .....
is hereby authorized, subject to the Gaming Act and regulations made thereunder and upon the conditions specified overleaf, to operate and keep the following gaming machine(s)—

.....
.....
.....
at.....
(*Premises*)

This licence shall expire on .....

Date of issue .....

Fee paid .....

.....
Chairman, Gaming Board

FORM IV reg. 8 (2)

BINGO OPERATOR LICENCE

Name: .....
is hereby authorized, subject to the Gaming Act and regulations made thereunder and upon the conditions specified overleaf, to organize and manage the playing of the game of bingo at .....
(*Premises*)

This licence shall expire on .....
Date of issue .....
Fee paid .....

.....
Chairman, Gaming Board

FORM V reg. 9 (3)

JUNKET AGENT LICENCE

Name: .....
of .....
(*Address*)
is authorized, subject to the Gaming Act and regulations made thereunder and upon conditions specified overleaf, to receive commission on, or a share in, gaming profits raised by a junket.

This licence shall expire on .....

Date of issue .....
Fee paid .....

.....
Chairman, Gaming Board

FORM VI reg. 10 (4)

MANUFACTURER LICENCE

Name: .....
of .....
(*Address*)
is authorized, subject to the Gaming Act and regulations made thereunder and upon conditions specified overleaf, to manufacture, sell, distribute, import and market gaming machines and devices.

This licence shall expire on .....
Date of issue .....
Fee paid .....

.....
Chairman, Gaming Board

FORM VII reg. 11 (4)

MAINTENANCE LICENCE

Name: .....
of .....
(*Address*)
is authorized, subject to the Gaming Act and regulations made thereunder and upon conditions specified overleaf, to maintain and repair gaming machines and devices.

This licence shall expire on .....
Date of issue .....
Fee paid .....

.....
Chairman, Gaming Board

FORM VIII reg. 12 (4)

SUPPLIER LICENCE

Name: .....
of .....
(*Address*)

is authorized, subject to the Gaming Act and regulations made thereunder and upon conditions specified overleaf, to sell, distribute, import and market gaming machines and devices.

This licence shall expire on .....

Date of issue .....
Fee paid .....

.....

Chairman, Gaming Board

FORM IX reg. 12A (6) G.N. 12/2015

WIDE AREA PROGRESSIVE GAMING LICENCE

Name .....

of .....

is hereby authorized, subject to the Gaming Act and regulations made thereunder and upon the conditions specified overleaf, to operate and keep the following gaming machines—

.....
.....

This licence shall expire on .....

Date of issue .....

Fee paid .....

.....

Chairman, Gaming Board

SECOND SCHEDULE reg. 13 (4)

APPLICATION FOR A GAMING MACHINE OPERATOR/SITE LICENCE*

To: The Chief Executive Officer
The Gaming Board

1. In accordance with the Gaming Act and the regulations made thereunder—

.....
(*Full Name*)

of .....
(*Address*)

(duly authorized in that behalf by the following society/partnership/body corporate) ..... hereby apply (for and on behalf of the said society/partnership/body corporate) for the issue/renewal* of Licence authorizing the use of the following gaming machines—

(Give sufficient particulars of machines and purposes thereof)

.....

on the premises—

.....

(*Plot No., Street, Town*)

2. State whether there are any other gaming machines made available for play in the same building in which your premises are situated.
3. What are your premises used for?

   .....
4. To what extent are your premises used by persons under the age of eighteen years?
5. Please give particulars of the manner in which the stakes hazarded by means of the gaming machines are to be applied (i.e. the percentage to be paid by way of winnings and the percentage to be applied for purposes other than private gain)—

   .....

Date ..... 20.....

.....

(*Signature*)

.....

(*Description*)

*Delete as necessary.

Where the application is made for and on behalf of a partnership, society or body corporate it must be signed by a partner or the secretary of the society or body corporate, as the case may be.

THIRD SCHEDULE reg. 13 (5)

PART I

APPLICATION FOR A CASINO LICENCE

To: The Chief Executive Officer

The Gaming Board

1. In accordance with the Gaming Act and the regulations made thereunder—

   .....

   (*Full Name*)

   of .....

   (*Address*)

*(duly authorized in that behalf by the Partnership/body corporate specified in paragraph (2)) hereby apply *(for and on behalf of the said partnership/body corporate) for a licence to organize and manage gaming at—

.....

(*Plot No., Street, Town*)

2. Name under which business will be conducted—

.....

Date and place of registration

3. Full names of all partners, directors, secretary and managers, if any, of body corporate—

(i) .....

(*Name and address*)

.....

(*Description, e.g. a director, secretary, etc.*)

(ii) .....

(*Name and address*)

.....

(*Description, e.g. a director, secretary, etc.*)

(iii) .....

(*Name and address*)

.....

(*Description, e.g. a director, secretary, etc.*)

4. Have you or any of the person named above ever been—

(*a*) convicted of any criminal offence involving fraud or dishonesty;

(*b*) bankrupt, or entered into any agreement with creditors? If so, give particulars—

.....

5. Give particulars of games you propose to organize and manage and state briefly the manner in which each game will be organized and managed—

.....

.....

.....

6. What do you expect will be the amount of the gross turnover for the first twelve months of the gaming business in respect of which this application is made

.....

7. State the name and address of the accountant you wish to appoint for the purpose of auditing your statement of accounts under section 10 of the Gaming Act.

.....

Date ..... 20.....

.....

(*Signature*)

.....

(*Description*)

*Delete as necessary.

Where the application is made for and on behalf of a partnership or a body corporate it must be signed by a partner or the secretary to the body corporate, as the case may be.

(N.B.—A separate application must be made in respect of each premises on which the applicant wishes to organize and manage gaming.)

FOR OFFICIAL USE ONLY

Application forwarded to .....

(*Local authority*)

on ..... 20.....

Recommendation of local authority received on ..... 20.....

PART II reg. 13 (5) (*a*)

COMPANY RELEASE AUTHORIZATION

To: All courts, probation departments, employers, educational institutions, banks, financial and other institutions, all agencies without exception, both foreign and domestic, and to whom else this authorization may be duly presented.

From: .....

....

(*Identification Number*) (*Telephone Number*)

As a requirement of making or involvement in proposal/application for a casino licence in Malaŵi, the above-named company agrees to allow the Gaming Board (the Board) to conduct an investigation into the background of the company.

The company HEREBY AUTHORIZES the Board and any person authorized by original letter of authority signed by the Board's Chief Executive Officer to inspect and obtain copies of—

(*a*) any credit report, other report, legal or commercial, information derived from those reports that has any bearing on the company's credit worthiness, credit history, credit standing or credit capacity;

(*b*) any loan information, cheque account records, savings deposit records, safe deposit box records, passbook records and bank statement sheets pertaining to the company provided to the Board under a letter of authority from the company to its bankers;

(*c*) any records relating to investigations of the operations or activities of the company conducted by any police force, crime investigation agencies, corporation regulatory agencies or any gaming or casino regulatory bodies;

(*d*) any records relating to any present or past civil or criminal court proceedings to which the company is a party; and

(*e*) any other document, record or correspondence pertaining to the company.

You are HEREBY AUTHORIZED to release to the Board or any of its authorized agents, all the documents, reports and information requested by any of them.

This Authorization shall supersede and countermand any prior request or authorization to the contrary. A photocopy of this Authorization will be considered as effective and valid as the original.

Dated the day of

The Common Seal of ..... was hereto affixed in

....

(*Director*) (*Secretary*)

....

(*Name*) (*Name*)

PART III

reg. 13 (5) (*b*)

CASINO BUSINESS PROPOSAL

1. Full name of company.....
2. Previous names of company .....
3. Registered office of the company .....
4. Physical business address of the company .....
   .....
   .....
   .....
5. Postal address of the company .....
   .....
   .....
   .....
   .....
6. Telephone number .....
7. Facsimile number .....
8. Date of incorporation of company .....
9. Place of incorporation of company .....
10. Company Registration No. .....

    Signed .....

    Name .....

    Designation .....

    Date .....

11. Is the company a wholly or partly owned subsidiary of another company or partnership?

    If 'yes' please give details of all holdings, subsidiary and associate entities of the holding company—

Name of Company	Registration number and place of incorporation	Nature of Business	Relationship to company, e.g. holding co., co. subsidiary, associate, etc.	Percentage Holding

NOTE.—A corporate 'family tree' diagram detailing the relationship of the holding company to the company, subsidiary and associate, must accompany the declaration.

Signed .....
Name .....
Designation .....
Date .....

12. Is the company a parent company of a group of companies? If 'yes' please give details of all subsidiary and associate companies of the group—

Name of Company	Registration number and place of incorporation	Nature of business	% shareholding of company, subsidiary of associate, entities

NOTE.—A corporate 'family tree' diagram detailing the relationship of the company to subsidiaries and associate entities must accompany the declaration.

Signed .....
Name .....
Designation .....
Date .....

13.—(*a*) Names, addresses and shareholdings of shareholders holding 5% or more of the issued share capital of the company—

Name	Address	Shareholding	Percentage

(*b*) Number of other shareholders with less than 5 percent shareholding

Signed .....
Name .....
Designation .....
Date .....

14. Names and addresses of any lenders, mortgagees or other persons providing finance, and the terms under which they have undertaken to provide funding in respect of this application—

Name	Address	Account/ Ref. No.	Type of Facility	Amount of Facility	Repayment Period	Repayment Terms

Signed .....
Name .....
Designation .....
Date .....

15. Provide details of any agreements relating to the ownership, operation of the casino development or its facilitatings or any right or interest therein—

.....
.....
.....
.....
.....
.....
.....

16. Has the company or any other company named in this declaration, or any director, manager or officer of such company while acting as such, ever been convicted of an offence?

If 'yes' please give details i.e. court at which convicted, date of conviction, offence and penalty—

.....
.....
.....
.....
.....
.....
.....

Signed .....
Name .....
Designation .....
Date .....

17. Is there any reason to believe that a prosecution against the company or any other named companies, directors or officers may be pending—

.....

If 'yes' give details—

.....
.....
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.....

18. Details of any civil action taken by or against the company during the past five years for amounts exceeding K500,000—

.....
.....
.....
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.....
.....
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.....
.....
.....
.....

Signed .....
Name .....
Designation .....
Date .....

19. Details of any civil action pending by or against the company for amounts exceeding K500,000—

    .....
    .....
    .....
    .....
    .....

20. Has the company or any subsidiary or associate entity ever been, or is it currently being investigated by any statutory or government body in Malaŵi or abroad?

    .....

    If 'yes' please give details below—

Statutory body/ Department	Address
.....	.....
.....	.....
.....	.....

21. Name and address of the company auditors—

    Name .....

    Address .....

    .....

    .....

    .....

    Telephone .....

NOTE.—If change in auditors took place during the last five years, also supply details of previous auditors.

22. Details of all bank accounts, including foreign accounts, held by the company at any time during the last five years—

Bank	Account No.	Address	Contact Names

Signed .....

Name .....

Designation .....

Date .....

23. Details of directors, officers and senior management personnel of the company—

Name	Address	Identity Number	Date of Birth	Place of Birth	Position

Provide full details of any current or prior association by any of the above-named persons with ownership, administration or management of a gambling related business.

24. Details of directors who have ceased to hold office during the last five years—

Name	Address	Identity Number	Date of Birth	Place of Birth

Signed .....

Name .....

Designation .....

Date .....

25. Names and addresses of the company's lawyers/legal advisors and consultants engaged with respect to this casino development—

.....
.....
.....
.....
.....
.....
.....
.....

26. Does the company have any interest, financial or otherwise, in any other company or with any person or business, or has the company ever provided any financial assistance or other support to any other company, business or other body, involved with the

ownership, administration or management of a gambling-related business?

If 'yes' provide full details—

.....
.....
.....
.....
.....
.....
.....
.....
.....
.....

Signed .....

Name .....

Designation .....

Date .....

28. Has the listed company, or any association entity, ever been fined, suspended or reprimanded for breaches of Stock Exchange Listing Rules on any exchange?

.....

If 'yes' provide full details—

.....
.....
.....
.....
.....
.....
.....
.....
.....
.....

Signed .....

Name .....

Designation .....

Date .....

The following must accompany this form—

1. Copies of the audited financial statements of the company and any holding company for the last ten years;
2. Details of any substantial change in the financial position of the company since the last audited financial statements;
3. Copies of the tax returns and assessments of the company for last two years;

4. Details of any joint venture arrangements between the company and any party, in relation to the casino development;
5. Details of the number, value and classes of share capital including voting rights, both unauthorized and issued;
6. A copy of the Memorandum and Articles of Association of the company and the Certificate of incorporation;
7. Details of any judicial manager, liquidator or provisional liquidator appointed to the company or any of its associated entities or any winding up petitions in respect of the company or any of its associated entities;
8. Details of any gambling related licences currently or previously held by the company, its affiliates or any director or office bearer anywhere in the world;
9. Details of any application by the company or any of its associated entities for a gambling related licence anywhere in the world, and the outcome of such application;
10. Copies of all reports and announcements to any Stock Exchange since 1st January, 1996;
11. An affidavit in which the Applicant attests to the validity and accuracy of all information contained in this proposal;

NOTE—(*a*) Applicants should use attachments in instances where the space pr d on the form is insufficient;

(*b*) Applicants are welcome to submit any additional information which might further support the proposal.

FOURTH SCHEDULE

reg. 13 (7)

APPLICATION FOR A BINGO OPERATOR LICENCE

To: The Chief Executive Officer
The Gaming Board

1. In accordance with the Gaming Act and the regulations made thereunder—

   .....

   (*Full name*)

   of .....

   (*Address*)

   *(duly authorized in that behalf by the partnership/body corporate specified in paragraph 2) hereby apply * (for and on behalf of the said partnership/body corporate) for a licence to organize and manage the game of bingo—

   .....

   (*Plot No., Street, Town*)

2. Name under which business will be conducted—

   .....

   Date and place of registration .....

3. Full names of all partners, directors and secretary of body corporate, managers, if any—

   (i) .....
   (*Name and address*)

   .....
   (*Description e.g. a director, secretary, etc.*)

   (ii) .....
   (*Name and address*)

   .....
   (*Description e.g. a director, secretary, etc.*)

   (iii) .....
   (*Name and address*)

   .....
   (*Description e.g. a director, secretary, etc.*)

4. Have you or any of the persons named above ever been—

   (*a*) convicted of any criminal offence involving fraud or dishonesty;

   (*b*) bankrupt, or entered into any agreement with creditors? If so give particulars—

   .....

   .....

5. Give particulars of games you propose to organize and manage and state briefly the manner in which each game will be organized and managed—

   .....

   .....

6. What do you expect will be the amount of the gross turnover for the first twelve months of the gaming business in respect of which this application is made?

   .....

   .....

7. State the name and address of the accountant you wish to appoint for the purpose of auditing your statement of accounts under section 10 of the Gaming Act—

   .....

   .....

   Date ..... 20.....

   .....
   (*Signature*)

   .....
   (*Description*)

*Delete as necessary.

Where the application is made for and on behalf of a partnership of a body corporate it must be signed by a partner or the secretary to the body corporate, as the case may be.

(N.B—A separate application must be made in respect of each premises on which the applicant wishes to organize and manage gaming.)

FOR OFFICIAL USE ONLY

Application forwarded to .....
(*Local authority*)

on ..... 20.....

Recommendation of local authority received on ..... 20.....

FIFTH SCHEDULE reg. 63 (2) G.N. 12/2015

1. The rate of gaming tax payable shall be as follows—

Type of licensee	*Rate*
(*a*) Casino licensee	12.5 per cent of his gross gaming revenue
(*b*) Bingo licensee	12.5 per cent of his gross gaming revenue
(*c*) Gaming machine operator licensee . .	12.5 per cent of his gross gaming revenue
(*d*) Gaming machine site licensee	12.5 per cent of his gross gaming revenue
(*e*) Wide area progressive gaming licensee . .	12.5 per cent of his gross gaming revenue

2. Gross gaming revenue shall be calculated as follows—
   (*a*) for each table game, gross gaming revenue equals the closing table float plus credit slips for cash, chips or tokens returned to the casino cage, plus drop, less opening table float and fills to the table;
   (*b*) for each gaming machine, gross gaming revenue equals drop less jackpot payouts, fills to the machine and if the licensee retains detailed documentation supporting the deduction the actual cost to the licensee of any personal property (excluding

travel, lodging, food and beverages or services) distributed to a patron as winnings from a gaming machine;

(*c*) for each card game and any other game in which the licensee is not a party to a wager, gross gaming revenue equals all money received by the licensee as compensation for conducting the game; and

(*d*) in respect of bingo, the total amount of money staked by players on a bingo game, including participation fees, less the total amount returned to players by way of prizes.

G.N. 12/2015 reg. 63 (3)

SIXTH SCHEDULE

Certified Statement in Respect of Gaming for Month Ending

No. .....

Original

Duplicate

Triplicate

Name of licensee .....

Licence No. .....

I/We, the abovenamed organizer(s) and manager of the games specified below, in accordance with the Gaming Act and the regulations made thereunder, hereby certify that the particulars given hereunder show a full and accurate statement of the moneys or money's worth received by me (us) and of the winnings for the period stated. I/We attach herewith a remittance for the tax due under section 17 of the Act.

Particulars of Moneys's Worth Stated on Games and Tax in Respect Thereof

Date	Games	Total Money's or Money Worth Stake	Total Commission	Total Tax Payable
Totals				

Signed .....

Address .....

SEVENTH SCHEDULE

reg. 63 (4) (*a*) G.N. 12/2015

	Type of licence	*Fees per annum*
1.	Casino licence	K1,000,000 plus K10,000 per gambling table and K8,000 per slot machine
2.	Wide area progressive gaming licence . .	K500,000 plus K8,000 per slot machine
3.	Gaming machine operator licence	K150,000 plus K8,000 per slot machine
4.	Gaming machine site licence	K50,000
5.	Bingo licence	K150,000
6.	Junket agent licence	K10,000
7.	Manufacturer licence—	
	(*a*) gaming machine	K150,000
	(*b*) any other gaming equipment	K50,000
8.	Maintenance licence	K50,000
9.	Supplier licence	K50,000

EIGHTH SCHEDULE

reg. 63 (4) (*b*) G.N. 12/2015

	Matter	*Fees*	
		K	*t*
1.	Casino licence—		
	(*a*) On application for a licence	1,000,000	00
	(*b*) On application to vary the location of business premises	100,000	00
	(*c*) On application to amend a licence	100,000	00
	(*d*) For issuance of a certificate of suitability . .	100,000	00
	(*e*) On registration of a key employee	30,000	00
	(*f*) On registration of any other employee	10,000	00
	(*g*) On registration of a gaming machine	8,000	00
	(*h*) On registration of a casino table	10,000	00

		K t
2.	Gaming machine operator licence—	
	(*a*) On application for a licence	150,000.00
	(*b*) On application to vary the location of business premises	50,000.00
	(*c*) On application to amend a licence	50,000.00
	(*d*) For issuance of a certificate of suitability . .	50,000.00
	(*e*) On registration of a key employee	15,000.00
	(*f*) On registration of any other employee	5,000.00
	(*g*) On registration of a gaming machine	8,000.00
3.	Gaming machine site licence—	
	(*a*) On application for a licence	50,000.00
	(*b*) On application to vary the location of business premises	10,000.00
	(*c*) On application to amend a licence	10,000.00
	(*d*) For issuance of a certificate of suitability . .	10,000.00
	(*e*) On registration of a gaming machine	8,000.00
4.	Bingo operator licence—	
	(*a*) On application for a licence	150,000.00
	(*b*) On application to vary the location of business premises	50,000.00
	(*c*) On application to amend a licence	50,000.00
	(*d*) For issuance of a certificate of suitability . .	10,000.00
	(*e*) On registration of a key employee	15,000.00
	(*f*) On registration of any other employee	5,000.00
	(*g*) On registration of a bingo seat	1,000.00
5.	Manufacturer licence—	
	(*a*) On application for a licence	150,000.00
	(*b*) On application to vary the location of business premises	50,000.00
	(*c*) On application to amend a licence	150,000.00
	(*d*) On registration of a key employee	15,000.00
	(*e*) On registration of any other employee	5,000.00

		K *t*
6.	Maintenance licence—	
	(*a*) On application for a licence	150,000.00
	(*b*) On application to vary the location of business premises	50,000.00
	(*c*) On application to amend a licence	50,000.00
	(*d*) On registration of a key employee	15,000.00
	(*e*) On registration of any other employee	5,000.00
7.	Supplier licence—	
	(*a*) On application for a licence	150,000.00
	(*b*) On application to vary the location of business premises	50,000.00
	(*c*) On application to amend licence	50,000.00
	(*d*) On registration of a key employee	15,000.00
	(*e*) On registration of any other employee	5,000.00
8.	Wide area progressive gaming licence—	
	(*a*) On application for a licence	500,000.00
	(*b*) On application to vary the location of business premises	50,000.00
	(*c*) On application to amend a licence	50,000.00
	(*d*) On registration of a key employee	15,000.00
	(*e*) On registration of any other employee	5,000.00
9.	Junket agent licence—	
	(*a*) On application of a licence	10,000.00
	(*b*) On application to vary the location of business premises	5,000.00
	(*c*) On application to amend a licence	5,000.00
	(*d*) On registration of a key employee	5,000.00
	(*e*) On registration of any other employee	1,000.00

LOTTERIES

CHAPTER 47:04

Containing Pages 1–36

CHAPTER 47:04
LOTTERIES
ARRANGEMENT OF SECTIONS

SECTION

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An Act to provide for the regulation of National Lotteries and other lotteries; for the control and licensing of other lotteries, for the generation of funds for economic development and matters connected with or incidental thereto 9 of 2003

[19TH SEPTEMBER, 2003]

PART I
PRELIMINARY

1. This Act may be cited as the Lotteries Act. Short title

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

"Board" means the National Lotteries Board established under section 3;

"Chairperson" means the person designated as Chairperson of the Board under section 6;

"date" means in relation to a lottery, the date on which the winners of that lottery are determined;

"licensee" means the person to whom the licence for the National Lottery has been issued under subsection (1) of section 2;

"lottery" includes any game, scheme, arrangement, system plan, promotional competition or device of distributing prizes by lot or chance and any game, scheme, arrangement, system, plan, competition or device, which the Minister may by notice in the *Gazette* declare to be a lottery;

"National Lottery" means the lottery contemplated in section 21 and includes all the lotteries conducted under the licence for the National Lottery, taken as a whole;

"net proceeds of the National Lottery" means the sums that are payable to the Board under paragraph (*e*) of subsection (3) of section 22 but not the sums which are paid in prizes of the National Lottery;

"newspaper" includes a journal, magazine or other periodical publication;

"participant", in relation to a lottery, means a person who is in possession of a valid ticket in that lottery;

"place" means any place, whether or not it is a public place and includes any premises, building, dwelling, flat, room, office, shop, structure, vehicle, vessel or aircraft;

"prescribe" means prescribe by the Minister by regulation;

"political office" means the office of a Cabinet Minister, a Member of Parliament, a Member of a City, Town or District Council, as the case may be;

"prize" means the prize awarded to the winner of a lottery;

"promoters" means persons promoting other lotteries referred to in section 36;

"software" means a set of instructions fixed or stored in any manner and which, when used directly or indirectly in a computer, directs its operation to bring about a result;

"subscription" means the payment, or delivery of any money goods article, matter or thing, including any ticket, coupon or entry form, for the right to compete in a lottery;

"ticket" means, in relation to a lottery, any symbol, sign, token, coupon, warrant, card, printed paper, document or list or any other means or device which confers or purports to confer the right to take part in a lottery and which is issued by or on behalf of the lottery in question.

PART II
Establishment of National Lotteries Board

Establishment of the National Lotteries Board

3. There is hereby established a Board to be known as the National Lotteries Board (hereinafter referred to as the "Board") which shall be a body corporate with perpetual succession and a common seal and shall have the capacity of suing and being sued and, subject to the provisions of this Act, of doing all such acts as a body corporate may by law perform.

Composition of the Board

4.—(1) The Board shall consist of not more than nine and not less than six members to be appointed by the Minister.

(2) In order for the Board to fulfill its mandate effectively the composition of the Board shall include—

(*a*) a person with a business and an accounting background;

(*b*) a person with a social rehabilitation background who has been in practice for not less than five years;

(*c*) a person with a legal background and is registered to practice in Malaŵi;

(*d*) a person with law enforcement experience not below the rank of Commissioner;

(*e*) a person with knowledge and experience in the operation of lotteries and who is not in any gainful employment with any lottery operator; and

(*f*) four *ex officio* members.

(3) In making an appointment under this section, the Minister shall require the person to be appointed to declare whether he has any, and if so what, financial interest in any lottery undertaking operating in Malaŵi.

Qualifications of members

5. The person to be appointed as a Member of the Board shall be—

(*a*) a Malaŵian of not less than twenty-five years of age;

(*b*) a person who has not been declared bankrupt for the last five (5) years;

(*c*) a person who has not been convicted of any criminal offence for the past five years; and

(*d*) a person who is not holding a political office.

Chairperson of the Board

6. The Minister shall designate one of the members appointed under section 4, other than an *ex officio* member, as Chairperson.

Tenure and vacation of office of members

7.—(1) The members of the Board, other than *ex officio* members, shall hold office for a period of three years but shall be eligible for re-appointment for one more term.

(2) Any member of the Board, other than an *ex officio* member, may at any time, by notice in writing to the Minister, resign from his office.

(3) The office of a member, other than an *ex officio* member shall become vacant—

(*a*) upon his death;

(*b*) if he is adjudged bankrupt;

(*c*) if he is convicted of an offence and sentenced to imprisonment;

(*d*) if he is mentally or physically incapable of performing his duties as a member of the Board;

(*e*) if he is guilty of gross misconduct and is so notified in writing by the Minister; or

(*f*) if he is absent from three consecutive meetings of the Board, for which he has had notice, without any reasonable excuse.

Meetings of the Board

8.—(1) The Chairperson shall preside over every meeting of the Board, but in the event of the Chairperson being absent from any meeting of the Board, the members present shall elect from among their number a person to preside over that meeting.

(2) At all meetings of the Board, six members shall form a quorum.

(3) Meetings of the Board shall be held at least once in every three months and at such other times and at such places as the Chairperson may determine.

(4) The Chairperson shall have a deliberative vote and, in the case of an equality of votes, shall also have a casting vote.

(5) The Board may invite, for such a period of time as it thinks fit, any person whose knowledge or advice it may require, but a person so invited shall not be entitled to vote at any meeting of the Board or be counted as a member for the purpose of forming a quorum.

Remuneration of the Board

9. The members of the Board shall be paid such remuneration and allowances as the Minister may determine.

Functions of the Board

10. The Board shall have the following functions—

(*a*) issue one licence to conduct the National Lottery as contemplated in subsection (1) of section 21 and any matter contemplated in paragraph (*g*) of subsection (3) of section 22;

(*b*) ensure that—

(i) the National Lottery is conducted with all due propriety and strictly in accordance with the provisions of the Constitution, this Act, all other applicable laws and the licence for the National Lottery together with any agreement pertaining to that licence;

(ii) the interest of every participant in the National Lottery are adequately protected; and

(iii) subject to subparagraphs (i) and (ii), the net proceeds of the National Lottery are as large as possible;

(*c*) monitor, regulate and police all lotteries;

(*d*) advise the Minister of percentages of money to be allocated or review the percentage under paragraph (*e*) of subsection (3) of section 22 as required;

(*e*) advise the Minister on the efficacy of legislation pertaining to lotteries and ancillary matters;

(*f*) administer and invest the money paid to the Board in accordance with this Act and the licence for the National Lottery;

(*g*) perform such additional duties in respect of lotteries as the Minister may assign to the Board;

(*h*) ensure that arrangements are made as may be specified in the licence for the protection of prize monies and sums for distribution;

(*i*) advise the Minister on any matter relating to the National Lottery and on any other matter upon which the Minister requires the advice of the Board; and

(*j*) set up a fund for prize money.

Powers of the Board

11. The Board shall have the following powers to—

(*a*) acquire and dispose of assets of the Board;

(*b*) set up a secretariat and employ management staff with appropriate qualifications;

(*c*) generate revenue;

(*d*) ensure that the winners in a lottery are paid their prize money promptly;

(*e*) ensure that part of the funds generated are channeled towards poverty reduction programs, including to sectors such as sports, culture, small medium enterprises and social welfare services; and

(*f*) develop guidelines for the operation of the National Lottery business in Malaŵi.

Secretariat of the Board

12. The Secretariat of the Board shall consist of a chief executive officer and other employees of the Board appointed under this Act.

Executive Director of the Board

13.—(1) The Board shall appoint, on such terms and conditions as it may determine, an Executive Director of the Board who shall be the Secretary of the Board as well as the Chief Executive Officer of the Board and in addition shall perform such duties as the Board shall assign to his office and ensure the effective administration and implementation of this Act.

(2) Without derogation from the generality of the responsibilities and duties of the Executive Director conferred under subsection (1), the Executive Director shall be responsible for the day-to-day administration of the Board.

(3) The Executive Director or such other officer of the Board as the Executive Director may designate, shall attend meetings of the Board and may address such meetings, but shall not vote on any matter:

Provided that the person presiding at any meeting may, for good cause, require the Executive Director or such other officer to withdraw from such meetings.

Other employees

14.—(1) The Board may appoint, on such terms and conditions as it may determine, such other employees, subordinate to the Executive Director, as it considers necessary for the performance

of its functions and to assist the Executive Director in discharging his duties.

(2) The Board may delegate to the Executive Director the appointment of employees of such junior ranks, as the Board shall specify.

Procedures for the Board

15.—(1) The Chairperson or another person duly authorized by the Board shall sign all licences issued under this Act and all communications from the Board, and such documents may be published in the *Gazette*.

(2) The application of the seal of the Board shall be authenticated by the signatures of the Chairperson or some other members of the Board duly authorized by the Board to authenticate the application of the seal thereof.

Annual Report

16.—(1) The Board shall, within three months after the end of each financial year, furnish to the Minister the full report on the exercise and performance of its functions during that year and such report shall include financial statements duly audited, the report of the auditors and such other information as the Minister may by notice in writing to the Board, require.

(2) The Minister shall, after receiving the Report referred to in subsection (1), present it to Parliament at its next sitting.

PART III
Financial Provisions

Funds of the Board

17.—(1) The funds of the Board shall consist of—

(*a*) such sums as may be appropriated by Parliament;

(*b*) subject to the provisions of this Act, the proceeds from the sale of tickets in any National Lottery;

(*c*) other money lawfully paid to the Board excluding any prize money paid by the licensee to the Board; and

(*d*) the payments to the Board in terms of section 35.

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(2) Subject to the provisions of sections 72 and 73 of the Public Finance Management Act, the Board may with the approval of the Minister, borrow either temporarily, by way of overdraft or otherwise, such sum as it may require, for meeting its obligations or discharging its functions under this Act.

Finances

18. There shall be paid out of payments made to the Board in terms of section 35 such sums as are necessary to defray any expenses incurred by the Board, including the remuneration, allowances and other employment benefits of the Executive Director and members of staff of the Board.

Accounts and audit

19.—(1) The Board and the licensee shall keep proper books of accounts and records of all their transactions in respect of the National Lottery.

(2) The Minister shall appoint independent auditors at the end of each financial year to examine and audit the accounts and all relevant documents of the Board.

Financial year

20. The financial year of the Board shall be the period commencing on the date of commencement of this Act and ending on the following 30th June and thereafter it shall be a period of twelve months ending on 30th June every year.

PART IV
Licensing of the National Lottery

Licence to conduct National Lottery

21.—(1) The Board shall issue one licence at any one time authorizing a person to conduct the National Lottery which for purposes of section 46 will constitute a lottery, in accordance with the provisions of this Act.

(2) Before a licence is granted under this section—

(*a*) the Board shall, by notice in the *Gazette* and in not less than two newspapers, invite interested parties to apply in writing for a copy of a request for proposal or any other document which may be made public and the Board shall require payments for such documents;

(*b*) the Board shall, before granting a licence, be satisfied that—

(i) the applicant for the licence contemplated in subsection (1) has sufficient and appropriate knowledge or experience to conduct the National Lottery, or has unconstrained and continuous access thereto, and shall be able to conduct the National Lottery strictly in accordance with this Act, the licence of the National Lottery and any agreement pertaining to the licence;

(ii) the applicant has the necessary financial and other resources to conduct the National Lottery; and

(iii) no political party in the country or political office bearer has any direct financial interest in the applicant or is a shareholder of the applicant.

(3) In considering whether to grant the licence, the Board shall take into account—

(*a*) whether any person who appears before the Board is likely to manage the business or any part of the business of the National Lottery under the licence, is a fit and proper person to do so;

(*b*) whether any person for whose benefit that business is likely to be conducted is a fit and proper person to benefit from it; and

(*c*) whether any person who is likely to manage the business or any part of the business of the National Lottery under the licence, shall—

(i) do so with all due propriety and strictly in accordance with the Constitution, this Act, all other applicable laws and the licence for the National Lottery together with any agreement pertaining to the licence;

(ii) ensure that the interests of every participant in the National Lottery are adequately protected; and

(iii) subject to subparagraphs (i) and (ii), ensure that the net proceeds of the National Lottery are as large as possible.

(4) A licence granted under this section shall include the conditions contemplated in section 22.

(5) The licence contemplated in subsection (1) may allow the licensee to appoint another person to conduct certain lotteries of the National Lottery on behalf of the licensee only with the written approval of the Board.

(6) The Minister shall inform Parliament regarding the person to whom a licence to conduct the National Lottery has been granted.

Requirements and conditions of licence

22.—(1) A licence granted under section 21 shall—

(*a*) be in writing;

(*b*) specify the conditions attached to it; and

(*c*) be granted for a maximum period of five years and may be renewed for a further period of five years.

(2) The Board may, in a case where the licence has been granted for less than five years, and at least one year before expiry of that licence, extend that licence for such further period as would, together with the initial period which that licence was granted, not exceed five years:

Provided that the licensee shall have no rights or legitimate expectation in respect of an extension of the period of validity of the licence other than the rights afforded by this subsection.

(3) The conditions contemplated in subsection (1) shall include such conditions as the Board shall determine and shall in particular include conditions requiring the licensee to—

(*a*) obtain the consent of the Board before doing anything specified in the licence;

(*b*) refer specific matters to the Board, as the case may be, for approval;

(*c*) ensure that such requirements the Board may, from time to time, determine or approve in terms of the licence are complied with, including the imposition of penalties in the event of the licensee not complying with any provision of this Act or the licence;

(*d*) provide the Board, at times specified by the Board, with such information as the Board may require;

(*e*) make such arrangements as may be specified in the licence for the payment of such sums out of the net proceeds of the National Lottery as may be so specified to the Fund or the Board, at such times as may be specified;

(*f*) do such things in terms of the licence including the transfer of property or any rights, excluding intellectual property rights or proprietary software as the Board may require, upon the expiration of the licence;

(*g*) obtain the approval of the Board for any lottery and the rules thereof before the lottery is conducted under the licence for the National Lottery;

(*h*) allow the Board or any person designated by it to enter any premises or facility belonging to or under the control of the licensee or a member of the management of the licensee or, premises to which the licensee has a right of access at any reasonable time if such entry is necessary for the protection of the integrity of the National Lottery and to—

(i) examine or inspect anything, machine, document or data captured in any form, excluding proprietary software, found on or in the premises or facility, and make copies of or make extracts from that thing, machine, document or data;

(ii) seize, for the purpose of further examination or security information, anything, machine, document or data, excluding proprietary software, on or in such premises or facility which has a bearing on the conduct of the National Lottery;

(iii) seal or otherwise secure any such premises, facility, thing or machine on or in which any document or data which has a bearing on the conduct of the National Lottery is stored or captured; and

(iv) take such steps as may be reasonably necessary to protect the integrity and conduct of the National Lottery;

(*i*) secure a valid and enforceable undertaking in a written form from—

(i) the person controlling the licensee in any way whatsoever not to change that control of the licensee for the duration of the licence without the consent of the Board; and

(ii) the person controlling the licensee in any way whatsoever not to transfer, cede or in any other way encumber the licence to another person.

(4) On—

(*g*) requesting a copy of any document under paragraph (*a*) subsection (2) of section 21;

(*h*) applying for the licence to be issued under subsection (1) of section 21; or

(*i*) the granting of the licence under section 21,

the person requesting a copy of a document, the applicant or the licensee, as the case may be, shall pay to the Board the prescribed fee.

Variation of conditions of licence

23.—(1) The Board may vary any condition in the licence granted under section 21—

(*a*) to the extent provided for in the proviso to subsection (1) of section 22; or

(*b*) other than a condition contemplated in paragraph (*a*) only if the licensee consents to that variation, or if the licensee does not consent to that variation, only if—

(i) that variation is provided for in this Act or to the extent provided for in the licence; and

(ii) the licensee has been given a reasonable opportunity to make representations to the Board, as the case may be, in respect of the intended variation.

(2) If the Board, after consideration of the licensee's representations to it, decides to vary a condition in accordance with that licence but without the consent of the licensee, the Board, shall cause a notice to be served on the licensee in which the licensee shall be informed of the variation and the date on which that variation shall take effect, which date shall not be less than twenty-one (21) working days after the date of service of such notice, unless the licensee agrees to a shorter period in writing.

(3) The provisions of the licence to vary a condition in the licence under subsection (1) may allow the Board to add a condition to the licence.

Enforcement of conditions of licence

24.—(1) If the Board has reason to believe—

(*a*) that a person has contravened a condition in the licence granted under section 21;

(*b*) that a person has contravened such a condition and there is a reasonable likelihood that the contravention will continue or be repeated; or

(*c*) that a person has contravened such a condition and that the contravention can be remedied,

the Board, may apply to the High Court for an order prohibiting the contravention or, as the case may be, requiring the licensee and any other person who appears to the court to have been a party to the contravention, to take such steps as the court may direct.

(2) The liability of the licensee to pay any money in terms of this Act or the licence or agreement pertaining thereto shall not be affected by the licence ceasing to be valid for any reason and such money may not be set off by the licensee against any amount due and payable.

Grounds for revocation of licence

25. The licence granted under section 21 may be revoked by the Board on the following grounds if—

(*a*) the licensee is no longer a fit and proper person to conduct the National Lottery, whether because of the commission of an act or insolvency, liquidation or for any other valid reason;

(*b*) a condition contained in the licence has been materially contravened;

(*c*) any information given by the licensee, any person who in any way controls the licensee or an agent or representative of the licensee to the Board—

(i) in or in connexion with the application for the licence;

(ii) in accordance with a condition in the licence; or

(iii) in making representations under subsection (1) of section 26, in respect of financial matters regarding the National Lottery or in respect of any aspect of the management of the National Lottery, is materially false;

(*d*) any person who is managing the business or any part of the business of the licensee or who is a supplier of goods or services to the licensee is not a fit and proper person to do so, whether because of the commission of an act or insolvency, liquidation, incarceration in a prison or other institution or for any other relevant reason, unless the licensee immediately takes steps to effectively disassociate himself or itself from that person;

(*e*) any person for whose benefit the licence has been acquired or who is a holding company of the licensee or who in any other way controls the licensee, is not a fit and proper person to benefit from it, whether because of insolvency, liquidation, incarceration in a prison or other institution or for any other relevant reason;

(*f*) the licensee has failed to take adequate steps to prevent the commission of fraud by his or its employees, agents, representatives, suppliers or by participants in the National Lottery after

having been alerted to or becoming aware of conditions conducive to the commission of fraud or to instances of fraud or dishonesty;

(*g*) the licensee, or any of his or its employees, agents representatives or suppliers prevent the Board or any person designated by it from exercising his or its rights contemplated in paragraph (*h*) of subsection (3) of section 22;

(*h*) application has been made to the High Court for the sequestration or liquidation, as the case may be, of a person who in any way controls the licensee;

(*i*) the licensee or his representative contravenes the law; or

(*j*) the licensee or his representative gives information in the application for a licence or on financial matters regarding the lottery which is materially false.

Notice of revocation

26.—(1) If the Board is satisfied that grounds exist for the revocation of the licence granted under section 21, it shall notify the licensee in writing of the existence of such grounds and call upon the licensee to furnish reasons within fourteen days of service of that notice, sent to the registered physical address of the licensee, as to why the licence should not be revoked, failing which the licence will cease to be valid upon the expiration of the said period of fourteen days.

(2) If the licence for the National Lottery ceases to be valid in terms of subsection (1), the Board shall forthwith inform the licensee in writing of that fact and of the date upon which the licence ceased to be valid.

Suspension of licence

27.—(1) The Board may order a suspension of the licence in the notice contemplated in subsection (1) of section 26 as from the date of service of that notice for a period of not longer than thirty days after the licensee has furnished those reasons:

Provided that the Board or whoever acts under this section, shall inform the other of his or its actions.

(2) If the Board decides to suspend the licence under subsection (1) the Minister shall forthwith inform Parliament of that fact and of the grounds for the suspension, and if Parliament is not then in session, on the first day of the next session of Parliament.

(3) The licence shall immediately cease to be valid if it is suspended for a second time.

Revocation of licence

28.—(1) If reasons are furnished by the licensee as contemplated in subsection (1) of section 26, the Board, shall after considering such reasons—

(*a*) decide whether or not to revoke the licence;

(*b*) call upon the licensee to appear before the Board on a specified date to make oral representations in support of any written representations made by the licensee or to answer any questions which the Board may have with regard to such written representations, thereafter the Board shall consider the matter and decide whether or not to revoke the licence.

(2) If the Board decides to revoke the licence, it shall by written notice served at the registered head office of the licensee notify the licensee of that fact, of the grounds for the revocation and of the date on which the revocation shall take effect.

(3) If the Board decides to revoke the licence in terms of subsection (1), it shall inform the Minister and the Minister shall inform Parliament of that fact and of the grounds for the revocation forthwith and if Parliament is not then in session, on the first day of the next session of Parliament.

PART V
Establishment of National Lottery Distribution Fund

Establishment of National Lottery Distribution Fund

29. There is hereby established a fund to be known as the National Lottery Distribution Fund (hereinafter referred to as "the Fund") which shall be managed by the Board.

Fund to vest in and administered by the Board

30.—(1) The Fund shall vest in and be administered by the Board.

(2) The Minister shall include in his Report to Parliament information regarding the operations of the Fund.

Revenue of the Fund

31. The Fund shall consist of—

(*a*) the sums paid to the Fund in terms of paragraph (*e*) of subsection (3) of section 22;

(*b*) interest and dividends derived from the investment of money standing to the credit of the Fund; and

(*c*) other money lawfully paid into the Fund.

Banking account

32.—(1) Money in the Fund shall, pending the application thereof in terms of this Act be deposited into an account to be known as "The National Lottery Distribution Fund" at a financial institution.

(2) The financial institution where the account referred to in subsection (1) is maintained, shall not in respect of any liability of the Board, not being a liability arising out of or in connexion with any such account, have or obtain recourse to any rights, whether by set-off, counter-claim, charge or otherwise, against money standing to the credit of such an account.

Investment of money not immediately required

33.—(1) Any money of the Fund or the Board which is not immediately required for allocation may be invested with a financial institution or in any manner the Board deems fit and approved by the Minister.

(2) Any unexpended balance of the money of the Fund at the end of any financial year shall be carried forward as a credit to the next financial year.

Allocation of money in the Fund

34.—(1) The Minister, in consultation with the Board shall prescribe the amount of money and the manner in which the money in the Fund shall be allocated to different sectors, and other good causes for the welfare of the general public and contribution to the national economy.

(2) The Minister in consultation with the Board shall allocate an amount from the Fund to the Board under section 35.

Payments from Fund in respect of expenses

35.—(1) At such times as the Minister deems appropriate, payments shall be allocated to the Board out of money in the Fund held under subsection (2) of section 34 in respect of the Board's expenses.

(2) In determining what amounts are sufficient for meeting payments referred to in subsection (1), the Minister shall take into account sums paid or to be paid to the Board in terms of paragraph (*e*) of subsection (3) of section 22.

PART VI
Authorization of Other Lotteries

Authorization of other lotteries

36.—(1) The Board may, in its absolute discretion authorize the promotion and conduct of a lottery, not being a lottery contemplated under the provisions of section 21—

(*a*) which is intended to raise funds for social service, public welfare, relief of distress or patriotic purposes or to provide recreational or sporting facilities;

(*b*) of which at least one-quarter of the gross proceeds is to be devoted to the object for which the lottery is promoted; and

(*c*) in respect of which an application, which shall state in detail the purposes for which the lottery is to be promoted, is made by the intended promoters to the Board.

(2) The Board may, in its absolute discretion and subject to such conditions as it may think fit to impose, authorize the promotion and conduct of any lottery not otherwise authorized or permitted under the provisions of this Act.

(3) Where in the case of a lottery authorized under the provisions of subsection (1), less than one-quarter (¼) of the gross

proceeds of the lottery is devoted to the object for which such lottery is promoted or any of the proceeds are devoted to any purpose, other than expenses and prizes, which is not such an object, each promoter of such lottery commits an offence and on conviction shall be liable to a fine of K100,000 and to twelve months imprisonment.

Powers of the Board in respect of other lotteries

37.—(1) The Board may—

(*a*) make such investigation, or require the submission of such information, as it may deem necessary, in order to enable it to examine any application made to the Board under the provisions of subsection (1) of section 36;

(*b*) impose, in respect of any authorization granted under the provisions of the said subsection such conditions as it may deem necessary in order to ensure that the lottery concerned is promoted and conducted as efficiently as possible in the interest of the purposes for which it is being promoted and of the public in general;

(*c*) take such steps, as it may deem necessary, in order to ensure that any conditions imposed under paragraph (*b*) have been or are being complied with;

(*d*) require any lottery which it has authorized to render accounts to the Board in such form and within such periods as it may specify;

(*e*) guide and coordinate the proper and equitable distribution of the charitable funds from any lottery authorized by it;

(*f*) make recommendations from time to time to the Minister for the better control of lotteries with particular regard to the protection of the public from fraud.

(2) If any condition, imposed under the provisions of subsection (2) of section 36 or of paragraph (*b*) of subsection (1), is broken, each of the promoters of the lottery concerned and, where the person by whom the condition is broken is not one of the promoters, that person also, commits an offence and on conviction shall be liable to a fine of K100,000 and to twelve months imprisonment:

Provided that it shall be a defence for a person charged only by reason of his being a promoter of the lottery to prove that the offence was committed without his knowledge.

Imposition of condition in respect of other lotteries

38. Without prejudice to the generality of paragraph (*b*) of subsection (1) of section 37, the Board may, in respect of any lottery authorized by it, impose conditions under the said paragraph—

(*a*) providing for the amount, not exceeding twelve and one-half per cent (12½ per cent) of the gross proceeds of the lottery, which the promoters thereof may deduct from such proceeds in respect of operating expenses:

Provided that, in the case of a series of lotteries proposed to be promoted by the same persons, the Board may, in its discretion, allow the deduction of an amount in excess of the aforesaid percentage in respect of all or any of the lotteries drawn within the period of twelve months from the date of the draw of the first lottery in such series;

(*b*) providing for the protection of purchasers of tickets or chances in the lottery against fraud;

(*c*) providing for the submission of accounts to the Board by the promoters of the lottery;

(*d*) restricting the amount of the proceeds of the lottery which may be used for the purposes of such lottery outside Malaŵi, which amount shall not exceed one-fifth (⅕) of the total amount devoted to the object for which the lottery is promoted; and

(*e*) relating to the provision by the promoters of the lottery of guarantors to cover the expected proceeds, or any part thereof, of such lottery.

Utilization of gross proceeds of a lottery for certain purposes

39.—(1) Where the promoters of a lottery authorized under section 36 wish to—

(*a*) build up a reserve fund for prize stabilization;

(*b*) create a reserve to meet extraordinary expenditure not attributable to any particular draw;

(*c*) acquire premises for the purposes of providing office or staff accommodation; or

(*d*) incur capital expenditure,

they shall apply to the Board for permission to do so setting out in such application details of their proposal.

(2) Where an application is made to the Board under the provisions of subsection (1), the Board may, if it is satisfied that the application is made in respect of a recurrent lottery and that the lottery concerned would, if the application were approved, be promoted and conducted more efficiently in the interest of the purpose for which it is being promoted and of the public in general, approve the application.

(3) Where the Board approves an application under the provisions of subsection (2), it may authorize the promoters of the lottery to utilize a portion of the gross proceeds of one or more

future lotteries for such of the purposes set out in subsection (1) as are referred to in the said application:

Provided that the Board shall not authorize the promoters to utilize an amount in excess of one-twentieth (1/20) of the gross proceeds of any lottery for such of the said purposes as are referred to in the said application.

(4) Notwithstanding the provisions of section 38, any amount which the promoters are authorized to utilize under the provisions of subsection (3) shall be in addition to any amount deducted from the gross proceeds in accordance with the provisions of paragraph (*a*) of section 38.

(5) The Board may attach such conditions, as it may deem necessary, to any approval or authority given under the provisions of this section.

(6) In the event of the promoters ceasing to promote further lotteries, any assets acquired with funds utilized in accordance with the provisions of this section shall be sold and the proceeds of such sale disposed of in meeting winding up expenses and accrued liabilities, not otherwise provided for, and any residue remaining after any such expenses or liabilities have been met shall be disposed of in such manner as the Board may direct.

Prescribed fees

40.—(1) The promoters of any lottery authorized under the provisions of section 36 shall pay the Board such fee or fees in respect of such authorization as may from time to time be prescribed.

(2) For the purposes of any condition imposed upon the authorization of a lottery of the limitation of operating expenses, any fee paid under the provisions of this section shall be deemed to be part of such expenses.

Invalid conditions by promoters

41. For the purposes of any civil proceedings brought in respect of any ticket or chance in any lottery authorized under the provisions of section 36, a condition imposed by the promoters of the lottery requiring that tickets or chances in the lottery shall not be sold or prizes awarded, to any specified class or classes of persons shall be deemed to be null and void

Power to require incorporation of promoters

42. Before authorizing the promotion of a lottery under the provisions of subsection (1) of section 36, the Board may require the promoters of the lottery to become a body corporate under any written law for the time being in force relating to incorporation.

Lotteries incidental to certain entertainment

43.—(1) A lottery may be promoted and conducted as an incident of any entertainment to which this section applies provided that all the conditions specified in subsection (2) are observed in connexion with the promotion and conduct of the lottery.

(2) The conditions referred to in subsection (1) are that—

(*a*) the whole proceeds of the entertainment, including the proceeds of the lottery, after deducting—

(i) the expenses of the entertainment excluding the expenses incurred in connexion with the lottery;

(ii) the expenses incurred in printing tickets in the lottery; and

(iii) such sum, if any, as the promoters of the lottery think fit to appropriate on account of any expenses incurred by them in providing or purchasing prizes in the lottery, shall be devoted to the purpose other than private gain;

(*b*) tickets or chances in the lottery shall not be sold, or issued, nor shall the result of the lottery be declared, except on the premises on which the entertainment takes place and during the progress of the entertainment; and

(*c*) the facilities provided for participating in lotteries shall not be the only, or the only substantial, inducement to persons to attend the entertainment.

(3) If any of the conditions specified in subsection (2) is broken or not complied with, every person concerned in the promotion or conduct of the lottery commits an offence and on conviction shall be liable to a fine of K100,000 and to twelve months imprisonment:

Provided that in any proceedings instituted under the provisions of this subsection it shall be a defence to prove that the offence was committed without the knowledge of the person against whom such proceedings are brought.

(4) The entertainments to which this section applies are bazaars, sales or work, fetes, chances and other entertainments of a similar character, whether limited to one day or part thereof or extending over two or more days.

Private lotteries

44.—(1) In this section—

"private lottery" means a lottery within Malaŵi which is promoted for, and in which the sale of tickets or chances by the promoters is confined to, either—

(*a*) members of one club or association established for social or common interest or recreational purposes only;

(*b*) persons all of whom work in the same organization; or

(*c*) persons all of whom reside in the same building,

and which is promoted by persons each of whom is a person to whom, under the foregoing provisions, tickets or chances may be sold to by the promoters and, in the case of a lottery promoted for the members of a club or association, is a person authorized in writing by the governing body of the club to promote the lottery.

(2) A private lottery may be promoted and conducted provided that all the conditions specified in subsection (3) are observed in connexion with the promotion and conduct of the lottery.

(3) The conditions referred to in subsection (2) are that—

(*a*) the whole proceeds, after deducting only expenses incurred for printing and stationery, shall be devoted to the provision of prizes for purchasers of tickets or chances or, in the case of a lottery promoted for the members of the club or association, shall be devoted either to the provision of prizes as aforesaid or to purposes which are purposes of the club or association, or, as to part, to the provision of prizes as aforesaid and as to the remainder, to such purposes as aforesaid;

(*b*) there shall not be exhibited, published or distributed any written notice or advertisement of the lottery other than—

(i) a notice thereof exhibited on the premises of the club or association for whose members it is promoted or, as the case may be, within the organization or in the building which the persons for whom it is promoted work or reside; and

(ii) the announcement or advertisement thereof as is contained in the tickets, if any;

(*c*) the price of each ticket or chance shall be the same, and the price of any ticket shall be stated on the ticket;

(*d*) every ticket shall bear upon the face of it the names and addresses of the promoters of the lottery and a statement of the persons to whom the sale of tickets or chances by the promoters is restricted, and a statement that no prize won in the lottery shall be paid or delivered by the promoters to any person other than the person whom the winning ticket or chance was sold, and no prize shall be paid or delivered except in accordance with the statement;

(*e*) no ticket or chance shall be issued or allotted by the promoters except by way of sale and upon receipt of the full price thereof, and no money or valuable thing so received by a promoter shall in any circumstances be returned; and

(*f*) no ticket in the lottery shall be sent through the post or any electronic devices.

(4) If any of the conditions specified in subsection (3) is broken, each of the promoters of the lottery and, where the person by whom the condition is broken is not one of the promoters, that person also, commits an offence and on conviction shall be liable to a fine of K100,000 and to imprisonment for twelve months:

Provided that it shall be a defence for a person charged only by reason of his being a promoter of the lottery to prove that the offence was committed without his knowledge.

PART VII
Offences and Penalty

Offences by bodies corporate

45. Where a person convicted of an offence under this Act is a body corporate, every person who at the date of the commission of the offence was a director or officer of such body corporate shall also be deemed to be guilty of that offence unless he proves that the offence was committed without his knowledge.

Unauthorized lotteries

46.—(1) Any lottery promoted or conducted otherwise than in accordance with the provisions of this Act shall be deemed to be an unauthorized lottery.

(2) Any person who opens, keeps or uses any place for carrying on an unauthorized lottery commits an offence and upon conviction shall be liable to a fine of K200,000 and to imprisonment for two years.

(3) Any person who prints or publishes, or causes to be printed, or published, any advertisement or other notice of, or relating to an unauthorized lottery, whether promoted within Malaŵi or elsewhere, or relating to the sale of any ticket or chance in any such lottery, commits an offence and upon conviction shall be liable to a fine of K200,000 and to imprisonment for two years.

(4) Where any person is convicted of an offence under the provisions of this section, the court may, in addition to or in lieu of any penalty which may be imposed, order the forfeiture of any instrument, apparatus or device used in connexion with the lottery.

General offences

47.—(1) Any person who—

(*a*) participates in a lottery; or

(*b*) conducts, facilitates, promotes or derives any benefit from a lottery unless such lottery is or has been authorized by or under this Act, commits an offence.

(2) Any person who—

(*a*) contravenes or fails to comply with any provision of this Act;

(*b*) forges or in any other fraudulent way changes any ticket or any other document or thing pertaining to any lottery;

(*c*) knowingly sells or in any other way disposes of any forged ticket or any other document or thing pertaining to any lottery; or

(*d*) with intent to defraud, alters any number or figure on any ticket or any other document or thing pertaining to any lottery;

(*e*) obtains any direct or indirect financial gain which is not solely a share in the prize payout, by forming, conducting or in any other way promoting a syndicate for the purchase of a ticket; or

(*f*) sells a ticket—

(i) at a price higher than that which is printed on the ticket;

(ii) on condition that the seller of the ticket shares in the prize in the event of a ticket sold by him being the ticket in respect of which a prize was paid;

(iii) on any condition not provided for in the rules of the lottery concerned;

(iv) on credit with the financial assistance in any form of the seller; or

(*g*) conducts, organizes, promotes, derives or manages any scheme, plan, competition, arrangement, system, game or device which directly or indirectly provides for betting, wagering, gambling, or any other game of risk on any outcome of any lottery unless authorized by or under this Act or any other law,

commits an offence,

Offences relating to National Lottery

48.—(1) Any person who—

(*a*) advertises or offers the opportunity to participate in a lottery, promotional competition, competition or game of another description and who gives, by whatever means, a false indication that it is a lottery, competition or game forming part, or is otherwise connected with, the National Lottery;

(*b*) with intent to defraud, falsely makes, forges, utters, passes or counterfeits a National Lottery ticket;

(*c*) influences or attempts to influence the winning of a prize through the use of coercion, fraud or deception, or through tampering with lottery equipment, systems, software, data, tickets or materials; or

(*d*) fails to comply with any regulation made under section 50, commits an offence.

Penalties

49. Any person convicted of an offence under this Act, for which no penalty is provided for, shall be liable to a fine of K500,000 and to imprisonment for four years.

PART VIII
Miscellaneous Provisions

Regulations in respect of National Lottery and other lotteries

50.—(1) The Minister may, in consultation with the Board make regulations for the proper conduct of the National Lottery, other lotteries and generally for the carrying into effect of this Act.

(2) Without prejudice to the generality of the foregoing, the Minister, in consultation with the Board, may make regulations regarding—

(*a*) the conduct of the National Lottery or other lotteries including—

(i) the minimum age of persons to whom or by whom tickets or chances may be sold;

(ii) the persons or categories of persons who shall be disqualified from participation;

(iii) the places where or circumstances or manner in which tickets or chances may be sold or persons who may be invited to buy such tickets or chances;

(iv) the circumstances under which lotteries may be advertised and the information that is to appear in an advertisement for a lottery;

(v) the places where or circumstances or manner in which signs relating to a lottery may be displayed;

(vi) application and licensing fees referred to in paragraph (*a*) of subsection (2) of section 21;

(vii) in general any other matter which may be necessary or expedient to prescribe in order to achieve or promote the objects of this Act;

(*b*) the making of oral representations as contemplated in paragraph (*b*) of subsection (1) of section 28;

(*c*) prescribing the form in which any application for the authorization under the provisions of section 36 shall be made;

(*d*) prescribing the amount of fees payable under section 40; or

(*e*) management of the National Lottery Distribution Fund referred to in section 29.

Savings

51. Nothing in this Act shall apply in relation to any lottery or competition in respect of which there is no subscription.

Lottery debts enforcement

52. Any lottery debt lawfully incurred by a person in the course of any lottery shall, notwithstanding provisions of any law or the common law, be enforceable in a court of law.

Confidentiality

53.—(1) Subject to the provisions of the Constitution, any legislation which may be enacted in pursuance of the Constitution or any other relevant law, no person, including the Minister, a member or employee of the Board or the Department, or a former member of employee of the Board or the Department, may—

(*a*) in any way disclose any information submitted by any person in connexion with any application for any licence, certificate or appointment under this Act, or;

(*b*) publish any information obtained in contravention of paragraph (*a*), unless ordered to do so by a court of law or unless the person who made such application consents thereto in writing.

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

SUBSIDIARY LEGISLATION

G.N. 16/2006
19/2008

LOTTERIES (PROMOTIONAL COMPETITIONS) REGULATIONS

under s. 50

Citation

1. These Regulations may be cited as the Lotteries (Promotional Competitions) Regulations.

Interpretation
G.N. 19/2008

2. In these Regulations, unless the context otherwise requires—

"advertising material" "excludes material which refers to a promotional competition printed or displayed on any individual item of the goods promoted by that competition and which are for sale to the public;

"goods or services" mean goods or services which are ordinarily manufactured, sold, supplied, distributed or delivered or in any other way form a substantial part of the business of the promoter involved in a particular promotional competition in the calendar year during which that promotional competition is held;

"permit" means a permit which authorizes a promotional competition;

"promoter" means a person who holds, conducts, promotes, organizes or is in any other way directly associated with the management or execution of a promotional competition;

"promotional budget" shall consist of the total of the value of the prizes and all the advertising costs;

"promotional competition" means a lottery for the promotion of a trade or business;

"value of prize" means a price at which a person reasonably expects to purchase the prize in the absence of a discount or special incentive but is not connected to the monetary component of a prize.

Application of Regulations

3.—(1) These Regulations shall apply to the administration and conduct of promotional competitions.

(2) These Regulations shall not apply in respect of any operation authorized by the licence issued under section 21 (1) of the Act.

Lawful promotional competition

4. A promotional competition shall be lawful if—

(*a*) the consideration payable in respect of the purchase of goods or the use of services in respect of which that promotional competition is conducted—

(i) is the price usually or ordinarily paid, excluding discounts, for such or similar goods or services without the opportunity of taking part in a promotional competition;

(ii) is not increased by the opportunity to participate in that promotional competition; and

(iii) is the only consideration payable for those goods or services and includes consideration for the right to compete;

(*b*) the opportunity of participating in the promotional competition is not the only or the only substantial inducement to a person to purchase or use the goods or services to which the promotional competition relates;

(*c*) the promotional competition is conducted in accordance with these Regulations;

(*d*) the Minister has not declared that kind of promotional competition unlawful;

(*e*) the goods or services manufactured, sold, supplied, distributed or delivered in connexion with the right to participate in a promotional competition are usually or ordinarily manufactured, sold, supplied, distributed or delivered by the person for whose benefit the promotional is held; and

(*f*) the consideration paid for the purchase of the goods or the use of the services promoted by a promotional competition is not increased by the opportunity to take part in that promotional competition to such an extent that the promotional competition does not mainly serve as a means, method or mechanism of promoting the relevant goods or services, but substantially as consideration for the opportunity to take part in that promotional competition.

Application for permit G.N. 19/2008

5. (1) Any person who wishes to conduct a promotional competition shall submit an application, in duplicate, for a permit to the Board in the prescribed form contained in the First Schedule hereto and shall pay the prescribed application fees contained in the Second Schedule hereto.

(2) Where the Board is satisfied with the application it shall grant the applicant a permit to conduct a promotional competition upon payment of the fees contained in the Second Schedule hereto.

(3) The Board may revise the fees in the Second Schedule hereto from time to time.

(4) Where the payment of the fees is effected on a date later than the indicated starting date of the competition, interest shall be charged on the fees due from the indicated date to date when it is

paid inclusive at 3 per cent above the base rate for the time being of the Reserve Bank of Malaŵi or such other clearing bank as the National Lotteries Board (NLB) may from time to time determine.

(5) The Board shall only issue a permit for a specific period up to three months and where a promoter wishes to conduct a promotion for a longer term upon the expiry of the term, he shall apply in writing to the Board for a renewal and shall pay an additional fee as contained in the Second Schedule.

Minimum age of participants

6.—(1) A promoter shall not offer or award to a person under a particular age, a prize or benefit comprising or consisting of or involving goods or services which under any written law shall not—

(*a*) be sold or supplied to;

(*b*) be used by; or

(*c*) in any other way benefit,

a person under that age.

(2) No person shall direct at persons under the age contemplated in subregulation (1) an advertising material in respect of a promotional competition or which offers or awards goods or services referred to in subregulation (1).

Conditions of entry G.N. 19/2008

7.—(1) A person who is an employee, agent or consultant of the promoter or his immediate family members shall not be eligible to participate in a promotional competition held by that promoter.

(2) Any advertising material in respect of a promotional competition shall be adequately noticeable and legible in order to alert prospective participants in that promotional competition to the prohibition referred to in subregulation (1).

(3) A promoter shall ensure that all information designed to or likely to induce a person to enter the promotional competition includes—

(*a*) the name and address of the business for whose benefit the promotional competition is conducted;

(*b*) the rules, terms and conditions of entry;

(*c*) the period of the competition including the closing date for receipt of entries;

(*d*) details of the drawing of prizes;

(*e*) the method used to decide prize winners;

(*f*) any arrangements for a second chance draw for unclaimed prizes; and

(*g*) details of each prize and its recommended retail value and where a prize in the competition consists of one of the following terms, the additional information in the Third Schedule shall be included in the terms and conditions.

(4) The promoter may publish the terms and conditions of a promotional competition in any advertising material and where it may not be possible to do so, the advertising material shall state where the full terms and conditions are to be found.

Nature of prizes

8.—(1) A promoter shall not offer or award goods, services or benefits as prizes to a participant in a promotional competition—

(*a*) in respect of which the sale, possession, use, distribution, rendering or delivery is unlawful;

(*b*) in respect of which the possession, use, rendering, distribution or delivery is dependent on the payment of a fee or any consideration to any other person in order to fully possess or use the prize unless all the initial costs have been met by the promoter;

(*c*) in respect of which any licence, approval, endorsement, sanction, consent, agreement or any form of authorization by—

(i) any branch of Government;

(ii) a person's legal guardian; or

(iii) any other person,

is required for the lawful possession or use of those goods, services or benefits; or

(*d*) if, subject to subregulation (2) the winner of the prize is expected or obliged to endorse, promote or advertise the goods or services of the promoter, unless that winner after being publicly announced as a winner of the promotional competition is informed of such in writing and he consents in writing to endorse, promote or advertise the goods or services of the promoter.

(2) If the winner referred to in subregulation (1) (*d*) is a person under the age of sixteen years, any consent given by that person is not sufficient without the written consent of that person's legal guardian.

Rules relating to winners G.N. 19/2008

9.—(1) The rules of a promotional competition relating to the manner and date of announcing the winners of the competition shall be published in advertising material promoting that competition.

(2) A promoter shall inform the Board of the time frame within which he shall award the prize to the winner:

Provided that the duration within which the promoter shall award the prize to the winner shall not exceed sixty days from the date, the winner of the promotional competition is announced.

Witnessing a draw by the Board G.N. 19/2008

10.—(1) Every draw of a promotional competition authorized by the Board shall be witnessed by a person nominated by the Executive Director to represent the Board in that respect.

(2) Prize draws shall take place within the period stipulated on the permit and at the exact time and location indicated in the terms and conditions of the competition.

(3) A promoter shall not require participants to attend a draw as a prerequisite for eligibility in the draw unless—

(*a*) entry to the competition is only available in the premises in which the draw is to take place; and

(*b*) the draw is to take place within twenty-four hours after the commencement of the competition.

Redraw G.N. 19/2008

10A.—(1) A promoter may conduct a redraw on the following conditions—

(*a*) that the winner of a prize is not readily identified; and

(*b*) reasonable efforts have unsuccessfully been made to identify the winner of the prize;

(2) The redraw shall be conducted if the terms and conditions of entry provide that the promoter may draw additional entrants:

Provided the additional name or names that have been drawn shall be substituted for the name of the winner of that prize.

Inspection

11.—(1) A member of the Board or any person designated by the Chairperson of the Board in writing may, for purposes of monitoring compliance with the Act or these Regulations, and on the authority of a warrant issued under subregulation (2), enter any premises and—

(*a*) inspect or search those premises;

(*b*) examine any object found in or upon those premises;

(*c*) examine or make copies of or take extracts from any book or document found on those premises; or

(*d*) seize any book, document or any object, if he wishes to retain it for safe custody or for further examination, and if it appears to provide proof of non-compliance with the Act.

(2) A warrant referred to in subregulation (1) shall be issued by a judge of the High Court or a magistrate who has jurisdiction in the area where the premises are situated, if it appears to the judge or magistrate from information under oath or affirmation that there are reasonable grounds for believing that—

(*a*) an exercise of a power referred to in subregulation (1) is necessary for the purpose of appropriate and applicable law enforcement in terms of the Act or these Regulations; and

(*b*) an object, book or document relating to such law enforcement is likely to be upon or in such premises.

(3) A warrant referred to in subregulation (1)—

(*a*) shall specify which of the acts mentioned in subregulation (1) may be performed thereunder by the person to whom it is issued;

(*b*) shall be executed during day time unless the person who issued the warrant authorizes the execution thereof during night time which in the circumstances are reasonable;

(*c*) may be issued on any day and shall be in force until—

(i) it has been executed;

(ii) it is cancelled by the person who issued it or, if such person is not available, by any person with similar authority; or

(iii) the expiry of seven days from the date of its issue.

(4) Any person who acts on the authority of a warrant referred to in subregulation (1)—

(*a*) shall, subject to subregulation (5), immediately before commencing with the execution—

(i) audibly demand admission to the premises from the person who appears to be in control of the premises;

(ii) identify himself to the person who appears to be in control of the premises, if such person is present, and hand to such person a copy of the warrant, or, if such person is not present, affix such copy in a prominent place on the premises; and

(iii) if such person is present, state the purpose for which he seeks entry;

(*b*) may subject to subregulation (3) (*a*), use such force as may be reasonably necessary, including the breaking of any door, window or other barrier—

(i) to overcome any resistance against the entry and search; or

(ii) if no person replies to the demand contemplated in paragraph (*a*) (i), in order to gain entry to the premises.

(5) Subregulation (4) (*a*) is not applicable if the person acting on the authority of that warrant has reasonable grounds to believe that any object, book or document which is the subject of the search may be destroyed, tampered with or disposed of if subregulation (4) (*a*) is first complied with.

(6) A person from whose possession or control a book or document has been removed under this regulation may make copies thereof at any reasonable time, at his own expense and under the supervision of a member of the Board or any other person designated by the Board.

Offences and penalties

12.—(1) A promoter who contravenes any of the provisions of these Regulations commits an offence.

(2) Any person who knowingly participates in a promotional competition in contravention of regulation 7 commits an offence.

(3) Any person who hinders, obstructs or otherwise prevents any person acting on the authority of a warrant issued under regulation 11 from exercising his powers or from performing his duties authorized by that warrant, commits an offence.

(4) Any person convicted of an offence under this regulation shall be liable to a fine of K1,000 or to imprisonment for three months or to both a fine and imprisonment.

FIRST SCHEDULE reg. 5 (1), G.N. 19/2008

APPLICATION FOR A PERMIT TO CONDUCT PROMOTIONAL COMPETITIONS

1. In accordance with the Lotteries Act and these Regulations made thereunder:
I, ...
(*insert full name of applicant*)
of .....
(*address*)
.....
hereby apply (*with due authority*) on behalf of .....
which is the body corporate specified in paragraph 2 hereto, for a permit to conduct the following promotional competition:
.....
.....
.....
.....
.....
.....
.....
.....
(*State the details of the competition*)

2. Name of corporate body conducting the promotional competition .....
.....

3. Date and Place of Registration .....
.....

4. Full Particulars of all partners, directors and secretary of the body corporate—
(*a*) .....
(*Name and address*)
(*b*).....
(*description, i.e. partner, director or secretary*)
(*a*).....
(*Name and address*)
(*b*).....
(*description, i.e. partner, director or secretary*)
(*a*).....
(*Name and address*)
(*b*).....
(*description, i.e. partner, director or secretary*)
(*a*).....
(*Name and address*)

(*b*).....

(*description, i.e. partner, director or secretary*)

(*a*).....

(*Name and address*)

(*b*).....

(*description, i.e. partner, director or secretary*)

5. Have you or any of the persons named in paragraph 4 ever been convicted of any criminal offence involving fraud or dishonesty; declared bankrupt, or entered into any agreement with creditors?

   If yes, give particulars:

   .....

   .....

   .....

6. State the dates including the duration within which the promotional competition is to be conducted:

   .....

   .....

7. The proposed closing date: .....

   .....

8. The proposed date of draw: .....

   .....

9. The proposed method of draw: .....

10. Time and place of draw: .....

11. Proposed duration within which winners may claim and collect their prize: .....

    .....

12. What method is proposed for the distribution of prizes, will the winners be required to claim the prizes themselves or will they be contacted by the promoters? Explain:

    .....

    .....

    .....

    .....

    .....

13. Are the promoters of the proposed promotional competition prepared to provide any guarantee to the Board to cover for any default (failure to pay prizes) should the Board put such a condition? If not, state reasons:

    .....

    .....

    .....

    .....

    .....

14. Provide a complete breakdown of advertising expenses (Please attach supporting documentation):

.....
.....
.....
.....
.....

15. Provide details of prizes (Please attach further information if the competition offers more than ten levels of prizes. All information provided should have attached supporting documentation):

Description of the Prizes	*Quantity*	*Retail Value of Each Prize*	*Total Value*
.....	.....	.....	.....
.....	.....	.....	.....
.....	.....	.....	.....
.....	.....	.....	.....
.....	.....	.....	.....
.....	.....	.....	.....
.....	.....	.....	.....
.....	.....	.....	.....
.....	.....	.....	.....
.....	.....	.....	.....

16. The name and address of the accountant you shall appoint for the purpose of auditing your statement of accounts:

.....
.....
.....
.....

Date: ....., 20..... Signature: .....
.....

(*Designation*)

NOTE: For the applicant: (Please ensure that the application should be accompanied by the prescribed application fees upon submission).

FOR OFFICIAL USE ONLY

Date when application is received: .....

Attachments received: .....

Name and signature of Receiving officer of the Board: .....
.....

SECOND SCHEDULE reg. 5
G.N. 19/2008

FEES FOR PROMOTIONAL COMPETITIONS

	Type of Permit	*Permit Fee*
1.	Where the duration for the proposed promotional competition is a period not exceeding three months part thereof	5% of the promotional competition budget.
2.	For a period in excess of three months	5% of the promotional competition budget.

THIRD SCHEDULE reg 7 (3) (*g*)
G.N. 19/2008

DETAILS OF PRIZES

	Type of Prize	*Additional Information Required*
1.	Machinery or an electrical appliance	Detailed description including — make, model and accessories.
2.	Motor vehicle including motorcycle	Detailed description including — new or second hand, make, model and accessories. NOTE: All on-road costs must be included in the prize.
3.	House and land	Detailed description including — exact location, size, valuation, and nature (freehold, leasehold) (fully furnished), separate garage, landscaped garden, paved driveway. NOTE: All legal, government and transfer costs must be included in the prize.
4.	Travel and accommodation	Detailed description including — destination, number of people (whether adults or children), duration (days and nights), mode and class of transport, amount of spending money, transfer costs, type of accommodation (if meals or entertainment is included), validity period for prize, prize restrictions (availability, peak or non-peak periods, transferability).

SALE OF GOODS

CHAPTER 48:01

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CHAPTER 48:01

SALE OF GOODS

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17. Sale by sample

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An Act to regulate the Sale of Goods 14 of 1967

[28TH JULY, 1967]

PART I

PRELIMINARY

1. This Act may be cited as the Sale of Goods Act. Short title

2. (1) In this Act, except where the context otherwise requires— Interpretation

"action" includes counterclaim and set-off;

"buyer" means a person who buys or agrees to buy goods;

"contract of sale" includes an agreement to sell as well as a sale;

"delivery" means voluntary transfer of possession from one person to another;

"document of title to goods" includes any bill of lading, dock warrant, warehouse-keeper's certificate or warrant or order for the delivery of goods, and any other document used in the ordinary course of business as proof of the possession or control of goods, or authorizing or purporting to authorize, either by endorsement or by delivery, the possessor of the document to transfer or receive goods thereby represented;

"fault" means wrongful act or default;

"future goods" means goods to be manufactured or acquired by the seller after the making of the contract of sale;

"goods" includes all chattels personal other than things in action and money, and all emblements, industrial growing crops and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale;

"minor" means an unmarried person under the age of twenty-one years;

"plaintiff" includes defendant counterclaiming;

"property" means the general property in goods, and not merely a special property;

"quality of goods" includes their state or condition;

"sale" includes a bargain and sale as well as a sale and delivery;

"seller" means a person who sells or agrees to sell goods;

"specific goods" means goods identified and agreed upon at the time a contract of sale is made;

"warranty" means an agreement with reference to goods which are the subject of a contract of sale, but collateral to the main purpose of such contract, the breach of which gives rise to a claim for damages, but not to a right to reject the goods and treat the contract as repudiated.

(2) A thing is deemed to be done in good faith within the meaning of this Act when it is in fact done honestly, whether it be done negligently or not.

(3) A person is deemed to be insolvent within the meaning of this Act who either has ceased to pay his debts in the ordinary course of business or cannot pay his debts as they become due, whether he has committed an act of bankruptcy or not.

(4) Goods are in a deliverable state within the meaning of this Act when they are in such a state that the buyer would under the contract be bound to take delivery of them.

PART II

Formation of the Contract

Contract of Sale

3.—(1) A contract of sale of goods is a contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for a money consideration, called the price. Sale and agreement to sell

(2) There may be a contract of sale between one part owner and another.

(3) A contract of sale may be absolute or conditional.

(4) Where under a contract of sale the property in the goods is transferred from the seller to the buyer the contract is called a sale; but, where the transfer of the property in the goods is to take place at a future time or subject to some condition thereafter to be fulfilled, the contract is called an agreement to sell.

(5) An agreement to sell becomes a sale when the time elapses or the conditions are fulfilled subject to which the property in the goods is to be transferred.

4.—(1) Capacity to buy and sell is regulated by the general law concerning capacity to contract, and to transfer and acquire property: Capacity to buy and sell

Provided that, where necessaries are sold and delivered to a minor, or to a person who by reason of mental incapacity or drunkenness is incompetent to contract, he must pay a reasonable price therefor.

(2) Necessaries in this section means goods suitable to the condition in life of such minor or other person, and to his actual requirements at the time of the sale and delivery.

Formalities of the contract

5. Subject to this Act and any written law in that behalf, a contract of sale may be made in writing (either with or without seal) or by word of mouth, or partly in writing and partly by word of mouth, or may be implied from the conduct of the parties: Contract of sale, how made

Provided that nothing in this section shall affect the law relating to corporations.

6.—(1) A contract for the sale of any goods of the value of ten pounds or upwards shall not be enforceable by action unless the buyer accepts part of the goods so sold, and actually receives the same, or gives something in earnest to bind the Contract of sale for ten pounds or more to be in writing

contract or in part payment, or unless some note or memorandum in writing of the contract is made and signed by the party to be charged or his agent in that behalf.

(2) This section shall apply to every such contract, notwithstanding that the goods may be intended to be delivered at some future time, or may not at the time of such contract be actually made, procured or provided, or fit or ready for delivery, or some act may be requisite for the making or completing thereof, or rendering the same fit for delivery.

(3) There shall be an acceptance of goods within the meaning of this section when the buyer does any act in relation to the goods which recognizes a pre-existing contract of sale whether there be an acceptance in performance of the contract or not.

Subject Matter of Contract

Existing or future goods

7.—(1) The goods which form the subject of a contract of sale may be either existing goods, owned or possessed by the seller, or goods to be manufactured or acquired by the seller after the making of the contract of sale.

(2) There may be a contract for the sale of goods the acquisition of which by the seller depends upon a contingency which may or may not happen.

(3) Where by a contract of sale the seller purports to effect a present sale of future goods, the contract shall operate as an agreement to sell the goods.

Sale of perished goods

8. Where there is a contract for the sale of specific goods, and the goods without the knowledge of the seller have perished at the time when the contract is made, the contract shall be void.

Goods perished after agreement to sell

9. Where there is an agreement to sell specific goods, and subsequently the goods, without any fault on the part of the seller or buyer, perish before the risk passes to the buyer, the agreement shall be thereby avoided.

The Price

Ascertainment of price

10.—(1) The price in a contract of sale may be fixed by the contract, or may be left to be fixed in a manner thereby agreed, or may be determined by the course of dealing between the parties.

(2) Where the price is not determined in accordance with the foregoing provisions, the buyer must pay a reasonable price; and what is a reasonable price shall be a question of fact dependent on the circumstances of each particular case.

Agreement to sell at valuation

11.—(1) Where there is an agreement to sell goods on the terms that the price is to be fixed by the valuation of a third party, and such third party cannot or does not make such valuation, the agreement shall be avoided:

Provided that if the goods or any part thereof have been delivered to and appropriated by the buyer he must pay a reasonable price therefor.

(2) Where such third party is prevented from making the valuation by the fault of the seller or buyer, the party not in fault may maintain an action for damages against the party in fault.

Conditions and Warranties

Stipulations as to time

12.—(1) Unless a different intention appears from the terms of the contract, stipulations as to time of payment shall not be deemed to be of the essence of a contract of sale.

(2) Whether any other stipulation as to time is of the essence of the contract or not shall depend on the terms of the contract.

(3) In a contract of sale, "month" means *prima facie* calendar month.

When condition to be treated as warranty

13.—(1) Where a contract of sale is subject to any condition to be fulfilled by the seller, the buyer may waive the condition, or may elect to treat the breach of such condition as a breach of warranty and not as a ground for treating the contract as repudiated.

(2) Whether a stipulation in a contract of sale is a condition the breach of which may give rise to a right to treat the contract as repudiated, or a warranty the breach of which may give rise to a claim for damages but not to a right to reject the goods and treat the contract as repudiated, shall depend in each case on the construction of the contract; and a stipulation may be a condition, though called a warranty in the contract.

(3) Where a contract of sale is not severable and the buyer has accepted the goods or part thereof, or where the contract is for specific goods the property in which has passed to the buyer, the breach of any conditions to be fulfilled by the seller can only be treated as a breach of warranty and not as a ground for rejecting the goods and treating the contract as repudiated, unless there be a term of the contract express or implied, to that effect.

(4) Nothing in this section shall affect the case of any condition or warranty, fulfilment of which is excused by law by reason of impossibility or otherwise.

Condition and warranties implied in contracts of sale

14. In a contract of sale, unless the circumstances of the contract are such as to show a different intention, there shall be—

(*a*) an implied condition on the part of the seller that in the case of a sale he has a right to sell the goods, and that in the case of an agreement to sell he will have a right to sell the goods at the time when the property is to pass;

(*b*) an implied warranty that the buyer shall have and enjoy quiet possession of the goods;

(*c*) an implied warranty that the goods shall be free from any charge or encumbrance in favour of any third party, not declared or known to the buyer before or at the time when the contract is made.

Conditions implied by description

15. Where there is a contract for the sale of goods by description, there is an implied condition that the goods shall correspond with the description; and, if the sale is by sample as well as by description, it is not sufficient that the bulk of the goods corresponds with the sample if the goods do not also correspond with the description.

No implied warranty as to fitness, except in certain cases

16. Subject to this Act and any written law in that behalf, there shall be no implied warranty or condition as to the quality or fitness for any particular purpose of goods supplied under a contract of sale, except as follows—

(*a*) where the buyer, expressly or by implication, makes known to the seller the particular purpose for which the goods are required, so as to show that the buyer relies on the seller's skill or judgment, and the goods are of a description which it is in the course of the seller's business to supply (whether he be the manufacturer or not), there shall be an implied condition that the goods shall be reasonably fit for such purpose:

Provided that in the case of a contract for the sale of a specified article under its patent or other trade name, there shall be no implied condition as to its fitness for any particular purpose;

(*b*) where goods are bought by description from a seller who deals in goods of that description (whether he be the manufacturer or not), there shall be an implied condition that the goods shall be of merchantable quality:

Provided that if the buyer has examined the goods, there shall be no implied condition as regards defects which such examination ought to have revealed;

(*c*) an implied warranty or condition as to quality or fitness for a particular purpose may be annexed by the usage of trade;

(*d*) an express warranty or condition shall not negative a warranty or condition impled by this Act unless inconsistent therewith.

Sale by sample

Sale by Sample

17.—(1) A contract of sale is a contract for sale by sample where there is a term in the contract, express or implied, to that effect.

(2) In the case of a contract for sale by sample there shall be—

(*a*) an implied condition that the bulk shall correspond with the sample in quality;

(*b*) an implied condition that the buyer shall have a reasonable opportunity of comparing the bulk with the sample;

(*c*) an implied condition that the goods shall be free from any defect rendering them unmerchantable which would not be apparent on reasonable examination of sample.

PART III

Effects of the Contract

Transfer of Property as between Seller and Buyer

Property in unascertained goods

18.—Where there is a contract for the sale of unascertained goods, no property in the goods shall be transferred to the buyer unless and until the goods are ascertained.

Property in specific or ascertained goods passes when intended to pass

19.—(1) Where there is a contract for the sale of specific or ascertained goods, the property in them shall be transferred to the buyer at such time as the parties to the contract intend it to be transferred.

(2) For the purpose of ascertaining the intention of the parties, regard shall be had to the terms of the contract, the conduct of the parties and the circumstances of the case.

Rules for ascertaining intention as to time when property passes

20. Unless a different intention appears, the following rules shall apply for ascertaining the intention of the parties as to the time at which the property in the goods is to pass to the buyer—

(*a*) where there is an unconditional contract for the sale of specific goods, in a deliverable state, the property in the goods shall pass to the buyer when the contract is made, and it is immaterial whether the time of payment or the time of delivery or both be postponed;

(*b*) where there is a contract for the sale of specific goods and the seller is bound to do something to the goods for the purpose of putting them into a deliverable state, the property shall not pass until such thing be done, and the buyer has notice thereof;

(*c*) where there is a contract for the sale of specific goods in a deliverable state, but the seller is bound to weigh, measure, test or do some other act or thing with reference to the goods for the purpose of ascertaining the price, the property shall not pass until such act or thing be done, and the buyer has notice thereof;

(*d*) when goods are delivered to the buyer on approval or "on sale or return" or other similar terms, the property therein shall pass to the buyer—

(i) when he signifies his approval or acceptance to the seller or does any other act adopting the transaction;

(ii) if he does not signify his approval or acceptance to the seller but retains the goods without giving notice of rejection, then, if a time has been fixed for the return of the goods, on the expiration of such time, or, if no time has been fixed, on the expiration of a reasonable time;

(*e*) (i) where there is a contract for the sale of unascertained or future goods by description, and goods of that description, and in a deliverable state, are unconditionally appropriated to the contract, either by the seller with the assent of the buyer or by the buyer with the assent of the seller, the property in the goods thereupon shall pass to the buyer; such assent may be express or implied, and may be given either before or after the appropriation is made;

(ii) where, in pursuance of the contract, the seller delivers the goods to the buyer or to a carrier or other bailee or custodier (whether named by the buyer or not) for the purpose of transmission to the buyer, and does not reserve the right of disposal, he shall be deemed to have unconditionally appropriated the goods to the contract.

Reservation by seller of right of disposal

21.—(1) Where there is a contract for the sale of specific goods, or where goods are subsequently appropriated to the contract, the seller may, by the terms of the contract or appropriation, reserve the right of disposal of the goods until certain conditions are fulfilled; and in such case notwithstanding the delivery of the goods to a buyer, or to a carrier or other bailee or custodier for the purpose of transmission to the buyer, the property in the goods shall not pass to the buyer until the conditions imposed by the seller are fulfilled.

(2) Where goods are shipped, and by the bill of lading the

goods are deliverable to the order of the seller or his agent, the seller shall be *prima facie* deemed to reserve the right of disposal.

(3) Where the seller of goods draws on the buyer for the price, and transmits the bill of exchange and bill of lading to the buyer together to secure acceptance or payment of the bill of exchange, the buyer shall be bound to return the bill of lading if he does not honour the bill of exchange, and if he wrongfully retains the bill of lading the property in the goods shall not pass to him.

Risk *prima facie* passes with property

22. Unless otherwise agreed, the goods shall remain at the seller's risk until the property therein is transferred to the buyer, but when the property therein is transferred to the buyer the goods shall be at the buyer's risk whether delivery has been made or not:

Provided that—

(*a*) where delivery has been delayed through the fault of either buyer or seller the goods shall be at the risk of the party in fault as regards any loss which might not have occurred but for such fault;

(*b*) nothing in this section shall affect the duties or liabilities of either seller or buyer as a bailee or custodier of the goods of the other party.

Transfer of Title

Sale by person not the owner

23.—(1) Subject to this Act, where goods are sold by a person who is not the owner thereof, and who does not sell them under the authority or with the consent of the owner, the buyer shall acquire no better title to the goods than the seller had, unless the owner of the goods is by his conduct precluded from denying the seller's authority to sell.

(2) Nothing in this Act shall affect—

(*a*) any written law enabling the apparent owner of goods to dispose of them as if he were the true owner thereof;

(*b*) the validity of any contract of sale under any special common law or statutory power of sale or under the order of a court of competent jurisdiction.

Sale under voidable title

24. When the seller of goods has a voidable title thereto, but his title has not been avoided at the time of the sale, the buyer shall acquire a good title to the goods, provided he buys them in good faith and without notice of the seller's defect of title.

Revesting of property in stolen goods on conviction of offender

25.—(1) Where goods have been stolen and the offender is prosecuted to conviction, the property in the goods so stolen shall revest in the person who was the owner of the goods, or his personal representative, notwithstanding any intermediate dealing with them, whether by sale or otherwise.

(2) Notwithstanding any written law to the contrary, where goods have been obtained by fraud or other wrongful means not amounting to theft, the property in such goods shall not revest in the person who was the owner of the goods or his personal representative, by reason only of the conviction of the offender.

Resale of goods in certain cases

26.—(1) Where a person having sold goods continues or is in possession of the goods, or of the documents of title to the goods, the delivery or transfer by that person, or by a mercantile agent acting for him, of the goods or documents of title, under any sale, pledge or other disposition thereof, to any person receiving the same in good faith and without notice of the previous sale shall have the same effect as if the person making the delivery or transfer were expressly authorized by the owner of the goods to make the same.

(2) Where a person having bought or agreed to buy goods obtains, with the consent of the seller, possession of the goods or the documents of title to the goods, the delivery or transfer by that person, or by a mercantile agent acting for him, of the goods or documents to title under any sale, pledge or other disposition thereof, to any person receiving the same in good faith and without notice of any lien or other right of the original seller in respect of the goods shall have the same effect as if the person making the delivery or transfer were a mercantile agent in possession of the goods or documents of title with the consent of the owner.

(3) In this section, "mercantile agent" means a mercantile agent having, in the customary course of his business as such agent, authority either to sell goods, or to consign goods for the purpose of sale, or to buy goods, or to raise money on the security of goods.

Effect of writs of execution

27.—(1) A writ of *fieri facias* or other writ of execution against goods shall bind the property in the goods of the execution debtor as from the time when the writ is delivered to the sheriff to be executed; and, for the better manifestation of such time, it shall be the duty of the sheriff, without fee, upon the receipt of any such writ to endorse upon the back thereof the hour, day, month and year when he received the same:

Provided that no such writ shall prejudice the title to such goods acquired by any person in good faith and for valuable consideration, unless such person had at the time when he

acquired his title notice that such writ or any other writ by virtue of which the goods of the execution debtor might be seized or attached had been delivered to and remained unexecuted in the hands of the sheriff.

(2) In this section, "sheriff" includes any officer charged with the enforcement of a writ of execution.

PART IV

Performance of the Contract

Duties of seller and buyer

28. It shall be the duty of the seller to deliver the goods and of the buyer to accept and pay for them, in accordance with the terms of the contract of sale.

Payment and delivery concurrent conditions

29. Unless otherwise agreed, delivery of the goods and payment of the price shall be concurrent conditions, that is to say, the seller must be ready and willing to give possession of the goods to the buyer in exchange for the price, and the buyer must be ready and willing to pay the price in exchange for possession of the goods.

Rules as to delivery

30.—(1) Whether it is for the buyer to take possession of the goods or for the seller to send them to the buyer shall be a question depending in each case on the contract, express or implied, between the parties; and apart from any such contract, express or implied, the place of delivery shall be the seller's place of business, if he have one, and if not, his residence:

Provided that if the contract is for the sale of specific goods which, to the knowledge of the parties when the contract is made, are in some other place, then that place shall be the place of delivery.

(2) Where under the contract of sale the seller is bound to send the goods to the buyer, but no time for sending them is fixed, the seller shall be bound to send them within a reasonable time.

(3) Where the goods at the time of sale are in the possession of a third person, there shall be no delivery by seller to buyer unless and until such third person acknowledges to the buyer that he holds the goods on his behalf:

Provided that nothing in this section shall affect the operation of the issue or transfer of any document of title to goods.

(4) Demand or tender of delivery may be treated as ineffectual unless made at a reasonable hour; and what is a reasonable hour shall be a question of fact.

(5) Unless otherwise agreed, the expenses of and incidental to putting the goods into a deliverable state must be borne by the seller.

Delivery of wrong quantity or description

31. Where the seller delivers to the buyer a quantity of goods less than he contracted to sell, the buyer may reject them, but if the buyer accepts the goods so delivered he must pay for them at the contract rate.

(2) Where the seller delivers to the buyer a quantity of goods larger than he contracted to sell, the buyer may accept the goods included in the contract and reject the rest, or he may reject the whole; and if the buyer accepts the whole of the goods so delivered he must pay for them at the contract rate.

(3) Where the seller delivers to the buyer the goods he contracted to sell mixed with goods of a different description not included in the contract, the buyer may accept the goods which are in accordance with the contract and reject the rest, or he may reject the whole.

(4) This section shall be subject to any usage of trade, special agreement or course of dealing between the parties.

Delivery by instalments

32.—(1) Unless otherwise agreed, the buyer of goods shall not be bound to accept delivery thereof by instalments.

(2) Where there is a contract for the sale of goods to be delivered by stated instalments and to be separately paid for, and the seller makes defective deliveries in respect of one or more instalments, or the buyer neglects or refuses to take delivery of or pay for one or more instalments, it shall be a question in each case, depending on the terms of the contract and the circumstances of the case, whether the breach of contract is a repudiation of the whole contract or whether it is a severable breach giving rise to a claim for compensation but not to a right to treat the whole contract as repudiated.

Delivery to carrier as buyer's agent

33.—(1) Where, in pursuance of a contract of sale, the seller is authorized or required to send the goods to the buyer, delivery of the goods to the carrier, whether named by the buyer or not, for the purpose of transmission to the buyer shall *prima facie* be deemed to be a delivery of the goods to the buyer.

(2) Unless otherwise authorized by the buyer, the seller must make such contract with the carrier on behalf of the buyer as may be reasonable having regard to the nature of the goods and the other circumstances of the case; and if the seller omits so to do, and the goods are lost or damaged in course of transit, the buyer may decline to treat the delivery to the carrier as a delivery to himself, or may hold the seller responsible in damages.

(3) Unless otherwise agreed, where goods are sent by the seller to the buyer by a route involving sea transit, under circumstances in which it is usual to insure, the seller must give such notice to

the buyer as may enable him to insure them during their sea transit, and, if the seller fails to do so, the goods shall be deemed to be at his risk during such sea transit.

Risk where goods delivered elsewhere than at place of sale

34. Where the seller of goods agrees to deliver them at his own risk at a place other than that where they are when sold, the buyer must nevertheless, unless otherwise agreed, take any risk of deterioration in the goods necessarily incident to the course of transit.

Buyer's right of examining the goods

35.—(1) Where goods are delivered to the buyer which he has not previously examined, he shall not be deemed to have accepted them unless and until he has had a reasonable opportunity of examining them for the purpose of ascertaining whether they are in conformity with the contract.

(2) Unless otherwise agreed, when the seller tenders delivery of goods to the buyer, he shall be bound, on request, to afford the buyer a reasonable opportunity of examining the goods for the purpose of ascertaining whether they are in conformity with the contract.

Acceptance

36. The buyer shall be deemed to have accepted the goods when he intimates to the seller that he has accepted them or when the goods have been delivered to him, and he does any act in relation to them which is inconsistent with the ownership of the seller, or when, after the lapse of a reasonable time, he retains the goods without intimating to the seller that he has rejected them.

Buyer is not bound to return rejected goods

37. Unless otherwise agreed, where goods are delivered to the buyer, and he refuses to accept them, having the right so to do, he shall not be bound to return them to the seller, but it shall be sufficient if he intimates to the seller that he refuses to accept them.

Liability of buyer for neglecting or refusing delivery of goods

38. When the seller is ready and willing to deliver the goods, and requests the buyer to take delivery, and the buyer does not within a reasonable time after such request take delivery of the goods, he shall be liable to the seller for any loss occasioned by his neglect or refusal to take delivery, and also for a reasonable charge for the care and custody of the goods:

Provided that nothing in this section shall affect the rights of the seller where the neglect or refusal of the buyer to take delivery amounts to a repudiation of the contract.

PART V

Rights of unpaid seller against the Goods

Unpaid seller defined

39.—(1) The seller of goods shall be deemed to be an unpaid seller within the meaning of this Act—

(*a*) when the whole of the price has not been paid or tendered;

(*b*) when a bill of exchange or other negotiable instrument has been received as conditional payment, and the condition on which it was received has not been fulfilled by reason of the dishonour of the instrument or otherwise.

(2) In this Part, "seller" includes any person who is in the position of a seller, as, for instance, an agent of the seller to whom the bill of lading has been endorsed, or a consignor or agent who has himself paid, or is directly responsible for, the price.

Rights of unpaid seller

40.—(1) Subject to this Act and any written law in that behalf, notwithstanding that the property in the goods may have passed to the buyer, the unpaid seller of goods, as such, shall have by implication of law—

(*a*) a lien on the goods or right to retain them for the price while he is in possession of them;

(*b*) in case of the insolvency of the buyer, a right of stopping the goods in transitu after he has parted with the possession of them;

(*c*) a right of resale as limited by this Act.

(2) Where the property in goods has not passed to the buyer, the unpaid seller shall have, in addition to his other remedies, a right of withholding delivery similar to and coextensive with his rights of lien and stoppage in transitu where the property has passed to the buyer.

Unpaid Seller's Lien

Seller's lien

41.—(1) Subject to this Act, the unpaid seller of goods who is in possession of them shall be entitled to retain possession of them until payment or tender of the price in the following cases, namely—

(*a*) where the goods have been sold without any stipulation as to credit;

(*b*) where the goods have been sold on credit, but the term of credit has expired;

(*c*) where the buyer becomes insolvent.

(2) The seller may exercise his right of lien notwithstanding that he is in possession of the goods as agent or bailee or custodier for the buyer.

Lien after part delivery

42. Where an unpaid seller has made part delivery of the goods, he may exercise his right of lien or retention on the remainder unless such part delivery has been made under such circumstances as to show an agreement to waive the lien or right of retention.

Termination of lien

43.—(1) The unpaid seller of goods shall lose his lien or right of retention thereon—

(*a*) when he delivers the goods to a carrier or other bailee or custodier for the purpose of transmission to the buyer without reserving the right of disposal of the goods;

(*b*) when the buyer or his agent lawfully obtains possession of the goods;

(*c*) by waiver thereof.

(2) The unpaid seller of goods, having a lien or right of retention thereon, shall not lose his lien or right of retention by reason only that he has obtained judgment or a decree for the price of the goods.

Stoppage in Transitu

Right of stoppage in transitu

44. Subject to this Act, when the buyer of goods becomes insolvent, the unpaid seller who has parted with the possession of the goods shall have the right of stopping them in transitu, that is to say, he may resume possession of the goods as long as they are in course of transit, and may retain them until payment or tender of the price.

Duration of transit

45.—(1) Goods shall be deemed to be in course of transit from the time when they are delivered to a carrier by land, air or water, or other bailee or custodier for the purposes of transmission to the buyer, until the buyer or his agent in that behalf takes delivery of them from such carrier or other bailee or custodier.

(2) If the buyer or his agent in that behalf obtains delivery of the goods before their arrival at the appointed destination, the transit shall be at an end.

(3) If, after the arrival of the goods at the appointed destination, the carrier or other bailee or custodier acknowledges to the buyer, or his agent, that he holds the goods on his behalf and continues in possession of them as bailee or custodier for the

buyer, or his agent, the transit shall be at an end, and it shall be immaterial that a further destination for the goods may have been indicated by the buyer.

(4) If the goods are rejected by the buyer, and the carrier or other bailee or custodier continues in possession of them, the transit shall not be deemed to be at an end, even if the seller has refused to receive them back.

(5) When the goods are delivered to a ship chartered by the buyer, it shall be a question, depending on the circumstances of the particular case, whether they are in the possession of the master as a carrier, or as agent to the buyer.

(6) Where the carrier or other bailee or custodier wrongfully refuses to deliver the goods to the buyer, or his agent in that behalf, the transit shall be deemed to be at an end.

(7) Where part delivery of the goods has been made to the buyer, or his agent in that behalf, the remainder of the goods may be stopped in transitu, unless such part delivery has been made under such circumstances as to show an agreement to give up possession of the whole of the goods.

Mode of stoppage in transitu

46.—(1) The unpaid seller may exercise his right of stoppage in transitu either by taking actual possession of the goods, or by giving notice of his claim to the carrier or other bailee or custodier in whose possession the goods are; and such notice may be given either to the person in actual possession of the goods or to his principal; and in the latter case the notice, to be effectual, must be given at such time and under such circumstances that the principal, by the exercise of reasonable diligence, may communicate it to his servant or agent in time to prevent a delivery to the buyer.

(2) When notice of stoppage in transitu is given by the seller to the carrier, or other bailee or custodier in possession of the goods, he must redeliver the goods to, or according to the directions of, the seller; and the expenses of such redelivery must be borne by the seller.

Resale by Buyer or Seller

Effect of subsale or pledge by buyer

47. Subject to this Act, the unpaid seller's right of lien or retention or stoppage in transitu shall not be affected by any sale or other dispostition of the goods which the buyer may have made, unless the seller has assented thereto:

Provided that where a document of title to goods has been lawfully transferred to any person as buyer or owner of the goods, and that person transfers the document to a person who takes the document in good faith and for valuable consideration,

then, if such last-mentioned transfer was by way of sale, the unpaid seller's right of lien or retention or stoppage in transitu shall be defeated, and, if such last-mentioned transfer was by way of pledge or other disposition for value, the unpaid seller's right of lien or retention or stoppage in transitu shall only be exercised subject to the rights of the transferee.

Effect on sale of exercise of lien or stoppage in transitu

48.—(1) Subject to this section, a contract of sale shall not be rescinded by the mere exercise by an unpaid seller of his right of lien or retention or stoppage in transitu.

(2) Where an unpaid seller who has exercised his right of lien or retention or stoppage in transitu resells the goods, the buyer shall acquire a good title thereto as against the original buyer.

(3) Where the goods are of a perishable nature, or where the unpaid seller gives notice to the buyer of his intention to resell, and the buyer does not within a reasonable time pay or tender the price, the unpaid seller may resell the goods and recover from the original buyer damages for any loss occasioned by his breach of contract.

(4) Where the seller expressly reserves a right of resale in case the buyer should make default, and, on the buyer making default, resells the goods, the original contract of sale shall thereby be rescinded, but without prejudice to any claim the seller may have for damages.

PART VI

Actions for Breach of Contract

Remedies of the Seller

Action for price

49.—(1) Where, under a contract of sale, the property in the goods has passed to the buyer, and the buyer wrongfully neglects or refuses to pay for the goods according to the terms of the contract, the seller may maintain an action against him for the price of the goods.

(2) Where, under a contract of sale, the price is payable on a day certain irrespective of delivery, and the buyer wrongfully neglects or refuses to pay such price, the seller may maintain an action for the price, although the property in the goods has not passed and the goods have not been appropriated to the contract.

Action for non-acceptance

50.—(1) Where the buyer wrongfully neglects or refuses to accept and pay for the goods, the seller may maintain an action against him for damages for non-acceptance.

(2) The measure of damages shall be the estimated loss

directly and naturally resulting, in the ordinary course of events, from the buyer's breach of contract.

(3) Where there is an available market for the goods in question, the measure of damages shall *prima facie* be ascertained by the difference between the contract price and the market or current price at the time or times when the goods ought to have been accepted, or, if no time was fixed for acceptance, then at the time of the refusal to accept.

Remedies of the Buyer

Action for non-delivery

51.—(1) Where the seller wrongfully neglects or refuses to deliver the goods to the buyer, the buyer may maintain an action against the seller for damages for non-delivery.

(2) The measure of damages shall be the estimated loss directly and naturally resulting, in the ordinary course of events, from the seller's breach of contract.

(3) Where there is an available market for the goods in question the measure of damages shall *prima facie* be ascertained by the difference between the contract price and the market or current price of the goods at the time or times when they ought to have been delivered, or, if no time was fixed, then at the time of the refusal to deliver.

Right to specific performance

52.—(1) In any action for breach of contract to deliver specific or ascertained goods the court may, if it thinks fit, on the application of the plaintiff, by its judgment or decree direct that the contract shall be performed specifically, without giving the defendant the option of retaining the goods on payment of damages.

(2) The judgment or decree may be unconditional, or upon such terms and conditions as to damages, payment of the price, and otherwise, as to the court may seem just, and the application by the plaintiff may be made at any time before judgment or decree.

Remedy for breach of warranty

53.—(1) Where there is a breach of warranty by the seller, or where the buyer elects, or is compelled, to treat any breach of a condition on the part of the seller as a breach of warranty, the buyer shall not by reason only of such breach of warranty be entitled to reject the goods; but he may—

(*a*) set up against the seller the breach of warranty in diminution or extinction of the price; or

(*b*) maintain an action against the seller for damages for the breach of warranty.

(2) The measure of damages for breach of warranty shall be the estimated loss directly and naturally resulting, in the ordinary course of events from the breach of warranty.

(3) In the case of breach of warranty of quality, such loss shall *prima facie* be the difference between the value of the goods at the time of delivery to the buyer and the value they would have had if they had answered to the warranty.

(4) The fact that the buyer has set up the breach of warranty in diminution or extinction of the price shall not prevent him from maintaining an action for the same breach of warranty if he has suffered further damage.

Interest and special damages

54. Nothing in this Act shall affect the right of the buyer or the seller to recover interest or special damages in any case where by law interest or special damages may be recoverable, or to recover money paid where the consideration for the payment of it has failed.

PART VII

Supplementary

Variation, etc., of implied rights

55. Where any right, duty or liability would arise under a contract of sale by implication of law, it may be negatived or varied by express agreement or by the course of dealing between the parties, or by usage, if the usage be such as to bind both parties to the contract.

Reasonable time

56. Where, by this Act, any reference is made to a reasonable time, the question what is reasonable time shall be a question of fact.

Rights, etc., enforceable by action

57. Where any right, duty or liability is declared by this Act, it may, unless otherwise by this Act provided, be enforced by action.

Auction sales

58.—(1) In the case of sale by auction—

(*a*) where goods are put up for sale by auction in lots, each lot shall *prima facie* be deemed to be the subject of a separate contract of sale;

(*b*) a sale by auction shall be complete when the auctioneer announces its completion by the fall of the hammer, or in other customary manner; and until such announcement is made any bidder may retract his bid;

(*c*) where a sale by auction is not notified to be subject to a right to bid on behalf of the seller, it shall not be lawful for the seller to bid himself or to employ any person to bid at such

sale, or for the auctioneer knowingly to take any bid from the seller or any such person; and any sale contravening this rule may be treated as fraudulent by the buyer;

(*d*) a sale by auction may be notified to be subject to a reserved or upset price, and a right to bid may also be reserved expressly by or on behalf of the seller.

(2) Where a right to bid is expressly reserved, but not otherwise, the seller, or any one person on his behalf, may bid at the auction.

Savings

59.—(1) The rules in bankruptcy relating to contracts of sale shall continue to apply thereto, notwithstanding anything in this Act contained.

(2) The rules of the common law, including the law merchant, save in so far as they are inconsistent with the express provisions of this Act, and in particular the rules relating to the law of principal and agent, and the effect of fraud, misrepresentation, duress or coercion, mistake or other invalidating cause, shall continue to apply to contracts for the sale of goods.

(3) Nothing in this Act shall affect any written law relating to bills of sale or any other written law relating to the sale of goods.

(4) The provisions of this Act relating to contracts of sale shall not apply to any transaction in the form of a contract of sale which is intended to operate by way of mortgage, pledge, charge or other security.

BILLS OF EXCHANGE

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CHAPTER 48:02

BILLS OF EXCHANGE

15 of 1967 **An Act relating to Bills of Exchange, Cheques and Promissory Notes, and Matters Incidental thereto**

[28TH JULY, 1967]

PART I

PRELIMINARY

Short title

1. This Act may be cited as the Bills of Exchange Act.

Interpretation

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

"acceptance" means an acceptance completed by delivery or notification;

"action" includes counter claim and set off;

"banker" includes a body of persons whether incorporated or not who carry on the business of banking;

"bankrupt" includes any person whose estate is vested in a trustee or assignee under the law for the time being in force relating to bankruptcy;

"bearer" means the person in possession of a bill or note which is payable to bearer;

"bill" means bill of exchange, and "note" means promissory note;

"delivery" means transfer of possession, actual or constructive, from one person to another;

"holder" means the payee or indorsee of a bill or note who is in possession of it, or the bearer thereof;

"indorsement" means an indorsement completed by delivery;

"issue" means the first delivery of a bill or note, complete in form to a person who takes it as a holder;

"value" means valuable consideration;

"written" includes printed, and "writing" includes print.

PART II

Bills of exchange

Form and Interpretation

Bill of exchange defined

3.—(1) A bill of exchange is an unconditional order in writing, addressed by one person to another, signed by the person giving it, requiring determinable future time a sum certain in money to or to the order of a specified person, or to bearer.

(2) An instrument which does not comply with these conditions, or which orders any act to be done in addition to the payment of money, is not a bill of exchange.

(3) An order to pay out of a particular fund is not unconditional within the meaning of this section; but an unqualified order to pay, coupled with—

(*a*) an indication of a particular fund out of which the drawee is to re-imburse himself or a particular account to be debited with the amount; or

(*b*) a statement of the transaction which gives rise to the bill, is unconditional.

(4) A bill is not invalid by reason—

(*a*) that it is not dated;

(*b*) that it does not specify the value given, or that any value has been given therefor;

(*c*) that it does not specify the place where it is drawn or the place where it is payable.

Inland and foreign bills

4.—(1) An inland bill is a bill which is or on the face of it purports to be both drawn and payable within Malaŵi, or drawn within Malaŵi upon some person resident therein. Any other bill is a foreign bill.

(2) Unless the contrary appear on the face of the bill the holder may treat it as an inland bill.

Effect where different parties to bill are the same person

5.—(1) A bill may be drawn payable to, or to the order of, the drawer; or it may be drawn payable to, or to the order of, the drawee.

(2) Where in a bill drawer and drawee are the same person, or where the drawee is a fictitious person or a person not having capacity to contract, the holder may treat the instrument, at his option, either as a bill of exchange or as a promissory note.

Address to drawee

6.—(1) The drawee must be named or otherwise indicated in a bill with reasonable certainty.

(2) A bill may be addressed to two or more drawees whether they are partners or not, but an order addressed to two drawees in the alternative or to two or more drawees in succession is not a bill of exchange.

Certainty required as to payee

7.—(1) Where a bill is not payable to bearer, the payee must be named or otherwise indicated therein with reasonable certainty.

(2) A bill may be made payable to two or more payees jointly, or it may be made payable in the alternative to one of two, or one or some of several payees. A bill may also be made payable to the holder of an office for the time being

(3) Where the payee is a fictitious or non-existing person the bill may be treated as payable to bearer.

What bills are negotiable

8.—(1) When a bill contains words prohibiting transfer, or indicating an intention that it should not be transferable, it is valid as between the parties thereto, but is not negotiable.

(2) A negotiable bill may be payable either to order or to bearer.

(3) A bill is payable to bearer which is expressed to be so payable, or on which the only or last indorsement is an indorsement in blank.

(4) A bill is payable to order which is expressed to be so payable, or which is expressed to be payable to a particular person, and does not contain words prohibiting transfer or indicating an intention that it should not be transferable.

(5) Where a bill, either originally or by indorsement, is expressed to be payable to the order of a specified person, and not to him or his order, it is nevertheless payable to him or his order at his option.

Sum payable

9.—(1) The sum payable by a bill is a sum certain within the meaning of this Act, although it is required to be paid—

(*a*) with interest;

(*b*) by stated instalments;

(*c*) by stated instalments, with a provision that upon default in payment of any instalment the whole shall become due;

(*d*) according to an indicated rate of exchange or according to a rate of exchange to be ascertained as directed by the bill.

(2) Where the sum payable is expressed in words and also in figures, and there is a discrepancy between the two, the sum denoted by the words is the amount payable,

(3) Where a bill is expressed to be payable with interest, unless the instrument otherwise provides, interest runs from the date of the bill, and if the bill is undated from the issue thereof.

Bill payable on demand

10.—(1) A bill is payable on demand—

(*a*) which is expressed to be payable on demand, or at sight, or on presentation; or

(*b*) in which no time for payment is expressed.

(2) Where a bill is accepted or indorsed when it is overdue, it shall, as regards the acceptor who so accepts, or any indorser who so indorses it, be deemed a bill payable on demand.

Bill payable at a future time

11.—(1) A bill is payable at a determinable future time within the meaning of this Act which is expressed to be payable—

(*a*) at a fixed period after date or sight;

(*b*) on or at a fixed period after the occurrence of a specified event which is certain to happen, though the time of happening may be uncertain.

(2) An instrument expressed to be payable on a contingency is not a bill, and the happening of the event does not cure the defect.

Omission of date in bill payable after date

12. Where a bill expressed to be payable at a fixed period after date is issued undated, or where the acceptance of a bill payable at a fixed period after sight is undated, any holder may insert therein the true date of issue or acceptance, and the bill shall be payable accordingly:

Provided that—

(*a*) where the holder in good faith and by mistake inserts a wrong date; and

(*b*) in every case where a wrong date is inserted, if the bill subsequently comes into the hands of a holder in due course, the bill shall not be avoided thereby, but shall operate and be payable as if the date so inserted had been the true date.

Ante-dating and post-dating

13.—(1) Where a bill or an acceptance or any indorsement on a bill is dated, the date shall, unless the contrary be proved, be deemed to be the true date of the drawing, acceptance, or indorsement, as the case may be.

(2) A bill is not invalid by reason only that it is ante-dated or post-dated, or that it bears date on a Sunday.

Computation of time of payment

14. Where a bill is not payable on demand the day on which it falls due is determined as follows—

(*a*) three days, called days of grace, are, in every case where the bill itself does not otherwise provide, added to the time of payment as fixed by the bill, and the bill is due and payable on the last day of grace:

Provided that—

(i) when the last day of grace falls on Sunday, Christmas Day, or Good Friday, the bill is, except in the case hereinafter provided for, due and payable on the preceding business day;

(ii) when the last day of grace is a public holiday (other than Christmas Day or Good Friday) or when the last day of grace is a Sunday and the second day of grace is a public holiday (other than Christmas Day), the bill is due and payable on the succeeding business day;

(*b*) where a bill is payable at a fixed period after date, after sight, or after the happening of a specified event, the time of payment is determined by excluding the day from which the time is to begin to run and by including the day of payment;

(*c*) where a bill is payable at a fixed period after sight, the time begins to run from the date of the acceptance if the bill be accepted, and from the date of noting or protest if the bill be noted or protested for non-acceptance, or for non-delivery;

(*d*) the term "month" in a bill means calendar month.

Case of need

15. The drawer of a bill and any endorser may insert therein the name of a person to whom the holder may resort in case of need, that is to say, in case the bill is dishonoured by non-acceptance or non-payment. Such person is called the referee in case of need. It is in the option of the holder to resort to the referee in case of need or not as he may think fit.

Optional stipulations by drawer or indorser

16. The drawer of a bill, and any indorser, may insert therein an express stipulation—

(*a*) negativing or limiting his own liability to the holder;

(*b*) waiving as regards himself some or all of the holder's duties.

Definition and requisites of acceptance

17.—(1) The acceptance of a bill is the signification by the drawee of his assent to the order of the drawer.

(2) An acceptance is invalid unless it complies with the following conditions, namely—

(*a*) it must be written on the bill and be signed by the drawee. The mere signature of the drawee without additional words is sufficient;

(*b*) it must not express that the drawee will perform his promise by any other means than the payment of money.

Time for acceptance

18.—(1) A bill may be accepted—

(*a*) before it has been signed by the drawer, or while otherwise incomplete;

(*b*) when it is overdue, or after it has been dishonoured by a previous refusal to accept, or by non-payment.

(2) When a bill payable after sight is dishonoured by non-acceptance, and the drawee subsequently accepts it, the holder, in the absence of any different agreement, is entitled to have the bill accepted as of the date of first presentment to the drawee for acceptance.

General and qualified acceptances

19.—(1) An acceptance is either general or qualified.

(2) A general acceptance assents without qualification to the order of the drawer. A qualified acceptance in express terms varies the effect of the bill as drawn.

In particular an acceptance is qualified which is—

(*a*) conditional, that is to say, which makes payment by the acceptor dependent on the fulfilment of a condition therein stated;

(*b*) partial, that is to say, an acceptance to pay part only of the amount for which the bill is drawn;

(*c*) local, that is to say, an acceptance to pay only at a particular specified place. An acceptance to pay at a particular place is a general acceptance, unless it expressly states that the bill is to be paid there only and not elsewhere;

(*d*) qualified as to time;

(*e*) the acceptance of some one or more of the drawees, but not of all.

Inchoate instruments

20.—(1) Where a simple signature on a blank stamped paper is delivered by the signer in order that it may be converted into a bill, it operates as a *prima facie* authority to fill it up as a complete bill for any amount the stamp will cover, using the signature for that of the drawer, or the acceptor, or an indorser; and, in like manner, when a bill is wanting in any material particular, the person in possession of it has a *prima facie* authority to fill up the omission in any way he thinks fit.

(2) In order that any such instrument when completed may be enforceable against any person who became a party thereto prior to its completion, it must be filled up within a reasonable time, and strictly in accordance with the authority given. Reasonable time for this purpose is a question of fact:

Provided that if any such instrument after completion is negotiated to a holder in due course, it shall be valid and effectual for all purposes in his hands, and he may enforce it as if it had been filled up within a reasonable time and strictly in accordance with the authority given.

Delivery

21.—(1) Every contract on a bill, whether it be the drawer's, the acceptor's or an indorser's, is incomplete and revocable, until delivery of the instrument in order to give effect thereto:

Provided that where an acceptance is written on a bill, and the drawee gives notice to or according to the directions of the person entitled to the bill that he has accepted it, the acceptance then becomes complete and irrevocable.

(2) As between immediate parties, and as regards a remote party other than a holder in due course, the delivery—

(*a*) in order to be effectual must be made either by or under the authority of the party drawing, accepting or indorsing, as the case may be;

(*b*) may be shown to have been conditional or for a special purpose only, and not for the purpose of transferring the property in the bill,

but if the bill be in the hands of a holder in due course a valid delivery of the bill by all parties prior to him so as to make them liable to him is conclusively presumed.

(3) Where a bill is no longer in the possession of a party who has signed it as drawer, acceptor, or indorser, a valid and

unconditional delivery by him is presumed until the contrary is proved.

Capacity and Authority of Parties

Capacity of parties

22.—(1) Capacity to incur liability as a party to a bill is co-extensive with capacity to contract:

Provided that nothing in this section shall enable a corporation to make itself liable as drawer, acceptor, or indorser of a bill unless it is competent to it so to do under the law for the time being in force relating to corporations.

(2) Where a bill is drawn or indorsed by an infant, minor, or corporation having no capacity or power to incur liability on a bill, the drawing or indorsement entitles the holder to receive payment of the bill, and to enforce it against any other party thereto.

Signature essential to liability

23. No person is liable as drawer, indorser, or acceptor of a bill who has not signed it as such:

Provided that—

(*a*) where a person signs a bill in a trade or assumed name, he is liable thereon as if he had signed it in his own name;

(*b*) the signature of the name of a firm is equivalent to the signature by the person so signing of the names of all persons liable as partners in that firm.

Forged or unauthorized signature

24. Subject to this Act, where a signature on a bill is forged or placed thereon without the authority of the person whose signature it purports to be, the forged or unauthorized signature is wholly inoperative, and no right to retain the bill or to give a discharge therefor or to enforce payment thereof against any party thereto can be acquired through or under that signature, unless the party against whom it is sought to retain or enforce payment of the bill is precluded from setting up the forgery or want of authority:

Provided that nothing in this section shall affect the ratification of an unauthorized signature not amounting to a forgery.

Procuration signatures

25. A signature by procuration operates as notice that the agent has but a limited authority to sign, and the principal is only bound by such signature if the agent in so signing was acting within the actual limits of his authority.

Person signing as agent or in representative capacity

26.—(1) Where a person signs a bill as drawer, endorser, or acceptor, and adds words to his signature, indicating that he signs for or on behalf of a principal, or in a representative character, he is not personally liable thereon; but the mere addition to his

signature of words describing him as an agent, or as filling a representative character, does not exempt him from personal liability.

(2) In determining whether a signature on a bill is that of the principal or that of the agent by whose hand it is written, the construction most favourable to the validity of the instrument shall be adopted.

The Consideration for a Bill

Value and holder for value

27.—(1) Valuable consideration for a bill may be constituted by—

(*a*) any consideration sufficient to support a simple contract; or

(*b*) an antecedent debt or liability. Such a debt or liability is deemed valuable consideration whether the bill is payable on demand or at a future time.

(2) Where value has at any time been given for a bill the holder is deemed to be a holder for value as regards the acceptor and all parties to the bill who became parties prior to such time.

(3) Where the holder of a bill has a lien on it arising either from contract or by implication of law, he is deemed to be a holder for value to the extent of the sum for which he has a lien.

Accommodation bill or party

28.—(1) An accommodation party to a bill is a person who has signed a bill as drawer, acceptor, or indorser, without receiving value therefor, and for the purpose of lending his name to some other person.

(2) An accommodation party is liable on the bill to a holder for value; and it is immaterial whether, when such holder took the bill, he knew such party to be an accommodation party or not.

Holder in due course

29.—(1) A holder in due course is a holder who has taken a bill, complete and regular on the face of it, under the following conditions, namely—

(*a*) that he became the holder of it before it was overdue, and without notice that it had been previously dishonoured, if such was the fact;

(*b*) that he took the bill in good faith and for value, and that at the time the bill was negotiated to him he had no notice of any defect in the title of the person who negotiated it.

(2) In particular the title of a person who negotiates a bill is defective within the meaning of this Act, when he obtained the bill, or the acceptance thereof, by fraud, duress, or force and fear, or other unlawful means, or an illegal consideration or when he negotiates it in breach of faith, or under such circumstances as amount to a fraud.

(3) A holder (whether for value or not), who derives his title to a bill through a holder in due course, and who is not himself a party to any fraud or illegality affecting it, has all the rights of that holder in due course as regards the acceptor and all parties to the bill prior to that holder.

Presumption of value and good faith

30.—(1) Every party whose signature appears on a bill is *prima facie* deemed to have become a party thereto for value.

(2) Every holder of a bill is *prima facie* deemed to be a holder in due course; but if in an action on a bill it is admitted or proved that the acceptance, issue, or subsequent negotiation of the bill is affected with fraud, duress, or force and fear, or illegality the burden of proof is shifted, unless and until the holder proves that, subsequent to the alleged fraud or illegality, value has in good faith been given for the bill.

Negotiation of Bills

Negotiation of bill

31.—(1) A bill is negotiated when it is transferred from one person to another in such a manner as to constitute the transferee the holder of the bill.

(2) A bill payable to bearer is negotiated by delivery.

(3) A bill payable to order is negotiated by the indorsement of the holder completed by delivery.

(4) Where the holder of a bill payable to his order transfers it for value without indorsing it, the transfer gives the transferee such title as the transferor had in the bill, and the transferee in addition acquires the right to have the indorsement of the transferor.

(5) Where any person is under obligation to indorse a bill in a representative capacity, he may indorse the bill in such terms as to negative personal liability.

Requisites of a valid indorsement

32. An indorsement in order to operate as a negotiation must comply with the following conditions, namely:—

(*a*) it must be written on the bill itself and be signed by the indorser. The simple signature of the indorser on the bill, without additional words, is sufficient. An indorsement written on an allonge, or on a "copy" of a bill issued or negotiated in

a country where "copies" are recognized, is deemed to be written on the bill itself;

(*b*) it must be an indorsement of the entire bill. A partial indorsement, that is to say, an indorsement which purports to transfer to the indorsee a part only of the amount payable, or which purports to transfer the bill to two or more indorsees severally, does not operate as a negotiation of the bill;

(*c*) where a bill is payable to the order of two or more payees or indorsees who are not partners all must indorse, unless the one indorsing has authority to indorse for the others;

(*d*) where, in a bill payable to order, the payee or indorsee is wrongly designated, or his name is mis-spelt, he may indorse the bill as therein described, adding, if he thinks fit, his proper signature;

(*e*) where there are two or more indorsements on a bill, each indorsement is deemed to have been made in the order in which it appears on the bill, until the contrary is proved;

(*f*) an indorsement may be made in blank or special. It may also contain terms making it restrictive.

Conditional indorsement

33. Where a bill purports to be indorsed conditionally the condition may be disregarded by the payer, and payment to the indorsee is valid whether the condition has been fulfilled or not.

Indorsement in blank and special indorsement

34.—(1) An indorsement in blank specifies no indorsee, and a bill so indorsed becomes payable to bearer.

(2) A special indorsement specifies the person to whom, or to whose order, the bill is to be payable.

(3) The provisions of this Act relating to a payee apply with the necessary modifications to an indorsee under a special indorsement

(4) When a bill has been indorsed in blank, any holder may convert the blank indorsement into a special indorsement by writing above the indorser's signature a direction to pay the bill to or to the order of himself or some other person.

Restrictive indorsement

35.—(1) An indorsement is restrictive which prohibits the further negotiation of the bill or which expresses that it is a mere authority to deal with the bill as thereby directed and not a transfer of the ownership thereof, as, for example, if a bill be indorsed "Pay D. only", or "Pay D. for the account of X.," or "Pay D. or order for collection."

(2) A restrictive indorsement gives the indorsee the right to receive payment of the bill and to sue any party thereto that his indorser could have sued, but gives him no power to transfer his rights as indorsee unless it expressly authorize him to do so.

(3) Where a restrictive indorsement authorizes further transfer, all subsequent indorsees take the bill with the same rights and subject to the same liabilities as the first indorsee under the restrictive indorsement.

Negotiation of overdue or dishonoured bill

36.—(1) Where a bill is negotiable in its origin it continues to be negotiable until it has been restrictively indorsed or discharged by payment or otherwise.

(2) Where an overdue bill is negotiated, it can only be negotiated subject to any defect of title affecting it at its maturity, and thenceforward no person who takes it can acquire or give a better title than that which the person from whom he took it had.

(3) A bill payable on demand is deemed to be overdue within the meaning and for the purposes of this section, when it appears on the face of it to have been in circulation for an unreasonable length of time. What is an unreasonable length of time for this purpose is a question of fact.

(4) Except where an indorsement bears date after the maturity of the bill, every negotiation is *prima facie* deemed to have been effected before the bill was overdue.

(5) Where a bill which is not overdue has been dishonoured any person who takes it with notice of the dishonour takes it subject to any defect of title attaching thereto at the time of dishonour, but nothing in this subsection shall affect the rights of a holder in due course.

Negotiation of bill to party already liable thereon

37. Where a bill is negotiated back to the drawer, or to a prior indorser or to the acceptor, such party may, subject to this Act, re-issue and further negotiate the bill, but he is not entitled to enforce payment of the bill against any intervening party to whom he was previously liable.

Rights of the holder

38. The rights and powers of the holder of a bill are as follows—

(*a*) he may sue on the bill in his own name;

(*b*) where he is a holder in due course, he holds the bill free from any defect of title or prior parties, as well as from mere personal defences available to prior parties among themselves, and may enforce payment against all parties liable on the bill;

(*c*) where his title is defective—

(i) if he negotiates the bill to a holder in due course that holder obtains a good and complete title to the bill; and

(ii) if he obtains payment of the bill the person who pays him in due course gets a valid discharge for the bill.

General Duties of the Holder

When presentment for acceptance is necessary

39.—(1) Where a bill is payable after sight, presentment for acceptance is necessary in order to fix the maturity of the instrument.

(2) Where a bill expressly stipulates that it shall be presented for acceptance, or where a bill is drawn payable elsewhere than at the residence or place of business of the drawee, it must be presented for acceptance before it can be presented for payment.

(3) In no other case is presentment for acceptance necessary in order to render liable any party to the bill.

(4) Where the holder of a bill, drawn payable elsewhere than at the place of business or residence of the drawee, has not time, with the exercise of reasonable diligence, to present the bill for acceptance before presenting it for payment on the day that it falls due, the delay caused by presenting the bill for acceptance before presenting it for payment is excused, and does not discharge the drawer and indorsers.

Time for presenting bill payable after sight

40.—(1) Subject to this Act, when a bill payable after sight is negotiated, the holder must either present it for acceptance or negotiate it within a reasonable time.

(2) If he does not do so, the drawer and all indorsers prior to that holder are discharged.

(3) In determining what is a reasonable time within the meaning of this section, regard shall be had to the nature of the bill, the usage of trade with respect to similar bills, and the facts of the particular case.

Rules as to presentment for acceptance, and excuses for non-presentment

41.—(1) A bill is duly presented for acceptance which is presented in accordance with the following rules—

(*a*) the presentment must be made by or on behalf of the holder to the drawee or to some person authorized to accept or refuse acceptance on his behalf at a reasonable hour on a business day and before the bill is overdue;

(*b*) where a bill is addressed to two or more drawees, who are not partners, presentment must be made to them all, unless one has authority to accept for all, then presentment may be made to him only;

(*c*) where the drawee is dead presentment may be made to his personal representative;

(*d*) where the drawee is bankrupt, presentment may be made to him or to his trustee;

(*e*) where authorized by agreement or usage, a presentment through the post office is sufficient.

(2) Presentment in accordance with these rules is excused, and a bill may be treated as dishonoured by non-acceptance—

(*a*) where the drawee is dead or bankrupt, or is a fictitious person or a person not having capacity to contract by bill;

(*b*) where, after the exercise of reasonable diligence, such presentment cannot be effected;

(*c*) where, although the presentment has been irregular, acceptance has been refused on some other ground.

(3) The fact that the holder has reason to believe that the bill, on presentment, will be dishonoured does not excuse presentment.

Non-acceptance

42. When a bill is duly presented for acceptance and is not accepted within the customary time, the person presenting it must treat it as dishonoured by non-acceptance. If he does not, the holder shall lose his right of recourse against the drawer and indorsers.

Dishonour by non-acceptance and its consequences

43.—(1) A bill is dishonoured by non-acceptance—

(*a*) when it is duly presented for acceptance, and such an acceptance as is prescribed by this Act is refused or cannot be obtained; or

(*b*) when presentment for acceptance is excused and the bill is not accepted.

(2) Subject to this Act when a bill is dishonoured by non-acceptance, an immediate right of recourse against the drawer and indorsers accrues to the holder, and no presentment for payment is necessary.

Duties as to qualified acceptances

44.—(1) The holder of a bill may refuse to take a qualified acceptance, and if he does not obtain an unqualified acceptance may treat the bill as dishonoured by non-acceptance.

(2) Where a qualified acceptance is taken, and the drawer or an indorser has not expressly or impliedly authorized the holder to take a qualified acceptance, or does not subsequently assent thereto, such drawer or indorser is discharged from his liability on the bill.

This subsection does not apply to a partial acceptance, whereof due notice has been given. Where a foreign bill has been accepted as to part, it must be protested as to the balance.

(3) When the drawer or indorser of a bill receives notice of a qualified acceptance, and does not within a reasonable time express his dissent to the holder he shall be deemed to have assented thereto.

Rules as to presentment for payment

45.—(1) Subject to this Act a bill must be duly presented for payment. If it be not so presented the drawer and indorsers shall be discharged.

(2) A bill is duly presented for payment which is presented in accordance with the following rules—

(*a*) where the bill is not payable on demand, presentment must be made on the day it falls due;

(*b*) where the bill is payable on demand, then, subject to this Act, presentment must be made within a reasonable time after its issue in order to render the drawer liable, and within a reasonable time after its indorsement, in order to render the indorser liable. In determining what is a reasonable time, regard shall be had to the nature of the bill, the usage of trade with regard to similar bills, and the facts of the particular case;

(*c*) presentment must be made by the holder or by some person authorized to receive payment on his behalf at a reasonable hour on a business day, at the proper place as hereinafter defined, either to the person designated by the bill as payer, or to some person authorized to pay or refuse payment on his behalf if with the exercise of reasonable diligence such person can there be found;

(*d*) a bill is presented at the proper place—

(i) where a place of payment is specified in the bill and the bill is there presented;

(ii) where no place of payment is specified, but the address of the drawee or acceptor is given in the bill, and the bill is there presented;

(iii) where no place of payment is specified and no address given, and the bill is presented at the drawee's or acceptor's place of business if known, and if not, at his ordinary residence if known; or

(iv) in any other case if presented to the drawee or acceptor wherever he can be found, or if presented at his last known place of business or residence;

(*e*) where a bill is presented at the proper place, and after the exercise of reasonable diligence no person authorized to pay or refuse payment can be found there, no further presentment to the drawee or acceptor is required;

(*f*) where a bill is drawn upon, or accepted by two or more persons who are not partners, and no place of payment is specified, presentment must be made to them all;

(*g*) where the drawee or acceptor of a bill is dead, and no place of payment is specified, presentment must be made to a personal representative, if such there be, and with the exercise of reasonable diligence he can be found;

(*h*) where authorized by agreement or usage a presentment through the post office is sufficient.

Excuses for delay or non-presentment for payment

46.—(1) Delay in making presentment for payment is excused when the delay is caused by circumstances beyond the control of the holder, and not imputable to his default, misconduct, or negligence. When the cause of delay ceases to operate presentment must be made with reasonable diligence.

(2) Presentment for payment is dispensed with—

(*a*) where, after the exercise of reasonable diligence presentment, as required by this Act, cannot be effected. The fact that the holder has reason to believe that the bill will, on presentment, be dishonoured, does not dispense with the necessity for presentment;

(*b*) where the drawee is a fictitious person;

(*c*) as regards the drawer where the drawee or acceptor is not bound as between himself and the drawer, to accept or pay the bill, and the drawer has no reason to believe that the bill would be paid if presented;

(*d*) as regards an indorser, where the bill was accepted or made for the accommodation of that indorser, and he has no reason to expect that the bill would be paid if presented;

(*e*) by waiver of presentment, express or implied.

Dishonour by non-payment

47.—(1) A bill is dishonoured by non-payment—

(*a*) when it is duly presented for payment and payment is refused or cannot be obtained; or

(*b*) when presentment is excused and the bill is overdue and unpaid.

(2) Subject to this Act, when a bill is dishonoured by non-payment, an immediate right of recourse against the drawer and indorsers accrues to the holder.

Notice of dishonour and effect of non-notice

48. Subject to this Act, when a bill has been dishonoured by non-acceptance or by non-payment, notice of dishonour must be given to the drawer and each indorser, and any drawer or indorser to whom such notice is not given is discharged:

Provided that—

(*a*) where a bill is dishonoured by non-acceptance, and notice of dishonour is not given, the rights of a holder in due course, subsequent to the omission, shall not be prejudiced by the omission;

(*b*) where a bill is dishonoured by non-acceptance, and due notice of dishonour is given, it shall not be necessary to give notice of a subsequent dishonour by non-payment unless the bill shall in the meantime have been accepted.

Rules as to notice of dishonour

49. Notice of dishonour in order to be valid and effectual must be given in accordance with the following rules—

(*a*) the notice must be given by or on behalf of the holder, or by or on behalf of an indorser who, at the time of giving it, is himself liable on the bill;

(*b*) notice of dishonour may be given by an agent either in his own name, or in the name of any party entitled to give notice whether that party be his principal or not;

(*c*) where the notice is given by or on behalf of the holder, it enures for the benefit of all subsequent holders and all prior indorsers who have a right of recourse against the party to whom it is given;

(*d*) where notice is given by or on behalf of an indorser entitled to give notice as hereinbefore provided, it enures for the benefit of the holder and all indorsers subsequent to the party to whom notice is given;

(*e*) the notice may be given in writing or by personal communication, and may be given in any terms which sufficiently identify the bill, and intimate that the bill has been dishonoured by non-acceptance or non-payment;

(*f*) the return of a dishonoured bill to the drawer or an indorser is, in point of form, deemed a sufficient notice of dishonour;

(*g*) a written notice need not be signed, and an insufficient written notice may be supplemented and validated by verbal communication. A misdescription of the bill shall not vitiate the notice unless the party to whom the notice is given is in fact misled thereby;

(*h*) where notice of dishonour is required to be given to any person, it may be given either to the party himself, or to his agent in that behalf;

(*i*) where the drawer or indorser is dead, and the party giving notice knows it, the notice must be given to a personal representative if such there be, and with the exercise of reasonable diligence he can be found;

(*j*) where the drawer or indorser is bankrupt, notice may be given either to the party himself or to the trustee;

(*k*) where there are two or more drawers or indorsers who are not partners, notice must be given to each of them, unless one of them has authority to receive such notice for the others;

(*l*) the notice may be given as soon as the bill is dishonoured and must be given within a reasonable time thereafter. In the absence of special circumstances notice is not deemed to have been given within a reasonable time, unless—

(i) where the person giving and the person to receive notice reside in the same place, the notice is given or sent off in time to reach the latter on the day after the dishonour of the bill; or

(ii) where the person giving and the person to receive notice reside in different places, the notice is sent off on the day after the dishonour of the bill, if there be a post at a convenient hour on that day, and if there be no post on that day then by the next post thereafter;

(*m*) where a bill when dishonoured is in the hands of an agent, he may either himself give notice to the parties liable on the bill, or he may give notice to his principal. If he gives notice to his principal, he must do so within the same time as if he were the holder, and the principal upon receipt of such notice has himself the same time for giving notice as if the agent had been an independent holder;

(*n*) where a party to a bill receives due notice of dishonour, he has after the receipt of such notice the same period of time for giving notice to antecedent parties that the holder has after the dishonour;

(*o*) where a notice of dishonour is duly addressed and posted, the sender is deemed to have given due notice of dishonour, notwithstanding any miscarriage by the post office.

Excuses for non-notice and delay

50.—(1) Delay in giving notice of dishonour is excused where the delay is caused by circumstances beyond the control of the party giving notice, and not imputable to his default, misconduct,

or negligence. When the cause of delay ceases to operate the notice must be given with reasonable diligence.

(2) Notice of dishonour is dispensed with—

(*a*) when, after the exercise of reasonable diligence, notice as required by this Act cannot be given to or does not reach the drawer or indorser sought to be charged;

(*b*) by waiver express or implied. Notice of dishonour may be waived before the time of giving notice has arrived or after the omission to give due notice;

(*c*) as regards the drawer in the following cases, namely—

(i) where drawer and drawee are the same person;

(ii) where the drawee is a fictitious person or a person not having capacity to contract;

(iii) where the drawer is the person to whom the bill is presented for payment;

(iv) where the drawee or acceptor is as between himself and the drawer under no obligation to accept or pay the bill;

(v) where the drawer has countermanded payment;

(*d*) as regards the indorser in the following cases, namely—

(i) where the drawee is a fictitious person or a person not having capacity to contract, and the indorser was aware of the fact at the time he indorsed the bill;

(ii) where the indorser is the person to whom the bill is presented for payment;

(iii) where the bill was accepted or made for his accommodation.

Noting or protest of bill

51.—(1) Where an inland bill has been dishonoured it may, if the holder think fit, be noted for non-acceptance or non-payment, as the case may be; but it shall not be necessary to note or protest any such bill in order to preserve the recourse against the drawer or indorser.

(2) Where a foreign bill, appearing on the face of it to be such, has been dishonoured by non-acceptance it must be duly protested for non-acceptance, and where such a bill, which has not been previously dishonoured by non-acceptance, is dishonoured by non-payment it must be duly protested for non-payment. If it be not so protested the drawer and indorsers are discharged. Where a bill does not appear on the face of it to be a foreign bill, protest thereof in case of dishonour is unnecessary.

(3) A bill which has been protested for non-acceptance may be subsequently protested for non-payment.

(4) Subject to this Act, when a bill is noted or protested, it may be noted on the day of its dishonour and must be noted not later than the next succeeding business day. When a bill has been duly noted, the protest may be subsequently extended as of the date of the noting.

(5) Where the acceptor of a bill becomes bankrupt or insolvent or suspends payment before it matures, the holder may cause the bill to be protested for better security against the drawer and indorsers.

(6) A bill must be protested at the place where it is dishonoured:

Provided that—

(*a*) when a bill is presented through the post office, and returned by post dishonoured, it may be protested at the place to which it is returned and on the day of its return if received during business hours, and if not received during business hours, then not later than the next business day;

(*b*) when a bill drawn payable at the place of business or residence of some person other than the drawee has been dishonoured by non-acceptance, it must be protested for non-payment at the place where it is expressed to be payable, and no further presentment for payment to, or demand on, the drawee is necessary.

(7) A protest must contain a copy of the bill, and must be signed by the notary making it, and must specify—

(*a*) the person at whose request the bill is protested;

(*b*) the place and date of protest, the cause or reason for protesting the bill, the demand made, and the answer given, if any, or the fact that the drawee or acceptor could not be found.

(8) Where a bill is lost or destroyed, or is wrongly detained from the person entitled to hold it, protest may be made on a copy or written particulars thereof.

(9) Protest is dispensed with by any circumstance which would dispense with notice of dishonour. Delay in noting or protesting is excused when the delay is caused by circumstances beyond the control of the holder, and not imputable to his default, misconduct, or negligence. When the cause of delay ceases to operate the bill must be noted or protested with reasonable diligence.

Duties of holder as regards drawee or acceptor

52.—(1) When a bill is accepted generally presentment for payment is not necessary in order to render the acceptor liable.

(2) When by the terms of a qualified acceptance presentment for payment is required, the acceptor, in the absence of an express stipulation to that effect, is not discharged by the omission to present the bill for payment on the day that it matures.

(3) In order to render the acceptor of a bill liable it is not necessary to protest it, or that notice of dishonour should be given to him.

(4) Where the holder of a bill presents it for payment, he shall exhibit the bill to the person from whom he demands payment, and when a bill is paid the holder shall forthwith deliver it up to the party paying it.

Liabilities of Parties

Funds in hands of drawee

53. A bill, of itself, does not operate as an assignment of funds in the hands of the drawee available for the payment thereof, and the drawee of a bill who does not accept as required by this Act is not liable on the instrument.

Liability of acceptor

54. The acceptor of a bill, by accepting it—

(*a*) engages that he will pay it according to the tenor of his acceptance;

(*b*) is precluded from denying to a holder in due course—

(i) the existence of the drawer, the genuineness of his signature, and his capacity and authority to draw the bill;

(ii) in the case of a bill payable to drawer's order, the then capacity of the drawer to indorse, but not the genuineness or validity of his indorsement;

(iii) in the case of a bill payable to the order of a third person, the existence of the payee and his then capacity to indorse, but not the genuineness or validity of his indorsement.

Liability of drawer or indorser

55.—(1) The drawer of a bill by drawing it—

(*a*) engages that on due presentment it shall be accepted and paid according to its tenor, and that if it be dishonoured he will compensate the holder or any indorser who is compelled to pay it, provided that the requisite proceedings on dishonour be duly taken;

(*b*) is precluded from denying to a holder in due course the existence of the payee and his then capacity to indorse.

(2) The indorser of a bill by indorsing it—

(*a*) engages that on due presentment it shall be accepted and paid according to its tenor, and that if it be dishonoured he will compensate the holder or a subsequent indorser who is compelled to pay it, provided that the requisite proceedings on dishonour be duly taken;

(*b*) is precluded from denying to a holder in due course the genuineness and regularity in all respects of the drawer's signature and all previous indorsements;

(*c*) is precluded from denying to his immediate or a subsequent indorsee that the bill was at the time of his indorsement a valid and subsisting bill, and that he had then a good title thereto.

Stranger signing bill liable as indorser

56. Where a person signs a bill otherwise than as drawer or acceptor, he thereby incurs the liabilities of an indorser to a holder in due course.

Measure of damages against parties to dishonoured bill

57. Where a bill is dishonoured, the measure of damages, which shall be deemed to be liquidated damages, shall be as follows—

(*a*) the holder may recover from any party liable on the bill, and the drawer who has been compelled to pay the bill may recover from the acceptor, and an indorser who has been compelled to pay the bill may recover from the acceptor or from the drawer, or from a prior indorser—

(i) the amount of the bill;

(ii) interest thereon from the time of presentment for payment if the bill is payable on demand, and from the maturity of the bill in any other case;

(iii) the expenses of noting, or, when protest is necessary, and the protest has been extended the expenses of protest;

(*b*) in the case of a bill which has been dishonoured abroad, in lieu of the above damages, the holder may recover from the drawer or an indorser, and the drawer or an indorser who has been compelled to pay the bill may recover from any party liable to him, the amount of the re-exchange with interest thereon until the time of payment;

(*c*) where by this Act interest may be recovered, as damages, such interest may, if justice requires it, be withheld wholly or in part, and where a bill is expressed to be payable with interest at a given rate, interest as damages may or may not be given at the same rate as interest proper.

Transferor by delivery and transferee

58.—(1) Where the holder of a bill payable to bearer negotiates it by delivery without indorsing it he is called a "transferor by delivery."

(2) A transferor by delivery is not liable on the instrument.

(3) A transferor by delivery who negotiates a bill thereby warrants to his immediate transferee being a holder for value that the bill is what it purports to be, that he has a right to transfer it, and that at the time of transfer he is not aware of any fact which renders it valueless.

Discharge of Bill

Payment in due course

59.—(1) A bill is discharged by payment in due course by or on behalf of the drawee or acceptor.

"Payment in due course" means payment made at or after the maturity of the bill to the holder thereof in good faith and without notice that his title to the bill is defective.

(2) Subject to the provisions hereinafter contained, when a bill is paid by the drawer or an indorser it is not discharged, but—

(*a*) where a bill payable to, or to the order of, a third party is paid by the drawer, the drawer may enforce payment thereof against the acceptor, but may not re-issue the bill;

(*b*) where a bill is paid by an indorser, or where a bill payable to drawer's order is paid by the drawer, the party paying it is remitted to his former rights as regards the acceptor or antecedent parties, and he may, if he thinks fit, strike out his own and subsequent indorsements, and again negotiate the bill.

(3) Where an accommodation bill is paid in due course by the party accommodated the bill is discharged.

Banker paying demand draft where an indorsement is forged

60. When a bill payable to order on demand is drawn on a banker, and the banker on whom it is drawn pays the bill in good faith and in the ordinary course of business, it is not incumbent on the banker to show that the indorsement of the payee or any subsequent indorsement was made by or under the authority of the person whose indorsement it purports to be, and the banker is deemed to have paid the bill in due course, although such indorsement has been forged or made without authority.

Acceptor the holder at maturity

61. When the acceptor of a bill is or becomes the holder of it at or after its maturity, in his own right, the bill is discharged.

Express waiver

62.—(1) When the holder of a bill at or after its maturity absolutely and unconditionally renounces his rights against the acceptor the bill is discharged.

The renunciation must be in writing, unless the bill is delivered up to the acceptor.

(2) The liabilities of any party to a bill may in like manner be renounced by the holder before, at, or after its maturity; but nothing in this section shall affect the rights of a holder in due course without notice of the renunciation.

Cancellation

63.—(1) Where a bill is intentionally cancelled by the holder or his agent, and the cancellation is apparent thereon, the bill is discharged.

(2) In like manner any party liable on a bill may be discharged by the intentional cancellation of his signature by the holder or his agent. In such case any indorser who would have had a right of recourse against the party whose signature is cancelled is also discharged.

(3) A cancellation made unintentionally, or under a mistake, or without the authority of the holder is inoperative; but where a bill or any signature thereon appears to have been cancelled the burden of proof lies on the party who alleges that the cancellation was made unintentionally, or under a mistake, or without authority.

Alteration of bill

64.—(1) Where a bill or acceptance is materially altered without the assent of all parties liable on the bill, the bill is avoided except as against a party who has himself made, authorized, or assented to the alteration, and subsequent indorsers:

Provided that where a bill has been materially altered, but the alteration is not apparent, and the bill is in the hands of a holder in due course, such holder may avail himself of the bill as if it had not been altered, and may enforce payment of it according to its original tenor.

(2) In particular the following alterations are material, namely, any alteration of the date, the sum payable, the time of payment, the place of payment, and, where a bill has been accepted generally, the addition of a place of payment without the acceptor's assent.

Acceptance and Payment for Honour

Acceptance for honour supra protest

65.—(1) Where a bill of exchange has been protested for dishonour by non-acceptance, or protested for better security, and is not overdue, any person, not being a party already liable

thereon, may, with the consent of the holder, intervene and accept the bill *supra* protest, for the honour of any party liable thereon, or for the honour of the person for whose account the bill is drawn.

(2) A bill may be accepted for honour for part only of the sum for which it is drawn.

(3) An acceptance for honour *supra* protest in order to be valid must—

(*a*) be written on the bill, and indicate that it is an acceptance for honour;

(*b*) be signed by the acceptor for honour.

(4) Where an acceptance for honour does not expressly state for whose honour it is made, it is deemed to be an acceptance for the honour of the drawer.

(5) Where a bill payable after sight is accepted for honour, its maturity is calculated from the date of the noting for non-acceptance, and not from the date of the acceptance for honour.

Liability of acceptor for honour

66.—(1) The acceptor for honour of a bill by accepting it engages that he will, on due presentment, pay the bill according to the tenor of his acceptance, if it is not paid by the drawee, provided it has been duly presented for payment, and protested for non-payment, and that he receives notice of these facts.

(2) The acceptor for honour is liable to the holder and to all parties to the bill subsequent to the party for whose honour he has accepted.

Presentment to acceptor for honour

67.—(1) Where a dishonoured bill has been accepted for honour *supra* protest, or contains a reference in case of need, it must be protested for non-payment before it is presented for payment to the acceptor for honour, or referee in case of need.

(2) Where the address of the acceptor for honour is in the same place where the bill is protested for non-payment, the bill must be presented to him not later than the day following its maturity; and where the address of the acceptor for honour is in some place other than the place where it was protested for non-payment, the bill must be forwarded not later than the day following its maturity for presentment to him.

(3) Delay in presentment or non-presentment is excused by any circumstance which would excuse delay in presentment for payment or non-presentment for payment.

(4) When a bill of exchange is dishonoured by the acceptor for honour it must be protested for non-payment by him.

Payment for honour supra protest

68.—(1) Where a bill has been protested for non-payment, any person may intervene and pay it *supra* protest for the honour of any party liable thereon, or for the honour of the person for whose account the bill is drawn.

(2) Where two or more persons offer to pay a bill for the honour of different parties, the person whose payment will discharge most parties to the bill shall have the preference.

(3) Payment for honour *supra* protest, in order to operate as such and not as a mere voluntary payment, must be attested by a notarial act of honour which may be appended to the protest or form an extension of it.

(4) The notarial act of honour must be founded on a declaration made by the payer for honour, or his agent in that behalf, declaring his intention to pay the bill for honour, and for whose honour he pays.

(5) Where a bill has been paid for honour, all parties subsequent to the party for whose honour it is paid are discharged, but the payer for honour is subrogated for, and succeeds to both the rights and duties of, the holder as regards the party for whose honour he pays, and all parties liable to that party.

(6) The payer for honour on paying to the holder the amount of the bill and the notarial expenses incidental to its dishonour is entitled to receive both the bill itself and the protest. If the holder does not on demand deliver them up he shall be liable to the payer for honour in damages.

(7) Where the holder of a bill refuses to receive payment *supra* protest he shall lose his right of recourse against any party who would have been discharged by such payment.

Lost Instruments

Holder's right to duplicate of lost bill

69. Where a bill has been lost before it is overdue the person who was the holder of it may apply to the drawer to give him another bill of the same tenor, giving security to the drawer if required to indemnify him against all persons whatever in case the bill alleged to have been lost shall be found again.

If the drawer on request as aforesaid refuses to give such duplicate bill he may be compelled to do so.

Action on lost bill

70. In any action or proceeding upon a bill, the court or a judge may order that the loss of the instrument shall not be set up, provided an indemnity be given to the satisfaction of the court or judge against the claims of any other person upon the instrument in question.

Bill in a Set

Rules as to sets

71.—(1) Where a bill is drawn in a set each part of the set being numbered, and containing a reference to the other parts, the whole of the parts constitute one bill.

(2) Where the holder of a set indorses two or more parts to different persons, he is liable on every such part, and every indorser subsequent to him is liable on the part he has himself indorsed as if the said parts were separate bills.

(3) Where two or more parts of a set are negotiated to different holders in due course, the holder whose title first accrues is as between such holders deemed the true owner of the bill; but nothing in this subsection shall affect the rights of a person who in due course accepts or pays the part first presented to him.

(4) The acceptance may be written on any part, and it must be written on one part only.

If the drawee accepts more than one part, and such accepted parts get into the hands of different holders in due course, he is liable on every such part as if it were a separate bill.

(5) When the acceptor of a bill drawn in a set pays it without requiring the part bearing his acceptance to be delivered up to him, and that part at maturity is outstanding in the hands of a holder in due course, he is liable to the holder thereof.

(6) Subject to the preceding rules, where any one part of a bill drawn in a set is discharged by payment or otherwise, the whole bill is discharged.

Conflict of Laws

Rules where laws conflict

72. Where a bill drawn in one country is negotiated, accepted, or payable in another, the rights, duties, and liabilities of the parties thereto are determined as follows—

(*a*) the validity of a bill as regards requisites in form is determined by the law of the place of issue, and the validity as regards requisites in form of the supervening contracts, such as acceptance, or indorsement, or acceptance *supra* protest, is determined by the law of the place where such contract was made:

Provided that—

(i) where a bill is issued out of Malaŵi it is not invalid by reason only that it is not stamped in accordance with the law of the place of issue;

(ii) where a bill, issued out of Malaŵi, conforms, as regards requisites in form, to the law of Malaŵi, it may, for

the purpose of enforcing payment thereof, be treated as valid as between all persons who negotiate, hold, or become parties to it in Malaŵi;

(*b*) subject to this Act, the interpretation of the drawing, indorsement, acceptance, or acceptance *supra* protest of a bill, is determined by the law of the place where such contract is made:

Provided that where an inland bill is indorsed in a foreign country the indorsement shall as regards the payer be interpreted according to the law of Malaŵi;

(*c*) the duties of the holder with respect to presentment for acceptance or payment and the necessity for or sufficiency of a protest or notice of dishonour, or otherwise, are determined by the law of the place where the act is done or the bill is dishonoured;

(*d*) where a bill is drawn out of but payable in Malaŵi and the sum payable is not expressed in the currency of Malaŵi the amount shall, in the absence of some express stipulation, be calculated according to the rate of exchange for sight drafts at the place of payment on the day the bill is payable;

(*e*) where a bill is drawn in one country and is payable in another, the due date thereof is determined according to the law of the place where it is payable.

PART III

Cheques on a Banker

Cheque defined

73. A cheque is a bill of exchange drawn on a banker payable on demand.

Except as otherwise provided in this Part, the provisions of this Act applicable to a bill of exchange payable on demand apply to a cheque.

Presentment of cheque for payment

74. Subject to this Act—

(*a*) where a cheque is not presented for payment within a reasonable time of its issue, and the drawer or the person on whose account it is drawn had the right at the time of such presentment as between him and the banker to have the cheque paid and suffers actual damage through the delay, he is discharged to the extent of such damage, that is to say, to the extent to which such drawer or person is a creditor of such banker to a larger amount than he would have been had such cheque been paid;

(*b*) in determining what is a reasonable time regard shall be had to the nature of the instrument, the usage of trade and of bankers, and the facts of the particular case;

(*c*) the holder of such cheque as to which such drawer or person is discharged shall be a creditor, in lieu of such drawer or person, of such banker to the extent of such discharge, and entitled to recover the amount from him.

Revocation of banker's authority

75. The duty and authority of a banker to pay a cheque drawn on him by his customer are determined by—

(*a*) countermand of payment;

(*b*) notice of the customer's death.

Rights of bankers collecting cheques not indorsed by holders

76. A banker who gives value for, or has a lien on, a cheque payable to order which the holder delivers to him for collection without indorsing it, has such (if any) rights as he would have had if, upon delivery, the holder had indorsed it in blank.

Unindorsed cheques as evidence of payment

77. An unindorsed cheque or other instrument to which section 78 (2) applies which appears to have been paid by the banker on whom it is drawn is evidence of the receipt by the payee of the sum payable by the cheque or other instrument, as the case may be.

Protection of bankers paying unindorsed or irregularly indorsed cheques, etc.

78.—(1) Where a banker in good faith and in the ordinary course of business pays a cheque drawn on him which is not indorsed or is irregularly indorsed, he does not, in doing so, incur any liability by reason only of the absence of, or irregularity in, indorsement and he is deemed to have paid it in due course.

(2) Where a banker in good faith and in the ordinary course of business pays any such instrument as the following namely—

(*a*) a document issued by a customer of his which, though not a bill of exchange, is intended to enable a person to obtain payment from him of the sum mentioned in the document;

(*b*) a draft payable on demand drawn by him upon himself, whether payable at the head office or some other office of his bank,

he does not, in doing so, incur any liability by reason only of the absence of, or irregularity in, indorsement, and the payment discharges the instrument.

Protection of bankers collecting payment of cheques, etc.

79.—(1) Where a banker, in good faith and without negligence—

(*a*) receives payment for a customer of an instrument to which this section applies; or

(*b*) having credited a customer's account with the amount of such an instrument, receives payment thereof for himself,

and the customer has no title, or a defective title, to the instrument, the banker does not incur any liability to the true owner of the instrument by reason only of having received payment thereof.

(2) This section applies to the following instruments, namely—

(*a*) cheques;

(*b*) any document issued by a customer of a banker which, though not a bill of exchange, is intended to enable a person to obtain payment from that banker of the sum mentioned in the document;

(*c*) any draft payable on demand drawn by a banker upon himself, whether payable at the head office or some other office of his bank.

(3) A banker is not to be treated for the purposes of this section as having been negligent by reason only of his failure to concern himself with absence of, or irregularity in, indorsement of an instrument.

Crossed Cheques

General and special crossings defined

80.—(1) Where a cheque bears across its face an addition of—

(*a*) the words "and company" or any abbreviation thereof between two parallel transverse lines either with or without the words "not negotiable"; or

(*b*) two parallel transverse lines simply, either with or without the words "not negotiable",

that addition constitutes a crossing, and the cheque is crossed generally.

(2) Where a cheque bears across its face an addition of the name of a banker, either with or without the words "not negotiable," that addition constitutes a crossing, and the cheque is crossed specially and to that banker.

Crossing by drawer or after issue

81.—(1) A cheque may be crossed generally or specially by the drawer.

(2) Where a cheque is uncrossed, the holder may cross it generally or specially.

(3) Where a cheque is crossed generally the holder may cross it specially.

(4) Where a cheque is crossed generally or specially, the holder may add the words "not negotiable."

(5) Where a cheque is crossed specially, the banker to whom it is crossed may again cross it specially to another banker for collection.

(6) Where an uncrossed cheque, or a cheque crossed generally, is sent to a banker for collection, he may cross it specially to himself.

Crossing a material part of cheque

82. A crossing authorized by this Act is a material part of the cheque; it shall not be lawful for any person to obliterate or, except as authorized by this Act, to add to or alter the crossing.

Duties of banker as to crossed cheques

83.—(1) Where a cheque is crossed specially to more than one banker except when crossed to an agent for collection being a banker, the banker on whom it is drawn shall refuse payment thereof.

(2) Where the banker on whom a cheque is drawn which is so crossed nevertheless pays the same, or pays a cheque crossed generally otherwise than to a banker, or if crossed specially otherwise than to the banker to whom it is crossed, or his agent for collection being a banker, he is liable to the true owner of the cheque for any loss he may sustain owing to the cheque having been so paid:

Provided that where a cheque is presented for payment which does not at the time of presentment appear to be crossed, or to have had a crossing which has been obliterated, or to have been added to or altered otherwise than as authorized by this Act, the banker paying the cheque in good faith and without negligence shall not be responsible or incur any liability, nor shall the payment be questioned by reason of the cheque having been crossed, or of the crossing having been obliterated or having been added to or altered otherwise than as authorized by this Act, and of payment having been made otherwise than to a banker or to the banker to whom the cheque is or was crossed, or to his agent for collection being a banker, as the case may be.

Protection to banker and drawer where cheque is crossed

84. Where the banker, on whom a crossed cheque is drawn, in good faith and without negligence pays it, if crossed generally, to a banker, and if crossed specially, to the banker to whom it is crossed, or his agent for collection being a banker, the banker paying the cheque, and, if the cheque has come into the hands of the payee, the drawer, shall respectively be entitled to the same rights and be placed in the same position as if payment of the cheque had been made to the true owner thereof.

85. Where a person takes a crossed cheque which bears on it the words "not negotiable," he shall not have and shall not be capable of giving a better title to the cheque than that which the person from whom he took it had.

Effect of crossing on holder

86. The provisions of this Act relating to crossed cheques shall have effect in relation to instruments, other than cheques, to which section 79 applies as they have effect in relation to cheques.

Application of certain provisions of this Act to instruments not being bills of exchange

87. If the Government has an account with a banker, the Government shall, for the purposes of this Act be regarded as a customer of that banker.

Government to be regarded as a customer of a banker

88. The foregoing provisions of this Act do not make negotiable any instrument which, apart from them, is not negotiable.

Construction

PART IV

Promissory Notes

89.—(1) A promissory note is an unconditional promise in writing made by one person to another signed by the maker, engaging to pay, on demand or at a fixed or determinable future time, a sum certain in money, to, or to the order of, a specified person or to bearer.

Promissory note defined

(2) An instrument in the form of a note payable to maker's order is not a note within the meaning of this section unless and until it is indorsed by the maker.

(3) A note is not invalid by reason only that it contains also a pledge of collateral security with authority to sell or dispose thereof.

(4) A note which is, or on the face of it purports to be, both made and payable within Malaŵi is an inland note. Any other note is a foreign note.

90. A promissory note is inchoate and incomplete until delivery thereof to the payee or bearer.

Delivery necessary

91.—(1) A promissory note may be made by two or more makers, and they may be liable thereon jointly, or jointly and severally according to its tenor.

Joint and several notes

(2) Where a note runs "I promise to pay" and is signed by two or more persons it is deemed to be their joint and several note.

92.—(1) Where a note payable on demand has been indorsed, it must be presented for payment within a reasonable time of the indorsement. If it be not so presented the indorser is discharged.

Note payable on demand

(2) In determining what is reasonable time, regard shall be had to the nature of the instrument, the usage of trade, and the facts of the particular case.

(3) Where a note payable on demand is negotiated, it is not deemed to be overdue, for the purpose of affecting the holder with defects of title of which he had no notice, by reason that it appears that a reasonable time for presenting it for payment has elapsed since its issue.

Presentment of note for payment

93.—(1) Where a promissory note is in the body of it made payable at a particular place, it must be presented for payment at that place in order to render the maker liable. In any other case, presentment for payment is not necessary in order to render the maker liable.

(2) Presentment for payment is necessary in order to render the indorser of a note liable.

(3) Where a note is in the body of it made payable at a particular place, presentment at that place is necessary in order to render an indorser liable; but when a place of payment is indicated by way of memorandum only, presentment at that place is sufficient to render the indorser liable, but a presentment to the maker elsewhere, if sufficient in other respects, shall also suffice.

Liability of maker

94. The maker of a promissory note by making it—

(*a*) engages that he will pay it according to its tenor;

(*b*) is precluded from denying to a holder in due course the existence of the payee and his then capacity to indorse.

Application of Part II to notes

95.—(1) Subject to this Part, and except as by this section provided, the provisions of this Act relating to bills of exchange apply, with the necessary modifications, to promissory notes.

(2) In applying those provisions the maker of a note shall be deemed to correspond with the acceptor of a bill, and the first indorser of a note shall be deemed to correspond with the drawer of an accepted bill payable to drawer's order.

(3) The following provisions as to bills do not apply to notes; namely, provisions relating to:—

(*a*) presentment for acceptance;

(*b*) acceptance;

(*c*) acceptance *supra* protest;

(*d*) bills in a set.

(4) Where a foreign note is dishonoured, protest thereof is unnecessary.

PART V
SUPPLEMENTARY

Good faith

96. A thing is deemed to be done in good faith, within the meaning of this Act, where it is in fact done honestly, whether it is done negligently or not.

Signature

97.—(1) Where, by this Act, any instrument or writing is required to be signed by any person it is not necessary that he should sign it with his own hand, but it is sufficient if his signature is written thereon by some other person by or under his authority.

(2) In the case of a corporation, where, by this Act, any instrument or writing is required to be signed, it is sufficient if the instrument or writing be sealed with the corporate seal.

But nothing in this section shall be construed as requiring the bill or note of a corporation to be under seal.

Computation of time

98. Where, by this Act, the time limited for doing any act or thing is less than three days, in reckoning time, non-business days are excluded.

"Non-business days" for the purposes of this Act means Sundays and public holidays. Any other day is a business day.

When noting equivalent to protest

99. For the purposes of this Act, where a bill or note is required to be protested within a specified time or before some further proceeding is taken, it is sufficient that the bill has been noted for protest before the expiration of the specified time or the taking of the proceeding; and the formal protest may be extended at any time thereafter as of the date of the noting.

Protest when notary not accessible

100. Where a dishonoured bill or note is authorized or required to be protested, and the services of a notary cannot be obtained at the place where the bill is dishonoured, any householder or substantial resident of the place may, in the presence of two witnesses, give a certificate, signed by them, attesting the dishonour of the bill, and the certificate shall in all respects operate as if it were a formal protest of the bill.

The form given in Schedule I to this Act may be used with necessary modifications, and if used shall be sufficient.

Dividend warrants may be crossed

101. The provisions of this Act as to crossed cheques shall apply to a warrant for payment of dividend.

Savings

102.—(1) The rules in bankruptcy relating to bills of exchange, promissory notes, and cheques shall continue to apply thereto notwithstanding anything in this Act contained.

(2) The rules of common law including the law merchant, save in so far as they are inconsistent with the express provisions of this Act, shall continue to apply to bills of exchange, promissory notes, and cheques.

45 & 46 Vict. c.61
33 of 1955
5 of 1959(F)

(3) Nothing in this Act or in the repeal of the Bills of Exchange Act 1882 of the United Kingdom, of the Bills of Exchange Act, 1882 (Amendment) Ordinance, 1955, and of the Cheques Ordinance, 1959, Shall affect—

(*a*) any law or enactment for the time being in force relating to stamp duties or other revenue;

25 & 26 Vict. c. 89

(*b*) the provisions of any Act or Ordinance relating to joint stock banks or companies;

(*c*) the validity of any usage relating to dividend warrants, or the indorsements thereof.

s. 94

SCHEDULE

Form of protest which may be used when the services of a notary cannot be obtained.

Know all men that I, A.B., of in the District of in Malaŵi, at the request of C.D., there being no notary public available, did on the day of 19 at demand payment (or acceptance) of the bill of exchange hereunder written, from E.F., to which demand he may answer (state answer, if any) wherefore I, now in the presence of G.H. and J.K., do protest the said bill of exchange

(*signed*)

A.B.

G.H. }
J.K. } Witnesses.

N.B.—The bill itself should be annexed, or a copy of the bill and all that is written thereon should be underwritten.

PERSONAL PROPERTY SECURITY

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PERSONAL PROPERTY SECURITY

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CHAPTER 48:03

PERSONAL PROPERTY SECURITY

8 of 2013
G.N. 41/2015
15/2016

An Act to reform the law relating to security interests in personal property and, in particular, to provide for the creation of security interests in personal property; the perfection of security interests; the determination of priority between security and other interests in the same personal property; the establishment of a registry of security interests in personal property; the enforcement of security interests in personal property; and for matters connected therewith and incidental thereto

[23RD NOVEMBER, 2015; 20TH MAY, 2016 – SECTIONS 85, 129 (4) AND (5)]

PART I

PRELIMINARY

Citation

1. This Act may be cited as the Personal Property Security Act.

Interpretation

2.—(1) In this Act, unless the context otherwise requires—

"accessions" means goods that are installed in, or affixed to, other goods without losing their identity;

"account receivable" means a right to payment of a monetary obligation that is not evidenced by chattel paper, an investment security or by a negotiable instrument, whether or not that obligation has been earned by performance;

"advance" means the payment of money, the provision of credit or the giving of value;

"after-acquired property" means personal property that is acquired by a debtor after the security agreement is made;

"cash proceeds" means proceeds in the form of money, cheques, drafts or deposit accounts in banks or similar institutions;

"chattel paper" means one or more writings that evidence both a monetary obligation and a security interest in, or lease of, specific goods or specific goods and accessories;

"collateral" means personal property that is subject to a security interest;

"commercial consignment" means a consignment where—

(*a*) a consignor has reserved an interest in goods that the consignor has delivered to the consignee for the purpose of sale, lease or other disposition; and

(*b*) both the consignor and the consignee deal in the ordinary course of business in goods of that description but does not include an agreement under which goods are delivered to an auctioneer for the purpose of sale;

"consumer goods" means goods that are used or acquired for use primarily for personal, domestic or household purpose;

"control" with respect to deposit and securities accounts exists—

(*a*) automatically upon the creation of a security interest if a bank or other financial institution that maintains the deposit or securities accounts is the secured creditor; or

(*b*) if the bank or other financial institution has concluded a control agreement with a debtor and secured party;

"Court" means the High Court;

"crops" means crops and plants, whether grown, growing or yet to be planted, attached to land by roots or forming part of trees, but does not include trees, unless the trees are grown for commercial purposes and sale;

"debtor" means a person that has an interest in a collateral, and includes—

(*a*) a consignee who receives goods from another person under a commercial consignment;

(*b*) a financial lessee or a lessee under an operating lease for a term of more than one year;

(*c*) a transferor of an intangible; and

(*d*) a buyer that acquires goods subject to a retention of title clause;

"default" means the occurrence of an event that, under a security agreement, gives a secured party the right to enforce a security interest;

"document of title" means a writing issued by or addressed to a bailee—

(*a*) that covers goods in the possession of the bailee and are identified or are fungible portions of an identified mass; and

(*b*) in which it is stated that the goods identified in it will be delivered to a named person, or to a transferee of that person, or to a bearer or to the order of a named person;

"equipment" means goods that are held by a debtor other than as inventory or consumer goods, and used in the operation of the debtor's business;

"farm products" include crops, fish, livestock and their unborn offspring and products, whether or not grown or raised naturally or artificially;

"financial lease" means a lease, including a hire-purchase agreement, at the end of which—

(*a*) a lessee automatically becomes the owner of the good that is the object of the lease;

(*b*) the lessee may acquire ownership of the good by paying no more than a nominal price; or

(*c*) the good has no more than a nominal residual value;

"financing statement" means forms in writing or their electronic equivalent as provided in the Registry Regulations on which information is provided in order to effect, amend, terminate or continue a registration;

"fungible goods" means goods of which any unit is, by nature or usage of trade, the equivalent of any other like unit, and includes unlike units to the extent that they are treated as equivalents under a security agreement;

"future advance" means the payment of money, the provision of credit, or the giving of value secured by a security interest, occurring after the security agreement has been concluded, whether or not provided or given under an obligation to do so;

"goods" means tangible personal property and include farm products, inventory, equipment, consumer goods, trees that have been severed, and petroleum or minerals that have been extracted but does not include chattel paper, a document of title, a negotiable instrument, an investment security or money;

"intangible" means personal property, other than goods, chattel paper, a document of title, an investment security, money or a negotiable instrument;

"inventory" means goods that are—

(*a*) held by a person for sale or lease, or that have been leased by the person as lessor;

(*b*) to be provided under a contract for services;

(*c*) raw materials or work in progress; or

(*d*) materials used or consumed in a business;

"investment security" means a writing, whether or not it is in the form of a security certificate, that is recognized in a place in which it is issued or dealt with as a warrant, option, share, right to participate, or other interest in property or an enterprise, or that evidences an obligation of the issuer, and that, in the ordinary course of business, is transferred by—

(*a*) delivery with any necessary endorsement, assignment, or registration in the records of the issuer or agent of the issuer;

(*b*) an entry in the records of a clearing house or central securities depository;

(*c*) an entry in the records maintained for that purpose by or on behalf of the issuer; or

(*d*) an entry in the records maintained for that purpose by or on behalf of the nominee,

but does not include a writing that evidences a monetary obligation that is secured by an interest in land;

"land" includes all estates and interests, whether freehold or leasehold, in real property;

"negotiable instrument" means—

(*a*) a bill of exchange or promissory note within the meaning of the Bills of Exchange Act; or

Cap. 48:02

(*b*) any other writing that evidences a right to payment of money and is of a kind that, in the ordinary course of business, is transferred by delivery with any necessary endorsement; but does not include chattel paper, a document of title or an investment security;

"new value" means value other than antecedent debt or liability;

"obligation secured" means an obligation secured by a security interest;

"operating lease" means a lease, other than a financial lease, for a term of more than one year;

"organization" means any body, whether incorporated or unincorporated;

"perfected security interest" means the security interest that has been created and becomes effective against third parties by control, possession, registration or temporarily, as the case may be;

"personal property" includes chattel paper, documents of title, goods, intangibles, investment securities, money and negotiable instruments;

"possession" in relation to a secured party, means possession of collateral that is in the actual or apparent possession or control of the debtor or the debtor's agent;

"proceeds" means identifiable or traceable personal property received as a result of sale, other disposition, collection, lease or license of the collateral, including proceeds of civil and natural fruits, dividends, distributions, insurance proceeds and claims arising from defects in, damage to or loss of collateral;

"purchase" means taking by sale, lease, discount, assignment, negotiation, mortgage, pledge, lien, issue, reissue, gift or any

other consensual transaction that creates an interest in personal property;

"purchase money security interest" means—

(*a*) a security interest in collateral retained by a seller that secures the obligation to pay any unpaid portion of the purchase price of the collateral;

(*b*) a security interest taken by a person who gives value for the purpose of enabling the debtor to acquire rights in the collateral, to the extent that the value is applied to acquire those rights;

(*c*) the interest of a financial lessor or a lessor of goods under a lease for a term of more than one year; or

(*d*) the interest of a consignor who delivers goods to a consignee under a commercial consignment, but does not include a transaction of sale and lease back to the seller;

"receiver" has the same meaning as in the Insolvency Act; Cap. 11:01

"secured party" means—

(*a*) a person in whose favor a security interest is created;

(*b*) a consignor;

(*c*) a financial lessor and a lessor who acquired goods under an operating lease for a term of more than one year;

(*d*) a transferee of an intangible;

(*e*) a seller who reserved title to the sold goods; or

(*f*) a trustee or agent of the person mentioned in paragraphs (*a*) to (*e*);

"security agreement" means an agreement between the debtor and secured party that creates or provides for a security interest;

"security interest" means a property right in personal property that is created by agreement and secures payment or other performance of an obligation, regardless of whether the parties have denominated it as a security interest, but does not include a personal right against a guarantor or other person liable for the payment of the secured obligation;

"value" means consideration that is sufficient to support a simple contract and includes an antecedent debt or liability and a binding commitment to provide future value;

"writing" includes an electronic message if the information contained therein is accessible so as to be usable for subsequent reference.

(2) For the purposes of this Act, the determination of whether goods are consumer goods, equipment, farm products or inventory shall be made at the time when the security agreement is concluded.

Scope of the Act

3.— (1) This Act shall bind the Government.

(2) Any person, whether an individual or entity, domestic or foreign, may—

(*a*) create a security interest; and

(*b*) be a debtor or secured party under this Act.

(3) The provisions of this Act on perfection, registration, priority shall also apply to liens created by judgments or operation of the law.

(4) The provisions of this Act on perfection, registration, priority and enforcement shall supersede laws applicable to interests created by conditional sale agreements (including agreements to sell subject to retention of title), hire purchase agreements, consignments, operating and financial leases, and outright assignments of intangibles.

(5) This Act shall not apply to—

(*a*) a lien, charge, or other interest in personal property created by any other Act or by operation of any written law;

(*b*) any right of set-off whether or not arising under or from financial contracts governed by netting agreements; or

(*c*) an interest created or provided for by any of the following transactions—

(i) the creation or transfer of an interest in land;

(ii) a transfer of a right to payment that arises in connexion with an interest in land, including a transfer of rental payments payable under a lease of or licence to occupy land, unless the right to payment is evidenced by an investment security;

(iii) a transfer of present or future claim to wages, salary, pay, commission or any other compensation for labour or personal services of an employee;

(iv) an assignment for the general benefit of creditors of the person making the assignment;

(v) a transfer of an interest or claim in or under a contract of annuity or life policy of insurance under the Pension Act or other applicable law; Cap. 55:02

(vi) a transfer of a right to damages in tort not related to commercial activity;

(vii) the registration of a transfer, assignment, mortgage or assignment of a mortgage of a ship subject to the Inland Waters Shipping Act; and Cap. 71:01

(viii) a transfer or mortgage in a license, concession or other personal privilege issued or granted under the relevant laws.

PART II

Creation of Security Interests

Effectiveness of security agreement

4. Except as otherwise provided by this Act or any other Act or rule of law or equity, a security agreement shall be effective and create a security interest as between the parties according to its terms.

Standards of good faith and commercial reasonableness

5.—(1) All rights, duties or obligations that arise under a security agreement or this Act shall be exercised or discharged in good faith and in accordance with reasonable standards of commercial practice.

(2) A person shall not be regarded as having acted in bad faith merely because the person acted with knowledge of the interest of some other person, unless it is proved that the person knew that his actions would violate the rights of the other person.

Description of collateral in security agreement

6.—(1) A security agreement shall be enforceable and a security interest created in respect of collateral only if a security agreement contains an adequate description of the collateral that may be generic or specific.

(2) For the purposes of this Part, a description of collateral is adequate if the collateral is described by—

(*a*) item, kind, type or category;

(*b*) a statement that a security interest is taken in all of the debtor's present and after-acquired property; or

(*c*) a statement that a security interest is taken in all of the debtor's present and after-acquired property except for specified items or kinds of personal property.

Inadequate description of collateral as consumer goods

7. A description is inadequate for the purposes of section 6 if it describes the collateral as consumer goods without specific reference to the item or kind of collateral.

Description of proceeds not required for enforceability against third parties

8. Except as otherwise provided in this Act, a security interest in any collateral shall automatically continue in the proceeds thereof, whether or not the security agreement contains a description of the proceeds.

PART III

Perfection of Security Interests

Perfection of security interest

9.—(1) Except as otherwise provided in this Act, a security interest is perfected when—

(*a*) the security interest has been created; and

(*b*) either—

(i) a financing statement has been registered in respect of the security interest;

(ii) the secured party, or another person on the secured party's behalf, has possession of the collateral (except where possession is a result of seizure or repossession); or

(iii) the secured party, or another person on the secured party's behalf has control of the collateral that is a deposit account or investment security.

(2) Subsection (1) shall apply regardless of the order in which creation and either of the steps referred to in paragraph (*b*) of that subsection occur.

Continuity of perfection where perfected security interest subsequently perfected in another way

10. A security interest shall be continuously perfected for the purposes of this Act if—

(*a*) the security interest is perfected under this Act;

(*b*) the security interest is subsequently perfected in another way under this Act; and

(*c*) there is no intervening period during which the security interest is unperfected.

PART IV

Creation and Perfection of Security Interests in Particular Kinds of Personal Property

Security interests in after-acquired property

11. A security agreement may provide for security interests in after-acquired property.

Creation of security interests in after-acquired property

12.—(1) A security interest in after-acquired property shall be created without written consent or any further act of a debtor.

(2) Where the after-acquired property is consumer goods, the debtor shall provide written consent.

Continuation of security interests in proceeds

13.—(1) Except as otherwise provided in this Act, a security interest in collateral that is dealt with or otherwise gives rise to proceeds shall—

(*a*) continue in the collateral that has been dealt, unless the secured party expressly or impliedly authorized the dealing; and

(*b*) extend to the proceeds.

(2) If the secured party enforces the security interest against both the collateral and the proceeds, its recovery from the collateral and its proceeds shall be limited to the value of the collateral at the date of the dealing that gave rise to the proceeds.

Continuous perfection of security interest in proceeds

14. A security interest shall remain continuously perfected in proceeds if the security interest in the original collateral is perfected by registration of a financing statement that contains a description of the original collateral, if—

(*a*) the proceeds are of a kind that is within description of the original collateral; or

(*b*) the proceeds are cash proceeds.

Temporary perfection of security interests in proceeds in other cases

15. If the proceeds are not cash proceeds and not within description of the collateral in the financing statement as set forth in section 14, a security interest in proceeds shall be temporarily perfected until the expiration of ten working days after the proceeds arose. If the secured party does not perfect within ten working days, its security interest in the proceeds will become unperfected.

Perfection where goods in hands of bailee

16. A security interest in goods in the possession of a bailee may be perfected when—

(*a*) the security interest has been created and a financing statement relating to the goods is registered; or

(*b*) possession of a negotiable document of title to the goods has been delivered to the secured party, or the bailee has issued a document of title in the name of the secured party or holds the goods on behalf of the secured party.

Security interests in crops

17.—(1) Except as otherwise provided in this Act, a security interest can be created and perfected in crops and continues as such before they are planted, while growing and afterwards when cut or separated from the soil.

(2) A security interest in crops shall be created only with the consent of the mortgagee or lessor under a lease with the duration of no more than three years.

(3) A perfected security interest in crops shall not be extinguished or prejudicially affected by a subsequent sale, lease, mortgage or other encumbrance of or upon the land on which the crops are growing.

Temporary perfection of security interest in negotiable instrument or investment security returned to debtor

18. A security interest in negotiable instruments or certificated securities that has been perfected by possession shall remain perfected until the expiration of ten working days after the secured party made the negotiable instrument or investment security available to the debtor for sale, exchange, presentation, collection, renewal or registration of a transfer.

Temporary perfection of security interest in negotiable document of title or goods returned to debtor

19. A security interest in a negotiable document of title or goods held by a bailee that are not covered by a negotiable document of title, shall be temporarily perfected until the expiration of ten working days after the secured party made the negotiable document of title or goods available to the debtor, if—

(*a*) the security interest was perfected by possession; and

(*b*) the secured party delivered the negotiable document of title or goods for the purposes of sale, exchange, loading, unloading, storing, shipping, manufacturing, processing, packaging or otherwise dealing with the goods in preparation for their sale or exchange.

PART V

Priority Between Security Interests

Priority of security interests in same collateral when Act provides no other way of determining priority

20.—(1) Priority between security interests in the same collateral is determined as follows—

(*a*) a perfected security interest shall have priority over an unperfected security interest;

(*b*) priority between perfected security interests shall be determined by the order of whichever of the following first occurs in relation to a particular security interest—

(i) the registration of a financing statement;

(ii) the secured party, or another person on the secured party's behalf, taking possession of the collateral (except where possession is a result of seizure or repossession); or

(iii) the secured party, or another person on the secured party's behalf acquiring control of the collateral; and

(*c*) priority between unperfected security interests in the same collateral shall be determined by the order of creation of the security interests.

(2) This Act does not affect the priority of wage and similar claims granted to workers under other laws of Malaŵi.

Original method of perfection applies to continuously perfected security interest

21. For the purposes of section 20, a continuously perfected security interest shall be treated at all times as perfected and retain its priority from the date of its original perfection.

Priority in original collateral to continue in proceeds

22. The priority of a security interest in original collateral shall also be the priority with respect to its proceeds.

Transfer of security interests does not affect priority

23. A security interest that is transferred shall have the same priority as it had at the time of the transfer.

Voluntary subordination of security interests

24.—(1) A secured party may agree, in a security agreement or otherwise, to subordinate its security interest to any other interest.

(2) The agreement to subordinate the security interest shall not adversely affect rights of a person who is not a party to the agreement.

(3) An agreement to subordinate a security interest shall be effective according to its terms between the parties and may also be enforced by a third party if the third party is the person for whose benefit the agreement is intended.

Priority of security interest applies to all advances

25. A security interest shall have the same priority in respect of all advances, including future advances.

Priority of purchase money security interest in collateral or its proceeds, other than inventory or intangibles

26. A purchase money security interest in collateral or its proceeds, other than inventory, shall have priority over a non-purchase money security interest in the same collateral created by the same debtor if the purchase money security interest in the collateral or its proceeds is perfected not later than ten working days after the day on which the debtor, or another person at the request of the debtor, obtained possession of the collateral.

Priority of purchase money security interest in inventory or its proceeds

27. A purchase money security interest in inventory or its proceeds shall have priority over a non-purchase money security interest in the same collateral given by the same debtor if the purchase money security interest in the inventory or its proceeds is perfected at the time the debtor, or another person at the request of the debtor, obtains possession of the collateral.

Priority of purchase money security interest in intangibles or its proceeds

28. A purchase money security interest in an intangible or its proceeds shall have priority over a non-purchase money security interest in the same collateral given by the same debtor if the purchase security interest in the intangible or its proceeds is perfected not later than ten working days after the day on which the security interest in the intangible was created.

Non-proceeds security interest in accounts receivable

29. A security interest in accounts receivable that is given for new value shall have priority over a purchase money security interest in the accounts receivable as proceeds of inventory if the security interest in the accounts receivable is registered before the purchase money security interest.

30. A purchase money security interest in goods or their proceeds taken by a seller, lessor or consignor of a collateral, shall have priority over any other purchase money security interest in the same collateral given by the same debtor to a secured party that is not a seller, lessor or consignor of that collateral if the purchase money security interest in goods or their proceeds is perfected—

Priority between purchase money security interests in goods or their proceeds taken by seller

(*a*) in the case of inventory, at the time the debtor, or another person at the request of the debtor, obtained possession of the collateral; or

(*b*) in the case of collateral, other than inventory, not later than ten working days after the day on which the debtor, or another person at the request of the debtor, obtained possession of the collateral.

31. Priority between purchase money security interests in the same goods or their proceeds that have not been taken by a seller, lessor or consignor, and those that have been given by the same debtor, shall be determined in accordance with section 20.

Priority between purchase money security interests in same goods or their proceeds not taken by seller

32. A security interest in goods that becomes an accession shall continue in the accession.

Security interests in accessions

33. Except as otherwise provided in this Act, a security interest in goods that is created and perfected before the time when the goods become an accession shall have priority over a claim to the goods as an accession made by a person with an interest in the whole.

Priority of security interest in goods before they become accessions

34. A perfected security interest in goods that subsequently becomes part of a product or mass shall continue as a perfected security interest in the product or mass if the goods are manufactured, processed, assembled or commingled in such a way that their identity is lost in the product or mass.

Continuation of security interest in goods that become part of processed or commingled goods

35. If more than one security interest is perfected in the goods before they become part of a product or mass, the security interests rank equally in proportion to the value of the goods at the time they became part of the product or mass.

Limit on value of priority of goods that become part of processed or commingled goods

Priority where more than one security interest continues in processed or commingled goods

36.— (1) A perfected security interest continuing in the product or mass shall have priority over an unperfected security interest continuing in the same product or mass.

(2) If more than one unperfected security interest continues in the same product or mass, each unperfected security interest shall be entitled to share in the product or mass according to the ratio that the obligation secured by the unperfected security interest bears to the sum of the obligations secured by all unperfected security interests in the same product or mass.

Priority of purchase money security interest in goods that continues in processed or commingled goods

37. Notwithstanding section 36, a perfected purchase money security interest in goods that continues in a product or mass shall have priority over—

(*a*) a non-purchase money security interest in the goods that continues in the product or mass; and

(*b*) a non-purchase money security interest in the product or mass given by the same debtor.

Rights of debtor may be transferred

38.—(1) The rights of a debtor in collateral may be transferred despite a provision in the security agreement prohibiting transfer or declaring a transfer to be a default.

(2) A transfer by the debtor shall not prejudice the rights of the secured party under the security agreement, including the right to treat a prohibited transfer as an act of default.

(3) In this section, "transfer" includes a sale, the creation of a security interest or a transfer under judicial enforcement proceedings.

General priority of security interest in transferred collateral over security interests granted by transferee

39. If a debtor transfers an interest in collateral that, at the time of the transfer, is subject to a perfected security interest, that security interest shall have priority over any other security interest granted by the transferee.

Transfer of debtor's interest in collateral with prior consent of secured party

40.—(1) If a security interest is perfected by registration and the debtor transfers all or part of its interest in the collateral, the security interest in the transferred collateral shall remain perfected against such collateral and, if the security interest extends to after-acquired

property, the security interest in the transferred collateral shall remain perfected against any collateral that the transferee acquires within fifteen days.

(2) The security interest shall not be perfected with respect to collateral acquired by the transferee after the expiration of a fifteen day period unless the secured party registers a financing statement naming the transferee as the debtor.

PART VI

Special Priority Rules

Lien has priority over security interest relating to same goods

41. A possessory lien arising out of materials or services provided in respect of goods that are subject to a security interest in the same goods shall have priority over that security interest if—

(*a*) the materials or services relating to the lien were provided in the ordinary course of business;

(*b*) the lien has not arisen under an Act that provides that the lien does not have the priority; and

(*c*) the person who provided the materials or services did not, at the time the person provided those materials or services, know that the security agreement relating to the goods contained a provision prohibiting the creation of a lien by the debtor.

When holder of money takes money free of perfected security interest in money

42. A transferee of money takes the money free of a security interest unless the transferee acts in collusion with the debtor in violating the rights of a secured party.

Priority of creditor who receives payment of debt

43. A creditor who receives payment of a debt owing by a debtor through any payment system shall receive the payment free of a security interest whether or not the creditor had knowledge of the security interest at the time of the payment.

Priority of purchaser of negotiable instrument, document of title, chattel paper and security certificate

44. A purchaser of a negotiable instrument, document of title, chattel paper or security certificate shall have priority over a perfected security interest in the negotiable instrument, the document of title, the chattel paper or the security certificate if the purchaser—

(*a*) gave value;

(*b*) acquired the negotiable instrument, the document of title, the chattel paper or the security certificate without knowledge that the transaction is a breach of the security agreement to which the security interest relates; and

(*c*) took possession of the negotiable instrument, the document of title, the chattel paper or the security certificate.

Priority of interests on assignment of account receivable or non-negotiable chattel paper

45.—(1) The rights of an assignee of an account receivable or non-negotiable chattel paper shall be subject to—

(*a*) the terms of the contract between the account debtor and the assignor and any defence or claim arising from the contract or a closely connected contract; and

(*b*) any other defence or claim of the account debtor against the assignor (including a defence by way of a right of set-off) that accrues before the account debtor receives notification of the assignment.

(2) Subsection (1) shall not apply if the account debtor has made an enforceable agreement not to assert defences to claims arising out of the contract.

(3) In this section—

(*a*) "account debtor" means a person who is obligated under an account receivable or chattel paper; and

(*b*) "assignee" includes a transferee or other secured party.

Execution creditor has priority over unperfected security interest

46.—(1) The interest of a judgment creditor in any collateral shall have priority over any security interest in the same collateral if the security interest is not perfected at the time of execution.

(2) In this section, "time of execution" means—

(*a*) if the collateral is seized by or on behalf of an execution creditor, the time of seizure; or

(*b*) in any other case, the time when a charging order or a garnishee order is served on the person holding some property for or on behalf of the debtor.

Buyer or lessee of collateral takes collateral free of unperfected security interests

47. A buyer or lessee of collateral who acquires the collateral for value shall take the collateral free of an unperfected security interest in the collateral.

48. A buyer of goods sold in the ordinary course of business of the seller and a lessee of goods leased in the ordinary course of business of the lessor, shall take the goods free of a security interest created by the seller or lessor unless the buyer or lessee knows that the sale or the lease constitutes a breach of the security agreement under which the security interest was created.

Buyer or lessee of goods sold or leased in ordinary course of business takes goods free of certain security interests

PART VII

Personal Property Securities Registry

49. There shall be established a Personal Property Security Registry which shall be—

Establishment of a Personal Property Security Registry

(*a*) electronic;

(*b*) maintained for the purposes of effecting, amending or terminating registrations under this Act; and

(*c*) operated at all times, except if precluded by maintenance, technical or security problems.

50. The Minister shall appoint a Registrar of the Personal Property Security Registry.

Appointment of Registrar

51. The Registrar may refuse access to the Registry or otherwise suspend the operation of the Registry, in whole or in part, for purposes of maintenance or due to technical or security problems.

Registrar may refuse to provide certain services relating to Registry

52.—(1) A person may register a financing statement in accordance with this Act and the Registry Regulations.

Person may register financing statement

(2) The Registrar and any Registry employee shall not verify whether authorization for registration has been properly granted pursuant to this Act or conduct any scrutiny of the information provided in the financing statement.

53. A financing statement shall provide—

Data required to register financing statement

(*a*) the identifier of the debtor;

(*b*) the identifier of the secured party or a representative of the secured party;

(*c*) a description of the collateral, including a serial number as provided in this Act and the Registry Regulations;

(*d*) the date of prior registration, if prior registration law (as defined in section 130) applies in respect of the security interest;

(*e*) the maximum amount of the secured obligation; and

(*f*) any other data required by this Act or the Registry Regulations to be contained in the financing statement.

Identification of debtor in financing statement

54. A financing statement sufficiently identifies the debtor—

(*a*) if the debtor is an individual, it provides the debtor's unique identification number as provided in the Registry Regulations, and the name, address and date of birth; or

(*b*) if the debtor is an unregistered company—

(i) the identification number as provided in the Registry Regulations, the name and address of the company as provided in its formation documents, charter or other document creating the company; and

(ii) the name, job title and contact details of the person acting on its behalf in the transaction relating to this registration;

(*c*) if the debtor is a registered company, the company name indicated in the relevant companies registry where the company is registered, and a unique number assigned to it on its registration as provided in the Registry Regulations.

Identification of secured party in financing statement

55. A financing statement sufficiently identifies the secured party—

(*a*) if the secured party is an individual, it provides the individual's unique identification number as provided in the Registry Regulations, and the name, address and date of birth;

(*b*) if the secured party is an unregistered company, it provides the identification number as provided in the Registry Regulations, the name and address of the company as provided in its formation documents, charter or other document creating the company; or

(*c*) if the secured party is a registered company, the company name indicated in the relevant companies registry where the company is registered, and a unique number assigned to it on its registration as provided in the Registry Regulations.

When financing statement not to be registered

56. A financing statement shall not be registered if—

(*a*) it is not submitted in the prescribed manner or in a form that enables the information to be entered directly by electronic means into the Registry; or

(*b*) the prescribed fee has not been paid by the person submitting the financing statement, unless arrangements for its payment have been made in accordance with the Registry Regulations.

When financing statement to be registered

57. A financing statement shall be registered at the time that a registration number, date and time are assigned to it by the Registry, and it shall not be effective against third parties until it becomes publicly searchable as provided in the Registry Regulations.

Registration of financing statement not to constitute notice or knowledge

58. Registration of a financing statement shall not be constructive notice or knowledge of existence of a security interest or contents thereof to any person.

Verification statement to be forwarded to person who registered financing statement

59. A verification statement, in the form prescribed in the Registry Regulations, shall, as soon as reasonably practicable after a financing statement has been registered, be given to the person who submitted the financing statement for registration.

When financing may be registered

60. A financing statement may be registered before or after a security agreement is concluded.

Authorization to register financing statement

61.—(1) A debtor who enters into a security agreement authorizes the registration of a financing statement and any amendments thereto.

(2) The debtor may also authorize registration of a financing statement prior to the conclusion of a security agreement and such authorization shall be signed by the debtor.

Financing statement may relate to one or more security agreements

62. A financing statement may relate to one or more security agreements.

When secured party to notify debtor about registration of financing statement

63. The secured party who registered a financing statement, or on whose behalf a financing statement has been registered, shall, not later than fifteen working days after the day on which the verification statement was received, give to the debtor a copy of the verification statement in accordance with the Registry Regulations, unless the debtor has waived in writing the right to receive it.

Registration of financing statement invalid only if seriously misleading

64. The effectiveness of the registration shall not be affected by any defect, irregularity, omission, or error unless the defect, irregularity, omission or error is seriously misleading.

When financing statement seriously misleading

65.—(1) A registration shall be ineffective if there is a seriously misleading defect, irregularity, omission or error in—

(*a*) the identifier of a debtor; or

(*b*) the serial number of the collateral if the collateral is of a kind that is required by the Registry Regulations to be described by serial number.

(2) An error in the serial number of the collateral may render the registration ineffective only with respect to the collateral identified by such serial number.

(3) A registration of a financing change statement or termination is ineffective unless it has been properly authorized by the secured party.

Proof that person actually misled not necessary

66. In order to establish that a defect, irregularity, omission or error is seriously misleading, it is not necessary to prove that any person was actually misled by it. The registration shall be deemed to be seriously misleading if a search of the Registry under the correct debtor's identifier would not disclose the registration.

Validity of registration when description of part of collateral is incorrect

67. An incorrect description of certain collateral shall not render the registration ineffective with respect to other collateral sufficiently described.

Duration of registration of financing statement

68. Except as otherwise provided in this Act, a registration of a financing statement under this Act shall be effective until whichever is the earlier of—

(*a*) the expiration of the term specified in the financing statement;

(*b*) the expiration of five years commencing on the date on which and at the time at which the financing statement was registered; or

(*c*) when the financing statement has been discharged before the expiration of the relevant period referred to in this section.

Renewal of registration

69.—(1) A registration may be renewed by registering a financing statement as provided in the Registry Regulations before the effectiveness of the registration expires.

(2) Except as otherwise provided in this Act, the period of time for which a registration shall be effective is extended until whichever is the earlier of—

(*a*) the expiration of the new term specified in the financing change statement; or

(*b*) the expiration of five years commencing on the date on which and at the time at which the financing change statement was registered.

Registration of financing change statement in respect of transfer of security interest perfected by registration

70. If a secured party transfers a security interest perfected by registration, the transferred security interest will remain effective. The transferee need not amend the registration that names the transferor as the secured party or to register a new financing statement against the debtor.

Registration of financing change statement in respect of subordinated security interest

71. If a security interest has been subordinated by the secured party to the interest of another person, a financing change statement may be registered to disclose the subordination before expiration of the effectiveness of the registration.

Voluntary amendment to, or discharges of, registration of financing statement

72.—(1) An amendment or discharge of a registration may be effected by the secured party or its agent by registering a financing change statement at any time before expiration of the effectiveness of the registration.

(2) An amendment to a registration that adds collateral, that adds a new debtor or that modifies the maximum amount of the secured obligation is effective as to the added collateral, the added debtor and the new maximum amount only from the date when financing change statement was registered.

Discharge of registration relating only to consumer goods

73. If a registration covers consumer goods, the secured party shall discharge the registration within fifteen working days after all obligations under the security agreement creating the security interest are performed, unless the registration lapses before the expiration of that period.

When debtor may demand registration of financing change statement

74. In cases not governed by section 73, the debtor may give a written demand to the secured party to amend or discharge the registration if—

(*a*) all of the obligations under the security agreement to which the registration relates have been performed and there is no commitment to make future advances;

(*b*) the secured party has agreed to release part of the collateral described in the registration;

(*c*) the collateral described in the registration includes an item or kind of property that is not collateral under a security agreement between the secured party and the debtor;

(*d*) no security agreement exists between the parties; and

(*e*) the security interest is extinguished in accordance with this Act.

Matters that may be required by demand

75. Upon receipt of the demand submitted under section 74, the secured party must register, within fifteen working days, a financing change statement—

(*a*) discharging the registration in a case within paragraph (*a*), (*d*) or (*e*) of section 74; or

(*b*) amending the registration to release some property that is no longer collateral in a case within paragraph (*c*) of section 74 or that was never collateral under a security agreement between the secured party and the debtor in a case within paragraph (*c*) of section 74.

Procedure for non-compliance with demand

76. If the secured party fails to comply with the demand within fifteen working days after its receipt, the person giving the demand under section 74 may ask the Court to issue an order discharging or amending the registration as appropriate.

Compulsory amendment or discharge by court order

77.—(1) The Court may, on application by the person, order that the registration be discharged or amended in accordance with the demand.

(2) The Court may make any other order it thinks proper for the purpose of giving effect to an order under subsection (1).

(3) The Registrar shall amend or discharge a registration in accordance with a court order made under subsection (1) as soon as reasonably practicable after receiving the order.

78. A secured party shall not charge any fee for compliance with a demand received under section 74.

No fee for compliance with demand

79. A person may search the Registry, and obtain a printed search result, in accordance with this Act and the Registry Regulations.

Search of Registry

80. The Registry may be searched only by reference to the following criteria—

Search criteria

(*a*) the unique identifier of the debtor as provided in the Registry Regulations;

(*b*) if collateral is required by this Act and the Registry Regulations to be described by serial number, the serial number of the collateral; and

(*c*) the registration number assigned to the registration.

81. A search of the Registry may be carried out without the need for the searcher to justify the reasons for the search.

Search purposes

82. A person who submitted a registration or carried out search of the Registry with a frivolous, malicious or criminal purpose or intent shall be subject to civil and criminal penalties according to the relevant laws of Malaŵi.

When registration and search constitutes interference with privacy of individual

83. The Registry may, upon request and payment of the fee to be prescribed in the Registry Regulations, issue a printed search result in the form of a certificate. A printed search result issued by the Registry shall be conclusive evidence of the existence of information in the Registry as of the date and time of its issuance.

Printed search result receivable as evidence

PART VIII

Enforcement of Security Interests

84. This Part shall apply to all security interests with the exception of those that are created or provided for by—

Application of this Part

(*a*) an outright transfer of an account receivable or chattel paper;

(*b*) an operating lease for a term of more than one year that does not secure payment or performance of an obligation; or

(*c*) a commercial consignment that does not secure payment or performance of an obligation.

Part not to apply to remedies under the Insolvency Act Cap. 11:01

85. This Part shall not apply to remedies and measures provided in the Insolvency Act.

When contracting out of certain provisions in this Part permitted

86. Parties may in the security agreement contract out of sections 87, 88, 102, 106 and 107 of this Act.

Secured party may take possession and sell collateral

87.—(1) After default, a secured party may—

(*a*) take possession of a collateral; or

(*b*) without removal, render the collateral unusable under section 88.

(2) A secured party may proceed under this section—

(*a*) pursuant to judicial process; or

(*b*) without judicial process, if the debtor does not resist the removal of the collateral.

(3) Commencement of enforcement requires registration of the enforcement form. The enforcement form shall identify the debtor, the secured party and the collateral against which enforcement is sought.

(4) A prior notice to the debtor is not required for the secured party to repossess or render the collateral unusable under this section.

Secured party may render collateral unusable

88.—(1) A secured party with priority over all other secured parties may render the collateral unusable under section 87 if the collateral is of a kind that cannot be readily moved from the debtor's premises or is of a kind for which adequate storage facilities are not readily available.

(2) If subsection (1) applies, the secured party may dispose of collateral on the debtor's premise provided that it shall not cause the person in possession of the premises, if other than the debtor, any greater inconvenience than is necessary.

Secured party may apply certain collateral in satisfaction of secured obligation

89.—(1) A secured party with priority over all other secured parties may collect and apply an account receivable, investment security, money or a negotiable instrument taken as collateral to the satisfaction of the obligation secured by the security interest if the debtor is in default.

(2) Unless otherwise agreed, the secured party may notify the account debtor and collect payment even prior to default.

Secured party may take possession of and sell collateral

90.—(1) With or without leave of the Court, a secured party may take possession of the collateral pursuant to section 87 and dispose of it when—

(*a*) the debtor is in default under the security agreement; or

(*b*) the collateral is at risk.

(2) In subsection (1), collateral is at risk if the secured party has reasonable grounds to believe that the collateral has been or will be destroyed, damaged, endangered, disassembled, removed, concealed, sold or otherwise disposed of contrary to the provisions of the security agreement.

Duty of secured party selling collateral to obtain best price reasonably obtainable

91. A secured party who exercises a power of sale of collateral under section 93 shall owe duty to obtain the best price reasonably obtainable as at the time of sale to the following persons—

(*a*) the debtor;

(*b*) any person who has registered a financing statement in the collateral that is effective at the time the secured party repossessed the collateral; and

(*c*) any person who has given the secured party notice that that person claims an interest in the collateral.

Power of sale applies to document of title and related goods

92. If the collateral is a document of title, the power of sale provided by section 93 shall apply to the document of title and to the goods to which it relates.

Methods of sale of collateral

93. A secured party may effect a sale of collateral by auction, public tender, private sale or any other method provided for in the security agreement.

Notice of sale of collateral

94.—(1) A secured party who intends to sell collateral under section 93 shall not less than ten working days before selling the collateral, give notice to the following persons—

(*a*) the debtor;

(*b*) any person who has registered a financing statement in respect of the collateral that became effective before the secured party repossessed the collateral; and

(*c*) any other person that has given the secured party notice that that person claims an interest in the collateral.

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

(*a*) the collateral may perish within ten working days of the repossession;

(*b*) the secured party believes on reasonable grounds that the collateral will decline substantially in value if it is not disposed of immediately;

(*c*) the cost of care and storage of the collateral is disproportionately large in relation to its value;

(*d*) the collateral consists of inventory;

(*e*) the security interest comprises all, or substantially all, of the assets of the debtor that is a company;

(*f*) after the secured party repossesses the collateral, every person entitled to receive notice under subsection (1) consents in writing to the immediate sale of the collateral; or

(*g*) a Court grants leave to the secured party to sell collateral under section 94 without complying with subsection (1).

(3) If a security interest extends to collateral and some, but not all, of the collateral is listed in subsection (2), the secured party may sell the collateral listed in subsection (2) under section 93 without complying with subsection (1).

Extinguishment of subordinate security interests on sale

95. If collateral has been sold under section 93, all security interests in the collateral and its proceeds that are subordinate to the security interest of the secured party who sold the collateral shall be extinguished on the sale of the collateral.

Secured party to give statement of account to debtor

96. If collateral is sold by a secured party under section 93, the secured party shall, within fifteen working days after the sale of the collateral, give the persons referred to in section 94 (1) a statement of account in writing, showing—

(*a*) the amount of the gross proceeds of sale;

(*b*) the amount of the costs and expenses of the sale; and

(*c*) the balance owing by the secured party to the debtor, or by the debtor to the secured party, as the case may be.

Secured party selling collateral shall pay prior ranking secured parties

97. A secured party who has sold collateral under section 93 shall, before applying the net proceeds of the sale towards the satisfaction of the debt or other obligation secured by the security interest of the secured party, apply the net proceeds of the sale towards the reasonable costs and expenses of the sale, and to the extent provided for in an agreement, reasonable legal expenses.

Distribution of surplus

98.—(1) For the purposes of this Act, there is surplus when the net proceeds recovered upon disposition of the collateral under this Part exceed the amount owed by the debtor to the secured party.

(2) In subsection (1), "net proceeds" means net proceeds of the sale after deducting the reasonable costs and expenses of the secured party of, and incidental to, taking possession of, holding, storing, repairing, maintaining, valuing, and preparing the sale of, and selling, the collateral.

(3) If a secured party has applied collateral under section 100 or sold collateral under section 93, as the case may be, the secured party shall pay the following persons the amount of any surplus in the following order—

(*a*) any person who have a subordinate security interest perfected by registration, in the order of their priority;

(*b*) any other person who has given the secured party notice that that person claims an interest in the collateral; and

(*c*) the debtor.

Surplus may be paid into Court

99. The secured party may pay the surplus into Court if there is a question as to who is entitled to receive payment under section 98.

Proposal of secured party to retain collateral

100.—(1) A secured party with priority over all other secured parties may, after default, propose to retain the collateral in satisfaction of the obligation secured by it.

(2) The secured party shall give notice of the proposal to the persons listed in section 94.

Persons entitled to notice may object to proposal

101. The secured party shall sell the collateral under section 93 if a person who is entitled to a notice under section 94 and whose interest in the collateral would be adversely affected by the secured party's proposal to retain collateral gives to the secured party a notice of objection within ten working days after receiving the notice referred to in section 100.

Person making objection may be requested by secured party to prove interest

102.—(1) The secured party may request a person, other than the debtor, who objects to provide proof of the person's interest.

(2) If the person to whom subsection (1) applies does not provide proof not later than ten working days after the secured party's request, the secured party may proceed as if no objection were received from the person.

Position where persons entitled to notice do not object to retention of collateral by secured party

103.—(1) If no notice of objection is received, the secured party shall, at the expiration of the ten day period referred to in section 102, be deemed to have irrevocably elected to take the collateral in satisfaction of the obligation secured by it, and shall be entitled to hold or dispose of the collateral free from all rights and interests of the debtor and of any person entitled to receive notice under section 94 (1).

(2) If subsection (1) applies, all security interests in the collateral that are subordinate to the security interest of the secured party referred to in subsection (1) shall be extinguished.

Secured party shall not damage goods when removing accession

104.—(1) A secured party who is entitled to repossess an accession under section 87 shall remove the accession from the whole in a manner that causes no greater damage to the other goods or that puts the person in possession of the whole to no greater inconvenience than is necessary for the removal of the accession.

(2) A person, other than a debtor, who has an interest in the other goods at the time the goods become an accession shall be entitled to reimbursement for any damage to that person's interest in the other goods caused by the removal of the accession.

(3) Any reimbursement payable under subsection (1) shall not include reimbursement for a reduction in the value of the property caused by the removal of the accession or by the necessity of the replacement of the accession.

(4) A person entitled to reimbursement under this section may refuse permission to remove the accession until the secured party has given adequate security for the reimbursement.

Entitled persons may redeem collateral

105.—(1) At any time before the secured party sells the collateral or is deemed to have taken the collateral in satisfaction of the obligation secured by it, a person who is entitled to receive a notice under section 94 may, unless the person otherwise agrees in writing after default, redeem the collateral by—

(*a*) tendering fulfillment of all the obligations secured by the collateral; and

(*b*) paying a sum equal to the reasonable expenses of seizing, repossessing, holding, repairing, processing and preparing the collateral for sale, if those expenses have actually been incurred by the secured party, and any other reasonable expenses incurred by the secured party.

(2) The debtor rights to redeem the collateral shall have priority over any other person's right to redeem the collateral.

Debtor may reinstate security agreement

106.—(1) At any time before the secured party sells the collateral or is deemed to have taken the collateral in satisfaction of the obligation secured by it, the debtor may, unless the debtor has otherwise agreed in writing after default, reinstate the security agreement by—

(*a*) paying the sums actually in arrears, exclusive of the operation of an acceleration clause in the security agreement;

(*b*) remedying any other default by reason of which the secured party intends to sell the collateral; and

(*c*) paying a sum equal to the reasonable expenses of seizing, repossessing, holding, repairing, processing, and preparing the collateral for sale, if those expenses have actually been incurred by the secured party, and any other reasonable expenses incurred by the secured party.

(2) Subsection (1) shall not apply to any security agreement made or entered into before the commencement of this Act.

Limit on reinstatement of security agreement

107. Unless otherwise agreed, the debtor shall not be entitled to reinstate a security agreement more than twice in each year.

PART IX

Miscellaneous Provisions

Entitlement to damages for breach of obligation

108.—(1) If a person fails to discharge any duty or obligation imposed by this Act, the person to whom the duty or obligation is owed and any other person who can reasonably be expected to rely on performance of the duty or obligation shall have a right to recover damages for any loss or damage that was reasonably foreseeable as likely to result from the failure.

(2) Nothing in subsection (1) shall limit or affect any liability that a person may incur under any law of Malaŵi other than this Act.

(3) In addition to the damages recoverable under paragraphs (1) and (2) of this section, the person that registered a financing statement

without authorization of the debtor shall be responsible to pay to the debtor the statutory damages as may be prescribed.

Secured party to provide certain information relating to security interest

109.—(1) A debtor may request the secured party to send or make available to any specified person, at an address specified by the debtor making the request, any of the following—

(*a*) a summary of a security agreement that creates or provides for a security interest held by the secured party in the personal property of the debtor;

(*b*) a statement in writing of the amount of the indebtedness and of the terms of payment of the indebtedness;

(*c*) a written approval or correction of an itemized list of personal property indicating which items are collateral, unless the security interest is over all of the personal property of the debtor; or

(*d*) a statement of account indicating the pay off amount needed to fully satisfy the secured obligation.

(2) Subsection (1) shall not apply if the information requested under that subsection must be, or has already been, made available under any other Act or rule of law, to the person who made the request.

Time for complying with request

110. A secured party shall comply with the request made under section 109 (1) within ten working days of its receipt, unless the secured party has been exempted under section 111.

Exemption from complying with request

111. The Court may, on application by a secured party, make an order exempting the secured party from complying with a request made under section 109 in whole or in part or extending the time for compliance if the Court is satisfied that, in the circumstances, it would be unreasonable for the secured party to comply with the request.

Secured party may recover costs arising from request

112.—(1) A secured party, who is required to respond to a request made under section 109, may charge the debtor only the reasonable costs for providing the information.

(2) A debtor who has requested information under section 109 shall be entitled to one response free of charge every three months.

Application to Court for compliance with request

113. The Court may, on application of the debtor who submitted a request under section 109, make an order requiring the secured party to comply with the request if, without reasonable excuse, the secured party failed to comply with the request.

Consequences of not complying with court order

114. If the secured party fails to comply with a court order made under section 113, the Court may, on the application of the debtor who made the request under section 109—

(*a*) issue an order—

(i) declaring that the security interest to which the request relates is to be treated as unperfected or extinguished; and

(ii) directing the Registrar to discharge and remove the registration relating to the security interest; and

(*b*) make such other orders as it thinks proper for the purpose of giving effect to an order under this section.

Obligation to disclose successor in security interest when request made

115. Where a debtor makes a request under section 109 and the secured party to whom the request was made no longer has an interest in the obligation secured or collateral covered by the registration, the secured party shall send or make available to the debtor the name and address of the immediate successor in interest or transferee and the latest successor in interest or transferee, if known.

Method of service of notices

116.—(1) Any notice or any other document required or authorized by this Act to be served on or given to any person shall be in writing and is sufficiently served or given if—

(*a*) it is delivered to the person or the person's agent authorized to receive such notices as designated in the security agreement;

(*b*) it is left at that person's or that person's agent's usual or last known place of abode or business or at an address specified for that purpose in the security agreement;

(*c*) it is posted in a letter addressed to the person or the person's agent by name at that place of abode or business or address; or

(*d*) it is given by facsimile, electronic mail, or other similar means of communication.

(2) If the person is deceased, notice or other document may be served on or given to the person's personal representatives.

Court may make order concerning service of notice

117. Notwithstanding section 116, a Court may in any case make an order directing the manner in which any notice or other document is to be served or given, or dispensing with the service or giving of the notice or document.

How to effect service of notice by post

118. If any notice or other document is sent to any person by post, it shall be deemed to have been delivered to that person at the time when the letter would in the ordinary course of post be delivered and, in proving the delivery, it is sufficient to prove that the letter was properly addressed and posted.

How to effect service of notice by facsimile

119. A notice or document served or given by facsimile shall, in the absence of proof to the contrary, be regarded as having been served or given if the facsimile machine generated a record of the transmission of the notice or document to the facsimile machine of the recipient, and the date of the record is deemed to be the date of receipt of the notice or document.

How to effect service of notice by electronic mail

120. A notice or document served or given by electronic mail or other similar means of communication shall be, in the absence of proof to the contrary, regarded as having been served or given if—

(*a*) the computer system used to transmit the notice or document has received an acknowledgement or receipt to the electronic mail address of the person transmitting the notice or document; or

(*b*) the person who served the notice or document proves that the notice or document was transmitted by computer system to the electronic mail address provided by the person on whom the notice is served or given.

Notices served in court proceedings

121. Sections 116 to 120 shall not apply to—

(*a*) notices of other documents served or given in any proceedings in the Court or in any other court; and

(*b*) notices or other documents served or given in accordance with another procedure specified in the security agreement for serving or giving notices or other documents.

Regulations

122.—(1) The Minister may make regulations for carrying out or giving effect to the provisions of this Act.

(2) Without prejudice to the generality of subsection (1), such regulations may provide for all or any of the following—

(*a*) prescribing procedures, requirements, and other matters, not inconsistent with this Act, in respect of the Registry and its operation, including matters relating to—

(i) the form of access to the Registry; and

(ii) the location of and hours of access to the Registry;

(*b*) the prescribing amount of fees payable under this Act and for the services provided by the Registry;

(*c*) prescribing procedures for the payment of fees, including electronic payments;

(*d*) prescribing procedures, requirements, and other matters, not inconsistent with this Act, in respect of any registration under this Act, including prescribing—

(i) the description of collateral in financing statements and financing change statements;

(ii) the kinds of goods that may or must be described by serial number;

(iii) what the serial number for various types of goods is;

(iv) the data fields, limits on the number of characters, abbreviations or symbols that may be used in financing statements and financing change statements; and

(v) the manner of registering financing statements and financing change statements;

(*e*) prescribing the necessary information to be entered in the Registry to effect, renew, discharge, or otherwise amend a registration;

(*f*) prescribing procedures, requirements, and other matters, not inconsistent with this Act, in respect of the form, use, and manner of obtaining printed or electronic verification statements to confirm a registration;

(*g*) prescribing procedures, requirements and other matters, not inconsistent with this Act, in respect of searching the Registry, including—

(i) criteria against which a search may be conducted;

(ii) the method of disclosure;

(iii) the form of search results; or

(iv) the abbreviations, expansions, or symbols that may be used when conducting searches;

(*h*) prescribing forms of financing statements for the purposes of this Act;

(*i*) prescribing procedures, requirements and other matters, not inconsistent with this Act, in respect of notices under this Act, including prescribing—

(i) the matters in respect of which notices are required under this Act; and

(ii) the form of notices under this Act; and

(*j*) providing for such other matters as are contemplated by or necessary for giving effect to this Act and for its due administration.

Repeals and savings
Cap. 48:03
Cap. 48:05
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Cap. 48:06

123.—(1) The Bills of Sale Act, the Hire Purchase Act, the Farmers' Stop Order Act and the Commercial Credits Act are repealed.

(2) Any subsidiary legislation made under the Acts repealed by subsection (1), in force immediately before the commencement of this Act—

(*a*) shall remain in force, unless in conflict with this Act, and shall be deemed to be subsidiary legislation made under this Act; and

(*b*) may be replaced, amended or repealed by subsidiary legislation made under this Act.

(3) Principles of the common law, equity and law merchant, unless in conflict with this Act, shall continue to apply.

PART X

Applicable Laws

When Malaŵi law applies to tangible property

124.—(1) The law applicable to the creation, perfection and priority of a security interest in a tangible property when the tangible asset is located in Malaŵi is the law of Malaŵi.

(2) If the tangible asset is of a type ordinarily used in more than one country, the law of Malaŵi applies if the debtor is located in Malaŵi.

125. The law applicable to the creation, perfection and priority of a security interest in an intangible property when the debtor is located in Malaŵi is the law of Malaŵi.

When Malaŵi law applies to intangible property

126. The law applicable to the creation, perfection and priority of a security interest in a deposit or investment account is the law of Malaŵi if the bank or other financial institution that maintains the relevant deposit or investment account has a place of business in Malaŵi.

When Malaŵi law applies to deposit and investment accounts

127. The law applicable to the creation, perfection and priority of a security interest in proceeds is the law applicable to the creation, perfection and priority of the security interest in the original collateral from which the proceeds arose.

When Malaŵi law applies to proceeds

128.—(1) The law applicable to issues relating to the enforcement of a security interest in tangible goods is the law of the country where enforcement takes place.

When Malaŵi law applies to enforcement

(2) The law applicable to issues relating to the enforcement of a security interest in intangible goods is the law of the country where the debtor is located.

129.—(1) The law applicable to the mutual rights and obligations of the debtor and the secured party arising from their security agreement is the law chosen by the parties and, in the absence of a choice of law, by the law governing the security agreement.

When Malaŵi law applies to some other matters

(2) A reference to the "the law" of another country as the law applicable to one or more of the issues governed by this Part does not include its conflict of laws provisions.

(3) The application of the law determined under this Part may be refused only if the effects of its application would be manifestly contrary to the public policy of the country.

(4) The commencement of insolvency proceedings under the Insolvency Act does not displace the conflict of laws provisions that determine the law applicable to the creation, perfection, priority and enforcement of a security interest.

Cap. 11:01

(5) Avoidance of security interests, treatment of secured parties, ranking of claims and distribution of proceeds under the Insolvency Act if the insolvency proceedings commenced under the Insolvency Act shall not be displaced.

Cap. 11:01
Cap. 11:01

(6) For the avoidance of doubt, an unperfected security interest created by a debtor shall not be effective against an insolvency practitioner carrying out insolvency proceedings in relation to the estate of the debtor.

PART XI

Transitional Provisions

Interpretation

130. In this Part, unless the context otherwise requires—

"existing secured party" means a holder of a prior security interest;

"prior law" means any law whether statutory, equitable or common law that existed immediately before the commencement of this Act;

"prior interests" means an interest created or provided for by an agreement or other transaction that was made or entered into before the commencement of this Act and that had not been terminated before that commencement date but does not include a security interest that is renewed or extended by a security agreement or other transaction made or entered into on or after the commencement of this Act;

Cap. 46:03
Cap. 48:03
Cap. 63:03
Cap. 48:06

"prior registration law" means the Companies Act, the Bills of Sale Act, the Farmers' Stop Order Act and the Commercial Credits Act, that existed immediately before the commencement of this Act;

"prior third party interest" means a third party interest that arose before the commencement of this Act;

"transitional period" means the period of six months commencing on the commencement of this Act.

Prior security interests continue to be enforceable against third parties during transitional period

131. A prior security interest that was enforceable against third parties under the prior law shall continue, during the transitional period, to be enforceable against third parties under this Act.

Prior registered security interests deemed to be perfected by registration during transitional period

132. A prior security interest that, immediately before the commencement of this Act, was registered under prior registration law shall, during the transitional period, be deemed to be perfected by registration under this Act.

Other prior security interests deemed to be perfected during transitional period

133. A prior security interest that, immediately before the commencement of this Act was not registered shall, during the transitional period, be deemed to be perfected by registration under this Act if the prior security interest had (under the prior law and without the collateral relating to that prior security interest being taken into possession by the secured party) priority over every other prior security interest (if any).

Prior security interests to be perfected during transitional period

134. An existing secured party may, before the end of the transitional period, perfect that secured party's prior security interest under this Act.

Consequences of not perfecting certain security interests

135.—(1) A prior security interest that is deemed to be a perfected security interest under section 132 or section 133 and that is not perfected under this Act within the transitional period shall be deemed to be an unperfected security interest on the close of the transitional period.

(2) If a prior security interest that is deemed to be an unperfected security interest under subsection (1) is perfected after the close of the transitional period, that perfection shall be only effective from the time of that perfection.

Time of registration of certain prior security interests

136.—(1) For the purposes of this Act, the time of registration of a prior security interest that is deemed to be perfected by registration under this Act shall be—

(*a*) the date that, under the relevant prior registration law, determined the priority of the security interest (where the prior security interest is deemed to be perfected by registration under section 132);

(*b*) the date that the security interest was created (where the prior security interest is deemed to be perfected by registration under section 132).

(2) When the security interest was perfected within the transitional period, it shall have priority from the date that the security interest was registered or created under the prior law.

(3) Subsection (2) does not affect the priority of a later registered fixed charge over an earlier registered floating charge. For the purposes of this Part, the fixed charge will be deemed to be a purchase money security interest.

Priority of prior security interests during transitional period

137.—(1) During the transitional period—

(*a*) priority between prior security interests shall be determined by the prior law;

(*b*) priority between security interest that is deemed to be perfected by registration under section 132 or section 133 and a security interest perfected in accordance with this Act shall be determined by this Act; and

(*c*) priority between an unperfected prior security interest and another unperfected security interest shall be determined by the order in which they were created.

(2) During the transitional period, prior security interest deemed to be perfected under section 132 or section 133 and security interests perfected in accordance with this Act shall have priority over any unperfected interests.

Priority of third party interests during transitional period

138. During the transitional period—

(*a*) priority between a prior security interest and a prior third party interest shall be determined by the prior law;

(*b*) priority between a prior security interest and a third party interest that arose on or after the commencement of this Act shall be determined by this Act; and

(*c*) priority between a security interest that is not a prior security interest and a prior third party interest shall be determined by this Act.

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30. Registrar may enter into agreements
31. Judicial proceedings
32. Damages
33. Registry forms
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FIRST SCHEDULE

SECOND SCHEDULE

G.N. 6/2015

PERSONAL PROPERTY SECURITY REGULATIONS

under s. 122

PART I

PRELIMINARY

Citation

1. These Regulations may be cited as the Personal Property Security Regulations.

Interpretation

2. In these Regulations, unless the context otherwise requires—

"address" means—

(*a*) a physical address or a post office box number, city, postal code and district;

(*b*) village, traditional authority and district; or

(*c*) an electronic address;

"amendment" means a modification of information contained in a registration to which the financing change statement relates;

"initial financing statement registration number" means the unique identifier assigned to the initial financing statement on its registration that is permanently associated with such financing statement;

"serial number" means—

(*a*) in the case of a motor vehicle, the vehicle identification number marked or attached to the body frame by the manufacturer;

(*b*) in the case of a boat and train, the serial number marked on or attached to the boat or train by the manufacturer; and

(*c*) in the case of an aircraft, the registration marks assigned to the airframe by the relevant authority or the serial number marked on or attached to the airframe by the manufacturer; and

"serial-numbered goods" means a motor vehicle, train, boat or aircraft that has a serial or identification number permanently marked on or attached to its principal part by a manufacturer or a relevant authority.

PART II

Administration of the Personal Property Security Registry

Registrar of the Personal Property Security Registry

3.—(1) The Registrar General shall be the Registrar of the Personal Property Security Registry (in these Regulations otherwise referred to as the "Registry") and shall supervise and administer the operation of the Registry.

(2) In addition to the powers conferred to by the Act, the Registry shall also receive, store, and make accessible to the public registrations with respect to security interests in personal property for the purpose of implementing the purposes referred to in the Act.

Access to the Registry

4.—(1) Any person may have access to the Registry to submit financing statements or to conduct a search in accordance with the requirements of the Act and these Regulations.

(2) Each office of the Registry shall be open to the public during the days and hours specified for that office by the Registrar.

(3) Registry office locations and opening hours shall be published on the Registry's website and posted at each office.

(4) Notwithstanding subregulation (2), the Registrar may suspend access to the Registry or to Registry services in whole or in part only

for maintenance or servicing purposes, or where circumstances arise that make it impossible or impractical to provide access.

(5) Notice of the temporary suspension of access or service and its expected duration shall be published on the Registry's website and at the offices of the Registry.

Conditions for the provision of Registry services
First Schedule

5.—(1) A financing statement shall not be registered if—

(*a*) it is not submitted in the form prescribed in the First Schedule to these Regulations;

(*b*) it does not provide the information prescribed in section 53 of the Act and regulation 14;

(*c*) the person who filled in the information prescribed by section 53 of the Act did not identify himself in the manner prescribed by the Registry; or

(*d*) a prescribed fee has not been paid.

(2) If the Registry rejects a registration, the Registry shall provide the reason for the rejection as soon as practicable in the manner provided in Form VIII of the First Schedule to these Regulations.

First Schedule

(3) A user account for a person may be established when a contract providing for an account has been concluded between the person and the Registry.

(4) Access to the Registry services shall be in accordance with these Regulations and the terms of the contract referred to in this regulation.

(5) Execution of a contract providing for an account shall constitute sufficient identification of the person according to this regulation.

(6) A financing statement submitted other than through a user account, shall include a copy of the valid driver's licence, passport or voter registration card of the person who filled in the information.

PART III

Registration of Financing Statements

When financing statement may be registered and authorization to register

6.—(1) A secured party may register a financing statement before or after a security agreement is concluded.

(2) By entering into a security agreement, a debtor authorizes the registration of a financing statement and any amendments thereto.

(3) A debtor may, in writing, authorize registration of a financing statement prior to the conclusion of a security agreement.

All required information to be provided

7.—(1) A person submitting a financing statement for registration shall ensure that all information required by the Act and these Regulations to be contained in a financing statement is provided legibly in the fields designated for entering information of that kind.

(2) For the submission of a financing statement, financing change statement, termination form, enforcement form, cancellation form and search request, a person shall, respectively use the appropriate Forms prescribed in the First Schedule to these Regulations. *First Schedule*

Duties and responsibilities of the Registry

8.—(1) The Registry shall not be responsible for changes, omissions or corruption of electronically transmitted information which occurred prior to its receipt.

(2) The Registry shall reject a financing statement or search request if—

(*a*) the statement or the request does not provide the required information as prescribed in these Regulations; or

(*b*) the information is provided in a form or document not prescribed in First Schedule to these Regulations. *First Schedule*

(3) The Registry and any Registry employee shall not conduct any scrutiny of the content of the financing statement, and in particular, it is not the responsibility of the Registry to ensure that information is complete, accurate and legally sufficient.

(4) The Registry shall not determine whether or not the registration of an initial financing statement or financing change statement has been authorized as provided in section 61 of the Act and regulation 6.

(5) Information provided in financing statements shall be entered into the Registry as received, and no character substitution or truncation shall be performed.

(6) Information shall not be deleted from the Registry, whether or not a financing change statement discharging the registration has been registered.

(7) Expired registrations shall be maintained in the Registry and searchable by the public for six months following their expiration.

(8) Discharged and expired registrations shall be identified as such in a search.

(9) Six months after the expiry, registrations shall cease to be publicly searchable and shall be removed into an archive from which it may be retrieved only by the Registry employees.

(10) The Registry shall, as soon as it is reasonably practicable after a financing statement has been registered, provide a verification statement to the person who submitted the financing statement for registration.

Duties of a secured party

9.—(1) A person named as a secured party in a registration shall, not later than fifteen working days after the day on which the person received a verification statement, provide to a debtor a copy of the verification statement, unless the debtor has waived in writing the right to receive it.

(2) If a registration covers consumer goods, the secured party shall discharge the registration within fifteen working days after all obligations under the security agreement creating the security interest are performed, unless the registration lapses before the expiration of that period.

(3) In cases not governed by subregulation (2), the debtor may give a written demand to the secured party to amend or discharge the registration if—

(*a*) all of the obligations under the security agreement to which the registration relates have been performed and there is no commitment to make future advances;

(*b*) the secured party has agreed to release part of the collateral described in the registration;

(*c*) the collateral described in the registration includes an item or kind of property that is not collateral under a security agreement between the secured party and the debtor;

(*d*) no security agreement exists between the parties; or

(*e*) the security interest is extinguished in accordance with the Act.

(4) Upon receipt of the demand referred to in subregulation (3), a secured party shall, within fifteen working days, register, a financing

change statement amending or discharging the registration pursuant to the demand.

(5) The failure of the secured party to act on the demand shall entitle the debtor to resort to the court as provided in sections 76 and 77 of the Act.

PART IV

Searches at the Registry

Searchable record and criteria

10.—(1) The Registry shall maintain for public inspection a searchable record of all registrations according to the criteria set out in regulation 10 (*d*) and (*e*).

(2) A search of the Registry may be carried out without the need for the searcher to justify the reasons for the search.

(3) The Registry shall create a record that bears the initial financing statement registration number and the date and time of registration, and shall index any and all related financing change statements in the same record.

(4) All registrations shall be publicly searchable according to the identification number of the debtor and initial financing statement registration number.

(5) Registrations that cover serial-numbered goods shall be publicly searchable according to the serial number.

Requirements for searching

11.—(1) Searches at the Registry shall be available on the Internet, twenty-four hours a day, everyday, including weekends and national holidays without the need for the searcher to justify the reasons for the search.

(2) A searcher may request a search at the Registry by delivering to the Registry offices Form VI prescribed in the First Schedule to these Regulations. *First Schedule*

(3) A searcher shall, according to the type of search being carried out, enter the relevant criteria in the designated fields of Form VI prescribed in the First Schedule. *First Schedule*

(4) A person who submitted a registration or carried out search at the Registry with a frivolous, malicious or criminal purpose or intent shall be subject to civil and criminal penalties according to the relevant laws of Malaŵi.

Search results and certificates

12.—(1) A search result shall either indicate that no registrations were retrieved against the search criterion provided by the searcher or shall set out all registrations searchable in the Registry at the date and time when the search was performed as prescribed in the Form VII of the First Schedule to these Regulations.

First Schedule

(2) Any person may submit a request to the Registry to issue a certificate of search using a search criterion specified in regulation 10 (4) and (5).

(3) The Registry shall issue a certificate upon receipt of a request under this regulation and payment of the prescribed fee.

(4) A certificate issued by the Registry shall be conclusive evidence of the existence of information in the Registry as of the date and time of its issuance.

Search and effectiveness of the financing statement

13.—(1) A financing statement shall be registered at the time that a registration number, date and time are assigned to it by the Registry, and it shall not be effective against a third party until it becomes publicly searchable.

(2) The effectiveness of the registration shall not be affected by any defect, irregularity, omission, or error, unless the defect, irregularity, omission or error is seriously misleading.

(3) Effectiveness or ineffectiveness of a registration, as envisaged by section 65 of the Act, shall only be determined after a search has been conducted against an identification number of a debtor.

(4) In order to establish that a defect, irregularity, omission or error is seriously misleading, it is not necessary to prove that any person was actually misled by it.

(5) A registration that fails to correctly provide the identification number of the debtor in accordance with these Regulations shall be ineffective if it is not retrieved by a search under the correct identification number of the debtor.

(6) An incorrect identification number of a debtor in a registration shall not render the registration ineffective with respect to other debtors correctly identified in the same registration.

(7) A registration that fails to correctly provide the serial number of the collateral in accordance with regulation 2 shall be ineffective

if it is not discovered by a search under the correct serial number of the collateral.

(8) An incorrect description of certain collateral shall not render the registration ineffective with respect to other collateral sufficiently described.

PART V

Financing Statements

Information required in an initial financing statement

14.—(1) A financing statement shall provide—

(*a*) an identifier of the debtor;

(*b*) an identifier of a secured party or a representative of the secured party;

(*c*) a description of a collateral, including a serial number as provided in the Act and these Regulations;

(*d*) a date of prior registration, if prior registration law applies in respect of the security interest; and

(*e*) the maximum amount of the secured obligation.

(2) If there is more than one debtor or secured party, the required information shall be entered in the designated field separately for each debtor or secured party.

Identification information of a debtor who is an individual

15.—(1) If a person to be identified in a financing statement is an individual, the financing statement shall include the following information—

(*a*) the identification number as defined in subregulation (2);

(*b*) the first name;

(*c*) the first middle name;

(*d*) the last name as they appear on the official document defined in subregulation (2); and

(*e*) an address.

(2) For the purposes of these Regulations and the Act, an individual debtor's identification number and the name is the identification number and the name that—

(*a*) appears on a validly issued driver's licence;

(*b*) if the individual does not have a valid driver licence, the debtor's identification number and the name is the identification number and the name that appears on a valid passport issued by the Government of Malaŵi; or

(*c*) if the individual has neither a valid drivers' licence nor a passport, the debtor's identification number and the name is the identification number and the name that appears on a valid voter registration card issued by the Electoral Commission.

(3) If a debtor is an individual who is neither a citizen nor a resident of Malaŵi who has one of the documents identified in subregulation (2), the debtor's identification number and the name is the passport number and the name that appears in the passport issued by a foreign government.

(4) If a debtor is an individual whose full name consists of only one word, that word shall be entered as both the debtor's first and last names.

Cap. 46:02

(5) If a debtor is an individual who carries on business as a sole proprietor that is not registered in the Business Registration Act, under a name or style other than the debtor's own name, the secured party shall provide the debtor's identification information pursuant to this regulation.

Identification information of a debtor who is an organization

16.—(1) If a debtor is an organization, the financing statement shall include the following information—

(*a*) the identification number of the debtor as defined in subregulation (3);

(*b*) the name of the organization specified in a current document constituting the organization that is registered in the Malaŵi business registration database or other registry; and

Cap. 5:03

(*c*) if the organization is not registered under the Trustees Incorporation Act, the name of the organization as set out in its constitution, partnership agreement, its charter or other similar document or law constituting the organization.

(2) For the purposes of these Regulations, an organization debtor's identification number is the debtor's registration number assigned by the Malaŵi business registration database upon its registration.

(3) If the organization debtor is not registered, the debtor's identification number is the tax payer identification number issued by the Malaŵi Revenue Authority.

Change of identification number

17.—(1) If an identification number of the debtor has changed the registration remains effective to perfect a security interest in collateral acquired by the debtor within three months after the identification number of the debtor in the registration became incorrect.

(2) A security interest shall remain perfected as to collateral that has been acquired after the debtor's identification number has changed, if the registration is amended to add the new identification number within three months after the change.

Identification of secured party

18.—(1) A financing statement shall identify the secured party pursuant to section 55 of the Act and regulations 15 and 16.

(2) A financing statement sufficiently identifies the secured party—

(*a*) if the secured party is an individual, it provides the individual's unique identification number as provided in regulation 15, the name, and address;

(*b*) if the secured party is an unregistered company, it provides the identification number as provided in regulation 16, the name and address of the company as provided in its formation documents, charter or other document creating the company; or

(*c*) if the secured party is a registered company, the company name indicated in it under the Companies Act and a unique number assigned to it on its registration as provided in regulation 16. Cap. 46:03

General requirements for description of a collateral

19.—(1) A financing statement shall include a description of a collateral that is clear enough to enable the collateral to be identified.

(2) A financing statement sufficiently describes the collateral if it provides a description of the collateral as provided in section 6 of the Act.

Description of serial-numbered goods

20.—(1) If a financing statement covers serial-numbered goods, it shall contain the following information—

(*a*) an indication of the relevant type of the serial-numbered goods as defined in regulation 2; and

(*b*) a serial number as defined in regulation 2.

(2) Subregulation (1) shall not apply to serial-numbered goods that are held as inventory; a description of serial-numbered goods held as inventory is sufficient if it satisfies the requirements of section 6 of the Act.

Term of effectiveness of the registration

21.—(1) Unless otherwise indicated by a secured party, a term of effectiveness of a registration shall be five years.

(2) A registration of a financing statement under the Act and these Regulations shall be effective until whichever is the earlier of—

(*a*) the expiration of the term specified in the registration;

(*b*) the expiration of five years commencing on the date on which the financing statement was registered; or

(*c*) when the registration has been discharged before the expiration of the relevant period referred to in subregulations (1) and (2).

(3) A registration may be renewed by registering a financing change statement before the effectiveness of the registration expires.

(4) Except as otherwise provided in these Regulations, the period of time for which a registration shall be effective is extended until whichever is earlier of—

(*a*) the expiration of the new term specified in the financing change statement; or

(*b*) the expiration of five years commencing on the date on which the financing change statement was registered.

(5) A financing change statement, other than an extension, shall not extend the term of effectiveness of the registration.

(6) A financing change statement extends the term of effectiveness of the registration beginning from the time of expiry of the current term.

Information required for registering prior security interest

22. For the registration of a prior interest as defined in section 130 of the Act, a financing statement shall provide the following information—

(*a*) if section 132 of the Act applies—

(i) the date of prior registration of the prior interest;

(ii) the type of the prior interest, whether floating charge, fixed charge or similar; and

(iii) the relevant prior registration law; or

(*b*) if section 133 of the Act applies—

(i) the date of creation of the prior interest; and

(ii) the relevant enactment under the prior registration law.

Maximum amount of the secured obligation

23. When submitting the financing statements referred to in regulation 22, a secured party shall include, in the financing statement, a maximum amount of the secured obligation in numbers and in a currency.

Registration of a financing change statement

24.—(1) An amendment to a registration may be effected by the person named as the secured party in the registration or by its agent by registering a financing change statement at any time before expiration of the effectiveness of the registration.

(2) A registration of a financing change statement is ineffective unless it has been properly authorized by the secured party.

(3) An amendment to a registration that adds a collateral, that adds a new debtor or that modifies the maximum amount of the secured obligation is effective as to the added collateral, the added debtor and the new maximum amount only from the date when the financing change statement is registered.

(4) If the financing change statement relates to an assignment, it shall identify the assignor and the assignee.

(5) If a court has made an order of amendment of a registration pursuant to section 77 of the Act, the court shall submit the financing change statement with an order or a summary statement of the court order to the Registry.

(6) If a secured party transfers a security interest perfected by registration, the security interest shall remain effective.

(7) Where a security interest has been transferred pursuant to subregulation (6), the transferee shall have no obligation to amend the registration that names the transferor as the secured party or to register a new financing statement against the debtor.

(8) If a security interest has been subordinated by the secured party to the interest of another person, the secured party or the other person may register a financing change statement in order to disclose the subordination.

Information required in a financing change statement

25.—(1) A secured party who wishes to register a financing change statement shall—

(*a*) provide the initial financing statement registration number of the financing statement to which the financing change statement relates;

(*b*) indicate whether the purpose of the amendment is to add, change or delete information in a registration;

(*c*) if information is to be added, indicate the additional information in the manner provided in regulations 15, 16, 18, 19, and 20; and

(*d*) if information is to be changed or deleted, enter the information to be changed or deleted; and in case of a change, also enter new information in the manner provided in regulations 15, 16, 18, 19, and 20.

(2) A person who enters information into the financing change statement shall identify the secured party authorizing the registration.

Enforcement form

26.—(1) Commencement of enforcement requires registration of the enforcement form.

(2) A secured party shall register the enforcement form under this regulation within seven working days of default.

(3) A secured party shall include in the enforcement form the following information—

(*a*) the initial financing statement registration number of the financing statement to which the enforcement form relates;

(*b*) identification of a debtor pursuant to regulation 15 or 16, whichever is applicable;

(*c*) identification of the secured party authorizing the registration pursuant to regulation 18; and

(*d*) a description of the collateral against which the enforcement is sought.

Cancellation of enforcement form *First Schedule*

27.—(1) If a debtor cures a default and reinstates the security agreement, the secured party shall register the cancellation of enforcement form as prescribed in Form V of the First Schedule to these Regulations.

(2) A secured party shall, within seven days of reinstatement of a security agreement, register a cancellation of enforcement form.

(3) A secured party shall in the cancellation of enforcement form under this regulation include—

(*a*) the initial financing statement registration number of the financing statement to which the cancellation of enforcement form relates;

(*b*) an identification of the debtor pursuant to regulation 15 or 16;

(*c*) an identification of the secured party authorizing the registration pursuant to regulation 18; and

(*d*) the reason for reinstatement of the security agreement.

Discharge of registration

28.—(1) A secured party shall discharge a registration if the requirements of regulation 9 have been satisfied.

(2) A secured party shall in the termination form prescribed in Form III of the First Schedule to these Regulations include— *First Schedule*

(*a*) an initial financing statement registration of the financing statement to which the termination form relates; and

(*b*) an identification of the secured party authorizing this registration pursuant to regulation 18.

PART VI

Miscellaneous Matters

Liability of the Registry

29.—(1) Subject to any written law, the Registrar shall be responsible for reasonable loss or damage suffered by a person as a result of the Registry system malfunction.

(2) The Registrar shall be responsible for reasonable loss or damage suffered by a person as a result of advice given by the Registrar, the Deputy Registrar, an officer or an employee, or an agent of the Registry in respect of legal requirements, including legal effect of registration under the Act and these Regulations.

(3) The Registrar shall not be responsible for loss or damage suffered by a person as a result of advice given by the Registrar, the Deputy Registrar, an officer or an employee, or an agent of the Registry in respect of operational aspects of registration system under the Act and these Regulations.

Registrar may enter into agreements

30.—(1) The Registrar may enter into an agreement with users of the Registry, to provide for access to the Registry in such manner and on such terms and conditions as the Registrar considers advisable.

(2) Without prejudice to the generality of subregulation (1), the terms and conditions imposed by the Registrar under the subregulation (1) may include payment of access fees.

(3) The Registrar may enter into an agreement with a user of the Registry, establishing an account with the Registry to enable fees that are payable under this regulation to be charged on a continuing basis against the balance in the person's account.

Judicial proceedings

31.—(1) On application of an interested person, a court may determine any issue under the Act.

(2) Proceedings under the Act or these Regulations shall be by way of motion or originating summons.

Damages

32. The prescribed damages for purposes of section 108 (3) of the Act are K100,000.

Registry forms

First Schedule

33.—(1) The Registry shall issue and make available the forms of financing statements, search and certificate requests as prescribed in First Schedule to these Regulations.

First Schedule

(2) The Registry may modify the design and presentation without altering the content of the forms as prescribed in the First Schedule.

(3) The Registry may, on proper advance notice, update the forms.

(4) The Registry may issue and make available any other forms for the implementation of the Act.

Forms that satisfy the requirements of the Act

Second Schedule

34.—(1) For the purposes of the Act, the forms referred to in the Second Schedule provide sufficient information and have satisfied the applicable requirements of the Act.

(2) Notwithstanding subregulation (1), a court may find a form insufficient, and hence not in compliance with the Act, on the basis

of the information inserted by a person that has issued or executed the form.

(3) Any document registered in the Registry that is not prescribed by the Act or these Regulations shall not be construed in place of or in derogation from or in addition to a form prescribed by the Act or these Regulations.

Other forms necessary for the implementation of the Act

35.—(1) For the purposes of section 16 (*b*) of the Act, a bailee holds the goods on behalf of a secured party when he has executed a form in the manner prescribed in Form I of the Second Schedule to these Regulations. *Second Schedule*

(2) For the purposes of section 61 (2) of the Act, the debtor may authorize registration of a financing statement prior to the conclusion of a security agreement in the manner prescribed in Form II of the Second Schedule to these Regulations. *Second Schedule*

(3) For the purposes of section 74 of the Act, a demand to a secured party to discharge a registration is sufficient if it has been issued in the form prescribed in Form III of the Second Schedule to these Regulations. *Second Schedule*

(4) For the purpose of section 89 of the Act, a secured party may collect and apply an account receivable by notifying the account debtor. Such notification may be served as a demand on the account debtor that is sufficient if it has been issued in the form prescribed in Form IV of the Second Schedule to these Regulations. *Second Schedule*

(5) Pursuant to section 94 of the Act, a notice of sale of the collateral is sufficient if it has been issued in the form prescribed in Form V of the Second Schedule to these Regulations. *Second Schedule*

(6) For the purposes of section 100 (2) of the Act, a notice of proposal by the secured party to retain collateral in satisfaction of the secured obligation is sufficient if it has been issued in the form prescribed in Form VI of the Second Schedule to these Regulations. *Second Schedule*

regs. 5, 7, 8, 11, 12, 27, 28 and 33

FIRST SCHEDULE

FORMS OF FINANCING STATEMENTS AND SEARCH FORMS

I.—INITIAL FINANCING STATEMENT

Time of effectiveness of registration: ..... (dd/mm/yyyy) ..... (hh/mm/ss)

Registration No: .....

THE ABOVE FIELDS ARE FOR REGISTRY OFFICE USE ONLY.

IT IS THE SECURED PARTY'S RESPONSIBILITY TO ENSURE THAT ALL REQUIRED INFORMATION IS PROVIDED AND ENTERED IN THE DESIGNATED FIELD OF THE FINANCING STATEMENT IN A LEGIBLE MANNER AND THAT THE INFORMATION IS COMPLETE, ACCURATE AND LEGALLY EFFECTIVE.

A. Debtor

1. Individual

Last Name	First Name	Middle Name (if any)
Address (City/State/ Postal Code or Village, Traditional Authority, District)	Street or P.O. Box (if any)	Electronic address (if any)

Identification number: .....

2. Organization

Name: .....

Address (City/State/ Postal Code or Village, Traditional Authority, District)	Street or P.O. Box (if any)	Electronic address (if any)

Identification number: .....

B. Secured Party

1. Individual

Last Name	First Name	Middle Name (if any)
Address (City/State/ Postal Code or Village, Traditional Authority, District)	Street or P.O. Box (if any)	Electronic address (if any)

Identification number: .....

2. Organization
Name: .....

Address (City/State/ Postal Code or Village, Traditional Authority, District)	Street or P.O. Box (if any)	Electronic address (if any)

Identification number: .....

C. Description of the Collateral other than Serial-numbered Goods .....

D. Description of Serial-numbered Goods

1. Indicate the type of serial-numbered good:
   Serial number: .....
2. Indicate the type of serial-numbered good:
   Serial number: .....
3. Indicate the type of serial-numbered good:
   Serial number: .....

E. Term of Effectiveness of Registration

This financing statement shall be effective for the period of [.....] from the date of the registration

If no term specified this financing statement shall be effective for five years

F. Maximum Amount of the Secured Obligation

.....

G. Registration of Prior Security Interest

Provide information pursuant to regulation 22 .....

.....

H. Additionl Information (Optional)

.....

II.—FINANCING CHANGE STATEMENT

Time of effectiveness of registration: ..... (dd/mm/yyyy) ..... (hh/mm/ss)

THE ABOVE FIELD IS FOR REGISTRY OFFICE USE ONLY.

IT IS THE SECURED PARTY'S RESPONSIBILITY TO ENSURE THAT ALL REQUIRED INFORMATION IS PROVIDED AND ENTERED IN THE DESIGNATED FIELD OF THE FINANCING STATEMENT IN A LEGIBLE MANNER AND THAT THE INFORMATION IS COMPLETE, ACCURATE AND LEGALLY EFFECTIVE.

INITIAL FINANCING STATEMENT REGISTRATION NUMBER: .....

SELECT ONE OR MORE OF THE FOLLOWING—

☐ A. Add Debtor

1. Individual

Last Name	First Name	Middle Name (if any)
Address (City/State/ Postal Code or Village, Traditional Authority, District)	Street or P.O. Box (if any)	Electronic address (if any)

Identification number: .....

2. Organization

Name: .....

Address (City/State/ Postal Code or Village, Traditional Authority, District)	Street or P.O. Box (if any)	Electronic address (if any)

Identification number: .....

☐ B. Delete Debtor

1. Individual

Last Name	First Name	Middle Name (if any)

2. Organization

Name: .....

☐ C. Change of Debtor Information

1. DEBTOR TO WHOM THIS CHANGE RELATES

1. Individual

Last Name	First Name	Middle Name (if any)

2. Organization

Name: .....

2. NEW DEBTOR INFORMATION

1. Individual

Last Name	First Name	Middle Name (if any)
Address (City/State/ Postal Code or Village, Traditional Authority, District)	Street or P.O. Box (if any)	Electronic address (if any)

Identification number: .....

2. Organization

Name: .....

Address (City/State/ Postal Code or Village, Traditional Authority, District)	Street or P.O. Box (if any)	Electronic address (if any)

Identification number: .....

☐ D. Add Secured Party or Assignee

1. Individual

Last Name	First Name	Middle Name (if any)
Address (City/State/ Postal Code or Village, Traditional Authority, District)	Street or P.O. Box (if any)	Electronic address (if any)

Identification number: .....

2. Organization

Name: .....

Address (City/State/ Postal Code or Village, Traditional Authority, District)	Street or P.O. Box (if any)	Electronic address (if any)

Identification number: .....

☐ E. Delete Secured Party or Assignor

1. Individual

Last Name	First Name	Middle Name (if any)

2. Organization

Name: .....

☐ F. Change Secured Creditor Information

1. SECURED CREDITOR TO WHOM THIS CHANGE RELATES

1. Individual

Last Name	First Name	Middle Name (if any)

2. Organization

Name: .....

2. NEW SECURED CREDITOR OR ASSIGNEE

1. Individual

Last Name	First Name	Middle Name (if any)
Address (City/State/ Postal Code or Village, Traditional Authority, District)	Street or P.O. Box (if any)	Electronic address (if any)

Identification number: .....

2. Organization

Name: .....

Address (City/State/ Postal Code or Village, Traditional Authority, District)	Street or P.O. Box (if any)	Electronic address (if any)

Identification number: .....

☐ G. Addition of Collateral Other than Serial-Numbered Goods

Insert description of collateral to be added .....
.....
.....

☐ H. Addition of Collateral Other Than Serial-Numbered Goods

1. Indicate the type of serial-numbered good:
   Serial number: .....
2. Indicate the type of serial-numbered good:
   Serial number: .....
3. Indicate the type of serial-numbered good:
   Serial number: .....

☐ I. Deletion of Collateral

Insert description of collateral to be deleted .....
.....
.....

☐ J. Change of Description of Collateral

1. COLLATERAL TO WHICH THIS CHANGE RELATES

Insert description of collateral to be changed .....
.....
.....

2. NEW DESCRIPTION OF COLLATERAL

Insert description of collateral .....
.....
.....

☐ K. Subordination of Security Interest

1. SECURED CREDITOR SUBORDINATING ITS SECURITY INTEREST

1. Individual

Last Name	First Name	Middle Name (if any)

2. Organization

Name: .....

2. SECURED CREDITOR WHO IS THE BENEFICIARY OF SUBORDINATION

1. Individual

Last Name	First Name	Middle Name (if any)
Address (City/State/ Postal Code or Village, Traditional Authority, District)	Street or P.O. Box (if any)	Electronic address (if any)

Identification number: .....

2. Organization

Name: .....

Address (City/State/ Postal Code or Village, Traditional Authority, District)	Street or P.O. Box (if any)	Electronic address (if any)

Identification number: .....

☐ L. Extend Term of Effectiveness of Registration

The term of this registration shall be extended for the period of [ ]

If no period is specified the term of this registration is extended for five years

☐ M. Change Maximum Amount for which Security Right may be Enforced

.....
.....
.....

☐ N. Secured Party Authorizing This Registration

1. Individual

Last Name	First Name	Middle Name (if any)

2. Organization

Name: .....

☐ COURT IF AMENDMENT ORDERED PURSUANT TO A COURT ORDER

Identify court, order number and provide a summary of the order .....
.....
.....
.....

III.—TERMINATION FORM

Time of effectiveness of registration: ..... (dd/mm/yyyy) ..... (hh/mm/ss)

THE ABOVE FIELD IS FOR REGISTRY OFFICE USE ONLY.

IT IS THE SECURED PARTY'S RESPONSIBILITY TO ENSURE THAT ALL REQUIRED INFORMATION IS PROVIDED AND ENTERED IN THE DESIGNATED FIELD OF THE FINANCING STATEMENT IN A LEGIBLE MANNER AND THAT THE INFORMATION IS COMPLETE, ACCURATE AND LEGALLY EFFECTIVE.

INITIAL FINANCING STATEMENT REGISTRATION NUMBER

.....

SECURED PARTY AUTHORIZING THIS REGISTRATION

1. Individual

Last Name	First Name	Middle Name (if any)

2. Organization

Name: .....

COURT IF DISCHARGE ORDERED PURSUANT TO A COURT ORDER

Identify court, order number and provide a summary of the order .....
.....
.....
.....
.....
.....
.....

IV.—ENFORCEMENT FORM

Time of effectiveness of registration: ..... (dd/mm/yyyy) ..... (hh/mm/ss)

THE ABOVE FIELD IS FOR REGISTRY OFFICE USE ONLY.

IT IS THE SECURED PARTY'S RESPONSIBILITY TO ENSURE THAT ALL REQUIRED INFORMATION IS PROVIDED AND ENTERED IN THE DESIGNATED FIELD OF THE FINANCING STATEMENT IN A LEGIBLE MANNER AND THAT THE INFORMATION IS COMPLETE, ACCURATE AND LEGALLY EFFECTIVE.

INITIAL FINANCING STATEMENT REGISTRATION NUMBER:

.....

A. DEBTOR AGAINST WHICH ENFORCEMENT IS SOUGHT

1. Individual

Last Name	First Name	Middle Name (if any)
Address (City/State/ Postal Code or Village, Traditional Authority, District)	Street or P.O. Box (if any)	Electronic address (if any)

Identification number: .....

2. Organization
Name: .....

Address (City/State/ Postal Code or Village, Traditional Authority, District)	Street or P.O. Box (if any)	Electronic address (if any)

Identification number: .....

B. 1. Collateral Other than Serial-Numbered Goods Subject to Enforcement
Insert description of collateral subject to enforcement.

B. 2. Collateral that is Serial-Numbered Goods Subject to Enforcement

1. Indicate the type of serial-numbered good:
Serial number: .....

2. Indicate the type of serial-numbered good:
Serial number: .....

3. Indicate the type of serial-numbered good:
Serial number: .....

C. Secured Party Authorizing this Registration

1. Individual

Last Name	First Name	Middle Name (if any)

2. Organization: .....

Name: .....

V.—CANCELLATION OF ENFORCEMENT FORM

Time of effectiveness of registration: ..... (dd/mm/yyyy) ..... (hh/mm/ss)

THE ABOVE FIELD IS FOR REGISTRY OFFICE USE ONLY. IT IS THE SECURED PARTY'S RESPONSIBILITY TO ENSURE THAT ALL REQUIRED INFORMATION IS PROVIDED AND ENTERED IN THE DESIGNATED FIELD OF THE FINANCING STATEMENT IN A LEGIBLE MANNER AND THAT THE INFORMATION IS COMPLETE ACCURATE AND LEGALLY EFFECTIVE.

INITIAL FINANCING STATEMENT REGISTRATION NUMBER: .....

A. DEBTOR THAT HAS REINSTATED THE SECURITY AGREEMENT

1. Individual

Last Name	First Name	Middle Name (if any)
Address (City/State/ Postal Code or Village, Traditional Authority, District)	Street or P.O. Box (if any)	Electronic address (if any)

Identification number: .....

2. Organization
Name: .....

Address (City/State/ Postal Code or Village, Traditional Authority, District)	Street or P.O. Box (if any)	Electronic address (if any)

Identification number: .....

B. REASON FOR REINSTATING THE SECURITY AGREEMENT

Indicate a reason for registering the cancellation of enforcement form.

C. SECURED PARTY AUTHORIZING THIS REGISTRATION

1. Individual

Last Name	First Name	Middle Name (if any)

2. Organization
Name: .....

VI.—SEARCH REQUEST FORM

IT IS THE SEARCHER'S RESPONSIBILITY TO ENSURE THAT INFORMATION IN EITHER SECTION A OR B IS PROVIDED AND ENTERED IN A LEGIBLE MANNER.

☐ A. DEBTOR

1. Identification number of individual: .....

2. Identification number of organization: .....

☐ B. INITIAL FINANCING STATEMENT REGISTRATION NUMBER:

.....

C. RETURN TO

Last Name	First Name	Middle Name (if any)
Address (City/State/ Postal Code or Village, Traditional Authority, District)	Street or P.O. Box (if any)	Electronic address (if any)

Identification number: .....

VII.—SEARCH RESULT

A. TIME OF SEARCH: ..... (dd/mm/yyyy) ..... (hh/mm/ss)

B. SEARCH CRITERION USED

1. Identification number of debtor: .....

2. Initial financing statement registration number: .....

C. SEARCH RESULT

No corresponding registrations were retrieved: .....

The following corresponding registrations were retrieved: .....

	Initial financing statement registration number	*Identification number of debtor*	*Collateral description*
1			
2			
3			
4			
5			

VIII.—REJECTION OF A REGISTRATION OR A SEARCH REQUEST

☐ A. TIME OF REJECTION: ..... (dd/mm/yyyy) ..... (hh/mm/ss)

☐ B. THE REGISTRATION IS REJECTED BECAUSE THE FINANCING STATEMENT FAILED TO PROVIDE THE FOLLOWING INFORMATION IN THE DESIGNATED FIELD OR IN A LEGIBLE MANNER—

☐ B. 1 Initial financing statement failed to provide—

- ☐ The identification number of the debtor
- ☐ The name and address of the debtor
- ☐ The identification number of the secured party
- ☐ The name and address of the secured party
- ☐ A description of the collateral
- ☐ The maximum amount of the secured obligation

☐ B. 2 Financing change statement including enforcement and cancellation of enforcement form failed to provide—

- ☐ The initial financing statement registration number
- ☐ Relevant information for addition
- ☐ Relevant information deletion
- ☐ Relevant information for change
- ☐ Secured party authorizing the amendment

☐ B. 3 Termination form failed to provide—

- ☐ The initial financing statement registration number
- ☐ Secured party authorizing the amendment

☐ C. THE SEARCH REQUEST IS REJECTED BECAUSE IT FAILED TO PROVIDE A SEARCH CRITERION IN A LEGIBLE MANNER.

☐ D. THE REGISTRATION OF A FINANCING STATEMENT OR SEARCH REQUEST IS REJECTED BECAUSE IT WAS NOT SUBMITTED IN THE PRESCRIBED FORM.

SECOND SCHEDULE regs. 34 and 35

OTHER FORMS NECESSARY FOR IMPLEMENTATION OF THE ACT

FORM I
BAILEE ACKNOWLEDGMENT

[*Date*]

Re: [*insert name of the debtor*]

We hereby acknowledge that the debtor has entered into a security agreement dated as of ..... (the "Security Agreement") with you and has granted to you a first priority security interest in [*insert description of collateral*] and proceeds thereof (the "Collateral"). We further acknowledge that, pursuant to our agreements with the debtor, from time to time we receive and maintain possession of certain of the collateral, which are presently kept at our premises located at: [*insert address of facilities*]. We further acknowledge that we have received and hold possession of the collateral for your benefit and that we shall continue to hold possession of the collateral for your benefit until we receive notice (in an authenticated record) from you that your security interest has been terminated.

We hereby waive, surrender and relinquish any rights in or to the collateral, including, without limitation, any security interests or liens provided by applicable law to which we may otherwise be entitled. We further acknowledge and agree that no negotiable warehouse receipts or documents of title will be issued covering the collateral.

We further acknowledge that, according to the terms of the Security Agreement, you have the right to inspect the collateral and, upon default, the right to remove and take possession of the collateral after paying in full all storage charges incurred by the debtor and owing to us. We agree to permit you access to the collateral for these purposes at your request without first receiving the consent or permission of the debtor.

[*insert name of the bailee*]

cc: Debtor

[*debtor*] confirms and agrees to the foregoing.

Form II
Pre-registration Authorization Letter

[*Date*]

[*Name and address of secured party*]

Re: [*Proposed Transaction Involving Personal Property Security Act security interest*]

In connexion with [*insert proposed transaction involving Personal Property Security Act security interest*], [*insert name and address of debtor*] ("Debtor") hereby authorizes [*insert name of secured party*] ("Secured Party") to register a financing statement ("Financing Statement") naming debtor as "debtor" and indicating the following collateral: [*insert collateral description*].

By its signature below the secured party agrees that if the [proposed transaction] fails to close within ten days of the date hereof, it shall discharge this registration without further request of the debtor pursuant to section 74 of the Personal Property Security Act.

[*insert name of debtor*]

[*insert name and title of the person that signed this authorization on behalf of debtor*]

Form III
Demand to Discharge Registration

[*Date*]

[*Name and address of secured party*]

Re: Discharge of Registration against [*insert name of debtor*] ("Debtor")

Please be advised that all indebtedness owed by debtor or borrower if different [*insert name of borrower*] to the secured party has been paid in full.

Pursuant to section 74 of the Personal Property Security Act, the debtor hereby demands that secured party discharge the relevant registration identified by the initial financing statement number [*insert number*].

Please be advised that failure of secured party to register such financing change statement discharging the registration within fifteen working days after secured party's receipt of this demand letter entitles the debtor to ask the court to issue an order discharging this registration.

[*insert name of debtor*]

[*insert name and title of the person that signed this demand letter on behalf of debtor*]

Form IV
Notification of the Account Debtor to Pay the Secured Party

[*Date*]

[*insert name and address of account debtor*]

Re: Demand by [*insert name of secured party*] ("Secured Party") on account debtor

This letter constitutes a demand for payment under section 89 of the Personal Property Security Act.

The secured party is aware that you are an account debtor of [*insert name and address of debtor*] ("Debtor") and owes money to debtor on account of services provided by or at the direction of debtor or on account of goods sold to you by debtor.

The secured party is a secured creditor of debtor by virtue of a Security Agreement dated as of [*insert date*] (the "Agreement"). Under the Agreement, the secured party has been assigned an interest in the accounts receivable of the debtor.

The debtor is in default under the Agreement, and there is currently owed the principal of [*insert amount*] and interest of [*insert amount*] under the Agreement.

In accordance with the provisions of section 89 of the Personal Property Security Act, the secured party hereby demands that you immediately pay to the secured party to the bank account identified below all amounts that are presently owing to debtor and that you pay to this bank account all future amounts owed to debtor as they become due.

All payments are to be made to the following deposit account [*insert the beneficiary, number, routing number and depository institution that maintains the bank account*].

Attached for your review is a copy of the Agreement and a copy of the registration which perfected the security interest of the secured party. If you would like further verification of or information on the secured party's security interest or if you have any further questions, please contact me at [*insert address and/or phone number*].

[*insert name and title of the person that signed this demand letter on behalf of secured party*]

Form V
Notice of Public Disposition (Auction) of Collateral

NOTICE IS HEREBY GIVEN that at 10:00 a.m. on [*insert date*], a [*insert name of secured party*] ("Secured Party"), intends to offer to sell at a public sale (auction) conducted in accordance with the Personal Property Security Act at [*insert location*] all right, title and interest of

[*insert name of debtor*] ("Debtor") in and to certain collateral of debtor, including [*insert collateral description* ("*Collateral*")].

Pursuant to the Security Agreement dated [*insert date*] (as amended or otherwise modified from time to time, the "Security Agreement") and the other instruments, documents and agreements executed in connexion with the Security Agreement, secured party has extended secured loans and certain other financial accommodations to debtor, and debtor has granted secured party a security interest in the collateral to secure debtor's payment and performance of the obligations under the Security Agreement. Debtor's obligations to secured party under the Security Agreement are not less than [*insert amount*] as of [*insert date*] (exclusive of accrued interest, fees, costs, charges and other obligations as of such date). Debtor is in default in the payment of the obligations.

The collateral will be offered for sale in one or more lots on an "AS IS, WHERE IS" basis, without recourse, representation, guaranty or warranty of any kind whatsoever, whether express or implied, including, without limitation, any warranty relating to merchantability, quiet enjoyment, title, possession or the like. Without limiting the generality of the foregoing, secured party hereby expressly disclaims any and all warranties of merchantability and warranties of fitness for a particular purpose, and secured party shall not be liable whatsoever for any consequential or incidental damages.

Any buyer wishing to make an offer for the collateral at the sale may do so. All offers must be for cash, contain no contingencies that are unsatisfactory to secured party and, unless otherwise agreed by secured party, be payable on the day of the sale. If any successful bidder fails to complete the sale, the collateral may, if secured party chooses, be sold to the next highest bidder at the sale. Secured party reserves the right, by announcement at or prior to the sale, to change the terms and conditions of the sale and/or announce additional terms and conditions. Each prospective bidder must notify secured party's representative [*insert name*] at [*insert address or phone number*] of its intent to attend the sale at least two working days prior to the date of sale. Prospective bidders may obtain additional information with respect to the sale by contacting secured party's representative identified above.

In all events, secured party shall be deemed to be a qualified bidder and may credit bid or buy in for all or any portion of the collateral at the sale. Secured party may announce additional auction procedures at the sale.

Secured party reserves the right to withdraw all or any portion of the collateral from the sale at any time for any reason whatsoever. In addition, secured party reserves the right to cancel the sale at any time, or to cause the sale to be adjourned from time to time, for any reason whatsoever and without further notice or publication other than by announcement at or prior to the sale. Security interests and non-consensual liens that are subordinate

to secured party's security interest will be discharged by the sale pursuant to section 95 of the Personal Property Security Act. A secured party reserves all of its rights against debtor and any other obligor or guarantor for any and all deficiencies with respect to the obligations remaining after the sale. Secured party will apply the sale proceeds received for the assets at the sale in accordance with sections 97 and 98 of the Personal Property Security Act and the terms of the Security Agreement.

[*insert date*]

[*insert name of secured party*]

[*insert name and title of the person that issued this Notice on behalf of secured party*]

Form VI
Notification of Proposal to Retain Collateral

[*insert date*]

[*insert name and address of person entitled to notice under section 94 of the Personal Property Security Act*]

Re: Notification of Proposal to Retain Collateral

[*insert name of debtor*] ("Debtor")

[*insert name and address of secured party*] ("Secured Party")

[*insert collateral description*] ("Collateral")

[*insert name of person receiving notice*]—

The Debtor is in default under a Security Agreement dated [*insert date*]. The outstanding balance due from the debtor to the secured party as of [*insert date*] is [*insert amount*] ("Debt").

The secured party proposes to retain the collateral in full satisfaction of the debt, and the obligations due shall be deemed fully discharged as a result.

If you have any objection to the secured party's proposal to retain the collateral in full satisfaction of the debt, you must send us a notice of your objection pursuant to section 101 of the Personal Property Security Act. If we have not received a notice of objection within ten working days after receiving this notice, you will be deemed to have consented to this proposal and will have no further right to object. The secured party will retain the collateral in full satisfaction of the debtor's obligation, as described in this letter.

[*insert name of secured party*]

[*insert name and title of the person that issued this notice on behalf of secured party*]

PERSONAL PROPERTY SECURITY (FEES AND STAMP DUTY) REGULATIONS

ARRANGEMENT OF REGULATIONS

REGULATION

1. Citation
2. Interpretation
3. Fees for Registry access
4. Determination of microfinance agency status
5. Access by Government departments and institutions
6. Stamp duty on financing statements

SCHEDULE

G.N. 42/2015

PERSONAL PROPERTY SECURITY (FEES AND STAMP DUTY) REGULATIONS

under s. 122

Citation

1. These Regulations may be cited as the Personal Property Security (Fees and Stamp Duty) Regulations.

Interpretation

2. In these Regulations, unless the context otherwise requires—

"microcredit agency" has the meaning ascribed to it in the Microfinance Act; and

Cap. 46:08

"public agency" an institution of Malaŵi Government, whether established by law or otherwise.

Fees for Registry access *Schedule*

3.—(1) A user of the Registry shall pay to the Registrar the fees prescribed in Table 1 of the Schedule, when accessing the Registry.

(2) The Registrar may grant unlimited access relating to the searches or registrations to users to the Registry on payment in advance of the subscription fees prescribed in Table 2 of the Schedule, subject to such terms and conditions as the Registrar may decide.

(3) Where a person opt to pay per transaction, payment shall be made in advance and shall be credited to a user account to be deducted per transaction.

4 . A certificate issued by the Registrar of Financial Institutions under the Microfinance Act shall be conclusive proof that an institution is a microcredit agency.

Determination of microfinance agency status Cap. 46:08

5. The Registrar may grant access to personnel of Government departments or public agencies where the access is reasonably required for their public or statutory functions free of charge of such terms and conditions the Registrar may determine.

Access by Government departments and institutions

6.—(1) Financing statements shall be subject to such stamp duty as may be payable on charge or mortgage instructions under the Stamp Duty Act.

Stamp duty on financing statements Cap. 43:01

(2) In a case where the underlying security agreement is a lease agreement, stamp duty shall be paid at the same rate as the stamp duty payable on leases under the Stamp Duty Act.

Cap. 43:01

SCHEDULE

reg. 3

FEES PAYABLE BY A USER WHEN ACCESSING THE REGISTRY

TABLE 1

General fees payable

(*a*)	for registering an electronic financing statement	K5,000
(*b*)	for generating a search certificate	K2,000
(*c*)	for effecting amendments or discharges	free of charge
(*d*)	for a transitional registrations	free of charge

TABLE 2

Fees payable in relation to unlimited access of the Registry

(*a*)	Microcredit agencies	K250,000
(*b*)	any other bodies corporate and any other persons	K1,000,000

WEIGHTS AND MEASURES

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WEIGHTS AND MEASURES

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CHAPTER 48:04

WEIGHTS AND MEASURES

ARRANGEMENT OF SECTIONS

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PRELIMINARY

1. Short title
2. Interpretation

PART I

STANDARD WEIGHTS AND MEASURES

3. Standard units of weight, length and capacity
4. Units of weight, length, capacity, area and volume in Malaŵi
5. Malaŵi, Local and Working standards
6. Replacement of standards
7. Authentication of standards
8. Verification of standards
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ADMINISTRATION

10. Arrangements with local authorities for administration of the Act
11. Appointment of officers
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13. Certificates in respect of design or pattern of instruments, etc.

PART III

ASSIZING OF INSTRUMENTS, WEIGHTS AND MEASURES

14. Instruments, etc., used in trade to be assized
15. Assizers to reject certain instruments, etc.
16. Instruments, etc., to be assized or re-assized
17. Powers of inspection and entry

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18. Contracts to be made by reference to an authorized measure
19. Containers marked with unauthorized measure
20. Sale and delivery of articles

SECTION

21. Sale of pre-packed articles
22. Provision and operation of weighing instruments
23. Price lists
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GENERAL

28. Regulatory powers of Minister
29. Offences
30. Forfeiture
31. Acts or omissions by managers, agents or employees
32. Safeguards to traders
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34. Burden of proof
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SCHEDULE

UNITS OF WEIGHT, LENGTH, CAPACITY, AREA AND VOLUME

CHAPTER 48:04

WEIGHTS AND MEASURES

18 of 1959(F)
15 of 1966
1 of 1969
17 of 1974
10 of 1981
G.N. 225 1963
219/1964(N)

An Act to provide for the uniformity of measures of weight, length capacity, area and volume, the assizing and re-assizing of weighing or measuring instruments, weights and measures, better protection of the public in relation to the sake of articles and other transactions by weight or measure and for other matters incidental thereto

[1ST JANUARY, 1960]

PRELIMINARY

Short title
10 of 1981

1. This Act may be cited as the Weights and Measures Act.

Interpretation
10 of 1981

2. In this Act, unless inconsistent with the context—

"article" includes any liquids, foods, chattels, wares, merchandise, commodities and other goods of any description and, where necessary, any article and its package;

"assize" or "re-assize" in relation to an instrument, weight or measure means to examine, verify, test in the prescribed manner and when found correct stamp with the stamp of assize and provide with a seal of assize, where prescribed, in accordance with this Act, and cognate expressions shall be construed accordingly;

"assizer" means a person appointed as an assizer in terms of section 11;

"authorized measure" means a unit of weight, length, capacity, area or volume referred to in section 4, and "unauthorized measure" shall be construed accordingly;

"Board" means the Assize Board established in terms of section 12;

"correct" in relation to an instrument, weight or measure, means correct within such limits of error and with such sensitiveness as may be prescribed;

"inspector" means a person appointed as an inspector in terms of section 11;

"instrument" means a weighing or measuring instrument;

"measuring instrument" means an instrument for the measurement of length, area, capacity, volume or quantity;

"police officer" means any member of the Malaŵi Police of the rank of Inspector or above;

"pre-packed", in relation to an article, means packed or made up in advance ready for sale in a wrapper or container;

"purchaser" includes a person acting on behalf of a purchaser;

"rejected", in relation to an instrument, weight or measure, means examined, tested and found not to comply with the requirements of this Act by an assizer and stamped with a prescribed rejection mark, and cognate expressions shall be construed accordingly;

"sale by retail" means a sale to a person buying otherwise than for the purpose of resale, but does not include a sale to a caterer or manufacturer for the purposes of his catering or manufacturing business, as the case may be, and "sell by retail" and "sold by retail" shall be construed accordingly ;

"seal of assize" means a prescribed seal of assize;

"sell" includes to offer, advertise, expose, keep, have in possession, or prepare for sale and to exchange or dispose of for valuable consideration, and cognate expressions shall be construed accordingly;

"stamp" includes to cast, engrave, etch, print or otherwise mark in such manner as to be as far as possible indelible, and cognate expressions shall be construed accordingly;

"stamp of assize" means a prescribed stamp of assize;

"standard" means a Malaŵi, Local or Working Standard, as the case may be, referred to in section 5;

"trade" includes any contract, bargain, sale, dealing and generally any transaction for valuable consideration in pursuance of which articles are weighed, measured or counted, but does not include any contract, or bargain for sale of or dealing in land or interest in land;

"unassized" means not assized, or, in relation to an instrument, weight or measure which under this Act should have been re-assized, not re-assized;

"use in trade", in relation to an instrument, weight or measure, means the use thereof for weighing, measuring or counting in trade, and cognate expressions shall be construed accordingly;

"weighing instrument" includes scales, balances and all kinds of machines or instruments used for weighing, including those which also compute prices and those which count objects by weighing.

PART I

Standard Weights and Measures

Standard units of weight, length and capacity
10 of 1981

3.—(1) The standard unit of weight in Malaŵi shall be a kilogram equal in mass to the International Prototype Kilogram deposited at the International Bureau of Weights and Measures at Sèvres, France.

(2) The standard unit of length in Malaŵi shall be a metre equal in length to 1 650 763.73 wavelengths in vacuum of the radiation corresponding to the transition between the levels $2p_{10}$ and $5d_5$ of the krypton 86 atom.

(3) The standard unit of capacity in Malaŵi shall be a litre equal in volume to one cubic decimetre.

Units of weight, length, capacity, area and volume in Malaŵi
10 of 1981

4. The units of weight, length, capacity, area and volume in Malaŵi and their corresponding values shall be those specified in the Schedule, and such units of weight, length, capacity, area or volume of the Imperial system and their corresponding values as may for the time being be prescribed.

Malaŵi, Local and Working standards

5.—(1) The Minister shall procure standards representing such units of weight, length and capacity specified in the Schedule and such parts and multiples thereof as he may deem necessary, and shall direct which of the standards so procured shall be—

(*a*) Malaŵi standards;

(*b*) Local standards;

(*c*) Working standards.

(2) The Malaŵi standards shall be deposited and kept in such places as the Minister shall determine, and shall be used solely for the purpose of verification of Local standards.

(3) The Local standards shall be kept in the custody of an assizer at such place as shall be prescribed, and shall be used for the purpose of verification of Working standards.

(4) Working standards shall be used for the assizing or reassizing of instruments, weights and measures.

Replacement of standards

6. If at any time a standard is lost, destroyed, defaced, damaged or found by the Minister to be unsuitable, the Minister shall cause that standard to be replaced by a fresh standard.

Authentication of standards

7.—(1) Every standard shall be authenticated in such manner as may be prescribed.

(2) Judicial notice shall be taken of every standard authenticated in terms of this section.

Verification of standards
1 of 1969
17 of 1974

8.—(1) The Minister shall cause—

(*a*) all Malaŵi standards to be verified in such manner as he thinks fit, at intervals not exceeding twenty-five years;

(*b*) all Local standards to be verified in comparison with Malaŵi standards at intervals not exceeding five years;

(*c*) all Working standards to be verified in such manner and at such intervals as may be prescribed.

(2) Records of such verifications shall be kept in such form as the Minister may direct.

Equipment for administration of the Act

9. The Minister shall procure such suitable instruments, appliances and facilities as may be necessary for the purposes of this Act, and shall provide for such repair, adjustment, maintenance, verification or replacement of the instruments, appliances and facilities as may be required.

PART II

Administration

Arrangements with local authorities for administration of the Act

10. (1) Subject to section 11 (2), the Minister may enter into an agreement with any local authority, whereby arrangements are made for—

(*a*) the appointment by the Minister of any person employed by the Government or by a local authority as the case may be, as an assizer or an inspector;

(*b*) the provision by the Government or that local authority of such services or facilities as shall be agreed upon for the administration of this Act in any area within Malaŵi or within the jurisdiction of the local authority concerned.

(2) An agreement referred to in subsection (1) may contain provision for—

(*a*) the reimbursement from moneys provided for the purpose by Parliament to a local authority of the amount of any expenditure incurred by that local authority in pursuance of such agreement; or

(*b*) the payment from moneys provided for the purpose by Parliament to that local authority of an amount equal to that collected in fees in respect of assizing, re-assizing and rejecting of instruments, weights and measures in the area to which such agreement relates; or

(*c*) partly the one and partly the other.

(3) Any person appointed as an assizer or inspector in pursuance of an agreement referred to in subsection (1) shall have all the powers and duties of an assizer or inspector, as the case may be, under this Act but only within the area to which such agreement relates.

Appointment of officers

11.—(1) There shall be appointed, subject to any law relating to the public service, such assizers, inspectors and other officers as he may consider necessary for carrying out this Act.

(2) No person shall be appointed as an assizer unless he is the holder of an assizer's certificate issued to him by the Minister.

Assize Board

12.—(1) The Minister shall establish a board to be known as the Assize Board.

(2) The Board shall consist of not less than three and not more than five persons of whom at least one shall be an assizer. The chairman of the Board shall be appointed by the Minister from the members thereof.

(3) The members of the Board shall hold office for such period and shall be paid such remuneration or allowances as may be prescribed.

(4) The decision of the majority of the members present at any meeting of the Board shall constitute the decision of the Board.

(5) The functions of the Board shall be, when required by the Minister to do so, to make recommendations on—

(*a*) the examination of candidates for the assizer's certificate and the syllabus, conditions of and fees for such examinations;

(*b*) the circumstances in which a person may be issued with an assizer's certificate;

(*c*) the issue of certificates in regard to the suitability of design or pattern of instruments, weights or measures for use in trade or the amendment of such certificates;

(*d*) the limitations of the use in trade of any such design or pattern;

(*e*) the exemption of any area or article or class of articles from all or any provisions of this Act;

(*f*) any dispute or difference which may arise between an assizer and any person in regard to the assizing or re-assizing of any instrument, weight or measure or to the weighing, measuring, marking or packing of any article; and

(*g*) any such other matter as may be referred to it by the Minister.

Certificates in respect of design or pattern of instruments, etc.

13.—(1) Any person may, on payment of the prescribed fee, make a written application to the Minister—

(*a*) for the issue of a certificate in regard to the suitability for use in trade of any instrument, weight or measure of a design or pattern specified in the application; or

(*b*) for the amendment of such certificate if that design or pattern is altered in a manner specified in the application without affecting the principle of the instrument, weight or measure.

(2) If the Minister is satisfied—

(*a*) as to the suitability for use in trade of any instrument, weight or measure of a design or pattern specified in the application, he shall issue a certificate to that effect;

(*b*) that the alteration of the design or pattern specified in the application does not affect the—

(i) suitability for use in trade; and

(ii) principle,

of the instrument, weight or measure, he shall amend the certificate accordingly:

Provided that the Minister may, in such certificate, limit the purposes of trade for which any instrument, weight or measure of that design or pattern may be used and restrict, or impose conditions upon, the use in trade of any such instrument, weight or measure.

(3) If the Minister at any time finds a design or pattern of an instrument, weight or measure in respect of which a certificate has been issued under this section to have some quality which might render it unsuitable for all or any purposes of trade or which has become obsolete he may—

(*a*) cancel such certificate; or

(*b*) cancel such certificate and, upon the payment of the prescribed fee, issue a fresh certificate in place thereof in which he may limit the purposes of trade for which the instrument, weight or measure may be used or restrict or impose conditions upon the use in trade of such instrument, weight or measure.

PART III

Assizing of Instruments, Weights and Measures

Instruments, etc. used in trade to be assized

14. Subject to this Act, every instrument, weight and measure used in trade shall be assized or re-assized in accordance with this Act.

Assizers to reject certain instruments, etc.

15.—(1) An assizer shall reject in the prescribed manner any instrument,weight or measure which he finds to be false or defective or not to be correct or not to comply with the requirements of this Act.

(2) Where an assizer rejects an instrument, weight or measure in terms of subsection (1) he shall issue to the person in charge of such instrument, weight or measure, if required by him to do so, a written statement to the effect that it has been rejected.

Instruments, etc., to be assized or re-assized 10 of 1981

16.—(1) An assizer may, by notice published in the *Gazette* and in such other manner, if any, as the Minister may direct, call upon all persons or any class of persons having instruments, weights or measures in use in trade within an area specified in that notice to produce the same to an assizer for the purpose of their being assized or re-assized at such time and place within that area as may be specified in that notice:

Provided that there shall be an interval of at least fourteen days between the date of publication of the notice in the *Gazette* and the first day on which any instrument, weight or measure is to be produced in terms of this section.

(2) Subject to subsection (3), any person who fails to comply with a notice referred to in subsection (1) shall be liable to a fine of K200 or, in default of payment, to imprisonment for three months.

(3) A person having, within an area specified in a notice referred to in subsection (1)—

(*a*) an instrument of measure which—

(i) is fixed; or

(ii) has a weighing capacity exceeding 250 kg; or

(iii) is of delicate construction; or

(*b*) an instrument, weight or measure which is ordinarily kept at a place which is not within forty kilometres (twenty-five miles) of any place specified in that notice,

shall not be guilty of an offence under this section if, upon the publication of that notice, he forthwith in writing notifies the assizer by whom that notice was published of the particulars of such instrument, weight or measure and the place where it is ordinarily kept and requests that such instrument, weight or measure be assized or re-assized at that place.

(4) An assized measure of capacity made of clear glass or an assized metal measure of length need not be re-assized unless the assizer has reasonable grounds for believing that it has materially altered since it was assized or re-assized for the last time or unless the stamp of assize has been defaced or become illegible.

(5) An assizer may demand that any person producing or submitting an instrument, weight or measure for assizing or re-assizing—

(*a*) cause it to be taken sufficiently apart to enable him to examine the working parts;

(*b*) provide auxiliary material necessary for the assizing or re-assizing of any such instrument, weight or measure;

(*c*) provide transport for the carriage of and labour for the proper and expeditious handling of the standards or any material which is to be used for the assizing or re-assizing of any such instrument, weight or measure;

(*d*) cause it to be cleaned if necessary;

and if such demand is not complied with may refuse to assize or re-assize such instrument, weight or measure.

Powers of inspection and entry
10 of 1981

17.—(1) An assizer, inspector, magistrate or police officer may at all reasonable times—

(*a*) enter into any place or vehicle where he has reasonable cause to believe there is any instrument, weight or measure which is used in trade and may inspect such instrument, weight or measure and cause it to be compared by an assizer with standards;

(*b*) seize and detain any instrument, part of an instrument, weight or measure which he has reasonable cause to believe is used contrary to this Act.

(2) An assizer, inspector, magistrate or police officer may at all reasonable times—

(*a*) enter any place or vehicle in or from which he has reasonable cause to believe any articles are sold or kept for delivery and may inspect and weigh or measure any article found therein;

(*b*) order any person delivering any article to stop and may inspect and weigh or measure any such article;

(*c*) for the purposes of paragraph (*a*) or (*b*) use any assized or re-assized instrument, weight or measure at the place or vehicle where such article is inspected;

(*d*) order the seller of any article to produce for inspection and, if he thinks it necessary, seize and detain any invoice, delivery note or other record kept by such seller relating to the weighing or measuring of such article;

(*e*) seize and detain any article in respect of which he has reasonable cause to believe that an offence has been committed under this Act;

(*f*) order any person mentioned in paragraph (*b*) or (*d*) or in charge of any place or vehicle mentioned in paragraph (*a*) to—

(i) provide labour for the handling and weighing in terms of this section of any article;

(ii) give his name and address and the name and address of his employer, if any.

(3) Any person who fails to comply with any order made in terms of this section shall be liable to a fine of K200 or, in default of payment, to imprisonment for three months.

(4) When exercising any powers conferred by this section an assizer or inspector shall, if so required, produce a written authority from the Minister.

PART IV

Sale of Articles and Use of Instruments, Weights and Measures

Contracts to be made by reference to an authorized measure
10 of 1981

18.—(1) Subject to subsection (3), every contract made or effected in Malaŵi for any work, article, or thing other than land or interest in land shall, when the same has been or is to be done, sold, delivered, carried or agreed for by weight or measure, be made or effected by reference to an authorized measure. If not so made or effected any such contract shall be void.

(2) Subject to subsection (3), any person who sells any article by reference to an unauthorized measure shall be liable to a fine of K200 or, in default of payment, to imprisonment for three months.

(3) This section shall not apply to any contract made or effected with a view to the exportation from, or the importation into, Malaŵi of any article.

Containers marked with unauthorized measure

19. Subject to this Act, no person shall sell any article in a wrapper or container marked with an unauthorized measure unless its correct equivalent in terms of an authorized measure is also marked on that wrapper or container—

(*a*) not less conspicuously than the unauthorized measure; or

(*b*) in the prescribed manner.

Sale and delivery of articles

20.—(1) Subject to subsection (4), no person shall sell any article by weight unless by net weight.

(2) Subject to subsections (3) and (4), a person who sells or has sold an article by weight or measure shall not deliver, cause to be

delivered or have in his possession or charge for delivery to the purchaser such article without an invoice or delivery note showing the net weight or the measure of such article:

Provided that where a weight has been prescribed for a sack, bag or pocket of any article and that article is sold by such sack, bag or pocket it shall be sufficient if the invoice or delivery note contains only the number of such sacks, bags or pockets sold.

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

(*a*) bread or milk sold by retail; or

(*b*) any article weighed or measured in the sight and presence of the purchaser and delivered to him immediately thereafter; or

(*c*) any article sold in a wrapper or container on the outside of which or on a label securely attached to which is clearly and legibly written or printed the net weight or the measure of such article or the net weight or the measure of such article at the time of packing.

(4) This section shall not apply to any article for which weight is used for the purpose of designating grade or class only.

Sale of prepacked articles

21.—(1) Subject to subsection (2), no person shall sell any pre-packed article by weight or measure unless the net weight or the measure of that article is marked on the wrapper or container in the prescribed manner by reference to an authorized measure.

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

(*a*) weighed or measured in the sight and presence of the purchaser and delivered to him immediately thereafter; or

(*b*) in respect of which a weight has been prescribed for a sack, bag or pocket of that article and the article is sold by such sack, bag or pocket; or

(*c*) for which weight is used for the purpose of designating grade or class only.

Provision and operation of weighing instruments

22.—(1) Subject to this Act, where any person in a shop or store or in or from any vehicle sells by retail by weight any article he shall provide an assized weighing instrument and, where necessary, weights capable of weighing such article and shall keep and operate the same in such place and manner that the weighing and the weight indicated by the instrument are clearly visible to the purchaser at all times:

Provided that this subsection shall not apply to any person selling bread from a vehicle.

(2) Subject to this Act, any person responsible for the management of any mill, refinery, creamery, produce store or other place where agricultural or dairy produce is purchased shall provide an assized weighing instrument and, where necessary, weights capable of weighing such produce and shall keep and operate the same in such place and manner that the weighing and the weight indicated by the instrument are clearly visible to the person delivering such produce.

Price lists
10 of 1981

23.—(1) Subject to subsection (2), no person shall print, publish, make, circulate, or cause to be printed, published, made or circulated any price list, catalogue or other paper containing a statement of prices current of articles for sale by weight or measure in Malaŵi in which measures of weight, length, capacity, area or volume of those articles are expressed otherwise than by reference to an authorized measure or denote or imply a greater or lesser measure of weight, length, area or volume than is denoted or implied by an authorized measure.

(2) Subsection (1) shall not apply to any price list, catalogue or other paper emanating from outside Malaŵi which—

(*a*) clearly shows that references to measures of weight, length or volume contained therein are not applicable to Malaŵi; or

(*b*) bears a statement showing the accurate equivalent by reference to an authorized measure of the measures contained in that price list, catalogue or other paper.

False statements as to measure, weight, etc.
10 of 1981

24.—Any person who, by any means whatsoever, whether directly or indirectly—

(*a*) makes a false, incorrect or untrue declaration or statement as to the weight, length, gauge, width, area, capacity, volume or number of any article in connexion with its purchase, sale, weighing or measurement; or

(*b*) sells or causes to be sold anything by weight or measure short of the quantity demanded of, or represented by, the seller,

shall be liable to a fine of K1,000 and to imprisonment for six months.

Prohibition of use and sale of certain instruments, etc.
10 of 1981

25.—(1) Subject to this Act, any person who knowingly uses in trade or has in his possession or charge for such use—

(*a*) any instrument, weight or measure the use in trade whereof is prohibited under this Act or which is false, defective or not correct;

(*b*) any unassized or rejected instrument, weight or measure;

(*c*) any instrument, weight or measure for any purpose of trade—

(i) for which according to a certificate issued under section 13 it may not be used; or

(ii) contrary to any restriction or condition imposed in such certificate.

shall be liable to a fine of K200 or, in default of payment, to imprisonment for three months.

(2) Any person charged with contravening—

(*a*) subsection 1 (*a*) or (*b*), shall be presumed to have known at the time when the offence was committed that the instrument, weight or measure to which the charge relates is such as is described in those paragraphs;

(*b*) subsection (1) (*c*), shall be presumed to have known at the time when the offence was committed the purposes of trade for which, and the restrictions or conditions subject to which, the instrument, weight or measure to which the charge relates, may be used,

unless the contrary is proved.

10 of 1981

(3) Subject to subsection (4), a person shall not sell any weighing instrument unless such instrument bears a stamp of assize of the year of, or immediately preceding, the date of sale.

(4) Subsection (3) does not apply to a weighing instrument of a type which is not ordinarily assizable and which, when manufactured, was not designed for use in trade.

Lawful use of certain unassized instruments, etc.

26.—(1) Any person who has in his possession for use in trade any unassized instrument, weight or measure shall, without undue delay—

(*a*) cause that instrument, weight or measure to be assized or re-assized;or

(*b*) obtain a written authority for the use in trade of such instrument, weight or measure from an assizer in terms of subsection (2).

(2) An assizer may, upon the payment of the prescribed fee, issue a written authority for such period and subject to such conditions, if any, as he may specify therein to any person to use in trade any unassized instrument, weight or measure, if that person furnishes him with a written statement that to the best of his knowledge such instrument, weight or measure is assizable.

(3) A person who uses in trade or has in his possession or charge for such use an unassized instrument, weight or measure—

(*a*) in respect of which there is in force an authority issued under subsection (2); and

(*b*) in accordance with the conditions, if any, specified in that authority,

shall not be liable to criminal proceedings under this Act in respect of such use or possession of that instrument, weight or measure.

Repairs to instruments, etc.

27.—(1) Any person who mends or repairs an assized or rejected instrument, weight or measure shall first permanently obliterate the stamp of assize or the rejection mark thereon and before such instrument, weight or measure is thereafter used in trade, cause such instrument, weight or measure to be assized:

Provided that if such person cannot without undue delay cause such mended or repaired instrument, weight or measure to be assized, he may apply to an assizer for a written authority for the use in trade of such instrument, weight or measure in terms of subsection (2).

(2) An assizer shall, upon the payment of the prescribed fee, issue a written authority for such period and subject to such conditions, if any, as he may specify therein to any person to use in trade any instrument, weight or measure which has been mended or repaired and not subsequently assized if—

(*a*) he is satisfied that the person who mended or repaired such instrument, weight or measure is sufficiently competent to effect such mending or repairing; and

(*b*) the person who mended or repaired such instrument, weight or measure furnishes him with a written statement that to the best of his knowledge such instrument, weight or measure is correct and assizable.

(3) A person who uses in trade or has in his possession or charge for such use an instrument, weight or measure—

(*a*) in respect of which there is in force an authority issued under subsection (2); and

(*b*) in accordance with the conditions, if any, specified in that authority,

shall not be liable to criminal proceedings under this Act in respect of such use or possession of that instrument, weight or measure.

PART V

General

Regulatory powers of Minister 10 of 1981

28. (1) The Minister may by regulation, order or notice prescribe all matters which by this Act are required or permitted to be prescribed, or which are necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) Without derogation from the generality of subsection (1), the Minister may in regulations, orders or notices made in terms of that subsection provide for—

(*a*) the manner in which the process of assizing or re-assizing shall be carried out;

(*b*) the material, construction and marking of instruments, weights and measures for use in trade and the manner in which the denominations of standard units of weight, length or capacity and any multiples or parts thereof may be represented on or by such instruments, weight or measures;

(*c*) the placing, erection and protection of instruments, weights and measures;

(*d*) instruments, weights or measures which, or circumstances in which, an assizer shall refuse to assize or re-assize;

(*e*) prohibiting the use in trade of instruments, weights and measures which in his opinion are liable easily to become incorrect or generally unsuitable for use in trade;

(*f*) limiting the purposes of trade for which certain instruments, weights or measures may be used and restricting, or imposing conditions upon the use in trade of instruments, weights and measures;

(*g*) defining the limits of error which may be allowed and the sensitiveness required in any instrument, weight or measure and the limits of error which may be allowed in the weight or measure of any article;

(*h*) particulars to be specified in an invoice or delivery note relating to any article or class of articles;

(*i*) regulating and controlling the sale by weight, measure or number of any article, and requiring that the same shall be sold by such weight or measure only, or according to prescribed quantities;

(*j*) regulating the manner in which an assizer, inspector, magistrate, or police officer shall carry out his duties under this Act;

(*k*) the circumstances in which a person may be issued with an assizer's certificate by the Minister;

(*l*) the examination of candidates for assizers' certificates and the syllabus, conditions of and fees for such examinations;

(*m*) the conditions upon which any fluids may be sold by weight only or by capacity only;

(*n*) the manner in which the weight, measure or number of an article shall be marked on packages or containers;

(*o*) tables showing the equivalents which may be used in trade of one authorized measure in terms of another authorized measure;

(*p*) the procedure of the Board and its quorum;

(*q*) the forms to be used in connexion with this Act;

(*r*) the quality and tolerance and the conditions for the supply, custody, care and verification of standards and associated equipment;

(*s*) exempting classes of instruments, weights or measures from all or any provisions of this Act;

(*t*) exempting, subject to such conditions as may be prescribed, any area or article or class of articles from all or any provisions of this Act;

(*u*) fees in respect of the assizing, re-assizing and rejection of instruments, weights and measures;

(*v*) the examination, testing, verification and stamping of any instrument, weight or measure belonging to or in use by the Government.

(3) Any regulation, order or notice may be made for the whole of Malaŵi or any part thereof.

(4) In regulations, orders or notices made in terms of subsection (1) the Minister may make different provisions for different classes of persons, articles or trade, and for different areas.

Offences
10 of 1981

29.—(1) Any person—

(*a*) who makes use of any fraudulent art, device or contrivance for the purpose of evading this Act; or

(*b*) who forges or counterfeits or utters or unlawfully has in his possession a forged or counterfeit stamp or die for the assizing or re-assizing of an instrument, weight or measure; or

(*c*) who, save as is provided in section 27—

(i) tampers with an instrument, weight or measure; or

(ii) increases or diminishes a weight or measure; used in trade; or

(*d*) other than an assizer, who places on any instrument, weight or measure any stamp or mark purporting to indicate that such instrument, weight or measure has been assized or re-assized; or

(*e*) who wilfully commits or is a party to or aids in or incites any other person to the commission of any fraud or deception in the use of any instrument, weight or measure,

shall be liable to a fine of K1,000 and to imprisonment for six months.

(2) Any person—

(*a*) who hinders or obstructs any assizer, inspector, magistrate or police officer in the exercise of his functions under this Act; or

(*b*) who impersonates an assizer or inspector; or

(*c*) other than an assizer, and save as is provided in section 27, who obliterates or removes from any instrument, weight or measure any stamp or seal of assize or a part thereof; or

(*d*) who in any way alters any portion of the material or the weight or principle of construction of any instrument, weight or measure in respect of the design or pattern of which a certificate in terms of section 13 is in force and who, by any means whatsoever, whether directly or indirectly, represents such altered instrument, weight or measure to any person as an instrument, weight or measure in respect of the design or pattern of which such certificate is in force; or

(*e*) who contravenes or fails to comply with any provision of this Act with which it is his duty to comply,

shall, save as is otherwise specially provided in this Act, be liable to a fine of K250 or in default of payment to imprisonment for three months.

Forfeiture

30. Upon conviction of a person under this Act, the court may, if it thinks fit, either in addition to or without inflicting any other penalty, order that any article, instrument, weight or measure in respect or by means of which the offence was committed shall be forfeited, unless the owner of such article, instrument, weight or measure or any person acting on his behalf or having a right in that article, instrument, weight or measure shows cause to the contrary.

Acts or omissions by managers, agents or employees

31.—(1) Whenever any manager, agent or employee of any person (hereinafter referred to as the principal) does or omits to do any act which would be an offence under this Act for such principal to do or omit to do, then, unless it is proved that all

reasonable steps were taken by the principal to prevent any act or omission of the kind in question, the principal shall be presumed himself to have done or omitted to do that act and be liable to be convicted and sentenced in respect thereof.

(2) Whenever any manager, agent or employee of a principal does or omits to do any act which would be an offence under this Act to do or omit to do, he shall be liable to be convicted and sentenced in respect thereof as if he were the principal.

(3) Any such manager, agent or employee may be so convicted and sentenced in addition to the principal.

Safeguards to traders

32.—(1) In any proceedings under this Act in respect of an alleged deficiency of weight or measure of any pre-packed article or of bread, the court shall disregard any inconsiderable variation in the weight or measure of a single article, and shall have regard to the average weight or measure of a reasonable number of other articles of the same kind, if any, sold by the accused, or in his possession for the purpose of sale, on the same occasion, and generally to all the circumstances of the case.

(2) It shall be a defence to any proceedings under this Act in respect of an alleged deficiency of weight, length, gauge, width, area, capacity, volume or number if the accused proves that such deficiency was due to a *bona fide* mistake or an accident, evaporation or drainage, or other causes beyond his control, and in spite of all reasonable precautions being taken by him to prevent the occurrence of such deficiency, or was due to the action of some person over whom he had no control.

Documents to be *prima facie* evidence

33.—(1) A document purporting to be signed by an assizer and certifying that an instrument, weight or measure specified therein was inspected or examined and compared with standards by him on a specified date and the finding of his inspection or examination shall be received in any court on production by any person and without further proof as *prima facie* evidence of the facts therein stated.

(2) A document purporting to be signed by an assizer, inspector, magistrate or police officer and certifying that an article specified therein was weighed, measured or counted by him on a specified date and was found to be of a weight, measure or number therein stated shall be received in any court on production by any person and without further proof as *prima facie* evidence of the facts therein stated.

Burden of proof

34.—(1) In any proceedings under this Act in which it is necessary in order to establish the charge against a person to prove that he did at any time use in trade or have in his possession or charge for such use any instrument, weight or

measure he shall, if it is proved that he carried on trade at that time and that such instrument, weight or measure was then in his possession or charge, be presumed, unless the contrary is proved, to have at that time used in trade or to have had in his possession or charge for such use, as the case may be, the said instrument, weight or measure.

(2) In any proceedings under this Act in which it is necessary in order to establish the charge against a person to prove that a notice under section 16 (1) should, in respect of any instrument, weight or measure have been complied with, such instrument, weight or measure shall be presumed, unless the contrary is proved, at all relevant times to have been used in trade by that person in the area to which the notice in question relates.

(3) Where an article is found in or on any place or vehicle which is used by any person for trade that article shall, unless the contrary is proved, be deemed, for the purposes of this Act, to be in or on that place or vehicle for sale.

(4) Where an article packed or made-up in a wrapper or container is found in or on any place or vehicle which is used by any person for trade, that article shall, unless the contrary is proved, be deemed, for the purposes of this Act, to be a pre-packed article.

Recovery of fees

35. The Minister may by action in any court of competent jurisdiction recover the amount of a fee payable in terms of this Act.

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SCHEDULE

ss. 4 and 5

Units of Weight, Length, Capacity, Area and Volume

WEIGHT

Tonne	=	1000 kilograms
Kilogram		
Gram	=	1/1000 kilogram
Metric carat	=	1/5 gram
Decigram	=	1/10 gram
Centigram	=	1/100 gram
Milligram	=	1/1000 gram

LENGTH

Kilometre	=	1000 metres
Metre		
Decimetre	=	1/10 metre
Centimetre	=	1/100 metre
Millimetre	=	1/1000 metre

CAPACITY

Litre		
Decilitre	=	1/10 litre
Centilitre	=	1/100 litre
Millilitre	=	1/1000 litre

AREA

Square metre		
Square decimetre	=	1/100 square metre
Square centimetre	=	1/0000 square metre

VOLUME

Cubic metre		
Cubic decimetre	=	1/100 cubic metre
Cubic centimetre	=	1/1000 cubic decimetre

UNITS OF THE IMPERIAL SYSTEM

All such units of weight, length, capacity, area or volume of the Imperial system and their corresponding values as may for the time being be prescribed under section 4.

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Table XIV Graduated glass measures—metric.
Table XV Liquid measures of capacity—imperial.
Table XVI Liquid measures of capacity—metric.

SECOND SCHEDULE

ABREVIATIONS OF DENOMINATIONS

THIRD SCHEDULE

DENOMINATIONS OF WEIGHTS AND MEASURES WHICH ARE ASSIZABLE

Part I Weights
Part II Measures

G.N.
269/1959(F)
347/1962(F)
192/1963(F)
269/1963(F)
225/1963
60/1964(M)
143/1968
49/1969
211/1971
17/1983
18/1989
4/1997

WEIGHTS AND MEASURES (ASSIZE) REGULATIONS

under s. 28

Citation

1. These Regulations may be cited as the Weights and Measures (Assize) Regulations.

Interpretation

2. In these Regulations, unless inconsistent with the context—

"approved" means approved by the Minister;

"assize" includes to re-assize;

"automatic weighing machine" means a weighing instrument in which special self-acting machinery is used to effect all or some of the following—

(*a*) an automatic feed;

(*b*) the rapid weighing of pre-determined quantities;

(*c*) the registration and summation of loads;or other similar purposes;

"beam scale" means an equal-armed weighing instrument, the pans of which are below the beam;

"bulk flowmeter" means a measuring instrument designed to measure liquid fuel or lubricating oil for individual deliveries of 200 litres or more, whether or not individual deliveries of less than 200 litres may also be made by means of the same instrument;

"capacity" means—

(*a*) in relation to a weighing instrument, the maximum load which it is constructed to weigh as marked on such instrument in accordance with regulation 7;

(*b*) in relation to a measure or measuring instrument, the maximum volume, quantity or length which it is constructed to contain or measure, as the case may be;

"compartment" in relation to a vehicle tank, means a subdivided portion of that tank;

"counter machine" means an equal-armed weighing instrument of a capacity not exceeding 50 kg, the pans of which are above the beam;

"crane machine" means—

(*a*) a suspended unequal-armed compound lever weighing instrument fitted with a loadhook suspended from knife edges, and provided with poises moving over graduated scales to indicate weight; or

(*b*) a suspended self-indicating, hydraulic or spring-actuated weighing instrument,

which has a capacity of not less than one ton;

"deadweight machine" means an equal-armed weighing instrument of a capacity exceeding 50 kg, the pans or platform of which are above the beam;

"difference chart" in relation to a weighing instrument, means a chart on which, by means of a pointer or other indicator, excess or deficiency from a pre-determined weight is indicated;

"error" in relation to an instrument, means the extent to which such instrument indicates in excess or deficiency of standard weight or measure;

"fabric-measuring instrument" means a measuring instrument designed and constructed to measure and to indicate the length of fabric or other material passed through it;

"liquid measuring device" means a measuring instrument provided with a measuring chamber or chambers designed for filling barrels, bottles, drums or other containers with pre-determined quantities of liquid or for dispensing liquids in small quantities from bulk;

"petrol pump" means a measuring instrument provided with either a meter or one or more measuring chambers, designed to measure liquid fuel or lubricating oil for individual deliveries of less than 200 litres, whether or not individual deliveries of more than 200 litres can also be made by means of the same instrument;

"platform machine" means a weighing instrument known as a platform machine, provided with a load-carrying platform or rails supported on or suspended from a compound lever system or an approved system and which indicates the weight of a load on one or more steelyards, on a chart or on both a steelyard and a chart, or by digital display, and includes a counter platform machine, dormant platform machine or overhead weigher;

"repaired" in relation to an instrument, means that the instrument has, since it was last assized, had an addition, replacement, repair or adjustment made to a part which is essential to the use of such instrument;

"self-indicating weighing instrument" means a weighing instrument other than a spring balance on which the whole or a part of the weight of the goods weighed is indicated by means of a pointer moving over a chart, or by means of a chart moving in relation to a fixed pointer, or by digital display;

"sensitiveness" in relation to a weighing instrument, means the actual weight which causes the beam or steelyard to turn;

"spring balance" means a weighing instrument having a capacity of less than 1,000 kg in which weight indications are dependent on the extension of springs and which is so constructed that the load is below the springs and is suspended directly from them;

"steelyard" means—

(*a*) a suspended unequal-armed single-lever weighing instrument, the shorter arm of which carries a loadhook suspended from knife edges, whilst the longer arm is provided with a poise moving over a graduated scale to indicate weight;

(*b*) a steelyard provided on a platform machine, weighbridge or other similar weighing instrument,

as the context requires;

"Table" means the appropriate table of allowances prescribed in the First Schedule;

"turn" in relation to a beam or steelyard, means to move from its position of equilibrium to the full extent of its travel each way between stops or to the limit of its graduated scale;

"vehicle tank" means a measure mounted on a motor vehicle or trailer and used for the measurement of liquid fuel;

"vibrating weighing instrument" means a weighing instrument so constructed that the beam or steelyard returns to or oscillates about the position of equilibrium when disturbed therefrom;

"wall beam" means an unequal-armed multi-lever weighing instrument designed to be affixed to a wall, having a loadhook suspended from knife edges on the lower lever, and provided with poises moving over graduated scales to indicate weight;

"weighbridge" means a weighing instrument known as a weighbridge, provided with a load-carrying platform or rails supported on or suspended from a compound lever system or an approved system and which indicates the weight of a load on one or more steelyards, on a chart or on both a steelyard and a chart, or by digital display.

PART I

General

3. [*Deleted by G.N.* 4/1997]

4. The stamp of assize shall be— Stamp of assize

(*a*) a stamp incorporating the cock symbol, the letters M.G. and a mark consisting of a letter and numeral or numerals identifying the assizer concerned; and

(*b*) in close proximity to the said cock symbol, a date mark consisting of numerals signifying the year of assize.

5. The seal of assize shall be a lead seal bearing a stamp incorporating the cock symbol and the letters "M.G." and a date mark consisting of at least two numerals signifying the year of assize. Seal of assize G.N 17/1983

6.—(1) The rejection mark shall be a mark of six-pointed star design. Rejection mark

(2) For the purposes of section 15 of the Act, an assizer shall reject an instrument, weight or measure—

(*a*) if such instrument, weight or measure bears a stamp of assize, by obliterating such stamp with a rejection mark;

(*b*) if such instrument, weight or measure does not bear a stamp of assize, by stamping the rejection mark in a suitable position thereon.

7.—(1) The capacity of a weighing instrument shall be conspicuously, legibly and durably marked thereon. Marking of capacity or denomination G.N 17/1983

(2) The capacity of a fabric-measuring instrument shall be clearly and conspicuously stamped thereon.

(3) The denomination of a weight shall, except where the small size of it renders it impracticable, be clearly and conspicuously stamped on the upper surface of the weight.

(4) The capacity of a measure shall, unless otherwise prescribed, be clearly and conspicuously stamped on the outside of the measure or on a metal plate permanently secured thereto.

(5) When an instrument, weight or measure is marked with its capacity or denomination, as the case may be, the denomination of weight or measure shall be stated in full or, in respect of a denomination specified in the first column of the Second Schedule, in full or in the abbreviated form specified opposite thereto in the second column of the Second Schedule.

8.—(1) The graduations on an instrument or measure shall— Graduations

(*a*) be indelible, clear, distinct and legible;

(*b*) except in respect of a graduated glass measure, be uniformly spaced;

(*c*) in the case of denominated graduations, be distinguished by longer lines than the intermediate graduations.

(2) The graduations on a steelyard shall—

(*a*) consist of notches or incised or embossed lines so defined that the position of the poise with respect thereto is clearly indicated;

(*b*) be cut, incised or embossed in one plane, at right angles to the steelyard and parallel to each other.

Improper use of instruments, weights or measures G.N 17/1983

9.—(1) No person shall use in trade an instrument which is erected or placed upon an unsuitable or insufficiently strong or stable base or foundation.

(2) No person shall use in trade a platform machine or weighbridge to ascertain the weight of any vehicle or other article unless such instrument—

(*a*) has a platform or platforms or a rail or rails, as the case may be, of sufficient size to support completely such vehicle or other article; and

(*b*) is of sufficient capacity to permit of the weighing of such vehicle or other article when so supported on the platform or platforms, or rail or rails, as the case may be.

(3) No person shall use a counter machine or a self-indicating weighing instrument provided with a sliding or tare weight otherwise than for factory use.

(4) No person shall use in trade a spring balance—

(*a*) which is not of the circular suspended type;

(*b*) with a pan above the spring if its capacity exceeds 10 kg.

(5) Where a person uses in trade a dry measure of capacity for the measurement of any article he shall ensure that the article is neither heaped nor pressed in the measure, but is level with the brim.

(6) Where two or more measures of length are attached to a counter no person shall use in trade such measures unless they are contiguous or are not less than one and one-half metres.

(7) Where a person in a shop or other place sells by retail by weight any article which is weighed in the sight and presence of the purchaser and delivered to him immediately thereafter he shall use for such weighing a weighing instrument which is so sited that the weighing and the weight indicated by the instrument are clearly visible to the purchaser at all times.

Conditions for refusal to assize G.N 17/1983

10.—(1) An assizer shall refuse to assize an instrument, weight or measure which—

(*a*) is not properly constructed or when, in his opinion, its material or mode of construction or any part thereof or its nature or condition appears likely to render it unsuitable for use in trade;

(*b*) has unusual or novel features, unless it is of a design or pattern in respect of which a certificate has been issued in terms of section 13 of the Act;

(*c*) is not sufficiently strong to withstand the wear and tear of ordinary use in trade;

(*d*) is not complete in itself;

(*e*) is not in a clean state;

(*f*) bears a manufacturer's or other mark which might be mistaken for the stamp of assize;

(*g*) having been rejected by the assizer as defective, has not been repaired by a person in possession of a current licence of competency issued under the Weights and Measures (Licence of Competency) Regulations. G.N 49/1969

(2) An assizer shall refuse to assize an instrument which—

(*a*) has interchangeable or reversible parts, unless the interchange or reversal does not affect the accuracy of the instrument;

(*b*) has removable parts, the removal of which would affect the accuracy of the instrument, unless the parts are such that the instrument cannot be used without them.

(3) An assizer shall refuse to assize a weighing instrument which—

(*a*) has a scoop, pan, plate or other part which is essential to its operation broken;

(*b*) has a scoop, pan or plate of such size or shape as may lead to incorrect weighing either through its fouling the housing of the scale, or because proper contact between the knife edge and bearings is disturbed;

(*c*) has a goods-plate which is readily absorbent on account of faulty glazing or on account of the extent to which it is cracked or chipped;

(*d*) has a friction plate, stay, hook or loop which is not of hardened steel or an approved material;

(*e*) has packing at the knife edges which, in the opinion of the assizer, is either excessive as to the number of pieces or is in other respects unsuitable for the purpose.

(4) An assizer shall refuse to assize an accelerating weighing instrument, other than an accelerating deadweight machine.

G.N 143/1968 17/1983

(5) (*a*) Subject to subregulation (*b*) an assizer shall refuse to assize a counter machine constructed on the open Beranger principle;

(*b*) Notwithstanding subregulation (*a*) an open Beranger counter machine which—

(i) was assized or re-assized prior to the 1st July, 1968; and

(ii) has subsequently been re-assized in each year up to but not including the current year,

shall be re-assized as long as it otherwise continues to comply with these Regulations.

11. [*Revoked by G.N.* 17/1983.]

PART II

Weighing Instruments

Testing of weighing instruments

12.—(1) Subject to this regulation, a weighing instrument shall be tested by the direct application of standard weights.

(2) An automatic weighing machine shall be tested—

(*a*) where practicable, by the direct application of standard weights; and

(*b*) by comparing the load delivered against standard weights.

(3) Subject to subregulation (5), a weighbridge shall be tested by the direct application—

(*a*) of standard weights; or

(*b*) of such other testing equipment as may be approved by an assizer.

(4) Subject to subregulation (5), a weighing instrument kept in stock for sale which is tested on the premises of a dealer in or repairer of scales shall be tested by the direct application—

(*a*) of standard weights; or

(*b*) of test weights provided by the dealer or repairer, as the case may be.

(5) When a weighing instrument is tested and sufficient standard or test weights are not available, auxiliary material may be used to make weight.

Limits of error and sensitiveness G.N. 17/1983

13.—(1) A weighing instrument shall be tested for error by ascertaining the weight required to overcome the error in that instrument.

(2) A vibrating weighing instrument shall be tested for sensitiveness by loading the instrument to its capacity, or as near thereto as is practicable, with the beam or steelyard in a horizontal position and ascertaining that the addition of the amount shown in the appropriate table for an instrument of that class and capacity causes the beam or steelyard to turn.

(3) An accelerating deadweight machine shall be tested for acceleration by loading the instrument to its capacity, or as near thereto as is practicable, with the beam at the extremity of its travel, and ascertaining that the subtraction of the amount shown in the third column of Table VI for an instrument of that capacity causes the beam to return to its initial position.

(4) The limit of error allowed and the sensitiveness required in a weighing instrument of a particular class shall be—

(*a*) in the case of a new or repaired instrument, the appropriate limit of error and the sensitiveness prescribed in this Part;

(*b*) in the case of a weighing instrument which is not new or repaired, twice the appropriate limit of error and three times the appropriate sensitiveness prescribed in this Part.

(5) The limit of error allowed and the sensitiveness required in a weighing instrument of a capacity not specified in the appropriate table shall be the limit of error and the sensitiveness which bear the same proportion to the capacity of that instrument as the limits of error and sensitiveness for a similar instrument of the next lower capacity specified in the table bear to the capacity of such latter instrument.

(6) Where a weighing instrument is tested at graduations below the capacity of that instrument, the limit of error allowed shall be—

(*a*) below one-quarter of the capacity, one-quarter of the prescribed limit of error;

(*b*) one-quarter of the capacity or over but not exceeding three-quarters of the capacity, one-half of the prescribed limit of error;

(*c*) above three-quarters of the capacity, the prescribed limit of error.

Poises

14.—(1) Where lead is used for adjusting purposes on any poise it shall not come into contact with the beam or steelyard.

(2) A poise shall be provided with an adjusting hole of such size, shape and design as to permit readily of necessary adjustment.

(3) A poise shall be so constructed that no part thereof can be detached without the use of a mechanical appliance.

Counterpoise weights G.N 17/1983

15.—(1) A counterpoise weight shall be marked in equivalents of 5 kg, 10 kg, 20 kg, 25 kg, 50 kg or 100 kg.

(2) A counterpoise weight used, or intended for use, on a platform machine used for weighing corrosive articles, including hides and skins, shall be made of brass, nickel-steel, or other corrosion-resisting metal.

(3) A counterpoise weight shall have only one undercut adjusting hole containing fixed lead sufficient to cover adequately the bottom of such hole, and with room to permit future adjustments.

(4) A counterpoise weight of an actual weight of less than 100 g shall be made of brass.

(5) Where more than one platform machine provided with counterpoise weights is kept or used by any person on any premises or on a public market, each such counterpoise weight shall be identified with the weighing instrument to which it belongs by—

(*a*) a number conspicuously and indelibly marked and corresponding to a number similarly marked on the pillar and on the counterbalance of the instrument; or

(*b*) a band of paint, of a colour in distinct contrast to the colour of the weight, on the edge of the weight, corresponding to a band of paint of the same colour on the pillar and on the counterbalance of the instrument.

(6) A counterpoise weight shall be circular or hexagonal in shape.

Knife edges and bearings

16.—(1) Knife edges shall—

(*a*) be firmly secured in position;

(*b*) be in true parallelism; and

(*c*) bear throughout the entire length of the parts designed to be in contact with the bearings.

(2) Knife edges and bearings shall be of hardened steel, agate or an approved material and the load-carrying parts shall not show scratches when tested by means of the application of a superfine smooth file.

Balance
G.N. 17/1983

17.—(1) A weighing instrument shall be in balance—

(*a*) when unloaded; and

(*b*) where a loose receptacle or frame is used in conjunction with such instrument, when the receptacle or frame is attached thereto.

(2) Balance shall be indicated—

(*a*) in the case of a vibrating weighing instrument, by the beam or steelyard returning to the position of equilibrium when disturbed therefrom;

(*b*) in the case of a self-indicating weighing instrument or a weighing instrument provided with a graduated indicating plate or a difference chart, by the pointer coming to rest at the position of equilibrium or zero graduation with the bubble of any spirit level provided in its true position except that, in the case of weighing instrument fitted with a digital display, balance shall be indicated by zeros appearing in all windows of the display.

(*c*) in the case of a counter machine constructed on the Beranger principle, by two pointers, each attached to a subsidiary beam, coming to rest directly opposite each other;

(*d*) in the case of an accelerating deadweight machine, by the beam, on being released from the stop under the weights-pan, falling gently to the stop under the goods-pan.

(3) Balance shall not be affected when the load is removed from the instrument.

(4) Where a weighing instrument is provided with a balance box or a balance or gravity ball, such device shall be capable of adjustment only by the use of a mechanical appliance.

Automatic weighing machines
G.N. 17/1983

18.—(1) In an automatic weighing machine—

(*a*) the integral parts shall in respect of principle of construction and material, satisfy such requirements of this Part as are applicable;

(*b*) any beam shall be stamped with a number or mark which corresponds to a number or mark stamped elsewhere on the machine so as to identify it with the machine;

(*c*) any adjusting mechanism shall be suitably secured and protected so that it cannot readily be tampered with.

(2) An automatic weighing machine shall be tested with such number of continuous loads, but not less than twenty, as an assizer may consider necessary. In testing "totalizing" machines, thirty loads shall be passed over the machine, ten of which shall be minimum loads, ten maximum and ten of the mean between the minimum and the maximum.

(3) Subject to regulation 13, the limit of error allowed on an automatic weighing machine is—

(*a*) if the machine weighs amounts of 100 g or less, one per centum in excess only;

(*b*) if the machine weighs amounts in excess of 100 g, one-half per centum in excess only;

of the weight which it purports to deliver.

(4) The stamp of assize shall be stamped upon a lead plug inserted in a conspicuous and easily accessible part of the beam or some other essential part of the machine.

Beam scales
G.N. 17/1983

19.—(1) Beam scales shall be classified as follows—

(*a*) Class 1, comprising precision balances provided with means for relieving all the knife edges and bearings;

(*b*) Class 2, comprising beam scales, other than Class 1 beam scales, used for weighing chemicals, drugs, fine seeds or precious metals or stones;

(*c*) Class 3, comprising beam scales other than Class 1 or Class 2 beam scales.

(2) A new or repaired Class 2 or Class 3 beam scale shall be stamped "Class 2" or "Class 3" as the case may be.

(3) Any device for adjusting the balance of a beam scale shall be permanently secured and so attached that it cannot readily be tampered with:

Provided that a Class 1 or Class 2 beam scale may be fitted with—

(*a*) threaded balancing screws at the extremities of the beam;

(*b*) flags; or

(*c*) an approved balancing device.

(4) In a beam scale provided with a pointer moving across a graduated indicating plate or difference chart, the pointer shall travel beyond the extreme graduation on each side of the point of equilibrium or zero graduation. If the chart is graduated on the heavy side only the pointer shall travel beyond the extreme graduation on that side and for a corresponding distance on the ungraduated side.

(5) A beam scale shall be tested—

(*a*) with the pan loaded to half the capacity of the scale, and any difference in the accuracy of the instrument resulting from moving the knife edges or bearings laterally, or backwards or forwards, within the limits of movement, shall not exceed half the limit of error prescribed in subregulation (6);

(*b*) at capacity.

(6) Subject to regulation 13, the limit of error allowed and the sensitiveness required in a Class 1, Class 2 or Class 3 beam scale of a capacity specified in the first column of Table I, II or III, as the case may be, are those specified opposite thereto in the second and third columns respectively of Table I, II or III, as the case may be.

(7) On a beam scale the stamp of assize shall be stamped upon a lead plug inserted in the beam immediately under or over the fulcrum knife edge or as near thereto as is practicable or, where the beam is totally enclosed in a housing, upon a lead plug securely fitted in a cup rivetted to that housing.

Counter machines

20.—(1) In a counter machine—

(*a*) the supports for the pans shall be of rigid structure;

(*b*) the centre fork shall be so secured that it cannot twist or get out of place.

G.N. 143/1968

(2) A counter machine constructed on the Beranger principle shall have—

(*a*) its working parts totally enclosed in a housing;

(*b*) pans which, if interchangeable, do not offset the balance when interchanged.

(3) Material used for balancing purposes shall be contained in a balance box which is—

(*a*) securely fixed to the under surface of a fixed weights-pan or of the support for a weights-pan;

(*b*) capable of containing lead to a weight not exceeding one per centum of the capacity of the machine.

G.N. 17/1983

(4) On a counter machine the travel of the beam each way from the horizontal position shall be, where the capacity of the machine is—

(*a*) not over 2 kg, not less than 6 mm;

(*b*) over 2 kg and not over 5 kg, not less than 7 mm;

(*c*) over 5 kg and not over 10 kg, not less than 8 mm;

(*d*) over 10 kg and not over 20 kg, not less than 10 mm;

(*e*) over 20 kg, not less than 12 mm.

(5) A counter machine shall be tested—

(*a*) with the pan loaded to half the capacity of the machine and any difference in the accuracy of the instrument resulting from moving the knife edges or bearings laterally, or backwards and forwards, within their limits of movement, shall not exceed half the limit of error prescribed in subregulation (6);

(*b*) with a weight or weights equal to half the capacity of the machine placed on the goods-pan anywhere within a distance from the centre equal to one-third the greatest length of the pan, or, if the pan has a vertical side, against the middle of that side, and a similar weight placed in any position on the weights-pan, and the machine shall indicate the same weight within half the limit of error prescribed in subregulation (6);

(*c*) at capacity with the weights placed centrally on each pan, unless the goods-pan is in the form of a scoop in which case half the total weight shall be placed against the middle of the back of the scoop and the other half in any position on the scoop.

(6) Subject to regulation 13, the limit of error allowed and the sensitiveness required in a counter machine of a capacity specified in the first column of Table IV, are those specified opposite thereto in the second and third columns respectively of Table IV.

(7) The stamp of assize shall be stamped upon a lead plug inserted in a conspicuous and easily accessible part of the beam:

Provided that in the case of a closed Beranger it may be stamped upon the housing or upon a lead plug inserted therein.

Crane machines

21.—(1) In a crane machine the range of balance shall not exceed two per centum of the capacity of the machine.

(2) A crane machine shall be tested at as many numbered graduations as the assizer considers necessary.

(3) Subject to regulation 13, the limit of error allowed and the sensitiveness required in a crane machine of a capacity specified in the first column of Table V shall be double those specified opposite thereto in the second and third columns respectively of Table V.

(4) The stamp of assize shall be stamped upon a lead plug inserted in a conspicuous part of the steelyard or, where the machine has no steelyard, of the housing.

(5) An assizer shall refuse to assize a crane machine not constructed on the lever principle unless it is of a design or pattern in respect of which a certificate has been issued in terms of section 13 of the Act.

Deadweight machines G.N. 17/1983

22.—(1) In a deadweight machine—

(*a*) any goods-platform shall not exceed in length the length of the beam and in width double the width of the beam and shall not be fitted with folding wings which increase such dimensions by more than one-third in either direction;

(*b*) any platform shall be made of metal or an approved material.

(2) Material used for balancing purposes shall be contained in a balance box securely fixed to the under surface of a platform.

(3) The travel of the beam from the horizontal position shall be not less than—

(*a*) in the case of an accelerating deadweight machine, 22 mm;

(*b*) in the case of a deadweight machine which is not an accelerating deadweight machine, 15 mm either way.

(4) A deadweight machine shall be tested—

(*a*) with weights equal to half the capacity of the machine placed successively at the middle of the front and of the back of each platform and centrally over the knife edges on each side, and the machine shall indicate the same weight within half the limit of error prescribed in subregulation (5);

(*b*) at capacity, and the weights shall be distributed evenly on the platforms.

(5) Subject to regulation 13, in a deadweight machine of a capacity specified in the first column of Table VI—

(*a*) which is an accelerating deadweight machine, the limit of error allowed and the weight required to bring the beam back from its position of maximum displacement are those specified opposite thereto in the second and third columns respectively of Table VI;

(*b*) which is not an accelerating deadweight machine, the limit of error allowed and the sensitiveness required are those specified opposite thereto in the second and fourth columns respectively of Table VI.

(6) The stamp of assize shall be stamped upon a lead plug inserted in a conspicuous and easily accessible part of the beam.

Platform machines and weigh bridges G.N. 17/1983

23.—(1) In a platform machine or weighbridge—

(*a*) the upper surface or edge of the steelyard shall be in a straight plane from the zero graduation to the nose end;

(*b*) there shall be no readily removable parts other than the counterbalance to support the counterpoise weights;

(*c*) adequate stops shall be provided to prevent any poise from travelling behind the zero graduation;

(*d*) provided with a load carrying rail or rails, such rail or rails shall be distant from any other rail or rails not less than 12mm.

(2) A weighbridge shall have—

(*a*) provision for adequate drainage and the pit kept free from any accumulation of water, mud or debris;

(*b*) its approaches smooth, straight and level for a distance not less than the length of the platform at each end of such weighbridge except that, if the platform is of sufficient length to accommodate the entire vehicle being weighed, it is sufficient if the approaches are smooth and straight at each end for a lesser distance.

(*c*) the building housing the chart or steelyard so constructed that the operator has a clear and unobstructed view of the entire platform or platforms.

(*d*) the platform so protected as to allow vehicles to pass on and off the platform at the ends only;

(*e*) foundations of adequate strength to support, without change of position, both the mechanism and a load equal to the capacity of the weighbridge.

(3) Where a platform machine or weighbridge is not provided with a tare-beam, the weight of any loose receptacle or frame used in conjunction with the instrument shall be accurately compensated for by means of a counterpoise weight distinctive in shape from any of the ordinary counterpoise weights belonging to the instrument. Such compensating weight shall have the words "TARE WEIGHT" legibly and conspicuously stamped on its edge.

(4) The range of balance—

(*a*) in a platform machine, shall not exceed one half per centum of the capacity of the machine and shall be not less than one-eighth per centum of such capacity each way from the centre of travel of the ball;

(*b*) in a weighbridge, shall be double the range permitted in a platform machine.

(5) The travel of the steelyard each way from the horizontal position shall be not less than—

(*a*) in a platform machine, 10 mm;

(*b*) in a weighbridge, 12 mm.

(6) A platform machine or weighbridge shall be tested—

(*a*) with a load which is equal to, or is as near as is practicable to, one-quarter of its capacity, and the machine shall indicate the same weight within half the limit of error prescribed in subregulation (7), whether the load is placed on the middle or near the ends or corners of the platform;

(*b*) at as many numbered graduations of the steelyard or chart or as many indications on the digital display as the assizer considers necessary, and also each individual counterpoise weight, drop weight, tare bar, weigh bar, or any other device used to increase the capacity of the machine shall be tested;

(*c*) at capacity or as near thereto as, in the opinion of an assizer, is practicable with the weights and materials evenly distributed on the platform;

(*d*) and the instrument shall be correct whether the test is forward or backward;

(*e*) in the case of a dormant platform machine, weighbridge or overhead weigher, in situ, and it shall be correct when the load is run on or off the platform or load-carrying rail, as the case may be;

(*f*) and it shall, if fitted with a locking handle or relieving gear, be correct when the machine is put slowly out of and into action.

(7) Subject to regulation 13, the limit of error allowed and the sensitiveness required are—

(*a*) in the case of a platform machine of a capacity specified in the first column of Table VII, those specified opposite thereto in the second and third columns respectively of Table VII;

(*b*) in the case of a weighbridge of a capacity specified in the first column of Table V, those specified opposite thereto in the second and third columns respectively of Table V.

(8) The stamp of assize shall be stamped upon a lead plug inserted in a conspicuous and easily accessible position on the instrument and the official date stamp shall be stamped upon the lead in the adjusting hole of any counterpoise or tare weight.

(9) An assizer shall refuse to assize—

(*a*) an instrument of the type known as Union scales;

(*b*) a platform machine having counterpoise weights which, when added to the full value of the steelyard reading, represent a weight greater or less than the capacity of the machine.

Self-indicating weighing instruments G.N. 17/1983

24.—(1) In a self-indicating weighing instrument—

(*a*) in which weight indications are dependent on the extension of a spring or springs, such spring or springs shall be iso-elastic or a temperature compensating device shall be incorporated;

(*b*) other than a dormant platform machine, weighbridge, suspended self-indicating weighing instrument or a self-indicating weighing instrument specifically designed for use in an out-of-level position, a circular spirit level or cross spirit level shall be provided;

(*c*) error due to parallax shall not exceed the value of the smallest subdivision;

(*d*) the indicating wire or the extremity of the indicating pointer shall not exceed in width or thickness the width of any graduation, and the extremity of the pointer shall meet but not obscure the graduations;

(*e*) which is new or repaired and is provided with a cylindrical or revolving chart, any indicating wire shall be a single wire;

(*f*) in which the chart is partly enclosed, the aperture through which the indications are read shall be sufficiently large to permit the next lower numbered graduation to be read.

(2) The graduations on the chart shall—

(*a*) in the case of a platform machine or weighbridge—

(i) not exceed 0.8 mm or 1.5 mm in width in a platform machine or weighbridge respectively; and

(ii) be not less than 2.5 mm, measured from centre to centre, whether or not they are on opposite sides of a dividing line;

(*b*) in the case of a self-indicating weighing instrument other than a platform machine or weighbridge—

(i) not exceed 0.4 mm in width;

(ii) be not less than 1.5 mm apart, measured from centre to centre, whether or not they are on opposite sides of a dividing line:

Provided that a lens or other approved device may be fitted to the instrument for the purpose of magnifying the graduations so as to bring them in to conformity with this subsection.

(3) The weight value of the smallest subdivision of the chart shall, where the capacity of the chart is— G.N. 17/1983

(*a*) not over 500 g, not exceed 5 g;

(*b*) over 500 g and not over 2 kg, not exceed 10 g;

(*c*) over 2 kg and not over 10 kg, not exceed 20 g;

(*d*) over 10 kg and not over 25 kg, not exceed 50 g;

(*e*) over 25 kg and not over 50 kg, not exceed 100 g;

(*f*) over 50 kg and not over 100 kg, not exceed 200 g;

(*g*) over 100 kg and not over 250 kg, not exceed 500 g;

(*h*) over 250 kg and not over 500 kg, not exceed 1 kg;

(*i*) over 500 kg and not over 2,000 kg, not exceed 2 kg;

(*j*) over 2,000 kg and not over 5,000 kg, not exceed 5 kg;

(*k*) over 5,000 kg and not over 10,000 kg, not exceed 10 kg;

(*l*) over 10,000 kg and not over 25,000 kg, not exceed 20 kg;

(*m*) over 25,000 kg, not exceed 50 kg.

(4) A self-indicating weighing instrument shall be tested—

(*a*) to ensure that the graduations indicating value in money are in alignment with those indicating weight, and a sufficient number of computations shall be checked to establish their accuracy;

(*b*) at as many graduations or indications as the assizer considers necessary, and the instrument shall be correct whether the test is forward or backward;

(*c*) to ensure that the instrument, if fitted with two charts indicating weight, shows the same indication on both;

(*d*) if it is specifically designed for use in an out-of-level position, with the instrument in a level position and again with the instrument in an out-of-level position.

(5) Subject to regulation 13, the limit of error allowed on a self-indicating weighing instrument is the weight corresponding to one-half of the smallest subdivision on the chart: G.N. 17/1983

Provided that in the case of a self-indicating weighing instrument with a digital display, the limit of error allowed shall be a weight corresponding to one increment.

(6) The stamp of assize shall be stamped upon a lead plug inserted in a conspicuous and easily accessible part of the instrument.

25.—(1) In a spring balance— Spring balances G.N. 17/1983

(*a*) the chart shall—

(i) be clearly and indelibly marked "TRADE SPRING BALANCE"

(ii) bear a statement of the weight value of the smallest subdivision;

(iii) be made of white enamel, polished brass, or an approved material so protected that the graduations and other markings are clearly visible;

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(*b*) the graduations on the chart shall not exceed 0.8 mm in width nor be less than—

(i) 1.25 mm apart in the case of an instrument of not more than 15 kg capacity;

(ii) 2 mm apart in the case of an instrument of over 15 kg but not more than 50 kg capacity;

(iii) 2.5 mm apart in the case of an instrument of over 50 kg capacity;

(*c*) where a temperature compensating device or iso-elastic spring or springs are incorporated, it shall be capable of compensating temperature variations of 10 degrees celsius in balance and at load;

(*d*) any ball-bearing unit shall be protected against dust and dirt;

(*e*) the extremity of the indicating pointer shall not—

(i) exceed in width or thickness the width of any graduation; and

(ii) be more than 3 mm from the chart;

(*f*) a suitable balancing device capable of adjustment only by the use of a mechanical appliance shall be provided;

(*g*) back-balanced for use with a bag, sack, pan or other means of loading, such fact shall be clearly stated on the chart.

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(2) The weight value of the smallest subdivision of the chart shall, where the capacity of the chart is—

(*a*) under 1 kg, not exceed 5 g;

(*b*) I kg or over and under 5 kg, not exceed 10 g;

(*c*) 5 kg or over and under 10 kg, not exceed 20 g;

(*d*) 10 kg or over and under 20 kg, not exceed 50 g;

(*e*) 20 kg or over and under 50 kg, not exceed 100 g;

(*f*) 50 kg or over, not exceed one-half of one *per centum* of such capacity.

(3) The range of balance shall not exceed one per centum of the capacity of the spring balance.

(4) A spring balance shall be tested—

(*a*) at as many graduations as the assizer considers necessary, and it shall be correct whether the test is forward or backward;

(*b*) and the assizer may test the balance for efficiency or ability to recover by leaving on the pan or hook a load equal to the capacity of the balance for a period not exceeding twenty-four hours, and after the expiration of a further four hours testing for accuracy.

(5) Subject to regulation 13, the limit of error allowed on a spring balance is the weight corresponding to one-half of the smallest subdivision.

(6) The stamp of assize shall be stamped upon a lead plug inserted in the chart, or in a prominent position on the instrument.

Steelyards and wall beams G.N. 17/1983

26.—(1) In a steelyard or wall beam—

(*a*) the steelyard shall be made of wrought-iron, steel or an approved metal and shall be perfectly straight;

(*b*) a stop to prevent excessive oscillation of the steelyard shall be provided;

(*c*) any load hook shall be securely attached to the instrument;

(*d*) end fittings to prevent the poise-carrier riding off the steelyard shall be securely attached;

(*e*) any poise shall move freely without risk of injury to the notches and there shall be a stop to prevent it travelling behind the zero graduation.

(2) In a wall beam—

(*a*) the frame and bracket shall be of adequate strength to support, without deflection, both the wall beam and a load equal to the capacity of the wall beam;

(*b*) on a swivel bracket, the steelyard shall be level in all positions;

(*c*) the range of balance shall not exceed one-half per centum of the capacity of the wall beam.

(3) The travel of the steelyard of a wall beam each way from the horizontal position shall be not less than 10 mm.

(4) A wall beam or steelyard shall be tested at as many graduations as the assizer considers necessary, and the instrument shall be correct whether the test is forward or backward.

(5) Subject to regulation 13, the limit of error allowed and the sensitiveness required are—

(*a*) in the case of a steelyard of a capacity specified in the first column of Table VII, double those specified opposite thereto in the second and third columns respectively of Table VII;

(*b*) in the case of a wall beam of a capacity specified in the first column of Table VII, those specified opposite thereto in the second and third columns respectively of Table VII.

(6) The stamp of assize shall be stamped upon a lead plug inserted in a conspicuous and easily accessible part of the instrument and a date stamp shall be stamped upon the lead in the adjusting hole of the poise.

(7) An assizer shall refuse to assize—

(*a*) a counter steelyard;

(*b*) a steelyard of a capacity of less than 50 kg;

(*c*) a steelyard with three hooks.

PART III

Weights

Weights

27.—(1) A weight shall—

(*a*) be free from flaws and, except for the marking of the denomination and the maker's name, be smooth on all its surfaces;

(*b*) if it is a new iron weight, be galvanized, oxidized, painted or protected by an approved process.

(2) If a weight is marked with the maker's name the size of the letters thereof shall not exceed one-half the size of the letters marking the denomination.

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(3) A weight shall—

(*a*) if it is of 50 g or over, be provided with an adjusting hole;

(*b*) if it is not made of iron, be of cylindrical or hexagonal form;

(*c*) if it is made of iron and is of 2 kg or under, be of cylindrical or hexagonal form;

(*d*) if it is made of iron and is of 5 kg or over, be of hexagonal or rectangular bar form:

Provided that, a weight of 500 mg or under may be in the form of wire.

(4) The adjusting hole of a weight shall—

(*a*) be undercut, on the under surface of the weight, and shall not extend to the upper surface of the weight;

(*b*) be plugged with lead which, in the case of an iron weight, is not less than 3 mm thick;

(*c*) in the case of a new weight, be in depth not less than two-fifths nor more than three-fifths of the centre thickness of the weight, with the lead plug not less than one-fifth of the centre thickness of the weight from the under surface of the weight.

(5) A weight shall be tested on an assizer's balance or beam scale against a standard weight.

(6) The limit of error allowed— G.N. 17/1983

(*a*) on a weight of a denomination specified in the first column of Table VIII—

(i) which is made of iron, is that specified opposite thereto in the second column of Table VIII;

(ii) which is not made of iron, is that specified opposite thereto in the third column of Table VIII;

(*b*) on a metric carat weight of a denomination specified in the first column of Table IX, is that specified opposite thereto in the second column of Table IX.

(7) The stamp of assize shall be stamped—

(*a*) if the weight is provided with an adjusting hole, upon the lead in that hole;

(*b*) if the weight is not provided with an adjusting hole, upon the upper surface of the weight on first submission and thereafter upon the under surface.

28. An assizer shall refuse to assize— Weights not assizabte G. N. 17/1983

(*a*) a weight made of solder, tin or any other soft metal;

(*b*) a cased weight or weight made of two or more unalloyed metals;

(*c*) a weight marked with a trade mark other than a maker's name;

(*d*) an iron weight under 100 grams;

(*e*) an iron weight with a removable or split ring;

(*f*) ring weight;

(*g*) a weight provided with more than one adjusting hole;

(*h*) a weight of a denomination not specified in Part I of the Third Schedule.

PART IV

Measures

29.—(1) A dry measure of capacity— Dry measures of capacity G.N. 17/1983

(*a*) shall be made of aluminium, brass, bronze, copper, nickel, sheet iron, steel, tin plate, or an approved metal;

(*b*) may be protected by electro-plating, galvanization, or an approved process;

(*c*) of 50 litres or under, shall be cylindrical in form with the internal diameter not differing by more than five per centum from the depth.

(2) The capacity of a dry measure of capacity shall be defined by the brim of the measure.

(3) A dry measure of capacity shall be tested either with water or in the following manner with fine seed—

(*a*) the standard shall be filled with seed passed through a hopper, a distance of 150 mm being left between the bottom of the hopper and the top of the standard;

(*b*) the seed in the standard shall then be passed through the hopper into the measure being tested, a distance of 150 mm being left between the bottom of the hopper and the top of the measure.

(4) The limit of error allowed in a dry measure of capacity of a capacity specified in the first column of Table XIII, is that specified opposite thereto in the second column of Table XIII.

(5) The stamp of assize shall be stamped near the brim of the measure directly above the position where the capacity is marked.

(6) An assizer shall refuse to assize a dry measure of capacity of a capacity not specified in paragraph 3 of Part II of the Third Schedule.

Liquid measures of capacity G.N. 17/1983

30.—(1) A liquid measure of capacity—

(*a*) shall be made of glass or of aluminium, brass, bronze, copper, nickel, pewter, sheet iron, silver, steel, tin plate, white metal, or an approved metal;

(*b*) may be protected by anodising, electro-plating, enamelling, galvanization or tinning;

(*c*) made of brass, bronze or copper shall have the inside surfaces well tinned;

(*d*) which is electro-plated shall be uniformly coated and shall show no signs of peeling;

(*e*) shall not have a strengthening rib or ring which might be mistaken for a graduation;

(*f*) shall not have a false bottom;

(*g*) made of metal shall not have a bottom rim of a depth greater than is necessary to protect the bottom of the measure;

(*h*) shall not be provided with a lip or retaining edge which increases the capacity of the measure by more than ten per centum;

(*i*) shall drain completely when tilted to an angle of one hundred and twenty degrees from the vertical;

(*j*) if provided with a tap shall drain completely without a prolonged dribble when the tap is open and the measure is in a level position;

(*k*) shall not have its capacity stamped on the bottom, edge, handle, lip or rim of the measure;

(*l*) made of glass which has its capacity defined by a line, shall have its capacity stamped near that line.

(2) The capacity of a liquid measure of capacity shall be clearly defined—

(*a*) if the measure is provided with a lip or retaining edge, by the bottom of the lip or retaining edge;

(*b*) if the measure is in the form of a milk can, by the bottom of the neck of the measure;

(*c*) if the measure is a glass measure other than a graduated glass measure, by—

(i) the brim of the measure; or

(ii) an indelible line not less than 50 mm in length and distant not less than 12 mm and not more than 40 mm from the brim;

(*d*) if the measure is a measure not referred to in paragraph (*a*), (*b*) or (*c*), by the brim of the measure.

(3) A metal dipping measure of capacity shall—

(*a*) be of circular or elliptical section with vertical sides;

(*b*) be provided with a long handle;

(*c*) have sides the height of which do not differ by more than ten per centum from one and a half times the mean dimension of its section;

(*d*) not exceed one litre in capacity.

(4) A graduated glass measure shall—

(*a*) be of conical or cylindrical form;

(*b*) have a level base at right angles to the axis of the measure;

(*c*) have graduations which are—

(i) parallel to the base of the measure;

(ii) not less than 1.5 mm apart;

(iii) in the case of back graduations, coincidental with the front graduations when the measure is standing in a level position.

(5) A liquid measure of capacity shall be tested against a standard measure. When testing a glass measure the capacity of which is defined by a line, the level of the water shall be taken at the bottom of the meniscus.

(6) The limit of error allowed on a liquid measure of capacity is—

(*a*) in the case of a graduated glass measure with an internal diameter at the graduation tested of approximately that specified in the first column of Table XI, that specified opposite thereto in the second column of Table XI:

Provided that in the case of a burette, glass flask or pipette, the limit of error allowed shall be half the limit specified in Table XI;

(*b*) in the case of a measure, other than a graduated glass measure of a capacity specified in the first column of Table XII, that specified opposite thereto in the second column:

Provided that in the case of a conical measure, the limit of error allowed shall be half the limit specified in Table XII.

(7) The stamp of assize shall be stamped—

(*a*) if the measure is a metal measure provided with a lip or retaining edge, at the bottom of the inside of the lip or retaining edge;

(*b*) if the measure is not a metal measure provided with a lip or retaining edge, near the position where the capacity is marked.

(8) An assizer shall refuse to assize a liquid measure of capacity of a capacity not specified—

(*a*) in the case of a graduated measure, in paragraph 1;

(*b*) in the case of a measure other than a graduated glass measure, in paragraph 2,

of Part II of the Third Schedule.

Measures of length G.N. 17/1983

31.—(1) A measure of length shall—

(*a*) be made of brass, hardwood, ivory, steel, woven tape or an approved material;

(*b*) if it is a rigid measure, be straight and free from flaws;

(*c*) if it is a wooden measure, have both ends capped with metal and the tips riveted;

(*d*) if it is provided with hinges or sliding or caliper arms, have no more play than is required for easy movement.

(2) A measure of length shall not be sub-divided otherwise than into decimetres, centimetres and millimetres.

(3) A measure of length shall be tested—

(*a*) against a standard measure;

(*b*) in the case of a tape measure, whilst supported as far as practicable throughout its entire length on a plane and even base and subjected—

(i) in the case of a tape measure made wholly of metal, to 5kg;

(ii) in the case of a tape measure not made wholly of metal, to 1 kg,

tension or pull.

(4) The limit of error allowed on a measure of length shall be as specified in Table X of the First Schedule.

(5) The stamp of assize shall be stamped—

(*a*) if the measure is a tape measure, upon a metal label or disc securely fixed thereto;

(*b*) if the measure is not a tape measure, near the zero graduation.

(6) An assizer shall refuse to assize a measure of length of a denomination not specified in paragraph 5 of Part II of the Third Schedule.

Vehicle tanks
G.N. 17/1983

32.—(1) A vehicle tank or compartment shall—

(*a*) be of cylindrical or elliptical section;

(*b*) be fitted with a fixed-quantity indicator or provided with a dip-stick by means of which the liquid can be measured;

(*c*) if of elliptical section, have the length of the major axis of the section not more than one and a half times the length of the minor axis of the section;

(*d*) have a delivery outlet, pipe and valves which are completely separate from any other delivery outlet, pipe and valves on the same motor vehicle or trailer;

(*e*) have the delivery piping connected thereto of such design and construction that when the motor vehicle or trailer on which it is mounted is standing in a level position the tank or compartment can be completely drained;

(*f*) be effectively ventilated to prevent the formation of airpockets;

(*g*) if it is new, have the filler opening of such size and construction as to permit of internal inspection.

(2) In a vehicle tank or compartment fitted with a fixed quantity indicator—

(*a*) the marking of the capacity on the tank or compartment shall be preceded by the word "CAPACITY" and followed by the words "TO INDICATOR";

(*b*) the tank or compartment shall be stamped with a number which corresponds to a number similarly stamped on the delivery outlet so as to identify it with that outlet;

(*c*) the indicator shall—

(i) be made of metal;

(ii) be fixed rigidly so as to indicate on the longitudinal axis and under the dome centrally situated on the top of such tank or compartment;

(iii) clearly and distinctly indicate, by means of a disc of at least 25 mm in diameter, the height to which the tank or compartment must be filled in order to contain its marked capacity;

(iv) if it is adjustable, be so constructed that it can be sealed so as to prevent any change in its position without the seal being broken.

(3) In a vehicle tank or compartment provided with a dip-stick—

(*a*) the tank or compartment shall have a guide tube for the dip-stick, fixed centrally so that the dip-stick indicates on the longitudinal axis;

(*b*) such dip-stick shall be—

(i) made of metal;

(ii) graduated to indicate the actual contents of the measure;

(iii) indelibly stamped with a number which corresponds to a number similarly stamped on the tank or compartment so as to identify it with that tank or compartment.

(4) The volume of a vehicle tank or compartment shall exceed the marked capacity of such tank or compartment by not less than one and one-half per centum of such capacity.

(5) A vehicle tank or compartment shall be tested—

(*a*) with the tank or compartment in a level position;

(*b*) against standard measures or with a bulk flowmeter assized immediately prior to the testing of the vehicle tank or compartment;

(*c*) if it is provided with an emergency valve for closing the delivery outlet, with such emergency valve open.

(6) The limit of error allowed on a vehicle tank, compartment or dip-stick is one-half per centum of its capacity at the indication tested.

(7) The stamp of assize shall be stamped—

(*a*) if the tank or compartment is fitted with a fixed-quantity indicator, upon a lead seal attached to the indicator;

(*b*) if the tank or compartment is provided with a dip-stick, upon solder studs or upon the metal at the top and bottom of the dip-stick.

(8) An assizer shall refuse to assize a vehicle tank or compartment provided with a dip-stick graduated to indicate different quantities unless an accurate full scale diagram of the graduations on the dip-stick has been supplied to him and such diagram—

(*a*) is on suitable drawing paper;

(*b*) bears a number which corresponds to the number stamped on the dip-stick so as to identify it with that dip-stick.

PART V

Measuring Instruments

Bulk flowmeters G.N. 17/1983

33.—(1) In a bulk flowmeter—

(*a*) an air separator shall be provided which—

(i) prevents air passing through the meter to such an extent as to affect the accuracy of delivery; and

(ii) ensures non-registration when the supply of liquid fuel or oil fails;

(*b*) there shall be no leakage;

(*c*) the figures on any indicator shall be indelible, clear and legible;

(*d*) the maker's name shall be stamped on the instrument;

(*e*) the maximum and minimum rates of flow in litres per minute shall be shown;

(*f*) in respect of which a certificate has been issued in terms of section 13 of the Act, the reference number of such certificate shall be shown.

(2) A bulk flowmeter shall be tested—

(*a*) after any dry hose has been flushed and the instrument reset to zero;

(*b*) to ensure that whenever the instrument is reset to zero, the indicating pointer is in alignment with the zero indication;

(*c*) by passing the liquid through the meter into a standard measure in as many deliveries and of such quantities as the assizer considers necessary;

(*d*) with varying heads of liquid or with varying bore by manipulation of the delivery valve so far as is practicable.

(3) The limit of error allowed on a bulk flowmeter is one-half per centum of the quanity tested, in excess only.

(4) The stamp of assize shall be stamped upon a lead plug inserted in a conspicuous and easily accessible part of the meter. A seal of assize shall be affixed where necessary to prevent access to the working parts or adjusting device without the seal being broken.

Fabric-measuring instruments G.N. 17/1983

34.—(1) In a fabric-measuring instrument—

(*a*) the measuring rollers shall, when in position for measuring, be in true parallelism;

(*b*) a braking device shall be fitted which ensures non-registration when the supply of fabric fails;

(*c*) the rollers shall be free when the instrument is reset;

(*d*) the chart or charts shall, when the instrument is reset, return to zero either automatically or by the operation of a special handle or device provided for that purpose;

(*e*) the indications shall be by means of graduations not less than—

(i) 20 mm apart in the case of graduations of a length value of 100 mm;

(ii) 3 mm apart in the case of graduations of a length value of 25 mm,

or by counters.

(2) A fabric-measuring instrument shall be tested—

(*a*) by passing the standard or the fabric normally measured by that instrument through the instrument at right angles to the axis of the measuring rollers;

(*b*) and if it is necessary to remove the standard or fabric during the test, this shall only be done when an integral number of metres of the standard or fabric has passed through the instrument and the standard or fabric shall be re-inserted at the zero or initial graduation of the standard or fabric;

(*c*) and the instrument shall be correct whether the test is forward or backward;

(*d*) to ensure that—

(i) the instrument, if fitted with two charts, shows the same indication of length on both;

(ii) any totalizing meter functions properly and correctly;

(iii) the parts work freely throughout the range of the instrument;

(iv) there is no back-lash in the mechanism.

(3) The limit of error allowed on a fabric-measuring instrument is, for each metre or portion thereof indicated, 2 mm deficiency and 4 mm in excess.

(4) The stamp of assize shall be stamped upon a lead plug inserted in a conspicuous and easily accessible part of the instrument. A seal of assize shall be affixed where necessary to prevent access to the working parts or adjusting device without the seal being broken.

Liquid measuring devices G.N. 17/1983

35.—(1) In a liquid measuring device—

(*a*) adequate provision to prevent the formation of airlocks shall be made;

(*b*) there shall be no leakage;

(*c*) any valve shall work freely.

(2) A liquid measuring device shall be tested—

(*a*) after the device, and any delivery hose or measure used in the test has been flushed;

(*b*) in the case of each separate measuring chamber—

(i) by passing the liquid from the chamber into a standard measure or, where this is not practicable, into the barrel, bottle, drum or other container and then into a standard measure;

(ii) where it is not practicable to test the liquid with a standard measure, by ascertaining the net weight of the liquid delivered and converting such weight into volume, basing the computation on the specific gravity of the liquid.

(3) The limit of error allowed on a liquid measuring device is one-half per centum of the quantity purported to be delivered, in excess only:

Provided that the limit of error allowed on a 35 ml dispensing or measuring tap is 4 per cent of the capacity in excess or 2 per cent of the capacity in deficiency.

(4) The stamp of assize shall be stamped—

(*a*) upon a lead plug inserted in a conspicuous and easily accessible part of the device; and

(*b*) if the device is provided with a metal displacer or displacers to alter the capacity of a measuring chamber, upon such displacer or displacers.

A seal of assize shall be affixed where necessary to prevent access to the working parts or adjusting device without the seal being broken.

Petrol pumps G.N. 17/1983

36.—(1) In this regulation—

"price indicator" means an indicator showing the value in money of the liquid fuel or oil delivered;

"volume indicator" means an indicator showing the volume of liquid fuel or oil delivered.

(2) A petrol pump shall—

(*a*) be constructed to deliver liquid fuel or oil at one outlet only;

(*b*) be provided with a clear and legible volume indicator;

(*c*) not have a counting or totalizing device which may be confused with the volume indicator;

(*d*) not leak at any point;

(*e*) not, unless written permission from an assizer has been obtained, be fitted with a delivery hose exceeding 5 m in length.

When measuring the length of a delivery hose—

(i) the length of the nozzle shall be included;

(ii) the length of any swing or radial arm shall be excluded;

(iii) which is retractable, the hose shall be measured from the point where it emerges from the housing and when fully extended;

(*f*) if it is of fixed type—

(i) be securely mounted on a solidly constructed, level base;

(ii) be so sited as to permit the purchaser to have a clear and unobstructed view of the volume indicator and any price indicator or measuring chamber provided;

(iii) be so sited that the adjusting mechanism and the plug for the stamp of assize are readily accessible;

(*g*) if it is used to measure oil, have a delivery hose which is permanently filled to the nozzle.

(*h*) if it is of the Carbox or Satam twin-container type, not be assized or re-assized after the 30th day of June, 1972.

(3) A petrol pump provided with a meter shall—

(*a*) be incapable of operation until the volume indicator and any price indicator are reset to zero;

(*b*) if it is used to measure liquid fuel, be—

(i) provided with a sight glass which clearly shows whether the delivery hose is completely filled before, during and after delivery; and

(ii) conspicuously marked "THIS GLASS MUST BE FULL BEFORE AND AFTER DELIVERY";

(*c*) not be fitted with a swing arm unless such arm—

(i) has a radius of swing not exceeding 2 m;

(ii) is provided with a slight glass of an approved pattern at the highest point of the swing arm or extension pipe immediately before the connexion to the flexible hose;

(*d*) have a clear indication on the housing or dial of the position of the lead seals and the plug for the stamp of assize;

(*e*) be provided with an air separator or cut-off valve which ensures non-registration when the supply of liquid fuel or oil fails.

(4) A petrol pump provided with one or more measuring chambers shall—

(*a*) have any measuring chamber clearly visible and made of clear glass;

(*b*) have the delivery hose so positioned as to allow complete discharge of the liquid measured from the delivery outlet of the pump;

(*c*) if it has more than one measuring chamber, be provided with a value to prevent the liquid flowing from one chamber into another;

(*d*) have each measuring chamber denominated.

(5) In a petrol pump provided with a price indicator, the indicator shall incorporate a device which clearly indicates the price per litre and regulates the registration on such indicator.

(6) A petrol pump shall be tested—

(*a*) if it is provided with one or more measuring chambers, after passing at least five litres of liquid through the delivery hose to prevent undue absorption during the test;

(*b*) by passing the liquid into a standard measure in as many deliveries and of such quantities as the assizer considers necessary;

(*c*) if it is provided with a meter, by a slow test which does not exceed a time limit of thirty seconds per litre on any quantity delivered;

(*d*) to ensure that—

(i) back-drainage does not exceed 25 ml per hour;

(ii) it is correct, whether the pump is operated rapidly or slowly;

(iii) the indications on the volume indicator are in agreement with those on the price indicator and with the price per litre indicated by the device referred to in subregulation (5), and a sufficient number of computations shall be checked to establish their accuracy;

(iv) if it is fitted with a nozzle control valve, no liquid fuel or oil is delivered when such valve is open and the pump is at rest;

(v) if it is fitted with two volume indicators, after delivery it shows the same indication of volume on both such indicators;

(vi) if it is fitted with two price indicators, after a delivery it shows the same indication of value in money on both such indicators.

(7) The limit of error allowed on a petrol pump is one-half of one *per centum* of the quantity purported to be delivered, in excess only:

Provided that in a petrol pump used to measure lubricating oil, where the quantity purported to be delivered is one litre or less, the limit of error allowed is 2 per cent of the quantity purported to be delivered, in excess only.

(8) The stamp of assize shall be stamped upon a lead plug inserted in a conspicuous and easily accessible part of the pump. A seal of assize shall be affixed where necessary to prevent access to the working parts or adjusting device without the seal being broken.

G. N. 17/1983

FIRST SCHEDULE

reg. 2

Tables Showing Limits of Error and Sensitiveness

TABLE I

BEAM SCALES—CLASS 1

Capacity		*Error Allowed*		*Sensitiveness*	
10	grams	1	milligram	1	milligram
20	grams	4	milligrams	2	milligrams
50	grams	6	milligrams	3	milligrams
100	grams	8	milligrams	4	milligrams
200	grams	10	milligrams	5	milligrams
500	grams	12	milligrams	6	milligrams
1	kilogram	24	milligrams	12	milligrams
2	kilograms	50	milligrams	25	milligrams
5	kilograms	100	milligrams	50	milligrams
10	kilograms	150	milligrams	75	milligrams
20	kilograms	300	grams	150	milligrams

TABLE II

Beam Scales—Class 2

Capacity		*Error Allowed*		*Sensitiveness*	
50	grams	15	milligrams	15	milligrams
200	grams	25	milligrams	25	milligrams
500	grams	30	milligrams	30	milligrams
1	kilogram	60	milligrams	60	milligrams
2	kilograms	120	milligrams	120	milligrams
5	kilograms	250	milligrams	250	milligrams
10	kilograms	500	milligrams	500	milligrams
20	kilograms	1	gram	1	gram
50	kilograms	2	grams	2	grams

TABLE III

Beam Scales—Class 3

Capacity		*Error Allowed*		*Sensitiveness*	
500	grams	1	gram	1	gram
1	kilogram	2	grams	1	gram
2	kilograms	3	grams	1.5	grams
5	kilograms	5	grams	2.5	grams
10	kilograms	7	grams	3.5	grams
20	kilograms	10	grams	5	grams
50	kilograms	15	grams	8	grams

TABLE IV

Counter Machines

Capacity		*Error Allowed*		*Sensitiveness*	
500	grams	2	grams	1	gram
1	kilogram	4	grams	2	grams
2	kilograms	5	grams	2.5	grams
5	kilograms	7	grams	3.5	grams
7	kilograms	9	grams	4.5	grams
10	kilograms	10	grams	5	grams
15	kilograms	15	grams	8	grams
20	kilograms	20	grams	10	grams
50	kilograms	30	grams	15	grams

TABLE V

**Crane Machines and Weighbridges*

Capacity		*Error Allowed*		*Sensitiveness*	
1	tonne	700	grams	350	grams
2	tonnes	1	kilogram	500	grams
5	tonnes	2	kilograms	1	kilogram
10	tonnes	3	kilograms	1.5	kilograms
20	tonnes	5	kilograms	2.5	kilograms
30	tonnes	6	kilograms	3	kilograms
40	tonnes	7	kilograms	3.5	kilograms
50	tonnes	9	kilograms	4.5	kilograms
60	tonnes	10	kilograms	5	kilograms
100	tonnes	12	kilograms	6	kilograms
200	tonnes	25	kilograms	12.5	kilograms

*The error allowed and sensitiveness required on crane machines are double the amounts shown above.

TABLE VI

Deadweight Machines

Capacity		*Error Allowed*		**Recovery*		*Sensitiveness*	
50	kilograms	30	grams	50	grams	15	grams
100	kilograms	50	grams	100	grams	30	grams
200	kilograms	80	grams	200	grams	50	grams
500	kilograms	120	grams	300	grams	80	grams

*Recovery is the weight required to bring the beam back from its position of maximum displacement to the horizontal.

TABLE VII

*Platform machines, *steelyards and wallbeams*

Capacity of Machine		*Error*		*Sensitiveness*	
50	kilograms	30	grams	15	grams
100	kilograms	60	grams	30	grams
150	kilograms	60	grams	30	grams
200	kilograms	90	grams	45	grams
250	kilograms	90	grams	45	grams
300	kilograms	100	grams	50	grams
400	kilograms	120	grams	60	grams
500	kilograms	150	grams	75	grams
1,000	kilograms	300	grams	100	grams
1,500	kilograms	400	grams	170	grams
2,000	kilograms	500	grams	250	grams
5,000	kilograms	1	kilogram	500	grams

*The error allowed and sensitiveness required on steelyards are double the amounts shown above.

TABLE VIII

Weights

Denomination of Weight		*Iron*		*Error allowed in excess only Other*	
20	kilograms	3	grams	1.5	grams
10	kilograms	2	grams	1	gram
5	kilograms	1	gram	500	milligrams
2	kilograms	600	milligrams	300	milligrams
1	kilogram	400	milligrams	200	milligrams
500	grams	200	milligrams	100	milligrams
200	grams	100	milligrams	50	milligrams
100	grams	40	milligrams	20	milligrams
50	grams		—	15	milligrams
20	grams		—	10	milligrams
				Error allowed in excess of deficiency	
10	grams		—	5	milligrams
5	grams		—	5	milligrams
2	grams		—	5	milligrams
1	gram		—	2	milligrams
500	milligrams		—	2	milligrams
200	milligrams		—	2	milligrams
100	milligrams		—	2	milligrams
50	milligrams		—	2	milligrams
20	milligrams		—	1	milligram
10	milligrams		—	0.5	milligram
5	milligrams		—	0.2	milligram
2	milligrams		—	0.2	milligram
1	milligram		—	0.1	milligram

TABLE IX

Metric carat weights

Denomination of Weight		*Error allowed in excess only*	
500	metric carats	10	milligrams
200	metric carats	5	milligrams
100	metric carats	2	milligrams
50	metric carats	1	milligrams
20	metric carats	1	milligram
10	metric carats	1	milligram
5	metric carats	1	milligram
2	metric carats	1	milligram
1	metric carat	1	milligram
0.5	metric carat	0.5	milligram
0.25	metric carat	0.5	milligram
0.2	metric carat	0.5	milligram
0.1	metric carat or under	0.2	milligram

TABLE X

Measures of length

Denomination of measure	*End measure in excess*	*Line measure in excess*
100 metres	—	20 millimetres
50 metres	—	15 millimetres
30 metres	—	10 millimetres
20 metres	—	7.5 millimetres
10 metres	—	5.0 millimetres
5 metres	—	2.5 millimetres
3 metres	3 millimetres	1.5 millimetres
2 metres	2 millimetres	1.0 millimetre
1 metre	1 millimetre	0.5 millimetre
500 millimetres	0.8 millimetre	0.4 millimetre

TABLE XI

**Graduated glass measures*

Approximate internal diameter of measure at the graduation tested	*Error allowed in excess or deficiency*
100 millimetres	1 millilitre
90 millimetres	1 millilitre
80 millimetres	0.8 millilitre
70 millimetres	0.8 millilitre
60 millimetres	0.6 millilitre
50 millimetres	0.6 millilitre
40 millimetres	0.4 millilitre
30 millimetres	0.3 millilitre
20 millimetres	0.15 millilitre
10 millimetres	0.05 millilitre

*The error allowed and sensitiveness required on steelyards are double the amounts shown above.

TABLE XII

**Liquid measures of capacity*

Capacity of Measure	*Error allowed in excess only*
100 litres or above	$\frac{1}{2}$ of 1% of capacity
50 litres	125 millilitres
20 litres	100 millilitres
10 litres	75 millilitres
5 litres	50 millilitres
2 litres	25 millilitres
1 litre	15 millilitres
500 millilitres	10 millilitres

200	millilitres	5	millilitres
100	millilitres	2	millilitres
50	millilitres	2	millilitres
20	millilitres	1	millilitre
10	millilitres	0.5	millilitre
5	millilitres	0.25	millilitre
2	millilitres	0.1	millilitre
1	millilitre	0.05	millilitre

*The error allowed on a burette, glass flask or pipette is half the amount shown above.

TABLE XIII

Dry measures of Capacity

Capacity of measure		*Error allowed in excess only*	
50	litres	125	millilitres
20	litres	100	millilitres
10	litres	75	millilitres
5	litres	50	millilitres
2	litres	25	millilitres
1	litre	15	millilitres
500	millilitres	10	millilitres
200	millilitres	5	millilitres
100	millilitres	2	millilitres

SECOND SCHEDULE

reg. 7 (5) G. N. 17/1983

Abbreviations of Denominations

Denomination	*Abbreviation*
Weights	
Kilogram	kg
Gram	g
Decigram	dg
Centigram	cg
Milligram	mg
Metric Carat	C.M.
Measures	
Litre	l
Decilitre	dl
Centilitre	cl
Millilitre	ml
Metre	m
Decimetre	dm
Centimetre	cm
Millimetre	mm
Cubic Centimetre	c.c. or cm^3
Cubic metre	cu.m or m^3

G. N. 17/1983 regs. 28, 29,
18/1989 30 and 31

THIRD SCHEDULE

Denominations of Weights and Measures which are assizable

PART I

Weights

20	kilogram	5	grams
10	kilogram	2	grams
5	kilogram	1	grams
2	kilogram	500	milligram
1	kilogram	200	milligram
500	grams	100	milligram
200	grams	50	milligram
100	grams	20	milligram
50	grams	10	milligram
20	grams	5	milligram
10	grams	2	milligram
		1	milligram
500	metric carats	1.0	metric carats
200	metric carats	0.5	metric carats
100	metric carats	0.25	metric carats
50	metric carats	0.2	metric carats
20	metric carats	0.1	metric carats
10	metric carats	0.05	metric carats
5	metric carats	0.02	metric carats
2	metric carats	0.01	metric carats
		0.005	metric carats

PART II

Measures

1. *Graduated glass measures*

2	litres	25	millilitres
1	litre	20	millilitres
500	millilitres	10	millilitres
250	millilitres	5	millilitres
200	millilitres	2	millilitres
100	millilitres	1	millilitre
50	millilitres		

2. *Measures of capacity other than graduated glass measures*

100	litres or above		
50	litres		
20	litres	100	millilitres
10	litres	50	millilitres
5	litres	20	millilitres
2	litres	10	millilitres
1	litre	5	millilitres
500	millilitres	2	millilitres
200	millilitres	1	millilitre

3. *Dry capacity measures*

50 litres or above	
20 litres	1 litre
10 litres	500 millilitres
5 litres	200 millilitres
2 litres	100 millilitres

4. *Measures of area*

1 square metre or multiples of 1 square metre

1 square decimetre or multiples of 1 square decimetre

1 square centimetre or multiples of 1 square centimetre

5. *Measures of length*

100 metres	3 metres
50 metres	2 metres
30 metres	1 metre
20 metres	0.5 metre
10 metres	1 decimetre
5 metres	1 centimetre

6. *Cubic measures*

Measures of any multiple of 0.1 cubic metre.

WEIGHTS AND MEASURES (ASSIZE BOARD) REGULATIONS

G.N. 272/1962(F) 57/1969

under s. 28

1. These Regulations may be cited as the Weights and Measures (Assize Board) Regulations. Citation

2. In these Regulations, unless inconsistent with the context— Interpretation

"day" means any period of 24 hours during which a member is engaged on the business of the Board, including time spent travelling between his residence and the place at which the business of the Board is being conducted.

3. The members of the Board shall be appointed by the Minister. Appointment of Board members

4. The period of office of a member of the Board shall be two years. Period of office

5.—(1) At meetings of the Board each member present shall have one vote on any question before the Board and, in the event of an equality of votes, the chairman shall have, in addition to a deliberative vote, a casting vote. Voting and absence of chairman

(2) If the chairman of the Board is prevented by illness, absence from Malaŵi or other cause from attending a meeting of the Board the members present shall elect one of their number to preside at such meeting.

6. The quorum of the Board shall consist of three members. Quorum

G.N.
279/1966
5/1983
27/1983
19/1989
29/1990
44/1995
3/1997
61/1998

WEIGHTS AND MEASURES (ASSIZE FEES) REGULATIONS

under s. 28

Citation

1. These Regulations may be cited as the Weights and Measures (Assize Fees) Regulations.

Interpretation

2. In these Regulations—

"applicant" means a person having an instrument, weight or measure referred to in section 16 (3) of the Act, who notifies, an assizer in writing of the particulars of such instrument, weight or measure and the place where it is ordinarily kept and requests that such instrument, weight or measures be assized at that place;

"assize station" means a place specified in a notice issued in accordance with section 16 (1) of the Act as a place where persons called upon must produce any instrument, weight or measure in use in trade for the purpose of its being assized;

"special applicant" means a person, other than an applicant, who notifies an assizer of the particulars of an instrument, weight or measure and the place where it is kept and requests that such instrument, weight or measure be assized at that place.

Fees for assizing

3.—(1) Subject to subregulation (2) and to regulation 5, there shall be charged, in respect of the assizing or rejection of instruments, weights and measures, the fees prescribed in the First Schedule.

(2) The fees referred to in subregulation (1) shall not be charged in respect of an assized instrument, weight or measure which is produced or submitted for re-assizing at an assize station and is rejected.

Fees for various services
G. N. 3/1997

4. Subject to regulation 5, there shall be charged, in respect of—

(*a*) the adjusting of weights and measures, the fees prescribed in Part II of the First and Second Schedules, respectively; and

(*b*) the services mentioned in Part III of the First and Second Schedules, the fees prescribed in Part III of the First and Second Schedules, respectively.

Special Fees
G. N. 19/1989

5. Where an instrument, weight or measure is assized, or rejected or any of the services referred to in regulation 4 are carried out at a place other than—

(*a*) an assize office;

(*b*) an assize station; or

(*c*) the premises of a maker or repairer of, or dealer in, instruments, weights or measures, of that type,

the appropriate fee chargeable in accordance with regulation 3 or regulation 4 shall be increased by fifty per centum.

Testing on applicant's premises G.N. 5/1983 3/1997

6.—Where an assizer tests an instrument, weight or measure on the premises of a special applicant there shall be charged, in respect of each journey necessarily made by the assizer to the premises—

(*a*) if the journey is made by motor vehicle, a fee determined by the body responsible for weights and measures services in Malaŵi;

(*b*) if the journey is made by rail or air, a fee equal to the cost of a first class return rail fare or return air fare, as the case may be, from the assize office at which the assizer is stationed to the railway station or airport, as the case may be, nearest to the premises plus any costs incurred by the assizer in travelling from the railway station or airport, as the case may be, to the premises;

(*c*) if the journey necessitates the absence from the assize office at which he is stationed of the assizer for a period exceeding six hours, a fee of K50.00 for each day or part of a day that he is absent; and

(*d*) if the journey necessitates the assizer obtaining sleeping accommodation away from the place where the assize office at which he is stationed is established, a fee of K80.00 for each night such accommodation is obtained.

Testing of weighbridge on applicant's premises

7. Where an assizer tests a weighbridge on the premises of an applicant or special applicant, there shall be charged in addition to any other fee prescribed, a fee equal to the cost incurred in transporting the weights to the premises of the applicant or special applicant, as the case may be:

Provided that no such fee shall be charged or collected where transport is provided by the applicant or special applicant as the case may be.

FIRST SCHEDULE

reg. 3

G.N. 5/1983 27/1983 29/1990 44/1995 3/1997 61/1998

PART I

Fees for Testing Measuring Instruments Used in Trade by the Industry

1. Weighing Instrument—

	K t
(*a*) 100,000 kg or over	1,500 00
(*b*) 50,000kg to under 100,000 kg	1,200 00

	k t
(*c*) 10,000 kg to under 50,000 kg	700 00
(*d*) 2,000 kg to under 10,000 kg	500 00
(*e*) 200 kg to under 2,000 kg	250 00
(*f*) under 200 kg	80 00
2. An automatic weighing machine where the capacity for each individual weigher is—	
(*a*) 100 kg or over	700 00
(*b*) 10 kg to under 100 kg	250 00
(*c*) under 10 kg	80 00
3. A continuous weigher coupled to a conveyor belt	150 00
4. Weights—	
(*a*) 10 kg or over	70 00
(*b*) under 10 kg	30 00
5. Measures of capacity—	
(*a*) Graduated glass	30 00
(*b*) A measure of a capacity of—	250 00
(i) 1,000 litres or over	700 00
(ii) 100 litres to under 1,000 litres	500 00
(iii) 10 litres to under 100 litres	300 00
(iv) under 10 litres	250 00
(*c*) A vehicle tank or a compartment of a capacity of—	
(i) 250 litres or under	300 00
(ii) over 250 litres:	
(A) for the first 250 litres	300 00
(B) for each additional 100 litres or part thereof	70 00
6. Measures of length—	
2 metres or over	250 00
7. Measuring instruments—	
(*a*) a bulk flow metre	700 00
(*b*) a fabric measuring instrument of capacity of—	
(i) 50 metres or over	250 00
(ii) under 50 metres	150 00

PART II

Adjusting Fees

1. A weight of 5 kg or over	50 00
2. A counterpoise weight	50 00
3. A measure of a capacity of—	
(*a*) 1,000 litres or over	130 00
(*b*) 50 litres to under 1,000 litres	100 00
(*c*) under 50 litres	70 00

PART III

MISCELLANEOUS FEES

	K t
1. Denominating a weight or measure	50 00
2. Affixing a stud or inserting plug	50 00
3. Balancing a counter scale	50 00

SECOND SCHEDULE

G.N. 44/1995
3/1997
61/1998

PART I

FEES FOR TESTING TRADE MEASURING INSTRUMENTS FOR USERS OTHER THAN THE INDUSTRY

	K t
1. Weighing Instruments—	
(*a*) 200 kg to under 500 kg	150 00
(*b*) 50 kg to under 200 kg	75 00
(*c*) 20 kg to under 50 kg	50 00
(*d*) under 20 kg	25 00
(*e*) self or semi-self indicating weighing instruments	twice the fee in (*a*), (*b*), (*c*) or (*d*)
2. Weights—	
(*a*) 5 kg	20 00
(*b*) under 5 kg	15 00
3. Measures of length—	
under 2 metres	10 00

PART II

ADJUSTING FEES

	K t
1. 5 kg or under	10 00
2. A counter poise weight	15 00

PART III

MISCELLANEOUS FEES

	K t
1. Denominating a weight or measure	15 00
2. Affixing a stud or inserting a plug	15 00
3. Balancing a counter scale	15 00

[Subsidiary] *Weights and Measures (Assizer's Certificate) Regulations/Weights and Measures (Exemptions) Regulations*

G.N. 61/1964(M)

WEIGHTS AND MEASURES (ASSIZER'S CERTIFICATE) REGULATIONS

under s. 28

Citation

1. These regulations may be cited as the Weights and Measures (Assizer's Certificate) Regulations.

Issue of assizer's certificate

2. The Minister may issue an assizer's certificate to a person who is the holder of—

(*a*) a certificate of qualification as an inspector of weights and measures; issued by the Board of Trade of the United Kingdom; or

(*b*) an assizer's certificate issued by the Department of Commerce and Industries of the Republic of South Africa.

G.N. 272/1959(F) 225/1963 4/1983 57/1984

WEIGHTS AND MEASURES (EXEMPTIONS) REGULATIONS

under s. 28

Citation

1. These Regulations may be cited as the Weights and Measures (Exemptions) Regulations.

Exempt articles G.N. 4/1983

2.—(1) Subject to regulation 3, the articles specified in the First Schedule, or any meal or flour obtained therefrom, shall, when sold by measure and in quantities of less than five litres, be exempt from section 18 and section 20 (2) of the Act.

(2) Subject to regulation 3, the articles specified in the Second Schedule shall, when sold in quantities of less than 500 millilitres be exempt from section 18 and section 20 (2) of the Act.

No exemption if pre-packed

3. The exemptions contained in regulation 2 in respect of articles specified in the First or Second Schedule shall not apply to any such article which is pre-packed.

Quantities less than one litre G.N. 4/1983

4. Any dry or liquid measures of capacity which is of a capacity of less than 500 millilitres shall be exempted from the provisions of—

(*a*) sections 14, 16, 25 and 26 of the Act; and

Above p. 24

(*b*) the Weights and Measures (Assize) Regulations made in terms of section 28 of the Act.

regs. 2 (1) and 3

FIRST SCHEDULE

Beans	Peas
Cassava	Rice

Castor Seed	Sesame
Groundnuts	Sorghum
Maize	Sweet Potatoes
Millets	Wheat
Paddy	

SECOND SCHEDULE reg. 2 (2) and 3 G.N. 57/1984

Cooking Oil	Vinegar

WEIGHTS AND MEASURES (SALE OF ARTICLES) REGULATIONS

under s. 28

G.N. 273/1959(F) 242/1960(F) 268/1960(F) 122/1962(F) 248/1963(F) 225/1963(F) 19/1966 183/1970 233/1970 3/1971 120/1974 179/1974 66/1981 59/1984 17/1989 70/1995

Citation

1. These Regulations may be cited as the Weights and Measures (Sale of Articles) Regulations.

Application of Regulations

2. These Regulations shall not apply to the sale of—

(*a*) any articles of food, other than intoxicating liquor, for consumption on the premises of the seller;

(*b*) any assortment of foods packed for sale as a meal and ready for consumption without cooking, heating or other preparation;

(*c*) articles intended for export which are so packed and marked and are consigned to a point outside Malaŵi; and

(*d*) a single article, the retail price of which is not more than five tambala.

Interpretation of terms G.N. 59/1984 17/1989

3. In these Regulations, unless inconsistent with the context—

"agricultural produce" means—

(*a*) beans, dhal, gram, lentils, onions or peas, when not in a green state;

(*b*) barley, buckwheat, cassava, kaffir corn, maize but not including green maize on the cob, millet, munga, oats, paddy, rupoko, rice, rye, sorghum, wheat, or any other cereal;

(*c*) bean meal, bran, crushed maize, flour, hominy chop, kaffir corn meal, maize cones, maize grits, maize meal, maize, offals, maize seconds, mealie rice, munga meal, pollard, rupoko meal, rye meal, samp, or any other meal or milled product of grain;

(*d*) chaff, fodder, forage, lucerne, or teff grass;

(*e*) castor seed, groundnuts, linseed, potatoes, seed cotton, sesame, sweet potatoes, sunflower seed, or sunnhemp seed;

"beer" and "cider" have the meanings ascribed to them in section 2 of the Liquor Act; Cap. 50:07

"coke" includes any solid fuel derived from coal or of which coal or coke is a constituent;

"dried fish" means fish which has been sun-dried or smoked;

"dried fruit" includes candied peel and crystallized or glacé fruits;

"fertilizer" means any substance which is intended or offered for improving or maintaining the growth of plants or the productivity of the soil but does not include—

(*a*) farmyard, stable or kraal manure;

(*b*) compost;

(*c*) wood ash;

(*d*) gypsum;

(e) town refuse or night soil;

"intoxicating liquor" means spirits, beer, cider and wine;

"meat" means the carcass, part of a carcass or offal of any animal or poultry being a carcass, part of a carcass or offal suitable for human consumption and whether fresh, frozen, chilled, pickled, cured, salted, dried, minced, cooked, or manufactured into brawn, polony, or sausages;

"milk" means cow's milk, whether pasteurized, separated, skimmed, or subjected to any other process, but does not include dried, evaporated, or condensed milk;

"soft drinks" includes ginger beer, mineral water, fruit concentrates and any non-alcoholic fruit-based drink;

"spirituous liquor" means brandy, gin, rum, cane, vodka or whisky;

"thread" means single, multiple or cabled yarn of any fibre, natural or synthetic, other than wool, which is suitable for sewing, embroidery, crocheting or similar purposes;

"wool" means yarns—

(*a*) of natural wool or synthetic fibres; or

(*b*) of mixtures containing natural wool and additionally or alternatively synthetic fibres,

packed and intended for hand-knitting.

Exemption from sect on 20 (1) of the Act G.N. 59/1984

4.—(1) Subject to subregulation (2), section 20 (1) of the Act shall not apply to chocolates.

(2) When chocolates are sold by weight, the weight of only the immediate wrapping, if any, of each individual chocolate shall be included in the weight of the chocolates so sold.

Exemption from section 21 (1) of the Act G.N. 59/1984 17/1989

5. Subsection (1) of section 21 of the Act shall not apply to—

(*a*) any pre-packed article specified in the First Schedule, if the wrapper or container of the article is marked in accordance with regulation 6 with the net weight, at the time that it is pre-packed, of the article and the statement of the weight is preceded or followed by the words "net weight when packed";

(*b*) any groundnuts, kaffir corn, maize, munga or rupoko, sold in quantities of not less than 15 tonnes if the invoice or delivery note required in terms of section 20 (2) of the Act, contains a statement similar in all material particulars to the following—

"This sale of groundnuts/kaffir corn/maize/munga/rupoko, which is not less than 15 *tonnes, is made by total net weight and the bags in which the articles are packed do not comply with section* 21 *of the Weights and Measures Act, Cap.* 48:04 *The purchaser of these articles who resells them by weight as pre-packed articles in quantities of less than* 15 *tonnes must comply with the said section"*

Marking of Wrappers or Containers G.N. 59/1984 17/1989

6.—(1) For the purposes of sections 19 and 21 of the Act, the wrapper or container of an article shall be marked with a statement of the weight or measure, as the case may be, of the article in a manner complying with this regulation and with regulations 6A, 6B and 6C.

(2) The marking of the net weight or the measure of the article shall be clearly and legibly stamped, printed or written—

(*a*) in a prominent position and so placed, whether upon an inner or outer wrapper or container or upon both, that it can easily be read without detaching or unwrapping any of the wrappers or containers;

(*b*) in letters, or figures and letters, of a size not less than half the average size of the letters used to describe the contents nor less than six millimetres in height:

Provided that—

(i) where the wrapper or container, or the label containing a printed description of the contents and affixed thereto, is so small as to preclude the marking in letters, or figures and letters, of the size prescribed, such marking may be in smaller letters, or figures and letters, if they are clear and legible;

(ii) where the average size of the letters used to describe the contents is greater than seventy-five millimetres, it shall not be necessary for the marking to be in letters, or figures and letters, more than thirty-five millimetres in height.

Marking of metric units

6A.—(1) A marking indicating a length—

(*a*) of one metre or more shall be entirely in terms of metres and fractions of a metre; and

(*b*) of less than one metre shall be entirely in terms of centimetres and fractions of a centimetre, or entirely in terms of millimetres.

(2) A marking indicating a mass or weight—

(*a*) of one kilogram or more shall be entirely in terms of kilograms and fractions of a kilogram; and

(*b*) of less than one kilogram shall be entirely in terms of grams.

(3) A marking indicating a capacity or volume—

(*a*) of one litre or more shall be entirely in terms of litres and fractions of a litre; and

(*b*) of less than one litre shall be entirely in terms of centilitres and fractions of a centilitre, or entirely in terms of millilitres.

(4) A marking indicating a volume—

(*a*) of 0.01 cubic metre or more shall be entirely in terms of cubic metres and fractions of a cubic metre; and

(*b*) of less than 0.01 cubic metre shall be entirely in terms of cubic centimetres and fractions of a cubic centimetre.

Marking of quantity by measurement

6B.—(1) In the case of a wrapper or container required by or under the Act to be marked with quantity of measurement, the marking shall comprise the numerical value of the relevant unit of measurement expressed in words or figures and a reference to that unit in words or by means of the symbol used in relation to the unit as specified in the Second Schedule.

Second Schedule

(2) An indication of quantity by gross weight shall include the words "gross" or the words "including container" or other words which indicate that the marked weight includes the weight of the wrapper or container.

(3) No abbreviation of the word "net" or "gross" shall be employed in the marking.

(4) Where the numerical value of the relevant unit of quantity is expressed in words, the unit of measurement shall be expressed in words and not by means of a symbol.

Position of marking

6C. For the purposes of regulations 6, 6A and 6B the wrapper or container of an article shall be deemed to be marked with a statement of weight or measure if the statement is marked on a label—

(*a*) securely attached to the wrapper or container; or

(*b*) inserted within the wrapper or container or, where more than one wrapper or container is used, within the outer wrapper or container, in such a manner that it cannot be removed without first breaking open the wrapper or container.

Standard weight per bag or pocket

7.—(1) The standard weight for a bag of any article specified in the first column of Part I of the Third Schedule shall be the net weight specified opposite thereto in the second column of Part I of the Third Schedule.`

(2) The standard weight for a pocket of any article specified in the first column of Part II of the Third Schedule shall be the net weight specified opposite thereto in the second column of Part II of the Third Schedule.

Pre-packed articles
G.N. 59/1984
Fourth Schedule

8.—(1) Subject to subregulation (2), no person shall sell any pre-packed article specified in the first column of the Fourth Schedule otherwise than by weight and in a quantity specified opposite thereto in the second column of that Schedule

(2) Subregulation (1) shall not apply to any pre-packed article other than wool—

(*a*) the weight of which does not exceed 50 g, or

(*b*) packed in a tube,

if the wrapper or container of the article is marked in accordance with regulation 6, with the net weight of the article.

Cement

9. No person shall sell cement otherwise than by weight.

Coal and Coke

10. No person shall sell coal or coke otherwise than by weight.

Fertilizer

11.—(1) Subject to subregulation (2), no person shall sell any fertilizer otherwise than by weight.

(2) Subregulation (1) shall not apply to a fertilizer sold in liquid form.

Firewood
G.N 59/1984

12.—(1) Subject to subregulation (2), no person shall sell firewood otherwise than—

(*a*) by weight; or

(*b*) in quantities of one cubic metre or integral multiple of one cubic metre.

(2) Subregulation (1) shall not apply to firewood sold in quantities of less than 100 kg.

Meat

13.—(1) Subject to subregulation (3), no person shall sell any meat otherwise than by weight.

(2) The invoice or delivery note required in terms of section 20 (2) of the Act shall, in respect of the sale of any meat sold by weight, specify—

(*a*) the name and address of the seller;

(*b*) the name and address of the purchaser;

(*c*) the weight, grade and designation of each cut of meat delivered; and

(*d*) the price per pound of, or the total price charged for, each cut of meat delivered.

(3) Subregulation (1) shall not apply to the sale of brains, head or feet.

Soap
G.N 59/1984

14.—(1) Subject to subregulation 2, no person shall sell—

(*a*) soap in the form of cake, tablet or bar—

(i) which is pre-packed unless the container or wrapper is marked with an indication of quantity by net weight;

(ii) which is not pre-packed but contained in a case, unless the soap is of uniform weight and the case is marked with the number of cakes, tablets or bars contained therein;

(*b*) liquid soap which is pre-packed unless the container is marked with an indication of quantity by capacity measurement;

(*c*) soap in any form other than in the form described in paragraph (*a*) or (*b*)—

(i) which is pre-packed unless the container is marked with an indication of quantity by net weight;

(ii) which is not pre-packed except by retail sale only and by net weight.

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

(*a*) soap manufactured in the specifications of a purchaser for his own use and not for re-sale;

(*b*) medicated soap containing special antiseptic or similar ingredients;

(*c*) liquid soap in a quantity of less than 50 ml;

(*d*) soap in any other form in a quantity of less than 50 g.

Spirituous liquor G.N. 59/1984

15.—(1) For the purposes of this regulation, "sell from bulk" means to sell from a bottle or other container any quantity which is less than the original quantity contained in such bottle or other container.

(2) Subject to subregulation (3), no person shall sell from bulk for consumption on his premises any spirituous liquor otherwise than—

(*a*) by measure of capacity; and

(*b*) in quantities of 35 ml, 70 ml or 140 ml.

(3) Subregulation (2) shall not apply to any spirituous liquor sold—

(*a*) in the form of a cocktail; or

(*b*) on the premises of a club which holds a club licence in terms of section 23 (7) of the Liquor Act. Cap. 50:07

Thread

16.—(1) Subject to subregulation (2), no person shall sell thread otherwise than by length or by weight.

(2) No person shall sell thread which—

(*a*) is suitable for sewing purposes; and

(*b*) is not of linen, jute or ramie fibre, otherwise than by lengths:

Provided that if such thread is sold to a manufacturer for manufacturing purposes, it shall be sold by length or by weight.

Agricultural produce G.N. 59/1984

17.—(1) Subject to subregulation (2), no person shall sell any agricultural produce otherwise than by weight or by measure of capacity.

(2) Subregulation (1) shall not apply to any agricultural produce which is—

(*a*) sold by auction and which is—

(i) not contained in a sack or container; and

(ii) sold in quantities not exceeding 15 kg in weight; or

(*b*) sold by measure of capacity in quantities of less than 5 litres.

Bread
G.N. 66/1981
70/1995

18.—(1) Subject to subregulation (2), no person shall sell bread otherwise than—

(*a*) by weight; and

(*b*) in quantities of 300 grams and 600 grams:

Provided that these quantities may be exceeded by a weight not exceeding 20 grams for each 300 grams of bread.

(2) Subregulation (1) shall not apply to bread baked in rolls or other shapes and not exceeding 100 grams in weight.

Milk and cream
G.N. 59/1984

19.—(1) Subject to subregulation (2), no person shall sell milk or cream otherwise than by measure of capacity and in quantities of 250 ml, 500 ml, 1 litre or an integral multiple of 1 litre, and unless the container is marked with an indication of quantity by capacity measurement.

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

(*a*) flavoured milk drinks in sealed containers;

(*b*) milk or cream sold to a creamery, dairy or factory for manufacturing purposes;

(*c*) tinned or bottled cream sold by weight;

(*d*) milk sold for consumption at a school.

Soft drinks
G.N. 59/1984

20.—(1) Subject to subregulation (2), no person shall sell soft drinks which are pre-packed in a closed container unless the container is marked with an indication of quantity by capacity measurement.

(2) Subregulation (1) shall not apply to any soft drink of a quantity of less than 50 ml.

Intoxicating liquor

21.—(1) Subject to subregulation (2), no person shall sell intoxicating liquor which is pre-packed in a closed container unless the container is marked with an indication of quantity by capacity measurement.

(2) Subregulation (1) shall not apply to intoxicating liquor of a quantity of less than 50 ml.

Potato crisps, biscuits or sweets

22.—(1) Subject to subregulation (2), no person shall sell potato crisps, biscuits or sweets which are pre-packed in, a closed container unless the container is marked with a declaration of mass.

(2) Subregulation (1) shall not apply to potato crisps, biscuits or sweets of a mass of less than 25 g.

23.—(1) Subject to subregulation (2), no person shall sell liquid fuel, lubricating oil or any mixture of such fuel and oil and lubricating grease— Liquid fuel, oil, etc.

(*a*) which is not pre-packed unless the sale is by net weight, by volume or by capacity measurement;

(*b*) which is pre-packed unless the container is marked with an indication of quantity by net weight, by volume or by capacity measurement.

(2) Subregulation (1) shall not apply where the liquid fuel, lubricating oil, mixture of fuel and oil or lubricating grease is sold in a quantity of less than 50 g or capacity of less than 50 ml.

24. Any person who contravenes any provision of these regulations is guilty of an offence and liable upon conviction to a fine of K250 and to imprisonment for three months. Offences

FIRST SCHEDULE reg. 5

Pre-packed articles which may be marked "Net Weight when Packed"

1. Carbonate of soda, sulphate of soda or epsom salts.
2. Soap made in bar or tablet form and packed in cases.
3. Tobacco.
4. Dried fruit.
5. Cheese in its original wrappings.
6. Ham in its original wrappings or preserving materials.
7. Fertilizers.
8. Compound feeding stuffs for animals.
9. Seed potatoes.
10. Yeast.
11. Any grade of ferrous sulphate other than the exsiccated variety, zinc sulphate, copper sulphate, sodium sulphate, sodium thiosulphate or lead nitrate.
12. Wool.
13. Soap powder and detergent powder.

SECOND SCHEDULE reg. 6B

SYMBOLS OF DENOMINATIONS

Denomination	*Symbol*
Weights	
Kilogram	kg
Gram	g
Decigram	dg
Milligram	mg
Centigram	cg
Metric carat	C.M.
Measures	
Metre	m
Decimetre	dm
Centimetre	cm
Millimetre	mm

Denomination	*Symbol*
Cubic metre	Cu.m or m^3
Cubic centimetre	c.c. or cm^3
Litre	l
Decilitre	dl
Centilitre	cl
Millilitre	ml

reg. 7

THIRD SCHEDULE

PART I

Standard Weight per Bag

Article	*Net Weight*
Barley	70 kg
Beans, all varieties	90 kg
Bran, Maize	45 kg
Bran, wheaten	20 kg
Buckwheat	70 kg
Bullrush millet	90 kg
Bullrush millet meal	90 kg
Coal	50 kg
Coke	25 kg
Cow peas	90 kg
Coffee beans	60 kg
Flour, wheaten	70 kg
Gram	90 kg
Groundnuts, shelled	70 kg
Groundnuts cake	70 kg
Groundnut meal	90 kg
Groundnuts, unshelled	30 kg
Hominy chop	70 kg
Kaffir corn	90 kg
Kaffir corn meal	90 kg
Maize, crushed seconds or grits	70 kg
Maize, dried and off the cob	90 kg
Maize flour	70 kg
Maize germ meal	70 kg
Maize meal	70 kg
Manna	90 kg
Mealie rice	90 kg
Munga	90 kg
Munga meal	90 kg
Oats, crushed	50 kg
Oats, uncrushed	70 kg
Onions	50 kg
Pollard	45 kg
Potatoes	70 kg
Rupoko (finger millet)	90 kg
Rupoko meal (finger millet meal)	90 kg
Rice paddy	80 kg
Rye	90 kg
Rye meal	90 kg
Samp	70 kg

Article	*Net Weight*
Seed cotton	70 kg
Sorghum	90 kg
Sorghum meal	90 kg
Sunflower seed	70 kg
Sunhemp seed	90 kg
Sweet potatoes	50 kg
Wheat	90 kg

PART II

Standard Weight per Pocket

Article	*Net Weight*
Coal	50 kg
Coke	25 kg
Groundnuts, shelled	50 kg
Groundnuts meal	50 kg
Maize, crushed or grits	45 kg
Maize flour	45 kg
Maize germ meal	45 kg
Maize meal	45 kg
Onions	12 kg
Potatoes	15 kg
Rice	50 kg
Seed cotton	45 kg
Wheat	45 kg

FOURTH SCHEDULE

reg. 8

	Pre-packed Article	*Quantity*
1.	Butter, dripping, lard, margarine or any other animal or vegetable cooking fat not in liquid form, but excluding peanut butter	100 g, 125 g, 250 g,1 kg, or an integral multiple of 1 kg.
2.	Tea, including bush tea, raw or roast coffee beans, ground coffee, cocoa and other beverages in flaked, granulated or powdered form but excluding—	
	(*a* dried or evaporated milk;	
	(*b*) soluble coffee extracts;	
	(*c*) soluble coffee and chicory extracts;	
	(*d*) soluble tea compound;	
	(*e*) fruit-flavoured drinks in dried form	75 g, 100 g, 125 g, 150 g, 200 g, 375 g, 500 g, 750 g, 1 kg, or an integral multiple of 250 g.
3.	Soluble coffee extracts, soluble coffee and chicory extracts and soluble tea compounds	100 g, 125 g, 200 g, 225 g, 250 g, 300 g, 400 g, 450 g, 500 g, 1 kg and an integral multiple of 500 g.

	Pre-packed Article	*Quantity*
4.	Honey, jam, jelly, marmalade syrup or treacle, but excluding jelly criystas	100 g, 125 g, 200 g, 225 g, 250 g, 300 g, 400 g, 450 g, 500 g, 1 kg and an integral multiple of 500 g.
5.	Breakfast foods manufactured from cereal	100 g, 125 g, 150 g, 200 g, 250 g, 300 g, 350 g, 400 g, 500 g, 1 kg and an integral multiple of 1 kg.
6.	Macaroni, spaghetti, vermicelli or any similar product or substitute therefor, whether flavoured or not, which is not tinned	100 g, 125 g, 200 g, 250 g, 500 g, 1 kg or an integral multiple of 500 g.
7.	Cornflour, self-raising flour rice, sago, semolina or tapioca	100 g, 125 g, 200 g, 500 g, 1 kg or an integral multiple of 500 g.
8.	Flour, but excluding flour of a type specified in paragraph 7 or 9	An integral multiple of 500 g, not exceeding 5 kg, 10 kg, 20 kg, 45 kg, 70 kg or 90 kg.
9.	Maize meal or maize flour	100 g, 200 g, 250 g, 500 g, 1 kg, or an integral multiple of 1 kg not exceeding 5 kg, 10 kg, 20 kg, or 90 kg.
10.	Maize germ meal	An integral multiple of 500 g not exceeding 5 kg, 10 kg, 20 kg, 50 kg, 70 kg or 90 kg.
11.	Meal, but excluding meal of a type specified in paragraph 9 or 10	An integral multiple of 500 g not exceeding 5 kg, 10 kg, 20 kg, 50 kg or 90 kg.
12.	Salt, but excluding rock or flavoured salt. .	100 g, 125 g, 200 g, 250 g, 500 g, 750 g, 1 kg or an integral multiple of 500 g.
13.	Caster, cube, icing, loaf or table sugar . .	125 g, 200 g, 450 g, 500 g, 1 kg, or an integral multiple of 500 g.

14.	Sugar, but excluding sugar of a type specified in paragraph 13	125 g, 200 g, 250 g, 500 g, 1 kg or an integral multiple of 1 kg not exceeding 5 kg, 10 kg, 20 kg, 50 kg, or 90 kg.
15.	Dried fruit	100 g, 125 g, 200 g, 250 g, 500 g, 1 kg or an integral multiple of 1 kg.
16.	Wool	10 g, 20 g, 25 g, or an integral multiple of 20 g or 25 g.
17.	Peanut butter	100 g, 200 g, 400 g, 500 g, 1 kg or an integral multiple of 1 kg.
18.	Nuts, including peanuts, dried fruit mixtures and puffs	75 g, 100 g, 125 g, 150 g, 200 g, 250 g, 300 g, 500 g, 1 kg or an integral multiple of 1 kg.

WEIGHTS AND MEASURES (STANDARDS) REGULATIONS

under s. 28

G.N. 274/1959(F) 225/1963 216/1966 6/1983

Citation

1. These Regulations may be cited as the Weights and Measures (Standards) Regulations.

Authentication of standards

2.—(1) A standard shall be authenticated by a certificate issued by the National Physical Laboratory of the United Kingdom or by the Standard Weights and Measures Department of the Board of Trade of the United Kingdom which—

(*a*) describes and identifies the standard;

(*b*) states the actual error found on verification; and

(*c*) specifies any special conditions applying during the verification.

(2) A local standard shall be authenticated by a certificate issued by an assizer under instructions issued by the Minister which—

(*a*) describes and identifies the standard; and

(*b*) states the actual error found on verification.

(3) A working standard shall be authenticated by a certificate issued by an assizer which—

(*a*) describes and identifies the standard; and

(*b*) states the actual error found on verification.

Verification of working standards G.N. 6/1983

3. All working standards shall be verified in comparison with local standards at intervals not exceeding—

(*a*) in the case of weights, other than metric carat weights, one year;

(*b*) in the case of metric carat weights, five years;

(*c*) in the case of measures of length, five years;

(*d*) in the case of measures of capacity, one year.

Error allowed G.N. 6/1983

4. In local standards, the limit of error allowed—

(*a*) on a weight of a denomination specified in the first column of Part I or II of the First Schedule, is that specified opposite thereto in the second column of Part I or II, as the case may be, of the First Schedule;

(*b*) on a measure of capacity of a capacity specified in the first column of Part I or II of the Second Schedule, is that specified in the second column of Part I or II, as the case may be, of the Second Schedule;

(*c*) on a measure of length of a capacity specified in the first column of the Third Schedule, is that specified opposite thereto in the second column of the Third Schedule.

Adjustment of a working standard G.N. 6/1983

5.—(1) Subject to subregulation (2), a working standard shall, when verified, be adjusted to agree with the local standard with which it is compared.

(2) The limit of error allowed on an iron working standard weight of a denomination of 1 kg or over, which is used for the testing of any weighing instrument, is 100 mg per kilogram, in excess only.

(3) The limit of error allowed on a 500 kg roller weight is 100 grams in excess only.

Place where local standards are kept reg. 4 (*a*) G.N. 6/1983

6. The local standards shall be kept at the assize offices established at Blantyre.

FIRST SCHEDULE

Limits of error on local Standards

PART I

Weights

Denomination of Weight		*Error allowed in excess or deficiency*	
20	kilograms	150	milligrams
10	kilograms	100	milligrams
5	kilograms	50	milligrams
2	kilograms	30	milligrams

Denomination of Weight		*Error allowed in excess or deficiency*	
1	kilogram	20	milligrams
500	grams	10	milligrams
200	grams	10	milligrams
100	grams	4	milligrams
50	grams	3	milligrams
20	grams	2	milligrams
15	grams	1	milligram
10	grams	1	milligram
5	grams	1	milligram
4	grams	1	milligram
3	grams	1	milligram
2	grams	1	milligram
1	gram	0.4	milligram
500	milligrams	0.4	milligram
200	milligrams	0.4	milligram
100	milligrams	0.4	milligram
50	milligrams	0.4	milligram
20	milligrams	0.2	milligram
10	milligrams	0.1	milligram
5	milligrams or under	0.04	milligram

PART II

Metric Carat Weights

Denomination of Weight		*Error allowed in excess or deficiency*	
200	metric carats or over	1	milligram
100	metric carats	0.4	milligram
50	metric carats	0.4	milligram
20	metric carats	0.2	milligram
10	metric carats	0.2	milligram
5	metric carats	0.2	milligram
2	metric carats	0.2	milligram
1	metric carat	0.2	milligram
0.5	metric carat	0.1	milligram
0.25	metric carat	0.1	milligram
0.2	metric carat	0.1	milligram
0.1	metric carat	0.04	milligram

reg. 4 (*b*)

SECOND SCHEDULE

Limits of error on local Standards

PART I

Measure of Capacity

Capacity of Measure	*Error allowed in excess or deficiency*
20 litres	10 millilitres
10 litres	5 millilitres
5 litres	2.5 millilitres
2 litres	1.25 millilitres
1 litre	0.5 millilitre
500 millilitres	0.4 millilitre
200 millilitres	0.3 millilitre
100 millilitres	0.2 millilitre
50 millilitres	0.15 millilitre
20 millilitres	0.1 millilitre
10 millilitres	0.08 millilitre
5 millilitres	0.06 millilitre
2 millilitres	0.04 millilitre
1 millilitre	0.04 millilitre

PART II

Graduated Glass Measures

Capacity of Measure	*Error allowed in excess or deficiency*
above 100 millilitres	0.5 millilitre
above 20 millilitres and not exceeding 100 millilitres	0.3 millilitre
above 5 millilitres and not exceeding 20 millilitres	0.2 millilitre
above 2 millilitres and not exceeding 5 millilitres	0.1 millilitre
not exceeding 2 millilitres	0.05 millilitre

THIRD SCHEDULE reg. 4 (*c*)

Limits of error on local standards—measures of length

Denomination	*Error allowed in excess or deficiency*
50 metres	4.0 millimetres
30 metres	4.0 millimetres
20 metres	2.5 millimetres
10 metres	2.5 millimetres
5 metres	2.5 millimetres
3 metres	2.5 millimetres
2 metres	0.5 millimetres
1 metre	0.25 millimetre
1 decimetre	0.1 millimetre
1 centimetre	0.05 millimetre

WEIGHTS AND MEASURES (LICENCE OF COMPETENCY) REGULATIONS

G.N. 48/1969

under s. 28

1. These Regulations may be cited as the Weights and Measures (Licence of Competency) Regulations. Citation

2. In these Regulations unless the context otherwise requires— Interpretation

"licence of competency" means a licence declaring that a person is competent in the repair of weighing instruments, measuring instruments, weights and measures.

3. Applications for a licence of competency shall be made in writing to an assizer. Applications

4.—(1) The assizer shall cause an applicant for a licence of competency to be examined as to his ability to repair instruments, weights and measures and as to his knowledge of the law relating to weights and measures insofar as it relates to the particular classes of instruments, weights and measures for which the applicant wishes to hold a licence of competency. Examination for licence

(2) The examination referred to in subregulation (1) shall be conducted in such a manner as the assizer may determine.

5.—(1) Where the assizer is satisfied that an applicant for a licence of competency has sufficient knowledge of the law relating to weights and measures and is a person who can repair instruments, weights and measures to the standard prescribed by the Act he shall, upon receipt of the prescribed fee, issue the applicant with a licence of competency. Issue of licence

(2) A licence of competency may be issued for all or any particular class of weighing and measuring instruments.

Renewal of licence

6. A licence of competency shall expire on the 31st day of December each year, but may be renewed upon application to the assizer and on payment of the prescribed fee. The assizer shall renew the licence if he is satisfied that the work on the holder is satisfactory:

Provided that, where the assizer refuses to grant or renew a licence of competency he shall, in writing, advise the applicant of the reasons for such refusal.

Withdrawal of licence

7. The assizer may at any time withdraw a licence of competency if he is satisfied that the holder has failed to comply with any law relating to weights and measures:

Provided that where a certificate of competency is withdrawn, the assizer shall advise the holder, in writing, of the reasons for the withdrawal.

Appeal

8. Any person aggrieved by a decision of the assizer under these Regulations may appeal to the Minister whose decision shall be final.

Fees

9. The fees for the examination of an applicant for a licence of competency, the issue of a licence of competency and the renewal of a licence of competency, shall be those specified in the Schedule.

SCHEDULE

	Fee
1. Examination for licence of competency	K4.20
2. Issue of licence of competency	K2.10
3. Renewal of licence of competency	K2.10

G.N. 90/1969

WEIGHTS AND MEASURES (CERTIFICATE OF APPROVAL) REGULATIONS

under s. 28

Citation

1. These Regulations may be cited as the Weights and Measures (Certificate of Approval) Regulations.

Application

2. These Regulations shall apply to the submission of weights, measures and weighing and measuring instruments in terms of section 13 of the Weights and Measures Act.

State of instruments

3. Any instrument submitted to an assizer for approval shall be completely erected and ready for use.

Liquid measuring instruments

4. In the case of an instrument intended to measure a liquid, the applicant shall provide the assizer with a sufficient quantity of that liquid to enable him to test the instrument adequately.

5. The fees listed in the Schedule hereto are hereby prescribed for the examination and testing of weights, measure, and weighing and measuring instruments whether or not they are subsequently approved. Fees

6. Where an instrument, weight or measure, after approval, is modified in minor detail only, the Assizer may if he thinks fit undertake the examination and testing of the modified pattern for one half of the normal fee. Modified instruments

7. Where an applicant can prove that a Certificate of Approval has been issued in respect of an instrument, weight or measure by a testing authority in another country and accepted by the Ministry of Trade, Industry and Tourism as satisfying the requirements for approval under these Regulations no approval fee shall be charged in Malaŵi. Exemption from payment of fees

SCHEDULE

	K
Measures of length	30
Measures of volume	30
Measures of capacity	50
Weights	30
Beamscales	50
Counter machines	100
Counter machines with charts or dials	140
Steelyards	50
Deadweight machines	100
Spring balances including hydrostatic weighing machines	100
Platform machines and weighbridges	160
Machines acting automatically to weigh or record a succession of loads or deliver a succession of loads from bulk	240
Length measuring instruments	100
Capacity or volume measuring instruments	200

COMMERCIAL ADVERTISING (TRADITIONAL MUSIC) CONTROL

CHAPTER 48:07

Containing Page 1–2

CHAPTER 48:07

COMMERCIAL ADVERTISING (TRADITIONAL MUSIC) CONTROL

ARRANGEMENT OF SECTIONS

SECTION

1. Short title
2. Interpretation
3. Recording of traditional music or dancing
4. Use of recordings of traditional music or dancing for advertising
5. Regulations

An Act to provide for the control of the recording and reproduction for commercial advertising purposes of Malaŵi traditional music and dancing performed as an integral part of any official or public celebrations and for matters incidental thereto or connected therewith 19 of 1978

[31st March, 1978]

1. This Act may be cited as the Commercial Advertising (Traditional Music) Control Act. Short title

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

"Malaŵi traditional music or dancing" means any music, dancing, singing or drumming performed in the Malaŵi customary manner by ceremonial performers or by members of the public as an integral part of, or in connexion with, any official or public celebration or act of public acclaim of the President or of any other notable person or visitor to Malaŵi.

3. Any person who, for purposes of use in commercial advertising, records or causes to be recorded, by any method of sound, cinematographic or photographic recording capable of reproduction, any Malaŵi traditional music or dancing shall be guilty of an offence and liable to a fine of two thousand Kwacha or to imprisonment for a term of one year. Recording of traditional music or dancing

Use of recordings of traditional music or dancing for advertising

4. Any person who publishes or causes to be published any sound, cinematographic or photographic record of any Malaŵi traditional music or dancing for the purpose of or in connexion with or as background to any advertising of any commercial enterprise or business or of any offer to the public of any sale, letting or hiring of any lands, goods or services shall be guilty of an offence and liable to a fine of two thousand Kwacha or to imprisonment for a term of one year.

Regulations

5. The Minister may, by notice published in the *Gazette*, make regulations for the better carrying out of the provisions of this Act.

METRICATION

CHAPTER 48:08

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CHAPTER 48:08

METRICATION

ARRANGEMENT OF SECTIONS

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3. Power of Minister to adapt, alter, convert and modify
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FIRST SCHEDULE

SECOND SCHEDULE

CHAPTER 48:08

METRICATION

An Act to introduce the units of the metric system in Malaŵi, to enable necessary modification of legislation to be effected, to provide that the metric system of weights and measures shall be the only permitted system in trade transactions and for matters incidental thereto

9 of 1981
G.N. 48/1981

[26TH JUNE, 1981]

PART I

Preliminary

Short title

1.—(1) This Act may be cited as the Metrication Act.

(2) This Act shall be construed as one with the Weights and Measures Act (hereinafter called the principal Act) so however that, in the case of any conflict between the provisions of this Act and the principal Act, the provisions of this Act shall prevail.

PART II

Introduction of the Metric System

Metric units

2. On and after the commencement of this Act the units of the metric system shall have legal force and validity in Malaŵi and the units of the metric system shall consist of—

(*a*) the base units set out in Part I of First Schedule (including their multiples and sub-multiples);

(*b*) the supplementary and derived units set out in Part II of the First Schedule; and

(*c*) the additional units set out in Part III of the First Schedule.

Power of Minister to adapt, alter, convert and modify

3. The Minister responsible for the administration, of an Act may, in respect of that Act, by Order provide for the adaptation, alteration, conversion or modification of any of the provisions of that Act for the purpose of replacing references to units other than metric units which are either equivalent to such provisions or such approximations thereto as appear to the Minister to be desirable to ensure that, as so adapted, altered, converted or modified, they are expressed in convenient terms.

Conversion of Imperial standard units to metric units

4. The values expressed in terms of any units of the Imperial standard relating to measures of extension whether lineal, superficial or solid, or weight or capacity, may be converted into values expressed in terms of the units of the metric system in accordance with the Second Schedule.

Power of Minister to add to, vary or amend Schedules

5. The Minister may from time to time, by Order, add to, vary or amend the Schedules to this Act as he may think fit.

Saving

6.—(1) No Act or thing done prior to the making of any Order pursuant to section 3 shall be challenged only on the ground that such act or thing done was in a unit other than a unit of the metric system.

(2) Nothing in this Part shall affect the legal force and validity of any other system of units lawfully used in Malaŵi.

PART III

Weights, Measures and Instruments used in Trade

Interpretation of Part

7. In this Part—

"instrument" means a weighing or measuring instrument;

"licensed repairer" means a person licensed pursuant to the principal Act to repair or overhaul instruments;

"measure" means any device for the measurement of length area, capacity or volume;

"weight" means a mass piece, of a kind ordinarily used in association with a weighing instrument, for the determination of quantity according to weight.

Power of Minister to prohibit non-metric systems

8.—(1) The Minister may, by Order, specify any area, industry, trade or transaction to be an area, industry, trade or transaction in which—

(*a*) all weights and measures possessed or used in trade and denominated in units other than metric units shall be surrendered to an assizer on such date and in such circumstances as may be specified in the Order;

(*b*) all instruments possessed or used in trade and indicating in units other than metric units shall be converted to indicate in metric units within such period and in such circumstances as may be specified in the Order.

(2) When an Order is made under subsection (1) the Minister may, by the same or a subsequent Order, specify a date after which the possession or use in trade in the area, industry, trade or transaction concerned of any weights, measures or instruments which indicate in units other than metric units shall be prohibited.

Seizure and destruction of prohibited weights and measures

9.—(1) After the date specified in an Order made under section 8 (2) an assizer or inspector may seize and detain any weight or measure which he has reason to believe is prohibited by the Order.

(2) Unless, within 90 days after the date of seizure, the owner or other person found in possession of such weight or measure institutes proceedings for the recovery thereof on the ground that the same was not prohibited by the Order, giving notice in writing to the Minister of the institution of such proceedings, the weight or measure shall be destroyed.

(3) Proceedings under subsection (2) shall be heard and determined before a court of a Resident Magistrate.

Surrender of instruments, seizure, etc.

10.—(1) After the commencement of any period specified in an Order made under section 8 (1) (*b*), the Government Assizer may, by General Notice published in the *Gazette* and in such other

manner, if any, as he may consider expedient, require any person in the area, industry or trade, or engaged in the transaction, to which the Order relates, who has in his possession for use in trade any instrument to which the Order applies, to surrender such instrument to an assizer on such date and at such place as is specified in the Notice being a date within the period specified in the Order.

(2) After the date specified in an Order made under section 8 (2) an assizer or inspector may seize and detain any instrument which he has reason to believe is prohibited by the Order.

(3) This section does not apply with respect to any instrument which is—

(*a*) in the possession of a licensed repairer for the purpose of conversion to indicate in metric units;

(*b*) *bona fide* possessed or being used for the purposes of any person, industry, trade or transaction for the time being exempted by an Order made under section 11.

Power of Minister to exempt

11. Where the Minister is satisfied that suitable arrangements exist for ultimate compliance with this Part he may, by Order, exempt any person, industry, trade or transaction from the provisions of any Order made under section 8 for such period and subject to such conditions as may be specified in the Order made under this section.

Conversion of instruments

12. (1) Any instrument which is to be converted to indicate in metric units in pursuance of this Part shall be so converted by a licensed repairer.

(2) After completing such conversion, the licensed repairer concerned shall submit the instrument for assize before the same is returned to the possession of any person.

(3) Notwithstanding subsection (2), where an instrument is so fixed, or by reason of its heavy weight or delicate construction, it cannot conveniently be moved, the requirement of that subsection shall be deemed to have been complied with if—

(*a*) the licensed repairer concerned, in writing, has notified the fact of such conversion and the location of the instrument to an assizer and certified that to the best of his ability and belief such instrument has been rendered by him correct and assizable; and

(*b*) an assizer, having received a fee of K2, has issued a written authority stating that the instrument, as so converted, may be used in trade.

Power of Minister to prohibit importation, sale or manufacture of non-metric instruments

13. The Minister may, by Order, prohibit the importation, sale or manufacture of instruments intended for use in trade which do not indicate in metric units, and an assizer shall not accept for assize any such instrument so prohibited.

Offences and Penalties

14.—(1) Any person who—

(*a*) after the date specified in an Order made under section 8, has in his possession for use, or uses, in trade any weight, measure or instrument, prohibited by that Order;

(*b*) not being an assizer or a licensed repairer, converts or purports to convert any instrument for the purposes of this Part;

(*c*) being a licensed repairer, fails to comply with the requirement of section 12 (2);

(*d*) imports, sells or manufactures any instrument in contravention of an Order made under section 13; or

(*e*) fails to comply with a requirement made under section 10(1),

shall be guilty of an offence and liable to a fine of K500 and every instrument in respect of which an offence under paragraph (*a*), (*d*) or (*e*) was committed shall be forfeited unless the owner or some person acting on his behalf or having a right in such instrument shows cause to the contrary to the satisfaction of the court in accordance with subsection (3).

(2) Paragraphs (*a*), (*d*) and (*e*) of subsection (1) do not apply with respect to any instrument which is—

(*a*) in the possession of a licensed repairer for the purpose of conversion to indicate in metric units; or

(*b*) *bona fide* possessed or being used for the purposes of any person, industry, trade or transaction for the time being exempted by an Order made under section 11.

(3) Where a person is convicted of an offence under paragraph (*a*), (*d*) or (*e*) of subsection (1) the court, unless it considers, for reasons to be recorded by the court, that suitable arrangements can be made for the conversion of the instrument concerned to indicate in metric units, shall order that the instrument be forfeited.

(4) Where an instrument has been seized under section 10 (2) and a person charged with an offence in relation thereto under paragraph (*a*), (*d*) or (*e*) of subsection (1) has not within six months of the date thereof appeared to answer such charge, the Government Assizer may apply to a court of a Resident Magistrate for an order that such instrument shall be forfeited, and the court may make such order in relation to such application as it thinks just.

(5) Where a court other than the High Court fails or refuses to make an order for forfeiture under this section the Government Assizer may appeal against such failure or refusal to the High Court which may make such order, or may dismiss the appeal, and the decision of the High Court shall be final.

(6) Every instrument forfeited under this section shall be destroyed.

FIRST SCHEDULE (section 2)

PART I

BASIC UNITS

Quantity	*Name*	*Symbol*
length	metre	m
mass	kilogram	kg
time	second	s
intensity of electric current	ampere	A
thermodynamic temperature	kelvin	K
luminous intensity	candela	cd
amount of substance	mole	mol

PART II

SUPPLEMENTARY UNITS

Quantity	*Name*	*Symbol*
plane angle	radian	rad
solid angle	steradian	sr

Derived units

Quantity	*Name*	*Symbol*
area	square metre	m^2
volume	cubic metre	m^3
frequency	hertz	Hz
density (mass density)	kilogram per cubic metre	kg/m^3
velocity	metre per second	m/s
angular velocity	radian per second	rad/s
acceleration	metre per second squared	m/s^2
angular acceleration	radian per second squared	rad/s^2
force	newton	N
pressure (stress)	pascal	Pa
dynamic viscosity	pascal second	Pa.s
kinematic viscosity	square metre per second	m^2/s
work, energy, quantity of heat	joule	J
power	watt	W
quantity of electricity	coulomb	C
electric potential potential difference electromotive force electric field strength	volt	v
electric field strength	volt per metre	V/m
electric resistance	ohm	Ω
electric capacitance	farad	F
conductance	siemens	S
magnetic flux	weber	Wb
inductance	henry	H
magnetic flux density	tesla	T
magnetic field strength	ampere per meter	A/m
luminous flux	lumen	lm
luminance	candela per square metre	cd/m^2

Quantity	*Name*	*Symbol*
illuminance	lux	lx
wave number	1 per metre	m^{-1}
heat capacity, entropy	joule per kelvin	J/K
specific heat capacity	joule per kilogram kelvin	J/kgK
thermal conductivity	watt per metre kelvin	W/mK
radiant intensity	watt per steradian	W/sr
activity (of a radio-active source)	1 per second	s^{-1}
torque, moment of force	newton metre	Nm
surface tension	newton per metre	N/m
specific energy	joule per kilogram	J/kg
energy density	joule per cubic metre	J/m^3
current density	ampère per square metre	A/m^2
molar energy	joule per mole	J/mol
moment of inertia	kilogram square metre	kgm^2
momentum	kilogram metre per second	kgm/s

PART III

ADDITIONAL UNITS

Quantity	*Name*	*Symbol*
time	minute	min = 60s
	hour	h = 60 min
	day	d = 24 h
angle	degree	$° = \frac{\pi}{180}$
	minute	$' = \frac{1°}{60}$
	second	$'' = \frac{1'}{60}$
volume	litre	$1 = dm^3$
mass	tonne	t = 1,000 kg
temperature / temperature interval	degree Celsius	°C(0°C = 273.15 K)
distance	nautical mile	n mile = 1 852m
speed	knot	kn = 1 nautical mile per hour
area	are	$a = 100m^2$
	hectare	$ha = 10\ 000m^2$
pressure	bar	$b = 10^5Pa$
	standard atmosphere	atm = 101.325 kPa

SECOND SCHEDULE

(section 4)

Conversion of Imperial Standard Units to Equivalent Metric Units

Imperial Standard Units		*Metric Units*
1 yard	=	0.9144 metre exactly
1 pound	=	0.453 592 37 kilogram exactly
1 gallon	=	4.546 09 cubic decimetres approximately

[Subsidiary] (*Conversion of Instruments*) *and* (*Surrender of Weights and Measures*) *Orders*/ (*Exemption*) *Orders*

SUBSIDIARY LEGISLATION

(CONVERSION OF INSTRUMENTS) AND (SURRENDER OF WEIGHTS AND MEASURES) ORDERS

under s. 8

(*Not reproduced in the Laws of Malaŵi*)

G.N. 52–55/1981, 67–80/1981, 91–92/1981, 95–102/1981, 116–119/1981, 7–10/1982, 45–50/1982, 69–72/1983.

(EXEMPTION) ORDERS

under s. 11

(*Not reproduced in the Laws of Malaŵi*)

G.N. 28/1983
80/1985

COMPETITION AND FAIR TRADING

CHAPTER 48:09

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CHAPTER 48:09

COMPETITION AND FAIR TRADING

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43 of 1998
G.N. 9/2000

An Act to encourage competition in the economy by prohibiting anti-competitive trade practices; to establish the Competition and Fair Trading Commission; to regulate and monitor monopolies and concentrations of economic power; to protect consumer welfare; to strengthen the efficiency of production and distribution of goods and services; to secure the best possible conditions for the freedom of trade; to facilitate the expansion of the base of entrepreneurship and to provide for matters incidental thereto or connected therewith

[1ST APRIL, 2000]

PART I

Preliminary

1. This Act may be cited as the Competition and Fair Trading Act. Short title

2.—(1) In this Act, unless the context otherwise requires— Interpretation

"advertisement" means any form of communication made to the public or a section of the public for the purpose of promoting the supply of goods or services;

"affiliated" means associated with each other, formally or informally, by shareholding or otherwise;

"anti-competitive trade practices" means the trade practices enumerated in sections 32, 33 and 34;

"Chairman" means the Chairman of the Commission appointed under section 5;

"Committee" means a committee of the Commission established under section 14;

"Consumer" includes any person—

(*a*) who purchases or offers to purchase goods otherwise than for the purpose of resale but does not include a person who purchases any goods for the purpose of using them in the production and manufacture of any other foods or articles for sale;

(*b*) to whom a service is rendered;

"controlling interest", in relation to—

(*a*) any undertaking means any interest which enables the holder thereof to exercise, directly or indirectly, any control whatsoever over the activities or assets of the undertaking;

(*b*) any asset, means any interest which enables the holder thereof to exercise, directly or indirectly, any control whatsoever over the asset;

"customer" means a person who purchases goods or services;

"distribution" includes any act which goods are sold or services are supplied for consideration;

"distributor" means a person who engages in distribution;

"Executive Director" means the Executive Director of the Commission appointment under section 20;

"immediate family member", in relation to any person, means that person's spouse, child, parent, brother or sister;

"manufacturing" means transforming, on a commercial scale, raw materials into finished or semi-finished products, and includes the assembling of inputs into finished or semi-finished products but does not include mining;

"member" means a member of the Commission;

"merger" means—

(*a*) the acquisition of a controlling interest in—

(i) any trade involved in the production or distribution of any goods or services;

(ii) an asset which is or may be utilized for or in connexion with the production or distribution of any commodity, where the person who acquires the controlling interest already has a controlling interest in any undertaking involved in the production or distribution of the same goods or services; or

(*b*) the acquisition of a controlling interest in any trade whose business consists wholly or substantially in—

(i) supplying goods or services to the person who acquires the controlling interest;

(ii) distributing goods or services produced by the person who acquires the controlling interest;

"monopoly" means a situation in which a single person exercises, or two or more persons with a substantial economic connexion exercise, substantial control of a market for any goods or services;

"person" includes an individual, a company, a partnership, an association and any group of persons acting in convert, whether incorporated or not;

"sale" includes an agreement to sell or offer for sale and includes the exposing of goods for sale, the furnishing of a quotation, whether verbally or in writing, and any other act or notification by which willingness to enter into any transaction for sale is expressed;

"service" includes the sale of goods where the goods are sold in conjunction with the rendering of a service;

(*a*) in relation to goods, includes supply or re-supply by way of gift, sale, exchange, lease, hire or hire purchase;

(*b*) in relation to services, does not include the rendering of any services under a contract or employment but includes—

(i) the performance of engagements, for gain or reward (including professional engagements) for any matter; and

(ii) the rendering of services to order, and the provision of services by making them available to potential users, and

"supplier" shall be construed accordingly;

"trade" means any trade, business, industry, profession or occupation, relating to the supply or acquisition of goods or services;

"trade association" means a body of persons, whether incorporated or not, which is formed for the purpose of furthering the trade interests of its members or of persons represented by its members and, for the avoidance of doubt, does not include a trade union as defied in the Labour Relations Act; and Cap. 54:01

"trade practice means" any practice related to the carrying on of any trade and includes anything done or proposed to be done by any person which affects or is likely to affect the method of trading of any trade or class of traders or the production, supply or price in the course of trade of any goods whether real or personal, or of any service.

(2) For the purpose of this Act—

(*a*) any two companies are to be treated as affiliated enterprises if one of them is a company of which the other is a subsidiary or if both of them are subsidiaries of the same company; and

(*b*) a group of affiliated enterprises shall be treated as a single enterprise.

(3) Every reference in this Act to the term "market" is a reference to a market in Malaŵi for goods or services as well as other goods or services that, as a matter of fact and commercial common sense, are substitutable for them.

(4) References in this Act to the lessening of competition shall, unless the context otherwise requires, include references to hindering or preventing competition.

(5) For the purposes of this Act, the effect on competition in a market shall be determined by reference to all factors that affect competition in that market, including competition from goods or services supplied or likely to be supplied by persons not resident or carrying on business in Malaŵi.

Non-application of the Act

3. Nothing in this Act shall apply to—

(*a*) activities of employees for their own reasonable protection as employees;

(*b*) arrangements for collective bargaining on behalf of employers and employees for the purpose of fixing terms and conditions of employment;

(*c*) activities of trade unions and other associations directed at advancing the terms and conditions of employment of their members;

(*d*) those elements of any agreement which relate exclusively to the use, licence or assignment of rights under, or existing by virtue of, any copyright, patent or trademark;

(*e*) any act done to give effect to a provision of an agreement referred to in paragraph (*d*);

(*f*) activities expressly approved or required under a treaty or agreement to which Malaŵi is a party;

(*g*) those activities of professional associations which relate exclusively to the development and enforcement of professional standards of competence reasonably necessary for the protection of the public; and

(*h*) such business or activity as the Minister may, by notice published in the *Gazette*, specify.

PART II

The Competition and Fair Trading Commission

Establishment of the Commission

4. There is hereby established a body to be known as Competition and Fair Trading Commission (in this Act otherwise referred to as the "Commission") which shall be a body corporate with perpetual succession and a common seal capable of suing and being sued in its corporate name, and with power, subject to this Act, to do or perform all such acts and things as a body corporate may by law do or perform.

Composition of the Commission

5.—(1) The Commission shall consist of—

(*a*) the following members nominated by the Minister and appointed by the President—

(i) two persons representing business interests;

(ii) a lawyer;

(iii) an economist;

(iv) an accountant; and

(v) two persons representing consumer interests.

(*b*) the following members *ex officio*—

(i) the Secretary to the Treasury or his representative;

(ii) the Secretary for Commerce and Industry or his representative; and

(iii) the General Manager of the Malaŵi Bureau of Standards or his representative.

(2) A representative of a member *ex officio* referred to in subsection (1) shall be designated by, or on behalf of, the member *ex officio* by a notice in writing to the Commission to attend the meetings of the Commission, and upon such designation such representative shall not attend to the business of the Commission by representation.

(3) The Chairman shall be elected by the Commission from among its members:

Provided that no member appointed under paragraph (*b*) of subsection (1) shall be elected as Chairman.

(4) The names of all members as first constituted and every change of membership shall be published in the *Gazette*.

(5) The persons to be appointed under subsection (1) shall be chosen for their ability and experience in industry, commerce or administration or their professional qualifications or their suitability otherwise for appointment.

(6) A member shall not be in the employ of the Commission nor serve on a full time basis.

Tenure of office and vacancies

6.—(1) A member, other than a member *ex officio*, shall hold office for a period of three years and shall be eligible for re-appointment for another three-year term but the office of that member shall become vacant—

(*a*) if he resigns by giving one month notice in writing to the Minister;

(*b*) upon his death;

(*c*) if he is absent without valid excuse from three consecutive meetings of the Commission of which he has had notice;

(*d*) if he becomes an undischarged bankrupt;

(*e*) if he becomes of unsound mind; and

(*f*) if he participates, directly or indirectly, in an activity which is in contravention of this Act.

(2) On vacation of office by a member, the vacancy shall be filled by a person appointed in accordance with the relevant provisions of section 5 (1) (*a*) under which the former member was appointed:

Provided that if the remaining period is less than six months, the Minister may decide not to have the vacancy filled until the expiry of the period.

Allowances of members

7. Members of the Commission shall be paid such an allowance as the Minister shall determine.

Functions of the Commission

8.—(1) It shall be the function of the Commission to regulate, monitor, control and prevent acts or behaviour which are likely to adversely affect competition and fair trading in Malaŵi.

(2) Without derogation from the generality of subsection (1), the functions of the Commission shall be—

(*a*) to carry out, on its own initiative or at the request of any person, investigations in relation to the conduct of business so as to determine whether any enterprise is carrying on anti-competitive trade practices or unfair trading and the extent of such practices, if any;

(*b*) to carry out investigations on its own initiative or at the request of any person who may be adversely affected by a proposed merger;

(*c*) to take such action as it considers necessary or expedient to prevent or redress the creation of a merger or the abuse of a dominant position by an enterprise;

(*d*) to provide persons engaged in business with information regarding their rights and duties under this Act;

(*e*) to provide information for the guidance of consumers regarding their rights under this Act;

(*f*) to undertake studies and make available public reports regarding the operation of this Act;

(*g*) to cooperate with and assist any association or body of persons to develop and promote the observance of standards of conduct for the purpose of ensuring compliance with the provisions of this Act;

(*h*) to advise the Minister on such matters relating to the operation of this Act as it thinks fit or as may be requested by the Minister; and

(*i*) to do all such acts and things as are necessary, incidental or conducive to the better carrying out of its functions under this Act.

Commission shall seek information

9. The Commission shall obtain such information as it considers necessary to assist it in its investigation and, where it considers appropriate, shall examine and obtain verification of documents submitted to it.

Powers of the Commission

10.—(1) For the purposes of carrying out its functions under this Act, the Commission is hereby empowered to—

(*a*) summon and examine witnesses;

(*b*) call for and examine documents;

(*c*) administer oaths;

(*d*) require that any document submitted to the Commission be verified by affidavit; and

(*e*) adjourn any investigation from time to time.

(2) The Commission may hear orally any person who, in its opinion, will be affected by an investigation under this Act, and shall so hear the person if the person has made a written request for a hearing, showing that his is an interested party likely to be affected by the result of the investigation or that there are particular reasons why he should be heard orally.

(3) The Commission may require a person engaged in business or a trade or such other person as the Commission considers appropriate, to state such facts concerning goods manufactured, produced or supplied by him as the Commission may think necessary to determine whether the conduct of the business in relation to the goods or services constitutes an anti-competitive practice.

(4) If the information specified in subsection (3) is not furnished to the satisfaction of the Commission, it may make a finding on the basis of the information available before it.

Hearings to be held in public

11. Hearings of the Commission shall take place in public but the Commission may, whenever the circumstances so warrant, conduct a hearing in private.

Policy directions

12.—(1) The Commission may, where necessary, seek the general direction of the Minister as to the manner in which it is to carry out its duties under this part of the Act.

(2) Any direction given by the Minister under subsection (1) shall be in writing and published by the Commission in the *Gazette*.

Proceedings of the Commission

13.—(1) Subject to the other provisions of this Act, the Commission may regulate its own procedure.

(2) The Commission shall meet for the transaction of business at least once every three months at such places and at such times as the Chairman may determine.

(3) A special meeting of the Commission may be called by the Chairman upon written notice of not less than seven days received from any member of the Commission and shall be called if at least four members so request in writing:

Provided that if the urgency of any particular matter does not permit the giving of such notice, a special meeting may be called upon giving a shorter notice.

(4) Half of the members shall form the quorum of any meeting of the Commission.

(5) There shall preside at any meeting of the Commission—

(*a*) the Chairman; and

(*b*) in the absence of the Chairman such member as the Chairman may designate or such member as the members present and forming a quorum may elect from among their number for the purpose of that meeting.

(6) The decision of the Commission on any matter before any meeting shall be that of the majority of the members present and voting at the meeting and, in the event of an equality of votes, the person presiding shall have a casting vote in addition to his deliberative vote.

(7) No member appointed under section 5 (1) (*a*) shall attend to the business of his office by representation.

Commmittees of the Commission

14.—(1) The Commission may, for the purpose of performing its functions under this Act, establish committees and delegate to any such committee such of its functions as it considers necessary.

(2) The Commission may appoint as members of a committee established under subsection (1) persons who are or are not members of the Commission and such persons shall hold office for such period as the Commission may determine.

(3) Subject to any specific or general direction of the Commission, a committee established under subsection (1) may regulate its own procedure.

Minutes of meetings

15. The Commission shall cause minutes to be kept of the proceedings of every meeting of the Commission and of every meeting of a committee of the Commission.

Disclosure of interest

16.—(1) If any member is present at a meeting of the Commission or of any committee of the Commission at which any matter which is the subject of consideration is a matter in which that person or his immediate family member or his professional or business partner is directly or indirectly interested in a private or professional capacity, he shall, as soon as is practicable after the commencement of the meeting, disclose such interest and, unless the Commission or the committee otherwise directs, that person shall not take part in any consideration or discussion of, or vote on, any question touching on such matter.

(2) A disclosure of interest shall be recorded in the minutes of the meeting at which it is made.

Protection of members

17. No action, suit or other proceedings shall be brought or instituted personally against any member in respect of any act done in good faith in the course of carrying out the provisions of this Act.

Invited persons

18.—(1) The Commission may in its discretion at any time and for any period invite any person, and the Minister may in like manner nominate an officer in the public service, to attend any meeting of the Commission or of any of its committees and take part in the deliberations of the meeting, but such person or officer shall not be entitled to vote at the meeting.

(2) Section 16 shall apply, *mutatis mutandis*, to a person or an officer attending a meeting of the Commission pursuant to subsection (1).

PART III
Secretariat

Secretariat of the Commission

19. The Secretariat of the Commission shall consist of the Executive Director and other employees of the Commission appointed under this Act.

Executive Director of the Commission

20.—(1) The Commission shall appoint, on such terms and conditions as it may determine, an Executive Director of the Commission who shall be the chief executive officer of the Commission and shall in addition perform such duties as the Commission shall assign to his office and ensure the effective administration and implementation of this Act.

(2) Without derogation from the generality of the responsibilities and duties of the Executive Director conferred under subsection (1), the Executive Director shall be responsible for the day to day administration of the Commission.

(3) The Executive Director or such other officer of the Commission as the Executive Director may designate, shall attend meetings of the Commission and of any committee of the Commission and may address such meetings, but shall not vote on any matter:

Provided that the person presiding at any meeting may, for good cause, require the Executive Director or such other officer to withdraw from such meeting.

(4) Section 16 shall apply, *mutatis mutandis*, to the Executive Director and of such other officer referred to in this section.

Other employees

21.—(1) The Commission may appoint, on such terms and conditions as it may determine, such other employees, subordinate to the Executive Director, as it considers necessary for the performance of its functions and to assist the Executive Director in discharging his duties and responsibilities.

(2) The Commission may delegate to the Executive Director the appointment of employees of such junior ranks as the commission shall specify.

Disclosure of interest by employees, etc.

22.—(1) An employee of the Commission or a consultant to the Commission who, or whose immediate family member is directly or indirectly interested in a private or professional or official capacity in any matter being considered by the Commission, shall disclose such interest.

(2) A disclosure of interest made under this section shall be made to the Executive Director who shall take such decision as he considers appropriate in each case and submit a report thereon to the Commission.

Oath of secrecy

23. Every—

(*a*) member of the Commission;

(*b*) member of a committee of the Commission;

(*c*) employee of the Commission; and

(*d*) consultant in the service of the Commission,

shall, upon assumption of his office, take such oath of secrecy as may be approved by the commission or as may otherwise be prescribed under this Act.

Prohibition of publication or disclosure of information by unauthorized persons

24.—(1) No person shall, without the consent in writing given by or on behalf of the Commission, publish or disclose to any person, otherwise than in the course of his duties, contents of any document communication of information which relates to, and which has come to his knowledge in the course of his duties under this Act.

(2) Any person who contravenes subsection (1) shall be guilty of an offence and, upon conviction, liable to a fine of K50,000 and to imprisonment for three years.

Protection of employees

25. No action, suit or other proceedings shall be brought or instituted personally against any employee in respect of any act done in good faith in the course of carrying out the provisions of this Act.

PART IV

Financial Provisions

Funds of the Commission

26.—(1) The funds of the Commission shall consist of such monies as may—

(*a*) be appropriated by Parliament for the purposes of the Commission;

(*b*) be obtained as a result of the levy imposed under section 27;

(*c*) be paid to the Commission by way of grants or donations;

(*d*) be received by the Commission under subsection (2);

(*e*) constitute proceeds of sales of the annual reports and progress reports of the Commission: and

(*f*) otherwise vest or accrue to the Commission.

(2) The Commission may—

(*a*) accept money by way of grants or donations from any source in or outside Malaŵi;

(*b*) subject to the approval of the Minister and the Minister responsible for Finance, raise, by way of loans from any source in or outside Malaŵi, such money as it may require for the discharge of its functions; and

(*c*) Charge and collect fees in respect of programmes, publications, seminars, documents, consultancy services and other services provided by the Commission.

(3) The Commission may invest in such manner as it thinks fit such funds as it does not immediately require for the performance of its functions.

Levy

27. The Commission may, from time to time, by order published in the *Gazette*, impose a levy and such levy shall be appropriated for the general operations of the Commission.

Financial year

28. The financial year of the Commission shall be the period of twelve months ending on 30th June in each year or on such other date as the Minister may specify by Order published in the *Gazette*:

Provided that the first financial year of the Commission may be such shorter or longer period than twelve months as the Minister shall determine but being not less than six months or more than eighteen months.

Accounts

29.—(1) The Commission shall cause to be kept proper books of accounts and other records relating to its accounts.

(2) The accounts of the Commission shall be audited annually by independent auditors appointed by the Commission.

Annual reports

30.—(1) As soon as practicable, but not later than six months after the expiry of each financial year, the Commission shall submit to the Minister a report concerning its activities during that financial year.

(2) The report referred to in subsection (1) shall be in such form as the Minister shall approve and shall include information on the financial affairs of the Commission, and there shall be appended to the report—

(*a*) an audited balance sheet;

(*b*) an audited statement of income and expenditure; and

(*c*) such other information as the Commission may consider appropriate or as the Minister may direct.

(3) The Minister shall, during the meeting of the National Assembly next following receipt by him of the report referred to in subsection (1), lay the report before the National Assembly and subsequently the report shall be published.

Progress reports

31. The Commission shall, at the end of every financial year, produce a progress report on its activities during that period and shall publish the Report.

PART V

Anti-Competitive Trade Practices, etc.

Enumeration of anti-competitive trade practices

32.—(1) Any category of agreements, decisions and concerted practices which are likely to result in the prevention, restriction or distortion of competition to an appreciable extent in Malaŵi or in any substantial part of it are declared anti-competitive trade practices and are hereby prohibited.

(2) Subject to the provisions of subsection (1), enterprises shall refrain from the following acts or behaviour if they limit access to markets or otherwise unduly restrain competition, or have or are likely to have adverse effect on trade or the economy in general—

(*a*) predatory behaviour towards competitors including the use of cost pricing to damage, hinder or eliminate competition;

(*b*) discriminatory pricing and discrimination, in terms and conditions, in the supply or purchase of goods or services, including by means of pricing policies in transactions between affiliated enterprises which overcharge or undercharge for goods or services purchased or supplied as compared with prices for similar or comparable transactions outside the affiliated enterprises;

(*c*) Making the supply of goods or services dependant upon the acceptance of restrictions on the distribution or manufacture of competing or other goods or the provision of competing or other services;

(*d*) making the supply of particular goods or services dependant upon the purchase of other goods or services from the supplier to the consignee;

(*e*) imposing restrictions where or to whom or in what form or quantities goods supplied or other goods may be sold or exported;

(*f*) resale price maintenance; or

(*g*) trade agreements fixing prices between persons engaged in the business of selling goods or services, which agreements hinder or prevent the sale or supply or purchase of goods or services between persons, or limit or restrict the terms and conditions of sale or supply or purchase between persons engaged in the sale of purchased goods or services.

Trade agreements

33.—(1) It shall be an offence for enterprises engaged on the market in rival or potentially rival activities to engage in the practices appearing in subsection (3):

Provided that this subsection shall not apply where enterprises are dealing with each other in the context of a common entity wherein they are under common control or where they are otherwise not able to act independently of each other.

(2) The section applies to formal, informal, written and unwritten agreements and arrangements.

(3) For the purposes of subsection (1), the following are prohibited—

(*a*) colluding in the case of monopolies of two or more manufacturers, wholesalers, retailers, contractors or suppliers of services, in settling uniform price in order to eliminate competition;

(*b*) collusive tendering and bid-rigging;

(*c*) market or customer allocation agreements;

(*d*) allocation by quota as to sales and production;

(*e*) collective action to enforce arrangements;

(*f*) concerted refusals to supply goods or services to potential purchasers; or

(*g*) collective denials of access to an arrangement or association which is crucial to competition.

Anti-competitive trade practices by associations

34.—(1) The following practices conducted by or on behalf of a trade association are declared to be anti-competitive trade practices and are prohibited—

(*a*) unjustifiable exclusion from a trade association of any person carrying on or intending to carry on in good faith the trade in relation to which the association is formed; or

(*b*) making of recommendations, directly or indirectly, by a trade association, to its members or to any class of its members which relate to—

(i) the prices charged or to be charged by such members or any such class of members or to the margins included or to be included in the prices or to the pricing formula used or to be used in the calculation of those prices; or

(ii) the terms of sale (including discount, credit, delivery, and product and service guarantee terms) of such members or any class of members and which directly affects prices or profit margins included in the pricing formula.

(2) Any trade association which contravenes the provisions of subsection (1) commits an offence.

Control of mergers and takeovers

35.—(1) Any person who, in the absence of authority from the Commission, whether as a principal or agent and whether by himself, or his agent, participates in effecting—

(*a*) a merger between two or more independent enterprises;

(*b*) a takeover of one or more such enterprises by another enterprise, or by a person who control another such enterprise,

where such a merger or takeover is likely to result in substantial lessening of competition in any market shall be guilty of an offence.

(2) No merger or takeover made in contravention to subsection (1) shall have any legal effect and no rights or obligations imposed on the participating parties by any agreement in respect of the merger or takeover shall be legally enforceable.

Application to the Commission for authorization

36.—Any person may apply to the Commission for an order authorizing that person to effect a merger or takeover.

Investigation by the Commission

37.—(1) The Commission shall investigate any application made under section 36 and for that purpose the Commission shall be entitled to require any participant in the market within which a merger or takeover is proposed to take place to grant to the Commission access to records relating to patterns of ownership and percentages of sales accounted for by participants in the proposed merger or takeover or by other leading enterprises in the relevant sector.

(2) The Commission may require any person possessing such records to give to the Commission copies of those records or alternatively to submit such records to the Commission for copying by the Commission.

Criteria for evaluating application for authorization

38.—(1) In evaluating an application under section 36, the Commission shall have due regard to the following criteria—

(*a*) a merger or takeover shall be regarded as disadvantageous to the extent that it is likely to reduce competition in the domestic market and increases the ability of producers of the goods or services in question to manipulate domestic prices, output and sales;

(*b*) a merger or takeover shall be regarded as advantageous to Malaŵi to the extent that it is likely to result in—

(i) a substantially more efficient unit with lower production or distribution costs;

(ii) an increase in net exports;

(iii) an increase in employment;

(iv) lower prices to consumers;

(v) an acceleration in the rate of economic development;

(vi) a more rapid rate of technological advancement by enterprises in Malaŵi.

(2) The Commission shall not authorize a merger or takeover unless on balance the advantages to Malaŵi outweigh the disadvantages.

Order of the Commission on mergers or takeovers

39.—(1) The Commission shall, within forty-five days of receipt of an application or the date on which the applicants provide the information sought by the Commission if that date is later, make an order concerning and an application for authorization of a merger or takeover.

(2) An order made under subsection (1) may approve or reject the application, or it may approve the application on condition that certain steps be taken to reduce negative effects of the merger or takeover on competition.

(3) The Commission shall cause an order made under subsection (1) to be published in the *Gazette* not later than fourteen days after it is made.

Enforcement of orders

40.—(1) The Commission or any person in whose favour or for whose benefit an order has been made may lodge a copy of the order, certified by the Commission or a person authorized by the Commission, with the Registrar of the High Court and the Registrar shall forthwith record the order as a judgment of the High Court.

(2) An order that has been recorded under subsection (1) shall, for the purposes of enforcement, have the effect of a civil judgment of the High Court.

Misuse of market power

41.—(1) Any person that has a dominant position of market power shall not use that power for the purpose of—

(*a*) eliminating or damaging a competitor in that or any other market;

(*b*) preventing the entry of a person into that or any other market; or

(*c*) deterring or preventing a person from engaging in competitive conduct in that or any other market.

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

Monitoring concentration of economic power, etc.

42. The Commission shall keep the structure of production of goods and services in Malaŵi under review to determine where concentrations of economic power or anti-competitive trade practices exist whose detrimental impact on competition and the economy outweight the efficiency advantages, if any.

Unfair trading

43.—(1) A person shall not, in relation to a consumer—

(*a*) withhold or destroy producer or consumer goods, or render unserviceable or destroy the means of production and distribution of such goods, whether directly or indirectly, with the aim of bringing about a price increase;

(*b*) exclude liability for defective goods;

(*c*) in connexion with the supply of goods or services, make any warranty—

(i) limited to a particular geographic area or sales point;

(ii) falsely representing that products are of a particular style, model or origin;

(iii) falsely representing that the goods are new or of specified age; or

(iv) representing that products or services have any sponsorship, approval, performance and quality characteristics, components, materials, accessories, uses or benefits which they do not have;

(*d*) engage in conduct that is likely to mislead the public as to the nature, price, availability, characteristics, suitability for a given purpose, quantity or quality of any products or services;

(*e*) supply any product which is likely to cause injury to health or physical harm to consumers, when properly used, or which does not comply with a consumer safety standard which has been prescribed under any written law;

(*f*) claim payment for unsolicited goods or services;

(*g*) engage in unconscionable conduct in carrying out trade in goods or services;

(*h*) engage in pyramid selling of goods and services;

(*i*) engage in bait selling;

(*j*) offer gifts or prizes with no intention of supplying them; and

(*k*) put out an advertisement which is misleading or deceptive.

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

Authorization of allowable acts

44.—(1) The Commission may authorize any act, agreement or understanding which is not prohibited outright by this Act, that is, one which is not necessarily illegal unless abused if that act, agreement or understanding is consistent with the objectives of this Act and the Commission considers that, on balance, the advantage to Malaŵi outweigh the disadvantages.

(2) The Commission shall not authorize acts, agreements or understandings of a kind described in sections 33 (3), 41 (1) and 43 (1).

PART VI

Miscellaneous Provisions

Investigating officers

45.—(1) The Commission may designate any of its employees to be investigating officers for the purposes of this Act.

(2) Investigating officers shall carry out their functions under this Act subject to such directions as the Commission may give them.

(3) The Commission shall cause every investigating officer to be furnished with a certificate of appointment, which the investigating officer shall exhibit on demand by any interested person before carrying out any function under this Act.

Powers of entry and inspection

46.—(1) An investigating officer may at all reasonable times and on the production of a search warrant obtained from a court of law—

(*a*) enter any premises in or on which there is reasonable suspected to be any book, record or document relating to any anti-competitive trade practice or unfair trade practice or any actual or potential merger, takeover or monopoly situation; and

(*b*) require any person upon the premises—

(i) to disclose all information at his disposal; and

(ii) to produce any book, record or document or copy thereof or extract therefrom,

that may relate in any way to any anti-competitive trade practice, unfair trade practice, merger, takeover or monopoly situation referred to in paragraph (*a*); and

(*c*) make copies of or take extracts from any book; record or document referred to in paragraph (*b*).

(2) Any person who, without lawful excuse—

(*a*) hinders or prevents an investigating officer from exercising any power under subsection (1); or

(*b*) fails or refuses to comply with any requirement of an investigating officer under subsection (1); or

(*c*) upon being required under subsection (1) or disclose any information, fails or refuses to do so or provides information that is false or which he does not believe on reasonable grounds to be true,

shall be guilty of an offence and, upon conviction, be liable to a fine of K10,000 or to imprisonment for two years.

Secrecy to be observed

47.—(1) A member of the Commission or of a committee thereof, and every investigating officer and other person appointed or employed under this Act shall not disclose to any person, except in the performance of his functions under this Act or when required to do so by any written law, any information which he may have acquired in the course of his duties in relation to the financial or business affairs of any person, undertaking or business.

(2) Any person who contravenes subsection (1) shall be guilty of an offence and, upon conviction, be liable to a fine of K1,000 or to imprisonment for two years.

Appeal against finding of the Commission

48.—(1) Any person who is aggrieved by a finding of the Commission may, within fifteen days after the date of that finding, appeal to a Judge in Chambers.

(2) The Judge in Chambers may—

(*a*) confirm, modify or reverse the findings of the Commission or any part thereof; or

(*b*) direct the Commission to reconsider, either generally or in respect of any specified matters, the whole or any specified part of the matter to which the appeal relates.

(3) In giving any direction under this section, the Judge shall—

(*a*) advise the Commission of his reasons for doing so; and

(*b*) give to the Commission such directions as he thinks fit concerning the reconsideration of the matter by the Commission.

(4) In reconsideration of the matter, the Commission shall have regard to the Judge's reasons for giving a direction.

Operation of order pending determination of appeal

49. Where an appeal is brought against any finding of the Commission any directions or order of the Commission based on such findings shall remain in force pending the determination of the appeal, unless the Judge otherwise orders.

Offences

50. Any person who—

(*a*) contravenes or fails to comply with provision of this Act or any regulations made hereunder, or any directive or order lawfully given, or any requirement lawfully imposed under this Act or any regulations made hereunder;

(*b*) omits or refuses—

(i) to furnish any information when required by the Commission to do so; or

(ii) to produce any document when required to do so by a notice sent by the Commission; or

(*c*) knowingly furnishes any false information to the Commission,

shall be guilty of an offence.

Penalty for offences

51. A person guilty of an offence under this Act for which no specific penalty is provided shall be liable to a fine of K500,000 or of an amount equivalent to the financial gain generated by the offence, if such amount be greater, and to imprisonment for five years

Civil liability

52. Any person who suffers injury, loss or harm as a result of any agreement, arrangement, undertaking, act or omission which is prohibited under this Act may recover damages by way of civil proceedings in the High Court from the person responsible for any such agreement, arrangement, undertaking, act or omission.

Regulations

53. The Minister may, on the advice of the Commission, make regulations for carrying into effect the provisions of this Act, and, in particular and without prejudice to the generality of the foregoing power, such regulations may provide for—

(*a*) anything required to be prescribed under, or for the purposes of, this Act;

(*b*) any forms required for the purposes of this Act; and

(*c*) fees payable in respect of any service provided by the Commission.

54. This Act shall apply to and bind the Government.

Government to be bound

SUBSIDIARY LEGISLATION

G.N. 20/2006

COMPETITION AND FAIR TRADING REGULATIONS

under s. 53

Citation

1. These Regulations may be cited as the Competition and Fair Trading Regulations.

Oath of secrecy

2.—(1) Every member of the Commission or a committee of the Commission upon the assumption of his office in terms of section 23, shall take the oath of secrecy in the prescribed form contained in the First Schedule hereto.

(2) Every employee of the Commission or consultant in the service of the Commission upon the assumption of his office or duties, as the case may be, in terms of section 23, shall take the oath of secrecy in the prescribed form contained in the First Schedule hereto.

Application for authorization for relocation of core-company assets

3.—(1) An enterprise may apply to the Commission for authorization for relocation of core-company assets in terms of section 8 (1) of the Act.

(2) The application referred to in subregulation (1) shall be made in the prescribed form contained in the Second Schedule hereto.

Application for authorization of exclusive dealing arrangement

4.—(1) An enterprise may apply to the Commission for authorization to enter into an exclusive dealing arrangement, in terms of section 32 (2) (*c*) of the Act, where the enterprise is of the view that such agreement would not—

(*a*) limit access to market;

(*b*) unduly restrain competition; or

(*c*) have or likely to have adverse effect on trade or the economy in general.

(2) The application referred to in subregulation (1) shall be made in the prescribed form contained in the Second Schedule hereto.

Application for authorization for full-line forcing, bundling or typing arrangements

5.—(1) An enterprise may apply to the Commission for authorization to engage in full-line forcing, bundling or tying arrangements, in terms of section 32 (2) (*d*) of the Act, where the enterprise is of the view that such acts would not—

(*a*) limit access to markets;

(*b*) unduly restrain competition; or

(*c*) have or likely to have adverse effect to trade or the economy in general.

(2) The application referred to in subregulation (1) shall be made in the prescribed form contained in the Second Schedule hereto.

Application for authorization for resale price maintenance

6.—(1) An enterprise may apply to the Commission for authorization to engage in resale price maintenance in terms of section 32 (2) (*f*) of the Act, where the enterprise is of the view that such act would not—

(*a*) limit access to markets;

(*b*) unduly restrain competition; or

(*c*) have or likely to have adverse effect on trade or the economy in general.

(2) The application referred to in subregulation (1) shall be made in the prescribed form contained in the Second Schedule hereto.

Application for authorization to enter into trade agreement

7.—(1) An enterprise may apply to the Commission for authorization to enter into trade agreement where the enterprise is of the view that such agreement would not—

(*a*) hinder or prevent the sale or supply or purchase of goods or services between persons;

(*b*) limit or restrict the terms and conditions of sale or purchase between persons engaged in the sale of purchased goods or services in terms of section 32 (2) (*g*) of the Act.

(2) The application referred to in subregulation (1) shall be made in the prescribed form contained in the Second Schedule hereto.

Application for authorization for negative clearance

8.—(1) An enterprise may apply to the Commission for authorization for negative clearance in terms of section 32 (2) of the Act, where the enterprise is of the view that such act would not—

(*a*) limit access to markets;

(*b*) unduly restrain competition; or

(*c*) have or likely to have adverse effect to trade or the economy in general.

(2) The application referred to in subregulation (1) shall be made in the prescribed form contained in the Second Schedule hereto.

Application for authorization of a merger, takeover or acquisition

9. Any person who wishes to effect a merger, takeover or acquisition between two or more enterprises in terms of section 35 of the Act, shall apply to the Commission for authorization in the prescribed form contained in the Second Schedule hereto.

Unfair trading practices

10.—(1) Any person may lodge a complaint with the Commission in the prescribed form contained in the Third Schedule hereto, regarding unfair trading practice in terms of section 43 of the Act.

Fees

11.—(1) Any person who applies for authorization to the Commission under regulations 3 to 9 shall pay such fees as set out in the Fourth Schedule hereto.

(2) The Commission may from time to time revise the fees referred to in subregulation (1).

Consideration of the applications by the Commission

12.—(1) The Commission shall consider an application made by an enterprise taking into consideration the objectives of the Act and in order to give effect to the same.

(2) The Commission may, where necessary—

(*a*) investigate any application made under the regulations above and for that purpose may—

(i) require from the enterprise making the application to furnish the Commission with any necessary documents; or

(ii) access the records of the enterprise;

(*b*) require any person possessing the records of an enterprise to give to the Commission copies of those records;

(*c*) require the personal attendance of the persons making the application before the Commission to explain or clarify matters; or

(*d*) seek the views of other enterprises who are carrying on similar business as the applicant or the views of the persons who may be affected if such request was granted by the Commission.

(3) The Commission shall make its determination whether or not to grant the authorization within forty-five (45) days of receipt of the application:

Provided that where the Commission requests additional information the forty-five (45) days shall start running from the date the Commission acquires the requested information.

(4) The Commission shall inform an applicant of its decision in writing and, where the Commission has rejected the application, it shall furnish the applicant with the reasons for rejecting the application.

Offence and penalty

13.—(1) Any person who contravenes or fails to comply with the provisions of these Regulations commits an offence.

(2) Any person guilty of an offence under subregulation (1) shall, upon conviction, be liable to a fine of K1,000 and to three (3) months imprisonment.

FIRST SCHEDULE

OATH OF SECRECY FORMS s. 23; reg. 2

FORM I	OATH OF SECRECY FOR A MEMBER OF THE COMMISSION
FORM II	OATH OF SECRECY FOR A MEMBER OF A COMMITTEE OF THE COMMISSION
FORM III	OATH OF SECRECY FOR AN EMPLOYEE OF THE COMMISSION
FORM IV	OATH OF SECRECY FOR A CONSULTANT IN THE SERVICE OF THE COMMISSION

FORM I

THE COMPETITION AND FAIR TRADING ACT

(CAP 48:09)

CONFIDENTIAL

SOLEMN AFFIRMATION

OATH OF SECRECY FOR A MEMBER OF THE COMPETITION AND FAIR TRADING COMMISSION s. 23; reg. 2 (1)

I, ... being called upon to exercise the duties and functions of a member of the Competition and Fair Trading Commission, in pursuance of section 23 of the Act, do swear that I will not, directly or indirectly, reveal to any unauthorized person or otherwise than in the course of duty the contents or any part of the contents of any document, communication or information whatsoever which may come to my knowledge in the course of the exercise of my duties or functions as such.

SO HELP ME GOD

Signed: .....

Sworn before me this ..... day of ....., 20 .....

.....

Commissioner for Oaths

FORM II

THE COMPETITION AND FAIR TRADING ACT

(CAP. 48:09)

CONFIDENTIAL

SOLEMN AFFIRMATION

OATH OF SECRECY FOR A MEMBER OF A COMMITTEE OF THE COMPETITION AND FAIR TRADING COMMISSION s. 23; reg. 2 (1)

I, ... being called upon to exercise the duties and functions of a member of a committee of the Competition and Fair Trading Commission, in pursuance of section 23 of the Act, do swear that I will not, directly or indirectly, reveal to any unauthorized person or otherwise than in the course of duty the contents or any part of the contents of any document, communication or information whatsoever which may come to my knowledge in the course of the exercise of my duties or functions as such.

SO HELP ME GOD

Signed: .....

Sworn before me this ..... day of ....., 20 .....

.....

Commissioner for Oaths

FORM III

THE COMPETITION AND FAIR TRADING ACT

(CAP. 48:09)

CONFIDENTIAL

SOLEMN AFFIRMATION

OATH OF SECRECY FOR AN EMPLOYEE OF THE COMPETITION AND FAIR TRADING COMMISSION s. 23; reg. 2 (2)

I, ... being called upon to exercise the duties and functions as an employee of the Competition and Fair Trading Commission, in pursuance of section 23 of the Act, do swear that I will not, directly or indirectly, reveal to any unauthorized person or otherwise than in the course of duty the contents or any part of the contents of any document, communication or information whatsoever which may come to my knowledge in the course of the exercise of my duties or functions as such.

SO HELP ME GOD

Signed: .....

Sworn before me this ..... day of ....., 20 .....

.....

Commissioner for Oaths

FORM IV

THE COMPETITION AND FAIR TRADING ACT

(CAP. 48:09)

CONFIDENTIAL

SOLEMN AFFIRMATION

OATH OF SECRECY FOR A CONSULTANT IN THE SERVICE OF THE COMPETITION AND FAIR TRADING COMMISSION s. 23; reg. 2 (2)

I, ... being in the service of the Competition and Fair Trading Commission as a consultant, in pursuance of section 23 of the Act, do swear that I will not, directly or indirectly, reveal to any unauthorized person or otherwise than in the course of duty the contents or any part of the contents of any document, communication or information whatsoever which may come to my knowledge in the course of the exercise of my duties or functions as such.

SO HELP ME GOD

Signed: .....

Sworn before me this ..... day of ....., 20 .....

.....

Commissioner for Oaths

SECOND SCHEDULE
FORMS

Form No. CFTC/I	Application for Authorization for a Proposed Relocation of Core Company Assets
Form No. CFTC/II	Application for Authorization for Exclusive Dealing Arrangement
Form No. CFTC/III	Application for Authorization for a Full-Line Forcing Bundling or Tying Arrangements
Form No. CFTC/IV	Application for Authorization for Resale Price Maintenance
Form No. CFTC/V	Application for Authorization for a Trade Agreement
Form No. CFTC/VI	Application for Authorization of a Proposed Merger/Takeover/Acquisition
Form No. CFTC/VII	Application for Authorization for Negative Clearance

Form No. CFTC/I

THE COMPETITION AND FAIR TRADING ACT

(Cap. 48:09)

Application for Authorization of a Proposed Relocation of Core Company Assets s. 8 (1); reg. 3

To: The Executive Director
The Competition and Fair Trading Commission
P.O. Box 30366
Lilongwe 3

PART I
Background Information

1. Information from the Applicant(s):
Give details of—
(*a*) name and address of undertaking:
.....
.....
(*b*) nature of the undertaking's business:
.....
.....

(*c*) name, address, telephone number, fax number and position held by the appropriate contact person:

.....

.....

.....

2. Information of the other parties to the arrangement:

For each party to the arrangement (except the applicant) give details of:

(*a*) name and address of undertaking:

.....

.....

.....

(*b*) nature of the undertaking's business:

.....

.....

.....

(*c*) name, address, telephone number, fax number and position held by the appropriate contact person:

.....

.....

.....

3. Address of service (give an address to which all communications may be made and documents delivered):

.....

....

4. Appointment of Representatives:

Where applications are signed by representatives of undertakings, such representatives shall produce written proof that they are authorized to act.

5. If a joint notification is being submitted, has a joint representative been appointed?

5.1 If yes, please give details requested below:

(*a*) name of representative: .....

(*b*) address of representative: .....

(*c*) name of person to be contacted (if different from (*b*) above):

.....

(*d*) telephone number and fax number: .....

6. If no, please give details below of information of any representatives who have been authorized to act for each of the parties to the application, indicating whom they represent—
   (*a*) name of representative: .....
   .....
   (*b*) address of representative: .....
   .....
   .....
   (*c*) name of person to be contacted (and address, if different from (*b*) above):
   .....
   .....
   .....
   (*d*) telephone number and fax number: .....
   .....

PART II
Details if the Conduct, Relocation of Company Assets

7. Give a full listing and description of the plant and machinery to be relocated out of Malaŵi and subject of this notification. Include the plant rated capacity, current utilization rate, dates of manufacture and purchase, and country of origin.
   .....
   7.1 Give a full description of the production process and an identification of where the plant and machinery to be relocated is used.
   .....
   .....
   7.2 Indicate whether or not the plant and machinery has alternative usage in Malaŵi and the current product or service supply situation in the country.
   7.3 Give details of firms and their locations that are using similar plant and machinery in Malaŵi.
   7.4 Give the market value of the plant and machinery to be relocated.

PART III
Market Structure
Structure of Supply in affected Markets

8. Explain the distribution channels and service networks, if any, that exist in affected markets taking into account the following where appropriate—
   8.1 Distribution systems prevailing on the affected markets and their importance, i.e. who are the suppliers and the service providers to your company?
   .....
   .....

8.2 Indicate the anticipated effects of the relocation on the company's product lines, customers and consumers, resellers and other service providers, etc. (indicate whether the effects are positive or negative) Explain.

8.3 What are relative market shares of other suppliers/manufacturers using similar plant and machinery?

.....

.....

8.4 Is your company and industry affected by imported products in markets?

.....

.....

Structure of Demand in affected Markets

9. Identify five largest customers of the notifying parties in each affected market stating their individual share of the total sales of the goods and services attributed to each customer.

Customer 1	%
Customer 2	%
Customer 3	%
Customer 4	%
Customer 5	%
Others	%

9.1 State the name, address, fax, and telephone numbers of the contact person for each customer mentioned in 9 above:

.....

.....

.....

.....

.....

9.2 Explain the structure of demand in terms of—

(*a*) what has been the trend in the demand for the products from the plant and machinery to be relocated (i.e. downward, stable, upward, etc.). Please itemize trend for each product?

.....

.....

.....

.....

(*b*) what would you consider as the strong factors to your products doing well on the market, why do customers prefer your products?

.....

.....

(*c*) what is the degree of concentration or dispersion of customers on the Malaŵian market?

.....

(*d*) the basis of segmentation of customers into different groups and describe the "typical customer" of each group: .....

.....

(*e*) the importance of exclusive distribution contracts and other types of long-term contracts: .....

(*f*) the extent to which public authorities like government agencies, state enterprises or similar bodies are important participants as a source of demand:

.....

.....

PART IV
Market Entry

10. State whether there has been significant entry into any of the affected markets over the past five years: .....

.....

.....

11. If there has been significant entry into the market provide names, address, telephone number and contact person of market entrants:

.....

.....

12. In the opinion of parties making this notification, are there any undertakings likely to enter the market? .....

.....

.....

13. If there is likely to be new entrants in the market, give names, addresses and contact telephone numbers of such entrants: .....

.....

.....

14. Give an estimate of the period within which such entry is likely to occur, if possible:

.....

.....

15. Describe the various factors influencing entry into affected markets that exist in the present case, examining entry from both a geographical and product view point. In so doing, take account of the following where appropriate—
    (*a*) the total costs of entry (R & D. establishing distribution systems, promotion, advertising, servicing, etc.) on a scale equivalent to a significant viable competitor, indicating the market share of such a competitor:
    .....
    .....
    (*b*) any legal or regulatory barriers to entry, such as government authorization or standard setting in any form:
    .....
    .....
    (*c*) any restrictions created by existence of patents, know-how and other intellectual property rights in these markets and any restrictions created by licensing such rights:
    .....
    .....
    (*d*) the extent to which each of the parties to the concentration are licensees or licensors of patents, know-how and other rights in the relevant markets:
    .....
    .....
    (*e*) the importance of economies of scale for the production of products in the fleeted markets:
    .....
    .....
    (*f*) access to sources of supply, such as availability of raw materials:
    .....
    .....
    .....

PART V
Consideration of Public Interest Issues

15. Depending on your particular situation, the transaction may warrant justification on public interest grounds which may include such factors as the ones listed below herewith on which you may want to make detailed comments—
    15.1 A particular (industrial) sector or region.
    15.2 Employment.
    15.3 The ability of small businesses or the informal sector or the socially disadvantaged and persons with disabilities to become competitive i.e. impact in expanding the base of entrepreneurship and human development.
    15.4 The ability of national industries to compete in international markets.

PART VI
Grounds for Granting the Authorization

16. The grounds for claiming that the notified conduct does not and will not unduly restrain competition nor have an adverse effect on trade or the economy in general:

.....

.....

.....

16.1 Facts and contentions relied upon to substantiate this claim:

.....

Note: *The Commission will need to be satisfied that the conduct is consistent with the objectives of the Act.*

PART VII
Declaration

The undersigned declare that, to the best of their knowledge and belief, the information given in this notification is true, correct and complete, that complete copies of documents required under this form have been supplied, and that all estimates are identified as such and are their best estimates of the underlying facts and that all the opinions expressed are sincere.

Dated at ..... this ..... day of ..... year .....

Name(s): .....

.....

Signature(s): .....

.....

I/We attach the following relevant documents:

- ☐ Two copies of latest Annual Report and Audited Accounts (including Balance Sheet);
- ☐ Copy of Agreement or other documents relating to the transaction;
- ☐ Press Release or other Shareholder, Board or management official statement on the transaction;
- ☐ Other market or industry study reports that support the transaction.

Notes:

1. Experience has shown that pre-notification meetings are extremely valuable to both the notifying party(ies) and the Commission in determining the precise amount of information required in a notification and, in the large majority of cases, will result in a significant reduction of the information required. Accordingly, notifying parties are encouraged to consult the Commission regarding the possibility of dispensing with the obligation to provide certain information.

2. If the information required in this Form is not reasonably available to you in part or whole, the Commission will accept that the notification is complete and thus valid notwithstanding the failure to provide such information, provided that you give reasons for the unavailability of the said information, and provide your best estimates for the missing data together with the sources for the estimate. Where possible, indications as to where any of the requested information that is available to you could be provided.
3. The Commission only requests the submission of information relevant and necessary to its inquiry into the notified operation. If you consider that any particular information requested in this form may not be necessary for the Commission's examination of the case, you may explain this in your notification and ask the Commission to dispense with the obligation to provide that information.
4. Incorrect or misleading information in the notification will be considered to be incomplete information. The notification will only become effective on the date on which the complete and accurate information is received by the Commission. Section 50 (*c*) of the Act provides that misleading or incorrect information where supplied intentionally or negligently can make the notifying party or parties liable to a fine or imprisonment or to both.
5. The Commission can revoke its decision on the compatibility of a notified concentration or business practice where it is based on incorrect information for which one of the undertakings is responsible. Each party completing the notification is responsible for the accuracy of the information which it provides.
6. The notification must be completed in English and type-written or printed. The information requested in this Form is to be set out using the sections and paragraph numbers of the Form. The supporting or requested documents may be originals or certified copies of the originals. In the latter case the notifying party shall confirm that they are true and complete.
7. CONFIDENTIALITY: If you believe that your interests would be harmed if any of the information you are asked to supply were to be published or otherwise divulged to other parties, submit this information separately with each page clearly marked "Business Secrets". You should also give reasons why this information should not be divulged or published.
8. The notification should be delivered during normal Commission working hours at the following address—

   The Competition and Fair Trading Commission
   P. O. Box 30366
   Lilongwe 3
   Tel: 01 774 940/01 770 244 Fax: 01 770 680
   E-mail: malawicftc@gmail.com website:

FORM NO. CFTC/II

THE COMPETITION AND FAIR TRADING ACT

(CAP. 48:09)

APPLICATION FOR AUTHORIZATION OF EXCLUSIVE DEALING ARRANGEMENT s. 32 (2) (*d*); reg. 4

To: The Executive Director
The Competition and Fair Trading Commission
P.O. Box 30366
Lilongwe 3

PART I

BACKGROUND INFORMATION

1. Information from the Applicant(s):
Give details of—
(*a*) name and address of undertaking:
.....
.....
(*b*) nature of the undertaking's business:
.....
.....
(*c*) name, address, telephone number, fax number and position held by the appropriate contact person:
.....
.....
.....

2. Information on the other parties to the arrangement:
For each party to the arrangement (except the applicant) give details of—
(*a*) name and address of undertaking:
.....
.....
.....
(*b*) nature of undertaking's business:
.....
.....
.....
(*c*) name, address, telephone number, fax number and position held by the appropriate contact person:
.....
.....
.....

3. Address of service (give an address to which all communications may be made and documents delivered):

   .....

   .....

4. Appointment of Representatives:

   Where applications are signed by representatives of undertakings, such representatives shall produce written proof that they are authorized to act.

5. If a joint notification is being submitted, has a joint representative been appointed?

   5.1 If yes, please give details requested below—

   (*a*) name of representative: .....

   (*b*) address of representative: .....

   .....

   (*c*) name of person to be contacted (if different from (*b*) above):

   .....

   (*d*) telephone number and fax number: .....

   .....

6. If no, please give details below of information of any representatives who have been authorized to act for each of the parties to the application, indicating whom they represent—

   (*a*) name of representative: .....

   .....

   (*b*) address of representative: .....

   .....

   (*c*) name of person to be contacted (and address, if different from (*b*) above):

   .....

   .....

   .....

   (*d*) telephone number and fax number: .....

   .....

PART II

Details of the Arrangement

7. Describe goods and services in relation to the supply or acquisition of which this application relates: .....

   7.1 Describe competing goods and services of which the distributors are not allowed to engage in: .....

   .....

8. Identity the possible area(s) or market which will be affected by the Agreement in Malaŵi: .....

   .....

9. Give a list of all other undertakings which are engaged in the production of competing goods and services forbidden by the said Agreement:
   .....
   .....
   .....

10. Does the agreement grant the distributor also an exclusive territory? (if so, give details):
    .....
    .....

11. What are the normal conditions you require to grant a distributorship?
    .....
    .....
    .....

12. Describe what either party brings in the arrangement i.e. consideration:
    .....
    .....
    .....

13. What is your current market share in the relevant market?
    .....

14. Please summarize any provisions contained in the agreements which may restrict the parties in their freedom to take independent commercial decisions, for example regarding—
    (*a*) buying or selling prices, discounts or other trading conditions: .....
    .....
    (*b*) the quantities of goods to be manufactured or distributed or services to be offered: .....
    .....
    (*c*) technical development or investment: .....
    .....
    (*d*) the choice of markets or services of supply: .....
    .....
    (*e*) purchases from or sales to third parties .....
    .....
    (*f*) whether to apply similar terms for the supply of equivalent goods and services:
    .....
    .....
    (*g*) whether to offer different services separately: .....
    .....

PART III

Market Structure

Structure of Supply in affected Markets

15. Explain the distribution channels and service networks, if any, that exist in affected markets taking into account the following where appropriate——

15.1 Distribution systems prevailing on the affected markets and their importance:

.....

.....

15.2 The service networks performed by third parties prevailing and their importance:

.....

.....

15.3 What are relative market shares of other suppliers, manufacturers?

.....

.....

15.4 What is the importance of import competition?

.....

.....

Structure of Demand in affected Markets

16. Identify five largest customers of the notifying parties in each affected market stating their individual share of the total sales of the goods and services attributed to each customer: .....

.....

.....

.....

16.1 State the name, address, fax, telephone numbers of the contact person for each customer mentioned in 16, above: .....

.....

16.2 Explain the structure of demand in terms of—

(*a*) take off/expansion/maturity and decline or forecast of the growth rate of demand:

.....

.....

.....

.....

(*b*) the importance of customer preference in terms of brand loyalty/ product differentiation or provision of full range of products:

.....

.....

(*c*) the degree of concentration or dispersion of customers:

.....

(*d*) segmentation of customers into different groups and describe the "typical customer" of each group: .....

.....

(*e*) the importance of exclusive distribution contracts and other types of long-term contracts: .....

.....

(*f*) the extent to which public authorities like government agencies, state enterprises or similar bodies are important participants as a source of demand:

.....

.....

PART IV
Business Justification of the Agreement

17. What is the duration of the Agreement: .....

18. What are the special features of the goods or services of the contract, such as, do they require any special handling, storage or distribution, etc.

.....

.....

.....

19. Is there any unwillingness of dealers to handle the product without exclusive dealership or territory restrictions:

.....

20. The grounds for claiming that the notified conduct does not and will not unduly restrain competition nor have an adverse effect on trade or the economy in general:

.....

.....

Note: *The Commission will need to be satisfied that the conduct is consistent with the objectives of the Act.*

PART V
Declaration

The undersigned declare that, to the best of their knowledge and belief, the information given in this notification is true, correct and complete, that complete copies of documents required by this form have been supplied, and that all estimates are identified as such and are their best estimates of the underlying facts and that all the opinions expressed are sincere.

Dated at ..... this ..... day of ..... year .....

Names(s): .....

.....

Signature(s): .....

.....

I/We attach the following relevant documents:

☐ Two copies of latest Annual Report and Audited Accounts (including Balance Sheet);

☐ Copy of Agreement or other documents relating to the transaction;

☐ Press Release or other Shareholders, Board or management official statement on the transaction;

☐ Other market or industry study reports that support the transaction.

Notes:

1. Experience has shown that pre-notification meetings are extremely valuable to both the notifying party(ies) and the Commission in determining the precise amount of information required in a notification and, in the large majority of cases, will result in a significant reduction of the information required. Accordingly, notifying parties are encouraged to consult the Commission regarding the possibility of dispensing with the obligation to provide certain information.
2. If the information required in this Form is not reasonably available to you in part or whole, the Commission will accept that the notification is complete and thus valid notwithstanding the failure to provide such information, provided that you give reasons for the unavailability of the said information, and provide your best estimates for the missing data together with the sources for the estimate. Where possible, indications as to where any of the requested information that is available to you could be provided.
3. The Commission only requests the submission of information relevant and necessary to its inquiry into the notified operation. If you consider that any particular information requested in this form may not be necessary for the Commission's examination of the case, you may explain this in your notification and ask the Commission to dispense with the obligation to provide that information.

4. Incorrect or misleading information in the notification will be considered to be incomplete information. The notification will only become effective on the date on which the complete and accurate information is received by the Commission. Section 50 (*c*) of the Act provides that misleading or incorrect information where supplied intentionally or negligently can make the notifying party or parties liable to a fine or imprisonment or to both.
5. The Commission can revoke its decision on the compatibility of a notified concentration or business practice where it is based on incorrect information for which one of the undertakings is responsible. Each party completing the notification is responsible for the accuracy of the information which it provides.
6. The notification must be completed in English and type-written or printed. The information requested in this Form is to be set out using the sections and paragraph numbers of the Form. The supporting or requested documents may be originals or certified copies of the originals. In the latter case the notifying party shall confirm that they are true and complete.
7. CONFIDENTIALITY: If you believe that your interests would be harmed if any of the information you are asked to supply were to be published or otherwise divulged to other parties, submit this information separately with each page clearly marked "Business Secrets". You should also give reasons why this information should not be divulged or published.
8. The notification should be delivered during normal Commission working hours at the following address—

   The Competition and Fair Trading Commission
   P.O. Box 30366
   Lilongwe 3
   Tel: 01 774 940/ 01 770 244 Fax: 01 770 680
   E-mail: malawicftc@gmail.com Website:

FORM NO. CFTC/III

THE COMPETITION AND FAIR TRADING ACT

(CAP. 48:09)

APPLICATION FOR THE AUTHORIZATION FOR FULL-LINE FORCING BUNDLING OR TYING ARRANGEMENTS

s. 32 (2) (*d*); reg. 5

To: The Executive Director
The Competition and Fair Trading Commission
P.O. Box 30366
Lilongwe 3

PART I

BACKGROUND INFORMATION

1. Information from the Applicant(s):

   Give details of—

   (*a*) name and address of undertaking: .....
   .....

   (*b*) nature of the undertaking's business:
   .....
   .....

   (*c*) name, address, telephone number, fax number and position held by the appropriate contact person:
   .....
   .....
   .....

2. Information on the other parties to the arrangement:

   For each party to the arrangement (except the applicant) give details of—

   (*a*) name and address of undertaking:
   .....
   .....
   .....

   (*b*) nature of undertaking's business:
   .....
   .....
   .....

   (*c*) name, address, telephone number, fax number and position held by the appropriate contact person:
   .....
   .....

3. Address of Service (give an address to which all communications may be made and documents delivered):
   .....
   .....

4. Appointment of Representatives:

   Where applications are signed by representatives of undertakings, such representatives shall produce written proof that they are authorized to act.

5. If a joint notification is being submitted, has a joint representative been appointed?

   5.1 If yes, please give details requested below—

   (*a*) name of representative: .....

(*b*) address of representative: .....

.....

(*c*) name of the person to be contacted (if different from (*b*) above):

.....

(*d*) telephone number and fax number: .....

6. If no, please give details below of information of any representatives who have been authorized to act for each of the parties to the application, indicating whom they represent—

(*a*) name of representative: .....

.....

(*b*) address of representative: .....

.....

.....

(*c*) name of person to be contacted (and address, if different from (*b*) above):

.....

.....

(*d*) telephone number and fax number: .....

PART II

PRODUCT MARKET

7. Description of goods and services in relation to the supply or acquisition of which this application relates:

.....

8. Description of the conduct of a kind referred to in s. 32 (2) (*d*):

.....

9. Grounds for the granting of the authorization:

.....

10. Describe the relevant geographic market:

.....

.....

.....

NOTE: *The Commission will need to be satisfied that the conduct is consistent with the objectives of the Act.*

PART III

Market Structure

Structure of Supply in affected Markets

11. Explain the distribution channels and service networks, if any, that exist in affected markets taking into account the following where appropriate—

    11.1 Distribution systems prevailing on the affected markets and their importance:
    .....
    .....

    11.2 The service networks performed by third parties prevailing and their importance:
    .....
    .....

    11.3 What are relative market shares of other suppliers/manufacturers?
    .....
    .....

    11.4 What is the importance of import competition?
    .....
    .....

Structure of Demand in affected Markets

12. Identify five largest customers of the notifying parties in each affected market stating their individual share of the total sales of the goods and services attributed to each customer:.....
    .....
    .....
    .....
    .....

    12.1 State the name, address, fax, telephone numbers of the contact person for each customer mentioned in 12 above: .....
    .....
    .....
    .....
    .....

    12.2 Explain the structure of demand in terms of—

    (*a*) take off/expansion/maturity and decline or forecast of the growth rate of demand:
    .....
    .....
    .....

(*b*) the importance of customer preference in terms of brand loyalty/ product differentiation or provision of full range of products:
.....
.....

(*c*) the degree of concentration or dispersion of customers:
.....

(*d*) segmentation of customers into different groups and describe the "typical customer" of each group: .....
.....

(*e*) the importance of exclusive distribution contracts and other types of long-term contracts: .....

(*f*) the extent to which public authorities like government agencies, state enterprises or similar bodies are important participants as a source of demand:
.....
.....

PART IV
Grounds for Granting the Authorization

13. The grounds for claiming that the notified conduct does not and will not unduly restrain competition nor have an adverse effect on trade or the economy in general:
.....
.....
.....

14. Facts and contentions relied upon to substantiate this claim:
.....
.....
.....

Notes: *The Commission will need to be satisfied that the conduct is consistent with the objectives of the Act.*

PART V
Declaration

The undersigned declare that, to the best of their knowledge and belief, the information given in this notification is true, correct and complete, that complete copies of documents required by this form have been supplied, and that all estimates are identified as such and are their best estimates of the underlying facts and that all the opinions expressed are sincere.

Dated at ..... this ..... day of ..... year .....

Name(s): .....

Signature(s): .....
.....

I/We attach the following relevant documents:

☐ Two copies of latest Annual Report and Audited Accounts (including Balance Sheet);

☐ Copy of Agreement or other documents relating to the transaction;

☐ Press Release or other Shareholders, Board or management official statement on the transaction;

☐ Other market or industry study reports that support the transaction.

NOTES:

1. Experience has shown that pre-notification meetings are extremely valuable to both the notifying party(ies) and the Commission in determining the precise amount of information required in a notification and, in the large majority of cases, will result in a significant reduction of the information required. Accordingly, notifying parties are encouraged to consult the Commission regarding the possibility of dispensing with the obligation to provide certain information.
2. If the information required in this Form is not reasonably available to you in part or whole, the Commission will accept that the notification is complete and thus valid notwithstanding the failure to provide such information, provided that you give reasons for the unavailability of the said information, and provide your best estimates for the missing data together with the sources for the estimate. Where possible, indications as to where any of the requested information that is available to you could be provided.
3. The Commission only requests the submission of information relevant and necessary to its inquiry into the notified operation. If you consider that any particular information requested in this form may not be necessary for the Commission's examination of the case, you may explain this in your notification and ask the Commission to dispense with the obligation to provide that information.
4. Incorrect or misleading information in the notification will be considered to be incomplete information. The notification will only become effective on the date on which the complete and accurate information is received by the Commission. Section 50 (*c*) of the Act provides that misleading or incorrect information where supplied intentionally or negligently can make the notifying party or parties liable to a fine or imprisonment or to both.
5. The Commission can revoke its decision on the compatibility of a notified concentration or business practice where it is based on incorrect information for which one of the undertakings is responsible. Each party completing the notification is responsible for the accuracy of the information which it provides.

6. The notification must be completed in English and type-written or printed. The information requested in this Form is to be set out using the sections and paragraph numbers of the Form. The supporting or requested documents may be originals or certified copies of the originals. In the latter case the notifying party shall confirm that they are true and complete.
7. CONFIDENTIALITY: If you believe that your interests would be harmed if any of the information you are asked to supply were to be published or otherwise divulged to other parties, submit this information separately with each page clearly marked "Business Secrets". You should also give reasons why this information should not be divulged or published.
8. The notification should be delivered during normal Commission working hours at the following address—
   The Competition Fair Trading Commission
   P. O. Box 30366
   Lilongwe 3
   Tel: 01 774 940/ 01 770 244 Fax: 01 770 680
   E-mail: malawicftc@gmail.com Website:

FORM NO. CFTC/IV

THE COMPETITION AND FAIR TRADING ACT

(CAP. 48:09)

APPLICATION FOR AUTHORIZATION FOR RESALE PRICE MAINTENANCE s. 32 (2) (*f*); reg. 6

To: The Executive Director
The Competition and Fair Trading Commission
P.O. Box 30366
Lilongwe 3

PART I

BACKGROUND INFORMATION

1. Information from the Applicant(s):
   Give details of—
   (*a*) name and address of undertaking:
   .....
   .....
   (*b*) nature of the undertaking's business:
   .....
   .....
   .....

(*c*) name, address, telephone number, fax number and position held by the appropriate contact person:

.....

.....

.....

2. Information on the other parties to the arrangement:

For each party to the arrangement (except the applicant) give details of—

(*a*) name and address of undertaking:

.....

.....

.....

(*b*) nature of undertaking's business:

.....

.....

.....

(*c*) name, address, telephone number, fax number and position held by the appropriate contact person:

.....

.....

.....

3. Address of Service (give an address to which all communications may be made and documents delivered):

.....

.....

4. Appointment of Representatives:

Where applications are signed by representatives of undertakings, such representatives shall produce written proof that they are authorized to act.

5. If a joint notification is being submitted, has a joint representative been appointed?

5.1 If yes, please give details requested below—

(*a*) name of representative: .....

(*b*) address of representative:.....

.....

(*c*) name of person to be contacted (if different from (*b*) above):

.....

(*d*) telephone number and fax number: .....

6. If no, please give details below of information of any representatives who have been authorized to act for each of the parties to the application, indicating whom they represent—

(*a*) name of representative: .....
.....

(*b*) telephone number and fax number: .....
.....

PART II

PRODUCT MARKET

7. Description of goods and services in relation to the supply or acquisition of which this application relates:
.....
.....

7.1 Description of the conduct that may constitute resale price maintenance:
.....
.....

7.2 Describe the relevant geographic market:
.....
.....
.....

PART III

MARKET STRUCTURE

Structure of Supply in affected Markets

8. Explain the distribution channels and service networks, if any, that exist in affected markets taking into account the following where appropriate—

8.1 Distribution systems prevailing on the affected markets and their importance:
.....
.....

8.2 The service networks performed by third parties prevailing and their importance:
.....
.....

8.3 What are relative market shares of other suppliers/manufacturers?
.....
.....

8.4 What is the importance of import competition?
.....
.....

Structure of Demand in affected Markets

9. Identify five largest customers of the notifying parties in each affected market stating their individual share of the total sales of the goods and services attributed to each customer: .....
.....
.....
.....
.....
.....

9.1 State the name, address, fax, telephone numbers of the contact person for each customer mentioned in 9 above: .....
.....
.....
.....
.....
.....

9.2 Explain the structure of demand in terms of—

(*a*) take off/expansion/maturity and decline or forecast of the growth rate of demand:

.....
.....

(*b*) the importance of customer preference in terms of brand loyalty/ product differentiation or provision of full range of products:

.....
.....

(*c*) the degree of concentration or dispersion of customers:

.....

(*d*) segmentation of customers into different groups and describe the "typical customer" of each group: .....
.....

(*e*) the importance of exclusive distribution contracts and other types of long-term contracts: .....

(*f*) The extent to which public authorities like government agencies, state enterprises or similar bodies are important participants as a source of demand:

.....
.....

PART IV
Grounds for Granting the Authorization

10. The grounds for claiming that the notified conduct does not and will not unduly restrain competition nor have an adverse effect on trade or the economy in general:

.....

.....

.....

Notes: *The Commission will need to be satisfied that the conduct is consistent with the objectives of the Act.*

PART V
Declaration

The undersigned declare that, to the best of their knowledge and belief, the information given in this notification is true, correct and complete, that complete copies of documents required by this form have been supplied, and that all estimates are identified as such and are their best estimates of the underlying facts and that all the opinions expressed are sincere.

Dated at ..... this ..... day of ..... year .....

Name(s): .....

Signature(s): .....

.....

I/We attach the following relevant documents:

- ☐ Two copies of latest Annual Report and Audited Accounts (including Balance Sheet);
- ☐ Copy of Agreement or other documents relating to the transaction;
- ☐ Press Release or other Shareholders, Board or management official statement on the transaction;
- ☐ Other market or industry study reports that support the transaction.

Notes:

1. Experience has shown that pre-notification meetings are extremely valuable to both the notifying party(ies) and the Commission in determining the precise amount of information required in a notification and, in the large majority of cases, will result in a significant reduction of the information required. Accordingly, notifying parties are encouraged to consult the Commission regarding the possibility of dispensing with the obligation to provide certain information.

2. If the information required in this Form is not reasonably available to you in part or whole, the Commission will accept that the notification is complete and thus valid notwithstanding the failure to provide such information, provided that you give reasons for the unavailability of the said information, and provide your best estimates for the missing data together with the sources for the estimate. Where possible, indications as to where any of the requested information that is available to you could be provided.
3. The Commission only requests the submission of information relevant and necessary to its inquiry into the notified operation. If you consider that any particular information requested in this form may not be necessary for the Commission's examination of the case, you may explain this in your notification and ask the Commission to dispense with the obligation to provide that information.
4. Incorrect or misleading information in the notification will be considered to be incomplete information. The notification will only become effective on the date on which the complete and accurate information is received by the Commission. Section 50 (*c*) of the Act provides that misleading or incorrect information where supplied intentionally or negligently can make the notifying party or parties liable to a fine or imprisonment or to both.
5. The Commission can revoke its decision on the compatibility of a notified concentration or business practice where it is based on incorrect information for which one of the undertakings is responsible. Each party completing the notification is responsible for the accuracy of the information which it provides.
6. The notification must be completed in English and type-written or printed. The information requested in this Form is to be set out using the sections and paragraph numbers of the Form. The supporting or requested documents may be originals or certified copies of the originals. In the latter case the notifying party shall confirm that they are true and complete.
7. CONFIDENTIALITY: If you believe that your interests would be harmed if any of the information you are asked to supply were to be published or otherwise divulged to other parties, submit this information separately with each page clearly marked "Business Secrets". You should also give reasons why this information should not be divulged or published.
8. The notification should be delivered during normal Commission working hours at the following address—

   The Competition Fair Trading Commission
   P. O. Box 30366
   Lilongwe 3
   Tel: 01 774 940/ 01 770 244 Fax: 01 770 680
   E-mail: malawicftc@gmail.com Website:

FORM NO. CFTC/V

THE COMPETITION AND FAIR TRADING ACT

(CAP. 48:09)

APPLICATION FOR AUTHORIZATION FOR A TRADE AGREEMENT

s. 32 (2) (*g*); reg. 7

To: The Executive Director
The Competition and Fair Commission
P.O. Box 30366
Lilongwe 3

PART I

BACKGROUND INFORMATION

1. Information from the Applicant(s):
Give details of—
(*a*) name and address of undertaking:
.....
.....
(*b*) nature of the undertaking's business:
.....
.....
.....
(*c*) name, address, telephone number, fax number and position held by the appropriate contact person:
.....
.....
.....

2. Information on the other parties to the arrangement:
For each party to the arrangement (except the applicant) give details of—
(*a*) name and address of undertaking:
.....
.....
.....
(*b*) nature of undertaking's business:
.....
.....
.....

(*c*) name, address, telephone number, fax number and position held by the appropriate contact person:

.....

.....

.....

3. Address of Service (give an address to which all communications may be made and documents delivered):

.....

.....

4. Appointment of Representatives:

Where applications are signed by representatives of undertakings, such representatives shall produce written proof that they are authorized to act.

5. If a joint notification is being submitted, has a joint representative been appointed?

5.1 If yes, please give details requested below—

(*a*) name of representative: .....

(*b*) address of representative:.....

.....

(*c*) name of person to be contacted (if different from (*b*) above):

.....

(*d*) telephone number and fax number: .....

6. If no, please give details below of information of any representatives who have been authorized to act for each of the parties to the application, indicating whom they represent—

(*a*) name of representative:.....

.....

(*b*) address of representative:

.....

.....

(*c*) name of person to be contacted (if different from (*b*) above):

.....

.....

.....

(*d*) telephone number and fax number: .....

.....

PART II
Agreements by Associations

7. The agreement by which the association is formed:

.....

.....

7.1 Description of any recommendations issued to members (with copy of relevant extracts from the minutes, if any, authorizing those recommendations):

.....

.....

.....

(*see* Declaration below)

PART III
Full Details of the Arrangement

8. Please summarize any provisions contained in the agreements which may restrict the parties in their freedom to take independent commercial decisions, for example regarding—

(*a*) buying or selling prices, discounts or other trading conditions:

.....

(*b*) the quantities of goods to be manufactured or distributed or services to be offered:

.....

(*c*) technical development or investment:

.....

(*d*) the choice of markets or services of supply:

.....

(*e*) purchases from or sales to third parties:

.....

(*f*) whether to apply similar terms for the supply of equivalent, goods and services:

.....

(*g*) whether to offer different services separately:

.....

(*h*) list of all the parties (e.g. agents or distributors) to the agreement:

.....

PART IV
Market Structure

Structure of Supply in affected Markets

9. Explain the distribution channels and service networks, if any, that exist in affected markets taking into account the following where appropriate—

   9.1 Distribution systems prevailing on the affected markets and their importance:

   .....

   .....

   9.2 The service networks performed by third parties prevailing and their importance:

   .....

   .....

   9.3 What are relative market shares of other suppliers/manufacturers?

   .....

   .....

   9.4 What is the importance of Import Competition?

   .....

   .....

Structure of Demand in affected Markets

10. Identify five largest customers of the notifying parties in each affected market stating their individual share of the total sales of the goods and services attributed to each customer: .....

    .....

    .....

    .....

    .....

    .....

    10.1 State the name, address, fax, telephone numbers of the contact person for each customer mentioned in 10, above: .....

    .....

    .....

    .....

    .....

    .....

10.2 Explain the structure of demand in terms of—

(*a*) take off/expansion/maturity and decline or forecast of the growth rate of demand:

.....

.....

.....

.....

(*b*) the importance of customer preference in terms of brand loyalty/ product differentiation or provision of full range of products:

.....

.....

(*c*) the degree of concentration or dispersion of customers:

.....

.....

(*d*) segmentation of customers into different groups and describe the "typical customer" of each group: .....

.....

(*e*) the importance of exclusive distribution contracts and other types of long-term contracts: .....

(*f*) the extent to which public authorities like government agencies, state enterprises or similar bodies are important participants as a source of demand:

.....

PART V

Grounds for Granting the Authorization

11. The grounds for claiming that the notified conduct does not and will not unduly restrain competition nor have any adverse effect on trade or the economy in general:

.....

.....

.....

Note: *The Commission will need to be satisfied that the agreement is consistent with the objectives of the Act.*

PART VI
Declaration

The undersigned declare that, to the best of their knowledge and belief, the information given in this notification is true, correct and complete, that complete copies of documents required by this form have been supplied, and that all estimates are identified as such and are their best estimates of the underlying facts and that all the opinions expressed are sincere.

Dated at ..... this ..... day of ..... year .....

Name(s): .....

Signature(s): .....

.....

I/We attach the following relevant documents:

- ☐ Two copies of latest Annual Report and Audited Accounts (including Balance Sheet);
- ☐ Copy of Agreement or other documents relating to the transaction;
- ☐ Press Release or other Shareholders, Board or management official statement on the transaction;
- ☐ Other market or industry study reports that support the transaction.

Notes:

1. Experience has shown that pre-notification meetings are extremely valuable to both the notifying party(ies) and the Commission in determining the precise amount of information required in a notification and, in the large majority of cases, will result in a significant reduction of the information required. Accordingly, notifying parties are encouraged to consult the Commission regarding the possibility of dispensing with the obligation to provide certain information.
2. If the information required in this Form is not reasonably available to you in part or whole, the Commission will accept that the notification is complete and thus valid notwithstanding the failure to provide such information, provided that you give reasons for the unavailability of the said information, and provide your best estimates for the missing data together with the sources for the estimate. Where possible, indications as to where any of the requested information that is available to you could be provided.
3. The Commission only requests the submission of information relevant and necessary to its inquiry into the notified operation. If you consider that any particular information requested in this form may not be necessary for the Commission's examination of the case, you may explain this in your notification and ask the Commission to dispense with the obligation to provide that information.

4. Incorrect or misleading information in the notification will be considered to be incomplete information. The notification will only become effective on the date on which the complete and accurate information is received by the Commission. Section 50 (*c*) of the Act provides that misleading or incorrect information where supplied intentionally or negligently can make the notifying party or parties liable to a fine or imprisonment or to both.
5. The Commission can revoke its decision on the compatibility of a notified concentration or business practice where it is based on incorrect information for which one of the undertakings is responsible. Each party completing the notification is responsible for the accuracy of the information which it provides.
6. The notification must be completed in English and type-written or printed. The information requested in this Form is to be set out using the sections and paragraph numbers of the Form. The supporting or requested documents may be originals or certified copies of the originals. In the latter case the notifying party shall confirm that they are true and complete.
7. If an agreement is made by a trade or a service association. The parties include all the association's members but, if there are more than 50, there is no need to give names and addresses, an approximation of the total membership is sufficient.
8. Where an agreement made among the members of a trade or services supply association is contained in its constitution, the rules, regulations, by-laws or resolutions of the association must be provided to the Commission.
9. CONFIDENTIALITY: If you believe that your interests would be harmed if any of the information you are asked to supply were to be published or otherwise divulged to other parties, submit this information separately with each page clearly marked "Business Secrets". You should also give reasons why this information should not be divulged or published.
10. The notification should be delivered during normal Commission working hours at the following address—

    The Competition Fair Trading Commission
    P. O. Box 30366
    Lilongwe 3
    Tel: 01 774 940/ 01 770 244 Fax: 01 770 680
    E-mail: malawicftc@gmail.com Website:

FORM NO. CFTC VI

THE COMPETITION AND FAIR TRADING ACT

(CAP. 8:09)

APPLICATION FOR AUTHORIZATION OF A PROPOSED MERGER/TAKEOVER/ACQUISITION s. 35; reg. 8

To: The Executive Director
The Malaŵi Competition and Fair Trading Commission
P.O. Box 30366
Lilongwe 3

PART I
BACKGROUND INFORMATION

1. Information from the Applicant(s):

Give details of—

(*a*) name and address of undertaking:

.....

.....

(*b*) nature of the undertaking's business:

.....

.....

(*c*) name, address, telephone number, fax number and position held by the appropriate contact person:

.....

.....

2. Information on the other parties to the arrangement:

For each party to the arrangement (except the applicant) give details of—

(*a*) name and address of undertaking:

.....

.....

(*b*) nature of undertaking's business:

.....

.....

(*c*) name, address, telephone number, fax number and position held by the appropriate contact person:

.....'

....

3. Address of Service (give an address to which all communications may be made and documents delivered):

   .....

   .....

4. Appointment of Representatives:

   Where applications are signed by representatives of undertakings, such representatives shall produce written proof that they are authorized to act.

5. If a joint notification is being submitted, has a joint representative been appointed?

   5.1 If yes, please give details requested below—

   (*a*) name of representative: .....

   (*b*) address of representative: .....

   .....

   (*c*) name of person to be contacted (if different from (*b*) above):

   .....

   (*d*) telephone number and fax number: ....

6. If no, please give details below of information of any representatives who have been authorized to act for each of the parties to the application, indicating whom they represent.

   (*a*) name of representative:.....

   .....

   (*b*) address of representative: .....

   .....

   (*c*) name of person to be contacted (and address, if different from (*b*) above):

   .....

   .....

   .....

   (*d*) telephone number and fax number: .....

   .....

PART II

Ownership and Control

7. For each of the parties to the concentration provide a list of all undertakings belonging to the same group. The list must include—

   7.1 Names and addresses of the current and past (two years) Directors of each of the undertaking to the concentration:

   .....

   .....

   .....

   .....

7.2 Names and addresses of the current and past (two years) shareholders of each of the undertaking to the concentration:

.....
.....
.....
.....

7.3 All undertakings or persons controlling these parties, directly or indirectly:

.....
.....

7.4 All undertakings active on any affected market that are controlled, directly or indirectly—

(*a*) by these parties: .....
.....

(*b*) by any other undertaking identified in 7.3 above:

.....

For each entry listed above, the nature and means of control shall be specified.

PART III
Details of the Concentration

8. Briefly describe the nature of the concentration being notified. In doing so state—

(*a*) whether the proposed concentration is a full legal merger, an acquisition of sole or joint control, a concentrative joint merger or other means of conferring direct or indirect control:

.....
.....

(*b*) whether the whole or parts of parties are subject to the concentration:

.....
.....

(*c*) a brief explanation of the economic and financial structure of the concentration:

.....
.....

(*d*) the proposed or expected date of any major events designed to bring about the completion of the concentration:

.....
.....

(*e*) the proposed structure of ownership and control after the completion of the concentration:

.....
.....

PART IV
Market Structure

Structure of Supply in affected Markets

9. Explain the distribution channels and service networks, if any, that exist in affected markets taking into account the following where appropriate—

9.1 Distribution systems prevailing on the affected markets and their importance:
.....
.....

9.2 The service networks performed by third parties prevailing and their importance:
.....
.....

9.3 What are relative market shares of other suppliers, manufacturers?
.....
.....

9.4 What is the importance of import competition?
.....
.....

Structure of Demand in affected Markets

10. Identify five largest customers of the notifying parties in each affected market stating their individual share of the total sales of the goods and services attributed to each customer: .....
.....
.....
.....
.....

10.1 State the name, address, fax, telephone numbers of the contact person for each customer mentioned in 16 above: .....
.....
.....
.....
.....

10.2 Explain the structure of demand in terms of—

(*a*) take off/expansion/maturity and decline or forecast of the growth rate of demand:
.....
.....
.....

(*b*) the importance of customer preference in terms of brand loyalty/ product differentiation or provision of full range of products:

.....

.....

(*c*) the degree of concentration or dispersion of customers:

.....

(*d*) segmentation of customers into different groups and describe the "typical customer" of each group: .....

.....

(*e*) the importance of exclusive distribution contracts and other types of long-term contracts: .....

.....

(*f*) the extent to which public authorities like government agencies, state enterprises or similar bodies are important participants as a source of demand:

.....

.....

PART V
Market Entry

11. State whether there has been significant entry into any of the affected markets over the past five years: .....

.....

.....

12. If there has been significant entry into the market provide names, address, telephone numbers and contact person of market entrants: .....

.....

.....

13. In the opinion of parties making this notification, are there any undertakings likely to enter the market? .....

14. If there is likely to be new entrants in the market, give names, addresses and contact telephone numbers of such entrants: .....

.....

.....

15. Give an estimate of the period within which such entry is likely to occur, if possible:

.....

.....

16. Describe the various factors influencing entry into affected markets that exist in the present case, examining entry from both a geographical and product view point. In so doing, take account of the following where appropriate—

    (*a*) the total costs of entry (R & D, establishing distribution systems, promotion, advertising, servicing, etc.) on a scale equivalent to a significant viable competitor, indicating the market share of such a competitor:

    .....

    .....

    (*b*) any legal or regulatory barriers to entry, such as government authorization or standard setting in any form:

    .....

    .....

    (*c*) any restrictions created by existence of patents, know-how and other intellectual property rights in these markets and any restrictions created by licensing such rights:

    .....

    .....

    (*d*) the extent to which each of the parties to the concentration are licensees or licensors of patents, know-how and other rights in the relevant markets:

    .....

    (*e*) the importance of economies of scale for the production of products in the affected markets:

    .....

    .....

    (*f*) access to sources of supply, such as availability of raw materials:

    .....

    .....

PART VI

Full Details of the Arrangement

17. Please summarize any provisions contained in the agreements which may restrict the parties in their freedom to take independent commercial decisions, for example regarding—

    (*a*) buying or selling prices, discounts or other trading conditions:

    .....

    (*b*) the quantities of goods to be manufactured or distributed or services to be offered:

    .....

    (*c*) technical development or investment:

    .....

(*d*) the choice of markets or services of supply:

.....

(*e*) purchases from or sales to third parties:

.....

(*f*) whether to apply similar terms for the supply of equivalent goods and services:

.....

(*g*) whether to offer different services separately:

.....

18. What is the corresponding share of each market currently held by the acquiring enterprise (the other enterprise involved in the proposed merger) in the relevant market?

.....
.....
.....

19. If the proposed merger or acquisition is authorized, what is the estimated market share of the combined enterprise following the merger or acquisition in the relevant market?

.....
.....
.....

PART VII
Grounds for Granting the Authorization

20. The grounds for claiming that the notified conduct does not and will not unduly restrain competition nor have any adverse effect on trade or the economy in general:

.....
.....
.....

20.1 Facts and contentions relied upon to substantiate this claim (this may include competitive effects, efficiencies, failing firms, public interest issues e.g. employment, export development, increased tax, consumer welfare, technological transfer, MNC presence, market development, etc.):

.....
.....
.....
.....

Note: *The Commission will need to be satisfied that the agreement is consistent with the objectives of the Act.*

PART VIII
Declaration

The undersigned declare that, to the best of their knowledge and belief, the information given in this notification is true, correct and complete, that complete copies of documents required by this form have been supplied, and that all estimates are identified as such and are their best estimates of the underlying facts and that all the opinions expressed are sincere.

Dated at ..... this ..... day of ..... year .....

Name(s): .....

Signature(s): .....

.....

I/We attach the following relevant documents:

☐ Two copies of latest Annual Report and Audited Accounts (including Balance Sheet);

☐ Copy of Agreement or other documents relating to the transaction;

☐ Press Release or other Shareholders, Board or management official statement on the transaction;

☐ Other market or industry study reports that support the transaction.

Notes:

1. Experience has shown that pre-notification meetings are extremely valuable to both the notifying party(ies) and the Commission in determining the precise amount of information required in a notification and, in the large majority of cases, will result in a significant reduction of the information required. Accordingly, notifying parties are encouraged to consult the Commission regarding the possibility of dispensing with the obligation to provide certain information.
2. If the information required in this Form is not reasonably available to you in part or whole, the Commission will accept that the notification is complete and thus valid notwithstanding the failure to provide such information, provided that you give reasons for the unavailability of the said information, and provide your best estimates for the missing data together with the sources for the estimate. Where possible, indications as to where any of the requested information that is available to you could be provided.
3. The Commission only requests the submission of information relevant and necessary to its inquiry into the notified operation. If you consider that any particular information requested in this form may not be necessary for the Commission's examination of the case, you may explain this in your notification and ask the Commission to dispense with the obligation to provide that information.

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5. The Commission can revoke its decision on the compatibility of a notified concentration or business practice where it is based on incorrect information for which one of the undertakings is responsible. Each party completing the notification is responsible for the accuracy of the information which it provides.
6. The notification must be completed in English and type-written or printed. The information requested in this Form is to be set out using the sections and paragraph numbers of the Form. The supporting or requested documents may be originals or certified copies of the originals. In the later case the notifying party shall confirm that they are true and complete.
7. CONFIDENTIALLY: If you believe that your interests would be harmed if any of the information you are asked to supply were to be published or otherwise divulged to other parties, submit this information separately with each page clearly marked "Business Secrets". You should also give reasons why this information should not be divulged or published.
8. The notification should be delivered during normal Commission working hours at the following address—

   The Executive Director
   The Malaŵi Competition and Fair Trading Commission
   P.O. Box 30366
   Lilongwe 3
   EeL CM 774 940 01 770 244 Fax: 01 770 680
   E-mail: malawicftc@gmail.com Website:

FORM NO. CFTC/VII

THE COMPETITION AND FAIR TRADING ACT

(CAP. 48:09)

APPLICATION FOR NEGATIVE CLEARANCE s. 32 (2); reg. 8

To: The Executive Director
The Competition and Fair Trading Commission
P.O. Box 30366
Lilongwe 3

PART I
Background Information

1. Information from the Applicant(s):

   Give details of—

   (*a*) name and address of undertaking:

   .....

   .....

   (*b*) nature of the undertaking's business:

   .....

   .....

   .....

   (*c*) name, address, telephone number, fax number and position held by the appropriate contact person:

   .....

   .....

   .....

2. Information on the other parties to the arrangement:

   For each party to the arrangement (except the applicant) give details of—

   (*a*) name and address of undertaking:

   .....

   .....

   .....

   (*b*) nature of undertaking's business:

   .....

   .....

   .....

   (*c*) name, address, telephone number, fax number and position held by the appropriate contact person:

   .....

   .....

   .....

3. Address of Service (give an address to which all communications may be made and documents delivered):

   .....

   .....

4. Appointment of Representatives:

   Where applications are signed by representatives of undertakings, such representatives shall produce written proof that they are authorized to act.

5. If a joint notification is being submitted, has a joint representative been appointed?

   5.1 If yes, please give details requested below—

   (*a*) name of representative: .....

   (*b*) address of representative: .....
   .....

   (*c*) name of person to be contacted (if different from (*b*) above):
   .....

   (*d*) telephone number and fax number: .....
   .....

6. If no, please give details below of information of any representatives who have been authorized to act for each of the parties to the application, indicating whom they represent—

   (*a*) name of representative:.....
   .....
   .....

   (*b*) address of representative: . .....
   .....
   .....

   (*c*) name of person to be contacted (and address, if different from (*b*) above):
   .....
   .....
   .....

   (*d*) telephone number and fax number: .....
   .....

PART II
Details of the Conduct

7. Description of the conduct, arrangement, undertaking or practice which is being notified:

.....

   7.1 Describe in detail the nature of the restriction(s) contained in the arrangement:
   .....
   .....

PART III
Ownership and Control

8. For each of the parties to the concentration provide a list of all undertakings belonging to the same group. The list must include—

   8.1 Names and addresses of the current and past (two years) Directors of each of the undertaking to the concentration:

   .....
   .....
   .....
   .....

   8.2 Names and addresses of the current and past (two years) shareholders of each of the undertaking to the concentration:

   .....
   .....
   .....
   .....

   8.3 All undertakings or persons controlling these parties, directly or indirectly:

   .....
   .....

   8.4 All undertakings active on any affected market that are controlled directly or indirectly—

   (*a*) by these parties: .....
   .....

   (*b*) by any other undertaking identified in 7.3 above: .....
   .....

PART IV
Market Structure

Structure of Supply in affected Markets

9. Explain the distribution channels and service networks, if any, that exist in affected markets taking into account the following where appropriate—

   9.1 Distribution systems prevailing on the affected markets and their importance:

   .....
   .....

   9.2 The service networks performed by third parties prevailing and their importance:

   .....
   .....

9.3 What are relative market shares of other suppliers/manufacturers?
.....
.....

9.4 What is the importance of import competition?
.....
.....

Structure of Demand in affected Markets

10. Identify five largest customers of the notifying parties in each affected market stating their individual share of the total sales of the goods and services attributed to each customer: .....
.....
.....
.....
.....

10.1 State the name, address, fax, telephone numbers of the contact person for each customer mentioned in 16. above: .....
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.....

10.2 Explain the structure of demand in terms of—

(*a*) take off/expansion/maturity and decline or forecast of the growth rate of demand:
.....
.....
.....
.....

(*b*) the importance of customer preference in terms of brand loyalty/ product differentiation or provision of full range of products:
.....
.....

(*c*) the degree of concentration or dispersion of customers:
.....

(*d*) segmentation of customers into different groups and describe the "typical customer" of each group: .....
.....

(*e*) the importance of exclusive distribution contracts and other types of long-term contracts: .....

.....

(*f*) the extent to which public authorities like government agencies, state enterprises or similar bodies are important participants as a source of demand:

.....

.....

PART V
Grounds for Granting the Authorization

11. The grounds for claiming that the notified conduct does not and will not unduly restrain competition nor have any adverse effect on trade or the economy in general:

.....

.....

.....

11.1 Facts and contentions relied upon to substantiate this claim:

.....

.....

.....

Note: *The Commission will need to be satisfied that the agreement is consistent with the objectives of the Act.*

PART VI
Declaration

The undersigned declare that, to the best of their knowledge and belief, the information given in this notification is true, correct and complete, that complete copies of documents required by this form have been supplied, and that all estimates are identified as such and are their best estimates of the underlying facts and that all the opinions expressed are sincere.

Dated at ..... this ..... day of ..... year .....

Name(s): .....

Signature(s): .....

.....

I/We attach the following relevant documents:

☐ Two copies of latest Annual Report and Audited Accounts (including Balance Sheet);

☐ Copy of Agreement or other documents relating to the transaction;

☐ Press Release or other Shareholders, Board or management official statement on the transaction;

☐ Other market or industry study reports that support the transaction.

NOTES:

1. Experience has shown that pre-notification meetings are extremely valuable to both the notifying party(ies) and the Commission in determining the precise amount of information required in a notification and, in the large majority of cases, will result in a significant reduction of the information required. Accordingly, notifying parties are encouraged to consult the Commission regarding the possibility of dispensing with the obligation to provide certain information.
2. If the information required in this Form is not reasonably available to you in part or whole, the Commission will accept that the notification is complete and thus valid notwithstanding the failure to provide such information, provided that you give reasons for the unavailability of the said information, and provide your best estimates for the missing data together with the sources for the estimate. Where possible, indications as to where any of the requested information that is available to you could be provided.
3. The Commission only requests the submission of information relevant and necessary to its inquiry into the notified operation. If you consider that any particular information requested in this form may not be necessary for the Commission's examination of the case, you may explain this in your notification and ask the Commission to dispense with the obligation to provide that information.
4. Incorrect or misleading information in the notification will be considered to be incomplete information. The notification will only become effective on the date on which the complete and accurate information is received by the Commission. Section 50 (*c*) of the Act provides that misleading or incorrect information where supplied intentionally or negligently can make the notifying party or parties liable to a fine or imprisonment or to both.
5. The Commission can revoke its decision on the compatibility of a notified concentration or business practice where it is based on incorrect information for which one of the undertakings is responsible. Each party completing the notification is responsible for the accuracy of the information which it provides.
6. The notification must be completed in English and type-written or printed. The information requested in this Form is to be set out using the sections and paragraph numbers of the Form. The supporting or requested documents may be originals or certified copies of the originals. In the later case the notifying party shall confirm that they are true and complete.
7. CONFIDENTIALLY: If you believe that your interests would be harmed if any of the information you are asked to supply were to be published or otherwise divulged to other parties, submit this information separately with each page clearly marked "Business Secrets". You should also give reasons why this information should not be divulged or published.

8. The notification should be delivered during normal Commission working hours at the following address—

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   P. O. Box 30366
   Lilongwe 3
   Tel: 01 774 940/01 770 244 Fax: 01 770 680
   E-mail: malawicftc@gmail.com website:

THIRD SCHEDULE

THE COMPETITION AND FAIR TRADING ACT

(Cap. 48:09)

Complaint Authorization Form s. 43; reg. 10

PART A

Name of Commission Officer: ..... Date: .....
.....
.....
Name of Complainant(s): .....
.....
.....
Address(es): .....
.....
.....
Identification Document: .....
.....
.....
.....
Tel.: ..... Mobile: ..... Fax No.: .....
Occupation: ..... Nationality: .....
.....
.....
.....
Method of lodging a complaint: .....
.....
.....
.....
Details of Trader: .....
.....
.....

Address: .....

.....

Tel.: ..... Mobile: ..... Fax No.: .....

Economic Sector: .....

.....

.....

The alleged contravened section of the Act: .....

.....

.....

.....

.....

.....

.....

SUMMARY OF COMPLAINT

NB. If space is not adequate use additional paper.

List of Documents attached, if any:

....

Signature of Officer *Signature of Certifying Officer*

....

Designation of Officer *Designation of Certifying Officer*

PART B

DECISION OF THE EXECUTIVE DIRECTOR

In terms of section 8 (2) (*a*) of the Act, I hereby authorize/do not authorize officers of the Competition and Fair Trading Commission to investigate the complaint whose details are contained in Part A of this document.

Therefore the following action should be taken:

..... Date: .....

Executive Director

FOURTH SCHEDULE

The Competition and Fair Trading Act

(Cap. 48:09)

FEES

reg. 11

	Type of fees	*Amount* K	*t*
(1)	Application fees for authorization for—	70,000	00
	(*a*) relocation of core-company assets	700,000	00
	(*b*) exclusive dealing arrangement	700,000	00
	(*c*) full-line forcing, bundling or tying arrangements	700,000	00
	(*d*) re-sale price maintenance	700,000	00
	(*e*) trade agreement	700,000	00
	(*f*) negative clearance	700,000	00
(2)	Notification for a merger, takeover or acquisition—	700,000	00
	0.05% of combined turnover or total assets, whichever is the higher, of the enterprises proposing to effect the merger or takeover.		

CONSUMER PROTECTION

CHAPTER 48:10

Containing Pages 1–30

L.R.O. 1/2010

CHAPTER 48:10

CONSUMER PROTECTION

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14 of 2003
G.N. 27/2004

[21ST OCTOBER, 2004]

PART I
PRELIMINARY

Short title

1. This Act may be cited as the Consumer Protection Act.

Interpretation

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

"abusive clause" means a clause which is or appears to be imposed on a consumer by a supplier or trader who has economic power over the consumer and which gives the supplier or trader an unfair, unconscionable or excessive advantage over the consumer;

"abusive advertising" refers to abusive, unfair or discriminatory advertising which incites or is likely to incite violence, evokes fear or exploits profits from children, infringes environmental values or is capable of leading consumers to behave in a manner detrimental or hazardous to their health or safety;

"advertiser" includes a supplier or trader of technology, goods or services who has commissioned the publication of an advertising message;

"appropriate laboratory" means a laboratory or organization recognized by Government and includes any such laboratory or organization established by or under any law for the time being in force for carrying out analysis or test of any goods with a view to determining whether such goods have any defect;

"business records" include—

(*a*) accounts, balance sheets, vouchers, records, minutes of meetings, contracts, files, instructions to employees, invoices, import documents and other instruments; and

(*b*) any information recorded or stored by means of a pen, typewriter, computer or other device whatsoever and any material subsequently derived from information so recorded;

"Chairman" means the Chairman of the Council appointed under section 14;

"competent authority" means a body that has power or jurisdiction, derived from any written law, over a particular issue or entity;

"complainant" means a consumer or any consumer association who or which, as the case may be, makes a complaint;

"complaint" means any allegation in writing or orally made by a complainant that—

(*a*) as a result of any unfair trade practice adopted by a supplier or trader, the complainant has suffered loss or damage;

(*b*) the goods or technology mentioned in the complaint had one or more defects; and

(*c*) the services mentioned in the complaint suffer from deficiency in any respect;

"consumer" means a person who—

(*a*) purchases or offers to purchase technology, goods or services otherwise than for resale; but does not include a person who purchases any technology, goods or services for the purpose of using them in the production or manufacture of any other technology, goods or services for sale;

(*b*) receives or uses any technology, goods or services for which consideration has been paid or promised or partly paid or partly promised, or under any system of deferred payment and such person includes any user of such technology, goods or services other than the person who buys or pays for the same when such is made with the approval or acquiescence of the purchaser;

(*c*) hires or avails himself of any technology, goods or services for a consideration which has been paid or promised or partly paid or partly promised, or under any system of deferred payment and includes any beneficiary of technology, goods or services other than the person who hires or avails himself of the same when the technology, goods or services are availed with the approval or acquiescence of the hirer;

"consumer contract" means a contract for the sale or supply of technology, goods or services, in which the supplier or trader is dealing in the course of business and the purchaser or user is not; but does not include a contract for the sale, letting or hire of immoveable property or a contract of employment;

"consumer dispute" means a dispute where the person or business against whom or which a complaint has been made denies or

disputes the allegations contained in the complaint or having accepted the allegations, refuses, declines or fails to compensate any loss or injury suffered by the complainant to the satisfaction of the complainant;

"Council" means the Consumer Protection Council established under section 10 of this Act;

"defect" means any fault, imperfection or shortcoming in the quality, quantity, potency, purity or standard which is required to be maintained by or under this Act or any other written law in relation to any goods;

"deficiency" means any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance which is required to be maintained by this Act or under any written law for the time being in force or has been undertaken to be performed by a person in pursuance of a contract or otherwise in relation to any service;

"distribution" includes any act by which technology, goods or services are sold or supplied by one person to another person;

"distributor" means any person in the supply chain whose activity does not affect properties of a product;

"downstream processor" means a manufacturer who adds value to goods supplied or manufactured by another person;

"false or misleading advertising" includes any type of business information or communication which uses text, dialogue, sound, image or description which can directly or indirectly, expressly or implied or by omission, leads a consumer to make a mistake, misunderstand or to be confused about any technology, goods or services on the market;

"goods" include all tangible items or articles acquired or used by a consumer;

"guarantee" means an undertaking applicable for a specified time made by a supplier or trader to pay for the cost of repairs or to replace a good that does not work due to a defect or deficiency arising from mechanical failure or faulty workmanship;

"interest" means the prevailing interest rates charged by commercial banks at that particular time;

"intermediate goods" means goods used as inputs in manufacturing or downstream processing;

"Local Authority" bears the same meaning as defined in the Local Government Act; Cap. 22:01

"manufacture" includes any process which transforms goods in order to add value to them for the purpose of resale; and

includes any operation of packing or repackaging not linked to another form of transformation within a single enterprise;

"manufacturer" means a person who—

(*a*) manufactures the product or a component part;

(*b*) assembles or fabricates parts made or manufactured by any other manufacturer;

(*c*) presents himself as the manufacturer by affixing to the product his name, trade mark or other distinctive mark; or

(*d*) reconditions the product;

"offer for sale" includes the exposing of goods for sale, the furnishing of a quotation, whether verbally or in writing and any other act or notification whatsoever by which willingness to enter into any transaction for sale is expressed;

"price" in relation to the transfer, supply, provision or sale of technology, goods or services, includes every valuable consideration whether direct or indirect, and includes any consideration which in effect relates to the transfer, supply, provision or sale of the technology, goods or services, although ostensibly relating to any other matter or things;

"pyramid selling" means—

(*a*) a scheme for the sale or lease of a product whereby one person (the 'first person) pays a fee to participate in the scheme and receives the right to receive a fee, commission or other benefit—

(i) in respect of the recruitment into the scheme of other persons either by the first person or any other person;

(ii) in respect of sales or leases made, other than by the first person, to other persons recruited into the scheme by the first person or any other person; and

(*b*) a scheme for the sale or lease of a product whereby one person sells or leases a product to another person (the "second person") who receives the right to receive a rebate, commission or other benefit in respect of sales or leases of the same or another product that are not—

(i) sales or leases made to the second person;

(ii) sales or leases made by the second person; or

(iii) sales or leases, made to ultimate consumers or users of the same or other product, to which no right of further participation in the scheme, immediate or contingent, is attached;

"retail trade" means a form of distribution by which goods are customarily sold to consumers rather than for the purpose of resale or manufacturing; and includes any act or set of acts or

sale to consumers which is the subject of a consumer dispute or an action under this Act;

"safe product" means a product or service which does not present any risk to health, environment and safety of persons or property when used for the assumed purpose or in a way in which it is expected to be used:

Provided that a product shall not be considered dangerous only because it is possible to obtain higher levels of safety or because another safer product is available;

"sale" includes an agreement to sell or offer for sale;

"seller" means a person regularly engaged in retail trade or who participates in some act or set of acts of retail trade which is the subject of a consumer dispute or action under this Act;

"service" means service of any description, which is made available to potential users and includes the provision of facilities in connexion with health, insurance, banking, including the rendering of a service free of charge or under a contract or personal service;

"supplier" in relation to a service or technology, includes a person who performs a service or transfers technology and a person who arranges the performance of a service or the transfer of technology, goods or services to another person;

"subordinate court" bears the same meaning as defined in the Courts Act; Cap. 3:02

"technology", "technology transaction" or "technology transfer" includes, *mutatis mutandis*, systematic knowledge or a transaction involving the transfer of systematic knowledge for the manufacture of a product, for the application of a process or for the rendering of a service and does not extend to the transactions involving the mere sale or mere lease of goods;

"trader" in relation to any technology, goods or services means any person who sells or distributes, supplies or provides any technology, goods or services and includes the manufacturer thereof, and where goods are sold or distributed in package form includes the packer of the goods;

"trade practice" means any practice related to the carrying on of any trade; includes anything done or proposed to be done by any person which affects or is likely to affect the method of trading of any trader or class of traders, or the production, supply or price in the course of trade of any goods whether real or personal, or of any technology or service as defined in the Competition and Fair Trading Act; Cap. 48:09

"unfair trade practice" means a trade or business practice including the practice which, for the purpose of promoting the sale, use, supply or provision of any technology, goods or services adopts any unfair method or unfair or deceptive practice including the practice of making any statement whether orally or in writing or by conduct which—

(*a*) falsely represents that the technology or goods are of a particular standard, quality, grade, durability, composition, style or model;

(*b*) falsely represents that the services are of a particular standard, quality or grade;

(*c*) falsely represents that any re-built, second hand, renovated, reconditioned or old goods are new or unused goods;

(*d*) represents that any technology, goods or services has sponsorship, approval, performance characteristics, accessories, peripherals, uses or benefits which such technology, goods or services do not have;

(*e*) represents that the supplier or trader has a sponsorship or approval, affiliation, intellectual property, licence or franchise which such supplier or trader does not have;

(*f*) makes a false or misleading representation concerning the need for or the usefulness or utility of any technology, goods or services;

(*g*) gives to the public any assurance, warranty or guarantee of the performance, efficiency, efficacy or length of life of a product or any technology, goods or services that is not based on an adequate or proper test thereof; and

(*h*) takes advantage of a consumer by exerting undue pressure or undue influence on the consumer to enter into a transaction involving any technology, goods or services;

"warranty" means an agreement with reference to goods which are the subject of a contract, but collateral to the main purpose of such contract of sale, the breach of which gives rise to a claim for damages, but not to a right to reject the goods and treat contract as repudiated as defined in the Sale of Goods Act; Cap. 48:01

"wholesale" means a form of distribution by which goods are customarily sold for the purpose of resale or as inputs in manufacturing and includes any act or set of acts of sale for either of those purposes which is the subject of a consumer dispute or an action under this Act or any other written law;

"wholesaler" means a person regularly engaged in wholesale trade, or who participates in some act or set of acts of wholesale

trade, which is the subject of a consumer dispute or an action under this Act or any other written law.

PART II
General Principles of Consumer Protection

Consumer rights

3. Consumers shall be entitled to the following rights—

(*a*) the protection of their economic interest, health and safety in the consumption of technology, goods and services;

(*b*) true, sufficient, clear and timely consumer education including information on technology, goods and services offered, as well as on prices, characteristics, quality and risks that may be encountered in the consumption of the technology, goods and services;

(*c*) fair and non-discriminatory treatment by a supplier or trader of technology, goods and services;

(*d*) full, timely, adequate and prompt compensation for damages suffered by a consumer which, pursuant to the provisions of this Act or any other written law or other special or general contractual obligations, are attributed to a supplier or trader;

(*e*) the freedom and right to associate and join or form consumer unions or associations;

(*f*) access to the appropriate or competent authorities for the protection of their legitimate rights; and

(*g*) any other rights, freedoms, entitlements and interests incidental to or which would facilitate the enjoyment of the foregoing rights.

Undertaking of the Government

4.—(1) The Government shall in its policies, laws and administrative measures ensure that consumers draw maximum benefit from national, economic, environmental, cultural, social and other resources.

(2) The Government shall endeavour to establish or adopt, maintain and enforce standards for technology, goods and services according to Malaŵi Standards in order to prevent technology, goods and services from causing harm to life and property of a consumer as well as to the environment.

(3) The Government shall endeavour to establish a system for indicating the quality and other elements of the substance of goods and services and regulate against false advertising and exaggerated indications so that a consumer may not make a mistake in the selection of technology, goods and services, in purchasing or utilizing them.

(4) The Government shall endeavour to regulate activities that reasonably restrict fair and free competition concerning the prices and supply of technology, goods and services that are particularly important to consumers.

(5) The Government shall endeavour to promote the circulation of information on technology, goods and services in order to assist the consumer make a sound and informed choice on the technology, goods and services.

(6) The Government shall endeavour to ensure access to basic or essential needs and where appropriate prescribe minimum standards.

Responsibilities of the Local Authorities

5.—(1) Local Authorities shall have the responsibility to plan measures paralleling those of the Government as well as plan and execute measures concerning consumer protection according to the social and economic condition of the area under their jurisdiction.

(2) Local Authorities shall, in collaboration with the Council, have the responsibility of implementing the provisions of this Act and any other written laws on matters of consumer protection.

Obligations of a supplier or a trader

6.—(1) A supplier or trader of technology, goods or services shall—

(*a*) take necessary and appropriate measures concerning technology, goods or services he provides for the prevention of danger;

(*b*) ensure correct ingredients, measures or weights and give proper indications of technology, goods or services, as the case may be;

(*c*) ensure that imported technology, goods meet the Malaŵi Standards;

(*d*) cooperate with the Government or Local Authorities in the execution of policies relating to consumer protection;

(*e*) not supply technology, goods or services which can cause injury or harm to a consumer or the environment and which do not comply with the Malaŵi Safety Standards;

(*f*) not engage in any unfair trade practices;

(*g*) produce and show a business record, when requested to do so, to a member of the Council or a person duly authorized by the Council:

Provided that a member of the Council or a person duly authorized by the Council shall on demand produce to the trader or supplier a valid identification; and

(*h*) provide consumers with true, sufficient, clear and timely information on technology, goods or services that they offer.

(2) Any supplier or trader who contravenes subsection (1) shall be guilty of an offence and upon conviction, liable to a fine of K500,000 and to imprisonment for five (5) years.

Responsibility of the consumer

7. The consumer shall take the initiative to acquire the necessary knowledge of consumer life and endeavour to behave self-reliantly and rationally.

Beneficial interpretation

8.—(1) Any competent authority shall construe consumer contracts or agreements in favour of and for the benefit of a consumer where the contract is unfair or ambiguous.

(2) The Council or any other competent authority shall closely regulate and control abusive, unfair, dumping, restrictive, harmful or anti-competitive trade or business practices or contract terms or clauses.

(3) Contractual clauses or stipulations shall have no effect where they purport to or in fact—

(*a*) exempt, exclude, reduce or limit the responsibility or liability of a supplier or trader for a defect, deficiency, inadequacy or efficacy of any nature of the technology or goods supplied or the services rendered;

(*b*) imply a waiver of the rights, freedoms or liabilities vested in the consumer pursuant to this Act or any other written law and limit the exercise of the rights, freedoms and liberties of the consumer;

(*c*) place, shift or reverse the burden of proof against the consumer for a defect, deficiency, inadequacy or efficacy which is not immediately apparent to the consumer;

(*d*) authorize the supplier or trader to unilaterally cancel, repudiate or rescind the contract except where this power is vested in the trader or supplier in the case of postal or sample sales; or

(*e*) create contractual terms and conditions, which are unfair, unconscionable, inequitable, oppressive or unreasonable to consumers or are actuated by bad faith.

Pyramid selling or betting prohibited

9. A person who engages, causes or coerces another person to be engaged in pyramid selling or betting commits an offence.

PART III
Administration

Establishment of the Consumer Protection Council

10.—(1) There is hereby established a body to be known as the Consumer Protection Council which shall—

(*a*) be a body corporate with perpetual succession and a common seal;

(*b*) in its corporate name, be capable of suing and being sued;

(*c*) be capable of holding, purchasing or otherwise acquiring, charging and disposing of any property, moveable or immoveable, for the purpose, or in the course of carrying out its functions;

(*d*) have the powers of borrowing and lending money; and

(*e*) be capable of doing or performing all such acts and activities bodies corporate may by law do and perform.

(2) The Council shall consist of—

(*a*) the following members appointed by the Minister—

(i) a representative from a consumer body in Malaŵi;

(ii) a representative from an economic body in Malaŵi;

(iii) a representative from Malaŵi Confederation of Chambers of Commerce and Industry;

(iv) a representative from the Law Society of Malaŵi;

(v) a representative of a trade union in Malaŵi;

(vi) a representative from a women's organizations;

(*b*) the following *ex officio* members—

(i) the Secretary for Commerce and Industry or his designated representative;

(ii) the Director General of Malaŵi Bureau of Standards or his designated representative; and

(iii) the Chief Executive of the Pharmacy, Medicines and Poisons Board or his designated representative;

(iv) Secretary for Justice or his designated representative; and

(v) Secretary for Local Government or his designated representative.

(3) A member of the Council, other than an *ex officio* member, shall hold office for a period of three (3) years unless his appointment is terminated sooner than the expiry of that period and shall be eligible for re-appointment for one more term.

(4) The names of all members of the Council as first constituted and every change in the membership of Council shall be published in the *Gazette*.

(5) There shall be a Secretary to the Council who shall be an officer in the public service.

(6) The Secretary shall be the chief executive officer of the Council and as such shall be responsible to the Council for the administration and management of its affairs, and shall be in charge of all administrative, executive and other staff of the Council, and, in all such matters, shall, at all times, be subject to the direction and control of the Council.

(7) The Secretary shall exercise such powers and perform such duties as the Council may delegate to him in writing from time to time, and in any such delegation the Council may impose such conditions as to the exercise of such powers or the performance of such duties as the Council deems fit.

(8) In addition to the Secretary, there shall be appointed in the public service such other officers subordinate to the Secretary as may be required for the proper functions of the Council.

Vacation of office of members

11. The office of a member, other than an *ex officio* member shall become vacant—

(*a*) upon his death;

(*b*) if he has been absent from three consecutive meetings of the Council, of which he has had notice, without valid explanation;

(*c*) if he has been convicted of an offence and sentenced to imprisonment for a period exceeding six (6) months without an option of a fine;

(*d*) if he becomes mentally or physically incapable of efficiently performing his duties as a member of the Council;

(*e*) if he becomes an undischarged bankrupt; or

(*f*) if he resigns by giving one month notice in writing to the Minister.

Filling of vacancies

12.—(1) On vacation of office by a member of the Council, the vacancy shall be filled by a person appointed in accordance with section 10 (2) (*a*) under which the former member was appointed:

Provided that if the remaining period is less than six (6) months the Minister may decide not to have the vacancy filled until the expiry of the period.

(2) If any member of the Council is granted leave of absence by the Council, the Council may, if it deems fit, co-opt a person who

belongs to the same organization as the member who has been granted leave to fill the vacancy during the absence of that member.

Invited persons

13. The Council may, in its discretion at any time and for any period, invite any person to attend any meeting of the Council and take part in the deliberations of the Council, but such person shall not be entitled to vote at that meeting.

Chairman and Vice-Chairman

14.—(1) The Minister shall appoint a Chairman from the elected members of the Council.

(2) The Vice-Chairman of the Council shall be elected by the members of the Council from amongst its members.

(3) No member appointed under paragraph (*b*) of subsection (2) of section 10 shall be appointed or, elected as Chairman or Vice-Chairman, respectively.

(4) Subject to subsection (3), the Chairman and the Vice-Chairman shall hold office for the duration of their membership of the Council.

(5) The office of the Chairman or the Vice-Chairman shall become vacant—

(*a*) if the holder resigns his office by notice to the Minister; or

(*b*) if the holder of the office ceases to be a member of the Council.

(6) Whenever the Chairman is absent or is for any cause unable to discharge the functions of his office, the Vice-Chairman shall discharge the functions of the Chairman.

Remuneration of members of the Council or committees

15. A member of the Council or a committee shall be paid out of the funds of the Council, such remuneration and allowances, if any, as the Minister may determine.

Meetings of the Council

16.—(1) Subject to subsection (2), the Council shall hold ordinary meetings for the dispatch of business at least four times a year.

(2) An extraordinary meeting of the Council—

(*a*) may be convened by the Chairman at any time;

(*b*) shall be convened by the Chairman within twenty-one (21) days of receipt by him of a request in writing signed by not less than five (5) members of the Council and specifying the purpose for which the meeting is to be convened.

(3) At any meeting of the Council—

(*a*) the Chairman or, in his absence, the Vice-Chairman, shall preside;

(*b*) in absence of both the Chairman and Vice-Chairman, the members present and forming a quorum shall elect one of their number to preside; and

(*c*) the quorum shall be formed by seven (7) members.

(4) An *ex officio* member of the Council shall attend any meeting of the Council in person.

(5) At any meeting of the Council a decision on any matter shall be that of the majority of the members present and voting at that meeting, and in the event of an equality of votes, the person presiding shall have a casting vote in addition to his deliberative vote.

(6) The Council shall regulate its own procedure.

(7) The Council shall cause minutes of every meeting of the Council or committee of the Council to be kept.

Non-liability of members of the Council or committees

17. No member of the Council or of any committee of the Council shall be liable for any act or default of his or of the Council, done in good faith in the exercise of the functions or powers of the Council.

PART IV

Functions and Powers of The Council

Functions of the Council

18.—(1) The functions of the Council shall be—

(*a*) to identify price mechanisms in Malaŵi to determine whether the prices are justifiable;

(*b*) to monitor the frequency and the magnitude of price increases;

(*c*) to liaise and consult with relevant stakeholders in order to understand what is happening in the economy;

(*d*) to coordinate and network consumer activities and liaise with consumer associations or organizations, any competent authority and agencies within and outside Malaŵi to protect consumer interests;

(*e*) to carry out, promote or participate in consumer education programmes and activities;

(*f*) disseminate consumer information to the public;

(*g*) to provide advice to consumers on their rights and responsibilities under this Act and any other written law and make available to consumers general information affecting their interests;

(*h*) to monitor the operations of consumer organizations so that they operate in a transparent manner and effectively throughout the country;

(*i*) to create or facilitate the establishment of conflict resolution mechanisms on consumer issues;

(*j*) to investigate any complaint received regarding consumer protection, and where appropriate, refer the complaint to a competent authority and ensure that action is taken by the competent authority to whom the complaint has been referred;

(*k*) to advocate for the effective implementation of this Act and any other written law affecting consumers;

(*l*) to maintain a complaints register;

(*m*) to formulate and submit to the Minister, policy and legislative proposals in the interest of consumers, consider and examine, and where necessary, advise the Minister on the modification, consolidation or updating of legislation providing protection to consumers in the areas covered under, or related to this Act or any other written law;

(*n*) to collaborate with other institutions to ensure that the quality of technology, goods or services imported into the country comply with the Malaŵi Standards;

(*o*) to recommend to Government, where appropriate, minimum standards for basic or essential needs;

(*p*) to carry out investigations or inspections on its own initiative or at the request of any person regarding matters relating to consumer issues;

(*q*) to undertake such activities as are necessary, to expedite or convenient for or in connexion with the performance of its functions under this Act.

Powers of the Council

19. For the better performance of its functions, the Council shall, subject to the provisions of this Act, have power—

(*a*) to request an advertiser to withdraw an advertisement which contravenes the provisions of this Act;

(*b*) to publish reports of the complaints the Council has dealt with;

(*c*) to caution suppliers or traders who contravene the provisions of this Act;

(*d*) to employ professional, technical and administrative personnel as it may deem appropriate and lay down conditions of service for such employees;

(*e*) to pay any person in its employ such salary, wages or other remuneration as it may deem fit, and to grant him such leave as it may deem fit;

(*f*) to enter into any contract or agreement;

(*g*) to purchase, take on lease or in exchange, hire or otherwise acquire any real or personal property, which it considers necessary in the furtherance of its functions;

(*h*) subject to the Public Finance Management Act, to raise money by way of loans or overdrafts; Cap. 37:02

(*i*) to invest or deal with any moneys not immediately required in such securities and in such manner as it may deem fit and to vary or realize such investments;

(*j*) to manage, insure, let, sell, alienate, mortgage or otherwise deal with any property of the Council as it may deem necessary or expedient;

(*k*) to receive donations of money or other property from any person or body of persons, other than from a supplier or trader, for the furtherance of its functions;

(*l*) to receive such donations beneficially or as trustee of any trust established for the furtherance of such functions;

(*m*) to publish, from time to time, such professional or other information as it deems necessary or expedient for the promotion of the functions of the Council; and

(*n*) to do all such acts, matters and things as it deems necessary for fulfilling the functions of the Council.

Committees of the Council

20.—(1) The Council may, for the purpose of performing its functions under this Act, establish committees and delegate to any such committee such functions of the Council as the Council may consider expedient.

(2) The Chairman of each committee shall be appointed by the Council from amongst the members of the Council.

(3) Each committee may in its discretion invite any person, not being a member of the Council, to attend a meeting of the committee and take part in the deliberations of the meeting but such person shall not be entitled to vote.

(4) The Chairman of a committee may convene a meeting of the committee of which he is Chairman.

(5) The Chairman may direct the Chairman of any committee to convene a meeting of such committee and such Chairman shall, as soon as is practicable, comply with such direction.

(6) At all meetings of a committee the quorum shall be formed by a majority of members.

(7) At all meetings of a committee each member present shall have one vote on a question before the committee and, in the event of an equality of votes, the Chairman shall have, in addition to a deliberative vote, a casting vote.

(8) Every committee shall have the power to regulate its own procedure.

(9) Every committee shall keep minutes of its meetings and shall inform the Council of its activities and shall conduct its proceedings in such manner as the Council may direct.

(10) A member of a committee shall, in respect of expenses incurred by him in travelling and subsistence while discharging his duties as member of that committee, be paid out of the funds of the Council such allowances as the Council may, determine.

Disclosure of interest

21. If a member of the Council has an interest, direct or indirect, in any matter before the Council and is present at a meeting of the Council at which the matter is under consideration, he shall as soon as practicable, disclose that fact and shall not take part in the consideration or discussion of or vote on any question with respect to the determination of the matter.

PART V
Financial Provisions

Funds, accounts and audit

22.—(1) The funds of the Council shall consist of—

(*a*) such sums as may be appropriated by Parliament for the purposes of the Council;

(*b*) any fees payable under this Act;

(*c*) a portion of the fines paid to the subordinate courts in matters of consumer protection;

(*d*) such other moneys and assets as may vest in or accrue to the Council in the course of its functions; and

(*e*) such moneys or other assets as may accrue to or vest in, the Council by way of grants, subsidies, bequests, donations, subscriptions, rents, interests or royalties from any other person.

(2) The Council shall keep proper accounts and other records relating thereto in respect of its funds and shall in every aspect comply with the provisions of the Public Finance Management Act.

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(3) The accounts of the Council shall be examined and audited annually by auditors appointed by the Council.

23. The Council may make provision for the reimbursement of any reasonable expenses incurred by a member of the Council or of a committee in connexion with the business of the Council or the committee.

Reimbursement of expenses of members of the Council, etc.

24.—(1) As soon as practicable, but not later than six (6) months after the expiry of each financial year, the Council shall submit to the Minister a report concerning its activities during that financial year.

Annual reports

(2) The report referred to in subsection (1) shall be in such form as the Minister shall approve and shall include information on the financial affairs of the Council, and shall be appended to the report—

(*a*) an audited balance sheet;

(*b*) an audited statement of income and expenditure; and

(*c*) such other information as the Council may consider appropriate or as the Minister may direct.

(3) The Minister shall, after he receives the report referred to in subsection (1), lay the report before the National Assembly and subsequently the report shall be published.

25. The Council shall, at the end of every financial year, produce a progress report on its activities during that period and shall publish the report.

Progress reports

PART VI
Contractual Protection

26.—(1) Standard form contracts or agreements shall—

Standard form contracts

(*a*) be drafted in terms which are clear and understandable to a consumer and shall not contain references to contracts, rules, practices, texts or documents which, not being within public or common knowledge, are not made available to a consumer prior to the execution of the agreement or contract;

(*b*) be drafted in the official language and in characters readable at single sight by any normal sighted person; and

(*c*) where the contract is entered into locally, have a written translation into the national local language and shall be read and explained to an illiterate, blind, mute and similarly disabled consumer in a language he understands.

(2) The Council shall control and regulate the standard form agreements to ensure adequate consumer protection.

Relief against unfair consumer contracts

27.—(1) A consumer who contracts for sale or supply of technology, goods or services where the contract is unfair or contains unfair provisions or where the trader or supplier has taken or is likely to take unfair advantage of his rights under the contract shall be given relief by a competent authority.

(2) Where a consumer has entered into an unfair consumer contract, the competent authority may make any one or more of the following orders—

(*a*) cancelling the whole or any part of the contract;

(*b*) varying part only of the consumer contract;

(*c*) enforcing part only of the consumer contract;

(*d*) reducing any amount payable by the consumer under the contract;

(*e*) annulling the exercise of any power, right or discretion under the consumer contract or directing that any such power, right or discretion should be exercised in a particular way.

(3) For the purposes of this section, an unfair consumer contract means a contract which—

(*a*) results in an unreasonable or unequal exchange of value or benefits;

(*b*) is oppressive;

(*c*) imposes obligations or liabilities on a party, which obligations are not reasonably necessary to protect the interests of the other party;

(*d*) excludes or limits the obligations of a party to an extent that it is not reasonably necessary to protect his interests;

(*e*) is contrary to commonly acceptable standards of fair dealings; or

(*f*) in case of a written consumer contract, if the contract is expressed in a language not ordinarily understood by the consumer.

Financial transactions

28.—(1) A consumer shall have access to banking and financial services including but not limited to opening and operating accounts, securing loans, mortgages, charges, insurance, health insurance cover, pension and other services at affordable or lowest possible rates.

(2) Contracts governing financial transactions such as general insurance, health insurance, hire purchase, mortgage shall be interpreted, implemented and enforced—

(*a*) in good faith;

(*b*) consistent with the instrument embodying the contract between the parties; and

(*c*) in a manner consistent with the laws governing or regulating financial transactions.

Consumer credit contracts

29. The supplier or trader of technology, goods or services shall, in a case involving the supply or sale of technology, goods or services that include the grant of consumer credits, inform the consumer and advise him in writing about the following matters in advance—

(*a*) the cash price of the technology, goods or services involved;

(*b*) the amount of interest, the annual or periodic rate at which the same is computed as well as the interest rate in arrears;

(*c*) the number of instalments payable as well as the frequency or periodicity thereof; and

(*d*) the total amount payable for such technology, goods or services except that the said total amount shall not be higher than the sum of the cash price and the interest.

Right of retraction

30.—(1) A consumer shall have the right of retraction within a reasonable period but not less than seven (7) days from the signature or execution of a contract or receipt of the technology, goods or services where the contract has been entered into at a place other than the ordinary business premises of the supplier or trader.

(2) In computing the grace period within which the consumer should exercise the right of retraction from the day on which the agreement was entered into, weekends and public holidays shall be excluded.

(3) Where the consumer exercises the right of retraction within reasonable time he shall be entitled to have the consideration he paid returned to him subject to corresponding reasonable adjustments which shall be agreed upon by the parties.

(4) A supplier or trader shall indemnify a consumer for injury or loss suffered where a good or item under service for fitness, repair, cleaning or otherwise suffers such detriment so as to diminish its value or render it wholly or partly unfit for the ordinary or normal use it is intended for.

Implied contract terms

31.—(1) In the service of technology transfer contract, the purpose of which is the repair of any type of goods, there shall be an implied obligation on the part of the service or technology supplier to use at his expense new spare parts, accessories, paraphernalia or peripherals fit for the goods involved without prejudice to the freedom of the parties to expressly agree otherwise.

(2) Where the supplier of service or technology does not comply with subsection (1), a consumer shall be entitled to indemnity and such other redress including the supplier of services or technology substituting, without extra charge, the components, spare parts, paraphernalia, accessories or peripherals involved therein.

Cancellation and variation of contracts

32.—(1) A consumer may request cancellation of an agreement or a reduction of the price, without prejudice to being indemnified for injury or loss, where a technology, good or service which is the subject of the contract has concealed faults, defects or deficiencies that make it unfit or diminish its quality and usefulness below the standards normally expected from it to such an extent that, if previously known to the consumer he would not have purchased the same or would have paid a lower price for it.

(2)—(*a*) A consumer shall be entitled, in addition to indemnity for consequential injury or loss, to—

(i) free replacement of the technology;

(ii) repair of the goods;

(iii) adjustment of the technology, or

(iv) free rendering of the service for a reasonable term; and

(*b*) where (ii), (iii) or (iv) is not possible, to its replacement or to the return of the amount paid.

(3) Subsection (2) shall apply where—

(*a*) the technology, goods or services which are subject to compulsory standards regarding its quality or efficiency do not comply with the standards;

(*b*) the materials, elements, substances or ingredients forming or constituting the technology, goods or services do not correspond with the alleged specifications;

(*c*) a legal standard of fineness of jewellery or gold is lower than that allegedly present;

(*d*) a technology, good or service has been purchased under a given warranty and within the warranty period a deficiency, poor quality or defect covered by the warranty becomes evident; or

(*e*) a supplier or trader and the consumer have agreed that the technology, goods or services subject to the agreement should meet certain specifications but which the technology, good or service supplied or rendered does not meet the specifications.

(4) A supplier or trader shall replace goods or return the excess money paid, as the case may be, where—

(*a*) after consideration of the permitted tolerance ranges, the net contents of goods are lower than expected or the amount is lower than what is indicated on the package or container; or

(*b*) the instrument used to measure the contents, quantity, volume or any other standard has been used to the detriment of the consumer or beyond the tolerance ranges permitted in the type of measurement.

Supplier's or trader's liability

33.—(1) The actions referred to in section 32 above may be brought against any constituent of the distribution chain which sold such technology, goods or services including manufacturer, wholesaler, retailer or trader, all of whom may be severally or jointly liable.

(2) A consumer may cancel a contract, without prejudice to the indemnities he is entitled to, where a supplier or trader of technology, goods or services delays in complying with his obligations under a contract.

(3)—(*a*) Where goods repaired show defects related to the service rendered and attributable to the supplier of the service, a consumer shall be entitled, within sixty (60) days from receipt of the goods or discovery of the defect, whichever is latter, to have it repaired without additional cost within the shortest possible time and in any event within fourteen (14) days; and

(*b*) this subsection shall not prejudice the consumer's right to proper indemnity for damages.

(4) A supplier shall indemnify a consumer for injury or loss suffered where goods or items under service for fitness, repair, cleaning or otherwise suffers such detriment so as to diminish its value or render it wholly or partly unfit for the ordinary or normal use it is intended for.

Standards and support service

34.—(1) The supplier or trader of technology, goods or services shall supply or deliver technology, goods or services which shall offer the services or satisfaction legitimately expected by the consumer.

(2) The technology, goods or services shall meet the minimum requirements and relevant standards such as durability, usefulness, safety and viability.

(3) The supplier or trader shall also give the consumer a manual in a language understood by the consumer, receipt or any other document showing the technical characteristics, application of the product or technology, safety precautions relating to the operation or use thereof, the price, and the guarantee period which shall be sufficiently long but not less than six (6) months.

(4) The supplier or trader shall, in transactions concerning products for long use, provide maintenance, after sale services and guarantee or warranty to the consumer.

Consumer information on standards

35.—(1) A supplier or trader of a technology, goods or services shall provide consumers with true, sufficient, clear and timely information on—

(*a*) goods including whether they are genetically modified or not; and

(*b*) services offered, to enable consumers to make proper, informed and reasonable choices.

(2) A manufacturer or producer shall—

(*a*) label all products in a manner that is legible, indelible and where applicable in bold letters and in ordinarily understandable language or dialect of a consumer; and

(*b*) label every genetically modified product.

(3) A manufacturer, producer, assembler or packer shall clearly indicate his name, postal and physical address, the contents, ingredients and the expiry date of the products in legible, distinct characters and in a contrasting colour to the background colour.

(4) The supplier or trader of technology, goods or services shall provide technology, goods or services that meet Malaŵi Standards.

Supplier or trader to provide the consumer with receipt, invoice, etc.

36.—(1) A supplier or trader of technology, goods or services shall provide a consumer with a contract, receipt, ticket, invoice, business record or any other document that embodies or evidences the transaction unless this requirement is expressly excluded by this Act or any other written law.

(2) In the event that the technology, goods or services are not delivered, supplied or performed upon the execution of the transaction or upon the sale, the contract, receipt, ticket, invoice, business record or document shall indicate the date and place where delivery, supply or performance is to take place and the consequences of any failure or delay.

(3) In the supply of technology, goods or services the contract, receipt, ticket or invoice shall indicate the material components, spare parts, accessories, paraphernalia or peripherals to be used, price thereof, the cost of manpower or labour as well as the terms under which the supplier undertakes to provide such technology or service.

Price to be displayed on goods, etc.

37.—(1) The supplier or trader of technology, goods or services shall indicate clearly in local currency and exhibit to the public the price of any technology, goods and services, unless an express exemption applies under any written law.

(2) The price of any technology, goods or services shall include the actual price as well as any duty, tax, charge, fees or levy the consumer is liable to pay.

Particulars or labels on goods to be in official language, etc.

38. A supplier or trader of technology, goods or services shall ensure that the particulars shown on the goods or their labels, packages or in advertisements and any information or announcements relating to the supply of a technology, goods or services is expressed in recognized official language, legal tender, and in generally accepted international, national or local measuring units.

Certain words to be used to indicate warranty

39. A person shall only use the terms "guarantee" or "warranty" or any other equivalent term, to indicate clearly and accurately the extent of the warranty, as well as the conditions, manner, duration and place in which they can be enforced by a consumer.

Warning about harmful technology and goods

40.—(1) A supplier or trader of consumer technology or goods which are harmful or hazardous to human health or the environment shall put easily noticeable instructions and warning on the technology or goods so that the consumer may use them under highest possible safety conditions.

(2)—(*a*) The supplier or trader of dangerous technology, goods or services shall provide instructions and put a clearly visible and prominent warning on the technology, goods or services;

(*b*) paragraph (*a*) above shall not prejudice the supplier's obligation to take corresponding safety measures or to conduct his activities with due diligence and care as may be required under this Act or any other written law.

(3) A supplier or trader who, after the introduction of technology, goods or services into the market becomes aware of the existence of unforeseen health hazards or risks, shall communicate as soon as possible to the relevant authority and inform consumers of the existence of such hazards or risks.

(4) The supplier or trader of technology, goods or services concerned shall bear the costs of giving notice to consumers and the notice shall be given through the most effective and appropriate means to ensure full and timely dissemination of the information about the risks that such technology, goods or services might cause to the consumers.

(5) Subsection (4) shall not exempt the supplier or trader from his liability for the damage actually caused by the technology, goods or services.

Remedies for harmful technologies and goods

41.—(1) The Council shall take all necessary steps for the full, timely and faithful compliance with the obligations set forth in section 40.

(2) Where it is verified in an appropriate laboratory that technology or goods have a material defect or deficiency or constitutes a material hazard or risk, even under proper use, the

supplier or trader thereof shall, without prejudice to the liabilities that may have arisen, withdraw the same from the market and substitute or replace the same at his own expense.

(3) Where a supplier or trader fails to proceed according to subsection (2) he shall, within a reasonable period, return to a consumer the consideration paid for the technology, goods or services.

(4) A consumer shall show the supplier or trader the technology, goods or services as well as its package or other means of proving that the consumer purchased or lawfully availed himself of the same,

(5) The Council shall cause the immediate withdrawal of a technology, goods or services from the market and ban the circulation thereof where the hazard or toxicity of the technology, goods or services is proven to reach levels considered harmful or dangerous to public or where it is reasonably foreseeable that the technology, goods or services are health capable of causing harm or danger to the public.

(6) The trader or supplier of the technology, goods or services which cause harm or danger shall be liable for the damage caused and bear the expenses of withdrawing the technology, goods or services from the market.

Offence and penalty

42. Any supplier or trader who contravenes any provision under this Part shall be guilty of an offence and upon conviction, liable to a fine of K500,000 and to imprisonment for five (5) years.

PART VII
Advertising

Supplier or trader to provide true information

43. Every supplier or trader of technology, goods services shall provide a consumer with true, adequate, clear and prompt information on the technology, goods and services offered, so that the consumer can make a proper and informed choice.

Advertisement to be truthful

44.—(1) An advertiser shall ensure that an advertisement—

(*a*) conforms to rules of decency, sincerity and truth;

(*b*) does not exploit superstition, ignorance or fear; and

(*c*) is distinct in whatever form it takes.

(2) Any advertiser who puts an advertisement that constitutes a false or misleading offer or promotion of technology, goods, activities or services shall be guilty of fraud,

(3) For the purposes of this section, false or misleading advertising includes any type of business information or commu-

nication using text, dialogue, sounds, images or descriptions which can directly or indirectly, expressly or by omission, lead a consumer to mistake, misunderstand or confuse—

(*a*) the geographic, business or other origin of the offered goods or the place for the rendering of services agreed upon or the technology used;

(*b*) the components or ingredients of goods offered, or the percentages of the same used therein;

(*c*) the benefits or repercussions of the uses or hiring such technology, goods or services;

(*d*) the basic characteristics of the goods to be sold or the technology to be supplied or the services to be rendered, such as size, quality, usefulness, durability or any other standard deemed reasonable and indispensable or a normal dealing relating to such technology, goods or services;

(*e*) the date of manufacture or useful life of the technology or goods,

(*f*) the terms of the warranties and guarantee as offered;

(*g*) the official or private, domestic or foreign recognition, approvals or distinctions or licences, such as patents, trademarks, medals, awards, prizes or diplomas;

(*h*) the price of the offered technology, goods or services, the terms of payment and the cost of the credit; or

(*i*) any other particular material to the transaction involving the technology, goods or services.

Abusive advertising prohibited

45. An advertiser shall not use abusive advertising.

Duration of advertisement necessary in promotional sales, etc.

46.—(1) An advertiser shall, in the case of promotional services, sales or special offers, indicate in the respective advertisement the duration thereof or, as the case may be, the nature or volume of the technology, goods or services offered, as well as the general conditions, warranties, guarantee and terms of the proposed business.

(2) Where no duration is fixed, nor the nature or volume of the technology, goods or services determined, the sale, promotion or offer shall be understood to extend for a maximum duration of thirty (30) days from time of the last announcement.

(3) Where the advertiser of technology, goods or services in promotion, sale or special offer fails to comply with the advertisement, a consumer may—

(*a*) take necessary steps to compel the supplier or trader to comply with the obligation according to the general law of contract;

(*b*) accept another technology or goods or the rendering of an equivalent service; or

(*c*) cancel the contract if there has been an advance payment by the consumer.

Consumer to be compensated

47.—(1) Where abusive advertising results in loss to a consumer, the consumer shall be entitled to claim compensation from the offeror, or advertiser and the compensation shall in no event be less than the balance between the price of the technology, goods or services under promotion or sale and its regular or ordinary price or cost of replacement or repair.

(2) Where the statements made in the advertisement are considered false or misleading to consumers, the Council shall order an amendment of the content and such amendment shall be announced at the expense of the advertiser through the same media used to disseminate the false or misleading message.

(3) The advertiser shall bear the burden of proving the truth of the statements contained in the advertising material.

Offence and penalty

48. Any person who contravenes any provision under this Part shall be guilty of an offence and upon conviction, liable to a fine of K500,000 and to imprisonment for five (5) years.

PART VIII
Measures for Consumer Redress and Mechanisms

Representative consumer or class actions

49.—(1) The defence, promotion or enforcement of rights under this Act or any other written law shall be exercised or conducted through individual or collective mediation, negotiation, arbitration or litigation.

(2) Collective mediation, negotiation, arbitration or litigation may be conducted where collective or diffuse interests or rights are involved.

(3) Under "collective or diffuse interest" means supra-individual rights or interests having an indivisible nature to which undetermined individuals are entitled.

(4) Registered consumer associations shall be lawfully entitled to act in judicial or administrative tribunals in the collective enforcement or defence of the rights that this Act or any other written law vest in a consumer; and they may represent consumers in such tribunals.

(5) The decisions rendered in collective procedures shall have general effect and accrue to all consumers except where any such decision is dismissed for want of proof in which event any other consumer having an interest in the matter may bring a new action on the basis of facts and claims arising from the same transaction.

Subordinate courts to have jurisdiction over consumer claims

50. The subordinate courts shall—

(*a*) have jurisdiction over consumer protection claims;

(*b*) be available and accessible to all consumers in order to provide simple, speedy, inexpensive and understandable justice; and

(*c*) have the power to order alteration, modification, reform, rescission or reformulation of consumer contracts and transactions.

Funding for the subordinate Courts

51. Local Authorities shall allocate funds to the subordinate courts for the disposition of the consumer protection claims.

Remedies and sanctions

52.—(1) The subordinate courts shall have and exercise penal and remedial powers provided under this Act or any other written law.

(2) The subordinate court may under this Act or any other written law give the following remedies to a consumer—

(*a*) cancellation, rescission or revision of a contract or its clauses;

(*b*) damages and interests; or

(*c*) fine the guilty party.

(3) A subordinate court may—

(*a*) order the destruction of offensive technology or goods;

(*b*) decide upon the prohibition of the sale or supply of technology, goods or services; or

(*c*) order the withdrawal of the same from the market, within a specified period.

Jurisdiction in respect of persons and causes of action

53.—(1) Subject to this Act, a subordinate court shall have jurisdiction in respect of—

(*a*) any person who resides or carries on business or is employed within its area;

(*b*) any person in respect of any cause of action that arose wholly within its area;

(*c*) any person, whether or not he resides, carries on business or is employed within its area, if he appears before the court and does not object to its jurisdiction; and

(*d*) any person in respect of any proceedings incidental to any action instituted in the court by that person.

Relationship between this Act and other laws

54. For the avoidance of doubt, this Act shall be regarded as complementary to the process of ensuring and enhancing laws regulating or touching on consumer protection.

PART IX
Miscellaneous Provisions

Offence and penalty

55.—(1) Any person who contravenes or fails to comply with any provision of this Act or any regulations made hereunder shall be guilty of an offence.

(2) A person guilty of an offence under this Act or regulations made hereunder for which no specific penalty is provided shall be liable to a fine of K500,000 or where applicable to an amount equivalent to the financial gain generated by the offence, if such amount be greater, and to imprisonment for five years.

Regulations

56.—(1) The Minister may, in consultation with the Council, make regulations generally for the better carrying into effect the provisions of this Act.

(2) Without prejudice to the generality of the foregoing, the Minister may make regulations to fees to be paid by the complainants.

(3) The Chief Justice may in consultation with the Minister make regulations to—

(*a*) prescribe the manner in which complaints to the subordinate courts may be made;

(*b*) prescribe the monetary jurisdiction and ceilings for matters which may be tried in subordinate courts;

(*c*) prescribe the procedure of subordinate courts in matters of consumer protection;

(*d*) prescribe forms for pleadings at subordinate courts in matters of consumer protection; and

(*e*) prescribe the sessions of the subordinate courts to facilitate access as well as to ensure expeditious determination of matters.

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SCHEDULE
Certification Trade Marks

CHAPTER 49:01

TRADE MARKS

14 of 1957(F)
37 of 1960(F)
2 of 1962(F)
G.N. 5/1964(M)
166/1967

An Act to make Provision Relating to the Registration of Trade Marks and for other purposes Incidental thereto

[1st April, 1958]

PRELIMINARY

Short title

1. This Act may be cited as the Trade Marks Act.

Interpretation

2.—(1) In this Act, unless inconsistent with the context—

"assignment" means assignment by act of the parties concerned;

"Convention" means the Union Convention of Paris, dated the 20th March, 1883, for the Protection of Industrial Property, revised at Brussels on the 14th December, 1900, at Washington on the 2nd June, 1911, at The Hague on the 6th November, 1925, and at London on the 2nd June, 1934, and any revision thereof to which Malaŵi may accede in terms of section 7 of the Patents Act;

Cap. 49:02

"convention country", in relation to any provision of this Act, means a country (including any colony, protectorate or territory subject to the authority or under the suzerainty of that country, or any territory over which a mandate or trusteeship is exercised) which has been declared to be a convention country in terms of section 7 of the Patents Act;

"examiner" means an examiner appointed under section 5;

"former trade marks legislation" means this Act as in force from time to time prior to the 1st January, 1964;

"limitations" means any limitations of the exclusive right to the use of a trade mark given by the registration of a person as proprietor thereof, including limitations of that right as to mode of use, as to use in relation to goods to be sold or otherwise traded in in any place within Malaŵi or as to use in relation to goods to be exported to any market outside Malaŵi;

"mark" includes a device, brand, heading, label, ticket, name, signature, word, letter, numeral or any combination thereof;

"patent agent" means a person who is registered as such under section 68 (1) of the Patents Act and is by virtue of that Act entitled to practise as a patent agent; Cap. 49:02

"permitted use" has the meaning assigned to it by section 33 (1)

"register" means the register of trade marks kept under this Act;

"register of trade mark agents" means the register of trade mark agents kept under section 83 (1)

"registered trade mark" means a trade mark that is actually on the register;

"registered user" means a person who is for the time being registered as such under section 33;

"Registrar" means the Registrar of Trade Marks appointed under section 5;

"regulations" means regulations made under section 81;

"trade mark" means, except in relation to a certification trade mark, a mark used or proposed to be used in relation to goods for the purpose of indicating, or so as to indicate, a connexion in the course of trade between the goods and some person having the right either as proprietor or as registered user to use the mark, whether with or without any indication of the identity of that person, and means, in relation to a certification trade mark, a mark registered or deemed to have been registered under section 42;

"trade mark agent" means a person who is—

(*a*) registered as a trade mark agent in terms of section 83 (2); or

(*b*) a legal practitioner or patent agent entitled to practise as a trade mark agent in terms of section 85;

"Trade Marks Office" means the Trade Marks Office established under section 3;

"transmission" means transmission by operation of law, devolution on the legal representative of a deceased person and any other mode of transfer not being assignment;

Cap. 49:02

"Tribunal" means the Patents Tribunal established under the Patents Act.

(2) References in this Act to the use of a mark shall be construed as references to the use of a printed or other visual representation of the mark, and references therein to the use of a mark in relation to goods shall be construed as references to the use thereof upon, or in physical or other relation to, goods.

PART I

Administration

Establishment of Trade Marks Office

3. There shall be established under the direction of the Minister an office to be called the Trade Marks Office.

Seal

4. The seal of the Patent Office kept in terms of the Patents Act shall also be the seal of the Trade Marks Office, and impressions thereof made for the purposes of this Act shall be judicially noticed.

Appointment of officers

5. There shall be appointed—

(*a*) a Registrar of Trade Marks who shall exercise the powers and perform the duties assigned to the Registrar by this Act and shall be responsible for its administration;

(*b*) one or more Deputy Registrars of Trade Marks who shall, subject to the control of the Registrar, have all the powers conferred by this Act on the Registrar,

(*c*) such examiners and other officers as the Minister may consider necessary for carrying out this Act.

Register of trade marks

6.—(1) There shall be kept at the Trade Marks Office for the purposes of this Act the record called the register of trade marks wherein shall be entered all registered trade marks with the names, addresses and descriptions of their proprietors, notifications of assignments and transmissions, the names, addresses and descriptions of all registered users, disclaimers, conditions, limitations and such other matters relating to registered trade marks as may be prescribed.

(2) The register shall be divided into four parts which shall be known as Part A, Part B, Part C and Part D respectively.

(3) Any trade mark which was registered under the former trade marks legislation shall continue in force in Malaŵi for the remainder of the unexpired portion of the period for which it was of force and effect when registered under the said legislation.

(4) Subject to this Act, the register of trade marks shall, at all convenient times, be open to inspection by the public, and certified copies, sealed with the seal of the Patent Office, of any entry in the register shall be given to any person requiring them on payment of the prescribed fee.

(6) No notice of any trust, whether expressed, implied or constructive, shall be entered in the register, and the Registrar shall not be affected by any such notice.

PART II

Effect of Registration and the Action for Infringement

No action for infringement of unregistered trade mark

7. No person shall be entitled to institute any proceedings to prevent or to recover damages for the infringement of an unregistered trade mark, but nothing in this Act shall be deemed to affect rights of action against any person for passing off goods as the goods of another person or the remedies in respect thereof.

Registration to be in respect of particular goods

8. A trade mark must be registered in respect of particular goods or classes of goods, and any question arising as to the class within which any goods fall shall be determined by the Registrar whose decision shall be final.

Right given by registration in Part A and infringement thereof

9.—(1) Subject to this section and sections 12 and 13, the registration of a person in Part A of the register as proprietor of a trade mark in respect of any goods shall, if valid, give or be deemed to have given to that person the exclusive right to the use of the trade mark in relation to those goods and, without prejudice to the generality of the foregoing words, that right shall be deemed to be infringed by any person who, not being the proprietor of the trade mark or a registered user thereof using by way of the permitted use, uses a mark identical with it or so nearly resembling it as to be likely to deceive or cause confusion in the course of trade in relation to any goods in respect of which it is registered and in such manner as to render the use of the mark likely to be taken either—

(*a*) as being used as a trade mark; or

(*b*) in a case in which the use is use upon the goods or in physical relation thereto or in an advertising circular or other advertisement issued to the public, as referring—

(i) to some person having the right either as proprietor or as registered user to use the trade mark; or

(ii) to goods with which such a person as aforesaid is connected in the course of trade.

(2) The right to the use of a trade mark given by registration as aforesaid shall be subject to any conditions or limitations entered on the register and shall not be deemed to be infringed by the use of any such mark as aforesaid in any mode in relation to goods to be sold or otherwise traded in in any place, in relation to goods to be exported to any market or in any other circumstances to which, having regard to any such limitations, the registration does not extend.

(3) The right to the use of a trade mark given by registration as aforesaid shall not be deemed to be infringed by the use of any such mark as aforesaid by any person—

(*a*) in relation to goods connected in the course of trade with the proprietor or a registered user of the trade mark if, as to those goods or a bulk of which they form a part, the proprietor or the registered user conforming to the permitted use has applied the trade mark and has not subsequently removed or obliterated it or has at any time expressly or impliedly consented to the use of the trade mark; or

(*b*) in relation to goods adapted to form part of, or to be accessory to, other goods in relation to which the trade mark has been used without infringement of the right given as aforesaid or might for the time being be so used, if the use of the mark is reasonably necessary in order to indicate that the goods are so adapted and neither the purpose nor the effect of the use of the mark is to indicate otherwise than in accordance with the fact a connexion in the course of trade between any person and the goods.

(4) The use of a registered trade mark, being one of two or more registered trade marks that are identical or nearly resemble each other, in exercise of the right to the use of that trade mark given by registration as aforesaid shall not be deemed to be an infringement of the right so given to the use of any other of those trade marks.

Right given by registration in Part B and infringement thereof

10.—(1) Except as provided by subsection (2), the registration of a person in Part B of the register as proprietor of a trade mark in respect of any goods shall, if valid, give or be deemed to have given to that person the like right in relation to those goods as if the registration had been in Part A of the register, and section 9 shall have effect in like manner in relation to a trade mark registered in Part B of the register as they have effect in relation to a trade mark registered in Part A of the register.

(2) In any action for infringement of the right to the use of a trade mark given by registration as aforesaid in Part B of the register, otherwise than by an act that is deemed to be an infringement by virtue of section 11 no injunction or other relief shall be granted to the plaintiff if the defendant establishes to the

satisfaction of the High Court that the use of which the plaintiff complains is not likely to deceive or cause confusion or to be taken as indicating a connexion in the course of trade between the goods and some person having the right either as proprietor or as registered user to use the trade mark.

Infringement by breach of certain restrictions

11.—(1) Where, by a contract in writing made with the proprietor or a registered user of a registered trade mark, a purchaser or owner of goods enters into an obligation to the effect that he will not do, in relation to the goods, an act to which this section applies, any person who, being the owner for the time being of the goods and having notice of the obligation, does that act or authorizes it to be done, in relation to the goods, in the course of trade or with a view to any dealing therewith in the course of trade shall be deemed thereby to infringe the right to the use of the trade mark given by the registration thereof, unless that person became the owner of the goods by purchase for money or money's worth in good faith before receiving notice of the obligation or by virtue of a title derived through another who so became the owner thereof.

(2) The acts to which this section applies are—

(*a*) the application of the trade mark upon the goods after they have suffered alteration in any manner specified in the contract as respects their state or condition, get-up or packing;

(*b*) in a case in which the trade mark is upon the goods, the alteration, part removal or part obliteration thereof;

(*c*) in a case in which the trade mark is upon the goods and there is also thereon other matter, being matter indicating a connexion in the course of trade between the proprietor or registered user and the goods, the removal or obliteration, whether wholly or partly, of the trade mark unless that other matter is wholly removed or obliterated;

(*d*) in a case in which the trade mark is upon the goods, the application of any other trade mark to the goods;

(*e*) in a case in which the trade mark is upon the goods, the addition to the goods of any other matter in writing that is likely to injure the reputation of the trade mark.

(3) In this section, references, in relation to any goods, to the proprietor, to a registered user and to the registration of a trade mark shall be construed, respectively, as references to the proprietor in whose name the trade mark is registered, to a registered user who is registered and to the registration of the trade mark, in respect of those goods, and the expression "upon" includes, in relation to any goods, a reference to physical relation thereto.

Saving for vested rights

12. Nothing in this Act shall entitle the proprietor or a registered user of a registered trade mark to interfere with or restrain the use by any person of a trade mark identical with or nearly resembling it, in relation to goods, in relation to which that person or a predecessor in title of his has continuously used that trade mark from a date anterior—

(*a*) to the use of the first-mentioned trade mark in relation to those goods by the proprietor of a predecessor in title of his; or

(*b*) to the registration of the first-mentioned trade mark in respect of those goods in the name of the proprietor or a predecessor in title of his,

whichever is the earlier, or to object (on such use being proved) to that person being put on the register for that identical or nearly resembling trade mark in respect of those goods under section 17 (2).

Saving for use of name, address or description of goods

13. No registration of a trade mark shall interfere with—

(*a*) any *bona fide* use by a person of his own name or of the name of his place of business, or of the name or of the name of the place of business of any of his predecessors in business; or

(*b*) the use by any person of any bona fide description of the character or quality of his goods, not being a description that would be likely to be taken as importing any such reference as is mentioned in section 9 (1) (*b*) or in section 42 (3) (*b*).

PART III

Registrability and Validity of Registration

Distinctiveness requisite for registration in Part A

14.—(1) In order for a trade mark (other than a certification trade mark) to be registrable in Part A of the register, it must contain or consist of at least one of the following essential particulars—

(*a*) the name of a company, individual or firm, represented in a special or particular manner;

(*b*) the signature of the applicant for registration or some predecessor in his business;

(*c*) an invented word or invented words;

(*d*) a word or words having no direct reference to the character or quality of the goods and not being, according to its ordinary signification, a geographical name or a surname;

(*e*) any other distinctive mark, but a name, signature or

word or words, other than such as fall within the descriptions in the foregoing paragraphs (*a*), (*b*), (*c*) and (*d*), shall not be registrable under this paragraph except upon evidence of its distinctiveness.

(2) For the purposes of this section, "distinctive" means adapted, in relation to the goods in respect of which a trade mark is registered or proposed to be registered, to distinguish goods with which the proprietor of the trade mark is or may be connected in the; course of trade from goods in the case of which no such connexion subsists, either generally or, where the trade mark is registered or proposed to be registered subject to limitations, in relation to use within the extent of the registration.

(3) The Registrar, or the Tribunal in the event of an appeal from a decision of the Registrar, in determining whether a trade mark is adapted to distinguish as aforesaid may have regard to the extent to which—

(*a*) the trade mark is inherently adapted to distinguish as aforesaid; and

(*b*) by reason of the use of the trade mark or of any other circumstances the trade mark is, in fact, adapted to distinguish as aforesaid.

(4) An appeal shall lie from any decision of the Registrar under this section.

Capability of distinguishing requisite for registration in Part B

15.—(1) In order for a trade mark to be registrable in Part B of the register, it must be capable, in relation to the goods in respect of which it is registered or proposed to be registered, of distinguishing goods with which the proprietor of the trade mark is or may be connected in the course of trade from goods in the case of which no such connexion subsists, either generally or, where the trade mark is registered or proposed to be registered subject to limitations, in relation to use within the extent of the registration.

(2) In determining whether a trade mark is capable of distinguishing as aforesaid, the Registrar, or the Tribunal in the event of an appeal from a decision of the Registrar, may have regard to the extent to which—

(*a*) the trade mark is inherently capable of distinguishing as aforesaid; and

(*b*) by reason of the use of the trade mark or of any other circumstances the trade mark is, in fact, capable of distinguishing as aforesaid.

(3) A trade mark may be registered in Part B notwithstanding

any registration in Part A in the name of the same proprietor of the same trade mark or any part or parts thereof.

(4) An appeal shall lie from any decision of the Registrar under this section.

Prohibition of registration of deceptive, etc., matter

16. It shall not be lawful to register as a trade mark or part of a trade mark any matter the use of which would, by reason of its being likely to deceive or cause confusion or otherwise, be disentitled to protection in a court of justice or would be contrary to law or morality, or any scandalous design.

Prohibition of registration of identical and resembling trade marks

17.—(1) Subject to subsection (2), no trade mark shall be registered in respect of any goods or description of goods that is identical with a trade mark belonging to a different proprietor and already on the register in respect of the same goods or description of goods or that so nearly resembles such a trade mark as to be likely to deceive or cause confusion.

(2) In the case of honest current use or other special circumstances which, in the opinion of the Registrar, or the Tribunal in the event of an appeal from a decision of the Registrar, make it proper so to do, the Registrar or the Tribunal, as the case may be, may permit the registration of trade marks that are identical or nearly resemble each other in respect of the same goods or description of goods by more than one proprietor subject to such conditions and limitations, if any, as the Registrar or the Tribunal may think it right to impose.

(3) Where separate applications are made by different persons to be registered as proprietors respectively of trade marks that are identical or nearly resemble each other in respect of the same goods or description of goods, the Registrar may refuse to register any of them until their rights have been determined by the Tribunal or have been settled by agreement in a manner approved by him or on an appeal by the Tribunal.

Registration in Part A to be conclusive as to validity after seven years

18.—(1) In all legal proceedings relating to a trade mark registered in Part A of the register (including applications under section 37) the original registration in Part A of the register of the trade mark shall, after the expiration of seven years from the date of that registration, be taken to be valid in all respects, unless—

(*a*) that registration was obtained by fraud; or

(*b*) the trade mark offends against section 16.

(2) Nothing in section 10 (1) shall be construed as making applicable to a trade mark, as being a trade mark registered in Part B of the register, the foregoing provisions of this section relating to a trade mark registered in Part A of the register.

Registration subject to disclaimer

19. If a trade mark—

(*a*) contains any part not separately registered by the proprietor as a trade mark; or

(*b*) contains matter common to the trade or otherwise of a non-distinctive character,

the Registrar, or the Tribunal in the event of an appeal from a decision of the Registrar, in deciding whether the trade mark shall be entered or shall remain on the register, may require as a condition of its being on the register—

(i) that the proprietor shall disclaim any right to the exclusive use of any part of the trade mark or to the exclusive use of all or any portion of such trade mark as aforesaid, to the exclusive use of which the Registrar or the Tribunal holds him not to be entitled; or

(ii) that the proprietor shall make such other disclaimer as the Registrar or the Tribunal may consider necessary for the purposes of defining his rights under the registrations:

Provided that no disclaimer on the register shall affect any rights of the proprietor of a trade mark except such as arise out of the registration of the trade mark in respect of which the disclaimer is made.

Words used as name or description of an article or substance

20.—(1) The registration of a trade mark shall not be deemed to have become invalid by reason only of any use, after the date of the registration, of a word or words which the trade mark contains, or of which it consists, as the name or description of an article or substance:

Provided that, if it is proved either—

(*a*) that there is a well-known and established use of the word or words as the name or description of the article or substance by a person or persons carrying on a trade therein, not being use in relation to goods connected in the course of trade with the proprietor or a registered user of the trade mark on (in the case of a certification trade mark) goods certified by the proprietor; or

(*b*) that the article or substance was formerly manufactured under a patent, that a period of two years or more after the cesser of the patent has elapsed, and that the word or words is or are the only practicable name or description of the article or substance,

subsection (2) shall have effect.

(2) Where the facts mentioned in proviso (*a*) or (*b*) to subsection (1) are proved with respect to any word or words, then—

(*a*) if the trade mark consists solely of that word or those words, the registration of the trade mark, so far as regards registration in respect of the article or substance in question or of any goods of the same description, shall be deemed, for the purposes of section 37, to be an entry wrongly remaining on the register;

(*b*) if the trade mark contains that word or those words and other matter, the Registrar, or the Tribunal in the event of an appeal from a decision of the Registrar, in deciding whether the trade mark shall remain on the register, so far as regards registration in respect of the article or substance in question and of any goods of the same description, may in case of a decision in favour of its remaining on the register require as a condition thereof that the proprietor shall disclaim any right to the exclusive use in relation to that article or substance and any goods of the same description of that word or those words, so, however, that no disclaimer on the register shall affect any rights of the proprietor of a trade mark except such as arise out of the registration of the trade mark in respect of which the disclaimer is made; and

(*c*) for the purposes of any other legal proceedings relating to the trade mark—

(i) if the trade mark consists solely of that word or those words, all rights of the proprietor, whether under the common law or by registration, to the exclusive use of the trade mark in relation to the article or substance in question or to any goods of the same description; or

(ii) if the trade mark contains that word or those words and other matter, all such rights of the proprietor to the exclusive use of that word or those words in such relation as aforesaid,

shall be deemed to have ceased on the date at which the use mentioned in proviso (*a*) to subsection (1) first became well known and established or at the expiration of the period of two years mentioned in proviso (*b*).

(3) No word which is the commonly used and accepted name of any single chemical element or single chemical compound, as distinguished from a mixture, shall be registered as a trade mark in respect of a chemical substance or preparation, and any such registration in force at the commencement of this Act or thereafter shall, notwithstanding anything in section 18, be deemed, for the purposes of section 37, to be an entry made in the register without sufficient cause, or an entry wrongly remaining on the register, as the circumstances may require:

Provided that the foregoing provisions of this subsection shall not have effect in relation to a word which is used to denote only a brand or make of the element or compound as made by the

proprietor or a registered user of the trade mark, as distinguished from the element or compound as made by others, and in association with a suitable name or description open to public use.

Effect of limitation as to colour and of absence thereof

21. A trade mark may be limited in whole or in part to one or more specified colours, and in any such case the fact that it is so limited shall be taken into consideration by the Registrar, or by the Tribunal in the event of an appeal from a decision of the Registrar, in deciding on the distinctive character of the trade mark.

If and so far as a trade mark is registered without limitation of colour, it shall be deemed to be registered for all colours.

PART IV

Procedure for, and Duration of, Registration

Application for registration

22.—(1) Any person claiming to be the proprietor of a trade mark used or proposed to be used by him who is desirous of registering it must apply in writing to the Registrar in the prescribed manner for registration either in Part A or in Part B of the register.

(2) Subject to this Act, the Registrar may refuse the application or may accept it absolutely or subject to such amendments, modifications, conditions or limitations, if any, as he may think right.

(3) In the case of an application for registration of a trade mark (other than a certification trade mark) in Part A of the register, the Registrar may, if the applicant is willing, instead of refusing the application, treat it as an application for registration in Part B and deal with the application accordingly.

(4) In the case of a refusal or conditional acceptance, the Registrar shall, if required by the applicant, state in writing the grounds of his decision and the materials used by him in arriving thereat, and the decision of the Registrar shall be subject to appeal.

(5) An appeal under this section shall be made in the prescribed manner, and on the appeal the Tribunal shall, if required, hear the applicant and the Registrar, and shall otherwise deal with such appeal in accordance with Part X.

(6) Appeals under this section shall be heard on the materials stated as aforesaid by the Registrar, and no further grounds of objection to the acceptance of the application shall be allowed to be taken by the Registrar, other than those so stated as aforesaid by him, except by leave of the Tribunal. Where any further

grounds of objection are taken, the applicant shall be entitled to withdraw his application without payment of costs on giving notice as prescribed.

(7) The Registrar, or the Tribunal in the event of an appeal from a decision of the Registrar, may at any time, whether before or after acceptance, correct any error in or in connexion with the application or may permit the applicant to amend his application upon such terms as the Registrar or the Tribunal may think right.

Opposition to registration and appeals

23.—(1) When an application for registration of a trade mark has been accepted, whether absolutely or subject to conditions or limitations, the applicant shall, as soon as may be after acceptance, advertise the application as accepted in the prescribed manner, and the advertisement shall set forth all conditions and limitations subject to which the application has been accepted:

Provided that the Registrar may direct that an application shall be advertised before acceptance if it is made under section 14 (1) (*e*), or in any other case where it appears to him that it is expedient by reason of any exceptional circumstances so to do, and where an application has been so advertised, the Registrar may, if he thinks fit, direct that it shall be advertised again when it has been accepted, but shall not be bound so to do.

(2) Any person may, within the prescribed time from the date of the advertisement of an application, give notice to the Registrar of opposition to the registration.

(3) The notice shall be given in writing in the prescribed manner and shall include a statement of the grounds of opposition.

(4) The Registrar shall send a copy of the notice to the applicant and, within the prescribed time after receipt thereof, the applicant shall send to the Registrar, in the prescribed manner a counter-statement of the grounds on which he relies for his application, and if he does not do so, he shall be deemed to have abandoned his application.

(5) If the applicant sends such a counter-statement as aforesaid, the Registrar shall furnish a copy thereof to the persons giving notice of opposition, and shall, after hearing the parties, if so required, and considering the evidence, decide whether, and subject to what conditions or limitations, if any, registration is to be permitted.

(6) An appeal shall lie from any decision of the Registrar under this section.

(7) An appeal under this section shall be made in the pre-

scribed form and manner, and on the appeal the Tribunal shall, if required, hear the parties and the Registrar, and shall make an order determining whether, and subject to what conditions or limitations, if any, registration is to be permitted.

(8) On the hearing of an appeal under this section, any party may, either in the manner prescribed or by special leave of the Tribunal, bring forward further material for the consideration of the Tribunal.

(9) On an appeal under this section, no further grounds of objection to the registration of a trade mark shall be allowed to be taken by the opponent or the Registrar, other than those so stated as aforesaid by the opponent, except by leave of the Tribunal. Where any further grounds of objection are taken; the applicant shall be entitled to withdraw his application without payment of the costs of the opponent on giving notice as prescribed.

(10) On an appeal under this section, the Tribunal may, after hearing the Registrar, permit the trade mark proposed to be registered to be modified in any manner not substantially affecting the identity thereof, but in any such case the trade mark as so modified shall be advertised in the prescribed manner before being registered.

Registration

24.—(1) When an application for registration of a trade mark has been accepted, and either—

(*a*) the application has not been opposed and the time for notice of opposition has expired; or

(*b*) the application has been opposed and the opposition has been decided in favour of the applicant,

the Registrar shall, unless the application has been accepted in error or unless the Tribunal otherwise directs, register the trade mark, and the trade mark, when registered, shall be registered as of the date of the application for registration, and that date shall be deemed, for the purposes of this Act, to be the date of registration:

Provided that the foregoing provisions of this subsection, relating to the date as of which a trade mark shall be registered and to the date to be deemed to be the date of registration, shall, as respects a trade mark registered under this Act with the benefit of any enactment relating to international arrangements, have effect subject to that enactment.

(2) On the registration of a trade mark the Registrar shall issue to the applicant a certificate in the prescribed form of the registration thereof sealed with the seal of the Patent Office.

(3) Where registration of a trade mark is not completed within twelve months from the date of the application by reason of default on the part of the applicant, the Registrar may, after giving notice of the non-completion to the applicant in writing in the prescribed manner, treat the application as abandoned, unless it is completed within the time specified in that behalf in the notice.

Duration and renewal of registration

25.—(1) The registration of a trade mark shall be for a period of seven years, but may be renewed from time to time in accordance with this section.

(2) The Registrar shall, on application made by the registered proprietor of a trade mark in the prescribed manner and within the prescribed period, renew the registration of the trade mark for a period of fourteen years from the date of expiration of the original registration or of the last renewal of registration, which date is in this section referred to as "the expiration of the last registration".

(3) At the prescribed time before the expiration of the last registration of a trade mark, the Registrar shall send notice in the prescribed manner to the registered proprietor of the date of expiration and the conditions as to payment of fees and otherwise upon which a renewal of registration may be obtained and, if at the expiration of the time prescribed in that behalf those conditions have not been duly complied with, the Registrar may remove the trade mark from the register, subject to such conditions, if any, as to its restoration to the register as may be prescribed.

(5) Where a trade mark has been removed from the register for non-payment of the fee for renewal, it shall, nevertheless, for the purpose of any application for the registration of a trade mark during one year next after the date of the removal, be deemed to be a trade mark that is already on the register:

Provided that the foregoing provisions of this subsection shall not have effect where the Registrar, or the Tribunal in the event of an appeal from a decision of the Registrar, is satisfied either—

(*a*) that there has been no *bona fide* trade use of the trade mark that has been removed during the three years immediately preceding its removal; or

(*b*) that no deception or confusion would be likely to arise from the use of the trade mark that is the subject of the application for registration by reason of any previous use of the trade mark that has been removed.

Registration of parts of trade marks and of trade marks as a series

26.—(1) Where the proprietor of a trade mark claims to be entitled to the exclusive use of any part thereof separately, he may apply to register the whole and any such part as separate trade marks.

Each separate trade mark must satisfy all the conditions of an independent trade mark and shall, subject to section 28 (3) and section 35 (2), have all the incidents of an independent trade mark.

(2) Where a person claiming to be the proprietor of several trade marks, in respect of the same goods or description of goods, which, while resembling each other in the material particulars thereof, yet differ in respect of—

(*a*) statements of the goods in relation to which they are respectively used or proposed to be used; or

(*b*) statements of number, price, quality or names of places; or

(*c*) other matter of a non-distinctive character which does not substantially affect the identity of the trade mark; or

(*d*) colour,

seeks to register those trade marks, they may be registered as a series in one registration.

PART V

Assignment and Transmission

Powers of and restrictions on, assignment and transmission

27.—(1) Notwithstanding any rule or law to the contrary, a registered trade mark shall be, and shall be deemed always to have been, assignable and transmissible either in connexion with the goodwill of a business or not.

(2) A registered trade mark shall be, and shall be deemed always to have been, assignable and transmissible in respect either of all the goods in respect of which it is registered, or was registered, as the case may be, or of some (but not all) of those goods.

(3) Subsections (1) and (2) shall have effect in the case of an unregistered trade mark used in relation to any goods as they have effect in the case of a registered trade mark registered in respect of any goods, if at the time of the assignment or transmission of the unregistered trade mark it is or was used in the same business as a registered trade mark and if it is or was assigned or transmitted at the same time and to the same person as that registered trade mark and in respect of goods all of which are goods in relation to which the unregistered trade mark is or

was used in that business and in respect of which that registered trade mark is or was assigned or transmitted.

(4) Notwithstanding anything in subsections (1) to (3) inclusive, a trade mark shall not be, or be deemed to have been, assignable or transmissible in a case in which as a result of an assignment or transmission there would in the circumstances subsist or have subsisted, whether under the common law or by registration, exclusive rights in more than one of the persons concerned to the use, in relation to the same goods or description of goods, of trade marks nearly resembling each other or of identical trade marks, if, having regard to the similarity of the goods and of the trade marks, the use of the trade marks in exercise of those rights would be, or have been, likely to deceive or cause confusion:

Provided that, where a trade mark is, or has been, assigned or transmitted in such a case as aforesaid, the assignment or transmission shall not be deemed to be, or to have been, invalid under this subsection if the exclusive rights subsisting as a result thereof in the persons concerned respectively are, or were, having regard to limitations imposed thereon, such as not to be exercisable by two or more of those persons in relation to goods to be sold or otherwise traded in within Malaŵi (otherwise than for export therefrom) or in relation to goods to be exported to the same market outside Malaŵi.

(5) The proprietor of a registered trade mark who proposes to assign it in respect of any goods in respect of which it is registered may submit to the Registrar in the prescribed manner a statement of case setting out the circumstances, and the Registrar may issue to him a certificate stating whether, having regard to the similarity of the goods and of the trade marks referred to in the case, the proposed assignment of the first-mentioned trade mark would or would not be invalid under subsection (4), and a certificate so issued shall, subject to the provisions of this section as to appeal and unless it is shown that the certificate was obtained by fraud or misrepresentation, be conclusive as to the validity or invalidity under subsection (4) of the assignment in so far as such validity or invalidity depends upon the facts set out in the case, but, as regards a certificate in favour of validity, only if application for the registration under section 30 of the title of the person becoming entitled is made within six months from the date on which the certificate is issued.

(6) Notwithstanding anything in subsections (1) to (3) inclusive, a trade mark shall not, on or after the commencement of this Act, be assignable or transmissible in a case in which as a result of an assignment or transmission thereof there would in the circumstances subsist, whether under the common law or by registration, an exclusive right in one of the persons concerned to the use of the trade mark limited to use in relation to goods to be sold or otherwise traded in in a place or places in Malaŵi and an

exclusive right in another of those persons to the use of a trade mark nearly resembling the first-mentioned trade mark or of an identical trade mark in relation to the same goods or description of goods limited to use in relation to goods to be sold or otherwise traded in in another place or other places in Malaŵi:

Provided that on application in the prescribed manner by the proprietor of a trade mark who proposes to assign it, or of a person who claims that a trade mark has been transmitted to him or to a predecessor in title of his on or after the commencement of this Act, in any such case, the Registrar, if he is satisfied that in all the circumstances the use of the trade marks in exercise of the said rights would not be contrary to the public interest, may approve the assignment or transmission, and an assignment or transmission so approved shall not be deemed to be, or to have been, invalid under this subsection or under subsection (4), so, however, that in the case of a registered trade mark this provision shall not have effect unless application for the registration under section 30 of the title of the person becoming entitled is made within six months from the date on which the approval is given or, in the case of a transmission, was made before that date.

(7) Where an assignment in respect of any goods of a trade mark that is at the time of the assignment used in a business in those goods is made, on or after the commencement of this Act, otherwise than in connexion with the goodwill of that business, the assignment shall not take effect until the following requirements have been satisfied, that is to say, the assignee must, not later than the expiration of six months from the date on which the assignment is made or within such extended period, if any, as the Registrar may allow, apply to him for directions with respect to the advertisement of the assignment and must advertise it in such form and manner and within such period as the Registrar may direct.

(8) An appeal shall lie from any decision of the Registrar under this section.

Certain trade marks to be associated so as to be assignable and transmissible as a whole only

28.—(1) Trade marks that are registered as, or that are deemed by virtue of this Act to be, associated trade marks shall be assignable and transmissible only as a whole and not separately, but they shall for all other purposes, be deemed to have been registered as separate trade marks.

(2) Where a trade mark that is registered, or is the subject of an application for registration, in respect of any goods is identical with another trade mark that is registered, or is the subject of an application for registration, in the name of the same proprietor in respect of the same goods or description of goods, or so nearly resembles it as to be likely to deceive or cause confusion if

used by a person other than the proprietor, the Registrar, may at any time require that the trade marks shall be entered on the register as associated trade marks.

(3) Where a trade mark and any part or parts thereof are, by virtue of section 26 (1), registered as separate trade marks in the name of the same proprietor, they shall be deemed to be, and shall be registered as, associated trade marks.

(4) All trade marks that are, by virtue of section 26 (2), registered as a series in one registration shall be deemed to be, and shall be registered as, associated trade marks.

(5) On application made in the prescribed manner by the registered proprietor of two or more trade marks registered as associated trade marks, the Registrar may dissolve the association as respects any of them if he is satisfied that there would be no likelihood of deception or confusion being caused if that trade mark were used by another person in relation to any of the goods in respect of which it is registered and may amend the register accordingly.

(6) An appeal shall lie from any decision of the Registrar under this section.

Power of registered proprietor to assign and give receipts

29. Subject to this Act, the person for the time being entered in the register as proprietor of a trade mark shall, subject to any rights appearing from the register to be vested in any other person, have power to assign the trade mark and to give effectual receipts for any consideration for an assignment thereof.

Registration of assignments and transmissions

30.—(1) Where a person becomes entitled by assignment or transmission to a registered trade mark, he shall make application to the Registrar to register his title, and the Registrar shall, on receipt of the application and on proof of title to his satisfaction, register him as the proprietor of the trade mark in respect of the goods in respect of which the assignment or transmission has effect, and shall cause particulars of the assignment or transmission to be entered on the register.

(2) An appeal shall lie from any decision of the Registrar under this section.

(3) Except for the purposes of an appeal under this section or of an application under section 37, a document or instrument in respect of which no entry has been made in the register in accordance with subsection (1) shall not be admitted in evidence in any court in proof of the title to a trade mark unless the court otherwise directs.

PART VI

Use and Non-Use

Removal from register and imposition of limitation

31.—(1) Subject to section 32, a registered trade mark may be taken off the register in respect of any of the goods in respect of which it is registered on application by any person aggrieved to the Tribunal or, at the option of the applicant and subject to section 64, to the Registrar, on the ground either—

(*a*) that the trade mark was registered without any *bona fide* intention on the part of the applicant for registration that it should be used in relation to those goods by him and that there has in fact been no *bona fide* use of the trade mark in relation to those goods by any proprietor thereof for the time being up to the date one month before the date of the application; or

(*b*) that up to the date one month before the date of the application a continuous period of five years or longer elapsed during which the trade mark was a registered trade mark and during which there was no *bona fide* use thereof in relation to those goods by any proprietor thereof for the time being:

Provided that (except where the applicant has been permitted under section 17 (2) to register an identical or nearly resembling trade mark in respect of the goods in question or where the Tribunal or the Registrar, as the case may be, is of opinion that he might properly be permitted so to register such a trade mark) the Tribunal or the Registrar may refuse an application made under paragraph (*a*) or (*b*) in relation to any goods, if it is shown that there has been, before the relevant date or during the relevant period, as the case may be, *bona fide* use of the trade mark by any proprietor for the time being in relation to goods of the same description, being goods in respect of which the trade mark is registered.

(2) Where, in relation to any goods in respect of which a trade mark is registered—

(*a*) the matters referred to in subsection (1) (*b*) are shown so far as regards non-use of the trade mark in relation to goods to be sold or otherwise traded in in a particular place in Malaŵi (otherwise than for export from Malaŵi) or in relation to goods to be exported to a particular market outside Malaŵi; and

(*b*) a person has been permitted under section 17 (2) to register an identical or nearly resembling trade mark in respect of those goods under a registration extending to use in relation to goods to be sold or otherwise traded in that place (otherwise than for export from Malaŵi) or in relation to goods to be exported to that market or the Tribunal or the Registrar is

of opinion that he might properly be permitted so to register such a trade mark;

on application by that person to the Tribunal or, at the option of the applicant and subject to section 64, to the Registrar, the Tribunal or the Registrar may impose on the registration of the first mentioned trade mark such limitations as the Tribunal or the Registrar thinks proper for securing that that registration shall cease to extend to such use as last aforesaid.

(3) An applicant shall not be entitled to rely for the purposes of subsection (1) (*b*), or for the purposes of subsection (2), on any non-use of a trade mark that is shown to have been due to special circumstances in the trade and not to any intention not to use or to abandon the trade mark in relation to the goods to which the application relates.

Defensive registration of well-known trade marks

32.—(1) Where a trade mark registered in Part A of the register has become so well known as respect any goods in respect of which it has been used that the use thereof in relation to other goods would be likely to be taken as indicating a connexion in the course of trade between those goods and a person entitled to use the trade mark in relation to the first-mentioned goods, then, notwithstanding that the proprietor registered in respect of the first-mentioned goods does not use or propose to use that trade mark in relation to those other goods and notwithstanding anything in section 31, the trade mark may, on the application in writing in the prescribed manner of the proprietor registered in respect of the first-mentioned goods be registered in Part D of the register in his name in respect of those other goods as a defensive trade mark and, while so registered, shall not be liable to be taken off the register in respect of those goods under section 31.

(2) The registered proprietor of a trade mark may apply for the registration thereof in respect of any goods as a defensive trade mark, notwithstanding that it is already registered in his name in respect of those goods otherwise than as a defensive trade mark, or may apply for the registration thereof in respect of any goods otherwise than as a defensive trade mark, notwithstanding that it is already registered in his name in respect of those goods as a defensive trade mark, in lieu in each case of the existing registration.

(3) A trade mark registered as a defensive trade mark and that trade mark as otherwise registered in the name of the same proprietor shall, notwithstanding that the respective registrations are in respect of different goods, be deemed to be, and shall be registered as, associated trade marks.

(4) On application by any person aggrieved to the Tribunal or at the option of the applicant and subject to section 64, to the Registrar, the registration of a trade mark as a defensive trade mark may be cancelled on the ground that the requirements of subsection (1) are no longer satisfied in respect of any goods in respect of which the trade mark is registered in the name of the same proprietor otherwise than as a defensive trade mark or may be cancelled as respects any goods in respect of which it is registered as a defensive trade mark on the ground that there is no longer any likelihood that the use of the trade mark in relation to those goods would be taken as giving the indication mentioned in subsection (1).

(5) The Registrar may at any time cancel the registration as a defensive trade mark of a trade mark of which there is no longer any registration in the name of the same proprietor otherwise than as a defensive trade mark.

(6) Except as otherwise expressly provided in this section the provisions of this Act shall apply in respect of the registration of trade marks as defensive trade marks and of trade marks so registered as they apply in other cases and the provisions of section 9 relating to the infringement of a trade mark registered in Part A of the register shall apply to the infringement of any defensive trade mark registered in terms of this section if that registration is valid.

Registered users

33.—(1) Subject to this section, a person other than the proprietor of a trade mark registered in either Part A or Part B of the register may be registered as a registered user thereof in respect of all or any of the goods in respect of which it is registered (otherwise than as a certification or defensive trade mark) and either with or without conditions or restrictions.

The use of a trade mark by a registered user thereof in relation to goods with which he is connected in the course of trade and in respect of which for the time being the trade mark remains registered and he is registered as a registered user, being use such as to comply with any conditions or restrictions to which his registration is subject, is in this Act referred to as the "permitted use" thereof.

(2) The permitted use of a trade mark shall be deemed to be use by the proprietor thereof and shall be deemed not to be use by a person other than the proprietor for the purposes of section 31 and for any other purpose for which such use in material under this Act or under any other law.

(3) Subject to any agreement subsisting between the parties, a registered user of a trade mark shall be entitled to call upon the proprietor thereof to take proceedings to prevent infringement thereof and, if the proprietor refuses or neglects to do so within

two months after being so called upon, the registered user may institute proceedings for infringement in his own name as if he were the proprietor, making the proprietor a defendant.

A proprietor so added as defendant shall not be liable for any costs unless he enters an appearance and takes part in the proceedings.

(4) Where it is proposed that a person should be registered as a registered user of a trade mark, the proprietor and the proposed registered user must apply in writing to the Registrar in the prescribed manner and must furnish him with an affidavit or a solemn declaration made by the proprietor or by some person authorized to act on his behalf and approved by the Registrar—

(*a*) giving particulars of the relationship existing or proposed between the proprietor and the proposed registered user, including particulars showing the degree of control by the proprietor over the permitted use which their relationship will confer and whether it is a term of their relationship that the proposed registered user shall be the sole registered user or that there shall be any other restriction as to persons for whose registration as registered users application may be made;

(*b*) stating the goods in respect of which registration is proposed;

(*c*) stating any conditions or restrictions proposed with respect to the characteristics of the goods, to the mode or place of permitted use or to any other matter; and

(*d*) stating whether the permitted use is to be for a period or without limit of period and, if for a period, the duration thereof,

and with such further documents, information or evidence as may be required under the regulations or by the Registrar.

(5) When the requirements of subsection (4) have been complied with, if the Registrar, after considering the information furnished to him under that subsection, is satisfied that in all the circumstances the use of the trade mark in relation to the proposed goods or any of them by the proposed registered user, subject to any conditions or restrictions which the Registrar thinks proper, would not be contrary to the public interest, the Registrar may register the proposed registered user as a registered user in respect of the goods as to which he is so satisfied subject as aforesaid.

(6) The Registrar shall refuse an application under the foregoing provisions of this section if it appears to him that the grant thereof would tend to facilitate trafficking in a trade mark.

(7) The Registrar shall, if so required by an applicant, take steps for securing that information given for the purposes of an application under the foregoing provisions of this section (other than matter entered in the register) is not disclosed to rivals in trade.

(8) Without prejudice to section 37, the registration of a person as a registered user—

(*a*) may be varied by the Registrar as regards the goods in respect of which or any conditions or restrictions subject to which it has effect, on the application in writing in the prescribed manner of the registered proprietor of the trade mark to which the registration relates;

(*b*) may be cancelled by the Registrar on the application in writing in the prescribed manner of the registered proprietor or of the registered user or of any other registered user of the trade mark; or

(*c*) may be cancelled by the Registrar on the application in writing in the prescribed manner of any person on any of the following grounds, that is to say—

(i) that the registered user has used the trade mark otherwise than by way of the permitted use or in such a way as to cause or to be likely to cause deception or confusion;

(ii) that the proprietor or the registered user misrepresented or failed to disclose some fact material to the application for the registration or that the circumstances have materially changed since the date of the registration;

(iii) that the registration ought not to have been effected, having regard to rights vested in the applicant by virtue of a contract in the performance of which he is interested.

(9) Provision shall be made by regulations for the notification of the registration of a person as a registered user to any other registered user of the trade mark, and for the notification of an application under subsection (8) to the registered proprietor and each registered user (not being the applicant) of the trade mark, and for giving to the applicant on such an application, and to all persons to whom such an application is notified and who intervene in the proceedings in accordance with the regulations an opportunity of being heard.

(10) The Registrar may at any time cancel the registration of a person as a registered user of a trade mark in respect of any goods in respect of which the trade mark is no longer registered.

(11) An appeal shall lie from any decision of the Registrar under this section.

(12) Nothing in this section shall confer on a registered user of a trade mark any assignable or transmissible rights to the use thereof.

Proposed use of trade mark by corporation to be constituted, etc

34.—(1) No application for the registration of a trade mark in respect of any goods shall be refused, nor shall permission for such registration be withheld, on the ground only that it appears that the applicant does not use or propose to use the trade mark—

(*a*) if the Registrar is satisfied that a body corporate is about to be constituted and that the applicant intends to assign the trade mark to the corporation with a view to the use thereof in relation to those goods by the corporation; or

(*b*) if the application is accompanied by an application for the registration of a person as a registered user of the trade mark and the Registrar is satisfied that the proprietor intends it to be used by that person in relation to those goods and the Registrar is also satisfied that that person will be registered as a registered user thereof immediately after the registration of the trade mark.

(2) Section 31 shall have effect, in relation to a trade mark registered under the power conferred by subsection (1) as if for the reference, in section 31 (1) (*a*) to intention on the part of an applicant for registration that a trade mark should be used by him there were substituted a reference to intention on his part that it should be used by the corporation or registered user concerned.

(3) Where a trade mark is registered in respect of any goods under the power conferred by subsection (1) in the name of an applicant who relies on intention to assign to a corporation as aforesaid, then, unless within such period as may be prescribed or within such further period not exceeding six months as the Registrar may on application being made to him in the prescribed manner allow, the corporation has been registered as the proprietor of the trade mark in respect of those goods, the registration shall cease to have effect in respect thereof at the expiration of that period, and the Registrar shall amend the register accordingly.

(4) An appeal shall lie from any decision of the Registrar under this section.

Use of one of associated or substantially identical trade marks equivalent to use of another

35.—(1) Where under this Act use of a registered trade mark is required to be proved for any purpose, the Registrar, or the Tribunal in the event of an appeal from a decision of the Registrar, may, if and so far as the Registrar or the Tribunal thinks right, accept use of an associated registered trade mark, or of the trade mark with additions or alterations not substantially affecting its identity, as an equivalent for the use required to be proved.

(2) The use of the whole of a registered trade mark shall for the purposes of this Act, be deemed to be also a use of any registered trade mark, being a part thereof, registered in the name of the same proprietor by virtue of section 26 (1).

Use of trade mark for export trade

36. The application in Malaŵi of a trade mark to goods to be exported from Malaŵi and any other act done in Malaŵi in relation to goods to be so exported which, if done in relation to goods to be sold or otherwise traded in Malaŵi, would constitute use of a trade mark therein shall be deemed to constitute use of the trade mark in relation to those goods for any purpose for which such use is material under this Act or under any other law.

PART VII

Rectification and Correction of the Register

General power to rectify entries in register

37.—(1) Any person aggrieved by the non-insertion in or omission from the register of any entry, or by any entry made in the register without sufficient cause, or by any entry wrongly remaining on the register, or by any error or defect in any entry in the register, may apply in the prescribed manner to the Tribunal or, at the option of the applicant and subject to section 64, to the Registrar, and the Tribunal or the Registrar may make such order for making, expunging or varying the entry as the Tribunal or the Registrar may think fit.

(2) The Tribunal or the Registrar may in any proceeding under this section decide any question that it may be necessary or expedient to decide in connexion with the rectification of the register.

(3) In case of fraud in the registration, assignment or transmission of a registered trade mark, the Registrar may himself apply to the Tribunal under this section.

(4) Any order of the Tribunal rectifying the register shall direct that notice of the rectification shall be served in the prescribed manner on the Registrar, and the Registrar shall on receipt of the notice rectify the register accordingly.

(5) The power to rectify the register conferred by this section shall include power to remove a registration in Part A of the register to Part B.

Power to expunge or vary registration for breach of condition

38. On application by any person aggrieved to the Tribunal or, at the option of the applicant and subject to section 64, to the Registrar or on application by the Registrar to the Tribunal, the Tribunal or the Registrar may make such order as the Tribunal or the Registrar may think fit for expunging or varying the registration of a trade mark on the ground of any contravention

of or failure to observe a condition entered on the register in relation thereto.

Correction of register

39. (1) The Registrar may, in request made in the prescribed manner by the registered proprietor—

(*a*) correct any error in the name, address or description of the registered proprietor of a trade mark;

(*b*) enter any change in the name, address or description of the person who is registered as proprietor of a trade mark;

(*c*) cancel the entry of a trade mark on the register;

(*d*) strike out any goods or classes of goods from those in respect of which a trade mark is registered; or

(*e*) enter a disclaimer or memorandum relating to a trade mark which does not in any way extend the rights given by the existing registration of the trade mark.

(2) The Registrar may, on request made in the prescribed manner by a registered user of a trade mark, correct any error or enter any change in the name, address or description of the registered user.

(3) An appeal shall lie from any decision of the Registrar under this section.

Alteration of registered trade mark

40.—(1) The registered proprietor of a trade mark may apply in the prescribed manner to the Registrar for leave to add to or alter the trade mark in any manner not substantially affecting the identity thereof, and the Registrar may refuse leave or may grant it on such terms and subject to such limitations as he may think fit.

(2) The Registrar may direct that an application under this section shall be advertised in the prescribed manner in any case where it appears to him that it is expedient so to do, and where he does so, if within the prescribed time from the date of the advertisement any person gives notice to the Registrar in the prescribed manner of opposition to the application, the Registrar shall, after hearing the parties if so required, decide the matter.

(3) An appeal shall lie from any decision of the Registrar under this section.

(4) Where leave as aforesaid is granted, the trade mark as altered shall be advertised by the proprietor in the prescribed manner, unless it has already been advertised, in the form to which it has been altered, in an advertisement under subsection (2).

Adaptation of entries in register to amended or substituted classification of goods

41.—(1) The Minister may from time to time make such regulations, prescribe such forms and generally do such things as may be expedient, for empowering the Registrar to amend the register, whether by making or expunging or vary in entries therein, so far as may be requisite for the purpose of adapting the designation therein of the goods or classes of goods in respect of which trade marks are registered to any amended or substituted classification that may be prescribed.

(2) The Registrar shall not, in exercise of any power conferred on him for the purpose aforesaid, make any amendment of the register that would have the effect of adding any goods or classes of goods to those in respect of which a trade mark is registered (whether in one or more classes) immediately before the amendment is to be made or of ante-dating the registration of a trade mark in respect of any goods:

Provided that this subsection shall not have effect in relation to goods as to which the Registrar is satisfied that compliance with this subsection in relation thereto would involve undue complexity and that the addition or ante-dating, as the case may be, would not affect any substantial quantity of goods and would not substantially prejudice the rights of any person.

(3) A proposal for the amendment of the register for the purpose aforesaid shall be notified to the registered proprietor of that trade mark affected, shall be subject to appeal by the registered proprietor to the Tribunal, shall be advertised by the proprietor with any modifications, and may be opposed before the Registrar by any person aggrieved on the ground that the proposed amendment contravenes subsection (2), and an appeal shall lie from any decision of the Registrar on any such opposition.

PART VIII

Certification Trade marks

Certification trade marks

42.—(1) A mark adapted in relation to any goods to distinguish in the course of trade goods certified by any person in respect of origin, material, mode of manufacture, quality, accuracy or other characteristic from goods not so certified shall be registrable as a certification trade mark in Part C of the register in respect of those goods in the name, as proprietor thereof, of that person:

Provided that a mark shall not be so registrable in the name of a person who carries on a trade in goods of the kind certified.

(2) In determining whether a mark is adapted to distinguish as aforesaid, the Registrar, or the Tribunal in the event of an appeal from a decision of the Registrar, may have regard to the extent to which—

(*a*) the mark is inherently adapted to distinguish as aforesaid in relation to the goods in question; and

(*b*) by reason of the use of the mark or of any other circumstances, the mark is in fact adapted to distinguish as aforesaid in relation to the goods in question.

(3) Subject to subsections (4) to (6) inclusive and sections 12 and 13, the registration of a person as proprietor of a certification trade mark in respect of any goods shall, if valid, give to that person the exclusive right to the use of the trade mark in relation to those goods, and, without prejudice to the generality of the foregoing words, that right shall be deemed to be infringed by any person who, not being the proprietor of the trade mark or a person authorized by him under the regulations in that behalf using it in accordance therewith, uses a mark identical with it or so nearly resembling it as to be likely to deceive or cause confusion in the course of trade in relation to any goods in respect of which it is registered and in such manner as to render the use of the mark likely to be taken either—

(*a*) as being use as a trade mark; or

(*b*) in a case in which the use is use upon the goods or in physical relation thereto or in an advertising circular or other advertisement issued to the public, as importing a reference to some person having the right either as proprietor or by his authorization under the relevant regulations to use the trade mark or to goods certified by the proprietor.

(4) The right to the use of a certification trade mark given by registration as aforesaid shall be subject to any conditions or limitations entered on the register and shall not be deemed to be infringed by the use of any such mark as aforesaid in any mode, in relation to goods to be sold or otherwise traded in in any place, in relation to goods to be exported to any market or in any other circumstances to which, having regard to any such limitations, the registration does not extend.

(5) The right to the use of a certification trade mark given by registration as aforesaid shall not be deemed to be infringed by the use of any such mark as aforesaid by any person—

(*a*) in relation to goods certified by the proprietor of the trade mark if, as to those goods or a bulk of which they form part, the proprietor or another in accordance with his authorization under the relevant regulations has applied the trade mark and has not subsequently removed or obliterated it or the proprietor has at any time expressly or impliedly consented to the use of the trade mark; or

(*b*) in relation to goods adapted to form part of or to be accessory to other goods in relation to which the trade mark has been used without infringement of the right given as

aforesaid or might for the time being be so used, if the use of the mark is reasonably necessary in order to indicate that the goods are so adapted and neither the purpose nor the effect of the use of the mark is to indicate otherwise than in accordance with the fact that the goods are certified by the proprietor:

Provided that paragraph (*a*) shall not have effect in the case of use consisting of the application of any such mark as aforesaid to any goods, notwithstanding that they are such goods as are mentioned in that paragraph, if such application is contrary to the relevant regulations.

(6) Where a certification trade mark is one of two or more registered trade marks that are identical or nearly resemble each other, the use of any of those trade marks in exercise of the right to the use of that trade mark given by registration shall not be deemed to be an infringement of the right so given to the use of any other of those trade marks.

(7) There shall be deposited at the Trade Marks Office in respect of every trade mark registered under this section regulations approved by the Registrar for governing the use thereof, which shall include provisions as to the cases in which the proprietor is to certify goods and to authorize the use of the trade mark and may contain any other provisions that the Registrar may require or permit to be inserted therein (including provisions conferring a right of appeal to the Registrar against any refusal of the proprietor to certify goods or to authorize the use of the trade mark in accordance with the regulations). Regulations so deposited shall be open to inspection in like manner as the register.

(8) A certification trade mark shall not be assignable or transmissible otherwise than with the consent of the Registrar.

(9) The First Schedule shall have effect with respect to the registration of a mark under this section and to marks so registered.

(10) In this section, "person" includes the Minister responsible for the administration of any Ministry or Government department which has been authorized or established to certify goods in respect of origin, material, mode of manufacture, quality, accuracy or other characteristic.

(11) Marks which, immediately before the 1st January, 1964, were registered under the former trade marks legislation as certification trade marks shall be deemed to be registered as certification trade marks in Part C of the register.

PART IX

Functions of Registrar in Relation to Certain Evidence, Documents and Powers

Preliminary advice by Registrar as to distinctiveness

43. (1) The power to give to a person who proposes to apply for the registration of a trade mark in Part A or Part B of the register advice as to whether the trade mark appears to the Registrar *prima facie* to be inherently adapted to distinguish or capable of distinguishing, as the case may be, shall be a function of the Registrar under this Act.

(2) Any such person who is desirous of obtaining such advice must make application to the Registrar therefor in the prescribed manner.

(3) If on application for the registration of a trade mark as to which the Registrar has given advice as aforesaid in the affirmative, made within three months after the advice is given, the Registrar, after further investigation or consideration, gives notice to the applicant of objection on the ground that the trade mark is not adapted to distinguish or capable of distinguishing, as the case may be, the applicant shall be entitled, on giving notice of withdrawal of the application within the prescribed period, to have repaid to him any fee paid on the lodging of the application.

Hearing before exercise of Registrar's discretion

44. Where any discretionary or other power is given to the Registrar by this Act or the regulations, he shall not exercise that power adversely to the applicant for registration or the registered proprietor of the trade mark in question without (if duly required so to do within the prescribed time) giving to the applicant or registered proprietor an opportunity of being heard.

Evidence of certain entries and documents

45.—(1) A certificate purporting to be signed by the Registrar and certifying that any entry which he is authorized by or under this Act to make has or has not been made, or that any other thing which he is so authorized to do has or has not been done, shall be *prima facie* evidence of the matters so certified.

(2) A copy of any entry in any register or of any document kept in the Trade Marks Office or of any trade mark or an extract from any such register or document, certified by the Registrar and sealed with the seal of the Patent Office, shall be admitted in evidence without further proof and without production of the original.

Requests for information as to trade mark

46. The Registrar shall, on the request of any person and on payment of the prescribed fee, furnish copies of any documents which are open to public inspection and which are lodged at the Trade Marks Office or particulars from the register or furnish a certificate in respect thereof.

47. In all proceedings before the Registrar under this Act, the Registrar shall have power to award to any party such costs as he may consider reasonable and to direct how and by what parties they are to be paid. Any costs awarded by the Registrar shall be taxed by a taxing officer of the Tribunal and payment thereof may be enforced in the same manner as if they were costs allowed by the Tribunal.

Power of Registrar to award costs

48.—(1) Subject to section 79, evidence in any proceedings before the Registrar under this Act shall be given by affidavit, so, however, that the Registrar may, if he thinks fit in any particular case, take oral evidence on oath in lieu of or in addition to such evidence as aforesaid and may allow any witness to be cross-examined on his affidavit, or oral evidence.

Proceedings before Registrar

(2) The powers, rights and privileges of the Registrar in proceedings before him under this Act shall be the same as those conferred upon commissioners by the Commissions of Inquiry Act and sections 9, 10 and 12 of that Act and so much of the regulations made under it as are applicable shall, *mutatis mutandis*, apply in relation to the hearing and determination of any matter before the Registrar under this Act and to any person summoned to give evidence or giving evidence before him.

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49. The Registrar may in any proceeding held before him decide the hours, times and places at which he will sit and he may adjourn any proceedings for such time and to such place as he may think fit.

Power of Registrar to fix time and place of sitting, etc

50. No advertisement or notice, other than a notice issued under the authority of the Minister, shall be published by any person under this Act unless it is in the prescribed form and the Registrar has approved the contents of such advertisement or notice, and no advertisement or notice which has not been so approved shall have any force or effect for the purposes of this Act.

Advertisements to be approved by Registrar

PART X

Appeals and Legal Proceedings

51.—(1) Where this Act provides for an appeal from a decision of the Registrar, such appeal shall be made to the Tribunal.

Patents Tribunal to hear appeals

(2) For the purposes of this Act, the Minister shall appoint a registrar of the Tribunal and such other officers thereof as he may deem necessary.

(3) The Tribunal shall in connexion with any proceedings before it under this Act have all the powers of the High Court and without prejudice to the foregoing and to the other powers

conferred upon it by this Act, the Tribunal shall have power to make any order for the purpose of securing the attendance of any person, the discovery or production of any documents, or the investigation or punishment of any contempt of court which the High Court as aforesaid has power to make.

(4) The procedure and practice of the Tribunal shall, save as otherwise provided for by rules made under this Part, be those prevailing in the High Court, in so far as the same are applicable, and if any matter should arise which is not contemplated by either such procedure, practice or rules, the Tribunal may give instructions regarding the course to be pursued which instructions shall be binding on all parties.

(5) Upon appeal to the Tribunal, the Tribunal may—

(*a*) confirm, set aside or vary the order or decision in question;

(*b*) exercise any of the powers which could have been exercised by the Registrar in proceedings in connexion with which the appeal is brought;

(*c*) make such order as to costs as it may think fit.

(6) For the purpose of this Act, the Tribunal shall sit at such times and places as it may appoint.

(7) In any proceedings before it, the Tribunal may, subject to section 79, accept evidence by affidavit or take oral evidence on oath and allow any witness to be cross-examined on his affidavit or oral evidence.

Right of audience

52. In any proceedings before the Tribunal under this Act, the parties to such proceedings may appear in person or be represented and appear by a legal practitioner, and in any case where the Tribunal deems fit, it may grant to the Registrar leave to intervene, and he may thereafter appear or be so represented.

Rules

53. The Minister may make rules for regulating generally the practice and procedure of the Tribunal and with respect to appeals or references to such Tribunal as to the time within which any requirement of the rules is to be complied with, as to the costs and expenses of and incidental to any proceedings in such Tribunal, as to the fees to be charged in respect of proceedings therein, as to the fees to be paid to assessors, and in particular may make rules providing for the summary determination of any appeal which appears to the Tribunal to be frivolous or vexatious or to be brought for the purpose of delay.

Assessors

54. The Tribunal may appoint any person with special expert knowledge to act as an assessor in an advisory capacity in any case where it appears to such Tribunal that such knowledge is required for the proper determination of the case.

55. Appeals under this Part, whether from decisions of the Registrar, or orders or decisions of the Tribunal, shall be brought within three months after the date of the decision or order in question or within such further time as the Tribunal or High Court may allow upon application by the appellant concerned.

Time for appeals

56. When any matter to be decided by the Registrar under this Act appears to him to involve a point of law or to be of unusual importance or complexity, he may, after giving notice to the parties, refer such matter to the Tribunal for a decision and shall thereafter, in relation to such matter act in accordance with the decision of that Tribunal or any decision substituted therefor on appeal to the High Court.

References to Tribunal by Registrar

57. In all legal proceedings relating to a registered trade mark (including applications under section 37) the fact that a person is registered as proprietor of the trade mark shall be *prima facie* evidence of the validity of the original registration of the trade mark and of all subsequent assignments and transmissions thereof.

Registration to be *prima facie* evidence of validity

58. In any legal proceeding in which the validity of the registration of a registered trade mark comes into question and is decided in favour of the proprietor of the trade mark, the High Court or Tribunal may certify to that effect, and if it so certifies, then, in any subsequent legal proceeding in which the validity of the registration comes into question, the proprietor of the trade mark, on obtaining a final order or judgment in his favour, shall have his full costs, charges and expenses as between solicitor and client or attorney and client, unless in the subsequent proceeding the High Court or Tribunal certifies that he ought not to have them.

Certification of validity

59. Any action or legal proceeding relating to the infringement or passing off of a trade mark shall be brought in the High Court.

Infringement or passing off action to be heard in High Court

60. In any action or proceeding relating to a trade mark or trade name, the Tribunal or the Registrar, as the case may be, shall admit evidence of the usages of the trade concerned and of any relevant trade mark or trade name or get-up legitimately used by other persons.

Trade usage, etc., to be considered

61.—(1) In any legal proceeding in which the relief sought includes alteration or rectification of the register, the Registrar shall have the right to appear and be heard, and shall appear if so directed by the Tribunal.

Registrar's appearance in proceedings involving rectification

(2) Unless otherwise directed by the Tribunal, the Registrar, in

lieu of appearing and being heard, may submit to the Tribunal a statement in writing signed by him, giving particulars of the proceedings before him in relation to the matter in issue or of the grounds of any decision given by him affecting it or of the practice of the Trade Marks Office in like cases or of such other matters relevant to the issues, and within his knowledge as Registrar, as he thinks fit, and the statement shall be deemed to form part of the evidence in the proceeding.

Tribunal's power to review Registrar's decision

62. The Tribunal, in dealing with any question of the rectification of the register (including all applications under section 37) shall have power to review any decision of the Registrar relating to the entry in question or the correction sought to be made.

Discretion of Tribunal in appeals

63. In any appeal from a decision of the Registrar to the Tribunal, the Tribunal shall have and exercise the same discretionary powers as under this Act are conferred upon the Registrar.

Procedure in cases of option to apply to Tribunal or Registrar

64. Where under any of the foregoing provisions of this Act an applicant has an option to make an application either to the Tribunal or to the Registrar and such application is made to the Registrar, the Registrar may, at any stage of the proceedings, refer the application to the Tribunal or may, after hearing the parties, determine the question between them, subject to appeal to the Tribunal.

Security for costs and taxation of costs

65.—(1) When a party to proceedings before the Registrar or the Tribunal or an appellant is resident outside Malaŵi, the Registrar or the Tribunal may order such party or appellant to give security, within such time as may be directed, for the costs of the proceedings or appeal.

(2) If the party or appellant ordered to give security for costs fails to do so within the time directed, the Registrar or the Tribunal may treat the proceedings or appeal as abandoned.

(3) Where a bond is to be given as security for costs, it shall, unless the Registrar or the Tribunal otherwise directs, be given to the party requiring the security.

(4) Unless otherwise agreed between the parties, any costs awarded in terms of section 51 (5) shall be taxed by the registrar of the Tribunal in accordance with rules made under this Part which taxation shall be subject to appeal to the Tribunal, and any such costs may be recovered by action in a court of competent jurisdiction.

Costs of Registrar

66. In all proceedings before the Tribunal under this Act, the costs of the Registrar shall be in the discretion of the Tribunal, but the Registrar shall not be ordered to pay the costs of any other of the parties.

Appeals to High Court

67.—(1) Any party to any proceedings before the Tribunal may appeal in accordance with rules made under this Part from any order or decision of such Tribunal to the High Court.

(2) Upon the hearing of an appeal under the provisions of this section, the High Court may, without prejudice to its other powers—

(*a*) confirm, set aside or vary the order or decision in question;

(*b*) remit the proceedings to the Tribunal with such instructions for further consideration, report, proceedings or evidence as the High Court may think fit to give;

(*c*) exercise any of the powers which could have been exercised by the Tribunal in the proceedings in connexion with which the appeal is brought;

(*d*) make such order it may think just as to the costs of the appeal or of earlier proceedings in the matter before the Tribunal.

PART XI

Offences and Penalties

Falsification of entries in register

68. Any person who makes or causes to be made a false entry in the register, or a writing falsely purporting to be a copy of an entry in the register, or who produces or tenders or causes to be produced or tendered in evidence any such writing, knowing the entry or writing to be false, shall be guilty of an offence.

Penalty for falsely representing a trade mark as registered

69.—(1) Any person who makes a representation—

(*a*) with respect to a mark not being a registered trade mark to the effect that it is a registered trade mark; or

(*b*) with respect to a part of a registered trade mark not being a part separately registered as a trade mark to the effect that it is so registered; or

(*c*) to the effect that a registered trade mark is registered in respect of any goods in respect of which it is not registered; or

(*d*) to the effect that the registration of a trade mark gives an exclusive right to the use thereof in any circumstances in which, having regard to limitations entered on the register, the registration does not give that right,

shall be liable to a fine of £50 and to imprisonment for six months.

(2) For the purposes of this section, the use in Malaŵi in relation to a trade mark of the word "registered" or of any other word referring, whether expressly or impliedly, to registration shall be deemed to import a reference to registration in the register, except—

(*a*) where that word is used in physical association with other words delineated in characters at least as large as those in which that word is delineated and indicating that the reference is to registration as a trade mark under the law of a country outside Malaŵi, being a country under the law of which the registration referred to is in fact in force;

(*b*) where that word (being a word other than the word "registered") is of itself such as to indicate that the reference is to such registration as last aforesaid; or

(*c*) where that word is used in relation to a mark registered as a trade mark under the law of another country and in relation to goods to be exported to that country.

Deceiving or influencing the Registrar or an officer

70.—(1) Any person who—

(*a*) for the purpose of deceiving the Registrar or any other officer of the Trade Marks Office in the execution of this Act; or

(*b*) for the purpose of procuring or influencing the doing or omission of anything in relation to this Act or any matter thereunder,

makes or submits a false statement or representation, whether orally or in writing, knowing the same to be false, shall be guilty of an offence.

(2) Any person who, having innocently made a false statement or representation, whether orally or in writing, for the purpose of procuring or influencing the doing or omission of anything in relating to this Act or any matter thereunder and who on becoming aware that such statement or representation was false, fails to advise the Registrar forthwith of such falsity shall be guilty of an offence.

Witness giving false evidence

71. Any person who, after having been sworn, wilfully gives false evidence before the Registrar or the Tribunal concerning the subject-matter of the proceeding in question, knowing such evidence to be false or not knowing or believing it to be true, shall be guilty of an offence.

Penalties

72. Save where otherwise provided in this Act, any person who is guilty of an offence under this Act shall be liable to a fine of £500 and to imprisonment for three years.

PART XII

Miscellaneous

Convention arrangements

73.—(1) Any person who qualifies under Article 2 or 3 of the Convention and who has applied for protection for any trade mark in a convention country or his legal representative or assignee (if such assignee is also so qualified) shall be entitled to registration of his trade mark in priority to other applicants; and the registration shall have the same date as the date of the application in the convention country:

Provided that—

(*a*) the application for registration is made within six months from the date of the application for protection in the convention country;

(*b*) nothing in this section shall entitle the proprietor of a trade mark to recover damages for infringements happening prior to the actual date on which his trade mark is registered in Malaŵi.

(2) Where applications have been made for the registration of a trade mark in two or more convention countries, the period of six months referred to in subsection (1) shall be reckoned from the date on which the earlier or earliest of those applications was made.

(3) The application for the registration of a trade mark under this section must be made in the same manner as is required in the case of any ordinary application under this Act.

Change of form of trade connexion not to be deemed to cause deception

74. The use of a registered trade mark in relation to goods between which and the person using it any form of connexion in the course of trade subsists shall not be deemed to be likely to cause deception or confusion on the ground only that the trade mark has been or is used in relation to goods between which and that person or a predecessor in title of his a different form of connexion in the course of trade subsisted or subsists.

Jointly owned trade marks

75. Where the relations between two or more persons interested in a trade mark are such that no one of them is entitled as between himself and the other or others of them to use it except—

(*a*) on behalf of both or all of them; or

(*b*) in relation to an article with which both or all of them are connected in the course of trade;

those persons may be registered as joint proprietors of the trade mark, and this Act shall have effect in relation to any rights to

the use of the trade mark vested in those persons as if those rights had been vested in a single person.

Subject as aforesaid, nothing in this Act shall authorize the registration of two or more persons who use a trade mark independently, or propose so to use it, as joint proprietors thereof.

Lodging and authentication of documents

76.—(1) Any application, notice or document authorized or required under this Act to be lodged, made or given at the Trade Marks Office or to the Registrar or to any other person may be delivered by hand or sent by registered post.

(2) No authentication shall be required in respect of any document lodged in the Trade Marks Office under this Act or used in proceedings before the Tribunal.

Expenses of administration

77. All moneys necessary for the purpose of this Act shall be paid out of moneys provided for the purpose by Parliament.

Provisions as to fees

78.—(1) Where under this Act—

(*a*) a fee is payable in respect of the performance of any act by the Registrar, the Registrar shall not perform that act until the fee has been paid;

(*b*) a fee is payable in respect of the doing of any act by any person other than the Registrar, the act shall be deemed not to have been done until the fee has been paid; or

(*c*) a fee is payable in respect of the lodging of a document, the document shall be deemed not to have been lodged until the fee has been paid.

(2) All fees shall be paid at the Trade Marks Office in such manner as the Registrar, with the approval of the Minister, may accept.

Oaths and affirmations

79. Any person who is required under this Act to take any oath or swear to the truth of any affidavit may, in lieu thereof, make an affirmation or declaration in accordance with the law relating to affirmations or declarations.

Trade Marks Journal

80.—(1) The Minister may, when he deems fit, direct the publication by the Registrar of a journal, to be referred to as the Trade Marks Journal, containing particulars of applications for the registration of trade marks and other proceedings or matters arising under this Act, together with such reports of cases and other relevant matters as the Minister may deem fit.

(2) The Registrar shall make provision for selling copies of the Trade Marks Journal at such price and in such manner as the Minister may direct.

Power to make regulations

81.—(1) The Minister may make regulations prescribing anything which under this Act is to be prescribed and generally for the better carrying out of the objects and purposes of this Act or to give force or effect to its provisions or for its better administration.

(2) Without derogation from the generality of subsection (1), regulations made by the Minister may provide—

(*a*) for regulating the practice under this Act, including the service of documents;

(*b*) for classifying goods for the purposes of registration of trade marks;

(*c*) for prohibiting the registration of any mark on the grounds of morality, public policy or other good and sufficient reason;

(*d*) for making or requiring duplicate representations of trade marks and other documents;

(*e*) for securing and regulating the publishing and selling or distributing, in such manner as he thinks fit, of copies of trade marks and other documents;

(*f*) for the fees which may be charged in relation to the conduct of trade mark business by trade mark agents;

(*g*) for the professional conduct of trade mark agents;

(*h*) generally for regulating the business of the Trade Marks Office in relation to trade marks and all things by this Act placed under the direction or control of the Registrar.

(3) The Minister may also prescribe a tariff, not inconsistent with this Act, of the fees which shall be payable in respect of any application, registration and other matters under this Act and the fees shall be payable as so prescribed.

PART XIII

Application

Application of Act

82. Save as otherwise provided in this Part, this Act shall apply in respect of all trade marks, including trade marks registered before the date of commencement of this Act, and in respect of all applications for the registration of trade marks, including applications made before that date:

Provided that—

(*a*) a trade mark registered before that date shall not be liable to be taken off the register except upon some ground upon which it would have been so liable in terms of the

relevant repealed legislation under which it was registered and shall, unless it is so removed in terms of this Act, lapse on the date of the expiration of the last registration thereof in terms of that legislation unless renewed in terms of section 25;

(*b*) fees for the renewal of any trade mark registered before the date of commencement of this Act shall be paid in accordance with the scale of fees prescribed for the renewal of trade marks registered under this Act.

PART XIV

Trade mark agents

Registration of trade mark agents

83.—(1) Subject to section 85, the Registrar shall keep a register of trade mark agents in which he shall—

(*a*) register the name of every person who is accepted for registration in terms of subsection (2);

(*b*) show against the name of every person registered under paragraph (*a*) such particulars as he may from time to time deem necessary; and

(*c*) enter all changes relating to registrations.

(2) Any person who, within six months after the date* of commencement of the Trade Marks Amendment Act, 1962, satisfies the Registrar that for a continuous period of two years immediately before such date he was ordinarily resident in the Federation of Rhodesia and Nyasaland and was performing the functions mentioned in section 87 (1) may make application to the Registrar in the prescribed manner to be registered as a trade mark agent, and the Registrar shall arrange such registration if he is satisfied that there is no good reason why it should not be arranged and that the applicant is not a person whose name could be removed from the register of trade mark agents under section 84 (1) (*b*), (*c*) or (*f*).

Removal of names from register of trade mark agents

84.—(1) The Registrar may remove from the register of trade mark agents the name of any trade mark agent upon proof to his satisfaction that such trade mark agent—

(*a*) has died;

(*b*) has become of unsound mind;

(*c*) has been adjudged or otherwise declared bankrupt or insolvent under any law, or has made an assignment to or composition with his creditors;

(*d*) has ceased to reside in Malaŵi, or has ceased to maintain a place of business therein;

* 1st July, 1962

(*e*) has applied for his name to be so removed;

(*f*) has, after being convicted, in Malaŵi or elsewhere, of the crime of theft, fraud, forgery or uttering a forged document or perjury, been sentenced to to serve a term of imprisonment without the option of a fine, whether such sentence is suspended or not, and has not received a free pardon;

(*g*) having been entitled to practise as a trade mark agent has ceased to be so entitled, or has ceased to practise as such.

An appeal shall lie from any decision of the Registrar made under this subsection.

(2) Subject to this section and such procedure as may be prescribed, the Tribunal may order the Registrar to remove the name of any trade mark agent from the register of trade mark agents or may suspend any trade mark agent from practising as such for such time as it thinks fit if it is satisfied, after due inquiry, that such person has been guilty of conduct discreditable to a trade mark agent or has been guilty of a breach of any regulations prescribed for the conduct of trade mark agents.

(3) No order shall be made by the Tribunal in terms of subsection (2) unless the trade mark agent concerned has been given notice of any allegation made against him and has had an opportunity to adduce evidence and to be heard.

(4) Where the name of any trade mark agent has been removed from the register of trade mark agents under subsection (1) or (2), his name shall not be restored to that register except by direction of the Tribunal, which may further direct that such restoration shall be made either without fee or on payment of such fee as it may fix, and the Registrar shall restore the name accordingly.

Privileges of legal practitioners and patent agents

85. Any person entitled to practise as a legal practitioner and any patent agent may practise and describe himself as a trade mark agent and perform the functions set out in section 87 without being registered as a trade mark agent.

Entitlement to practise as a trade mark agent

86.—(1) No person who is not—

(*a*) ordinarily resident in Malaŵi and registered as a trade mark agent; or

(*b*) such a person as is described in section 85,

shall practise as a trade mark agent.

(2) A person shall be deemed to practise as a trade mark agent if he performs any of the functions of a trade mark agent set out in section 87 or if he carries on within Malaŵi the business of

applying for or obtaining for others trade marks in Malaŵi or elsewhere.

(3) No person who is not a trade mark agent shall describe himself as, or hold himself out to be, a trade mark agent, trade mark attorney or attorney for trade marks, nor shall he permit himself to be so described or held out.

(4) Any person who contravenes this section shall be guilty of an offence.

Trade mark agents and their functions

87.—(1) Subject to this Act, a trade mark agent may act as agent on behalf of any person in connexion with any matter or proceeding before the Registrar under this Act and may draw and sign all documents and make all communications between an applicant and the Trade Marks Office and may represent an applicant at all attendances before the Registrar.

(2) A trade mark agent shall not be guilty of an offence under any law prohibiting the preparation for reward of certain documents by persons not legally qualified, by reason only of the preparation by him of any document relating to trade marks for use in the Trade Marks Office or required in any proceedings under this Act before the Registrar or the Tribunal.

Prohibition of certain acts by trade mark agents

88.—(1) No trade mark agent shall have an interest either as a partner or manager or otherwise in more than one firm of trade mark agents in Malaŵi.

(2) No trade mark agent shall practise under a name or title which includes the name of any person who is not or was not—

(*a*) in his lifetime ordinarily resident in Malaŵi; or

(*b*) registered or entitled to practise as a trade mark agent under this Act.

(3) No person shall practise as a trade mark agent if he is a party to—

(*a*) a contract of partnership; or

(*b*) an arrangement providing for the sharing or paying over of any professional fees,

relating to the business of a trade mark agent with any person who is prohibited from practising as a trade mark agent.

(4) Any person who contravenes this section shall be guilty of an offence.

SCHEDULE

s. 42

Certification Trade marks

1. (1) An application for the registration of a mark under section 42 must be made to the Registrar in writing in the prescribed manner by the person proposed to be registered as the proprietor thereof.

(2) An applicant for the registration of a mark under the said section 42 shall transmit to the Registrar draft regulations for governing the use thereof at such time before the decision of the Registrar on the application as he may require in order to enable him to consider the draft.

(3) Subject to this Act, the Registrar may refuse the application or may accept it and approve the regulations either without modification and unconditionally or subject to any conditions or limitations or to any amendments or modifications of the application or of the regulations, which he thinks requisite.

(4) Section 22 (5) to (8) inclusive shall have effect in relation to an application under section 42 as they have effect in relation to an application under section 22 (1).

(5) In dealing with an application under section 42, the Registrar, or the Tribunal in the event of an appeal from a decision of the Registrar, shall have regard to the like considerations, so far as relevant, as if the application were an application under section 22 and to any other considerations relevant to applications under section 42, including the desirability of securing that a certification trade mark shall comprise some indication that it is such a trade mark, and including also the following matters, that is to say—

(*a*) whether the applicant is competent to certify the goods in respect of which the mark is to be registered;

(*b*) whether the draft regulations are satisfactory; and

(*c*) whether in all the circumstances the registration applied for would be to the public advantage.

2. When an application has been accepted, the applicant shall, as soon as may be after such acceptance, advertise the application as accepted in the prescribed manner, and section 23 (2) to (10) inclusive shall have effect in relation to the registration of the mark as if the application had been an application under section 22.

3. (1) The regulations deposited in respect of a certification trade mark may, on the application of the registered proprietor, be altered by the Registrar.

(2) The Registrar may direct that an application for an alteration under this paragraph shall be advertised in any case where it appears to him that it is expedient so to do, and where an application has been so advertised, if within the prescribed time from the date of the

advertisement any person gives notice to the Registrar of opposition to the application, the Registrar shall not decide the matter without giving the parties an opportunity of being heard.

4.—(1) On the application in the prescribed manner of any person aggrieved or of his own motion, the Registrar (subject to section 44) may make such order as he thinks fit for expunging or varying any entry in the register relating to a certification trade mark or for varying the deposited regulations on the ground—

(*a*) that the proprietor is no longer competent, in the case of any of the goods in respect of which the trade mark is registered, to certify those goods;

(*b*) that the proprietor has failed to observe a provision of the deposited regulations to be observed on his part;

(*c*) that it is no longer to the public advantage that the trade mark should be registered; or

(*d*) that it is requisite for the public advantage that, if the trade mark remains registered, the regulations should be varied.

(2) An appeal shall lie from any decision of the Registrar under this paragraph.

5. Notwithstanding anything in section 47 the Registrar shall not have any jurisdiction to award costs to or against any party on an appeal to him against a refusal of the proprietor of a certification trade mark to certify goods or to authorize the use of the trade mark.

6. The following provisions of this Act shall not have effect in relation to a certification trade mark, that is to say, sections 9, 11, 14, 22 and 23 (except as expressly applied by this Schedule), section 27 (4) to (8) inclusive, sections 31 to 34 inclusive, section 74 and any provisions the operation of which is limited by the terms thereof to registration in Part B of the register.

SUBSIDIARY LEGISLATION

APPOINTMENT NOTICE

G.N. 237/1965

under s. 5

The Minister has appointed—

(i) The Registrar-General to be Registrar of Trade Marks;

(ii) The Assistant Registrar-General to be Deputy Registrar of Trade Marks.

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4/2006

TRADE MARKS REGULATIONS

under ss. 41 *and* 81

Citation

1. These Regulations may be cited as the Trade Marks Regulations.

Interpretation

2. In these Regulations, unless inconsistent with the context—

"agent" means an agent duly authorized to the satisfaction of the Registrar;

"Office" means the Trade Marks Office;

"specification" means the designation of goods in respect of which a trade mark, or a registered user of a trade mark, is registered or proposed to be registered.

Fees

3. The fees which shall be payable in respect of any application, registration and other matters under the Act and these Regulations shall be the fees prescribed in the First Schedule.

Forms

4. The forms herein referred to are those contained in the Second Schedule and such forms shall be used in all cases to which they are applicable, and may be modified as directed by the Registrar to meet other cases.

Classification of goods

5.—(1) For the purpose of—

(*a*) trade marks registrations dated in—

(i) Zimbabwe (then Southern Rhodesia) before 1st January, 1951;

(ii) Zambia (then Northern Rhodesia) before the 27th July, 1938;

(iii) Malaŵi (then Nyasaland) before the 1st June, 1952; and

(*b*) registrations of registered users in respect of any of the trade marks mentioned in paragraph (*a*),

goods are classified in the manner appearing in the Third Schedule unless any specification has been converted to the Fourth Schedule.

(2) For the purposes of—

(*a*) trade marks registrations dated in—

(i) Southern Rhodesia on or after the 1st January, 1951;

(ii) Zambia (then Northern Rhodesia) or or after the 27th July, 1938;

(iii) Malaŵi (then Nyasaland) on or after the 1st June, 1952;

(*b*) registrations of registered users in respect of any of the trade marks mentioned in paragraph (*a*);

(*c*) any trade marks registrations dated before the date of commencement of the Act whereof the specifications have been converted to the Fourth Schedule; and

(*d*) trade marks registered on or after the date of commencement of the Act or registrations of registered users thereunder,

goods are classified in the manner appearing in the Fourth Schedule.

Application by registered proprietors for conversion of specification

6. Where the specification of a registered trade mark is founded on the Third Schedule the registered proprietor may apply to the Registrar on form T.M. No. 45 for the conversion of that specification so that it may be founded on the Fourth Schedule, whether with or without the striking-out of goods therefrom, but so that the registration retains its original date, and shall include in the application a request for the like conversion of the specification of the goods of any registered users under that registration. Thereupon the Registrar in accordance with section 41 (3) shall notify in writing to the registered proprietor a proposal showing the form which, in the Registrar's view, the amendment of the register should take. Two or more registrations of a trade mark in respect of goods falling within the same class of the Fourth Schedule, having the same date of registration, may be amalgamated upon conversion in accordance with this regulation.

Advertisement of proposal. Opposition

7. The advertisement of a proposal for amendment under section 41 (3) of the Act shall be made in the *Gazette* and a notice of any opposition shall be given on form T.M. No. 46 within two months from the date of the advertisement, and shall be accompanied by a duplicate of the notice and by a statement in duplicate showing how the proposed conversion would be contrary to section 41 (2) of the Act. The Registrar shall forthwith send the duplicate copies to the registered proprietor who may, within two months from the receipt of such duplicates, send to the Registrar a counter-statement on form T.M. No. 7

setting out fully the grounds on which the opposition is contested and if he does so he shall deliver to the opponent a copy thereof. The Registrar may thereupon require or admit evidence directed to the questions in issue and, if so desired by either party he shall, before deciding the matter, give the parties an opportunity of being heard thereon.

Conversion of specifications; resulting registrations

8. When a proposal for the conversion of a specification in accordance with regulation 6 has been advertised and has not been opposed and the time for notice of opposition has expired, or having been opposed the opposition has been determined and a conversion allowed, the Registrar shall make all the entries in the register necessary to give effect to the conversion in accordance with the proposal as advertised, or the proposal as amended after opposition or appeal thereon and published subsequently in the *Gazette*, and shall enter in the register the date when such entries were made. The expression "the expiration of the last registration" shall have regard to the same date in the case of all the resulting entries for the purpose of determining the next renewal thereof in accordance with section 25 of the Act as it had with regard to the registration before conversion.

Size etc., of documents

9. Subject to any other directions that may be given by the Registrar, all applications, notices, statements, papers having representations affixed, or other documents authorized or required by the Act or these Regulations to be made, left or sent, at or to the Office, shall, unless the Registrar otherwise directs, be written, typewritten, lithographed or printed in the English language upon strong paper, in dark, indelible ink, on one side only, of a size approximately 13 inches by 8 inches, and shall have on the left-hand part thereof a margin of not less than $1\frac{1}{2}$ inches.

Signature of documents by partnerships, companies and associations

10. A document purporting to be signed for or on behalf of a partnership shall contain the names of all the partners in full and shall be signed by all the partners or by any qualified partner stating that he signs on behalf of the partnership, or by any other person who satisfies the Registrar that he is authorized to sign the document. A document purporting to be signed for or on behalf of a body corporate shall be signed by a director or by the secretary or other principal officer of the body corporate, or by any other person who satisfies the Registrar that he is authorized to sign the document. A document purporting to be signed for or on behalf of an association of persons may be signed by any person who appears to the Registrar to be duly qualified.

Service of documents

11. All applications, notices, statements, papers having representations affixed, or other documents authorized or required by

the Act or these Regulations to be made, left or sent, at or to the Office or with or to any other person may be sent through the post by a prepaid letter; any application or any document so sent shall be deemed to have been made, left or sent at the time when the letter containing the same would be delivered in the ordinary course of post. In proving such sending, it shall be sufficient to prove that the letter was properly addressed and put into the post.

Address

12.—(1) Where any person is by the Act or these Regulations bound to furnish the Registrar with an address, the address given shall in all cases be as full as possible for the purpose of enabling any person easily to find the place of trade or business of the person whose address is given.

(2) The Registrar may require the address to include the name of the street and the number of the street or name of the premises, if any.

Address for service

13.—(1) The Registrar may require an applicant, opponent or agent, or a registered proprietor or registered user of a trade mark, who does not reside or carry on business within Malaŵi, to give an address for service within Malaŵi and such address may be treated as the actual address of that person for all purposes connected with the matter in question.

(2) Any registered proprietor or registered user of a trade mark, or any person about to be registered as such, may, if he so desires, give an address for service for entry in the register, and such address may be entered by the Registrar.

(3) In any case in which no address for service is entered in the register, the Registrar may treat the trade or business address of the registered proprietor or registered user as therein entered as his address for service for all purposes connected with the registration.

(4) Any written communication addressed to a party or person as aforesaid at an address given by him, or treated by the Registrar, as his address for service shall be deemed to be properly addressed.

(5) The Registrar, at any time that a doubt arises as to the continued availability of an address for service entered in the register, may request the person for whom it is entered, by letter addressed to his trade or business address in the register, to confirm the address for service, and if within three months of making such request the Registrar receives no confirmation of that address, he may strike it off the register.

Agency

14.—(1) Except as otherwise required by these Regulations, any application, request or notice which is required or permitted by the Act or these Regulations to be made or given to the Registrar, and all other communications between an applicant or a person making such a request or giving such a notice and the Registrar, and between the registered proprietor or a registered user of a trade mark and the Registrar or any other person, may be signed, made or given by or through an agent.

(2) Any such applicant, person making request or giving notice, proprietor or registered user may appoint an agent to act for him in any proceeding or matter before or affecting the Registrar under the Act and these Regulations by signing and sending to the Registrar an authority to that effect in the form T.M. No. 1, or in such other written form as the Registrar may deem sufficient. In case of such appointment, service upon the agent of any document relating to the proceeding or matter shall be deemed to be service upon the person so appointing him, all communications directed to be made to such person in respect of the proceeding or matter may be addressed to such agent, and all attendances upon the Registrar relating thereto may be made by or through such agent. In any particular case the Registrar may require the personal signature or presence of an applicant, opponent, proprietor, registered user or other person.

(3) The Registrar shall not be bound to recognize as such agent any person—

(a) who has been proved to him to have been guilty of conduct discreditable to a trade mark agent; or

(*b*) who has been convicted of a criminal offence and sentenced to imprisonment without the option of a fine; or

(*c*) who has been suspended from practice as a legal practitioner or whose name has been struck off the roll of legal practitioners whether in Malaŵi or elsewhere;

(*d*) who has been adjudged guilty of conduct discreditable to a patent agent; or

(*e*) who has been suspended from practice as a patent agent, or whose name has been erased from the register of patent agents kept under the Patents Act and not subsequently restored.

Registrable trade marks

15.—(1) The Registrar may refuse to accept any application for the registration of a mark upon which any of the following appear—

(*a*) the words "Patent", "Patented", "Registered", "Registered Design", "Copyright", "Entered at Stationers' Hall, "To counterfeit this is a forgery", or words to like effect;

(*b*) representations of the President or any colourable imitations thereof;

(*c*) The words "Red Cross" or "Geneva Cross", and representations of the Geneva and other crosses in red, or of the Swiss Federal cross in white or a red ground or silver on a red ground, or such representations in a similar colour or colours.

(2) Where there appears in a trade mark the registration of which is applied for a representation of a cross in any colour, not being one of those mentioned in subregulation (1) (*c*) the Registrar may require the applicant as a condition of acceptance to undertake not to use the cross device in red, or in white on a red ground or silver on a red ground, or in any similar colour or colours.

Prohibited word in marks

16. The word "Anzac" may not appear on trade mark for whose registration an application is made.

Arms of city, etc.

17. Where a representation of the armorial bearings, insignia, orders of chivalry, decorations or flags of any state, city, borough, town, place, society, body corporate, institution or person appears on a mark, the Registrar, before proceeding to register the mark, shall, if he so requires, be furnished with a consent to the registration and use of such emblems from such official or other person as appears to the Registrar to be entitled to give consent, and in default of such consent he may refuse to register the mark.

Consent of person to use of name or representation

18. Where the name or representation of any person appears on a trade mark, the Registrar shall, if he so requires, before proceeding to register the mark be furnished with consent from him or, in the case of a person recently dead, from his legal representative, and in default of such consent he may refuse to register the mark.

Name or description of goods on a trade mark

19.—(1) Where the name or description of any goods appears on a trade mark the Registrar may refuse to register such mark in respect of any n the goods so named or described.

(2) Where the name or description of any goods appears on a trade mark, which name or description in use varies, the Registrar may permit the registration of the mark for those and other goods, and in that case the applicant shall state in his application that the name or description will be varied when the mark is used upon goods covered by the specification other than the named or described goods.

Preliminary advice by Registrar as to distinctiveness

20.—(1) Any person who proposes to apply for the registration of a trade mark in Part A or Part B of the register in respect of any goods may apply to the Registrar on form T.M. No. 30, or on form T.M. No. 29 in a case where he is also making an application under regulation 113, for advice as to whether the trade mark, of which duplicate representations shall accompany the form, appears to the Registrar *prima facie* to be inherently adapted to distinguish within the meaning of section 14 or 15 of the Act, as the case may be, in relation to those goods, and shall apply separately in relation to goods comprised within different classes of goods in the Fourth Schedule.

(2) A notice of withdrawal of an application for the registration of a trade mark given under section 43 (3) of the Act for the purpose of obtaining repayment of any fee paid on the filing of the application shall be given in writing within two months from the date of the notice of the Registrar's objection.

Form of application. Specification

21.—(1) An application to the Registrar for the registration of a trade mark shall be signed by the applicant or his agent. For a trade mark other than a certification or defensive trade mark the application shall be made on form T.M. No. 2. For a certification or a defensive trade mark the application shall be made on form T.M. No. 5 or form T.M. No. 33 respectively. Each application shall be for registration in respect of goods in one class of the Fourth Schedule only.

(2) Every application claiming priority under section 73 of the Act by reason of an application to register the trade mark made or deemed to have been made in a convention country, which shall be named in the application, shall state the date of that application, and the applicant shall furnish a certificate by the registrar or other registering authority of that country, or shall otherwise verify the application made or deemed to have been made therein to the satisfaction of the Registrar.

(3) In the case of an application for registration in respect of all the goods included in a class, or of a large variety of goods, the Registrar may refuse to accept the application unless he is satisfied that the specification is justified by the use of the mark which the applicant has made, or intends to make if and when it is registered.

(4) For the purposes of section 22 (2) of the Act an application shall be made on form T.M. No. 2 subject to such modifications as the Registrar may approve.

Address for application

22. An application for the registration of a trade mark shall be addressed and sent to the Registrar at the Office.

Representation of mark

23.—(1) Every application for the registration of a trade mark shall contain a representation of the mark in the space provided on the application form for that purpose.

(2) Where the representation exceeds such space in size the representation shall be mounted upon linen, tracing cloth or such other material as the Registrar may consider suitable. Part of the mounting shall be affixed in the space aforesaid and the rest may be folded.

(3) In the case of word marks represented in plain letters, the word shall be printed or stencilled in letters of not less than $\frac{3}{8}$ inch in size.

Additional forms and representations

24. There shall be sent with every application for registration of a trade mark (other than a certification trade mark) six additional representations of the mark on form T.M. No. 3. The representation of the mark on the application and its duplicate (if any) and the additional representations shall correspond exactly. The additional representations shall in all cases be noted with all such particulars as may from time to time be required by the Registrar. Such particulars shall, if required, be signed by the applicant or his agent.

Representations to be durable

25. All representations of marks must be of a durable nature, but the applicant may in case of need supply, in place of representations on form T.M. No. 3, such representations on sheets of strong paper as may be approved by the Registrar.

Separate applications

26. Applications for the registration of the same mark in different classes shall be treated as separate and distinct applications, and in all cases where a trade mark is registered under the same official number for goods in more than one class, whether on conversion of the specification under regulation 6 or otherwise, the registration in respect of the goods included in each separate class shall be deemed to be a separate registration for all the purposes of the Act.

Representations to be satisfactory

27. The Registrar, if dissatisfied with any representation of a mark, may at any time require another representation satisfactory to him to be substituted before proceeding with the application.

Specimens of trade marks in exceptional cases

28.—(1) Where a drawing or other representation or specimen cannot be given in the manner aforesaid, a specimen or copy of the trade mark may be sent either of full size or on a reduced scale and in such form as the Registrar may think most convenient.

(2) The Registrar may also, in exceptional cases, deposit in the Office a specimen or copy of any trade mark which cannot conveniently be shown by a representation, and may refer thereto in the register in such manner as he may think fit.

Series of trade marks

29. Where application is made for the registration of a series of trade marks under section 26 (2) of the Act, a representation of each trade mark of the series shall be included, all as aforesaid, in the application form, in the duplicate thereof (if any), and six representations of each trade mark of the series shall be pinned on the accompanying form T.M. No. 3.

Transliteration and translation

30.—(1) Where a trade mark contains a word or words in characters other than Roman, there shall, unless the Registrar otherwise directs, be endorsed on the application form, and on the accompanying form T.M. No. 3, a sufficient transliteration and translation to the satisfaction of the Registrar of each of such words, and every such endorsement shall state the language to which the word belongs and shall be signed by the applicant or his agent.

(2) Where a trade mark contains a word or words in a language other than English, the Registrar may ask for an exact translation thereof together with the name of the language, and such translation and name, if he so requires, shall be endorsed and signed as aforesaid.

Search

31. Upon receipt of an application for the registration of a trade mark in respect of any goods the Registrar shall cause a search to be made amongst the registered marks and pending applications, for the purpose of ascertaining whether there are on record in respect of the same goods or description of goods any marks identical with the mark applied for, or so nearly resembling it as to render the mark applied for likely to deceive or cause confusion, and the Registrar may cause the search to be renewed at any time before the acceptance of the application, but shall not be bound to do so.

Acceptance absolute or conditional; objection

32. After such search, and consideration of the application, and of any evidence of use or of distinctiveness or of any other matter which the applicant may furnish or may be required to furnish, the Registrar may accept the application absolutely, or he may object to it, or he may express his willingness to accept it subject to such conditions, amendments, disclaimer, modifications or limitations as he may think right to impose.

Registrar's objections

Hearing

33. If the Registrar object to the application, he shall inform the applicant of his objections in writing, and unless within two months the applicant applies for a hearing or makes a considered

reply in writing to those objections he shall be deemed to have withdrawn his application.

Registrar's conditions, etc.

34. If the Registrar is willing to accept the application subject to any conditions, amendments, disclaimer, modifications or limitations, he shall communicate such willingness to the applicant in writing, and, if the applicant objects to such conditions, amendments, disclaimer, modifications or limitations, he shall within two months from the date of the communication apply for a hearing or communicate his considered objections in writing, and if he does not do so he shall be deemed to have withdrawn his application. If the applicant does not object to such conditions, amendments, disclaimer, modifications or limitations, he shall forthwith notify the Registrar in writing and alter his application accordingly.

Hearing

Decision of Registrar

35.—(1) The decision of the Registrar, at a hearing in accordance with regulation 33 or 34, or without a hearing if the applicant has duly communicated his considered objections or considered reply, in writing, and has stated that he does not desire to be heard, shall be communicated to the applicant in writing, and if the applicant objects to such decision he may within two months by applying upon form T.M. No. 4 require the Registrar to state in writing the grounds of, and the materials used by him in arriving at, his decision.

(2) In a case where the Registrar makes any requirements to which the applicant does not object, the applicant shall comply therewith before the Registrar issues such statement in writing. The date when such statement is sent to the applicant shall be deemed to be the date of the Registrar's decision for the purpose of appeal.

Disclaimer

36. The Registrar may call on an applicant to insert in his application such disclaimer as the Registrar may think fit, in order that the public generally may understand what the applicant's rights, if his mark is registered, will be.

Application under section 32

37. An application for the registration of a defensive trade mark under section 32 of the Act shall be made, addressed and sent to the Registrar on form T.M. No. 33, and shall be accompanied by a statement of case setting forth the full particulars of the facts on which the applicant relies in support of his application, verified by an affidavit or solemn declaration made by the applicant or some other person approved for the purpose by the Registrar. The applicant may send with this declaration, or subsequently, such other evidence as he may desire to furnish, whether after request made by the Registrar or otherwise, and the Registrar shall consider the whole of the

evidence before deciding on the application. In all other respects and where they are appropriate and it is not otherwise stated, these Regulations shall apply to such applications as they apply to applications for the registration of ordinary trade marks.

Application under section 42

38. An application for the registration of a certification trade mark under section 42 of the Act shall be made to the Registrar on form T.M. No. 5 and shall be accompanied by six additional representations of the trade mark on form T.M. No. 3.

Authorization to proceed

39.—(1) These Regulations shall apply to such applications as they apply to applications for the registration of ordinary trade marks, except that for references therein to acceptance of an application there shall be substituted references to authorization to proceed with the application, and that the applicant shall not be deemed to have abandoned his application if in the circumstances of regulation 33 or 34 he does not apply for a hearing or reply in writing.

(2) The address of an applicant to register a certification trade mark shall be deemed to be a trade or business address for all the purposes for which such an address is required by these regulations.

Case; draft regulations

40. The applicant shall send to the Registrar with his application or when required by the Registrar a case setting out the grounds on which he relies in support of his application together with draft regulations for governing the use of the mark and form T.M. No. 34, all being in duplicate. The Registrar may communicate to the applicant any observations he may have to make on the sufficiency of the case or the suitability of the draft regulations and the applicant may modify either of those documents.

Directions by the Registrar

41. If the Registrar decides to authorize the application to proceed he may at any time call for such evidence, if any, as he thinks fit, and shall if required hear the applicant before giving directions as provided in paragraph 1 (5) of the First Schedule to the Act. When such directions have been given and the application has been accepted, the regulations for governing the use of the mark approved by the Registrar, as well as the form of application, shall be open to public inspection.

Advertisement of application

42.—(1) An application for the registration of a trade mark required or permitted to be advertised by section 23 (1) of the Act or paragraph 2 of the First Schedule to the Act, shall be advertised in form T.M. No. 44 in the *Gazette*. In the case of an application with which the Registrar proceeds only after the

applicant has lodged the written consent to the proposed registration of the registered proprietor of another trade mark or another applicant, the words "By Consent" shall appear in the advertisement.

(2) If no representation of the trade mark be included in the advertisement of the application, the applicant shall refer in such advertisement to the place or places where a specimen or representation of the trade mark is deposited for exhibition.

Wood block or electro-type printing

43. For the purposes of such advertisement the applicant may, at the appropriate time, supply or be required to supply a printing block (or more than one, if necessary) of the trade mark satisfactory to the Registrar, of such dimensions as may from time to time be approved or directed by the Registrar, or shall supply such information or other means of advertising the trade mark as may be required by the Registrar; and the Registrar, if dissatisfied with the printing block supplied by the applicant or his agent, may require a fresh block before approving of the advertisement.

Advertisement of series

44. When an application relates to a series of trade marks differing from one another in respect of the particulars mentioned in section 26 (2) of the Act, the applicant may be required to supply a printing block (or more than one, if necessary) satisfactory to the Registrar of any or of each of the trade marks constituting the series; or the Registrar may, if he thinks fit, direct that there shall be inserted with the advertisement of the application a statement of the manner in which the several trade marks differ from one another.

Advertisement under sections 23 and 40

45. Advertisements under section 23 (10) and section 40 (2) and (4) of the Act shall *mutatis mutandis* be made in the same manner as advertisements relating to an application for registration.

Opposition

46. Any person may within two months from the date of any advertisement in the *Gazette* of an application for registration of a trade mark give notice on form T.M. No. 6 to the Registrar of opposition to the registration.

Notice of opposition

47. The notice shall include a statement of the grounds upon which the opponent objects to the registration. If registration is opposed on the ground that the mark resembles marks already on the register, the numbers of such trade marks and the dates of the *Gazettes* in which they have been advertised shall be set out. The notice shall be accompanied by a duplicate which the Registrar will forthwith send to the applicant.

Counterstatement

48. Within two months from the receipt of such duplicate the applicant shall send to the Registrar a counter-statement on form T.M. No. 7 setting out the grounds on which he relies as supporting his application. The applicant shall also set out what facts, if any, alleged in the notice of opposition he admits. The counter-statement shall be in duplicate.

Evidence in support of opposition

49. Upon receipt of the counter-statement and duplicate the Registrar shall forthwith send the duplicate to the opponent and within two months from the receipt of the duplicate the opponent shall leave with the Registrar such evidence by way of affidavit or solemn declaration as he may desire to adduce in support of his opposition and shall deliver to the applicant a copy of such evidence.

Evidence in support of application

50.—(1) If an opponent leaves no evidence he shall, unless the Registrar otherwise directs, be deemed to have abandoned his opposition but, if he does leave evidence, then, within two months from the receipt of the copies of such evidence, the applicant shall leave with the Registrar such evidence by way of affidavit or solemn declaration as he desires to adduce in support of his application and shall deliver to the opponent a copy thereof.

(2) An applicant shall, unless the Registrar otherwise directs, be deemed to have withdrawn his application if, within the period of two months referred to in subregulation (1), he—

(a) fails to leave with the Registrar such evidence as he desires to adduce in support of his application; or

(*b*) fails to notify the Registrar in the event of his not desiring to adduce evidence in support of his application.

Evidence in reply by opponent

51. Within two months from the receipt by the opponent of the copy of the applicant's affidavit or solemn declaration the opponent may leave with the Registrar evidence by affidavit or solemn declaration in reply, and shall deliver to the applicant a copy of such evidence. This evidence shall be confined to matters strictly in reply.

Further evidence

52. No further evidence shall be left on either side but, in any proceedings before the Registrar, he may at any time if he thinks fit give leave to either the applicant or the opponent to leave any evidence upon such terms as to costs or otherwise as he may think fit.

Exhibits

53. Where there are exhibits to affidavits or solemn declarations filed in an opposition, a copy or impression of each exhibit shall be sent to the other party on his request and at his expense,

or, if such copies or impressions cannot conveniently be furnished, the originals shall be left with the Registrar in order that they may be open to inspection. The original exhibits shall be produced at the hearing unless the Registrar otherwise directs.

Hearing

54. Upon completion of the evidence the Registrar shall give notice to the parties of a date when he will hear the arguments in the case. Such appointment shall be for a date at least fourteen days after the date of the notice, unless the parties consent to a shorter notice. Within seven days from the receipt of the notice any party who intends to appear shall so notify the Registrar on form T.M. No. 8. A party who receives notice as aforesaid and who does not, within seven days from the receipt thereof, so notify the Registrar on form T.M. No. 8 may be treated as not desiring to be heard and the Registrar may act accordingly.

Extension of time

55. Where in opposition proceedings any extension of time is granted to any party, the Registrar may thereafter, if he thinks fit, without giving the said party a hearing, grant any reasonable extension of time to any other party in which to take any subsequent step.

Security for costs

56. Where a party giving notice of opposition or an applicant sending a counter-statement after receipt of a copy of such a notice neither resides nor carries on business in Malaŵi, the Registrar may require him to give security, in such form as the Registrar may deem sufficient, for the costs of the proceedings before the Registrar, for such amount as to the Registrar may seem fit, and at any stage in the opposition proceedings may require further security to be given at any time before giving his decision in the case.

Costs in uncontested case

57. In the event of an opposition being uncontested by the applicant, the Registrar in deciding whether costs should be awarded to the opponent shall consider whether proceedings might have been avoided if reasonable notice had been given by the opponent to the applicant before the notice of opposition was lodged.

Opposition to application

58. Within two months from the date of any advertisement in the *Gazette* of an application for the registration of a certification trade mark, any person may give notice to the Registrar on form T.M. No. 37 of opposition under paragraph 2 of the First Schedule to the Act, and regulations 47 to 57 inclusive shall apply *mutatis mutandis* to the proceedings thereon, with substitution of form T.M. No. 38 for form T.M. No. 7, and of form T.M. No. 39 for form T.M. No. 8. In any case of doubt any party may apply to the Registrar for directions.

Non-completion within twelve months

59. Where registration of a trade mark is not completed within twelve months from the date of application by reason of default on the part of the applicant, the Registrar shall on form T.M. No. 9 give notice in writing to the applicant at his trade or business address of the non-completion, but if the applicant has authorized an agent for the purpose of the application he shall instead send the notice to the agent and shall send a duplicate thereof to the applicant. If after fourteen days from the date when the notice was sent, or such further time as the Registrar may allow, the registration is not completed, the application shall be deemed to be abandoned.

Entry in register

60.—(1) As soon as may be after the expiration of two months from the date of the advertisement in the *Gazette* of any application for the registration of a trade mark, the Registrar shall, subject to any opposition and the determination thereof, and subject to section 24 (1) of the Act, and upon payment of the prescribed fee on form T.M. No. 10, enter the trade mark in the register. In those cases where the applicant has supplied a printing block in accordance with regulation 43, he shall send with his fee a representation of the trade mark agreeing in all respects with the representation then appearing on the form of application, to be affixed by the Registrar to the certificate of registration as required by regulation 63. The entry of a trade mark in the register shall give the date of the registration, the goods in respect of which it is registered, and all particulars named in section 6 (1) of the Act, including both the trade or business address and the address for service (if any), particulars of the trade, business, profession, occupation or other description of the proprietor, particulars of any undertakings by the proprietor entered on the form of application, particulars affecting the scope of the registration or the rights conferred by the registration and such other particulars as are prescribed.

(2) In the case of an application as aforesaid which the Registrar accepts only after the applicant has lodged the written consent to the proposed registration of the registered proprietor of another trade mark or another applicant for registration, the aforesaid entry in the register shall state that it is "By Consent" and shall give the number of the previous registration or the application for registration.

Associated marks

61.—(1) Where a mark is registered as associated with any other mark or marks the Registrar shall note in the register in connexion with the first-mentioned mark the numbers of the marks with which it is associated and shall also note in the register in connexion with each of the associated marks the number of the first-mentioned mark as being a mark associated therewith.

(2) An application by a registered proprietor under section 28 (5) of the Act to the Registrar to dissolve the association between two or more associated trade marks shall be made on form T.M. No. 20, and shall include a statement of the grounds of the application.

Death of applicant before registration

62. In case of the death of any applicant for the registration of a trade mark after the date of his application, and before the trade mark applied for has been entered in the register, the Registrar, after the expiration of the prescribed period of advertisement and the determination of any opposition to the application, may, on being satisfied of the applicant's death, enter in the register in place of the name of such deceased applicant, the name, address and description of the person owning the trade mark, on such ownership being proved to the satisfaction of the Registrar.

Certificate of registration

63. Upon the registration of a trade mark the Registrar shall issue to the applicant a certificate in form T.M. No. 11, and shall affix thereto a copy of the mark, which may be a representation thereof supplied by the applicant under regulation 60.

Renewal of registration

64. At any time not more than six months before the expiration of the last registration of a trade mark any person may leave at the Office a fee for the renewal of the registration of the mark with form T.M. No. 12, and, if he is not the registered proprietor, shall sign a statement on the form that he is directed by the registered proprietor to pay the fee (if such be the case) and shall give his address. Before taking any further step the Registrar may either—

(*a*) require the person leaving the fee to furnish within fourteen days an authority to pay the fee signed by the registered proprietor, and if he does not furnish such authority may return the fee and treat it as not received; or

(*b*) communicate with the registered proprietor stating that the fee has been received and that the registration will in due course be renewed.

Notice before removal of trade mark from register

65. At a date not less than three months and not more than six months before the expiration of the last registration of a mark, if no fee with form T.M. No. 12 has been received, the Registrar shall notify the registered proprietor in writing of the approaching expiration.

Second notice

66. At a time not less than fourteen days and not more than one month before the expiration of the last registration of a mark the Registrar may, if no fee as aforesaid has been received,

send a notice in writing to the registered proprietor at his trade or business address as well as at his address for service, if any.

Advertisement of non-payment

67. If at the date of the expiration of the last registration of a mark the renewal fee has not been paid, the Registrar shall advertise the fact forthwith in the *Gazette*. If the Registrar receives the renewal fee with form T.M. No. 12, together with an additional fee accompanying form T.M. No. 13, at any time during the period between such date of expiration and one month after such advertisement, he may renew the registration without removing the mark from the register.

Removal of trade mark from register

68. Where, at the expiration of one month from the advertisement mentioned in regulation 67, the fees therein mentioned have not been paid, the Registrar may remove the mark from the register as of the date of the expiration of the last registration, but may, upon payment of the renewal fee with form T.M. No. 12 together with a restoration fee accompanying form T.M. No. 14, restore the mark to the register if satisfied that it is just so to do and upon such conditions as he may think fit to impose.

Record of removal of mark

69. Where a trade mark has been removed from the register, the Registrar shall cause to be entered in the register a record of the removal and of the cause thereof.

Notice and advertisement of renewal and restoration

70. Upon the renewal or restoration and renewal of a registration a notice to that effect shall be sent to the registered proprietor and the renewal or restoration and renewal shall be advertised in the *Gazette*.

Joint application for entry of assignment or transmission

71. Where a person becomes entitled by assignment or transmission to a registered trade mark he may, conjointly with the registered proprietor, make application to the Registrar on form T.M. No. 16 to register his title.

Application for entry of assignment or transmission by subsequent proprietor

72. Where a person becomes entitled to a registered trade mark in the manner referred to in regulation 71, and no conjoint application as therein mentioned is made, he shall make application to the Registrar on form T.M. No. 17 to register his title.

Particulars to be stated in application

73. An application under regulation 71 or 72 shall contain the name, trade or business address and description of the person claiming to be entitled, together with full particulars of the instrument, if any, under which he claims, and such instrument shall be produced for inspection by the Registrar, preferably at the time of application. The full names of all the partners in a partnership shall be given in the body of the application. The

Registrar may in any case require and retain an attested copy of any instrument produced for inspection in proof of title, but such copy shall not be open to public inspection.

Case accompanying application

74. Where in the case of an application on form T.M. No. 16 or No. 17 the person applying for registration of his title does not claim under any document or instrument which is capable in itself of furnishing proof of his title, he shall, unless the Registrar otherwise directs, either upon or with the application, state a case setting forth the full particulars of the facts upon which his claim to be proprietor of the trade mark is based, and showing that the trade mark has been assigned or transmitted to him. If the Registrar so requires, the case shall be verified by affidavit or solemn declaration on form T.M. No. 18.

Proof of title

75. The Registrar may call on any person who applies to be registered as proprietor of a registered trade mark for such proof or additional proof of title as he may require for his satisfaction.

Application for entry of assignment without goodwill

76.—(1) An application under regulation 71 or 72 relating to an assignment on or after the commencement of the Act of a trade mark in respect of any goods shall state—

(*a*) whether the trade mark was, at the time of the assignment used in a business in any of those goods; and

(*b*) whether the assignment was made otherwise than in connexion with the goodwill of that business;

and, if both those circumstances subsisted, then the applicant shall leave with the Registrar a copy of the Registrar's directions to advertise the assignment, obtained upon application under section 27 (7) of the Act and regulation 80, and such proof, including copies of advertisements or otherwise, as the Registrar may require that his directions have been fulfilled; and if the Registrar is not satisfied that the directions have been fulfilled he shall not proceed with the application.

(2) For the purposes of section 34 (3) of the Act, the period within which a corporation may be registered as the subsequent proprietor of a registered trade mark, upon application made under regulation 71 or 72, shall be six months from the date of advertisement in the *Gazette* of the registration of the trade mark or such further period not exceeding six months as the Registrar may allow, on application being made to him on form T.M. No. 15 by the applicant for registration of title or the registered proprietor, as the case may be, at any time before or during the period for which the extension can be allowed.

Entry in register

77. When the Registrar is satisfied as to the title of the person claiming to be registered he shall cause him to be registered as proprietor of the trade mark in respect of the relevant goods, and

shall enter in the register his name, trade or business address and description and particulars of the assignment or transmission.

Separate registrations

78. Where pursuant to an application under regulation 71 or 72, and as the result of a division and separation of the goods of a registration or a division and separation of places or markets, different persons become registered separately under the same official number as subsequent proprietors of a trade mark, each of the resulting separate registrations in the names of those different persons shall be deemed to be a separate registration for all the purposes of the Act.

Registrar's certificate or approval as to certain assignments and transmissions

79. Any person who desires to obtain the Registrar's certificate under section 27 (5) of the Act, or his notification of approval under section 27 (6) of the Act, shall send to the Registrar, with his application on form T.M. No. 40 or No. 41, as the case may be, a statement of case in duplicate setting out the circumstances, and a copy of any instrument or proposed instrument effecting the assignment or transmission. The Registrar may call for any evidence or further information that he may consider necessary, and the statement of case shall be amended if required to include all the relevant circumstances and shall if required be verified by affidavit or solemn declaration. The Registrar, after hearing if so required the applicant and any other person whom the Registrar may consider to be interested in the transfer, shall consider the matter and issue a certificate thereon or a notification in writing of approval or disapproval thereof, as the case may be. Where a statement of case is amended, two fair copies thereof in its final form shall be left with the Registrar. The Registrar shall seal a copy of the statement of case in its final form to the certificate or notification.

Registrar's directions for advertisement of assignment without goodwill of trade mark in use

80.—(1) An application to the Registrar under section 27 (7) of the Act shall be made by the assignee on form T.M. No. 42 and shall state the date on which the assignment was made. The application shall give particulars of the registration in the case of a registered trade mark, and, in the case of an unregistered trade mark, shall show the mark and give particulars of the registered trade mark that has been assigned therewith in accordance with section 27 (3) of the Act. The Registrar may call for any evidence or further information, and if he is satisfied with regard to the various matters he shall issue directions in writing with respect to the advertisement of the assignment.

(2) The Registrar may refuse to consider such an application in a case to which section 27 (6) of the Act applies unless his approval has been obtained under the said subsection and a reference identifying the Registrar's notification of approval is included in the application.

(3) A request to the Registrar for an extension of the period within which the application may be made, which shall be on form T.M. No. 43, may be made at any time before or during the period for which extension can be allowed. The extension of the period which the Registrar may allow shall not exceed three months.

Alteration of address in register

81.—(1) A registered proprietor or registered user of a trade mark whose trade or business address or address for service is changed so that the entry in the register is rendered incorrect shall forthwith request the Registrar on form T.M. No. 19 to make the appropriate alteration of the address in the register, and the Registrar shall alter the register accordingly if he is satisfied in the matter.

(2) A registered proprietor or registered user of a trade mark whose registered trade or business address or address for service is altered by a public authority, so that the changed address designates the same premises as before, may make the aforesaid request to the Registrar on form T.M. No. 19, and if he does so he shall leave therewith a certificate of the alteration given by the said authority. If the Registrar is satisfied as to the facts of the case, he shall alter the register accordingly, but shall not require the payment of the prescribed fee.

(3) In case of the alteration of the address of a person entered in the register as the address for service of more than one registered proprietor or registered user of trade marks, the Registrar may, on proof that the said address is the address of the applicant and if satisfied that it is just so to do, accept an application from that person on form T.M. No. 19 amended so as to suit the case for the appropriate alteration of the entries of his address as the address for service in the several registrations, particulars of which shall be given in the form, and may alter the entries accordingly.

(4) All applications under this regulation on form T.M. No. 19 shall be signed by the registered proprietor or the registered user, as the case may be, or by an agent expressly authorized by him for the purpose of such an application, unless in exceptional circumstances the Registrar otherwise allows.

Application to rectify, or remove a trade mark from, the register

82. An application to the Registrar under any of the sections 31, 32, 37 or 38 of the Act for the making, expunging or varying of any entry in the register shall be made on form T.M. No. 27, and shall be accompanied by a statement setting out fully the nature of the applicant's interest, the facts upon which he bases his case and the relief which he seeks. Where the application is made by a person who is not the registered proprietor of the trade mark in question it shall be accompanied by a copy of the

application and a copy of the statement, and these copies shall be transmitted forthwith by the Registrar to the registered proprietor.

Further procedure

83. Upon such application being made, and copy thereof transmitted to the registered proprietor, if necessary, regulations 48 to 57 inclusive shall apply *mutatis mutandis* to the further proceedings thereon; but the Registrar shall not rectify the register or remove the mark from the register merely because the registered proprietor has not filed a counter statement. In any case of doubt any party may apply to the Registrar for directions.

Intervention by third parties

84. Any person other than the registered proprietor alleging interest in a registered trade mark in respect of which an application is made on form T.M. No. 27 may apply to the Registrar on form T.M. No. 28 for leave to intervene, stating thereon the nature of his interest, and the Registrar may refuse or grant such leave, after hearing (if so required) the parties concerned, upon such conditions and terms as he may deem fit. Before dealing in any way with the application for leave to intervene the Registrar may require the applicant to give an undertaking to pay such costs as in the circumstances he may award to any party.

Application under section 39 (1)

85. An application to the Registrar under section 39 (1) of the Act for the alteration of the register by correction, change, cancellation or striking out goods, or for the entry of a disclaimer or memorandum, may be made by the registered proprietor of the trade mark or by such person as may satisfy the Registrar that he is entitled to act in the name of the registered proprietor. Such applications shall be made on form T.M. No. 19, No. 21, No. 22, No. 23, No. 24 or No. 25, as may be appropriate.

Evidence

86. In the case of an application as in regulation 85, the Registrar may require such evidence by affidavit, solemn declaration or otherwise as he may think fit as to the circumstances in which the application is made.

Advertisement of certain applications

87. Where application is made on form T.M. No. 25 to enter a disclaimer or memorandum relating to a trade mark, the Registrar, before deciding upon such application, shall direct the applicant to advertise the application in the *Gazette* in order to enable any person desiring so to do to state, within two months of the advertisement, any reasons in writing against the making of the entry of the disclaimer or memorandum.

Certificates of validity to be noted

88. Where the High Court or the Tribunal has certified as provided in section 58 of the Act with regard to the validity of a registered trade mark, the registered proprietor thereof may request the Registrar on form T.M. No. 49 to add to the entry in the register a note that the certificate of validity has been granted in the course of the proceedings, which shall be named in the form. A certified copy of the certificate shall be sent with the request, and the Registrar shall so note the register and direct the proprietor to publish the note in the *Gazette*.

Alteration of registered mark

89. Where a person desires to apply under section 40 of the Act that his registered trade mark may be added to or altered, he shall make his application on form T.M. No. 26 and shall furnish the Registrar with six copies of the mark as it will appear when so added to or altered.

Advertisement before decision

90. The Registrar shall consider the application and shall, if it appears to him expedient, direct the registered proprietor to advertise the application in the *Gazette* before deciding it. Within two months from the date of such advertisement any person may give notice of opposition to the application on form T.M. No. 47 accompanied by a duplicate of the notice, and may also send therewith a further statement of his objections in duplicate. The Registrar shall send the duplicate notice, and the duplicate of any further statement of objections to the applicant and regulations 48 to 57 inclusive shall apply *mutatis mutandis* to the further proceedings thereon. In any case of doubt any party may apply to the Registrar for directions.

Advertisement after decision

91. If the Registrar decides to allow the application he shall add to or alter the mark in the register and, if the mark so added to or altered has not been advertised under regulation 90, he shall direct the registered proprietor to advertise it in the *Gazette*.

Supply of printing block

92. In connexion with an application to alter a registered trade mark the Registrar may at any time call on the applicant to supply a printing block satisfactory to the Registrar and suitable for advertising the mark with the addition or alteration as aforesaid, if in the opinion of the Registrar an advertisement describing the addition or alteration in words would not be likely to be understood by persons interested in the matter.

Orders for rectification of certification trade mark entries and regulations

93. An application on any of the grounds mentioned in paragraph 4 of the First Schedule to the Act, made by an aggrieved person to the Registrar for an order expunging or varying an entry in the register of or relating to a certification trade mark, or varying the relevant deposited regulations, shall

be made on form T.M. No. 36 and shall include full particulars of the grounds on which the application is made.

Alteration of certification trade mark regulations

94. An application by the registered proprietor of a certification trade mark for an alteration of the deposited regulations and the consent of the Registrar thereto shall be made on form T.M. No. 35. Where the Registrar causes such an application to be advertised the time within which any person may give notice to the Registrar of opposition to the application shall be two months from the date of the advertisement.

Service of documents

95. Where any document is by these Regulations directed to be served upon the Registrar it shall be served in duplicate.

Application for entry of registered user

96. An application to the Registrar for the registration under section 33 of the Act of a person as a registered user of a registered trade mark shall be made by that person and the registered proprietor on form T.M. No. 50.

Entry and notification

97. The date of an entry of a registered user in the register shall be the date upon which the application for registration as a registered user was made. In addition to the trade or business address of the registered user it may include an address for service, if such has been approved. A notification in writing of the registration of a registered user shall be sent to the registered proprietor of the trade mark, to the registered user and to every other registered user whose name is entered in relation to the same registration of a trade mark, and shall be inserted by the registered proprietor in the *Gazette*.

Registered proprietor's application to vary entry

98. An application by the registered proprietor of a trade mark for the variation of the registration of a registered user of that trade mark under section 33 (8) (*a*) of the Act shall be made on form T.M. No. 51, and shall be accompanied by a statement of the grounds on which it is made, where the registered user in question consents, by the written consent of that registered user.

Application by registered proprietor or user to cancel entry

99. An application by the registered proprietor or any registered user of a trade mark for the cancellation of the registration of a registered user of that trade mark under section 33 (8) (*b*) of the Act shall be made on form T.M. No. 52, and shall be accompanied by a statement of the grounds on which it is made.

Application under section 33 (8) (*c*) to cancel entry

100. An application by any person for the cancellation of the registration of a registered user under section 33 (8) (*c*) of the Act shall be made on form T.M. No. 53, and shall be accompanied by a statement of the grounds on which it is made.

Notification of hearing

101. The Registrar shall notify in writing applications under regulations 98, 99 and 100 to the registered proprietor and each registered user (not being the applicant) under the registration of the trade mark. Any person so notified who intends to intervene in the proceedings shall within two months of the receipt of such notification give notice to the Registrar on form T.M. No. 54 to that effect and shall send therewith a statement of the grounds of his intervention. The Registrar shall thereupon send copies of such notice and statement to the other parties, so that the intervention may be known to the applicant, the registered proprietor, the registered user whose registration is in suit, and any other registered user who intervenes. Any such party may, within such time or times as the Registrar may appoint, leave evidence in support of his case, and the Registrar after giving the parties an opportunity of being heard may accept or refuse the application or accept it subject to such conditions, amendments, modifications of limitations as he may think right to impose.

Registered user's application under section 39 (2)

102.—(1) Applications under section 39 (2) of the Act shall be made on form T.M. No. 19 or No. 21 or No. 22, as may be appropriate, by a registered user of a trade mark, or by such person as may satisfy the Registrar that he is entitled to act in the name of a registered user, and the Registrar may require such evidence by affidavit or solemn declaration or otherwise as he may think fit as to the circumstances in which the application is made.

(2) In case of the registration of a registered user of a period, in accordance with section 33 (4) (*d*) of the Act the Registrar shall cancel the entry of the registered user at the end of the period. Where some or all of the goods are struck out from those in respect of which a trade mark is registered, the Registrar shall at the same time strike them out from those specifications of registered users of the trade mark in which they are comprised. The Registrar shall notify every cancellation or striking out under this subregulation to the registered users whose permitted use is affected thereby and the registered proprietor of the trade mark.

Extension of time

103. If in any particular case the Registrar is satisfied that the circumstances are such as to justify an extension of the time for doing any act or taking any proceedings under these regulations, not being a time expressly provided in the Act or prescribed by regulation 76 or 80, he may extend the time upon such notice to other parties, and proceedings thereon, and upon such terms as he may direct, and the extension may be granted though the time has expired for doing the act or taking the proceeding.

Excluded days

104. Whenever the last day fixed by these Regulations for doing any act or thing at the Office shall fall on a day when the Office is not open which day shall be an excluded day for the purpose of these Regulations, it shall be lawful to do the act or thing on the first day following such excluded day which is not an excluded day.

Hearing

105. Before exercising adversely to any person any discretionary power given to the Registrar by the Act, or by these Regulations, the Registrar shall, if so required, hear such person thereon.

Application for hearing

106. An application for a hearing shall be made within one month from the date of notification by the Registrar of any objection to an application or the date of any other indication that he proposes to exercise a discretionary power.

Notice of hearing

107.—(1) Upon receiving such application the Registrar shall give the person applying fourteen days' notice of a time when he may be heard.

(2) Within seven days from the date when such notice would be delivered in the ordinary course of post the person applying shall notify the Registrar whether or not he intends to be heard on the matter.

Notification of decision

108. The decision of the Registrar in the exercise of any such discretionary power as aforesaid shall be notified to the person affected.

Dispensing with evidence

109. Where under these Regulations any person is required to do any act or thing, or to sign any document, or to make any declaration on behalf of himself or of any body corporate, or any document or evidence is required to be produced to or left with the Registrar, or at the Office, and it is shown to the satisfaction of the Registrar that from any reasonable cause such person is unable to do such act or thing, or to sign such document, or to make such declaration, or that such document or evidence cannot be produced or left as aforesaid, it shall be lawful for the Registrar, upon the production of such other evidence, and subject to such terms as he may think fit, to dispense with any such act or thing, signature, declaration, document or evidence.

Amendment of documents

110. Any document or drawing or other representation of a trade mark may be amended, and any irregularity in procedure which in the opinion of the Registrar may be excused without detriment to the interests of any person may be corrected, if the Registrar thinks fit, and on such terms as he may direct.

Certificates by Registrar

111. The Registrar may give a certificate, other than a certificate under section 24 (2) of the Act, as to any entry, matter or thing which he is authorized or required by Act or these Regulations to make or do, upon receipt of a request therefor on form T.M. No. 32 from any person who, if the Registrar thinks fit so to require, can show an interest in the entry, matter or thing to his satisfaction. The Registrar shall not be obliged to include in the certificate a copy of any mark, unless he is furnished by the applicant with a copy thereof suitable for the purpose.

Manner in which and person before whom affidavit or solemn declaration is to be taken

112. The affidavits and solemn declarations required by the Act and regulations, or used in any proceedings thereunder, shall be accepted if made and subscribed before any judge, magistrate, notary public under his signature and seal of office, or by the Registrar of a Court of Justice or by a commissioner of oaths.

Searches

113. Any person may request the Registrar on form T.M. No. 29 to cause a search to be made in respect of specified goods classified in any one class of the Third Schedule or the Fourth Schedule to ascertain whether any mark is on record at the date of the search which resembles a trade mark of which duplicate representations accompany the form. The Registrar shall cause such search to be made and the person making the request to be informed of the result thereof.

Days and hours of business

114. The office shall be open to the public and the register shall be open to inspection on payment of the fee specified in the First Schedule every weekday, except Saturday, between the hours of nine and twelve, and half-past one and half-past three, and on Saturdays between the hours of nine and twelve; except on public holidays.

Procedure on appeal from decision of Registrar

115.—(1) Any person who wishes to appeal against a decision of the Registrar shall—

(*a*) submit his case in writing to the Registrar who shall furnish that person with his written decision and his grounds therefor;

(*b*) within three months from the date of the decision of the Registrar—

(i) leave at the Office a notice in form T.M. No. 31;

(ii) file with the Registrar of the Tribunal a notice of appeal in accordance with the Trade Marks (Tribunal) Rules.

(2) Subregulation (1) shall not apply in the case of an application within regulations 31 to 35 inclusive.

Copy of application to Tribunal to be served on Registrar

116. A copy of every application made to the Tribunal under the Act shall be served on the Registrar.

Order of High Court or Tribunal

117. Where an order has been made by the High Court or the Tribunal in any case under the Act, the person in whose favour such order has been made, or such one of them, if more than one, as the Registrar may direct, shall forthwith leave at the Office a certified copy of such order, together with form T.M. No. 48 if required. The register may, if necessary, thereupon be rectified or altered by the Registrar.

Publication of order of High Court or Tribunal

118. Whenever an order is made by the High Court or the Tribunal under the Act the Registrar may, if he thinks fit that the order should be made public, require the applicant or the appellant, as the case may be, to publish it in the *Gazette*.

G.N. 76/1980
37/2000
4/2006

FIRST SCHEDULE reg. 3

Tariff of Fees

	Matter or Proceeding	*Amount* K	t	*Corresponding Form No*
1.	(*a*) On application not otherwise charged to register a trade mark for a specification of goods included in one class. .	1,000	00	T.M. No. 2
	(*b*) On application to register a series of trade marks under section 26 (2) of the Act for a specification of goods included in one class	1,000	00	T.M. No 2
	(*c*) On application to register a defensive trade mark for a specification of goods included in one class	1,000	00	T.M. No. 33
	(*d*) On application under section 42 of the Act to register a certification trade mark for a specification of goods included in one class	1,000	00	T.M. No. 5
	(*e*) On application made at the same time under section 42 of the Act to register one certification trade mark for specifications of goods not all included in one class: In respect of every class . . . . . Total fee in no case to exceed K5,000.00 for any number of classes.	1,000	00	T.M. No. 5
2.	On a request to the Registrar to state grounds of decision relating to an application to register a trade mark and materials used	2,000	00	T.M. No. 4
3.	(*a*) On notice of opposition before the Registrar under section 23 of the Act for each application opposed, by opponent	1,000	00	T.M. No. 6
	(*b*) On lodging a counter-statement in answer to a notice of opposition under section 23 of the Act for each application opposed, by the applicant; or in answer to an application under any of the sections 31, 32, 37 and 38 of the Act by the proprietor in respect of each trade mark; or in answer to a notice of opposition under section 40 or 41 of the Act, for each application or conversion opposed, by the proprietor	1,000	00	T.M. No. 7

		Matter or Proceeding	*Amount* K	t	*Corres-ponding Form No*
	(*c*)	On the hearing of each opposition under section 23 of the Act by applicant and by opponent respectively; or on the hearing of an application under any of the sections 31, 32, 37 and 38 of the Act, by applicant and by proprietor, respectively; or on the hearing of an opposition under section 40 or 41 of the Act by proprietor and opponent, respectively	1,500	00	T.M. No. 8
	(*d*)	On notice of opposition before the Registrar under paragraph 2 of the First Schedule of the Act for each application opposed by the opponent	1,000	00	T.M. No. 37
	(*e*)	On lodging a counter-statement in answer to a notice of opposition before the Registrar under paragraph 2 of the First Schedule of the Act for each application opposed, by the Applicant	1,000	00	T.M. No. 38
	(*f*)	On the hearing of each opposition before the Registrar under paragraph 2 of the First Schedule of the Act by applicant and by opponent, respectively	1,000	00	T.M. No. 39
4.	(*a*)	For one registration of a trade mark not otherwise charged for a specification of goods included in one class	1,000	00	T.M. No. 10
	(*b*)	For one registration of a series of trade marks under section 26 (2) of the Act for a specification of goods included in one class:—			
		For the first mark	1,000	00	T.M. No. 10
		And for every other mark of the series	200	00	—
	(*c*)	For registration under section 42 of the Act of a certification trade mark for a specification of goods included in one class	1,000	00	T.M. No. 10
	(*d*)	For registration upon application made at the same time of one certification trade mark under section 42 of the Act, for specifications of goods not all included in one class:			
		In respect of every class	1,000	00	T.M. No. 10
		Total fee in no case to exceed K2,000.00 for any number of classes.			
	(*e*)	For one registration of a defensive trade mark for a specification of goods included in one class	1,000	00	T.M. No. 10
5.	(*a*)	Upon each addition to the registered entry of a trade mark of a note that the mark is associated with a newly registered mark	500	00	T.M. No. 10
	(*b*)	On an application to dissolve the association between registered trade marks	500	00	T.M. No. 20
6.	(*a*)	On application to register a registered user of a registered trade mark in respect of goods within the specification thereof	1,000	00	T.M. No. 50
	(*b*)	On application to register the same registered user of more than one registered trade mark of the same respective specifications thereof and subject to the same conditions and restrictions in each case:—			
		(i) for the first mark	1,500	00	T.M. No. 50
		(ii) and for every other mark of the proprietor included in the application and statement of case	500	00	—

		Matter or Proceeding	*Amount* K	t	*Corres-ponding Form No*
	(*c*)	On application by the proprietor of a single trade mark, under section 33 (8) (*a*) of the Act, to vary the entry of a registered user thereof	700	00	T.M. No. 51
	(*d*)	On application by the proprietor of more than one trade mark, under section 33 (8) (*a*) of the Act, to vary the entries of a registered user thereof:—			
		(i) for the first mark.	600	00	T.M. No. 51
		(ii) for every other mark of the proprietor for which the same user is registered, included in the application . .	200	00	—
	(*e*)	On application by the proprietor or registered user of a single trade mark; under section 33 (8) (*b*) of the Act for cancellation of the entry of a registered user thereof . .	500	00	T.M. No. 52
	(*f*)	On application by the proprietor or registered user of more than one trade mark, under section 33 (8) (*b*) of the Act, for cancellation of the entries of a registered user thereof:			
		(i) for the first mark.	500	00	T.M. No. 52
		(ii) for every other mark of the proprietor for which the same user is registered, included in the application . .	300	00	—
	(*g*)	On application, under section 33 (8) (*c*) of the Act, to cancel the entry of a registered user of single trade mark. . . .	500	00	T.M. No. 53
	(*h*)	On application, under section 33 (8) (*c*) of the Act, to cancel the entries of a registered user of more than one trade mark			
		(i) for the first mark.	500	00	T.M. No. 53
		(ii) for every other mark of the same proprietor for which the same user is registered, included in the application . .	300	00	—
	(i)	On notice, under section 33 (9) of the Act and regulation 101, of intention to intervene in one proceeding for the variation or cancellation of entries of a registered user of trade marks	500	00	T.M. No. 54
7.	(*a*)	On request to enter in the register and advertise a certificate of validity, under section 58 and regulation 88:			
		(i) for the first registration certificate	500	00	T.M. No. 49
		(ii) for every other registration certificate in the same certificate	300	00	—
	(*b*)	On application, under section 34 (3) of the Act and regulation 76, for extension of time for registering a corporation as subsequent proprietor of trade marks on one assignment:			
		(i) not exceeding two months	1,000	00	T.M. No. 15
		(ii) not exceeding four months	1,500	00	T.M. No. 15
		(iii) not exceeding six months	2,000	00	T.M. No. 15
8.	(*a*)	On application for certificate of the Registrar, under section 27 (5) of the Act and regulation 79:			
		(i) for the first mark proposed to be assigned	1,500	00	T.M. No. 40
		(ii) for every other mark of the same proprietor included in that assignment.	1,000	00	—
	(*b*)	On application for approval of the Registrar, under section 27 (6) and regulation 79—			

		Matter or Proceeding	*Amount* K	t	*Corresponding Form No*
		(i) for the first mark.	1,500	00	T.M. No. 41
		(ii) for every other mark of the same proprietor included in the same transfer	1,000	00	—
	(*c*)	On application for directions by the Registrar for advertisement of assignment of trade marks in use, without good will—			
		(i) for one mark assigned	1,500	00	T.M. No. 42
		(ii) for every other mark assigned with the same devolution of title	1,000	00	—
	(*d*)	On application for extension of time for applying for directions for advertisement of assignment of trade marks in use, without goodwill, in respect of one devolution of title—			
		(i) not exceeding one month	1,000	00	T.M. No. 43
		(ii) not exceeding two months	1,500	00	T.M. No. 43
		(iii) not exceeding three months	2,000	00	T.M. No. 43
9.	(*a*)	On application to register a subsequent proprietor in a case of assignment or transmission of a single trade mark—			
		(i) if made within six months from the date of acquisition of proprietorship.	1,000	00	T.M. No. 16 or No. 17
		(ii) if made after the expiration of six months but within twelve months from the date of acquisition of proprietorship	1,500	00	T.M. No. 16 or No. 17
		(iii) if made after the expiration of twelve months from the date of acquisition of proprietorship.	2,000	00	T.M. No. 16 or No. 17
	(*b*)	On application to register a subsequent proprietor of more than one trade mark standing in the same name, the devolution of title being the same in each case—			
		(i) if made within six months from the date of acquisition of proprietorship	1,000	00	T.M. No. 16 or No. 17
		(ii) for every mark	500	00	—
		(iii) if made after expiration of six months but within twelve months from the date of acquisition of proprietorship—			
		(A) for the first mark	1,000	00	T.M. No. 16 or No. 17
		(B) for every other first mark	300	00	—
10.	(*a*)	On application to change the name or description of a proprietor or a registered user of a single trade where there has been no change in the proprietorship or in the identity of the user	500	00	T.M. No. 22
	(*b*)	On application to change the name or description of a proprietor or a registered user of more than one trade mark standing in the same name, where there has been no change in the proprietorship or in the identity of the user, the change being the same in each case—			
		(i) for the first mark	500	00	T.M. No. 22
		(ii) for every other mark	300	00	—
11.	(*a*)	For renewal of registration of a trade mark at expiration of last registration	3,000	00	T.M. No. 12

Matter or Proceeding	*Amount* K	t	*Corresponding Form No*
(*b*) For renewal of registration of a series of trade marks under section 26 (2) of the Act, at expiration of last registration—			
(i) for the first mark of the series.	3,000	00	T.M. No. 12
(ii) and for every other mark of the series	1,000	00	—
(*c*) For renewal of registrations of the same certification trade mark with the same date for goods in more than one class—			
(i) in respect of every class.	3,000	00	T.M. No. 12
(ii) total fee in no case to exceed K10,000.00 for any number of classes:			
(*d*) Additional fee under regulation 67.	2,000	00	T.M. No. 13
(*e*) Restoration fee under regulation 68.	3,000	00	T.M. No. 14
12. (*a*) On an application to the Registrar for leave to add to or alter a single registered mark	1,000	00	T.M. No. 26
(*b*) On an application to the Registrar for leave to add to or alter more than one registered trade mark of the same proprietor, being identical marks, the addition or alteration to be made, in each case, being the same—			
(i) for the first mark	1,000	00	T.M. No. 26
(ii) for every other mark	500	00	—
(*c*) On notice of opposition to application for leave to add to or alter registered trade marks, for each application opposed	1,000	00	T.M. No. 47
13. For altering one or more entries of the trade or business address or address for service of a registered proprietor or a registered user of a trade mark where the address in each case is the same and is altered in the same way (unless exempted from fee under regulation 81)—			
(i) for the first entry	1,000	00	T.M. No. 19
(ii) and for every other entry	500	00	—
14. For every entry in the register of a rectification thereof or an alteration therein, not otherwise charged	500	00	T.M. No. 48
15. For cancelling the entry or part of the entry of a trade mark upon the register on the application of the registered proprietor of the trade mark	500	00	T.M. No. 23 or No. 24
16. (*a*) On application, under any of the sections 31, 32, 37 and 38 of the Act, for rectification of the register or removal of trade mark from the register	1,000	00	T.M. No. 27
(*b*) On application for leave to intervene in proceedings under any of the sections 31, 32, 37 and 38 of the Act, for rectification of the register or removal of trade mark from the register	1,000	00	T.M. No. 28
17. (*a*) On application for correction of one clerical error or effecting one amendment in one document before registration of any matter	500	00	T.M. No. 21
(*b*) On application for correction of clerical errors after registration of any matter, in respect of each trade mark. .	500	00	T.M. No. 21

Matter or Proceeding	*Amount* K	t	*Corresponding Form No*
18. On request by registered proprietor of a trade mark for entry of disclaimer or memorandum in the register	500	00	T.M. No. 25
19. (*a*) On application to the Registrar under regulation 93 to expunge or vary the registration of a certification trade mark or to vary the deposited regulations of a certification trade mark or certification trade marks of the same registered proprietor where the regulations are substantially the same	1,000	00	T.M. No. 36
(*b*) On request to the Registrar by the registered proprietor of a certification trade mark to permit alteration of the deposited regulations thereof—			
(i) for the regulation of one such registration	500	00	T.M. No. 35
(ii) the same or substantially the same regulations of each other registration proposed to be altered in the same way and included in the same request. . . .	400	00	—
20. (*a*) On application by registered proprietor under regulation 6, for conversion of specification.	500	00	T.M. No. 45
(*b*) On notice of opposition to a conversion of the specification or specifications of a registered trade mark or registered trade marks—			
(i) for one trademark	1,000	00	T.M. No. 46
(ii) for every other trade mark of the same proprietor having the same specification	500	00	—
21. Notice to the Registrar that notice of appeal has been filed with the Registrar of the Tribunal.	500	00	T.M. No. 31
22. For a search under regulation 113 in respect of one class—			
(*a*) without application for the Registrar's advice under regulation 20	500	00	T.M. No. 29
(*b*) with application for the Registrar's advice under regulation 20	600	00	T.M. No. 29
23. On request for the Registrar's preliminary advice under regulation 20, for each trade mark submitted in respect of one class	200	00	T.M. No. 30
24. For certificate of the Registrar (other than certificate under section 24 (2) of the Act) relating to the registration of a trade mark	400	00	T.M. No. 32
25. For certificate of the Registrar (other than certificate under section 24 (2) of the Act relating to the registration of a series of trade marks under section 26 (2) of the Act	500	00	T.M. No. 32
26. (*a*) For permission to search in files and documents— for each file searched	500	00	—
(*b*) for permission to search indices including terminal index . .	500	00	—
(*c*) for permission to search register per volume	500	00	—
27. For permission to search amongst the classified representations or scrap books of trade marks, per volume	500	00	—
28 For typewritten copy of any document, for every 100 words . .	200	00	—
29. For photographic copy of documents or drawings per sheet . .	200	00	—

Matter or Proceeding	*Amount* K	t	*Corresponding Form No.*
30. For certifying office copies, M.S.S. or photographic or printed matter—			
(i) under seal	500	00	
(ii) other	300	00	
31. On every authorization of an agent	500	00	T.M. No. 1

For the purposes of these fees (except as specially provided above) every mark of a series under section 26 of the Act, or any preceding similar enactment, shall be deemed to be a mark separately registered.

SECOND SCHEDULE reg. 4

Forms

Form		*Corresponding Fee No.*
T.M. No. 1	Authorization	31
T.M. No. 2	Application for registration of trade mark	1 or 1 (*b*)
T.M. No. 3	Additional representation of trade mark	—
T.M. No. 4	Request for statement of grounds of decision	2

Form		*Corresponding Fee No.*
T.M. No. 5	Application for registration of trade mark under section 42 of the Act	1 (*d*), 1 (*e*)
T.M. No. 6	Opposition before Registrar to application for registration of trade mark	3
T.M. No. 7	Counter-statement to opposition before Registrar to application for registration of trade mark, or in certain other proceedings	3 (*a*)
T.M. No. 8	Application for hearing in opposition matter, or in rectification, removal or certain other proceedings	3 (*b*)
T.M. No. 9	Notice of non-completion of registration of trade mark	—
T.M. No. 10	For registration of a trade mark	4, 4 (*a*), 4 (*b*), 4 (*c*), 4 (*d*) and 5
T.M. No. 11	Certificate of registration of trade mark under section 24(2) of the Act	—
T.M. No. 12	Renewal of registration of trade mark	11, 11 (*a*) 11 (*b*)
T.M. No. 13	Additional fee to accompany renewal fee within one month after advertisement of non-payment of renewal fee	11 (*c*)
T.M. No. 14	Restoration of trade mark where removed for non-payment of fee	11 (*d*)
T.M. No. 15	Application under section 34(3) of the Act and regulation 76 for extension of time to request entry of corporation-assignee as subsequent proprietor	7 (*a*)
T.M. No. 16	Request by registered proprietor and transferee to register transferee as subsequent proprietor	9, 9 (*a*)
T.M. No. 17	Request to enter name of subsequent proprietor	9, 9 (*a*)
T.M. No. 18	Declaration in support of request to enter name of subsequent proprietor	—
T.M. No. 19	Application for alteration of trade or business address or address for service on register	13, or nil
T.M. No. 20	Application to Registrar to dissolve association between registered trade marks	5 (*a*)
T.M. No. 21	Correction of clerical error in the register or amendment of application	17
T.M. No. 22	Request to enter change of name or description of registered proprietor or user	10, 10 (*a*)
T.M. No. 23	Application by registered proprietor for cancellation of entry of trade mark in register	15
T.M. No. 24	Request by registered proprietor to strike out goods from those for which a trade mark is registered	15
T.M. No. 25	Request by registered proprietor to enter disclaimer or memorandum in register	18
T.M. No. 26	Application to add to or alter a registered trade mark	12, 12 (*a*)

Form		*Corresponding Fee No.*
T.M. No. 27	Application for rectification of register or removal of trade mark from register	16
T.M. No. 28	Application for leave to intervene in proceedings for rectification of register, or removal of trade mark from register	16 (*a*)
T.M. No. 29	Request for search	22
T.M. No. 30	Request for Registrar's advice on registrability . .	23
T.M. No. 31	Notice to Registrar that notice of appeal has been filed with the registrar of the Tribunal . .	—
T.M. No. 32	Request for general certificate	24, 25
T.M. No. 33	Application for registration of defensive trade mark	1 (*c*)
T.M. No. 34	Regulations governing the use of certification trade mark (title page)	—
T.M. No. 35	Request for alteration of certification trade mark regulations and consent of Registrar	19 (*a*)
T.M. No. 36	Application to the Registrar under regulation 93, respecting a certification trade mark.	19
T.M. No. 37	Opposition before the Registrar concerning certification trade mark	3 (*c*)
T.M. No. 38	Counter-statement to opposition before Registrar concerning certification trade mark	3 (*d*)
T.M. No. 39	Application for hearing in opposition before Registrar concerning certification trade mark . .	3 (*e*)
T.M. No. 40	Application for certificate of Registrar upon proposed assignment of registered trade mark	8
T.M. No. 41	Application for approval by Registrar of transfer of trade mark (section 27(6) of the Act)	8 (*a*)
T.M. No. 42	Application for directions for advertisement of assignment of trade mark in use, without goodwill	8 (*b*)
T.M. No. 43	Application for extension of time for applying for directions for advertisement of assignment of trade mark in use, without goodwill	8 (*c*)
T.M. No. 44	General form of advertisement	—
T.M. No. 45	Application by registered proprietor for conversion of specification of a registration	20
T.M. No. 46	Opposition to Registrar's proposal for conversion	20 (*a*)
T.M. No. 47	Opposition to application to add to or alter a trade mark	12 (*b*)
T.M. No. 48	Notice of order of a High Court or Tribunal for alteration of register	14
T.M. No. 49	Request for entry and advertisement of certificate of validity	7
T.M. No. 50	Application for registration of registered user . .	6, 6 (*a*)

Form		*Corresponding Fee No.*
T.M. No. 51	Application by registered proprietor for variation of entry of registered user	6 (*b*), 6 (*c*)
T.M. No. 52	Application by registered proprietor or user for cancellation of entry of registered user	6 (*d*), 6 (*e*)
T.M. No. 53	Application under section 33(8)(c) of the Act for cancellation of entry of registered user	6 (*f*), 6 (*g*)
T.M. No. 54	Notice of intention to intervene in registered user proceedings	6 (*h*)

MALAŴI

Form T.M. No. 1.

reg. 14.

TRADE MARKS ACT

(Cap. 49:01)

Fee: 1s.

Form of Authorization of Agent

I/We (1) .....
.....
have appointed (2).....
of .....
to act as my/our agent for (3).....
..... No. .....
and request that all notices, requisitions and communications relating thereto may be sent to such agent at the above address.

I/We hereby revoke all previous authorizations, if any, in respect of the same matter or proceeding.

I/We hereby declare that I am/we are a (4) .....

Dated this ..... day of ....., 19 .....

(5) .....

Address (6) .....

(To be struck out if the person appointing the agent desires his own address to be treated as the address for service after registration.)

I/We also authorize the said (2) .....
..... to complete the entry of an address for service as part of any registration obtained under the above authorization.

Dated this ..... day of ....., 19 .....

(5).....

Address (6) .....

The Registrar,
The Trade Marks Office,
P.O. Box 100,
Blantyre.

(1) The full names of all the partners in a firm must be inserted, and the kind and country of incorporation of bodies corporate stated

(2) Here insert name and address of agent

(3) Here state the particular matter or proceeding for which the agent is appointed, giving the reference number. if known

(4) Here state nationality

(5) To be signed by person appointing the agent

(6) Here insert the full trade or business address of the person appointing the agent

L.R.O. 1/1968

MALAŴI.

Form T.M. No. 2.

s. 22 or 26.
reg. 21.

TRADE MARKS ACT

(Cap. 49:01)

Fee: 1 or 1(*b*).

Application for Registration of Trade Mark in Part of the Register*

One representation to be fixed within this space and six others to be pinned on to and sent with Form T.M. No. 3.

Application is hereby made for registration in Part* of the register of the accompanying trade mark in Class .....
in respect of (1) .....
.....
.....
.....
in the name of (2).....whose trade or business address is (3) .....
trading as (4) .....
by whom it is (5) proposed to be used and who claim(s) to be the proprietor(s) thereof.

6).....
.....
.....
.....

Dated this ..... day of ....., 19.....
(7).....

My/Our address for service in Malaŵi
.....
.....
.....

The Registrar,
The Trade Marks Office,
P.O. Box 100,
Blantyre.

* Write distinctly here "A" or "B" according to the registration desired.

(1) Here specify the goods. Only goods included in one and the same class should be specified. A separate application form is required for each class.

(2) Here insert legibly the full name, description and nationality of the individual, firm, or body corporate making the application. The names of all partners in a firm must be given in full. If the applicant is a body corporate, the kind and country of incorporation should be stated.

(3) Here insert the full trade or business address of the applicant.

(4) Here insert the trading style (if any).

(5) If the mark is already in use, strike out the words:"proposed to be" and insert "being".

(6) For additional matter if required; otherwise to be left blank.
(7) Signature.

MALAŴI

Form T.M. No. 3.

s. 22 and 26 (2).
reg. 24, 29, 30 and 38

TRADE MARKS ACT

(Cap. 49:01)

Additional Representation of Trade Mark to Accompany Application for Registration

Six representations of the trade mark must be pinned within this space. They must correspond *exactly* in all respects with the representations affixed to the application form.

MALAŴI

Form T.M. No. 4.

s. 22 (4)
reg. 35.

TRADE MARKS ACT

(Cap. 49:01)

Fee: £1.

Request for Statement of Grounds of Decision

(1) Insert words and number identifying the matter or proceeding.

IN THE MATTER OF (1) ..... the Registrar is hereby requested to state in writing the grounds of his decision, dated the ..... day of ....., 19..... after the hearing on the ..... day of ....., 19 ..... and the materials used by him in arriving at the decision.

Dated this ..... day of ..... 19 .....

(2) Signature.

(2) .....

My/Our address for service in Malaŵi

.....
.....
.....

If the Registrar has made any requirement to which the applicant does not object, the applicant shall comply therewith before the Registrar issues the grounds of his decision.

The Registrar,
The Trade Marks Office,
P.O. Box 100,
Blantyre.

MALAŴI

Form T.M. No. 5.

s. 42.

reg. 21 and 38.

TRADE MARKS ACT

(Cap. 49:01)

Fee: 1 (*d*) or 1 (*e*).

Application for Registration of Certification Trade Mark

One representation to be fixed within this space, and six others to be pinned on to and sent with form T.M. No. 3.

Application is hereby made for Registration in Part C of the Register of the accompanying certification trade mark in Class .....
in respect of (1) .....
of (2) .....
whose address is (3) .....
.....

Dated this ..... day of ....., 19 .....
(4).....

My/Our address for service in Malaŵi

.....
.....
.....

The Registrar,
The Trade Marks Office,
P.O. Box 100,
Blantyre.

(1) Here specify the goods. Only goods in one and the same class should be specified. A separate application form is required for each class.

(2) State the full name, description and nationality of the applicant. If the applicant is a body corporate, the kind and country of incorporation should be stated.

(3) Here insert the full address of the applicant.

(4) Signature.

[Subsidiary] *Trade Marks Regulations*

MALAŴI

Form T.M. No. 6.

s. 23.

reg. 46.

TRADE MARKS ACT

(Cap. 49:01)

Fee: £2.

Notice of Opposition to Application for Registration of a Trade Mark

(To be lodged in duplicate)

IN THE MATTER OF an application No .....
by ..... of .....
.....

I/WE (1) ..... hereby give notice of my/our intention to oppose the registration of the trade mark advertised under the above number for Class ..... in the *Gazette* of the ..... day of ..... 19 ....., No. ....., page .....

(1) State full name and address.

The grounds of opposition are as follows:
.....
.....
.....
(2).....

(2) If registration is opposed on the ground that the mark resembles marks already on the register, the numbers of those marks and of the *Gazettes* in which they have been advertised are to be set out

Dated this ..... day of ....., 19.....
(3).....

(3) Signature.

My/Our address for service in Malaŵi
.....
.....
.....

The Registrar,
The Trade Marks Office,
P.O. Box 100,
Blantyre.

MALAŴI

Form T.M. No. 7.

s. 23, 31, 32, 37, 38, 40 or 41.

reg. 7, 48, 83 or 90.

TRADE MARKS ACT

(Cap. 49:01)

Fee: £1.

Form of Counter-statement

(To be lodged in duplicate)

IN THE MATTER OF an opposition No. ....., to Application No. .....

I/We, ... applicant(s) for registration of the above trade mark, hereby give notice that the following are the grounds on which I/we rely as supporting my/our application:—

.....
.....
.....

I/We admit the following allegations in the notice of opposition:—

.....
.....
.....

Dated this ..... day of ..... 19 ..... (1) Signature.

(1).....

My/Our address for service in Malaŵi

.....
.....
.....

The Registrar,
The Trade Marks Office,
P.O. Box 100,
Blantyre.

Form T.M. No. 8 s. 23, 31, 32, 37, 38, 40 or 41.
reg. 7, 54, 83 or 90.

TRADE MARKS ACT

(Cap. 49:01)

Fee. £2.

Notice to the Registrar of Attendance at Hearing

I/We (1).....
of .....
hereby give notice that the hearing of the arguments in the case of:

(1) State full name and address

(2) Strike out words here that are not applicable, so as to state one of the cases (*a*) to (*e*) only

(2) (*a*) opposition No. ....., to application for registration of a trade mark No. .....;

(*b*) application that the entry in the register in respect of trade mark No. ..... may be removed;

(*e*) ..... may be amended by alteration of or addition to the trade mark;

(*d*) ..... may be amended by a conversion of the specification of goods;

(*c*) ..... may be amended otherwise than by any change in the mark or of the specification on conversion.

which, by the Registrar's Notice to me/us dated the ..... day of ....., 19 ....., is fixed for ..... a.m. or p.m. at the Trade Marks Office on the day of ..... 19 ....., will be attended by me/us or by some person on my/our behalf.

Dated this ..... day of ....., 19 .....

(3) Signature. (3) .....

(4) Address. (4) .....

The Registrar,
The Trade Marks Office,
P.O. Box 100,
Blantyre.

MALAŴI

Form T.M. No. 9 s. 24 (3).

reg. 59.

TRADE MARKS ACT

(Cap. 49:01)

Notice of Non-completion of Registration

No. .....

The Registrar, as required by section 24 (3) of the Trade Marks Act, and regulation 59 of the Trade Marks Regulations, has to point out that the registration of the trade mark, in respect of which your application numbered as above was made on the ..... day of .....,19 ....., has not been completed by reason of your default. Unless it is completed within fourteen days from this date the application will be treated as abandoned.

Dated this ..... day of ....., 19 .....

To .....

.....

.....

.....

The Trade Marks Office,
P.O. Box 100,
Blantyre.

MALAŴI

Form T.M. No. 10. s. 24, 26 or 42.

reg. 60

TRADE MARKS ACT

(Cap. 49:01)

Fee: 4, 4 (*a*), 4 (*b*), 4 (*c*), or 4 (*d*) and 5.

Fee for Registration of a Trade Mark

(If the Applicant has furnished a printing block for advertisement, this form must be accompanied by one unmounted representation of the mark, exactly as shown on the form of application.)

The prescribed fee for the registration of the trade mark No ..... in class ..... is hereby transmitted.

Dated this ..... day of ....., 19 .....

(1) Signature (1) .....

The Registrar,
The Trade Marks Office,
P.O. Box 100,
Blantyre.

MALAŴI

Form T.M. No. 11.

TRADE MARKS ACT

(Cap. 49:01)

Certificate of Registration

The Trade Mark shown above has been registered in Part .... of the Register in the name of .....
.....
.....
.....
.....
in Class ..... under No.....
as of the ....., 19 ....., in respect of .....
.....

Sealed at my direction, this ..... day of ....., 19 .....

.....

Registrar

The Trade Marks Office,
P.O. Box 100,
Blantyre.

Registration is for 7 years from the date first abovementioned, and may then be renewed, and also at the expiration of each period of 14 years thereafter.

NOTE.—Upon any change of ownership of this trade mark, or change in address, application should AT ONCE be made to the Registrar to register the change.

MALAŴI

Form T.M. No. 12. s. 25.

reg. 64.

TRADE MARKS ACT

(Cap. 49:01)

Fee: 11,11 (*a*) or 11 (*b*).

**Renewal of Registration of Trade Mark*

I/We(1) .....
of .....
hereby leave the prescribed fee of ..... for renewal of registration of the trade mark No ..... in class .....†, which I am/we are directed by the proprietor of the trade mark, that is to say by (2) ..... to pay.

Dated this ..... day of .....,19 .....

(3) .....

.....

The statement on the back of this form must be filled in and signed.

The Trade Marks Office,
P.O. Box 100,
Blantyre.

*This form will be returned if it is filed more than six months before the expiration of the last registration.

(1) State the name and address of the person leaving the fee.† If the fee is left by the proprietor himself, this passage should be struck out.

(2) If the fee is not left by the proprietor him self, insert his name and address here.

(3) Signature and address of the person leaving the fee.

(4) If the request is signed by the registered proprietor strike out here the words "the registered proprietor" and substitute the word "me".

(5) Signature.

(To appear on the back of the form)

The Registrar is requested to send notice of renewal of the registration to (4) the registered proprietor at the following address:—

.....

.....

(5) .....

Dated this ..... day of .....,19 .....

MALAŴI

Form T.M. No. 13. s. 25.
reg. 67.

TRADE MARKS ACT

(Cap. 49:01)

Fee: £1.

Additional Fee of £1 to accompany Renewal Fee (form T.M. No. 12) within one month after advertisement of Non-payment of Renewal Fee

(To accompany form T.M. No. 12)

In pursuance of the notices issued by the Registrar, I/We hereby transmit the additional fee of £1 (along with form T.M. No. 12) for the renewal of the registration of the trade mark No. ..... in Class .....

Dated this ..... day of ....., 19.....

(1)..... (1) Signature.

(2) ..... (2) Address

NOTE.—This form must be signed by the person(s) signing the form T.M. No. 12 which accompanies it.

The Registrar,
The Trade Marks Office,
P.O. Box 100,
Blantyre.

MALAŴI

Form T.M. No. 14. s. 25.
reg. 68.

TRADE MARKS ACT

(Cap. 49:01)

Fee: £2.

Restoration of Trade Mark removed from Register for Non-payment of Fee

(To accompany form T.M. No. 12)

In pursuance of the notices issued by the Registrar, I/we hereby transmit the additional fee of £2 (along with form T.M. No. 12) for the restoration to the register of the trade mark No. ..... in Class.....

Dated this ..... day of ....., 19.....

(1) Signature. (1) .....

(2) Address. (2) .....

NOTE.—This form must be signed by the person(s) signing the form T.M. No. 12 which accompanies it.

The Registrar,
The Trade Marks Office,
P.O. Box 100,
Blantyre.

MALAŴI

Form T.M. No. 15. s. 34 (3).
reg. 76.

TRADE MARKS ACT

(Cap. 49:01)

Fee: 7 (*a*).

Application for extension of time, in accordance with section 34 (3), *for the registration of the name of a Corporation as Subsequent Proprietor of a Trade Mark in the Register*

Application is hereby made by (1) .... of ..... for an extension of time by (2) ..... months of the period of six months allowed by section 34 (3) regulation 76 for registering its name, by force of one assignment, as proprietor of the following trade mark(s) registered upon application(s) conforming to section 34 (1)(*a*):—

(1) Here state the name and address of the applicant

(2) Here insert "two" or "four" or "six".

(3) Registration Number	Class
.....	.....
.....	.....
.....	.....

(3) Additional numbers may be given in a signed schedule on the back of the form.

Dated this ..... day of ....., 19..... .

(4) Signature.

(4) .....

The Registrar,
The Trade Marks Office,
P.O. Box 100,
Blantyre.

[Subsidiary] *Trade Marks Regulations*

MALAŴI

Form T.M. No. 16. s. 27.
reg. 71.

TRADE MARKS ACT

(Cap. 49:01)

Fee: 9 or 9 (*a*).

Joint Request to the Registrar by Registered Proprietor and Transferee to register the Transferee as Subsequent Proprietor of Trade Marks upon the same devolution of title

We (1) .....
.....
and (2) .....
.....
hereby request, under regulation 71, that the name of (3) .....
carrying on business as (4) .....
at (5) .....
may be entered in the register of trade marks as proprietor of the trade mark(s) No ..... * in Class ..... as from the (6) .....
(7) .....
.....
.....
(8) The trade mark at the time of the assignment was (8) (not) used in a business in the goods in question, and the assignment (8) took/ did not take place on or after the commencement of the Act otherwise than in connexion with the goodwill of a business in the goods, (8) and there is sent herewith a copy of the Registrar's direction to advertise the assignment, a copy of each of the advertisements complying therewith, and a statement of the dates of issue of any publication containing them.

Dated this..... day of ....., 19.....

(9) .....

(10) .....

Our address for service in Malaŵi—

.....

....

....

The Registrar,
The Trade Marks Office,
P.O. Box 100,
Blantyre.

(1) State name and address of registered proprietor, or other assignor or transmitter.
(2) State full name, trade address and nationality of transferee.
(3) Name of transferee.
(4) Description of transferee.
*Additional numbers may be given in a signed schedule on the back of the form.
(5) Trade or business address of transferee.
(6) Date of acquisition of proprietorship.
(7) Full particulars of the instrument of assignment or transmission, if any, or statement of case.
(8) Strike out any words not applicable (*see* regulation 76).
(9) Signature of assignor or transmitter.
(10) Signature of transferee.

MALAŴI

Form T.M. No. 17. s. 27.
reg. 72.

TRADE MARKS ACT

(Cap. 49:01)

Fee: 9 or 9 (*a*).

Request to the Registrar to register a Subsequent Proprietor of a Trade Mark or Trade Marks upon the same devolution of title

I/We (1) .....
.....
.....
hereby request that my/our names ..... may be entered in the register of trade marks as proprietor(s) of trade mark(s) No ..... * in Class .....
as from the (2) .....

I am/we are entitled to the trade mark(s) by virtue of (3) .....
.....
.....
.....

(4) The trade mark at the time of the assignment was (4) not/used in a business in the goods in question, and the assignment (4) took/ did not take place on or after the commencement of the Act otherwise than in connexion with the goodwill of a business in the goods,(4) and there is sent herewith a copy of the Registrar's direction to advertise the assignment.

Dated this ..... day of ....., 19.....

(5) .....

My/Our address for service in Malaŵi—

.....

.....

.....

(1) Here state full name, trade or business address, nationality and description.

* Additional numbers may be given in a signed schedule on the back of the form.

(2) Date of acquisition of proprietorship.

(3) Here insert full particulars of the instrument of assignment or transmission, if any, or statement of case.

(4) Strike out any words not applicable (see regulation 76).

(5) Signature.

NOTE.—The instrument under which the transferee claims should preferably accompany this form.

The Registrar,
The Trade Marks Office,
P.O. Box 100,
Blantyre.

MALAŴI

Form T.M. No. 18. s. 27.
reg. 74.

TRADE MARKS ACT

(Cap. 49:01)

Affidavit / Solemn Declaration (only to be furnished when requested by Registrar) in support of Statement of Case accompanying form T.M. No. 16 *or No.* 17

I, ...
of .....
do hereby make* oath and say/solemnly and sincerely declare that the particulars set out in the statement of case, exhibit marked ....., and left by me in connexion with my request to be registered as subsequent proprietor of the trade mark No ..... in Class ..... are true and comprise every material fact and document affecting the present proprietorship of the trade mark.

* Strike out whichever is inapplicable.

And I make this affidavit/solemn declaration conscientiously believing the same to be true.....

(1) .....

(1)To be signed here by the person making the affidavit/ solemn declaration.

Declared at ....., this ..... day of....., 19.....

Before me (2) .....

.....

(2) Signature and title of authority before whom the affidavit/ solemn declaration is made.

The Registrar,
The Trade Marks Office,
P.O. Box 100,
Blantyre.

MALAŴI

Form T.M. No. 19. s. 39.
reg. 81, 85 and 102.

TRADE MARKS ACT

(Cap. 49:01)

Fee: 13 or nil.

Request for Alteration of Trade or Business Address or Address for Service in Register of Trade Marks

IN THE MATTER OF the trade mark(s) No. .....* registered in Class .....

I/We .....
of .....
being the registered (1) proprietor(s)/user(s) of the trade mark(s) numbered as above, request that my/our trade address in the register of trade marks be altered to .....
.....

Dated this ..... day of ..... 19 .....

(2) .....

* Additional numbers may be given in a signed schedule on the back of the form.

* Strike out one of these words.

(2) Signature.

NOTE.—A registered proprietor or registered user whose address has been altered by a public authority, so that the changed address designates the same premises as before, may make also the statement below in order to avoid payment of the fee.

The Registrar,
The Trade Marks Office,
P.O. Box 100,
Blantyre.

(For use only in case of an address changed by a public authority, without change of premises)

The change of address, for the entry of which application is made above, was ordered by (3) .....
.....
.....
on the ..... day of ....., 19 .....

(4).....

(3) Here insert the name of the public authority ordering the change, and the date thereof.

(4) Signature of the registered proprietor or user, as the case may be.

NOTE.—If the above statement be made, and a certificate of the alteration given by the named authority be supplied, the Registrar, if satisfied as to the facts of the case, will not require the payment of a fee with Form T.M. No. 19 (See regulation 81.)

MALAŴI

Form T.M. No. 20. s. 28 (5).
reg. 61.

TRADE MARKS ACT

(Cap. 49:01)

Fee: £2.

Application to the Registrar under section 28 (5) *to dissolve the Association between a registered Trade Mark and (an)other registered Trade Mark(s)*

(To be accompanied by a Statement of Case)

IN THE MATTER of a trade mark No. ..... registered in Class .....

I/We .....
.....
being the registered proprietor(s) of the above-numbered trade mark, hereby apply that the association of this trade mark with the following trade mark(s) registered in my/our name:—

No. ..... registered in Class .....

No. ..... registered in Class .....
may be dissolved and the register amended accordingly.

The grounds for this application are set forth in the accompanying statement of case.

Dated this ..... day of ....., 19 .....

(1) .....

(1) Signature

The Registrar,
The Trade Marks Office,
P.O. Box 100,
Blantyre.

MALAŴI

Form T.M. No. 21. s. 39.
reg. 85 and 102.

TRADE MARKS ACT

(Cap. 49:01)

Fee: 10s.

Request for Correction of Clerical Error; or for Permission to amend Application

IN THE MATTER OF (1) .....
I/We, being the .....
hereby request that .....
.....
.....
.....
.....
.....
.....
.....
.....
.....
.....
.....

(1) Here insert words and reference number identifying the entry or application.

Dated this ..... day of ..... , 19 .....

(2) ..... (2) Signature.

The Registrar,
The Trade Marks Office,
P.O. Box 100,
Blantyre.

[Subsidiary] *Trade Marks Regulations*

MALAŴI

Form T.M. No. 22. s. 39.
reg. 85 and 102.

TRADE MARKS ACT

(Cap. 49:01)

Fee: 10 and 10 (*a*).

Request to enter Change of Name or Description of Registered Proprietor (or Registered User) of Trade Mark upon the Register

(1) Here state present name, address and description of registered proprietor or registered user.

I/We (1).....
.....
.....
.....
hereby request that my/our name(s) and description(s) may be entered in the register of trade marks as (2) proprietor(s)/registered user(s) of the trade mark(s) No .....* registered in Class .....

(2) Strike out the words that are not applicable.

I am/we are entitled to (2) the said trade mark/use the said trade mark as registered user(s).

* Additional numbers may be given on a signed schedule on the back of the form.

There has been no change in the (2) actual proprietorship/identity of the registered user(s) of the said trade mark, but (3).....
.....
.....
.....

(3) Here state the circumstances under which the change of name took place.

The entry at present standing in the register gives my/our name(s) and description(s) as follows .....

Dated this ..... day of ..... , 19 .....

(4) Signature.

(4) .....

The Registrar,
The Trade Marks Office,
P.O. Box 100,
Blantyre.

MALAŴI

Form T.M. No. 23. s. 39 (1).
reg. 85 and 86.

TRADE MARKS ACT

(Cap. 49:01)

Fee: 10s.

Application by Registered Proprietor of Trade Mark for the Cancellation of Entry thereof in Register

IN THE MATTER OF trade mark No. .....
Class .....

Name of registered proprietor .....
.....

Trade or business address .....
Description .....

Application is hereby made by .....
of (1) ..... (or by .....
a member of the firm of .....
of (1) .....
on behalf of my said firm) .....
that the entry in the register of trade marks of the trade mark No .....
in Class ..... may be cancelled.

Dated this ..... day of ....., 19 .....

(2) .....

The Registrar,
The Trade Marks Office,
P.O. Box 100,
Blantyre.

(1) Here insert the trade or business address and descrip-tion of the applicant(s) or his/their firm.

(2) Signature.

[Subsidiary] *Trade Marks Regulations*

MALAŴI

Form T.M. No. 24. s. 39 (1).
reg. 85 and 86.

TRADE MARKS ACT

(Cap. 49:01)

Fee: 10s.

Application by Registered Proprietor of Trade Mark to the Registrar to strike out Goods from those for which the Trade Mark is Registered

IN THE MATTER OF trade mark No. ..... registered in Class .....

Name of registered proprietor .....
.....

Trade or business address.....

Description .....

Application is hereby made by .....
of (1) ..... (or by.....
a member of the firm of .....
of (1) .....
on behalf of my said firm) .....
.....
for the striking out of (2) .....
from the goods for which the trade mark No..... is registered in Class .....

(1) Here insert the trade or business address and description of the applicant(s) or his/their firm.

(2) Here designate the goods to struck out.

Dated this ..... day of ....., 19 .....

(3) Signature.

(3).....

The Registrar,
The Trade Marks Office,
P.O. Box 100,
Blantyre.

MALAŴI

Form T.M. No. 25 s. 39 (1).
reg. 85,86 and 87.

TRADE MARKS ACT

(Cap. 49:01)

Fee: 10s.

Request by Registered Proprietor of a Trade Mark that a Disclaimer or Memorandum relating thereto may be Registered

Request is hereby made by (1) ..... of ..... for the addition to the entry in the register in connexion with trade mark No ..... in Class..... of the following ..... namely:.....
.....
.....
.....

(1) Here insert the name, trade or business address and description of the registered proprietor.

Dated this ..... day of ..... , 19 .....

(2).....

(2) Signature.

The Registrar,
The Trade Marks Office,
P.O. Box 100,
Blantyre.

[Subsidiary] *Trade Marks Regulations*

MALAŴI

Form T.M. No. 26. s. 40.
reg. 89 to 92.

TRADE MARKS ACT

(Cap. 49:01)

Fee: 12 or 12 (*a*).

Application by Registered Proprietor under section 40 *for an addition to or alteration of a Registered Trade Mark*

IN THE MATTER OF the trade mark No. ..... in Class .....

(1) Here insert name, trade or business address and description.

Application is hereby made by (1) .... of ..... being the registered proprietor(s) of the registered trade mark numbered as above, that the Registrar shall add to it or alter it in the following particulars, that is to say— (2) .....
.....
.....

(2) Here fill in full particulars.

Six copies of the mark as it will appear when so altered are filed herewith.

Dated this ..... day of ....., 19 .....

(3) Signature.

(3) .....

The Registrar,
The Trade Marks Office,
P.O. Box 100,
Blantyre.

MALAŴI

Form T.M. No. 27. s. 31, 32, 37 or 38.
reg. 82.

TRADE MARKS ACT

(Cap. 49:01)

Fee: £3.

Application to the Registrar for the Rectification of the Register or the Removal of a Trade Mark from the Register

(To be lodged in duplicate and accompanied by a statement of case in duplicate)

IN THE MATTER OF the trade mark No. ..... registered in the name of ..... in Class .....

I/We (1) .....
.....
hereby apply that the entry in the register in respect of the above mentioned trade mark may be removed (2) rectified in the following manner .....
.....

(1) Here state full name and address.

(2) Strikes out the word(s) that is/are not applicable.

The grounds of my/our application are as follows:—
.....
.....
.....

No action concerning the trade mark in question is pending in the Tribunal or the High Court.....

(3) Signature.

Dated this ..... day of ....., 19 .....

(3) .....

My/Our address for service in Malaŵi—

.....

.....

.....

The Registrar,
The Trade Marks Office,
P.O. Box 100,
Blantyre.

[Subsidiary] *Trade Marks Regulations*

MALAŴI

Form T.M. No. 28. s. 31, 32, 37 or 38.
reg. 84.

TRADE MARKS ACT

(Cap. 49:01)

Fee: £2.

Application to the Registrar for Leave to intervene in Proceedings relating to the Rectification of the Register or the Removal of a Trade Mark from the Register

IN THE MATTER OF trade mark No. ..... registered in the name of ..... in Class .....

(1) Here state full name and address

I/We (1) .....
.....
hereby apply for leave to intervene in the proceedings relating to the rectification or removal of the entry in the register in respect of the above-mentioned trade mark.

My/Our interest in the trade mark is .....
.....
.....
.....
.....

Dated this ..... day of ..... , 19 .....

(2) .....

(2) Signature.

My/Our address for service in Malaŵi—

.....
.....
.....

The Registrar,
The Trade Marks Office,
P.O. Box 100,
Blantyre.

MALAŴI

Form T.M. No. 29. s. 43.

reg. 20 and 113.

TRADE MARKS ACT

(Cap. 49:01)

Fee: 22.

1.—*Request for Search*

The registrar is hereby requested under regulation 113 to search in Class*..... in respect of (1) .....
.....
to ascertain whether any trade marks are on record which resemble the trade mark sent herewith in duplicate (each representation being mounted on a half-sheet of foolscap).

Dated this ..... day of ....., 19 .....

(2) .....

(3) .....

2.—*Request for Registrar's Preliminary Advice as to Distinctiveness or Capability of Distinguishing, by a person proposing to apply for the Registration of a Trade Mark*

I/We (4) .....
.....
.....
hereby request the Registrar to advise me /us whether the trade mark referred to above appears to him *prima facie* to be inherently adapted to distinguish or inherently capable of distinguishing my/our goods above-mentioned so as to comply with the requirement of section 14 or 15 respectively of the Act for registrability in Part A or Part B of the register.

Dated this ..... day of ....., 19 .....

(5) .....

My/Our address for service in Malaŵi:

.....
.....
.....

NOTE.—Request 1 MUST be completed. The fee on the form is 15s. if request 2 is not completed, of £1 if both requests are completed.

The Registrar,
The Trade Marks Office,
P.O. Box 100,
Blantyre.

* The Registrar's direction should be obtained if the class is not known.

(1)Here specify the goods (in the class stated) in respect of which the search is to be made.
(2) Signature.
(3) Address.

(4) Here state name and address in full.

(5) Signature.

[Subsidiary] *Trade Marks Regulations*

MALAŴI

Form T.M. No. 30. reg. 20.

TRADE MARKS ACT

(Cap. 49:01)

Fee: 5s.

Request for Registrar's Preliminary Advice as to Distinctiveness or Capability of Distinguishing, by a person proposing to apply for the Registration of a trade Mark

(1) Here state name and address in full. * To be sent in duplicate.

I/We (1) .....
.....
.....
hereby request the Registrar to advise me/us whether the trade mark shown on the accompanying foolscap sheet* appears to him *prima facie* to be inherently adapted to distinguish or inherently capable of distinguishing my/our goods so as to comply with the requirements of section 14 or 15, respectively of the Act for registrability in Part A or Part B of the register.

(2) Here specify the goods. Only goods included in one and the same class should be specified. A separate form of request is required for each class.

The goods in respect of which I/we propose to apply for registration of the said trade mark are (2) .....
.....
.....
..... in Class (3) .....

Dated this ..... day of ..... , 19 .....

(4).....

My/Our address for service in Malaŵi:

.....
.....
.....

(3) Here insert the number of the class (if known). In case of doubt, the Registrar's direction may be obtained.

NOTE.—If and when an application is made to register the trade mark, objection may arise if identical or resembling trade marks are found on the register. A prior notification of any such relevant marks (if any are to be found) can be obtained by a request to the Registrar made on Form T.M. No. 29.

(4) Signature.

The Registrar,
The Trade Marks Office,
P.O. Box 100,
Blantyre.

MALAŴI

Form T.M. No. 31. s. 51.
reg. 115.

TRADE MARKS ACT

(Cap. 49:01)

Fee: Nil.

Notice to Registrar that Notice of Appeal has been filed with registrar of Tribunal

I/We (1) .....
.....
hereby give you notice that I/we have this day filed with the registrar of the Tribunal a notice of appeal, a copy of which is attached hereto, together with a copy of my/our grounds of appeal.

(1) Here state full name and address.

Dated this ..... day of ....., 19 .....

(2) ..... (2) Signature.

The Registrar,
The Trade Marks Office,
P.O. Box 100,
Blantyre.

[Subsidiary] *Trade Marks Regulations*

MALAŴI

Form T.M. No. 32. s. 45.
reg. 111.

TRADE MARKS ACT

(Cap. 49:01)

Fee: 24 or 25.

Request for General Certificate of the Registrar (including Certificate of Registration of a Trade Mark)

* These words may be varied to suit other cases.

IN THE MATTER OF* the trade mark No. ..... registered in Class .....*

(1) Here set out the particulars which the Registrar is requested to certify.

I/We ..... of ..... hereby request the Registrar to furnish me/us with (2) his certificate that (1) ..... (2) a certificate of registration of the trade mark (2) for use in obtaining registration abroad.

(2) Strike out words that are not applicable.

Dated this ..... day of ..... , 19.....

(3) Signature.

(3) .....

The Registrar,
The Trade Marks Office,
P.O. Box 100,
Blantyre.

Trade Marks Regulations **[Subsidiary]**

MALAŴI

Form T.M. No. 33. s. 32.
reg. 21 and 37.

TRADE MARKS ACT

Fee: £3.

(Cap. 49:01)

Application under section 32 of the Act for Registration of an Invented Word (or Words) in Part D of the Register as Defensive Trade Mark

One representation to be fixed within this space, and six others to be pinned on to and sent with form T.M. No. 3.

Application is hereby made for registration in Part D of the register of the above mark as a defensive trade mark in Class ..... in respect of (1) .....
.....
.....
in the name of (2) .....
.....
of (3) .....
.....
trading as (4) .....
who is/are the proprietor(s) of the same trade mark registered in Class (5)....., in respect of ..... under No. .....

The particulars of the facts on which I/we rely in support of this application are set forth in the accompanying statement of case (6).

Dated this ..... day of ..... 19.....

(7) .....

My/Our address for service in Malaŵi:

.....
.....
.....

The Registrar,
The Trade Marks Office,
P.O. Box 100,
Blantyre.

(1) Here specify the goods. Only goods included in one and the same class should be specified.

(2) Here insert legibly the full name, description and nationality of the individual, firm or body corporate making the application. The names of all partners in a firm must be given in full. If the applicant is a body corporate, the kind and country of incorporation should be stated.

(3) Here insert the full trade or business address of the applicant.

(4) Here insert the trading style (if any).

(5) Here insert particulars of the applicant's registration of the trade mark.

(6) To be furnished in duplicate.

(7) Signature.

[Subsidiary] *Trade Marks Regulations*

MALAŴI

Form T.M. No. 34. s. 42.
reg. 40.

TRADE MARKS ACT

(Cap. 49:01)

(1) Here specify the goods of the registration.

Regulations for governing the use of Certification Trade Mark No. .....
in Class in respect of (1) .....
.....

(For Official Use)

Advertised in *Gazette* No. .....
at page ..... on the ..... day of .....

(Date of application and registration ..... 19 .....)

MALAŴI

Form T.M. No. 35. s. 42.

reg. 94.

TRADE MARKS ACT

(Cap. 49:01)

Fee: 19 (*a*).

Request for the consent of the Registrar to Alteration of the deposited Regulations for Use of a Certification Trade Mark

Application is hereby made by (1) .... who is/are the proprietors(s) of the certification trade mark(s) No. (2) .....*registered in Class .....* in respect of (3) .....* that the deposited regulations for governing the use of the mark may be altered in the manner shown in red in the accompanying copies (4) of the regulations as proposed to be altered, and for the consent of the Registrar to such alteration.

Dated this ..... day of ....., 19 .....

(5) .....

The Registrar,
The Trade Marks Office,
P.O. Box 100,
Blantyre.

*Additional numbers and specifications may be given in a signed Schedule on the back of the form.

(1) Here state name and address of the proprietor(s) as registered.

(2) If the same regulations apply to more than one registration, the numbers of all the registrations should be stated.

(3) Here state the specifications of the respective registrations.

(4) Three copies should be furnished.

(5) Signature.

[Subsidiary] *Trade Marks Regulations*

MALAŴI

Form T.M. No. 36. s. 42.
reg. 93.

TRADE MARKS ACT

(Cap. 49:01)

Fee: £3.

Application to the Registrar for an order Expunging or Varying an entry in the Register relating to a Certification Trade Mark or Varying the deposited Regulations

(To be lodged in duplicate together with a statement of case in duplicate)

IN THE MATTER OF certification trade mark No..... registered in the name of ..... in Class .....

(1) Here state full name and address.

I/We (1) .....
.....
being (an) aggrieved person(s), hereby apply for an order of the Registrar that:

(2) Strike out either paragraph that is not applicable.

1. (2) The entry in the register in respect of the above-mentioned trade mark may be expunged/varied in the following manner .....
.....
.....
.....

2. (2) The deposited regulations governing the use of the abovementioned trade mark may be varied in the following manner.....
.....
.....

The grounds of my/our application are as follows:

.....
.....

Dated this ..... day of .....,19 .....

(3).....

(3) Signature.

My/Our address for service in Malaŵi:

.....
.....
.....

The Registrar,
The Trade Marks Office,
P.O. Box 100,
Blantyre.

MALAŴI

Form T.M. No. 37. s. 42.
reg. 58.

TRADE MARKS ACT

(Cap. 49:01)

Fee: £2.

Notice to the Registrar, under Paragraph 2 of the Schedule to the Act, of Opposition to an Application for Registration of a Certification Trade Mark

(To be lodged in duplicate)

IN THE MATTER OF an application No .....
by .....
of .....

I/We (1) .....
.....
hereby give notice of my/our intention to oppose the registration of the certification trade mark advertised under the above number for Class ..... in the *Gazette* of the ..... day of ....., 19 ....., No ..... page .....

(1) Here state full name and address

The grounds of opposition are as follows (2): .....
.....
.....
.....
.....
.....

(2) The grounds should be limited to matters referred to in paragraph 1 (5) of the Schedule to the Act

Dated this ..... day of ....., 19 .....

(3).....

(3) Signature

My/Our address for service in Malaŵi:

.....
.....
.....

The Registrar,
The Trade Marks Office,
P.O. Box 100,
Blantyre.

[Subsidiary] *Trade Marks Regulations*

MALAŴI

Form T.M. No. 38. s. 42.
reg. 58.

TRADE MARKS ACT

(Cap. 49:01)

Fee: £1.

Form of Counter-statement in reply to the Notice to the Registrar, under Paragraph 2 of the First Schedule to the Act, of Opposition to an Application for registration of a Certification Trade Mark

(To be lodged in duplicate)

IN THE MATTER OF an opposition, No. ....., to application for registration of a certification trade mark No. .....

I/We ..... the applicant(s) for registration of the abovenumbered certification trade mark, hereby give notice that the following are the grounds on which I/we rely as supporting my/our application: .....
.....
.....
.....
.....

I/We admit the following allegations in the notice of opposition: .....
.....

Dated this ..... day of ....., 19 .....

(1) .....

(1) Signature

My/Our address for service in Malaŵi:

.....
.....
.....

The Registrar,
The Trade Marks Office,
P.O. Box 100,
Blantyre.

MALAŴI

Form T.M. No. 39. s. 42.
reg. 58.

TRADE MARKS ACT

(Cap. 49:01)

Fee: £2.

Hearing by the Registrar of an Opposition under Paragraph 2 *of the First Schedule to the Act, to an Application for Registration of a Certification Trade Mark*

Notice of Attendance at Hearing

I/We (1) ..... of .... hereby give notice that the hearing by the Registrar of the arguments in the case of opposition No ..... to application No. ..... for the registration of a certification trade mark, which, by the Registrar's notice to me/us dated the ..... day of ..... , 19 ..... is fixed for ..... a.m. or p.m. at the Trade Marks Office on the ..... day of ....., 19 ....., will be attended by me/us or by some person on my/our behalf.

(1) Here state name and address.

Dated this ..... day of ....., 19 .....

(2).....

(2) Signature.

My/Our address for service in Malaŵi:

.....
.....
.....

The Registrar,
The Trade Marks Office,
P.O. Box 100,
Blantyre.

MALAŴI

From T.M. No. 40. s. 27 (5).
reg. 79.

TRADE MARKS ACT

(Cap. 49:01)

Fee: 8.

Application for Certificate of the Registrar under section 27 (5) *of the Act with reference to a proposed Assignment of a Registered Trade Mark*

(To be accompanied by a statement of case in duplicate and a copy of the proposed assignment.)

IN THE MATTER OF trade mark(s) No.(s) .....
registered in the name of .....
in Class(es) .....

(1) Here insert the name and trade or business address of the registered proprietor.

Application is hereby made by (1) .....
.....
.....
of .....
being the registered proprietor(s) of the above-numbered registered trade mark(s), for the Registrar's certificate under section 27 (5) of the Act with reference to a proposed assignment of the registered trade mark(s) No.(s) ..... to (2) .....
.....
of .....
.....
in circumstances that are stated fully in the accompanying statement of case

(2) Here insert the name and trade or business address of the proposed assignee.

Dated this ..... day of ....., 19 .....

(3) Signature. (3) .....

The Registrar,
The Trade Marks Office,
P.O. Box 100,
Blantyre.

MALAŴI

Form T.M. No. 41. s. 27 (6).
reg. 79.

TRADE MARKS ACT

(Cap. 49:01)

Fee: 8 (*a*).

Application for the Approval by the Registrar under section 27 (6) *of the Act of a proposed assignment, or of a transmission (on or after the commencement of the Act), of a Trade Mark resulting in exclusive rights in different persons for different parts of Malaŵi*

(To be accompanied by a statement of case in duplicate and a copy of the instrument proposed for the assignment or effecting the transmission.)

IN THE MATTER OF (a) trade mark(s) *registered No.(s) ..... in Class(es) .....*, the property of .....

I. Application is hereby made by (1) .....
.....
of .....
the proprietor of the trade mark(s) shown in the accompanying statement of case (2) (registered in his name) and (2) (used by him) in respect of the following goods .....
for the approval by the Registrar of a proposed assignment of the trade mark(s) to (3) .....
of .....
.....
in respect of the following goods .....
to be sold or otherwise traded in in (4) .....
†[and to (3) .....
of .....
in respect of the following goods .....
to be sold or otherwise traded in in (4) .....]
in circumstances that are stated fully in the accompanying statement of case.

II. (5) .....
of .....
who claims that the trade mark(s) shown in the accompanying statement of case was/were, in respect of the following goods, namely .....
.....
.....
and on the (6) ..... day of ..... 19 .....,

*To be struck out in the case of unregistered trade marks.

Strike out either paragraph I or paragraph II.

(1) Insert here the name and trade or business of the proprietor.

(2) Strike out either if not applicable.

(3) Insert here the names and trade or business addresses of the proposed assignee(s).

(4) Insert the name of the place or places in Malaŵi
†Strike out the bracketed passage if not required.
(5) Insert here the name and trade or business address of the person who claims a transmission to him.
(6) Insert here the date of the transmission' which must not precede the commencement of the Act.

(7) Strike out the words that are not applicable.

(8) Insert here the name and trade or business address of the predecessor in title, if any.

(9) Insert here the name and trade or business address of the person who transmitted.

(10) Signature.

transmitted to (7) him [to (8) .... of ....(who was his predecessor in title)] by or from (9) ..... of ..... by whom the trade mark was then used in respect of the following goods, namely ..... all in circumstances that are stated fully in the accompanying statement of case, for the approval by the Registrar of the aforesaid transmission,

Dated this ..... day of ....., 19 .....

(10) .....

Assignee's address for service in Malaŵi is:—

.....

.....

.....

The Registrar,
The Trade Marks Office,
P.O. Box 100,
Blantyre.

MALAŴI

Form T.M. No. 42. s. 27 (7).
reg. 80.

TRADE MARKS ACT

(Cap. 49:01.)

Fee: 8(*b*).

Application to the Registrar under section 27 (7) *of the Act for Directions for the Advertisement of an Assignment of Trade Marks otherwise than in connexion with the good will of the business*

(To be lodged in duplicate.)

(1) Here insert the name and trade or business address of the assignee (applicant).

Application is hereby made by (1) .... of ..... for the Registrar's directions with respect to the advertisement of an assignment to him/them of the following trade marks otherwise than in connexion with the goodwill of the business in which they were used at the time of assignment,namely ....

I. Registered Trade Marks:.....

**Registration Number*	*Class*	*Goods in respect of which the mark has been used and is assigned.*

all of which are or were registered in the name of (2) .....
.....
of .....
who is the assignor;

(2) Here insert the name and trade or business address of the proprietor (assignor).

II. Unregistered trade mark (3), all being marks used in his business at the time of the assignment in respect of the goods stated below, by (2).....
.....
of .....
who is the assignor:

(3) Only those unregistered trade marks passing by the one assignment and used in the same business and for the same goods as those for which one or more of the registered marks are registered may be stated here.

**Representation of mark*	*Goods in respect of which the mark has been used and is assigned.*

The date of assignment was the ..... day of ....., 19 .....

The instrument effecting the assignment is sent herewith, together with a copy thereof.

It is suggested that advertisement shall be directed as follows, namely, in.....

*Additional marks and numbers may be given in a signed schedule on the back of the form. .....

Dated this ..... day of ....., 19 .....

(4) .....

(4) Signature.

The Registrar,
The Trade Marks Office.
P.O. Box 100,
Blantyre.

MALAŴI

Form T.M. No. 43. s. 27 (7).
reg. 80.

TRADE MARKS ACT

(Cap. 49:01)

Fee: 8 (*c*).

Application for Extension of Time in which to apply for the Registrar's Directions for the advertisement of an Assignment of Trade Marks otherwise than in connexion with the goodwill of the business

Application is hereby made by (1) .....
.....
of .....
for extension of time (2) ..... month(s) in which to apply for the Registrar's directions for the advertisement of an assignment to him/them of the following trade marks otherwise than in con-

(1)Here insert the name and trade or business address of the assignee (applicant).

(2) Here insert "one" or "two" or "three".

nexion with the goodwill of the business in which they were used at the time of assignment, namely:—

I. Registered Trade Marks:

**Registration Number* *Class* *Goods in respect of which the mark has been used and is assigned.*

all of which are or were registered in the name of (3) .....
.....
of .....
who is the assignor;

II. Unregistered trade marks, all being marks used in his business at the time of assignment and in respect of the goods stated below, by (3) .....
.....
of .....
who is the assignor:.....

(3) Here insert the name and trade or business address of the proprietor (assignor).

**Representation of mark* *Goods in respect of which the mark has been used and is assigned.*

The date of assignment was the ..... day of ....., 19 .....

*Additional marks and numbers may be given in a signed schedule on the back of the form.

Dated this ..... day of ....., 19 .....

(4) .....

My/Our address for service in Malaŵi is:—

.....
.....
.....

(4) Signature.

The Registrar,
The Trade Marks Office,
P.O. Box 100,
Blantyre.

MALAŴI

Form T.M. No. 44. s. 23 and 40.
reg. 42 and 45.

TRADE MARKS ACT
(Cap. 49:01)
General Form of Advertisement

Notice is hereby given that in terms of .....
.....
.....
.....
.....

Dated this ..... day of ....., 19.....

MALAŴI

Form T.M. No. 45. s. 41.

reg. 6.

TRADE MARKS ACT

(Cap. 49:01)

Fee: 5s.

RECLASSIFICATION

Application to the Registrar by the Proprietor of a Registered Trade Mark for the Conversion of the Specification from the Third Schedule to the Fourth Schedule of the Trade Marks Regulations

IN THE MATTER OF a trade mark No. .....registered in the name of ..... in Class ..... of the Third Schedule.

Application is hereby made by (1) .... the registered proprietor of the abovenumbered trade mark, for the conversion of the specification of the abovementioned registration (2) and the specification(s) of the registered user(s) thereunder from the Third Schedule to the Fourth Schedule of the Trade Marks Regulations.

(1) Here insert the name and trade or business address of the registered proprietor (applicant).

(2) Cancel the words underlined if there are no registered users.

The specification(s) entered in the register in accordance with the Third Schedule is/are:— ....

Application is made that the Registrar should propose the following specification(s) in accordance with the Fourth Schedule upon conversion :—.....

Class .....

Class .....

Dated this ..... day of ....., 19 .....

(3) ..... (3) Signature.

The Registrar,
The Trade Marks Office,
P.O. Box 100,
Blantyre.

[Subsidiary] *Trade Marks Regulations*

MALAŴI

Form T.M. No. 46. s. 41 (3).
reg. 7.

TRADE MARKS ACT

(Cap. 49:01)

Fee: 20(*a*).

RECLASSIFICATION

Notice of Opposition to Proposal for Conversion of Specification

(To be lodged in duplicate together with a statement, in duplicate, showing how the proposed conversion would be contrary to section 41 (2) of the Act.)

IN THE MATTER OF the*trade mark(s) No.(s) .....
registered in the name of .....
in Class ..... of the Third Schedule of the Regulations.

(1) Here state full name and address.

I/We (1) .....
.....
hereby give notice of my/our intention to oppose the proposal for the conversion of the specification(s) of the trade mark(s), advertised in the *Gazette* of the ..... day of ....., 19 .....
No ..... page .....

The grounds of opposition are as follows: .....
.....
.....

Dated this ..... day of ....., 19 .....

(2) Signature.

(2).....

My/Our address for service in Malaŵi is:—

.....
.....
.....

The Registrar,
The Trade Marks Office,
P.O. Box 100,
Blantyre.

*The numbers of more than one trade mark dealt with by the same proposal may be given provided the specifications are the same.

MALAŴI

Form T.M. No. 47. s. 40.
reg. 90.

TRADE MARKS ACT

(Cap. 49:01)

Fee: £2.

Notice of Opposition to Application under section 40 *of the Act for addition to or alteration of a Registered Trade Mark*

(To be lodged in duplicate.)

IN THE MATTER OF the trade mark No .....
registered in the name of .....
in Class .....

I/We (1) .....
.....
hereby give notice of my/our intention to oppose the addition to or alteration of the trade mark numbered and registered as above, so that it shall be in the form shown in the application advertised in the *Gazette* of the ..... day of ....., 19.....
No ..... page .....

(1) Here state full name and address

The grounds of opposition are as follows:—
.....
.....

Dated this ..... day of ....., 19 .....

(2) .....

(2) Signature.

My/Our address for service in Malaŵi is:—

.....
.....
.....

The Registrar,
The Trade Marks Office,
P.O. Box 100,
Blantyre.

[Subsidiary] *Trade Marks Regulations*

MALAŴI

Form T.M. No. 48. s. 51 and 59.
reg. 117.

TRADE MARKS ACT

(Cap. 49:01)

Fee: 10s.

Notice of Order of High Court or Tribunal for alteration or rectification of Register of Trade Marks

IN THE MATTER OF the trade mark No. ..... registered in Class ..... in the name of .....

Notice is hereby given to the Registrar that, by an order of the High Court/Tribunal made on the ..... day of ....., 19 ..... it was directed that
.....
.....
.....

A certified copy of the order of the High Court/Tribunal is enclosed herewith.

Dated this ..... day of ....., 19 .....

(1) To be signed by the person interested or his agent.

(1) .....

The Registrar,
The Trade Marks Office,
P.O. Box 100,
Blantyre.

MALAŴI

Form T.M. No. 49 s. 58.
reg. 88.

TRADE MARKS ACT

(Cap. 49:01)

Fee: 7.

Request to the Registrar for entry on the Register and advertisement of a note of a Certificate of Validity by the High Court or Tribunal

IN THE MATTER OF trade mark(s) No.(s) ..... registered in Class ..... in the name of ....

I/We (1) .... hereby request the Registrar to add to the abovenumbered entry/entries of a trade mark in the Register, and to advertise in the *Gazette* a note that in (2) .... the High Court Tribunal certified that the validity of the said registration(s) came into question and was decided in favour of the proprietor of the trade mark in the terms of the accompanying certificate of validity.

(1) Here state the name and address of the registered proprietor.

(2) Here state the nature of the proceedings, with the names of the parties to them, in which the certificate was given.

Dated this ..... day of ....., 19 .....

(3) .....

(3) Signature.

The Registrar,
The Trade Marks Office,
P.O. Box 100,
Blantyre.

[Subsidiary] *Trade Marks Regulations*

MALAŴI

Form T.M. No. 50. s. 33 (4).
reg. 96.

TRADE MARKS ACT

(Cap. 49:01)

Fee: 6 or 6 (*a*).

Application for Registration of Registered User

(To be accompanied by a statement of case giving particulars and stating as required by section 33 (4), verified by an affidavit or solemn declaration made by the proprietor, or by some person authorized to act on his behalf and approved by the Registrar.)

Application is hereby made by (1) .....
.....
.....
who is/are the registered proprietor(s) of trade mark(s) No. (s)* ..... registered in Class ..... in respect of (2)
.....
.....
that (3) .....
.....
.....
.....
of (4) .....
.....
.....
trading as (5) .....
.....
who hereby joins in the application, may be registered as a registered user of the abovenumbered registered trade mark(s) in respect of (6)
.....
.....
.....
subject to the following conditions or restrictions:—

(7) .....
.....
.....
(8) The proposed permitted use is to end on the ..... day of ....., 19 ...../ The proposed permitted use is without limit of period.

Dated this ..... day of ....., 19 .....

(9) .....

(1) Here insert full name, trade or business address and description of the registered proprietor(s). * Additional numbers may be given in a signed schedule on the back of the form.

(2) Here insert the specification in the register.

(3) Here insert the full name, description and nationality of the individual, firm or body corporate, proposed as registered user. The names of all partners in a firm must be given in full. In the case of a body corporate brief particulars of the kind and country of incorporation should be stated.

(4) Here insert the full trade or business address of the proposed registered user.

(5) Here insert trading style (if any).

(6) Here insert designation of goods (which must be comprised within the specification).

(7) Write *None* if there are no conditions or restrictions.

(8) Strike out the words that are not applicable

(9) Signature.

My/Our address for service in Malaŵi is:—

.....
.....
.....

The Registrar,
The Trade Marks Office,
P.O. Box 100,
Blantyre.

MALAŴI

Form T.M. No. 51. s. 33 (8) (*a*).
reg. 98.

TRADE MARKS ACT

(Cap. 49:01)

Fee: 6 (*b*) or 6 (*c*).

Application by the Registered Proprietor of a Trade Mark for variation of the registration of a Registered User thereof with regard to the goods or the conditions or restrictions

(To be accompanied by a statement of the grounds for the application and the written consent (if given) of the registered user.)

Application is hereby made by (1) .....
.....
.....
the proprietor of trade mark(s) No. (s)*.....
registered in Class ..... in respect of (2).....
.....
.....
that the registration of (3) .....
as a registered user of the above-numbered trade mark(s) in respect of
(4) .....
.....
.....
may be varied in the following manner: (5) .....
.....
.....

Dated this ..... day of ....., 19 .....
(6) .....

The Registrar,
The Trade Marks Office,
P.O. Box 100,
Blantyre.

(1) Here insert the full name, description and trade or business address of the registered proprietor.

*Additional numbers may be given in a signed schedule on the back of the form.

(2) Here insert the specification in the register.

(3) Here insert full name, description and trade or business address of the registered user .....

(4) Here insert the goods in respect of which the user is registered.

(5) Here state in terms the manner in which it is requested that the entry should be varied.

(6) Signature.

[Subsidiary] *Trade Marks Regulations*

MALAŴI

Form T.M. No. 52. s. 33 (8) (*b*).
reg. 99.

TRADE MARKS ACT

(Cap. 49:01)

Fee: 6 (*d*) or 6 (*e*).

Application by the Registered Proprietor of a Trade Mark or by any of the Registered Users of the Trade Mark for the cancellation of entry of a Registered User thereof

(To be accompanied by a statement of the grounds for the application.)

Application is hereby made by (1) .....
.....
.....
being (2) the registered proprietor/registered user of trade mark(s) No.(s)* .....
registered in Class ..... in respect of (3) .....
.....
.....
for cancellation of the entry under the above-mentioned registration(s) of (4) .....
.....

As a registered user of the trade mark(s) in respect of (5) .....
.....
.....
.....

The grounds for this application are set forth in the accompanying statement.

Dated this ..... day of ....., 19.....

(6) .....
.....
.....

The Registrar,
The Trade Marks Office,
P.O. Box 100,
Blantyre.

1) Here insert the full name, description and trade or business address of the applicant(s).

(2) Strike out words that are not applicable. *Additional numbers may be given in a signed schedule on the back of the form.

(3) Here insert the specification in the register.

(4) Here insert the full name, description and trade or business address of the registered user whose entry is sought to be cancelled.

(5) Here insert goods in respect of which that registered user is entered.

(6) Signature(s).

MALAŴI

Form T.M. No. 53. s. 33 (8) (*c*).
reg. 100.

TRADE MARKS ACT

(Cap. 49:01)

Fee: 6 (*f*) or 6 (*g*).

Application for cancellation of entry of a Registered User of a Trade Mark

(To be accompanied by a statement of the grounds for the application.)

IN THE MATTER OF trade mark(s) No. (s)* ..... registered in Class ..... in the name of (1) .....
.....
.....

Application is hereby made by (2) .....
.....
.....
for the cancellation of the entry under the above-mentioned registration(s) of (3) .....
.....
.....
as the registered user thereof in respect of (4) .....
.....
.....

The grounds of this application, particulars of which are given in detail in the accompanying statement of case, are (5) .....
.....
.....
.....

Dated this ..... day of ....., 19 .....

(6).....

My/Our address for service in Malaŵi is:—

.....
.....
.....

The Registrar,
The Trade Marks Office,
P.O. Box 100,
Blantyre.

*Additional numbers may be given in a signed schedule on the back of the form.

(1) Here insert the name trade or business address and description of the registered proprietor as entered in the register.

(2) Here insert the name and address of the applicant for cancellation.

(3) Here insert the name, trade or business address and description of the registered user as entered in the register.

(4) Here insert the goods in respect of which the registered, user is entered.

(5) Here insert one or more of the subparagraphs of section 33 (8) (*c*) numbered (i), (ii), (iii).

(6) Signature.

MALAŴI

Form T.M. No. 54. s. 33 (9).
reg. 101.

TRADE MARKS ACT

(Cap. 49:01)

Fee: 10s.

Notice to the Registrar under section 33 (9) *of the Act of intention to intervene in proceedings for he variation or cancellation of an entry of a Registered User of a Trade Mark*

(To be accompanied by a statement of the grounds for intervention)

IN THE MATTER OF a trade mark No. .....registered in Class ..... in the name of (1) .....
.....

(1) Insert here the name of the registered proprietor.

and

IN THE MATTER OF a registration of (2) .....
.....
thereunder as a registered user of the mark.

(2) Insert here the name and trade or business address of the registered user.

In reply to the Registrar's notification, dated the ..... day of ....., 19 ..... notice is hereby given of my intention to intervene in the proceedings in the above matter.

Dated this ..... day of ....., 19.....

(3) .....

(3) Signature.

My address for service in Malaŵi is:—

.....
.....
.....

The Registrar,
The Trade Marks Office,
P.O. Box 100,
Blantyre.

THIRD SCHEDULE

reg. 5

CLASSIFICATION OF GOODS

Class 1

Chemical substances used in manufactures, photography, or philosophical research, and anti-corrosives.

Class 2

Chemical substances used for agricultural, horticultural, veterinary, and sanitary purposes.

Class 3

Chemical substances prepared for use in medicine and pharmacy.

Class 4

Raw, or partly prepared, vegetable, animal, and mineral substances used in manufactures, not included in other Classes.

Class 5

Unwrought and partly wrought metals used in manufacture.

Class 6

Machinery of all kinds, and parts of machinery, except agricultural and horticultural machines and their parts included in Class 7.

Class 7

Agricultural and horticultural machinery, and parts of such machinery.

Class 8

Philosophical instruments, scientific instruments and apparatus for useful purposes; instruments and apparatus for teaching.

Class 9

Musical instruments.

Class 10

Horological instruments.

Class 11

Instruments, apparatus, and contrivances, not medicated, for surgical or curative purposes, or in relation to the health of men or animals.

Class 12

Cutlery and edge tools.

Class 13

Metal goods, not included in other Classes.

Class 14

Goods of precious metals and jewellery, and imitations of such goods and jewellery.

Class 15

Glass.

Class 16

Porcelain and earthenware.

Class 17

Manufactures from mineral and other substances for building or decoration.

Class 18

Engineering, architectural, and building contrivances.

Class 19

Arms, ammunition, and stores not included in Class 20.

Class 20

Explosive substances.

Class 21

Naval architectural contrivances and naval equipments not included in other Classes.

Class 22

Carriages.

Class 23

(*a*) Cotton yarn.

(*b*) Sewing cotton.

Class 24

Cotton piece goods.

Class 25

Cotton goods not included in other Classes.

Class 26

Linen and hemp yarn and thread.

Class 27

Linen and hemp piece goods.

Class 28

Linen and hemp goods not included in other Classes.

Class 29

Jute yarns and tissues, and other articles made of jute, not included in other Classes.

Class 30

Silk, spun, thrown, or sewing.

Class 31

Silk piece goods.

Class 32

Silk goods not included in other Classes.

Class 33

Yarns of wool, worsted, or hair

Class 34

Cloths and stuffs of wool, worsted, or hair.

Class 35

Woollen and worsted and hair goods, not included in other Classes.

Class 36

Carpets, floorcloth and oilcloth.

Class 37

Leather, skins unwrought and wrought, and articles made of leather not included in other Classes.

Class 38

Articles of clothing.

Class 39

Paper (except paper hangings), stationery and bookbinding.

Class 40

Goods manufactured from india-rubber and gutta-percha not included in other Classes.

Class 41

Furniture and upholstery.

Class 42

Substances used as food or as ingredients in food.

Class 43

Fermented liquors and spirits.

Class 44

Mineral and aerated waters, natural and artificial, including ginger beer.

Class 45

Tobacco, whether manufactured or unmanufactured.

Class 46

Seeds for agricultural and horticultural purposes.

Class 47

Candles, common soap, detergents; illuminating, heating, or lubricating oils; matches; and starch, blue and other preparations for laundry purposes.

Class 48

Perfumery (including toilet articles, preparations for the teeth and hair, and perfumed soap).

Class 49

Games of all kinds and sporting articles not included in other Classes.

Class 50

Miscellaneous:—

(1) Goods manufactured from ivory, bone or wood, not included in other Classes.

(2) Goods manufactured from straw or grass, not included in other Classes.

(3) Goods manufactured from animal and vegetable substances, not included in other Classes.

(4) Tobacco pipes.

(5) Umbrellas, walking sticks, brushes and combs for the hair.

(6) Furniture cream, plate powder.

(7) Tarpaulins, tents, rick-cloths, rope (jute or hemp), twine.

(8) Buttons of all kinds other than of precious metal or imitations thereof.

(9) Packing and hose.

(10) Other goods not included in the foregoing Classes.

reg. 5

FOURTH SCHEDULE

CLASSIFICATION OF GOODS

NAMES OF THE CLASSES

[Parts of an article or apparatus are, in general, classified with the actual article or apparatus, except where such parts constitute articles included in other classes.]

1. Chemical products used in industry, science, photography, agriculture, horticulture, forestry: manures (natural and artificial); fire-extinguishing compositions; tempering substances and chemical preparations for soldering;chemical substances for preserving food-stuffs; tanning substances; adhesive substances used in industry.

2. Paints, varnishes, lacquers; preservatives against rust and against deterioration of wood; colouring matters, dye stuffs; mordants; resins; metals in foil and powder form for painters and decorators.

3. Bleaching preparations and other substances for laundry use; cleaning, polishing, scouring and abrasive preparations; soaps; perfumery, essential oils, cosmetics, hair lotions; dentifrices.

4. Industrial oils and greases (other than edible oils and fats and essential oils); lubricants; dust-laying and absorbing compositions; fuels (including motor spirit) and illuminants; candles, tapers, night lights and wicks.

5. Pharmaceutical, veterinary and sanitary substances; infants' and invalids' foods; plasters, material for bandaging; material for stopping teeth, dental wax; disinfectants; preparations for killing weeds and destroying vermin.

6. Unwrought and partly wrought common metals and their alloys; anchors, anvils, bells, rolled and cast building materials; rails and other metallic materials for railway tracks; chains (except driving chains for vehicles); cables and wires (non-electric); lock-smiths' work; metallic pipes and tubes; safes and cash boxes; steel balls; horseshoes; nails and screws; other goods in non-precious metal not included in other Classes; ores.

7. Machines and machine tools; motors (except for vehicles); machine couplings and belting (except for vehicles); large-size agricultural implements; incubators.

8. Hand tools and instruments; cutlery, forks and spoons; side arms.

9. Scientific, nautical, surveying and electrical apparatus and instruments (including wireless), photographic cinematographic, optical, weighing, measuring, signalling, checking (supervision), life-saving and teaching apparatus and instruments; coin or counter-freed apparatus; talking machines; cash registers; calculating machines; fire-extinguishing apparatus.

10. Surgical, medical, dental and veterinary instruments and apparatus (including artificial limbs, eyes and teeth).

11. Installations for lighting, heating, steam generating, cooking, refrigerating, drying, ventilating, water supply and sanitary purposes.

12. Vehicles; apparatus for locomotion by land, air or water.

13. Firearms; ammunition and projectiles; explosive substances; fireworks.

14. Precious metals and their alloys and goods in precious metals or coated therewith (except cutlery, forks and spoons); jewellery, precious stones; horological and other chronometric instruments.

15. Musical instruments (other than talking machines and wireless apparatus).

16. Paper and paper articles, cardboard and cardboard articles; printed matter, newspapers and periodicals, books; bookbinding material; photographs; stationery, adhesive materials (stationery); artists' materials; paint brushes, typewriters and office requisites (other than furniture); instructional and teaching material (other than apparatus); playing cards (printers type and cliches (stereotype).

17. Gutta-percha, india-rubber, balata and substitutes, articles made from these substances and not included in other Classes; materials for packing, stopping or insulating; asbestos, mica and their products; hose pipes (non-metallic); plastics in the form of sheets, blocks, rods and tubes, being for use in manufactures.

18. Leather and imitations of leather, and articles made from these materials, and not included in other Classes; skins, hides, trunks and travelling bags; umbrellas, parasols and walking-sticks; whips, harness and saddlery.

19. Building materials, natural and artificial stone, cement, lime, mortar, plaster and gravel; pipes of earthenware or cement; road-making materials; asphalt, pitch and bitumen; portable buildings; stone monuments; chimney pots.

20. Furniture, mirrors, picture frames; articles (not included in other Classes) of wood, cork, reeds, cane, wicker, horn, bone, ivory, whalebone, shell, amber, mother-of-pearl, meerschaum, celluloid, and substitutes for all these materials.

21. Small domestic utensils and containers (not of precious metal, nor coated therewith); combs and sponges; brushes (other than paint brushes); brushmaking materials; instruments and material for cleaning purposes; steelwool; glassware, porcelain and earthenware not included in other Classes.

22. Ropes, string, nets, tents, awnings, tarpaulins, sails, sacks, padding and stuffing materials (hair, capoc, feathers, seaweed, etc.); raw fibrous textile materials.

23. Yarns, threads.

24. Tissues (piece goods); bed and table covers; textile articles not included in other Classes.

25. Clothing, including boots, shoes and slippers.

26. Lace and embroidery, ribands and braid; buttons, press buttons, hooks and eyes, pins and needles; artificial flowers.

27. Carpets, rugs, mats and matting; linoleums and other materials for covering floors; wall hangings (non-textile).

28. Games and playthings; gymnastics and sporting articles (excepting clothing); ornaments and decorations for Christmas trees.

29. Meat, fish, poultry and game; meat extracts; preserved, dried and cooked fruits and vegetables; jellies, jams; eggs, milk and other dairy products, edible oils and fats; preserves, pickles.

30. Coffee, tea, cocoa, sugar, rice, tapioca, sago, coffee substitutes; flour, and preparations made from cereals; bread, biscuits, cakes, pastry and confectionery, ices; honey, treacle; yeast, baking-powder; salt, mustard; pepper, vinegar, sauces; spices; ice.

31. Agricultural, horticultural and forestry products and grains not included in other Classes; living animals; fresh fruits and vegetables; seeds; live plants and flowers; foodstuffs for animals, malt.

32. Beer, ale and porter; mineral and aerated waters and other non-alcoholic drinks; syrups and other preparations for making beverages.

33. Wines, spirits and liqueurs.

34. Tobacco, raw or manufactured; smokers' articles; matches.

TRADE MARKS (TRIBUNAL) RULES

ARRANGEMENT OF RULES

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FIRST SCHEDULE

SECOND SCHEDULE

G.N. 261/1957(F) 5/1964(M) 166/1967

TRADE MARKS (TRIBUNAL) RULES

under s. 53

PRELIMINARY

Citation

1. These rules may be cited as the Trade Marks (Tribunal) Rules.

Interpretation

2. In these Rules, unless inconsistent with the context—

"Office" means the Trade Marks Office;

"Chairman" means the Chairman of the Tribunal;

PART I

Appeals

Entry of appeal

3.—(1) Any person who desires to appeal to the Tribunal from a decision of the Registrar of Trade Marks in any matter in which a right of appeal is given under the Act shall, within three months after the date of the decision, file with the registrar of the Tribunal a notice in form T.M.T. No. 1.

(2) A notice of appeal shall state the nature of the decision appealed against and whether the appeal is from the whole or part only and, if so, what part of the decision.

(3) The notice in form T.M.T. No. 1 shall be accompanied—

(*a*) in case the appeal concerns an application within regulations 31 to 35 inclusive of the Trade Marks Regulations by a copy of the form of application containing a representation of the mark applied for and a copy of the grounds of the decision of the Registrar of Trade Marks; Above p. 49

(*b*) in other cases by a copy of the decision of the Registrar of Trade Marks.

(4) The notice shall also be accompanied by a statement in writing of the appellant's grounds of appeal.

(5) The appellant shall send a copy of the notice of appeal to the Registrar of Trade Marks and to any person or persons who appeared or gave notice of opposition in the proceedings before the said Registrar.

(6) The appellant shall be responsible for the preparation of the record which shall be certified by the Registrar of Trade Marks as correct in terms of subrule (9).

(7) The Registrar of Trade Marks as well as the parties or their legal practitioners shall endeavour to exclude from the record all documents (more particularly such as are purely formal) that are not relevant to the subject matter of the appeal, and generally to reduce the bulk of the record as far as practicable, and to avoid the production of unnecessary exhibits, taking special care to avoid the duplication of documents and the unnecessary repetition of headings, and furnish merely the formal particulars of documents; but the documents omitted to be copied shall be enumerated in a list to be placed after the index or at the end of the record.

(8) The Registrar of Trade Marks, after consultation with the registrar of the Tribunal, shall direct the number of copies of the record to be prepared, having regard to whether or not one or more assessors are likely to sit upon the hearing of the appeal.

(9) After the completion of the preparation of the record the Registrar of Trade Marks shall certify the record to be correct and forward it to the registrar of the Tribunal together with such copies thereof as he has directed to be prepared in terms of subrule (8).

Application for an extension of time in which to appeal

4.—(1) Any application for an extension of time in which to appeal shall be in form T.M.T. No. 2 and shall state briefly the grounds upon which the application is based and where facts are alleged such facts shall be verified by affidavit.

(2) The application accompanied by supporting documents shall be delivered to the registrar of the Tribunal and copies shall forthwith be served by the appellant on the Registrar of Trade Marks and on any person or persons who appeared or gave notice of opposition in the proceedings before the said Registrar.

(3) The respondent shall be entitled to file an affidavit in reply within fourteen days from the date of service or within such longer period as may be ordered by the Tribunal, and the Tribunal may permit further affidavits to be filed. Copies of such affidavits shall be served on the Registrar of Trade Marks and on the appellant or the respondent, as the case may be, immediately after the affidavits are filed.

Notice of hearing

5.—(1) The registrar of the Tribunal shall, after obtaining directions from the Chairman, give to the Registrar of Trade Marks, to the appellant and to any opposing party not less than fourteen days' notice of the time and place appointed for the hearing of the appeal, unless the Chairman directs that shorter notice shall be given.

(2) In any case where the setting down of the hearing of an appeal has been delayed any party may apply to the registrar of the Tribunal to fix a date for the hearing, and thereupon the registrar of the Tribunal, after consulting any other party and the Chairman, shall set down the appeal for hearing after having given to the Registrar of Trade Marks and to any other party not less than fourteen days' notice of the time and place appointed for the hearing of the appeal unless the Chairman directs that shorter notice shall be given.

(3) If in the opinion of the registrar of the Tribunal an appeal is not being prosecuted timeously he may lay the matter before the Chairman for directions and, if the Chairman is satisfied that the parties do not intend or are unable to proceed with the appeal, he may direct that the parties attend before him to show cause why the appeal should not be dismissed.

Evidence

6. Subject to section 51 (7) of the Act, the evidence used on appeal to the Tribunal shall be the same as that used before the

Registrar of Trade Marks, and no further evidence shall be given except with the leave of the Tribunal.

Attendance of witnesses

7. The Tribunal may, at the request of any party, order the attendance at the hearing for the purpose of cross-examination of any person who has given evidence in the matter to which the appeal relates.

Security on appeal

8.—(1) Subject to section 65 of the Act any party may, at any time before the hearing of an appeal, apply to the Tribunal for an order that any opposing party shall, within such time, in such amount and in such manner as the Tribunal directs, give security for the payment of any costs which such opposing party may be ordered to pay.

(2) The party applying for an order for security for costs shall serve upon the opposing party a copy of the notice of the application for security at least seven days before the date of the hearing thereof.

(3) Any party ordered to give security for costs in terms of this rule may apply to the Tribunal for an order extending the time within which any security is to be given, and shall give not less than four days' notice of such application to the other party.

(4) In the event of the security not being given or being only partly given within the time directed by the Tribunal or any extension thereof, all proceedings in the appeal shall be deemed to be stayed, unless the Tribunal otherwise orders, and the appeal shall be set down for such order, whether of dismissal or otherwise, as the Tribunal may think fit.

Abandonment or failure to prosecute appeal

9.—(1) An appellant may at any time abandon his appeal by giving notice of abandonment in form T.M.T. No. 3 to the registrar of the Tribunal, and upon such notice being given the appeal shall be deemed to have been dismissed by the Tribunal.

(2) The appellant shall serve a copy of the notice of abandonment on the respondent and on the Registrar of Trade Marks.

(3) The respondent may, upon receipt of such notice, apply to the Tribunal for an order in respect of any costs incurred by him.

Frivolous or vexatious appeals

10. If it appears to the Tribunal that any notice of appeal against a decision of the Registrar of Trade Marks discloses grounds of appeal which are frivolous or vexatious and that the appeal can be determined without a hearing, the Tribunal may dismiss the appeal summarily without calling on any person to attend the hearing of such appeal.

PART II

Applications to Tribunal

Application to Tribunal under section 31, 32, 37 or 38

11.—(1) An application to the Tribunal under section 31, 32, 37 or 38 of the Act shall be made in form T.M.T. No. 4 and shall be filed with the Registrar of Trade Marks.

(2) The application shall set out fully the nature of the applicant's interest, the facts upon which he bases his case and the relief he seeks, and shall be accompanied by an affidavit verifying the facts set out therein.

(3) The applicant shall serve copies of the application and of the relevant affidavit upon the registered proprietor or registered user of the trade mark concerning which the application is made and upon any other person appearing from the register to be interested in the trade mark, and he shall advertise the application in one issue of the *Gazette* in such form as may be approved by the Registrar of Trade Marks.

(4) At any time within two months from the date of the advertisement the registered proprietor or registered user of the trade mark or any other person who wishes to oppose the application shall deliver to the Registrar of Trade Marks a counter-statement, verified by affidavit, setting out fully the grounds on which the applicant is opposed, and shall at the same time serve upon the applicant a copy of the counter-statement and of such affidavit. Proof of service shall be furnished to the satisfaction of the said Registrar.

(5) When this rule has been complied with to the extent herein required the Registrar of Trade Marks shall hand all relevant papers to the registrar of the Tribunal.

Hearing of applications

12.—(1) When the registrar of the Tribunal has received from the Registrar of Trade Marks the papers or written proceedings in relation to any application or other matter made to the Tribunal under the Act he shall, after taking directions from the Chairman, appoint a time and place for the hearing of the case, and shall give the parties at least fourteen days' notice of the appointment.

(2) After hearing the party or parties desiring to be heard or, if none of the parties desires to be heard, then without a hearing, the Tribunal shall decide the case and notify its decision to the parties.

Evidence by affidavit

13.—(1) All evidence shall be by affidavit unless otherwise directed by the Tribunal.

(2) Whenever a time is specified in this Part within which any act or thing is to be done the Registrar of Trade Marks may, on application made to him in writing, extend the time either before or after its expiration or within any extended period.

Costs

14. If the applicant notifies the Tribunal that he does not desire to proceed with an application, the Tribunal in deciding whether costs should be awarded to the other party shall consider whether proceedings might have been avoided if such other party had given reasonable notice to the applicant before the application to the Tribunal was filed.

PART III

Taxation of Costs

Registrar of Tribunal to be Taxing Officer

15. The registrar of the Tribunal shall be the Taxing Officer for the purpose of taxing a bill of costs of a legal practitioner, and in the taxation of costs shall comply with such instructions as may from time to time be given to him by the Tribunal for that purpose.

Necessary and proper costs to be allowed

16.—(1) With a view to affording the party who has been awarded an order for costs a full indemnity for all costs reasonably incurred by him in relation to his application or opposition, and to ensure that all such costs shall be borne by the party against whom such order has been awarded by the Tribunal, the Taxing Officer shall on every taxation allow all such costs, charges and expenses as appear to him to have been necessary or proper for the attainment of justice or for defending the rights of any party, but, save as against the party who incurred the same, no costs shall be allowed which appear to the Taxing Officer to have been incurred or increased through over-caution, negligence or mistake, or by payment of a special fee to counsel, unless the Tribunal otherwise orders, or special charges and expenses to witnesses or other persons or by other unusual expenses.

(2) Upon the taxation of costs the Taxing Officer may, in determining the remuneration to be allowed, have regard to the skill, labour and responsibility involved. If, on having regard to the said matters, the Taxing Officer considers that there are special reasons why costs in excess of those prescribed in the Second Schedule should be allowed, he may, in respect of any particular application made or business done, allow such costs as seem to him reasonable and shall certify his decision in writing.

(3) Any person aggrieved by the charges made by any legal practitioner in respect of work performed by him under the Act may refer such charges to the Taxing Officer for taxation.

Scale of fees to be followed

17. In the taxation of costs the Taxing Officer shall be guided, as far as the circumstances of each particular case will permit, by the scale of fees prescribed in Part IV of the Second Schedule. In addition to these charges all disbursements shall be separately charged and shall be allowed by the Taxing Officer when reasonable.

Witnesses' charges and allowances

18.—(1) Witnesses requiring payment shall be paid for their attendance and travelling in accordance with the tariff prescribed in Part II of the Second Schedule.

(2) The charges for witnesses as fixed by tariff are to be considered as payable to the witness by the party who summoned or produced him, and in the event of any such party being awarded his costs against any other party the said charges shall be allowed against such other party in the taxation of costs.

(3) Any person applying to the registrar of the Tribunal for the issue of a subpoena to compel the attendance of any witness shall by endorsement of such subpoena give an undertaking that all expenses due to the witness shall be tendered to such witness upon service of the subpoena, failing which no subpoena shall issue. If upon service of the subpoena all expenses due to such witness have not been paid the subpoena shall have no force and effect.

(4) In the taxation of costs between party and party no amount shall be allowed for any witness whether for attendance or travelling expenses unless there is produced to the Taxing Officer proof that such amount has already been paid or tendered to or claimed by such witness.

(5) In the taxation of costs between party and party nothing shall be allowed for any witness not examined unless upon proof that his evidence might reasonably have been believed to be material and necessary.

(6) If the number of witnesses summoned, or if the number of affidavits filed, is manifestly greater than is reasonably necessary, there shall only be allowed against the other party the charges for such witnesses or affidavits as were reasonably necessary.

(7) In the taxation of costs between party and party no amount shall be allowed for any witness in respect of personal attendance or travelling expenses if the fact or facts which such witness is subpoenaed to prove have, before the issue of such subpoena, been admitted to the party taking out the subpoena by the opposite party:

Provided that such admission shall be in writing, signed by the party making it or his legal practitioner acting on his behalf.

(8) When the same person is a witness in more cases than one heard on the same day, he shall be entitled to no more than one fee for personal attendance and one allowance for travelling expenses, which shall be equally divided between such cases.

Taxation of costs

19.—(1) In all cases where a notice of taxation is necessary seven days' notice together with a copy of the bill of costs shall be given by the legal practitioner on behalf of the party whose costs are to be taxed to the other party or to the legal practitioner of such other party.

(2) When the dwelling house or place of business of the party against whom costs are to be taxed is more than 36 miles from the seat of the Tribunal, the time for the service of such notice shall be extended to fourteen days.

(3) In the taxation of costs, the notice of taxation with a copy of the bill of costs may be transmitted by registered post to the party appearing in person.

Review of decision of Taxing Officer

20. Any party aggrieved by the decision of the Taxing Officer may apply to the Tribunal within four weeks after the taxation to review such taxation. Copies of the application shall be served on the Taxing Officer and on the opposite party. The application shall specify the items forming the subject of the grievance but the grounds upon which such items are sought to be reviewed shall not require to be verified by affidavit.

Reference to Chairman in chambers

21. The Taxing Officer may, without filing any formal documents, submit any point arising at a taxation for decision by the Chairman in chambers, and it shall be competent for the Taxing Officer and for the legal practitioners who appeared at the taxation to appear before the Chairman respecting such point.

PART IV

General

Adjournment of proceedings

22. The hearing of any application or other matter before the Tribunal may from time to time be adjourned upon such terms as the Tribunal thinks fit.

Place of hearing

23.—(1) Except as provided in subrule (2) every hearing before the Tribunal shall be in Blantyre.

(2) One or more of the parties may, not later than fourteen days before the date approved for the hearing, apply to the Tribunal to conduct the hearing at some other place in Malaŵi. The Tribunal may, in its discretion and subject to such conditions

as to notice and costs as it thinks fit, conduct the hearing at the place named in the application.

(3) Where an application under subrule (2) is not made by all the parties to the proceedings, the Tribunal shall not decide the application without giving the parties an opportunity to be heard.

Forms

24. The forms referred to in these Rules are those set out in the First Schedule and such forms shall be used in all cases to which they are applicable and may be modified as directed by the Chairman.

Fees

25. The Tribunal fees prescribed in Part I of the Second Schedule shall be paid to the Registrar of Trade Marks at the Office.

Endorsement of fee on document chargeable

26.—(1) Upon receipt of any document chargeable with any fee payable in terms of these rules the Registrar of Trade Marks shall endorse upon the original of such document the amount of the fee paid and the date of payment.

(2) The Registrar of Trade Marks shall refuse to accept any document in respect of which a fee is payable under these rules, unless the appropriate fee accompanies such document.

Oath to be taken by assessors appointed under section 54

27. The form of oath to be taken by assessors shall be as follows—

I, ... hereby declare that I will to the best of my ability faithfully and diligently discharge any duties as assessor without favour, fear or prejudice.

Remuneration of assessors

28. The remuneration of any assessor appointed under section 54 of the Act shall be as prescribed in Part III of the Second Schedule.

r. 24

FIRST SCHEDULE

FORMS

Form	*Matter*	*Rule*
1.	Notice of appeal to Tribunal	3 (1)
2.	Application for an extension of time in which to appeal	4 (1)
3.	Notice of abandonment of appeal	9 (1)
4.	General form of application made to the Tribunal under section 31, 32, 37 or 38 of the Act	11 (1)

Form T.M.T. No. 1. Sections 51 and 53.

Rule 3 (1)

TRADE MARKS ACT

(Cap 49:01)

Fee: £2 10s

Notice of Appeal to the Tribunal

IN THE MATTER OF an application (1) .....
.....
.....
.....
.....

and

IN THE MATTER OF an opposition by (2) .....
.....
.....

I/We (3) .....
of .....
.....
hereby give notice of appeal to the Tribunal from (4) .....
.....
.....
of the Registrar of Trade Marks, dated the ..... day of ..... 19 ..... relating to (5).....
.....
.....whereby he (6) .....
.....
.....
.....

Dated this ..... day of ....., 19.....

(7) .....
.....

My/Our address for service in Malaŵi:

.....
.....
.....

The Registrar of the Patents Tribunal,
P.O. Box 100,
Blantyre.

(1) State nature of the application or proceedings, the name of the applicant and the number of the application for registration of a trade mark

(2) State the name of the opponent(s) if the application is opposed

(3) State full name and address of appellant(s)

(4) Here insert "the decision" or "that part of the decision", as the case may be

(5) Here insert brief particulars identifying the proceedings in which the decision was given

(6) Here insert statement of the nature of the decision in question

(7) To be signed by the appellant(s) or his/their legal practitioner

Form T.M.T. No. 2. Section 55.
Rule 4 (1)

TRADE MARKS ACT

(Cap. 49:01)

Fee: Nil.

Application for an Extension of Time in which to Appeal

(1) State nature of the application or proceedings, the name of the the number of the application for registration of a trade mark

IN THE MATTER OF an application (1) .....
.....
.....
.....
.....

and

(2) State the name of the opponent(s) if the application is opposed

IN THE MATTER OF an opposition by (2) .....
.....
.....

(3) State full name and address of appellant(s)

I/We (3) .....
of .....
.....

(4) Here insert "the decision" or "that part of the decision", as the case may be

hereby make application for an order of the Tribunal extending the time in which to appeal from (4) .....
.....
.....

(5) Here state briefly the grounds upon which the application is based, and where facts are alleged such facts shall be verified by affidavit

of the Registrar of Trade Marks on the following grounds (5) .....
.....
.....
.....
.....
.....

Dated this ..... day of ....., 19.....

(6) To be signed by the appellant(s) or his/their legal practitioner

(6) .....
.....

The Registrar of the Patents Tribunal,
P.O. Box 100,
Blantyre.

Form T.M.T. No. 3.

Rule 9 (1).

TRADE MARKS ACT

(Cap. 49:01)

Fee: Nil.

Notice of Abandonment of Appeal

IN THE MATTER OF an application (1).....
.....
.....
.....
.....

and

IN THE MATTER OF an opposition by (2).....
.....
.....

you are hereby notified that the above-named appellant(s) hereby abandon(s) all further proceedings in the above matter.

Dated this ..... day of ....., 19.....

(3) .....
.....

The Registrar of the Patents Tribunal,
P.O. Box 100,
Blantyre.

(1) State nature of the application or proceedings, the name of the applicant(s) and the number of the application for registration of a trade mark

(2) State the name of the opponent(s) if the application is opposed

(3) To be signed by the appellant(s) or his/their legal practitioner

Form T.M.T. No. 4. Section 31, 32, 37 or 38.
Rule 11 (1).

TRADE MARKS ACT

(CAP. 49:01)

Fee: £2 10s.

General Form of Application made to the Tribunal under section 31, 32, 37 *or* 38 *of the Act*

IN THE MATTER OF trade mark(s) No. (s) .....
..... registered in class .....

in the name of .....

(1) State full name and address of applicant(s)

I/We (1) .....
.....
.....

(2) Here insert nature of the relief sought

hereby make application to the Tribunal for an order (2) .....
.....
.....

(3) State fully the grounds

The grounds on which I/we base this application are as follows:—

(3) .....
.....
.....
.....

(4) To be signed by the applicant(s) or his/their legal practitioner

Dated this ..... day of....., 19 .....

(4) .....
.....

My/Our address for service in Malaŵi:—

.....
.....
.....

NOTE.—The application must be accompanied by an affidavit verifying the facts upon whichthe case is based.

The Registrar,
The Trade Marks Office,
P.O. Box 100,
Blantyre.

SECOND SCHEDULE

rr. 17, 18, 25 and 28.

Part I

TRIBUNAL FEES

Item	*Matter*	*Amount* £ s. d.
1.	On every appeal to the Tribunal from decision or order of the Registrar of Trade Marks—inclusive fee	2 10 0
2.	On any application or matter made direct to the Tribunal under the Act —inclusive fee	2 10 0
3.	On every search	0 2 6
4.	For typewritten copies of judgments or records, for additional copies of orders or for copies of documents or proceedings furnished upon direction of the registrar of the Tribunal:	
	The first copy for each folio of 100 words or part thereof	0 1 6
	Additional copies for each folio or 100 words or part thereof	0 0 6
5.	On certifying any document as an office copy	0 5 0
6.	Transcript of shorthand writers' notes	Such fee as may be determined by the Minister.

Part II

SUBSISTENCE AND TRAVELLING ALLOWANCES PAYABLE TO WITNESSES

Witnesses attending the Tribunal shall be paid subsistence and travelling allowances at the rates prescribed.

Part III

REMUNERATION OF ASSESSORS

An assessor shall be remunerated at the rate of £1 1s. 0d. per hour or part thereof, but his remuneration shall not exceed £5 5s. 0d. per day, unless the Minister, with the approval of the Minister of Finance, otherwise directs. An assessor shall in addition be paid a travelling allowance at the rates prescribed.

Part IV

LEGAL PRACTITIONERS' FEES

Legal practitioners' fees in any appeal, application, opposition or other matter heard before the Tribunal shall be in accordance with the tariff of fees prescribed save as hereinafter provided—

Perusal of any necessary documents—

For the first 10 folios—per folio	2s. 6d.
For each subsequent folio	1s. 0d.

[Subsidiary] *Trade Marks (Agents' Fees) Regulations*

G.N. 287/1962(F)

TRADE MARKS (AGENTS' FEES) REGULATIONS

under s. 81

Citation

1. These Regulations may be cited as the Trade Marks (Agents' Fees) Regulations.

Fees

2. The fee (excluding disbursements) for any service specified in the first column of the Schedule and performed by a trade mark agent shall be not less than that specified opposite thereto in the second column of the Schedule.

s.2

SCHEDULE

TARIFF OF FEES PAYABLE TO TRADE MARK AGENTS

Service	*Minimum Fee* £	*s.*	*d.*
1. Ordinary trade mark applications—			
(*a*) lodging of an application in one class, including normal prosecution and obtaining certificate	6	18	0
(*b*) lodging of each additional application at the same time and in the same name	5	3	0
(*c*) preparing documents, per application	1	10	0
2. Series trade mark applications—			
(*a*) lodging of an application in one class, including normal prosecution and obtaining certificate—			
(i) for first mark in series	6	18	0
(ii) for each additional mark in series	0	5	0
(*b*) lodging of each additional application for same series of marks in each additional class—			
(i) for first mark of series	6	18	0
(ii) for each additional mark in series	0	10	0
3. Priority date; claiming priority under Convention on each ordinary or series application	1	0	0
4. Defensive trade mark applications—			
(*a*) lodging of an application, including normal prosecution and obtaining certificate	6	18	0
(*b*) lodging of each additional application for same mark in each additional class.	5	3	0
5. Certification trade mark applications—			
(*a*) lodging of an application, including normal prosecution and obtaining certificate.	6	18	0
(*b*) lodging of each additional application for same mark in each additional class.	5	3	0
(*c*) preparing and lodging request to registrar for alteration of deposited regulations.	5	0	0
(*d*) preparing and lodging of an application to Registrar for an order expunging or varying an entry in the register relating to a certification trade mark or varying the deposited regulations	5	0	0
(*e*) drawing statement of case	5	0	0
6. Registered users—			
(*a*) lodging of an application for registration of user of one trade mark . .	5	7	0
(*b*) inclusion of each additional mark of the same proprietor in the same application of the same registered user	0	10	0

Service	*Minimum Fee* £	*s.*	*d.*
6. Registered users (*Continued*)			
(*c*) drawing simple registered user agreement	6	6	0
(*d*) drawing simple declaration and statement of case	5	0	0
(*e*) lodging of an application for cancellation of registered user entry of a trade mark—			
(i) for a single mark	5	0	0
(ii) for each additional mark included in the same application of the same proprietor or registered user	0	10	0
(*f*) lodging of an application for variation of the terms of appointment of a registered user—			
(i) for a single trade mark	2	0	0
(ii) for each additional mark of the proprietor for which the same user is registered included in the same application	0	10	0
(*g*) preparation of statements to accompany (*e*) or (*f*)	5	0	0
(*h*) lodging of an application for leave to intervene in variation or cancellation of registered user	5	5	0
7. Assignments—			
(*a*) preparing deed of assignment	2	0	0
(*b*) lodging of an application for assignment of a single trade mark—			
(i) within six months from the acquisition of proprietorship . .	6	8	0
(ii) between six and twelve months from the acquisition of proprietorship	6	5	0
(iii) after twelve months from the acquisition of proprietorship . .	6	5	0
(*c*) inclusion of second mark in same application	3	0	0
(*d*) inclusion of each subsequent mark in same application	1	0	0
(*e*) lodging of an application for directions to advertise assignment of trade mark in use without goodwill—			
(i) for a single trade mark	2	0	0
(ii) for each additional mark included in the same application . .	0	5	0
(*f*) lodging of an application for extension of time to advertise assignment without goodwill as in (*e*)— for each month (up to three)	1	0	0
(*g*) preparing and lodging affidavit in support of statement of case accompanying request to register subsequent proprietor	3	0	0
(*h*) lodging of an application for extension of time for registration of company about to be formed as a subsequent proprietor— for each application (up to six months)	1	0	0
(*i*) lodging of an application for certificate of Registrar on proposed assignment of trade marks—			
(i) for a single trade mark	2	0	0
(ii) for each additional mark of the same proprietor included in the same application	0	5	0
(*j*) lodging of an application for approval by Registrar of a proposed assignment of trade marks—			
(i) for a single trade mark	2	0	0
(ii) for each additional mark of the same proprietor included in the same application	0	5	0
(*k*) drawing statement of case	4	0	0
8. Renewal—			
(*a*) making application and obtaining certificate	2	0	0
(*b*) for each subsequent application of the same proprietor lodged simultaneously with first application	1	0	0
(*c*) submitting additional fee for overdue renewal fee	1	0	0
9. Restoration—			
(*a*) lodging of an application in respect of one mark	5	0	0
(*b*) lodging of an application in respect of each additional mark in the name of same proprietor simultaneously with the first application	2	0	0
10. Prosecution; attending to official objections against trade mark applications; charges according to services rendered, upon the following bases—			
(*a*) attendances at Trade Marks Office for formal matters	1	0	0

Service	*Minimum Fee* £	*s.*	*d.*
10. Prosecution; etc. (*Continued*)			
(*b*) interviews and consultations with Trade Marks Office	1	10	0
(*c*) examining citations at Trade Marks Office	1	0	0
(*d*) obtaining uncertified print of cited device mark	1	0	0
(*e*) formal routine correspondence sent and received, per letter	0	5	0
(*f*) correspondence involving merits, per letter	0	7	6
(*g*) hearings	4	0	0
(*h*) each affidavit	2	9	0
(*i*) obtaining block, including representations	1	0	0
(*j*) obtaining representations (other than block words simpliciter) for lodging	1	0	0
(*k*) lodging application for grounds of Registrar's decision	1	5	0
(*l*) preparing and serving notice of advertisement of acceptance on one prior registrant	1	10	0
(*m*) application for extension of time (where no prescribed form)	2	0	0
11. Amendments—			
(*a*) amendment of one trade mark registration under section 40 of the Act	6	18	0
(*b*) amendment of each additional mark in the same name at the same time	3	0	0
(*c*) amendment of the same mark in an additional class, in the same name and at the same time	3	0	0
(*d*) lodging of notice of opposition to alteration of or addition to a registered trade mark	8	0	0
(*e*) lodging of an application for correction of clerical error or permission to amend an application	1	0	0
12. Miscellaneous—			
(*a*) lodging of an application for registration of memorandum in register or amendment of registered goods—			
(i) against one mark	2	10	0
(ii) against a second mark in the same name effected simultaneously	1	0	0
(iii) against each subsequent mark in the same name effected simultaneously	0	10	0
(*b*) lodging of an application for cancellation of trade marks registrations—			
(i) for first mark	2	10	0
(ii) for each additional mark in the same name effected simultaneously	1	0	0
(*c*) lodging of an application for registration of change of address or addresses for service and obtaining certificate—			
(i) against one mark	1	10	0
(ii) against each subsequent mark in the same name at the same time	0	10	0
(*d*) lodging of an application for registration of change of name and obtaining official certificate—			
(i) against one mark	2	10	0
(ii) against second mark in same name at same time	1	0	0
(iii) against each subsequent mark in the same name at same time	0	10	0
(*e*) late lodging of any document	0	10	0
(*f*) associations—			
(i) submitting association fee for each application for registration, where not included in original instructions for lodging such application	0	15	0
(ii) lodging of an application for dissolving association of marks	4	0	0
(*g*) entering disclaimers and other endorsements for each application for registration where not included in original instructions for lodging of such application	1	0	0
(*h*) certification of any document as a true copy	0	15	0
13. Searches and registrability research—			
(*a*) making and reporting search as to registrability of a single trade mark	2	0	0

Service	*Minimum Fee* £	*s.*	*d.*
13. Searches and registrability research (*Continued*)			
(*b*) making and reporting general searches, through the official indexes and additionally or alternatively in the register	2	0	0
(*c*) making and reporting, name index only	0	10	0
(*d*) lodging of a request for Registrar's *prima facie* opinion as to registrability of mark in one class of goods and reporting	1	10	0
(*e*) lodging of a request for official search for anticipations, and reporting . .	1	10	0
14. Conversion of goods—			
(*a*) converting specification of goods from Schedule III to Schedule IV of the Trade Marks Regulations in a single trade mark registration—	Above p. 49		
(i) for the first class converted	5	0	0
(ii) for each additional class converted at the same time . .	2	0	0
(*b*) lodging of an opposition to conversion of goods—			
(i) for first mark opposed	5	0	0
(ii) for each other opposed at the same time	4	0	0
15. Certificates; obtaining any certificate of Registrar (not already mentioned above)	2	0	0
16. Opposition/rectification proceedings—			
(*a*) lodging of a formal notice of opposition	8	0	0
(*b*) lodging counter-statement	8	0	0
(*c*) lodging of formal notice to Registrar of attendance at hearing in opposition or rectification proceedings or other matters concerned	1	0	0
(*d*) lodging of an application for expungement of a registered trade mark . .	8	0	0
(*e*) lodging of an application for leave to intervene in rectification proceedings	2	0	0
17. Appeals and court orders—			
(*a*) lodging of a notice to Registrar that notice of appeal has been filed with Tribunal	2	0	0
(*b*) lodging of a notice of order of High Court or Tribunal for alteration or rectification of register	1	10	0
(*c*) lodging of an application requesting registration and advertisement of certificate of validity order of High Court or Tribunal—			
(i) for first mark	2	0	0
(ii) for each additional mark at the same time	0	10	0

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G.N.
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166/1967

An Act to make provision relating to Patents for Inventions and for other purposes incidental thereto

[1ST APRIL, 1958]

PRELIMINARY

Short title

1. This Act may be cited as the Patents Act.

Interpretation

2. (1) In this Act, unless inconsistent with the context—

"applicant" includes a person in whose favour a direction has been given under section 23, or his legal representative;

"article" includes any substance or material, and any equipment, machinery or apparatus, whether affixed to land or not;

"assignee" means—

(*a*) the person who has derived his title to the invention for Malaŵi directly or indirectly from the inventor thereof or from the latter's assignee; or

(*b*) the legal representative of such person;

"Convention" means the Union Convention of Paris, dated the 20th March, 1883, for the Protection of Industrial Property, revised at Brussels on the 14th December, 1900, at Washington on the 2nd June, 1911, at The Hague on the 6th November, 1925, and at London on the 2nd June, 1934, and any revision thereof to which Malaŵi may accede in terms of section 7;

"convention application" means an application made by a person referred to in section 11 (*c*);

"convention country", in relation to any provision of this Act, means a country (including any colony, protectorate or territory subject to the authority or under the suzerainty of that country, or any territory over which a mandate or trusteeship is exercised) which the Minister has, with a view to the fulfilment of the provisions of the Convention, by notice published in the *Gazette* declared to be a convention country;

"Court" means the High Court;

"date of lodging", in relation to any document lodged under this Act, means the date on which the document is lodged or, where it is deemed by virtue of any provision of this Act to have been lodged on any different date, the date on which it is deemed to have been lodged;

"effective date" means, in relation to—

(*a*) an application which has been ante-dated or post-dated under this Act, the date to which that application has been so ante-dated or post-dated;

(*b*) an application in a convention country, the date on which the application in respect of the relevant invention was made in the convention country in question or is in terms of the laws of that country deemed to have been so made;

(*c*) any other application, the date on which that application was lodged at the Patent Office;

"examiner" means an examiner appointed under section 4;

"exclusive licence" means a licence from a patentee which confers on the licensee, or on the licensee and persons authorized by him, to the exclusion of all other persons (including the patentee), any right in respect of the patented invention, and "exclusive licensee" shall be construed accordingly;

"former patents legislation" means this Act as in force from time to time prior to the 1st January, 1964;

"Government department" means a department of the Government;

"invention" means any new and useful art (whether producing a physical effect or not), process, machine, manufacture or composition of matter which is not obvious, or any new and useful improvement thereof which is not obvious, capable of being used or applied in trade or industry and includes an alleged invention;

"inventor" means the person who actually devised the invention and includes the legal representative of an inventor, but does not include a person to whom an invention has been communicated either from within or outside Malaŵi;

"legal representative" means—

(*a*) the liquidator or receiver of a company;

(*b*) the representative recognized by law of any person who has died, become insolvent or bankrupt, assigned his estate, is an infant or a minor, or of unsound mind, or is otherwise under a disability;

"new", in relation to an invention, means, subject to sections 8, 10 and 46, that, on or before the effective date of application for a patent in respect thereof, the invention was not—

(*a*) known or used anywhere in Malaŵi by anyone other than the applicant or his agent, or the person or persons from or through whom such applicant has derived his right or title (secret knowledge or secret user otherwise than on a commercial scale being excluded);

(*b*) worked anywhere in Malaŵi otherwise than by way of reasonable technical trial or experiment by the applicant or any person or persons from or through whom such applicant has derived his right or title;

(*c*) described in a patent specification available to public inspection and bearing a date less than fifty years prior to such effective date;

(*d*) described in writing in any publication of which there was a copy anywhere in Malaŵi at the effective date of the

application, or in a publication printed and published outside Malaŵi less than fifty years prior to such date;

(*e*) claimed in any complete specification for a patent which, though not available to public inspection at the effective date of the application, was deposited pursuant to an application for a patent which is, or will be, of prior date to the date of any patent which may be granted in respect of the said invention;

"patent" means letters patent for an invention granted for Malaŵi under section 25;

"patentee" means the person for the time being entered on the register as grantee or proprietor of a patent;

"patent agent" means a person who is registered as such in terms of section 68 (1);

"patent of addition" means a patent granted under section 31;

"Patent Office" means the Patent Office established under section 3;

"patented article" means any article in respect of which a patent has been granted and is for the time being in force;

"Patents Tribunal" means the Patents Tribunal established under section 74;

"published" means made available to the public and, without prejudice to the generality of the foregoing provision, a document shall be deemed, for the purposes of this Act, to be published if it can be inspected as of right by members of the public, whether upon payment of a fee or otherwise;

"register" means the register of patents kept at the Patent Office under section 6;

"register of patent agents" means the register of patent agents kept under section 68 (1);

"Registrar" means the Registrar of Patents appointed under section 4;

"specification" means a provisional or a complete specification, as the circumstances may require, referred to in section 14;

(2) A reference in this Act to the date of a patent shall be construed as a reference to the appropriate date specified in section 27 (1).

PART I

Administration

Establishment of Patent Office

3. There shall be established under the direction of the Minister an office to be called the Patent Office.

Appointment of officers

4. The Minister shall appoint—

(*a*) a Registrar of Patents who shall exercise the powers and perform the duties assigned to the Registrar by this Act and shall be responsible for its administration;

(*b*) one or more Deputy Registrars of Patents who shall, subject to the control of the Registrar, have all the powers conferred by this Act upon the Registrar;

(*c*) such examiners and other officers as he may consider necessary for carrying out this Act.

Seal

5. There shall be a seal of the Patent Office, and impressions thereof shall be judicially noticed.

Register of patents

6. (1) There shall be kept at the Patent Office a register of patents, in which shall be entered—

(*a*) particulars of patents in force, of assignments and transmissions of patents and of licences under patents; and

(*b*) notice of all matters which are required by or under this Act to be entered in the register and of such other matters affecting the validity or proprietorship of patents as the Registrar thinks fit.

(2) All registers of patents established and kept under the former patents legislation in respect of patents originating in Malaŵi shall, under arrangements made by the Registrar and with the approval of the Minister, be incorporated with and form part of the register established under subsection (1), so, however, that such arrangements shall in no way be deemed to extend the term and effect of any patent registered in such registers beyond the term and effect provided in respect of such patent by the said legislation.

(3) Subject to this Act, the register of patents shall, at all convenient times, be open to inspection by the public, and certified copies, sealed with the seal of the Patent Office, of any entry in the register shall be given to any person requiring them on payment of the prescribed fee.

(4) The register of patents shall be *prima facie* evidence of any matters required or authorized by or under this Act to be entered therein.

(5) No notice of any trust, whether expressed, implied or constructive, shall be entered in the register, and the Registrar shall not be affected by any such notice.

PART II

International Provisions

Convention arrangements

7. If Malaŵi accedes to the Convention and any revision thereof as a country of the Union for the Protection of Industrial Property constituted thereunder, the Minister shall, by notice in the *Gazette*, declare that Malaŵi has become such a country with effect from the date stated in such notice.

Convention applications

8.—(1) Subject to section 11, any person who qualifies under Article 2 or 3 of the Convention and who has applied for protection for an invention in a convention country or his legal representative or assignee (if such assignee is also so qualified) shall be entitled to a patent for his invention under this Act in priority to other applicants if application therefor is made in terms of this Act within twelve months after the effective date of the first application for protection in the first convention country in which he made such application or, where more than one such application for protection has been made, from the effective date of the first such application, and the patent shall have the same date as the effective date of the application in such convention country but the term of the patent shall run from the date on which the complete specification is lodged at the Patent Office :

Provided that—

(*a*) nothing in this subsection shall entitle the patentee to recover damages for infringements occurring prior to the date on which his complete specification is advertised as having been accepted in Malaŵi;

(*b*) no patent granted on a convention application lodged within twelve months after the date stated in terms of section 7 shall bear a date or be effective from a date prior to the date so stated.

(2) Where, after the lodging of the first application in the first convention country in respect of any invention a subsequent application is lodged in that country in respect of the same invention such subsequent application shall be regarded as the first application in that country in respect of that invention, if at the time of the lodging thereof—

(*a*) the previous application has been withdrawn, abandoned or refused without having been open to public inspection; and

(*b*) no priority rights have been claimed by virtue of such previous application; and

(*c*) no rights are outstanding in that convention country in connexion with such previous application.

(3) An application which has been withdrawn, abandoned or refused shall not after the lodging of the subsequent application be capable of supporting a claim for priority rights under this section.

(4) Where all the rights of each of two or more applicants referred to in subsection (1) who have made application for protection of inventions in any one or more convention countries have become vested in the same person, those applications shall for the purposes of section 13 (4) be deemed to have been made by the same applicant.

(5) Where an applicant referred to in subsection (1) has applied for protection for any invention by an application which, in accordance with the law of any convention country, is equivalent to an application duly made in that convention country, he shall be deemed for the purposes of this section to have applied in that convention country.

(6) In determining for the purposes of this Act whether an invention described or claimed in a specification lodged in the Patent Office is the same as that for which protection has been applied for in a convention country, regard shall be had to the disclosure contained in the whole of the documents put forward at the same time as and in support of the application in the convention country, being documents of which copies have been lodged at the Patent Office within such time and in such manner as may be prescribed.

(7) A patent granted in Malaŵi for an invention upon an application made in terms of this section shall not be invalidated by reason only of—

(*a*) the invention having been known or used or published in Malaŵi or elsewhere on or after the effective date of the application in the convention country in which application was first made; or

(*b*) the granting in Malaŵi after the effective date of the application in the convention country of a patent of another person for the same invention:

Provided that—

(i) the effective date of the patent of such other person shall not be prior to the effective date in Malaŵi of the convention application; and

(ii) the convention patentee shall be entitled to have the patent of such other person revoked upon due application under and compliance with section 50.

(8) An application for a patent under this section shall be made in the same manner as for an application in terms of section 12, save that the application shall be accompanied by a complete specification.

(9) For the purpose of this Act, matter shall be deemed to have been disclosed in an application for protection in a convention country if it was claimed or disclosed (otherwise than by way of disclaimer or acknowledgement of prior art) in that application or in documents submitted by the applicant for protection in support of and at the same time as that application, but no account shall be taken of any disclosure by any such document unless a copy of the document is lodged at the Patent Office with the convention application or within such period as may be prescribed after the lodging of that application.

Special provisions as to vessels, aircraft and land vehicles

9.—(1) Where a vessel or aircraft registered in a convention country or a land vehicle owned by a person ordinarily resident in such a country comes into Malaŵi temporarily or accidentally only, the rights conferred by a patent for an invention shall not be deemed to be infringed by the use of the invention—

(*a*) in the body of the vessel or in the machinery, tackle, apparatus or other accessories thereof, so far as the invention is used on board the vessel and for its actual needs only; or

(*b*) in the construction or working of the aircraft or land vehicle or of the accessories thereof,

as the case may be.

(2) This section shall not affect any Act which exempts any or any class of aircraft from seizure on patent claims.

Protection of inventions communicated under international agreements

10.—(1) Subject to this section, the Minister may make regulations for securing that, where an invention has been communicated in accordance with any agreement or arrangement made by or on behalf of the Government with the government of any country for the supply or mutual exchange of information or articles—

(*a*) an application for a patent for an invention so communicated made by a person, his legal representative or assignee, entitled under section 11 to make such application, shall not be prejudiced, and a patent granted on such an application shall not be invalidated by reason only that the invention has been communicated as aforesaid or that in consequence thereof—

(i) the invention has been published, made, used, exercised or vended; or

(ii) an application for a patent has been made by any other person, or a patent has been granted on such an application;

(*b*) any application for a patent made in consequence of such a communication as aforesaid by a person who is not entitled so to do under section 11 may be refused and any patent granted on such an application may be revoked.

(2) Regulations made under subsection (1) may provide that the publication, making use, exercise or vending of an invention or the making of any application for a patent in respect thereof shall, in such circumstances and subject to such conditions or exceptions as may be prescribed by the regulations, be presumed to have been in consequence of such a communication as is mentioned in that subsection.

(3) The powers of the Minister under this section, so far as they are exercisable for the benefit of persons from whom inventions have been communicated to the Government by the government of any country, shall only be exercised if and to the extent that the Minister is satisfied that substantially equivalent provision has been or will be made under the law of that country for the benefit of persons whose inventions have been communicated by the Government to the government of that country.

(4) References in subsection (3) to the communication of an invention to or by the Government or the government of any country shall be construed as including references to the communication of the invention by or to any person authorized in that behalf by the government in question.

Patents granted under the Protocol 9 of 1985

10A.—(1) A patent granted under the Protocol shall, subject to the provisions of the Protocol, have effect in Malaŵi as if it were a patent granted under this Act.

(2) In this section, "Protocol" means the Protocol on Patents and Designs within the Framework of the Industrial Property Organization for English-speaking Africa adopted on 10th December, 1982, at Harare in the Republic of Zimbabwe to which Malaŵi acceded on 3rd January, 1984, and any revision thereof to which Malaŵi has acceded.

PART III

Applications Generally

Persons entitled to make application

11. Application for a patent for an invention may be made by any of the following persons, that is to say—

(*a*) a person cl e the inventor of the invention who owns the invention in respect of Malaŵi;

(*b*) an assignee;

(*c*) a person entitled under section 8 (1);

(*d*) the legal representative of any person who immediately before his death or disability was entitled to make such application,

and may be made by any above-mentioned person either alone or jointly with any other person.

Form of application

12.—(1) Every application for a patent shall—

(*a*) be made in the prescribed form, which must be signed by the applicant or by a person authorized to sign on his behalf;

(*b*) be lodged at the Patent Office in the prescribed manner;

(*c*) state an address for service in Malaŵi to which all notices and communications may be sent; and

(*d*) in so far as they are not already stated for the purposes of paragraph (*c*) state the full postal, residential and business addresses of the applicant.

(2) An assignee or legal representative making or joining in an application shall furnish such proof of title or authority as the Registrar may require or as may be prescribed.

(3) Every application form shall—

(*a*) state that the applicant owns the invention in respect of Malaŵi;

(*b*) give the full name of the inventor; and

(*c*) where the inventor is not the applicant or one of the applicants, contain a declaration that the applicant believes him to be the inventor.

(4) Every convention application, in addition to the requirements set out in subsection (3), shall state—

(*a*) the convention country in which such application for protection was made;

(*b*) its number;

(*c*) the effective date of such application; and

(*d*) the respect in which the applicant in the convention country and in Malaŵi qualifies under Article 2 or 3 of the Convention.

Complete and provisional specifications

13.—(1) Every application for a patent, other than a convention application, shall be accompanied by either a complete specification or a provisional specification and every convention application shall be accompanied by a complete specification.

(2) If a complete specification does not accompany an application, it shall be lodged within twelve months after the date of lodging of the application or within such further period, not exceeding three months, as the Registrar may in writing allow upon payment of the prescribed fee and if this subsection is not complied with the application shall lapse.

(3) Where two or more applications accompanied by provisional specifications have been lodged in respect of inventions

which are cognate or of which one is a modification of another, a single complete specification may, subject to this section and section 14, be lodged in pursuance of those applications, or, if more than one complete specification has been lodged, may with the leave of the Registrar be proceeded with in respect of those applications.

(4) Where applications for protection have been made in one or more convention countries in respect of two or more inventions which are cognate or of which one is a modification of another, a single convention application may, subject to sections 11 and 14, be made in respect of those inventions at any time within twelve months from the effective date of the earliest of the said applications for protection.

(5) In considering the validity of applications made in terms of subsection (3) or (4) and in determining other relevant matters under this Act the Registrar shall have regard to the effective dates of the applications or the convention applications concerned relating to the several matters claimed in the specification, and the requirements of section 12 (4) shall, in the case of any such application, apply separately to the applications for protection in respect of each of the said inventions.

(6) Where an application for a patent, not being a convention application, is accompanied by a specification purporting to be a complete specification, the Registrar may, if the applicant so requests at any time before the acceptance of the specification, direct that it shall be treated for the purposes of this Act as a provisional specification and proceed with the application accordingly.

(7) Where a complete specification has been lodged in pursuance of an application for a patent accompanied by a provisional specification or by a specification treated by virtue of a direction under subsection (6) as a provisional specification, the Registrar may, if the applicant so requests at any time before the acceptance of the complete specification, cancel the provisional specification and post-date the application to the date of lodging of the complete specification.

Contents of specification

14.—(1) Every specification shall indicate whether it is a provisional or a complete specification and shall commence with a title sufficiently indicating the subject to which the relevant invention relates.

(2) A provisional specification shall fairly describe the invention.

(3) A complete specification shall—

(*a*) fully describe the invention and the manner in which it is to be performed;

(*b*) disclose the best method of performing the invention known to the applicant at the time when the specification is lodged at the Patent Office; and

(*c*) end with a claim or claims defining the subject matter for which protection is claimed.

(4) The claim or claims of a complete specification must relate to a single invention, must be clear and succinct, and must be fairly based on the matter disclosed in the specification.

(5) Every specification shall be accompanied by drawings if required by the Registrar, and such drawings shall be deemed to be part of the specification, but if drawings which accompanied a provisional specification are sufficient for the purpose of a complete specification, it shall suffice if that complete specification refers to such drawings.

(6) Subject to the foregoing provisions of this section, a complete specification lodged at the Patent Office after a provisional specification, or with a convention application, may include claims in respect of developments of or additions to the invention which was described in the provisional specification or, as the case may be, in respect of which application for protection was made in a convention country, being developments of or additions in respect of which the applicant would be entitled to make a separate application for a patent:

Provided that an application shall, in so far as the complete specification contains claims in respect of any such developments or additions, be deemed to have been made on the date on which the complete specification was lodged at the Patent Office.

(7) Where a complete specification claims a new substance, the claim shall be construed as not extending to that substance when found in nature.

Effective date of claims of complete specification

15.—(1) Every claim of a complete specification shall have effect from the date prescribed by this section in relation to that claim and a patent shall not be invalidated by reason only of the publication or use of the invention, so far as claimed in any claim of the complete specification, on or after the effective date of that claim, or by the grant of another patent upon a specification claiming the same invention in a claim of the same or later effective date.

(2) Where the complete specification is lodged in pursuance of a single application preceded by a provisional specification or by a specification which is treated by virtue of a direction under section 13 (6) as a provisional specification, and the claim is fairly based on the matter disclosed in that specification, the effective date of that claim shall be the effective date of the application.

(3) Where the complete specification is lodged or proceeded with in pursuance of two or more applications accompanied by such specifications as are mentioned in subsection (2), and the claim is fairly based on the matter disclosed in one of those specifications, the effective date of that claim shall be the effective date of the application accompanied by that specification.

(4) Where the complete specification is lodged in pursuance of a convention application and the claim is fairly based on the matter disclosed in the application for protection in a convention country or, where the convention application is founded upon more than one such application for protection, in one of those applications, the effective date of that claim shall be the effective date of the relevant application for protection.

(5) Where, under the foregoing provisions of this section, any claim of a complete specification would, but for this provision, have two or more effective dates, the effective date of that claim shall be the earlier or earliest of those dates.

(6) In any case to which subsection (2), (3), (4) or (5) does not apply, the effective date of a claim shall be the date of lodging of the complete specification in Malaŵi.

Examination of applications and specifications

16.—(1) The Registrar shall examine every application for a patent and every specification accompanying such application or lodged at the Patent Office in pursuance of such application, in order to ascertain—

(*a*) whether such application or specification complies with the requirements of this Act;

(*b*) in the case of a complete specification lodged after a provisional specification, or of a convention application, whether the invention claimed is substantially the same as that disclosed in the provisional specification or in the application lodged in the convention country, as the case may be.

(2) Any examination or investigation required in terms of subsection (1) may, on the direction of the Registrar, be undertaken by an examiner who shall report his findings on any such examination or investigation to the Registrar.

(3) An examination or investigation required by this Act shall not be deemed to warrant the validity of any patent, and no liability shall be incurred by the Government, the Minister, the Registrar or any officer of the Patent Office by reason of or in connexion with any such examination or investigation or report or other proceeding consequent thereon.

Ante-dating and post-dating of applications

17.—(1) At any time after an application has been lodged under this Act and before acceptance of the complete specification, the Registrar may, at the request of the applicant and upon payment of the prescribed fee, direct that the application shall be post-dated to such date as may be specified in the request:

Provided that—

(*a*) no application shall be post-dated under this subsection to a date later than six months from the date on which it was actually lodged or would, but for this subsection, be deemed to have been so lodged; and

(*b*) a convention application shall not be post-dated under this subsection to a date later than the last date on which, under this Act, the application could have been made.

(2) Where an application or specification lodged under this Act is amended before acceptance of the complete specification, the Registrar may direct that the application or specification shall be post-dated to the date on which it is amended or, if it has been returned to the applicant, to the date on which it is again lodged under this Act.

(3) Where, at any time after an application or specification has been lodged at the Patent Office and before acceptance of the complete specification, a fresh application or specification is lodged in respect of any part of the subject-matter of the first-mentioned application or specification, the Registrar may direct that the fresh application or specification shall be antedated to a date not earlier than the date of lodging of the first-mentioned application or specification.

(4) An appeal shall lie from any decision of the Registrar under subsection (2) or (3).

Refusal of application in certain cases

18. (1) If it appears to the Registrar in the case of any application for a patent—

(*a*) that it is frivolous on the ground that it claims as an invention anything obviously contrary to well-established natural laws; or

(*b*) that the use of the invention in respect of which the application is made would be contrary to law or morality; or

(*c*) that it claims as an invention a substance capable of being used as food or medicine which is a mixture of known ingredients possessing only the aggregate of the known properties of the ingredients, or that it claims as an invention a process producing such a substance by mere admixture,

he may refuse the application.

(2) If it appears to the Registrar that any invention in respect of which an application for a patent is made might be used in

any manner contrary to law, he may refuse the application unless the specification is amended by the insertion of such disclaimer in respect of that use of the invention, or such other reference to the illegality thereof, as the Registrar thinks fit.

(3) An appeal shall lie from any decision of the Registrar under this section.

Powers of Registrar if specification or application defective

19.—(1) If, in the case of a complete specification lodged in pursuance of an application for a patent, which application was accompanied by a provisional specification, the result of any examination or investigation made in terms of section 16 is adverse to the applicant in regard to any matter referred to in that section, or it is found that the invention described in the complete specification is not substantially the same as that described in the provisional specification or that the complete specification includes an invention not included in the provisional specification, the Registrar may, subject to section 14 (6)—

(*a*) refuse to accept the complete specification until it has been amended to his satisfaction;

(*b*) with the consent of the applicant, cancel the provisional specification and direct that the application be post-dated to the date upon which the complete specification was lodged at the Patent Office; or

(*c*) where the complete specification includes an invention not included in the provisional specification, allow the application to be proceeded with in so far as the invention included both in the provisional and in the complete specification is concerned and allow an application for the additional invention included in the complete specification to be made and authorize the application for such additional invention, if lodged at the Patent Office within such period as he may determine, to be dated with the date on which the complete specification was lodged at the Patent Office.

(2) If in the case of a convention application it is found that the invention claimed is not substantially the same as that claimed in the application made in the convention country in question, the Registrar may, subject to section 14 (6)—

(*a*) refuse to accept the application until it has been amended to his satisfaction; or

(*b*) with the consent of the applicant, treat the application as an application in terms of section 12.

(3) If in the case of a convention application it is found that the specification lodged in Malaŵi includes an invention not included in the specification lodged in the convention country, the Registrar may allow the application to be proceeded with in so

far as the invention included in both the convention and the Malaŵi specification is concerned, and allow an application for the additional invention to be made and authorize such application, if lodged at the Patent Office within the period he may determine, to be dated with the date on which the Malaŵi specification was lodged at the Patent Office.

(4) An appeal shall lie from any decision of the Registrar under this section.

Lapsing of applications

20.—(1) If a complete specification is not accepted within eighteen months from the date of lodging of an application, the application shall lapse unless—

(*a*) an appeal has been lodged in respect of the application;

(*b*) the time within which such appeal may be lodged has not expired; or

(*c*) the delay in accepting the specification was not due to any neglect or default on the part of the applicant:

Provided that where an application is made for an extension of time for the acceptance of a complete specification, the Registrar shall, on payment of the prescribed fee, grant an extension of time to the extent applied for, but not exceeding three months.

(2) If, at the expiration of the period allowed under subsection (1), an appeal to the Patents Tribunal is pending under any of the provisions of this Act in respect of the application (or, in the case of an application for a patent of addition, either in respect of that application or in respect of the application for the patent for the main invention) or the time within which such an appeal could be brought in accordance with Part X, apart from any future extension of time thereunder, has expired, then—

(*a*) where such an appeal is pending, or is brought within the time aforesaid or before the expiration of any extension of that time granted, in the case of the first extension, on an application made within that time or, in the case of a subsequent extension on an application made before the expiration of the last previous extension, the said period shall be extended until such date as the Patents Tribunal may determine;

(*b*) where no such appeal is pending or is so brought, the said period shall continue until the end of the time aforesaid, or, if any extension of that time is granted as aforesaid, until the expiration of the extension or the last extension so granted.

Acceptance and publication of complete specification

21.—(1) Subject to section 20, the complete specification may be accepted by the Registrar at any time after the applicant has complied with the requirements imposed upon him by this Act:

Provided that the applicant may give notice to the Registrar requesting him to postpone acceptance until such date, not being later than eighteen months from the date of lodging of the application, as may be specified in the notice and the Registrar may postpone acceptance accordingly.

(2) On the acceptance of a complete specification the Registrar shall give notice to the applicant who shall, within the prescribed period or within such further period as the Registrar may allow, advertise in the prescribed manner the fact that the specification has been accepted and, unless the acceptance of the specification is so advertised, the application shall lapse.

(3) Upon advertisement under subsection (2) the application form, the specification and other documents essential to obtain acceptance lodged in pursuance thereof shall be open to public inspection.

(4) After the date of the publication as prescribed in subsection (2) of notice of acceptance of a complete specification and until the sealing of a patent in respect thereof, the applicant shall have the like privileges and rights as if a patent for the invention had been sealed on the date of the publication of such notice.

Opposition to grant of patent

22.—(1) Any person interested, including the Government, may within three months from the date of the advertisement of the acceptance of a complete specification or within such further period as the Registrar, on application made to him within the said period of three months, may allow, or, with the consent of the applicant, at any time before the sealing of the patent, oppose the grant of a patent in accordance with this section by giving written notice to the Registrar of opposition to such grant on any of the following grounds and no others, namely—

(*a*) that the applicant is not a person entitled under section 11 to make the application;

(*b*) that the application is in fraud of the rights of the person giving such notice or of any persons under or through whom he claims;

(*c*) that the invention does not relate to an art (whether producing a physical effect or not), process, machine, manufacture or composition of matter, which is capable of being applied in trade or industry;

(*d*) subject to section 31, that the invention is obvious in that it involves no inventive step having regard to what was common knowledge in the art at the effective date of the application;

(*e*) that the invention is not useful;

(*f*) that the complete specification does not fully describe and ascertain the invention and the manner in which it is to be performed;

(*g*) that the claims of the complete specification do not sufficiently and clearly define the subject-matter for which protection is claimed;

(*h*) that the complete specification does not disclose the best method of performing the invention known to the applicant at the time when the specification was lodged at the Patent Office;

(*i*) that the application contains a material misrepresentation;

(*j*) that the invention described or claimed in the complete specification is not the same as that described in the provisional specification, and—

(i) in so far as it is not described in the provisional specification, was not new at the date when the complete specification was lodged at the Patent Office; or

(ii) forms the subject of a pending application made in Malaŵi for a patent the effective date of which is prior to the date on which the complete specification was lodged at the Patent Office;

(*k*) in the case of a convention application, that the specification describes or claims an invention other than that for which protection has been applied for in the convention country and that such other invention either—

(i) forms the subject of an application for a patent in Malaŵi which, if granted, would bear a date in the interval between the lodging of the application in the convention country and the effective date of the application in Malaŵi; or

(ii) is not an invention as defined in this Act

(*l*) that the invention was not new at the effective date of the application;

(*m*) that the specification includes claims which, in terms of section 18 (1), should have been refused.

(2) A copy of any notice given under subsection (1), and of any statement which in terms of subsection (3) accompanies such notice, shall be served by the objector on the applicant for the patent.

(3) Any notice of opposition given under subsection (1) shall state the grounds on which the objector intends to oppose the grant of the patent, and shall be accompanied by a statement setting out particulars of the facts alleged in support of the said

grounds, and proof of service on the applicant concerned of a copy of such notice and of such statement shall be furnished to the Registrar.

(4) If the applicant wishes to contest the opposition, he shall within such time as is prescribed, or such further time as the Registrar may allow, lodge at the Patent Office a counter-statement setting out particulars of the grounds upon which the opposition is to be contested.

(5) A copy of any such counter-statement lodged at the Patent Office shall be served by the applicant on the objector concerned.

(6) Particulars delivered may from time to time be amended by leave of the Registrar.

(7) No evidence shall be admitted in proof of any ground on which particulars have not been delivered as aforesaid, except by leave of the Patents Tribunal.

(8) When, in relation to any opposition, the foregoing provisions of this section have been complied with to the extent therein required, the Registrar shall hand all relevant papers to the registrar of the Patents Tribunal who shall arrange for the matter to be heard by that Tribunal in the manner prescribed and the Patents Tribunal may make such order therein as it deems just.

(9) Upon being notified of the order of the Patents Tribunal by the registrar thereof, the Registrar shall take such further action therein as may be necessary.

Substitution of applicants

23.—(1) If the Registrar is satisfied, on a claim made in the prescribed manner at any time before a patent has been granted, that by virtue of any assignment or agreement made by the applicant or one of the applicants for a patent, or by operation of law, the claimant would, if the patent were then granted, be entitled thereto or to the interest of an applicant therein, or to an undivided share of the patent or of that interest, the Registrar may, subject to this section, direct that the application shall proceed in the name of the claimant or in the names of the claimant and the applicant or the other joint applicant or applicants, as the case may require.

(2) No such direction as aforesaid shall be given by virtue of any assignment or agreement made by one of two or more joint applicants for a patent except with the consent of the other joint applicant or applicants.

(3) No such direction as aforesaid shall be given by virtue of any assignment or agreement for the assignment of the right to an invention unless—

(*a*) the invention is identified therein by reference to the number of the application for the patent;

(*b*) there is produced to the Registrar an acknowledgement by the person by whom the assignment or agreement was made that the assignment or agreement relates to the invention in respect of which that application is made; or

(*c*) the rights of the claimant in respect of the invention have been finally established by a decision of the Patents Tribunal or any court to which an appeal against such a decision has been brought.

(4) Where one of two or more joint applicants for a patent has died at any time before the patent has been granted, the Registrar, if satisfied of such decease, may alter the application by substituting the legal representative of such deceased applicant and shall thereafter seal the application in the names of the surviving applicants and of such legal representative unless, upon a request in that behalf made by the survivor or survivors, and with the consent of such legal representative, the Registrar directs that the application shall proceed and be sealed in the name of the survivor or survivors alone.

(5) If any dispute arises between joint applicants for a patent whether or in what manner the application should be proceeded with, the Registrar may, upon application made to him in the prescribed manner by any of the parties, and after giving to all parties concerned an opportunity to be heard, give such directions as he thinks fit for enabling the application to proceed in the name of one or more of the parties alone or for regulating the manner in which it shall be proceeded with, or for both those purposes, as the case may require.

(6) An appeal shall lie from any decision of the Registrar under this section.

Provisions for secrecy of certain inventions

24. (1) In this section the expression "competent authority" means the Minister.

(2) Where, before or after the date of commencement of this Act, an application for a patent has been made in respect of an invention, and it appears to the Registrar that the invention is one of a class notified to him by a competent authority as relevant for defence purposes, he may give directions for prohibiting or restricting the publication of information with respect to the invention, or the communication of such information to any person or class of persons specified in the directions, and while such directions are in force the application may, subject to the directions, proceed up to the acceptance of the complete specification, but the acceptance shall not be advertised nor the specification published, and no patent shall be granted in pursuance of the application.

(3) Where the Registrar gives any such directions as aforesaid, he shall give notice of the application and of the directions to the

competent authority, and thereupon the following provisions shall have effect, that is to say—

(*a*) the competent authority shall, upon receipt of such notice, consider whether the publication of the invention would be prejudicial to the defence of Malaŵi and unless a notice under paragraph (*c*) of this subsection has previously been given by that authority to the Registrar, shall reconsider that question before the expiration of nine months from the date of lodging of the application for the patent and at least once in every subsequent year;

(*b*) for the purpose aforesaid, the competent authority may, at any time after the complete specification has been accepted or, with the consent of the applicant, at any time before the complete specification has been accepted, inspect the application and any documents furnished to the Registrar in connexion therewith;

(*c*) if upon consideration of the invention at any time it appears to the competent authority that the publication of the invention would not, or would no longer, be prejudicial to the defence of Malaŵi, that authority shall give notice to the Registrar to that effect;

(*d*) on the receipt of any such notice the Registrar shall revoke the directions and may, subject to such conditions, if any, as he thinks fit, extend the time for doing anything required or authorized to be done by or under this Act in connexion with the application, whether or not that time has previously expired.

(4) When directions have been given under this section, if any use of the invention is made during the continuance in force of such directions by or on behalf of or to the order of a Government department, section 40 shall apply in relation to that use as if a patent had been granted for the invention.

(5) If an applicant for a patent has suffered loss or damage by reason of his invention having been kept secret in pursuance of a direction under subsection (2), the Minister, with the consent of the Minister of Finance, shall pay to him such reasonable compensation as is agreed upon, or, in default of agreement, as may be determined by the Patents Tribunal on a reference under section 42 (1).

(6) Where a patent is granted in pursuance of an application in respect of which directions have been given under this section, no renewal fees shall be payable in respect of any period during which those directions were in force.

(7) If any person fails to comply with any direction given under this section he shall be guilty of an offence.

PART IV

Grant, Effect and Term of Patent

Grant and sealing of patent

25.—(1) If the conditions precedent to the grant of a patent, as prescribed in this Act, have been complied with and there is no opposition to such grant or, in the event of such opposition, the final determination is in favour of the grant of a patent, a patent shall be granted to the applicant, or, in the case of an application by two or more persons jointly, to the applicants jointly, and the Registrar shall cause the patent to be sealed with the seal of the Patent Office:

Provided that—

(*a*) where an applicant under a joint application has died, the patent may, with the consent of his heir or legal representative, be granted to the survivors of the joint applicants;

(*b*) where an applicant has agreed in writing to assign the invention or a share in the invention or, in the case of an application by two or more persons jointly, his interest in the invention, to another person, the patent may upon proof of the agreement to the satisfaction of the Registrar be granted to and in the name of the assignee either solely or jointly with the applicant or, in the case of an application by two or more persons jointly, to and in the name of the assignee jointly with the other applicants or their assignees.

(2) A patent shall be sealed as soon as may be, but not later than twenty-two months after the date of lodging of the application therefor:

Provided that—

(*a*) where the Registrar or the Patents Tribunal has allowed an extension of the time within which a complete specification may be lodged or accepted, a corresponding extension of the time for the sealing of the relevant patent shall be allowed;

(*b*) where the sealing is delayed by an appeal or by opposition to the grant of the patent, the patent may be sealed at such time as the Registrar may determine;

(*c*) where the patent is to be granted to the heir or legal representative of an applicant who has died before the expiration of the time which would otherwise be allowed for sealing the patent, the patent may be sealed at such later time as the Registrar may decide;

(*d*) the Registrar may, on payment of the prescribed fee, extend the period of twenty-two months for such further time as may be prescribed;

(*e*) where it is proved to the satisfaction of the Registrar that hardship would arise in connexion with the prosecution of the corresponding application for a patent in any other country unless the period for the sealing of such patent is extended, that period may be extended from time to time by the Registrar to such periods as appear to him to be necessary in order to prevent the hardship arising, if an application in that behalf is made to him and the prescribed fee is paid within the first-mentioned period, or in the case of a subsequent application under this paragraph, within the period to which such first-mentioned period was extended on the last preceding application.

(*f*) in respect of applications lodged during the years 1964 and 1965 the period of twenty-two months shall be deemed to have been extended to forty-six months.

Amendment of patent granted to deceased applicant

26. Where, at any time after a patent has been sealed in pursuance of an application under this Act, the Registrar is satisfied that the person to whom the patent was granted had died, or, in the case of a body corporate, had ceased to exist, before the patent was sealed, he may amend the patent by substituting for the name of that person the name of the person entitled thereto according to law, and the patent shall have effect, and shall be deemed always to have had effect, accordingly.

Date of patent

27.—(1) Subject to this Act, the date of a patent shall be the effective date of the application therefor.

(2) The date of a patent shall be entered in the register and shall be inserted in the patent.

Extent, effect and form of patent

28.—(1) Subject to this Act, a patent shall have the same effect against the Government as it has against a subject.

(2) A patent shall be in such form as may be prescribed.

(3) A patent shall be granted for one invention only, but it shall not be competent for any person in an action or other proceeding to take any objection to a patent on the ground that it has been granted for more than one invention.

(4) The effect of a patent shall be to grant to the patentee, subject to this Act and the conditions of the patent, full power, sole privilege and authority by himself, his agents and licensees during the term of the patent to make, use, exercise and vend the invention within Malaŵi in such a manner as to him seems meet, so that he shall have and enjoy the whole profit and advantage accruing by reason of the invention during the terms of the patent.

29. The term of every patent shall, subject to this Act, be sixteen years from the date of lodging the complete specification in the Patent Office. Term of patent

30.—(1) A patentee or an exclusive licensee may, after advertising in the prescribed manner, apply to the Patents Tribunal for an extension of the term of the relevant patent on any one or more of the following grounds, namely— Extension of patent

(*a*) that he has not derived adequate remuneration from that patent;

(*b*) that by reason of hostilities between Malaŵi and any foreign state, he has suffered loss or damage including—

(i) loss or damage arising out of action taken in pursuance of an official request to keep secret the specification of the invention to which the patent relates; and

(ii) loss of opportunity for dealing in or developing the invention on account of—

(A) the fact that he or his employees were engaged in work of national importance; or

(B) lack of supplies or loss of markets as a result of such hostilities, wherever such lack or loss occurs.

(2) Any such application may be made—

(*a*) in the case of an application under subsection (1) (*a*), not more than twelve and not less than six months before the date of expiration of the term of the patent in question or at such later time, being not later than the date of expiration of the patent, as the Patents Tribunal may allow; and

(*b*) in the case of an application under subsection (1) (*b*) at any time before the date of expiration of the patent or within two years after the date on which hostilities ceased, whichever is the later date.

(3) Any person may within the prescribed time give written notice to the Registrar and the applicant of objection to any such extension, and the registrar of the Patents Tribunal shall fix a date for the hearing of the application by that Tribunal and shall advise the applicant and any objector of the date so fixed.

(4) The Patents Tribunal may, after hearing the applicant and any person who may have objected to the extension, refuse the application or order the extension of the term of the patent in question for such period and subject to such conditions as it may deem fit or, if the patent has already lapsed, order the issue of a new patent for such a period and subject to such conditions:

Provided that no such extension shall be granted—

(*a*) on the grounds mentioned in subsection (1) (*a*) for a term exceeding five years or, in what the Patents Tribunal may deem to be exceptional circumstances, ten years; or

(*b*) on the grounds mentioned in subsection (1) (*b*), for a term exceeding the period of hostilities.

(5) Section 34 shall *mutatis mutandis* apply in respect of any extension of the term of a patent granted as a result of an application under subsection (1) (*b*) :

Provided that in the application of those provisions the reference in that section to a period of three months from the date on which any renewal fee referred to therein was due shall be construed as a reference to the date on which any patent whereof the term is extended under this section lapsed by effluxion of time.

(6) An extension of the term of a patent under this section shall be endorsed on the relevant patent by the Registrar and recorded in the register.

(7) Except where the Patents Tribunal otherwise decides, an application based on the grounds specified in subsection (1) (*b*), shall not be considered if the patentee or exclusive licensee is a subject of such foreign state as is referred to in that paragraph or is a company the business whereof is managed or controlled by such subjects or is carried on wholly or mainly for the benefit or on behalf of such subjects, notwithstanding that the company may be registered in accordance with any law relating to companies.

Patents of addition

31.—(1) Subject to this section, where an application for a patent is pending or has been granted thereon for an invention (hereinafter referred to as the main invention) and the applicant or patentee applies for a further patent in respect of any improvement in or modification of the main invention, the Registrar may, if the applicant so requests, grant a patent for the improvement or modification as a patent of addition.

(2) Subject to this section, where an invention, being an improvement in or modification of another invention, is the subject of an independent patent and the patentee in respect of that patent is also the patentee in respect of the patent for the main invention, the Registrar may, if the patentee so requests, by order revoke the patent for the improvement or modification and grant to the patentee a patent of addition in respect thereof, bearing the same date as the date of the patent so revoked.

(3) A patent shall not be granted as a patent of addition unless the date of lodging of the complete specification was the same as or later than the date of lodging of the complete specification in respect of the main invention.

(4) A patent of addition shall not be sealed before the sealing of the patent for the main invention, and if the period within which, but for this provision, the sealing of a patent of addition could be made under section 25 expires before the period within which the sealing of the patent for the main invention may be so made, the sealing of the patent of addition may be made at any time within the last-mentioned period.

(5) A patent of addition shall remain in force for as long as the patent for the main invention shall remain in force, including any extension of the term thereof but no longer, and no fees shall be payable for renewal of a patent of addition:

Provided that, where the patent for the main invention is revoked, the Registrar or the Patents Tribunal, as the case may be, may order that the patent of addition shall become an independent patent, and the fees payable in respect of such independent patent and the times for the payment thereof shall be determined according to the date of the former patent of addition, but the normal term of the independent patent shall not extend beyond the date on which the patent for the main invention would have expired if it had not been revoked.

(6) The grant of a patent of addition shall be conclusive evidence that the invention is a proper subject for such a patent, and shall not be refused, nor shall any such patent be liable to be revoked or invalidated, on the ground only that the invention claimed in the complete specification does not involve any inventive step having regard to the main invention, so, however, that this subsection shall not apply to an independent patent referred to in the proviso to subsection (5).

(7) A patent for a main invention and its patent of addition shall not be capable of assignment apart from one another.

(8) An appeal shall lie from any decision of the Registrar under this section.

Renewal of patents

32.—(1) Subject to this section, every patent shall lapse if the fees prescribed for its renewal are not paid within the prescribed times.

(2) The Registrar may, upon application of the patentee and subject to the payment of such additional fees as may be prescribed, extend the time for payment of a fee referred to in subsection (1) for a period not exceeding six months.

(3) No fee referred to in subsection (1) shall be payable for the renewal of a patent granted or registered under any enactment repealed by the former patents legislation in respect of the period of its term which had elapsed before the 1st January, 1964.

Restoration of lapsed patents

33.—(1) Where a patent has lapsed owing to the failure of the patentee to pay any prescribed fee within the prescribed time, the patentee may in the prescribed manner apply to the Registrar for the restoration of the patent.

(2) If the Registrar is satisfied that such failure was unintentional, and that no undue delay has occurred in making the application, he shall direct the patentee to advertise the application in the prescribed manner, and thereupon any person may within such time as may be prescribed give notice in the prescribed manner of opposition to the restoration of the patent.

(3) If there is no opposition to such restoration the Registrar shall, on payment of the unpaid renewal fees, make an order restoring the patent.

(4) Where notice of opposition is given, the Registrar shall notify the applicant thereof and shall, after the expiration of the prescribed period and after hearing the applicant and the objector, decide the matter and make an order either restoring the patent, subject to section 34, or dismissing the application.

(5) An appeal shall lie from any decision of the Registrar under this section.

Protective provisions to be inserted in order for restoration of patent

34. In every order restoring a lapsed patent made under section 33, there shall be inserted for the protection of persons who may have availed themselves of the subject-matter of the patent after a lapse of a period of three months from the date on which the renewal fee was due, the following provisions, namely, that the patentee shall not commence or prosecute any action or other proceedings or recover damages—

(*a*) in respect of any infringement of the patent which has taken place after the lapse of the said period and before the date of the order;

(*b*) in respect of any use of the subject-matter of the patent at any time after the date of the order by the employment of any means or composition of matter actually made within or imported into Malaŵi, or in respect of any process put into operation in Malaŵi in infringement of the patent after the lapse of the said period and before the date of the order, or in respect of the sale, purchase or use of any article which is the product of the use of the said means, composition of matter, or process:

Provided that the employment of the said means, composition of matter or process shall be limited to the person by or for whom the said means, composition of matter, or process was so made, imported or put into operation, his legal

representative, his successors or assigns, or his vendees, as the case may be;

(*c*) in respect of the employment at any time after the date of the order of any further means, composition of matter, or process, being a reproduction or improvement of the means, composition of matter, or process referred to in paragraph (*b*) or in respect of the sale, purchase or use of any article which is the product of the said further means, composition of matter, or process;

Provided that the employment of the said further means, composition of matter, or process shall be limited to a person entitled to use as aforesaid the means, composition of matter, or process specified in that paragraph.

Endorsement of patent "licences of right"

35.—(1) At any time after the sealing of a patent the patentee may apply to the Registrar for the patent to be endorsed with the words "licences of right" and where such an application is made, the Registrar shall notify the application to any person entered on the register as entitled to an interest in the patent and if satisfied, after giving any such person an opportunity to be heard, that the patentee is not precluded by contract from granting licences under the patent, cause the patent to be endorsed accordingly, so, however, that no such endorsement shall be made in respect of an exclusive licence.

(2) Where a patent is endorsed under this section—

(*a*) any person shall, at any time thereafter, be entitled as of right to a licence under the patent upon such terms as may, in default of agreement and subject to subsection (3), be settled by the Registrar on the application of the patentee or the person requiring the licence;

(*b*) the Registrar may, on the application of the holder of any licence granted under the patent before the endorsement, order the licence to be exchanged for a licence to be granted by virtue of the endorsement upon terms to be settled as aforesaid;

(*c*) if in proceedings for infringement of the patent, otherwise than by the importation of goods, the defendant undertakes to take a licence upon terms to be settled by the Registrar as aforesaid, no injunction shall be granted against him, and the amount, if any, recoverable against him by way of damages shall not exceed double the amount which would have been payable by him as licensee if such a licence had been granted before the earliest infringement;

(*d*) the renewal fees payable in respect of the patent after the date of the endorsement shall be one half of the renewal fees which would be payable if the patent were not so endorsed.

(3) In settling the terms of the licence for the purposes of subsection (2) (*a*) or (*b*), the Registrar shall—

(*a*) take cognisance of section 38 with respect to a patent falling under that section; and

(*b*) provide, *inter alia*, for the following matters—

(i) the period of the licence;

(ii) the terms of renewal, if any;

(iii) the amount of and method for payment of royalties;

(iv) arrangements for cancellation of the licence upon application made to him by the patentee after failure by the licensee to pay royalties or to observe any other conditions included in the licence by the Registrar, who is hereby authorized to include such conditions, so, however, that no such licence may be cancelled unless the licensee, after reasonable notice given to him by the patentee, has failed to observe such conditions.

(4) The licensee under any licence granted by virtue of the endorsement of a patent under this section shall, unless in the case of a licence the terms of which are settled by agreement the licence otherwise expressly provides, be entitled to call upon the patentee to take proceedings to prevent any infringement of the patent, and if the patentee refuses or neglects to do so within two months after being so called upon, the licensee may institute proceedings for the infringement in his own name as if he were patentee, making the patentee a defendant:

Provided that a patentee so added as defendant shall not be liable for any costs unless he enters an appearance and takes part in the proceedings.

(5) An application for the endorsement of a patent under this section shall contain a statement, to be verified in such manner as may be prescribed, that the patentee is not precluded by contract from granting licences under the patent, and the Registrar may require from the applicant such further evidence as he may think necessary.

(6) An application made under this section for the endorsement of a patent of addition shall be treated as an application for the endorsement of the patent for the main invention also, and an application made under this section for the endorsement of a patent in respect of which a patent of addition is in force shall be treated as an application for the endorsement of the patent of addition also, and where a patent of addition is granted in respect of a patent already endorsed under this section, the patent of addition shall also be so endorsed:

Provided that no royalty shall be paid by a licensee in respect of such endorsement.

(7) All endorsements of patents under this section shall be entered in the register and shall be published in the prescribed manner.

(8) An appeal shall lie from any decision of the Registrar under this section.

Cancellation of endorsement made under section 35

36.—(1) Within such time as may be prescribed after a patent has been endorsed under section 35, the patentee may apply to the Registrar for cancellation of the endorsement and where such an application is made and the balance paid of all renewal fees which would have been payable if the patent had not been endorsed, the Registrar may, if satisfied that there is no existing licence under the patent or that all licensees under the patent consent to the application, cancel the endorsement accordingly.

(2) Within the prescribed period after a patent has been endorsed as aforesaid, any person who claims that the patentee is, and was at the time of the endorsement, precluded by a contract in which the claimant is interested from granting licences under the patent may apply to the Registrar for cancellation of the endorsement.

(3) Where the Registrar is satisfied, on application made under subsection (2), that the patentee is and was precluded as aforesaid, he shall cancel the endorsement, and thereupon the patentee shall be liable to pay, within such period as may be prescribed, a sum equal to the balance of all renewal fees which would have been payable if the patent had not been endorsed, and if that sum is not paid within that period the patent shall cease to have effect at the expiration of that period.

(4) Where the endorsement of a patent is cancelled under this section, the rights and liabilities of the patentee with respect to it shall thereafter be the same as if the endorsement had not been made.

(5) An applicant shall advertise in the prescribed manner any application made by him under this section and within the prescribed period after such advertisement—

(*a*) in the case of an application under subsection (1), any person interested; and

(*b*) in the case of an application under subsection (2), the patentee and either additionally or alternatively any person interested;

may give notice to the Registrar of opposition to the cancellation.

(6) Where any such notice of opposition is given, the Registrar shall fix a date for the hearing of the application and shall advise in writing the parties of the date so fixed, and shall, after giving the applicant and the opponent an opportunity to be heard, give such decision on the application as he may consider just.

(7) An application made under this section for the cancellation of the endorsement of a patent of addition shall be treated as an application for the cancellation of the endorsement of the patent for the main invention also, and an application made under this section for the cancellation of the endorsement of a patent in respect of which a patent of addition is in force shall be treated as an application for the cancellation of the endorsement of the patent of addition also.

(8) An appeal shall lie from any decision of the Registrar under this section.

Compulsory licence in case of abuse or insufficient use of patent rights

37.—(1) Subject to subsection (14), any person interested who can show that he has been unable to obtain a licence under a patent on reasonable terms may, after the expiration of a period of three years subsequent to the date on which that patent was sealed, or four years subsequent to the date on which the application in respect thereof was lodged whichever period last expires, apply to the Registrar in the prescribed manner for a compulsory licence on the ground that the reasonable requirements of the public with respect to the invention in question have not been or will not be satisfied.

(2) Every application under this section shall set out fully the nature of the applicant's interest, the facts on which he bases his case and the relief he seeks, and shall be accompanied by an affidavit verifying the facts set out in such application.

(3) If, after consideration of any such application, the Registrar is satisfied that the applicant has a bona fide interest, and that a *prima facie* case for relief has been made out, he shall direct the applicant to serve copies of the application and of the relevant affidavit upon the patentee and upon any other person appearing from the register to be interested in the patent, and to advertise the application in the prescribed manner.

(4) If the patentee or any other person wishes to oppose the grant of a licence under this section, he may within the prescribed period, or within such further period as the Registrar may on application allow, deliver to the Registrar a counter-statement, verified by affidavit, setting out fully the grounds on which the application is opposed, and shall at the same time serve upon the applicant copies of the counter-statement and of such affidavit.

(5) When, in relation to an application or an opposition thereto, the foregoing provisions of this section have been

complied with to the extent therein required, the Registrar shall hand all relevant papers to the registrar of the Patents Tribunal, who shall arrange for the matter to be heard by that Tribunal in the manner prescribed and, subject to this section, the Patents Tribunal may make such order therein as it deems just.

(6) The reasonable requirements of the public referred to in subsection (1) shall be deemed not to have been satisfied in any of the following circumstances, namely—

(*a*) if the patented invention, being an invention capable of being worked in Malaŵi, is not being worked therein on a commercial scale and there is no satisfactory reason for such non-working:

Provided that, if an application for a compulsory licence is made on this ground and the Patents Tribunal is of the opinion that the time which has elapsed since the sealing of the patent has by reason of the nature of the invention or for any other reason been insufficient to enable the invention to be worked within Malaŵi on a commercial scale, the Patents Tribunal may make an order adjourning the hearing of the application for such period as will in its opinion be sufficient for that purpose;

(*b*) if the working of the invention within Malaŵi on a commercial scale is being prevented or hindered by the importation of the patented article by the patentee or persons claiming under him, or by persons directly or indirectly purchasing from him or by persons against whom the patentee is not taking or has not taken proceedings for infringement;

(*c*) if the demand for the patented article in Malaŵi is not being met to an adequate extent and on reasonable terms;

(*d*) if by reason of the refusal of the patentee to grant a licence or licences upon reasonable terms, the trade or industry of Malaŵi or the trade of any person or class of persons trading in Malaŵi, or the establishment of any new trade or industry in Malaŵi, is being prejudiced, and it is in the public interest that a licence or licences should be granted;

(*e*) if any trade or industry in Malaŵi, or any person or class of persons engaged therein, is being prejudiced by unfair conditions attached by the patentee, whether before or after the date of commencement of this Act, to the purchase, hire, licence or use of the patented article, or to the using or working of the patented process;

(*f*) if any condition which under section 49 is null and void as being in restraint of trade and contrary to public policy, has been inserted in any contract made in relation to the sale or

lease of or any licence to use or work any article or process protected by the patent:

Provided that, for the purpose of determining whether there has been any abuse of the monopoly rights under a patent, due regard shall be had to the fact that patents are granted not only to encourage invention but also to secure that inventions shall so far as possible be worked on a commercial scale in Malaŵi without undue delay.

(7) The Patents Tribunal may order the grant to the applicant of a licence on such terms as it may think expedient, including a term precluding the licensee from importing into Malaŵi any goods whereof the importation by persons other than the patentee or persons claiming under him, would be an infringement of the patent.

(8) If in respect of an application under this section the Patents Tribunal is satisfied that the invention which is the subject of the application is not being worked on a commercial scale within Malaŵi, and is such that it cannot be so worked without the expenditure of capital for the raising of which it will be necessary to rely on the patent monopoly, it may, unless the patentee or those claiming under him will undertake to find such capital, order the grant to the applicant or any other person, or to the applicant jointly with one or more other persons, if able and willing to provide such capital, of an exclusive licence on such terms as the Patents Tribunal may think just, but subject as hereinafter provided.

(9) The terms of any exclusive licence ordered to be granted under subsection (8) shall, with due regard to the risks to be undertaken by the licensee in providing the capital and working the invention, be so framed as—

(*a*) to secure to the patentee the maximum royalty compatible with the successful working of the invention within Malaŵi on a commercial scale and at a reasonable profit;

(*b*) to guarantee to the patentee a minimum yearly sum by way of royalty, if and so far as it is reasonable to do so;

and in addition to any other terms of the licence or order, the licence and the order shall be made revocable at the discretion of the Patents Tribunal if the licensee fails to—

(i) work the invention within the time specified in the order;

(ii) expend the amount specified in the licence as being the amount which he is able and willing to provide for the purpose of working the invention on a commercial scale within Malaŵi; or

(iii) pay to the patentee the royalties payable in terms of the licence.

(10) In deciding to whom an exclusive licence is to be granted, the Patents Tribunal shall, unless good reason is shown to the contrary, prefer an existing licensee to a person who, according to the register, has no interest in the patent.

(11) The order directing the grant of an exclusive licence under this section shall operate to divest the patentee of any right which he may have as patentee to work or use the invention, and to revoke all existing licences, unless otherwise provided in the order, and may, if considered fair and equitable by the Patents Tribunal, be made subject to the condition that the licensee shall give proper compensation to be fixed by the Patents Tribunal for any money or labour expended by the patentee or any existing licensee in developing or working the invention.

(12) A licensee under this section shall be entitled to call upon the patentee concerned to institute any proceedings which may be necessary to prevent infringement of the patent in question and shall in all other respects have the same rights as any other licensee, and if the patentee fails within two months after being called upon by the licensee, or within such further period as the Patents Tribunal may allow, to institute any such proceedings, the licensee may himself institute such proceedings as if he were the patentee, making the patentee a defendant, but the patentee shall not be liable for any costs in connexion with such proceedings unless he enters an appearance and takes part in those proceedings.

(13) The existence of a compulsory licence granted solely on the ground that an invention is not being worked in Malaŵi on a commercial scale shall not preclude the grant of further licences (including compulsory licences) in respect of that invention, but the holder of any compulsory licence shall not be entitled to transfer that licence or grant a sub-licence thereunder except to a person to whom the business or the part of the business in connexion with which the rights under the licence were exercised, has been transferred.

(14) Except in the case of a licence to be granted under subsection (8), no licence shall be granted in terms of this section or of section 38 while the relevant patent remains endorsed "licences of right" under section 35.

(15) For the purposes of this section, the expression "patented article" includes any article made by a patented process.

Inventions relating to food or certain other commodities

38.—(1) Subject to section 37 (14) and without prejudice to the other foregoing provisions of this Act, where a patent is in force in respect of—

(*a*) a substance capable of being used as food or medicine, or in the production of food or medicine;

(*b*) a process for producing such a substance as aforesaid; or

(*c*) any invention capable of being used as or as part of a surgical or curative device,

the Patents Tribunal shall, on application made to it by any person interested, order the grant to the applicant of a licence under the patent on such terms as it thinks fit unless it appears to such Tribunal that there are good reasons for refusing the application.

(2) In settling the terms of licences under this section the Patents Tribunal shall endeavour to secure that food, medicines, and surgical and curative devices shall be available to the public at the lowest prices consistent with the patentees deriving a reasonable advantage from their patent rights.

(3) A licence granted under this section shall entitle the licensee to make, use, exercise and vend the invention as a food or medicine, or for the purposes of the production of food or medicine or as part of a surgical or curative device, but for no other purposes.

Supplementary provisions as to licences

39.—(1) Any order under this Act for the grant of a licence shall, without prejudice to any other method of enforcement, have effect as if it were an agreement executed by the patentee and all other necessary parties granting a licence in accordance with the order.

(2) No order shall be made in pursuance of any application under section 37 which would be at variance with the Convention.

Use of patented inventions for services of the Government

40. (1) Notwithstanding anything in this Act, any Government department or any person authorized in writing by the Minister may make, use or exercise any invention disclosed in any specification lodged at the Patent Office for the service of the Government in accordance with this section.

(2) If and so far as the invention has, before the effective date of the relevant claim of the completed specification, been duly recorded by or tried by or on behalf of a Government department or a person authorized in terms of subsection (1) otherwise than in consequence of the communication thereof directly or indirectly by the patentee or any person from whom he derives title, any use of the invention by virtue of this section may be made by such Government department or person free of any royalty or other payment to the patentee.

(3) If and so far as the invention has not been so recorded or tried as aforesaid, any use of the invention made by virtue of this

section at any time after the acceptance of the complete specification in respect of the patent, or in consequence of any such communication as aforesaid, shall be made upon such terms as may be agreed upon, either before or after the use, between the Minister and the patentee with the approval of the Minister of Finance, or as may in default of agreement be determined by the Patents Tribunal on a reference under section 42 (1).

(4) The authority of the Minister in respect of an invention may be given under this section either before or after the patent is granted and either before or after the acts in respect of which the authority is given are done, and may be given to any person, whether or not he is authorized directly or indirectly by the patentee to make, use, exercise or vend the invention.

(5) Where any use of an invention is made by or with the authority of the Minister under this section, then, unless it appears to him that it would be contrary to the public interest so to do, the Minister shall notify the patentee as soon as practicable after the use is begun, and furnish him with such information as to the extent of the use as he may from time to time require.

(6) For the purposes of this section, section 41 and section 42, any use of an invention for the supply to the government of any other country, in pursuance of any agreement or arrangement between the Government of Malaŵi and the government of that country, of articles required for the defence of that country shall be deemed to be a use of the invention for the services of the Government, and the power of a Government department or a person authorized by the Minister under this section to make, use and exercise an invention shall include power—

(*a*) to sell such articles to the government of any country in pursuance of any such agreement or arrangement as aforesaid: and

(*b*) to sell to any person any articles made in the exercise of the powers conferred by this section which are no longer required for the purpose for which they were made.

(7) The purchaser of any articles sold in the exercise of powers conferred by this section, and any person claiming through him, shall have power to deal with them in the same manner as if the patent were held on behalf of the Government

(8) The Minister may make regulations governing the rights of third parties in relation to any use of a patented invention, or an invention in respect of which an application for a patent is pending, made for the services of the Government in terms of this section or section 41.

Special provisions as to Government use during emergency

41.—(1) For the purposes of this section, the expression "period of emergency" means any period beginning on such date as may be declared by the Minister by notice published in the *Gazette* to be the commencement, and ending on such date as may be so declared to be the termination, of a period of emergency.

(2) During any period of emergency the powers exercisable in relation to an invention by a Government department, or a person authorized by the Minister under section 40, shall include power to make, use, exercise and vend the invention for any purpose which appears to the Minister necessary or expedient—

(*a*) for the efficient prosecution of any war in which Malaŵi may be engaged;

(*b*) for the maintenance of supplies and services essential to the life of the community;

(*c*) for securing a sufficiency of supplies and services essential to the well-being of the community;

(*d*) for promoting the productivity of industry, commerce and agriculture;

(*e*) for fostering and directing exports and reducing imports or imports of any classes, from all or any countries and for redressing the balance of trade;

(*f*) generally for ensuring that the whole resources of the community are available for use, and are used, in a manner best calculated to serve the interests of the community; or

(*g*) for assisting the relief of suffering and the restoration and distribution of essential supplies and services in any part of Malaŵi or any other countries that are in grave distress as the result of war;

and any reference in that section or in section 42 to the services of the Government shall be construed as including a reference to the purposes aforesaid.

Reference of disputes as to Government use

42.—(1) Any dispute as to—

(*a*) the exercise by a Government department or a person authorized by the Minister of the powers conferred by section 40;

(*b*) the terms for the use of an invention for the services of the Government thereunder;

(*c*) the compensation payable upon a reference to the Patents Tribunal under section 24 (5); or

(*d*) the right of any person to receive any part of a payment determined in terms of paragraph (*b*) or (*c*);

may be referred to the Patents Tribunal by any party to the dispute in such manner as may be prescribed.

(2) In any proceedings under this section to which a Government department is a party, the Minister may—

(*a*) if the patentee is a party to the proceedings, apply for revocation of the patent upon any ground upon which a patent may be revoked under section 50;

(*b*) in any case, put in issue the validity of the patent without applying for its revocation.

(3) If in such proceedings as aforesaid any question arises whether an invention has been recorded or tried as mentioned in section 40, or has been used by or on behalf of or to the order of a Government department under section 24 (4), and the disclosure of any document recording the invention, or of any evidence of the trial or use thereof, would, in the opinion of the Minister, be prejudicial to the public interest, the disclosure may be made confidentially to counsel appearing for the other party or to an independent expert agreed upon by the parties.

(4) In determining under this section any dispute between a Government department and any person as to terms for the use of an invention for the services of the Government, the Patents Tribunal shall have regard to any benefit or compensation which that person or any person from whom he derives title may have received, or may be entitled to receive, directly or indirectly from any Government department in respect of the invention in question.

PART V

Special Provisions Relating to Specifications, Anticipation and Rights in Inventions

Amendment of specification by Registrar

43.—(1) An applicant for a patent or a patentee may at any time by request in writing lodged at the Patent Office seek leave to amend either his provisional or his complete specification, including drawings forming part thereof, and shall in making any such request state the nature of the proposed amendment and the reasons therefor.

(2) Where there are joint applicants or patentees, the request shall be made by them jointly or by one or more of them with the written consent of the other or others, and in the case of disagreement between them the Registrar may, if satisfied that one or more of them should be allowed to proceed alone and subject to such conditions as he may impose, permit the request to be made without the consent of the others:

Provided that all parties interested shall be notified by the applicant of the request and be entitled to be heard before any decision is given thereon.

(3) An amendment of an accepted complete specification shall be allowed only if it is by way of disclaimer, correction or explanation, and no amendment of any specification, except by way of correcting an obvious mistake, shall be allowed if the result would be that the specification as amended would claim or describe matter not in substance disclosed in the specification before amendment, or would include any claim not wholly within the scope of a claim included in the specification before amendment.

(4) The request for an amendment of an accepted complete specification and its nature shall be advertised by the applicant in the prescribed manner, and at any time within three months of the advertisement, or such further time as the Registrar, subject to such conditions as he may impose, may allow, any person may give notice at the Patent Office of opposition to the amendment.

(5) Notice of opposition shall be given in the prescribed manner to the Registrar and to the person making the request, and the Registrar shall hear the person making the request and the person who has given notice of opposition and determine whether and subject to what conditions, if any, the amendment ought to be allowed.

(6) Where a complete specification has not been accepted or, if it has been accepted, no notice of opposition has been given or any such notice has been withdrawn, the Registrar shall determine whether and subject to what conditions, if any, the amendment ought to be allowed.

(7) No request for amendment under this section shall be allowed if and so long as any proceedings are pending for infringement or revocation of the patent in question.

(8) An appeal shall lie from any decision of the Registrar made under this section.

Amendment of specification with leave of Court or Patents Tribunal

44. In any action for infringement of a patent or any proceedings before the Patents Tribunal for the revocation of a patent, the Court or the Patents Tribunal, as the case may be, may, subject to section 43 (3), allow the patentee to amend his complete specification in such manner and subject to such terms as to costs, advertisement or otherwise as the Court or the Patents Tribunal may think fit, and, if in any such proceedings for revocation the Patents Tribunal decides that the patent is invalid, it may allow the specification to be amended under this section instead of revoking the patent.

Restrictions on recovery of damages in certain cases

45. Where an amendment of a specification by way of disclaimer, correction or explanation has been allowed under this Act after the publication of the specification, no damages shall be awarded in any proceedings in respect of the use of the invention before the date of the decision allowing the amendment, unless the Court or the Patents Tribunal is satisfied that the specification as originally published was framed in good faith and with reasonable skill and knowledge.

Savings for anticipation

46.—(1) A patent shall not be refused or held to be invalid by reason only of the fact that the invention in respect of which the patent is applied for or was granted or any part thereof was published, used or known prior to the effective date of the application, if the applicant or the patentee, as the case may be, proves that the knowledge was acquired or the publication or use was made without his knowledge or consent, and that the knowledge acquired or the matter published or used was derived or obtained from him, and, if he learnt of the disclosure, use or knowledge before the effective date of his application for the patent, that he applied for and obtained protection for his invention with all reasonable diligence after learning of the disclosure:

Provided that the protection afforded by this section shall not extend to a patentee or an applicant for a patent who has or whose predecessors in title have prior to the effective date of the application worked the invention in Malaŵi commercially, otherwise than for the purpose of reasonable technical trial thereof.

(2) An invention claimed in a complete specification shall not be deemed to have been anticipated by reason only of the communication of the invention to a Government department or to any person authorized by the Minister to investigate the invention or its merits, or of anything done by any person whomsoever in consequence of such a communication, for the purpose of the investigation.

Co-ownership of patents

47.—(1) Where a patent is granted to two or more persons, each of those persons shall, unless an agreement to the contrary is in force, be entitled to an equal undivided share in the patent.

(2) Subject to this section, where two or more persons are registered as patentees, then, unless an agreement to the contrary is in force, each of those persons shall be entitled by himself or his agents, to make, use, exercise and vend the patented invention for his own benefit without accounting to the other or others.

(3) Subject to subsections (6), (7) and (8) and to any agreement for the time being in force, a licence under a patent shall not be

granted, and a share in a patent shall not be assigned, except with the consent of all persons, other than the licensor or assignor, who are registered as patentees.

(4) Where a patented article is sold by one of two or more persons registered as patentees the purchaser and any person claiming through him shall in respect of such article be entitled to deal with it in the same manner as if it has been sold by a sole patentee.

(5) Subject to this section, the rules of law applicable to the ownership and devolution of movable or personal property generally shall apply in relation to patents as they apply in relation to other incorporeal rights or choses in action.

(6) Where two or more persons are registered as patentees, the Registrar may, upon application made to him in the prescribed manner by any of those persons, give such directions in accordance with the application as to the sale or lease of the patent or any interest therein, the grant of licences under the patent or the exercise of any right under subsections (1) to (5) inclusive in relation thereto, as he thinks fit.

(7) If any person registered as patentee fails to execute any instrument or to do any other thing required for the carrying out of any direction given under this section within fourteen days after being requested in writing so to do by any of the other persons so registered, the Registrar may, upon application made to him in the prescribed manner by any such other person, give directions empowering any person to execute that instrument or to do that thing in the name and on behalf of the person in default.

(8) Before giving directions in pursuance of an application under subsection (6) or (7), the Registrar shall give an opportunity to be heard—

(*a*) in the case of an application under subsection (6), to the other person or persons registered as patentees;

(*b*) in the case of an application under subsection (7), to the person in default.

(9) An appeal shall lie from any decision of the Registrar under this section.

(10) No directions shall be given under this section so as to affect the mutual rights or obligations of trustees or of the legal representatives of a deceased person, or their rights or obligations as such.

Disputes as to inventions made by employees

48.—(1) Where a dispute arises between an employer and a person who is or was at the material time his employee as to the rights of the parties in respect of an invention made by the

employee either alone or jointly with other employees or in respect of any patent granted or to be granted in respect thereof, the Registrar may, upon application made to him in the prescribed manner by either of the parties, and after giving to each of them an opportunity to be heard, determine the matter in dispute, and may make such orders for giving effect to his decision as he considers expedient.

(2) In proceedings before the Patents Tribunal between an employer and a person who is or was at the material time his employee, or upon an application made to the Registrar under subsection (1), the Patents Tribunal or Registrar, as the case may be, may unless satisfied that one or other of the parties is entitled, to the exclusion of the other, to the benefit of an invention made by the employee, by order provide for the apportionment between them of the benefit of the invention, and of any patent granted or to be granted in respect thereof, in such manner as the Patents Tribunal or Registrar considers just.

(3) A decision of the Registrar under this section shall have the same effect as between the parties and persons claiming under them as a decision of the Patents Tribunal.

(4) An appeal shall lie from any decision of the Registrar under this section.

Avoidance of certain restrictive conditions in contracts

49.—(1) It shall not be lawful in any contract made after the date of commencement of this Act in relation to the sale or lease of or a licence to use or work any article or process protected by a patent to insert a condition the effect of which will be—

(*a*) to prohibit or restrict the purchaser, lessee or licensee from using any article or class of articles, whether patented or not, or any patented process, supplied or owned by any person other than the seller, lessor or licensor or his nominee; or

(*b*) to require the purchaser, lessee or licensee to acquire from the seller, lessor or licensor or his nominee any article or class of articles not protected by the patent;

and any such condition shall be null and void, as being in restraint of trade and contrary to public policy:

Provided that this subsection shall not apply if—

(i) the seller, lessor or licensor proves that at the time the contract was entered into the purchaser, lessee or licensee had the option of purchasing the article or obtaining a lease or licence on reasonable terms without such conditions as aforesaid; and

(ii) the contract entitles the purchaser, lessee or licensee to relieve himself of his liability to observe any such condition on giving the other party three months' notice in writing and on payment, if the Registrar so directs, of compensation for such

relief, in the case of a purchase of such sum, or in case of a lease or licence of such rent or royalty for the residue of the term of the contract, as may be fixed by the Registrar.

An appeal shall lie from any decision of the Registrar under proviso (ii).

(2) Any contract relating to the lease of or licence to use or work any patented article or patented process may, at any time after the patent or all the patents by which the article or process was protected in Malaŵi at the time of the making of the contract has or have ceased to be in force, and notwithstanding anything to the contrary in the same or in any other contract, be determined by either party on giving three months' notice in writing to the other party.

(3) Nothing in this section shall—

(*a*) affect any condition in a contract whereby any person is prohibited from selling any goods other than those of a particular person;

(*b*) be construed as validating any contract which would, apart from this section, be invalid;

(*c*) affect any right of determining a contract or condition in a contract exercisable independently of this section;

(*d*) affect any condition in a contract for the lease of or a licence to use a patented article, whereby the lessor or licensor reserves to himself or his nominee the right to supply such new parts of the patented article as may be required to put or keep it in repair.

Revocation of patents

50.—(1) Application for revocation of a patent may be made to the Patents Tribunal by any person interested, including the Government, upon any one or more of the grounds on which the grant of a patent might have been opposed, but, subject to subsection (2), proviso (ii) to section 8 (7) (*b*), and section 10 (1) (*b*), on no other grounds.

(2) Where an order for the granting of a licence under the patent has been made in pursuance of an application under section 37 any person interested may, at any time after the expiration of two years from the date of that order, apply to the Patents Tribunal for the revocation of the patent upon any of the grounds specified in subsection (6) of the said section 37; and if upon such application the Patents Tribunal is satisfied—

(*a*) that any of the said grounds are established; and

(*b*) that the purpose for which an order may be made in pursuance of an application under the said section 37 could not be achieved by the making of any further order under that section,

it may order the patent to be revoked.

(3) Any such application shall state the grounds on which the applicant relies, and shall be accompanied by a statement setting out particulars of the facts alleged in support of the said grounds, and a copy of the application and of the statement shall be served by the applicant on the patentee and proof of such service shall be furnished to the Registrar.

(4) If the patentee wishes to contest the application made in terms of subsection (1) or subsection (2), he shall within such time as may be prescribed, or such further time as the Patents Tribunal may allow, lodge at the Patent Office a counter-statement setting out particulars of the grounds upon which the application is contested and deliver to the applicant a copy of that statement.

(5) Except by leave of the Patents Tribunal, no evidence shall be admitted in proof of any ground, particulars of which are not delivered as aforesaid.

(6) Particulars delivered may from time to time be amended by leave of the Patents Tribunal.

(7) The Patents Tribunal shall appoint a time for the hearing of any such application, and shall thereafter decide whether the patent shall be revoked or whether and, if so, subject to what amendments, if any, of the specification or claims thereof, the patent shall be upheld:

Provided that the Patents Tribunal—

(*a*) shall not allow any amendment of the specification or claims as aforesaid if it is established to its satisfaction that the original complete specification and claims were not framed in good faith and with reasonable skill and knowledge; and

(*b*) may, in the exercise of its discretion as to costs, take into consideration the conduct of the patentee in framing his original specification and claims and permitting them to remain as so framed.

(8) An order for the revocation of a patent under this section may be made so as to take effect either unconditionally or in the event of failure to comply, within such reasonable period as may be specified in the order, with such conditions as may be imposed by the order with a view to achieving the purposes aforesaid, and the Patents Tribunal may, on reasonable cause shown in any case, by subsequent order, extend any period so specified.

Consequences of revocation on grounds of fraud

51.—(1) Where a patent is revoked on the ground of fraud, or a patent fraudulently obtained has been surrendered and revoked, or the grant of a patent has been refused under section 22 (1) (*b*), the Patents Tribunal may, on the

application of the person entitled to the invention for Malaŵi or his legal representative, made in accordance with this Act, direct the grant to him of a patent for the whole or any part of the invention, bearing the same date as the patent so revoked or as would have been borne by the patent which has been refused, if the grant thereof had not been refused.

(2) Where in proceedings before the Patents Tribunal in connexion with opposition to the grant of a patent, the Patents Tribunal has found that an invention was in part obtained from the objector and has required that the specification be amended by the exclusion of that part of the invention, the Patents Tribunal may direct that, on the application of the inventor or any person claiming through or under him made in accordance with this Act within three months after the date of the direction or within such further period as the Patents Tribunal may allow, a patent for that excluded part of the invention bearing the date of and having the same effective date as the opposed application be granted to the applicant concerned.

(3) No action shall be brought for any infringement of a patent committed—

(*a*) in the case of a patent granted under subsection (1), before the date of sealing thereof; or

(*b*) in the case of a patent granted under subsection (2), before the date of advertisement of acceptance of the complete specification lodged in pursuance of the application for such patent.

Surrender of patents

52.—(1) A patentee may at any time by notice given to the Registrar offer to surrender his patent.

(2) Where such an offer is made the patentee shall advertise the offer in the prescribed manner, and within the prescribed period after such advertisement any person interested may give notice to the Registrar of opposition to the surrender.

(3) Where any such notice of opposition is duly given the Registrar shall notify the patentee.

(4) If the Registrar is satisfied, after hearing the patentee and any opponent, if desirous of being heard, that the patent may properly be surrendered he may accept the offer and by order revoke the patent.

(5) An appeal shall lie from any decision of the Registrar under this section.

PART VI

Infringements

Procedure and conditions in action for infringement

53.—(1) An action for infringement of a patent may only be instituted by the patentee or the exclusive licensee. Such action shall be heard and determined by the High Court and, subject to any rules made under section 81, the following provisions shall apply in connexion therewith, namely—

(*a*) any ground upon which a patent may be revoked under this Act may be relied upon by way of defence;

(*b*) the defendant may, by way of counter-claim in the action, apply for the revocation of the patent;

(*c*) the plaintiff shall, with his statement of claim or declaration or on the order of the Court at any subsequent time, deliver full particulars of the infringement complained of;

(*d*) the defendant shall, with his statement of defence or plea or on the order of the Court at any subsequent time, deliver particulars of any objections on which he relies in support thereof;

(*e*) at the hearing no evidence shall, except by leave of the Court, be admitted of any infringement or on any objections of which particulars have not been so delivered;

(*f*) the Court may allow the patentee to amend his specification, subject to such terms as to costs, advertisement or otherwise as it may impose and to section 43 (3).

(2) In any action under this section where an exclusive licensee is the plaintiff, the patentee shall, unless he is joined as plaintiff in such action, be added as defendant:

Provided that a patentee so added as defendant shall not be liable for any costs unless he enters an appearance and takes part in the proceedings.

(3) If the patentee is the plaintiff in any such action, he shall give notice thereof to the exclusive licensee under the patent in question and any such licensee shall be entitled to intervene as a co-plaintiff and to recover any damages he may have suffered as a result of the infringement.

(4) No action under this section shall lie in respect of an infringement which took place before the publication referred to in section 21 (2).

(5) In an action for infringement of a patent the plaintiff shall be entitled to relief by way of injunction and damages and the Court may, on application, make such order for an injunction,

damages, inspection or account and impose such terms and give such directions as it may deem fit.

(6) In an action for infringement of a patent in respect of an invention which relates to the protection of a new substance, any substance of the same chemical composition and constitution shall in the absence of proof to the contrary be deemed to have been produced by the patented process.

Relief for infringement of partially valid specification

54.—(1) Where, in any action for the infringement of a patent, the Court finds that any claim in the specification in respect of which the infringement is alleged is valid, but that any other claim thereunder is invalid, then, notwithstanding section 53, the following provisions shall apply, namely—

(*a*) unless the Court is satisfied that the invalid claim was not framed in good faith and with reasonable skill and knowledge, the Court shall, subject to its discretion as to costs and as to the date from which damages should be reckoned, and to such terms as to amendment of the specification as it may deem desirable, grant relief in respect of any valid claim which is or has been infringed, without regard to the invalidity of any other claim in the specification, and in exercising such discretion the Court may take into consideration the conduct of the patentee in inserting the invalid claim in the specification or permitting that claim to remain there;

(*b*) if the Court is so satisfied, it shall not grant any relief by way of damages or costs, but may grant such other relief in respect of any valid claim which is or has been infringed as to it seems just and may impose such terms as to amendment of the specification as a condition of granting any such relief as it may deem desirable;

(*c*) if a counter-claim for revocation of the patent has been made in the action on the ground of invalidity of any claim in the specification, the Court may postpone the operation of any order made thereon for such time as may be requisite to enable the patentee to effect any amendment of the specification pursuant to terms imposed by the Court and may attach such other conditions to any order to be made on the counter-claim as the Court may deem desirable.

Restrictions of recovery of damages for infringement

55.—(1) In proceedings for the infringement of a patent, damages shall not be awarded against a defendant who proves that, at the date of the infringement, he was not aware, and had no reasonable grounds for supposing and had no reasonable means of making himself aware, that the patent existed, and the application to an article of the word "patent", "patented", or any word or words expressing or implying that a patent has been obtained for the article, shall not constitute such grounds or

means unless the number and year of the patent accompanied the word or words in question.

(2) If proceedings are taken in respect of infringement of a patent committed after the failure to pay any fee within the prescribed time and before any extension of time for such payment, the Court may, if it thinks fit, refuse to award any damages in respect of such infringement.

(3) Nothing in this section shall affect the power of the Court to grant an injunction in any proceedings for the infringement of a patent.

Remedy for groundless threats of infringement proceedings

56.—(1) Where any person (whether entitled to or interested in a patent or an application for a patent or not) by circulars, advertisements or otherwise threatens any other person with proceedings for infringement of a patent, any person aggrieved thereby may in the prescribed manner bring an action against him in the High Court for any such relief as is mentioned in subsection (2).

(2) Unless in any action brought by virtue of this section the defendant proves that the acts in respect of which proceedings were threatened constitute or, if done, would constitute, an infringement of a patent or of rights arising from the publication of a complete specification in respect of a claim of the specification not shown by the plaintiff to be invalid, the plaintiff shall be entitled to the following relief, that is to say—

(*a*) a declaration to the effect that the threats are unjustifiable;

(*b*) an injunction against the continuance of the threats; and

(*c*) such damages, if any, as he has sustained thereby.

(3) For the avoidance of doubt, it is hereby declared that a mere notification of the existence of a patent does not constitute a threat of proceedings within the meaning of this section.

(4) The defendant in any such action as aforesaid may apply, by way of counter-claim in the action, for any relief to which he would be entitled in a separate action in respect of any infringement by the plaintiff of the patent to which the threats relate.

Power of Court to make declaration as to non-infringement

57.—(1) A declaration that the use by any person of any process, or the making or use or sale by any person of any article, does not or would not constitute an infringement of a claim of a patent may be made by the High Court in proceedings between that person and the patentee or the holder of an exclusive licence under the patent, notwithstanding that no

assertion to the contrary has been made by the patentee or licensee, if it is shown—

(*a*) that the plaintiff has applied in writing to the patentee or licensee for a written acknowledgement to the effect of the declaration claimed, and has furnished him with full particulars in writing of the process or article in question; and

(*b*) that the patentee or licensee has refused or neglected to give such an acknowledgement.

(2) The costs of all parties in proceedings for a declaration brought by virtue of this section shall be ordered as the Court may deem fit:

Provided that a patentee or holder of an exclusive licence under the patent shall not be liable for any costs unless he enters an appearance and takes part in the proceedings.

(3) The validity of a claim of the specification of a patent shall not be called in question in proceedings for a declaration brought by virtue of this section, and accordingly the making or refusal of such a declaration in the case of a patent shall not be deemed to imply that the patent is valid.

(4) Proceedings for a declaration may be brought by virtue of this section at any time after the date of the notice of the acceptance of the complete specification in pursuance of an application for a patent, and references in this section to the patentee shall be construed accordingly.

PART VII

Assignments and Corrections

Provisions as to assignments

58.—(1) Subject to section 31 (7), the rights granted to a patentee by a patent shall be capable of assignment and of devolution by operation of law and of being mortgaged and pledged.

(2) Where any person becomes entitled by assignment, transmission or operation of law to a patent or to a share in a patent, or becomes entitled as mortgagee, licensee or otherwise to any other interest in a patent, he may apply to the Registrar in the prescribed manner for the registration of his title as proprietor or co-proprietor, or, as the case may be, of notice of his interest, in the register, and the Registrar shall, upon proof of such entitlement to his satisfaction, register such title or notice against the patent accordingly.

(3) Except for the purposes of an application to rectify the register under this Act, a document in respect of which no entry

has been made in the register under subsection (2) shall not be admitted in any proceedings as evidence of the title of any person to a patent, or a share of or interest in a patent, unless the Patents Tribunal or Court concerned otherwise directs.

Power of Registrar to authorize corrections

59.—(1) The Registrar may authorize—

(*a*) the correction of any clerical error or omission, or error in translation in any patent, application for a patent or document lodged in pursuance of such an application, or in the register;

(*b*) the amendment otherwise of any documents for the amending of which no express provision is made in this Act;

(*c*) the condonation or correction of any irregularity in procedure in any proceedings before him, if such condonation or correction is not detrimental to the interests of any person.

(2) A correction may be made in pursuance of this section, either upon a request in writing accompanied by the prescribed fee or without such a request.

(3) Where it is proposed to make a correction otherwise than upon such a request, the Registrar shall give notice of the proposal to the patentee or the applicant for the patent, as the case may be, and to any other person who appears to him to be concerned, and shall give any such person an opportunity of being heard before the correction is made.

(4) Where a request is made for the correction of any such clerical error or omission and it appears to the Registrar that the correction would materially alter the scope of the document to which the request relates, the Registrar may require notice of the request to be advertised in the prescribed manner and to be served upon such persons as he considers necessary.

(5) Any opposition to the request for such correction may be lodged and shall be dealt with by the Registrar in the manner prescribed.

(6) An appeal shall lie from any decision of the Registrar under this section.

Rectification of register

60.—(1) The Patents Tribunal may, on the application of any person aggrieved, order the register to be rectified by the making of any entry therein or the variation or deletion of any entry therein.

(2) The Patents Tribunal may determine any question which it may be necessary or expedient to decide in connexion with the rectification of the register.

(3) Notice of any application to the Patents Tribunal under this section shall be given in the prescribed manner to the Registrar and all interested parties, and the Registrar and all such parties shall be entitled to appear and be heard on the application.

(4) Any order made by the Patents Tribunal under this section shall be served on the Registrar in the prescribed manner, and the Registrar shall, on the receipt of the notice, rectify the register accordingly.

PART VIII

Functions of Registrar in Relation to Certain Evidence, Documents and Powers

Evidence of certain entries and documents

61.—(1) A certificate purporting to be signed by the Registrar and certifying that any entry which he is authorized by or under this Act to make has or has not been made, or that any other thing which he is so authorized to do has or has not been done, shall be *prima facie* evidence of the matters so certified.

(2) A copy of any entry in any register or of any document kept in the Patent Office or of any patent, or an extract from any such register or document, certified by the Registrar and sealed with the seal of the Patent Office, shall be admitted in evidence without further proof and without production of the original.

Requests for information as to patent or patent application

62. The Registrar shall, on the request of any person and on payment of the prescribed fee, furnish copies of any documents which are open to public inspection and which are lodged at the Patent Office or particulars from the register, or furnish a certificate in respect thereof.

Loss or destruction of patent

63. Where the Registrar is satisfied that a patent has been lost or destroyed or cannot be produced, he may at any time cause a duplicate thereof to be sealed on payment of such fees as may be prescribed.

Exercise of discretionary powers of Registrar

64.—(1) Without prejudice to any provisions of this Act requiring the Registrar to hear any party to proceedings thereunder, or to give to any such party an opportunity to be heard, the Registrar shall give to any applicant for a patent, or for amendment of a specification, an opportunity to be heard before exercising adversely to the applicant any discretion vested in the Registrar by or under this Act.

(2) Subject to section 80 (2), where by this Act any time is specified within which any act or thing is to be done, the Registrar may, save where it is expressly otherwise provided, extend the time, either before or after its expiration, if he is

satisfied that the failure to comply with the provisions relating to such time has not been or will not be due to any neglect or default on the part of the person concerned.

Proceedings before Registrar

65.—(1) Evidence in any proceedings before the Registrar under this Act shall be given by affidavit, so, however, that the Registrar may, if he thinks fit in any particular case, take oral evidence on oath in lieu of or in addition to such evidence as aforesaid, and may allow any witness to be cross-examined on his affidavit or oral evidence.

(2) The powers, rights and privileges of the Registrar in proceedings before him under this Act shall be the same as those conferred upon commissioners by the Commissions of Inquiry Act and sections 9, 10 and 12 of that Act shall, *mutatis mutandis,* apply in relation to the hearing and determination of any matter before the Registrar under this Act and to any person summoned to give evidence or giving evidence before him. Cap. 18:01

Advertisements to be approved by Registrar

66. No advertisement or notice, other than a notice issued under the authority of the Minister, shall be published by any person under this Act unless it is in the prescribed form and the Registrar has approved the contents of such advertisement or notice, and no advertisement or notice which has not been so approved shall have any force or effect for the purposes of this Act.

PART IX

Patent Agents

Patent agents and their functions

67.—(1) Subject to this Act, a patent agent may act as agent on behalf of any person in connexion with any matter or proceeding before the Registrar under this Act and may draw and sign all documents and make all communications between an applicant and the Patent Office and may represent an applicant at all attendances before the Registrar.

(2) A patent agent shall not be guilty of an offence under any law prohibiting the preparation for reward of certain documents by persons not legally qualified, by reason only of the preparation by him of any document relating to patents for use in the Patent Office or required in any proceedings under this Act before the Registrar or the Patents Tribunal.

Qualification and registration of patent agents

68.—(1) The Registrar shall keep a register of patent agents in which the name of every person, immediately upon his being accepted for registration, shall be registered, showing against his name such particulars as the Registrar shall from time to time

deem necessary, and the Registrar shall enter in such register of patent agents all changes relating to registrations.

(2) Any person who—

(*a*) has passed the prescribed examinations;

(*b*) produces proof that he is a Fellow in good standing of the Chartered Institute of Patent Agents of the United Kingdom, incorporated by Royal Charter on the 11th August, 1891;

(*c*) produces proof that he is a British Oversea Member in good standing of such Institute;

(*d*) produces proof that he holds any qualification recognized by the Minister as being equivalent to the qualifications required for the purposes of paragraph (*a*), (*b*) or (*c*); or

58 of 1965

(*e*) is a legal practitioner and satisfies the Registrar that prior to the date* of commencement of the Patents (Amendment) Act, he has, within Malaŵi, performed the functions of a Patent Agent as set out in section 67 and has publicly described himself as a Patent Agent in Malaŵi,

may make application to the Minister in the prescribed manner to be registered as a Patent Agent, and the Minister shall arrange such registration by the Registrar if he is satisfied that there is no good reason why it should not be arranged and that the applicant is not a person whose name could be removed from the register of Patent Agents under section 69 (1), (*b*), (*c*) or (*f*):

Provided that—

(i) the Minister may refuse to arrange such registration without assigning any reason therefor;

(ii) a public officer who has been employed in the patent office shall not be registered as a Patent Agent or be permitted to practise as such until at least twelve months have expired since he ceased to be so employed.

(3) No appeal shall lie from any decision of the Minister made under subsection (2).

Removal of names from register of patent agents

69.—(1) The Registrar may remove from the register of patent agents the name of any patent agent upon proof to his satisfaction that such patent agent—

(*a*) has died;

(*b*) has become of unsound mind;

(*c*) has been adjudged or otherwise declared bankrupt or insolvent under any law or has made an assignment to or composition with his creditors;

*1st January, 1964.

(*d*) has ceased to maintain a place of business in Malaŵi;

(*e*) has applied for his name to be so removed;

(*f*) has at any time been convicted (whether in Malaŵi or elsewhere) of theft, any offence involving an element of fraud, forgery, uttering a forged document, perjury or any similar offence, by whatever name called, and has been sentenced therefor to serve a term of imprisonment without the option of a fine, whether such sentence is suspended or not, and has not received a free pardon;

(*g*) having been entitled to practise as a legal practitioner, or to be registered as a patent agent, has ceased to be so entitled;or

(*h*) having been entitled to practise as a legal practitioner or a patent agent, has ceased to practise as such.

An appeal shall lie from any decision of the Registrar made under this subsection.

(2) Subject to this section and such procedure as may be prescribed, the Patents Tribunal may order the Registrar to remove the name of any patent agent from the register of patent agents or may suspend any patent agent from practising as such for such time as it thinks fit if it is satisfied, after due inquiry, that such person has been guilty of conduct discreditable to a patent agent or has been guilty of a breach of any regulations prescribed for the conduct of patent agents.

(3) No order shall be made by the Patents Tribunal in terms of subsection (2) unless the patent agent concerned has been given notice of any allegations made against him and has had an opportunity to adduce evidence and to be heard.

(4) Any institute or other organization recognized by the Minister as being representative of the patent agents in Malaŵi shall be entitled to be represented, to adduce evidence and to be heard by the Patents Tribunal before it makes any order in terms of subsection (2).

(5) Where the name of any patent agent has been removed from the register of patent agents under subsection (1) or (2), his name shall not be restored to that register except by direction of the Patents Tribunal, which may further direct that such restoration shall be made either without fee or on payment of such fee, not exceeding the registration fee, as it may fix, and the Registrar shall restore the name accordingly.

Privileges of legal practitioners

70. Every person entitled to practise as a legal practitioner may practise as a patent agent and perform the functions set out in section 67 without being registered as a patent agent, but no such person shall be entitled to be so registered except under section 68.

Entitlement to practise as patent agent

71.—(1) No person shall practise as a patent agent unless he is registered as such or is, by virtue of section 70, entitled so to practise.

(2) A person shall be deemed to practise as a patent agent if he performs any of the functions of a patent agent set out in section 67 or if he carries on within Malaŵi the business of applying for or obtaining for others patents in Malaŵi or elsewhere.

(3) No person who is not a legal practitioner or registered as a patent agent shall describe himself as, or hold himself out to be, a patent agent or any term implying such a meaning, such as "patent attorney" or "attorney for patents", nor shall he permit himself to be so described or held out.

(4) Any person who contravenes this section shall be guilty of an offence.

Prohibition of certain acts by patent agents

72.—(1) No patent agent shall have an interest either as a partner or manager or otherwise in more than one firm of patent agents in Malaŵi.

(2) No patent agent shall practise under a name or title which includes the name of any person who is not or was not—

(*a*) in his lifetime ordinarily resident in Malaŵi; or

(*b*) registered as a patent agent under this Act.

(3) No person shall practise as a patent agent if he is a party to—

(*a*) a contract of partnership; or

(*b*) an arrangement providing for the sharing or paying over of any professional fees,

relating to the business of a patent agent with any person who is prohibited from practising as a patent agent.

(4) Any person who contravenes this section shall be guilty of an offence.

PART X

Patents Tribunal and Appeals

Appeals from Registrar

73. Where this Act provides for appeals from decisions of the Registrar, all such appeals shall be made to the Patents Tribunal in accordance with this Part.

Patents Tribunal

74.—(1) For the purposes of hearing and determining appeals in accordance with section 73 and of exercising the other powers

conferred upon it by this Act, there is hereby established a Patents Tribunal, which shall consist of a Chairman appointed by the Minister.

(2) The Chairman shall be a person who—

(*a*) has been a judge of a court having unlimited jurisdiction in civil and criminal matters in some part of the Commonwealth; or

(*b*) is and has for not less than ten years been qualified and entitled to practise as an advocate or barrister in any court or courts having such jurisdiction.

(3) The Patents Tribunal shall sit at such times and places as it may appoint.

(4) There shall be paid to the Chairman such remuneration and allowances as the Minister may determine with the approval of the Minister of Finance.

(5) The Minister shall appoint a registrar of the Patents Tribunal and such other officers thereof as he may deem necessary.

General powers of Patents Tribunal

75.—(1) The Patents Tribunal shall, in connexion with any proceedings before it under this Act, have all the powers of the High Court, and without prejudice to the foregoing and to the other powers conferred upon it by this Act, the Patents Tribunal shall have power to make any order for the purpose of securing the attendance of any person, the discovery or production of any document, or the investigation or punishment of any contempt of court, which the High Court has power to make.

(2) The procedure and practice of the Patents Tribunal shall, save as otherwise provided for by rules made under this Part, be those prevailing in such High Court, in so far as the same are applicable, and if any matter should arise which is not contemplated by either such procedure, practice or rules, the Patents Tribunal may give instructions regarding the course to be pursued, which instructions shall be binding on all parties.

(3) Upon any appeal to the Patents Tribunal under this Part, such Tribunal may—

(*a*) confirm, set aside or vary the order or decision in question;

(*b*) exercise any of the powers which could have been exercised by the Registrar in the proceedings in connexion with which the appeal is brought;

(*c*) make such order as to costs as it may think fit.

(4) In any proceedings before it, the Patents Tribunal may, subject to section 91, accept evidence by affidavit or take oral evidence on oath and allow any witness to be cross-examined on his affidavit or oral evidence.

Right of audience

76. In any proceedings before the Patents Tribunal under this Act the parties to such proceedings may appear in person or be represented and appear by a legal practitioner and, in any case where the Patents Tribunal deems fit, it may grant leave to the Registrar to intervene and he may thereafter appear or be so represented.

Costs and security for costs

77.—(1) If any party to any proceedings before the Patents Tribunal is resident outside Malaŵi, the Patents Tribunal may, on the application of any other party to the proceedings, order that security to its satisfaction be lodged or given by the first-mentioned party in respect of any costs which may be awarded against him in those proceedings and may refuse to permit such proceedings to be continued until such security has been lodged or given.

(2) Unless otherwise agreed between the parties, any costs awarded in terms of section 75 (3) shall be taxed by the registrar of the Patents Tribunal in accordance with rules made under this Part, which taxation shall be subject to appeal to the Patents Tribunal, and any such costs may be recovered by action in a court of competent jurisdiction.

Appeals to High Court

78.—(1) Any party to proceedings before the Patents Tribunal may appeal in accordance with rules made under this Part from any order or decision of such Tribunal to the High Court.

(2) Upon the hearing of an appeal under this section, the High Court may, without prejudice to its other powers—

(*a*) confirm, set aside or vary the order or decision in question;

(*b*) remit the proceedings to the Patents Tribunal with such instructions for further consideration, report, proceedings or evidence as the High Court may think fit to give;

(*c*) exercise any of the powers which could have been exercised by the Patents Tribunal in the proceedings in connexion with which the appeal is brought;

(*d*) make such order it may think just as to the costs of the appeal or of earlier proceedings in the matter before the Patents Tribunal.

79. The Patents Tribunal may appoint any person with special expert knowledge to act as an assessor in an advisory capacity in any case where it appears to such Tribunal that such knowledge is required for the proper determination of the case. Assessors

80.—(1) Appeals under this Part, whether from decisions of the Registrar or orders or decisions of the Patents Tribunal, shall be brought within three months after the date of the decision or order in question, or within such further time as the Patents Tribunal or High Court to which the appeal is brought may allow upon application by the appellant concerned. Time for appeals

(2) The powers of the Registrar as to extensions of time under section 64 (2) shall not apply in relation to times for bringing appeals under this Part.

81. The Minister may make rules for regulating generally the practice and procedure of the Patents Tribunal and with respect to appeals or references to such Tribunal as to the time within which any requirement of the rules is to be complied with, as to the costs and expenses of and incidental to any proceedings in such Tribunal, as to the fees to be charged in respect of proceedings therein, as to the fees to be paid to assessors, and in particular may make rules providing for the summary determination of any appeal which appears to the Patents Tribunal to be frivolous or vexatious or to be brought for the purpose of delay. Rules

82.—(1) When any matter to be decided by the Registrar under this Act appears to him to involve a point of law or to be of unusual importance or complexity, he may, after giving notice to the parties, refer such matter to the Patents Tribunal for a decision and shall, thereafter, in relation to such matter, act in accordance with the decision of that Tribunal or any decision substituted therefor on appeal to the High Court. References to Patents Tribunal by Registrar

(2) Where any matter has been referred to the Patents Tribunal in terms of subsection (1), the Registrar and the parties shall be entitled to be heard by the Patents Tribunal before any decision is made in such matter and may appear or be represented in accordance with section 76.

PART XI

Offences and Penalties

83. If any person makes or causes to be made a false entry in any register kept under this Act, or a writing falsely purporting to be a copy of an entry in any such register, or produces or Falsification of certain documents

tenders or causes to be produced or tendered in evidence any such writing, knowing the entry or writing to be false, he shall be guilty of an offence.

Deceiving or influencing the Registrar or an officer

84.—(1) Any person who—

(*a*) for the purpose of deceiving the Registrar or any other officer of the Patent Office in the execution of this Act; or

(*b*) for the purpose of procuring or influencing the doing or omission of anything in relation to this Act or any matter thereunder,

makes or submits a false statement or representation, whether orally or in writing, knowing the same to be false, shall be guilty of an offence.

(2) Any person who, having innocently made a false statement or representation, whether orally or in writing, for the purpose of procuring or influencing the doing or omission of anything in relation to this Act, or any matter thereunder and who on becoming aware that such statement or representation was false fails to advise the Registrar forthwith of such falsity, shall be guilty of an offence.

Witness giving false evidence

85. Any person who, after having been sworn, or having in lieu thereof made an affirmation or declaration, wilfully gives false evidence before the Registrar or the Patents Tribunal concerning the subject-matter of the proceeding in question, knowing such evidence to be false or not knowing or believing it to be true, shall be guilty of an offence.

Prohibition on trafficking in patents by officers in Patent Office

86.—(1) Any officer of the Patent Office who buys, sells, acquires, or traffics in any invention or patent or any right under a patent shall be guilty of an offence.

(2) Every purchase, sale or acquisition, and every assignment of any invention or patent, by or to any such officer shall be null and void.

(3) Nothing in this section contained shall apply to the inventor or to any acquisition by bequest or devolution in law.

Unauthorized claim for patent right

87. If any person falsely represents that any article sold by him is a patented article, he shall be guilty of an offence, and for the purposes of this provision a person who sells an article having stamped, engraved or embossed thereon or otherwise applied thereto the word "patent" or "patented" or any other word expressing or implying that the article is patented, shall be deemed to represent that the article is a patented article.

88. If any person other than a person appointed in terms of section 4 uses on his place of business, or on any document issued by him, or otherwise, the words "Patent Office" or any other words suggesting that his place of business is, or is officially connected with, the Patent Office, he shall be guilty of an offence. Unauthorized use of certain words

89. Any person who is guilty of an offence under this Act shall be liable to a fine of £500 and to imprisonment for three years. Penalties

PART XII

Miscellaneous

90.—(1) Any application, notice or document authorized or required under this Act to be lodged, made or given at the Patent Office, or to the Registrar or any other person, may be delivered by hand or sent by registered post. Lodging and authentication of documents

(2) No authentication shall be required in respect of any document lodged in the Patent Office under the provisions of this Act and used in proceedings before the Registrar or the Patents Tribunal.

91. Any person who is required under this Act to take any oath or swear to the truth of any affidavit may, in lieu thereof, make an affirmation or declaration in accordance with the law relating to affirmations or declarations. Oaths and affirmations

92. All moneys necessary for the purpose of this Act shall be paid out of moneys provided by Parliament. Expenses of administration

93.—(1) Where under this Act— Provisions as to fees

(*a*) a fee is payable in respect of the performance of any act by the Registrar, the Registrar shall not perform that act until the fee has been paid;

(*b*) a fee is payable in respect of the doing of any act by any person other than the Registrar, the act shall be deemed not to have been done until the fee has been paid; or

(*c*) a fee is payable in respect of the lodging of a document, the document shall be deemed not to have been lodged until the fee has been paid.

(2) All fees shall be paid at the Patent Office in such manner as the Registrar, with the approval of the Minister, may accept.

94. Nothing in this Act shall affect the right of the Government or of any person deriving title directly or indirectly from the Government to sell or use articles forfeited to the Government under any enactment in force in Malaŵi. Saving for certain forfeitures

Patent Journal

95.—(1) The Minister may, when he deems fit, direct the publication by the Registrar of a journal, to be referred to as the Patent Journal, containing particulars of applications for patents and other proceedings or matters arising under this Act, together with such reports of cases and other relevant matters as the Minister may deem fit.

(2) The Registrar shall make provision for selling copies of the Patent Journal at such price and in such manner as the Minister may direct.

Power to make regulations

96.—(1) The Minister may make regulations prescribing anything which under this Act is to be prescribed and generally for the better carrying out of the objects and purposes of this Act or to give force or effect to its provisions or for its better administration.

(2) Without derogation from the generality of subsection (1), regulations made by the Minister may provide for—

(*a*) the form of applications for patents and of any specifications, drawings or other documents which may be lodged at the Patent Office, and the furnishing of copies of any such documents;

(*b*) the procedure to be followed in connexion with any application or request to the Registrar, or any proceeding before him, and the authorizing of the rectification of irregularities of procedure;

(*c*) the service of notices and other documents required to be served in connexion with proceedings under this Act;

(*d*) examinations for the qualification of patent agents in terms of this Act, the recognition for such purpose of qualifications obtained either in or outside Malaŵi, and the fees to be paid in connexion with the registration of patent agents;

(*e*) the conduct of the business of the Patent Office;

(*f*) other fees payable under this Act, and fees which may be charged in relation to the conduct of patent business by patent agents and legal practitioners performing the functions of patent agents;

(*g*) authorizing the publication and the sale of copies of specifications, drawings and other documents in the Patent Office, and of indexes to and abridgements of such documents;

(*h*) the professional conduct of patent agents.

PART XIII

Application

Application of Act

97. Any patent which immediately before the 1st January, 1964, was registered in Malaŵi under any enactment relating to

patents and was protected under the former patents legislation and any patent which immediately before the commencement of the said legislation was registered in the United Kingdom under any agreement relating to patents and was protected in Malaŵi under the Registration of Patents Ordinance (now repealed) shall be deemed to be registered under this Act and shall be protected under this Act while it would have been protected in the Federation of Rhodesia and Nyasaland or in the United Kingdom as the case may be: 21 of 1932

Provided that—

(*a*) a patent referred to in this section shall not be liable to revocation except upon some ground upon which it would have been liable to revocation in terms of the said legislation;

(*b*) an application in respect of a patent referred to in this section which was pending in the Federation of Rhodesia and Nyasaland immediately prior to the 1st day of January, 1964, may be refused by the Registrar only in accordance with the provisions of this Act;

(*c*) fees in respect of an application referred to in paragraph (*b*) shall continue to be payable at appropriate rates provided under the said legislation except that they shall be paid in terms of section 93 and shall thereafter be paid into the Consolidated Fund.

[Subsidiary] *Patents Tribunal Rules*

G.N. 234/1965

SUBSIDIARY LEGISLATION

APPOINTMENT NOTICE

under s. 4

The Minister has appointed—

(i) the Registrar General to be Registrar of Patents;

(ii) the Assistant Registrar General to be Deputy Registrar of Patents.

PATENTS TRIBUNAL RULES

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FIRST SCHEDULE

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PATENTS TRIBUNAL RULES

under s. 81

G.N. 252/1957(F) 5/1964(M) 232/1965 166/1967

PRELIMINARY

1. These Rules may be cited as the Patents Tribunal Rules. Citation

2. In these Rules, unless inconsistent with the context— Interpretation

"Office" means the Patent Office;

"Chairman" means the Chairman of the Patents Tribunal;

"Tribunal" means the Patents Tribunal.

PART I

APPEALS

3. (1) Any person who desires to appeal to the Tribunal from a decision of the Registrar of Patents in any matter in Entry of appeal

which a right of appeal is given under the Act shall, within three months after the date of the decision, file with the registrar of the Tribunal a notice in form P.T. No. 1.

(2) A notice of appeal shall state the nature of the decision appealed against and whether the appeal is from the whole or part only and, if so, what part of the decision, and shall be accompanied by a statement in writing of the appellant's grounds of appeal.

(3) The appellant shall send a copy of the notice of appeal to the Registrar of Patents and to any person or persons who appeared or gave notice of opposition in the proceedings before the said Registrar.

(4) The appellant shall be responsible for the preparation of the record which shall be certified by the Registrar of Patents as correct in terms of subrule (7).

(5) The Registrar of Patents as well as the parties or their legal practitioners shall endeavour to exclude from the record all documents (more particularly such as are purely formal) that are not relevant to the subject matter of the appeal, and generally to reduce the bulk of the record as far as practicable, and to avoid the production of unnecessary exhibits, taking special care to avoid the duplication of documents and the unnecessary repetition of headings, and furnish merely the formal particulars of documents; but the documents omitted to be copied shall be enumerated in a list to be placed after the index or at the end of the record.

(6) The Registrar of Patents, after consultation with the registrar of the Tribunal, shall direct the number of copies of the record to be prepared, having regard to whether or not one or more assessors are likely to sit upon the hearing of the appeal.

(7) After the completion of the preparation of the record the Registrar of Patents shall certify the record to be correct and forward it to the registrar of the Tribunal together with such copies thereof as he has directed to be prepared in terms of subrule (6).

Application for an extension of time in which to appeal

4.—(1) Any application for an extension of time in which to appeal shall be in form P.T. No. 2 and shall state briefly the grounds upon which the application is based and where facts are alleged such facts shall be verified by affidavit.

(2) The application accompanied by supporting documents shall be delivered to the registrar of the Tribunal and copies shall forthwith be served by the appellant on the Registrar of Patents and on any person or persons who appeared or gave notice of opposition in the proceedings before the said Registrar.

(3) The respondent shall be entitled to file an affidavit in reply within fourteen days from the date of service or within such longer period as may be ordered by the Tribunal, and the Tribunal may permit further affidavits to be filed. Copies of such affidavits shall be served on the Registrar of Patents and on the appellant or the respondent, as the case may be, immediately after the affidavits are filed.

Notice of hearing

5. (1) The registrar of the Tribunal shall, after obtaining directions from the Chairman, give to the Registrar of Patents, to the appellant and to any opposing party not less than fourteen days' notice of the time and place appointed for the hearing of the appeal, unless the Chairman directs that shorter notice shall be given.

(2) In any case where the setting down of the hearing of an appeal has been delayed any party may apply to the registrar of the Tribunal to fix a date for the hearing, and thereupon the registrar of the Tribunal, after consulting any other party and the Chairman, shall set down the appeal for hearing after having given to the Registrar of Patents and to any other party not less than fourteen days' notice or such shorter notice of the time and place appointed for the hearing of the appeal as directed by the Chairman.

(3) If in the opinion of the registrar of the Tribunal an appeal is not being prosecuted timeously he may lay the matter before the Chairman for directions and, if the Chairman is satisfied that the parties do not intend or are unable to proceed with the appeal, he may direct that the parties attend before him to show cause why the appeal should not be dismissed.

Evidence

6. Subject to section 75 (4) of the Act the evidence used on appeal to the Tribunal shall be the same as that used before the Registrar of Patents and no further evidence shall be given, except with the leave of the Tribunal.

Attendance of witnesses

7. The Tribunal may, at the request of any party, order the attendance at the hearing for the purpose of cross-examination of any person who has given evidence in the matter to which the appeal relates.

Security on appeal

8.—(1) Subject to section 77 of the Act any party may, at any time before the hearing of an appeal, apply to the Tribunal for an order that any opposing party shall, within such time, in such amount and in such manner as the Tribunal directs, give security for the payment of any costs which such opposing party may be ordered to pay.

(2) The party applying for an order for security for costs shall

serve upon the opposing party a copy of the notice of the application for security at least seven days before the date of the hearing thereof.

(3) Any party ordered to give security for costs in terms of this rule may apply to the Tribunal for an order extending the time within which any security is to be given, and shall give not less than four days' notice of such application to the other party.

(4) In the event of the security not being given or being only partly given within the time directed by the Tribunal or any extension thereof, all proceedings in the appeal shall be deemed to be stayed, unless the Tribunal otherwise orders, and the appeal shall be set down for such order, whether of dismissal or otherwise, as the Tribunal may think fit.

Abandonment or failure to prosecute appeal

9.—(1) An appellant may at any time abandon his appeal by giving notice of abandonment in form P.T. No. 3 to the registrar of the Tribunal and upon such notice being given the appeal shall be deemed to have been dismissed by the Tribunal.

(2) The appellant shall serve a copy of the notice of abandonment on the respondent and on the Registrar of Patents.

(3) The respondent may, upon receipt of such notice, apply to the Tribunal for an order in respect of any costs incurred by him.

Frivolous or vexatious appeals

10. If it appears to the Tribunal that any notice of appeal against a decision of the Registrar of Patents discloses grounds of appeal which are frivolous or vexatious and that the appeal can be determined without a hearing, the Tribunal may dismiss the appeal summarily without calling on any person to attend the hearing of such appeal.

PART II

Applications and Oppositions

Application for extension of patent

11.—(1) Subject to section 64 of the Act an application to the Tribunal under section 30 of the Act for an order extending the term of a patent shall be made in form P.T. No. 4 and shall be filed with the Registrar of Patents after the applicant has duly advertised his application in two consecutive issues of the *Gazette* and notified in writing the registered licensee or patentee, as the case may be, of the advertisement.

(2) The application shall state the period of the extension which is sought and shall be supported by evidence setting out

fully the facts relied upon, such evidence being filed either with the application or at any time within three months from the date thereof.

(3) At any time within two months from the date of the second advertisement of the application in the *Gazette* any person may give notice of opposition.

(4) Such notice shall be in form P.T. No. 5 and shall be accompanied by a statement setting out fully the nature of the objector's interest, the grounds of opposition and the relief which he seeks and evidence of the facts upon which he relies.

(5) Within two months from the receipt of the notice of opposition the applicant may file evidence confined to matters strictly in reply and shall serve on the objector a copy of the evidence. Proof of service must be furnished to the satisfaction of the Registrar of Patents.

(6) An objector shall be entitled at his own expense to be supplied with a copy of the application and of any evidence filed in support thereof.

(7) When this rule has been complied with to the extent herein required, the Registrar of Patents shall hand all relevant papers to the registrar of the Tribunal.

Application for compulsory licence in respect of patents relating to food or certain other commodities

12.—(1) An application under section 38 of the Act for a licence under a patent shall be made in form P.T. No. 6 and shall be filed with the Registrar of Patents.

(2) The application shall set out fully the nature of the applicant's interest, the facts upon which he bases his case and the relief he seeks and shall be accompanied by an affidavit verifying the facts set out therein.

(3) The applicant shall serve copies of the application and of the relevant affidavit upon the patentee and upon any other person appearing from the register to be interested in the patent, and he shall advertise the application in one issue of the *Gazette* in such form as may be approved by the Registrar of Patents.

(4) At any time within two months from the date of the advertisement the patentee or any other person who wishes to oppose the application shall deliver to the Registrar of Patents a counter-statement, verified by affidavit, setting out fully the grounds upon which the application is opposed, and shall at the same time serve upon the applicant a copy of the counter-statement and of such affidavit. Proof of service shall be furnished to the satisfaction of the said Registrar.

(5) When this rule has been complied with to the extent herein required, the Registrar of Patents shall hand all relevant papers to the registrar of the Tribunal.

Dispute as to Government use

13.—(1) Any reference to the Tribunal under section 42 of the Act by a party to a dispute (hereinafter referred to as "the Claimant") shall be made in form P.T. No. 7 and shall be filed with the Registrar of Patents.

(2) The claimant shall by affidavit verify the facts upon which he relies and shall state fully the nature of his interest in the matter in dispute and the relief which he seeks.

(3) The claimant shall serve a copy of his claim and of the relevant affidavit upon the other party to the dispute.

(4) The other party shall within two months from the date of receipt of such copy deliver to the Registrar of Patents a counter-statement, verified by affidavit, setting out fully the nature of his interest and the facts upon which he relies, and shall at the same time serve upon the claimant a copy of the counter-statement and of such affidavit.

(5) Proof of service shall be furnished to the satisfaction of the Registrar of Patents.

(6) When this rule has been complied with to the extent herein required, the Registrar of Patents shall hand all relevant papers to the registrar of the Tribunal.

(7) Any party to the dispute may at any time during the proceedings under this rule make application to the Tribunal for an order for the hearing of oral evidence, and the Tribunal shall make such order as it deems fit.

Revocation of patent

14.—(1) An application for the revocation of a patent under section 50 of the Act shall be made in form P.T. No. 8 and shall be filed with the Registrar of Patents.

(2) The applicant shall serve copies of the application upon the patentee and shall advertise the application in one issue of the *Gazette* in such form as may be approved by the Registrar of Patents.

(3) The period within which a counter-statement may be lodged by the patentee shall be two months from the date of receipt by him of the application. If such counter-statement is not lodged within the said period, opposition to the application shall be deemed to be abandoned.

(4) The applicant may within two months from the receipt of the copy of the counter-statement file evidence in support of his case and shall serve on the patentee a copy thereof.

(5) Within two months from the receipt of the copy of the applicant's evidence or, if the applicant does not file any evidence, within two months from the expiration of the time within which the applicant's evidence might have been filed, the patentee may file evidence in support of his case and shall serve on the applicant a copy of the evidence; and within two months from the receipt of the copy of the patentee's evidence the applicant may file evidence confined to matters strictly in reply and shall serve on the patentee a copy of the evidence.

(6) No further evidence shall be filed by either party except by leave or direction of the Tribunal.

(7) Proof of service of all notices, statements or other documents referred to in this rule shall be furnished to the satisfaction of the Registrar of Patents.

(8) When this rule has been complied with to the extent herein required, the Registrar of Patents shall hand all relevant papers to the registrar of the Tribunal.

Rectification of register

15. An application for the rectification of the register under section 60 of the Act shall be made to the Tribunal in form P.T. No. 9 and a copy thereof shall be served on the Registrar of Patents and on any other person appearing from the register to be interested in the patent.

Hearing of applications

16.—(1) When the registrar of the Tribunal has received from the Registrar of Patents the papers or written proceedings in relation to any application or other matter made to the Tribunal under the Act or in matters where applications to the Tribunal are not required to be transmitted through the said Registrar, he shall, after taking directions from the Chairman, appoint a time and place for the hearing of the case, and shall give the parties at least fourteen days' notice of the appointment.

(2) After hearing the party or parties desiring to be heard or, if none of the parties desires to be heard, then without a hearing, the Tribunal shall decide the case and notify its decision to the parties.

Evidence by affidavit

17.—(1) All evidence shall be by affidavit unless otherwise directed by the Tribunal.

(2) Whenever a time is specified in this Part within which any act or thing is to be done, the Registrar of Patents, may, on application made to him in writing, extend the time either before or after its expiration or within any extended period.

Costs

18. If the applicant notifies the Tribunal that he does not desire to proceed with an application, the Tribunal in deciding whether costs should be awarded to the other party shall consider whether proceedings might have been avoided if such other party had given reasonable notice to the applicant before the application to the Tribunal was filed.

PART III

Patent Agents

Procedure under section 69 (2)

19.—(1) Every person applying under section 69 (2) of the Act for an order to remove the name of any patent agent from the register of patent agents or to suspend any patent agent from practising as such shall make application in that behalf to the Tribunal, and such application, accompanied by affidavits of the facts upon which it is based, shall be filed with the registrar of the Tribunal.

(2) A copy of the application and of the accompanying affidavits shall be served upon the patent agent concerned, who within one month after receipt thereof shall notify the registrar of the Tribunal in writing whether he wishes to adduce evidence and to be heard by the Tribunal.

(3) Thereafter the registrar of the Tribunal, after consultation with the Chairman, shall appoint a time for the hearing of the application and shall give the parties and the Registrar of Patents at least fourteen days' notice of the appointment.

(4) If, after due inquiry into the allegations made, the Tribunal is satisfied that the patent agent concerned has been guilty of conduct discreditable to a patent agent or has been guilty of a breach of any regulation prescribed for the conduct of patent agents, the Tribunal shall make such order therein as it considers just.

PART IV

Taxation of Costs

Registrar of Patents Tribunal to be Taxing Officer

20. The registrar of the Tribunal shall be the Taxing Officer for the purpose of taxing a bill of costs of a legal practitioner, and in the taxation of costs shall comply with such instructions as may from time to time be given to him by the Tribunal for that purpose.

Necessary and proper costs to be allowed

21.—(1) With a view to affording the party who has been awarded an order for costs a full indemnity for all costs reasonably incurred by him in relation to his application or

opposition, and to ensure that all such costs shall be borne by the party against whom such order has been awarded by the Tribunal, the Taxing Officer shall on every taxation allow all such costs, charges and expenses as appear to him to have been necessary or proper for the attainment of justice or for defending the rights of any party, but, save as against the party who incurred the same, no costs shall be allowed which appear to the Taxing Officer to have been incurred or increased through over-caution, negligence or mistake, or by payment of a special fee to counsel, unless the Tribunal otherwise orders, or special charges and expenses to witnesses or other persons or by other unusual expenses.

(2) Upon the taxation of costs the Taxing Officer may, in determining the remuneration to be allowed, have regard to the skill, labour and responsibility involved. If, on having regard to the said matters, the Taxing officer considers that there are special reasons why costs in excess of those prescribed in these Rules should be allowed, he may, in respect of any particular application made or business done, allow such costs as seem to him reasonable and shall certify his decision in writing.

(3) Any person aggrieved by the charges made by any legal practitioner in respect of work performed by him under the Act may refer such charges to the Taxing Officer for taxation.

Scale of fees to be followed

22. In the taxation of costs the Taxing Officer shall be guided, as far as the circumstances of each particular case will permit, by the scale of fees prescribed in rule 35. In addition to these charges all disbursements shall be separately charged and shall be allowed by the Taxing Officer when reasonable.

Witnesses' charges and allowances

23.—(1) Witnesses requiring payment shall be paid for their attendance and travelling in accordance with rule 34.

(2) The charges for witnesses as fixed by rule 34 are to be considered as payable to the witness by the party who summoned or produced him, and in the event of any such party being awarded his costs against any other party the said charges shall be allowed against such other party in the taxation of costs.

(3) Any person applying to the registrar of the Tribunal for the issue of a subpoena to compel the attendance of any witness shall by endorsement of such subpoena give an undertaking that all expenses due to the witness shall be tendered to such witness upon service of the subpoena, failing which no subpoena shall issue. If upon service of the subpoena all expenses due to such witness have not been paid the subpoena shall have no force and effect.

(4) In the taxation of costs between party and party no amount shall be allowed for any witness whether for attendance or travelling expenses unless there is produced to the Taxing Officer proof that such amount has already been paid or tendered to or claimed by such witness.

(5) In the taxation of costs between party and party nothing shall be allowed for any witness not examined unless upon proof that his evidence might reasonably have been believed to be material and necessary.

(6) If the number of witnesses summoned, or if the number of affidavits filed, is manifestly greater than is reasonably necessary, there shall only be allowed against the other party the charges for such witnesses or affidavits as were reasonably necessary.

(7) In the taxation of costs between party and party no amount shall be allowed for any witness in respect of personal attendance or travelling expenses if the fact or facts which such witness is subpoenaed to prove have, before the issue of such subpoena, been admitted to the party taking out the subpoena by the opposite party:

Provided that such admission shall be in writing, signed by the party making it or his legal practitioner acting on his behalf.

(8) When the same person is a witness in more cases than one heard on the same day, he shall be entitled to no more than one fee for personal attendance and one allowance for travelling expenses, which shall be equally divided between such cases.

Taxation of costs

24.—(1) In all cases where a notice of taxation is necessary seven days' notice together with a copy of the bill of costs shall be given by the legal practitioner on behalf of the party whose costs are to be taxed to the other party or to the legal practitioner of such other party.

(2) When the dwelling-house or place of business of the party against whom costs are to be taxed is more than thirty-six miles from the seat of the Tribunal, the time for the service of such notice shall be extended to fourteen days.

(3) In the taxation of costs, the notice of taxation with a copy of the bill of costs may be transmitted by registered post to the party appearing in person.

Review of decision of Taxing Officer

25. Any party aggrieved by the decision of the Taxing Officer may apply to the Tribunal within four weeks after the taxation to review such taxation. Copies of the application shall be served on the Taxing Officer and on the opposite party. The application

shall specify the items forming the subject of the grievance but the grounds upon which such items are sought to be reviewed shall not require to be verified by affidavit.

Reference to Chairman in chambers

26. The Taxing Officer may, without filing any formal documents, submit any point arising at a taxation for decision by the Chairman in chambers, and it shall be competent for the Taxing Officer and for the legal practitioners who appeared at the taxation to appear before the Chairman respecting such point.

PART V

General

Adjournment of proceedings

27. The hearing of any application or other matter before the Tribunal may from time to time he adjourned upon such terms as the Tribunal thinks fit.

Place of hearing

28.—(1) Except as provided in subrule (2) every hearing before the Tribunal shall be in Blantyre.

(2) One or more of the parties may, not later than fourteen days before the date approved for the hearing, apply to the Tribunal to conduct the hearing at some other place in Malaŵi. The Tribunal may, in its discretion and subject to such conditions as to notice and costs as it thinks fit, conduct the hearing at the place named in the application.

(3) Where an application under subrule (2) is not made by all the parties to the proceedings, the Tribunal shall not decide the application without giving the parties an opportunity to be heard.

Forms

29. The forms referred to in these Rules are those set out in the First Schedule and such forms shall be used in all cases to which they are applicable and may be modified as directed by the Chairman.

Fees

30. The Tribunal fees prescribed in the Second Schedule shall be paid to the Registrar of Patents at the Office.

Endorsement of fee on document chargeable

31.—(1) Upon receipt of any document chargeable with any fee payable in terms of these Rules the Registrar of Patents shall endorse upon the original of such document the amount of the fee paid and the date of payment.

(2) The Registrar of Patents shall refuse to accept any document in respect of which a fee is payable under these Rules, unless the appropriate fee accompanies such document.

Oath to be taken by assessors appointed under section 79

32. The form of oath to be taken by assessors shall be as follows—

I, ... hereby declare that I will to the best of my ability faithfully and diligently discharge any duties as assessor without favour, fear or prejudice.

Remuneration of assessors

33. The remuneration of assessors attending the Tribunal shall be that payable to assessors attending the High Court in criminal matters.

Witnesses' allowances

34. The subsistence and travelling allowances payable to witnesses attending the Tribunal shall be the same allowances as are payable to witnesses attending the High Court in civil matters.

Legal practitioners' fees

35. Legal practitioners' fees in any appeal, application, opposition or other matter heard by the Tribunal shall be in accordance with the fees prescribed for legal practitioners in civil matters in the High Court.

FIRST SCHEDULE

r. 29

FORMS

Form	*Matter*	*Rule*
1.	Notice of appeal to Patents Tribunal	3 (1)
2.	Application for an extension of time in which to appeal	4 (1)
3.	Notice of abandonment of appeal	9 (1)
4.	Application under section 30 of the Act for extension of term of patent	11 (1)
5.	Notice of opposition to application for extension of term of patent	11 (4)
6.	Application for licence under section 38 of the Act	12 (1)
7.	Reference to the Patents Tribunal under section 42 of the Act	13 (1)
8.	Application under section 50 of the Act for the revocation of a patent	14 (1)
9.	Application for rectification of register of patents . .	15

Form P.T. No. 1

Sections 73 and 80
Rule 3 (1)

THE PATENTS ACT

(Cap 49:02)

Fee: £2 10s.

Notice of Appeal to Patents Tribunal

(1) State nature of application or proceedings, the name of the applicant and the number of the application for Letters Patent

IN THE MATTER of an application (1) .....
.....
.....
.....
.....

and

IN THE MATTER of an opposition by (2) .....
.....
.....

I/We (3) .....
of .....
.....

hereby give notice of appeal to the Tribunal from (4) .....
.....
of the Registrar of Patents, dated the ..... day of ....., 19 ....., whereby he

(5).....
.....
.....
.....
.....

Dated this ..... day of....., 19 .....

(6) .....
.....

My/Our address for service in Malaŵi:—

.....
.....
.....

The Registrar of the Patents Tribunal,
Blantyre

(2) State the name of the objector(s) if the application is opposed
(3)State full name and address of appellant(s)
(4) Here insert "the decision" or "that part of the decision", as the case may be
(5) Here insert "refused application for Letters Patent" or "refused (or allowed) application for leave to amend specification" or otherwise, as the case may be
(6) To be signed by the appellant(s) or his/their legal practitioner

Form P.T. No. 2

Sections 80
Rule 4 (1)

THE PATENTS ACT
(Cap. 49:02)

Fee: Nil

Application for an Extension of Time in which to Appeal

IN THE MATTER of an application (1) .....
.....
.....
.....

(1) State nature of application or proceedings, the name of the applicant and the number of the application for Letters Patent

and

(2) State the name of the objector(s) if the application is opposed

IN THE MATTER of an opposition by (2) .....
.....
.....

(3) State full name and address of appellant(s)

I/We (3) .....
of .....
.....

(4) Here insert "the decision" or "that part of the decision" as the case may be

hereby make application for an order of the Tribunal extending the time in which to appeal from (4) .....
.....
.....
of the Registrar of Patents on the following grounds (5) .....
.....
.....
.....

(5) Here state briefly the grounds upon which the application is based and where facts are alleged such facts shall be verified by affidavit

Dated this ..... day of ..... 19 ....,

(6) .....
.....

(6) To be signed by the appellant(s) or his/their legal practitioner

The Registrar of the Patents Tribunal,
Blantyre

Form P.T. No. 3

Rule 9 (1)

THE PATENTS ACT
(CAP. 49:02)

Fee: Nil

Notice of Abandonment of Appeal

(1) State nature of application or proceedings, the name of the applicant(s) and the number of the application for Letters Patent

IN THE MATTER of an application (1) .....
.....
.....
.....
.....

and

(2) State the name of the objector(s) if the application is opposed

IN THE MATTER of an opposition by (2) .....
.....
.....

you are hereby notified that the abovenamed appellant(s) hereby abandon(s) all further proceedings in the above matter.

Dated this ..... day of ..... , 19.....

(3) .....

.....

(3) To be signed by the appellant(s) or his/their legal practitioner

The Registrar of the Patents Tribunal,
Blantyre

Form P.T. No. 4

Section 30 (1)
Rule 11 (1)

THE PATENTS ACT

(Cap. 49:02)

Fee: £3

Application under section 30 of the Act for Extension of Term of Patent

I/We (1).....
.....
.....
hereby apply for an extension of the term of Patent No. .....
for a period of (2) ..... year(s), on the following grounds (3) .....
.....
.....
.....

(1) State full name and address of applicant(s)

(2)Insert period for which extension is sought

(3) Here state briefly the nature of the grounds

Dated this ..... day of ..... , 19 .....

(4) .....

.....

(4) To be signed by the applicant(s) or his/their legal practitioner

My/Our address for service in Malaŵi:—

.....
.....
.....

NOTE.— The application must be accompanied by evidence setting out fully the facts relied upon.

The Registrar,
The Patent Office,
Blantyre

Form P.T. No. 5

Section 30 (3)
Rule 11 (4)

THE PATENTS ACT

(CAP. 49:02)

Fee: £2

Notice of Opposition to Application for Extension of Term of Patent

I/We (1) .....
.....
.....
hereby give notice of opposition to the application for extension of the term of Patent No. ..... upon the following grounds (2)
.....
.....
.....
.....

(1) State full name and address of objector(s)

(2) Here state briefly the grounds

Dated this ..... day of ....., 19.....

(3) .....
.....

(3) To be signed by the objector(s) or his/their legal practitioner

My/Our address for service in Malaŵi:—
.....
.....
.....

NOTE.—The application must be accompanied by evidence in support of the opposition.

The Registrar,
The Patent Office,
Blantyre

Form P.T. No. 6

Section 38
Rule 12 (1)

THE PATENTS ACT

(Cap. 49:02)

Fee: £2 10s.

Application for Licence under section 38 of the Act.

I/We (1) .....
.....
hereby apply for a licence under Patent No. ..... for making, using and exercising the invention—

(1) State name and address of applicant(s)

(*a*) as food or medicine;

(*b*) for the purpose of the production of food or medicine;

(*c*) as or as part of a surgical or curative device;

(*a*), (*b*) and (*c*) Delete whichever is not applicable

for the following reasons (2) .....
.....
.....
.....

(2) State nature of applicant'(s') interest and the facts relied upon

Dated this ..... day of ....., 19 .....

(3) .....
.....

(3) To be signed by the applicant(s) or his/their legal practitioner

My/Our address for service in Malaŵi:—

.....
.....
.....

NOTE.—The application must be accompanied by evidence verifying the statements set out in the application.

The Registrar,
The Patent Office,
Blantyre

Form P.T. No. 7

Section 42
Rule 13 (1)

THE PATENTS ACT

(Cap. 49:02)

Fee: £2 10s.

Reference to the Patents Tribunal under section 42 of the Act

IN THE MATTER of a reference by (1) .....
.....
.....

(1) State name of claimant(s) and nature of matter in dispute

against

(2) .....
.....

(2) State name of other party to dispute

I/We (3) .....
.....

(3) State full name and address of claimant(s)

hereby refer for the determination of the Tribunal my/our claim against (4) .....
.....

(4) State full name of respondent

The following are the grounds on which I/we base my/our claim:—

(5) Here state briefly the nature of the grounds

(5) .....
.....
.....
.....
.....

Dated this ..... day of ....., 19 .....

(6) To be signed by the claimant(s) or his/their legal practitioner

(6) .....
.....

My/Our address for service in Malaŵi:—

.....
.....
.....

NOTE.—The claim must be accompanied by an affidavit verifying the facts and stating fully the nature of the interest in the matter in dispute and the relief sought.

The Registrar,
The Patent Office,
Blantyre

Form P.T. No. 8

Section 50
Rule 14 (1)

THE PATENTS ACT
(Cap. 49:02)

Fee: £2

Application under section 50 of the Act for the Revocation of a Patent

(1) State full name and address of applicant(s)

I/We (1) .....
.....
.....
hereby apply for an order for the revocation of Patent No. .....
on the following grounds:—

(2) The grounds of the application can only be one or more of the grounds on which grant of the patent could have been opposed under section 22

(2) .....
.....
.....
.....

(3) I/We declare that no action for infringement or proceedings in any Court for the revocation of the Letters Patent are pending.

(3) If such action or proceedings are pending in any Court the application cannot be made without the leave of the Court

Dated this ..... day of .....,19 .....

(4) .....

.....

(4) To be signed by the applicant(s) or his/their legal practitioner

My/Our address for service in Malaŵi:—

.....

.....

.....

NOTE.—The application must be accompanied by a statement setting out fully the nature of the applicant's interest, the facts relied upon and the relief sought.

The Registrar,
The Patent Office,
Blantyre

Form P.T. No. 9

Section 60
Rule 15

THE PATENTS ACT

(Cap. 49:02)

Fee: £1

Application for Rectification of Register of Patents

(1) State name and address of applicant(s)

I/We (1) .....

.....

(2) State manner in which register is to be rectified

hereby apply in respect of Patent No. .....
that the register may be rectified in the following manner (2) .....
.....

The grounds upon which I/we base this application are as follows:—

(3) State briefly the grounds

(3) .....
.....
.....

Dated this ..... day of ....., 19 .....

(4) To be signed by the applicant(s) or his/their legal practitioner

(4) .....

.....

My/Our address for service in Malaŵi:—

.....

.....

.....

The Registrar,
The Patent Office,
Blantyre

SECOND SCHEDULE
TRIBUNAL FEES

Item	*Matter*	*Amount* £	s.	d.
1.	On every appeal to the Tribunal from decision or order of the Registrar of Patents—inclusive fee	2	10	0
2.	On application under section 30 of the Act for extension of term of patent	3	0	0
3.	On notice of opposition to application for extension of term of patent	2	0	0
4.	On application for licence under section 38 of the Act	2	10	0
5.	On a reference to the Tribunal under section 42 of of the Act	2	10	0
6.	On application under section 50 of the Act for the revocation of a patent	2	0	0
7.	On application for rectification of register of patents	1	0	0
8.	On any other application or matter made direct to the Tribunal under the Act	The fees as prescribed in the First Schedule to the Patents Regulations		
9.	On every search	0	2	6
10.	For typewritten copies of judgments or records, for additional copies of orders or for copies of documents or proceedings furnished upon direction of the registrar of the Tribunal: . .			
	The first copy for each folio of 100 words or part thereof	0	1	6
	Additional copies for each folio of 100 words or part thereof	0	0	6
11.	On certifying any document as an office copy . .	0	5	0
12.	Transcript of shorthand writers' notes	Such fee as may be determined by the Minister		

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PATENTS REGULATIONS

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REGULATION

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SUBSTITUTION OF APPLICANTS, ETC.

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32. Procedure under section 23 (5)

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SEALING AND FORM OF PATENT, AND RENEWAL FEES

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34. Time for sealing under section 25 (2)
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37. Payment of renewal fees
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G.N.
251/1957(F)
206/1959(F)
363/1960(F)
203/1962(F)
5/1964(M)
166/1967
71/1992
36/2000
3/2006

PATENTS REGULATIONS

under s. 96

PRELIMINARY

Citation

1. These Regulations may be cited as the Patents Regulations.

Interpretation

2. In these Regulations, unless inconsistent with the context—

"Agent" means a patent agent registered as such in terms of section 68 of the Act, and includes a legal practitioner;

"Office" means the Patent Office;

"Tribunal" means the Patents Tribunal.

PART I
APPLICATION FOR PATENTS AND SPECIFICATIONS

Appropriate application forms to be used

3.—(1) An application, other than a convention application, shall be made in form No. 1.

(2) A convention application shall be made in form No. 2.

(3) An application for a patent of addition shall be made in form No. 3.

(4) An application in terms of section 31 (2) of the Act for the grant of a patent of addition instead of an independent patent shall be made in form No. 4.

(5) Every application (other than a convention application) shall be accompanied by either a provisional specification in duplicate in form No. 5 or a complete specification in duplicate in form No. 6; and every convention application shall be accompanied by a complete specification in duplicate in form No. 6.

Assignee or legal representative to establish right to act

4. An application for a patent by an assignee or the legal representative of a person who was the owner of an invention when he died shall be accompanied by the deed of assignment or the probate of the will of the deceased or the letters of administration, as the case may be, or a certified copy thereof, and such further evidence and proof of the applicant's title as the Registrar may require.

Cognate application

5. Where, in pursuance of section 13 (3) of the Act, the Registrar allows a single complete specification to be proceeded with in respect of two or more applications in respect of which two or more complete specifications have been lodged, the single complete specification may include any matter disclosed in any of the said specifications and shall be deemed to have been lodged on such date, not earlier than the earliest date on which all the matter disclosed in the said single complete specification has been disclosed to the office in or in connexion with the applications, as the Registrar may direct.

Division of application if not cognate

6. Where a complete specification has been lodged pursuant to two or more applications accompanied by provisional specifications for inventions which the applicant believes to be cognate or modifications one of another and the Registrar is of the opinion that such inventions are not cognate or modifications one of another, the Registrar may allow the complete specification to be divided into such number of complete specifications as may be necessary to enable the applications to be proceeded with as two or more separate applications for patents.

Evidence in support of convention application

7.—(1) In addition to the specification lodged with every convention application, there shall be lodged with the application, or within six months thereafter, a copy of the specification and drawings or documents lodged in respect of the relevant first application or applications for protection in a convention country, duly certified by the official chief or head of the patent

office of the convention country, or otherwise verified to the satisfaction of the Registrar.

(2) If any specification or other document relating to the application is in a foreign language, it shall be accompanied by a translation thereof in the English language verified to the satisfaction of the Registrar.

Division of convention application

8. Where a single convention application has been made in respect of all or part of the inventions in respect of which two or more applications for protection have been made in one or more convention countries, the Registrar may, if he is satisfied that the claims of the specification lodged with the said convention application relate to more than one invention, allow one or more further applications to be lodged and the specification to be divided into such number of specifications as may be necessary to enable two or more separate convention applications to be proceeded with, and may direct that the said applications be deemed to have been lodged on the date of lodging of the original application.

Extension of period for lodging complete specification

9. A request in terms of section 13 (2) of the Act for an extension of time for lodging a complete specification shall be made in form No. 7.

Request for post-dating an application

10. A request in terms of section 17 (1) of the Act for the post-dating of an application shall be made in form No. 8.

PART II

Drawings

When supplied, drawings to accompany specification

11. Drawings, when supplied, shall accompany the provisional or complete specification to which they refer, except in the case provided for by regulation 18. A true copy of the original drawings shall be lodged at the same time as the original drawings.

Drawing paper

12.—(1) Drawings shall be made on pure white tough drawing paper, not thinner than 100 sheets to the inch, of smooth surface and good quality, and without colour or washes, in such a way as to admit of being clearly reproduced on a reduced scale by photography.

(2) Mounted drawings may not be used.

Size of sheets, etc.

13.—(1) Drawings shall be on sheets which measure 13 inches from top to bottom and are either 8 inches or 16 inches wide, and shall be made on one side of the paper only and have 1½ inches

clear binding margin on the left-hand side of the sheet and a ½ inch clear margin on the top, bottom and right-hand side of the sheet.

(2) If there are more figures than can be shown on one of the smaller sized sheets, two or more of these sheets shall be used unless the large size is required by the size of any one figure.

(3) An exceptionally large figure may be continued on subsequent sheets.

(4) No more sheets shall be employed than are necessary.

(5) The figures shall be numbered consecutively without regard to the number of sheets, and shall as far as possible be arranged in numerical order, separated by a sufficient space to keep them distinct.

(6) Where figures on a number of sheets form in effect a single complete figure, they shall be so arranged that the complete figure can be assembled without concealing any part of another figure.

Preparation of drawings

14. Drawings shall be prepared in accordance with the following requirements—

(*a*) they shall be executed in durable black or very dark markings;

(*b*) each line shall be firmly and evenly drawn, sharply defined, and of the same strength throughout;

(*c*) section lines, lines for effect, and shading lines shall be as few as possible, and shall not be closely drawn;

(*d*) shading lines shall not contrast excessively in thickness with the general lines of the drawing;

(*e*) sections and shading shall not be represented by solid black or washes;

(*f*) they shall be on a scale sufficiently large to show the invention clearly, and only so much of the apparatus, machine or article may appear as effects this purpose;

(*g*) if the scale is given, it shall be drawn and not denoted by words, and no dimensions may be marked on the drawings;

(*h*) where convenient, the figures shall be drawn in an upright position in regard to the top and bottom of the sheet;

(*i*) subject to any special directions of the Registrar in any particular case, reference letters and numerals and index letters

and numerals used in conjunction therewith shall be bold, distinct and not less than $\frac{1}{8}$ inch in height; the same letters or numerals shall be used in different views of the same parts; and where the reference letters or numerals are shown outside the parts referred to they shall be connected with the said parts by fine lines.

Identification of drawings

15.—(1) Drawings shall bear—

(*a*) in the left-hand top corner the name of the applicant and, in the case of drawings lodged with a complete specification after one or more provisional specifications, the numbers and years of the applications;

(*b*) in the right-hand top corner the number of sheets of drawings sent and the consecutive number of each sheet, and the words "original" or "true copy", as the case may require;

(*c*) in the right-hand bottom corner the signature of the applicant or his agent.

(2) The title of the invention shall not appear on the drawings.

Descriptive matter

16.—(1) No descriptive matter shall appear on constructional drawings, but drawings in the nature of flow sheets may bear descriptive matter to show the materials used and the chemical or other reactions or treatments effected in carrying out the invention.

(2) Drawings showing a number of instruments or units of apparatus and their interconnexions, either mechanical or electrical, where each such instrument or unit is shown only symbolically, may bear such descriptive matter as is necessary to identify the instruments or units or their interconnexions.

(3) Such descriptive matter shall be in black or very dark markings on both the original and the true copy drawings and on the latter the letters shall be not less than 1/4 inch in height.

(4) No drawing or sketch, other than a graphic chemical formula or a mathematical formula, symbol or equation, shall appear in the verbal part of the specification and if such a formula, symbol or equation is used therein a copy thereof, prepared in the same manner as original drawings, except that it may be a hand-made drawing on tracing-cloth, shall be furnished if the Registrar so directs.

Drawings not to be creased

17.—Drawings shall be delivered at the Office free from folds, breaks or creases which would render them unsuitable for reproduction by photography.

Drawings lodged with provisional specification

18. If an applicant desires to adopt the drawings lodged with his provisional specification as the drawings or part of the drawings for his complete specification, he shall refer to them in the complete specification as those lodged with the provisional specification.

PART III

Examination of Applications and Acceptance of Complete Specifications

Examination procedure under section 16

19.—(1) When the Registrar, in making the investigation under section 16 of the Act, finds that the application or specification does not comply with the requirements of subsection (1) of that section, the Registrar may refuse to accept the application or require the application or the specification which accompanied it to be amended in such manner as may be necessary.

(2) The Registrar may appoint a hearing if he considers it desirable to do so, having regard to the time remaining for putting the application in order or other circumstances of the case.

(3) When a hearing is appointed the applicant shall be given fourteen days' notice of the appointment or such shorter notice as appears to the Registrar to be reasonable in the circumstances and shall as soon as possible notify the Registrar whether he will attend the hearing.

(4) After hearing the applicant, or without a hearing if the applicant has not attended or has notified that he does not desire to be heard, the Registrar may direct or permit such amendment of the specification as will be to his satisfaction, and may refuse to accept the specification unless such amendment is made within such period as he may fix.

Extension of time under section 20

20. An application for extension of time for accepting a complete specification shall be given in form No. 9.

Extension of time under section 21

21. A notice under the proviso to section 21 (1) of the Act requesting postponement of the acceptance of a complete specification to a date, not being later than eighteen months from the date of lodging of the application, shall be given in form No. 10.

Publication of acceptance

22.—(1) When notice of acceptance of a complete specification has been given by the Registrar in terms of section 21 (2) of the Act the applicant shall advertise the acceptance in the *Gazette* within one month of the date of such acceptance or within such further time as the Registrar may allow.

(2) At any time prior to the publication of the acceptance of a complete specification the Registrar may, if he thinks fit, on application made in form No. 11, cancel such acceptance.

Inspection of application, specification and drawings

23. The fee for inspecting an application, specification and drawings shall be as set out in item 50 of the First Schedule.

PART IV

Opposition to Grant of Patent

Notice of opposition

24. A notice of opposition to the grant of a patent shall be given in form No. 12.

Counter-statement

25. The period within which a counter-statement may be lodged by the applicant shall be two months from the date of receipt by him of the notice of opposition. If such counter-statement is not lodged within the said period or within such further period as the Registrar may allow the application shall be deemed to be abandoned.

Filing of evidence by objector

26. The objector may within two months from the receipt of the copy of the counter-statement file evidence in accordance with section 65 of the Act in support of his case and shall serve on the applicant a copy thereof.

Filing of evidence by applicant

27. Within two months from the receipt of the copy of the objector's evidence or, if the objector does not file any evidence, within two months from the expiration of the time within which the objector's evidence might have been filed, the applicant may file evidence in accordance with section 65 of the Act in support of his case and shall serve on the objector a copy of the evidence; and within two months from the receipt of the copy of the applicant's evidence the objector may file evidence confined to matters strictly in reply and shall serve on the applicant a copy of the evidence.

Extension of time under regulations 25, 26 and 27

28. The Registrar may extend the periods mentioned in regulations 25, 26 and 27 if a request in writing for such extension is made at any time within the said periods or extended periods.

Proof of service of notices, statements, etc.

29. Proof of service of all notices, statements or other documents referred to in these Regulations shall be furnished to the Registrar.

Supply of documents, etc., to Tribunal

30.—(1) When the foregoing provisions of this Part have been complied with, the Registrar shall hand all relevant papers to the registrar of the Tribunal.

(2) Copies of all documents, other than Government specifications, referred to in the notice of opposition or in any statement or evidence filed in connexion with the opposition shall be furnished for the use of the Tribunal, unless the Tribunal otherwise directs.

PART V

Substitution of Applicants, etc.

Procedure under section 23 (1)

31.—(1) A claim under section 23 (1) of the Act that an application for a patent shall proceed in the name of the claimant or in the names of the claimant and the applicant or the other joint applicant or applicants shall be made in form No. 13 and shall be accompanied by a copy of any assignment or agreement upon which the claim is based, which copy shall be certified by the claimant, the applicant or the agent of either of them as the case may be.

(2) If so required by the Registrar the original assignment or agreement shall also be produced for his inspection and he may also call for such other proof of title or written consent as he may require.

Procedure under section 23 (5)

32.—(1) An application under section 23 (5) of the Act by any party to a joint application for the directions of the Registrar as to the name of the party, or the manner in which an application for a patent shall be proceeded with, shall be made in form No. 14 and shall be accompanied by a statement setting out fully the facts upon which the applicant relies and the directions which he seeks.

(2) A copy of the application and statement shall be sent by the Registrar to each other joint applicant (the applicant shall supply a sufficient number of copies for that purpose) and thereafter the Registrar shall appoint a time for the hearing of the case and shall give the parties at least fourteen days' notice of the appointment.

(3) After hearing the party or parties desiring to be heard or, if none of the parties desires to be heard, then without a hearing, the Registrar shall in accordance with section 23 (5) of the Act give directions as he thinks fit for enabling the application to proceed in the name of one or more of the parties or for regulating the manner in which it shall be proceeded with or for both those purposes, according as the case may require.

PART VI

Sealing and Form of Patent, and Renewal fees

Request for sealing

33. An application for the sealing of a patent shall be made in form No. 15.

Time for sealing under section 25 (2)

34.—(1) An application for an extension of time under proviso (*d*) to section 25 (2) of the Act shall be made in form No. 16 and the period of extension shall not exceed three months.

(2) An application under proviso (*e*) to section 25 (2) of the Act for a further extension of time shall be made in form No. 17.

Form of patent

35. A patent shall be in the form set out in the Second Schedule or in such form modified as directed by the Registrar to meet the circumstances.

Amendment of patent

36. An application under section 26 of the Act for the amendment of a patent shall be made in form No. 18 and shall be accompanied by evidence verifying the statements therein and by the letters patent.

Payment of renewal fees

37. If it is desired at the expiration of the third year of the term of a patent or of any succeeding year during the term of the patent to keep the patent in force, the renewal fees set out in item 18 of the First Schedule shall be paid by lodging form No. 19 before the expiration of that year:

Provided that where the sealing of the patent is delayed beyond the periods set out herein, by reason of opposition or the application having been kept secret or an extension under proviso (*e*) to section 25 (2) of the Act having been granted, the renewal fees may be paid at the time the patent is sealed. The Registrar may in his discretion grant an extension of time not exceeding six months from the date of sealing for payment of such fees.

Renewal fees may be paid in advance

38. All or any of the prescribed renewal fees may be paid in advance.

Extension of time for payment

39. An application for extension of time for payment of any renewal fee shall be made in form No. 20.

Certificate of payment

40. On due compliance with the terms of regulation 37, the Registrar shall issue a certificate in form No. 21 that the prescribed fee has been duly paid, and he shall cause to be entered in the register the fact that the fee has been paid and the date of payment as stated on the certificate.

PART VII

Restoration of Lapsed Patents

Application

41.—(1) An application under section 33 of the Act for the restoration of a patent shall be made in form No. 22 and shall be accompanied by evidence by affidavit in support of the statements made in the application.

(2) The Registrar shall direct the patentee to advertise the application (if in compliance with section 33 (2) of the Act) in two consecutive issues of the *Gazette*.

Notice of opposition

42.—(1) At any time within two months of the advertisement of the application any person may give notice of opposition thereto in form No. 23.

(2) Such notice shall be accompanied by a copy thereof together with a statement, in duplicate, setting out fully the nature of the objector's interest and the facts upon which he relies.

(3) Upon notice of opposition being given regulations 25 to 29 inclusive shall *mutatis mutandis* apply in respect of the proceedings held before the Registrar under section 33 of the Act.

Hearing

43.—(1) On completion of the evidence (if any), or at such other time as the Registrar may see fit, the Registrar shall appoint a time for the hearing of the application and shall give the parties at least fourteen days' notice of the appointment.

(2) After hearing the party or parties desiring to be heard or, if none of the parties desires to be heard, then without a hearing, the Registrar shall decide the matter and notify his decision to the parties.

PART VIII

Voluntary Endorsement of Patents "Licences of Right"

Application under section 35 (1)

44. An application under section 35 (1) of the Act for endorsement of a patent "licences of right" shall be made in form No. 24 and shall be accompanied by evidence verifying the statement in the application and by the letters patent.

Application under section 35 (2)

45.—(1) An application under section 35 (2) (*a*) or (*b*) of the Act for settlement of the terms of a licence under a patent endorsed "licences of right" shall be made in form No. 25 and shall be accompanied by a copy thereof and a statement, in duplicate, setting out fully the facts upon which the applicant relies and the terms of the licence which he is prepared to accept or grant.

(2) A copy of the application and statement shall be sent by the Registrar to the patentee or the person requiring a licence, as the case may be, who, if he does not agree to the terms set out in the statement, shall within two months of the receipt of such copies file a counter-statement setting out fully the grounds of the objection and serve a copy thereof on the applicant.

(3) The Registrar shall give such directions as he may think fit with regard to the filing of evidence and the hearing of the parties.

Advertisement of endorsement

46. Upon the endorsement of a patent in terms of section 35 (1) of the Act the Registrar shall direct the applicant to publish notification thereof forthwith in the *Gazette*.

Cancellation of endorsement under section 36 (1)

47. An application under section 36 (1) of the Act for the cancellation of an endorsement shall be made in form No. 26 and shall be accompanied by evidence verifying the statement in the application and by a memorandum in form No. 19 with fees to the amount of the balance of all renewal fees which would have been payable if the patent had not been endorsed.

Cancellation of endorsement under section 36 (2)

48. An Application under section 36 (2) of the Act for the cancellation of an endorsement shall be made in form No. 27 within six months after the patent has been endorsed and shall be accompanied by a copy thereof and a statement, in duplicate, setting out fully the nature of the applicant's interest and the facts upon which he relies.

(2) The period within which renewal fees shall be paid on cancellation of an endorsement in terms of section 36 (3) of the Act shall be one month from the date of cancellation.

Advertisement and opposition

49.—(1) Every application under section 36 (1) or (2) of the Act shall be advertised by the applicant in the *Gazette* and the period within which notice of opposition to the cancellation of an endorsement may be given under section 36 (5) of the Act shall be two months after the advertisement.

(2) Such notice shall be given in form No. 28 and shall be accompanied by a copy thereof and a statement, in duplicate, setting out fully the facts upon which the opponent relies, and, in the case of opposition to an application under section 36 (1) of the Act, the nature of his interest.

(3) A copy of the notice and of the statement shall be sent by the Registrar to the applicant for cancellation of the endorsement and thereafter the Registrar shall appoint a time for the hearing of the application and shall give the parties at least fourteen days' notice of the appointment.

(4) After hearing the party or parties desiring to be heard or, if none of the parties desires to be heard, then without a hearing, the Registrar shall give such decision on the application as he may consider just.

PART IX

Compulsory Licences

Application under section 37

50. An application under section 37 of the Act for a licence under a patent shall be made in form No. 29.

Preliminary consideration by Registrar

51.—(1) If upon consideration of the evidence the Registrar is satisfied that the application falls within section 37 of the Act, he shall direct the applicant to serve copies of the application and of the relevant affidavit upon the patentee and upon any other person appearing from the register to be interested in the patent and to advertise the application in one issue of the *Gazette* in such form as he may approve.

(2) If the Registrar is not so satisfied he shall notify the applicant accordingly, and unless within one month the applicant requests to be heard in the matter the Registrar shall refuse the application.

Opposition

52.—(1) At any time within two months from the date of the advertisement, or within such further time as the Registrar may allow, the patentee or any other person who wishes to oppose the application shall deliver to the Registrar a counter-statement, verified by affidavit, setting out fully the grounds on which the application is opposed, and shall at the same time serve upon the applicant a copy of the counter-statement and of such affidavit.

(2) Proof of service shall be furnished to the satisfaction of the Registrar.

Supply of documents, etc., to Tribunal

53. When the foregoing provisions of this Part have been complied with, the Registrar shall hand all relevant papers to the registrar of the Tribunal.

PART X

Amendment of Specification

Application to amend unaccepted specification

54.—(1) An application for leave to amend a provisional specification or a complete specification which has not been accepted, except when the amendment is made to meet an objection by the Registrar, shall be made in form No. 30.

(2) The Registrar shall, if he thinks fit, appoint a time for a hearing of the application and shall give the applicant at least twenty-one days' notice of such appointment. If the applicant desires to be heard he must, not later than seven days prior to the

date of the hearing or within such further time as the Registrar may allow, notify the Registrar to that effect.

(3) After hearing the applicant or, if the applicant does not desire to be heard, then without a hearing, the Registrar shall decide the case and notify his decision to the applicant.

Application to amend accepted complete specification

55. An application for leave to amend an accepted complete specification shall be made in form No. 31 and the application and the nature of the proposed amendment shall be advertised by the applicant in the *Gazette* in the manner provided for in form No. 32.

Certified copy of original specification to accompany application

56. An application for leave to amend a specification shall be accompanied by a copy certified by the applicant or his agent of the original specification, or of those pages of specification or drawings in which the proposed amendment appears, clearly showing in red ink the amendment sought.

Opposition

57.—(1) Any person wishing to oppose an application for amendment under regulation 55 shall give notice to the Registrar in form No. 33.

(2) Such notice shall be accompanied by a statement setting out fully the nature of the objector's interest, the facts upon which he relies and the relief he seeks.

(3) A copy of the notice and of any statement which accompanies such notice shall be served by the objector on the applicant.

(4) Upon notice of opposition being given regulations 25 to 29 inclusive and 43 shall *mutatis mutandis* apply in respect of the proceedings held before the Registrar under section 43 of the Act.

New specification and drawings as amended may be required

58.—(1) When leave to amend a specification is given the applicant shall, if the Registrar so requires and within a time to be fixed by him, lodge a new specification and drawings as amended.

(2) Where an application for leave to amend a specification is made pursuant to an order of the Tribunal or of a Court such application shall be accompanied by a copy of such order certified by the registrar of the Tribunal or Court, as the case may be.

PART XI

Directions to Co-owners

Application under section 47 (6)

59.—(1) An application for directions under section 47 (6) of the Act by any one or more of the proprietors of a patent shall be made in form No. 34 and shall be accompanied by a

statement setting out fully the facts upon which the applicant relies and the directions which he seeks.

(2) A copy of the application and of the statement shall be sent by the Registrar to each of the other proprietors of the patent, and the applicant shall supply a sufficient number of copies for that purpose.

(3) Thereafter the Registrar shall appoint a time for the hearing of the case and shall give the parties at least fourteen days' notice of the appointment.

(4) After hearing the party or parties desiring to be heard or, if none of the parties desires to be heard, then without a hearing, the Registrar shall give directions in accordance with section 47 (6) of the Act.

Application under section 47 (7)

60.—(1) An application for directions under section 47 (7) of the Act shall be made in form No. 35 and shall be accompanied by a copy thereof and a statement, in duplicate, setting out fully the facts upon which the applicant relies and the directions which he seeks.

(2) A copy of the application and of the statement shall be sent by the Registrar to the person in default.

(3) Thereafter regulation 59 (3) and (4) shall apply.

PART XII

Disputes as to Inventions Made by Employees

Application under section 48 (1)

61.—(1) An application under section 48 (1) of the Act to determine a dispute as to rights in respect of an invention or in respect of a patent granted or to be granted in respect thereof shall be made in form No. 36 and shall be accompanied by a copy thereof together with a statement, in duplicate, setting out fully the facts of the dispute and the relief which is sought.

(2) A copy of the application and of the statement shall be sent by the Registrar to the other party to the dispute, who within three months after receipt thereof shall file a counter-statement, in duplicate, setting out fully the grounds on which he disputes the right of the applicant to the relief sought.

(3) The Registrar shall send a copy of this counter-statement to the applicant and thereafter, subject to such directions as the Registrar may think fit to give, regulations 26 to 29 inclusive shall *mutatis mutandis* apply in respect of proceedings held before the Registrar, and references to the objector shall be substituted for references to the applicant and references to the applicant for references to the other party.

Hearing

62.—(1) Should the Registrar decide to hear the application he shall thereafter appoint a time for the hearing and shall give the parties at least fourteen days' notice of the appointment.

(2) After hearing the party or parties desiring to be heard or, if none of the parties desires to be heard, then without a hearing, the Registrar shall determine the matter in dispute and make such orders for giving effect to his decision as he considers expedient.

PART XIII

Surrender of Patent

Form of offer to surrender a patent

63. A notice of an offer by a patentee under section 52 of the Act to surrender his patent shall be given in form No. 37 and shall be advertised by the patentee in one issue of the *Gazette*.

Opposition

64.—(1) At any time within two months from such advertisement any person may give notice of opposition to the Registrar in form No. 38, which shall be accompanied by a copy thereof and a statement, in duplicate, setting out fully the nature of the opponent's interest, the facts upon which he relies and the relief which he seeks.

(2) A copy of the notice and of the statement shall be sent by the Registrar to the patentee.

(3) Upon such notice of opposition being given and a copy thereof sent to the patentee, regulations 25 to 29 inclusive and regulation 43 shall *mutatis mutandis* apply and references to the patentee shall be substituted for references to the applicant.

PART XIV

Register of Patents

Register to record grant of patents

65.—(1) In addition to the particulars referred to in the Act, the Registrar shall cause to be entered in the register the name, address and nationality of the patentee as the grantee thereof, the title of the invention, the date of the patent and the date of the sealing thereof, together with the full postal address for service.

(2) The Registrar may at any time enter in the register such other particulars as he may deem necessary.

Alteration of entries

66.—(1) A request by a patentee for the alteration of a name, nationality, address, or address for service entered in the register in respect of his patent shall be made in form No. 39.

(2) Before acting on a request to alter a name or nationality, the Registrar may require such proof of the alteration as he may think fit.

(3) If the Registrar is satisfied that the request may be allowed, he shall cause the register to be altered accordingly.

Registration of assignments, etc.

67.—(1) An application for the registration of the title of any person becoming entitled by assignment to a patent or to a share in a patent shall be made in form No. 40 by the person becoming so entitled.

(2) Application may be made in form No. 41 for entry in the register of notification of an interest by way of mortgage, licence or otherwise.

Copies of documents

68.—(1) A copy of any document which is referred to in an application under regulation 67, duly certified to the satisfaction of the Registrar, shall be produced to the Registrar with the application.

(2) Unless the Registrar otherwise directs, the original of any other document so referred to shall be produced to him with the application, and a certified copy of any such document shall be lodged therewith, and such original document shall be returned to the person who produced it.

Correction of errors

69. A request under section 59 of the Act for the correction of a mistake in the register, in any patent, or application for a patent or any document lodged in pursuance of such application, or in proceedings in connexion with any patent, shall be made in form No. 42.

Advertisement

70. Where the Registrar requires notice of the nature of the proposed correction to be advertised in terms of section 59 (4) of the Act, the advertisement shall be made by publication in the *Gazette* of the request and the nature of the proposed correction.

Opposition

71.—(1) Where such application is advertised in terms of regulation 70, notice of opposition may at any time within two months from the date of publication be given in form No. 43.

(2) Upon notice of opposition being given regulations 25 to 29 inclusive and regulation 43 shall *mutatis mutandis* apply in respect of the proceedings held before the Registrar under section 59 of the Act.

Certified copies of entries, etc.

72. Copies of any entry in the register, or copies of, or extracts from, patents, specifications and other public documents in the Office, or of or from registers and other records kept there,

certified by the Registrar, may be furnished by the Registrar on payment of the fees prescribed in the First Schedule.

Lost patent

73. An application under section 63 of the Act for a further patent to be sealed shall be made in form No. 44 and shall be accompanied by evidence setting out fully and verifying the circumstances in which the patent was lost or destroyed or cannot be produced.

PART XV

Patent Agents

Application for registration

74.—(1) An application to be registered as a patent agent in terms of section 68 (2) of the Act shall be—

(*a*) made by affidavit on form No. 45 sworn before a Commissioner for Oaths;

(*b*) accompanied by—

(i) documentary proof that the applicant is entitled to be registered;

(ii) the appropriate fee.

(2) A certificate of the registration of a Patent Agent shall be in form No. 46.

PART XVI

Miscellaneous

Fees

75. The fees to be paid in respect of the grant of patents and applications therefor and in respect of other matters relating to patents arising under the Act shall be those prescribed in the First Schedule.

Forms

76. The forms referred to in these Regulations are those set out in the Third Schedule and such forms shall be used in all cases to which they are applicable and may be modified as directed by the Registrar.

Size, etc., of documents

77.—(1) All documents and copies of documents, except drawings, lodged at the Office shall, unless the Registrar otherwise directs, be written, typewritten, lithographed or printed in the English language—

(*a*) upon strong white paper of a size approximately 13 inches by 8 inches, leaving a margin of at least $1\frac{1}{2}$ inches on the left-hand part thereof;

(*b*) in legible characters with a dark, indelible ink;

(*c*) with the lines widely spaced;

(*d*) except in the case of affidavits, on one side only.

(2) Duplicates of any documents shall at any time be lodged, if required by the Registrar.

(3) Duplicate documents required under these Regulations may be carbon copies of the original documents :

Provided that they shall be on paper of good quality and the typing shall be black and distinct.

Address for service

78. Every person concerned in any proceedings to which these Regulations relate, and every patentee, shall furnish to the Registrar an address for service in Malaŵi and that address may be treated for all purposes connected with such proceedings or patent as the address of the person concerned in the proceedings or the patentee.

Method and proof of service

79.—(1) Where any notice, application or other document is required to be served on any person under the Act, such service may be effected by the delivery of a copy thereof either—

(*a*) at the address for service furnished to the Registrar in terms of these Regulations; or

(*b*) to such person personally, or to his duly authorized agent; or

(*c*) at his residence or place of business or employment, to some responsible person there residing or employed.

(2) Service effected by any person in accordance with this regulation shall be proved by a certificate made in form No. 47 and such certificate shall be filed with the Registrar.

Lodging of documents

80. Any notice, application or other document sent to the Office by post shall not be deemed to have been given, made or lodged until it is actually received in the Office.

Power of Registrar to fix time and place of proceedings

81. The Registrar may in any proceedings held before him decide the hours, times and places at which he will sit and he may adjourn any proceedings for such time and to such place as he may think fit.

Agency

82.—(1) Any application, request or notice which is required or permitted under this Act to be made or given to the Registrar, and all other communications between an applicant or a person making a request or giving a notice and the Registrar, and

between the patentee and the Registrar or any other person, may be signed, made or given by or through an agent:

Provided that the Registrar is satisfied that the agent has been duly authorized so to act on behalf of such applicant, person or patentee.

(2) No power of attorney or any form of authorization need be filed at the office or exhibited to the Registrar in connexion with any matter or proceeding under these Regulations unless the Registrar otherwise directs.

Refusal to recognize agent

83. The Registrar may refuse to recognize as agent in respect of any proceedings under this Act a person who neither resides nor maintains a place of business in Malaŵi.

Signature of documents

84.—(1) A document purporting to be signed for or on behalf of a partnership shall contain the names of all the partners in full and may be signed by a partner, or by any other person who satisfies the Registrar that he is authorized to sign the document.

(2) A document purporting to be signed for or on behalf of a body corporate shall be signed by a director or by the secretary or other principal officer of the body corporate, or by any other person who satisfies the Registrar that he is authorized to sign the document.

Amendment of documents

85. Any document lodged in any proceedings before the Registrar may, if the Registrar thinks fit, be amended, and any irregularity in procedure may be rectified on such terms as he may direct.

Power of Registrar to waive requirements

86.—(1) Where, under these Regulations, any person is required to do any act or thing, or any document or evidence is required to be produced or lodged, the Registrar may, upon the production of such evidence and subject to such terms and conditions as he thinks fit, modify or dispense with the doing of the act or thing or the production or lodging of the document or evidence if he is satisfied that it is reasonable so to do.

(2) The Registrar may allow an application for a patent or a provisional or complete specification, although not in accordance with these Regulations, to be left on such terms and conditions as he thinks fit. In any such case the Registrar shall require the applicant to comply with these Regulations within the time specified by him. Until the prescribed requirements are complied with no further action shall be taken by the Registrar in respect of the application.

Order of Court or Tribunal

87.—(1) Where an order relating to a patent has been made by any Court or by the Tribunal, the person in whose favour such Court or order has been made shall forthwith file at the Office an office copy of such order together with an application in form No. 48.

(2) The specification shall thereupon be amended or the register rectified or the purport of such order shall otherwise be duly entered in the register, as the case may be.

Days and Hours of business

88. The Office shall be open to the public and the register shall be open to inspection on payment of the fee specified in item 48 of the Hours of First Schedule, every weekday, except Saturday, between the hours of business nine and twelve, and half-past one and half-past three, and on Saturday between the hours of nine and twelve; except on public holidays.

FIRST SCHEDULE

reg. 75

G.N. 36/2000
3/2006

Payable to the Office

Item	*Matter*	*Amount* K	t	*Corresponding Patents Form Item No.*
1.	On application for a patent (non-convention)	2,000	00	1
2.	On convention application in respect of each application for protection in a convention country	2,000	00	2
3.	On application for a patent of addition . .	1,000	00	3
4.	On application for a grant of an additional patent instead of an independent patent . .	1,000	00	4
5.	On lodging specification—			
	(*a*) Provisional.	200	00	5
	(*b*) Complete	1,000	00	6
6.	For extension of the period for lodging complete specification	500	00	7
7.	On request for the postdating of an application under section 17 (1) of the Act	300	00	8
8.	For extention of time under section 20 of the Act—			
	(*a*) not exceeding one month	500	00	9
	(*b*) not exceeding two months	700	00	
	(*c*) not exceeding three months	800	00	
9.	For each extention of time under section 21 of the Act	300	00	10
10.	On application for withdrawal of acceptance . .	300	00	11
11.	On notice of opposition to grant of patent by objector.	1,000	00	12
12.	On claim under section (23) (1) of the Act for application to proceed in name of claimants	450	00	13

Item	*Matter*	*Amount* K	t	*Corresponding Patents Form Item No.*
13.	On application for directions under section 23 (5) of the Act	800	00	14
14.	On a request for sealing of a patent	1,000	00	15
15.	On application for extension of the period for requesting the sealing of a patent under provision (*d*) to section 25 (2) of the Act—			
	(*a*) not exceeding one month	400	00	16
	(*b*) not exceeding two months	500	00	
	(*c*) not exceeding three months	600	00	
16.	On application for extension of the period for requesting the sealing of a patent under provision (*e*) to section 25 (2) of the Act—			
	(*a*) not exceeding one month	400	00	17
	(*b*) not exceeding two months	500	00	
17.	On application under section 26 of the Act for amendment of patent	500	00	18
18.	On application for certificate of payment of renewal fee—			
	(*a*) 4th, 5th and 6th year, each year	500	00	19
	(*b*) 7th, 8th and 9th year, each year	600	00	
	(*c*) 10th and 11th year	700	00	
	(*d*) 12th and 13th year	800	00	
	(*e*) 14th year	900	00	
	(*f*) 15th year	1,000	00	
	(*g*) 16th year	1,100	00	
	(One-half only of these fees is payable on patents endorsed "Licences of Right").			
19.	On extension of the period for payment of renewal fees—			
	(*a*) not exceeding one month	400	00	20
	(*b*) not exceeding two months	500	00	
	(*c*) not exceeding six months	600	00	
20.	Certificate of payment of renewal fee		—	21
21.	On application for restoration of lapsed patent—			
	(*a*) if made within 1 year of lapsing	1,000	00	22
	(*b*) if made after 1 year of lapsing	1,200	00	
22.	On notice of opposition to application for restoration of lapsed patent	1,000	00	23
23.	On application for endorsement of patent "Licences of Right"	600	00	24

Item	*Matter*	*Amount* K	t	*Corresponding Patents Form Item No.*
24.	On application for settlement of terms of licence under patent endorsed "Licences of Right"	700	00	25
25.	On application by patentee for cancellation of endorsement of patent "Licences of Right" under section 36 (1) of the Act	600	00	26
26.	On application for cancellation of endorsement "Licences of Right" under section 36 (2) of the Act	600	00	27
27.	On notice of opposition to cancellation of endorsement of patent "Licences of Right" . .	1,000	00	28
28.	On application for compulsory licence under section 37 of the Act	1,500	00	29
29.	On application for amendment of provisional specification or of complete specification not yet accepted	400	00	30
30.	On application for amendment of complete specification after acceptance up of sealing—			
	(*a*) by applicant	500	00	31
	(*b*) after sealing, by patentee	600	00	
31.	Form of advertisement of request to amend specification	300	00	32
32.	On notice of opposition to amendment, by objector	1,500	00	33
33.	On application for directions under section 47 (6) of the Act	1,500	00	34
34.	On application for directions under section 47 (7) of the Act	1,500	00	35
35.	On application under section 48 (1) of the Act to determine disputes	1,500	00	36
36.	On offer to surrender a patent under section 52 of the Act	300	00	37
37.	On notice of opposition to surrender a patent	1,000	00	38
38.	For altering name, nationality, address or address for service in register, for each patent	300	00	39
39.	On application for registration of an assignment under section 58 of the Act	1,000	00	40
40.	On request to enter notice of interest in register	1,000	00	41
41.	On request to correct a clerical error—			
	(*a*) up to sealing	300	00	42
	(*b*) after sealing	600	00	
42.	On notice of opposition to the correction of a clerical error	1,500	00	43
43.	For duplicate of patent	450	00	44
44.	On application for registration of patent agent	2,000	00	45

Item	*Matter*	*Amount* K	t	*Corresponding Patents Form Item No.*
45.	Form of certificate of registration of patent agent	1,000	00	46
46.	Certificate of service	500	00	48
47.	Application for entry of order of court or tribunal	500	00	—
48.	For inspection of register	200	00	—
49.	For certifying office copies, MSS, or photographic or printed matter—			
	(*a*) under seal	500	00	—
	(*b*) other	450	00	—
50.	For inspection and making copies of documents, in respect of each application of patent	200	00	—
51.	For typewritten copy of any specification or document, for every 100 words	200	00	—
52.	For photographic copy of any specification or other document or drawing, per sheet . .	Contract price at reasonable cost as fixed by the Registrar from time to time		
53.	Power to Attorney	200	00	

SECOND SCHEDULE

Form of Patent

To all whom these presents shall come, the President of the Republic of Malaŵi sends greetings:

Whereas .....
.....
.....
(hereinafter called the "patentee") has pursuant to the Patents Act, made application for Letters Patent for an invention for .....
.....
and has made a declaration that he is the owner of that invention and that there is no lawful ground of objection to the grant of a patent to him and has by a complete specification fully described and ascertained the said invention.

Now therefor, the President on behalf of the Government of Malaŵi, does by these Letters Patent give and grant to the patentee special licence, full power, sole privilege and authority that the patentee by

himself, his agent or licensees and no others may at all times hereafter during the term herein mentioned make, use, exercise and vend the said invention within Malaŵi in such manner as to him seems meet, and the patentee shall have and enjoy the whole profit and advantage from time to time occurring by reason of the said invention during the term of Sixteen Years from .....

Provided always that these Letters Patent shall be granted subject to the provisions of the said Act.

In witness whereof the President caused these Letters to be made Patent and to be sealed as of the ..... day of ..... one thousand nine hundred and .....

Dated this ..... day of ....., 19 ....

.....
Registrar of Patents

THIRD SCHEDULE

reg. 76

FORMS

Form	*Matter*	*Corresponding Fee Item No.*
1.	Application for a patent	1
2.	Convention application for a patent	1
3.	Application for a patent of addition	3
4.	Application for the grant of a patent of addition instead of an independent patent	4
5.	Provisional specification	—
6.	Complete specification	5
7.	Application for extension of time for lodging a complete specification	6
8.	Request for the post-dating of an application	7
9.	Application for extension of time for acceptance of a complete specification	8
10.	Request for postponement of acceptance of complete specification	9
11.	Application for withdrawal of acceptance	10
12.	Notice of opposition to grant of patent	11
13.	Claim under section 23 (1) of the Act to proceed as an applicant or co-applicant	12
14.	Application for directions under section 23 (5) of the Act as to proceeding with an application for a patent in case of dispute between joint applicants	13
15.	Request for the sealing of a patent	14
16.	Application under proviso (*d*) to section 25 (2) of the Act for extension of the period for making a request for sealing of a patent	15
17.	Application under proviso (*e*) to section 25 (2) of the Act for an extension of the period for making a request for the sealing of a patent	16
18.	Application under section 26 of the Act for the amendment of a patent	17
19.	Payment of renewal fee	18
20.	Application for extension of the period for payment of renewal fee	19
21.	Certificate of payment of renewal fee	—
22.	Application for the restoration of a lapsed patent	21
23.	Notice of opposition to an application for the restoration of a lapsed patent	22
24.	Voluntary application for endorsement of patent "Licences of Right"	23

Form	*Matter*	*Corresponding Fee Item No.*
25.	Application under section 35 (2) (*a*) or (*b*) of the Act for settlement of terms of licence under patent endorsed "Licences of Right"	24
26.	Application under section 36 (1) of the Act by patentee for cancellation of endorsement of a patent "Licences of Right"	25
27.	Application under section 36 (2) of the Act by any person interested for cancellation of endorsement of patent "Licences of Right"	26
28.	Notice of opposition by patentee or by any person interested for cancellation of endorsement of a patent "Licences of Right"	27
29.	Application for compulsory licence under section 37 of the Act	28
30.	Application under section 43 of the Act for amendment of a provisional specification or of a complete specification not yet accepted	29
31.	Application under section 43 of the Act for amendment of complete specification after acceptance	30
32.	Form of advertisement of request to amend specification	31
33.	Notice of opposition to amendment of specification under section 43 (5) of the Act	32
34.	Application for directions under section 47 (6) of the Act	33
35.	Application for directions under section 47 (7) of the Act	34
36.	Application under section 48 (1) of the Act to determine a dispute between employer and employee as to rights in an invention	35
37.	Offer to surrender a patent under section 52 of the Act	36
38.	Notice of opposition under section 52 of the Act to offer to surrender a patent	37
39.	Request for alteration of a name or nationality or an address or an address for service in the register of patents	38
40.	Application for registration of assignment	39
41.	Request to enter in the register of patents a notice of an interest in a patent	40
42.	Request for correction of clerical error	41
43.	Notice of opposition to the correction of a clerical error	42
44.	Application for duplicate of Letters Patent	43
45.	Application for registration as a patent agent under section 68 of the Act	44
46.	Certificate of registration of patent agent	—
47.	Certificate of service	—
48.	Application for entry of order of Court or Tribunal	47
49.	Form of advertisement—general	—

MALAŴI

Patents Form No. 1

ss. 11 and 12
reg. 3 (1)

PATENTS ACT

(CAP. 49:02)

Fee: K30

Application for a Patent (Non-Convention)

I/We(1) .....
.....
.....
being a national/nationals of .....
do hereby declare that I am/we are the owner(s) of an invention in respect of Malaŵi (2) by having invented it/by having acquired it by assignment, which invention is described in the accompanying (2) provisional/complete specifications under the title (3) .....
.....
that (2) I am/we are the assignee(s)/legal representative(s) of (4) .....
.....
who claim(s) to be the inventor(s) thereof, and that to the best of my/our knowledge and belief there is no lawful ground of objection to the grant of a patent to me/us on this application and I/we pray that a patent may be granted to me/us for the invention.

(1) State full name and address of applicant(s)

(2) Delete if not applicable

(3) Here insert title of invention

(4) Here insert name(s) of inventor(s)

Dated this ..... day of ....., 19 .....

(5) .....

.....

My/Our address for service in Malaŵi

.....
.....
.....

(5) To be signed by the applicant(s) or his/their agent

The Registrar,
The Patent Office,
P.O. Box 100,
Blantyre

[Subsidiary] *Patents Regulations*

MALAŴI

Patents Form No. 2

s. 8, 11, 12
reg. 3 (2)

PATENTS ACT
(CAP. 49:02)

Fee: K30

Convention Application for a Patent

(This is a comprehensive form and points inappropriate to a particular application should be deleted)

(1) State full name and address of applicant(s)

I/We(1) .....
.....
.....
being a national/nationals of .....
..... do hereby declare that I am/we are the owner(s) of an invention in respect of Malaŵi (2) by having invented it/by having acquired it by assignment, which invention is entitled (3) .....
.....

(2) Delete if not applicable

(3) Here insert title of invention

and which invention is described in the accompanying complete specification, and that (2) I am/we are the assignee(s)/legal representative(s) of (4) .....
.....
.....

(4) Here insert name(s) of inventor(s)

who claim(s) to be the inventor(s) thereof; that an application or applications for protection for the invention or inventions has or have been made in the following country or countries and on the following effective date or dates, namely—

in (5) ..... on (6) .....
numbered (7) .....
in (5)..... on (6) .....
numbered (7).....
in (5)..... on (6) .....
numbered (7).....

(5) Here insert the name of the convention country in which the first application was made

(6) Here insert the official date of the first application in a convention country

and that the said application or each of the said applications was the first application in a convention country in respect of the relevant invention by me/us or by any person from whom I/We derive title, and that the applicant(s) in the abovementioned country/countries qualify under (8) Article 2/3 of the Convention by reason of being (8) a national of/domiciled in/having a place of business in a member state, namely .....

(7) Here insert official number of first application in convention country

and that I/We qualify under the said (8) Article 2/3; by reason of being (8) a national of/domiciled in/having a place of business in a member state, namely and that to the best of my/our knowledge and belief there is no lawful ground of objection to the grant of a patent to me/us on this application and that I/We pray that a patent may be granted to me/us for the invention in priority to other applicants, and that such patent shall have the date (6).....

(8) Delete whichever does not apply

and (8) I/We declare the said invention(s) is/are an improvement in or modification of my/our invention for which a patent was applied for/granted under No. (9) .....

(9) Insert number of main patent or patent application

and (8) I/We pray that a patent may be granted to me/us for the said invention(s) as a patent of addition and request that the term of such further patent may be the same as that of the patent for the main invention or so much of that term as is unexpired.

Dated this ..... day of ....., 19 .....

(10) .....

.....

My/Our address for service in Malaŵi

.....

.....

.....

(10) To be signed by the applicant(s) or his/their agent

The Registrar
The Patent Office
P.O. Box 100
Blantyre

MALAŴI

Patents Form No. 3

ss. 11, 12 and 31 (1)
reg. 3 (3)

PATENTS ACT

(CAP. 49:02)

Fee:K30

Application for a Patent of Addition

I/We (1) .....
.....
.....
being a national/nationals of .....
do hereby declare that I am/we are the owner(s) of an invention the title of which is (2) .....
and that I am/we are the (3) assignee(s)/legal representative(s) of (4) .....
.....
who claim(s) to be the inventor(s) thereof; that the said invention is an improvement in or modification of my/our invention for which a patent was applied for/granted under number (5) .....
that to the best of my/our knowledge and belief there is no lawful ground of objection to the grant of a patent to me/us on this application and I/we pray that a patent may be granted to me/us for the said invention as a patent of addition and request that the term of such further patent may be the same as that of the patent for the main invention or so much of that term as is unexpired.

(1) State full name and address of applicant(s)

(2) Here insert title of invention

(3) Delete if not applicable

(4) Here insert name(s) of inventor(s)

(5) Here insert number of main patent or patent application

Dated this ..... day of ....., 19.....

(6) To be signed by the applicant(s) or his/their agent

(6) .....

.....

My/Our address for service in Malaŵi

.....

.....

.....

The Registrar
The Patent Office
P.O. Box 100
Blantyre

MALAŴI

Patents Form No. 4

ss. 11, 12 and 31 (2)
reg. 3 (4)

PATENTS ACT

(CAP. 49:02)

Fee:K60

Application for the Grant of a Patent of Addition instead of an Independent Patent

I/We (1) .....

.....

.....

(1) State full name and address of patentee(s)

being a national/nationals of .....
hereby request that patent No. .....
of which I am/we are the patentee(s) be revoked and that instead thereof a patent of addition to patent No. .....
of which I am/we are also the patentee(s) be granted to me/us, such patent of addition to bear the same date as the patent so revoked.

Dated this ..... day of ....., 19 .....

(2) To be signed by patentee(s) or his/their agent

(2) .....

.....

.....

My/Our address for service in Malaŵi

.....

.....

.....

The Registrar
The Patent Office
P.O. Box 100
Blantyre

MALAŴI

Patents Form No. 5

Regulations 3 (4)

PATENTS ACT

(CAP. 49:02)

Fee: K5

Provisional Specification

(1) .....

.....

.....

(2) I/We .....

.....

.....

do hereby declare this invention to be described in the following statement— .....

(3) .....

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(1) State title verbally agreeing with that in the application form

(2) State full name, description and address of applicant(s) as in application form

(3) Here begin description of the invention. The continuation of the specification should be upon paper of foolscap size on one side only, with the lines well spaced and with a margin of one inch and a half on the left-hand part of the paper. The specification must be signed by the applicant(s) or his/their agent on the last sheet and dated (thus): "Dated this……. day of…..19….."

MALAŴI

Patents Form No. 6 Regulations 3 (5)

PATENTS ACT

(CAP. 49:02)

Fee: K130

Complete Specification

(To be furnished in duplicate)

(1) State title verbally agreeing with that in the application form.

(1) .....
.....
.....

(2) State full name, description and address of applicant(s) as in application.

(2) I/We .....
.....
.....

do hereby declare this invention, the manner in which and the method by which it is to be performed, to be particularly described and ascertained in and by the following statement—

(3) Here begin full description of invention. The continuation of the specification should be upon paper of foolscap size on one side only with the lines well spaced and with a margin of one inch and half on the left-hand part of the paper. The, completion of the description should be followed by the words "Having now particularly described and ascertained my /our said invention and in what manner the same is to be performed, I/we declare that what I/we claim is after which

(3) .....
.....
.....
.

NOTE.—The claims must relate to a single invention, must be clear and succinct and must be fairly based on the matter disclosed in the specification. They should form in brief a clear statement of that which constitutes the invention. Applicants should be careful that their claims include neither more nor less than they desire to protect by their patent. Any unnecessary multiplicity of claim or prolixity of language should be avoided. Claims should not be made for the efficiency or advantages of the invention.

should be written the claim or claims numbered consecutively) (see note below). The specification and the duplicate thereof must be signed by the applicant(s) or his/ their agent on the last sheet and dated (thus): "Dated this ……. day of …..19……"

MALAŴI

Patents Form No. 7

s. 13 (2)
reg. 9

PATENTS ACT

(CAP. 49:02)

Fee: K50

Application for Extension of Time for lodging a Complete Specification

I/We (1) .....
.....
hereby in respect of application No. ....., request an extension of time until .....,
in which to lodge a complete specification.

(1) State name and address of applicant(s)

Dated this ..... day of ....., 19 .....

(2).....
.....

(2) To be signed by applicant(s) or his/their agent

My/Our address for service in Malaŵi
.....
.....
.....

(1) State name and address of applicant(s)

The Registrar
The Patent Office
P.O. Box 100
Blantyre

MALAŴI

Patents Form No. 8

s. 17 (1)
reg. 10

PATENTS ACT

(CAP. 49:02)

Fee: K20

Request for the Post-dating of an Application

I/We (1) .....
.....
hereby request that application No. ..... lodged

on the ..... of ..... 19 ....., be deemed to have been made on the following date, namely, ... the day of ....., 19 .....

Dated this ..... day of ....., 19 .....

(2) To be signed by applicant(s) or his/their agent

(2) .....
.....
.....

My/Our address for service in Malaŵi

.....
.....
.....

The Registrar
The Patent Office
P.O. Box 100
Blantyre

MALAŴI

Patents Form No. 9

s. 20 (1)
reg. 20

PATENTS ACT

(CAP. 49:02)

Fee: Item 8

Application for Extension of Time for Acceptance of a Complete Specification

I/We hereby apply for ..... months' extension of time for acceptance of the complete specification upon application No. ..... dated .....

(1) To be signed by applicant(s) or his/their agent

Dated this ..... day of ....., 19 .....

(1) .....
.....
.....

My/Our address for service in Malaŵi

.....
.....
.....

The Registrar
The Patent Office
P.O. Box 100
Blantyre

MALAŴI

Patents Form No. 10

s. 21 (1)
reg. 21

PATENTS ACT
(CAP. 49:02)

Fee: K20

Request for Postponement of Acceptance of Complete Specification

I/We hereby request a postponement of the acceptance of the complete specification of application No. ..... dated ..... to a date not later than the expiration of ..... months from the date of lodging of the application.

Dated this ..... day of ....., 19 .....

(1) .....

..... (1) To be signed by applicant(s) or his/their agent

My/Our address for service in Malaŵi

.....

.....

.....

The Registrar
The Patent Office
P.O. Box 100
Blantyre

MALAŴI

Patents Form No. 11

reg. 22 (2)

PATENTS ACT
(CAP. 49:02)

Fee: K15

Application for Withdrawal of Acceptance

I/We (1) ..... (1) State name and address of applicant(s)

.....

.....

apply for withdrawal of the acceptance of the specification of patent application No .....

My/Our reasons for desiring such withdrawal are as follows—

(2) ..... (2) The circumstances and grounds must be stated in full

.....

.....

.....

.....

Dated this ..... day of ....., 19 .....

(3) To be signed by the applicant(s) or his/their agent

(3) .....

.....

My/Our address for service in Malaŵi

.....

.....

.....

The Registrar
The Patent Office
P.O. Box 100
Blantyre

MALAŴI

Patents Form No. 12

s. 22 (1)
reg. 24

PATENTS ACT

(Cap. 49:02)

Fee: K90

Notice of Opposition to Grant of Patent

I/We (1) .....

(1) State full name and address

.....

.....

hereby give notice of opposition to the grant of Letters Patent upon application No. ..... applied for by .....

.....

.....

upon the ground (2) .....

(2) State upon which of the grounds of opposition permitted by section 22 the grant is opposed and identify all specifications and other publications relied upon

.....

.....

.....

.....

Dated this ..... day of ....., 19 .....

(3) To be signed by objector(s) or his/their legal practitioner

(3) .....

.....

My/Our address for service in Malaŵi

.....

.....

.....

The Registrar
The Patent Office
P.O. Box 100
Blantyre

MALAŴI

Patents Form No. 13 s. 23 (1)
reg. 31 (1)

PATENTS ACT

(CAP. 49:02)

Fee: K30

Claim under section 23 (1) *of the Act to proceed as an Applicant or Co-applicants*

I/We (1) .....
.....
.....
hereby request that patent application No. (2) ..... dated .....made by (3).....
.....
.....
may proceed in the name(s) of (4) .....
.....
.....
.....

I/We claim to be entitled to proceed as applicant(s) for the patent by virtue of (5) .....
.....
.....
.....
.....

And in proof whereof I/we transmit the accompanying (6) .....
.....
.....

My/Our address for service in Malaŵi
.....
.....
(7) .....
.....

I/We (8) .....
.....
consent to the above request.

The Registrar
The Patent Office
P.O. Box 100
Blantyre

(1) State name of claimant(s)

(2) State the number and date of the application for patent

(3) State name of applicant(s) for patent

(4) Here insert name, address, and nationality of the person or persons in whose name(s) it is requested that the application shall proceed

(5) Give the particulars of such documents, giving its date and the parties to the same, and showing how the claim here made is substantiated

(6) State the nature of the document. The certified copy should be written, typewritten or printed on foolscap paper

(7) To be signed by claimant(s) or his/their agent

(8) To be signed by the applicant(s) or his/their agent

MALAŴI

Patents Form No. 14

s. 23 (5)
reg. 32

PATENTS ACT

(CAP. 49:02)

Fee: K100

Application for Directions under section 23 (5) *of the Act as to proceeding with an Application for a Patent in Case of Dispute between Joint Applicants*

(1) State full name and address

I (1) .....
.....
.....

(2) State name and address of other applicant(s)

being a joint applicant with (2) .....
.....
.....

in the application for a patent No. ..... hereby declare that a dispute has arisen between us and request that an order of the Registrar be made giving directions for enabling the application to proceed.

Particulars of the matter in dispute are given in the annexed statement setting out the facts upon which I rely and the relief which I seek.

Dated this ..... day of ..... 19 .....

(3) .....

(3) To be signed by applicant or his agent

My/Our address for service in Malaŵi
.....
.....
.....

NOTE—The application must be accompanied by a statement of case and by copies of the application and statement as required by Regulation 32.

The Registrar
The Patent Office
P.O. Box 100
Blantyre

MALAŴI

Patents Form No. 15

s. 25 (1)
reg. 33

PATENTS ACT
(CAP. 49:02)

Fee: K50

Request for the sealing of a Patent

I/We (1) .....
.....
request that a patent may be sealed on my/our application No. .....
of 19 ....., and I/we hereby transmit the prescribed fee for sealing, and further request that the following may be entered on the register as my/our address for service in Malaŵi.

(1) State name of applicant(s)

.....
.....
.....

Dated this ..... day of ....., 19 .....

(2).....
.....

(2) To be signed by the applicant(s) or his/their agent

The Registrar
The Patent Office
P.O. Box 100
Blantyre

MALAŴI

Patents Form No. 16

s. 25 (2)
reg. 34 (1)

PATENTS ACT
(CAP. 49:02)

Fee: Item 15

Application under proviso (d) to section 25 (2) *of the Act for Extension of the Period for making a Request for Sealing of a Patent*

I/We hereby apply for ..... months' extension of time for the sealing of a patent upon application No. .....
dated .....

Dated this ..... day of ....., 19 .....

(1) .....
.....

My/Our address for service in Malaŵi

.....
.....
.....

(1) To be signed by applicant(s) or his/their agent

The Registrar
The Patent Office
P.O. Box 100
Blantyre

MALAŴI

Patents Form No. 17

s. 25 (2)
reg. 34 (2)

PATENTS ACT

(CAP. 49:02)

Fee: Item 16

Application under proviso (e) to section 25 (2) *of the Act for an Extension of the Period for making a Request for the Sealing of a Patent*

(1) Not more than six months' extension may be applied for at one time

I/We hereby apply for (1) ..... months' extention of the period for the sealing of a patent upon application No. ..... The circumstances and the grounds upon which the extension is applied for are as follows—

(2) The circumstances and grounds must be stated in detail

(2) .....

.....

.....

I/We hereby declare that—

(*a*) and (*b*) Delete the words which are not applicable

(*a*) an extension of time of three months for making a request for sealing has been allowed under proviso (*d*) to section 25 (2) of the Act and has not yet expired:

(*b*) an extension of time of ..... months for making a request for sealing has been allowed under proviso (*e*) to section 25 (2) of the Act and has not yet expired.

Dated this ..... day of .....,19 .....

(3) To be signed by the applicant (s) or his/their agent

(3) .....

.....

My/Our address for service in Malaŵi

.....

.....

.....

The Registrar
The Patent Office
P.O. Box 100
Blantyre

MALAŴI

Patents Form No. 18

s. 26
reg. 36

PATENTS ACT
(CAP. 49:02)

Fee: K50

Application under section 26 *of the Act for the Amendment of a Patent*

I/We (1) .....
.....
.....
hereby request that Letters Patent No. .....
granted to .....
.....
.....
may be amended by substituting the name of (2) .....
.....
.....
for the name of the grantee. .....

(1) State name and address

(2) State name and address of person to whom patent should have been granted

Dated this ..... day of ....., 19.....
(3) .....
.....

(3) To be signed by the applicant(s) or his/their agent

My/Our address for service in Malaŵi
.....
.....
.....

NOTE—Application to be accompanied by evidence verifying the statements made therein and by the Letters Patent.

The Registrar
The Patent Office
P.O. Box 100
Blantyre

MALAŴI

Patents Form No. 19

s. 30 (4)
reg. 37, 47

PATENTS ACT
(CAP. 49:02)

Fee: Item 18

Payment of Renewal Fee

I/We (1) .....
.....
hereby transmit the fee prescribed for the continuation in force of (2)
.....
.....

(1) State name of person(s) tendering the fee

(2) Here insert name of patentee(s)

Patent No ..... for a further period of ..... and request that the Certificate of Payment may be sent to me/us at (3) .....

(3) Here insert full address to which certificate is to be sent

Dated this ..... day of ....., 19 .....

NOTE.—If the address given above is not that entered in the register as the patentee's address for service and it is desired to amend the entry in the register, application therefor must be made in Patents Form No. 39.

The Registrar
The Patent Office
P.O. Box 100
Blantyre

MALAŴI

Patents Form No. 20

s. 30 (4)
reg. 39

PATENTS ACT

(CAP. 49:02)

Fee: Item 19

Application for Extension of the Period for Payment of Renewal Fee

I/we hereby apply for an extension of ..... month(s) of the period prescribed for payment of the ..... years' renewal fee upon my/our Patent No. .....

(1) ....

(1) Here insert name and full address to which receipt is to be sent

Dated this ..... day of ..... 19 .....

(2) ....

(2) To be signed by the applicant(s) or his/their agent

The Registrar
The Patent Office
P.O. Box 100
Blantyre

MALAŴI

Patents Form No. 21

reg. 40

PATENTS ACT
(CAP. 49:02)

Certificate of Payment of Renewal Fee

Letters Patent No. .....

This is to certify that .....
did this ..... day of ....., 19.....
make the prescribed payment of K .....
in respect of a period of .....
from.....
.....
Registrar of Patents

The Patent Office
P.O. Box 100
Blantyre

MALAŴI

Patents Form No. 22

s. 33
reg. 41

PATENTS ACT
(CAP. 49:02)

Item 31

Application for the Restoration of a Lapsed Patent

I/We .....
of .....
being the owner(s) of Patent No. ..... hereby apply for an order for the restoration of the said patent.

The circumstances which have led to the failure to pay the renewal fee of (1) ..... on or before the (2) .....are as follows—(3)
.....
.....
.....
.....
.....
.....

Dated this ..... day of ....., 19 .....
(4) .....
.....

My/Our address for service in Malaŵi
.....
.....
.....

The Registrar
The Patent Office
P.O. Box 100
Blantyre

(1) Here state amount of fee
(2) State last day when fee was due
(3) State circumstances. The application must be accompanied by one or more affidavits setting out fully all the material facts on which the applicant(s) base(s) his/their case
(4) To be signed by the applicant(s) or his/their agent

MALAŴI

Patents Form No. 23

s. 33 (4)
reg. 42

PATENTS ACT
(CAP. 49:02)

Fee: K90

Notice of Opposition to an Application for the Restoration of a Lapsed Patent

(1) Here state full name and address of objector(s)

(2) Here state reasons for opposition. The notice must be accompanied by a copy thereof together with a statement, in duplicate, setting out fully the nature of the objector's(s) interest and the facts upon which he relies/ they rely

(3) To be signed by the objector(s) or his/ their agent

I/We (1) .....
.....
.....
hereby give notice of opposition to the application for restoration of Patent No. ..... for the following reasons (2)
.....
.....
.....
.....
.....
.....
.....

Dated this ..... day of ....., 19 .....
(3) .....
.....

My/Our address for service in Malaŵi
.....
.....
.....

The Registrar
The Patent Office
P.O. Box 100
Blantyre

MALAŴI

Patents Form No. 24

s. 35 (1)
reg. 44

PATENTS ACT
(CAP. 49:02)

Fee: K60

(1) State name and address of Patentee(s)

Voluntary Application for Endorsement of Patent "Licences of Right"

I/We (1) .....
.....
.....

being the owner(s) of Patent No. ....., hereby request that the said patent may be endorsed "Licences of Right", I am/we are not precluded by contract from granting licences under the patent.

Dated this ..... day of ....., 19 .....

(2) .....

.....

(2) To be signed by the patentee(s) or his/their agent

My/Our address for service in Malaŵi

.....

.....

.....

NOTE—The application must be accompanied by evidence verifying the statement in the application and by the Letters Patent.

The Registrar
The Patent Office
P.O. Box 100
Blantyre

MALAŴI

Patents Form No. 25

s. 35 (2)
reg. 45

PATENTS ACT

(CAP. 49:02)

Fee: K100

Application under section 35 (2) *(a) or (b) of the Act for Settlement of Terms of Licence under Patent endorsed "Licences of Right"*

I/We (1) .....

.....

.....

(1) State name and address of applicant(s)

hereby apply for settlement of the terms of a licence to be granted under Patent No. .....

(*a*), (*b*), (*c*) Delete the two categories not applicable

I am/We are the—

(*a*) patentee(s);

(*b*) person(s) requiring a licence

(*c*) holder(s) of a licence under the patent granted before endorsement.

(*d*) Delete if the applicant(s) is/are not the holder(s) of a licence

I/We (*d*) request that an order may be made entitling me/us to exchange my/our existing licence for a licence to be granted upon the terms as settled.

Dated this ..... day of .....,19 .....

(2) .....

.....

(2) To be signed by the applicant(s) or his/their agent

My/Our address for service in Malaŵi

.....

.....

.....

NOTE.—The application must be accompanied by a copy thereof and a statement of case in duplicate.

The Registrar
The Patent Office
P.O. Box 100
Blantyre

MALAŴI

Patents Form No. 26

s. 36 (1)
reg. 47

PATENTS ACT

(CAP. 49:02)

Fee: K60

Application under section 36 (1) *of the Act by Patentee for Cancellation of Endorsement of a Patent "Licences of Right"*

(1) State name and address of patentee(s)

I/We (1) .....

.....

.....

being the owner(s) of Patent No. ....., hereby request that the endorsement of the said patent as "Licences of Right" may be cancelled, and I/we enclose Patents Form No. 19 bearing the balance of all renewal fees which would have been payable if the patent had not been endorsed.

(*a*), (*b*) Delete whichever is not applicable

I/We declare (*a*) that there is no existing licence under the patent: or (*b*) all the licensees consent to this application.

(2) To be signed by the patentee(s) or his/ their agent

Dated this ..... day of ....., 19 .....

(2) .....

.....

My/Our address for service in Malaŵi

.....

.....

.....

NOTE—The application must be accompanied by evidence in support of the application.

The Registrar
The Patent Office
P.O. Box 100
Blantyre

MALAŴI

Patents Form No. 27

s. 36 (2)
reg. 48

PATENTS ACT

(CAP. 49:02)

Fee: K60

Application under section 36 (2) *of the Act by any Person interested for Cancellation of Endorsement of Patent "Licences of Right"*

I/We (1) .....
.....
.....
hereby claim that the endorsement of Patent No. .....
"Licences of Right" is and was at the time of the endorsement contrary to a contract in which I am/we are interested and I/we request that such endorsement may be cancelled.

(1) State name and address of applicant(s)

Dated this ..... day of ....., 19 .....
(2) .....
.....

(2) To be signed by the applicant(s) or his/their agent

My/Our address for service in Malaŵi
.....
.....
.....

NOTE—The application must be completed in duplicate and accompanied by a statement of case in duplicate.

The Registrar
The Patent Office
P.O. Box 100
Blantyre

MALAŴI

Patents Form No. 28

s. 36 (5)
reg. 49

PATENTS ACT

(CAP. 49:02)

Fee: K90

Notice of Opposition by Patentee or by any Person interested to Cancellation of Endorsement of a Patent "Licences of Right"

I/We (1) .....
hereby give notice of opposition to the application for the cancellation of the endorsement "Licences of Right" in respect of Patent No. .....
.....

(1) State name and address of opponent(s)

Dated this ..... day of ....., 19 .....

(2) To be signed by the opponent(s) or his/their agent

(2) .....

.....

My/Our address for service in Malaŵi

.....

.....

.....

NOTE—The notice must be accompanied by a copy thereof and a statement of case in duplicate.

The Registrar
The Patent Office
P.O. Box 100
Blantyre

MALAŴI

Patents Form No. 29

s. 37
reg. 50

PATENTS ACT

(CAP. 49:02)

Fee: K100

Application for Compulsory Licence under section 37 *of the Act*

(1) State name and address of applicant(s)

I/We (1) .....

.....

.....

hereby apply for an order of the Tribunal for a licence to be granted to me/us in respect of Patent No. ..... for the following reasons—

(2) State the nature of the applicant's(s') interest, the facts upon which he relies/they rely and the grounds upon which the application is made

(2) .....

.....

.....

.....

Dated this ..... day of ....., 19 .....

(3) To be signed by the applicant(s) or his/their legal practitioner

(3) .....

.....

My/Our address for service in Malaŵi

.....

.....

.....

NOTE—The application must be accompanied by evidence verifying the statements set out in the application.

The Registrar
The Patent Office
P.O. Box 100
Blantyre

MALAŴI

Patents Form No. 30

s. 43
reg. 54

PATENTS ACT
(CAP. 49:02)

Fee: K20

Application under section 43 *of the Act for Amendment of a Provisional Specification or of a Complete Specification not yet accepted*

I/We (1) .....
.....
.....
seek leave to amend the provisional/complete specification of Patent Application No..... as shown in red ink in the certified copy of the original specification hereunto annexed.

(1) State full name and address of applicant(s)

My/Our reasons for making this amendment are in detail as follows—
.....
.....
.....
.....

(2) State full particulars of the reasons for seeking amendment

Dated this ..... day of ....., 19.....
(3) .....
.....

(3) To be signed by the applicant(s) or his/their agent

My/Our address for service in Malaŵi
.....
.....
.....

The Registrar
The Patent Office
P.O. Box 100
Blantyre

MALAŴI

Patents Form No. 31

s. 43
reg. 55

PATENTS ACT
(CAP. 49:02)

Fee: Item 30

Application under section 43 *of the Act for Amendment of Complete Specification after Acceptance*

I/We (1) .....
.....
.....

(1) Here state full name and address of applicant(s)

seek leave to amend the specification of Letters Patent No. ..... / Patent Application No. ..... as shown in red ink in the certified copy of the original specification hereunto annexed.

I/We (2) .....

(2) These words are to be struck out when Letters Patent have not been sealed

declare that no action for infringement or proceedings for the revocation of the Letters Patent in question are pending.

My/Our reasons for making this amendment are as follows—

(3) .....

.....

.....

(3) State full particulars of the reasons for making amendment

Dated this ..... day of ....., 19 .....

(4) .....

.....

(4) To be signed by applicant(s) or patentee(s) or his/ their agent

My/Our address for service in Malaŵi

.....

.....

.....

The Registrar
The Patent Office
P.O. Box 100
Blantyre

MALAŴI

Patents Form No. 32

s. 43
reg. 55

PATENTS ACT
(CAP. 49:02)

Fee: K10

(*Form of advertisement of request to amend specification*)
Application to amend Specification

I/We (1).....

.....

.....

(1) State full name and address of applicant(s)

seek leave to amend by way of (2) .....

(2) State whether by way of disclaimer, correction or explanation

the specification of Letters Patent/Application No. .....

for (3) .....

.....

A copy of the original specification, showing in red ink the proposed amendment, is now open to public inspection at the Patent Office.

(3) Title of invention

A notice of opposition (in Patents Form No. 33) may be filed at the Patent Office within three months from the date of this advertisement.

Dated this ..... day of ....., 19 .....

(4) .....

.....

(4) To be signed by applicant(s) or his/their agent

MALAŴI

Patents Form No. 33

s. 43 (5)
reg. 57

PATENTS ACT
(CAP. 49:02)

Fee: K90

Notice of Opposition to Amendment of Specification under section 43 (5) *of the Act*

I/We (1) .....
.....
hereby give notice of opposition to the proposed amendment of the specification of Letters Patent/Patent Application No. ....., ... for the following reasons—
(2) .....
.....
.....
.....

(1) State full name and address of objector(s)

(2) Here state reasons of opposition

Dated this ..... day of ....., 19.....
(3) .....
.....
My/Our address for service in Malaŵi
.....
.....
.....

(3) To be signed by objector(s) or his/their agent

The Registrar
The Patent Office
P.O. Box 100
Blantyre

MALAŴI

Patents Form No. 34

s. 47 (6)
reg. 59

PATENTS ACT
(CAP. 49:02)

Fee: K100

Application for Directions under section 47 (6) of the Act

I/We (1) .....
.....
.....
hereby apply for the following directions in respect of Patent No. .....
(2) .....
.....

(1) State name and address of patentee(s)

(2) State the directions sought

Dated this ..... day of ....., 19.....

(3) To be signed by the patentee(s) seeking directions or his/their agent

(3) .....

.....

My/Our address for service in Malaŵi

.....

.....

.....

NOTE—The application must be accompanied by a statement of case and by copies of the application and statement as required by regulation 59.

The Registrar
The Patent Office
P.O. Box 100
Blantyre

MALAŴI

Patents Form No. 35

s. 47 (7)
reg. 60

PATENTS ACT
(CAP. 49:02)

Fee: K100

Application for Directions under section 47 (7) *of the Act*

(1) State name and address of pantentee or joint patentees

I/We (1) .....

.....

.....

hereby apply for directions in respect of the failure of (2) .....

.....

(2) State name of person in default

to comply with the directions of the Registrar given under section 47 (6) of the Act on the ..... day of.....

19 ..... in the following manner—

(3) State the directions sought

(3) .....

.....

Dated this ..... day of ....., 19 .....

(4) To be signed by the patentee(s) or his/ their agent

(4) .....

.....

My/Our address for service in Malaŵi

.....

.....

.....

NOTE—The application must be accompanied by a copy thereof and a statement of case in duplicate.

The Registrar
The Patent Office
P.O. Box 100
Blantyre

MALAŴI

Patents Form No. 36

s. 48 (1)
reg. 61

PATENTS ACT
(CAP. 49:02)

Fee: K100

Application under section 48 (1) *of the Act to determine a Dispute between Employer and Employee as to Rights in an Invention*

I/We (1) .....
.....
.....
hereby declare that in respect of the rights in the invention for which an application for a patent was made by .....
and numbered ....., (2) and upon which a patent No. ..... has been granted, a dispute has arisen between me/us and (3) .....
.....
.....
and I/we hereby apply to the Registrar/Patents Tribunal to determine the dispute.

The facts of the dispute and the relief which I/we seek are set out fully in the accompanying statement. .....

Dated this ..... day of ....., 19 .....

(4) .....
.....

My/Our address for service in Malaŵi
.....
.....
.....

NOTE—Application must be accompanied by a copy thereof and a statement in duplicate setting out the facts of the dispute and the relief which is sought.

The Registrar
The Patent Office
P.O. Box 100
Blantyre

(1) State name and address of applicant(s)

(2) Delete if a patent has not been granted

(3) State name and address of other party to dispute

(4) To be signed by the applicant(s) or his/their agent

MALAŴI

Patents Form No. 37

s. 52 (1)
reg. 63

PATENTS ACT
(CAP. 49:02)

Fee: K10

Offer to surrender a Patent under section 52 (1) *of the Act*

I/We (1) .....
.....
.....
hereby offer to surrender Patent No. .....

(1) State full name and address of patentee(s)

I/We declare that no action for infringement, proceeding for revocation or proceeding in which the validity of the patent or of a clause in the complete specification is disputed, is pending.

My/Our reasons for making this offer are

.....
.....
.....

Dated this ..... day of ....., 19 .....

(2) To be signed by the patentee(s) or his/ their agent

(2) .....
.....

My/Our address for service in Malaŵi

.....
.....
.....

The Registrar
The Patent Office
P.O. Box 100
Blantyre

MALAŴI

Patents Form No. 38

s. 52 (2)
reg. 64

PATENTS ACT
(CAP. 49:02)

Fee: K90

Notice of Opposition under section 52 (2) *of the Act to offer to surrender a Patent*

(1) State full name and address of opponent(s)

I/We (1) .....
.....
.....

hereby give notice of opposition to the offer to surrender Patent No. ..... for the following reasons (2) .....

(2) State briefly the reasons for opposition

.....
.....
.....

Dated this ..... day of ....., 19.....

(3) To be signed by the opponent(s) or his/their agent

(3) .....
.....

My/Our address for service in Malaŵi

.....
.....
.....

NOTE—The application must be accompanied by a copy thereof and a statement of case in duplicate.

The Registrar
The Patent Office
P.O. Box 100
Blantyre

MALAŴI

Patents Form No. 39

s. 6
reg. 66

PATENTS ACT
(CAP. 49:02)

Fee: K10

Request for Alteration of a Name or Nationality or an Address or an Address for Service in the Register of Patents

In the matter of Patent No. .....

I/We (1) .....
.....
.....
hereby request that the (2) name, nationality, address, address for service, now upon the register of patents may be altered to (3) .....
.....
.....

Dated this ..... day of ....., 19.....

(4) .....
.....

My/Our address for service in Malaŵi
.....
.....
.....

NOTE—Where the request is for alteration in a name or nationality, proof of the alteration must be furnished.

The Registrar
The Patent Office
P.O. Box 100
Blantyre

(1) State full name and address of applicant(s)

(2) Strike out words not applicable

(3) Insert name, nationality, address or address for service, as the case may be

(4) To be signed by the applicant(s) or his/their agent

MALAŴI

Patents Form No. 40

s. 58 (2)
reg. 67 (1)

PATENTS ACT
(CAP. 49:02)

Fee: K20

Application for Registration of Assignment

I/We (1) .....
.....
.....
hereby request that you will enter my/our name in the register of patents as proprietor/co-proprietor of Patent No. ..... at present registered in the name of (2) .....
.....

(1) State full name and address of applicant(s)

(2) Here give name of registered proprietor(s)

(3) Here specify the particulars of each document, giving its date, and the parties to the same, and showing how the claim here made is substantiated
(4) Here insert the nature of the document

(5) To be signed by the applicant(s) or his/their agent

I/We claim to be so entitled by virtue of (3) .....
.....
.....
.....
.....
And in proof whereof I/we transmit the accompanying (4) .....
.....

Dated this ..... day of ....., 19 .....

(5) .....
.....

My/Our address for service in Malaŵi
.....
.....
.....

The Registrar
The Patent Office
P.O. Box 100
Blantyre

MALAŴI

Patents Form No. 41

s. 58 (2)
reg. 67 (2)

PATENTS ACT

(CAP. 49:02)

Fee: K20

(1) State full name and address of applicant(s)

(2) Here insert the nature of the claim, whether by way of licence or otherwise
(3) Here give the name of registered proprietor(s)
(4) Here specify the particulars of such document

Request to enter in the Register of Patents a Notice of an Interest in a Patent

I/We (1) .....
.....
hereby request that you will enter in the register of patents a notice of the following interest in a patent—.....

I/We claim to be entitled (2) .....
.....
to an interest in Patent No. ..... at present registered in the name of (3) .....
by virtue of (4) .....
.....

And in proof whereof I/we transmit the accompanying (5) .....
.....
with a certified copy thereof.

Dated this ..... day of ....., 19 .....

(6) .....

.....

My/Our address for service in Malaŵi

.....

.....

.....

The Registrar
The Patent Office
P.O. Box 100
Blantyre

giving its date, and the parties to the same and showing how the claim here made is substantiated,

(5) Here insert the nature of the document

(6) To be signed by the applicant(s) or his/their agent

MALAŴI

Patents Form No. 42

s. 59 (2)
reg. 69

PATENTS ACT

(CAP. 49:02)

Fee: Item 41

Request for Correction of Clerical Error

I/We (1) .....
.....
.....
hereby request that the clerical error(s) in the (2) .....
.....
relating to Application/Patent No. ..... indicated in red ink in the annexed copy of the said (2) .....
..... or shown as follows—
.....
.....
may be corrected.

(1) State full name and address of applicant(s)

(2) State whether in application, specification, entry in register, patent or the particular relevant document

Dated this ..... day of ....., 19 .....

(3) .....

.....

My/Our address for service in Malaŵi

.....

.....

.....

The Registrar
The Patent Office
P.O. Box 100
Blantyre

(3) To be signed by the applicant(s) or his/their agent

MALAŴI

Patents Form No. 43

s. 59 (5)
reg. 71

PATENTS ACT
(CAP. 49:02)

Fee: K90

Notice of Opposition to the Correction of Clerical Error

(1) State full name of objector(s)

I/We (1) .....
.....
hereby give notice of opposition to the correction of an alleged clerical error in .....
.....
which said correction has been applied for by .....
.....

The grounds upon which the said correction is opposed are as follows—.....
.....
.....
.....
.....

(2) To be signed by the objector(s) or his/their agent

Dated this ..... day of ....., 19 .....
(2) .....
.....

My/Our address for service in Malaŵi
.....
.....
.....

The Registrar
The Patent Office
P.O. Box 100
Blantyre

MALAŴI

Patents Form No. 44

s. 63
reg. 73

PATENTS ACT
(CAP. 49:02)

Fee: K20

Application for Duplicate of Letters Patent

(1) State full name and address of applicant(s)

I/We (1) .....
.....

(2) State date, number and full

have to inform you that the Letters Patent dated (2) .....
..... No. ..... granted to
..... for an invention the title of

which is (3) .....
been lost or destroyed, or cannot be produced in the following circumstances—

(4) .....
.....
.....

I/We beg therefore to apply for the issue of a duplicate of such Letters Patent. .....

(5) .....
.....

Dated this ..... day of ....., 19 .....

(6) .....
.....
.....

My/Our address for service in Malaŵi
.....
.....
.....

The Registrar
The Patent Office
P.O. Box 100
Blantyre

name of grantee(s)
(3) Insert title of invention
(4) State full circumstances of the case, which must be verified by evidence
(5) State interest possessed by applicant(s) in the patent
(6) To be signed by the patentee(s) or his/their agent

MALAŴI

Patents Form No. 45

s. 68 of
reg. 74

PATENTS ACT
(CAP. 49:02)

Fee: K90

Application for Registration as a Patent Agent under section 68 of the Act

I/We (1) .....
.....
do hereby make oath and say as follows—.....

I am and have (always) been (2) (since ....) a Commonwealth citizen (or British Protected Person).

I am ordinarily resident in Malaŵi and have been so resident since (3) .....
I possess the following qualifications which entitle me to be registered as a patent agent in terms of section 68 of the Act—

(4).....
.....
.....

(1) State full name and address
(2) Delete whichever does not apply
(3) State date of entry into Malaŵi
(4) Here insert full particulars of qualifications

I desire to be registered as a patent agent. .....

Sworn before me at .....
this ..... day of ....., 19.....

.....
Commissioner for Oaths

MALAŴI

Patents Form No. 46

s. 6
reg. 74 (2)

PATENTS ACT
(CAP. 49:02)

Certificate of Registration of Patent Agent

PURSUANT to regulation 74 (2) of the Patents Regulations, I do hereby certify that .....
of .....
was registered as a Patent Agent on the ..... day of ....., 19 .....

The Registrar
The Patent Office
P.O. Box 100
Blantyre

.....
Registrar of Patents

MALAŴI

Patents Form No. 47

reg. 79

PATENTS ACT
(CAP. 49:02)

Certificate of Service

(1) State name and address

(2) State precisely where service was effected

(3) Here describe the service

(4) To be signed by the person effecting service

I/We (1) .....
.....
.....
hereby certify that at (2) .....
.....
on the ..... day of ....., 19.....
.....
at ..... o'clock in the ..... noon, I/we served the following documents upon .....
by (3) .....
.....

Dated this ..... day of ....., 19 .....

(4) .....

The Registrar
The Patent Office
P.O. Box 100
Blantyre

MALAŴI

Patents Form No. 48

reg. 87

PATENTS ACT
(CAP. 49:02)

Fee: K10

Application for Entry of Order of Court or Tribunal

I/We (1) .....
.....
..... (1) State name and address of applicant(s)

in respect of Patent/Patent Application No. ..... hereby transmit an office copy of an order by the High Court of ..... by the Tribunal with reference to (2) .....
..... (2) Here state purport of the order
.....

Dated this ..... day of ....., 19 .....
(3)..... (3) To be signed by the applicant(s) or his/their agent
.....

My/Our address for service in Malaŵi
.....
.....
.....

The Registrar
The Patent Office
P.O. Box 100
Blantyre

MALAŴI

Patents Form No. 49

s. 21 (2),
30 (1), 36 (5),
52 (2), 59 (4),
reg. 76

PATENTS ACT
(CAP. 49:02)

General Form of Advertisement

Notice is hereby given that in terms of section ..... of the Patents Act .....
.....
.....
.....

Dated this ..... day of ....., 20 .....
(1)..... (1) Name and address of applicant(s) or his/their agent
.....
.....

NOTE— The contents of this advertisement must be approved by the Registrar in terms of section 66.

PATENTS (AGENTS' FEES) REGULATIONS

under s. 96

Citation

1. These Regulations may be cited as the Patents (Agents' Fees) Regulations.

Interpretation

2. In these Regulations, unless inconsistent with context—

"patent agent" includes a legal practitioner when performing the functions of a patent agent.

Fees

3. The fee (excluding disbursements) for any service specified in the first column of the Schedule and performed by a patent agent shall be not less than that specified opposite thereto in the second column of the Schedule.

SCHEDULE

reg. 3

Tariff of Fees Payable to Patent Agents

Service	*Minimum Fee* £	s.	d.
Applications			
1. Lodging complete application in the first instance for ordinary patent or patent of addition, including normal prosecution . .	14	0	0
2. Extra for each Convention priority		15	0
3. Lodging provisional application	8	0	0
4. Completion of provisional application including normal Prosecution	11	0	0
Amendment			
5. Making amendments not requiring formal application . .	1	5	0
6. Lodging formal application to amend specification—			
(*a*) before acceptance	5	10	0
(*b*) after acceptance or after sealing and advertisement. . . .	8	0	0
(These fees include recopying portions of the specification up to 600 words, but not the drafting of the amendment) . .			
7. Registering change of address or address for service—			
(*a*) against one patent	2	0	0
(*b*) against each additional patent at the same time in the same name		15	0
8. Registering change of name—			
(*a*) against one patent	2	10	0
(*b*) against each additional patent at the same time in the same name		15	0
9. Lodging application for correction of clerical errors and amendment of application form (in pending applications)—			
(*a*) in one pending application	3	0	0
(*b*) for same corrections or amendment in each additional application		10	0
10. Lodging application for correction of clerical error after sealing	3	0	0
Opposition, appeal, revocation and extension of term			
11. In general the tariff of the High Court applies			

Service	*Minimum Fee* K	t
Extensions		
12. Obtaining each extension of time for leaving complete specification	3	00
13. Obtaining each extension of time for acceptance of complete specification—		
(*a*) up to eighteen months	2	00
(*b*) each further extension	3	00
14. Obtaining each extension of time for sealing a patent	3	00
15. Obtaining or agreeing to each extension of time for lodging opposition or ensuing responses	3	00
Working		
16. Nominal working one patent; fee according to number of advertisements effected and direct offers made—		
(*a*) two advertisements and no direct offers	8	00
(*b*) two advertisements and up to five direct offers	12	00
(*c*) three advertisements and up to ten direct offers (In cases of combined working of two or more patents, add 25 per centum in respect of each patent after the first)	16	00
Assignment of patent		
17. Recording assignment, notice of interest or licence against—		
(*a*) the first or a single patent	8	00
(*b*) each subsequent patent simultaneously and in the same name	5	00
18. (1) Preparing simple deed of assignment	3	00
(2) Certifying copies of such deed, according to the length thereof(For preparing copies and certifying same see items 29 and 37)	2	00
19. Substitution of applicant	10	00
Renewal		
20. (1) Paying one year's renewal fee on each patent	4	00
(2) For each further year paid at the same time	1	00
21. Obtaining enlargement of time for paying renewal fees on each patent— for each extension (up to six months)	2	00
Restoration		
22. Lodging and prosecuting application for restoration of a lapsed patent and advertisement costs	20	00
Licences of right		
23. (1) Lodging application to endorse one patent "Licence of Right"	12	00
(2) Obtaining cancellation of such endorsement	10	00
(3) For each additional patent in same name at same time	1	50
(4) Drawing declaration	4	20
General		
24. Inspecting register	2	50
25. Name search in index and register	4	00
26. Subject matter searches	6	00
27. Obtaining withdrawal of acceptance	4	00
28. Obtaining certificate of Registrar	2	50
29. Copying specifications and other documents, per 100 words—		
(*a*) original (including one carbon copy, if required)	0	50
(*b*) each additional carbon copy	0	10
30. Obtaining photocopies of documents on record—		
(*a*) one to five copies, per document	1	50
(*b*) six to ten copies after the first five, per document	0	75
(*c*) each copy after the tenth	0	50
31. (1) Obtaining translations of documents	1	50
(2) Revising documents sent from abroad when necessary, but not involving restatement of subject matter	0	75

Service	*Minimum Fee* *K*	*t*
32. Correspondence—		
(*a*) formal routine correspondence, sent and received, per folio of 100 words	0	50
(*b*) correspondence involving discussion of merits, sent and received, per folio of 100 words	0	75
33. Late filing of any document (not otherwise provided for) . .	1	00
34. Lodging authorizations or powers of attorney as may be required—add for each	0	50
35. Lodging affidavits or declarations as may be required—add for each	0	50
36. Preparing and lodging forms and authorizations of any kind other than renewal forms	2	10
37. Certification (by agent) of any document other than assignment deed as true copy of original	1	00
38. Offer to surrender patent and advertising same	3	00

DECLARATION

under s. 7

Gen. N. 307/1966

The Minister has declared that Malaŵi is a Country of the Union for Protection of Industrial Property.

COPYRIGHT

CHAPTER 49:03

Containing Pages 1-80

CHAPTER 49:03

COPYRIGHT

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SECTION

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2. Interpretation
3. Application

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11. Chairperson and Vice-Chairperson
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14. Copyright Administrator
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CHAPTER 49:03

COPYRIGHT

An Act to make provision for copyright in literary, dramatic, musical and artistic works, audio-visual works, sound recordings and broadcasts; the rights of performers; technological measures and rights management information; the establishment of the Copyright Society of Malaŵi and the Creativity Promotion Fund; and matters connected therewith or incidental thereto.

26 of 2016
G.N. 21/2017

[13th March, 2017 – Except Part XII]

PART I

Preliminary

Short title

1. This Act may be cited as the Copyright Act.

Interpretation

2.—(1) In this Act, unless the context otherwise requires—

"adaptation"—

(*a*) in relation to a dramatic work, means conversion of the work from non-dramatic form to its dramatic form, whether the work is in its original language or not;

(*b*) in relation to a literary work, whether in a non-dramatic form or in a dramatic form, means—

(i) a translation of the work, including in relation to a computer programme, a version of the programme in which it is converted into or out of a computer language or code or into a different computer language or code;

(ii) a version of the work in which the story or action is conveyed solely or principally by means of pictures;

(iii) in relation to a computer programme or a compilation of data, a rearrangement or altered version of the original programme or compilation; or

(*c*) in relation to a musical work, an arrangement or transcription of the work;

"artistic work", irrespective of artistic quality, includes—

(*a*) etchings paintings, drawings, sketches, lither crafts, woodcrafts, engravings, etching, products of photographs and prints;

(*b*) photographs;

(*c*) maps, plans, charts or diagrams;

(*d*) sculptures;

(*e*) work of architecture in the form of buildings or models; and

(*f*) work of applied art, whether handicraft or produced on an industrial scale;

"association" means an association of persons whose works are protected under this Act;

"audio-visual work" means a fixation in any physical medium of images synchronized with or without sound from which a moving picture may, by any means, be reproduced and includes cinematograph films, videotapes and videograms but does not include a broadcast;

"author" means—

(*a*) in case of any work other than an audio-visual work, the person who creates the work; or

(*b*) in case of an audio-visual work, the person by whom arrangements for the making of the work were undertaken;

"broadcast" means the transmission by wireless means of sounds or images, or of representations thereof, over a distance, for direct reception by the general public, or if the signals are encrypted, for direct reception using means for decrypting that are provided to the public by a broadcasting organization or with its consent, and includes broadcast by satellite;

"broadcast by satellite" means the act of introducing, under the control and responsibility of a broadcasting organization, the programme carrying signals intended for reception by the public, into an uninterrupted chain of communication leading towards the satellite and down towards the earth;

"broadcasting organization" means any person, licensed to carry out broadcasting or content services under the Communications Act or any other written law;

Cap. 68:01

"cable retransmission" means the simultaneous, unaltered and unabridged retransmission by cable or a microwave system for reception by the public of an initial transmission by wire or over the air, including that by satellite, of a broadcast, made by an entity other than a broadcasting organization making the initial broadcast;

"choreographic work" means a dance composition or design by a dance composer of dance patterns;

"cinematography" means affixation in any physical medium from which a moving picture may, by any means, be reproduced and includes cinematograph films, videotapes and videograms but does not include a broadcast;

"commercial rental" means rental made with the intention of direct or indirect gain;

"commissioned work" means a work created in pursuance of a contract between an author and an individual or a legal entity commissioning a specified work from the author against an agreed author's fee;

"communication by cable" in relation to a work or related subject matter, means transmission over wires or other paths provided by a material substance of the work or related subject matter, but does not include making it available in a manner so that members of the public can access it from a place and at a time individually chosen by them;

"communication to the public" in relation to a work or related subject matter, means making the work accessible to the public by way of transmission, by wire or wireless means, of images or sounds, and includes broadcasting and communication by cable and any communication made in such manner that members of the public can access the images or sounds from a place and at a time individually chosen by them;

"compilations of data" means gathering of data, whether in machine-readable or other form, which, by reason of the selection or arrangement of the contents, constitute intellectual creations:

Provided that the copyright protection in the compilations does not extend to the data and does not prejudice any copyright in the material contained therein;

"computer programme" means a set of instructions, whether expressed in words or in schematic or other form, which is capable, when incorporated in a machine-readable medium, of causing an electronic or other device having information processing capabilities to indicate, perform or achieve a particular function, task or result;

"copy" means an embodiment in material form, be it permanent or temporary, intransient storage of a work or related subject matter, and includes, except where otherwise stated, the original in the

form of a manuscript or similar object, fixation or recording or in any other material form:

Provided that an object shall not be taken to be a copy of an architectural work unless the object is a building or model;

"copyright" means copyright protected under this Act;

"database" means a machine-readable compilation of data;

"derivative work" means a work resulting from adaptation, translation or other transformation of an original work in so far as it constitutes an independent creation;

"display" means the display of tangible copies which shows the work or related subject matter directly without the use of technical aids;

"distribution" means the distribution of tangible copies of a work or related subject matter by way of sale, rental, lease, hire, loan, lending, gift or similar arrangement, and includes the offering for sale, rental, lease, hire, loan or as a gift or similar arrangement;

"dramatic work" includes—

(*a*) a choreographic show or entertainment in a dumb show; or

(*b*) a scenario or script for an audio-visual work but does not include the audio-visual work;

"engraving" means a picture made by cutting a design on a piece of metal or wood and then printing it on paper does not include a photograph;

"expressions of folklore" means subject matter in the literary, dramatic, musical or artistic fields, belonging to the traditional cultural heritage of Malaŵi, preserved and developed by ethnic or local communities or by unidentified individuals of Malaŵi, and includes—

(*a*) folk tales, folk poetry and riddles;

(*b*) folk songs and instrumental folk music;

(*c*) folk dances, plays and artistic forms of rituals;

(*d*) production of folk art, in particular drawings, paintings, carvings, sculptures, pottery, terracotta, mosaic, woodwork, metalware, jewellery, baskets and costumes;

(*e*) traditional musical instruments; and

(*f*) any works designated as such by the Minister by notice published in the *Gazette*;

"first published in Malaŵi" means that a work, sound recording or published edition was first published abroad but within thirty days thereafter was published in Malaŵi;

"fixation" means the embodiment of images or sounds, or of the representations thereof, in a material form, sufficiently permanent or stable to permit them to be heard, perceived, reproduced or communicated, including through a machine or device;

"infringing copies" means copies of a work or related subject matter produced by any process and in any form the making of which involves infringement of copyright in the work or the rights granted to performers, broadcasters, producers of sound recordings and publishers under this Act, and includes copies the making of which infringes the provisions of this Act relating to expressions of folklore;

"lawfully made available to the public" refers to any public performance or display, any communication or distribution to the public, made with the consent of the owner of the rights concerned or as otherwise permitted under this Act;

"literary work", irrespective of literary quality, includes any of the following—

(*a*) novels, stories or poetry works;

(*b*) plays, stage directions, film scenarios or broadcasting scripts;

(*c*) textbooks, treatises, histories, biographies, essays or articles;

(*d*) encyclopedias, dictionaries, or anthologies;

(*e*) letters, reports or memoranda;

(*f*) lectures, addresses or sermons;

(*g*) computer programmes; and

(*h*) compilation of data or other material;

"Mandatory Mediation Rules" means the High Court (Commercial Division) (Mandatory Mediation) Rules;

"manuscript", in relation to a work, means an original document embodying the work whether written by hand or otherwise;

"musical work" includes any musical work irrespective of its musical quality, and includes words composed for musical accompaniment;

"performance" means the presentation of a work or expression of folklore by such action as dancing, playing, reciting, singing, delivering, declaiming or projecting to listeners or spectators, live or by any means whatsoever;

"performer" means actor, singer, declaimer, musician, dancer or other person who performs a work or expression of folklore and includes the conductor of a performance of any such work or expression of folklore;

"photograph" includes photolithograph and other work produced by any process analogous to photography but does not include any part of an audio-visual work;

"plate" means any material object in which a work, production, performance or edition has been embodied and by the means of which copies or reproductions of the work, production, performance or edition may be made;

"producer of sound recordings" means a person who makes the initiative and has the responsibility for the first fixation of a sound recording;

"public performance" means a performance before a group of persons that goes beyond the normal circle of the family and closest social acquaintances of the person initiating the performance, and includes performances made within a commercial context to a comparatively large group, whether closed or not;

"published" in relation to related subject matter, has the same meaning as that ascribed to the term "published works", except where otherwise stated;

"published works" means works which, with the consent of the authors, have been made available to the public in tangible copies in a quantity sufficient to satisfy a reasonable demand for the work;

"rebroadcasting" means the simultaneous or subsequent broadcasting in part or in whole by one broadcasting organization of the broadcast of another broadcasting organization;

"related subject matter" includes expressions of folklore, performances, sound recordings, broadcasts and typographical arrangements;

"remuneration" means money paid to owners of rights or their representative as a compensation for use of a work with no prior authorization;

"rental" means distribution by way of rental, lease, hire or similar arrangement, and includes exchange of copies that is carried out as an organized activity;

"reproduction" means the making of one or more copies by any means of a work or related subject matter in whole or in part, and includes—

(*a*) making a fixation from a performance or communication;

(*b*) permanent or temporary storage in electronic form; and

(*c*) in the case of an artistic work, includes converting a work into a three-dimensional form or, if existing in a three-dimensional form, converting it into a two-dimensional form;

"royalty" means payment to an author or owners of rights for use of their work where prior authorization was granted;

"Society" means the Copyright Society of Malaŵi established under section 4;

"sound recording" means the fixation of the sounds of a performance or of other sounds, or of a representation of sounds, from which the sounds may be conveyed, regardless of the medium in which the recording is made or the method by which the sounds are conveyed, but does not include, except where otherwise stated, the fixation when incorporated in an audio-visual work;

"tangible copy" means a fixed copy that may be put into circulation as a tangible object;

"work" means a literary, dramatic, musical, artistic or audio-visual work within the meaning of the Berne Convention for the Protection of Literary and Artistic Works, in the form of text notation or related illustrations whether published or otherwise made publicly available in any media;

"works of applied art" means an artistic work applied to objects for practical use whether handicraft or works produced on industrial scale; and

"works of joint authorship" means a work created by the collaboration of two or more authors in which the contribution of each author is not separable from, or is interdependent with, the contribution of the other author or authors.

Application

3.—(1) Copyright, in accordance with this Act, shall subsist in—

(*a*) literary, dramatic, musical and artistic audio-visual works—

(i) of an author who is a citizen of Malaŵi or has his habitual residence in Malaŵi; or

(ii) which are first published in Malaŵi, irrespective of the nationality or residence of the authors;

(*b*) audio-visual works where—

(i) the maker of the work has his habitual residence, or has its headquarters, in Malaŵi; or

(ii) the work was first published in Malaŵi; and

(*c*) works of architecture erected in Malaŵi or other artistic works incorporated in a building or other structure located in Malaŵi.

(2) The protection under this Act of expressions of folklore shall apply to expressions of folklore belonging to the traditional or cultural heritage of Malaŵi developed and maintained by—

(*a*) ethnic or local communities in Malaŵi; or

(*b*) unidentified Malaŵian individuals.

(3) The rights granted by this Act to performers shall apply to performers, where—

(*a*) the performer is a citizen of Malaŵi;

(*b*) the performance took place in Malaŵi;

(*c*) the performance is fixed in a sound recording qualifying for protection under subsection (4); or

(*d*) the performance, which has not been fixed in a sound recording, is embodied in a broadcast qualifying for protection under subsection (5).

(4) The rights granted by this Act to producers of sound recordings shall apply, where—

(*a*) the producer of the sound recording is a citizen of Malaŵi or has his habitual residence or its headquarters in Malaŵi;

(*b*) the first fixation of the sound recording was made in Malaŵi; or

(*c*) the sound recording was first published in Malaŵi.

(5) The rights granted by this Act to a broadcasting organization with regard to their broadcasts shall apply where—

(*a*) the headquarters of the broadcasting organization is situated in Malaŵi; or

(*b*) the broadcast was transmitted from a transmitter situated in Malaŵi.

(6) The rights granted by this Act to publishers with regard to typographical arrangements of published editions shall apply to editions first published in Malaŵi.

PART II

The Copyright Society of Malaŵi

Establishment of a Copyright Society of Malaŵi

4.—(1) There is hereby established a Society to be known as the Copyright Society of Malaŵi (in this Act otherwise referred to as the "Society").

(2) The Society shall—

(*a*) be a body corporate having perpetual succession and a common seal;

(*b*) be capable of suing and being sued in its corporate name;

(*c*) be capable of acquiring, hiring and disposing of any moveable or immoveable property and do such things and perform such acts as bodies corporate may by law do or perform; and

(*d*) have power to perform such functions and exercise such powers as are conferred by this Act.

Functions of the Society

5. The Society shall be responsible for the implementation of this Act and shall have the following functions—

(*a*) promote and protect the interests of authors, performers, translators, producers of sound recordings, broadcasters, publishers and in particular, to collect and distribute any royalties or other remuneration accruing to them in respect of their rights provided for in this Act;

(*b*) maintain registers of works, productions and associations of authors, performers, translators, producers of sound recordings, broadcasters and publishers;

(*c*) publicize the rights of owners and give evidence of the ownership of these rights where there is a dispute or an infringement;

(*d*) print, publish, issue or circulate any information, report, periodical, book, pamphlet, leaflet or any other material relating to copyright, expressions of folklore, rights of broadcasters, performers and producers of sound recordings;

(*e*) cooperate with any associations in Malaŵi;

(*f*) establish and maintain close and continuous working relationships with national, regional and international

organizations or institutions whose objectives are similar to those of the Society, and to negotiate bilateral agreements with collecting societies abroad, in particular as regards use that may be subject to an extended collective licence under section 58;

(*g*) negotiate and enter into collective agreements as mandated by authors, performers, translators, producers of sound recordings, broadcasters and publishers, or any association thereof, in particular agreements that according to section 58 entail an extended collective licence;

(*h*) ensure that there is constant improvement and continued effectiveness of legislation on copyright and related rights and implementation thereof;

(*i*) devise programmes on promotion, introduction and training programmes on copyright and related rights, to which end it may co-ordinate its work with national or international organizations concerned with the same subject matter; and

(*j*) advise the Minister on all matters under this Act.

Powers of the Society

6. For the better performance of its functions, the Society shall have power to—

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(*a*) subject to the Public Finance Management Act, borrow money whether by way of loan, overdraft or otherwise, on the security of its assets;

(*b*) accept and administer any trust or donation;

(*c*) determine minimum rates of royalties to be levied in respect of uses to be made of works registered by the Society;

(*d*) propose fees and levies for registration of works and associations;

(*e*) perform such other functions as may be assigned to the Society by the Minister; and

(*f*) do and perform all such acts or things as it may consider necessary or expedient to achieve the objects of this Act.

Board of the Society

7.—(1) There shall be a Board of the Society which shall be responsible for directing the affairs of the Society.

(2) The Board shall consist of the following nine members who shall be citizens of Malaŵi—

(*a*) a Chairperson appointed by the Minister, from amongst members appointed under paragraph (*b*);

(*b*) six persons nominated at the annual general assembly of the Society from members and member association and appointed by the Minister;

(*c*) the secretary responsible for culture or his representative, *ex officio*;

(*d*) the Comptroller of Statutory Corporations or his representative, *ex officio*; and

(*e*) the Solicitor General or his representative, *ex officio.*

(3) The Board shall consist of not less than forty per cent of woman and not more than sixty per cent of any gender, and *ex officio*, shall hold office for a term of three years and shall be eligible for reappointment for a further term.

(4) The Minister shall cause to be published in the *Gazette*, a notice of the appointment of members of the Board as first constituted and any other appointment of a member of the Board and shall in such notice, specify the current membership of the Board resulting from such appointment.

(5) A member of the Board shall not, by virtue only of his appointment to the Board, be deemed to be an officer in the public service.

Vacation, etc., of members from office

8.—(1) The office of a member of the Board shall become vacant where the member—

(*a*) has been declared bankrupt or has assigned his estate for the benefit of, or made a composition or other arrangement with his creditors;

(*b*) has been absent from three consecutive meetings of the Board of which he has had notice, without the leave of the Chairperson of the Board;

(*c*) has been convicted of an offence under this Act;

(*d*) has been convicted within Malaŵi of a criminal offence, or outside Malaŵi of an offence by whatever name called which, if committed within Malaŵi, would have been a criminal offence, and sentenced to imprisonment for a term of six months or more without the option of a fine, whether or not such sentence has been suspended, and has not received a pardon; or

(*e*) is mentally or physically incapable of efficiently performing his duties as member of the Society.

(2) The Minister may suspend from office, a member of the Board against whom criminal proceedings have been instituted for

an offence in respect of which a sentence of imprisonment for a term of six months or more without the option of a fine may be imposed.

(3) A member of the Board may resign from his office by notice in writing to the Minister.

Filling of vacancies in the Board

9.—(1) On vacation of office by a member of the Board, the vacancy shall be filled by a person appointed in accordance with section 7:

Provided that where the remaining period is less than six months, the Minister may decide not to have the vacancy filled until the expiry of the period.

(2) If any member of the Board is granted leave of absence by the Board, the Board may, if it considers appropriate, co-opt a person, who belongs to the same profession or calling as the member who has been granted leave, to fill the vacancy during the absence of the member.

Co-opted persons

10. The Board may at any time and for any period, invite any person to attend any meeting of the Board and take part in the deliberations at the meeting but such person shall not be entitled to vote at that meeting.

Chairperson and Vice-Chairperson

11.—(1) The Board shall elect a Vice-Chairperson from amongst its members at the first meeting of the Board.

(2) The office of the Vice-Chairperson of the Board of the Society shall become vacant if—

(*a*) the holder resigns his office by notice in writing to the Chairperson of the Board;

(*b*) the holder of the office ceases to be a member of the Board; or

(*c*) the Board so determines.

(3) Whenever the Chairperson of the Board is absent or is for any reason unable to discharge the functions of his office, the Vice-Chairperson shall discharge the functions of the Chairperson.

Meetings of the Board

12.—(1) The Board shall hold ordinary meetings at least four times in each year.

(2) Notwithstanding subsection (1), an extraordinary meeting of the Board of the Society—

(*a*) may be convened by the Chairperson of the Board at any time; and

(*b*) shall be convened within twenty-one days of the receipt by the Chairperson of a request in writing signed by not less than any three members of the Board and specifying the purpose for which the meeting is to be convened.

(3) The *quorum* at any meeting of the Board shall be five persons.

(4) The Chairperson or, in his absence, the Vice-Chairperson, shall preside at a meeting of the Board:

Provided that in the absence of both the Chairperson and the Vice-Chairperson, the members present and forming the *quorum* shall elect one among their numbers to preside.

(5) At any meeting of the Board, a decision on any matter shall be that of the majority of the members present and voting at that meeting and in the event of an equality of votes, the Chairperson or the person presiding shall have a casting vote in addition to his deliberative vote.

(6) The Board may make rules for proceedings at its meetings.

Remuneration and expenses of the Board of the Society

13. Members of the Board shall be paid from the funds of the Society, such allowances as the Minister may determine, to cover expenses incurred for the attendance of meetings in connexion with business of the Society.

Copyright Administrator

14.—(1) The Board shall appoint a Copyright Administrator on such terms and conditions as may be approved by the Minister.

(2) The Copyright Administrator shall be the secretary to the Board and the chief executive officer of the Society.

Tenure of office of the Copyright Administrator

15.—(1) The Copyright Administrator shall be appointed for a term of five years, and may be reappointed for a further term.

(2) The Copyright Administrator shall be removed from office on any of the following grounds—

(*a*) incompetence;

(*b*) misconduct that brings the Society into disrepute;

(*c*) undischarged bankruptcy;

(*d*) non-disclosure of interest in matters of the Society which he ought to disclose;

(*e*) if he has been convicted by a competent court of a crime which is punishable with imprisonment without an option of a fine;

(*f*) involvement in active politics; or

(*g*) incapability to perform his duties as Copyright Administrator by reason of mental or physical infirmity.

(3) The Copyright Administrator shall not be removed from office unless he has been given an opportunity to be heard.

Powers and functions of the Copyright Administrator

16.—(1) The Copyright Administrator shall have the following powers and functions—

(*a*) implementing the decisions of the Board of the Society;

(*b*) keeping the Board informed of the activities of the Society;

(*c*) submitting strategic plans, action plans and budget support programmes to the Board for approval;

(*d*) implementing the strategic plans, action plans and budget support programmes;

(*e*) ensuring that activities of the Society comply with relevant laws and policies;

(*f*) acting on behalf of the Society; and

(*g*) generally perform such functions and duties as may be assigned to him by the Board of the Society.

(2) The Copyright Administrator or, in his absence, such other employee of the Society as he may designate, shall attend meetings of the Board and of any committees of the Board of the Society and may address such meetings, but shall not vote on any matter.

Other staff of the Society

17.—(1) The Board may appoint such other staff as it considers necessary for the discharge of functions of the Society and on such terms and conditions as the Board may determine:

Provided that the Board may delegate to the Copyright Administrator power to appoint other staff below the level of director.

(2) The Copyright Administrator, in consultation with the Chairperson of the Board, may appoint temporary employees at such daily rates of pay, not below the minimum rates otherwise prescribed by written law, as he may consider appropriate and shall, after he has appointed any such employee, report the fact thereof to the Society at its next meeting.

Disclosure of conflict of interest

18.—(1) Any member of the Board who is present at a meeting of the Board at which any matter in which he has or may have an interest is being considered, that member shall disclose such interest as soon as is practicable after the commencement of the meeting and

the member shall not take part in any consideration or discussion of, or vote on, any question relating to the matter.

(2) The Copyright Administrator shall disclose to the Chairperson of the Board any interest he has in any matter that is under consideration by the Board, and shall not attend any meeting of the Board or of any committee of the Board while any question related to the matter is being discussed.

(3) Any employee of the Society or any consultant, adviser or sub-contractor of the Society shall disclose to the Copyright Administrator any interest that he has or that may arise in the course of duties related to the operations of the Society, and the Copyright Administrator or the Board in the case of the Copyright Administrator, shall make decisions considered appropriate in each case and submit a report thereon to the Board.

Confidentiality

19.—(1) A person shall not publish or disclose to any entity, other than in the course of the entity's duties, the contents of any document, communication or information which has come to the person's knowledge in the course of his duties under this Act.

(2) Any member of the Board, employee, consultant, adviser or sub-contractor of the Society who holds confidential information, or any person who has directly or indirectly, obtained any such information from a member of Board, employee, consultant, adviser or sub-contractor of the Society, whom that person knows or has reasonable cause to believe held the information by virtue of his office, and who—

(*a*) deals in any contract or proposed contract to which the information relates and in which the Society is involved;

(*b*) counsels or instigates anyone else to deal in any such contract or proposed contract, knowing or having reasonable cause to believe that the other entity would deal in such contract or proposed contract; or

(*c*) communicates to anyone else the information held or, as the case may be, obtained by him if he knows or has reasonable cause to believe that such other entity or any other entity would make use of the information for the purpose of dealing in, or counselling or causing anyone else to deal in, any contract or proposed contract to which the information relates, and in which the Society is involved,

commits an offence and shall on conviction, be liable to a fine of K5,000,000 and imprisonment for two years.

(3) This section shall apply to any information that—

(*a*) a member of the Board, employee, consultant, adviser or sub-contractor of the Society holds by virtue of his office or dealings with the Society;

(*b*) would not be expected, or would not be reasonable for the information to be disclosed by a member of the Board, employee, consultant, adviser or sub-contractor of the Society except in the proper performance of the functions of his office; or

(*c*) the member of the Board, employee, consultant, adviser or sub-contractor of the Society holding the information knows or ought to have known that it is unpublished information in relation to any contract or proposed contract of the Society.

(4) The provisions of this section shall continue to apply to any member of the Board, employee, consultant, adviser or sub-contractor of the Society, notwithstanding the expiry or termination of the term of office of the member or the employment of the employee, consultant, adviser or sub-contractor of the Society, as the case may be.

Oath of secrecy

20. A member of the Board, an employee, a consultant, an adviser and a sub-contractor of the Society, shall sign an oath of secrecy upon being appointed to the Board or being engaged by the Society, as the case may be.

Delegation of powers

21.—(1) The Board may delegate some of its functions under this Act to the Copyright Administrator, any member of the Board, or member of staff of the Society.

(2) The Copyright Administrator may, with the approval of the Board of the Society, delegate any power or function assigned to him under this Act, to any member of staff of the Society.

Funds of the Society

22.—(1) The operational and financial costs of the Society shall be provided through—

(*a*) all fees payable under this Act, except levies and fees payable to the Society under Part XIII;

(*b*) administrative penalties paid to the Society under this Act;

(*c*) grants or donations received by the Society;

(*d*) such moneys as may be appropriated to the Society by Parliament; and

(*e*) such other moneys and assets as may vest and accrued to the Society.

(2) Subject to the Public Finance Management Act, the Society may borrow such moneys as it may require for the performance of its functions under this Act. Cap. 37:02

(3) The Society may invest with any bank or financial institution in Malaŵi, any of its moneys that are not immediately required for the performance of its functions under this Act.

(4) All the moneys of the Society which, at the end of each financial year, are in excess of the Society's budgetary requirements for that year shall be paid into the Consolidated Fund, but the Society may, subject to agreement with the Minister of Finance, retain such sums as it may reasonably require for operations of the Society.

Accounts and audit

23.—(1) The Society shall maintain proper books of accounts and other records relating to its accounts.

(2) The Society shall appoint independent auditors to audit the accounts of the Society annually and a copy of the audited accounts shall be sent to the Auditor General for examination before final presentation to the Minister.

(3) The financial year of the Society shall be the same as the financial year of the Government.

Annual report

24.—(1) As soon as practicable, but not more than six months after the expiry of each financial year, the Society shall submit to the Minister, a report concerning its activities during that financial year.

(2) The report shall be in the form and contain such information as prescribed by the Minister.

(3) There shall be appended to the report—

(*a*) an audited statement of financial position;

(*b*) an audited statement of income and expenditure;

(*c*) justification for retention of any sums, where applicable; and

(*d*) such other information as the Minister may consider appropriate.

(4) As soon as practicable, but not more than six months after the expiry of the financial year, the Minister shall lay the report before Parliament.

PART III

Copyright

Copyright

25. An author of any work shall, by the mere fact of its creation, enjoy an exclusive property right in the work.

Eligibility for copyright

26.—(1) Literary, dramatic, musical or artistic work shall not be eligible for copyright under this Part unless—

(*a*) it is original in character; or

(*b*) it is a derivative work.

(2) A work shall be eligible for copyright under this Act irrespective of its form of expression, its quality or purpose for which it was created.

(3) For purposes of this Part, a work is original if it is the product of the independent efforts of the author.

Derivative

27.—(1) The following derivative works, in so far as they constitute independent creations, shall be subject to copyright protection as if they were original works—

(*a*) translations, adaptations, arrangements and any other transformations of original literary, dramatic, musical and artistic works; and

(*b*) collections of works, such as encyclopedias and anthologies, which, by reason only of the selection or arrangements of their contents, constitute intellectual creations.

(2) The protection of any work referred to under subsection (1) shall be without prejudice to any other protection of a pre-existing work or expression of folklore.

Works not subject to copyright protection

28.—(1) Copyright protection shall not extend to—

(*a*) written laws and decisions of courts and administrative bodies and to official translations thereof;

(*b*) news published, broadcast or communicated to the public by any other means; or

(*c*) a report made by a commission appointed by the Government or any agency thereof and which the Government has made available to the public.

(2) Works that have not been made especially for use in documents as mentioned in subsection (1), and which are quoted or reproduced in the documents or made available through news reports, shall be subject to copyright protection.

Economic rights

29.—(1) Subject to Part IV, an author of any work eligible for copyright under this Part, shall have the exclusive right in respect of such work, to do, or authorize any other person to do, the following acts in relation to the whole work or any part thereof—

(*a*) reproduction of the work;

(*b*) distribution by way of sale, commercial rent or lending of the work to the public;

(*c*) public display of the work;

(*d*) public performance of the work;

(*e*) communication of the work to the public;

(*f*) translation, adaptation, arrangement or any other transformation of the work in relation to a translation, adaptation, arrangement or other transformation of the work; or

(*g*) any of the actions in paragraphs (*a*), (*b*), (*c*), (*d*) and (*h*) in relation to a translation, adaptation, arrangement or other transformation of the work.

(2) Tangible copies of a work which have been sold or otherwise assigned by, or with the consent of, the author may, regardless of whether the transfer of the copy occurred in Malaŵi or elsewhere, be distributed to the public:

Provided that the author shall retain—

(*a*) the right of commercial rental of the work, except in the case of objects for practical use and works or architecture in the form of a building;

(*b*) the right of commercial rental in the case of computer programmes, except where the programme itself is not the essential object of the rental or lending; and

(*c*) the right of lending of machine-readable copies of a computer program audio-visual work embodied in sound recording, database or musical work in form of notation.

(3) Tangible copies of a work which have been sold or otherwise assigned by, or with the consent of the author may be displayed to the public regardless where the transfer of the copy took place.

Moral rights

30.—(1) An author of any work eligible for copyright under this Act shall have the exclusive right to—

(*a*) claim authorship of his work and in particular, to demand that his name or pseudonym be mentioned in the manner required by proper usage when any of the acts referred to in section 29 (1) is done in relation to such work;

(*b*) object to, and to seek relief in connexion with, any alteration, distortion, mutilation or other modification of the work where—

(i) such act would be or is prejudicial to his honour or reputation; or

(ii) the work is discredited thereby.

(2) Whenever a work is made available to the public in a prejudicial manner as stated in subsection (1) (*b*) (i), the author shall have a right to demand that he be not mentioned as the author of the work, or that it be stated that the alteration does not derive from him.

(3) The right of the author stated in subsection (2) shall—

(*a*) apply regardless of the author having consented to the use; and

(*b*) not be subject to waiver.

(4) The rights conferred by subsection (1)—

(*a*) shall not be transferable except on and by reason of the death of the author; and

(*b*) may not be waived except for a use which is limited in nature and extent.

(5) On the death of an author, the rights conferred by subsection (1) shall be exercisable by his heirs or legal representatives.

(6) The director of any audio-visual work shall have the right to—

(*a*) be identified as the director of the work and in particular, to demand that his name or pseudonym be mentioned in the manner required by proper usage when any of the acts referred to in section 29 (1) is done in relation to such work;

(*b*) object to, and to seek relief in connexion with, any alteration, distortion, mutilation or other modification of the work where—

(i) such act would be or is prejudicial to his honour or reputation; or

(ii) the work is discredited thereby, except where such act is done under authority of the author of the work.

(7) Subsections (2), (3), (4) and (5) shall apply, *mutatis mutandis*, to the director of an audio-visual work.

Right to share in proceeds of sale

31.—(1) Notwithstanding any assignment or sale of original work, an author of a graphic work, three-dimensional work and manuscript shall have an inalienable right to share in the proceeds of any sale of that work or manuscript by public auction, through a dealer whatever the method used by the latter to carry out the operation.

(2) The right conferred by this section shall apply to originals of such work.

(3) The conditions for the exercise of the right conferred by this section shall be prescribed by regulations made by the Minister under section 118.

Alteration of buildings and objects for practical use Cap. 29:01

32. Subject to the Monuments and Relics Act, buildings and objects for practical use may be altered without the consent of the author when this is done for technical reasons or for practical purposes, irrespective of section 30 (1) (*b*).

Ownership of copyright

33.—(1) In determining the person vested with copyright under this Part, the following principles shall apply—

(*a*) where one person is the author of the work, the rights shall vest in that person;

(*b*) where two or more persons are the authors of the work of joint ownership, the rights shall vest in them jointly; and

(*c*) where there is no proof to the contrary, the author of the work is the individual whose name or generally known pseudonym, mark or symbol is indicated in the usual manner on the work as its author.

(2) In the case of published anonymous or pseudonymous works other than those referred to in subsection (1) (*c*), the publisher whose name appears on the work shall, in the absence of proof to the contrary, be deemed to represent the author and may act on behalf of the author until the author reveals his identity and establishes his claim to authorship of the work.

Works by employed authors and commissioned works

34.—(1) Unless there is evidence to the contrary, when a work is created by an author in the course of his employment or as a commissioned work, the rights of the author in respect of the work shall vest in the employer or the party that commissioned the work.

(2) Nothing in subsection (1) shall derogate from the rights of the author as set out in section 30.

Duration of copyright

35.—(1) Unless otherwise expressly provided in this Act, the rights referred to in sections 29 and 30 shall be protected—

(*a*) during the life of the author and for fifty years after his death;

(*b*) in the case of a work of joint ownership, during the life of the last surviving author and for fifty years after his death;

(*c*) in the case of anonymous or pseudonymous works, for a period of fifty years from the date on which such work was first

published or otherwise lawfully made available to the public, whichever date is the latest, or if the work has not thus been made available to the public within fifty years of it having been created, for a period of fifty years from the date on which the work was created:

Provided that where the author, before the expiration of such period, discloses his identity, or the pseudonym leaves no doubt as to the identity of the author, protection shall be for the duration specified in paragraph (*a*) or (*b*), as the case may be;

(*d*) in the case of any audio-visual work, until the expiration of fifty years from the date on which such work is first published or otherwise made available to the public with the consent of the author, whichever date is the latest, or if the work has not thus been made available to the public within fifty years from the making of the work;

(*e*) in the case of a work owned by the Government, for fifty years commencing from the date on which the work was first made available to the public, or, if the work has not thus been made available to the public within fifty years from the making of the work, fifty years from the making of the work; or

(*f*) in the case of a work of applied art which is subject to production on an industrial scale, until the expiration of twenty-five years from the date on which the work was first published, or, if the work has not been published within fifty years of it having been made, for a period of fifty years from the date on which the work was made.

(2) Every period specified in this section shall run to the end of the calendar year in which it would otherwise expire.

PART IV

Permitted Free Uses of Works

Permitted free uses of a work

36.—(1) The uses of a work in accordance with this Part shall be permissible without the consent of the author and without the obligation to pay remuneration for the use of such work.

(2) When a work is made available to the public pursuant to this section, the original work or a translation thereof, may be rendered in the dimensions and form required for that purpose, with the requirement that the character of the work not to be altered or prejudiced:

Provided that the source and the name of the author shall be mentioned in the manner required by proper usage.

Transient and incidental copies

37.—(1) The making of a copy of a work which is transient and incidental to a technological process shall be permitted when the reproduction is an integral and essential part of the technological process and the sole purpose is to enable—

(*a*) a transmission of the work in a network between third parties by an intermediary; or

(*b*) a lawful use of the work:

Provided that the copy shall have no independent economic significance.

(2) The reproduction permitted under subsection (1) shall be subject to the following exceptions—

(*a*) where the work is a work of architecture, the copy is not made in the form of construction of a building;

(*b*) where the work is a computer programme or database, the copy made is not a machine-readable copy;

(*c*) where the copy made is a recording of a musical work or of an audio-visual work, the reproduction is not made by—

(i) using technical equipment made available to the public in libraries, on business premises, or in other places accessible to the public; or

(ii) a person outside the normal circle of the user's family and closest social acquaintances,

unless assistance is necessary on account of the user being disabled; and

(*d*) where the copy made is an object of applied art, a sculpture, a pictorial weaving or other artistic reproduction of an artistic work, the reproduction shall not be made by a person outside the normal circle of the user's family and closest acquaintances.

Reproduction, etc., of a work for user's private use

38. The reproduction, translation, adaptation, arrangement or other transformation of a work exclusively for the user's own personal or private use of a work which has already been lawfully made available to the public, shall be permitted:

Provided that it is made on the basis of a representation that is authorized under this Act, at the initiative of the user and not for purposes of gain and only in single copies.

Inclusion of quotations

39. The inclusion of quotations from a work in another work, including quotations from newspaper articles and periodicals in the form of press summaries, shall be permitted:

Provided that the work from which the quotation is made, has already been lawfully made available to the public, and that such quotations are compatible with fair practice and their extent of use does not exceed that justified by the purpose.

Critical or scientific presentations, artistic works and literary works

40. Artistic works may be used to the extent required for the purposes of, and in connexion with the text of critical or scientific presentations which have not been prepared for commercial purposes:

Provided that the work has already been lawfully made available to the public, and that the use is comparable with fair practice.

Use of a work by way of illustration

41. The use of a work by way of illustration in publications, broadcasts or programmes communicated to the public by cable, audio-visual works for teaching or sound recordings for teaching, shall be permitted to the extent justified for that purpose:

Provided that—

(*a*) the work has already been lawfully made available to the public;

(*b*) the use is compatible with fair practice; and

(*c*) there is no requirement for a reproduction licence to be obtained from the Society.

Public performance of a work and public display of copies of a work

42. The public performance of a work and the public display of copies of a work that has already been lawfully made available to the public is permitted when made in an educational context in schools, universities and professional training, at religious services, or at events where the performance or display of works is not the primary feature and the public is admitted free of charge:

Provided that—

(*a*) the performance is not made in a dramatic form;

(*b*) the work is not an audio-visual work; and

(*c*) there is no gainful intent for the performance or display.

Simultaneous and unaltered cable transmission of a work broadcast

43. The simultaneous and unaltered cable retransmission of any work broadcast is permitted where the beneficiaries of the cable retransmission live in one and the same building or group of buildings none of which is separated from another building by a public street or road:

Provided that—

(*a*) the beneficiaries are not more than twenty-five households or other closed entities; and

(*b*) the cable retransmission originates in such building or group of buildings and is done without direct or indirect gainful intent.

Reproduction in the press, etc., of articles on current topics

44. The reproduction in the press, broadcast and communication to the public by cable of any article on current economic, political, social or religious topics, which, with the consent of the author, has already been lawfully made available to the public in a newspaper or periodical, and of any work of the same character broadcast, shall be permitted, unless the article, when first made available, or the work, when first broadcast, was accompanied by an express condition prohibiting such reproduction, broadcasting or communication:

Provided that the source of the article or the work when used in such manner is clearly indicated.

Reporting on current events

45. Reproduction of a work and making available to the public of any work that can be seen or heard in the course of a current event, for the purpose of reporting on the current event, by means of photography, cinematography or other means of communication, is permitted to the extent justified for an informative purpose.

Photography, cinematography, drawings, etc.

46. The reproduction and making available to the public by photography, cinematography, drawing or similar means of depiction of an artistic work is permitted when the work is—

(*a*) included in the picture or recording by way of background or as incidental, to the essential matters represented;

(*b*) a work of architecture in the form of a building; or

(*c*) a work of art permanently located in a place outdoors where it can be viewed by the public:

Provided that pictures or recordings in which the work of art clearly is the principal motif, shall not be commercially exploited without the consent of the author.

Artistic work forming part of a collection

47. Artistic works which form part of a collection or which are exhibited, or are offered for sale, may be depicted in inventories of the collection or exhibition and in notices of the exhibition or sale:

Provided that any such inventory which is made available to the public, shall be made only in printed form.

Libraries, archives, museums, scientific and educational institutions

48.—(1) The Minister may, by notice published in the *Gazette*, designate libraries, archives, museums, scientific institutions and educational establishments to make copies of works.

(2) The libraries, archives, museums, scientific institutions and educational establishments designated pursuant to subsection (1) shall abide by the following conditions—

(*a*) reproduction of works shall not be made with intent of direct or indirect gain, and that the number of copies made and the use thereof, shall be limited to the needs of the regular activities of the body reproducing the work which may be to—

(i) conserve or safeguard works contained in its collections;

(ii) complete a copy contained in its collection, parts of which have been damaged or lost;

(iii) obtain copies of such works as are subject to the Printed Publications Act whenever the library, archive, museum, scientific institution or educational establishment is a beneficiary of the Printed Publications Act and copies of the work cannot be obtained from a sales outlet, the publisher, the producer or the importer;

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(iv) assist a particular personal and individual research or study in which case reproduction shall be limited to making copies in a paper format, including printouts, of articles in a collection of works such as encyclopedias or anthologies, or from a publication such as newspapers or journals, or short excerpts from other works in its collections, and only one copy of the work may be delivered to the individual requesting access thereto, either directly or to another body designated, by notice published in the *Gazette*, to which the individual made the request;

(*b*) except in the case of subparagraph (*a*) (i), the work has already been lawfully made available to the public;

(*c*) except—

(i) in the case of subparagraph (*a*) (i);

(ii) as provided for in subparagraph (*a*) (iv); or

(iii) by permission from the Minister for a particular research, the copies are made in the same form as the copy from which the reproduction was made:

Provided the making of printouts from machine-readable material shall be permitted except when otherwise provided;

(*d*) where in the case of paragraph (*c*), the copy is delivered against payment, a licence from the Society shall be required;

(*e*) where the work is a computer programme, the copy made is not a machine-readable copy;

(*f*) the number of copies made from a sound or audio-visual recording does not exceed the number of copies of the recording already contained in the collection;

(*g*) machine-readable copies and copies of sound or audio-visual recordings shall be used only on the premises of the body having made the reproduction, or on individual request, on the premises of another body designated by the Minister, in which case, that body shall be under the obligation to—

(i) return the copy;

(ii) delete the copy; or

(iii) destroy the copy; and

(*h*) whenever machine-readable copies, sound or audio-visual recordings are made available to the public, no access to a facility for reproduction shall be provided.

(3) An institution designated pursuant to subsection (1) may use terminals on its own premises to make works in its collections available to individuals when this is done for the purpose of research or private study and not for direct or indirect gain:

Provided that—

(*a*) the work has already been lawfully made available to the public;

(*b*) the work has not been obtained pursuant to—

(i) the Printed Publications Act; or Cap. 19:01

(ii) subsection (1) (*a*) (iii); and

(*c*) no access to a facility for digital reproduction or transmission is provided to the public.

(4) The making of any copy under this section shall be subject to the provisions of subsection (1) and subsection (2) shall not imply a permission to make machine-readable copies for the purpose of making work available on a terminal.

Reproduction of a work for people with disabilities

49. The reproduction of a published literary, artistic or musical work in a form specifically intended for visually impaired persons or persons with print disabilities people with disabilities who, due to the nature of their disability, are not able to access or enjoy the work in any of the forms in which it is commercially available, shall be permitted:

Provided that the reproduction and the making available of the copies is not made on a commercial basis and that the copies shall be made available only to such disabled people for which they are intended, and that—

(*a*) the reproduction is not made from copies which are made for the same purpose;

(*b*) where it is a reproduction of a musical work, it is not made in the form of a sound or audio-visual recording; and

(*c*) where the reproduction is made in the form of a sound or audio-visual recording, the copies shall be made available only by way of lending to people who, due to their disability, may access and enjoy the work only in this form.

Reproduction in the press

50. The reproduction in the press or the communication to the public of—

(*a*) any political speech delivered in public;

(*b*) any speech delivered during legal proceedings; or

(*c*) any lecture, address, sermon or other work of the same nature delivered in public,

shall be permitted on the condition that—

(i) the use is exclusively for the purpose of publication of current information; and

(ii) the author shall retain the exclusive right to make a collection of such works, and, unless otherwise permitted under this Act, any document quoted or used as evidence or expert opinion in such proceedings,

shall not be reproduced or made available to the public except to the extent necessary in order to narrate the proceedings and at a comparable with fair practice.

Recordings by a broadcasting organization of its own broadcasts

51.—(1) Any broadcasting organization shall be permitted to make recordings of its own broadcasts and by means of its own facilities, in one or several copies of any work which it is authorized to broadcast:

Provided that all copies of such recording shall be destroyed within six months of the making thereof or within any longer period agreed to by the author.

(2) Notwithstanding subsection (1), where the recording has an exceptional documentary character, one copy of it may be preserved

official archives of the broadcasting organization and section 29 shall not be applicable in such a case.

Use of a computer programme

52.—(1) A person who has the right to use a computer programme shall be entitled to—

(*a*) make such copies of the programme and such translation, adaptation, arrangement or transformation of the programme as are necessary for the person in order to use the computer programme in accordance with its intended purpose, including the correction of errors;

(*b*) make a back up copy in so far as it is necessary for the use of the programme; and

(*c*) observe, study or test the functioning of the programme in order to determine the ideas and principles which underlie any element of the programme, if he does so while performing any acts such as loading, displaying, running, transmitting or storing the programme which he is entitled to.

(2) Any contractual limitation of use set out in subsection (1) (*b*) and (*c*) shall be null and void.

(3) Notwithstanding any contractual obligation to the contrary, a user may be permitted to make a copy of the code of a computer programme and translate the form of the code when this is indispensable in order to obtain the information necessary to achieve the interoperability of an independently created computer programme with other programmes:

Provided that—

(*a*) these acts are performed by the user of a copy of a computer programme, or on his behalf, by a person authorized to do so;

(*b*) the information necessary to achieve interoperability has not previously been readily available to the persons referred to in paragraph (*a*); and

(*c*) these acts are confined to the parts of the original programme which are necessary to achieve interoperability.

(4) The information obtained in accordance with subsection (2) shall not be—

(*a*) used for purposes other than to achieve the interoperability of the independently created computer programme;

(*b*) given to other persons, except when this is necessary in order to achieve the interoperability of the independently created computer programme; or

(*c*) used for the development, production or marketing of a computer programme substantially similar to the original in its expression, or for any other act which infringes copyright in the programme.

(5) Notwithstanding any contractual obligation to the contrary, any person having a right to use a compilation of data in the form of a database may perform such acts as are necessary to access and make normal use of the contents of the database.

Evidence in administrative or judicial proceedings

53. This Act shall not prevent a work from being used in connexion with an investigation or as evidence in administrative or judicial proceedings.

PART V

Transfer of Copyright

Transferability of copyright

54.—(1) Any right under this Act shall be transferable and may be so transferred by assignment, testamentary disposition or by operation of law except as limited or restricted by this Act.

(2) A contract which requires the total transfer of the economic rights specified in section 29, shall be limited in scope, to the use provided for in the contract.

(3) An assignment of copyright under this Act shall be in writing, and shall be signed by the owner, or by the person authorized by him for that purpose.

(4) A licence to do any act falling within a copyright shall be in writing.

(5) In case of work of joint authorship, an assignment or licence in respect of the work shall be subject to authorization of the joint authors.

(6) Where a work is work of joint authorship, and one of the joint authors withholds his consent to an assignment or the granting of a licence, the matter shall be referred to the Society to determine whether consent should be granted in respect of the assignment or licence and conditions thereof.

(7) The Society shall state reasons for its decision under subsection (6) and any appeal against the decision shall lie to the High Court.

(8) An assignment, a licence or testamentary disposition may be made or granted in respect of a future or existing work.

(9) Where under a bequest, whether specific or general, a person is entitled to a manuscript of a literary, dramatic, musical or artistic

work which was not published before the death of the testator, the bequest shall be construed as including the copyright in the work in so far as the testator was the owner of the copyright immediately before his death, unless a contrary intention is indicated in the testator's will or codicil thereto.

Contracts for authorization of use of rights under this Act

55.—(1) An owner of a work shall grant authorization in writing for the use of the work by a contract conferring on the user, the rights required for the envisaged use on such conditions as may be stipulated in the contract.

(2) A contract made pursuant to subsection (1) shall clearly specify the rights conferred on the user and such rights shall be non-exclusive unless the contract clearly specifies that they are exclusive rights.

(3) The user of rights under a contract made pursuant to subsection (1) shall not be entitled to such rights except where the transfer is made under a contract in writing and subject to the prior consent in writing of the owner of the rights.

(4) Where a contract has been entered into and it is found that there is a gross disproportion between the remuneration paid by the user of the work and the income derived by the user from the use thereof, the owner of the copyright may request an amendment of the contract so as to secure for himself, an equitable share of income, corresponding to standards generally prevailing in similar cases, but such claim shall not be made in advance of the use of the work, and it shall not be enforceable after the lapse of two years from the time when the owner of the copyright work first received knowledge of the circumstances which give rise to the claim:

Provided that the owner of the copyright shall not claim to have received such knowledge after the expiration of six years from the date of the contract to be amended.

(5) Where the user does not exercise an exclusive right conferred on him by the owner of the copyright, the owner may revoke the right if the non-exercise thereof, is prejudicial to his legitimate interest.

(6) The right of revocation under subsection (5) may be exercised only after the period of delay stipulated in the contract for commencing the exercise of the exclusive right by the person to whom it is granted has expired but, in any case, not earlier than two years—

(*a*) from the grant of such right; or

(*b*) where the work to be used was supplied subsequent to the grant of the right, from the date of its delivery.

(7) In each of the cases under subsection (6), the owner of the copyright shall notify the user of the proposed revocation, allowing him a reasonable additional time in which to exercise the exclusive right, but where the exercise of the right by the user has become inexercisable or the user has refused the right, the owner's right of revocation may be exercised in accordance with subsection (6).

(8) A contract on future grant of rights for the use of works to be created thereafter and not specified in detail, but only mentioned in general or by reference to their nature, may be terminated by either party with six months' notice after a period of four years from the conclusion of the contract.

Publishing contracts

56.—(1) Notwithstanding section 55 (5), (6) and (7), an author who, by way of a publishing agreement, has assigned an exclusive right to publish a work in printed form may, if the publisher does not—

(*a*) within a reasonable period of time, publish the work and ensure that it is distributed in the usual manner; or

(*b*) after the work has been published, ensure that copies of the publication are distributed to the public within a reasonable period of time after having been requested to do so by the author,

terminate the agreement and retain any fee received and demand compensation for any damage resulting from default:

Provided that such compensation shall be subject to the default not being due to an obstacle beyond the control of the publisher and which the publisher could not reasonably have been expected to have taken into consideration at the time the agreement was made or to avoid or overcome the consequences thereof.

(2) Any agreement which significantly deviates from subsection (1) and negatively affects the rights of the author shall not be valid.

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

(*a*) contributions to newspapers and periodicals;

(*b*) contributions to collections of works;

(*c*) contributions which are to be used as illustration in works that are to be published; or

(*d*) translations.

(4) When fifteen years have passed since the expiry of the year in which the publisher first published the work in accordance with an agreement under subsection (1), the author shall have the

right to include the work in an edition of his collected or selected literary works.

(5) The right to publish the edition referred to in subsection (4) shall be offered to—

(*a*) the publisher; or

(*b*) if the works of the author have been published by different publishers, the publisher who may be considered as his main publisher.

Commissioned work

57.—(1) When a contract is in respect of commissioned work, the user shall be under an obligation to make a declaration with regard to acceptance of the work within sixty days from the date on which the work is handed over or, if such work is regulated under any written law other than this Act, within such period as is prescribed for acceptance under the law, and if the user fails to make such declaration within such period he shall be deemed to have accepted the work.

(2) Within the time allowed under subsection (1) for acceptance of commissioned work, the user may, once or repeatedly, return the work to the author and require him to amend or correct the work taking into consideration the purpose for which the creation of the work was agreed upon and such requests shall be made in writing and fix reasonable dates by which the amendment or correction shall be done.

(3) Where the author fails to comply with a request made under subsection (2), or if the amended or corrected work is still not suitable for the stipulated purpose, the user may terminate the contract:

Provided that the user shall be obliged to pay the author, in consideration of the work done, an appropriate fee which shall be less than the agreed remuneration for use of the commissioned work.

PART VI

Licences

Extended collective licences

58.—(1) A broadcasting organization that is authorized by an agreement with the Society to broadcast literary, musical or artistic works, may, subject to the terms and conditions of the agreement, also broadcast works of authors whom it does not represent:

Provided that—

(*a*) the work is of the same nature as works that are covered by the agreement;

(*b*) the work has already been lawfully made available to the public;

(*c*) the author has not himself by notice to the broadcasting organization and the Society, prohibited the broadcast of the work;

(*d*) the work is not broadcast in dramatic form;

(*e*) if the broadcast is made by satellite, it simulcasts a terrestrial broadcast by the same broadcasting organization; and

(*f*) the licensing under this section does not exonerate the organization from meeting its licensing requirements under any written law.

(2) When simultaneous and unaltered rebroadcasting or cable retransmission of the broadcast of works is permitted through an agreement with the Society, and is made with the consent of the broadcasting organization concerned, the rebroadcasting or retransmission may, subject to the terms and conditions of the agreement, include works of authors whom the broadcasting organization does not represent:

Provided that the works are of the same nature as works that are covered by the extended collective licence.

(3) A collective licence agreement permitting the use of works of authors represented either directly or through their associations by the Society, representing, as confirmed by the Minister, a substantial part of the authors concerned whose habitual residence is in Malaŵi, shall, subject to the terms and conditions of the agreement, extend to the use of works of authors whom the Society does not represent:

Provided that such works are of the same nature as works that are covered by the extended collective licence and limited to the uses permitted by the extended collective licence, in so far as the permission regards—

(*a*) the reproduction, in the original or in translation, in a collection consisting of works by a large number of authors, which is intended for use in religious services or in education of minor parts of literary, dramatic or musical works, or short works in these categories, and for the purpose of illustration of artistic works that are pertinent to the text, unless the author has notified the Society that any such use is subject to the author's authorization, such notification to be made in writing and to be communicated to the licensed user:

Provided that—

(i) the work has already been lawfully made available to the public;

(ii) if the collection is intended for use in education, the work reproduced was not created for educational use; and

(iii) such use is compatible with fair practice;

(*b*) the reproduction of a work, or the fixation of a broadcast of a work, by an establishment or organization and its students, for use within the educational activities of said body:

Provided that—

(i) the copy made renders the work in the same form as the copy from which the reproduction was made and in which the work has already been lawfully made available to the public and the electronic scanning of printed material and the making of printouts from machine-readable material shall be permissible;

(ii) any fixation made from a broadcast shall not include an audio-visual work that must be perceived as also intended for uses other than presentation via broadcast, unless only minor parts thereof are used in the broadcast from which the fixation was made; and

(iii) in case of a fixation from a broadcast or a copy of an audio-visual work or a sound recording, that it is not to be made by a student nor distributed or made available to students for use in their private studies:

Provided that any copy made according to this paragraph shall not be used for music accompaniment in educational activities pertaining to dance, music, gymnastics or similar activities and shall to be made available outside the premises of the establishment or organization except as part of educational activities which it normally carries out outside its own premises;

(*c*) the reproduction of a work, or the fixation of a broadcast of a work, by a public or private institution, organization or enterprise:

Provided that—

(i) the copy made renders the work in the same form as the copy from which the reproduction was made and in which the work has already been lawfully made available to the public, and the electronic scanning of printed material and the making of printouts from machine-readable material shall be permitted;

(ii) any fixation made from a broadcast does not include an audio-visual work that is perceived as also intended for uses other than presentation via broadcast, unless only minor parts thereof are used in the broadcast from which the fixation was made; and

(iii) the copies are to be used only within the circle of employees and close associates of the institution, organization or enterprise, or in particular proceedings, and only for purposes that have no direct gainful intent, and any copy made according to this paragraph shall not to be used for music accompaniment to activities such as dance and gymnastics or similar activities;

(*d*) the reproduction by a library, archive or museum designated under section 48 of works in its collections for the purpose of making the works available to the public, unless the author has notified the Society in writing that any such use is subject to the author's authorization and such notification shall be communicated to the licensed user:

Provided that the reproduction renders the work in the same form as the copy from which the reproduction was made and in which the work has already been lawfully made available to the public, and any electronic scanning of printed material and the making of printouts from machine-readable material shall be permitted; and

(*e*) the use of an artistic work in connexion with the text of a critical or scientific presentation for commercial purposes, a textbook intended for teaching or a generally informative presentation:

Provided that the work has already been lawfully made available to the public and that the presentation is not made available to the public in machine-readable form unless the author has notified the Society in writing that any such use is subject to the author's authorization, and such notification shall be communicated to the licensed user.

(4) The authority given to the Society to enter into agreements that entail an extended collective licence is without prejudice to the authority of the owner of the relevant rights to grant licences for any use as set out in this section except that the right of simultaneous and unaltered rebroadcasting and cable retransmission of the broadcast of works shall not be exercised except through the Society.

(5) Irrespective of any agreement, the decision by the Society or an association that the Society has entrusted with the collection and distribution of remuneration for the permitted use, shall also be binding on owners of rights who are not members of or represented by the organization or the association, such that—

(*a*) if the remuneration is collected and distributed on a title specific basis, the owners of rights shall have the same rights as

owners of rights who are members of or represented by the Society or such association to partake in the distribution of remuneration;

(*b*) if the remuneration is collected on a non-title specific basis, the owners of rights shall have the same rights as owners of rights who are members of, or represented by the Society or the association to share in any funds and benefits that are distributed or largely financed from the remuneration; or

(*c*) when an owner of rights can substantiate that his work has been used pursuant to this section, he shall as an alternative to benefiting from the remuneration in the manner set out in paragraphs (*a*) and (*b*), be entitled to claim that the corresponding remuneration be paid to him and the claim shall be made within three years from the end of the year in which the use took place, and to be directed exclusively to the Society except when according to the agreement, the distribution shall be made by the user.

(6) Whenever an agreement as to the remuneration claimed by an individual owner of right in accordance with subsection (5) is not reached, either party may request that the claim be settled in accordance with subsection (8).

(7) Where agreement entailing an extended collective licence pursuant to this section is not be concluded, or a party refuses to enter into negotiations with the another party concerning such agreement, either party may request that the disagreement be settled in accordance with subsection (8).

(8) Any dispute arising in the exercise of the parties of the rights under this section shall be resolved by way of arbitration conducted according to the Arbitration Act. Cap. 6:03

(9) This section shall not apply to the copyright that a broadcasting organization holds in its own broadcasts:

Provided that if an agreement with a broadcasting organization concerning permission to make use of the organization's broadcasts as provided for herein is not concluded, subsection (7) shall apply.

(10) The Minister may make regulations regarding the supervision of associations and other entities that receive remuneration for distribution.

Compulsory licence for public examinations

59.—(1) An institution which is responsible for arranging public examinations may, for this purpose, reproduce works that have already lawfully been made available to the public:

Provided that such reproduction is done subject to compulsory licensing conditions specified in this section.

(2) An institution which is responsible for arranging public examinations shall, immediately upon the finalization of the examination, report to the Society on the reproduction of the work, the number of copies made, the name of the author and the source from which the reproduction was made, and the report shall be accompanied by two copies of the examination paper.

(3) The reproduction under this section shall be limited to the number of copies necessary to conduct the examination and the documentation thereof.

(4) The institution shall pay remuneration in accordance with tariffs set by the Society, and the remuneration shall be collected, and distributed to the author, by the Society.

Compulsory translation licence

60.—(1) Where a work is expressed exclusively in words, the right to make a translation of that work and to publish it in Malaŵi may be subject to compulsory licensing conditions specified in this section.

(2) A person who is a citizen of Malaŵi or has his habitual residence in Malaŵi may, subject to the provisions of this section, apply to the Minister for a non-exclusive licence to make a translation of a work, which is expressed exclusively in words, into any language in general use in Malaŵi, be it a foreign language or a local language of Malaŵi, and to publish or authorize the publication of the translation in copies.

(3) No application for a licence under this section shall be filed until the expiration of a period of—

(*a*) three years commencing from the date of the first publication of the work in copies, if the licence is for translation into a foreign language of Malaŵi; or

(*b*) one year commencing from the date of the first publication of the work in copies, if the licence is for translation into any other language of Malaŵi.

(4) A licence under this section shall not be granted unless the Minister is satisfied that—

(*a*) no translation of the work into the language in question has ever been published in copies by or under the authority of the owner of the right of translation, or that all previous editions in that language are out of print;

(*b*) following the expiration of the relevant period specified in subsection (3), the applicant has requested the owner of the

right of translation for consent to translate the work but has been refused or, in spite of genuine efforts made by the applicant, he has been unable to locate the owner;

(*c*) the applicant, at the time of making the request referred to in paragraph (*b*), sent a notice of his request to the International Information Centre established by the United Nations Educational, Scientific and Cultural Organization (hereinafter referred to as "UNESCO"), or to a national or regional copyright information centre identified as such in a notification deposited with the Director General of UNESCO or with the Director General of the World Intellectual Property Organization (hereinafter referred to as WIPO) by the State in which the publisher is believed to have his principal place of business; or

(*d*) where the applicant cannot locate the owner of the right of translation, he has by registered mail, sent copies of his application to the publisher whose name appears on the work and also to the centres specified in paragraph (*c*).

(5) For the purpose of subsection (4) (*c*), the Society shall keep and maintain addresses of national and regional copyright information centres for ease of reference or contact by interested persons.

(6) A licence under this section shall not be granted, unless the following periods from the date of the application and from the date on which the applicant complies with the requirements mentioned in subsection (4) (*b*) and (*d*) have expired—

(*a*) in the case of an application for a licence required for translation into a foreign language of Malaŵi, six months; and

(*b*) in the case of an application for a licence required for translation into another local language of Malaŵi, nine months.

(7) If, during any period specified in subsection (6) a translation of the work in the language in question is published in copies by or under the authority of the owner of the right of translation, then, no licence shall be granted for translation of the work.

(8) When a work is composed mainly of illustrations, a licence to translate the text and to reproduce the illustrations shall not be granted except if the conditions prescribed under section 63 are also fulfilled.

(9) Where the author of a work has withdrawn all copies of the work from circulation, no licence shall be granted in respect of the work under this section.

Conditions of a compulsory translation licence

61.—(1) A licence granted under section 60 shall—

(*a*) be limited to the non-exclusive right to translate the work into the language in respect of which it is granted and to publish copies of the translation in Malaŵi;

(*b*) be for a translation required only for the purpose of teaching, scholarship or research;

(*c*) not be transferable by the licensee;

(*d*) not authorize the exportation of copies of the translation prepared under the licence;

(*e*) be valid only for publication in Malaŵi; and

(*f*) provide for just compensation to the owner of the work, consistent with standards of royalties normally payable in the case of licences freely negotiated between a person in Malaŵi and the owner of the right of translation in any other country.

(2) Where a licence is granted under section 60, the licensee shall ensure that the work in respect of which the licence is granted is correctly translated and that all published copies include—

(*a*) the original title and name of the author of the work;

(*b*) a notice in the language of the translation stating that copies of the translated version of the work are available for distribution in Malaŵi only; and

(*c*) a reprint of the copyright notice, namely, the symbol ©, accompanied with the name of the owner of the copyright and the year of the first publication of the work and the place where the work of which the translation is made is published with the copyright notice.

(3) A licence granted under section 60 shall terminate if a translation of the work in the same language and with substantially the same content as the edition for which the licence is granted is published in copies in Malaŵi by or under the authority of the owner of the right of translation at a price reasonably related to that normally charged in Malaŵi for comparable work:

Provided that any Copies already published before the licence is terminated may continue to be distributed until the stock is exhausted.

Translation licence for broadcasting purposes

62.—(1) Subject to the provisions of sections 60 and 61, a licence to translate a work published in printed or analogous form of reproduction may be granted under this section to a broadcasting

organization having its headquarters in Malaŵi, where the translation is—

(*a*) made from a copy made or acquired in accordance with this Act;

(*b*) for use only in broadcasts intended exclusively for teaching or for the dissemination of the result of specialized research to experts in a particular profession; and

(*c*) in fact used exclusively for the purpose specified in paragraph (*b*) through broadcasts that are lawfully made and are intended for reception in Malaŵi, including broadcasts made from audio-visual works or sound recordings that are lawfully made for the sole purpose of such broadcasts.

(2) A translation under this section of an audio-visual work or sound recording shall not be exchanged except between departments or divisions of the broadcasting organization.

(3) A licence may also be granted under this section to a broadcasting organization to translate any text incorporated in an audio-visual work that is itself prepared and published for the sole purpose of being used in connexion with systematic instructional activities.

(4) A translation made under a licence issued under this section shall not be used for commercial purposes.

Compulsory reproduction licence

63.—(1) Where a literary, dramatic, musical or artistic work is published in printed or analogous form, the exclusive right to reproduce the work and publish it in copies may be subject to a compulsory licence under the conditions specified in this section.

(2) A person who is a citizen of Malaŵi or has his habitual residence in Malaŵi may, subject to the provisions of this section, apply to the Minister for a non-exclusive licence to reproduce a particular edition of a work referred to in subsection (1) and to publish or authorize the publication of such reproduction in copies.

(3) A licence under this section shall not be granted—

(*a*) until the expiration of a period of—

(i) three years commencing from the date of publication of a work in the field of technology or of a natural or physical science including mathematics;

(ii) seven years commencing from the date of publication of a work of fiction, poetry, drama or music or a book of art; or

(iii) five years commencing from the date of publication of any other work; and

(*b*) unless the Minister is first satisfied that—

(i) after the expiration of the relevant period, there has never been a sale or other distribution authorized by the owner of the reproduction right, of copies of the particular edition in Malaŵi, to the general public or in connexion with systematic instructional activities, at a price reasonably related to that charged in Malaŵi for comparable works, or there has been no such sale or other distribution during the six months immediately preceding the application;

(ii) the applicant has requested from the owner of the right of reproduction for his authorization to reproduce the work and has been refused or, in spite of genuine efforts made by the applicant, he has been unable to locate the owner;

(iii) the applicant, at the time of making the requests referred to in subparagraph (ii), sent a notice of his request either to the International Copyright Information Centre established by the UNESCO, or a national or regional copyright information centre identified as such in a notification deposited with that organization or with the WIPO by the State in which the publisher is believed to have his principal place of business; or

(iv) where the applicant cannot locate the owner of the right of reproduction, the applicant has by registered mail sent copies of the application to the publisher whose name appears in the work and also to the centres specified in subparagraph (iii).

(4) For the purpose of subsection (3) (*b*) (iii), the Society shall keep and maintain addresses of such centres for easy reference or contact by interested persons.

(5) A licence under this section shall not be granted in respect of any application made until the expiration of a period of six months commencing from the date of—

(*a*) the request referred to in subsection 3 (*b*) (iii); or

(*b*) the dispatch of the copies of the application referred to in subsection (3) (*b*) (iv).

(6) If, during the period of six months referred to in subsection (5), a distribution or an offer for sale as described in subsection (3) (*b*) (i) has taken place, no licence shall be granted.

(7) A licence to reproduce and publish a translation of a work shall not be granted under this section—

(*a*) where the translation was not published by the owner of the right of translation or with his authorization; or

(*b*) where the translation is not in a language in general use in Malaŵi.

(8) Where the author of a work has withdrawn all copies of an edition of the work from circulation, no licence shall be granted under this section in respect of the edition.

(9) In subsection (3), "the date of publication" refers to the particular edition to be reproduced.

Conditions of a compulsory reproduction licence

64.—(1) A licence granted under section 63 shall—

(*a*) be limited to the non-exclusive right to reproduce the particular edition of the work in respect of which it is granted, and to publish copies of the reproduction in Malaŵi for use in connexion with systematic instructional activities, but the price at which the reproduced copies are sold shall be at a level not higher than such amount as is reasonably related to the price normally charged in Malaŵi for comparable work;

(*b*) not be transferable by the licensee;

(*c*) not authorize the exportation of copies of the particular edition of the work in respect of which it is granted;

(*d*) be valid for publication in Malaŵi only; and

(*e*) provide for just compensation to the owner of the work, consistent with standards of royalties normally payable in the case of licences negotiated between persons in Malaŵi and owners of the right of reproduction in any other country.

(2) Where a licence is granted under section 63, the licensee shall ensure that the particular edition of the work in respect of which the licence is granted is accurately reproduced and that all published copies include the following—

(*a*) the title of the particular edition of the work and the name of the author;

(*b*) a notice in the appropriate language stating that copies of the reproduced version of the work are available for distribution in Malaŵi only; and

(*c*) if the edition which is reproduced bears a copyright notice, a reprint of that notice.

(3) A licence granted under section 63 shall terminate—

(*a*) whenever copies of an edition of the work in respect of which the licence is granted are distributed to the general public in Malaŵi; or

(*b*) whenever copies of the edition of the work are distributed in Malaŵi in connexion with systematic instructional activities, by or under the authority of the owner of the right of reproduction at a price reasonably related to that normally charged in Malaŵi for comparable work, if such edition is in the same language and is substantially the same in content as the edition published under the licence:

Provided that any copies already made before the licence is terminated may continue to be distributed until the stock is exhausted.

Compulsory reproduction licence for audio-visual works

65.—(1) The Minister may, upon application in writing made to him by any person and subject to the terms set out in section 63, grant a licence authorizing the person to—

(*a*) reproduce in audio-visual form a lawfully made audio-visual work, including any protected work incorporated in it; or

(*b*) translate any text incorporated in such work into any language in general use in Malaŵi, be it a foreign language or any other language of Malaŵi.

(2) No licence shall be granted under this section unless the audio-visual work is prepared or published for the sole purpose of being used in connexion with systematic instructional activities.

(3) A licence granted according to this section shall comply with the conditions set out in section 64.

Production of recording of musical works

66.—(1) A manufacturer of sound recordings may make a sound recording of any musical work including any literary work the recording of which together with the musical work has already been authorized by the author of the literary work, if—

(*a*) copies of a sound recording of the musical work have previously been made in or imported into Malaŵi for the purpose of retail sale, and were so made with the licence of, or so imported by, the owner of the copyright in such work; and

(*b*) before the making of the sound recording, the manufacturer gives the owner of the copyright work notice of his intention to

make the recording and the address at which he intends to make the recording.

(2) Sound recordings made according to this section may be in the form of an adaptation of the musical work as previously recorded:

Provided that the two adaptations are similar in that the adaptations do not differ substantially in their treatment of the work, in respect of style or, apart from a difference in number, in respect of the performers required to perform the adaptations.

(3) The manufacturer shall, not later than fifteen days before the sale of any of the copies made by him under this section, send to the owner of the copyright or the person authorized by him for that purpose, by registered post notice of his intention to sell or otherwise distribute the copies made and such notice shall contain—

(*a*) the name and address of the manufacturer;

(*b*) the title of the work to which the notice under subsection (1) (*b*) relates, with a description sufficient to identify the author of the work and the publisher thereof;

(*c*) the type of sound recording on which the manufacturer intends to produce the work and an estimate of the number of copies he initially intends to sell;

(*d*) the ordinary selling price of the copies the manufacturer intends to reproduce and the amount of royalty payable in respect of them; and

(*e*) the earliest date on which any of the copies may be available for sale.

(4) The manufacturer shall, within ninety days after he has sent the notice referred to in subsection (3), pay royalties to the owner of the copyright and shall have affixed to each copy of the sound recording made by him an adhesive label issued by the Society as evidence of the payment.

(5) The royalty payable by the manufacturer under subsection (4) shall be an amount not less than ten per centum of the ordinary retail selling price of each copy of the sound recording or its similar adaptation.

(6) It shall be an infringement of copyright where the manufacturer exhibits for sale or sells, without the adhesive label referred to in subsection (4) affixed thereto, any copy of a sound recording or its similar adaptation made by him under this section.

PART VII

Expressions of Folklore

Right in expressions of folklore to vest in Government

67.—(1) Copyright in expressions of folklore shall vest in perpetuity in the Government on behalf of, and for the benefit of the people of Malaŵi.

(2) The provisions of this Part shall apply whether or not the expressions of folklore are fixed in material form.

(3) Expressions of folklore shall be protected in perpetuity.

Certain uses of expressions of folklore to be subject to authorization

68. The following uses of the expressions of folklore shall be subject to prior written authorization by the Minister when they are made for gainful purposes or outside their traditional and customary context—

(*a*) any publication, reproduction and any distribution of copies of expressions of folklore; or

(*b*) any communication to the public, including recitation, performance, broadcasting or distribution by cable, of expressions of folklore.

Free uses of expressions of folklore

69. The provisions of section 68 shall not apply to any use of the expressions of folklore in the following cases—

(*a*) for the purposes of education;

(*b*) by way of illustration in an original work of an author provided that the extent of such use is compatible with fair practice;

(*c*) use of expressions of folklore for creation of an original work by an author inspired by folklore; and

(*d*) incidental use of expressions of folklore, including—

(i) that which can be seen or heard in the course of a current event by means of photography, broadcasting or audio-visual work or sound recording:

Provided that the extent of such use is justified by the informative purposes thereof; and

(ii) use of objects containing the expressions of folklore which are permanently located in a place where they can be viewed by the public, if the use consists in the inclusion of their image in a photograph, a film or a television broadcast.

Source of expressions of folklore to be acknowledged

70. A user of the expression of folklore shall acknowledge the source from where the expressions of folklore used by him in any printed publication or communication to the public except for uses referred to in section 69 (*c*) and (*d*).

71.—(1) Authorization of any use of expressions of folklore may be general or specific and may be granted upon application in writing to the Minister.

Authorization for use of expressions of folklore

(2) The refusal by the Minister to grant an application shall not act as a bar to any subsequent application in respect of the same expression of folklore for which authorization was not granted or other expression of folklore.

72. The protection of expressions of folklore under this Act shall not in any way be construed so as to hinder the normal use, maintenance and development of expressions of folklore.

Non-hindrance of development of folklore

73. Protection of expressions of folklore conferred by this Part shall be additional to, and shall not in any way limit or prejudice protection on such expressions conferred by any other written law or treaty to which Malaŵi is a party.

Protection under this Part is additional

PART VIII

Performers, Producers of Sound Recordings, Broadcasters and Publishers

74. The protection granted under this Part relating to rights of performers, producers of sound recordings, broadcasters and publishers shall not in any way, affect copyright in a work under this Act and no provision in this Part shall be construed so as to affect copyright in any such work, nor shall the protection granted under this Part to rights of one category of owners of rights affect rights of another category.

Rights of performers, etc., of sound recordings and publishers not to affect copyright

75.—(1) Subject to section 83, performers shall enjoy the exclusive right to do, or authorize any other person to do, any of the following acts—

Exclusive rights of performers

(*a*) broadcasting or other communication to the public of their unfixed performance except where the performance thus used is itself a broadcast performance and the broadcast or communication is made or authorized by the organization initially broadcasting the performance;

(*b*) fixation of their unfixed performance;

(*c*) reproduction in any manner or form of their performance in any of the following cases—

(i) where the performance was initially fixed without the performer's consent;

(ii) where the reproduction is made for purposes different from those for which the performer gave authorization; or

(iii) where the performance was initially in accordance with the provisions of section 83 but the reproduction is made for purposes different from any of those referred to in that section;

(*d*) the distribution by way of sale and lending to the public of their performance fixed in a sound recording;

(*e*) communication to the public of their performance fixed in a sound or audio-visual fixation, when the communication is made in such a way that members of the public may access the performance from a place and at a time individually chosen by them; and

(*f*) making available to the public, of his fixed performance by wire or wireless means in such a way that members of the public may access the performance from time to time.

(2) Tangible copies of a performance fixed in a sound recording which have been sold or otherwise assigned by or with the consent of the performers may, regardless of whether the transfer of the copy occurred in Malaŵi or elsewhere, be distributed to the public:

Provided that the performers shall retain the right of commercial rental.

(3) In the absence of any agreement to the contrary, or of circumstances of employment from which the contrary would ordinarily be inferred—

(*a*) the authorization to broadcast a performance or to communicate it by cable shall not imply—

(i) an authorization to license another organization to broadcast the performance or communicate it by cable;

(ii) an authorization to fix the performance; or

(iii) an authorization to reproduce the fixation;

(*b*) the authorization to fix the performance and to reproduce the fixation shall not imply—

(i) an authorization to broadcast or otherwise communicate the performance to the public from the fixation or any reproduction of such fixation; or

(ii) an authorization to distribute copies of the fixation, except when the fixation or reproduction in accordance with the authorization granted is in the form of or is incorporated in a visual or audio-visual fixation; and

(*c*) the authorization to distribute copies of a performance fixed in a sound recording or audio-visual fixation shall not imply an authorization to distribute copies by way of commercial rental.

(4) Where the performers have authorized the fixation of their performance by the broadcaster and the broadcast or other communication to the public of that fixation, the performer shall have the right to equitable remuneration in respect of any such broadcast or communication whether or not such fixation has been used commercially.

(5) Where the performers have authorized distribution by way of commercial rental of their performances fixed in sound recordings, or audio-visual fixation the performer shall receive equitable remuneration in respect thereof.

(6) Nothing in this section shall be construed so as to deprive performers of the right to agree by contracts on terms and conditions more favourable for them in respect of any use of their performance.

(7) Where a published sound recording or audio-visual fixation of a performance is used for public performance, broadcasting or for any other form of communication to the public except that which is subject to authorization under subsection (1) (*e*), the provisions in section 80 regarding remuneration to performers and producers shall apply.

(8) The remuneration in subsections (4), (5) and (7) shall be collected only through the Society.

(9) When there is an agreement with the Society permitting reproduction or fixation as set out in section 58 (3) of performances, section 58 shall apply *mutatis mutandis*, to the use of performances of performers who are not represented by the Society:

Provided that the agreement has been entered into by the Society in its capacity of representing, as confirmed by the Minister, a substantial part of the performers concerned whose habitual residence is in Malaŵi.

(10) The protection under this section shall subsist for fifty years computed from the end of the year in which the performance took place or in which the fixation of the performance was made, or, if the fixation is published within that period, from the end of the year in which the fixation was published for the first time.

Moral rights of performers

76.—(1) A performer shall, as regards his live performances fixed in a sound recording or audio-visual fixation, have the right to claim to be identified as the performer, except where omission is dictated

by the manner of the use of the performance, and to object to any distortion, mutilation or other modification of his performances that would be prejudicial to his honour to reputation.

(2) The rights conferred by subsection (1) shall subsist for the duration of the rights according to section 75, even after the transfer of any such right, and shall not be transferable except upon and by reason only of the death of the performer and henceforth such rights shall be exercisable by his heirs or legal representative.

Granting of authorization by performers

77.—(1) A written authorization under section 75 may be given by the performer or by a duly appointed representative to which the performer has in writing granted the right to give such authorization.

(2) Any authorization given by the performer claiming that he has retained the relevant rights or by a person claiming to be the duly appointed representative of a performer shall be considered valid unless the recipient knew or had good reason to believe that the claim or appointment, as the case may be, was not a valid one.

Exclusive rights of producers of sound recordings or audio-visual fixations

78.—(1) Subject to section 83, a producer of a sound recording or audio-visual fixation shall have the exclusive right to do, or authorize any other person to do, any of the following acts—

(*a*) reproduction of the sound recording or audio-visual fixation;

(*b*) distribution to the public of the sound recording or audio-visual fixation;

(*c*) communication to the public of the sound recording or audio-visual fixation in such a way that members of the public may access the recording from a place and at a time individually chosen by them; or

(*d*) making available to the public of a sound recording or audio-visual fixation by wire or wireless means in such a way that members of the public may access the sound recordings or audio-visual fixation at any time.

(2) Tangible copies of a sound recording or audio-visual fixation which have been sold or otherwise assigned by, or with the consent of the producer may, regardless of whether the transfer of the copy occurred in Malaŵi or elsewhere, be distributed to the public, and the producer shall retain the right of commercial rental.

(3) For the purposes of this section, a copy of a sound recording or audio-visual fixation shall be unlawful if, with or without imitating the outward characteristics of the original sound recording

or audio-visual fixation it incorporates all or part of the producer's sound recording without his authorization.

(4) When there is an agreement with the Society permitting reproduction or fixation, as set out in section 58 (3), of sound recordings or audio-visual fixation section 58 shall apply correspondingly to the use of sound recordings or audio-visual fixation of producers who are not represented by the Society:

Provided that the agreement has been entered into by the Society in its capacity of representing, as confirmed by the Minister, a substantial part of the producers concerned whose habitual residence or headquarters is in Malaŵi.

(5) Where a published sound recording or audio-visual fixation is used for public performance, for broadcasting or for any other form of communication to the public except that which is subject to authorization under subsection (1) (*c*), the provisions in section 80 regarding remuneration to the producer and the performers apply.

(6) The protection referred to in subsection (1) shall subsist for fifty years computed from the end of the year in which the sound recording or audio-visual fixation was made, or, if it is published within that period, from the end of the year in which it was published for the first time.

Obligations of producers

79.—(1) A producer of a sound recording or audio-visual fixation shall state on the label of the recording or on its container—

(*a*) the names of the author and those of the main performer;

(*b*) the title of the work;

(*c*) the name, whether individual or corporate, or distinguishing mark of the producer; and

(*d*) that the rights accruing to the producer under this Act are reserved, and it shall be sufficient to use any words to that effect.

(2) For the purposes of subsection (1) (*a*), choirs, orchestras and composers shall be referred to by their proper names and by the name of the leader, if any.

(3) Where copies of a sound recording are made for commercial purposes, there shall be printed on the copies also a notice consisting of—

(*a*) the symbol © in addition to (P); and

(*b*) the year of first publication of the sound recording or audio-visual fixation placed in such a manner as to give reasonable notice of claim of protection of the rights of the producer.

(4) Where the copies of the sound recording or audio-visual fixation or their containers do not identify the producer or his licensee in relation thereto by his name, description or trade mark, the label or container notice shall include the name of the owner of copyright in the recording.

(5) Where the notice specified in subsection (3) is printed on a sound recording or audio-visual fixation or the container thereof such notice shall be *prima facie* evidence of the facts stated thereon for the purposes of any proceedings brought under this Act with respect to the rights of the producer.

(6) Non-compliance with the obligations according to this section shall not in any way affect the rights of the producer of the sound recording or audio-visual fixation under sections 56 and 58.

Remuneration for public performance of sound recordings or audio-visual fixations

80.—(1) Performers and producers of sound recordings shall be entitled to a single equitable remuneration—

(*a*) where published sound recordings or audio-visual fixation are used for broadcasting or communication to the public that does not, according to this Part, require authorization from the performer or the producer; and

(*b*) where a public performance of published sound recording takes place, by means of a broadcast, cinematography, jukebox or other apparatus.

(2) The use which is subject to remuneration under this section includes use of a reproduction of the published sound recording, and such reproduction incorporated in an audio-visual fixation.

(3) For the purpose of this section, "published sound recording" includes recordings that by way of communication to the public have been made available to the public in such a way that members of the public may access the recording from a place and at a time individually chosen by them.

(4) Remuneration according to this section may be claimed and collected only through the Society, which shall distribute the remuneration collected for the use of a sound recording in equal shares to the performers and the producer.

(5) The right to claim remuneration according to this section is subject to section 61 and shall apply only to the use of published sound recordings that are protected according to section 53 or section 56.

(6) The right of a performer to collect remuneration under this section shall not be assigned by the performer except to a collecting society.

Exclusive rights of broadcasting organizations

81.—(1) Subject to section 83, a broadcasting organization shall have the exclusive right to authorize or prohibit—

(*a*) rebroadcasting of its broadcasts;

(*b*) the fixation of its broadcasts;

(*c*) reproduction of its fixation of its broadcasts; or

(*d*) communication to the public of their television broadcasts.

(2) The protection under this section shall subsist for twenty years computed from the end of the year in which the broadcast took place.

(3) Where an agreement by which the broadcasting organization permits the simultaneous and unaltered rebroadcasting or cable retransmission of its broadcasts as set out in section 58 (2) or the fixation of its broadcasts for any use as set out in section 58 (3) cannot be concluded, or where a party refuse to enter into negotiations with the other party concerning the agreement, the provisions of section 58 (8) on resolution of disputes shall apply *mutatis mutandis* to the disagreement.

Rights in typographical arrangements

82.—(1) Without the authorization of a publisher, and unless permitted according to section 83, the following are prohibited—

(*a*) reproduction of the typographical arrangement of a published edition of a literary, dramatic or musical work, by way of making a facsimile copy of the whole or any part thereof; and

(*b*) distribution to the public, otherwise than by way of rental or lending, copies of such published edition or facsimile copy thereof.

(2) Notwithstanding subsection (1) (*b*), the distribution of copies that, with the consent of the publisher, have been sold or otherwise assigned in Malaŵi or elsewhere shall be permitted.

(3) Protection according to this section shall not subsist in the typographical arrangement of a published edition if, or to the extent, that it reproduces the typographical arrangement of a previous edition.

(4) The protection of typographical arrangements according to this section shall subsist for a period of twenty-five years from the end of the year when the edition was first published, any subsequent new editions reproducing that same arrangement not giving rise to any prolongation of said period or any renewed protection.

(5) When there is an agreement with the Society permitting, as set out in section 58 (3) (*b*), (*c*) or (*d*), the reproduction of published

editions the typographical arrangement of which is protected, section 58 shall in respect of such use apply correspondingly to the use of published editions of publishers who are not represented by the Society:

Provided that the agreement has been entered into by the Society in its capacity of representing, as confirmed by the Minister, a substantial part of the publishers concerned whose habitual residence or headquarters is in Malaŵi.

Exceptions to certain provisions under this Part

83.—(1) The provisions of sections 75, 78, 79, 80, 81 and 82 shall not apply where the acts referred to therein consist of any use of performances, sound recordings, audio-visual works, broadcasts or typographical arrangements that under Part IV is permitted in regard to works, as long as the conditions set out in Part IV are complied with:

Provided that—

(*a*) quotations from a performance, a sound recording, a broadcast or the typographical arrangement of a published edition may only be in the form of short excerpts that are compatible with fair practice and are justified by the informative purpose of those quotations;

(*b*) the reporting of current events, including the reporting of them in conjunction with section 44 or 50 shall include no more than short excerpts of a performance, sound recording or broadcast, except if it is itself succinct;

(*c*) the provision in section 56 shall not be relied upon to make fixations of a live performance except in the context of reporting of current events, including the reporting of them in conjunction with section 44 or 50;

(*d*) the provisions in sections 44 and 50 shall not apply to typographical arrangements;

(*e*) the provisions in section 49 shall not apply.

(2) Section 59 shall apply, *mutatis mutandis*, to performances, sound recordings, audio-visual works, broadcasts and typographical arrangements.

PART IX

Public Domain

Works and related subject matter in the public domain

84.—(1) The following works shall belong to the public domain—

(*a*) works whose terms of protection have expired;

(*b*) works in respect of which authors have renounced their rights; and

(*c*) foreign works that do not enjoy protection in Malaŵi.

(2) For the purpose of subsection (1) (*b*), renunciation by an author or his successor in title of his moral rights referred to in section 30 shall be in writing and made public:

Provided that any such renunciation shall not be contrary to any previous contractual obligation relating to the work.

(3) When a work is in the public domain the provisions of this Act shall not prevent or limit its use.

(4) This section shall apply, *mutatis mutandis*, to—

(*a*) performances, sound recordings, audio-visual fixation, broadcasts and typographical arrangements whose terms of protection have expired, or to which the owners of the rights have renounced their rights; and

(*b*) foreign performances, sound recordings, audio-visual fixation, and broadcast that do not enjoy protection in Malaŵi.

PART X

Technological Measures and Rights Management Information

Technological measures

85.—(1) Where an effective technological measure is used by, or with the consent of, an owner of copyright or any related, it shall be considered unlawful and an infringement of such rights—

(*a*) to manufacture, import for distribution to the public, distribute or offer to the public or possess for commercial purposes any device, product, component or means that—

(i) is promoted, advertised or marketed for the purpose of circumventing any device or means intended to prevent or restrict reproduction, communication or performance of a work, an expression of folklore, a performance, a sound recording, a broadcast or a typographical arrangement, or to impair the quality of copies made of any such work or subject matter;

(ii) has only a limited commercially significant purpose other than that mentioned in subparagraph (i); or

(iii) is primarily designed, produced or adapted to circumvent the device as mentioned in subparagraph (i); or susceptible to enable or assist the reception of an encrypted programme which is broadcast or otherwise communicated to the public, by those who are not entitled to receive the programme;

(*b*) to offer to the public or provide services which have any such effect as set out in paragraph (*a*); or

(*c*) to circumvent any such technological measure for the purpose of committing an act which according to this Act is subject to the consent of the owner of the right, except if the circumvention is made for the sole purpose of achieving interoperability of a computer programme with another independently created computer programme, by a person having lawful access to the computer programme, or on his behalf by a person authorized to do so, but then only to the extent of—

(i) identifying and analyzing the specific elements of the computer programme that are not readily available to the person carrying out the circumvention, and that are necessary to achieve such interoperability;

(ii) developing and employing technological means necessary to carry out the activities specified in subparagraph (i); or

(iii) making the information resulting from the activities in subparagraph (i), or the means specified in subparagraph (ii) available to others for the sole purpose of enabling interoperability as described in this subsection.

(2) In the application of sections 94 to 97, any illicit device and means mentioned in subsection (1), shall be associated with infringing copies.

(3) A violation of this section shall be independent of any infringement that might by reason of such violation occur under this Act.

(4) In this section, an "effective technological measure" means any technology, product, device, component or means that is designed to prevent or restrict acts, in respect of works, expressions of folklore, performances, sound recordings or broadcasts or typographical arrangements, which are not authorized by the owner of the respective right, and by which the owner of the right, through an application of an access control or protection process which in its normal course of operation achieves the protection objective, controls the use of such protected work or subject matter.

Use of works, etc., when effective technological measures are employed

86.—(1) An owner of copyright shall ensure that a beneficiary who has legal access to a protected work or other subject matter protected under this Act is able to use the work or other subject matter without impediment of an effective technological protection measure—

(*a*) pursuant to sections 41, 44, 48, 49, 51, 53 and 59;

(*b*) for performances in an educational context, pursuant to section 42; and

(*c*) except if it is a sound recording, pursuant to section 49, by way of reproduction or otherwise as the relevant section permits.

(2) Where an owner of the copyright on the request of a beneficiary of a section listed in subsection (1) fails to provide access as described therein, he may, on the beneficiary's petition addressed to the Society, be ordered to provide information that is necessary to enable the work or other subject matter to be used in accordance with the purpose of the relevant subsection.

(3) The Society may in addition to orders referred to in subsection (2), rule that the beneficiary, regardless of section 85, may circumvent the applied technological protection measures if the owner of rights fails to adhere to the time limit imposed in such order.

(4) Copies of works or other subject matter protected under this Act, that are deposited under the Printed Publications Act, shall always be equipped with the information necessary to ensure that circumvention of technological protection measures to enable lawful reproduction is possible. Cap. 19:01

(5) This section shall not apply where a protected work or other protected subject matter on agreed terms is communicated to the public in such a way that the individual can choose the time and place of access to the work or subject matter.

(6) This section shall not apply to computer programmes:

Provided that the Minister may decide that some institutions in the sector of archives, libraries and museums automatically receive the information necessary to ensure that circumvention of technological protection measures to enable lawful reproduction is possible.

Electronic rights management

87.—(1) The following acts shall be considered unlawful and an infringement of the exclusive rights accorded to owners of works under this Act—

(*a*) the removal or alteration of any electronic rights management information from a copy of a protected work or other protected subject matter without authority; and

(*b*) the distribution or import for distribution to the public, broadcasting or other communication to the public, or public performance of protected works or other protected subject matter, by a person knowing or having reason to know that electronic rights management information has been removed or altered without authority.

(2) In the application of sections 94 to 97, any copy from which electronic rights management information has been removed or in which such information has been altered in contravention of subsection (1) shall be assimilated to infringing copies.

(3) For purposes of this Part, "rights management information" means any information which identifies any of the following—

(*a*) the author of the work;

(*b*) the work;

(*c*) the expression of folklore;

(*d*) the performer;

(*e*) the performance of the performer;

(*f*) the producer of the sound recording or audio-visual fixation;

(*g*) the sound recording or audio-visual fixation;

(*h*) the broadcasting organization;

(*i*) the broadcast; or

(*j*) the owner of any right protected under this Act, and information about the terms and conditions for use of the work, the expression of folklore, the performance, the sound recording, the broadcast or the typographical arrangement, and any numbers or code that represent such information, when any of these items of information is attached to a copy of a work, an expression of folklore, a fixed performance, a sound recording or a broadcast or a typographical arrangement, or appears in connexion with the broadcasting, communication to the public, or public display or performance of a work, an expression of folklore, a fixed performance, a sound recording, audio-visual fixation or a broadcast or a typographical arrangement.

PART XI

Infringement of Copyright or Related Rights

Infringement of copyright

88.—(1) A person infringes copyright in respect of any work protected under this Act where, without valid transfer, licence or authorization under this Act, the person does, permits or causes another person to—

(*a*) reproduce, fix, duplicate, extract or imitate such work or permit or cause it to be reproduced, fixed, duplicated, extracted, or imitated;

(*b*) distribute copies of such work to the public or permit or cause copies of such work to be distributed to the public, by way of sale, lending, hand-out, gift or like manner, or offer or expose copies of such work for such distribution, except when the copies have been sold or otherwise assigned or elsewhere by or with the consent of the author;

(*c*) distribute copies of such work, or cause or permit copies of such work to be distributed to the public, by way of commercial hire or rental, or offer or expose copies of such work to the public for such distribution, except in the case of objects for practical use, works of architecture in the form of a building, and computer programmes which in themselves are not the essential object of the hire or rental;

(*d*) distribute, or cause or permit to be distributed, to the public, machine-readable copies of computer programmes by way of lending, or offer or expose such copies for such distribution;

(*e*) make a public display of copies of such work or permit or cause such public display to be made, except when the copies have been sold or otherwise assigned in Malaŵi or elsewhere by or with the consent of the author;

(*f*) make a public performance of such work or permit or cause a public performance of it to be made;

(*g*) communicate such work, or permit or cause it to be communicated, to the public by way of broadcast, communication by cable or like manner, including communication made in such manner that members of the public may access the work from a place and at a time individually chosen by them; or

(*h*) import, or permit or cause to be imported, into Malaŵi copies of such work, which have been made abroad in such circumstances that if the copies had been made in Malaŵi, the fixation or reproduction would have been in contravention of this Act, provided that the importation is made for the purpose of making the work available to the public.

(2) For the purposes of this section, the following acts in respect of a work which is protected under this Act, shall be deemed an infringement of the rights of the author—

(*a*) to make the work available to the public without mention of the name or the pseudonym of the author in the manner required by proper usage;

(*b*) to use the work in a manner prejudicial to the honour or reputation of the author of the work; or

(*c*) when making the work available to the public, to mention of the name of the author when the author has demanded that he be not mentioned, or to fail to state that an alteration does not derive from the author, if the author has demanded that such a statement should be made.

(3) Subsection (2) shall apply *mutatis mutandis* to the director of audio-visual works protected under this Act.

Infringement of performers' rights

89.—(1) A person infringes a performers' rights in a live performance protected under this Act where, without valid transfer, licence or authorization under this Act, the person does, permits or causes another person to—

(*a*) broadcast such performance or otherwise communicate it to the public, or permit or cause it to be broadcast or otherwise communicated to the public, except when the performance is itself a broadcast performance and the broadcast or communication is made or authorized by the organization initially broadcasting the performance; or

(*b*) make a fixation of such performance or permit or cause a fixation of it to be made.

(2) A person infringes a performer's rights with regard to a fixation of a performance protected under this Act occurs where, without valid transfer, licence or authorization under this Act, the person reproduces, fixes, duplicates or extracts, or permits or causes another person to reproduce, fix, duplicate or extract, such fixation, or permit or cause such fixation to be reproduced, fixed, duplicated or extracted in any of the following cases—

(*a*) where the performance was initially fixed without the performer's consent;

(*b*) where the reproduction is made for purposes different from those for which the performer gave authorization; or

(*c*) where the performance was initially fixed in accordance with the provisions of section 83:

Provided the reproduction is made for purposes different from any of those referred to in that section.

(3) A person infringes performers' rights in a performance fixed in a sound recording protected under this Act where, without valid transfer, licence or authorization under this Act, the person in respect of the sound recording—

(*a*) distributes copies of the sound recording or audio-visual fixation to the public, or permits or causes copies of such sound

recording to be distributed to the public, by way of sale, lending, hand-out, gift or like manner, or offers or exposes copies of such sound recording for such distribution, except when the copies have been sold or otherwise assigned in Malaŵi or elsewhere by or with the consent of the producer of the sound recording;

(*b*) distributes copies of the sound recording, or causes or permits copies of such sound recording to be distributed to the public, by way of commercial hire or rental or offers or exposes copies of such sound recording for such distribution; or

(*c*) communicates such performance fixed in a sound recording, audio-visual fixation or permits or causes it to be communicated, to the public in such manner that members of the public may access the performance from a place and at a time individually chosen by them.

(4) For the purposes of this section, the following shall constitute an infringement of the performers' right in respect of any performance protected under this Act—

(*a*) the reproduction broadcast or other communication to the public of a performance from a fixation made without the performer's consent, and the use of such fixation for public performance, when such act is made without the performer's consent and where equitable remuneration is not paid to the performer except if the fixation was made in accordance with section 61 for the purpose of that specific use;

(*b*) the import into Malaŵi of copies of a fixation of a performance, which have been made abroad in such circumstances that if the copies had been made in Malaŵi, the fixation or reproduction would have been in contravention of this Act, provided that the importation is made for the purpose of making the performance available to the public by way of distribution to the public, broadcasting or other communication to the public or public performance;

(*c*) the distribution of the infringing copies of a fixation of a performance or of copies which were imported into Malaŵi in contravention of paragraph (*b*);

(*d*) commercially renting performances fixed in sound recording or audio-visual fixation when an equitable remuneration is not paid to the performers;

(*e*) the direct or indirect use for public performance, for broadcast or for other communication to the public, of an infringing

copy of a fixation of a performance, or a copy which was imported into Malaŵi in contravention of paragraph (*b*); or

(*f*) to cause another person to commit or cause or permit any of the acts mentioned in paragraphs (*a*) to (*d*) inclusive.

(5) For the purposes of this section, the following acts in respect of a live aural performance or such performance fixed in a sound recording or audio-visual fixation which is protected under this Act shall be deemed an infringement of the moral rights of the performer—

(*a*) to make such performance available to the public without mention of the name or the pseudonym of the performer, except where omission of such mention is dictated by the manner of the use of the performance; and

(*b*) to use such performance in a manner whereby it is distorted, mutilated or otherwise modified in a manner which is prejudicial to the reputation of the performer.

Infringement of rights of producers of sound recordings

90. A person infringes producers' rights in sound or audio-visual fixation recordings where, without valid transfer, licence or authorization under this Act, the person, in respect of a sound recording or audio-visual fixation protected under this Act, does, permits or causes another person to—

(*a*) reproduce, fix, duplicate or extract such recording or fixation or permit or cause it to be reproduced, fixed, duplicated or extracted;

(*b*) distribute copies of such recording or fixation to the public, or permit or cause copies of such recording to be distributed to the public, by way of sale, lending, hand-out, gift or like manner, or offer or expose copies of such recording for such distribution, except when the copies have been sold or otherwise assigned in Malaŵi or elsewhere by or with the consent of the producer of the sound recording;

(*c*) distribute copies of such recording, or cause or permit copies of such recording to be distributed, to the public, by way of commercial hire or rental, or offer or expose copies of such recording for such distribution;

(*d*) communicate such recording to the public in such manner that members of the public may access it from a place and at a time individually chosen by them, or permit or cause a sound recording to be thus communicated to the public without payment of equitable remuneration;

(*e*) import, or permit or cause to be imported, into Malaŵi copies of such sound recording or audio-visual fixation which have been made abroad in such circumstances that if the copies had been made in Malaŵi, the reproduction would have been in contravention of this Act, provided that the importation is made for the purpose of making the recording available to the public; or

(*f*) distribute to the public, or directly or indirectly use for public performance, broadcast or other communication to the public, copies of a such sound recording or audio-visual fixation or cause or permit that copies of such recording are thus distributed or used, if—

(i) the copies were made without the producer's consent; or

(ii) the copies have been imported into Malaŵi in contravention of paragraph (*e*).

Infringement by parallel imports

91. Any person who, without the consent of the producer, imports into Malaŵi copies of audio-visual works or sound recordings with the intention of making them available to the public for gain, or causes or permits such imports, commits an infringement of the rights of the producer, except when copies of the same production are not being offered or promoted to the public in Malaŵi with the consent of the producer.

Infringement of broadcasting organizations' rights

92. An infringement of a broadcasting organization's rights occurs where, without valid transfer, licence or authorization under this Act, a person, in respect of a broadcast protected under this Act, does, permits or causes another person to—

(*a*) make a fixation of such broadcast, or permit or cause a fixation of such broadcast to be made;

(*b*) reproduce, fix, duplicate or extract a fixation of such broadcast, or permit or cause such fixation to be reproduced, fixed, duplicated or extracted;

(*c*) rebroadcast such broadcast, or retransmit it by cable, or permit or cause such rebroadcasting or retransmission;

(*d*) otherwise communicate to the public such television broadcast, or cause or permit such television broadcast to be communicated to the public;

(*e*) import, or permit or cause to be imported, into Malaŵi copies of a fixation of such broadcast, which have been made abroad in such circumstances that if the copies had been made in Malaŵi, the reproduction would have been in contravention of

this Act, provided that the importation is made for the purpose of making the fixation of the broadcast available to the public; or

(*f*) broadcast or otherwise communicate to the public, or use for public performance, a fixation of a broadcast, or distribute to the public by way of sale, hire, rental, lending, hand-out, gift or like manner, copies of such fixation, if—

(i) the fixation or the copies were made without the consent of the broadcasting organization; or

(ii) the copies have been imported into Malaŵi in contravention of paragraph (*e*).

Infringement of publishers' rights in typographical arrangements

93. A person infringes rights in typographical arrangements in published editions occurs where, without valid transfer, licence or authorization under this Act, the person, in respect of a typographical arrangement in a published edition protected under this Act, does, permits or causes another person to—

(*a*) reproduce such arrangement by way of making a facsimile copy of the typographical arrangement of the whole or any part of a published edition of a literary, dramatic or musical work, or permit or cause such reproduction to be made;

(*b*) distribute or permit or cause to be distributed in Malaŵi by way of sale, hire, rental, lending, hand-out, gift or like manner any facsimile copy made in contravention of paragraph (*a*);

(*c*) offer or expose to the public for distribution by way of sale, hire, rental, lending, hand-out, gift or otherwise any facsimile copy made in contravention of paragraph (*a*); or

(*d*) import or permit or cause to be imported into Malaŵi facsimile copies of a published edition which have been made abroad in such circumstances that if the copies had been made in Malaŵi, the reproduction would have been in contravention of this Act:

Provided that the importation is made for the purpose of making the copies available to the public.

PART XII

Inspection

Inspectors

94.—(1) The Society shall, for purposes of enforcing the provisions of this Act, appoint such number of inspectors as the Society considers appropriate and shall issue to them, in writing or in such form as may be prescribed, certificates of authority to act as such inspectors.

(2) In addition to inspectors appointed under subsection (1), any member of the Society, a customs officer and a police officer of the rank of sub-inspector and above shall perform the functions of an inspector under this Act.

(3) A person appointed as an inspector shall hold office subject to such conditions as the Society may determine with the approval of the Minister.

Entry into premises

95. An inspector may, at any reasonable time and on production of his certificate of authority and identification, enter any premises, ship, aircraft or vehicle for the purpose of ascertaining whether there is or has been, on or in connexion with those premises, ship, aircraft or vehicle any contravention of this Act.

Mode of inspection

96.—(1) For purposes of ascertaining whether there is or has been a contravention of this Act, an inspector may inspect—

(*a*) any substance or article appearing to him to be a work;

(*b*) any container or package used or intended to be used to contain any work; or

(*c*) any plant or equipment appearing to him to be used or intended to be used in connexion with the production, reproduction or otherwise manufacture of a work.

(2) An inspector may seize and detain any substance or article which he has reasonable cause to believe to be an infringing copy of any work or in relation to which or by means of which he has reasonable cause to believe that an offence under this Act has been or is being committed, and any document which he has reasonable cause to believe to be a document which may be required in proceedings under this Act.

(3) Where an inspector seizes any work, he shall in writing notify the person from whom it is seized the fact of that seizure and shall in that notification specify any items seized.

(4) Any substance, article or work seized under this section shall be retained by the Society until the case in connexion with which the substance, article or work was seized has been concluded or a decision not to prosecute has been made:

Provided that—

(*a*) where any person has been tried and convicted or where a person fails to claim the seized substance, article or work after being acquitted, the substance, article or work shall be disposed of at the discretion of the Copyright Administrator; and

(*b*) where a decision has been made not to prosecute, the seized substance, article or work may be returned to the owner.

(5) Any person who—

(*a*) wilfully obstructs an inspector in the discharge of the inspector's duties;

(*b*) wilfully fails to comply with any requirement properly made to him by an inspector;

(*c*) without reasonable cause fails to give to the inspector any assistance or information which the inspector may reasonably require of him for the purpose of the performance of his duties under this Act; or

(*d*) in giving any such information as is mentioned in subparagraph (*c*), makes any statement which he knows to be false,

commits an offence and shall on conviction be liable to a fine of K5,000,000 and to imprisonment for two years.

Inspectors not personally liable

97. Any inspector shall not be personally liable in respect of any act done by him in good faith in the course of his employment and in the execution or purported execution of any under this Act.

PART XIII

The Copyright Fund

Establishment of the Copyright Fund

98. There is hereby established a fund to be known as the Copyright Fund (in this Act otherwise referred as the "Fund"), which shall be administered by the Society, and shall become operational on such a date as the Minister shall appoint, by notice published in the *Gazette.*

Objectives of the Fund

99. The Fund shall be used for—

(*a*) enforcement of copyright law;

(*b*) promotion and improvement of—

(i) creativity; and

(ii) artistic skills;

(*c*) promotion and preservation of works which depict a cultural identity of Malaŵi;

(*d*) payment of proceeds from the fines paid for infringement of the rights under this Act; and

(*e*) civic education.

100.—(1) The Fund shall vest in the Society and, subject to this Act, shall be administered in accordance with the Public Audit Act and the Public Finance Management Act. Vesting of the Fund Cap. 37:01 Cap. 37:02

(2) The Minister shall approve the provisions drawn up by the Society on the operation and management of the Fund.

101.—(1) The Fund shall be financed through levies on the following acts— Financing of the Fund

(*a*) performances, sound recordings, broadcasts and typographical arrangements;

(*b*) importing, manufacturing or placing of devices for digital storage materials on the market;

(*c*) public sale or auction of original works of art; and

(*d*) offering to the public of paper used for reproduction by the application of photocopiers or electronic copiers on commercial terms.

(2) Notwithstanding the sources in subsection (1), the Minister shall determine and specify annually a fee which is to be awarded from the Government budget to the Fund for the use of works and related subject matter in public libraries which offer their collections to the general public for lending or consultation free of charge.

(3) The levies and fees pursuant to this section shall be paid directly to the Society.

(4) For purposes of this section "public libraries" means the libraries which are wholly or partly funded by the Government.

102.—(1) The levy on the placing of devices for digital storage of material pursuant to section 101 shall apply in regard to— Levy on storage devices

(*a*) devices integrated in computers or other specialized computer equipment; and

(*b*) stand alone storage devices such as compact disks and memory sticks as specified in regulations.

(2) It shall be presumed that the placing of the said devices on the market is for consumers unless circumstances or evidence clearly proves that it is for commercial purposes.

(3) The levy shall be paid by the manufacturers or importers of devices for the digital storage of material.

(4) The levy shall be specified by the Minister of Finance in consultation with the Minister responsible for culture, by order published in the *Gazette.*

Levy on public sale of original works of art

103.—(1) The levy on resale of original works of art pursuant to section 101 shall apply to—

(*a*) all acts of sale involving as sellers, buyers or intermediaries art market professionals, such as salesrooms, art galleries and, in general, any dealers in works of art; and

(*b*) any purchase of artistic works, which is made for the purpose of decoration of buildings and areas accessible to the general public, regardless of whether the work is an existing work or a commissioned work.

(2) The above shall apply only where the work sold is a—

(*a*) work of graphic or plastic art such as pictures, collages, paintings, drawings, engravings, prints, lithographs, sculptures, carvings, tapestries, ceramics, glassware and photographical art; and

(*b*) the work is made in limited numbers by the author or with the consent of the author.

(3) The levy shall not apply to the resale of buildings as such.

(4) The seller shall pay the levy.

Levy on copy shops etc.

104.—(1) The levy on the offering to the public of paper reproduction pursuant to section 101 shall apply to the offering of—

(*a*) services in the form of reprographic reproduction; and

(*b*) access to photocopiers or electronic copiers without offering the machines themselves:

Provided that the offer is made on commercial terms.

(2) In order to offer a service or access that is subject to the levy under this section, the owner of the operation is obliged to register it with the Society as a copy shop, such registration to include identification of the copiers and their location.

(3) The registered owner of the copy shop shall pay the levy.

Obligation to pay levies independent

105. Obligation to pay levies pursuant to this Part does not depend on the works and related subject matter involved in the acts referred to in section 101 being subject to protection under this Act.

106. The Minister may make regulations on the rates of the levies that are established according to section 101. Determination of the levies

107.—(1) The Fund shall be used for the promotion of copyright activities and production in Malaŵi in which persons who are resident in Malaŵi take part, as follows— Utilization of the Fund

(*a*) the creation of music, fiction and non-fiction such as poetry, essays, plays and textbooks, fine art and audio-visual works, and the production of a particular sound recording or performance of a dramatic work or musical works, etc.; and

(*b*) the professional improvement of Malaŵian authors and performers, producers and publishers, and their living or working conditions by the way of offering—

(i) measures such as training courses, seminars, organizational improvement and legal aid, organized or approved by the Society, enforcement activities; and

(ii) grants to individual authors or performers:

Provided that the availability of such measures and grants to be publicly announced.

(2) The right to benefit from the measures and grants referred to in subsection (1) shall be equally enjoyed by such persons as referred to in this section, regardless of whether or not they are members of the Society or an association.

108.—(1) The Society shall, on request in writing have access to the accounts of manufacturers or importers of devices for digital storage placed on the market for consumers, sellers of works of art, and copy shops in order to determine whether they comply with the provisions in this Act, this right being limited to the accounts of the last three years before the year in which the request for access is made. Access to accounts

(2) Information gathered by reason of access to the accounts may not be exploited for other purposes, and the Society and the persons whom the Society employs for such purposes, shall observe strict confidentiality with respect to this information except as is necessary in order to enforce the levy schemes pursuant to section 101.

109.—(1) The Minister shall cause to be kept proper books and other records of account in respect of receipts and expenditures of the Fund in accordance with the Public Audit Act and the Public Finance Management Act. Books and other records of accounts Cap. 37:01 Cap. 37:02

(2) The accounts of the Fund shall be audited by the Auditor General in accordance with the Public Audit Act. Cap. 37:01

(3) The Minister shall cause to be prepared, as soon as practicable, but not later than six months after the end of the financial year, an annual report on all the financial transactions of the Fund.

(4) The report referred to in subsection (3) shall include a balance sheet, an income and expenditure account and the annual report of the Auditor General and shall be laid by the Minister before the National Assembly.

Financial year of the Fund

110. The financial year of the Fund shall be the same as the financial year of the Government.

PART XIV

Court Proceedings, Administrative Proceedings and Penalties

Liabilities of members of companies, etc.

111. Where any offence under this Act is committed by a company or a member of a partnership, firm or business, society or association of persons, every director or officer of the company or any other member of the partnership or other person concerned with the management of such partnership, firm or business, society or association of persons commits an offence unless he proves to the satisfaction of the court that—

(*a*) he used due diligence to secure compliance with this Act; and

(*b*) the offence was committed without his knowledge, consent or connivance.

Administrative penalties

112.—(1) Where the Copyright Administrator has reasonable grounds to believe that—

(*a*) an offence under this Act has been committed by any person;

(*b*) the offence is of minor nature; and

(*c*) having regard to the previous conduct of the person concerned, it would be appropriate to impose a penalty under this section,

he may cause a notice, in writing, in accordance with subsection (2) to be served on that person.

(2) A notice under subsection (1) shall be in a prescribed form and shall specify—

(*a*) the nature of the offence and the date of its commission;

(*b*) a summary of the facts upon which the allegation that an offence has been committed is based; and

(*c*) any other matter that the Copyright Administrator considers relevant to the imposition of a penalty, and shall be endorsed with a statement setting out the provisions of this section.

(3) Any person on whom a notice under subsection (1) is served may, within thirty days after such service, by notice in writing to the Copyright Administrator require that the proceedings in respect of the alleged offence be dealt with by the court or admit the offence.

(4) Where pursuant to subsection (3) a person opts to have the alleged offence dealt with by a court—

(*a*) no further proceedings shall be taken under this section by the Copyright Administrator; and

(*b*) nothing in this section shall be construed to prevent proceedings in respect of the alleged offence to be dealt with by the court or the imposition by the court of any penalty or forfeiture under this Act upon such conviction in such proceedings.

(5) Where pursuant to subsection (3) a person opts to admit the alleged offence he may, by notice in writing to the Copyright Administrator—

(*a*) admit the offence; and

(*b*) make submissions to the Copyright Administrator as to the matters he wishes the Copyright Administrator to take into account in imposing any penalty under this section.

(6) Where a person on whom a notice under subsection (3) is served does not, within thirty days after the notice is served on him—

(*a*) require that proceedings in respect of the alleged offence be dealt with by the court; and

(*b*) admit the offence,

he shall, on the expiration of that period, be presumed to have admitted the offence.

(7) Where pursuant to this section a person admits or is presumed to have admitted an offence, the Copyright Administrator may, after taking into account any submissions by the person under subsection (5), impose a monetary penalty on the person in respect of the offence not exceeding one half of the maximum penalty to which the person would be liable if he were convicted of the offence by the court.

(8) Where the Copyright Administrator imposes a penalty on a person under this section in respect of an offence, the Copyright Administrator shall serve that person with a notice in writing in the

prescribed form of the particulars of the penalty and place where the penalty should be paid.

(9) A person on whom a penalty is imposed under this section shall pay the penalty to the Society within thirty days after the notice of the penalty is served on him in accordance with subsection (8).

(10) Without prejudice to the requirement of subsection (9), a penalty imposed under this section shall be recoverable by the Society from the person on whom it has been imposed in the same manner as a fine is recoverable on conviction of an offence.

(11) Where an offence has been admitted or is presumed to have been admitted under this section, no further charge shall be laid in respect of the offence against the person who has admitted or is presumed to have admitted the offence.

(12) This section shall not apply—

(*a*) in respect of any offence under section 113; or

(*b*) to any offence or alleged offence in respect of which a charge has already been preferred.

Offence and penalties

113.—(1) Any person who infringes any copyright commits an offence and shall on conviction, be liable to a fine of K5,000,000 and to imprisonment for two years and in the case of a continuing offence, to a further fine of K25,000 for each day during which the offence continues.

(2) Any person who, without the authorization of the Minister imports, sells, offers or exposes for sale or distribution in Malaŵi any copy of the following subject matter outside Malaŵi—

(*a*) expressions of Malaŵian folklore; or

(*b*) translations, adaptations or arrangements of expressions of Malaŵian folklore,

commits an offence and shall on conviction, be liable to a fine of K10,000,000 and to imprisonment for four years and in the case of a continuing offence, to a further fine of K50,000 for each day during which the offence continues.

(3) Any person who contravenes section 69, 70 or 71 commits an offence and shall on conviction, be liable to a fine of K2,000,000 and to imprisonment for twelve months.

(4) Any person who has in his possession—

(*a*) any infringing copy of a work other than for his private or domestic use; or

(*b*) any machinery, plate, matrix or other device with the intention of using such device to produce infringing copies,

commits an offence and shall be liable to a fine of K10,000,000 and to imprisonment for four years and in the case of a continuing offence to a further fine of K50,000 for each day during which the offence continues.

(5) For purposes of subsection (4), any person who has in his possession three or more infringing copies of the same work or related subject matter shall, unless the contrary is proved, be presumed to be in possession of such copies otherwise than for private or domestic use.

(6) Seventy-five per cent of the fines paid for the infringement of the rights under this Act shall be paid into the Fund.

Compensation to victims of offence

114.—(1) Infringement of copyright shall be actionable by the owner of the copyright.

(2) In addition to any penalty imposed by a court in respect of an offence under this Act in any action for an infringement of copyright, all such relief by way of damages, injunction, account of profits or otherwise, shall be available to the plaintiff as in any other corresponding proceedings in respect of infringements of other proprietary rights, and in any such action, the court may give such orders as are necessary to—

(*a*) enable the plaintiff to obtain evidence of any infringement which he intends to adduce at the trial; or

(*b*) prohibit the defendant from removing assets from the jurisdiction of the court or otherwise wasting them, to the extent that such assets are necessary to satisfy the plaintiff's claim if he succeeds at the trial.

(3) In any proceedings to which subsection (2) (*a*) applies—

(*a*) a person shall not be excused from answering any question put to that person or complying with any order made pursuant to that subsection by reason only that to do so would expose that person to criminal proceedings under this Act; and

(*b*) no statement of admission made by that person in answer to a question put, or an order made, in accordance with that subsection shall be admissible in criminal proceedings brought under this Act against that person save that nothing in this paragraph shall render any such statement or admission inadmissible in proceedings against that person for perjury or contempt of court.

(4) The Court may order that all reproductions, duplications, extracts, imitations and other materials involved in the infringement and all implements or devices used in such infringement be given to the copyright owner, or, if such material be dangerous to the public, be destroyed by the court.

(5) For purposes of this Part, "owner of copyright" means the first owner, an assignee or an exclusive licensee, as the case may be, of the relevant portion of the copyright.

Forfeiture as an additional penalty

115. Upon the conviction of any person of an offence under this Act the court may, where it considers forfeiture to be necessary, in addition to any other penalty imposed, order any article, substance, work or any other thing used in connexion with the commission of the offence to be forfeited to the Government.

Proof of facts in proceedings

116. An affidavit made on oath, affirmation or other like manner before a magistrate, commissioner for oaths, notary public or other person competent to administer an oath or affirmation under the law of the country where the oath was made, which—

(*a*) purports to have been made by or on behalf of the owner of the copyright or his successor in title; and

(*b*) states all or any of the following—

(i) that at the time specified therein, the rights of the owner of the copyright work subsisted;

(ii) the nationality of the owner of the copyright;

(iii) the place where the work was first made;

(iv) the date and place of the first publication of the work and the date of the publication thereof in Malaŵi, if such publication was not first publication;

(v) that the person named therein is the owner of the copyright or his successor in title; and

(vi) that a copy of the work exhibited to the affidavit is a true copy of the work,

shall be admitted without further proof in any proceedings under this Act.

PART XV

Miscellaneous Provisions

Extension of the application of Act

117.—(1) The Minister may, by notice published in the *Gazette*, extend the application of this Act to any works, expressions of

folklore, performances, sound recordings, broadcasts or typographical arrangements of published editions that are eligible for protection by virtue of and in accordance with any treaty to which Malaŵi is a party.

(2) The Minister may, by notice published in the *Gazette*, determine that this Act shall also apply to works which are first published by specific international organizations and the unpublished works in which such organization owns the publishing rights.

Application of this Act to satellite broadcast

118. When works or performances are broadcast by satellite from a foreign country, this Act shall apply to the broadcast if the satellite that receives signals from Malaŵi or the broadcast is commissioned by a broadcasting organization which has its headquarters or principal place of business in Malaŵi:

Provided that the rules regarding the broadcasting of works and performances in the country from where the broadcast is made do not provide protection corresponding to the protection provided under this Act.

Regulations

119.—(1) The Minister may make regulations for implementation of the provisions of this Act generally.

(2) Without prejudice to the generality of subsection (1), such regulations may—

(*a*) provide for the registration and deposit of works;

(*b*) prescribe forms for—

(i) applications to be made;

(ii) licences to be issued; or

(iii) contracts to be concluded,

pursuant to the provisions of this Act;

(*c*) prescribe fees payable under this Act;

(*d*) prescribe any matter to be prescribed under this Act;

(*e*) provide for the affiliation of associations to the Society and for the membership with such associations or with the Society of any persons whose works are protected under this Act.

Cap. 1:01

(3) Notwithstanding section 21 (*e*) of the General Interpretation Act, the regulations made under this Act may provide for the contravention of which would have a fine of up to K5,000,000 and imprisonment for up to two years.

Repeal and savings Cap. 49:03

120.—(1) The Copyright Act is repealed.

(2) Any subsidiary legislation made under the repealed Act in force immediately before the commencement of this Act—

(*a*) shall remain in force unless in conflict with this Act and be deemed to be subsidiary legislation made under this Act; and

(*b*) may be replaced, amended or repealed by subsidiary legislation made under this Act.

Transitional provisions Cap. 49:03

121. All licences, valid transfers, authorizations, approvals and exemptions granted or made under the repealed Act shall remain in force until on such a date as the Minister shall appoint by notice published in the *Gazette* and whereupon they shall lapse and holders thereof shall be required to obtain licences in accordance with this Act.

MERCHANDISE MARKS

CHAPTER 49:04

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CHAPTER 49:04

MERCHANDISE MARKS

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CHAPTER 49:04

MERCHANDISE MARKS

17 of 1957(F)
17 of 1959(F)
G.N. 5/1964(M)
137/1966

An Act to provide for the marking of goods for the prohibition, of the use of certain emblems and for matters incidental thereto

[7TH MARCH, 1958]

PRELIMINARY

Short title

1. This Act may be cited as the Merchandise Marks Act.

Interpretation

2. In this Act, unless inconsistent with the context—

"apply to" means to emboss, impress, engrave, etch or print upon, weave or otherwise work into or annex or affix to, and cognate expressions shall be construed accordingly;

"bottle" means a bottle made of glass, earthenware or plastic material;

"covering" includes any stopper, cask, bottle, vessel, box, cover, wrapper, capsule, case, frame or container;

"customs officer" means any officer of the Department of Customs and Excise and any other person appointed by the Controller of Customs and Excise for the discharge of any duties in connexion with the administration of the Customs and Excise Act;

Cap. 42:01

"false trade description" means a trade description which is false in a material respect as regards the goods to which it is applied and includes every alteration of a trade description, whether by way of addition, effacement or otherwise, where that alteration makes the description false or misleading in a material respect and the fact that a trade description is a trade mark or part of a trade mark shall not prevent such trade description being a false trade description within the meaning of this Act;

"goods" means anything which is the subject of trade, manufacture or merchandise;

"goods assembled externally" means goods assembled in any country outside Malaŵi;

"goods manufactured externally" means goods manufactured, made or produced in any country outside Malaŵi;

"goods mixed externally" means goods the ingredients of which have been mixed in any country outside Malaŵi and were manufactured, made or produced in—

(*a*) a country other than the country in which they were mixed; or

(*b*) more than one country;

"inspector" means an inspector appointed under section 19;

"label" includes any band or ticket;

"mix" includes blend and cognate expressions shall be construed accordingly;

"name" includes any abbreviation of or addition to a name;

"offending mark" means—

(*a*) in relation to goods manufactured externally, goods assembled externally or goods mixed externally—

(i) a mark applied to those goods containing any name being or purporting to be the name of any manufacturer, producer, trader, assembler or mixer in Malaŵi or the name of any town, place or District in Malaŵi; or

(ii) a trade mark or trade description applied to those goods containing—

(A) a direct or indirect reference to any town, place or district outside Malaŵi; or

(B) a direct or indirect reference (other than the name of a country applied to those goods so as to indicate that they were manufactured, produced, assembled or mixed in that country) to a country outside Malaŵi;

(*b*) in relation to goods manufactured, made, produced, assembled or mixed in Malaŵi a trade mark or trade description applied to those goods containing a direct or indirect reference to any town, place, district or country outside Malaŵi;

"police officer" means a member of the Malaŵi Police Force of or above the rank of Inspector;

"sell" includes to expose for sale or have in possession for the purpose of sale or for any purpose of trade or commerce, and cognate expressions shall be construed accordingly;

"trade description" means any description, statement or other indication, direct or indirect, as to—

(*a*) the number, quantity, measure, gauge or weight of any goods; or

(*b*) the standard of quality of any goods, according to a classification commonly used or recognized in the trade; or

(*c*) the name of the manufacturer, producer, assembler or mixer of any goods; or

(*d*) the place or country in which any goods were manufactured, made, produced, assembled or mixed; or

(*e*) the fitness for purpose, strength, performance or behaviour of any goods; or

(*f*) the mode of manufacturing, producing, assembling or mixing of any goods; or

(*g*) the material of which any goods are composed; or

(*h*) the fact of any goods being the subject of an existing patent, privilege or copyright;

and the use of any figure, word or mark which, according to the custom of the trade, is commonly taken to be an indication of any of the above matters shall be deemed to be a trade description within the meaning of this Act;

"trade mark" means a mark which is used upon or in connexion with goods for the purpose of indicating that they are, by virtue of manufacture, production, selection, certification, dealing with or offering for sale, the goods of the proprietor or of a person who is, in terms of any enactment in force within Malaŵi, the registered user thereof.

PART I

Application of Trade Marks and Trade Descriptions

Application of trade marks and trade descriptions

3.—(1) A person shall be deemed to apply a trade mark or trade description to goods if he—

(*a*) applies it to the goods themselves; or

(*b*) applies it to any covering, label, reel or other thing in or attached to which the goods are sold; or

(*c*) places, encloses or annexes the goods which are sold in, with or to any covering, label, reel or other thing to which a trade mark or trade description has been applied; or

(*d*) uses a trade mark or trade description in any manner so as to be likely to lead to the belief that the goods in connexion with which it is used are designated or described by that trade mark or trade description.

(2) Goods delivered in pursuance of an offer or request made by reference to a trade mark or trade description appearing in any sign, advertisement, invoice, wine list, business letter, business paper or other commercial communication shall, for the purposes of subsection (1) (*d*), be deemed to be goods in connexion with which the trade mark or trade description is used.

(3) A person shall be deemed falsely to apply to goods a trade mark who, without the consent of the proprietor or of any person who is, in terms of any enactment in force within Malaŵi, the registered user thereof, applies to the goods that trade mark or a mark so nearly resembling it as to be likely to deceive.

(4) Any person who applies to goods any word, name, letter, figure or mark, or arangement or combination thereof, whether consisting of or including a trade mark or part of a trade mark or not, which is likely to lead to the belief that the goods are the manufacture or merchandise of some person other than the person whose manufacture or merchandise they really are, shall be deemed to apply a false trade description to the goods.

PART II

Marking of Goods and Prohibitions in Relation to Trade Marks and Trade Descriptions

Certain acts deemed to be a forgery of a trade mark

4. A person shall be deemed to forge a trade mark if he—

(*a*) without the consent of the proprietor of the trade mark, makes that trade mark or a mark so nearly resembling that trade mark as to be likely to deceive; or

(*b*) falsifies any genuine trade mark, whether by alteration, addition, effacement or otherwise;

and any trade mark so made or falsified is in this Act referred to as a forged trade mark.

Forgery of trade marks and other acts prohibited

5.—(1) No person shall—

(*a*) forge any trade mark; or

(*b*) make any die, block, machine or other instrument for the purpose of forging or of being used for forging a trade mark; or

(*c*) dispose of or have in his possession any die, block, machine or other instrument for the purpose of forging a trade mark; or

(*d*) falsely apply to goods any trade mark or a mark so nearly resembling a trade mark as to be likely to deceive; or

(*e*) without the consent of the proprietor of a trade mark, make, import or have in his possession any device for applying that trade mark to goods or make any reproductions, replicas or representations of that trade mark or import them otherwise than on goods to which they have been applied for the purpose of applying them contrary to this Act; or

(*f*) make, import or have in his possession any device for applying to any goods a mark so nearly resembling a trade mark as to be likely to deceive; or

(*g*) make, import or have in his possession any coverings, labels, reels or any reproductions, replicas or representations of a trade mark or a mark so nearly resembling a trade mark as to be likely to deceive for the purpose of applying them to goods contrary to this Act; or

(*h*) apply any false trade description to goods.

(2) It shall be a sufficient defence to any charge under subsection (1) if the accused satisfies the court that he acted without intent to defraud.

(3) In any prosecution for a contravention of subsection (1) (*b*), (*d*) or (*h*), it shall be a sufficient defence if the accused satisfies the court that—

(*a*) in the ordinary course of his business he was employed, on behalf of other persons, either to make dies, blocks, machines or other instruments for making or being used in making trade marks, or, as the case may be, to apply trade marks or trade descriptions to goods and that in the case which is the subject of the charge he was so employed by some other person and was not interested in the goods by way of profit or commission dependent on the sale of such goods; and

(*b*) he took reasonable precautions against committing the offence charged; and

(*c*) he had, at the time of the commission of the alleged offence, no reason to suspect the genuineness of the trade mark or trade description; and

(*d*) on request made by an inspector, police officer or customs officer, he gave to such inspector or such officer all the information in his power with respect to the persons on whose behalf the trade mark or trade description was applied.

Prohibition of sale of goods bearing forged trade mark or false trade description

6.—(1) No person shall sell any goods—

(*a*) to which any forged trade mark or false trade description is applied; or

(*b*) to which any trade mark or a mark so nearly resembling a trade mark as to be likely to deceive is falsely applied.

(2) It shall be a sufficient defence to any charge under subsection (1) if the accused satisfies the court that—

(*a*) having taken all reasonable precautions against committing an offence against this Act, he had at the time of the sale no reason to suspect the genuineness of the trade mark or trade description and, on request made by an inspector, police officer or customs officer, he gave to such inspector or such officer all the information in his power with respect to the persons from whom he obtained such goods; or

(*b*) otherwise he had acted innocently.

Prohibition of sale of imported goods unless accompanied by indication of origin

7.—(1) Subject to subsection (2), no person shall sell or for the purpose of advertising goods distribute any goods manufactured externally, any goods assembled externally or any goods mixed externally or samples of such goods to which there is applied an offending mark unless there is also applied to those goods in the manner specified in section 10 the name of the country in which those goods were manufactured, assembled or mixed so as to indicate that those goods were manufactured, assembled or mixed, as the case may be, in that country.

(2) This section shall not have effect in respect of the application of a name or trade mark to—

(*a*) parts or materials of a type suitable only for consumption in a process of manufacture; or

(*b*) articles to be used as coverings, labels or reels or to articles in or with which goods manufactured, made, produced, assembled or mixed in Malaŵi are to be sold,

if the name or trade mark so applied is the name or trade mark of a manufacturer, producer, assembler, mixer of or trader in those goods in Malaŵi and the name or trade mark is applied with his consent.

(3) The Minister may, by notice published in the *Gazette*, suspend, in relation to any goods or class of goods, the operation of subsection (1).

Prohibition of sale of goods, whether made in Malaŵi or elsewhere, unless accompanied by indication of origin

8.—(1) No person shall sell or for the purpose of advertising goods distribute in Malaŵi any goods manufactured, made, produced, assembled or mixed in Malaŵi or samples of such goods to which there is applied an offending mark unless there is also applied to those goods in the manner specified in section 10 the name of Malaŵi so as to indicate that those goods were manufactured, made, produced, assembled or mixed, as the case may be, in Malaŵi.

(2) The Minister may, by notice published in the *Gazette*, suspend, in relation to any goods or class of goods the operation of subsection (1).

Importation of certain goods prohibited

9. No person shall import into Malaŵi any goods—

(*a*) to which any forged trade mark or false trade description is applied or to which any trade mark or a mark so nearly resembling a trade mark as to be likely to deceive is falsely applied; or

(*b*) which it would be an offence to sell or distribute in terms of section 7 or 8.

Manner of application of mark

10.—(1) Whenever the name of the country in which goods were manufactured, made, produced, assembled or mixed is applied to goods for the purposes of section 7 or 8 that name shall be applied in a conspicuous manner—

(*a*)—(i) in the case where an offending mark is applied to the goods themselves, to the goods themselves; or

(ii) in the case where an offending mark is applied to any covering, label or other attachment, either by means of such covering, label or other attachment or to the goods themselves;

(*b*) so as to render unlikely the obliteration, erasure or detachment of such name in the ordinary course of handling prior to sale to the consumer; and

(*c*) in a prominent position and so placed that it can be easily read without detaching or unwrapping any part of the covering in which the goods may be offered for sale, or wherever an offending mark is applied.

(2) Notwithstanding subsection (1), the Minister may by notice published in the *Gazette* and for the purposes of sections 7 and 8 prescribe in respect of goods specified in such notice the manner in which the name of the country shall be applied and in that event subsection (1) shall not apply in relation to those goods.

Marking of goods on importation

11.—(1) If the import of any goods into Malaŵi is prohibited in terms of section 9 (b), the Controller of Customs, after—

(*a*) being furnished by the importer thereof with proof of

the country in which the goods were manufactured, made, produced, assembled or mixed; and

(*b*) being satisfied that the goods are capable of being marked so as to comply with the requirements of section 7 or 8 as the case may be,

may, within such time as he may specify, permit the importer of the goods to mark them so as to comply with such requirements.

(2) If the goods are marked within the time specified in terms of subsection (1) to the satisfaction of the Controller of Customs and Excise, such goods may, notwithstanding section 21 of the Customs and Excise Act, be imported into Malaŵi.

Removal of indication of origin from imported goods prohibited

12.—(1) No person shall remove, alter or obliterate an indication of origin applied to goods in accordance with section 7, 8 or 11.

(2) It shall be a sufficient defence to any charge under subsection (1) if the accused satisfies the court that the removal, alteration or obliteration was not made for the purpose of concealing the origin of the goods at the time of sale.

Indication of origin and compliance with specified standards in the case of certain classes of goods

13. The Minister may, after such investigation as he thinks fit, by notice published in the *Gazette*, prohibit the importation for sale or the sale of goods of any class or description, unless all or any of the following requirements, as specified in such notice, have been complied with—

(*a*) there are applied to the goods words stating clearly the country in which they were manufactured, made, produced, assembled or mixed and such words are applied in such manner as may be specified in the notice or, if no manner is specified, in a conspicuous manner;

(*b*) the goods bear such mark as may be specified in the notice and conform to such standard as may be prescribed in the notice;

(*c*) there are applied to the goods in a conspicuous manner and as specified in the notice words or letters stating clearly the materials of which they are composed and, if so specified in the notice, the percentages of such materials calculated either by weight or by volume;

(*d*) there are applied to second-hand goods which have been reconditioned, rebuilt or remade, whether in Malaŵi or elsewhere, in the manner specified in the notice, words stating clearly that they have been reconditioned, rebuilt or remade, as the case may be;

(*e*) in the case of goods to which there is applied any number which, in the opinion of the Minister, is likely to lead

to the belief that such number refers to a unit of quantity, measure, gauge, or weight, there are added words stating clearly to what such number refers.

Indication of origin of certain goods may be prescribed

14. If the Minister, after such investigation as he thinks fit, is satisfied, in the case of goods of any class or description which are made or produced in one country, that—

(*a*) such goods—

(i) have undergone in another country any treatment or process resulting in a substantial change in the goods;

(ii) have had a considerable part of the labour expended in the manufacture or production of such goods expended in another country; or

(iii) are largely composed of materials made or produced in another country; and

(*b*) it is desirable that disclosure be made with respect to such goods of the facts referred to in paragraph (*a*) (i), (ii) or (iii),

he may by notice published in the *Gazette* prohibit the importation for sale or the sale of such goods, unless there are applied to them in a conspicuous manner words specified in the notice making disclosure of the facts referred to concerning such goods.

Use of certain marks may be prohibited

15. The Minister may, after such investigation as he thinks fit, by notice published in the *Gazette* prohibit, either absolutely or conditionally, the application to goods of any mark, word, letter or figure or of any arrangement or combination thereof.

Submission of representations by interested persons

16. Before the Minister issues any notice under section 13, 14 or 15, he shall, by notice published in the *Gazette*, invite representations on the matter within a period stated and take into consideration all representations so submitted.

PART III

Miscellaneous

Implied warranty on sale of marked goods

17. Every person who sells any goods to which a trade mark or trade description has been applied shall be deemed to warrant that the mark is a genuine trade mark and not forged or falsly applied or that the trade description is not a false trade description, as the case may be, unless the contrary is expressed in writing signed by the seller or on his behalf and delivered at the time of the sale to and accepted by the purchaser.

Sale of goods in bottles marked with owner's name

18. No person shall sell in any bottle, to which or to the stopper of which have been indelibly applied words indicating that the bottle is the property of a named person, goods resembling or so nearly resembling goods manufactured or produced for sale in any such bottle by such named person as to be likely to deceive.

Appointment of inspectors and powers of police officers and inspectors

19.—(1) The Minister may appoint any person to be an inspector for the purposes of this Act.

(2) Any inspector who produces a certificate of his appointment under subsection (1) or any police officer may, at any time during the hours when the premises are open for business, enter any premises on which he has reason to believe there are kept for sale any goods, whether imported into or manufactured in Malaŵi, and, on giving a receipt therefor, may, without payment, take and remove samples of any such goods for examination or inspection or for any other purpose relating to this Act.

(3) A police officer or inspector taking a sample in terms of subsection (2) shall forthwith notify the person on whose premises the sample is taken, or his agent, that the sample is taken in pursuance of this Act and shall, if required so to do at the time of giving such notification, select a second like sample or, if practicable, divide the sample into two parts and mark and seal and leave with that person or agent either the second sample or one part of the divided sample.

(4) Any sample taken by a police officer or inspector under the powers conferred upon him by subsection (3) shall, whenever possible, be returned by him to the person from whose premises it was removed or to his agent.

(5) No person shall obstruct a police officer or inspector in the execution of the powers conferred upon such officer or such inspector by this section.

Evidence

20.—(1) Any invoice or other document submitted or used by an importer or any other person in connexion with the importation of goods in respect of which a prosecution is brought under this Act may be produced as evidence in any criminal proceedings without calling the person who prepared or signed it.

(2) In any prosecution for an offence under the provisions of this Act, evidence that any imported goods were shipped at any port of call shall be *prima facie* evidence that those goods were made or produced in the country within which that port is situated.

(3) Where, in any prosecution for a contravention of this Act, the consent of the proprietor of a trade mark is a relevant issue, the onus of proving the consent of such proprietor shall lie on the accused.

Aiding and abetting offences

21. No person shall within Malaŵi procure, counsel, aid, abet or be accessory to the commission outside Malaŵi of any act which, if committed in Malaŵi, would be an offence under this Act.

Limitation of prosecution

22. No prosecution for any offence under this Act shall be commenced after the expiration of a period of three years reckoned from the date on which the offence was alleged to have been committed or one year next after the first discovery thereof by an inspector, police officer, or customs officer, whichever expiration first happens.

Offences and penalties

23. Subject to this Act, any person who contravenes or fails to comply with any provision of this Act shall be liable—

(*a*) on first conviction, to a fine of £100 and to imprisonment for one year;

(*b*) on the second or any subsequent conviction, to a fine of £200 and to imprisonment for two years.

Forfeiture

24.—(1) Upon conviction of an offender under this Act, the judge or magistrate presiding at the trial may, in addition to passing sentence, declare any goods in respect or by means of which the offence was committed to be forfeited, unless the owner of the goods or any person acting on his behalf or other person interested in the goods shows cause to the contrary.

(2) If any goods in respect or by means of which it is suspected that an offence under this Act has been committed are seized by a police officer under any law and taken before a magistrate, and, if no prosecution is instituted following that seizure, the magistrate shall, on application by a police officer, cause a notice to be published in the *Gazette* and in a newspaper circulating in his District stating that, unless cause is shown to the contrary at the time and place named in the notice, such goods shall be declared forfeited.

(3) At such time and place, the magistrate may, unless the owner of the goods or any person acting on his behalf or other person interested in the goods shows cause to the contrary, declare such goods to be forfeited.

(4) Any goods declared to be forfeited under this section shall, without compensation, vest in the Government and may, by direction of the Minister of Finance, be sold or destroyed or appropriated to the Government.

SUBSIDIARY LEGISLATION

NOTE

The Merchandise Marks (*Section* 7 *Suspension*) *Notice,* 1960 (*G.N.* 74/1960)(*F*)*), made under section* 7*, is not published here as it is to be replaced shortly.*

MERCHANDISE MARKS (SECTION 8 SUSPENSION) NOTICE

G.N. 190/1960(F) 200/1962(F)

under s. 8 (2)

1. This notice may be cited as the Merchandise Marks (Section 8 Suspension) Notice. Citation

2. The operation of section 8 (1) of the Act is suspended in relation to the following goods:— Goods

Milk which—

(*a*) is produced by dairy herds in which each and every animal clearly shows the characteristics of the Jersey or Guernsey breed of dairy cattle with a complete absence of any other breed characteristic; and

(*b*) contains a minimum of 13 per centum total milk solids and a minimum of 4.25 per centum milk fat,

to which there is applied the following offending mark:—

Channel Island

3. The operation of section 8 (1) of the Act is suspended in relation to the following classes of goods:— Classes of goods

(*a*) "Innoxa" toilet preparations, including liquid perfumery, powders, washes, pomatums, cosmetics, pastes, dyes and hair oils, but not including tooth powders, tooth pastes and tooth washes;

(*b*) "Innoxa" perfumes containing more than 2 per centum of alcohol by volume at a temperature of 51 degrees Fahrenheit,

to which there is applied a trade mark or trade description containing a direct or indirect reference to any of the following places:—

London
Paris
Sydney

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An Act to make Provision Relating to the Registration of Designs and for other purposes Incidental thereto.

12 of 1958 (F)
9 of 1985
G.N 5/1964(M)
166/1967

[1st December, 1958]

Preliminary

1. This Act may be cited as the Registered Designs Act. Short title

2.—(1) In this Act, unless inconsistent with the context— Interpretation

"article" means any article of manufacture and includes any part of an article if that part is made and sold separately;

"artistic work" means a work of any of the following descriptions, that is to say—

(*a*) the following, irrespective of artistic quality, namely, paintings, sculptures, drawings, engravings and photographs;

(*b*) works of architecture, being either buildings or models for buildings;

(*c*) works of artistic craftsmanship, not falling within paragraph (*a*) or (*b*);

"assignee" means—

(*a*) the person who has derived his title to the design for Malaŵi directly or indirectly from the proprietor thereof or from the latter's assignee; or

(*b*) the legal representative of such person;

"Convention" means the Union Convention of Paris, dated the 20th March, 1883, for the Protection of Industrial Property, revised at Brussels on the 14th December, 1900, at Washington on the 2nd June, 1911, at The Hague on the 6th November, 1925, and at London on the 2nd June, 1934, and any revision thereof to which Malaŵi may accede in terms of section 7 of the Patents Act; Cap. 49:02

"convention country" means a country (including any colony, protectorate or territory subject to the authority or under the suzerainty of that country, or any territory over which a mandate or trusteeship is exercised) which has been declared to be a convention country in terms of the Patents Act;

"copyright", in relation to a registered design, has the meaning assigned to it by section 14(1);

"corresponding design", in relation to an artistic work, means a design which, when applied to an article, results in a reproduction of that work;

"Court" means the High Court;

"design" means features of shape, configuration, pattern or ornament applied to an article by any industrial process or

means, being features which in the finished article appeal to and are judged solely by the eye, but does not include a method or principle of construction or features of shape or configuration which are dictated solely by the function which the article to be made in that shape or configuration has to perform;

"Designs Office" means the Designs Office established under section 3;

"legal representative means—

(*a*) the liquidator or receiver of a company;

(*b*) the representative recognized by law of any person who has died, become insolvent or bankrupt, assigned his estate, is an infant or a minor, or of unsound mind, or is otherwise under a disability;

"Patent Journal" means the journal for which provision is made in section 95 of the Patents Act;

"proprietor" has the meaning assigned to it by section 8;

"register" means the register of designs kept under this Act;

"registered proprietor" means the person or persons for the time being entered in the register as the proprietor of the design;

"Registrar" means the Registrar of Designs appointed under section 4;

"set of articles" means a number of articles of the same general character ordinarily on sale or intended to be used together, to each of which the same design, or the same design with modifications or variations not sufficient to alter the character or substantially to affect the identity thereof, is applied;

"Tribunal" means the Patents Tribunal established under the Patents Act.

Cap 49:02.

(2) Any reference in this Act to an article in respect of which a design is registered shall, in the case of a design registered in respect of a set of articles, be construed as a reference to any article of that set.

(3) Any question arising under this Act whether a number of articles constitutes a set of articles shall be determined by the Registrar; and notwithstanding anything in this Act any determination of the Registrar under this subsection shall be final.

PART I

Administration

Establishment of Designs Office

3. There shall be established under the direction of the Minister an office to be called the Designs Office.

Appointment of officers

4. There shall be appointed—

(*a*) a Registrar of Designs who shall exercise the powers and perform the duties assigned to the Registrar by this Act and shall be responsible for its administration; and

(*b*) one or more Deputy Registrars of Designs who shall, subject to the control of the Registrar, have all the powers conferred by this Act upon the Registrar; and

(*c*) such examiners and other officers as the Minister may consider necessary for carrying out this Act.

Seal Cap. 49:02

5. The seal of the Patent Office kept in terms of the Patents Act shall also be the seal of the Designs Office, and impressions thereof made for the purposes of this Act shall be judicially noticed.

Register of Designs

6.—(1) There shall be kept at the Designs Office for the purposes of this Act a register of designs wherein shall be entered all registered designs with the names and addresses of their proprietors, notifications of assignments and transmissions, and such other matters relating to registered designs as may be prescribed or as the Registrar may think fit.

(2) Subject to this Act, the register of designs shall, at all convenient times, be open to inspection by the public, and certified copies, sealed with the seal of the Patent Office, of any entry in the register shall be given to any person requiring them on payment of the prescribed fee.

(3) The register of designs shall be *prima facie* evidence of any matters required or authorized by or under this Act to be entered therein.

(4) No notice of any trust, whether expressed, implied or constructive, shall be entered in the register, and the Registrar shall not be affected by any such notice.

PART II

Registrable Designs and Proceedings for Registration

Designs registrable under Act

7.—(1) Subject to the following provisions of this section, a design may, upon application made by the person claiming to be the proprietor, his assignee or legal representative, be registered under this Act in respect of any article or set of articles specified in the application.

(2) Subject to this Act, a design shall not be registered thereunder unless it is new or original and in particular shall not be so registered in respect of any article if it is the same as a design which before the date of the application for registration appears on the register or has been published in Malaŵi in respect of the same or any other article or differs from such a design only in immaterial details or in features which are variants commonly used in trade.

(3) Regulations made by the Minister under this Act may provide for excluding from registration thereunder designs for such articles, being articles which are primarily literary or artistic in character, as the Minister thinks fit.

Designs registered under the Protocol 9 of 1985

7A.—(1) A design registered under the Protocol shall, subject to the provisions of the Protocol, have effect in Malaŵi as if it were a design registered under this Act.

(2) In this section, "Protocol" means the Protocol on Patents and Designs within the Framework of the Industrial Property Organization for English-speaking Africa adopted on 10th December, 1982, at Harare in the Republic of Zimbabwe to which Malaŵi acceded on 3rd January, 1984, and any revision thereof to which Malaŵi has acceded.

Proprietorship of designs

8.—(1) Subject to this section, the author of a design shall be treated for the purposes of this Act as the proprietor of the design:

Provided that where the design is executed by the author for another person for valuable consideration, that other person shall be treated for the purposes of this Act as the proprietor.

(2) Where a design, or the right to apply a design to any article, becomes vested, whether by assignment, transmission or operation of law, in any person other than the original proprietor, either alone or jointly with the original proprietor, that other person, or, as the case may be, the original proprietor and that other person, shall be treated for the purposes of this Act as the proprietor of the design or as the proprietor of the design in relation to that article.

Proceedings for registration

9.—(1) An application for the registration of a design shall be made in the prescribed form and shall be lodged at the Designs Office in the prescribed manner.

(2) For the purpose of deciding whether a design is new or original, the Registrar may make such searches, if any, as he thinks fit.

(3) The Registrar may refuse any application for the registration of a design or may register the design in pursuance of the application subject to such modifications, if any, as he thinks fit.

(4) An application which, owing to any default or neglect on the part of the applicant, has not been completed so as to enable registration to be effected within such time as may be prescribed shall be deemed to be abandoned.

(5) Except as otherwise expressly provided by this Act, a design when registered shall be registered as of the date on which the application for registration was made, or such other date (whether earlier or later than that date) as the Registrar may in any particular case direct:

Provided that no proceedings shall be taken in respect of any infringement of copyright in that design committed before the date on which the certificate of registration thereof under this Act is issued.

(6) An appeal shall lie from any decision of the Registrar under subsection (3).

Registration of same design in respect of other articles, etc.

10.—(1) Where the registered proprietor of a design registered in respect of any article makes an application—

(*a*) for registration in respect of one or more other articles, of the registered design; or

(*b*) for registration in respect of the same or one or more other articles, of a design consisting of the registered design with modifications or variations not sufficient to alter the character or substantially to affect the identity thereof,

the application shall not be refused and the registration made on that application shall not be invalidated by reason only of the previous registration or publication of the registered design:

Provided that the period of copyright in a design registered by virtue of this section shall not extend beyond the expiration of the original and any extended period of copyright in the original registered design.

(2) Where any person makes an application for the registration of a design in respect of any article and either—

(*a*) that design has been previously registered by another person in respect of some other article; or

(*b*) the design to which the application relates consists of a design previously registered by another person in respect of the same or some other article with modifications or variations not sufficient to alter the character or substantially to affect the identity thereof,

then, if at any time while the application is pending the applicant becomes the registered proprietor of the design previously registered, subsection (1) shall apply as if at the time of making the application the applicant had been the registered proprietor of that design.

Provisions for secrecy of certain designs

11.—(1) Where an application for the registration of a design has been made, and it appears to the Registrar that the design is one of a class notified to him by the Minister as relevant for defence purposes, he may give directions for prohibiting or restricting the publication of information with respect to the design, or the communication of such information to any person or class of persons specified in the directions.

(2) Regulations shall be made by the Minister under this Act for securing that the representation or specimen of a design in the case of which directions are given under this section shall not be open to inspection at the Designs Office during the continuance in force of the directions.

(3) Where the Registrar gives any such directions as aforesaid, he shall give notice of the application and of the directions to the Minister, and thereupon the following provisions shall have effect, that is to say—

(*a*) the Minister shall, upon receipt of such notice, consider whether the publication of the design would be prejudicial to the defence of Malaŵi and unless a notice under paragraph (*c*) has previously been given by the Minister to the Registrar, shall reconsider that question before the expiration of nine months from the date of lodging of the application for registration of the design and at least once in every subsequent year;

(*b*) for the purpose aforesaid, the Minister may, at any time after the design has been registered or with the consent of the applicant, at any time before the design has been registered, inspect the representation or specimen of the design lodged in pursuance of the application;

(*c*) if upon consideration of the design at any time it appears to the Minister that the publication of the design would not, or would no longer, be prejudicial to the defence of Malaŵi, the Minister shall give notice to the Registrar to that effect;

(*d*) on the receipt of any such notice the Registrar shall revoke the directions and may, subject to such conditions, if any, as he thinks fit, extend the time for doing anything required or authorized to be done by or under this Act in connexion with the application or registration, whether or not that time has previously expired.

(4) No person ordinarily resident or domiciled in Malaŵi shall, while in Malaŵi, except under the authority of a written permit granted by or on behalf of the Registrar, make or cause to be made any application outside Malaŵi for the registration of a design of any class prescribed for the purposes of this section unless—

(*a*) an application for registration of the same design has been made in Malaŵi not less than six weeks before the application outside Malaŵi; and

(*b*) either no directions have been given under subsection (2) in relation to the application in Malaŵi or all such directions have been revoked.

(5) If any person fails to comply with any direction given under this section or makes or causes to be made an application for the registration of a design in contravention of this section, he shall be guilty of an offence.

(6) Where an offence under this section is committed by a body corporate, every person who at the time of the commission of the offence is a director, general manager, secretary or other similar officer of the body corporate, or is purporting to act in any such capacity, shall be deemed to be guilty of that offence unless he proves that the offence was committed without his consent or connivance and that he exercised all such diligence to prevent the commission of the offence as he ought to have exercised having regard to the nature of his functions in that capacity and to all the circumstances.

Provisions as to confidential disclosure, etc.

12.—(1) An application for the registration of a design shall not be refused, and the registration of a design shall not be invalidated, by reason only of—

(*a*) the disclosure of the design by the proprietor to any other person in such circumstances as would make it contrary to good faith for that other person to use or publish the design;

(*b*) the disclosure of the design in breach of good faith by any person other than the proprietor of the design;

(*c*) in the case of a new or original textile design intended for registration, the acceptance of a first and confidential order for goods bearing the design; or

(*d*) the communication of the design by the proprietor thereof to a Government department or to any person authorized by the Minister to consider the merits of the design, or of anything done in consequence of such a communication.

(2) Where copyright under any written law relating to copyright subsists in an artistic work, and an application is made by, or with the consent of, the owner of that copyright for the registration of a corresponding design, that design shall not be treated for the purposes of this Act as being other than new or original by reason only of any use previously made of the artistic work, unless—

(*a*) the previous use consisted of or included the sale, letting for hire, or offer for sale or hire of articles to which the design in question (or a design differing from it only as mentioned in section 7 (2)) had been applied industrially, other than articles of a description specified in regulations made under section 7 (3); and

(*b*) that previous use was made by, or with the consent of, the owner of the copyright in the artistic work.

Convention arrangements

13.—(1) Any person who qualifies under Article 2 or 3 of the Convention and who has applied for protection for any design in a convention country, or his legal representative or assignee (if such assignee is also so qualified), may make an application for registration of that design in priority to other applicants; and the registration shall have the same date as the date of the application in the convention country or, where more than one such application for protection has been made, the date of the first such application:

Provided that—

(*a*) the application for registration is made within six months from the date of the application for protection in the convention country or, where more than one such application for protection has been made, from the date of the first application;

(*b*) no proceedings shall be taken in respect of any infringement of copyright in that design committed before the date on which the certificate of registration thereof under this Act is issued.

(2) An application for the registration of a design made by virtue of this section shall not be refused, and the registration of a design on such an application shall not be invalidated, by reason only of the registration or publication of the design in Malaŵi during the period specified in subsection (1) (*a*) as that within which the application for registration may be made.

(3) Where an applicant referred to in subsection (1) has applied for protection for any design by an application which, in accordance with the law of any convention country, is equivalent to an application duly made in that convention country, he shall be deemed for the purposes of this section to have applied in that convention country.

PART III

Effect of Registration, etc.

Right given by registration

14.—(1) The registration of a design under this Act shall give to the registered proprietor the copyright in the registered design, that is to say, the exclusive right in Malaŵi to make or import for sale or for use for the purposes of any trade or business, or to sell, hire or offer for sale or hire, any article in respect of which the design is registered, being an article to which the registered design or a design not substantially different from the registered design has been applied, and to make anything for enabling any such article to be made as aforesaid.

(2) Subject to this Act, the registration of a design shall have the same effect against the Government as it has against a subject.

Period of copyright

15.—(1) Copyright in a registered design shall, subject to this Act, subsist for a period of five years from the date of registration.

(2) The Registrar shall extend the period of copyright for a second period of five years from the expiration of the original period and for a third period of five years from the expiration of the second period if an application for extension of the period of copyright for the second or third period is made in the prescribed form before the expiration of the original period or the second period, as the case may be, and if the prescribed fee is paid before the expiration of the relevant period or within such further period (not exceeding three months) as may be specified in a request made to the Registrar and accompanied by the prescribed additional fee.

(3) Where in the case of a registered design it is shown—

(*a*) that the design, at the time when it was registered, was a corresponding design in relation to an artistic work in which copyright subsisted under any written law;

(*b*) that, by reason of a previous use of that artistic work, the design would not have been registrable under this Act but for section 12 (2); and

(*c*) that the copyright in that work under any written law relating to copyright expired before the date of expiry of the copyright in the design,

the copyright in the design shall, notwithstanding anything in this section, be deemed to have expired at the same time as the copyright in the artistic work, and shall not be renewable after that time.

Exemption of innocent infringer from liability for damages

16.—(1) In proceedings for the infringement of copyright in a registered design damages shall not be awarded against a defendant who proves that at the date of the infringement he was not aware, and had no reasonable ground for supposing, that the design was registered; and a person shall not be deemed to have been aware or to have had reasonable ground for supposing as aforesaid by reason only of the marking of an article with the word "registered" or any abbreviation thereof, or any word or words expressing or implying that the design applied to the article has been registered, unless the number of the design accompanied the word or words or the abbreviation in question.

(2) Nothing in this section shall affect the power of the Court to grant an injunction in any proceedings for infringement of copyright in a registered design.

Compulsory licence in respect of registered design

17.—(1) At any time after a design has been registered any person interested may apply to the Registrar for the grant of a compulsory licence in respect of the design on the ground that the design is not applied in Malaŵi by any industrial process or means to the article in respect of which it is registered to such an extent as is reasonable in the circumstances of the case; and the Registrar may make such order on the application as he thinks fit.

(2) An order for the grant of a licence shall, without prejudice to any other method of enforcement, have effect as if it were a deed executed by the registered proprietor and all other necessary parties, granting a licence in accordance with the order.

(3) No order shall be made under this section which would be at variance with any of the provisions of the Convention.

(4) An appeal shall lie from any order of the Registrar under this section.

PART IV

Use of Registered Designs for Services of Government, etc.

Use of registered designs for services of the Government

18.—(1) Notwithstanding anything in this Act, any Government department or any person authorized in writing by the Minister may use any registered design for the services of the Government in accordance with this section.

(2) If and so far as the design has before the date of registration thereof been duly recorded by or applied by or on behalf of a Government department otherwise than in consequence of the communication thereof directly or indirectly by the registered proprietor or any person from whom he derives title, any use of the design by virtue of this section may be made free of any royalty or other payment to the registered proprietor.

(3) If and so far as the design has not been so recorded or applied as aforesaid, any use of the design made by virtue of this section at any time after the date of registration thereof, or in consequence of any such communication as aforesaid, shall be made upon such terms as may be agreed upon, either before or after the use, between the Minister and the registered proprietor with the approval of the Minister of Finance, or as may in default of agreement be determined by the Tribunal on a reference under section 21 (1).

(4) The authority of the Minister in respect of a design may be given under this section either before or after the design is registered and either before or after the acts in respect of which the authority is given are done, and may be given to any person, whether or not he is authorized directly or indirectly by the registered proprietor to use the design.

(5) Where any use of a design is made by a Government department or any person authorized by the Minister under this section, then, unless it appears to the Minister that it would be contrary to the public interest so to do, the Minister shall notify the registered proprietor as soon as practicable after the use is begun, and furnish him with such information as to the extent of the use as he may from time to time require.

(6) For the purposes of this Part any use of a design for the supply to the government of any country outside Malaŵi in pursuance of any agreement or arrangement between the Government of Malaŵi and the government of that country, of articles required for the defence of that country shall be deemed to be a use of the design for the services of the Government, and the power of a Government department or a person authorized by the Minister under this section to use a design shall include power—

(*a*) to sell such articles to the government of any country in pursuance of any such agreement or arrangement as aforesaid; and

(*b*) to sell to any person any articles made in the exercise of the powers conferred by this section which are no longer required for the purpose for which they were made.

(7) The purchaser of any articles sold in the exercise of powers conferred by this section, and any person claiming through him, shall have power to deal with them in the same manner as if the rights in the registered design were held on behalf of the Government.

Right of third parties in respect of Government use

19.—(1) In this section "exclusive licence" means a licence from a registered proprietor which confers on the licensee or on the licensee and person authorized by him, to the exclusion of all other persons (including the registered proprietor), any right in respect of the registered design.

(2) In relation to any use of a registered design, or a design in respect of which an application for registration is pending, made for the services of the Government—

(*a*) by a Government department or a person authorized by the Minister under section 18; or

(*b*) by the registered proprietor or applicant for registration to the order of a Government department,

the provisions of any licence, assignment or agreement made, whether before or after the commencement of this Act, between the registered proprietor or applicant for registration or any person who derives title from him or from whom he derives title and any person other than a Government department shall be of no effect so far as those provisions restrict or regulate the use of the design, or any model, document or information relating thereto, or provide for the making of payments in respect of any such use, or calculated by reference thereto; and the reproduction or publication of any model or document in connexion with the said use shall not be deemed to be an infringement of any copyright subsisting in the model or document.

(3) Where an exclusive licence granted otherwise than for royalties or other benefits determined by reference to the use of the design is in force under the registered design then—

(*a*) in relation to any use of the design which, but for this section and section 18, would constitute an infringement of the rights of the licensee, section 18 (3) shall have effect as if for the reference to the registered proprietor there were substituted a reference to the licensee; and

(*b*) in relation to any use of the design by the licensee by virtue of an authority given under section 18, that section shall have effect as if subsection (3) thereof were omitted.

(4) Subject to subsection (3), where the registered design or the right to apply for or obtain registration of the design has been assigned to the registered proprietor in consideration of royalties or other benefits determined by reference to the use of the design, then—

(*a*) in relation to any use of the design by virtue of section 18, subsection (3) of that section shall have effect as if the reference to the registered proprietor included a reference to the assignor, and any sum payable by virtue of that subsection shall be divided between the registered proprietor and the assignor in such proportion as may be agreed upon between them or as may in default of agreement be determined by the Tribunal or a reference under section 21; and

(*b*) in relation to any use of the design made for the services of the Government by the registered proprietor to the order of a Government department, section 18 (3) shall have effect as if that use were made by virtue of an authority given under that section.

(5) Where, under section 18 (3), payments are required to be made by a Government department to a registered proprietor in respect of any use of a design, any person being the holder of an exclusive licence under the registered design (not being such a licence as is mentioned in subsection (3) of this section) authorizing him to make that use of the design shall be entitled to recover from the registered proprietor such part, if any, of those payments as may be agreed upon between that person and the registered proprietor, or as may in default of agreement be determined by the Tribunal under section 21 to be just having regard to any expenditure incurred by that person—

(*a*) in developing the said design; or

(*b*) in making payments to the registered proprietor, other than royalties or other payments determined by reference to the use of the design, in consideration of the licence;

and if, at any time before the amount of any such payment has been agreed upon between the Government department and the registered proprietor that person gives notice in writing of his interest to the department, any agreement as to the amount of that payment shall be of no effect unless it is made with his consent.

Special provisions as to Government use during emergency

20.—(1) In this section "period of emergency" means any period beginning on such date as may be declared by the Minister by notice published in the *Gazette* to be the commencement, and ending on such date as may be so declared to be the termination, of a period of emergency.

(2) During any period of emergency the powers exercisable in

relation to a design by a Government department or a person authorized by the Minister under section 18, shall include power to use the design for any purpose which appears to the Minister necessary or expedient—

(*a*) for the efficient prosecution of any war in which Malaŵi may be engaged;

(*b*) for the maintenance of supplies and services essential to the life of the community;

(*c*) for securing a sufficiency of supplies and services essential to the well-being of the community;

(*d*) for promoting the productivity of industry, commerce and agriculture;

(*e*) for fostering and directing exports and reducing imports or imports of any classes, from all or any countries and for redressing the balance of trade;

(*f*) generally for ensuring that the whole resources of the community are available for use, and are used, in a manner best calculated to serve the interests of the community; or

(*g*) for assisting the relief of suffering and the restoration and distribution of essential supplies and services in any part of the Commonwealth or any foreign countries that are in grave distress as the result of war;

and any reference in this Part to the services of the Government shall be construed as including a reference to the purposes aforesaid.

Reference of disputes as to Government use

21.—(1) Any dispute as to—

(*a*) the exercise by a Government department or a person authorized by the Minister of the powers conferred by section 18;

(*b*) the terms for the use of a design for the services of the Government thereunder; or

(*c*) the right of any person to receive any part of a payment made in pursuance of section 18 (3),

may be referred to the Tribunal by any party to the dispute in such manner as may be prescribed.

(2) In any proceedings under this section to which a Government department is a party, the Government department may—

(*a*) if the registered proprietor is a party to the proceedings, apply for cancellation of the registration of the design upon any ground upon which the deletion of a design may be ordered by the Tribunal under section 24;

(*b*) in any case, put in issue the validity of the registration of the design without applying for its cancellation.

(3) If in such proceedings as aforesaid any question arises whether a design has been recorded or applied as mentioned in section 18 and the disclosure of any document recording the design, or of any evidence of the application thereof, would, in the opinion of the Government department, be prejudicial to the public interest, the disclosure may be made confidentially to counsel appearing for the other party or to an independent expert agreed upon by the parties.

(4) In determining under this section any dispute between a Government department and any person as to terms for the use of a design for the services of the Government, the Tribunal shall have regard to any benefit or compensation which that person or any person from whom he derives title may have received, or may be entitled to receive, directly or indirectly from any Government department in respect of the design in question.

PART V

Assignments, Corrections and Cancellation

Registration of assignments, etc.

22.—(1) Where any person becomes entitled by assignment, transmission or operation of law to a registered design or to a share in a registered design, or becomes entitled as mortgagee, licensee or otherwise to any other interest in a registered design, he may apply to the Registrar in the prescribed manner for the registration of his title as proprietor or co-proprietor or, as the case may be, of notice of his interest, in the register.

(2) Without prejudice to subsection (1), an application for the registration of the title of any person becoming entitled by assignment to a registered design or a share in a registered design, or becoming entitled by virtue of a mortgage, licence or other instrument to any other interest in a registered design, may be made in the prescribed manner by the assignor, mortgagor, licensor or other party to that instrument, as the case may be.

(3) Where application is made under this section for the registration of title of any person, the Registrar shall, upon proof of title to his satisfaction—

(*a*) where that person is entitled to a registered design or a share in a registered design, register him in the register as proprietor or co-proprietor of the design, and enter in that register paticulars of the instrument or event by which he derives title; or

(*b*) where that person is entitled to any other interest in the registered design, enter in that register notice of his interest, with particulars of the instrument, if any, creating it.

(4) Subject to any rights vested in any other person of which notice in entered in the register of designs, the person or persons registered as proprietor of a registered design shall have power to assign, grant licences under, or otherwise deal with the design, and to give effectual receipts for any consideration for any such assignment, licence or dealing.

(5) Except for the purposes of an application to rectify the register under this Act, a document in respect of which no entry has been made in the register under subsection (3) shall not be admitted in any proceedings as evidence of the title of any person to a registered design or share of or interest in a registered design unless the Tribunal or Court concerned otherwise directs.

Power of Registrar to authorize corrections

23.—(1) The Registrar may authorize the correction of any clerical error or omission or error in translation in any application for the registration or in the representation of a design, or any error in the register.

(2) A correction may be made in pursuance of this section, either upon a request in writing made by any person interested and accompanied by the prescribed fee, or without such a request.

(3) Where it is proposed to make a correction otherwise than upon such a request, the Registrar shall give notice of the proposal to the registered proprietor or the applicant for registration of the design, as the case may be, and to any other person who appears to him to be concerned, and shall give any such person an opportunity of being heard before the correction is made.

Rectification of register

24.—(1) The Tribunal may, on the application of any person aggrieved, order the register to be rectified by the making of any entry therein or the variation or deletion of any entry therein.

(2) The Tribunal may determine any question which it may be necessary or expedient to decide in connexion with the rectification of the register.

(3) Notice of any application to the Tribunal under this section shall be given in the prescribed manner to the Registrar and to any other person appearing from the register to be interested in the design and the Registrar and any such person shall be entitled to appear and be heard on the application.

(4) A notice of any order made by the Tribunal under this section shall be served on the Registrar in the prescribed manner, and the Registrar shall, on receipt of the notice, rectify the register accordingly.

Cancellation of registration

25.—(1) The Registrar may, upon a request made in the prescribed manner by the registered proprietor, cancel the registration of a design.

(2) At any time after a design has been registered any person interested may apply to the Registrar for the cancellation of the registration of the design on the ground that—

(*a*) the design was not, at the date of the registration thereof, new or original;

(*b*) the design, at the time when it was registered, was a corresponding design in relation to an artistic work in which copyright subsisted under any written law relating to copyright;

(*c*) by reason of a previous use of that artistic work, the design would not have been registrable under this Act but for section 12 (2), or

(*d*) the copyright in that work under any written law relating to copyright has expired;

or on any other ground on which the Registrar could have refused to register the design; and the Registrar may make such order on the application as he thinks fit.

(3) An appeal shall lie from any order of the Registrar under subsection (2).

PART VI

Functions of Registrar in Relation to Certain Evidence, Documents and Powers

Evidence of certain entries and documents

26.—(1) A certificate purporting to be signed by the Registrar and certifying that any entry which he is authorized by or under this Act to make has or has not been made, or that any other thing which he is so authorized to do has or has not been done, shall be *prima facie* evidence of the matters so certified.

(2) A copy of any entry in the register or of any representation, specimen or document kept in the Designs Office or an extract from the register or any such document, purporting to be certified by the Registrar and to be sealed with the seal of the Patent Office, shall be admitted in evidence without further proof and without production of the original.

Inspection of registered designs

27.—(1) Subject to this section and to any regulation made by the Minister in pursuance of section 11 (3), the representation or specimen of a design registered under this Act shall be open to inspection at the Designs Office on and after the day on which the certificate of registration is issued.

(2) In the case of a design registered in respect of an article of any class prescribed for the purposes of this subsection, no

representation or specimen of the design lodged in pursuance of the application shall, until the expiration of such period after the day on which the certificate of registration is issued as may be prescribed in relation to articles of that class, be open to inspection at the Designs Office except by the registered proprietor, a person authorized in writing by the registered proprietor, or a person authorized by the Registrar, the Tribunal or by a court:

Provided that where the Registrar proposes to refuse an application for the registration of any other design on the ground that it is the same as the first-mentioned design or differs from that design only in immaterial details or in features which are variants commonly used in the trade, the applicant shall be entitled to inspect the representation or specimen of the first-mentioned design lodged in pursuance of the application for registration of that design.

(3) In the case of a design registered in respect of an article of any class prescribed for the purposes of subsection (2), the representation or specimen of the design shall not, during the period prescribed as aforesaid, be inspected by any person by virtue of this section except in the presence of the Registrar or of an officer acting under him; and except in the case of an inspection authorized by the proviso to that subsection, the person making the inspection shall not be entitled to take a copy of the representation or specimen of the design or any part thereof.

(4) Where an application for the registration of a design has been abandoned or refused, neither the application for registration nor any representation or specimen of the design lodged in pursuance thereof shall at any time be open to inspection at the Designs Office or be published by the Registrar.

Information as to existence of copyright

28. On the request of any person furnishing such information as may enable the Registrar to identify the design, and on payment of the prescribed fee the Registrar shall inform him whether the design is registered, and, if so, in respect of what articles, and whether any extension of the period of copyright in relation to that design has been granted and shall state the date of registration and the name and address of the registered proprietor.

Certificate of registration

29. The Registrar shall grant a certificate of registration in the prescribed form to the registered proprietor of a design when the design is registered.

Copies of certificates of registration

30. The Registrar may, in a case where he is satisfied that the certificate of registration referred to in section 29 has been lost or destroyed, or in any other case in which he thinks it expedient, furnish one or more copies of the certificate.

31. Without prejudice to any provisions of this Act requiring the Registrar to hear any party to proceedings thereunder, or to give to any such party an opportunity to be heard, the Registrar shall give to any applicant for registration of a design an opportunity to be heard before exercising adversely to the applicant any discretion vested in the Registrar by or under this Act.

Exercise of discretionary powers of Registrar

32.—(1) Subject to section 55, evidence in any proceedings before the Registrar under this Act shall be given by affidavit, so, however, that the Registrar may, if he thinks fit in any particular case, take oral evidence on oath in lieu of or in addition to such evidence as aforesaid and may allow any witness to be cross-examined on his affidavit or oral evidence.

Proceedings before Registrar

(2) The powers, rights and privileges of the Registrar in proceedings before him under this Act shall be the same as those conferred upon commissioners by the Commissions of Inquiry Act and sections 9, 10 and 12 of that Act shall, *mutatis mutandis*, apply in relation to the hearing and determination of any matter before the Registrar under this Act and to any person summoned to give evidence or giving evidence before him.

Cap. 18:01

33. In all proceedings before the Registrar under this Act, the Registrar shall have power to award to any party such costs as he may consider reasonable and to direct how and by what parties they are to be paid. Any costs awarded by the Registrar shall be taxed by the registrar of the Tribunal and payment thereof may be enforced in the same manner as if they were costs allowed by the Tribunal.

Power of Registrar to award costs

34. .The Registrar may in any proceeding held before him decide the hours, times and places at which he will sit and he may adjourn any proceedings for such time and to such place as he may think fit.

Power of Registrar to fix time and place of sitting, etc

PART VII

Appeals and Legal Proceedings

35.—(1) Where this Act provides for an appeal from a decision of the Registrar, such appeal shall be made to the Tribunal.

Patents Tribunal to hear appeals

(2) The Tribunal shall in connexion with any proceedings before it under this Act have all the powers of the High Court and without prejudice to the foregoing and to the other powers conferred upon it by this Act the Tribunal shall have power to make any order for the purpose of securing the attendance of any

person, the discovery or production of any documents, or the investigation or punishment of any contempt of court which the High Court has power to make.

(3) The procedure and practice of the Tribunal shall, save as otherwise provided for by rules made under this Part, be those prevailing in the High Court, in so far as the same are applicable, and if any matter should arise which is not contemplated by such procedure, practice or rules, the Tribunal may give instructions regarding the course to be pursued which instructions shall be binding on all parties.

(4) Upon appeal to the Tribunal, the Tribunal may—

(*a*) confirm, set aside or vary the order or decision in question;

(*b*) exercise any of the powers which could have been exercised by the Registrar in proceedings in connexion with which the appeal is brought;

(*c*) make such order as to costs as it may think fit.

(5) For the purpose of this Act, the Tribunal shall sit at such times and places as it may appoint.

(6) In any proceedings before it, the Tribunal may, subject to section 55, accept evidence by affidavit or take oral evidence on oath and allow any witness to be cross-examined on his affidavit or oral evidence.

Right of audience

36. In any proceedings before the Tribunal under this Act, the parties to such proceedings may appear in person, or be represented and appear by a legal practitioner, and in any case where the Tribunal deems fit it may grant to the Registrar leave to intervene and he may thereafter appear or be so represented.

Assessors

37. The Tribunal may appoint any person with special expert knowledge to act as an assessor in an advisory capacity in any case where it appears to such Tribunal that such knowledge is required for the proper determination of the case.

Rules

38. The Minister may make rules for regulating generally the practice and procedure of the Tribunal and with respect to appeals or references to such Tribunal as to the time within which any requirement of the rules is to be complied with, as to the costs and expenses of and incidental to any proceedings in such Tribunal, as to the fees to be charged in respect of proceedings therein, as to the fees to be paid to assessors, and in particular may make rules providing for the summary determination of any appeal which appears to the Tribunal to be frivolous or vexatious or to be brought for the purpose of delay.

Time for appeals

39. Appeals under this Part, whether from decisions of the Registrar or orders or decisions of the Tribunal, shall be brought within three months after the date of the decision or order in question, or within such further time as the Tribunal or Court may allow upon application by the appellant concerned.

References to Tribunal by Registrar

40. When any matter to be decided by the Registrar under this Act appears to him to involve a point of law or to be of unusual importance or complexity, he may, after giving notice to the parties, refer such matter to the Tribunal for a decision and shall thereafter, in relation to such matter, act in accordance with the decision of the Tribunal or any decision substituted therefor on appeal to any court.

Certification of validity

41. In any legal proceeding in which the validity of the registration of a design is contested and is decided in favour of the registered proprietor of the design, the Tribunal or Court may certify to that effect and, if it so certifies, then, in any subsequent legal proceeding in which the validity of the registration comes into question, the registered proprietor of the design, on obtaining a final order or judgment in his favour, shall have his full costs, charges and expenses as between solicitor and client, unless in that subsequent proceeding the Tribunal or Court directs that he ought not to have them.

Infringement action to be heard in High Court

42. Any action or legal proceeding relating to the infringement in Malaŵi of copyright in a registered design shall be brought in the High Court.

Remedy for groundless threats of infringement proceedings

43.—(1) Where any person (whether entitled to or interested in a registered design or an application for registration of a design or not) by circulars, advertisements or otherwise threatens any other person with proceedings for infringement of the copyright in a registered design, any person aggrieved thereby may bring an action against him in the High Court for any such relief as is mentioned in subsection (2).

(2) Unless in any action brought by virtue of this section the defendant proves that the acts in respect of which proceedings were threatened constitute or, if done, would constitute, an infringement of the copyright in a registered design, the registration of which is not shown by the plaintiff to be invalid, the plaintiff shall be entitled to the following relief, that is to say—

(*a*) a declaration to the effect that the threats are unjustifiable;

(*b*) an injunction against the continuance of the threats; and

(*c*) such damages, if any, as he has sustained thereby.

(3) For the avoidance of doubt, it is hereby declared that a mere notification that a design is registered does not constitute a threat of proceedings within the meaning of this section.

(4) The defendant in any such action as aforesaid may apply, by way of counterclaim in the action, for any relief to which he would be entitled in a separate action in respect of any infringement by the plaintiff of the design to which the threats relate.

Security for costs and taxation of costs

44.—(1) When a party to proceedings before the Registrar or the Tribunal or an appellant is resident outside Malaŵi, the Registrar or the Tribunal may order such party or appellant to give security, within such time as may be directed, for the costs of the proceedings or appeal.

(2) If the party or appellant ordered to give security for costs fails to do so within the time directed, the Registrar or the Tribunal may treat the proceedings or appeal as abandoned.

(3) Where a bond is to be given as security for costs, it shall, unless the Registrar or the Tribunal otherwise directs, be given to the party requiring the security.

(4) Unless otherwise agreed between the parties, any costs awarded in terms of section 35 (4) shall be taxed by the Registrar of the Tribunal in accordance with rules made under this Part which taxation shall be subject to appeal to the Tribunal, and any such costs may be recovered by action in a court of competent jurisdiction.

Costs of Registrar

45. In all proceedings before the Tribunal under this Act, the costs of the Registrar shall be in the discretion of the Tribunal, but the Registrar shall not be ordered to pay the costs of any of the other parties.

Appeals to High Court

46.—(1) Any party to any proceedings before the Tribunal may appeal in accordance with rules made under this Part from any order or decision of such Tribunal to the High Court.

(2) Upon the hearing of an appeal under this section, the High Court may, without prejudice to its other powers—

(*a*) confirm, set aside or vary the order or decision in question;

(*b*) remit the proceedings to the Tribunal with such instructions for further consideration, report, proceedings or evidence as the High Court may think fit to give;

(*c*) exercise any of the powers which could have been exercised by the Tribunal in the proceedings in connexion with which the appeal is brought;

(*d*) make such order as it may think just as to the costs of the appeal or of earlier proceedings in the matter before the Tribunal.

PART VIII

Offences and Penalties

Falsification of entries in register

47. Any person who makes or causes to be made a false entry in the register, or a writing falsely purporting to be a copy of an entry in the register, or who produces or tenders or causes to be produced or tendered in evidence any such writing, knowing the entry or writing to be false, shall be guilty of an offence.

Penalty for falsely representing a design as registered

48.—(1) Any person who—

(*a*) falsely represents that a design applied to any article sold by him is registered in respect of that article; or

(*b*) after the copyright in a registered design has expired, marks any article to which the design has been applied with the word "registered," or any word or words implying that there is a subsisting copyright in the design, or causes any such article to be so marked,

shall be liable to a fine of £50 and to imprisonment for six months.

(2) For the purpose of this section a person who sells an article on which he has, or has caused to have, stamped, engraved or impressed or to which he has, or has caused to have, otherwise applied the word "registered", or any other word expressing or implying that the design is registered, shall be deemed to represent that the design applied to the article is registered in respect of that article.

Deceiving or influencing the Registrar or an officer

49.—(1) Any person who—

(*a*) for the purpose of deceiving the Registrar or any other officer of the Designs Office in the execution of this Act; or

(*b*) for the purpose of procuring or influencing the doing or omission of anything in relation to this Act or any other matter thereunder,

makes or submits a false statement or representation, whether orally or in writing, knowing the same to be false, shall be guilty of an offence.

(2) Any person who, having innocently made a false statement or representation, whether orally or in writing, for the purpose of procuring or influencing the doing or omission of anything in relation to this Act or any matter thereunder and who on

becoming aware that such statement or representation was false fails to advice the Registrar forthwith of such falsity, shall be guilty of an offence.

Witness giving false evidence

50. Any person who, after having been sworn or having in lieu thereof made an affirmation or declaration, wilfully gives false evidence before the Registrar or the Tribunal concerning the subject-matter of the proceeding in question, knowing such evidence to be false or not knowing or believing it to be true, shall be guilty of an offence.

Penalties

51. Save where otherwise provided in this Act, any person who is guilty of an offence under this Act shall be liable to a fine of £500 and to imprisonment for three years.

PART IX

Miscellaneous

Recognition of agents

52. Where by this Act any act has to be done by or to any person in connexion with a design or any procedure relating thereto, the act may under and in accordance with the regulations or, in particular cases, by special leave of the Registrar be done by or to an agent of that person duly authorized in the prescribed manner.

Lodging and authentication of documents

53.—(1) Any application, notice or document authorized or required under this Act to be lodged, made or given at the Designs Office or to the Registrar or to any other person may be delivered by hand or sent by registered post.

(2) No authentication shall be required in respect of any document lodged in the Designs Office under this Act or used in proceedings before the Tribunal.

Provisions as to fees

54.—(1) Where under this Act—

(*a*) a fee is payable in respect of the performance of any act by the Registrar, the Registrar shall not perform that act until the fee has been paid;

(*b*) a fee is payable in respect of the doing of any act by any person other than the Registrar, the act shall be deemed not to have been done until the fee has been paid; or

(*c*) a fee is payable in respect of the lodging of a document, the document shall be deemed not to have been lodged until the fee has been paid.

(2) All fees shall be paid at the Designs Office in such manner as the Registrar, with the approval of the Minister, may accept.

55. Any person who is required under this Act to take any oath or swear to the truth of any affidavit may, in lieu thereof, make an affirmation or declaration in accordance with the law relating to affirmations or declarations. Oaths and affirmations

56. The Minister may direct the publication by the Registrar in the Patent Journal of any reports of cases on designs and other relevant matters as the Minister may deem fit. Journal

57.—(1) Nothing in this Act shall be construed as authorizing or requiring the Registrar to register a design the use of which would, in his opinion, be contrary to law or morality. Savings

(2) Nothing in this Act shall affect the right of the Government or of any person deriving title directly or indirectly from the Government to sell or use articles forfeited to the Government under any enactment in force in Malaŵi.

58.—(1) The Minister may make regulations prescribing anything which under this Act is to be prescribed and generally for the better carrying out of the objects and purposes of this Act or to give force or effect to its provisions or for its better administration. Power to make regulations

(2) Without derogation from the generality of subsection (1), regulations made by the Minister may provide for—

(*a*) the form of applications for registration of designs and of any representations or specimens of designs or other documents which may be lodged at the Designs Office, and for requiring copies to be furnished of any such representations, specimens or documents;

(*b*) the procedure to be followed in connexion with any application or request to the Registrar, or any proceeding before him, and the authorizing of the rectification of irregularities of procedure;

(*c*) the service of notices and other documents required to be served in connexion with proceedings under this Act;

(*d*) the conduct of the business of the Designs Office;

(*e*) authorizing the publication and the sale of copies or representations of designs and other documents in the Designs Office.

(3) The Minister may prescribe a tariff of the fees which shall be payable in respect of any application, registration or other matter under this Act and the fees shall be payable as so prescribed.

PART X

Application and Transitional Provisions

Application of Act and transitional proceedings

59.—(1) Any design which immediately before the 1st January, 1964, was registered in the former Federation of Rhodesia and Nyasaland under any enactment relating to registered designs and was protected under the former Registered Designs legislation and any design which immediately before the date of commencement of the said legislation was registered in the United Kingdom under any enactment relating to registered designs and was protected in Malaŵi under the United Kingdom Designs (Protection) Ordinance (now repealed) shall be deemed to be registered under this Act and the copyright in that design shall subsist in Malaŵi while copyright therein would have subsisted in the said Federation or subsists in the United Kingdom as the case may be.

20 of 1936

(2) The Registrar may register a design referred to in subsection (1) upon application made before the 31st December, 1964, by a person appearing to the Registrar to be the registered proprietor of that design in terms of the former Registered Designs legislation or of an enactment relating to registered designs in the United Kingdom.

(3) The copyright in a design registered under subsection (2)—

(*a*) shall subsist in Malaŵi until the expiration of the current five-year period for which it would have subsisted at the date of such registration under the said Act or as the case may be for which it is at the date of such registration subsisting in the United Kingdom.

(*b*) may on application be extended in terms of section 15 (2). For the purposes of determining the period for which the copyright may be so extended the date of registration under subsection (2) shall be deemed to be the date of registration in the said Federation or in the United Kingdom as the case may be.

(4) Every application under this section shall be made in the prescribed form and shall be accompanied by the prescribed fee.

(5) In this section, the expression "the former Registered Designs legislation" means this Act as in force from time to time prior to the 1st January, 1964.

SUBSIDIARY LEGISLATION

APPOINTMENT NOTICE

G.N. 235/1965

under s. 4

The Minister has appointed—

(*a*) the Registrar General to be Registrar of Designs;

(*b*) the Assistant Registrar General to be Deputy Registrar of Designs.

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under ss. 7 *and* 58

G.N
273/1958(F)
5/1964(M)
166/1967
78/1980
47/1992
43/1997
35/2000
5/2006

Preliminary

Citation

1. These Regulations may be cited as the Registered Designs Regulations.

Interpretation

2. In these Regulations, unless inconsistent with the context—

"agent" means an agent duly authorized to the satisfaction of the Registrar;

"Office" means the Designs Office;

"specimen" means an article with the design applied to it;

"textile article" means textile piece goods, handkerchiefs and shawls, and includes such other classes of articles of a similar character as the Registrar may from time to time decide.

PART I

Application for Registration of Designs

Form of application

3.—(1) An application for the registration of a design shall be signed by the applicant or his agent. The application shall be in form No. 1 or No. 2 or, in the case of a design to be applied to a set of articles, in form No. 3 or No. 4, as the case may be.

(2) Where it is desired to register the same design in respect of more than one article, a separate application shall be made in respect of each article. In that case each application shall be numbered separately and shall be treated as a separate and distinct application.

(3) Every application shall state the article to which the design is to be applied and that the applicant claims to be the proprietor thereof.

(4) Except in the case of an application to register a design to be applied to a textile article, to wallpaper or to lace, the application shall further be accompanied by a statement of the features of the design for which novelty is claimed.

(5) For the purposes of section 59 (2) an application shall be made in form No. 1 or No. 3, as the case may be, subject to such modifications as the Registrar may approve.

Endorsement as to novelty

4. The applicant shall, if required by the Registrar in any case so to do, endorse on each of the representations or specimens a statement satisfactory to the Registrar of the novelty claimed for the design.

Application for registration under section 10

5. If the application is for the registration of a design which has already been registered in respect of one or more articles, or consists of a registered design with modifications or variations not sufficient to alter the character or substantially to affect the identity thereof, and it is desired to claim the protection of section 10 for such application, it shall contain the number or numbers of the registration or registrations already effected.

Represent-tions or specimens to be furnished with application

6.—(1) There shall be furnished in connexion with an application to register a design four identical representations of the design, in a form satisfactory to the Registrar, or four specimens. Where representations are supplied the Registrar may at any time before registration require specimens or additional representations.

(2) There shall be furnished in connexion with an application for the registration of a design to be applied to a set of articles four identical representations of the design, in a form satisfactory to the Registrar, or four specimens.

(3) The representations of the design to be applied to a set of articles shall show the design as applied to each different article included in the set.

Preparation of representa-tions

7.—(1) Each representation of the design, whether to be applied to a single article or to a set of articles, shall be upon paper of the size prescribed by regulation 35 and not on cardboard and shall appear on one side only of the paper. The figure or figures shall be placed in an upright position on the sheet. When more figures than one are shown, these shall where possible be on one and the same sheet, and each shall be designated perspective view, front view, side view, plan or otherwise, as the case may be.

(2) When the representations furnished are drawings or tracings, they shall be in ink, and if on tracing cloth or tracing paper shall be mounted on paper of the size prescribed by regulation 35.

(3) Where words, letters or numerals appear in the design but are not of the essence of the design, they shall be removed from the representations or specimens; where they are of the essence of the design the Registrar may require the insertion of a disclaimer of any right to their exclusive use.

(4) Each representation of a design which consists of a

repeating surface pattern shall show the complete pattern and a sufficient portion of the repeat in length and width, and shall not be of less size than 7 inches by 5 inches.

In certain cases representations to be furnished in place of speciments

8. When specimens are furnished and are not, in the Registrar's opinion, of a kind which can be conveniently mounted in a flat position by means of an adhesive upon paper, or by stitching on linen-backed sheets of paper of the size prescribed by regulation 35 and stored without damage to other documents, representations shall be furnished in place of specimens.

Portraits of President, armorial bearings, etc.

9.—(1) Where a portrait of the President, or a reproduction of the armorial bearings, insignia, orders of chivalry, decorations or flags of any country, city, borough, town, place, society, body corporate, institution or person appears on a design, the Registrar, before proceeding to register the design, shall, if he so requires, be furnished with a consent to the registration and use of such portrait or reproduction from such official or other person as appears to the Registrar to be entitled to give consent, and in default of such consent he may refuse to register the design.

(2) Where the name or portrait of a living person appears on a design, the Registrar shall be furnished, if he so requires, with consent from such person before proceeding to register the design. In the case of a person recently dead the Registrar may call for consent from his legal representative before proceeding with the registration of a design on which the name or portrait of the deceased person appears.

Designs excluded from registration under section 7 (3)

10. There shall be excluded from registration under the Act designs to be applied to any of the following articles, namely—

(*a*) works of sculpture other than casts or models used or intended to be used as models or patterns to be multiplied by any industrial process;

(*b*) wall plaques and medals; and

(*c*) printed matter primarily of a literary or artistic character, including bookjackets, calendars, certificates, coupons, dressmaking patterns, greeting cards, leaflets, maps, plans, postcards, stamps, trade advertisements, trade forms, and cards, transfers and the like.

Convention applications

11.—(1) An application for registration under section 13 shall contain a declaration that the application in a convention country upon which the applicant relies is the first application made in a convention country in respect of the design, whether by the applicant or by any person of whom he claims to be the legal

representative or assignee, and shall specify the convention country in which such foreign application was made, or is to be deemed under section 13 (3) to have been made, and the official date thereof.

(2) In addition to the representations or specimens lodged with every convention application there shall be lodged with the application or within three months thereafter a copy of the representation of the design filed or deposited in respect of the first application in a convention country, duly certified by the official chief or head of the Designs Office of the convention country, or otherwise verified to the satisfaction of the Registrar.

(3) If any certificate or other document relating to the application is in a foreign language, it shall be accompanied by a translation thereof in the English language verified to the satisfaction of the Registrar.

(4) Save as provided by this regulation, all proceedings in connexion with a convention application shall be taken within the times and in the manner prescribed by these Regulations.

PART II

Procedure on Receipt of Application for Registration of a Design and Extension of Period of Copyright

Registrar's objections

12.—(1) If the Registrar objects to an application for the registration of a design, he shall inform the applicant of his objections in writing, and unless within two months the applicant applies for a hearing or makes a considered reply in writing to those objections he shall be deemed to have withdrawn his application.

Decision of Registrar

13.—(1) If the applicant applies for a hearing, the decision of the Registrar at such hearing shall be communicated to the applicant in writing.

Procedure on appeal from decision of Registrar

14. If the applicant desires to appeal from the Registrar's decision, he shall within one month from the date of the decision apply to the Registrar in form No. 5, requesting him to state in writing the grounds of, and the materials used by him in arriving at, his decision, Upon receipt of such application the Registrar shall send to the applicant such statement as aforesaid in writing, and the date when such statement is sent shall be deemed to be the date of the Registrar's decision for the purpose of an appeal.

Certificate of registration

15. The certificate or registration of a design shall be in form No. 6, No. 7, No. 8 or No. 9, whichever is applicable, and may be modified as directed by the Registrar.

Non-completion

16. The time prescribed for the purposes of section 9 (4), which relates to non-completion of an application, shall be twelve months from the date of the application:

Provided that the application may be completed at any time after twelve months but within fifteen months of the date aforesaid, if a request for an extension of time is made in form No. 10 bearing the prescribed fee.

Death of applicant

17. In case of the death of any applicant for the registration of a design after the date of his application, and before registration of the design has been effected, the Registrar may, on being satisfied of the applicant's death, enter in the register, in place of the name, address and nationality of such deceased applicant, the name, address and nationality of the person owning the design on such ownership being proved to the satisfaction of the Registrar.

Extension of period of copyright

18.—(1) An application for extension of the period of copyright for a second .period of five years shall be made in form No. 11, and an application for extension of the period of copyright for a third period of five years shall be made in form No. 12.

(2) An application for extension of the period of copyright in a design registered by virtue of section 10 shall be made before the expiration of the period of copyright in the original registered design current at the date of lodging the application under section 10.

(3) Where an application is made for registration of a design by virtue of section 10 and the period of copyright in the original registered design, current at the date of lodging the said application, expires before the completion of that application, registration shall not be effected until the copyright in the original registered design has been extended for a further period and an application has been lodged for the extension of the period of copyright in the design to be registered.

(4) A request for an enlargement of time for payment of any fee payable for an extension of the period of copyright shall be made in form No. 13.

PART III

Assignments and Compulsory Licences

Application for registration of title under section 22

19.—(1) An application for the registration of the title of any person becoming entitled by assignment, transmission or operation of law to a registered design or to a share in a registered design, or becoming entitled as mortgagee, licensee or otherwise to any interest in a registered design, shall be made—

(*a*) in the case of an application under section 22 (1) by the person becoming so entitled in form No. 14; and

(*b*) in the case of an application under section 22 (2) by the assignor, mortgagor, licensor of other party conferring the interest in form No. 15.

(2) Application may be made in form No. 16 for entry in the register of notification of any other document purporting to affect the proprietorship of a registered design.

Copies of documents

20.—(1) A copy of any document which is referred to in an application under regulation 19, duly certified to the satisfaction of the Registrar, shall be produced to the Registrar with the application.

(2) Unless the Registrar otherwise directs, the original of any other document so referred to shall be produced to him with the application, and a certified copy of any such document shall be lodged therewith, and such original document shall be returned to the person who produced it.

Particulars to be stated in application

21.—(1) An application under regulation 19 (1) shall contain the name, address and nationality of the person claiming or stated to be entitled together with full particulars of the instrument, if any, under which title is claimed or given.

(2) Where the name of a person is entered in the register as mortgagee or licensee, such person may, on making an application for the purpose in form No. 17, have a note entered in the register that he no longer claims to be mortgagee or licensee, as the case may be.

Application for compulsory licence

22. An application for the grant of a compulsory licence under section 17 shall be made in form No. 18. Such application shall be in duplicate and accompanied by a statement in duplicate setting out fully the nature of the applicant's interest and the facts upon which he bases his case. Copies of the application and the statement of case shall be transmitted by the Registrar to the registered proprietor.

Opposition

23.—(1) If the registered proprietor desires to oppose the application he shall, within such time as the Registrar may allow, file a statement fully setting out the grounds on which the application is to be opposed and shall deliver to the applicant a copy thereof.

(2) The applicant shall, within such time as the Registrar may allow, file evidence in support of his case and shall deliver to the registered proprietor a copy thereof.

(3) Within such time as the Registrar may allow, the proprietor may file evidence in answer and shall deliver to the applicant a copy thereof; and within such time as the Registrar may allow, the applicant may file evidence confined to matters strictly in reply and shall deliver to the proprietor a copy thereof.

(4) No further evidence shall be filed by either party except by leave or on direction of the Registrar.

(5) If any person fails to file in terms of this regulation any statement or evidence within the time allowed by the Registrar for the purpose, he shall be deemed to have abandoned his right to file such statement or evidence.

Hearing

24.—(1) On completion of the evidence, or at such other time as he may see fit, the Registrar shall appoint a time for the hearing of the case and shall give the parties at least fourteen days' notice of the appointment.

(2) After hearing the party or parties desiring to be heard or, if none of the parties desires to be heard, then without a hearing, the Registrar shall decide the matter and notify his decision to the parties.

PART IV

Register of Designs

Alteration of entries in register

25.—(1) A request by the registered proprietor of a design for the alteration of a name, nationality, address or address for service entered in the register in respect of his design shall be made in form No. 19 or No. 20, as the case may be.

(2) Before acting on a request to alter a name or nationality, the Registrar may require such proof of the alteration as he may think fit.

(3) If the Registrar is satisfied that the request may be allowed, he shall cause the register to be altered accordingly.

Correction of errors

26. Where an applicant for registration or the registered proprietor of a design desires, under section 23, to correct an error, he shall make the application in form No. 21.

Cancellation of registration

27.—(1) Where the registered proprietor of a design desires to cancel his registration under section 25 (1) he shall make application in form No. 22.

(2) An application for the cancellation of the registration of a design under section 25 (2) shall be made in form No. 23, and shall be accompanied by a copy thereof and a statement in duplicate setting out fully the nature of the applicant's

interest and the facts on which he relies. A copy of the application shall be sent by the Registrar to the registered proprietor and thereupon regulations 23 and 24 shall apply.

Costs

28. In the event of an application for the grant of a compulsory licence or for the cancellation of the registration of a design being uncontested by the proprietor, the Registrar in deciding whether costs should be awarded to the applicant shall consider whether proceedings might have been avoided if reasonable notice had been given by the applicant to the registered proprietor before the application was lodged.

Searches

29.—(1) Where any person desires to obtain the information which he is entitled to obtain under section 28 and can furnish the registration number of the design, he shall apply in form No. 24 and the Registrar shall thereafter funish him with the information aforesaid.

(2) Where the applicant is unable to furnish the registration number of a design, he shall apply in form No. 25 and furnish in duplicate to the Registrar a representation or specimen of the design applied to an article and the Registrar shall thereupon make such search among designs applied to such articles as may be possible, and shall furnish such information as can properly be given.

(3) The Registrar shall, upon application for the purpose made in form No. 26, accompanied in duplicate by a representation or specimen of a design applied to an article, cause a search to be made among registered designs and state whether the design as applied to that article appears to be identical with, or closely to resemble, any registered design applied to such article of which the copyright is still existing.

Certified copies of entries, etc.

30. Copies of any entry in the register, or copies of, or extracts from, designs, representations, specimens and other public documents in the Office, or of or from registers and other records kept there, certified by the Registrar, may be furnished by the Registrar upon receipt of a request therefor in form No. 27 from any person who, if the Registrar thinks fit so to require, can show an interest in the entry, matter or thing to his satisfaction. The Registrar shall not be obliged to include in the certificate a copy of any representation or specimen, unless he is furnished by the applicant with a copy thereof suitable for the purpose.

Copy of certificate of registration

31. An application under section 30 for a copy of a certificate of registration shall be made in form No. 28 and shall be accompanied by evidence setting out fully and verifying the circumstances in which the original certificate of registration was lost or destroyed or cannot be produced.

Designs not open to public inspection

32.—(1) Where the Registrar has given a direction under section 11 (2) prohibiting or restricting the publication of a design, the representation or specimen of the design shall not be open to public inspection while such direction remains in force.

(2) The period under section 27 (2) during which a design shall not be open to inspection, except as provided in that section, shall be, as regards designs to be applied to textile articles, three years and as regards designs to be applied to wallpaper and lace, two years from the date of the registration thereof.

PART V

Miscellaneous

Fees

First Schedule

33. The fees to be paid in respect of the registration of designs and applications therefor, and in respect of other matters relating to designs arising under the Act, shall be those prescribed in the First Schedule.

Forms

34. The forms referred to in these Regulations are those set out in the Second Schedule and such forms shall be used in all cases to which they are applicable and may be modified as directed by the Registrar.

Size, etc., of documents

35. Subject to any directions that may be given by the Registrar, all applications, notices, statements, papers having representations affixed, or other documents authorized or required by the Act to be made, left or sent at or to the Office, shall be written, typewritten, lithographed or printed in the English language upon strong paper, in dark, indelible ink and, except where otherwise required, on one side only, of a size approximately 13 inches by 8 inches, and shall have on the left-hand part thereof a margin of not less than 1½ inches.

Address for service

36. Every person concerned in any proceedings to which these regulations relate, and every registered proprietor, shall furnish to the Registrar an address for service in Malaŵi and that address may be treated for all purposes connected with such proceedings or design as the address of the person concerned in the proceedings or the registered proprietor.

Method and proof of service

37.—(1) Where any notice application or other document is required to be served on any person under the Act, such service may be effected by the delivery of a copy thereof—

(*a*) at the address for service furnished to the Registrar in terms of these Regulations; or

(*b*) to such person personally, or to his duly authorized agent; or

(*c*) at his residence or place of business or employment, to some responsible person there residing or employed.

(2) Service effected by any person in accordance with this regulation shall be proved by a certificate made in form No. 29 and such certificate shall be filed with the Registrar.

Lodging of documents

38. Any notice, application or other document sent to the Office by post shall not be deemed to have been given, made or lodged until it is actually received in the Office.

Power of Registrar to fix time and place of proceedings

39. The Registrar may in any proceedings held before him decide the hours, times and places at which he will sit and he may adjourn any proceedings for such time and to such place as he may think fit.

Agency

40.—(1) Any application, request or notice which is required or permitted by the Act or these Regulations to be made or given to the Registrar, and all other communications between an applicant or a person making such request or giving such notice and the Registrar, and between the registered proprietor of a design and the Registrar or any other person, may be signed, made or given by or through an agent.

(2) Any such applicant, person making request or giving notice, or proprietor may appoint an agent to act for him in any proceedings or matter before or affecting the Registrar under the Act and these Regulations by signing and sending to the Registrar an authority to that effect in form No. 30 or in such other written form as the Registrar may deem sufficient. In case of such appointment, service upon the agent of any document relating to the proceedings or matter shall be deemed to be service upon the person so appointing him, all communications directed to be made to such person in respect of the proceedings or matter may be addressed to such agent, and all attendances upon the Registrar relating thereto may be made by or through such agent. In any particular case the Registrar may require the personal signature or presence of an applicant, opponent, proprietor or other person.

(3) The Registrar shall not be bound to recognize as such agent any person—

(*a*) who has been proved to him to have been guilty of conduct discreditable to an agent; or

(*b*) who has been convicted of a criminal offence and sentenced to imprisonment without the option of a fine; or

(*c*) who has been suspended from practice as a legal practitioner or whose name has been struck off a roll of legal practitioners whether in Malaŵi or elsewhere; or

(*d*) who has been adjudged guilty of conduct discreditable to a patent agent; or

(*e*) who has been suspended from practice as a patent agent, or whose name has been erased from the register of patent agents kept under the Patents Act and not subsequently restored. Cap. 49:02

Signature of documents

41.—(1) A document purporting to be signed for or on behalf of a partnership shall contain the names of all the partners in full and may be signed by a partner or by any other person who satisfies the Registrar that he is authorized to sign the document.

(2) A document purporting to be signed for or on behalf of a body corporate shall be signed by a director or by the secretary or other principal officer of the body corporate, or by any other person who satisfies the Registrar that he is authorized to sign the document.

Amendment of documents

42. Any document lodged in any proceedings before the Registrar may, if the Registrar thinks fit, be amended, and any irregularity in procedure may be rectified on such terms as he may direct.

Power of Registrar to waive requirements

43.—(1) Where, under these Regulations, any person is required to do any act or thing, or any document or evidence is required to be produced or lodged the Registrar may, upon the production of such evidence and subject to such terms and conditions as he may think fit, modify or dispense with the doing of the act or thing or the production or lodging of the document or evidence if he is satisfied that it is reasonable so to do.

(2) The Registrar may allow an application for a design, although not in accordance with these Regulations, to be left on such terms and conditions as he may think fit. In any such case the Registrar shall require the applicant to comply with these Regulations within the time specified by him. Until the prescribed requirements are complied with no further action shall be taken by the Registrar in respect of the application.

Extension of time

44.—(1) If in any particular case the Registrar is satisfied that the circumstances are such as to justify an extension of the time for doing any act or taking any proceedings under these Regulations, not being a time expressly provided in the Act or prescribed by regulation 11 (2), he may extend the time upon

such notice to other parties, and proceedings thereon, and upon such terms as he may direct, and the extension may be granted though the time has expired for doing the act or taking the proceeding.

(2) At any stage of any proceedings before the Registrar, he may direct that such documents, information or evidence as he may require shall be lodged, and may fix the period for the lodging thereof.

Excluded days

45. Whenever the last day fixed by these Regulations for doing any act or thing at the Office shall fall on a day when the Office is not open, such day shall be an excluded day for the purpose of these Regulations, and it shall be lawful to do the act or thing on the first day following such excluded day which is not an excluded day.

Days and hours of business

46. The Office shall be open to the public and the register shall be open to inspection on payment of the fee specified in the First Schedule every weekday, except Saturday, between the hours of nine and twelve, and half past one and half past three, and on Saturday between the hours of nine and twelve; except on public holidays.

Copy of application to Tribunal to be served on Registrar

47. A Copy of every application made to the Tribunal under the Act shall be served on the Registrar.

Order of Court or Tribunal

48.—(1) Where an order relating to a design has been made by any Court or by the Tribunal, the person in whose favour such order has been made shall forthwith file at the Office a certified copy of such order together with an application in form No. 31.

(2) The specimen or representation of a design shall thereupon be amended or the register rectified or the purport of such order shall otherwise be duly entered in the register, as the case may be.

Publication of Order of Court or Tribunal

49. Whenever an order is made by any Court or by the Tribunal under the Act the Registrar may, if he thinks fit that the order should be made public, require the applicant or the appellant, as the case may be, to publish it in the *Gazette*.

FIRST SCHEDULE

reg. 33
G.N. 78/1980
47/1992
43/1997
35/2000

Fees Payable to the Office

The following fees shall be paid in respect of applications, registrations and other matters under the Act. Such fees must in all cases be paid before or at the time of doing the matter in respect of which they are to be paid—

Item	*Matter*	*Amount* K t	*Corresponding Designs Form No.*
1.	(*a*) on application to register one design to be applied to a single article, not being a textile article	250 00	1 or 2
	If made of lace.	100 00	1 or 2
	(*b*) on application to register one design to be applied to a set of articles, not being textile articles	250 00	3 or 4
	If made of lace	150 00	3 or 4
	(*c*) on application to register one design to be applied to a textile article . .	100 00	1 or 2
	(*d*) on application to register a design under section 59 (2) of the Act	450 00	1 or 3
2.	On application to register to state grounds of design and materials used under regulation 14	250 00	5
3.	On request for extension of time within which an application for registration of a design may be completed—		
	(*a*) not exceeding one month	100 00	10
	(*b*) exceeding one month but not exceeding two months	180 00	10
	(*c*) exceeding two months but not exceeding three months but . .	250 00	10
4.	On application for extension of copyright under section 15 (2) of the Act . .	250 00	11 or 12
5.	On request for enlargement of time for payment of fee for extension of copyright—		
	(*a*) not exceeding one month	100 00	13
	(*b*) exceeding one month but not exceeding two months	180 00	13
	(*c*) exceeding two months but not exceeding three months	250 00	13
6.	On request to enter subsequent proprietorship, etc. under regulation 19 made within six months from date of acquisition of proprietorship, etc.—		

Item	*Matter*	*Amount* K t	*Corresponding Designs Form No.*
	(*a*) in respect of one design made after six but within twelve months from date of acquisition of proprietorship, etc. . .	100 00	14 or 15
	(*b*) in respect of one design made after expiration of twelve months from the date of acquisition of proprietorship, etc.	180 00	14 or 15
	(*c*) in respect of one design	250 00	14 or 15
	(*d*) on application covering more than one design, for each additional design similarly acquired	40 00	
7.	On application for entry of notification of document in the register made within six months of date of document—		
	(*a*) in respect of one design made after six but within twelve months from date of document	100 00	16
	(*b*) in respect of one design made after expiration of twelve months from date of document	200 00	16
	(*c*) in respect of one design	250 00	16
	(*d*) on application covering more than one design for each additional design referred to in the same document as the first design	40 00	—
8.	On application of mortgagee, licensee, or other person for entry that he no longer claims such interest—		
	(*a*) in respect of one design	50 00	17
	(*b*) for each additional design	40 00	17
9.	On application for compulsory licence under section 17	450 00	18
10.	On application to enter change of name or nationality of registered proprietor in the register—		
	(*a*) in respect of one design	100 00	19
	(*b*) for each additional design	50 00	19
11.	On application for alteration of address for service in the register—		
	(*a*) in respect of one design	100 00	20
	(*b*) for each additional design	50 00	20

Item	*Matter*	*Amount* K t	*Corresponding Designs Form No.*
12.	On application under section 23 to correct error	100 00	21
13.	On application by proprietor for cancellation under section 25 (1)	100 00	22
14.	On application for cancellation of registration under section 25 (2) . .	80 00	23
15.	On application for search under section 28 when registration number is supplied . .	80 00	24
16.	On application for search under section 28 when registration number is not supplied	100 00	25
17.	On application for search under regulation 29 (3)	100 00	26
18.	On application for a certified copy of entries, etc., under regulation 30 . .	80 00	27
19.	On application for a copy of certificate of registration under regulation 31 . .	80 00	28
20.	On every authorization of an agent . .	50 00	30
21.	On application for, entry of order of court or tribunal	50 00	31
22.	For inspection of register	50 00	
23.	For certifying office copies, MSS or photographic or printed matter—		
	(*a*) under seal	100 00	—
	(*b*) other	80 00	—
24.	For inspecting documents in respect of each application or design	50 00	—
25.	For making copies of documents in respect of each application or design . .	450 00	—
26.	For typewritten copy of any document for every 100 words	40 00	—
27.	For photographic copy of any document or drawing, per sheet	Price as fixed by the registrar from time to time	

SECOND SCHEDULE
Forms

Form	*Matter*	*Corresponding Fee Item No.*
1.	Application for registration of design (non-Convention)	1 (*a*), (*c*) or (*d*)
2.	Application under section 13 of the Act for registration of design (Convention)	1 (*a*) or (*c*)
3.	Application for registration of design to be applied to a set of articles (non-Convention)	1 (*b*) or (*d*)

Form	*Matter*	*Corresponding Fee Item No.*
4.	Application under section 13 of the Act for registration of design to be applied to a set of articles (Convention)	1 (*b*)
5.	Application for statement of grounds of decision under regulation 14	2
6.	Certificate of registration of design	—
7.	Certificate of registration of design	—
8.	Certificate of registration of design	—
9.	Certificate of registration of design	—
10.	Request for extension of time within which an application for the registration of a design may be completed	3
11.	Application for extension of copyright in design for a second period of five years	4
12.	Application for extension of copyright in design for a third period of five years	4
13.	Request for enlargement of time for payment of fee for extension of copyright in design	5
14.	Application under regulation 19 by assignee, mortgagee or licensee to enter subsequent proprietorship or interest in design in the register	6
15.	Application under regulation 19 by assignor mortgagor, licensor, etc., to enter subsequent proprietorship or interest in design in the register	6
16.	Application for entry of notification of document in register	7
17.	Application by mortgagee or licensee under regulation 21(2) for entry in register of note that he no longer claims such interest	8
18.	Application for the grant of a compulsory licence under section 17 of the Act	9
19.	Application to enter alteration of name or nationality of registered proprietor of design in register . . .	10
20.	Application for alteration of address or address for service in register	11
21.	Request under section 23 of the Act for correction of error	12
22.	Application by registered proprietor of design to cancel registration	13
23.	Application for cancellation of registration under section 25 (2) of the Act	14
24.	Request for information under section 28 of the Act when registration number is supplied	15
25.	Request for search under section 28 of the Act when registration number is not supplied	16

Form	*Matter*	*Corresponding Fee Item No.*
26.	Request for search under regulation 29 (3) . .	17
27.	Request for general certificate of Registrar (including certificate of registration of a design)	18
28.	Application for copy of certificate of registration of design	19
29.	Certificate of service	—
30.	Form of authorization of agent	20
31.	Application for entry of order of Court or Tribunal	21

MALAŴI

Designs Form No. 1 — s. 9 or 59 reg. 3

REGISTERED DESIGNS ACT

(CAP. 49:05) — Fee: 1 (*a*)

Application for Registration of Design (Non-Convention)

Application is hereby made for registration of the accompanying design in the name of (1) ..... (1) State full name and address of applicant(s)
.....
of .....
who claim(s) to be the proprietor(s) thereof.

The design is to be applied to (2) .....
.....
.....
.....

(3) The design has been previously registered for one or more other articles under No. .....

(4) The design consists of the design previously registered under No. ..... with modifications or variations not sufficient to alter the character or substantially to affect the identity thereof .....

Dated this ..... day of ..... 19 .....

(5) .....
.....

My/Our address for service in Malaŵi—
.....
.....
.....

The Registrar
The Designs Office
P.O. Box 100
Blantyre

NOTE— Four identical representations or specimens of the design should accompany this form, and, except in the case of an application in respect of a design to be applied to a textile article, to wallpaper or to lace, it should further be accompanied by a statement of the features of the design for which novety is claimed.

MALAŴI

ss. 9 and 13
regs. 3 and 11

Designs Form No. 2

REGISTERED DESIGNS ACT

(CAP. 49:05)

Fee: 1 (*a*) or (*c*)

Application under section 13 of the Act for Registration of Design (*Convention*)

(1) State full name and address of applicant(s)

Application is hereby made for the registration of the accompanying design in the name of (1) .....
.....
of .....

.....
being a national/nationals of .....
who claim(s) to be the proprietor(s) thereof (2) .....
.....
.....
.....
.....
.....
.....
.....

The design is to be applied to a (3) .....
.....
.....

(4) The design has been previously registered for one or more other articles under No. .....

(5) The design consists of the design previously registered under No. ..... with modifications or variations not sufficient to alter the character or substantially to affect the identity thereof.

Application for protection of the design has been made in the following country (6) .....
on the following official date (7) .....
numbered (8) ..... Such application was the first application made in a convention country in respect of the relevant design, whether by the applicant(s) or by any person of whom he/they claim(s) to be the legal representative(s) or assignee(s), and the applicant(s) in the abovementioned country qualify/qualifies under (9) Article 2/3 of the Convention by reason of being (9) a national(s) of/domiciled in/having a place of business in a member state, namely .....

This application is made on the ground that I/we qualify/qualifies under the said (9) Article 2/3 by reason of being (9) a national(s) of/domiciled in/having a place of business in a member state, namely ..... and that to the best of my/our knowledge and belief there is no lawful ground of objection to the registration of the design and that I/we request that the design may be registered as of the date (7) .....

Dated this ..... day of ..... 19 .....

(10) .....
.....

My/Our address for service in Malaŵi:—
.....
.....
.....

The Registrar
The Designs Office
P.O. Box 100
Blantyre

NOTE—Four identical representations or specimens of the design should accompany this form, and, except in the case of an application in respect of a design to be applied to a textile article, to wallpaper or to lace, it should further be accompanied by a statement of the features of the design for which novelty is claimed.

(2) If the applicant is not the person who made the application in the convention country, the words "by virtue of", followed by particulars of the instrument under which he claims, should be inserted here

(3) Here state the article to which the design is to be applied as shown in the representations

(4) and (5) Delete one or both paragraphs, if inapplicable

(6) Here insert the name of the convention country in which the first application was made.

(7) Here insert the official date of the first application in a convention country.

(8) Here insert official number of first application in convention country

(9) Delete whichever does not apply

(10) To be signed by the applicant(s) or his/their agent.

MALAŴI

Designs Form No. 3

Section 9 or 59.
Regulation 3.

REGISTERED DESIGNS ACT Cap. 49:05

Fee: 1 (*b*) or (*d*).

Application for Registration of Design to be Applied to a Set of Articles (Non-Convention)

(1) State full names and addresses of applicant(s)

Application is hereby made for registration of the accompanying design for a set of articles in the name of (1) .....
.....
of .....
.....
who claim(s) to be the proprietor(s) thereof.

(2) Here state the set of articles, and also the trade description of each of the articles comprised in the set to which the design is to be applied as shown in the representations

The design is to be applied to (2) .....
.....
.....
.....
.....
.....
.....

(3) The design has been previously registered for one or more other articles under No. .....

(4) The design consists of the design previously registered under No. ..... with modifications or variations not sufficient to alter the character or substantially to affect the identity thereof.

(3) and (4) Delete one or both paragraphs, if inapplicable

Dated this ..... day of ..... 19 .....

(5) .....
.....

(5) To be signed by the applicant(s) or his/their agent

My/Our address for service in Malaŵi:—
.....
.....
.....

The Registrar
The Designs Office
P.O. Box 100
Blantyre

NOTE—Four identical representations or specimens of the design should accompany this form, and, except in the case of an application in respect of a design to be applied to a textile article, to wallpaper or to lace, it should further be accompanied by a statement of the features of the design for which novelty is claimed.

Registered Designs Regulations **[Subsidiary]**

MALAŴI

Designs Form No. 4

ss. 9 and 13
regs. 3 and 11

REGISTERED DESIGNS ACT

(CAP. 49:05)

Fee: 1 (b)

Application under section 13 of the Act for Registration of Design to be Applied to a Set of Articles (*Conventio*)

Application is hereby made for the registration of the accompanying design in the name of (1) .....
.....
of .....
.....
being a national/nationals of .....
who claim(s) to be the proprietor(s) thereof (2) .....
.....
.....
.....
.....

The design is to be applied to a (3) .....
.....
.....
.....
.....

(4) The design has been previously registered for one or more other articles under No. .....

(5) The design consists of the design previously registered under No. ..... with modifications or variations not sufficient to alter the character or substantially to affect the identity thereof.

Application for protection of the design has been made in the following country (6) .....
on the following official date (7) .....
numbered (8) ..... Such application was the first application made in a convention country in respect of the relevant design, whether by the applicant(s) or by any person of whom he/they claims to be the legal representative(s) or assignee(s), and the applicant(s) in the abovementioned country qualify/qualifies under (9) Article 2/3 of the Convention by reason of being (9) a national(s) of/domiciled in/having a place of business in a member state namely.....
.....

This application is made on the ground that I/We qualify/qualifies under the said (9) Article 2/3 by reason of being (9) a national(s) of/domiciled in/having a place of business in a member state, namely ..... and that to the best of my/our knowledge and belief there is no lawful ground of objection to the registration of the design and that I/We request that the design may be registered as of the date (7) .....

Dated this ..... day of ....., 19.....,

(10) .....
.....

(1) State full name and address of applicant(s)
(2) If the applicant is not the person who made the application in the convention country, the words "by virtue of", followed by particulars of the instrument under which he claims, should be inserted here
(3) Here state the set of articles, and also the trade description of each of the articles comprised in the set, to which the design is to be applied as shown in the representations
(4) and (5) Delete one or both paragraphs, if inapplicable
(6) Here insert the name of the convention country in which the first application was made
(7) Here insert the official date of the first application in a convention country
(8) Here insert official number of first application in convention country

(9) Delete whichever does not apply

My/Our address for service in Malaŵi:—

.....

.....

.....

(10) To be signed by the applicant(s) or his/their agent

The Registrar
The Designs Office
P.O. Box 100
Blantyre

NOTE—Four identical representations or specimens of the design should accompany this form, and, except in the case of an application in respect of a design to be applied to a textile article, to wallpaper or to lace, it should further be accompanied by a statement of the features of the design for which novelty is claimed.

MALAŴI

Designs Form No. 5 s. 9
reg. 14

REGISTERED DESIGNS ACT

(CAP. 49:05)

Fee: K100

Application for Statement of Grounds of Decision under regulation 14

Application for Design No. .....

Application is hereby made under regulation 14 of the Registered Designs Regulations for a statement in writing of the grounds of the decision dated the ..... day of ..... 19 ..... after the hearing on the ..... day of ..... 19 ..... and the materials used in arriving at such decision .....

Dated this ..... day of ....., 19.....

(1) .....

.....

(1) To be signed by the applicant(s) or his/their agent

My/Our address for service in Malaŵi:—

.....

.....

.....

The Registrar
The Designs Office
P.O. Box 100
Blantyre

MALAŴI

Designs Form No. 6.

REGISTERED DESIGNS ACT, CAP. 49:05

Certificate of Registration of Design

Number of Registration .....

This is to certify that, in pursuance of and subject to the provisions of the Registered Designs Act the design, of which a representation is annexed, has been registered in the name of .... as of the ..... day of ..... 19 ....., in respect of the application of such design to.....

Sealed at my direction, this ..... day of ..... 19 .....

.....

Registrar

The Designs Office
P.O. Box 100
Blantyre

NOTE—Subject to the Act, copyright in this design will subsist for five years from the first abovementioned date, and may be extended for two further periods, each of five years.

MALAŴI

Designs Form No. 7.

REGISTERED DESIGNS ACT, Cap. 49:05

Certificate of Registration of Design

Number of Registration .....

This is to certify that, in pursuance of and subject to the Registered Designs Act the design, of which a representation is annexed, has been registered in the name of .... as of the ..... day of ..... 19 ....., in respect of the application of such design to.....

The period of copyright conferred by the registration of this design does not extend beyond the expiration of the original and any extended period of copyright in registered design No. .....

Sealed at my direction, this ..... day of ..... 19 .....

.....

Registr ar

The Designs Office
P.O. Box 100
Blantyre

NOTE—Copyright in this design will normally expire on the ..... but may, on application made in the prescribed manner, be extended for two further periods, each of five years, provided that the period of copyright in design No. ..... be similarly extended.

[Subsidiary] *Registered Designs Regulations*

MALAŴI

Designs Form No. 8.

REGISTERED DESIGNS ACT, CAP. 49:05

Certificate of Registration of Design

Number of Registration .....

This is to certify that, in pursuance of and subject to the Registered Designs Act the design, of which a representation is annexed, has been registered in the name of .....
.....
as of the ..... day of ..... 19.....
being the date on which application was made for protection of the design in a convention country, viz. .....
..... in respect of the application of such design to
.....

Sealed at my direction, this ..... day of ..... 19 .....

.....
Registrar

The Designs Office
P.O. Box 100
Blantyre

NOTE—Subject to the Act, copyright in this design will subsist for five years from the first abovementioned date, and may be extended for two further periods, each of five years.

MALAŴI

Designs Form No. 9.

REGISTERED DESIGNS ACT, CAP. 49:05

Certificate of Registration of Design

Number of Registration .....

This is to certify that, in pursuance of and subject to the Registered Designs Act the design, of which a representation is annexed, has been registered in the name of .....
.....
as of the ..... day of ..... 19.....
being the date on which application was made for protection of the design in a convention country, viz. .....
..... in respect of the application of such design to
.....

The period of copyright conferred by the registration of this design does not extend beyond the expiration of the original and any extended period of copyright in registered design No. .....

Sealed at my direction, this ..... day of ..... 19 .....

.....
Registrar

The Designs Office
P.O. Box 100
Blantyre

NOTE—Copyright in this design will normally expire on the ,..... but may, on application made in the prescribed manner, be extended for two further periods, each of five years, provided that the period of copyright in design No. ..... be similarly extended.

MALAŴI

Designs Form No. 10 s. 9 (4)
reg. 16

REGISTERED DESIGNS ACT

(CAP. 49:05)

Fee: K3

Request for Extension of Time within which an Application for the Registration of a Design may be completed

I/We hereby apply for ..... month's extension of time within which the application No. ..... for the registration of a design may be completed.

Dated this ..... day of ....., 19 .....

(1) .....
.....
.....

(1) State name and full address to which receipt is to be sent

The Registrar
The Designs Office
P.O. Box 100
Blantyre

MALAŴI

Designs Form No. 11

s. 15 (2)
reg. 18

REGISTERED DESIGNS ACT

(CAP. 49:05)

Fee: K80

Application for Extension of Copyright in Design for a Second Period of Five Years

I/We hereby apply for the extension of the period of copyright in design No. ..... for a second period of five years.

Dated this ..... day of ....., 19 .....

(1) .....
.....
.....

(1) State name and full address to which certificate is to be sent

The Registrar
The Designs Office
P.O. Box 100
Blantyre

(*This part of the form to be filled in at the Designs Office*)

Certificate of Extension of Copyright in Design for the Second Period of Five Years

This is to certify that ..... did on the ..... day of ....., 19 ....., make application and pay the prescribed fee for the extension of copyright in design No. ..... and that the copyright is hereby extended for a second period of five years until the ..... day of ....., 19 .....

Sealed at my direction, this ..... day of ..... 19 .....

.....

Registrar

The Designs Office
P.O. Box 100
Blantyre

MALAŴI

Designs Form No. 12 s. 15 (2)
reg. 18

REGISTERED DESIGNS ACT

(Cap 49:05)

Fee: K80

Application for Extension of Copyright in Design for a Third Period of Five Years

I/We hereby apply for the extension of the period of copyright in the design No. ..... for a third period of five years.

Dated this ..... day of ....., 19 .....

(1) State name and full address to which certificate is to be sent

(1) .....
.....
.....

The Registrar
The Designs Office
P.O. Box 100
Blantyre

(*This part of the form to be filled in at the Designs Office*)

Certificate of Extension of Copyright in Design for the Third Period of Five Years

This is to certify that ..... did on the ..... day of ....., 19 ....., make application and pay the prescribed fee for the extension of copyright in the design No ..... and that the copyright is hereby extended for a third period of five years until the ..... day of ....., 19 .....

design No. ..... and that the copyright is hereby extended

Sealed at my direction, this ..... day of ..... 19 .....

.....
Registrar

The Designs Office
P.O. Box 100
Blantyre

MALAŴI

Designs Form No. 13. Section 15 (2).
Regulation 18 (4).

REGISTERED DESIGNS ACT, Cap. 49:05

Fee: 5.

Request for Enlargement of Time for Payment of Fee for Extension of Copyright in Design

I/We hereby request ..... months' enlargement of time within which payment of the fee of £ ..... for the extension of the copyright in design No. ..... may be made.

Dated this ..... day of ....., 19 .....

(1) ..... (1) State name and full address to which receipt is to be sent
.....
.....

The Registrar
The Designs Office
P.O. Box 100
Blantyre

MALAŴI

Designs Form No. 14. Section 22 (1)
Regulation 19 (1) (*a*).

REGISTERED DESIGNS ACT, CAP. 49:05

Fee: 6.

Application under Regulation 19 by Assignee, Mortgagee or licensee to enter subsequent Proprietorship or Interest in Design in the Register

I/We (1) .....

(1) State full name and address

.....

.....

hereby request that you will enter my/our name(s) in the register as proprietor(s)/mortgagee(s)/licensee(s) of the design No. .....

I am/We are entitled to the said design (or to a share or an interest in the said design) in pursuance of (2) .....

(2) Insert full particulars of the instrument, if any

.....

.....

Dated this ..... day of ....., 19.....

(3) .....

(3) To be signed by the applicant(s) or his/their agent

.....

My/Our address for service in Malaŵi

.....

.....

.....

The Registrar
The Designs Office
P.O. Box 100
Blantyre

NOTE—The instrument under which the applicant claims should accompany this form.

MALAŴI

Designs Form No. 15. Section 22 (2).
Regulation 19 (1) (*b*).

REGISTERED DESIGNS ACT, Cap. 49:05

Fee : 6.

Application under Regulation 19 by Assignor, Mortgagor, Licensor etc., to enter subsequent Proprietorship or Interest in Design in the Register

I/We (1) .....

..... (1) State full name and address

.....

hereby request that you will enter the name(s) of (2) ..... (2) Here insert name, address and nationality of assignee, etc.

.....

.....

.....

in the register as subsequent proprietor(s)/mortgagee(s)/licensee (s) of the design No. .....

He is/They are entitled to the said design (or to a share or interest in the said design) by virtue of (3) ..... (3) Insert full particulars of the instrument if any.

.....

.....

The address for service in Malaŵi of the subsequent proprietor, mortgagee or licensee, etc., is (4) ..... (4) Here insert the address for service in Malaŵi of the subsequent proprietor, mortgagee, licensee, etc

.....

.....

Dated this ..... day of ....., 19.....

(5) ..... (5) To be signed by the applicant(s) or his/their agent.

.....

The Registrar
The Designs Office
P.O. Box 100
Blantyre

MALAŴI

Designs Form No. 16. Section 6 or 22.
Regulation 19 (2).

REGISTERED DESIGNS ACT, Cap. 49:05

Fee : 7.

Application for Entry of Notification of Document in Register

I/We transmit herewith an attested copy of (1) .....
.....
.....
.....
.....
.....
.....
relative to design No. ..... as well as the original document for verification, and I/we apply that a notification thereof may be entered in the register.....

Dated this ..... day of ....., 19 .....

(2) .....

(3) .....
.....
.....

The Registrar
The Designs Office
P.O. Box 100
Blantyre

(1) Here insert a description of the nature of the document, giving its date and the names and addresses of the parties thereto

(2) Signature

(3) Here insert full address of the party benefiting under the document

---

MALAŴI

Designs Form No. 17. Section. 22.
Regulation 21 (2).

REGISTERED DESIGNS ACT, Cap. 49:05

Fee: 8.

Application by Mortgagee or Licensee under Regulation 21 (2) *for Entry in Register of Note that he no longer claims such Interest*

Design No. .....
Name of registered proprietor.....
Place of business.....
.....

I/We, the undersigned, ...
of .....
apply for entry in the register that I/we no longer claim to be mortgagee(s) or licensee(s) in respect of design No. .....

Dated this ..... day of ....., 19 .....

(1) .....
.....

The Registrar
The Designs Office
P.O. Box 100
Blantyre

(1) To be signed by the applicant(s) or his/their agent

MALAŴI

Designs Form No. 18 s. 17
reg. 22

REGISTERED DESIGNS ACT

(CAP. 49:05)

Fee : K100

Application for the Grant of a Compulsory Licence under section 17 *of the Act*

Design No. .....

I/We .....
.....
of .....
hereby apply for the grant of a compulsory licence in respect of design No. ..... on the ground that the design is not applied in Malaŵi by any industrial process or means to the article in respect of which it is registered to such an extent as is reasonable in the circumstances of the case.

Dated this ..... day of ....., 19 .....

(1) .....
.....

(1) To be signed by the applicant(s) or his/their agent

My/Our address for service in Malaŵi—
.....
.....
.....

The Registrar
The Designs Office
P.O. Box 100
Blantyre

NOTE—The application must be accompanied by a copy thereof and a statement of case in duplicate.

MALAŴI

Designs Form No. 19 s. 6
reg. 25

REGISTERED DESIGNS ACT

(CAP 49:05)

Fee : K10

Application to enter Alteration of Name or Nationality of Registered Proprietor of Design in Register

I/We .....
.....
hereby apply, in respect of design No. ....., that my/our

(1) Here insert particulars of alteration

name(s) or nationality in the register may be altered to (1) .....
.....

There has been no change in the actual proprietorship of the said design. .....

Dated this ..... day of ....., 19 .....
.....

(2) To be signed by the applicant(s) or his/their agent

(2) .....
.....

My/Our address for service in Malaŵi—
.....
.....
.....

The Registrar
The Designs Office
P.O. Box 100
Blantyre

MALAŴI

Designs Form No. 20

s. 6
reg. 25

REGISTERED DESIGNS ACT

(CAP. 49:05)

Fee: K11

Application for Alteration of Address or Address for Service in Register

Design No. .....

I/We .....
.....
of .....
.....
the registered proprietor(s) of the design numbered as above apply that my/our address or my/our address for service in the register may be altered to.....

Dated this ..... day of ....., 19.....
.....

(1) To be signed by the applicant(s) or his/their agent

(1) .....
.....

The Registrar
The Designs Office
P.O. Box 100
Blantyre

MALAŴI

Designs Form No. 21

s. 23
reg. 26

REGISTERED DESIGNS ACT

(CAP. 49:05)

Fee: K30

Request under section 23 of the Act for Correction of Error

I/We hereby request that the following error .....
.....
.....
in the (1) .....
.....
of design No. ..... may be corrected as follows—
(2) .....

Dated this ..... day of ....., 19.....

(3) .....
.....

My/Our address for service in Malaŵi—

.....
.....
.....

(1) Here state whether in application, representation or entry in register

(2) Here state what correction should be made

(3) To be signed by the applicant(s) or his/their agent

The Registrar
The Designs Office
P.O. Box 100
Blantyre

MALAŴI

Designs Form No. 22

s. 25 (1)
reg. 27 (1)

REGISTERED DESIGNS ACT

(CAP. 49:05)

Fee: K10

Application by Registered Proprietor of Design to Cancel Registration

Design No. .....

Name of registered proprietor .....
.....
Address .....
.....

I/We, the undersigned, ...
of .....
apply that the registration of design No. ..... may be cancelled.

(1) To be signed by the applicant(s) or his/their agent

Dated this ..... day of ....., 19.....

(1) .....
.....

The Registrar
The Designs Office
P.O. Box 100
Blantyre

MALAŴI

Designs Form No. 23

s. 25 (2)
reg. 27 (2)

REGISTERED DESIGNS ACT

(CAP. 49:05)

Fee: K8

Application for Cancellation of Registration under section 25 (2) *of the Act*

Design No. .....

I/We .....
.....
of .....
hereby apply for cancellation of the registration of design No. .....
on the ground that (1) .....
.....
.....

(1) Here state ground(s) on which cancellation is requested

Dated this ..... day of ....., 19.....

(2) To be signed by the applicant(s) or his/their agent

(2) .....
.....

My/Our address for service in Malaŵi—
.....
.....
.....

The Registrar
The Designs Office
P.O. Box 100
Blantyre

NOTE—The application must be accompanied by a copy thereof and a statement of case in duplicate.

MALAŴI

Designs Form No. 24

s. 28
reg. 29 (1)

REGISTERED DESIGNS ACT
(CAP. 49:05)

Fee: K20

Request for Information under section 28 *of the Act when Registration Number is supplied*

I/We hereby request that I/We may be given such information as I/We may be entitled to under section 28 with respect to the design registered under No. .....

Dated this ..... day of ....., 19.....

(1) .....
.....

(1) To be signed by the applicant(s) or his/their agent

Address—
.....
.....
.....

The Registrar
The Designs Office
P.O. Box 100
Blantyre

MALAŴI

Designs Form No. 25

s. 28
reg. 29 (2)

REGISTERED DESIGNS ACT
(CAP. 49:05)

Fee: K30

Request for Search under section 28 *of the Act when Registration Number is not supplied*

I/We hereby request that a search may be made in respect of the design (a representation or specimen of which is annexed hereto in duplicate) applied to (1) .....and that I/we may be given such information as I/we may be entitled to under section 28.

(1) Here insert name of article

Dated this ..... day of ....., 19.....

(2) .....
.....

(2) To be signed by the applicant(s) or his/their agent

Address—
.....
.....
.....

The Registrar
The Designs Office
P.O. Box 100
Blantyre

MALAŴI

Designs Form No. 26

s. 28
reg. 29 (3)

REGISTERED DESIGNS ACT
(CAP. 49:05)

Fee: K30

Request for Search under regulation 29 (3)

I/We hereby request that a search may be made and that I/we may be informed whether the design (a representation or specimen of which is annexed hereto in duplicate) to be applied to (1) .....
.....
appears to be identical with or closely to resemble any registered design applied to such article of which the copyright is still existing.

(1) Here insert name of article

Dated this ..... day of ....., 19.....

(2) .....
.....

(2) To be signed by the applicant(s) or his/their agent

Address—
.....
.....
.....

The Registrar
The Designs Office
P.O. Box 100
Blantyre

MALAŴI

Designs Form No. 27

s. 6 (2)
reg. 30

REGISTERED DESIGNS ACT
(CAP. 49:05)

Fee: K20

Request for General Certificate of the Register

Design No. ....., registered in the name of .....
.....

I/We .....
.....
of .....
hereby request the Registrar to furnish me/us with (1) his certificate that (2) .....
(1) a certificate of registration of the design (1) for use in obtaining registration abroad.

1) Delete words that are not applicable

(2) Here set out the particulars which the Registrar is requested to certify

Dated this ..... day of ....., 19.....

(3) .....
.....

(3) To be signed by the applicant(s) or his/their agent

The Registrar
The Designs Office
P.O. Box 100
Blantyre

MALAŴI

Designs Form No. 28

s. 30
reg. 31

REGISTERED DESIGNS ACT
(CAP. 49:05)

Fee: K20

Application for Copy of Certificate of Registration of Design

I/We have to inform you that the Certificate of Registration of Design No. ..... has been (1) .....
.....
.....
.....
.....
.....

I/We therefore apply for the issue of a copy of such certificate (2)
.....
.....
.....
.....

Dated this ..... day of ....., 19.....

(3) .....
.....

Address—.....
.....
.....
.....

The Registrar
The Designs Office
P.O. Box 100
Blantyre

(1) Here state whether "lost or destroyed" or "cannot be produced", as the case may be,and state in full the circumstances of the case which must be verified by affidavit

(2) Here state interest possessed by applicant(s) in the design

(3) To be signed by the applicant(s) or his/their agent

MALAŴI

Designs Form No. 29

reg. 37 (2)

REGISTERED DESIGNS ACT
(CAP. 49:05)

Certificate of Service

I/We(1) .....
.....
.....
hereby certify that at (2) .....
.....
on the ..... day of ....., 19 ....., at .....
o'clock in the ..... noon, I/We served the following documents

(1) State name and address

(2) State precisely where service was effected

.....
.....
upon .....
by (3) .....
.....

(3) Here describe the method of service

Dated this ..... day of ....., 19 .....

(4) .....

(4) To be signed by the person effecting service

The Registrar
The Designs Office
P.O. Box 100
Blantyre

MALAŴI

Designs Form No. 30

REGISTERED DESIGNS ACT

(CAP. 49:05)

Fee: K10

Form of Authorization of Agent

I/We (1) .....
.....
.....
.....
.....
.....
.....
have appointed (2) .....
of .....
.....
to act as my/our agent for (3) .....
.....
.....
.....
..... No. .....

(1) The full names of all the partners in a firm must be inserted, and the kind and country of incorporation of bodies corporate stated

(2) Here insert name and address of agent

(3) Here state the particular matter or proceeding for which the agent is appointed, giving the reference number, if known

and request that all notices, requisitions and communications relating thereto may be sent to such agent at the above address.

I/We hereby revoke all previous authorizations, if any, in respect of the same matter or proceeding. .....

Dated this ..... day of ....., 19.....

(4) .....

Address— (5) .....
.....

(To be deleted if the person appointing the agent desires his own address to be treated as the address for service after registration).

I/We also authorized the said (2) ..... to complete the entry of an address for service as part of any registration obtained under the above authorization.

Dated this ..... day of ....., 19,,,,,

(4) ....

Address— (5) .....
.....

The Registrar
The Designs Office
P.O. Box 100
Blantyre

(4) To be signed by person appointing the agent

(5) Here insert full trade or business address of the person appointing the agent

---

MALAŴI

Designs Form No. 31

reg. 48

REGISTERED DESIGNS ACT

(Cap. 49:05)

Fee: K10

Application for Entry of Order of Court or Tribunal

I/We (1) .....
.....
.....
in respect of Registered Design/Design Application No. .....
hereby transmit a certified copy of any order by the High Court of ...../by the Tribunal with reference to (2) .....
.....
.....

Dated this ..... day of ....., 19.....

(3) .....
.....

My/Our address for service in Malaŵi—

.....
.....
.....

The Registrar
The Designs Office
P.O. Box 100
Blantyre

(1) State name and address of applicant(s) mortgage

(2) Here state purport of the order sale or mortgage

(3) To be signed by the applicant(s) or his/their agent

REGISTERED DESIGNS (TRIBUNAL) RULES

ARRANGEMENT OF RULES

RULE

PRELIMINARY

1. Title and commencement
2. Interpretation

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3. Entry of appeal
4. Application For an extension of time in which to appeal
5. Notice of hearing
6. Evidence
7. Attendance of witnesses
8. Security on appeal
9. Abandonment or failure to prosecute appeal
10. Frivolous or vexatious appeals

PART II

APPLICATIONS

11. Dispute as to Government use
12. Rectification of register
13. Hearing of applications
14. Evidence by affidavit
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PART II

TAXATION OF COSTS

16. Registrar of Tribunal to be Taxing Officer
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25. Forms
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FIRST SCHEDULE

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Fees

REGISTERED DESIGNS (TRIBUNAL) RULES

G.N. 274/1958(F) 5/1964(M) 166/1967

under s. 38

PRELIMINARY

1. These rules may be cited as the Registered Designs (Tribunal) Rules and shall come into operation on the 1st December, 1958. Citation

2. In these rules, unless inconsistent with the context— Interpretation

"Office" means the Designs Office;

"Chairman" means the Chairman of the Patents Tribunal;

"section" means a section of the Act.

PART I

APPEALS

3.—(1) Any person who desires to appeal to the Tribunal from a decision of the Registrar of Designs in any matter in which a right of appeal is given under the Act shall, within three months after the date of the decision, file with the registrar of the Tribunal a notice in form D.T. No. 1. Entry of appeal

(2) A notice of appeal shall state the nature of the decision appealed against and whether the appeal is from the whole or part only and, if so, what part of the decision, and shall be accompanied by a statement in writing of the appellant's grounds of appeal.

(3) The appellant shall send a copy of the notice of appeal to the Registrar of Designs and to any person or persons who appeared or gave notice of opposition in the proceedings before the said Registrar.

(4) The appellant shall be responsible for the preparation of the record which shall be certified by the Registrar of Designs as correct in terms of subrule (7).

(5) The Registrar of Designs as well as the parties or their legal practitioners shall endeavour to exclude from the record all documents (more particularly such as are purely formal) that are not relevant to the subject matter of the appeal, and generally to reduce the bulk of the record as far as practicable, and to avoid the production of unnecessary exhibits, taking special care to avoid the duplication of documents and the unnecessary repetition of headings, and furnish merely the formal particulars of

documents; but the documents omitted to be copied shall be enumerated in a list to be placed after the index or at the end of the record.

(6) The Registrar of Designs, after consultation with the registrar of the Tribunal, shall direct the number of copies of the record to be prepared, having regard to whether or not one or more assessors are likely to sit upon the hearing of the appeal.

(7) After the completion of the preparation of the record the Registrar of Designs shall certify the record to be correct and forward it to the registrar of the Tribunal together with such copies thereof as he has directed to be prepared in terms of subrule (6).

Application for an extension of time in which to appeal

4.—(1) Any application for an extension of time in which to appeal shall be in form D.T. No. 2 and shall state briefly the grounds upon which the application is based and where facts are alleged such facts shall be verified by affidavit.

(2) The application accompanied by supporting documents shall be delivered to the registrar of the Tribunal and copies shall forthwith be served by the appellant on the Registrar of Designs and on any person or persons who appeared or gave notice of opposition in the proceedings before the said Registrar.

(3) The respondent shall be entitled to file an affidavit in reply within fourteen days from the date of service or within such longer period as may be ordered by the Tribunal, and the Tribunal may permit further affidavits to be filed. Copies of such affidavits shall be served on the Registrar of Designs and on the appellant or the respondent, as the case may be, immediately after the affidavits are filed.

Notice of hearing

5.—(1) The Registrar of the Tribunal shall, after obtaining directions from the Chairman, give to the Registrar of Designs, to the appellant and to any opposing party not less than fourteen days' notice of the time and place appointed for the hearing of the appeal, unless the Chairman directs that shorter notice shall be given.

(2) In any case where the setting down of the hearing of an appeal has been delayed any party may apply to the registrar of the Tribunal to fix a date for the hearing, and thereupon the registrar of the Tribunal, after consulting any other party and the Chairman, shall set down the appeal for hearing after having given to the Registrar of Designs and to any other party not less than fourteen days' notice or such shorter notice of the time and place appointed for the hearing of the appeal as directed by the Chairman.

(3) If in the opinion of the registrar of the Tribunal an appeal is not being prosecuted timeously he may lay the matter before the Chairman for directions and, if the Chairman is satisfied that the parties do not intend or are unable to proceed with the appeal, he may direct that the parties attend before him to show cause why the appeal should not be dismissed.

Evidence

6. Subject to section 35 (6) the evidence used on appeal to the Tribunal shall be the same as that used before the Registrar of Designs, and no further evidence shall be given except with the leave of the Tribunal.

Attendance of witnesses

7. The Tribunal may, at the request of any party, order the attendance at the hearing for the purpose of cross-examination of any person who has given evidence in the matter to which the appeal relates.

Security on appeal

8.—(1) Subject to section 44 any party may, at any time before the hearing of an appeal, apply to the Tribunal for an order that any opposing party shall, within such time, in such amount and in such manner as the Tribunal directs, give security for the payment of any costs which such opposing party may be ordered to pay.

(2) The party applying for an order for security for costs shall serve upon the opposing party a copy of the notice of the application for security at least seven days before the date of the hearing thereof.

(3) Any party ordered to give security for costs in terms of this rule may apply to the Tribunal for an order extending the time within which any security is to be given, and shall give not less than four days' notice of such application to the other party.

(4) In the event of the security not being given or being only partly given within the time directed by the Tribunal or any extension thereof, all proceedings in the appeal shall be deemed to be stayed, unless the Tribunal otherwise orders, and the appeal shall be set down for such order, whether of dismissal or otherwise, as the Tribunal may think fit.

Abandonment or failure to prosecute appeal

9.—(1) An appellant may at any time abandon his appeal by giving notice of abandonment in form D.T. No. 3 to the registrar of the Tribunal and upon such notice being given the appeal shall be deemed to have been dismissed by the Tribunal.

(2) The appellant shall serve a copy of the notice of abandonment on the respondent and on the Registrar of Designs.

(3) The respondent may, upon receipt of such notice, apply to the Tribunal for an order in respect of any costs incurred by him.

Frivolous or vexatious appeals

10. If it appears to the Tribunal that any notice of appeal against a decision of the Registrar of Designs discloses grounds of appeal which are frivolous or vexatious and that the appeal can be determined without a hearing, the Tribunal may dismiss the appeal summarily without calling on any person to attend the hearing of such appeal.

PART II

Applications

Dispute as to Government use

11.—(1) Any reference to the Tribunal under section 21 by a party to a dispute (hereinafter referred to as the "the claimant") shall be made in from D.T. No. 4 and shall be filed with the Registrar of Designs.

(2) The claimant shall by affidavit verify the facts upon which he relies and shall state fully the nature of his interest in the matter in dispute and the relief which he seeks.

(3) The claimant shall serve a copy of his claim and of the relevant affidavit upon the other party to the dispute.

(4) The other party shall within two months from the date of receipt of such copy deliver to the Registrar of Designs a counter-statement, verified by affidavit, setting out fully the nature of his interest and the facts upon which he relies, and shall at the same time serve upon the claimant a copy of the counter statement and of such affidavit.

(5) Proof of service shall be furnished to the satisfaction of the Registrar of Designs.

(6) When this rule has been complied with to the extent herein required, the Registrar of Designs shall hand all relevant papers to the registrar of the Tribunal.

(7) Any party to the dispute may at any time during the proceedings under this rule make application to the Tribunal for an order for the hearing of oral evidence, and the Tribunal shall make such order as it deems fit.

Rectification of register

12. An application for the rectification of the register under section 24 shall be made to the Tribunal in form D.T. No. 5 and a copy thereof shall be served on the Registrar of Designs and on any other person appearing from the register to be interested in the design.

Hearing of applications

13.—(1) When the registrar of the Tribunal has received from the Registrar of Designs the papers or written proceedings in relation to any application or other matter made to the Tribunal under

the Act, he shall, after taking directions from the Chairman, appoint a time and place for the hearing of the case, and shall give the parties at least fourteen days' notice of the appointment.

(2) After hearing the party or parties desiring to be heard or, if none of the parties desires to be heard, then without a hearing, the Tribunal shall decide the case and notify its decision to the parties.

Evidence by affidavit

14.—(1) All evidence shall be by affidavit unless otherwise directed by the Tribunal.

(2) Whenever a time is specified in this Part within which any act or thing is to be done, the Registrar of Designs may, on application made to him in writing, extend the time either before or after its expiration or within any extended period.

Costs

15. If the applicant notifies the Tribunal that he does not desire to proceed with an application, the Tribunal in deciding whether costs should be awarded to the other party shall consider whether proceedings might have been avoided if such other party had given reasonable notice to the applicant before the application to the Tribunal was filed.

PART III

Taxation of Costs

Registrar of Tribunal to be Taxing Officer

16. The registrar of the Tribunal shall be the Taxing Officer for the purpose of taxing a bill of costs of a legal practitioner, and in the taxation of costs shall comply with such instructions as may from time to time be given to him by the Tribunal for that purpose.

Necessary and proper costs to be allowed

17.—(1) With a view to affording the party who has been awarded an order for costs a full indemnity for all costs reasonably incurred by him in relation to his application or opposition, and to ensure that all such costs shall be borne by the party against whom such order has been awarded by the Tribunal, the Taxing Officer shall on every taxation allow all such costs, charges and expenses as appear to him to have been necessary or proper for the attainment of justice or for defending the rights of any party, but, save as against the party who incurred the same, no costs shall be allowed which appear to the Taxing Officer to have been incurred or increased through over-caution, negligence or mistake, or by payment of a special fee to counsel, unless the Tribunal otherwise orders, or special charges and expenses to witnesses or other persons or by other unusual expenses.

(2) Upon the taxation of costs the Taxing Officer may, in determining the remuneration to be allowed, have regard to the skill, labour and responsibility involved. If, on having regard to the said matters, the Taxing Officer considers that there are special reasons why costs in excess of those prescribed in the Second Schedule should be allowed, he may, in respect of any particular application made or business done, allow such costs as seem to him reasonable and shall certify his decision in writing.

(3) Any person aggrieved by the charges made by any legal practitioner in respect of work performed by him under the Act may refer such charges to the Taxing Officer for taxation.

Scale of fees to be followed

18. In the taxation of costs the Taxing Officer shall be guided, as far as the circumstances of each particular case will permit, by the scale of fees prescribed in Part IV of the Second Schedule. In addition to these charges all disbursements shall be separately charged and shall be allowed by the Taxing Officer when reasonable.

Witnesses' charges and allowances

19.—(1) Witnesses requiring payment shall be paid for their attendance and travelling in accordance with the tariff prescribed in Part II of the Second Schedule.

(2) The charges for witnesses as fixed by tariff are to be considered as payable to the witness by the party who summoned or produced him, and in the event of any such party being awarded his costs against any other party the said charges shall be allowed against such other party in the taxation of costs.

(3) Any person applying to the registrar of the Tribunal for the issue of a subpoena to compel the attendance of any witness shall by endorsement of such subpoena give an undertaking that all expenses due to the witness shall be tendered to such witness upon service of the subpoena, failing which no subpoena shall issue. If upon service of the subpoena all expenses due to such witness have not been paid the subpoena shall have no force and effect.

(4) In the taxation of costs between party and party no amount shall be allowed for any witness whether for attendance or travelling expenses unless, there is produced to the Taxing Officer proof that such amount has already been paid or tendered to or claimed by such witness.

(5) In the taxation of costs between party and party nothing shall be allowed for any witness not examined unless upon proof that his evidence might reasonably have been believed to be material and necessary.

(6) If the number of witnesses summoned, or if the number of affidavits filed, is manifestly greater than is reasonably necessary, there shall only be allowed against the other party the charges for such witnesses or affidavits as were reasonably necessary.

(7) In the taxation of costs between party and party no amount shall be allowed for any witness in respect of personal attendance or travelling expenses if the fact or facts which such witness is subpoenaed to prove have, before the issue of such subpoena, been admitted to the party taking out the subpoena by the opposite party:

Provided that such admission shall be in writing, signed by the party making it or his legal practitioner acting on his behalf.

(8) When the same person is a witness in more cases than one heard on the same day, he shall be entitled to no more than one fee for personal attendance and one allowance for travelling expenses, which shall be equally divided between such cases.

Taxation of costs

20.—(1) In all cases where a notice of taxation is necessary, seven days' notice together with a copy of the bill of costs shall be given by the legal practitioner on behalf of the party whose costs are to be taxed to the other party or to the legal practitioner of such other party.

(2) When the dwelling-house or place of business of the party against whom costs are to be taxed is more than thirty-six miles from the seat of the Tribunal, the time for the service of such notice shall be extended to fourteen days.

(3) In the taxation of costs, the notice of taxation with a copy of the bill of costs may be transmitted by registered post to the party appearing in person.

Review of decision of Taxing Officer

21. Any party aggrieved by the decision of the Taxing Officer may apply to the Tribunal within four weeks after the taxation to review such taxation. Copies of the application shall be served on the Taxing Officer and on the opposite party. The application shall specify the items forming the subject of the grievance but the grounds upon which such items are sought to be reviewed shall not require to be verified by affidavit.

Reference to Chairman in chambers

22. The Taxing Officer may, without filing any formal documents, submit any point arising at a taxation for decision by the Chairman in chambers, and it shall be competent for the Taxing Officer and for the legal practitioners who appeared at the taxation to appear before the Chairman respecting such point.

PART IV

General

Adjournment of proceedings

23. The hearing of any application or other matter before the Tribunal may from time to time be adjourned upon such terms as the Tribunal thinks fit.

Place of hearing

24.—(1) Except as provided in subrule (2) every hearing before the Tribunal shall be in Blantyre.

(2) One or more of the parties may, not later than fourteen days before the date approved for the hearing, apply to the Tribunal to conduct the hearing at some other place in Malaŵi. The Tribunal may, in its discretion and subject to such conditions as to notice and costs as it thinks fit, conduct the hearing at the place named in the application.

(3) Where an application under subrule (2) is not made by all the parties to the proceedings, the Tribunal shall not decide the application without giving the parties an opportunity to be heard.

Forms

25. The forms referred to in these Rules are those set out in the First Schedule and such forms shall be used in all cases to which they are applicable and may be modified as directed by the Chairman.

Fees

26. The Tribunal fees prescribed in Part I of the Second Schedule shall be paid to the Registrar of Designs at the Office.

Endorsement of fee on document chargeable

27.—(1) Upon receipt of any document chargeable with any fee payable in terms of these rules the Registrar of Designs shall endorse upon the original of such document the amount of the fee paid and the date of payment.

(2) The Registrar of Designs shall refuse to accept any document in respect of which a fee is payable under these rules, unless the appropriate fee accompanies such document.

Oath to be taken by assessors appointed under section 37

28. The form of oath to be taken by assessors shall be as follows—

I, ... hereby declare that I will to the best of my ability faithfully and diligently discharge any duties as assessor without favour, fear or prejudice.

Remuneration of assessors

29. The remuneration of any assessor appointed under section 37 shall be as prescribed in Part III of the Second Schedule.

FIRST SCHEDULE

Forms

Form	*Matter*	*Rule*
1.	Notice of appeal to Tribunal	3 (1)
2.	Application for an extension of time in which to appeal	4 (1)
3.	Notice of abandonment of appeal	9 (1)
4.	Reference to the Tribunal under section 21 . .	11 (1)
5.	Application for rectification of register of designs . .	12

Form D.T. No. 1.

ss. 35 and 39
r. 3(1)

REGISTERED DESIGNS ACT
(Cap. 49:05)

Fee: £2 10s.

Notice of Appeal to Tribunal

IN THE MATTER of an application (1) .....
.....
.....
.....
.....

and

IN THE MATTER of an opposition by (2) .....
.....
.....

I/We (3) .....
of .....
.....
hereby give notice of appeal to the Tribunal from (4) .....
.....
of the Registrar of Designs, dated the ..... day of
....., 19 ....., whereby he

(5) .....
.....
.....
.....

Dated this ..... day of ....., 19 .....

(6) .....
.....

(1) State nature of application or proceedings, the name of the applicant(s) and the number of the application for registration of design
(2) State the name of the opponent(s) if the application is opposed
(3) State full name and address of appellant(s)
(4) Here insert "the decision" or "that part of the decision". as the case may be
(5) Here insert "refused application for registration of a design" or "refused (or granted) application for compulsory licence" or otherwise, as the case may be

(6) To be signed by the appellant(s) or his/their legal practitioner

My/Our address for service in Malaŵi:—

.....
.....
.....

The Registrar of the Patents Tribunal
P.O. Box 100
Blantyre

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s. 39
r. 4(1)

Form D.T. No. 2.

REGISTERED DESIGNS ACT
(Cap. 49:05)

Fee: Nil.

Application for an Extension of Time in which to Appeal

(1) State nature of application or proceedings, the name of the applicant(s) and the number of the application for registration of design
(2) State the name of the opponent(s) if the application is opposed
(3) State full name and address of appellant(s)
(4) Here insert "the decision" or "that part of the decision", as the case may be
(5) Here state briefly the grounds upon which the application is based, and where facts are alleged such facts shall be verified by affidavit
(6) To be signed by the appellant(s) or his /their legal practitioner

IN THE MATTER of an application (1) .....
.....
.....
.....
.....

and

IN THE MATTER of an opposition by (2) .....
.....
.....

I/We (3) .....
of .....
.....
hereby make application for an order of the Tribunal extending the time in which to appeal from (4) .....
.....
.....
of the Registrar of Designs on the following grounds (5) .....
.....
.....
.....

Dated this ..... day of ....., 19.....

(6) .....
.....

The Registrar of the Patents Tribunal
P.O. Box 100
Blantyre

Form D.T. No. 3. r. 9 (1)

REGISTERED DESIGNS ACT

(Cap. 49:05)

Fee: Nil.

Notice of Abandonment of Appeal

IN THE MATTER of an application (1) .....
.....
.....
.....
.....

(1) State nature of application or proceedings, the name of the applicant(s) and the number of the application for registration of design

and

IN THE MATTER of an opposition by (2) .....
.....
.....

(2) State the name of the opponent(s) if the application is opposed

you are hereby notified that the abovenamed appellant(s) hereby abandon(s) all further proceedings in the above matter. .....

Dated this ..... day of ....., 19.....

(3) .....
.....

(3) To be signed by the appellant(s) or his/their legal practitioner

The Registrar of the Patents Tribunal
P.O. Box 100
Blantyre

Form D.T. No. 4. s. 21 r. 11 (1)

REGISTERED DESIGNS ACT

(Cap. 49:05)

Fee: £2 10s.

Reference to the Tribunal under section 21 *of the Act*

IN THE MATTER of a reference by (1) .....
.....
.....

(1) State name of claimant(s) and nature of matter in dispute

(2) State name of other party to dispute

against

(2) .....
.....

(3) State full name and address of claimant(s)

I/We (3) .....
.....

(4) State name of respondent

hereby refer for the determination of the Tribunal my/our claim against (4) .....
.....

The following are the grounds on which I/we base my/our claim:—

(5) .....
.....

(5) Here state briefly the name of grounds

.....
.....
.....

(6) To be signed by the claimant(s) or his/their legal practitioner

Dated this ..... day of ....., 19.....

(6) .....
.....

My/Our address for service in Malaŵi:—
.....
.....
.....

The Registrar
The Designs Office
P.O. Box 100
Blantyre

NOTE—The claim must be accompanied by an affidavit verifying the facts and stating fully the nature of the interest in the matter in dispute and the relief sought.

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s. 24
r. 12

Form D.T. No. 5.

REGISTERED DESIGNS ACT
(Cap. 49:05)

Fee: £1.

Application for Rectification of Register of Designs

(1) State name and address of applicant(s)

I/We (1) .....
.....
.....

hereby apply in respect of Design No. ..... that the register may be rectified in the following manner (2) .....
.....

(2) State manner in which register is to be rectified

The grounds upon which I/we base this application are as follows:—

(3) State briefly the grounds

(3) .....
.....
.....

Dated this ..... day of ....., 19.....

(4) To be signed by the applicant(s) or his/their legal practitioner

(4) .....
.....

My/Our address for service in Malaŵi:—
.....
.....
.....

The Registrar
The Designs Office
P.O. Box 100
Blantyre

SECOND SCHEDULE

rr. 18, 19, 26 and 29

PART I

Tribunal Fees

Item	*Matter*	*Amount* £ s. d.
1.	On every appeal to the Tribunal from decision or order of the Registrar of Designs—inclusive fee	2 10 0
2.	On a reference to the Tribunal under section 21	2 10 0
3.	On application for rectification of register of designs	1 0 0
4.	On every search	0 2 6
5.	For typewritten copies of judgments or records, for additional copies of orders or for copies of documents or proceedings furnished upon direction of the registrar of the Tribunal:	
	The first copy for each folio of 100 words or part thereof	0 1 6
	Additional copies for each folio of 100 words or part thereof	0 0 6
6.	On certifying any document as an office copy	0 5 0
7.	Transcript of shorthand writer's notes . .	Such fee as may be determined by the Minister.

PART II

Subsistence and Travelling Allowances Payable to Witnesses

Witnesses attending the Tribunal shall be paid subsistence and travelling allowances at the rates prescribed.

PART III

Remuneration of Assessors

An assessor shall be remunerated at the rate of £1 1s. 0d. per hour or part thereof, but his remuneration shall not exceed £5 5s. 0d. per day, unless the Minister, with the approval of the Minister of Finance otherwise directs. An assessor shall in addition be paid a travelling allowance at the rates prescribed.

PART IV

Legal Practitioners' Fees

Legal practitioners' fees in any appeal, application, opposition or other matter heard before the Tribunal shall be in accordance with the tariff of fees prescribed, save as hereinafter provided—

Perusal of any necessary documents—

For the first 10 folios—per folio 2s. 6d.

For each subsequent folio 1s. 0d.

ARTS AND CRAFTS

CHAPTER 49:07

Containing Pages 1–4

L.R.O. 1/1991

CHAPTER 49:07

ARTS AND CRAFTS

ARRANGEMENT OF SECTIONS

PART I

PRELIMINARY

SECTION

1. Short title
2. Interpretation

PART II

PROMOTION OF ARTS AND CRAFTS

3. Appointment of Chief Arts and Crafts Officer and other staff
4. Duties of Chief Arts and Crafts Officer

PART III

ARTS AND CRAFTS ADVISORY COUNCIL

5. Establishment of the Council
6. Functions of the Council
7. Secretary to the Council
8. Constitution, proceedings and other matters of the Council

PART IV

MISCELLANEOUS

9. Regulations

Schedule

CHAPTER 49:07

ARTS AND CRAFTS

An Act to provide for the development, promotion, preservation, presentation and study of arts and crafts and folklore in Malaŵi; the establishment of the Arts and Crafts Advisory Council; and for matters incidental thereto or connected therewith

[1st October, 1990]

PART I

PRELIMINARY

1. This Act may be cited as the Arts and Crafts Act. Short title

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

"Chairman" means the Chairman of the Council designated in accordance with the provision of the Schedule;

"Council" means the Arts and Crafts Advisory Council established by section 5.

PART II

Promotion of Arts and Crafts

Appointment of Chief Arts and Crafts Officer and other staff

3. There shall be appointed in the public service an officer to be designated as the Chief Arts and Crafts Officer and such other staff subordinate to the Chief Arts and Crafts Officer as may be deemed necessary for the discharge of the duties specified in section 4.

Duties of Chief Arts and Crafts Officer

4. The Chief Arts and Crafts Officer shall, subject to this Act and to the general or special direction of the Minister—

(*a*) be responsible for the revival, promotion, development and presentation of arts and crafts;

(*b*) carry out research in the development and production of arts and crafts;

(*c*) provide advisory services, training facilities and technical assistance to organizations and persons engaged in the production of arts and crafts;

(*d*) assist organizations and persons engaged in the sale or exportation of arts and crafts;

(*e*) develop public interest in arts and crafts by organizing exhibitions, displays, performances, workshops and seminars regarding arts and crafts of Malaŵi;

(*f*) promote, develop and preserve the folklore of Malaŵi; and

(*g*) perform any other functions as the Minister may assign to him for the purposes of this Act.

PART III

Arts and Crafts Advisory Council

Establishment of the Council

5. There is hereby established a council to be known as the Arts and Crafts Advisory Council.

Functions of the Council

6. The function of the Council shall be—

(*a*) to advise the Minister on all matters relating to the revival, promotion, presentation, development, preservation and study of arts and crafts in Malaŵi; and

(*b*) to consider and deal with such matters as the Minister may refer to it or require of it.

Secretary to the Council

7. The Chief Arts and Crafts Officer shall be the Secretary to the Council.

Constitution, proceedings and other matters of the Council

8.—(1) The constitution, proceedings and other matters of the Council shall be in accordance with the Schedule.

(2) The Minister may amend the Schedule by order published in the *Gazette*.

PART IV

Miscellaneous

Regulations

9. The Minister may make regulations for the better carrying out of this Act and, without prejudice to the generality of the foregoing, such regulations may provide for—

(*a*) the granting of licences, certificates, permits and similar authorizations;

(*b*) the establishment of places of public performances, exhibitions and other displays regarding arts and crafts; and

(*c*) the entry upon premises by the Chief Arts and Crafts Officer and other public officers.

SCHEDULE

s. 8 (1)

Constitution, Proceedings and Other Matters of the Council

Composition of the Council

1. The Council shall consist of—

(*a*) the following *ex officio* members—

(i) the Secretary for Education and Culture or his representative;

(ii) the Secretary for Local Government or his representative;

(iii) the Secretary for Youth and Malaŵi Young Pioneers or his representative;

(iv) the Secretary for Trade and Industry or his representative;

(v) the Vice-Chancellor of the University of Malaŵi or his representative;

(vi) the General Manager of the Malaŵi Broadcasting Corporation or his representative;

(vii) the Copyright Administrator or his representative; and

(*b*) four members appointed by the Minister on account of their knowledge of and interest in arts and crafts.

Chairman of the Council

2. The Minister shall designate one of the members of the Council as Chairman of the Council.

Member of the Council not deemed public officer

3. A member of the Council shall not, by virtue only of his appointment to the Council, be deemed to be an officer in the public service.

Publication of Council membership

4. The Minister shall cause to be published in the *Gazette* the membership of the Council as first appointed and every change in the membership of the Council.

Tenure of officer

5. A member of the Council, other than a member *ex officio*, shall hold office for a period of two years from the date of his appointment, unless the Minister terminates his appointment, and shall be eligible for re-appointment.

Co-opted members

6. The Chairman may, at his discretion, invite any person to attend any meeting of the Council and such person may take part in the proceedings of that meeting but shall have no right to vote at such meeting.

Meetings of the Council

7.—(1) The Council shall meet at least twice a year at such places as the Chairman may determine.

(2) The Council shall further meet any time at the request, in writing, of at least any four of its members.

(3) In the absence of the Chairman from any meeting of the Council, the members present, if constituting a quorum shall elect one of their number to preside at that meeting.

(4) Any six members of the Council shall constitute a quorum.

(5) The Council shall determine its own procedure.

(6) At all meetings of the Council decisions shall be determined by the majority of members present and the Chairman or the person presiding shall have a deliberative vote and in the event of an equality of votes he shall also have a casting vote.

(7) The Chairman or the person presiding at the meeting shall report to the Council at each meeting thereof the action taken in respect of any matter on which the Council has advised the Minister.

LAWS OF MALAŴI

VOL VIII

L.R.O. 1/2018

TOURISM AND HOTELS

CHAPTER 50:01

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CHAPTER 50:01

TOURISM AND HOTELS

ARRANGEMENT OF SECTIONS

SECTION

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An Act to provide for the control and management of hotels, the establishment of a Tourism and Hotels Board and other matters incidental thereto

[8TH MARCH, 1968]

51 of 1965
18 of 1969
37 of 1970
11 of 1971
8 of 1980
39 of 1981
1 of 2003

1. This Act may be cited as the Tourism and Hotels Act. Short title

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

"Board" means the Tourism and Hotels Board established under section 3;

"hotel" includes a boarding-house and any other building or premises used for the accommodation of the public in which lodgings are provided and provisions are supplied by the keeper or manager thereof, but does not include any hostel or any school or any other premises or class of premises exempted from this Act by the Minister;

"hotel-keeper" means any person to whom a licence to keep or manage an hotel has been issued under section 5, and includes any person to whom a licence has been transferred under section 8;

"licence" means a licence issued under section 5;

"member" includes the Chairman of the Board;

"register" means the register kept by an hotel-keeper in accordance with section 14 (1).

Establishment of Board
18 of 1969
8 of 1980

3.—(1) There is hereby established a board to be known as the Tourism and Hotels Board.

(2) The Board shall consist of a chairman and not less than five other members appointed by the Minister.

(3) Subject to a power or revocation of appointment by the Minister, every member shall hold office for a period of two years from the date of his appointment but shall be eligible for reappointment.

8 of 1980

(4) Four members shall constitute a quorum at any meeting of the Board. In the absence of the chairman the members present shall elect one of the number to act as chairman.

(5) The chairman at any meeting shall, in addition to his deliberative vote as a member of the Board, have a casting vote.

Policy
18 of 1969
1 of 2003

4. The Board may, where necessary, seek the general direction of the Minister on the manner in which it is to carry out its duties under this Act.

Licences
1 of 2003

5.—(1) No person shall use any premises as an hotel unless he has previously obtained a licence from the Board authorizing that the premises be used as an hotel.

(2) No person shall keep or manage an hotel unless he has previously obtained a licence from the Board authorizing him to keep or manage an hotel.

(3) Every licence shall commence on the day on which it is expressed to commence and, unless previously cancelled or otherwise determined, shall expire on the thirty-first day of December next following the date of its commencement.

(4) Any person who keeps or manages an hotel without a valid licence, or who, not being the holder of a valid licence, publicly uses, or permits to be used, the word "hotel" in relation to any premises of which he is the owner or occupier, shall be guilty of an offence and liable to a fine of K20,000 and to imprisonment of one year.

(5) Any person who contravenes the provisions of subsection (1) shall be guilty of an offence and liable to a fine of K50,000 and to imprisonment for two years.

Functions of the Board
1 of 2003

6.—(1) The functions of the Board shall be to control and regulate the tourism industry.

(2) Without prejudice to the generality of subsection (1), the Board shall—

(*a*) grant licences under section 5;

(*b*) consent to transfer of licences under section 8;

(*c*) vary, cancel or suspend licences under section 9; and

(*d*) classify or reclassify hotels under section 10.

Conditions under which the licence shall be granted

7.—(1) No licence shall be granted by the Board unless the applicant satisfies the Board that the conditions specified in this section are fulfilled.

(2) The conditions to be fulfilled for the purposes of this section are that—

(*a*) the applicant is of good character and is a person capable of keeping or managing an hotel;

(*b*) the premises in respect of which the application is made are structurally adapted for use as an hotel, and are in all respects suitable for such use;

(*c*) proper provision has been made for the sanitation of the hotel;

(*d*) proper provision has been made for the hotel to be conducted in an efficient manner;

(*e*) proper provision has been made for the storage, preparation, cooking and serving of food in the hotel; and

(*f*) the premises in respect of which the application is made comply with the requirements of the Public Health Act and any subsidiary legislation made thereunder. Cap. 34:01

(3) The Board may attach to any licence such additional conditions as the Board may, in its discretion, and having regard to all the circumstances of the case, deem expedient.

Transfer of licence

8. A licence may, with the consent of the Board previously obtained, be transferred to any person who is of good character and is capable of keeping or managing an hotel.

Cancellation of licence
1 of 2003

9. Where it is made to appear to the Board that—

(*a*) an hotel is being conducted in an unclean or insanitary manner;

(*b*) an hotel is not being conducted in an efficient manner;

(*c*) the food served in an hotel is not properly prepared, cooked or served, or;

(*d*) an hotel is being used for prostitution or for other unlawful activities; and

(*e*) any condition specified in section 7 (2) or (3) is not, or has ceased to be, complied with,

then the Board, by notice in writing, may require the hotel-keeper to remedy the defect within such period, not exceeding ninety days, as may be specified in such notice and if the hotel-keeper fails to remedy the defect to the satisfaction of the Board within the specified period, the Board shall cancel the licence in respect of such hotel.

Closure of premises and seizure of food, etc.
1 of 2003

9A.—(1) Where the Board believes, on reasonable grounds, that this Act, has been contravened, in the circumstances spelt out in section 5, section 9 or otherwise, the Board may, subject to subsection (2) and in consultation with relevant authorities, order—

(*a*) the closure of any premises; and

(*b*) the seizure of any food, except perishables, equipment, instrument or any other thing, by means of, or in relation to which, the Board reasonably believes the contravention was committed.

(2) The closure of any premises shall cease, and any food, equipment, instrument or any other thing shall not be detained, after the provisions of this Act have, in the opinion of the Board, been complied with, unless before that time court proceedings have been instituted in respect of the contravention, in which event the premises shall remain closed and the food, equipment, instrument or other thing may be detained until the proceedings are finally concluded.

(3) Where a person has been found guilty of an offence under this Act, any food, equipment, instrument or other thing by means of or in relation to which the offence was committed may, in addition to any other penalty imposed by the court, be forfeited, and may be disposed of in such manner and at such time and place, as the court may direct; but no such food, equipment, instrument or other thing shall be disposed of pending an appeal against the decision of the court or before the time within which the appeal may be taken has expired.

Forfeiture, cancellation and other orders
1 of 2003

9B.—(1) Where a court convicts a person for an offence under this Act, the court may, in addition to any other sentence, order that—

(*a*) any substance or equipment used in the commission of the offence be forfeited to the State and be disposed of as the court directs;

(*b*) the costs of disposing of any such substance or equipment be borne by the accused person;

(*c*) some or all of the reasonable cost of and incidental to any testing or analysis or other steps undertaken by or on behalf of the prosecution to investigate the alleged offence and obtain evidence, be borne by the accused person; or

(*d*) a licence granted to the person convicted under this Act be cancelled.

(2) If a person is convicted for a second or subsequent time of an offence under this Act the court may, in addition to any other sentence, order that the person convicted be disqualified from holding a licence under this Act for a period not exceeding two years.

Classification or re-classification of hotels

10.—(1) The Board shall classify every hotel, in respect of which a licence is granted, in a class or grade conformable with the standard with which the hotel is, or is intended or is likely to be, kept, managed or conducted; and in so classifying any hotel the Board shall take into consideration the extent to, and the manner in, which the several conditions specified in section 7 (2) are, or are intended or are likely to be, complied with.

(2) Where it is made to appear to the Board that an hotel is being kept, managed or conducted in a manner conformable with a standard which is superior to the standard of an hotel of the class in which such hotel is classified, the Board may, upon giving notice thereof to the hotel-keeper, remove the name of the hotel from such class and place it in a higher class.

(3) Where it is made to appear to the Board that an hotel is not being kept, managed or conducted in a manner conformable with the standard of an hotel of the class in which such hotel is classified, the Board may, upon giving notice thereof to the hotel-keeper, remove the name of such hotel from such class and place it in a lower class:

Provided that any re-classification of an hotel under this section shall not take effect until the expiration of not less than thirty days from the date of the service of the notice of reclassification.

Right to be heard

11. The Board shall not refuse any application for a licence under section 5, or any application for a transfer under section 8, nor shall it cancel or suspend the licence of an hotel-keeper under section 9, nor classify or re-classify an hotel under section 10, unless the applicant, the proposed transferee or hotel-keeper, as the case may be, or a legal practitioner appearing on behalf of any such person, has been furnished by the Board with particulars of the contents of any complaint made to the Board and has been given an opportunity of appearing before the Board and of being heard in support of the application, or in opposition to the cancellation, suspension, classification or re-classification, as the case may be.

Appeals

12. Any person who is aggrieved by—

(*a*) any refusal, cancellation, suspension, revocation or variation of a licence issued under this Act; or

(*b*) any decision directly applicable to him taken by the Board or any person exercising powers under this Act,

may within thirty days appeal in writing to the Minister who shall appoint an appeals committee for the purpose of hearing the appeal in question.

Appeals committee
1 of 2003

12A.—(1) An appeals committee shall consist of—

(*a*) one person who has expert knowledge in the issues raised in the appeal, appointed by the Minister;

(*b*) one person representing the tourism industry, appointed by the Minister;

(*c*) one legal practitioner, appointed by the Minister;

(*d*) the Secretary responsible for tourism or his representative; and

(*e*) one member of the Board, appointed by the Board.

(2) The person appointed under subsection (1) (*a*) shall be chairman of the appeals committee.

(3) Members of the appeals committee shall be paid such an allowance as the Minister shall determine.

(4) The Board may make provision for reimbursement of any reasonable expense incurred by a member of the appeals committee in connexion with the business of the appeals committee.

Powers of appeals committee
1 of 2003

12B.—(1) An appeals committee shall have, in relation to the hearing of any appeal, the power to—

(*a*) confirm, set aside, vary, alter, reverse or amend the decision which is the subject of the appeal;

(*b*) refer the relevant matter back to the Board for its reconsideration;

(*c*) order persons to attend and give evidence or to produce or give discovery and inspection of documents in like manner as in proceedings in the High Court:

Provided that the appeals committee may, in its absolute discretion admit evidence which would not be admissible in a court of law and may use evidence contained in any official record and may call evidence of its own motion;

(*d*) make such order as it may deem fit; and

(*e*) do all things which it is required or empowered to do by or under this Act.

(2) The decision of the appeals committee on any appeal shall be—

(*a*) made in writing;

(*b*) sent to all the parties to the appeal; and

(*c*) made available for public inspection.

(3) Any person who, having appealed under section 12, is aggrieved by the decision of the appeals committee may, within thirty days thereof, apply to the High Court for judicial review of the decision of the committee.

Power to obtain information

13. Any member of the Board, or any person authorized in writing by the Board in that behalf, may at all reasonable times enter and inspect the premises of an hotel and may require the hotel-keeper to furnish such information as may be necessary to enable the Board to carry out its functions.

Register of guests 1 of 2003

14.—(1) Every hotel-keeper shall keep a register for the purpose of showing the name of every resident guest and such other particulars as may be prescribed.

(2) Every hotel-keeper shall—

(*a*) present the register to every guest who proposes to stay at his hotel and shall request the guest to write his name in the register together with such other particulars as may be prescribed; and

(*b*) present the register for inspection when so requested by any member of the Board, by any person authorized by the Board under section 13, or by any police officer of or above the rank of Inspector.

Any hotel-keeper who fails to comply with this subsection shall be liable to a fine of K10,000.

(3) Any guest who proposes to stay at an hotel and who fails to write his name or any other prescribed particulars in the register, or who makes in any register a statement or entry knowing the same to be false, shall be liable to a fine of K5,000 and to imprisonment for three months.

Power to make regulations
11 of 1971
1 of 2003

15.—(1) The Minister may make regulations for carrying this Act into effect.

(2) In particular and without prejudice to the generality of the foregoing power, such regulations may be made—

(*a*) prescribing the form of any licence under this Act and, after consultation with the Minister of Finance, the fees, if any, payable therefor;

(*b*) providing for the classification or reclassification of hotels and all matters incidental thereto;

(*c*) fixing the maximum charges or enabling the Board to fix the maximum charges, which may be made by an hotel-keeper to guests staying in his hotel and providing for the posting-up by hotel-keepers of lists giving particulars of the maximum charges to such guests, or providing for different maximum prices to be fixed for different hotels, regard being had to the class to which an hotel belongs;

(*d*) providing for returns to be supplied from time to time by hotel-keepers to the Board or to any person authorized by the Board in that behalf, showing the number of guests staying at any hotel;

(*e*) prescribing the form of the register to be kept under section 14;

11 of 1971
1 of 2003

(*ee*) providing, after consultation with the Minister of Finance, for the establishment of tourism funds; and

(*f*) prescribing any other matter which is required or is necessary to be prescribed under this Act.

Cap. 1:01

(3) Any regulation made under this Act may, notwithstanding the provisions of section 21 (*e*) of the General Interpretation Act prescribe a fine of up to K200,000 and imprisonment for up to two years for an offence committed against any provision of such regulation.

Application of Act, etc., to other enterprises
37 of 1970
1 of 2003

16.—(1) The Minister may, by order published in the *Gazette*, apply the provisions of this Act to such enterprises, other than hotels, as he may specify in such order, and in such event those provisions shall *mutatis, mutandis* apply to any such enterprise.

(2) Any order made under subsection (1) may contain such incidental or consequential provisions as the Minister deems fits.

17. Nothing in this Act shall be deemed to affect the Liquor Act or any regulations made thereunder:

Saving
Cap. 50:07
37 of 1970
39 of 1981

Provided that where the Board refuses to issue, or cancels or suspends a licence in respect of an hotel under this Act any licence issued under the Liquor Act to such hotel shall, as from the date of such refusal, cancellation or suspension, and during the period of such refusal, cancellation or suspension, be of no force or effect.

Cap. 50:07

SUBSIDIARY LEGISLATION

HOTELS REGULATIONS

ARRANGEMENT OF REGULATIONS

REGULATION
1. Citation
2. Interpretation
3. Forms of application
4. Procedure on application
5. Consideration of application
6. Grant of licence
7. Notification on change of ownership
8. Classification of hotels
9. Factors governing classification
10. Issue of notice of classification
11. Maximum charges fixed by the Board
12. Excessive charges an offence
13. List of charges to be displayed
14. Notice of classification to be displayed
15. Bedrooms to be numbered
16. Right to services
17. Monthly rates
18. Accommodation in a double room
19. Additional fees prohibited
20. Charges for full board terms
21. Bill to be supplied
22. Signature of notices etc., issued by the Board
23. Power of inspector
24. Particulars of classification to be published
25. Penalties
Schedule

G.N. 52/1968
176/1971
10/1974
12/1982
25/2009

HOTELS REGULATIONS

under s. 15

Citation

1. These Regulations may be cited as the Hotels Regulations.

Interpretation
G.N. 25/2009

2. In these Regulations, unless the context otherwise requires—

"accommodation" means the supply of a bed with clean, sufficient and suitable mosquito net, linen, bed-cover, and other bedding and includes the cleaning of the bedroom and any other supply or service which may reasonably be expected in an hotel of the class to which the licence relates;

"application" means an application under these Regulations;

"bath" includes the supply of adequate hot water, soap, towels, and cleaning of the bath and bathroom;

"full board" means accommodation, early morning tea, breakfast, luncheon, afternoon tea, dinner and bath.

"tourism enterprise" includes any business or undertaking that provides or offers goods and services for tourists, travellers and excursionists.

Forms of application

3.—(1) Any person required by the Act to obtain a licence to keep or manage an hotel shall submit an application to the Board in Form 1 in the Schedule.

(2) Any person required by the Act to renew such licence shall submit an application to the Board in Form 2 in the Schedule.

(3) Any person desiring to have such licence transferred shall submit an application to the Board in Form 3 in the Schedule.

Procedure on application

4.—(1) Upon receipt of an application the Board shall satisfy itself that the particulars set out therein are correct and shall cause such investigation or inspection of the premises concerned to be made as the Board may consider necessary.

(2) Upon receipt of an application, the Board shall send a notice to the applicant acknowledging such receipt and specifying the date and place on and at which the Board will consider such application.

Consideration of application

5. Upon the date appointed for the consideration of an application, the Board shall consider the particulars set out therein together with such reports of inspections and investigations as may have been called for, and, after making recommendations on the matter to the Minister and having received the Minister's approval, may—

(*a*) grant or refuse a licence;

(*b*) fix the maximum charges to apply to the hotel in question; or

(*c*) permit the hotel to be carried on without a licence for a period not exceeding three months pending further inquiry.

Grant of licence

6. The licence granted by the Board in respect of an hotel shall be in Form 4 in the Schedule.

Notification on change of ownership

7. When the ownership of an hotel changes, the holder of the licence shall forthwith furnish to the Board particulars of such change.

Classification of hotels

8. The Board shall, with the approval of the Minister and in accordance with such principles as the Board may from time to time, by notice, declare, classify hotels into such classes as it may, by notice, specify.

Factors governing classification

9. In determining the class to which a particular hotel belongs, the Board shall take into consideration all the factors relevant to the hotel of which it may reasonably become informed and, in particular, the following—

(*a*) the standard of service provided and the degree of efficiency of the management and the staff;

(*b*) the degree of comfort afforded, the quality of the equipment and furnishings, the proportion of the number of bathrooms to the number of bedrooms and the number of private bathrooms in proportion to the total number of bathrooms;

(*c*) the standard of cleanliness throughout the hotel and the sanitary facilities provided;

(*d*) the manner in which food is stored, prepared, cooked and served and the quality and quantity of the food;

(*e*) the structure of the hotel buildings and the amenities provided by or in public rooms, the recreational facilities of the hotel and, where relevant, of its surrounding grounds.

Issue of notice of classification

10. The Board shall upon classification of any hotel in accordance with these Regulations, send to the holder of the licence for such hotel a notice in writing in Form 5 in the Schedule informing him of such classification.

Maximum charges fixed by the Board G.N. 25/2009

11.—(1) The maximum charges which may be fixed by a hotel-keeper to be paid by guests at his hotel shall be furnished to the Board in writing quarterly.

(2) In fixing the maximum charges under subregulation (1), the hotel keeper shall have regard to, *inter alia*, the grade awarded to the hotel.

(3) The Minister may, by order published in the *Gazette*, cause a specified service charge to be levied on each bill made by a tourism enterprise operator to guests or clients at his tourism enterprise.

(4) Any service charge levied in accordance with subregulation (3) shall, not later than the 12th day following the end of each calendar month, be paid into the Tourism Marketing fund established in accordance with section 15 (2) (*ee*) of the Act.

Excessive charges an offence

12. Any hotel-keeper who makes any charge for anything in excess of the maximum charge fixed therefor by the Board shall be guilty of an offence.

List of charges to be displayed

13. Every hotel-keeper shall cause the list of the maximum charges currently fixed by the Board under regulation 11 for his hotel to be clearly printed and a copy of such list to be displayed in every bedroom and in a conspicuous place at the reception desk of the hotel. Any hotel-keeper who contravenes this regulation shall be guilty of an offence.

Notice of classification to be displayed

14. Every hotel-keeper shall cause the current notice of classification sent to him by the Board under regulation 10 to be exhibited in a conspicuous place at the reception desk of the hotel, and he shall not advertise or describe his hotel in any publication, leaflet, brochure, broadcast or otherwise howsoever as being of a higher class than that described in such notice. Any hotel-keeper who contravenes this regulation shall be guilty of an offence.

Bedrooms to be numbered

15. Every bedroom shall be numbered and the number allotted to each such room shall be clearly marked on the outside of the door thereof.

Right to services

16. Save in conformity with any law or with any special order, direction or instruction given by the Board, no hotel-keeper shall attach any condition, other than a condition for the payment of his lawful charges, to the provision in his hotel of any food, drink, meal, board or other service incidental thereto. Any hotel-keeper who contravenes this regulation shall be guilty of an offence.

Monthly rates

17. No hotel-keeper in respect of whose hotel an all inclusive monthly rate for full board has been fixed shall unreasonably refuse to supply full board at such rate to any guest whom he has accepted as a resident in his hotel for a period of one month or more. The keeper of a boarding-house shall include in his tariff of charges an all inclusive monthly rate for full board. Any hotel-keeper or keeper of a boarding-house failing to comply with this regulation shall be guilty of an offence.

Accommodation in a double room

18.—(1) Where a person occupies a double room because no single room accommodation is available, the hotel-keeper shall not charge such person, in respect of the room, a rate higher than that fixed for single room accommodation:

Provided that the hotel-keeper may, at any time, request any such person to share a room with another person of the same sex and, if the first-mentioned person agrees so to share the room, he

shall be charged for accommodation, for so long as the room is shared with the other person, half the price chargeable for a double room; and if, without reasonable cause, he refuses, such first mentioned person may be charged the full price for the double room accommodation.

(2) Any hotel-keeper who contravenes this regulation shall be guilty of an offence.

Additional fees prohibited

19. An hotel-keeper who, in addition to the fixed charge for a room and any service charge levied in accordance with regulation 11 (5), makes any other charge for a room, whether in the form of a booking fee or otherwise, shall be guilty of an offence.

Charges for full board terms

20. No guest staying at an hotel on full board terms shall be entitled to any reduction in charges by reason of the fact that he may not have consumed the full number of meals supplied under full board terms.

Bill to be supplied

21. An hotel-keeper shall furnish every guest staying in his hotel with a bill showing in detail the item or items supplied and the charge or charges made therefor and, on payment being made, with a receipt duly dated, signed and where required by law, stamped. Every such bill and receipt shall be numbered consecutively and a carbon copy thereof shall be kept by the hotelkeeper and for one year from the date of issue such copy shall be available for inspection by a member of the Board or any person authorized in writing in that behalf by the Board. Any hotelkeeper failing to comply with this regulation shall be guilty of an offence.

Signature of notices etc. issued by the Board

22. Every notice, order or other document issued by the Board shall be signed by the chairman thereof, or by some person authorized in writing by the chairman for the purpose, and when so signed shall for all purposes be deemed to have been duly issued by the Board until the contrary be proved.

Power of inspector

23. Any member of the Board or any person authorized in writing by the Board in terms of section 13 of the Act and acting in the course of his duties may—

(*a*) require any hotel-keeper or any of the hotel-keeper's employees, servants or agents to produce to him any article, books or accounts or other documents relating to the business of the hotel other than profit and loss, trading accounts and balance sheets;

(*b*) investigate any matter arising under the Act; and

(*c*) sieze and detain any article, books or documents relating to the business of any hotel, other than profit and loss, trading accounts and balance sheets, if he has reasonable grounds for suspecting that they contain evidence of the commission of an offence against the Act.

Particulars of classification to be published

24. Particulars of any classification or re-classification of an hotel made by the Board under regulation 8 shall be published in the *Gazette*.

Penalties

25.—(1) Any person who is convicted of an offence against regulation 12, 13, 14, 16, 17, 18, 19 or 21 shall be liable to a fine of K200 and to imprisonment for three months, and the court

trying the offence may, in its discretion, order the cancellation or suspension of any licence held by any hotel-keeper who is convicted, or whose employee, servant or agent is convicted of an offence against these Regulations.

(2) Any person who aids, abets, counsels, procures or assists in the commission of, or attempts to commit, any offence against these Regulations shall himself be guilty of an offence.

regs. 3, 6 and 10, G.N. 12/1982

SCHEDULE

HOTELS ACT FORM 1

(Cap. 50:01)

HOTELS REGULATIONS

APPLICATION FOR LICENCE TO KEEP OR MANAGE AN HOTEL

(REGULATION 3 (1))

I, ..., hereby apply in terms of section 5 of the Hotels Act for a licence to keep/manage the undermentioned hotel.

1. Name of hotel .....
2. Address of hotel .....
   .....
3. Name of proprietor (if partnership, give names of all partners; if limited company, names of directors) .....
   .....
   .....
4. Name of manager .....
   .....
5. Experience of proprietor or manager in keeping or managing an hotel .....
   .....
   .....
6. Rateable valuation of property .....
7. Number of bedrooms:

(*a*)	SINGLE TOTAL	No. with bathroom and W.C.	No. with bathroom and no W.C.	No. without bathroom but with H. and C.	No. without H. and C.
(*b*)	DOUBLE TOTAL	No. with bathroom and W.C.	No. with bathroom and no W.C.	No. without bathroom but with H. and C.	No. without H. and C.

8. Number of:
   - (*a*) women's bathrooms.....*
   - (*b*) men's bathrooms .....*

   For resident guests:
   - (*c*) women's lavatories .....*
     - (i) with water-borne sanitation
     - (ii) without water-borne sanitation
   - (*d*) men's lavatories .....*
     - (i) with water-borne sanitation
     - (ii) without water-borne sanitation

   For non-resident guests:
   - (*e*) women's lavatories .....*
     - (i) with water-borne sanitation
     - (ii) without water-borne sanitation
   - (*f*) men's lavatories .....*
     - (i) with water-borne sanitation
     - (ii) without water-borne sanitation*
   - (*g*) (i) sitting rooms for resident guests
     - (ii) sitting rooms for non-resident guests*
   - (*h*) writing rooms
   - (*i*) other public rooms

9. Is garage accommodation provided? .....
   If so, describe and state for how many cars .....
   .....
   .....
10. What is the system of lighting? .....
11. What is the system of water supply? .....
    If not on mains supply, state quantity
    of water available in litres per day..... G.N. 12/1982
    .....
12. What is the system of sanitation? .....
    .....
13. Are all rooms mosquito-proofed? If not, state
    number proofed .....
    Number unproofed .....
14. Average number of staff employed:

Managers	.....
Chefs	.....
Cooks	.....
Barmen	.....
Housekeepers	.....
Receptionists	.....
Waiters	.....
Kitchen staff	.....
Bedroom staff	.....
Others (specify)	.....

*Excluding private bathrooms, lavatories and sitting rooms

15. Are laundry facilities provided for guests ? .....
16. Details of dining-rooms:
    State seating accommodation .....
    Number of tables .....
17. Is there a telephone ? .....
    If so, state location and number of extensions .....
    .....
18. Are special arrangements made for children ? .....
    (*a*) Dining-room .....
    (*b*) Other rooms or services .....
19. Is there a liquor licence ? ....
    If so, state whether there is:
    (*a*) separate entrance to the bar .....
    (*b*) sitting-room open to all guests*/residents only .....
    (*c*) separate toilet arrangements for the bar.....
20. Hours:
    (*a*) for attendance .....
    (*b*) for meals or refreshments .....
    (*c*) for night porter .....
21. Describe:
    (*a*) kitchen accommodation
    and storage facilities .....
    (including refrigerator) .....
    (*b*) washing-up facilities .....
    This application is supported by:
    (*a*) bedroom plan (in duplicate and not necessarily to scale) with room numbers, number of electric lights in each bedroom, location (if installed) of H. and C. installation, bathrooms and lavatories;

(*b*) brief description of grounds, stating extent and amenities provided:

.....

Date ..... *Signed* .....

*Delete as applicable.

HOTELS ACT FORM 2

(Cap. 50:01)

HOTELS REGULATIONS

APPLICATION FOR RENEWAL OF LICENCE TO KEEP OR MANAGE AN HOTEL

(REGULATION 3 (2))

I, ...,
hereby apply for the renewal of the licence issued in respect of the undermentioned hotel—

Name of hotel .....
Address .....
.....
Name of proprietor(s) .....
.....
Name of manager.....

I certify that the particulars of the hotel are the same as those submitted with the last application for a licence/renewal of a licence in respect of this hotel, with the exception of the changes and structural alterations set out in the attached statement.

Date ..... *Signed* .....

For official use only

1. .....
2. .....
3. .....
4. .....
5. .....

FORM 3

HOTELS ACT

(Cap. 50:01)

HOTELS REGULATIONS

APPLICATION FOR TRANSFER OF LICENCE TO KEEP OR MANAGE AN HOTEL

(REGULATION 3 (3))

We, the undersigned, being respectively the present holder of and the intended transferee of the licence for the hotel to which this application refers, hereby apply for the transfer of the licence from the present holder to the transferee stated herein.

1. Name of hotel .....
2. Address of hotel .....
3. Name of present licence holder .....
   Licence number ..... issued on .....
4. Name of transferee .....

We certify that the particulars of the hotel are the same as those set out in the last application for a licence/renewal of a licence in respect of this hotel, with the exception of the changes and structural alterations set out in the attached statement.

Signature of present holder of licence .....

Signature of transferee .....

Date ..... No. .....

HOTELS ACT FORM 4

(Cap. 50:01)

HOTELS REGULATIONS

(REGULATION 6)

LICENCE

Name of holder .....

Name of hotel .....

Address of hotel .....

This licence is issued in terms of the Hotels Act. upon the conditions hereunder set forth and is valid until the ..... day of ..... 19 .....

Date ....

Chairman,
The Hotel Board

CONDITIONS

FORM 5

HOTELS ACT

(Cap. 50:01)

HOTELS REGULATIONS

(REGULATION 10)

NOTICE OF CLASSIFICATION

To ....., hotel-keeper.

You are hereby notified that the .... hotel has been classified by the Hotel Board as a ..... hotel.

Date ....

Chairman,
The Hotel Board

TOURISM AND HOTELS (MINIMUM STANDARDS) REGULATIONS

G.N. 62/1969
13/1982
18/2005

under s. 15

PART I

Preliminary

1. These Regulations may be cited as the Tourism and Hotels (Minimum Standards) Regulations. Citation

2. In these Regulations, unless the context otherwise requires— Interpretation

"accommodation" means the supply of bed with clean, sufficient and suitable mosquito net, linen, bed-cover, and other bedding and includes the cleaning of the bedroom and any other supply or service which may reasonably be expected in a hotel or any other accommodation of the class to which the licence relates;

"apartment" means self-catering accommodation made available to tourists at a fee, in which the guests provide and prepare their own food and do their own laundry;

"bath" includes the supply of adequate hot water, soap, towels and cleaning of the bath and bathroom;

"bathroom" includes shower-room;

"caravan" means a vehicle designed or fitted which is capable for use as habitation or dwelling or for sleeping purposes, excluding a railway stock;

"caravan and camping park" means a place where tourists on payment of a charge, are permitted to reside temporarily in caravans or tents, or both caravans and tents;

"holiday resort" means a complex of accommodation units, facilities and acceptable quality equipment designed to promote tourists stays and holiday usually at an all inclusive price covering lodging, the use of common equipment and sport and recreation facilities;

"hotel" means any premises, wherein or whereon the business of supplying lodging and meals for reward is or is intended to be concluded, and includes an inn;

"hotel premises" means premises used as an hotel and in respect of which a licence is held or intended to be held;

"kitchen" includes any pantry, store-room or other part of an hotel in which food or drink are stored, prepared, cooked or served.

"lodge" means any premises, wherein or whereon the business of supplying lodging and meals for reward is or is intended to be conducted, in conjunction with some other outdoor special interest activity;

"resthouse" means any premises offering simple accommodation facilities and providing bed and beddings, ablution and toilet facilities of the lowest acceptable quality;

"shower" includes the supply of adequate hot water, soap, towels and cleaning of shower-room;

Provisions of these Regulations to be treated as conditions on which licence is granted, etc.

3. For the purposes of section 7 of the Act, the matters hereinafter set out in these Regulations shall be deemed conditions which have to be satisfied before a licence may be granted by the Board and, in relation to a licence granted by the Board, shall be deemed conditions subject to which the licence is granted.

PART II

Adaptation and Suitability of Hotel Premises

Adaptation and suitability of premises

4.—(1) All hotel premises shall be maintained at all times in a state of cleanliness and good repair and shall provide facilities for people with physical disabilities.

(2) Each room in hotel premises shall have—

(*a*) adequate natural lighting during the day and shall be capable of being cross-ventilated by some natural means; and

(*b*) artificial lighting to the satisfaction of the Board.

(3) All electrical wiring shall be on a conduit and PVC system and shall conform with such standards as may be prescribed under the Electricity Act.

Cap. 73:01

(4) All fixtures, fittings and furnishings in any hotel shall at all times be maintained in a clean and sound condition.

Bedrooms

5.—(1) Each bedroom shall be provided with—

(*a*) cross-ventilation or air conditioning;

(*b*) electrical lighting and an electricity outlet; and

(*c*) electric lighting at each bed operated by a switch close to the bed.

(2) The minimum size of a bedroom shall be $11m^2$ including built in furniture.

(3) The window area, of which at least 50 per centum must be capable of being opened, shall be not less than 10 per centum of the floor area.

(4) A lighted hand-wash basin with hot and cold running water, and with an accompanying mirror and shelf shall be provided in each bedroom without a private bathroom, and an area not less than 600 mm in width and 450 mm in height immediately above the basin shall be protected with an impervious splash-back.

(5) A towel rail and a drinking glass for each guest shall be provided at or near every basin.

(6) All bedroom doors shall—

(*a*) have locks and keys which shall be made available to guests;

(*b*) be numbered or named.

(7) There shall be supplied in each bedroom—

(*a*) adequate number of chairs, bedside table, a dressing-cum-writing table with at least one drawer, mirror and stool, and waste paper basket;

(*b*) beds, other than for small children, which shall be well sprung of a minimum width of 910 mm and at least 1,800 mm in length, and shall be provided with—

(i) inner spring foam rubber or similar mattress, with all sagging eliminated; and

(ii) head board;

(*c*) an effective mosquito net for each bed or cot if required;

(*d*) for each new guest or every three days or earlier if required whichever be the more frequent, freshly laundered bed linen for each bed or cot;

(*e*) adequate window curtaining and bedside rug;

(*f*) a luggage rack;

(*g*) bath soap;

(*h*) an adequate supply of fresh and potable drinking water with a drinking glass for each guest; and

(*i*) a legible, up-to-date information notice or directory of services, including times.

Bathrooms

6.—(1) There shall be at least one communal bathroom for every six beds which are not served by private bathrooms.

(2) Separate communal bathrooms shall be provided for each sex on each floor on which bedrooms without private bathrooms are situated;

(3) All bathrooms shall show for which sex they are provided.

(4) All bathrooms shall be served by an efficient hot or cold water system, maintained in a good working order.

(5) All bathrooms shall have splash-backs not less than 1.5 m in height, which shall be tiled or of impervious finish, the wall above the splash-backs to be of a finish satisfactory to the Board;

(6) Floors shall be of impervious material, and all corners and junctions with walls shall be covered.

(7) Every bathroom shall be provided with—

(*a*) a mirror, a shelf and a towel rail;

(*b*) a bath mat;

(*c*) a chair or a stool;

(*d*) hooks for hanging clothes;

(*e*) a door which can be locked or bolted from within; and

(*f*) freshly laundered bath towels for each guest and at least every two days or earlier if necessary.

(8) All toilet-pans shall be provided with lids and seats and there shall be a toilet paper dispenser in each toilet and a suitable form of sanitary disposal in each female toilet.

Communication

7. Telephone or other means of communication shall be accessible to guests at all times.

Electric lighting

8.—(1) Electric lighting shall be provided throughout the premises.

(2) Where self-generated electric current is used, alternative means of lighting shall be available in all bedrooms, bathrooms, cloakrooms and public rooms for use when current is not available, and notices, prominently displayed, drawing attention to this fact, shall be provided.

Diningrooms and lounges

9.—(1) All hotel premises shall contain a diningroom sufficient for use of guests and visitors.

(2) All dining-rooms shall be equipped and supplied to the satisfaction of the Board with appropriate and sufficient furniture, clean table linen, cutlery, crockery and condiment sets of good quality.

(3) A clean and legible menu, showing the meal tariff, shall be made available to each guest when orders are being taken.

(4) No chipped, cracked or broken cutlery shall be used.

Bar

10.—(1) Every bar and bar lounge shall be suitably furnished and equipped to the satisfaction of the Board.

(2) A double sink with a splash board made of tiles or stainless steel or other acceptable impermeable material and supplied with hot and cold running water and used solely for the washing of glasses shall be provided in or near the bar.

(3) Adequate sanitary and toilet arrangements with separate facilities for both sexes shall be provided near to, and accessible from, any bar or bar lounge.

(4) Toilets shall be clearly designated and shall contain water closet with a lid, hand wash basin with hot and cold running water, soap and clean facilities for drying, and adequate clothes hooks.

(5) Urinal and mirror and shelf shall be provided for toilet for men and, in the case of toilet for women, a sanitary basin, a dressing mirror, and a shelf or table and a chair shall be provided.

(6) Every toilet door shall have means of fastening the door from within.

Public cloakrooms

11.—(1) Separate public cloakrooms shall be provided for each gender and shall contain the following—

(*a*) a toilet pan with a lid and seat and a toilet paper dispenser, in a cubicle provided with a door which can be locked from within;

(*b*) a hand-wash basin with running hot and cold water with splash-back;

(*c*) a mirror and a shelf;

(*d*) soap and a towel or other hand drying facilities;

(*e*) a towel rail; and

(*f*) hooks for the hanging of outer garments.

(2) In addition to items set out in subregulations (1)—

(*a*) cloakrooms for men shall provide a urinal of one piece construction of stainless steel or other impervious material; and

(*b*) cloakrooms for women shall provide a suitable form of sanitary disposal, a chair or stool and a dressing table or shelf.

(3) The location of every public cloakroom shall be clearly indicated.

Sanitation

12.—(1) Sewerage shall be water-borne for all sanitary facilities provided for guests or the public.

(2) Water waste shall be disposed of—

(*a*) into a public sewer;

(*b*) into a French drain which is not in close proximity to any water supply;

(*c*) into a septic tank not less than 5,000 litres; or

Cap. 34:01

(*d*) in any other way which is compliant with the Public Health Act.

Kitchen, storerooms and pantries

13.—(1) A kitchen shall at all times be maintained in a clean and sanitary condition.

(2) Floors of kitchens, storerooms and pantries shall be constructed of an impervious material suitably graded and drained, and all corners, edges and junctions with the walls shall be covered.

(3) Kitchen walls shall be—

(*a*) tiled or be of other impervious finish to a height of not less than 1.98 m; and

(*b*) of light colour.

(4) Adequate ventilation shall be provided in the kitchen and hot-air fumes and smoke shall be extracted by such means as shall be approved by the Board.

(5) Kitchens shall be kept free of insects and rodents and other vermin.

(6) Every kitchen shall be provided with adequate refuse receptacle with a lid.

(7) No article not directly connected with the storage, preparation, cooking and serving of food or drink shall be kept in the kitchen.

(8) All areas used for storage, preparation, cooking and serving of food and drink shall be provided with facilities, including sinks supplied with hot and cold running water, for the efficient washing of articles or utensils to the satisfaction of the Board.

(9) Adequate refrigeration and cooling shall be provided to ensure the proper storage of all foodstuffs requiring such facilities and different types of foodstuffs shall be separated, and all exposed foodstuffs shall be adequately covered.

(10) Adequate space and facilities shall be provided for the proper storage of dry stores.

(11) No space or facility used for the storage of food, drink or dry stores shall be used for any other purpose.

(12) Floors for wash-up areas shall be of impervious materials and walls shall be tiled or be of other finish approved by the Board and—

(*a*) at least two sinks or a dish-washing machine with running water shall be provided at each wash-up;

(*b*) separate pot-washing facilities shall be provided.

Staff in kitchen to wear certain clothing, etc.

14.—(1) Kitchen staff shall at all times be clean in person and clothing and shall be clothed in garments which extend below the knee and have suitable footwear.

(2) Food handlers shall be clothed in garments which extend below the elbow and shall wear appropriate headgear.

Certain facilities for kitchen staff

15. Adequate toilet and sanitary facilities shall be provided for all persons employed in the kitchen and such facilities shall be adjacent to the kitchen and shall include water closets, adequate hand-wash basins with hot and cold running water, soap and scrubbing brushes.

Persons not to sleep in kitchen

16. No person shall sleep in any hotel kitchen, or in any room used for storage of food or of the articles used in the storage, preparation, cooking and serving of food and drink.

Supply of drinking water, etc.

17.—(1) Fresh water and potable drinking water shall at all times be available in every bedroom, bathroom and public room:

Provided that where water is unfit for drinking, all taps on the premises supplying untreated or unfit water shall have a notice close at hand clearly indicating that the water is not fit for drinking.

(2) Ice cubes made from pure and potable drinking water shall be available free of charge at all reasonable times for guests and visitors.

Laundry

18.—(1) Proper laundry facilities shall be provided on the premises or other arrangement made for the washing of clothing of guests to the satisfaction of the Board.

(2) Facilities for the pressing and drying of clothes by guests shall be available unless valet services are provided.

Reception

19.—(1) A competent person shall be available at all times to receive guests.

(2) Means shall be made available at or near the main entrance to summon the receptionist.

(3) A porter or other member of staff shall be available at all reasonable times to assist guests with luggage.

(4) A valid hotel licence shall be displayed in a conspicuous place at the reception area.

Staff

20.—(1) All hotel staff shall be suitably and neatly dressed in uniform to the satisfaction of the Board.

(2) All staff shall at all times be clean and sober.

(3) All staff on duty shall wear suitable footwear.

Cap. 34:01

(4) All staff involved in the preparation and serving of food and drink shall undergo regular examinations as required under the Public Health Act.

Staff quarters and amenities

21.—(1) Ablution, toilet and laundry facilities shall be provided to the satisfaction of the Board for use of staff.

(2) All waste water shall be properly disposed of.

(3) Well-ventilated facilities for storage and hanging of clothes and personal effects shall be provided.

(4) Restroom facilities, where provided, shall be weatherproof, well-ventilated and furnished with chairs or benches.

(5) Where staff take meals on premises, appropriate facilities to the satisfaction of the Board shall be provided.

(6) Any sleeping quarters controlled by the hotel shall be provided with appropriate facilities and maintained in a clean and hygienic condition.

Animals

22. No animals of any kind shall be permitted into public areas, dining rooms, kitchens or any room used for storage, preparation, cooking and serving of food and drink.

Gardens, yards, etc.

23.—(1) The gardens, yards, beaches and other outside parts of any hotel premises shall at all times be kept in a clean and neat condition.

(2) Adequate parking space shall be provided and shall be clearly indicated and lit at night.

Refuse

24.—(1) Refuse shall be disposed of in a sanitary manner.

(2) All refuse bins shall be provided with lids, which shall be removed for access to the bin.

(3) Where stored outside the building, a suitable plinth shall be provided to ensure that refuse bins are above ground level.

(4) The refuse area shall be kept clean and tidy, to the satisfaction of the Board.

Fire-fighting equipment

25.—(1) Adequate and appropriate fire-fighting equipment to the satisfaction of the Board shall be provided in conspicuous places on hotel premises and such equipment shall at all time be maintained in good and working order carrying the current inspection tag.

(2) Staff shall be trained to operate the fire fighting equipment and techniques.

Emergency exits

26. Emergency exits shall be provided and clearly indicated.

First Aid outfits

27.—(1) At all times there shall be maintained in some prominent and easily accessible place at the hotel premises a First Aid outfit containing disinfectants, bandages, snake bite serum kit, adhesive tape, dressings, eye bath, tannic acid ointment, scissors and tweezers.

(2) Where a swimming pool or water sporting facilities are provided, swimming pool life guards shall be in attendance and life jackets shall be available for users of the swimming pool or the sporting equipment.

(3) All necessary precautions shall be taken to ensure adequate security.

PART III

General Provisions for Licensing Designated Tourism Enterprises

Application

28. These provisions shall apply to all premises, places or services designated by the Minister as tourism enterprises.

Enterprise licence

29. Every designated tourism enterprise shall apply for licensing and shall comply with the appropriate requirements for licensing designed tourism enterprises before it may be licensed in terms of the Act.

No one to operate unlicensed enterprise

30. No person shall conduct or operate a designated tourism enterprise unless it is licensed in accordance with the provisions of the minimum requirements for licensing designated tourism enterprises.

Notice to cancel licence

31.—(1) Where the Board considers that there has been a failure in respect of requirements, the Board may give notice to the operator of the licensed tourism enterprise that unless the requirement concerned is complied with within such reasonable period as the Board shall specify, the Board may cancel the tourism enterprise's licence.

Right to make representations

(2) The operator of a licensed tourism enterprise in respect of which a notice has been given under subregulation (1) may, before the expiry of the period specified by the Board, make written representations to the Board in regard to the proposed cancellation of the tourism enterprise's licence.

(3) If, upon the expiry of the period specified in subregulation (1), the Board considers that the requirement concerned has not been complied with and that no good reason has been shown as to why the tourism enterprise concerned should remain licensed, the Board shall cancel the tourism enterprise's licence and the Board shall inform the operator of the cancellation.

PART IV

Minimum Requirements for Licensing Designated Tourism Enterprises

A. General

Equipment and facilities

32.—(1) All equipment and facilities shall be of such quality acceptable to the Board.

Dangers

(2) All inherent dangers in and around the designated tourism enterprise shall be drawn to the attention of the guests by the operator of the enterprise.

Safety precautions

(3) Precautions such as the provision of fire-fighting equipment, lifeguards and equipment and any other safety precautions shall be taken, to the satisfaction of the Board, to protect guests from danger.

Medical facilities

(4) A properly equipped first-aid box shall be available in a readily accessible position, and it shall be maintained at a standard to the satisfaction of the health officer responsible for the area.

Display for facilities, conditions of entry, and tariff

(5) There shall be displayed on notice-boards placed in suitable positions at a designated tourism enterprise the facilities available; and the conditions of entry; and the tariff.

Control of activities

(6) All activities at a designated tourism enterprise shall be controlled in such a manner as to preserve the well-being of other users.

(7) A supervisor or other responsible person shall be in attendance whenever there are visitors at a designated tourism enterprise. Staff

(8) Persons employed at a designated tourism enterprise shall, whenever they come into contact with guests, be cleanly and neatly dressed in uniform and be medically fit.

(9) The entire area of a designated tourism enterprise, including staff quarters, and all roads, pathways, and gardens therein, shall be kept in a clean, tidy and sanitary condition and in good repair at all times. Maintenance

(10) All equipment, fittings, utensils, furniture, linen, etc., provided shall be kept in a clean and sanitary condition and in good repair at all times.

(11) All designated tourism enterprises shall be maintained in good working order and in a clean and sanitary condition.

(12) The structure and appearance of a tourism enterprise must be sound and appealing and in conformity with the environment. Structural presentation

(13) (*a*) Every operator of a designated tourism enterprise shall keep in respect of his enterprise such records and accounts as may be necessary to show— Records and accounts

(i) the number of guests in any calendar month and the amount of the levy payable in respect of each such guest as specified by the Board;

(ii) the aggregated amount of the levies collected and remitted by him in each calendar month.

(*b*) Every operator of a designated tourism enterprise shall ensure that on any account submitted to a guest in respect of guest's visit to the enterprise the amount of the levy payable in respect of each guest to which the account relates is clearly indicated as a separate item.

(*c*) Any account or record kept in terms of this section shall be retained by the operator for a period of three years from the date of the period to which the account or record relates.

B. Where Accommodation is Provided

33.—(1) Bedrooms shall have— Bedrooms

(*a*) numbers, or be otherwise suitably designated;

(*b*) secure facilities for residents to lock away valuable property;

(*c*) beds with blankets, pillows, bed-linen and bath towels, all to be clean and maintained in good state of repair;

(*d*) adequate storage facilities for guests, clothing and personal effects;

(*e*) a wash-hand basin with hot and cold water available at all reasonable times, either from a tap or in a water-jug, where the room is not provided with a private bathroom;

(*f*) a towel rail, shelf, mirror and drinking-glass(es);

(*g*) waste bin;

(*h*) at least one chair;

(*i*) a bedside drawer or table;

(*j*) a bedside rug for each bed where a carpet is not provided; and

(*k*) an effective mosquito net or an aerosol insecticide where protection against the entry of mosquitoes is not provided.

Bathrooms

(2) There shall be at least one communal bathroom or shower for males and one for females for every six beds where they are not provided with a private bathroom.

(3) All bathrooms shall have—

(*a*) a hot and cold water system maintained in good working order; and

(*b*) an impervious finish on walls not less than five hundred millimetres above the bath to form a splash-back where the bath is in contact with the wall.

(4) All bathrooms shall contain—

(*a*) a mirror, a shelf and towel rail;

(*b*) a freshly laundered bath-mat;

(*c*) a clothes hook; and

(*d*) a door which is capable of being locked, bolted or otherwise secured from within.

Toilets

(5) There shall be at least one toilet for males and one toilet for females for every fourteen beds in a designated tourism enterprise.

(6) There shall be a toilet-paper-dispenser and toilet tissue in each toilet and a sanitary bin or incinerator in each female toilet.

(7) Where urinals are installed, the number of toilets for males may be reduced by the number of urinal stalls installed up to a maximum of twenty-five per cent:

Provided that the number of toilets for males shall be not less than seventy-five per centum of the total number required on the basis of one for every fourteen beds.

(8) Where showers are provided, they shall have no slippery floor and be supplied with— Showers

(*a*) hot and cold water, and the system shall be maintained in good order; and

(*b*) soap-dish, a wall hook and a towel-rail at least six hundred millimetres long or towel ring and a duck-board.

(9) Where bars are provided, they shall be maintained in accordance with the Liquor Act and any requirements or regulations made thereunder. Bars Cap. 50:07

(10) Public rooms shall be of a size suitable for the type of designated tourism enterprise, as determined by the Board. Public rooms

(11) There shall be an adequate supply of pure potable water available at all times. Water supply

(12) Lighting shall be of a standard acceptable to the Board. Lighting

(13) All rooms shall have cross ventilation, forced-draught ventilation or air-conditioning. Ventilation

(14) Sewerage shall be water-borne. Sewerage

(15) Waste water shall be properly disposed of—

(*a*) into a public sewer; or

(*b*) into a French drain which shall not be in close proximity to any water-supply or watercourse; or

(*c*) in any other manner approved by the Board

(16) Refuse shall be properly disposed of in a sanitary manner to prevent the breeding of flies and other insects. Refuse disposal

(17) All refuse-bins shall be provided with close-fitting lids which shall be removed only for the purpose of access to such bins.

(18) All refuse-bins shall be thoroughly cleaned regularly.

(19) Provision and arrangements shall be made for the reception of guests. Reception of guests

(20) A register of guests shall be kept as required by the Board.

C. Where Meals are Provided for Guests

34.—(1) Kitchens, sculleries and pantries shall have— Kitchens, sculleries and pantries

(*a*) an impervious finish to floors and walls; and

(*b*) where appropriate, floors suitably graded and drained to an outside gully; and

(*c*) rounded or covered corners, edges and junctions on walls and floors; and

(*d*) roofs constructed in such a way as to protect the areas from insects, rodents, vermin or other noxious matter or things; and

(*e*) good ventilation with hot-air fumes removed by a canopy with extractor-fan or by any other means approved by the Board; and

(*f*) an approved impervious finish on all furniture and shelving; and

(*g*) separate hand-washing facilities for staff, including hand drying facilities, soap and scrubbing brushes; and

(*h*) separate and sufficient sinks exclusively for the preparation of food; and

(*i*) at least two sinks for dish-washing and rinsing or a dish-washing machine, with a good supply of piped hot and cold water; and

(*j*) separate pot-washing facilities.

Dining facilities

(2) Dining rooms shall be of a size suitable for the number of guests likely to be using the facilities.

(3) Cutlery, condiment-sets, crockery and table appointments shall be of a good standard, maintained in clean condition and sufficient quantity for the number of guests likely to be served.

Other requirements

(4) The requirements specified in subregulations 33 (9), 33 (10), 33 (11), 33 (12), 33 (13), 33 (14), 33 (15), 33 (16), 33 (17) and 33 (18) shall also apply in all designated tourism enterprises where meals are provided for guests.

D. Where Facilities are Provided for Self-Catering

Cooking facilities

35.—(1) Cooking facilities shall be served either by electricity or gas or other fuel acceptable to the Board, and must be sufficient for the numbers of guests accommodated and in keeping with the standard of accommodation offered.

Washing-up facilities

(2) Washing-up facilities shall be provided for the washing of cooking utensils.

(3) Outdoor washing-up facilities shall have overhead cover, and shall consist of—

(*a*) a stainless-steel sink with double draining-board supplied with hot and cold water;

(*b*) a gully fitted with a grease-trap connected to a drain which discharges into a sewerage system or French drain;

(*c*) a floor sloped towards the gully in such a manner that the water drains into the gully; and

(*d*) a refuse bin with close-fitting lid, for every four wash-up sinks, for the disposal of food waste.

(4) There shall be not less than such washing-up facilities as are referred to in subregulation (3) for every fifty guests accommodated at a designated tourist facility.

E. Caravan and Camping Parks

Caravan and camping sites

36.—(1) There shall be provided a usable area with reasonably even surface of not less than—

(*a*) one hundred square metres for each caravan accommodated in a park;

(*b*) twenty-six square metres for every ten guests accommodated in a camping park.

Recreation areas

(2) There shall be an open usable space provided for recreational purposes of not less than twenty per cent of the area provided for caravan or camping sites.

Water supply

(3) There shall be one permanent water-stand-pipe providing pure and potable water, with a surrounding concrete apron of not less than four square metres and a soak-away situated in a convenient position for every six caravan or camping sites.

Ablutions

(4) Ablutions shall—

(*a*) be grouped in blocks suitably divided for males and females and so distributed that each block is within one hundred metres from the caravan or camping area which it is to serve; and

(*b*) have floors of impervious material and graded for efficient drainage; and

(*c*) have impervious washable surfaces on the walls.

Toilets

(5) There shall be—

(*a*) at least one toilet for females for every seven caravan or camping sites which shall contain a suitable form of sanitary disposal; and

(*b*) one toilet for males for every fourteen caravan or camping sites; and

(*c*) a toilet-paper dispenser in each toilet and a toilet tissue.

(6) Where urinals are installed, the number of toilets for males may be reduced by the number of urinal stalls installed by not more than twenty-five per cent.

Urinals

(7) There shall be at least one urinal in each men's ablution which shall be of the stall or slab type and fitted with a flushing device.

Handwash basins

(8) There shall be at least one hand-wash basin with hot and cold water, one for males and one for females, for every fourteen caravans or camping sites.

(9) The basins for females shall be separated by wing-walls rising from the floor to door-head-level and extending one and a half metres from the outer wall.

Showers

(10) Where showers are provided, they shall be supplied with—

(*a*) Hot and cold water, and the system shall be maintained in good order;

(*b*) A soap-dish, a wall-hook and a towel-rail at least six hundred millimetres in length, or a towel-ring and a duck board.

(*c*) Two showers, one for males and one for females, for every twenty caravan or camping sites.

Bathrooms

(11) Where provided, bathrooms shall comprise private cubicles, each with one bath supplied with hot and cold water, a duck-board and a small bench, a mirror, a wall-hook and a towel-rail at least six hundred millimetres in length or a towel-ring.

(12) There shall be one bath—

(*a*) for females, for every five caravan or camping-sites; and

(*b*) for males, for every five caravan or camping sites.

Refuse bins

(13) There shall be one refuse-bin, with a capacity of not less than one cubic metre, placed in convenient position for every four caravan or camping-areas, and such refuse bin shall be cleaned daily.

Lighting

(14) Lighting of a standard acceptable to the Board shall be provided in toilets, ablution blocks, wash-up and laundry facilities and the approaches thereto.

Washing-up facilities

(15) Washing-up facilities shall be of the standard laid down in regulation 35.

Laundry facilities

(16) There shall be provided laundry facilities consisting of—

(*a*) a deep laundry-sink with running water and a draining board discharging waste into a gully connected to a sewerage system or a french drain;

(*b*) a separate ironing-room with two ironing-boards, and a drying yard with not less than fifty metres of washing-line.

F. All Catering Units

37. All catering units shall comply with the Code of Hygienic Conditions for food and food processing units of the Malaŵi Standards.

To comply with code of hygienic conditions

G. Resthouses

38. All resthouses shall satisfy the following requirements—

Planning approval

(1) Planning approval for the operation of a resthouse in the area from relevant authorities.

(2) Fire safety precautions approved by relevant authorities.

Fire safety

(3) A reasonable standard of interior and exterior decorations.

Decoration

(4) Adequate guest safety in bedrooms.

Guest safety

(5) The resthouse tariff to be displayed at the Reception with house rules in every bedroom.

Tariff and house rules

(6) At least five lettable bedrooms each of which shall have the following—

Number, size and facilities in bedrooms

(*a*) direct natural light;

(*b*) sufficient size with minimum floor area excluding bathrooms and balcony as follows—

(i) single room minimum floor area of 8 sq metres;

(ii) double room minimum floor area of 10 sq metres; and

(iii) triple room minimum floor area of 12 sq metres;

(*c*) windows with clean curtains or other means of ensuring privacy;

(*d*) walls of the bedrooms to be of a light colour and well maintained;

(*e*) beds with clean mattresses, clean sheets, clean pillows and pillowcases, with minimum bed sizes of—

(i) single: 180 cm by 80 cm;

(ii) double: 180 cm by 140 cm.

(*f*) in each bathroom—

(i) wash basins;

(ii) mirror;

(iii) hot and cold water;

(iv) soap;

(v) clean towel for each person;

(vi) toilet rail or clothes hook;

(*g*) a chair and table;

(*h*) provision of adequate facilities for hanging clothes;

(*i*) means of fastening the door from inside;

(*j*) adequate ventilation;

(*k*) A bedroom number clearly placed on each door;

(*l*) A set of clear instructions regarding safety in an event of a fire to be placed in each room;

Communal bathrooms and toilets

(*m*) Where communal bathrooms and toilets are provided, they shall be clearly designated and differentiated, and the minimum ratios shall be as follows—

(i) Bathrooms: 1 for every five guests;

(ii) Toilets: 1 for every ten guests.

Pit latrines

(*n*) Where pit latrines are used, they shall be conveniently sited, at least 6 metres away from the nearest bedroom and they shall be clearly designated and differentiated.

H. Guesthouses

Planning approval

39. Guesthouses shall satisfy the following Requirements—

(1) Planning approval for the operation of a guesthouse from relevant authorities.

Fire safety

(2) Fire safety precautions approved by the relevant authorities.

Décor

(3) A reasonable standard of exterior and interior decoration.

Bedroom safety

(4) A high degree of general safety in all bedrooms, and at reception, with house rules.

Tariff to be displayed

(5) A copy of the common tariff displayed in all bedrooms, and at reception, with house rules.

Number, size, and facilities in bedrooms

(6) At least three lettable bedrooms, each of which must have the following features—

(*a*) direct natural light;

(*b*) sufficient size to allow freedom of movement for guests occupying the room and adequate for using all equipment and furniture in a free, comfortable and safe manner with minimum floor area, excluding bathroom and balcony, as follows—

(i) single room minimum floor area of 8 sq metres;

(ii) double room minimum floor area of 10 sq metres; and

(iii) triple room minimum floor area of 12 sq metres.

(*c*) windows equipped with blinds, curtains or other means of ensuring privacy;

(*d*) beds with modern mattresses, clean sheets, pillow-cases and bedcovers and of comfortable proportions; if single, to be 190 cm by 80 cm, if double 190 cm by 150 cm at least;

(*e*) wash basin with mirror, hot and cold running water, soap, glass tumbler and clean towel, daily for each person;

(*f*) bedside table, cabinet or shelf shaded with light;

(*g*) dressing table or vanity unit;

(*h*) a chair per person;

(*i*) chest of drawers for clothes;

(*j*) wardrobe or other provision for hanging clothes;

(*k*) a carpet or rug for each bed;

(*l*) means of securing the door from within;

(*m*) adequate ventilation;

(*n*) a bedroom number placed on the door;

(*o*) display sign indicating the location of safe deposit facilities, if any;

(*p*) instructions displayed in each bedroom regarding the procedures that must be followed in the event of a fire, including maps of fire escape routes; and

(*q*) provision of breakfast.

I. Lodges

Location, number of bedrooms, meals, facilities, etc.

40.—(1) Lodges shall satisfy the following requirements—

(*a*) natural environment to be conducive to the practice of the intended outdoor activities;

(*b*) a satisfactory standard of furnishing and equipment as specified under Tourism and Hotels (Minimum Standards) Regulations with at least ten lettable rooms;

(*c*) prompt and courteous service;

(*d*) access for residents during the day and at all hours if pre-arranged.

(*e*) an adequately lighted and ventilated sitting room area;

(*f*) a telephone in a public area for use by guests;

(*g*) safe deposit facilities;

(*h*) breakfast and dinner or refreshments for residents at reasonable fixed times every day of the week;

(*i*) a sign displayed at convenient locations indicating how to obtain emergency assistance at night;

(*j*) sufficient lighting of bedroom corridors and stairs to ensure safety during the hours of darkness;

(*k*) communal or private bathroom furnished with bath or shower. stool, chair or lidded WC, towel rail bath mat, receptacle for soap, hook for clothes, mirror and electric shaver point but the ratio of communal bathrooms to bedrooms should not exceed one to three;

(*l*) communal or private toilets provided with toilet paper, cloth and brush, but the ratio of communal toilets to bedrooms should not exceed one to every six bed places;

(*m*) a first-aid emergency kit;

(*n*) availability of adequate car parking in the grounds or vicinity of the lodge house; and

(*o*) gardens maintained in tidy condition and the footpaths and parking area in a serviceable state.

Grading of Lodges

(2) Lodges shall be graded into star ratings in accordance with the criteria set out in the Schedule for the Grading of Lodges.

J. Tourist Apartments

Sanitary and hygienic conditions Cap. 34:01

41.—(1) All tourist apartments shall comply with the sanitary and hygienic conditions prescribed by the Public Health Act in areas intended for both customers and, where appropriate, staff.

(2) A cleaning service shall be provided for all common areas and passages. Each apartment shall be cleaned before customers take possession.

Staff

(3) Where appropriate, staff working in apartment blocks or complexes shall possess the qualifications required by the national tourism administration responsible for specific professional posts.

Buildings to comply with the law

(4) Buildings shall comply with the electrical and architectural specifications laid down by the National Construction Industry Act so as to guarantee the safety of the apartments and or persons using the premises. Apartment blocks or complexes shall be equipped with the technical and architectural facilities prescribed by the Act to cope with emergencies.

Requirements for bedrooms, etc.

(5) Bedrooms, dining and living rooms shall each have a window. Bedroom windows shall be supplied with curtains or similar opaque fittings.

Water and electricity supply

(6) All apartments shall be supplied with hot and cold running water and be connected to the main covered drainage system.

(7) All rooms shall be supplied with electricity, electrical fittings and power points. Good lighting shall be provided in all common areas and points of access to apartments.

(8) All apartments shall be supplied with a bathroom with natural and artificial ventilation, a shower/bath tub, washbasin, toilet, kitchen or kitchen recess with ventilation system as well as bedding and diningroom furniture in proportion to their capacity. Bathrooms. furniture, etc.

(9) Facilities shall be provided for tourists to wash, dry and iron their personal laundry if need be. Laundry facilities

(10) Crockery, cutlery and other household equipment in good condition shall be supplied in sufficient numbers to correspond to the capacity of each apartment. Towels and other household linen shall be supplied on request. Supply of crockery, cutlery, linen, etc.

(11) A telephone shall be provided in the building or its immediate proximity. Telephone facilities

(12) Apartments shall be heated or cooled on climatic conditions. Heating and cooling

(13) A refuse collection or elimination service shall be provided. Apartment buildings shall be equipped with separate facilities for refuse disposal. Refuse disposal

K. Holiday Resorts

42.—(1) A holiday resort shall comply with the following physical features— Physical features

(*a*) location: On sites where the natural environment is conducive to the practice of outdoor activities and sports;

(*b*) boundary: Common areas to be demarcated by natural geography or artificial enclosures;

(*c*) internal traffic circulation: Subject to restrictions on speed and volume;

(*d*) open spaces: Parking in a reserved area for the exclusive use of customers.

(2) While holiday resorts remain open to customers, they shall satisfy the following—

(*a*) ensure that their services comply with the conditions of sanitation and hygiene prescribed by Public Health Act, in all commercial establishments and common areas, accommodation areas (for customers and, where appropriate, service staff) and areas set aside for the practice of sports and other common activities; Sanitation, hygiene and security Cap. 34:01

(*b*) staff employed shall have relevant professional qualifications;

(*c*) assign to the functions specified for the various levels of classification staff whose professional qualifications match those required by the national tourism administration responsible for the performance of such functions;

Water supply

(*d*) all common facilities and accommodation units shall be supplied with constant running water and be connected to the main drainage System;

Ventilation in rooms, etc.

(*e*) rooms with showers, washbasins and toilets shall be supplied with natural or artificial ventilation.

Common facilities and services

(3) Holiday resorts shall provide the following facilities and services—

(*a*) recreation and entertainment to comply with specifications by the Tourism and Hotels Board;

(*b*) attendants at some sporting activities like the swimming pool or beach areas, shall be equipped with life-saving equipment as prescribed by the Laws of Malaŵi;

(*c*) at least one recreation manager if a programme of common recreational activities exists;

(*d*) readily accessible shops, at least for the sale of food and drinks, situated at or near the site;

(*e*) a first-aid service. Medical service to be arranged with medical assistance centre for the nearest town or village;

(*f*) security and surveillance of the resort;

(*g*) laundry and ironing facilities;

(*h*) refuse collection and cleaning of accommodation, common area facilities and equipment.

PART V

Miscellaneous

Offences and penalties

43. Any person who fails to comply with any requirement of these Regulations or any order, requirement, or direction lawfully issued by the Board under these Regulations shall be guilty of an offence and liable to a fine of K50,000 and imprisonment for six months.

TOURISM AND HOTELS (ENTERPRISES) REGULATIONS

G.N. 17/2005
3/2009
57/2017

under s. 16

PART I

Preliminary

1. These Regulations may be cited as the Tourism and Hotels (Enterprises) Regulations. Citation

2. In these Regulations, unless the context otherwise require— Interpretation

"capacity" means the number of persons, including the driver thereof, a motor vehicle is authorized to carry under the Road Traffic Act; Cap. 69:01

"car hire" means any body, incorporate or unincorporated, which is in the business of keeping and lending of motor vehicles to travellers at a fee;

"chauffeur tourist guide" means a national tourist guide who is also a chauffeur;

"motor vehicle" means any vessel designed to move on the road for the purpose of carrying human beings, such vessel having at least four wheels and propelled by a motor engine;

"national tourist guide" means a person who, for a fee or reward, escorts tourists and provides them with explanations and narrations concerning any or all aspects of tourist interest in the Republic of Malaŵi;

"restaurant" means any premises, wherein or whereon the business of supplying meals with waiter service for reward is or is intended to be conducted but does not include a restaurant that is functioning as part of a hotel or that has an entrance through a hotel;

"tourist" means any person ordinarily resident outside Malaŵi who travels to Malaŵi and spends at least one night or any person ordinarily resident in Malaŵi who travels to another part of the country and spends at least one night;

"tourist guide" or "tour guide" means any person who, for a fee or reward, escorts one or more persons and provides him or them, with explanations or narrations of any or all aspects of tourist interest on an organized trip and who is duly licensed by the Board;

"tour operator" means any person who provides for a fee or reward, any of the following services or facilities to tourists or travellers within Malaŵi or tourists visiting Malaŵi or travelling abroad—

(*a*) the issue of transport tickets or booking of seats on any means of transport;

(*b*) the reservation of accommodation in hotels, resthouses, guesthouses and other places providing lodging and refreshments;

(*c*) provision of reception at ports of entry, assistance in the securing of travel documents such as passports, visas, exchange control permits and clearing and transport of baggage; or

(*d*) the organization of excursions or tours either on an all-inclusive basis or on the basis of a commission on the sale of travel tickets and the provision of services and facilities connected with such excursions or tours.

"travel agent" means any person who provides for a fee or reward the services of a tour operator, excluding the organization of excursions or tours.

Application of the Act to enterprises other than hotels

3. The provisions of the Tourism and Hotels Act and of any regulations made thereunder shall apply to the following enterprises—

(*a*) restaurants;

(*b*) tour operations;

(*c*) car hires; and

(*d*) any other tourism enterprise as designated by the Minister.

PART II

Restaurants

Ambience

4.—(1) A restaurant shall have a cheerful ambience and shall create an atmosphere of warmth and elegance.

(2) The floor shall be non-slippery and easy to clean and it shall not be chipped or cracked.

(3) All fixtures, fittings and furnishings shall at all times be maintained in a good state of repair.

(4) The ventilation system shall be well designed so that smoke, smell, stale air, etc. are replaced by fresh air.

Size and arrangement of tables

5.—(1) The table arrangement shall allow easy service.

(2) A silver service restaurant shall allow an area of 12 to 15 square metres per station of 24 to 30 covers including a side board.

(3) An average size of a table in a restaurant shall be 76 cm × 76 cm to seat four and the height shall be 76 cm.

(4) An average size of the chair shall be 46 cm × 46 cm with a height of 46 cm.

(5) Upholstery material used shall be easy to clean and shall have fast colours.

(6) Leather, synthetic leather and other various types of tapestry cloth may be used.

(7) The dining chairs shall be designed to withstand rough and heavy usage.

Kitchen heat, etc.

6. A double door dividing the kitchen and the restaurant shall be placed to keep away kitchen heat, noise and smell from penetrating into the restaurant.

Menu

7.—(1) Both international and national or local food items shall be listed on the a *là carte* menu with their prices.

(2) Equipment required for various preparations shall be made available and the items served shall reflect the name or the style of preparation described in the menu.

(3) Speciality cuisines, such as Chinese, French, Italian, Malaŵian or Indian, may be offered in speciality restaurants and Ethnic, Halal and vegetarian dishes may also be offered.

Staff

8.—(1) All staff shall be professionally trained.

(2) Supervisory staff shall be trained in food safety and hygiene, first aid, restaurant layout and security.

(3) Adequate number of staff shall be employed to ensure smooth services.

(4) Waiters must be conversant in English and wear uniforms with personal badges.

Forms of application and licences

9.—(1) Any person who desires to obtain a licence to authorize him to use premises as a restaurant shall submit an application to the Board in Form 1 in the First Schedule.

(2) Any person who desires to obtain a licence to authorize him to keep or manage a restaurant shall submit an application to the Board in Form 2 in the First Schedule.

(3) The licence granted by the Board in respect of using premises as a restaurant shall be in Form 3 in the First Schedule.

(4) The licence granted by the Board in respect of keeping or managing a restaurant shall be in Form 4 in the First Schedule.

PART III

Tour Operations

Tour operations under licence

10. No person shall function as a national tourist guide, chauffeur tourist guide or perform the functions of a tour operator or travel agent without a valid licence issued by the Board specifying the services in respect of which a licence is granted.

Qualifications of a national tourist guide

11. No person shall be licensed as a national tourist guide unless he—

(*a*) is a citizen of Malaŵi or resident of Malaŵi holding a Temporary Employment Permit;

(*b*) is in possession of a certificate issued by any institution recognized by the Board on successful completion of a training course on tour-guiding;

(*c*) is proficient in English and one or more foreign languages which are mostly spoken by international visitors to Malaŵi and the region, i.e. French and Portuguese;

(*d*) is mentally and physically fit and free of communicable disease; and

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Cap. 35:02
Cap. 45:01
Cap. 42:01

(*e*) has not been convicted of an offence under the Penal Code, the Dangerous Drugs, the Exchange Control and Customs and Excise Acts during the period of five years prior to the date of application for a licence.

Qualifications of a chauffeur tourist guide

12. No person shall be licensed as a chauffeur tourist guide unless he—

(*a*) meets the requirements under regulation 11; and

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(*b*) is in possession of a valid driving licence issued under the Road Traffic Act or an international driving licence of the appropriate class.

Tour operator or travel agent

13.—(1) No person shall be licensed as a tour operator or operator or travel agent unless—

(*a*) he has a working capital of not less than K100,000;

(*b*) he has had a business turnover of not less than K500,000 during the financial year immediately preceding the date of application (in computing such business turnover the value of air and sea passages sold by the agency should be excluded but the commission on such tickets should be included);

(*c*) in the case of a limited company, it has a paid up capital of not less than K100,000; or

(*d*) in case of a sole proprietorship or partnership, it has a capital contribution of not less than K100,000;

(*e*) he furnishes a bank guarantee in such a sum as may be determined by the Board, and the bank guarantee shall be in Form 5 in the First Schedule.

(2) The sole business of the agency seeking a licence shall be that of a travel agent or tour operator.

(3) The agency shall maintain a current account in its own name in a bank within Malaŵi.

(4) The agency shall have adequately furnished and equipped office with at least a telephone, a fax and an e-mail.

(5) The agency shall employ adequate and professionally trained staff to serve customers and transact business.

Forms of application

14.—(1) Any person who desires to obtain a licence to function as a tourist guide shall submit an application to the Board in Form 6 in the First Schedule.

(2) Any person who desires to obtain a licence to function as a chauffeur tourist guide shall submit an application to the Board in Form 7 in the First Schedule.

(3) Any person who desires to obtain a licence to function as a tour operator shall submit an application to the Board in Form 8 in the First Schedule.

Licences

15.—(1) The licence granted by the Board in respect of a tourist guide shall be in Form 9 in the First Schedule.

(2) The licence granted by the Board in respect of a chauffeur tourist guide shall be in Form 10 in the First Schedule.

(3) The licence granted by the Board in respect of a tour operator shall be in Form 11 in the First Schedule.

PART IV

Car Hire

Car Hire under licence

16.—(1) No person shall carry out the business of a car hire unless he is licensed by the Board.

(2) Any person who desires to obtain a licence to carry out the business of a car hire shall submit an application to the Board in Form 12 in the First Schedule.

(3) The licence granted by the Board in respect of a car hire shall be in Form 13 in the First Schedule.

(4) The licence granted by the Board shall be prominently displayed by the holder of the licence in the reception area of the premises of the car hire.

Requirements for premises, vehicles and drivers

17.—(1) Car hire operations shall be conducted from adequate office space located in a decent area.

(2) There shall be adequate parking space at the premises of a car hire for all registered motor vehicles owned by the car hire.

(3) Every car hire shall have at least five motor vehicles for hire and each such motor vehicle shall have a minimum capacity of five persons.

(4) All premises for car hire shall be inspected by the Board and certified suitable for the purpose of car hire.

(5) A motor vehicle for hire shall be in good physical and mechanical condition and shall not be more than five years old from the year of make unless it has been immaculately reconditioned and certified for this purpose by the Road Traffic Department.

(6) A car hire shall not employ a driver to drive any of its vehicles unless the driver—

(*a*) has a valid driving licence which has not been endorsed;

(*b*) is proficient in English; and

(*c*) is mentally and physically fit and free of communicable disease.

(7) Details of a motor vehicle for hire shall be completed after every inspection referred to in subparagraph (4) and the details shall be set out in Form 14 in the First Schedule.

PART V

Miscellaneous Provisions

Misleading information

18. Any person who is not licensed by the Board but purports to be a licensed tourist guide, chauffeur tourist guide or tour operator or who describes his business in any way that could reasonably be construed as being duly licensed by the Board shall be guilty of an offence.

Register of licensed travel agent

19. The Board shall maintain a register of licensed travel agents and tour operators for the information of the local and international travel trade and the general public.

Fees

20. The fees prescribed in the Second Schedule shall be payable in respect of the matters specified therein in relation to such fees.

Offence and penalty

21. Any person who contravenes these regulations shall be guilty of an offence and shall be liable to a fine of K50,000.

FIRST SCHEDULE

FORMS FORM 1

TOURISM AND HOTELS ACT

(CAP. 50:01)

APPLICATION FOR LICENCE TO USE PREMISES AS A RESTAURANT

(*under paragraph* 9 (1))

The Chairman,

1. I/We hereby apply for a licence in terms of the Tourism and Hotels (Enterprises) Regulations for—

.....

(*trading name of restaurant*)

.....

(*full address of restaurant*)

....

(*Telephone Number*) (*Fax*) (*E-mail*)

The restaurant is situated at: .....

.....

(*physical address of restaurant*)

2. The operator of the restaurant is: .....

.....

(*name*)

.....

(*address*)

If the operator is a company, partnership, or other association, the full names and addresses of all directors, partners or other persons (*excluding shareholders in public companies*) *who have a financial interest in the enterprise must be provided separately.*

3. I/We enclose, in support of this application (where applicable)—

(*a*) a brochure or other printed material promoting the restaurant;

(*b*) the application fee of: .....

(*c*) a plan of the restaurant to scale, showing—

(i) the full extent of the land occupied by the restaurant;

(ii) all buildings on the land;

(iii) any servitude or building restrictions; and

(iv) the proposed or existing layout of the restaurant, including all ablution blocks, laundries, cooking-facilities, access-roads, paths, etc.; and

(*d*) a copy of a document from Planning Authorities authorizing use of premises as a restaurant.

I/We certify that, to the best of my/our knowledge and belief, the information given in this application "and the documents in support thereof are true and correct.

Place: .....

Date: ....

(*Signature of applicant*)

NOTES—(1) All structures, equipment and facilities of the restaurant will be inspected by a designated officer prior to licensing.

(2) This form, with the relevant attachments and fee should be submitted to the Chairman of the Tourism and Hotels Board.

FORM 2

TOURISM AND HOTELS ACT

(CAP. 50:01)

APPLICATION FOR LICENCE TO KEEP OR MANAGE A RESTAURANT

(*under paragraph* 9 (2))

The Chairman,

1. I hereby apply in terms of paragraph 9 (2) of the Tourism and Hotels (Enterprises) Regulations for a Manager's licence.

.....

(*applicant's full name*)

.....

(*Signature of address*)

for (where applicable) .....

(*grade of restaurant for which licence is sought*)

....

(*Telephone Number*) (*Fax*) (*E-mail*)

2. I enclose in support of my application—

(*a*) copies of certificates of my professional qualifications;

(*b*) documents as evidence of my professional experience;

(*c*) names and addresses of three contactable referees; and

(*d*) (for Non-Malaŵians) a copy of clearance documents from Immigration authorities.

I certify that to the best of my knowledge and belief, the information given in this application and the documents in support thereof are true and correct.

I declare that I have not been convicted of an offence within the past five years and I am not an undischarged bankrupt.

Place: .....

Date: ....

(*Signature of applicant*)

FORM 3

TOURISM AND HOTELS ACT

(CAP. 50:01)

LICENCE TO USE PREMISES AS A RESTAURANT

(*under paragraph* 9 (3))

Licence No. .....

I/We certify that, in terms of paragraph 9 (3) of the Tourism and Hotels (Enterprises) Regulations:

.....

(*trading name of restaurant*)

of .....

(*situated at*)

is licensed as a restaurant of Grade (where applicable) .....

(*product category*)

The validity of this licence shall expire on the 31st day of December, 20 .....

.....

Chairman
Tourism and Hotels Board

FORM 4

TOURISM AND HOTELS ACT

(CAP. 50:01)

LICENCE TO KEEP OR MANAGE A RESTAURANT

(*under paragraph* 9 (4))

Licence No. .....

.....

(*full name*)

.....

(*full address*)

is licensed to manage a restaurant in the following grade (where applicable):

.....

(*product category*)

This licence shall expire on the 31st day of December, 20 .....

The previous licence, if any, expired on the 31st day of December, 20 .....

.....

Chairman
Tourism and Hotels Board

NOTE: If, for any reason, this licence is cancelled, the holder thereof shall forthwith return the licence to the Chairman of the Tourism and Hotels Board.

FORM 5

TOURISM AND HOTELS ACT

(CAP. 50:01)

SURETY BOND

In terms of paragraph 13 (1) (*e*) of the Tourism and Hotels (Enterprises) Regulations, I/We, the undersigned ..... do hereby bind
(*surety or sureties*)
myself/ourselves as surety/sureties and co-principal debtor/s under renunciation of the benefits of excursion and division to the Board for the due payment by: .....
.....
(*tour operator*)
of any amount that the Board may be entitled to claim from him in terms of these Regulations, up to an amount not exceeding K ..... in respect of an award of compensation that may be made to a tourist in terms of the said regulations.

Dated this ..... day of ..... , 20.....

Witness ....
(*Surety*)

Witness ....
(*Surety*)

At: .....

FORM 6

TOURISM AND HOTELS ACT

(CAP. 50:01)

APPLICATION FOR A LICENCE TO FUNCTION AS A NATIONAL TOURIST GUIDE

(*under paragraph* 14 (1))

1. Full name of applicant: .....
2. Nationality: .....
3. Residential Address: .....
4. Postal Address: .....
5. Intended area(s) of operation: .....
6. Licence applied for: .....
7. Professional qualifications (attach copies of certificates): .....
.....
8. Professional experience (attach reference letters, if applicable): .....
.....
9. Knowledge of foreign languages (give details of levels of proficiency): .....
.....

10. Evidence of medical fitness (attach): .....
.....

11. Any other relevant information: .....
.....

I, ... , declare that I have not been convicted of an offence under the Penal Code of the Laws of Malaŵi and that the particulars given above are true and correct.

Signature: ..... Date: .....

NOTE: National Tourist Guides or Chauffeur Tourist Guides who intended to operate their own business have to submit a separate application for a tour operator's licence.

FORM 7

TOURISM AND HOTELS ACT

(CAP. 50:01)

APPLICATION FOR A LICENCE TO OPERATE AS A CHAUFFEUR TOURIST GUIDE

(*under paragraph* 14 (2))

1. Full name of applicant: .....
2. Nationality: .....
3. Residential Address: .....
4. Postal Address: .....
5. Intended area(s) of operation: .....
6. Licence applied for: .....
7. Professional qualifications (attach copies of certificates, including driving licence):
.....
8. Professional experience (attach reference letters, if applicable): .....
.....
9. Knowledge of foreign languages (give details of levels of proficiency): .....
.....
10. Evidence of medical fitness (attach): .....
.....
11. Any other relevant information: .....
.....

I, ..., declare that I have not been convicted of an offence under the Penal Code of the Laws of Malaŵi and that the particulars given above are true and correct.

Date: ..... Signature: .....

NOTE: National Tourist Guides or Chauffeur Tourist Guides who intended to operate their own business have to submit a separate application for a tour operator's licence.

FORM 8

TOURISM AND HOTELS ACT

(CAP. 50:01)

APPLICATION FOR A LICENCE TO FUNCTION AS A TOUR OPERATOR

(*under paragraph* 14 (3))

1. Registered name of business: .....
   Address of the principal place of business: .....
   .....
2. State name, address and nationality of directors (in case of a company) and partners or proprietors (in case of a partnership) and number of shares held by each.

	Name of Director/ Partner/Proprietor	*Private Address*	*Nationality*	*Number of shares held*
1.				
2.				
3.				
4.				
5.				
6.				
7.				
8.				
9.				
10.				

3. Registration number under the Companies Act/Business Names and the Date of Registration. (Annex photostat copy of a certificate).
4. If a company indicate:
   (1) Whether private or public: .....
   (2) Authorized capital: .....
   (3) Paid up capital: .....
   (*Annex a certified statement of paid up capital from recognized auditors*)
5. If a partnership or sole proprietorship, indicate amount of capital contribution: .....
6. Date of commencement of business as a Travel Agent/Tour Operator: .....
7. Name of bankers: .....

8. Description of business premises:
   (*a*) Location: .....
   (*b*) Whether on a street level or upper floor: .....
   (*c*) Floor area occupied: .....
   (*d*) Telephone number: .....
   (*e*) E-mail: .....
   (*f*) Fax No.: .....
   (*g*) Are the premises air conditioned? .....
   (*h*) Any other information: .....
9. Please indicate on the attached form details of the staff employed in the business.
10. Does the agency handle—
    (a) Incoming tourists?.....
    (b) Outgoing tourists? .....
11. Details of air and the sea passage agencies held by the firm (give details of appointment):
    (a) Airlines;
    (b) Shipping lines.
12. Is the Agency a member of IATA?..... If yes, membership number:
13. Name and address of foreign tour operators/travel agencies whom you represent: .....
14. Name and address of your agent, if any, in a foreign country: .....
15. Does your Agency/Operation hold franchise of any international organization? .....
16. Do you specialize in any special interest tours? Please give details: .....
17. Have you been authorized to accept/encash foreign currency? If yes, indicate the number of Permits issued by the Reserve Bank of Malaŵi, Department of Foreign Exchange Control—
    (*a*) Acceptance Permit Number: .....
    (*b*) Encashment Permit Number: .....
    (*c*) Re-encashment Permit Number: .....
18. Details of vehicles registered in the name of the Agency—
    (*a*) Number of vehicles registered of private use with registration number
        (i) cars: .....
        (ii) other (specify): .....
    (*b*) Number of vehicles for hire with registration numbers—
        (i) cars: .....
        (ii) station wagon: .....

(iii) mini/macro buses: .....

(iv) coaches .....

(v) Jeeps/4 × 4s .....

(*c*) Number of self-driven cars with registration numbers: .....

19. Earnings of the Agency/Operation for the financial year immediately preceding the date of this application—

(*a*) Foreign exchange earnings: .....

(*b*) Earnings in Malaŵi Kwacha: .....

(*Annex a certified statement from recognized Auditors*)

20. Is the Agency a member of any national and/or international travel organization? Please give details: .....

.....

Furnish details of the staff employed in the business:

Name of officer	*Designation*	*Period of Service in the Agency*	*Remarks*

21. Does the Agency/Operation have brochures and a schedule of confidential tariffs? If so enclose copies.

22. Any other information you wish to state regarding your Agency/Operation: .....

.....

23. Has the Agency/Operation or any of its directors (if company), proprietors, partners or any person employed in the business, been convicted of the offences enumerated in the Regulations relating to the licensing of Travel Agents/Tour Operators? .....

.....

I/We the undersigned declare that the above particulars are true and correct.

Date: .....

Signature(s): .....

Name and Designation of Applicant(s): .....

The following documents should be forwarded with this application—

(*a*) a photostat copy of the Certificate of Registration with the Registrar of Business Names or a Certificate of Incorporation from the Registrar of Companies along with a copy of the Memorandum and Articles of Association:

(*b*) a duly audited Profit and Loss Account and Balance Sheet for the financial year immediately preceding the date of application;

(*c*) a Bank Guarantee to be specified by the Board;

(*d*) a Certified Statement of paid-up capital from recognized Auditors in case of a company that has not completed one year in business;

(*e*) a Certified Statement of the amount of capital contribution in the case of a sole proprietor or partnership that has not completed one year in business; and

(*f*) a Certified Statement of Foreign Exchange earnings and other earnings form recognized business.

FORM 9

TOURISM AND HOTELS ACT

(CAP. 50:01)

LICENCE IN RESPECT OF A NATIONAL TOURIST GUIDE

(*under paragraph* 15 (1))

I/We certify that, in terms of paragraph 15(1) of the Tourism and Hotels (Enterprises) Regulations:

.....

(*Name of holder*)

has satisfied the requirements for licensing and is hereby licensed as a .....

.....

(*Type and area of operation, where applicable*)

This licence is valid until the ..... day of ....., 20.....

.....

Chairman of the Tourism and Hotels Board

FORM 10

TOURISM AND HOTELS ACT

(CAP. 50:01)

LICENCE IN RESPECT OF A CHAUFFEUR TOURIST GUIDE

(*under paragraph* 15 (2))

I/We certify that, in terms of paragraph 15 (2) of the Tourism and Hotels (Enterprises) Regulations:

.....

(*Name of holder*)

has satisfied the requirements for licensing and is hereby licensed as a .....

.....

(*Type and area of operation, where applicable*)

This licence is valid until the ..... day of ....., 20.....

.....

Chairman of the Tourism and Hotels Board

FORM 11

TOURISM AND HOTELS ACT

(CAP. 50:01)

LICENCE IN RESPECT OF A TOUR OPERATOR

(*under paragraph* 15 (3))

I/We certify that, in terms of paragraph 15 (3) of the Tourism and Hotels (Enterprises) Regulations:

.....

(*Name of holder*)

has satisfied the requirements for licensing and is hereby licensed as a .....

.....

This licence is valid until the ..... day of ....., 20.....

.....

Chairman of the Tourism and Hotels Board

FORM 12

TOURISM AND HOTELS ACT

(CAP. 50:01)

APPLICATION FOR A LICENCE TO CARRY OUT THE BUSINESS OF A CAR HIRE

(*under paragraph* 16 (2))

1. Registered Name of Business: .....
.....

   Address of the Principal Place of Business: .....
.....

2. State name, address and nationality of directors (in case of a company) and partners or proprietors (in case of a partnership or a sole proprietorship) and number of shares held by each:

	Name of Director Partner/Proprietor	*Private Address*	*Nationality*	*Number of Shares Held*
1.				
2.				
3.				
4.				
5.				
6.				
7.				
8.				
9.				
10.				

3. Registration number under the Companies Act/Business Names and Registration Act. (*Annex Photostat copy of certificate*).
4. If a company indicate—
   (*a*) Whether private or public: .....
   (*b*) Authorized capital: .....
   (*c*) Paid-up capital: .....
   (*Annex a certified statement of paid-up capital from recognized Auditors*).
5. If a partnership or sole proprietorship, indicate amount of capital contribution:
.....
6. Date of commencement of business as a Car Hire: .....
7. Name of Bankers: .....

8. Description of business premises: .....
   (*a*) Location: .....
   (*b*) Whether on a street level or upper floor level: .....
   (*c*) Floor area occupied: .....
   (*d*) Number of packing spaces: .....
   (*e*) Telephone number: .....
   (*f*) E-mail address: .....
   (*g*) Fax Number: .....
   (*h*) Any other information: .....
   .....
   .....
9. Please indicate on the attached form details of the staff employed in the business.
10. Have you been authorized to accept/encash foreign currency? If so, indicate the number of Permits issued by the Reserve Bank of Malaŵi, Department of Foreign Exchange Control—
   (*a*) Acceptance Permit Number: .....
   (*b*) Encashment Permit Number: .....
   (*c*) Re-encashment Permit Number: .....
11. Number of vehicles for hire with registration numbers—
   (*a*) cars: .....
   (*b*) station wagon: .....
   (*c*) mini/macro buses: .....
   (*d*) coaches: .....
   (*e*) Jeeps/4 × 4s: .....
   (*f*) Number of self-driven cars with registration numbers: .....
   .....
12. Details of the staff employed in the business:

	Name of officer	*Designation*	*Period of Service in the Agency*	*Remarks*
1.				
2.				
3.				
4.				
5.				
6.				
7.				

13. Does the Car Hire have brochures and a tariff schedule? If so, enclose copies.
14. Any other information you wish to state regarding your Car Hire?

    .....

    .....

15. Has the Car Hire or any of its directors (if company), proprietors, partners or any person employed in the business, been convicted of the offences enumerated in the Regulations relating to the licensing of Travel Agents/Tour Operators? .....

    .....

I/We the undersigned declare that the above particulars are true and correct.

Date: .....

Signature(s): .....

Name and Designation of Applicant(s): .....

The following documents should be forwarded with this application—

(*a*) a Photostat copy of the Certificate of Registration with the Registrar of Business Names or a Certificate of Incorporation from the Registrar of Companies along with a copy of the Memorandum and Articles of Association;

(*b*) a duly audited Profit and Loss Account and Balance Sheet for the financial year immediately preceding the date of application;

(*c*) a Bank Guarantee to be specified by the Board;

(*d*) a Certified Statement of paid-up capital from recognized Auditors in case of a company that has not completed one year in business;

(*e*) a Certified Statement of the amount of capital contribution in the case of a sole proprietor or partnership that has not completed one year in business; and

(*f*) a Certified Statement of Foreign Exchange earnings and other earnings from recognized business.

FORM 13

TOURISM AND HOTELS ACT

(CAP. 50:01)

Licence in Respect of a Car Hire

(*under paragraph* 16(3))

I/We certify that, in terms of paragraph 16 (3) of the Tourism and Hotels (Enterprises) Regulations

.....

(*Name of holder*)

has satisfied the requirements for licensing and is hereby licensed as a .....

.....

This licence is valid until the ..... day of ....., 20.....

.....

Chairman of the Tourism and Hotels Board

FORM 14

TOURISM AND HOTELS ACT

(CAP. 50:01)

TOURISM AND HOTELS (ENTERPRISES) REGULATIONS

Details of a Motor Vehicle for Hire

(*under paragraph* 16 (7))

1. Registered name of business: .....
2. Area of operation: .....
3. Vehicle type: ..... Year of make: .....
   Registration No.:..... Sitting capacity: .....
4. Accessories available:

	Very Good	*Good*	*Fair*	*Poor*
Fire Extinguisher				
First Aid Kit				
Body Work				
Floor Carpet				
Condition of Seats				
Reclining Seats				
Fixed Seats				
Leg Space				
Air Condition				
Radio				
Loud Speaker				
Intercom				
General Appearance				
Ashtrays				
Map and Brochure Brackets				
Luggage Space				
Trailer				

Attach copies of Registration Book and Certificate of Fitness.

Date of inspection: ..... Inspected by:.....

Comments: .....

.....

SECOND SCHEDULE

reg. 20
G.N. 3/2009
57/2017

I. Licensing Fees

		K	*t*
A.	ACCOMMODATION—		
	(*a*) Category A	640,000	00
	(*b*) Category B	400,000	00
	(*c*) Category C	320,000	00
	(*d*) Category D	240,000	00
	(*e*) Category E	160,000	00
	(*f*) Category F	80,000	00
	(*g*) Category G	48,000	00
	(*h*) Category H	24,000	00
	(*i*) Category I	8,000	00
B.	RESTAURANT—		
	1. On application to use premises as a restaurant—		
	(*a*) Category A	320,000	00
	(*b*) Category B	192,000	00
	(*c*) Category C	96,000	00
	(*d*) Category D	48,000	00
	(*e*) Category E	36,000	00
	(*f*) Category F	24,000	00
	(*g*) Category G	12,000	00
	2. On application to keep or manage a restaurant—		
	(*a*) Class A	20,000	00
	(*b*) Class B	8,000	00
	(*c*) Class C	4,000	00
C.	CAR HIRE—		
	(*a*) Category A: more than 20 vehicles	600,000	00
	(*b*) Category B: 16 to 20 vehicles	500,000	00
	(*c*) Category C: 11 to 15 vehicles	200,000	00
	(*d*) Category D: 5 to 10 vehicles	160,000	00
D.	TRAVEL AGENTS	140,000	00
E.	TOUR OPERATORS—		
	(*a*) Category A: RESIDENT TOUR OPERATOR	300,000	00
	(*b*) Category B: NON-RESIDENT TOUR OPERATOR	500,000	00
F.	EVENT ORGANISER	60,000	00

I. LICENSING FEES—(*continued*)

		K	*t*
G.	HUNTING OPERATORS	60,000	00
H.	CONFERENCE FACILITIES	60,000	00
I.	INCENTIVE TRAVEL ORGANISERS	60,000	00
J.	PHOTOGRAPHIC AND OTHER SAFARI OPERATORS	40,000	00
K.	WILDLIFE RESERVES, PARKS, FARMS, SANCTUARIES, ART GALLERY, CULTURAL VILLAGE	40,000	00
L.	RAFTING, CANOEING, KAYAKING BOATS, RAFTS	40,000	00
M.	HORSE-RIDING AND OTHER ANIMAL RIDING SAFARIS	200,000	00
N.	GOLFING	500,000	00
O.	CRUISE, YACHTS, SCUBA DIVING	200,000	00
P.	TOUR GUIDES—		
	(*a*) Category A: National Tour Guides and Chauffer Tourist Guides	20,000	00
	(*b*) Category B: Local Tour Guides	2,000	00
Q.	HIRING OF—		
	(*a*) Aircraft	120,000	00
	(*b*) Bicycles	8,000	00
	(*c*) Motor Coaches	80,000	00
	(*d*) Motor bikes	20,000	00
R.	TOURISM ENTERPRISE TRAINING INSTITUTIONS OR FACILITIES	120,000	00
S.	LOCAL TOURIST GUIDES	4,000	00
T.	NATIONAL AND CHAUFFER TOURIST GUIDES	20,000	00
U.	THE REST OF TOURISM ENTERPRISES	40,000	00

NB: The fees for replacement of license shall be the same as for the application of license.

II. Re-Inspection and Closure Penalty Fees

		CLOSURE	PENALTY FEE
A.	ACCOMMODATION RE-INSPECTION FEE		
	(*a*) Category A	100,000 00	160,000 00
	(*b*) Category B	70,000 00	100,000 00
	(*c*) Category C	50,000 00	80,000 00
	(*d*) Category D	40,000 00	60,000 00
	(*e*) Category E	27,000 00	40,000 00
	(*f*) Category F	14,000 00	20,000 00
	(*g*) Category G	8,000 00	12,000 00
	(*h*) Category H	4,000 00	6,000 00
	(*i*) Category I	1,500 00	2,000 00
B.	RESTAURANT—		
	1. On application to use premises as a restaurant—		
	(*a*) Category A	27,000 00	40,000 00
	(*b*) Category B	16,000 00	24,000 00
	(*c*) Category C	8,000 00	12,000 00
	(*d*) Category D	5,000 00	8,000 00
	(*e*) Category E	4,000 00	6,000 00
	(*f*) Category F	3,000 00	4,000 00
	(*g*) Category G	1,500 00	2,000 00
	2. On application to keep or manage a restaurant—		
	(*a*) CLASS A	2,000 00	2,500 00
	(*b*) CLASS B	1,000 00	1,000 00
	(*c*) CLASS C	500 00	500 00
C.	CAR HIRE—		
	(*a*) Category A: more than 20 vehicles	100,000 00	150,000 00
	(*b*) Category B: 16 to 20 vehicles	80,000 00	125,000 00
	(*c*) Category C: 11 to 15 vehicles	30,000 00	50,000 00
	(*d*) Category D: 5 to 10 vehicles	20,000 00	40,000 00
D.	TRAVEL AGENTS	25,000 00	35,000 00
E.	TOUR OPERATORS—		
	(*a*) Resident	50,000 00	75,000 00
	(*b*) Non-resident	70,000 00	100,000 00
F.	EVENT ORGANISER	5,000 00	7,500 00

II. Re-Inspection and Closure Penalty Fees—(*continued*)

		CLOSURE	PENALTY FEE
G.	HUNTING OPERATORS	10,000 00	15,000 00
H.	CONFERENCE FACILITIES	5,000 00	7,500 00
I.	INCENTIVE TRAVEL ORGANISERS	5,000 00	7,500 00
J.	PHOTOGRAPHIC AND OTHER SAFARI OPERATORS	4,000 00	5,000 00
K.	WILDLIFE RESERVES, PARKS, FARMS, SANCTUARIES, ART GALLERY, CULTURAL VILLAGE	3,000 00	5,000 00
L.	RAFTING, CANOEING, KAYAKING BOATS, RAFTS	3,000 00	5,000 00
M.	HORSE-RIDING AND OTHER ANIMAL RIDING SAFARIS, GOLFING	17,000 00	25,000 00
N.	GOLFING	50,000 00	100,000 00
O.	CRUISE, YACHTS, SCUBA DIVING	17,000 00	25,000 00
P.	TOUR GUIDES—		
	(*a*) Category A: National Tour Guides and Chauffer Tourist Guides		2,000 00 2,500 00
	(*b*) Category B: Local Tour Guides		250 00 250 00
Q.	HIRING OF—		
	(*a*) Aircrafts	10,000 00	15,000 00
	(*b*) Bicycles	1,000 00	1,000 00
	(*c*) Motor coaches	7,000 00	10,000 00
	(*d*) Motor bikes	2,000 00	2,500 00
R.	TOURISM ENTERPRISE TRAINING INSTITUTIONS OR FACILITIES	10,000 00	15,000 00
S.	LOCAL TOURIST GUIDES	500 00	500 00
T.	NATIONAL AND CHAUFFER TOURIST GUIDES	2,000 00	2,500 00
U.	THE REST OF TOURISM ENTERPRISES . .	3,000 00	5,000 00

N. B. 1. The categories for accommodation units are based on location, volume of business, rates, capacity, size and presentation of rooms and comfort.

2. The categories for restaurants are based on location, rates, capacity and volume of business.

TOURISM AND HOTELS (LICENSING OF HOTELS) REGULATIONS

G.N. 19/2005
23/2009

under s. 15

PART I
Preliminary

1. These regulations may be cited as Tourism and Hotels (Licensing of Hotels) Regulations. Citation

2. In these Regulations, unless the context otherwise requires— Interpretation

"full board" means accommodation, early morning tea, breakfast, luncheon afternoon tea, dinner and bath;

"hotel owner" means any person to whom a licence under section 5 (1) of the Act has been issued and includes any person to whom such a licence has been transferred under section 8 of the Act.

PART II
Application for Licences

3.—(1) Any person who desires to obtain a licence under section 5 (1) of the Act shall submit an application to the Board in Form 1 in the First Schedule Forms of application

(2) Any person who desires to obtain a licence under section 5 (2) of the Act shall submit an application to the Board in Form 2 in the First Schedule.

(3) Any person who desires to renew a licence under section 5 (1) of the Act shall at least two months before the expiry of the licence, submit an application to the Board in Form 3 in the First Schedule.

(4) Any person who desires to renew a licence under section 5 (2) of the Act shall submit an application to the Board in Form 4 in the First Schedule.

(5) Any person who changes a hotel-keeper shall within seven days of making the changes inform the Board of such change in Form 5 in the First Schedule.

(6) Any holder of licence to keep or manage an hotel who desires to have the licence transferred shall submit an application to the Board in Form 6 in the First Schedule.

(7) Any person who owns a hotel shall within seven days of termination of the employment of a hotel-keeper, inform the board in writing of such termination and the reason thereof.

(8) An Application shall be accompanied by the prescribed fee.

(9) Nothing in this Regulation shall preclude the Board from requiring an application to produce such further documents or such other evidence as the Board may deem necessary for the purpose of being satisfied as to any matter related to the application.

Amendment of an application

4.—(1) An application submitted to the Board may, with the approval of the Board, be amended in any respect at any time prior to its being determined by the Board.

(2) Where an application has been amended pursuant to subregulation (1), the application shall be deemed to have been made on the date when the amendment was effected.

(3) Any person who, prior to his application being determined by the Board, willfully withholds information or gives information knowing or having reason to believe it to be false or misleading shall be guilty of an offence and liable to a fine of K5,000 and to imprisonment for one year.

Ground for refusing to issue, renew or transfer a licence

5.—(1) If, when considering any application for the issue, renewal or transfer of any licence, the board is satisfied that the applicant—

(*a*) is not a fit and proper person;

(*b*) is not a person of good character and integrity;

(*c*) is not a person of good financial standing;

(*d*) is an unrehabilitated insolvent;

(*e*) is a minor;

(*f*) is of unsound mind; or

(*g*) has within the last five years been removed from an office of trust on account of misconduct,

then the Board may refuse to issue, renew or transfer the licence, as the case may be, or may issue, renew or transfer it subject to such conditions relevant to the said grounds as it may think fit.

(2) For the avoidance of doubt, it is hereby declared that the provisions of subregulation (1) relating to grounds for refusing to issue, renew or transfer a licence are in addition to, and not in derogation of, any other grounds set out in these Regulations.

Prohibited applications

6.—(1) Any person whose—

(*a*) application has been refused by the Board; or

(*b*) licence has been revoked,

on any ground shall not apply again for any licence within a year from the date of such refusal or revocation.

(2) Any person who has a direct or indirect interest in the business. premises or licence of the person referred to in subregulation (1) shall not apply for any licence within one year from the date of the refusal or revocation referred to in subregulation (1).

(3) Any person whose—

(*a*) application has been refused by the Board; or

(*b*) licence has been revoked,

on any ground more than once shall not apply again for any licence within two years from the date of such refusal or revocation.

(4) Any person who has a direct or indirect interest in the business, premises or licence of the person referred to in subregulation (3) shall not apply for any licence within two years from the date of the refusal or revocation referred to in subregulation (3).

Representation by interested parties

7.—(1) Any person wishing to make representations in relation to any application submitted to the Board shall make the representations to the Board within fourteen days of the submission of the application to the Board.

(2) The representations under subregulation (1) shall set fully—

(*a*) the name, address and telephone number of the person submitting the representations;

(*b*) the name of the applicant to whom the representation relates;

(*c*) the nature of the interest of the person submitting the representation;

(*d*) the facts upon which they are based; and

(*e*) the relief that is being sought.

(3) The representations made under subregulation (1) shall be accompanied by an affidavit verifying the facts set out therein.

(4) The representations and the relevant affidavit shall be served upon the applicant and any other person appearing from the register to be interested in the matter.

(5) At any time within ten days from the date of service of the representations on the applicant, the applicant or any other person who has a substantial interest in the matter and who wishes to oppose the representations shall deliver to the Board a counter

statement, verified by affidavit, setting out fully the grounds on which the representations are opposed and copies of the same shall be served upon the person making the representations.

Application and objection to be open to public inspection

8.—(1) Any application, objection and response lodged in terms of regulations 3 and 7 shall, subject to subregulation (2), be open to public inspection by interested persons during the normal office hours of the Board and the Board shall, at the request of any interested person, and payment of such fees as may be set out in the Third Schedule, furnish him with a copy of, or extract from, any such application, response or information.

(2) The Board may determine that any document or information relating to the financial capacity of any person participating in an application, the names of the prospective employees or the business plans of an applicant, shall not be open to public inspection, provided such document or information can be separated from the remainder of the application and is marked confidential.

Investigation and police reports

9.—(1) In order to determine whether or not a licence should be granted to an applicant, the Board may, subject to any other law, gather such information from any source or person regarding the suitability of the applicant to hold the licence and the suitability of the premises in respect of which the application has been made.

(2) The Board may, upon receipt of an application for a licence, request the Police for a report stating—

(*a*) particulars of any convictions recorded against an applicant or any person who will be involved in the business in respect of whom the Board deems it necessary to obtain the police report; and

(*b*) such other matters which ought, in the opinion of the Police, to be taken into account in respect of the application.

(3) The report contemplated in regulation (2) shall be furnished to the Board within fourteen days or such extended period approved by the Board.

(4) For purposes of the report contemplated in subregulation (2), any member of the Police may require the applicant or person concerned to furnish such information and particulars (including any fingerprint or palm-print) as he may consider necessary.

Hearing of applications, etc.

10. When the Board has received any application, representations (if any) and counter statement (if any), the Chief Executive Officer shall, after taking directions from the Chairman, appoint a

time and place for the hearing of the matter and shall give the parties at least ten days notice of the appointment.

Appearance before the Board

11.—(1) Any applicant or other person entitled to appear before the Board may appear personally or, with the leave of the Board, by—

(*a*) a legal practitioner; or

(*b*) any other agent or representative authorized in writing.

(2) The leave referred to in subregulation (1) may be given on such terms as the Board thinks fit and may at any time be withdrawn.

Non-appearance

12. Should a party not appear within a reasonable period as the Board may determine and not file an explanation for his non-appearance, the hearing may be proceeded with forthwith.

Summoning of witnesses

13. The Board has, as regards the attendance, swearing and examination of witnesses, the production and inspection of documents, the enforcement of its orders and other matters necessary or proper for the due exercise of its functions, all such powers, rights and privileges as are vested in the High Court and, without limiting the generality of the foregoing, may—

(*a*) issue a summons to any person requiring him to appear at the time and place mentioned therein to testify to all matters within his knowledge relative to a subject matter before the Board and to bring with him and produce any document, book or paper as he has in his possession or under his control relative to such subject matter;

(*b*) administer oaths and examine any person upon oath or affirmation; and

(*c*) during a hearing, receive such additional information as it may consider credible or trustworthy and necessary for dealing with the subject matter before it.

Proceedings in Public

14.—(1) Subject to subregulation (2), all proceedings before the Board shall be held in public.

(2) If the Board is satisfied, by reason of the confidential nature of the evidence otherwise, that it is appropriate to do so, the Board may direct that a proceeding, or part of a proceeding, be held in private.

Procedure at hearing

15. The Board—

(*a*) shall act according to equity and the substantial merits of the case without regard to technicalities and legal forms;

(*b*) shall not be bound by rules of evidence and may inform itself on any matter as it thinks appropriate; and

(*c*) may give directions relating to procedure that it considers will enable delay and costs to be reduced and will facilitate a prompt hearing of the matter at issue.

Decision

16.—(1) Subject to subregulation (3), after hearing the parties desiring to be heard or, if none of the parties desires to be heard then without hearing, the Board shall decide the case.

(2) The decision of the Board may be given orally or in writing and in either event shall contain the reasons for the decision.

(3) If it appears to the Board that the representations made under regulation 7 are frivolous or vexatious, the Board may dismiss the representations summarily without calling on any person to attend the hearing of such representations.

Costs, witnesses expenses, etc.

17.—(1) Subject to the provisions of regulation 7, no fees shall be payable for lodging any document.

(2) A person who appears as a party before the Board shall bear his own costs and the Board shall not award costs to or against a party.

(3) A person summoned under these Regulations to appear as a witness before the Board shall be entitled to be paid—

(*a*) where the witness was summoned on the application of a party to the proceedings, by that party; or

(*b*) in any other case, by the Board,

such allowances for his traveling, attendance and other expenses as are provided for in the Rules of the High Court.

Failure of a witness to attend

18. Any person served with a summons to appear as a witness before the Board who fails to attend as required by the summons, or having attended, fails to appear and report himself from day to day unless excused, or released from further attendance by the Board shall be guilty of an offence and liable to a fine of K5,000 and imprisonment for six months.

Refusal to be sworn or answer questions

19. Any person appearing as a witness at a hearing who, without reasonable excuse—

(*a*) refuses or fails to be sworn or to make an affirmation;

(*b*) refuses or fails to answer a question lawfully put to him; or

(*c*) refuses or fails to produce a document that he was required to produce by a summons served on him,

shall be guilty of an offence and liable to a fine of K5,000 and to imprisonment for six months.

Contempt

20. Any person who—

(*a*) insults or disturbs a member in the exercise of his powers or the performance of his functions or duties as a member;

(*b*) interrupts a hearing;

(*c*) uses insulting language against a member;

(*d*) creates a disturbance, or takes part in creating or continuing a disturbance, in a place where the Board is holding a hearing; or

(*e*) does any other act or thing that would, if the Board were a court of record, constitute a contempt of court,

shall be guilty of an offence and liable to a fine of K5,000 and to imprisonment for six months.

Validity of hearing not affected by defect in appointment or want of form

21. The validity of the proceedings of the hearing shall not be affected by any defect in the appointment of a member or by reason of the fact that a person not entitled to do so took part in the hearing or proceedings.

Grant of licences

22.—(1) The licence to be granted by the Board under section 5 (1) of the Act shall be in Form 7 in the First Schedule.

(2) The licence to be granted by the Board under section 5 (2) of the Act shall be in Form 8 in the First Schedule.

Replacement of a licence

23.—(1) If a licence issued in terms of the Act is damaged, destroyed or lost, the person to whom the licence was issued may apply to the Board for a replacement thereof.

(2) An application under subregulation (1) shall be made in Form 9 in the First Schedule and shall be accompanied by a fee as set out in the Third Schedule.

(3) On receipt of an application in terms of subregulation (1), the Board may issue a licence to replace that which has been damaged, destroyed or lost.

(4) Upon the issue of a replacement licence in terms of subregulation (2), the person to whom the replacement licence is issued shall, upon receipt of notification thereof, forthwith return any damaged licence to the Board for cancellation and collect the issued licence.

Registers

24. The Board shall keep and maintain registers in which it shall enter names and particulars prescribed or determined by the Board of each person to whom a licence has been issued.

Suspension and revocation of licence

25. The Board may at any time suspend for a specified period or revoke any licence in terms of this Part after giving the person an opportunity of being heard—

(*a*) if any information contained in the application for licence was false in any material respect or was subject to any material omission;

(*b*) if the person licensed has become subject to a disqualification contemplated in subregulation (1) of regulation 27.

(*c*) if the person licensed as a hotel-keeper has performed any act or has been engaged in any activity or occupation whether as agent or employee or otherwise, for or on behalf of an hotel which is not licensed under the Act; or

(*d*) if the person licensed has contravened a provision of these Regulations or a condition of his licence.

Notification on change of ownership

26. When the ownership of an hotel changes, the holder of a licence under section 5 (1) of the Act shall forthwith furnish the Board particulars of such change.

PART III
Hotel-Keepers

Qualifications of hotel-keeper

27.—(1) No person shall qualify to be licensed as an hotel-keeper unless he has such professional qualifications and experience as may be determined by the Board.

(2) In determining professional qualifications and experience under subregulation (1), the Board shall take into account, *inter alia*, the class or grade of the hotel to be kept or managed.

Proof of licence

28. An hotel owner shall, in respect of every hotel-keeper keep a copy of the licence of the hotel-keeper on the employment record of that hotel-keeper.

Suspension or revocation of licence

29.—(1) If an hotel-keeper—

(*a*) has his licence revoked by the Board, the hotel owner, by whom such a person is employed, shall summarily terminate the employment of that person in any capacity in which he is required to be so licensed.

(*b*) has his licence suspended by the Board, the hotel owner by whom such a person is employed shall summarily suspend the employment of that person in any capacity in which he is required to be so licensed, for the period of suspension by the Board,

without liability on the part of the hotel owner.

(2) The provisions of subregulation (1) shall be a condition of employment.

PART IV

Classification and Grading of Hotels

Qualifications of hotel

30. The Board shall classify and grade hotels into such classes or grades as are conformable with the type and standard in which the hotel is, or is intended, or is likely, to be, kept or managed or conducted.

Factors governing classification

31. In determining the class or grade to which a particular hotel belongs, the Board shall take into consideration all the factors relevant to the hotel of which it may reasonably become informed and in particular, the following—

(*a*) the structure of the hotel buildings and the amenities provided by or in public rooms, the recreational facilities of the hotel and, where relevant, of its surrounding grounds;

(*b*) the degree of comfort afforded, the quality of the equipment and furnishings, the proportion of the number of bathrooms or shower-rooms to the number of bedrooms and the number of private bathrooms or shower-rooms in proportion to the total number of bathrooms or shower-rooms;

(*c*) the standard of cleanliness throughout the hotel unit and the sanitary facilities provided;

(*d*) the standard of service provided and the degree of efficiency of the management and the staff;

(*e*) the manner in which food is stored, prepared, cooked and served and the quality and quantity of the food and service; and

(*f*) staff cleanliness and the provision of adequate staff changing rooms, ablution, staff canteen and the cleanliness thereof.

Issue of notice of classification

32. The Board shall upon classification or grading of any hotel in accordance with these Regulations, send to the holder of the licence for such hotel a notice in writing in Form 10 or Form 11 in

the First Schedule informing him of such classification or grading, respectively.

Maximum charges

33. [*Deleted* by *G.N.* 23/2009.]

List of charges to be displayed

34.—(1) Every hotel-keeper shall cause list of the maximum charges currently applicable under regulation 33 to be displayed in every bedroom and in a conspicuous place at the reception desk.

(2) Every hotel-keeper shall display at a prominent place a plague stating that a particular unit is licensed by the Board.

(3) Any hotel-keeper who contravenes this regulation shall be guilty of an offence.

Notice of classification to be displayed

35.—(1) Every hotel-keeper shall cause the current notice of classification or grade sent to him by the Board under regulation 32 to be exhibited in a conspicuous place at the reception of the hotel and he shall not advertise or describe the hotel in any publication, leaflet, brochure, broadcast or otherwise howsoever as being of a higher or lower class or grade than that described in such notice.

(2) Any hotel-keeper who contravenes this regulation shall be guilty of an offence.

Misleading advertisement

36. Any hotel-keeper or hotel owner who advertises or holds himself out as having been classified in respect of his hotel by the Board in a class other than in which it is in fact classified shall be guilty of an offence.

Bedrooms to be numbered

37. Every bedroom shall be numbered and the number allotted to each such room shall be clearly marked on the outside of the door thereof.

Right to services

38.—(1) Save in conformity with any law or with any special order, direction or instruction given by the Board, no hotel-keeper shall attach any condition, other than a condition for the payment of his lawful charges, to the provision in his hotel of any food, drink, meal, board or other services incidental hereto.

(2) Any hotel-keeper unit who contravenes this regulation shall be guilty of an offence.

Right of admission

39. Subject to regulation 38, every hotel-keeper shall reserve the right of admission.

Monthly rates

40. No hotel-keeper in respect of whose hotel an all-inclusive monthly rate of full board has been fixed shall unreasonably refuse to supply full board at such rate to any guest whom he has accepted as a resident or patron of his hotel for a period of one month or more.

Accommodation in a single room

41.—(1) Where a person occupies a double room because no single room accommodation is available, the hotel-keeper shall not charge such person, in respect of the room, a rate higher than that fixed for a single room accommodation.

(2) Any hotel-keeper who contravenes this regulation shall be guilty of an offence.

Charges for full board terms

42. No guest at a hotel on full board terms shall be entitled to any reduction in charges by reason of the fact that he may not have consumed the full number of meals supplied under full board terms.

Bill to be supplied

43.—(1) A hotel-keeper shall furnish every guest staying in his hotel or patronizing his hotel with a bill showing in detail item or items supplied and the charge or charges made therefor and, on payment being made, with a receipt fully dated, signed and, where required by law, stamped.

(2) Every bill and receipt shall be numbered consecutively and a carbon copy thereof shall be kept by the hotel-keeper and such copy shall, for three years from the date of issue, be available for inspection by a member of the Board or any person authorized in writing in that behalf by the Board.

(3) Any hotel-keeper failing to comply with this regulation shall be guilty of an offence.

Particulars of classification to be published

44. Particulars of any classification or grading or re-classification or re-grading of an hotel made by the Board under regulation 30 shall be published in the *Gazette*.

PART V

Records and Registers

Records and accounts

45.—(1) Every hotel-keeper shall keep in respect of his hotel such records and accounts as may be necessary to show—

(*a*) the number of guests who have resided at that enterprise in any calendar month and the amount of the levy payable in respect of each such guest; and

(*b*) the aggregate amount of the levies collected and remitted by him in each calendar month.

(2) Every hotel-keeper shall ensure that on any account submitted to a guest in respect of his residence at the hotel, the amount of the levy payable in respect of each guest to which the account relates is clearly indicated as a separate item.

(3) Any account or record kept in terms of this regulation shall be retained by the hotel-keeper for a period of three years from the date of the period to which the account or record relates.

Register of guests

46.—(1) Every hotel-keeper shall keep a register in which he shall record the following particulars in respect of every person who is given accommodation for not less than one night in the hotel managed by him—

(*a*) his name;

(*b*) his nationality;

(*c*) his home address;

(*d*) his country of permanent residence;

(*e*) passport number in case of international traveller;

(*f*) his arrival and departure dates;

(*g*) if he is traveling by vehicle, the vehicle registration number; and

(*h*) the address to which he is proceeding.

(2) The register referred to in subregulation (1) shall be in the form set out in the Third Schedule.

(3) Every hotel-keeper shall submit to the Board a summary of guest statistics as detailed in the form set out in the Fourth Schedule.

PART VI

Miscellaneous Provisions

Signature of notices, etc. issued by the Board

47. Every Notice, Order or other document issued by the Board shall be signed by the chairman thereof, or by some person authorized in writing by the chairman for the purpose, and when so signed shall for all purposes be deemed to have been duly issued by the Board until the contrary be proved.

Power of inspector

48.—(1) Any member of the Board or any person authorized in writing by the Board in terms of section 13 of the Act and acting in the course of his duties may—

(*a*) require any hotel-keeper or any of the hotel-keeper's employees, servants or agents to produce to him any article, books or accounts or other documents relating to the business of the hotel than profit and loss, trading accounts and balance sheets;

(*b*) investigate any matter arising under the Act; and

(*c*) seize and detain any article, book or document relating to the business of any hotel other than profit and loss, trading accounts and balance sheets, if he has reasonable grounds for suspecting that they contain evidence of the commission of an offence against the Act.

(2) Any hotel-keeper or owner or any of the hotel-keeper's employee, servant or agent who refuses an inspector entry or permission to investigate or seize any documents shall be guilty of an offence.

Penalties

49.—(1) Any person who is convicted of an offence under these Regulations shall be liable to a fine of K20,000 and imprisonment for six months, and the court trying the offence may, in its discretion, order cancellation or suspension of any licence held by any hotel-keeper who is convicted, or whose employee, servant or agent is convicted of an offence against these Regulations.

(2) Any person who aids, abets, counsels, procures or assists in the commission of, or attempts to commit, any offence against these Regulations, shall himself be guilty of an offence.

Fees

50. The fees prescribed in the Fifth Schedule shall be payable in respect of the matters specified therein in relation to such fees.

FIRST SCHEDULE

FORM 1

TOURISM AND HOTELS ACT

(CAP. 50:01)

APPLICATION FOR A LICENCE TO USE PREMISES AS AN HOTEL reg. 3 (1)

I, ... hereby apply in terms of section 5 of the Tourism and Hotels Act for a licence to use the under-mentioned premises as an hotel—

1. Name of proposed hotel .....
2. Postal address and physical address of hotel/accommodation unit .....
3. Telephone/Fax/E-mail of the hotel/accommodation unit .....
4. Name of proprietor (if partnership, give names of all partners; if limited company, names of directors) .....
5. Hotel-keeper's Licence Number .....
6. This form should be submitted together with Form 2 if the hotel-keeper is not yet licensed.

   FORM 2 enclosed: Yes/No: .....
7. Rateable valuation of property: .....
8. Number of bedrooms: .....

(*a*)	Single Total	No. with bathroom and W.C	No. with bathroom and no W.C	No. without bathroom but with H.W.B
(*b*)	Double Total	No. with bathroom and W.C	No. with bathroom and no W.C	No. without bathroom but with H.W.B

9. Number of—

   (*a*) women's bathroom(s): .....

   (*b*) men's bathroom(s): .....

   (*c*) women's toilets: .....

   (i) with water-borne sanitation

   (ii) without water-borne sanitation

   (*d*) men's toilets: .....

   (i) with water-borne sanitation

   (ii) without water-borne sanitation

   For non-resident guests—

   (*e*) women's toilets: .....

   (i) with water-borne sanitation

   (ii) without water-borne sanitation

(*f*) men's toilets: .....

(i) with water-borne sanitation

(ii) without water-borne sanitation

(*g*) (i) sitting rooms for resident guests

(ii) sitting rooms for non-resident guests

(*h*) writing rooms: .....

(*i*) other public rooms: .....

10. State capacity of parking space? .....
11. What is the system of lighting? .....
12. What is the system of water supply? .....

*Excluding private bathrooms, lavatories and sitting rooms.

If not on mains supply, state quantity of water available in litres per day .....

13. What is the system of sanitation? .....
14. Are all rooms mosquito-proofed? If not, state number proofed .....
15. Average number of staff employed:

Managers: .....

Chefs: .....

Cooks: .....

Barmen: .....

Housekeepers: .....

Receptionists: .....

Waiters: .....

Kitchen staff: .....

Bedroom staff: .....

Guides: .....

Chauffeurs: .....

Others (specify): .....

16. Are laundry facilities provided for guests? .....
17. Details of diningrooms: .....

State seating accommodation: .....

Number of tables: .....

18. Is there a telephone?

If so, state location and number of extensions: .....

19. Are special arrangements made for children? .....

(*a*) dining room: .....

(*b*) other rooms or services: .....

20. Are special facilities made for the disabled? .....

If so specify: .....

21. Is there a bar? .....
    If so, state whether there is—
    (*a*) separate entrance to the bar .....
    (*b*) sitting room open to all guests*/residents only .....
    (*c*) separate toilet arrangements for the bar .....
22. Hours—
    (*a*) for attendance: .....
    (*b*) for meals or refreshments: .....
    (*c*) for night porter: .....
    (*d*) for room service: .....
23. Describe—
    (*a*) kitchen accommodation and storage facilities (including refrigerator) .....
    .....
    (*b*) washing-up facilities .....
    (*c*) Grounds, stating extent and amenities provided (including a sketch plan, not necessarily to scale) .....
    .....

Date: ..... Signed: .....

*Delete as applicable.

FORM 2

TOURISM AND HOTELS ACT

(CAP. 50:01)

APPLICATION FOR LICENCE TO KEEP OR MANAGE AN HOTEL

reg. 3 (2)

1. I ..... , hereby apply in terms of section 5 (2) of the Tourism and Hotels Act for a licence to keep or manage an hotel under Class
   .....
2. My full address is .....
   .....
3. I enclose in support of my application—
   (*a*) copies of certificates of my professional qualifications;
   (*b*) documents as evidence of my professional experience;
   (*c*) names and addresses of three contactable referees; and
   (*d*) (for non Malaŵian nationals) a copy of clearance documents from Immigration authorities.

I declare that I have not been convicted of an offence within the past five years and that I am not an undischarged bankrupt.

I certify that to the best of my knowledge and belief, the information given in this application and the documents in support thereof are true and correct.

Place .....

Date ....

(*Signature of applicant*)

FORM 3

TOURISM AND HOTELS ACT

(CAP. 50:01)

APPLICATION FOR RENEWAL OF LICENCE TO USE PREMISES AS AN HOTEL reg. 3 (3)

I, ..., hereby apply for the renewal of the licence to use premises as an hotel issued in respect of the under-mentioned hotel unit:

Name of hotel: .....

Address: .....

Name of proprietor(s): .....

Name of hotel-keeper: .....

I certify that the particulars of the hotel are the same as those submitted with the last application for a licence/renewal of licence in respect of this hotel, with exception of the changes and structural alterations set out in the attached statement.

Date ..... Signed .....

For official use only

1. .....
2. .....
3. .....
4. .....

FORM 4

TOURISM AND HOTELS ACT

(CAP. 50:01)

APPLICATION FOR RENEWAL OF A LICENCE TO KEEP OR MANAGE AN HOTEL reg. 5 (4)

The Chairman,

1. I hereby apply in terms of regulation 3 (4) of the Tourism and Hotels (Licensing of Hotels) Regulations for the renewal of licence to keep or manage an hotel under Class:

   .....

   .....

   (*applicant's full name*)

   .....

.....

(*applicant's full name*)

2. Class of enterprise for which previous licence was issued .....
3. I enclose in support of my application—
   (*a*) names and addresses of 3 contactable referees (attach)
   (*b*) copy of licence to be renewed.

Date: ....

(*Signature of Applicant*)

FORM 5

TOURISM AND HOTELS ACT

(CAP. 50:01)

NOTIFICATION OF CHANGE OF HOTEL-KEEPER reg. 3 (5)

The Chairman,

I hereby inform you of the change of the hotel-keeper for .....

.....

(*hotel*)

The previous hotel-keeper was: ..... Licence No.:.....

Class: .....

The new hotel-keeper is: ..... Licence No.:.....

Class: .....

The new hotel-keeper started work on: ..... 20.....

Place: ..... Date: .....

....

(*Name of hotel-owner*) (*Signature of hotel-owner*)

FORM 6

TOURISM AND HOTELS ACT

(CAP. 50:01)

APPLICATION FOR TRANSFER OF LICENCE TO KEEP OR MANAGE AN HOTEL reg. 3 (6)

We, the undersigned, being respectively the present holder of and the intended transferee of the licence of the hotel to which this application refers, hereby apply for the transfer of the licence from the present holder to the transferee stated herein.

1. Name of Hotel: .....
2. Address of Hotel: .....

3. Name of present Licence Holder: .....

Licence Number: ..... issued on: .....

4. Name of Transferee: .....

We certify that the particulars of the hotel are the same as those submitted with the last application for a licence/renewal of a licence in respect of this hotel, with exception of the changes and structural alterations set out in the attached statement.

....

(*Signature of present holder of licence*) (*Signature of transferee*)

Date: ..... No.: .....

FORM 7

TOURISM AND HOTELS ACT

(CAP. 50:01)

TOURISM AND HOTELS (LICENSING OF HOTELS) REGULATIONS

Class: .....

Licence Category: .....

LICENCE TO USE PREMISES AS AN HOTEL reg. 22 (1)

Name of hotel: .....

Address: .....

This licence is issued in terms of the section 5 (1) of Tourism and Hotels Act, upon the conditions hereunder set forth and is valid until the ..... day of ....., 20....

Date: ....

Chairman
Tourism and Hotels Board

CONDITIONS

.....

.....

.....

.....

.....

.....

.....

.....

FORM 8

TOURISM AND HOTELS ACT

(CAP. 50:01)

TOURISM AND HOTELS (LICENSING OF HOTELS) REGULATIONS

Class: .....

Licence No. .....

LICENCE TO KEEP OR MANAGE AN HOTEL reg. 22 (2)

Name of holder: .....

Address: .....

This licence is issued in terms of section 5 (2) of the Tourism and Hotels Act, upon the conditions hereunder set forth and is valid until the ..... day of ....., 20.....

Date: ....

Chairman
Tourism and Hotels Board

CONDITIONS

.....

.....

.....

.....

.....

.....

.....

FORM 9

TOURISM AND HOTELS ACT

(CAP. 50:01)

APPLICATION FOR REPLACEMENT OF A LICENCE reg. 23 (2)

The Chairman,

I/We hereby apply for the replacement of—

Licence number ....., dated the ....., 20....., issued by the Board in respect of .....

The original licence mentioned above has been damaged/destroyed/lost* in the following circumstances .....

I/We undertake to return the damaged licence to the Board immediately when called upon to collect a new licence.

Place: .....

Date: ....

(*Signature of Licence Holder*)

*Delete the inapplicable.

FORM 10

TOURISM AND HOTELS ACT

(CAP. 50:01)

NOTICE OF CLASSIFICATION OF AN HOTEL reg. 32

To: ..... hotel-keeper

You are hereby notified that ..... hotel has been classified by the Tourism and Hotels Board as a .....

Date: ....

Chairman
Tourism and Hotels Board

FORM 11

TOURISM AND HOTELS ACT

(CAP. 50:01)

NOTICE OF GRADING OF AN HOTEL reg. 32

To: ..... hotel-keeper

You are hereby notified that ..... hotel has been graded by the Tourism and Hotels Board as a .....

Date: ....

Chairman
Tourism and Hotels Board

SECOND SCHEDULE reg. 33 (4)

[*Revoked by G.N.* 23/2009.]

THIRD SCHEDULE reg. 46 (2)

TOURISM AND HOTELS ACT

(CAP. 50:01)

TOURISM AND HOTELS (LICENSING OF HOTELS) REGULATIONS

GUEST REGISTER

Name	*Nationality*	*Passport Number*	*Home Address*	*Country of Permanent Residence*	*Date of Arrival*	*Date of Departure*	*Vehicle Registration Number*	*Address to which Proceeding*

FOURTH SCHEDULE reg. 46 (3)

TOURISM AND HOTELS ACT

(CAP. 50:01)

TOURISM AND HOTELS (LICENSING OF HOTELS) REGULATIONS

MONTHLY SUMMARY OF ACCOMMODATION STATISTICS

Reporting Months: ..... Year: .....

Name of Hotel: .....

Address:..... Tel.: ..... Fax:..... E-mail: .....

Number of Rooms: ..... Rooms available: .....

Number of Beds: ..... Beds available: .....

Singles: ..... Twins: ..... Suites:.....

Number of Employees: ..... Male: ..... Female: .....

Malaŵians: ..... Foreigners: ..... Skilled: ..... Non-Skilled: .....

VISITOR PROFILE

Country of Residence	*No. of Guests*	*Room Nights sold*	*Bed Nights sold*
AFRICA			
Malaŵi			
East Africa (1)			
Mozambique			
South Africa			
Zambia			
Zimbabwe			
Rest of Africa			
AMERICA			
Canada			
USA			
Central America			
Caribbean			
Rest of America			
ASIA			
India			
Japan			
Rest of Asia			
Australasia (2)			
EUROPE			
Benelux Countries (3)			
Germany			
Italy			
Scandinavia (4)			
United Kingdom			
Rest of Europe			
Any other Country (5)			
TOTAL			

NOTE:—(1) includes Kenya, Uganda and Tanzania
(2) includes Australia and New Zealand
(3) includes Netherlands, Belgium and Luxembourg
(4) includes Norway, Finland and Sweden
(5) includes any other country not already specified

GROSS TURNOVER
Kwacha: ..... US Dollars:..... Other: .....
Signed: ..... Designation: ..... Date: ..... /..... 20.....

NOTE: This Monthly Summary of Accommodation Statistics Form must be submitted to the Tourism and Hotels Board by the second week of every month following the reporting month. Failure to provide correct information is an offence.

FIFTH SCHEDULE reg. 50

LICENSING FEES

	K	t
A. ACCOMMODATION ESTABLISHMENTS		
1. On application to use premises as an hotel—		
(*a*) Category A	100,000	00
(*b*) Category B	70,000	00
(*c*) Category C	50,000	00
(*d*) Category D	30,000	00
(*e*) Category E	20,000	00
(*f*) Category F	10,000	00
(*g*) Category G	5,000	00
(*h*) Category H	2,000	00
(*i*) Category I	1,000	00
2. On application to keep or manage an hotel—		
Class A	5,000	00
Class B	2,000	00
Class C	1,000	00
B. FEES ON APPEAL		
1. Resthouses, Guesthouses, Cottages, Huts, Bandas, Chalets	5,000	00
2. Managers of Class A	10,000	00
3. Local Tourist Guides	5,000	00
4. Managers of Class B and Class C	3,000	00

TOURISM AND HOTELS (GRADING) REGULATIONS

G.N. 7/2010

under s. 15

ARRANGEMENT OF REGULATIONS

REGULATION

1. Citation
2. Interpretation
3. Application
4. Application for grading
5. Grading of serviced accommodation
6. Issue of notice of grading
7. Notice of grading to be displayed
8. Particulars of grading to be published

SCHEDULES

Citation

1. These Regulations may be cited as the Tourism and Hotels (Grading) Regulations.

Interpretation

2. In these Regulations, unless, the context otherwise requires—

"approved" means sanctioned by the Board;

"backpacker" means an establishment which provides communal facilities including a dormitory and may also offer a range of alternative sleeping arrangements and only establishments which cater for transient guests (travelling public) will qualify for grading;

"bed and breakfast" means an establishment where accommodation is provided in a family (private) home and the owner/manager thereof lives in the house or on the property, breakfast is served, bathroom facilities may or may not be en-suite or private and in general, the guest shares the public areas with the host family;

"country house" means an establishment that is a large guest house usually situated in natural and peaceful surroundings such as near a nature reserve, forest or lake, etc; and it offers all the services of a guest house, including dinner on request;

"floors" for the purposes of determining the number of lifts required, means all floors, including the ground floor;

"guest house" includes an existing home or building that has been specifically designed to provide overnight accommodation and its public areas are for the exclusive use of its guests and the owner or manager may live on the property;

"holiday resort" means a complex of accommodation units with facilities of acceptable quality and equipment designed to promote tourist stays and holiday, usually at an all inclusive price, covering lodging, the use of common equipment as well, sport and recreation facilities;

"hotel" means an establishment that provides accommodation to the travelling public, has a reception area, offers at least a communal eating area or a "breakfast room" and in general, makes food and beverage services available to guests which may be outsourced or provided by the hotel;

"lodge" means an accommodation facility located in natural surroundings and rates charged are usually inclusive of all meals and the experience offered includes game drives, hiking tours, walking etc.; and

"suite" means a unit comprising a separate permanent lounge, bedroom and a bathroom with toilet facilities.

Application

3.—(1) These Regulations shall apply to serviced accommodation including hotels, lodges, holiday resorts and guest houses.

(2) Serviced accommodation eligible for grading shall be establishments that—

(*a*) cater for transient guests (travelling public);

(*b*) meet minimum regulations as stipulated in each of the accommodation category; and

(*c*) comply with tourism, statutory and local government regulations.

Application for grading

4.—(1) An operator of a serviced accommodation who desires to have his serviced accommodation graded shall submit an application to the Board in Form 1 set out in the First Schedule.

(2) An application for grading shall be accompanied by the fees prescribed in the Second Schedule.

Grading of serviced accommodation

5.—(1) Serviced accommodation shall be graded by a grading assessor according to the grading criteria specified in the Third Schedule using the Assessment Form set out in Form 2 in the First Schedule.

(2) Serviced accommodation shall be graded as follows—

(*a*) five-star, which shall—

(i) have exceptional quality and luxurious accommodation, matching best international standards;

(ii) have highest standard of furnishings, flawless service and meticulous guest care;

(iii) provide 24-hour room service to guests;

(iv) provide a fully cooked breakfast, usually available all day and can also be served to guests in their rooms, and shall be served over an extended period;

(v) provide an eating area which must provide a service to the guests at tables;

(vi) provide bedrooms that have a working area or a desk;

(vii) have bathrooms that should have a full range of amenities such as shampoo, shower gel, wrapped soap, hair conditioner, body lotion, shower cap, hand towel, bath towel, bath sheet and face cloth;

(viii) have health and beauty facilities on site or at least can provide them to guests at a nearby facility; and

(ix) provide facilities such as internet access as well as fax facilities;

(*b*) four-star, which shall—

(i) be of superior or excellent quality in the overall standard of the furnishings, service and guest care;

(ii) provide a fully cooked breakfast that is served over an extended period;

(iii) serve guests at tables if desired;

(iv) provide bedrooms that have a working area with a desk;

(v) provide guests with at least eighteen hours room service; and

(vi) have bathrooms that have amenities such as shampoo, shower gel, wrapped soap, hair conditioner, body lotion, hand towel, bath towel, shower cap, bath sheet and face cloth;

(*c*) three-star, which shall—

(i) be of very good quality in the overall standard of the furnishings, service and guest care;

(ii) provide guests with a breakfast with an extensive variety of cooked food;

(iii) provide bedrooms which are more spacious with additional furniture such as a desk; and

(iv) provide bathrooms with at least shower gel, wrapped soap, shampoo and both a hand and bath towel;

(*d*) two-star, which shall—

(i) be of good quality in the overall standard of the furnishings, service and guest care;

(ii) provide guests with a continental breakfast and a limited variety of cooked items could be available; and

(iii) provide soap, hand towel and bath towel in the bathroom;

(*e*) one-star, which shall—

(i) be of acceptable quality in the overall standard of the furnishings, service and guest care;

(ii) provide clean comfortable and functional accommodation;

(iii) provide guests with a continental breakfast or a quick and simple breakfast; and

(iv) provide soap and bath towel in the bathroom.

(3) A grading assessor may award a score of between 1 and 10 for each area assessed and the score for each standard shall be defined as follows—

(*a*) 10	. . . . .	excellent;
(*b*) 9	. . . . .	very good;
(*c*) 8	. . . . .	good;
(*d*) 6, 7	. . . . .	standard;
(*e*) 5	. . . . .	acceptable;
(*f*) 3, 4	. . . . .	poor; or
(*g*) 1, 2	. . . . .	unacceptable;

(4)—(*a*) A serviced accommodation shall qualify for a 5-star grade if it is awarded—

(i) overall score	. . . . .	95% to 100%;
(ii) items to score	. . . . .	9 or 10; and
(iii) no more than one item to score	. .	8.

(*b*) A serviced accommodation shall qualify for a 4-star grade if it is awarded—

(i) overall score	. . . . .	85% to 94%;
(ii) items to score	. . . . .	8 or more;
(iii) no more than one item to score	. . . .	7; and
(iv) all service elements to score	. . . .	8, 9 or 10.

(*c*) A serviced accommodation shall qualify for a 3-star grade if it is awarded—

(i) overall score	71% to 84%;
(ii) items to score	7 or more;
(iii) no more than 2 items to score	6; and
(iv) all service elements to score	8, 9 or 10.

(*d*) A serviced accommodation shall qualify for a 2-star grade if it is awarded—

(i) overall score	61% to 70%;
(ii) no unacceptable items	less than 3;
(iii) items to score	6 or more;
(iv) no more than 2 items to score . .	5; and
(v) all service elements to score	7, 8, 9 or 10.

(*e*) A serviced accommodation shall qualify for a 1-star grade if it is awarded—

(i) overall score of	51% to 60%;
(ii) no unacceptable item	less than 3; and
(iii) all service elements to score	7, 8, 9 and 10.

(5) Notwithstanding the provisions of subregulation (1), the Board may, on receipt of a written request from the keeper of the concerned serviced accommodation, grade that serviced accommodation in a lower grade than that for which it qualifies.

Issue of notice of grading

6. The Board shall upon grading of any serviced accommodation in accordance with these Regulations, send to the holder of the licence for such serviced accommodation a notice in writing in Form 3 set out in the First Schedule of such grading.

Notice of grading to be displayed

7.—(1) Every serviced accommodation keeper shall cause the current notice of grade sent to him by the Board under regulation 6 to be exhibited in a conspicuous place at the reception of the serviced accommodation, and he shall not advertise or describe the serviced accommodation in any publication, leaflet, brochure, broadcast or otherwise, as being of a higher or lower grade than that described in such notice.

(2) Any serviced accommodation keeper who contravenes this regulation shall be guilty of an offence and shall be liable upon conviction to a fine of K20,000.00.

Particulars of grading to be published

8. Particulars of any grading or re-grading of a serviced accommodation made by the Board shall be published in the *Gazette*.

FIRST SCHEDULE reg. 4 (1)

FORMS FORM 1

TOURISM AND HOTELS ACT

(CAP. 50:01)

APPLICATION FORM FOR STAR GRADING

Name of establishment: .....
Group name: .....
Name of Manager: .....
Physical Address: .....
.....
.....
.....
Postal Address: .....
Telephone number: .....
Fax number: .....
E-mail address: .....
Website: .....
Grade applying for .....

Facilities:

Number of rooms .....

Dining facilities	Yes	No (please tick)
Conference facilities	Yes	No
Laundry	Yes	No
Outside catering	Yes	No
Internet	Yes	No
Airport Shuttle	Yes	No
Taxi service	Yes	No
Swimming pool	Yes	No
Coded safes	Yes	No
Room service	Yes	No
Bar	Yes	No
Gym	Yes	No
Shops	Yes	No
Kitchen	Yes	No
Sauna	Yes	No
Jacuzzi	Yes	No
Golf Course	Yes	No

TOURISM AND HOTELS ACT reg. 5 (1)

(CAP. 50:01) FORM 2

ASSESSMENT FORM FOR SERVICED ACCOMMODATION

Assessor Name		**Property Details**
Assessor Employment No.		Name
Date of assessment		General Manager's name
Overnight stay included?		Name of contact person for Grading
Grading Category		Property meets minimum requirements? Yes/No
No. of rooms		
Exterior	**Score**	**Comments**
1. Appearance of buildings		
2. Grounds and gardens		
3. Parking		
Total		
Bedrooms		
4. Decoration		
5. Furniture and finishings		
6. Flooring and ceiling		
7. Beds and linen		
8. Temperature control		
9. Lighting and ventilation		
10. Accessories		
11. Spaciousness and overall impression		
Total		
Bathrooms		
12. Decoration and flooring		
13. Fixtures and fittings		
14. Bathroom linen		
15. Lighting and temperature control		
16. Accessories		
17. Spaciousness		
Total		

Public Areas		
18. Decoration		
19. Furnishings and fixtures		
20. Flooring and ceiling		
21. Lighting		
22. Atmosphere and ambience		
Total		
Dining Facilities	**Score**	
23. Decoration		
24. Furnishings		
25. Flooring and ceiling		
26. Lighting		
27. Menu presentation		
28. Table appointment		
29. Atmosphere and ambience		
Total		
Food and Beverage		
30. Breakfast presentation and quality		
31. Lunch presentation and quality		
32. Dinner presentation and quality		
Total		
Kitchen facilities		
33. Kitchen staff presentation		
34. Food storage		
35. Food handling		
36. State of repair of furniture and fittings		
37. Lighting and ventilation		
38. Overall cleanliness		
39. Spaciousness		
Total		

Services and Service		
40. Welcome friendliness and attitude		
41. Reservation, check in, general efficiency		
42. Porterage		
43. Room service		
44. Public area service		
45. Meal service		
46. Check out efficiency		
47. Tourist information		
48. Laundry		
Total		
Housekeeping		
49. Bedrooms		
50. Guest bathrooms		
51. Public areas		
52. Public toilets		
53. Restaurant		
54. Appearance of staff		
Total		

SCORE CALCULATION

COUNT	1	2	3	4	5	6	7	8	9	10
EXTERIOR										
BEDROOMS										
BATHROOMS										
PUBLIC AREAS										
DINING ROOM										
FOOD AND BEVERAGE										
SERVICES AND SERVICE										
HOUSE KEEPING										
KITCHEN										
TOTAL										

SUM

Exterior		**SERVICE ELEMENTS**	**Score**
Bedrooms		Item Number 40	
Bathrooms		Item Number 41	
Public Areas		Item Number 42	
Dining Room		Item Number 43	
Food and Beverage		Item Number 44	
Services and Service		Item Number 45	
Housekeeping		Item Number 46	
Kitchen		Item Number 47	
Total Score (*a*)		Item Number 48	

Number of Areas Assessed [ ] X 10 = [(*b*)]

Overall Percentage = a/b X 100 [ ]

Recommended Star Rating

General Comments

TOURISM AND HOTELS ACT reg. 6

(CAP. 50:01) FORM 3

NOTICE OF GRADING OF SERVICED ACCOMMODATION

To .....

You are hereby notified that .....
has been graded by the Tourism and Hotels Board as a ..... star .....

Date ....

Chairman
Tourism and Hotels Board

SECOND SCHEDULE reg. 4 (2)

TOURISM AND HOTELS ACT

(CAP. 50:01)

APPLICATION FEES FOR GRADING

Grade	*Fee*	
	K	t
1. 5-star	500,000	00
2. 4-star	400,000	00
3. 3-star	300,000	00
4. 2-star	200,000	00
5. 1-star	100,000	00

THIRD SCHEDULE reg. 5

GRADING CRITERIA FOR HOTELS

1. Exterior of Buildings

Appearance of Buildings	**Score**
▪ New buildings—absence of weathering. Fresh, well-maintained paint work, with an overall clean and new look. ▪ For older buildings—there is no staining and the paint work well-maintained. ▪ For all buildings—there has to be very good external lighting, clear signage as well as an addition of attractive architectural features.	10–9
▪ High quality maintenance of paint, stone or brickwork, although a certain natural weathering may be present but should be in a good condition. Some additional external features to enhance appearance may be present.	8
▪ Paintwork, windows, drains, etc. in good state of repair. No obvious structural defects or damage. Plain architectural features are acceptable.	7–6
▪ Some areas of paint may be ageing and rather weathered. Small defects, damage or cracks on walls of the building etc. No evidence of recent repairs, paintwork, etc. Ageing signage.	5–4–3

▪ Generally neglected buildings. Obvious structural defects or damage. Flaking paint, illegible signs, rotting wood.	2–1
Grounds and Gardens	
▪ Well tended formal gardens or an attractive natural environment. Tidy and well-lit pathways. Looking good throughout the year. Well maintained drive-way and entrance. No disorder or evidence of littering. Provision of garden furniture. Architectural features appropriate to the nature of the guests attracted to the establishment.	10–9
▪ High standards of maintenance in formal gardens. Pleasant and tidy appearance throughout the year. No clutter or disorder around the service areas. External lighting and good drive-way, etc. Some architectural features appropriate to the guests.	8
▪ Immediate surroundings to be kept tidy and well maintained. An attempt to create an appealing effect with interesting design, easy and clear access to accommodation, no potholes in drive-ways and adequate external lighting.	7 or 6
▪ Gardens and other surrounding areas of the establishment are kept clean and under control. Little attempt to provide an interesting design. Drive-way may have an uneven surface but disorder is kept to a minimum.	5–4–3
▪ Neglected and overgrown surroundings with potholes, puddles, rubbish and clutter visible. Poor lighting and generally a disorderly appearance.	2–1
Parking	
▪ Clearly marked and adequate parking space or bays in a secure environment, very good lighting, well organized and an effort to provide covered parking.	10–9
▪ Organized, secure parking and close to accommodation.	8
▪ Secure parking but not always organized.	7–6
▪ Little attempt to control or secure parking.	5–4–3
▪ No parking available, however only pavement parking available.	2–1

2. Bedrooms

Decoration	**Score**
▪ High quality paint or wall-paper. Excellent attention to detail. Attractive coordination of patterns, colours and textures. High quality pictures, paintings and other artistic objects.	10–9
▪ High Quality wall coverings and in good condition. Very few visible signs of wear and tear, scratches, water splashes, finger marks, stains and other marks.	8
▪ Average quality wall coverings. Some pictures in good frames. Some reasonable attempt to coordinate patterns and colours. The decorations may be old but not damaged, scratched or stained.	7–6
▪ Ageing or old looking décor, at least of average quality. Little attention to detail. Plain style of painting and décor showing some wear and tear i.e. scratches, water splashes, finger marks, stains and other marks.	5–4–3
▪ Low grade decor that is poorly executed. Uncoordinated styles and colours, very noticeable wear and tear, stains, splashes, scratches etc. exposed wiring, little or no art work.	2–1
Furniture and Furnishings	
▪ Excellent quality furniture and furnishings and in excellent condition. Very attractive furniture with excellent finishing and detail. No sign of ageing, wear and tear or any stains. Ample hanging space, attractive and comfortable seating in excellent condition. Full, double lined curtains with appropriate accessories that are in an excellent working order. Good and excellent quality electronics in excellent condition.	10–9
▪ High intrinsic quality of materials but may show some signs of wear and tear. Good quality furniture and furnishings. Full curtains, good quality electronic appliances and in good working condition.	8
▪ Good quality furniture. Medium quality range of materials but in good condition. No damage, stains or fraying on furniture. All furniture of similar standard and medium quality electronics in good condition.	7 or 6

▪ Furniture of average quality in well used condition. Little coordination of styles. Some slight damage but of good condition. Thin, short or skimpy curtains. Some stains, marks on soft furnishings. Out-dated electronic equipment but in good working condition.	5–4–3
▪ Low quality furniture, poorly constructed, damaged, marked or scratched. Thin and unlined curtains, stained or worn out upholstery. Poor quality electronic goods with some broken components.	2–1
Flooring and Ceiling	
▪ High quality fitted carpets, good and thick pile underlay. High quality wooden or tiled flooring or high quality rugs or mats. Excellent quality ceiling, no sagging or visible water marks or water seeping marks and stains. Floors and ceilings should be painted and in pristine condition.	10–9
▪ High quality carpets beginning to show, some signs of ageing (flattening or wearing). No stains, burns or marks, etc. Alternatively, carpet with higher percentage of man-made fiber but in new condition. Wooden or tiled flooring in need of buffing but with high quality rugs. Ceiling of good quality, no sagging nor evidence of water leakage or seeping, professionally fitted and painted.	8
▪ High quality carpet with flattening in areas of most traffic but all in sound condition, alternatively a cheaper new carpet. Wooden or tiled floors a little scratched in some places. Ceiling of average quality. Paintwork completely applied, although not necessarily of a professional standard.	7–6
▪ Carpets showing considerable use—flattened spots, bleached by sunlight through windows, some thinning. Unprofessionally fitted with ripples, rough ill-fitting edges, thin or no underlay. (There should be no holes, tears, burns or other defects that render the carpet unsound). Chipped wooden or tiled floors. Poor quality ceiling, amateurishly fitted, but no evidence of sagging. Ceilings slightly stained, paintwork of a poor standard.	5–4–3

▪ Carpets with distinct signs of wearing, visible canvas or backing fabric, patches, stains, discolouration, obvious seams, gaps between carpet and wall. Several unmatched styles or newer carpets laid on top of damaged or worn-through older ones. Wooden floors that have aged now in need of a new coat of varnish, with worn and stained rugs. Missing tiles and obvious chips. Poor quality, sagging ceiling and evidence of water seepage. Stained paintwork, old and unprofessionally done.	2–1
Beds and Linen	**Score**
▪ Beds larger than the standard size, good mattresses with sprung bases. Excellent quality bed frames, well decorated with an interesting design. High quality linen, professionally laundered. Good supply and variety of pillows and cushions. Thick and heavy blankets with spares readily available. Excellent quality duvet well coordinated with the décor of the room. Headboards free from stains and marks.	10–9
▪ Very firm mattresses with a sound base. Beddings and bed linen of high quality but not necessarily new. All bed linen and beddings well coordinated with other furnishings in the room. Bed frames may be of an older style but in good condition and of good quality.	8
▪ Standard domestic quality bed frames, divans and mattresses but in good condition. Well ironed bed linen but not necessary good quality. Medium quality bed covers and pillows free from stains, holes and wear. The head board may be made from simple wood.	7–6
▪ Domestic mattresses that have been over used and are thin. There is tendency to move or creak. No sagging, broken struts or uneven legs of beds. The headboards are wobbly and the frames sloppy. Bed linen of cheaper quality and faded. Thin pillows.	5–4–3
▪ Thin mattresses with little or no resistance or bounce. Loose legs of the beds, missing casters, visible stains, marks and holes on the mattress and bed linen.	2–1

Temperature Control	**Score**
▪ Thermostatically and individually controlled heating and cooling system capable of maintaining a comfortable temperature of between 18 and 25 degrees, of appropriate size and location in room and should be in excellent condition.	10–9
▪ Individually controlled by guests at all times. Good quality with no noise. There can be free standing wall or ceiling mounted fans or heaters.	8
▪ Effective heating and cooling provided in rooms, may be with individual control. Does not have to be most up to date model. Large, slightly noisy, wall mounted air conditioners.	7–6
▪ Free standing appliance capable of maintaining a reasonably comfortable temperature in the room. May be ageing but in good condition.	5–4–3
▪ Old, low quality appliance. Heating or cooling may be available only close to apparatus.	2–1

Lighting	**Score**
▪ Adequate and high standard lighting in the room. Controllable dimmer light sources in all appropriate places such as places for shaving, make-up, contact lenses and reading. Separate bed-side lamps on each side of the bed. Provision for switching off bedroom lights at the bed side. Lights and lamp shades of excellent quality and in good condition.	10–9
• High quality fittings and lamp shades. More than just one centre bed side light.	8
▪ Good quality bedside lamps and shades with separate control for each guest. Good blend of natural and electric light.	7–6
▪ Adequate light, restricted natural light and ageing and unattractive lamp shades and lamps.	5–4–3
▪ Dim, gloomy light. Low quality lamps and shades. Lights fitted in inappropriate places. Poor natural lighting, light control not easily accessible, burnt shades and may be stained.	2–1

Accessories	**Score**
▪ A wide range and high quality accessories such as— Fruit bowl Plants Satellite television with a reasonable number of channels TV with remote control Pay channels and videos Books and magazines Suit stand/suit press Potpourri Comprehensive room information, well presented Pack of cards, or any game Sweets, biscuits, mints or chocolates Mineral water Mini bar Fresh milk Variety of teas and coffees Tea tray	10–9
▪ A reasonable proportion of the above, may include— TV with remote control Comprehensive guest information Bottled water Books and magazines A reasonable variety of teas and coffees Mini bar Mending kit Shoe polish pad Fruit bowl	8
▪ A small selection of the above, may include— TV with remote control Bottled water A reasonable variety of teas and coffees Comprehensive guest information	7–6
▪ One or two items listed above of average quality	5–4–3
▪ One or two items listed above only, of very poor quality	2–1

Spaciousness and Overall impression	Score
▪ Spacious well planned room with furniture neatly arranged. Ease of access to all furniture, cupboards, wardrobes and drawers. A sitting area with sufficient space to relax. Adequate space to put luggage so that it does not clutter the room or obstruct access. Easy access to all facilities, unrestricted view of the TV and all mirrors. No intrusive noise from other rooms or public areas.	10–9
▪ Reasonably spacious room with good access to all furniture and facilities large enough room to comfortably contain two chairs.	8
▪ Room large enough to contain all necessary furniture and allow easy access to all facilities. One chair may serve for easy seating as well as for the dressing table.	7–6
▪ The room may be cluttered. Limited space to move around and access facilities, no enough room to open drawers cupboards and wardrobe. Limited space to place luggage, some intrusive noise.	5–4–3
▪ Restricted access to most of the facilities. Noise and disturbances from other rooms and public areas.	2–1

3. Bathrooms

Decoration and Flooring	Score
▪ Highest quality floor and wall coverings. Tiles well-fitted. Grouting in excellent condition. No marks, stains or condensation damage. No peeling of wall paper or flaking of paint. Tiles well-fitted and free from stains or water damage.	10–9
▪ May be a high quality finish but not recent, some signs of wear but all in good condition. Alternatively, may be recently decorated but not with the highest quality materials, though a competent and professional job. High quality floor covering or tiles.	8
▪ Not necessarily recently decorated though in good condition. Some signs of wear. Standard quality bathroom flooring. No visible stains or marks.	7–6
▪ Lower quality materials, old with evidence of poor standards. Very plain with no attempt at adornment. Grouting discoloured and of outdated style. Stains and other marks visible.	5–4–3

▪ Very bad and old style. Damp or condensation marks visible. Cheap, very low quality finish, unprofessionally applied. Sealant or grouting mouldy, carpet rotting and smelly. Chipped and flaking paintwork. Area around toilet discoloured or damp.	2–1
Fixtures and Fittings	**Score**
▪ High quality, solid, well made fittings in excellent order and well matched with excellent finish. Attractive shower screens with sturdy cast iron or steel and enamel bath. A good sized wash basin with easy to use and responsive controls. Hot and cold water available at all times.	10–9
▪ High quality fittings. Good sized bath. Good quality shower screen or shower curtain. All tiles in good condition, no cracks or stains, well coordinated and matched. Hot and cold water available at all times.	8
▪ A standard bathroom in good condition and clean. It may have a shower or a bath. May show some wear and tear. Hot and cold water available at all times.	7–6
▪ A dull finish to tiles, ageing fittings and wear and tear visible. Not properly decorated with limited space and not well laid out.	5–4–3
▪ Small bathroom With insufficient water supply and little space to move around. Stained, mouldy, cheap and poor quality shower curtain. Cracked wash basins and toilet. Visible damage and discolouration on fittings.	2–1
Linen	**Score**
▪ A full range of thick, heavy and excellent towels including a bath sheet, bath towel, face towel and bath robes for each guest. Towels placed daily and after each use.	10–9
▪ A good range of towels including a bath sheet, hand towel, face towel for each guest and of good quality and frequently changed.	8
▪ Good quality towels such as a bath sheet and hand towel but not very heavy, and in very good condition.	7–6
▪ Moderate quality towel and hand towel. Both may show over use.	5–4–3

▪ Towels may be very thin, small, old, stained, faded and may have holes in them.	2–1
Lighting and Ventilation	**Score**
▪ Good quality lighting, effective for all purposes, such as shaving and make-up. Good quality lights, lamps and in excellent condition, may provide windows that open easily and effectively or an extractor.	10–9
▪ Good standard light fittings, sufficient for shaving and other purposes.	8
▪ A centre light and shaving light that can provide adequate light.	7–6
▪ Dim centre light and not well fitted shaving light, ageing fittings.	5–4–3
▪ Damaged light fittings, partially dark, poor quality lights and not well fitted.	2–1
Accessories	**Score**
▪ Luxurious toilet paper, two-ply. A wide range of excellent quality accessories provided in each bathroom and may include— Shampoo After shave Tooth brushes Tooth paste Vanity kit Wrapped soap and shower gel Shower cap Lotion Shoe polishing pad	10–9
▪ Good quality toilet paper, wrapped soap and shower gel, shower cap, shoe polishing pad, mending kit, lotion, tooth brush and toothpaste and all in excellent condition and of good quality.	8
▪ A small range of the above and all in good condition.	7–6
▪ At least two items from the above list are of average quality.	5–4–3
▪ One or two items from the above list but of poor quality, however soap must be provided.	2–1

Spaciousness	**Score**
▪ Separate bath and shower. Conveniently laid out bathroom with easy access to all facilities. Well spaced out.	10–9
▪ Good-sized rooms with access to all facilities. There may be room for only one guest at a time. No awkward corners or obstructed parts. Good space for toiletries.	8
▪ Adequate size of room for one guest may be a shower only, but no awkward access or inconvenient position of facilities, etc. adequate space for toiletries.	7–6
▪ Restricted space leading to small bath or shower, small washbasin. Limited space for toiletries.	5–4–3
▪ Very small room with facilities in separate small rooms. Limited room for drying and dressing. Small washbasin and cramped access to toilet.	2–1

4. Public areas

These include: conference facilities, corridors, public toilets, lounges, reception areas, fitness centres, business centres, etc.

Decoration	**Score**
▪ High quality wall covering in excellent condition. Evidence of well coordinated design. Interesting architectural features, artwork, etc. No evidence of ageing, wear and tear (some historical locations accepted). High quality with a professional finish.	10–9
▪ Use of high quality materials, though not necessarily in pristine condition. Alternatively more moderate quality materials if recently decorated. Attempt to coordinate design with additional attractive features. No scratches, chips, stains or scuffs. Professional workmanship throughout.	8
▪ Standard "domestic" style and quality of décor, no major wear and tear. Use of wall hangings, pictures, etc. showing competent workmanship.	7–6
▪ Moderate quality, ageing. Slightly damaged, showing wear and tear. Amateur application of décor that is also outdated. Little design input or coordination.	5–4–3
▪ Very old, faded and damaged wall coverings. Evidence of dampness and water penetration. Grubby marks and exposed wiring. Generally neglected.	2–1

Furnishings and Fixtures	**Score**
▪ Furniture with high degree of comfort and luxury, in excellent condition with attractive and well coordinated extras.	10–9
▪ High quality furniture, not necessarily new but in good condition though it may have a "lived-in" feel but has to be comfortable. Alternatively, more moderate quality furniture in excellent condition.	8
▪ Medium to high quality furniture, showing some wear and tear. May be rather out-dated but good. Alternatively, new furniture of medium quality with little luxury but comfortable.	7–6
▪ Uncoordinated style of furniture and old. May show marks and signs of wear and tear. Is sparsely arranged, not particularly comfortable or attractive and of low quality.	5–4–3
▪ Low quality, uncomfortable, ageing furniture. May show some damage e.g. scratches, loose arms or legs. Stained or grubby upholstery. Outdated and unattractive.	2–1

Flooring and Ceiling	**Score**
▪ High quality fitted carpets (high percentage wool content), good thick pile and underlay. Alternatively excellent quality domestic carpeting, fit for purpose. High quality wooden or tiled flooring with high quality occasional rugs or mats. Ceilings to be of excellent quality, no sagging or evidence of water leakage, marks or stains. All of the above should be professionally fitted, painted and in perfect condition.	10–9
▪ High quality carpets beginning to-show some signs of ageing (flattening or wearing). No stains, burns or marks, etc. Alternatively, a carpet with higher percentage of man-made fiber but in new condition. Wooden or tiled flooring in need of buffing but with high quality rugs. Ceiling should be of good quality, no sagging and evidence of water leakage or seeping. Professionally fitted and painted.	8

▪ High quality carpet maybe flattened in areas of most traffic but in sound condition—some small discolouration in places. Alternatively, a cheaper but new carpet. Wooden or tiled floors with little scratches. Ceiling of average quality, competent job of application. Paintwork competently applied, although not necessarily of a professional standard.	7–6
▪ Carpets showing considerable use i.e. flattened spots, bleached by sunlight through windows, some thinning. Unprofessionally fitted with ripples, rough edges, etc. (there should be no holes, tears, burns or other defects that render the carpet of poor quality). Low quality flooring. Chipped wooden or tiled floors. Poor quality ceiling amateurishly fitted but no evidence of sagging. Ceiling slightly stained and paintwork of poor standard.	5–4–3
▪ Carpets with distinct signs of wearing, patches, stains, discolouration and seams. Gaps between carpet and walls. Several unmatched styles or newer carpets laid on top of damaged or worn-out older ones or wooden floors that have aged and are now in need of a new coat or varnish. Missing tiles and visible chips. Poor quality sagging ceiling showing evidence of water seepage.	2–1
Lighting	**Score**
▪ Overall high standard of illumination providing sufficient light for all purposes but also designed for good effect-showing off features in rooms or corridors. All lights and shades of high quality manufacture and in excellent working order. No harsh fluorescent lighting.	10–9
▪ High quality fittings with more than adequate spread of illumination for practical use, though no or limited use of sophisticated lighting effects. Occasional lamps, reading lights, perhaps picture lights.	8
▪ More than minimal lighting. Medium quality fittings in good condition. No burnt shades, ageing lamps. Main light and one or two small lamps. No extra lights for effect.	7–6
▪ Enough light for practical use, but nothing more.	5–4–3
▪ Low quality lighting. Exposed wires, wobbly fittings, loose plugs. Dim lights with a gloomy effect and creating darkness.	2–1

Atmosphere and Ambience	Score
▪ Harmonious combination of décor, lighting and very high quality furniture. Interesting architectural features. Spacious rooms and no intrusive noise from public areas or other rooms.	10–9
▪ Large enough room with comfortable and high quality furniture that is well coordinated and comfortable. May be some busy activity or music in the background but not intrusive.	8
▪ Comfortable seating area but may be used for other things at times. A degree of activity but not irritating.	7–6
▪ Busy area with a lot of activities going on, creating a "corridor" effect. Harsh lighting. Intrusive noise. Awkward seating. Cooking smells. Not particularly comfortable.	5–4–3
▪ Uncomfortable, awkward seating in an area clearly used for other purposes. Loud noises from TV's, radios etc. Smoky, old, persistent cooking smells. No professional touches. Nothing to look at or read.	2–1

5. Dining Facilities

Decoration	Score
▪ High quality wall covering in excellent condition with well coordinated designs. Interesting architectural features and artwork. No evidence of ageing, wear and tear (some historical locations excepted). High quality décor with a professional finish.	10–9
▪ Use of high quality materials, though not necessarily in pristine condition. Alternatively more average quality materials if recently decorated. No scratches, stains or scuffs. Professional workmanship throughout. Standard domestic style and quality of décor. Some ageing but no major wear and tear.	8
▪ Standard domestic style and quality of décor. Some ageing but no major wear and tear.	7–6
▪ Average quality, ageing. Some slight damage showing as well as wear and tear. Outdated style. Little design input or coordination. Looking old.	5–4–3
▪ Very old, faded, damaged wall covering. Evidence of damp or water penetration. Grubby marks. Evidence of neglect.	2–1

Furnishings	**Score**
▪ High degree of comfort. Well spaced chairs of appropriate height for tables. Spacious tables and well coordinated in terms of design.	10–9
▪ All of high quality but not necessarily the same design although coordinated. Good sized tables.	8
▪ Average quality. Tables large enough for uncluttered use. May be a mix of styles and ages, but all in good order. Design may take precedence over comfort.	7–6
▪ May be a mix of styles, ages, designs, shapes and heights. Chairs not very comfortable. Tables too close together and little space to move around.	5–4–3
▪ Inadequate table size and very small. Cluttered, cramped, uncomfortable and inconvenient layout out of tables and chairs.	2–1
Flooring and Ceiling	**Score**
▪ High quality fitted carpets, good thick pile and underlay. High quality wooden or tiled flooring with high quality rugs or mats. Ceilings to be of an excellent quality, no sagging or evidence of water leakage or seeping, marks or stains. All of the above should be professionally fitted, painted and in pristine condition.	10–9
▪ High quality carpets beginning to show some signs of ageing (flattening or wearing). No stains, burns or marks, etc. Alternatively carpet with higher percentage of man-made fiber but in new condition. Wooden or tiled flooring in need of buffing but with high quality rugs. Ceiling of good quality, no sagging, and no evidence of water leakage or seeping. Professionally fitted and painted.	8
▪ High quality carpet with flattening in areas of most traffic but all in good condition. Alternatively a cheaper but new carpet. Wooden or tiled floors a little scratched in some places. Ceiling of average quality. Paintwork completely applied although not necessarily, of a professionally standard.	7–6
▪ Carpets showing considerable use, unprofessionally fitted with ripples, rough ill-fitting edges, thin or no underlay. Low quality flooring. Chipped wooden or tiled floors. Poor quality ceiling, amateurishly fitted, but no evidence of sagging.	5–4–3

▪ Carpets with visible signs of wearing out. Several unmatched styles or newer carpets laid on top of damaged or worn-out older ones. Wooden floors that have aged and are now in need of a new coat of varnish. Missing tiles and visible chips. Poor quality sagging ceilings and evidence of water seepage.	2–1
Lighting	**Score**
▪ Generally high quality lighting and sufficient for all purposes, with good design. Excellent connexions, good quality shades and bases and no harsh fluorescent lighting.	10–9
▪ High quality fittings adequate for all purposes. Good quality lamps or picture lights.	8
▪ Medium quality fittings in good condition. No burnt shades. More than minimal lighting-main light plus one or two small occasional lamps.	7–6
▪ Enough light for practical use, outdated fittings, unattractive and harsh lighting, and no occasional lamps.	5–4–3
▪ Low quality fittings in poor condition. Dim, gloomy effect creating dark areas. Irritating, harsh fluorescent lights with no diffuser.	2–1

6. Menu Presentation

▪ Clear, informative layout. Attractive design in excellent condition. No thumb prints, stains, written corrections, etc. Wines and other drinks set out in clear sections with options available. Menu items could be explained to assist guests.	10–9
▪ High standard presentation may show a little wear. Where wines and other drinks are not available, it is clearly marked. No hand-written corrections.	8
▪ Clear layout. Clean but not worn out, large variety of wines and other drinks available, those that are not available are clearly marked.	7–6
▪ Scrappy appearance, not clearly marked and over used menu. Most of the items listed not available.	5–4–3
▪ Dirty, very old and rumpled menu. Difficult to read. Bearing little relation to what is available.	2–1

7. Table Appointments

Cognizance will be taken of the nature and style of the establishment.

▪ Emphasis on style and high quality (stainless steel, silver, etc.). All cutlery and crockery matching, and coordinated. No wear and chips in glassware etc. Additional features such as vases, candlesticks, coasters, etc. Good quality linen and cloth napery. Large napkins. High quality accessories, such as ice buckets, jam pots, etc. Provision of appropriate styles of cutlery for different functions and different glasses/crystal for different uses.	10–9
▪ Similar style as above but more limited in range. Alternatively, high quality domestic crockery rather than professional china. Fine glass rather than crystal. Good quality stainless steel rather than silver, etc. and napkins are smaller.	8
▪ Middle to high range cutlery and crockery in good condition, with main service matching. Accessories of different style but of good quality. Multiply paper napkins. Shorter table clothes of medium quality.	7–6
▪ Variety of style and quality. Fading of pattern or glaze. Thin napkins. No accessories. Sauces in bottles or packets.	5–4–3
▪ Mismatched patterns. Cracked cutlery and crockery with an over used appearance. Low quality but functional crockery. Thin napkins. Sticky and dirty sauce bottles laid on tables.	2–1

8. Atmosphere and Ambience

▪ Harmonious combination of décor and lighting. Spacious room, good layout of tables. No intrusive noises or smells. Designs may add to the ambience. In a Bed and Breakfast, it may be a comfortable family dining room with high quality domestic furniture.	10–9
▪ High standard of fabrics. Tables close together with little room to move around. Good atmospheric lighting. Some intrusive noise from the background but kept to a minimum.	8

▪ Tables quite close together but with sufficient space to allow private conversation, customers and staff to pass without inconvenience. A certain amount of noise and activity in the background.	7–6
▪ Crowded tables with awkward access. Difficult to have private conversations. Noisy and stuffy.	5–4–3
▪ Uncomfortable tables and chairs, loud noises. No room for private conversations. Clutter all around.	2–1

9. Food and Beverage

Applies to internal food and beverage.

Dinner Presentation	**Score**
▪ Well presented food, on appropriate plates with attractive and appropriate garnishes. Pleasing combination of colours, textures, and shapes. Care in execution and attention to visual appeal. Buffet replenished and refreshed.	10–9
▪ Care and attention to detail with visual effect, though not with highest degree of skill. Tendency to follow standard garnishing.	8
▪ Attractive arrangement and garnishes. Neat arrangements on plates.	7–6
▪ No attempt to enhance appearance. No variety of colours and textures. Some drying out of food, wrinkled skin on sauces. Food not particularly hot when served.	5–4–3
▪ Badly presented buffet. No garnish. Dull combination. Food is lukewarm.	2–1
Dinner Quality	**Score**
▪ Skillful use of finest, fresh ingredients. Everything prepared to the right degree. Good balance on menu with something for all tastes including local cuisine.	10–9
▪ May not quite reach top level of execution but evidently aiming higher. High quality fresh ingredients and of a good range.	8
▪ A mixture of high quality prepared meals and fresh ingredients. Meals prepared with care and attention but in domestic style.	7–6
▪ Low quality food and inexpertly prepared. Not very appetizing but edible.	5–4–3
▪ Lowest quality ingredients, poorly prepared and arranged food, with an unappetizing appearance.	2–1

Breakfast Presentation and Quality	**Score**
▪ Cold buffet neatly set out, attractive containers. May opt for plated cold courses. Preferably a refrigerated counter in a hotel. A good range of cold and hot food. Plated main course and eggs cooked to guest's order. High quality of ingredients and wide choice-specialty foods and unusual dishes. Wide selection of breads and pastries. Service must be offered.	10–9
▪ Smaller range of items on buffet. High quality ingredients. Noticeable attempt to provide high quality and unusual items. Eggs cooked to guest's order.	8
▪ Standard range of cold courses. Limited range of choice for cooked items. Ingredients of good quality. Competent cooking but no unusual or sophisticated dishes.	7–6
▪ Only basic breakfast. Limited choice of hot and cold courses. Low quality ingredients. Small portions.	5–4–3
▪ Limited choice. Low quality ingredients. Badly cooked and unappetizing.	2–1

10. Services and Service

Welcome, Friendliness and Attitude	**Score**
▪ Warm, friendly, helpful, pleasant appearance and eager to provide information about the establishment to guests. Attempt to establish a good rapport with guests.	10–9
▪ Cheerful demeanor and attitude. Willingness to show guests to their rooms and provide them adequate information.	8
▪ Pleasant appearance. Willing to assist when asked.	7–6
▪ Well behaved. Not very enthusiastic about assisting guests and providing any information.	5–4–3
▪ Rude. Not well behaved. Irritated at being asked for help and any other information.	2–1
Reservation, Check-in and General Efficiency	**Score**
▪ Efficient and helpful telephone reservation. Details and all necessary information properly noted down. All necessary information given to guests. Any messages forwarded promptly. Efficient communication with other departments, porters, restaurant table bookings, etc.	10–9

▪ Reservations dealt with promptly. All necessary information taken and provided efficiently. Efficient check-in, good responses to requests and generally pleasant towards guests.	8
▪ Reservations dealt with in a fair manner. All necessary information noted and provided. Guest directed to their rooms and all request dealt with pleasantly.	7–6
▪ Name and address of guest taken. Minimal information provided. Guest not always escorted or given direction to their rooms. Lack of willingness to respond to requests.	5–4–3
▪ Only Name taken. Marked reluctance to assist and give any information. Generally inefficient.	2–1

Porterage

Porterage may not always apply to all serviced accommodation, but some assistance with luggage is expected at all 4 and 5 star properties.

▪ Smart and helpful staff. Readily available with good knowledge of accommodation facilities and local area.	10–9
▪ Willing, prompt and friendly staff. Willingness to assist and find out more information for guests.	8
▪ Members of staff always available to assist with luggage though not very efficient. Cheerful and enthusiastic to assist but not very skillful in providing other information.	7–6
▪ Long delays in getting luggage to rooms. No further help or information and does not respond in a very pleasant manner.	5–4–3
▪ Luggage ignored and mixed up with others'. A porter or member of staff not always available to assist. Unhelpful, unfriendly and showing lack of interest to assist.	2–1
Room Service	**Score**
▪ Very efficient and prompt in service delivery. Telephone answered promptly and orders correctly noted down. Attractive presentation, adequate cutlery and napkins provided. Dirty dishes removed at earliest convenience.	10–9
▪ Orders taken correctly, in a pleasant manner and delivered in a reasonable time. Pleasant attitude. Asks if there is anything else required. Tray collected from outside room.	8

▪ Order taken efficiently. No delays but condiments missing.	7–6
▪ Room service menu not having variety. Some delay in answering the phone. Lengthy wait. Orders not correctly taken. No cutlery provided. Inefficient in collecting tray from room or even outside room.	5–4–3
▪ Long delay in answering phone. No knowledge of what is available. Room service not available at all times. No trays. Orders taken wrongly. Very inefficient.	2–1
Public Area Service	**Score**
▪ Efficient, attentive service from smart and very enthusiastic staff. Attend to guests in a polished and professional manner. Drinks correctly served and presented. Top ups offered. Ably providing information to guests.	10–9
▪ Brilliant and enthusiastic staff. Helpful and attentive. Shows willingness whenever something is requested.	8
▪ A member of staff always available and responds helpfully to requests. Willingness to assist though not very skilled.	7–6
▪ Staff not always available to assist and respond to requests. Little or no attempt to create good rapport with guests. Showing no interest and lacking enthusiasm.	5–4–3
▪ Inefficient staff. Rarely available to assist or respond to requests. Little product knowledge, ignoring the customer they are serving. Generally lack of interest.	2–1
Meal Service	**Score**
▪ Cheerful, friendly, polite and well trained staff. Very well informed about food and wines and other drinks, very well presented and clean. Prompt and efficient service. Correct and adequate cutlery and glasses provided for each meal. Excellent judgment on timing of courses and drinks. Responses to any other requests are given in an efficient manner. Tables are cleared in a prompt manner and top ups are well noted.	10–9
▪ Well motivated staff. Excellent standard of service. Further training would be required.	8
▪ Willingness to assist and very attentive. Enthusiastic and try to do their best. Would benefit from further training.	7–6

▪ Low skills but pleasant. Not really interested but responds in a helpful manner to requests. Conversely well skilled and trained but lacking social skills.	5–4–3
▪ Inefficient service delivery. Lack of skills, professionalism and interest.	2–1
Check-out Efficiency	**Score**
▪ Generally very efficient. Correct detail on bill. Every item on bill clearly explained. Guests asked if they enjoyed their stay at the hotel. Efficient in processing payment.	10–9
▪ Prompt attention to guests. Cheerful staff and noticeable attempts at excellence. Bill correct.	8
▪ Bill correct. Willingness to assist guests with luggage.	7–6
▪ Bill unclear, with calculation errors. Staff unable to explain some of the charges made to guest.	5–4–3
▪ Bill wrong and unexplained. Staff have no knowledge and skills and is unwilling to assist guests. Long wait. Staff unable to manage some forms of payment.	2–1
Tourist Information	**Score**
▪ Information well presented in rooms, reception and lounge. Information well covers all surrounding areas, emergency information and other accommodation information. Books and pamphlets of local interest and leisure facilities readily provided. Staff well versed on relevant tourist information, staff very willing to assist and offer information on the local area. Attention to personalized itineraries and personal interests in guest's information requirements.	10–9
▪ Information well presented and always available. Staff not well versed though. Some information on the local areas, emergency, leisure activities and some books. Staff eager to assist.	8
▪ Less material with information on surrounding area. Staff able to assist but not well versed.	7–6
▪ Limited information at the reception only. Staff lacks required knowledge.	5–4–3
▪ No information or out of date information. Staff unable to assist.	2–1

11. House-keeping

Bedrooms	**Score**
▪ High standard of cleanliness and attention to detail. Well-made beds. Gleaming surfaces, no smears and marks. Thorough cleaning. No broken equipment. Turndown service. Room tidied, trays taken away. Lights on and curtains drawn in the evening.	10–9
▪ High standard of cleanliness, attention to detail may not come up to the standard above. Small areas of attention missed.	8
▪ Efficient vacuum cleaning. Equipment and room accessories not as tidy and well arranged as they should be. Occasional lapse in maintenance. All surfaces free from dirt, and polished.	7–6
▪ Smeary and dusty surfaces. Neglect of vacuum cleaning under beds and in inaccessible corners. Pieces of paper, debris under furniture, dusty lamp shades, etc.	5– 4– 3
▪ Very heavy dust on all surfaces. Bits of paper, threads, grit and debris in wardrobes, drawers, and on carpet.	2–1
Guest Bathrooms	**Score**
▪ Particular attention to hygiene. All surfaces gleaming. Clean, fresh smell. High level of efficiency.	10–9
▪ Very high standard cleaning, but perhaps one or two slight lapses.	8
▪ No evidence of dirt, dust, hair or grime. Clean surfaces. Slight discolouration of enamel or grout.	7–6
▪ Clean but lacking attention to detail. Dirt and dust on low and high surfaces and in inaccessible places. Dull and discoloured surfaces.	5–4–3
▪ Low standard of house keeping. Dirt, dust, hair on surfaces and floors. Long term encrusted grime. Flooring around toilet is stained and smelly.	2–1
Public Areas	**Score**
▪ All well vacuum cleaned. All surfaces free from dust and dirt. No cobwebs. Well polished surfaces. Clean ashtrays, no finger prints left on doorplates and other surfaces. Flowers fresh and well arranged. News papers, books, up to date and tidy.	10–9
▪ A very good level of vacuum cleaning and dusting. Everything tidy and well arranged.	8

▪ High level of cleanliness. Easy seating area with some books, magazines, etc. on tables.	7–6
▪ Clean but with some dust on surfaces. Personal clutter. Newspapers and magazines out of date and in untidy piles. Dying house plants. Smears on surfaces.	5–4–3
▪ Neglected house-keeping. Carpets badly vacuum cleaned. Dirty and dusty surfaces, wilting plants, unemptied ash trays. Newspapers and books found on the floor. Dirty glasses or cups on tables.	2–1
Public Toilets	
▪ Fastidious attention to hygiene. Gleaming surfaces. Clean and fresh smell. High level of efficiency.	10–9
▪ Very high standard with just one or two slight lapses.	8
▪ No evidence of dirt, grime, hair or dust on surfaces, floors.	7–6
▪ Clean but lacking attention to detail. Dirt and dust on surfaces and in inaccessible places.	5–4–3
▪ Low standard of house-keeping. Long-term encrusted grime in inaccessible places, dirt and dust on surfaces and floor. Flooring around toilet stained and smelly.	2–1
Restaurant	
▪ High standard of cleanliness in all areas. No evidence of previous meals. Tables always set-up to high standard.	10–9
▪ High standard of cleanliness—no dirt, etc. may be some clutter. Pile of menus, wine and beverage lists, etc.	8
▪ Always tidy and clean in time for beginning of meal service. Standard cleaning and tidiness.	7–6
▪ Not always at its tidiest. Glasses, menus on surfaces. Clean but may be some dirt and dust on surfaces. Some tables remain unset during meal service. Pot plants and flowers neglected.	5–4–3
▪ Untidy. Crumbs on carpet, surfaces smeared, and ring marked. Dead or dying flowers. Piles of menus, etc. scattered around. Marks and stains on table cloths.	2–1

12. Appearance of staff

The nature of the establishment will be taken into formality may vary significantly.

▪ Clean, neat, appropriately dressed. A smart, well groomed appearance. Sleeves, trousers and skirts of right length. Clothing fresh and well ironed. Hair clean and well combed. Hands and fingernails clean. Polished shoes.	10–9
▪ Approaching excellent, but lacking the final touch. Some clothing items a little ill fitting. All clothing clean.	8
▪ A noticeable attempt to be smart. No stains, tears, etc. but dressed for comfort rather than smartness.	7–6
▪ Clothes starting to look worn, rumpled, faded, but basically clean. Hair not clean cut and combed.	5–4–3
▪ Clothing dirty, stained, frayed, with holes in them. Dirty shoes. Hands and fingernails grubby. Hair unwashed and untidy. Basic personal hygiene lacking.	2–1

13. Kitchen

Overall Cleanliness	**Score**
▪ Very clean. Shining floors. Clean surfaces. Items neatly arranged. Excellent paint work and finishes. Clean cupboards. Cutlery and crockery well packed. Very well organized kitchen.	10–9
▪ Not very shiny floors and surfaces but clean and tidy. Well organized kitchen, all items well arranged. Cupboards clean and well organized.	8
▪ Clean floors. Few marks and stains. Not very well organized. Few signs of wear and tear showing.	7–6
▪ Clean floors but disorganized surfaces. Very visible signs of wear and tear.	5–4–3
▪ Very dirty, disorganized, old feel and smelly kitchen.	2–1
Food Storage	**Score**
▪ Food properly stored and in excellent condition. Packed in appropriate storage facilities including clearly marked packs and containers. Separate cold and dry stores. Large enough storage space and well organized.	10–9
▪ Food properly stored and in good condition. Well organized and neatly arranged. Medium-sized storage space.	8

▪ Food well stored and in a good condition. Organized storage space but a bit small.	7–6
▪ Food not well stored or marked. May be placed in a disorganized manner. Small storage space.	5–4–3
▪ Very small storage space. Food not packed or properly refrigerated. Food kept in the fridge for too long. Expired products found on storeroom shelves.	2–1
Lighting and Ventilation	**Score**
▪ Excellent lighting and well ventilated kitchen. Pleasant atmosphere. Excellent lamps and shades in good condition.	10–9
▪ Good quality lighting and well ventilated. Good quality lights and in good condition.	8
▪ Good quality lighting and well ventilated. Little attempt to provide lights of good shape.	7–6
▪ Dimmer lights, small in size. Not very well ventilated and a little bit smoky.	5–4–3
▪ Partially dark and poorly ventilated. Smoky, smelly and have a general foggy appearance.	2–1
Spaciousness	**Score**
▪ Spacious kitchen with big cupboards and storage facilities. Excellent quality woodwork and fittings. Enough room to move around with utensils and food trays. Very attractive and generally very clean.	10–9
▪ Big kitchen with adequate space to store food and equipment. Good quality woodwork and fittings. May show some signs of wear and tear. Generally clean.	8
▪ Medium-sized kitchen with enough space to store food and equipment. Generally clean. May have a few breakages, water marks and stains visible on cupboards.	7–6
▪ Small kitchen. Little space to move around. Generally and old feel and some breakages to fittings.	5–4–3
▪ Very small kitchen. Limited space to move around. Old, smelly, dirty and greasy surfaces and cupboards.	2–1

Kitchen Staff Presentation	**Score**
▪ Well groomed staff. Well versed with food handling and safety measures. Clean, pleasant and in good health. Well dressed in appropriate full kitchen uniforms of excellent quality. Willingness and desire to provide quality meals. Very pleasant.	10–9
▪ Well groomed staff and neat. Well versed with food handling and safety precautions. In good health and in good quality uniforms.	8
▪ Well presented staff. Clean and have some knowledge about food handling and safety measures. In good health and in clean uniforms, but with some signs of over use.	7–6
▪ Staff with little knowledge about food handling and safety measures. Not in full uniform. Not very pleasant and show little interest to provide quality meals.	5–4–3
▪ No knowledge about food handling and safety measures. Not in uniform. Arrogant and little interest in preparing good meals. Take a long time to attend to the orders.	2–1

TOURISM AND HOTELS (HOTEL STAFF TRAINING FUND) REGULATIONS

G.N. 177/1971 10/1983

under s. 15

1. These Regulations may be cited as the Tourism and Hotels (Hotel Staff Training Fund) Regulations. Citation

2. In these Regulations, unless the context otherwise requires— Interpretation

"Fund" means the Hotel Staff Training Fund established under regulation 3.

3. There is hereby established a fund, to be known as the Hotel Staff Training Fund, for the purposes set out in regulation 4. Establishment of Fund

4. The purposes of the Fund shall be— Purposes of Fund

(*a*) to provide financial backing for the training of Malaŵians in the running and managing of hotels;

(*b*) to produce, through professional training in specific aspects of the hotel trade, fully qualified Malaŵian personnel;

(*c*) to foster the training of hotel staff in Malaŵi with a view to achieving and maintaining the highest possible standards in the quality of hotel services;

(*d*) to stimulate co-operation and participation in the pursuit of the above aims in the hotel trade.

5. The Fund shall consist of— Revenue of Fund

(*a*) moneys paid from the apportionment of the service charge levied on guests in hotels in accordance with regulation 11 of the Tourism and Hotels Regulations;

(*b*) any interest on investments; and

(*c*) any moneys received for the purposes of or vested in or accrued to the Fund whether under the Act or otherwise.

6. The Fund shall be administered, in accordance with the purposes of the Fund, by the Chief Tourism Officer, who shall, subject to any directions of the Secretary to the Treasury, maintain all necessary books and accounts to enable him to produce annually a receipts and payments account and such other accounts as may be required by the Secretary to the Treasury. The accounts shall be audited annually by the Auditor General. Administration of Fund G.N. 10/1983

Payment of moneys into Fund G.N. 10/1983

7. Moneys due to the Fund from the apportionment of service charges levied on hotel guests shall be paid monthly, not later than the 12th day following the end of each calendar month, to the Chief Tourism Officer, shall be made payable to the Hotel Staff Training Fund and shall be accompanied by a monthly Hotel Service Charge Submission Form, as set out in the Schedule hereto, duly completed.

SCHEDULE reg. 7

☐ HOTEL PAYMENT PERIOD .....

☐ RESTAURANT, ETC.

MONTHLY HOTEL/RESTAURANT SERVICE CHARGE SUBMISSION FORM

Company: .....

Name of Hotel or Restaurant: .....

Address: .....

.....

Telephone Number: .....

Number of employees: Management: .....

Administrative: ..... Other: .....

1*a*.	Total Service Charge due— current payment period		K.....
b.	Total Service Charge due— year-to-date	K.....	
2*a*.	Hotel Staff Training Fund— current payment period		K.....
b.	Hotel Staff Training Fund— year-to-date	K.....	
3.	Hotel Staff Training Fund Contribution Enclosed— (2*a* above)		K.....

DECLARATION OF AUTHENTICITY

I, ..., hereby declare
Name

that the foregoing statements are correct and that payments made to my employees and to the Malaŵi Hotel Staff Training Fund are representative of 5 per cent of the charges made for hotel/lodging/ restaurant services in my establishment.

.....
General Manager

Date ....
Location

TOURISM AND HOTELS (MARKETING FUND) REGULATIONS

ARRANGEMENT OF REGULATIONS

REGULATION
1. Citation
2. Interpretation
3. Establishment of the Fund
4. Purpose of the Fund
5. Revenue of the Fund
6. Disbursements from the Fund
7. Responsibilities for the Fund
8. Establishment of the Tourism Marketing Committee
9. Functions of the Committee
10. Composition of the Committee
11. Use of overdraft facility
12. Annual estimates
13. Annual audit
14. Surpluses and deficits
15. Remittances to the Consolidated Fund
16. Revocation

TOURISM AND HOTELS (MARKETING FUND) REGULATIONS

G.N. 2/2016

under s. 15

Citation

1. These Regulations may be cited as the Tourism and Hotels (Marketing Fund) Regulations.

Interpretation

2. In these Regulations, unless the context otherwise requires—

"Committee" means the Tourism Marketing Committee established under regulation 8;

"Fund" means the Marketing Fund established under these Regulations 3; and

"tourism enterprise" includes any business or undertaking that offers goods and services for tourists, travellers and excursionists.

Establishment of the Fund

3. There is hereby established a Fund to be known as the Tourism Marketing fund for the purpose set out in regulation 4.

Purpose of the Fund

4. The purpose of the Fund shall be to provide funding for marketing of Malaŵi's tourism attractions and facilities both within Malaŵi and abroad and, through so doing, to ensure the fullest possible utilization of the facilities.

Revenue of the Fund

5. The Fund shall consist of such money received for the purpose the Fund, including such sums as may be received from levy on all tourism activities that are offered by tourism enterprises and proceeds from point of sale of tourism promotional materials.

Disbursements from the Fund

6. Any payment from the Fund of an amount exceeding K250,000,000 shall only be made upon prior approval of the Secretary to the Treasury.

Responsibilities for the Fund

7. The Director of Tourism shall be responsible for administering the Fund, subject to the necessary approval by the Committee, and shall, subject to the supervision and direction of the Secretary responsible for tourism, maintain all necessary books and accounts to enable the Secretary responsible for tourism produce financial statements annually, or at such other period as the Secretary to the Treasury may direct, an Income and Expenditure Account and such other accounts as may be required.

Establishment of the Tourism Marketing Committee

8. There is hereby established the Tourism Marketing Committee which shall be a Committee of the Tourism and Hotels Board.

Functions of the Committee

9. The functions of the Committee shall include but not limited to—

(*a*) identification and definition of the Malaŵi's target markets;

(*b*) identification and development of the most cost effective promotional activities;

(*c*) identification of appropriate marketing strategies for each identified market; and

(*d*) making recommendations on the proper utilization of the Tourism Marketing Fund.

Composition of the Committee

10. The Committee shall comprise the following—

(*a*) secretary responsible for tourism;

(*b*) a representative of the Malaŵi Tourism Council;

(*c*) a representative of the Malaŵi Chapter of the Chartered Institute of Marketing;

(*d*) two members from prominent accommodation units; and

(*e*) two representatives for leading tour operators who shall serve for a term of two years;

Use of overdraft facility

11. No money shall be raised for the purposes of the Fund by means of any overdraft at any bank, unless permission of the Secretary to the Treasury has first been obtained.

12. The Committee shall be responsible for reviewing and approving of Annual Estimates of Income and Expenditure of the Fund. Annual estimates

13. The Fund shall be subject to annual financial audit in accordance with the Public Audit Act and the Public Finance Management Act, as such, the Secretary responsible for tourism shall submit annual Financial Statement within three months after the end of a financial year for auditing purposes. Annual audit Cap. 37:01 Cap. 37:02

14. When submitting Estimates in accordance with paragraph 13, the Secretary responsible for tourism shall submit proposals for dealing with any actual or expected surplus or deficiency of the Fund and shall conform to such directions as the Secretary to the Treasury may think fit to give in relation thereto. Surpluses and deficits

15. The Fund shall remit one percent of its total revenues to the Consolidated Fund, and the remaining ninety nine percent shall be retained by the Fund for its operational costs. Remittances to the Consolidated Fund

16. The Tourism and Hotels (Marketing Fund) Regulations are hereby revoked. Revocation

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TOURISM AND HOTELS (RESTAURANTS) ORDER

under s. 16

G.N. 133/1971
264/1971
8/1972
61/1975
175/1976
47/1977
11/1983
65/1990

1. This Order may be cited as the Tourism and Hotels (Restaurants) Order. Citation

2. The provisions of the Tourism and Hotels Act and of any regulations made thereunder shall apply to the following named establishments— Application of the Act to establishments other than hotels G.N. 65/1990

(*a*) the Airport Caterers, Chileka;
(*b*) the Causerie Restaurant, Lilongwe;
(*c*) the Chintheche Inn, Nkhata Bay;
(*d*) the Chitipa Inn, Chitipa;
(*e*) the Garden Korea Restaurant, Lilongwe;
(*f*) the Gazeebo Restaurant, Lilongwe;
(*g*) the Golden Dragon Chinese Restaurant and Bar, Lilongwe;
(*h*) the Golden Egg Restaurant, Blantyre;

(*i*) the Government Hostel, Zomba;
(*j*) the Hong Kong Restaurant, Blantyre;
(*k*) the Kasungu Inn, Kasungu;
(*l*) the Kudu Restaurant, Lilongwe;
(*m*) the Maxim's Restaurant, Blantyre;
(*n*) the Melting Pot Restaurant, Blantyre;
(*o*) the Mzuzu Rest House, Mzuzu;
(*p*) the Ngabu Rest House, Chikwawa;
(*q*) the Pumani Restaurant, Lilongwe;
(*r*) the Restaurant l'Hostaria, Blantyre; and
(*s*) the Restaurant Korea, Lilongwe.

Change of names of establishments

3. The provisions of the Tourism and Hotels Act and any regulations made thereunder shall apply to the restaurants or night clubs specified in Orders made under the Act, whether known by names specified in the said Orders, or whether those names are subsequently changed.

G.N. 24/2009

TOURISM AND HOTELS (SERVICE CHARGE) ORDER

under reg. 11

Citation

1. This Order may be cited as the Tourism and Hotels (Service Charge) Order.

Interpretation

2. In this order, unless the context otherwise requires—

"tourism enterprise" includes any business or undertaking that provides or offers goods and services for tourists, travellers and excursionists.

Service Charge

3. All tourism enterprises shall charge a one per cent (1%) service charge on all bills raised for any service provided by such tourism enterprise.

HIDE AND SKIN TRADE

CHAPTER 50:02

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CHAPTER 50:02

HIDE AND SKIN TRADE

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CHAPTER 50:02

HIDE AND SKIN TRADE

23 of 1954
1 of 1963
G.N.
22/1963
1/1965
166/1967
Gen. N.
16/1970

An Act to provide for the regulation of the trade in hides and skins

[1ST JANUARY, 1955]

PART I

SHORT TITLE, APPLICATION AND INTERPRETATION

Short title and application

1.—(1) This Act may be cited as the Hide and Skin Trade Act.

(2) So much of the provisions of this Act as relate to dealing in hides and skins and to licences authorizing such dealing shall extend only to such areas and such classes of hides and skins as the Minister may from time to time, by notice published in the *Gazette*, appoint.

Interpretation

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

"buyer" means any person who buys, sells or otherwise deals in hides and skins;

"buyer's licence" means a licence issued under section 4;

"Director" means the Director of Animal Health and Industry and includes the Deputy Director of Animal Health and Industry;

"export" means export from Malaŵi;

"exporter" means any person duly authorized under this Act to export hides or skins or hides and skins;

"exporter's licence" means a licence issued under section 9;

"game animal" bears the same meaning in this Act as it bears in the Game Act; Cap. 66:03

"green hide" or "green skin" means a hide or skin which is not partly nor wholly dried, salted or tanned;

"hide" means the hide of a bovine animal;

"inspector" means any person authorized in writing by the Minister to act as an inspector for the purposes of this Act;

"licensing officer" means any person authorized in writing by the Minister to issue buyer's licences under this Act;

"preparation" includes the processes of cleansing, fleshing, salting or drying and the expressions "prepared" and "prepare" shall be construed accordingly;

"skin" means the skin of a pig, sheep or goat or of any game animal.

PART II

Buyer's Licence

Restriction on purchase of hides and skins

3.—(1) No person shall, whether on his own account or on behalf of any other person, buy for the purpose of resale or tanning in Malaŵi, or for export, any hide or skin unless he is in possession of a valid buyer's licence in the prescribed form issued to him by a licensing officer:

Provided that the Minister may, by notice published in the *Gazette*, exempt any person or class of persons from this section.

(2) Any person who contravenes this section shall be guilty of an offence.

Application for, issue of and validity of buyer's licence

4.—(1) Any person who wishes to obtain or renew a buyer's licence shall apply therefor, in the prescribed manner, to a licensing officer.

(2) The licensing officer may, upon receiving any such application, if he is satisfied that the applicant possesses a sufficient knowledge of the hide and skin trade and is capable of complying with the prescribed conditions, issue the applicant with a buyer's licence or a renewal thereof on payment of the prescribed fee. Every such licence shall specify the premises, the area and the markets to which it relates and shall be valid only in respect of such premises, area and markets.

(3) A licensing officer shall not issue a buyer's licence unless—

(*a*) an inspector has certified that the premises in respect of which an applicant has applied for such licence are suitable, having regard to the volume and nature of the trade which may reasonably be expected in such premises and having regard also to the District in which they are situate;

(*b*) a medical officer of health for the area concerned, or some person authorized by him in writing in that behalf has certified that such premises are, having regard to the interests of public health, suitable for the purpose for which the licence is required.

(4) A buyer's licence shall, unless previously cancelled or suspended under section 6, remain in force until the 31st December of the year in respect of which it was issued.

Conditions attached to buyer's licence

5.—(1) In addition to any conditions which may be prescribed, it shall be a condition of every buyer's licence that the licensee shall—

(*a*) buy and sell each hide by grade as well as by weight;

(*b*) buy and sell each skin by grade as well as by the piece or weight;

(*c*) carry out the grading of the hides and skins at the time of purchase to the satisfaction of an inspector;

(*d*) display at the premises to which his licence relates, in the prescribed manner, the prices which he offers;

(*e*) not buy hides and skins at lower prices than those displayed in the prescribed manner;

(*f*) buy hides and skins for cash on delivery;

(*g*) keep proper books in English or Chinyanja in the manner prescribed:

Provided that paragraphs (*e*) and (*f*) shall not apply to purchases from the holder of a buyer's licence.

(2) The Minister may, by notice published in the *Gazette*, prescribe the minimum price payable for hides and skins.

(3) Any person who contravenes any of the conditions of a buyer's licence or who buys hides or skins at a price below the minimum price fixed under subsection (2) shall be guilty of an offence.

Cancellation or suspension of buyer's licence

6.—(1) A licensing officer may cancel or suspend a buyer's licence for such period as he deems fit if he is satisfied that the licensee—

(*a*) has been convicted of an offence against any of the provisions of this Act; or

(*b*) has committed a breach of any of the conditions of his licence; or

(*c*) has been convicted, either in Malaŵi or elsewhere, of any offence involving fraud or dishonesty, or is an undischarged bankrupt.

(2) When any person is notified that his buyer's licence has been cancelled or suspended he shall forthwith surrender such licence to the licensing officer of the area in which it was issued and, if any such person fails, without lawful excuse, so to surrender such licence, he shall be guilty of an offence.

PART III

Export of Hides and Skins

Restriction on export of hides and skins

7.—(1) No hide or skin may be exported except through a prescribed port or exit point.

(2) Any person who contravenes, or attempts to contravene, this section, shall be guilty of an offence.

Export under licence

8.—(1) No person shall export any hide or skin unless he is in possession of a valid exporter's licence in the prescribed form issued to him by the Director.

(2) Any person who contravenes, or attempts to contravene, this section, shall be guilty of an offence.

Application for, issue of, power to refuse and validity of exporter's licence

9.—(1) Any person who wishes to obtain or renew an exporter's licence shall apply therefor, in the prescribed manner, to the Director and, on payment of the prescribed fee, the Director may, subject to the general or special directions of the Minister, issue to the applicant an exporter's licence or a renewal thereof. Every such licence shall specify the premises to which it relates.

(2) The Director may, subject to the general or special directions of the Minister, refuse to issue an exporter's licence if—

(*a*) in his opinion, the applicant has insufficient resources, or inadequate facilities, or he or the staff employed by him lack the technical knowledge, to enable him to engage in trading in hides and skins for export in the manner required by this Act; or

(*b*) the premises on which the applicant proposes to carry on his business do not conform with the requirements of any Act; or

(*c*) the applicant has, within the five years immediately preceding the date of his application been convicted of an offence against this Act; or

(*d*) the applicant has, within the five years immediately preceding his application, been convicted, either in Malaŵi or elsewhere, of any offence involving fraud or dishonesty, or is an undischarged bankrupt or is, in the case of a corporation or firm, in liquidation.

For the purposes of paragraphs (*c*) and (*d*), "applicant" includes, in the case of a corporation or firm, any director or partner of such corporation or firm and its local manager.

(3) The Director shall not issue an exporter's licence unless—

(*a*) an inspector has certified that the premises in respect of which an applicant has applied for such licence are suitable, having regard to the volume and nature of the trade which may reasonably be expected in such premises and having regard also to the District in which they are situate;

(*b*) a medical officer of health for the area concerned, or some person authorized by him in writing in that behalf has certified that such premises are, having regard to the interest of public health, suitable for the purpose for which the licence is required.

(4) An exporter's licence shall, unless previously cancelled or suspended under section 11, remain in force until the 31st December of the year in which it is issued.

Conditions attached to exporter's licence

10.—(1) In addition to any conditions which may be prescribed, it shall be a condition of every exporter's licence that the licensee shall—

(*a*) equip and maintain his premises to the satisfaction of the Minister;

(*b*) carry out grading of hides and skins to the satisfaction of the Minister;

(*c*) keep proper books in English or Chinyanja in the manner prescribed.

(2) Any person who contravenes any of the conditions of an exporter's licence shall be guilty of an offence.

Cancellation or suspension of exporter's licence

11. The Minister may cancel, or suspend for such period as he deems fit, an exporter's licence if he is satisfied that the licensee—

(*a*) has been convicted of an offence against any of the provisions of this Act; or

(*b*) has committed a breach of any of the conditions of his licence; or

(*c*) has been convicted, either in Malaŵi or elsewhere, of an offence involving fraud or dishonesty, or is an undischarged bankrupt.

Proviso

12.—(1) Provided that nothing in this Part shall preclude the Minister, at his discretion and upon payment of such fee as he shall consider reasonable, from granting to any person an exclusive licence to export hides and skins and from attaching to such licence such conditions as he may consider necessary or expedient. An exclusive licence shall be valid for such period as may be specified therein and may be granted either in respect of the whole of Malaŵi or of any part of Malaŵi.

(2) No such licence shall be granted before the expiration of a period of not less than three months following the publication in the *Gazette* and in a newspaper circulating in Malaŵi of a notice declaring the intention of the Minister to grant such a licence.

PART IV

Registration of Premises

Premises used for drying to be registered

13.—(1) No premises may be used for the purposes of shade or suspension-drying until they have been approved as suitable for such purpose by an inspector who, if he approves, shall, upon payment of the prescribed fee, issue the owner or occupier with a registration certificate in respect of such premises, in the prescribed form:

Provided that this subsection shall not apply to any premises or class of premises as the Minister may, by notice published in the *Gazette*, exempt therefrom.

(2) An inspector may with the consent in writing of the Minister—

(*a*) refuse to approve premises if, in his opinion, they are unsuitable for the purpose, or the owner or occupier or the persons employed therein are not capable of satisfactorily preparing hides and skins in the prescribed manner;

(*b*) cancel or suspend the registration certificate of any registered premises if, in his opinion and after having given fourteen days' notice in writing to the owner or occupier of such premises, hides and skins are not being prepared, dried or stored therein in a satisfactory manner.

(3) Any person who uses premises in contravention of subsection (1) shall be guilty of an offence.

Validity of registration certificate

14. A registration certificate shall, unless cancelled or suspended under section 13, remain in force until the 31st December of the year in which it was issued.

PART V

Appeals

Appeal from decision of licensing officer or inspector and of Director

15. Any person aggrieved by the refusal of a licensing officer to issue or renew a licence under section 4, or by the decision of a licensing officer under section 6, or of an inspector under section 13 (1), may in writing require such licensing officer or inspector, as the case may be, to supply to him in writing the reasons for his decision and such person may, within fourteen days after the date upon which he receives such reasons, appeal in the prescribed manner to the Director.

PART VI

Powers of Inspection, Search and Seizure

Powers of inspection, search and seizure

16.—(1) Any inspector or any other person authorized in writing for the purpose by the Minister may, at all reasonable times, upon producing the written authority of the Minister in that behalf enter any premises in which any buyer or exporter carries on, or in which any inspector or other authorized person suspects him of carrying on, his business, or any premises registered under Part IV, or reasonably suspected by any inspector or other authorized person of being used for the purpose of preparing hides or skins, for the purpose of ascertaining whether the provisions of this Act, or the conditions of any licence, are being observed, and may inspect any hides or skins found on such premises and may take any such hides or skins as samples for the purpose of instituting any proceedings under this Act.

(2) Any person authorized in writing for the purpose by the Minister, if he has reasonable cause to believe that any offence has been committed against this Act in respect of any hides or skins, may take possession of such hides or skins or, by order in writing, require the person in possession of such hides or skins to retain them in his possession pending the order of the Minister.

(3) Any police officer of or above the rank of assistant inspector, or any other police officer authorized in writing in that behalf by an administrative officer, may stop and examine any vehicle carrying, or reasonably suspected by him to be carrying, hides or skins, and may stop any person carrying, or reasonably suspected by him to be carrying, hides or skins, and may inspect any hides or skins found in such vehicle or in the possession of such person.

(4) Any person who wilfully obstructs or interferes with any inspector, police officer or other person in the exercise of his powers under this section shall be guilty of an offence.

PART VII

Miscellaneous

Separate licence required for each premises

17. A separate buyer's or exporter's licence shall be required in respect of each set of premises owned or occupied by a licensee.

Reference of dispute as to grading

18. Where the person who produces any hide or skin for sale to a buyer is dissatisfied with the buyer's grading thereof, the dispute may, with the consent of both parties thereto, be referred to a person authorized in writing for the purpose by the Minister. The decision of such person shall be final and binding on both parties, and the buyer shall, if he buys such hide or skin, pay the price appropriate to the grade fixed by such person.

PART VIII

Offences

Licensee not to store hides and skins on unlicensed premises

19.—(1) No holder of a buyer's licence shall store any hides or skins except on the premises to which his licence relates.

(2) Any person who contravenes subsection (1) shall be guilty of an offence.

Offence to buy, etc., certain dried hides

20.—(1) No person shall sell or offer to sell, and no holder of a buyer's licence or exporter's licence shall be in possession of, purchase, sell or offer to sell any dried hide which is smeared with blood, dung or any foreign substance, or which is not completely dried and in a fit condition for storage.

(2) Any person who contravenes subsection (1) shall be guilty of an offence.

Miscellaneous offences and penalty

21.—(1) Any person who for the purposes of sale—

(*a*) treats any hide or skin with any substance not specified by the Minister by notice published in the *Gazette*;

(*b*) treats or prepares any sun-dried hide or skin with the object of selling it as a shade or suspension-dried hide or skin;

(*c*) without the permission of an inspector, soaks, immerses, or in any other way applies liquid, other than liquid for the control of parasites, to any hide or skin which has been partially or wholly dried;

(*d*) without the consent of the Minister or of an inspector authorized for that purpose by him, removes, alters or defaces any mark or label made on or attached to any hide or skin in pursuance of this Act,

shall be guilty of an offence:

Provided that nothing contained in paragraphs (*a*), (*c*) and (*d*) shall apply to hides used for making harness for yoke oxen, or for making thongs for securing domestic animals or for other domestic purposes.

(2) Any person who, in any application for a licence required under this Act, makes a statement which is, to his knowledge, untrue, or makes such statement recklessly, without caring whether it be true or false, shall be guilty of an offence.

(3) Any person who is guilty of an offence against any of the provisions of this Act shall be liable to a fine of £100 and to imprisonment for six months.

PART IX

Rules

Power to make Rules

22. The Minister may make Rules generally for the purpose of improving the quality of hides or skins produced, prepared, sold in, or exported from, Malaŵi and, without prejudice to the generality of the foregoing, for all or any of the following purposes—

(*a*) prescribing the conditions to be attached to any licence or certificate to be issued under this Act;

(*b*) requiring returns to be made by buyers and exporters and prescribing the persons to whom, and the forms in which, such returns shall be made;

(*c*) regulating the branding, grading and classification of hides and skins and defining the grades and classes thereof;

(*d*) regulating the manner and method of marking or labelling hides or skins for export, for denoting the grade, type and District of origin of such hides or skins;

(*e*) prohibiting or controlling the movement of hides and skins—

(i) from one part of Malaŵi to any other part of Malaŵi; or

(ii) from any part of Malaŵi to any part of Southern Rhodesia, Zambia, Tanzania or Mozambique; or

(iii) into Malaŵi; or

(iv) from any neighbouring territory through Malaŵi to any port or exit point;

(*f*) prohibiting, regulating and controlling the offering for sale or the buying or the export of any kind of hide or skin, or any hide or skin not prepared in a prescribed manner or which

is not in a prescribed condition, or which has been so mutilated by brand marks or in any other way as to render it, in the opinion of a prescribed person, unfit or unsuitable for sale, purchase or export;

(*g*) prescribing the conditions under which a person may deal in green hides and skins;

(*h*) regulating the prices to be paid to producers for the various grades and types of hides and skins;

(*i*) regulating the relationship between the prices to be paid for various grades of hides and skins;

(*j*) regulating and controlling the methods of slaughter of animals from which hides or skins are to be removed;

(*k*) regulating and controlling the methods which may or may not be used in preparing hides and skins;

(*l*) prescribing the methods to be employed when removing a hide or skin from an animal;

(*m*) defining the meaning of shade or suspension-dried hides or skins;

(*n*) prescribing the method to be employed for the protection, preservation and treatment of hides and skins, with the object of preserving them or improving their general quality, either before or after they are dried;

(*o*) requiring buyers and exporters in specified areas to—

(i) keep registers;

(ii) preserve such registers for a period of not less than two years from the date of the last entry therein;

(iii) produce such registers for inspection when called upon to do so by an inspector;

(*p*) prescribing the ports or exit points from which the export of hides and skins shall be permitted;

(*q*) prescribing the methods to be employed for the marking or labelling of shade and suspension-dried hides or skins with the registered number of the premises in which they were dried;

(*r*) prescribing anything required under this Act to be prescribed;

(*s*) generally for the better carrying out of this Act.

SUBSIDIARY LEGISLATION

G.N. 198/1954

APPLICATION OF ACT

under s. 1 (2)

The provisions of the Act which relate to dealing in hides and skins and to licences authorizing such dealing have been declared to extend to all classes of hides and skins throughout Malaŵi.

G.N. 108/1954 7/1955 205/1958 22/1963 81/1963

HIDES AND SKIN TRADE RULES

under s. 22

Citation

1. These Rules may be cited as the Hide and Skin Trade Rules, and shall come into force upon such date as the Minister may appoint by notice published in the *Gazette**;

Provided that the Minister may bring these Rules generally or any specified Rules into force either in relation to the whole of, any part of or any place in Malaŵi.

Interpretation

2. In these Rules, unless the context otherwise requires—

"buyer" means the holder of a buyer's licence issued under the Act;

"completely dried" means a suspension or ground dried hide or skin which when protected from rain and freely suspended under an impervious roof for 24 hours will not lose more than 3 per cent of its weight at the time of suspension by evaporation of water;

"flaying" means the opening of and the separating of the hide or skin from its body attachments;

"flaying knife" means a cutting implement with a curved blade not less than 5 inches long and sharpened on the curved edge with the blade curved upwards from the handle and ending in a rounded or blunted extremity;

"pickling" means removing the hair or wool from a hide or skin and preserving its pelt by treatment with a solution of acid and salt;

"prepared" means prepared in the manner prescribed by these Rules;

*See commencement notice following these Rules.

"preserving" means treating a hide or skin chemically or physically in order to render it less putrescible;

"processing" means subjecting a prepared or preserved hide or skin to any mechanical or chemical treatment preliminary to, or including, tanning;

"protected" means protected from insect damage in the manner prescribed by these Rules;

"slaughtering knife" means a long, pointed, sharp implement 8 inches to 20 inches in length;

"suspension dried hide or skin" means a hide or skin which has been treated in the manner prescribed in rule 19;

"tanning" means treating a hide or skin in order to convert its substance into leather.

Buyers

Application for buyer's licence

3.—(1) Every application for a buyer's licence shall be made to the licensing officer of the area in which applicants' premises are situate, and shall be in the English language and in the form set out in the First Schedule.

(2) Every application shall be accompanied by the prescribed fee and by four unmounted photographs of the head and shoulders of the applicant which shall be approximately 2 1/2 inches by 2 inches in size. One photograph shall be signed on the back thereof by the applicant, whose signature shall be attested by a person of standing known to the licensing officer and considered by him to be a reputable person.

(3) The fee for a buyer's licence shall be 10s.

(4) Every buyer's licence shall be issued to the buyer in duplicate. One copy shall be in the form set out in the Second Schedule and one copy in the form set out in the Third Schedule.

Renewal of buyer's licence

4. An application for the renewal of a buyer's licence shall be in writing and shall be accompanied by the prescribed fee for such licence and by the licence in the form set out in the Second Schedule.

Notice of prices

5.—(1) Every buyer shall display prominently at the premises to which his licence relates a notice specifying clearly the prices which he offers for each grade of suspension dried or ground dried hides and skins. Such notice shall be in the form set out in the Fourth Schedule.

(2) The words and figures shall be clearly displayed in English words and Arabic numerals of not less than one inch in height.

Additional conditions for buyer's licence

6. In addition to the conditions prescribed by section 5 of the Act it shall be a condition of every buyer's licence that the licensee or, if he is an employee, his employer shall—

(*a*) equip and maintain the premises to which his licence relates to the satisfaction of an inspector and ensure that such premises conform with the requirements of every relevant Act;

(*b*) provide and maintain in such premises the following facilities, material and equipment for marking hides and skins—

(i) such light, natural or artificial, as will permit a clear and detailed observation of the hides and skins;

(ii) a smooth, level surface measuring at least 3 feet square made of cement, wood or metal on which hides or skins should be placed for marking;

(iii) a sufficient supply of marking equipment together with provision for its safe custody. If branding irons are used for marking, these shall be of a type approved by the Director, shall be unworn and undamaged, and shall be kept in safe custody when not in use;

(*c*) store hides and skins in a manner and place which will keep them free from avoidable damage;

(*d*) maintain in such premises suitable facilities for weighing hides and skins;

(*e*) to the satisfaction of the Minister, employ in the premises to which his licence relates persons sufficient in number and ability to carry out adequately the work of a buyer, including grading, and to keep the books of such buyer in the prescribed manner. Such books shall include a register containing a record of every transaction carried out by such buyer and shall be kept in the form set out in the Fifth Schedule:

Provided that where the Minister is satisfied that any buyer keeps books in a manner sufficient to enable an inspector to obtain the information provided for in the Fifth Schedule he may exempt such buyer from keeping such register in the form set out in such Schedule.

Display of licence

7. It shall be a further condition of every buyer's licence that the buyer shall display the copy of his licence in the form set out in the Second Schedule in a prominent place on the premises to which such licence relates, and carry and display on his person the copy of his licence in the form set out in the Third Schedule together with a copy of the prices displayed under rule 5.

EXPORTERS

8.—(1) Every application for an exporter's licence shall be in the form set out in the Sixth Schedule and shall be made to the Director. Application for exporter's licence

(2) Every application shall be accompanied by the prescribed fee.

(3) If the applicant is a corporation, the application shall be made by the managing director or by the secretary or by the local representative duly authorized in writing by such corporation to make the same. The names of all the directors of such corporation shall be stated in the application.

(4) If the applicant is a firm, the application shall be made by one of the partners or by the local representative duly authorized in writing to do so. The names of all the partners of the firm shall be stated in the application.

(5) It shall be a condition of every exporter's licence issued to a corporation or firm that any change in, or addition to, the directors of a company or the partners of a firm shall be notified as soon as may be to the Director.

(6) The fee for an exporter's licence shall be £12.

(7) Every exporter's licence shall be in the form set out in the Seventh Schedule.

9. In addition to the conditions prescribed in section 10 of the Act, the following conditions shall be attached to every exporter's licence— Conditions on exporter's licence

(*a*) every warehouse, shed, godown or other premises used by an exporter for preparing, protecting, sorting or otherwise treating hides and skins shall—

(i) have floors of reasonably impervious material;

(ii) have a watertight roof;

(iii) be of such size as will provide adequate space for the proper handling of the hides and skins normally passing through the building;

(iv) have the facilities, materials and equipment for marking hides and skins prescribed in rule 6 (*b*);

(v) have the facilities, materials and equipment for protecting hides or skins in the manner prescribed in rule 21;

(vi) conform with the requirements of any other relevant Act;

(*b*) every exporter shall, when the nature of his business requires the maintenance of a baling press—

(i) keep every baling press used by him for baling hides or skins in good and proper condition;

(ii) use a baling press capable of compressing one ton of hides or skins into a space not greater than 75 cubic feet;

(iii) take all the necessary precautions to prevent such hides or skins from damage during transit and to prevent any cutting, tearing, cracking or staining of such hides or skins during the process of baling, or thereafter;

(*c*) every exporter's books shall include a register containing a record of every transaction carried out by him relating to the purchase, sale and export of hides and skins and shall be in the form set out in the Fifth Schedule:

Provided that where the Director is satisfied that any exporter keeps books in a manner sufficient to enable an inspector to obtain the information provided for in the Fifth Schedule he may exempt such exporter from keeping such register in the form set out in such Schedule.

Requirement of export certificate

10.—(1) No exporter shall export any consignment of hides or skins unless such consignment is accompanied by an export certificate certifying that the hides or skins contained in such consignment have been prepared or otherwise conform with the Act. Such certificate shall be in the form set out in the Eighth Schedule and shall be stamped and initialled by an inspector.

(2) No such certificate shall be stamped or initialled by an inspector if, upon examination of at least 5 per cent of each consignment, he is satisfied that—

(*a*) the bales are not clearly labelled with the shipper's marks duly registered with the Director;

(*b*) the hides or skins are not branded in the prescribed manner;

(*c*) the hides or skins are not prepared, protected, completely dried and otherwise in a fit condition for export;

(*d*) the hides or skins are not correctly classified either as ground dried, suspension dried, dry salted or wet salted;

(*e*) any cess or export tax payable under any law for the time being in force in Malaŵi has not been paid.

Exit points for export

11.—(1) No person may—

(*a*) export or attempt to export any hides or skins except

through the exit points of Nsanje, Dedza, Chitipa, Mwanza, Mchinji or Nkhata Bay.

(*b*) buy or export any skin under eight ounces in weight.

(2) Any person contravening subrule (1) shall be guilty of an offence.

BUYERS AND EXPORTERS

Storage of hides and skins

12. In addition to the conditions prescribed by the Act, it shall be a further condition of every buyer's licence and also of every exporter's licence that in every warehouse, shed, godown or other premises used by a buyer or exporter, the base of every stack or pile of loose hides or skins shall be at a reasonable height above the level of the floor.

Application for transfer of licence

13.—(1) An application for the transfer of a buyer's licence or exporter's licence from the premises, District or markets to which such licence relates to any other premises, District or markets, shall be made in the form set out in the Tenth Schedule and shall be accompanied by such licence.

(2) An application for the transfer of a buyer's licence shall be made to the licensing officer of the area in which the new premises are situate and an application for the transfer of an exporter's licence shall be made to the Director.

(3) A buyer's licence or exporter's licence may be transferred to new premises, a new District or new markets, as the case may be, once only during the period in which it is valid unless the written consent of the Director to a further transfer shall first be had and obtained.

Register of licences

14. It shall be the duty of every licensing officer, in respect of buyer's licences issued by him, and of the Director in respect of licences issued by him, to keep a register of such licences. Such register shall contain particulars of the name of the licensee, the area for which the licence is issued, the premises to which the licence relates and the number of the licence.

Retention of books

15. Every buyer and exporter shall retain the books kept by him under the Act for a period of not less than two years from the date of the last entry therein and shall produce such books at all reasonable times when called upon to do so by an inspector.

REGISTRATION OF PREMISES

Application and fee

16.—(1) Every application for the issue of a registration certificate under section 13 of the Act shall be made in writing to an inspector and shall be accompanied by the prescribed fee.

(2) The fee for such certificate shall be 2s. 6d. and such certificate shall be in the form set out in the Ninth Schedule.

PREPARATION

Method of slaughter

17.—(1) The slaughter of every animal from which hides or skins are to be removed shall be carried out in the following manner—

(*a*) every animal shall be rested during the twelve hours preceding slaughter and shall be supplied with drinking water, but no animal shall be fed during such period of twelve hours;

(*b*) slaughter shall take place between sunrise and the hour of nine o'clock in the forenoon or at such other times as may be approved by the Minister; animals shall either be slaughtered in an abattoir, if such is available, or, if none is available, shall be cast and tied in a humane manner on a clean piece of ground in which a groove six inches deep and ten inches wide has been dug, and over which a hoist has been erected;

(*c*) animals shall be dispatched by use of a humane killer, or, if none is available, by one stroke of a slaughtering knife across the throat as near the head as possible;

(*d*) after dispatch, the dewlap shall be cut vertically and the carcass shall be hoisted by the hind legs, and shall be lowered after bleeding is completed and before cutting of the hide or skin or flaying is commenced.

(2) Every person who, for the purposes of removing a hide or skin therefrom, shall slaughter an animal in contravention of subrule (1) shall be guilty of an offence.

Flaying, cleaning and trimming

18.—(1) The following methods shall be employed for flaying, cleaning and trimming a hide or skin—

(*a*) every hide or skin shall be opened by cutting with a sharp flaying knife—

(i) an incision through the hide or skin in a straight line along the centre of the belly, commencing from the middle line of the under side of the chin and finishing at the middle line of the under side of the anus;

(ii) incisions commencing from points at the centre of the inner side of either knee joint to points on either side of the centre line of the belly at the fore-end of the breast bone;

(iii) two incisions commencing from points at the centre of the back of each hock joint to points on either side of the centre line of the belly, not further from the anus than a point midway between the anus and the scrotum or udder;

(*b*) flaying shall be performed by cutting the connecting tissues between the hide and skin and the body with such knife or by separating such tissues from the body with the human hand or with a machine or blunt instrument in such manner as to leave the flesh side of the hide or skin as free as possible from fat, meat and from cuts or other injury;

(*c*) every hide or skin shall, immediately after it is flayed, be washed with water so as to free such hide or skin from blood, dung, dirt or other material, and such hide or skin shall then be placed on a smooth surface and all fat or meat shall be removed from it by such means as shall not cause injury to its flesh side;

(*d*) every completely dried hide or skin shall be trimmed by the removal of any portions which cover the head, the shanks below the knee and hock joints and that part of the tail which is more than eight inches from the junction of the tail with the hide or skin.

(2) Any person who shall flay, clean or trim a hide or skin in contravention of subrule (1) shall be guilty of an offence.

Drying by suspension

19.—(1) Where hides or skins are dried by suspension drying, the following methods shall be employed—

(*a*) after such hide or skin has been flayed and cleaned and within eight hours of its removal from the carcass, it shall be fleshed on a smooth surface with a flaying knife and shall be suspended for drying by—

(i) lacing such hide or skin to a frame of such dimensions that such hide or skin is freely suspended within its perimeter under light and even tension, so that no part of the hide or skin is in contact with any solid object other than that used for lacing it to the frame or distending the hump; or, subject to the approval of the Minister,

(ii) hanging such skin, flesh side uppermost, along the line of the backbone over a taut rope, wire or other method of support, and by using thin twigs or straws to open out any folds that may develop in any skin which is so suspended, and the sides of such skin shall hang over such ropes, wires or other method of support;

(*b*) such frame or rope, wire or other method of support shall be—

(i) placed or fixed inside a well-ventilated shed or verandah; or

(ii) fixed in the open, so that the plane of the hide or skin shall lie from east to west and so that in the case of such a frame the plane of the hide shall not vary more than 23 degrees from the vertical; or

(iii) raised horizontally off the ground to a height of not less than one foot;

(*c*) the surface of any hide or skin dried by the method prescribed in this rule shall, when suspended for drying, be separated from the surface of any other hide or skin by a free interval of not less than nine inches;

(*d*) no hide or skin when being dried by suspension drying shall be tied by hanging it over any support which is more than one quarter of an inch in width or diameter.

(2) Any person who shall dry any hide or skin by suspension drying in contravention of subrule (1) shall be guilty of an offence.

MISCELLANEOUS

Identification marks

20.—(1) The first buyer of a hide or skin shall identify every such hide or skin with the letter "N" and the letter or number or other symbols allocated by the Minister, by notice published in the *Gazette*, to the area in which the buyer's premises are situate.

(2) Such letters, numbers or other symbols shall be marked or branded on the hide or skin in such a way as to be readily decipherable and in a manner acceptable to the Minister, as notified by him from time to time by notice published in the *Gazette*.

(3) Such letters, numbers or symbols shall be marked or branded on the right fore shank. Each mark or brand shall be sited not more than one inch from the outer margin of each such shank:

Provided that—

(*a*) if any such fore shank is so mutilated that an alternative site is required for marking or branding, the left fore shank shall be used in the same manner;

(*b*) this paragraph shall apply only to the identification of dry hides and skins.

(4) No person shall mark or brand any hide or skin with the letters, numbers or symbols notified by the Director under subrule (1) unless such hide or skin shall have been prepared, protected or stored by a buyer in the premises to which his licence relates.

Protection of hides and skins

21. Every buyer and exporter shall protect every hide and skin from insect damage in the case of prepared hides or skins as soon as may be after purchase, and in the case of green hides or skins as soon as may be after they have been prepared for sale, and, in any case, before such prepared hides or skins are placed in contact with others stored in the premises to which his licence relates or in the curtilage thereof, by treating such hide or skin with one of the following preservatives, which shall be applied in the form of a liquid spray or as a powder, in a sufficient quantity, to both sides of such hide or skin—

Pyrethrum in powdered form,

D.D.T. (dichloro-diphenyl-trichlorethane) of not less than 4 per cent in powdered form,

Benzene hexachloride in powdered form, containing not less than 0.5 per cent of gamma isomer,

Sodium silico-fluoride in the form of a powder containing not less than 40 per cent of pure sodium silico-fluoride,

A solution containing not less than 0.15 per cent of arsenic calculated as arsenious oxide,

Any preparation containing one or more of these compounds:

Provided that where a preparation consists of a mixture of one or more of such compounds, they shall contain the minimum concentration required by this rule where such minimum is specified.

Transportation

22. Every buyer transporting completely dried hides or skins shall—

(*a*) provide adequate covering against rain;

(*b*) tie the hides or skins into firm bundles.

Protection against rubbing and dust

23. Every owner and every driver of a motor vehicle in which completely dried hides or skins are being carried shall ensure that the bundles of such hides or skins are stacked in the vehicle in such a manner as will prevent damage caused by rubbing, and shall provide reasonable protection against dust.

Treatment obligatory

24.—(1) No prepared hide or skin shall be bought or sold or offered for sale, or exported or offered for export—

(*a*) unless it has been treated in the manner prescribed in these Rules;

(*b*) if it has been treated in such a manner as to cover up or disguise any cut, scratch, sore, brand mark, disease, lesion or other blemish:

Provided that nothing contained in this rule shall apply to hides for making harness for yoke oxen or for making thongs for securing domestic animals or for other domestic purposes.

(2) Any person who shall sell or offer for sale, export or offer for export any prepared hide or skin in contravention of subrule (1) shall be guilty of an offence.

Import

Persons who may import

25.—(1) No person shall move hides or skins either from or into any area to which the provisions of the Act relating to the buying of hides and skins have been applied under section 1 (2) of the Act unless—

(*a*) he is a buyer or exporter or the holder of a registration certificate issued under section 13 of the Act; and

(*b*) each hide or skin is identified in the manner prescribed by rule 20.

(2) Any person who shall move any hides or skins in contravention of subrule (1) shall be guilty of an offence.

Conditions for importing

26.—(1) No hide or skin originating in any country outside Malaŵi may be imported by any person into Malaŵi unless such hide or skin—

(*a*) is consigned in transit to the exit points of Nsanje, Dedza, Chitipa, Mwanza, Mchinji or Nkhata Bay.

(*b*) is imported for preserving, processing, tanning or pickling, either for use in Malaŵi or for export:

Provided that if any hide or skin so imported is found to be unsuitable for preserving, processing, tanning or pickling it may be exported if, with the prior approval of an inspector, it has been branded with the letter "F" on the left fore shank.

(2) Any person who shall import any hide or skin into Malaŵi in contravention of subrule (1) shall be guilty of an offence.

Penalty

Penalty

27. Any person convicted of an offence against these Rules shall be liable to a fine of £50 and to imprisonment for three months.

FIRST SCHEDULE

r. 3(1)

The Hide and Skin Trade Rules

Application for a Buyer's Licence

To the Licensing Officer, ... Area.

I, the undersigned, hereby apply for a buyer's licence to be issued to me under the provisions of the Hide and Skin Trade Act. I enclose the prescribed fee of 10s. and four similar copies of my photograph. Full name of applicant.....
Does the applicant intend to buy hides or skins on his own behalf? .....
.....
If not, on whose behalf?.....
Name and address of employer or principal, if any.....
Address of applicant .....
Occupation of applicant.....
Address of the premises to which the licence will, if granted, relate .....
.....
Does the applicant hold, or has he held previously, a licence to buy hides and skins in Malaŵi or elsewhere? If yes, give number of licence, place and date of issue .....
What previous experience of the hide and skin trade does the applicant possess?.....
.....
.....
Has the applicant's knowledge of the trade been certified as being sufficient by an inspector? .....
If yes, state place and date of examination by the inspector .....
.....
Has the applicant been convicted, within the last five years, of an offence in Malaŵi or elsewhere?—

(*a*) against any provisions of the Hide and Skin Trade Act ..... Cap. 50:02,
.....
or Agricultural and Livestock Marketing Act ..... Cap. 67:01

(*b*) involving fraud or dishonesty ..... and if so, when and by what court .....
Is the applicant an undischarged bankrupt? .....

I have read and understood the conditions laid down in the Hide and Skin Trade Act and in the Hide and Skin Trade Rules.

I declare the above particulars are correct and I am fully aware of the penalties which may be imposed should I be convicted of any untrue statement in this application.

Dated this ..... day of ..... , 19 .....

.....
Signature of applicant

The premises to which this application relates are suitable, having regard to the volume and nature of the hide and skin trade which may reasonably be expected in such premises and to the District in which they are situate.

.....
Inspector

The premises to which this application relates are, having regard to the interests of public health, suitable.

.....
Medical Officer of Health or person authorized by him

NOTE.—The application should be submitted in duplicate, in English to the Licensing Officer of the area in which the premises are situated and must be in applicant's own handwriting.

Copies of the Hide and Skin Trade Act and Rules thereunder may be purchased from the Government Printer.

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r. 3(4), 4 and 7

SECOND SCHEDULE

THE HIDE AND SKIN TRADE RULES

Buyer's Licence

Page 1

LICENCE No .....

..... is hereby licensed to buy hides and skins for the purposes set out in section 3 of the Act* [on behalf of ....] in the ..... area.

This licence is issued in respect of the following premises .....
.....

This licence is issued in respect of the following approved Hides and Skins Markets—
.....
.....

Date .....

.....
Licensing Officer for
..... *Area*
.....

*Delete if not applicable.

(*Photograph*)

THIRD SCHEDULE

r. 3(4) and 7

Page 1

LICENCE FOLDER

No. .....

THE HIDE AND SKIN TRADE RULES

Buyer's Licence

LICENCE No. .....

..... is hereby licensed to buy hides and skins* [on behalf of .....] in the ..... area.

This licence is issued in respect of the following premises .....
.....

This licence is issued in respect of the following approved Hides and Skins Markets—

.....
.....
.....

Date .....

.....
Licensing Officer for
..... *Area*

*Delete if not applicable.

Page 2

(*Photograph*)

Pages 3 *and* 4

Annual Renewal

This licence is renewed until the 31st December, 19 .....

This ..... day of ....., 19 .....

Date .....

Receipt No .....

Dated on .....†

.....
Licensing Officer for
..... *Area*

(†to be printed three times on each page)

Transfer to other premises

(Rule 13)

This licence is hereby transferred to the following premises*/area/markets .....

Date .....

.....
Licensing Officer for
..... *Area*

*Delete if not applicable.

FOURTH SCHEDULE

r. 5(1)

Notice

I hereby offer the following prices for hides and skins.

Buyer

The Hide and Skin Trade Rules

	Hides per 1b.			
	Humped		Humpless	
	Green	Suspension dried	Green	Suspension dried
Grade I	Sh.			
Grade II	Sh.			
Grade III	Sh.			
Grade IV	Sh.			
	Goat skins per piece		Sheep skins per piece	
	Green	Suspension dried	Green	Suspension dried
Grade I	Sh.			
Grade II	Sh.			
Grade III	Sh.			
Grade IV	Sh.			

FIFTH SCHEDULE

rr. 6 and 9

The Hide and Skin Trade Rules

Register

Suspension dried { Hides or Skins } { Cattle, Game, Sheep, Goats }

Date of Purchase	District	Purchasing grade	No. of pieces	Purchasing		Amount paid		Date of sale	District	Selling grade	No. of pieces	Selling		Amount received	
				Weight	Rate	Sh.	Pence					Weight	Rate	Sh.	Pence

A separate form should be used for each class of Hide or Skin.

r. 8

SIXTH SCHEDULE

The Hide and Trade Rules

Application for an Exporter's Licence

To the Director of Veterinary Services,

I, the undersigned, hereby apply for an exporter's licence to export hides and skins, and enclose the prescribed fee of Sh. .....

Full name of applicant .....

Address of applicant .....

Nationality of applicant .....

Occupation of applicant .....

Address of premises to which the licence, if granted, will relate .....
.....

Does the applicant hold, or has he held previously, an exporter's licence to export hides and skins in Malaŵi and, if yes, give the number of the licence and date of issue .....

Has a licence to export hides and skins previously related to the premises to which the licence, if granted, will relate; if yes, give particulars of such licence .....

What previous experience of the hide and skin trade does the applicant possess? .....

What staff of selectors and supervisors will be employed and what previous experience of the hide and skin trade have they had? (Give their full names) .....
.....

What is the floor of the premises? .....

State the number of presses in the premises, their type and capacity
.....
.....

Have the premises been condemned under any Act or By-law? .....
.....

Has the applicant been convicted, within the last five years, of an offence in Malaŵi or elsewhere? .....

(*a*) against any of the provisions of the Hide and Skin Trade Act, or any Rules made thereunder .....

(*b*) involving fraud or dishonesty ..... and, if so, when and by what court? .....
.....

Is the applicant an undischarged bankrupt, or in the case of a corporation or firm, in liquidation?

To be completed where the application is made on behalf of a corporation or firm—

What is the registered capital of the applicant? .....

I am the managing director/secretary/local manager/partner of the applicant corporation/firm.

The directors of the corporation/partners of the firm are (*Give names and addresses*) .....
.....
.....

The corporation/firm is solvent.

I declare the above particulars are correct and I am fully aware of the penalties which may be imposed should I be convicted of any false statement in the above application.

Date ....
Signature of applicant

The premises to which this application relates are suitable, having regard to the volume and nature of the hide and skin trade which may reasonably be expected in such premises and to the District in which they are situate.

.....
Inspector

The premises to which this application relates are suitable, having regard to the interests of public health.

.....
Medical Officer of Health or person authorized by him

NOTE.—The application should be submitted in duplicate, in English, in the applicant's own handwriting.

If the applicant is a corporation or firm the questions concerning convictions and bankruptcy should be answered with reference to every director of the corporation or partner of the firm, each director or partner, as the case may be, being an applicant for this purpose. In the case of a corporation the managing director/secretary or local representative, duly authorized to do so, should sign on behalf of the company; in the case of a firm a partner or local representative, duly authorized so to do, should sign on behalf of the firm.

Copies of the Hide and Skin Trade Act and Rules thereunder may be purchased from the Government Printer.

SEVENTH SCHEDULE

r. 8

THE HIDE AND SKIN TRADE RULES

Exporter's Licence

LICENCE No. .....

..... is hereby licensed to export .....

This licence is issued in respect of the following premises .....
.....

Date ....
Director of Veterinary Services

EIGHTH SCHEDULE

r. 10

The Hide and Skin Trade Rules

Export Certificate for Hides or Skins

Certificate No. .....

I hereby certify that the under-mentioned bales of hides or parcels of skins have been prepared and otherwise conform to the provisions of the Hide and Skin Trade Act.

	Number of		Particulars— If cattle, sheep, goats, etc.	F.O.B. value	Markings on bales or parcels in full
	Bales hides	Parcels skins			
Suspension dried					

Date .....

.....
Exporter

NINTH SCHEDULE

r. 16 (2)

The Hide and Skin Trade Rules

Registration of Premises Certificate

The premises situate at ..... and occupied by .... have been inspected by me and I hereby approve them as being suitable for the purpose of shade or suspension drying. I also certify that the owner/occupier* of such premises and the persons employed therein are capable of satisfactorily preparing hides and skins in the prescribed manner. The premises have been given the following registered number .....

.....
Inspector

*Delete whichever word is not applicable.

TENTH SCHEDULE

r. 13

The Hide and Skin Trade Rules

Application for the Transfer of a Buyer's/Exporter's Licence from the Licensed Premises to any other Premises

To the .....,

I, ... the holder of ..... Licence No ..... issued at ..... on the ..... day of ....., 19 ...., in respect of the premises situated at ...., hereby apply to have the above licence transferred so that it shall relate to the* premises at ..... or District of ..... or markets at ..... and declare that the previous licensed premises will not be used by me after .... I further declare that no previous application for the transfer of ..... Licence No. ..... has been made on my behalf.

Date .....

*Delete what is inapplicable.

.....
Signature of applicant

G.N.
192/1954
268/1970

COMMENCEMENT AND APPLICATION OF HIDE AND SKIN TRADE RULES

under r. 1 *of the Rules*

The 1st January, 1955, has been appointed as the date on which the Hide and Skin Trade Rules shall come into force generally:

Provided that rules 17, 18, 19 and 24 of the Rules shall come into force only in relation to the places set out in the Schedule hereto.

SCHEDULE

A. Southern Region

(1) *Townships*

Blantyre Municipal Abattoir
Limbe Municipal Abattoir
Naperi Private Abattoir
Zomba Town Abattoir

(2) *Other Markets, including Rural Areas*

Blantyre District

Lunzu
Lirangwe
Kanjedza
Kunthembwe
Mbhami

Chiradzulu District

Mombesi
Namadzi
Namitambo
Njuli

Fort Johnston District

Fort Johnston
Namweras
Ulongwe

Kasupe District

Balaka

Mlanje District

Lauderdale
Chonde

Thyolo District

Messrs. Conforzi Private Abattoir

Zomba District

Songani
Jali
Mtwiche

B. Central Region

(1) *Townships*

Lilongwe Municipal Abattoir

(2) *Other Markets, including Rural Areas*

Dedza District
Dedza
Mayani
Linthipe Bridge
Tete
Kafotokoza

Lilongwe District
Nsaru
Namitete
Mitundu
Nathenje
Nkhoma

Kasungu District
Kasungu

Ncheu District
Ncheu
Lizulu

Dowa District
Dowa
Nambuma
Mponela

Nkhota Kota District
Nkhota Kota
Ntchisi

C. Northern Region

Markets
M'mbelwa
Karonga
Ekwendeni
Nkhata Bay
Mzuzu

LIQUID FUELS AND GAS (PRODUCTION AND SUPPLY)

CHAPTER 50:03

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CHAPTER 50:03
LIQUID FUELS AND GAS (PRODUCTION AND SUPPLY)

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Schedule

An Act to make provisions for production, blending, extraction, conversion, importing, transforming, transporting, storing, distributing and selling liquid fuels and gas in a liberalized market and for matters connected therewith or incidental thereto

23 of 2004
G.N. 40/2007

[28TH DECEMBER, 2007]

PART I

PRELIMINARY

1. This Act may be cited as the Liquid Fuels and Gas (Production and Supply) Act. Short title

2.—(1) The provisions of this Act shall apply to the production, extraction, conversion, importation, blending, transportation, storage, distribution, wholesale and retail sale of liquid fuels and gas and related activities within Malaŵi, and in the event that natural gas is used as boiler fuel, feed stock or for other commercial purposes in Malaŵi, all provisions of this Act which refer to liquid fuels and gas shall also apply to natural gas, whether imported or produced in Malaŵi, including compressed and liquefied natural gas. Application

(2) The provisions of this Act shall apply to all persons, whether individual or body corporate, all departments and other entities of the Government, the Malaŵi Defence Force, all public corporations and all corporations under the Companies Act, subject to specific exemption for military and other entities for reasons of national security as may be authorized by the Minister by notice published in the *Gazette*. Cap. 46:03

Act not to apply to exploration of oil and gas

Cap. 61:01

3. The activities and installations related to the prospecting, exploration, discovery and development of oil and gas within Malaŵi as well as the storage, transportation and transformation of such oil and gas within the limits of the development area shall be governed by the Petroleum Exploration Act.

Interpretation

4. In this Act, unless the context otherwise requires—

Cap. 73:02

"Authority" means the Malaŵi Energy Regulatory Authority established under section 3 of the Energy Regulation Act;

"chain of supply" means all operations, activities, installation equipment and other facilities, directly or indirectly, related to liquid fuels and gas supply operations;

"commercial storage" means liquid fuels and gas storage held by a licensee for his day to day commercial operations;

Cap. 48:10

"consumer" has the meaning assigned thereto in the Consumer Protection Act;

Cap. 73:02

"Energy Laws" has the meaning ascribed thereto in the Energy Regulations Act;

Cap. 61:01

"exploration area" has the meaning assigned thereto in the Petroleum Exploration Act;

"franchising" means an agreement between a licensee and a retail dealer under which the retail dealer is permitted to retail liquid fuels and gas under a designated business name;

"importation" means buying liquid fuels and gas from a source outside Malaŵi by a licensee;

"international haulage" means transportation of liquid fuels and gas into Malaŵi delivered at designated storage facilities of a licensee holding a storage licence;

"internal distribution" means transportation of liquid fuel and gas within Malaŵi from storage facilities to wholesale and retail outlets;

"licence" means a licence issued by the Authority under this Act;

"licensee" means the holder of a licence under this Act;

"liquid fuels and gas" means organic compounds, pure or blended, which are derived from the refining or processing of crude oils or mixes of crude oils, or refined from plant organic materials including—

(*a*) asphalts, bitumens, coke and other residual products;

(*b*) bunkers or heavy residual fuel oils for combustion engines or industrial heat processes such as burners for boilers or heating furnaces;

(*c*) commercial gases such as methane, ethane, propane, butane, LPG and other similar gases or mixture of these gases whether in gaseous or liquefied state;

(*d*) gasoil or automotive industrial or marine diesel;

(*e*) gasolines (petrol) or naphtha products;

(*f*) kerosene or other similar oils for illumination or combustion applications;

(*g*) lubricating oils such as base oils and refined and blended finished oils;

(*h*) turbo fuels for jet propulsion engines;

(*i*) fuel ethanol; and

(*j*) other products or by-products of crude oil processing having a Flash Point lower than 120 degrees celsius, as determined in a Pensky-Martens closed test apparatus;

"liquid fuels and gas supply undertaking operation" means any operation or installation and activities for or in connexion with the import, landing, loading, transformation, transport, storage, distribution, wholesale, retail or franchising of liquid fuels and gas products which are owned and operated by a licensee;

"production area" means the area constituted by a block that is, or by blocks that are, subject to a liquid fuel and gas productions licence;

"retailing" means selling of liquid fuels and gas on retail terms by a holder of a retail licence;

"strategic fuel reserve storage" means liquid fuels storage held by Government for strategic purposes;

"transportation" means the international haulage and local distribution of liquid fuels and gas by a licensee; and

"wholesaling" means selling of liquid fuels and gas on wholesale terms by a holder of a wholesale licence.

PART II

General Principles

Objectives

5. The objectives of this Act are to—

(*a*) ensure that the liquid fuels and gas supply of Malaŵi is adequate, reliable, efficient and economical for the country and the consumers;

(*b*) protect the public safety, health and the environment in all liquid fuels and gas supply operations and installations;

(*c*) protect the occupational safety, health and welfare of people working in the liquid fuels and gas supply industry;

(*d*) ensure equal access to liquid fuels and gas products of adequate quality at competitive prices for all consumers;

(*e*) eliminate discrimination or preferential treatment of any participant, and to prevent monopolistic control of any segment of the chain of supply;

(*f*) create favourable conditions for new participation and investors in order to improve and expand the infrastructure of the chain of supply; and

(*g*) promote empowerment of Malaŵians to participate in the liquid fuels and gas supply industry through operation and ownership of retail outlets.

Activities in chain of supply open to any person

6.—(1) Any and all activities in the chain of supply, save those mentioned in paragraph (*g*) of section 5, shall be open to any person whether private or public, domestic or foreign subject to the provisions of this Act and any other applicable written law.

(2) A holder of a wholesale licence shall own and run a maximum of two retail outlets and shall franchise out the rest of his retail outlets to Malaŵians.

PART III

Functions of the Minister

Functions of the Minister

7. The Minister, or any person to whom the functions referred to in this section may have been delegated by notice published in the *Gazette*, shall—

(*a*) advise the President and the Cabinet on liquid fuels and gas policy matters and supply strategies;

(*b*) initiate legislation and make the necessary regulations in order to ensure that there is at all times a continuous, secure and adequate supply of liquid fuels and gas at competitive price for all consumers and ensure the availability of adequate import, transport, storage and distribution facilities within and outside the country in the chain of supply;

(*c*) oversee the Strategic Fuel Reserve Facility;

(*d*) approve the National Liquid Fuels and Gas Emergency Plan;

(*e*) impose levies; and

(*f*) perform those other functions assigned to him by this Act or any other applicable written laws.

PART IV

Liquid Fuels and Gas Production Licence

Obligation to obtain a production licence

8.—(1) No person shall carry out production activities referred to in section 9 without having obtained a production licence in accordance with the provisions of this Act.

(2) Any person who fails to comply with subsection (1) shall be guilty of an offence.

Production activities to be licensed

9. The following production activities shall be licensed by the Authority—

(*a*) the production of crude oil and gas;

(*b*) the refining of crude oil into refined products;

(*c*) the production of ethanol fuel; and

(*d*) the production of bio-diesel.

Application for a production licence

10.—(1) An application for a licence for one or more production activities shall be in a prescribed form, and shall be filed with the Authority.

(2) The procedure for filing, evaluating and approving the applications and the documentation to be submitted by the applicant under subsection (1) shall be prescribed by regulations.

(3) The Authority shall, during the process of application evaluating and approval, treat all applications equally without any discrimination or preferences, and the Authority may not require or impose any terms or conditions, which are not specified or authorized by this Act.

(4) Whenever required to do so by any applicable written law, an applicant, shall obtain the necessary environmental authorization, and prepare and file an environmental management plan or an environmental impact study as a condition for obtaining a production licence under this section.

Application fees and expenses

11.—(1) The Authority may employ experts for the purpose of evaluating an application for licence under section 10, and the Authority shall pay for the services of such experts.

(2) An applicant for a production licence or for the renewal or assignment of a production licence shall pay an application fee to the Authority.

(3) The expenses for experts under subsection (1) and the application fees under subsection (2) shall be prescribed by the regulations.

Approval of applications

12.—(1) The Authority shall, after due evaluation of the application under section 10, issue a production licence in the prescribed form, and may establish special terms and conditions.

(2) The Authority shall notify the applicant of the approval or rejection of his application for granting, renewal or assignment within thirty days from the date of receipt of an application for a production licence and, if an application is rejected the authority shall notify the applicant in writing stating the reasons for the rejection of the application.

(3) If the applicant is not notified within the period stated in subsection (2), the applicant may serve written notice on the Authority and the Authority shall, within fourteen days from the receipt of such notice, review the application and notify the applicant of its decision to approve or reject the application; and if the applicant is not so notified within the period of fourteen days, the application shall be deemed to be approved by the Authority, and the applicant shall be entitled to immediately receive the appropriate documentation from the Authority confirming the granting, renewal or assignment of the production licence as applied for.

Validity of production licences

13. A production licence issued under section 12 shall have a duration of one to five years depending on the type of the activity the licence covers, and shall be renewable in accordance with conditions prescribed in regulations.

Assignment of production licence

14. No production licence issued under section 12 may be assigned by or transferred from the holder to another person without the prior written approval of the Authority, unless otherwise provided for in regulations.

Suspension, revocation or termination of production licence

15. Notwithstanding any other remedies or penalties for offences provided for under this Act or any other written law—

(*a*) a production licence may be suspended by the Authority in case of contravention of provisions of the Act concerning the protection of occupational safety, health and welfare, public safety, public health and the environment or for other reasons stated by this Act or Energy Laws;

(*b*) a production licence may be revoked by the Authority in the event that the holder fails to remedy or repeats violation of provisions of this Act concerning the protection of occupational safety, health, welfare, public safety, public health and the environmental and other reasons stated by this Act; and

(*c*) a production licence may be revoked by the Authority at the instance of the holder of the licence applying for revocation or termination in accordance with regulations.

PART V

Liquid Fuels and Gas Construction and Operating Licences

Obligation to obtain a licence

16.—(1) No person shall carry out the construction or modification of installations and facilities of the chain of supply mentioned in section 17 without having obtained a licence in accordance with the provisions of this Act.

(2) No person shall perform liquid fuels and gas supply operations mentioned in section 17 without having obtained a licence in accordance with the provisions of this Act.

(3) Any person who fails to comply with subsection (1) or subsection (2) shall be guilty of an offence.

Activities to be licensed

17. The following activities in the chain of supply shall be licensed by the Authority—

(*a*) the importation of liquid fuels and gas;

(*b*) the wholesaling of liquid fuels and gas;

(*c*) the storage of liquid fuels and gas;

(*d*) the transportation of liquid fuels and gas; and

(*e*) the retailing of liquid fuels and gas.

Application for a licence

18.—(1) An application for a licence for one or more activities in the chain of supply shall be in a prescribed form, and shall be filed with the Authority.

(2) The procedure for filing, evaluating and approving the applications and the documentation to be submitted by the applicant under subsection (1) shall be prescribed by regulations.

(3) The Authority shall, during the process of application, evaluating and approval, treat all applications equally without any discrimination or preferences, and the Authority may not require or impose any terms or conditions, which are not specified or authorized by this Act.

(4) Whenever required to do so by any applicable written law, the applicant shall obtain the necessary environmental authorization, prepare and file an environmental management plan and an environmental impact study as a condition for obtaining a licence under this Act.

Application fees and expenses

19.—(1) The Authority may employ experts for the purpose of evaluating an application under section 18, and the Authority shall pay for the services of such experts.

(2) An applicant for a licence or for the renewal or assignment of a licence shall pay an application fee to the Authority.

(3) The expenses for experts under subsection (1) and the fees under subsection (2) shall be prescribed by regulations.

Approval of applications

20.—(1) The Authority shall, after due evaluation of an application, issue a licence in the prescribed form, and may establish special terms and conditions.

(2) The Authority shall notify the applicant of the approval or rejection of his application for granting, renewal or assignment within thirty days from the date of receipt of an application for a licence, and if an application is rejected, the Authority shall notify the applicant in writing stating the reasons for the rejection of the application.

(3) If the applicant is not notified within the period stated in subsection (2), the applicant may serve written notice on the Authority and within fourteen days from the receipt of such notice, the Authority shall review the application and notify the applicant of its decision to approve or reject the application, and if the applicant is not so notified within the period of fourteen days, the application shall be deemed to be approved by the Authority, and the applicant shall be entitled to immediately receive the appropriate documentation by the Authority confirming the granting, renewal or assignment of the licence as applied for.

Validity of licences

21. A licence issued under section 20 shall have a duration of one to five years, depending on the type of the activity the licence covers, and shall be renewable in accordance with conditions prescribed in regulations.

Assignment of licences

22. No licence issued under section 20 may be assigned by or transferred from the holder to another person without the prior written approval of the Authority, unless otherwise provided for in regulations.

Suspension, revocation or termination of licences

23. Notwithstanding any other remedies or penalties for offences provided for under this Act or any other written law—

(*a*) a licence may be suspended by the Authority in case of violations of provisions of the Act concerning the protection of occupational safety, health and welfare, public safety, public health and the environment or for other reasons stated by this Act or Energy Laws;

(*b*) a licence may be revoked by the Authority in the event that the holder fails to remedy or repeats violation of provisions of this Act concerning the protection of occupational safety, health, welfare, public safety, public health and the environmental and other reasons stated by this Act; and

(*c*) a licence may be revoked by the Authority at the instance of the holder of the licence applying for revocation or termination in accordance with regulations made under this Act.

PART VI

Obligations of the Holders of Licences

Compliance with laws, regulations, standards and specifications

24. All licensees and all persons working under the direction of, licensees, as well as the installations and equipment used by them, shall comply with all applicable laws and regulations, standards and technical specifications concerning the protection of occupational safety, health, welfare, public safety, public health and the environment and with all other applicable written laws.

Inspection and information

25.—(1) A licensee shall submit or make available for inspection reports, keep records and furnish information as required by the Authority for the purpose of carrying out the provisions of this Act.

(2) A licensee shall maintain an address in Malaŵi to which communications may be sent, and shall give notice to the Authority of that address and any change thereof.

(3) For the purpose of carrying out inspections or other monitoring and enforcement actions as specified in regulations, the Authority may at any time enter upon any area, premises or working area where construction works of liquid fuels and gas production and supply operations are being performed by a licensee.

Minister to establish minimum stock requirements

26.—(1) In order to assure the security and continuity of the liquid fuels and gas supply of the country, the Minister, on the recommendation of the Authority, may require that all or certain groups of licensees, including industrial consumers buying for wholesale distributors, maintain commercial stocks and minimum stocks of liquid fuels and gas or of all certain liquid fuels and gas products which they handle and taking into account the required storage capacity as stated in their respective licences.

(2) The details of the minimum stocks of liquid fuels and gas referred to in subsection (1) shall be specified in regulations.

National Liquid Fuels and Gas Information System

27.—(1) There is hereby established the National Liquid Fuels and Gas Information System which shall be organized and maintained by the Authority.

(2) All information contained in the National Liquid Fuels and Gas Information System shall be available for inspection by any public or private person with the exception of information which has been qualified as confidential in order to protect proprietary market data or for other lawful reason as defined by the Authority in its discretion.

Reports and information to be submitted

28. Every licensee shall submit to the Authority periodic reports and other information for the National Liquid Fuels and Gas Information System as prescribed by the Authority by regulations.

Central Registry of Liquid Fuels and Gas Operations

29.—(1) The Authority shall establish and maintain the Central Registry of Liquid Fuels and Gas Operations which shall form part of the National Liquid Fuels and Gas Information System.

(2) The Central Registry of Liquid Fuels and Gas Operations shall include a record of all applications, grants, variations, assignments, other transfers, suspensions and revocations of licences and all relevant information about the licensees and their operations and installations.

(3) The Central Registry of Liquid Fuels and Gas Operations maintained by the Authority under subsection (1) shall be open to public scrutiny.

PART VII

Assurance of Fair Competition

Prohibition against activities contrary to principles of fair competition

30.—(1) All liquid fuels and gas operations shall be subject to the provisions of any other written law which prohibits anti-competitive trade practices and regulates and monitors monopolies and concentrations of economic power as defined in such written law and which are contrary to the principles of fair competition or are intended to impede the functioning of a free market for liquid fuels and gas products in the country.

(2) Subject to the provisions of any written law regulating competition and fair trading, all participants in the chain of supply shall sell their products and offer their services to all interested persons without undue delay and without any form of deliberate discrimination by means of quality, quantity or price.

(3) The Authority shall monitor the conditions of the market and the trade practices of the participants in the chain of supply and shall cooperate with and assist any competent authority in the exercise of its functions under any written law regulating

competition and fair trading and in the determination and prosecution of offences thereunder.

Negotiated access to unused capacities of third party facilities

31.—(1) In order to foster the creation of a competitive liquid fuels and gas product market for present and future participants in the access to essential facilities, such as depots, pipelines and marine terminals a licensee who is the operator or owner of a facility which has the availability of unused capacities, may, subject to subsection (2) negotiate in good faith with any qualified person interested in the usage of all or part of such capacity in order to establish the tariff and other reasonable terms and conditions for using the facility.

(2) A person interested to utilize the unused capacity of a licensee referred to in subsection (1) shall hold or have applied for the licence required for the respective operation and shall provide proof of his capability to pay the tariff and fulfill other financial and technical conditions as agreed upon with the owner or operator of the facility.

(3) Any agreement negotiated under subsection (1) shall be subject to approval by the Authority.

(4) The minimum terms and conditions of the agreement to be approved by the Authority under subsection (3) shall be prescribed in regulations.

PART VIII

Protection of Occupational Safety, Health and Welfare, Public Safety, Public Health and the Environment

Adoption and adaptation of international standards and specifications

32.—(1) In order to upgrade the quality of the infrastructure of the chain of supply and the services provided by licensees to the standards of the international liquid fuels and gas industry, the Authority, in cooperation with the relevant agencies, shall develop and establish national standards that are in line with prevailing international standards, technical specifications and codes of practice.

(2) The Authority may adopt and declare as compulsory standards in accordance with the provisions of this Act the standards, specifications, and codes of practice as established under subsection (1) by the organizations which are recognized by the international liquid fuels and gas industry in matters of quality, industrial safety and environmental protection, after being adapted as necessary, taking into account the social-economic realities of the domestic liquid fuels and gas market and the technical conditions and required adjustment periods and transitory exceptions for the chain of supply.

(3) The Authority, in coordination with the competent environmental authorities, shall ensure that where a licensee abandons a site for whatever reason, such site is restored to such environmental standards acceptable to both the competent environmental authorities and the Authority.

Environmental impact studies

33.—(1) The Authority, in coordination with the competent environmental authorities, shall establish the classification of liquid fuels and gas supply operation projects within the chain of supply which shall require environmental impact assessment studies under the relevant written law as a condition of the granting of a licence under this Act.

(2) In the event that an environmental impact study is required or other conditions are to be met in accordance with the provisions of any written law for the protection of the environment, the Authority shall refer the applicant to the competent environmental authorities.

PART IX

National Liquid Fuels and Gas Emergency Plan and the Strategic Fuel Reserve Storage

National Liquid Fuels and Gas Emergency Plan

34.—(1) In order to respond to accidents, emergencies, natural disasters or other interruptions or distortions of the product liquid fuels and gas supply by *force majeure*, negligence or willful misconduct, the Authority, shall develop a National Liquid Fuels and Gas Emergency Plan.

(2) The details of the elaboration, content and implementation of the National Liquid Fuels and Gas Emergency Plan shall be established by regulations.

(3) The National Liquid Fuels and Gas Emergency Plan shall be approved by the Minister and published in the *Gazette*.

(4) In case of emergency for the reasons mentioned in subsection (1) the Authority, after consultation with the Minister, may temporarily intervene in the chain of supply or implement other measures or restrictions provided for in the National Liquid Fuels and Gas Emergency Plan.

Strategic Fuel Reserve Storage

35. The Government shall establish and manage a Strategic Fuel Reserve Storage.

PART X

Product Prices, Taxes and Levies

Approval of prices

36.—(1) The price band for liquid fuels and gas products throughout the chain of supply shall be subject to approval by the Authority from time to time.

(2) The Authority shall establish adequate procedures for the monitoring of consumer prices for liquid fuels and gas, and shall monthly publish the results and reference prices to be used for monitoring purposes as shall be calculated by the Authority in accordance with a formula prescribed by regulations.

(3) A licensee shall not charge a consumer any price more than that approved by the Authority.

Advisory committees Cap. 73:02

37.—(1) In addition to any advisory committee that the Authority may establish under section 16 of the Energy Regulations Act, the Authority shall establish the following committees—

(*a*) Liquid Fuels and Gas Pricing Advisory Committee; and

(*b*) Liquid Fuels and Gas Licensing Advisory Committee.

(2) The composition of the Advisory Committees established under subsection (1) shall be published in the *Gazette*.

Levies

38.—(1) The Minister may, by order published in the *Gazette*, impose the levies specified in the Schedule on sales of liquid fuels and gas.

(2) The Minister may, by order published in the *Gazette*, amend the Schedule.

(3) The sums of money raised by way of the levies imposed by the Minister under subsection (1) shall be collected and disbursed to the relevant institutions by the Authority.

PART XI

Mediation and Appeals

Mediation by the Authority

Cap. 73:02

39.—(1) Any dispute between licensees in the chain of supply or between a licensee and a consumer concerning the application of this Act may be brought by any of the parties involved before the Authority for mediation under the Energy Regulation Act.

(2) The Authority may ask the partners to appear before the Authority and may request for information and documentation which the Authority considers necessary and may conduct other investigations.

Appeal to the High Court

40. Any person who is aggrieved by any decision of the Authority may appeal to the High Court.

PART XII

Offences and Penalties

Offences

41. Any person commits an offence who—

(*a*) refuses, delays or fails to produce any document or other information relating to liquid fuels and gas production and supply operations and installations which may be required to be produced under this Act;

(*b*) knowingly or without reasonable grounds for believing the same to be true furnishes any document or other information which is false or misleading in any material aspect whether upon demand or otherwise;

(*c*) publishes or otherwise discloses any information in contravention of any provision of this Act;

(*d*) resists, hinders or obstructs an officer of the Authority or any other person who acts in compliance with the provisions of this Act to enter or inspect any premises or to stop and search any vehicle or to examine any books, accounts or other records or to otherwise comply with his duties and rights under this Act; or

(*e*) refuses, delays or fails to comply with any order, prohibition, direction, demand, requirement or notice lawfully made, served, published or otherwise given under this Act.

Penalties

42. Any person who commits an offence under this Act shall be liable upon conviction to a fine of K50,000,000 and to imprisonment for ten years.

Joint liability

43.—(1) Where a person charged with any offence under this Act is a body corporate and every person who, at the time of the occurrence of the offence, was a chief executive officer, manager or officer of such body corporate, may be charged jointly in the same proceedings with the body corporate if that person was a party to the commission of the offence.

(2) Any partner in any firm shall be answerable and jointly and severally liable for the acts or omissions of any other partner in the same firm in so far as they concern the firm.

(3) Any licensee who employs in or for his operation or place of business any agent, clerk, servant or other person, shall be answerable and liable for any acts or omissions of such employees in so far as they concern the business of the licensee.

Initiation of actions by consumers

44. Any consumer of liquid fuels and gas products or any recognized consumer organization may initiate action against any licensee for offences under this Act, provided that such consumer or consumer organization has previously filed a complaint with the Authority and feels aggrieved by the acts or omissions of the Authority in response to such complaint.

PART XIII

Miscellaneous Provisions

Rehabilitation of area damaged by operations

45.—(1) There may be included in a licence such conditions relating to—

(*a*) the reinstatement, leveling, regressing, reforesting and contouring of any part of the area that may have been damaged or deleteriously affected by operations of a licensee; and

(*b*) the filling in, sealing or fencing off, of excavations, shafts and tunnels,

as the Authority may, in any particular case, determine.

(2) Where any condition is to be included in a licence pursuant to subsection (1), the Authority may require the licensee to lodge with Authority, within such time as the Authority may require, security for the performance of the conditions in such amount and form as the Authority may deem appropriate.

Regulations

46. The Minister may, in consultation with the Authority, make such regulations as he may deem expedient to give force or effect to this Act or for its better administration.

By-laws

47. The Authority may make by-laws to give effect to this Act or for its better administration and shall publish a draft of the proposed by-laws for comment by members of the public or licensees and shall consider any comments given before putting such by-laws into effect.

Transitory regime for licences

48.—(1) Where any lawful act or thing required or permitted to be done by or under this Act was done before the effective date of this Act, it shall be deemed to have been done under or by virtue of this Act.

(2) The present licensees in the chain of supply, whether licensed or not under any other applicable legislation, shall adjust their operations and facilities in order to comply with the provisions of this Act within a transition period of not more than twelve months from the effective date of this Act, subject to a transitory regime which shall be proposed by the Authority for approval by the Minister and before the expiration of the respective transition period each licensee in the chain of supply shall apply for the applicable licences under this Act.

(3) Any person who held a licence relating to the chain of supply before the commencement of this Act shall be required to obtain a new licence from the Authority within ninety days of the coming into force of this Act.

Repeal and savings

49.—(1) The following Acts are repealed—

Cap. 50:08 (*a*) the Petroleum Control Commission Act; and

Cap. 50:03 (*b*) the Petroleum Act.

(2) Any subsidiary legislation made under the Petroleum Control Commission Act and the Petroleum Act, repealed by subsection (1), in force immediately before the commencement of this Act—

(*a*) shall remain in force unless in conflict with this Act and shall be deemed to be subsidiary legislation made under this Act; and

(*b*) may be replaced, amended or repealed by subsidiary legislation made under this Act.

(3) The Preservation of Public Security (Conservation of Motor Fuel) Regulations made under the Preservation of Public Security Act shall be deemed to be subsidiary legislation made under this Act, and shall be administered by the Authority.

Cap. 14:02

SCHEDULE s. 38

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LIQUID FUELS AND GAS (PRODUCTION AND SUPPLY) REGULATIONS

G.N. 4/2009
31/2010
49/2017

under s. 46

1. These Regulations may be cited as the Liquid Fuels and Gas (Production and Supply) Regulations. Citation

2. In these Regulations, unless the context otherwise requires— Interpretation G.N. 31/2010

"additive" means a chemical compound added to petrol, diesel or illumination paraffin to improve either its performance or storage stability or both;

"Automatic Pricing Mechanism" or "APM" means the automatic mechanism for the determination of liquid fuels and gas prices provided for under these Regulations;

"ASTM method" means a test method published by the American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19103, USA;

"batch" means a quantity of premium or blended petrol in a single consignment blended or processed at one given time;

"bulk" means a quantity above four hundred litres of petroleum product; G.N. 31/2010

"defective" means any container or contents therein which fails in one or more respects to comply with these Regulations;

"emergency" means any accident, natural disaster, negligence or willful misconduct, civil strife, rioting or state of war or state of national emergency that has profound effect on the supply or availability of liquid fuels and gas in Malaŵi;

"final boiling point" means the maximum temperature reading noted during the final phase of a distillation carried out under standardized conditions;

"flash point" means the minimum temperature to which a product must be heated for the vapours emitted to ignite momentarily in the presence of a flame when operating under standardized conditions;

"free on board" or "F.O.B." means the premium agreed upon between an importer and supplier of liquid fuels and gas plus the monthly average price of the product on the international market;

"Goods In-Transit" or "GIT" means the insurance cover provided for goods in transit;

"handling charges" means all clearing charges of liquid fuels and gas at the border plus road transport broker's commissions;

"idle storage capacity" means any storage capacity which is available on any storage facility and is currently not in use and the licensee does not intend to put it to any use in the next six months or more;

"In-bond landed costs" or "IBLC" means the cost of landing fuel in Malaŵi;

"Inspector" means any person appointed or authorized as such by the Authority;

"IP method" means a test method published by the Institute of Petroleum, 61 New Cavendish Street, London W1M 8AR, England;

"IP Scale" means the scale from 0.5 (lightest) to 8 (darkest) applied to automotive, domestic, commercial, industrial and marine middle distillates of paraffin;

"lot" means a quantity of diesel fuel in one storage or transit tank or any number of drums containing diesel fuels and marked with the same brand name or trade mark from one manufacturer, submitted at any one time for inspection and testing;

"MBS" means Malaŵi Bureau of Standards;

"minimum stocks" means the smallest amount of liquid fuels or gas that a licensee shall be required to keep in stock at all material times;

"octane number" means the number on a conventional scale, expressing the antiknock value of a fuel for spark ignition engines expressed as the percentage of iso-octane in a mixture of n-heptane with the iso-octane having the same antiknock quality as the fuel in question;

"Price stabilization Fund" or "PSI" means a fund managed by the Malaŵi Energy Regulator Authority to cater for IBLC fluctuations of at least 5%;

G.N. 31/2010 "retail terms" means selling of petroleum products to an end consumer at a site;

"Saybolt Scale" means the scale from +30 (lightest) to -16 (darkest) applied generally to domestic and aviation kerosenes.

"storage area" means any area within Malaŵi where liquid fuel or gas is stored;

"storage shed" means a shed constructed for purposes of storing liquid fuels;

"storage tank" means any tank used for the storage of liquid fuels in bulk;

"the Government" means the ministry responsible for energy affairs in Malaŵi;

"third party storage capacity access" means any written agreement by virtue of which one licensee can use another licensee's idle storage capacity for storing liquid fuels or gas;

"transport costs," means the cost of transporting fuel into Malaŵi either by rail or road or any other means approved by the Authority;

"wholesale terms" means the purchase and sale in bulk of petroleum products by a licensed wholesaler, or from another licensed wholesaler, or from a licensed manufacturer, or sale to a licensed retailer or to an end-consumer for own consumption: G.N. 31/2010

Provided that the end-consumer has own storage capacity which is duly registered by the Authority.

Objectives

3. The objectives of these Regulations are—

(*a*) to regulate the production, importation, transportation and sale of liquid fuels and gas and to license certain related activities;

(*b*) to regulate prices of liquid fuels and gas and set minimum standards to be complied with by licensees;

(*c*) to set up measures which would ensure continuous availability and reliable supply of fuel in Malaŵi at all material times;

(*d*) to set out minimum stocks of liquid fuels and gas storage in Malaŵi;

(*e*) to ensure optimum and efficient use of liquid fuels and gas storage capacity in Malaŵi;

(*f*) to encourage positive interaction and partnerships between licensees in the liquid fuels and gas industry;

(*g*) to encourage fair competition between various licensees in the liquid fuels and gas industry;

(*h*) to create an enabling environment for private sector involvement and participation in the liquid fuels and gas industry; and

(*i*) to provide for procedures for the declaration of liquid fuels and gas emergency in Malaŵi.

PART II

Licensing

Division 1—General Provisions

Application of this Part

4. This Part shall apply to all matters relating to the application, processing, granting and enforcement of licences in respect of production, importation, transportation, wholesaling, storage and retailing of all liquid fuels and gas.

Prohibition of unlawful activities

5. No person shall carry on the business of producing, processing, importing, transporting, storing, wholesaling or retailing of any liquid fuel or gas without having in his possession a valid and requisite licence issued to him by the Authority under these Regulations:

Provided that a licensee who has applied for the renewal of his licence shall continue carrying out the activity for which he was licensed pending the determination of the application.

Requirement for licensing

6. Any person who wishes to carry on any of the business activities stated in regulation 4 shall apply to the Authority for the licence in the manner prescribed under these Regulations.

Application fees for licence

7. An application for a licence under these Regulations shall be made in the form prescribed in the First Schedule hereto and shall be accompanied by the application fees prescribed in the Third Schedule hereto.

Acknowledgement of application

8. Upon receipt of an application for any of the licences under these Regulations, the Authority shall acknowledge receipt of the same in writing to the applicant within thirty days from the date of receipt.

Consideration of applications

9.—(1) The Authority shall consider each application for a licence under these Regulations and determine whether to grant or refuse to grant a licence.

(2) The Authority shall, upon making a decision on the application, communicate its decision to the applicant.

(3) Where the Authority refuses to grant the application for licence by any applicant, it shall, within thirty days furnish the applicant with reasons in writing for its refusal.

(4) Any applicant whose application for licence has been refused may appeal against any such decision in accordance with the Energy Regulation Act.

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Licences

10.—(1) Every licence issued by the Authority shall be in the form prescribed in the Second Schedule hereto and shall be valid on the conditions and for the period provided therein.

(2) Every licence issued under these Regulations shall have the following details—

(*a*) name and type of the licence;

(*b*) name and particulars of the licensee;

(*c*) commencement and expiry date;

(*d*) emblem or logo of the Authority;

(*e*) designated signature of the Authority;

(*f*) any such security features as the Authority may determine; and

(*g*) the common seal of the Authority.

Suspension or revocation of licences

11.—(1) The Authority may suspend or revoke any licence at any time if it is satisfied that the licensee or any person in his employ has contravened any of the provisions of a licence granted to the licensee, or these Regulations or any other law applicable to liquid fuels and gas in Malaŵi.

(2) Before revoking any licence, the Authority shall endeavour to give the licensee an opportunity to remedy his breach within a reasonable period of time.

Licence fees

12.—(1) Upon the grant of a licence, an applicant shall pay the licence fee prescribed in the Third Schedule hereto.

(2) Every licensee shall annually pay a licence renewal fee specified in the Third Schedule hereto for the entire duration within which the licence subsists.

(3) Licence renewal fees shall become payable on the last working day of the twelfth month immediately preceding the date any such payment was last made or the date on which the licence was last issued, as the case may be.

Division 2—Production Licence

Application for a Production Licence

13. Any person who wishes to carry on the business of producing or refining of crude oil, gas, bio-fuel or any other liquid fuel in Malaŵi shall apply to the Authority for a Production Licence prior to the carrying on of any such business.

Form of application for a Production Licence

14.—(1) The application for a Production Licence shall be made in Form LFG 1 prescribed in Part I of the First Schedule hereto.

(2) An application for a Production Licence shall be accompanied by the following supporting documents furnished by the applicant—

(*a*) a five year projected business plan, which shall state comprehensively, the company profile, organizational structure, shareholding or other ownership details and the requisite experience in liquid fuels or gas production, as the case may be;

(*b*) a five year proposed investment plan, which shall include the funds flow statement, profit and loss balance sheet, implementation plan, human resources plan, market projections and financial or cash flow projections;

(*c*) the applicant's certificate of incorporation or any instrument of registration under the Laws of Malaŵi;

(*d*) the applicant's Memorandum and Articles of Association or any other authorized instrument recognized by the Laws of Malaŵi, such as a constitution or trust deed;

(*e*) proof of acquisition of land together with the requisite certificate of approval from the Ministry of Lands or any other authorized Planning Authorities;

(*f*) a proposal on how the applicant shall comply with the Occupational Safety, Health and Welfare Act;

Cap. 55:07

(*g*) a proposal on how the applicant shall comply with the Environment Management Act;

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(*h*) proof of the approval of necessary plant and machinery by the Director of Occupational Safety, Health and Welfare as to the suitability of the same for the particular undertaking;

(*i*) a scale plan of storage construction and approved building plans of storage tanks and depot equipment by MBS and the Inspector of Factories; and

(*j*) a letter of reference of credit worthiness from at least one local commercial bank and one reputable international bank.

Expenses of Authority in processing a Production Licence

15. All reasonable expenses incurred by the Authority in processing an application for a Production Licence shall be borne by the applicant on prior communication to the applicant by the Authority.

Validity of a Production Licence

16. A Production Licence shall be valid for a period of twelve calendar months from the date of issue.

Application for renewal of a Production Licence and Fees

17.—(1) An application for the renewal of a Production Licence, where any of the factors set out in regulation 14 (2) have not changed since the date of last application, shall be made in writing to the Authority expressing the applicant's intention to renew his licence.

(2) An application for the renewal of a Production Licence, where any of the factors set out in regulation 14 (2) have changed since the date of the last application, shall be made in writing to the Authority in the manner prescribed in regulation 14 (1) and shall

be accompanied by only the necessary documentary evidence of the factors which have changed.

(3) Where a licensee applies for renewal of his licence for the first time since the date of the first licence, any such application shall be accompanied by a valid certificate of compliance with the Occupational Safety, Health and Welfare Act and a certificate of compliance with the Environment Management Act. Cap. 55:07 Cap. 60:02

(4) Every application for renewal of a Production Licence shall be accompanied by the application fees prescribed in the Third Schedule hereto.

Division 3—Importation Licence

Application for an Importation Licence 49 of 2017

18.—(1) Any person who wishes to carry on the business of importing liquid fuel or gas into Malaŵi shall apply to the Authority for an Importation Licence prior to the carrying on of any such business.

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(2) Any person who imports liquid fuel or gas shall not be compensated from the Price Stabilization Fund for the unrealized exchange losses, however, the trading accounts of the importer shall record the amount of the said unrealized exchange losses.

Form of Application for an Importation Licence

19.—(1) The application for an Importation Licence shall be made in Form LFG2 prescribed in Part II of the First Schedule hereto.

(2) An application for an Importation Licence shall be accompanied by the following supporting documents furnished by the applicant—

(*a*) a five year projected business plan, which shall state comprehensively, the company profile, organizational structure, shareholding or other ownership details and the requisite experience in liquid fuels or gas, as the case may be;

(*b*) a five year proposed investment plan, which shall include the funds flow statement, profit and loss balance sheet, implementation plan, human resources plan, market projections and financial or cash flow projections;

(*c*) the applicant's certificate of incorporation or any instrument of registration under the Laws of Malaŵi;

(*d*) the applicant's Memorandum and Articles of Association or any other authorized instrument recognized by the Laws of Malaŵi, such as a constitution or trust deed;

(*e*) proof of acquisition of land together with the requisite certificate of approval from the Ministry of Lands or any other authorized Planning Authorities, where applicable;

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(*f*) a certificate of compliance with the Occupational Safety, Health and Welfare Act;

(*g*) a certificate of the environmental impact assessment or management plan issued by the Department of Environmental Affairs;

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(*h*) proof of ownership of, or access to, liquid fuel or gas storage facilities with a capacity equivalent to thirty days' storage of expected market share and depot equipment duly licensed by the Authority;

(*i*) a letter of reference of credit worthiness from at least one local commercial bank and one reputable international bank.

Expenses of Authority in processing an Importation Licence

20. All reasonable expenses incurred by the Authority in processing an application for an Importation Licence shall be borne by the applicant on prior communication to the applicant by the Authority.

Validity of an Importation Licence

21. An Importation Licence shall be valid for a period of twelve calendar months from the date of issue.

Application for renewal of an Importation Licence and fees

22.—(1) An application for the renewal of an Importation Licence, where any of the factors set out in regulation 19 (2) have not changed since the date of last application, shall be made in writing to the Authority expressing the Applicant's intention to renew his licence.

(2) An application for the renewal of Importation Licence, where any of the factors set out in regulation 19 (2) have changed since the date of last application, shall be made in writing to the Authority in the manner prescribed in regulation 19 (1) accompanied by only the necessary documentary evidence of the factors which have changed.

(3) Where a licensee applies for renewal of his licence for the first time since the date of the first licence, any such application shall be accompanied by a valid certificate of compliance with the Occupational Safety, Health and Welfare Act and a certificate of compliance with the Environment Management Act.

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Cap. 60:02

(4) Every application for renewal of an Importation Licence shall be accompanied by the application fees prescribed in the Third Schedule hereto.

Division 4—Transportation Licence

Application for a Transportation Licence

23. Any person who wishes to carry on the business of transporting liquid fuel or gas into or within Malaŵi shall apply to the Authority for a Transportation Licence prior to the carrying on of any such business.

Form of application for a Transportation Licence G.N. 31/2010

24.—(1) The application for a Transportation Licence shall be made in Form LFG 3 prescribed in Part III of the First Schedule hereto.

(2) An application for a Transportation Licence shall be accompanied by the following supporting documents furnished by the applicant—

(*a*) a projected business plan covering a period of one year, which shall state comprehensively, the company profile, organizational structure, shareholding or other ownership details and the requisite experience in liquid fuels or gas, as the case may be;

(*b*) a proposed investment plan covering a period of one year, which shall include the funds flow statement, profit and loss balance sheet, implementation plan, human resources plan, market projections and financial or cash flow projections;

(*c*) the applicant's certificate of incorporation or any instrument of registration under the Laws of Malaŵi or of the country where any such certificate was issued:

Provided that any foreign certificate of incorporation or document of registration shall be subject to the approval of the Authority;

(*d*) the applicant's Memorandum and Articles of Association or any other authorized instrument recognized by the Laws of Malaŵi, or the laws of the country where any such applicant is registered, such as a constitution or trust deed;

(*e*) a certificate of compliance with the Occupational Safety, Health and Welfare Act; Cap. 55:07

(*f*) proof that— G.N. 31/2010

(i) its motor vehicles to be used in the transportation business shall comply with the Road Traffic Act; or Cap. 69:01

(ii) its wagons to be used in the transportation business shall comply with the Railways Act; Cap. 69:03

(*g*) in the case of an Applicant registered in Malaŵi, a letter of reference of credit worthiness from at least one commercial bank in Malaŵi; and

(*h*) in the case of an Applicant who is foreign owned, attach a copy of a letter of recommendation of the Applicant's credit worthiness from at least one reputable local commercial bank and one reputable international bank.

Validity of a Transportation Licence

25. A Transportation Licence shall be valid for a period of twelve-calendar months from the date of issue.

Application for renewal of a Transportation Licence and Fees

26.—(1) An application for the renewal of Transportation Licence, where any of the factors set out in regulation 24 (2) have not changed since the date of last application, shall be made in writing to the Authority expressing the applicant's intention to renew his licence.

(2) An application for the renewal of a Transportation Licence, where any of the factors set out in regulation 24 (2) have changed since the date of last application, shall be made in writing to the Authority in the manner prescribed in regulation 24 (1) accompanied by only the necessary documentary evidence of the factors which have changed.

(3) Where a licensee applies for renewal of his licence for the first time since the date of the first licence, any such application shall be accompanied by a valid certificate of compliance with the Occupational Safety, Health and Welfare Act and a certificate of compliance with the Environment Management Act.

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(4) Every application for renewal of a Transportation Licence shall be accompanied by the application fees prescribed in the Third Schedule hereto.

Division 5—Storage Licence

Application for a Storage Licence

27. Any person who wishes to store on any premises liquid fuel exceeding four hundred litres in Malaŵi shall apply to the Authority for a Storage Licence prior to the carrying on of any such business or activity.

Form of application for a Storage Licence

28.—(1) The application for a Storage Licence shall be made in Form LFG 4 prescribed in Part IV of the First Schedule hereto.

(2) An application for a Storage Licence shall be accompanied by the following supporting documents furnished by the applicant—

(*a*) a three year projected business plan, which shall state comprehensively, the company profile, organizational structure, shareholding or other ownership details and the requisite experience in liquid fuels or gas, as the case may be;

(*b*) a three year proposed investment plan, which shall include the funds flow statement, profit and loss balance sheet, implementation plan, human resources plan, market projections and financial or cash flow projections;

(*c*) a certificate of incorporation or any instrument of registration under the Laws of Malaŵi;

(*d*) the Memorandum and Articles of Association or any other authorized instrument recognized by the Laws of Malaŵi, such as a constitution or trust deed;

(*e*) proof of acquisition of land together with the requisite certificate of approval from the Ministry of Lands or any other authorized Planning Authorities;

(*f*) a description of the quantity and the manner in which any such type of liquid fuel or gas shall be stored;

(*g*) a proposal on how the applicant shall comply with the Environment Management Act; Cap. 60:02

(*h*) proof of the approval of necessary plant and machinery by the Director of Occupational Safety, Health and Welfare as to the suitability of the same for the particular undertaking;

(*i*) a scale plan of storage construction equivalent to thirty (30) days storage of expected market share, approved by MBS and the Inspector of Factories;

(*j*) a letter of reference of credit worthiness from at least one local commercial bank and one reputable international bank; and

(*k*) proof that the storage area, or tank or shed within the storage area are constructed or erected in compliance with the conditions set out in Part V of these Regulations.

Validity of a Storage Licence

29. A Storage Licence shall be valid for a period of twelve calendar months from the date of issue.

Application for renewal of a Storage Licence and Fees

30.—(1) An application for the renewal of Storage Licence, where any of the factors set out in regulation 28 (2) have not changed since the date of last application, shall be made in writing to the Authority expressing the applicant's intention to renew his licence.

(2) An application for the renewal of a Storage Licence, where any of the factors set out in regulation 28 (2) have changed since the date of last application, shall be made in writing to the Authority in the manner prescribed in regulation 28 (1) accompanied by only the necessary documentary evidence of the factors which have changed.

(3) Where a licensee applies for renewal of his licence for the first time since the date of the first licence, any such application shall be accompanied by a valid certificate of compliance with the Occupational Safety, Health and Welfare Act and a certificate of compliance with the Environment Management Act. Cap. 55:07 Cap. 60:02

(4) Every application for renewal of the Storage Licence shall be accompanied by the application fees prescribed in the Third Schedule hereto.

Division 6—Wholesale Licence

Application for a Wholesale Licence 49 of 2017

31.—(1) Any person who wishes to carry on the business of wholesaling liquid fuel or gas in Malaŵi shall apply to the Authority for a Wholesale Licence prior to the carrying on of any such business.

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(2) A holder of a Wholesale Licence shall ensure that its offloading facilities which are located near a railway line are able to receive liquid fuel or gas by both road tankers and where practicable, rail wagons, in line with the importation route mix as set by the Authority, from time to time.

Form of application for a Wholesale Licence

32.—(1) The application for a Wholesale Licence shall be made in Form LFG 5 prescribed in Part V of the First Schedule hereto.

(2) An application for a Wholesale Licence shall be accompanied by the following supporting documents furnished by the applicant—

(*a*) a three year projected business plan, which shall state comprehensively, the company profile, organizational structure, shareholding or other ownership details and the requisite experience in liquid fuels or gas, as the case may be;

(*b*) a three year proposed investment plan, which shall include the funds flow statement, profit and loss balance sheet, implementation plan, human resources plan, market projections and financial or cash flow projections;

(*c*) the applicant's certificate of incorporation or any instrument of registration under the Laws of Malaŵi;

(*d*) the applicant's Memorandum and Articles of Association or any other authorized instrument recognized by the Laws of Malaŵi, such as a constitution or trust deed;

(*e*) proof of acquisition of land together with the requisite certificate of approval from the Ministry of Lands or any other authorized Planning Authorities;

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(*f*) a proposal on how the applicant shall comply with the Environment Management Act;

(*g*) proof of the approval of necessary plant and machinery by the Director of Occupational Safety, Health and Welfare as to the suitability of the same for the particular undertaking;

(*h*) proof of ownership of, or access to, liquid fuel or gas storage facilities equivalent to thirty days expected market share duly licensed by the Authority; 49 of 2017

(*i*) the applicant's letter of reference of credit worthiness from at least one local commercial bank and one reputable international bank.

Validity of a Wholesale Licence

33. A Wholesale Licence shall be valid for a period of twelve calendar months from the date of issue.

Application for renewal of a Wholesale Licence and Fees

34.—(1) An application for the renewal of a Wholesale Licence, where any of the factors set out in regulation 32 (2) have not changed since the date of last application, shall be made in writing to the Authority expressing the applicant's intention to renew his licence.

(2) An application for the renewal of a Wholesale Licence, where any of the factors set out in regulation 32 (2) have changed since the date of last application, shall be made in writing to the Authority in the manner prescribed in regulation 32 (1) accompanied by only the necessary documentary evidence of the factors which have changed.

(3) Where a licensee applies for renewal of his licence for the first time since the date of the first licence, any such application shall be accompanied by a valid certificate of compliance with the Occupational Safety, Health and Welfare Act and a certificate of compliance with the Environment Management Act. Cap. 55:07 Cap. 60:02

(4) An application for renewal of a Wholesale Licence shall be accompanied by the application fees prescribed in the Third Schedule hereto.

Offloading liquid fuel or gas 49 of 2017

34A.—(1) A transporter shall ensure that liquid fuel and gas transported into the country by, or on behalf of, a license shall be offloaded from the transporting road tankers or wagons within five days from the date of arrival in Malaŵi.

(2) A holder of a Wholesale Licence or Importation Licence, who for reasons other than *force majeure*, does not offload the liquid fuel or gas within the period provided under subregulation (1), shall be liable to a demurrage charge of Malaŵi Kwacha equivalent to 200 United States Dollars per tanker or wagon for each day that the liquid fuel or gas remains un-offloaded and such demurrage charge shall be payable to the holder of a Transportation Licence.

(3) A holder of a Transportation Licence, who for reasons other than *force majeure*, does not offload liquid fuel or gas within the period provided under subregulation (1), shall be liable to a demurrage

charge of Malaŵi Kwacha equivalent to 200 United States Dollars per tanker or wagon for each day that the liquid fuel or gas remains un-offloaded and such demurrage charge shall be payable to the holder of a Wholesale Licence or Importation Licence, as the case may be.

Division 7—Retail Licence

Application for a Retail Licence G.N. 31/2010

35.—(1) Any person who wishes to carry on the business of retailing of liquid fuels and gas shall apply to the Authority for a Retail Licence prior to the carrying on of any such business.

(2) Notwithstanding subregulation (1) above—

(*a*) small-scale importers of lubricants shall be issued with only an Importation Licence upon entry into Malaŵi. Small-scale importers for purposes of this provision means a person importing not in excess of four hundred litres; and

(*b*) traders of lubricants within Malaŵi shall be registered by a licensee holding a wholesale licence. Such licensee shall keep a register of such traders which shall be lodged with the Authority upon renewal of his or her licence.

Form of application for a Retail Licence

36.—(1) The application for a Retail Licence shall be made in Form LFG 6 prescribed in Part VI of the First Schedule hereto.

(2) An application for a Retail Licence shall be accompanied by the following supporting documents furnished by the applicant—

(*a*) a three year projected business plan, which shall state comprehensively, the company profile, organizational structure, shareholding or other ownership details and the requisite experience in liquid fuels or gas, as the case may be;

(*b*) a three year proposed investment plan, which shall include the funds flow statement, profit and loss balance sheet, implementation plan, human resources plan, market projections and financial or cash flow projections;

(*c*) the applicant's certificate of incorporation or any instrument of registration under the Laws of Malaŵi;

(*d*) the applicant's Memorandum and Articles of Association or any other authorized instrument recognized by the Laws of Malaŵi, such as a constitution or trust deed;

(*e*) proof of acquisition of land together with the requisite certificate of approval from the Ministry of Lands or any other authorized Planning Authorities, where applicable;

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(*f*) a proposal on how the applicant shall comply with the Environment Management Act;

(*g*) proof of the approval of necessary plant and machinery by the Director of Occupational Safety, Health and Welfare as to the suitability of the same for the particular undertaking;

(*h*) a scale plan of storage construction equivalent to thirty days storage of expected market share, approved building plans and storage tanks and depot equipment approved by MBS and the Director of Occupational Safety and Health; and 49 of 2017

(*i*) a letter of reference for credit worthiness from at least one commercial bank in Malaŵi.

Validity and renewal of a Retail Licence

37. A Retail Licence shall be valid for a period of twelve calendar months from the date of issue.

Application for renewal of a Retail Licence and fees

38.—(1) An application for the renewal of a Retail Licence, where any of the factors set out in regulation 36 (2) have not changed since the date of last application, shall be made in writing to the Authority expressing the applicant's intention to renew his licence.

(2) An application for the renewal of a Retail Licence, where any of the factors set out in regulation 36 (2) have changed since the date of last application, shall be made in writing to the Authority in the manner prescribed in regulation 36 (1) accompanied by only the necessary documentary evidence of the factors which have changed.

(3) Where a licensee applies for renewal of his licence for the first time since the date of the first licence, any such application shall be accompanied by a valid certificate of compliance with the Occupational Safety, Health and Welfare Act and a certificate of compliance with the Environment Management Act. Cap. 55:07 Cap. 60:02

(4) An application for renewal of the Retail Licence shall be accompanied by the application fees prescribed in the Third Schedule hereto.

Standards for construction and maintenance of retail fuel outlets 49 of 2017

39.—(1) The Authority shall prescribe the standards to be followed in the construction and maintenance of retail fuel outlets.

(2) All applicants shall obtain a Construction Licence from the Authority prior to commencement of the construction of a retail fuel outlet.

(3) The Authority shall not issue or renew a Construction Licence or Retail Licence, unless the applicant's retail outlet complies with the standards prescribed by the Authority.

(4) Without derogating from the generality of subregulation (1), every retail outlet shall have an air compressor for use by consumers to pump motor vehicle tyres.

Division 8—Prohibition of Exportation of Liquid Fuels and Gas

Prohibition of exportation of liquid fuels and gas

40.—(1) No person shall export petrol, diesel, paraffin, aviation fuels or gas from Malaŵi.

(2) Any person who exports liquid fuels or gas from Malaŵi commits an offence and shall, on conviction, be liable to a fine of two thousand Kwacha (K2,000) and to imprisonment for six months.

PART III

Liquid Fuels and Gas Pricing

Division 1—General Provisions

Maximum selling price

41.—(1) A person shall not sell liquid fuel or gas to any other person or persons at a higher price than the maximum selling price of any such product as approved by the Authority.

(2) A retail licensee shall display the maximum selling prices of the liquid fuel and gas at a clearly visible place at the retail station.

Approval of maximum prices

42. The Authority shall approve all maximum price adjustments of liquid fuels and gas at all levels of the chain of supply on recommendation from the Liquid Fuels and Gas Pricing Advisory Committee.

Review and revision of price build-up

43. The Authority shall, in a transparent, verifiable and accountable manner, conduct and publish in the *Gazette*, monthly reviews and revisions of liquid fuels and gas price build-up.

Average IBLC

44. For the purposes of maintaining uniform maximum liquid fuels and gas prices in Malaŵi, the Authority shall use average IBLC determined by weighing the route shares based on the proportions of the amount of liquid fuels and gas each route brings into Malaŵi.

Publication of route shares

45. The Authority shall publish in the *Gazette*, the weights attached to each route each time there is a change in the same.

Division 2—Pricing of Petrol, Diesel, Paraffin and Aviation Fuel

Determination of maximum prices

46.—(1) In determining the maximum price of petrol, diesel, paraffin, aviation fuels and gas, the Authority shall take into account the following factors—

(*a*) the value of the product in the reference spot market plus the supplier's ex-tax margins;

(*b*) the cost of haulage from the ports of discharge into Malaŵi, inclusive of the inland shipping;

(*c*) the weighted cost of storage;

(*d*) the sum of weighted costs for actual handling, depot through-put, goods in transit insurance and transit losses;

(*e*) Government taxes and levies imposed on importation, transportation or sale of the product; and

(*f*) the licensee's approved mark-up.

(2) The price of petrol, diesel, paraffin and aviation fuel shall be adjusted upwards or downwards automatically, if there is an increase or decrease in the IBLC of the product of more than five per centum (5%) from the date of the last price adjustment:

Provided that in the event that the global prices and resultant F.O.B. prices are unstable and the Automatic Pricing Mechanism (APM) results in or is likely to result in severe local pump price volatility, the Authority may at its discretion suspend the APM in favour of a targeted approach as defined from time to time.

(3) The Authority shall approve all maximum price adjustments of liquid fuels and gas at all levels of the chain of supply using the APM within forty-eight hours after receipt of recommendations from the Liquid Fuels and Gas Pricing Advisory Committee. 49 of 2017

47. In determining the F.O.B., the Authority shall take into account the premium agreed upon between the importer and the supplier plus the monthly average price of the product on the international market converted into Malaŵi Kwacha at the particular day's rate of foreign exchange. Determination of F.O.B.

48. Petrol, diesel, paraffin and aviation fuel and gas may, ordinarily be transported into Malaŵi either by road or rail or the combination of the two: Mode of transporting fuel into Malaŵi

Provided that the Authority may determine other alternative modes of transporting petrol, diesel, paraffin, aviation fuel and gas where circumstances so require.

49. The Authority shall determine the maximum unit cost of transporting petrol, diesel, paraffin, aviation fuel and gas into Malaŵi either by road or rail through the use of average weighted transportation rates. Determination of maximum transport costs

50. The GIT cost shall be an agreed percentage of all the cost elements that form the IBLC, plus an estimated cost that may cover Determination of GIT

duty and excise in the event of loss of the product after crossing the border into Malaŵi.

Determination of handling charge

51. The Authority shall approve all handling charges in respect of clearance of petrol, diesel, paraffin, aviation fuel and gas as well as any commissions charged thereon.

Normal fuel loss

52. For the purposes of these Regulations, any in-transit loss or storage loss of petrol, diesel, paraffin, aviation fuels or gas of not more than nought point five per centum (0.5%) shall be deemed to be normal loss.

Recoverable fuel loss

53. No licensee shall recover from the consumer any in-transit or storage fuel losses above the normal loss incurred in the course of transporting petrol, diesel, paraffin, aviation fuels or gas into or within Malaŵi or through the storage of the same.

Division 3—Pricing of Bio-Fuels and Gas

Pricing of bio-fuels and gas

54. The Authority shall, at the request of any licensee dealing with bio-fuels or gas, approve maximum prices of bio-fuels and gas on the recommendation of the Liquid Fuels and Gas Pricing Advisory Committee.

Determination of bio-fuel prices

55.—(1) In determining the price for bio-fuels, the Authority shall take into account the following factors—

(*a*) the cost of production;

(*b*) the cost of transportation and distribution from the place of production to the place of sale;

(*c*) the weighted cost of storage;

(*c*) the cost of goods in-transit insurance and transit losses;

(*e*) Government taxes and levies on the sale of the product; and

(*f*) the licensee's approved mark-up.

(2) The Authority, may in its discretion, take any other factors into account in determining the price of bio-fuels:

Provided that any such factor shall not be repugnant to any Energy Law.

Determination of gas prices

56.—(1) In determining the price of gas, the Authority shall take into account the following factors—

(*a*) the value of the product in the reference spot market;

(*b*) the cost of transportation and distribution from the place of production or purchase to the place of sale;

(*c*) the weighted cost of storage;

(*d*) the cost of goods in transit insurance and transit losses;

(*e*) Government taxes and levies, if any, on the sale of gas; and

(*f*) the licensee's approved mark-up.

(2) The Authority, may in its discretion, take any other factors into account in determining the price of gas:

Provided that any such factor shall not be repugnant to any Energy Law.

Personal attendance

57. Whenever necessary, the Authority may require any licensee dealing with bio-fuels or gas, as the case may be, to attend before it and justify any proposed price adjustment.

Division 4—Offences and Penalties

Offences and penalties

58.—(1) Any licensee who—

(*a*) knowingly sells any liquid fuel or gas at a price higher than the maximum selling price; or

(*b*) knowingly makes a false declaration or allegation of fact to the Authority about the true cost of any of the IBLC elements,

commits an offence and shall, on conviction, be liable to imprisonment for six months. 49 of 2017

(2) In addition to the penalties specified in subregulation (1), a court may order reimbursement of all reasonable expenses incurred by the Authority or any person as a consequence of the breach.

PART IV

Standard Specifications

Division 1—Application of this Part

Application of this Part

59. This Part shall apply to the regulation of the chemical contents of all liquid fuels and gas imported, sold and used in Malaŵi.

Division 2—Petrol Standard Specifications

Approved petrol

60.—(1) No person shall import, sell or in any way use petrol in Malaŵi unless the same complies with the standard specifications set out in this Part.

(2) All petrol imported, sold or used in Malaŵi shall be unleaded petrol and shall comply with the specific standards set out in this Part.

Composition of petrol

61.—(1) All petrol imported, sold or used in Malaŵi shall comprise hydrocarbon fuel to which additives may have been added to improve its performance or its storage stability or both and shall only be suitable for use in spark-ignition internal-combustion engines other than aviation piston engines.

(2) Any such petrol may also contain small and acceptable quantities of harmless colouring materials to give it a distinctive appearance.

(3) All petrol imported, sold or used in Malaŵi shall be blended and shall contain a minimum level of organic oxygenates such as fuel ethanol of not less than the per centum V/V set out in Table 1 in the Fourth Schedule hereto.

Compliance with petrol standard specifications

62.—(1) All petrol imported, sold or used in Malaŵi shall, when tested, comply with all the requirements set out in Table 1 in the Fourth Schedule hereto.

(2) Any unleaded petrol shall be clear and free from any visible water, sediments, suspended matter or any other contaminant that can cause damage to any equipment designed to use this type of petrol.

Marking and labelling on petrol pumps and containers

63.—(1) All petrol dispenser pumps and delivery containers used for the dispensing or delivery of petrol in Malaŵi shall bear such marks and labels as set out herein below—

(*a*) the name, trade name or trademark of the supplier or the vendor;

(*b*) the words "blended petrol" and "unleaded petrol" in clear and legible writing;

(*c*) a green band signifying unleaded petrol; and

(*d*) the MBS mark signifying compliance with the Malaŵi Bureau of Standards Certification Marking Scheme Regulations.

(2) All documents relating to the sale or delivery of petrol shall bear the batch number applicable to the petrol sold or delivered.

Testing petrol for compliance

64.—(1) All petrol imported, sold or used in Malaŵi shall be tested for compliance with the standard specifications set out in these Regulations using any or all of the testing methods set out in Table 1 in the Fourth Schedule hereto.

(2) The Authority, in conjunction with MBS, may take such samples of petrol at any stage of the chain of supply for purposes of testing in accordance with the relevant procedures provided for in this Part.

Construction of sampling cans

65.—(1) For purposes of this Part, the Authority shall cause to be made, or shall procure, sampling cans with which petrol samples may be collected either from the storage tanks or dispensing pumps.

(2) All sampling cans shall be constructed in such a manner as to comply with appropriate safety requirements as befits the purpose and the highly inflammable nature of petrol, and without prejudice to the generality of this regulation, any such cans shall be provided with screw caps incorporating a petroleum resistant washer.

Preparation for use of sampling cans

66.—(1) Before any petrol is collected in the sampling can, any such can shall be rinsed with petrol and allowed to dry, to remove any residual traces of oil or other substances that might have been left in the can during manufacturing operations.

(2) All sampling cans shall, prior to being used, be checked for leaks to avoid distorting the sample tests.

Mode of sample collection

67. Petrol samples shall be collected from the source and processed in the manner provided for in Table 1 in the Fourth Schedule hereto.

No sample collection in direct sunlight

68. No sample of petrol shall be collected in direct sunlight to avoid risking changes in petrol, which may occur as a result of the petrol coming into direct contact with the sunlight.

Storage, labelling and transportation of samples

69.—(1) All petrol samples collected for tests shall be stored in a cool and covered place and shall not be exposed to sunlight:

Provided that it shall not be necessary to keep any such samples in a refrigerator.

(2) Each can containing the sample petrol shall be labelled appropriately and legibly with information relating to the source of the sample in such a manner as would ensure that such information cannot be lost by either detachment or erasure.

(3) Where it is necessary to send the sample to a laboratory far from the collection point, the same shall be packed, transported and stored in the manner provided for under the Road Traffic (Carriage of Dangerous Cargo) Regulations.

Division 3—Diesel Standard Specifications

Approved diesel

70. No person shall import, transport, sell or in any way use diesel in Malaŵi unless the same complies with the standard specifications set out in this Part.

Composition of diesel

71. All diesel imported, sold or used in Malaŵi shall comprise of hydro-carbon distillate fuel derived from petroleum to which small amounts of additives may have been added to improve its ignition, or its storage stability or both, or for any other lawful purpose.

Compliance with diesel standard specifications

72. All diesel imported, sold or used in Malaŵi shall comply with the standard specifications set out in Table 2 in the Fourth Schedule hereto.

Prohibition against contaminants

73. Without prejudice to the generality of regulation 72, all diesel imported, sold or used in Malaŵi shall be clear and free from visible water, grit, suspended matter and any other contaminants which can cause damage to, or malfunctioning of the equipment designed to use this type of fuel.

Grades of diesel and their composition

74.—(1) All diesel imported, sold or used in Malaŵi may be of any of the following grades—

(*a*) high speed diesel oil; and

(*b*) light diesel oil.

(2) High speed diesel oil comprises all diesel fuel distillates of low volatility and which contain no residuum oil.

(3) Light diesel oil comprises all diesel fuel, which has more viscous distillates and blends of these that contain residuum oil.

Approved diesel storage stability

75. All diesel imported, sold or used in Malaŵi shall have such storage stability as would, under conventional storage conditions for a period of twelve months after the date of receipt, comply with the standard specifications set out in Table 2 in the Fourth Schedule hereto.

Marking and labelling of diesel pumps, tanks and containers

76.—(1) All diesel dispenser pumps and delivery containers used for the dispensing or delivery of diesel in Malaŵi shall bear the following marks and labels—

(*a*) the name, trade name or trademark and grade of diesel;

(*b*) the name and address of the distributor;

(*c*) the quantity of diesel, where possible;

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(*d*) the year of make;

(*e*) the words "Flammable" together with the corresponding symbol for labelling dangerous goods; and

(*f*) the MBS mark signifying compliance with the Malaŵi Bureau of Standards Certification Marking Scheme Regulations.

(2) Where any such diesel is packed in bulk storage tanks, road tank wagons, or rail tank wagons, the contents shall be identified as above in the storage and consignment documents.

Testing diesel fuel for compliance

77. The Authority, in conjunction with MBS shall carry out compliance tests of diesel imported, transported, sold or used in Malaŵi at any stage of the chain of supply in any manner provided for in Table 2 and Appendix A of the Fourth Schedule hereto.

Division 4—Paraffin Standard Specifications

Use of paraffin

78. No person shall import, sell or in any way use paraffin in Malaŵi unless the same complies with this Part.

Composition of paraffin

79. All paraffin imported, sold or used in Malaŵi shall comprise of hydrocarbon distillate fuel obtained from either sulphur dioxide (Edeleanu) process or the hydro-treating refining process and which may contain small quantities of acceptable harmless colouring materials.

Compliance with paraffin standard specifications

80. All paraffin imported, sold or used in Malaŵi shall comply with this Part by meeting the standard specifications set out in Table 3 in the Fourth Schedule hereto.

Approved smoke point

81. All paraffin imported, sold or used in Malaŵi shall have a smoke point which conforms to the value provided in Table 4 in the Fourth Schedule hereto.

Approved net specific energy and testing

82. All paraffin imported, sold or used in Malaŵi shall have the net specific energy of approximately 43.5 MJ/Kg as determined from the test fuel using the IP12 method and BS526 or by calculation from the test fuel density.

(2) When determining the net specific energy using the test fuel density method, the equation provided for in Appendix B in the Fourth Schedule hereto shall be used.

Approved burning qualities

83. All paraffin imported, sold or used in Malaŵi shall have the following burning qualities when tested in accordance with either IP10 or ASTM D187 methods at a fuel consumption rate not exceeding 23 grams/hour for a twenty-four hour testing period—

(*a*) the difference between the width of the flame and its initial width shall not exceed two millimetres;

(*b*) the decrease in the height of the flame in comparison to the height of the initial flame shall not exceed three millimetres;

(*c*) the chimney shall not show more than a slight bloom;

(*d*) there shall not be appreciable quantity of hard incrustation on the wick; and

(*e*) the char value shall be less than twenty (20) milligrams per kilogram of the fuel actually burned.

Approved paraffin storage stability

84. All paraffin imported, sold or used in Malaŵi shall be of such storage stability as would, after storage in original containers under normal storage conditions for a period of at least twelve months from the date of receipt, comply with this Part.

Storage and transportation of paraffin

85. Paraffin shall be packed, transported and stored in such a manner as would comply with the Road Traffic (Carriage of Dangerous Cargo) Regulations, and these Regulations.

Marking and labelling of paraffin pumps, tanks and containers

86.—(1) All paraffin dispenser pumps and delivery containers used for the dispensing or delivery of any such paraffin in Malaŵi shall bear such marks and labels as set out herein below in legible and indelible letters or marks—

(*a*) the supplier's name;

(*b*) the description of the product;

(*c*) the quantity of the paraffin;

(*d*) year of make; 49 of 2017

(*e*) the words "Flammable" together with the corresponding symbol for labelling dangerous goods;

(*f*) the words "no smoking" together with the corresponding symbol for anti-smoking; and

(*g*) the MBS mark signifying compliance with the Malaŵi Bureau of Standards Certification Marking Scheme Regulations.

(2) Where any such paraffin fuel is packed in bulk storage tanks, road tank wagons, or rail tank wagons, the contents shall be identified as above in the storage and consignment documents.

Compliance procedures for paraffin

87. The Authority, in conjunction with MBS shall carry out compliance tests of paraffin imported, sold or used in Malaŵi at any stage of the chain of supply using any of the sampling procedures described in ASTM D4057 and ASTM D4177.

Division 5—Other Fuels and Gas Standard Specifications

Approved standard specifications for other fuels and gas

88. All liquid fuels and gas not covered under *Division 4* of this Part, imported, produced, sold or in any way used in Malaŵi shall comply with such standard specifications set out or which may be set down by MBS.

Testing procedures for compliance

89. The Authority, in conjunction with MBS, shall carry out appropriate compliance tests of all liquid fuels and gas falling under regulation 88 which are imported, produced, sold or otherwise used in Malaŵi using any approved and internationally acceptable testing procedure as may be established by MBS and published by notice in the *Gazette*.

Storage and transportation of ethanol and gas

90. All liquid fuels and gas not covered under *Division 4* of this Part shall be packed, transported and stored in compliance with the Road Traffic (Carriage of Dangerous Cargo) Regulations and Part V of these Regulations.

Division 6—Offences and Penalties

Offences and penalties

91.—(1) Any licensee or person who—

(*a*) sells petrol not blended to the minimum specifications;

(*b*) imports, sells or offers to any other person for use any type of liquid fuels or gas which do not comply with this Part;

(*c*) falsely represents to any person about the true nature of any liquid fuel or gas; or

(*d*) prohibits or in any way obstructs the Authority or MBS from collecting samples of any liquid fuel or gas in his custody or under his control,

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commits an offence, and shall, on conviction, be liable to imprisonment for six months.

(2) In addition to the penalties provided for the offences under this regulation, a court may also order that the guilty person repay any expenses incurred by any other person or the Authority as a consequence of the offence.

PART V

Storage of Liquid Fuels and Gas

Division 1—Application of this Part

Application of this Part

92. This Part shall apply to all matters relating to the processing, enforcement, construction and maintenance of storage facilities of all liquid fuels and gas.

Division 2—Preparation, Construction and Maintenance of Storage Facilities

Storage tanks for liquid fuels

93. All storage tanks for liquid fuels and gas shall be prepared, constructed and maintained in the manner prescribed in Part I of the Fifth Schedule hereto.

Storage sheds

94. All storage sheds shall be prepared, constructed and maintained in the manner prescribed in Part II of the Fifth Schedule hereto.

Storage of gas

95. All gas storage plants, sheds and cylinders shall be constructed or installed, as the case may be, and maintained, in the manner set out in Part III of the Fifth Schedule hereto.

Division 3—Management of Storage Area

Conditions for management and control of storage area

96. The following conditions shall apply to all storage areas in which liquid fuels shall be stored—

(*a*) every person managing or employed in or in connexion with the storage area shall abstain from any act whatsoever which may cause fire and which is not reasonably necessary, and shall take all reasonable and necessary steps to prevent any other person from so doing;

(*b*) no smoking shall be permitted in a storage area or within sixteen metres thereof and suitable notices to this effect shall be conspicuously posted upon the storage area in red letters upon a white background;

(*c*) no fire or naked light shall be permitted in a storage area or within sixteen metres thereof;

(*d*) all grass, bushes and shrub reasonably near a storage area shall be cut short to the satisfaction of the Authority and no cultivation shall be permitted within or within sixteen metres from the boundaries of any storage area; and

(*e*) every storage area where any brand of liquid fuels and gas are stored otherwise than in storage tanks or sheds shall be securely fenced to the satisfaction of the Authority, and the plot on which any such storage area lies shall be so situated as to ensure a clear space of sixteen metres in width around the perimeter of the fenced area.

Prohibition against dispensing of liquid fuels

97.—(1) No person shall dispense any brand of liquid fuels and gas within a storage area.

(2) Notwithstanding subregulation (1), liquid fuels and gas may be dispensed within sixteen metres from the boundaries of a storage area through the use of an approved dispenser pump of a design approved by the Authority.

Prohibition against soldering

98. No person shall carry out or permit the carrying out of any soldering work within the storage area except in a workshop specifically constructed for that purpose.

Division 4—Miscellaneous Provisions

Storage of liquid fuels in buildings
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99.—(1) No person shall store any brand of liquid fuel within any building which, or part of which, is used as living accommodation or as a place of habitual public resort:

Provided that the prohibition shall not apply—

(*a*) to the storage of paraffin oil for domestic use in a quantity not exceeding three hundred (300) litres; and

(*b*) subject to subregulation (2), the storage of liquid fuels in a quantity of less than four hundred litres for commercial purposes.

(2) A person who wishes to store liquid fuels or gas for commercial purposes pursuant to subregulation (1) (*b*) shall first register with the Authority in Form LFG 7 in Part VII of the First Schedule hereto and shall pay a registration fee prescribed in the Third Schedule hereto.

(3) A person registered to store liquid fuels or gas in accordance with this regulation shall, at all times, comply with the standards for storage of liquid fuels and gas as prescribed under these Regulations and by MBS from time to time.

(4) A person registered to store liquid fuels in accordance with this regulation shall be issued with and for the period specified therein a Registration Certificate in the form prescribed in Part IV of the Second Schedule hereto for a period specified therein.

100. Nothing in these Regulations shall apply to the storage of any brand or mixture thereof of liquid fuels in the tank of any motor vehicle or any stationary machinery or plant for consumption therein. Storage in machinery or motor vehicles

101. All accidents arising out of storage areas, tanks or sheds involving fire, explosion, or escape of any toxic gas or materials which can cause death or injury to persons or damage to property shall be reported immediately by the licensee or any of his agents or employees to the police, the fire brigade and the Authority. Reporting accidents

PART VI

Third Party Storage Capacity Access Contracts

Division 1—Application of this Part

102. This Part shall apply to the determination, accessibility and management of third party access to unutilized storage capacity of liquid fuels and gas. Application of this Part

Division 2—General Provisions

103.—(1) A licensee who wishes to have additional storage capacity may approach any other licensee who has idle storage capacity and negotiate a third party storage capacity access contract. Third party storage capacity access contract

(2) A licensee who has idle storage capacity and wishes to let out the same, may solicit any other licensee to use the idle storage capacity through a public advertisement or contracts.

104.—(1) The Authority shall approve, endorse and monitor all third party storage capacity access contracts entered into between two or more licensees. Pricing framework for third party storage capacity access contracts 49 of 2017

(2) The Authority shall develop and publish in the *Gazette*, a pricing framework of third party storage capacity access contract to be complied with by parties entering into third party storage capacity access contracts.

105. A third party storage capacity access contract shall comply with the minimum terms and conditions set down in this Part. Compliance

106. The Authority shall have power to require any licensee to make a full and frank disclosure with respect to its maximum storage capacity as well as any available idle storage capacity. Disclosure

Division 3—Eligibility and Minimum Terms

107. No person shall be eligible to enter into a third party storage capacity access contract unless such person holds a valid Storage Eligibility

Licence issued under these Regulations at the time the agreement is made or proposed to be made.

Minimum terms and conditions

108. Every third party storage capacity access contract shall contain the following minimum terms and conditions—

(*a*) names and particulars of the parties between whom the contract is proposed to be entered into;

(*b*) detailed description of the storage facility, particularly the Plot Number where the facility is situated and the exact amount of idle capacity available, in respect of which any such contract is being entered into;

(*c*) specific time period within which the contract shall subsist;

(*d*) exact amount of consideration to be furnished by the third party, and where any such consideration is a monetary value, the contract shall specify the mode of payment;

(*e*) statement of proof of possession of valid licences copies of which shall be attached to the contract as an appendix;

(*f*) list of grounds and manner in which the contract may come to an end; and

(*g*) list of rights and duties of each party in the event of breach.

Other terms and conditions

109. Parties to a third party storage capacity access contract shall be at liberty to negotiate any such terms and conditions as mutually agreed:

Provided that any term or condition which is in any way contrary to these Regulations or any other Act which applies to liquid fuels and gas shall be void and thereby ineffectual to the extent of the inconsistency thereof.

Division 4—Submission and Approval

Submission to the Authority

110.—(1) Once third party storage capacity access terms have been agreed, the parties shall submit a draft contract to the Authority for its endorsement and approval.

(2) The Authority shall consider the draft contract and communicate its decision within thirty days of receipt of the draft contract.

(3) A third party storage capacity access contract shall not be valid until the Authority has approved it.

Corrections and resubmissions

111.—(1) Where the Authority is of the opinion that the draft contract is not in line with these Regulations or any other law in force, it shall return the same to the parties with its recommendations for further refining and correction.

(2) The parties shall make such corrections as recommended by the Authority and send the draft back to the Authority for approval.

Mediation

112. The Authority may mediate where there is—

(*a*) unjustified denial of access by one party; or

(*b*) non-agreement on terms of access between the parties.

PART VII

Minimum Stocks and Strategic Storage Reserves

Division 1—Application of this Part

Application of this Part

113. This Part shall apply to all matters relating to the storage of minimum stocks and strategic reserves and all matters incidental thereto.

Division 2—Minimum Stocks

Minimum stocks

114.—(1) Every licensee shall comply, at all material times, with the minimum stocks for petrol, diesel, paraffin, aviation fuel and gas, which the Authority shall establish by notice in the *Gazette* from time to time.

(2) The Authority shall ensure that the minimum stocks of petrol, diesel, paraffin, aviation fuel and gas at all material times, do not dwindle below ninety days cover of continuous consumption without replenishment.

Determinative factors

115. In determining the exact amount of minimum petrol, diesel, paraffin, aviation fuel and gas stocks to be kept, the Authority shall take the following factors into account—

(*a*) the strategic importance of the fuel in question to the people of Malaŵi;

(*b*) the available demand of the fuel in question;

(*c*) the storage cost implications of keeping in stock the fuel in question;

(*d*) the available storage capacity on the part of the licensee; and

(*e*) the international market trends of the fuel in question.

Strategic fuel reserve storage

116. The Government shall establish a strategic fuel reserve storage with a holding capacity of not less than sixty days of continuous consumption without replenishment to buffer the minimum stocks maintained by the licensees.

Commercial storage rationalization rules

117.—(1) The Authority shall prepare and enforce petrol, diesel, paraffin, aviation fuel and gas commercial storage rationalization rules which among other things shall require—

(*a*) every wholesale licensee to maintain minimum fuel stocks at all material times of thirty days of continuous consumption without replenishment;

(*b*) every wholesale licensee to allow third party utilization and hospitality of any idle capacity it may have; and

(*c*) every wholesale licensee to establish a regional presence in the geographical distribution of its storage capacity.

(2) The Authority shall publish the Commercial Storage Rationalization Rules in the *Gazette*.

Coastal facilities

118. The Government, on recommendations from the Authority, may acquire, own and manage its own coastal storage and handling facilities of petrol, diesel and paraffin in order to meet the requirements of maintaining the minimum stocks of the products under these Regulations.

Direct fuel importation

119. The Government may directly import and transport petrol, diesel, paraffin, aviation fuel and gas into Malaŵi from a supplier or suppliers in order to meet the minimum stocks set down by these Regulations.

Wholesaler's obligations 49 of 2017

120.—(1) Every holder of a Wholesale Licence shall purchase from the Government Strategic Reserves at least once every month as determined by the Authority.

(2) The amounts of liquid fuels and gas to be so purchased by each Wholesale Licence holder shall be in proportion to the market share of the wholesaler, as determined by the Authority.

Division 3—Determination of Minimum Stocks

Determination and publication

121.—(1) The Authority shall determine the minimum stocks of fuel to be kept by each licensee based on the licensee's proportional market share in Malaŵi.

(2) The Authority shall publish in the *Gazette* the formula for determining the exact amount of minimum stocks to be kept by each licensee.

Maximum and idle storage capacity

122.—(1) Every licensee shall, on request by the Authority, declare its maximum fuel storage capacity and the average amounts of fuel actually kept at any given time.

(2) A licensee, if requested by the Authority, shall declare to the Authority any idle and unutilized storage capacity, and disclose whether or not any such capacity is intended for immediate use.

PART VIII

Emergency Plan

Division 1—Application of this Part

Application of this Part

123. This Part shall apply to the declaration of an emergency and the formulation of the National Liquid Fuels and Gas Emergency Plan.

Division 2—General Provisions

Declaration of liquid fuel emergency

124.—(1) A state of liquid fuels and gas emergency shall be deemed to exist, when a natural disaster or accident, state of war, civil strife or any act of sabotage to the supply of liquid fuels in Malaŵi dwindles below sixty days of cover of continuous consumption without replenishment.

(2) Where as a result of the occurrence of any or all of the events stipulated in subregulation (1), the liquid fuels and gas shortage becomes so acute as to warrant active intervention by the Government in the chain of supply, the Minister shall by notice published in the *Gazette*, declare a state of liquid fuels and gas emergency.

(3) The notice of liquid fuel and gas emergency issued under subregulation (2) shall take effect on such date as the Minister may specify in the notice, otherwise it shall be deemed to take effect fourteen days from the date of its publication in the *Gazette*.

Authority's mandate in an emergency

125. Upon the declaration of a liquid fuel emergency under this Part, the Authority may temporarily intervene in the chain of supply or take any measures as may be stipulated in the National Liquid Fuels and Gas Emergency Plan.

Consultations

126.—(1) The Authority and the Minister shall hold a consultative meeting with all major stakeholders in the liquid fuels and gas industry to have a pre-emergency review of the situation and agree on reasonable corrective measures, before declaring a state of liquid fuels emergency.

(2) Where, for any reason the pre-emergency consultative meeting is unable to agree on any reasonable corrective measures,

the Authority shall have power with the approval of the Minister to implement any such measures as the situation may demand and any such decision shall be final.

Suspension or revocation of declaration of liquid fuel emergency

127.—(1) The Minister may by notice published in the *Gazette*, revoke or suspend any notice of emergency given under these Regulations upon being satisfied that the liquid fuel and gas situation has normalized.

(2) Upon revocation or suspension of a state of liquid fuel emergency, all corrective measures undertaken by the Authority shall cease forthwith, unless otherwise stated in the National Liquid fuels and Gas Emergency Plan.

Division 3—National Liquid Fuels and Gas Emergency Plan

National Liquid Fuel and Gas Emergency Plan

128.—(1) The Authority shall formulate and develop a National Liquid Fuels and Gas Emergency Plan in consultation with the Liquid Fuels and Gas industry and with the approval of the Minister.

(2) The Authority shall publish in the *Gazette*, the National Liquid Fuels and Gas Emergency Plan, at least fourteen days from the date of approval by the Minister.

(3) The National Liquid Fuels and Gas Emergency Plan shall be available to the general public or any interested person at a fee, which shall be determined by the Authority from time to time.

Guiding principles and factors

129. In formulating and developing the National Liquid Fuels and Gas Emergency Plan, the Authority shall be guided by such principles and factors as it may deem necessary, which shall include—

(*a*) the objectives and the general spirit by the Act;

(*b*) the objectives and overall goals of the Malaŵi Energy Policy;

(*c*) the international trends and measures in dealing with fuel crises;

(*d*) the nature and cause of the actual or impending or forecasted fuel crisis in Malaŵi;

(*e*) the complexity of dealing with various causes of supply distortions or interruptions of liquid fuels and gas;

(*f*) the short- and long-term effects of any corrective measures to be taken;

(*g*) the overall short- and long-term economic effect that any such crisis or corrective measures thereof may have on the economy as a whole or the particular industry in question;

(*h*) the possibility of multifaceted and multisectoral redress mechanisms; and

(*i*) the role and input of the necessary stakeholders, in the liquid fuels and gas industry.

Corrective measures

130.—(1) The National Liquid Fuels and Gas Emergency Plan shall clearly state all possible corrective measures which may be undertaken or implemented by the Authority, in the event of an emergency and without prejudice to the generality of the foregoing, such measures may include the following—

(*a*) changing haulage routes or mode of transportation;

(*b*) issuing more or suspending or revoking some licences as the situation may require;

(*c*) rationing liquid fuels and gas sales at every or some points in the chain of supply; and

(*d*) direct involvement or intervention by the Authority in the chain of supply.

(2) A measure stipulated in the National Liquid Fuels and Gas Emergency Plan shall be implemented subject to the Preservation of Public Security (Conservation of Motor Fuel) Regulations.

PART IX

Miscellaneous Provisions

Inspection

131.—(1) An Inspector, a member or any person authorized by the Authority may, for the purposes of monitoring compliance with these Regulations enter any premises and—

(*a*) inspect or search those premises;

(*b*) examine any facility, construction, equipment or object found in or upon those premises;

(*c*) examine or make copies of or take extracts from any book or document found on those premises;

(*d*) seize any book, document or any object, if he wishes to retain it for safe custody or for further examination, and if it appears to provide proof of non-compliance with these Regulations; and

(*e*) any conditions of a licence set under these Regulations.

(2) Any person who obstructs an Inspector or any officer authorized by the Authority from inspecting any premises, or from entering any premises for purposes of inspecting them, commits an offence and shall, on conviction, be liable to imprisonment for six months.

49 of 2017

Provision of information

132. Every holder of a licence under these regulations shall provide information to the Authority about any liquid fuels or gas it deals with including any information on amounts, prices, specifications in the manner prescribed by the Authority.

General offence and penalties
49 of 2017

133.—(1) Any licensee or person who contravenes any Part of these Regulations commits an offence and shall, on conviction, be liable to imprisonment for six months.

(2) In addition to the penalties provided for the offences under these Regulations, a court may also order that the guilty person repay any expenses incurred by the Authority or any other person as a consequence of the offence.

FIRST SCHEDULE

FORMS

PART I

LIQUID FUELS AND GAS (PRODUCTION AND SUPPLY) ACT reg. 14

(Cap. 50:03)

APPLICATION FOR LICENCE TO PRODUCE LIQUID FUELS AND GAS

SECTION A Form LFG 1

PARTICULARS OF APPLICANT

A.1 Full Name of Applicant: .....
.....

A.2 Address of Applicant, or in the case of a body corporate, the registered office:
.....
.....

A.3 Telephone Number of Applicant: .....

A.4 Fax Number: .....

A.5 E-mail Address: .....

A.6 Details of Contact Person:

Full Name: .....

Telephone Number: .....

Fax Number: .....

E-mail Address: .....

A.7 Legal personality of Applicant: .....

.....

A.8 If the Applicant is a registered company or organization, enclose the following—

(*a*) full names of shareholders and their holding percentages;

(*b*) full names and occupations of Directors;

(*c*) Certificate of Incorporation;

(*d*) Memorandum and Articles of Association/Trust Deed or Constitution; and

(*e*) past experience in Liquid Fuels or Gas.

SECTION B

COMMENCEMENT DATE OF LICENCE

B. Desired date from which the licence (if granted) is to take effect:

.....

SECTION C

AREA TO WHICH THE APPLICATION RELATES

C.1 Proof of applicant's ownership or acquisition of land such as certificate of transfer or lease.

Certificate of Transfer of Land:

Date of issue: .....

Name of Proprietor: .....

Location: .....

Certificate of Lease:

Date of issue: .....

Name of Lessor:.....

Name of Lessee: .....

Duration of Lease: .....

Location: .....

Tenancy Agreement:

Date of Agreement:.....

Name of the Landlord: .....

Name of the Tenant:.....

Duration of the Tenancy: .....

Location: .....

C.2 Provide sufficient information (maps or sketch plans of the area or areas to which the application relates):

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C.3 Provide proof of planning authorization from Planning Authorities on the following:

(*a*) Approved Building Plans; and

(*b*) Approved Storage Construction Plans.

SECTION D

TECHNICAL INFORMATION

Submit single line diagram(s) of the plant or factory by means of which the applicant intends to produce the type of liquid fuel or gas in question. Identify any parts of that plant or factory, if any, which will not be in possession or control of the applicant. The diagram should be accompanied by a certificate of approval from the Chief Inspector of Factories in Malaŵi. The Applicant shall also submit MBS certification for any depot equipment to be used.

SECTION E

FINANCIAL INFORMATION

E.1 Income Statement:

Provide statements and a five year business plan stating the proposed investment plan replete with projected sales and cash flow statements, profit and loss balance sheet and market projections. Attach copies of the current and/or budgeted balance sheet, rate of return, profit and loss account and source and application of funds for current and next five years. Indicate major cost items such as staff costs, maintenance, etc.

E.2 Investment Program:

Investment Program for current and the next five years. Attach copies of the detailed scheme or schemes prepared by a competent engineer and mode and cost of financing such a scheme.

E.3 Fixed Assets:

Provide the Applicant's summary of total assets available and intended for use in the production process. This information should be accompanied by a certificate of verification from certified public accountants.

E.4 Audited Accounts:

Provide copies of the latest audited accounts of the applicant.

E.5 Bank Reference Letter:

In the case of an Applicant registered in Malaŵi, attach a copy of a letter of recommendation of the Applicant's credit worthiness from at least one reputable local commercial bank.

In the case of an Applicant who is foreign owned, attach a copy of a letter of recommendation of the Applicant's credit worthiness from at least one reputable local commercial bank and one reputable international bank.

SECTION F

INFORMATION ON HUMAN RESOURCES

F. Personnel—

(*a*) Submit details of the number of staff and employees and their categories and grades in the service of or to be recruited by the applicant, showing their qualifications and number of years of experience in similar jobs.

(*b*) Provide curriculum vitae of top management personnel of the applicant.

SECTION G

PERMITS FROM OTHER GOVERNMENT DEPARTMENTS OR REGULATORY AUTHORITIES

Submit copies of the following permits or approvals issued by public or local authorities or other regulatory agencies—

(*a*) Certificate of Registration of Workplace under the Occupational Safety, Health and Welfare Act (Cap. 55:07);

(*b*) Certificate of Environment Impact Assessment from the Department of Environmental Affairs; and

(*c*) any other certificates or permits.

SECTION H

ADVERTISING NOTICE

Attach a draft copy of the notice of advertisement as to representations or objections.

SECTION I

ENVIRONMENTAL CONSIDERATION

Provide a brief description of the likely negative impact of the production and storage facilities on natural resources and environment and mitigation measures proposed.

SECTION J

ADDITIONAL INFORMATION

Please provide any other information which the applicant wishes to include with this application:

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PART II

LIQUID FUELS AND GAS (PRODUCTION AND SUPPLY) ACT

(CAP. 50:03)

APPLICATION FOR LICENCE TO IMPORT LIQUID FUELS AND GAS reg. 19

SECTION A FORM LFG 2

PARTICULARS OF APPLICANT

A.1 Full Name of Applicant:.....

.....

A.2 Address of Applicant, or in the case of a body corporate, the registered office:

.....

.....

A.3 Telephone Number of Applicant: .....

A.4 Fax Number: .....

A.5 E-mail Address: .....

A.6 Details of Contact Person:

Full Name: .....

Telephone Number: .....

Fax Number: .....

E-mail Address:.....

A.7 Legal personality of Applicant: .....

A.8 If the Applicant is a registered company or organization, enclose the following—

(*a*) full names of shareholders and their holding percentages;

(*b*) full names and occupations of Directors;

(*c*) Certificate of Incorporation;

(*d*) Memorandum and Articles of Association/Trust Deed or Constitution; and

(*e*) past experience in Liquid Fuels or Gas.

SECTION B

COMMENCEMENT DATE OF LICENCE

B. Desired date from which the licence (if granted) is to take effect:

.....

SECTION C

AREA TO WHICH THE APPLICATION RELATES

C.1 Proof of applicant's ownership or acquisition of land such as certificate of transfer or lease.

Certificate of Transfer of Land:

Date of issue: .....

Name of Proprietor: .....

Location: .....

Certificate of Lease:

Date of issue: .....

Name of Lessor: .....

Name of Lessee: .....

Duration of Lease: .....

Location: .....

Tenancy Agreement:

Date of Agreement: .....

Name of the Landlord: .....

Name of the Tenant:.....

Duration of the Tenancy: .....

Location: .....

C.2 Provide sufficient information (maps or sketch plans of the area or areas to which the application relates):

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.....

C.3 Provide proof of planning authorization from Planning Authorities on the following:

(*a*) Approved Building Plans; and

(*b*) Approved Storage Construction Plans.

SECTION D

TECHNICAL INFORMATION

Submit single line diagrams(s) of the storage sheds or areas by means of which the applicant intends to store the type of liquid fuel or gas in question. Identify any parts of that storage shed or area, if any, which will not be in possession or control of the applicant. All diagrams should be accompanied by a certificate of approval from the Chief Inspector of Factories in Malaŵi. The Applicant shall also submit MBS certification for any depot equipment to be used.

SECTION E

FINANCIAL INFORMATION

E.1 Income Statement:

Provide statements and a five year business plan, stating the proposed investment plan replete with projected sales and cash flow statements, profit and loss balance sheet and market projections. Attach copies of the current and/or budgeted balance sheet, rate of return, profit and loss account and source and application of funds for current and next five years. Indicate major cost items such as staff costs, maintenance, etc.

E.2 Investment Program:

Investment Program for current and the next five years. Attach copies of the detailed scheme or schemes prepared by a competent engineer and mode and cost of financing such a scheme.

E.3 Fixed Assets:

Provide the Applicant's summary of total assets available and intended for use in the production process. This information should be accompanied by a certificate of verification from certified public accountants.

E.4 Audited Accounts:

Provide copies of the latest audited accounts of the Applicant.

E.5 Bank Reference Letter:

In the case of an Applicant, registered in Malaŵi, attach a copy of a letter of recommendation of the Applicant's credit worthiness from at least one reputable local commercial bank.

In the case of an Applicant who is foreign owned, attach a copy of a letter of recommendation of the Applicant's credit worthiness from at least one reputable local commercial bank and one reputable international bank.

SECTION F

INFORMATION ON HUMAN RESOURCES

F. Personnel:

(*a*) Submit details of the number of staff and employees and their categories and grades in the service of or to be recruited by the applicant, showing their qualifications and number of years of experience in similar jobs.

(*b*) Provide *curriculum vitae* of top management personnel of the applicant.

SECTION G

PERMITS FROM OTHER GOVERNMENT DEPARTMENTS OR REGULATORY AUTHORITIES

Submit copies of the following permits or approvals issued by public or local authorities or other regulatory agencies—

(*a*) Certificate of Registration of Workplace under the Occupational Safety, Health and Welfare Act (Cap. 55:07);

(*b*) Certificate of Environment Impact Assessment from the Department of Environmental Affairs; and

(*c*) any other certificates or permits.

SECTION H

ADVERTISING NOTICE

Attach a draft copy of the notice of advertisement as to representations or objections.

SECTION I

ENVIRONMENTAL CONSIDERATION

Provide a brief description of the likely negative impact of the storage facilities on natural resources and environment and mitigation measures proposed.

SECTION J

ADDITIONAL INFORMATION

Please provide any other information which the applicant wishes to include with this application:

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PART III G.N. 31/2010

LIQUID FUELS AND GAS (PRODUCTION AND SUPPLY) ACT

(Cap. 50:03)

APPLICATION FOR LICENCE TO TRANSPORT LIQUID FUELS AND GAS reg. 24

SECTION A Form LFG 3

PARTICULARS OF APPLICANT

A.1 Full Name of Applicant:.....

.....

A.2 Address of Applicant, or in the case of a body corporate, the registered office:

.....

.....

A.3 Telephone Number of Applicant: .....

A.4 Fax Number of Applicant: .....

A.5 E-mail Address of Applicant: .....

A.6 Contact Person:

Name: .....

Telephone Number: .....

Fax Number: .....

E-mail Address: .....

A.7 Legal personality of Applicant: .....

A.8 If the Applicant is a registered company or organization, enclose the following—

(*a*) full names of shareholders and their holding percentages;

(*b*) full names and occupations of Directors;

(*c*) Certificate of Incorporation;

(*d*) Memorandum and Articles of Association/Trust Deed or Constitution; and

(*e*) past experience in transporting Liquid Fuels or Gas or any other dangerous cargo.

SECTION B

COMMENCEMENT DATE OF LICENCE

B. Desired date from which the licence (if granted) is to take effect:

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SECTION C

PROOF OF OWNERSHIP OR ACQUISITION OF APPROVED MOTOR VEHICLES

C. Proof of applicant's ownership or acquisition of approved motor vehicles for the transportation of liquid fuels and gas, attaching certified copies of the following in respect of each and every motor vehicle intended for use thereof—

(*a*) Motor Vehicle Registration Certificate;

(*b*) Motor Vehicle Licensing Certificate;

(*c*) Motor Vehicle Certificate of Fitness; and

(*d*) Motor Vehicle's total holding capacity.

SECTION D

TRANSPORT ROUTES

Submit a detailed statement of preferred transportation routes to be operated by the Applicant and the estimated quantities of liquid fuels and gas to be transported via each route per month.

SECTION E

FINANCIAL INFORMATION

E.1 Income Statement:

Provide statements and a one year business plan, stating the proposed investment plan replete with projected sales and cash flow statements, profit and loss balance sheet and market projections. Attach copies of the current and/or budgeted balance sheet, rate of return, profit and loss account and source and application of funds for current and next five years. Indicate major cost items such as staff costs, maintenance, etc.

E.2 Investment Program:

Provide an Investment Program for current year and means of financing the operations.

E.3. Fixed Assets:

Provide the Applicant's summary of total assets available and intended for use in the production process. This information should be accompanied by a certificate of verification from certified public accountants.

E.4 Audited Accounts:

Provide copies of the latest audited accounts of the Applicant.

E.5 Bank Reference Letter:

Attach copy of a letter of recommendation of the Applicant's credit worthiness from at least one reputable local bank.

SECTION F

INFORMATION ON HUMAN RESOURCES

F. Personnel—

(*a*) Submit details of the number of staff and employees and their categories and grades in the service of or to be recruited by the applicant, showing their qualifications and number of years of experience in similar jobs; and

(*b*) Provide curriculum vitae of top management personnel of the applicant.

SECTION G

PERMITS FROM OTHER GOVERNMENT DEPARTMENTS OR REGULATORY AUTHORITIES

Submit copies of the following permits or approvals issued by public or local authorities or other regulatory agencies—

(*a*) Certificate of Registration of Workplace under the Occupational Safety, Health and Welfare Act (Cap 55:07);

(*b*) Proof that motor vehicles do comply with the Road Traffic Act (Cap. 69.01) of the Laws of Malaŵi; and

(*c*) any other certificates or permits.

SECTION H

ADVERTISING NOTICE

Attach a draft copy of the notice of advertisement as to representations or objections.

SECTION I

ENVIRONMENTAL CONSIDERATION

Provide a brief description of the likely negative impact of the motor vehicles on natural resources and environment and mitigation measures proposed.

SECTION J

ADDITIONAL INFORMATION

Please provide any other information which the applicant wishes to include with this application:

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PART IV

LIQUID FUELS AND GAS (PRODUCTION AND SUPPLY) ACT

(Cap. 50:03)

APPLICATION FOR LICENCE TO STORE LIQUID FUELS AND GAS reg. 28

SECTION A Form LFG 4

PARTICULARS OF APPLICANT

A.1 Full Name of Applicant:.....

.....

A.2 Address of Applicant, or in the case of a body corporate, the registered office:
.....
.....

A.3 Telephone Number of Applicant: .....

A.4 Fax Number: .....

A.5 E-mail Address: .....

A.6 Details of Contact Person:
Full Name: .....
Telephone Number: .....
Fax Number: .....
E-mail Address: .....

A.7 Legal personality of Applicant: .....
.....

A.8 If the Applicant is a registered company or organization, enclose the following—
(*a*) full names of shareholders and their holding percentages:
(*b*) full names and occupations of Directors;
(*c*) Certificate of Incorporation;
(*d*) Memorandum and Articles of Association/Trust Deed or Constitution; and
(*e*) Past experience in Liquid Fuels or Gas.

SECTION B

COMMENCEMENT DATE OF LICENCE

B. Desired date from which the licence (if granted) is to take effect:
.....

SECTION C

AREA TO WHICH THE APPLICATION RELATES

C.1 Proof of applicant's ownership or acquisition of land such as certificate of transfer or lease.
Certificate of Transfer of Land:
Date of issue: .....
Name of Proprietor: .....
Location: .....
Certificate of Lease:
Date of issue: .....
Name of Lessor: .....
Name of Lessee: .....
Duration of Lease: .....

Location: .....

Tenancy Agreement:

Date of Agreement: .....

Name of the Landlord: .....

Name of the Tenant: .....

Duration of the Tenancy: .....

Location: .....

C.2 Provide sufficient information (maps or sketch plans of the area or areas to which the application relates):

C.3 Provide proof of planning authorization from Planning Authorities on the following:

(*a*) Approved Building Plans; and

(*b*) Approved Storage Construction Plans.

SECTION D

TECHNICAL INFORMATION

Submit single line diagrams(s) of the storage sheds or areas by means of which the applicant intends to store and sell the type of liquid fuel or gas in question. Identity any parts of that storage shed or area, storage tanks or depot, if any, which will not be in possession or control of the applicant. A certificate of approval should accompany all diagrams from the Chief Inspector of Factories in Malaŵi. The Applicant shall also submit MBS certification for any depot equipment to be used.

SECTION E

FINANCIAL INFORMATION

E.1 Income Statement:

Provide statements and a three year business plan stating the proposed investment plan replete with projected sales and cash flow statements, profit and loss balance sheet and market projections. Attach copies of the current and/or budgeted balance sheet, rate of return, profit and loss account and source and application of funds for current and next three years. Indicate major cost items such as staff costs, maintenance, etc.

E.2 Investment Program:

Investment Program for current and the next three years. Attach copies of the detailed scheme or schemes prepared by a competent engineer and mode and cost of financing such a scheme.

E.3. Fixed Assets:

Provide the Applicant's summary of total assets available and intended for use in the wholesale process. This information should be accompanied by a certificate of verification from certified public accountants.

E.4 Audited Accounts:

Provide copies of the latest audited accounts of the Applicant.

E.5 Bank Reference Letter:

In the case of an Applicant registered in Malaŵi, attach a copy of a letter of recommendation of the Applicant's credit worthiness from at least one reputable local commercial bank.

In the case of an Applicant who is foreign owned, attach a copy of a letter of recommendation of the Applicant's credit worthiness from at least one reputable local commercial bank and one reputable international bank.

SECTION F

INFORMATION ON HUMAN RESOURCES

F. Personnel:

(*a*) Submit details of the number of staff and employees and their categories and grades in the service of or to be recruited by the applicant, showing their qualifications and number of years of experience in similar jobs.

(*b*) Provide curriculum vitae of top management personnel of the applicant.

SECTION G

PERMITS FROM OTHER GOVERNMENT DEPARTMENTS OR REGULATORY AUTHORITIES

Submit copies of the following permits or approvals issued by public or local authorities or other regulatory agencies—

(*a*) Certificate of Registration of Workplace under the Occupational Safety, Health and Welfare Act (Cap. 55:07);

(*b*) Certificate of Environment Impact Assessment from the Department of Environmental Affairs; and

(*c*) any other certificates or permits.

SECTION H

ADVERTISING NOTICE

Attach a draft copy of the notice of advertisement as to representations or objections.

SECTION I

ENVIRONMENTAL CONSIDERATION

Provide a brief description of the likely negative impact of the storage facilities on natural resources and environment and mitigation measures proposed.

SECTION J

ADDITIONAL INFORMATION

Please provide any other information which the applicant wishes to include with this application:

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G.N. 31/2010

PART V

LIQUID FUELS AND GAS (PRODUCTION AND SUPPLY) ACT

(Cap. 50:03)

APPLICATION FOR LICENCE TO WHOLESALE LIQUID FUELS AND GAS

reg. 32

SECTION A

Form LFG 5

PARTICULARS OF APPLICANT

A.1 Full Name of Applicant: .....

.....

A.2 Address of Applicant, or in the case of a body corporate, the registered office:

.....

.....

A.3 Telephone Number of Applicant: .....

A.4 Fax Number of Applicant: .....

A.5 E-mail Address of Applicant: .....

A.6 Contact Person:

Full Name: .....

Telephone Number: .....

Fax Number: .....

E-mail Address: .....

A.7 Legal personality of Applicant: .....

.....

A.8 If the Applicant is a registered company or organization, enclose the following—

(*a*) full names of shareholders and their holding percentages;

(*b*) full names and occupations of Directors;

(*c*) Certificate of Incorporation;

(*d*) Memorandum and Articles of Association/Trust Deed or Constitution; and

(*e*) past experience in Liquid Fuels or Gas.

SECTION B

COMMENCEMENT DATE OF LICENCE

B. Desired date from which the licence (if granted) is to take effect:

.....

SECTION C

AREA TO WHICH THE APPLICATION RELATES

C.1 Proof of applicant's ownership or acquisition of land such as certificate of transfer or lease.

Certificate of Transfer of Land:

Date of issue: .....

Name of Proprietor: .....

Location: .....

Certificate of Lease:

Date of issue: .....

Name of Lessor: .....

Name of Lessee: .....

Duration of Lease: .....

Location: .....

Tenancy Agreement:

Date of Agreement: .....

Name of the Landlord: .....

Name of the Tenant:.....

Duration of the Tenancy: .....

Location: .....

C.2 Provide sufficient information (maps or sketch plans of the area or areas to which the application relates):

.....

.....

C.3 Provide proof of planning authorization from Planning Authorities on the following:

(*a*) Approved Building Plans; and

(*b*) Approved Storage Construction Plans.

SECTION D

TECHNICAL INFORMATION

Submit single line diagram(s) of the storage sheds or areas by means of which the applicant intends to carry out the retail sales of the type of liquid fuel or gas in question.

Identify any parts of that storage shed or storage area or storage tanks or disperser pumps, if any, which will not be in possession or control of the applicant. All diagrams should be accompanied by a certificate of approval from the Chief Inspector of Factories in Malaŵi.

SECTION E

FINANCIAL INFORMATION

E.1 Income Statement:

Provide statements and a three year business plan stating the proposed investment plan replete with projected sales and cash flow statements, profit and loss balance sheet and market projections. Attach copies of the current and or budgeted balance sheet, rate of return, profit and loss account and source and application of funds for current and next three years. Indicate major cost items such as staff costs, maintenance, etc.

E.2 Investment Program:

Investment Program for current and the next three years. Attach copies of the detailed scheme or schemes prepared by a competent engineer and mode and cost of financing such a scheme.

E.3 Fixed Assets:

Provide the Applicant's summary of total assets available and intended for use in the production process. This information should be accompanied by a certificate of verification from certified public accountants.

E.4 Audited Accounts:

Provide copies of the latest audited accounts of the applicant.

SECTION F

INFORMATION ON HUMAN RESOURCES

F. Personnel—

(*a*) Submit details of the number of staff and employees and their categories and grades in the service of or to be recruited by the applicant, showing their qualifications and number of years of experience in similar jobs.

(*b*) Provide *curriculum vitae* of top management personnel of the applicant.

SECTION G

PERMITS FROM OTHER GOVERNMENT DEPARTMENTS OR REGULATORY AUTHORITIES

Submit copies of the following permits or approvals issued by public or local authorities or other regulatory agencies—

(*a*) Certificate of Registration of Workplace under the Occupational Safety, Health and Welfare Act, (Cap. 55:07);

(*b*) Certificate of Environment Impact Assessment from the Department of Environmental Affairs; and

(*c*) any other certificates or permits.

SECTION H

ADVERTISING NOTICE

Attach a draft copy of the notice of advertisement as to representations or objections.

SECTION I

ENVIRONMENTAL CONSIDERATION

Provide a brief description of the likely negative impact of the storage facilities on natural resources and environment and mitigation measures proposed.

SECTION J

ADDITIONAL INFORMATION

J. Please provide any other information which the applicant wishes to include with this application:

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PART VI G.N. 31/2010

LIQUID FUELS AND GAS (PRODUCTION AND SUPPLY) ACT

(Cap. 50:03)

APPLICATION FOR LICENCE TO RETAIL LIQUID FUELS AND GAS reg. 36

SECTION A Form LFG 6

PARTICULARS OF APPLICANT

A.1 Full Name of Applicant: .....

.....

A.2 Address of Applicant, or in the case of a body corporate, the registered office:
.....
.....

A.3 Telephone Number of Applicant : .....

A.4 Fax Number of Applicant : .....

A.5 E-mail Address of Applicant :.....

A.6 Details of Contact Person:
Full Name : .....
Telephone Number : .....
Fax Number : .....
E-mail Address :.....

A.7 Legal personality of Applicant : .....
.....

A.8 If the Applicant is a registered company or organization, enclose the following—
(*a*) full names of shareholders and their holding percentages;
(*b*) full names and occupations of Directors;
(*c*) Certificate of Incorporation;
(*d*) Memorandum and Articles of Association Trust Deed or Constitution; and
(*e*) past experience in transporting Liquid Fuels.

SECTION B

COMMENCEMENT DATE OF LICENCE

B. Desired date from which the licence (if granted) is to take effect:
.....

SECTION C

AREA TO WHICH THE APPLICATION RELATES

C.1 Proof of applicant's ownership or acquisition of land such as certificate of transfer or lease.
Certificate of Transfer of Land:
Date of issue: .....
Name of Proprietor: .....
Location: .....

Certificate of Lease:
Date of issue: .....
Name of Lessor: .....
Name of Lessee: .....
Duration of Lease: .....
Location: .....

Tenancy Agreement:
Date of Agreement: .....
Name of the Landlord: .....
Name of the Tenant: .....
Duration of the Tenancy: .....
Location: .....

C.2 Provide sufficient information (maps or sketch plans of the area or areas to which the application relates):
.....
.....

C.3 Provide proof of planning authorization from Planning Authorities on the following:
(*a*) Approved Building Plans; and
(*b*) Approved Storage Construction Plans.

SECTION D
TECHNICAL INFORMATION

Submit single line diagram(s) of the plant or factory by means of which the Applicant intends to produce the type of liquid fuel or gas in question. Identify any parts of that plant or factory, if any, which will not be in possession or control of the applicant. The diagram should be accompanied by a certificate of approval from the Chief Inspector of Factories of Malaŵi.

SECTION E
FINANCIAL INFORMATION

E.1 Income Statement:
Provide statements and a five year business plan stating the proposed investment plan replete with projected sales and cash flow statements, profit and loss balance sheet and market projections. Attach copies of the current and or budgeted balance sheet, rate of return, profit and loss account and source and application of funds for current and next five years. Indicate major cost items such as staff costs, maintenance, etc.

E.2 Investment Program:
Investment Program for current and the next five years. Attach copies of the detailed scheme or schemes prepared by a competent engineer and mode and cost of financing such a scheme.

E.3 Fixed Assets:
Provide the Applicant's summary of total assets available and intended for use in the production process. This information should be accompanied by a certificate of verification from certified public accountants.

E.4 Audited Accounts:
Provide copies of the latest audited accounts of the applicant.

SECTION F

INFORMATION ON HUMAN RESOURCES

F. Personnel—

(*a*) Submit details of the number of staff and employees and their categories and grades in the service of or to be recruited by the applicant, showing their qualifications and number of years of experience in similar jobs.

(*b*) Provide *curriculum vitae* of top management personnel of the applicant.

SECTION G

PERMITS FROM OTHER GOVERNMENT DEPARTMENTS OR REGULATORY AUTHORITIES

Submit copies of the following permits or approvals issued by public or local authorities or other regulatory agencies

(*a*) Certificate of Registration of Workplace under the Occupational Society Health and Welfare Act (Cap. 55:07);

(*b*) Certificate of Environment Impact Assessment from the Department of Environmental Affairs; and

(*c*) any other certificates or permits.

SECTION H

ADVERTISING NOTICE

Attach a draft copy of the notice of advertisement as to representations or objections.

SECTION I

ENVIRONMENTAL CONSIDERATION

Provide a brief description of the likely negative impact of the storage facilities on natural resources and environment and mitigation measures proposed.

SECTION J

ADDITIONAL INFORMATION

J. Please provide any other information which the applicant wishes to include with this application:

.....

.....

.....

.....

.....

.....

PART VII

LIQUID FUELS AND GAS (PRODUCTION AND SUPPLY) ACT

(CAP. 50:03)

REGISTRATION FORM FOR LIQUID FUELS AND GAS STORAGE reg. 99

SECTION A

PARTICULARS OF APPLICANT

A.1 Full Name of Applicant:.....

.....

A.2 Address of Applicant, or in the case of a body corporate, the registered office:

.....

.....

A.3 Telephone Number of Applicant: .....

A.4 Fax Number: .....

A.5 E-mail Address: .....

A.6 Details of Contact Person:

Full Name: .....

Telephone Number: .....

Fax Number: .....

E-mail Address: .....

A.7 Legal personality of Applicant: .....

.....

A.8 If the applicant is a company provide the following—

(*a*) Full names of shareholders and their holding percentages;

(*b*) Full names and occupation of Directors;

(*c*) Certificate of Incorporation; and

(*d*) Memorandum and Articles of Association.

SECTION B

COMMENCEMENT DATE, PURPOSE AND DURATION OF REGISTRATION

B.1 Desired date from which the registration (if granted) is to take effect:

.....

B.2 Duration of the registration from commencement date: .....

B.3 Purpose for registration: .....

B.4 Type of application (issue, transfer, amendment or renewal): .....

SECTION C

INFORMATION ON HUMAN RESOURCES

C. Personnel—

(*a*) Submit details of the number of staff and employees and their categories and grades in the service of or to be recruited by the applicant, showing their qualifications and number of years of experience in similar jobs; and

(*b*) Provide *curriculum vitae* of top management personnel of the applicant.

SECTION D

PERMITS FROM OTHER GOVERNMENT OR REGULATORY AUTHORITIES

Submit copies of permits or approvals issued by public or local authority or other regulatory agencies necessary for the operation of the Coal Supply business.

SECTION E

ENVIRONMENTAL CONSIDERATION

(*a*) Provide a brief description of the likely negative impact of the storage of liquid fuels and gas on natural resources and environment and mitigation measures proposed.

(*b*) Provide a copy of the approved environmental mitigation plan (if any) by the relevant authority.

SECTION F

ADDITIONAL INFORMATION

Please provide any other relevant information which the applicant wishes to include with this application:

.....

.....

.....

.....

.....

.....

SECOND SCHEDULE reg. 10

LICENCES

PART I

LIQUID FUELS AND GAS (PRODUCTION AND SUPPLY) ACT

(CAP. 50:03)

PRODUCTION LICENCE [No. .....]

This Licence is hereby granted to: .....
of ..... for the
production of ..... at the place(s)
described in Form LFG 1, subject to the conditions prescribed by the Liquid Fuels and Gas (Production and Supply) Regulations, 2009, made under the Liquid Fuels and Gas (Production and Supply) Act (Cap. 50:03).

This Licence shall expire on the ..... day of ..... next following the date of issue hereof, and may be renewed on application being made for this purpose.

Issued this ..... day of ....., 20.....

.....

for Malaŵi Energy Regulatory Authority

This Licence is issued subject to the Liquid Fuels and Gas (Production and Supply) Regulations, 2009, of which the Licensee admits cognizance.

PART II

LIQUID FUELS AND GAS (PRODUCTION AND SUPPLY) ACT

(CAP. 50:03)

IMPORTATION LICENCE [No. .....]

This Licence is hereby granted to: .....
of ..... for the
importation of .....
from ..... into Malaŵi, subject to the conditions prescribed by the Liquid Fuels and Gas (Production and Supply) Regulations, 2009, made under the Liquid Fuels and Gas (Production and Supply) Act (Cap. 50:03).

This Licence shall expire on the ..... day of ..... next following the date of issue hereof, and max be renewed on application being made for this purpose.

Issued this ..... day of ....., 20.....

.....

for Malaŵi Energy Regulatory Authority

This Licence is issued subject to the Liquid Fuels and Gas (Production and Supply) Regulations, 2009. of which the Licensee admits cognizance.

PART III

LIQUID FUELS AND GAS (PRODUCTION AND SUPPLY) ACT

(CAP. 50:03)

TRANSPORTATION LICENCE [No. .....]

This Licence is hereby granted to: .....
of ..... for the
transportation of .....
from ..... to ..... subject to the conditions prescribed by the Liquid Fuels and Gas (Production and Supply) Regulations, 2009, made under the Liquid Fuels and Gas (Production and Supply) Act (Cap. 50:03).

This Licence shall expire on the ..... day of ..... next following the date of issue hereof, and may be renewed on application being made for this purpose.

Issued this ..... day of ....., 20.....

.....
for Malaŵi Energy Regulatory Authority

This Licence is issued subject to the Liquid Fuels and Gas (Production and Supply) Regulations, 2009, of which the Licensee admits cognizance.

PART IV

LIQUID FUELS AND GAS (PRODUCTION AND SUPPLY) ACT

(CAP. 50:03)

STORAGE LICENCE [No. .....]

This Licence is hereby granted to: .....
of ..... for the
storage of ..... at the place(s) described in Form LFG 4 submitted to the Authority, subject to the conditions prescribed by the Liquid Fuels and Gas (Production and Supply) Regulations, 2009, made under the Liquid Fuels and Gas (Production and Supply) Act (Cap. 50:03).

This Licence shall expire on the ..... day of ..... next following the date of issue hereof, and may be renewed on application being made for this purpose.

Issued this ..... day of ....., 20.....

.....
for Malaŵi Energy Regulatory Authority

This Licence is issued subject to the Liquid Fuels and Gas (Production and Supply) Regulations, 2009, of which the Licensee admits cognizance.

PART V

LIQUID FUELS AND GAS (PRODUCTION AND SUPPLY) ACT

(CAP. 50:03)

WHOLESALE LICENCE [No. .....]

This Licence is hereby granted to: .....

of ..... for the

wholesale of ..... at the place(s) described in Form LFG 5 submitted to the Authority, subject to the conditions prescribed by the Liquid Fuels and Gas (Production and Supply) Regulations, 2009, made under the Liquid Fuels and Gas (Production and Supply) Act (Cap. 50:03).

This Licence shall expire on the ..... day of ..... next following the date of issue hereof, and may be renewed on application being made for this purpose.

Issued this ..... day of ....., 20.....

.....

for Malaŵi Energy Regulatory Authority

This Licence is issued subject to the Liquid Fuels and Gas (Production and Supply) Regulations, 2009, of which the Licensee admits cognizance.

PART VI

LIQUID FUELS AND GAS (PRODUCTION AND SUPPLY) ACT

(CAP. 50:03)

RETAIL LICENCE [No. .....]

This Licence is hereby granted to: .....

of ..... for the

retailing of ..... at the place(s) described in Form LFG 6 submitted to the Authority, subject to the conditions prescribed by the Liquid Fuels and Gas (Production and Supply) Regulations, 2009, made under the Liquid Fuels and Gas (Production and Supply) Act (Cap. 50:03).

This Licence shall expire on the ..... day of ..... next following the date of issue hereof, and may be renewed on application being made for this purpose.

Issued this ..... day of ....., 20.....

.....

for Malaŵi Energy Regulatory Authority

This Licence is issued subject to the Liquid Fuels and Gas (Production and Supply) Regulations, 2009, of which the Licensee admits cognizance.

PART VII

LIQUID FUELS AND GAS (PRODUCTION AND SUPPLY) ACT

(CAP. 50:03)

STORAGE REGISTRATION CERTIFICATE [No. .....]

This Registration Certificate is hereby issued to: .....

of ..... for the

storage of .....

at (physical address) subject to the conditions prescribed by the Liquid Fuels and Gas (Production and Supply) Regulations, 2009, made under the Liquid Fuels and Gas (Production and Supply) Act (Cap. 50:03).

This Registration Certificate shall expire on the ..... day of ..... next following the date of issue hereof, and may be renewed on application being made for this purpose.

Issued this ..... day of ....., 20.....

.....

for Malaŵi Energy Regulatory Authority

This Registration Certificate is issued subject to the Liquid fuels and Gas (Production and Supply) Regulations, 2009, of which the Licensee admits cognizance.

G.N. 31/2010

THIRD SCHEDULE

regs. 7, 12, 17, 22, 26, 30, 34, 38 and 99

LICENCE AND REGISTRATION FEES

			K	t
1.	On application for a licence or renewal thereof—			
	(*a*)	Production Licence:		
		(i) crude oil production	5 tambala/litre	
		(ii) crude oil refining	5 tambala/litre	
		(iii) production of bio-fuels	2.5 tambala/litre	
	(*b*)	Importation Licence:		
		(i) lubricants	300,000	00
		(ii) other liquid fuels and gas	300,000	00
	(*c*)	Transport Licence:		
		(i) 1 to 3 trucks/tankers	50,000	00
		(ii) 4 to 10 trucks/tankers	150,000	00
		(iii) 11 and above trucks/tankers	250,000	00

		K	t
(*d*)	Storage Licence:		
	(i) for commercial use	200,000	00
	(ii) for own use	300,000	00
(*e*)	Wholesale Licence:		
	(i) lubricants	250,000	00
	(ii) other liquid fuels and gas	300,000	00
(*f*)	Retail Licence:		
	(i) lubricants	50,000	00
	(ii) other liquid fuels and gas	100,000	00
2.	On issue of a licence— Applicable to all types of license considered under (1) of this of Third Schedule	5,000	00
3.	Registration fees for liquid fuels for commercial purposes and annual renewal	5,000	00

FOURTH SCHEDULE

G.N. 31/2010

STANDARD SPECIFICATIONS

TABLE 1

regs. 62, 63 and 66

PETROL STANDARD SPECIFICATIONS

Specification requirements for R93 leaded petrol, inland grade unleaded petrol R93 and coastal grade unleaded petrol R95

Property	*Specification requirement*		*Test method*	
	R 93 unleaded	R95 unleaded	ASTM	IP
Octane rating—				
(*a*) Research octane number (RON), minimum . .	93	95	D2699	237
(*b*) Motor octane number (MON), minimum . .	83	85	D2700	236
(*c*) Motor octane number for blends containing more than 2% (v/v) alcohol, min	85	87	D2700	236
Colour	Yellowish	Yellowish	Visual	
Density at 20°C, kg/I . .	0,710-0,785		D1298 D4052	160 365

Distillation—				
(*a*) Temperature, °C for—				
(i) 10% (v/v) evaporated, max	65			
(ii) 50% (v/v) evaporated	77–115			
(iii) 90% (v/v) evaporated, max . .	185		D86	123
(*b*) Final boiling point, °C, max	215			
(*c*) Residue, % (v/v), max	2.0			
(*d*) Evaporated to 70°C (E70), % (v/v)	Report			
Reid vapour pressure (RVP), kPa	45–75		*See* Note 7	*See* Note 7
Flexible volatility index (FVI=RVP+0,7 E70)—				
(*a*) FV1 (summer[1]), maximum	89	95	*See* Note 7	*See* Note 7
(*b*) FVM (winter[1]), maximum	94	100		
Lead content, g Pb/1, maximum	0.013		D3116, D5059, D3237, D3348	
Induction period, minutes, minimum	360 4		D525	40
Existent gum, mg 100 ml, maximum	4		ISO 6245, D381	131
Potential gum, (2,5 h at 100ºC), mg/100 ml, maximum	4		D873	138
Sulphur content, % (m/m), maximum	0.05		D1266, D3120	107, 243 336
Benzene, vol % maximum	5		—	—
Copper strip corrosion (3 h at 50°C), maximum	Classification 1		D130	154
Total acidity[2], mg KOH/g, maximum	0,03		D3242	354
Oxygen contents[3], % (m/m), maximum	3.7	2.8	D4815	—
Oxidation stability	360[4]			
Contains a deposit control additive	yes	yes		

([1]) Summer = 1 September to 3 March;
Winter = 1 April to 31 August.

([2]) Applicable only to fuels containing oxygenates.

([3]) Any alcohol blended into the fuel shall contain a minimum of 90% (m/m) ethanol with the balance I-propanol and n-propanol, and only trace quantities of other alcohols. Minimum alcohol content to be anhydrous alcohol of 99.5% v/v ethanol minimum (99% m/m).

3,7% (m/m) oxygen	=	approximately 20% (v/v) MTBE
	=	approximately 9.5% (v/v) ethanol
2,8% (m/m) oxygen	=	approximately 15% (v/v) MTBE
	=	approximately 7.5% (v/v) ethanol

4. Petrol which has to be stored for extended periods shall have an oxidation stability of not less than 480 minutes.

NOTES:

1. Ethers containing five or more carbon atoms per molecule may be included up to maximum concentration as indicated in the standard. The oxygen content of the blend will be determined by method ASTM D4815 (MTBE) and such other C_5 ethers.
2. ASTM D1250/IP 200 (Standard guide for petroleum measurement tables) should be used for correlation of densities at 15°C and 20°C, respectively.
3. METHODS OF TEST:
   - 3.1 For methods of tests use the applicable method as specified in last 2 columns of Table 1. Also *see* Annex F for full titles.
   - 3.2 Reid vapour pressure
     - 3.2.1 When testing fuels containing no alcohol, use test method ASTM D323 or IP 69.
     - 3.2.2 When testing fuel blends containing oxygenates in the form of alcohols or alcohol/ether mixtures, use test method ASTM D4953.

   Note— When alcohol is present in the fuel, the water introduced when test method ASTM D323 or IP 69 is used, will extract some of the alcohol causing low Reid vapour pressure values to be obtained.

   - 3.3 Flexible volatility index (FVI):

     The flexible volatility index is an additional parameter which characterizes the volatility properties of petrol, and is calculated using the formula:

     FVI = RVP + 0,7 E70

Where

RVP is the Reid vapour pressure in kilopascals; and

E70 is the percentage of petrol, by volume, evaporated to 70°C.

BLENDING LEVELS

MINIMUM LEVEL OF ORGANIC OXYGENATES

Not less than twenty per centum (20%) v/v.

TABLE 2 regs. 71, 74, 75 and 76

DIESEL STANDARD SPECIFICATIONS

Characteristics	*HSD Requirement*	*LDO Requirement*	*Testing Method*
Acidity, inorganic	Nil	Nil	IS 1448 P2
Acidity, total mg of KOH/g, maximum	0.50		IS 1448 P2
Ash, per cent by mass, maximum	0.01	0.02	IP4
Carbon residue (Ramsbottom) per cent by mass, maximum	0.20	1.50	IS 1448 P: 8
Cetane number, minimum	45		IS 1448 P: 9 IP 41 ASTM D976/613
Pour point, maximum	5 degrees Celsius		IP 15
Copper strip corrosion for 3 hours at 100 degrees Celsius	2	2	IP 15 ASTM D 130 IP
Flash point (Pensky Marterns) degrees Celsius	60		ASTM D445
Sediment, per cent by mass, max.	0.03	0.01	ASTM D473/1744
Total sulphur per cent (m/m), maximum		0.55	IP 61
Water content, per cent (v/v), maximum . .		0.55	IP 74
Total sediments mg per 100ml	1.0		Appendix A
Distillation temperatures for 90% recovery degrees Celsius, max.		362	IP 123
Final boiling point		385	IP 123
Density: minimum	0.820		ASTM
maximum	0.870		D1298

APPENDIX A reg. 76

TESTING FOR THE DETERMINATION OF TOTAL SEDIMENTS IN DIESEL FUEL

A.1 SCOPE

A1.1 This method prescribes a procedure of assessing the storage stability of distillate fuels by measurement of amount of insoluble material formed under test conditions.

A.2 OUTLINE OF THE METHOD

A.2.1 The fuel is stored in a glass bottle, shielded from light for 16 hours at 99°C and the amount of insoluble material formed is determined. The colour of the fuel before and after test is reported. Duplicate tests shall be carried out on each fuel.

A.3 APPARATUS

A.3.1 Bottles of heat-resistant glass: One litre capacity made of 3 mm nominal thick glass, conforming to dimensions given in Table A1 and Fig. 1. Soft glass shall not be used as it may inhibit the formation of sediment.

TABLE A.1: DIMENSIONS OF HEAT-RESISTANT GLASS

Capacity	1 litre
Total height (from the base to top of the neck)	210 mm (approx.)
External diameter (at the bottom)	104 mm (approx.)
Length of the neck	42 mm (approx.)
Internal diameter of the neck (at the top)	39 mm (approx.)

A.3.2 Air oven: Controlled at 105 ±2°C.

A.3.3 Oil bath: Controlled at 99 ± 0.5°C, of capacity sufficient to allow not less than ten litres of oil for first bottle and five litres for each additional bottle. The bath shall be fitted with a screen to shield the bottles from light while allowing access of fair air to the sample. The covering of the bottles shall be done either using a 250 ml lipped beaker or a 100 ml silica dish supported on a glass triangle. Both these covers shall be painted black. A suitable arrangement is shown in Fig 2.

A.3.4 Filtering medium: A gooch crucible as described in Fig 2 fitted with a Whitman glass fibre paper Grade GF/A of 3.2 cm diameter.

A.3.5 Filtering accessories: Holder for crucible approximately 4.5 cm in diameter, Buchner filtering flask, vacuum pump and manometer indicating a differential pressure of 125 to 300 mm Hg.

A.3.6 Analytical balance: Accurate to 0.1 mg.

A.3.7 Evaporation bath: Beaker and air-over.

A.3.8 Apparatus for measuring colour of petroleum products by ASTM colour scale.

Note: *In case of non-availability of gooch crucible, a G4 sintered glass crucible may be used.*

FIGURE 2

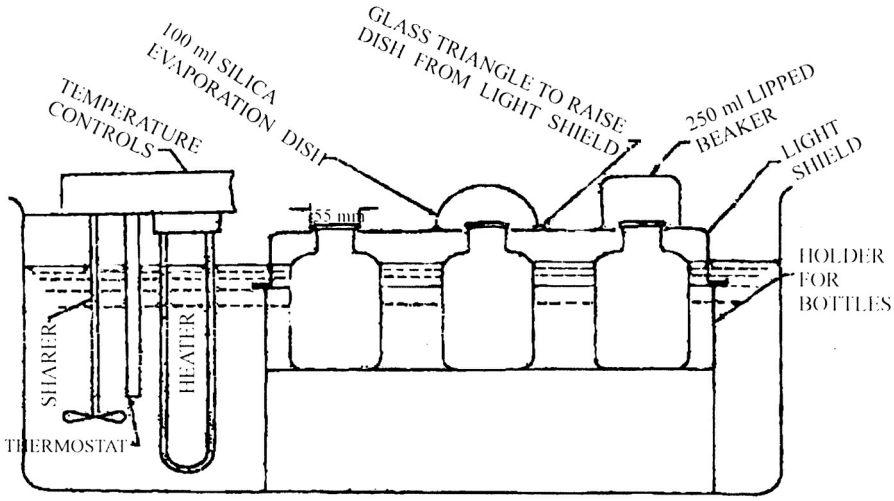

Diagrammatic View of Oil-Bath Assembly

A.4 MATERIALS

A.4.1 Normal heptane

A.4.2 Gum solvent: A mixture of equal volumes of analytical reagent grades of acetone, chloroform and methanol.

A.5 PROCEDURE

A.5.1 Wash with gum solvent and air dry all glassware which comes into contact with fuel.

CAUTION: The vapours are toxic

A.5.2 Then soak the glassware overnight in 98 per cent sulphuric acid. Pour off the sulphuric acid, allow to drain, rinse with tap water at least three times, then rinse with distilled water and finally with acetone. Dry all glassware with dust free air and store it in a clean oven, maintain at 105°C until required.

A.5.3 Fit two gooch crucible with the filter paper (smooth side down), or use G4 sintered glass crucibles, dry in an oven at 105°C for at least one hour and cool for one hour in a desiccator, until required.

A.5.4 Shake the test sample to ensure homogeneity and filter at least 900 ml through the unweighed cruicible into a clean flask.

A.5.5 Determine the colour of the filtered fuel by ASTM method as in IS 1448 (P12).

A.5.6 Measure 700 ± 10 ml of filtered fuel into a clean bottle and shake the bottle vigorously for two minutes to generate the oil thoroughly. Place the un-stoppered bottle in the oil-bath at 99 ± 0.5°C with the level of fuel in the bottle at least 2.5 cm below the oil surface in the bath.

A.5.6.1 Position the shield and opaque covers as shown in Fig 2. Leave the bottle immersed for 16 ± 5°C.

A.5.7 Filter the fuel through the weighed crucible into a cleaned 1 litre Buchner flask maintained at a vacuum of 200 to 300 mm Hg.

Transfer the filtered fuel to a clean bottle, retaining this sample for determination of the colour.

A.5.8 Replace the crucible on the Bucher flask and transfer to the filter any sludge remaining in the bottle, emptying at least three washing and using a total volume of 150 ml of normal heptane.

A.5.9 Finally, wash the filter with 150 ml of normal heptane, remove the crucible and wipe the outside with clean dust-free material, and dry for one hour in an oven at 105 ± 2°C. Cool the crucible in a dessicator for one hour and reweigh.

A.5.10 Determining the colour of the retained fuel (*See* A.5.7) by the methods prescribed in IS 1448 (P 12).

A.6 REPORTING

A.6.1 Reporting the following:

A.6.1.1 Filtered sediment, mg per 100 ml.

A.6.1.2 Colour of filtered fuel, AST > colour (*See* A.5.5).

A.6.1.3 Colour of filtered fuel after test, ASTM colour (*See* A.5.9).

TABLE 3 reg. 79

REQUIREMENTS FOR ILLUMINATING PARAFFIN

Characteristics	*Requirements*	*Testing Method*
***Distillation*:** Recovery at 200°C, v/v Final boiling point, °C (maximum) Residue, per cent per v/v (maximum)	 40—60 280 2.0	 IP 123 ASTM D 86 ISO 3405
Flash Point*:* **Abel,** °C (minimum) . . . . . . Tag, °C (minimum)	 38 38	 IP 170 ASTM D56
Smoke Point	*See* 42	IP 57
Colour: IP glass standard (maximum) . . . . Saybolt, (minimum).	 1.5 +25	 IP 17 ASTM D156
Sulphur Content*:* % m/m (maximum)	 0.05	 IP 107
Copper Corrosion*:* (3h at 50ºC); . . . . . . ASTM scale classification (maximum)	 1	 IP 154 ASTM D130
Density (at 20ºC, kg/l) . . . . . . Char value, mg/kg (maximum) . . .	0.75,080 10	 IP ASTM D187

TABLE 4 reg. 80

SMOKE POINT

Sulphur content, mass fraction% (m/m)	*Smoke point:* °C
0.000-0.015	25
0.016-0.032	27
0.033-0.05	29

APPENDIX B reg 81

QUALITY VERIFICATION OF ILLUMINATING PARAFFIN

A.1 QUALITY VERIFICATION

A1.1 When a purchaser requires on-going verification of the quality of illuminating paraffin, if it is suggested that, instead of concentrating solely on evaluation of the final product, he also direct his attention to the manufacture's quality system.

A1.2 If the illuminating paraffin does not bear the certification mark and no information about the implementation of quality control or testing during manufacture is available to help in assessing the quality of a consignment, and a purchaser wishes to establish by inspection and testing of samples of the final products whether a consignment of illuminating paraffin complies with this standard, the sampling procedure given in A2 can be applied.

A.2 SAMPLING AND COMPLIANCE WITH THIS STANDARD

A2.1 Sampling

A2.1.1 General: The sampling procedure given in A2.1.3 shall be applied in determining whether a lot complies with the relevant requirements of this standard. The samples so drawn shall be deemed to represent the lot.

A2.1.2 Definitions

A2.1.2.1 Defective: A test sample of a paraffin that fails in one or more respects to comply with the relevant requirements of this standard.

A2.1.2.2 Lot: That quantity of illuminating paraffin in containers bearing the same brand name or trade mark and batch identification, from one manufacturer, and submitted at any one time for inspection and testing.

A.2.1.3 Samples for inspection and testing: After checking for compliance with the relevant requirements of 4, use the relevant sampling procedure described in ASTM D4057 and ASTM D4177 as appropriate to determine whether a lot complies with this specification, and deem the samples so taken to represent the lot for the respective properties.

A2.2 Compliance with this standard: Deem the lot to comply with the relevant requirements of this standard if, on inspection of the containers or tankers in the lot and on testing of the sample taken in accordance with A2.1.3, no defect is found.

FIFTH SCHEDULE

PREPARATION, CONSTRUCTION AND MAINTENANCE OF STORAGE FACILITIES

PART I

reg. 93

STORAGE TANKS FOR LIQUID FUELS

1. *Storage tanks specifications*

All Storage Tanks shall be made of mild steel or any other approved material designed and protected according to the standards approved by the Authority in conjunction with the Malaŵi Bureau of Standards.

2. *Construction of storage tanks*

(*a*) Storage tanks may be constructed entirely below, partially above or completely above the surface of the ground.

(*b*) Storage tanks entirely below the ground shall be covered with soil or any other material approved by the Authority to a minimum depth of three hundred millimetres with the exception of manhole covers.

(*c*) Where there is possibility of water supplies, courses or drainage systems being contaminated, in the event of serious leakage from the storage tank, such tank shall be completely surrounded by concrete of such thickness as the Authority may deem sufficient.

3. *Modes of construction of storage tanks*

(*a*) Storage tanks constructed partially above the surface of the ground may be set in any one of the following approved ways set out herein below.

(*b*) The storage tank may be left exposed in a pit excavated in the ground, the sides of which shall be carried out to easy slopes and any such pit must be capable of holding at least ninety per cent of the total holding capacity of the tanks of the brand of liquid fuel in question. Any such storage tank may be bunded with clay or any other impermeable core as the case may be.

(*c*) Where the storage tank is not more than 13.7 metres in height, the same shall be sunk below the surface of the ground at a depth being not less than sixty per cent of its diameter and mounded over completely with soil to a minimum depth of three hundred millimetres, with the exception of the manhole covers.

(*d*) The storage tank may be sunk less than 1.5 metres below the surface of the ground and constructed and mounded as in paragraph (*c*) above and the soil shall be supported by retaining walls constructed in brick, concrete or any other material approved by the Authority:

Provided that where, in the event of serious leakage, there is a possibility of water supplies, courses or drainage systems being contaminated, the following additional conditions shall apply:

(i) Under the method provided for in paragraph (*b*) above, the floor and sides of the pit shall be formed of concrete unless otherwise approved by the Authority;

(ii) Under the methods provided for in paragraphs (*c*) and (*d*) above, the storage tank shall be constructed upon and mounded over with concrete of such thickness and composition as may be approved by the Authority or in its sole discretion, with puddle clay not less than three hundred millimetres in thickness.

(e) The storage tank may be constructed completely above the surface of the ground on the following conditions:

(i) The tanks shall be supported on brick, stone or concrete piers or by some other approved method.

(ii) The tanks shall be surrounded by a brick, stone or concrete wall or by an earth bund forming enclosure capable of holding the following capacities:

(*a*) in respect of bunds enclosing one tank, not less than ninety per cent of the tank capacity;

(*b*) in respect of bunds enclosing two tanks, not less than eighty per cent of the total capacity of the tanks;

(*c*) in respect of bunds enclosing more than two tanks, not less than seventy-five of the total capacity of the tanks in question;

(*d*) no water shall be allowed to accumulate in the enclosure;

(*e*) an air-space of not less than 2.5 per cent of the tanks' capacity, including the manhole, must be provided in the tanks to allow for expansion;

(*f*) provision of a fireproof roof over the unburied tanks where special conditions exist, such as danger from sparks; and

(*g*) tanks must be adequately protected from rust or corrosion.

(f) Where under the construction method in paragraph (*e*), in the event of serious leakage, there is a possibility of water supplies, courses or drainage systems adjacent to the installation being contaminated, the floor of the enclosure shall be formed of concrete or other material approved by the Authority and any such enclosure shall be drained by a pipe fitted with a valve actuated from the outside of the enclosure which shall always be kept closed except when actually in use.

4. *Minimum distances*

(*a*) The minimum distance between any storage tank and the boundary of the storage area shall be at least three metres and the minimum distance between storage tanks constructed partially above or completely above the surface of the ground shall also be at least three metres.

(*b*) The minimum distance between storage tanks constructed wholly below the surface of the ground and mounded over with soil to a depth of not less than three hundred millimetres shall be one metre.

PART II reg. 94

STORAGE SHEDS FOR LIQUID FUELS

1. *Construction of Storage Sheds*

(*a*) No storage shed shall be constructed and maintained otherwise other than in accordance with the provisions of these Regulations.

2. *Mode of Construction and Maintenance of Storage Sheds*

The construction and maintenance of all storage sheds for purposes of storing liquid fuels shall be in accordance with the following conditions—

(*a*) The storage sheds shall be constructed entirely of non-inflammable materials approved by the Authority.

(*b*) The storage sheds shall be at least one metre apart and shall be surrounded by clear space of at least sixteen metres in width.

(*c*) The storage sheds shall have doors which shall be constructed so as to open otherwise than inwards and which must be kept securely locked when the storage shed is not in use:

Provided that where the storage shed has a floor area exceeding nine square metres, it shall have at least two doors or other means of exit.

(*d*) All doorway sills and other openings of every storage shed shall be built up to a height of not less than one hundred and fifty millimetres above floor level of the shed or the floor shall be sunk to a depth of at least one hundred and fifty millimetres below the level of the ground, so that in either case no liquid fuels can flow out of the shed in the event of its escape from the receptacle in which it is contained.

(*e*) The storage sheds shall have adequate ventilation of such standard as the Authority may approve.

(*f*) Sufficient amounts of sand or dry earth and at least one approved fire extinguisher by the Authority shall be kept available in each storage shed for use in case of fire.

(*g*) No artificial light other than a filament electric lamp may be used within any shed:

Provided that artificial lighting and installation of the approved vapour-proof or gas-filled electric bulb may be used at a distance of not less than ten metres from the shed.

PART III reg. 95

STORAGE OF GAS

1. *Construction of Gas Storage Plants*

All gas storage plants shall be made of such material or materials and in such a manner as to comply with the internationally accepted best practices approved by the Authority in conjunction with the Malaŵi Bureau of Standards.

2. *Installation of Gas Storage Plants*

Subject to paragraph 1, every gas storage plant in Malaŵi shall be installed in open air and in an area protected by a storage shed or any other structure approved by the Authority.

3. Construction of Gas Storage Sheds

Every gas storage shed shall be constructed in the manner prescribed herein below—

(*a*) The roof shall be constructed in such a manner as to provide permanent ventilation by leaving the shed directly exposed to open air.

(*b*) The floor shall be recessed or filled so as to form a retaining space of sufficient capacity to contain at least seventy-five per cent of the gas therein.

(*c*) The shed shall be constructed far from other buildings and shall not be attached to any other building or buildings.

(*d*) The shed shall have approved and adequate protection from lightning.

(*e*) The shed shall be provided with such fire-fighting equipment which meets the approved standards.

4. Maintenance of Gas Storage Plants or Sheds

All gas storage plants or sheds shall be maintained in such a manner as to ensure utmost safety and to prevent gas leakages or unintentional opening of control valves.

5. Construction and Storage of Gas Cylinders

(*a*) All gas cylinders for compressed, dissolved or liquefied gas shall be constructed, marked and stored in accordance with the provisions of this Schedule.

(*b*) All gas cylinders shall be—

(i) made of approved material and of good construction, free from patent defects; and

(ii) fitted with approved and suitable pressure gauge.

(*c*) Every licensee shall store gas cylinders in the prescribed manner, and without prejudice to the generality of the foregoing, the licensee shall—

(i) store gas cylinders in such a manner as to protect them against excessive temperature variations, exposure to direct sunlight;

(ii) not store gas cylinders under conditions of continuous dampness;

(iii) keep gas cylinders in the upright position irrespective of their being charged or empty; and

(iv) provide to the Authority acceptable means of preventing violent shock if handled.

6. Marking of Gas Cylinders

All gas cylinders used for the storage or transportation of gas in Malaŵi shall be appropriately marked and labelled in legible letters and in English language and any other Malaŵian language approved by the Authority and stating—

(*a*) the name, trade name or trade mark of the supplier or the vendor, as the case may be;

(*b*) the accurate description of the contents therein;

(*c*) the MBS mark signifying compliance with the Malaŵi Bureau of Standards Certification Marking Scheme Regulations; and

(*d*) the words "flammable" together with the corresponding symbol for labelling dangerous goods.

FRANCHISING AND DEALERSHIP BY-LAWS

ARRANGEMENT OF BY-LAWS

BY-LAW

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FRANCHISING AND DEALERSHIP BY-LAWS

G.N. 8/2015

under s. 47

PART I

PRELIMINARY PROVISIONS

1. These By-laws may be cited as the Franchising and Dealership By-laws. Citation

2. In these By-laws, unless the context otherwise requires— Interpretation

"disclosure document" means a document that provides information about a franchisor and its franchise system;

"earnings projection" includes any information given by, or on behalf of the franchisor or franchisor's associate or agent, directly or indirectly, from which a specific level or range of actual or potential sales, costs, income, revenue or profits from franchises or business of the franchisor, franchisor's associates or affiliates of the franchisor of the same type as the franchise being offered can easily be ascertained;

"franchise" means a privilege or right officially granted by a franchisor holding a wholesale licence under the Act to a franchisee whereby the franchisee is granted the right to use a trademark, trade name, logo, advertising mark, service mark, major brand, commercial symbol or other identifying symbol or name owned by the franchisor in connexion with the retail sale of liquid fuels or gas supplied by the franchisor;

"franchise agreement" means a written agreement between the franchisor holding a wholesale licence under the Act to a franchisee that governs the relationship between the two entities for a specified

period of time for the purpose of engaging in the retail sale of liquid fuels or gas supplied by the franchisor;

"franchisee" means a Malaŵian person, firm, corporation, or entity wholly owned by a Malaŵian who or which has entered into a franchise agreement;

"franchisor" means a holder of a wholesale licence under the Act or an Oil Marketing Company who grants a franchise;

"major brand" means the primary trade name or trademark most commonly associated and identified with a franchisor;

"Oil Marketing Company" means a licensee which is a company engaged in the importation, wholesale, retail or distribution of liquid fuels or gas;

"period of emergency" includes the timeframe of operation of the National Emergency Plan under the Act or a legal declaration of state of emergency controlling, directing, restricting or prohibiting the sale, supply, use or consumption of liquid fuels or gas during a period of interruption, reduction or cessation of normal supplies of liquid fuels or gas;

"retailing" has the meaning ascribed to the term in the Liquid Fuels and Gas (Production and Supply) Amendment Regulations, 2010;

"retail outlet" means a place of business operated under a retail licence for sale of liquid fuels or gas on retail terms; and

Cap. 49:01 "Trademark" has the meaning ascribed to the term in the Trade Marks Act;

Application

3.—(1) These By-laws shall apply to all franchising arrangements under the Act.

(2) These By-laws shall apply in relation to a franchise agreement to the extent that they are not inconsistent with the operation of any law or a direction or order given or made during period of emergency.

PART II

General Provisions

Objectives of the By-laws

4. The Objectives of these By-laws are to—

(*a*) empower Malaŵians to participate in liquid fuels and gas supply operations through operation and ownership of retail outlets;

(*b*) regulate holders of wholesale licensees who own retail outlets;

(*c*) regulate the relationship of a franchisor and franchisee in the liquid fuels and gas industry;

(*d*) encourage fair trade practices between a franchisor and a franchisee;

(*e*) provide guidelines for franchise agreements in the liquid fuels and gas industry; and

(*f*) eliminate discrimination or preferential treatment of franchisees by franchisors.

Wholesale licensee not to operate more than two retail outlets

5.—(1) A holder of a wholesale licence shall not operate, own, manage, run or control more than two retail outlets.

(2) Every holder of a wholesale licence and every Oil Marketing Company shall, in an open and transparent manner, invite the general public, to make an application to operate, own, or run retail outlets under a franchising arrangements.

Relationships excluded from franchising

6. For purposes of these By-laws, each of the following shall not in itself, constitute a franchise arrangement—

(*a*) an employer and employee relationship;

(*b*) a partnership;

(*c*) a landlord and tenant relationship;

(*d*) a mortgagor and mortgagee relationship;

(*e*) a lender and borrower relationship;

(*f*) a holding company and its subsidiary; or

(*g*) any other relationship that is contrary to the objectives of these By-laws.

Approval and filing of franchise agreements

7.—(1) Every franchisor shall develop and submit a copy of its standard franchise agreement to the Authority for approval.

(2) A franchisor and franchisee shall file with the Authority a copy of a duly executed franchise agreement and all amendments when they are made.

Obligations of parties to a franchise agreement

8.—(1) Every franchise agreement shall provide for obligations of a franchisor and franchisee during the term of the franchise.

(2) A franchise agreement shall provide for—

(*a*) all costs, and charges applicable to the franchise agreement;

(*b*) the maximum period of time between order and delivery of liquid fuel and gas;

(*c*) method of payments;

(*d*) provision of training by the franchisor to the franchisee and its employees before the franchised business starts operating and during the operation of the franchised business;

(*e*) maintenance and compliance with regulatory requirements and standards;

(*f*) term of the franchise agreement; and

(*g*) the retail outlet to which the franchise apply.

(3) Obligations of the parties to the franchise agreement shall only be amended by mutual consent of the parties.

Restrictions on the nature of obligations in a franchise agreement

9.—(1) A franchisor shall not impose an obligation on the franchisee that is likely to be impossible or unreasonably onerous to perform at the time when it is required to be performed.

(2) Where a franchise agreement contains a provision of a kind referred to in paragraph (1), that provision shall be void.

(3) Where a provision of an agreement is rendered void by the operation of paragraph (2), the validity of the franchise agreement shall not be otherwise affected.

(4) Where there is a dispute concerning whether an obligation under a franchise agreement is impossible or unreasonably onerous to perform, such dispute shall be referred to the Authority for arbitration as provided for under the Energy Regulation Act.

Cap. 73:02

Franchisor's obligation to supply liquid fuel or gas

10.—(1) A franchisor shall, during the term of a franchise agreement, supply to a franchisee's retail outlet such quantity of liquid fuels or gas as is from time to time reasonably required by the franchisee for retail sale by that franchisee in accordance with the terms of the franchise.

(2) Notwithstanding paragraph (1), a franchisor may not supply liquid fuel and gas to a franchisee during a period in which—

(*a*) the franchisee fails or refuses to comply with a provision of the franchise agreement relating to payment or safety standards with respect to liquid fuels or gas supplied or to be supplied by the franchisor; or

(*b*) the franchisor is, by reason of a shortage of supplies due to an industrial dispute or circumstances beyond its control, unable to supply liquid fuels or gas as the franchisee requires.

(3) Where paragraph 2 (*b*) applies, the franchisor shall, to the best of its ability, endeavour to supply liquid fuels or gas to all persons who are franchisees in relation to franchise to which the franchisor is a party in a fair and equitable manner as between each of its franchisees and as between its franchisees and any other persons to whom it supplies liquid fuels and gas having regard to the respective needs of its franchisees and the public.

Transfer or assignments of a franchise agreement

11.—(1) A franchise agreement shall provide conditions for assignment or transfer of a franchisee's and franchisor's rights.

(2) A provision in the franchise agreement that unduly or unreasonably restricts the transfer or assignment of rights shall be void.

PART III

Disclosure Procedures

Disclosure document

12.—(1) A franchisor shall, thirty days before signing of a franchise agreement, provide a disclosure document to a prospective franchisee.

(2) A prospective franchisee shall not disclose the contents of a disclosure document to any third party save for purposes of seeking mandatory advice as provided for in by-law 15.

(3) A prospective franchisee shall be liable for any unlawful disclosure of the contents of the disclosure document.

Purpose of disclosure document

13. A disclosure document shall—

(*a*) give to a prospective franchisee, or a franchisee proposing to enter into, renew or extend a franchise agreement, information from the franchisor to help the franchisee make a reasonably informed decision about the franchise; and

(*b*) give a franchisee current information that is material to the running of the franchised business.

Contents of disclosure document

14. A disclosure document shall provide information on the following—

(*a*) business experience of the franchisor;

(*b*) earning projections of a retail outlet;

(*c*) whether the franchisor is involved in any litigation or arbitral proceedings that may affect the franchisor's obligations;

(*d*) other existing franchises;

(*e*) a trade mark used to identify, and a patent or copyright that is material to the intended franchise agreement;

(*f*) any judgment or pending proceedings that could affect ownership or use of the trade mark patent or copyright;

(*g*) goods or services supplied by the franchisor;

(*h*) restriction of goods and service that the franchisee may supply;

(*i*) payments required to be made under the franchise agreement;

(*j*) financing arrangements under the franchise; and

(*k*) indemnity and guarantees applicable to the franchise agreement.

Mandatory advice

15.—(1) The franchisor shall not enter into, renew or extend a franchise agreement unless the franchisor has received from the franchisee or prospective franchisee, a written statement that the franchisee or prospective franchisee has received, read and has had a reasonable opportunity to understand the disclosure document.

(2) The written statement in paragraph (1), shall include the following—

(*a*) signed statements, that the prospective franchisee has been given advice about the proposed franchise or franchised business, by any of the following documents—

(i) an independent legal adviser;

(ii) an independent business adviser; or

(iii) an independent accountant;

(*b*) for each kind of statement not received under paragraph (*a*), a signed statement by the prospective franchisee that he—

(i) has been given advice related to the proposed franchise agreement or franchised business; or

(ii) has been informed of his right to seek prior legal advice but has decided not to seek it.

PART IV

Termination and Renewal of a Franchise Agreement

Termination of a franchise agreement

16.—(1) A franchise agreement shall provide for the termination of the agreement and the grounds thereof.

(2) Subject to by-law 18, termination of the franchise agreement for reasons other than expiry of the term of the agreement shall be preceded by a ninety days written notice and the grounds thereof from the party proposing to terminate the agreement.

(3) Where a party to a franchise agreement intends to terminate the agreement on grounds of breach by the other part, the party in breach shall be given a reasonable opportunity to remedy the breach.

Automatic termination of a franchise agreement

17. Notwithstanding by-law 16 (2) and (3), a franchise agreement shall terminate automatically where a party to a franchise agreement—

(*a*) no longer holds a licence that is required to carry on the franchised business;

(*b*) becomes bankrupt, insolvent or under administration of an externally administered body corporate;

(*c*) voluntarily abandons the franchised business or the franchise relationship; or

(*d*) is unable to discharge the obligations under the franchise agreement for a reason which is beyond the control of the party.

Renewal of a franchise agreement

18.—(1) Where a franchisor proposes to renew a franchise agreement, it shall, not later than ninety days, before the date of expiry of the agreement, serve on the franchisee a notice in writing offering to renew the franchise agreement.

(2) A notice under paragraph (1) may include a proposal, made in good faith and in the normal course of business, to change the terms of the franchise agreement which differ from those of the existing agreement in the manner specified in the notice.

(3) For the purposes of this by-law, a proposal shall not be taken to be made in accordance with paragraph (2) if, under the proposal—

(*a*) an amount payable by a franchisee under the franchise agreement as proposed to be renewed excluding an amount payable in respect of liquid fuels or other stock in trade, is calculated or determined in such a manner as to be unreasonable, having regard to the market value of any interest, goods or services to which the amount relates; or

(*b*) the provisions of the proposed renewed agreement are unreasonable or onerous to perform by the franchisee.

(4) Where a franchisee receives a notice from the franchisor in accordance with paragraph (2), the franchisee shall, no later than sixty days before the expiry of the franchise agreement, respond to the proposal of the franchisor by accepting or rejecting the proposal to renew the franchise.

(5) A franchisor shall not refuse or fail to renew the franchise agreement unless it has served on the franchisee, not later than ninety days before the date of expiry of the agreement, a notice in writing of its decision not to renew the agreement, setting out full particulars of the grounds, including a statement of the facts relating to the grounds on which the decision is based.

(6) A franchisee who is dissatisfied with the decision of a franchisor in not renewing the franchise agreement may apply to the Authority for a determination on whether it is just and equitable, having regard to all the circumstances including the grounds given for the non-renewal of the agreement.

PART V

Dispute Resolution

Mandatory dispute resolution procedures

19.—(1) Every franchise agreement shall provide for dispute resolution procedures that complies with this Part.

(2) A party to a franchise agreement may, where aggrieved, lodge in writing a complaint arising out of and in connexion with a franchise agreement, with the other party and state therein the nature of the grievance, supporting evidence and relief sought.

(3) The parties shall endeavour to resolve disputes arising out of and in connexion with a franchise agreement amicably.

Mandatory mediation

20.—(1) Notwithstanding by-law 19, where the parties fail to resolve a dispute amicably, either of the parties shall refer the dispute to a mutually agreed mediator as provided under the Energy Regulation Act.

(2) Mediation shall be conducted in accordance with the Energy Regulation By-laws.

Arbitration

21. Where a dispute arising out of, or in connexion with, a franchise agreement, fails to be resolved by mediation, either of the parties shall refer the dispute to arbitration to be conducted in accordance with the Energy Regulation By-laws.

Interim Relief

22. A party to a dispute shall not be precluded from seeking interim relief from a court of competent jurisdiction pending the resolution of the dispute in accordance with this Part.

PART VI

Offence and Penalties

Offences and penalties

23. Any person who contravenes any provision of these By-laws, commits an offence and shall on conviction, be liable to imprisonment for three months.

Corporate criminal liability

24. Where a person who is alleged to have committed an offence is a body corporate, the criminal charges shall be laid against the person who, at the time of the occurrence of the offence, was Chief Executive Officer, manager or head of the body corporate.

PART VII

Miscellaneous

Franchisor not to discriminate between franchisees

25. A franchisor shall not discriminate between its franchisees with regard to price, rebates, deliveries, fees, allowances, and credits for fuel supplied to its franchisees unless such discrimination is based on clear and objective grounds communicated to the franchisees at the time of signing the franchise agreement or thirty days prior to the implementation of the discrimination.

Books of Accounts

26. A franchisee shall have separate books of accounts relating to the business of liquid fuels and gas in accordance with by-law 14 of the Energy Regulation By-laws.

Transition arrangements for subsisting franchises

27. All subsisting franchise agreements shall be adjusted in order to comply with the provisions of these By-laws within a transition period of not more than six months from the effective date of these By-laws.

SLAUGHTER OF CATTLE

CHAPTER 50:04

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CHAPTER 50:04

SLAUGHTER OF CATTLE

ARRANGEMENT OF SECTIONS

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2. Interpretation
3. Prohibition against slaughter of immature and female cattle
4. Grounds for authorizing slaughter
5. Authority to slaughter cattle
6. Powers of entry
7. Order forbidding slaughter
8. Appeal to Minister
9. Penalty

CHAPTER 50:04

SLAUGHTER OF CATTLE

An Act to provide for control of the slaughter of cattle and for matters incidental thereto and connected therewith

6 of 1969
G. N. 16/1970

[6TH MAY, 1969]

Short title and application

1.—(1) This Act may be cited as the Slaughter of Cattle Act.

(2) Part I shall apply in such areas of Malaŵi and to such types or classes of cattle as the Minister may, from time to time, by notice specify.

(3) Part II shall apply throughout Malaŵi.

Interpretation

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

"cattle" includes bulls, cows, oxen, heifers and calves;

"C brand" means a mark in the shape of a half circle, the diameter of the circle being not less than 2 inches or more than 2½ inches;

"immature cattle" means male or female cattle having less than six permanent incisor teeth;

"Inspector" means any Veterinary Officer, Livestock Officer, Assistant Livestock Officer, Marketing Officer, Assistant Marketing Officer, or any other person authorized in writing by the Director of Animal Health and Industry for the purposes of this Act.

PART I

Prohibition against slaughter of immature and female cattle

3. In any area to which this Part applies, any person who slaughters any immature or female cattle, unless such slaughter is authorized by an Inspector in accordance with this Act, shall be guilty of an offence.

Grounds for authorizing slaughter

4. An Inspector shall not authorize the slaughter of any immature or female cattle unless he is satisfied that it is desirable or necessary on humanitarian or economic grounds or in the interests of cattle breeding in Malaŵi.

Authority to slaughter cattle

5.—(1) Where an Inspector authorizes the slaughter of any immature or female cattle he shall mark or cause to be marked such cattle with a C brand on the right cheek.

(2) The presence of a C brand on the right cheek of any immature or female cattle shall be *prima facie* evidence that the slaughter of such cattle has been authorized by an Inspector.

(3) Any person, other than an Inspector or a person so authorized by an Inspector, who marks any immature or female cattle with a C brand on the right cheek shall be guilty of an offence.

PART II

Powers of entry

6. For the purposes of this Act, any Inspector may, at all reasonable times, enter any land or premises where cattle are kept for slaughter or offered for sale and any abattoir or slaughter house or other place where cattle are slaughtered, and may inspect any cattle or carcasses found therein and may seize and remove any carcass or part of any carcass which would afford evidence of a contravention of this Act.

Order forbidding slaughter

7. Where an Inspector is of the opinion that the slaughter of any immature or female cattle in an area to which Part I has not been applied, is undesirable in the interests of cattle breeding in Malaŵi, he may issue to the owner of such cattle an order in writing forbidding the slaughter of such cattle without the authority of an Inspector, and thereafter any person who slaughters or causes the slaughter of such cattle, unless the slaughter is authorized by an Inspector in accordance with this Act, shall be guilty of an offence.

Appeal to Minister

8. Any person aggrieved by the refusal of an Inspector to authorize the slaughter of any immature or female cattle, or by the issue by an Inspector of an order forbidding the slaughter of any immature or female cattle, may apply to the Minister to review such refusal or issue, and the Minister's decision thereon shall be final and shall not be questioned in any court.

Penalty

9. Any person guilty of an offence under this Act shall be liable to a fine of one hundred pounds and to imprisonment for six months.

SUBSIDIARY LEGISLATION

APPLICATION OF ACT

G.N. 127/1972
182/1972

under s. 1

Part I of the Act has been applied to the whole of the area specified below—

The Blantyre District;
The Lilongwe District.

AUTOMOTIVE TRADES REGISTRATION AND FAIR PRACTICES

CHAPTER 50:05

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CHAPTER 50:05
AUTOMOTIVE TRADES REGISTRATION AND FAIR PRACTICES

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CHAPTER 50:05
AUTOMOTIVE TRADES REGISTRATION AND FAIR PRACTICES

19 of 1971
51 of 1971
G.N. 151/1972

An Act to provide for the registration of persons engaged for profit or reward in the business of the assembly, sale or repair of motor vehicles or internal combustion or other motor vehicle engines or of any electrical or mechanical parts or accessories of such vehicles or engines or engaged in businesses incidental to the maintenance or repair thereof and to provide for the protection of the general public from unfair or unconscionable practices by such persons and for matters related or incidental to any of the purposes aforesaid

[30TH SEPTEMBER, 1972]

PART I
PRELIMINARY

Short title, commencement and application

1. This Act may be cited as the Automotive Trades Registration and Fair Practices Act, and shall come into operation on such date as the Minister may appoint by notice published in the *Gazette:*

Provided that, by one notice or by separate notices, different dates may be appointed for the coming into operation of this Act in relation to different specified Regions, local authority areas, Districts or places in Malaŵi.

Interpretation

2. In this Act unless the context otherwise requires—

"annual renewal of registration meeting" means that meeting of the Board, held annually, at which renewals of registration are considered pursuant to section 21;

"automotive trade" means the commercial garage business operating throughout Malaŵi;

"Board" means the Automotive Trades Registration Board established by section 3;

*For parts of Malaŵi in relation to which Act is in operation see subordinate legislation at page 22 of this Chapter.

"Chairman" means the Chairman of the Board, appointed and designated pursuant to section 4 (2) (*a*);

"commercial garage" means any garage operated as a business for profit or reward;

"date of commencement" means, in relation to any Region, Local Government Area, District or place in Malaŵi, the date of the coming into operation of this Act, in such Region, Area, District or place, by notice pursuant to section 1 ;

"decision of the Minister" means any decision in respect of registration under this Act, made by the Minister under section 18, 24, 27 or 29;

"garage" means any premises used for the purpose of the assembly, repair or renovation of motor vehicles or of internal combustion or other engines designed to be the propelling force of such vehicles; or used for the purpose of the assembly, repair or renovation of mechanical or electrical components, parts or accessories of such vehicles or engines; or used for the assembly, repair or renovation of motor vehicle bodies, or for the breaking-up of old or damaged motor vehicles for scrap or salvage; or for the sale of new or second-hand motor vehicles; or for the re-treading or re-capping or other such renovation of motor vehicle tyres; and includes premises used for the manufacture, assembly, repair or renovation of self-propelled farm machinery; but does not include premises used solely as a petrol service station;

"investigation" means an investigation by the Board into the business conduct or practices of a registered proprietor pursuant to Part IV;

"motor vehicle" means any self-propelled vehicle whose propulsive force is provided by a built-in internal combustion or other engine, and includes a motor car, motor cycle and self-propelled farm and road machinery but shall not include any ship or aircraft;

"petrol service station" means any premises used for the purpose of the sale of petrol and oil for delivery on such premises directly into motor vehicles for immediate use therein; for the sale of petrol or oil in containers and quantities of not more than five gallons in respect of each sale; for the sale and installation of tyres for motor vehicles; for tyre repairs; and for the sale or replacement and the installation of electric bulbs, windscreen wipers and other minor motor vehicle accessories;

"premises" means any land and includes any buildings and trade fixtures upon such land;

"Public Service" bears the meaning ascribed to the term "public service" by section 98 of the Constitution;

"Register" means the Register of Commercial Garage Proprietors and Commercial Garages kept pursuant to section 14;

"registered garage" means a commercial garage premises registered as the place of business of a registered proprietor under Part III;

"registered proprietor" means the proprietor of a commercial garage registered in respect of such garage under Part III;

"Registrar" means the Secretary to the Board designated pursuant to section 6;

"registration" means the registration of commercial garage proprietors and commercial garages under Part III;

"registration year" means the twelve month period from 1st January to 31st December, or any lesser period ending on the 31st December, during which any registration under this Act is subsisting;

"renewal of registration" means the registration, pursuant to section 21, of an existing registered proprietor in respect of a particular registered garage for the registration year immediately following the year in relation to which the existing registration is subsisting;

"second-hand part" means any mechanical or electrical part of any motor vehicle or internal combustion or other engine which has previously been installed and used in any such vehicle or engine;

"second-hand vehicle" means any motor vehicle which, since its manufacture and initial sale has been in ordinary use;

"Secretary" means the Secretary to the Board, designated by the Minister pursuant to section 6;

"transfer of registration" means the transfer of the registration of a registered proprietor in respect of a registered garage to another person;

"Vice-Chairman" means the Vice-Chairman of the Board appointed and designated pursuant to section 4 (2) (*b*).

PART II

Administration

A. The Automotive Trades Registration Board

Establishment of Automotive Trades Registration Board

3. There is hereby established a board to be known as the Automotive Trades Registration Board (hereinafter referred to as "the Board").

Composition of the Board

4.—(1) The Minister shall, by notice in the *Gazette*, appoint the members of the Board other than the *ex officio* members.

(2) The Board shall consist of—

(*a*) one member designated as Chairman by the Minister;

(*b*) one member designated as Vice-Chairman by the Minister;

(*c*) the Chairman of the Price Control Board established pursuant to regulations made under the Control of Goods Act; Cap. 18:08

(*d*) one member representing the Malaŵi Congress Party;

(*e*) the Director of Plant and Vehicles, *ex officio*;

(*f*) the Road Traffic Commissioner, *ex officio*.

(3) The Minister may appoint to the Board such additional Members as he deems essential to the Board in the exercise of its powers and functions.

(4) No person shall be appointed to the Board who—

(*a*) is an undischarged bankrupt;

(*b*) has, within three years last past, been convicted of an offence under this Act;

(*c*) has, within three years last past, been convicted of an offence under any written law and been sentenced therefor to imprisonment for a term of six months or more without the option of a fine;

(*d*) has, within five years last past, been convicted of an offence involving fraud or dishonesty.

(5) Members of the Board shall not, by virtue only of their appointments to the Board, be deemed to be officers in the Public Service.

(6) The names of all members of the Board as first constituted and every change in membership thereof shall be published in the *Gazette*.

Board may co-opt persons to attend meetings

5.—(1) The Board may, with the consent of the Minister, co-opt any one or more persons to attend any particular meeting or series of meetings for the purpose of assisting or advising the Board in respect of any particular matter under consideration by the Board.

(2) Any person co-opted pursuant to subsection (1) may take part in the deliberations of the Board at any meeting he so attends, but shall have no voting powers.

Secretary/ Registrar

6.—(1) There shall be a Secretary to the Board who shall be an officer in the Public Service and shall be designated as Secretary by the Minister.

(2) The Secretary to the Board shall be the Registrar for all of the purposes of this Act.

Tunure of office of Board members

7.—(1) Members of the Board, other than *ex officio* members, shall, subject to the provisions of this section, hold office for such period, being not less than two years, as may be specified in their respective appointments.

(2) *Ex officio* members of the Board shall hold office as such so long as they hold the public office whereby they are members of the Board pursuant to this Act.

(3) A retiring member shall be eligible for re-appointment.

(4) On the expiry of the period for which a member, other than an *ex officio* member, is appointed he shall continue to hold office until his successor has been appointed, but in no case shall such further period exceed three months.

(5) The office of a member other than an *ex officio* member shall be vacated—

(*a*) upon his death;

(*b*) if he is adjudged a bankrupt;

(*c*) if he is convicted of an offence under this Act;

(*d*) if he is convicted of an offence under any other written law and sentenced therefor to imprisonment for a term of six months or more without the option of a fine;

(*e*) if he is convicted of an offence involving fraud or dishonesty;

(*f*) if he is absent from three consecutive meetings of the Board without the permission of the Board;

(*g*) upon the expiry of one month's notice in writing of his intention to resign his said office given by him to the Minister;

(*h*) upon the expiry of one month's notice in writing terminating his appointment to such office given to him by the Minister;

(*i*) if he becomes mentally or physically incapable of performing his duties as a member of the Board;

(*j*) if, being registered as a registered proprietor under this Act, his registration has been cancelled on the direction of the Minister.

Remuneration of members of the Board

8. Any member of the Board who is not an officer in the Public Service shall be paid such remuneration and allowances, if any, as the Minister may in his case fix.

Meetings of the Board

9.—(1) The Board may meet at such places and times as the Chairman may determine or as he may be directed by the Minister and such meetings shall be convened by notice to the members given by the Chairman.

(2) In the absence of the Chairman from any meeting of the Board the Vice-Chairman shall preside, and in the absence of

both the Chairman and the Vice-Chairman from any such meeting the members present shall elect one of their number to preside at that meeting and the person so elected shall have all of the powers and shall perform all of the duties of the Chairman for that meeting.

(3) Save where otherwise provided by this Act, the Board shall conduct its proceedings in such manner as may be directed by the Minister or, in the absence of such direction, in such manner as the Board deems meet.

(4) Minutes of each meeting shall be kept by the Secretary and shall be confirmed at the succeeding meeting by the Chairman, or, in his absence, by the Vice-Chairman or member presiding, as the case may be.

(5) Three members of the Board shall form a quorum.

(6) At all meetings of the Board the person presiding shall have a deliberative vote and in the event of an equality of votes shall also have a casting vote.

Non-liability of members of the Board

10. No member of the Board shall be personally liable for any act or default of his, or of the Board, done in the exercise in good faith of the functions of the Board.

Member to declare pecuniary interests

11.—(1) If a member of the Board or his spouse, or any company of which he or she is a director or major shareholder, or any partner of such member or of his spouse has or acquires any pecuniary interest, direct or indirect, in any matter in which his private interests conflict with his duties as a member and which is the subject of consideration by the Board he shall, as soon as he becomes aware of such interest in such matter, disclose the facts relating thereto to the Board and the Minister.

(2) A member referred to in subsection (1) shall not take part in the consideration of, or vote on, any question before the Board which relates to the matter referred to in that subsection.

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(3) For the purposes of this section, the expression "major shareholder" means any person who, at the relevant time, in his own right or by right of any other person, has the power to exercise or control not less than ten per cent of the voting rights in the relevant company, whether by reason of share holdings, debenture holdings, proxy or otherwise.

B. Functions and Duties of the Board

Functions of the Board

12. The functions and duties of the Board shall be—

(*a*) to advise the Minister on matters relating to—

(i) the maintenance and improvement of the services, facilities and workmanship offered to the general public by commercial garages within Malaŵi;

(ii) what minimum standards of workmanship and materials the proprietors of commercial garages should use and maintain in their operations in order to be registered under this Act or to retain such registration;

(iii) such other matters concerning the automotive trade in Malaŵi as the Board deems meet;

(iv) any question concerning the automotive trade submitted to the Board by the Minister for its opinion and advice thereon;

(*b*) to keep and maintain a register of commercial garage proprietors and commercial garages in Malaŵi pursuant to Part III;

(*c*) to hear complaints against commercial garage proprietors pursuant to Part IV and to make recommendations to the Minister thereon.

PART III

Registration of Commercial Garage Owners and Commercial Garages

Compulsory registration of garage owners and garages

13.—(1) After six months from the date of commencement, no person shall carry on the business of a commercial garage on any premises without being registered as a commercial garage proprietor (hereinafter called "the registered proprietor") in respect of such premises, nor shall such proprietor carry on such business on such premises without the said premises being registered as a commercial garage (hereinafter called a "registered garage") under this Act.

(2) Any person who, after six months from the date of commencement—

(*a*) carries on the business of a commercial garage without being registered as a registered proprietor; or

(*b*) carries on the business of a commercial garage on any premises without the said premises being registered as a registered garage,

shall be guilty of an offence and liable to a fine of K1,000 and to imprisonment for one year.

(3) Where a company or other body corporate is found guilty of an offence under subsection (2) there shall be imposed in lieu of the penalty provided by the said subsection, a penalty of K3,000.

(4) Subsection (2) (*b*) shall not apply to any registered proprietor carrying on business at the scene of any breakdown or accident for the purpose of dealing with such breakdown or accident.

Register of proprietors and garages

14. The Registrar, under the direction of the Board, shall keep, in the prescribed form, a Register of Commercial Garage Proprietors and Commercial Garages (hereinafter called "the Register") for the purposes of this Act.

Application for registration

15.—(1) An application for registration under this Act or for a renewal or transfer of such registration shall be made to the Board in the manner prescribed.

(2) Not less than two weeks before making his application to the Board under this section, the applicant shall cause notice, in the prescribed form, of his intention to apply for registration, renewal or transfer to be published in the *Gazette* and in one issue of a newspaper in general circulation in the area in which the relevant garage is located.

(3) Where an application is made in respect of a partnership firm., the partners shall nominate one member of the firm, who shall, upon the application being granted by the Minister, be registered as the proprietor in respect of the premises registered pursuant to such application.

(4) Every application for registration under this Act, or for renewal or transfer of such registration shall be accompanied with the appropriate prescribed fee.

(5) Any application for a transfer of registration under this Act may be made by the intended transferee or transferor and such application shall be accompanied with the current Certificate of Registration of the registered proprietor for purposes of cancellation upon the grant of the applied for transfer.

(6) Where any person carries on the business of a commercial garage in more than one premises a separate application shall be made by such person in respect of each separate premises in which such business is carried on.

Applicant to furnish description of premises

16. Every applicant for registration, or for renewal of registration, under this Act, shall, at the time of his application, furnish to the Board a description in writing of the premises used or proposed to be used by him as a commercial garage, and shall, if so required by the Board, furnish a map or plan of such premises.

Consideration by and report of the Board

17.—(1) As soon as is practicable after receiving an application under section 15 the Board shall consider the same in accordance with this section and report thereon in writing to the Minister—

(*a*) in the case of an application for a new registration, whether—

(i) the applicant is already registered under this Act in respect of other premises;

(ii) they consider the applicant a person suitable for registration;

(iii) they consider the premises, in respect of which the application is made, suitable for the intended uses thereof;

(iv) they consider the applicant reasonably capable of providing the service intended or of employing persons so capable;

(v) the applicant has previously been refused registration under this Act or whether any previous registration of the applicant hereunder has been cancelled by direction of the Minister and the date and cause of such cancellation;

(*b*) in the case of an application for renewal of an existing registration, whether—

(i) if the applicant has been registered in respect of the relevant premises during the entire past registration year, he has been the subject of any investigation under Part IV during the said period and the outcome of such investigation;

(ii) if the applicant has been first registered in respect of the premises, whether by way of new registration or transfer, during the past registration year, he has been the subject of any investigation under Part IV during the said period and the outcome of such investigation;

(iii) anything has been done to the premises during the past registration year, whether by way of alteration or reconstruction, to render them unsuitable for registration;

(*c*) in the case of a transfer of an existing registration, whether—

(i) the applicant is already registered in respect of other premises;

(ii) they consider the applicant reasonably capable of providing the service intended or of employing persons so capable;

(iii) the applicant has been refused registration under this Act or whether any previous registration of the applicant hereunder has been cancelled by direction of the Minister and the date and cause of such cancellation;

(iv) anything has been done to the premises during the past registration year, whether by way of alteration or reconstruction, to render them unsuitable for registration.

(2) Each applicant shall be entitled to attend before the Board in person (or, if the applicant is a body corporate, by a senior director or executive of such body corporate) or to be represented thereat by a legal practitioner during the consideration of his application, and shall be entitled to be heard and to adduce evidence in respect of any matter relevant to such application. 51 of 1971

(3) The Board shall notify each applicant, by letter sent by ordinary post to the address given on the application, of the date, hour and place of consideration of his said application by the Board.

(4) Having considered the application and such other matters as were adduced thereon by the applicant, or deemed relevant by the Board, the Board shall, without undue delay, forward to the

Minister its report together with a copy of the application and such other documents in its possession as it deems relevant to the application.

(5) The applicant shall not be entitled to a copy, or to be informed of the contents, of any report made to the Minister by the Board pursuant to this section.

Minister to decide application

18.—(1) The Minister, having considered the application and the report of the Board thereon and such other documents in relation thereto as were submitted to him by the Board, shall decide whether the application should be granted or refused, and shall notify the Board of his decision.

(2) Any decision of the Minister made pursuant to subsection (1) shall be final and shall not be subject to appeal to, or question by, any court of law, and the Minister shall not be required to assign any reasons for such decision.

Registration or refusal

19.—(1) Whenever the Minister grants an application for registration, renewal of registration, or transfer of registration under this Part, and notifies the Board of his decision thereon, the Board shall cause the Registrar to enter such registration, renewal or transfer in the appropriate parts or part of the Register and shall notify the applicant thereof and cause notice thereof to be published in the *Gazette.*

(2) Having entered any registration or renewal of registration pursuant to subsection (1) the Registrar shall, within one month thereafter, furnish the registered proprietor with a certificate of his registration as registered proprietor and of the registration of the relevant garage as a registered garage.

(3) Having entered any transfer of registration pursuant to subsection (1) the Registrar shall, within one month thereafter, furnish the new registered proprietor with a certificate of his registration in the prescribed form as registered proprietor of the relevant registered garage together with a certified copy of the registration of the said relevant garage.

(4) Whenever the Minister refuses an application under this Part and notifies the Board of his decision thereon, the Board shall cause the Registrar to notify the applicant, in writing, of such refusal.

Duration of registration

20. Registration under this Act shall be effective from the date of its entry in the Register by the Registrar and shall determine on the 1st January following unless sooner surrendered or cancelled.

Annual renewal of registration

21.—(1) The Board shall, in the month of December of each year, hold an annual renewal of registration meeting for the

purposes of renewal of registration of existing registrations for the following year:

In this regard the Board may fix different dates in the said month of December for the holding of the annual renewal of registration meeting in respect of different places or areas in Malaŵi.

(2) The Board shall, during the first week of the month of October of each year, publish, in one issue of the *Gazette* and in one issue of a newspaper in general circulation in Malaŵi, a notice setting forth the date, time and venue of such annual renewal of registration meeting, and if the said meeting is to be held on different dates in respect of different areas the said notice shall specify the place or area in respect of which each such meeting is to be held.

(3) Application for renewal of registration shall be made pursuant to section 15 and shall be delivered to the Board not later than 21 days before the date of the relevant annual renewal of registration meeting of the Board.

(4) Application for renewal of registration shall be considered at the relevant annual renewal of registration meeting and shall normally not be considered at any other meeting of the Board save for just cause.

(5) The Board may adjourn any annual renewal of registration meeting from time to time until all applications for renewal of registration to be considered at such meeting have been considered by the Board.

(6) If, in respect of any application for renewal of registration, the decision of the Minister thereon under section 18 has not been notified by the said 31st December, the existing registration shall be deemed to be extended, for the purposes of this Act, until such time in the following year as the Minister notifies his decision on such application to the Board in accordance with the said section 18.

PART IV

Surrender, Suspension and Cancellation of Registration

Surrender of registration

22. Any registered proprietor of any registered garage may, at any time, by notice in writing to the Board, surrender his registration in relation to any specified registered garage, and upon receipt of such surrender the Board shall cause the Registrar to strike off the Register the registration of the said registered proprietor in relation to the said garage and also to strike off the Register the registration of the said registered garage.

Complaints to and hearings by the Board

23.—(1) Any person who has had repairs or alterations or any other work or service done upon any motor vehicle or internal combustion or other engine or upon any mechanical or electrical parts or accessories of such motor vehicle or engine or who has had any new mechanical or electrical accessories or devices attached to such motor vehicle or engine at any registered garage and is of opinion that—

(*a*) the quality of the workmanship was bad; or

(*b*) the work was negligently executed; or

(*c*) the work executed was unnecessary; or

(*d*) the re-assembly of the said motor vehicle or engine, after the work was completed, was negligently executed; or

(*e*) the replacement parts fitted were of inferior quality or not reasonably suited to the purpose for which they were installed; or

(*f*) the replacement parts fitted were of inferior quality or second-hand parts and were so fitted without his knowledge or consent; or

(*g*) while the motor vehicle or internal combustion or other engine was in the said registered garage for the purposes of the said work, parts thereof, unrelated to and not involved in the said work, were removed therefrom without his knowledge or consent and were replaced by parts of inferior quality; or

(*h*) the said motor vehicle or internal combustion or other engine, when re-delivered to him, was unfit for immediate use, and no warning was given to him as to its condition; or

(*i*) the statement of time attributed to the work, and charged for, was false; or

(*j*) the charges generally were unreasonably high; or

(*k*) the requirements of section 33 were not complied with; or

(*l*) the inefficient or negligent manner in which the work was executed and the unreasonable charges for such work constituted an unconscionable act towards him by the registered proprietor,

may, in the prescribed manner, make complaint in writing to the Board against the registered proprietor of the said registered garage.

(2) Every complaint made to the Board under subsection (1) shall be made within ninety days after the execution of the work in question, or after receipt of the statement of charges therefor whichever is the later:

Provided that, in any case where the Board deems it just and reasonable so to do, the Board may extend the time specified by this subsection. 51 of 1971

(3) The Board shall, as soon as practicable, scrutinize each complaint received pursuant to subsection (1), and, if it is of opinion that the subject matter thereof should be investigated by it, it shall fix a date and place for the hearing of such complaint, and, shall cause notice, in the prescribed form, of the said hearing to be served upon the complainant and the registered proprietor not less than twenty days before the said date of hearing.

(4) Every notice of hearing issued by the Board shall contain a statement of the matters of complaint which the Board intends to investigate at the hearing.

(5) The Board may require the complainant to attend the hearing in person and adduce evidence on the matters arising out of his complaint which are under investigation by the Board.

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(6) Every registered proprietor whose business activities are under hearing by the Board pursuant to this section shall be entitled to attend such hearing in person or, if the registered proprietor is a body corporate, by a senior director or executive of such body corporate, and shall also be entitled to adduce evidence on any of the matters under investigation.

(7) The Registrar, or, in his absence, any officer of the Public Service who is acting as Registrar, or any member of the Board, shall be empowered to administer an oath for the purpose of any hearing pursuant to this section.

(8) The Board shall be empowered to summon witnesses to attend and give evidence on oath or produce documents at any hearing pursuant to this section.

(9) Having heard the evidence adduced and any representations made by or on behalf of the complainant and the registered proprietor the Chairman, Vice-Chairman or other member presiding shall declare the hearing closed.

(10) The Board shall, as soon as practicable after the close of the hearing, consider the evidence adduced and representations made thereat and shall, without undue delay, furnish the Minister with its report thereon together with such documents as were produced and are relevant to the matters investigated, and shall make its recommendations as to whether in its opinion the complaint should be dismissed or the registered proprietor cautioned, or the registration suspended or cancelled, as the case may be.

(11) Neither the applicant nor the registered proprietor shall be entitled to a copy, or to be informed of the contents, of any report or of the recommendations made thereon to the Minister pursuant to this section.

Minister to decide complaints

24.—(1) Having considered the report and recommendations of the Board on any investigation of a complaint pursuant to section 23, and also having considered such other matters as he deems relevant, the Minister shall decide whether—

(*a*) the complaint should be dismissed; or

(*b*) the registered proprietor should be required to compensate the complainant in a stated sum for his default in workmanship

or service, and thereupon cautioned, or in the event of his failure to so compensate the complainant within a stated time, whether his registration in respect of the relevant registered garage be suspended or cancelled; or

(*c*) the registration of the registered proprietor in respect of the relevant registered garage be suspended for a stated period of time and may attach terms and conditions to such suspension; or

(*d*) the registration of the registered proprietor in respect of all garages registered under his name be suspended for a stated period of time and may attach terms and conditions to such suspension; or

(*e*) the registration of the registered proprietor in respect of the relevant registered garage be cancelled; or

(*f*) the registration of the registered proprietor in respect of all garages registered under his name be cancelled,

and shall notify the Board of his said decision.

(2) Any decision of the Minister made pursuant to subsection (1) shall be final and shall not be subject to appeal to, or question by, any court of law, and the Minister shall not be required to assign any reason for such decision.

Implementation of decision of Minister under section 24

25.—(1) Upon the Board being notified of the decision of the Minister pursuant to section 24, the Board shall cause the Registrar to make the appropriate entry thereof in the record of the relevant investigation held under section 23.

(2) Where the decision of the Minister is one of caution of the registered proprietor or suspension of his registration, the Board shall further cause the Registrar to make the appropriate entry thereof in the appropriate place or places in the Register.

(3) Where the decision of the Minister is one of cancellation of registration, the Board shall cause the Registrar to strike the relevant registration off the Register, and to publish notice thereof in one issue of the *Gazette*.

(4) Within three days after making an entry in the Register pursuant to subsection (2), the Registrar shall notify the registered proprietor, in writing, of the caution or suspension, as the case may be, and of any conditions attached by the Minister to such caution or suspension.

(5) As soon as practicable after striking a registration off the Register pursuant to subsection (3) the Registrar shall cause notice thereof, in the prescribed form, to be given to the registered proprietor and shall cause a copy of such notice to be posted in a prominent place on any garage premises whose registration has been cancelled by reason of such striking off.

Board-initiated Investigation.

26.—(1) If the Board is of opinion that any registered proprietor—

(*a*) knowingly and habitually engages in practices, in the course of his business as a garage proprietor, which are dishonest, fraudulent or unconscionable; or

(*b*) has, notwithstanding any caution given pursuant to a decision of the Minister under section 24 (1) (*b*), knowingly continued to commit acts similar to those which gave rise to such caution; or

(*c*) has wilfully failed to compensate a complainant as directed pursuant to a decision of the Minister under section 24 (1) (*b*); or

(*d*) has, notwithstanding the suspension of his registration pursuant to a decision of the Minister under section 24 (1) (*c*) or (*d*), engaged in business as a garage proprietor contrary to the terms and conditions of such suspension; or

(*e*) has been convicted of an offence which, in the opinion of the Board, renders him unfit to continue in business as a registered proprietor,

the Board may, by notice, require such registered proprietor to appear before the Board and show cause why the Board should not recommend to the Minister the cancellation of his registration under this Act.

(2) The notice referred to in subsection (1) shall be in the prescribed form, shall set forth the grounds upon which it is issued by the Board and the day, time and place of hearing thereon, which shall be not more than two months and not less than one month from the date of its issue, and it shall be served upon the said registered proprietor within ten days of the said date.

(3) The said registered proprietor shall be entitled to attend such hearing in person, or if the said registered proprietor is a body corporate, by a senior director or executive of such body corporate, and shall also be entitled to adduce evidence on any of the matters under investigation.

(4) The provisions of section 23 (7) and (8) shall apply *mutatis mutandis* to any hearing under this section.

(5) Having beard any evidence adduced and any representations made by or on behalf of the said registered proprietor, the Chairman, Vice-Chairman or other member presiding shall declare the hearing closed.

(6) The Board shall, as soon as practicable after the close of the hearing, consider the evidence adduced and the representations made thereat, and shall, without undue delay, furnish the Minister with its report thereon together with such documents as were produced and are relevant to the matters investigated and shall

make its recommendations as to whether in its opinion the said registered proprietor has shown cause why his registration should not be cancelled or whether he has failed to show such cause and, in its opinion, his registration should be cancelled.

(7) The said registered proprietor shall not be entitled to a copy, or to be informed, of the contents of any report or the recommendations made thereon to the Minister pursuant to this section.

Minister to decide on report of the Board

27.—(1) Having considered the report and recommendations of the Board on any investigation made pursuant to section 26, and also having considered such other matters as he deems relevant, the Minister shall decide whether the registration of the said registered proprietor should or should not be cancelled, and shall notify the Board of his said decision.

(2) Any decision of the Minister made pursuant to subsection (1) shall be final and shall not be subject to appeal to, or question by, any court of law, and the Minister shall not be required to assign any reason for such decision.

Implementation of decision of Minister under section 27

28.—(1) Upon the Board being notified of the decision of the Minister, pursuant to section 27, the Board shall cause the Registrar to make the appropriate entry thereof in the record of relevant investigation held under section 26.

(2) Where the decision of the Minister is one of cancellation of registration, the Board shall cause the Registrar to strike the relevant registration off the register and to publish notice thereof, in the prescribed form, in one issue of the *Gazette*.

(3) As soon as practicable after striking a registration off the Register pursuant to subsection (2), the Registrar shall cause notice thereof in the prescribed form to be given to the registered proprietor and shall cause a copy of such notice to be posted in a prominent place on any garage premises whose registration has been cancelled by reason of such striking off.

Minister may direct investigation by the Board

29.—(1) The Minister may, at any time, direct the Board to investigate the business activities of, or any specific act done in the course of business by, any registered proprietor.

(2) Upon receiving any direction of the Minister pursuant to subsection (1) the Board shall issue a notice to the registered proprietor requiring him to appear before it in person, or if the said registered proprietor is a body corporate, by a senior director or executive of such body corporate, and answer any questions put by the Board in respect of the said business activities or specific act, as the case may be.

(3) The notice referred to in subsection (1) shall be in the prescribed form, shall set forth in general terms the matters intended to be investigated by the Board and the day, time and place of hearing thereon, which shall not be more than two months and not less than one month from the date of its issue, and it shall be served upon the registered proprietor within ten days of the said date.

(4) The provisions of section 23 (6), (7), (8), (9) and (10), and of sections 24 (1) (*a*), (*c*), (*d*), (*e*) and (*f*), 24 (2) and 25 shall apply *mutatis mutandis* to any investigation under this section.

Power of the Minister re registration

30.—(1) Notwithstanding any other provision of this Act, the Minister may, at any time, in his absolute discretion, direct the Board to cancel any registration of any registered proprietor in respect of any registered garage under this Act and the Board shall thereupon cause the Registrar to strike the relevant registration off the Register and to publish notice thereof in one issue of the *Gazette*.

(2) As soon as practicable after striking a registration off the Register pursuant to subsection (1), the Registrar shall cause notice thereof, in the prescribed form, to be given to the registered proprietor and shall cause a copy of such notice to be posted in a prominent place on any garage premises whose registration has been cancelled by reason of such striking off.

(3) Notwithstanding any other provision of this Act, the Minister may, at any time, in his absolute discretion, direct the Board to reinstate on the Register the name of any garage proprietor whose name was struck off the Register under this Act, and such reinstatement on the Register may, in the absolute discretion of the Minister, be in respect of any or all garage premises in respect of which the said garage proprietor was registered before such striking off, and such premises shall, on such reinstatement of such registration, thereupon become and be registered garage premises for all of the purposes of this Act, and the Board shall thereupon cause the Registrar to make the necessary amendments to the Register and publish the notices necessary to implement the decision of the Minister.

(4) The Minister may, at any time, in his absolute discretion, lift any suspension of any registered garage proprietor made pursuant to this Act and the Board shall cause any direction of the Minister in this regard to be implemented by the Registrar.

(5) Any direction of the Minister given pursuant to subsection (1) shall not be subject to appeal to, or question by, any court of law.

(6) The Minister shall not be required to assign any reason for any direction given by him pursuant to this section.

Effect of cancellation

31.—(1) A cancellation of the registration of a registered proprietor in accordance with this Act may be a general cancellation, whereby the resultant striking of his name off the Register effects the cancellation and striking off of the registration of all Registered garages in respect of which the said garage proprietor is registered under this Act.

(2) Where a cancellation of the registration of a registered proprietor in accordance with this Act is not a general cancellation, the resultant striking of his name off the Register shall be in respect of the particular registered garage or registered garages to which the direction of the Minister made under section 24 (1) (*e*), 24 (1) (*f*), 27, 29 or 30, as the case may be, expressly refers, and shall effect the cancellation and striking off of the registration of the said registered garage or registered garages expressly referred to. The said registered proprietor shall in such event remain registered as registered proprietor of any other registered garage in respect of which he is registered under this Act.

Suspension of registration

32.—(1) Suspension of the registration of a registered proprietor, pursuant to this Act, may be a general suspension whereby the said registered proprietor is, for the duration of the suspension, deemed not to be registered under this Act in respect of all registered garage premises in respect of which he is registered as the registered proprietor, and all such registered garages shall be deemed not to be registered, for the duration of the said period of suspension.

(2) Suspension of the registration of a registered proprietor pursuant to this Act may be expressed to be in respect of one or more particular registered garage premises in respect of which he is registered as the registered proprietor whereby, for the duration of the period of suspension, the said registered proprietor is deemed not to be registered under this Act in respect of the said particular registered garage or registered garages, and the said particular registered garage or registered garages shall be deemed not to be registered for the duration of the said period of suspension.

(3) Where any registered proprietor is registered as such in respect of more than one registered garage and the Minister directs suspension of his registration, the Minister shall, in his direction thereon to the Board, state the duration of such suspension, and, if the said suspension is not intended, to be general, the registered garages in respect of which it is to apply.

PART V

Miscellaneous

Duty of registered proprietor on repair of vehicle or engine

33.—(1) Every registered proprietor, who, in the course of repairing a motor vehicle or internal combustion or other engine, causes any existing part of such vehicle or engine to be replaced shall, at the time of re-delivery of such vehicle or engine to the owner thereof—

(*a*) either—

(i) deliver the said replaced part to the said owner; or

(ii) show the said replaced part to the said owner and seek his directions as to its disposal; and

(*b*) furnish the said owner with a statement in writing, signed by the said registered proprietor or his agent, stating whether the replacement is—

(i) a new part issued by the manufacturers of the said vehicle or engine; or

(ii) a new part made by a motor spares manufacturer, giving the name of such manufacturer; or

(iii) a substitute part made by the registered proprietor, or by another person on his behalf, for the purpose of such repair; or

(iv) a second-hand part, and stating that such second-hand part is reasonably fit for the purpose for which it is intended.

(2) Where a registered proprietor wilfully and habitually fails to comply with the provisions of this section such conduct shall be deemed to be unconscionable practice for the purposes of any investigation of the business activities of the said registered proprietor by the Board under Part IV.

Duty of registered proprietor who is agent of manufacturer

34.—(1) Every registered proprietor who is, in Malaŵi or in any part thereof, the approved or accredited agent of any manufacturer in respect of any type or make of motor vehicle or internal combustion or other engine, or of any mechanical or electrical part or accessory of any such vehicle or engine, shall, at all times, keep in stock in Malaŵi a reasonable quantity of spare parts and accessories appertaining to each model of motor vehicle or internal combustion or other engine of such manufacturer's making sold in Malaŵi or, as the case may be, a reasonable quantity of such mechanical or electrical parts or accessories of such manufacturer's making.

(2) Failure to comply with subsection (1) shall, of itself, be sufficient grounds for the Board to recommend to the Minister that the registration of the registered proprietor concerned be cancelled.

Regulations

35. The Minister may make regulations for the better carrying out of this Act, and, without prejudice to the generality of the foregoing, such regulations may provide for—

(*a*) the forms to be used for any register, application or notice;

(*b*) the forms of certificates of registration;

(*c*) the fees for registration under this Act;

(*d*) the fees for any application to the Board;

(*e*) the form to be used for any complaint to the Board;

(*f*) the places where the Board may meet for the purposes of the investigation of complaints;

(*g*) any matter to be or which may be prescribed.

Exemptions

36.—(1) Nothing in this Act shall apply to any person who is carrying on business as a commercial garage proprietor immediately prior to the date of commencement until the expiry of six months from such date:

Provided that if, within such period of six months, such person first applies for registration, nothing in this Act shall apply to him until the notification to him of the result of such application under section 19.

(2) The Minister may by Order, published in the *Gazette*, and subject to such conditions, if any, as he may impose, exempt any particular commercial garage proprietor, or any class or description of commercial garage proprietors, from this Act, either generally or in respect of any area or place, or in respect of any class or description of garage premises, business or undertaking.

Registration not in lieu of licensing or registration, etc., under other written laws
Cap. 46:01
Act No. 7 of 1971

37. Registration under this Act shall be in addition to and not in derogation of any applicable licensing, registration or other requirement of the Businesses Licensing Act, or the Second-hand and Scrap Metal Dealers Act, or any other written law.

Not applicable to Government or local authorities

38. This Act shall not apply to the Government or to any local authority.

SUBSIDIARY LEGISLATION

APPLICATION OF ACT

under s. 1

The Act has been brought into operation in relation to the Local Government Areas specified below—

The City of Blantyre;
The Municipality of Lilongwe;
The Township of Zomba;
The Township of Mzuzu.

AUTOMOTIVE TRADES REGISTRATION AND FAIR PRACTICES (FORMS AND FEES) REGULATIONS

ARRANGEMENT OF REGULATIONS

REGULATION
1. Citation
2. Forms
3. Fees

FIRST SCHEDULE

(FORMS)

FORM
NO.
1. Register of Commercial Garage Proprietors and Commercial Garages
   PART I Register of Proprietors
   PART II Register of Commercial Garages
2. Notice of Intention to Apply for Registration/Renewal of Registration
3. Notice of Intention to Apply for Transfer of Registration
4. Application for Registration/Renewal of Registration of a Commercial Garage Proprietor and Commercial Garage
5. Application for Transfer of Registration
6. Certificate of Registration
7. Notice of Refusal of Application for Registration/Renewal of Registration
8. Notice of Refusal of Application for Transfer of Registration
9. Complaint
10. Notice of Hearing of Complaint
11. Witness Summons
12. Summons to Attend and Produce Documents
13. Notice of striking-off Register and Cancellation of Registration
14. Notice of Cancellation of Registration by the Minister
15. Notice of Caution
16. Notice of Suspension of Registration
17. Notice to Appear and Show Cause

FORM NO.
18. Notice to Appear and Answer Questions
19. Notice of Reinstatement of Registration
20. Statement of Garage Proprietor on Replaced Parts
Schedules

AUTOMOTIVE TRADES REGISTRATION AND FAIR PRACTICES (FORMS AND FEES) REGULATIONS

G.N. 147/1972 151/1981 32/1998 23/2004

under s. 35

Citation

1. These Regulations may be cited as the Automotive Trades Registration and Fair Practices (Forms and Fees) Regulations.

Forms

2. The forms set out in the First Schedule to these Regulations shall be used for the purposes of the Act and the particulars contained therein are hereby prescribed as the particulars required under the Act.

Fees

3. The fees specified in the Second Schedule to these Regulations shall be payable under the Act.

FIRST SCHEDULE reg. 2

REGISTER OF COMMERCIAL GARAGE PROPRIETORS AND COMMERCIAL GARAGES FORM 1

PART I PAGE NO.

REGISTER OF PROPRIETORS

Name of Registered Proprietor .....
.....
Address .....
.....

Registration Number .....
Date of Registration .....

			Fee Paid on Registration of Proprietor and Annual Renewals							
Name of Commercial Garage	*Location of Commercial Garage and Telephone No.*	*Registration No. of Garage*	*Amount of Fee Paid on Reg. of Proprietor GR. No. and Date*	*General Receipt No. and Date*	*General Receipt No. and Date*	*General Receipt No. and Date*	*General Receipt No. and Date*	*General Receipt No. and Date*	*Note of Transfers*	*Remarks*

FORM 1

REGISTER OF COMMERCIAL GARAGE PROPRIETORS AND COMMERCIAL GARAGES

PART II PAGE NO.

REGISTER OF GARAGES

				Fee Paid on Registration of Garage and Annual Renewals							
Registration No.	*Date of Registration*	*Name of Commercial Garage and Proprietor (Show also Reg. No. of Proprietor)*	*Location of Commercial Garage and, Telephone No.*	*Amount of Fee Paid on Reg. of Garage GR. No. and Date*	*General Receipt No. and Date*	*General Receipt No. and Date*	*General Receipt No. and Date*	*General Receipt No. aid Date*	*General Receipt No. and Date*	*Note of Transfers Fee Paid GR. No. on Transfer and Date*	*Remarks*

FORM 2

GOVERNMENT OF MALAŴI
AUTOMOTIVE TRADES REGISTRATION AND FAIR PRACTICES ACT
(CAP. 50:05)
NOTICE OF INTENTION TO APPLY FOR REGISTRATION/ RENEWAL OF REGISTRATION
(SECTION 15(2))

Take Notice that (1) .....
of (2) ..... intends to apply to the Automotive Trades Registration Board for registration/ renewal of registration of (3) .....
.....
.....
as a Commercial Garage Proprietor in respect of premises situated at
.....
.....
.....
and for registration/renewal of registration of such premises as a Commercial Garage.

Dated this ..... day of ....., 197.....

Signed .....
Applicant

Key
(1) Name of Proposed Applicant
(2) Address
(3) Name of Proposed Applicant

FORM 3

GOVERNMENT OF MALAŴI
AUTOMOTIVE TRADES REGISTRATION AND FAIR PRACTICES ACT
(CAP. 50:05)
NOTICE OF INTENTION TO APPLY FOR TRANSFER OF REGISTRATION
(SECTION 15(2))

Take Notice that (1) .....
of (2) ..... intend to apply to the Automotive Trades Registration Board for transfer of registration from (3) .....
.....
to me in respect of a registered Commercial Garage (4) .....
.....
situated at .....
for which the said (5) .....
..... is the registered proprietor.

Dated this ..... day of ....., 197.....

Signed .....
Applicant

Key
(1) Name of Proposed Applicant
(2) Address
(3) Name of Garage Proprietor
(4) Name of Commercial Garage
(5) Name of Garage Proprietor

FORM 4

GOVERNMENT OF MALAŴI
AUTOMOTIVE TRADES REGISTRATION AND FAIR PRACTICES ACT
(CAP. 50:05)
APPLICATION FOR REGISTRATION/RENEWAL OF REGISTRATION OF A COMMERCIAL GARAGE PROPRIETOR AND COMMERCIAL GARAGE
(SECTION 15(1))

Form to be completed in block letters and submitted in duplicate

1. Full name of applicant .....
2. Nationality of applicant .....
3. Postal address of applicant .....
   .....
4. Description and location of premises used or proposed to be used as commercial garage.
   (*a*) Description .....
   .....
   .....
   .....
   (*b*) Location: Village, road or street name .....
   Chief (if applicable) .....
   Town or District .....
   (*c*) Please state if plot is freehold, leasehold or customary land (give plot No. if applicable) .....
   .....
5. If application is for renewal, insert current registration numbers of registered proprietor and registered garage or garages .....
   .....
6. Financial condition:
   Please state the amount of capital:
   (*a*) You have invested .....
   (*b*) You intend to invest .....
   (*c*) Name and address of your bank .....
7. Number of persons employed or proposed to be employed:
   (i) Managerial .....
   (ii) Office staff .....
   (iii) Tradesmen, holding national trade test certificate .....
   Grade 1 .....
   Grade 2 .....

Grade 3 .....
(*State number in each grade*)
or its equivalent .....
(iv) Uncertificated tradesmen .....

8. State if accredited or approved agent of a Manufacturer, giving name of manufacturer and description of products in relation to which applicant is agent .....
.....
.....
.....
.....

9. (i) Machinery and equipment stating make, type, capacity/horsepower .....
.....
.....
.....
.....
(ii) Total value of spares holdings .....

10. Name and address of person actually responsible for operation of garage .....
.....
.....

11. Are you an undischarged bankrupt? Yes/No .....

12. Have you ever been convicted of any offence under the Act? Yes/No .....
If yes, give date and full details .....
.....
.....
.....
.....
.....
.....
.....
.....
.....
.....
.....

13. Have you any other business?
.....
.....

Signature of applicant .....
Title .....
Date .....

FORM 5

GOVERNMENT OF MALAŴI
AUTOMOTIVE TRADES REGISTRATION AND FAIR PRACTICES ACT
(CAP. 50:05)
APPLICATION FOR TRANSFER OF REGISTRATION
(SECTION 15(1))
Form to be completed in block letters and submitted in duplicate

1. Full name of transferee .....
2. Nationality of transferee .....
3. Postal address of transferee .....
4. Full name of transferor .....
   ..... Registration No. .....
5. Nationality of transferor .....
6. Postal address of transferor .....
7. Name of Commercial Garage .....
   ..... Registration No. .....
8. Financial condition of transferee:
   Please state the amount of capital:
   (*a*) Transferee intends to invest .....
   (*b*) Name and address of transferee's bank .....
9. Number of persons proposed to be employed in the garage by the transferee:
   (i) Managerial .....
   (ii) Office staff .....
   (iii) Tradesmen, holding national trade test certificate .....
   Grade 1 .....
   Grade 2 .....
   Grade 3 .....
   (State number in each grade)
   or its equivalent .....
   (iv) Uncertificated tradesmen .....
10. (i) Machinery and equipment stating make, type, capacity/horsepower .....
   .....
   .....
   .....
   (ii) Total value of spares holdings .....
11. Is the transferee an undischarged bankrupt? Yes/No .....
12. Has the transferee ever been convicted of any offence under the Act? ..... Yes/No .....
   If yes, give date and full details .....
   .....
   .....
13. Have you any other business?
   .....

Dated this ..... day of ....., 197.....

Signature .....
Transferee/Transferor

FORM 6

(CREST)
GOVERNMENT OF MALAŴI

AUTOMOTIVE TRADES REGISTRATION AND FAIR PRACTICES ACT
(CAP. 50:05)
CERTIFICATE OF REGISTRATION
(SECTION 19(2))

This is to certify that .....
.....
.....
of ....
is registered as REGISTERED PROPRIETOR in respect of the premises situated at .....
which premises are registered as a REGISTERED GARAGE, for the purposes of the Automotive Trades Registration and Fair Practices Act (Cap. 50:05).
Registration No. .....
Registered Garage No. .....
Amount of Fee paid Reg. Prop. K ..... (comprehensive) Reg. Garage
Date of issue ..... K .....
Date of expiry .....

Automotive Trades Registration Board
by .....
Registrar

FORM 7

GOVERNMENT OF MALAŴI

AUTOMOTIVE TRADES REGISTRATION AND FAIR PRACTICES ACT
(CAP. 50:05)
NOTICE OF REFUSAL OF APPLICATION FOR REGISTRATION/RENEWAL OF REGISTRATION
(SECTION 19(4))

Take notice that the application you submitted to the above Board for the registration/renewal of registration of your registration as a Commercial Garage Proprietor, and also for the registration/renewal of registration of your premises, situated at .....
.....
as a Commercial Garage has been refused by the Minister.

Dated this ..... day of ....., 197.....

Automotive Trades Registration Board
by .....
Registrar

FORM 8

GOVERNMENT OF MALAŴI
AUTOMOTIVE TRADES REGISTRATION AND FAIR PRACTICES ACT
(CAP. 50:05)
NOTICE OF REFUSAL OF APPLICATION FOR TRANSFER OF REGISTRATION
(SECTION 19(4))

Take notice that the application you submitted to the above Board for transfer of registration from (1) .....
.....
to yourself in respect of Commercial Garage (2) .....
.....
situated at .....
has been refused by the Minister.

Dated this ..... day of ....., 197.....

Automotive Trades Registration Board
by .....
Registrar

(1) Name of Garage Proprietor
(2) Name of Commercial Garage

FORM 9

GOVERNMENT OF MALAŴI
AUTOMOTIVE TRADES REGISTRATION AND FAIR PRACTICES ACT
(CAP. 50:05)
COMPLAINT
(SECTION 23)

Form to be completed in block letters and submitted in duplicate to:
THE REGISTRAR,
AUTOMOTIVE TRADES REGISTRATION BOARD,
MINISTRY OF WORKS AND SUPPLIES,
PRIVATE BAG 45,
ZOMBA

1. Full name of complainant .....
2. Address of complainant .....
   .....
   .....
3. Full name and address of garage proprietor .....
   .....
   .....
4. Name and address of garage .....
   .....
   .....
5. Make, type and model of vehicle concerned .....
   .....

6. Registration number of vehicle .....
7. Date when vehicle taken to garage .....
8. Work authorized to be carried out on vehicle concerned (invoices and statement of charges to be attached) .....
.....
.....
.....
9. Date when work completed .....
10. Particulars of complaint .....
.....
.....
.....
11. If repairs required replacement of parts, did you receive a written statement from the proprietor or his agent relating to such replaced parts? If so, attach statements to this complaint .....
12. Was garage proprietor informed of your dissatisfaction in writing or verbally? .....
If he was informed in writing, please send a copy of the letter to the Board with the complaint .....
If he was informed verbally, on what date? .....
13. What action was taken by the garage proprietor? .....
.....
.....
.....

Dated this ..... day of ....., 197.....

Signature of Complainant .....

FORM 10

GOVERNMENT OF MALAŴI

AUTOMOTIVE TRADES REGISTRATION AND FAIR PRACTICES ACT

(CAP. 50:05)

NOTICE OF HEARING OF COMPLAINT

(SECTION 23 (3))

Take notice that the Automotive Trades Registration Board will meet at ..... on .....
(place)
the ..... day of .....,197.....
at ..... o'clock a.m. or p.m. for the hearing of a complaint by ..... lodged with the Board in respect of the workmanship or business practices of .....
..... registered proprietor of
(name)
.....
(name of premises)
a registered garage, concerning work carried out on vehicle .....
.....

The particulars of the complaint which the Board intends to investigate are as follows—

PARTICULARS .....
.....
.....
.....
.....
.....
.....
.....
.....
.....
and further take notice that you .....
(*complainant*)
are/are not required by the Board to attend and adduce evidence at the said hearing.

Dated this ..... day of ....., 197.....

Automotive Trades Registration Board
by .....
Registrar

To: .....
.....
.....
Registered Proprietor
.....
.....
.....
Complainant

FORM 11

GOVERNMENT OF MALAŴI
AUTOMOTIVE TRADES REGISTRATION AND FAIR PRACTICES ACT
(CAP. 50:05)
WITNESS SUMMONS
(SECTION 23 (8))

You are hereby summoned by the Automotive Trades Registration Board to attend and give evidence before the Board on ..... the ..... day of ....., 197..... at ..... o'clock in the (1) ..... noon at (2) .....
.....
..... in respect of a complaint which has been lodged with the above Board by (3) .....
.....
in respect of the workmanship or business practices of
(4) .....
registered proprietor of (5) .....
.....
a registered garage, concerning work carried out on vehicle .....
.....

Dated this ..... day of ....., 197.....
Automotive Trades Registration Board
by .....
Registrar

Key
(1) fore or after
(2) Place of hearing
(3) Name of complainant
(4) Name of registered proprietor
(5) Name of registered garage

FORM 12

GOVERNMENT OF MALAŴI

AUTOMOTIVE TRADES REGISTRATION AND FAIR PRACTICES ACT
(CAP. 50:05)

SUMMONS TO ATTEND AND PRODUCE DOCUMENTS
(SECTION 23(8))

You are hereby summoned by the Automotive Trades Registration Board to attend before the above-named Board on ..... the ..... day of ....., 197..... at ..... o'clock in the (1) ..... noon at (2) .....
.....
which has been lodged with the above Board by (3) .....
.....
in respect of the workmanship or business practices of .....
(4) .....
registered proprietor of (5) .....
.....
a registered garage, concerning work carried out on vehicle .....
.....
and to produce there at all documents in your possession or under your control relating to the above matter of complaint, and in particular the following—
.....
.....
.....
.....

Dated this ..... day of ....., 197.....
Automotive Trades Registration Board
by .....
Registrar

Key
(1) fore or after
(2) Place of hearing
(3) Name of complainant
(4) Name of registered proprietor
(5) Name of registered garage

FORM 13

GOVERNMENT OF MALAŴI
AUTOMOTIVE TRADES REGISTRATION AND FAIR PRACTICES ACT
(CAP. 50:05)
NOTICE OF STRIKING OFF REGISTER AND CANCELLATION OF REGISTRATION
(SECTIONS 25(5), 28(3))

Take notice that following the complaint which was lodged with the above Board by (1) .....
.....
of (2).....
.....
in connection with (3) .....
.....
.....
.....
against you, the Minister has decided that your registration as a Commercial Garage Proprietor in respect of,
(*a*) Your garage premises situated at (4) .....
.....
.....
(*b*) All garage premises of which you are the Registered Proprietor, be cancelled.

Accordingly, your registration has been struck off the Register of Commercial Garage Proprietors and Commercial Garages,
(*a*) in respect of garage premises situated at (4) .....
.....
and the registration of such garage has been cancelled;
(*b*) in respect of all garage premises of which you are the Registered Proprietor and the registration of all such premises has been cancelled.

Dated this ..... day of ....., 197.....

Automotive Trades Registration Board
by .....
Registrar

(1) Name of Complainant
(2) Address of Complainant
(3) Cause of Complaint
(4) Location of garage (s) concerned

FORM 14

GOVERNMENT OF MALAŴI
AUTOMOTIVE TRADES REGISTRATION AND FAIR PRACTICES ACT
(CAP. 50:05)
NOTICE OF CANCELLATION OF REGISTRATION BY THE MINISTER
(SECTION 30(2))

Take notice that the Minister has directed that your registration as a Commercial Garage Proprietor in respect of your garage premises

situated at .....
.....
.....
be cancelled.

Accordingly, your registration in respect of such garage has been struck of the Register of Commercial Garage Proprietors and Commercial Garages.

Dated this ..... day of ....., 197.....

Automotive Trades Registration Board
by .....
Registrar

FORM 15

GOVERNMENT OF MALAŴI
AUTOMOTIVE TRADES REGISTRATION AND FAIR PRACTICES ACT
(CAP. 50:05)
NOTICE OF CAUTION
(SECTIONS 25(4), 29(4))

Take Notice that the Minister has decided that you be cautioned following the complaint of
(1) ..... of
(2) .....
..... in connection with
(3) .....
.....
.....
against you as a Commercial Garage Proprietor in respect of your garage premises situated at .....
.....
which complaint was lodged with the Board by .....
on the ..... day of ....., 197..... and heard by the Board on the ..... day of ..... 197.....

The following conditions are attached to this caution—
.....
.....
.....
.....
.....
.....
.....
.....

Automotive Trades Registration Board
by .....
Registrar

Key
(1) Name of Complainant
(2) Address of Complainant
(3) Cause of Complaint

FORM 16

GOVERNMENT OF MALAŴI

AUTOMOTIVE TRADES REGISTRATION AND FAIR PRACTICES ACT

(CAP. 50:05)

NOTICE OF SUSPENSION OF REGISTRATION

(SECTIONS 25(4), 29(4))

Take Notice that your registration as a Commercial Garage Proprietor,

(*a*) has been generally suspended in respect of all garages of which you are the Registered Proprietor,

(*b*) has been suspended in respect of your garage premises situated at .....
.....
.....
.....

by the Minister, for a period of ..... from the date of this notice/until further notice, and the garages/garage referred to above shall be deemed not to be registered under the Act for the duration of such suspension.

The following are conditions attached to this suspension—
.....
.....
.....
.....
.....
.....
.....
.....
.....
.....
.....
.....
.....
.....
.....
.....
.....
.....
.....
.....

Dated this ..... day of ....., 197.....

Automotive Trades Registration Board
by .....
Registrar

FORM 17

GOVERNMENT OF MALAŴI
AUTOMOTIVE TRADES REGISTRATION AND FAIR PRACTICES ACT
(CAP. 50:05)
NOTICE TO APPEAR AND SHOW CAUSE
(SECTION 26(1))

Take Notice that you are hereby required by the above Board to appear before it on ..... at .....
(*date*) (*time*)
at .....
(*place*)
and show cause why the Board should not recommend to the Minister the cancellation of your registration as a Commercial Garage Proprietor in respect of your garage premises situated at .....
.....
.....
.....

This notice is issued on the following grounds .....
.....
.....
.....
.....
.....
.....
.....
.....
.....
.....
.....
.....
.....
.....
.....
.....
.....
.....

Dated this ..... day of ....., 197.....

Automotive Trades Registration Board
by .....
Registrar

FORM 18

GOVERNMENT OF MALAŴI
AUTOMOTIVE TRADES REGISTRATION AND FAIR PRACTICES ACT
(CAP. 50:05)
NOTICE TO APPEAR AND ANSWER QUESTIONS
(SECTION 29(2))

Take notice that the Automotive Trades Registration Board requires you to appear before it on .....
(*date*)

at ..... at .....
(*time*) (*place*)

and answer questions that may be put to you in respect of the matters hereinafter referred to, which are to be investigated by the Board.

The matters which are to be investigated by the Board are as follows:
.....
.....
.....
.....

Dated this ..... day of ....., 197.....
Automotive Trades Registration Board
by .....
Registrar

FORM 19

GOVERNMENT OF MALAŴI

AUTOMOTIVE TRADES REGISTRATION AND FAIR PRACTICES ACT

(CAP. 50:05)

NOTICE OF REINSTATEMENT OF REGISTRATION

(SECTION 30(3))

Take notice that the Minister has directed that your name (1) ..... which was struck off the Register following the cancellation of your registration as a commercial garage proprietor on (2) ..... in respect of,

(*a*) all garage premises then registered in your name as registered owner;

(*b*) the garage premises situated at .....
.....
then registered in your name as registered owner thereof, should be reinstated in respect of,

(*a*) all garage premises then registered in your name as registered owner;

(*b*) the garage premises situated at .....
.....
with effect from, ...
and the Register of Commercial Garage Proprietors and Commercial Garages has, this day, been amended accordingly.

Dated this ..... day of ....., 197.....
Automotive Trades Registration Board
by .....
Registrar

Key
(1) Registered name of proprietor
(2) Date of cancellation of registration

FORM 20

GOVERNMENT OF MALAŴI
AUTOMOTIVE TRADES REGISTRATION AND FAIR PRACTICES ACT
(CAP. 50:05)
STATEMENT OF GARAGE PROPRIETOR ON REPLACED PARTS
(SECTION 33(1)(*b*))

[IMPORTANT: To be furnished by the garage to the vehicle owner on delivery to him of a repaired vehicle.]

1. Name of Registered Garage Proprietor .....
2. Name of registered garage .....
3. Make, type and model of motor vehicle or engine repaired .....
.....
4. Name of owner of vehicle or engine concerned .....
.....
5. Address of owner of vehicle or engine concerned .....
.....

I state that in the course of repairing the above-mentioned motor vehicle or engine, I caused the following parts to be placed—
.....
.....
.....
.....

The replacements are—

(*a*) New parts issued by the manufacturers of the motor vehicle or engine concerned .....
.....
.....
.....
.....
.....

(*b*) New parts made by a motor spares manufacturer namely, Messrs.
.....
.....
.....
.....
.....

(*c*) Substitute parts made by me/my representative for the purpose of the repairs in question .....
.....
.....
.....

(*d*) Second-hand parts which are reasonably fit for the purpose of the repairs in question .....
.....
.....
.....

[NOTE: Delete (*a*), (*b*), (*c*) or (*d*) where inappropriate.]

Dated this ..... day of ....., 20.....

Signed .....

Registered Proprietor/Agent

SECOND SCHEDULE reg. 3 G.N. 151/1981 32/1998 23/2004

FEES

	K	t
Registration of a garage proprietor	750	00
Registration of a commercial garage—		
(i) Grade A	50,000	00
(ii) Grade B	30,000	00
(iii) Grade C	30,000	00
(iv) Grade D	30,000	00
(v) Grade E—		
(*a*) in Cities and Municipalities	20,000	00
(*b*) in Townships and rural areas	5,000	00
(vi) Grade F	2,500	00
Transfer of registration	750	00
A certified copy of registration from the Registrar . .	250	00

SECOND-HAND SCRAP METAL DEALERS

CHAPTER 50:06

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CHAPTER 50:06

SECOND-HAND AND SCRAP METAL DEALERS

ARRANGEMENT OF SECTIONS

SECTION

1. Short title and commencement
2. Interpretation
3. Appointment of registering authority
4. Registration of dealers
5. Dealer to furnish description of premises
6. Non-registration of certain persons
7. Dealers to keep books
8. Dealers to retain articles for seven days
9. Dealers to enter names of purchasers, etc.
10. False entries and information
11. Dealers to produce articles and books on demand
12. Dealers to report stolen goods
13. Dealer may not alter or deface article without permission
14. Dealer may not possess smelting pots, etc.
15. Business not to be transacted with persons under 14 years of age
16. Dealers to have their names over shop doors
17. Revocation of registration
18. Cancellation of registration
19. Regulations
20. Exemptions
21. Registration not in lieu of licensing, etc., under other written laws

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An Act to provide for the registration of dealers in second-hand goods and scrap metal and for matters incidental thereto and connected therewith

7 of 1971
G.N. 73/1972

[12th March, 1973]

1. This Act may be cited as the Second-hand and Scrap Metal Dealers Act. Short title

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

"article" in relation to second-hand goods, means any item of second-hand goods, and in relation to scrap metal means anything consisting wholly or partly of metal and includes any part of such item or thing;

"to buy" means to obtain by way of purchase, barter or exchange, and cognate words shall be construed accordingly;

"dealer" means a second-hand dealer or a scrap metal dealer;

"goods" means any tangible movable property entirely or partly manufactured, cast, wrought, woven or fashioned out of or on any metal, precious metal, cloth, paper, glass, clay, wood, plastic or other material, and includes motor vehicles, machinery, tools, works of art and printed and photographic reproductions of paintings, photographs, and recorded reproductions of speech or music;

"metal" means aluminium, cobalt, copper, iron, lead, manganese, vanadium, cadmium, tungsten, zinc, all other ferrous and non-ferrous metals and alloys of these metals but does not include precious metals except to the extent that one tenth of one *per centum* or less of the weight of such an alloy as aforesaid is attributable to any precious metal;

"precious metal" means gold, silver and platinum;

"premises" includes any land whether enclosed or unenclosed and whether consisting of land and buildings or otherwise;

"register" means the register of second-hand and scrap metal dealers kept by the registering authority as provided by section 4 (2);

"registered dealer" means a dealer registered pursuant to section 4;

"registering authority" means the Commissioner of Police;

"re-possessed goods" means any goods which, under the terms of a hire-purchase or instalment sale agreement, have been re-possessed by the seller thereof from the purchaser;

"scrap metal" includes—

(i) any old metal or broken metal;

(ii) any broken, worn out or defaced or manufactured, or partly manufactured, processed or wrought articles which are not fit for the purpose for which they were manufactured, processed or wrought or which are no longer so required;

(iii) metallic waste;

(iv) any metal, occurring as a mineral in a raw or natural state, in quantities of less than one thousand pounds in weight, except when utilized *bona fide* as raw metal geological specimens;

"scrap metal dealer" means any person who carries on a trade or business which consists wholly or partly of buying and selling scrap metal, whether the scrap metal sold is in the form in which it was bought or otherwise, and includes any person who, from a person other than a scrap metal dealer, buys or acquires scrap metal for further processing or for the manufacture of other things or for export, but does not include any person engaged in mining who in the course of his mining business buys or sells scrap metal from or to another such person;

"second-hand goods" means any goods which have been bought or delivered or are possessed for sale after use by a previous owner, and includes goods received by any person from their previous owner in partial or full consideration for any contract, or by way of deposit or part deposit in respect of any hire-purchase or instalment sale agreement, but does not include re-possessed goods so long as the said goods remain in the possession of the seller thereof.

Appointment of registering authority

3.—(1) There shall be a registering authority who shall be the Commissioner of Police and who shall, subject to the general or special directions of the Minister, be responsible for the administration of this Act.

(2) The registering authority may designate a police officer of the rank of superintendent or of any higher rank as registrar for the purposes of this Act.

(3) The police officer in charge of each District shall be *ex officio* assistant registrar for the purposes of this Act.

(4) The registering authority may, subject to the general or special directions of the Minister, delegate any of his powers or functions under this Act to any police officer or public officer.

Registration of dealers

4.—(1) On and after the date of commencement of this Act, no person shall carry on the business of a second-hand dealer or scrap metal dealer without being registered as such under this Act.

(2) The registering authority shall keep a register in the prescribed form for the purposes of this Act.

(3) An application for registration under this Act or for a renewal thereof shall be made, in the prescribed manner and at the prescribed time, to the registering authority and may be granted or refused at the discretion of that authority.

(4) Where an application for registration is made under this Act in respect of a partnership firm, the partners shall nominate one member of the firm who shall, upon the application being granted by the registering authority, be registered as the registered dealer in respect of the said partnership business.

(5) Every application for registration or for a renewal thereof shall be accompanied with the appropriate prescribed fee.

(6) Registration under this Act shall be effective from the date of its entry in the register by the registering authority and shall determine on the 1st January following unless sooner revoked or cancelled.

(7) Any person who carries on business as a second-hand dealer or scrap metal dealer without being registered as such under this Act or who contravenes the terms of his registration shall be guilty of an offence and liable to a fine of K1,000 and to imprisonment for one year.

Dealer to furnish description of premises

5. Every person applying for registration under this Act or for a renewal thereof shall, at the time of his application, furnish to the registering authority a description, in writing, of his premises, including all cellars, closets and other places proposed to be used by him in the course of his business, and shall, if so required by the said authority, furnish a map or plan of such premises.

Non-registration of certain persons

6.—(1) Save with the consent of the Minister, the registering authority shall not register any person under this Act who—

(*a*) is not a resident of Malaŵi; or

(*b*) has been convicted of an offence under this Act and sentenced therefor to a fine of K20 or more or to imprisonment without the option of a fine; or

(*c*) has been convicted of an offence under any fiscal or revenue law; or

(*d*) has been convicted of an offence involving fraud or dishonesty; or

(*e*) has, within six years last past, been convicted of an offence under any written law and sentenced therefor to a term of imprisonment without the option of a fine.

(2) Nothing in this section provided shall be deemed to impair or delimit the general discretion of the licensing authority to refuse registration under this Act.

Dealers to keep books

7.—(1) Every dealer shall enter in a bound book (hereinafter referred to as the "dealings book") to be kept, exclusively for the purposes of this Act, by him on his premises the particulars of each transaction in second-hand goods or scrap metal, as the case may be, entered into by him in the course of his said business, including—

(*a*) a proper and distinctive description of each article purchased or received by him;

(*b*) the name and residential address of the person from whom he purchased or received the article;

(*c*) the date and hour of the day of each transaction;

(*d*) the price paid or agreed to be paid for the article;

(*e*) in the case of a transaction in scrap metal, the source of such scrap metal;

(*f*) such other particulars as may be prescribed:

Provided that, where articles of the same kind, value and description are on any particular occasion bought or sold in a lot or parcel, it shall be sufficient to describe such lot or parcel without describing each of the several articles comprising same.

(2) Where a dealer engages in business in more premises than one he shall keep a dealings book for and in respect of each such premises and each dealings book shall be kept on the premises to which it relates and shall contain a record of transactions in second-hand goods or scrap metal, as the case may be, entered into on such premises.

(3) Every entry in the dealings book kept by a dealer shall be deemed, unless the contrary is proved, to have been made by or under the authority of that dealer.

(4) Any person who fails to comply with any requirement of this section shall be guilty of an offence and liable to a fine of K100.

Dealers to retain articles for seven days

8.—(1) Every article purchased or received by a dealer shall be kept by him, on his premises, for seven days from the date on which it was so purchased or received, unless in the meantime he shall, on giving twenty-four hours' previous notice to the officer in charge of the Police of the District in which the premises are located, have received from such officer permission to dispose of such article.

(2) Every dealer shall, when required so to do by a police officer, produce to him any such article before the expiration of the said period of seven days.

(3) Any person who fails to comply with any requirement of this section shall be guilty of an offence and liable to a fine of K20.

Dealers to enter names of purchasers, etc.

9.—(1) Every dealer shall enter in the dealings book the name and address of the person to whom any article, lot or parcel is sold or delivered by him and also the date of the sale or delivery.

(2) Any person who fails to comply with the requirement of this section shall be guilty of an offence and shall be liable to a fine of K5.

False entries and information

10. Any person who—

(*a*) knowingly makes any false entry in any dealings book; or

(*b*) knowingly gives to a second-hand dealer or his servant or agent any false particulars concerning his name and address; or

(*c*) gives to any scrap metal dealer or his servant or agent any false particulars concerning his name and address or concerning the source of any scrap metal,

shall be guilty of an offence and liable to a fine of K2,000 or imprisonment for a term of two years.

Dealers to produce articles and books on demand

11.—(1) Every dealer shall at all reasonable times produce on demand to any police officer any article in his possession and shall also so produce the dealings book in which the description of any article is or ought to have been entered.

(2) Any police officer obtaining the production of any dealings book shall on each occasion subscribe his name immediately after the last entry therein.

(3) Whenever any article which has been stolen or fraudulently obtained is found in the possession of any dealer, he shall, on being informed by any police officer that such article was stolen or fraudulently obtained, hand over the said article to such officer.

(4) Any dealer who fails to comply with any requirement of this section shall be guilty of an offence and liable to a fine of K20, without prejudice to his being also proceeded against under any other written law as a receiver of stolen goods.

Dealers to report stolen goods

12.—(1) Where any article, with respect to which information in writing is given by any police officer to a dealer that it has been stolen or fraudulently obtained, is then in, or subsequently comes into, the possession of the said dealer, he shall as soon as is practicable inform a police officer that an article answering the description of the said stolen or fraudulently obtained article is in his possession and shall state the name and address given by the person from whom the article was received.

(2) Any dealer who contravenes the provisions of this section shall be guilty of an offence and liable to a fine of K10:

Provided that, in the case of any article which it may be difficult to trace and identify, no fine shall be imposed under this section unless it appears to the court that the article was knowingly concealed by the dealer.

Dealer may not alter or deface articles without permission

13. Where any dealer, after receiving information of the theft or fraudulent obtaining of any article, melts, alters, defaces or conceals any article answering to the description of the aforesaid article, or causes the same to be melted, altered, defaced or concealed, without having been authorized in writing by a police officer so to do, and it is found that the said article was stolen or fraudulently obtained by the person from whom the dealer received the same or by any other person, then in such case it shall be held that the dealer knew that the said article was stolen or fraudulently obtained and he shall be proceeded against according to law as a receiver of stolen goods, and no evidence of his guilt shall be necessary other than the evidence of such melting, altering, defacing or concealing, after receiving such information as aforesaid.

Dealer may not possess smelting pots, etc.

14. Any dealer, who, without permission in writing from the police officer in charge of the District in which his premises are located, possesses, keeps or knowingly allows to be kept on his premises any smelting pot or implement for melting, altering or defacing metals or precious metals shall be guilty of an offence and liable to a fine of K1,500 and to imprisonment for a term of one year.

Business not to be transacted with persons under 14 years of age

15.—(1) A dealer shall not sell to or purchase from any person apparently under the age of fourteen years, whether such person is acting on his own behalf or on behalf of any other person.

(2) Any dealer who contravenes the provisions of this section, either by himself or any agent or servant, shall be guilty of an offence and liable to a fine of K20.

Dealers to have their names over shop doors

16.—(1) Every registered dealer shall have his name with the words "registered second-hand dealer" or "registered scrap metal dealer", as the case may be, painted over the door or principal entrance to his premises in legible characters, either black upon a white ground or white upon a dark ground, and shall replace the same if removed, obliterated or defaced.

(2) The requirements of this section shall be met if the said name and words are legibly painted, impressed or embossed on a plate of metal or other durable material which is affixed over the said door or principal entrance.

(3) Any person who fails to comply with the requirements of this section shall be guilty of an offence and liable to a fine of K5.

Revocation of registration

17.—(1) The registering authority may, with the approval of the Minister, revoke any registration under this Act, if—

(*a*) the registered dealer fails or refuses to comply with any term or condition of his registration; or

(*b*) by reason of any structural alterations, or otherwise, the said authority is of opinion that the premises in which the registered dealer carries on his business as such have become unsuitable for such business; or

(*c*) the registered dealer has been convicted of an offence under this Act or under any fiscal or revenue law;

(*d*) the said authority is of opinion that the registered dealer has failed to make entries, or has made inaccurate or misleading entries, in any dealings book.

(2) Whenever the registering authority decides to revoke any registration pursuant to subsection (1), he shall send to the registered dealer a notice in the prescribed form stating that he has decided to revoke the said registration as of a date not less than one month or more than three months from the date of the said notice.

(3) Any registered dealer who receives a notice pursuant to subsection (2) may, within seven days after receipt thereof, appeal in writing to the Minister against the decision of the registering authority to revoke the said registration and the decision of the Minister on such appeal shall be final and not subject to review by any court.

(4) Where a registration has been revoked pursuant to this section the dealer concerned shall be allowed thirty days from the date of the revocation or from the date of the decision of the Minister disallowing any appeal pursuant to subsection (3), whichever is the later, within which to dispose of second-hand goods or scrap metal, as the case may be, in stock on his premises at the date of the revocation and during the said period the said dealer shall be subject to this Act in respect of such second-hand goods or scrap metal, as the case may be, as if his said registration had not been revoked.

(5) A dealer whose registration has been revoked pursuant to this section shall not buy or receive for sale any article on or after the date of such revocation notwithstanding that the said dealer may, during the said time, be entitled to dispose of existing stocks of second-hand goods or scrap metal, as the case may be, pursuant to subsection (4).

(6) Any person who contravenes the provisions of subsection (4) or (5) shall be guilty of an offence and liable to a fine of K1,500 and to imprisonment for a term of one year.

Cancellation of registration by court

18.—(1) Upon the conviction of any registered dealer of an offence under this Act or under any fiscal or revenue law or of an offence involving fraud or dishonesty the court, in addition to any other penalty it may impose, may order the cancellation of the registration of the said registered dealer under this Act, and if requested so to do by the prosecution in any such case, the court shall so order the cancellation of the said registration.

(2) Whenever a court makes an order pursuant to subsection (1) it shall cause a certified copy of such order to be delivered to the registration authority, who shall, as soon as the said order becomes final, strike the name of the said dealer from the register.

(3) Any person whose registration has been cancelled pursuant to this section shall, as soon as the order of cancellation becomes final, cease to deal in second-hand goods whether on his own behalf or through any partner, manager, employee or agent.

Regulations

19. The Minister may make regulations for the better carrying out of this Act, and, without prejudice to the generality of the foregoing such regulations may provide for—

(*a*) the forms to be used for any register, return or application;

(*b*) the fees for any registration or application;

(*c*) the form of and particulars to be entered into any dealings book, and, in this regard, may provide for different forms and particulars in respect of different articles and businesses and in respect of different areas;

(*d*) the terms and conditions of registration;

(*e*) the penalties for breaches of the regulations;

(*f*) any matter to be or which may be prescribed.

Exemptions

20. The Minister may, by Government Notice, exempt any dealer or class of dealer from the provisions and requirements of this Act, or any of them, and may, in like manner, revoke or alter any such exemption.

Registration not in lieu of licensing, etc., under other written laws Cap. 46:01

21. Registration under this Act shall be in addition to and not in derogation of any applicable licensing or other requirements of the Businesses Licensing Act or any other written law.

SUBSIDIARY LEGISLATION

G.N. 73/1972

SECOND-HAND AND SCRAP METAL DEALERS REGULATIONS

under s. 19

Citation

1. These Regulations may be cited as the Second-hand and Scrap Metal Dealers Regulations.

A. Registers of Dealers

The Register

2. The Register of Second-hand and Scrap Metal Dealers shall be in two Parts, consisting of—

(*a*) Part I—Register of Second-hand Dealers, which shall be in Form A in the First Schedule; and

(*b*) Part II—Register of Scrap Metal Dealers, which shall be in Form B in the First Schedule,

and shall be maintained by the Registrar designated in accordance with section 3 (2) of the Act.

Place where Register to be kept

3. The Register shall be kept at such place as is appointed by the registering authority from time to time, by *Gazette* notice, and shall be in the custody and under the control of the Registrar.

District Registers

4.—(1) Upon the registration of any second-hand or scrap metal dealer in the Register, the Registrar shall cause a copy of the particulars entered in the Register in respect of such dealer to be sent to the Assistant Registrar of each District in which such dealer has premises which are registered as premises where second-hand goods or scrap metal, as the case may be, are sold or stored by the registered dealer, and the Assistant Registrar of such District shall enter such particulars in respect of such dealer, and of such registered premises as are within the District, in the appropriate Part of the relevant District Register maintained by such Assistant Registrar for the purpose of the Act.

(2) District Registers shall be in the Form of the Register, but shall not contain any entries other than those entered therein pursuant to subregulation (1).

Inspection of Registers

5. The Register and all District Registers shall be available for inspection by any person at all reasonable times.

Discrepancies

6. In the event of any discrepancy between particulars entered in the Register and particulars entered in any District Register in respect of any second-hand or scrap metal dealer, the entry in the Register shall be conclusive.

Certified copies of entries

7.—(1) A copy of any entry in the Register in respect of any second-hand or scrap metal dealer, as the case may be, certified as a true and correct extract therefrom by the Registrar, shall be evidence of the said entry and of the facts so entered in the Register in respect of the said second-hand or scrap metal dealer, as the case may be.

(2) A copy of any entry in a District Register in respect of any second-hand or scrap metal dealer, as the case may be, certified as a true and correct extract therefrom by the Assistant Registrar, in whose custody and under whose control the said District Register is for the time being held, shall, unless the contrary is proved, be evidence of the entry and of the facts entered in the Register in respect of the said second-hand or scrap metal dealer.

Application for registration or renewal

8.—(1) Every application, under section 6(3) of the Act, for registration or renewal of registration as a second-hand dealer shall be in Form A in the Second Schedule.

(2) Every application, under section 6(3) of the Act, for registration or renewal of registration as a scrap metal dealer shall be in Form B in the Second Schedule.

(3) Every application shall be submitted in triplicate to the Assistant Registrar of the District in which the applicant's principal place of business is located.

(4) The Assistant Registrar shall retain one copy of such application and shall, as soon as is practicable, forward the other two copies, together with his report in duplicate on the suitability of the applicant and of the applicant's premises located in his District, to the Registrar.

Ruling of Registering Authority

9.—(1) The Registrar shall, as soon as is practicable, forward one copy of every application and of every report received by him pursuant to regulation 8(4), together with his recommendations thereon, to the registering authority.

(2) The registering authority may require any applicant to furnish to the authority a map or plan of any premises intended to be used by the applicant for the purposes of his business as a dealer. Such request shall be in writing and shall specify a time, being not less than 14 days, within which such map or plan shall be furnished.

(3) The registering authority may, as a condition for registration, or for renewal of registration, require any applicant to make reasonable necessary structural alterations to any premises intended to be used in the course of or for the purposes of such applicant's business as a dealer, for the purpose of rendering such premises more easily subject to control or inspection by the police.

(4) The registering authority may attach to the registration or to the grant or renewal of registration of any applicant, generally or in respect of any particular premises, such conditions as it deems necessary for the better administration of the Act or for the prevention of crime.

(5) Whenever the registering authority intends to impose or attach any conditions to the registration, or to the grant or renewal of registration, of any applicant, generally or in respect of any particular premises, it shall notify the applicant thereof in writing,

giving such applicant not less than fourteen days within which to make representation to the authority as to why such conditions, or any of them, should not be imposed or attached.

(6) Having considered such representations as are made to the authority pursuant to subregulation (5), the authority may waive such conditions, or any of them, or may rule that such conditions, or any of them, be imposed or attached as notified pursuant to subregulation (5).

(7) Conditions attaching to the grant or renewal of registration must be fulfilled by the applicant before registration or renewal of registration under the Act.

(8) Upon the registering authority being satisfied that registration or renewal thereof should be granted, whether subject to conditions or otherwise, it shall notify the applicant and the Registrar of its ruling thereon and, if subject to conditions, such notices shall distinguish between conditions imposed upon or attaching to the grant or renewal of registration to, and conditions attaching to the registration of, such applicants.

(9) The Registrar, upon being satisfied that any conditions imposed upon or attaching to the grant or renewal of registration have been fulfilled and that the applicant has agreed to comply, at all times, with any condition attaching to his registration as a dealer, the Registrar shall enter the required particulars in the appropriate Part of the Register and shall send a copy of the entry to the Assistant Registrar in each District in which the relevant premises are located, for entry by such Assistant Registrar in the appropriate Part of the relevant District Register.

B. Special Provisions Re Scrap Metal Dealers

Returns to be made upon registration of scrap metal dealer

10.—(1) Within one month after registration or renewal of registration of any person as a scrap metal dealer, such dealer shall furnish to the Registrar, in triplicate, a return of all scrap metal in his possession at the date of his registration or renewal of registration.

(2) Such return shall be in Form C in the Second Schedule.

Weights of scrap metal

11. For the purpose of any return under these Regulations or the Act, or for the purposes of any entry in any dealings book, weights of scrap metal shall be shown as follows—

(*a*) iron or steel, to the nearest cwt.;
(*b*) copper, to the nearest lb.;
(*c*) lead, to the nearest lb.;
(*d*) zinc, to the nearest lb.;
(*e*) aluminium, to the nearest lb.;
(*f*) manganese, to the nearest ounce;
(*g*) vanadium, to the nearest ounce;

(*h*) cadmium, to the nearest ounce;

(*i*) tungsten, to the nearest ounce;

(*j*) brass, to the nearest lb.;

(*k*) alloys, principally of copper (other than brass), to the nearest lb.;

(*l*) alloys, principally of iron, to the nearest cwt.;

(*m*) alloys, principally of zinc, to the nearest lb.;

(*n*) alloys, principally of aluminium, to the nearest lb.

C. Dealings Books

Forms of dealings books

12.—(1) The dealings books required for the purposes of section 7 of the Act shall be—

(*a*) in Form A in the Third Schedule for dealings in second-hand goods; and

(*b*) in Form B in the Third Schedule for dealings in scrap metal.

(2) Where a dealer is registered both as a second-hand dealer and a scrap metal dealer in respect of the same premises, he shall keep and maintain on such premises two separate dealings books, one of which shall be in Form A and the other in Form B in the Third Schedule, and shall record in each such book the transactions appropriate thereto.

D. Fees

Fees

13. The fees specified in the Fourth Schedule to these Regulations shall be payable under the Act.

FIRST SCHEDULE

GOVERNMENT OF MALAŴI

Form A Second-Hand and Scrap Metal Dealers Act,

(Cap. 50:06)

Part I Year 19 .....

REGISTER OF SECOND-HAND DEALERS

Registration number	Date of registration	Dealer's name and address	Premises where goods are sold, and premises where goods are stored, by dealer	Former registration number	Fee paid and G.R. No.	Con-victions

GOVERNMENT OF MALAŴI

FORM B SECOND-HAND AND SCRAP METAL DEALERS ACT

(CAP. 50:06)

PART II Year .....

REGISTER OF SCRAP METALS DEALERS

Registration number	Date of registration	Dealer's name and address	Premises where scrap metal is sold, and premises where scrap metal is stored, by dealer	Former registration number	Fee paid and G.R. No.	Convictions

SECOND SCHEDULE

GOVERNMENT OF MALAŴI

FORM A SECOND-HAND AND SCRAP METAL DEALERS ACT

(CAP. 50:06)

APPLICATION FOR REGISTRATION/RENEWAL OF REGISTRATION AS A SECOND-HAND DEALER

Name of Applicant .....

(*Block capitals*)

Postal Address .....

Business address .....

(*If a company, address of Registered Office*)

(If Applicant is a Nominated Partner—

Name of firm .....

Names and addresses of other partners—

.....

.....

.....

.....

.....

.....)

A. Situations of all premises where dealings in second-hand goods will be carried on under the registration applied for—

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.....
.....

B. Situations of all other premises where second-hand goods will be stored for purposes of business—

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Other businesses carried on on premises listed under A above—

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Other businesses carried on on premises listed under B above—

.....
.....

Number(s) and date(s) of previous registration(s) under this Act—

.....	.....
.....	.....
.....	.....
.....	.....
.....	.....

(If Applicant is a Nominated Partner—

Number(s) and date(s) of previous registration(s) of any of the other partners—

.....	.....
.....	.....
.....	.....
.....	.....
.....	.....)

I hereby certify that—

(*a*) I have not (nor have any of my partners) been convicted of any offence under the Second-hand and Scrap Metal Dealers Act and sentenced therefor to a fine of K20 or more or to imprisonment without the option of a fine;

(*b*) I have not (nor have any of my partners) been convicted of an offence under any fiscal or revenue law;

(*c*) I have not (nor have any of my partners) been convicted of an offence involving fraud or dishonesty;

(*d*) I have not (nor have any of my partners), within six years last past, been convicted of an offence under any written law and sentenced therefor to imprisonment without the option of a fine, and the information supplied in this application is true and correct.

Date ..... *Signature* .....

GOVERNMENT OF MALAŴI

FORM B SECOND-HAND AND SCRAP METAL DEALERS ACT

(CAP. 50:06)

APPLICATION FOR REGISTRATION/RENEWAL OF REGISTRATION AS A SCRAP METAL DEALER

Name of Applicant .....

(*Block capitals*)

Postal Address .....

Business address .....

(*If a company, address of Registered Office*)

(If Applicant is a Nominated Partner—

Name of firm .....

Names and addresses of other partners—

.....

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.....)

A. Situations and descriptions of all premises where dealings in scrap metal will be carried on under the registration applied for—

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B. Situations and descriptions of all other premises where scrap metal will be stored for purposes of business—

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.....
.....
.....

Other businesses carried on on premises listed under A above—

.....
.....

Other businesses carried on on premises listed under B above—

.....
.....

Number(s) and date(s) of previous registration(s) under this Act—

....
....
....
....

(If Applicant is a Nominated Partner—

Number(s) and date(s) of previous registration(s) of any of the other partners—

....
....
....
....
....

I hereby certify that—

(*a*) I have not (nor have any of my partners) been convicted of any offence under the Second-hand and Scrap Metal Dealers Act and sentenced therefor to a fine of K20 or more or to imprisonment without the option of a fine;

(*b*) I have not (nor have any of my partners) been convicted of an offence under any fiscal or revenue law;

(*c*) I have not (nor have any of my partners) been convicted of an offence involving fraud or dishonesty;

(*d*) I have not (nor have any of my partners), within six years last past, been convicted of an offence under any written law and sentenced therefor to imprisonment without the option of a fine,

and the information supplied in this application is true and correct.

Date ..... *Signature* .....

GOVERNMENT OF MALAŴI

FORM C SECOND-HAND AND SCRAP METAL DEALERS ACT

(CAP. 50:06)

RETURN OF SCRAP METAL IN THE POSSESSION OR UNDER THE CONTROL OF THE SCRAP METAL DEALER ON THE DATE OF THE GRANT OR RENEWAL OF HIS REGISTRATION AS A SCRAP METAL DEALER

Lot No.	Variety of Metal	Weight and Dimensions	General Description

FORM A

THIRD SCHEDULE

DEALINGS BOOK— (SECOND-HAND GOODS)

For Premises No. .....

PURCHASES								SALES							
Description of goods bought	Date and time of purchase	Lot No.	Identification mark	Other particulars of goods bought	Person effecting purchase	Seller's name and address	Price paid	Purchaser's name and address	Description of goods sold	Lot No. from which sold	Identification marks	Other particulars of goods sold	Person effecting sale	Price received	Comments

(Left-hand page) *(Right-hand page)*

FORM B

DEALINGS BOOK— (SCRAP METAL)

Premises No. .....

PURCHASES								SALES							
Variety of metal bought	Date and time of purchase	Lot No.	Weight and Dimensions	Description and source	Person effecting purchase	Seller's name and address	Price Paid	Purchaser's name and address	Variety of metal sold	Lot No. from which sold	Weight and Dimensions	Description	Person effecting sale	Date and time of sale	Price received

(Left-hand page) *(Right-hand page)*

FOURTH SCHEDULE

Fees

	K	t
Application for registration or renewal of registration as a second-hand dealer	50	00
Application for registration of renewal or registration as a scrap metal dealer	50	00
For each premises registered for second-hand dealings . .	10	00
For each premises registered for scrap metal dealings . .	10	00
For each premises registered for storing second-hand goods	10	00
For each premises registered for storing scrap metal . .	10	00
Reduction in above fees when application made in course of a year—		
1/12 for every full month expired at date of application		
Certified copy of extract from Register	1	00
Certified copy of extract from District Register . .	0	50

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CHAPTER 50:07

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Prescribed Hours for Sales Licences

1 of 1979
9 of 1985
10 of 1996
G.N. 79/1979

An Act to amend and consolidate the law relating to the manufacture and sale of intoxicating liquor, to repeal the Intoxicating Liquor Act and the Traditional Beer Act and to provide for matters connected therewith and incidental thereto

[1st November, 1979]

PART I

PRELIMINARY

Short title

1. This Act may be cited as the Liquor Act.

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

"area" means licensing area;

"area of a local authority" means any Local Government Area under the Local Government (Urban Areas) Act, or the area of jurisdiction of any District Council under the Local Government (District Councils) Act, as the case may be; Cap. 22:01, Cap. 22:02

"auctioneer's temporary licence" has the meaning ascribed to that term by section 25;

"beer" includes ale, stout, lager, and any other description of beer, and any liquor which is made or sold as a description of beer or as a substitute for beer and which on analysis of a sample thereof at any time is found to contain more than two *per centum* of proof spirits, but does not include opaque beer or traditional beer;

"beer-hall" means any premises within the area of any local authority which are maintained and operated by such local authority and in which the said local authority sells or permits the sale of opaque beer for consumption on or off the premises;

"Board" means a Local Licensing Board established pursuant to section 5;

"brewer" means any person who by a process of fermentation brews beer from any cereal, tuber or root, or from hops, or from any concentrate, extract, product or combination thereof;

"canteen" means any premises in which the sale of liquor to—

(*a*) members of the Malaŵi Army, or any specified class of members of the Malaŵi Army, or their guests, is carried on under the authority of the Minister responsible for Army matters; or

(*b*) members of the Malaŵi Police Force, or any specified class of members of the Malaŵi Police Force, or their guests, is carried on under the authority of the Minister responsible for Police matters; or

(*c*) members of the University of Malaŵi, or any specified class of members of the University of Malaŵi, or their guests, is carried on under the authority of the Minister responsible for Education;

"cider" includes perry;

"commercial brewer" means any brewer who brews beer, cider or other such liquor, other than opaque beer, by an industrial process for ultimate sale to any use by members of the public;

"commercial brewer's licence" bears the meaning ascribed to that term by section 18;

Cap. 46:03 "company" means a company incorporated under the Companies Act;

"denatured or methylated spirits" means spirits mixed with some other substance in such manner and quantity as to render the mixture unfit for use as a beverage in the opinion of the Controller of Customs and Excise;

"distiller" means any person who, by a process of distillation, distils spirits for ultimate sale to and use by members of the public;

"distiller's licence" bears the meaning ascribed to that term by section 17;

"health officer" bears the meaning ascribed to that term by section 4 of
Cap. 34:01 the Public Health Act;

"intoxicating liquor" means any spirits, wine, beer, cider or other potable liquor intended for human consumption, which, on analysis of a sample thereof at any time, is found to contain more than two *per centum* by volume of proof spirits;

"licence" means a licence issued pursuant to this Act;

"licensed premises" means any premises, or part of any premises, which are specified in a licence issued under this Act as the place where the licensee is authorized to exercise his rights thereunder; and includes any lands adjacent to such premises which, whether held by the licensee under the same title or grant or otherwise, are ordinarily used by the said licensee in and about the said exercise of his said rights and are included within the description on the licence.

It further shall be deemed to include, to the extent in this Act provided, any passenger vessel or part of any passenger vessel, any railway restaurant car or part of any railway restaurant car, or any aircraft or part of any aircraft, specified in such licence as the place wherein the licensee may exercise his rights under the said licence, or which is a unit, or part of a unit, of any fleet of any such passenger vessels, railway restaurant cars or aircraft, as the case may be, so specified;

"licensing area" bears the meaning ascribed to such term by section 3;

"licensing authority" means, in relation to any area—

(*a*) the licensing officer designated for such area under section 4; or

(*b*) where a Local Licensing Board has been established for such area under section 5, the said Local Licensing Board;

"licensing officer" means, in relation to any area, the person designated by the Minister as such for such area pursuant to section 4, and includes any person so designated as acting licensing officer for such area;

"liquor" means intoxicating liquor;

"major shareholder" means, in relation to any company, any person who is registered on the Register of Shareholders of such company as the holder of ten or more *per centum* of the issued equity shares of the company whose voting rights are not suspended; or who has the right to exercise the voting rights of ten or more *per centum* of such issued equity shares; or who, being the holder of a debenture or of debenture shares of the company with voting rights, has the rights to exercise ten or more *per centum* of the combined voting rights of all such equity shares, voting debentures and voting debenture shares issued by the said company;

"manufacturer's licence" means any licence under which the principal right exercisable by the licensee thereunder is the manufacture of liquor by an industrial process, for ultimate sale to and use by the public;

"medical officer of health" bears the meaning ascribed to that term by section 4 of the Public Health Act; Cap. 34:01

"mess" means any canteen;

"methylated spirits" see "denatured or methylated spirits";

"off-licence" means any class or grade of retail sales licence issued under this Act which is exercisable on stated licensed premises and which authorizes the licensee thereunder to sell liquor by retail sale for consumption off the said relevant licensed premises only;

"officer in charge of police" bears the meaning ascribed to that term by section 2 of the Police Act;

Cap. 13:01

"on-licence" means any class or grade of retail sales licence, issued under this Act, which is exercisable on stated licensed premises and which, *inter alia*, authorizes the licensee thereunder to sell liquor by retail sale for consumption on the said relevant licensed premises;

"opaque beer" means liquor brewed by an industrial brewing process, which, if brewed by traditional methods, would be traditional beer;

"opaque beer brewer's licence" bears the meaning ascribed to that term by section 20;

"permitted hours" means the prescribed hours appropriate to the relevant licence or permit, as the case may be, together with any lawful extensions thereof;

"premises" means any land with buildings thereon, and includes the curtilage of such buildings, and, for the purposes of any grade "TAV", "TRY" or "TPV" travel and transit licence issued under this Act, shall be deemed to include any passenger vessel or part of any passenger vessel, any railway restaurant car or part of any railway restaurant car, any aircraft or part of any aircraft, respectively, as specified in such licence as the place wherein the licensee may exercise his rights under such licence, or which is a unit or part of a unit of any fleet of any such passenger vessels, railway restaurant cars or aircraft, as the case may be, so specified;

"premises permit" means a permit to manufacture and sell traditional beer and to sell opaque beer as prescribed by section 65;

"prescribed hours" means the days of the week and the hours of the day during which a licensee or permit holder is authorized to sell liquor in the exercise of his licence or permit under this Act;

"proof spirits" means spirits any volume of which at fifty-one degrees Fahrenheit (10.555° Celsius) weighs twelve thirteenths of an equal volume of distilled water at the same temperature;

"prostitution" includes soliciting or procuring for prostitution or unnatural immoral purposes;

"removal of licence" bears the meaning ascribed to such term by section 55 (1);

"retail permit" means a permit to manufacture and sell traditional beer and to sell opaque beer as prescribed by section 64;

"retail sales licence" means any class of sales licence which authorizes the licensee thereunder to sell liquor by way of retail sale;

"retail sale" means the sale of liquor at any one time to any one person in quantities not exceeding the following—

(*a*) in the case of spirits and wines, two Imperial gallons, or if bottled or in small containers, one dozen reputed quart bottles or quart containers, or the equivalent total content in smaller or larger bottles or other containers, as the case may be;

(*b*) in the case of beer, cider, perry, opaque beer, traditional beer, or other such liquor, six Imperial gallons, or, if bottled or in small containers, four dozen reputed one-half pint bottles or one-half pint containers, or the equivalent total content in smaller or larger bottles or other containers, as the case may be;

"sales licence" means any licence under which the principal right exercisable by a holder thereof is the sale of liquor;

"sell" includes to supply and to keep for sale;

"spirits" means spirits of any description manufactured by a process of distillation, and includes all liquors mixed with spirits, and all liquid mixtures, compounds or preparations made with spirits;

"supply" includes to transfer or to deliver, whether on a sale or otherwise;

"temporary sales licence" means any auctioneer's temporary licence or any occasional licence;

"traditional beer" means any liquor brewed by a process of fermentation, by traditional methods, from one or more of the following ingredients, that is to say, millet, barley, sorghum, maize, cassava, or any prescribed cereal, tuber or root, or from any concentrate, extract or product of any such ingredient or from any combination of any such ingredients, concentrates, extracts or products, but shall not include any liquor brewed from any other ingredient, or any distilled liquor;

"transfer of licence" bears the meaning ascribed to such term by section 48;

"travel and transit licence" bears the meaning ascribed to such term by section 24;

"Tribunal" means the Licensing Appeals Tribunal established pursuant to section 56;

"wholesale sale" means the sale of liquor in unopened containers at any one time to any one person in quantities exceeding the following—

(*a*) in the case of spirits or wines, two Imperial gallons, or if bottled or in small containers, one dozen reputed quart bottles or quart containers, or the equivalent total content in smaller or larger bottles or other containers as the case may be;

(*b*) in the case of beer, cider, perry, opaque beer, or traditional beer or other such liquor, six Imperial gallons, or if bottled or in small containers, four dozen reputed one-half pint bottles or one-half pint containers, or the equivalent total content in smaller or larger bottles or other containers, as the case may be;

"wine-makers' licence" bears the meaning ascribed to such term by section 19;

"young person" means any person who is, or who appears to be, under the age of eighteen years.

PART II

Administration

Licensing areas

3.—(1) Subject to subsection (2), each area of a local authority shall be a licensing area, hereinafter called an "area", for the purposes of this Act.

(2) The Minister may, for the better administration of this Act, by notice published in the *Gazette*, include in any area any adjoining area, or any part of any adjoining area or any licensed premises within any such adjoining area, and such area, part or premises, as the case may be, so included by such notice, shall, for all of the purposes of this Act, be deemed to be a part of and within the first-mentioned area.

Licensing officers—licensing authorities

4.—(1) There shall be a licensing officer for each area for the purposes of this Act, who shall be an officer in the public service designated as such licensing officer by the Minister.

(2) Save as provided by section 5, each licensing officer shall be the licensing authority for the area for which he is designated.

(3) Within the area for which he is licensing officer each licensing officer shall be responsible to the Minister for the carrying out of the provisions of this Act in such area and shall, subject to the provisions of this Act and to the general or special directions of the Minister, exercise such functions and perform such duties as are conferred upon him by this Act.

Establishment of Local Licensing Boards

5.—(1) The Minister may, by notice published in the *Gazette*, establish for any area a Local Licensing Board (hereinafter called the "Board").

(2) Each Board shall consist of—

(*a*) the licensing officer for such area or, in his absence, such other person as may be designated by the Minister as acting licensing officer for such area, who shall be chairman;

(*b*) a health officer for the area, appointed to the Board by the Minister after consultation with the appropriate health authority;

(*c*) the officer in charge of police within the area, or such other police officer as may be designated in his stead by the Chief Commissioner;

(*d*) not less than two or more than six other members appointed by the Minister.

(3) Notwithstanding the provisions of paragraph (*d*) of subsection (2), the Minister may, at any time, appoint to any Board such additional members as he deems essential to it in the exercise of its powers and functions.

(4) Each Board shall be the licensing authority for the area for which it is established pursuant to subsection (1).

Non-eligibility for appointment to a Board

6.—(1) The following persons shall not be eligible for appointment to a Board—

(*a*) any holder of, or applicant for, any licence for the sale of liquor;

(*b*) any distiller or commercial brewer;

(*c*) any person engaged in the making of wine or spirits for sale;

(*d*) any opaque beer brewer;

(*e*) any partner, agent, director, manager, employee or spouse of any person described in paragraph (*a*), (*b*), (*c*) or (*d*);

(*f*) any executive director, officer, member of the executive committee or council, or agent of any body of persons whose objects include the sale, promotion of the sale or prevention of the sale of liquor, or any person who is, or who, within the preceding three years, was an officer or director or executive committee or council member of any body of persons having as a primary object the promotion or suppression of the liquor trade:

Provided that this paragraph shall not relate to any trade association of persons who are engaged in the business of the manufacture or sale of liquor in Malaŵi.

For the purpose of this paragraph the term "body of persons" means any partnership, society, club, group or association of persons corporate or unincorporate.

(2) The provisions of paragraph (*e*) or (*f*) of subsection (1) shall not apply to a legal practitioner who, from time to time, represents in his professional capacity, any person described in paragraph (*a*), (*b*), (*c*) or (*d*) of the said subsection.

(3) Membership of a club holding a "Grade E" general retail licence under this Act shall not of itself render a person ineligible for membership of a Board.

Disqualifications for appointment to a Board

7. No person shall be appointed a member of a Board who—

(*a*) is a body corporate;

(*b*) is an undischarged bankrupt;

(*c*) for an offence under this Act, or under any Act repealed or replaced by this Act, has been sentenced to a fine of not less than ten Kwacha, or to a term of imprisonment of not less than one month save as an alternative to, or in default of, the payment of a fine;

(*d*) within six years last past, for an offence, not of a political character, has been sentenced to a term of imprisonment of not less than three months, save as an alternative to, or in default of, the payment of a fine; or

(*e*) has been convicted of an offence involving fraud or dishonesty.

Tenure of office of members of Board

8.—(1) Subject to subsection (4), each member of a Board shall hold office for the period expressed in the instrument of his appointment, being, in any case, not more than three years.

(2) A retiring member shall be eligible for re-appointment.

(3) On the expiration of the period for which a member is appointed he shall continue to hold office until his successor has been appointed but in no case shall such further period exceed three months.

(4) This section shall not apply to any member appointed or holding office under the provisions of paragraph (*a*), (*b*) or (*c*) of section 5 (2).

Compensation of members of Board

9. Every member of a Board, who is not an officer in the public service, shall be paid such remuneration and allowances as the Minister may, in his case, fix.

Vacancies on Board

10. The office of a member of a Board shall be vacated—

(*a*) upon his death;

(*b*) if he is adjudicated bankrupt;

(*c*) if he is absent from three consecutive meetings of the Board without the permission of the chairman;

(*d*) upon the expiry of one month's notice in writing of his intention to resign his office given by him to the chairman and to the Minister;

(*e*) upon notice in writing given to him by the Minister;

(*f*) if he becomes mentally or physically incapable of performing his duties as such;

(*g*) if for an offence under this Act he has been sentenced to a fine of not less than ten Kwacha, or to imprisonment for a term of not less than one month save as an alternative to, or in default of, the payment of a fine;

(*h*) if for an offence under any written law he has been sentenced to a term of imprisonment of not less than three months save as an alternative to, or in default of, the payment of a fine;

(*i*) if he is convicted of an offence involving fraud or dishonesty;

(*j*) if he or his spouse becomes the holder of a liquor licence, save in the capacity of legal personal representative of any deceased applicant or licence holder;

(*k*) if he or his spouse becomes a partner in any business licensed under this Act;

(*l*) if he or his spouse becomes a major shareholder in, or a director or manager of a company engaged in any business licensed under this Act;

(*m*) if he or his spouse becomes the agent of any person engaged in any business licensed under this Act:

Provided that, subject to section 13, this paragraph shall not apply to or in respect of any legal practitioner who, in his professional capacity, represents any applicant or licensee under this Act, or any other person, in respect of any application, objection, or other matter arising under this Act;

(*n*) if he becomes ineligible for appointment to a Board under section 6 or disqualified under section 7.

Functions of Boards

11.—(1) Every Board, within the area for which it is established, shall—

(*a*) hear and determine every application, arising within the said area, for—

(i) a new liquor licence;

(ii) the renewal of a liquor licence;

(iii) the transfer of a liquor licence from the holder thereof to some other person;

(iv) the removal of a liquor licence from one premises to another;

(v) the revocation of a liquor licence;

(vi) the cancellation of a liquor licence at the request of the holder thereof;

(*b*) direct the licensing officer of the said area to implement its ruling on any matter heard and determined by it under paragraph (*a*);

(*c*) advise and make recommendations to the Minister on matters concerning the manufacture, sale and control of liquor within the said area;

(*d*) exercise such other functions and duties as may be assigned to it, from time to time, under this Act or any other written law or by the Minister.

Meetings of Boards

12.—(1) Each Board shall meet at such places within the area for which it is established, and at such times as the Minister may, from time to time, direct, and, in the absence of any such direction, at such places within such area and at such times as the chairman may determine.

(2) All meetings shall be convened by notice in writing given by the chairman to the members.

(3) A Board shall not transact any business in the absence of the chairman or such other person as may have been designated by the Minister as acting licensing officer.

(4) Each Board shall conduct its proceedings in such manner as may be directed by the Minister, or, in the absence of such direction, in such manner as the Board deems meet.

(5) The chairman and one-half of all the other members for the time being of a Board shall constitute a quorum of such Board.

(6) At all meetings of a Board the chairman shall have a deliberative vote and in the event of an equality of votes he shall also have a casting vote.

Member's interest in licence or application to be disclosed

13.—(1) If any member of a Board or if, to such member's knowledge, his spouse—

(*a*) holds or acquires any pecuniary interest, whether as shareholder, debenture holder, partner, mortgagee or otherwise, in any business or premises in respect of which a liquor licence is held or applied for; or

(*b*) is possessed of any right, title or interest, legal or equitable, in or to any premises in respect of which a liquor licence is held or applied for; or

(*c*) is employed as agent, director, manager or otherwise by any holder of or applicant for a liquor licence; or

(*d*) is a legal practitioner engaged, in relation to any matter pending before the Board, by or on behalf of the holder of or applicant for a liquor licence, or by or on behalf of any objector

to the issue, renewal or transfer of any such licence, or is a partner or employee of any firm of legal practitioners so engaged,

the said member shall, as soon as is practicable after the relevant facts have come to his knowledge, disclose the nature and extent of such interest in the said licence, application, premises or matter to the chairman of the Board.

(2) If the chairman determines that the interest in such licence, application, premises or matter, disclosed by such member is such that he should refrain from taking part in the Board's deliberations thereon, the said member shall absent himself from such deliberations and shall not vote thereon.

(3) If the interest disclosed by any such member has, pursuant to the provisions of paragraphs (*k*), (*l*) or (*m*) of section 10, resulted in the said member vacating his office as such, the Minister shall proceed in accordance with section 5 to appoint a new member in his place.

Secretaries to Boards

14.—(1) There shall be a Secretary to each Board (hereinafter referred to as the "Board Secretary"), who shall be an officer in the public service and who shall be designated as Secretary by the Minister.

(2) Each Board Secretary shall perform such duties and exercise such functions as are assigned to him from time to time by the Board, and shall perform and exercise the same under the direction of the licensing officer for the area.

PART III

Licences

A. Application

Application of this Part

15. This Part shall not apply to the manufacture or sale of traditional beer or to the sale of opaque beer by retail sale.

B. General

Classification of licences

16.—(1) Any licence granted or renewed under this Act shall be either—

(*a*) a manufacturer's licence; or

(*b*) a sales licence.

(2) Manufacturers' licences shall be classified as follows—

(*a*) a distiller's licence;

(*b*) a commercial brewer's licence;

(*c*) a wine-maker's licence;

(*d*) an opaque beer brewer's licence.

(3) Sales licences shall be either wholesale or retail or temporary sales licences.

(4) Wholesale sales licences shall be classified as follows—

(*a*) Wholesale licences;

(*b*) Agents licences.

(5) Retail sales licences shall be classified as follows—

(*a*) General retail licences;

(*b*) Travel and transit licences.

(6) Temporary sales licences shall be classified as follows—

(*a*) Auctioneers' temporary licences; and

(*b*) Occasional licences.

C. Manufacturers' Licences

Distiller's licence

17. A distiller's licence shall authorize the holder thereof to engage, at specified premises, in the business of distiller, and, subject to the provisions of this Act in that behalf, on such premises, from malt, grain, fruit or other vegetable matter, to distil, refine, mature or blend potable spirits for ultimate sale to and use by the public, and to sell such spirits by wholesale sale for the purpose of resale or consumption off the distiller's licensed premises.

Commercial brewer's licence

18. A commercial brewer's licence shall authorize the holder thereof to engage, at specified premises, in the business of brewer, and, subject to the provisions of this Act in that behalf, on such premises to manufacture and brew beer, cider or other like intoxicating beverage, other than opaque beer, for ultimate sale to and use by the public, and to sell such beverage by wholesale sale for purposes of resale or consumption off the commercial brewer's licensed premises.

Wine-maker's licence

19. A wine-maker's licence shall authorize the holder thereof to engage, at specified premises, in the business of wine-maker, and, subject to the provisions of this Act in that behalf, on such premises to manufacture from the grape or other prescribed fruit liquor for ultimate sale to and use by the public, and to sell such liquor by wholesale sale for purposes of resale or consumption off the wine-maker's licensed premises.

Opaque beer brewer's licence

20. An opaque beer brewer's licence shall authorize the holder thereof to engage at specified premises in the business of commercial brewer of opaque beer, and, subject to the provisions of this Act in that behalf, to manufacture and brew by industrial methods from traditional, or prescribed traditional, ingredients, such opaque beer for ultimate sale to and use by the public, and to sell such opaque beer by wholesale sale for the purposes of resale or consumption off the opaque beer brewer's licensed premises.

D. Wholesale Sales Licences

Wholesale licence

21. A wholesale licence shall authorize the licensee to sell liquor on the specified premises licensed thereunder, during the relevant permitted hours, by wholesale sale for purposes of resale or consumption off the wholesaler's licensed premises.

Agent's licence

22. An agent's licence shall authorize the licensee thereunder to engage, on any premises, or part of any premises, specified in such licence, in the business of agent to receive, on behalf of any distiller, commercial brewer, opaque beer brewer, wine-maker or wholesaler, licensed under this Act, orders for the supply of liquor, by wholesale sale, by such distiller, commercial brewer, opaque beer brewer, wine-maker or wholesaler, as the case may be.

E. Retail Sales Licences

General retail licence

23.—(1) A general retail licence shall be a retail sales licence and shall authorize the licensee to sell liquor on the specified premises licensed thereunder, during the relevant permitted hours, by way of retail sale.

(2) Every general retail licence shall be graded within the grade appropriate thereto as hereinafter provided, and shall be subject to the terms, conditions, qualifications and limitations and the fee, under this Act prescribed for such grade.

(3) A grade "A" general retail licence shall relate to specified premises and shall authorize the licensee thereunder, within the terms and conditions of the licence, to sell liquor of any kind to members of the general public for consumption on or off such premises.

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(4) A grade "B" general retail licence shall relate to specified premises and shall authorize the licensee thereunder, within the terms and conditions of the licence, to sell liquor of any kind in unopened containers in their original imported or manufactured state to members of the general public for consumption off such premises.

(5) A grade "C" general retail licence shall relate to specified hotel premises only and shall authorize the licensee thereunder, within the terms and conditions of the licence, to sell liquor of any kind, on such licensed premises—

(*a*) during the relevant permitted hours, to any person for consumption on or off such premises;

(*b*) at any time, to any person lodging on the premises, for consumption on such premises by such person or any guest of such person;

(*c*) at any time, to any person consuming a meal on the premises, for the purpose of consumption of such liquor by such person at such meal.

(6) A grade "D" general retail licence shall relate to specified restaurant premises only, and shall authorize the licensee thereunder, within the terms and conditions of the licence, to sell liquor of any kind to any person consuming a meal on the premises, for the purpose of consumption of such liquor by such person at such meal.

(7) A grade "E" general retail licence shall relate to specified club premises only, and shall authorize the licensee thereunder, within the terms and conditions of the licence, to sell liquor of any kind, being the property of the club, to members of the club for consumption by such members or their guests on or off the said premises:

Provided that no grade "E" general retail licence shall authorize the sale of any liquor to any person who is not a member of the club to which such licence relates:

And further provided that no licence under this subsection, or no other licence under this Act, shall be required for the supply of liquor to the members of a club on the club premises, where the liquor is the property of the members and the cost thereof is debited equally to all the members or to all the members consuming the liquor and no extra charge is made to any individual for liquor consumed by him.

(8) A grade "F" general retail licence shall relate only to premises, or part of any premises, which are used in the business of providing meals together with cabaret entertainment to customers for reward, and shall authorize the licensee thereunder, within the terms and conditions of the licence, to sell liquor of any kind to any person consuming a meal on such premises, for the purpose of consumption of such liquor at such meal or to any person who is a member of the staff or an entertainer currently employed at such premises.

(9) A grade "G" general retail licence shall relate only to premises, or part of any premises, which are used as a theatre, cinema or other place of public entertainment, and shall authorize the licensee thereunder, within the terms and conditions of the licence, to sell liquor of any kind, for consumption on the premises, to any person who is a member of the audience or staff of such theatre, cinema or other place, or one of the players or entertainers engaged or taking part in the production currently being shown therein.

(10) A grade "H" general retail licence shall relate to specified premises and shall authorize the licensee thereunder, within the terms and conditions of the licence, to sell liquor, not including spirits other than listed spirits, to members of the general public for consumption off such premises:

Provided that the relevant licensing authority may, with the prior approval of the Minister, endorse any grade "H" general

retail licence so as to authorize the sale thereunder, for consumption on or off the premises, of such liquor as is included within the limitations of the licence, and such endorsement shall be written clearly on the face of the licence.

For the purpose of this subsection, the Minister may, from time to time, by *Gazette* notice, specify the classes or descriptions of potable spirits manufactured in Malaŵi (herein referred to as "listed spirits"), which may be sold by the holder of a grade "H" general retail licence.

(11) A grade "I" general retail licence shall relate to specified premises situate within the perimeter of any National Park or Game Reserve, as the case may be, and which are ordinarily used, by way of business, as a camp, hostel, rest house or hotel for the provision of accommodation, food or drink to persons visiting such National Park or Game Reserve, and shall authorize the licensee thereunder, within the terms and conditions of the licence, to sell liquor of any kind to members of the general public at any place within the perimeter of the said National Park or Game Reserve for consumption on or off the premises but within such National Park or Game Reserve.

Travel and transit licence: fleet licence

24.—(1) A travel and transit licence shall be a retail sales licence and shall authorize the licensee to sell liquor during the relevant prescribed hours on premises licensed thereunder and ordinarily used for or in connexion with the carriage of passengers by way of trade or business.

(2) Every travel and transit licence shall be graded within the grade appropriate thereto as hereinafter provided, and shall be subject to the terms, conditions, qualifications and limitations and the fee under this Act prescribed for such grade.

(3) A grade "TA" travel and transit licence shall relate only to premises consisting of or forming part of an aerodrome, airport or air terminal and shall authorize the licensee thereunder, within the terms and conditions of the licence, to sell liquor of any kind for consumption on or off the premises to any person lawfully using such aerodrome, airport or air terminal.

(4) A grade "TB" travel and transit licence shall relate only to premises consisting of or forming part of a bus station or bus terminus and shall authorize the licensee thereunder, within the terms and conditions of the licence, to sell liquor of any kind, for consumption on or off the premises, to any person lawfully using such bus station or bus terminus.

(5) A grade "TR" travel and transit licence shall relate only to premises consisting of or forming part of a railway station or railway terminus and shall authorize the licensee thereunder, within the terms and conditions of the licence, to sell liquor of any kind, for consumption on or off the premises, to any person lawfully using such railway station or railway terminus.

(6) Subject to subsection (11), a grade "TAV" travel and transit licence shall relate only to premises consisting of a specified aircraft, or any specified part of such aircraft, employed for the purpose of a stated air transport service as a common carrier for the carriage of persons for reward, and shall authorize the licensee thereunder, during any time the said aircraft is in use for the common carriage of persons, to sell liquor of any kind within the terms and conditions of the licence, for consumption on or off the premises, to any person on board such aircraft.

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(6A) Subject to subsection (11), a grade "TBC" travel and transit licence shall relate only to premises consisting of a specified bus, or any specified part of such bus, employed for the purpose of a stated road transport service as a common carrier for the carriage of persons for reward, and shall authorize the licensee thereunder, during any time the bus is in use for the common carriage of persons, to sell liquor of any kind, within the terms and conditions of the licence, for consumption on or off the premises, to any person on board such bus.

(7) Subject to subsection (11), a grade "TRY" travel and transit licence shall relate only to premises consisting of a specified railway restaurant car or any specified part of such railway restaurant car employed for the purposes of a stated rail transport service as a common carrier for the carriage of persons for reward, and shall authorize the licensee thereunder during any time the said restaurant car constitutes part of a train in use for the common carriage of persons, to sell liquor of any kind, within the terms and conditions of the licence, for consumption on or off the premises, to any person on board such train.

(8) Subject to subsection (11), a grade "TPV" travel and transit licence shall relate only to premises consisting of a specified passenger carrying vessel, or a specified part of such passenger carrying vessel, employed for the purpose of a stated water transport service as a common carrier for the carriage of persons for reward, and shall authorize the licensee thereunder, during any time the said vessel is in use for the common carriage of persons, to sell liquor of any kind, within the terms and conditions of the licence, for consumption on or off the premises, to any person on board such vessel.

(9) A grade "TA" travel and transit licence shall not be granted, transferred or removed except upon the written request of the owner of the relevant premises. If such owner is a company, such request shall be made by the Board of Directors or Managing Director thereof, or, if such owner is a body corporate, other than a company, it shall be made by the person responsible for the general management and administration of such body corporate:

Provided that where the relevant premises are a Government aerodrome, or part of a Government aerodrome, the above provisions of this subsection shall not apply, but in such case, no

such licence shall be granted, transferred or removed without the prior approval of the Minister responsible for civil aviation matters.

(10) A grade "TB" or grade "TR" travel and transit licence shall not be granted, transferred or removed except upon the written request of the owner of the relevant premises. If such owner is a company, such request shall be made by the Board of Directors or Managing Directors thereof, or, if such owner is a body corporate, other than a company, it shall be made by the person responsible for the general management and administration of such body corporate.

(11) In respect of any travel and transit licences of grades "TAV", "TBC", "TRY" and "TPV", as provided for by subsections (6), (6A), (7) and (8), respectively, the Minister may, by regulations made by notice published in the *Gazette*, prescribe for the issue, within any such grade, of a fleet licence to any person who, in the course of his business, operates more than three aircraft, buses, railway restaurant cars or passenger carrying vessels, as the case may be, and may prescribe the respective fees payable for the issue of any such fleet licence within each such respective grade. 9 of 1985

(12) Every fleet licence issued pursuant to subsection (11) shall relate to every such aircraft, bus, railway restaurant car or passenger carrying vessel, respectively, operated by the licensee within the grade of such fleet licence, and, while being so operated by such licensee, each such aircraft, bus, railway restaurant car or passenger carrying vessel, as the case may be, shall be deemed to be licensed thereunder as if a separate licence had been issued in respect thereof, and shall be subject to all of the terms and conditions of a licence of such grade. 9 of 1985

(13) Every fleet licence issued pursuant to subsection (11), shall bear the identifying letters of the grade within which it is issued, followed by the further mark "(F)".

(14) The licensee under any fleet licence shall notify the licensing authority in writing of any diminution of, or addition to, such fleet within forty-eight hours after such event.

(15) The licensing authority of the City of Blantyre shall be the exclusive licensing authority in respect of the issue and control of travel and transit licences, and the premises relevant to any such licence, wherever located, shall, for the purposes of issue, renewal, transfer or removal, where appropriate, be deemed to be located in the area of the said City of Blantyre.

F. Temporary Sales Licences

Auctioneer's temporary licence

25.—(1) An auctioneer's temporary licence shall authorize the licensee thereunder to sell by auction liquor in unopened containers, on a stated occasion, at specified premises during prescribed hours, for consumption off such premises where—

(*a*) such liquor forms part of the assets of the estate of any deceased or bankrupt person;

(*b*) such liquor forms part of the assets of any partnership, or of any member's club, which is being dissolved, and such proposed sale is for the purposes of the realization of such assets;

(*c*) such liquor forms part of the assets of any company or body corporate and is being sold for the purposes of the winding up of such company or body corporate;

(*d*) such liquor forms part of assets held in receivership and is being sold on the instructions of the receiver thereof;

(*e*) such liquor constituted property of any person which has been declared forfeit pursuant to any order of court or any written law;

(*f*) such liquor forms part of the business assets of any person, whose said business is being administered for the purpose of closure thereof or for the benefit of creditors under any agreement or order of court or written law;

(*g*) such liquor has been seized and is intended to be sold in the lawful execution of any judgment;

(*h*) such liquor is the property of some person other than the auctioneer, and is not being sold for the purpose of profit or by way of trade.

(2) No liquor shall be sold under an auctioneer's temporary licence on any premises licensed for the consumption of liquor on such premises.

(3) An auctioneer may, under an auctioneer's temporary licence, sell liquor by auction in any quantities.

(4) An auctioneer's temporary licence shall not be issued to any person who is not engaged in business in Malaŵi as an auctioneer.

(5) Nothing in this section shall be deemed to prevent any licensee, under any general retail licence, personally, or by any person acting on his behalf, from selling liquor, the property of the licensee, by auction on his licensed premises (not being premises on which the sale of liquor for consumption on the premises is permitted) or, with the consent of the licensing officer for the area concerned, on any other premises.

Occasional licence

26. An occasional licence shall authorize the licensee thereunder to sell liquor by retail sale for consumption at a specified place of public recreation or public amusement or other public assembly, for the period, not exceeding five days, during which such recreation, amusement or assembly continues, or for any lesser period specified in the licence, subject to such restrictions and conditions as to the hours during which liquor may be sold or supplied, or otherwise, as may be stated in the licence.

G. Hours of Business Under Sales Licences

Prescribed hours

27. Subject to section 28, the days and the hours of the day during which any licensee under a sales licence may exercise his right to sell liquor under such licence shall be as prescribed in respect of such class or grade of licence in the First Schedule.

First Schedule

Alteration and extension of prescribed hours

28.—(1) The Minister may, by notice published in the *Gazette*, alter the prescribed hours during which the sale of liquor may be made by any specified licensee of licensed premises, or by the licensees of licensed premises in any specified area, district or place.

(2) A licensing authority may, upon application made by the licensee, and after consultation thereon with the officer in charge of police in the area in which the relevant licensed premises are situate, extend, by endorsement on such licence, the prescribed hours during which the sale of liquor may be made under such licence during any occasion or any period, being not more than three days, specified in the said endorsement.

(3) The Minister, after consultation with the Minister responsible for Tourism, may, by notice published in the *Gazette*, in respect of any specified area, district or place which, in his opinion, is an area, district or place frequented from time to time, by holiday-makers or tourists, extend the relevant prescribed hours applicable to any stated class or grade of licence exercisable under this Act within such area, district or place, during any stated period.

H. Miscellaneous Provisions on Licences

Duration of licences

29.—(1) Every licence issued pursuant to this Act, other than a temporary sales licence, shall be valid from the date of issue to the following 31st March, and may be renewed from year to year thereafter in accordance with this Act.

(2) Every temporary sales licence shall be valid for the period specified therein and shall not be renewable.

Licensing fees: reduced licensing fee

30.—(1) The Minister, after consultation with the Minister responsible for Finance, may, by regulations published in the *Gazette*, prescribe the fees payable in respect of any licence issued under this Part, and, in this regard, may, by such regulations, prescribe different fees to be payable in respect of different classes of licence or in respect of different grades of licence within any such class, and may, for the purposes of this section, in like manner prescribe different categories within any such class or grade, as the case may be, and prescribe the fees to be payable in respect of any licence issued within each such prescribed category.

(2) Where any licence, other than a temporary sales licence, is issued for a period of less than twelve months, the licensing fee payable shall be proportionately reduced:

Provided that such fee shall be computed as though the licence became operative on the first day of the month in which it was issued.

Separate licences for each premises, vessel, etc.

31. Every licence related to premises, other than a travel and transit fleet licence issued under section 24 (11), shall relate to one premises only, and a separate licensing fee shall be payable in respect of each such licence issued.

PART IV

Issue and Renewal of Licences

Persons absolutely disqualified

32. The following persons shall not be entitled to hold a licence under this Act—

(*a*) any person who is under the age of twenty-one years;

(*b*) any Sheriff, Under Sheriff, or serving police officer or any other officer entrusted with the execution of the legal process of any court;

(*c*) any person who has been convicted, whether under this Act or any other written law, of keeping, or permitting to be kept, as a brothel any premises for which at the time of such offence he held a licence under this Act or under any former written law regulating the manufacture or sale of liquor in Malaŵi;

(*d*) any person who has been convicted under any written law of forging a liquor licence or of knowingly making use of a forged liquor licence;

(*e*) any person who has been disqualified by any court from holding a liquor licence under this Act, or under any former written law regulating the sale of intoxicating liquor in Malaŵi, and such disqualification has not expired or been removed or cancelled.

Persons limitedly disqualified

33. Save with the prior written consent of the Minister, the following persons shall not be entitled to hold a licence under this Act—

(*a*) any person whose licence has been forfeited under this Act and two years have not elapsed since the date of such forfeiture;

(*b*) any person who has been convicted of an offence involving or relating to the sale of liquor without a licence and two years have not elapsed since the date upon which such conviction became final;

(*c*) any person who has, within two years last past, for an offence under any written law, been sentenced to a term of imprisonment of not less than six months save as an alternative to, or in default of, the payment of a fine;

(*d*) any person who does not ordinarily reside in Malaŵi:

Provided that this section shall not apply to any such person who is the legal personal representative or trustee in bankruptcy of any deceased or bankrupt licensee, as the case may be, and to whom such licence is transferred under this Act or any other written law for the purposes of the administration of the estate of such deceased or bankrupt licensee.

Companies, partnerships, etc., as such not eligible to hold sales licence

34.—(1) No company, partnership, society, association or other body of persons, corporate or unincorporate, as such, shall be entitled to hold a sales licence as licensee under this Act:

Provided that, subject to subsection (2), nothing in this section shall be deemed to prevent the grant, transfer or renewal of any sales licence to any person in the employ of such company, partnership, society, association or body of persons, as the agent or nominee thereof who shall hold the same for them and on their behalf, and if any such person to whom such sales licence was granted, transferred or renewed, as aforesaid, ceases to be employed in a position in which he is required to hold such licence his employer may take such steps for the transfer of such licence to, some other employee as a licensee may take under this Act for the transfer of his licence to some other person, and, for such purpose, the said employer shall be deemed to be the agent of the said licensee duly authorized to do and execute all acts and deeds as may be necessary for the transfer of the said sales licence as aforesaid:

Provided, further, that for the purposes of any interim period between the cessation of such employment of such licensee and the transfer of such sales licence to such other employee, the said company, partnership, society, association or body of persons shall cause notice in writing of such cessation to be given, as soon as is practicable, to the relevant licensing authority, informing such authority of the name and address of the person whom they have appointed to exercise the powers and duties of licensee until such time as the same is transferred to a new nominee or agent in accordance with this Act. Such notice shall be accompanied with a written acceptance of the duties and powers of the licensee under the said licence for the said interim period and shall be signed by the said appointed person; and for the duration of such interim period the said appointed person shall, for the purposes of this Act, be impressed with all of the rights, duties, obligations and liabilities of the licensee under such licence, as if he were the holder thereof under this Act.

(2) A grade "E" general retail licence shall be applied for by, and issued to, the Secretary or any other responsible officer of the relevant club, and, notwithstanding the first and second provisos to subsection (1), no transfer of the said licence shall be required by reason of any change in the holder of the office to whom the

said licence was issued, but notice of such change shall be given, in writing, by the Committee of the club to the appropriate licensing officer within thirty days after such change is made.

Notice of intention to apply for licence

35.—(1) Subject to subsection (3), any person who intends to apply to a licensing authority for a liquor licence under this Act shall give notice of such intention in accordance with this section.

(2) A notice of intention under subsection (1) shall be in the prescribed form and shall state the prescribed class and grade of licence intended to be applied for, and shall, not less than fourteen days before the application for the licence is made, be published in the *Gazette* and in two issues of a newspaper in general circulation in the area where it is intended to exercise the licence.

(3) The provisions of subsections (1) and (2) shall not apply to any person intending to apply for a grade "H" general retail licence as defined by section 23 (10) or for a temporary sales licence.

(4) Any person who intends to apply for a grade "H" general retail licence or for a temporary sales licence shall, if so required, give such notice of intention to apply therefor as may be prescribed.

Objections

36.—(1) Where a notice of intention to apply for a liquor licence is published pursuant to this Act, any person who wishes to object to the grant of such licence shall, not later than fourteen days after the date of the last publication of the said notice, give, in the prescribed form, to the appropriate licensing officer, the officer in charge of police in the district in which the relevant premises are located, or deemed to be located under this Act (or where the said intended relevant licence is not to relate to premises, the Chief Commissioner of Police) and to the proposed applicant named in the said notice, notice of objection to the grant of such licence.

(2) In any area for which a Board has been established in accordance with section 5, the licensing officer shall cause any notice of objection received by him pursuant to subsection (1), to be placed before the said Board at the time the application for the grant of the relevant licence is being heard and considered by such Board.

(3) No objection to the grant of a licence under this Act shall be considered or entertained by the appropriate licensing officer or Board, as the case may be, unless the notice of objection to the issue of such licence—

(*a*) states the grounds of objection; and

(*b*) has been given to the appropriate licensing officer, the officer in charge of police in the area in which the relevant premises are located or deemed to be located under this Act

(or where the said licence is not to attach to premises, the Chief Commissioner of Police) and to the proposed applicant, within the time provided by subsection (1).

Application for licence

37.—(1) Upon the expiry of fourteen days after the last publication pursuant to section 35 (2) of a notice of intention to apply for a licence, and at any time within three months thereafter, the person named as the proposed applicant in the said notice may, as hereinafter provided, apply for such licence to the appropriate licensing authority.

(2) Every application for a licence under this section shall be made in the appropriate prescribed form and manner and shall be accompanied with the appropriate prescribed fee.

(3) Every application for a licence under this section shall further be accompanied with such written evidence as will satisfy relevant licensing authority that all taxes upon income which are due and payable by the applicant pursuant to the Taxation Act and which are not currently under review or appeal under that Act have been paid, or, alternatively, that the said applicant has made arrangements satisfactory to the Commissioner of Taxes for the payment thereof: Cap. 41:01

Provided that this subsection shall not apply where such application is made by any person as the nominee of any company or other body corporate:

And further provided that where such application is made by the secretary or other responsible officer of any club as the nominee thereof, the relevant income for the purposes of the written evidence required by this subsection shall be that of the said club and not that of the said secretary or other such responsible officer.

(4) Subject to subsection (6), upon receipt of any application pursuant to subsection (2), the licensing officer shall appoint a day and place for the hearing of such application and shall, not less than fourteen days before the date of hearing, cause notice thereof to be sent, in the prescribed manner, to the applicant, to any person who has given notice of objection to the issue of such licence, and, where the licence sought is to relate to premises, to the officer in charge of the police in the area in which the premises are located or deemed to be located, as the case may be; or, where the said licence sought is not to relate to premises, to the Chief Commissioner of Police.

(5) The licensing officer shall cause a copy of the notice referred to in subsection (4) to be posted in a prominent place outside his office for a period of not less than seven days before the date of hearing of the said application for a licence.

(6) Where, pursuant to this section, an application is made for a licence in respect of premises situated or deemed to be situated in an area for which a Board has been established, the licensing officer shall notify the Board of the receipt of such application and the Board shall appoint a day and place for the hearing thereof and thereupon the licensing officer shall not less than fourteen days before the date of hearing, in the name of, and on behalf of, the Board, cause notice of such hearing to be sent, in the prescribed manner to the applicant, to any person who has given notice of objection to the issue of such licence, and, where the said licence sought is to relate to premises, to the officer in charge of police in the area in which the premises are located or deemed to be located, as the case may be; or, where the said licence sought is not to relate to premises, to the Chief Commissioner of Police, and shall further cause a copy of the said notice to be posted in a prominent place outside the office of the Board for a period of not less than seven days before the said date of hearing of the said application for a licence.

(7) Where, pursuant to this section, an application is made for a licence in respect of premises which, under any planning scheme approved under the Town and Country Planning Act, are excluded either wholly or in part from use as licensed premises, the licensing authority shall not entertain such application unless there is submitted therewith the written consent of the Minister responsible for Town and Country Planning for the use of such premises as licensed premises in the event of the granting of the said application by the said licensing authority.

Cap. 23:01

(8) This section shall not apply to any application for a licence to which section 41 applies.

Hearing of application

38.—(1) The applicant, and every person who has given notice of objection to the issue of the licence sought, shall be entitled to be present at the hearing by the licensing authority of the application for such licence or to be represented thereat by a legal practitioner, and shall be entitled to be heard and to adduce evidence on his application or objection, as the case may be.

(2) Where the licence sought is one to relate to premises the officer in charge of police for the area in which the relevant premises are located or deemed to be located, as the case may be (and, in all other cases, by leave of the licensing authority, the Chief Commissioner of Police) may be present at the hearing of the application, or represented thereat by another police officer or by a legal practitioner, and may adduce evidence and be heard in the matter of the said application.

(3) Any person who may be affected by the grant of a licence, but who has failed to give notice of objection to its issue as provided by section 36 (1), may apply to the licensing authority

for leave to be present at the hearing of the application and to oppose the grant of the said licence, and the said licensing authority may, upon the said person furnishing security for the costs of the applicant in such sum as the said authority deems reasonable and subject to such other terms and conditions as the authority may impose, allow such person to be present at the said hearing or to be represented thereat by a legal practitioner and to adduce evidence and be heard thereat in opposition to the grant of the said licence.

(4) The licensing authority may, if it thinks fit, adjourn, from time to time, the hearing of any application, to enable the applicant to answer any objection or opposition to the grant of the applied-for licence.

(5) Where a licensing authority refuses to grant an application for a licence, or where it grants such application and attaches to such licence any conditions pursuant to section 44, it shall, at the request of the applicant, inform such applicant in writing of the grounds upon which such application was refused, or upon which such conditions were attached to such licence, as the case may be.

Amendment of application

39.—(1) A licensing authority may allow an applicant to amend his application for a licence, when and as often as appears to be necessary.

(2) Leave to amend pursuant to subsection (1) may be on such terms and conditions as the said authority deems meet.

(3) It shall be in the discretion of the licensing authority to determine what, if any, public notice shall be given of any application as amended pursuant to this section.

Power of licensing authority to examine under oath

40.—(1) A licensing authority may require any applicant for a licence to attend before it at the hearing of his application and to be examined on oath concerning any matter material thereto.

(2) A licensing authority may permit any person to attend before it at the hearing of any application for a licence and to give evidence and be examined on oath concerning any matter material thereto.

Application for grade "H" or temporary sales licence

41. Application for a grade "H" general retail sales licence or for a temporary sales licence shall be in the manner and form prescribed for such application, and if no such manner or form of application is so prescribed such application shall be made in the manner and form required by the licensing authority.

Death or bankruptcy of applicant

42.—(1) If, pending the determination of any application for the grant of a licence under this Act, the person, to whom such licence is, by such application, requested to be issued, dies, the licensing authority may, in its discretion, upon being satisfied that

such person is dead, issue such licence to the legal personal representative of such person, without further application in that behalf.

(2) If, pending the determination of any application for the grant of a licence under this Act, the person, to whom such licence is, by such application, requested to be issued, is adjudicated bankrupt, or a trustee is appointed to administer his property under any composition or scheme of arrangement or under any deed of arrangement with his creditors, the licensing authority may in its discretion issue such licence to the trustee in bankruptcy of the applicant, or to the trustee of the applicant appointed under such composition or scheme or to the trustees of the applicant appointed by and under such deed of arrangement, as the case may be, without further application in that behalf.

False statements in application

43. Any person applying for a licence under this Act, who, knowingly, submits to any licensing authority any application which is false in any material particular shall be guilty of an offence and liable to a fine of five hundred Kwacha and to imprisonment for a term of six months.

Power to attach conditions to licences

44. Any other provision of this Act to the contrary notwithstanding, a licensing authority may attach to any licence, upon the grant thereof, such conditions, not being for the payment of money is excess of the prescribed licensing fee, as the said authority deems expedient in the public interest.

Provisional licence for premises under construction

45.—(1) A licensing authority may, subject to such conditions as it deems fit to impose, grant a provisional licence related to premises intended to be constructed or in course of construction, either to a named person or to a person to be named subsequently by the applicant and approved by the licensing authority.

(2) Sections 35, 36, 37 (excluding subsection (3) thereof) and section 38, shall apply *mutatis mutandis* to every application for a provisional licence under subsection (1) and there shall be attached to each such application, for approval by the licensing authority, such number of copies of the plans of the proposed premises, as may be prescribed.

(3) Upon the appropriate licensing officer being satisfied that premises to which a provisional licence relates have been substantially completed in accordance with the approved plans, and that all of the conditions attaching to such provisional licence have been substantially fulfilled, he shall certify the same by way of endorsement on the said provisional licence, and the provisional licence holder, upon delivery of such provisional licence, so certified, and of any evidence required under section 37 (3), to the relevant licensing authority and payment of the appropriate

prescribed fee, shall be entitled to the issue to him or to his approved nominee, of a licence related to such premises of the class and grade designated in the said provisional licence.

(4) For the purposes of this section the expression "premises intended to be constructed or in course of construction" includes any proposed building which is intended, upon its completion, to be annexed or added to any existing licensed premises as an extension thereof, and the expression "provisional licence" includes any provisional extension of the licence related to such existing premises so as to include within such existing licence such proposed extension of the said premises.

Surrender of licence for cancellation

46. A licence may be surrendered by the licensee to the licensing officer at any time for the purposes of cancellation and, upon such cancellation of the said licence, the licensee shall be entitled to a refund of such proportion of the licensing fee paid as may be prescribed.

Lost or destroyed licences

47.—(1) Where any licensing officer is satisfied that any licence has been lost or destroyed, he shall, upon payment of the prescribed fee, issue a duplicate of such licence to the licensee.

(2) Where any duplicate licence is issued pursuant to subsection (1), such duplicate shall replace the said lost or destroyed licence, as the subsisting valid licence for the purposes of this Act.

(3) Where any duplicate licence has been issued pursuant to subsection (1) in place of a licence which has been lost, and the licensee subsequently finds the said lost licence, he shall retain the said duplicate licence and shall, within one month after having found the said lost licence, return the said lost licence to the licensing officer for cancellation. Any licensee who fails to comply with this subsection shall be guilty of an offence.

PART V

Transfer and Removal of Licences Related to Premises

Transfer of licence related to premises

48. For the purposes of this Act, the transfer of a licence means, in respect of any particular licensed premises, the substitution of some other person as licensee under the licence related to such premises in place of the current licensee.

Notice of application for transfer

49.—(1) Any person intending to apply for a transfer of a licence, other than a grade "H" general retail licence, shall give notice in writing of his intention to do so to—

(*a*) the licensee, where the application is not to be made by such licensee; and

(*b*) the relevant licensing authority; and

(*c*) the officer in charge of police in the area in which the relevant licensed premises are located or deemed to be located under this Act.

(2) Notice under subsection (1) shall be in the prescribed form and shall state the name and address of the current licensee, the address of the relevant licensed premises and the name and address of the intended transferee and shall, after service thereof pursuant to subsection (1) and not less than fourteen days before the application for transfer of the licence is made, be published in the *Gazette* and in two issues of a newspaper in general circulation in the area in which the relevant licensed premises are located or deemed to be located under this Act.

(3) Any application for the transfer of any grade "H" general retail licence shall be in the manner and form prescribed therefor.

Application for transfer

50.—(1) At any time within three months after the expiration of fourteen days from the date upon which notice was published pursuant to section 49 (2), the person who gave such notice may make application in the prescribed form and manner to the appropriate licensing authority for the transfer of the said licence.

(2) Every application for the transfer of a licence under this section may be made by either the transferor or transferee of the interest of the licensee in the premises licensed under the said licence, whether such transfer of interest occurs by virtue of any conveyance, grant, assignment, demise, gift, bequest or descent or otherwise, or by operation of law, and shall be accompanied with the appropriate prescribed transfer fee.

(3) Every application for the transfer of a licence under this section shall be signed by the applicant, and, if the current licensee is not the applicant, a copy of such application shall be served upon the said current licensee at least three days before the application is forwarded to the licensing authority together with proof of such service:

Provided that, if the current licensee holds the said licence as the nominee of some other person and such other person is not the applicant, the said application shall be signed by the applicant and shall be served upon such other person but need not be served upon the current licensee.

(4) The provisions of sections 36, 38 to 40, 42 and 43 shall apply *mutatis mutandis* to proceedings under this section.

Limitations on transfer of licence

51.—(1) A licence shall not be transferred to any person absolutely disqualified under section 32 from holding such licence, or, without the prior consent of the Minister, to any person limitedly disqualified under section 33.

(2) A licence shall not be transferred to any person unless the appropriate licensing authority is satisfied that such person is a fit and proper person to hold a licence under this Act.

When transfer of licence may be granted

52.—(1) Subject to section 51, transfer of a licence shall not be granted except in the following cases and to the following persons, that is to say—

(*a*) where the licensee has died, to his legal personal representative or to any new owner, tenant or occupier of the relevant licensed premises;

(*b*) where the licensee is incapable, through illness or other infirmity, of carrying on business under the licence, to his trustee, assignee, guardian, curator, manager or other person lawfully appointed to manage and conserve his affairs during his said incapacity, or to any new owner, tenant or occupier of the relevant licensed premises;

(*c*) where the licensee is adjudged bankrupt, or a trustee is appointed in pursuance of any composition or scheme of arrangement to administer the property or manage the business of the licensee, or a trustee is appointed under a deed of arrangement for the benefit of the creditors of the licensee, to the trustee in bankruptcy of the said licensee or to such other trustee, or to any new owner, tenant or occupier of the relevant licensed premises;

(*d*) where, upon sale or otherwise, the licensee has, or his legal personal representative has, given up occupation of the relevant licensed premises, to the new owner, tenant or occupier of such premises, or to the person to whom the said legal personal representative has, upon sale, or otherwise, in good faith conveyed, assigned or made over the interest of the said licensee in the said premises;

(*e*) where the licensee, being about to quit the relevant licensed premises, has neglected or wilfully omitted to apply for a renewal of the licence, to the owner, new tenant or occupier of such premises;

(*f*) where the owner of such relevant licensed premises, or some other person on his behalf, has been granted a protection order pursuant to section 54, to such owner or such other person;

(*g*) where any employer desires that a licence be transferred from one employee to another pursuant to section 34, to such other employee.

(2) In any case arising under paragraph (*e*) or (*f*) of subsection (1), the licence may be renewed and transferred as a valid and subsisting licence upon payment of the appropriate renewal and transfer fees, notwithstanding its forfeiture by the former licensee because of failure to renew the same within the prescribed time, and upon such transfer such licence shall be deemed to have been renewed within the prescribed time and not to have been forfeited by the said former licensee.

Power to carry on licensed business after death, etc., of licensee

53.—(1) Where a licensee dies, or is adjudged bankrupt, or a trustee is appointed in pursuance of a composition or scheme to administer the property or manage the business of a licensee, or a trustee is appointed under a deed of arrangement for the benefit of creditors of a licensee, section 72 shall not prohibit the sale of liquor on the relevant licensed premises by the legal personal representative, or the trustee, as the case may be, of the said licensee, during the period of three months immediately following such death, adjudication or appointment:

Provided that this section shall not exempt from the prohibition imposed by the said section 72 any sale of liquor which would not have been authorized under the licence held by such licensee in respect of the premises on which such sale is made.

(2) Where an application is made for the transfer of a licence affected by the provisions of subsection (1) within the period of three months referred to in the said subsection, and the licensing authority adjourns consideration of the application, the said period of three months shall, if necessary, be deemed to be extended from time to time to the date of the final ruling of the said licensing authority on the said application.

Protection order

54.—(1) Where a person proposes to apply for the transfer to him of a licence related to premises under this Act, the licensing officer for the area in which the relevant licensed premises are located or deemed to be located, as the case may be, may, upon the application, in writing, of such person, and upon such officer being satisfied that it is just and equitable for him to exercise his powers under this subsection and that the applicant is a person to whom the transfer of the licence could be granted under this Act, grant him authority (hereinafter referred to as a protection order) to sell liquor on such licensed premises as if he were the holder of the relevant licence.

(2) Where—

(*a*) a licence related to premises is forfeited under this Act; or

(*b*) a licensee under such a licence becomes disqualified under section 32 or 33 from holding a licence,

and the said former licensee, whose licence was so forfeited, or who so became disqualified, was, at the date of such forfeiture or disqualification, possessed of the relevant licensed premises, as tenant, agent, employee or nominee of, or under a right of occupancy from, some other person, the licensing officer for the area in which the said relevant licensed premises are located or deemed to be located, as the case may be, may grant a protection order to the person under whom the said former licensee possessed or occupied the said premises, or to such person's nominee, or, in the event of such person not applying for such order, to the holder of any title to such premises superior to that of such

aforesaid person, and such protection order may be granted notwithstanding the said forfeiture of the said licence by the said former licensee or his said disqualification from holding such licence, as the case may be.

(3) The provisions of this Act relating to the regulation and control of licences shall, while a protection order is in force, apply to the person to whom such order has been granted, in the same manner and to the same extent as they apply to the holder of a licence under this Act.

(4) A protection order shall remain in force for three months from the date of its issue:

Provided that where application is made by the holder of the said protection order for a transfer of the relevant licence within the said period of three months and the licensing authority adjourns consideration of such application, the said period shall, if necessary, be deemed to be extended to the date of the final ruling on the said application.

(5) A licensing officer to whom application for a protection order is made may examine the applicant or any other person on oath in respect of any matter relevant to the application, and is hereby empowered to administer oaths for such purposes.

(6) A protection order shall not be granted unless the applicant has, not less than forty-eight hours before making the application, given, to the officer in charge of police in the area in which the relevant licensed premises are located or deemed to be located under this Act, notice in writing of his intention to apply for such order, which notice must be signed by the applicant or his duly authorized agent and must state the name and address of the applicant and the profession, business, trade or calling followed by the applicant during the six months' period immediately preceding the giving of such notice.

(7) Where a licensing officer grants a protection order pursuant to this section, he shall endorse a memorandum of such order on the relevant licence:

Provided that if such licence is not available to such licensing officer or to the applicant at the time of the granting of the said protection order, the said licensing officer shall issue under his hand, to such applicant, a protection order in the form prescribed.

(8) There shall be payable, upon the grant of a protection order, the appropriate prescribed fee.

Removal of licence from one premises to another

55.—(1) For the purposes of this Act, the removal of a licence means discontinuing the right to exercise such licence on the premises to which it is expressed to be related, and relating it to and making it exercisable on other premises within the same area.

(2) A removal of a licence shall be made by way of endorsement on the existing licence.

(3) An application for the removal of a licence shall be made to the appropriate licensing authority, in the prescribed form by the person desiring to hold such licence after removal, and the provisions of sections 35, 36, 37, 38, 39 and 40 shall apply *mutatis mutandis* to any such application.

(4) Without prejudice to any other power of a licensing authority to grant the removal of a licence, such licensing authority shall not grant any such removal unless it is satisfied that the licensee under the licence and any person owning and having control of the business carried on on the licensed premises from which it is sought to remove such licence have no objection to such removal.

(5) There shall be payable upon the grant of a removal of a licence the appropriate prescribed fee.

(6) A licensing authority may make a provisional grant of removal of a licence to premises about to be constructed or under construction, and the provisions of section 45 shall apply *mutatis mutandis* to such provisional grant of a removal of such licence as they apply to the grant of a provisional licence.

PART VI

Appeals

Licensing Appeals Tribunal

56.—(1) There is hereby established a tribunal to be known as the Licensing Appeals Tribunal (hereinafter referred to as the Tribunal), which shall have exclusive jurisdiction to hear and determine appeals from licensing authorities, brought pursuant to section 57.

(2) The Tribunal shall consist of four members, appointed by the Minister, one of whom shall be designated as chairman. In this regard, the Minister may appoint any officer in the public service to be a member of the Tribunal. The Minister shall cause notice of every appointment to the Tribunal to be published in the *Gazette*, and shall, from time to time, cause notice of the composition of such Tribunal to be so published.

(3) The Minister shall designate an officer in the public service to be secretary to the Tribunal.

(4) Subject to subsections (5) and (6), a member of the Tribunal shall hold office for such term not exceeding three years as the Minister may specify in the instrument of such member's appointment.

(5) A member of the Tribunal may resign upon giving one month's notice in writing to the Minister of his intention so to do.

(6) The Minister may terminate the membership of a member of the Tribunal at any time by giving notice of such termination to the member concerned.

(7) Members of the Tribunal, other than those who are officers in the public service, shall be paid such remuneration and allowances as the Minister, in each individual case, may fix.

(8) The chairman, when present, shall preside at the sittings of the Tribunal, but, in his absence, the senior member present shall preside. In this regard the senior member present shall be the longest serving member, or, where two or more members are equal in such seniority, the member whose name first appears in the notice of appointment published pursuant to subsection (2) shall be deemed to be the senior member for the purposes of this subsection.

(9) For the purposes of the hearing of appeals, the Tribunal shall consist of the chairman and two other members only, or, in the absence of the chairman, the three other members.

(10) The chairman, or the member presiding, as the case may be, and the secretary are hereby empowered to administer any oath required by any provision of this Act relating to the giving of evidence before the Tribunal.

Appeals

57.—(1) Any applicant for—

(i) the grant of a licence, other than a temporary sales licence; or

(ii) the grant of a provisional licence; or

(iii) the renewal, transfer or removal of a licence,

or any person who has validly taken objection to such application, being aggrieved by the decision of a licensing authority thereon or by any condition attached to the grant, renewal, transfer or removal of such licence, or by any protection order made under section 54, may appeal to the Licensing Appeals Tribunal.

(2) Notice of appeal pursuant to this section shall be in the prescribed form and shall be given to the Tribunal and the relevant licensing authority within thirty days after the decision of the said licensing authority:

Provided that the chairman of the Tribunal may, in his discretion, extend the time for giving notice of appeal.

(3) Upon the entry of any appeal under the provisions of this section, the appellant shall pay the appropriate prescribed fee and a notice of appeal shall not be deemed to have been given to the Tribunal until such fee has been received by the Tribunal.

(4) In any appeal under this section the parties thereto shall be the applicant, any person who has validly taken objection to the original application and wishes to appear on such appeal, the officer in charge of police in the area in which the relevant premises are located or deemed to be located, as the case may be (or, in

the case of any licence not related to any premises, the Chief Commissioner of Police) and the licensing authority concerned, and no other person shall be entitled to be represented at or heard on such appeal.

(5) An appellant in any appeal under this section shall, within five days after the entry of such appeal in accordance with subsection (3), serve on all other persons, other than the licensing authority concerned, who, by virtue of subsection (4) are parties to such appeal, copies of the notice of appeal.

(6) Any party to an appeal under this section may appear at the hearing thereof in person or by a legal practitioner.

(7) In any appeal before the Tribunal, the licensing authority concerned may, in lieu of appearing before the Tribunal at the hearing of such appeal, send to it and to the appellant a statement of the reasons why such authority considers that the appeal should not be allowed, and such statement, if it purports to be signed by, or under the authority of, the said licensing authority, shall be considered by the Tribunal in its deliberations on such appeal.

(8) Pending the determination of an appeal against refusal to renew a licence, such licence shall be deemed to remain in force.

(9) The Tribunal—

(*a*) may, by notice in writing, require any person, subject to the payment or tender of the reasonable expenses of his attendance, to attend and give evidence before the Tribunal at the hearing of any appeal under this section, or to produce at such hearing any document in his possession or power which relates to any matter in issue relevant to such appeal and, if such, person, without reasonable excuse, fails to comply with any of the requirements of such notice, he shall be guilty of an offence and liable to a fine of one hundred Kwacha:

Provided that no person shall, under this paragraph, be required to produce any book or account, voucher or receipt which directly refers to his personal business or trading or to that of any company of which he is a director or employee, other than the company, if any, of which the appellant is the nominee for the purpose of obtaining the relevant licence;

(*b*) shall have power to take evidence on oath and to make such other investigations as it may deem fit in assisting it to come to a decision regarding any matter relevant to the issue on appeal before it, and each member of the Tribunal is hereby empowered to administer oaths for the purposes of this paragraph;

(*c*) may award to any party to an appeal such costs as the Tribunal considers reasonable, and direct by what parties such costs are to be paid, and any person failing to comply with the

provisions of any order made under this paragraph shall be guilty of an offence and liable to a fine of two hundred Kwacha, and the costs awarded may be recovered from the party ordered to pay such costs, by the party to whom they were awarded, by civil action:

Provided that where a licensing authority submits a statement under subsection (7) and does not appear before the Tribunal, no costs shall be awarded against such authority.

(10) The Tribunal shall hear and determine the matter of any appeal brought before it and make such order therein as it deems fit, in addition to or in substitution for the matter appealed against, or may refer the matter back to the licensing authority concerned with the directions of the Tribunal, which shall be binding on such authority.

(11) No appeal shall lie to any court from a final decision of the Tribunal under this section.

PART VII

Traditional Beer

A. Preliminary

Application of Part VII

58. This Part shall apply to the brewing and sale of traditional beer and to the retail sale of opaque beer.

Interpretation of Part VII

59. In this Part unless the context otherwise requires—

"appropriate local authority" means, in relation to any area or place—

(*a*) within a Municipality, the Municipal Council constituted under the Local Government (Urban Areas) Act for such Municipality; Cap. 22:01

(*b*) within a Township, the Town Council constituted under the Local Government (Urban Areas) Act for such Township;

(*c*) within a District, the District Council established under the Local Government (District Councils) Act for such District; Cap. 22:02

"liquor permit" means any permit issued under this Part;

"permit officer" means a person appointed by a local authority to issue permits under this Part for the area of such local authority or for any stated place within such area;

"permitted premises" means the premises specified in a premises permit as defined by section 65;

"premises permit" bears the meaning ascribed to that term by section 65;

"retail permit" bears the meaning ascribed to that term by section 64.

B. Administration of Part VII

Local authority to be permit authority

60.—(1) The permit authority for the issue, revocation and cancellation of any retail permit shall be the local authority for the area within which the said retail permit is to be exercised by the holder thereof.

(2) The permit authority for the issue, revocation and cancellation of any premises permit shall be the local authority for the area in which the relevant premises are situate.

Permit officers

61.—(1) Each local authority shall designate one of its officers as the permit officer for the area of such local authority.

(2) Every permit officer shall, subject to this Act and to the general or special directions of the local authority and to the relevant by-laws thereof, be responsible for the administration of this Part within the area of such local authority, and shall, in the name of such local authority and on its behalf, be the person empowered to issue, revoke and cancel liquor permits under this Part, in accordance with this Part and with the said directions and by-laws.

Power of Minister to remove this Part from local authority jurisdiction

62. The Minister may, by Order published in the *Gazette*, at any time, remove from the jurisdiction of any local authority the powers conferred upon such local authority by this Part, and may transfer such powers to the appropriate licensing officer, or licensing officers, in the area of such local authority, whereupon the powers of the said local authority under this Part shall be transferred to and vest in the said licensing officer, or officers, who shall become and be the exclusive permit authority or authorities for such area, or areas, under this Part, and shall, to the exclusion of any permit officer designated under section 61 (1), exercise all of the powers of such local authority and such permit officer in respect of liquor permits within such area.

Classes of liquor permits

63. There shall be two classes of liquor permit for the purposes of this Part, to wit—

(*a*) a retail permit; and

(*b*) a premises permit.

Retail permit

64.—(1) Subject to subsection (3), a retail permit shall authorize the holder thereof, subject to the terms and conditions therein stated, to—

(*a*) manufacture, and sell by retail sale, traditional beer; or

(*b*) sell opaque beer by retail sale; or

(*c*) do (*a*) and (*b*) above,

at the places specified and on the days permitted by such permit.

(2) A retail permit shall be valid for a maximum period of seven days from the effective date stated therein.

(3) Every retail permit issued under this Part by any local authority constituted under the Local Government (Urban Areas) Act shall be restricted to the sale of opaque beer only, and shall not authorize or permit the manufacture or sale of traditional beer at any place within the Local Government Area of such local authority. Cap. 22:01

65.—(1) Subject to subsection (3), a premises permit shall authorize the holder thereof, subject to the terms and conditions therein stated, to— Premises permit

(*a*) manufacture, and sell by retail sale, traditional beer; or

(*b*) sell opaque beer by retail sale; or

(*c*) do (*a*) and (*b*) above,

on the premises specified in the said permit.

(2) A premises permit shall be valid until the 31st March next following its effective date.

(3) Every premises permit issued under this Part by any local authority constituted under the Local Government (Urban Areas) Act shall be restricted to the sale of opaque beer only, and shall not authorize or permit the manufacture or sale of traditional beer at any place within the Local Government Area of such local authority. Cap. 22:01

66. [*Repealed by* 10 *of* 1996].

67. Every application for a permit under this Part shall be made in the manner prescribed by by-laws made by the relevant local authority and shall be accompanied with the appropriate fee so prescribed. Application for permit

68.—(1) A permit officer may refuse to issue a retail permit or a premises permit to any person— Refusal to issue permit

(*a*) who has, within two years prior to the date of application for such permit, been convicted of an offence under this Act or under any written law repealed and replaced by this Act;

(*b*) who, in the opinion of the permit officer, is not a fit or proper person to hold such permit.

(2) A person aggrieved by the decision of the permit officer in refusing to issue a retail permit under the provisions of subsection (1), may, within ten days after such refusal, appeal in writing to the relevant local authority, and the permit officer shall implement the decision of the local authority on any such appeal.

(3) The decision of the local authority on any appeal under subsection (2) shall not be subject to appeal to, or question by, any court.

(4) Where, pursuant to section 62, the powers conferred upon any local authority by this Part have been removed from the jurisdiction of such local authority and transferred to the appropriate licensing officer, or licensing officers, in the area of such local authority, an appeal shall lie to the Minister from the decision of any such licensing officer in refusing to issue any such retail permit or premises permit and this section shall apply *mutatis mutandis* to every such appeal.

Local authority beer-halls

69.—(1) Every local authority may, within the area of such local authority, establish, maintain and operate beer-halls where opaque beer may be sold to the public by such local authority, or by holders of current valid retail permits with the permission and under the supervision and control of such local authority.

(2) No licence under this Act, or premises permit or retail permit under this Part, shall be required to be held by any local authority which establishes, maintains or operates any beer-hall under subsection (1).

(3) Every local authority which maintains or operates any beer-hall pursuant to subsection (1) shall appoint a manager or agent in respect of each such beer-hall so maintained or operated, and shall cause the name of such manager or agent, as the case may be, to be displayed conspicuously in a place ordinarily frequented by members of the public within such beer-hall.

(4) Every manager or agent acting on behalf of any local authority in the management or operation of any beer-hall established, maintained or operated by such local authority under subsection (1), shall be bound by every relevant provision of this Act in his conduct of such management or operation, as if he were the holder of a premises permit in respect of such beer-hall save that he shall not be required to hold any licence or any permit under this Act in relation to such beer-hall.

(5) Save as is otherwise provided by this section, no person shall sell opaque beer in any beer-hall unless he is the holder of a current valid retail permit approved under this Part.

(6) No person shall sell in any beer-hall any liquor other than opaque beer pursuant to this section.

By-laws

70.—(1) Any local authority may make by-laws for the better carrying out of this Part in the area of such local authority, and, without prejudice to the generality of the foregoing, such by-laws may provide for—

(*a*) the forms to be used for any register, return, application or permit;

(*b*) the fees to be paid upon any application for and issue of a permit;

(*c*) the hours of the day and the days during which any permit issued under this Part may be exercised;

(*d*) the conditions under which any permit holder may sell traditional beer or opaque beer;

(*e*) the control of the sale of traditional beer or opaque beer;

(*f*) the display of premises permits in the relevant permitted premises;

(*g*) offences in relation to the sale or offering for sale of traditional beer or opaque beer whether under a retail permit or premises permit, or otherwise, other than such offences as are expressly provided for by this Act in relation to such matters;

(*h*) the maintenance of cleanliness and hygienic conditions in the manufacture or sale of traditional beer under any liquor permit;

(*i*) the state of repair and hygienic conditions of any premises to which a current premises permit relates;

(*j*) the conduct of persons in any beer-hall, or on any premises to which a current premises permit relates, and the prescribing of offences in respect of such conduct;

(*k*) penalties for any offence committed against the said by-laws;

(*l*) any matter to be, or which may be, prescribed under this Part.

(2) Any by-laws intended to be made by any local authority under subsection (1) shall be made in the manner prescribed, from time to time, for the making of by-laws in the written law under which such local authority is established.

PART VIII

Offences Relating to Sales, etc.

Illegal manufacture of liquor for sale

71.—(1) Save as is otherwise provided by this Act, any person, not being the holder of a manufacturer's licence under this Act, who, for purposes of sale, manufactures any liquor whether by brewing, distilling, fermenting or any other such process, shall be guilty of an offence and liable to a fine of two thousand Kwacha and to imprisonment for a term of two years:

Provided that this subsection shall not apply to any person, being the holder of a valid current liquor permit issued under Part VII, who, for purposes of sale, manufactures traditional beer by traditional methods in accordance with the terms and conditions of such permit.

(2) Any person, being the holder of a manufacturer's licence, or of a liquor permit issued under Part VII, who for purposes of sale manufactures by any process liquor of a kind other than that which he is entitled to manufacture under his said licence or permit, shall be guilty of an offence and liable to a fine of one thousand Kwacha and to imprisonment for a term of eighteen months.

(3) Any person, being the holder of a manufacturer's licence, or of a liquor permit issued under Part VII, who for purposes of sale manufactures liquor by any process other than that which he is entitled under his said licence or permit to use in such manufacture, shall be guilty of an offence and liable to a fine of one thousand Kwacha and to imprisonment for a term of eighteen months.

Illegal sales

72.—(1) Subject to this Act any person who—

(*a*) sells any liquor not being the holder of a licence or permit authorizing him to sell such liquor; or

(*b*) being the holder of a licence or permit related to any premises under this Act, sells any liquor except on the premises specified in such licence or permit; or

(*c*) being the holder of a licence or permit under this Act, sells any liquor save in accordance with the terms and conditions of the said licence or permit,

shall be guilty of an offence and liable—

(i) on first conviction under this section to a fine of one thousand Kwacha and to imprisonment for a term of eighteen months;

(ii) on a second or subsequent conviction under this section, to a fine of two thousand Kwacha and to imprisonment for a term of two years.

(2) Upon a second or subsequent conviction of a person of an offence under subsection (1), the court may, in addition to any other penalty imposed, order such person to be disqualified from holding a licence or permit under this Act—

(*a*) on a second conviction, for a period not exceeding five years;

(*b*) on a third or subsequent conviction for any period of years or for life.

(3) Every occupier of premises on which any liquor is sold in contravention of this section shall, unless he proves that the offence was committed without his privity or consent, be deemed to have committed an offence under this section.

Sales outside permitted hours

73.—(1) Subject to this Act, any person, being the holder of a licence or permit authorizing him to do so who—

(*a*) save during the permitted hours, personally or by his servant or agent, sells to any person on any licensed premises or permitted premises any liquor to be consumed either on or off the said licensed or permitted premises;

(*b*) save during the permitted hours, personally or by his servant or agent permits any person to consume on, or take from, any such licensed premises or permitted premises any liquor;

(*c*) save during the permitted hours, personally or by his servant or agent sells, on any licensed aircraft, railway restaurant car or passenger vessel, as the case may be, any liquor to be consumed either on or off the said aircraft, railway restaurant car or passenger vessel, as the case may be;

(*d*) save during the permitted hours, consumes on, or takes from, or personally or by his servant or agent permits any person to consume on, or take from, any licensed aircraft, railway restaurant car or passenger vessel, any liquor,

shall be guilty of an offence and liable to a fine of one hundred Kwacha:

Provided that liquor sold during the permitted hours under any on-licence, on any licensed premises, aircraft, railway restaurant car or passenger vessel to which the said licence relates, may be consumed on such premises, aircraft, railway restaurant car or passenger vessel up to fifteen minutes after the conclusion of the said permitted hours.

(2) Nothing in this section shall prohibit or restrict—

(*a*) the sale, or consumption by any person of liquor on any licensed premises or permitted premises where he is residing, or the sale of liquor for consumption on the premises of any hotel premises licensed under this Act, to any person lodging therein or the supply of liquor to any personal guest of any such person being in good faith entertained by such person at such person's expense, or the consumption of liquor on such premises by any person so supplied;

(*b*) the supply of liquor for consumption on any licensed premises, in a part of such premises not ordinarily used for the sale of liquor to members of the public, to any personal guest of the licensee in good faith being entertained by the licensee at the licensee's expense, or the consumption of such liquor by the person so supplied.

(3) For the purposes of this section, the expression "permitted hours" means the prescribed hours appropriate to the relevant licence or liquor permit held by the licensee or permit holder, as the case may be, together with any lawful extension of such hours under this Act.

Supply of liquor to young persons

74. Any licensee under a sales licence issued under this Act who supplies liquor to any young person (irrespective of whether the said liquor is supplied for the personal use of such young person or of some other person) shall be liable to a fine of one hundred Kwacha and to imprisonment for a term of six months.

Employment of young persons to sell liquor

75. Any licensee under this Act who employs any young person—

(*a*) to sell, or to control or supervise the sale of, liquor on behalf of the said licensee; or

(*b*) to have the custody and control of any liquor on the licensed premises, on behalf of the said licensee,

shall be guilty of an offence and liable to a fine of one hundred Kwacha and to imprisonment for a term of six months:

Provided that in exceptional circumstances and with the prior consent in writing of the licensing officer and subject to such terms and conditions as the licensing officer may impose, a licensee may employ a young person to perform the duties referred to in this section.

Sale of liquor on credit by on-licensee prohibited

76.—(1) Any licensee under an on-licence issued pursuant to this Act, who sells liquor for consumption on the premises otherwise than for money actually received before or at the time of such sale shall be guilty of an offence and liable to a fine of fifty Kwacha and to imprisonment for a term of three months:

Provided that if liquor is supplied to any person who is in *bona fide* occupation of a room or rooms at such licensed premises, as tenant, paying guest or lodger, for consumption in such room or rooms, or to a person having a meal at such premises, for consumption with such meal, the provisions of this subsection shall not be deemed to have been contravened if the price of such liquor is paid before or immediately upon such person ceasing to occupy such room or rooms or during or immediately after such meal, as the case may be.

(2) No action shall be brought upon any debt incurred in contravention of this section.

Drunkenness on licensed premises

77.—(1) Any licensee under an on-licence, or any holder of a premises permit, issued pursuant to this Act who permits drunkenness or any disorderly conduct to take place on his licensed premises, or permitted premises, as the case may be, shall be guilty of any offence.

(2) If any licensee or premises permit holder is charged with permitting drunkenness on his licensed premises, or permitted premises, as the case may be, in contravention of subsection (1) on any stated occasion and it is proved that on such occasion any person was drunk on the said licensed premises, or permitted premises, the said licensee or permit holder, as the case may be, shall be deemed to be guilty unless he proves that he and the persons employed by him took all reasonable steps for preventing drunkenness on the premises.

(3) Any licensee under an on-licence, or any holder of a premises permit, issued pursuant to this Act, who, on his licensed premises, or permitted premises, as the case may be, sells liquor to a drunken person or who incites any drunken person to drink liquor, shall be guilty of an offence.

(4) Any person convicted of an offence under this section shall be liable to a fine of one hundred Kwacha and to imprisonment for a term of six months.

Prostitutes on licensed premises

78. Any licensee, under an on-licence, or any holder of a premises permit, issued pursuant to this Act, who—

(*a*) permits his licensed premises, or permitted premises, as the case may be, to be used as a brothel or as a place of habitual meeting or resort of reputed common prostitutes or any other persons for immoral purposes;

(*b*) permits, on his licensed premises, or permitted premises, as the case may be, any reputed common prostitutes or other person to engage in soliciting members of the public for immoral purposes; or

(*c*) knowingly employs any reputed common prostitute in and about any part of the said licensed premises, or permitted premises, as the case may be, ordinarily used for the sale of liquor, shall be guilty of an offence and liable to a fine of five hundred Kwacha and to imprisonment for a term of one year.

Supply of liquor to police officers

79. Any licensee under an on-licence issued pursuant to this Act, who, without the authority of a police officer of or above the rank of inspector—

(*a*) permits any police officer below the rank of inspector, while on duty, to enter or remain on his licensed premises otherwise than for the purpose of keeping or restoring order or otherwise in the execution of his duty; or

(*b*) supplies any liquor or refreshment to any such police officer while on duty,

shall be guilty of an offence and liable to a fine of two hundred Kwacha and to imprisonment for a term of one year.

PART IX

Control of Licensed Premises

Exhibition of name of licensee

80.—(1) Save as is hereinafter provided, every licensee under a sales licence related to premises other than a temporary sales licence, issued pursuant to this Act shall have his name and a description of the class and grade of licence he holds in respect of the premises painted over the door or principal public entrance to his licensed premises in legible characters, either black upon a white ground or white upon a dark ground, and shall replace the same if it be removed, obliterated or defaced.

(2) The requirements of subsection (1) shall be met if the said name and description are legibly painted, impressed or embossed on a plate of metal or other durable material which is firmly affixed over the said door or entrance.

(3) No person other than a licensee under this Act shall exhibit in the manner provided by subsection (1) or subsection (2), or in any other manner, on any premises, any words or letters likely to lead persons to the belief that he holds a licence under this Act, or that he sells or supplies liquor.

(4) No licensee shall exhibit any words or letters, as provided by subsection (1) or (2), likely to lead persons to believe that he holds a sales licence of a class or grade different from that which he holds, or that he sells or supplies any liquor in a manner not authorized by his said licence.

(5) Every licensee shall exhibit, and keep exhibited during the continuance of his licence, a copy of his said licence in a conspicuous place inside his licensed premises.

(6) The Minister may, in respect of any class or grade of sales licence attaching to premises, exempt licensees under such class or grade from all or any of the provisions of this section.

(7) Any person not being exempted pursuant to subsection (6) who contravenes any provision of this section shall be guilty of an offence and liable to a fine of one hundred Kwacha.

Restrictions on carrying on other business on licensed premises

81. Any holder of an on-licence issued pursuant to this Act and related to premises other than an airport, bus station or railway station, who, without the written consent of the licensing officer, carries on any other business on his licensed premises, except that connected with the conduct of an hotel, restaurant, cabaret or theatre, or with the sale of light refreshments, tobacco, smokers' requisites, sweets, and similar commodities, shall be guilty of an offence and liable to a fine of fifty Kwacha.

Personal supervision by licensee under on-licence

82.—(1) Unless otherwise permitted by the terms and conditions of his licence, every licensee under an on-licence shall personally supervise the conduct of the business carried on under the authority of his licence, and shall not, without the consent of the licensing officer, absent himself from the business for more than fourteen consecutive days at any one time.

(2) Where the licensee does not intend personally to supervise the said business, the name of the responsible manager of the business shall be stated in the licence, and it shall not be lawful for the licensee to employ any other person to superintend the business carried on under the authority of such licence for more than fourteen consecutive days at any one time, save with the prior consent of the licensing officer.

Improper storage of liquor

83. Any licensee under a liquor licence, other than a temporary sales licence, issued pursuant to this Act, who, on premises other than licensed premises or premises approved for the purpose by the licensing officer of the area in which such premises are situate or by the Minister, or in a warehouse approved by the Controller

of Customs for the storage of dutiable goods, stores liquor intended for sale shall be guilty of an offence and liable to a fine of two hundred Kwacha and to imprisonment for a term of one year.

Structural alterations to premises

84.—(1) Any structural alteration to premises licensed under this Act, which gives increased facilities for the sale of liquor or for drinking, or conceals from observation any part of the said premises ordinarily used for the sale of liquor or for drinking, or which affects the communication between such part of the said licensed premises ordinarily used for the sale of liquor or for drinking and any other part thereof or any street or public place shall not be made without the consent of the appropriate licensing authority.

(2) Where any structural alteration is made in contravention of subsection (1) the licensee shall be guilty of an offence and liable to a fine of one hundred Kwacha and to imprisonment for a term of six months, and the court may direct that, within a time fixed by the court, the premises shall be restored to their original condition and that in default of such restoration within such time the licence shall be forfeited.

(3) For the purposes of this section, the term "structural alteration" shall not include the construction of any building which is intended, upon completion, to be annexed or added to the said licensed premises as an extension thereof and in respect of which a provisional extension of such licence has been granted under section 45.

Power of licensee or permit holder to exclude drunkards, etc.

85.—(1) Any licensee under a retail sales licence related to premises, or any holder of a premises permit, or the servants or agents of such licensee or permit holder, as the case may be, may refuse to admit to, or may remove from, such licensed premises or permitted premises any person who is drunk or disorderly or to whom the supply of liquor is prohibited, under this or any other written law, and may use such force as may reasonably be necessary to do so.

(2) Any person who, being requested by the licensee, or permit holder, his servant or agent to leave licensed premises or permitted premises, as the case may be, pursuant to subsection (1), refuses so to do shall be guilty of an offence and liable to a fine of twenty Kwacha and to imprisonment for a term of two months.

Gambling on licensed premises

86. Save as is otherwise provided by any written law, any licensee under any retail sales licence related to premises who suffers or permits any gambling or gaming to be carried on on such premises shall be guilty of an offence and liable to a fine of two hundred Kwacha and to imprisonment for a term of one year.

Payment of wages on licensed premises prohibited

87. Any person who, on premises licensed under any retail sales licence, pays any wages to any other person who is paid monthly, or at any lesser interval, shall be guilty of an offence and liable to a fine of one hundred Kwacha:

Provided that this section shall not apply to the payment by any licensee, on his own licensed premises, of any wages to any person employed by such licensee in connexion with the said licensed premises.

PART X

Prevention and Detection of Offences

Power to enter and inspect licensed premises

88.—(1) Any police officer, licensing officer, medical officer of health or health officer may, at any time, either alone or accompanied by any other duly authorized person, enter upon and inspect any licensed premises, or any premises approved for the storage of liquor pursuant to section 83, for the purpose of preventing or detecting any offence under this Act, or for the purpose of observing the state of repair or sanitary condition of such premises or the general conduct of the business being transacted thereon and may require the licensee, or other person for the time being in charge of the said licensed premises, to produce for inspection the licence relating to the said premises.

(2) Any licensee, or any other person for the time being in charge of such licensed premises or of such premises approved for the storage of liquor, as the case may be, who refuses or fails to admit to such premises or any part thereof, any person entitled to enter upon such premises under subsection (1), or refuses or fails to produce such licence on the demand of such person or who refuses, or fails to afford such person every facility in the lawful exercise of his powers under this section, or who obstructs such person in the exercise of his said powers, shall be guilty of an offence and liable to a fine of fifty Kwacha and to imprisonment for a term of six months.

Search warrant for detection of liquor manufactured, sold or kept contrary to law

89.—(1) Any magistrate, if satisfied by information on oath that there is reasonable ground for believing that liquor is being unlawfully manufactured, sold or stored at any place, whether in a building or otherwise, may grant a warrant, under his hand, by virtue whereof it shall be lawful for any police officer, at any time or times within one month of the date of such warrant, to enter, if need be by force, the place designated therein, and every part of such place, and to examine the same and search for liquor therein, and to seize and remove and take before a magistrate any liquor found therein together with the vessels containing such liquor which there is reasonable ground to believe has been unlawfully manufactured or sold or is being unlawfully stored for sale or is in such place for the purpose of unlawful sale thereat or at any other place.

(2) If the owner or occupier or person entitled to the immediate possession of the place so entered is convicted of an offence under this Act in relation to any liquor so seized pursuant to subsection (1), the court may order that all or any of the liquor so seized and the vessels containing the same be forfeited to the Government.

(3) When any liquor is found in any place entered and searched by virtue of a warrant issued pursuant to subsection (1)—

(*a*) any person in whose possession or under whose control such liquor is found, and who is reasonably suspected of having committed an offence under this Act, may be arrested by any police officer without a warrant; and

(*b*) any person who is found at such place at such time shall be deemed, unless the contrary is proved, to have been at such place for the purpose of committing an offence under this Act, and shall be guilty of an offence and liable to a fine of ten Kwacha.

(4) This section shall apply to liquor in process of unlawful manufacture and to ingredients, materials, equipment and implements used or intended to be used for the unlawful manufacture of liquor in like manner as it applies to liquor.

Closure of licensed premises during public unrest, etc.

90.—(1) Where in any area any public unrest, disorder or civil commotion exists, or is apprehended, the District Commissioner in whose District such area lies, or the officer in charge of police in such District, may order that all or any licensed premises in such area shall be closed until further order or for such period as is specified in such order.

(2) Such order shall be in writing and the service of a copy thereof upon any licensee concerned, or his agent, shall be sufficient notice to such licensee of the purport of such order.

(3) Any licensee who contravenes or fails to comply with any order made pursuant to subsection (1) shall be guilty of an offence and liable to a fine of five hundred Kwacha and to imprisonment for a term of one year.

Limitation on powers of police below rank of inspector

91. The powers conferred upon a police officer by sections 88, 89 and 90 shall not be exercised in any District by any police officer below the rank of inspector unless generally or specially authorized in that behalf by a police officer of the rank of inspector or of higher rank entitled to exercise such powers in such District and authorized to delegate the same.

PART XI

Forfeiture and Exemptions

Forfeiture of licence

92.—(1) Upon the conviction of any licensee of an offence under this Act, the court may order the relevant licence of such licensee to be forfeited and may direct such licensee forthwith to deliver up the said licence, together with any copies thereof in his possession, to the appropriate licensing authority for cancellation.

(2) Where any licensee is convicted of an offence under this Act and is sentenced therefor to a term of imprisonment of not less than fourteen days without the option of a fine, the court shall order every licence held by such licensee under this Act to be forfeited and shall direct such licensee forthwith to deliver up all such licences held by him, together with any copies thereof in his possession, to the appropriate licensing authority for cancellation.

(3) Where any liquor licence issued under this Act, is exercisable on stated premises as part of and in the course of any business carried on on such premises under any authority, licence or permit issued under any other written law, and the said authority, licence or permit to carry on such business on such premises is revoked, cancelled or forfeited, the said liquor licence issued under this Act shall forthwith be forfeited, and the licensee thereunder shall deliver up such liquor licence to the appropriate licensing authority for cancellation.

Forfeiture of liquor

93.—(1) Upon the conviction of any person of an offence under this Act, the court may, in addition to any other penalty imposed, order that any equipment or implements, or any ingredients, materials or liquor in respect of which the said offence was committed, together with the vessels containing the same be forfeited to the Government.

(2) Where, upon the conviction of any person under this Act, the court is of opinion that any liquor found in the possession of the person convicted, or on the premises, or at the place, where the offence was committed, has been or was intended to be dealt with in contravention of this Act, the court may, in addition to any other penalty imposed, make an order (hereinafter referred to as a conditional order) to the effect that unless a person other than the person convicted claims, pursuant to this section, any right of ownership in the said liquor within one month of the date of publication of notice of the said conditional order pursuant to subsection (3), the prosecution may apply to the court *ex parte* for an order of forfeiture of the said liquor, together with the vessels containing the same, the to Government.

(3) Upon the making of a conditional order pursuant to subsection (2), the licensing officer for the area in which the offence occurred shall, within ten days thereafter, cause to be published in the *Gazette*, and in at least one issue of a newspaper in general circulation in the said area, a notice of the making of such order, which said notice shall be in the form prescribed, or, if no such form be prescribed, in a form approved by the court.

(4) Any person who claims any right in or over any liquor, which is the subject matter of a conditional order made pursuant to subsection (2), may within fifteen days after the publication of the notice thereof, pursuant to subsection (3), serve upon the prosecution and on the licensing officer for the area in which the

offence referred to was committed, and lodge, with the clerk of the court, an application in writing for the discharge of the said conditional order, setting out his claim of right in or over the said liquor, whereupon the clerk of the court shall fix a date, not less than one month after the lodgement of the said application, for a hearing thereon and shall, within seven days after such lodgement, cause notice of the hearing to be served upon the prosecution, the said licensing officer and the applicant.

(5) In any proceedings brought pursuant to subsection (4) the burden of proof shall be on the applicant.

(6) Where, after hearing the evidence adduced by the applicant in support of his claim and any evidence tendered in opposition thereto by the prosecution and the licensing officer, the court is satisfied that the said applicant is lawfully entitled to the possession of the said liquor, the court shall make an order discharging the said conditional order and restoring to the said applicant the said liquor together with the vessels containing the same and shall allow to the said applicant the costs of his said application.

(7) Where, in any proceedings brought pursuant to subsection (4), the court is satisfied that the said liquor is owned jointly by the applicant and the convicted person, the court shall order to be forfeited to the Government all of the right of ownership and interest of the said convicted person in and to the said liquor and in and to the vessels containing the same, and shall by the said order declare the extent of the said convicted person's right of ownership and interest in the said liquor and the vessels containing the same so forfeited, and shall order that, in so far as the said conditional order affected the right of ownership or interest of the applicant in and over the said liquor together with the vessels containing the same, the said conditional order be discharged, and shall further order the said liquor together with the vessels containing the same to be sold and the proceeds, after deduction of the costs of such sale, to be distributed to the Government and the applicant in the ratio of their ownership and interest therein, pursuant to the said order, and shall allow to the applicant such costs of his said application as the court deems attributable to the extent of the success of his claim.

(8) Where, in any proceedings brought pursuant to subsection (4), the court is satisfied that the applicant has failed to prove his claim of ownership or interest in the said liquor, the court shall make the said conditional order absolute and dismiss the said application with costs.

Disposal of liquor stocks after cancellation, revocation or forfeiture of licence

94.—(1) Where any licence issued under this Act is cancelled, revoked or forfeited under circumstances in which section 92 does not apply or has not been invoked by any court, the appropriate licensing officer shall issue to the former licensee, or his agent or representative, a written authority empowering such

licensee, or such agent or representative, to sell by public auction or by private treaty such stocks of liquor, the property of the licensee, as the said licensee held as stock in trade at the time of the cancellation, revocation or forfeiture, as the case may be, of his said licence.

(2) Any sale of liquor under any authority issued pursuant to subsection (1) may be by wholesale or retail sale, save that no sale may be made thereunder for consumption of such liquor on the premises where it is sold.

(3) Any authority issued pursuant to subsection (1) shall be valid for sixty days, but such authority may be extended from time to time by the said licensing officer in his absolute discretion until all of the said stock of liquor is sold.

Exemptions

95.—(1) Nothing in this Act shall apply to—

(*a*) the brewing, keeping and consumption of beer or the making, keeping and consumption of any wine by any person at his place of residence for consumption by himself, by members of his household and by his guests;

(*b*) the sale of any liquor being medicated spirits, or spirits made up in any medicine and sold in the practice of his profession by any medical practitioner or dentist or by any veterinary surgeon, or by any registered pharmacist or any company exempted under section 16 of the Pharmacy and Poisons Act;

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(*c*) the sale or supply of denatured or methylated spirits or spiritous or distilled perfumes, save to the extent expressly provided by regulations made under section 96 (*a*);

(*d*) the sale or supply of liquor to any member of the Malaŵi Army or of the Malaŵi Police Force or of the University of Malaŵi or their respective guests in any mess or canteen established for the use of such respective members under the appropriate relevant Ministerial authority.

(2) Save to the extent of any restrictions thereon prescribed by regulation in respect of sales by auction, nothing in this Act shall apply to—

(*a*) the sale of liquor by any person, who is not a licensee under this Act, not being for profit, nor in the course of business, nor by way of trade;

(*b*) the sale, by the personal representative of a deceased person, of liquor forming part of the estate of such deceased person;

(*c*) the sale, by the trustee of the estate of a bankrupt, of liquor forming part of the estate of such bankrupt, or the sale by the liquidator or receiver of any body of persons, corporate or unincorporate, of liquor forming part of the assets of such body upon the liquidation or dissolution thereof;

(*d*) the sale, by private arrangement, of liquor, being the residue of a reasonable stock held for private consumption, by a person about to leave Malaŵi;

(*e*) the sale of liquor by order of any court:

Provided that liquor shall not be sold under this subsection except in unopened containers.

PART XII

Regulations

Regulations

96. The Minister may, by notice published in the *Gazette*, make regulations for the better carrying out of this Act, and, without prejudice to the generality of the foregoing, such regulations may provide for—

(*a*) the prohibition, restriction or regulation of the sale or supply of denatured or methylated spirits, or spiritous or distilled perfumes, and the application of such of the provisions of this Act as he may deem necessary for the enforcement of such regulations;

(*b*) the form of, and particulars to be entered in, any registers or records to be kept for the purposes of this Act;

(*c*) the form of notices, applications and other documents to be used for the purposes of this Act;

(*d*) penalties for breaches of any regulations made under this Act, and in this regard, such regulations may provide for a penalty of not exceeding five hundred Kwacha and imprisonment for a term of one year generally or for the breach of any specific regulation;

(*e*) any matter to be, or which may be, prescribed.

PART XIII

Miscellaneous

Control of supply of liquor to habitual drunkards

97.—(1) Where, upon application to a magistrate, it is shown to the satisfaction of such magistrate that any person is a habitual drunkard such magistrate may declare such person a habitual drunkard and make an order that such person shall not be supplied with any liquor by any other person, except on the written permit of a magistrate or a medical practitioner, for such period not exceeding three years as may be specified in the order.

(2) No order shall be made under this section except on the application of any of the following—

(*a*) the alleged habitual drunkard; or

(*b*) the spouse of the alleged habitual drunkard; or

(*c*) a member of his immediate family with whom he resides.

(3) Any person who knowingly contravenes an order made under this section shall be guilty of an offence and liable to a fine of one hundred Kwacha and to imprisonment for a term of six months.

Sale of tobacco, etc.

98. Notwithstanding the provisions of any written law for the time being in force relating to business licences, the holder of any on-licence under this Act may, on the relevant licensed premises and during the prescribed hours, carry on the business of the sale of light refreshments, tobacco, tobacco products, smokers' articles, mineral waters, chocolates, sweets and matches without a business licence.

Infringement of conditions of licence, etc.

99. If there occurs any breach or infringement of—

(*a*) any provision or term of any licence; or

(*b*) any condition attached to any licence; or

(*c*) any term or condition attached to any transfer of any licence; or

(*d*) any term of or condition attached to any permit or approval granted under this Act,

the licensee or the grantee under such permit or approval, as the case may be, and every other person privy to such breach or infringement shall be guilty of an offence and liable to a fine of one hundred Kwacha and to imprisonment for a term of six months.

Offences by servants or agents

100.—(1) Anything which, if done by a licensee personally, would be an offence under this Act, shall also be an offence if done by any servant or agent of the licensee, and such servant or agent shall be guilty thereof.

(2) If an offence under this Act is committed on licensed premises, or on premises approved for the storage of liquor, by any servant or agent of the licensee, then, the licensee shall be deemed also to be guilty of such offence, unless he proves that he neither abetted nor consented to the commission of the offence and that he had taken all reasonable steps to prevent the commission thereof.

(3) A sentence of imprisonment shall not be imposed upon any licensee for any offence under subsection (2) of this section.

Attempt and abetment

101.—(1) Any person who attempts to commit an offence under this Act shall be guilty of the offence which he attempted to commit.

(2) Any person who aids or abets another person in the commission of an offence under this Act shall himself be guilty of the offence committed by such other person.

Evidence of sale or consumption of liquor and burden of proof

102.—(1) In proving the sale, supply or consumption of liquor for the purpose of any proceedings for an offence under this Act, it shall not be necessary to show that any money actually passed or that any liquor was actually supplied or consumed, if the court hearing the case is satisfied on the evidence adduced that a transaction in the nature of a sale of liquor actually took place, or that any supply or consumption of liquor was about to take place.

(2) Proof of consumption or intended consumption of liquor on licensed premises by some person other than the occupier of, or a servant employed on, the premises, shall be *prima facie* evidence that the liquor was sold by the licensee to that person.

(3) In any proceedings under this Act relating to the sale of liquor the burden of proving that such sale was lawful shall be on the person alleging the same.

Proof of licence, etc.

103. In any proceedings under this Act, a certificate, purporting to be signed by the appropriate licensing officer, or in respect of any document issued under Part VII, by the permit officer of the relevant permit authority, or by the appropriate licensing officer as the relevant permit authority under section 62, as the case may be, to the effect that any licence, permit, order, approval, consent or other document was issued by the relevant licensing authority, or permit authority, as the case may be, to any stated person on any state date, shall be prima facie evidence of the issue of such licence, permit, order, approval, consent, or other document to such stated person on the date stated.

SCHEDULE

Section 27

Prescribed Hours for Sales Licences

A. WHOLESALE SALES LICENCES— (sections 21 and 22)

1. Wholesale Licence: (section 21)

Week days	No restrictions
Sundays	No restrictions
Public Holidays other than Martyr's Day	No restrictions
Martyr's Day	No sales permitted at any time

2. Agent's Licence: (section 22)

Weekdays	7.00 a.m. to 6.30 p.m.
Sundays	*No orders to be received at any time*
Public Holidays	*No orders to be received at any time*

B. RETAIL SALES LICENCES— (sections 23 and 24)

1. General Retail Licence:

(*a*) Grade "A" (section 23 (3)) (Bar business)

(i) *Urban Areas:*

Weekdays	8.00 a.m. to 12.00 midnight
Sundays	8.00 a.m. to 12.00 midnight
Public Holidays other than Martyr's Day	8.00 a.m. to 12.00 midnight
Martyr's Day	No sales permitted at any time. No consumption of liquor on premises at any time.

(ii) *All other areas:*

Weekdays	7.00 a.m. to 12.00 midnight
Sundays	7.00 a.m. to 12.00 midnight
Public Holidays other than Martyr's Day	7.00 a.m. to 12.00 midnight
Martyr's Day	No sales permitted at any time. No consumption of liquor on premises at any time.

(*b*) Grade "B" (section 23 (4)) (Off-licence business)

Weekdays	7.30 a.m. to 8.00 p.m.
Sundays	7.30 a.m. to 8.00 p.m.
Public Holidays other than Martyr's Day	7.30 a.m. to 8.00 p.m.
Martyr's Day	No sales permitted.

(*c*) Grade "C" (section 23 (5)) (Hotel)

Sales to persons not lodging on premises	*Weekdays* *Sundays* *Public Holidays other than Martyr's Day* *Martyr's Day*	Same hours as apply *Grade "A" Urban Areas*
Sales to persons lodging on premises and the guests of such persons		No restrictions
Sales to persons consuming a meal on the premises, for consumption with meal		No restrictions

(*d*) Grade "D" (section 23 (6)) (Restraurant)

Sales of liquor to persons consuming meals, for consumption of such liquor with such meals	No restrictions

(*e*) Grade "E" (section 23 (7)) (Club)

Sales to members only

Weekdays	No restrictions
Sundays	No restrictions

Public Holidays other than Martyr's Day	No restrictions
Martyr's Day	No sales permitted at any time. No consumption of liquor on premises at any time.

(*f*) Grade "F" (section 23 (8)) (Cabaret)
Liquor sold for consumption with meals only

Weekdays *Sundays* *Public Holidays other than Martyr's Day*	Sales permitted from 5.00 p.m. up to thirty (30) minutes after conclusion of last cabaret show.
Martyr's Day	No sales permitted

(*g*) Grade "G" (section 23 (9)) (Theatre, Cinema, etc.)

Weekdays *Sundays* *Public Holidays other than Martyr's Day*	Sales permitted from thirty (30) minutes before the commencement of the performance to thirty (30) minutes after its conclusion: If the performance is continuous, sales permitted from thirty (30) minutes before the commencement of the first performance to thirty (30) minutes after the conclusion of the last performance.
Martyr's Day	No sales permitted

(*h*) Grade "H" (section 23 (10)) (Limited off-licence business)

Weekdays	7.30 a.m. to 10.00 p.m.
Sundays	7.30 a.m. to 9.00 p.m.
Public Holidays other than Martyr's Day	7.30 a.m. to 9.00 p.m.
Martyr's Day	No sales permitted

(*i*) Grade "I" (section 23 (11)) (National Park or Game Reserve)

Weekdays *Sundays* *Public Holidays*	No restrictions
Martyr's Day	No sales permitted

2. Travel and Transit Licence: (section 42)

(*a*) Grade "TA" (section 24 (3)) (Aerodrome, Airport, Air Terminal)

Weekdays *Sundays* *Public Holidays other than Martyr's Day*	At all times when aerodrome, airport or air terminal is open to the public for the purposes of its operations.

Martyr's Day	Sales permitted only to *bona fide* passengers in transit on international flights to and from such aerodrome, airport or air terminal.

(*b*) Grade "TB" (section 24 (4)) (Bus Station or Bus Terminus)

(i) *Urban Areas:*

Weekdays	8.00 a.m. to 1.00 a.m. following day
Sundays	8.00 a.m. to 12.00 midnight
Public Holidays other than Martyr's Day	8.00 a.m. to 1.00 a.m. following day
Martyr's Day	No sales permitted at any time. No consumption of liquor on premises permitted at any time.

(ii) *All other Areas:*

Weekdays	7.00 a.m. to 1.00 a.m. following day
Sundays	7.00 a.m. to 12.00 midnight
Public Holidays other than Martyr's Day	7.00 a.m. to 1.00 a.m. following day
Martyr's Day	No sales permitted at any time. No consumption of liquor on premises permitted at any time.

(*c*) Grade "TR" (section 24 (5)) (Railway Station or Railway Terminus)

(i) *Urban Areas:*

Weekdays	8.00 a.m. to 1.00 a.m. following day
Sundays	8.00 a.m. to 12.00 midnight
Public Holidays other than Martyr's Day	8.00 a.m. to 1.00 a.m. following day
Martyr's Day	No sales permitted at any time. No consumption of liquor on premises permitted at any time.

(ii) *All other Areas:*

Weekdays	7.00 a.m. to 1.00 a.m. following day
Sundays	7.00 a.m. to 12.00 midnight
Public Holidays other than Martyr's Day	7.00 a.m. to 1.00 a.m. following day
Martyr's Day	No sales permitted at any time. No consumption of liquor on premises permitted at any time.

(A) *While in flight:*

Weekdays *Sundays* *Public Holidays*	No restrictions

(B) *While not in flight:*

Weekdays *Sundays* *Public Holidays*	No sales permitted at any time

(ii) *Domestic Flights:*

(A) *While in flight:*

Weekdays	No restrictions
Sundays	No restrictions
Public Holidays other than Martyr's Day	No restrictions
Martyr's Day	No sales permitted at any time. No consumption of liquor on aircraft permitted at any time.

(B) *While not in flight:*

Weekdays *Sundays* *Public Holidays*	No sales permitted at any time

(*e*) Grade "TRY" (section 24 (7)) (Railway Restaurant Car)

Weekdays *Sundays* *Public Holidays other than Martyr's Day*	No restrictions
Martyr's Day	No sales permitted at any time

(*f*) Grade "TPV" (section 24 (8)) (Passenger Vessel)

Weekdays *Sundays* *Public Holidays other than Martyr's Day*	No restrictions
Martyr's Day	No sales permitted

C. Temporary Sales Licences (sections 25 and 26)

1. Auctioneer's Temporary Licence (section 25)

Weekdays	8.00 a.m. to 8.00 p.m.
Sundays *Public Holidays*	No sales permitted

2. Occasional Licence (section 26)

Permitted hours as stated in licence.

G.N. 160/1980

SUBSIDIARY LEGISLATION

LIQUOR (LISTED SPIRITS) NOTICE

under s. 23 (10)

Citation

1. This notice may be cited as the Liquor (Listed Spirits) Notice.

Listed Spirits

2. The spirits specified in the Schedule and therein referred to as "listed spirits", being potable spirits manufactured in Malaŵi, shall be the spirits which may be sold by a holder of a grade "H" general retail licence issued pursuant to section 23 (10) of the Act.

para. 2

SCHEDULE

LISTED SPIRITS

(*A*) *Gin*
- (*a*) Malaŵi Gin
- (*b*) Gilbeys Gin

(*B*) *Brandy*
- (*a*) Premier Brandy
- (*b*) Oude Molen
- (*c*) Three Barrels

(*C*) *Vodka*
Smirnoff

(*D*) *Cane Spirit*
White Diamond

(*E*) *Miscellaneous*
Methylated Spirits (Blue)

(*F*) *Whisky* (*Scotch*)
Spey Royal

G.N. 156/1980

LIQUOR (LICENSING FEES) REGULATIONS

under s. 30

Citation

1. These Regulations may be cited as the Liquor (Licensing Fees) Regulations.

Licensing fees

2. The fee specified in the *Second Column* of the Schedule in relation to a licence specified in the *First Column* shall be payable in respect of such licence issued under Part III of the Act.

SCHEDULE

reg. 2

Licensing Fees

First Column	*Second Column Fees*
A. Wholesale Sales Licences	
1. Wholesale Licence	K300 p.a.
2. Agents	K100 p.a.
B. Retail Sales Licences	
1. General Retail Licence	
Grade "A" (Bar business premises)—	
(i) Urban areas	K500 p.a.
(ii) All other areas	K200 p.a.
Grade "B" (Off business premises Licence)—	
(i) Urban areas	K200 p.a.
(ii) All other areas	K120 p.a.
Grade "C" (Hotels)—	
(i) Urban areas	K200 p.a.
(ii) All other areas	K100 p.a.
Grade "D" (Restaurants)—	
(i) Urban areas	K150 p.a.
(ii) All other areas	K 60 p.a.
Grade "E" (Clubs)	K200 p.a.
Grade "F" (Cabaret)	K100 p.a.
Grade "G" (Theatre, Cinema, etc.) . .	K 60 p.a.
Grade "H" (Limited off-premises licence) . .	K 40 p.a.
Grade "I" (National Park or Game Reserve) . .	K100 p.a.
Grade "TA" (Aerodrome, Airport, Air Terminal) . .	K500 p.a.
Grade "TB" (Bus Station or Bus Terminus) . .	K200 p.a.
Grade "TR" (Railway Station or Railway Terminus)—	
(i) Urban areas	K200 p.a.
(ii) All other areas	K120 p.a.
Grade "TAV" (Aircraft)	K 20 p.a.
Grade "TRY" (Railway Restaurant Car) . .	K 60 p.a.
Grade "TPV" (Passenger Vessel)	K200 p.a.

First Column	*Second Column Fees*
C. TEMPORARY SALES LICENCES	
1. Auctioneer's Temporary Licence . .	K5.00 per day
2. Occasional Licence	K10.00 per day
D. MISCELLANEOUS SALES LICENCE	
A duplicate of any licence	K3.00 per copy
E. MANUFACTURER'S LICENCE	
1. Distiller's licence	K40 p.a.
2. Commercial brewer's licence	K40 p.a.
3. Wine-maker's licence	K20 p.a.
4. Opaque beer brewer's licence	K40 p.a.

G.N. 157/1980

LIQUOR (FORMS) REGULATIONS

under s. 96

Citation

1. These Regulations may be cited as the Liquor (Forms) Regulations.

Forms

2. The forms set out in the Schedule shall be used for the purposes of the Act.

reg. 2

SCHEDULE

FORM I

Form of Notice of Intention to apply for a Liquor Licence

LIQUOR ACT

(CAP. 50:07)

NOTICE OF INTENTION TO APPLY FOR A LIQUOR LICENCE

(SECTION 35)

I*/We, (*name of applicant*(*s*)) ...., of (*address*) .... hereby give notice of my*/our intention to apply for a (*describe the licence and its grade*) .... for the manufacture*/sale of liquor at (*describe premises*) .... licence period ending on 31st March, 19.....

This notice is given pursuant to section 35 of the Liquor Act.

Dated this ..... day of ....., 19.....

.....

Signature of applicant or his duly authorized agent

*Delete whichever does not apply.

FORM II

Form of application for a Liquor Licence

LIQUOR ACT

(CAP. 50:07)

APPLICATION FOR A LIQUOR LICENCE

(SECTION 37)

To: The Licensing Officer at .....

1. Following the notice of my*/our intention to apply for a liquor licence published in the *Gazette* issue of (*date of Gazette issue*) ..... and in the two issues of (*name of the newspaper and dates of the two issues*) ....., I*/we, (*name of applicant*(*s*)) ...., of (*address*) ...., hereby apply for a (*describe the licence and its grade*) ..... for the manufacture*/sale of liquor at (*describe premises*) .... in respect of the licence period ending on 31st March, 19 ..... .

†2. I*/We attach hereto written evidence showing that all taxes upon my*/our income which are due and payable pursuant to the Taxation Act (Cap. 41:01) and which are not currently under review or appeal under that Act have been paid, or showing that I*/we have made arrangements satisfactory to the Commissioner of Taxes for the payment of such taxes.

Fee paid .....

Dated this ..... day of ....., 19 .....

.....

Signature of applicant or his duly authorized agent

*Delete whichever does not apply.

†Persons applying as nominees of companies or other bodies corporate are not required to comply with paragraph 2.

NOTE: This form is not for use by applicants for a grade "H" general retail licence or a temporary sales licence.

FORM III

Form of an application for Grade "H" General Retail Licence

LIQUOR ACT

(CAP. 50:07)

APPLICATION FOR A GRADE "H" GENERAL RETAIL LICENCE

(SECTION 41)

To: The Licensing Officer at .....

I*/We (*name of applicant*(*s*)) ..... of (*address*) ..... hereby apply for a grade "H" general retail licence for the sale of liquor at (*describe premises*) .... to members of the general public for consumption off such premises.

Dated this ..... day of ....., 19 .....

.....

Signature of applicant or his duly authorized agent

*Delete whichever does not apply.

FORM IV

Form of application for a Temporary Sales Licence

LIQUOR ACT

(CAP. 50:07)

APPLICATION FOR A TEMPORARY SALES LICENCE

(SECTION 41)

To: The Licensing Officer at .....

I*/We, (*name of applicant*(*s*)) .... of (*address*) .... hereby apply for an auctioneer's temporary licence*/occasional licence for the period commencing on ..... for the sale of liquor at (*describe premises*) ..... for the purposes of, or in connexion with, (*describe the circumstances or occasion of the sale*) .....

Dated this ..... day of ....., 19 .....

.....

Signature of applicant or his duly authorized agent

*Delete whichever does not apply.

FORM V

Form of a Liquor Licence

LIQUOR ACT

(CAP. 50:07)

LIQUOR LICENCE

(PART III OF THE ACT)

A (*describe the licence and its grade*) .... is hereby granted to (*name of licensee*) ..... of (*address*) .... in respect of (*describe premises*) .....

This licence commences on ..... and expires on ....., and is issued subject to the provisions of the Liquor Act and to such conditions as may be endorsed at the back hereof.

Dated this ..... day of ....., 19 .....

.....

Licensing Officer

LIQUOR (APPLICATION AND OTHER FEES) REGULATIONS

G.N. 159/1980

under s. 96

1. These Regulations may be cited as the Liquor (Application and Other Fees) Regulations. Citation

2. The fee payable in respect of an application for any licence that may be issued under Part III of the Act shall be two Kwacha. Application fee

3. The fee payable in respect of a duplicate licence issued pursuant to section 47 (1) of the Act shall be one Kwacha. Duplicate licence fee

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LIQUOR (OPAQUE BEER) BY-LAWS

under s. 70

URBAN AREAS

BALAKA TOWN COUNCIL (OPAQUE BEER) BY-LAWS

G.N. 103/1985

1. These By-laws may be cited as the Balaka Town Council (Opaque Beer) By-laws and shall apply throughout the area of jurisdiction of the Balaka Town Council. Citation and application

2.—(1) Any person, being a female, who desires to sell opaque beer by retail sale shall apply to the permit officer for a retail permit. Procedure on application for retail permit

(2) Subject to section 68 of the Act, the permit officer shall, after receipt of the appropriate fee, issue to the applicant a retail permit in the form prescribed in Part A of the First Schedule authorizing the applicant to sell opaque beer by retail sale at such place and on such days as shall be specified therein by the permit officer in writing.

Procedure on application for premises permit

3.—(1) Any owner or lessee of premises who, being a female, desires to sell on the premises opaque beer by retail sale shall apply to the permit officer for a premises permit.

(2) Application for a premises permit shall be made at least three months before the date upon which the applicant desires the permit to be issued.

(3) Subject to section 68 of the Act, the permit officer shall, after receipt of the appropriate fee, issue to the applicant a premises permit in the form prescribed in Part B of the First Schedule authorizing the applicant to sell opaque beer by retail sale on the premises specified therein by the permit officer in writing.

(4) Application for the renewal of a premises permit may be made by the holder to a permit officer on or before the 1st January in the year in which renewal is sought:

Provided that the permit officer, in his discretion, may allow such an application made on any later date up to and including the 1st February in that year, or may reject the application.

Fees for permits

4.—(1) The fee payable for the issue of a permit shall be the appropriate fee prescribed in the Second Schedule for the permit concerned.

(2) Notwithstanding the foregoing, in the case of a premises permit issued for a period of nine months or less, the fee payable shall be a proportion of the prescribed annual fee calculated in accordance with the following table—

Period of validity of permit	*Proportion of annual fee*
(*a*) Not exceeding 3 months	$\frac{1}{4}$
(*b*) Exceeding 3 months but not exceeding 6 months	$\frac{1}{2}$
(*c*) Exceeding 6 months but not exceeding 9 months	$\frac{3}{4}$

Permitted hours

5. The permitted hours for the supply of opaque beer are 6 a.m. to 10 p.m., except on Martyrs' Day.

Supply of opaque beer on credit prohibited

6. Opaque beer shall be supplied by the holder of a permit to a purchaser only in exchange for money actually received before or at the time of sale.

Supply of opaque beer to young persons prohibited

7. Opaque beer shall not be supplied to any person who is, or who appears to be, under the age of eighteen years.

Provisions as to quality and hygiene

8.—(1) The holder of a permit shall ensure that all opaque beer sold under the authority of the permit is sound and wholesome and is so sold only in sealed containers.

(2) The holder of a premises permit shall—

(*a*) maintain the premises concerned and the furniture therein in a clean and sanitary condition and in good repair; and

(*b*) provide at least one separate latrine for the use of each sex.

Permits not transferable, etc.

9. Permits are not transferable and the holder of a permit shall not permit any person to sell opaque beer on her behalf unless such person is the holder of, and has authority to do so under, and is in possession of, a retail permit.

Display of premises permit

10. The holder of a premises permit shall display the permit in a conspicuous place inside the premises to which it relates where it can be easily seen by persons entering therein.

Possession and production of retail permit

11. The holder of a retail permit shall, at all times whilst engaged in the selling of opaque beer, be in possession of the permit and shall, if so required by the permit officer or by any person duly authorized in writing by the Council, produce the permit to him and permit him to examine the same.

Prohibition of the carrying of any weapon, etc., where opaque beer is being sold

12.—(1) No person being in possession of any weapon or any instrument capable of being used to inflict bodily harm enter or remain in any place or premises where opaque beer is being sold.

(2) The holder of a permit issued under these by-laws shall not knowingly suffer or permit a person to enter or remain in the place or premises to which the permit relates while opaque beer is being sold if such person is in possession of any such weapon or instrument.

(3) This by-law does not apply with respect to any police officer or agent of the Chief whilst on duty and in uniform.

(4) Any person who contravenes the provisions of paragraph (1) or (2) of this by-law shall be guilty of an offence and liable to a fine not exceeding K100 and to imprisonment for a term not exceeding 3 months.

Powers of permit officer and authorized persons

13. A permit officer, and any person duly authorized in writing by the Council so to do, may at any time when opaque beer is being supplied enter or remain in any place or premises with a view to ascertaining whether the provisions of the Act and of these by-laws are being complied with and, in particular, may inspect such place or premises and may require the production for examination of any relevant permit.

FIRST SCHEDULE (by-laws 2 and 3)

PART A

Retail Permit

Permit No. .....

The Holder of this permit—
Name: .....
Address: .....
Is Hereby Authorized to sell Opaque beer by retail sale at: .....
.....
on the following days, namely—

Day	*Date*	*Month*	*Year*
Monday, the	day of	.....	19.....
Tuesday, the	day of	.....	19.....
Wednesday, the	day of	.....	19.....
Thursday, the	day of	.....	19.....
Friday, the	day of	.....	19.....
Saturday, the	day of	.....	19.....
Sunday, the	day of	.....	19.....

in accordance with the Balaka Town Council (Opaque Beer) By-laws, 1985, and the relevant provisions of the Liquor Act (Cap. 50:07).
Fee paid: K .....: ..... tambala
Date of Issue: ....., 19 .....
Signature of Permit Officer: .....
for Balaka Town Council

PART B

Premises Permit

Permit No. .....

The Holder of this permit—
Name: .....
Address: .....
Is Hereby Authorized to sell Opaque beer by retail sale at the following premises at: .....
(*description of premises*)
for a period of ..... months from the date of issue, in accordance with the Balaka Town Council (Opaque Beer) By-laws, 1985, and the relevant provisions of the Liquor Act (Cap. 50:07).
Plinth Area of premises: ..... m^2
Fee paid: K .....: ..... tambala
Date of Issue: ....., 19 .....
Signature of Permit Officer: .....
for Balaka Town Council

SECOND SCHEDULE (by-law 4)

Fees

	K	t
1. For a retail permit to sell opaque beer, per week—		
(i) in a beer-hall	1	00
(ii) at a specified place (other than a beer-hall) . .	1	50
2. For a premises permit to sell opaque beer, per year—		
(i) Plinth area not exceeding $27m^2$	18	00
(ii) Plinth area exceeding $27m^2$	25	00

BLANTYRE CITY COUNCIL (OPAQUE BEER) BY-LAWS

G.N. 72/1985
34/1987

Citation and application

1. These By-laws may be cited as the Blantyre City Council (Opaque Beer) By-laws and shall apply throughout the area of jurisdiction of the Blantyre City Council.

Procedure on application for retail permit

2.—(1) Any person, being a female, who desires to sell opaque beer by retail sale shall apply to the permit officer for a retail permit.

(2) Subject to section 68 of the Act, the permit officer shall, after receipt of the appropriate fee, issue to the applicant a retail permit in the form prescribed in Part A of the First Schedule authorizing the applicant to sell opaque beer by retail sale at such place and on such days as shall be specified therein by the permit officer in writing.

Procedure on application for premises permit

3.—(1) Any owner or lessee of premises who, being a female desires to sell on the premises opaque beer by retail sale shall apply to the permit officer for a premises permit.

(2) Application for a premises permit shall be made at least three months before the date upon which the applicant desires the permit to be issued.

(3) Subject to section 68 of the Act, the permit officer shall after receipt of the appropriate fee, issue to the applicant a permit in the form prescribed in Part B of the First Schedule authorizing the applicant to sell opaque beer by retail sale on the premises specified therein by the permit officer in writing.

(4) Application for the renewal of a premises permit may be made by the holder to a permit officer on or before the 1st January in the year in which renewal is sought:

Provided that the permit officer, in his discretion, may allow such an application made on any later date up to and including the 1st February in that year, or may reject the application.

Fees for permit

4.—(1) The fee payable for the issue of a permit shall be the appropriate fee prescribed in the Second Schedule for the permit concerned.

(2) Notwithstanding the foregoing, in the case of a premises permit issued for a period of nine months or less, the fee payable shall be a proportion of the prescribed annual fee calculated in accordance with the following table—

Period of validity of permit	*Proportion of annual fee*
(*a*) Not exceeding 3 months	$\frac{1}{4}$
(*b*) Exceeding 3 months but not exceeding 6 months	$\frac{1}{2}$
(*c*) Exceeding 6 months but not exceeding 9 months	$\frac{3}{4}$

Permitted hours

5. The permitted hours for the sell of opaque beer are 6 a.m. to 9 p.m., except on Martyrs' Day.

Supply of opaque beer "on credit prohibited"

6. Opaque beer shall be supplied by the holder of a permit to a purchaser only in exchange for money actually received before or at the time of sale.

Supply of opaque beer to young persons prohibited

7. Opaque beer shall not be supplied to any person who is, or who appears to be, under the age of eighteen years.

Provisions as to quality and hygiene

8.—(1) The holder of a permit shall ensure that all opaque beer sold under the authority of the permit is sound and wholesome and is sold only in sealed containers.

(2) The holder of a premises permit shall—

(*a*) maintain the premises concerned and the furniture therein in a clean and sanitary condition and in good repair in accordance with the health requirements within the City; and

(*b*) provide at least one separate latrine for use of each sex.

Permits not transferable, etc.

9. Permits are not transferable and the holder of a permit shall not permit any person to sell opaque beer on her behalf unless such person is the holder of, and has authority to do so under, and is in possession of a retail permit.

Display of premises permit

10. The holder of a premises permit shall display the permit in a conspicuous place inside the premises to which it relates where it can be easily seen by persons entering therein.

Possession and production of retail permit

11. The holder of a retail permit shall, at all times whilst engaged in the selling of opaque beer, be in possession of the permit and shall, if so required by the permit officer or by any person duly authorized in writing by the Council, produce the permit to him and permit him to examine the same.

Prohibition on the carrying of any weapon, etc., where opaque beer is being sold

12.—(1) No person being in possession of a weapon or any instrument capable of being used to inflict bodily harm shall enter or remain in any place or premises where opaque beer is being sold.

(2) The holder of a permit issued under these by-laws shall not knowingly suffer or permit a person to enter or remain in the place or premises to which the permit relates while opaque beer is being sold if such person is in possession of any such weapon or instrument.

(3) This by-law does not apply with respect to any police officer or agent of the City Council whilst on duty.

(4) Any person who contravenes the provisions of paragraph (1) or (2) of this by-law shall be guilty of an offence and liable to a fine of K100 and to imprisonment for a term of three months.

Power of permit officer and authorized person

13. A permit officer, and any person duly authorized in writing by the Council so to do, may at any time when opaque beer is being supplied enter or remain in any place or premises with a view to ascertaining whether the provision of the Act and of these by-laws are being complied with and, in particular may inspect such place or premises, and any article used in connexion with such supply, and may require the production for examination of any relevant permit.

Prohibition on the sale of opaque beer on residential premises

14. No person shall sell opaque beer from residential premises.

FIRST SCHEDULE (by-laws 2 and 3)

PART A

RETAIL PERMIT TO SELL OPAQUE BEER

PERMIT No. .....

THE HOLDER of this permit—

Name: .....

Address: .....

IS HEREBY AUTHORIZED to sell Opaque beer by retail sale at: .....
..... on the following days, namely—

Day	*Date*	*Month*	*Year*
Monday, the	..... day of	.....,	19.....
Tuesday, the	..... day of	.....,	19.....
Wednesday, the	..... day of	.....,	19.....
Thursday, the	..... day of	.....,	19.....
Friday, the	..... day of	.....,	19.....
Saturday, the	..... day of	.....,	19.....
Sunday, the	..... day of	.....,	19.....

in accordance with the Blantyre City Council (Opaque Beer) By-laws, 1985, and the relevant provisions of the Liquor Act (Cap. 50:07).

Fee paid: K ..... :..... tambala

Date of Issue: ....., 19 .....

Signature of Permit Officer: .....
for Blantyre City Council

PART B

PREMISES PERMIT

PERMIT No. .....

THE HOLDER of this permit—

Name: .....

Address: .....

IS HEREBY AUTHORIZED to sell Opaque beer by retail sale at the following premises at: .....

(*description of premises*)

for a period of ..... months from the date of issue, in accordance with the Blantyre City Council (Opaque Beer) By-laws, 1985, and the relevant provisions of the Liquor Act (Cap. 50:07).

Plinth Area of premises: ..... m^2

Fee paid: K ..... :..... tambala

Date of Issue: ....., 19 .....

Signature of Permit Officer: .....

for Blantyre City Council

G.N. 34/1987

SECOND SCHEDULE (by-law 4)

FEES

	K	t
1. For a retail permit to sell opaque beer—		
(i) in a beer-hall, per week	1	50
(ii) at a specified place (other than a beer-hall) per week	1	50
(iii) for every crate of opaque beer sold	0	10
2. For a premises permit to sell opaque beer, per year—		
(i) Plinth area not exceeding 27 m^2	15	00
(ii) Plinth area exceeding 27 m^2	20	00

G.N. 83/1985

LIWONDE TOWN COUNCIL (OPAQUE BEER) BY-LAWS

Citation and application

1. These By-laws may be cited as the Liwonde Town Council (Opaque Beer) By-laws and shall apply throughout the area of jurisdiction of the Liwonde Town Council.

Procedure on application for retail permit

2.—(1) Any person, being a female, who desires to sell opaque beer by retail sale shall apply to the permit officer for a retail permit.

(2) Subject to section 68 of the Act, the permit officer shall, after receipt of the appropriate fee, issue to the applicant a retail permit in the form prescribed in Part A of the First Schedule authorizing the applicant to sell opaque beer by retail sale at such place and on such days as shall be specified therein by the permit officer in writing.

Procedure on application for premises permit

3.—(1) Any owner or lessee of premises who, being a female, desires to sell on the premises opaque beer by retail sale shall apply to the permit officer for a premises permit.

(2) Application for a premises permit shall be made at least three months before the date upon which the applicant desires the permit to be issued.

(3) Subject to section 68 of the Act, the permit officer shall, after receipt of the appropriate fee, issue to the applicant a premises permit in the form prescribed in Part B of the First Schedule authorizing the applicant to sell opaque beer by retail sale on the premises specified therein by the permit officer in writing.

(4) Application for the renewal of a premises permit may be made by the holder to a permit officer on or before the 1st January in the year in which renewal is sought:

Provided that the permit officer, in his discretion, may allow such an application made on any later date up to and including the 1st February in that year, or may reject the application.

Fees for permits

4.—(1) The fee payable for the issue of a permit shall be the appropriate fee prescribed in the Second Schedule for the permit concerned.

(2) Notwithstanding the foregoing, in the case of a premises permit issued for a period of nine months or less, the fee payable shall be a proportion of the prescribed annual fee calculated in accordance with the following table—

Period of validity of permit	*Proportion of annual fee*
(*a*) Not exceeding 3 months	$\frac{1}{4}$
(*b*) Exceeding 3 months but not exceeding 6 months	$\frac{1}{2}$
(*c*) Exceeding 6 months but not exceeding 9 months	$\frac{3}{4}$

Permitted hours

5. The permitted hours for the supply of opaque beer are 7.30 a.m. to 8.00 p.m. during Monday to Friday and 7.30 a.m. to 10.00 p.m. during Saturday to Sunday, except on Martyrs' Day.

Supply of opaque beer on credit prohibited

6. Opaque beer shall be supplied by the holder of a permit to a purchaser only in exchange for money actually received before or at the time of sale.

Supply of opaque beer to young persons prohibited

7. Opaque beer shall not be supplied to any person who is, or who appears to be, under the age of eighteen years.

Provisions as to quality and hygiene

8.—(1) The holder of a permit shall ensure that all opaque beer sold under the authority of the permit is sound and whole-some and is so sold only in sealed containers.

(2) The holder of a premises permit shall—

(*a*) maintain the premises concerned and the furniture therein in a clean and sanitary condition and in good repair; and

(*b*) provide at least one separate latrine for the use of each sex.

Permits not transferable, etc.

9. Permits are not transferable and the holder of a permit shall not permit any person to sell opaque beer on her behalf unless such person is the holder of, and has authority to do so under, and is in possession of, a retail permit.

Display of premises permit

10. The holder of a premises permit shall display the permit in a conspicuous place inside the premises to which it relates where it can be easily seen by persons entering therein.

Possession and production of retail permit

11. The holder of a retail permit shall, at all times whilst engaged in the selling of opaque beer, be in possession of the permit and shall, if so required by the permit officer or by any person duly authorized in writing by the Council, produce the permit to him and permit him to examine the same.

Prohibition on the carrying of any weapon, etc., where opaque beer is being sold

12.—(1) No person being in possession of any weapon or any instrument capable of being used to inflict bodily harm shall enter or remain in any place or premises where opaque beer is being sold.

(2) The holder of a permit issued under these by-laws shall not knowingly suffer or permit a person to enter or remain in the place or premises to which the permit relates while opaque beer is being sold if such person is in possession of any such weapon or instrument.

(3) This by-law does not apply with respect to any police officer or agent of the Chief whilst on duty and in uniform.

(4) Any person who contravenes the provisions of paragraph (1) or (2) of this by-law shall be guilty of an offence and liable to a fine not exceeding K100 and to imprisonment for a term not exceeding three months.

Powers of permit officer and authorized persons

13. A permit officer, and any person duly authorized in writing by the Council so to do, may at any time when opaque beer is being supplied enter or remain in any place or premises with a view of ascertaining whether the provisions of the Act and of these by-laws are being complied with and, in particular, may inspect such place or premises and may require the production for examination of any relevant permit.

FIRST SCHEDULE (by-laws 2 and 3)

PART A

Retail Permit

Permit No. .....

The Holder of this permit—

Name: .....

Address: .....

Is Hereby Authorized to sell Opaque beer by retail sale at: .....
..... on the following days, namely—

Day	*Date*	*Month*	*Year*
Monday, the	..... day of	.....,	19.....
Tuesday, the	..... day of	.....,	19.....
Wednesday, the	..... day of	.....,	19.....
Thursday, the	..... day of	.....,	19.....
Friday, the	..... day of	.....,	19.....
Saturday, the	..... day of	.....,	19.....
Sunday, the	..... day of	.....,	19.....

in accordance with the Liwonde Town Council (Opaque Beer) By-laws, 1985, and the relevant provisions of the Liquor Act (Cap. 50:07).

Fee paid: K ..... :..... tambala

Date of Issue: ....., 19 .....

Signature of Permit Officer: .....

for Liwonde Town Council

PART B

Premises Permit

Permit No. .....

The Holder of this permit—

Name: .....

Address: .....

Is Hereby Authorized to sell Opaque beer by retail sale at the following premises at: .....

for a period of ..... months from the date of issue,

(*description of premises*)

in accordance with the Liwonde Town Council (Opaque Beer) By-laws, 1985, and the relevant provisions of the Liquor Act (Cap. 50:07).

Plinth Area of premises: ..... m^2

Fee paid: K ..... :..... tambala

Date of Issue: ....., 19 .....

Signature of Permit Officer: .....

for Liwonde Town Council

(by-law 4)

SECOND SCHEDULE

FEES

	K	t
1. For a retail permit to sell opaque beer, per day—		
(i) in a beer-hall per week	1	00
(ii) at a specified place (other than a beer-hall) per week	1	25
2. For a premises permit to sell opaque beer, per year—		
(i) plinth area not exceeding 27 m^2	15	00
(ii) plinth area exceeding 27 m^2	20	00

G.N. 114/1988

LUCHENZA TOWN COUNCIL (OPAQUE AND TRADITIONAL BEER) BY-LAWS

Citation and Application

1. These By-laws may be cited as the Luchenza Town Council (Opaque and Traditional Beer) By-laws and shall apply throughout the area of jurisdiction of the Luchenza Town Council.

Procedure on application for retail permit

2.—(1) Any person, being a female, who desires to sell opaque beer by retail sale shall apply to the permit officer for a retail permit.

(2) Any person who desires to manufacture, and sell by retail sale, traditional beer shall apply to the permit officer for a retail permit.

(3) Subject to section 68 of the Act, the permit officer shall after receipt of the appropriate fee, issue to the applicant a retail permit in the form prescribed in Part A of the First Schedule authorizing the applicant to—

(*a*) sell opaque beer by retail sale; or

(*b*) manufacture, and sell by retail sale, traditonal beer; or

(*c*) do (*a*) and (*b*) above,

as may be appropriate at such place and on such days as shall be specified therein by the permit officer in writing.

Procedure on application for premises permit

3.—(1) Any owner or lessee of premises who—

(*a*) being a female, desires to sell on the premises opaque beer by retail sale; or

(*b*) desires to manufacture, and sell by retail sale, on the premises traditional beer,

shall apply to the permit officer for a premises permit.

(2) Application for a premises permit shall be made at least three months before the date upon which the applicant desires the permit to be issued.

(3) Subject to section 68 of the Act, the permit officer shall, after receipt of the appropriate fee, issue to the applicant a premises permit in the form prescribed in Part B of the First Schedule authorizing the applicant to—

(*a*) sell opaque beer by retail sale; or

(*b*) manufacture, and sell by retail sale, traditional beer; or

(*c*) do (*a*) and (*b*) above,

as may be appropriate, on the premises specified therein by the permit officer in writing.

(4) Application for the renewal of a premises permit may be made by the holder to a permit officer on or before the 1st January in the year in which renewal is sought:

Provided that the permit officer, in his discretion, may allow such an application made on any later date up to and including the 1st February in that year, or may reject the application.

Fees for permits

4.—(1) The fee payable for the issue of a permit shall be the appropriate fee prescribed in the Second Schedule for the permit concerned.

(2) Notwithstanding the foregoing, in the case of a premises permit issued for a period of 9 months or less, the fee payable shall be a proportion of the prescribed annual fee calculated in accordance with the following table—

Period of validity of permit	*Proportion of annual fee*
(*a*) Not exceeding 3 months	$\frac{1}{4}$
(*b*) Exceeding 3 months but not exceeding 6 months	$\frac{1}{2}$
(*c*) Exceeding 6 months but not exceeding 9 months	$\frac{3}{4}$

Permitted hours

5. The permitted hours for the supply of opaque beer and traditional beer are 6 a.m. to 10 p.m., except on Martyrs' Day.

Supply of beer on credit prohibited

6. Opaque beer and traditional beer shall be supplied by the holder of a permit to a purchaser only in exchange for money actually received before or at the time of sale.

Supply of beer to young persons prohibited

7. Opaque beer and traditional beer shall not be supplied to any person who is, or appears to be, under the age of eighteen years.

Provisions as to quality and hygiene

8.—(1) The holder of a permit shall ensure that all opaque beer and traditional beer sold under the authority of the permit is sound and wholesome and that opaque beer is so sold only in sealed containers.

(2) The holder of a permit authorizing the manufacture and sale of traditional beer shall—

(*a*) keep all utensils, vessels, containers, linen, towels, clothes and all other articles whether similar to the foregoing or not, used in connexion with such manufacture and sale, in a clean and sanitary condition and in good repair;

(*b*) take all reasonable steps adequately to prevent the contamination of traditional beer manufactured and intended for sale under the authority of the permit and in particular to prevent such contamination by dust, dirt and flies;

(*c*) if the permit is a premises permit—

(i) maintain the premises concerned and the furniture therein in a clean and sanitary condition and in good repair;

(ii) provide at least one separate latrine for the use of each sex.

Permits not transferable, etc.

9. Permits are not transferable and the holder of a permit shall not permit any person to sell opaque beer, or manufacture or sell traditional beer, on her or his behalf unless such person is the holder of, and has authority to do so under, and is in possession of, a retail permit.

Display of premises permit

10. The holder of a premises permit shall display the permit in a conspicuous place inside the premises to which it relates where it can be easily seen by persons entering therein.

Possession and production of retail permit

11. The holder of a retail permit shall, at all times whilst engaged in the activity which is authorized by the permit, be in possession of the permit and shall, if so required by the permit officer or by any person duly authorized in writing by the Council, produce the permit to him and permit him to examine the same.

Prohibition on the carrying of any weapon, etc., where beer is being sold

12.—(1) No person being in possession of any weapon or any instrument capable of being used to inflict bodily harm shall enter or remain in any place or premises where opaque or traditional beer is being sold.

(2) The holder of a permit issued under these by-laws shall not knowingly suffer or permit a person to enter or remain in the place or premises to which the premit relates while opaque or traditional beer is being sold if such a person is in possession of any such weapon or instrument.

(3) This by-law does not apply with respect to any police officer or agent of the Chief whilst on duty and in uniform.

(4) Any person who contravenes the provisions of paragraph (1) or (2) of this by-law shall be guilty of an offence and liable to a fine of K100 and to imprisonment for three months.

Powers of permit officer and authorized person

13. A permit officer, and any person duly authorized in writing by the Council so to do, may at any time when beer is being supplied enter or remain in any place or premises with a view to ascertaining whether the provisions of the Act and of these by-laws are being complied with and, in particular, may inspect such place or premises, and any article used in connexion with such supply, and may require the production for examination of any relevant permit.

FIRST SCHEDULE

(by-laws 2 and 3)

PART A

Retail Permit to Sell*Opaque/Traditional Beer

Permit No. .....

The Holder of this permit—

Name: .....

Address: .....

Is Hereby Authorized to sell *Opaque/traditional beer by retail sale at: ..... on the following days, namely—

Day	*Date*	*Month*	*Year*
Monday, the	..... day of	.....,	19.....
Tuesday, the	..... day of	.....,	19.....
Wednesday, the	..... day of	.....,	19.....
Thursday, the	..... day of	.....,	19.....
Friday, the	..... day of	.....,	19.....
Saturday, the	..... day of	.....,	19.....
Sunday, the	..... day of	.....,	19.....

in accordance with the Luchenza Town Council (Opaque and Traitional Beer) By-laws, 1988, and the relevant provisions of the Liquor Act (Cap. 50:07).

Fee paid: K ..... :..... tambala

Date of Issue: ....., 19 .....

(*to be deleted, as may be appropriate, by the permit officer)

Note: Where the issue of this permit authorizes the sell of traditional beer, the manufacture also of traditional beer for sell by retail sale is also authorized in accordance as aforesaid.

Signature of Permit Officer: .....

for Luchenza Town Council

PART B

Premises Permit

Permit No. .....

The Holder of this permit—

Name: .....

Address: .....

Is Hereby Authorized to—

*sell opaque beer by retail sale

*manufacture, and sell by retail sale, traditional beer

at: .....

(*description of premises*)

for a period of ..... months from the date of issue, in accordance with the Luchenza Town Council (Opaque Beer) By-laws, 1988, and the relevant provisions of the Liquor Act (Cap. 50:07).

Plinth Area of premises: ..... m^2

Fee paid: K ..... :..... tambala

Date of Issue: ....., 19 .....

Signature of Permit Officer: .....

for Luchenza Town Council

(*to be deleted, as may be appropriate, by the permit officer)

(by-law 4)

SECOND SCHEDULE

Fees

	K	t
1. For a retail permit to sell traditional beer—		
(*a*) in a beer-hall, per week	1	00
(*b*) at any other specified place	1	50
2. For a retail permit to sell opaque beer—		
(*a*) in a beer-hall, per week	1	00
(*b*) at any other specified place	1	50
3. For a premises permit, per annum—		
(*a*) for the sell by retail sale of opaque beer only:		
(i) plinth area not exceeding 27m^2 . .	16	00
(ii) plinth area exceeding 27m^2	27	00
(*b*) for the manufacture, and sell by retail sale, of traditional beer only:		
(i) plinth area not exceeding 27 m^2	16	00
(ii) plinth area exceeding 27 m^2	27	00

G.N. 85/1984

MANGOCHI TOWN COUNCIL (OPAQUE BEER) BY-LAWS

Citation and application

1. These By-laws may be cited as the Mangochi Town Council (Opaque Beer) By-laws and shall apply throughout the area of jurisdiction of the Mangochi Town Council.

Procedure on application for retail permit

2.—(1) Any person, being a female, who desires to sell opaque beer by retail sale shall apply to the permit officer for a retail permit.

(2) Subject to section 68 of the Act, the permit officer shall, after receipt of the appropriate fee, issue to the applicant a retail permit in the form prescribed in Part A of the First Schedule authorizing the applicant to sell opaque beer by retail sale at such place and on such days as shall be specified therein by the permit officer in writing.

Procedure on application for premises permit

3.—(1) Any owner or lessee of premises who, being a female, desires to sell on the premises opaque beer by retail sale shall apply to the permit officer for a premises permit.

(2) Application for a premises permit shall be made at least three months before the date upon which the applicant desires the permit to be issued.

(3) Subject to section 68 of the Act, the permit officer shall, after receipt of the appropriate fee, issue to the applicant a premises permit in the form prescribed in Part B of the First Schedule authorizing the applicant to sell opaque beer by retail sale on the premises specified therein by the permit officer in writing.

(4) Application for the renewal of a premises permit may be made by the holder to a permit officer on or before the 1st January in the year in which renewal is sought:

Provided that the permit officer, in his discretion, may allow such an application made on any later date up to and including the 1st February in that year, or may reject the application.

Fees for permits

4.—(1) The fee payable for the issue of a permit shall be the appropriate fee prescribed in the Second Schedule for the permit concerned.

(2) Notwithstanding the foregoing, in the case of a premises permit issued for a period of nine months or less, the fee payable shall be a proportion of the prescribed annual fee calculated in accordance with the following table—

Period of validity of permit	*Proportion of annual fee*
(*a*) Not exceeding 3 months	$\frac{1}{4}$
(*b*) Exceeding 3 months but not exceeding 6 months	$\frac{1}{2}$
(*c*) Exceeding 6 months but not exceeding 9 months	$\frac{3}{4}$

Permitted hours

5. The permitted hours for the supply of opaque beer are 6 a.m. to 9 p.m., except on Martyrs' Day.

Supply of opaque beer on credit prohibited

6. Opaque beer shall be supplied by the holder of a permit to a purchaser only in exchange for money actually received before or at the time of sale.

Supply of opaque beer to young persons prohibited

7. Opaque beer shall not be supplied to any person who is, or who appears to be, under the age of eighteen years.

Provisions as to quality and hygiene

8.—(1) The holder of a permit shall ensure that all opaque beer sold under the authority of the permit is sound and wholesome and is so sold only in sealed containers.

(2) The holder of a premises permit shall—

(*a*) maintain the premises concerned and the furniture therein in a clean and sanitary condition and in good repair;

(*b*) provide at least one separate latrine for use of each sex.

Permits not transferable, etc.

9. Permits are not transferable and the holder of a permit shall not permit any person to sell opaque beer on her behalf unless such person is the holder of, and has authority to do so under, and is in possession of, a retail permit.

Display of premises permit

10. The holder of a premises permit shall display the permit in a conspicuous place inside the premises to which it relates where it can be easily seen by persons entering therein.

Possession and production of retail permit

11. The holder of a retail permit shall, at all times whilst engaged in the selling of opaque beer, be in possession of the permit and shall, if so required by the permit officer or by any person duly authorized in writing by the Council, produce the permit to him and permit him to examine the same.

Prohibition on the carrying of any weapon, etc., where opaque beer is being sold

12.—(1) No person being in possession of any weapon or any instrument capable of being used to inflict bodily harm shall enter or remain in any place or premises where opaque beer is being sold.

(2) The holder of a permit issued under these by-laws shall not knowingly suffer or permit a person to enter or remain in the place or premises to which the permit relates while opaque beer is being sold if such person is in possession of any such weapon or instrument.

(3) This by-law does not apply with respect to any police officer or agent of the Chief whilst on duty and in uniform.

(4) Any person who contravenes the provisions of paragraph (1) or (2) of this by-law shall be guilty of an offence and liable to a fine of K100 and to imprisonment for a term of three months.

Power of permit officer and authorized person

13. A permit officer, and any person duly authorized in writing by the Council so to do, may at any time when opaque beer is being supplied enter or remain in any place or premises with a view to ascertaining whether the provisions of the Act and of these by-laws are being complied with and, in particular, may inspect such place or premises, and any article used in connexion with such supply, and may require the production for examination of any relevant permit.

FIRST SCHEDULE (by-laws 2 and 3)

PART A

RETAIL PERMIT

PERMIT No. .....

THE HOLDER of this permit—

Name: .....

Address: .....

IS HEREBY AUTHORIZED to sell Opaque beer by retail sale at: .....

.....

on the following days, namely—

Day	*Date*	*Month*	*Year*
Monday, the	..... day of	.....,	19.....
Tuesday, the	..... day of	.....,	19.....
Wednesday, the	..... day of	.....,	19.....
Thursday, the	..... day of	.....,	19.....
Friday, the	..... day of	.....,	19.....
Saturday, the	..... day of	.....,	19.....
Sunday, the	..... day of	.....,	19.....

in accordance with the Mangochi Town Council (Opaque Beer) By-laws, 1984, and the relevant provisions of the Liquor Act (Cap. 50:07).

Fee paid: K ..... :..... tambala

Date of Issue: ....., 19 .....

Signature of Permit Officer: .....

for Mangochi Town Council

PART B

PREMISES PERMIT

PERMIT No. .....

THE HOLDER of this permit—

Name: .....

Address: .....

IS HEREBY AUTHORIZED to sell Opaque beer by retail sale at the following premises at .....

(*description of premises*)

for a period of ..... months from the date of issue, in accordance with the Mangochi Town Council (Opaque Beer) By-laws, 1984, and the relevant provisions of the Liquor Act (Cap. 50:07).

Plinth Area of premises: ..... m^2

Fee paid: K ..... :..... tambala

Date of Issue: ....., 19 .....

Signature of Permit Officer: .....

for Mangochi Town Council

SECOND SCHEDULE (by-law 4)

FEES

	K	t
1. For a retail permit to sell opaque beer—		
(i) in a beer-hall, per week	1	20
(ii) at a specified place (other than a beer-hall), per week	1	50
2. For a premises permit to sell opaque beer, per year—		
(i) Plinth area not exceeding 27 m^2	15	00
(ii) Plinth area exceeding 27 m^2	20	00

SALIMA TOWN COUNCIL (OPAQUE BEER) BY-LAWS

G.N. 52/1985

Citation and application

1. These By-laws may be cited as the Salima Town Council (Opaque Beer) By-laws and shall apply throughout the area of jurisdiction of the Salima Town Council.

Procedure on application for retail permit

2.—(1) Any person, being a female, who desires to sell opaque beer by retail sale shall apply to the permit officer for a retail permit.

(2) Subject to section 68 of the Act, the permit officer shall, after receipt of the appropriate fee, issue to the applicant a retail permit in the form prescribed in Part A of the First Schedule authorizing the applicant to sell opaque beer, by retail sale at such place and on such days as shall be specified therein by the permit officer in writing.

Procedure on application for premises permit

3.—(1) Any owner or lessee of premises who, being a female, desires to sell on the premises opaque beer by retail sale shall apply to the permit officer for a premises permit.

(2) Application for a premises permit shall be made at least three months before the date upon which the applicant desires the permit to be issued.

(3) Subject to section 68 of the Act, the permit officer shall, after receipt of the appropriate fee, issue to the applicant a premises permit in the form prescribed in Part B of the First Schedule authorizing the applicant to sell opaque beer by retail sale on the premises specified therein by the permit officer in writing.

(4) Application for the renewal of a premises permit may be made by the holder to a permit officer on or before the 1st January in the year in which renewal is sought:

Provided that the permit officer, in his discretion, may allow such an application made on any later date up to and including the 1st February in that year, or may reject the application.

Fees for permits

4.—(1) The fee payable for the issue of a permit shall be the appropriate fee prescribed in the Second Schedule for the permit concerned.

(2) Notwithstanding the foregoing, in the case of a premises permit issued for a period of nine months or less, the fee payable shall be a proportion of the prescribed annual fee calculated in accordance with the following table—

Period of validity of permit	*Proportion of annual fee*
(*a*) Not exceeding 3 months	$\frac{1}{4}$
(*b*) Exceeding 3 months but not exceeding 6 months	$\frac{1}{2}$
(*c*) Exceeding 6 months but not exceeding 9 months	$\frac{3}{4}$

Permitted hours

5. The permitted hours for the supply of opaque beer are 6 a.m. to 10 p.m., except on Martyrs' Day.

Supply of opaque beer on credit prohibited

6. Opaque beer shall be supplied by the holder of a permit to a purchaser only in exchange for money actually received before or at the time of sale.

Supply of opaque beer to young persons prohibited

7. Opaque beer shall not be supplied to any person who is, or who appears to be, under the age of eighteen years.

Provisions as to quality and hygiene

8.—(1) The holder of a permit shall ensure that all opaque beer sold under the authority of the permit is sound and wholesome and is so sold only in sealed containers.

(2) The holder of a premises permit shall—

(*a*) maintain the premises concerned and the furniture therein in a clean and sanitary condition and in good repair; and

(*b*) provide at least one separate latrine for the use of each sex.

9. Permits are not transferable and the holder of a permit shall not permit any person to sell opaque beer on her behalf unless such person is the holder of, and has authority to do so under, and is in possession of, a retail permit.

Permits not transferable, etc.

10. The holder of a premises permit shall display the permit in a conspicuous place inside the premises to which it relates where it can be easily seen by persons entering therein.

Display of premises permit

11. The holder of a retail permit shall, at all times whilst engaged in the selling of opaque beer, be in possession of the permit and shall, if so required by the permit officer or by any person duly authorized in writing by the Council, produce the permit to him and permit him to examine the same.

Possession and production of retail permit

12.—(1) No person being in possession of any weapon or any instrument capable of being used to inflict bodily harm shall enter or remain in any place or premises where opaque beer is being sold.

Prohibition on the carrying of any weapon, etc., where opaque beer is being sold

(2) The holder of a permit issued under these by-laws shall not knowingly suffer or permit a person to enter or remain in the place or premises to which the permit relates while opaque beer is being sold if such person is in possession of any such weapon or instrument.

(3) This by-law does not apply with respect to any police officer or agent of the Chief whilst on duty and in uniform.

(4) Any person who contravenes the provisions of paragraph (1) or (2) of this by-law shall be guilty of an offence and liable to a fine of K100 and to imprisonment for a term of three months.

13. A permit officer, and any person duly authorized in writing by the Council so to do, may at any time when opaque beer is being supplied enter or remain in any place or premises with a view to ascertaining whether the provisions of the Act and of these by-laws are being complied with and, in particular, may inspect such place or premises and may require the production for examination of any relevant permit.

Powers of permit officer and authorized person

FIRST SCHEDULE (by-laws 2 and 3)

PART A

Retail Permit

Permit No. .....

The Holder of this permit—

Name: .....

Address: .....

Is Hereby Authorized to sell Opaque beer by retail sale at .....

..... on the following days, namely—

Day	*Date*	*Month*	*Year*
Monday, the	..... day of	.....,	19.....
Tuesday, the	..... day of	.....,	19.....
Wednesday, the	..... day of	.....,	19.....
Thursday, the	..... day of	.....,	19.....
Friday, the	..... day of	.....,	19.....
Saturday, the	..... day of	.....,	19.....
Sunday, the	..... day of	.....,	19.....

in accordance with the Salima Town Council (Opaque Beer) By-laws, 1985, and the relevant provisions of the Liquor Act (Cap. 50:07).

Fee paid: K ..... :..... tambala

Date of Issue: ....., 19 .....

Signature of Permit Officer: .....

for Salima Town Council

PART B

PREMISES PERMIT

PERMIT No. .....

THE HOLDER of this permit—

Name: .....

Address: .....

IS HEREBY AUTHORIZED to sell Opaque beer by retail sale at the following premises—

at: .....

(*description of premises*)

for a period of ..... months from the date of issue, in accordance with the Salima Town Council (Opaque Beer) By-laws, 1985, and the relevant provisions of the Liquor Act (Cap. 50:07).

Plinth Area of premises: ..... m^2

Fee paid: K .....: ..... tambala

Date of Issue: ....., 19 .....

Signature of Permit Officer: .....

for Salima Town Council

SECOND SCHEDULE (by-law 4)

FEES

	K	t
1. For a retail permit to sell opaque beer—		
(i) In a beer-hall, per person, per month . .	0	75
(ii) At a specified place (other than in a beer-hall), per annum	20	00
2. For a premises permit to sell opaque beer, per year—		
(i) Plinth area not exceeding 27 m^2	30	00
(ii) Plinth area exceeding 27 m^2	40	00

LIQUOR (OPAQUE AND TRADITIONAL BEER) BY-LAWS

under s. 70

DISTRICT COUNCILS

BLANTYRE DISTRICT COUNCIL (OPAQUE AND TRADITIONAL BEER) BY-LAWS

G.N. 88/1988
108/1995

Citation and application

1. These By-laws may be cited as the Blantyre District Council (Opaque and Traditional Beer) By-laws, and shall apply throughout the area of jurisdiction of the Blantyre District Council.

Procedure on application for retail permit

2.—(1) Any person, being a female, who desires to sell opaque beer by retail sale shall apply to the permit officer for a retail permit.

(2) Any person who desires to manufacture, and sell by retail sale, traditional beer shall apply to the permit officer for a retail permit.

(3) Subject to section 68 of the Act, the permit officer shall after receipt of the appropriate fee, issue to the applicant a retail permit in the form prescribed in Part A of the First Schedule authorizing the applicant to—

(*a*) sell opaque beer by retail sale; or

(*b*) manufacture, and sell by retail sale, traditional beer; or

(*c*) do (*a*) and (*b*) above,

as may be appropriate at such place and on such days as shall be specified therein by the permit officer in writing.

Procedure on application for premises permit

3.—(1) Any owner or lessee of premises who—

(*a*) being a female, desires to sell on the premises opaque beer by retail sale; or

(*b*) desires to manufacture, and sell by retail sale, on the premises traditional beer,

shall apply to the permit officer for a premises permit.

(2) Application for a premises permit shall be made at least three months before the date upon which the applicant desires the permit to be issued.

(3) Subject to section 68 of the Act, the permit officer shall, after receipt of the appropriate fee, issue to the applicant a premises permit in the form prescribed in Part B of the First Schedule authorizing the applicant to—

(*a*) sell opaque beer by retail sale; or

(*b*) manufacture, and sell by retail sale, traditional beer; or

(*c*) do (*a*) and (*b*) above,

as may be appropriate, on the premises specified therein by the permit officer in writing.

(4) Application for the renewal of a premises permit may be made by the holder to a permit officer on or before the 1st January in the year in which renewal is sought:

Provided that the permit officer, in his discretion, may allow such an application made on any later date up to and including the 1st February in that year, or may reject the application.

Fees for permits

4.—(1) The fee payable for the issue of a permit shall be the appropriate fee prescribed in the Second Schedule for the permit concerned.

(2) Notwithstanding the foregoing, in the case of a premises permit issued for a period of 9 months or less, the fee payable shall be a proportion of the prescribed annual fee calculated in accordance with the following table—

Period of validity of permit	*Proportion of annual fee*
(*a*) Not exceeding 3 months	$\frac{1}{4}$
(*b*) Exceeding 3 months but not exceeding 6 months	$\frac{1}{2}$
(*c*) Exceeding 6 months but not exceeding 9 months	$\frac{3}{4}$

Permitted hours

5. The permitted hours for the supply of opaque beer and traditional beer are 6 a.m. to 10 p.m., except on Martyrs' Day.

Supply of beer on credit prohibited

6. Opaque beer and traditional beer shall be supplied by the holder of a permit to a purchaser only in exchange for money actually received before or at the time of sale.

Supply of beer to young persons prohibited

7. Opaque beer and traditional beer shall not be supplied to any person who is, or appears to be, under the age of eighteen years.

Provisions as to quality and hygiene

8.—(1) The holder of a permit shall ensure that all opaque beer and traditional beer sold under the authority of the permit is sound and wholesome and that opaque beer is so sold only in sealed containers.

(2) The holder of a permit authorizing the manufacture and sale of traditional beer shall—

(*a*) keep all utensils, vessels, containers, linen, towels, clothes and all other articles whether similar to the foregoing or not, used in connexion with such manufacture and sale, in a clean and sanitary condition and in good repair;

(*b*) take all reasonable steps adequately to prevent the contamination of traditional beer manufactured and intended

for sale under the authority of the permit and in particular to prevent such contamination by dust, dirt and flies;

(*c*) if the permit is a premises permit:

(i) maintain the premises concerned and the furniture therein in a clean and sanitary condition and in good repair;

(ii) provide at least one separate latrine for the use of each sex.

Permits not transferable, etc.

9. Permits are not transferable and the holder of a permit shall not permit any person to sell opaque beer, or manufacture or sell traditional beer, on her or his behalf unless such person is the holder of, and has authority to do so under, and is in possession of, a retail permit.

Display of premises permit

10. The holder of a premises permit shall display the permit in a conspicuous place inside the premises to which it relates where it can be easily seen by persons entering therein.

Possession and production of retail permit

11. The holder of a retail permit shall, at all times whilst engaged in the activity which is authorized by the permit, be in possession of the permit and shall, if so required by the permit officer or by any person duly authorized in writing by the Council, produce the permit to him and permit him to examine the same.

Prohibition on the carrying of any weapon, etc., where beer is being sold

12.—(1) No person being in possession of any weapon or any instrument capable of being used to inflict bodily harm shall enter or remain in any place or premises where opaque or traditional beer is being sold.

(2) The holder of a permit issued under these by-laws shall not knowingly suffer or permit a person to enter or remain in the place or premises to which the permit relates while opaque or traditional beer is being sold if such a person is in possession of any such weapon or instrument.

(3) This by-law does not apply with respect to any police officer or agent of the Chief whilst on duty and in uniform.

(4) Any person who contravenes the provisions of paragraph (1) or (2) of this by-law shall be guilty of an offence and liable to a fine of K100 and to imprisonment for a term of six months.

Powers of permit officer

13. A permit officer, and any person duly authorized in writing by the Council so to do, may at any time when beer is being supplied enter or remain in any place or premises with a view to ascertaining whether the provisions of the Act and of these By-laws are being complied with and, in particular, may inspect such place or premises, and any article used in connexion with such supply, and may require the production for examination of any relevant permit.

Revocation of By-laws of Cap. 22:02 Local Govt. Supp. sub. leg. p. B15

14. The Blantyre District Council (Traditional Beer) By-laws are revoked.

FIRST SCHEDULE (by-laws 2 and 3)

PART A

RETAIL PERMIT TO SELL *OPAQUE/TRADITIONAL BEER

PERMIT No. .....

THE HOLDER of this permit—

Name: .....

Address: .....

IS HEREBY AUTHORIZED to sell *Opaque/traditional beer by retail sale at: .....

.....

on the following days, namely—

Day	*Date*	*Month*	*Year*
Monday, the	..... day of	.....	, 20.....
Tuesday, the	..... day of	.....	, 20.....
Wednesday, the	..... day of	.....	, 20.....
Thursday, the	..... day of	.....	, 20.....
Friday, the	..... day of	.....	, 20.....
Saturday, the	..... day of	.....	, 20.....
Sunday, the	..... day of	.....	, 20.....

in accordance with the Blantyre District Council (Opaque and Traditional Beer) By-laws, 1988, and the relevant provisions of the Liquor Act (Cap. 50:07).

Fee paid: K ..... : ..... tambala

Date of Issue: ....., 20.....

(*to be deleted, as may be appropriate, by the Permit Officer)

NOTE: Where the issue of this permit authorizes the sale of traditional beer, the *manufacture* also of traditional beer for sale by retail sale is also authorized in accordance as aforesaid.

Signature of Permit Officer: .....

for Blantyre District Council

PART B

PREMISES PERMIT

PERMIT No. .....

THE HOLDER of this permit—

Name: .....

Address: .....

IS HEREBY AUTHORIZED to—

*sell opaque beer by retail sale

*manufacture, and sell by retail sale, traditional beer

at: ..... for a period
(*description of premises*)
of ..... months from the date of issue, in accordance with the Blantyre District Council (Opaque and Traditional Beer) By-laws, 1988, and the relevant provisions of the Liquor Act (Cap. 50:07).

Plinth Area of premises: .....m^2

Fee paid: K .....: ..... tambala

Date of issue: ....., 20.....

Signature of Permit Officer: .....
for Blantyre District Council

(*to be deleted, as may be appropriate, by the Permit Officer)

SECOND SCHEDULE (by-law 4) G.N. 88/1988, 108/1995

FEES

	K	t
1. For a retail permit to sell traditional beer, per day . .	3	00
2. For a retail permit to sell opaque beer, per annum . .	75	00
3. For a premises permit, per annum—		
(*a*) for the sale by retail of opaque beer only:		
(i) plinth area not exceeding 36 m^2 . .	80	00
(ii) plinth area exceeding 36 m^2	200	00
(*b*) for the manufacture and sale by retail sale of traditional beer only:		
(i) plinth area not exceeding 36 m^2 . .	80	00
(ii) plinth area exceeding 36 m^2	200	00

CHIKWAWA DISTRICT COUNCIL (OPAQUE AND TRADITIONAL BEER) BY-LAWS

G.N. 70/1984

Citation and application

1. These By-laws may be cited as the Chikwawa District Council (Opaque and Traditional Beer) By-laws and shall apply throughout the area of jurisdiction of the Chikwawa District Council.

Procedure on application for retail permit

2.—(1) Any person, being a female, who desires to sell opaque beer by retail sale shall apply to the permit officer for a retail permit.

(2) Any person who desires to manufacture, and sell by retail sale, traditional beer shall apply to the permit officer for a retail permit.

(3) Subject to section 68 of the Act, the permit officer shall, after receipt of the appropriate fee, issue to the applicant a retail permit in the form prescribed in Part A of the First Schedule authorizing the applicant to—

(*a*) sell opaque beer by retail sale; or

(*b*) manufacture, and sell by retail sale, traditional beer; or

(*c*) do (*a*) and (*b*) above,

as may be appropriate, at such place and on such days as shall be specified therein by the permit officer in writing.

Procedure on application for premises permit

3.—(1) Any owner or lessee of premises who—

(*a*) being a female, desires to sell on the premises opaque beer by retail sale; or

(*b*) desires to manufacture, and sell by retail sale, on the premises traditional beer,

shall apply to the permit officer for a premises permit.

(2) Application for a premises permit shall be made at least three months before the date upon which the applicant desires the permit to be issued.

(3) Subject to section 68 of the Act, the permit officer shall after receipt of the appropriate fee, issue to the applicant a premises permit in the form prescribed in Part B of the First Schedule authorizing the applicant to—

(*a*) sell opaque beer by retail sale; or

(*b*) manufacture, and sell by retail sale, traditional beer; or

(*c*) do (*a*) and (*b*) above,

as may be appropriate, on the premises specified therein by the permit officer in writing.

(4) Application for the renewal of a premises permit may be made by the holder to a permit officer on or before the 1st January in the year which renewal is sought:

Provided that the permit officer, in his discretion, may allow such an application made on any later date up to and including the 1st February in that year, or may reject the application.

Fees for permits

4.—(1) The fee payable for the issue of a permit shall be the appropriate fee prescribed in the Second Schedule for the permit concerned.

(2) Notwithstanding the foregoing, in the case of a premises permit issued for a period of nine months or less, the fee payable shall be a proportion of the prescribed annual fee calculated in accordance with the following table—

Period of validity of permit	*Proportion of annual fee*
(*a*) Not exceeding 3 months	$\frac{1}{4}$
(*b*) Exceeding 3 months but not exceeding 6 months	$\frac{1}{2}$
(*c*) Exceeding 6 months but not exceeding 9 months	$\frac{3}{4}$

Permitted hours

5. The permitted hours for the supply of opaque beer and traditional beer are 6 a.m. to 10 p.m., except on Martyr's Day.

Supply of beer on credit prohibited

6. Opaque beer and traditional beer shall be supplied by the holder of a permit to a purchaser only in exchange for money actually received before or at the time of sale.

Supply of beer to young persons prohibited

7. Opaque beer and traditional beer shall not be supplied to any person who is, or who appears to be, under the age of eighteen years.

Provisions as to quality and hygiene

8.—(1) The holder of a permit shall ensure that all opaque beer and traditional beer sold under the authority of the permit is sound and wholesome and that opaque beer is so sold only in sealed containers.

(2) The holder of a permit authorizing the manufacture and sale of traditional beer shall—

(*a*) keep all utensils, vessels, containers, linen, towels, clothes and all other articles whether similar to the foregoing or not, used in connexion with such manufacture and sale, in a clean and sanitary condition and in good repair;

(*b*) take all reasonable steps adequately to prevent the contamination of traditional beer manufactured and intended for sale under the authority of the permit, and in particular to prevent such contamination by dust, dirt and flies;

(*c*) if the permit is a premises permit—

(i) maintain the premises concerned and the furniture therein in a clean and sanitary condition and in good repair;

(ii) provide at least one separate latrine for the use of each sex.

Permits not transferable, etc.

9. Permits are not transferable and the holder of a permit shall not permit any person to sell opaque beer, or manufacture or sell traditional beer, on her or his behalf unless such person is the holder of, and has authority to do so under, and is in possession of a retail permit.

Display of premises permit

10. The holder of a premises permit shall display the permit in a conspicuous place inside the premises to which it relates where it can be easily seen by persons entering therein.

Possession and production of retail permit

11. The holder of a retail permit shall at all times whilst engaged in the activity which is authorized by the permit, be in possession of the permit and shall, if so required by the permit officer or by any person duly authorized in writing by the Council, produce the permit to him and permit him to examine the same.

Prohibition on the carrying of any weapon, etc., where beer is sold

12.—(1) No person being in possession of any weapon or any instrument capable of being used to inflict bodily harm shall enter or remain in any place or premises where opaque or traditional beer is being sold.

(2) The holder of a permit issued under these by-laws shall not knowingly suffer or permit a person to enter or remain in the place or premises to which the permit relates while opaque or traditional beer is being sold if such a person is in possession of any such weapon or instrument.

(3) This by-law does not apply with respect to any police officer or agent of the Chief whilst on duty and in uniform.

(4) Any person who contravenes the provisions of paragraph (1) or (2) of this by-law shall be guilty of an offence and liable to a fine of K100 and to imprisonment for a term of three months.

Powers of permit officer and authorized person

13. A permit officer, and any person duly authorized in writing by the Council so to do, may at any time when beer is being supplied enter or remain in any place or premises with a view to ascertaining whether the provisions of the Act and of these by-laws are being complied with and, in particular, may inspect such place or premises, and any article used in connexion with such supply, and may require the production for examination of any relevant permit.

FIRST SCHEDULE (by-laws 2 and 3)

PART A

RETAIL PERMIT TO SELL *OPAQUE/TRADITIONAL BEER

PERMIT No. .....

THE HOLDER of this permit—

Name: .....

Address: .....

IS HEREBY AUTHORIZED to sell *Opaque/traditional beer by retail sale at: .....

on the following days, namely—

Day	*Date*	*Month*	*Year*
Monday, the	..... day of	.....,	19.....
Tuesday, the	..... day of	.....,	19.....
Wednesday, the	..... day of	.....,	19.....
Thursday, the	..... day of	.....,	19.....
Friday, the	..... day of	.....,	19.....
Saturday, the	..... day of	.....,	19.....
Sunday, the	..... day of	.....,	19.....

in accordance with the Chikwawa District Council (Opaque and Traditional Beer) By-laws, 1984, and the relevant provisions of the Liquor Act (Cap. 50:07).

Fee paid: K ..... :..... tambala

Date of Issue: ....., 19.....

(*to be deleted, as may be appropriate, by the Permit Officer)

NOTE: Where the issue of this permit authorizes the sell of traditional beer, the manufacture also of traditional beer for sell by retail sale is also authorized in accordance as aforesaid.

Signature of Permit Officer: .....

for Chikwawa District Council

PART B

PREMISES PERMIT

PERMIT No. .....

THE HOLDER of this permit—

Name: .....

Address: .....

IS HEREBY AUTHORIZED to—

*sell opaque beer by retail sale

*manufacture, and sell by retail sale, traditional beer

at: .....

(*description of premises*)

for a period of ..... months from the date of issue, in accordance with Chikwawa District Council (Opaque and Traditional Beer) By-laws, 1984, and the relevant provisions of the Liquor Act (Cap. 50:07).

Plinth Area of premises: ..... m^2

Fee paid: K ..... :..... tambala

Date of issue: ....., 19.....

Signature of Permit Officer: .....

for Chikwawa District Council

(*to be deleted, as may be appropriate, by the Permit Officer)

SECOND SCHEDULE (by-law 4)

FEES

	K	t
1. For a retail permit to sell traditional beer, per day	1	00
2. For a retail permit to sell opaque beer, per annum	12	00
3. For a premises permit, per year—		
(*a*) for the sell by retail sale of opaque beer only—		
(i) plinth area not exceeding 30 m^2	25	00
(ii) plinth area exceeding 30 m^2	30	00
(*b*) for manufacture, and sell by retail sale of traditional beer only—		
(i) plinth area not exceeding 30 m^2	25	00
(ii) plinth area exceeding 30 m^2	30	00

LIQUOR (CHIRADZULU DISTRICT COUNCIL) (OPAQUE AND TRADITIONAL BEER) BY-LAWS

G.N. 179/1983 73/1987 60/1991

Citation and application G.N. 73/1987

1. These By-laws may be cited as the Liquor (Chiradzulu District Council) (Opaque and Traditional Beer) By-laws and shall apply throughout the area of jurisdiction of the Chiradzulu District Council.

Procedure on application for retail permit

2.—(1) Any person, being a female, who desires to sell opaque beer by retail sale shall apply to the permit officer for a retail permit.

(2) Any person who desires to manufacture, and sell by retail sale, traditional beer shall apply to the permit officer for a retail permit.

(3) Subject to section 68 of the Act, the permit officer shall, after receipt of the appropriate fee, issue to the applicant a retail permit in the form prescribed in Part A of the First Schedule authorizing the applicant to—

(*a*) sell opaque beer by retail sale;

(*b*) manufacture, and sell by retail sale, traditional beer; or

(*c*) do (*a*) and (*b*) above,

as may be appropriate, at such place and on such days as shall be specified therein by the permit officer in writing.

Procedure on application for premises permit

3.—(1) Any owner or lessee of premises who—

(*a*) being a female, desires to sell on the premises opaque beer by retail sale; or

(*b*) desires to manufacture, and sell by retail sale, on the premises traditional beer,

shall apply to the permit officer for a premises permit.

(2) Application for a premises permit shall be made at least three months before the date upon which the applicant desires the permit to be issued.

(3) Subject to section 68 of the Act, the permit officer shall, after receipt of the appropriate fee, issue to the applicant a premises permit in the form prescribed in Part B of the First Schedule authorizing the applicant to—

(*a*) sell opaque beer by retail sale; or

(*b*) manufacture, and sell by retail sale, traditional beer; or

(*c*) do (*a*) and (*b*) above,

as may be appropriate, on the premises specified therein by the permit officer in writing.

(4) Application for the renewal of a premises permit may be made by the holder to a permit officer on or before the 1st January in the year in which renewal is sought:

Provided that the permit officer, in his discretion, may allow such an application made on any later date up to and including the 1st February in that year, or may reject the application.

Fees for permits

4.—(1) The fee payable for the issue of a permit shall be the appropriate fee prescribed in the Second Schedule for the permit concerned.

(2) Notwithstanding the foregoing, in the case of a premises permit issued for a period of 9 months or less, the fee payable shall be a proportion of the prescribed annual fee calculated in accordance with the following table—

Period of validity of permit	*Proportion of annual fee*
(*a*) Not exceeding 3 months	$\frac{1}{4}$
(*b*) Exceeding 3 months but not exceeding 6 months	$\frac{1}{2}$
(*c*) Exceeding 6 months but not exceeding 9 months	$\frac{3}{4}$

Permitted hours

5. The permitted hours for the supply of opaque beer and traditional beer are 6 a.m. to 10 p.m., except on Martyrs' Day.

Supply of beer on Credit prohibited

6. Opaque beer and traditional beer shall be supplied by the holder of a permit to a purchaser only in exchange for money actually received before or at the time of sale.

Supply of beer to young persons prohibited

7. Opaque beer and traditional beer shall not be supplied to any person who is, or who appears to be, under the age of eighteen years.

Provisions as to quality and hygiene

8.—(1) The holder of a permit shall ensure that all opaque beer and traditional beer sold under the authority of the permit is sound and wholesome and that opaque beer is so sold only in sealed containers.

(2) The holder of a permit authorizing the manufacture and sale of traditional beer shall—

(*a*) keep all utensils, vessels, containers, linen, towels, clothes, and all other articles whether similar to the foregoing or not, used in connexion with such manufacture and sale, in a clean and sanitary condition and in good repair;

(*b*) take all reasonable steps adequately to prevent the contamination of traditional beer manufactured and intended for sale under the authority of the permit, and in particular to prevent such contamination by dust, dirt and flies;

(*c*) if the permit is premises permit—

(i) maintain the premises concerned and the furniture therein in a clean and sanitary condition and in good repair;

(ii) provide at least one separate latrine for the use of each sex.

Permits not transferable, etc.

9. Permits are not transferable and the holder of a permit shall not permit any person to sell opaque beer, or manufacture or sell traditional beer on her behalf unless such person is the holder of, and has authority to do so under, and is in possession of, a retail permit.

Display of premises permit

10. The holder of a premises permit shall display the permit in a conspicuous place inside the premises to which it relates where it can be easily seen by persons entering therein.

Possession and production of retail permit

11. The holder of a retail permit shall, at all times whilst engaged in the activity which is authorized by the permit, be in possession of the permit and shall, if so required by the permit officer or by any person duly authorized in writing by the Council, produce the permit to him and permit him to examine the same.

Prohibition on the carrying of any weapon, etc., where beer is being sold

12.—(1) No person being in possession of any weapon or any instrument capable of being used to inflict bodily harm shall enter or remain in the place or premises to which the permit relates while opaque or traditional beer is being sold.

(2) The holder of a permit issued under these By-laws shall not knowingly suffer or permit a person to enter or remain in the place or premises to which the permit relates while opaque or traditional beer is being sold if such a person is in possession of any such weapon or instrument.

(3) This by-law does not apply with respect to any police officer or agent of the Chief whilst on duty and in uniform.

(4) Any person who contravenes the provisions of paragraph (1) or (2) of this by-law shall be guilty of an offence and liable to a fine of K100 and to imprisonment for a term of three months.

Powers of permit officer and authorized persons

13. A permit officer, and any person duly authorized in writing by the Council so to do, may at any time when opaque or traditional beer is being supplied enter or remain in any place or premises with a view to ascertaining whether the provisions of the Act and of these By-laws are being complied with and, in particular, may inspect such place or premises, and any article used in connexion with such supply, and may require the production for examination of any relevant permit.

FIRST SCHEDULE (by-laws 2 and 3)

PART A

RETAIL PERMIT TO SELL*OPAQUE/TRADITIONAL BEER

PERMIT No. .....

THE HOLDER of this permit—

Name: .....

Address: .....

IS HEREBY AUTHORIZED to sell *Opaque/traditional beer by retail sale at: .....

.....

Place: .....

on the following days, namely—

Day	*Date*	*Month*	*Year*
Monday, the	..... day of	.....,	19.....
Tuesday, the	..... day of	.....,	19.....
Wednesday, the	..... day of	.....,	19.....
Thursday, the	..... day of	.....,	19.....
Friday, the	..... day of	.....,	19.....
Saturday, the	..... day of	.....,	19.....
Sunday, the	..... day of	.....,	19.....

in accordance with the Chiradzulu District Council (Opaque and Traditional Beer) By-laws, 1983, and the relevant provisions of the Liquor Act (Cap. 50:07).

Fee paid: K ..... :..... tambala

Date of Issue: ....., 19.....

(*to be deleted, as may be appropriate, by the Permit Officer)

NOTE: Where the issue of this permit authorizes the sell of traditional beer, the manufacture also of traditional beer for sell by retail sale is also authorized in accordance as aforesaid.

Signature of Permit Officer: .....

for Chiradzulu District Council

PART B

PREMISES PERMIT

PERMIT No. .....

THE HOLDER of this permit—

Name: .....

Address: .....

IS HEREBY AUTHORIZED to—

*sell opaque beer by retail sale

*manufacture, and sell by retail sale, traditional beer

at ..... for a

(*description of premises*)

period of ..... months from the date of issue, in accordance with Chiradzulu District Council (Opaque and Traditional Beer) By-laws, 1983, and the relevant provisions of the Liquor Act (Cap. 50:07).

Plinth Area of premises: ..... m^2

Fee paid: K .....: ..... tambala

Date of issue: ....., 20 .....

Signature of Permit Officer: .....

for Chiradzulu District Council

(*to be deleted, as may be appropriate, by the Permit Officer)

SECOND SCHEDULE (by-law 4)

G.N. 73/1987
60/1991

FEES

	K	t
1. For a retail permit to sell traditional beer, per day	2	50
2. For a retail permit to sell opaque beer, per annum	35	00
3. For a premises permit, per year—		
(*a*) for the sell by retail sale of opaque beer only—		
(i) plinth area not exceeding 36 m^2	18	00
(ii) plinth area exceeding 36 m^2	35	00
(*b*) for manufacture, and sell by retail sale of traditional beer only—		
(i) plinth area not exceeding 36 m^2	18	00
(ii) plinth area exceeding 36 m^2	35	00

CHITIPA DISTRICT COUNCIL (OPAQUE AND TRADITIONAL BEER) BY-LAWS

G.N. 15/1984
11/1988

Citation and application

1. These By-laws may be cited as the Chitipa District Council (Opaque and Traditional Beer) By-laws and shall apply throughout the area of jurisdiction of the Chitipa District Council.

Procedure on application for retail permit

2.—(1) Any person, being a female, who desires to sell opaque beer by retail sale shall apply to the permit officer for a retail permit.

(2) Any person who desires to manufacture, and sell by retail sale, traditional beer shall apply to the permit officer for a retail permit.

(3) Subject to section 68 of the Act, the permit officer shall, after receipt of the appropriate fee, issue to the applicant a retail permit in the form prescribed in Part A of the First Schedule authorizing the applicant to—

(*a*) sell opaque beer by retail sale; or

(*b*) manufacture, and sell by retail sale, traditional beer; or

(*c*) do (*a*) and (*b*) above,

as may be appropriate, at such place and on such days as shall be specified therein by the permit officer in writing.

Procedure on application for premises permit

3.—(1) Any owner or lessee of premises who—

(*a*) being a female, desires to sell on the premises opaque beer by retail sale; or

(*b*) desires to manufacture, and sell by retail sale, on the premises traditional beer,

shall apply to the permit officer for a premises permit.

(2) Application for a premises permit shall be made at least three months before the date upon which the applicant desires the permit to be issued.

(3) Subject to section 68 of the Act, the permit officer shall, after receipt of the appropriate fee, issue to the applicant a premises permit in the form prescribed in Part B of the First Schedule authorizing the applicant to—

(*a*) sell opaque beer by retail sale;

(*b*) manufacture, and sell by retail sale, traditional beer; or

(*c*) do (*a*) and (*b*) above,

as may be appropriate, on the premises specified therein by the permit officer in writing.

(4) Application for the renewal of a premises permit may be made by the holder to a permit officer on or before the 1st January in the year in which renewal is sought:

Provided that the permit officer, in his discretion, may allow such an application made on any later date up to and including the 1st February in that year, or may reject the application.

Fees for permit

4.—(1) The fee payable for the issue of a permit shall be the appropriate fee prescribed in the Second Schedule for the permit concerned.

(2) Notwithstanding the foregoing, in the case of a premises permit issued for a period of less than a year, the fee payable shall be a proportion of the prescribed annual fee calculated in accordance with the following table—

Period of validity of permit	*Proportion of annual fee*
(*a*) Not exceeding 3 months	$\frac{1}{4}$
(*b*) Exceeding 3 months but not exceeding 6 months	$\frac{1}{2}$
(*c*) Exceeding 6 months but not exceeding 9 months	$\frac{3}{4}$

Permitted hours

5. The permitted hours for the supply of opaque beer and traditional beer are 6 a.m. to 10 p.m., except on Martyrs' Day.

Supply of beer on credit prohibited

6. Opaque beer and traditional beer shall be supplied by the holder of a permit to a purchaser only in exchange for money actually received before or at the time of sale.

Supply of beer to young persons prohibited

7. Opaque beer and traditional beer shall not be supplied to any person who is, or who appears to be, under the age of eighteen years.

Provisions as to quality and hygiene

8.—(1) The holder of a permit shall ensure that all opaque beer and traditional beer sold under the authority of the permit is sound and wholesome and that opaque beer is so sold only in sealed containers.

(2) The holder of a permit authorizing the manufacture and sale of traditional beer shall—

(*a*) keep all utensils, vessels, containers, linen, towels, clothes and all other articles whether similar to the foregoing or not, used in connexion with such manufacture and sale, in a clean and sanitary condition and in good repair;

(*b*) take all reasonable steps adequately to prevent the contamination of traditional beer manufactured and intended for sale under the authority of the permit, and in particular to prevent such contamination by dust, dirt and flies;

(*c*) if the permit is a premises permit—

(i) maintain the premises concerned and the furniture therein in a clean and sanitary condition and in good repair;

(ii) provide at least one separate latrine for the use of each sex.

Permits not transferable, etc.

9. Permits are not transferable and the holder of a permit shall not permit any person to sell opaque beer, or manufacture or sell traditional beer, on her or his behalf unless such person is the holder of, and has authority to do so under, and is in possession of, a retail permit.

Display of premises permit

10. The holder of a premises permit shall display the permit in a conspicuous place inside the premises to which it relates where it can be easily seen by persons entering therein.

Possession and production of retail permit

11. The holder of a retail permit shall, at all times whilst engaged in the activity which is authorized by the permit, be in possession of the permit and shall if so required by the permit officer or by any person duly authorized in writing by the Council, produce the permit to him and permit him to examine the same.

Prohibition on the carrying of any weapon, etc., where beer is being sold

12.—(1) No person being in possession of any weapon or any instrument capable of being used to inflict bodily harm shall enter or remain in any place or premises where opaque or traditional beer is being sold.

(2) The holder of a permit issued under these by-laws shall not knowingly suffer or permit a person to enter or remain in the place or premises to which the permit relates while opaque or traditional beer is being sold if such a person is in possession of any such weapon or instrument.

(3) This by-law does not apply with respect to any police officer or agent of the Chief while on duty and in uniform.

(4) Any person who contravenes the provisions of paragraph (1) or (2) of this by-law shall be guilty of an offence and liable to a fine of K100 and to imprisonment for a term of three months.

Powers of permit officer and authorized person

13. A permit officer, and any person duly authorized in writing by the Council so to do, may at any time when beer is being supplied enter or remain in any place or premises with a view to ascertaining whether the provisions of the Act and of these by-laws are being complied with and, in particular, may inspect such place or premises, and any article used in connexion with such supply, and may require the production for examination of any relevant permit.

FIRST SCHEDULE (by-laws 2 and 3)

PART A

RETAIL PERMIT TO SELL*OPAQUE/TRADITIONAL BEER

PERMIT No. .....

THE HOLDER of this permit—

Name: .....

Address: .....

IS HEREBY AUTHORIZED to sell *Opaque/traditional beer by retail sale at: .....
on the following days, namely—

Day	*Date*	*Month*	*Year*
Monday, the	..... day of	.....	, 19.....
Tuesday, the	..... day of	.....	, 19.....
Wednesday, the	..... day of	.....	, 19.....
Thursday, the	..... day of	.....	, 19.....
Friday, the	..... day of	.....	, 19.....
Saturday, the	..... day of	.....	, 19.....
Sunday, the	..... day of	.....	, 19.....

in accordance with the Chitipa District Council (Opaque and Traditional Beer) By-laws, 1984, and the relevant provisions of the Liquor Act (Cap. 50:07).

Fee paid: K ..... tambala

Date of Issue: ....., 19.....

(*to be deleted, as may be appropriate, by the Permit Officer)

NOTE: Where the issue of this permit authorizes the sell of traditional beer, the manufacture also of traditional beer for sell by retail sale is also authorized in accordance as aforesaid.

Signature of Permit Officer: .....
for Chitipa District Council

PART B

PREMISES PERMIT

PERMIT No. .....

THE HOLDER of this permit—

Name: .....

Address: .....

IS HEREBY AUTHORIZED to—

*sell opaque beer by retail sale

*manufacture, and sell by retail sale, traditional beer

at: .....

(*description of premises*)

for a period of ..... months from the date of issue, in accordance with Chitipa District Council (Opaque and Traditional Beer) By-laws, 1984, and the relevant provisions of the Liquor Act (Cap. 50:07).

Plinth Area of premises: ..... m^2

Fee paid: K .....: ..... tambala

Date of issue: ....., 20.....

Signature of Permit Officer: .....

for Chitipa District Council

(*to be deleted, as may be appropriate, by the Permit Officer)

SECOND SCHEDULE (by-law 4) G.N. 75/1990 77/1993

FEES

	K	t
1. For a retail permit to sell traditional beer, per day at—		
(*a*) Chitipa Boma	3	00
(*b*) any other place	1	80
2. For a retail permit to sell opaque beer, per annum . .	30	00
3. For a premises permit, per annum—		
(*a*) for the sell by retail sale of opaque beer only	37	00
(*b*) for the manufacture and sell by retail sale of traditional beer only	37	00

DEDZA DISTRICT COUNCIL (OPAQUE AND TRADITIONAL BEER) BY-LAWS

G.N. 8/1985 90/1987 98/1990 9/1995 16/1995

Citation and application

1. These By-laws may be cited as the Dedza District Council (Opaque and Traditional Beer) By-laws, and shall apply throughout the area of jurisdiction of the Dedza District Council.

Procedure on application for retail

2. Any person, being a female, who desires to sell opaque beer by retail sale shall apply to the permit officer for a retail permit.

(2) Any person who desires to manufacture, and sell by retail sale, traditional beer shall apply to the permit officer for a retail permit.

(3) Subject to section 68 of the Act, the permit officer shall, after receipt of the appropriate fee, issue to the applicant a retail permit in the form prescribed in Part A of the First Schedule authorizing the applicant to—

(*a*) sell opaque beer by retail sale; or

(*b*) manufacture, and sell by retail sale, traditional beer; or

(*c*) do (*a*) and (*b*) above,

as may be appropriate, at such place and such days as shall be specified therein by the permit officer in writing.

Procedure on application for premises permit

3.—(1) Any owner or lessee of premises who—

(*a*) being a female, desires to sell on the premises opaque beer by retail sale; or

(*b*) desires to manufacture, and sell by retail sale, on the premises traditional beer,

shall apply to the permit officer for a premises permit.

(2) Application for a premises permit shall be made at least three months before the date upon which the applicant desires the permit to be issued.

(3) Subject to section 68 of the Act, the permit officer shall, after receipt of the appropriate fee, issue to the applicant a premises permit in the form prescribed in Part B of the First Schedule authorizing the applicant to—

(*a*) sell opaque beer by retail sale; or

(*b*) manufacture, and sell by retail sale, traditional beer; or

(*c*) do (*a*) and (*b*) above,

as may be appropriate, on the premises specified therein by the permit officer in writing.

(4) Application for the renewal of premises permit may be made by the holder to a permit officer on or before the 1st January in the year in which renewal is sought:

Provided that the permit officer, in his discretion, may allow such an application made on any later date up to and including the 1st February in that year, or may reject the application.

Fees for permits

4.—(1) The fee payable for the issue of a permit shall be the appropriate fee prescribed in the Second Schedule for the permit concerned.

(2) Notwithstanding the foregoing, in the case of a premises permit issued for a period of 9 months or less, the fee payable shall be a proportion of the prescribed annual fee calculated in accordance with the following table—

Period of validity of permit	*Proportion of annual fee*
(*a*) Not exceeding 3 months	$\frac{1}{4}$
(*b*) Exceeding 3 months but not exceeding 6 months	$\frac{1}{2}$
(*c*) Exceeding 6 months but not exceeding 9 months	$\frac{3}{4}$

Permitted hours

5. The permitted hours for the supply of opaque and traditional beer are 6 a.m. to 10 p.m. except on Martyrs' Day.

Supply of beer on credit prohibited

6. Opaque beer and traditional beer shall be supplied by the holder of a permit to a purchaser only in exchange for money actually received before or at the time of sale.

Supply of beer to young persons prohibited

7. Opaque beer and traditional beer shall not be suplied to any person who is, or appears to be, under the age of eighteen years.

Provisions as to quality and hygiene

8.—(1) The holder of a permit shall ensure that all opaque beer and traditional beer sold under authority of the permit is sound and wholesome and that opaque beer is so sold only in sealed containers.

(2) The holder of a permit authorizing the manufacture and sale of traditional beer shall—

(*a*) keep all utensils, vessels, containers, linen, towels, clothes and all other articles whether similar to the foregoing or not, used in connexion with such manufacture and sale, in a clean and sanitary condition and in good repair;

(*b*) take all reasonable steps adequately to prevent the contamination of traditional beer manufactured and intended for sale under the authority of the permit, and in particular to prevent such contamination by dust, dirt and flies;

(*c*) if the permit is premises permit—

(i) maintain the premises concerned and the furniture therein in a clean and sanitary condition and in good repair; and

(ii) provide at least one separate latrine for the use of each sex.

Permits not transferable, etc.

9. Permits are not transferable and the holder of a permit shall not permit any person to sell opaque beer, or manufacture or sell traditional beer, on her or his behalf unless such person is the holder of, and has authority to do so under, and is in possession of retail permit.

Display of premises permit

10. The holder of a premises permit shall display the permit in a conspicuous place inside the premises to which it relates where it can be easily seen by persons entering therein.

Possession and production of retail permits

11. The holder of a retail permit shall, at all times whilst engaged in the activity which is authorized by the permit, be in possession of the permit and shall, if so required by the permit officer or by any person duly authorized in writing by the Council, produce the permit to him and permit him to examine the same.

Prohibition of the carrying of any weapon, etc., where beer is being sold

12.—(1) No person being in possession of any weapon or any instrument capable of being used to inflict bodily harm shall enter or remain in any place or premises where opaque or traditional beer is being sold.

(2) The holder of a permit issued under these by-laws shall not knowingly suffer or permit a person to enter or remain in the place or premises to which the permit relates while opaque or traditional beer is being sold, if such a person is in possession of any such weapon or instrument.

(3) This by-law does not apply with respect to any police officer or agent of the Chief whilst on duty and in uniform.

(4) Any person who contravenes the provisions of paragraph (1) or (2) of this by-law shall be guilty of an offence and liable to a fine of K100 and to imprisonment for a term of three months.

Powers of permit officer and authorized person

13. A permit officer, and any person duly authorized in writing by the Council so to do, may at any time when opaque or traditional beer is being supplied enter or remain in any place or premises with a view to ascertaining whether the provisions of the Act and of these by-laws are being complied with and, in particular, may inspect such place or premises, any article used in connexion with such supply, and may require the production for examination of any relevant permit.

FIRST SCHEDULE (by-laws 2 and 3)

PART A

Retail Permit to Sell *Opaque/Traditional Beer

Permit No. .....

The Holder of this permit—

Name: .....

Address: .....

Is Hereby Authorized to sell *Opaque/traditional beer by retail sale at: .....

on the following days, namely—

Day	*Date*	*Month*	*Year*
Monday, the	day of	.....	, 19.....
Tuesday, the	day of	.....	, 19.....
Wednesday, the	day of	.....	, 19.....
Thursday, the	day of	.....	, 19.....
Friday, the	day of	.....	, 19.....
Saturday, the	day of	.....	, 19.....
Sunday, the	day of	.....	, 19.....

in accordance with the Dedza District Council (Opaque and Traditional Beer) By-laws, 1984, and the relevant provisions of the Liquor Act (Cap. 50:07).

Plinth area of premises ..... m^2

Fee paid: K ..... tambala

Date of Issue: ....., 20.....

(*to be deleted, as may be appropriate, by the Permit Officer)

NOTE: Where the issue of this permit authorizes the sell of traditional beer, the manufacture also of traditional beer for sell by retail sale is also authorized in accordance as aforesaid.

Signature of Permit Officer: .....

for Dedza District Council

PART B

PREMISES PERMIT

PERMIT No. .....

THE HOLDER of this permit—

Name: .....

Address: .....

IS HEREBY AUTHORIZED to—

*sell opaque beer by retail sale

*manufacture, and sell by retail sale, traditional beer

at: .....

(*description of premises*)

for a period of ..... months from the date of issue, in accordance with Dedza District Council (Opaque and Traditional Beer) By-laws, 1985, and the relevant provisions of the Liquor Act (Cap. 50:07).

Plinth Area of premises: ..... m^2

Fee paid: K ..... :..... tambala

Date of issue: ....., 20.....

Signature of Permit Officer: .....

for Dedza District Council

(*to be deleted, as may be appropriate, by the Permit Officer)

SECOND SCHEDULE (by-law 4) G.N. 98/1990 9/1995 16/1995

FEES

1.	For a retail permit to sell traditional beer, per day	3 00
2.	For a retail permit to sell opaque beer, per annum	45 00
3.	For a premises permit, per annum—	
	(*a*) for the sale by retail sale of opaque beer only—	
	(i) plinth area not exceeding 36 m^2	40 00
	(ii) plinth area exceeding 36 m^2	40 00

(*b*) for the manufacture, and sale by retail sale of traditional beer only—

(i) plinth area not exceeding 36 m^2 . . . . . 50 00

(ii) plinth area exceeding 36 m^2 . . . . . 50 00

G.N. 81/1984
106/1986

DOWA DISTRICT COUNCIL (OPAQUE AND TRADITIONAL BEER) BY-LAWS

Citation and application

1. These By-laws may be cited as the Dowa District Council (Opaque and Traditional Beer) By-laws and shall apply throughout the area of jurisdiction of the Dowa District Council.

Procedure on application for retail permit

2.—(1) Any person, being a female, who desires to sell opaque beer by retail sale shall apply to the permit officer for a retail permit.

(2) Any person who desires to manufacture, and sell by retail sale, traditional beer shall apply to the permit officer for a retail permit.

(3) Subject to section 68 of the Act, the permit officer shall, after receipt of the appropriate fee, issue to the applicant a retail permit in the form prescribed in Part A of the First Schedule authorizing the applicant to—

(*a*) sell opaque beer by retail sale; or

(*b*) manufacture, and sell by retail sale, traditional beer; or

(*c*) do (*a*) and (*b*) above,

as may be appropriate, at such place and on such days as shall be specified therein by the permit officer in writing.

Procedure on application for premises permit

3.—(1) Any owner or lessee of premises who—

(*a*) being a female, desires to sell on the premises opaque beer by retail sale; or

(*b*) desires to manufacture, and sell by retail sale, on the premises traditional beer,

shall apply to the permit officer for a premises permit.

(2) Application for a premises permit shall be made at least three months before the date upon which the applicant desires the permit to be issued.

(3) Subject to section 68 of the Act, the permit officer shall after receipt of the appropriate fee, issue to the applicant a premises permit in the form prescribed in Part B of the First Schedule authorizing the applicant to—

(a) sell opaque beer by retail sale; or

(*b*) manufacture, and sell by retail sale, traditional beer; or

(*c*) do (*a*) and (*b*) above,

as may be appropriate, on the premises specified therein by the permit officer in writing.

(4) Application for the renewal of a premises permit may be made by the holder to a permit officer on or before the 1st January in the year in which renewal is sought:

Provided that the permit officer, in his discretion, may allow such an application made on any later date up to and including the 1st February in that year, or may reject the application.

Fees for permits

4.—(1) The fee payable for the issue of a permit shall be the appropriate fee prescribed in the Second Schedule for the permit concerned.

(2) Notwithstanding the foregoing, in the case of a premises permit issued for a period of nine months or less, the fee payable shall be a proportion of the prescribed annual fee calculated in accordance with the following table—

Period of validity of permit	*Proportion of annual fee*
(*a*) Not exceeding 3 months	$\frac{1}{4}$
(*b*) Exceeding 3 months but not exceeding 6 months	$\frac{1}{2}$
(*c*) Exceeding 6 months but not exceeding 9 months	$\frac{3}{4}$

Permitted hours

5. The permitted hours for the supply of opaque beer and traditional beer are 6 a.m. to 10 p.m., except on Martyrs' Day.

Supply of beer on credit prohibited

6. Opaque beer and traditional beer shall be supplied by the holder of a permit to a purchaser only in exchange for money actually received before or at the time of sale.

Supply of beer to young persons prohibited

7. Opaque beer and traditional beer shall not be supplied to any person who is, or who appears to be, under the age of eighteen years.

Provisions as to quality and hygiene

8.—(1) The holder of a permit shall ensure that all opaque beer and traditional beer sold under the authority of the permit is sound and wholesome and that opaque beer is so sold only in sealed containers.

(2) The holder of a permit authorizing the manufacture and sale of traditional beer shall—

(*a*) keep all utensils, vessels, containers, linen, towels, clothes and all other articles whether similar to the foregoing or not, used in connexion with such manufacture and sale, in a clean and sanitary condition and in good repair;

(*b*) take all reasonable steps adequately to prevent the contamination of traditional beer manufactured and intended for sale under the authority of the permit, and in particular to prevent such contamination by dust, dirt and flies;

(*c*) if the permit is a premises permit—

(i) maintain the premises concerned and the furniture therein in a clean and sanitary condition and in good repair; and

(ii) provide at least one separate latrine for the use of each sex.

Permits not transferable, etc.

9. Permits are not transferable and the holder of a permit shall not permit any person to sell opaque beer, or manufacture or sell traditional beer, on her or his behalf unless such person is the holder of, and has authority to do so under, and is in possession of retail permit.

Possession and production of retail permit

10. The holder of a premises permit shall display the permit in a conspicuous place inside the premises to which it relates where it can be easily seen by persons entering therein.

Display of premises permit

11. The holder of a retail permit shall, at all times whilst engaged in the activity which is authorized by the permit, be in possession of the permit and shall, if so required by the permit officer or by any person duly authorized in writing by the Council, produce the permit to him and permit him to examine the same.

Prohibition on the carrying of any weapon, etc., where beer is being sold

12.—(1) No person being in possession of any weapon or any instrument capable of being used to inflict bodily harm shall enter or remain in any place or premises where opaque or traditional beer is being sold.

(2) The holder of a permit issued under these by-laws shall not knowingly suffer or permit a person to enter or remain in the place or premises to which the permit relates while opaque or traditional beer is being sold if such a person is in possession of any such weapon or instrument.

(3) This by-law does not apply with respect to any police officer or agent of the Chief whilst on duty and in uniform.

(4) Any person who contravenes the provisions of paragraph (1) or (2) of this by-law shall be guilty of an offence and liable to a fine of K100 and to imprisonment for a term of three months.

Powers of permit officer and authorized person

13. A permit officer, and any person duly authorized in writing by the Council so to do, may at any time when beer is being supplied enter or remain in any place or premises with a view to ascertaining whether the provisions of the Act and of these by-laws are being complied with and, in particular, may inspect such place or premises, and any article used in connexion with such supply, and may require the production for examination of any relevant permit.

FIRST SCHEDULE (by-laws 2 and 3)

PART A

RETAIL PERMIT TO SELL*OPAQUE/TRADITIONAL BEER

PERMIT No. .....

THE HOLDER of this permit—

Name: .....

Address: .....

IS HEREBY AUTHORIZED to sell *Opaque/traditional beer by retail sale at: .....

on the following days, namely—

Day	*Date*	*Month*	*Year*
Monday, the	..... day of	.....,	19.....
Tuesday, the	..... day of	.....,	19.....
Wednesday, the	..... day of	.....,	19.....
Thursday, the	..... day of	.....,	19.....
Friday, the	..... day of	.....,	19.....
Saturday, the	..... day of	.....,	19.....
Sunday, the	..... day of	.....,	19.....

in accordance with the Dowa District Council (Opaque and Traditional Beer) By-laws, 1984, and the relevant provisions of the Liquor Act (Cap. 50:07).

Fee paid: K ..... :..... tambala

Date of Issue: ....., 19.....

(*to be deleted, as may be appropriate, by the Permit Officer)

NOTE: Where the issue of this permit authorizes the sell of traditional beer, the manufacture also of traditional beer for sell by retail sale is also authorized in accordance as aforesaid.

Signature of Permit Officer: .....

for Dowa District Council

PART B

PREMISES PERMIT

PERMIT No. .....

THE HOLDER of this permit—

Name: .....

Address: .....

IS HEREBY AUTHORIZED to—

*sell opaque beer by retail sale

*manufacture, and sell by retail sale, traditional beer

at: .....

(*description of premises*)

for a period of ..... months from the date of issue, in accordance with Dowa District Council (Opaque and Traditional Beer) By-laws, 1984, and the relevant provisions of the Liquor Act (Cap. 50:07).

Plinth Area of premises: ..... m^2

Fee paid: K .....: ..... tambala

Date of issue: ....., 19.....

Signature of Permit Officer: .....

for Dowa District Council

G.N. 106/1986

SECOND SCHEDULE (by-law 4)

FEES

	K	t
1. For a retail permit to sell traditional beer, per day	1	50
2. For a retail permit to sell opaque beer, per annum	15	00
3. For a premises permit, per annum—		
(*a*) for the sale of opaque beer only—		
(i) Plinth area not exceeding 36 m^2.	25	00
(ii) Plinth area exceeding 36 m^2	35	00
(*b*) for manufacture and sale by retail sale of traditional beer only—		
(i) Plinth area not exceeding 36 m^2.	25	00
(ii) Plinth area exceeding 36 m^2	35	00

G.N. 73/1985

KARONGA DISTRICT COUNCIL (OPAQUE AND TRADITIONAL BEER) BY-LAWS

Citation and application

1. These By-laws may be cited as the Karonga District Council Opaque and Traditional Beer) By-laws and shall apply throughout the area of jurisdiction of the Karonga District Council.

Procedure on application for retail permit

2.—(1) Any person, being a female, who desires to sell opaque beer by retail sale shall apply to the permit officer for a retail permit.

(2) Any person who desires to manufacture, and sell by retail sale, traditional beer shall apply to the permit officer for a retail permit.

(3) Subject to section 68 of the Act, the permit officer shall, after receipt of the appropriate fee, issue to the applicant a retail permit in the form prescribed in Part A of the First Schedule authorizing the applicant to—

(*a*) sell opaque beer by retail sale; or

(*b*) manufacture, and sell by retail sale, traditional beer; or

(*c*) do (*a*) and (*b*) above,

as may be appropriate, at such place and on such days as shall be specified therein by the permit officer in writing.

Procedure on application for premises permit

3.—(1) Any owner or lessee of premises who—

(*a*) being a female, desires to sell on the premises opaque beer by retail sale; or

(*b*) desires to manufacture, and sell by retail sale, on the premises traditional beer,

shall apply to the permit officer for a premises permit.

(2) Application for a premises permit shall be made at least three months before the date upon which the applicant desires the permit to be issued.

(3) Subject to section 68 of the Act, the permit officer shall, after receipt of the appropriate fee, issue to the applicant a premises permit in the form prescribed in Part B of the First Schedule authorizing the applicant to—

(*a*) sell opaque beer by retail sale; or

(*b*) manufacture, and sell by retail sale, traditional beer; or

(*c*) do (*a*) and (*b*) above,

as may be appropriate, on the premises specified therein by the permit officer in writing.

(4) Application for the renewal of a premises permit may be made by the holder to a permit officer on or before the 1st January in the year in which renewal is sought:

Provided that the permit officer, in his discretion, may allow such an application made on any later date up to and including the 1st February in that year, or may reject the application.

Fees for permits

4.—(1) The fee payable for the issue of a permit shall be the appropriate fee prescribed in the Second Schedule for the permit concerned.

(2) Notwithstanding the foregoing, in the case of a premises permit issued for a period of nine months or less, the fee payable shall be a proportion of the prescribed fee calculated in accordance with the following table—

Period of validity of permit	*Proportion of annual fee*
(*a*) Not exceeding 3 months	$\frac{1}{4}$
(*b*) Exceeding 3 months but not exceeding 6 months	$\frac{1}{2}$
(*c*) Exceeding 6 months but not exceeding 9 months	$\frac{3}{4}$

Permitted hours

5. The permitted hours for the supply of opaque beer and traditional beer are 6 a.m. to 10 p.m., except on Martyrs' Day.

Supply of beer on credit prohibited

6. Opaque beer and traditional beer shall be supplied by the holder of a permit to a purchaser only in exchange for money actually received before or at the time of sale.

Supply of beer to young persons prohibited

7. Opaque beer and traditional beer shall not be supplied to any person who is, or who appears to be, under the age of eighteen years.

Provisions as to quality and hygiene

8.—(1) The holder of a permit shall ensure that all opaque beer and traditional beer sold under the authority of the permit is sound and wholesome and that opaque beer is so sold only in sealed containers.

(2) The holder of a permit authorizing the manufacture and sale of traditional beer shall—

(*a*) keep all utensils, vessels, containers, linen towels, clothes and all other articles whether similar to the foregoing or not, used in connexion with such manufacture and sale, in a clean and sanitary condition and in good repair;

(*b*) take all reasonable steps adequately to prevent the contamination of beer manufactured and intended for sale under the authority of the permit, and in particular to prevent such contamination by dust, dirt and flies.

(*c*) if the permit is premises permit—

(i) maintain the premises concerned and the furniture therein in a clean and sanitary condition and in good repair;

(ii) provide at least one separate latrine for the use of each sex.

Permits not transferable, etc.

9. Permits are not transferable and the holder of a permit shall not permit any person to sell opaque beer, or manufacture or sell traditional beer, on her or his behalf unless such person is the holder of, and has authority to do so under, and is in possession of a retail permit.

Display of premises permit

10. The holder of a premises permit shall display the permit in a conspicuous place inside the premises to which it relates where it can be easily seen by persons entering therein.

Possession and production of retail permit

11. The holder of a retail permit shall, at all times whilst engaged in the activity which is authorized by the permit, be in possession of the permit and shall, if so required by the permit officer or by any person duly authorized in writing by the Council, produce the permit to him and permit him to examine the same.

Prohibition on the carrying of any weapon, etc., where beer is being sold

12.—(1) No person being in possession of any weapon or any instrument capable of being used to inflict bodily harm shall enter or remain in any place or premises where opaque or traditional beer is being sold.

(2) The holder of a permit issued under these by-laws shall not knowingly suffer or permit a person to enter or remain in the place or premises to which the permit relates while opaque or traditional beer is being sold if such a person is in possession of any such weapon or instrument.

(3) This by-law does not apply with respect to any police officer or agent of the Chief whilst on duty and in uniform.

(4) Any person who contravenes the provisions of paragraph (1) or (2) of this by-law shall be guilty of an offence and liable to a fine of K100 and to imprisonment for a term of three months.

Powers of permit officer and authorized person

13. A permit officer, and any person duly authorized in writing by the Council so to do, may at any time when beer is being supplied enter or remain in any place or premises with a view to ascertaining whether the provisions of the Act and of these by-laws are being complied with and, in particular, may inspect such place or premises, and any article used in connexion with such supply, and may require the production for examination of any relevant permit.

FIRST SCHEDULE (by-laws 2 and 3)

PART A

RETAIL PERMIT TO SELL*OPAQUE/TRADITIONAL BEER

PERMIT No. .....

THE HOLDER of this permit—

Name: .....

Address: .....

IS HEREBY AUTHORIZED to sell *Opaque/traditional beer by retail sale at: .....

on the following days, namely—

Day	*Date*	*Month*	*Year*
Monday, the	..... day of	.....,	19.....
Tuesday, the	..... day of	.....,	19.....
Wednesday, the	..... day of	.....,	19.....
Thursday, the	..... day of	.....,	19.....
Friday, the	..... day of	.....,	19.....
Saturday, the	..... day of	.....,	19.....
Sunday, the	..... day of	.....,	19.....

in accordance with the Karonga District Council (Opaque and Traditional Beer) By-laws, 1985, and the relevant provisions of the Liquor Act (Cap. 50:07).

Fee paid: K ..... :..... tambala

Date of Issue: ....., 19.....

(*to be deleted, as may be appropriate, by the Permit Officer)

NOTE: Where the issue of this permit authorizes the sell of traditional beer, the manufacture also of traditional beer for sell by retail sale is also authorized in accordance as aforesaid.

Signature of Permit Officer: .....

for Karonga District Council

PART B

PREMISES PERMIT

PERMIT No. .....

THE HOLDER of this permit—

Name: .....

Address: .....

IS HEREBY AUTHORIZED to—

*sell opaque beer by retail sale

*manufacture, and sell by retail sale, traditional beer

at: .....

(*description of premises*)

for a period of ..... months from the date of issue, in accordance with Karonga District Council (Opaque and Traditional Beer) By-laws, 1985, and the relevant provisions of the Liquor Act (Cap. 50:07).

Plinth Area of premises: ..... m^2

Fee paid: K ..... :..... tambala

Date of issue: ....., 19.....

Signature of Permit Officer: .....

for Karonga District Council

(*to be deleted, as may be appropriate, by the Permit Officer)

SECOND SCHEDULE (by-law 4)

FEES

	K	t
1. For a retail permit to sell traditional beer, per day	1	00
2. For a retail permit to sell opaque beer, per annum	20	00
3. For a premises permit, per year—		
(*a*) for the sell by retail sale of opaque beer only—		
(i) Plinth area not exceeding 36 m^2.	24	00
(ii) Plinth area exceeding 36 m^2	32	00
(*b*) for manufacture, and sell by retail sale, of traditional beer only—		
(i) Plinth area not exceeding 36 m^2.	24	00
(ii) Plinth area exceeding 36 m^2	32	00

G.N. 14/1986
68/1988

KASUNGU DISTRICT COUNCIL (OPAQUE AND TRADITIONAL BEER) BY-LAWS

Citation and application

1. These By-laws may be cited as the Kasungu District Council (Opaque and Traditional Beer) By-laws and shall apply throughout the area of jurisdiction of the Kasungu District Council.

Procedure on application for retail permit

2.—(1) Any person, being a female, who desires to sell opaque beer by retail sale shall apply to the permit officer for a retail permit.

(2) Any person who desires to manufacture, and sell by retail sale, traditional beer shall apply to the permit officer for a retail permit.

(3) Subject to section 68 of the Act, the permit officer shall, after receipt of the appropriate fee, issue to the applicant a retail permit in the form prescribed in Part A of the First Schedule authorizing the applicant to—

(*a*) sell opaque beer by retail sale; or

(*b*) manufacture, and sell by retail sale, traditional beer, or

(*c*) do (*a*) and (*b*) above,

as may be appropriate, at such place and on such days as shall be specified therein by the permit officer in writing.

Procedure on application for premises permit

3.—(1) Any owner or lessee of premises who—

(*a*) being a female, desires to sell on the premises opaque beer by retail sale; or

(*b*) desires to manufacture, and sell by retail sale, on the premises traditional beer,

shall apply to the permit officer for a premises permit.

(2) Application for a premises permit shall be made at least three months before the date upon which the applicant desires the permit to be issued.

(3) Subject to section 68 of the Act, the permit officer shall, after receipt of the appropriate fee, issue to the applicant a premises permit in the form prescribed in Part B of the First Schedule authorizing the applicant to—

(*a*) sell opaque beer by retail sale; or

(*b*) manufacture, and sell by retail sale, traditional beer; or

(*c*) do (*a*) and (*b*) above,

as may be appropriate, on the premises specified therein by the permit officer in writing.

(4) Application for the renewal of a premises permit may be made by the holder to a permit officer on or before the 1st January in the year in which renewal is sought:

Provided that the permit officer, in his discretion, may allow such an application made on any later date up to and including the 1st February in that year, or may reject the application.

Fees for permits

4.—(1) The fee payable for the isuue of a permit shall be the appropriate fee prescribed in the Second Schedule for the permit concerned.

(2) Notwithstanding the foregoing, in the case of a premises permit issued for a period of nine months or less, the fee payable shall be a proportion of the prescribed annual fee calculated in accordance with the following table—

Period of validity of permit	*Proportion of annual fee*
(*a*) Not exceeding 3 months	$\frac{1}{4}$
(*b*) Exceeding 3 months but not exceeding 6 months	$\frac{1}{2}$
(*c*) Exceeding 6 months but not exceeding 9 months	$\frac{3}{4}$

Permitted hours

5. The permitted hours for the supply of opaque beer and traditional beer are 6 a.m. to 10 p.m., except on Martyrs' Day.

Supply of beer on credit prohibited

6. Opaque beer and traditional beer shall be supplied by the holder of a permit to a purchaser only in exchange for money actually received before or at the time of sale.

Supply of beer to young persons prohibited

7. Opaque beer and traditional beer shall not be supplied to any person who is, or who appears to be, under the age of eighteen years.

Provisions as to quality and hygiene

8.—(1) The holder of a permit shall ensure that all opaque beer and traditional beer sold under the authority of the permit is sound and wholesome and that opaque beer is so sold only in sealed containers.

(2) The holder of a permit authorizing the manufacture and sale of traditional beer shall—

(*a*) keep all utensils, vessels, containers, linen, towels, clothes and all other articles whether similar to the foregoing or not, used in connexion with such manufacture and sale, in a clean and sanitary condition and in good repair;

(*b*) take all reasonable steps adequately to prevent the contamination of traditional beer manufactured and intended for sale under the authority of the permit, and in particular to prevent such contamination by dust, dirt and flies;

(*c*) if the permit is a premises permit—

(i) maintain the premises concerned and the furniture therein in a clean and sanitary condition and in good repair;

(ii) provide at least one separate latrine for the use of each sex.

Permits not transferable, etc.

9. Permits are not transferable and the holder of a permit shall not permit any person to sell opaque beer, or manufacture or sell traditional beer, on her or his behalf unless such person is the holder of, and has authority to do so under, and is in possession of, a retail permit.

Display of premises permit

10. The holder of a premises permit shall display the permit in a conspicuous place inside the premises to which it relates where it can be easily seen by persons entering therein.

Possession and production of retail permit

11. The holder of a retail permit shall, at all times whilst engaged in the activity which is authorized by the permit, be in possession of the permit and shall, if so required by the permit officer or by any person duly authorized in writing by the Council, produce the permit to him and permit him to examine the same.

Prohibition on the carrying of any weapon, etc., where beer is being sold

12.—(1) No person being in possession of any weapon or any instrument capable of being used to inflict bodily harm shall enter or remain in any place or premises where opaque or traditional beer is being sold.

(2) The holder of a permit issued under these by-laws shall not knowingly suffer or permit a person to enter or remain in the place or premises to which the permit relates while opaque or traditional beer is being sold if such a person is in possession of any such weapon or instrument.

(3) This by-law does not apply with respect to any police officer or agent of the Chief whilst on duty and in uniform.

(4) Any person who contravenes the provisions of paragraph (1) or (2) of this by-law shall be guilty of an offence and liable to a fine of K100 and to imprisonment for a term of three months.

Powers of permit officer and authorized person

13. A permit officer, and any person duly authorized in writing by the Council so to do, may at any time when beer is being supplied enter or remain in any place or premises with a view to ascertaining whether the provisions of the Act and of these by-laws are being complied with and, in particular, may inspect such place or premises, and any article used in connexion with such supply, and may require the production for examination of any relevant permit.

FIRST SCHEDULE (by-laws 2 and 3)

PART A

RETAIL PERMIT TO SELL*OPAQUE/TRADITIONAL BEER

PERMIT No. .....

THE HOLDER of this permit—

Name: .....

Address: .....

IS HEREBY AUTHORIZED to sell *opaque/traditional beer by retail sale at: .....

on the following days, namely—

Day	*Date*	*Month*	*Year*
Monday, the	..... day of	.....	, 20.....
Tuesday, the	..... day of	.....	, 20.....
Wednesday, the	..... day of	.....	, 20.....
Thursday, the	..... day of	.....	, 20.....
Friday, the	..... day of	.....	, 20.....
Saturday, the	..... day of	.....	, 20.....
Sunday, the	..... day of	.....	, 20.....

in accordance with the Kasungu District Council (Opaque and Traditional Beer) By-laws, 1986, and the relevant provisions of the Liquor Act (Cap. 50:07).

Plinth Area of premises: ..... m^2

Fee paid: K ..... :..... tambala

Date of Issue: ....., 20.....

(*to be deleted, as may be appropriate, by the Permit Officer)

NOTE: Where the issue of this permit authorizes the sell of traditional beer, the manufacture also of traditional beer for sell by retail sale is also authorized in accordance as aforesaid.

Signature of Permit Officer: .....

for Kasungu District Council

PART B

PREMISES PERMIT

PERMIT No. .....

THE HOLDER of this permit—
Name: .....
Address: .....
IS HEREBY AUTHORIZED to—
*sell opaque beer by retail sale
*manufacture, and sell by retail sale, traditional beer
at: .....
(*description of premises*)
for a period of ..... months from the date of issue, in accordance with Kasungu District Council (Opaque and Traditional Beer) By-laws, 1986, and the relevant provisions of the Liquor Act (Cap. 50:07).
Plinth Area of premises: ..... m^2
Fee paid: K ..... :..... tambala
Date of issue: ....., 20.....
Signature of Permit Officer: .....
for Kasungu District Council

(*to be deleted, as may be appropriate, by the Permit Officer)

G.N. 68/1988

SECOND SCHEDULE (by-law 4)

FEES

	K	t
1. For a retail permit to sell traditional beer, per day	2	00
2. For a retail permit to sell opaque beer, per annum	30	00
3. For a premises permit, per annum—		
(*a*) for the sale of opaque beer only—		
(i) Plinth area not exceeding 36 m^2.	15	00
(ii) Plinth area exceeding 36 m^2	20	00
(*b*) for manufacture, and sale by retail sale, of traditional beer only—		
(i) Plinth area not exceeding 36 m^2.	15	00
(ii) Plinth area exceeding 36 m^2	20	00

G.N. 74/1990
109/1995

LILONGWE DISTRICT COUNCIL (OPAQUE AND TRADITIONAL BEER) BY-LAWS

Citation and application

1. These By-laws may be cited as the Lilongwe District Council (Opaque and Traditional Beer) By-laws, and shall apply throughout the area of jurisdiction of the Lilongwe District Council.

Procedure on application for retail permit

2.—(1) Any person, being a female, who desires to sell opaque beer by retail sale shall apply to the permit officer for a retail permit.

(2) Any person who desires to manufacture, and sell by retail sale, traditional beer shall apply to the permit officer for a retail permit.

(3) Subject to section 68 of the Act, the permit officer shall after receipt of the appropriate fee, issue to the applicant a retail permit in the form prescribed in Part A of the First Schedule authorizing the applicant to—

(*a*) sell opaque beer by retail sale; or

(*b*) manufacture, and sell by retail sale, traditional beer; or

(*c*) do (*a*) and (*b*) above,

as may be appropriate, at such place and on such days as shall be specified therein by the permit officer in writing.

Procedure on application for premises permit

3.—(1) Any owner or lessee of premises who—

(*a*) being a female, desires to sell on the premises opaque beer by retail sale; or

(*b*) desires to manufacture, and sell by retail sale, on the premises traditional beer,

shall apply to the permit officer for a premises permit.

(2) Application for a premises permit shall be made at least three months before the date upon which the applicant desires the permit to be issued.

(3) Subject to section 68 of the Act, the permit officer shall, after receipt of the appropriate fee, issue to the applicant a premises permit in the form prescribed in Part B of the First Schedule authorizing the applicant to—

(*a*) sell opaque beer by retail sale; or

(*b*) manufacture, and sell by retail sale, traditional beer; or

(*c*) do (*a*) and (*b*) above,

as may be appropriate, on the premises specified therein by the permit officer in writing.

(4) Application for the renewal of a premises permit may be made by the holder to a permit officer on or before the 1st January in the year in which renewal is sought:

Provided that the permit officer, in his discretion, may allow such an application made on any later date up to and including the 1st of February in that year, or may reject the application.

Fees for permits

4.—(1) The fee payable for the issue of a permit shall be the appropriate fee prescribed in the Second Schedule for the permit concerned.

(2) Notwithstanding the foregoing, in the case of a premises permit issued for a period of less than a year, the fee payable shall be a proportion of the prescribed annual fee calculated in accordance with the following table—

Period of validity of permit	*Proportion of annual fee*
(*a*) Not exceeding 3 months	$\frac{1}{4}$
(*b*) Exceeding 3 months but not exceeding 6 months	$\frac{1}{2}$
(*c*) Exceeding 6 months but not exceeding 9 months	$\frac{3}{4}$

Permitted hours

5. The permitted hours for the supply of opaque beer and traditional beer are 6 a.m. to 10 p.m., except on Martyrs' Day.

Supply of beer on credit prohibited

6. Opaque beer and traditional beer shall be supplied by the holder of a permit to a purchaser only in exchange for money actually received before or at the time of sale.

Supply of beer to young persons prohibited

7. Opaque beer and traditional beer shall not be supplied to any person who is, or who appears to be, under the age of eighteen years.

Provisions as to quality and hygiene

8.—(1) The holder of a permit shall ensure that all opaque beer and traditional beer sold under the authority of the permit is sound and wholesome and that opaque beer is so sold only in sealed containers.

(2) The holder of a permit authorizing the manufacture and sale of traditional beer shall—

(*a*) keep all utensils, vessels, containers, linen, towels, clothes and all other articles whether similar to the foregoing or not, used in connexion with such manufacture and sale, in a clean and sanitary condition and in good repair;

(*b*) take all reasonable steps adequately to prevent the contamination of traditional beer manufactured and intended for sale under the authority of the permit, and in particular to prevent such contamination by dust, dirt and flies;

(*c*) if the permit is a premises permit—

(i) maintain the premises concerned and the furniture therein in a clean and sanitary condition and in good repair;

(ii) provide at least one separate latrine for the use of each sex.

Permits not transferable, etc.

9. Permits are not transferable and the holder of a permit shall not permit any person to sell opaque beer, or manufacture or sell traditional beer, on her or his behalf unless such person is the holder of, and has authority to do so under, and is in possession of, a retail permit.

Display of premises permit

10. The holder of a premises permit shall display the permit in a conspicuous place inside the premises to which it relates where it can be easily seen by persons entering therein.

Possession

11. The holder of a retail permit shall, at all times whilst engaged in the activity which is authorized by the permit, be in

possession of the permit and shall, if so required by the permit officer or by any person duly authorized in writing by the Council, produce the permit to him and permit him to examine the same.

Prohibition on the carrying of any weapon, etc., where beer is being sold

12.—(1) No person being in possession of any weapon or any instrument capable of being used to inflict bodily harm shall enter or remain in any place or premises where opaque or traditional beer is being sold.

(2) The holder of a permit issued under these by-laws shall not knowingly suffer or permit a person to enter or remain in the place or premises to which the permit relates while opaque or traditional beer is being sold if such a person is in possession of any such weapon or instrument.

(3) This by-law does not apply with respect to any police officer or agent of the Chief while on duty and in uniform.

(4) Any person who contravenes the provisions of paragraph (1) or (2) of this by-law shall be guilty of an offence and liable to a fine of K100 and to imprisonment for a term of three months.

Powers of permit officer

13. A permit officer, and any person duly authorized in writing by the Council so to do, may at any time when beer is being supplied enter or remain in any place or premises with a view to ascertaining whether the provisions of the Act and of these by-laws are being complied with and, in particular, may inspect such place or premises, and any article used in connexion with such supply, and may require the production for examination of any relevant permit.

FIRST SCHEDULE (by-laws 2 and 3)

PART A

RETAIL PERMIT TO SELL*OPAQUE/TRADITIONAL BEER

PERMIT No. .....

THE HOLDER of this permit—

Name: .....

Address: .....

IS HEREBY AUTHORIZED to sell *Opaque/traditional beer by retail sale at: .....

on the following days, namely—

Day	*Date*	*Month*	*Year*
Monday, the	..... day of	.....	, 20.....
Tuesday, the	..... day of	.....	, 20.....
Wednesday, the	..... day of	.....	, 20.....
Thursday, the	..... day of	.....	, 20.....
Friday, the	..... day of	.....	, 20.....
Saturday, the	..... day of	.....	, 20.....
Sunday, the	..... day of	.....	, 20.....

in accordance with the Lilongwe District Council (Opaque and Traditional Beer) By-laws, 1990, and the relevant provisions of the Liquor Act (Cap. 50:07).

Plinth area of premises: ..... m^2
Fee paid: K ..... :..... tambala
Date of Issue: ....., 20.....
(*to be deleted, as may be appropriate, by the Permit Officer)
NOTE: Where the issue of this permit authorizes the sell of traditional beer, the manufacture also of traditional beer for sell by retail sale is also authorized in accordance as aforesaid.
Signature of Permit Officer: .....
for Lilongwe District Council

PART B
PREMISES PERMIT
PERMIT No. .....

THE HOLDER of this permit—
Name: .....
Address: .....
IS HEREBY AUTHORIZED to—
*sell opaque beer by retail sale
*manufacture, and sell by retail sale, traditional beer
at ..... for a period of
(*description of premises*)
..... months from the date of issue, in accordance with Lilongwe District Council (Opaque and Traditional Beer) By-laws, 1990, and the relevant provisions of the Liquor Act (Cap. 50:07).
Plinth Area of premises: ..... m^2
Fee paid: K ..... :..... tambala
Date of issue: ....., 20.....
Signature of Permit Officer: .....
for Lilongwe District Council
(*to be deleted, as may be appropriate, by the Permit Officer)

G.N. 109/1995

SECOND SCHEDULE (by-law 4)

FEES

	K	t
1. For a retail permit to sell opaque beer, per day	5	00
2. For a retail permit to sell opaque beer, per annum	50	00
3. For a premises permit, per annum—		
(*a*) for the sale by retail of opaque beer only—		
(i) Plinth area not exceeding 36 m^2.	15	00
(ii) Plinth area exceeding 36 m^2	50	00

G.N. 39/1986 49/1990

MACHINGA DISTRICT COUNCIL (OPAQUE AND TRADITIONAL BEER) BY-LAWS

Citation and application

1. These By-laws may be cited as the Machinga District Council (Opaque and Traditional Beer) By-laws and shall apply throughout the area of jurisdiction of the Machinga District Council.

Procedure on application for retail permit

2.—(1) Any person, being a female, who desires to sell opaque beer by retail sale shall apply to the permit officer for a retail permit.

(2) Any person who desires to manufacture, and sell by retail sale, traditional beer shall apply to the permit officer for a retail permit.

(3) Subject to section 68 of the Act, the permit officer shall, after receipt of the appropriate fee, issue to the applicant a retail permit in the form prescribed in Part A of the First Schedule authorizing the applicant to—

(*a*) sell opaque beer by retail sale; or

(*b*) manufacture, and sell by retail sale, traditional beer; or

(*c*) do (*a*) and (*b*) above,

as may be appropriate, at such place and on such days as shall be specified therein by the permit officer in writing.

Procedure on application for premises permit

3.—(1) Any owner or lessee of premises who—

(*a*) being a female, desires to sell on the premises opaque beer by retail sale; or

(*b*) desires to manufacture, and sell by retail sale, on the premises traditional beer,

shall apply to the permit officer for a premises permit.

(2) Application for a premises permit shall be made at least three months before the date upon which the applicant desires the permit to be issued.

(3) Subject to section 68 of the Act, the permit officer shall, after receipt of the appropriate fee, issue to the applicant a premises permit in the form prescribed in Part B of the First Schedule authorizing the applicant to—

(*a*) sell opaque beer by retail sale; or

(*b*) manufacture, and sell by retail sale, traditional beer; or

(*c*) do (*a*) and (*b*) above,

as may be appropriate, on the premises specified therein by the permit officer in writing.

(4) Application for the renewal of a premises permit may be made by the holder to a permit officer on or before the 1st January in the year in which renewal is sought:

Provided that the permit officer, in his discretion, may allow such an application made on any later date up to and including the 1st February in that year, or may reject the application.

Fees for permits

4.—(1) The fee payable for the issue of a permit shall be the appropriate fee prescribed in the Second Schedule for the permit concerned.

(2) Notwithstanding the foregoing, in the case of a premises permit issued for a period of nine months or less, the fee payable shall be a proportion of the prescribed annual fee calculated in accordance with the following table—

Period of validity of permit	*Proportion of annual fee*
(*a*) Not exceeding 3 months	$\frac{1}{4}$
(*b*) Exceeding 3 months but not exceeding 6 months	$\frac{1}{2}$
(*c*) Exceeding 6 months but not exceeding 9 months	$\frac{3}{4}$

Permitted hours

5. The permitted hours for the supply of opaque beer and traditional beer are 6 a.m. to 10 p.m., except on Martyrs' Day.

Supply of beer on credit prohibited

6. Opaque beer and traditional beer shall be supplied by the holder of a permit to a purchaser only in exchange for money actually received before or at the time of sale.

Supply of beer to young persons prohibited

7. Opaque beer and traditional beer shall not be supplied to any person who is, or who appears to be, under the age of eighteen years.

Provisions as to quality and hygiene

8.—(1) The holder of a permit shall ensure that all opaque beer and traditional beer sold under the authority of the permit is sound and wholesome and that opaque beer is so sold only in sealed containers.

(2) The holder of a permit authorizing the manufacture and sale of traditional beer shall—

(*a*) keep all utensils, vessels, containers, linen, towels, clothes and all other articles whether similar to the foregoing or not, used in connexion with such manufacture and sale, in a clean and sanitary condition and in good repair;

(*b*) take all reasonable steps adequately to prevent the contamination of traditional beer manufactured and intended for sale under the authority of the permit, and in particular to prevent such contamination by dust, dirt and flies;

(*c*) if the permit is a premises permit—

(i) maintain the premises concerned and the furniture therein in a clean and sanitary condition and in good repair;

(ii) provide at least one separate latrine for the use of each sex.

Permits not transferable, etc.

9. Permits are not transferable and the holder of a permit shall not permit any person to sell opaque beer, or manufacture or sell traditional beer, on her or his behalf unless such person is the holder of, and has authority to do so under, and is in possession of, a retail permit.

Display of premises permit

10. The holder of a premises permit shall display the permit in a conspicuous place inside the premises to which it retales where it can be easily seen by persons entering therein.

Possession and production of retail permit

11. The holder of a retail permit shall, at all times whilst engaged in the activity which is authorized by the permit, be in possession of the permit and shall, if so required by the permit officer or by any person duly authorized in writing by the Council, produce the permit to him and permit him to examine the same.

Prohibition on the carrying of any weapon, etc., where beer is being sold

12.—(1) No person being in possession of any weapon or any instrument capable of being used to inflict bodily harm shall enter or remain in any place or premises where opaque or traditional beer is being sold.

(2) The holder of a permit issued under these by-laws shall not knowingly suffer or permit a person to enter or remain in the place or premises to which the permit relates while opaque or traditional beer is being sold if such a person is in possession of any such weapon or instrument.

(3) This by-law does not apply with respect to any police officer or agent of the Chief while on duty and in uniform.

(4) Any person who contravenes the provisions of paragraph (1) or (2) of this by-law shall be guilty of an offence and liable to a fine of K100 and to imprisonment for a term of three months.

Powers of permit officer and authorized person

13. A permit officer, and any person duly authorized in writing by the Council so to do, may at any time when beer is being supplied enter or remain in any place or premises with a view to ascertaining whether the provisions of the Act and of these by-laws are being complied with and, in particular, may inspect such place or premises, and any article used in connexion with such supply, and may require the production for examination of any relevant permit.

FIRST SCHEDULE (by-laws 2 and 3)

PART A

Retail Permit to Sell*Opaque/Traditional Beer

Permit No. .....

The Holder of this permit—

Name: .....

Address: .....

Is Hereby Authorized to sell *Opaque/traditional beer by retail sale at: .....

on the following days, namely—

Day	*Date*	*Month*	*Year*
Monday, the	..... day of	.....	, 19.....
Tuesday, the	..... day of	.....	, 19.....
Wednesday, the	..... day of	.....	, 19.....
Thursday, the	..... day of	.....	, 19.....

Friday, the ..... day of ....., 19.....
Saturday, the ..... day of ....., 19.....
Sunday, the ..... day of ....., 19.....

in accordance with the Machinga District Council (Opaque and Traditional Beer) By-laws, 1986, and the relevant provisions of the Liquor Act

(Cap. 50:07).

Plinth area of premises: ..... m^2
Fee paid: K ..... :..... tambala
Date of Issue: ....., 19.....
(*to be deleted, as may be appropriate, by the Permit Officer)

NOTE: Where the issue of this permit authorizes the sell of traditional beer, the manufacture also of traditional beer for sell by retail sale is also authorized in accordance as aforesaid.

Signature of Permit Officer: .....
for Machinga District Council

PART B

PREMISES PERMIT

PERMIT No. .....

THE HOLDER of this permit—
Name: .....
Address: .....
IS HEREBY AUTHORIZED to—
*sell opaque beer by retail sale
*manufacture, and sell by retail sale, traditional beer
at: .....
(*description of premises*)
for a period of ..... months from the date of issue, in accordance with Machinga District Council (Opaque and Traditional Beer) By-laws, 1986, and the relevant provisions of the Liquor Act (Cap. 50:07).

Plinth Area of premises: ..... m^2
Fee paid: K .....: ..... tambala
Date of issue: ....., 19.....
Signature of Permit Officer: .....
for Machinga District Council
(*to be deleted, as may be appropriate, by the Permit Officer)

G.N. 49/1990
21/1993

SECOND SCHEDULE (by-law 4)

FEES

		K	t
1.	For a retail permit to sell traditional beer, per day	5	00
2.	(*a*) For a retail permit to sell opaque beer in the Council's own hall, per day	2	00
	(*b*) For a retail permit to sell opaque beer, per annum . .	40	00
3.	For a permit, per annum—		
	(*a*) for the sell by retail sale of opaque beer only	40	00
	(*b*) for manufacture, and sell of traditional beer only . .	40	00

MANGOCHI DISTRICT COUNCIL (OPAQUE AND TRADITIONAL BEER) BY-LAWS

G.N. 173/1983
52/1993

Citation and application

1. These By-laws may be cited as the Mangochi District Council (Opaque and Traditional Beer) By-laws, and shall apply through out the area of jurisdiction of the Mangochi District Council.

Procedure on application for retail permit

2.—(1) Any person, being a female, who desires to sell opaque beer by retail sale shall apply to the permit officer for a retail permit.

(2) Any person who desires to manufacture, and sell by retail sale, traditional beer shall apply to the permit officer for a retail permit.

(3) Subject to section 68 of the Act, the permit officer shall after receipt of the appropriate fee, issue to the applicant a retail permit in the form prescribed in Part A of the First Schedule authorizing the applicant to—

(*a*) sell opaque beer by retail sale; or

(*b*) manufacture, and sell by retail sale, traditional beer; or

(*c*) do (*a*) and (*b*) above,

as may be appropriate, at such place and on such days as shall be specified therein by the permit officer in writing.

Procedure on application for premises permit

3.—(1) Any owner or lessee of premises who—

(*a*) being a female, desires to sell on the premises opaque beer by retail sale; or

(*b*) desires to manufacture, and sell by retail sale, on the premises traditional beer,

shall apply to the permit officer for a premises permit.

(2) Application for a premises permit shall be made at least three months before the date upon which the applicant desires the permit to be issued.

(3) Subject to section 68 of the Act, the permit officer shall, after receipt of the appropriate fee, issue to the applicant a premises permit in the form prescribed in Part B of the First Schedule authorizing the applicant to—

(*a*) sell opaque beer by retail sale; or

(*b*) manufacture, and sell by retail sale, traditional beer; or

(*c*) do (*a*) and (*b*) above,

as may be appropriate, on the premises specified therein by the permit officer in writing.

(4) Application for the renewal of a premises permit may be made by the holder to a permit officer on or before the 1st January in the year in which renewal is sought:

Provided that the permit officer, in his discretion, may allow such an application to be made on any later date up to and including the 1st February in that year, or may reject the application.

Fees for permits

4.—(1) The fee payable for the issue of a permit shall be the appropriate fee prescribed in the Second Schedule for the permit concerned.

(2) Notwithstanding the foregoing, in the case of a premises permit issued for a period of 9 months or less, the fee payable shall be a proportion of the prescribed annual fee calculated in accordance with the following table—

Period of validity of permit	*Proportion of annual fee*
(*a*) Not exceeding 3 months	$\frac{1}{4}$
(*b*) Exceeding 3 months but not exceeding 6 months	$\frac{1}{2}$
(*c*) Exceeding 6 months but not exceeding 9 months	$\frac{3}{4}$

Permitted hours

5. The permitted hours for the supply of opaque beer and traditional beer are 6 a.m. to 10 p.m., except on Martyrs' Day.

Supply of beer on credit prohibited

6. Opaque beer and traditional beer shall be supplied by the holder of a permit to a purchaser only in exchange for money actually received before or at the time of sale.

Supply of beer to young persons prohibited

7. Opaque beer and traditional beer shall not be supplied to any person who is, or who appears to be, under the age of eighteen years.

Provisions as to quality and hygiene

8.—(1) The holder of a permit shall ensure that all opaque beer and traditional beer sold under the authority of the permit is sound and wholesome and that opaque beer is so sold only in sealed containers.

(2) The holder of a permit authorizing the manufacture and sale of traditional beer shall—

(*a*) keep all utensils, vessels, containers, linen, towels, clothes, and all other articles whether similar to the foregoing or not, used in connexion with such manufacture and sale, in a clean and sanitary condition and in good repair;

(*b*) take all reasonable steps adequately to prevent the contamination of traditional beer manufactured and intended for sale under the authority of the permit, and in particular to prevent such contamination by dust, dirt and flies;

(*c*) if the permit is premises permit—

(i) maintain the premises concerned and the furniture therein in a clean and sanitary condition and in good repair;

(ii) provide at least one separate latrine for the use of each sex.

9. Permits are not transferable and the holder of a permit shall not permit any person to sell opaque beer, or manufacture or sell traditional beer, on her or his behalf unless such person is the holder of, and has authority to do so under, and is in possession of a retail permit.

Permits not transferable, etc.

10. The holder of a premises permit shall display the permit in a conspicuous place inside the premises to which it relates where it can be easily seen by persons entering therein.

Display of premises permit

11. The holder of a retail permit shall, at all times whilst engaged in the activity which is authorized by the permit, be in possession of the permit and shall, if so required by the permit officer or by any person duly authorized in writing by the Council, produce the permit to him and permit him to examine the same.

Possession and production of retail permit

12.—(1) No person being in possession of any weapon or any instrument capable of being used to inflict bodily harm shall enter or remain in any place or premises where opaque or traditional beer is being sold.

Prohibition on the carrying of any weapon, etc., where beer is being sold.

(2) The holder of a permit issued under these By-laws shall not knowingly suffer or permit a person to enter or remain in the place or premises to which the permit relates while opaque or traditional beer is being sold if such a person is in possession of any such weapon or instrument.

(3) This by-law does not apply with respect to any police officer or agent of the Chief whilst on duty and in uniform.

(4) Any person who contravenes the provisions of paragraph (1) or (2) of this by-law shall be guilty of an offence and liable to a fine of K100 and to imprisonment for a term of three months.

13. A permit officer, and any person duly authorized in writing by the Council so to do, may at any time when opaque or traditional beer is being supplied enter or remain in any place or premises with a view to ascertaining whether the provisions of the Act and of these by-laws are being complied with and, in particular, may inspect such place or premises, and any article used in connexion with such supply, and may require the production for examination of any relevant permit.

Powers of permit officer and authorized persons

14. The Local Government (District Councils) (Mangochi District Council) (Traditional Beer) By-laws are revoked.

Revocation of By-laws of Cap. 22:02 Local Govt. Supp. sub. leg. p. B166*t*

FIRST SCHEDULE (by-laws 2 and 3)

PART A

RETAIL PERMIT TO SELL *OPAQUE/TRADITIONAL BEER

PERMIT No. .....

THE HOLDER of this permit—

Name: .....

Address: .....

IS HEREBY AUTHORIZED to sell *Opaque/traditional beer by retail sale at: .....

on the following days, namely—

Day	*Date*	*Month*	*Year*
Monday, the	..... day of	.....,	19.....
Tuesday, the	..... day of	.....,	19.....
Wednesday, the	..... day of	.....,	19.....
Thursday, the	..... day of	.....,	19.....
Friday, the	..... day of	.....,	19.....
Saturday, the	..... day of	.....,	19.....
Sunday, the	..... day of	.....,	19.....

in accordance with the Mangochi District Council (Opaque and Traditional Beer) By-laws, 1983, and the relevant provisions of the Liquor Act (Cap. 50:07).

Fee paid: K ..... tambala

Date of Issue: ....., 19.....

(*to be deleted, as may be appropriate, by the Permit Officer)

NOTE: Where the issue of this permit authorizes the sale of traditional beer, the manufacture also of traditional beer for sale by retail sale is also authorized in accordance as aforesaid.

Signature of Permit Officer: .....

for Mangochi District Council

PART B

PREMISES PERMIT

PERMIT No. .....

THE HOLDER of this permit—

Name: .....

Address: ..... of

IS HEREBY AUTHORIZED to— *sell opaque beer by retail sale
*manufacture, and sell by retail sale, traditional beer

at: .....

(*description of premises*)

for a period of ..... months from the date of issue, in accordance with Mangochi District Council (Opaque and Traditional Beer) By-laws, 1983, and the relevant provisions of the Liquor Act (Cap. 50:07).

Plinth Area of premises: ..... m^2

Fee paid: K ..... :..... tambala

Date of issue: ....., 19.....

Signature of Permit Officer: .....

for Mangochi District Council

(*to be deleted, as may be appropriate, by the Permit Officer.)

SECOND SCHEDULE (by-law 4) G.N. 173/1983 52/1993

FEES

	K	t
1. For a retail permit to sell traditional beer, per day	3	00
2. For a retail permit to sell opaque beer, per annum . .	40	00
3. For a premises permit, per annum—		
(*a*) for the sale of opaque beer only:		
(i) plinth area not exceeding 36 m^2	40	00
(ii) plinth area exceeding 36 m^2	60	00
(*b*) for manufacture and sale by retail sale of traditional beer only:		
(i) plinth area not exceeding 36 m^2	40	00
(ii) plinth area exceeding 36 m^2	60	00

MCHINJI DISTRICT COUNCIL (OPAQUE AND TRADITIONAL BEER) BY-LAWS

G.N. 55/1990 8/1995

Citation and application

1. These By-laws may be cited as the Mchinji District Council (Opaque and Traditional Beer) By-laws, and shall apply throughout the area of jurisdiction of the Mchinji District Council.

Procedure on application for retail permit

2.—(1) Any person, being a female, who desires to sell opaque beer by retail sale shall apply to the permit officer for a retail permit.

(2) Any person who desires to manufacture, and sell by retail sale, traditional beer shall apply to the permit officer for a retail permit.

(3) Subject to section 68 of the Act, the permit officer shall after receipt of the appropriate fee, issue to the applicant a retail permit in the form prescribed in Part A of the First Schedule authorizing the applicant to—

(*a*) sell opaque beer by retail sale; or

(*b*) manufacture, and sell by retail sale, traditional beer; or

(*c*) do (*a*) and (*b*) above,

as may be appropriate, at such place and on such days as specified therein by the permit officer in writing.

Procedure on application for premises permit

3.—(1) Any owner or lessee of premises who—

(*a*) being a female, desires to sell on the premises opaque beer by retail sale; or

(*b*) desires to manufacture, and sell by retail sale, on the premises traditional beer,

shall apply to the permit officer for a premises permit.

(2) Application for a premises permit shall be made at least three months before the date upon which the applicant desires the permit to be issued.

(3) Subject to section 68 of the Act, the permit officer shall, after receipt of the appropriate fee, issue to the applicant a premises permit in the form prescribed in Part B of the First Schedule authorizing the applicant to—

(*a*) sell opaque beer by retail sale; or

(*b*) manufacture, and sell by retail sale, traditional beer: or

(*c*) do (*a*) and (*b*) above,

as may be appropriate, on the premises specified therein by the permit officer in writing.

(4) Application for the renewal of a premises permit may be made by the holder to a permit officer on or before the 1st January in the year in which the renewal is sought:

Provided that the permit officer, in his discretion may, allow such an application made on any later date up to and including the 1st February in that year, or may reject the application.

Fees for permits

4.—(1) The fee payable for the issue of a permit shall be the appropriate fee prescribed in the Second Schedule for the permit concerned.

(2) Notwithstanding the foregoing, in the case of a premises permit issued for a period of nine months or less, the fee payable shall be a proportion of the prescribed annual fee calculated in accordance with the following table—

Period of validity of permit	*Proportion of annual fee*
(*a*) Not exceeding 3 months	$\frac{1}{4}$
(*b*) Exceeding 3 months but not exceeding 6 months	$\frac{1}{2}$
(*c*) Exceeding 6 months but not exceeding 9 months	$\frac{3}{4}$

Permitted hours

5. The permitted hours for the supply of opaque beer and traditional beer are 6 a.m. to 10 p.m. except on Martyrs' Day.

Supply of beer on credit prohibited

6. Opaque beer and traditional beer shall be supplied by the holder of a permit to a purchaser only in exchange for money actually received before or at the time of sale.

Supply of beer to young persons prohibited

7. Opaque beer and traditional beer shall not be supplied to any person who is, or appears to be, under the age of eighteen years.

Provisions as to quality and hygiene

8.—(1) The holder of a permit shall ensure that all opaque beer and traditional beer sold under the authority of the permit is sound and wholesome and that opaque beer is so sold only in sealed containers.

(2) The holder of a permit authorizing the manufacture and sale of traditional beer shall—

(*a*) keep all utensils, vessels, containers, linen, towels, clothes and all other articles similar to the foregoing or not, used in connexion with such manufacture and sale, in a clean and sanitary condition and in good repair;

(*b*) take all reasonable steps adequately to prevent the contamination of traditional beer manufactured and intended for sale under the authority of the permit and in particular to prevent such contamination by dust, dirt and flies; and

(*c*) if the permit is a premises permit—

(i) maintain the premises concerned and the furniture therein in a clean and sanitary condition and in good repair; and

(ii) provide at least one separate latrine for the use of each sex.

Permits not transferable, etc.

9. A permit issued under these By-laws shall not be transferable and the holder thereof shall not permit any person to sell opaque beer or manufacture or sell traditional beer on her or his behalf unless such person is the holder of, and has authority to do so under, and is in possession of, a retail permit.

Display of premises permit

10. The holder of a premises permit shall display the permit in a conspicuous place inside the premises to which it relates where it can be easily seen by persons entering therein.

Possession and production of retail permit

11. The holder of a retail permit shall, at all times whilst engaged in the activity which is authorized by the permit, be in possession of the permit and shall, if so required by the permit officer or by any person duly authorized in writing by the Council, produce the permit to him and permit him to examine the same.

Prohibition on the carrying of any weapon, etc., where beer is being sold

12.—(1) No person being in possession of any weapon or any instrument capable of being used to inflict bodily harm shall enter or remain in any place or premises where opaque or traditional beer is being sold.

(2) The holder of a permit issued under these By-laws shall not knowingly suffer or permit a person to enter or remain in the place or premises to which the permit relates while opaque or traditional beer is being sold if such a person is in possession of any such weapon or instrument;

(3) This by-law does not apply with respect to any police officer or agent of the Chief while on duty and in uniform.

(4) Any person who contravenes the provisions of paragraph (1) or (2) of this by-law commits an offence and is liable to a fine of K100 and to imprisonment for a term of three months.

Powers of permit officer and authorized persons

13. A permit officer, and any person duly authorized in writing by the Council so to do, may at any time when beer is being supplied enter or remain in any place or premises with a view to ascertaining whether the provisions of the Act and of these By-laws are being complied with, and in particular, may inspect such place or premises, and any article used in connexion with such supply, and may require the production for examination of any relevant permit.

FIRST SCHEDULE (by-laws 2 and 3)

PART A

RETAIL PERMIT TO SELL *OPAQUE/TRADITIONAL BEER

PERMIT No. .....

THE HOLDER of this permit—

Name: .....

Address: .....

IS HEREBY AUTHORIZED to sell *Opaque/traditional beer by retail sale at:

..... on the following days, namely—

Day	*Date*	*Month*	*Year*
Monday, the	..... day of	.....,	19.....
Tuesday, the	..... day of	.....,	19.....
Wednesday, the	..... day of	.....,	19.....
Thursday, the	..... day of	.....,	19.....
Friday, the	..... day of	.....,	19.....
Saturday, the	..... day of	.....,	19.....
Sunday, the	..... day of	.....,	19.....

in accordance with the Mchinji District Council (Opaque and Traditional Beer) By-laws, 1990, and the relevant provisions of the Liquor Act (Cap. 50:07).

Plinth area of premises: ..... m^2

Fee paid: K ..... :..... tambala

Date of Issue: ....., 19.....

(*to be deleted, as may be appropriate, by the Permit Officer)

NOTE: Where the issue of this permit authorizes the sell of traditional beer, the manufacture also of traditional beer for sell by retail sale is also authorized in accordance as aforesaid.

Signature of Permit Officer: .....

for Mchinji District Council

PART B

PREMISES PERMIT

PERMIT No. .....

THE HOLDER of this permit—

Name: .....

Address: .....

IS HEREBY AUTHORIZED to—

*sell opaque beer by retail sale

*manufacture, and sell by retail sale, traditional beer

at ..... for a

(*description of premises*)

period of ..... months from the date of issue, in accordance with Mchinji District Council (Opaque and Traditional Beer) By-laws, 1990, and the relevant provisions of the Liquor Act (Cap. 50:07).

Plinth Area of premises: ..... m^2

Fee paid: K..... tambala

Date of issue: ....., 20.....

Signature of Permit Officer: .....

for Mchinji District Council

(*to be deleted, as may be appropriate, by the Permit Officer)

SECOND SCHEDULE (by-law 4) G.N. 55/1990 8/1995

Fees

	K	t
1. For a retail permit to sell traditional beer, per brew ..	2	50
2. For a retail permit to sell opaque beer, per annum ..	25	00
3. For a premises permit, per annum—		
(*a*) for the sell by retail sale of opaque beer only:		
(i) plinth area not exceeding 36 m^2	30	00
(ii) plinth area exceeding 36 m^2	35	00
(*b*) for manufacture, and sell by retail sale, of the traditional beer only:		
(i) plinth area not exceeding 36 m^2	30	00
(ii) plinth area exceeding 36 m^2	35	00

M'MBELWA DISTRICT COUNCIL (OPAQUE AND TRADITIONAL BEER) BY-LAWS

G.N. 5/1986

Citation and application

1. These By-laws may be cited as the M'mbelwa District Council (Opaque and Traditional Beer) By-laws and shall apply throughout the area of jurisdiction of the M'mbelwa District Council.

Procedure on application for premises permit

2.—(1) Any person, being a female, who desires to sell opaque beer by retail sale, shall apply to the permit officer for a retail permit.

(2) Any person who desires to manufacture, and sell by retail sale, traditional beer shall apply to the permit officer for a retail permit.

(3) Subject to section 68 of the Act, the permit officer shall, after receipt of the appropriate fee, issue to the applicant a retail permit in the form prescribed in Part A of the First Schedule authorizing the applicant to—

(*a*) sell opaque beer by retail sale; or

(*b*) manufacture, and sell by retail sale, traditional beer; or

(*c*) do (*a*) and (*b*) above,

as may be appropriate, at such place and such days as shall be specified therein by the permit officer in writing.

Procedure on application for premises permit

3.—(1) Any owner or lessee of premises who—

(*a*) being a female, desires to sell on the premises opaque beer by retail sale; or

(*b*) desires to manufacture, and sell by retail sale, on the premises traditional beer,

shall apply to the permit officer for a premises permit.

(2) Application for a premises permit shall be made at least three months before the date upon which the applicant desires the permit to be issued.

(3) Subject to section 68 of the Act, the permit officer shall, after receipt of the appropriate fee, issue to the applicant a premises permit in the form prescribed in Part B of the First Schedule authorizing the applicant to—

(*a*) sell opaque beer by retail sale; or

(*b*) manufacture, and sell by retail sale, traditional beer; or

(*c*) do (*a*) and (*b*) above,

as may be appropriate, on the premises specified therein by the permit officer in writing.

(4) Application for the renewal of a premises permit may be made by the holder to a permit officer on or before the 1st January in the year in which renewal is sought:

Provided that the permit officer, in his discretion, may allow such an application made on any later date up to and including the 1st February in that year, or may reject the application.

Fees for permit

4.—(1) The fee payable for the issue of a permit shall be the appropriate fee prescribed in the Second Schedule for the permit concerned.

(2) Notwithstanding the foregoing, in the case of a premises permit issued for a period of nine months or less, the fee payable shall be a proportion of the prescribed annual fee calculated in accordance with the following table—

Period of validity of permit	*Proportion of annual fee*
(*a*) Not exceeding 3 months	$\frac{1}{4}$
(*b*) Exceeding 3 months but not exceeding 6 months	$\frac{1}{2}$
(*c*) Exceeding 6 months but not exceeding 9 months	$\frac{3}{4}$

Permitted Hours

5. The permitted hours for the supply of opaque beer and traditional beer are 6 a.m. to 10 p.m., except on Martyrs' Day.

Supply of beer on credit prohibited

6. Opaque beer and traditional beer shall be supplied by the holder of a permit to a purchaser only in exchange for money actually received before or at the time of sale.

Supply of beer to young persons prohibited

7. Opaque beer and traditional beer shall not be supplied to any person who is, or appears to be, under the age of eighteen years.

Provisions as to quality and hygiene

8.—(1) The holder of a permit shall ensure that all opaque beer and traditional beer sold under authority of the permit is sound and wholesome and that opaque beer is so sold only in sealed containers.

(2) The holder of a permit authorizing the manufacture and sale of traditional beer shall—

(*a*) keep all utensils, vessels, containers, linen, towels, clothes and all other articles whether similar to the foregoing or not, used in connexion with such manufacture and sale, in a clean and sanitary condition and in good repair;

(*b*) take all reasonable steps adequately to prevent the contamination of traditional beer manufactured and intended for sale under the authority of the permit, and in particular to prevent such contamination by dust, dirt and flies;

(*c*) if the permit is a premises permit—

(i) maintain the premises concerned and the furniture therein in a clean and sanitary condition and in good repair; and

(ii) provide at least one separate latrine for the use of each sex.

9. Permits are not transferable and the holder of a permit shall not permit any person to sell opaque beer, or manufacture or sell traditional beer, on her or his behalf unless such person is the holder of, and has authority to do so under, and is in possession of a retail permit.

Permits not transferable, etc.

10. The holder of a premises permit shall display the permit in a conspicuous place inside the premises to which it relates where it can be easily seen by persons entering therein.

Display of premises permit

11. The holder of a retail permit shall, at all times whilst engaged in the activity which is authorized by the permit, be in possession of the permit and shall, if so required by the permit officer or by any person duly authorized in writing by the Council, produce the permit to him and permit him to examine the same.

Possession and production of retail permit

12.—(1) No person being in possession of any weapon or any instrument capable of being used to inflict bodily harm shall enter or remain in any place or premises where opaque or traditional beer is being sold.

Prohibition on the carrying of any weapon, etc., where beer is being sold

(2) The holder of a permit issued under these by-laws shall not knowingly suffer or permit a person to enter or remain in the place or premises to which the permit relates while opaque or traditional beer is being sold, if such a person is in possession of any such weapon or instrument.

(3) This by-law does not apply with respect to any police officer or agent of the Chief whilst on duty and in uniform.

(4) Any person who contravenes the provisions of paragraph (1) or (2) of this by-law shall be guilty of an offence and liable to a fine of K100 and to imprisonment for a term of three months.

13. A permit officer, and any person duly authorized in writing by the Council so to do, may at any time when opaque or traditional beer is being supplied enter or remain in any place or premises with a view to ascertaining whether the provisions of the Act and of these by-laws are being complied with and, in particular, may inspect such place or premises, any article used in connexion with such supply, and may require the production for examination of any relevant permit.

Powers of permit officer and authorized person

FIRST SCHEDULE (by-laws 2 and 3)

PART A

RETAIL PERMIT TO SELL*OPAQUE/TRADITIONAL BEER

PERMIT NO. .....

THE HOLDER of this permit—

Name: .....

Address: .....

IS HEREBY AUTHORIZED to sell *Opaque/traditional beer by retail sale at:

..... on the following days, namely—

Day	*Date*	*Month*	*Year*
Monday, the	..... day of	.....,	19.....
Tuesday, the	..... day of	.....,	19.....
Wednesday, the	..... day of	.....,	19.....
Thursday, the	..... day of	.....,	19.....
Friday, the	..... day of	.....,	19.....
Saturday, the	..... day of	.....,	19.....
Sunday, the	..... day of	.....,	19.....

in accordance with the M'mbelwa District Council (Opaque and Traitional Beer) By-laws, 1985, and the relevant provisions of the Liquor Act (Cap. 50:07).

Fee paid: K ..... :..... tambala

Date of Issue: ....., 19 .....

(*to be deleted, as may be appropriate, by the Permit Officer)

NOTE: Where the issue of this permit authorizes the sell of traditional beer, the manufacture also of traditional beer for sell by retail sale is also authorized in accordance as aforesaid.

Signature of Permit Officer: .....

for M'mbelwa District Council

PART B

PREMISES PERMIT

PERMIT No. .....

THE HOLDER of this permit—

Name: .....

Address: .....

IS HEREBY AUTHORIZED to—

*sell opaque beer by retail sale

*manufacture, and sell by retail sale, traditional beer

at: .....

(*description of premises*)

for a period of ..... months from the date of issue, in accordance with M'mbelwa District Council (Opaque and Traditional Beer) By-laws, 1985, and the relevant provisions of the Liquor Act (Cap. 50:07).

Plinth Area of premises: ..... m^2

Fee paid: K.....: ..... tambala

Date of issue: ....., 19 .....

Signature of Permit Officer: .....

for M'mbelwa District Council

(*to be deleted, as may be appropriate, by the Permit Officer)

SECOND SCHEDULE (by-law 4)

FEES

	K	t
1. For a retail permit to sell traditional beer, per day . .	1	50
2. For a retail permit to sell opaque beer, per annum . .	20	00
3. For a premises permit, per annum—		
(*a*) for the sell by retail sale of opaque beer only:		
(i) plinth area not exceeding 36 m^2	20	00
(ii) plinth area exceeding 36 m^2	40	00
(*b*) for manufacture, and sell by retail sale, of the traditional beer only:		
(i) plinth area not exceeding 36 m^2	20	00
(ii) plinth area exceeding 36 m^2	40	00

MULANJE DISTRICT COUNCIL (OPAQUE AND TRADITIONAL BEER) BY-LAWS

G.N. 73/1988

Citation and application

1. These By-laws may be cited as the Mulanje District Council (Opaque and Traditional Beer) By-laws and shall apply throughout the area of jurisdiction of the Mulanje District Council.

Procedure on application for retail permit

2.—(1) Any person, being a female, who desires to sell opaque beer by retail sale shall apply to the permit officer for a retail permit.

(2) Any person who desires to manufacture, and sell by retail sale traditional beer shall apply to the permit officer for a retail permit.

(3) Subject to section 68 of the Act, the permit officer shall after receipt of the appropriate fee, issue to the applicant a retail permit in the form prescribed in Part A of the First Schedule authorizing the applicant to—

(*a*) sell opaque beer by retail sale; or

(*b*) manufacture, and sell by retail sale, traditional beer; or

(*c*) do (*a*) and (*b*) above,

as may be appropriate at such place and on such days as shall be specified therein by the permit officer in writing.

Procedure on application for premises permit

3.—(1) Any owner or lessee of premises who—

(*a*) being a female, desires to sell on the premises opaque beer by retail sale; or

(*b*) desires to manufacture, and sell by retail sale, on the premises traditional beer,

shall apply to the permit officer for a premises permit.

(2) Application for a premises permit shall be made at least three months before the date upon which the applicant desires the permit to be issued.

(3) Subject to section 68 of the Act, the permit officer shall, after receipt of the appropriate fee, issue to the applicant a premises permit in the form prescribed in Part B of the First Schedule authorizing the applicant to—

(*a*) sell opaque beer by retail sale; or

(*b*) manufacture, and sell by retail sale, traditional beer; or

(*c*) do (*a*) and (*b*) above,

as may be appropriate, on the premises specified therein by the permit officer in writing.

(4) Application for the renewal of a premises permit may be made by the holder to a permit officer on or before the 1st January in the year in which renewal is sought:

Provided that the permit officer, in his discretion, may allow such an application made on any later date up to and including the 1st February in that year, or may reject the application.

Fees for permits

4.—(1) The fee payable for the issue of a permit shall be the appropriate fee prescribed in the Second Schedule for the permit concerned.

(2) Notwithstanding the foregoing, in the case of a premises permit issued for a period of 9 months or less, the fee payable shall be a proportion of the prescribed annual fee calculated in accordance with the following table—

Period of validity of permit	*Proportion of annual fee*
(*a*) Not exceeding 3 months	$\frac{1}{4}$
(*b*) Exceeding 3 months but not exceeding 6 months	$\frac{1}{2}$
(*c*) Exceeding 6 months but not exceeding 9 months	$\frac{3}{4}$

Permitted hours

5. The permitted hours for the supply of opaque beer and traditional beer are 6 a.m. to 10 p.m., except on Martyrs' Day.

Supply of beer on credit prohibited

6. Opaque beer and traditional beer shall be supplied by the holder of a permit to a purchaser only in exchange for money actually received before or at the time of sale.

Supply of beer to young persons prohibited

7. Opaque beer and traditional beer shall not be supplied to any person who is, or appears to be, under the age of eighteen years.

Provisions as to quality and hyigene

8.—(1) The holder of a permit shall ensure that all opaque beer and traditional beer sold under the authority of the permit is sound and wholesome and that opaque beer is so sold only in sealed containers.

(2) The holder of a permit authorizing the manufacture and sale of traditional beer shall—

(*a*) keep all utensils, vessels, containers, linen, towels, clothes and all other articles whether similar to the foregoing or not, used in connexion with such manufacture and sell, in a clean and sanitary condition and in good repair;

(*b*) take all reasonable steps adequately to prevent the contamination of traditional beer manufactured and intended for sell under the authority of the permit and in particular to prevent such contamination by dust, dirt and flies;

(*c*) if the permit is a premises permit—

(i) maintain the premises concerned and the furniture therein in a clean and sanitary condition and in good repair;

(ii) provide at least one separate latrine for the use of each sex.

Permits not transferable, etc.

9. Permits are not transferable and the holder of a permit shall not permit any person to sell opaque beer, or manufacture or sell traditional beer, on her or his behalf unless such person is the holder of, and has authority to do so under, and is in possession of, a retail permit.

Display of premises permit

10. The holder of a premises permit shall display the permit in a conspicuous place inside the premises to which it relates where it can be easily seen by persons entering therein.

Possession and production of retail permit

11. The holder of a retail permit shall, at all times whilst engaged in the activity which is authorized by the permit, be in possession of the permit and shall, if so required by the permit officer or by any person duly authorized in writing by the Council, produce the permit to him and permit him to examine the same.

Prohibition on the carrying of any weapons, etc., where beer is being sold

12.—(1) No person being in possession of any weapon or any instrument capable of being used to inflict bodily harm shall enter or remain in any place or premises where opaque or traditional beer is being sold.

(2) The holder of a permit issued under these by-laws shall not knowingly suffer or permit to enter or remain in the place or premises to which the permit relates while opaque or traditional beer is being sold if such a person is in possession of any such weapon or instrument.

(3) This by-law does not apply with respect to any police officer or agent of the Chief whilst on duty and in uniform.

(4) Any person who contravenes the provisions of paragraph (1) or (2) of this by-law shall be guilty of an offence and liable to a fine of K100 and to imprisonment for a term of three months.

Powers of permit officer and authorized person

13. A permit officer, and any person duly authorized in writing by the Council so to do, may at any time when beer is being supplied enter or remain in any place or premises with a view to ascertaining whether the provisions of the Act and of these by-laws are being complied with and, in particular, may inspect such place or premises, and any article used in connexion with such supply, and may require the production for examination of any relevant permit.

FIRST SCHEDULE (by-laws 2 and 3)

PART A

RETAIL PERMIT TO SELL*OPAQUE/TRADITIONAL BEER

PERMIT No. .....

THE HOLDER of this permit—

Name: .....

Address: .....

IS HEREBY AUTHORIZED to sell *Opaque/traditional beer by retail sale at.....

.....on the following days, namely—

Day	*Date*	*Month*	*Year*
Monday, the	day of	.....	, 19.....
Tuesday, the	day of	.....	, 19.....
Wednesday, the	day of	.....	, 19.....
Thursday, the	day of	.....	, 19.....
Friday, the	day of	.....	, 19.....
Saturday, the	day of	.....	, 19.....
Sunday, the	day of	.....	, 19.....

in accordance with the Mulanje District Council (Opaque and Traditional Beer) By-laws, 1988, and the relevant provisions of the Liquor Act (Cap. 50:07).

Fee paid: K ..... :..... tambala

Date of Issue: ....., 19.....

(*to be deleted, as may be appropriate, by the Permit Officer)

NOTE: Where the issue of this permit authorizes the sale of traditional beer, the manufacture also of traditional beer for sale by retail sale is also authorized in accordance as aforesaid.

Signature of Permit Officer: .....

for Mulanje District Council

PART B

PREMISES PERMIT

PERMIT No. .....

THE HOLDER of this permit—

Name: .....

Address: .....

IS HEREBY AUTHORIZED to—

*sell opaque beer by retail sale

*manufacture, and sell by retail sale, traditional beer

at .....

(*description of premises*)

for a period of ..... months from the date of issue, in accordance with Mulanje District Council (Opaque and Traditional Beer) By-laws, 1988, and the relevant provisions of the liquor Act (Cap. 50:07).

Plinth Area of premises: ..... m^2

Fee paid: K..... tambala

Date of issue: ....., 19.....

Signature of Permit Officer: .....

for Mulanje District Council

(*to be deleted, as may be appropriate, by the Permit Officer)

SECOND SCHEDULE (by-law 4)

FEES

		K	t
1.	For a retail permit to sell traditional beer, per day ..	1	50
2.	For a retail permit to sell opaque beer, per annum ..	15	00
3.	For a premises permit, per annum—		
	(*a*) for the sell by retail sale of opaque beer only—		
	(i) plinth area not exceeding 36 m^2	25	00
	(ii) plinth area exceeding 36 m^2	55	00
	(*b*) for manufacture, and sell by retail sale, of the traditional beer only—		
	(i) plinth area not exceeding 36 m^2	25	00
	(ii) plinth area exceeding 36 m^2	55	00

MWANZA DISTRICT COUNCIL (OPAQUE AND TRADITIONAL BEER) BY-LAWS

G.N. 105/1984
118/1990

Citation and application

1. These By-laws may be cited as the Mwanza District Council (Opaque and Traditional Beer) By-laws and shall apply throughout the area of jurisdiction of the Mwanza District Council.

Procedure on application for retail permit

2.—(1) Any person, being a female, who desires to sell opaque beer by retail sale shall apply to the permit officer for a retail permit.

(2) Any person who desires to manufacture, and sell by retail sale, traditional beer shall apply to the permit officer for a retail permit.

(3) Subject to section 68 of the Act, the permit officer shall, after receipt of the appropriate fee, issue to the applicant a retail permit in the form prescribed in Part A of the First Schedule authorizing the applicant to—

(*a*) sell opaque beer by retail sale; or
(*b*) manufacture, and sell by retail sale, traditional beer; or
(*c*) do (*a*) and (*b*) above,

as may be appropriate, at such place and such days as shall be specified therein by the permit officer in writing.

Procedure on application for premises permit

3.—(1) Any owner or lessee of premises who—

(*a*) being a female desires to sell on the premises opaque beer by retail sale; or

(*b*) desires to manufacture, and sell by retail sale, on the premises traditional beer,

shall apply to the permit officer for a premises permit.

(2) Application for a premises permit shall be made at least three months before the date upon which the applicant desires the permit to be issued.

(3) Subject to section 68 of the Act, the permit officer shall, after receipt of the appropriate fee, issue to the applicant a premises permit in the form prescribed in Part B of the First Schedule authorizing the applicant to—

(*a*) sell opaque beer by retail sale; or

(*b*) manufacture, and sell by retail sale, traditional beer; or

(*c*) do (*a*) and (*b*) above,

as may be appropriate, on the premises specified therein by the permit officer in writing.

(4) Application for the renewal of a premises permit may be made by the holder to a permit officer on or before the 1st January in the year in which renewal is sought:

Provided that the permit officer may, in his discretion, allow such an application made on any later date up to and including the 1st February in the year, or may reject the application.

Fees for permit

4.—(1) The fee payable for the issue of a permit shall be the appropriate fee prescribed in the Second Schedule for the permit concerned.

(2) Notwithstanding the foregoing, in the case of a premises permit issued for a period of less than a year, the fee payable shall be a proportion of the prescribed annual fee calculated in accordance with the following table—

Period of validity of permit	*Proportion of annual fee*
(*a*) Not exceeding 3 months	$\frac{1}{4}$
(*b*) Exceeding 3 months but not exceeding 6 months	$\frac{1}{2}$
(*c*) Exceeding 6 months but not exceeding 9 months	$\frac{3}{4}$

Permitted hours

5. The permitted hours for the supply of opaque beer and traditional beer are 6 a.m. to 10 p.m., except on Martyrs' Day.

Supply of beer on credit prohibited

6. Opaque beer and traditional beer shall be supplied by the holder of a permit to a purchaser only in exchange for money actually received before or at the time of sale.

Supply of beer to young persons prohibited

7. Opaque beer and traditional beer shall not be supplied to any person who is, or who appears to be, under the age of eighteen years.

Provision as to quality and hygiene

8.—(1) The holder of a permit shall ensure that all opaque beer and traditional beer sold under the authority of the permit is sound and wholesome and that opaque beer is so sold only in sealed containers.

(2) The holder of a permit authorizing the manufacture and sale of traditional beer shall—

(*a*) keep all utensils, vessels, containers, linen, towels, clothes and all other articles whether similar to the foregoing or not, used in connexion with such manufacture and sale, in a clean and sanitary condition and in good repair;

(*b*) take all reasonable steps adequately to prevent the contamination of traditional beer manufactured and intended for sale under the authority of the permit, and in particular to prevent such contamination by dust, dirt and flies.

(*c*) if the permit is a premises permit—

(i) maintain the premises concerned and the furniture therein in a clean and sanitary condition and good repairs;

(ii) provide at least one latrine for the use of each sex.

Permits not transferable, etc.

9. Permits are not transferable and the holder of a permit shall not permit any person to sell opaque beer, or manufacture or sell traditional beer, on her or his behalf unless such person is the holder of, and has authority to do so under, and is in possession of a retail permit.

Display of premises permit

10. The holder of a premises permit shall display the permit in a conspicuous place inside the premises to which it relates where it can be easily seen by persons entering therein.

Possession and production of retail permit

11. The holder of a retail permit shall at all times whilst engaged in the activity which is authorized by the permit, be in possession of the permit and shall, if so required by the permit officer or by any person duly authorized in writing by the Council, produce the permit to him and permit him to examine the same.

Prohibition on the carrying of any weapon etc., where beer is being sold

12.—(1) No person being in possession of any weapon or any instrument capable of being used to inflict bodily harm shall enter or remain in any place or premises where opaque or traditional beer is being sold.

(2) The holder of a permit issued under these by-laws shall not knowingly suffer or permit a person to enter or remain in the place or premises to which the permit relates while opaque or traditional beer is being sold if such a person is in possession of any such weapon or instrument.

(3) This by-law does not apply with respect to any police officer or agent of the Chief while on duty and in uniform.

(4) Any person who contravenes the provisions of paragraph (1) or (2) of this by-law shall be guilty of an offence and liable to a fine of K100 and to imprisonment for a term of three months.

Power of permit officer and authorized person

13. A permit officer, and any person duly authorized in writing by the Council so to do may at any time when beer is being supplied enter or remain in any place or premises with a view to ascertaining whether the provisions of the Act and these by-laws

are complied with and, in particular, may inspect such place or premises, and any article used in connexion with such supply, and may require the production for examination of any relevant permit.

FIRST SCHEDULE (by-laws 2 and 3)

PART A

RETAIL PERMIT TO SELL*OPAQUE/TRADITIONAL BEER

PERMIT No. .....

THE HOLDER of this permit—

Name: .....

Address: .....

IS HEREBY AUTHORIZED to sell *Opaque/traditional beer by retail sale at: .....

on the following days, namely—

Day	*Date*	*Month*	*Year*
Monday, the	..... day of	.....	, 19.....
Tuesday, the	..... day of	.....	, 19.....
Wednesday, the	..... day of	.....	, 19.....
Thursday, the	..... day of	.....	, 19.....
Friday, the	..... day of	.....	, 19.....
Saturday, the	..... day of	.....	, 19.....
Sunday, the	..... day of	.....	, 19.....

in accordance with the Mwanza District Council (Opaque and Traditional Beer) By-laws, 1984, and the relevant provisions of the Liquor Act (Cap. 50:07).

Fee paid: K ..... :..... tambala

Date of Issue: ....., 19 .....

(*to be deleted, as may be appropriate, by the Permit Officer)

NOTE: Where the issue of this permit authorizes the sell of traditional beer, the manufacture also of traditional beer for sell by retail sale is also authorized in accordance as aforesaid.

Signature of Permit Officer: .....

for Mwanza District Council

PART B

PREMISES PERMIT

PERMIT No. .....

THE HOLDER of this permit—

Name: .....

Address: .....

IS HEREBY AUTHORIZED to—

*sell opaque beer by retail sale

*manufacture, and sell by retail sale, traditional beer

at: .....

(*description of premises*)

for a period of ..... months from the date of issue, in accordance with Mwanza District Council (Opaque and Traditional Beer) By-laws, 1984, and the relevant provisions of the Liquor Act (Cap. 50:07).

Plinth Area of premises: ..... m^2

Fee paid: K ..... :..... tambala

Date of issue: ....., 19 .....

Signature of Permit Officer: .....

for Mwanza District Council

(*to be deleted, as may be appropriate, by the Permit Officer)

SECOND SCHEDULE (by-law 4) G.N. 118/1990

FEES

	K	t
1. For a retail permit to sell traditional beer, per day	2	00
2. For a retail permit to sell opaque beer, per delivery . .	1	50
3. For a premises permit, per annum—		
(*a*) for the sell by retail sale of opaque beer only	24	00
(*b*) for manufacture, and sell by retail sale of traditional beer only	24	00

NKHATA BAY DISTRICT COUNCIL (OPAQUE AND TRADITIONAL BEER) BY-LAWS

G.N. 124/1987

Citation and application

1. These By-laws may be cited as the Nkhata Bay District Council (Opaque and Traditional Beer) By-laws and shall apply throughout the area of jurisdiction of Nkhata Bay District Council.

Procedure on application for retail permit

2.—(1) Any person, being a female, who desires to sell opaque beer by retail sale, shall apply to the permit officer for a retail permit.

(2) Any person who desires to manufacture, and sell by retail sale, traditional beer shall apply to the permit officer for a retail permit.

(3) Subject to section 68 of the Act, the permit officer shall after receipt of the appropriate fee, issue to the applicant a retail permit in the form prescribed in Part A of the First Schedule authorizing the application to—

(*a*) sell opaque beer by retail sale; or

(*b*) manufacture, and sell by retail sale, traditional beer; or

(*c*) do (*a*) and (*b*) above,

as may be appropriate, at such place and such days as shall be specified therein by the permit officer in writing.

Procedure on application for premises permit

3.—(3) Any owner or lessee of premises who—

(*a*) being a female, desires to sell on the premises opaque beer by retail sale; or

(*b*) desires to manufacture, and sell by retail sale, on the premises traditional beer,

shall apply to the permit officer for a premises permit.

(2) Application for a premises permit shall be made at least three months before the date upon which the applicant desires the permit to be issued.

(3) Subject to section 68 of the Act, the permit officer shall, after receipt of the appropriate fee, issue to the applicant a premises permit in the form prescribed in Part B of the First Schedule authorizing the applicant to—

(*a*) sell opaque beer by retail sale; or

(*b*) manufacture, and sell by retail sale, traditional beer; or

(*c*) do (*a*) and (*b*) above,

as may be appropriate, on the premises specified therein by the permit officer in writing.

(4) Application for the renewal of a premises permit may be made by the holder to a permit officer on or before the 1st January in the year in which renewal is sought:

Provided that the permit officer, in his discretion, may allow such an application made on any later date up to and including the 1st February in that year, or may reject the application.

Fees for permits

4.—(1) The fee payable for the issue of a permit shall be the appropriate fee prescribed in the Second Schedule for the permit concerned.

(2) Notwithstanding the foregoing, in the case of a premises permit issued for a period of 9 months or less, the fee payable shall be a proportion of the prescribed annual fee calculated in accordance with the following table—

Period of validity of permit	*Proportion of annual fee*
(*a*) Not exceeding 3 months	$\frac{1}{4}$
(*b*) Exceeding 3 months but not exceeding 6 months	$\frac{1}{2}$
(*c*) Exceeding 6 months but not exceeding 9 months	$\frac{3}{4}$

Permitted hours

5. The permitted hours for the supply of opaque beer and traditional beer are 6 a.m. to 10 p.m. except on Martyrs' Day.

Supply of beer on credit prohibited

6. Opaque beer and traditional beer shall be supplied by the holder of a permit to a purchaser only in exchange for money actually received before or at the time of sale.

Supply of beer to young persons prohibited

7. Opaque beer and traditional beer shall not be supplied to any person who is, or appears to be, under the age of eighteen years.

Provisions as to quality and hygiene

8.—(1) The holder of a permit shall ensure that all opaque beer and traditional beer sold under the authority of the permit is sound and wholesome and that opaque beer is so sold only in sealed containers.

(2) The holder of a permit authorizing the manufacture and sale of traditional beer shall—

(*a*) keep all utensils, vessels, containers, linen, towels, clothes, and all other articles whether similar to the foregoing or not, used in connexion with such manufacture and sale, in a clean and sanitary condition and in good repair;

(*b*) take all reasonable steps adequately to prevent the contamination of traditional beer manufactured and intended for sale under the authority of the permit, and in particular to prevent such contamination by dust, dirt and flies;

(*c*) if the permit is premises permit—

(i) maintain the premises concerned and the furniture therein in a clean and sanitary condition and in good repair; and

(ii) provide at least one separate latrine for the use of each sex.

Permits not transferable, etc.

9. Permits are not transferable and the holder of a permit shall not permit any person to sell opaque beer, or manufacture or sell traditional beer on her behalf unless such person is the holder of and has authority to do so under, and is in possession of retail permit.

Display of premises permits

10. The holder of a premises permit shall display the permit in a conspicuous place inside the premises to which it relates where it can be easily seen by persons entering therein.

possession and production of retail permit

11. The holder of a retail permit shall at all times whilst engaged in the activity which is authorized by the permit, be in possession of the permit and shall, if so required by the permit officer or by any person duly authorized in writing by the Council, produce the permit to him and permit him to examine the same.

Prohibition on the carrying of any weapon, etc., where beer is sold

12.—(1) No person being in possession of any weapon or any instrument capable of being used to inflict bodily harm shall enter or remain in any place or premises where opaque or traditional beer is being sold.

(2) The holder of a permit issued under these By-laws shall not knowingly suffer or permit a person to enter or remain in the place or premises to which the permit relates while opaque or traditional beer is being sold, if such a person is in possession of any such weapon or instrument.

(3) This By-law does not apply with respect to any police officer or agent of the Chief whilst on duty and in uniform.

(4) Any person who contravenes the provisions of paragraph (1) or (2) of this By-law shall be guilty of an offence and liable to a fine of K100 and to imprisonment for a term of six months.

Powers of permit officer and authorized persons

13. A permit officer, and any person duly authorized in writing by the Council so to do may at any time when opaque or traditional beer is being supplied enter or remain in any place of premises with a view to ascertaining whether the provisions of the Act of these By-laws are being complied with and, in particular, may inspect such place or premises, any article used in connexion with such supply, and may require the production for examination of any relevant permit.

FIRST SCHEDULE (by-laws 2 and 3)

PART A

RETAIL PERMIT TO SELL*OPAQUE/TRADITIONAL BEER

PERMIT No. .....

THE HOLDER of this permit—

Name: .....

Address: .....

IS HEREBY AUTHORIZED to sell *Opaque/traditional beer by retail on the following days, namely—

Day	*Date*	*Month*	*Year*
Monday, the	..... day of	.....,	19.....
Tuesday, the	..... day of	.....,	19.....
Wednesday, the	..... day of	.....,	19.....
Thursday, the	..... day of	.....,	19.....
Friday, the	..... day of	.....,	19.....
Saturday, the	..... day of	.....,	19.....
Sunday, the	..... day of	.....,	19.....

in accordance with the Nkhata Bay District Council (Opaque and Traditional Beer) By-laws, 1987, and the relevant provisions of the Liquor Act (Cap. 50:07).

Fee paid: K ..... :..... tambala

Date of Issue: ....., 19.....

(*to be deleted, as may be appropriate, by the Permit Officer)

NOTE: Where the issue of this permit authorizes the sell of traditional beer, the manufacture also of traditional beer for sell by retail sale is also authorized in accordance as aforesaid.

Signature of Permit Officer: .....

for Nkhata District Council

PART B

PREMISES PERMIT

PERMIT No. .....

THE HOLDER of this permit—

Name: .....

Address: .....

IS HEREBY AUTHORIZED to—

*sell opaque beer by retail sale

*manufacture, and sell by retail sale, traditional beer

at ..... for a

(*description of premises*)

period of ..... months from the date of issue, in accordance with Nkhata District Council (Opaque and Traditional Beer) By-laws, 1987, and the relevant provisions of the Liquor Act (Cap. 50:07).

Plinth Area of premises: ..... m^2

Fee paid: K ..... :..... tambala

Date of issue: ....., 19 .....

Signature of Permit Officer: .....

for Nkhata District Council

(*to be deleted, as may be appropriate, by the Permit Officer)

SECOND SCHEDULE (by-law 4)

FEES

	K	t
1. For a Retail Permit to sell traditional beer, per day ..	1	50
2. For a Retail Permit to sell opaque beer per annum—		
(*a*) at Nkhata Bay Boma	25	00
(*b*) at any other place	15	00
3. For a premises permit, per annum—		
(*a*) for the sale of opaque beer only:		
(i) Plinth area not exceeding 36 m^2	25	00
(ii) Plinth area exceeding 36 m^2	55	00
(*b*) for the manufacture, and sell by retail sale, of traditional beer only—		
(i) plinth area not exceeding 36 m^2	25	00
(ii) plinth area exceeding 36 m^2	55	00

NSANJE DISTRICT COUNCIL (OPAQUE AND TRADITIONAL BEER) BY-LAWS

G.N. 51/1986
72/1989

Citation and application

1. These By-laws may be cited as the Nsanje District Council (Opaque and Traditional Beer) By-laws and shall apply throughout the area of jurisdiction of the Nsanje District Council.

Procedure on application for retail permit

2.—(1) Any person, being a female, who desires to sell opaque beer by retail sale shall apply to the permit officer for a retail permit.

(2) Any person who desires to manufacture, and sell by retail sale, traditional beer, shall apply to the permit officer for a retail permit.

(3) Subject to section 68 of the Act, the permit officer shall, after receipt of the appropriate fee, issue to the applicant a retail permit in the form prescribed in Part A of the First Schedule authorizing the applicant to—

(*a*) sell opaque beer by retail sale; or

(*b*) manufacture, and sell by retail sale, traditional beer; or

(*c*) do (*a*) and (*b*) above,

as may be appropriate, at such place and on such days as shall be specified therein by the permit officer in writing.

Procedure on application for premises permit

3.—(1) Any owner or lessee of premises who—

(*a*) being a female, desires to sell on the premises opaque beer by retail sale; or

(*b*) desires to manufacture, and sell by retail sale, on the premises traditional beer,

shall apply to the permit officer for a premises permit.

(2) Application for a premises permit shall be made at least three months before the date upon which the applicant desires the permit to be issued.

(3) Subject to section 68 of the Act, the permit officer shall, after receipt of the appropriate fee, issue to the applicant a premises permit in the form prescribed in Part B of the First Schedule authorizing the applicant to—

(*a*) sell opaque beer by retail sale; or

(*b*) manufacture, and sell by retail sale, traditional beer; or

(*c*) do (*a*) and (*b*) above,

as may be appropriate, on the premises specified therein by the permit officer in writing.

(4) Application for the renewal of a premises permit may be made by the holder to a permit officer on or before the 1st January in the year in which renewal is sought:

Provided that the permit officer, in his discretion, may allow such an application made on any later date up to and including the 1st February in that year, or may reject the application.

Fees for permit

4.—(1) The fee payable for the issue of a permit shall be the appropriate fee prescribed in the Second Schedule for the permit concerned.

(2) Notwithstanding the foregoing, in the case of a premises permit issued for a period of nine months or less, the fee payable shall be a proportion of the prescribed annual fee calculated in accordance with the following table—

Period of validity of permit	*Proportion of annual fee*
(*a*) Not exceeding 3 months	$\frac{1}{4}$
(*b*) Exceeding 3 months but not exceeding 6 months	$\frac{1}{2}$
(*c*) Exceeding 6 months but not exceeding 9 months	$\frac{3}{4}$

Permitted hours

5. The permitted hours for the supply of opaque beer and traditional beer are 6 a.m. to 10 p.m., except on Martyrs' Day.

Supply of beer on credit prohibited

6. Opaque beer and traditional beer shall be supplied by the holder of a permit to a purchaser only in exchange for money actually received before or at the time of sale.

Supply of beer to young persons prohibited

7. Opaque beer and traditional beer shall not be supplied to any person who is, or who appears to be, under the age of eighteen years.

Provisions as to quality and hygiene

8.—(1) The holder of a permit shall ensure that all opaque beer and traditional beer sold under the authority of the permit is sound and wholesome and that opaque beer is so sold only in sealed containers.

(2) The holder of a permit authorizing the manufacture and sale of traditional beer shall—

(*a*) keep all utensils, vessels, containers, linen, towels, clothes and all other articles whether similar to the foregoing or not, used in connexion with such manufacture and sale, in a clean and sanitary condition and in good repair;

(*b*) take all reasonable steps adequately to prevent the contamination of traditional beer manufactured and intended for sale under the authority of the permit, and in particular to prevent such contamination by dust, dirt and flies;

(*c*) if the permit is a premises permit—

(i) maintain the premises concerned and the furniture therein in a clean and sanitary condition and in good repair;

(ii) provide at least one separate latrine for the use of each sex.

Permits not transferable, etc.

9. Permits are not transferable and the holder of a permit shall not permit any person to sell opaque beer, or manufacture or sell traditional beer, on her or his behalf unless such person is the holder of, and has authority to do so under, and is in possession of, a retail permit.

Display of premises permit

10. The holder of a premises permit shall display the permit in a conspicuous place inside the premises to which it relates where it can be easily seen by persons entering therein.

Possession and production of retail permit

11. The holder of a retail permit shall, at all times whilst engaged in the activity which is authorized by the permit, be in possession of the permit and shall, if so required by the permit officer or by any person duly authorized in writing by the Council, produce the permit to him and permit him to examine the same.

Prohibition on the carrying of any weapon, etc., where beer is being sold

12.—(1) No person being in possession of any weapon or any instrument capable of being used to inflict bodily harm shall enter or remain in any place or premises where opaque or traditional beer is being sold.

(2) The holder of a permit issued under these by-laws shall not knowingly suffer or permit a person to enter or remain in the place or premises to which the permit relates while opaque or traditional beer is being sold if such a person is in possession of any such weapon or instrument.

(3) This by-law does not apply with respect to any police officer or agent of the Chief whilst on duty and in uniform.

(4) Any person who contravenes the provisions of paragraph (1) or (2) of this by-law shall be guilty of an offence and liable to a fine of K100 and to imprisonment for a term of three months.

Powers of permit officer and authorized person

13. A permit officer, and any person duly authorized in writing by the Council so to do, may at any time when beer is being supplied enter or remain in any place or premises with a view to ascertaining whether the provisions of the Act and of these by-laws are being complied with and, in particular, may inspect such place or premises, and any article used in connexion with such supply, and may require the production for examination of any relevant permit.

FIRST SCHEDULE (by-laws 2 and 3)

PART A

RETAIL PERMIT TO SELL*OPAQUE/TRADITIONAL BEER

PERMIT No. .....

THE HOLDER of this permit—

Name: .....

Address: .....

IS HEREBY AUTHORIZED to sell *Opaque/traditional beer by retail sale at: ..... on the following days, namely—

Day	*Date*	*Month*	*Year*
Monday, the	..... day of	.....	, 19.....
Tuesday, the	..... day of	.....	, 19.....
Wednesday, the	..... day of	.....	, 19.....
Thursday, the	..... day of	.....	, 19.....
Friday, the	..... day of	.....	, 19.....
Saturday, the	..... day of	.....	, 19.....
Sunday, the	..... day of	.....	, 19.....

in accordance with the Nsanje District Council (Opaque and Traditional Beer) By-laws, 1986, and the relevant provisions of the Liquor Act (Cap. 50:07).

Fee paid: K ..... :..... tambala

Date of Issue: ....., 19.....

(*to be deleted, as may be appropriate, by the Permit Officer)

NOTE: Where the issue of this permit authorizes the sell of traditional beer, the manufacture also of traditional beer for sell by retail sale is also authorized in accordance as aforesaid.

Signature of Permit Officer: .....

for Nsanje District Council

PART B

PREMISES PERMIT

PERMIT No. .....

THE HOLDER of this permit—

Name: .....

Address: .....

IS HEREBY AUTHORIZED to—

*sell opaque beer by retail sale

*manufacture, and sell by retail sale, traditional beer

at: ..... for

(*description of premises*)

a period of ..... months from the date of issue, in accordance with Nsanje District Council (Opaque and Traditional Beer) By-laws, 1986, and the relevant provisions of the Liquor Act (Cap. 50:07).

Plinth Area of premises: ..... m^2

Fee paid: K ..... :..... tambala

Date of issue: ....., 20.....

Signature of Permit Officer: .....

for Nsanje District Council

(*to be deleted, as may be appropriate, by the Permit Officer)

SECOND SCHEDULE (by-law 4) G.N. 72/1989

FEES

	K	t
1. For a retail permit to sell traditional beer, per day	1	50
2. (*a*) For a retail permit to sell opaque beer in a Council own beer hall, per day	1	00
(*b*) For a retail permit to sell opaque beer, per annum . .	25	00
3. For a premises permit, per year		
(*a*) for the sale of opaque beer only:		
(i) plinth area not exceeding 36 m^2	24	00
(ii) plinth area exceeding 36 m^2	32	00
(*b*) for manufacture, and sell by retail sale of traditional beer only:		
(i) plinth area not exceeding 36 m^2	24	00
(ii) plinth area exceeding 36 m^2	32	00

[Subsidiary] *Ntcheu District Council (Opaque and Traditional Beer) By-laws*

G.N. 22/1995
104/1995

NTCHEU DISTRICT COUNCIL (OPAQUE AND TRADITIONAL BEER) BY-LAWS

Citation and application

1. These By-laws may be cited as the Ntcheu District Council (Opaque and Traditional Beer) By-laws and shall apply throughout the area of jurisdiction of the Ntcheu District Council.

Procedure on application for retail permit

2.—(1) Any person, being a female, who desires to sell opaque beer by retail sale shall apply to the permit officer for a retail permit.

(2) Any person who desires to manufacture, and sell by retail sale, traditional beer shall apply to the permit officer for a retail permit.

(3) Subject to section 68 of the Act, the permit officer shall, after receipt of the appropriate fee, issue to the applicant a retail permit in the form prescribed in Part A of the First Schedule authorizing the applicant to—

(*a*) sell opaque beer by retail sale; or

(*b*) manufacture, and sell by retail sale, traditional beer; or

(*c*) do (*a*) and (*b*) above,

as may be appropriate, at such place and on such day as shall be specified therein by the permit officer in writing.

Procedure on application for premises permit

3.—(1) Any owner or lessee of premises who—

(*a*) being a female, desires to sell on the premises opaque beer by retail sale; or

(*b*) desires to manufacture, and sell by retail sale, on the premises traditional beer,

shall apply to the permit officer for a premises permit.

(2) Application for a premises permit shall be made at least three months before the date upon which the applicant desires the permit to be issued.

(3) Subject to section 68 of the Act, the permit officer shall, after receipt of the appropriate fee, issue to the applicant a premises permit in the form prescribed in Part B of the First Schedule authorizing the applicant to—

(*a*) sell opaque beer by retail sale; or

(*b*) manufacture, and sell by retail sale, traditional beer; or

(*c*) do (*a*) and (*b*) above,

as may be appropriate, on the premises specified therein by the permit officer in writing.

(4) Application for the renewal of a premises permit may be made by the holder to a permit officer on or before the 1st January in the year in which renewal is sought:

Provided that the permit officer, in his discretion, may allow such an application made on any later date up to and including the 1st February in that year, or may reject the application.

Fees for permit

4.—(1) The fee payable for the issue of a permit shall be the appropriate fee prescribed in the Second Schedule for the permit concerned.

(2) Notwithstanding the foregoing, in the case of a premises permit issued for a period of 9 months or less, the fee payable shall be a proportion of the prescribed annual fee calculated in accordance with the following table—

Period of validity of permit	*Proportion of annual fee*
(*a*) Not exceeding 3 months	$\frac{1}{4}$
(*b*) Exceeding 3 months but not exceeding 6 months	$\frac{1}{2}$
(*c*) Exceeding 6 months but not exceeding 9 months	$\frac{3}{4}$

Permitted hours

5. The permitted hours for the supply of opaque beer and traditional beer are 6 a.m. to 10 p.m., except on Martyrs' Day.

Supply of beer on credit prohibited

6. Opaque beer and traditional beer shall be supplied by the holder of a permit to a purchaser only in exchange for money actually received before or at the time of sale.

Supply of beer to young persons prohibited

7. Opaque beer and traditional beer shall not be supplied to any person who is, or appears to be, under the age of eighteen years.

Provisions as to quality and hygiene

8.—(1) The holder of a permit shall ensure that all opaque beer and traditional beer sold under the authority of the permit is sound and wholesome and that opaque beer is so sold only in sealed containers.

(2) The holder of a permit authorizing the manufacture and sale of traditional beer shall—

(*a*) keep all utensils, vessels, containers, linen, towels, clothes and all other articles whether similar to the foregoing or not, used in connexion with such manufacture and sale, in a clean and sanitary condition and in good repair;

(*b*) take all reasonable steps adequately to prevent the contamination of traditional beer manufactured and intended for sale under the authority of the permit and in particular to prevent such contamination by dust, dirt and flies;

(*c*) If the permit is a premises permit—

(i) maintain the premises concerned and the furniture therein in a clean and sanitary condition and in good repair;

(ii) provide at least one separate latrine for the use of each sex.

Permits not transferable, etc.

9. Permits are not transferable and the holder of a permit shall not permit any person to sell opaque beer, or manufacture or sell traditional beer, on her or his behalf unless such person is the holder of, and has authority to do so under, and is in possession of, a retail permit.

Display of premises permit

10. The holder of a premises permit shall display the permit in a conspicuous place inside the premises to which it relates where it can be easily seen by persons entering therein.

Possession and production of permit

11. The holder of a retail permit shall, at all times whilst engaged in the activity which is authorized by the permit, be in possession of the permit and shall, if so required by the permit officer or by any person duly authorized in writing by the Council, produce the permit to him and permit him to examine the same.

Prohibition on the carrying of any weapon, etc., where beer is being sold

12.—(1) No person being in possession of any weapon or any instrument capable of being used to inflict bodily harm shall enter or remain in any place or premises where opaque or traditional beer is being sold.

(2) The holder of a permit issued under these by-laws shall not knowingly suffer or permit a person to enter or remain in the place or premises to which the permit relates while opaque or traditional beer is being sold if such a person is in possession of any such weapon or instrument.

(3) This by-law does not apply with respect to any police officer or agent of the Chief whilst on duty and in uniform.

(4) Any person who contravenes the provisions of paragraph (1) or (2) of this by-law shall be guilty of an offence and liable to a fine of K100 and to imprisonment for a term of three months.

Powers of permit officer and authorized person

13. A permit officer, and any person duly authorized in writing by the Council so to do, may at any time when beer is being supplied enter or remain in any place or premises with a view to ascertaining whether the provisions of the Act and of these by-laws are being complied with and, in particular, may inspect such place or premises, and any article used in connexion with such supply, and may require the production for examination of any relevant permit.

(by-laws 2 and 3)

FIRST SCHEDULE

PART A

Retail Permit to Sell*Opaque/Traditional Beer

Permit No. .....

The Holder of this permit—

Name: .....

Address: .....

IS HEREBY AUTHORIZED to sell *Opaque/traditional beer by retail sale at: ..... on the following days, namely—

Day	*Date*	*Month*	*Year*
Monday, the	..... day of	.....,	19.....
Tuesday, the	..... day of	.....,	19.....
Wednesday, the	..... day of	.....,	19.....
Thursday, the	..... day of	.....,	19.....
Friday, the	..... day of	.....,	19.....
Saturday, the	..... day of	.....,	19.....
Sunday, the	..... day of	.....,	19.....

in accordance with the Ntcheu District Council (Opaque and Traditional Beer) By-laws, 1988, and the relevant provisions of the Liquor Act (Cap. 50:07).

Fee paid: K ..... tambala

Date of Issue: ....., 19.....

(*to be deleted, as may be appropriate, by the Permit Officer)

NOTE: Where the issue of this permit authorizes the sale of traditional beer, the manufacture also of traditional beer for sale is also authorized in accordance as aforesaid.

Signature of Permit Officer: .....

for Ntcheu District Council

PART B

PREMISES PERMIT

PERMIT No. .....

THE HOLDER of this permit—

Name: .....

Address: .....

IS HEREBY AUTHORIZED to—

*sell opaque beer by retail sale

*manufacture, and sell by retail sale, traditional beer

at: .....

(*description of premises*)

for a period of ..... months from the date of issue, in accordance with Ntcheu District Council (Opaque and Traditional Beer) By-laws, 1988, and the relevant provisions of the Liquor Act (Cap. 50:07).

Plinth Area of premises: ..... m^2

Fee paid: K ..... tambala

Date of issue: ....., 19.....

Signature of Permit Officer: .....

for Ntcheu District Council

(*to be deleted, as may be appropriate, by the Permit Officer)

(by-law 4) SECOND SCHEDULE

FEES

	K	t
1. For a retail permit to sell traditional beer, per day . .	5	00
2. For a retail permit to sell opaque beer, per annum . .	30	00
3. For a premises permit, per annum—		
(*a*) for the sell by retail sale of opaque beer only—		
(i) plinth area not exceeding 36 m^2	40	00
(ii) plinth area exceeding 36 m^2	50	00
(*b*) for manufacture, and sale by retail sale of the traditional beer only—		
(i) plinth area not exceeding 36 m^2	40	00
(ii) plinth area exceeding 36 m^2	50	00

G.N. 112/1984
12/1996

NTCHISI DISTRICT COUNCIL (OPAQUE AND TRADITIONAL BEER) BY-LAWS

Citation and application

1. These By-laws may be cited as the Ntchisi District Council (Opaque and Traditional Beer) By-laws and shall apply throughout the area of jurisdiction of the Ntchisi District Council.

Procedure on application for retail permit

2.—(1) Any person, being a female, who desires to sell opaque beer by retail sale shall apply to the permit officer for a retail permit.

(2) Any person who desires to manufacture, and sell by retail sale, traditional beer shall apply to the permit officer for a retail permit.

(3) Subject to section 68 of the Act, the permit officer shall, after receipt of the appropriate fee, issue to the applicant a retail permit in the form prescribed in Part A of the First Schedule authorizing the applicant to—

(*a*) sell opaque beer by retail sale; or
(*b*) manufacture, and sell by retail sale, traditional beer; or
(*c*) do (*a*) and (*b*) above,

as may be appropriate, at such place and on such days as shall be specified therein by the permit officer in writing.

Procedure on application for premises permit

3.—(1) Any owner or lessee of premises who—

(*a*) being a female, desires to sell on the premises opaque beer by retail sale; or

(*b*) desires to manufacture, and sell by retail sale, on the premises traditional beer,

shall apply to the permit officer for a premises permit.

(2) Application for a premises permit shall be made at least three months before the date upon which the applicant desires the permit to be issued.

(3) Subject to section 68 of the Act, the permit officer shall, after receipt of the appropriate fee, issue to the applicant a premises permit in the form prescribed in Part B of the First Schedule authorizing the applicant to—

(*a*) sell opaque beer by retail sale; or

(*b*) manufacture, and sell by retail sale, traditional beer; or

(*c*) do (*a*) and (*b*) above,

as may be appropriate, on the premises specified therein by the permit officer in writing.

(4) Application for the renewal of a premises permit may be made by the holder to a permit officer on or before the 1st January in the year in which renewal is sought:

Provided that the permit officer, in his discretion, may allow such an application made on any later date up to and including the 1st February in the year, or may reject the application.

Fees for permits

4.—(1) The fee payable for the issue of a permit shall be the appropriate fee prescribed in the Second Schedule for the permit concerned.

(2) Notwithstanding the foregoing, in the case of a premises permit issued for a period of 9 months or less, the fee payable shall be a proportion of the prescribed annual fee calculated in accordance with the following table—

Period of validity of permit	*Proportion of annual fee*
(*a*) Not exceeding 3 months	$\frac{1}{4}$
(*b*) Exceeding 3 months but not exceeding 6 months	$\frac{1}{2}$
(*c*) Exceeding 6 months but not exceeding 9 months	$\frac{3}{4}$

Permitted hours

5. The permitted hours for the supply of opaque beer and traditional beer are 6 a.m. to 10 p.m., except on Martyrs' Day.

Supply of beer on credit

6. Opaque beer and traditional beer shall be supplied by the holder of a permit to a purchaser only in exchange for money actually received before or at the time of sale.

Supply of beer to young persons prohibited

7. Opaque beer and traditional beer shall not be supplied to any person who is, or who appears to be, under the age of eighteen years.

Provisions as to quality and hygiene

8.—(1) The holder of a permit shall ensure that all opaque and traditional beer sold under the authority of the permit is sound and wholesome and that opaque beer is so sold only in sealed containers.

(2) The holder of a permit authorizing the manufacture and sale of traditional beer shall—

(*a*) keep all utensils, vessels, containers, linen, towels, clothes, and all other articles whether similar to the foregoing or not, used in connexion with such manufacture and sale, in a clean and sanitary condition and in good repair;

(*b*) take all reasonable steps adequately to prevent the contamination of traditional beer manufactured and intended for sale under the authority of the permit, and in particular to prevent such contamination by dust, dirt and flies;

(*c*) if the permit is a premises permit—

(i) maintain the premises concerned and the furniture therein in a clean and sanitary condition and in good repair;

(ii) provide at least one separate latrine for the use of each sex.

Permits not transferable, etc.

9. Permits are not transferable and the holder of a permit shall not permit any person to sell opaque beer or manufacture or sell traditional beer, on her or his behalf unless such person is the holder of, and has authority to do so under, and is in possession of, a retail permit.

Display of premises permit

10. The holder of a premises permit shall display the permit in a conspicuous place inside the premises to which it relates where it can be easily seen by persons entering therein.

Possession and production of retail permit

11. The holder of a retail permit shall, at all times whilst engaged in the activity which is authorized by the permit be in possession of the permit and shall, if so required by the permit officer or by any person duly authorized in writing by the Council, produce the permit to him and permit him to examine the same.

Prohibition on the carrying of any weapon, etc., where beer is being sold

12.—(1) No person being in possession of any weapon or any instrument capable of being used to inflict bodily harm shall enter or remain in the place or premises to which the permit relates while opaque or traditional beer is being sold.

(2) The holder of a permit issued under these by-laws shall not knowingly suffer or permit a person to enter or remain in the place or premises to which the permit relates while opaque or traditional beer is being sold if such a person is in possession of any such weapon or instrument.

(3) This by-law does not apply with respect to any police officer or agent of the Chief whilst on duty and in uniform.

(4) Any person who contravenes the provisions of paragraph (1) or (2) of this by-law shall be guilty of an offence and liable to a fine of K100 and to imprisonment for a term of three months.

Powers of permit officer and authorized persons

13. A permit officer, and any person duly authorized in writing by the Council so to do, may at any time when opaque or traditional beer is being supplied enter or remain in any place or premises with a view to ascertaining whether the provisions of the Act and of these by-laws are being complied with and, in particular, may inspect such place or premises, and any article used in connexion with such supply, and may require the production for examination of any relevant permit.

(by-laws 2 and 3) FIRST SCHEDULE

PART A

RETAIL PERMIT TO SELL *OPAQUE/TRADITIONAL BEER

PERMIT NO. .....

THE HOLDER of this permit—

Name: .....

Address: .....

IS HEREBY AUTHORIZED to sell *Opaque/traditional beer by retail sale at: .....
on the following days, namely—

Day	*Date*	*Month*	*Year*
Monday, the	..... day of	.....,	19.....
Tuesday, the	..... day of	.....,	19.....
Wednesday, the	..... day of	.....,	19.....
Thursday, the	..... day of	.....,	19.....
Friday, the	..... day of	.....,	19.....
Saturday, the	..... day of	.....,	19.....
Sunday, the	..... day of	.....,	19.....

in accordance with the Ntchisi District Council (Opaque and Traditional Beer) By-laws, 1984, and the relevant provisions of the Liquor Act (Cap. 50:07).

Fee paid: K .....: ..... tambala

Date of Issue: ....., 19.....

(*to be deleted, as may be appropriate, by the Permit Officer)

NOTE: Where the issue of this permit authorizes the sell of traditional beer, the manufacture also of traditional beer for sell by retail sale is also authorized in accordance as aforesaid.

Signature of Permit Officer: .....

for Ntchisi District Council

PART B

PREMISES PERMIT

PERMIT NO. .....

THE HOLDER of this permit—

Name: .....

Address: .....

IS HEREBY AUTHORIZED to—

*sell opaque beer by retail sale

*manufacture, and sell by retail sale, traditional beer

at ..... for a
(*description of premises*)

period of ..... months from the date of issue in accordance with Ntchisi District Council (Opaque and Traditional Beer) By-laws, 1984, and the relevant provisions of the Liquor Act (Cap. 50:07).

Plinth Area of premises: ..... m^2

Fee paid: K ..... tambala

Date of issue: ....., 19.....

Signature of Permit Officer: .....

for Ntchisi District Council

(*to be deleted, as may be appropriate, by the Permit Officer)

SECOND SCHEDULE (by-law 4)

FEES

	K	t
1. For a retail permit to sell traditional beer per day at—		
(*a*) Ntchisi Boma and Malomo	20	00
(*b*) any other places	15	00
2. For a retail permit to sell opaque beer, per annum . .	100	00
3. For a premises permit per annum—		
(*a*) for the sell by retail of opaque beer only—		
(i) plinth area not exceeding 36 m^2	40	00
(ii) plinth area exceeding 36 m^2	50	00
(*b*) For manufacture, and sell by retail sale, of traditional beer only—		
(i) plinth area not exceeding 36 m^2	40	00
(ii) plinth area exceeding 36 m^2	50	00

G.N. 23/1985
20/1993

RUMPHI DISTRICT COUNCIL (OPAQUE AND TRADITIONAL BEER) BY-LAWS

Citation and application

1. These By-laws may be cited as the Rumphi District Council (Opaque and Traditional Beer) By-laws, and shall apply throughout the area of jurisdiction of the Rumphi District Council.

Procedure on application for retail permit

2.—(1) Any person, being a female, who desires to sell opaque beer by retail sale shall apply to the permit officer for a retail permit.

(2) Any person who desires to manufacture, and sell by retail sale, traditional beer shall apply to the permit officer for a retail permit.

(3) Subject to section 68 of the Act, the permit officer shall, after receipt of the appropriate fee, issue to the applicant a retail permit in the form prescribed in Part A of the First Schedule authorizing the applicant to—

(*a*) sell opaque beer by retail sale; or
(*b*) manufacture, and sell by retail sale, traditional beer; or
(*c*) do (*a*) and (*b*) above,

as may be appropriate, at such place and on such days as shall be specified therein by the permit officer in writing.

Procedure on application for premises permit

3.—(1) Any owner or lessee of premises who—

(*a*) being a female, desires to sell on the premises opaque beer by retail sale; or

(*b*) desires to manufacture, and sell by retail sale, on the premises traditional beer,

shall apply to the permit officer for a premises permit.

(2) Application for a premises permit shall be made at least three months before the date upon which the applicant desires the permit to be issued.

(3) Subject to section 68 of the Act, the permit officer shall, after receipt of the appropriate fee, issue to the applicant a premises permit in the form prescribed in Part B of the First Schedule authorizing the applicant to—

(*a*) sell opaque beer by retail sale; or

(*b*) manufacture, and sell by retail sale, traditional beer; or

(*c*) do (*a*) and (*b*) above,

as may be appropriate on the premises specified therein by the permit officer in writing.

(4) Application for the renewal of a premises permit may be made by the holder to a permit officer on or before the 1st January in the year in which renewal is sought:

Provided that the permit officer, in his discretion, may allow such an application made on any later date up to and including the 1st February in that year, or may reject the application.

Fees for permits

4.—(1) The fee payable for the issue of a permit shall be the appropriate fee prescribed in the Second Schedule for the permit concerned.

(2) Notwithstanding the foregoing, in the case of a premises permit issued for a period of nine months or less, the fee payable shall be a proportion of the prescribed annual fee calculated in accordance with the following table—

Period of validity of permit	*Proportion of annual fee*
(*a*) Not exceeding 3 months months	$\frac{1}{4}$
(*b*) Exceeding 3 months but not exceeding 6 months	$\frac{1}{2}$
(*c*) Exceeding 6 months but not exceeding 9 months	$\frac{3}{4}$

Permitted hours

5. The permitted hours for the supply of opaque beer and traditional beer are 6 a.m. to 10 p.m., except on Martyrs' Day.

Supply of beer on credit prohibited

6. Opaque beer and traditional beer shall be supplied by the holder of a permit to a purchaser only in exchange for money actually received before or at the time of sale.

Supply of beer to young persons prohibited

7. Opaque beer and traditional beer shall not be supplied to any person who is, or who appears to be, under the age of eighteen years.

Provisions as to quality and hygiene

8.—(1) The holder of a permit shall ensure that all opaque beer and traditional beer sold under the authority of the permit is sound and wholesome and that opaque beer is so sold only in sealed containers.

(2) The holder of a permit authorizing the manufacture and sale of traditional beer shall—

(*a*) keep all utensils, vessels, containers, linen, towels, clothes and all other articles whether similar to the foregoing or not, used in connexion with such manufacture and sale, in a clean and sanitary condition and in good repair;

(*b*) take all reasonable steps adequately to prevent the contamination of traditional beer manufactured and intended for sale under the authority of the permit, and in particular to prevent such contamination by dust, dirt and flies;

(*c*) if the permit is a premises permit—

(i) maintain the premises concerned and the furniture therein in a clean and sanitary condition and in good repair;

(ii) provide at least one separate latrine for the use of each sex.

Permits not transferable, etc.

9. Permits are not transferable and the holder of a permit shall not permit any person to sell opaque beer, or manufacture or sell traditional beer, on her or his behalf unless such person is the holder of, and has authority to do so under, and is in possession of, a retail permit.

Display of premises permit

10. The holder of a premises permit shall display the permit in a conspicuous place inside the premises to which it relates where it can be easily seen by persons entering therein.

Possession and procdution of retail permit

11. The holder of a retail permit shall, at all times whilst engaged in the activity which is authorized by the permit, be in possession of the permit and shall, if so required by the permit officer or by any person duly authorized in writing by the Council, produce the permit to him and permit him to examine the same.

Prohibition on the carrying of any weapon, etc., where beer is being sold

12.—(1) No person being in possession of any weapon or any instrument capable of being used to inflict bodily harm shall enter or remain in any place or premises where opaque or traditional beer is being sold.

(2) The holder of a permit issued under these by laws shall not knowingly suffer or permit a person to enter or remain in the place or premises to which the permit relates while opaque or traditional beer is being sold if such a person is in possession of any such weapon or instrument.

(3) This by-law does not apply with respect to any police officer or agent of the Chief whilst on duty and in uniform.

(4) Any person who contravenes the provisions of paragraph (1) or (2) of this by-law shall be guilty of an offence and liable to a fine of K100 and to imprisonment for a term of three months.

Powers of permit

13. A permit officer, and any person duly authorized in writing by the Council so to do, may at any time when beer is being supplied enter or remain in any place or premises with a view to ascertaining whether the provisions of the Act and of these by-laws are being complied with and, in particular, may inspect such place or premises, and any article used in connexion with such supply, and may require the production for examination of any relevant permit.

FIRST SCHEDULE (by-laws 2 and 3)

PART A

RETAIL PERMIT TO SELL*OPAQUE/TRADITIONAL BEER

PERMIT No. .....

THE HOLDER of this permit—

Name: .....

Address: .....

IS HEREBY AUTHORIZED to sell *Opaque/traditional beer by retail sale at .....

on the following days, namely—

Day	*Date*	*Month*	*Year*
Monday, the	..... day of	.....,	19.....
Tuesday, the	..... day of	.....,	19.....
Wednesday, the	..... day of	.....,	19.....
Thursday, the	..... day of	.....,	19.....
Friday, the	..... day of	.....,	19.....
Saturday, the	..... day of	.....,	19.....
Sunday, the	..... day of	.....,	19.....

in accordance with the Rumphi District Council (Opaque and Traditional Beer) By-laws, 1984, and the relevant provisions of the Liquor Act (Cap. 50:07).

Fee paid: K ..... tambala

Date of Issue: ....., 19.....

(*to be deleted, as may be appropriate, by the Permit Officer)

NOTE: Where the issue of this permit authorizes the sell of traditional beer, the manufacture also of traditional beer for sell by retail sale is also authorized in accordance as aforesaid.

Signature of Permit Officer: .....

for Rumphi District Council

PART B

PREMISES PERMIT

PERMIT No. .....

THE HOLDER of this permit—

Name: .....

Address: .....

IS HEREBY AUTHORIZED to—

*sell opaque beer by retail sale

*manufacture, and sell by retail sale, traditional beer

at ..... for a

(*description of premises*)

period of ..... months from the date of issue in accordance with Rumphi District Council (Opaque and Traditional Beer) By-laws, 1984, and the relevant provisions of the Liquor Act (Cap. 50:07).

Plinth Area of premises: ..... m^2

Fee paid: K ..... tambala

Date of issue: ....., 19.....

Signature of Permit Officer: .....

for Rumphi District Council

(*to be deleted, as may be appropriate, by the Permit Officer)

G.N. 113/1991
20/1993

SECOND SCHEDULE (by-law 4)

FEES

	K	t
1. For a retail permit to sell traditional beer, per brew ..	4	00
2. For a retail permit to sell opaque beer, per annum at—		
(*a*) Rumphi Boma	100	00
(*b*) other places	60	00
3. For a premises permit per annum—		
(*a*) for the sale by retail sale of opaque beer only—		
(i) plinth area not exceeding 36 m^2	40	00
(ii) plinth area exceeding 36 m^2	60	00

G.N. 68/1986
5/1992
118/1993

THYOLO DISTRICT COUNCIL (OPAQUE AND TRADITIONAL BEER) BY-LAWS

Citation and application

1. These by-laws may be cited as the Thyolo District Council (Opaque and Traditional Beer) By-laws, and shall apply throughout the area of jurisdiction of the Thyolo District Council.

Procedure on application for premises permit

2.—(1) Any person, being a female, who desires to sell opaque beer by retail sale shall apply to the permit officer for a retail permit.

(2) Any person who desires to manufacture, and sell by retail sale, traditional beer shall apply to the permit officer for a retail permit.

(3) Subject to section 68 of the Act, the permit officer shall, after receipt of the appropriate fee, issue to the applicant a retail permit in the form prescribed in Part A of the First Schedule authorizing the applicant to—

(*a*) sell opaque beer by retail sale; or
(*b*) manufacture, and sell by retail sale, traditional beer; or
(*c*) do (*a*) and (*b*) above,

as may be appropriate, at such place and on such days as shall be specified therein by the permit officer in writing.

Procedure on application for premises permit

3.—(1) Any owner or lessee of premises who—

(*a*) being a female, desires to sell on the premises opaque beer by retail sale; or

(*b*) desires to manufacture, and sell by retail sale, on the premises traditional beer,

shall apply to the permit officer for a premises permit.

(2) Application for a premises permit shall be made at least three months before the date upon which the applicant desires the permit to be issued.

(3) Subject to section 68 of the Act, the permit officer shall, after receipt of the appropriate fee, issue to the applicant a premises permit in the form prescribed in Part B of the First Schedule authorizing the applicant to—

(*a*) sell opaque beer by retail sale; or

(*b*) manufacture, and sell by retail sale, traditional beer; or

(*c*) do (*a*) and (*b*) above,

as may be appropriate, on the premises specified therein by the permit officer in writing.

(4) Application for the renewal of a premises permit may be made by the holder to a permit officer on or before the 1st January in the year in which renewal is sought:

Provided that the permit officer, in his descretion may allow such an application made on any later date upon and including the 1st February in that year, or may reject the application.

Fees for permits

4.—(1) The fee payable for the issue of a permit shall be the appropriate fee prescribed in the Second Schedule for the permit concerned.

(2) Notwithstanding the foregoing, in the case of a premises permit issued for a period of nine months or less, the fee payable shall be a proportion of the prescribed annual fee calculated in accordance with the following table—

Period of validity of permit	*Proportion of annual fee*
(*a*) Not exceeding 3 months	$\frac{1}{4}$
(*b*) Exceeding 3 months but not exceeding 6 months	$\frac{1}{2}$
(*c*) Exceeding 6 months but not exceeding 9 months	$\frac{3}{4}$

Permitted hours

5. The permitted hours for the supply of opaque beer and traditional beer are 6 a.m. to 10 p.m., except on Martyrs' Day.

Supply of beer on credit prohibited

6. Opaque beer and traditional beer shall be supplied by the holder of a permit to a purchaser only in exchange for money actually received before or at the time of sale.

Supply of beer to young persons prohibited

7. Opaque beer and traditional beer shall not be supplied to any person who is, or who appears to be, under the age of eighteen years.

Provisions as to quality and hygiene

8.—(1) The holder of a permit shall ensure that all opaque beer and traditional beer sold under the authority of the permit is sound and wholesome and that opaque beer is so sold only in sealed containers.

(2) The holder of a permit authorizing the manufacture and sale of traditional beer shall—

(*a*) keep all utensils, vessels, containers, linen, towels, clothes and all other articles whether similar to the foregoing or not, used in connexion with such manufacture and sale, in a clean and sanitary condition and in good repair;

(*b*) take all reasonable steps adequately to prevent the contamination of traditional beer manufactured and intended for sale under the authority of the permit, and in particular to prevent such contamination by dust, dirt and flies;

(*c*) if the permit is a premises permit—

(i) maintain the premises concerned and the furniture therein in a clean and sanitary condition and in good repair;

(ii) provided at least one separate latrine for the use of each sex.

Permits not transferable, etc.

9. Permits are not transferable and the holder of a permit shall not permit any person to sell opaque beer, on her or his behalf unless such person is the holder of, and has authority to do so under, and is in possession of, a retail permit.

Display of premises permit

10. The holder of a premises permit shall display the permit in a conspicuous place inside the premises to which it relates where it can be easily seen by persons entering therein.

Possession and production of retail permit

11. The holder of a retail permit shall, at all times whilst engaged in the activity which is authorized by the permit, be in possession of the permit and shall, if so required by the permit officer or by any person duly authorized in writing by the Council, produce the permit to him and permit him to examine the same.

Prohibition on the carrying of weapon, etc., where beer is being sold

12.—(1) No person being in possession of any weapon or any instrument capable of being used to inflict bodily harm shall enter or remain in any place or premises where opaque or traditional beer is being sold.

(2) The holder of a permit issued under these by-laws shall not knowingly suffer or permit a person to enter or remain in the place or premises to which the permit relates while opaque or traditional beer is being sold if such a person is in possession of any such weapon or instrument.

(3) This by-law does not apply with respect to any police officer or agent of the Chief while on duty and in uniform.

(4) Any person who contravenes the provisions of paragraph (1) or (2) of this by-law shall be guilty of an offence and liable to a fine of K100 and to imprisonment for a term of three months.

Powers of permit officer and authorized person

13. A permit officer, and any person duly authorized in writing by the Council so to do, may at any time when beer is being supplied enter or remain in any place or premises with a view to ascertaining whether the provisions of the Act and of these by-laws are being complied with and, in particular, may inspect such place or premises, and may require the production for examination of any relevant permit.

FIRST SCHEDULE (by-laws 2 and 3)

PART A

RETAIL PERMIT TO SELL*OPAQUE/TRADITIONAL BEER

PERMIT No. .....

THE HOLDER of this permit—

Name: .....

Address: .....

IS HEREBY AUTHORIZED to sell *opaque/traditional beer by retail sale at: .....

on the following days, namely—

Day	*Date*	*Month*	*Year*
Monday, the	..... day of	.....	, 19.....
Tuesday, the	..... day of	.....	, 19.....
Wednesday, the	..... day of	.....	, 19.....
Thursday, the	..... day of	.....	, 19.....
Friday, the	..... day of	.....	, 19.....
Saturday, the	..... day of	.....	, 19.....
Sunday, the	..... day of	.....	, 19.....

in accordance with the Thyolo District Council (Opaque and Traditional Beer) By-laws, 1986, and the relevant provisions of the Liquor Act (Cap. 50:07).

Fee paid: K..... tambala

Date of Issue: ....., 19.....

(*to be deleted, as may be appropriate, by the Permit Officer.)

NOTE: Where the issue of this permit authorizes the sell of traditional beer, the manufacture also of traditional beer for sell by retail sale is also authorized in accordance as aforesaid.

Signature of Permit Officer: .....

for Thyolo District Council

PART B

PREMISES PERMIT

PERMIT No. .....

THE HOLDER of this permit—

Name: .....

Address: .....

IS HEREBY AUTHORIZED to—

*sell opaque beer by retail sale

*manufacture, and sell by retail sale, traditional beer

at: ..... for a

(*description of premises*)

period of ..... months from the date of issue, in accordance with Thyolo District Council (Opaque and Traditional Beer) By-laws, 1986, and the relevant provisions of the Liquor Act (Cap. 50:07).

Plinth Area of premises: ..... m^2

Fee paid: K ..... tambala

Date of issue: ....., 19.....

Signature of Permit Officer: .....

for Thyolo District Council

(*to be deleted, as may be appropriate, by the Permit Officer)

G.N. 5/1992
118/1993

SECOND SCHEDULE

FEES

	K	t
1. For a retail permit to sell traditional beer, per day	3	50
2. For a retail permit to sell opaque beer, per annum	30	00
3. For premises permit per annum—		
(*a*) for the sell of opaque beer only by retail—		
(i) plinth area not exceeding 36 m^2	30	00
(ii) plinth area exceeding 36 m^2	40	00
(*b*) For the manufacture and sell by retail of traditional beer only—		
(i) plinth area not exceeding 36 m^2	30	00
(ii) plinth area exceeding 36 m^2	40	00
(*c*) For the sell of Chibuku beer by retail.	30	00

ZOMBA DISTRICT COUNCIL (OPAQUE AND TRADITIONAL BEER) BY-LAWS

G.N. 165/1983 88/1991

Citation and application

1. These By-laws may be cited as the Zomba District Council (Opaque and Traditional Beer) By-laws, 1983, and shall apply throughout the area of jurisdiction of the Zomba District Council.

Procedure on application for retail permit

2.—(1) Any person, being a female, who desires to sell opaque beer by retail sale shall apply to the permit officer for a retail permit.

(2) Any person who desires to manufacture, and sell by retail sale, traditional beer shall apply to the permit officer for a retail permit.

(3) Subject to section 68 of the Act, the permit officer shall, after receipt of the appropriate fee, issue to the applicant a retail permit in the form prescribed in Part A of the First Schedule authorizing the applicant to—

(*a*) sell opaque beer by retail sale; or

(*b*) manufacture, and sell by retail sale, traditional beer; or

(*c*) do (*a*) and (*b*) above,

as may be appropriate, at such place and on such days as shall be specified therein by the permit officer in writing.

Procedure on application for premises permit

3.—(1) Any owner or lessee of premises who—

(*a*) being a female, desires to sell on the premises opaque beer by retail sale; or

(*b*) desires to manufacture, and sell by retail sale, on the premises traditional beer,

shall apply to the permit officer for a premises permit.

(2) Application for a premises permit shall be made at least three months before the date upon which the applicant desires the permit to be issued.

(3) Subject to section 68 of the Act, the permit officer shall, after receipt of the appropriate fee, issue to the applicant a premises permit in the form prescribed in Part B of the First Schedule authorizing the applicant to—

(*a*) sell opaque beer by retail sale; or

(*b*) manufacture, and sell by retail sale, traditional beer; or

(*c*) do (*a*) and (*b*) above,

as may be appropriate, on the premises specified therein by the permit officer in writing.

(4) Application for the renewal of a premises permit may be made by the holder to a permit officer on or before the 1st January in the year in which renewal is sought:

Provided that the permit officer, in his discretion, may allow such an application made on any later date up to and including the 1st February in that year, or may reject the application.

Fees for permits

4.—(1) The fee payable for the issue of a permit shall be the appropriate fee prescribed in the Second Schedule for the permit concerned.

(2) Notwithstanding the foregoing, in the case of a premises permit issued for a period of nine months or less, the fee payable shall be a proportion of the prescribed annual fee calculated in accordance with the following table—

Period of validity of permit	*Proportion of annual fee*
(*a*) Not exceeding 3 months	$\frac{1}{4}$
(*b*) Exceeding 3 months but not exceeding 6 months	$\frac{1}{2}$
(*c*) Exceeding 6 months but not exceeding 9 months	$\frac{3}{4}$

Permitted hours

5. The permitted hours for the supply of opaque beer are 6 a.m. to 10 p.m., except on Martyrs' Day.

Supply opaque beer on credit prohibited

6. Opaque beer shall be supplied by the holder of a permit to a purchaser only in exchange for money actually received before or at the time of sale.

Supply of opaque beer to young persons prohibited

7. Opaque beer shall not be supplied to any person who is, or who appears to be, under the age of eighteen years.

Provisions as to quality and hygiene

8.—(1) The holder of a permit shall ensure that all opaque beer and traditional beer sold under the authority of the permit is sound and wholesome and that opaque beer is so sold only in sealed containers.

(2) The holder of a permit authorizing the manufacture and sale of traditional beer shall—

(*a*) keep all utensils, vessels, containers, linen, towels, clothes, and all other articles whether similar to the foregoing or not, used in connexion with such manufacture and sale, in a clean and sanitary condition and on good repair;

(*b*) take all reasonable steps adequately to prevent the contamination of traditional beer manufactured and intended for sale under the authority of the permit, and in particular to prevent such contamination by dust, dirt and flies;

(*c*) if the permit is premises permit—

(i) maintain the premises concerned and the furniture therein in a clean and sanitary condition and in good repair;

(ii) provide at least one separate latrine for the use of each sex.

9. Permits are not transferable and the holder of a permit shall not permit any person to sell opaque beer, or manufacture or sell traditional beer, on her or his behalf unless such person is the holder of, and has authority to do so under, and is in possession of, a retail permit.

Permits not transferable, etc.

10. The holder of a premises permit shall display the permit in a conspicuous place inside the premises to which it relates where it can be easily seen by persons entering therein.

Display of premises permit

11. The holder of a retail permit shall, at all times whilst engaged in the activity which is authorized by the permit, be in possession of the permit and shall, if so required by the permit officer or by any person duly authorized in writing by the Council, produce the permit to him and permit him to examine the same.

Possession and production of retail permit

12.—(1) No person being in possession of any weapon or any instrument capable of being used to inflict bodily harm shall enter or remain in any place or premises where opaque or traditional beer is being sold.

Prohibition on the carrying of any weapon, etc. where beer is being sold

(2) The holder of a permit issued under these By-laws shall not knowingly suffer or permit a person to enter or remain in the place or premises to which the permit relates while opaque or traditional beer is being sold if such a person is in possession of any such weapon or instrument.

(3) This by-law does not apply with respect to any police officer or agent of the Chief whilst on duty and in uniform.

(4) Any person who contravenes the provisions of paragraph (1) or (2) of this by-law shall be guilty of an offence and liable to a fine of K100 and to imprisonment for a term of three months.

13. A permit officer, and any person duly authorized in writing by the Council so to do, may at any time when opaque or traditional beer is being supplied enter or remain in any place or premises with a view to ascertaining whether the provisions of the Act and of these By-laws are being complied with and, in particular, may inspect such place or premises, and any article used in connexion with such supply, and may require the production for examination of any relevant permit.

Powers of permit officer and authorized persons

FIRST SCHEDULE (by-laws 2 and 3)

PART A

Retail Permit to Sell*Opaque/Traditional Beer

Permit No. .....

The Holder of this permit—

Name: .....

Address: .....

Is Hereby Authorized to sell *Opaque/traditional beer by retail sale at: .....

on the following days, namely—

Day	*Date*	*Month*	*Year*
Monday, the	..... day of	.....,	19.....
Tuesday, the	..... day of	.....,	19.....
Wednesday, the	..... day of	.....,	19.....
Thursday, the	..... day of	.....,	19.....
Friday, the	..... day of	.....,	19.....
Saturday, the	..... day of	.....,	19.....
Sunday, the	..... day of	.....,	19.....

in accordance with the Zomba District Council (Opaque and Traditional Beer) By-laws, 1983, and the relevant provisions of the Liquor Act (Cap. 50:07).

Fee paid: K ..... :..... tambala
Date of Issue: ....., 19.....
(*to be deleted, as may be appropriate, by the Permit Officer)

NOTE: Where the issue of this permit authorizes the sell of traditional beer, the manufacture also of traditional beer for sell by retail sale is also authorized in accordance as aforesaid.

Signature of Permit Officer: .....
for Zomba District Council

PART B

PREMISES PERMIT

PERMIT No. .....

THE HOLDER of this permit—
Name: .....
Address: .....
IS HEREBY AUTHORIZED to—
*sell opaque beer by retail sale
*manufacture, and sell by retail sale, traditional beer
at: .....
(*description of premises*)
for a period of ..... months from the date of issue, in accordance with Zomba District Council (Opaque and Traditional Beer) By-laws, 1983, and the relevant provisions of the Liquor Act (Cap. 50:07).
Plinth Area of premises: ..... m^2
Fee paid: K .....: ..... tambala
Date of issue: ....., 19.....
Signature of Permit Officer: .....
for Zomba District Council
(*to be deleted, as may be appropriate, by the Permit Officer)

G.N. 88/1991

SECOND SCHEDULE — by-law 4

FEES

		K	t
1.	For a retail permit to sell traditional beer, per day	2	00
2.	For a retail permit to sell opaque beer, per annum	25	00
3.	For a premises permit, per year for—		
	(*a*) the retail sale of opaque beer only	50	00
	(*b*) the retail sale of traditional beer only	50	00

LIQUOR (PRODUCTION, MARKETING AND DISTRIBUTION) REGULATIONS

ARRANGEMENT OF REGULATIONS

REGULATION

1. Citation
2. Interpretation
3. Prohibition of manufacture, importation, etc., of certain intoxicating liquor
4. Authorized quantities and packaging of intoxicating liquor
5. Prohibition of packaging industrial grade ethanol for purposes of consumption
6. Prohibition of packaging intoxicating liquor in plastics, polythene, etc.
7. General penalty
8. Revocation of certain licences

SCHEDULE

LIQUOR (PRODUCTION, MARKETING AND DISTRIBUTION) REGULATIONS

G.N. 7/2015

under s. 96

Citation

1. These Regulations may be cited as the Liquor (Production, Marketing and Distribution) Regulations.

Interpretation

2. In these Regulations, unless the context otherwise requires—

"alcopop" means a flavored alcoholic beverages, flavored malt beverages or pre-packaged spirit to which various fruit juices or other flavourings have been added as ingredients;

"clear beer" means any beer that is non cloudy, non-turbid, non-murky or non-hazy and does not contain any suspended matter;

"industrial grade ethanol" means a grade of ethanol that is used for industrial purposes such as in electronics, pharmaceutical, sterilization, refrigeration, industrial solvent, heating, lighting and others; and

"non-potable ethanol" means a grade of ethanol that is not food grade ethanol, for instance, industrial grade ethanol, analytical grade ethanol and fuel grade ethanol.

Prohibition of manufacture, importation, etc., of certain intoxicating liquor

3. A person shall not manufacture, import, export, keep, stock, bottle, package, convey, possess, sell or supply intoxicating liquor in quantities and packaging other than those authorized under these Regulations.

Authorized quantities and packaging of intoxicating liquor

4. The quantities and packaging set out in the Schedule hereto shall be the authorized quantities and packaging for the purposes of the manufacture, import, export, keeping, stocking, bottling, packaging, conveyance, possession, sale or supply of intoxicating liquor.

Prohibition of packaging industrial grade ethanol for purposes of consumption

5. A person shall not package industrial grade ethanol or other non-potable ethanol, or package a blend of either industrial grade ethanol or non-potable ethanol with intoxicating liquor.

Prohibition of packaging intoxicating liquor in plastics, polythene, etc.

6. A person shall not package intoxicating liquor in plastic or polythene sachets or any other similar packaging.

General penalty

7.—(1) A person who contravenes any provision of these Regulations commits an offence and shall upon conviction, be liable to imprisonment for twelve months.

(2) A court may, in addition to any penalty imposed on a person who is convicted of an offence under subregulation (1), order the forfeiture of—

(*a*) any licence issued under the Act to the person, in accordance with section 92 of the Act; or

(*b*) the intoxicating liquor which was used for the purpose of, or in relation to, the commission of the offence, in accordance with section 93 of the Act.

Revocation of certain licences

8. Any licence issued under the Act, in respect of the manufacture, import, export, sell or supply of the intoxicating liquor prohibited under these Regulations is revoked.

SCHEDULE

Authorized Quantities and Packing of Intoxicating Liquor

These prescriptions do not apply to—

(*a*) the sale of intoxicating liquor on any aircraft over the Republic in the course of a normal passenger service; and

(*b*) the sale or supply to, or consumption by, any person of intoxicating liquor in any licensed hotel premises.

Type of intoxicating liquor	*Authorized packaging*	*Minimum quantities*
1. Clear beer	Glass bottle/Aluminium	330 ml
2. Spirits	Glass bottle	200 ml
3. Traditional beer	Cardboard box	250 ml
4. Liquor	Glass bottle	200 ml
5. Ciders and alcopops	Glass bottle	300 ml

INDUSTRIAL LICENSING

CHAPTER 51:01

Containing Pages 1–3

L.R.O. 1/1992

CHAPTER 51:01
INDUSTRIAL LICENSING
ARRANGEMENT OF SECTIONS

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1. Short title
2. Interpretation
3. Industrial licence required for the manufacture of certain products
4. Minister to make regulations for the purposes of this Act
5. Compliance with other laws
6. Requirements with respect to the manufacture of other products

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CHAPTER 51:01
INDUSTRIAL LICENSING

An Act to provide for the control and regulation of the manufacture of certain products and to repeal and replace the Industrial Development Act and further to provide for matters incidental thereto or connected therewith 26 of 1991

[24TH JANUARY, 1992]

1. This Act may be cited as the Industrial Licensing Act. Short title

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

"industrial licence" means a licence issued under this Act;

"manufacture" means to subject physical matter to any process which materially changes it in substance, character or appearance and includes the business of treating or disposing of hazardous waste by a person other than a local authority;

"product" means any article, thing or substance produced as a result of any manufacturing process.

3.—(1) Every person manufacturing a product of a description specified in the Schedule to this Act at any place in Malaŵi must be in possession of an industrial licence to manufacture that product at that place issued to him in accordance with regulations made under this Act. Industrial licence required for the manufacture of certain products

(2) A person who contravenes subsection (1) shall be guilty of an offence and liable to a fine of K20,000 and to imprisonment for three years.

(3) The Minister may, by order published in the Gazette, amend the Schedule to this Act.

(4) An order under subsection (3) amending the Schedule to this Act so as to add any product to the list of products of a description specified therein shall be made only with the advice of the Board of the Malaŵi Investment Promotion Agency established under the Investment Promotion Act.

28 of 1991

(5) Determination by the Minister that a product is of a description specified in the Schedule to this Act shall be final and shall not open to any question in or by any court.

Minister to make regulations for the purposes of this Act

4.—(1) The Minister shall, by regulations published in the *Gazette*, provide for—

(*a*) all matters relating to applications for an industrial licence;

(*b*) the issuing of an industrial licence and for conditions, if any, attached thereto;

(*c*) the requirement for publications of an industrial licence and for the making of representations or objections concerning an application for an industrial licence;

(*d*) the conduct of inquiries into an application for an industrial licence and into representations or objections, if any, concerning such application;

(*e*) the grounds on which an industrial licence may not be granted or, if granted, may not be renewed or may be cancelled;

(*f*) the obligations of the holder of an industrial licence;

(*g*) the transfer of an industrial licence;

(*h*) offences and penalties for contravention of the regulations;

(*i*) any matter which the Minister considers necessary or expedient for the purposes of this Act or of any provision of any regulations made under this Act.

(2) The Minister may make different regulations or may, in any regulations, make different provisions for different products or different classes of products.

(3) The Minister may, in regulations made under this Act—

(*a*) authorize the making (for the purpose of this Act, or of regulations made under this Act) of rules, orders, notices or other form of subsidiary legislation by the Minister or by any public officer specified in the regulations;

(*b*) provide for any level of fines and any term of imprisonment as penalty for any offence against the regulations or against rules, orders, notices or other form of subsidiary legislation made under the regulations, notwithstanding the maximum levels of penalties prescribed in section 21 (*e*) of the General Interpretation Act with respect to offences under subsidiary legislation. Cap. 1:01

5. The issue of a licence to any person under this Act shall not be deemed in any way to relieve the licencee from compliance with any other written law relating to the activity for which the licence was issued. Compliance with other laws

6.—(1) The Minister may, by order published in the *Gazette* or by written notice to the manufacturer, require the manufacturer of any product, notwithstanding that the product is not of a description specified in the Schedule to this Act as one for which an industrial licence is required, to furnish to the Minister regularly or otherwise and within such period of time as the Minister may specify in the order or the notice the type or some of the type of information required to be furnished by a manufacturer licensed under this Act or any other type of information of a statistical nature. Requirement with respect to the manufacture of other products

(2) A manufacturer who fails to comply with an order or with a notice under subsection (1) shall be guilty of an offence and liable to a fine of K15,000 and to imprisonment for two years.

(3) For the purposes of this section, the Minister shall have power to require to be furnished with the address and other particulars of any manufacturer by the Registrar of Companies or by any other authority or source in Malaŵi.

SCHEDULE

ss. 3, 5 and 6

Products the Manufacture of which Requires an Industrial Licence

1. Fire arms, ammunition and chemical and biological weapons
2. Explosives
3. Hazardous waste
4. Products, the manufacture of which includes use of radio-active material

MALAŴI BUREAU OF STANDARDS

CHAPTER 51:02

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CHAPTER 51:02

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CHAPTER 51:02

MALAŴI BUREAU OF STANDARDS

An Act to establish the Malaŵi Bureau of Standards and the Malaŵi Standards Board; to vest the management and control of the Malaŵi Bureau of Standards in the Malaŵi Standards Board; to promote metrology, standardization and quality assurance of commodities and of the manufacture, production, processing or treatment thereof; and further to provide for matters incidental to, or connected with, the foregoing 14 of 2012

[27TH JULY, 2012]

PART I

PRELIMINARY

1. This Act may be cited as the Malaŵi Bureau of Standards Act. Short title

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

"auditor", means a person appointed as such under section 37;

"Board" means the Malaŵi Bureau of Standards Board established under section 7;

"Bureau" means the Malaŵi Bureau of Standards established by section 3;

"Bureau Management" means the Director General, Deputy Director General and the Heads of Departments of the Bureau;

"cess" means the quality development cess imposed by the Minister under section 20;

"Chairperson" means the Chairperson of the Board appointed and designated pursuant to section 9;

"Code of practice" means a set of rules relating to the methods to be applied or the procedure to be adopted in connexion with the

construction, installation, testing, operations or use of any article, apparatus, instrument, devise or process, including—

(*a*) the marking, handling, packing, storage and transport of a commodity; or

(*b*) the manner of installation of the commodity to ensure efficient performance;

"commodity" means product, service, good or article of, or for, trade;

"Director General" means the Chief Executive Officer of the Bureau appointed under section 24;

"examine" includes inspect, check or observe;

"financial auditor" means a person appointed as such to audit the finances of the Bureau;

"financial year" means the financial year of the Bureau as specified in section 23;

"import" means to bring or cause to bring a commodity in the country by any means;

"inspector" means an inspector appointed under section 37;

"Malaŵi Standard" means a specification, code of practice, terminology standard or method of test as declared under section 27 (1);

"Mandatory Standard" means a Malaŵi Standard declared as such under section 27 (2) to which compliance is compulsory;

"manufacture" includes produce, assemble, alter, modify, adapt, convert, process, package, including labeling, treat, install, test, operate and use;

"mark" means any device, brand, heading, label, ticket, emblem, representation, heading ticket, name, signature, word, letter or numeral, or any combination thereof; whether used in a compound with any other word or not;

"member" means a member of the Board appointed under section 8;

"person" includes a body corporate;

"reference material" means any material or substance with one or more characteristics which may be used for—

(*a*) calibration of any apparatus;

(*b*) testing of the accuracy of any method of measurement; or

(*c*) determination, by comparison therewith, of any characteristic, including purity, of any other material or substance;

"regulation" means a regulation in force in terms of this Act;

"sell" includes—

(*a*) display, offer or advertise for sale;

(*b*) export from Malaŵi for or in pursuance of sale;

(*c*) have in possession for the purpose of sale, trade, manufacture export from Malaŵi or for humanitarian grounds;

"specification" means an explicit set of requirements to be satisfied by a commodity with reference to its characteristics, including its

nature, quality, strength, efficacy, purity, composition, assembly, quantity; dimensions, mass, grade, design, layout, durability, capacity, format, operation, performance, origin or age, which ever may be applicable;

"standardization mark" means a certification mark, mark of proof, or mark of authenticity;

"system", with regard to a commodity, means interrelated processes which are designed to achieve a particular purpose or to perform a specific function;

"Vice-Chairperson" means the person appointed as such under section 9.

PART II
The Malaŵi Bureau of Standards

Establishment of the Malaŵi Bureau of Standards

3. There is hereby established the Malaŵi Bureau of Standards (in this Act otherwise referred to as the "Bureau"), which shall—

(*a*) be a body corporate with perpetual succession and a common seal, with power to alter the same from time to time;

(*b*) in its corporate name be capable of suing and being sued;

(*c*) subject to the provisions of this Act, of acquiring, holding, letting and otherwise disposing of any property; and

(*d*) be capable of doing and performing such acts and things as bodies corporate may by law do and perform.

Objects of the Bureau

4. The objects of the Bureau shall be—

(*a*) to promote standardization in commerce and industry;

(*b*) to prepare and issue standards and to administer schemes based thereon;

(*c*) to make arrangements to provide facilities for the testing and calibration of precision instruments, gauges and scientific apparatus, for the determination of their degree of accuracy by comparison with standards, approved by the Minister on the recommendation of the Board, and for the issue of certificates in regard thereto;

(*d*) to make arrangements or provide facilities in order to examine, test or analyze articles, materials and substances;

(*e*) to provide for the testing of locally manufactured or imported commodities with a view to determining whether such commodities comply with the provisions of this Act, the Merchandise Marks Act or any other law relating to standards of quality; Cap. 49:04

(*f*) to control the use of standardization marks;

(*g*) to encourage or undertake educational work in connexion with standardization;

(*h*) to provide for cooperation with any person, association or organization outside Malaŵi having objects similar to those of the Bureau;

(*i*) to assist any ministry, Government department, local authority, other public authority or any statutory corporation in the preparation and framing of the specifications or codes of practice required by it;

(*j*) to provide for cooperation with the representatives of any branch of industry, ministry, Government Department, local authority, other public authority or any statutory corporation or with any person with a view to bringing about standardization in connexion with commodities;

(*k*) to assess quality systems and to administer the certification by such systems thus assessed;

(*l*) to supply reference material for specific purposes; and

(*m*) to perform, in so far as it is not repugnant to or inconsistent with the provisions of any written law, such functions as the Minister may assign to the Bureau, so as to promote and maintain standardization and quality regarding commodities.

Functions, powers and duties of the Bureau

5.—(1) The Bureau shall exercise the following powers and perform duties as are conferred on it by this Act or any other written law for the purposes of achieving the objects of the Bureau set out in section 4—

(*a*) to supply reference material and issue directives in connexion with such material;

(*b*) at the request of any person, body, organization, administration or authority and subject to the conditions determined by the Bureau, conduct examinations, tests, or analyzes or cause them to be conducted in respect of any articles, material or substances;

(*c*) to purchase or otherwise acquire a sample of any article in order to investigate, test or analyze it, and for the purposes of a Malaŵi Standard determine the sampling examination, testing or analysis procedure to be followed in order to assess whether there has been compliance with the relevant characteristics requirements or the manner of manufacture of a commodity;

(*d*) subject to the provisions of this Act, determine and collect cess and fees for services rendered under this Act; and

(*e*) in addition to any function, power or duty that the Bureau is required or empowered to perform, exercise or execute in terms of the provisions of this Act or any other written law, do everything that is conducive to the achievement of its objects or is calculated, directly or indirectly, to enhance the value of or render profitable the property or rights of the Bureau.

(2) The Bureau may in the exercise of its powers—

(*a*) enter into an agreement with;

(*b*) render assistance to; or

(*c*) obtain the cooperation of,

a person, body, organization, administration, authority or government in any country or territory outside Malaŵi.

(3) The Bureau may issue to a person—

(*a*) who manufactures outside Malaŵi a commodity, a consignment of which is intended for importation into Malaŵi; or

(*b*) who intends to import a consignment of a commodity manufactured outside Malaŵi; or

(*c*) who intends to export a consignment of a commodity manufactured inside Malaŵi,

a certificate in which it is declared that such consignment complies with or has been manufactured in accordance with the requirements determined under this Act.

(4) The Minister may, with the concurrence of the Minister of Finance, indemnify the Bureau against any losses which it may incur consequent upon any act or omission of the person, body, organization administration, authority or government referred to in subsection (2):

Provided that such act was performed or omission was made with the approval of or at the request of the Minister.

(5) The Bureau shall—

(*a*) subject to the payment of the prescribed fees, undertake the investigations or research which the Minister may assign to it; and

(*b*) at the request of the Minister, advise the Minister concerning any matter which is relevant to the objects of the Bureau.

Non-liability of the Bureau

6. The Bureau shall not be liable in respect of anything done under this Act in good faith and without negligence.

PART III
The Malaŵi Bureau of Standards Board

Establishment of the Malaŵi Bureau of Standards Board

7.—(1) There is hereby established the Malaŵi Bureau of Standards Board (in this Act otherwise referred to as the "Board").

(2) The operations of the Bureau shall be managed by the Board which, subject to the special or general direction of the Minister, may exercise all the powers and functions of the Bureau in addition to the powers and functions otherwise vested in the Board by this Act.

Composition of the Board

8. The Board shall consist of—

(*a*) six members to be appointed by the Minister from the industry sector, trade sector, academic or non-Governmental organizations, who shall be persons with sufficient knowledge and experience in matters relating to the objects of the Bureau; and

(*b*) the following *ex officio* members—

(i) the Comptroller of Statutory Corporations or his designated representative;

(ii) the Secretary for Industry and Trade or his designated representative; and

(iii) the Secretary for Health or his designated representative.

The Chairperson and Vice-Chairperson of the Board

9.—(1) The Minister shall designate one of the members appointed under section 8, other than an *ex officio* member, as a Chairperson of the Board.

(2) The members of the Board shall, at their first meeting, elect a Vice-Chairperson.

Tenure of office of members, vacation and disqualification

10.—(1) The members, other than *ex officio* members, shall hold office for a period of two years but shall be eligible for reappointment for one more term.

(2) Any member, other than an *ex officio* member, may at any time, by, at least two weeks notice in writing to the Minister, resign from his office.

(3) The office of a member, other than an *ex officio* member, shall become vacant—

(*a*) upon his death;

(*b*) if he is mentally or physically incapable of performing his duties as a member of the Board;

(*c*) if he is adjudged bankrupt;

(*d*) if he is convicted of an offence and sentenced to imprisonment for a term of six months or more without an option of a fine;

(*e*) if he is guilty of gross misconduct and is so notified in writing by the Minister;

(*f*) if he is absent from three consecutive meetings of the Board, for which he has had notice, without any reasonable excuse.

(4) Any person who—

(*a*) is a Member of Parliament;

(*b*) is a Minister or Deputy Minister;

(*c*) is a holder of a licence under this Act;

(*d*) is an employee of a holder of a licence;

(*e*) is a director of a company holding a licence under this Act;

(*f*) holds five per cent or more shares in a company holding a licence under this Act;

(*g*) has, in the last seven years, been convicted of an offence under this Act, or an offence involving fraud or dishonesty by a competent court in Malaŵi or elsewhere; or

(*h*) is in a position where there is a material conflict of interest between the interests of the member as member of the Board and the business interest of that member,

shall be disqualified from being appointed as a member of the Authority.

Allowances for members

11. The members shall be paid such allowances as the Minister may, from time to time, determine.

Meetings of the Board

12.—(1) The Chairperson of the Board shall call meetings of the Board at such places and times as the Chairperson may determine.

(2) The Chairperson shall preside over every meeting of the Board but in the absence of the Chairperson from any meeting of the Board, the Vice-Chairperson shall preside over such meeting and in the absence of both the Chairperson and the Vice-Chairperson from any such meeting, the members present shall elect one of their number other than a member of *ex officio* to preside at that meeting.

(3) The person presiding over any meetings of the Board shall have a deliberative vote and, in the case of an equality of votes, shall also have a casting vote.

(4) A meeting of the Board shall be held at least once in every three months and at such other times and at such places as the Chairperson may determine.

(5) At all meetings of the Board, two thirds of the members shall form a quorum.

(6) A decision of the Board shall be a resolution of the majority of members present at any meeting and, at all meetings of the Board.

(7) The Board may invite, for such a period of time as it thinks fit, any person whose knowledge or advice it may require, and the person invited may take part in the deliberations of the meeting of the Board but shall not be entitled to vote at any such meeting or be counted as a member for the purpose of forming a quorum.

Non-liability of members

13.—(1) No member shall be personally liable for any act or default of his, or of the Board, done in the exercise, or in the purported exercise, in good faith of the functions of the Board.

(2) The Government, the Minister, the Bureau, a member of committee referred to in section 15, the Director General, or any

employee of the Bureau, shall not be liable in respect of anything done under this Act in good faith and without negligence.

Pecuniary interest of members

14.—(1) If a member, or his spouse or any company which he or she is a director or major shareholder, or any partner of such member or his spouse, has or acquires any pecuniary interest, directly or indirectly, in any matter in which his private interest conflicts with his duties as a member and which is a subject of consideration by the Board, he shall, as soon as he becomes aware of such interest in such matter, disclose the facts relating thereto to the Board.

(2) A member referred to in subsection (1) shall excuse himself from such a meeting and shall not in any way take part in the consideration of any question before the Board.

(3) For the purposes of this section, the term "major shareholder" means any person who at the relevant time, in his own right or by right of any other person, has the power to exercise or control not less than ten per centum of the voting rights in the relevant company, whether by reason of share holdings, debenture holdings or proxy or otherwise.

Powers and functions of the Board

15.—(1) The Board shall have powers to—

(*a*) acquire and dispose of assets of the Bureau;

(*b*) formulate the policy which, subject to the approval of the Minister shall be adopted by it with a view to achieving the objects of the Bureau;

(*c*) advise the Minister in regard to any matter within his purview under this Act.

(2) For the purposes of achieving the objects of the Bureau, and in accordance with the provisions of this Act, the Board may do all such things as are conducive to the achievement of the said objects or calculated directly or indirectly to enhance the value of, or render profitable, the property or rights of the Board.

(3) The Board shall, in addition to any other powers and functions conferred by this Act, have the powers and functions set out in the First Schedule.

(4) The Minister may, at any time alter or amend the First Schedule by notice published in the *Gazette*.

(5) The Board may, in addition to the other powers and functions conferred by this Act, at the request of any ministry, Government Department, local authority, other public authority or any statutory corporation or of any body or person, carry out examinations or tests in respect of any particular commodities, or comparative examinations or tests in respect of imported and locally produced commodities or in respect of commodities of different makes or brands, and may furnish reports on any examination or test so carried out subject to such

conditions as it may deem fit, including conditions as to the use which may be made of such reports, and conditions prohibiting or restricting the disclosure of any information contained in such reports.

(6) The Board shall cause to be kept proper books of accounts and other books in relation thereto.

Committees of the Board

16.—(1) The Board may, for the purposes of performing its functions under this Act, establish committees and delegate to any such committee such functions of the Board as the Board may consider expedient.

(2) The chairperson of each committee shall be appointed by the Board from amongst the members of the Board.

(3) Each committee may, in its discretion, invite any person, not being a member of the Board, to attend a meeting of the Committee and take part in deliberations of the meeting but such person shall not be entitled to vote.

(4) The Chairperson of a committee may convene a meeting of the committee of which he is chairperson.

(5) The Chairperson may direct a chairperson of any committee to convene a meeting of such committee and such chairperson of a committee shall, as soon as practicable, comply with such direction.

(6) At all meetings of a committee a *quorum* shall be formed by a simple majority of members.

(7) At all meetings of a committee each member present shall have one vote on a question before the committee and, in the event of an equality of votes, the chairperson shall have, in addition to a deliberative vote, a casting vote.

(8) Every committee shall have the power to regulate its own procedure.

(9) Every committee shall keep minutes of its meetings and shall inform the Board of its activities.

(10) A member of a committee shall, in respect of expenses incurred by him in traveling and subsistence while discharging his duties as member of that committee, be paid out of the funds of the Board such allowances as the Board may, determine.

Delegation

17.—(1) The Board may, subject to such conditions as it may impose—

(*a*) in writing, delegate to the Chairperson, the Director General or a committee referred to in section 16 any power conferred upon the Board by or under this Act or any other law; or

(*b*) in writing, authorize the chairperson, the Director General or a committee referred to in section 16, to perform any duty assigned to the Board by or under this Act or any other written law.

(2) The Director General may, subject to such conditions as he may impose—

(*a*) delegate a power to an employee; or

(*b*) authorize an employee to perform a duty, which has been—

(i) delegated or assigned to the Director General under subsection (1), unless the Board has in the delegation or assignment concerned determined otherwise; or

(ii) conferred or imposed on the Director General by this Act or any other law.

(3) The Board or the Director General, as the case may be, shall not be divested of any power delegated under subsection (1) or (2), as the case may be, by it or him, and may amend or, withdraw any decision made in the exercise of such delegated power.

PART IV
Financial Provisions

Funds of the Board and its accounts

18.—(1) The funds of the Bureau shall consist of—

(*a*) such sums as may be payable to the Bureau from moneys appropriated by Parliament for the purpose;

(*b*) such moneys or other assets as may accrue to, or vest in, the Bureau, whether in the course of its functions or powers or otherwise;

(*c*) such moneys or other assets as may accrue to, or vest in the Bureau by way of grants, subsidies, bequests, donations, gifts, subscriptions, rents, interest or royalties from the Government or any other source;

(*d*) such sums as are derived from the sale of any property, real or personal, by, or on behalf of, the Bureau;

(*e*) revenue obtained by virtue of the provisions of subsection (2); and

(*f*) any cess payable under section 20.

(2) Subject to the provisions of this Act, the Bureau may, in respect of any service rendered by it under this Act, charge fees or make such other financial arrangements as it may deem fit.

(3) With the approval of the Minister, the Bureau may establish such reserve funds as it may deem necessary or expedient and put therein such amounts as the Minister may approve.

(4) The Bureau shall utilize its funds for defraying expenses in connexion with the performance of its functions.

(5) The Bureau shall keep proper accounts and other records relating thereto in respect of its funds and shall in every aspect comply with the provisions of the Public Finance Management Act and the Public Audit Act.

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Annual Reports

19.—(1) As soon as practicable, but not later than six months after the expiry of each financial year, the Board shall submit to the Minister a report concerning its activities during that financial year.

(2) The report referred to in subsection (1) shall be in such form as the Minister shall approve and shall include information on the financial affairs of the Board, and shall be appended to the report—

(*a*) an audited balance sheet;

(*b*) an audited statement of income and expenditure; and

(*c*) such other information as the Board may consider appropriate or as the Minister may direct.

(3) The Minister shall, on receipt of the report referred to in subsection (1), lay the report before the National Assembly and subsequently publish the report.

Quality development cess

20.—(1) The Minister may, by order published in the *Gazette*, prescribe cess to be known as "quality development cess" which shall be payable to the Bureau in respect of commodities which the Minister shall specify in the order.

(2) An order made under subsection (1) may—

(*a*) provide for cess at different rates on different commodities manufactured in, or imported into Malaŵi or may exempt any type of such commodities from liability for cess;

(*b*) prescribe the manner in which the cess shall be levied, collected and paid to the Bureau.

(3) The proceeds of the cess paid under this Act shall be used exclusively for the purposes of promoting standardization in commerce and industry.

Audit

21.—(1) The accounts of the Bureau shall be examined and audited annually by financial auditors approved by the Board.

(2) A financial auditor appointed by the Board shall audit the accounts of the Board at the end of each of the Board's financial years.

(3) The Board shall pay, in respect of any audit held under this Part, such fees, costs and expenses as may be appropriate.

(4) The Financial Auditor may, by writing under his hand, require the production of all books, deeds, contracts, vouchers, receipts and other documents relating to the accounts or investments of the Bureau which he may deem necessary for the financial audit, summon in writing all such persons having knowledge of the affairs of the Board as he may think proper to appear to be fixed in such summons for examination in connexion with any documents or matter relating to the financial audit.

(5) Any person who, without just cause, fails or refuses to produce any document the production of which has been duly required by the financial auditor, or who, having been duly required by the financial auditor, or who, having been so summoned—

(*a*) without just cause neglects or refuses to comply with the summons; or

(*b*) having appeared before the auditor, without just cause refuses to be examined; or

(*c*) without just cause refuses to answer such question pertaining to the audit as are put to him,

commits an offence and shall, on conviction, be liable to a fine of K100,000 for every such refusal or neglect and in default of payment, be liable to imprisonment for three months:

Provided that any conviction under this section shall not operate or be taken to exempt the person convicted from the liability to do or perform the act, matter or thing required of him.

(6) After completion of the audit of the accounts of the Bureau, the financial auditor shall report thereon in writing to the Board, through the Director General, about the audit generally.

Reimbursement of expenses of members of the Board

22. The Board may make provision for the reimbursement of any reasonable expenses incurred by a member of the Board or of a committee in connexion with the business of the Board or Committee.

Financial year

23. The financial year of the Board shall be the period commencing on the date of commencement of this Act and ending on the following 30th June and thereafter it shall be a period of twelve months ending on 30th June every year.

PART V
Staff of the Bureau

Director General

24.—(1) Subject to the approval of the Minister, the Board shall appoint, on such terms and conditions as it may determine, a person suitably qualified scientifically and technically, as Director General of the Bureau, who shall be the secretary of the Board as well as the chief executive officer of the Bureau, and in addition shall perform such duties as the Board shall assign his office and ensure the effective administration and implementation of this Act.

(2) The Board shall appoint, on such terms and conditions as it may determine, a person suitably qualified scientifically and technically, as Deputy Director General of the Bureau, who shall be the deputy chief executive officer of the Bureau, and shall perform such duties as shall be conferred on him by the Director General.

(3) Without derogation from the generality of the responsibilities and duties of the Director General conferred by subsection (1), the Director General shall—

(*a*) organize, carry out and direct the work of the Bureau in accordance with the policy adopted by the Board;

(*b*) be responsible for the day-to-day administration of the Bureau.

(4) The Director General or such other officer of the Bureau as the Director General may designate, shall attend meetings of the Board and may address such meetings, but shall not vote on any matter:

Provided that the person presiding at any meeting may, for good cause, require the Director General or such other officer to withdraw from such meetings.

(5) Whenever for any reason the Director General is absent or unable to fulfill his duties, the Board may, appoint some other person suitably qualified, scientifically and technically, to act as Director General during such absence or inability.

(6) Any person appointed as a member of staff of the Board shall perform the duties assigned to him from time to time by the Board.

Appointment of other staff and conditions of service

25.—(1) The Board shall, subject to subsection (3) and on such conditions as it may determine, appoint heads of the Departments of the Bureau whom it deems necessary to assist the Bureau in the performance of its functions.

(2) The Director General shall, subject to subsection (3), and on such conditions as he may determine, appoint other staff members of the Bureau to assist the Board in the performance of its functions.

(3) The Bureau shall pay to its employees such remuneration, allowances, and other benefits as the Board may determine, in accordance with a system approved by the Minister and such system may be revised from time to time.

PART VI

Establishment and Implementation of Standards

Setting of Malaŵi Standards

26.—(1) The Bureau shall, as far as possible, ensure that in the setting or amendment of a standard—

(*a*) the latest technological development is considered;

(*b*) the standard is based on an international standard as far as is practicable;

(*c*) the interests of all parties concerned, including the manufacturer, supplier and consumer, are considered; and

(*d*) the norm referred to in subsection (1) is maintained.

(2)—(*a*) the Bureau may—

(i) set and issue a Malaŵi Standard;

(ii) amend a set Malaŵi Standard; or

(iii) withdraw a set Malaŵi Standard.

(*b*) Subject to subsection 1 (*c*), a Malaŵi standard may be set merely by referring to a provision which occurs—

(i) in any other standard set by the Bureau; or

(ii) in a document in the nature of a specification code of practice or standard method issued by a foreign or international body having objects similar to any object of the Bureau and which it deems fit to issue as a standard for the purposes of this Act.

(3) No person shall issue a document which creates or may create the impression that it is a Malaŵi Standard as contemplated in this Act, unless it is issued in accordance with the provisions of this Act.

(4) The Bureau may charge fees—

(*a*) in respect of the setting and issuing of a Malaŵi standard;

(*b*) in respect of services rendered in connexion with the control over the use or application of codes of practice or any category of codes of practice which have been set and issued as a Malaŵi standard; and

(*c*) in regard to the participation in any scheme operated by the Bureau.

Declaration of Malaŵi Standards

27.—(1) The Bureau may, by notice published in the *Gazette*—

(*a*) declare any standard framed, developed or prepared by it to be a Malaŵi standard; or

(*b*) publish any replacement or withdrawal of a declared Malaŵi Standard.

(2) The Minister may, by order published in the *Gazette*, on the recommendation of the Board, and to promote and maintain standardization and quality of safety, health, consumer protection or the environment—

(*a*) declare a standard which has been set or issued to be a mandatory standard;

(*b*) amend a mandatory standard; or

(*c*) withdraw a mandatory standard.

(3)—(*a*) Where a Malaŵi Standard has been declared as a mandatory standard under subsection (2), the Minister may specify a date in the Order after which no person shall manufacture or sell a commodity,

use any method or procedure for the manufacture of a commodity, to which the declared standard applies, unless the commodity or the manufacture thereof is in conformity with the relevant standard.

(*b*) different dates may be fixed under paragraph (*a*) on which different provisions of a mandatory standard shall come into operation.

(4) Notwithstanding any order made under subsection (3), the Minister may, on the advice of the Board, declare—

(*a*) that it is temporarily impossible or impracticable for any person, industry or trade to comply with the Order; and

(*b*) that it is desirable in the public interest that such person, industry or trade should be permitted to manufacture or sell any commodity, method or procedure referred to in the Order, by Notice in the *Gazette*, exempt such person, industry or trade from complying with the Order for any period and subject to such conditions as may be specified in the notice.

Incorporation of Malaŵi Standards in laws

28.—(1) (*a*) If a Malaŵi Standard has been published in the *Gazette*, such Malaŵi Standard or a provision of such standard may be incorporated in any law by a mere reference to the title and number thereof;

(*b*) if a Malaŵi Standard or a provision of such a standard has been incorporated in any law in terms of paragraph (*a*) that standard or provision may be amended in accordance with section 26.

(2) A ministry, local authority, parastatal or other institution or body responsible for or involved in the administration of Malaŵi standards shall keep available for free inspection at each of its offices where or from where the administration of that Malaŵi standard or provision is undertaken, a copy, issued by the Bureau, of the full text of—

(*a*) the Malaŵi standard concerned and every amendment thereof; and

(*b*) every Malaŵi standard or document referred to in section 26 the whole or a part of which appears in a Malaŵi standard referred to in paragraph (*a*) above, and every amendment thereof.

(3) Criminal prosecution may only be instituted against a person on a charge of having contravened or failed to comply with a provision so incorporated with the consent of the Director of Public Prosecutions.

Effect of declaration as mandatory standard and application of standardization mark

29.—(1) A person shall not start to manufacture a commodity to which a mandatory standard applies unless he first obtains a permission to do so from the Bureau.

(2)—(*a*) A person shall not sell a commodity to which a mandatory standard applies, unless—

(i) such a commodity complies with or has been manufactured in accordance with the mandatory standard concerned; and

(ii) where applicable, the standardization mark referred to in section 32 (5) (*a*) has been applied to the commodity concerned in the prescribed manner as set out in the notice concerned, and such commodity has been marked in accordance with the requirements referred to in section 32;

(*b*) the provisions of section 32 (2) shall *mutatis mutandis* apply to the application of a standardization mark to a commodity;

(*c*) The Bureau may issue a sales permit exempting the person to whom it has been issued from provisions of paragraph (*a*), subject to the provisions of section 32 (3).

(3) A seller, manufacturer or importer, in respect of sales, shall keep records of quantities manufactured or imported, of a commodity to which a mandatory standard applies, for purposes of inspection and verification by the Bureau.

(4) A manufacturer or importer of a commodity to which a mandatory standard applies shall pay to the Bureau the prescribed fees.

(5) An imported commodity to which a mandatory standard applies may be deemed to comply with the provisions of subsection (2) (*a*) if that commodity has been certified by a person or organization recognized by the Bureau:

Provided that such a commodity shall be tested or examined and if it is found that commodity does not comply with the provisions of subsection (1) (*a*) (i), it may be dealt with in terms of section 32 (3).

Non-compliance with mandatory standards

30.—(1) Where the Director General upon reasonable grounds, suspects that a commodity, excluding a commodity referred to in section 29 (5), or a consignment or batch thereof does not comply with or has not been manufactured in accordance with a mandatory standard that applies to it, he may direct a person in whose possession or under whose control that commodity, consignment or batch is, to keep it in his possession or under his control, at or upon premises mentioned in the directive, until the said directive is withdrawn by the Director General in writing.

(2)—(*a*) If a certificate referred to in section 5 (3) has not been issued in respect of a consignment of a commodity to which a mandatory standard applies and which has been imported into Malaŵi, the Commissioner General of the Malaŵi Revenue Authority may, subject to the provisions of paragraph (*b*), cause that consignment to be secured at the request of the Director General until the Director General withdraws his request.

(*b*) for the purpose of paragraph (*a*), the provisions of the Customs and Excise Act with regard to the security goods shall apply *mutatis mutandis*. Cap. 42:01

(3) If it is found by the Bureau, or as a result of a test or examination referred to in section 29 (2), as the case may be, that a commodity referred to in subsections (1) or (2) does not comply with the mandatory standard concerned, the Director General may order in writing that—

(*a*) an importer of the consignment concerned of the said commodity return it to the country of origin;

(*b*) the consignment or batch concerned of the said commodity be confiscated and destroyed; or

(*c*) the consignment or batch concerned of the said commodity is dealt with in such other manner as may be stated in the order.

PART VII

Standardization Marks

Establishment, alteration of standardization marks, etc.

31.—(1) The Board shall by notice published in the *Gazette*, establish, alter or abolish the following standardization marks—

(*a*) certification marks;

(*b*) marks of proof; and

(*c*) marks of authenticity,

for any of the following purposes—

(i) the application to any commodity which is the subject of an order under section 27 (2); and

(ii) the application to a commodity which is not the subject of an order under section 27 (2) but concerning the manufacture or sale of which the Board has approved a standard.

(2) No mark which is identical with any trade mark registered in respect of any commodity under the Registered Designs Act, Trade Marks Act or the Merchandise Act or so nearly resembles any such mark which is likely to be mistaken for it, shall, under subsection (1), be specified to be a standardization mark in respect of the commodity or any similar commodity or in respect of the manufacture of that commodity or any similar commodity. Cap. 49:05 Cap. 49:01 Cap. 49:04

(3) No mark identical with any standardization mark which has been duly specified to be such which is likely to be mistaken as a trade mark in respect of any commodity shall be registered under the said Registered Designs Act, Trade Marks Act or the said Merchandise Marks Act. Cap. 49:05 Cap. 49:01 Cap. 49:04

(4) Where, after the date specified in the Order published under section 27 (3), a person intends to manufacture any commodity to which that order relates he shall notify the Board, in the prescribed form, of his intention and the Board shall, if it is satisfied that he is capable of

manufacturing the commodity in accordance with the relevant Malaŵi Standard, issue to him a permit to use the standardization mark referred to in subsection (1) (*a*).

(5) Where any person manufactures, or intends to manufacture, any commodity in respect of which a standardization mark has been specified under subsection (1) (*b*), he may notify the Board of his intention to comply with the approved specification and his wish to apply the relevant standardization mark and the Board shall, if it is satisfied that he is capable of manufacturing the commodity in accordance with the relevant approved specification issue to him a permit to use the standardization mark.

(6) A permit issued under this section may be subject to such conditions as may be specified therein and the person to whom it is issued shall pay to the Board such fees as may be prescribed.

(7) No person shall apply a standardization mark specified under subsection (1) to any commodity except under a permit issued by the Board and which complies with the relevant Malaŵi Standard.

(8) Any person who fails to comply with the provisions of this section commits an offence, and shall, on conviction, in addition to repayment of fees in arrears, be liable to the penalty provided under section 44.

Application of standardization mark

32.—(1) A standardization mark shall only be applied or used in a manner authorized by this Act.

(2) No person shall apply a standardization mark to a commodity except under a mark permit issued under section 33 and unless that commodity complies with or has been manufactured in accordance with the relevant Malaŵi Standard.

(3) For the purposes of this section a person shall be deemed to have applied a standardization mark to a commodity if he has—

(*a*) applied that standardization mark to any container or covering of the commodity concerned or to any label attached to the said commodity or to any container or covering thereof;

(*b*) placed or enclosed the commodity concerned in any container or covering to which that standardization mark has been applied or to which is attached any label to which the said certification mark has been applied; or

(*c*) in connexion with the sale of commodity concerned, directly or indirectly referred to that standardization mark in a manner or under circumstances likely to convey the impression that the said commodity complies with or has been manufactured in accordance with the relevant Malaŵi Standard.

(4)—(*a*) If a standardization mark is altered under section 31 (1), the Bureau may authorize the continued use of that standardization mark as it existed prior to the alteration thereof on such conditions, including conditions regarding the withdrawal of the authorization, as it may deem expedient in the particular instance.

(*b*) a standardization mark referred to in paragraph (*a*) shall, during the period of the continued use thereof be deemed to be a standardization mark which has not been altered by the Minister.

(5)—(*a*) The Bureau may—

(i) subject to the conditions it deems necessary, grant permission to a person entitled under a mark permit to apply a standardization mark to a commodity, to apply to the commodity concerned a code mark approved by the Bureau in lieu of that certification mark; and

(ii) for the purpose of the application of a code mark referred to in subparagraph (i), suspend or amend any condition to which the issue of the said mark permit is subject.

(*b*) the code mark referred to in paragraph (*a*) (i) shall be deemed to be a standardization mark.

Mark permits

33.—(1) An application for a mark permit shall be made to the Bureau and shall be accompanied by the prescribed fees.

(2) The Bureau may—

(*a*) issue a mark permit or sales permit for an indefinite period or for a fixed period subject to such conditions as it may deem necessary; or

(*b*) withdraw or, subject to such conditions as it may deem necessary, suspend a permit referred to in paragraph (*a*), or terminate the suspension of such permit.

(3) The holder of a permit which has been withdrawn in terms of subsection (2) (*b*), or which has expired due to effluxion of time or any other cause, shall, at the written request of the Bureau, forthwith return that permit to the Bureau for cancellation or suspension of permit.

Suspension or cancellation of permit

34.—(1) Notwithstanding any other measures applicable under this Act, the Board may suspend for a period not exceeding one year or cancel the operation of a permit where it is satisfied that the holder of the permit—

(*a*) has not complied with any condition specified therein;

(*b*) has not manufactured any commodity to which the permit relates in conformity with the relevant mandatory Malaŵi standard; or

(*c*) has ceased to manufacture the commodity to which the permit relates.

(2) Any person who is dissatisfied with a decision of the Board or a person acting under its authority in regard to—

(*a*) the refusal of the Board to issue him with a permit;

(*b*) the issuance of a permit subject to conditions; or

(*c*) the variation, cancellation or suspension of a permit issued,

may within fourteen days of the date of the decision, appeal to the Minister and the Minister may confirm, set aside or vary the decision of the Board.

Samples and information

35.—(1) Notwithstanding anything to the contrary in this Act contained, any person who—

(*a*) manufactures any commodity and is entitled under a mark permit to apply a certification mark to such a commodity;

(*b*) manufactures or sells any commodity for which or the manufacture of which a mandatory standard is in force;

(*c*) manufactures or sells any article in respect of which any other standardization mark is in force; or

(*d*) performs an act or carries out a process in which a commodity referred to in paragraph (*a*), (*b*) or (*c*) is involved, shall, at the written request of the Bureau, within a period stated in the request, at his own cost—

(i) transmit to the Bureau such samples as may be specified in the request, of the article concerned for examination, testing or analysis; or

(ii) furnish to the Bureau such information as may be so specified with regard to the article concerned or its manufacture.

(2)—(*a*) The Bureau may examine, test or analyze a sample obtained under this section in order to determine whether the article, component, material or substance concerned complies with, or has the characteristics or has been manufactured in accordance with, the requirements of any provision applicable in terms of this Act.

(*b*) If any sample obtained under this section is damaged or destroyed during the process of examining, testing or analyzing such sample, the Bureau shall not be liable for the damage to or destruction of the same.

(3) The result of any examination, test or analysis of any sample or a commodity to which a mandatory standard is in force, shall, until the contrary is proved, for all purposes be deemed to be valid for the whole consignment or batch from which the sample was obtained.

Limitations on certain claims

36.—(1) No person shall in connexion with the sale of a commodity refer directly or indirectly to the Bureau in a manner or under circumstances likely to create the impression that such commodity has

been approved by the Board, unless such commodity complies with, or has been manufactured in accordance with, a relevant Malaŵi Standard and certified by the Bureau.

(2) No person shall claim or declare that he or any other person complied with a standard unless—

(*a*) such claim or declaration is true and accurate in all material respects; and

(*b*) the identity of that person or the person, on whose authority such claim or declaration is made is clear.

(3) Any person who makes a false claim as per subsection (1) commits an offence, and the Bureau shall be entitled to recover the full costs of the investigation.

(4) Notwithstanding the provisions of subsection (1)—

(*a*) a trader may advertise or otherwise make known the fact that a standardization mark of the commodity offered by him complies with a particular Malaŵi Standard in the advertisement or notification concerned;

(*b*) any person required to make a statement in a contract, tender, quotation or other similar document as to the question whether any commodity offered or supplied by him complies with or has been manufactured in accordance with a particular Malaŵi Standard, may make such a statement, but only if such statement is correct and he confirms that statement in an affidavit or affirmation; and

(*c*) any person may advertise or otherwise make known the fact that he has used a commodity to which a standardization mark has been applied in an installation or in a process of manufacture:

Provided that he mentions or displays the trade name or trade mark of that commodity at the same time in the advertisement or notification concerned.

PART VIII
Inspectors and Auditors

Appointment and powers

37.—(1) Subject to section 25, the Board may in general or for a specific purpose—

(*a*) appoint a suitably qualified person as an inspector; or

(*b*) appoint a person, institution or organization as an auditor for the purposes of this Act.

(2) An inspector or auditor shall be furnished with a certificate stating that he has been appointed in general or for a specific purpose as an inspector or auditor, as the case may be, for the purposes of this Act.

(3) The Board may withdraw an appointment made under subsection (1).

Functions

38.—(1) An inspector or auditor may, subject to the provisions of his appointment and for the purposes of this Act—

(*a*) at any time during working hours and without prior notice, enter any premises in or upon which—

(i) there is a commodity in respect of which a mandatory standard, or any other mark is in force;

(ii) a manufacturing process or action in accordance with a provision of a mandatory standard is executed or is suspected to be executed;

(iii) there is or was an article in respect of which the impression has been created that it complies with or has been manufactured in accordance with a mandatory standard while such article in the opinion of the Bureau does not comply with or has not been manufactured in accordance with such a mandatory standard;

(iv) the records with regard to the manufacture or sale of an article referred to in subparagraph (ii) or (iii) of subsection (2) are kept;

(*b*) inspect and take samples of any such commodity or any material or substance in or on such premises used or suspected to be intended for use in the manufacture, production, processing or treatment thereof, and open any package or container in or on such premises which contains or is suspected to contain any quantity or any such commodity, material or substance;

(*c*) inspect any operations carried out in or upon any such premises in connexion with the manufacture, production, processing or treatment of any commodity, if there is a mandatory standard for such a commodity;

(*d*) at any time require any person to produce then and there or at a time and place to be determined by the inspector any book, notice, record, list or other document which is in the possession or custody, or under the control of, that person, or of any other person on his behalf;

(*e*) examine any such book, notice, record, list or document and make copies of, or take extracts from, any such book, notice, record, list of document which relates to any commodity referred to in paragraph (*a*), or to any permit issued or to be issued under subsection (2) of this section, and require from any person an explanation of any entries therein and seize any such book, notice, record, list or document which, in his opinion, may afford evidence on any offence under this Act;

(*f*) in regard to any matter which is being investigated by him, question, either alone or in the presence of any other person, as he

thinks fit, every person whom he finds on premises entered, under this section or who, he has reasonable grounds to believe is, or has been, employed on any such premises or is in possession, custody or control of anything referred to in this subsection;

(*g*) check any relevant document of a manufacturer or importer of a commodity in respect of which a mandatory standard is in force to determine whether that manufacturer or importer has paid the prescribed fees;

(*h*) order any person referred to in paragraph (*d*), (*e*) or (*f*) to appear before him at a time and place fixed by him, and at such time and place question that person concerning any matter, which is being investigated by him; or

(*i*) suspend a manufacturing activity if it is deemed with sufficient objective evidence to have a potential to compromise health and safety of a consumer or the environment.

(2) Any person who is in charge of any premises referred to in subsection (1) shall, at all times, furnish such facilities as are required by an inspector or auditor for the purpose of exercising his powers under the said subsection.

(3) Any inspector or auditor exercising any power conferred upon him by this section shall on demand, produce the certificate furnished to him in accordance with subsection (1) of this section.

(4) An inspector or auditor exercising powers assigned to him by this section shall, in addition, exercise the powers conferred upon him in the Second Schedule.

Second Schedule

(5) The Minister may at any time alter or amend the Second Schedule by notice published in the *Gazette*.

PART IX
Dangerous or Defective Commodities

Order prohibiting or restricting supply of defective commodities

39.—(1) The Director General, may by order under his hand, prohibit, or impose conditions for the supply of a commodity of any specified kind or description, if the Director General considers that the commodity is so defective that, in the interest of public safety, supply of the commodity should be prohibited or restricted immediately.

(2) An order under this section by the Director General shall take effect when written notice or the order is given to the supplier.

(3) An order made under this section shall remain in force until revoked.

(4) A person who supplies a commodity in contravention of an order made under this section commits an offence.

Remedy for supply of commodity in contravention of order

40.—(1) If a commodity is supplied to a person in contravention of an order under this Part, the person may recover from the supplier as a debt any money paid for the commodity, whether or not the supplier has been convicted of an offence in respect of its supply.

(2) If judgment is given for the plaintiff in an action under this Part, the judgment may, if the court so directs, be satisfied by repair or modification of the commodity in such a manner that—

(*a*) the contravention relied on by the plaintiff would not have occurred if the commodity had been supplied as repaired or modified; or

(*b*) the repaired or modified commodity is accepted by the plaintiff on or before a day specified in the direction.

Order for recall of defective commodities

41.—(1) The Director General may by order under his hand, require a supplier of any defective commodity to do any one or more of the following—

(*a*) recall the commodity, and all others of the same type that were supplied by him, in the manner, and within the period, specified in the order;

(*b*) disclose to the public, or to a class of persons specified in the order, in the manner and within the period so specified—

(i) the nature of any defect in any commodities identified in the order;

(ii) the circumstances in which the use of any such commodities is dangerous; and

(iii) procedures for disposing of any such commodities;

(*c*) notify the public, or a class of persons specified in the order, in the manner and within the period specified in the order, that the supplier undertakes to repair the defective commodity within the period specified in the order.

(2) If a supplier undertakes to replace a commodity, the supplier shall cause the commodity to be repaired so that—

(*a*) any defect in the commodity identified in the order is remedied; and

(*b*) if there is a mandatory standard for commodities of that kind, the commodity complies with the mandatory standard.

(3) If a supplier undertakes to replace a commodity, the supplier shall replace the commodity with a like commodity which—

(*a*) does not contain any defect in the commodity that was identified in the order; and

(*b*) complies with any compulsory standard for commodities of that kind.

(4) If a supplier undertakes to repair a commodity or replace a commodity, the cost of the repair or replacement, including any necessary transportation costs, shall be borne by the supplier.

(5) While an order made under this section is in force, a supplier of a commodity to which the order relates—

(*a*) who fails to comply with a requirement, a direction, or any provision in the order;

(*b*) where the order identifies a defect in the commodity, supplies a commodity of the kind to which the order relates and which contains that defect;

(*c*) in a case other than a case referred to in paragraph (*b*), supplies a commodity of the kind to which the order relates;

(*d*) who fails to carry out an undertaking notified by the supplier under this section; or

(*e*) who having given such an undertaking to repair or replace a commodity, fails to comply with this section in relation to the action undertaken,

commits an offence and shall, on conviction, be liable to a fine or to imprisonment as provided for in section 44.

Voluntary recall of commodities

42.—(1) A supplier who, of his own volition, takes action to recall any commodity shall give to the Director General a notice in writing, not later than two days after that action is taken and the notice shall—

(*a*) state that the commodity is subject to recall;

(*b*) if the commodity has a defect, state the nature of the defect; and

(*c*) if the commodity does not comply with a Malaŵi Standard for the commodity, stating the nature of the non-compliance.

(2) A supplier who fails to comply with this section commits an offence and on conviction shall be liable to a fine as provided for in section 44.

Certain actions not to affect insurance contracts

43.—(1) The liability of an insurer under a contract of insurance with any person, being a contract relating to the recall of commodities supplied, proposed to be supplied by him or to his liability with respect to possible defects in any such commodities, shall not be affected only because he gives to the Minister, or to the Bureau or the Director General or any officer of the Bureau, any information relating to any commodity supplied or proposed to be supplied by him.

(2) A contract of insurance shall be void and of no effect to the extent that it contains any provision that would defeat the operation of this section.

PART X
Offences and Penalties

Offences and penalties

44.—(1) Any person who—

(*a*) contravenes or fails to comply with any provision of this Act, or any directive, regulation, order, condition, requirement or request made there under;

(*b*) refuses or fails to pay any money levied under this Act;

(*c*) falsely represents any material or substance to be reference material supplied by the Bureau;

(*d*) falsely holds himself out to be an inspector, or to be an auditor for the purposes of this Act;

(*e*) makes any statement to an inspector or auditor which is false in any material respect, knowing it to be false;

(*f*) refuses or fails to answer to the best of his knowledge any relevant question which an inspector or auditor has in the exercise of his powers put to him;

(*g*) refuses or fails to comply to the best of his ability with any lawful requirements, demand or order of an inspector or auditor; or

(*h*) hinders or obstructs an inspector or auditor in the exercise of his powers,

commits an offence.

(2) Any person who is convicted of an offence in terms of this section shall—

(*a*) in the case of a first conviction for any offence under this Act other than offences listed in section 21 (5), be liable to a fine of K500,000, and to imprisonment for three years;

(*b*) in the case of a first conviction for an offence referred to in section 31 (8) or section 39 (4), be liable to a fine of K1,000,000 and to imprisonment for five years; and

(*c*) in the case of a second or subsequent conviction, to imprisonment for six years.

(3) Any person who contravenes any other provision of this Act commits an offence and shall, on conviction, be liable to a fine of K100,000 and to imprisonment for six months.

(4) A court which convicts any person of an offence under this Act may, in addition to any penalty imposed in respect of that offence—

(*a*) and subject to the provisions of subsection (4), order that a commodity, a consignment or batch of a commodity, any other article, or any material or substance in respect of which that offence was committed, be forfeited; and

(*b*) summarily enquire into, and assess, the monetary value gained or likely to be gained by such person in consequence of that offence and impose on that person a fine to a maximum equal to the amount so assessed and, in default of payment of such fine to imprisonment for twelve months.

(5) The court shall generally, or in a particular case, determine the manner in which the forfeited goods referred to in subsection (4) (*a*) shall be dealt with.

PART XI
General

Restriction on use of certain words

45.—(1) No person, association or company other than the Bureau, shall, except with the written consent of the Minister, carry on its activities under a name which contains any combination of the words "Malaŵi Bureau of Standards", or "Malaŵi Standards";

(2) No association or company shall be registered under the name "Malaŵi Bureau of Standards" or "Malaŵi Standards", or have a combination of those words in its name.

(3) No individual shall carry on any business, trade or occupation under any such name not being his own.

(4) No trade mark which contains the name "Malaŵi Bureau of Standard" or "Malaŵi Standard" shall be registered under the Registered Designs Act, the Trade Marks Act or the Merchandise Marks Act. Cap. 49:05

(5) No person shall, except under a permit issued under subsections (3) and (4) of section 39, sell any commodity under a mark which contains the word "Malaŵi Bureau of Standards" or "Malaŵi Standard" or under a description in which the said word is used in a manner which may create the impression that the commodity or the manufacture, production, processing or treatment thereof complies with the standard.

(6) An association, company or individual who, immediately prior to the commencement of this Act, lawfully carries on any activity, business, trade or occupation or is registered under any name contemplated in subsection (1), may continue to carry on that activity, business, trade or occupation.

(7) The provisions of subsection (1) shall not affect any trademark registered at the commencement of this Act and the sale of any commodity under any such trade mark.

(8) The Minister may at any time withdraw any consent given by him under subsection (1) if, in his opinion, it is necessary to do so in order to avoid confusion or abuse.

Presumption

46. If it is necessary for the purposes of this Act to determine an importer of a commodity, it shall be presumed, unless the contrary is proved, that the person indicated on the documents concerning the import transaction is the importer of that commodity.

Certain acts not to be interpreted as assurances or guarantees

47. The fact that anything has been done under this Act by the Minister, the Bureau, the Board, a member of a committee of the Board, the Director General or an employee of the Bureau, in connexion with any article, material, substance, act or matter, shall not be interpreted as an assurance or guarantee of any nature in respect of that article, material of a substance, act or matter.

Confidentiality

48.—(1) Any person who is or was concerned in the performance of any function under this Act, shall not disclose any information which he obtained in the performance of such a function except—

(*a*) to the Minister;

(*b*) to any person who, of necessity, requires such information for the performance of his functions under this Act;

(*c*) if he is a person who, of necessity, requires that he supplies such information in the performance of his functions under this Act;

(*d*) such information is required under any written law or as evidence in any court of law;

(*e*) to any competent authority which requires such information for the institution, or an investigation with a view to the institution of any criminal prosecution; or

(*f*) by or on the authority of the Minister, the Chairperson of the Board or the Director General.

(2) Notwithstanding the provisions of subsection (1), the disclosure of any information in connexion with an invention shall not prejudice the rights of the Bureau or any other person to obtain a patent in respect of such an invention.

Inventions by staff members and other persons

49.—(1) (*a*) If any invention is made—

(i) by an employee in the course of or in connexion with the performance of his duties;

(ii) by a person while following a course of study with the assistance, whether financial or otherwise, of the Bureau; or

(iii) by a person assisting the Bureau with any investigation of research,

the rights in respect of that invention shall vest in the Bureau unless the Bureau and the employee or person concerned have entered into a written agreement that the rights of the invention vest in the employee or person concerned or in that employee or person and the Bureau jointly.

(*b*) In the absence of an agreement referred to in paragraph (*a*), the Bureau shall be deemed to be the sole inventor.

(2) If the rights in respect of an invention vest solely in the Bureau, the Bureau may make such invention available for use in the public interest, subject to such conditions as the Board may determine.

(3) The Bureau may pay to an employee or person referred to in subsection (1) (*a*) money or royalties or, with the approval of the Board provide for financial participating by such employee or person in the proceeds obtained as a result of the use of an invention referred to in subsection (1).

(4) The Bureau may apply for a patent in respect of an invention referred to in subsection (1) if an agreement under that subsection has not been entered into, and shall for the purpose of the Patents Act, regarded as the cessionary of the invention concerned. Cap. 49:02

Levying of interest

50.—(1) The Bureau may levy interest in respect of money payable to it but which has not yet been paid from a date on which such money became payable, except in respect of money payable by the Government.

(2) The rate at which interest referred to in subsection (1) shall be calculated, shall be the rate which is determined from time to time in terms of applicable commercial bank market rates and which is applicable on the date on which the money referred to in subsection (1) is paid.

Disclosure of certain information to protect consumer

51.—(1) The Director General may, notwithstanding the provision of section 48, if he is of the opinion that it is necessary in the public interest and to protect the consumer, reveal in any manner—

(*a*) any information which in his opinion is necessary to prevent the public from being misinformed regarding any aspect regulated by this Act;

(*b*) the fact that the use of an article is dangerous to the consumer; or

(*c*) the name or a person who in his opinion does not comply with or does not comply fully with a provision of this Act or any aspect regulated by this Act.

(2) The disclosure referred to in subsection (1) may include the trade name and trade mark of a commodity.

Prohibition of victimization

52.—(1) No employer shall dismiss any person employed by him or reduce the rate of remuneration of that person or otherwise alter the conditions less favourable to him or alter his position to his disadvantage relative to other persons employed by that employer by reason only that the employer believes or suspects, whether or not the belief or suspicion is justified or correct, that the person concerned has given any information which could be required under this Act to give to an

inspector or has compiled with any lawful requirement of an inspector or has given evidence in any proceeding under this Act.

(2) Any employer who contravenes subsection (1) commits an offence, and upon conviction the court may, in addition to any sentence which it imposes, order the employer—

(*a*) to restore the employee to position and condition of employment he enjoyed immediately before the event and which gave rise to the conviction and to pay to him such remuneration as he would otherwise have received since the occurrence of the event; or

Cap. 41:01

(*b*) subject to the Taxation Act, to pay the employee a sum equal to his annual salary payable at the time of the occurrence of such event.

(3) An order made under subsection (2) (*b*) may be enforced as if it were a judgment of a civil court in favour of the employee concerned.

Conflicting standards

53. Where there is a conflict between the provisions of a declared Malaŵi Standard under section 26 and a specification made or declared under any other written law, the Malaŵi Standard shall prevail.

Regulations

54.—(1) The Minister may, in consultations with the Board, make regulations generally for the better carrying into effect the provisions of this Act.

(2) Regulations, which differ in aspects deemed expedient by the Minister, may, subject to the provisions of this Act, be made under subsection (1) in respect of different areas in Malaŵi, or different commodities.

(3) Any person who contravenes or fails to comply with the provisions of any regulation made under subsection (1) commits an offence and upon conviction shall, notwithstanding the provisions of section 21 (*e*) of the General Interpretation Act, be liable to a fine of K250,000 and to imprisonment for twelve months and, in the case of second or subsequent conviction, a fine of K500,000, and to imprisonment for two years.

Cap. 1:01

Relationship between this Act and other written laws

55. Except where otherwise expressly provided, this Act shall be in addition to, and not in substitution for or diminution of, any other written law.

Repeal and savings
Cap. 51:02

56.—(1) Subject to subsection (2), the Malaŵi Bureau of Standards Act is hereby repealed.

(2) Any subsidiary legislation made under the Act repealed by subsection (1) in force immediately before the commencement of this Act—

(*a*) shall remain in force, unless in conflict with this Act and shall be deemed to be subsidiary legislation made under this Act;

(*b*) may be replaced, amended or repealed by subsidiary legislation made under this Act.

PART XII
Transitional Provisions

Transfer of assets, funds, liabilities, etc.

57.—(1) Property, assets, funds, liabilities, obligations, agreements and other arrangements existing at the commencement of this Act and vested in, acquired, incurred or entered into by or on behalf of the Board established under the Act repealed by section 56 shall, on commencement of this Act, be deemed to have vested in or to have been acquired, incurred or entered into by or on behalf of the Board and shall become enforceable by or against the Board to the same extent as they were enforceable by or against the former Board.

(2) Where the transfer of any property transferred to or vested in the Board under subsection (1) is required by any written law to be registered, the Board shall, within one year from the commencement of this Act or within such other period as the written law may prescribe, apply to the appropriate registering authority for the registration of the transfer and thereupon the registering authority shall, at no cost to the Board or any person by way of registration fees, stamp or other duties—

(*a*) make such entries in the appropriate register as shall give effect to the transfer;

(*b*) where appropriate, issue to the Board a certificate of title or other statutory evidence or ownership of the property or make such amendments on such certificates or in the appropriate register as may be necessary; and

(*c*) make any necessary endorsement on such deeds or other documents as may be presented on such registering authority relating to the title, right or obligation concerned.

Transfer of employees

58.—(1) All appointments of members of the Board and staff of the former Board, made prior to the commencement of this Act and subsiding at that date shall be deemed to have been made in accordance with this Act.

(2) Any person who immediately prior to the commencement of this Act is employed by the former Board, shall be deemed to have been transferred to the employment of the Board under his former terms and conditions of service and, for the purpose of determining his rights thereunder, his service shall be regarded as continuous from the time he was appointed by the former Board.

s. 15

FIRST SCHEDULE

Additional Powers and Functions of the Board

1. The powers and functions of the Board shall include—

(*a*) to appoint, subject to paragraph 2 and on such conditions as it may determine, the employees of the Bureau whom it deems necessary to assist the MBS in the performance of its functions;

(*b*) to make provisions for the salaries, wages, conditions of service and other benefits of the Director General and other staff of the Board in accordance with a system approved by the Minister, with the concurrence of the Minister responsible for statutory corporations, as such system is amended from time to time;

(*c*) where applicable, to purchase, take on lease or in exchange or otherwise acquire dwelling houses for persons in its employ;

(*d*) where applicable, to purchase land and construct thereon dwelling houses for persons in its employ;

(*e*) to provide collateral security, including guarantees, to a registered finance institution in respect of a loan granted to an employee of the Bureau by that financial institution, to enable the employee to acquire, improve or enlarge immovable property for residential purposes;

Cap. 37:02

(*f*) subject to the Public Finance and Management Act, to raise moneys by way of loan or bank overdraft;

(*g*) to manage, insure, purchase, take on lease or in exchange, hire or otherwise acquire any real or personal, movable or immovable property, and any rights or privileges in or over any such property, which it considers necessary for the purpose of performing its functions;

(*h*) to construct, maintain, alter and improve any buildings, works, machinery and plant necessary or expedient for the purpose of performing its functions;

(*i*) to work or otherwise beneficially use, or to exchange, let, sell or mortgage any property, rights or privileges acquired or constructed;

(*j*) to invest and deal with any of its moneys not immediately required in such securities and in such manner as it may think fit and to vary or realize such investments;

(*k*) to invite or receive donations from any person towards its expenses and to award bursaries and to make grants towards research or to any other such project as it deems conducive to the promotion of the objects of the MBS;

(*l*) to enter into an agreement to facilitate the voluntary transfer of professional, technical or other staff between itself and any other employers;

(*m*) for the better performance of its functions, to cooperate with Ministries, Government Departments, universities, technical colleges, persons engaged in research, Chambers of Commerce, manufacturers, exporters, producers and such other associations, organizations or persons as may desire to avail themselves of its facilities inside and outside Malaŵi;

(*n*) to do all things incidental or conducive to the performance of its functions under this Act.

SECOND SCHEDULE

s. 38

Additional Powers of Inspectors and Auditors

Powers of inspectors

1.—(1) An inspector shall, for the purpose of the execution of his duties under this Act, have power to do the following things, that is to say, to take with him a police officer if he has reasonable cause to believe that he will meet any serious obstruction in the execution of his duty.

(2) If any person willfully delays an inspector in the exercise of any power under this Act, or fails to comply with the requisition of an inspector in pursuance of this Act or to produce any register, certificate, notice or documents which he is required by or in pursuance of this Act to produce, or willfully withholds or sell a commodity, or method or procedure for the manufacture of a commodity, to which declared Malaŵi Standard applies, or conceals or prevents, or attempts to conceal or prevent, a person from appearing before or being interviewed by an inspector, that person shall be deemed to obstruct an inspector in the execution of his duties under this Act.

Improvement and prohibition notices

2.—(1) If an inspector is of the opinion that a person—

(*a*) is contravening any of the provisions of this Act or regulations made thereunder; or

(*b*) has contravened one or more of those provisions in circumstances that make it likely that the contravention will continue or be repeated, he may serve on him a notice (in this Schedule referred to as "an improvement notice") stating that he is of that opinion, specifying the provision or provisions in respect of which he is of that opinion, giving particulars of the reasons why he is of that opinion and requiring that person to remedy the occasioning within such period within which an appeal against the notice can be brought under paragraph (8) below as may be specified in the notice.

(2) This clause applies to any activities which are being or are about to be carried on by or under the control of any person, being activities to or in relation to which this Act or the regulations made thereunder apply or will, if the activities are so carried on, apply.

(3) If as regards any activity to which this clause applies an inspector is of the opinion that, as carried on or about to be carried on by or under the control of the person in question the activity involves or, as the case may be

will involve a risk or serious personal injury, the inspector may serve on that person a notice (in this part referred to as "a prohibition notice").

(4) A prohibition notice shall—

(*a*) state the opinion of the inspector;

(*b*) specify the matters which, in his opinion, give or as the case may be, will give rise to the said risk;

(*c*) where in his opinion any of those matters involve or, as the case may be, will involve a contravention of any provision of this Act or the regulations made thereunder, state that he is of that opinion, specify the provision or provisions in respect of which he is of that opinion and give particulars of the reasons why he is of that opinion; and

(*d*) direct that the activities to which the notice relates shall not be carried on by or under the control of the person on whom the notice is served unless the matters specified in the notice in pursuance of subparagraph (*b*) of this clause and any associated contravention of provisions so specified in pursuance of subparagraph (*c*) have been remedied.

(5) A direction given under paragraph (3) (*d*) of this clause shall take immediate effect if the inspector is of the opinion, and states it, that the risk of safety, health or environment as related to the commodity, is or, as the case may be, will be imminent, and shall have effect to the end of a period specified in the notice in any other case.

(6) A notice may contain directions as to the measures to be taken to remedy any contravention or matter which the notice relates and any such directions—

(*a*) may be framed to any extent by reference to any standard approved by the Board; and

(*b*) may be framed so as to give the person on whom the notice is served a choice regarding ways of remedying the contravention or matter.

(7) Where an improvement notice of prohibiting notice which is to take immediate effect has been served—

(*a*) the notice may be withdrawn by an inspector at any time before the end of the period specified therein in pursuance of paragraph (5), if the risk to safety, health or environment has been remedied; or

(*b*) the period so specified may be extended by an inspector at any time when an appeal against the notice is not pending.

(8) A person on whom a notice is served may, within fourteen days from the date of its service, appeal to the Minister and on such appeal the Minister may either cancel or affirm the notice and, in affirmation the Board, may do so either in the notice's original form or with such modification as the Minister may, in the circumstances deem fit.

(9) Where an appeal under this clause is brought against a notice within the period allowed under paragraph (8) then—

(*a*) in the case of an improvement notice, the lodging of the appeal shall have the effect of suspending the operation of the notice until the appeal is finally disposed of or, if the appeal is withdrawn, until the withdrawal of the appeal; or

(*b*) in the case of a prohibition notice, the lodging of the appeal shall have the like effect if, but only if, on the application of the appellant, the Board so directs; and then only from the giving of the direction.

SUBSIDIARY LEGISLATION

G.N. 129/1987
33/1992
2/2015
50/2017

MALAŴI BUREAU OF STANDARDS (MALAŴI STANDARDS) (EFFECTIVE DATE) (DECLARATION) ORDER

under s. 20

Citation

1. This Order may be cited as the Malaŵi Bureau of Standards (Malaŵi Standards) (Effective Date) (Declaration) Order.

Effective dates
G.N. 33/1992

2. The dates specified in the Schedule shall be the dates with effect from which no person shall manufacture or sell a commodity specified in *Column 2* of the Schedule in relation to such date or use any method or procedure for the manufacture of such commodity, unless the commodity, or the manufacture thereof is in conformity with the Malaŵi Standard specified in relation to such commodity in *Column 1* of the Schedule within the description specified in *Column 3* of the Schedule.

G.N. 33/1992
2/2015
3/2015
50/2017
51/2017

para. 2

SCHEDULE

EFFECTIVE DATES FOR USE OF MALAŴI STANDARDS

Column 1 *Malaŵi Standard*	*Column 2* *Commodity*	*Column 3* *Description*
	EFFECTIVE DATE: 1ST NOVEMBER, 1987	
MBS 2–1976	UPVC conduit and fittings	COVERS UPVC conduit and fittings, but also applies to conduit and fittings of any other non-metallic material which meets the requirements of the specification.
MBS 3–1976	UPVC sewer pipes, drain pipes and pipe fittings	COVERS UPVC pipes and fittings intended for below-ground non-pressure application for the conveyance of sewer and waste water where continuous temperature in excess of 60° C are not encountered.
MBS 4–1976	UPVC type 1 pressure pipes and fittings	COVERS UPVC type 1 pipes and injection-moulded fittings intended for cold water services under pressure at ambient temperature not below 25° C.
MBS 5–1976	UPVC pipes and pipes fittings for use above ground drainage installations	Covers UPVC and injection-moulded pipe fittings intended for above-ground and non-pressure applications (such as soil water, waste water and ventilating pipes).

Column 1 *Malaŵi Standard*	*Column 2* *Commodity*	*Column 3* *Description*
MBS 11–1981	Artificial vinegar	Covers artificial vinegar produced from glacial acetic acid and water with or without caramel as a colouring matter and intended for use as a condiment.
MBS 18–1982	Carbonated soft drinks	Covers the manufacture, production, processing or treatment of carbonated soft drinks.
MBS 29–1984	Ordinary and rapid hardening Portland cement	Covers requirements for the composition, the manufacture, sampling, chemical and physical properties and ordinary and rapid hardening Portland cement. It also gives methods of test for physical properties.
MBS 30–1985	Wheat flour	Covers requirements and methods of test for wheat flour for human consumption, prepared from common wheat.
MBS 33–1985	Candles	Covers the requirement of candles and methods of test.
MBS 34–1985	Maize flour (*Ufa*)	Covers the description, requirements and method of sampling and analysis for maize flour intended for human consumption.
MBS 35–1985	Primary dry batteries	Lays down specification dimensions, test and requirements of single cells Leclanche type dry batteries (hereinafter referred to as "batteries") and applies to batteries of designations, R6, R14, and R20 for use in flashlights, transistor radio receivers, hearing aides and other electronic appliances where high current drain is not desired.
MBS 50–1987	Beer	This standard prescribes the requirements for beer as defined in the Liquor Act (Cap. 50:07).
	EFFECTIVE DATE: 1ST JANUARY, 1988	
MBS 8–1980	Manually operated airbreak switches	Covers manually operated airbreak switches rated at not more than 60 amperes and 250 volts to earth or 30 amperes and 660 volts between poles.

Column 1 *Malaŵi Standard*	*Column 2* *Commodity*	*Column 3* *Description*
MBS 10–1981	Tung oil	Defines the properties of and methods of testing tung oil of two types known in the trade as type F and type M derived respectively from Aleurites fordii Hemsley and from Aleurites montana Wilson. The standard is not intended for tung oil which is wholly or partly solidified as a result of isomerization. The tests given in this standard are derived to test the purity of the oil and not to test its technological properties.
MBS 13–1981	Glass-reinforced polyester laminated products	Covers requirements for products of the following two types manufactured from glass-reinforced polyester (GRP) laminated products by means of contact moulded at pressure not exceeding one bar: Types S and F.
MBS 14–1984	Glass-reinforced polyester laminated sheets	Covers the requirements for two types of profile of flat sheets made of glass-reinforced polyester (GRP) reinforced laminated. It does not cover moulded canopies curved sheets.
MBS 15–1984	Flexible cords power	1. Covers flexible cords for use with domestic appliances requiring an electrical supply at voltage not exceeding 300 v to earth, including non-domestic appliances available for operation by members of the public: 2. Flexible cords used for the internal wiring of electrical apparatus, pre-wired pendant cords with more than seven conductors, tinsel and screened flexible cords for use in circuits not exceeding 40 v to earth are excluded from the requirements of the specification.

Column 1 *Malaŵi Standard*	*Column 2* *Commodity*	*Column 3* *Description*
MBS 16–1984	Apparatus connectors	Covers apparatus connectors comprising inlet sockets and inlet plugs intended to form detachable connectors between single-phase portable domestic electrical appliances and flexible cords for the operation of such appliances at voltage not exceeding 250 volts. The specification does not apply to connecting sockets and plugs which are incorporated in appliances for the purpose of interconnecting parts of such appliances.
MBS 17–1984	Safety of electrical appliances	Covers the safety of electrical appliances, electrical cooking, heating, motor operated and magnetically controlled domestic appliances, for use at voltage exceeding 250 v to earth. It also covers other electrical appliances, for use in that voltage range, that are available to members of the public for use in circumstances not covered by specific safety legislation. The specification covers general requirements applicable to all appliances.
MBS 19–1982	Labelling of prepacked foods	Covers the general requirements of labelling of prepacked foods.
MBS 20–1983	Blow moulded plastic containers	Covers minimum requirements for plastic containers of nominal capacities up to and including 5 litres intended for storage of commodities other than explosives, compressed gases and radioactive materials.
MBS 21–1984	Code of hygienic conditions for food processing units	Provides a basic for establishing a code of hygienic practice which will ensure uniformity in the hygienic handling and maintaining of commodities and processing units.

Column 1 *Malaŵi Standard*	*Column 2* *Commodity*	*Column 3* *Description*
MBS 24–1984	Canned pineapples	Covers the manufacture, production, processing and treatment of fresh canned pineapples.
MBS 25–1984	Tomato puree	This standard for processed tomato concentrate does not include the products commonly known as tomato sauce, chilli sauce, and ketchup, or similar products of varying concentrations containing characteristic ingredients such as pepper, onions, vinegar, sugar, etc., in quantities that materially alter the flavour, aroma and taste of tomato component.
MBS 26–1984	Tomato juice	Covers the requirements and methods of test for tomato juice.
MBS 27–1984	Tomato sauce	Covers the requirements and methods of test for tomato sauce.
MBS 28–1984	Canned tomato	Covers the requirements and methods of test for canned tomatoes.
MBS 31–1985	Common bread	Specifies the products known as common bread, its requirements and methods of test.
MBS 32–1985	Maize grain	Covers maize for direct human consumption, i.e. ready for its intended use as human food, presented in packaged form or sold lose from the package directly to the consumer.
	EFFECTIVE DATE: 1ST JANUARY, 1992	
MBS 048–1986	Carbolic soap	This standard specifies hard soap for personal hygiene that contains additions of phenolic substances such as cresylic acid.
MBS 049–1986	Toilet soap	Specifies requirements for toilet soap for personal hygiene.

Column 1 *Malaŵi Standard*	*Column 2* *Commodity*	*Column 3* *Description*
MBS 051–1986	Edible oils, fats	Applies to edible oils and fats, either single or blended, derived frown vegetable, animal and marine origins fit for human consumption.
MBS 052–1986	Liquid toilet soap	Specifies requirements for toilet soap for personal hygiene.
MBS 063–1986	Vegetable ghee	Applies to vegetable ghee which has been fully processed and made fit for human consumption.
MBS 064–1986	Mixed animal and vegetable ghee	Applies to any product described as mixed animal and vegetable. Fully processed and made fit for human consumption.
MBS 070–1987	Industrial heavy-duty leather boots	Applies to men's industrial heavy-duty boots made of leather uppers with soles made of injection-moulded polyvinyl chloride or derived vulcanized process.
MBS 074–1987	Pasteurized cow's milk	Applies to pasteurized cow's milk
MBS 076–1988	Agricultural hand hoe	Specifies materials and other requirements for the agricultural hand hoe.
MBS 077–1988	Groundnut oil	Specifies requirements for semi-refined and refined edible groundnut oil.
MBS 078–1988	Refined sunflower oil	Specifies requirements for edible sunflower oil.
MBS 079–1988	Cotton seed oil	Specifies requirements for edible cotton seed oil.
MBS 080–1988	Rapeseed oil	This standard applies to fully refined edible low erucic acid rapeseed oil suitable for human consumption.
MBS 089–1989	Code of hygienic practice for handling and disposal of pesticides	Covers the handling, storage and disposal of pesticides and their containers on farms and small holdings.
MBS 090–1988	High protein baby food	Prescribes the requirements, for high protein baby food.

Column 1 *Malaŵi Standard*	*Column 2* *Commodity*	*Column 3* *Description*
MBS 094–1988	Industrial and safety boots	Prescribes the requirements methods of test for industrial and safety rubber boots of knee height for men and women.
MBS 096–1988	Chillies and capsicum, whole or ground	Specifies requirements for chillies and capsicums in whole or ground (powdered) form.
MBS 097–1988	Curry powder	Specifies minimum requirements for curry powder which is used as a flavouring material in the preparation of foods and commercialized in bulk for wholesale trade.
MBS 108–1989	Petroleum jelly for cosmetic industry	Prescribes the requirements and methods of sampling and test for white and yellow petroleum jelly for cosmetic industry.
MBS 109–1989	Casual and fashion plastic shoes	Specifies requirements for fashion shoes made of polyvinyl chloride compound using the injection-moulded compound.
MBS 112–1989	Toothpaste	Covers the requirements for toothpastes (flouridated and non-flouridated) intended for use with a brush in the cleaning of natural teeth.
MBS 123–1989	Industrial and safety polyvinyl chloride boots	Covers 3 types and 2 classes of injection-moulded ankle boots, requirements for lasts, material and construction are laid down.
MBS 125–1988	Chemical laboratories, code of safety	Outlines a code of safety in chemical laboratories.
MBS 152–1988	Turmeric, whole or ground	Specifies requirements for turmeric (curcumalong linnaeus) whole or ground (powdered).
MBS 153–1988	Coriander, whole or ground	Specifies requirements for whole or ground (powdered) coriander (coricudrum satirum linnaeus).
MBS 154–1988	Soya bean oil	Specifies requirements for fully refined edible soya bean oil.
MBS 161–1988	Cement roofing tiles	Lays down the requirements for raw materials, manufacture, dimensions of cement roofings tiles, sheets and fittings.

Column 1 *Malaŵi Standard*	*Column 2* *Commodity*	*Column 3* *Description*
MBS 163–1988	Raw tung oil for paints and varnishes	Specifies the requirements and the corresponding methods of test for two types of tung oil suitable for paints and varnishes.
MBS 164–1988	Pine apple juice	Specifies the requirements for pine apple juice.
MBS 176–1988	Jams, jellies and marmalades	Specifies the requirements for jams, jellies and marmalades.
MBS 177–1988	Fruit squashes	Specifies the requirements for fruit squashes.
MBS 178–1988	Country wines	Specifies the requirements for country wines.
MBS 179–1988	Rice	Lays down specifications for rice (Dryza Sativa L) of the following types: husked rice, husked parboiled rice, milled rice, and milled parboiled rice, suitable for human consumption.
MBS 191–1988	Yoghurt, Parts 1 and 2 (sweetened and flavoured)	Specifies the requirements for yoghurt and sweetened yoghurt.
MBS 193–1988	Dairy cream for direct consumption	Applies to dairy creams which have been pasteurized, sterilized or ultra-heat treated.
MBS 208–1990	Opaque Beer	Specifies the requirements for opaque beer as defined in the Liquor Act (Cap. 50:07).
MBS 210–1990	Spirits	Specifies the requirements for spirits as defined in the Liqour Act (Cap. 50:07).
MBS 250–1991	Laundry soaps	Prescribes requirements and methods of sampling and test for laundry soaps.
MBS 251–1991	Safety wood matches	Prescribes requirements and sampling procedure for safety wood matches with wooden spirits packed in wooden or cardboard boxes.
MBS 253–1991	Synthetic detergent powder for household	Prescribes requirements for synthetic detergent powder for household purposes.
MBS 255–1991	Compound fertilizers	Lays down the chemical composition requirements, for compound fertilizers.

Column 1 *Malaŵi Standard*	*Column 2* *Commodity*	*Column 3* *Description*
MBS 258–1991	Fertilizers ammonium sulphate	Specifies the composition requirements for ammonium sulphate fertilizer grade. The material may also be used for other industrial purposes.
MBS 261–1991	Industrial sewing thread made wholly or partly from synthetic fibres.	Defines types of thread and gives information on materials, manufacture physical requirement, colour fastness and sampling.
MBS 263–1991	Tarpaulins	Specifies requirements for the materials, manufacture and proofing of tarpaulins that have been treated and/or coated to induce water resistance and for resistance.
MBS 264–1991	Loomstate cotton duck	Covers twelve qualities of plain woven cotton fabric in the loomstate suitable for tents, tarpaulins and equipage. The fabric may be suitably processed, as required.
MBS 267–1991	Calcium carbonate precipitate for cosmetic industry	Prescribes the requirements and methods of sampling for precipitated calcium carbonate for the cosmetic industry.
MBS 268–1991	Textile care labelling code	Provides symbols and phrases that can be grouped into instructions for adoption by textile manufacturers, finishers, merchants or makers-up. For drawing up labels to guide the housewives, launders, dry cleaners, etc., in selection of appropriate cleaning treatment.
MBS 269–1991	Cotton towels	Specifies the constructional details and other requirements for cotton towels.
MBS 271–1991	Super phosphate fertilizers	Prescribes the composition requirement sampling procedure and methods of test for super phosphate fertilizer.
MBS 272–1991	Calcium ammonium nitrate (CAN) fertilizers	Specifies requirements and methods of test for calcium ammonium nitrate (CAN) fertilizer.

Column 1 *Malaŵi Standard*	*Column 2* *Commodity*	*Column 3* *Description*
MBS 278–1991	Road marking paints	Covers quick drying road marking paint for use on bituminous and concrete road surfaces. It makes provision for yellow, white and black paint but does not cover reflectionized paint.
MBS 279–1991	Emulsion paints for new galvanized iron	Covers paint for use on clean unpainted new galvanized iron.
MBS 280–1991	Emulsion paints for interior decorative purpose	Covers synthetic polymer base emulsion paints for interior decorative purposes.
MBS 282–1991	High gloss synthetic enamel paint (akkyd type)	Lays down requirements for interior and exterior high gloss akkyd type synthetic enamel paints as a finishing coat for use on correctly prepared surfaces of metal, wood plaster, walls, composition board, etc.
MBS 284–1991	Emulsion paints for exterior use	Gives the requirements, testing, packing and marking of emulsion paints based on synthetic polymers primarily intended for brush or roller application for exterior use on plaster, asbestos cement or other porous surfaces.
MBS 287–1991	Printing paints for metals	Lays down requirements for lead base, primer for iron and steel. It is intended for interior or exterior use under ready mixed oil paints.
MBS 288–1991	Primers for wood	Lays down requirements for lead base primer for soft wood. It is intended for interior use under ready mixed oil paints or hand gloss paints systems.
MBS 291–1991	Code of hygienic practices in the industry for milk carriers	Prescribes the hygienic requirements and guidelines for milk carriers, milk crates, and milk transporting vehicles.
MBS 294–1991	Fruit nectars	Prescribes the requirements for apricot, peach and pear nectars preserved exclusively by physical means.

Column 1 *Malaŵi Standard*	*Column 2* *Commodity*	*Column 3* *Description*
MBS 295–1991	Lemon juice	Prescribes the requirements for lemon juice preserved exclusively by physical means. The juice shall be obtained from lemons (citrus lemon burn F).
MBS 296–1991	Passion fruit juice	Specifies the requirements for passion fruit juice preserved exclusively by physical means. The juice which is obtained from sound and ripe passion fruit (passi-flora eduliussims) preserved exclusively by physical means.
MBS 297–1991	Mango juice	Prescribes the requirements for ripe mangoes (mangifera indica L) diluted by the use of syrup and acid preserved exclusively by physical means.
MBS 298–1991	Guava juice	Prescribes the requirements for guava juice obtained from ripe guavas (psidium guava), preserved exclusively by physical means.
MBS 299–1991	Orange juice	Prescribes the requirements for orange juice preserved exclusively by physical means. The juice shall be obtained from Mandarins (citrus reticulate—Blanco) or oranges (citrus sinensis (L) osbeck).
MBS 300–1991	Baking powder	Prescribes the requirements methods of test and handling of baking powder.
MBS 301–1991	Synthetic food colour	Prescribes the requirements for synthetic food colour preparations.
MBS 302–1991	Contaminants	Provides the list of contaminants and their permitted maximum levels.
MBS 303–1991	Mint dried	Specifies the requirements for leaves of dried mint (spear mint) in whole, broken or rubbed form. 'Dried mint' includes dehydrated mint, i.e. artificially dried mint.
MBS 304–1991	Cinnamon	Specifies the requirements for whole or ground (powdered) cinnamon constituted by the back of cinnamon (zeylanicum Blume).

Column 1 *Malaŵi Standard*	*Column 2* *Commodity*	*Column 3* *Description*
MBS 305–1991	Thyme	Specifies requirements for whole thyme (Thymes Vulgaris) in processed or semi-processed form for purposes of transactions.
MBS 306–1991	Celery seed	Specifies requirements for whole celery seed (Apium graveoulens Linnaeus) for use as a spice.
MBS 307–1991	Precast concrete blocks (concrete building blocks)	This specification relates to the three types of precast solid or hollow blocks of concrete made with aggregates.
MBS 308–1991	Burnt clay building bricks and blocks (burnt clay bricks)	Specifies the requirements for burnt bricks and blocks manufactured from brick earth clay or shale for use in masonry and walling.
MBS 309–1991	Flooring tiles (floor and wall tiles)	Covers natural coloured, single coloured and terrazo concrete flooring tiles.
MBS 310–1991	Protection of building against lightening	Covers the protection of dwelling homes, farm buildings and small huts by means of conductors and/or masts the use of metal roofs and gutters as part of the protection; the protection of thatched roofs; recommended materials and dimension of conductors and masts, the various methods of earthing, and the protection of electrical installations and radio and television aerials. Contains 14 drawings of typical examples of protection.
MBS 312–1991	Men's fashion shoes	Covers five types of men's shoes made according to Goodyear melted principle and with stitched or stuck-on outer soles.
MBS 313–1991	Childrens' shoes	Covers two types of children's shoes for boys and two for girls made in size ranges 9 to 1 and ½ and 2 to 8.
MBS 314–1991	Footwear side upper leather	Covers chrome-tanned bovine leather with a corrected grain and smooth finished and intended for use as an upper material for footwear.

Column 1 *Malaŵi Standard*	*Column 2* *Commodity*	*Column 3* *Description*
MBS 315–1991	Fabric lining for footwear	Covers the requirements for 13 types of women fabrics suitable for use as linings for footwear. 3 of the types combined by adhesive binding.
MBS 316–1991	Threads for footwear	Covers cotton linen polyamide and polyester threads and blended threads that consist of polyamide (or polyester) and cotton suitable for use in the manufacture of footwear.
MBS 317–1991	Manhole covers and hydrants	Covers the material, dimensional, mass, constructional and strength requirements for fifteen types of cast iron, frames, eleven types of cast iron surface boxes (with covers) for metres, valves, stopcocks and three types of cast iron, inspection covers and flames.
MBS 319–1991	Steel for wire fences	This specification covers the requirements for the dimensions and quality of plain fencing wire.
MBS 320–1991	Fencing wire stranded	Lays down requirements for galvanized strand fencing wire of 3-ply and 7-ply construction.
MBS 321–1991	Fencing wire barbed	This specification covers the requirements for the dimensions and quality of plain fencing wire and barbed (single strand and double strand) fencing wire from 3 grades of zinc coated steel wire.
MBS 322–1991	Mild steel nails	Covers dimensional material and finish requirements for 15 types of mild steel nails.
MBS 340–1991	Size designation of clothes (men's and boy's outerwear garments)	Establishes a system of designating sizes of men's and boy's outerwear garments (including knitwear and swimwear) that are classified as, covering the upper or whole body or lower body only.
MBS 341–1991	Size designation of clothes (women's and girls' outerwear garments)	Establishes a system of designating the sizes of women's and girls' outer-wear garment (including knitwear and swimwear) that are

Column 1 *Malaŵi Standard*	*Column 2* *Commodity*	*Column 3* *Description*
		classified as covering the upper or the whole body, or covering the lower body only.
MBS 342–1991	Size designation of clothes (infants' garments)	Establishes a system of designating the sizes of infants' garments. Both the control dimension on which the size designation system is based, and the method of indicating the size designation on garment labels, are laid down.
MBS 343–1991	Size designation of clothes (definitions and body measurement procedure)	Defines dimensions and specifies a standard procedure for measuring the body.
	EFFECTIVE DATE: 1ST JUNE, 2014	
MS 3:2004	Unplasticized polyvinyl chloride, (uPVC) sewer and drain pipes and pipe fittings-Specification	Covers both normal and heavy duty unplasticized polyvinyl chloride (uPVC) pipes of nominal sizes of 110-630 mm and one duty of uPVC pipe fittings of nominal sizes 110 mm and 160 mm, intended for underground non-pressure applications in the construction of sewers and drains where temperatures continuously in excess of 60 degrees Celsius are not encountered.
MS 4:1993	Unplasticized polyvinyl chloride (uPVC) type 1, pressure pipes and fittings for cold water services-Specification	Covers unplasticized polyvinyl chloride intended for cold water services under pressure at ambient temperature not below 25 degrees Celsius.
MS 5:1993	Unplasticized polyvinyl chloride (uPVC) pipes and pipe fittings for use above ground in drainage installations-Specification	Covers unplasticized polyvinyl chloride (uPVC) pipes and pipe fittings intended above ground non-pressure applications (such as soil water, waste water and ventilating pipes), where continuous temperatures in excess of 60 degrees Celsius are not encountered. Five nominal sizes of pipes and pipe fittings, ranging from 40 mm to 160 mm, are specified, all of which may

Column 1 *Malaŵi Standard*	*Column 2* *Commodity*	*Column 3* *Description*
		be designed for either rubber ring type or adhesive type jointing.
MS 6:1994	Burnt clay bricks-Specification	Covers bricks made from clay, brick-earth or shale, and hardened by firing.
MS 9:2011	Plugs, socket outlets and socket outlet adaptors-Specification	Covers three-pin plugs, socket outlets and socket outlet adaptors for use at nominal statutory supply voltages to earth and for currents not exceeding 15 amperes and intended for use in house hold and similar purposes.
MS 18:2010	Carbonated soft drinks-Specification	Covers the manufacture, product processing or treatment of carbonated soft drinks.
MS 19:2001	Labeling of prepacked food-General standard	Covers the general requirements for labeling of all prepacked food stuffs to be offered as such to consumers. Specific requirements for different foods are contained in respective food standards.
MS 21:2002	Food and food processing units-Code of hygienic conditions	Provides a basis for establishing a code of hygienic practice, which will ensure uniformity in the hygienic handling and maintaining of commodities and processing units.
MS 29:2001	Cement-Specification	Defines and gives the specifications of twenty-seven distinct common cement products and their constituents. The definition of each cement product includes the proportions in which the constituents are to be combined to produce these distinct products in a range of six strength classes.
MS 30:2011	Fortified wheat flour	Applies to fortified wheat flour for direct human consumption prepared from common wheat, *Triticum aestivum* L., or club wheat, *Triticum compactum* Host, or mixtures thereof, which is prepackaged ready for sale to the consumer or destined for use in other food products.

Column 1 *Malaŵi Standard*	*Column 2* *Commodity*	*Column 3* *Description*
MS 32:1998	Maize grain-Specification	Applies to maize grain for direct human consumption, which is ready for its intended use as human food, presented in package, or sold loose from the package directly to the consumer. The standard specifies the requirements for whole grain, shelled dent maize or shelled flint maize or their hybrids. It does not apply to processed maize.
MS 34:2011	Fortified maize flour (ufa)-Specification	Prescribes requirements and methods of sampling and analysis for fortified maize flour intended for human consumption.
MS 36:2012	Wood adhesives-Terminology and classification	Covers the definition of terms relating to adhesives for wood and the classification of adhesives for wood according to their inherent properties.
MS 37:2002	Preservative treated timber-Specification	Prescribes requirements of treated timber, other than the method of treatment, for preservative-treated timber and timber products, other than composite board products and timber products, at various levels of preservative treatment that are considered to be acceptable for a range of hazard conditions.
MS 40:2000	Detergent skin cleansers-Specification	Covers two types of detergent skin cleansers for personal hygiene that are suitable for use in detergent dispensers.
MS 42:2003	Bathing bars-Specification	Prescribes requirements and methods of sampling and test for bathing bars.
MS 43:2003	Black tea-Definition and basic requirements	Specifies the parts of a named plant that are suitable for making black tea for consumption as a beverage and the chemical requirements for black tea, which are used to indicate that the tea from that source has been produced in accordance with acceptable practice.

Column 1 *Malaŵi Standard*	*Column 2* *Commodity*	*Column 3* *Description*
MS 44:2004	Timber, the preservative treatment-Code of practice	Covers the classification of timber preservatives, hazard conditions for timber, the solvents used for timber preservatives, the preparation of timber for treatment and the various treatment processes for timber. Recommendations relating to the handling and safety of preservative treated timber are also given.
MS 45:2001	Lubricating grease-Specification	Covers the performance requirements of four classes of lubricating grease, namely, industrial non-extreme pressure, industrial high performance extreme pressure, automotive non-extreme pressure and automotive multipurpose-extreme pressure, each in four consistency grades, and all of which can contain suspended solid lubricants.
MS 46:1996	Adhesives for the laminating and finger-jointing of timber for furniture and joinery, phenolic and amino plastic resin-Specification	Covers the chemical, physical and performance requirements for three exposure classes of resin adhesives for wood, supplied in liquid or powder form, and based on the chemical reaction with formaldehyde of melamine, urea, melamine-urea compounds, or phenolic compounds.
MS 48:2006	Carbolic soap-Specification	Specifies requirements for carbolic soap for personal hygiene, which contains additions of phenolic substances such as cresylic acid.
MS 49:2006	Toilet soap-Specification	Prescribes the requirements for toilet soap for personal hygiene. It does not provide for specialty soaps, such as medicated soaps.
MS 51:2011	Fortified edible oils-Specification	Outlines requirements for fortified refined edible oils derived from oil seeds and oil-bearing fruits. These oils are suitable for use as cooking oils and salad oils.

Column 1 *Malaŵi Standard*	*Column 2* *Commodity*	*Column 3* *Description*
		The Standard excludes the use of crude oils by proscribing that crude oils shall not be sold for human consumption.
MS 52:2000	Liquid toilet soap-Specification	Prescribes the requirements of liquid toilet soap for personal hygiene.
MS 53:2001	Chilli sauce-Specification	Prescribes requirements for chilli sauce. The chilli sauce shall be manufactured from chillies (*Capsicum frutescens* L) or other small fruits of the genus Capsicum.
MS 55:1990	Wheat grain-Specification	Prescribes requirements, methods of sampling and analysis for wheat belonging to the species *Triticum aestivum* and T. durum, which are intended for human consumption.
MS 57:1987	Pineapple juice-Specification	Prescribes requirements for pineapple juice.
MS 59:2002	Solid waste-handling transportation and disposal-Code of practice	Prescribes the recommended procedure for the handling, transportation and disposal of solid waste to ensure safety of operatives, passers-by, animals and the rest of the environment.
MS 65:2003	Soap powder or chips-Specification	Covers four types of soap for use in laundries. It does not cover non-soapy detergents.
MS 66:2003	Antibacterial liquid toilet soap-Specification	Covers two types of antibacterial liquid toilet soap for medical use, which are suitable for use in liquid dispensers.
MS 71:2000	Concrete building blocks-Specification	Applies to solid, hollow or cellular concrete building blocks, including aerated blocks.
MS 73:1988	Raw cow's milk-Specification	Prescribes the requirements for raw milk obtained from cows.
MS 106:2005	Welding helmets, shields, goggles and welding spectacles-Specification	Prescribes requirements for the materials, design and manufacture of welding helmets, hand shields, goggles and welding spectacles that are intended to be used with protective filters, filter covers and

Column 1 *Malaŵi Standard*	*Column 2* *Commodity*	*Column 3* *Description*
		backing lenses that comply with the appropriate transmittance requirements. The standard does not cover eye protection devices for use in welding with lasers.
MS 113:2011	Above ground non-pressurized horizontal cylindrical steel storage tanks for petroleum products-Specification	Prescribes requirements for the manufacture and testing of non-pressurized horizontal cylindrical steel storage tanks for petroleum products.
MS 114:2011	Underground non-pressurized horizontal cylindrical storage tanks for petroleum products-Specification	Prescribes requirements for the manufacture and testing of non-pressurized horizontal cylindrical steel storage tanks for petroleum products.
MS 115:2002	Frozen fish-Specification	Outlines requirements for fresh, whole fish that is frozen and glazed.
MS 116:2002	Salted fish-Specification	Prescribes requirements for all species of fish, which are wet salted, sold while fresh or dry.
MS 117:2002	Smoked fish-Specification	Prescribes requirements for smoked fish and fishery products.
MS 118:2007	Canned fish, canned fish products and canned marine molluscs-Specification	Covers requirements for the manufacture, production, processing, or treatment and methods of tests for canned fish, canned fish products, and canned molluscs and their methods of tests.
MS 119:2004	Small incinerators-Specification	Covers requirements for a range of incinerators using fuel gases or electricity. The range of sizes included is based upon the number of test samples which can be destroyed in accordance with the conditions of test prescribed in the standard. In general, these appliances are suitable for the destruction of combustible materials such as sanitary towels, bandages, dressings and paper.

Column 1 *Malaŵi Standard*	*Column 2* *Commodity*	*Column 3* *Description*
MS 121:2011	Road tank vehicles for petroleum based flammable liquids-Specification	Covers the requirements for tank vehicles for use on public roads, for transportation, at temperatures below their boiling point, of normally stable petroleum-based flammable liquids.
MS 159:1996	Cooler blocks-Specification	Outlines requirements for raw materials, manufacture and physical properties of cooler blocks.
MS 164:2013	Asparagus-Specification	Applies to shoots of commercial varieties of asparagus grown from *Asparagus officinalis* L., of the *Liliaceae* family, to be supplied fresh to the consumer, after preparation and packaging. Asparagus for industrial processing is excluded.
MS 170:2012	Unleaded petrol-Specification	Prescribes requirements for unleaded petrol retailed in the country for use as fuel in petrol engine vehicles.
MS 172-1:2011	Petroleum industry Part 1: Storage and distribution of petroleum products in above-ground bulk installations	Covers the layout and design of petroleum bulk depots, and the installation of equipment of the types normally used for the handling, storage and distribution of petroleum products and their derivatives, other than equipment that is used for storage and dispensing on consumer premises, including service stations.
MS 172-2:2011	Petroleum industry Part 2: Electrical and other installations in the distribution and marketing sector	Covers the recommended safe practices in the design, construction, installation and maintenance of electrical, earthing and bonding systems intended to be used in flammable and combustible liquid storage, pumping, distribution and marketing facilities.
MS 172-3:2011	Petroleum industry Part 3: The installation of underground	Covers provisions for the installation of underground storage tanks of individual. Capacity not exceeding 85,000 litres,

Column 1 *Malaŵi Standard*	*Column 2* *Commodity*	*Column 3* *Description*
	storage tanks, pumps or dispensers and pipe work at service stations and consumer installations-Code of practice	pumps or dispensers and pipe work at service stations and consumer installations.
MS 173:2005	Acoustics-noise pollution tolerance limits	Prescribes maximum allowable noise limits in industrial, commercial, residential and silence zone areas. It also lays down sound level requirements for indoors of non-industrial buildings.
MS 177:2010	Fruit squashes-Specification	Specifies the requirements for fruit squashes.
MS 179:2010	Rice-Specification	Lays down specifications for rice (*Oryza sativa* L) of the following types: husked rice husked parboiled rice, milled rice suitable for human consumption, directly or after reconditioning.
MS 186:1988	Ballpoint pens-Specification	Specifies the requirements for single cartridge ballpoint pens, replacement refills and direct-fill ballpoint pens, which have black, blue, green or red ink.
MS 187:1999	School chalk-Specification	Prescribes the requirements, methods of sampling and test for white and coloured chalks made from gypsum, calcium sulphate hemihydrate ($CaSO_4.1/2H_2O$), intended for writing on chalkboards. It does not apply to calcium carbonate type of chalks.
MS 188:2008	Edible salt-Specification	Specifies the requirements and methods of test for edible salt meant for human and livestock consumption. It applies to salt used as an ingredient of food both for direct sale to the consumer and for food manufacture. It applies also to salt used as a carrier of food additives or nutrients or both.

Column 1 *Malaŵi Standard*	*Column 2* *Commodity*	*Column 3* *Description*
MS 189:2009	Cheese-Specification	Applies to cheese, intended for direct consumption or further processing.
MS 192:2009	Butter-Specification	Specifies requirements and methods of sampling and test for butter intended for direct consumption or for further processing.
MS 194:2009	Dairy-ice and dairy ice cream-Specification	Specifies the requirements, methods of sampling and test, for dairy ices and dairy ice cream.
MS 202:2013	Fortified white sugar-Specification	Prescribes the requirements for fortified white sugar derived from sugarcane or beet root intended for human consumption without further processing. It includes sugars sold directly to the final consumer and sugars used as ingredients in food stuffs.
MS 209:2013	Fortified raw sugar-Specification	Prescribes the requirements for fortified raw sugar derived from sugarcane or beet root intended for human consumption without further processing. It includes sugars sold directly to the final consumer and sugars used as ingredients in food stuffs.
MS 211:2013	Liquid carbon dioxide, industrial-Specification	Specifies two types of carbon dioxide for industrial use. Type 1 is suitable for industrial non-food applications, e.g. purging, inerting, life raft inflation. Type 2 is a higher quality grade which is also suitable for industrial food applications, e.g. beverages, gas packaging, food freezing and chilling. The standard does not apply to carbon dioxide for medical use, fire-fighting or welding.
MS 224:1990	Pasta products-Specification	Prescribes the requirements, methods of sampling and test for pasta products.
MS 225:2013	Fat spreads and blended spreads-Specification	Applies to fat products, containing at least 10 per cent and not more than 90 per cent fat, intended

Column 1 *Malaŵi Standard*	*Column 2* *Commodity*	*Column 3* *Description*
		primarily for use as spreads. The standard does not apply to fat spreads derived exclusively from milk or milk products to which only other substances necessary for their manufacture have been added. It only includes margarine and products used for similar purposes and exclude products with a fat content of less than two thirds of the dry matter (excluding salt). Butter and dairy spreads are not covered by this Standard.
MS 227:1990	Sugar confectionery-Specification	Specifies the requirements and methods of sampling and test for high boiled sweets and low boiled toffees and caramels.
MS 228:1990	Macadamia kernels-Specification	Specifies requirements and methods of test for shelled macadamia nuts belonging to the species *Macadamia tetraphylla* and *Macadamia intgergrifolia* or their hybrids.
MS 230:1990	Tomatoes-Specification	Prescribes the requirements for tomatoes, *Lycopersicon esculentum* Mill.
MS 231:1990	Fresh pineapples-Specification	Specifies the requirements for fresh pineapples (*Ananas comosus* L). It also stipulates requirements for handling, grading, packing and marking.
MS 234:1993	Bun-Specification	Specifies the requirements and methods of test and sampling for bun.
MS 236-1:2011	The handling, storage, distribution and maintenance of liquefied petroleum gas (LPG) in domestic, commercial, and industrial installations Part 1: Installations involving gas	Specifies requirements for the materials, the methods of construction and installation of equipment used in liquefied gas applications for domestic and commercial installations that involve gas storage containers of individual water capacity not exceeding 500 litres and of a combined water capacity not exceeding 3000 litres.

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	storage containers of individual water capacity not exceeding 500 litres and a combined water capacity not exceeding 3000 litres per installation	
MS 236-2:2011	The handling, storage, distribution and maintenance of liquefied petroleum gas (LPG) in domestic, commercial, and industrial installations Part 2: Installations in mobile units and small non-permanent buildings	Contains recommendations for the materials and methods of construction and assembly of installations for the storage and distribution of LPG in mobile units and small non-permanent buildings. It also contains recommendations for containers, appliances, piping, fittings and other components, and the maintenance, inspection and testing of installations.
MS 236-3:2011	The handling, storage, distribution and maintenance of liquefied petroleum gas (LPG) in domestic, commercial, and industrial installations Part 3: Installations involving storage vessels of individual water capacity exceeding 500 litres	Specifies requirements for the layout, design and installation of butane, propane and liquefied petroleum gas equipment, and of storage vessels of individual water capacity exceeding 500 litres and associated vaporizers, pipework and fittings up to the outlet of the first pressure reduction stage in the line.
MS 236-4:2011	The handling, storage, distribution and maintenance of liquefied petroleum gas (LPG) in domestic, commercial, and industrial installations Part 4: Transportation in bulk by road	Contains recommendations for the design, construction, inspection, fittings and filling ratio of tanks used in the transportation of LPG in bulk by road, the design of vehicles and ancillary equipment, and operating practice. Fire precautions are also covered.

Column 1 *Malaŵi Standard*	*Column 2* *Commodity*	*Column 3* *Description*
MS 236-6:2011	The handling, storage, distribution and maintenance of liquefied petroleum gas (LPG) in domestic, commercial, and industrial installations Part 6: The application of liquefied petroleum and compressed natural gases as engine fuels for internal combustion engines	Covers the safe use of liquefied petroleum gas and compressed natural gas as fuels for internal combustion engines and for the safe operation of equipment manufactured for conversions.
MS 236-7:2011	The handling, storage, distribution and maintenance of liquefied petroleum gas (LPG) in domestic, commercial, and industrial installations Part 7: Storage and filling premises for refillable LPG containers of gas capacity not exceeding 9 kg and the storage of individual gas containers not exceeding 48 kg	Specifies the minimum requirements for the location and installation of, and operations at, filling premises for the filling of liquefied petroleum gas (LPG) containers of gas capacity not exceeding 9 kg, including the storage of individual gas containers not exceeding 48 kg. It identifies safe methods of filling and storing refillable containers and makes recommendations towards safe working procedures that cover all aspects of the storage of containers.
MS 236-8:2011	The handling, storage, distribution and maintenance of liquefied petroleum gas (LPG) in domestic, commercial, and industrial installations Part 8: The fuelling of fork lift trucks and other LPG operated vehicles	Covers recommendations for the equipment used in filling LP gas containers on fork lift trucks and other LP gas operated vehicles from fixed storage, and for the siting and maintenance of the equipment. It also covers safety pre-cautions and fuelling procedure and is intended to supplement MS 236: Part 6.

Column 1 *Malaŵi Standard*	*Column 2* *Commodity*	*Column 3* *Description*
MS 236-10:2011	The handling, storage, distribution and maintenance of liquefied petroleum gas (LPG) in domestic, commercial, and industrial installations Part 10: Mobile filling stations for refillable LPG containers of capacity not exceeding 9 kg	Gives recommendations in respect of the location and operation of mobile filling stations suitable for the filling of refillable liquefied petroleum gas containers. It also gives certain design features in respect of the compliance of the trailer with the requirements of the road ordinance and general safety.
MS 237:2008	Food additives-General standard	Specifies food additives permitted for use in food. The Standard sets forth the conditions under which food additives may be used in all foods, whether or not they have previously been standardized by the Codex Alimentarius Commission.
MS 245:1991	Bean-Specification	Specifies requirements for shelled beans, *Phaseolus vulgaris* L. suitable for human consumption.
MS 248:1991	Orange juice-Specification	Specifies requirements for orange juice obtained from oranges (*Citrus sinensis* (L) Osbeck).
MS 249:2012	Fertilizers-Marking-Presentations and declarations	Specifies the procedure for marking containers or labels for fertilizers, where national legislation permits. This Standard is applicable to all fertilizers in containers and is designed to make easy compliance of the fertilizer industry with MS 722.
MS 251:2002	Safety wood matches-Specification	Specifies functional requirements for safety wood matches in boxes. It defines the performance characteristics of the splints, matches head composition, match box and friction surface.
MS 253:2002	Synthetic detergent powders for household use-Specification	The Standard specifies requirements for synthetic detergent powders for household use based predominantly on the

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		use of alkyl aryl sulphonates. It does not cover synthetic powders for use with washing machines.
MS 255:1998	Compound fertilizers-Specification	Specifies requirements, sampling and tests methods for compound fertilizers.
MS 258:2000	Fertilizers-Ammonium sulphate-Specification	Specifies requirements and methods of test for ammonium sulphate fertilizers, also known as sulphate of ammonia.
MS 267:2004	Calcium carbonate (precipitated) for cosmetic industry-Specification	Prescribes the requirements, methods of sampling and tests for precipitated calcium carbonate for the cosmetic industry.
MS 272:2000	Fertilizers-Calcium ammonium nitrate-Specification	Specifies requirements and methods of test for calcium ammonium nitrate fertilizer (CAN).
MS 298:2000	Guava nectar-Specification	Prescribes requirements for guava nectar. The nectar shall be obtained from guavas (*Psidium guajavas*).
MS 302:2008	Contaminants and toxins in foods-General standard	This Standard contains the main principles and procedures which are used and recommended by the Codex Alimentarius Commission in dealing with contaminants and toxins in foods and feeds, and lists the maximum levels of contaminants and natural toxicants in foods and feeds which are recommended to be applied to commodities moving in international trade.
MS 307:2002	Natural latex rubber condoms-Requirements and test methods	Specifies requirements for male condoms from compounded natural rubber latex, supplied to consumers and designed for contraceptive purposes and to assist in the prevention of sexually transmitted diseases.
MS 308:2002	Reusable rubber contraceptive diaphragms-Specification	Specifies requirements and methods of test for reusable rubber diaphragms supplied in consumer packages for contraceptive use

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		and for protection against sexually transmitted diseases. The standard does not cover other vaginal contraceptives barriers, such as those known cervical caps, vaginal sponges and vaginal sheaths.
MS 315:2003	Fabric linings for footwear-Specification	Covers the requirements for fifteen types of woven cotton fabric suitable for use as linings for footwear.
MS 319:2006	Steel metal door frames-Specification	Covers sizes and general requirements for door frames (with or without fan light frames) fabricated from mild steel sheet, for walking through doors.
MS 320:2006	Windows and doors made from rolled mild steel sections-Specification	Covers windows, doors, sidelights and fanlights fabricated from rolled mild steel sections, complete with fittings and ancillary components.
MS 322:2007	Mild steel nails-Specification	Covers the requirements for wire and at mild steel nails and tacks for general use and eight nails for pneumatic gun nailers.
MS 326:2004	Incinerators-Standard performance requirements for incineration plant for the destruction of hospital waste-Specification	Specifies the standard performance requirements for incineration plant, assisted by auxiliary fuel if required, suitable for the destruction of hospital waste.
MS 328:2009	Locks, latches and associated furniture for doors (domestic type)-Specification	This specification covers the requirements for the materials, essential dimensions, finish, and performance for mortice locks and latches, and the associated lock and latch furniture.
MS 346:2005	Incinerators-Methods of specifying purchasers' requirements for incineration plant for the destruction of hospital waste	The standard details a method for specifying purchaser's requirements for incinerators for the destruction of hospital waste manufactured to specifiers' requirements. It does not cover other items of plant such as charging machines, chimneys, flues, and others.

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MS 349:2002	Edible cassava flour-Specification	Applies to cassava flour intended for human consumption.
MS 351:2000	Fertilizers, urea-Specification	Specifies the requirements for urea fertilizer.
MS 353:2000	Fertilizers-ammonium nitrate-Specification	Specifies requirements for ammonium nitrate fertilizers (NH_4NO_3), also called nitrate of ammonia.
MS 354:2000	Fertilizers, muriate of potash	Specifies requirements for muriate of potash fertilizer, also called potassium chloride (KCI).
MS 355:2000	Fertilizers, sulphate of potash	Specifies requirements and methods of test for sulphate of potash fertilizer, also called potassium sulphate (K_2SO_4).
MS 356:2004	Design, specification, installation and commissioning of incineration plant for the destruction of hospital waste-Code of practice	Gives guidance on the design, specification, installation and commissioning of incineration plant for the destruction of hospital waste. It also gives information on training of staff and maintenance of plant, on collection and transportation of hospital waste.
MS 366:2010	Honey-Specification	Specifies requirements for all honeys produced by honey bees and covers all styles of honey presentations, which are processed and ultimately intended for direct consumption. It also applies to honey used as an ingredient in other foods and honey, which is packed for sale in bulk containers, which may be repacked into retail packs.
MS 374-1:2004	Black polyethylene pipes for the conveyance of liquids-Specification Part 1: Low density polyethylene pressure pipes	Covers two types of plain unthreaded, black low density polyethylene (LDPE) pipes intended for applications above and below ground for the conveyance of water under pressure when prolonged exposure to elevated temperatures (above 40 degrees Celsius) is not likely to be encountered.

Column 1 *Malaŵi Standard*	*Column 2* *Commodity*	*Column 3* *Description*
MS 374-2:2004	Black polyethylene pipes for the conveyance of liquids-Specification Part 2: High density polyethylene pressure pipes	Covers two types of plain unthreaded, black high density polyethylene (HDPE) pipes intended for applications above and below ground for the conveyance of water under pressure when prolonged exposure to elevated temperatures (above 40 degrees Celsius is not likely to be encountered.
MS 374-3:2004	Black polyethylene pipes for the conveyance of liquids-Specification Part 3: High density polyethylene PE 80 pressure pipes	This part of MS 374 covers plain, unthreaded, high-density black polyethylene (PE-HD) pipes (including pipes with integral fittings) that have a design stress rating of 6.3 MPa. They are intended for applications above and below ground, for the drainage and conveyance of water under pressure where temperatures of up to 40 degrees Celsius are encountered.
MS 400:1995	Pigeon peas-Specification	Specifies requirements for shelled dry peas, (*Cajanus cajan* L) intended for human consumption.
MS 414-1:2002	Masonry cement-Specification	Specifies requirements for the composition, manufacture, sampling and testing of masonry cement, without air entrainment agents.
MS 417:1995	Meat meal and meat and bone meal-Specification	Prescribes requirements and methods of sampling and test for meat meal and meat and bone meal meant for livestock feeding.
MS 422:1997	Fish meal as livestock feed-Specification	Prescribes requirements for fish meal for livestock feeding.
MS 423:1995	Bone meal as livestock feed-Specification	Prescribes requirements and methods of sampling and test for bone meal to be used as a mineral supplement in livestock feeding.
MS 424:1997	Blood meal as livestock-Specification	Prescribes requirements for blood meal as livestock feed.

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MS 425:2013	Sesame seed for the manufacture of oil-Specification	Specifies the requirements, methods of grading, sampling and testing of sesame seed, intended for the manufacture of oil for human consumption.
MS 458:2002	Rubber seals-joint rings for water supply, drainage and sewerage pipelines material -Specification	Specifies requirements for materials used in vulcanized rubber seals for cold drinking-water supplies up to 50 degrees Celsius, drainage, sewerage and rainwater systems (continuous flow up to 45 degrees Celsius and intermittent flow up to 95 degrees Celsius).
MS 461:1993	Cashew kernels-Specification (5 p)	Specifies requirements and methods of sampling and test for kernels obtained from cashew nuts (*Anacardium occidentale*).
MS 470:1993	Hair creams-Specification	Prescribes requirements for hair creams and other oil-based emulsion preparations for the hair. These include water-in-oil and oil-in-water emulsions. It does not cover hair oils, brilliantines and pomades.
MS 471:1993	Hair oils-Specification	Prescribes the requirements for hair oils and other oil-based cosmetic preparations for the hair. This includes hair tonics and hair oil concentrates.
MS 475:1993	Hair shampoo, soap based-Specification	Prescribes the requirements for soap-based hair shampoo. It also applies to shampoo with possible medicinal effect on the skin, but excludes special shampoos that are only meant for neutralizing purposes.
MS 477:1997	Food for infants and children-Code of hygienic practice	Provides a code of hygienic practice for all pre-packed foods intended to be for special use for infants or children. It contains the minimum hygienic requirements for the handling, including production, processing, packaging, storage,

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		transportation, distribution and sale, of such foods to ensure a safe, sound and wholesome product.
MS 479:1997	Avocado-Specification	Specifies requirements for fresh avocados to be supplied in export and local specified markets. The standard stipulates requirements for handling, grading and packaging of the produce up to dispatching stage.
MS 484:2008	Metallic materials-Tensile testing at ambient temperature	Specifies the method for tensile testing of metallic materials and defines the mechanical properties which can be determined at ambient temperature.
MS 488:2004	Wooden ceiling and paneling boards-Specification	Covers three grades of profiled boards (planed or planed and sanded) manufactured from hardwood or softwood timber and intended for use in ceilings or paneling.
MS 491:2011	The manufacture of finger-jointed structural timber-Code of practice	Covers the requirements for the manufacture of finger-jointed structural timber.
MS 492:2012	Plywood and composite board-Specification	Covers requirements for materials, construction, preservative treatment, dimensions and performance of plywood and composite board.
MS 496:2012	Softwood brandering and battens-Specification	Specifies requirements for one grade of timber suitable for use as brandering and battens intended for being fixed against beams and joists in roofs for the attachment of ceilings and for the boxing in of eaves, and for use as supports on roof trusses for the fixing of roofing slates, tiles, wooden shingles and thatch.
MS 498:2008	Illuminating paraffin-Specification	Covers a hydrocarbon fuel suitable for use in wick-fed, pressure vapourizing and other paraffin burning appliances for the purpose of illumination.

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MS 502:1995	Softwood furniture timber-Specification	Covers two grades of rough-sawn timber derived from trees of genera of the coniferae grown in southern Africa and intended for use in furniture manufacture.
MS 503:1995	Softwood joinery timber-Specification	Covers one grade of rough-sawn timber derived from trees of genera of the coniferae grown in Malaŵi and intended for use in joinery work.
MS 509:2010	Galvanized iron sheets-Specification	Specifies requirements for materials, profile and dimensions of galvanized corrugated and troughed iron sheets for roofing, cladding and other general uses.
MS 516:2010	Coffee and its products-Vocabulary	Defines the most commonly used terms relating to coffee and its products.
MS 519:2000	Thobwa powder-Specification	Covers the physical, chemical and micro-biological requirements, and methods of sampling and testing for thobwa powder.
MS 520:2000	Electricity appliances for heating liquids-Specification	Specifies constructional and performance requirements for electrical appliances of rated capacity not exceeding 80 litres for heating liquids for household and similar use and intended for operation on AC supply voltages not exceeding 250 V to earth and at current ratings not exceeding 16A.
MS 521:2002	CO_2 gas cartridges (steel)-Specification	Specifies the characteristics of refillable, CO_2 gas cartridges (steel) of capacities up to 500g.
MS 526:1997	Vegetable-tanned outer sole leather-Specification	Covers outer-sole leather tanned with vegetable tanning materials only.
MS 528:2000	PVC-insulated cables for electricity supply-Specification	Specifies requirements dimensions for PVC-insulated cables for operation at nominal voltages up to and including 1900 V to armour or earth and 3300 V between conductors.

Column 1 *Malaŵi Standard*	*Column 2* *Commodity*	*Column 3* *Description*
MS 529-1:2005	Production of reconditioned tyres Part 1: Definitions	Defines the terms used in the production of reconditioned tyres and includes a diagram illustrating the cross-section of a typical tyre.
MS 529-3:2005	Production of reconditioned tyres Part 3: Repairs	Covers the requirements for repairs of permissible defects in tyres that are to be reconditioned in accordance with the relevant part of the specification. The method of repair, the materials, and the equipment to be used are also covered.
MS 529-4:2005	Production of reconditioned tyres Part 4: Passenger car tyres	Covers the requirements for tyres for passenger cars, station wagons and caravans that are to be reconditioned (by the use of a hot moulding process) by remoulding or retreading or top-capping, and for the methods of reconditioning and the equipment to be used.
MS 529-5:2005	Production of reconditioned tyres Part 5: Light truck cross-ply tyres	Covers the requirements for two classes of cross-ply tyres for light trucks that are to be reconditioned (by the use of a hot, or top-capping), and for the methods of reconditioning and the equipment to be used.
MS 529-6:2005	Production of reconditioned tyres Part 6: Bus and truck cross-ply tyres	Covers the requirements for five classes of cross-ply tyres for buses, trucks and trailers that are to be reconditioned (by the use of a hot moulding process) by retreading or top-capping, and for the methods of reconditioning and the equipment to be used.
MS 529-7:2005	Production of reconditioned tyres Part 7: Tyres reconditioned by the pre-cured process	Covers the reconditioning by the use of a pre-cured tread process, of tyres for passenger cars, station wagons, caravans, light trucks, trucks and buses. Requirements are laid down for the casings, the methods or reconditioning, and the equipment to be used as well as for the finished product.

Column 1 *Malaŵi Standard*	*Column 2* *Commodity*	*Column 3* *Description*
MS 530:1997	Farm implements-Methods of sampling	Prescribes the recommended procedures for sampling of agricultural equipment and their components.
MS 534:2005	Disposal of effluents from dairy industry-Code of practice	Covers methods of treatment and disposal of effluents from dairy and allied industries. It is a compilation of sources, nature, volumes and pollution effects of the effluents, ways of waste prevention and methods of their treatment and disposal.
MS 538:2008	Diesel-Specification	Prescribes requirements and methods of sampling and test for diesel fuels suitable for various types of diesel engines.
MS 539:2002	Industrial effluents-Tolerance limits for discharge into inland	Surface waters lays down the tolerance limits for industrial effluents discharged into inland surface waters.
MS 541:2005	Infant formula-Specification	Applies to infant formula in liquid or powdered form intended for use, where necessary, as a substitute for human milk in meeting the normal nutritional requirements of infants. It also provides a standard for formulae intended for infants with special nutritional requirements, except for certain provisions which must be modified to meet those special requirements.
MS 542:2008	Sorghum grains-Specification	Provides requirements for sorghum grains for human consumption, which is ready for its intended use as human food, presented in packaged form or sold loose from the package directly to the consumer. It does not apply to other products derived from sorghum grains.
MS 544:2010	Whole and decorticated pearl millet grains-Specification	Applies to whole and decorticated pearl millet grains destined for human consumption which is obtained from *Pennisetum americanum* L.

Column 1 *Malaŵi Standard*	*Column 2* *Commodity*	*Column 3* *Description*
MS 546:2007	Poultry processing-Code of practice	This code is concerned with all poultry, poultry carcasses, poultry parts and other edible portions thereof which have not yet been treated in any way to ensure their preservation, except that they have been chilled or frozen and are intended for human consumption, whether by direct sale as such or through further processing. The code applies to all premises in which poultry is slaughtered, packed, or otherwise handled in the course of preparation, and all premises in which poultry parts are processed, packed, or otherwise handled in the course of preparation. It also applies to conditions of transport from all such premises.
MS 549:2001	Milk powder handling-Code of practice	Recommends general hygienic and technological practices for use in the handling (including production, preparation, processing, packaging, transportation and distribution) of milk powder for human consumption to ensure safe, sound and wholesome product.
MS 552:2005	Safety of welding-Code of practice	Establishes the general principles for the protection of persons from injury and illness, and for the protection of property and equipment from damage that can arise from welding processes.
MS 554:1996	Peanut butter-Specification	Covers the requirements, methods of sampling and test for smooth and crunchy textured peanut butter.
MS 557:2001	Glycerine for cosmetic use-Specification	Specifies requirements for glycerine used as a cosmetic.
MS 566:1998	Wax shoe polish-Specification	Covers requirements for wax shoe polish of any colour, suitable for general application to leather shoes and goods.

Column 1 *Malaŵi Standard*	*Column 2* *Commodity*	*Column 3* *Description*
MS 573:2007	Ethanol-Specification	Specifies requirements for four grades of ethanol, namely, food grade, industrial grade, analytical grade, and fuel grade ethanol. It applies to ethanol that is of agricultural origin, that is to say, starch or sugar based.
MS 575:1999	Bleaching powder, stable-Specification	Specifies the requirements and methods of sampling and test for stable bleaching powder.
MS 577:2001	Benzine, cleaning-Specification	Covers a hydrocarbon solvent suitable for general cleaning purposes and for the cleaning of silver platinum contact of telecommunication systems.
MS 588:2003	Chitenje-Specification	Specifies the requirements for chitenje.
MS 590:2002	Polyvinyl acetate dispersion adhesives for wood-Specification	Covers the chemical, physical, and performance requirements for three exposure asses of non-structural synthetic adhesives dispersed in water and based on the polymerization of vinyl acetate or on its co-polymerization.
MS 591:1996	Creosote, wood preserving (high temperature)-Specification	Covers creosote that is derived entirely from coal tar produced by the high-temperature carbonization of bituminous coal, and that is intended for use in the preservation of timber.
MS 592:1996	Creosote, wood preserving (lurgi-gasification process)-Specification	Covers creosote that is derived entirely from coal tar produced by the lurgi-gasification processing of bituminous coal, and that is intended for use in the preservation of timber.
MS 593:2012	Wood-preserving mixtures of creosote and waxy oil-Specification	Covers two types of wood-preserving mixtures of creosote and waxy oil for use in the preservation of timber.
MS 596:2005	Mixtures of copper-chromium-arsenic compounds for timber preservatives-Specification	Covers the mixtures of copper-chromium-arsenic compounds (in the form of a powder, a granular powder, a paste or a liquid) for timber preservation.

Column 1 *Malaŵi Standard*	*Column 2* *Commodity*	*Column 3* *Description*
MS 597:2005	Boron timber preservatives-Specification	Covers requirements for the following two types of boron timber preservatives— (*a*) type I: a sodium borate of a composition corresponding approximately to that of disodium octaborate tetrahydrate ($Na_2B_8O_{13}4H_2O$); and (*b*) type II: a mixture of borax and boric acid.
MS 598:2002	Safety in the wood preservation industry-Code of practice	Serves as a practical guide on safety and health aspects in and around timber treatment plants. It is applicable to any treatment process in which water borne preservatives, flames-retardants, organic solvent-based preservatives or creosote are used.
MS 599-1:2002	Fibreboard products-Specification Part 1: Uncoated fibreboards	Specifies the characteristics of uncoated fibreboard.
MS 599-2:2002	Fibreboard products-Specification Part 2: Coated fibreboards	Specifies the characteristics of coated fibreboard.
MS 600:2004	Laminated timber (glulam)-Specification	Covers the general requirements for softwood and hardwood laminated members that consist of laminations (glued or otherwise) bonded together with the general fibre direction parallel to the longitudinal or curved axis of each member.
MS 601:1997	Nutmeg-Specification	Specifies requirements for nutmeg, whole or broken, and for mace, whole or in pieces, obtained from the nutmeg tree (*Myristica fragrans Houttuyn*) for wholesale commercial purposes.
MS 615:2005	Waste within health care facilities-Handling and disposal-Code of practice	Develops criteria for segregation, collection, movement, storage and on-site disposal of waste within health care units, biological research facilities, abattoirs and veterinary surgeries.

Column 1 *Malaŵi Standard*	*Column 2* *Commodity*	*Column 3* *Description*
MS 616:2002	Glazing putty for wooden and metal window frames-Specification	Covers the following two types of putty for glazing of window frames— (*a*) type I: self-setting type for use in primed metal and wooden window frames; and (*b*) type II: reaction type for use in primed metal and primed window frames.
MS 617-1:1998	Pipes and fittings made of unplasticized polyvinyl chloride (uPVC) for water supply-Specification Part 1: General	Specifies the general aspects of pipes, joints, fittings (post-formed and moulded) and ancillaries, made of unplasticized polyvinyl chloride (uPVC), for a piping system intended to be used for buried water mains and services and for water supplies above ground, both inside and outside buildings.
MS 617-2:1998	Pipes and fittings made of unplasticized poly (vinyl chloride) (uPVC) for water supply-Specification Part 2: Pipes (with or without integral sockets)	Specifies the characteristics and properties of extruded pipes made of unplasticized polyvinyl chloride (uPVC), with or without socket(s) (integral or not), and intended to be used for buried water mains and services and not for water supplies above ground, both inside and outside buildings.
MS 617-3:1998	Pipes and fittings made of unplasticized polyvinyl chloride (uPVC) for water supply-Specification Part 3: Fittings and joints	Specifies the characteristics and properties of fittings (injection moulded and post-formed) and joints made of unplasticized polyvinyl chloride (uPVC), to be used for buried water mains and services and for and outside buildings.
MS 619:2000	Fruit juices-Specification	Applies to fruit juices made from fruits of a single species.
MS 620:2003	Structured wall pipes and fittings of PVC for buried drainage and sewerage systems-Specification	Covers unplasticized polyvinyl chloride (uPVC) structured wall pipes (including pipe fittings) with an essentially smooth inside surface, of nominal diameter 110 mm up

Column 1 *Malaŵi Standard*	*Column 2* *Commodity*	*Column 3* *Description*
		to and including 1000 mm, and intended for buried gravity drainage and sewerage pipe systems for the transportation of soil and waste discharge of domestic and industrial origin. Pipes of larger diameter are considered to be engineering products and are therefore not included in this standard.
MS 623:1995	Mahewu-Specification	Prescribes the requirements and methods of test for mahewu.
MS 624:2001	Nutrition labeling-Guidelines	Recommends procedures for the nutrition labeling of foods.
MS 625:2001	Nutrition claims-Guidelines	Relate to nutrition claims made for a food irrespective of whether or not a food is covered by an individual Malawi Standard.
MS 626:2002	Safety helmets for industrial use and for firemen-Specification	Covers three types of safety helmets (with brim or peak) for protection against falling objects and electrical hazards such as may be encountered in industry and during fire-fighting and rescue operations.
MS 627:1998	Fibre-cement sheets for roofing and cladding (corrugated and flat)-Specification	Covers straight corrugated, curved corrugated, flat and flat pressed fibre-cement sheets for roofing and cladding. Applies to uncoated asbestos-cement pipes.
MS 629:1996	Asbestos-cement drain and sewer pipes-Specification	Intended for underground use as drain or sewer pipes for gravity flow lines.
MS 630:2005	Roasted and ground coffee-Specification	Prescribes the requirements and methods of sampling and test for roasted and ground coffee.
MS 633:2001	Milk powder-Specification	Specifies requirements and methods of sampling and test for milk powder (dried milk).
MS 639-1:1997	Retro-reflective registration plates for motor vehicles-Specification Part 1: Metal blanks	Specifies requirement for two types of blanks intended for use in the production of the embossed registration plates that are covered by Part 2 of MS 639.

Column 1 *Malaŵi Standard*	*Column 2* *Commodity*	*Column 3* *Description*
MS 639-2:1997	Retro-reflective registration plates for motor vehicles-Specification Part 2: Metal registration plates	Specifies requirements for registration plates that are produced by the embossing of metal blanks with a registration mark and that are intended for use on motor vehicles (including motor cycles and motor tricycles) and trailers.
MS 639-3:1997	Retro-reflective registration plates for motor vehicles-Specification Part 3: Plastics blanks	Specifies requirements for plastics blanks intended for use in the production of the registration plates that are covered by Part 4 of MS 639.
MS 639-4:1997	Retro-reflective registration plates for motor vehicles-Specification Part 4: Plastic registration plates	Covers requirements for plastic registration plates that are produced by applying a registration mark and border to plastic blanks and that are intended for use on motor vehicles (including motor cycles and motor tricycles) and trailers.
MS 641:2002	Safety helmets for motor cyclists-Specification	Covers the requirements for the general design, construction, performance, marking, labelling, and testing of safety helmets for use by motor cyclists on the roads.
MS 642-1:1997	Lights for motor vehicles Part 1: Incandescent lamps	Covers incandescent tungsten filament lamps of the categories for use in motor vehicles and trailers: R2, HI, H2, H3, H4, P21W, P21/5W, R5W, R10W, C5W, C18W, C21W, T4W, W3W and W4W.
MS 642-2:1997	Lights for motor vehicles Part 2: Headlights	Covers the requirements for the photo metric properties of headlights emitting as asymmetrical dipped beam or main beam, or both, and used in headlight systems meeting left-hand rule-of-road requirement.
MS 642-3:1997	Lights for motor vehicles Part 3: Secondary lights	Covers the photometric characteristics of secondary lights for vehicle lights (parking lights, reversing lights, rear registration plate lights and end-outline marker lights) and of assemblies of these.

Column 1 *Malaŵi Standard*	*Column 2* *Commodity*	*Column 3* *Description*
MS 647-1:2003	Safety glass for vehicles-Specification Part 1: High penetration resistance laminated safety glass for vehicles	Covers high penetration-resistant laminated safety glass including bullet-resistant glazing materials for use in vehicles.
MS 647-2:2003	Safety glass for vehicles-Specification Part 2: Laminated safety glass for vehicles	Covers laminated safety glass (excluding windscreens) for use in vehicles.
MS 647-3:2003	Safety glass for vehicles-Specification Part 3: Toughened safety glass for vehicles	Covers toughened safety glass for use in vehicles.
MS 650:2000	Conductors in insulated cables and cords-Specification	Specifies the nominal cross-sectional areas and requirements, including numbers and sizes of wires and resistance values, for conductors in electric cables and cords of a wide range of types. These conductors include solid and stranded copper and aluminium conductors in cables for fixed installations and flexible copper conductors.
MS 651:2011	Spades and shovels-Specification	Covers the requirements for dimensions, material, construction and strength of four types of spades and ten types of shovels.
MS 652-1:2012	Braking (motor and towed vehicles, designed for low speed or for use off public roads) Part 1: Low vehicles	Applies to the braking systems of low speed motor vehicles with a maximum design speed of between 6 km per hour and 40 km per hour, and motor vehicles for use off public roads.
MS 652-2:2012	Braking (motor and towed vehicles, designed for low speed or for use off public roads) Part 2: Low speed trailers	Applies to the braking systems of low speed trailers, including trailers purely for agricultural and forestry purposes, with a maximum design speed of between 6 km per hour and 40 km per hour.

Column 1 *Malaŵi Standard*	*Column 2* *Commodity*	*Column 3* *Description*
MS 653:1997	Electrical connectors for towing and towed vehicles-Specification	Covers two types of electrical connectors in the form of a socket and a plug that will permit interchangeability of electrical connections for towing vehicles having electrical equipment operating at nominal voltage of 6, 12, or 24 V.
MS 655-1:2012	Gaming equipment Part 1: Casino equipment	Specifies the constructional and operational requirements for gaming devices that reside on, or are operated on the gaming floor of a casino.
MS 655-2:2012	Gaming equipment Part 2: Limited payout gaming equipment	Specifies the general hardware and software requirements and the list of significant events required by the gaming authority to be used in venues holding site licences for limited payout machines.
MS 655-3:2012	Gaming equipment Part 3: Monitoring and control systems for gaming equipment	Specifies the general hardware and software requirements and the list of significant events required for a monitoring and control system for use in gaming establishment.
MS 655-4:2012	Gaming equipment Part 4: Wagering record keeping software	Specifies the general hardware and software requirements and the list of significant events required by the Malawi Gaming Authority, for record keeping software for the acceptance by licensed operators of wagers on events permitted by the Licensing Authority.
MS 655-5:2012	Gaming equipment Part 5: Local area and wide area jackpot and progressive jackpot equipment	Sets out the requirements for gaming equipment that is added to existing gaming equipment to provide a layer of prizes, additional to those already available on a game's pay table, referred to as jackpots.
MS 656:2002	Adhesives for use with ceramic tiles and mosaics-Specification	Specifies the minimum requirements for adhesives used for fixing ceramic tiles to ensure that they are suitable for their proposed application.

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MS 657-1:2004	Portable rechargeable fire extinguishers-Specification Part 1: Water type extinguishers	Specifies the characteristics of stored pressure, portable rechargeable fire extinguishers of the water type, of capacity in the range of 9 litres to 10 litres (inclusive) and suitable for use on class A fires only.
MS 657-2:2004	Portable rechargeable fire extinguishers-Specification Part 2: Dry powder type extinguishers	Specifies the characteristics of stored-pressure portable rechargeable fire extinguishers of the dry powder type of capacity not exceeding 12 kg and suitable for use on fire of classes A and B.
MS 657-3:2004	Portable rechargeable fire extinguishers-Specification Part 3: Foam type extinguishers	Specifies the characteristics of stored pressure, portable rechargeable fire extinguishers of the foam type, of capacity not exceeding 10 litres and suitable for use on a variety of identified classes of fire.
MS 657-4:2004	Portable rechargeable fire extinguishers-Specification Part 4: CO_2 type extinguishers	Specifies the characteristics of portable rechargeable fire extinguishers of the CO_2 type, of capacity not exceeding 9 kg and suitable for use on fires of classes B and C.
MS 658-1:2004	The classification, use and control of fire-fighting equipment-Code of practice Part 1: Portable fire extinguishers	Covers the classification, selection, installation and control of portable fire extinguishers (excluding non-refillable fire extinguishers) that can be carried by one person. It also covers the conditions under which mobile fire extinguishers may be used.
MS 658-2:2004	The classification, use and control of fire-fighting equipment-Code of practice Part 2: Fire hose reels	Covers the siting and site control of fire hose reels installed in premises.
MS 659:2002	Pneumatic tyres for passenger cars and luggage trailers-Specification	Applies to new pneumatic tyres primarily designed for use on vehicles of category M1, O1, and O2. It does not apply to tyres designed for speeds exceeding 240 km per hour.

Column 1 *Malaŵi Standard*	*Column 2* *Commodity*	*Column 3* *Description*
MS 660:2002	Pneumatic tyres of commercial vehicles and trailers-Specifications	Applies to new pneumatic tyres primarily designed for use on vehicles of category M2, M3, N1, N2, O3 and O4.
MS 661-1:2011	Motor vehicle tyres and rims-dimension and load Part 1: General	Specifies the general requirements for motor vehicle pneumatic tyres, giving the basic definitions, details of the parameters used for tyre marking requirements and a test method for the measurement tyre dimensions.
MS 661-2:2011	Motor vehicle tyres and rims-dimension and load Part 2: Passenger car tyres	Specifies requirements for passenger car tyres. It does not cover motor car racing applications.
MS 661-3:2011	Motor vehicle tyres and rims-dimension and load Part 3: Commercial vehicle tyres	Covers commercial vehicle tyres.
MS 663:2001	Mixed fruit juices-Specification	It prescribes the requirements for mixed fruit juice which shall be obtained from two or more species of sound, ripe fruits.
MS 665:2001	Mixed fruit nectars-Specification	Applies to mixed fruit nectars for direct consumption.
MS 666-1:2002	Components of pressure pipe systems (uPVC)-Specification Part 1: Unplasticized polyvinyl chloride (uPVC) pressure pipes	Specifies requirements for unplasticized chloride (uPVC) pipes and injection-moulded fittings that are intended for above-ground pressure applications for the conveyance of portable water in reticulation systems and for other applications in which continuous temperatures in excess of 25 degrees Celsius are not encountered.
MS 666-2:2002	Components of pressure pipe systems (uPVC)-Specification Part 2: Modified polyvinyl chloride (PVC-m) pressure pipe systems	Specifies requirements for modified unplasticized polyvinyl chloride (PVC-m) pipes (with integral joints that incorporate rubber sealing or rings) and fittings (post-formed from pipe made of PVC-m) that are intended for above-ground and below

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		ground pressure applications for the conveyance of potable water in reticulation systems and for other applications, in which continuous temperatures in excess of 25 degree Celsius are not encountered.
MS 670:2011	Sodium silicate-Specification	Prescribes the requirements and the methods of sampling and test for sodium silicate in solid and liquid forms intended for use in various industries.
MS 671:2002	Toilet soap (super fatted)-Specification	Covers super fatted toilet soap that incorporates unsaponified matter that imparts beneficial in-use characteristics. The specification does not cover specialty soaps, such as soap for use by medical personnel, medicated soap, transparent soap and sea-water soap.
MS 675:2005	Safety procedures for the disposal of surplus pesticides and associated toxic waste-Code of practice	Covers the following aspects for the safe disposal of pesticides, pesticide waste and empty pesticide containers— (*a*) general precautions to be taken during the use of pesticides; (*b*) directives for the disposal of pesticide waste; (*c*) directives for the decontamination and disposal of empty pesticide containers; and (*d*) directives for the treatment of pesticide spillages and leakage, and the action to be taken in the case of fires and freight emergencies that involve pesticides.
MS 678:2005	Drinking water quality-Control and surveillance of water in public supply networks	Defines the control and surveillance of water in public water supply networks, it also indicates the sample frequency and types of analysis required.

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MS 684:2003	Water taps (metallic bodies)-Specification	Covers requirements for four classes of screw-down and non-screw-down metallic water taps (including stop taps) for the supply of water at temperatures not exceeding 75 degrees Celsius. It also covers stopcocks of sizes up to and including 50 mm. It does not cover thermostatic mixer taps, single control mixer taps, metering taps, demand taps or taps of which the bodies are made entirely of a plastics material.
MS 685:2003	WC flushing cisterns-Specification	Covers requirements for hand operated high-level, low-level, near-level and close-coupled cisterns of various flushing capacities and that are designed for a single-flush operation, a dual-flush operation or an interruptible-flush operation.
MS 686:2003	Automatic shut off flush valves for water closets for urinal-Specification	Covers the requirements for automatic shut-off flush valves for water closets and urinals that are intended for supplying a pre-set amount of water.
MS 688:2004	Unplasticized polyvinyl chloride (uPVC) soil, waste and vent pipes and pipe fittings-Specification	Covers unplasticized polyvinyl chloride (uPVC) pipes (including vent pipes) and pipe fittings of nominal sizes 40-160 mm intended for above-ground non-pressure applications for the conveyance of soil (human excrement or faeces) and waste water where continuous temperatures in excess of 60 degree Celsius are not encountered.
MS 689:2004	The installation of polyethylene and polyvinyl chloride (uPVC) and (PVC-m) pipes-Code of practice	The standard is intended to present (in sufficient detail for general use) the comparative physical, chemical and mechanical properties of two types of plastics pipe in common use, to provide guidance in their selection for the conveyance of potable water (and other applications) and to define sound practice in the assembly and installation of such pipe work.

Column 1 *Malaŵi Standard*	*Column 2* *Commodity*	*Column 3* *Description*
MS 691:2005	Tolerance limits for domestic sewage effluents discharged into in land surface waters-Specification	Lays down the tolerance limits for sewage effluents discharged into inland surface waters. It does not cover sewage effluents discharged on land.
MS 695:2004	Battery-based photovoltaic (PV) solar home systems-Specification	Specifies the practical minimum requirements for a battery based photovoltaic (PV) system.
MS 696:2004	Battery-based photovoltaic (PV) solar home systems-Code of practice	Specifies the guideline on how a battery based photovoltaic (PV) system should be designed for the system to continue working for a period of between three to five years without problems.
MS 699:2004	Bottled drinking water other than natural mineral water-Specification	Specifies the description, treatment, testing, packaging and labelling of water that is not natural mineral water. The water may be offered as packaged non-carbonated (still) water or as packaged carbonated (sparkling) water, with or without permitted substances.
MS 701:2005	Natural mineral water-Code of practice	Recommends general hygienic and technical practices for the use in collecting natural mineral water, its treatment, bottling and packaging, storage, transport, distribution and sale for direct consumption so as to ensure a safe, healthy and wholesome product.
MS 702:2004	Caustic soda, analytical and commercial-Specification	Prescribes the requirements, methods of test and sampling requirements for caustic soda, analytical and commercial in the solid and lye forms.
MS 704:2004	Cassava and maize starch for textile industry-Specification	Covers cassava and maize starch used in the textile industry (mainly cotton) as a textile sizing and finishing material.
MS 709:2005	Fluorescent lights for use in photovoltaic (PV) systems-Specification	Specifies the minimum requirements for fluorescent tube lights powered with direct current (DC) inverter ballasts for use in photovoltaic (PV) systems.

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MS 710:2005	Secondary cells and batteries for solar photovoltaic (PV) energy systems-General requirements and methods of test	Gives general information relating to the requirements of the secondary batteries used in photovoltaic (PV) solar energy systems and to the typical methods of test used for the verification of battery performances. The standard does not include specific information relating to battery sizing, method of charge or PV system design.
MS 711:2005	Crystalline silicon terrestrial photovoltaic (PV) modules-Design qualification and type approval	Lays down requirements for the design qualification and type approval of terrestrial photovoltaic (PV) modules suitable for long-term operation in general open-air climates, as defined in IEC 721-2-1. It applies only to crystalline silicon types. Standards for thin-film modules are not covered in this Malawi Standard.
MS 717:2005	Polypropylene grain sacks-Specification	Covers the requirements for three sizes of thermoplastic textile bags, namely 50 kg, 70 kg and 90 kg bags, made from slip resistant tubular woven fabric of which polypropylene yarns are the major component and that are suitable for use for the handling, transportation, and storage of whole grain and milled grain.
MS 719:2011	Hazardous waste-Management, classification and disposal-Code of practice	This standard provides guidelines for classification, management, treatment and disposal of hazardous waste. Requirements for transportation are also specified.
MS 720-1:2011	Transport of dangerous goods-Packaging and packaging for road and rail transport Part 1-Packaging	Identifies various methods of packaging that are suitable for prescribed maximum quantities of dangerous goods that may be offered for transport by road or by rail. It describes minimum performance requirements for the packaging, the procedures to be followed to obtain approval

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		from testing or certification authorities and gives details of the labels and marking to be displayed on the packaging.
MS 720-2:2011	Transport of dangerous goods-Packaging and packaging for road and rail transport Part 2-Large packaging	Identifies the various types of large packaging that are suitable for the transport of dangerous goods by road and rail. It describes minimum performance requirements for the large packaging, the procedures to be followed to obtain approval from test laboratories or certification authorities and gives details of the marking and labelling to be displayed on the large packaging.
MS 722:2005	Labelling, presentation and advertising of prepacked goods for ultimate consumer	Specifies requirements for providing information regarding pre-packed goods. It sets rules of a general nature applicable to all pre-packed goods put on the market.
MS 726:2009	Staples for office use-Specification	Provides requirements for pre-formed staples for use in standard-duty office stapling machines.
MS 727:2009	Office staplers-Specification	Provides requirements for two types of general purpose hand operated staplers (using size 26/6 staples) suitable for use either on a desk or held in the hand, and suitable for severe or moderate service.
MS 728:2009	Paper clips-Specification	Provides requirements for steel wire clips intended for clipping together sheets of paper.
MS 729:2009	Paper punches (desktop types)-Specification	Covers the requirements for three grades of paper punches in two hole and four hole configuration, suitable for use on desk tops.
MS 734:2005	Plastic carrier bags and flat bags-Specification	Specifies requirements for carrier bags and flat bags that are made from thermoplastic materials and are domestically produced or imported for use within Malawi.

Column 1 *Malaŵi Standard*	*Column 2* *Commodity*	*Column 3* *Description*
MS 736:2011	Transport of dangerous goods-Intermediate bulk containers for road and rail transport	Establishes the requirements for various types of intermediate bulk container (IBC) suitable for the transport of dangerous goods by road and rail. It describes minimum performance requirements for the IBCs, the procedures to be followed to obtain approval from testing or certification authorities and gives details of the marking and labelling to be displayed on the IBCs.
MS 737:2011	Industrial emissions-Emissions from mobile and stationary sources-Specification	Specifies maximum allowable limits for particulate matter and other common air pollutants in gaseous emissions from stationary and mobile sources. The standard also suggests the mechanisms for reduction or removal of the pollutants.
MS 743:2009	Canned baby foods-Specification	Specifies requirements for baby foods intended primarily for use during the normal infant's weaning period and also for the progressive adaptation of infants and children to ordinary food. They may be either in ready-to-eat form or in dry form requiring reconstitution with water or other suitable liquid.
MS 747:2010	Fruit flavoured drinks-Specification	Prescribes the requirements and methods of test for fruit flavoured drinks.
MS 748:2007	Soya bean milk and drink-Specification	Specifies the requirements and methods of sampling and test for soya bean milk and drink for human consumption.
MS 750:2005	Follow-up formula-Specification	Applies to the composition and labelling of follow-up formula. It does not apply to foods covered by the Malawi Standard for Infant Formula.
MS 751:2006	Sweetened condensed milk-Specification	Applies to sweetened condensed milk, intended for direct consumption or further processing.

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MS 752:2006	Evaporated milk-Specification	Applies to evaporated milks, intended for direct consumption or further processing, in conformity with the description in clause 3 of this Malawi Standard.
MS 753:2008	Raisins-Specification practice	Applies to dried grapes of varieties conforming to the characteristics of *Vitis vinifera* L. which have been suitably treated or processed and which are offered for direct consumption as raisins or sultanas. It also covers raisins packed in bulk containers which are intended for repacking into consumer size containers. (*a*) method of design: limit states classified as ultimate limit state and serviceability limit states; (*b*) material: ordinary concrete of normal and low density, used in reinforced, pre-stressed and precast structures or elements and in plain concrete walls; (*c*) types of structures: buildings and structures in which all load-bearing elements such as slabs, columns, walls, beams etc, are of concrete.
MS 795-1:2011	Water supply and drainage in buildings Part 1: Water supply installations for buildings-General requirements	Establishes general principles for the design, installation and testing of water installations for buildings. It is not applicable to water installations related to air conditioning systems, industrial processes, specialized plants, high temperature water heating systems exceeding 80 degree Celsius water heating systems and automatic sprinkler installations.
MS 798:2008	Instant noodles-Specification	Applies to various kinds of noodles. The instant noodle may be packed with noodle seasonings, or in the form of seasoned noodle and with or without noodle garnish(s) in

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		separate pouches, or sprayed on noodle and ready for consumption after dehydration process. This Standard does not apply to pasta.
MS 802:2009	Cheddar-Specification	Applies to cheddar intended for direct consumption or further processing.
MS 803:2009	Fermented milks-Specification	Applies to fermented milks, that is fermented milk including, heat treated fermented milks, concentrated fermented milks and composite milk products based on these products, for direct consumption or further processing.
MS 805:2009	Biodiesel fuel-Specification	Specifies requirements and test methods for marketed and delivered biodiesel to be used either as automotive fuel for diesel engines at 100 per cent concentration, or as an extender for automotive fuel for diesel engines.
MS 807:2011	Luncheon meat-Specification	Applies to products designated as "luncheon meat" which have been packed in any suitable packing material.
MS 808:2011	Cooked cured chopped meat-Specification	Applies to products designated as "chopped meat" which have been packed in any suitable packaging material.
MS 809:2011	UHT milk-Specification	Specifies the requirements and methods of sampling and tests for UHT milk.
MS 811:2009	Potato crisps-Specification	Specifies requirements for potato crisps made from tubers of the potato (*Solanum tuberosum* L.).
MS 812:2012	Bottled drinking water, other than natural mineral water-Code of practice	Recommends general techniques for collecting, processing, packaging, storing, transporting, distributing, and offering for sale a variety of drinking waters, other than natural mineral water for direct consumption. All bottled/packaged drinking waters other than natural mineral

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		water are covered by this code. This code does not cover recommendations collecting, processing and marketing of natural mineral waters.
MS 813:2009	Sulphuric acid for use in lead-acid starter batteries	Specifies the limit for impurities in sulphuric acid suitable for use in lead-acid batteries.
MS 816:2011	Dairy fat spreads-Specification	Applies to dairy fat spreads intended for use as spreads for direct consumption or for further processing.
MS 817:2011	Driers of paints and varnishes-Specification	Specifies requirements and methods of sampling and test for solid and liquid driers for paints, varnishes and related products.
MS 822:2010	Road vehicles-Inspection and testing of imported used motor vehicles	Specifies the safety related performance characteristics of used motor vehicles and their inspection and tests for roadworthiness.
MS 837:2013	Quick frozen fish fillets-Specification	Provides requirements for quick frozen fillets of fish as defined below and offered for direct consumption. It does not apply to products indicated as intended for further processing or for other industrial purposes.
MS 838:2011	Concrete works-Code of practice for minor works	Covers concrete works in foundations, slabs, stairways, masonry walls, pipelines, manholes, latrines, conservancy tanks, septic tanks and the like, where the design and supervision of plain, reinforced and precast concrete are not necessarily under the direct control of appropriately qualified engineers and technologists and no special finishes to the concrete are required.
MS 839:2013	Quick frozen shrimps or prawns-Specification	Provides requirements for quick frozen raw or partially or fully cooked shrimps or prawns.

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MS 840:2011	Above-ground tanks for petroleum products	Contains recommendations for the above-ground storage and handling of petroleum products at consumer installations with a total storage capacity not exceeding 200 m^3.
MS 841:2011	D-iron bracket and ceramic insulator assembly-Characteristics and test methods	Specifies characteristics of D-iron bracket galvanized complete with bolt and nut with ceramic insulator for alternating current (AC) overhead lines assemblies.
MS 842:2011	Aggregates from natural sources-Aggregates for concrete	Specifies requirements for fine and coarse aggregates from natural sources for use in concrete.
MS 843:2013	Code of practice for the prevention and reduction of aflatoxin contamination in groundnuts	Provides guidance for all interested parties producing and handling groundnuts for human consumption, and all other users feeding into the food chain. This code of practice indicates the measures that should be implemented by all persons that have the responsibility for assuring that food is safe and suitable for consumption, in order to prevent or reduce aflatoxin contamination in groundnuts.
MS 844:2011	Coal mining and processing-Health, safety and environmental protection-Code of practice	Covers the requirements for the health and safety for the workers and the general public and the environmental protection in the mining and processing of coal.
MS 845-1:2011	Transport of dangerous goods-Emergency information systems Part 1: Emergency information system for road transport	Covers requirements for emergency information systems, such as requirements for hazard class diamonds, placards and emergency information documents. The emergency information system as documented in this part of MS 845 is intended to assist emergency services response teams in the mitigation of an incident that involves dangerous goods.

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MS 845-2:2011	Transport of dangerous goods-Emergency information systems Part 2: Emergency information system for rail transport	Covers the rules and procedures that govern the implementation of an emergency information system for rail transportation of dangerous goods, in quantities that exceed the exempt quantity.
MS 845-3:2011	Transport of dangerous goods-Emergency information systems Part 3: Emergency response guides	Covers standard procedures of initial response, in the form of emergency response guides (ERGs) that are to be followed by a first responder upon arrival at the scene of an incident that involves the transport of materials that are classified as dangerous goods in accordance with DMS 848. The ERGs are intended to be used by the first responder or by the emergency services until more detailed information on the properties of each material and its treatment becomes available.
MS 847:2011	Transport of dangerous goods-Operational requirements for road vehicles	Establishes rules and procedures for the safe operation and handling of all road vehicles that are used for the transport of dangerous goods in accordance with the load constraints. The procedures include requirements for the consignor, the consignee, the operator, the driver and the qualified person as well as *en-route* procedures, and cargo handling. The standard covers the following three operations for the transport of dangerous goods by road— (*a*) loading of the dangerous goods, which is the responsibility of the consignor; (*b*) driving of the vehicle that carries the dangerous goods to its destination, which is the responsibility of the operator and the driver; and (*c*) off-loading of the dangerous goods, which is the responsibility of the consignee.

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MS 848:2011	The identification and classification of dangerous goods for transport	Covers the identification of dangerous goods that are capable of posing a significant risk to health and safety of persons or to property and the environment. Dangerous goods are classified in nine classes and three packing groups in accordance with the United Nations' Recommendations on the Transport of Dangerous Goods. The nine classes relate to the type of hazard whereas the three packing groups relate to the degree of danger posed within the class.
MS 849:2011	Transport of dangerous goods-Design, construction, testing, approval and maintenance of road vehicles and portable tanks	Covers requirements for the design, construction, testing, approval and maintenance of road vehicles of gross vehicle mass (GVM) equal to or above 3,500 kg, and portable tanks used to transport dangerous goods as classified in MS 848 and as required by the relevant national legislation.
MS 850:2011	Classification of coals	Describes a simple classification system for coals providing guidance on the selection of the appropriate standard procedures for the analyses and testing of coals. The system is applicable to coals of all ranks. The system may be applied to a wide range of representative coal samples, provided their exact nature is stated. Such samples include bore-core seam sections and composite samples, raw (as-mined) coal, washed coal, blends of coals of similar rank and selected, specified size fractions. The system provides a broad framework within which coals can be assessed.
MS 857:2011	Coal-burning appliances (reduced smoke emission type)	Covers the constructional and performance requirements for coal-burning appliances of three types that are free-standing and that operate with minimum smoke emission.

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MS 858:2011	Wood charcoal briquettes for households use-Specification	Specifies requirements for charcoal briquettes that is derived entirely from wood, in lump or briquettes form and that is intended for household use.
MS 875:2011	Building environment design-energy efficiency-General principles	Establishes the general principles of building environment design taking into account healthy indoor environment for the occupants, and protecting the environment for future generations. This standard promotes an approach in which the various parties involved in building environmental design collaborate with one another to provide a sustainable building environment.
MS 882:2012	Self-ballasted light emitting diodes lamps for general lighting purposes-Performance requirements	Specifies the performance requirements for self-ballasted light emitting diode (LED) lamps with a supply voltage up to 250 V, together with the test methods and conditions required, intended for domestic and similar general lighting purposes.
MS 883:2012	Self-ballasted lamps for general lighting purposes-Safety requirements	Specifies the safety and interchangeability requirements together with the test methods and conditions required to show compliance of tubular fluorescent and other gas-discharge lamps with integrated means for controlling starting and stable operation (self-ballasted lamps) intended for domestic and similar general lighting purposes.
MS 884:2012	Self-ballasted fluorescent lamps for general purposes-Performance requirements	Specifies the performance requirements together with the test methods and conditions required to show compliance of tubular fluorescent and other gas-discharge lamps with integrated

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		means for controlling starting and stable operation (self-ballasted lamps) intended for domestic and similar general lighting purposes.
MS 885:2012	Self-ballasted emitting diode lamps for general lighting purposes-Safety specification	Specifies the safety and interchangeability requirements, together with the test methods and conditions required to show compliance of LED-lamps with integrated means for stable operation (self-ballasted LED-lamps), intended for domestic and similar general lighting purposes.
MS 886:2012	Self-ballasted compact fluorescent lamps for general lighting purposes-Specification	Provides requirements for compact fluorescent lamps intended for domestic and general lighting purposes and applies exclusively to self-ballasted compact fluorescent lamps (CFLs)-with or without any cover, and without any reflector element. These lamps have an integrated means for controlling starting and stable operation and are intended for general lighting purposes.
MS 887:2012	Self-ballasted compact fluorescent lamps for general lighting purposes-Methods of measuring the performance	Specifies the test methods and conditions required for electronic self-ballasted, compact fluorescent lamps (CFLs), with integrated means for starting, controlling and stable operation.
MS 888:2011	Jatropha straight vegetable oil-Specification	Specifies requirements and test methods for marketed and delivered straight vegetable oil extracted from *Jatropha carcus* to be used at an agreed and approved percentage either as diesel or illuminating paraffin blend.
MS 889-5:2011	Recommendations for small renewable energy and hybrid systems for rural electrification Part 5: Protection against electrical hazards	The purpose of this standard is to specify the general requirements for the protection of persons and equipment against electrical hazards to be applied in decentralized rural electrification systems. These general requirements are to

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		be applied to all the identified categories of decentralized rural electrification systems (DRES).
MS 889-7-1:2011	Recommendations for small renewable energy and hybrid systems for rural electrification Part 7-1: Generators-Photovoltaic arrays	Specifies the general requirements for erection and operation of PV arrays in decentralized rural electrification systems.
MS 889-9-1:2011	Recommendations for small renewable energy and hybrid systems for rural electrification Part 9-1: Micro-power systems	Provides general requirements for the design, erection and operation of micro-power plants and general requirements to ensure the safety of persons and property. The micro-power plants covered by this specification are low-voltage alternating current (AC), three-phase or single-phase, with rated capacity less than, or equal to, 100kVA. They do not include voltage transformation.
MS 889-9-2:2011	Recommendations for small renewable energy and hybrid systems for rural electrification Part 9-2: Micro grids	Specifies the general requirements for the design and the implementation of micro grids used in decentralized rural electrification to ensure the safety of persons and property and their satisfactory operation according to the scheduled use.
MS 889-9-3:2011	Recommendations for small renewable energy and hybrid systems for rural electrification Part 9-3: Integrated system-User interface	Specifies the general requirements for the design and the implementation of the interface equipment within the user's installation which connects to a micro grid or the generating part of a stand-alone system.
MS 889-9-4:2011	Recommendations for small renewable energy and hybrid systems for rural electrification Part 9-4: Integrated system-User installation	Specifies the general requirements for the design and the implementation of a user's installation for small renewable energy and hybrid systems for rural electrification. It applies to single-phase user's electrical installations with maximum power of 500 VA, in DRES.

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MS 889-9-5:2012	Recommendations for small renewable energy and hybrid systems for rural electrification Part 9-5: Integrated system selection of portable PV lanterns for rural electrification projects	Applies to portable solar photovoltaic (PV) lanterns and is independent of the technology used to provide the light. It also provides regulations and installation conditions to be complied with in order to ensure the life and proper operation of the selected lantern as well as the safety of people living in proximity to the installation.
MS-ISO 10544:1992	Cold reduced steel wire for the reinforcement of concrete and manufacture of welded fabric	Specifies technical requirements for cold reduced steel wire designed for the reinforcement of concrete or for use in welded fabric.
MS-IEC 60044-1:2003	Instrument transformers- Part 2: Inductive voltage transformers	Applies to new inductive voltage transformers for use with electrical measuring instruments and electrical protective devices at frequencies from 15 to 100 Hz. This standard relates basically to transformers with separate windings, but also to auto transformers. It replaces IEC 60186 (1987) plus amendments 1 and 2 only for inductive voltage transformers. IEC 60186 remains in force for capacitive voltage transformers.
MS-IEC 60044-2:2003	Instrument transformers- Part 2: Inductive voltage transformers	Applies to new inductive voltage transformers for use with electrical measuring instruments and electrical protective devices at frequencies from 15 to 100 Hz. This standard relates basically to transformers with separate windings, but also to auto transformers. It replaces IEC 60186 (1987) plus amendments 1 and 2 only for inductive voltage transformers. IEC 60186 remains in force for capacitive voltage transformers.

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MS-IEC 60044-7:1999	Instrument transformers- Part 7: Electronic voltage transformers	Applies to newly manufactured electronic voltage transformers with analogue out put, for use with electrical measuring instruments and electrical protective devices at frequencies from 15 Hz to 100 Hz. The standard covers optical arrangements with electronic components. Three phase voltage transformers are not included, but some of the requirements apply.
MS-IEC 60055-2:1981	Paper-insulated metal-sheathed cables for rated voltages up to 18/30 Kv (with copper or aluminium conductors and excluding gas-pressure and oil-filled cables) Part 2: General and construction requirements	Specifies general and construction requirements for impregnated paper-insulated load-sheathed cables with copper or aluminium conductors from 0.6/1 Kv.
MS-IEC 60061-DB-1:2006	Lamp caps and holders together with gauges for the control of interchangeability and safety Part 1: Lamp caps	Provides requirements for lamp caps.
MS-IEC 60061-DB-2:2006	Lamp caps and holders together with gauges for the control of interchangeability and safety Part 2: Lamp holders	Provides requirements for lamp holders.
MS-IEC 60061-DB-3:2006	Lamp caps and holders together with gauges for the control of interchangeability and safety Part 3: Gauges	Provides requirements for gauges.

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MS-IEC 60064:2005	Tungsten filament lamps for domestic and similar general lighting purposes-Performance requirements	Applies to tungsten filament incandescent lamps for general lighting services (GLS) which comply with the safety requirements in IEC 60432-1.1.
MS-IEC 60076-SER-5:2000	Power transformers Part 5: Ability to withstand short circuit	Specifies the design and construction of transformers to withstand the thermal and dynamic effects of external short circuits under specified conditions. Includes tests to demonstrate the ability to withstand short circuit. Applies to transformers as defined in the scope of IEC 60076-1.
MS-IEC 60076-SER-11:2004	Power transformers Part 11: Dry-type transformers	Provides requirements for dry-type transformers.
MS-IEC 60086-2:2001	Primary batteries Part 2: Physical and electrical specifications	Applicable to primary batteries based on standardized electro-chemical systems. It specifies the physical dimensions, discharge test conditions, and the discharge performance requirements.
MS-IEC 60086-3:1995	Primary batteries Part 3: Watch batteries	Specifies dimensions, designation, methods of tests and requirements for primary batteries for watches. In several cases, a menu of test methods is given. When presenting battery electrical characteristics and/or performance data, the manufacturer specifies the test method used.
MS-IEC 60086-4:2000	Primary batteries Part 4: Safety of lithium batteries	Specifies tests and requirements for primary lithium batteries to ensure their safe operation under intended use or reasonably foreseeable misuse.
MS-IEC 60086-5:2005	Primary batteries Part 5: Safety of batteries with aqueous electrolyte	Specifies tests and requirements for primary batteries with aqueous electrolyte to ensure their safe operation under normal use and reasonably foreseeable misuse.
MS-IEC 60095-2:1984	Lead-acid starter batteries	Applies to lead-acid batteries used for starting, lighting and ignition

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	Part 2: Dimensions of batteries and dimensions and marking of terminal	of passenger automobiles and light commercial vehicles with a nominal voltage of 12 V fastened to the vehicles by means of ledges on the long sides of the battery case.
MS-IEC 60095-4:1989	Lead-acid starter batteries Part 4: Dimensions of batteries for heavy trucks	Applies to lead-acid batteries for starting lighting and igniting of heavy trucks.
MS-IEC 60096-1:1986	Radio-frequency cables Part 1: General requirements and measuring methods	Relates to flexible or semi-flexible radio-frequency cables of coaxial or twin conductor types designed for use in radio-communication equipment and in electronic devices employing similar techniques.
MS-IEC 60096-2:1961	Radio-frequency cables Part 2: Relevant cable specifications (consolidated edition)	Provides requirements for radio-frequency cables.
MS-IEC 60096-3:1982	Radio-frequency cables Part 3: General requirements and tests for single-unit coaxial cables for use in cabled distribution systems	Specifies the general requirements and tests applicable to single-unit coaxial cables for use in cabled distribution systems.
MS-IEC 60096-4-1:1990	Radio-frequency cables Part 4: Specification for super screened cables- Section One: General requirements and test methods	Covers the requirements of super screened cables.
MS-IEC 60107-1:1997	Methods of measurement on receivers for television broadcast transmissions	Deals with the standard conditions and methods of measurements on television receivers that conform to the terrestrial broadcast television standards specified by

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	Part 1: General considerations-Measurements at radio and video frequencies	the ITU-R. Such receivers may be used for direct off-air reception, reception via cabled networks or as a monitor for prerecorded video home movies and games among other applications. This part does not include the measurements specific to the sound channels which are dealt with by other parts.
MS-IEC 60155:1993	Glow-starters for fluorescent lamps	Specifies interchangeable starters used with pre-heat tubular fluorescent lamps and should be used in conjunction with corresponding publications for fluorescent lamps and their ballasts.
MS-IEC 60173:1964	Colours of the cores of flexible cables and cords	Lays down a standard colour identification for the earthing core in flexible cables and cords with not more than five cores.
MS-IEC 60189-2:1989	Low-frequency cables and wires with PVC insulation and PVC sheath Part 2: Cables in pairs, triples, quads and quintuples for inside installations	Deals with cables construction and dimensions, mechanical requirements, thermal stability and electrical requirements.
MS-IEC 60215:1987	Safety requirements for radio transmitting equipment	Applies to radio transmitting equipment operating under the responsibility of skilled personnel and deals with protection against electric shock, skin burns, high temperature and fire, implosion and explosion, harmful radiation and miscellaneous hazards. Includes design and construction requirements and test methods to ensure safety or personnel, when the equipment is operating under conditions of normal use and certain fault conditions, when carrying out adjustments, during fault finding, and repair of the equipment: prevention of fire and its spread.

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MS-IEC 60227-1:1997	Polyvinyl chloride insulated cables of rated voltages up to and including 450/750 V Part 1: General requirements	Gives definitions and specifies marking, core identification and general requirements for the construction of cables. Appendix describes code designation of cables.
MS-IEC 60227-3:1997	Polyvinyl chloride insulated cables of rated voltages up to and including 450/750 V Part 3: Non-sheathed cables for fixed wiring	Specifies requirements for polyvinyl chlorine insulated single-core non-sheathed cables for fixed wiring of rated voltages up to and including 450/750 V. This is a consolidated version of IEC 60227-3 (1993) and its Amendment 1 (1997).
MS-IEC 60227-4:1997	Polyvinyl chloride insulated cables of rated voltages up to and including 450/750 V Part 4: Sheathed cables for fixed wiring	Details the particular specification for light polyvinyl chloride sheathed cables of rates voltage of 300/500 V.
MS-IEC 60227-5:1998	Polyvinyl chloride insulated cables of rated voltages up to and including 450/750 V Part 5: Flexible cables (cords)	Details the particular specifications for polyvinyl chloride insulated flexible cables (cord), of rated voltages up to and including 300/500 V.
MS-IEC 60227-6:2001	Polyvinyl chloride insulated cables of rated voltages up to and including 450/750 V Part 6: Lift cables and cables for flexible connections	Details the particular specifications for both circular and flat lift cables and cables for flexible connections of rated voltages up to and including 450/750 V.
MS-IEC 60227-7:1995	Polyvinyl chloride insulated cables of rated voltages up to and including 450/750 V	This part of IEC 60227 details the particular specifications for polyvinyl chloride insulated screened and unscreened control cables of rated voltages up to and including 300/500 V.

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	Part 7: Flexible cables screened and unscreened with two or more conductors	All cables comply with the appropriate requirements given in IEC 60227-1 and each individual type of cable complies with the particular requirements of this part.
MS-IEC 60228:1978	Conductors of insulated cables	Specifies standardized nominal cross-section areas from 0.5 mm^2 to 2 000 mm^2, numbers and diameters of wires and resistance values of conductors in electric cables and flexible cords.
MS-IEC 60245-1:2003	Rubber insulated cables-Rated voltages up to and including 450/750 V Part 1: General requirements	Gives definitions and specifies marking, core identification and general requirements for the construction of cables.
MS-IEC 60245-3:1994	Rubber insulated cables-Rated voltages up to and including 450/750 V Part 3: Heart resistant silicone insulated cables	Details the particular specifications for silicone rubber insulated cables of rated voltage of 300/500 V
MS-IEC 60245-4:2004	Rubber insulated cables-Rated voltages up to and including 450/750 V Part 4: Cords and flexible cables	Details the particular specifications for rubber insulated and braided cords and for rubber insulated and rubber or polychloroprene or other equivalent synthetic elastomer sheathed cords and flexible cables of rated voltages up to and including 450/750 V.
MS-IEC 60245-5:1994	Rubber insulated cables-Rated voltages up to and including 450/750 V Part 5: Lift cables	Details the particular specifications for rubber insulated lift cables of rated voltage of 300/500 V.
MS-IEC 60245-6:1994	Rubber insulated cables-Rated voltages up to and including 450/750 V Part 6: Arc welding electrode cables	Details the particular specifications for rubber insulated lift arc welding electrode cables.

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MS-IEC 60245-8:2004	Rubber insulated cables-Rated voltages up to and including 450/750 V Part 8: Cords for applications requiring high flexibility	Details the particular specifications for rubber or cross-linked polyvinyl chloride insulated and rubber or cross-linked polyvinyl chloride sheathed cords of rated voltage 300/300 V, for use in applications where high flexibility is required for example iron cords.
MS-IEC 60254-1:1997	Lead-acid traction batteries Part 1: General requirements and methods of tests	Applicable to lead-acid traction batteries used as power sources for electric propulsion.
MS-IEC 60254-2:2000	Lead-acid traction batteries Part 2: Dimensions of cells and terminal and marking or polarity on cells	Applicable to lead-acid traction batteries used as power sources for electric propulsion.
MS-IEC 60269-1:1998	Low-voltage fuses Part 1: General requirements	Applicable to fuses incorporating enclosed current-limiting fuse-links with rated breaking capacities of not less than 6KkA, intended for protecting power-frequency alternating current (AC) circuits of nominal voltages not exceeding 1000 V or direct current (DC) circuits of nominal voltages not exceeding 1500 V.
MS-IEC 60304:1982	Standard colours for insulation for low-frequency cable and wires	Applies to thermoplastic insulation to be used with low-frequency cables and wires.
MS-IEC 60305:2003	Insulators for overhead lines with a nominal voltage above 1000 V-Ceramic or glass insulator units for alternating current (AC) systems-Characteristics of insulator units of the cap and pin type	Applies to string insulator units of the cap and pin type with insulating parts of ceramic material or glass, intended for alternating current (AC) overhead lines with a nominal voltage greater than 1000 V and a frequency not greater than 100 Hz and to insulators of similar design used in substations.

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MS-IEC 60309-1:2005	Plugs, socket-outlets and couples for industrial purposes Part 1: General requirements	Applies to plugs and socket-outlets, cable couplers and appliance couplers, with a rated operating voltage not exceeding 690 V direct current (DC) or alternating current (AC) and 500 Hz AC, and a rated current not exceeding 250A, primarily intended for industrial use, either indoors or outdoors.
MS-IEC 60335-1:2004	Household and similar electrical appliances-Safety Part 1: General requirements	Deals with the safety of electrical appliances for households and similar purposes. It deals with the common hazards presented by appliances that are encountered by all persons in and around the home. It also covers appliances used by laymen in shops, in light industry and on farms (such as catering equipment, and industrial and commercial cleaning appliances).
MS-IEC 60335-2-15:2005	Household and similar electrical appliances-Safety Part 2-15: Particular requirements for appliances for heating liquids	Deals with the safety of electrical appliances of heating liquids for household and similar purposes, their rated voltage being not more than 250 V.
MS-IEC 60335-2-21:2004	Household and similar electrical appliances-Safety Part 2-21: Particular requirements for storage water heaters	Deal with the safety of electric storage water heaters for household and similar purposed and intended for heating water below boiling temperature, their rated voltage being not more than 250 V for single phase appliances and 480 V for other appliances.
MS-IEC 60335-2-29:2004	Household and similar electrical appliances-Safety Part 2-29: Particular requirements for battery chargers	Deals with the safety of electric battery chargers for household and similar use having an output at safety extra-low voltage, their rated voltage being not more than 250 V.
MS-IEC 60335-2-3:2005	Household and similar electrical appliances-Safety	Deals with safety of electric dry irons and steam irons, including those with a separate water

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	Part 2-3: Particular requirements for electric irons	reservoir or boiler having a capacity not exceeding 5 litres, for household and similar purposes, their rated voltage being not more than 250 V.
MS-IEC 60335-2-39:2004	Household and similar electrical appliances-safety Part 2-39: Particular requirements for commercial electric multipurpose cooking pans	Deals with the safety of electrically operated commercial multipurpose cooking pans not intended for household use, their rated voltage being not more than 250 V for single phase appliances connected between one phase and neutral and 480 V for other appliances.
MS-IEC 60335-2-45:2002	Household and similar electrical appliances-Safety Part 2-45: Particular requirements for portable heating tools and similar appliances	Deals with the safety of portable electric heating tools and similar appliances, their rated voltage being not more than 250 V.
MS-IEC 60335-2-47:2002	Household and similar electrical appliances-Safety Part 2-47: Particular requirements for commercial electric boiling pans	Deals with the safety of electrically operated commercial boiling pans not intended for household use, their rated voltage being not more than 250 V for single-phase appliances connected between one phase and neutral, and 480 V for other appliances.
MS-IEC 60335-2-59:2006	Household and similar electrical appliances-Safety Part 2-59: Particular requirements for insect killers	Deals with the safety of electric insect killers for household and similar purposes, their rated voltage being not more than 250 V.
MS-IEC 60335-2-71:2002	Household and similar electrical appliances-Safety Part 2-71: Particular requirements for electrical heating appliances for breeding and rearing animals	Deals with the safety of all kinds of electrical heating appliances used for livestock rearing and breeding such as heat-radiating appliances, electrical sting-hens, incubators, chicken breeding units and heating plates for animals, the rated voltage of the appliances being not more than

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		250 V for single phase appliances and 480 V for other appliances.
MS-IEC 60357:2002	Tungsten halogen lamps (non-vehicle)	Specifies the performance requirements for single capped and double capped tungsten halogen lamps having rated voltages of up to 250 V.
MS-IEC 60364-4-41:2005	Electrical installations of buildings Part 4-41: Protection for safety-Protection against electric shock	Specifies essential requirements regarding protection against electric shock, including basic protection (protection against direct contact) and fault protection (protection against indirect contact) of persons and livestock. It deals also with the application and co-ordination of these requirements in relation to external influences.
MS-IEC 60364-4-42:2001	Electrical installations of buildings Part 4-42: Protection for safety-Protection against thermal effects	Describes protective measures intended to ensure the safety of persons from electric shock both in normal service and in case of fault. Also includes particular requirements applicable to Earth-Neutral (TN), Earth-Earth (TT) and Isolated-Earth (IT) system earthing.
MS-IEC 60364-4-43:2001	Electrical installations of buildings Part 4-43: Protection for safety-Protection against over current	Describes how live conductors are protected by one or more devices for automatic interruption of the supply in the event of overload and short-circuit except in cases where the overcurrent is limited in accordance with clause 436 or by the conditions described.
MS-IEC 60364-7-705:1984	Electrical installations of buildings Part 7: Requirements for special installations or locations. Section 705: Electrical installations of agricultural and horticultural premises	Requirements of this section apply to all parts of fixed installations of agricultural and horticultural premises outdoors and indoors and to locations where livestock are kept (such as stables, chicken-houses, piggeries, feed processing locations, lofts and storages for hay, straw and fertilizers).

Column 1 *Malaŵi Standard*	*Column 2* *Commodity*	*Column 3* *Description*
MS-IEC 60364-7-714:1996 Deals with fixed external lighting installations	Electrical installations of buildings Part 7: Requirements for special installations or locations-Section 714: External lighting installations	The requirements apply particularly to lighting installations e.g. for roads, parks, gardens, public places, sporting areas, illumination or monuments and flood lighting, and other equipment incorporating lighting such as telephone kiosks, bus shelters, advertising panels, town maps, road signs.
MS-IEC 60423:1993	Electrical installations of buildings Part 4-43: Protection for safety-Protection against over current	Specifies outside diameters for conduits used in electrical installations and the dimensional requirements for threads. It also specifies the dimensional requirements for threads used in associated fittings.
MS-IEC 60433:1998	Insulators for overhead lines with a nominal voltage above 1000 V-Ceramic insulators for alternating current (AC) systems-Characteristics of insulators units of the long rod type	Prescribes specified values for the electrical and mechanical characteristics and for the principal dimensions of string insulators units of the long rod type with insulating parts of ceramic material intended for alternating current (AC) overhead lines with a nominal voltage greater than 1000 V and a frequency not greater than 1000 Hz.
MS-IEC 60530:1975	Methods for measuring the performance of electric kettles and jugs for household and similar use	Applies to electric kettles and jugs with a capacity up to 2.5 litres. States and defines the principal performance characteristics which are of interest to the user and describes the standard methods for measuring these characteristics.
MS-IEC 60598-2-3:2000	Luminaries Part 2-3: Particular requirements-Luminaries for road and street lighting	Specifies requirements for, luminaries for road, street lighting and other public outdoor lighting applications; tunnel lightning; column-integrated luminaries with a minimum total height above normal ground level of 2.5 m and for use with electrical lighting sources on supply voltages not exceeding 1000 V.

Column 1 *Malaŵi Standard*	*Column 2* *Commodity*	*Column 3* *Description*
MS-IEC 60598-2-5:1992	Luminaries Part 2-5: Particular requirements-Flood lights	Specifies requirements for floodlight for use with tungsten filament, tabular fluorescent and other discharge lamps on supply voltages not exceeding 250 V.
MS-IEC 60614-1:1994	Conduits for electrical installations-Specification-Part 1: General requirements	Specifies requirements for conduits of circular cross-section for the protection of the conductors or cables in electrical installations.
MS-IEC 60614-2-1:1993	Specification for conduits for electrical installations Part 2: Particular specifications for conduits. Section 1: Metal conduits	Specifies requirements for threadable and non-threadable plain rigid metal conduits.
MS-IEC 60614-2-2:1980	Specification for conduits for electrical installations Part 2: Particular specifications for rigid plain conduits of insulating materials	Specifies requirements for rigid non-flame-propagating plain conduits of insulating materials.
MS-IEC 60614-2-5:1992	Specifications for conduits for electrical installations Part 2: Particular specifications for conduits-Section 5: Flexible conduits	Specifies requirements for flexible conduits of metal; insulating or composite materials for the protection of conductors and cables in electrical installations. It does not cover requirements for conduit fittings.
MS-IEC 60614-2-6:1992	Specifications for conduits for electrical installations Part 2: Particular specifications for conduits-Section 6: Pliable conduits of metal or composite materials	Specifies requirements for pliable conduits of metal or composite materials for the protection of conductors and cables in electric installations. It does not cover requirements for conduit fittings.

Column 1 *Malaŵi Standard*	*Column 2* *Commodity*	*Column 3* *Description*
MS-IEC 60665:1980	AC electric ventilating fans and regulators for household and similar purposes	Specifies the performance and the corresponding methods of test of ventilating fans for household and similar purposes intended for air forcing and exhaust, not exceeding 0.5 m in size, driven by single-phase alternating current (AC) motors having a power consumption not exceeding 500W (including any associated regulators), for use on single-phase alternating current (AC) circuits not exceeding 250 V.
MS-IEC 60669-1:2000	Switches for household and similar fixed-electrical installations Part 1: General requirements	Applies to manually operated general purpose switches, for alternating current (AC) only with a rated voltage not exceeding 440 V and a rated current not exceeding 63A, intended for household and similar fixed-electrical installations, either indoors or outdoors.
MS-IEC 60672-3:1997	Ceramic and glass insulating material Part 3: Specifications for individual materials	Applicable to ceramic, glass-ceramic, glass-mica and glass materials for electrical insulating purposes. It provides, for guidance, a classification of materials for general electrical insulating purposes, and indicates typical numerical values for the characteristics relevant to each subgroup or type of material as determined by the test methods defined in IEC 60672-2.
MS-IEC 60826:1991	Design criteria of overhead transmission lines	Applies to overhead lines of nominal voltage above 45kV. It may also be applied to lines with a lower nominal voltage.
MS-IEC 60884-1:1987	Plugs, socket-outlets and couples for household and similar purposes Part 1: General requirements	Applies to plugs and fixed or portable socket outlets for alternating current (AC) only, with and without earthing contact, with a rated voltage above 50 V but not exceeding 440 V and a rated current not

Column 1 *Malaŵi Standard*	*Column 2* *Commodity*	*Column 3* *Description*
		exceeding 32A, intended for household and similar proposes, either, indoors or outdoors.
MS-IEC 60884-2-1:1987	Plugs and socket-outlets for household and similar purposes Part 2: Particular requirements for fused plugs	Applies to where fuses are primarily intended to protect the flexible cable or cord.
MS-IEC 60884-2-2:1987	Plugs and sockets-outlets for household and similar purposes Part 2: Particular requirements for socket-outlets for appliances	Applies to socket-outlets integrated or intended to be incorporated in or fixed to appliances (hereinafter referred to as "socket-outlets for appliances").
MS-IEC 60888:1987	Zinc-coated steel wires for stranded conductors	Applies to zinc-coated steel wires used in the construction or reinforcement of conductors for overhead power transmission purposes.
MS-IEC 60889:1987	Hard-drawn aluminium wire for overhead line conductors	Applicable to hard-drawn aluminum wires for the manufacture of stranded conductors for overhead power transmission purpose. It specifies the mechanical and electrical properties of wires in the diameter range 1.25 mm to 5.00 mm.
MS-IEC 60896-11:2002	Stationery lead-acid batteries Part 11: Vented types-General requirements and methods of tests	Applicable to lead-acid cells and batteries which are designed for service in fixed locations, which entails not habitually to be moved from place to place, and which are permanently connected to the load and to the direct current power supply.
MS-IEC 60896-21:2004	Stationary lead-acid batteries Part 21: Valve regulated types-Methods of test	Applies to all stationary lead-acid cells and monobloc batteries of the valve regulated type for float charge applications, (i.e. permanently connected to a load

Column 1 *Malaŵi Standard*	*Column 2* *Commodity*	*Column 3* *Description*
		and to a DC power supply), in a static location (i.e. not generally intended to be moved from place to place) and incorporated into stationary or installed in battery rooms for use in telecom, uninterruptible power supply, utility switching, emergency power or similar applications.
MS-IEC 60904-2:1984	Photovoltaic devices Part 2: Requirements for reference solar cells	Gives requirements for the classification, selection, packaging, marking, calibration and care of crystalline silicon reference solar cells.
MS-IEC 60906-1:1989	IEC system of plugs and socket-outlets for household and similar purposes Part 1: Plugs and socket-outlets 16A 250 V alternating current	Applies to IEC system of plugs and socket outlets rated 16A 250 V alternating current (AC) for household and similar purposes for the connection of equipment to distribution systems having nominal voltages between 200 V and 250 V alternating current (AC) insofar as dimensional requirements are concerned.
MS-IEC 60921:2004	Ballast for tubular fluorescent lamps performance requirements	Performance requirements for ballasts, excluding resistance types, for use on alternating current (AC) supplies up to 1000 V at 50Hz or 60Hz, associated with tabular fluorescent lamps with preheated cathodes operated with or without a starter or starting device and having rated wattages, dimensions and characteristics as specified in IEC 60081 and 60901. It applies to complete ballasts and their component parts such as resistors, transformers and capacitors.
MS-IEC 60923:2005	Auxiliaries for lamps-Ballast for discharge lamps (excluding tubular fluorescent lamps)-Performance requirements	Specifies performance requirements of ballasts for discharge lamps such as high-pressure mercury vapour, low pressure sodium vapour, high pressure sodium vapour and metal halide lamps.

Column 1 *Malaŵi Standard*	*Column 2* *Commodity*	*Column 3* *Description*
MS-IEC 60925:2001	DC supplied electronic ballast for tubular fluorescent lamps. Performance requirements	Specifies general performance requirements for electronic ballasts for use on direct current supplies having rated voltages not exceeding 250 V, associated with fluorescent lamps complying with IEC 60081. It shall be read in conjunction with IEC 60924.
MS-IEC 60927:2004	Auxiliaries for lamps-Starting devices other than glow starters-Performance requirements	Specifies requirements for starting devices (starters and ignitors) for tabular fluorescent and other discharge lamps for use in alternating current (AC) supplies up to 1000 V at 50Hz or 60Hz, which produce starting pulses not greater than 5 kV. It should be read in conjunction with IEC 60926.
MS-IEC 60974-11:2004	Arc welding equipment Part 11: Electrode holders	Applicable to electrode holders for manual metal arc welding with electrodes up to 10mm in diameter.
MS-IEC 60974-12:2005	Arc welding equipment Part 12: Coupling device for welding	Applies to coupling devices for cables for welding and allied processes designed for connection and disconnection without using tools.
MS-IEC 61035-1:1990	Specification for conduit fittings for electrical installations Part 1: General requirements	Specifies requirements for conduit fittings for use with conduits for the protection of conductors and or cables, and type tests for the quality of joints of conduits fittings to conduit.
MS-IEC 61035-2-1:1993	Specification for conduit fittings for electrical installations Part 2: Particular specifications-Section 1: Metal conduit fittings	Gives the particular requirements for metal conduit fittings and is to be used in conjunction with IEC 61035-1.
MS-IEC 61035-2-2:1993	Specification for conduit fittings for electrical installation	Gives the particular requirements for conduit fittings of insulating material and is to be used in conjunction with IEC 61035-1.

Column 1 *Malaŵi Standard*	*Column 2* *Commodity*	*Column 3* *Description*
	Part 2: Particular specifications- Section 2: Conduit fittings of insulating material	
MS-IEC 61058-1:2001	Switches for appliances Part 1: General requirements	Applies to switches for appliances actuated by hand, by foot or by other human activity for use in, on or with appliances and other equipment for household and similar purposes, with a rated voltage not exceeding 440 V and a related current not exceeding 63A.
MS-IEC 61058-2-1:1992	Switches appliances Part 2-1: Particular requirement for cord switches	Applies to cord switches for appliances actuated by hand, by foot or by other human activity for use in, on or with appliances and other equipment for household and similar purposed, with a rated voltage not exceeding 250 V and a rated current not exceeding 16A.
MS-IEC 61084-1:1991	Cable trunking and ducting systems for electrical installations Part 1: General requirements	Specifies requirements for cable trunking and cable ducting systems intended for the accommodation, and where necessary for the segregation of conductors, cables of cords and other electrical equipment in electrical installations.
MS-IEC 61084-2-1:1996	Cable trunking and ducting systems for electrical installations Part 2: Particular requirements- Section 1: Cable trunking and ducting systems intended for mounting on walls or ceilings	Specifies requirements for cable trunking and ducting systems intended for mounting on walls or ceilings.
MS-IEC 61084-2-4:1996	Cable trunking and ducting systems for electrical installations	Specifies requirements for service poles intended for the accommodation, and where necessary for the segregation, of

Column 1 *Malaŵi Standard*	*Column 2* *Commodity*	*Column 3* *Description*
	Part 2: Particular requirements-Service poles	conductors, cables or cords and/or other electrical equipment in electrical installations.
MS-IEC 61089:1991	Round wire concentric lay overhead electrical stranded conductors	Specifies the electrical and mechanical characteristics of round wire concentric lay overhead electrical stranded conductors made of combinations of any of the following metal wires— (*a*) hard-drawn aluminium (*b*) aluminium alloy type B (*c*) aluminium alloy type A (*d*) regular strength steel (*e*) high strength steel (*f*) extra high strength steel
MS-IEC 61138:1994	Cables for portable earthing and short-circuiting equipment	Applies to flexible cables with covering based on ethylene propylene rubber (EPR) or on polyvinyl chloride (PVC) for portable earthing and short-circuiting equipment.
MS-IEC 61140:2004	Protection against electric shock-Common aspects for installation and equipment	Applies to the protection of persons and animals against electric shock. It is intended to give fundamental principles and requirements which are common to electrical installations, systems and equipment or necessary for their co-ordination.
MS-IEC 61156-1:2004	Multi-core and symmetrical pair or quad cable for digital communications Part 1-Generic specification	Is a guide to indoor cables which specifies the definitions and requirements of multi-core, symmetrical pair and quad cables used in digital communication systems such as ISDN, local area networks and data communication systems.
MS-IEC 61156-1-1:2001	Multi-core and symmetrical pair or quad cable for digital communications	Applies to capability approval requirements for multicore and symmetrical pair or quad cables for digital communications as specified in IEC 61156-1 series.

Column 1 *Malaŵi Standard*	*Column 2* *Commodity*	*Column 3* *Description*
	Part 1-1: Capability approval-Generic specification.	It specifies the requirements for a manufacturer seeking approval of his capability to design (if applicable), manufacture, inspect, test and release multicore and symmetrical pair/quad cables for digital communications as defined in his Capability Manual.
MS-IEC 61173:1992	Over voltage protection for photovoltaic (PV) power generating	Gives guidance on the protection of over-voltage issues for both stand-alone and grid-connected photovoltaic power generating systems. It is intended to identify sources of overvoltage hazards (including lighting) to define the types of protection such as grounding, shielding, stroke interception and protective devices.
MS-IEC 61194:1992	Characteristic parameters of stand-alone photovoltaic (PV) systems	Defines the major electrical, mechanical and environmental parameters for the description and performance analysis of stand-alone photovoltaic systems.
MS-IEC 61215:2005	Crystalline silicon terrestrial photovoltaic (PV) modules-Design qualification and type approval	Lays down IEC requirements for the design qualification and type approval of terrestrial photovoltaic modules suitable for long-term operation in general open-air climates, as defined in IEC 60721-2-1. It applies only to crystalline silicon modules types.
MS-IEC 61293:1994	Marking of electrical equipment with ratings related to electrical supply-Safety requirements	Establishes minimum requirements and general rules on marking electrical equipment with ratings and other characteristics to enable the proper and safe selection and installation of electrical equipment related to any supply of electricity.
MS-IEC 61364:1999	Nomenclature for hydroelectric power plant machinery	Provides a basic nomenclature for hydraulic machinery used in hydroelectric power stations and defines their components.

Column 1 *Malaŵi Standard*	*Column 2* *Commodity*	*Column 3* *Description*
MS-IEC 61394:1994	Overhead lines-characteristics of greases for aluminium, aluminium alloy and steel bare conductors	Applies to products designed for corrosion protection of bare electrical overhead conductors in any combination of wires of aluminium and aluminium alloy.
MS-IEC 61400-SER-1:2005	Wind turbine generator systems Part 1: Safety requirements	Deals with safety aspects, quality assurance and engineering integrity and specifies safety requirements for design, installation and operation of wind turbine generator systems.
MS-IEC 61400-SER-2:2006	Wind turbine generator systems Part 2: Safety of small wind turbines	Deals with safety philosophy, quality assurance, engineering integrity and specifies requirements for the safety of wind turbines having a sept areas smaller than $40m^2$ and generating at a voltage below 1000 V alternating current (AC) or 1500 V direct current.
MS-IEC 61427:2005	Secondary cells and batteries for photovoltaic energy systems (PVES)-General requirements and methods of test	Gives general information relating to the requirements of the secondary batteries used in photovoltaic energy systems (PVES) and to the typical methods of test used for the verification of battery performances.
MS-IEC 61429:1995	Marking of secondary cells and batteries with the international recycling symbol ISO 7000-1135	Defines the conditions of utilization of the recycling symbol of the International Organization for Standardization (ISO) associated with the chemical symbols indicating the electro-chemical system of the battery. This standard applies to lead-acid batteries (Pb) and nickel-cadmium batteries (Ni-cd).
MS-IEC 61479:2002	Live working-flexible conductor covers (line hoses) of insulating material	Applicable to flexible insulating covers (line hoses) for the protection of workers from accidental contact with live or earthed electrical conductors and for avoidance of short circuits during live working.

Column 1 *Malaŵi Standard*	*Column 2* *Commodity*	*Column 3* *Description*
MS-IEC 61558-1:2005	Safety of power transformers, power supplies, reactors and similar products Part 1: General requirements and tests	Deals with safety aspects of power transformers, power supplies, reactors and similar products such as electrical, thermal and mechanical safety.
MS-IEC 61663-2:2001	Lighting protection-Telecommunication lines Part 2: Lines using metallic conductors	Deals with protection against lighting of outdoor telecommunications lines using metallic conductors (for example, access networks, lines between buildings).
MS-IEC 61672-1:2001	Electro acoustics-Sound level meters Part 1: Specifications	Gives electro acoustical performance specifications for three kinds of sound measuring instruments— (*a*) a conventional sound level meter that measures exponential time-weighted sound level; (*b*) an integrating-averaging sound level meter that measures time-average sound level; and (*c*) an integrating sound level meter that measures sound exposure level.
MS-IEC 61951-1:2006	Secondary cells and batteries containing alkaline or other non-acid electrolytes-Portable sealed rechargeable single cells Part 1: Nickel-cadmium	Specifies marking, designation, dimensions, tests and requirements for portable sealed nickel-cadmium small prismatic, cylindrical and button rechargeable single cells suitable for use in any orientation.
MS-IEC 62019:2003	Electrical accessories-Circuit-breakers and similar equipment for household use-Auxiliary contact units	Applies to auxiliary electromechanically contact units associated (or intended to be associated) with circuit-breakers for over current protection and with residual current operated circuit-breakers with or without integral over current protection for household and similar installations, having

Column 1 *Malaŵi Standard*	*Column 2* *Commodity*	*Column 3* *Description*
		a related voltage not exceeding 440 V alternating current and 250 V direct current and a rated current not exceeding 10A.
MS-IEC 62133:2002	Secondary cells and batteries containing alkaline or other non-acid electrolytes-Safety requirements for portable sealed secondary cells, and for batteries made from them, for use in portable applications	Specifies requirements and tests for the safe operation of portable sealed secondary cells and batteries (other than button) containing alkaline or other non-acid electrolyte, under intended use and reasonably foreseeable misuse.
MS-IEC 62305-1:2006	Protection against lightning Part 1: General principles	Provide the general principles to be followed in the protection against lightning of— (*a*) structures including their installations and contents as well as persons; and (*b*) services connected to a structure.
MS-IEC 62305-3:2006	Protection against lightning Part 3: Physical damage to structures and life hazard	Provides the requirements for protection of a structure against physical damage by means of a lightning protection system (LPS), and for protection against injury to living beings due to touch and step voltages in the vicinity of an LPS (see IEC 62305-1).
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MS 74:2014	Pasteurized cow's milk-Specification (2nd Edition) (COMESA harmonized)	Applies to pasteurized cow's milk
MS 542:2014	Sorghum grains - Specification, (2nd Edition) (COMESA Harmonized)	Applies to sorghum grains for human consumption; i. e. ready for its intended use as human food presented in packaged form or sold loose from the package directly to the consumer. It does not apply to other products derived from sorghum grains.

Column 1 *Malaŵi Standard*	*Column 2* *Commodity*	*Column 3* *Description*
MS 619:2016	Fruit juices and nectars - Specification (2nd Edition) (COMESA Harmonized)	Specifies requirements for fruit juices, fruit nectars and concentrated fruit juices intended for direct human consumption or for further processing
MS 631:2016	Corned Beef - Specification (2nd Edition) (COMESA Harmonized)	Applies to canned beef products designated as "Corned beef" and sold in hermetically sealed containers which have been heat treated after sealing to such an extent that the product is shelf-stable. It does not apply to meat products of the type "Corned beef" with compositional characteristics different from those specified.
MS 807:2014	Luncheon Meat (2st Edition) (COMESA Harmonized)	Applies to products designated as "Luncheon meat" which have been packed in any suitable packing material.
MS 839:2013	Quick frozen shrimps or prawns - Specification (1st Edition) (COMESA Harmonized)	Provides requirements for quick frozen raw or partially or fully cooked shrimps or prawns peeled or unpeeled.
MS 929:2015	Broadleaved sawn timber - Nominal sizes (1st Edition) (COMESA Harmonized)	Specifies nominal sizes of unplaned, square-edged and unedged, broadleaved sawn timber.
MS 931:2015	Cast carbon steels for general engineering purposes (1st Edition) (COMESA Harmonized)	Specifies requirements for eight grades of heat-treated cast carbon steels for general engineering purposes.
MS 933-2:2015	Stainless steels for general purposes-Part 2: Corrosion resistant Semi-finished products, bars, rods and sections (1st Edition) (COME-SA Harmonized)	Specifies technical delivery conditions for semi-finished products, hot formed bars, rods, and sections for general purposes made of the most important corrosion-resistant stainless steel grades.

Column 1 *Malaŵi Standard*	*Column 2* *Commodity*	*Column 3* *Description*
MS 933-3:2015	Stainless steels for general purposes - Specification - Part 3: Wire (1st Edition) (COMESA Harmonized)	Specifies requirements for stainless steel wire for common use for which no product standard exists. It includes round, flat and shaped wire (such as square, hexagonal or rectangular wire), made of the most commonly used types of stainless steels for general corrosion resistance and high-temperature service. The wire may be supplied in coils or in straightened and cut lengths.
MS 939:2016	Labelling of and claims for food special for medical purposes (1st Edition) (COMESA Harmonized)	Applies to the labelling of and claims for foods for special medical purposes.
MS 941:2016	General Standard for the labelling of and claims for pre-packaged foods for special dietary uses (1st Edition) (COMESA Harmonized)	Applies to the labelling of and claims for pre-packaged foods for special dietary uses.
MS 943:2016	Formula Foods for use in Weight Control Diets (1st Edition) (COMESA Harmonized)	Applies to formula foods for use in weight control diets and presented as such. It does not apply to pre-packaged meals controlled in energy and presented in the form of conventional foods.
MS 949-1:2015	Reciprocating Internal Combustion engine driven Alternating Current generating sets- Part 1: Application, ratings and performance (1st Edition) (COMESA Harmonized)	Defines various classifications for the application, rating and performance of generating sets consisting of a Reciprocating Internal Combustion (RIC) engine, Alternating Current (A.C) generator and any associated control gear, switchgear and auxiliary equipment.
MS 949-2:2015	Reciprocating Internal Combustion engine driven	Specifies the principal characteristics of a reciprocating Internal Combustion (RIC)

Column 1 *Malaŵi Standard*	*Column 2* *Commodity*	*Column 3* *Description*
	Alternating Current generating sets- Part 2: Engines (1st Edition) (COMESA Harmonized)	engine when used for Alternating Current (A.C) generating set applications.
MS 949-3:2015	Reciprocating Internal Combustion engine driven Alternating current generating sets- Part 3: Alternating Current generators for generating sets (1st Edition) (COMESA Harmonized)	Specifies the principal characteristics of Alternating Current (A.C) generators under the control of their voltage regulators when used in generating set applications.
MS 949-4:2015	Reciprocating Internal Combustion engine driven Alternating Current generating sets- Part 4: Control gear and switch gear (1st Edition) (COMESA Harmonized)	Specifies the criteria for control gear and switchgear for generating sets with Reciprocating Internal Combustion engines.
MS 949-5:2015	Reciprocating Internal Combustion engine driven Alternating Current generating sets- Part 5: Generating sets (1st Edition) (COMESA Harmonized)	Defines terms and specifies design and performance criteria arising out of the combination of a Reciprocating Internal Combustion (RIC) engine and an Alternating Current (A.C) generator when operating as a unit.
MS 949-7:2015	Reciprocating Internal Combustion engine driven Alternating Current generating sets- Part 7: Technical declarations for specification and design (1st Edition) (COMESA Harmonized)	Specifies requirements and parameters for the specification and design of a Reciprocating Internal Combustion (RIC) engine driven generating set.

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MS 949-8:2015	Reciprocating Internal Combustion engine driven Alternating Current generating sets- Part 8: Requirements and tests for low-power generating sets (1st Edition) (COMESA Harmonized)	Defines requirements, minimum performances and type tests for low-power generating sets driven by Reciprocating Internal Combustion engines for land and marine use (domestic, recreational and industrial application), excluding generating sets used on aircraft.
MS 949-12:2015	Reciprocating Internal Combustion engine driven Alternating Current generating sets- Part 12: Emergency power supplies to safety services (1st Edition) (COMESA Harmonized)	This part of MS 949 applies to generating sets driven by Reciprocating Internal-Combustion (WC) engines for emergency power supply to safety services.
MS 965-1:2015	Steel for the pre-stressing of concrete- Part 1: General requirements (1st Edition) (COMESA Harmonized)	Specifies requirements for high tensile strength steel to be used in prestressed concrete. It applies only to material in the condition as supplied by the manufacturer. It does not cover requirements for materials and anchorage devices used in conjunction with the prestressing steel in structural components.
MS 965-2:2015	Steel for the pre-stressing of concrete - Part 2: Cold drawn wire (1st Edition) (COMESA Harmonized)	Specifies requirements for round, cold-drawn, high-tensile steel wire, either plain, indented, ribbed or crimped. The product is supplied as mill coil wire or straightened and stress-relieved wire in coils or cut lengths, according to the general requirements specified in MS 965-1.
MS 965-3:2015	Steel for the pre-stressing of concrete - Part 3: Quenched and tempered wire (1st Edition) (COMESA Harmonized)	Specifies requirements for round wire made of quenched and tempered high tensile steel, with a surface which is plain, ribbed, grooved or indented. The product is delivered in coils, according

Column 1 *Malaŵi Standard*	*Column 2* *Commodity*	*Column 3* *Description*
		to the general requirements specified in MS 965-1.
MS 965-4:2015	Steel for the pre-stressing of concrete - Part 4: Strand (1st Edition) (COMESA Harmonized)	Specifies requirements for high tensile steel strand which has been given a stress relieving heat treatment according to the general requirements specified in MS 965-1. The strand may contain 2, 3, 7 or 19 individual wires.
MS 965-5:2015	Steel for the pre-stressing of concrete - Part 5: Hot-rolled steel bars with or without subsequent processing (1st Edition) (COMESA Harmonized)	Specifies requirements for round high tensile steel bars. The bars may be supplied either hot-rolled or in a hot-rolled and processed condition, according to the general requirements specified in MS 965-1. The surface may be plain or ribbed.
MS 1000:2014	Certain pulses-Specification (1st Edition) (COMESA Harmonized)	Applies to the whole, shelled or split pulses (beans, lentils, peas, chick peas, filed beans and cow peas) which are intended for direct human consumption. The Standard does not apply to pulses intended for factory grading and packaging, industrial processing, or to those pulses intended for use in the feeding of animals. It does not apply to fragmented pulses when sold as such, or to other legumes for which separate standards may be elaborated.
MS 1003:2014	Papayas-Specification (1st Edition) (COMESA Harmonized)	Applies to fruits of commercial varieties of papayas grown from *Carica papaya* L., of the *Caricaceae* family, to be supplied fresh to the consumer, after preparation and packaging. Papayas for industrial processing are excluded.
MS 1004:2014	Mangoes-Specification (1st Edition) (COMESA Harmonized)	Applies to commercial varieties of Mangoes grown from *Mangifera indica* L, of the *Anacardiaceae* family, to be supplied fresh to the consumer, after preparation and packaging. Mangoes for industrial processing are excluded.

Column 1 *Malaŵi Standard*	*Column 2* *Commodity*	*Column 3* *Description*
MS 1005:2014	Dates- Specification (1st Edition) (COMESA Harmonized)	Applies to commercially prepared whole dates in pitted or un-pitted styles packed ready for direct consumption. It does not apply to other forms such as pieces or mashed dates or dates intended for industrial purposes.
MS 1006:2014	Milk fat products (1st Edition) (COMESA Harmonized)	Applies to anhydrous milkfat, milkfat, anhydrous butteroil, butteroil and ghee, which are intended for further processing or culinary use.
MS 1060:2015	Steel wire ropes for lifts - Minimum requirements (1st Edition) (COMESA Harmonized)	Specifies the minimum requirements for the manufacture and testing of stranded carbon steel wire ropes used for suspension duty on traction drive and roped hydraulic lifts, and for compensation and governor duties on passenger and freight lifts, dumbwaiters, personnel hoists and man lifts moving between guides. It gives the minimum breaking forces for the more common sizes, rope grades and rope classes and constructions.
MS 1061:2015	Steel wire ropes for general purposes - Minimum requirements (1st Edition) (COMESA Harmonized)	Specifies minimum requirements for the manufacture and testing of stranded steel wire ropes for general purposes, including lifting equipment such as cranes and hoists.
MS 1063:2015	Continuous hot-dip zinc-coated carbon steel sheet of structural quality - Specification (1st Edition) (COMESA Harmonized)	Applies to continuous hot dip zinc and zinc iron alloy coated carbon steel sheet of structural quality.
MS 1064:2015	Cold-reduced steel sheet of structural quality - Specification (1st Edition) (COMESA Harmonized)	Applies to cold-reduced steel sheet of structural quality in grades CR220, CR250, CR320 and CH550, usually without the use of microalloying elements. The product is intended for structures

Column 1 *Malaŵi Standard*	*Column 2* *Commodity*	*Column 3* *Description*
		that may include bolting, riveting and welding. It is generally used in the delivered condition for fabricating purposes, such as bending, forming or welding.
MS 1065-1:2015	Cold-formed welded structural hollow sections of non-alloy and fine grain steels, Part 1: Technical delivery conditions (1st Edition) (COMESA Harmonized)	Specifies the technical delivery requirements for cold-formed welded structural hollow sections of circular, square or rectangular form. It is applicable to structural hollow sections formed cold without subsequent heat treatment.
MS 1065-2:2015	Cold-formed welded structural hollow sections of non-alloy and fine grain steels, Part 2: Dimensions and sectional properties (1st Edition) (COMESA Harmonized)	Specifies the tolerances for cold-formed welded circular, square and rectangular structural hollow sections, and gives the dimensions and sectional properties for a range of standard sizes.
MS 1066:2015	Hot-rolled steel sheet of structural quality - Specification (1st Edition) (COMESA Harmonized)	Applies to hot-rolled steel sheet of structural quality usually prepared without the use of microalloying elements. The product is intended for structural purposes where particular mechanical properties are required. It is generally used in the delivered condition and is intended for bolted, riveted or structures. This product is produced on a wide strip mill, not a plate mill.
MS 1071:2015	Cold-reduced carbon steel sheet of commercial and drawing qualities (1st Edition) (COMESA Harmonized)	Applies to cold-reduced carbon steel sheet of commercial and drawing qualities. It is suitable for applications where the surface is of prime importance.
MS 1072:2015	High strength cast steels for general engineering and	Specifies requirements for four grades of heat-treated cast carbon and alloy steels

Column 1 *Malaŵi Standard*	*Column 2* *Commodity*	*Column 3* *Description*
	structural purposes (1st Edition) (COMESA Harmonized)	for general engineering and structural purposes.
MS 1075:2015	Stainless steel tubes - Dimensions, tolerances and conventional masses per unit length (1st Edition) (COMESA Harmonized)	Specifies the diameters, thicknesses, tolerances and conventional masses per unit length of stainless steel tubes.
MS 1076:2015	Hot dip galvanized coatings on fabricated iron and steel articles - Specifications and test methods (1st Edition) (COMESA Harmonized)	Specifies the general properties of coatings and test methods for coatings applied by dipping fabricated iron and articles (including certain castings) in a zinc melt (containing not more than 2 % of other metals).
MS 1077:2015	Round non-alloy steel wires for stranded wire ropes for mine hoisting - Specifications (1st Edition) (COMESA Harmonized)	Specifies round non-alloy steel drawn wires to be used in the manufacture of stranded wire ropes for mine hoisting.
MS 1078:2015	Hot-rolled steel strip of structural quality - Specification (1st Edition) (COMESA Harmonized)	Specifies requirements for hot-rolled steel strip.
MS 1080:2015	Cold-reduced carbon steel sheet according to hardness requirements (1st Edition) (COMESA Harmonized)	Applies to cold-reduced carbon steel sheet and corresponding hardness requirements. It is suitable for applications where the surface is of prime importance.
MS 1097-1:2016	Cold-formed welded structural hollow sections of non-alloy and fine grain steels - Part 1: Technical delivery conditions	Specifies the technical delivery requirements for cold-formed welded structural hollow sections of circular, square or rectangular form. It is applicable to structural hollow sections formed cold without subsequent heat treatment.

Column 1 *Malaŵi Standard*	*Column 2* *Commodity*	*Column 3* *Description*
	(1st Edition) (COMESA Harmonized)	
MS 1097-2:2016	Cold-formed welded structural hollow sections of non-alloy and fine grain steels - Part 2: Dimensions and sectional properties (1st Edition) (COMESA Harmonized)	Specifies the tolerances for cold-formed welded circular, square and rectangular structural hollow sections, and gives the dimensions and sectional properties for a range of standard sizes.
MS 1098-1:2015	Structural steels - Part 1: Technical delivery conditions for structural steels for general purposes (COMESA Harmonized)	Specifies the general technical delivery conditions for steel flat and long products (plate/ sections/wide flats and bars) used principally for general-purpose structural steels.
MS 1098-2:2015	Structural steels - Part 2: Technical delivery equipment for hot-finished hollow sections (1st Edition) (COMESA Harmonized)	Specifies qualities for steels for general structural use.
MS 1099:2016	Cold-reduced steel sheet of higher yield strength with improved formability (1st Edition) (COMESA Harmonized)	Applies to all grades of cold-rolled steel sheet of higher yield strength with improved formability. The steel is made according to fine-grain practice and has a suitable chemical composition, including microalloying elements, to provide improved formability. The product is intended for the fabrication of parts requiring better formability. It is generally used in the delivered condition.
MS 1100:2016	Steel wire ropes - Vocabulary, designation and classification (1st Edition) (COMESA Harmonized)	Defines terms, and specifies a designation system and a classification system, for steel wire ropes.

Column 1 *Malaŵi Standard*	*Column 2* *Commodity*	*Column 3* *Description*
MS 1102:2016	Steels for general engineering purposes (1st Edition) (COMESA Harmonized)	Specifies the qualities of general purpose steel intended for engineering purposes. This standard applies to hot-rolled steel sheet 3 mm or more thick, flats and bars generally used in the delivered state and as a rule in engineering structures.
MS 1103:2016	Continuous hot-dip terne (lead alloy) coated cold-reduced carbon steel sheet of commercial drawing and structural qualities (1st Edition) (COMESA Harmonized)	Is applicable to cold-reduced carbon steel sheet of commercial, drawing, and structural qualities coated by a continuous hot-dip terne (lead alloy) coating process.
MS 1104:2016	Structural steels with improved atmospheric corrosion resistance (1st Edition) (COMESA Harmonized)	Specifies the chemical and mechanical characteristics, methods of manufacture, the acceptance conditions and the marking of structural steel products possessing improved atmospheric corrosion resistance.
MS 1105:2016	Cold-reduced steel sheet of high tensile strength and low yield point with improved formability - Specification (1st Edition) (COMESA Harmonized)	Applies to killed cold-reduced steel sheet of two types that are commercially available in the world. Type 1 (Table 1) represents steels that are produced to mechanical properties only and Type 2 (Table 2) are produced to both mechanical and chemical properties.
MS 1106:2016	Fasteners - Hot dip galvanized coatings - Specification (1st Edition) (COMESA Harmonized)	Specifies material, process, dimensional and some performance requirements for hot dip spun galvanized coatings applied to coarse threaded steel fasteners from M8 up to and including M64 and for property classes up to and including 10.9 for bolts, screws and studs and 12 for nuts. It is not recommended to hot dip galvanize threaded fasteners in diameters smaller than M8 and/or with pitches below 1.25 mm.

Column 1 *Malaŵi Standard*	*Column 2* *Commodity*	*Column 3* *Description*
MS 1107:2016	Hot-rolled and cold-reduced electrolytic zinc-coated carbon steel sheet of commercial and drawing qualities - Specification (1st Edition) (COMESA Harmonized)	Specifies the characteristics of carbon steel sheet of commercial and drawing qualities in cut length or coil form, zinc coated by electrolytic deposition.
MS 1109:2016	Continuous electrolytic tin-coated cold-reduced carbon steel sheet of commercial and drawing qualities (1st Edition) (COMESA Harmonized)	Applies to cold-reduced carbon steel sheet of commercial and drawing qualities coated in coil or cut length forms by electro-deposition of tin. The product is commonly known as electrolytic tin-coated sheet and is used where solderability is desired, appearance is important, or a degree of corrosion resistance under specific conditions is advantageous and coating mass can be specified.
MS 1110:2014	Dried apricots - Specification (1st Edition) (COMESA Harmonized)	Applies to dried fruits of *Armeniaca Vulgaria* Lam. (*Prunns armeniaca* L.) which have been suitably treated and processed and which are offered for direct consumption. It also covers dried apricots which are packed in bulk containers and which are intended for repacking into consumer size containers or direct sale to consumers.
MS 1111:2014	Baby Com - Specification (1st Edition) (COMESA Harmonized)	Applies to the cobs, without the silk and anthers, of commercial varieties of baby corn (corn inflorescence) grown from *Zea mays* L, of the *Gramineae* family, separated from silk, husk and anthers, to be supplied fresh to the consumer, after preparation and packaging. Baby corn for industrial processing is excluded.
MS 1244:2016	Canned Shrimps or Prawns - Specification	Applies to canned shrimps or canned prawns. It does not apply to specialty products

Column 1 *Malaŵi Standard*	*Column 2* *Commodity*	*Column 3* *Description*
	(1st Edition) (COMESA Harmonized).	where shrimp constitutes less than 50 % m/m of the contents.
MS 1245:2016	Canned Tuna and Bonito - Specification (1st Edition) (COMESA Harmonized.	Applies to canned Tuna and Bonito. It does not apply to speciality products where the fish content constitutes less than 50 % m/m of the contents.
MS 1246:2016	Quick frozen blocks of fish fillet, minced fish flesh and mixtures of fillets and minced fish flesh - Specification (1st Edition) (COMESA Harmonized.	Applies to quick frozen blocks of cohering fish flesh prepared from fillets (including pieces of fillets) or minced fish flesh or a mixture of fillets and minced fish flesh, which are intended for further processing.
MS 1248:2016	Table Olives - Specification (1st Edition) (COMESA Harmonized)	Applies to the fruit of the cultivated olive tree which has been suitably treated or processed, and which is offered for direct consumption as table olives, including for catering purposes or olives packed in bulk containers which are intended for repacking into consumer size containers. It does not apply to the product when indicated as being intended for further processing.
MS 1249:2016	Sardine and Sardine type products - Specification (1st Edition) (COMESA Harmonized).	Applies to canned Sardines and Sardine-type products packed in water or oil or other suitable packing medium. It does not apply to speciality products where fish content constitute less than 50 % m/m of the net contents of the can.
MS 1263:2015	Couscous - Specification (1st Edition) (COMESA Harmonized)	Applies to processed Couscous destined for direct human consumption and it does not apply to Couscous intended for the same use but prepared from cereals other than durum wheat.
MS 1265:2016	Cooked cured ham - Specification (COMESA Harmonized)	Applies to products designated as “cooked ham” packaged in any suitable packaging material.

Column 1 *Malaŵi Standard*	*Column 2* *Commodity*	*Column 3* *Description*
MS 1304:2016	Leather-Bovine wet blue - Specification (1st Edition) (COMESA Harmonized)	Specifies requirements, methods of sampling test for wet blue leather produced from bovine hides and parts of bovine hides tanned without hair and with the use of basic chromium sulphate as the primary tanning agent.
MS 1305:2016	Leather - Wet blue sheep skins - Specification (1st Edition) (COMESA Harmonized)	Specifies requirements, methods of sampling and methods of test for wet blue leather produced from sheep skins tanned without wool and with the use of basic chromium sulphate as the primary tanning agent.
MS 1306:2016	Leather-Wet blue goat skins - Specification (1st Edition) (COMESA Harmonized)	Specifies requirements, methods of sampling and methods of test for wet blue leather produced from goat skins tanned without hair and with the use of basic chromium sulphate as the primary tanning agent.
MS 1348:2016	Quick frozen Broccoli - Specification (1st Edition) (COMESA Harmonized)	Applies to quick frozen broccoli of the species *Brassica oleracea* L. Var. talic Plenck (sprouting broccoli), as defined below and offered for direct consumption without further processing, except for re-packing, if required. It does not apply to the product when indicated as intended for further processing or for other industrial purposes.
MS 1350:2016	Code of hygienic practice for dried fruits natural (1st Edition) (COMESA Harmonized)	Applies to all fruits that have been dried by or artificial means or a combination of both. The fruit is dried to the extent that the greater part of the moisture has been removed, and in addition the fruit may be subjected to a safe and appropriate treatment in preparation and packing, to permit marketing in normal trade channels. Fruits covered by this code include apples, apricots, peaches, pears, nectarines, prunes, figs, dates, and vine fruits such as raisins and currants.

Column 1 *Malaŵi Standard*	*Column 2* *Commodity*	*Column 3* *Description*
MS 1351:2016	Quick frozen strawberries - Specification (1st Edition) (COMESA Harmonized)	Applies to quick frozen strawberries (excluding quick frozen strawberry puree) of the species *Fragaria grandijlora* L. and *Fragaria vesca* L. and offered for direct consumption without further processing, except for size grading or repacking if required. It does not apply to the product when indicated as intended for further processing or for other industrial purposes.
MS 1352:2016	Canned strawberries - Specification (1st Edition) (COMESA Harmonized)	Specifies the requirements and methods of sampling and test for canned strawberries.
MS 1353:2016	Quick frozen cauliflower - Specification (1st Edition) (COMESA Harmonized)	Applies to quick frozen cauliflower of the species *Brassica oleracea* L. Var. *Botrytis* L. and offered for direct consumption without further processing, except for repacking, if required. It does not apply to the product when indicated as intended for further processing or for industrial purposes.
MS 1354:2016	Code of hygienic practice for dehydrated fruits and vegetables including edible fungi (1st Edition) (COMESA Harmonized)	Applies to fruits and vegetables which are artificially dehydrated (including freeze-dried), either from the succulent stage or in combination with sun-drying, and covers the products commonly associated with the phrase "dehydrated food".
MS 1355:2016	Quick frozen peas - Specification (1st Edition) (COMESA Harmonized)	Applies to quick frozen peas of the species *Pisum sativum* L. as defined below and offered for direct consumption without further processing, except for size grading or repacking if required. It does not apply to the product when indicated as intended for further processing, or for other industrial purposes.

Column 1 *Malaŵi Standard*	*Column 2* *Commodity*	*Column 3* *Description*
MS 1357:2016	Cocoa butter confectionery - Specification (1st Edition) (COMESA Harmonized)	Applies to the homogeneous product prepared from cocoa butter, milk products and sugars and additions provided for in the standard.
MS 1358:2016	Quick frozen French fried potatoes - Specification (1st Edition) (COMESA Harmonized)	Applies to quick frozen French fried potatoes which have been prepared from tubers of the species *Solanum tuberosum* L. and offered for direct consumption without further processing except for repacking if required.
MS 1360:2016	Desiccated coconut - Specification (1st Edition) (COMESA Harmonized)	Applies to desiccated coconut, the dried product prepared for human consumption without requiring further processing which is obtained by shredding or otherwise comminuting the pared kernel of coconuts, the fruit of the palm, Cocos nucifera.
MS 1403:2016	Canned crab meat - Specification (1st Edition) (COMESA Harmonized)	Applies to canned crab meat. It does not apply to specialty products where crab meat constitutes less than 50% m/m of the contents.
MS 1405:2016	Dried Shark Fins - Specification (1st Edition) (COMESA Harmonized)	Applies to dried shark fins intended for further processing.

MALAŴI BUREAU OF STANDARDS (QUALITY DEVELOPMENT CESS) (REVOCATION) ORDER

ARRANGEMENT OF PARAGRAPHS

PARAGRAPH

1. Citation
2. Rate of quality development Cess
3. Persons by whom Cess to be paid
4. End use of products
5. Cess when due and payable to whom
6. Recovery of Cess
7. Records to be kept by importers of commodities subject to Cess
8. Registration of importers
9. Register of importers
10. Offences
11. Revocation of Cap. 51:02 Sub. leg. p. 19

FIRST SCHEDULE

SECOND SCHEDULE

G.N. 21/2016

MALAŴI BUREAU OF STANDARDS (QUALITY DEVELOPMENT CESS) (REVOCATION) ORDER

Citation

1. This Order may be cited as the Malaŵi Bureau of Standards (Quality Development Cess) (Revocation) Order.

Rate of quality development Cess

First Schedule

2. A Quality Development Cess (hereinafter referred to as the "Cess") shall be levied, paid and collected in respect of imported commodities specified in *Column 1* of the Schedule at the rate specified in *Column 2* in the said First Schedule.

Persons by whom Cess to be paid

First Schedule

3. The Cess shall be payable by every person who imports commodities specified in *Column 1* of the First Schedule upon the entry of the commodities into Malaŵi.

End use of products

4. The Cess shall be payable on the listed products irrespective of their end use or purpose.

5. The Cess shall be paid to the Malaŵi Bureau of Standards before clearance of imported commodities specified in *Column 1* of the First Schedule.

Cess when due and payable to whom
First Schedule

6. The Cess prescribed under this Order shall be recoverable as a debt due to the Malaŵi Bureau of Standards.

Recovery of Cess

7.—(1) An importer of commodities specified in *Column 1* in the First Schedule shall keep records of commodities imported by him and the price paid for such imports.

(2) An importer shall produce records referred to in subparagraph (1) for inspection by any person designated, in writing for that purpose, by the Director General at such time and place as that person may require.

Records to be kept by importers of commodities subject to Cess
First Schedule

8. Every importer of commodities specified in *Column 1* of the First Schedule shall furnish his name, business address and other particulars, in Form QDCO set out in the Second Schedule, to the Director General for registration in the register of importers kept and maintained under paragraph 9.

Registration of importers
First Schedule
Second Schedule

9. The Director General shall keep and maintain a register of importers of commodities specified in *Column 1* in the First Schedule.

Register of importers
First Schedule

10. Any person who contravenes this Order shall, on conviction, be liable to a fine of K250,000 and imprisonment for one year and in the case of subsequent conviction, a fine of K500,000 and to imprisonment for two years.

Offences

11. The Malaŵi Bureau of Standards (Quality Development Cess) Order, is hereby revoked.

Revocation of Cap. 51:02
Sub. leg. p. 19

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paras. 2, 3, 5, 7, 8, and 9

FIRST SCHEDULE

List of Imported Commodities Subjected to Cess

Column 1 *Imported commodities subject to Cess*	*Column 2* *Rate of Cess*
	0.5 per cent of the landed cost of imported products
1. Abrasives	
2. Acoustic and artificial plaster	
3. Agricultural products	
4. Alcoholic beverages (e.g. spirits, wine), and adhesives	
5. Aluminium and aluminium products	
6. Animal and poultry feeds	
7. Asbestos products	
8. Axes and hatchets	
9. Baby foods	
10. Bicycles and their parts	
11. Bituminous products	
12. Bottled drinking water (including natural mineral water)	
13. Bricks and blocks	
14. Candles and wax products	
15. Canned meat and meat products	
16. Carbonated soft drinks	
17. Caustic soda flakes	
18. Cement and cement products	
19. Cereal and cereal products (maize, wheat, rice, sorghum, etc, and their products)	
20. Chewing gum and bubble gum	
21. Cigarettes	
22. Coffee and cocoa products	
23. Copper and copper products	
24. Cosmetics	

Column 1 *Imported commodities subject to Cess*	*Column 2* *Rate of Cess*
25. Crude edible and non edible oils and fats	
26. Disinfectants (e.g. methylated spirits and benzene etc)	
27. Dry cell batteries	
28. Edible and non edible salts	
29. Egg and egg products	
30. Electrical appliances and accessories	
31. Materials	
32. Fasteners (nuts, screws, washers and bolts)	
33. Fertilizers	
34. Fire extinguishers	
35. Fish and fish products	
36. Fitting works materials and iron mongery	
37. Flexible cords for electric power and lighting appliances	
38. Floor covers	
39. Food additives (colourants, flavourants, preservatives)	
40. Footwear	
41. Fresh fruits and vegetables	
42. Fresh and frozen sea foods	
43. Fruit flavoured drinks	
44. Fruit juices, nectars, squashes and cordials	
45. Gaming equipment	
46. Ghee (animal, vegetable or mixed)	
47. Glazing material and glass products	
48. Gypsum and their products	
49. Honey and honey products	

Column 1 *Imported commodities subject to Cess*	*Column 2* *Rate of Cess*
50. Household electrical appliances	
51. Kitchenware	
52. Hair care products (hair oils, creams)	
53. Lead-acid starter batteries	
54. Leather and leather products	
55. Legumes and pulses	
56. Lime and lime products	
57. Lamps (compact fluorescent lamps and light emitting diode lamps)	
58. Manually operated air break switches	
59. Matches	
60. Meat and meat products	
61. Milk and milk products	
62. Mould-board plough and plough shares, and locks, latches and associated furniture fittings for doors and windows	
63. Non electrical insulating materials, and lubricants	
64. Paints and varnishes	
65. Paper and board, and machete	
66. Pesticides, insecticides, fungicides, herbicides	
67. Petroleum products and lubricants	
68. Pipes (uPVC) and fittings	
69. Plaster	
70. Plastic and plastic products	
71. Plugs, sockets, and socket outlet adaptors	
72. Polishes and dyes	

Column 1 *Imported commodities subject to Cess*	*Column 2* *Rate of Cess*
73. Polyurethane/Polyurethane foams	
74. Poultry and poultry products	
75. Premixes concentrates	
76. Refined edible and non edible oil and fats	
77. Resins and plumbing materials	
78. Retro reflective registration plates	
79. Ropes and cordages	
80. Rubber products, including tyres, tubes, seals	
81. Safety helmets	
82. Safety wood matches	
83. Secondhand clothes and shoes	
84. Soaps, detergents, and non soap detergents	
85. Spades and shovels	
86. Spices and condiments	
87. Steel and steel products	
88. Root and tuber products	
89. Sugar and sugar products	
90. Tarpaulins	
91. Tea	
92. Textiles and garments	
93. Threads and synthetic fibres	
94. Tiles	
95. Timber and timber products	
96. Timber preservatives	
97. Tin and tin products	
98. Toothpastes	
99. Turpentine	
100. Vegetables (canned/not canned)	

Column 1 *Imported commodities subject to Cess*	*Column 2* *Rate of Cess*
101. Vinegars	
102. Water hand pumps	
103. Welding helmets, shields, goggles and welding spectacles	
104. Wheat flour	
105. Writing materials	
106. Yeast, baking powder and bicarbonate of soda	

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para. 8

SECOND SCHEDULE

FORM QDCO

FORM OF APPLICATION

MALAŴI BUREAU OF STANDARDS ACT

(Cap. 51:02)

MALAŴI BUREAU OF STANDARDS (QUALITY DEVELOPMENT CESS) ORDER, 2016

Application for the Registration of Importers of Commodities Subject to Cess

(To be completed in triplicate)

I/We* (name in full) .....
of (Address) .....
.....,

hereby apply for registration of importer of commodities which are specified in *Column 1* in the First Schedule to the Malaŵi Bureau of Standards (Quality Development Cess) Order. I/We* import the following commodities:

.....

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Signature: .....

Name: .....

Stamp of firm (if any) Designation (if any): .....

*Delete which is not applicable

MALAŴI BUREAU OF STANDARDS (CERTIFICATION MARKS) REGULATIONS

ARRANGEMENT OF REGULATIONS

REGULATION

1. Citation
2. Interpretation
3. Scope of these Regulations
4. Application for a marks permit or certification
5. Conditions for issuing a pre-permit approval
6. Conditions for withdrawing or cancelling a pre-permit approval
7. Issuing a marks permit and certification mark
8. Terms and conditions of the certification mark
9. Terms and conditions of the marks permit
10. Arrangements for testing and test records
11. Application fee for a marks permit
12. Annual registration fee
13. Marking fee
14. Inspection fee
15. Consequences of non-payment of fee
16. Suspension or cancellation of marks permit
17. Surrender of permit
18. Procedure in regard to withdrawal of marks permit
19. Product compliance surveillance activities
20. Penalties
21. Repeal of Cap. 51:02 Sub. leg. p. 37

FIRST SCHEDULE
SECOND SCHEDULE
THIRD SCHEDULE
FOURTH SCHEDULE
FIFTH SCHEDULE
SIXTH SCHEDULE

MALAŴI BUREAU OF STANDARDS (CERTIFICATION MARKS) REGULATIONS

G.N. 22/2016

1. These Regulations, may be cited as the Malaŵi Bureau of Standards (Certification Marks) Regulations. Citation

2. In these Regulations unless the context otherwise requires— Interpretation

"applicant" means a person, whether natural or legal that seeks a permit to use the Malaŵi Bureau of Standards certification mark of quality or that seeks to issuance of standards designation certificate;

"audit" means a systematic and independent examination which may include inspection to determine whether quality activities and related results conform to planned arrangements and are suitable for a company to achieve its quality objectives;

"certificate of conformity" means a document issued by the Malaŵi Bureau of Standards, after satisfactory production processes and product assessments, that adequate confidence is provided by a manufacturer that its identified product meets the requirements of the applicable Standard(s);

"certificate of designation" means a document issued by the Malaŵi Bureau of Standards, after satisfactory factory and process assessments, that adequate confidence is provided by a manufacturer that its identified process meets the requirements of a Standard;

"conformity" means fulfillment of requirements of a Standard;

"inspection" means evaluation of conformity by measuring, observing or testing the relevant characteristics of a product or process;

"international (or foreign) standard" means a standard developed by International Organization for Standardization (ISO), International Electro-technical Commission (IEC), Codex Alimentarius Commission or other international or foreign standards body, which may be accepted by the Malaŵi Bureau of Standards for purposes of the certification mark scheme;

"Malaŵi Bureau of Standards certification mark" means the Malaŵi Bureau of Standard's mark which is printed on the packaging or a label of a certified product by a manufacturer as proof of certification of conformity;

"Malaŵi Standard" means the standard promulgated by the Malaŵi Bureau of Standards, relating to product specifications, test methods, terminology, standardization procedures, guidelines or practices;

"marks permit" means a certificate of conformity or designation issued by the Malaŵi Bureau of Standards under section 33 of the Act to a company authorizing the use of the Bureau certification mark on its products or in respect of its processes;

"marks permit holder" means a company to which the Malaŵi Bureau of Standards grants a permit to use the Malaŵi Bureau of Standards certification mark;

"non-conformity" means the non-fulfillment of requirements of a standard, categorized as follows—

(*a*) critical: are those non-conformities with high risk to health, safety, performance or the environment, and require immediate attention;

(*b*) major: are those non-conformities with medium risk to health, safety, performance or the environment, and require attending to within six weeks; and

(*c*) minor: are those non-conformities with potential risk to health, safety, performance or the environment, and require attending to within three months;

"pre-permit approval or sales permit" means a formal approval issued by the Malaŵi Bureau of Standards in accordance with section 29 (1) and (2) and section 33 (2) of the Act, permitting a product having a declared mandatory Malaŵi Standard to be manufactured and subjected for sell or use;

"Standard" means a specification, code of practice or method of procedure for the manufacture or testing of a commodity, published as a Malaŵi National Standard, international or foreign standard which may be used as a basis for evaluating an applicant's or permit holder's quality control system and product for the purposes of the Malaŵi Bureau of Standards certification mark scheme;

"surveillance audit" means periodic evaluation of an applicant's or marks permit holder's quality control system to determine the conformity of its production processes and products to relevant standards and the terms and conditions of the permit;

"testing laboratory" means—

(*a*) a laboratory that measures, examines, or determines the characteristics or performance of materials or products; or

(*b*) a laboratory that calibrates inspection, measuring and test equipment; and

"tests method" means a defined technical procedure to determine one or more specified characteristics of materials or products.

Scope of these Regulations

3. These Regulations shall apply to, and govern, the issuance, to companies or organizations, of a marks permit to use the Malaŵi Bureau of Standards certification mark in relation to the relevant Malaŵi Standards for products or processes for the companies and organizations.

Application for a marks permit or certification

First Schedule
Second Schedule

4.—(1) An application for a marks permit or certification to enable a product having a declared mandatory Malaŵi Standard to be permitted to be manufactured for sale or use in accordance with section 29 (1) and (2) of the Act shall be made in duplicate on Malaŵi Bureau of Standards Form prescribed in the First Schedule or Form prescribed in the Second Schedule, as appropriate, obtainable from the Bureau's head or regional offices.

(2) An application under this regulation shall include an undertaking by the applicant to abide by the terms and conditions of the marks permit or certification scheme of the Malaŵi Bureau of Standards including requirements in regulation 8.

(3) An application under this regulation shall be duly subscribed to by the applicant, or his duly authorized management representative.

(4) An application under this regulation shall be supported by information about the applicant's company and its capability to manufacture products consistently conforming to the requirements of a specific standard.

(5) An applicant under this regulation shall make available to the Director General or his duly designated representative, such information and product samples as may be required for the evaluation of its application for certification or for the surveillance audit of its quality control system and product(s).

(6) For companies or organizations having multiple or separate manufacturing operations or units, each manufacturing or processing unit shall be treated independently of the other units and certification applications shall be made separately for each of the units.

(7) An applicant shall only be allowed to sell or use his products after obtaining a pre-permit approval from the Director General.

Conditions for issuing a pre-permit approval

Third Schedule

5. A product shall be issued a pre-permit approval when it achieves the following—

(*a*) process audit: when the performance status after a conformity assessment corresponds to *Column 2* of the Third Schedule; and

(*b*) product audit: when the performance status, after a conformity assessment, corresponds to the following—

(i) full compliance in microbiological parameters (in case of food products);

(ii) full compliance on labeling and packaging requirements; and

(iii) a maximum of two non-conformities on other parameters other than (i) and (ii) for as long as the failure margin is not more than ten per cent of the specification in the applicable Standard.

Conditions for withdrawing or canceling a pre-permit approval

6.—(1) Production operations of a product with a pre-permit approval shall be suspended if—

Third Schedule

(*a*) the compliance status for the operations corresponds to *Column 3* of the Third Schedule or is contrary to product compliance criteria in regulation 5 (*b*):

Fifth Schedule

Provided that a suspension order, as prescribed in the Fifth Schedule, once issued shall only be lifted when the unit has redressed the identified shortfalls and complied with pre-permit criteria outlined above.

(2) The pre-permit approval shall be canceled or withdrawn if—

Third Schedule

(*a*) the limit of non-conformities corresponds to either *Column 4* or *5* of the Third Schedule;

Third Schedule

(*b*) the limit of non-conformities continues to correspond to *Column 3* of the Third Schedule in two consecutive surveillance audits;

(*c*) the non-conformity level, in case of products, is far below the criteria in regulation 5 (*b*);

(*d*) the Malaŵi Bureau of Standards has no evidence of performance for the process product for a period of up to one year; or

(*e*) the unit has changed management or premises.

(3) A product(s) for the canceled or withdrawn precertification approval shall be required to be withdrawn from the market by the producers or suppliers within the time frame to be specified in the suspension order.

(4) Any breach of the provisions of the Act, including failure to pay appropriate fees for certification activities.

Issuing a marks permit and certification mark

Third Schedule

7.—(1) If, in two surveillance audits after issuance of a pre-permit approval, the Malaŵi Bureau of Standards finds that a product consistently conforms fully to requirements of applicable Standard(s) or that the compliance status for production processes for the product corresponds with *Column 2* of the Third Schedule and the product fully meets the requirements in the applicable Standards, the Bureau shall approve issuance of a marks permit to the product thereby authorizing use of the certification mark on the conforming product.

(2) The marks permit shall take effect from date of issuance and shall be in full force and effective for a period of two years subject to continued compliance with applicable certification requirements.

(3) At any time, the marks permit may be revoked or canceled by the Malaŵi Bureau of Standards, if the product fails to comply with marks permit requirements, including failure to pay applicable fees. In the event of revocation of the marks permit, the concerned products shall not be permitted on the market.

Terms and conditions of the certification mark

Fourth Schedule

8.—(1) The design of the Malaŵi Bureau of Standards certification mark shall be in accordance with specimen prescribed in the Fourth Schedule with an indication of the number of the applicable Standard.

(2) The Malaŵi Bureau of Standards certification mark shall be affixed on the product covered by the marks permit but where the marking or stamping of the certification mark on the product is not possible, the mark shall appear on the package of the product.

(3) In the case of processes, the Malaŵi Bureau of Standards certificate of designation shall be prominently displayed in the building where the processes are being carried out.

(4) The Malaŵi Bureau of Standards certification mark affixed on a product or its package may be enlarged or reduced to an appropriate size, provided that its dimensions conform to the specifications in the Fourth Schedule.

Fourth Schedule

(5) The Malaŵi Bureau of Standards certification mark shall not be used on a product not covered by the marks permit and in any misleading manner.

(6) The marks permit holder shall not use the certification mark if its permit has been withdrawn or canceled for any cause.

Terms and conditions of the marks permit

9.—(1) The following terms and conditions shall be binding on all marks permit holders—

(*a*) the marks permit holder shall ensure that its certified product or process conforms at all times to applicable Malaŵi Standard(s)

and, for this purpose, shall maintain, to the satisfaction of the Malaŵi Bureau of Standards, its system of quality control, including inspection and testing;

(*b*) the marks permit holder shall affix the Malaŵi Bureau of Standards certification mark only on its certified product(s) in the case where it is possible to affix the Malaŵi Bureau of Standards certification mark as stipulated in regulation 8 (2);

(*c*) the marks permit holder shall give duly authorized representative(s) of the Malaŵi Bureau of Standards access during working hours to the premises where a certified product is manufactured, or a certified process is undertaken for the purpose of evaluating materials, production processes, finished articles, quality assurance facilities, records and others in accordance with the guidelines issued by the Bureau;

(*d*) in cases of subcontracts, it is understood that the marks permit holder shall assume full responsibility for the quality of its sub-assemblies, semi-finished and finished products;

(*e*) the marks permit holder shall inform the Malaŵi Bureau of Standards in writing of any change of management, business name, brand name, production site, production technology and product formulation;

(*f*) on occurrence of the changes referred to in paragraph (*e*), the Malaŵi Bureau of Standards may suspend the operations of the applicant in order to undertake verification conformity assessments on the applicant's processes and product(s) before the product can be permitted for use or sell:

Provided that permit under this paragraph shall be valid only after the process and product conformity assessment by the Bureau has shown continued conformity with the applicable requirements;

(*g*) the applicant shall pay the applicable fees and expenses as billed or stipulated by the Malaŵi Bureau of Standards and, in case of default, regulation 7 (*c*) shall apply; and

(*h*) the permit to use the Malaŵi Bureau of Standards certification mark is non-transferable and consequently the mark shall only be used by the applicant on the product(s) for which the marks permit has been issued.

(2) A contravention, by a permit holder, of any of the conditions stipulated in subregulation (1) shall constitute a sufficient ground for the permit holder to be suspended or of cancellation of the permit.

Arrangements for testing and test records

10.—(1) The applicant or marks permit holder shall comply with all the requirements for testing and for the control of the quality of the commodity, whether by the applicant or permit holder, as the case may be, or by an independent accredited testing laboratory or by the Malaŵi Bureau of Standards, to ascertain whether the commodity conforms to a Standard.

(2) An applicant or a marks permit holder shall keep proper records of all the analyses, tests, or inspections carried out by him and shall submit to the Malaŵi Bureau of Standards at such intervals as may be required a written record or statement in respect of each batch of the commodity showing the identification mark or number of each batch, the size such as number, mass and quantity of each batch and results of the analyses, tests or inspections of samples taken from each batch.

Application fee for a marks permit

11.—(1) Any person applying to the Malaŵi Bureau of Standards for a marks permit or certification shall pay a non-refundable fee to be prescribed in the application form.

Annual registration fee

Sixth Schedule

12.—(1) A marks permit holder or an applicant having a pre-permit approval shall pay an annual registration fee for each product or process having a marks permit or having a pre-permit as specified in the Sixth Schedule.

(2) The annual fee shall exclude fees for initial audits, special conformity assessments, inspection fees for planned audits and marking fees related to the permit holder's or applicant's processes and products.

(3) The annual registration fee shall not be refundable in the event of any surrender or withdrawal of the permit.

Marking fee

Sixth Schedule

13. A holder of a marks permit shall pay to the Malaŵi Bureau of Standards, on demand, an appropriate marking fee for each product having a marks permit as specified in the Sixth Schedule which shall be determined from the turnover of the marks permit holder's production of the commodity in respect of which the permit is issued.

Inspection fee

Sixth Schedule

14. An applicant or a holder of a marks permit shall pay to the Malaŵi Bureau of Standards, on demand, an appropriate inspection fee for each product or process having pre-permit approval or having a marks permit as specified in the Sixth Schedule which shall be determined from the applicant's or holders turnover of operations or production of the commodity in respect of which the pre-permit approval or marks permit is applied for or issued:

Provided that for the initial and special conformity assessments the inspection fee payable by the applicant or permit holder shall be determined by the Bureau and shall cover such costs as transportation, man-hours, product testing, subsistence allowances for the auditor and other expenses necessary for conducting the audit.

Consequences of non-payment of fee

15. In the event of fees in respect of a pre-permit approval or a marks permit being in arrears, the Malaŵi Bureau of Standards shall have the right to cancel the pre-permit approval or withdraw the marks permit, as the case may be, and to remove the name of the organization from the register of the certification scheme:

Provided that the applicant or holder is given at least one month's notice of the Bureaus' intention to cancel the pre-permit approval or withdraw the marks permit, in which case—

(*a*) the Bureau shall be at liberty to commence legal proceedings against the defaulting organization; and

(*b*) in the case of mandatory Standards declared under section 27 (2) of the Act, to order the suspension of operations of the organization.

Suspension or cancellation of marks permit

16.—(1) A marks permit granted under these Regulations may be suspended or canceled on any or all of the following grounds—

(*a*) that the product bearing or the process relating to the marks permit issued fails to conform to the requirements of any applicable Standard;

(*b*) that the marks permit holder fails to comply with the terms and conditions of the marks permit;

(*c*) the status of non-conformance of the holder during two consecutive audits corresponds with *Columns 3*, *4*, or *5* of the Third Schedule and, in the case of Malaŵi Standards declared under section 27 (2), the operations closed for non-compliance;

Third Schedule

(*d*) that the marks permit holder made false statements in connection with its application or maintenance of the permit;

(*e*) that the holder violates any of the provisions of these Regulations;

(*f*) that the holder violates any relevant written law of Malaŵi;

(*g*) that the Malaŵi Bureau of Standards has no evidence of performance for a period of one year due to the unit being persistently

inactive or on closure such that the Bureau no longer has basis for sustaining the pre-certification approval;

(*h*) that the unit has relocated from initial premises where it was initially approved; or

(*i*) that there has been a change of management, product brand name or company name despite operating on the same premises.

(2) Notwithstanding the preceding provisions, the Director General may direct that the matter of suspension or cancellation be adjudicated under any written laws if there is a private complainant instituting the cancellation or suspension of the marks permit.

(3) A marks permit shall be suspended or canceled after the Director General has served the holder a notice of his intention to do so, stating therein the grounds for the contemplated action:

Provided that the Director General shall grant the marks permit holder an opportunity to be heard not less than seven days from the date the notice has been received by the holder.

Surrender of marks permit

17.—(1) Where a holder of the marks permit wishes to surrender the permit, he shall give notice, in writing, to the Director General of his intention to do so, such notice to reach the Malaŵi Bureau of Standards on or before the thirtieth day of June in any year; and, where the notice is received in any year by the Bureau, after that date, the holder shall be liable in full for the annual fee payable in respect of that marks permit for the ensuing year.

(2) Subsequent to the surrender or cancellation of a marks permit, a marks permit holder shall furnish the Malaŵi Bureau of Standards with an accurate return showing the commodities on hand to which the certification mark was affixed before the expiry date of the marks permit, and also the existing supply of labels and packing materials bearing the mark or relevant reference to the Bureau's arrangements shall be made to the satisfaction of the Bureau to prevent the use of surplus labels or packing materials for commodities no longer covered by the surrendered or canceled marks permit.

Procedure in regard to withdrawal of marks permit

18.—(1) The decision of the Malaŵi Bureau of Standards refusing or withdrawing a marks permit shall be communicated, in writing, to the applicant or holder concerned, by delivering, or by sending by registered post, a notice of the decision to the applicant or holder concerned at his address specified in the form of application.

(2) An applicant or a holder concerned shall thereafter have the right of appeal to the Minister, as provided in section 34 (2) of the Act:

Provided that—

(*a*) a notice of intention to appeal to the Minister against the decision of the Board shall be lodged with the Minister, in writing; and

(*b*) a copy of the notice of appeal shall be served on the Bureau by the applicant or the holder concerned, within fourteen days of receipt, by the applicant or holder concerned, of notice of the decision of the Bureau.

Product compliance surveillance activities

19.—(1) The Malaŵi Bureau of Standards shall, pursuant to section 30 (3) of the Act, undertake surveillance activities on the market, warehousing facilities or manufacturing premises in order to take appropriate action on products not complying with relevant mandatory Malaŵi Standards or not approved by the Bureau in accordance with section 29 (1) and (2) of the Act.

(2) Appropriate actions referred to in subregulation (1) shall include confiscation and disposal by the Bureau of the products at the defaulter's expense.

(3) Following confiscation of the non-complying products, the person or organization found stocking, selling or using products not complying with relevant mandatory Malaŵi Standards or those not approved by the Malaŵi Bureau of Standards shall pay a surveillance fees as invoiced by the Bureau in order to defray its expenses.

Penalties

20. Any person who contravenes these Regulations shall, on conviction, be liable to a fine of K250,000 and imprisonment for one year and in the case of subsequent conviction, a fine of K500,000 and to imprisonment for two years.

Repeal of Cap. 51:02 Sub. leg. p. 37

21. The Malaŵi Bureau of Standards (Standardization Marks) Regulations are hereby repealed.

FIRST SCHEDULE

reg. 4

MALAŴI BUREAU OF STANDARDS
Application for Permit to Apply Certification Mark

NB: Completion/submission of this form does not imply authorization to start use/distribution/sell product(s) or provide any services covered by the Malaŵi Standards

Please return by:.....

TO: MALAŴI BUREAU OF STANDARDS, P.O. BOX 946, BLANTYRE

TELEPHONE: 0111870 488 TELEFAX: 01870 756

1. Name of Firm .....

Registration nr (Registration certificate to be attached): .....

MRA nr: .....

Postal Address: ..... City: .....

Street name: ..... Plot no.: .....

Telephone: ..... Telefax: .....

2. Factory address (*if different from above*):

2.1. Name of Factory:

Postal Address: ..... City: .....

Street name: ..... Plot no.: .....

Telephone: ..... Telefax: .....

3. Name and title of person responsible for the Quality Management System for the commodity/service:

3.1 Name: .....

3.2 Title: .....

4. Commodity details:

4.1 Brief description: .....

4.2 Trade mark(s): .....

5. Application fee: Amount K ..... Cheque no.: .....

Malaŵi Bureau of Standards Receipt Number: .....

6. Declaration:

6.1 I/We hereby apply to use on the above-named commodity the mark declared by the Malaŵi Bureau of Standards to be a standardization mark in respect of this commodity or for its manufacture, production, processing or treatment and undertake to observe the requirements of Malaŵi Bureau of Standards.

6.2 I/We undertake to observe the requirements of the Malaŵi Bureau of Standards Act, the regulations made thereunder and the general and specific conditions relating to the application of the standardization mark to a commodity as prescribed by the Malaŵi Bureau of Standards.

6.3 I declare that I have understood and accepted all certification conditions:

Representative of applicant: Name in full: .....

Capacity: ..... Signature: ..... Date: .....

7. Malaŵi Bureau of Standards officer receiving the application:

Name: ..... Designation: .....

Signature: ..... Date: .....

NOTE: 1. Sufficient details should be provided in section 4.1 describing the commodity/service to enable determination of relevant applicable Malaŵi Standard(s).

2. The application form should be completed in duplicate.

3. The client to obtain original copy with the Malaŵi Bureau of Standards stamp.

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reg. 4

SECOND SCHEDULE

MALAŴI BUREAU OF STANDARDS

APPLICATION FOR DESIGNATION OF A PROCESSING UNIT (UNDER MS 21)

NB: Completion/submission of this form does not imply authorization to start use/distribution/sell product(s) or provide any services covered by the Malaŵi Standards

Please return by: .....

TO: MALAŴI BUREAU OF STANDARDS, P.O. BOX 946, BLANTYRE

TELEPHONE: 0111870 488 TELEFAX: 01870 756

1. Name of Firm: .....

Registration nr (Registration certificate to be attached): .....

MRA no.: .....

Postal Address: ..... City: .....

Street name: ..... Plot no.: .....

Telephone: ..... Telefax: .....

2. Factory address (*if different from above*):

2.1. Name of Factory:

Postal Address: ..... City: .....

Street name: ..... Plot no.: .....

Telephone: ..... Telefax: .....

3. Name and title of person responsible for the Quality Management System for the commodity/service:

3.1 Name: .....

3.2 Title: .....

4. Commodity/Service details:

4.1 Brief description: .....

4.2 Trade mark(s): .....

5. Application fee: Amount MWK ..... Cheque no.: .....

Malaŵi Bureau of Standards Receipt Number: .....

6. Declaration:

6.1 I/We hereby apply for the certificate of designation for the above-named commodity or for its manufacture, production, processing or treatment as required by the Malaŵi Bureau of Standards Act.

6.2 I/We undertake to observe the requirements of the Malaŵi Bureau of Standards Act, the regulations made thereunder and the general and specific conditions relating to the application of the standardization mark to a commodity as prescribed by the Malaŵi Bureau of Standards.

6.3 I/We declare that I have understood and accepted all certification conditions:

Representative of applicant: Name in full: .....

Capacity: ..... Signature: ..... Date: .....

7. Malaŵi Bureau of Standards officer receiving the application:

Name: ..... Designation: .....

Signature: ..... Date: .....

Malaŵi Bureau of Standards

Official Stamp

NOTE: 1. Sufficient details should be provided in section 4.1 describing the commodity/service to enable determination of relevant applicable Malaŵi Standard(s).

2. The application form should be completed in duplicate.

3. The client to obtain original copy with the Malaŵi Bureau of Standards stamp.

regs. 6, 7 and 16

THIRD SCHEDULE

Limits of Non-Conformances

Column 1	*Column 2*	*Column 3*	*Column 4*	*Column 5*
Non-conformance	Limit 1	Limit 2	Limit 3	Limit 4
Critical	Not exceeding 0	Exceeding 0 but not exceeding 3	Exceeding 3 but not exceeding 4	Exceeding 4
Major	Not exceeding 3	Exceeding 3 but not exceeding 7	Exceeding 7 but not exceeding 10	Exceeding 10
Minor	Not exceeding 2	Exceeding 2 but not exceeding 10	Exceeding 10 but not exceeding 12	Exceeding 12

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reg. 8

FOURTH SCHEDULE

Specimen of the Malaŵi Bureau of Standards Certification Mark

The Malaŵi Bureau of Standards certification mark—

(*a*) shall be of the shape as described in the design;

(*b*) may be larger or smaller than in the design but its parts shall keep the same proportions as in the design;

(*c*) may appear in the official colors of the Bureau's logo or any color as long as the color is uniform throughout; and

(*d*) shall insert an appropriate Standard Number different from one in the specimen herein.

FIFTH SCHEDULE reg. 6 (1)

SUSPENSION ORDER TEMPLATE

BS/QAD/ ..... / ..... 20 ..... / ..... / .....

Managing Director

.....

.....

.....

Dear Sir/Madam

SUSPENSION OF YOUR OPERATIONS DUE TO CONTINUED NON-COMPLIANCE WITH APPLICABLE MANDATORY MALAŴI STANDARDS

Following the findings of the audit conducted by our quality auditor at your (*Specify name of factory/firm as indicated on the application form*) in (*Specify location of the factory/firm as indicated on the application form*) on (*Specify the date(s) when the audits/inspections were conducted*) and in accordance with the Certification Marks Regulations of the Malaŵi Bureau of Standards Act (Cap 51:02), I hereby issue this Suspension Order on your operations due to non-compliance with (*Specify the applicable Malaŵi Standards or technical regulations*). You are therefore expected to suspend your operations with immediate effect upon receipt of this order notice.

This Suspension Order will only be lifted when the highlighted shortfalls have been redressed and verified as such by Malaŵi Bureau of Standards.

SN	SHORTFALL DESCRIPTION	RELEVANT MALAŴI STANDARD/TECHNICAL REGULATION AND CLAUSE
1		
2		
3		
4		
5		
6		

SN	SHORTFALL DESCRIPTION	RELEVANT MALAŴI STANDARD/TECHNICAL REGULATION AND CLAUSE
7		
8		
9		
10		

We expect total cooperation in implementing this Suspension Order notice as failure to do so is an offence under the Malaŵi Bureau of Standards Act (Cap. 51:02)

Yours faithfully

(*Name and Signature of Director General or Designated Officer*)

DIRECTOR GENERAL

SIXTH SCHEDULE

reg. 14

FEE SCHEDULE

Turnover Limits	Marking fee Kwacha	Inspection fee Kwacha	Annual Registration fee Kwacha	Subtotal Kwacha	16.5% VAT on subtotal Kwacha	Total Kwacha
Up to K2,000,000	10,000	20,000	15,000	45,000	7,425	52,425
Over K2,000,000 to K10,000,000	30,000	45,000	15,000	90,000	14,850	104,850
Over K10,000,000 to K15,000,000	35,000	50,000	15,000	100,000	16,500	116,500
Over K15,000,000 to K30,000,000	40,000	55,000	15,000	110,000	18,150	128,150
Over K30,000,000 to K50,000,000	45,000	60,000	15,000	120,000	19,800	139,800
Over K50,000,000 to K100,000,000	50,000	65,000	15,000	130,000	21,450	151,450
Over K100,000,000 to K200,000,000	55,000	70,000	15,000	140,000	23,100	163,100
Over K200,000,000 to K300,000,000	60,000	75,000	15,000	150,000	24,750	174,750
Over K300,000,000 to K400,000,000	65,000	80,000	15,000	160,000	26,400	186,400
Over K400,000,000 to K500,000,000	70,000	85,000	15,000	170,000	28,050	198,050
Over K500,000,000 to K600,000,000	75,000	90,000	15,000	180,000	29,700	209,700
Over K600,000,000 to K700,000,000	80,000	95,000	15,000	190,000	31,350	221,350
Over K700,000,000 to K800,000,000	85,000	100,000	15,000	200,000	33,000	233,000
Over K800,000,000 to K900,000,000	90,000	105,000	15,000	210,000	34,650	244,650
Over K900,000,000 to K1,000,000,000	95,000	110,000	15,000	220,000	36,300	256,300
Over K1,000,000,000	105,000	115,000	15,000	235,000	38,775	273,775

MALAŴI BUREAU OF STANDARDS (IMPORTS QUALITY MONITORING) REGULATIONS

ARRANGEMENT OF REGULATIONS

REGULATION

1. Citation
2. Interpretation
3. Scope and application of these Regulations
4. Application for import commodity
5. Issuance of conditional release of imports shipments
6. Issuance of import commodity clearance
7. Withdrawal of import quality certificate
8. Disposition of samples
9. Fees
10. Warranties
11. Market surveillance exercises
12. Penalties
13. Appeals

FIRST SCHEDULE
SECOND SCHEDULE
THIRD SCHEDULE
FOURTH SCHEDULE
FIFTH SCHEDULE
SIXTH SCHEDULE

G.N. 23/2016

MALAŴI BUREAU OF STANDARDS (IMPORTS QUALITY MONITORING) REGULATIONS

Citation

1. These Regulations may be cited as the Malaŵi Bureau of Standards (Imports Quality Monitoring) Regulations.

Interpretation

2. In these Regulations, unless the context otherwise requires, the expression—

"Annual Import Quality Certificate" means a document issued annually by the Malaŵi Bureau of Standards to an importer of a commodity of same brand from same manufacturer and same country of origin after four consecutive import shipments have been evaluated and been found to conform to the relevant Malaŵi Standard;

"batch conformance certificate" means a document issued by the Malaŵi Bureau of Standards upon being satisfied by the evaluation on an import shipment of same brand from same manufacturer and same country of origin against applicable mandatory Malaŵi Standards;

"consignment" means products bearing same brand name from same manufacturer and country of origin identified by a commercial invoice or a group of products of different brands but identified by the same commercial invoice;

"designated products" means products having mandatory Malaŵi Standards that are subject to mandatory quality monitoring and certification by the Malaŵi Bureau of Standards;

"foreign (or international) standard" means a standard developed by a foreign standards body or International Organization for Standardization (ISO), International Electro-technical Commission (IEC), Codex Alimentarius Commission or other international body, which may be accepted by the Malaŵi Bureau of Standards for purposes of the Bureau Certification Mark Scheme;

"free on board (FOB)" means term of sale under which the price invoiced or quoted by a seller includes all charges up to placing the goods on board a ship at the port of departure specified by the buyer, and is also called "Collect Freight", "Freight Collect", or "Freight Forward;" and is used in shipping to indicate that there is no charge to the buyer for goods placed on board a carrier at the point of shipment;

"importer" means any individual, firm or organization involved in the direct procurement or provision of commodities from outside the boundaries of the Republic of Malaŵi, for the purposes of selling, distributing or processing or any other use;

"Import Quality Monitoring Report" means a conformity assessment report issued by the Malaŵi Bureau of Standards to the importer, highlighting either the level of compliance or non-compliance of a pre-shipment sample (with attached conditioning governing its issuance); or the non-compliance of a consignment/batch against its relevant applicable Standard, with further conditions governing its issuance for the importer's adherence;

"landed cost" means the total cost of a landed shipment including purchase, price, freight, insurance, and other costs up to the port of destination;

"Malaŵi Standard" means the standard promulgated by the Malaŵi Bureau of Standards and issued by the Bureau relating to product specification, test methods, terminology, standardization procedures, guidelines or practices; and

"packing list" means itemized list of articles usually included in each shipping package, giving the quantity, description, and weight of the contents, as prepared by the shipper and sent to the consignee for accurate tallying of the delivered goods; and is also called the "the bill of parcels", "packing slip" or "unpacking note".

Scope and application of these Regulations

3. These Regulations—

(*a*) shall govern the quality monitoring and certification of imported commodities covered by mandatory Malaŵi Standards; and

First Schedule

(*b*) shall cover imported commodities as specified in the First Schedule as amended from time to time.

Application for import commodity *First Schedule*

4.—(1) Importers of designated products covered by Malaŵi Standards and listed in the First Schedule shall apply for import commodity clearance to the Malaŵi Bureau of Standards prior to or upon arrival of shipments at port of entry, and shall be subjected to sampling and testing by the Bureau prior to the Malaŵi Revenue Authority release of the same.

(2) Importers of designated products, whose brands are new to the Malaŵian markets, shall be required to subject their products to pre-shipment assessment prior to importation by requesting their suppliers to send directly to the Malaŵi Bureau of Standards samples of the products for assessment against relevant Malaŵi Standards.

Second Schedule

(3) An application for an import commodity clearance shall be made through an Import Inspection Request Form (IIRF) prescribed in the Second Schedule obtainable from the Malaŵi Bureau of Standards. The form shall be filled in triplicate together with the import entry packing list, the original copy of any quality or test certificates (including results if any), commercial invoice for the commodity and any other shipping document.

(4) An import consignment shall be evaluated by the Malaŵi Bureau of Standards to determine its conformity to the requirements of the applicable Malaŵi Standards.

(5) The samples so drawn shall be for the purpose of laboratory analysis and a Sampling Request Form (SF) shall be filled by authorized Malaŵi Bureau of Standards personnel.

(6) Import quality monitoring charges for consignments comprising those of the product brand by same importer and from same supplier and country, may be waived for a period of up to twelve months:

Provided that the first four consecutive import consignments of a product of the same brand, from the same manufacturer and same country of origin, notwithstanding their certification as meeting Malaŵi Standard are sampled and tested by the Malaŵi Bureau of Standards and the technical findings are found to adhere to the requirements of the applicable Malaŵi Standards.

(7) A waiver under this regulation shall be withdrawn in the event that conformity assessments undertaken on the commodities subsequent to the issuance of the waiver show that the commodities are no longer compliant with the applicable Malaŵi Standards.

(8) The Director General shall, subsequent to the withdrawal of the waiver, issue a rejection order for subsequent importation of the commodity and may order withdrawal of the commodities from the market depending on the degree of non-compliance.

Issuance of conditional release of imports shipments

5.—(1) A conditional release of an import shipment from the Malaŵi Revenue Authority custody may be issued by the Malaŵi Bureau of Standards upon importer's compliance with the Malaŵi Revenue Authority's requirements, where completion of testing takes more than twenty working days.

(2) The transfer of import shipment from the Malaŵi Revenue Authority's custody to importer's or consignee's warehouse where evaluation may be performed shall be escorted by personnel of the Malaŵi Revenue Authority.

(3) Pending the issuance of an import commodity clearance, no sale or transfer of the shipment to any other place in whole or in part shall be made by the importer or any person.

Issuance of import commodity clearance

6.—(1) The Malaŵi Bureau of Standards shall issue an import commodity clearance on a consignment if the imported commodity has conformed to the relevant Malaŵi Standard.

(2) The Malaŵi Bureau of Standards shall issue a certificate for import commodity clearance.

(3) The certificate referred to in subregulation (2) shall be in two categories, namely—

(*a*) a batch certificate of conformance, as set out in the Third Schedule; and *Third Schedule*

Fourth Schedule

(*b*) an Annual Import Quality Certificate as set out in the Fourth Schedule.

(4) The validity period of the batch certificate of conformance shall be three months:

Provided that—

(*a*) where the product expires before the expiry of the three months, the validity period shall be such shorter period; and

(*b*) where the product expires after the expiry of the three months, the validity period shall be the shelf life of the product.

(5) The re-issuance of the batch certificate of conformance shall be subject to re-evaluation.

(6) Where a sample of consignment has marginally failed in one or more tests, but the product is still fit for use, the Malaŵi Bereau of Standards shall issue an import quality management report as specified in the Fifth Schedule.

Fifth Schedule

(7) Where a sample of consignment has critically failed in one or more tests, and the product is unfit for use, the Malaŵi Bereau of Standards shall issue a rejection report as specified in the Sixth Schedule.

Sixth Schedule

Withdrawal of import quality certificate

7.—(1) The Import Quality Certificate shall be withdrawn from the importer on the following grounds—

(*a*) if random sampling on the open market of a commodity covered by the certificate and imported by the certificate holder is found to be non-conforming, then regulation 11 shall apply;

(*b*) contravening provisions of the Act or regulations made under the Act; and

(*c*) failing to pay fee under these Regulations.

(2) The Malaŵi Bureau of Standards shall, upon withdrawal of the Import Quality Certificate—

(*a*) order the importer to withdraw the imported product from the market, where appropriate;

(*b*) inform the public through appropriate means about the dangers of using or consuming the particular non-conforming product(s); and

(*c*) demand that the importer arranges the re-exportation or appropriate disposal of any recoverable non-conforming imported product(s).

(3) The expenses incurred in undertaking all the activities under subregulation (2) shall be borne by the importer of the non-conforming product.

(4) It shall be an obligation of vendors to ensure that products being subjected for sale to consumers have been duly certified as conforming to relevant quality standards by the Malaŵi Bureau of Standards, otherwise regulation 11 shall apply.

(5) In the event that a vendor of an imported commodity refuses to disclose the name of the supplier of the imported commodity falling under the imports monitoring, the Malaŵi Bureau of Standards shall still carry out an evaluation on the commodity following the procedures laid down in this regulation; the vendor shall thus pay for all the costs incurred during such evaluation.

(6) An importer shall seek information relating to specific requirements of the designated imported products under these Regulations to enable him include such information in their contractual terms.

Disposition of samples

8.—(1) All samples drawn from a consignment for monitoring and laboratory analysis shall, wherever possible, be returned to the importer excluding those that have undergone destructive testing.

(2) An importer shall withdraw the samples from the Malaŵi Bureau of Standards within thirty days of receipt of notice to recover such samples.

(3) If an importer fails to withdraw the samples after due date, the Malaŵi Bureau of Standards shall dispose of the samples in any manner it may deem appropriate.

Fees

9.—(1) The following fees shall be charged and payable by importer prior to the consignment being cleared by the Malaŵi Revenue Authority—

(*a*) all expenses to be incurred by an inspector for the purpose of attending at the place and carrying out the quality inspection and sampling and returning therefrom at specified rates;

(*b*) all testing fees charged by the Malaŵi Bureau of Standards or any designated laboratories for testing the imported products, or both; and

(*c*) all fees charged for the issuance of the report or the batch conformance certificate, as the case may be.

(2) An importer who has been issued with an annual Import Quality Certificate shall be required to pay an annual fee as prescribed for each type of product; such fees shall be paid on collection of the certificate.

Warranties

10.—(1) A person who imports, displays, distributes or sells any product which is subject to a mandatory Malaŵi Standard and designated under the Imports Quality Monitoring Scheme, shall be deemed to warrant to the immediate purchaser that the product conforms to all regulatory requirements and meets the relevant specifications.

(2) Where written warranty is not provided by the person referred to in subregulation (1) to the ultimate consumer, the warrant shall be implied.

Market surveillance exercises

11.—(1) Inspectors of the Malaŵi Bureau of Standards may, without notice, undertake surveillance exercises on the local markets, including shopping outlets, for purposes of removing non-complying products and products lacking evidence of quality certification as required by the Act.

(2) All products found during surveillance exercises under this regulation shall be confiscated and disposed of by the inspectors or quarantined pending appropriate redress by the supplier.

(3) Any person, whether natural or legal, who stocks, sells or distributes non-complying products or products lacking evidence of quality certification, commits an offence, and shall be liable to an administrative fine of appropriate market surveillance fees.

Penalties

12. Any person who contravenes these Regulations shall, on conviction be liable to a fine of K250,000 and to imprisonment for twelve months and, in the case of subsequent conviction, a fine of K500,000 and to imprisonment for two years.

Appeals

13. Any person who is dissatisfied with the rulings of the Malaŵi Bureau of Standards or persons acting under its authority in regard to these Regulations may appeal to the Minister in accordance with the Act.

FIRST SCHEDULE

reg. 4 (1)

LIST OF DESIGNATED PRODUCTS SUBJECT TO IMPORTS QUALITY MONITORING

	Column 1 Name of Product	*Column* 2 Applicable Malaŵi Standard
1.	Adhesives for ceramic tiles, mosaics	MS 656
2.	Afridev hand pumps	MS 348
3.	Agricultural hand hoe	MS 76
4.	Animal feeds	MS 212, 240, 423, 424, 417, 422
5.	Artificial vinegar	MS 11
6.	Asbestos pressure pipes	MS 628
7.	Axes and hatchets	MS 183
8.	Baby food – high protein, infant/follow-up formula, canned	MS 90, 541, 743, 750
9.	Bags – woven propylene for sugar, milled products	MS 343, 394, 345
10.	Baking powder	MS 299
11.	Ballpoint pens	MS 186
12.	Bandages, open woven, conforming	MS 338, 339
13	Bathing bars	MS 42
14.	Batteries – primary dry, PVEs, traction	MS 35, 420, 180, 181
15.		MS-IEC 60095, 60050, 60086, 61427, 60254
16.	Beef – corned	MS 631
17.	Beer (bottled, lager, or clear)	MS 50
18.	Benzene	MS 577
19.	Biodiesel	MS 805
20.	Biscuits	MS 201
21.	Black polyethylene pipes (HDPE)	MS 374
22.	Black tea	MS 43
23.	Boots, industrial	MS 70, 94, 123
24.	Bottled or canned beer (clear)	MS 50
25.	Braking on -L motor vehicles	MS 645
26.	Bread and confectionaries	MS 31, 234
27.	Burgers, meat	MS 769
28.	Butter	MS 192
29.	Candles	MS 33
30.	Canned baby food	MS 743
31.	Canned pineapples	MS 24

	Column 1 Name of Product	*Column* 2 Applicable Malaŵi Standard
32.	Canned tomatoes	MS 24
33.	Cashew kernels, shelled	MS 228
34.	Cassava flour	MS 349
35.	Cast iron manhole covers, brackets	MS 317, 318
36.	Caustic soda	MS 702
37.	Celery seeds whole	MS 306
38.	Cement and cement products	MS 29, 71, 88, 161, 414
39.	Ceramic sanitary ware	MS 397
40.	Cereal and cereal products – maize, millet, rice, sorghum, wheat	MS 32, 544, 179, 542, 55
41.	Chalk – school	MS 187
42.	Cheddar	MS 802
43.	Cheese	MS 89
44.	Chewing/Bubble gum	MS 232
45.	Chillies, chilli sauce	MS 96, 53
46.	Chitenje	MS 588
47	Chocolates	MS 19/Codex
48.	Cigarettes	MS 786
49.	Cinnamon	MS 304
50.	Coffee – ground	MS 630
51.	Concrete building blocks, tiles	MS 71, 309
52.	Condensed, sweetened milk	MS 751
53.	Condoms and diaphragms	MS 307, 308
54.	Contaminants	MS 302
55	Cooked meat – cured chopped	MS 808
56.	Cook stove	MS 155, 157, 158
57.	Corned beef	MS 631
58.	Cornflakes	MS 229
59.	Coriander, whole/ground	MS 153
60.	Corrugated boards containers	MS 724
61.	Corrugated fibre – cement roofing sheets	MS 627
62.	Cotton towels, bed sheets	MS 269, 273
63.	Country wines	MS 178
64.	Creosote for wood preservation	MS 408
65.	Crisps – potato	MS 811
66.	Curry powder	MS 97
67.	Dairy ices and ice creams	MS 193, 194

	Column 1 Name of Product	*Column* 2 Applicable Malaŵi Standard
68.	Diesel	MS 583
69.	Door frames	MS 319
70.	Edible oils and fats	MS 51, 63, 64, 77, 78, 79, 80, 154, 10
71.	Electrical/electronic appliances, goods and fittings	Various
72.	Electrical conduits and fittings	MS 2
73.	Electrical cords	MS 15, 528, 617, 16, 650, IEC Series
74.	Ethanol	MS 573
75.	Evaporated milks	MS 752
76.	Fertilizers	MS 255, 272, 351, 354, 355, 353, 258, 265, 271, 352
77.	Fibre board	MS 599
78.	Fire extinguishers, potable rechargeable	MS 657
79.	Fish and fish products – salted, frozen, smoked, canned, fresh	MS 115, 116, 117, 118, 770
80.	Follow-up formula	MS 750
81.	Food additives	MS 237
82.	Food colours synthetic	MS 301
83.	Fruit juices and nectars	Various
84.	Gaming equipment	MS 655
85.	Garlic	MS 226
86.	Ghees – Vegetable, mixed veg/animal	MS 63, 64
87.	Ginger whole – ground/pieces	MS 246
88.	Glass-reinforced polyester (GRP) laminated products	MS 13, 14
89.	Glazing putty	MS 616
90.	Glucose syrup	MS 203
91.	Glycerine, cosmetic	MS 557
92.	Grease, lubricating	MS 45
93.	Groundnuts	MS 213
94.	Gypsum core cornice for buildings	MS 756
95.	Hair creams, oils, shampoo	MS 470, 471, 475
96.	Handwashing liquids	MS 372
97.	HDPE pipes (black polyethylene pipes)	MS 374
98.	Hessian cloth	MS 337
99.	Illuminating paraffin	MS 498
100.	Infant formula	MS 541

	Column 1 Name of Product	*Column* 2 Applicable Malaŵi Standard
101.	Iron sheets (galvanized)	MS 509
102.	Jams, jellies and marmalades	MS 176
103.	Lights for motor vehicles	MS 642, 646
104.	Limes	MS 85, 91
105.	Lubricating grease	MS 45
106.	Lubricating oils – diesel, petrol engines	MS 83, 86
107.	Mahewu	MS 623
108.	Maize flour	MS 34
109.	Maize grain	MS 32
110.	Margarine	MS 225
111.	Matchets	MS 182
112.	Meat and meat products – meat cooked, cured/ chopped, meat burgers, corned beef, pork & beef sausages	MS 808, 769, 631, 199
113.	Meat burgers	MS 769
114.	Melamine tableware	MS 457
115.	Methylated spirit	MS 370
116.	Milk and milk products – pasteurized, yoghurts, dairy creams, condensed sweetened, powder, evaporated, UHT, raw	MS 74, 191, 193, 194, 751, 752, 809, 633, 73
117.	Mineral solvents, turpentine	MS 396, 378
118.	Mint, dried spear	MS 303
119.	Mosquito coils	MS 458
120.	Nails, mild steel	MS 322
121.	Nutmeg	MS 601
122.	Nutritional claims and labelling	MS 624, 625
123.	Opaque beer	MS 208
124.	Packaging paper, polypropylene sacks	MS 100, 717
125.	Paints & varnishes	MS 278, 279, 280, 282, 284, 287, 288, 289, 377, 383, 386, 388, 392, 393, 394, 396
126.	Paint removers	MS 398
127.	Pasta products	MS 224
128.	Peanut butter	MS 524
129.	Pencil, lead	MS 221
130.	Petroleum jelly	MS 108
131.	Petroleum products	MS 170, 498, 538

	Column 1 Name of Product	*Column* 2 Applicable Malaŵi Standard
132.	Photovoltaic systems & accessories	MS 695, 696, 709, 710, 711, 779, 780
133.	Pigeon peas	MS 400
134.	Plastic containers	MS 20
135.	Ploughs, animal drawn, single furrow	MS 556, 110
136.	Polish (shoe, floor, etc)	MS 84, 566
137.	Polypropylene grain sacks	MS 717
138.	Polyurethane foam cores	MS 223
139.	Portable rechargeable fire extinguishers	MS 657
140.	Potato crisps	MS 811
141.	Pulses and legumes	MS 213, 242, 243, 244, 245, 400
142.	PVC-U pipes	MS 2, 3, 4, 5, 617, 666, 688, 620
143.	Raisins	MS 753
144.	Rear MV underrun protection devices	MS 649
145.	Retro-reflective fluorescent road signs	MS 643
146.	Retro-reflective plates for motor vehicles	MS 639
147.	Rice	MS 179
148.	Ropes – natural, manmade	MS 339, 340, 341
149.	Rubber seals, rings for water supply joints etc	MS 458
150.	Rulers for general purpose	MS 174
151.	Safety belts (restraining devices) for motor occupants	MS 644
152.	Safety glass for motor vehicles	MS 647
153.	Safety helmets	MS 626, 641
154.	Safety wood matches	MS 251
155.	Salt	MS 188
156.	Sausages	MS 199
157.	Scales, counter/beam balance	MS 773, 774
158.	Scouring powders	MS 373
159.	Sewing threads, industrial	MS 261
160.	Shoes – leather, plastic fashion	MS 312-315, 109
161.	Skin care products	MS 334, 471, 475, 557, 108, 470
162.	Soaps and detergents	MS 42, 48, 49, 52, 65, 66, 250, 253, 372, 671
163.	Soft drinks, carbonated	MS 18

	Column 1 Name of Product	*Column* 2 Applicable Malaŵi Standard
164.	Soil blocks, stabilized	MS 777
165.	Solar equipment and accessories	MS 62, 695, 696, 709, 710, 758, 779, 780
166.	Sorghum grain	MS 542
167.	Soyabeans	MS 244
168.	Soyabean flour	MS 478
169.	Spices and condiments	MS 96, 97, 153, 226, 246, 303, 304, 305, 601
170.	Spirits	MS 210
171.	Starch	MS 704
172.	Steel bars – round, square, hexagonal, octagonal, flat	MS 775
173.	Sugar and sugar confectionery	MS 202, 209, 227
174.	Sulphuric acid for lead acid batteries	MS 813
175.	Sweetened condensed milk	MS 751
176.	Tea – black	MS 43
177.	Tea sacks	MS 207
178.	Tiles – concrete wall/floors, roofing, ceramic . .	MS 309, 161, MS-ISO 10545
179.	Timber adhesives	MS 46
180.	Timber and timber products	Various
181.	Timber preservatives	MS 408, 590, 591, 596, 597, 46, 593, 594
182.	Toilet paper	MS 569
183.	Tomato juice	MS 26
184.	Tomato puree	MS 25
185.	Tomato sauce	MS 27
186.	Toothpaste	MS 112
187.	Turmeric, whole or ground	MS 152
188.	Turpentine, mineral	MS 378
189.	Tyres, pneumatic, for passenger cars/trailers, commercial vehicles	MS 659
190.	UPVC pipes and pipe fittings	MS 2, 3, 4, 5, 617, 666, 688, 620
191.	Vinegar, artificial	MS 11
192.	Water taps	MS 684
193.	Water, bottled non-mineral, mineral	MS 699, 560
194.	Water heaters	MS 62, 520, 758

	Column 1 Name of Product	*Column* 2 Applicable Malaŵi Standard
195.	Wax shoe polish/floor polish	MS 566, 84
196.	WC flushing cisterns	MS 685
197.	Welding helmets, shields, goggles, spectacles	MS 106
198.	Wheat and wheat products	MS 30, 55, 543
199.	Windows and doors	MS 320
200.	Wines	MS 178
201.	Wooden ceiling and panelling boards	MS 488
202.	Wooden poles, droppers, spacers etc	MS 489, 504
203.	Wood preservatives	See timber preservatives
204.	Yoghurts	MS 191
205.	Zinc-coated fencing wire	MS 321
	(B) ELECTRICAL AND ELECTRONIC PRODUCTS	
206.	Air conditioners	MS/IEC 60335 and 60065
207.	Bread toasters	MS/IEC 60335 and 60065
208.	Computer sets	MS/IEC 60335 and 60065
209.	Decoders	MS/IEC 60335 and 60065
210.	DVD players	MS/IEC 60335 and 60065
211.	Electrical fans	MS/IEC 60335 and 60065
212.	Electrical kettles	MS/IEC 60335 and 60065
213.	Electrical plugs	MS/IEC 60335 and 60065
214.	Electrical pressing irons	MS/IEC 60335 and 60065
215.	Electrical switches	MS/IEC 60335 and 60065
216.	Fruit mixtures	MS/IEC 60335 and 60065
217.	Home theatre systems	MS/IEC 60335 and 60065
218.	Hot plates	MS/IEC 60335 and 60065
219.	Household sockets outlet	MS/IEC 60335 and 60065
220.	Microwaves	MS/IEC 60335 and 60065
221.	Mini cookers/cookers/fry pans/urns	MS/IEC 60335 and 60065
222.	Play stations	MS/IEC 60335 and 60065
223.	Radios	MS/IEC 60335 and 60065
224.	Refrigerators	MS/IEC 60335 and 60065
225.	Rice cookers	MS/IEC 60335 and 60065
226.	Television sets	MS/IEC 60335 and 60065

NB: The list is subject to change with increase in the number of mandatory Malaŵi Standards

reg. 4 (3)

SECOND SCHEDULE

IMPORT INSPECTION REQUEST FORM

MBS/QASD/F/03

(Please complete sections 1 to 10 and fax/forward to the Malaŵi Bureau of Standards. Please note that lack of complete information may cause unnecessary delays)

1. Importer (Name & Address): Tel: ..... Fax: ..... Email:	2. Supplier (Name & Address): Tel: ..... Fax: .....
3. Forwarding Agent (Name & Address): Tel: ..... Fax: ..... Container Nr(s): Seal Nr(s): Commercial invoice Nr.:	4a. Product brand: 4b. FOB value: 4c. Landed cost: 5. No. & kind of packages 6. Quantity

7. Parameter	8. Applicable Malaŵi Standard	9. Importer's specification

10. TO THE DIRECTOR GENERAL MALAŴI BUREAU OF STANDARDS

Please kindly inspect a consignment as described above and issue an Import Batch Quality Certificate.

The consignment can be inspected at ..... which is ..... Km from Blantyre.

I undertake to settle all fees chargeable and abide by the regulations governing the Mandatory Certification Scheme.

11. FOR OFFICIAL USE ONLY IQMS FEES AND QUALITY DEVELOPMENT CESS

Item	Rate	Amount (MWK)
Registration		
Inspection & sampling	0.65% of FOB value (with K25,000 minimum and K500,000 maximum for FOBs above K300,000)	
Transportation		
Reporting/ Certification		
Subsistence allowance		
Total IQMS fees		

..... NAME OF CLIENT/ REPRESENTATIVE ..... SIGNATURE OF CLIENT/ REPRESENTATIVE ..... DATE	Testing IQMS fees +Testing VAT	At the prevailing rate	
	Cess	0.3% of landed cost	
	GRAND TOTAL		
	NAME OF MALAŴI BUREAU OF STANDARDS OFFICIAL: ..... SIGNATURE: ..... DATE:		

THIRD SCHEDULE

reg. 6 (3)

MALAŴI BUREAU OF STANDARDS
P. O. BOX 946, BLANTYRE
TEL: +(265)1 870 488
FAX: +(265)1 870 756

IMPORT BATCH CONFORMANCE CERTIFICATE

Consignee (name & address):	Certificate nr: Reference nr: Date issued:	
	Country of origin:	
Consignor (name & address):	Agent (name & address):	
Mode of transport	Sea Road	Rail Air
Port of entry:	Place of customs clearing:	Final destination:
Product brand name and description: Batch identification: Commercial invoice: Date sampled:		
Parameter	MS Specification	Result(s)

CERTIFICATION & CONDITIONS OF ISSUE

THIS IS TO CERTIFY that the above mentioned branded product bearing the indicated batch identification has been found to conform to the national

product standard. This certificate only applies to the consignment or batch from which the sample was obtained and tested and is strictly valid only up to ..... issued under the regulations and procedures governing the Import Quality Monitoring Scheme of the Malaŵi Bureau of Standards.

In this ..... day of ..... by me.

Seal of Issuing Authority

Name:

Signature:

Designation: Director, Quality Assurance Services

Date:

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reg. 6 (3)

FOURTH SCHEDULE

MALAŴI BUREAU OF STANDARDS
P. O. BOX 946, BLANTYRE
TEL: + (265) 670 488
FAX: + (265) 670 756

ANNUAL IMPORT CONFORMANCE CERTIFICATE

Consignee (name & address):	Certificate nr: Reference nr:
.....	Date of issue: .....
.....	Certificate valid until: .....
Consignor (name & address):	Agent (name & address): .....
.....	.....
.....	.....
.....	.....

Product brand name and description: .....

Applicable Malaŵi Standards: MS: .....

Country of Origin of Products: .....

Preceding Batch Certificates Nrs: .....

CERTIFICATION & CONDITIONS OF ISSUE

THIS IS TO CERTIFY that the above mentioned branded product has been found to consistently conform to the national product standard mentioned above on four consecutive imported consignments. The product is therefore allowed for clearance with MRA for a period of 12 months from the ..... day of ..... 20..... to the ..... day of ..... 20..... on the following conditions—

1. The importer is the same.
2. The supplier (consignor) is the same.
3. The product and brand are the same.
4. The country of origin.

The certificate is valid until ..... 20..... and is issued under the regulations and procedures governing the Import Quality Motoring Scheme of the Malaŵi Bureau of Standards in this ..... day of ..... 20..... by me.

Seal of Issuing Authority

Name: .....

Signature: .....

Designation: .....

Date: .....

FIFTH SCHEDULE reg. 6 (6)

BS/QAD/58/2015

The Managing Director

.....

.....

.....

.....

Dear Sir

RE: IMPORTS QUALITY MONITORING REPORT NR IQR/ ..... ON .....

..... UNDER COMMERCIAL INVOICE NUMBER .....

FROM .....

We refer to the above consignment, which was inspected and sampled from in ..... under imports inspection request nr .....

Please, find below laboratory results on tests conducted on the sample in accordance with MS ..... Mandatory Malaŵi Standard on .....

SL NR	TEST DONE	RESULTS	MS SPECIFICATION	REMARKS

reg. 6 (7)

SIXTH SCHEDULE
BS/QAD/58/2015

The Managing Director

.....

.....

.....

Dear Sir

RE: IMPORTS QUALITY MONITORING REPORT NR IQR/ ..... ON .....

..... UNDER COMMERCIAL INVOICE NUMBER .....

FROM ..... AND REJECTION OF ITS FURTHER IMPORTATION INTO MALAŴI DUE TO ITS NON-COMPLIANCE.

We refer to the above consignment, which was inspected and sampled from in ..... under imports inspection request nr .....

Please, find below laboratory results on tests conducted on the sample in accordance with MS ..... Mandatory Malaŵi Standard on .....

SL NR	TEST DONE	RESULTS	MS SPECIFICATION	REMARKS

The above results show that your sample failed on the abovementioned parameters for which we ask you to notify your supplier for redress, as the Bureau will not allow such non-complying consignments into the country.

We therefore, reject further importation of this non-complying product and demand pre-shipment sample which should be sent direct to us by your supplier on your behalf for testing of the product to verify redress of the non-compliance prior.

STANDARDIZATION OF SOAP

CHAPTER 52:01

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CHAPTER 52:01

STANDARDIZATION OF SOAP

ARRANGEMENT OF SECTIONS

SECTION

1. Short title
2. Interpretation
3. Provisions relating to soap
4. Restriction on manufacture
5. Inspection
6. Offences and penalties

An Act to Control the Manufacture of Soap and for Matters Incidental Thereto

18 of 1957
G.N. 22/1963(N)
219/1964(N)

[29TH NOVEMBER, 1957]

Short title

1. This Act may be cited as the Standardization of Soap Act.

Interpretation

2. In this Act, unless the context otherwise requires, "soap" means the product which results from the process of the saponification of fats and oils—

(*a*) with sodium hydroxide or potassium hydroxide;

(*b*) by the neutralization of fatty acids with sodium hydroxide or potassium hydroxide or their carbonates or bicarbonates; or

(*c*) by neutralization of fatty acids with ammonia or triethanolamine.

Provisions relating to soap

3. (1) Soap in the form of bars, tablets, flakes or chips for household, laundry or toilet purposes shall contain not less than forty-five per cent of fatty acids, of which not more than one-third may be replaced by resin acids, shall not contain more than one-quarter of one per cent of free caustic alkali (calculated for this purpose as sodium hydroxide), and shall be free from any harmful ingredients.

(2) Liquid soap shall contain not less than fifteen per cent of fatty acids, of which not more than one-quarter may be replaced by resin acids, shall contain not more than one-twentieth of one per centum of free caustic alkali (calculated for this purpose as sodium hydroxide), and shall be free from any harmful ingredients.

(3) Soft soap shall contain not less than thirty-five per cent of fatty acids, of which not more than one-third may be replaced by resin acids, and shall contain not more than three-quarters of one per cent of free caustic alkali (calculated for this purpose as sodium hydroxide).

Restrictions on manufacture

4.—(1) Except with the permission of the Minister, no person shall manufacture for sale any soap the composition of which, at the time when the soap is packed, does not comply with section 3 (1), (2) or (3) as the case may be.

(2) Any person who manufactures soap in contravention of subsection (1) shall be guilty of an offence.

Inspection

5.—(1) Any person generally or specially authorized thereto by the Minister may at any time enter upon premises where soap is manufactured and take samples of soap for examination or analysis.

(2) Any person who owns, occupies or is in control of any premises where soap is manufactured and every person employed by him on such premises shall, at all times, permit any person authorized in terms of subsection (1) to enter such premises in the course of his duties and to exercise the powers conferred by that subsection.

(3) Any person who fails to comply with subsection (2) shall be guilty of an offence.

Offences and penalties

6.—(1) Any person who is guilty of an offence under this Act shall be liable—

(*a*) for a first offence, to a fine of K200 or, in default of payment, to imprisonment for six months;

(*b*) for a second or subsequent offence, to a fine of K400 or to imprisonment for twelve months.

(2) Where any person is convicted of an offence under section 4, the court may order that any soap which is the subject matter of such offence shall be forfeited and any soap so forfeited may thereafter be disposed of as the Minister may direct.

SUBSIDIARY LEGISLATION

DELEGATION OF POWERS

under s. 5 (1)

G.N. 148/1963 60/1984

(Conferring powers of inspection on police officers of the rank of Inspector or above—Revoked by G.N. 60/1984).

NOTICE OF AUTHORIZATION

under s. 5 (1)

G.N. 576/1984

The Minister has authorized generally the Director and other staff of the Malaŵi Bureau of Standards to enter, at any time, upon any premises where soap is manufactured and take samples of soap for examination or analysis.

IODIZATION OF SALT

CHAPTER 52:02

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CHAPTER 52:02

IODIZATION OF SALT

ARRANGEMENT OF SECTIONS

SECTION

1. Short title and commencement
2. Interpretation
3. Salt to be iodized
4. Registration
5. Restriction on iodization of salt
6. Inspection
7. Offences and penalties
8. Regulations

An Act to control the iodization of common salt and for matters incidental thereto and connected therewith 10 of 1995 G.N. 3/1999

[15TH FEBRUARY, 1999]

1. This Act may be cited as the Iodization of Salt Act. Short title

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

"iodize" means to treat salt with iodine or a compound of iodine;

"salt" means salt in any form commonly used for domestic purposes or in the manufacture or processing of food for human or animal consumption.

3.—(1) Salt shall, before it is sold or distributed to the public or used in the manufacture or processing of food for human or animal consumption, be iodized to such specification as the Minister may, by Order published in the *Gazette*, prescribe. Salt to be iodized

(2) The Order made under subsection (1) may further prescribe the manner of labelling, packaging, storing, transporting or otherwise treating iodized salt.

4. Every person who is engaged in the business of salt iodization in accordance with this Act shall register such particulars thereof as the name and address of the business and every change thereof and for this purpose the Minister shall keep and maintain an appropriate register. Registration

5.—(1) No person shall iodize salt or permit or cause any other person to iodize salt nor continue to do so after the expiry of a period of ninety days from the date of commencement of this Act otherwise than in accordance with this Act and unless that person is registered under section 4. Restriction on iodization of salt

(2) The Minister may, once only, extend the period prescribed in subsection (1) by a further period not exceeding a period so

prescribed and shall cause notice of the extension to be published in the *Gazette*.

Inspection

6. —(1) The Minister may in writing appoint any public officer to be an inspector for the purposes of this Act.

(2) Every inspector shall be furnished with a certificate verifying his appointment and authorizing him to exercise the powers conferred on an inspector.

(3) When an inspector seeks to exercise power conferred under this Act, he shall, if requested by any person in relation to whom the power is sought to be exercised, produce to that person his certificate issued under subsection (2).

(4) An inspector may, for the purposes of this Act—

(*a*) without previous notice, at any time during business hours, enter upon any premises in or upon which any salt is or is reasonably suspected to be iodized or intended to be sold or distributed to the public;

(*b*) inspect and take samples of any such salt or any material or substance in or on such premises used or suspected to be intended for use in the iodization of salt and open any package or container in or on such premises which contains, or he reasonably suspects to contain, any quantity of any such salt, material or substance;

(*c*) inspect any operations carried out in or upon any such premises in connexion with the iodization of salt;

(*d*) at any time require any person to produce there and then or at a time and place to be fixed by the inspector any book, notice, record, list or other document which relates to the iodization, sale or distribution of salt and is in the possession or custody, or under the control, of that person or of any other person on his behalf;

(*e*) examine any such book, notice, record, list or document and make copies of, or take extracts from any such book, notice, record, list or document which relates to the iodization, sale or distribution of salt and require from any person an explanation of any entries therein and seize any such book, notice, record, list or document which, in the opinion of the inspector, may afford evidence of any offence under this Act;

(*f*) in regard to any matter which is being investigated by the inspector, question, either alone or in the presence of any other person, as the inspector thinks fit, every person whom he finds on the premises which he has entered under this subsection or who he has reasonable grounds for believing is, or has been employed on any such premises, or is in possession, custody or control of anything referred to in this subsection;

(*g*) order any person referred to in paragraph (*d*), (*e*) or (*f*) to appear before him at a time and place fixed by him, and at

such time and place question that person concerning any matter which is being investigated by him pursuant to this Act.

(5) Any person who is in charge of any premises referred to in this section shall, at all times, furnish such facilities as are required by an inspector for the purpose of exercising his powers under this section and shall not obstruct or hinder an inspector while exercising such powers.

Offences and penalties

7.—(1) Any person who contravenes sections 4, 5 and 6 shall be guilty of an offence and shall be liable—

(*a*) in respect of an offence contrary to section 4 to a fine of K10,000 and to imprisonment for two years;

(*b*) in respect of an offence contrary to section 5—

(i) for a first offence, to a fine of K10,000 and to imprisonment for two years;

(ii) for a second or subsequent offence, to a fine of K20,000 and to imprisonment for five years;

(*c*) in respect of an offence contrary to section 6, to a fine of K10,000 and to imprisonment for two years.

Regulations

8. The Minister may make regulations for giving effect to the provisions of this Act.

[Subsidiary] *Iodization of Salt Regulations*

SUBSIDIARY LEGISLATION

G.N. 75/1998

IODIZATION OF SALT REGULATIONS

PART I

PRELIMINARY

Citation

1. These Regulations may be cited as the Iodization of Salt Regulations.

Interpretation

2. In these Regulations, unless the context otherwise requires—

"authorized officer" means a customs officer, an environmental health officer or any inspector appointed under section 6;

"business" means business of salt iodization;

"Registrar" means the Principal Secretary or such other officer in the public service as he may authorize to act on his behalf.

PART II

REGISTRATION

Manner and particulars of registration

3. Every person who is engaged in the business of salt iodization shall furnish by sending by post or delivering to the Registrar a statement in writing in the form set out in the First Schedule containing the following particulars—

(*a*) the name of the business;

(*b*) the address of the business;

(*c*) the general nature of the business; and

(*d*) date of commencement of the business.

4. The statement required for the purpose of registration under regulation 3 shall—

(*a*) in the case of an individual, be signed by him; and

(*b*) in the case of a firm, either by all the individuals who are partners and by a director or the secretary of all corporations which are partners or by an individual who is a partner, director or the secretary of a corporation which is a partner and in either of these two cases shall be verified by an affidavit or statutory declaration made by the signatory:

Provided that no such affidavit or statutory declaration stating that any person other than the deponent or declarant is a partner, or omitting to state that any person other than as aforesaid is a partner, shall be evidence for or against such other person in respect of his liability or non-liability as a partner, and that the High Court may on application of any

person alleged or claiming to be a partner direct the rectification of the register and decide any question arising under this regulation.

Certificate

5. The Registrar shall issue a certificate of registration in the form set out in the Second Schedule to every firm or person registered under these Regulations.

Registration of changes

6. Whenever a change is made or occurs in the particulars registered under regulation 3 in respect of any firm or person, such firm or person shall, within fourteen days after such change or such longer period as the Registrar may, on application being made in any particular case, whether before or after the expiration of such fourteen days, allow, furnish by sending by post or delivery to him a statement in writing specifying the nature and the date of the change, signed, and, where necessary, verified in like manner as the statement required on registration under regulation 3.

Alteration

7. Every change in any of the particulars registered shall be notified in the form set out in the Third Schedule to the Registrar who shall alter the register accordingly.

Penalty for default in registration

8. If any firm or person by these Regulations required to furnish a statement of particulars or of any change in particulars shall without reasonable cause make default in so doing in the manner and within the time specified by these Regulations every partner in the firm or the person so in default shall be guilty of an offence and liable to a fine of K200 for every day during which the default continues, and the court shall order a statement of the required particulars or change in the particulars to be furnished to the Registrar within such time as may be specified in the Order.

Disability of persons in default

9.—(1) Where any firm or person by this Act required to furnish a statement of particulars or of any change in particulars shall have made default in so doing, then the rights of that defaulter under or arising out of any contract made or entered into by or on behalf of such defaulter in relation to the business in respect to the carrying on of which particulars were required to be furnished at any time while he is in default shall not be enforceable by action or other legal proceeding whether in the business name or otherwise:

Provided always as follows—

(*a*) the defaulter may apply to the Court for relief against the disability imposed by this regulation and the Court, on being satisfied that the default was accidental, or due to inadvertence, or some other sufficient cause or that on other grounds it is just and equitable to grant relief, may grant such relief either generally, or as respects any particular contract,

on condition of the costs of the application being paid by the defaulter, unless the Court otherwise orders, and on such other conditions (if any) as the Court may impose, but such relief shall not be granted except on such service and such publication of notice of the application as the Court may order, nor shall relief be given in respect of any contract if any party to the contract proves to the satisfaction of the Court that, if these Regulations had been complied with, he would not have entered into the contract;

(*b*) nothing herein contained shall prejudice the rights of any other party as against the defaulter in respect of such contract as aforesaid; and

(*c*) if any action or proceeding shall be commenced by any other party against the defaulter to enforce the rights of such party in respect of such contract, nothing herein contained shall preclude the defaulter from enforcing in that action or proceeding, by way of counter-claim, set off or otherwise, such rights as he may have against that party in respect of such contract.

(2) In this regulation the expression "Court" means the High Court:

Provided that, without prejudice to the power of the Court to grant such relief as aforesaid, if any proceeding to enforce any contract is commenced by a defaulter in a subordinate court, the subordinate court may, as respects that contract, grant such relief as aforesaid.

Penalty for false statements

10. If any statement required to be furnished under these Regulations contains any matter which is false in any material particular to the knowledge of any person signing it, the person shall be guilty of an offence and liable to a fine of K1,000 and to imprisonment for three months.

Duty to furnish particulars to the Registrar

11.—(1) The Registrar may require any person to furnish to him such particulars as appear necessary to the Registrar for the purpose of ascertaining whether or not he or the firm of which he is partner should be registered under these Regulations, or an alteration made in the registered particulars, and may also in the case of a corporation require the secretary or any other officer of a corporation performing the duties of secretary to furnish such particulars, and if any person when so required fails to supply such particulars as it is in his power to give, or furnishes particulars which are false in any material particular, he shall be guilty of an offence and liable to a fine of K1,000 and to imprisonment for three months.

(2) If from any information so furnished it appears to the Registrar that any firm or person ought to be registered under

these Regulations, or an alteration ought to be made in the registered particulars, the Registrar may require the firm or person to furnish to him the required particulars within such time as may be allowed by him, but, where any default under these Regulations has been discovered from the information acquired under this regulation, no proceedings under these Regulations shall be taken against any person in respect of such default prior to the expiration of the time within which the firm or person is required by the Registrar under this regulation to furnish particulars to him.

Registrar to file statement and issue certificate of registration

12. On receiving any statement, affidavit or statutory declaration made in pursuance of these Regulations, the Registrar shall cause the same to be filed, and he shall send by post or deliver a certificate of the registration thereof to the firm or person registering and the certificate or certified copy thereof shall be kept in a conspicuous position at the principal place of business of the firm or individual and if not kept so exhibited every partner in the firm, or the person as the case may be, shall be guilty of an offence and liable to a fine of K1,000.

Index to be kept

13. The Registrar shall keep an index of all the firms and persons registered by him under these Regulations.

Removal of names from register

14.—(1) If any firm or individual registered under these Regulations ceases to carry on business, it shall be the duty of the persons who were partners in the firm at the time when it ceased to carry on business or of the individual or, if he is dead, of his personal representative, within three months after the business has ceased to be carried on, to send by post or deliver to the Registrar notice in the prescribed form that the firm or individual has ceased to carry on business, and if any person whose duty it is to give such notice fails to do so within such time as aforesaid, he shall be guilty of an offence and liable to a fine of K1,000:

Provided that the Registrar may in his absolute discretion on reasonable cause therefor being shown, extend such time as aforesaid to such time as he may think fit.

(2) On receipt of such a notice as aforesaid the Registrar may remove the firm or individual from the register.

(3) Where the Registrar has reasonable cause to believe that any firm or individual registered under these Regulations is not carrying on business he may send to the firm or individual by registered post a notice that, unless an answer is received to such notice within one month from the date thereof, the firm or individual may be removed from the register.

(4) If the Registrar either receives an answer from the firm or individual to the effect that the firm or individual is not carrying on business or does not within one month after sending the

notice receive an answer, he may remove the firm or individual from the register.

Notice of cessation of business

15. Every notice to the Registrar that any firm or individual registered under these Regulations has ceased to carry on business shall be in the form set out in the Fourth Schedule.

Inspection of register

16. The register and all documents in connexion with registration under these Regulations shall be open to the public for inspection and copies of or extracts from such register or documents may be obtained on any business day during business hours.

PART III

Importation of Salt

Certificate of origin

17.—(1) No salt shall be imported into Malaŵi unless it is accompanied by a certificate of origin issued in country of origin by a designated authority.

(2) The certificate of origin referred to in subregulation (1) shall contain the following particulars—

(*a*) name of importer;

(*b*) name of manufacturer/supplier;

(*c*) type of salt;

(*d*) order/batch number;

(*e*) date of manufacture/expiry;

(*f*) content of iodine and sodium chloride;

(*g*) purity of salt;

(*h*) form of packaging;

(*i*) unit quantity and total quantity;

(*j*) value;

(*k*) moisture content;

(*l*) particle sizes; and

(*m*) brief description.

Non-iodized salt

18. No person shall import into Malaŵi non-iodized salt for industrial use without the prior approval of the Minister.

Imported salt

19.—(1) Any salt that is imported into Malaŵi that does not meet legal requirements that pertain to iodine level and packaging shall be delivered by the importer at a registered iodization plant within two days of his being informed of the salt by an authorized officer.

(2) If the salt referred to in subregulation (1) is not delivered at an iodization plant within the time stipulated therein, the salt shall be forfeited to the Government.

(3) Upon the salt referred to in subregulation (1) being delivered to an iodization plant, the iodization plant shall, at the expense of the importer, recondition, relabel, repack or otherwise cure the salt to meet the legal requirements.

(4) Any salt that is imported into Malaŵi that does not meet legal requirements that pertain to matters other than iodine level and packaging shall be re-exported by the importer to the country of origin within 30 days from the date of its entry into Malaŵi.

(5) If the salt referred to in subregulation (4) is not re-exported as stipulated therein, it shall be forfeited to the Government and the forfeited salt shall be disposed of by destruction.

PART IV

Miscellaneous

Quality assurance activities

20.—(1) All persons who iodize or prepack salt shall inspect, examine, analyse and test, in the manner set out in the Fifth Schedule, their processes, procedures and methods and the salt within their possession or control, to ensure that their activities and the salt within their possession or control comply with legal requirements.

(2) All persons who transport, store, display for distribution or sale, distribute, sell, export or otherwise hold or control salt commercially shall undertake necessary quality assurance activities to ensure that the salt in their possession or control comply with legal requirements.

(3) For purposes of subregulation (2), quality assurance activities include, as applicable—

(*a*) routine physical, chemical and microbiological tests on representative sample of salt to ensure that they conform to the authorized composition;

(*b*) routine inspection of packages and labels; and

(*c*) routine inspection of storage areas.

(4) All persons who iodize, prepack, sell, distribute, export or otherwise hold or control salt commercially shall keep records of all quality assurance activities for a period of three years specifying—

(*a*) the dates and times of inspection, examinations, analyses or any other quality assurance activity, the nature of the activity and findings;

(*b*) the batch lot number from which the samples were taken and the quantity of salt or samples tested or analysed; and

(*c*) analysis results.

(5) Any person who distributes, sells, exports or otherwise holds or controls salt commercially who finds, upon exercising reasonable diligence, that any salt within his custody or control fails to meet legal requirements shall—

(*a*) return the salt to the preceding seller for—

(i) reconditioning, relabelling, repacking or othewise curing so that it meets the legal requirements; or

(ii) destruction;

(*b*) recondition, relabel, repack or otherwise cure it to meet legal requirements prior to selling or distributing it further; or

(*c*) destroy it.

Fees

21. The fees to be paid in pursuance of these Regulations shall be the fees specified in the Sixth Schedule.

FIRST SCHEDULE

reg. 3

Statement of Particulars Required to be Given Pursuant to Regulation

1. Name of the business:
2. Address:
3. General nature of business:
4. Date of commencement of business:

(Signed) .....

Dated this ..... day of ....., 20 .....

SECOND SCHEDULE

reg. 5

Iodization of Salt Act

Certificate of Registration

I HEREBY CERTIFY that ..... this day of ..... have/(has) been duly registered pursuant to and in accordance with the Iodization of Salt Act and the subsidiary legislation made thereunder, and have/(has) been entered under the number ..... in the Index of Registration.

Given under my hand at ..... this ..... day of ..... 20.....

.....

Registrar

THIRD SCHEDULE

reg. 7

Notice of Change in Particulars Registered

Pursuant to the Iodization of Salt Act

To:

The Registrar

WHEREAS WE/(I) the undersigned were/(was) duly registered pursuant to the Iodization of Salt Act on the ..... day of ....., 20..... under the Number ..... in the Index of Registration.

AND WHEREAS a change (or changes) has (or have) occurred (or been made) in respect of the particulars registered as hereinafter mentioned.

Now We/(I) the undersigned hereby give you notice that on the date (or dates) hereunder specified the following change (or changes) occurred (or was or were made) in the particulars registered; that is to say .....

Dated this ..... day of ....., 20 .....

(Signed) .....

FOURTH SCHEDULE

reg. 15

Notice of Cessation of Business

Pursuant to the Iodization of Salt Act

To:

The Registrar

WHEREAS WE/(I) the undersigned registered under the Number ..... in the Index of Registration have ceased to carry on business.

Now We/(I) hereby give notice that We/(I) have ceased to carry on business as ..... as from the ..... day of ....., 20 ..... save for the purpose of winding up the business.

Dated this ..... day of ....., 20 .....

(Signed) .....

FIFTH SCHEDULE

reg. 20 (1)

Quality Assurance Activities By Person Who Iodize or Prepack Salt

All salt iodizers or prepackers shall conduct routine quality assurance activities, to ensure the quality of the salt under their control as follows—

(i) Iodine levels: at a regular interval on a daily basis, samples of iodized salt shall be collected from the production line and tested for iodine content.

(ii) Equipment: plant and laboratory equipment shall be inspected at least twice daily to ensure its proper operation. Calibration of the equipment shall also be undertaken periodically, at least once a year.

(iii) Mixing: the mixing process shall be monitored regularly to ensure consistent mixing.

(iv) Salt ready for each lot or batch shall be sampled to ensure the correct distribution concentration of iodine.

(v) Packaging and labelling: the packages and labels of iodized salt shall be routinely inspected to ensure they comply with regulation 16.

(vi) Storage: storage areas shall be routinely inspected to ensure that salt is being stored according to regulation 17.

SIXTH SCHEDULE reg. 21

FEES

		K	t
1.	On filing a statement of particulars or a notice of change of particulars	200	00
2.	On filing notice of cessation of business	200	00
3.	For inspection of the register	40	00
4.	For a certified copy certificate of registration . .	50	00
5.	For a copy of any registered document	20	00

G.N. 73/1998

IODIZATION OF SALT (SPECIFICATION) ORDER

under s. 3

Citation

1. This Order may be cited as the Iodization of Salt (Specification) Order.

Salt to be iodized

2. Salt shall, before it is sold or distributed to the public or used in the manufacture or processing of food for human or animal consumption, be iodized to the specification set out in the Schedule.

Labelling

3.—(1) All iodized salt packages shall be legibly and indelibly labelled and the salt in each package shall conform to the specifications on its label.

(2) A label on an iodized salt package shall contain the following information—

IODIZED SALT

Name of manufacturer, importer or packer:

Name of Iodization plant:

Iodine compound: potassium iodate level of iodine or potassium-mg/kg:

Best used before date:

CAUTION: STORE IN A COOL AND DRY PLACE.

(3) All salt iodized or prepacked in Malaŵi shall bear a certification mark of Malaŵi Bureau of Standards which shall

be displayed prominently on the package in which the salt is contained.

(4) For avoidance of doubt, the provisions of subparagraph (3) are in addition to, not in substitution for, the provisions of the Malaŵi Bureau of Standards Act and any other written law governing issuance of certification marks. Cap. 51:02

4. Every person who imports, manufactures, displays, distributes, sells or exports any salt shall be deemed to warrant to the immediate purchaser that the salt conforms to all legal requirements and meets the specification on its label. Warranty

5.—(1) All iodized salt shall be packed and sealed in moisture-proof lined packaging material. Packaging

(2) The total mass of an iodized salt package shall not exceed 20 kg.

6. All iodized salt shall not, during transportation, storage and display, be exposed to any of the following conditions— Transport, storage and display

(*a*) direct sunlight or strong light;

(*b*) heat above 35 degrees C;

(*c*) humidity above 75%, or water, including rain;

(*d*) contamination with dust or other particles or substances;

(*e*) mixture with non-iodized salt;

(*f*) inadequate ventilation or aeration;

(*g*) unduly long storage time (more than six months);

(*i*) storage in uncovered rooms or warehouses; and

(*j*) stacking less than 30 centimetres above the floor level.

7. All iodized salt shall be dispatched, distributed and sold strictly according to the principle of first in, first out. Distribution and sale

8. Any consumer who has purchased or received salt that does not comply with the requirements of this Order may pursue a legal action against any person in the salt manufacture-distribution chain shown to have violated the requirement of this Order. Private right of action

9. Any person who contravenes any provision of this Order shall be guilty of an offence and liable to a fine of K1,000 and to imprisonment for three months. Offences and penalties

[Subsidiary] *Iodization of Salt* (*Specification*) *Order*

SCHEDULE Para. 2

Salt shall be iodized as follows—

Location of Salt	Level of iodine, per 1kg of salt
Port of entry, iodization plant and prepacking factory	Between 80 and 100 milligrammes of potassium iodate
Wholesale and retail	A minimum of 50 milligrammes of potassium iodate

PROFESSIONAL QUALIFICATIONS

CHAPTER 53:01

Containing Pages 1–2

CHAPTER 53:01

PROFESSIONAL QUALIFICATIONS

ARRANGEMENT OF SECTIONS

SECTION

1. Short title
2. Interpretation
3. Recognition of external professional qualifications
4. Power to amend Schedule

An Act to make provision for the recognition of certain professional qualifications in Malaŵi

29 of 1965
17 of 1972
24 of 1972
G.N. 174/1965

[11TH MAY, 1965]

1. This Act may be cited as the Professional Qualifications Act. Short title

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

"Minister" means the Minister responsible for the administration or supervision of the profession concerned;

"profession" means a profession set forth in the Schedule.

3. Subject to Section 5, it shall be lawful for the Minister, by notice published in the *Gazette,* to specify the qualifications which in any country outside Malaŵi confer the right to practise a particular profession in that country as entitling, with or without further qualification or examination, a person to the membership and practice of that profession in Malaŵi. Recognition of external professional qualifications 24 of 1972

4. It shall be lawful for the Minister from time to time, by notice published in the *Gazette,* to add to or delete from the list of professions set forth in the Schedule. Power to amend Schedule

5. This Act shall not apply in relation to any profession where there is in force in respect of such profession any written law, expressly enacted for the purpose, which makes provision for qualification for membership of, and the right to practise, such profession in Malaŵi. Act not to apply in case of professions expressly provided for in certain laws, etc.

SCHEDULE

Accountant
Agronomist
Archivist
Auditor
Biologist
Botanist
Clerk of Works
Company Secretary
Geologist
Land Valuer
Master Mariner
Oculist
Optician
Patent Agent
Physiotherapist
Professional Agriculturist
Professional Forester
Radiographer
Statistician
Surveyor
Teacher
Town Clerk
Trade Mark Agent

ARCHITECTS AND QUANTITY SURVEYORS

CHAPTER 53:02

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CHAPTER 53:02

ARCHITECTS AND QUANTITY SURVEYORS

ARRANGEMENT OF SECTIONS

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1. Short title
2. Interpretation

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CHAPTER 53:02

ARCHITECTS AND QUANTITY SURVEYORS

29 of 1991
G.N. 72/1992

An Act to provide for matters relating to the professions of architecture and quantity surveying in Malaŵi and to the qualifications, registration and control of the members thereof; to establish the Board of Architects and Quantity Surveyors, a body corporate, as the qualifying, registering and disciplinary authority of such professions; and to provide for matters connected therewith and incidental thereto

[1st April, 1992]

PART I

PRELIMINARY

Short title

1. This Act may be cited as the Architects and Quantity Surveyors Act.

Interpretation

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

"approved institution" means any university, institute, college or school of architecture or quantity surveying approved by the Board pursuant to section 14 (*b*);

"Board" means the Board of Architects and Quantity Surveyors established by section 3;

"Chairman" means the Chairman of the Board designated by the Minister pursuant to section 4 (3);

"financial year" means the financial year of the Board as provided by section 20;

"register" means the register of Architects, or the register of Graduate Architects, or the register of Architectural Technicians, or the register of Quantity Surveyors, or the register of Graduate Quantity Surveyors, or the register of Quantity Surveying Technicians, as the case may be, maintained by the Board pursuant to section 22;

"Registrar" means the Secretary;

"Secretary" means the Secretary to the Board designated by the Minister pursuant to section 8; and

"Vice-Chairman" means the Vice-Chairman of the Board designated by the Minister pursuant to section 4 (3).

PART II

Administration

Division A—Board of Architects and Quantity Surveyors

Establishment of the Board

3.—(1) There is hereby established a Board under the name of the Board of Architects and Quantity Surveyors (in this Act referred to as the "Board") which shall be a body corporate with perpetual succession and a common seal, with power to alter and change the same from time to time, and shall, under that name, be capable of suing and being sued and, subject to the provisions of this Act, of purchasing or otherwise acquiring, holding or alienating property, real or personal, and of doing all such acts and things as bodies corporate may by law do or perform.

(2) The common seal of the Board shall be authenticated by the signatures of the Chairman, or of the person for the time being performing the functions of Chairman, and of one other member of the Board designated by the Board for such purpose, and any document purporting to be sealed with the seal of the Board and so authenticated shall be admissible in evidence of the particulars stated in that document.

(3) The Board may use a wafer or rubber stamp in lieu of an embossed seal until such time as an embossed seal is procured by the Board.

Composition of the Board

4.—(1) The Board shall consist of the following members—

(*a*) the public officer for the time being holding, or acting in, the post of Controller of Buildings;

(*b*) an officer in the public service, who is a registered architect or quantity surveyor and a resident of Malaŵi, appointed by the Minister;

(*c*) two persons appointed by the Minister from a panel of not less than five registered architects nominated by the Malaŵi Institute of Architects;

(*d*) two persons appointed by the Minister from a panel of not less than five registered quantity surveyors nominated by the Surveyors Institute of Malaŵi; and

(*e*) one other person appointed by the Minister.

(2) The Minister may appoint to the Board such other persons, not exceeding three in number, as he deems qualified to assist the Board in its work and deliberations.

(3) The Minister shall designate from amongst members of the Board two persons both of whom shall be citizens of Malaŵi to serve as Chairman and Vice-Chairman of the Board.

(4) Members of the Board shall not by virtue only of their appointment to the Board, be deemed to be officers in the public service.

Disqualifications

5. Any person who—

(*a*) is an undischarged bankrupt;

(*b*) has been convicted, at any time, of an offence under this Act or under any written law which is repealed or replaced by this Act;

(*c*) has, within three years last past, for an offence under any written law, been sentenced to a term of imprisonment of not less than six months save as an alternative to, or in default of, the payment of a fine;

(*d*) has been convicted, within six years last past, of an offence involving fraud or dishonesty,

shall be disqualified from being appointed to, or from continuing to hold, office as a member of the Board.

Tenure of office of members of the Board and vacancies thereon

6.—(1) Subject to subsection (4), any person who is appointed a member of the Board in pursuance of section 4 (1) (*b*), (*c*), (*d*) or (*e*) shall hold office for such period not exceeding three years as may be specified in the instrument of his appointment.

(2) Any retiring member of the Board, other than a member who is disqualified under section 5, shall be eligible for reappointment.

(3) Upon expiry of the period for which a member is appointed he shall continue to hold office until his successor has been appointed.

(4) The office of a member of the Board, who is not a member thereof *ex officio*, shall be vacated—

(*a*) upon his death;

(*b*) if he is absent from three consecutive meetings of the Board without the permission of the Board or of the Minister;

(*c*) upon the expiry of one month's notice in writing of his intention to resign given by him to the Minister and to the Board;

(*d*) upon his dismissal from the Board by the Minister by notice in writing;

(*e*) if he becomes mentally or physically unfit, and the Minister is of the opinion that he is no longer, by reason of such unfitness, capable of performing his duties as a member of the Board; and

(*f*) if he becomes disqualified for membership of the Board under section 5.

(5) An *ex officio* member of the Board shall continue as such for so long as he holds the office by virtue of which membership of the Board is ordained by this Act.

Remuneration of members of the Board

7. Any member of the Board who is not an officer in the public service shall be paid out of the funds of the Board such remuneration and allowances, if any, as may be prescribed.

Secretary/ Registrar

8.—(1) There shall be an officer of the Board designated as the Secretary to the Board who shall be appointed by the Board with the approval of the Minister and on such terms and conditions as the Board shall determine with the approval of the Minister.

(2) Until a person has been appointed under subsection (1) the Minister may designate an officer in the public service to be the Secretary to the Board.

(3) The Secretary to the Board shall be the Registrar for all of the purposes of this Act.

(4) The Secretary shall be the chief executive officer of the Board and as such shall be responsible to the Board for the administration and management of its affairs, and shall be in charge of all administrative, executive and other staff of the Board, and, in all such matters, shall, at all times, be subject to the direction and control of the Board.

(5) The Secretary shall exercise such powers and perform such duties as the Board may delegate to him in writing from time to time, and in any such delegation the Board may impose such conditions as to the exercise of such powers or the performance of such duties as the Board deemes fit.

Other staff of the Board

9.—(1) In addition to the Secretary the Board may appoint, on such terms and conditions as the Board may determine with the approval of the Minister, such other administrative, executive, or technical staff or other servants or agents as the Board considers

necessary for the better administration of the provisions of this Act or the affairs of the Board.

(2) The Secretary may, with the approval of the Board, employ such temporary or part-time staff as are necessary for the time being efficiently to effect the objects of the Board.

(3) The Board shall be liable for all salaries and other expenses incurred in relation to persons employed under subsections (1) and (2).

Meetings of the Board

10.—(1) The Board may meet at such places and times as the Chairman may determine and such meetings shall be convened by the Chairman or by the Minister.

(2) In the absence of the Chairman from any meeting of the Board, the Vice-Chairman shall preside, and in the absence of both the Chairman and the Vice-Chairman from any such meeting the members present, if constituting a quorum, shall elect one of their number to preside at that meeting.

(3) The Board shall have power to determine its own procedure for the conduct of its meetings.

(4) Any five members of the Board shall constitute a quorum.

(5) At any meeting of the Board the person presiding shall have a deliberative vote and, in the event of an equality of votes, shall also have a casting vote.

Committees of the Board

11.—(1) The Board may, with the approval of the Minister, establish one or more committees to carry out any special or general functions determined by the Board and may delegate to any such committee such of the functions of the Board as it may deem expedient.

(2) The Chairman of the Board shall, by reason of his office, be a member of every committee established pursuant to subsection (1).

(3) The chairman of each committee established pursuant to subsection (1) shall be appointed by the Board from amongst the members of the Board.

(4) Each committee may, with the prior approval of the Board or the Chairman, co-opt as members of such committee persons who are not members of the Board and who are not disqualified for such membership, and any of such members so co-opted may or may not be officers in the public service.

(5) The chairman of any committee may, at any time and at any place, convene a meeting of the committee of which he is chairman.

(6) The Board or the Chairman may, at any time, direct the chairman of any committee to convene a meeting of such committee and such chairman shall, as soon as is practicable, comply, with such direction.

(7) Every committee established pursuant to subsection (1) shall keep minutes of its meetings and shall inform the Board of its activities and conduct its proceedings in such manner as the Board may direct.

(8) The Minister may, in writing, nominate any officer in the public service to attend any meeting or meetings of any committee established pursuant to subsection (1), which officer may take part in the proceedings of any such meetings as if he were a member of such committee, save that he shall not be entitled to vote thereat.

(9) A member of a committee established pursuant to subsection (1), who is not an officer in the public service shall, in respect of expenses incurred by him in travelling and subsistence while discharging his duties as such member, be paid out of the funds of the Board, such allowances as may be prescribed.

Co-opted persons

12. The Board or any committee of the Board may, in its discretion, at any time and for any length of time invite any person, and the Minister may in like manner nominate any officer in the public service, to attend any meeting of the Board or of a committee of the Board and to take part in the deliberations thereat, but such person or officer shall not be entitled to vote at that meeting.

Minutes of Board and committee meetings

13. Minutes of every meeting of the Board and of a committee of the Board shall be taken and kept by the Secretary or by such other officer of the Board as the Secretary may designate in that behalf and shall be subject to confirmation by the Board or the committee at the succeeding meeting.

Division B—Powers of the Board

Powers of the Board

14. The Board shall be the sole qualifying and registering authority for the professions of architecture and quantity surveying in Malaŵi and shall have the following powers—

(*a*) to register persons qualified to be registered under this Act;

(*b*) to approve universities, institutions, colleges or schools of architecture, or quantity surveying or other educational or training institutions within or outside Malaŵi, as approved institutions the training at which in architecture or quantity surveying or any branch thereof will be recognized by the Board as acceptable training for the registration of persons under this Act;

(*c*) to establish educational standards and qualifications for the professions of architecture and quantity surveying in Malaŵi;

(*d*) to exercise disciplinary control over practitioners in the professions of architecture and quantity surveying in Malaŵi;

(*e*) to purchase, lease, or otherwise acquire any property, real or personal, for or in connexion with the exercise of any of its powers or objects;

(*f*) to manage, insure, let, sell, alienate, mortgate or otherwise deal with any property of the Board as it may deem necessary or expedient;

(*g*) to receive donations or gifts of moneys or other property from any person or body of persons and, for the furtherance of its objects, to receive such donations or gifts beneficially or as the trustee of any trust established for the furtherance of such objects; and

(*h*) to do or perform any act or thing required by this Act to be done or performed by the Board or which the Board considers to be expedient for the purposes of this Act.

Power of the Board to make rules

15. The Board may, with the approval of the Minister, make rules for all or any of the following purposes—

(*a*) for the management of the Board, for the holding of meetings of the Board, for the issue of notices calling such meetings, and for the procedure to be followed at such meetings;

(*b*) for the definition of unprofessional conduct and for determining the mode of inquiry into and the penalties which may be imposed upon any Architect or Quantity Surveyor found guilty of such conduct;

(*c*) for the definition of misconduct and for determining the mode of inquiry into and the method of dealing with such misconduct and the penalties which may be imposed upon any person registered under this Act found guilty of such misconduct;

(*d*) for recommending the scale of fees to be charged by persons registered under this Act in respect of professional advice, services rendered and work done, and the Board shall base such scale of fees on the recommendations of the Malaŵi Institute of Architects or the Surveyors Institute of Malaŵi;

(*e*) for describing the procedure to be followed by persons applying for registration;

(*f*) for the maintenance and improvement of the dignity and reputation of the professions of architecture and quantity surveying and the social standing of the practitioners of those professions;

(*g*) for prescribing the conditions under which persons registered under this Act may practise as limited liability companies, and for requiring professional indemnity insurance in the case of such companies; and

(*h*) for approving examinations authorized or permitted under this Act and for approving any curriculum for education or training in architecture or quantity surveying formulated by the Malaŵi Institute of Architects or the Surveyors Institute of Malaŵi.

16. No member of the Board shall be liable for any act or default of his, or of the Board, done in good faith in the exercise or purported exercise of his duties as member of the Board. Non-liability of members of the Board

PART III

Financial and Accounting Provisions

17.—(1) The funds of the Board shall consist of— Funds of the Board

(*a*) such sums as may be payable to the Board from moneys appropriated by Parliament for the purpose;

(*b*) such moneys or other property as may be payable to or vest in the Board whether in the course of the exercise of its powers or functions or otherwise; and

(*c*) such moneys or other property as may be payable to or vest in the Board pursuant to this or any other written law or pursuant to any trust or gift.

(2) The funds of the Board shall be deposited and held on such accounts as the Minister may approve.

18. The Board may invest any sums which are not immediately required for its objects in such manner as the Minister may approve. Investment of surplus sums

19. Subject to the provisions of section 32 (1) of the Finance and Audit Act, the Board may borrow, either temporarily, by way of overdraft or otherwise, such sums as it may require for meeting its obligations or discharging its functions under this Act. Borrowing powers Cap. 37:01

20. The financial year of the Board shall be the period commencing on the date of commencement of this Act and ending on the following 31st March and thereafter it shall be a period of twelve months ending on 31st March every year. Financial year of the Board

21.—(1) The Board shall cause to be kept proper books of account and other records in relation to all moneys and other property vested, received or otherwise obtained, and of all moneys expended or other property sold or otherwise disposed of, by the Board. Books, accounts, audits and reports

(2) The accounts of the Board shall be audited annually by professional auditors appointed by the Board with the approval of the Minister.

(3) The expenses of, and incidental to, any audit shall be payable out of the funds of the Board.

(4) The Board shall as soon as is practicable, but not later than six months after the end of each financial year, submit to the Minister an annual report upon its work and operations.

(5) The report required under subsection (4) shall include a balance sheet, an income and expenditure account and the annual report of the auditors, and shall be laid by the minister before the national assembly pursuant to section 32F of the Finance and Audit Act. Cap. 37:01

PART IV

Registration

Registers

22.—(1) The Board shall, for the purposes of this Act, keep and maintain, in the appropriate prescribed forms—

(*a*) a Register of Architects;

(*b*) a Register of Graduate Architects;

(*c*) a Register of Architectural Technicians;

(*d*) a Register of Quantity Surveyors;

(*e*) a Register of Graduate Quantity Surveyors; and

(*f*) a Register of Quantity Surveying Technicians.

(2) The Registers shall be in the custody of the Registrar and shall be kept at the offices of the Board, or at such other place in Malaŵi as the Board may direct.

(3) The Registrar shall perform such duties in connexion with the Registers as may be prescribed, and, in this regard, shall be under the control of the Board in the performance of such duties.

(4) A Register shall, at all reasonable times, be open to inspection by—

(*a*) public officers and members of the police force in course of duty;

(*b*) every person registered under the register; and

(*c*) members of the public, upon payment of the prescribed fee.

(5) Every person registered under this Act shall, before 31st March each year, pay to the Board such annual fee and in such manner as may be prescribed.

(6) The Registrar shall, once in every year and as soon as may be convenient after 1st April, publish in the *Gazette* the names, addresses, qualifications, dates of registration and other particulars of all persons registered under this Act.

Architects and Quantity Surveyors must be registered

23.—(1) Save where this Act otherwise provides, no person shall engage in the practice of architecture or quantity surveying in Malaŵi, or hold himself out as being entitled so to do, unless he is registered under this Act.

(2) Any person who engages in the practice of architecture or quantity surveying in contravention of subsection (1) shall not be entitled to recover in any court any charge or fee in respect of any architectural or quantity surveying work or activity done or performed by him in the course of his practice which constitutes a contravention of subsection (1).

Applications to the Board

24. Every application for registration under this Act shall be made to the Board in the form and manner prescribed and shall be accompanied with the appropriate prescribed fee.

Qualification for registration as an Architect

25. Any person may, upon making application for registration, be registered as an Architect provided that he proves to the satisfaction of the Board that his professional and general conduct has been such as not, in the opinion of the Board, to debar him from registration and that he—

(*a*) is a member of the Malaŵi Institute of Architects or such other institution or society as the Minister may, by notice published in the *Gazette*, declare to be of adequate standing; and

(*b*) either—

(i) has passed a qualifying examination approved by the Board and has had at least two years' practical training in the work of an Architect to the satisfaction of the Board; or

(ii) has satisfied the Board that he possesses a qualification which, in the opinion of the Board, furnishes a sufficient guarantee of the possession of the requisite knowledge and skill for the efficient practice of the work of an Architect.

Qualifications for registation as a Gruduate Architect

26.—(1) Any person shall be entitled to make application for registration as a Graduate Architect under this Act if he has, in consequence of an examination, obtained from an approved institution a degree or other qualifying certificate which the Board considers acceptable for registration.

(2) Every Graduate Architect registered pursuant to this section shall be entitled to practise architecture as an Architect in training, by agreement with and under the direction or control of a registered Architect.

Qualifications for registration as an Architectural Technician

27. (1) Any person shall be entitled to make an application for registration as an Architectural Technician under this Act if—

(*a*) he has passed an examination recognized by the Malaŵi Institute of Architects or has obtained from an approved institution other qualifications which the Board considers acceptable for registration; and

(*b*) subsequent to his qualifying certificate, has received practical training from approved employment as a technician for a period of not less than two years.

(2) If the Board is satisfied that the applicant is of good character and is a fit and proper person to be registered and that he has complied with all the requirements of this section, it shall direct the Registrar to register the applicant.

Qualifications for registration as a Quantity Surveyor

28. Any person may, upon making application for registration, be registered as a Quality Surveyor provided that he proves to the satisfaction of the Board that his professional and general conduct has been such as not, in the opinion of the Board, to debar him from registration and that he—

(*a*) is a full member of the Surveyors Institute of Malaŵi or of such other institution or society as the Minister may, by notice published in the *Gazette*, declare to be of adequate standing; and

(*b*) either—

(i) has passed a qualifying examination approved by the Board and has had at least two years' practical training in the work of a Quantity Surveyor to the satisfaction of the Board; or

(ii) has satisfied the Board that he possesses a qualification which, in the opinion of the Board, furnishes a sufficient guarantee of the possession of the requisite knowledge and skill for the efficient practice of the work of a Quantity Surveyor.

Qualifications for registration as a Graduate Quantity Surveyor

29.—(1) Any person shall be entitled to make application for registration as a Graduate Quantity Surveyor under this Act if he has, in consequence of an examination, obtained from an approved institution a degree or other qualifying certification which the Board considers acceptable for registration.

(2) Every Graduate Quantity Surveyor registered pursuant to this section shall be entitled to practise quantity surveying as a Quantity Surveyor in training, by agreement with and under the direction or control of a registered Quantity Surveyor.

Qualification for registration as a Quantity Surveying Technician

30.—(1) Any person shall be entitled to make an application for registration as a Quantity Surveying Technician under this Act if—

(*a*) he has obtained Part I and Part II technician certificates in quantity surveying from the Polytechnic of Malaŵi or has obtained from an approved institution other qualifications approved by the Surveyors Institute of Malaŵi which the Board considers acceptable for registration; and

(*b*) subsequent to his qualifying certificate, has received practical training from approved employment as a technician for a period of not less than two years.

(2) If the Board is satisfied that the applicant is of good character and is a fit and proper person to be registered and that he has complied with all the relevant requirements of this section, it shall direct the Registrar to register the applicant.

Certificate of registration

31. The Registrar shall issue to every person registered as an Architect, Graduate Architect, Architectural Technician, Quantity Surveyor, Graduate Quantity Surveyor, Quantity Surveying Technician, as the case may be, under this Act, a cerficate of registration in the appropriate prescribed form.

Correction of Registers

32.—(1) The Registrar may, with the prior approval of the Board, from time to time, make any necessary alteration or correction in any Register in relation to any entry therein.

(2) The Registrar shall remove from any Register the name of any deceased person, and shall, when directed by the Board so to do, remove from any Register any entry which has been incorrectly or fraudulently made therein.

(3) The Registrar may, with the consent, in writing, of the person concerned, remove from any Register the name of any person who has ceased to practise architecture or quantity surveying in Malaŵi.

(4) Any name removed from any Register pursuant to subsection (3) shall, at the request in writing of the person concerned, be reinstated by the Registrar.

PART V

Disciplinary Provisions

Suspension or striking out of Architects or Quantity Surveyors

33. The Board shall, in its own right or on the recommendation of the Malaŵi Institute of Architects or the Surveyors Institute of Malaŵi, as the case may be, have the right to reprimand or suspend any Architect or Quantity Surveyor or strike out of the register the name of any such person who shall have been found by the Board to have been guilty of unprofessional conduct as defined by Rules made under section 15.

Suspension or striking out of Graduate Architects, Architectural Technicians, Graduate Quantity Surveyors or Quantity Surveying Technicians

34. The Board shall, in its own right or on the recommendation of the Malaŵi Institute of Architects or the Surveyors Institute of Malaŵi, as the case may be, have the right to reprimand or suspend any person registered under this Act as a Graduate Architect, an Architectural Technician, a Graduate Quantity Surveyor or a Quantity Surveying Technician or strike out of the register the name of any such person who shall have been found by the Board to have been guilty of misconduct as defined by Rules made under section 15.

PART VI

Offences

Unlawful practice of architecture or quantity surveying

35. Save where this Act otherwise provides, any person who is not registered under this Act, and who in Malaŵi—

(*a*) engages, or purports to engage, in the practice of architecture or quantity surveying;

(*b*) holds himself out as being entitled to engage in the practice of architecture or quantity surveying;

(*c*) does or performs, or purports to do or perform, any act or thing which, under this Act may be done or performed exclusively by a person registered under this Act,

shall be guilty of an offence and liable to a fine of K5,000 and to imprisonment for a term of one year.

Unlawful use of descriptions

36. Any person who, in relation to himself or to any business which he owns, manages or controls, assumes or uses, in Malaŵi—

(*a*) the title or description of "Architect";

(*b*) the title or description of "Graduate Architect";

(*c*) the title or description of "Architectural Technician";

(*d*) the title or description of "Quantity Surveyor";

(*e*) the title or description of "Graduate Quantity Surveyor";

(*f*) the title or description of "Quantity Surveying Technician",

or any abbreviation of any such title or description, without being registered as such under this Act, shall be guilty of an offence and liable to a fine of K5,000 and to imprisonment for a term of one year.

Unlawful employment of non-registered person

37.—(1) Any person who, without the prior consent of the Board—

(*a*) employs any person not registered under this Act to do or perform; or

(*b*) during the course of his employment of any person not registered under this Act, requires such person to do or perform,

any prescribed architectural or quantity surveying work or activity shall be guilty of an offence and liable to a fine of K5,000 and imprisonment for a term of one year.

(2) Any person not registered under this Act, who, while in the employment of any other person, knowingly, in the course of such employment, does or performs any prescribed architectural or quantity surveying work or activity shall be guilty of an offence and liable to a fine of K2,500 and to imprisonment for a term of six months.

Fraudulent entries and copies

38. Any person who knowingly or fraudulently makes, or causes, or permits to be made—

(*a*) any false or incorrect entry in any Register; or

(*b*) any false or incorrect copy of any entry in any Register,

shall be guilty of an offence and liable to a fine of K2,500 and to imprisonment for a term of six months.

PART VII

Miscellaneous

Use of title

39.—(1) Any person registered as an Architect under this Act shall, by virtue of such registration, be entitled to take and use the title and description of Architect.

(2) Any person registered as a Graduate Architect under this Act shall, by virtue of such registration, be entitled to take and use the title and description of Graduate Architect.

(3) Any person registered as an Architectural Technician under this Act shall, by virtue of such registration, be entitled to take and use the title and description of Architectural Technician.

(4) Any person registered as a Quantity Surveyor under this Act shall, by virtue of such registration, be entitled to take and use the title and description of Quantity Surveyor.

(5) Any person registered as a Graduate Quantity Surveyor under this Act shall, by virtue of such registration, be entitled to take and use the title and description of Graduate Quantity Surveyor.

(6) Any person registered as Quantity Surveying Technician under this Act shall, by virtue of such registration, be entitled to take and use the title and description of Quantity Surveying Technician.

(7) Any person registered under this Act shall not take, or use, or affix to, or use in connexion with his business office or premises, any title in addition to that under which he is registered under this Act, other than as indicated by the particulars relating to his qualifications entered in the relevant Register.

(8) The Board may approve abbreviations of titles and descriptions recognized under this Act and persons registered under any category shall be entitled to use the abbreviation of that category approved by the Board.

Execution of certificates and other documents

40. No certificate or other document which is required by law, or under the terms or conditions of any contract, to be signed by a duly qualified architect or quantity surveyor, shall, if so signed in Malaŵi, be valid unless signed by a person duly registered, and competent to sign such certificate or other document, under this Act.

Regulations

41. The Minister may, from time to time, by Regulations, made by notice in the *Gazette*, prescribe anything which by the provisions of this Act may be prescribed and in respect of which no other prescribing authority is specified, and may, in like manner, from time to time, make Regulations for the better carrying out of this Act, and without prejudice to the generality of the foregoing, such Regulations may make provision for—

(*a*) the forms of the registers required to be maintained by the Board under this Act;

(*b*) the forms of application, notices, licences, certificates and other documents required for the purposes of this Act;

(*c*) the forms of books and records to be kept for the purposes of this Act;

(*d*) the allowances to be paid to members of the Board and to members of committees of the Board in respect of honorarium or travelling expenses and subsistence;

(*e*) the fees to be paid to the Board on any application for registration as an Architect, Graduate Architect, Architectural Technician, Quantity Surveyor, Graduate Quantity Surveyor and Quantity Surveying Technician;

(*f*) the fees to be paid upon the issue of any certificate of registration, or of any certified copy thereof or any entry in any Register maintained pursuant to this Act; and

(*g*) annual fees payable to the Board by Architects, Graduate Architects, Architectural Technicians, Quantity Surveyors, Graduate Quantity Surveyors and Quantity Surveying Technicians.

Appeals

42. Any person aggrieved by any decision of the Board may appeal to the Minister, whose decision in the matter shall be final and shall not be subject to appeal to, or review or question by any court of law and the Minister shall not be required to assign any reasons therefor.

Repeal of Cap. 53:02 and savings

43.—(1) The Architects and Quantity Surveyors Act is hereby repealed.

(2) Any subsidiary legislation made under the Architects and Quantity Surveyors Act in force immediately before the commencement of this Act—

(*a*) shall remain in force unless in conflict with this Act and be deemed to be subsidiary legislation made under this Act; and

(*b*) may be replaced, amended or repealed by subsidiary legislation made under this Act.

SUBSIDIARY LEGISLATION

ESTABLISHMENT OF BOARD

under s. 3

A Board of Registration of Architects and Quantity Surveyors has been established for the purposes of this Act.

ARCHITECTS AND QUANTITY SURVEYORS RULES

G.N. 105/1995

under s. 15

PART I

General

1. These Rules may be cited as the Architects and Quantity Surveyors Rules. Citation

2. In these Rules, unless the context otherwise requires— Interpretation

"Registrar" has the meaning assigned thereto in section 2 of the Act.

"member" means an Architect, Quantity Surveyor, Graduate Architect, Graduate Quantity Surveyor, Architectural Technician or Quantity Surveying Technician registered under the Act.

3. All communications to the Board shall be addressed to the Registrar at the postal address of the Board. Communications

4.—(1) All applications for registration as an Architect or Quantity Surveyor shall be made on Form 1 in the Second Schedule. Applications for registration

(2) All applications for registration as a Graduate Architect or Graduate Quantity Surveyor shall be made on Form 2 in the Second Schedule.

(3) All applications for registration as an Architectural Technician or a Quantity Surveying Technician shall be made on Form 3 in the Second Schedule.

5.—(1) The Board shall provide a certificate of registration to every member. Certificate of registration and form of registers

(2) The certificate of registration shall be in Form 4 set out in the Second Schedule.

(3) The Registrar shall keep and maintain each of the registers required under Part IV of the Act.

Certificate of registration in event of resignation, expulsion or suspension to be delivered to Board

6.—(1) In the event of the resignation, expulsion or suspension of a member, his certificate of registration shall be delivered up by him to the Board.

(2) In the event of suspension, such certificate of registration shall be held by the Board during the period of suspension, and in the case of resignation or expulsion, such certificate shall be cancelled by the Board.

Change of address

7. It shall be the duty of every member to notify the Registrar of any change of address.

Professional remuneration

8. Every member shall be entitled to remuneration for his services.

Scale of fees to be furnished to client

9.—(1) The scale of fees set out in the First Schedule is a minimum scale and shall be charged by Architects and Quantity Surveyors and the provisions set out in such Schedule shall apply to such charges.

(2) Architects and Quantity Surveyors shall forward to clients, at the outset of an engagement, a copy of such scale of fees.

PART II

Disciplinary Proceedings

The Board may institute inquiry

10. The conduct of any member may be considered by the Board in its own right or on the recommendation of the Malaŵi Institute of Architects or the Surveyors Institute of Malaŵi on behalf of any person feeling aggrieved by reason of alleged unprofessional conduct or misconduct on the part of any member.

Complaints

11. The Board may require the complainant to file further particulars of any of the matters complained of and may require the complaint or any part thereof to be verified by affidavit.

Explanation in answer to complaint

12. The Board may call upon the member whose conduct is complained of or is under investigation, to file within ten days thereafter explanation in answer to the complaint and may require such explanation to be verified by affidavit.

Power to subpeona member

13. The Board may summon before it any member against whom any complaint has been lodged or whose conduct may appear to the Board to require investigation and may call upon him to produce any document, contract, contract book, paper, drawing, specification, quantities or other writing in his possession or under his control in any way relating to or concerning the complaint or matter under investigation and shall hear any relevant evidence and inspect any relevant documents which the complainant or the party complained against may desire to adduce.

Appearance of accused member

14. The member against whom the complaint is made shall have the right to appear before the Board and to be heard either personally or through his legal practitioner and may call such evidence and produce such documents as may be relevant.

Non-appearance

15. Should such member not appear within a reasonable period as the Board may determine and not file an explanation the inquiry may be proceeded with forthwith.

Evidence on oath

16. At any inquiry held under these Rules, all verbal evidence shall be taken on oath.

Penal provision

17.—(1) The Board, after having enquired into the alleged misconduct of any member, may—

(*a*) take no further action; or

(*b*) caution the member; or

(*c*) suspend the member; or

(*d*) strike out the name of the member from the register; or

(*e*) impose such a fine as the Board may determine.

(2) The Board shall publish in the *Gazette* the name of a member who has been suspended or striken out of the register.

FIRST SCHEDULE r. 9

Scale of Professional Charges

A. ARCHITECTS

Application of this part

1. This part provides for scales of fees including other provisions related thereto which shall apply to any work done and services rendered by architects.

Appointment of Architects

2. The client and the architect shall discuss the appointment of the architect and conclude a Standard Form of Agreement for the appointment of an architect. Such Agreement shall specify in Schedules thereto the information to be supplied by the client, services to be provided by the architect fees and expenses and appointment of consultants specialists and site staff.

Standard Form of Agreement for the Appointment of an Architect

Notes on Use and Completion

The Standard Form of Agreement consists of a set of documents which, taken together, should enable Architect and Client to express formally and unequivocally the agreement reached between them; the completed memorandum will signify common understanding and acceptance. It is in the interests of both parties that the Agreement fully reflects their intentions and requirements.

These notes briefly describe the function and format of the documents and indicate the way they are best completed. In all cases

the Schedules will be used as a basis for discussion, and in most instances the Architect will complete the documents to record the agreements reached with the Client. Wherever possible, the details of appointment should be agreed in sufficient detail for the Memorandum of Agreement to be signed at the outset by both parties.

If the agreed professional services need to be revised subsequently, the best way to do this is to record the variation in a formal amending letter which will then become part of the Agreement. Attempts by the parties to amend the Agreement itself could lead to confusion and misunderstanding.

The Memorandum of Agreement

Use

The Memorandum identifies the parties, states their intentions, and defines the nature, scope and cost of the professional services to be provided.

The Memorandum is signed by both parties.

The Conditions

Completion

The conditions are plainly worded, and should be regarded as standard. They begin with definitions, and are in four parts.

Part One: is common to all commissions, and relates to the law of the contract; the obligations of the parties; assignments and sub-contracting; payment; suspension, resumption and termination; copy-right; and dispute resolution.

Part Two: relates specifically to matters concerning the design of building projects during work stages A–H.

Part Three: relates specifically to matters concerning the administration of the building contract and inspection of the works during work stages J–L.

Part Four: relates specifically to the appointment of consultants and specialists where the Architect is lead consultant.

Amendments

Amendments to the conditions are undesirable; if it is absolutely necessary to alter or delete anything, each agreed amendment should be initialled and dated by both parties. Proposed amendments may need to be referred to legal and insurance advisers.

The Schedules

Use

There are four schedules—

Schedule One: identifies the information to be supplied by the Client;

Schedule Two: identifies the services to be provided by the Architect;

Schedule Three: sets out the way payment for the services is calculated, charged and paid;

Schedule Four: is used where the Client accepts a recommendation to appoint consultants, specialists and site staff.

Completion

The Schedules are used to help identify the client's requirements and match these with the professional services to be provided by the Architect. They will form the basis for discussion and will be completed by the Architect to record agreement on the information to be supplied by the Client (Schedule One), the complement of professional services to be provided by the Architect (Schedule Two), and the anticipated fees and charges arising and their method of payment (Schedule Three). Where consultants, specialists and site staff are to be appointed, Schedule Four will also be used.

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MEMORANDUM OF AGREEMENT

Parties

Between

(1) .....
of .....(the Client)

(2) .....
of .....(the Architect)

Recitals

A. The Client intends to proceed with:

.....
.....(the Project)

The Project relates to the land and/or buildings at:

.....
.....(the Site)

B. The Client wishes to appoint the Architect for the Project and the Architect has agreed to accept such appointment upon and subject to the terms set out in this Agreement.

It is agreed that:

1. The Client hereby appoints the Architect and the Architect hereby accepts appointment for the Project.
2. This Appointment is made and accepted on the Conditions of Appointment and Schedules attached hereto.
3. The Architect shall provide the services specified in Schedule Two.
4. The Client shall pay the Architect the fees and expenses and disbursements specified in Schedule Three.

5. No action or proceedings for any breach of Agreement shall be commenced against the Architect after the expiry of ..... years from completion of the Architect's services, or, where the services specific to building projects Stages K-L are provided by the Architect, from the date of practical completion of the Project.

6.1 The Architect's liability for loss or damage shall be limited to such sum as the Architect ought reasonably to pay having regard to his responsibility for the same on the basis that all other consultants, specialists, and the contractor shall, where appointed, be deemed to have provided to the Client contractual undertakings in respect of their services and shall be deemed to have paid to the Client such contribution as may be appropriate having regard to the extent of their responsibility for such loss or damage.

6.2 The liability of the Architect for any loss or damage arising out of any action or proceedings referred to in clause 5 shall, notwithstanding the provisions of clause 6.1, in any event be limited to a sum not exceeding K.....

6.3 For the avoidance of doubt the Architect's liability shall never exceed the lower of the sum calculated in accordance with clause 6.1 above and the sum provided for in clause 6.2.

Dated ....., 20.....

As Witness the hands of the parties the day and year first before written.

....

(*the Architect*) (*the Client*)

MEMORANDUM OF AGREEMENT

(*Alternative version for execution as a deed under the Laws of Malaŵi*)

Between

Parties (1) .....

of .....(the Client)

(2) .....

of .....(the Architect)

Recitals A. The Client intends to proceed with:

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.....(the Project)

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6.3 For the avoidance of doubt the Architect's liability shall never exceed the lower of the sum calculated in accordance with clause 6.1 above and the sum provided for in clause 6.2.

Dated ..... 20.....

As Witness the hands of the parties the day and year first before written.

....

(*the Architect*) (*the Client*)

DEFINITIONS

Appointment — The agreement between the Client and the Architect for the Project as set out in the Standard Form of Agreement documents.

Architect — The Party specified as Architect in the Memorandum of Agreement.

Budget — The sum the Client proposes to spend on the Project inclusive of—

(*a*) professional fees;
(*b*) disbursements;
(*c*) statutory charges;
(*c*) the Construction Budget;

but excluding—

(*a*) site acquisition costs;
(*b*) client's legal and in-house expenses; and
(*c*) any surtax thereon.

Client — The party specified as Client in the Memorandum of Agreement.

Client's requirement — The objectives which the Client wishes to achieve in the Project including functional requirements, environmental standards, life span, and levels of quality.

Collateral agreement — An agreement between the Architect and a third party existing in parallel with the agreement between the Architect and the Client. Sometimes known as a collateral warranty or a duty of care agreement.

Construction budget — The sum the Client proposes to spend on the construction of the Project.

Contract documents — The documents forming the building contract between the Client and a contractor, usually comprising of contract, drawings, specifications and bills of quantities or schedules of rates.

Lead consultant — The consultant given the authority and responsibility by the Client to coordinate and integrate the services of the other consultants.

Procurement method — The method by which the building project is to be achieved, determining—

(*a*) the relations between the Client, the design team and the construction team;

(*b*) the methods of financing and management; and

(*c*) the form of construction contract.

Project — As specified in the Memorandum of Agreement.

Services — The services to be provided by the Architect as specified in Schedule Two.

Site — As specified in the Memorandum of Agreement.

Site staff — Staff appointed by either Architect or Client to provide inspection of the works on behalf of the Client.

Specialist — A person or firm, other than the consultants, appointed to provide expertise, skill and care, involving design, in the supply or manufacture of goods, materials or components or in the construction of parts of the Project.

Timetable — The timetable for the completion of the services showing *inter alia* and points and/or dates during the course of the carrying out of the services at which the Architect shall seek the authority of the Client before proceeding further with the services.

Total construction cost — The cost as certified by the Architect of all works including site works executed under the Architect's direction and control.

It shall include—

(*a*) the cost of all works designed by consultants and coordinated by the Architect irrespective of whether such work is carried out under separate building contracts for which the Architect may not be responsible. The Architect shall be informed of the cost of any such contract;

(*b*) the actual or estimated cost of any work executed which is excluded from the contract and which is otherwise designed by the Architect;

(*c*) the cost of built-in furniture and equipment. Where the cost of any special equipment is excluded from the total construction cost the Architect may charge additionally for work in connexion with such items; and

(*d*) the cost estimated by the Architect of any material, labour or carriage supplied by a Client who is not the contractor.

It shall exclude—

(*a*) the design fees of any Specialists for work on which otherwise consultants would have been employed. Where such fees are not known the Architect will estimate a reduction from the total construction cost.

Where the Client is the contractor, a statement of the ascertained gross cost of the works may be used in calculating the total construction cost of the works. In the absence of such a statement the Architect's own estimate shall be used. In both the statement of the ascertained gross cost and an Architect's estimate there shall be included an allowance for the contractor's profit and overheads.

Work stages

Stages into which the process of designing projects and administering building contracts may be divided in accordance with the RIBA's model *Plan of Work* for design team operation.

Works

The works to be carried out by the construction contractor as described in the contract documents; the place where those works are carried out.

SCHEDULE ONE

Information to be Supplied by the Client

PART I

All Commissions

The information to be supplied by the Client under conditions 1.3.2 and 1.3.3 shall specifically include—

Client's requirements

Budget

Timetable

Other matters:

PART II

Commissions Where Services as Specified to the Design of Building Projects, Works Stages A-H

Where this part applies, the further information to be supplied by the Client shall specifically include:

Matters relating to the site and any buildings thereon including—

(*a*) ownership and interests;

(*b*) boundaries;

(*c*) easements and restrictive and other covenants;

(*d*) other legal constraints;

(*e*) planning consents obtained and applied for;

(*f*) measured surveys;

(*g*) explorations; and

(*h*) any requirements to conform to client systems/working methods.

Further matters relating to Clients' requirements including—

(*a*) schedule of accommodation; and

(*b*) general level of quality of specification.

Other matters:

PART III

Commissions Where Services to Contract Administration and Inspection of the Works, Work Stages J–L

Where this part applies, information to be supplied by the Client shall specifically include:

As referred to in the Memorandum of Agreement dated between and (*parties to initial*)

CONDITIONS OF APPOINTMENT

PART I

Conditions Common to All

1.1 *Governing law/interpretation*

1.1.1 The applicant of the appointment shall be governed by the laws of Malaŵi.

1.1.2 The conditions headings and side notes are for the convenience of the parties to this Agreement only and do not affect its interpretation.

1.2 *Architect's obligations*

Duty of care

1.2.1 The Architect shall in providing the services exercise reasonable skill and care in conformity with the normal standards of the Architect's profession.

Architect's authority

1.2.2 The Architect shall act on behalf of the Client in the matters set out or necessarily implied in the appointment.

1.2.3 The Architect shall at those points and/or dates referred to in the timetable obtain the authority of the Client before proceeding with the services.

No alteration to services

1.2.4 The Architect shall make no material alteration to or addition to or omission from the services without the knowledge and consent of the Client except in case of emergency when the Architect shall inform the Client without delay.

Variations

1.2.5 The Architect shall inform the Client upon its becoming apparent that there is any incompatibility between any of the

Client's requirements; or between the Client's requirements, the budget and timetable; or any need to vary any part of them.

1.2.6 The Architect shall inform the Client upon its becoming apparent that the Services and/or the fees and/or any other part of the Appointment and/or any information or approvals need to be varied. The Architect shall confirm in writing any agreement reached.

1.3 *Client's obligations*

1.3.1 The Client shall name the person who shall exercise the powers of the Client under the appointment and through whom all instructions to the Architect shall be given. Client's representatives

1.3.2 The Client shall provide to the Architect the information specified in Schedule One. Information

1.3.3 The Client shall provide to the Architect such further information as the Architect shall reasonably and necessarily request for the performance of the services: all such information to be provided free of charge and at such times as shall permit the Architect to comply with the timetable.

1.3.4 The Client accepts that the Architect will rely on the accuracy, sufficiency and consistency of the information supplied by the Client.

1.3.5 The Client shall advise the Architect of the relative priorities of the Client's requirements, the budget and the timetable and shall inform the Architect of any variations to any of them.

1.3.6 The Client shall give such decisions and approvals as are necessary for the performance of the services and at such times as to enable the Architect to comply with the timetable. Decisions and approvals

1.3.7 The Client acknowledges that the Architect does not warrant the work or products of others nor warrants that the services will or can be completed in accordance with the timetable. Architect does not warrant

1.4 *Assignment and sub-contracting*

1.4.1 Neither the Architect nor the Client shall assign the whole or any part of the benefit or in any way transfer the obligation of the appointment without the consent in writing of the other. Assignment

1.4.2 The Architect shall not sub-contract any of the services without the consent of the Client, which consent shall not be unreasonably withheld. Sub-contracting

1.5 *Payment*

1.5.1 Payment for the services shall be calculated, charged and paid as set out in Schedule Three. Payment

1.5.2 Where payment is stated in Schedule Three that fees and/or expenses are payable on a percentage basis, then, unless any other basis has been agreed between the Architect and the Client and confirmed by the Architect to the Client in writing, the fees and/or expenses shall be based on the total construction cost of the works. On the issue of the final certificate under the building contract the fees and/or expenses shall be calculated on the actual total construction cost. Percentage fees

1.5.3 The following bases shall be used for the calculation of percentage fees based on the total construction cost until that cost has been ascetained—

(*a*) until tenders are obtained—the cost estimate;

(*b*) after tenders have been obtained—the lowest acceptable tender; and

(*c*) after the contract is let—the contract sum.

Revised rates

1.5.4 Unless otherwise stated in Schedule Three, time rates and mileage rates for vehicles shall be revised every twelve months from the date of the appointment.

Fee variation

1.5.5 Where any change is made to the architect's services, the procurement method, the Client's requirements, the budget, or the timetable, or where the Architect consents to enter into any Collateral Agreement the form or beneficiary of which had not been agreed by the Architect the date of the appointment, the fees specified in Schedule Three shall be varied.

Very lump sum

1.5.6 Where fees and/or expenses are specified in Schedule Three to be a lump sum, that lump sum shall also be varied in accordance with the provisions of Schedule Three.

Additional fees

1.5.7 Where the Architect is involved in extra work and/or expenses for which the Architect is not otherwise remunerated caused by—

(*a*) the Clients variations to complete work or services;

(*b*) the examination and/or negotiation of notices, applications or claims under a building contract; and

(*c*) delay or for any other reason beyond the Architect's control; the Architect shall be entitled to additional fees calculated on a time basis.

1.5.8 Where fees and/or expenses are varied under conditions 1.2.6, 1.5.4, 1.5.5 and/or 1.5.6 where additional fees are payable under conditions 1.5.7, the additional or varied fees and/or expenses shall be stated by the Architect in writing.

Incomplete services

1.5.9 Where the Architect carries out only part of services specified in Schedule Two, fees shall be calculated as described in Schedule Three for—

(*a*) completed work stage (Schedule Two);

(*b*) completed service (Schedule Two);

(*c*) completed part (Timetable, Schedule One),

and for the balance of any of the above the fees shall be on the basis of the Architect's estimate of the percentage of completion.

Expenses and disbursement

1.5.10 The client shall pay the expenses specified in Schedule Three. Expenses other than those specified shall be charged with the prior authorization of the Client.

1.5.11 The client shall reimburse the Architect as specified in Schedule Three for any disbursements made on the Client's behalf.

Records Maintenance

1.5.12 The Architect shall maintain records of expenses and of disbursments and shall make these available to the Client on reasonable request.

Instalments

1.5.13 All payments due under the appointment shall be made in Schedule Three. Where no such basis is specified, payments

shall be made monthly on the basis of the Architect's estimate of percentage of completion of the services.

1.5.14 Payment shall become due to the Architect on submission of the Architect's account. Payment

1.5.15 The Client may not withhold or reduce any sum payable to the Architect under the appointment by reason of claims or alleged claims against the Architect. All rights of set-off which the client may otherwise exercise in common law are hereby expressly excluded. No set-off

1.5.16 If any item or part of an item of any account is disputed or subject to question by the Client, the payment by the Client of the remainder of that account shall not be withheld on those grounds. Disputed accounts

1.5.17 Any sums remaining unpaid at the expiry of twenty-eight days, from the date of submission of an account shall bear interest thereafter, such as to accrue from day to day at the rate specified in Schedule Three. Interest on outstanding accounts

1.5.18 On suspension or termination of the appointment the Architect shall be paid, fees for all services provided to that time calculated as incomplete services, and to expenses and disbursements reasonably incurred to that time. Payment on suspension or termination

1.5.19 During any period of suspension the Architect shall be reimbursed by the client for the expenses, disbursements and other costs reasonably incurred as a result of the suspension.

1.5.20 On the resumption of the suspended service within six months, fees paid prior to resumption shall be regarded solely as payments on account of the total fee.

1.5.21 Where the appointment is suspended or terminated by the Client or suspended or terminated by the Architect on account of a breach of the appointment by the Client, the Architect shall be paid by the Client for all expenses and other costs necessarily incurred as a result of any suspension and any resumption or termination.

1.5.22 All fees, expenses and disbursements under the appointment are exclusive of surtax. Any surtax on the Architect's services shall be paid by the client. Surtax

1.6 *Suspension, resumption and termination*

1.6.1 The Architect shall give reasonable notice in writing to the Client of any circumstances which make it impracticable for the Architect to carry out any of the services in accordance with the timetable. Services impracticable

1.6.2 The client may suspend the performance of any or all of the services by giving reasonable notice in writing to the Architect. Suspension

1.6.3 In the event of the Client's being in default of payments of any fees, expenses and/or disbursements, the Architect may suspend the performance of any or all of the services on giving of notice in writing to the Client. Resumption

1.6.4 If the Architect has not been given instructions to resume any suspended services within six months from the date of suspension, the Architect shall request in writing such Termination

instructions. If written instruction have not been received within twenty-eight days of the date of such request the Architect shall have the right to treat the appointment as terminated.

1.6.5 The appointment may be terminated by either party on the expiry of reasonable notice in writing.

Architect's death or incapacity

1.6.6 Should the Architect through death or incapacity be unable to provide the services, the appointment shall thereby be terminated.

Accrued rights

1.6.7 Termination of the appointment shall be without prejudice to the accrued rights and remedies of either party.

1.7 *Copyright*

Copyright

1.7.1 Copyright in all documents and drawings prepared by the Architect and in any work executed from those documents and drawings shall remain the property of the Architect.

1.8 *Dispute resolution*

Arbitration

1.8.1 Any difference or dispute arising out of the appointment shall be referred by either of the parties to arbitration by a person to be agreed between the parties or, failing agreement within fourteen days after either party has given the other a written request to concur in the appointment of an arbitrator, a person to be nominated at the request of either party by the Malaŵi Institute of Architects provided that in a difference or dispute arising out of the conditions relating to copyright the arbitrator shall, unless otherwise agreed, be an Architect.

Opinion

1.8.2 Any difference or dispute arising from the appointment may be referred to the Malaŵi Institute of Architects for an opinion provided that—

(*a*) the opinion is sought on a joint statement of undisputed facts; and

(*b*) the parties agree to be bound by the opinion.

Negotiation

1.8.3 The parties shall attempt to settle any dispute by negotiation and no procedure shall be commenced under condition 1.8.1 until the expiry of twenty-eight days after notification has been given in writing by one to the other of a difference or dispute.

1.8.4 Nothing herein shall prevent the parties agreeing to settle any difference or dispute arising out of the appointment without recourse to arbitration.

PART II

Conditions Specific to Design of Building Projects Stages a-h

2.1 *Architect's obligations*

Architect's authority

2.1.1 The Architect shall, where specified in the timetable, obtain the authority of the Client before initiating any work stage and shall confirm that authority in writing.

Procurement method

2.1.2 The Architect shall advise on the options for the Procurement Method for the Project.

No alteration to design

2.1.3 The Architect shall make no material alteration, addition to or omission from the approved design without the knowledge and consent of the client and shall confirm such consent in writing.

2.2 *Client's obligations*

2.2.1 The Client shall instruct the making of applications for planning permission and approval and other statutory requirements and application for consents by freeholders and all others having an interest in the project and shall pay any statutory charges and any fees, expenses and disbursements in respect of such applications. Statutory requirements

2.2.2 The Client shall have informed the Architect prior to the date of the appointment whether any third party will acquire or is likely to acquire an interest in the whole on any part of the project.

2.2.3 The Client shall not require the Architect to enter into any Collateral Agreement with a third party which imposes greater obligations or liabilities on the Architect than does the appointment. Collateral agreements

2.2.4 The Client shall confirm the Procurement Method for the project. Procurement method

2.3 *Copyright*

2.3.1 Notwithstanding the provisions of condition 1.7.1, the Client shall be entitled to reproduce the Architect's design by proceeding to execute the project provided that—

(*a*) the entitlement applies only to the site or part of the site to which the design relates;

(*b*) the Architect has completed a scheme design or;

(*c*) has provided detail design and production information; and

(*d*) any fees, expenses and disbursements due to the Architect have been paid.

This entitlement shall also apply to the maintenance repair and/ or renewal of the works.

2.3.2 Where the Architect has not completed a scheme design, the Client shall not reproduce the design by proceeding to execute the project without consent of the Architect.

2.3.3 Where the services are limited to making and negotiating planning applications, the Client may not reproduce the Architect's design without the Architect's consent, which consent shall not be unreasonably withheld, and payment of any additional fees.

2.3.4 The Architect shall not be liable for the consequences of any use of any information or designs prepared by the Architect except for the purposes for which they were provided.

PART III

Conditions Specific to Contract Administration and Inspection of the Works Stages J-L

3.1 *Architect's obligation*

3.1.1 The Architect shall in providing the services specified in Stages K and L of Schedule Two make such visits to the works as the Architect at the date of the appointment reasonably expected to be necessary. The Architect shall confirm such expectation in writing. Visits to works

Variations to visits to works

3.1.2 The Architect shall on its becoming apparent that the expectation of the visits to the works needs to be varied, inform the Client in writing of his recommendations and any consequential variation in fees.

More frequent visits to works

3.1.3 The Architect shall whether the Client requires more frequent visits to the works than that specified by the Architect in condition 3.1 inform the Client of any consequential variation in fees. The Architect shall confirm in writing any agreement reached.

Alteration to design only in emergency

3.1.4 The Architect may in an emergency make an alteration, addition or omission without the Client's knowledge and consent but shall inform the Client without delay and shall confirm that in writing. Otherwise, the Architect shall make no material alteration or addition to or omission from the approved design during construction without the knowledge and consent of the Client, and the Architect shall confirm such consent in writing.

3.2 *Client's obligations*

Contractor

3.2.1 The Client shall employ a Contractor under a separate agreement to undertake construction or other works relating to the project.

Responsibilities of contractor

3.2.2 The Client shall hold the Contractor and not the Architect responsible for the contractor's management and operational methods and for the proper carrying out and completion of the works and for health and safety provisions on the site.

Products and materials

3.2.3 The Client shall hold the Contractor and not the Architect responsible for the proper installation and incorporation of all products and materials into the works.

Collateral Agreement

3.2.4 The Client shall, where the Architect consents to, enter into a Collateral Agreement with a third party in respect of the project, procure that the Contractor is equally bound.

Instructions

3.2.5 The Client shall only issue instructions to the Contractor through the Architect, and the Client shall not hold the Architect responsible for any instructions issued other than through the Architect.

3.3 *Site Staff*

3.3.1 The Architect shall recommend the appointment of such staff to the Client if in his opinion such appointments are necessary to provide the services specified in K-L 04–08 of Schedule Two.

3.3.2 The Architect shall confirm in writing to the Client the site staff to be appointed, their disciplines, the expected duration of their employment, the party to appoint them and the party to pay, and the method of recovery of payment to them.

3.3.3 All site staff shall be under the direction and control of the Architect.

PART IV

Conditions Specific to Appointment of Consultants and Specialists Where Architect is Lead Consultant

4.1 *Consultants*

Nominations

4.1.1 The Architects shall identify professional services which require appointment of consultants. Such consultants may be

nominated at any time by either the Client or the Architect subject to acceptance by each party.

4.1.2 The Client shall appoint and pay the nominated consultants. Appointment

4.1.3 The consultants to be appointed at the date of the appointment and the services to be provided by them shall be confirmed in writing by the Architect to the Client.

4.1.4 The Client shall, where the Architect consents to, enter into a Collateral Agreement with a third party in respect of the project, procure that all consultants are equally bound. Collateral Agreement

4.1.5 The Client shall appoint and give authority to the Architect as Lead Consultant in relation to all consultants however employed. The Architect shall be the medium of all communication and instruction between the Client and the consultants however employed. The Architect shall co-ordinate and integrate into the overall design the services of the consultants, require reports from the consultants. Lead consultant

4.1.6 The Client shall procure that the provisions of condition 4.1.5 above are incorporated into the conditions of appointment of all consultants however employed and shall provide a copy of such conditions of appointment to the Architect.

4.1.7 The Client shall hold each consultant however appointed and not the Architect responsible for the competence and performance of the services to be performed by the consultant and for the general inspection of the execution of the work designed by the consultant. Responsibilities of consultants

4.1.8 Nothing in this part shall affect any responsibility of the Architect for issuing instructions under the building contract in relation to work designed by a consultant. Responsibilities of Architects

4.2 *Specialists*

4.2.1 A specialist who is to be employed directly by the Client or indirectly through a contractor to design any part of the works may be nominated by either the Architect or the Client subject to acceptance by each party. Nominations

4.2.2 The specialists to be appointed at the date of the appointment and the services to be provided by them shall be those confirmed in writing by the Architect to the Client. Appointment

4.2.3 The Client shall, where the Architect consents to, enter into a Collateral Agreement with a third party in respect of the project, procure that all specialists are equally bound. Collateral Agreement

4.2.4 The Client shall give the authority to the Architect to co-ordinate and integrate the services of all specialists into the overall design and the Architect shall be responsible for such coordination and integration. Co-ordination and Integration

4.2.5 The Client shall hold any specialist and not the Architect responsible for the products and material supplied by the specialist and for the competence, proper execution and performance of the work with which such specialists are entrusted. Responsibility of specialists

SCHEDULE TWO

Services to be Provided by Architect

1. *Design Skills*

1.01 Provide interior design services.
1.02 Advise on the selection of furniture and fittings.
1.03 Design furniture and fittings.
1.04 Inspect the making-up of furnishings.
1.05 Advise on works of special quality, e.g. shop fittings.
1.06 Prepare information for installation of works of special quality.
1.07 Inspect installation of works of special quality.
1.08 Advise on commissioning or selection.
1.09 Prepare information for installation of works of art.
1.10 Inspect installation of works of art.
1.11 Provide industrial design services.
1.12 Develop a building system or components for mass production.
1.13 Examine and advise on existing building systems.
1.14 Monitor testing of prototypes, mock-ups or models of building systems.
1.15 Provide town planning and urban design services.
1.16 Provide landscape design services.
1.17 Provide graphic design services.
1.18 Provide exhibition design.
1.19 Provide presentation material design services.
1.20 Provide perspective and other illustrations.
1.21 Provide photographic record services.
1.22 .....

2. *Consultancy Services*

2.01 Provide services as a consultant Architect on a regular or intermittent basis.
2.02 Consult statutory authorities.
2.03 Provide information in connexion with local authority, government and other grants.
2.04 Make applications for local authority, government and other grants.
2.05 Conduct negotiations for local authority, government and other grants.
2.06 Make submission to non-statutory bodies.
2.07 Provide information to advisory bodies.
2.08 Negotiate with advisory bodies.
2.09 Advise on rights including easements and responsibilities on owners and lessees.
2.10 Provide information on rights including easements and responsibilities of owners and lessees.
2.11 Negotiate rights including easements.
2.12 Provide services in connexion with party wall negotiations.

2.13 Provide services in connexion with planning appeals and/or enquiries.
2.14 Advise on the use of energy in new or existing buildings.
2.15 Carry out life cycle analysis of proposed or existing buildings to determine their likely cost in use.
2.16 Provide services in connexion with environmental studies.
2.17 Act as coordinator in health and safety matters.
2.18 Prepare, settle proofs, attend conferences and give evidence.
2.19 Acts as witness as to fact.
2.20 Acts as expert witness.
2.21 Act as arbitrator.
2.22 Provide project management services.
2.23 .....
3. *Building/Services*
3.01 Advise on suitability and selection of sites.
3.02 Make measured surveys, take levels and prepare plans of sites.
3.03 Arrange for investigations on soil condition of sites.
3.04 Advise on suitability and selection of buildings.
3.05 Make measured surveys and prepare drawings of existing buildings.
3.06 Inspect and prepare report and schedule of condition of existing buildings.
3.07 Inspect and prepare report and schedule of delapidations.
3.08 Prepare estimates for the replacements and reinstatement of buildings and plant.
3.09 Prepare, submit, negotiate claims following damage by fire and other causes.
3.10 Investigate and advise on means of escape in existing buildings.
3.11 Investigate and advise on change of use in existing buildings.
3.12 Investigate and report on building failures.
3.13 Arrange for and inspect exploratory work by contractors and specialists in connexion with building failures.
3.14 Prepare a layout for the development of the site.
3.15 Prepare a layout for a greater area than that which is to be developed immediately.
3.16 Prepare development plans for a site or a large building or complex buildings.
3.17 Prepare drawings and specification of materials for the construction of estate roads and sewers.
3.18 Make structural surveys and report on the structural elements of buildings.
3.19 Investigate and advise on floor loadings in existing buildings.
3.20 Investigate and advise on Sound Insulation in existing buildings.
3.21 Investigate and advise on fire protection and alarms in existing buildings.
3.22 Investigate and advise on security systems in existing buildings.

3.23 Inspect and prepare a valuation report for mortgage or other purpose.
3.24 .....
4. *All Commissions*
4.01 Obtain the Client's Requirements, Budget and Timetable.
4.02 Advise on the need for and the scope for consultant's services and the conditions of their appointment.
4.03 Arrange for and assist in the selection of other consultants.

As referred to in the Memorandum of Agreement dated between and (*parties to initial*)

SCHEDULE TWO

Services Specific to Building Projects

Stages

A–B *Inception and Feasibility*
01 Obtain information about the site from the Client.
02 Visit the site and carry out an initial appraisal.
03 Assist the Client in preparation of Client's requirements.
04 Advise the Client on methods of procuring construction.
05 Advise on the need for specialist contractors, sub-contractors and suppliers to design and execute parts of the works.
06 Prepare proposals and make application for outline planning permission.
07 Carry out such studies as may be necessary to determine the feasibility of the Client's requirements.
08 Review with the Client alternative design and construction approaches and cost implications.
09 Advise on the need to obtain planning permission, approvals under Building Acts and/or Regulations and other statutory requirements.
10 Develop the Client's requirements.
11 Advise on environmental impact and prepare report.
12 .....

Work Stages are specified by circling the stage letters.

Basic Services indicated by boxed areas are specified unless struck out.

Additional Services are specified by circling the relevant numbered items.

C. *Outline Proposals*
01 Analyse the Client's requirements; prepare outline proposals.
02 Provide information to discuss proposals with and incorporate output of other consultants.
03 Provide information to other consultants for the preparation of an approximation of construction cost.

03A Prepare an approximation of construction cost.

04 Submit outline proposals and approximation of construction cost for the Client's preliminary approval.

05 Propose procedure for cost planning and control.

06 Provide information to others for cost planning and control throughout the project.

06A Operate the procedure for cost planning and control throughout the project.

07 Prepare and keep updated a client's running expenditure plan for the project.

08 Prepare special presentation drawings, brochures, models or technical information for use by the Client or others.

09 Carry out negotiations with tenants or others identified by the client.

10 .....

D. *Scheme Design*

01 Develop scheme design from approved outline proposals.

02 Provide information to, discuss proposals with and incorporate input of other consultants in scheme design.

03 Provide information to other consultants for their preparation of cost estimate.

03A Prepare cost estimate.

04 Prepare preliminary timetable for construction.

05 Consult with planning authorities.

06 Consult with building control authorities.

07 Consult with fire authorities.

08 Consult with environmental authorities.

09 Consult with licensing authorities.

10 Consult with statutory undertakers.

11 Prepare an application for full planning permission.

12 Submit scheme design showing spatial arrangements, materials and appearance, together with cost estimate, for the Client's approval.

13 Consult with tenants or others identified by the Client.

14 Conduct exceptional negotiations with planning authorities.

15 Submit an application for full planning permission.

16 Prepare multiple applications for full planning permission.

17 Submit multiple applications for full planning permission.

18 Make revisions to scheme design to deal with requirements of planning authorities.

19 Revise planning application.

20 Resubmit planning application.

21 Carry out special constructional research for the project including design of prototypes, mock-ups or models.

22 Monitor testing of prototypes, mock-ups or models, etc.

23 .....

E. *Detail Design*

01 Develop detail design from approved scheme design.

02 Provide information to, discuss proposals with and incorporate input of other consultants into detail design.

03 Provide information to other consultants for their preparation of cost estimate.

03A Revise cost estimate.

04 Prepare applications for approvals under Building Acts and/or other statutory requirements.

04A Prepare building notice under Building Acts and/or Regulations.

05 Agree form of building contract and explain the client's obligations thereunder.

06 Obtain the Client's approval of the type of construction, quality of materials and standard of workmanship.

07 Apply for approvals under Building Acts and/or Regulations and other statutory requirements.

07A Give building notice under Building Acts and/or Regulations.

08 Negotiate if necessary over Building Acts and/or Regulations and other statutory requirements and revise production information.

09 Conduct exceptional negotiations for approvals by statutory authorities.

10 Negotiate waivers or relaxations under Building Acts and/or Regulations and other statutory requirements.

11 .....

F-G *Production, Information and Bills of Quantities*

01 Prepare production drawings.

02 Prepare specification.

03 Provide information for the preparation of bills of quantities and/or schedules of works.

03A Prepare schedule of rates and/or quantities and/or schedule of works for tendering purposes.

04 Provide information to, discuss proposals with and incorporate input of other consultants into production information.

05 Coordinate production information.

06 Provide information to other consultants for their revision of cost estimate. 06A Revise cost estimate.

07 Revise timetable for construction.

08 Prepare other production information.

09 Submit plans for proposed building works for approval of landlords, funders, free-holders, tenants or others as requested by the Client.

10 .....

H. *Tender Action*

01 Advise on and obtain the Client's approval to a list of tenderers for the building contract.

02 Invite tenders.

03 Appraise and report on tenders with other consultants.

03A Appraise and report on tenders.

04 Assist other consultants in negotiating with a tenderer.

04A Negotiate with a tenderer.

05 Assist other consultants in negotiating a price with a contractor.

05A Negotiate with tenderer.

06 Select a contractor by other means.

07 Revise production information to adjust tender sum.

08 Arrange for other contracts to be let prior to the main building contract.

09 .....

J. *Project Planning*

01 Advise the Client on the appointment of the contractor and of the responsibilities of the parties and the Architect under the building contract.

02 Prepare the building contract and arrange for it to be signed.

03 Provide production information as required by the building contract.

04 Provide services in connexion with demolitions.

05 Arrange for other contracts to be let subsequent to the commencement of the building contract.

06 .....

K-L *Operation on Site and Completion*

01 Administer the terms of the building contract.

02 Conduct meetings with the contractor to review progress.

03 Provide information to other consultants for the preparation of financial reports to the Client.

03A Prepare financial reports for the Client.

04 Generally inspect materials delivered to the site.

05 As appropriate instruct sample taking and carrying out tests of materials, components, techniques and workmanship and examine the conduct and results of such tests whether on or off site.

06 As appropriate instruct the opening up of completed work to determine that it is generally in accordance with the contract document.

07 As appropriate visit the sites of the extraction and fabrication and assembly of materials and components to inspect such materials and workmanship before delivery to site.

08 At intervals appropriate to the stage of construction visit the works to inspect the progress and quality of the works and to determine that they are being executed generally in accordance with the contractor document.

09 Direct and control the activities of site staff.

10 Provide drawings showing the building and the main lines of drainage.

11 Arrange for drawings of building services installations to be provided.

12 Give general advice on maintenance.

13 Administer the terms of other contracts.

14 Monitor the progress of the works against the contractor's programme and report to the Client.

15 Prepare valuations of the work carried out and completed.

16 Provide specially prepared drawings or a building as built.

17 Prepare drawings for conveyancing purposes.

18 Compile maintenance and operational manual.

19 Incorporate information prepared by other maintenance manuals.

20 Prepare a programme for the maintenance of a building.

21 Arrange maintenance contracts.

22 .....

SCHEDULE THREE

Fees and Expenses

(*Surtax, where applicable, is charged on all fees and expenses*)

1. *Fees*

2. *Time Rates:* The rates for the services to be charged on a time basis shall be calculated as follows:

Time rates shall be revised from time to time as shall be advised.

3. *Expenses:* The following expenses shall be charged by the Architect—

(*a*) at cost ..... mileage rates where applicable shall be.

(*b*) cost plus ..... % .....

(*c*) a lump sum of K ..... and shall be revised each year on;

(*d*) additional percentage fee of ..... % .....

4. *Disbursements:* For disbursements made under condition 1.5.11 the Architect shall charge:

at cost plus ..... % other .....

5. *Instalments:* Fees and expenses shall be paid by instalments in accordance with the following programme.

6. *Site Staff:* For site staff (under conditions 3.3.1 and 3.3.2) appointed and paid by the architect, the Architect shall be reimbursed as follows:

(*a*) on a time basis, or .....

(*b*) on annual salary cost plus ..... % (salaries to be stated where appropriate).

7. *Interest on Overdue Accounts:* The interest rate payable under condition 1.5.17 shall be:

other ..... or ..... % over ..... (measure of base rate)

As referred to the memorandum of agreement dated ..... between ..... and ..... (*parties to initial*)

SCHEDULE FOUR

Appointment of Consultants, Specialists and Site Staff

Consultants: (under conditions 4.1.2 and 4.1.3).
Services* Name, address (*where known*)
Specialists: (under conditions 4.2.2)
Services* Name, address (*where known*) To be appointed—
(*a*) directly by Client;
(*b*) indirectly by contractor.

*Extent of services to be defined in appointing letter or other document—to be copied to the Architect.

Site Staff: (under conditions 3.3.2)

Description Duration No. of staff By whom appointed and paid As referred to the Memorandum of Agreement dated .....

between ..... and ..... (*parties to initial*)

TABLE 1—NEW WORKS

Estimated or Actual Construction Cost

Class	Up to K500,000	K500,000 to K1,250,000	K1,250,000 to K3,000,000	K3,000,000 to K5,000,000	K5,000,000 to K8,000,000	K8,000,000 to K12,000,000	over K12,000,000
1	6.5%	6.2%	5.9%	5.6%	5.3%	5.0%	4.7%
2	7.0%	6.7%	6.4%	6.1%	5.8%	5.5%	5.2%
3	7.7%	7.35%	7.0%	6.6%	6.25%	5.9%	5.55%
4	8.4%	8.0%	7.6%	7.2%	6.8%	6.4%	6.0%
5	9.0%	8.55%	8.1%	7.65%	7.2%	6.75%	6.3%

TABLE 2—WORKS TO EXISTING BUILDINGS

Estimated or Actual Construction Cost

Class	Up to K100,000	K100,000 to K350,000	K350,000 to K800,000	K800,000 to K1,500,000	over K 1,500,000
1	11.5%	10.6%	9.7%	8.75%	7.85%
2	12.4%	11.45%	10.45%	9.5%	8.5%
3	13.0%	12.00%	11.00%	10.00%	9.00%
4	13.75%	12.75%	11.75%	10.75%	9.75%
5	14.5%	13.5%	12.5%	11.5%	10.5%

Table 3—Classification of Buildings

Class 1 . . Warehouses and storage sheds
Single storey car parks
Single storey shops

CLASS 2	. .	Factories and workshops (speculative) Transport garages Multi-storey car parks Multi-storey office blocks (speculative) Community Halls Dormitory Hostels
CLASS 3	. .	Purpose built factories and workshops Supermarkets and banks Purposes built offices Branch libraries Ambulance and fire stations, bus station, Post Office Primary Schools Estate housing Sports centres, squash courts and swimming pools Clinics and homes for the elderly Police Stations and Prisons
CLASS 4	. .	Department stores Shopping centres Breweries and food processing units Telecom and computer accommodations Civic centres, concert halls Churches and crematoria Hotels Secondary schools and University buildings Museums and art galleries, libraries General Hospital complexes and surgeries
CLASS 5	. .	Recording studios Theatres High courts University laboratories Teaching hospitals and hospital laboratories Dental surgeries Homes for individual clients Telecommunications buildings

B. QUANTITY SURVEYORS

PART 1—GENERAL CONDITIONS OF ENGAGEMENT

1. The fees are in all cases exclusive of travelling, subsistence and other disbursements, copying of documents and printing, typing, duplicating, postage, telegrams, telephones, facsimiles, telexes, courier services, etc., all of which are chargeable in addition at net cost. The fees and disbursements are also exclusive of surtax.

2. The scale of fees are overall and are based upon the inclusion of all provisional and prime cost items.

3. When work is executed wholly or in part with old materials, or where material, labour or carriage is provided by the client, fees shall be calculated as if the works had been executed throughout by a contractor and with new material.

4. If the works are substantially varied at any stage or are subject to exceptional delays or if the quantity surveyor is involved in an excessive amount of abortive work, then the fees shall be adjusted by agreement between the client and the quantity surveyor.

5. Fees are to be calculated on the total final cost of the works. In the event of no tender being accepted, fees are to be calculated upon the basis of the lowest original *bona fide* tender received. In the event of no tender being received, the fees are to be calculated upon a reasonable valuation of the work based upon the original bills of quantities. A "*bona-fide* tender" shall mean a tender submitted in good faith without major errors or computation and not subsequently withdrawn by the tenderer.

6. Payment shall become due on the completion of the relevant stage or service except that fees for surveying works in progress may become due on a periodical basis to be agreed between the client and the quantity surveyor.

7. Should the fees and disbursements remain unpaid after a period of three months, they shall attract an interest charge compatible with interest charged by the commercial banks on overdraft facilities.

8. In the event of a project being deferred or abandoned or the services of the quantity surveyor be terminated at any stage, the fees chargeable shall be a proportion of the normal scale of fees.

9. Should a commission which has been deferred or abandoned or terminated be resumed without significant change within a period of two years, any fee paid in accordance with the normal scale of fees shall be considered as payment on account towards the total fees calculated on the final value.

10. In the event of the resumption of the project, the quantity surveyor shall be entitled to receive a disruption charge to be agreed with the client but there shall be no claim for loss of profit and/or expenses incurred for services which are no longer required.

11. Should a commission be reinstated after a period of two years but with significant change, the commission shall be deemed to be a new one and fees shall be in accordance with the normal scale of fees.

12. Copyright in bill of quantities and other documents prepared by the quantity surveyor is reserved to the quantity surveyor unless otherwise agreed.

13. The scale of fees set out hereafter shall in all cases be the minimum to be charged by a registered quantity surveyor, unless otherwise agreed by the Board.

Scale 1—Normal Services

1. Preliminary consultations, preparing preliminary estimates, preparing bills of quantities, examining tenders and reporting thereon surveying works in progress and for preparing and issuing valuations for payment certificates, preparing cost reports, preparing and agreeing final accounts—

fee 3%

2. Payment of fees shall be apportioned as follows—

(*a*)	preliminary consultations, preparing preliminary estimates	5%
(*b*)	preparing bills of quantities, examining tenders and reporting thereon	50%
(*c*)	surveying works in progress and preparing cost reports	35%
(*d*)	preparing and agreeing final accounts	10%

SCALE 2—MECHANICAL AND ELECTRICAL WORKS

1. Where bills of quantities are prepared by the quantity surveyor for air conditioning, heating, ventilating, electrical services, lifts or escalators, a fee in addition to Scale 1 shall become due, the fee to be calculated on the contract price of such services, excluding contingencies and builders work in connexion with such services.

2. Preliminary consultations, preparing preliminary estimates, preparing bills of quantities, examining tenders and reporting thereon, surveying works in progress and preparing and issuing valuations for payment certificates, preparing cost reports, preparing and agreeing final accounts—

fee 2.5%

3. Payment of these additional fees shall be apportioned as Scale 1.

SCALE 3—HOUSING SCHEMES

1. Where bills of quantities are prepared for housing schemes consisting of not less than three distinct domestic buildings being a repetition of one type and erected at the same time and locality from the same contract documents and bills of quantities, the scale of fees for each unit shall be as follows—

Preliminary consultations, preparing preliminary estimates, preparing bills of quantities, examining and reporting thereon—

(*a*)	fee for the first three identical houses	1.65%
(*b*)	fee for four to thirteen identical houses	0.50%
(*c*)	for each of the subsequent identical houses	0.25%

2. Payment of these fees shall be apportioned as follows—

(*a*)	preliminary consultations, preparing preliminary estimates	10%
(*b*)	preparing bills of quantities, examining tenders and thereon	90%

3. Surveying works in progress for and preparing and issuing valuations for payment certificates, preparing cost reports, preparing and agreeing final accounts—

fee 10%

4. Payment of these fees shall be apportioned as follows—

(*a*)	surveying works in progress and preparing cost reports	80%
(*b*)	preparing and agreeing final accounts	20%

5. All works or portions of the works measured shall be charged as Scale 1.

Scale 4—Repetitive Work

1. The fee for normal services for each original design (other than housing) on the same contract and on the same site shall be charged as Scale 1.

2. For each repetition of design on the same contract and on the same site the fee shall be 35% of Scale 1.

3. The fee for normal services for each original design (other than housing) on a different contract and/or a different site shall be charged as Scale 1.

4. For each repetition of design on a different contract and/or a different site, the fee shall be 40% of Scale 1.

5. All works or portions of the works measured shall be charged as in Scale 1.

6. Payment of fees shall be apportioned as in Scale 1.

Scale 5—Provisional Bills Of Quantities

1. This scale is for use on wholly provisional bills of quantities, giving a reasonably close forecast of the cost of the works, and will be contingent upon their being replaced by the normal firm bills of quantities, based on remeasurement to be prepared by the same quantity surveyor.

2. Preliminary consultations, preparing preliminary estimates, preparing provisional bills of quantities, examining tenderers and reporting thereon, surveying works in progress, including remeasurement, for and preparing and issuing valuations, for payment certificates, preparing cost reports, preparing and agreeing final accounts.

Fee to be 115 per cent of Scale 1 calculated on the total cost of the works.

3. Payment of fees shall be apportioned as follows—

(*a*) preliminary consultations, preparing preliminary estimates	5%
(*b*) preparing provisional bills of quantities, examining tenders and reporting thereon . .	35%
(*c*) surveying works in progress, remeasurement, preparing cost reports	50%
(*d*) preparing and agreeing final accounts	10%

Scale 6—Civil Engineering Works

1. This fee scale applies to contracts which are wholly of a civil engineering nature and which are based upon tender documents prepared in accordance with a recognized standard method of measurement for civil engineering works.

2. Preliminary consultations, preparing preliminary estimates, preparing provisional bills of quantities, surveying works in progress, remeasurement, preparing cost reports, preparing and agreeing final accounts.

Fees to be 70 per cent of Scale 1 calculated on the total final cost of the works.

3. Payment of fees shall be apportioned as in Scale 5.

Scale 7—Alteration Works

1. Preparing preliminary estimates, preparing bills of quantities, surveying works in progress for preparing and issuing valuations for certificates, preparing cost reports, preparing and agreeing final accounts—

fee to be as in Scale 1 plus an additional 2.0 per cent of the value of measured works of alterations, demolitions, redecoration and associated minor repairs.

2. This scale is also applicable to those sections of a contract which are works of alterations, demolitions, and associated minor repairs.

3. Payment of fees shall be apportioned as in Scale 1.

Scale 8—Cost Reimbursement Contracts

1. Preliminary consultations, preparing preliminary estimates, negotiating and compiling contracts, including specialists and/or sub-contractors, auditing time sheets, delivery notes, invoices, etc., checking rates of wages and costs of materials, preparing progressive statements of accounts, making check measurements of the principal materials used in the works for comparison with invoices, preparing cost reports and, preparing the final account—

fee of 115 per cent of Scale 1 calculated on the total final cost of the works.

2. Payment of these fees shall be apportioned as follows—

(*a*)	preliminary consultations, preparing preliminary estimates	5%
(*b*)	negotiating and compiling contracts	25%
(*c*)	surveying works in progress and preparing cost reports	60%
(*d*)	preparing and agreeing final accounts	10%

Scale 9—Other Services

1. Preparing Estimates

Preliminary consultations, preparing preliminary estimates, providing cost advice including technical and economic investigation and appraisal of a project to enable a client to decide whether and in what form to proceed, the fee, in addition to any other fee chargeable, shall be based upon the time involved.

2. Providing Cost Planning Services

When requested, on an elemental cost basis on measurement, a charge of 0.5 per cent in addition to Scale 1 or, alternatively, based upon the time involved.

3. Pricing Bills of Quantities

Providing an estimate comparable with tenders, a fee in addition to Scale 1 or 0.5 per cent shall be charged.

4. Negotiating and Agreeing a Contract Price

Negotiating and pricing bills of quantities, a fee of 0.5 per cent shall be charged.

5. Checking Contractors Orders for Materials

Checking bills of entry for duty-free customs purposes, a fee of 1.25 per cent in addition to Scale 1 shall be charged.

6. Preparing Schedules of Materials

A fee of 5.0 per cent of the current market value of materials shall be charged.

7. Providing Project Management Services

A charge to be agreed between the client and the quantity surveyor.

8. Valuation of Property

Preparing of valuations of buildings and other property for the assessment of taxation, fire insurance, expropriation and similar purposes, the fee shall be as follows—

fee 0.50%

9. Reduction of Tender

When cost planning services have not been provided by the quantity surveyor and if a tender, when received, is to be reduced before acceptance, fees are to be calculated upon the amount of the unreduced tender. A fee chargeable for preparing bills of reduction shall be calculated as follows—

2.0 per cent upon gross amount of omissions requiring measurement or abstraction from original dimension sheets;

3.0 per cent upon the gross amount of additions requiring measurement; and

0.5 per cent upon the gross amount of remaining additions.

10. Providing Post Contract Services Only

Where a quantity surveyor is appointed to carry out post contract services only and did not prepare the bills of quantities, a fee of 1.5 per cent in addition to Scale 1, in a proportion to a scale which is applicable to post contract work, shall be charged.

11. Additional Services

Providing additional services such as those arising as a result of the termination of a contract before completion, liquidation, fire damage to buildings, arbitration, litigation, feasibility studies, life cycle costing and all similar services, the charge shall be based upon the time involved.

Scale 10—Time Charges

1. Time charges for services rendered by quantity surveying staff shall be as laid down by the Suveryors Institute of Malaŵi and approved by the Board.

SECOND SCHEDULE

FORM 1

THE ARCHITECTS AND QUANTITY SURVEYORS ACT

Form of application to be used in making application for registration under sections 25 and 28 of the Act

SECTION A

To: THE REGISTRAR
BOARD OF ARCHITECTS AND QUANTITY SURVEYORS
PRIVATE BAG 316
LILONGWE 3.

(*All information to be printed in block letters*)

Surname .....

First names .....

Title (Dr., Mr., Mrs. or Miss) .....

University and/or professional degrees and/or qualifications

.....

.....

Postal address .....

Location of office .....

Date of birth .....

Nationality .....

Nationality at birth (if different from above) .....

I, the undersigned, hereby apply to have my name as given above entered in the register of Architects and/or Quantity Surveyors.

I am a member of the following professional bodies—

(1) .....

(2) .....

I enclose photocopies of my certificates.

I enclose a remittance of fifty Kwacha.

SECTION B

NOTES:

1. This section should be completed by the proposer and the supporter both of whom should have good knowledge of the applicant's technical duties. They should be satisfied that the information given by the applicant is correct.

2. The proposer and the supporter should both be either registered Architects or registered Quantity Surveyors.

PROPOSER

I, ...
full names/academic/professional qualifications

of .....
address, organization and position held

from my personal knowledge of the applicant, support this application

.....
Signature

SUPPORTER

I, ...
full names/academic/professional qualifications

of .....
address, organization and position held

from my personal knowledge of the applicant, support this application.

.....
Signature

I hereby solemnly and sincerely declare that the foregoing statements are true in every respect and that I have read the Act and the Rules and understand that, if registered, I shall be bound thereby and by any amendments thereto so long as my name remains on the register.

And I make this solemn declaration conscientiously believing the same to be true and by virtue of the Oaths, Affirmations and Declarations Act (Cap: 4:07).

Declared at ..... on this ..... day of ....., 20.....

By .....
Signature of applicant

Before me .....
Commissioner for Oaths, Magistrate, etc.

FORM 2

THE ARCHITECTS AND QUANTITY SURVEYORS ACT

Form of application to be used in making application for registration under sections 26 and 29 of the Act

SECTION A

TO: THE REGISTRAR
BOARD OF ARCHITECTS AND QUANTITY SURVEYORS
PRIVATE BAG 316
LILONGWE 3.

(*All information to be printed in block letters*)

Surname .....

First names .....

Title (Dr., Mr., Mrs., Miss) .....

University and/or professional degrees and/or qualifications.

.....

.....

Postal address .....

Location of office .....

Date of Birth .....

Nationality .....

Nationality at birth (if different from above) .....

I, the undersigned, hereby apply to have my name as given above entered in the register of Graduate Architects or Graduate Quantity Surveyors.

I am a member of .....

.....

I have passed the following examinations .....

.....

.....

SECTION B

NOTES:

1. This section should be completed by the proposer and the supporter both of whom should have good knowledge of the applicant's technical duties. They should be satisfied that the information given by the applicant is correct.

2. The proposer and the supporter should both be either Registered Architects or Registered Quantity Surveyors.

PROPOSER

I, ...

names/academic/professional qualifications

of .....

address, organization and position held

from my personal knowledge of the applicant, support this application.

.....

Signature

SUPPORTER

I, ...

full names/academic/professional qualifications

of .....
address, organization and position held

from my personal knowledge of the applicant, support this application.

.....
Signature

I am employed as .....

.....

.....

I am not employed in any other capacity other than as stated above nor am I associated with any other firm, business, trade office or association other than as mentioned above or in my Professional Record Sheet. Neither my professional nor general conduct has been such as to debar me from membership of any professional body or institution.

I enclose a remittance of K50.

I hereby solemnly declare that the foregoing statement and those contained in the attached Professional Record Sheet are true in every respect and that I have read the Act and the Rules and understand that, if registered, I shall be bound thereby and by any amendments thereto so long as my name remains in the register.

And I make this solemn declaration conscientiously believing the same to be true and by virtue of the Oaths, Affirmations and Declarations Act (Cap. 4:07).

Declared at .....

By .....
Signature of applicant

Before me .....
Commissioner for Oaths, Magistrate, etc.

this ..... day of ....., 20.....

(Read notes at foot prior to completion) (On back of Form No. 2)

PROFESSIONAL RECORD SHEET

Surname ..... First names .....

Period			
School, Technical College or University			
Certificate on leaving . .			

EMPLOYMENT

Period	Name and address of employers	In what capacity	Nature of work performed

.....
Signature of Applicant

Date ....., 20.....

NOTES:

The information entered above must be in the applicant's own handwriting.

Particulars of employment must be fully stated.

FORM 3

ARCHITECTS AND QUANTITY SURVEYORS ACT

Form of application to be used in making application for registration under sections 27 *and* 30

SECTION A

To: THE REGISTRAR
BOARD OF ARCHITECTS AND QUANTITY SURVEYORS
PRIVATE BAG 316
LILONGWE 3

Surname .....

First names .....

Date of birth .....

Nationality .....

Nationality at birth (if different from above) .....

Postal address .....

Present employer and address .....
.....

Class of Registration applied for: *Architectural Technician/Quantity Surveying Technician*.

(*Delete whichever is not applicable*)

Have you previously applied for registration? Yes/No.

If yes, please indicate class and date .....

.....

What was the result of the application? .....

.....

SECTION B

NOTES:

1. This section should be completed by the proposer and the supporter both of whom should have good knowledge of the applicant's technical duties. They should be satisfied that the information given by the applicant is correct.

2. The proposer and the supporter should both be either registered architects or registered quantity surveyors or architectural technicians or quantity surveying technicians or persons holding senior positions in the organization in which the applicant has worked or is working.

PROPOSER

I, ...
full names/academic/professional qualifications

of .....
address, organization and position held

from my personal knowledge of the applicant, support this application

.....
Signature

SUPPORTER

I, ...
full names/academic/professional qualifications

of .....
address, organization and position held

from my personal knowledge of the applicant, support this application.

.....
Signature

SECTION C

NOTES:

(*a*) To be completed by the applicant.

(*b*) In this section the proposer and the supporter are required to sign only those particulars of which they have personal knowledge.

(*c*) The applicant must enclose certified copies of documents as evidence of the technical qualifications relevant to the application.

1. GENERAL EDUCATION

From (Month/Year)	To	Schools attended

2. TECHNICAL EDUCATION

(Indicate whether Full Time (FT), Day Release (DR), or Evening (E)).

From/To (Months and Year)	College	FT DR/E	Brief details Subjects studied

I am employed as .....
.....
.....

I am not employed in any other capacity other than as stated above nor am I associated with any other firm, business, trade office or association other than as mentioned above. Neither my professional nor general conduct has been such as to debar me from membership of any professional body or institution.

I enclose a remittance of K50.

I hereby solemnly and sincerely declare that the following statements are true in every respect and I understand that, if registered, I shall be bound by the provisions of the Act and by any amendments made thereto so long as my name remains on the Register.

And I make this solemn declaration conscientiously believing the same to be true and by virtue of the Oaths, Affirmations and Declarations Act (Cap. 4:07).

Declared at ..... on this ..... day of ....., 20.....

.....
Signature of Applicant

Before me .....
Commissioner for Oaths, Magistrate, etc.

FORM 4

(LOGO)

MALAŴI GOVERNMENT

This is to certify that

.....
has been registered as

.....

In terms of the Architects and Quantity Surveyors Act (Cap. 53:02)

..... day of ....., 20.....

.....
Chairman

.....
Registrar

ARCHITECTS AND QUANTITY SURVEYORS (ANNUAL FEES) REGULATIONS

G.N. 36/1996
17/1998
71/1998
26/1999

under s. 41

Citation

1. These Regulations may be cited as the Architects and Quantity Surveyors (Annual Fees) Regulations.

Annual fees

2. The annual fees set out in the Schedule hereto shall be payable on 1st April in each year by persons registered under the Act respectively specified in the Schedule.

SCHEDULE reg. 2

G.N. 36/1996
17/1998
71/1998
26/1999

		K	t
(*a*)	Architect and Quantity Surveyors	1,500	00
(*b*)	Graduate Architects and Graduate Quantity Surveyors . .	900	00
(*c*)	Architectural Technicians and Quantity Surveying Technicians	450	00

NOTE: Failure to pay the annual fees within three months shall lead to automatic deregistration.

[Subsidiary] *Architects and Quantity Surveyors (Registraion fess) Regulations/Architects and Quanity Surveyors (Practising as a Limited Liability Company) Rules*

G.N. 35/1996
16/1998
25/1999

ARCHITECTS AND QUANTITY SURVEYORS (REGISTRATION FEES) REGULATIONS

under s. 41

Citation

1. These Regulations may be cited as the Architects and Quantity Surveyors (Registration Fees) Regulations.

Registration fees
G.N. 35/1996
16/1998
25/1999

2.—(1) The registration fees payable to the Board shall be as follows—

	K t
(*a*) upon application for registration as an Architect or a Quantity Surveyor	1,000 00
(*b*) upon application for registration as a Graduate Architect, a Graduate Quantity Surveyor, an Architectural Technician or a Quantity Surveying Technician . .	500 00
(2) The registration fees payable to the Board by applicants who are foreign consultants shall be	US$500 00

G.N. 25/2000

ARCHITECTS AND QUANTITY SURVEYORS (PRACTISING AS A LIMITED LIABILITY COMPANY) RULES

under s. 15

Citation

1. These Rules may be cited as the Architects and Quantity Surveyors (Practising as a Limited Liability Company) Rules.

Conditions for practising as a limited liability company

2. Any person registerd under the Act may practise as a limited liability company upon the following conditions—

(*a*) the majority of the directors of the company shall be either Architects or Quantity Surveyors;

(*b*) the day to day management of the company shall be under the charge of the directors who are either Architects or Quantity Surveyors;

(*c*) the company shall be required to take up professional indemnity insurance cover which the Board considers to be adequate; and

(*d*) the company shall be required to comply with the provisions of the Companies Act (Cap. 46:03).

ENGINEERS

CHAPTER 53:03

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CHAPTER 53:03

ENGINEERS

ARRANGEMENT OF SECTIONS

SECTION

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2. Interpretation

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B. Powers and Objects of the Board

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CHAPTER 53:03

ENGINEERS

17 of 1972
13 of 1974
8 of 1980
39 of 1981
9 of 1988

An Act to provide for matters relating to the profession of engineering in Malaŵi and to the qualification, registration and control of the members thereof; to establish the Board of Engineers, a body corporate, as the qualifying, registering and disciplinary authority of such profession; to amend the Professional Qualifications Act and the Consultants and Contractors Act; to repeal the Registered Engineers Act; and to provide for matters connected therewith and incidental thereto

[1st March, 1974]

PART I

PRELIMINARY

Short title

1. This Act may be cited as the Engineers Act.

Interpretation
39 of 1981

2. In this Act, save where the context otherwise requires—

"approved institution" means any university, institute, college or school of engineering or other educational institution approved by the Board pursuant to section 12 (*d*);

"Board" means the Board of Engineers established by section 3;

"Chairman" means the Chairman of the Board designated by the Minister pursuant to section 4 (3);

9 of 1988

"Current Register" means that Part of the Register of Registered Engineers designated as such in section 19 (6) (*b*);

"disciplinary committee" means the disciplinary committee of the Board constituted in accordance with section 29;

"engineering" means the doing or performing of any prescribed engineering work or activity constituting the practice of engineering under section 13 or of any other work or activity required, under this Act, or any other written law, to be done or performed by a person registered under this Act;

"financial year" means the period commencing on the date of commencement and ending on the following 31st March, and thereafter the period of twelve months ending on the 31st March each year;

"Graduate Engineer" means any person registered as such in the Register of Graduate Engineers, pursuant to section 23;

"Main Register" means that Part of the Register of Registered Engineers designated as such in section 19 (6) (*a*); 9 of 1988

"prescribed engineering work or activity" means any engineering work or activity prescribed as the practice of engineering pursuant to section 13 and includes any other work or activity required under this Act, or under any other written law, to be done or performed by a person registered under this Act;

"Register" means the Register of Engineers, or the Register of Graduate Engineers or the Register of Selected Registered Engineers, or Register of Technician Engineers or Register of Engineering Technicians as the case may be, maintained by the Board pursuant to section 19;

"Registered Engineer" means any person registered as such in the Register of Engineers;

"Registered Engineering Technician" means any person registered as such in the Register of Engineering Technicians pursuant to section 23B; 9 of 1988

"Registered Technician Engineer" means any person registered as such in the Register of Technician Engineers pursuant to section 23A; 9 of 1988

"Registrar" means the Secretary to the Board, designated Registrar by section 8 (2);

"rule" means any rule prescribed by the Board under this Act;

"Secretary" means the Secretary to the Board designated by the Minister pursuant to section 8 (1);

"Selected Registered Engineer" means any Registered Engineer registered as a Selected Registered Engineer pursuant to section 26;

"Vice-Chairman" means the Vice-Chairman of the Board designated by the Minister pursuant to section 4 (3).

PART II

Administration

A. Board of Engineers

Establishment of Board of Engineers

3.—(1) There is hereby established a board under the name of the Board of Engineers (hereinafter referred to as the Board) which shall be a body corporate with perpetual succession and a common seal, with power to alter and change the same from time to time, and shall, under the said name, be capable of suing and being sued and, subject to the provisions of this Act, of purchasing or otherwise acquiring, holding or alienating property, real or personal, and of doing all such acts and things as bodies corporate may by law do or perform.

(2) The common seal of the Board shall be authenticated by the signatures of the Chairman, or of the person for the time being performing the functions of Chairman, and of one other member of the Board designated by the Board for such purpose, and any document purporting to be sealed with the said seal and so authenticated shall be admissible in evidence of the particulars stated in that document.

(3) The Board may use a wafer or rubber stamp in lieu of an embossed seal until such time as an embossed seal is procured by the said Board.

Composition of the Board
13 of 1974
39 of 1981

4.—(1) The Board shall consist of the following members—

(*a*) the public officer for the time being holding, or acting in, the post of Engineer-in-Chief;

(*b*) an officer in the public service, who is a Registered Engineer and a resident of Malaŵi, appointed by the Minister;

(*c*) two persons appointed by the Minister from a panel of not less than five Registered Engineers nominated by the Malaŵi Group of Professional Engineers;

(*d*) one person appointed by the Minister from a panel, nominated by the University of Malaŵi, consisting of not less than three persons actively engaged on the staff of the said University as professors or lecturers in engineering or scientific subjects; and

(*e*) one other person appointed by the Minister.

(2) The Minister may appoint to the Board such other persons not exceeding three in number, as he deems qualified to assist the Board in its work and deliberations.

(3) The Minister shall designate the Chairman and the Vice-Chairman, respectively, of the Board from among the members thereof appointed by, or in pursuance of, subsection (1).

(4) Members of the Board shall not, by virtue only of their appointment to the Board, be deemed to be officers in the public service.

Disqualifications

5. Any person who—

(*a*) is an undischarged bankrupt;

(*b*) has been convicted, at any time, of an offence under this Act, or under any written law which is repealed or replaced by this Act;

(*c*) has, within three years last past, for an offence under any written law, been sentenced to a term of imprisonment of not less than six months save as an alternative to, or in default of, the payment of a fine;

(*d*) has been convicted, within six years last past, of an offence involving fraud or dishonesty,

shall be disqualified from being appointed to, or from continuing to hold office as a member of, the Board.

Tenure of office of members of Board, and vacancies thereon

6.—(1) Subject to subsection (4), any person who is appointed a member of the Board in pursuance of section 4 (1) (*b*), (*c*), (*d*) or (*e*) shall hold office for such period not exceeding three years as may be specified in the instrument of his appointment.

(2) Any retiring member of the Board, other than a member who is disqualified under section 5, shall be eligible for re-appointment.

(3) Upon expiry of the period for which a member is appointed he shall continue to hold office until his successor has been appointed, but in no case shall such further period exceed three months.

(4) The office of a member of the Board, who is not a member thereof *ex officio*, shall be vacated—

(*a*) upon his death;

(*b*) if he is absent from three consecutive meetings of the Board without the permission of the Board or of the Minister;

(*c*) upon the expiry of one month's notice in writing of his intention to resign given by him to the Minister and to the Board;

(*d*) upon his dismissal from the Board by the Minister by notice in writing;

(*e*) if he becomes mentally or physically unfit, and the Minister and the Board are of opinion that he is no longer, by reason of such unfitness, capable of performing his duties as a member of the Board; and

(*f*) if he becomes disqualified for membership of the Board under section 5.

(5) An *ex officio* member of the Board shall continue as such for so long as he holds the office by virtue of which membership of the Board is ordained by this Act.

Remuneration of members of Board

7. Any member of the Board who is not an officer in the public service shall be paid out of the funds of the Board such remuneration and allowances, if any, as may be prescribed.

Secretary / Registrar

8.—(1) There shall be a Secretary to the Board who shall be an officer in the public service and shall be designated as Secretary by the Minister.

(2) The Secretary to the Board shall be the Registrar for all of the purposes of this Act.

(3) The Secretary shall be the chief executive officer of the Board and as such shall be responsible to the Board for the administration and management of its affairs, and shall be in charge of all administrative, executive and other staff of the Board, and, in all such matters, shall, at all times, be subject to the direction and control of the Board.

(4) The Secretary shall exercise such powers and perform such duties as the Board may, after consultation with the Minister, delegate to him in writing from time to time, and in any such delegation the Board may impose such conditions as to the exercise of such powers or the performance of such duties as the Board deems fit.

(5) The Secretary may, with the approval of the Board, employ such temporary or part-time staff as he deems necessary for the time being efficiently to effect the objects of the Board.

(6) The Board shall be liable for all salaries and other expenses incurred in relation to persons employed under subsection (5).

Meetings of the Board

9.—(1) The Board may meet at such places and times as the Chairman may determine, or as he may be directed by the Minister, and such meetings shall be convened by the Chairman or by the Minister.

(2) In the absence of the Chairman from any meeting of the Board, the Vice-Chairman shall preside, and in the absence of both the Chairman and the Vice-Chairman from any such meeting, the members present, if constituting a quorum, shall elect one of their number to preside at that meeting.

(3) The Board shall conduct its meetings in such manner as may be directed by the Minister, or, in the absence of such direction, in such manner as the Board deems meet.

(4) Three members of the Board shall constitute a quorum.

(5) At all meetings of the Board the person presiding shall have a deliberative vote and, in the event of an equality of votes, shall also have a casting vote.

(6) Minutes of each meeting shall be kept by the Secretary and shall be confirmed at the succeeding meeting by the Chairman, Vice-Chairman or other member presiding, as the case may be.

Committees of the Board

10.—(1) The Board may, with the consent of the Minister, establish one or more committees to carry out any special or general functions determined by the Board and may delegate to any such committee such of the functions of the Board as it may deem expedient.

(2) The Chairman of the Board shall, by reason of his office, be a member of each committee established pursuant to subsection (1).

(3) The chairman of each committee established pursuant to subsection (1) shall be appointed by the Board from amongst the members of the Board.

(4) Each committee may, with the consent of the Board and the approval of the Minister previously obtained, co-opt as members of such committee persons who are not members of the Board and who are not disqualified for such membership, and any of such members so co-opted may or may not be officers in the public service.

(5) The chairman of each committee may, at any time and at any place, convene a meeting of the committee of which he is chairman.

(6) The Board may, at any time, direct the chairman of any committee to convene a meeting of such committee and such chairman shall, as soon as is practicable, comply, with such direction.

(7) Every committee established pursuant to subsection (1) shall keep minutes of its meetings and shall inform the Board of its activities and conduct its proceedings in such manner as the Board may direct.

(8) The Minister may, in writing, nominate any officer in the public service to attend any meeting or meetings of any committee established pursuant to subsection (1), which officer may take part in the proceedings of any such meeting as if he were a member of such committee, save that he shall not be entitled to vote thereat.

(9) Any member of a committee established pursuant to subsection (1), who is not an officer in the public service, shall, in respect of expenses incurred by him in travelling and subsistence while discharging his duties as such member, be paid out of the funds of the Board, such allowances as may be prescribed.

B. Powers and Objects of the Board

Powers of the Board
9 of 1988

11. The Board shall be the sole qualifying and registering authority of the engineering profession in Malaŵi and shall have the following powers—

9 of 1988

(*a*) to register engineers, technician engineers and engineering technicians pursuant to this Act;

(*b*) to establish educational standards and qualifications for the engineering profession in Malaŵi;

(*c*) to exercise disciplinary control over the engineering profession in Malaŵi ;

(*d*) to purchase, lease, or otherwise acquire any property, real or personal, for or in connexion with the exercise of any of its powers or objects;

(*e*) to manage, insure, let, sell, alienate, mortgage or otherwise deal with any property of the Board as it may deem necessary or expedient;

(*f*) to do or perform any act necessary to or directed towards the furtherance of its objects as declared by section 12;

(*g*) to receive donations or gifts of moneys or other property from any person or body of persons and, for the furtherance of its objects, to receive such donations or gifts beneficially or as the trustee of any trust established for the furtherance of such objects;

(*h*) to do or perform any act or thing prescribed by this Act to be done or performed by the Board;

(*i*) subject to the approval of the Minister, to employ administrative or executive staff or other servants or agents for the better administration of the affairs of the Board, and to make provision for the salaries, wages, commissions and other conditions of service of such persons, including pensions, gratuities and other superannuation benefits; and

(*j*) subject to the approval of the Minister, to make advances to employees of the Board for the purchase of motor or other vehicles by such employees, on terms and conditions as to the use of such vehicles and as to the repayment of such advances as the Minister may, from time to time, require.

Objects and duties of the Board
39 of 1981
9 of 1988

12. The objects and duties of the Board shall be—

(*a*) to maintain a Register of all persons who are entitled to practise engineering in Malaŵi as Registered Engineers under this Act;

(*b*) to maintain a Register of all persons entitled to practise engineering in Malaŵi as Graduate Engineers under this Act;

(*c*) to maintain a Register of Selected Registered Engineers who are deemed by the Board to be qualified to supervise the post-graduate training of Graduate Engineers in Malaŵi, as required from time to time, by the Board under this Act;

(*d*) to approve universities, institutions, colleges or schools of engineering or other such educational institutions within or outside Malaŵi, as approved institutions whose training in engineering will be acceptable training for the purposes of this Act;

(*e*) to prescribe, from time to time, by rules, made with the prior approval of the Minister, syllabuses of subjects for examinations to be set and held by the Board;

(*f*) to set and hold, from time to time, such examinations, oral or written, as the Board deems necessary for the purposes of this Act;

(*g*) to set and hold, from time to time, qualifying examinations for admission to the engineering profession in Malaŵi and for registration under this Act;

(*h*) to issue certificates in the name and under the seal of the Board to candidates who are successful at examinations conducted by the Board for the purposes of this Act;

(*i*) to prescribe, from time to time, by rule, made with the prior approval of the Minister, fees to be paid to the Board in respect of examinations held or prescribed by the Board for the purposes of this Act;

(*j*) to prescribe, from time to time, by rule, any thing or matter, relating to the qualification of persons for registration, which is to be prescribed under this Act and for which no other prescribing authority is specified;

(*k*) to prescribe, from time to time, by rule, principles of conduct and ethics to be followed by persons registered under this Act, in Malaŵi, in the course of their practice as engineers, and further to provide for disciplinary measures and penalties to be taken and enforced by the Board for any infringement or any such prescribed principles;

(*l*) to prescribe, from time to time, by rule, the maximum levels of engineering responsibility which may be imposed, by contract or by virtue of any employment, on Graduate Engineers, in respect of 8 of 1980
any engineering works; which said maximum levels of engineering responsibility may be determined by the Board by taking into account the class and extent of the relevant engineering works, the type and extent of the control of such works to be vested in such engineer; the knowledge and experience reasonably required of such engineer efficiently to exercise such control.

(*m*) with the approval of the Minister, to enter into arrangements with engineering qualifying bodies or authorities outside Malaŵi for the mutual correlation of qualifying standards of competence in engineering and for the reciprocal acceptance of qualifications.

9 of 1988

(*n*) to maintain a Register of all persons entitled to practise engineering in Malaŵi as Technician Engineers under this Act; and

9 of 1988

(*o*) to maintain a Register of all persons entitled to practise engineering in Malaŵi as Engineering Technicians under this Act.

Prescribed practice of engineering
8 of 1980

13.—(1) The Board may, from time to time, with the prior written approval of the Minister, prescribe, by notice published in the *Gazette* such engineering work or activity as may, in Malaŵi, be done or performed solely and exclusively by a person registered under this Act.

(2) The doing or performance of any work or activity prescribed pursuant to subsection (1), and of any other work or activity required by or under any other written law to be done or performed by a person registered under this Act, shall be deemed to be the practice of engineering for the purposes of this Act.

(3) The Board may, with the prior written approval of the Minister, specify, by notice published in the *Gazette*, certain persons or classes of persons in any particular engineering disciplines, occupations or employment who, although not registered under this Act, may, notwithstanding the provisions of subsection (1) or of any other written law, do or perform any work or activity deemed by subsection (2) to be the practice of engineering for the purposes of this Act.

PART III

Financial and Accountancy Provisions

Funds of the Board

14. The funds of the Board shall consist of—

(*a*) such sums as may be payable to the Board from moneys appropriated by Parliament for the purpose;

(*b*) such moneys or other property as may be payable to or vest in the Board whether in the course of the exercise of its powers or functions or otherwise; and

(*c*) such moneys or other property as may be payable to or vest in the Board pursuant to this or any other written law or pursuant to any trust or gift.

Investment powers

15. The Board shall have power to invest any moneys which are not immediately required for its objects.

Borrowing powers
Cap. 37:01

16. Subject to the provisions of section 32 (1) of the Finance and Audit Act, the Board may borrow temporarily, by way of overdraft or otherwise, such sums as it may require for meeting its obligations or discharging its functions under this Act.

Annual budgets
Cap. 37:01

17. The Board shall, in relation to each financial year, submit to the Minister both a capital and an income and expenditure budget pursuant to sections 32B and 32C of the Finance and Audit Act.

18.—(1) The Board shall cause to be kept proper books of account and other records in relation to all moneys or other property vested, received or otherwise obtained, and of all moneys expended or other property sold or otherwise disposed of, by the Board. Books, accounts, audits and reports

(2) The accounts of the Board shall be audited annually by professional auditors appointed by the Board with the approval of the Minister.

(3) The expenses of, and incidental to, any audit shall be payable out of the funds of the Board.

(4) The Board shall, as soon as is practicable, but not later than six months after the end of each financial year, submit to the Minister an annual report upon its work and operations.

(5) Such report shall include a balance sheet, an income and expenditure account and the annual report of the auditors, and shall be laid by the Minister before the National Assembly pursuant to section 32F of the Finance and Audit Act. Cap. 37:01

PART IV

Registration

19.—(1) The Board shall, for the purposes of this Act, keep and maintain, in the appropriate prescribed forms— Registers 9 of 1988

(*a*) a Register of Engineers;

(*b*) a Register of Graduate Engineers;

(*c*) a Register of Selected Registered Engineers;

(*d*) a Register of Technician Engineers; and

(*e*) a Register of Engineering Technicians.

(2) The Registers shall be in the custody and under the control of the Registrar and shall be kept at the offices of the Board, or at such other place in Malaŵi as the Board may direct.

(3) The Registrar shall perform such duties in connexion with the Registers as may be prescribed, and, in this regard, shall be under the control of the Board in the performance of such duties.

(4) The Registers referred to in subsection (1) shall, at all reasonable times, be open to inspection by—

(*a*) public officers and members of the police force in course of duty; and

(*b*) members of the public, upon payment of the prescribed fee.

(5) Every person registered under this Act as a Registered Engineer shall, before 31st March each year, pay to the Board such annual fee and in such manner as may be prescribed. 9 of 1988

(6) The Register of Engineers referred to under subsection (1) (*a*) shall be kept and maintained in two Parts—

(*a*) Part I of which shall be designated as the "Main Register" and in which shall be registered every person, whether resident in Malaŵi or not, who is registered under this Act to practise engineering and whose registration has not been cancelled under section 34 (1) (*e*);

(*b*) Part II of which shall be designated as the "Current Register" and in which shall be registered every person who—

(i) is resident in Malaŵi;

(ii) is registered in the Main Register; and

(iii) has paid the prescribed annual fee.

(7) The Registrar shall, once in every year and as soon as may be convenient after 1st April, publish in the *Gazette* the names, addresses, qualifications, date of registration and other particulars of all persons registered in the Current Register.

Engineers must be registered

20.—(1) Save where this Act otherwise provides, no person shall engage in the practice of engineering in Malaŵi, or hold himself out as being entitled so to do, unless he is registered under this Act.

(2) Any person who engages in the practice of engineering in contravention of subsection (1) shall not be entitled to recover in any court any charge or fee in respect of any engineering work or activity done or performed by him in the course of his said practice.

(3) No person other than a natural person may be registered under this Act.

Applications to the Board

21. Every application for registration under this Act shall be made to the Board in the form and manner prescribed and shall be accompanied with the appropriate prescribed fee.

Registration as Registered Engineer 39 of 1981

22.—(1) Any person shall be entitled to make application for registration as a Registered Engineer under this Act if—

(*a*) he has attained the age of 25 years; and

(*b*) he has, in consequence of an examination, obtained from an approved institution a degree or other qualifying certificate which the Board considers acceptable for registration; and

(*c*) he has passed the appropriate Engineering Qualifying Examination; and

(*d*) he has, for the prescribed period, been registered as a Graduate Engineer under this Act, and has complied with all of the conditions attached to his registration as such Graduate Engineer.

(2) Where a person who applies for registration as Registered Engineer has not complied with the requirements of subsection (1) (*b*), but has, in consequence of an examination, obtained a degree

or other qualifying certificate from an institution which is not an approved institution, the Board, if it is of opinion that such degree or qualifying certificate is academically equivalent to a degree or qualifying certificate of an approved institution and is acceptable for registration, may, in its absolute discretion, in the case of such person, waive the requirements of subsection (1) (*b*).

(3) Where a person who applies for registration as a Registered Engineer—

(*a*) has complied with the requirements of subsection (1) (*b*), or in whose case the Board has waived compliance therewith, pursuant to subsection (2); and

(*b*) shows, to the satisfaction of the Board, that, since his obtaining his degree or qualifying certificate, he has been engaged in active practice as an engineer for a period or periods totalling not less than two years,

the Board may, in its absolute discretion, in the case of such person waive the requirements of subsection (1) (*c*) or subsection (1) (*d*), or both.

(4) If the Board is satisfied that the applicant is of good character and is a fit and proper person to be registered, and that he has complied with all of the relevant requirements of this section, save such as have, in his case, been waived by the Board pursuant to subsection (2) or subsection (3), it shall direct the Registrar to register the said applicant in the Register of Engineers.

(5) This section is subject to the provisions of section 25 in the case of certain officers in the public service and of certain persons in the employment of prescribed statutory corporations.

Registration as a Graduate Engineer
13 of 1974
8 of 1980

23.—(1) Any person shall be entitled to make application for registration as a Graduate Engineer under this Act if he has complied with requirements of section 22 (1) (*b*) or with such of those requirements as have not, in his case, been waived by the Board under section 22 (2), as the case may be.

(2) The provisions of sections 22 (1) (*b*), 22 (2) and 22 (3) (*a*) shall apply, *mutatis mutandis,* to every application made under this section.

(3) If the Board is satisfied that the applicant for registration under this section is of good character and is a fit and proper person to be registered, and that he has complied with all of the relevant requirements of this section, save such as have, in his case, been waived by the Board pursuant to section 22 (2), it shall direct the Registrar to register the said applicant in the Register of Graduate Engineers, and the Registrar shall make the appropriate entry in the said Register.

(4) Every Graduate Engineer registered pursuant to this section shall be entitled to practise engineering, as an engineer in training, by agreement with and under the direction or control of a Selected Registered Engineer, registered as such under this Act.

(5) The Board shall prescribe the period of training required of Graduate Engineers pursuant to subsection (4), but in no case shall such period be for less than one year nor more than three years.

(6) The Board may, from time to time, prescribe further conditions attaching to registration as a Graduate Engineer.

(7) Every agreement made between any Graduate Engineer and any Selected Registered Engineer for the purposes of this section shall be in writing in a form approved by the Board and shall be executed by both parties thereto in triplicate and delivered to the Registrar by the Selected Registered Engineer concerned for noting in the Register of Graduate Engineers, whereupon the Registrar shall retain one copy thereof and without undue delay cause the other copies, duly endorsed by him, to be delivered to the parties thereto, respectively. Failure to deliver such agreement to the Registrar pursuant to this subsection within two months after the execution thereof shall render such agreement void.

(8) Every Selected Registered Engineer shall, not earlier than the 1st October and not later than the 31st December of each year, make, in the prescribed form, a report to the Board on the progress and quality of the work of each Graduate Engineer in training under his direction or control pursuant to subsection (4).

(9) This section shall not apply to any person in whose case the requirements of section 22 (1) (*d*) have been waived by the Board, pursuant to section 22 (3).

Registration as a Technician Engineer
9 of 1988

23A.—(1) Any person shall be entitled to make an application for registration as Technician Engineer under this Act if—

(*a*) he has obtained a diploma in engineering or a full technological certificate from the University of Malaŵi or has obtained from an approved institution other qualifications which the Board considers acceptable for registration and, subsequent to his qualifying diploma or certificate—

(i) he has received practical training from approved employment or institution as a technician for a period of not less than two years; and

(ii) he has had a minimum of three years' relevant engineering experience at least two years of which had been at a level of responsibility commensurate with the duties of a technician engineer; or

(*b*) he produces evidence, satisfactory to the Board, of his registration in any other country at an equivalent level by a registration authority of that country recognized by the Board.

(2) If the Board is satisfied that the applicant is of good character and is a fit and proper person to be registered and that he has complied with all the relevant requirements of this section, it shall direct the Registrar to register the applicant in the Register of Technician Engineers.

Registration as an Engineering Technician 9 of 1988

23B.—(1) Any person shall be entitled to make an application for registration as an Engineering Technician under this Act if—

(*a*) he has obtained Parts I and II technician certificates in a relevant branch of engineering from the Polytechnic of Malaŵi or has obtained from an approved institution other qualifications which the Board considers acceptable for registration and, subsequent to his qualifying certificate—

(i) he has received practical training from approved employment or institution as a technician for a period of not less than two years; and

(ii) he has had not less than two years' experience as an engineering technician; or

(*b*) he produces evidence satisfactory to the Board of his registration in any other country at an equivalent level by a registration authority of that country recognized by the Board.

(2) If the Board is satisfied that the applicant is of good character and is a fit and proper person to be registered and that he has complied with all the relevant requirements of this section, it shall direct the Registrar to register the applicant in the Register of Engineering Technicians.

Engineering Qualifying Examination 9 of 1988

24.—(1) The Board shall, from time to time, set, arrange and hold an examination (herein referred to as the Engineering Qualifying Examination) for the purposes of registration under this Act.

(2) Every person, other than a person who is exempted from this requirement or in whose case this requirement has been waived under any other provision of this Act, who intends to apply for registration under this Act, shall, before making application for such registration, submit himself to the Board as a candidate for, and pass, the Engineering Qualifying Examination.

(3) The Board may, in its discretion, arrange the Engineering Qualifying Examination into two or more separate parts, according to examination subjects, and may provide separate dates or times for the holding of examinations in such separate parts, and may further provide that such parts be independent of, or be interdependent upon, each other:

Provided, however, that, where such parts are independent of each other, a candidate shall not be deemed to have successfully passed the Engineering Qualifying Examination unless and until he has passed an examination in all parts, which taken together, would constitute successfully passing an examination in every part or subject into which the Engineering Qualifying Examination has been so divided by the Board.

(4) The Engineering Qualifying Examination may be in writing or oral, or partly in writing and partly oral.

9 of 1988

(5) Notwithstanding the foregoing provisions of this section, a person applying for registration as a Registered Technician Engineer or Registered Engineering Technician shall not be required to sit an Engineering Qualifying Examination.

Registration of public officers as Registered Engineers
39 of 1981

25.—(1) Any other provision of this Act to the contrary notwithstanding, any person who—

(*a*) is qualified as an engineer and entitled to practise engineering—

(i) in any State which is, or was at any time, a member State, or part of a member State, of the Commonwealth; or

(ii) in any other State, whose qualifying requirements for the practice of engineering in such State are acceptable to the Board as sufficient for the purposes of this section; and

(*b*) has, for a period of not less than two years prior to his application under this section, practised as a qualified engineer in such State; and

(*c*) is in active employment as an engineer in any Ministry or Department of the Government, or in any prescribed statutory corporation, performing engineering duties on behalf of the Government or of the said prescribed statutory corporation,

shall be entitled to make application to the Board for registration as a Registered Engineer under this Act.

(2) Every application under subsection (1) shall be in the prescribed form and shall be verified by the affidavit of the applicant and approved by the Principal Secretary of the Ministry, or the head of the Department, or the principal administrative officer of the prescribed statutory corporation, as the case may be, in which the applicant is employed.

Registration of Selected Registered Engineers
39 of 1981

26.—(1) The Board may, from time to time, select from among the engineers registered pursuant to this Act, such Registered Engineers as, in the opinion of the Board, possess the qualifications and experience necessary for the training of Graduate Engineers registered as such pursuant to this Act.

(2) Such Registered Engineers selected by the Board in accordance with subsection (1) shall be registered as Selected Registered Engineers in the Register of Selected Registered Engineers.

(3) Registration of a Registered Engineer in the Register of Selected Registered Engineers shall in no way affect or alter his registration in the Register of Engineers.

(4) The Board may, in its absolute discretion, at any time cancel the registration of any Registered Engineer in the Register of Selected Registered Engineers, and shall not be required to give or disclose to any person any reason for such cancellation.

27. The Registrar shall issue to every person registered as a Registered Engineer, as a Graduate Engineer, a Technician Engineer or an Engineering Technician, as the case may be, under this Act, a certificate of registration in the appropriate prescribed form.

Certificate of registration
39 of 1981
9 of 1988

28.—(1) The Registrar may, with the prior approval of the Board, from time to time, make any necessary alteration or correction in any Register in relation to any entry therein.

Correction of Registers

(2) The Registrar shall remove from any Register the name of any deceased person, and shall, when directed by the Board so to do, remove from any Register any entry which has been incorrectly or fraudulently made therein.

(3) The Registrar may, with the consent, in writing, of the person concerned, remove from any Register the name of any person who has ceased to practise engineering in Malaŵi.

(4) Any name removed from any Register pursuant to subsection (3) shall, at the request in writing of the person concerned, be reinstated by the Registrar.

PART V

Disciplinary Provisions

29.—(1) There shall be a disciplinary committee of the Board, hereinafter referred to as the "disciplinary committee", which shall consist of—

Disciplinary committee
39 of 1981

(*a*) the Chairman or, in his absence, the Vice-Chairman;

(*b*) two members of the Board, appointed by the Board; and

(*c*) three Registered Engineers, who are not members of the Board, appointed by the Board.

(2) Any three members of the disciplinary committee, together with the Chairman, or, in his absence, the Vice-chairman, shall constitute a quorum of such committee.

(3) The Chairman, or, in his absence, the Vice-Chairman, shall preside at every meeting of the disciplinary committee and shall have a deliberative vote thereat and, in the event of an equality of votes, shall also have a casting vote.

30.—The disciplinary committee shall be empowered to inquire into the conduct of Registered Engineers, Graduate Engineers, Technician Engineers and Engineering Technicians, in accordance with the provisions of this Part, and to report its findings on any such inquiry, and make recommendations thereon, to the Board.

Powers of inquiry of disciplinary committee
39 of 1981
9 of 1988

31.—(1) If the Board is of opinion that any Registered Engineer, Graduate Engineer, Technician Engineer or Engineering Technician—

Inquiry by disciplinary committee
39 of 1981
9 of 1988

(*a*) knowingly and habitually engages in practices, in the course of his professional work as a Registered Engineer,

Graduate Engineer, Technician Engineer or Engineering Technician, which are dishonest or fraudulent; or

(*b*) has contravened any provision of this Act or any relevant regulation or rule of professional conduct made under this Act; or

(*c*) has been guilty of professional misconduct or of conduct or acts in relation to his professional practice unbecoming to a member of the engineering profession; or

(*d*) has failed, within a reasonable time, to comply with any requirement or condition imposed upon him by the Board in its ruling on a previous inquiry into his professional conduct, held pursuant to this Act; or

(*e*) has, notwithstanding the suspension of his registration pursuant to this Act, engaged in the practice of engineering contrary to the terms and conditions of such suspension; or

(*f*) has, within one year last past, for an offence against any written law, been sentenced to a term of imprisonment of not less than one year save as an alternative to, or in default of the payment of fine,

it may direct the Registrar in writing to convene in its name the disciplinary committee to conduct an inquiry, in accordance with this section, into the matters of complaint in respect of the conduct of the said Registered Engineer, Graduate Engineer, Technician Engineer or Engineering Technician, as the case may be, in the said direction in writing contained.

9 of 1988

(2) Upon receipt from the Board of the direction in writing referred to in subsection (1), the Registrar shall, as soon as is practicable, by notice in writing to the members of the disciplinary committee, convene a meeting of such committee for a date not earlier than one month, or later than three months, after the date of the said notice, for the purpose of conducting an inquiry into the matters of complaint in the said direction in writing contained.

(3) Not later than fourteen days before the date of the inquiry referred to in subsection (2), the Registrar shall cause to be served upon the Registered Engineer, Graduate Engineer, Technician Engineer or Engineering Technician, to whom the matters of complaint relate, a notice in writing, setting out the matters of complaint as contained in the direction of the Board, referred to in subsection (1), the date, place and time of the inquiry thereon and such other matters as the Board may, in his case, direct.

9 of 1988

Cap. 18:01

(4) The provisions of sections 10, 11, 12 and 13 of the Commissions of Inquiry Act shall apply, mutatis mutandis, to an inquiry under this Part, as if the disciplinary committee established under this Act were Commissioners appointed pursuant to that Act, save that the Registered Engineer, Graduate Engineer, Technician

9 of 1988

Engineer or Engineering Technician, into whose conduct the inquiry is being conducted, shall not be entitled to his expenses of attending the said inquiry.

(5) The Board may be represented at any inquiry, held under this Part, by any Registered Engineer (other than a member of the disciplinary committee), nominated by the Board, or by any legal practitioner, or by both such Registered Engineer and such legal practitioner.

(6) The Registered Engineer, Graduate Engineer, Technician Engineer or Engineering Technician, as the case may be, whose conduct is the subject matter of any inquiry held under this Part, may be represented at such inquiry by any Registered Engineer (other than a member of the Board or of the disciplinary committee) nominated by such Registered Engineer, Graduate Engineer, Technician Engineer or Engineering Technician, as the case may be, or he may be represented thereat by any legal practitioner or by both such Registered Engineer and such legal practitioner.

(7) The Board, with the approval of the Minister, may by rule prescribe the practice and procedure to be followed in the conduct of an inquiry by the disciplinary committee under this Part. In the absence of any such prescription, the disciplinary committee may, in the conduct of each such inquiry, determine its own procedure.

(8) The Board may, of its own volition, instigate an inquiry under subsection (1), or may do so on the complaint of any person.

Disqualification of member of disciplinary committee

32.—(1) If any member of the disciplinary committee or his spouse, or if any company of which he or she is a director or major shareholder, or any partner of such member or his spouse, has or acquires any pecuniary interest, direct or indirect, in any matter out of which the complaint under inquiry arose and in which his private interests conflict with his duties as a member of the disciplinary committee, or if he or his spouse is related by consanguinity or affinity to the person whose conduct, or whose complaint, is under inquiry by the said committee, he shall, as soon as he becomes aware of such interest in such matter, or of such relationship to such person, disclose the facts relating thereto to the Board, and shall not act on such disciplinary committee during the conduct of such inquiry, nor take part in the consideration of any matter before the Board which relates to the subject matter of the said inquiry or to the recommendations of the said committee thereon.

(2) For the purposes of this section, the expression "major shareholder" means any person who, at the relevant time, has the power to exercise or control not less than ten per cent of the voting rights in the relevant company, whether by reason of shareholdings, debenture holdings, proxy or otherwise.

Report to Board by disciplinary committee
39 of 1981
9 of 1988

33.—(1) The disciplinary committee shall, as soon as practicable after the close of the inquiry, consider the evidence adduced and the representations made thereat, and shall, without undue delay complete and deliver to the Board its report thereon together with such documents as were produced and are relevant to the matters inquired into, and shall make its recommendations as to whether the complaint should be dismissed, or the Registered Engineer, Graduate Engineer, Technician Engineer or Engineering Technician, as the case may be, should be reprimanded, or his registration suspended or cancelled.

(2) No person, other than the members of the Board, shall be entitled to a copy, or to be informed of the contents, of any report made to the Board, or of any recommendations made thereon, by the disciplinary committee pursuant to this section.

Decision of Board; reprimand; suspension and cancellation of registration; appeal to High Court
39 of 1981
9 of 1988

34.—(1) Having considered the report and recommendations of the disciplinary committee delivered to the Board pursuant to section 33, and also having considered such other matters as the Board deems relevant, the Board shall decide whether—

(*a*) the complaint should be dismissed; or

(*b*) the Registered Engineer, Graduate Engineer, Technician Engineer or Engineering Technician, as the case may be, should be reprimanded; or

(*c*) the Registered Engineer, Graduate Engineer, Technician Engineer, or Engineering Technician, as the case may be, should be reprimanded and required to compensate, in a sum stated, the person or persons, whose complaint to the Board caused the inquiry to be instigated, for any loss suffered by reason of the facts inquired into; and, in the event of failure to make such compensation within a stated period, the registration of such Registered Engineer, Graduate Engineer, Technician Engineer or Engineering Technician, as the case may be, should be suspended for a stated period of time or cancelled; or

(*d*) the registration of the Registered Engineer, Graduate Engineer, Technician Engineer or Engineering Technician, as the case may be, should be suspended for a stated period of time. The Board may attach such terms and conditions as it deems meet to any such suspension; or

(*e*) the registration of the Registered Engineer, Graduate Engineer, Technician Engineer or Engineering Technician, as the case may be, should be cancelled,

and shall cause the Registrar to make the appropriate entries thereof in the record of the relevant inquiry, and, where appropriate, in the relevant Register, in accordance with subsections (2) to (6) inclusive.

(2) Where the decision of the Board is that the complaint should be dismissed, the Registrar shall make the appropriate entry thereof in the record of the relevant inquiry, and shall notify the Registered Engineer, Graduate Engineer, Technician Engineer or Engineering Technician, as the case may be, thereof, in writing.

(3) Where the decision of the Board is one of reprimand only pursuant to subsection (1) (*b*), the Registrar shall make the appropriate entry thereof in the record of the relevant inquiry.

(4) Where the decision of the Board is one of reprimand together with a requirement to make compensation pursuant to subsection (1) (*c*), the Registrar shall make the appropriate entry thereof in the record of the relevant inquiry and in the relevant Register:

Provided that, in the event of satisfactory proof of payment of the said compensation within the time stated, the Registrar shall cancel the said entry of the said decision in the relevant Register only.

(5) Where the decision of the Board is one of suspension with or without terms or conditions, pursuant to subsection (1) (*d*), the Registrar shall make the appropriate entry thereof in the record of the relevant inquiry and in the relevant Register, and shall note in such Register the terms or conditions, if any, attaching to such suspension.

(6) Where the decision of the Board is one of cancellation of registration, the Registrar shall make the appropriate entry in the record of the relevant inquiry, and shall strike the registration of the Registered Engineer, Graduate Engineer, Technician Engineer or Engineering Technician, as the case may be, off the relevant Register, and shall cause notice of such cancellation and striking-off to be published in one issue of the *Gazette*.

(7) The Registrar shall, without undue delay, after making the entry or entries of the decision of the Board in the record of the relevant inquiry or in the relevant Register, or in both, as required by subsection (3), (4) or (5), cause notice thereof to be served upon the Registered Engineer, Graduate Engineer, Technician Engineer or Engineering Technician, as the case may be, affected by such decision. Every such notice shall be in writing and shall set out the terms of the relevant reprimand or suspension as ordered by the Board, together with any term as to compensation or otherwise, or other condition, attached by the Board to such reprimand or suspension, and shall be served by registered letter addressed to the said Registered Engineer, Graduate Engineer, Technician Engineer or Engineering Technician, as the case may be, at the address in Malaŵi last shown for him in the relevant Register, and the Registrar shall, further, make an entry in the record of the relevant inquiry setting out the date and time of posting of such registered letter.

(8) The Registrar shall, without undue delay, after striking the registration of the relevant Registered Engineer, Graduate Engineer, Technician Engineer or Engineering Technician, as the case may be, off the relevant Register and cancelling such registration, pursuant to subsection (6), cause notice thereof to be served upon the Registered Engineer, Graduate Engineer, Technician Engineer or Engineering Technician, as the case may be, thereby affected. Such notice shall be in writing and shall set out in terms the relevant order of the Board and the date and time such striking-off and cancellation were effected, and shall be served by registered letter addressed to the said Registered Engineer, Graduate Engineer, Technician Engineer or Engineering Technician, as the case may be, at the address in Malaŵi last shown for him in the relevant Register, and the Registrar shall, further, make an entry in the record of the relevant inquiry setting out the date and time of posting of such registered letter.

(9) Any Registered Engineer, Graduate Engineer, Technician Engineer or Engineering Technician, whose registration has been suspended or cancelled, may appeal to the High Court against the decision of the Board by serving upon the Registrar a Notice of Appeal, in the prescribed form, within thirty days after the date of service of the notice of suspension or cancellation, by the Registrar pursuant to subsection (7), or subsection (8), as the case may be.

(10) At any time after service of Notice of Appeal pursuant to subsection (9), the appellant may, by giving to the Board not less than three days' notice in writing of his intention to do so, apply to the High Court in Chambers for a suspension of the effect of the decision of the Board, pending the decision of the Court on his appeal therefrom, and the Court, in its absolute discretion, may grant or refuse such application, or may grant the same upon such terms and conditions as to costs or otherwise as it deems meet.

(11) The High Court may require evidence to be adduced by the appellant or the Board at the hearing of any appeal under this section, and, having heard such evidence, if any, and any submissions made on behalf of the parties, the said Court may affirm, reverse, modify or alter the decision of the Board; and where such decision is reversed, modified or altered by the High Court, the Board shall, without undue delay, cause such ruling of the High Court to be implemented.

(12) The High Court may make such Order as to the costs of any appeal under this section as it deems meet.

PART VI

Miscellaneous

Use of title
39 of 1981
9 of 1988

35.—(1) Any person registered as a Registered Engineer under this Act shall, by virtue of such registration, be entitled to take and use the title and description of Registered Engineer.

(2) Any person registered as a Graduate Engineer under this Act shall, by virtue of such registration, be entitled to take and use the title and description of Registered Graduate Engineer.

(3) Any person registered as a Technician Engineer under this Act shall, by virtue of such registration, be entitled to take and use the title and description of Registered Technician Engineer. 9 of 1988

(4) Any person registered as Engineering Technician under this Act shall, by virtue of such registration, be entitled to take and use the title and description of Registered Engineering Technician. 9 of 1988

(5) Any person registered under this Act shall not take, or use, or affix to, or use in connexion with his business office or premises, any title in addition to that under which he is registered under this Act, other than as indicated by the particulars relating to his qualifications entered in the relevant Register.

Execution of certificates and other documents

36. No certificate or other document which is required by law, or under the terms or conditions of any contract, to be signed by a duly qualified engineer, shall, if so signed in Malaŵi, be valid unless signed by a person duly registered, and competent to sign such certificate or other document, under this Act.

Regulations 39 of 1981 9 of 1988

37. The Minister may, from time to time, by Regulations, made by notice in the *Gazette*, prescribe anything which by the provisions of this Act may be prescribed and in respect of which no other prescribing authority is specified, and may, in like manner, from time to time, make Regulations for the better carrying out of this Act, and without prejudice to the generality of the foregoing, such Regulations may make provision for—

(*a*) the forms of the Registers required to be maintained by the Board under section 19;

(*b*) the forms of applications, notices, licences, certificates and other documents required for the purposes of this Act;

(*c*) the forms of books and records to be kept for the purposes of this Act;

(*d*) the allowances to be paid to members of the Board and to members of committees of the Board in respect of travelling expenses and subsistence;

(*e*) the fees to be paid to the Board on any application for registration as a Registered Engineer;

(*f*) the fees to be paid to the Board on any application for registration as a Graduate Engineer;

(*g*) the fees to be paid upon the issue of any certificate of registration, or of any certified copy thereof or of any entry in any Register maintained pursuant to this Act;

9 of 1988

(*h*) the fees to be paid to the Board on any application for registration as a Technician Engineer;

(*i*) the fees to be paid to the Board on any application for registration as Engineering Technician; and

(*j*) the annual fees to be paid to the Board by Registered Engineers.

PART VII

Offences

Unlawful practice of engineering

38. Save where this Act otherwise provides, any person who is not registered under this Act, and who, in Malaŵi—

(*a*) engages, or purports to engage, in the practice of engineering;

(*b*) holds himself out as being entitled to engage in the practice of engineering; or

(*c*) does or performs, or purports to do or perform, any act or thing which, under this Act may be done or performed exclusively by a person registered under this Act,

shall be guilty of an offence and liable to a fine of K1,000 and to imprisonment for a term of one year.

Unlawful use of descriptions
39 of 1981
9 of 1988

39. Any person who, in relation to himself or to any business which he owns, manages or controls, assumes or uses, in Malaŵi—

(*a*) the title or description of "Registered Engineer";

(*b*) the title or description of "Registered Graduate Engineer";

(*c*) the title or description of "Registered Technician Engineer"; or

(*d*) the title or description of "Registered Engineering Technician",

or any abbreviation of any such title or description, without being registered as such under this Act, shall be guilty of an offence and liable to a fine of K1,000 and to imprisonment for a term of one year.

Unlawful employment of non-registered persons

40.—(1) Any person who, without the prior written consent of the Board—

(*a*) employs any person not registered under this Act to do or perform; or

(*b*) during the course of his employment of any person not registered under this Act, requires such person to do or perform, any prescribed engineering work or activity,

shall be guilty of an offence and liable to a fine of K1,000 and to imprisonment for a term of one year.

(2) Any person not registered under this Act, who, while in the employment of any other person, knowingly, in the course of such employment, does or performs any prescribed engineering work or activity, shall be guilty of an offence and liable to a fine of K500 and to imprisonment for a term of six months.

Fraudulent entries and copies

41. Any person who knowingly and fraudulently makes, or causes, or permits to be made—

(*a*) any false or incorrect entry in any Register; or

(*b*) any false or incorrect copy of any entry in any Register,

shall be guilty of an offence and liable to a fine of K500 and to imprisonment for a term of six months.

SUBSIDIARY LEGISLATION

ENGINEERS (REMUNERATION OF BOARD MEMBERS) REGULATIONS

G.N. 20/1974

under s. 37

Citation

1. These Regulations may be cited as the Engineers (Remuneration of Board Members) Regulations.

Remuneration and allowances of members of Board

2. Members of the Board who are not officers in the Public Service shall be paid out of the funds of the Board the remunerations and allowances set out in the Schedule hereto.

SCHEDULE

Honoraria of K300 per annum each member

ENGINEERS (GRADUATE ENGINEERS) TRAINING REGULATIONS

G.N. 22/1974

under s. 37

Citation

1. These Regulations may be cited as the Engineers (Graduate Engineers) Training Regulations.

Period of training

2. The period of training under these Regulations shall in individual cases be fixed by the Board but shall in no case be less than one year not more than three years.

Cost of training

3. Where any Graduate Engineer is being trained in Malaŵi by a Selected Registered Engineer under an agreement approved by the Board pursuant to section 23 of the Act, the cost of such training will be borne by the employer of the Selected Registered Engineer or the Selected Registered Engineer himself if he is the principal of the organization concerned.

Date of commencement of training

4.—(1) The date of commencement of training in respect of any Graduate Engineer under these Regulations shall be the date on which such Graduate Engineer enters into agreement for the provision of such training with a Selected Registered Engineer.

(2) In the case of those Graduate Engineers who are already in employment at the date of coming into force of these Regulations, the date of commencement of training shall be the date on which such Graduate Engineers took up such employment provided that the Board is satisfied with the nature of the engineering work and supervision in each case.

G.N. 25/1974 23/1980

ENGINEERS (FORMS) REGULATIONS

under s. 37

Citation

1. These Regulations may be cited as the Engineers (Forms) Regulations.

Application for registration as a Graduate Engineer G.N. 23/1980

2.—(1) Every application for registration as a Graduate Engineer shall be submitted to the Registrar and shall be in Form 'A' in the First Schedule.

(2) There shall be submitted, together with every application under subregulation (1) of this regulation—

(*a*) an undertaking in Form 'B' in the First Schedule, duly completed by—

(i) the Selected Registered Engineer directing and controlling the applicant, and

(ii) the employer of the applicant or by an officer of such employer, and

(iii) the applicant;

(*b*) a Schedule of Particulars in Form 'C' in the First Schedule duly completed by the aforesaid Selected Registered Engineer;

(*c*) the prescribed fee for such application.

Certificate of registration as a Graduate Engineer

3. Upon registration of any applicant as a Graduate Engineer, the Registrar shall issue to such Graduate Engineer a certificate in Form 'D' in the First Schedule.

Application for registration as a Registered Engineer

4.—(1) Every application for registration as a Registered Engineer shall be in Form 'A' in the Second Schedule.

(2) There shall be submitted, together with every application under subregulation (1) of this regulation a Certificate of Completion of Training in Form 'B' in the Second Schedule where such applicant has been registered as a Graduate Engineer and has been in training under the provisions of section 23 of the Act.

(3) Every application for registration as a Registered Engineer shall be accompanied with the prescribed fee for such application.

(4) No application under subregulation (1) or certificate under subregulation (2) hereof shall be accepted by the Registrar unless accompanied with evidence that the applicant has successfully completed the Engineering Qualifying Examination under section 24, or has been exempted from submission to such examination under any other section of the Act.

Certificate of registration as a Registered Engineer

5. Upon registration of any applicant as a Registered Engineer the Registrar shall issue to such Registered Engineer a certificate in Form 'C' in the Second Schedule.

6.—(1) The Register of Graduate Engineers shall be in Form 'A' in the Third Schedule. Forms of Registers

(2) The Register of Registered Engineers shall be in Form 'B' in the Third Schedule.

7. Every application for registration shall be accompanied with a registration fee as follows— Fees

(*a*) a fee of K2.00 in the case of an application for registration as a Graduate Engineer; and

(*b*) a fee of K4.00 in the case of an application for registration as a Registered Engineer.

FIRST SCHEDULE

MALAŴI GOVERNMENT FORM "A"

ENGINEERS ACT

(CAP. 53:03)

APPLICATION FOR REGISTRATION AS A GRADUATE ENGINEER

(UNDER SECTION 23)

To: The Registrar, Board of Engineers,
Private Bag 16, Lilongwe

Surname .....

First Names .....

Date of Birth ..... Nationality .....

Nationality at Birth (if different from above) .....

Postal Address .....

.....

Present Employer and address .....

.....

Engineering Degree	*First*	*Post Grad. or Other*
University or College . .	.....	.....
Country	.....	.....
Duration of Course	.....	.....
Date Awarded	.....	.....
Class	.....	.....

Any other relevant qualifications (Institution, class of Membership and date elected) .....

.....

.....

.....

Registered or Licensed to practise as an Engineer in other Countries .....
.....
.....
.....

I, the undersigned, hereby apply to have my name as given above entered in the Register of Graduate Engineers. I hereby solemnly and sincerely declare that the foregoing statements are true in every respect and that I have read the Act and any Rules made under the Act and understand that, if registered, I shall be bound thereby and by any amendments thereto so long as my name remains on the register.

Declared at ..... By .....
(*Signature of Applicant*)

Before me .....
(*Commissioner for Oaths*)

this ..... day of ....., 19 .....

MALAŴI GOVERNMENT FORM "B"

G.N. 23/1980

ENGINEERS ACT

(CAP. 53:03)

UNDERTAKINGS

WHEREAS ..... a Graduate of ..... University */College, has entered my service */the service of ..... for a period of ..... years, namely from .... to ..... whereby he has been afforded opportunities for practical training in the planning, design and execution of engineering work and appropriate work in the field as carried out normally in my service*/in such service or by attachment to other firms or organizations, I, ..., Selected Registered Engineer under Selected Registration No. ....., hereby UNDERTAKE to direct and control ..... in his training for the above-mentioned period and for so long as he continues in my service */such service.

Date ..... *Signature of Selected Registered Engineer* } .....

WHEREAS the continuance of ..... in my service*/in the service of ..... for the above-mentioned period will be on condition that his work

and conduct are satisfactory and on other conditions of business admitting thereof, I hereby UNDERTAKE to notify the Board of his discontinuance in my service*/in such service on any of the above-mentioned grounds.

Date ..... *Name and Signature of Employer or a Responsible Officer in the Employer's service, stating his designation therein* } .....

WHEREAS it is my intention to avail myself of the above-mentioned opportunities for my practical engineering training for the above-mentioned period, I, ..., a Graduate Engineer, hereby UNDERTAKE to diligently submit myself to the direction and control of ....

Date ..... *Signature of the Graduate Engineer* } .....

*Delete whichever does not apply.

MALAŴI GOVERNMENT FORM "C"

ENGINEERS ACT

(CAP. 53:03)

SCHEDULE OF PARTICULARS

(To be submitted with Form of Undertaking)

Firm or Authority

Name of Firm or Authority .....

Name of Selected Registered Engineer directing and supervising practical training—

.....

Position in Firm or Authority .....

Number of Graduate Engineers at present under training (excluding the person herein proposed) . . . .

Registered Graduate Engineer
Name . . . .

Date of Birth . . . .

Details of Degree with name and address of University or College:

.....

.....

Proposal for training:

.....

.....

Signature of Selected Registered

Engineer . . . .

Selected Registration Number .....

Date ..... FORM "D"

This is to certify that ..... has been entered in the Register of Graduate Engineers of the Board of Engineers of Malaŵi as a Graduate Engineer pursuant to the Engineers Act.

..... day of ..... 197.....

.....
Chairman

.....
Registrar

Registered Number .....

FORM "A"

SECOND SCHEDULE

ENGINEERS ACT

(CAP. 53:03)

APPLICATION FOR REGISTRATION AS A REGISTERED ENGINEER

(UNDER SECTION 22)

To: The Registrar, Board of Engineers,
Private Bag 16, Lilongwe

Surname .....

First Names .....

Date of Birth ..... Nationality .....

Nationality at Birth (if different from above) .....

Postal Address .....

.....

Present Employer and Address .....

.....

Engineering Degree	*First*	*Post Grad. or Other*
University or College . .	.....	.....
Country	.....	.....
Duration of Course	.....	.....
Date Awarded	.....	.....
Class	.....	.....

Professional Qualifications (Institution, class or Membership and date elected) and post Graduate Experience .....

.....

.....

.....

Registered or Licensed to practise as an Engineer in other Countries

.....

.....

.....

.....

I, the undersigned, hereby apply to have my name as given above entered in the Register of Registered Engineers. I hereby solemnly and sincerely declare that the foregoing statements are true in every respect and that I have read the Act and any Rules made under the Act and understand that, if registered, I shall be bound thereby and by any amendments thereto so long as my name remains on the register.

Declared at ..... By .....

Signature of Applicant

Before me ..... this ..... day of ..... 19 .....

(*Commissioner for Oaths*)

MALAŴI GOVERNMENT FORM "B"

ENGINEERS ACT
(CAP. 53:03)

G.N. 23/1980

CERTIFICATION OF COMPLETION OF PRACTICAL ENGINEERING TRAINING

I, ..., selected Registered Engineer, having directed or controlled ..... pursuant to the undertakings respectively dated ..... 19 ....., ... 19 ....., and ..... 19 ..... do hereby CERTIFY THAT the said ..... has been in my service*/in the service of .....as a Graduate Engineer for a period of ..... years, from ..... to ..... during which period he has spent .... months in my office*/in the office of ..... and .... months in or upon engineering works, and has received practical training in the planning, design and execution of engineering and other appropriate works as are comprised within the profession of Engineering; and I further CERTIFY THAT during the above-mentioned period he has conducted himself with propriety and has, to the best of my judgment, acquired reasonable practical knowledge of the works with which he has been associated and which are particularized overleaf.

Dated this ..... day of ....., 19 .....

Signature .....
Selected Registered Engineer

Selected Registration No. .....
Engineering Qualifications .....
Position Held .....

*Delete whichever does not apply.

FORM "C"

This is to certify that ..... has been entered in the Register of Registered Engineers of the Board of Engineers of Malaŵi as a Registered Engineer pursuant to the Engineers Act.

..... day of ....., 19 .....

.....
Chairman

.....
Registrar

Registered Number .....

THIRD SCHEDULE

GOVERNMENT OF MALAŴI FORM "A"

ENGINEERS ACT

(CAP. 53:03)

(REGISTER R1)

REGISTER OF GRADUATE ENGINEERS

Registered Number	*Date of Regis-tration*	*Name*	*Address*	*Qualifi-cations*	*Reference and date of Fee transfer to paid Register R2 date*	*Number and date of Receipt*

GOVERNMENT OF MALAŴI FORM "B"

ENGINEERS ACT

(CAP. 53:03)

(REGISTER R2)

REGISTER OF REGISTERED ENGINEERS

Registered Number	*Date of Registration*	*Name*	*Address*	*Qualifica-tions*	*Fee paid date*	*Number and date of Receipt*

VETERINARY AND PARA-VETERINARY PRACTITIONERS

CHAPTER 53:04

Containing Pages 1–20

L.R.O. 1/2003

CHAPTER 53:04

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An Act to Provide for the establishment of the Board of Veterinary Surgeons; the registration and disciplining of veterinary surgeons and para-veterinary surgeons; the licensing of private practice of veterinary surgery and generally for the control and regulation of the practice of veterinary surgery and veterinary medicine in Malaŵi and for matters incidental to or connected therewith

7 of 2001
GN. 27/2001

[3RD SEPTEMBER, 2001]

PART I

PRELIMINARY

1. This Act may be cited as the Veterinary and Para-Veterinary Practitioners Act.

Short title

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

Interpretation

"Board" means the Board of Veterinary Surgery established under section 3;

"Director" means the Director of Animal Health and Industry;

"para-veterinary surgeon" means a person registered as such under section 27;

"practice of veterinary surgery" includes the practice of veterinary medicine and the performance of any operation and the giving of and providing of any treatment, test, advice, diagnosis or attention such as is usually performed, given or provided by veterinary surgeons;

"Register" means the Register of Veterinary Surgeons provided forunder section 26;

"to register" means to enter in the Register the particulars required under section 29;

"Veterinary surgeon" means a person registered as such under section 27.

PART II

THE BOARD OF VETERINARY SURGERY

3. There is hereby established a body to be known as the Board of Veterinary Surgery (in this Act otherwise referred to as the "Board") which shall be a body corporate with perpetual succession and a common seal capable of suing and being sued in its corporate name, and with power, subject to this Act, to do or perform all such acts and things as a body corporate may by law do or perform.

Establishment of the Board

Composition of the Board

4.—(1) The Board shall consist of—

(*a*) the following members *ex officio*—

(i) the Director of Animal Health and Industry or his designated representative;

(ii) the Solicitor General or his designated representative;

(*b*) three registered veterinary surgeons appointed by the Minister; and

(*c*) two registered para-veterinary practitioners nominated by the Veterinary Assistants Association of Malaŵi and appointed by the Minister.

(2) A designated representative of a member *ex officio* referred to in subsection (1) shall be designated by, or on behalf of, the member *ex officio* by a notice in writing to the Board to attend the meetings of the Board, and upon such designation such designated representative shall not attend to the business of the board by representation.

(3) The Chairman shall be elected by the Board from among its members:

Provided that no member appointed under paragraph (*a*) of subsection (1) shall be elected as Chairman.

(4) The names of all members as first constituted and every change of membership shall be published in the *Gazette*.

(5) A member shall not be in the employ of the Board nor serve on full time basis.

Tenure of office and vacancies

5.—(1) A member, other than a member *ex officio*, shall hold office for a period of three years and shall be eligible for re-appointment for another three-year term but the office of that member shall become vacant—

(*a*) if he resigns by giving one month notice in writing to the Minister;

(*b*) upon his death;

(*c*) if he is absent without valid excuse from three consecutive meetings of the Board of which he has had notice;

(*d*) if he becomes an undischarged bankrupt;

(*e*) if he becomes mentally or physically incapable of performing his duties as a member; and

(*f*) if he participates, directly or indirectly, in an activity which is in contravention of this Act.

(2) On vacation of office by a member, the vacancy shall be filled by a person appointed in accordance with the relevant provisions of section 4 (1) (*b*) under which the former member was appointed:

Provided that if the remaining period is less than six months, the Minister may decide not to have the vacancy filled until the expiry of the Period.

Allowances of members

6. Members of the Board shall be paid such an allowance as the Minister shall, from time to time, determine.

Functions of the Board

7. The Board shall be the sole registering authority of all the persons required to be registered under this Act and shall have the following further functions—

(*a*) to assist in the promotion and improvement of animal health and industry in Malaŵi;

(*b*) to enforce discipline and control of all persons registered under this Act and practising veterinary surgery in Malaŵi;

(*c*) to control and exercise authority affecting the training of persons in the profession of veterinary surgery;

(*d*) to promote liaison in the field of training in the profession of veterinary surgery both within Malaŵi and elsewhere and to promote the standard of such training in Malaŵi;

(*e*) to advise the Minister on any matters falling within the scope of this Act; and

(*f*) to do all such acts and things as are necessary, incidental or conducive to the better carrying out of its functions under this Act.

Policy directions

8. The Board may, where necessary, seek the general direction of the Minister as to the manner in which it is to carry out its duties under this Part of the Act.

Proceedings of the Board

9.—(1) Subject to the other provisions of this Act, the Board may regulate its own procedure.

(2) The Board shall meet for the transaction of business at least once every three months at such places and at such times as the Chairman may determine.

(3) A special meeting of the Board may be called by the Chairman upon written notice of not less than seven days received from any member of the Board and shall be called if at least three members so request in writing:

Provided that if the urgency of any particular matter does not permit the giving of such notice, a special meeting may be called upon giving a shorter notice.

(4) Half of the members shall form the quorum of any meeting of the Board.

(5) There shall preside at any meeting of the Board—

(*a*) the Chairman; and

(*b*) in the absence of the Chairman, such member as the Chairman may designate or such member as the members present and forming a quorum may elect from among their number for the purpose of that meeting.

(6) The decision of the Board on any matter before any meeting shall be that of the majority of the members present and voting at the meeting and, in the event of an equality of votes, the person presiding shall have a casting vote in addition to his deliberative vote.

(7) No member appointed under section 4 (1) (*b*) shall attend to the business of his office by representation.

Committees of the Board

10.—(1) In addition to the Disciplinary Committee and save as otherwise provided in relation to that committee the Board may, for the purpose of performing its functions under this Act, establish any number of other committees and delegate to any such committees any of its functions as the Board considers necessary.

(2) The Board may appoint as members of a committee established under subsection (1) persons who are or are not members of the Board and such persons shall hold office for such period as the Board may determine.

(3) The persons to be appointed under subsection (2) shall be chosen for their ability and experience in veterinary science, pharmacy, medicine, dentistry, commerce, administration or finance or their professional qualifications or their suitability otherwise for appointment.

(4) Subject to any specific or general direction of the Board, a committee established under subsection (1) may regulate its own procedure.

Minutes of meetings

11. The Board shall cause minutes to be kept of the proceedings of every meeting of the Board and of every meeting of a committee of the Board.

Disclosure of interest

12.—(1) If any member is present at a meeting of the Board or of any committee of the Board at which any matter which is the subject of consideration is a matter in which that person or his immediate family member or his professional or business partner is directly or indirectly interested in a private or professional capacity, he shall, as soon as is practicable after the commencement of the meeting, disclose such interest and, unless the Board or the committee otherwise directs, that person shall not take part in any consideration or discussion of, or vote on, any question touching on such matter.

(2) A disclosure of interest shall be recorded in the minutes of the meeting at which it is made.

Protection of members

13. No action, suit or other proceedings shall be brought or instituted personally against any member in respect of any act done in good faith in the course of carrying out the provisions of this Act.

Co-opted persons

14.—(1) The Board may in its discretion at any time and for any period co-opt any person to attend any meeting of the Board or of any of its committees and take part in the deliberations of the meeting, but such person or officer shall not be entitled to vote at the meeting.

(2) Section 12 shall apply, *mutatis mutandis*, to a person or an officer attending a meeting of the Board pursuant to subsection (1).

Oath of secrecy

15.—Every—

(*a*) member:

(*b*) member of a committee of the Board; and

(*c*) consultant in the service of the Board.

shall, upon assumption of his office, take such oath of secrecy as may be approved by the Board or as may otherwise be prescribed under this Act.

Prohibition of publication or disclosure of information by unauthorized persons

16. No person shall, without the consent in writing given by or on behalf of the Board, publish or disclose to any person, otherwise than in the course of his duties, contents of any document, communication or information which relates to, and which has come to his knowledge in the course of his duties under this Act.

PART III

Management

Appointment of Registrar and other staff

17.—(1) Subject to the provisions of this section, the Board—

(*a*) shall appoint a Registrar upon such terms and conditions as the Board shall determine; and

(*b*) may appoint assistant registrars and such other employees as it considers necessary or desirable in the discharge of its duties and upon such terms and conditions as the Board may determine.

(2) The Registrar, after consultation with the Chairman of the Board, may appoint temporary employees at such daily rates of pay, not below the minimum rates otherwise prescribed by law, as he may consider appropriate and shall, after he has appointed any such employee, report the fact thereof to the Board at its next meeting.

(3) The Registrar shall be the secretary to the Board and to every committee thereof and shall, on the instructions of the Chairman of the Board or the chairman of any committee, convene a meeting of the Board or the committee, as the case may be.

(4) If the Registrar is absent or unable to carry out any of his functions under this Act, an assistant registrar or any other officer of the Board shall exercise, during the period that the Registrar is so absent or unable to act, such of the functions of the Registrar as the Board may designate.

PART IV

Financial Provisions

Funds of the Board

18.—(1) The funds of the Board shall consist of such monies as may—

(*a*) be appropriated by Parliament for the purposes of the Board;

(*b*) be obtained as a result of the levy imposed under section 19;

(*c*) be paid to the Board by way of grants or donations;

(*d*) be received by the Board under subsection (2);

(*e*) constitute proceeds of sales of the annual reports and progress reports of the Board; and

(*f*) otherwise vest or accrue to the Board.

(2) The Board may—

(*a*) accept money by way of grants or donations from any source in or outside Malaŵi;

(*b*) subject to the approval of the Minister and the Minister responsible for Finance, raise, by way of loans from any source in or outside Malaŵi, such money as it may require for the discharge of its functions; and

(*c*) charge and collect fees in respect of programmes, publications, seminars, documents, consultancy services and other services provided by the Board.

(3) The Board may invest in such manner as it thinks fit such funds as it does not immediately require for the performance of its functions.

Levy

19. The Board may, from time to time, by Order published in the *Gazette*, impose a levy on gross or net income accruing to any person or class of persons registered under this Act and such levy shall be appropriated for the general operations of the Board as the Minister may specify in the Order.

Financial year

20. The financial year of the Board shall be the period of twelve months ending on 30th June in each year or on such other date as the Minister may specify by Order published in the *Gazette*:

Provided that the first financial year of the Board may be such shorter or longer period than twelve months as the Minister shall determine but being not less than six months or more than eighteen months.

21.—(1) The Board shall cause to be kept proper books of accounts and other records relating to its accounts. Accounts

(2) The accounts of the Board shall—

(*a*) be audited annually by independent auditors appointed by the Board and approved by the Minister; and

(*b*) be examined by the Auditor General before being presented to the Minister in accordance with section 22.

22.—(1) As soon as practicable, but not later than six months after the expiry of each financial year, the Board shall submit to the Minister a report concerning its activities during that financial year. Annual reports

(2) The report referred to in subsection (1) shall be in such form as the Minister shall approve and shall include information on the financial affairs of the Board, and there shall be appended to the report—

(*a*) an audited balance sheet;

(*b*) an audited statement of income and expenditure; and

(*c*) such other information as the Board may consider appropriate or as the Minister may direct.

(3) The Minister shall, during the meeting of the National Assembly next following receipt by him of the report referred to in subsection (1), lay the report before the National Assembly and subsequently the report shall be published.

23. The Board shall, at the end of every financial year, produce a progress report on its activities during that period and shall publish the report. Progress report

PART V

Registration

24.—(1) Any person who wishes to be registered as a veterinary surgeon or as a para-veterinary surgeon shall make written application therefor to the Board. Application for registration

(2) Every such application shall be in the prescribed form, or a form approved for the purpose by the Board, and shall be accompanied by—

(*a*) such a fee as the Board may, from time to time, determine;

(*b*) a certified copy of the degree, diploma, certificate or other document by which the applicant purports to prove such qualifications as may be necessary to be registered as a veterinary surgeon or as a para-veterinary surgeon; and

(*c*) such other information or documents as the Board may require.

Unregistered persons prohibited from practising veterinary surgery

25.—(1) No person shall—

(*a*) practice veterinary surgery;

(*b*) hold himself out or allow himself to be held out as a veterinary surgeon; or

(*c*) hold himself out or allow himself to be held out as qualified to practice veterinary surgery, unless his name appears on the Register as a veterinary surgeon or as a para-veterinary surgeon.

(2) Nothing in subsection (1) shall be construed as precluding an unregistered person from performing, giving or providing, in accordance with the Schedule, any operation, treatment, test, advice, diagnosis or attendance which is specified in the Schedule.

Register

26.—(1) The Board shall keep a book called the Register of Veterinary Surgeons and Para-Veterinary Surgeons in which shall be entered the name, address, qualifications and date of registration of every veterinary surgeon and para-veterinary surgeon.

(2) The Board may make any necessary alterations to any entry in the Register.

(3) The Board shall publish or cause to be published in the *Gazette* the name, address and date of registration of every veterinary surgeon and para-veterinary surgeon as soon as practicable after the date of such registration.

Persons eligible to be registered as veterinary surgeons or para-veterinary surgeon

27. A person shall be eligible for registration under this Act as a veterinary surgeon or para-veterinary surgeon if he is a holder of a degree, diploma, certificate or other qualification which is recognized by the Board as making him eligible for registration and he satisfies the Board that he—

(*a*) has acquired sufficient knowledge of veterinary science; and

(*b*) has an adequate knowledge of the English language; and

(*c*) is, in all aspects as to character and otherwise, a fit and proper person to be registered.

Qualifications for registration

28. For the purposes of section 24, the qualifications necessary for a person to be registered as a veterinary surgeon or as a para-veterinary surgeon shall be such qualifications as the Minister, acting on the advice of the Board, deems sufficient.

Registration

29.—(1) Where a person has made application in accordance with section 24 and his qualifications have been deemed sufficient in accordance with section 28 the Board shall, subject to subsection (2), enter his name on the Register as a veterinary surgeon or as a para-veterinary surgeon.

(2) No person shall be registered if he has been struck off the Register or off any other registering authority for veterinary surgeons outside Malaŵi, and he has not been re-instated, or if the High Court has not ordered his re-instatement on the Register.

Annual publication of list of veterinary surgeons and para-veterinary surgeon

30.—(1) During the month of January in each year the Board shall publish or cause to be published in the *Gazette* a list containing the names of all persons on the Register at the end of the previous year their addresses and dates of registration

(2) An entry in the list published in the *Gazette* under this section shall be *prima facie* evidence that any person named therein is registered as veterinary surgeon or as para-veterinary surgeon and the absence of the name of any person from such list shall be *prima facie* evidence that such person is not so registered.

Removal of name from Register

31.—(1) The Board shall strike out of the Register the name of any veterinary surgeon or para-veterinary surgeon whose name the Board has directed to be struck out, but shall re-instate such name on the Register if the High Court so directs.

(2) The Board shall remove from the Register the name of any veterinary surgeon or para-veterinary surgeon—

(*a*) who makes written application to the Board to have his name removed from the Register;

(*b*) whom the Board is satisfied is dead;

(*c*) whom the Board is satisfied has ceased to practice veterinary surgery in Malaŵi; and

(*d*) who is convicted of an offence under this Act or any other written law which, in the opinion of the Board, renders him unfit to be on the register.

(3) For the purpose of satisfying itself that a veterinary surgeon or a para-veterinary surgeon has ceased to practice veterinary surgery in Malaŵi, the Board shall—

(*a*) publish in the *Gazette* notification of its intention to remove the name of surgeon from the Register; and

(*b*) send a copy of such notification to the address of the said veterinary surgeon or para-veterinary surgeon or to the address recorded in the Register, and if no objection to the removal of the name is received within thirty days of the publication of said notification in the *Gazette*, the Board may remove the said name from the Register.

Use of title

32. A person registered under this Act—

(*a*) shall, by virtue of being so registered, be entitled to take and use the title and description of veterinary surgeon or para-veterinary surgeon; and

(*b*) shall not take or use, or affix to or use in connexion with his premises, any title or description in addition to that of veterinary surgeon or para-veterinary surgeon, other than as indicated by the particulars relating to his qualifications entered in the Register.

Persons registered entitled to practice and recover charges

33.—(1) Every person registered under this Act shall be entitled to practise veterinary surgery, and to demand, sue for and recover in any court reasonable charges for professional aid, advice, visits and the value of any medicine or veterinary appliance supplied by him.

(2) No person shall be entitled to recover in any court any charge for professional aid, advice, visits or the value of any medicine or veterinary appliance supplied in connexion therewith unless he was at the relevant time duty registered under this Act.

Certificates to be signed by veterinary surgeons

34. No certificate or document which is required to be signed by a qualified veterinary surgeon or para-veterinary surgeon shall be valid unless signed by a person registered under this Act.

Authority for re-registration

35. Any person whose name has been struck out of the Register on the directions of the Board may make written application to the Board for directions that he may be re-instated on the Register, and the Board, after such inquiry, if any, as it deems fit, may issue such directions, or refuse to issue such directions, in its discretion.

PART VI

Private Practice

Licence for private practice

36.—(1) The Board may issue to a veterinary surgeon or a para-veterinary surgeon who has applied in the prescribed manner and whom the Board considers has had suitable experience in veterinary surgery or veterinary science, as the case may be, a licence to engage in private practice on his own behalf as a private practitioner or to be employed, either whole time or part time, by a private practitioner.

(2) A licence under subsection shall—

(*a*) be subject to such conditions as the Board may either generally or specially determine;

(*b*) be issued upon payment of the prescribed fee;

(*c*) be in such form as may be prescribed;

(*d*) be valid from the date of issue to 30th June next following the date of issue; and

(*e*) state whether the person so licensed may practise as a private practitioner on his own behalf or may be employed by a private practitioner.

(3) The Board may, for good cause, refuse to issue a licence to engage in private practice to any person or may withdraw or cancel such licence issued to any person either indefinitely or until such time as the conditions, if any, imposed by the Board have been fulfilled.

(4) No premises shall be habitually used for the purpose of private practice, unless they are authorized for such use by Board, and any person duly authorized by the Board in that behalf may at any reasonable time enter upon and inspect such premises.

(5) Any person aggrieved by any decision of the Board under this section may appeal to the High Court, and in such appeal the High Court may annul or vary the decision as it thinks fit.

(6) A person who engages in private practice without a licence authorizing him so to do issued in accordance with this Act or regulations made hereunder shall be guilty of an offence and liable to a fine of K2,000 and imprisonment for one year.

Issue, etc., of licences to be published in the *Gazette*

37. The issue, cancellation and withdrawal of any licence under section 36 shall be notified in the *Gazette*.

No fees recoverable unless practitioner licensed for private practice

38. No person in private practice shall be entitled to recover any charge for any treatment, operation, advice or other veterinary service which he has rendered, or for any medicine which he has prescribed or supplied, as a veterinary surgeon or para-veterinary surgeon unless he is at the time appropriately licensed under section 36 for private practice.

PART VII

Disciplinary Provisions

Disciplinary Committee

39.—(1) There shall be a Disciplinary Committee of the Board which shall consist of—

(*a*) the Chairperson of the Board who shall be the Chairperson of that committee;

(*b*) not less than two and not more than four other persons specially appointed by the Chairperson of the Board for the particular inquiry; and

(*c*) two other members who may or may not be members of the Board.

(2) In any disciplinary inquiry the Board may request the Attorney General to nominate a legally qualified person serving in the public service to assist the Disciplinary Committee in the proceedings of the inquiry.

(3) At any meeting of the Disciplinary Committee the Chairperson and two other members shall form a quorum.

(4) For the purposes of any inquiry the Chairperson of the Board may appoint to the Disciplinary Committee any other person he considers reasonably qualified to assist the committee in the conduct of the inquiry.

(5) All acts, matters or things authorized or required to be done by the Disciplinary Committee shall be decided by a majority vote at a meeting of the Disciplinary Committee at which a quorum is present.

(6) At all meetings of the Disciplinary Committee each member present, being a member by virtue of subsection (1), shall have one vote on a question before the Disciplinary Committee and, in the event of an equality of votes, the Chairperson shall have, in addition to a deliberative vote, a casting vote.

(7) The Disciplinary Committee shall have power to regulate its own procedure.

Function of Disciplinary Committee

40.—(1) Subject to the provisions of subsection (2), the function of the Disciplinary Committee shall be to inquire into an allegation referred to it under section 43 (2) alleging that a registered person—

(*a*) has been guilty of improper or disgraceful conduct or conduct which, when regard is had to the profession or calling of that person, is improper or disgraceful; or

(*b*) is grossly incompetent or has performed any act pertaining to his profession or calling in a grossly incompetent manner.

(2) Before exercising its function with respect to any person the Disciplinary Committee shall—

(*a*) cause to be served upon him a notice setting out the allegations against him; and

(*b*) afford him a reasonable opportunity of being heard either by himself or, if he so wishes, by a legal representative.

Taking of evidence by Disciplinary Committee

41.—(1) For the purposes of any inquiry, the Disciplinary Committee may take evidence and may—

(*a*) under the hand of the Chairperson of the Board or the Registrar summon witnesses and require the production of any book, record, document or thing;

(*b*) administer an oath or affirmation to any person; and

(*c*) examine any book, record, document or thing which a witness has been required to produce.

(2) A summons for attendance before the Disciplinary Committee or for the production to it of any book, record, document or thing shall be—

(*a*) in the form prescribed; and

(*b*) signed by the Chairperson or the Registrar.

(3) Any person who—

(*a*) has been summoned under subsection (2) and who—

(i) refuses or fails without sufficient cause to attend and give evidence relevant to the inquiry at the time and place specified in the summons; or

(ii) refuses to be sworn or to affirm; or

(iii) refuses or fails without sufficient cause to produce any book, record, document or thing which he has been required by that summons to produce; or

(*b*) attends as a witness before the Disciplinary Committee and refuses to answer or to answer fully and satisfactorily to the best of his knowledge and belief any question properly put to him,

shall be guilty of an offence and liable to a fine of K10,000 and to imprisonment for three months.

(4) Any person who gives false evidence on oath at any inquiry held under this Part, knowing such evidence to be false or not believing it to be true, shall be guilty of an offence and liable to a fine of K20,000 and to imprisonment for six months.

(5) The Disciplinary Committee shall, in any inquiry held by it under this Part, record the proceedings and any evidence heard by it and the decision made by it and the reasons therefore.

Exercise of disciplinary powers on conviction for offence

42.—(1) A registered person who has been convicted of an offence by a court of law within or outside Malaŵi, whether before, on or after the date of his registration, shall be liable to disciplinary inquiry by the Disciplinary Committee in accordance with the provisions of this Part if the Disciplinary Committee is of opinion that such offence constitutes—

(*a*) improper or disgraceful conduct; or

(*b*) conduct which, when regard is had to the profession or calling of that person, is improper or disgraceful.

(2) The Disciplinary Committee may, if it thinks fit on proof before it of a conviction referred to in subsection (1) and without hearing further evidence, deal with the convicted person in accordance with the provisions of this Part:

Provided that the convicted person shall be afforded an opportunity of tendering, in writing or in person or by his legal representative as he may elect, an explanation to the Disciplinary Committee in extenuation of his conduct

(3) If, after the termination of proceedings before a court in Malaŵi—

(*a*) it appears to the court that there is *prima facie* evidence of improper or disgraceful conduct on the part of a registered person, the court shall direct that a copy of the record of the proceedings or a copy of such part of the record of the proceedings as is material to the issue shall be transmitted to the Board; or

(*b*) the Board requests that a record of the proceedings before a court in Malaŵi or part of such record be supplied to it on the ground that it is of direct interest to the Board in the exercise of its functions under this Act, the court shall transmit to the Board a copy of the record of the proceedings or a copy of such part of the record of the proceedings as is material.

Board to refer cases to Disciplinary Committee

43.—(1) Whenever there is brought to the notice of the Board an allegation which might be subject of inquiry by the Disciplinary Committee the Board shall have power to call for information, to cause such investigation to be made as it thinks necessary and to seek such legal advice or other assistance as it may require.

(2) After any investigation pursuant to subsection (1) the Board—

(*a*) may refer the allegation to the Disciplinary Committee for inquiry under this Part and in that case the Registrar shall present a charge, in such form as may be prescribed, to the registered person against whom the allegation is made;

(*b*) if it considers that—

(i) the conduct complained of would not constitute improper or disgraceful conduct; or

(ii) for any other reason the allegation should not be the subject of inquiry by the Disciplinary Committee,

may dismiss the allegation or take such other action as it deems fit and may, after first allowing the person concerned to make written representation, authorize the Chairperson of the Board to admonish that person and the Chairperson shall report the fact thereof to the Board; and

(*c*) if it considers that the allegation forms or is likely to form the subject of criminal proceedings already before a court, may postpone referring the matter to the Disciplinary Committee until such criminal proceedings have been determined.

Exercise of disciplinary powers

44.—(1) After due inquiry, the Disciplinary Committee shall report its findings to the Board with such recommendations as the Disciplinary Committee considers appropriate.

(2) After considering the findings and recommendations of the Disciplinary Committee the Board—

(*a*) if it is satisfied that the registered person—

(i) has been guilty of improper conduct or disgraceful conduct or conduct which, when regard is had to the profession or calling of that person, is improper or disgraceful and that such conduct warrants the cancellation of his registration; or

(ii) is grossly incompetent or has performed any act pertaining to his profession or calling in grossly incompetent manner, the Board shall direct the Registrar to cancel the registration of the registered person and, if it thinks fit, order that person to pay to the Board any costs or expenses incidental to the inquiry;

(*b*) if it considers that the registered person has been guilty of improper or disgraceful conduct or conduct which, when regard is had to his profession or calling, is improper or disgraceful but that such conduct does not warrant the cancellation of the registration of that person, shall do one or more of the following—

(i) order his suspension for a specified period from practicing or performing acts specially pertaining to his profession or calling;

(ii) impose such conditions as it deems fit subject to which he shall carry on his profession or calling;

(iii) order him to pay to the Board a penalty not exceeding K10,000;

(iv) order him to pay any costs or expenses of and incidental to the inquiry;

(v) censure him; and

(vi) caution him and postpone, for a specified period not exceeding three years any further action against him on such conditions as the Board may determine as to his future conduct, including conduct or nature of his practice during that period;

(*c*) if it considers that the allegations against the registered person have not been established, shall dismiss the allegations and in such case the Board may if it is of the opinion that the allegations were frivolous or vexatious, order the complainant to pay the costs of the inquiry.

(3) If at any time the Board is satisfied that during the period of any postponement under subsection (2) (*b*) (vi) a registered person has not complied with the conditions imposed under that paragraph, the Board after giving reasonable notice to the registered person concerned, may proceed to inflict further upon him more of the measures specified in that subsection.

Appeal to High Court

45.—(1) Any person who is aggrieved by the findings of the Disciplinary Committee or the decision reached, or penalty or measure imposed, by the Board under this Part may, within three months after the date of such findings or the imposition of such penalty or measure, appeal to the High Court.

(2) On an appeal under subsection (1) the High Court may—

(*a*) confirm, vary or set aside any finding, decision or penalty appealed against; or

(*b*) refer the matter back to the Board, for further consideration, and in either case may make such order as to the costs of the appeal or otherwise as it may deem just:

Provided that the High Court shall not set aside any finding or penalty by reason only of an informality or irregularity in the proceedings of the Board or of the Disciplinary Committee which did not embarrass or prejudice the appellant in answering the charge or in the conduct of his defence.

(3) For the purposes of any appeal under this section the High Court may, if it considers it expedient so to do, sit with one or more persons as assessors, being persons whom it considers specially qualified to assist it in hearing the appeal, and may hear the appeal wholly or partly with such persons, but the decision in such appeal shall be that of the presiding judge or judges.

Publication of result of disciplinary proceedings

46. The Registrar shall by notice in the *Gazette* publish the name of any person—

(*a*) whose registration has been cancelled; or

(*b*) who has been suspended from practice and shall, in such notice, specify the period of suspension.

Board or Disciplinary Committee not to be liable

47.—(1) Save as is provided in this Act, no legal proceedings whether civil or criminal shall lie against the Board or the Disciplinary Committee or any member or officer thereof in respect of any act or duty done or performed in accordance with the provision of this Part.

(2) The Board shall not be responsible for any loss of earnings by a person as a result of action taken under this Act, whether by the Board or the Disciplinary Committee, and whether or not a particular finding, decision or penalty is subsequently varied or set aside.

Improper or disgraceful conduct

48.—(1) The Board may in regulations made under this Act—

(*a*) define what, in the case of any class of registered persons shall constitute improper or disgraceful conduct;

(*b*) provide for the manner in which complaints or charges against a registered person may be lodged; and

(*c*) provide for any other matter incidental to the investigation of an inquiry into a complaint or charge against a registered person.

(2) If any registered person has counselled or knowingly been a party to the performance of any act in respect of which an unregistered person has been convicted of an offence under this Act the conduct of such registered person shall, for the purposes of this Part, constitute improper or disgraceful conduct:

Provided that the provisions of this subsection shall not be construed as exempting such registered person from prosecution in a court for any offence which such conduct may constitute.

(3) Regulations referred to in subsection (1) shall not limit the general power conferred on the Disciplinary Committee or on the Board to inquire into allegations of improper or disgraceful conduct not covered by such regulations and to impose any penalty under this Part on any person guilty of such conduct.

PART VIII

Offences and Penalties

Offences and penalties

49.—(1) Any person who—

(*a*) contravenes section 25;

(*b*) contravenes section 32;

(*c*) fraudulently makes, or causes or permits to be made any false or incorrect entry in the Register or any copy threof;

(*d*) fraudulently procures or attempts to procure himself or any other person to be registrered; and

(*e*) being a veterinary surgeon or para-veterinary surgeon allows a person whose name is not entered on the Register to practice veterinary surgery on, or form an office in, the premises used by such veterinary surgeon or para-veterinary surgeon in the performance of his professional duties,

shall be liable to a fine of K10,000 and imprisonment of six months.

(2) A prosecution for an offence under this Act shall not be instituted without the sanction of the Director of Public Prosecutions.

PART IX

Regulations and Savings

Regulations

50. The Minister may, with the advice of the Board, make regulations for carrying out or giving effect to the provisions of this Act, and without prejudice to the generality of the foregoing, such regulations may—

(*a*) prescribe the fees payable—

(i) upon registration or renewal of registration; or

(ii) for restoration to a register, or

(iii) for the issue of duplicate certificate or registration or a certificate extract from a register or other certificate issued by the Board; or

(iv) in respect of private practice; or

(v) for any other matter under this Act;

(*b*) prescribe the forms required to be prescribed under this Act; and

(*c*) make provisions for the conduct, supervision of private practice and other matters relating thereto.

Repeal and savings Cap. 53:04

51.—(1) The Veterinary Surgeons Act is repealed.

(2) Any subsidiary legislation made under the Act repealed by subsection (1), in force immediately before the commencement of this Act—

(*a*) shall remain in force unless in conflict with this Act, and shall be deemed to be subsidiary legislation made under this Act; or

(*b*) may be replaced, amended or repealed by subsidiary legislation made under this Act.

(3) Any agreement or similar arrangement made pursuant to the provisions of the Act repealed by subsection (1) shall continue in force until terminated in accordance with the terms and conditions thereof.

SCHEDULE (s. 25)

Operations, treatments, tests, advice, diagnosis and attendance which may be performed, given or provided by unregistered persons—

(*a*) any non-surgical treatment given to an animal by—

(i) its owner;

(ii) a member of the household of which the owner is a member;

(iii) a person in the employment of the owner;

(iv) a person in the employment of a person referred to in sub-paragraph (ii);

(*b*) anything done, otherwise than for payment or material advantage, by a person engaged or employed in farming to any animal owned for the purpose of agriculture;

(*c*) anything done in the course of his duties by a person employed by the Government;

(*d*) the rendering in an emergency of first aid for the purpose of saving life or relieving pain; and

(*e*) the performance of the following operations—

(i) caponizing or castration;

(ii) the tail docking of a lamb;

(iii) the docking of the tail of a dog before its eyes are open;

(iv) the amputation of the dew claws of a dog before its eyes are open

(v) The clipping or hoof trimming of dogs, sheep or cattle.

NATIONAL CONSTRUCTION INDUSTRY

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CHAPTER 53:05

NATIONAL CONSTRUCTION INDUSTRY

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19 of 1996
G.N. 6/1997

An Act to provide for the establishment of the National Construction Industry Council of Malaŵi, for the promotion and development of the construction industry in Malaŵi, for the registration of persons engaged in the construction industry, for the co-ordination of training of persons engaged in the construction industry and generally for matters incidental thereto or connected therewith

[20TH JANUARY, 1997]

PART I

PRELIMINARY

Short title

1. This Act may be cited as the National Construction Industry Act.

Interpretation

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

"Council" means the National Construction Industry Council of Malaŵi established under section 3;

"financial institution" has the meaning ascribed thereto in section 2 of the Banking Act; Cap. 44:01

"foreign firm" means a firm operating in Malaŵi but belonging to a person who is not a Malaŵian national and having fifty-one per cent or more of its capital originating from outside Malaŵi;

"local firm" means a firm operating in Malaŵi having fifty-one per cent or more of its capital originating from within

Malaŵi but belonging to a person who is not a Malaŵian national;

"Malaŵian firm" means a firm operating in Malaŵi and having fifty-one per cent or more of its capital belonging to a Malaŵian national;

"member" in relation to the Council means a member thereof appointed or elected under section 4 (1);

"person engaged in construction industry" means a contractor, consultant, material manufacturer and material supplier.

PART II

The National Construction Industry Council of Malaŵi

Establishment of the Council

3. There is hereby established a Council to be known as the National Construction Industry Council of Malaŵi which shall be a body corporate having perpetual succession and a common seal and shall, under that name, be capable of suing and being sued and of purchasing or otherwise acquiring, holding and alienating movable or immovable property and, subject to the provisions of this Act, of performing all such acts as bodies corporate may by law perform.

Composition of the Council

4.—(1) The Council shall consist of the following members appointed by the Minister three quarters of whom shall, save in the case of an ex officio member, be citizens of Malaŵi—

(*a*) three members who shall be contractors nominated by the Master Builders' Association and the Malaŵian Building Contractors and Allied Trades Association;

(*b*) one specialized sub-contractor nominated by the Master Builders' Association and the Malaŵi Building Contractors and Allied Trades Association;

(*c*) one quantity surveyor nominated by the Board of Architects and Quantity Surveyors;

(*d*) one architect nominated by the Board of Architects and Quantity Surveyors;

(*e*) one engineer nominated by the Board of Engineers;

(*f*) one consulting engineer nominated by the Association of Consulting Engineers;

(*g*) two members representing material manufacturers;

(*h*) one member nominated by the Board of Registration of Land Economy Surveyors, Valuers, Estate Agents and Auctioneers;

(*i*) two members from financial institutions;

(*j*) the General Manager of the Malaŵi Investment Promotion Agency or his representative;

(*k*) the Executive Director of the Malaŵi Chamber of Commerce and Industry or his representative;

(*l*) the Secretary for Works and Supplies or his representative;

(*m*) the Secretary for Economic Planning and Development or his representative;

(*n*) the Solicitor General or his representative;

(*o*) one person nominated by the University of Malaŵi; and

(*p*) one person of good character and good standing in the community.

(2) Members of the Council, not being members *ex officio* shall hold office for a period of three years from the date of their appointment.

(3) Upon the appointment of any member to the Council, the Minister shall cause notice of such appointment to be published in the *Gazette* and shall in such notice specify the current membership of the Council resulting upon such appointment.

Disqualification from appointment to the Council

5. Any person who—

(*a*) is declared bankrupt under any law in force in Malaŵi;

(*b*) is, under any law in force in Malaŵi, adjudged or otherwise declared to be of unsound mind;

(*c*) has, within the past seven years, been convicted of an offence under any written law punishable by a term of imprisonment of six months without the option of a fine,

shall be disqualified from being appointed as a member of the Council.

Vacation, etc., of members from office

6.—(1) The Council shall require a member to vacate his office if the Council is satisfied that the member—

(*a*) has become insolvent or has assigned his estate for the benefit of, or made a composition or other arrangement with his creditors; or

(*b*) has been absent from three consecutive meetings of the Council, of which he has had notice, without leave of the Council; or

(*c*) has been disqualified under this Act or any other written law from carrying on his profession or trade; or

(*d*) has been convicted of an offence under this Act or any other written law relating to the construction industry;

(*e*) has been convicted—

(i) within Malaŵi of a criminal offence; or

(ii) outside Malaŵi of an offence by whatever name called which, if committed within Malaŵi, would have been a criminal offence, and sentenced to imprisonment for

a term of six months or more without the option of a fine, whether or not such sentence has been suspended, and has not received a free pardon; or

(*f*) is mentally or physically incapable of efficiently performing his duties as a member of the Council; or

(*g*) has had a penalty imposed upon him under this Act by the Council with the approval of the Minister.

(2) The Minister may—

(*a*) ask a member of the Council to temporarily resign if criminal proceedings have been instituted against the member for an offence in respect of which a sentence of imprisonment for a term of six months or more without the option of a fine may be imposed;

(*b*) suspend from office a member of the Council against whom the Council has instituted an inquiry into his professional conduct and while that member is so suspended he shall not carry out any duties as a member.

(3) Where a member against whom criminal proceedings have been instituted is acquitted by a court of law, the Minister may re-appoint such a member to hold office in the Council.

(4) A member of the Council may resign his office by giving one month notice in writing to the Chairman of the Council.

Filling of vacancies of the Council

7.—(1) On vacation of office by a member of the Council, the vacancy shall be filled by a person appointed in accordance with section 4 (1):

Provided that if the remaining period is less than six months the Minister may decide not to have the vacancy filled until the expiry of the period.

(2) If any member of the Council is granted leave of absence by the Minister, the Minister may, if he sees fit, co-opt a person who belongs to the same profession or calling as the member who has been granted leave to fill the vacancy during the absence of the member.

Invited persons

8.—(1) The Council may invite any person to attend any particular meeting or series of meetings of the Council for the purpose of assisting or advising the Council in respect of any matter under consideration by the Council.

(2) Any person invited pursuant to subsection (1) shall take part in the deliberations of the Council at any meeting he attends but shall not be entitled to vote.

Chairman and Vice-Chairman

9.—(1) The Council shall, from amongst its members, elect two members, who are not members ex officio, to be Chairman and Vice-Chairman.

(2) The office of the Chairman or Vice-Chairman shall become vacant—

(*a*) if the holder resigns his office by giving one month notice in writing to the Council; or

(*b*) if the holder of the office ceases to be a member of the Council; or

(*c*) if the Minister, at the recommendation of the Council, so directs.

(3) Whenever the Chairman is absent or is for any reason unable to discharge the functions of his office, the Vice-Chairman shall discharge the functions of the Chairman.

PART III

Meetings of the Council

Meetings of the Council

10.—(1) Subject to this Act, the Council shall hold ordinary meetings for the dispatch of business at least four times in each year.

(2) An extraordinary meeting of the Council—

(*a*) may be convened by the Chairman at any time;

(*b*) shall be convened by the Chairman within twenty-one days of the receipt by him of a request in writing signed by not less than five members of the Council and specifying the purpose for which the meeting is to be convened.

(3) At any meeting of the Council—

(*a*) the Chairman or, in his absence the Vice-Chairman, shall preside;

(*b*) in the absence of both the Chairman and Vice-Chairman the members present and forming the quorum shall elect one of their number to preside;

(*c*) the quorum shall be formed by any ten members.

(4) At any meeting—

(*a*) the decision of the Council on any matter shall be that of the majority of the members present and voting at the meeting, and in the event of an equality of votes, the Chairman or the person presiding shall have a casting vote in addition to his deliberative vote;

(*b*) a decision of the Council on policy matters shall be approved by the Minister.

(5) Subject to this Act, the Council may make rules for the regulation of its proceedings and business and may vary, suspend or revoke any such rules.

(6) The record of any meeting of the Council shall be made available to any person engaged in the construction industry

and registered under this Act at all reasonable times at the offices of the Council.

(7) No person shall have access to records of—

(*a*) a meeting of the Disciplinary Committee or any other committee of the Council; or

(*b*) the Council where the Council has resolved that it shall sit as a Committee.

(8) If a member of the Council has an interest, direct or indirect, in any matter before the Council and is present at a meeting of the Council at which the matter is under consideration, he shall as soon as practicable, disclose the fact and shall not take part in the consideration or discussion of or vote on any question with respect to the determination of the matter.

(9) Minutes of every meeting of the Council shall be taken and kept by such officer of the Council as may be designated in that behalf by the Council and shall be subject to confirmation by the Council at the succeeding meeting.

PART IV

Functions and Powers of the Council

Functions of the Council

11. The Council shall regulate the construction industry in Malaŵi and shall have the following further functions—

(*a*) to promote and develop the construction industry in Malaŵi by giving priority to Malaŵian firms;

(*b*) to facilitate Malaŵian firms to have access to resources for the development of their operations;

(*c*) to promote, in liaison with other bodies, both within Malaŵi and elsewhere, proper developmental issues relating to the construction industry;

(*d*) to promote research, development and use of competitive local materials;

(*e*) to promote and facilitate, where possible, the construction of affordable low-cost and medium-density housing;

(*f*) to promote safety standards in the construction industry;

(*g*) to prescribe and vary the categories for the registration of persons engaged in the construction industry;

(*h*) to recommend to the Minister conditions under which a foreign firm may register and operate in Malaŵi;

(*i*) to keep and maintain a register for each category of persons engaged in the construction industry;

(*j*) to conduct training, within Malaŵi and co-ordinate the training conducted by others, of persons engaged in the construction industry;

(*k*) to make available, from time to time, to persons engaged in the construction industry published information, advice and assistance in relation to the construction industry;

(*l*) to publish, from time to time, such technical and commercial information as it deems necessary or expedient for the benefit of persons engaged in the construction industry;

(*m*) to review, from time to time, the process of awarding contracts;

(*n*) to monitor and evaluate, from time to time, the capacity and progress of persons engaged in the construction industry;

(*o*) to encourage competition in the professions or trades of persons engaged in the construction industry;

(*p*) to regulate the activities of the construction industry in Malaŵi through the concerned Boards and Associations;

(*q*) to co-ordinate construction industry councils within or outside the region;

(*r*) to standardize quality control, contract documentation, codes of practice, procurement processes, legal and contractual procedures in liaison with other organizations;

(*s*) to exercise disciplinary control over the conduct of any person engaged in the construction industry and practising in Malaŵi; and

(*t*) generally, to perform such other functions as the Council deems necessary or expedient to achieve the objects of this Act.

Powers of the Council

12. For the better performance of its functions, the Council shall, subject to the provisions of this Act, have power—

(*a*) to consider any matter affecting the construction industry and make representations thereon to the Minister;

(*b*) to work together with other bodies in Malaŵi and elsewhere on matters affecting the construction industry;

(*c*) to recommend the approval of institutions in Malaŵi and outside for the training of persons engaged in the construction industry;

(*d*) to obtain information related to the industry from any person engaged in the construction industry in Malaŵi;

(*e*) to obtain and collate all available information concerning existing and proposed projects and advise persons engaged in the construction industry thereon;

(*f*) to employ such professional, technical and administrative officers, clerks and other servants as it may deem requisite and lay down conditions of service for such employees;

(*g*) to pay any person in its employ such salary, wages or other remuneration as it may deem fit, and to grant him such leave as it may deem fit; and

(*h*) generally, to do such things as the Council may deem necessary or expedient to achieve its objects under this Act.

Committees of the Council

13.—(1) The Council may establish any number of committees to carry out any special or general functions determined by the Council and may delegate to any such committee such of the functions of the Council as the Council may consider expedient.

(2) The Chairman of the Council shall by reason of his office be a member of every committee established under subsection (1).

(3) The Chairman of each committee shall be elected by the Council from amongst the members of the Council.

(4) (*a*) Each committee may, with the consent of the Council, invite any person to attend any particular meeting or series of meetings for the purpose of assisting or advising the committee in respect of any matter under consideration by the committee.

(5) Any person invited pursuant to subsection (4) shall take part in the deliberations of the committee at any meeting he attends but shall not be entitled to vote.

(6) The Chairman of the committee may, with the approval of the Chairman of the Council convene, at any time and place, a meeting of the committee of which he is chairman.

(7) The Council may, at any time, direct the Chairman of any committee to convene a meeting of such committee and such chairman shall, as soon as is practicable, comply with such direction.

(8) Every committee shall keep minutes of its meetings and shall inform the Council of its proceedings in such manner as the Council may direct.

PART V

Financial Provisions

Funds, accounts and audit

14.—(1) The funds of the Council shall consist of—

(*a*) such sums as may be appropriated by Parliament for the purposes of the Council;

(*b*) any fees payable under this Act;

(*c*) such other moneys and assets as may vest in or accrue to the Council in the course of its functions;

(*d*) the levy imposed under section 15;

(*e*) such moneys or other assets as may accrue to, or vest in, the Council by way of grants, subsidies, bequests, donations,

gifts, subscriptions, rents, interest or royalties, from any person.

(2) The Council shall keep proper accounts and other records relating thereto in respect of its funds and shall in every respect comply with the provisions of the Finance and Audit Act.

Cap. 37:01

(3) The accounts of the Council shall be examined and audited annually by auditors appointed by the Council and approved by the Minister.

Levy

15. The Council may, from time to time, by order published in the *Gazette*, impose a levy on any person or class of persons engaged in the construction industry under this Act and such levy shall be appropriated for the general operations of the Council.

Remuneration and expenses of members of the Council

16. A member of the Council or of a committee shall be paid from the funds of the Council such allowances as the Minister may approve and in prescribing the allowances, the Council may make provision for the reimbursement of any reasonable expenses incurred by a member of the Council or of a committee in connexion with the business of the Council or the committee.

Investment of surplus sums

17. The Council may invest any sums which are not immediately required for its objects.

Borrowing powers Cap. 37:01

18. Subject to the provisions of section 32 (1) of the Finance and Audit Act, the Council may borrow either temporarily by way of overdraft or otherwise, such sums as it may require, for meeting its obligations or discharging its functions under this Act.

Financial year of the Council

19. The financial year of the Council shall be the period commencing on the date of commencement of this Act and ending on the following 31st March, and thereafter it shall be a period of twelve months ending on 31st March every year.

PART VI

Registration

Prohibition of carrying on business, etc.

20.—(1) No person shall carry on business in the construction industry in Malaŵi unless he is registered under this Act.

(2) No person being registered under this Act shall carry on business of a category in respect of which he is not registered.

(3) An employee of any person registered under this Act shall not be deemed to carry on business within the meaning of subsection (1) or (2) by reason only of his performance of his functions as an employee.

Council to maintain a register

21.—(1) The Council shall, for the purpose of this Act, keep and maintain, in the appropriate prescribed form, a register of persons engaged in the construction industry.

(2) The register shall be in the custody of such officer employed by the Council as the Council may designate and shall be kept at the offices of the Council:

Provided that a copy of the register shall be kept at the Ministry Headquarters.

(3) Every person registered under this Act shall, after 31st March each year, pay to the Council such annual fees as may be prescribed.

(4) No person registered under this Act shall obtain a commission or a contract before the payment of the annual subscription fees.

(5) The Council shall, once in every year and as soon as may be convenient after 1st April, each year, publish in the *Gazette* the names, addresses, qualifications, dates of registration, category and other particulars of all persons registered under this Act.

Application for registration

22. An application for registration shall be made to the Council in such form as may be prescribed and shall be accompanied by the prescribed fee.

Qualifications for registration

23.—(1) The Council shall, before registering a person pursuant to an application made under section 22, take into consideration the following—

(*a*) his capital and other financial resources;

(*b*) whether he owns land, buildings and machinery;

(*c*) his managerial, professional, technical and other personnel; and

(*d*) in the case of an individual, his qualifications and skill;

(*e*) whether he has vehicles, plant, implements, tools, instruments, fuels and other goods and supplies for the unlimited categories;

(*f*) any other requirements which the Council may determine for each category necessary to enable him to discharge in a satisfactory manner, the obligations which may reasonably be expected of or undertaken by a person belonging to the category in respect of which registration is sought.

(2) (*a*) The Council may require the attendance of any party to, or any person interested in or affected by, any matter before the Council and may demand the production of any document or evidence to support the matter.

(*b*) Where any person whose presence is required is not present, or any document the production of which has been demanded, is not produced, the Council may postpone hearing the matter to give a reasonable opportunity for the appearance of such person or the production of such document.

Certificate of registration

24.—(1) The Council shall issue a certificate to every person registered under this Act.

(2) The certificate issued under subsection (1) shall be valid from 1st April to 31st March of the following year.

Council to decide applications for registration

25. After considering an application the Council shall decide whether the application should be granted or refused.

Appeals against refusal to register or removal from register

26.—(1) A person aggrieved by—

(*a*) the refusal of the Council to register him under this Act for any reason; or

(*b*) the removal by the Council of his name from the register; may, after filing written notice to the Council and within three months after the date on which notice is given to him by the Council of the refusal or removal as the case may be, appeal to the Minister in such a manner as may be prescribed.

(2) On hearing an appeal under subsection (1), the Minister may—

(*a*) dismiss the appeal; or

(*b*) if he is of the opinion that the Council has not acted in accordance with this Act, make an order that the name of the appellant be entered in or retained on the register; or

(*c*) refer the matter back to the Council for further consideration, and may make such other order as he may deem fit.

(3) Any person aggrieved by the decision of the Minister may apply to the High Court for review of such decision.

Striking off from the register

27.—(1) When a person registered under this Act has—

(*a*) failed to renew his annual licence; or

(*b*) ceased to carry on business in the construction industry in Malaŵi; or

(*c*) failed or ceased to have any of the things specified in section 23 (1) (*a*) to (*f*) inclusive; or

(*d*) undertaken work in a category other than that in respect of which he is registered; or

(*e*) been declared bankrupt; or

(*f*) become a person of unsound mind; or

(*g*) been found guilty of professional misconduct; or

(*h*) been found guilty of an offence involving dishonesty,

the Council may call upon such person to show cause why he should not be struck off the register.

(2) Where a person who has been called upon to show cause why he should not be struck off the register fails to show such

cause to the satisfaction of the Council, he shall be struck off the register.

PART VII

Miscellaneous Provisions

Offences

28. Any person who contravenes the provisions of this Act shall be guilty of an offence and be liable to a fine of K20,000 and to imprisonment for a term of two years, and in the case of a continuing offence to a further fine of K2,000 for each day during which the offence continues.

Regulations

29. The Minister may, with the advice of the Council, make regulations for carrying out or giving effect to the provisions of this Act, and without prejudice to the generality of the foregoing such regulations may—

(*a*) prescribe the fees payable—

(i) upon application for registration or renewal of registration;

(ii) for restoration to a register;

(iii) for any other matter under this Act;

(*b*) prescribe the forms required to be prescribed under this Act; and

(*c*) prescribe allowances to be paid to members of the Council and committees thereof in respect of honorarium, travelling and subsistence allowances;

(*d*) make provisions for the registration, control and regulation of foreign firms carrying on business in the construction industry in Malaŵi;

(*e*) make provision for the regulation and disciplining of persons engaged in the construction industry in Malaŵi.

PART VIII

Repeal and Savings

Repeal and savings

30.—(1) The Consultants and Contractors Act is hereby repealed.

(2) Any subsidiary legislation made under the Act repealed under subsection (1) in force immediately before the commencement of this Act—

(*a*) shall remain in force unless in conflict with this Act and be deemed to be subsidiary legislation made under this Act;

(*b*) may be replaced, amended or repealed by subsidiary legislation made under this Act.

SUBSIDIARY LEGISLATION

G.N. 5/1998
1/2000

NATIONAL CONSTRUCTION INDUSTRY (APPLICATION FEES) REGULATIONS

under s. 29

Citation

1. These Regulations may be cited as the National Construction Industry (Application Fees) Regulations.

Application fees
G.N. 1/2000

2. A non-refundable fee of one hundred and fifty Kwacha shall be paid by each applicant to the Council upon application for registration as—

(1) a consulting architect, surveyor or engineer;
(2) a building contractor;
(3) a civil engineering contractor;
(4) an electrical contractor;
(5) a mechanical services contractor;
(6) a structural steel contractor;
(7) a structural steel fabricator and erector;
(8) a demolition contractor;
(9) a roofing contractor;
(10) a joinery contractor;
(11) a painting contractor;
(12) a plumbing contractor;
(13) a specialist floor and wall finisher;
(14) a glazing contractor;
(15) a drainage contractor;
(16) a borehole maintenance contractor;
(17) a borehole drilling contractor; and
(18) a material supplier.

NATIONAL CONSTRUCTION INDUSTRY (DISCIPLINARY) RULES

G.N. 36/1999

under s. 29

Citation

1. These Rules may be cited as the National Construction Industry (Disciplinary) Rules.

When Council may institute inquiry

2. The conduct of any person engaged in the construction industry may be considered by the Council of its own accord or upon complaint made by or on behalf of any person feeling aggrieved by reason of alleged unprofessional conduct, on the part of any person engaged in the construction industry.

Complaints

3. The Council may require the complainant to file further particulars of any of the matters complained of and may require the complaint or any part thereof to be verified by affidavit.

Explanation in answer to complaint

4. The Council may call upon the person engaged in the construction industry against whose conduct is complained of or is under investigation, to file within ten days thereafter an explanation in answer to the complaint and may require such explanation to be verified by affidavit.

Power to subpoena

5. The Council may summon before it any person engaged in the construction industry against whom any complaint has been lodged or whose conduct may appear to the Council to require investigation and may call upon him to produce any document, contract, contract book, paper, drawing, specification, quantities or other writing in his possession or under his control in any way relating to or concerning the complaint or matter under investigation and shall hear any relevant evidence and inspect any relevant documents which the complainant or the party complained against may desire to adduce.

Appearance of accused

6. The person engaged in the construction industry against whom the complaint is made shall have the right to appear before the Council and to be heard either personally or through his legal practitioner and may call such evidence and produce such documents as may be relevant.

Non-appearance

7. Should such person not appear and not file an explanation the inquiry may be proceeded with forthwith.

Evidence on oath

8. At any inquiry held under these Rules, all verbal evidence shall be taken on oath.

Penal provision

9. The Council, after having enquired into the alleged misconduct of any person engaged in the construction industry, may—

(*a*) take no further action;

(*b*) caution the person;

(*c*) suspend the person; or

(*d*) strike out of the register the name of the person.

G.N. 5/2000

NATIONAL CONSTRUCTION INDUSTRY (RETENTION FUNDS) REGULATIONS

under s. 29

Citation

1. These Regulations may be cited as the National Construction Industry (Retention Funds) Regulations.

Retention funds to be paid to Council

2. Every consultant or client shall pay to the Council retention funds due to a contractor on construction projects, on every certificate, where public funds are used.

Depositing of retention funds

3. The retention funds paid to the Council under paragraph 2 shall be deposited by the Council in an interest earning account.

Share of interest

4. The interest earned on the account referred to in paragraph 3 shall be shared between the contractor and the Council in a ratio to be advised by the National Construction Industry Council (NCIC).

G.N. 26/2004

NATIONAL CONSTRUCTION INDUSTRY (PRACTICE OF CONSTRUCTION CONSULTANCY SERVICES BY FOREIGN CONSULTING FIRMS) REGULATIONS

under s. 29

Citation

1. These Regulations may be cited as the National Construction Industry (Practice of Construction Consultancy Services by Foreign Consulting Firms) Regulations.

Interpretation

2. In these Regulations, unless the context otherwise requires—

(*a*) "Council" means the National Construction Industry Council of Malaŵi established under section 3 of the National Construction Industry Act; and Cap. 53:05

(*b*) "member practice" means a local construction consulting firm in good standing with the Council.

Practice of construction consultancy by foreign consultants

3. A foreign consulting firm wishing to provide construction consultancy services in Malaŵi shall be required to provide those services through a member practice.

Approval of contractual relationship

4. A contractual relationship between a foreign consulting firm and a member practice shall, through registration, be approved by the Council as a joint venture.

Member practice to participate fully

5.—(1) The member practice shall take full professional responsibility of the services being provided in conjunction with a foreign consulting firm and shall demonstrate its full participation in, but not limited to, the following work stages—

(*a*) for Architects:

(i) D. Scheme Design;

(ii) E. Detail Design;

(iii) F.G. Production Information;

(iv) J. Project Planning;

(v) K.L. Operations on site;

(*b*) for Quantity Surveyors:

(i) Pre-Contract Services—

(A) preliminary consultations, preparing preliminary estimates;

(B) preparing bills of quantities, examining tenders and reporting thereon;

(ii) Post-Contract services—

(A) surveying works in progress and preparing cost reports;

(B) preparing and agreeing final accounts;

(*c*) for Structural Engineers, as specified by the Board of Engineers; and

(*d*) for Services Engineers, as specified by the Board of Engineers.

(2) Where the assignment is full services, the member practice shall be responsible for a minimum of fifty-one per cent of the work.

(3) Where the assignment is for partial services, the member practice shall demonstrate that it is responsible for a larger per cent for the work in the work stages stipulated in sub-regulation (1) of this regulation.

(4) The member practice shall have the responsibility of providing evidence to the Council that the foreign consulting firm is a *bona fide* construction consulting firm allowed to practice in the country, the firm regulatory practices and its principles hold current professional registrations.

Temporary registration fees

6.—(1) All foreign consulting firms entering into a contract with a member practice, shall apply, through the member practice, to the Council, an application for temporary registration.

(2) Upon the application being approved by the Council, the foreign consulting firm shall pay a registration fee of USD 10,000 and thereafter USD 2,500 as annual registration fees until the end of the assignment.

Professional registration insurance

7. The member practice shall be required to lodge with the Council a copy of their policy for professional indemnity insurance cover approved by the client.

Other services

8.—(1) The member practice shall be expected to advise its clients on the need for other required services based on the assignments being undertaken such as architecture, quantity surveying, structural, mechanical and electrical engineering and the need to procure them legally.

(2) Where foreign consulting firms are also involved in similar arrangements, the clients shall be advised accordingly.

National Construction Industry (*Project Registration*) *Regulations* **[Subsidiary]**

NATIONAL CONSTRUCTION INDUSTRY (PROJECT REGISTRATION) REGULATIONS

G.N. 19/2012

under s. 29

Citation

1. These Regulations may be cited as the National Construction Industry (Project Registration) Regulations.

Interpretation

2. In these Regulations, unless the context otherwise requires—

"client" means an agency or an organization, a company that, or an individual who, uses construction services or their respective representatives; and

"project" means a single contract of construction works.

Requirement for registration and threshholds

3. Every project shall be registered in accordance with these Regulations as follows—

(*a*) if the value of the contract exceeds thirty million Kwacha, in case of the public sector; or

(*b*) if the value of the contract exceeds thirty million Kwacha or any amount as the Board may determine, in case of the private sector.

Submission of application

4. A client shall apply to register the project not more than twenty-one working days after the parties to the contract have executed the contract in writing.

Details of application

5. An application submitted under regulation 4 shall be according to Form PRF001 of the Schedule hereto and shall contain the following details—

(*a*) the parties involved in the contract;

(*b*) a brief scope of the contract;

(*c*) the location of the contract;

(*d*) the value of the contract;

(*e*) the duration of the contract;

(*f*) whether the project consists of a series of contracts;

(*g*) whether the project relates to a public private partnership; and

(*h*) whether the project registered relates to a programme, if any.

Representative of a client

6.—(1) A client shall, according to Form PRF002 of the Schedule hereto, indicate a person who shall act as a representative of the client.

(2) The representative in subregulation (1) shall have authority to access the register of projects and the register of contracts.

(3) A client shall ensure that the representative complies with conditions of use of the register of contractors.

(4) A client shall notify the Council in writing when the representative ceases to act on his behalf.

Registration of the project

7.—(1) Where the Council is satisfied that the details of the application submitted for registration complies with regulation 5, the Council may register the project not more than thirty working days after the Council receives the application for registration.

(2) Upon registration of the project, the Council shall issue a certificate of registration to a client.

Reporting

8.—(1) A client shall, in relation to a contract registered under these Regulations, submit a status report to the Council not more than one calendar month from the date of—

(*a*) issuance of a practical completion certificate according to Form PRF003 of the Schedule hereto;

(*b*) termination of the contract according to Form PRF004 of the Schedule hereto; or

(*c*) settling all sums of money owing to the contractor in accordance with the contract as determined by the client.

(2) A client shall notify the Council of any arbitration entered into or litigation initiated by him or against him in relation to a contract registered under these Regulations, not more than one calendar month from the date of entering into such arbitration or from the date getting involved in the litigation.

Contractor or consultant performance report

9.—(1) Every client shall, in accordance with Form PRF005 of the Schedule hereto, complete a contractor or consultant performance report within one month of completion or termination of a project.

(2) A Contractor or consultant who is not satisfied with the assessment by a client under sub-regulation (1) may, within twenty-one days of issuance of the assessment report, appeal to the Council for review of the assessment.

(3) The appeal shall be made in accordance with Form PRF006 of the Schedule.

Failure to register

10. Any client who, or organ of state that, fails to register a project in terms of these Regulations commits an offence and shall be liable to a fine of one per cent of the value of the contract, which will be recoverable as a civil debt, in addition to any other penalties as the Council may deem fit under the Act.

Best practices assessment

11. Every project registered under these Regulations shall be assessed on the compliance with best practice standards guidelines as stipulated in Form PRF003 of the Schedule hereto.

SCHEDULE

FORM PRF 001—PROJECT REGISTRATION FORM (NOTIFICATION OF AWARD OF CONTRACT)

SECTION A—CLIENT INFORMATION

Client's Number: ☐☐☐☐☐☐☐☐☐

Client's Name: .....

Client's Address: .....

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SECTION B—CONTRACT DATA

Contract Number: ☐☐☐☐☐☐☐☐☐

Contract Name: .....

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Location of Project: .....

Contract Award Date: .....

Contract Value MK: .....

Contract Start Date: .....

Contract Duration: ☐☐☐ days

Description of Works (Scope): .....

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SECTION C—CONTRACTOR/JOINT VENTURE INFORMATION

Contractor Registration Number of main/lead Contractor: ☐☐☐☐☐☐☐

Name of Contractor/Joint Venture: .....

Contract Category: ……..... Foreign ☐ Local ☐

Contractor's Address: .....

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Name of Contact Person: .....

Designation: .....

E-mail Address: ..... Mobile Number: .....

SECTION D—SUB-CONTRACTOR INFORMATION

Sub-Contractor's Registration Number: ☐☐☐☐☐☐☐☐☐

Sub-Contractor's Name: .....

Contract Category: ..... Foreign ☐ Local ☐

Sub-Contractor's Address: .....

Description of Sub-Contractor's Works (Scope): .....

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Name of Contact Person: .....

Designation: .....

E-mail Address: ..... Mobile Number: .....

Office Telephone Number: .....

SECTION E—CONSULTANT'S INFORMATION

Consultant's Registration Number of main/lead Consultant: ☐☐☐☐☐☐

Consultant/JV Name: .....

Field: ..... Foreign ☐ Local ☐

Consultant's Address: .....

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Name of Contact Person: .....

Designation: .....

E-mail Address: ..... Mobile Number: .....

Office Telephone Number: .....

SECTION F—DECLARATION

I, the undersigned warrants that:

I am duly authorized to submit this notice to the NCIC on behalf of the Client;

The contents of this notice are within my personal knowledge, and are to the best of my belief both true and correct; and

I hereby authorize the NCIC to make such enquiries as necessary to verify the information contained on this form.

Signature: .....

Name (In capital letters): .....

Position/Designation: ..... Date Completed: .....

NCIC Official Use

Contract Number: ☐☐☐☐☐☐☐☐☐

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FORM PRF 002—NOMINATION FORM FOR CLIENT'S REPRESENTATIVE

SECTION A—CLIENT INFORMATION

Client's Number: ☐☐☐☐☐☐☐☐☐

Client's Name:.....

Client's Address:.....

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SECTION B—CONTRACT DATA

Contract Number: ☐☐☐☐☐☐☐☐☐

Contract Title: .....

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Date of Award: .....

SECTION C—CLIENT'S REPRESENTATIVE INFORMATION

Name of Representative: .....

Designation: .....

E-mail Address: ..... Mobile Number: .....

Office Telephone Number: .....

SECTION D—APPOINTING AUTHORITY

Appointing Authority: .....

Designation: .....

E-mail Address: ..... Mobile Number: .....

Office Telephone Number: ..... Date: .....

I, the undersigned declare that am duly authorized to transact all business for the organization/company and assign the representative whose details are in section C as client's representative on this project.

Signature: .....

NCIC Official Use

Contract Number: ☐☐☐☐☐☐☐☐☐☐

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FORM PRF 003—NOTIFICATION OF THE ISSUE OF A PRACTICAL COMPLETION CERTIFICATE AND CONTRACTOR PERFORMANCE REPORT

SECTION A—CONTRACT DATA

Client's Number: ☐☐☐☐☐☐☐☐☐

Client's Name: .....

Client's Address: .....

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SECTION B—CONTRACT DATA

Contract Number: ☐☐☐☐☐☐☐☐☐

Contract Title: .....

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Date of Practical Completion: .....

Estimated Value of Contract (including VAT, excluding any price adjustment):

MK.....

Estimated Value of variations (including VAT) excluding any price adjustment:

MK.....

Price adjustment (including VAT): MK.....

Value of penalties applied (including VAT): MK.....

Expected extension of time granted: ☐☐☐ days

Were there any unresolved dispute referred to dispute resolution on the contract?

Yes ☐ No ☐

If yes, please specify the nature of the dispute:

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Is the outcome of the dispute still pending? Yes ☐ No ☐

If no, please specify the outcome of the results:

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Which of the following dispute resolution mechanisms were applied on the contract?

Mediation: Yes ☐ No ☐

Arbitration: Yes ☐ No ☐

Adjudication: Yes ☐ No ☐

Litigation: Yes ☐ No ☐

Section C—Client's Representative Information

Name of Representative: .....

Designation: .....

E-mail Address: ..... Mobile Number: .....

Office Telephone Number: ..... Date:.....

I agree ☐ I disagree ☐ with the Reporting Officer's Assessment of the Contractor Assessment Report.

Signature: .....

Section D—Reporting Officer's Information

Organization Name: .....

Name of Reporting Officer: .....

Designation: .....

E-mail Address: ..... Mobile Number: .....

Office Telephone Number: ..... Date: .....

Date Submitted to NCIC: .....

Section E—Contractor/Joint Venture Information

Contractor Registration Number of main/lead Contractor: ☐☐☐☐☐☐☐

Name of Contractor/Joint Venture: .....

Designation: .....

E-mail Address: ..... Mobile Number: .....

Office Telephone Number: ..... Date: .....

I agree ☐ I disagree ☐ with the Reporting Officer's Assessment of the Contractor Assessment Report.

I/We wish to appeal against the performance assessment by the Reporting Officer:

Yes ☐ No ☐

Name (In capital letters): .....

Position/Designation: ..... Date Completed: .....

NCIC Official Use

Contract Number: ☐☐☐☐☐☐☐☐☐

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Form PRF 004—Notification of the Cancellation/Termination of Contract

Section A—Client Information

Client's Number: ☐☐☐☐☐☐☐☐☐

Client's Name: .....

Client's Address: .....

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Section B—Contract Data

Contract Number: ☐☐☐☐☐☐☐☐☐

Employer's Contract Number: ☐☐☐☐☐☐☐☐☐

Contract Title: .....

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Date of Cancellation/Termination: .....

Section C—Termination/Cancellation Circumstances

Circumstances within the Contractor's control:

Failure to commence the Contract ☐ Failure to perform on time ☐

Unwilling to perform ☐ Failure to produce work of acceptable standards ☐

Other (please specify): .....

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Circumstances beyond the Contractor's control:

Reasons of the employer:

Insufficient funding available ☐ Works no longer required ☐

Other (please specify): .....

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Reasons of the Contractor:

Failure to provide sureties/guarantees ☐

Other (please specify): .....

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SECTION D—CLIENT'S REPRESENTATIVE INFORMATION

Name of Representative: .....

Designation: .....

E-mail Address: ..... Mobile Number: .....

Office Telephone Number: ..... Date: .....

I agree ☐ I disagree ☐ with the Reporting Officer's Assessment of the Contractor Assessment Report.

Signature: .....

SECTION E—REPORTING OFFICER'S INFORMATION

Organization Name: .....

Name of Reporting Officer: .....

Designation: .....

E-mail Address: ..... Mobile Number: .....

Office Telephone Number: ..... Date: .....

Date Submitted to NCIC: .....

SECTION F—CONTRACTOR/JOINT VENTURE INFORMATION

Contractor Registration Number of main/lead Contractor: ☐☐☐☐☐☐☐☐

Name of Contractor/Joint Venture: .....

Name of Contact Person: .....

Designation: .....

E-mail Address: ..... Mobile Number: .....

Office Telephone Number: ..... Date: .....

I agree ☐ I disagree ☐ with the Reporting Officer's Assessment of the Contractor Assessment Report.

I/We wish to appeal against the performance assessment by the Reporting Officer:

Yes ☐ No ☐

Signature: ..... Date: .....

SECTION G—DECLARATION (REPORTING OFFICER)

I, the undersigned warrants that:

I am duly authorized to submit this notice to the NCIC on behalf of the Client;

The contents of this notice are within my personal knowledge, and are to the best of my belief both true and correct; and

I hereby authorize the NCIC to make such enquiries as necessary to verify the information contained on this form.

Signature: .....

Name (In capital letters): .....

Position/Designation: ..... Date Completed: .....

NCIC Official Use

Contract Number: ☐☐☐☐☐☐☐☐☐

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FORM PRF 005—CONTRACTOR PERFORMANCE INFORMATION FOR CLIENTS

SECTION A—CONTRACTOR/JOINT VENTURE INFORMATION

Contractor Registration Number ☐☐☐☐☐☐☐☐☐

Name of Contractor/Joint Venture: .....

.....

NCIC grade ☐ Category ☐☐ Local ☐ Foreign ☐

SECTION B—CONTRACTOR PERFORMANCE INFORMATION

Number of performance reports considered ☐☐☐

	Mini Score	Avg. Score	Max. Score
Time Management	☐	☐	☐
Cost Management	☐	☐	☐
Quality Management	☐	☐	☐
H and S Management	☐	☐	☐
Site Conditions	☐	☐	☐

Scale: . . . . Poor [−1] Adequate [0] Good [1] Excellent [2]

Number of contract cancellation/termination due to circumstances within the Contractor's control ☐

FORM PRF 006—APPEAL FOR REVIEW OF CONTRACTOR PERFORMANCE

SECTION A—CLIENT INFORMATION

Client's Number: ☐☐☐☐☐☐☐☐☐

Client's Name: .....

Client's Address: .....

.....

SECTION B—CONTRACT DATA

Contract Number: ☐☐☐☐☐☐☐☐☐

Employer's Contract Number: ☐☐☐☐☐☐☐☐☐

Contract Title: .....

.....

Date of Application: .....

SECTION C—REASON FOR APPEAL/REVIEW

We are not satisfied with the results of the Reporting Officer's assessment of the following performance criteria: (Please indicate each performance criteria separately and provide reasons for the appeal):

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SECTION D—CONTRACTOR /JOINT VENTURE INFORMATION

Contractor Registration Number of main/lead Contractor: ☐☐☐☐☐☐☐☐

Name of Contractor/Joint Venture: .....

Name of Contact Person: .....

Designation: .....

E-mail Address: ..... Mobile Number: .....

Office Telephone Number: ..... Date: .....

I agree ☐ I disagree ☐ with the Reporting Officer's Assessment of the Contractor Assessment Report.

I/We wish to appeal against the performance assessment by the Reporting Officer:

Yes ☐ No ☐

Signature: ..... Date: .....

SECTION E—DECLARATION (REPORTING OFFICER)

I, the undersigned warrants that:

I am duly authorized to submit this notice to the NCIC on behalf of the Contractor;

The contents of this notice are within my personal knowledge, and are to the best of my belief both true and correct; and

I hereby authorize the NCIC to make such enquiries as necessary to verify the information contained on this form.

Signature: .....

Name (In capital letters): .....

Position/Designation: ..... Date Completed: .....

NCIC Official Use

Contract Number: ☐☐☐☐☐☐☐☐☐

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NATIONAL CONSTRUCTION INDUSTRY (LEVY) ORDER

G.N. 1/2013
29/2014

under s. 15

Citation

1. This Order may be cited as the National Construction Industry (Levy) Order.

Imposition of a levy on consultants and contractors

2. Every consultant and contractor shall pay to the Council, or allow to be deducted by a client, a levy of one per cent of the total consultancy fees or the certified sum on each certificate, respectively.

Consultant or contractor to inform the Council

3. Every consultant or contractor who has been contracted by a third party to work on a construction project shall inform the Council of such a project, and file a copy of every invoice or certificate with the Council.

Failure to pay levy or inform Council

4. A consultant or contractor who—

(*a*) fails to pay the Council, or refuses to be deducted, the levy due from that consultant or contractor under paragraph 2; or

(*b*) fails to inform the Council under paragraph 3,

shall be liable to civil proceedings for the recovery of the levy due.

Remittance of levy to Council

5. Every client who procures the services of persons engaged in the construction industry as defined in section 2 of the Act shall withhold and remit to the Council such levies as inserted on the

works completion certificates within thirty days from the date the deduction was made.

Composition of consultancy fee note and certificate G.N. 29/2014

6. Consultancy fee note and work certificate shall comprise the cost of raw materials, labour, overheads, profit and any related expenses incurred in the course of the works.

Stakeholders other than persons engaged in construction G.N. 29/2014

7. Where a stakeholder other than a person engaged in construction industry, partakes in direct construction of all components of a particular project or part thereof, levy shall be imposed on the cost of all materials procured for that project including direct labour cost.

Maintenance of project accounting records G.N. 29/2014

8. Every client, consultant or contractor shall keep and maintain, at its principal place of business in Malaŵi, up to date records of project accounting information in the prescribed form including—

(*a*) name of client;

(*b*) name of project;

(*c*) location of project;

(*d*) contractors and consultants involved;

(*e*) project sum;

(*f*) pricing mechanism used; and

(*g*) payment details,

and such information shall be at all reasonable times be available for inspection by an inspector or other officer authorized in that behalf by the Council.

Delayed payment of levy G.N. 29/2014

9. Every client who, after having deducted or withheld such levies in accordance with paragraphs 2 and 5 respectively, fails to pay such levies within thirty days from the date the deduction or withholding was made, shall be liable to pay a penalty in addition to the levy so far deducted or withheld as follows—

(*a*) twenty per cent in the first month of the delay; and

(*b*) there after the commercial bank's rate shall apply for every month not paid.

False information for levy evasion G.N. 29/2014

10. A person who, with intent to evade payment of levy or any penalty due under the Act—

(*a*) makes a false statement to the Council;

(*b*) fails or omits to give any information; or

(*c*) gives information or maintains project accounting records which are false in any material particular,

commits an offence and shall be liable, upon conviction, to a fine of K2,000,000 or of an amount equivalent for the financial gain generated by the offence, if such amount is greater, and to imprisonment for three years.

11. Any amount of levy and of the penalty thereon imposed under this Order shall be recovered by the Council as a civil debt owed to the Council and shall be recoverable by civil proceedings. Recovery of levy and penalty G.N. 29/2014

NATIONAL CONSTRUCTION INDUSTRY (SUBCONTRACTING AND JOINT VENTURES BY FOREIGN AND MALAŴIAN CONSTRUCTION FIRMS) ORDER

G.N. 2/2014

under s. 29

1. This Order may be cited as the National Construction Industry (Subcontracting and Joint Ventures by Foreign and Malaŵian Construction Firms) Order. Citation

2.—(1) In this Order, unless the context otherwise requires— Interpretation

"building" or "work" means construction activity as distinguished from manufacturing, furnishing of materials, or servicing and maintenance work and includes, buildings, structures and improvement of all types, such as bridges, dams, plants, highways, parkways, streets, subways, tunnels, sewers, mains, power lines, pumping stations, railways, airports, terminals, docks, piers, wharves, ways, lighthouses, buoys, jetties, breakwaters, levees and canals, dredging, shoring, scaffolding, drilling, blasting, excavating, clearing and landscaping. Manufacturing or furnishing of materials, articles, supplies, or equipment, shall not be a "building" or "work" within the meaning of this Order unless conducted in connexion with and at the site of such a "building" or "work";

"Joint Venture" means an agreement between two or more construction firms for purposes of securing and executing a contract and in meeting the provisions of the agreement; and

"Management Committee" means a body established in terms of a Joint Venture Agreement to manage all aspects of the work of the Joint Venture in securing and executing the contract and in meeting the provisions for the agreement;

"Member Practice" means a paid-up registered Malaŵian construction firm or a group of registered local or Malaŵian construction firms which is not serving any disciplinary measures;

"Sub-Contract" means the portion of works undertaken by a subcontractor, under a contract in which the firm originally hired in turn hires another firm to do all or part of the work.

(2) All other words shall take the meaning as defined in the Act.

Purpose

3. The purpose of this Order is to carry out Government's policy of supporting the fullest possible participation of Malaŵian firms in the promotion and development of the construction industry in Malaŵi according to section 11 (*a*) of the Act.

Application

4. This Order shall apply to any building or construction project, construction contract or procurement contract for works, goods and services.

Practice of foreign construction firms

5. A foreign construction firm wishing to provide construction services in Malaŵi shall be required to provide those services in association with a Member Practice.

Composition of a Member Practice

6. A Member Practice shall comprise a single construction firm or a Joint Venture with a contractual relationship approved by the Council.

Management Committee

7.—(1) A Joint Venture shall be directed, controlled and managed by a Management Committee where each party shall be represented.

(2) The Management Committee shall have the responsibility to provide evidence to the Council that the foreign construction firm is a *bona fide* construction firm allowed to practice and is duly registered in its country of origin.

Registration of joint ventures

8.—(1) All foreign construction firms entering into a contract with a Member Practice shall submit to the Council an application for registration for a Joint Venture in the form contained in Part I of the Schedule or for a subcontracting arrangement in the form contained in Part II of the Schedule.

(2) When the application is approved by the Council, the foreign construction firm shall pay—

(*a*) a registration fee of Malaŵi Kwacha equivalent of USD2,500;

(*b*) an annual renewal registration fee of Malaŵi Kwacha equivalent of USD2,500 until the end of the assignment, if the company is not previously registered in Malaŵi; and

(*c*) fees as the Council prescribes from time to time, if the company is not previously registered in Malaŵi.

Member Practice to participate in services provided

9.—(1) A Member Practice shall fully participate in the services being provided in conjunction with a foreign construction firm which include the following work stages—

(*a*) tendering and procurement processes;

(*b*) planning and development of method statements;

(*c*) site administration and project or contract management;

(*d*) execution and site supervision; and

(*e*) post contract processes, including handover and commissioning.

Minimum work proportion for Member Practice

10. A Member Practice, whether in a Joint Venture or a Sub-contract arrangement shall be responsible for a minimum of thirty per cent of the works by volume and value.

SCHEDULE Order. 8

PART I

JOINT VENTURE AGREEMENT

1. PREAMBLE—

This agreement is made and entered into by and between:.....
.....
.....
.....
of the first part and .....
.....
.....
.....of the second part.

(allow for additional parties as necessary)

Whereas the foregoing parties have resolved to form a Joint Venture under the title of: .....
.....

for the exclusive purposes of securing or executing the Contract to be awarded by: (name of Employer) .....
for (brief description of Contract):
.....
.....
.....

NOW IT IS HEREBY AGREED AS FOLLOWS—

2. DEFINITIONS AND INTERPRETATION—

2.1 Definitions:

The following words and expressions shall have the meanings indicated, except where the context otherwise requires. Defined terms and words are, in general, signified in the text of the Agreement by the use of capital

initial letters, but the absence of such letters does not necessarily signify that a term, or word, is not defined.

"Agreement" means the agreement between the Members of the Joint Venture and includes this model form of agreement together with the Preamble, Specific Provisions, if any, Schedules "A", "B" and "C" and any relevant documents prepared prior to the signing of the Agreement and appended thereto.

"Contract" means the contract with the Employer for the supply of the deliverables, for the purposes of securing and executing which, the Joint Venture has been formed.

"Deliverables" means the works, services, equipment, materials or goods to be furnished by the Joint Venture to the Employer in terms of the Contract.

"Document" means any written, drawn, typed, printed, or photographic material, which relates to the Agreement.

"Employer" means the person, or body, which is to award the Contract and will employ the Joint Venture if it is awarded the Contract.

"Joint Venture" means the joint venture formed by the Members in accordance with the Agreement.

"Management Committee" means the body established in terms of the Agreement to manage all aspects of the work of the Joint Venture in securing and executing the Contract and in meeting the provisions for the Agreement.

"Member" means a person, or body which, being a party to the Agreement is a member of the Joint Venture.

"Member's Interest" means the proportion expressed as a percentage, which the total monetary value of all resources provided and contributions made by a Member towards the execution by the Joint Venture of the Contract bears to the total of such values by all Members and, unless otherwise indicated in the Agreement, represents the extent to which the Member participates in the fortunes of the Joint Venture.

"Representative" means the person representing a Member on the Management Committee.

"Schedules" means Schedules "A", "B" and "C" which set out general, financial and other information relating to the Members and the obligations, duties, rights, risks and benefits arising from their participation in the Joint Venture.

"Specific Provisions" means the variations, if any, required to this standard form of agreement for the specific purposes of the Agreement.

2.2 Interpretation:

Unless inconsistent with the context, an expression in the Agreement which denotes—

- any gender shall include the other genders;
- a natural person shall include a juristic person and *vice versa*;
- the singular shall include the plural and *vice versa*.

2.3 Headings:

The headings to clauses of the Agreement shall not be considered part thereof, nor shall the words they contain be taken into account in the interpretation of any clause.

2.4 Law:

The Agreement shall be construed in accordance with and governed by the laws of the Republic of Malaŵi and the English language versions shall prevail.

2.5 Language:

English shall be exclusively used by the Members in the preparation of Documents unless otherwise indicated.

2.6 Conflict between Agreement and Contract:

Should any provision of the Agreement be in conflict with the terms of the Contract, the Agreement shall be amended to the approval of the Management Committee so as to eliminate the conflict.

3. Joint Venture General—

3.1 Establishment and Purpose:

The Joint Venture established by the Members in terms of the Agreement is an unincorporated association with the exclusive purposes of securing and executing the Contract for the benefit of the Members.

3.2 Termination:

The operation of the Joint Venture and the validity of the Agreement shall terminate if and when it becomes evident that the Joint Venture will not be awarded the Contract, or, if the Joint Venture secures the Contract, when all obligations and rights of the Joint Venture and the Members in connexion with the Contract and the Agreement have ceased or been satisfactorily discharged.

Unless otherwise decided by the Management Committee, the Agreement shall not terminate if a Member changes its name, or is taken over by, or merged with, another body.

3.3 Exclusivity:

Unless otherwise agreed by the Management Committee, or provided for in the Contract no Member shall engage in any activity related to the Contract other than as a Member of the Joint Venture and Members shall ensure that their subsidiaries and other bodies over which they have control comply with this requirement.

3.4 Participation of Members:

Except as may otherwise be stipulated in the Agreement, each Member shall be responsible for all costs incurred by it prior to the date of inception of the Agreement.

Subsequent to the date of inception of the Agreement, each Member shall, participate in the operations, risks, responsibilities and fortunes of the Joint Venture including, *inter alia*, the provision of funding, sureties, guarantees, insurances, human and other resources and participation in profits and losses to the extents indicated in the Schedules.

Participation in any aspect not covered in the Schedules shall, if an agreement cannot be reached between the Members, be to the same extent as indicated by the Members' Interests.

3.5 Management:

The affairs of the Joint Venture shall be directed and controlled by the Management Committee, as set out in section 4 hereof.

3.6 Confidentiality:

All matters relating to the Agreement and the Contract shall be treated by the Members as confidential and no such matter shall be disclosed to any third party without the prior written approval of the Management Committee.

A Member shall not be party to the dissemination of publicity relating to the Contract, or the Agreement, without the prior written approval of the Management Committee and the Employer.

3.7 Assignment:

A Member shall not cede, assign, or in any other way make over any of its rights, or obligations, under the Agreement without the prior written consent of the Management Committee.

3.8 Subcontracting:

A Member shall not subcontract any obligation, work or duty for which it is, itself, responsible in terms of the Agreement without the prior written consent of the Management Committee.

3.9 Variations to Agreement:

A variation, modification, or waiver of any part of the Agreement shall not be of any force, or effect, unless unanimously agreed by the Members and reduced to in writing.

3.10 Liability:

Each Member warrants that it will indemnify the other Members against all legal liabilities arising out of, or in connexion with the performance of its obligations under the Agreement.

It is acknowledged by the Members that they may be held jointly and severally liable in respect of claims against the Joint Venture by the Employer or third parties.

4. Management of Joint Venture—

4.1 General:

The affairs of the Joint Venture shall be directed, controlled and managed by the Management Committee, which, within the terms of the Agreement and the Contract, shall have full authority to bind the Members in all matters relating to the affairs of the Joint Venture.

Communication between the Joint Venture and the Employer, or third parties, relating to the Contract shall be conducted exclusively by the Management Committee, or by such person as it may delegate to perform this function.

The Management Committee shall have the power to appoint a project manager or such other persons as it may see fit to appoint for the purpose of executing the Contract and may delegate such of its powers, responsibilities and duties as it may consider necessary, or desirable, to persons or bodies appointed or seconded for this purpose.

Such administrative functions as are necessary to ensure the effective operation of the Management Committee shall be performed by its chairman.

4.2 Management Committee:

4.2.1 Composition:

The Management Committee shall, unless otherwise agreed by all the Members, consist of one Representative of each Member and each Member shall be obliged, at all times, to maintain a Representative on the Management Committee.

Each member shall, not later than three working days after the signing of the Agreement, appoint its Representative and notify the other Members of the name and contact details of the Representative. Such Representative shall have the power to bind the Member that he

represents in all matters relating to the execution of the Contract and the performance of the Agreement.

A Member shall be entitled, after giving the other Members not less than three working days written notice of his intention to do so, appoint, remove or replace, an alternate who shall, at any meeting of the Management Committee from which the Representative whom he represents is absent, be vested with all rights and powers and subjected to all the obligations of the absent Representative.

The chairman of the Management Committee shall be the Representative of the Member which has the largest Member's Interest.

If two, or more, Members have the same, largest Member's Interest, the chairmanship shall rotate between the Representatives of such Members at three monthly intervals, the order of rotation to be determined by ballot.

Notwithstanding the foregoing, the chairmanship of the Management Committee may be determined, or changed, at any time by unanimous decision of the Management Committee.

No remuneration shall be paid by the Joint Venture to Representatives or their alternates for serving on the Management Committee, unless otherwise decided by the Management Committee.

4.2.2 Meetings:

Meetings of the Management Committee shall take place at such times and places as the Management Committee may determine, provided that the chairman shall convene a meeting of the Management Committee to be held not later than ten working days after he has been requested, in writing, by a Member to do so. Not less than five working days written notice of any meeting of the Management Committee shall be given to all Representatives and their alternates.

The Management Committee may permit, or invite, persons other than Representatives or alternates to attend any of its meetings, but such persons shall not have voting rights.

4.2.3 Decisions:

Each Representative shall have one vote on the Management Committee and where, in terms of this clause, a casting vote is required, this shall be exercised by the chairman.

All decisions of the Management Committee shall, desirably, be unanimous. Accordingly, if unanimity cannot, initially, be achieved in regard to a decision, the meeting at which that decision is sought shall be adjourned for a period of forty-eight hours to enable Representatives to consult with their principals. If, on resumption of the adjourned meeting, unanimity can still not be achieved, the decision, provided it is not one requiring unanimity of the Members,

shall be taken by majority vote and, in the event of a tie, the chairman shall exercise a casting vote.

A Member not satisfied with a majority decision of the Management Committee may declare a dispute, to be dealt with in terms of Clause 8 hereof, but the majority decision shall, nevertheless, be implemented with immediate effect.

Decisions of the Management Committee, whether taken at a meeting, or otherwise, shall be recorded in written minutes, which shall be distributed by the chairman to reach the Representatives not later than five working days after those decisions were taken.

Such minutes shall be deemed to have been affirmed by the Representatives unless written notice of dissent is received by the chairman not later than three working days after receipt of the minutes by the Representative.

4.2.4 Powers and duties:

The functions, responsibilities and powers of the Management Committee shall include, *inter alia*, those listed below—

4.2.4.1 Formulating overall policy in regard to the achievement of the objectives of the Joint Venture.

4.2.4.2 Managing the day to day affairs of the Joint Venture.

4.2.4.3 Monitoring, directing and coordinating the activities of the Members to ensure that the objectives of the Joint Venture are achieved and that the obligations and responsibilities of the individual Members are met.

4.2.4.4 Monitoring and controlling the financial affairs of the Joint Venture and ensuring that proper books of account and financial records relating to affairs of the Joint Venture are maintained in an approved form and submitted to the Management Committee for approval at regular intervals, which shall not be longer than one month.

4.2.4.5 Determining the necessity for and the details of any changes in the duties and responsibilities of Members provided that any resulting changes in Members' Interests shall be unanimously approved by the Members.

4.2.4.6 Determining the terms and conditions of employment of personnel and the emoluments applicable to staff seconded to the Joint Venture by the Members.

4.2.4.7 Controlling and approving the appointment of all subcontractors.

4.2.4.8 Procuring, after the completion of the Contract and the release of all bonds, guarantees and sureties given in respect of the performances of the Joint Venture and the Members, the preparation and auditing of a final set of accounts, on the

basis of which the final profits, or losses, attributable to the individual Members shall be determined and any necessary adjustments effected.

5. Resources of Joint Venture—

The resources to be utilized by the Joint Venture in securing and executing the Contract shall, insofar as these are to be provided directly by the Members, be as set out in the Schedule and may, from time to time, be amended by decision of the Management Committee, provided that the Members' Interests are not, except with the unanimous approval of the Members, affected thereby.

Similarly, specific areas of responsibility of the Members for the performance of work and the provision of facilities shall be as set out in the Schedules and may, from time to time, be amended by decision of the Management Committee, provided that the Members' Interest are not, except with the unanimous approval of the Members, affected thereby.

5.1 Schedule "A" (General):

Schedule "A" shall contain general information relating to the Joint Venture including, *inter alia*, the following—

1. The Employer's name and address.
2. A brief description of the Contract and the Deliverables.
3. The name, physical address, communications addresses and *domicilium citandi et executandi* of each Member and of the Joint Venture.
4. The Members' Interests.
5. A statement indicating whether or not, Specific Provisions apply to the Agreement.
6. A schedule of insurance policies which must be taken out by the Joint Venture and by the individual Members.
7. A Schedule of sureties, indemnities and guarantees that must be furnished by the Joint Venture and by the individual Members.
8. Details of the persons, who, in the event of failure by the Members to reach agreement on the appointments of mediator and arbitrator, will nominate appointees to these positions in terms of Clauses 8.2 and 8.3.

5.2 Schedule "B" (Financial):

Schedule "B" shall contain information regarding the financial affairs of the Joint Venture including, *inter alia*, the following—

1. The working capital required by the Joint Venture and the extent to which and manner whereby this will be provided or guaranteed by

the individual Members from time to time.

2. The banking accounts that are to be opened in the name of the Joint Venture and the manner in which these are to be operated.
3. The rates of interest that will be applicable to amounts by which Members are in debit, or credit, to the Joint Venture.
4. The names of the auditors and others, if any, who will provide auditing and accounting services to the Joint Venture.
5. The intervals at which interim financial accounts and forecasts will be prepared for approval by the Management Committee.
6. Insofar as not covered in Schedule "C", the basis on which contributions of various types by the Members towards the work of the Joint Venture in securing, executing, managing and satisfactorily completing the Contract, will be valued.
7. The basis on which profits or surplus cash will, if available from time to time, be distributed to Members.
8. The basis upon which losses, if any, are to be apportioned to Members.

5.3 Schedule "C" (Contributions by Members):

Schedule "C" shall set out the contributions of various types, other than cash, that will be made by the individual Members towards the work and obligations of the Joint Venture and shall, as far as possible, indicate the monetary values to be placed on such contributions, which may include, *inter alia*, the following—

1. Staff seconded to the Joint Venture.
2. Work carried out and services provided to, or on behalf of, the Joint Venture.
3. Plant, equipment, facilities, etc., made available for use by the Joint Venture.
4. Materials and goods supplied to, or on behalf of, the Joint Venture.
5. Licences, sureties, guarantees and indemnities furnished to, or on behalf of, the Joint Venture.
6. Joint Venture Disclosure form required for the Contract.

6. Breach of Agreement—

If a Member breaches any material provision of the Agreement, or delays or fails to fulfil its obligations in whole, or in part, and does not remedy the situation within fourteen calendar days of receipt of notice from the Management Committee, or another Member, to do so, the other Members shall have the right, without prejudice to any other rights arising from the default, to summarily terminate the Agreement and re-assign the defaulting Member's rights and obligations in the

Joint Venture as they see fit and withhold any moneys due to the defaulting member by the Joint Venture.

Each Member shall indemnify the other Members against all losses, costs and claims which may arise against them in the event of the Agreement being terminated as a result of breach of the Agreement by the said Member.

7. INSOLVENCY OF MEMBER—

Should a Member be placed in liquidation, or under judicial management, whether provisionally or finally, or propose any compromise with its creditors, the other Members shall be entitled to proceed in terms of Clause 6, as if the Member had breached the Agreement.

8. DISPUTES—

8.1 Settlement:

The Members shall negotiate in good faith and make every effort to settle any dispute, or claim, that may arise out of, or relate to, the Agreement.

If agreement cannot be reached, an aggrieved Member shall, if he intends to proceed further in terms of Clause 8.2 hereof, advise all other Members in writing that negotiations have failed and that he intends to refer the matter to mediation in terms of Clause 8.2.

8.2 Mediation:

Not earlier than ten working days after having advised the other Members, in terms of Clause 8.1, that negotiations in regard to a dispute have failed, an aggrieved Member may require that the dispute be referred, without legal representation, to mediation by a single mediator. The mediator shall be selected by agreement between the Members, or, failing such agreement, by the person named for this purpose in Schedule "A". The costs of the mediation shall be borne equally by all Members.

The mediator shall convene a hearing of the Members and may hold separate discussions with any Member and shall assist the Members in reaching a mutually acceptable settlement of their differences through means of reconciliation, interpretation, clarification, suggestion and advice. The Members shall record such agreement in writing and thereafter they shall be bound by such agreement.

The mediator is authorized to end the mediation process whenever in his opinion further efforts at mediation would not contribute to a resolution of the dispute between the Members.

8.3 Arbitration:

Where a dispute or claim is not resolved by mediation, it shall be referred to arbitration by a single arbitrator to be selected by agreement between the Members or, failing agreement, to be nominated by the person named for this purpose in Schedule "A".

The Member requiring referral to arbitration shall notify the other Members, in writing, thereof, not later than thirty calendar days after the mediator has expressed his opinion, failing which the mediator's opinion shall be deemed to have been accepted by all Members and shall be put into effect.

Arbitration shall be conducted in accordance with the provisions of the National Construction Industry Council Arbitration Rules and in accordance with such procedure as may be agreed by the Members.

The decisions of the arbitrator shall be final and binding on the Members, shall be carried into immediate effect and, if necessary, be made an order of any court of competent jurisdiction.

9. DOMICILIUM—

The Members choose *domicilium citandi et executandi* for all purposes of and in connexion with the Agreement as stated in Schedule "A". A Member shall be entitled to change his *domicilium* from time to time, but such change shall be effective only on receipt of written notice of the change by all other Members.

Thus done and signed at ..... this .....

day of ....., 20.....

For and on behalf of ..... by (name) ..... who warrants his authority to do so.

As witnesses: 1. .....

2. .....

Thus done and signed at ..... this .....

day of ....., 20.....

For and on behalf of ..... by

(name) ..... who warrants his authority to do so.

As witnesses: 1. .....

2. .....

(Allow for additional parties as necessary.)

PART II

Subcontract Agreement

1. Preamble—

This Subcontract Agreement (the "Agreement") is made and effective this ..... day of ....., 20.....

BETWEEN:

..... (the "Main Contractor"), a company organized and existing under the laws of the Government of Malaŵi, with its offices located at:

.....
.....
(Complete address)

AND:

..... (the "Subcontractor"), a company organized and existing under the laws of the Government of Malaŵi, with its offices located at:

.....
..... (Complete address)

NOW IT IS HEREBY AGREED AS FOLLOWS:

2. Definitions and Interpretations—

2.1 Definitions:

The following words and expressions shall have the meanings indicated, except where context otherwise requires. Defined terms and words are, in general, signified in the text of agreement be the use of capital letters, but the essence of such letters does not necessarily signify that a term, or word, is not defined.

"Client" means the owner of the overall project who demands particular deliverables and is the financier of the overall projects;

"Consultant" means the registered consulting firm and or their representatives hired by the Client to design or prepare work and specifications for the overall project;

"Main Contractor" means the contractor hired to supply deliverables and has responsibility for the full completion of the overall project at a specified price under the terms and conditions set in the contract;

"Prime Contract" means the overall project awarded by the Client to Main Contractor;

"Subcontract" The portion of works undertaken by a subcontractor, a secondary contract in which the person or company originally hired in turn hires somebody else to do all or part of the work;

"Subcontractor" means the contractor hired by the Main Contractor to perform a particular task as part of the overall project.

2.2 Interpretation:

Unless inconsistent with context, an expression in the agreement which denotes:

- consultant shall include all professions registered under the Act as Consultant;
- any gender shall include the other genders;
- a natural person shall include a juristic person and *vice versa*;
- the singular shall include the plural and *vice versa*.

3. Subcontracting General—

Main Contractor has entered into, or will hereafter enter into, a general construction contract, henceforth the "Prime Contract" with .... (the Client), to perform in accordance with various contract documents and specifications certain work prepared by .... (Engineer), or furnish labour, materials, supplies, or services required to construct the following named constructions project: ..... henceforth "the Project". Located in .... (Address),

AND

WHEREAS Main Contractor desires to retain Subcontractor to perform certain contract works in accordance with various contract document and specifications or to furnish labour, materials, supplies or services for the project.

4. Subcontract Work—

Subcontractor shall be employed as an independent contractor and shall provide and furnish all labour, materials, tools, supplies, equipment, services, facilities, supervision, and administration for the proper and complete performance and acceptance of the following portion of the work, hereinafter "the Subcontract Work", for the project, together with such other portions of the drawings, specifications and addendum as related thereto in the scope and conditions.

5. Subcontractor Price—

In consideration of Subcontractor's performance of this Subcontract, and at the times and subject to the terms and conditions hereinafter set forth, Main Contractor shall pay Subcontractor the total sum of K ..... (amount), hereinafter "subcontract price". Said subcontract price is dependent upon the conditions set forth in the Scope and Conditions being met. Should said conditions not be met, the subcontract amount shall be modified accordingly.

6. Special Conditions—

The Special Conditions to Subcontract are incorporated in this Subcontract as though fully set forth herein. Subcontractor hereby acknowledges receipt of the Special Conditions.

7. Communication and Notice—

(*a*) All communication between the Subcontractor and the Client or Engineer shall be via the Main contractor.

(*b*) Subcontractor shall furnish Main Contractor with periodic progress reports as required by the Main Contractor, including status of material, equipment, manpower and submittal.

(*c*) Subcontractor shall be deemed to have received notice of a fact, request, order, or demand when its Representative is notified, in writing, or ..... days after written notice is sent by registered or certified mail addressed to Subcontractor's last known place of business, whichever is sooner.

(*d*) Main Contractor shall be deemed to have received notice of a fact, request, or demand ..... days after written notice is sent by registered or certified mail addressed to the following address: .....
.....

8. Governing Law and Rules of Construction—

(*a*) The validity, interpretation, and performance of this Subcontract shall be governed by the laws of the Government of Malaŵi.

(*b*) Titles, captions, or headings to any provision, articles, etc., shall not limit the full contents of the same. These articles have the full force and effect as if no titles existed.

(*c*) If any term of provision of this Subcontract is determined to be invalid, it shall not affect the validity and enforcement of the remaining terms and provisions of this Subcontract.

(*d*) This contract shall be binding upon and insure to the benefit of the respective successors assigns, representatives and heirs of the parties herein.

9. Amendment—

This Subcontract shall only be amended or modified by written document executed by the authorized representatives of the Main Contractor and Subcontractor. This Subcontract supersedes all prior representations made by the Main Contractor.

10. Dispute Resolution—

Any and all disputes or claims between the Contractor and the Subcontractor arising out of this Subcontract shall be resolved by submission of the same to the National Construction Industry Council,

for resolution by conciliation, mediation, adjudication or binding arbitration according to the National Construction Industry Council Arbitration Rules. The parties further agree that the award of the arbitrator shall be final and binding upon them as though rendered by a court of law and shall be enforceable in any court having jurisdiction over the same.

IN WITNESS WHEREOF, the parties hereto have executed this agreement as of the day and year first above written.

SUBCONTRACTOR:	CONTRACTOR:
.....	.....
Print Name and Title	Print Name and Title
.....	.....
Authorized Signature	Authorized Signature

NATIONAL CONSTRUCTION INDUSTRY (COMPLIANCE) REGULATIONS

G.N. 28/2014

under s. 29

1. These Regulations may be cited as the National Construction Industry (Compliance) Regulations. Citation

2. Upon registration, every contractor shall operate within the category and field in which they are registered and shall not accept work outside their expertise and category. Requirement for compliance

3. Upon registration, every consultant shall operate within the discipline and expertise in which they are registered and shall not accept work outside their expertise. Registered consultants

4. A registered firm shall comply with the respective codes of ethics for their trade or profession, as well as regulations developed under the Act and other professional and regulatory bodies. Registered films

5. A client whether public or private seeking to undertake construction project shall engage qualified and registered contractors and consultants in their respective fields and categories as determined by the Council, and in a fair and transparent manner. Clients to engage qualified personnel

6.—(1) Every organization, agency, department, institution, or Non-Governmental Organization (NGO) whose normal operations involve technical issues of construction shall engage professionally qualified personnel who shall maintain active affiliation to the relevant professional bodies at all times. Personnel to be affiliated to relevant professional bodies

(2) Every professional work shall be done under the supervision of certified professionals with full professional indemnity cover.

Responsibility for quality and performance

7. An organization, agency, department, institution or NGO shall be fully responsible for the quality and performance of its staff and retain full responsibility for the selection, maintenance and development of its personnel.

Suspension of works or activities

8. The Council reserves the right in its absolute discretion to suspend any works or activities carried out by personnel who are not able to adequately or appropriately perform the services required for the particular service or works, and are not affiliated to the relevant professional bodies.

Assumption of the role of contractor or consultant

9. An organization, agency, department, institution or NGO shall not assume the roles of contractor or consultant other than in their routine and normal operation, and coordination of activities for construction projects.

Coordination of construction related activities

10. An organization, agency, department, institution or NGO that participates in coordination of construction related activities or is involved in the development of the scope of work, solicitation of documents, contractual instruments or technical specifications shall not participate as a contractor to perform any work on that particular project or any other project that would constitute an organizational conflict of interest or would give other contractors an unfair advantage over other bidders on that project.

Non-compliance by a client

11. A client or an organ of the state which fails to comply with these Regulations shall be liable to a penalty of 0.5% of the value of the contract, which will be recoverable as a civil debt.

Non-compliance by contractor or consultant

12. A contractor or consultant who fails to comply with these Regulations shall be liable to undergo through disciplinary action according to disciplinary procedures, which may lead to suspension or striking off from the register.

NATIONAL CONSTRUCTION INDUSTRY (FEES AND FORMS) REGULATIONS

G.N. 32/2017

under s. 29

1. These Regulations may be cited as the National Construction Industry (Fees and Forms) Regulations. Citation

2.—(1) The fees specified in the First Schedule shall be payable in respect of the matters correspondingly specified in that Schedule. Fees

(2) In case of fees for renewal of registration—

(*a*) the fee shall be payable annually, not later that 30th June of each year;

(*b*) where the fee or any part thereof remains unpaid for more than ninety days after the due date, a penalty of fifty per cent of the amount due shall be imposed on the amount due and shall become part of the amount payable;

(*c*) where the amount due, including penalties, remains unpaid for further ninety days after the due date, the firm's name shall be struck off the register in line with section 27 of the Act; and

(*d*) there shall be no reduction, proportionate or otherwise, in the amount of the fees payable even if the period between the date of payment and the next 30th June is less than twelve months.

3. The Forms prescribed in the Second Schedule shall be used for the purposes of the matters under Act as specified in the Forms, Forms

4. The National Construction Industry (Fees and Forms) Regulations, are hereby repealed. Repeal of Cap. 53:05, Sub. leg. p. 14.

FIRST SCHEDULE

reg. 2

FEES

Matter	*Upon registration*	*Upon renewal of registration*
1. As a consulting architect, surveyor or engineer—		
(*a*) local consultant	K80,000.00	K80,000.00
(*b*) foreign consultant	USD 10,000.00	USD2,500.00

Matter	*Upon registration*	*Upon renewal of registration*
2. As a contractor in building, civil or electrical—		
(*a*) in the ten million Kwacha category	K15,000.00	K15,000.00
(*b*) in the twenty million Kwacha category	K25,000.00	K25,000.00
(*c*) in the fifty million Kwacha category	K60,000.00	K60,000.00
(*d*) in the one hundred million Kwacha category	K90,000.00	K90,000.00
(*e*) in the two hundred million Kwacha category	K160,000.00	K160,000.00
(*f*) in the five hundred million Kwacha category	K200,000.00	K200,000.00
(*g*) in the one billion Kwacha category	K500,000.00	K500,000.00
(*h*) in the unlimited category . .	K 1,000,000.00	K 1,000,000.00
3. In the Specialist category—		
(*a*) as a mechanical service contractor	K15,000.00	K 15,000.00
(*b*) a structural steel contractor . .	K22.500.00	K22,500.00
(*c*) as a structural steel fabricator and erector	K35,000.00	K35,000.00
(*d*) as a demolition contractor . .	K15,000.00	K15,000.00
(*e*) as a roofing contractor . .	K15,000.00	K15,000.00
(*f*) as a joinery & carpentry contractor	K7,500.00	K7,500.00
(*g*) as a painting contractor . .	K7,500.00	K7,500.00
(*h*) as a plumbing contractor . .	K7,500.00	K7,500.00
(*i*) as a floor and wall finisher . .	K7,500.00	K7,500.00
(*j*) as a glazing contractor . .	K15,000.00	K15,000.00
(*k*) as a drainage contractor . .	K7,500.00	K7,500.00
(*l*) as a water proofing contractor	K7,500.00	K7,500.00
(*m*) as a ceiling and partitioning contractor	K22,500,00	K22,500.00
(*n*) as a driller contractor . .	K 120,000.00	K 120,000.00

Matter	*Upon registration*	*Upon renewal of registration*
(*o*) as a construction material supplier—		
(i) Small sale of bricks, sand, timber, etc.	K15,000.00	K15,000.00
(ii) Large scale	K40,000.00	K40,000.00
(*p*) as a construction material manufacturer	K60,000.00	K60,000.00
4. As foreign contractors in any category	USD2,500.00	USD2,500.00

SECOND SCHEDULE reg. 3

FORMS

FORM 1

NATIONAL CONSTRUCTION INDUSTRY ACT

(CAP. 53:05)

APPLICATION FOR REGISTRATION AS CONSULTING ARCHITECTS, SURVEYORS, ENGINEERS, ENVIRONMENTALISTS OR SPECIALISTS IN RELEVANT AREA

Note: *This is for permanent registration for both foreign and local consultants.*

To: The Chief Executive Officer

National Construction Industry Council (NCIC)

Private Bag A146

Lilongwe

Tel: (+265)1725 523/529/569 Fax: (+265) 1752 535

Email: *ncic@ncic.mw* Website: *www.ncic.mw*

Profession and field of practice for which this application is submitted

.....

.....

1. Applicant .....

(*Attach Business Name Certificate or Certificate of Incorporation*)

(*a*) Head Office Address .....

.....

i. Nationality of the Director .....

ii. Passport Number of the Director .....

(*Attach copy of passport*)

iii. Physical Address of Office in Malaŵi .....

.....

(*b*) Registration Certificate Number of MRA TPIN Registration Certificate .....

(*Attach copy of certificate*)

(*c*) Telephone/Cell Numbers .....

(*d*) Email address .....

(*e*) Website .....

2. (*a*) Give below particulars of applicant or partners applying for registration. In case of foreign firms, if the local office is controlled by a representative not being a partner, give particulars of the local representative. Please attach copies of professional certificates for all names provided below:

NAME ADDRESS	QUALIFICATION	NO. OF YEARS OF EXPERIENCE	NO. OF YEARS IN A SENIOR POST	REGISTRATION NUMBER WITH THE RELEVANT PROFESSIONAL BODY IN MALAŴI

(*b*) Apart from applicant/partners/local representative, give details below of other technical staff employed. Attach copies of detailed *curriculum vitae* and certificates.

NAME ADDRESS	QUALIFICATION	NO. OF YEARS OF EXPERIENCE	NO. OF YEARS IN A SENIOR POST	REGISTRATION NUMBER WITH THE RELEVANT PROFESSIONAL BODY IN MALAŴI

3. State whether or not you have any objections to the Council approaching the Manager of the Bank for a reference concerning your account.

   .....

4. Are you familiar with Laws of Malaŵi relating to your profession? Must have read and understood the Laws before applying for registration.

   .....

   .....

5. For foreign firms, upon approval, registration fee is the Malaŵi Kwacha equivalent of ten thousand United States Dollars (USD 10,000.00). An annual renewal registration fee is the Malaŵi Kwacha equivalent of two thousand five hundred United States Dollars (USD 2,500.00).
6. For local firms, fees are as prescribed in Registration Procedures and are subject to review from time to time.
7. Declaration

   I/We the undersigned hereby solemnly and sincerely declare as follows—

   (*a*) that the information I have given above is true in every respect to the best of my knowledge and belief and that I have read the Act and the regulations made under Act and understand that, if registered, I shall be bound thereby and by any amendments thereto, for as long as my name shall remain on the register;

   (*b*) that I/we know that NCIC Registration Certificate remains the property of the Council and that the Council has the right to withdraw it at any time I/we am/are found to abuse it;

   (*c*) that I/we shall be responsible for any form of abuse of the NCIC Registration Certificate and also be responsible for disciplinary measures that can be imposed as per disciplinary procedures;

   (*d*) that I/we shall at all times adhere to the Laws of Malaŵi and all relevant regulations in the construction industry;

   (*e*) my/our signing of this application form implies acceptance of responsibility for the veracity and accuracy of all information submitted therein or therewith;

   (*f*) the information given will be used by the Council for the purpose of evaluating this application for registration. Such registration will be approved at the sole discretion of the Council;

   (*g*) any employer, consultant or banker, past or present, is hereby authorized and requested to provide information on the competence and general reputation of this firm if so requested by the Council;

(*h*) the Council is welcome to visit and physically inspect my/our establishment and works (contracts) executed, when it deems fit to do so, in order to verify the authenticity of the information given herein, or by our Referees, or obtained from any other source regarding our film; and

(*i*) failure to complete any part of this application form may result in not being registered.

.....

Signature of the Applicant.

Declared before me on this ..... day of ....., 20.....

.....

Commissioner for Oaths

This Declaration must be signed, in the case of an application by a company, by the Managing Director or Secretary, and in the case of a partnership, by the principal partner or where none is resident in Malaŵi, by the local representative.

8. Commitment to uphold Code of Ethics

M/s ..... (Name of the Applicant-firm), as registered contractors by the NCIC, understand that we are expected to exhibit the highest standards of professionalism. Construction services have a direct and vital impact on the quality of life for all people. Accordingly, the services provided require honesty, impartiality, fairness and equity, and must be dedicated to the protection of the public health, safety and welfare. We therefore pledge to perform under a standard of behaviour that requires adherence to the highest principles of ethical conduct.

We also recognize that corruption has a devastating impact on the social and economic development of any country. We share in the growing global consensus that action is needed to strengthen transparency and accountability, particularly in international development, trade and investment.

We therefore pledge to support the efforts of the Government of the Republic of Malaŵi to participate, along with the NCIC and other members of the business community and financing institutions, in forming a coalition against corruption and all unethical conduct.

We welcome the action taken by the Government to strengthen transparency and accountability. In this context we shall—

(*a*) not offer or give any bribes or any other form of inducement to any public official in connexion with a pending bid;

(*b*) not permit anyone (whether our employee or an independent commission agent) to do so on our behalf;

(*c*) make full disclosure in our bids of the beneficiaries of payments relating to the bids to any person other than our employees but including bonus payments which may be made to employees; and

(*d*) formally undertake to issue instructions to all our employees and agents or other representatives in Malaŵi directing them at all times to comply with the laws of Malaŵi and in particular not to offer or to pay bribes or other form of inducement to officials, whether directly or indirectly.

....

(*to be signed by Managing Director of the firm*) Date

9. FOR OFFICE USE ONLY

(*a*) Date of approval of application .....

(*b*) Registration No .....

(*c*) Receipt No. of registration fees .....

(*d*) Remarks .....

Dated this ..... day of ..... 20.....

.....

Chief Executive Officer

National Construction Industry Council

FORM 1A

NATIONAL CONSTRUCTION INDUSTRY ACT

(CAP. 53:05)

APPLICATION FOR TEMPORAL REGISTRATION AS CONSULTING ARCHITECTS, SURVEYORS, ENGINEERS, ENVIRONMENTALISTS OR SPECIALISTS IN RELEVANT AREA

Note: *This is for temporal registration for Foreign Consultants only. When filling this form ensure you have understood Regulations 2004* (*Practice of Construction Consultancy Services by Foreign Consulting Firms*).

To: The Chief Executive Officer
National Construction Industry Council (NCIC)
Private Bag A146
Lilongwe
Tel: (+265)1725 523/529/569 Fax: (+265) 1752 535
Email: *ncic@ncic.mw* Website: *www.ncic.mw*

Profession and field of practice for which this application is submitted

.....

.....

SECTION I

FIRM'S DETAILS

2. Applicant .....

(*Attach Business Name Certificate or Certificate of Incorporation*)

(*a*) Head Office Address

.....

.....

.....

(i) Nationality of Company Representative .....

(ii) Passport Number .....

(*Attach copy of passport*)

(iii) Physical address of office in Malaŵi

.....

(*b*) Registration Certificate Number as a consultant prior coming to Malaŵi .....

(*Attach copy of certificate*)

(*c*) E mail address .....

(*d*) Website .....

SECTION II

DETAILS OF A MEMBER PRACTICE

3. Name of the Company and address (attach NCIC Registration Certificate)

.....

.....

4. Attach a copy of a duly signed agreement in line with provisions of the Practice of Construction Consultancy Services by Foreign Consulting Firms, Regulations 2004.

SECTION III

Particulars of Specific Assignment Registration of Sought for in Malaŵi

5. Name of Project (*attached duly signed contract agreement*)

   .....

   .....

   .....

6. Scope of Works

   .....

   .....

   .....

7. Location of Project

   .....

   .....

   .....

8. Awarding Authority and address

   .....

   .....

   .....

9. Client and Address

   .....

   .....

   .....

10. Value of Contract

    .....

    .....

11. Financer of the Project

    .....

12. Start Date .....

13. Expected Completion Date .....

14. Attach a letter from Awarding Authority supporting the application.

SECTION IV

Key Technical Staff

15. Give details key technical staff employed for the project. Attach copies of detailed CVs and Certificates.

NAME ADDRESS	QUALIFICATION	NO. OF YEARS OF EXPERIENCE SINCE QUALIFIED	NO. OF YEARS IN A SENIOR POST	REGISTRATION NUMBER WITH THE RELEVANT PROFESSIONAL BODY IN MALAŴI

SECTION V

Firm's Previous Experience

15. Give details of work completed during the past three years prior to coming to Malaŵi. Attached copies of offer letters or completion certificates with traceable contact details for Clients.

WORK DESCRIPTION	WORK VALUE	CLIENT DETAILS	LOCATION

Provide separate sheet if space provided is insufficient.

16. Are you familiar with the Act (Cap. 53:05 of Laws of Malaŵi) relating to your profession? Do you have copies of the relevant legislations?

.....

SECTION VI

Registration and Renewal Fees

17. Upon approval, registration fee is the Malaŵi Kwacha equivalent of Ten Thousand United States Dollars (USD 10,000.00). An annual renewal registration fee is the Malaŵi Kwacha equivalent of Two Thousand Five Hundred United States Dollars (USD 2,500.00) until the end of assignment.

SECTION VII

Declaration

18. We the undersigned hereby solemnly and sincerely declare as follows—

(*a*) that the information I have given above is true in every respect to the best of my knowledge and belief and that I have read the Act and the regulations made under Act and understand that, if registered, I shall be bound thereby and by any amendments thereto, for as long as my name shall remain on the register;

(*b*) that, after being registered and while executing the assignment, we shall not participate in any National Competitive Bidding process;

(*c*) that we shall leave the country after duly completing the assignment unless we apply for permanent registration;

(*d*) that we know that NCIC Registration Certificate remains the property of the Council and that the Council has the mandate to withdraw it at any time we are found to abuse it;

(*e*) that we shall be responsible for any form of abuse of the NCIC Registration Certificate and also be responsible for disciplinary measures that can be imposed as per disciplinary procedures;

(*f*) that we shall at all times adhere to the Laws of Malaŵi and all relevant regulations in the construction industry;

(*g*) that we, under temporal registration, shall not participate in any National Competitive Bidding process unless we get permanent registration with the Council after completion of the specific assignment;

(*h*) my/our signing of this application form applies acceptance of responsibility for the veracity and accuracy of all information submitted therein or therewith;

(*i*) the information given will be used by the Council for the purpose of evaluating this application for registration. Such registration will be approved at the sole discretion of the Council;

(*j*) any employer, consultant or banker, past or present, is hereby authorized and requested to provide information on the competence and general reputation of this firm if so requested by the Council;

(*k*) the Council is welcome to visit and physically inspect our establishment and works (contracts) executed, when it deems fit to do so, in order to verify the authenticity of the information given herein, or by our Referees, or obtained from any other source regarding our firm; and

(*l*) failure to complete any part of this application form may result in not being registered.

.....

Signature of Applicant.

Declared before me on this ..... day of ....., 20.....

.....

Commissioner for Oaths

This Declaration must be signed, in the case of an application by a company, by the Managing Director or Secretary, and in the case of a partnership, by the principal partner or where none is resident in Malaŵi, by the local representative.

SECTION VIII

Commitment to Uphold Code of Ethics

M/s ..... (Name of applicant-firm), as registered contractors by the NCIC, understand that we are expected to exhibit the highest standards of professionalism. Construction services have a direct and vital impact on the quality of life for all people. Accordingly, the services provided require honesty, impartiality, fairness and equity, and must be dedicated to the protection of the public health, safety and welfare. We therefore pledge to perform under a standard of behaviour that requires adherence to the highest principles of ethical conduct.

We also recognize that corruption has a devastating impact on the social and economic development of any country. We share in the growing global consensus that action is needed to strengthen transparency and accountability, particularly in international development, trade and investment.

We therefore pledge to support the efforts of the Government of the Republic of Malaŵi to participate, along with the NCIC and other members of the business community and financing institutions, in forming a coalition against corruption and all unethical conduct.

We welcome the action taken by the Government to strengthen transparency and accountability. In this context we shall—

(*a*) not offer or give any bribes or any other form of inducement to any public official in connexion with a pending bid;

(*b*) not permit anyone (whether our employee or an independent commission agent) to do so on our behalf;

(*c*) make full disclosure in our bids of the beneficiaries of payments relating to the bids to any person other than our employees but including bonus payments which may be made to employees; and

(*d*) formally undertake to issue instructions to all our employees and agents or other representatives in Malaŵi directing them at all times to comply with the laws of Malaŵi and in particular not to offer or to pay bribes or other form of inducement to officials, whether directly or indirectly.

....

(*to be signed by Managing Director of the firm*) Date

19. FOR OFFICE USE ONLY

(*a*) Date of approval of application .....

(*b*) Registration No. .....

(*c*) Receipt No. of registration fees .....

(*d*) Remarks .....

Dated this ..... day of ..... 20.....

.....

Chief Executive Officer
National Construction Industry Council

FORM 1B

NATIONAL CONSTRUCTION INDUSTRY ACT

(CAP. 53:05)

APPLICATION FOR REGISTRATION AS A PROJECT MANAGEMENT CONSULTANT

To: The Chief Executive Officer
National Construction Industry Council (NCIC)
Private Bag A146
Lilongwe
Tel: (+265)1725 523/529/569 Fax: (+265) 1752 535
Email: *ncic@ncic.mw* Website: *www.ncic.mw*

1. Applicant (name of firm) .....

(*Attach business name certificate*)

(*a*) Head office address .....

.....

(i) Nationality of the Director .....

(ii) Passport Number of the Director (attach copy) .....

(iii) MRA Tax Registration Certificate Number for the firm .....

(*attach copy of certificate*)

(*b*) Names of members or representatives .....

.....

.....

(*c*) Telephone/Cell Numbers .....

(*d*) E mail address .....

(*e*) Web site .....

2 (*a*) Give below particulars of applicant or partners whether they are resident in Malaŵi or not. In case of foreign firms, if the local office is controlled by a representative not being a partner, give particulars of the local representative. Please attach copies of professional certificates and *curriculum vitae* for all names provided below—

NAME ADDRESS	QUALIFICATION	NO. OF YEARS OF EXPERIENCE	NO. OF YEARS IN A SENIOR POST	REGISTRATION NUMBER WITH THE RELEVANT PROFESSIONAL BODY IN MALAŴI

Note: *if space provided proves insufficient, details may be provided on a separate sheet of paper*

(*b*) Apart from applicant/partners/local representative, give details below of other technical staff employed (attach copies of certificates and *curriculum vitae*).

NAME ADDRESS	QUALIFICATION	NO. OF YEARS OF EXPERIENCE	NO. OF YEARS IN A SENIOR POST	REGISTRATION NUMBER WITH THE RELEVANT PROFESSIONAL BODY IN MALAŴI

Note: *if space provided proves insufficient, details may be provided on a separate sheet of paper*

3. Give details of work upon which you are presently engaged or have been engaged during the past four years and attach any two project reports demonstrating your competence in key areas of Project Management (refer to procedures for registration requirements)

NAME OF PROJECT	VALUE OF CONTACT	TYPE OF WORK ADDRESS FOR CLIENT AND CONTACTS

Note: *if space provided proves insufficient, details may be provided on a separate sheet of paper*

4. (*a*) Give full details of the capacity you propose to utilize for financing operations of the firm including the address of the Bank, or other security in which these funds are held.

.....

.....

(*b*) State whether or not you have any objections to the Council approaching the Manager of the Bank for a reference concerning your account.

.....

(*c*) Attach a copy of Business Name Registration Certificate

Certificate Number .....

Date of Issue ..... Place of Issue .....

5. (*a*) Are you familiar with Laws of Malaŵi relating to your profession?

.....

(*b*) Do you hold copies of the relevant legislation?

.....

6. Declaration

I/We the undersigned hereby solemnly and sincerely declare as follows:

(*a*) that the information I have given above is true in every respect to the best of my knowledge and belief and that I have read the Act and the regulations made under the Act and understand that, if registered, I shall be bound thereby and by any amendments thereto, for as long as my name shall remain on the register;

(*b*) that I/we know that NCIC Registration Certificate remains the property of the Council and that the Council has the right to withdraw it at any time I/we am/are found to abuse it;

(*c*) that I/we shall be responsible for any form of abuse of the NCIC Registration Certificate and also be responsible for disciplinary measures that can be imposed as per disciplinary procedures;

(*d*) that I/we shall at all times adhere to Laws of Malaŵi and all relevant regulations in the construction industry;

(*e*) my/our signing of this application form implies acceptance of responsibility for the veracity and accuracy of all information submitted therein or therewith;

(*f*) the information given will be used by the Council for the purpose of evaluating this application for registration. Such registration will be approved at the sole discretion of the Council;

(*g*) any employer, consultant or banker, past or present, is hereby authorized and requested to provide information on the competence and general reputation of this firm if so requested by the Council;

(*h*) the Council is welcome to visit and physically inspect my/our establishment and works (contracts) executed, when it deems fit to do so, in order to verify the authenticity of the information given herein, or by our Referees, or obtained from any other source regarding our firm; and

(*i*) failure to complete any part of this application form may result in not being registered.

.....

Signature of Applicant.

Declared before me on this ..... day of ....., 20.....

.....

Commissioner for Oaths

This Declaration must be signed, in the case of an application by a company, by the Managing Director or Secretary, and in the case of a partnership, by the principal partner or where none is resident in Malaŵi, by the local representative.

7. COMMITMENT TO UPHOLD CODE OF ETHICS

M/s ..... (Name of applicant-firm), as learned professional, practising consultants registered by the NCIC, understand that we are expected to exhibit the highest standards of professionalism. Professionals have a direct and vital impact on the quality of life for all people. Accordingly, the services provided by professionals require honesty, impartiality, fairness and equity, and must be dedicated to the protection of the public health, safety and welfare. We therefore pledge to perform under a standard professional behaviour that requires adherence to the highest principles of ethical conduct.

We also recognize that corruption has a devastating impact on the social and economic development of any country. We share in the growing global consensus that action is needed to strengthen transparency and accountability, particularly in international development, trade and investment.

We therefore pledge to support the efforts of the Government of the Republic of Malaŵi to participate, along with the NCIC and other members of the business community and financing institutions, in forming a coalition against corruption and all unethical conduct.

We welcome the action taken by the Council to strengthen transparency and accountability. In this context we shall—

(*a*) not offer or give any bribes or any other form of inducement to any public official in connexion with a pending bid;

(*b*) not permit anyone (whether our employee or an independent commission agent) to do so on our behalf;

(*c*) make full disclosure in our bids of the beneficiaries of payments relating to the bids to any person other than our employees but including bonus payments which may be made to employees; and

(*d*) formally undertake to issue instructions to all our employees and agents or other representatives in Malaŵi directing them at all times to comply with the laws of Malaŵi and in particular not to offer or to pay bribes or other form of inducement to officials, whether directly or indirectly.

....

(*to be signed by Managing Director of the firm*) Date

8. FOR OFFICE USE ONLY

(*i*) Date of approval of application .....

(*j*) Registration No. .....

(*k*) Receipt No. of registration fees .....

(*l*) Remarks .....

Dated this .....day of..... 20.....

.....

Chief Executive Officer
National Construction Industry Council

FORM 2

NATIONAL CONSTRUCTION INDUSTRY ACT

(CAP. 53:05)

APPLICATION FORM FOR FIRST REGISTRATION OR UPGRADING OF BUILDING AND CIVIL CONTRACTORS

Note 1: This form is for permanent registration for both foreign and local or Malaŵian firms.

Note 2: When filling this form, ensure you have understood Procedures for Registration for your Reference and Code of Ethics for Contractors.

To: The Chief Executive Officer,
National Construction Industry Council (NCIC)
Private Bag A 146,
Lilongwe.
Tel: (+265)1725 523/529/569 Fax: (+265) 1752 535
Email: *ncic@ncic.mw* Website: *www.ncic.mw*

Category of the construction industry for which this application is submitted:

(e.g. Civil Engineering, Building)

.....

Note: *Classes in each category of construction range from 1 to 8 as detailed below*:

CLASS	Building Category (K)	Civil Category (K million)
1	10.0M	10.0M
2	20.0M	20.0M
3	50.0M	50.0M
4	100.0M	100.0M
5	200.0M	200.0M
6	500.0M	500.0M
7	1.0 Billion	1.0Billion
8	Unlimited	Unlimited

Note: *M = Million*

SECTION I

COMPANY PROFILE

1. Company's name in full .....
2. Address of head office and physical address .....
   .....
3. (*a*) Telephone .....
   (*b*) Cell Phone .....
   (*c*) Fax No .....
   (*d*) E mail address .....
   (*e*) Nationality of the Director (*Attach copy of Passport*) .....
   (*f*) Internet Website .....
4. Contact Postal Address in Malaŵi (*in case of foreign firms*)
   .....
   .....
5. Place (s) of Business (i.e. Location of Main and Branch Offices).
   (House/Plot No./Block No./Street and Village/Town/City)
   .....
   .....

6. MRA Registration Certificate Number for the firm .....

   (*Attach copy of certificate*)

7. Current MRA Tax Clearance Certificate Number (if upgrading) .....

   (*Attach copy of certificate*)

8. Type of Contracting Business .....

   .....

   (*State whether civil, building, electrical or specialization contractors should state clearly the field of Specialist e.g. borehole drilling, air conditioning, mechanical services, plumbing, material supplier, material manufacturer, etc.*)

9. Current Class..... Registration No..... Year of Registration .....

   (*Attach copy of Registration Certificate*)

10. Class applied for .....

11. No. of Certificate of Registration of Business name .....

    (*Attach Copy of Certificate*)

12. (*a*) Registered Capital .....

    (*b*) Paid up Capital .....

    (Applicable to Companies which are limited by shares as shown in their Memorandum and Articles of Association)

13. Names, qualifications/experience and nationality of shareholders or partners or sole director, (*those without skill and knowledge in construction related field are ineligible for registration or upgrading*).

Name	Nationality	Address	Qualification

14. Current Business License (if any, attach copy)

    Certificate Number .....

    Date of Issue ..... Place of Issue .....

15. Is the company member of any association? If yes state below and attach current membership certificate.

    .....

    .....

SECTION II

FINANCIAL STATUS OF THE FIRM

16. Capital and Other Financial Resources in Possession of/or Available to the Firm (*specify and attach certified Bank Statements*)

(*a*) Cash in bank .....

(*b*) Stocks and other securities held and redeemable in Malaŵi at market price

.....

17. Annual Turnover for the last three years

No.	Fiscal Year	Turnover (K)	Remark
1			
2			
3			

18. Company's Fixed (Immovable) Assets (*Certified copies of documents proving ownership i.e. Letters of offer or Title Deeds should be attached*). NB: Plant and Equipment are not Fixed Assets for the purpose of Registration.

No.	Name of Asset	Value	Document Attached
1.			
2.			
3.			
4.			
5.			
6.			

Note: *Should the place provided prove insufficient, details may be provided on separate sheet of paper in same order.*

SECTION III

OFFICE AND SERVICE FACILITIES

19. Office Space (m^2)..... Storage yard (m^2).....

Service Workshop (m^2) .....

SECTION IV

Safety Gear

20. List of safety gear available in stock.

No.	Description	Quantity	Condition
1.			
2.			
3.			
4.			
5.			
6.			

Note: *Should the place provided prove insufficient, details may be provided on separate sheet of paper in same order*

SECTION V

Staff Qualifications

21. Give particulars of personnel (*Including Directors/Partners, Technical, administrative and Finance*). Please attach copies of detailed CVs and authenticated Certificates or Testimonials. Director (*in case of sole trading*)/ one of the directors (*in case of limited liability*) must have minimum technical qualifications and skills as stipulated in registration procedures.

Name of Personnel	Nationality	Academic / Professional Qualification	Status and Position in the Company	Working experience (No. of years)	Basic Terms of Employment (Permanent or Contract)	Remarks (Give Number and Copy of Work Permit, in case of foreign nationals)

Note: *Should the place provided prove insufficient, details may be provided on separate sheet of paper in same order.*

SECTION VI

PLANT AND EQUIPMENT

22. Particulars of Construction Equipment owned by Company. (*Should the place provided prove insufficient, details may be provided on separate sheet of paper in same order*).

Name	Type/Make/ Model	Age in years	Reg. No./ Serial No./other identification marks	Owned*	Condition

**Attach copies of Registration License and/or any other document as proof of ownership*

23. Transport including Lorries, Vans, Tippers etc, with registration numbers, attach copies of blue books.

TYPE OF VEHICLE, REG. NUMBER	OWNERSHIP STATUS	CONDITION

Note: *Should the place provided prove insufficient, details may be provided on separate sheet of paper.*

SECTION VII

FIRM'S EXPERIENCE

24. Particulars of Contracts in hand or executed by the firm since last registration/upgrading including works carried out as sub-contractor. Please give names of Main Contractors for works carried out as sub-contractor. *Evidence required for each project indicated e.g. Copies of duly signed Contract Agreements/Offer letters or Completion Certificates (Jobs without evidence and those supervised by unregistered consultants will not be considered). Provide evidence of construction levy paid* (*Jobs with unpaid levies will delay approval process until levies are paid*). *Provide extra sheet in same order as in the table.*

Project & Location	Main or Subcontractor	Client and his address	Consultant and his address	Contract Sum	Date Completed[1]	Levy paid	Extension if any	Remark [2]

1 Attach certificate of completion

2 e.g. why project delayed or not completed

25. Does your firm attend Professional Seminars/Workshops organized by the Council and other boards/institutions dealing with the construction industry?

    .....

    If yes, list the most recent seminars/workshops attended since your first registration/upgrading.

Theme of Seminar	Year	Organizers	Person Attended	Position in Firm

(*Attach copies of attendance certificates*)

SECTION VIII

References

26. Give two names and full addresses of Referees (Architects/Engineers/Surveyors) under whom you have recently carried out work. A referee must be a person who knows and can comment on the prospect performance of the firm (NB: A fellow contractor CANNOT be a referee, even if he is registered). Attach reference letters on authentic letter heads from the Referees provided.

NAME OF REFEREE	FIRM REPRESENTED	POSITION IN FIRM	PHONE NUMBER

27. Are you familiar with the Laws of Malaŵi relating to your trade? Do you hold copies of the relevant legislation?

    .....

28. A Council appointed official may be required to make a physical verification/inspection of the information given herein. Do you have any objections?

    .....

SECTION IX

Registration and Renewal Fees

29. Upon approval, registration fee is the Malaŵi Kwacha equivalent of two thousand five hundred United States Dollars (USD 2,500.00) for all foreign contractors.

30. An annual renewal registration fee is the Malaŵi Kwacha equivalent of two thousand five hundred United States Dollars (USD 2,500.00) for all foreign contractors.

31. Registration and renewal fees for local/Malaŵian contractors are as prescribed in the Procedures for Registration. Note that fees are subject to review from time to time.

SECTION X

Declaration

32. I/We the undersigned hereby solemnly and sincerely declare as follows—

    (*a*) that the information I have given above is true in every respect to the best of my knowledge and belief and that I have read the Act and the regulations made under Act and understand that, if registered, I shall be bound thereby and by any amendments thereto, for as long as my name shall remain on the register;

    (*b*) that I/we know that NCIC Registration Certificate remains the property of the Council and that the Council has the right to withdraw it at any time I/we am/are found to abuse it;

    (*c*) that 1/we shall be responsible for any form of abuse of the NCIC Registration Certificate and also be responsible for disciplinary measures that can be imposed as per disciplinary procedures;

    (*d*) that I/we shall at all times adhere to the Laws of Malaŵi and Codes of Ethics for Contractors in the construction industry whose copies I/we am/are in custody of;

    (*e*) my/our signing of this application form implies acceptance of responsibility for the veracity and accuracy of all information submitted therein or therewith;

    (*f*) the information given will be used by the Council for the purpose of evaluating this application for registration. Such registration will be approved at the sole discretion of the Council;

(*g*) any employer, consultant or banker, past or present, is hereby authorized and requested to provide information on the competence and general reputation of this firm if so requested by the Council;

(*h*) the Council is welcome to visit and physically inspect my/our establishment and works (contracts) executed, when it deems fit to do so, in order to verify the authenticity of the information given herein, or by our Referees, or obtained from any other source regarding our firm; and

(*i*) failure to complete any part of this application form may result in not being registered.

.....
Signature of Applicant.

Declared before me on this ..... day of ....., 20.....

.....
Commissioner for Oaths

This Declaration must be signed, in the case of an application by a limited liability company, by the Managing Director or Secretary, and in the case of a partnership, by the principal partner or where none is resident in Malaŵi, by the local representative.

SECTION XI

Commitment to Uphold Code of Ethics

M/s ..... (Name of applicant-firm), as registered contractors by the NCIC, understand that we are expected to exhibit the highest standards of professionalism. Construction services have a direct and vital impact on the quality of life for all people. Accordingly, the services provided require honesty, impartiality, fairness and equity, and must be dedicated to the protection of the public health, safety and welfare. We therefore pledge to perform under a standard of behavior that requires adherence to the highest principles of ethical conduct.

We also recognize that corruption has a devastating impact on the social and economic development of any country. We share in the growing global consensus that action is needed to strengthen transparency and accountability, particularly in international development, trade and investment.

We therefore pledge to support the efforts of the Government of the Republic of Malaŵi to participate, along with the NCIC and other members of the business community and financing institutions, in forming a coalition against corruption and all unethical conduct.

We welcome the action taken by the Council to strengthen transparency and accountability. In this context we will—

(*a*) not offer or give any bribes or any other form of inducement to any public official in connexion with a pending bid;

(*b*) not permit anyone (whether our employee or an independent commission agent) to do so on our behalf;

(*c*) make full disclosure in our bids of the beneficiaries of payments relating to the bids to any person other than our employees but including bonus payments which may be made to employees; and

(*d*) formally undertake to issue instructions to all our employees and agents or other representatives in Malaŵi directing them at all times to comply with the laws of Malaŵi and in particular not to offer or to pay bribes or other form of inducement to officials, whether directly or indirectly.

....

(*to be signed by Managing Director of the firm*) Date

SECTION XII

List of Attachments to be Submitted

(*a*) AT1 – Certificate of Registration from Registrar of Companies

(*b*) AT2 – Certificate of Incorporation (Limited Company)

(*c*) AT3 – MRA Registration and Tax Clearance Certificates

(*d*) AT4 – Certified Copies of Share Certificate (Partnership)

(*e*) AT5 – Company Memorandum & Articles of Association

(*f*) AT6 – Any Memorandum of Understanding (Limited Company or Partnership)

(*g*) AT7 – CV's of Shareholders/Partners

(*h*) AT8 – CV's of Key Personnel and their Certificate Copies

(*i*) AT9 – Proof of Ownership of Plant and Equipment

(*j*) AT10 – Duly Signed Commitment to Uphold Code of Ethics

(*k*) AT11 – Report of Audited Accounts and Certified Bank Statements

(*l*) AT12 – Current Business Licence

(*m*) AT13 – Proof of Asset Ownership

(*n*) AT14 – Proof of Securities

(*o*) AT15 – Reference Letters

SECTION XIII

Application Assessment Scores

Section	Requirement	Scores (Classes 6 to 8)	Scores (Classes 2 to 5)	Scores (Class 1)
II	Financial Status	25pts	20pts	Not required
III	Office and Services Facilities	10pts	10pts	20pts
IV	Safety Gear	5pts	5pts	10pts
V	Staff Qualifications	30pts	35pts	40pts
VI	Plant and Equipment	20pts	20pts	30pts
VII	Experience of the firm	10pts	10pts	Not required
	TOTAL	100pts	100pts	100pts

Note: *An applicant who scores an aggregate of 60 points and above, but not less than 50% of the points allotted in any criteria (1) through (6) shall qualify for registration and upgrading in the relevant class.*

SECTION XIV

Performance and Compliance Reports

For Official Use Only.

33. Project Implementation Performance Score -1 0 1 2

34. Compliance Report -1 0 1 2

35. Decision:

(*a*) Date of approval of application .....

(*b*) Registration Number .....

(*c*) Receipt Number of registration fees .....

(*d*) Final remarks .....

Dated this .....day of....., 20.....

.....

Chief Executive Officer
National Construction Industry Council

FORM 2A

NATIONAL CONSTRUCTION INDUSTRY ACT

(CAP. 53:05)

APPLICATION FORM FOR TEMPORARY REGISTRATION OF FOREIGN CONTRACTORS

Note: *Temporary registration is for Foreign Firms that have been awarded specific projects. The registration will only allow them carry out works under which registration is sought.*

To: The Chief Executive Officer,

National Construction Industry Council (NCIC),

Private Bag A 146,

Lilongwe.

Tel: (+265)1725 523/529/569 Fax: (+265) 1752 535

Email: *ncic@neic.mw* Website: *www.ncic.mw*

Category of the construction industry for which this application is submitted:

(*e.g. Civil Engineering, Building, Electrical, Specialist, etc*)

.....

Note: *The following is the range of Classes in each category of construction:*

CLASS	Building Category (K)	Civil Category (K)	Electrical Specialists Category (K)
6	500.0 Million	500.0 MiIlion	500.0 Million
7	1.0 Billion	1.0Billion	1.0 Billion
8	Unlimited	Unlimited	Unlimited

SECTION I

COMPANY PROFILE

1. Company's name in full.....
2. Address of head office

   .....

   .....
3. (*a*) Telephone .....

   (*b*) Cell Phone .....

   (*c*) Fax No .....

(*d*) Email Address …….....

(*e*) Nationality (Attach copy of Passport of its representative) .....

(*f*) Identity No .....

(*g*) Internet Website .....

4. Name of Authorized Representative (Attach power of Attorney)

.....

5. Banker's Name (s) and Address (es)

.....

.....

.....

6. Contact Address in Malaŵi (House No./Plot No./Block No./Street and Village/ Town/ City/Postal Address)

.....

.....

.....

7. Type of Contracting Business .....

.....

(*State whether Civil, Building, Electrical or Specialization contractors should state clearly the field of Specialist e.g. Borehole drilling, Air Conditioning, Mechanical Services, Plumbing, Material Supplier, Material Manufacturer, etc.*)

8. Class applied for .....

9. Country of original registration as contractor (attach certificate)

.....

10. Names, qualifications/experience and nationality of shareholders or partners.

Name	Nationality	Address	Qualification

11. Certificate of Incorporation in Malaŵi (attach copy)

Number ..... Date .....

SECTION II

PARTICULARS OF THE LOCAL PARTNER / MAIN LOCAL SUBCONTRACTOR

12. Name of the Company and address (*attach NCIC registration certificate*)

.....

.....

13. Attach a copy of a duly signed agreement in line with provisions of the Subcontracting and Joint Venture by Foreign and Malaŵian Construction Firms Regulations.

SECTION III

PARTICULARS OF THE CONTRACTED PROJECT

14. (*a*) Name of Project (*attached duly signed contract agreement*)

.....

.....

.....

(*b*) Scope of Works

.....

.....

.....

15. Location of Project .....

16. (*a*) Value of Contract .....

(*b*) Awarding Authority and Address .....

.....

17. (*a*) Client and Address .....

.....

(*b*) Financier(s) and Address(es) .....

.....

(*c*) Consultants and Address .....

.....

(*d*) Other Contractors on the Project and Address .....

.....

.....

18. (*a*) Starting Date .....

(*b*) Expected Completion Date .....

19. Attach a letter from client supporting the application.

SECTION IV

STAFF QUALIFICATIONS

20. Give particulars of personnel (Including Directors/Partners, Technical, administrative and Finance). Please attach copies of detailed *curriculum vitae* and authenticated Certificates or Testimonials.

Name of Personnel	Nationality	Academic / Professional Qualification	Status and Position in the Company	Working experience (No. of years)	Basic Terms of Employment (Permanent or Contract)	Remarks (Give Number and Copy of Work Permit, in case of foreign nationals)

Note: *Should the place provided prove insufficient, details may be provided on separate sheet of paper in the same order.*

SECTION V

Plant and Equipment

21. Particulars of Construction Equipment owned by Company to be deployed for the project. (*Should the place provided prove insufficient, details may be provided on separate sheet of paper in the same order*).

Name	Type/Make/Model	Age in years	Reg. No./Serial No./other identification marks	Owned*/leased	Condition

*Attach copies of Registration License and/or any other document as proof of ownership

SECTION VI

FIRM'S EXPERIENCE

Project & Location	Main or Subcontractor	Client	Consultant	Contract Sum	Date started	Date Completed[1]	Extension if any	Remark[2]

1 *Attach certificate of completion*

2 *e.g. why project delayed or not completed*

22. Particulars of Contracts in hand or executed by the firm prior to coming to Malaŵi including works carried out as sub-contractor for the past five years. Please give names of Main Contractors for works carried out as Sub-Contractor. *Evidence required for each project indicated e.g. Copies of duly signed Contract Agreements/Offer letters or Completion Certificates* (*Jobs without evidence and those supervised by unregistered consultants will not be considered*). *Extra sheet can be attached if space provided proves insufficient*.

SECTION VII

Registration and Renewal Fees

23. Upon approval, registration fee is the Malaŵi Kwacha equivalent of Two Thousand Five Hundred United States Dollars (USD 2,500.00).

24. An annual renewal registration fee is the Malaŵi Kwacha equivalent of two thousand five hundred United States Dollars (USD 2,500.00) until the end of assignment.

SECTION VIII

Declaration

25. We the undersigned hereby solemnly and sincerely declare as follows—

(*a*) that the information I have given above is true in every respect to the best of my knowledge and belief and that I have read the Act and the regulations made under Act and understand that, if registered, I shall be bound thereby and by any amendments thereto, for as long as my name shall remain on the register;

(*b*) that, after being registered and while executing the assignment, we shall not participate in any National Competitive Bidding process;

(*c*) that we shall leave the country after duly completing the assignment unless we apply for permanent registration;

(*d*) that we know that NCIC Registration Certificate remains the property of the Council and that the Council has the mandate to withdraw it at any time we are found to abuse it;

(*e*) that we shall be responsible for any form of abuse of the NCIC Registration Certificate and also be responsible for disciplinary measures that can be imposed as per disciplinary procedures;

(*f*) that we shall at all times adhere to the Laws of Malaŵi and all relevant regulations in the construction industry;

(*g*) that we, under temporal registration, shall not participate in any National Competitive Bidding process unless we get permanent registration with the Council after completion of the specific assignment;

(*h*) my/our signing of this application form applies acceptance of responsibility for the veracity and accuracy of all information submitted therein or therewith;

(*i*) the information given will be used by the Council for the purpose of evaluating this application for registration. Such registration will be approved at the sole discretion of the Council;

(*j*) any employer, consultant or banker, past or present, is hereby authorized and requested to provide information on the competence and general reputation of this firm if so requested by the Council;

(*k*) the Council is welcome to visit and physically inspect our establishment and works (contracts) executed, when it deems fit to do so, in order to verify the authenticity of the information given herein, or by our Referees, or obtained from any other source regarding our firm; and

(*l*) failure to complete any part of this application form may result in not being registered.

.....
Signature of Applicant.

Declared before me on this ..... day of .....,20 ...

.....
Commissioner for Oaths

This Declaration must he signed, in the case of an application by a company, by the Managing Director or Secretary, and in the case of a partnership, by the principal partner or where none is resident in Malaŵi, by the local representative.

SECTION IX

Commitment to Uphold Code of Ethics

M/s ..... (Name of applicant-firm), as registered contractors by the NCIC, understand that we are expected to exhibit the highest standards of professionalism. Construction services have a direct and vital impact on the quality of life for all people. Accordingly, the services provided require honesty, impartiality, fairness and equity, and

must be dedicated to the protection of the public health, safety and welfare. We therefore pledge to perform under a standard of behavior that requires adherence to the highest principles of ethical conduct.

We also recognize that corruption has a devastating impact on the social and economic development of any country. We share in the growing global consensus that action is needed to strengthen transparency and accountability, particularly in international development, trade and investment.

We therefore pledge to support the efforts of the Government of the Republic of Malaŵi to participate, along with the NCIC and other members of the business community and financing institutions, in forming a coalition against corruption and all unethical conduct.

We welcome the action taken by the Government to strengthen transparency and accountability. In this context we shall—

(*a*) not offer or give any bribes or any other form of inducement to any public official in connexion with a pending bid;

(*b*) not permit anyone (whether our employee or an independent commission agent) to do so on our behalf;

(*c*) make full disclosure in our bids of the beneficiaries of payments relating to the bids to any person other than our employees but including bonus payments which may be made to employees; and

(*d*) formally undertake to issue instructions to all our employees and agents or other representatives in Malaŵi directing them at all times to comply with the laws of Malaŵi and in particular not to offer or to pay bribes or other form of inducement to officials, whether directly or indirectly.

....

(*to be signed by Managing Director of the firm*) Date

SECTION X

List of Attachments to be Submitted

(*a*) AT1 – Company's Memorandum & Articles of Association or Extract from Registrar of Companies

(*b*) AT2 – Certificate of Incorporation

(*c*) AT3 – Certificate of Compliance

(*d*) AT4 – CVs of Shareholders/Partners

(*e*) AT5 – NCIC Registration Certificate of Local/Malaŵian Partner/ Main Subcontractor

(*f*) AT6 – CV's of Key Personnel and their Certificate Copies

(*g*) AT7 – Supporting letters from Clients

(*h*) AT8 – Proof of Ownership of Plant and Equipment

(*i*) AT9 – Duly Signed Commitment to Uphold Code of Ethics

(*j*) AT10 – Affidavit

SECTION XI

Affidavit

I ..... of P.O. Box ..... for the purpose of carrying out a specific contract in Malaŵi,

DO HEREBY solemnly make an oath/affirm and state as follows—

1. That I am the ..... of applicant company M/s ..... with Certificate of Compliance No .....
2. That the company has contracted works with specific project at ..... for the period of ..... months/years.
3. That the duration of the project is ..... months/years commencing from ..... and that once the contracted works are completed we the applicant company shall wing up business and not engage in any other business beside the above mentioned project.

   On behalf of the applicant, I declare that the facts deposed to herein are true to the best of my knowledge.

.....
DEPONENT

Sworn/Affirmed at ..... by the said ..... who is the ..... of M/s ..... this ..... day of ..... 20.....

Before me .....

Signature .....

Postal Address .....

.....
Commissioner of Oaths

SECTION XII

Performance and Compliance Reports for Office Use Only

22. Decision:

(*a*) Date of approval of application .....

(*b*) Registration Number .....

(*c*) Receipt Number of registration fees .....

(*d*) Final remarks .....

Dated this ..... day of ....., 20.....

.....
Chief Executive Officer
National Construction Industry Council

FORM 2B

NATIONAL CONSTRUCTION INDUSTRY ACT

(CAP. 53:05)

APPLICATION FORM FOR FIRST REGISTRATION OR UPGRADING OF ELECTRICAL CONTRACTORS

Note 1: This form is for permanent registration for both Foreign and Local/ Malaŵian Firms.

Note 2: When filling this form, ensure you have understood Procedures for Registration for your Reference and Code of Ethics for contractors.

To: The Chief Executive Officer,
National Construction Industry Council (NCIC),
Private Bag A 146,
Lilongwe.
Tel: (+265)1725 523/529/569 Fax: (+265) 1752 535
Email: *ncic@ncic.mw* Website: *www.ncic.mw*

Note: *Classes in category of construction range from 1 to 8 as detailed below:*

CLASS	Electrical Category (K)
1	10.0M
2	20.0M
3	50.0M
4	100.0M
5	200.0M
6	500.0M
7	1 Billion
8	Unlimited

Note: M = Million

SECTION 1

COMPANY PROFILE

1. Full name of a Contractor .....
2. Company's name in full .....
3. Address of head office and Physical Address

   .....

   .....
4. (*a*) Telephone .....

   (*b*) Cell Phone .....

   (*c*) Fax No .....

   (*d*) E mail address .....

   (*e*) Nationality of the Director (Attach copy of Passport) .....

   (*f*) Internet Website .....
5. Contact Postal Address in Malaŵi (*in case of foreign firms*)

   .....

   .....

   .....
6. Place (s) of Business (i.e. Location of Main and Branch Offices).

   (House/Plot No./Block No./Street and Village/Town/City)

   .....

   .....
7. Number of Permit from the Malaŵi Energy Regulatory Authority (MERA) .....

   (*Attach copy of MERA permit. Without permit, registration NCIC cannot be processed.*)
8. Current Class..... Registration No ..... Year of Registration .....

   (*Attach Copy of Registration Certificate-in case of upgrading*)
9. Class applied for .....
10. No. of Certificate of Registration of Business name .....

    (*Attach Copy of Certificate*)
11. (*a*) Registered Capital .....

    (*b*) Paid up Capital .....

    (*c*) Date of Incorporation .....

(*d*) Place of Incorporation .....

(Applicable to Companies which are limited by shares as shown in their Memorandum and Articles of Association)

12. Names, qualifications/experience and nationality of shareholders or partners or sole director. (*Those without skill and knowledge in construction related field are ineligible for registration or upgrading*).

Name	Nationality	Address	Qualification

13. Is the company affiliated to Electrical Contractors Association of Malaŵi (ELCAM)? If yes state below and attach current membership certificate.

.....

.....

SECTION II

Financial Status of the Firm

14. Capital and Other Financial Resources in Possession of/or Available to the Firm

(*Specify and attach certified Bank Statements*)

iii. Cash in bank .....

iv. Stocks and other securities held and redeemable in Malaŵi at market price

.....

15. Annual Turnover for the last three (3) years

No.	Fiscal Year	Turnover (K)	Remark
1			
2			
3			

16. Company's Fixed (Immovable) Assets (*Certified copies of documents proving ownership i.e. letters of offer or Title Deeds should be attached*).
NB: Tools are not fixed Assets for the purpose of Registration.

No.	Name of Asset	Value	Document Attached
1.			
2.			
3.			
4.			
5.			
6.			

Note: *Should the place provided prove insufficient, details may be provided on separate sheet of paper in same order*

SECTION III

Office and Service Facilities

17. Office Space (m^2) ..... Storage yard (m^2) .....
Service Workshop (m^2) .....

SECTION IV

Saftey Gear

18. List of safety gear available in stock.

No.	Description	Quantity	Condition
1.			
2.			
3.			
4.			
5.			
6.			

Note: *Should the place provided prove insufficient, details may be provided on separate sheet of paper in same order*

SECTION V

Staff Qualifications

19. Give particulars of personnel (*Including Directors/Partners, Technical, administrative and Finance*). Please attach copies of detailed *curriculum vitae* and authenticated certificates or testimonials. Director (*in case of sole trading*)/ one of the directors (*in case of limited liability*) must have minimum technical qualifications and skills as stipulated in registration procedures.

Name of Personnel	Nationality	Academic / Professional Qualification	Status and Position in the Company	Working experience (No. of years)	Basic Terms of Employment (Permanent or Contract)	Remarks (Give Number and Copy of Work Permit, in case of foreign nationals)

Note: *Should the place provided prove insufficient, details may be provided on separate sheet of paper in same order.*

SECTION VI

PLANT, EQUIPMENT AND TOOLS

20. Give details of tools and equipment owned by Company and which are in sound working order and have valid certificates and currently licensed. Attach ownership documentation. (Should the place provided prove insufficient, details may be provided on separate sheet of paper in same order).

Name	Type/Make/Model	Age in years	Reg. No./Serial No./other identification marks	Owned*/	Condition

**Attach copies of Registration License and/or any other document as proof of ownership*

21. Transport including Lorries, Vans, etc. with registration numbers, attach copies of blue books

TYPE OF VEHICLE, REG. NUMBER	OWNERSHIP STATUS	CONDITION

Note: *Should the place provided prove insufficient, details may be provided on separate sheet of paper.*

SECTION VII

FIRM'S EXPERIENCE (If upgrading)

22. Particulars of Contracts in hand or executed by the firm since last registration/ upgrading including works carried out as sub-contractor. Please give names of Main Contractors for works carried out as Sub-Contractor. *Evidence required for each project indicated e.g. Copies of duly signed Contract Agreements/Offer letters or Completion Certificates (Jobs without evidence and those supervised by unregistered consultants will not be considered). Provide evidence of construction levy paid (Jobs with unpaid levies will delay approval process until levies are paid). Provide extra sheet in same order as in the table.*

Project & Location	Main or Subcontractor	Client and his Address	Consultant and his Address	Contract Sum	Date started[1]	Date Completed[1]	Extension if any	Remark[2]

1 *Attach certificate of completion*

2 *e.g. why project delayed or not completed*

23. Does your firm attend Professional Seminars/Workshops organized by the Council and other boards/institutions dealing with the construction industry?

.....

if yes, list the most recent seminars/workshops attended since your first registration/upgrading.

Theme of Seminar	Year	Organizers	Person Attended	Position in Firm

(*Attach copies of Attendance certificates*)

SECTION VIII

References

24. Give two names and full addresses of Referees (Electrical Engineers/ consultants or other relevant competent professionals) under whom you have recently carried out work. A referee must be a person who knows and can comment on the prospect performance of the firm (NB: A fellow contractor *CANNOT* be a referee, even if he is registered). Attach reference letters on authentic letter heads from the Referees provided.

NAME OF REFEREE	FIRM REPRESENTED	POSITION IN FIRM	PHONE NUMBER

25. Are you familiar with the Laws of Malaŵi relating to your trade? Do you hold copies of the relevant legislation?

    .....

26. A Council appointed official may be required to make a physical verification/inspection of the information given herein. Do you have any objections?

    .....

SECTION IX

Registration and Renewal Fees

27. Upon approval, registration fee is the Malaŵi Kwacha equivalent of Two Thousand Five Hundred United States Dollars (USD 2,500.00) for all foreign contractors.

28. An annual renewal registration fee is the Malaŵi Kwacha equivalent of two thousand five hundred United States Dollars (USD 2,500.00) for all foreign contractors.

29. Registration and renewal fees for local/Malaŵian contractors are as prescribed in the Procedures for Registration. Note that fees are subject to review from time to time.

SECTION X

Declaration

30. I/We the undersigned hereby solemnly and sincerely declare as follows—

(*a*) that the information I have given above is true in every respect to the best of my knowledge and belief and that I have read the Act and the Regulations made under Act and understand that, if registered, I shall be bound thereby and by any amendments thereto, for as long as my name shall remain on the register;

(*b*) that I/we know that NCIC Registration Certificate remains the property of the Council and that the Council has the right to withdraw it at any time I/we am/are found to abuse it;

(*c*) that I/we shall be responsible for any form of abuse of the NCIC Registration Certificate and also be responsible for disciplinary measures that can be imposed as per disciplinary procedures;

(*d*) that I/we shall at all times adhere to the Laws of Malaŵi and Codes of Ethics for contractors in the construction industry whose copies I/we am/are in custody of;

(*e*) my/our signing of this application form implies acceptance of responsibility for the veracity and accuracy of all information submitted therein or therewith;

(*f*) the information given will be used by the Council for the purpose of evaluating this application for registration. Such registration will be approved at the sole discretion of the Council;

(*g*) any employer, consultant or banker, past or present, is hereby authorized and requested to provide information on the competence and general reputation of this firm if so requested by the Council;

(*h*) the Council is welcome to visit and physically inspect my/our establishment and works (contracts) executed, when it deems fit to do so, in order to verify the authenticity of the information given herein, or by our Referees, or obtained from any other source regarding our firm; and

(*i*) failure to complete any part of this application form may result in not being registered.

.....
Signature of Applicant

Declared before me on this ..... day of ....., 20.....

.....
Commissioner for Oaths

This declaration must be signed, in the case of an application by a company, by the Managing Director or Secretary, and in the case of a partnership, by the principal partner or where none is resident in Malaŵi, by the local representative.

SECTION XI

Commitment to Uphold Code of Ethics

M/s ..... (Name of applicant-firm), as registered contractors by the NCIC, understand that we are expected to exhibit the highest standards of professionalism. Construction services have a direct and vital impact on the quality of life for all people. Accordingly, the services provided require honesty, impartiality, fairness and equity, and must be dedicated to the protection of the public health, safety and welfare. We therefore pledge to perform under a standard of behavior that requires adherence to the highest principles of ethical conduct.

We also recognize that corruption has a devastating impact on the social and economic development of any country. We share in the growing global consensus that action is needed to strengthen transparency and accountability, particularly in international development, trade and investment.

We therefore pledge to support the efforts of the Government of the Republic of Malaŵi to participate, along with the NCIC and other members of the business community and financing institutions, in forming a coalition against corruption and all unethical conduct.

We welcome the action taken by the Council to strengthen transparency and accountability. In this context we will—

(*a*) not offer or give any bribes or any other form of inducement to any public official in connexion with a pending bid;

(*b*) not permit anyone (whether our employee or an independent commission agent) to do so on our behalf;

(*c*) make full disclosure in our bids of the beneficiaries of payments relating to the bids to any person other than our employees but including bonus payments which may be made to employees; and

(*d*) formally undertake to issue instructions to all our employees and agents or other representatives in Malaŵi directing them at all times to comply with the laws of Malaŵi and in particular not to offer or to pay bribes or other form of inducement to officials, whether directly or indirectly.

....

(*to be signed by Managing Director of the firm*) Date

SECTION XII

List of Attachments to be Submitted

(*a*) AT1 – Certificate of Registration from Registrar of Companies

(*b*) AT2 – MRA Registration or Tax Clearance Certificates

(*c*) AT3 – MERA Permit Certificate

(*d*) AT4 – NCIC old certificate if upgrading

(*e*) AT5 – Certificate of Incorporation (Limited Company)

(*f*) AT6 – Certified Copies of Share Certificate (Partnership)

(*g*) AT7 – Company Memorandum & Articles of Association

(*h*) AT8 – Any Memorandum of Understanding (Limited Company or Partnership)

(*i*) AT9 – CV's of Shareholders/Partners

(*j*) AT10 – CV's of Key Personnel and their Certificate Copies

(*k*) AT11 – Proof of Ownership of Plant and Equipment

(*l*) AT12 – Duly Signed Commitment to Uphold Code of Ethics

(*m*) AT13 – Report of Audited Accounts and Certified Bank Statements

(*n*) AT14 – Proof of Asset Ownership

(*o*) AT15 – Proof of Securities

(*p*) AT16 – Reference Letters

SECTION XIII

Application Assessment Scores

Section	Requirement	Scores (Classes 6 to 8)	Scores (Classes 2 to 5)	Scores (Class 1)
II	Financial Status	25pts	20pts	Not required
III	Office and Services Facilities	10pts	10pts	20pts
IV	Safety Gear	5pts	5pts	10pts
V	Staff Qualifications	30pts	35pts	40pts
VI	Tools and Equipment	20pts	20pts	30pts
VII	Experience of the firm	10pts	10pts	Not required
	TOTAL	100pts	100pts	100pts

Note: *An applicant who scores an aggregate of 60 points and above, but not less than 50% of the points allotted in any criteria (1) through (6) shall qualify for registration and upgrading in the relevant class.*

SECTION XIV

Performance and Compliance Reports

For Official Use Only.

31. Project Implementation Performance Score -1 0 1 2

32. Compliance Report -1 0 1 2

33. Decision:

(*a*) Date of approval of application .....

(*b*) Allocated MERA Working License Number .....

(*c*) Registration Number .....

(*d*) Receipt Number of registration fees .....

(*e*) Final remarks .....

Dated this ..... day of....., 20.....

.....

Chief Executive Officer
National Construction Industry Council

FORM 3

NATIONAL CONSTRUCTION INDUSTRY ACT

(CAP. 53:05)

APPLICATION FOR REGISTRATION AS A MATERIAL MANUFACTURER AND/OR A MATERIAL SUPPLIER

To: The Chief Executive Officer,
National Construction Industry Council (NCIC),
Private Bag A 146,
Lilongwe.
Tel: (+265)1725 523/529/569 Fax: (+265) 1752 535
Email: *ncic@ncic.mw* Website: *www.ncic.mw*

Branch of Construction Industry,

.....

(*a*) Full Name of applicant .....

(*b*) Business Name .....

(*Attach business name registration certificate*)

(i) Postal Address .....

.....

(ii) Telephone No ..... Fax .....

(iii) Name of proprietor/shareholders .....

.....

.....

(iv) Length of period in business ..... Years

(v) Nationality of the Director (attach copy of passport) .....

.....

(*c*) Type of Material …….....

(*d*) (i) Are finished materials imported or locally made

.....

(ii) Origin (if imported) .....

(*e*) Are you registered with Malaŵi Revenue Authority? (attach copies of certificates)

(i) TPIN Registration Number .....

(ii) Current Tax Clearance Certificate Number .....

(*f*) Location of applicant's businesses

(i) .....

(ii) .....

(iii) .....

(iv) .....

(*g*) If application is on behalf of a limited liability company, state:

(i) Foreign/Local Malaŵian .....

(ii) Paid up capital K .....

(iii) Date of registration .....

(iv) Place of incorporation .....

(v) Name of Managing Director .....

(*h*) If application is on behalf of partnership state:

(i) Foreign/Local Malaŵian .....

(ii) Date of registration .....

(iii) Place of registration .....

(iv) Give particulars of partners below

NAME	NATIONALITY	ADDRESS	QUALIFICATION

(*i*) Number of employees: Locals Expatriates

Administration ....

Technical ....

Labourers ....

(*j*) In what other lines of business are you involved?

.....

.....

(*k*) Are you familiar with the laws of Malaŵi relating to your trade? Do you have copies of relevant legislation?

.....

.....

(*l*) An NCIC appointed official might be required to inspect your business premises. Do you have any objections?

.....

(*m*) DECLARATION

I/We the undersigned hereby solemnly and sincerely declare as follows—

(*a*) that the information I have given above is true in every respect to the best of my knowledge and belief and that I have read the Act and the regulations made under Act and understand that, if registered, I shall be bound thereby and by any amendments thereto, for as long as my name shall remain on the register;

(*b*) that I/we know that NCIC Registration Certificate remains the property of the Council and that the Council has the right to withdraw it at any time I/we am/are found to abuse it;

(*c*) that I/we shall be responsible for any form of abuse of the NCIC Registration Certificate and also be responsible for disciplinary measures that can be imposed as per disciplinary procedures;

(*d*) that I/we shall at all times adhere to Laws of Malaŵi and all relevant regulations in the construction industry;

(*e*) my/our signing of this application form implies acceptance of responsibility for the veracity and accuracy of all information submitted therein or therewith;

(*f*) the information given will be used by the Council for the purpose of evaluating this application for registration. Such registration will be approved at the sole discretion of the Council;

(*g*) any employer, consultant or banker, past or present, is hereby authorized and requested to provide information on the competence and general reputation of this firm if so requested by the Council;

(*h*) the Council is welcome to visit and physically inspect my/our establishment and works (contracts) executed, when it deems fit to do so, in order to verify the authenticity of the information given herein, or by our Referees, or obtained from any other source regarding our firm; and

(*i*) failure to complete any part of this application form may result in not being registered.

.....

Signature of Applicant

Declared before me on this..... day of ....., 20.....

.....

Commissioner for Oaths

This Declaration must be signed, in the case of an application by a company, by the Managing Director or Secretary, and in the case of a partnership, by the principal partner or where none is resident in Malaŵi, by the local representative.

SECTION I

Commitment to Uphold Code of Ethics

M/s ..... (Name of applicant-firm), as registered contractors by the NCIC, understand that we are expected to exhibit the highest standards of professionalism. Construction services have a direct and vital impact on the quality of life for all people. Accordingly, the services provided require honesty, impartiality, fairness and equity, and must be dedicated to the protection of the public health, safety and welfare. We therefore pledge to perform under a standard of behavior that requires adherence to the highest principles of ethical conduct.

We also recognize that corruption has a devastating impact on the social and economic development of any country. We share in the growing global consensus that action is needed to strengthen transparency and accountability, particularly in international development, trade and investment.

We therefore pledge to support the efforts of the Government of the Republic of Malaŵi to participate, along with NCIC and other members of the business community and financing institutions, in forming a coalition against corruption and all unethical conduct.

We welcome the action taken by the Government to strengthen transparency and accountability. In this context we shall—

(*a*) not offer or give any bribes or any other form of inducement to any public official in connexion with a pending bid;

(*b*) not permit anyone (whether our employee or an independent commission agent) to do so on our behalf;

(*c*) make full disclosure in our bids of the beneficiaries of payments relating to the bids to any person other than our employees but including bonus payments which may be made to employees; and

(*d*) formally undertake to issue instructions to all our employees and agents or other representatives in Malaŵi directing them at all times to comply with the laws of Malaŵi and in particular not to offer or to pay bribes or other form of inducement to officials, whether directly or indirectly.

....

(*to be signed by Managing Director of the firm*) Date

12. FOR OFFICE USE ONLY:

(*a*) Date of approval of application .....

(*b*) Registration Number .....

(c) Receipt Number of registration fees .....

(*d*) Remarks .....

Dated this ..... Day of ..... Year .....

.....

Chief Executive Officer
National Construction Industry Council

[Subsidiary]

National Construction Industry
(*Synchronized Categories of Construction Contractors*) *Regulations*

G.N. 33/2017

NATIONAL CONSTRUCTION INDUSTRY (SYNCHRONIZED CATEGORIES OF CONSTRUCTION CONTRACTORS) REGULATIONS

Citation

1. These Regulations may be cited as the National Construction Industry (Synchronized Categories of Construction Contractors) Regulations.

Interpretation

2. In these Regulations, unless the context otherwise requires—

"category" means the maximum value of a single contract that a contractor in a certain class is allowed to undertake, and includes the cost of materials, labour or taxes.

Synchronized categories of construction contractors

3. Building, civil or electrical construction contractors shall be classified in accordance with the categories prescribed in the Schedule—

reg. 3

SCHEDULE

CATEGORIES OF CONSTRUCTION CONTRACTORS

CLASS	CATEGORY
Class 1	K10,000,000
Class 2	K20,000,000
Class 3	K50,000,000
Class 4	K100,000,000
Class 5	K200,000,000
Class 6	K500,000,000
Class 7	K1,000,000,000
Class 8	Unlimited

PUBLIC ACCOUNTANTS AND AUDITORS

CHAPTER 53:06

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CHAPTER 53:06

PUBLIC ACCOUNTANTS AND AUDITORS

ARRANGEMENT OF SECTIONS

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2. Interpretation

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ESTABLISHMENT OF THE MALAŴI ACCOUNTANTS BOARD

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4. Appointment and membership of the Board
5. Disqualification from appointment to the Board
6. Vacation of office by members
7. Tenure of office
8. Chairman and Vice-Chairman of the Board
9. Meetings of the Board
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13. Funds of the Board and keeping and audit of accounts
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17. Objectives of the Board
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62. Saving of existing programmes, students and qualifications
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CHAPTER 53:06

PUBLIC ACCOUNTANTS AND AUDITORS

An Act to provide for the establishment of the Malaŵi Accountants Board; for the registration of chartered accountants and diplomate accountants; and to make provision for matters connected therewith or incidental thereto 5 of 2013 G.N. 11/2014

[1st April, 2014]

PART I
PRELIMINARY

1. This Act may be cited as the Public Accountants and Auditors Act. Short title

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

"audit" means an independent examination of financial statements by an auditor to enable him express an opinion on whether financial statements are prepared, in all material respects, in accordance with an identified financial reporting framework;

"Board" means the Malaŵi Accountants Board established under section 3;

"chartered accountant" means a person who is registered as a Chartered Accountant;

"College" means the Malaŵi College of Accountancy established by the Education Act; Cap. 30:01

"diplomate accountant" means a person who is registered as a Diplomate Accountant;

"financial year" means the period of twelve months ending on 30th June of each year;

"Institute" means the Institute of Chartered Accountants in Malaŵi incorporated under the Companies Act; Cap. 46:03

"Member" means a member of the Board;

"practising certificate" means a certificate issued by the Institute permitting the holder to carry on practice as a chartered accountant in public practice;

"public practice" means the practice of a person who performs the functions of an accountant or auditor, and for that purpose, holds himself out as an accountant or auditor and places his services at the disposal of the public for reward, but does not include services which are substantially at the command of and for the exclusive use of any one person or of the Government;

"registered trainee" means a person who is engaged under a registered training contract;

"registered training contract" means a written contract accepted for registration pursuant to the provisions of section 19 (1) whereby a person engages to serve another for a specified period in order to receive training in the profession of a chartered accountant or diplomate accountant.

PART II

Establishment of the Malaŵi Accountants Board

Establishment of the Malaŵi Accountants Board

3.—(1) There is hereby established a Board to be known as the Malaŵi Accountants Board.

(2) The Board shall be a body corporate with perpetual succession, and a common seal, and with capacity, in its corporate name, to—

(*a*) possess and own property, real or personal;

(*b*) sue and be sued;

(*c*) enter into contracts; and

(*d*) do all such other things which a body corporate may lawfully do.

Appointment and membership of the Board

4.—(1) Members of the Board shall be appointed by the Minister and shall consist of the following—

(*a*) two persons nominated by the Institute from amongst its members, one of whom shall be a non-practicing member and the other from an academic institution;

(*b*) one person nominated by the Malaŵi Confederation of Chambers of Commerce and Industry; and

(*c*) the following *ex officio* members—

(i) the Secretary to Treasury;

(ii) the Secretary responsible for Education;

(iii) the Accountant General;

(iv) the Auditor General;

(v) the Governor of the Reserve Bank of Malaŵi;

(vi) the Commissioner General of the Malaŵi Revenue Authority;

(vii) the Secretary for Justice; and

(viii) the Chief Executive Officer of the Malaŵi Stock Exchange.

(2) An *ex officio* member of the Board may appoint a senior officer from his institution as an alternate permanent representative at meetings of the Board.

(3) The name, qualifications and date of appointment of every person appointed as a member of the Board shall be published in the *Gazette*.

Disqualification from appointment to the Board

5. A person shall be disqualified from being appointed as a member of the Board if that person—

(*a*) is declared bankrupt under any law in force in Malaŵi;

(*b*) is under any law in force in Malaŵi adjudged or otherwise declared to be of unsound mind;

(*c*) has at any time been convicted of an offence involving corruption, theft, fraud, forgery, perjury or dishonesty;

(*d*) has, within the past five years, been convicted of an offence under any written law punishable by a minimum term of six months' imprisonment without the option of a fine;

(*e*) would, for any other reason, be disqualified by law from serving as a director of a company or a trustee of a trust within Malaŵi; and

(*f*) would have a conflict of interest if appointed to the Board.

Vacation of office by members

6. A member of the Board other than an *ex officio* member shall vacate his office—

(*a*) upon the presentation of a petition for his bankruptcy, or upon execution of an unsatisfied judgment against his estate;

(*b*) if he is convicted of an offence under any written law and sentenced to a minimum term of six months' imprisonment, otherwise than as an alternative to, or in default of, the payment of a fine;

(*c*) if he is convicted of any offence involving corruption, theft, fraud, forgery, perjury or dishonesty;

(*d*) if, in the opinion of the Minister, or the authority by which he was nominated, as the case may be, he becomes, by reason of mental or physical infirmity, incapable of performing his duties as a member of the Board;

(*e*) if the Minister or the authority by which he was nominated, is satisfied that the personal interests of the member conflict or are likely to conflict with his duties as a member, and that consequently, it is inappropriate for him to continue to hold office as a member;

(*f*) upon the expiry of one month's notice in writing to the Minister or the authority by which he was nominated, of his intention to resign his office;

(*g*) upon receipt of notice of termination of his appointment, from the Minister or the authority by which he was appointed;

(*h*) if he is absent from three consecutive meetings of the Board, of which he has had notice, without leave of the Board, which leave shall not be unreasonably withheld;

(*i*) if he ceases to hold the qualifications for which he was appointed member pursuant to section 4; and

(*j*) upon his death.

Tenure of office

7.—(1) A member of the Board other than an *ex officio* member shall hold office for a term of three years and shall be eligible for re-appointment for one further term.

(2) Whenever the office of a member falls vacant before expiration of the period for which the member was appointed, the Minister or other authority which appointed the member shall, subject to the provisions of section 4, appoint any other person to fill the vacancy.

Chairman and Vice-Chairman of the Board

8.—(1) Members of the Board shall, at their first meeting following their appointment, and thereafter as need arises, elect out of their number other than members *ex officio*, a Chairman and a Vice-Chairman, and the persons so elected shall hold office as such until the end of their term of office as members.

(2) If for any reason the Chairman is not able to act as chairman, the Vice-Chairman shall act in his stead.

Meetings of the Board

9.—(1) The Board shall meet at least four times a year, and the time and venue of every meeting shall be determined by the Board from time to time.

(2) The Chairman of the Board may at any time call a special meeting of the Board at such time and place as he may determine and shall, upon a written request signed by not less than three members, call a special

meeting thereof to be held within two weeks after the date of receipt of such request, at such time and place as he may determine.

(3) Meetings of the Board shall be conducted in such manner as the Board thinks fit.

(4) The Board shall cause minutes of all proceedings of, and decisions taken at, all meetings of the Board and of its committees, to be entered into books kept for that purpose.

Quorum and majority decisions

10.—(1) A simple majority of all members of the Board present shall form a *quorum* for any meeting of the Board.

(2) The Chairman or, in his absence, the Vice-Chairman, shall preside at meetings of the Board, but in the absence of both the Chairman and the Vice-Chairman, the members present shall elect one of their number to preside at the meeting.

(3) The decision of a simple majority of the members of the Board present at any meeting shall constitute a decision of the Board.

(4) At any meeting of the Board, a member may require the person presiding at the meeting to direct that his dissent from any resolution passed by the Board, and the reasons for such dissent, be recorded in the minutes of the proceedings at which such resolution was passed.

(5) No decision or act done under the authority of the Board shall be invalid by reason only of an interim vacancy on the Board, or of the fact that a person who is disqualified from being a member, or with respect to whose appointment the provisions of this Act had not been complied with, sat or acted as a member at the time when the decision was taken or the act was performed or authorized, if the decision was taken or the act was performed or authorized by a majority of the members present at the time who were entitled to sit and act as members.

Committees of the Board

11.—(1) The Board may establish committees to assist it in the performance of its functions and duties, and may appoint such persons, including persons other than members, as it may deem fit, to be members of any such committees.

(2) The Board may assign to a committee such of its powers as it may deem fit, but shall not be deemed to be divested of any power which it may have assigned to a committee, and may alter any decision of any such committee.

(3) Any reference in this Act to the Board in relation to the exercise of any power which it has assigned to a committee shall be construed as including a reference to that committee.

Reports to the Minister

12.—(1) The Chairman of the Board may submit to the Minister reports regarding matters connected with the activities of the Board which, in the Chairman's opinion, should be brought to the attention of the Minister from time to time.

(2) The Board shall, at the request of the Minister, the Attorney General or the Registrar General, furnish to the Minister or such other public officer, advice on questions in connexion with the accountancy and auditing profession or cognate matters, and shall communicate to the Minister information acquired by it, in the course of its duties, on matters regarded by it as being of public importance.

PART III
Funds of the Board

Funds of the Board and keeping and audit of accounts

13.—(1) Funds of the Board shall consist of—

(*a*) such moneys as may be collected by the Board by way of levies from institutions and individuals registered with the Board;

(*b*) such moneys as may be collected by the Board by way of fees;

(*c*) such moneys or assets as may accrue to or vest in the Board, whether in the course of the exercise of its functions or powers, or otherwise;

(*d*) such moneys or other assets as may accrue to or vest in the Board by way of grants, subsidies, bequests, donations, gifts, subscriptions, rents, interests or royalties, from the Government or any other person;

(*e*) such moneys as may be derived from the sale of any property, real or personal, by or on behalf of the Board;

(*f*) such moneys as may be received by the Board by way of voluntary contributions; and

(*g*) such moneys or other assets as may be donated to the Board by any foreign government, international agency or other external body of persons, corporate or unincorporate.

(2) The Board shall cause to be kept proper books of account and other records in relation to all moneys and other property vested, received or otherwise obtained, and of all moneys expended or other property sold or otherwise disposed of, by the Board.

(3) The accounts of the Board shall be audited annually by a chartered accountant in public practice appointed by the Board.

(4) The expenses of, and incidental to, any audit shall be payable out of the funds of the Board.

(5) The Board shall, as soon as is practicable, but not later than six months after the end of each financial year, submit to the Minister an annual report of its work and operations.

Non-liability of the Board

14. No legal proceedings, whether criminal or civil, shall lie against the Board in respect of any act or duty performed in good faith in accordance with the provisions of this Act.

Remuneration and allowances of members

15.—(1) A member of the Board or of any Committee, as the case may be, shall be paid such remuneration and allowances, if any, as the Board may in its discretion determine.

(2) Any remuneration or allowances which may become payable under subsection (1) shall be paid out of the funds of the Board.

(3) The Board shall, in any case where a member does not make a direct claim to the Board, refund to the appropriate Ministry or institution, as the case may be, any transport or subsistence allowances paid by such Ministry or institution to such member whilst engaged in the business of the Board.

PART IV

Functions, Powers and Objectives of the Board

General powers of the Board

16.—(1) The Board shall have power to—

(*a*) consider and determine applications for registration under Part V of this Act;

(*b*) maintain the Register of chartered accountants and diplomate accountants;

(*c*) encourage cooperation between the Institute and other professional bodies in matters of common interest;

(*d*) take such steps as appear to the Board to be necessary or desirable to advance the standing and effectiveness of the accountancy profession in Malaŵi;

(*e*) advise the College and the Institute on matters pertaining to examinations and training of accountants;

(*f*) promote the standardisation of qualifying examinations on common subjects;

(*g*) take such steps as appear to the Board to be necessary to provide for the manpower requirements of the accountancy profession in Malaŵi;

(*h*) advise the Minister on accountancy and cognate matters;

(*i*) employ such professional, technical and administrative officers, clerks and other servants as it may deem necessary and to lay down conditions of service for such employees;

(*j*) pay its employees such salary, wages or other remuneration as it may deem fit and to grant them such leave as it may deem fit;

(*k*) purchase, take on lease, hire or otherwise acquire any real or personal property which it considers necessary for the purpose of performing its functions, or for the purpose of use as dwelling- houses for its employees;

(*l*) lease dwelling-houses and land for residential purposes for its employees;

(*m*) construct, maintain, alter or improve any buildings, works, machinery and plant necessary or expedient for the performance of its functions;

(*n*) prescribe such professional indemnity insurance as it may think fit;

(*o*) hear and determine appeals from any person aggrieved by a finding of the Institute in relation to admission to membership or to improper conduct, and make such order as to the costs incurred by it in the hearing of such appeals as it may consider equitable;

(*p*) invest and deal with any of its moneys, not immediately required, in such securities and in such manner as it may think fit and to vary or realize such investments;

(*q*) review statutory financial statements and financial reports of public interest entities;

(*r*) monitor the accuracy and fairness of financial reporting and enforce compliance with accounting standards;

(*s*) establish and maintain an independent investigation and disciplinary scheme for public interest purposes;

(*t*) oversee the regulatory and professional development activities of professional accountancy bodies;

(*u*) conduct quality assurance reviews of public auditors and audit firms;

(*v*) establish procedures for coordination of disciplinary responsibilities and referrals with the Institute;

(*w*) accredit professional accountancy bodies and trainers that meet the required standards;

(*x*) oversee the activities of professional accountancy bodies, including their training and professional qualification examinations;

(*y*) formulate any syllabus, training requirement or examination structure applicable to its registrants or prospective registrants, and to inform the Institute of any such changes; and

(*z*) do all things incidental or conducive to the furtherance of its powers under this Act.

(2) No action, suit or other proceedings shall be brought or instituted personally against any member in respect of any act done in good faith in the course of carrying out his duties under this Act.

(3) The Board may delegate some of its powers to the Institute.

Objectives of the Board

17. The Board shall regulate the reporting of financial matters and provide direct oversight over professional accountancy bodies and auditors in order to—

(*a*) promote high quality reporting of financial and non-financial information by entities;

(*b*) promote the highest professional standards among auditors and accountants;

(*c*) enhance the credibility of financial reporting;

(*d*) improve the quality of accounting and auditing services;

(*e*) improve the integrity, competence and transparency of professional activities in accounting and auditing;

(*f*) protect the interests of the general public and investors;

(*g*) adopt and ensure compliance with and the enforcement of applicable local and international accounting and auditing standards; and

(*h*) encourage effective collaboration with other regulators.

Maintenance of standards of examinations

18.—(1) The Board may, after consultation with all the academic institutions charged with the responsibility of training persons desirous of becoming chartered accountants or diplomate accountants, recommend the adoption of any syllabus, training requirement or examination structure which, in the opinion of the Board, is necessary or desirable to maintain or enhance professional standards.

(2) If an institution referred to in subsection (1) proposes to change any syllabus, training requirement or examination, it shall advise the Board, in writing, of the proposal at least three months before making any such change.

(3) If the Board is of the opinion that any proposal made to it under subsection (2) is detrimental to the interests of the profession, it shall advise the institution concerned in sufficient time to enable the institution cancel or modify the proposed change in the light of the Board's advice.

(4) If any institution—

(*a*) fails or refuses to adopt any syllabus, training requirement or examination structure recommended by the Board under subsection (1); or

(*b*) changes any syllabus, training requirement or examination structure in a manner which the Board had advised is detrimental to the interests of the profession,

the Board may refuse an application for registration as a chartered accountant or a diplomate accountant of any person who qualifies from such institution.

Registered training contracts

19.—(1) No service under a training contract entered into after the commencement of this Act shall be recognized for the purposes of this Act unless such contract has, through the Institute, been registered with the Board.

(2) No contract shall be registered under subsection (1) unless the person with whom service is to be performed thereunder has obtained the consent of the Institute, in accordance with the requirements of the Board, to engage registered trainees under registered training contracts.

(3) The Institute shall not give its consent referred to in subsection (2) unless—

(*a*) it can be demonstrated that the trainee shall, during the period of the training contract, receive the personal supervision of a chartered accountant under conditions that will ensure that the trainee shall obtain a sufficiently wide and general practical training and experience; and

(*b*) upon submission of—

(i) a certificate that a degree or diploma, other than an honorary degree or diploma, approved by the Institute has been conferred upon such person; or

(ii) a certificate that such person has obtained not less than six passes in the Malaŵi School Certificate of Examination, including credit passes in Mathematics, English, and one other subject, or in an examination approved by the Institute as being of equal standing.

(4) The Institute shall determine the maximum number of trainees who may be engaged for service under training contracts by any person or in the public service during any particular period.

(5) The period of service under training contracts shall be two hundred and fifty full days and five hundred full days, exclusive of days on leave or absence for whatsoever reasons, for eligibility for registration as diplomate accountants and as chartered accountants respectively, such period of service to be substantially uninterrupted and, save as is otherwise provided in this section, to be with one employer for not less than two hundred and fifty consecutive full working days:

Provided that the Institute may in the case of a person who, in the opinion of the Institute, has obtained satisfactory practical training and experience by way of service under conditions substantially the same as under a registered training contract either within Malaŵi or elsewhere,

reduce the period of service under a training contract to such extent as it may deem fit or grant exemption from service under the training contract.

(6) Whenever the service of a registered trainee is terminated before he has served the prescribed period under a registered training contract, the Institute may in its discretion and on such conditions as it may deem fit, approve of the transfer of such registered trainee to some other person or Government Ministry or Department, as the case may be, to complete the remaining portion of his period of service under a registered training contract.

(7) No person shall accept any payment or other reward in consideration of the engagement by him of any person under a registered training contract.

(8) No person who is registered as a non-resident accountant and auditor under this Act shall be entitled to have the services of any registered trainee under a training contract in Malaŵi.

Powers and duties of auditors

20.—(1) No person acting in the capacity of auditor to any undertaking shall, without such requirements as may be appropriate in the circumstances, in pursuance of any audit carried out by him in that capacity, certify or report or express an opinion to the effect that any financial statements, including any annexure thereto, which relates to such undertaking, presents fairly, or gives a true and fair view of, or reflects correctly the affairs of such undertaking and the results of its operations, or the matters dealt with in such financial statement or annexure, as the circumstances may require, unless—

(*a*) he has carried out such audit free of any restrictions whatsoever;

(*b*) proper accounting records in English have been kept in Malaŵi in connexion with the undertaking in question, so as to reflect and explain all its transactions and record all its assets and liabilities correctly and adequately;

(*c*) he has obtained all information, vouchers and other documents which in his opinion were necessary for the proper performance of his duties;

(*d*) he has, in the case of an undertaking regulated by any written law, complied with all the requirements of that law relating to the audit of that undertaking;

(*e*) he has, by means of such methods as are reasonably appropriate having regard to the nature of the undertaking in question, satisfied himself of the existence of material assets and liabilities shown on such financial statements or annexure;

(*f*) he is satisfied, as far as is reasonably practicable having regard to the nature of the undertaking in question and of the audit carried out by him, as to the fairness or the truth or the correctness, as the case may be, of such financial statements or annexure; or

(*g*) any matter referred to in subsection (3) had, at the date on which he so certified or reported or expressed such opinion, been adjusted to his satisfaction.

(2) No accountant or auditor shall, when acting otherwise than in pursuance of an audit, certify or report or express an opinion, without such qualification as may be appropriate in the circumstances, to the effect that any account, financial statement (including any annexure thereto) or other document relating to the business or financial affairs of any undertaking, presents fairly, or gives a true and fair view of, or reflects correctly, the matters dealt with therein, unless he has, *mutatis mutandis*, complied with the provisions of paragraphs (*a*), (*c*) and (*f*) of subsection (1).

(3) If any accountant or auditor or his partner, or any person employed by him or his partner, or any person working under his supervision and control or under the supervision and control of his partner, was responsible for keeping books, records or accounts of any undertaking, except to the extent of making closing entries or assisting with any adjusting entries or framing any balance sheet, accounts, statement or other document from existing records, such accountant or auditor shall, in certifying or reporting on anything in connexion with the business or financial affairs of such undertaking, indicate that he or his partner or a person working under his supervision and control or under the supervision and control of his partner, as the case may be, was responsible for keeping such books, records or accounts.

(4) Any certificate required to be given or report to be made or opinion to be expressed by an accountant or auditor in his capacity as an accountant or auditor in pursuance of any assignment carried out by him, shall be given or made or expressed within a period of four months after the date on which the assignment was completed, and in any case not more than fifteen months from the previous Annual General Meeting, and if such accountant or auditor is unable to give an unqualified certificate or make an unqualified report or express an unqualified opinion, he shall, within the said period give that certificate or make that report or express that opinion subject to such qualifications as he may deem necessary, and may, if he considers it advisable, endorse on that certificate, report or opinion the reason for any such qualification:

Provided that—

(*a*) if any person acting in the capacity of auditor to any undertaking is satisfied or has reason to believe that in the conduct of the affairs of such undertaking a material irregularity has taken

place, which irregularity has caused or is likely to cause financial loss to the undertaking or to any of its members or creditors, he shall forthwith dispatch, a report in writing to the persons in charge of that undertaking, giving the particulars of the irregularity, at the same time drawing the attention of the person in charge of such undertaking to the provisions of paragraphs (*b*) and (*c*) of this proviso and requesting him to acknowledge receipt of such report in writing;

(*b*) unless within thirty days after an auditor has dispatched such a report, he has been satisfied by information received that no such irregularity has taken place or is taking place or that adequate steps have been taken for the recovery of any such loss caused as aforesaid or for the prevention of any such loss likely to be caused as aforesaid, he shall, through the Institute, furnish the Board with copies of the report and of any acknowledgement of receipt thereof and reply thereto and such other particulars as he may deem fit;

(*c*) the Board may disclose to the Attorney General or any public officer or any member or creditor of the undertaking concerned, any information supplied to it pursuant to paragraph (*b*) of this proviso;

(*d*) for the purpose of determining whether any irregularity contemplated by this subsection has taken place or is taking place, an auditor may carry out such investigations as he may deem fit; and

(*e*) nothing in this subsection shall be construed as conferring upon any person any right of action against an auditor, which, but for the provisions of this subsection, he would not have had.

(5) If any person who was acting in the capacity of an auditor regarding any undertaking immediately prior to its bankruptcy or liquidation (whether provisional or final), is satisfied or has reason to believe that at or before the date of the bankruptcy or liquidation, as the case may be, a material irregularity in the conduct of the affairs of such undertaking was taking place or had taken place, which irregularity had caused or was likely to cause financial loss to the undertaking or to any of its members or creditors, and such person did not comply with the provisions of paragraph (*a*) of the proviso to subsection (4) in respect of such irregularity before the said date, he shall forthwith dispatch a report in writing giving particulars of such irregularity, to the person appointed as trustee or provisional trustee or as liquidator or provisional liquidator, as the case may be, of such undertaking and at the same time supply copies of such report to the person in charge of such undertaking and to the Board.

(6) The Board may disclose to the Attorney General or any public officer or any member or creditor of the undertaking concerned, any information supplied to it pursuant to the provisions of paragraph (*b*) of the proviso to subsection (4).

(7) If a person who has been registered as an accountant and auditor under the provisions of this Act—

(*a*) fails to perform any duties devolving upon him in the capacity of an auditor to any undertaking with such a degree of care and skill as, in the opinion of the Board, may reasonably be expected; or

(*b*) is on the basis of *prima facie* evidence presented to the Board, negligent in the performance of such duties,

the Board may, whether or not such auditor is liable to be or has been criminally charged or has been convicted in respect of such failure or negligence, cause the Institute to enquire into the circumstances, and if such failure or negligence is proved to its satisfaction, impose upon that person any of the penalties prescribed under Part VII of this Act:

Provided that no person shall be penalised by reason of any opinion expressed by him in good faith as to the value or amount of any asset or liability appearing on the balance sheet in respect of the undertaking in connexion with which the audit was carried out, or by reason of his having declined to express any opinion thereon, if the Board is satisfied that, having regard to the nature of such asset or liability or any other circumstances, he could not reasonably have been expected to express an authoritative opinion.

(8) No action shall be instituted against any auditor or any person registered as an accountant and auditor under this Act in respect of any opinion expressed or certificate given or report or statement made or statement, account or document certified by him in the ordinary cause of his duties, unless it is proved that such opinion was expressed or such certificate was given or such report or statement was made or such statement, account or document was certified maliciously, negligently or with fraudulent intent.

(9) In carrying out his duties under this section, an auditor shall adhere to the provisions of the Code of Conduct promulgated by the Institute.

Information to be furnished by registered accountants

21. Every person who is registered as a practicing chartered accountant under this Act shall, subject to the provisions of subsection (3)—

(*a*) notify the Board and every person whom he or his firm acts as auditor of any change in the name, constitution or address of such firm within fourteen days after the date on which such change takes place; and

(*b*) furnish the following information within fourteen days after receiving a request therefor from any person for whom he or his

firm acts as auditor or who proposes to appoint him or his firm as auditor—

(i) every firm name or title under which he practices;

(ii) the place or places of business of all partnerships in which he is in public practice as a partner;

(iii) the full names of all his partners; and

(iv) his nationality, his forenames or the initial thereof, his surname and every surname which he may have home previously and his ordinary business address and his residential address.

(2) When two or more persons are practising in partnership, the particulars referred to in subsection (1) may be furnished in a communication by or in the name of the firm and any such communication shall be regarded as sufficient compliance by the individual partners of that firm with the provisions of that subsection.

(3) For the purposes of subsection (1) the expression "every surname which he may have borne previously" does not include—

(*a*) in the case of a person adopted as a child, his surname before his adoption;

(*b*) in the case of any person, any surname previously borne by him which was changed or disused before he attained the age of eighteen years or has been changed or disused for a period of not less than twenty years; or

(*c*) in the case of a married or divorced woman or a widow, the surname borne by her before her marriage.

PART V
Register and Registration

Register of Chartered Accountants and Diplomate Accountants

22.—(1) The Board shall establish a register, to be known as the Register of Chartered Accountants and Diplomate Accountants, which shall be divided into three parts, one for the registration of chartered accountants in public practice, one for the registration of other chartered accountants and the other for diplomate accountants.

(2) The secretary of the Board shall be responsible, subject to any directions given to him by the Board, for maintaining the Register and ensuring that entries are made in the appropriate part of the Register recording—

(*a*) the name and such other particulars as may be prescribed of each person whom the Board has directed shall be registered;

(*b*) the fact that a registration certificate has been issued to a registered person, or that any such certificate has ceased to be valid;

(*c*) particulars of the cancellation or suspension of any person's registration and of the restoration of any such cancelled registration or the termination of any such suspension;

(*d*) any necessary corrections or alterations to any particulars or facts referred to in paragraph (*a*), (*b*) or (*c*); and

(*e*) any other particulars that may be prescribed or that the Board may determine.

Register to be open to inspection

23. Any person may inspect the Register and make copies of any entry therein at all reasonable times on payment of such fee as may be prescribed by the Board.

Compulsory registration

24. Any person resident and working in Malaŵi who is a member in good standing of the Institute or an association of accountants which is recognized by the Institute shall register as a member of the Institute within ninety days from either the date of commencement of this Act or taking up residence in Malaŵi.

Qualification for registration

25.—(1) A person shall be qualified for registration as a chartered accountant or diplomate accountant if he is a member in good standing of the Institute.

(2) A person shall not be qualified for registration if—

(*a*) he has been adjudged or otherwise declared insolvent or bankrupt under a law in force in any country and has not been rehabilitated or discharged;

(*b*) he has made an assignment to or arrangement or composition with his creditors under a law in force in any country, and the assignment, arrangement or composition has not been rescinded or set aside; or

(*c*) within the period of five years immediately preceding his application for registration—

(i) he has been convicted inside or outside Malaŵi of a criminal offence which, in the opinion of the Board, is of a disgraceful or dishonourable nature;

(ii) he has behaved in a manner which, in the opinion of the Board after consultation with the Institute, is of a disgraceful or dishonourable nature; or

(iii) he has been certified either inside or outside Malaŵi to be mentally disordered or defective or of unsound mind in terms of the Mental Treatment Act or an equivalent law in a foreign country and the certification remains in force.

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(3) Before reaching a decision as to whether or not a person is disqualified for registration under subsection (2), the Board shall—

(*a*) inform him in writing of the grounds on which it might reach such a decision and afford him a reasonable opportunity to make representations in the matter, in writing or in person, as the Board may think fit; and

(*b*) pay due regard to any representations made by him under paragraph (*a*).

General prohibition

26.—(1) No person shall, unless he is registered by the Board as a chartered accountant or diplomate accountant—

(*a*) offer services as, or hold himself out to be a public accountant, chartered accountant or diplomate accountant; or

(*b*) do anything likely to lead persons to infer that he is a public accountant, chartered accountant or diplomate accountant.

(2) A person who contravenes subsection (1) commits an offence and is liable to a fine of K100,000 and imprisonment for two years.

Application for registration

27.—(1) Any person who wishes to be registered as a chartered accountant or a diplomate accountant shall submit to the Institute an application therefor in the form and manner prescribed, together with the prescribed registration fee.

(2) On receipt of an application under subsection (1), the secretary of the Institute shall certify in writing whether or not the applicant is—

(*a*) a member in good standing with the Institute; and

(*b*) qualified for registration as a chartered accountant or a diplomate accountant, as the case may be,

and shall forward the application together with the registration fee, to the Board.

Registration

28.—(1) The Board shall consider every application for registration forwarded to it under section 27 and—

(*a*) if the Board is satisfied that the applicant is qualified for registration, the Board shall direct the secretary of the Board to register the applicant in the appropriate part of the Register; and

(*b*) if the Board is not satisfied, the Board shall refuse the application and direct the secretary of the Board to notify the Institute which shall notify the applicant in writing of its decision.

(2) Any person who desires to be registered as a non-resident chartered accountant or diplomate accountant shall, under his hand, apply to the Board through the Institute for such registration accompanied by

the prescribed fee and such information as the Board may require, and if, after consideration of any such application the Board is satisfied that the applicant—

(*a*) is of full age and is not ordinarily resident in Malaŵi;

(*b*) is a member of a body of accountants and auditors recognized by the Board for the purposes of this subsection,

the Board shall register the applicant as a non-resident chartered accountant or diplomate accountant and issue to him a certificate of registration in such form as it may prescribe.

(3) The Board shall not register any person under this section—

(*a*) if he has at any time been removed from an office of trust on account of misconduct;

(*b*) if he has at any time been convicted of theft, fraud, forgery or uttering a forged document or perjury, and sentenced in respect thereof to imprisonment or to a fine;

(*c*) if he is of unsound mind; or

(*d*) if he is disqualified from registration consequent upon any punishment imposed under this Act,

and may refuse so to register any person who is an undischarged bankrupt or who has entered into an arrangement with his creditors or who has been guilty of misconduct by reason whereof he is in the opinion of the Board not a fit person to be so registered.

(4) The Board shall cancel the registration of any person—

(*a*) who subsequent to his registration becomes subject to any of the disqualifications stated in paragraph (*a*) or (*b*) of subsection (3);

(*b*) whose estate is adjudged bankrupt;

(*c*) who enters into an arrangement with his creditors;

(*d*) whose registration was made in error or on information subsequently proved to be false; or

(*e*) who has, prior to his registration, been guilty of misconduct by reason whereof he is in the opinion of the Board not a fit person to be so registered.

(5) The Board shall cancel the registration of any person who is a non-resident chartered accountant or diplomate accountant if—

(*a*) subsequent to his registration, he becomes resident in Malaŵi;

(*b*) he becomes subject to any of the disqualifications specified under subsection (4) other than that set out in paragraph (*a*) of subsection (6);

(*c*) he does not, within six months after the date of his registration, produce proof to the satisfaction of the Board that he has been admitted into partnership with a chartered accountant resident and engaged in public practice in Malaŵi;

(*d*) he ceases to be a partner of a chartered accountant resident and engaged in public practice in Malaŵi and does not within six months thereafter produce proof to the satisfaction of the Board that he has been admitted into any other partnership with another chartered accountant resident and engaged in public practice in Malaŵi; or

(*e*) he is in partnership with a chartered accountant who has ceased to be engaged in public practice in Malaŵi or with a person whose registration has been cancelled or has lapsed under or by virtue of any of the provisions of this Act unless he produces proof to the satisfaction of the Board within six months thereafter that such partnership has been dissolved and that he has been admitted into partnership with another chartered accountant resident and engaged in public practice in Malaŵi.

(6) The registration of any person who is a registered chartered accountant or a diplomate accountant shall lapse if such person—

(*a*) ceases permanently to reside in Malaŵi; or

(*b*) fails within three months after such fee or portion thereof becomes due and payable or within such further period as the Board may in any particular case prescribe to pay any annual fee or portion thereof prescribed under this Act which is payable by him.

(7) Subject to the provisions of subsection (3), the Board shall on application to it in writing register in the appropriate category any person who was previously registered under this Act, if he possesses the prescribed residential qualifications and has paid the prescribed registration fee and any arrear annual fee.

(8) The Board shall, at the written request of any person registered under this Act, remove his name from the register, save that the removal shall not affect any liability incurred by such person prior to the date of such request.

(9) A person who is registered under the provisions of this Part may describe himself as a chartered accountant or as a diplomate accountant, as the case may be, and if registered as a chartered accountant in public practice shall be entitled to describe himself as such and to engage in public practice in Malaŵi.

(10) Whenever the secretary of the Board registers a person under this section, he shall issue that person with a certificate in the form prescribed indicating the part of the Register in which that person has been registered.

Cancellation or suspension of registration

29.—(1) Subject to subsection (4), the Board shall direct the secretary of the Board to cancel the registration of any registered person—

(*a*) who has ceased to be a member of the Institute;

(*b*) who has been adjudged or otherwise declared insolvent or bankrupt under a law in force in any country;

(*c*) who has made an adjustment to or arrangement or composition with his creditors under a law in force in any country;

(*d*) who has been convicted inside or outside Malaŵi of a criminal offence which in the opinion of the Board is of a disgraceful or dishonourable nature;

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(*e*) who is certified either inside or outside Malaŵi to be mentally disordered or defective or of unsound mind under the Mental Treatment Act, or an equivalent law in a foreign country; or

(*f*) whose membership of his professional body has been cancelled or suspended.

(2) Subject to subsection (4), the Board shall direct the secretary of the Board to cancel the registration of a person as a public auditor if he has ceased to be a member of the Institute.

(3) Subject to subsection (4), if the Board is notified in writing by the Institute that it has suspended the membership of a registered person, the Board shall suspend that person's registration for the same period as his membership has been suspended.

(4) Before reaching a decision as to whether or not a registered person's registration should be cancelled or suspended under subsection (1) or (2), the Board shall—

(*a*) inform him in writing of the grounds on which it might reach such a decision and afford him a reasonable opportunity to make representations in the matter, in writing or in person, as the Board thinks fit; and

(*b*) pay due regard to any, representations made by him under paragraph (*a*).

(5) Whenever the secretary cancels or suspends a person's registration under this section, he shall notify that person, in writing, of the cancellation or suspension.

Restoration of registration

30.—(1) The Board shall direct the secretary of the Board to restore to the Register the name of a person whose registration was cancelled on the ground referred to in paragraph (*a*) of subsection (1) of section 29, if the Institute notifies the Board, in writing, that he has become a member of the Institute or has had his membership restored.

(2) The Board shall direct the secretary of the Board to restore to the Register as a chartered accountant or diplomate accountant the name of a person whose registration was cancelled on the ground referred to in subsection (2) of section 29 if the Institute notifies the Board, in writing, that he has become a member of the Institute or has had his membership restored.

(3) A person whose registration has been cancelled under section 29 may apply for his registration to be restored and sections 25 to 27 shall apply, *mutatis mutandis*, as if he were applying for registration.

PART VI

Secretariat of the Board

Secretary and other staff of the Board

31. The Board shall appoint a secretary and such other members of staff as shall enable the Board to carry out its functions in terms of this Act.

Disclosure of interest by employees, etc.

32.—(1) An employee of the Board or a consultant to the Board who, or whose immediate family member is directly or indirectly interested in a private or professional or official capacity in any matter being considered by the Board, shall disclose such interest.

(2) A disclosure of interest made under this section shall be made to the Secretary or, as the case may be, by the Secretary to the Board who or which shall take such decision as he or it considers appropriate in each case and submit a report thereon to the Board.

Oath of secrecy

33. Every—

(*a*) member of the Board;

(*b*) member of a committee of the Board;

(*c*) employee of the Board; and

(*d*) consultant in the service of the Board,

shall, upon assumption of his office, take such oath of secrecy as may be approved by the Board.

Prohibition of publication or disclosure of information by unauthorized persons

34.—(1) No person shall, without the consent in writing given by or on of behalf of the Board, publish or disclose to any person, other than in the of course of his duties, contents of any document, communication or information which relates to and which has come to his knowledge in the course of his duties under this Act.

(2) A person who contravenes subsection (1) commits an offence and is liable to a fine of K100,000 and to imprisonment for two years.

Protection of employees

35. No action, suit or other proceedings shall be brought or instituted personally against any employee of the Board in respect of any act done in good faith in the course of carrying out the provisions of this Act.

PART VII
Discipline

Disciplinary proceedings

36. The Institute shall be responsible, in the first instance, for the professional conduct of its members and, for that purpose, the Institute shall have power to undertake disciplinary proceedings against such members and to discipline them.

Review of disciplinary proceedings

37.—(1) Where the Institute has found that a member contravened any disciplinary rules as provided for in the By-laws and has been disciplined under section 36, the Institute shall report that fact to the Board in writing within fourteen days and shall provide the Board with information regarding the case.

(2) If, after the thirty-day period specified in section 38, the member concerned has not lodged an appeal under that section, the Board shall forthwith review the decision of the Institute in any case reported to it under subsection (1):

Provided that, if the Board agrees to hear an appeal after the thirty-day period, it shall not be necessary to review the case under this subsection.

(3) In a review under subsection (2), the Board may confirm, alter or set aside the decision of the Institute or refer the matter back to the Institute for further consideration:

Provided that the Board shall not alter or set aside the decision unless it is satisfied that—

(*a*) the Institute failed to follow any procedure which it was required to follow in disciplinary proceedings;

(*b*) the Institute failed to observe the rules of natural justice; or

(*c*) the decision of the Institute was unreasonable in all the circumstances of the case,

and that a substantial miscarriage of justice occurred.

Appeal to the Board against disciplinary action

38.—(1) A registered person whose membership of the Institute has the Board been suspended or cancelled following disciplinary proceedings against him may appeal in writing to the Board, setting out clearly the grounds of his appeal, within thirty days after being informed of his suspension or cancellation, or within such further period as the Board may allow.

(2) An appeal under subsection (1) shall be lodged in the form and manner prescribed,

(3) The Board shall forward a copy of any appeal lodged with it under subsection (1) to the Institute and the Institute shall, within thirty days or such longer period as the Board may permit, provide the Board with such number of copies of the record of the disciplinary proceedings as may be prescribed.

(4) After affording the appellant and the Institute a reasonable opportunity to make representations in the matter, the Board shall consider any appeal under this section and may confirm, alter or set aside the decision of the Institute or refer the matter back to the Institute for further consideration.

(5) If the Board receives oral evidence in an appeal under this section, it shall ensure that a record is kept of such evidence.

(6) If following an appeal under this section the Board confirms the suspension or cancellation of the appellant's registration, the Board may make an order requiring the appellant to pay the expenses of and incidental to the appeal, or any part of those expenses.

(7) The Board may recover from the appellant concerned any amount he has been ordered to pay under subsection (6) by proceedings against him in a court of competent jurisdiction.

(8) The Board shall hear and determine appeals from any person aggrieved by a finding of the Institute in relation to improper conduct and make such order as to the costs incurred by it in the hearing such appeals as it may consider equitable.

Suspension of registered accountants who are mentally disabled

39.—(1) Whenever it appears to the Board from information on oath that any person registered under this Act has become mentally disabled to are such an extent that it would be contrary to the public welfare to allow him to continue to practice or to act as a chartered accountant or as a diplomate accountant, as the case may be, the Board may, if it deems fit, hold an enquiry in respect of such person.

(2) If the Board after due enquiry finds as a fact that such person has become mentally disabled, it may order the suspension of such person for a specified period from practising as a public accountant or from acting as a chartered accountant as the case may be.

(3) The Board may order the extension of the period of operation of any order made under this section or may order its revocation.

PART VIII
The Institute

Objectives of the Institute

40. The Institute shall—

(*a*) promote the development of the accounting profession;

(*b*) supervise the accountancy profession in the public interest;

(*c*) promote the highest standards of professional ethics and business conduct of, and enhance the quality of services offered by, chartered accountants or diplomate accountants;

(*d*) protect the public interest by ensuring that members of the Institute observe the highest standards of professional and ethical conduct;

(*e*) ensure the professional independence of accountants;

(*f*) determine the eligibility criteria to become a member of the Institute;

(*g*) arrange for the assessment of candidates seeking certification as members;

(*h*) promote, maintain and increase the knowledge, skills and competence of members of the Institute and students;

(*i*) ensure that members of the Institute obtain the necessary technical and ethical guidance that enables them to meet the needs of the community in areas in which they have special knowledge and expertise;

(*j*) maintain and monitor high quality practical training at all levels of the profession;

(*k*) seek public recognition of a broad range of skilled services that chartered accountants or diplomate accountants and accounting technicians can provide;

(*l*) promote and protect the objectives and sustainability of the Institute and of the accounting profession;

(*m*) maintain the legitimate professional rights of members of the Institute;

(*n*) advance the theory and practice of accountancy in all aspects;

(*o*) develop and maintain effective working relationships with Government and other national, regional and international accountancy bodies;

(*p*) promote high quality accounting, auditing and financial reporting standards and practices;

(*q*) develop professional qualifications for accountants and auditors in Malaŵi;

(*r*) keep abreast of international developments affecting the accounting profession; and

(*s*) protect the interests of its members.

Functions of the Institute

41. The Institute shall, subject to this Act and to the general or special directions of the Board, undertake diligently the following functions or any of such functions—

(*a*) the continuous review and dissemination to its members and others of information concerning international and internal developments in technical matters affecting the profession of accounting and auditing;

(*b*) the setting of accounting and auditing standards appropriate to conditions prevailing in Malaŵi, and to the continued international acceptance of audited financial statements originating in Malaŵi;

(*c*) advising the Board and the College on any matters referred to it;

(*d*) the carrying out of research into matters affecting the profession;

(*e*) the provision of continuing professional education for its members, and monitoring compliance;

(*f*) the definition and enforcement of ethical practice and discipline among its members;

(*g*) the issuing, renewal and withdrawal of practising certificates to its members carrying on public practice;

(*h*) the registration of student members;

(*i*) the prescription of regulations for the protection of client funds held by its members, and for the due performance of professional obligations;

(*j*) the disciplining of its members and registered students and trainees;

(*k*) the appointment of its representatives required under the provisions of this Act;

(*l*) determining the syllabus to be followed by institutions charged with the training of those desirous of qualifying for registration under this Act, taking fully into account the need for the integration of the syllabus for qualification as a diplomate accountant with the syllabus for qualification as a chartered accountant;

(*m*) setting the examinations for those desirous of qualifying for registration under this Act;

(*n*) coordinating the marking and adjudication of the examinations set in pursuance of the provisions of paragraph (*m*);

(*o*) reviewing the academic syllabus of examinations followed by academic or professional institutions other than those referred to in paragraph (1) with a view to the establishment of exemptions from the examinations prescribed in paragraph (*m*);

(*p*) ensuring, through liaison with other professional bodies of accountants of high standing, that the examination and marking standards applied by the Institute are acceptable as of equal academic standing to those applied by the other bodies;

(*q*) liaising with and advising the Minister, the Board and the College on matters relating to the training of accountants and the requisite qualifications for the registration of accountants;

(*r*) promoting issues of good corporate governance in Malaŵi;

(*s*) performing such other functions relating to the training of accountants and the requisite qualifications for the registration of accountants;

(*t*) evaluating and monitoring the standards of qualifying courses and training set or offered by the College or any other institution in consultation with the Institute;

(*u*) performing such other functions relating to the training of accountants and auditors as the Board may, from time to time, direct;

(*v*) laying down the requirements for different classes of its membership;

(*w*) considering any application for registration made under this Act for different classes of its membership;

(*x*) registering persons as members of the Institute who qualify to be chartered accountants or diplomate accountants, chartered accountants in public practice, student members, or such other class of membership as the Institute may establish;

(*y*) overseeing, monitoring and supervising the qualifications and selection of mentors of practical training programs;

(*z*) inquiring into any written complaint made against any chartered accountant, or diplomate accountant, either on its own initiative or at the request of any person, for violations or breaches of its codes, rules and standards, in accordance with the rules of the Institute;

(*aa*) implementing a sound system of quality assurance review mechanism to ensure high quality audit practice;

(*bb*) recognizing any accountancy qualifications that are, in the opinion of the Board, equivalent to those of the Institute;

(*cc*) representing members' interests in local, regional and international forums;

(*dd*) improving the quality of professional services offered by its members; and

(*ee*) performing such other duties or functions as it deems necessary to promote the highest professional standards among its members.

Powers of the Institute

42.—(1) The Institute shall have powers to do all things necessary or appropriate in connexion with the performance of its functions.

(2) Without derogating from the generality of subsection (1), and subject to the provisions of this Act, the powers of the Institute shall include the power to—

(*a*) cooperate with, or become a member or an affiliate of, any international body, the objects or functions of which are similar to or connected with those of the Institute;

(*b*) impose and collect such penalties, fees and fines as may be required under this Act and the rules of the Institute;

(*c*) levy such charges or fees as may be reasonable for services and facilities provided by the Institute;

(*d*) issue rules and guidelines related to the examinations and qualifications of the Institute;

(*e*) issue rules and guidelines related to membership in the Institute, including the acceptance, rejection, withdrawal, suspension, cancellation or renewal of membership; and

(*f*) conduct any inquiry or investigation, or collect information, documents or evidence, for the purpose of carrying out its functions, including disciplinary actions against its members.

(3) The Institute shall have the power to accept delegations of the Board's functions.

PART IX
Practising Certificate

Prohibition against practice without practising certificate

43.—(1) No person shall practice or hold himself out as a chartered accountant in public practice whether directly or indirectly, by himself or in partnership or association with any other person, except in accordance with the terms and conditions of a valid practising certificate issued by the Institute and registered by the Board.

(2) Subsection (1) shall not apply to anything done by a registered person which he could lawfully do as an unregistered person under section 52.

(3) A person who contravenes subsection (1) commits an offence and is liable to a fine of K100,000 and imprisonment for two years.

(4) A conviction for an offence under subsection (3) shall not be a bar to a further prosecution or conviction if the offence continues.

Application for practising certificate

44. A person who wishes to obtain a practising certificate shall apply to the Institute in the form and manner prescribed, and shall submit with his application such fee, certificates, documents and information as may be prescribed.

Issue or refusal of practising certificate

45.—(1) On receipt of an application for a practising certificate under section 44, the Institute shall issue a practicing certificate to the applicant authorizing him to practice as a chartered accountant in public practice if the Institute is satisfied that the applicant—

(*a*) is a chartered accountant; and

(*b*) is a member in good standing with the Institute.

(2) If the Institute is not satisfied as provided for in subsection (1), it shall refuse to issue the practising certificate concerned and shall—

(*a*) advise the applicant accordingly; and

(*b*) subject the applicant to practice reviews at such a time and in such a manner as the Institute may prescribe.

Unregistered person prohibited from practising

46.—(1) No person shall, unless he is registered by the Board as a chartered accountant in public practice—

(*a*) practice or offer services as, or hold himself out to be a chartered accountant in public practice; or

(*b*) do anything likely to lead persons to infer that he is a chartered accountant in public practice.

(2) A person who contravenes subsection (1) commits an offence and is liable to a fine of K100,000 and to imprisonment for two years.

Period of validity of practising certificate

47.—(1) Subject to this section, a practising certificate shall remain valid for as long as its holder remains registered.

(2) A practising certificate which authorizes its holder to practise as a chartered accountant shall cease to be valid if its holder is deregistered by the Institute in which case the certificate shall immediately be returned to the Institute.

Withdrawal of practising certificate

48.—(1) If, after due enquiry, the Institute is satisfied that a chartered accountant in public practice has not complied with any term or condition of a practising certificate held by him, the Institute may withdraw the practising certificate and, if it does so, the Institute shall advise the chartered accountant accordingly.

(2) Where a practising certificate is withdrawn, the Board shall publish a notice in the *Gazette* notifying the public of such withdrawal.

Surrender of withdrawn or invalid practising certificate

49. Where a person has been advised in writing by the secretary of the Institute that a practising certificate issued to him has been withdrawn or has ceased to be valid, he shall forthwith and in any event within thirty days after being so advised return the practising certificate to the Institute.

PART X

MISCELLANEOUS

Use of certain designations

50.—(1) A chartered accountant shall be entitled to use the designation "Chartered Accountant (Malaŵi)" or the initials "C.A.(M)".

(2) A diplomate accountant shall be entitled to use the designation "Diplomate Accountant (Malaŵi)" or the initials "Dip. A.(M)".

Offences by unregistered persons

51.—(1) Subject to section 53 and any other enactment, no person other than a chartered accountant shall—

(*a*) hold himself out to be a chartered accountant; or

(*b*) use the designation or initials referred to in subsections (1) and (2) of section 50 or any other name, title, description or letters indicating that he is a chartered accountant or diplomate accountant, whether by advertisement or description or in any document.

(2) A person who contravenes subsection (1) commits an offence and is liable to a fine of K200,000 and imprisonment for three years.

(3) A conviction for an offence under subsection (2) shall not be a bar to a further prosecution or conviction if the offence continues.

Offences and penalties

52.—(1) No person who is registered as a chartered accountant in public practice under this Act shall—

(*a*) except with the consent of the Institute, knowingly employ in connexion with his practice—

(i) any person while such person is suspended from public practice under any provision of this Act;

(ii) any person not registered as a chartered accountant in public practice under this Act who was previously so registered; or

(iii) any person not registered under this Act whom the Board has refused to register;

(*b*) make over to or share with any person (other than a person registered as a chartered accountant in public practice under this Act or practising as an accountant and auditor outside Malaŵi)

any portion of professional fees earned by him in respect of work performed by him as a chartered accountant in public practice;

(*c*) share profits derived from his practice as a chartered accountant in public practice in Malaŵi, or practice in Malaŵi in partnership, with any person not registered as a chartered accountant in public practice under the provisions of this Act;

(*d*) practice under a firm name or title unless on every letterhead bearing such firm name or title there appears—

(i) his present forenames or the initials thereof and his present surname;

(ii) The present forenames or the initials thereof and the present surnames of his partners, if any; and

(iii) if any such partner is not resident in Malaŵi, a statement of that fact;

(*e*) sign any account, statement, report or other document which purports to represent work performed by him, unless such work was performed by himself or under his personal supervision or direction or by or under the personal supervision or direction of one or more of his partners:

Provided that the provisions of this paragraph shall not apply in respect of work performed on behalf of a person registered as a chartered accountant in public practice under this Act by another chartered accountant in public practice so registered or in respect of work performed outside Malaŵi by a member of a recognized body of professional accountants outside Malaŵi whose status, in the opinion of the Board, is at least equal to that demanded by the Board for the profession in Malaŵi:

Provided further that nothing in this paragraph shall be deemed to prevent any person registered as a chartered accountant in public practice under this Act from signing the firm name or title under which he practices;

(*f*) perform professional work in connexion with any matter which is the subject of an application for finance, dispute or litigation on condition that payment for such work shall be made only if such application, dispute or litigation ends favourably for the party for whom such work is performed;

(*g*) engage in public practice during any period in respect of which he has been suspended from practice; or

(*h*) engage in public practice without carrying such professional indemnity insurance as may have been prescribed by the Institute.

(2) A person who contravenes any provision of this section commits an offence and is liable to a fine of K100,000 and imprisonment for two years.

Exemptions

53.—(1) Section 52 shall not prevent a person who, without receiving any fee or reward, prepares or reports on the accounts of a club, society, institute or other association not established for the acquisition of gain, from describing himself as an honorary auditor in relation to the preparation of or reporting on such accounts.

(2) Any person in the *bona fide* employment of—

(*a*) a registered chartered accountant in public practice; or

(*b*) a partnership referred to in subsection (4),

shall not be regarded as practising as a chartered accountant in public practice or as holding himself out to be a registered chartered accountant in public practice for the purposes of section 52 in respect of anything done in the course of such employment while under the direction and control of a registered chartered accountant in private practice.

(3) Section 52 shall not apply to any person in the full-time employment of the Government in respect of anything done by him in the course of such employment.

(4) Notwithstanding section 52, a partnership whose partners—

(*a*) are registered chartered accountants in public practice;

(*b*) hold practising certificates; and

(*c*) directly manage the provision of accounting or auditing services by the partnership,

may practice as though it were a chartered accountant in public practice.

Appeals from decisions of the Board

54.—(1) A person who is aggrieved by any decision of the Board made under Parts V and VII may, within thirty days after being advised of such decision, appeal to the High Court in such manner as may be prescribed.

(2) In an appeal under subsection (1), the High Court may—

(*a*) confirm, vary or set aside the decision appealed against; or

(*b*) remit the matter to the Board for further consideration and may make such other order, whether as to costs or otherwise, as the High Court thinks just.

(3) The lodging of an appeal under subsection (1) against a decision of the Institute to withdraw a practising certificate shall not set aside the decision appealed against, unless—

(*a*) the Board, by written notice to the chartered accountant concerned, agrees otherwise; or

(*b*) the High Court, on application, directs otherwise,

in which event the Institute shall return the practising certificate to the appellant pending the outcome of the appeal.

Evidence

55.—(1) The Register shall be *prima facie* proof of all matters directed or authorized by or under this Act to be noted therein.

(2) A certificate purporting to be signed by the Institute to the effect that—

(*a*) the name of a person appears in any specified part of the Register, shall be *prima facie* proof that the person is registered as a chartered accountant in public practice or a chartered accountant or a diplomate accountant, as the case may be;

(*b*) the name of a person has been deleted or removed from or does not appear in the Register or any specified part thereof, shall be *prima facie* proof that the person is not registered as a chartered accountant in public practice or a chartered accountant or a diplomate accountant, as the case may be; and

(*c*) a registered person has been suspended from practice for a specified period, shall be *prima facie* proof that he has been suspended for that period.

(3) A certificate referred to in subsection (2) or a copy of an entry in the Register or of a document in the custody of the secretary of the Board or an extract from the Register or any such document shall, if it purports to be certified by the secretary of the Board, be admitted in evidence in any court on its production by any person without further proof or production of the original.

By-laws

56.—(1) Subject to subsection (2), the Board may make By-laws prescribing anything which under this Act is required to be prescribed or which, in the Board's opinion, is necessary or convenient to be prescribed for carrying out or giving effect to the provisions of this Act.

(2) Without prejudice to the generality of subsection (1), such By-laws may provide for—

(*a*) fees which shall be payable in connexion with registration, the issue of certificates and anything else issued or done under this Act;

(*b*) the issue of duplicate, corrected or amended certificates of registration;

(*c*) the form of the Register and the circumstances in which it may be inspected by members of the public;

(*d*) the levies payable by the Institute to the Board;

(*e*) the procedure for reviews by and appeals to the Board;

(*f*) the setting and administration of examinations by the Institute; and

(*g*) the conduct of financial statements review, and audit practice review in the context of public interest entities.

Regulations

57. Without derogation from the specific powers prescribed in this Act, the Minister, on the recommendation of the Board, may make regulations for the better carrying out of the purposes and provisions of this Act.

Compliance with the provisions of the Public Finance Management Act Cap. 37:02

58. The Board shall at all times comply with the provisions of Part VIII of the Public Finance Management Act.

Repeal and savings Cap. 53:06

59.—(1) The Public Accountants and Auditors Act is repealed.

(2) Any subsidiary legislation made under the Act repealed by subsection (1), in force immediately before the commencement of this Act—

(*a*) shall remain in force, unless in conflict with this Act, and shall be deemed to be subsidiary legislation made under this Act; and

(*b*) may be replaced, amended or repealed by subsidiary legislation made under this Act.

PART XI
Transitional Provisions

Saving of existing appointments and membership Cap. 53:06

60.—(1) Any person who, immediately prior to the commencement of this Act, is a member of the Board established under the Public Accountants and Auditors Act repealed by section 59, shall be deemed to have been appointed in accordance with this Act.

(2) Any person who, immediately prior to the commencement of this Act, is a member of the Public Accountants Examination Council, shall continue to hold office until the expiry of his term of office or until the Council of the Institute is duly constituted, whichever happens earlier.

Transfer of membership to professional accountancy bodies

61.—(1) Notwithstanding anything contained in this Act, any person who, immediately prior to the commencement of this Act—

(*a*) is a member in good standing of a professional accountancy body shall, upon providing evidence of such membership to the

Institute within three months after the commencement of this Act, be deemed to have been registered as a chartered accountant or diplomate accountant under this Act; or

(*b*) is offering audit and assurance services to the public, may continue, within a period of six months from the commencement of this Act, to offer such audit and assurance services to the public without being registered as a chartered accountant under this Act:

Provided that the person shall, within the six months, be required to apply for registration as a certified auditor in accordance with this Act.

Saving of existing programmes, students and qualifications

62.—(1) Programmes and courses existing or subsisting at the commencement of this Act with respect to students referred to in subsection (2) (*a*) shall continue on the same terms and conditions subsisting before the commencement of this Act.

(2) Notwithstanding anything contained in this Act, any person who, immediately prior to the commencement of this Act—

(*a*) is a student of the Public Accountants Examination Council shall, upon providing evidence of being a student to the Institute within three months after the commencement of this Act, be deemed to be a duly registered student with the Institute; or

(*b*) is a holder of a qualification from the Public Accountants Examination Council shall, upon providing evidence of such qualification to the Institute within three months after the commencement of this Act, be deemed to be a duly qualified person with the Institute.

Transfer of employees

Cap. 53:06

63.—(1) Any person who, immediately prior to the commencement of this Act is employed by the Board established under the Public Accountants and Auditors Act repealed by section 59 (hereinafter referred to as the "former Board"), shall be deemed to have been transferred to the employment of the Board on the same terms and conditions of service and, for the purpose of determining his rights thereunder, his service shall be regarded as continuous from the date he was appointed by the former Board.

(2) Any person who, immediately prior to the commencement of this Act is employed by the Public Accountants Examination Council, shall be deemed to have been transferred to the employment of the Institute on the same terms and conditions of service and, for the purpose of determining his rights thereunder, his service shall be regarded as continuous from the date he was appointed by the Public Accountants Examination Council.

Transfer of assets, liabilities, etc.

64.—(1) All property, assets, funds, liabilities, obligations, agreements and other arrangements existing at the commencement of this Act and vested in, acquired, incurred or entered into by or on behalf of the former Board shall, on commencement of this Act, be deemed to have vested in, or to have been acquired, incurred or entered into by, or on behalf of, the Board, and shall become enforceable by, or against, the Board, to the same extent as they were enforceable by or against the former Board.

(2) Where the transfer of any property transferred to or vested in the Board under subsection (1) is required by any written law to be registered, the Board shall, within one year from the commencement of this Act, or within such other period as the written law may prescribe, apply to the appropriate registering authority for the registration of the transfer and thereupon the registering authority shall, at no cost to the Board or any other person by way of registration fees, stamp or other duties—

(*a*) make such entries in the appropriate register as shall give effect to the transfer;

(*b*) where appropriate, issue to the Board a certificate of title or other statutory evidence of ownership of the property, or make such amendments on such certificate or in the appropriate register as may be necessary; and

(*c*) make any necessary endorsement on any deed or other document as may be presented to such registering authority relating to the title, right or obligation concerned.

(3) All property, assets, funds, liabilities, obligations, agreements and other arrangements existing at the commencement of this Act and vested in, acquired, incurred or entered into by or on behalf of the Public Accountants Examination Council shall, on commencement of this Act, be deemed to have vested in, or to have been acquired, incurred or entered into by, or on behalf of, the Institute, and shall become enforceable by, or against, the Institute, to the same extent as they were enforceable by or against the Public Accountants Examination Council.

(4) Where the transfer of any property transferred to or vested in the Institute under subsection (3) is required by any written law to be registered, the Institute shall, within one year from the commencement of this Act, or within such other period as the written law may prescribe, apply to the appropriate registering authority for the registration of the transfer and thereupon the registering

authority shall, at no cost to the Institute or any other person by way of registration fees, stamp or other duties—

(*a*) make such entries in the appropriate register as shall give effect to the transfer;

(*b*) where appropriate, issue to the Institute a certificate of title or other statutory evidence of ownership of the property, or make such amendments on such certificate or in the appropriate register as may be necessary; and

(*c*) make any necessary endorsement on any deed or other document as may be presented to such registering authority relating to the title, right or obligation concerned.

SUBSIDIARY LEGISLATION

ACCOUNTANCY TRAINING REGULATIONS

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SCHEDULE

G.N. 1/2017

ACCOUNTANCY TRAINING REGULATIONS

under s. 57

PART I
PRELIMINARY

Citation

1. These Regulations may be cited as the Accountancy Training Regulations.

Interpretation

2. In these Regulations unless the context otherwise requires—

"examining body" means an institution which has been accredited by the Board to set, administer and provide assessment for accountancy courses or syllabus for post-secondary school education in Malaŵi;

"IFAC" means International Federation of Accountants;

"institution" means any training institution offering training for personnel desirous to become registered accountants in Malaŵi; and

"users" means any person who has been recognized as the user of services rendered by an accountancy or advisory service provider.

Application

3. These Regulations apply to the following situations—

(*a*) accreditation for all institutions intending to offer any accountancy training in Malaŵi;

(*b*) development and approval process of accountancy training syllabuses; and

(*c*) maintenance of security and integrity of accountancy examinations in Malaŵi.

4. These Regulations have been developed to ensure that— Objectives of the regulations

(*a*) accountants trained in Malaŵi meet the requirements and standards of IFAC and are well knowledgeable in accounting skills;

(*b*) only institutions which have requisite resources as contained in regulation 5 and capacity are allowed to offer accountancy training;

(*c*) accountancy training offered in Malaŵi complies with the IFAC requirements and that the training is relevant to Malaŵi's business environment;

(*d*) accountancy examinations administered in Malaŵi are credible and meet the minimum requirements and standards of the Board; and

(*e*) students are protected from unfair business practices and inappropriate assessments during their accountancy training.

PART II
Accreditation of Accountancy Institutions in Malaŵi

5.—(1) An institution offering or intending to offer accountancy training or accountancy examinations shall make an application for accreditation to the Board in Form 1 set out in the Schedule hereto and shall submit the application accompanied with the relevant application fee prescribed in Form 4 in the Schedule hereto. Accreditation of institutions offering or intending to offer accountancy training *Schedule*

(2) An institution offering or intending to offer accountancy training as a short course or a secondary school offering or intending to offer accountancy courses shall not be required to be accredited by the Board.

(3) An institution which offers accountancy as a minor component of its program shall not be required to be accredited by the Board, but the accountancy syllabus designed shall have to be cleared with the Board as provided in Part III of these Regulations.

6.—(1) An institution, in order to be accredited by the Board, shall satisfy the following— Requirements for accreditation

(*a*) availability of a conducive learning environment which includes location, adequate classrooms, library, computer laboratory and other amenities;

(*b*) availability of qualified trainers with minimum qualifications as prescribed in Form 2 set out in Schedule hereto; and *Schedule*

Cap. 30:12

(*c*) compliance with requirements of the National Council for Higher Education under the National Council for Higher Education Act.

(2) The Board shall, upon receipt of the application for accreditation containing all necessary required documents and the prescribed fees, complete the assessment exercise within ninety days and shall, thereafter, within twenty-one days communicate its decision, on whether the institution has been accredited or not in writing.

(3) Where an application for accreditation has been approved, the Board shall issue a certificate of accreditation, in Form 3 set out in the Schedule hereto, to the institution which made the application.

Schedule

(4) The Board's decision on the application for accreditation of an institution shall be final and any aggrieved party shall be allowed to seek redress at the National Council for Higher Education.

(5) A party who is not satisfied by the decision of the National Council for Higher Education may appeal to the High Court against the decision of the National Council for Higher Education.

(6) An institution which has been accredited by the Board shall pay an annual retainership fee prescribed in Form 4 in the Schedule hereto.

Schedule

Submission of financial statements

7.—(1) An accredited institution shall submit to the Board, where the Board finds it appropriate, its annual financial statements.

(2) Where the institution offers other courses and generates revenue from non-accountancy courses, the submission shall, where practicable, indicate income and expenses associated with the provision of accountancy training.

(3) Without prejudice to the proceeding provisions, the Board may require the accredited institution to submit other accounting information the Board may require in order to effectively supervise and enforce the terms and conditions of the accreditation, and the accredited institution shall provide such information within ninety days.

Requirement to provide information

8.—(1) The Board shall, where necessary, request an accredited institution to provide information to the Board and in such manner and at such times as the Board may require which will enable the Board to carry out its functions under the Act.

(2) The Board shall, where necessary, request the accredited institution to submit periodic reports, statistics and other data and additional information in order to supervise and enforce effectively the terms of the accreditation.

(3) An accredited institution shall submit annual returns containing minimum information such as—

(*a*) courses run during the year;

(*b*) registered number of students for the year with gender analysis of the students for each course;

(*c*) the pass rates for examinations;

(*d*) major development projects undertaken during the year;

(*e*) changes in key training personnel;

(*f*) challenges encountered during the year;

(*g*) plans for the forthcoming academic year; and

(*h*) any other information the Board may consider necessary from time to time.

(4) An accredited institution which does not comply with the provisions of this regulation shall be liable to an administrative penalty which may be prescribed by the Board from time to time.

Quality in accountancy training

9.—(1) As part of ensuring quality in accountancy training, the Board shall require all accredited training institutions to submit annual returns for their institution as specified in regulation 8 (3) above.

(2) The Board in ensuring that quality is maintained in all accredited training institutions shall—

(*a*) conduct annual inspections of all accredited institutions to verify if all accreditation conditions are being complied with;

(*b*) work with National Council for Higher Education to ensure that monitoring programs are integrated and avoid exerting unnecessary duplication of efforts; and

(*c*) arrange for training whenever there are new developments in the accountancy training curriculum.

Revocation of an accreditation certificate

10.—(1) The Board shall continue to monitor all accredited training institutions to ensure compliance with the terms of accreditation, and where an institution does not comply with the terms of accreditation, the Board may revoke the certificate of accreditation.

(2) The Board shall revoke the certificate of accreditation of an institution where the accredited institution—

(*a*) fails to comply with the terms and conditions of its accreditation;

(*b*) is declared bankrupt by a competent court of law;

(*c*) has been deregistered by National Council for Higher Education;

(*d*) no longer has trainers with requisite minimum qualifications;

(*e*) has moved to a new premise where in the opinion of the Board, the place is not conducive for accountancy training;

(*f*) has modified its syllabus or course without notifying the Board;

(*g*) is involved in financial mismanagement which has negatively affected the students and the institution has not mitigated the loss to the students;

(*h*) has failed to comply with requirements of any other written law in Malaŵi and is facing sanctions or penalties under that written law;

(*j*) has made a decision to discontinue accountancy training; or

(*j*) fails to remit retainership fees.

Working relations

11.—(1) The Board shall maintain a working relationship with relevant institutions involved in accountancy training.

(2) The relationship shall include memorandum of understandings, joint inspection exercise, examination assessments, and trainer of trainer courses.

PART III
Accountancy Syllabus in Malaŵi

Submission of syllabus for accreditation

12.—(1) An accredited institution, offering a course which will enable a student to become a diplomate accountant or a chartered accountant, shall submit its proposed syllabus to the Board for purposes of accreditation.

(2) The Board shall not register an accountant who graduates from a course whose syllabus is not accredited by the Board.

(3) The Board shall annually publish a list of accountancy courses in Malaŵi which are accredited, in order to protect the interests of the students.

(4) An accredited institution setting accountancy examinations in Malaŵi shall submit the syllabus to the Board for its accreditation.

(5) The Board shall enter into working relationship with various international accreditation institutions to ensure that there is a reciprocal accreditation process for accountancy courses.

Submission of information required for accreditation of a syllabus

13.—(1) An accredited institution applying for accreditation of its syllabus, shall submit the following information to the Board—

(*a*) a brief summary of the course, the level it is covering and the relevance of the syllabus;

(*b*) a copy of the proposed syllabus detailing—

(i) the broad accounting issues covered in the syllabus;

(ii) details of emphasis of coverage for various topics such as broad coverage, knowledge or partial coverage;

(iii) the specification grid such as weighing the relevance of various sections within the syllabus;

(iv) the students study scheme;

(v) the relevant resource materials for the students; and

(vi) the proposed format for the examinations; and

(*c*) a copy of a pilot examination paper with suggested solutions.

(2) The Board shall, in assessing the application, consider—

(*a*) the compliance of the syllabus contents with the relevant international accounting standards and other relevant Generally Accepted Accounting Practices;

(*b*) the adequacy of the syllabus coverage in relation to the level of training being tested;

(*c*) the relationship of the syllabus with other accountancy courses offered by the institution;

(*d*) whether the syllabus has been copied from another course without the authorization of the original holders of the qualification; and

(*e*) the examination structure proposed in the syllabus and the adequacy of knowledge.

(3) Where the Board rejects the accreditation of a syllabus, the Board shall notify the institution of its decision, in writing, specifying reasons for its rejection, and advising the institution on areas for improvement in order for the syllabus to be accepted.

(4) The Board's decision on the application for accreditation of a syllabus shall be final and any aggrieved party shall be allowed to seek redress at the National Council for Higher Education.

(5) A party who is not satisfied by the decision of the National Council for Higher Education may appeal to the High Court against the decision of the National Council for Higher Education.

Application for approval to changes or modification to a syllabus

14.—(1) An accredited institution that makes or intends to make changes or modifications to its syllabus shall apply to the Board for approval of such changes and modifications to the syllabus and such changes shall include—

(*a*) change in topics covered;

(*b*) the level of the program;

(*c*) the format of the examinations; and

(*d*) the mode of offering the course.

(2) The accredited institution shall apply to the Board for approval three months before effecting any changes to the syllabus.

(3) The Board may request an accredited institution to make modifications or amendments, as the Board considers appropriate, to the proposed changes or modifications as submitted by the accredited institution and where the institution does not comply with the advice of the Board, the Board shall not register as a diplomate or a chartered accountant a student graduating from such an institution.

(4) Where the Board rejects the changes or modifications in the syllabus, the Board shall notify the accredited institution of its decision, in writing, specifying reasons for its rejection, and advising the accredited institution on areas for improvement in order for the changes or modifications in syllabus to be accepted.

(5) The Board's decision on the changes or modifications in the syllabus shall be final and an aggrieved party shall be allowed to seek redress at the National Council for Higher Education.

(6) A party who is not satisfied by the decision of the National Council for Higher Education may appeal to the High Court against the decision of the National Council for Higher Education.

Offences relating to accreditation

15. An accredited institution which offers a course whose syllabus has not been accredited by the Board commits an offence and shall be liable upon conviction to a fine of K200,000.

PART IV
Security of Accountancy Examinations in Malaŵi

Preparation process for accountancy examinations

16.—(1) The Board shall ensure that accountancy examinations in Malaŵi are stored in a safe place and that the examinations provide adequate assessment in accordance with the level being examined.

(2) An accredited training institution shall ensure that accountancy examinations set in Malaŵi undergo internal or external processes of assessment independent of the institution administering the examinations, before the examinations are administered.

(3) An accredited training institution shall ensure that there are no cases of examination malpractice and the institution shall ensure that there are reserve examination papers where there is examination malpractice with regards to the main examination papers.

(4) An accredited training institution shall punish a member of staff whether on full-time or part-time employment, found guilty of leaking examinations.

(5) The Board shall, where there are cases of examination malpractice, review the leakage cases and where there is evidence that the accredited training institution is involved in the examination malpractice, the Board shall undertake disciplinary proceedings against the accredited training institution.

(6) Where the Board, after due inquiry finds that a member of the accredited training institution has committed a professional misconduct, it shall—

(*a*) issue a letter of warning to the accredited training institution;

(*b*) advise the accredited training institution to take disciplinary action against its members of staff guilty of the examination malpractice;

(*c*) suspend the accredited training institution's certificate of accreditation; or

(*d*) revoke the accredited training institution's certificate of accreditation:

Provided that, during the review of the leakage cases, the accredited training institution is given an opportunity to be heard in accordance with the principles of natural justice.

Administration for accountancy examinations in Malaŵi

17.—(1) An accredited institution, shall before administering examination, ensure that—

(*a*) the examining hall has—

(i) enough ventilation;

(ii) well spaced desks;

(iii) availability of rooms of convenience;

(iv) disability friendly facilities; and

(v) availability of safety tools such as fire extinguishers and horse reels;

(*b*) there is availability of adequate invigilators to supervise the examinations;

(*c*) candidates are properly inspected to ensure that they do not bring unauthorized materials into the examination hall; and

(*d*) there is availability of adequate examination papers and where applicable, adequate answer sheets.

(2) The accredited training institution shall ensure that where the examination is administered at different locations, the examination should commence at the same time to avoid cheating.

(3) The accredited training institution shall ensure that candidates are given enough notice of the examination, detailing the date, place and duration of the examination.

(4) The accredited training institution shall ensure that examination instructions shall be made available to the candidates before the examination is administered and the instructions shall include the following among others—

(*a*) what candidates are allowed to bring and not allowed to bring to an examination hall;

(*b*) when the candidates can be allowed to enter or leave the examination hall during the time the examinations are in progress;

(*c*) how candidates can behave in case of an emergency such as candidates falling sick or candidates receiving news of a bereavement during the time the examinations are in progress;

(*d*) penalties for candidates caught cheating; and

(*e*) instructions on how questions are to be answered on the answer sheet.

Penalty

18. An accredited training institution that does not comply with any of the provisions of regulation 16, shall be liable to an administrative penalty as prescribed by the Board from time to time.

Quality control and inspections

19.—(1) The Board shall ensure that quality of accountancy examination in Malaŵi is enhanced by—

(*a*) conducting regular trainer of trainers for personnel involved in administering accountancy examinations;

(*b*) making sure that regular assessment of examination papers is conducted by the institution before the examination is administered;

(*c*) making sure that reviewing of marked scripts and analyzing examination reports is conducted by the institution;

(*d*) conducting surprise visits to examination halls;

(*e*) setting a committee to deal with complaints from the students on issues dealing with accountancy training;

(*f*) benchmarking regularly with similar international organization on accountancy training and this may include membership into international organizations.

(2) An accredited training institution shall ensure that quality is maintained for all accountancy training and examination by—

(*a*) regularly reviewing the syllabus to ensure that the syllabus reflects on developments within the profession;

(*b*) ensuring that technology is deployed in the delivery of services to its students;

(*c*) maintaining a team of well trained and qualified trainers and examiners;

(*d*) instituting internal means of obtaining feedback from key stakeholders;

(*e*) availing resource materials to students such as library and computer laboratory facilities;

(*f*) continuous professional development programs for trainers and examiners; and

(*g*) benchmarking with other training and examining institutions within and outside Malaŵi.

Cheating cases

20.—(1) The Board shall expect an accredited training institution to ensure that tight security is maintained during the development and administration of examinations.

(2) An accredited training institution shall suspend a candidate caught cheating during an examination for a maximum period of two years.

(3) An accredited training institution shall not be allowed to administer examinations to a candidate who has been suspended by another accredited training institution before expiry of the candidate's period of suspension as specified in subregulation (2) of this Regulation.

(4) The following shall be considered as forms of cheating during an examination—

(*a*) bringing unauthorized materials during an examination including cases where the candidate has been caught using the material;

(*b*) a candidate caught canvassing, discussing or peeping on another candidate's paper; or

(*c*) using or bringing unauthorized electronic devices into the examination room during the time the examination is in progress including phones, tablets or portable hand computers.

(5) The accredited training institution shall have a fair process of dealing with cheating cases including requesting a written explanation from a candidate who has been caught cheating and allowing for appeal procedures.

Circumstances considered as hardship cases

21.—(1) The following circumstances may be considered as hardship cases that may put the candidate not in the right state of mind—

(*a*) sickness of a candidate before or during an examination;

(*b*) receipt to news of the death of an immediate close family member before or during an examination;

(*c*) accident of a candidate before or during examination; and

(*d*) civil strike causing disruption of transport system to examination hall.

(2) For the avoidance of doubt, the following circumstances may not be considered as hardship cases that may put the candidate not in the right state of mind—

(*a*) where the candidate fails to reach exam hall due to rain, wind or too much sun;

(*b*) where the candidate claims to be sick but there is no medical report to substantiate the candidate's claim;

(*c*) receipt of news of the death of a person who is not an immediate close family member;

(*d*) transport problems to the examination hall;

(*e*) lack of preparedness to take the examination;

(*f*) pregnancy;

(*g*) sickness related to alcohol or drug abuse; or

(*h*) hunger, tiredness or body pains due to other factors other than sickness or accident.

(3) The accredited training institution shall set remedial procedures for a candidate who has proven to have a genuine hardship case and such remedies shall include—

(*a*) allowing the candidate to write supplementary examinations;

(*b*) allowing the candidate to carry forward any examination fees paid to be used for future examinations;

(*c*) refund of the examination fees to the candidate;

(*d*) allowing the candidate to write the examination in a special room;

(*e*) allowing special equipment to the examination hall such as a wheel chair or walking sticks; or

(*f*) allowing a candidate to finish the examination later than the rest of the candidates where the hardship circumstance caused the candidate to start writing the examinations later than the rest of the candidates.

(4) The accredited training institution shall not be allowed to take the following remedial measures—

(*a*) allowing the candidate to sit for the same paper after the rest of the candidates have completed and have been released from the examination hall, unless where the candidate was kept in isolation when the examination was being administered;

(*b*) lowering the examination mark for the candidate;

(*c*) using previous assessments results to grade the candidate for the examination;

(*d*) allowing the candidate to sit for another examination which is for a higher or lower level; or

(*e*) allowing another person to write the examination on behalf of the candidate.

PART V
General Provisions

Extension of time

22. Notwithstanding anything contained in these Regulations, where a time period is specified under the regulations or where the Board

makes a request for an act to be done or a condition to be fulfilled within a specified time period, the person affected may request the Board, in writing, for an extension of such time and the Board may grant such extension of time as it considers appropriate.

Invalidity affecting enforceability

23. Where these Regulations become unenforceable due to changes in accounting standards or any pronouncements from IFAC, the part of the regulations affected shall be suspended and the new accounting standards or pronouncement shall apply.

SCHEDULE

PUBLIC ACCOUNTANTS AND AUDITORS ACT (CAP. 53:06)

reg. 5 (1)

FORM 1

APPLICATION FOR ACCREDITATION TO OFFER ACCOUNTANCY TRAINING

Please fill all items on this form, append attachments and submit to: The Chief Executive Officer, Malaŵi Accountants Board, P.O. Box 2271, BLANTYRE.

1. Proposed institution

(*a*) Name .....

(*b*) Incorporation (Attach a copy of the Constitution or Articles of Association plus a copy of registration with the registrar of companies) .....
.....

(*c*) Date of Incorporation/Registration .....

(*d*) Owners/shareholders of the institution (Attach copy of identity document for each person) .....
.....

(*e*) Members of Council/Board and their designations (Attach copy of identity document for each person) .....
.....

(*f*) Membership with National Council for Higher Education (Attach copy of certificate) .....
.....

(*g*) Affiliation (specify whether religious, not-for-profit or profit) .....
.....

2. Contact information

(*a*) Postal address .....
.....

(*b*) Physical address .....
.....

(*c*) Email address .....

(*d*) Website .....

(*e*) Telephone lines .....

3. Proposed course/programme .....
.....
.....

4. Briefly describe the generic criteria for student admission into each programme

.....
.....
.....
.....
.....

5. Infrastructure to support the delivery of the course

(*a*) Facilities available

Classroom/Lecture theatres .....

Library .....

Sanitation facilities by gender .....
.....

Other (Specify) .....

(*b*) Facilities in support of people with disabilities .....

.....

.....

6. Human resources for the delivery of the course/programme

(*a*) Full-time academic staff members (for each programme, attach list of names with details of gender, qualifications and where obtained and year) .....

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(*b*) Part-time academic staff members (for each programme, attach list of names with details of gender, qualification and the place where the qualifications were obtained and year)

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(*c*) Technical and support staff (for each programme, attach list of names with details of gender, qualification and where obtained and year)

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.....

(*d*) Administrative staff (for each department/section, attach list of names with details of gender, qualification and the place where the qualifications were obtained and year) .....

.....

.....

7. Compliance

Please indicate that you comply with the requirements of the National Council for Higher Education (Attach copy of certificate if already accredited) .....

8. Finance structure

Please describe briefly how the institution shall be financed, including fee structure (Attach a business plan that indicates that the institution shall remain a going concern) .....

.....

.....

9. Provision of information

The institution shall provide the Board with information which will enable it carry out its functions under the Act such as annual returns which shall contain the following—

(*a*) Courses run during the year .....

(*b*) Number of registered students for the year with gender analysis for each course

.....

.....

.....

(*c*) The pass rates for examinations

.....

.....

.....

(*d*) Major development projects undertaken during the year

.....

(*e*) Changes in key training personnel .....

(*f*) Challenges encountered during the year .....

(*g*) Plans for the forthcoming academic year .....

(*h*) Statement of compliance with other relevant Government institutions like NCHE, city licence and business licence .....

.....

(*i*) Annual financial reports .....

DECLARATIONS AND SIGNATURE

1. We confirm that the information in this form is complete and true.

2. We will provide Malaŵi Accountants Board with a copy of registration or certificate of incorporation.

3. We acknowledge the role, duties and powers of the Malaŵi Accountants Board and agree to cooperate fully during its reviews.

4. We understand that an annual registration fee will be due upon lodging an application and thereafter at the commencement of MAB's financial year end and upon receiving an invoice/reminder from MAB.

Name ..... Designation .....

Signature ..... Date .....

PUBLIC ACCOUNTANTS AND AUDITORS ACT
(CAP. 53:06)

reg. 6 (1) (*b*)

FORM 2

QUALIFICATIONS OF TRAINERS

Course	*Minimum lecturer's qualification*
Certificate in Financial Accounting	Bachelor's degree in Accountancy
Accounting Technician Diploma & Foundation	Bachelor's degree in Accountancy; and professional stage of CCA/CIMA/ICAM
Bachelor of Accountancy Degree	ACCA/CIMA/ICAM affiliate; or Master's degree in a relevant field
Professional level of ACCA/CIMA/ICAM	Member or Fellow of ACCA/CIMA/ICAM; or Master's degree in relevant field with a minimum of three years post qualification experience

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PUBLIC ACCOUNTANTS AND AUDITORS ACT
(CAP. 53:06)

FORM 3 reg. 6 (3)

CERTIFICATE OF ACCREDITATION

This is to certify that

.....

has this day been accredited by the Board as an

ACCOUNTANCY TRAINING INSTITUTION

Given under the common seal of the

MALAŴI ACCOUNTANTS BOARD

....
Chairman Secretary

Dated this ..... day of ..... 20.....

Certificate Number: .....

This Certificate is the Property of the Malaŵi Accountants Board

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PUBLIC ACCOUNTANTS AND AUDITORS ACT
(CAP. 53:06)

FORM 4 regs. 5 (1), 6 (6)

FEES

Matter	*K t*
Accreditation Fee	200,000 00
Annual Retainership Fee	100,000 00

PRACTISING ACCOUNTANT AND AUDIT FIRMS REGULATIONS

ARRANGEMENT OF REGULATIONS

REGULATION

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PRELIMINARY

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2. Interpretation
3. Application of the regulations
4. Objectives of the regulations

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5. Application for registration
6. Requirements for registration as a practising accountant
7. Examination requirements for registration as a practising accountant
8. Consideration of an application for registration as a practising accountant
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PART III
AUDIT ASSURANCE QUALITY REVIEWS – MANDATE AND PROCESS

10. Audit assurance quality reviews – mandate and process
11. No civil or criminal liability for the production of information in good faith
12. Exemptions of withholding information obtained from the performance review
13. Quality assurance reviews
14. Objective of the reviews
15. Compliance by firms and practising accountants
16. Outcome of the quality assurance process
17. Engagement subject to reviews
18. Engagements reviews
19. Steps to be followed for quality assurance review
20. The Practice Review Committee

REGULATION

21. Reporting and evaluation
22. Review decisions
23. Review and re-review criteria
24. Procedure in conducting review and re-review criteria
25. Cost of quality assurance review

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26. Extension of time
27. Invalidity affecting enforceability

SCHEDULE

PRACTISING ACCOUNTANT AND AUDIT FIRMS REGULATIONS

G.N. 2/2017

under s. 57

PART I
Preliminary

1. These Regulations may be cited as the Practising Accountant and Audit Firms Regulations. Citation

2. In these Regulations unless the context otherwise requires— Interpretation

"audit firm" means a firm that reviews activities to identify inefficiencies, reduce costs and otherwise achieve organizational objectives;

"practising accountant" means a person who is a member of the Board and is holding a certificate of practice granted under the provision of the Act;

"review cycle" means a period of three to six years; and

"users" means any person who has been recognized as the user of services, products and reports rendered by an accountancy or advisory service provider.

3. These Regulations apply to the following situations— Application of the regulations

(*a*) issuance for a practising certificate;

(*b*) provision for the performance of audit quality, monitoring reviews or practice reviews, or inspections; or

(*c*) firms providing audit services.

Objectives of the regulations

4. The objectives of these Regulations are to—

(*a*) ensure that a proper register is maintained by the Board for all practising accountants and audit firms;

(*b*) ensure that financial statements prepared in Malaŵi are of high quality and in compliance with International Financial Reporting Standards, International Public Sector Accounting Standards (IPSAS) and any other regulatory frameworks;

(*c*) promote the highest professional standards and ethics among auditors and accountants;

(*d*) improve the quality of accounting and audit services;

(*e*) improve the integrity and competence of the auditor;

(*f*) protect the interests of the general public and investors; and

(*g*) address International Standard on Quality Control 1 (ISQC 1).

PART II

Registration of Practising Accountants and Audit Firms

Application for registration

5.—(1) A chartered accountant wanting to practice in Malaŵi as a practising accountant shall apply for registration to the Board through the Institute in order to be issued with a practising certificate.

(2) All practising accountants shall register through the Institute, the continuity arrangements they have entered into with another practising accountant.

(3) The Board shall maintain a register of all practising accountants authorized to practice in Malaŵi.

Requirements for registration as a practising accountant

6.—(1) A person may apply for a registration as a practising accountant provided that the person meets the set requirements to be registered as a practising accountant.

(2) The Board shall require an applicant to have acquired three years of post-qualification experience in the office of a practising accountant, in an audit firm in auditing services for the applicant to be qualified for registration.

(3) A person who has made an application for a registration as a practising accountant shall submit the application with a recommendation from a supervisor or mentor on the person's competency in auditing services.

Examination requirements for registration as a practising accountant

7.—(1) A person who has made an application for registration as a practising accountant shall submit the application to the Board with proof that he has passed the Malaŵi Taxation, Malaŵi Company Law and Audit Assurance examinations at a higher level, unless the person is exempted from writing such examinations.

(2) The Board shall be responsible for setting up the Malaŵi Taxation, Malaŵi Company Law and Audit Assurance examinations and shall further set the venue and dates of where the examinations shall be written.

(3) A person shall make an application to the Board through the Institute to sit for the examinations.

(4) Upon registration, only the person who has paid the approved examination fee in full shall be eligible to sit for the examinations.

(5) The Board shall communicate the results of the examinations to the person through the Institute.

Consideration of an application for registration as a practising accountant

8.—(1) The application for registration as a practising accountant shall be considered by the Membership and Education Committee of the Board.

(2) Where the Board approves the application for registration, the Board shall issue to the applicant, a practising certificate.

(3) Where the Board rejects an application for registration, the Board shall communicate, to the applicant, through the Institute, in writing, of its decision specifying the reasons for having made such a decision:

Provided that the Board shall give the applicant an opportunity to defend his application where the applicant wishes to do so.

(4) The practising certificate shall be valid until it is revoked either by non-payment of fees or cancellation by the Board.

(5) The Board shall maintain a register of practising accountants, which shall be updated regularly.

(6) A practising accountant shall display the practising certificate in a conspicuous place on the premises from which the practising accountant practices.

Registration of firms providing audit services

9.—(1) A person shall make an application to the Board to register an audit firm providing audit services in Form 1 in the Schedule hereto.

(2) The Board shall register all audit firms operating in Malaŵi at a fee prescribed in Form 2 in the Schedule hereto.

Schedule

(3) The Board shall register an audit firm only if the managing partner is a registered member under the practising membership category.

(4) At least one practising accountant in the partnership shall be resident in Malaŵi in order for the Board to register the audit firm.

(5) Only a chartered accountant or firm registered under this category shall be allowed to issue an opinion on the truth and fairness of financial statements for a client.

(6) Where the Board approves the application for registration, the Board shall issue to the audit firm, a practising certificate in Form 3 in the Schedule hereto.

Schedule

(7) The Board shall maintain a register of all registered firms or partnerships allowed to provide auditing services in Malaŵi.

(8) Non-resident firms with a one off assignment for audit services in Malaŵi shall obtain a special clearance at a prescribed fee for every assignment.

(9) The Board shall require a non-resident firm intending to practice in Malaŵi to partner with a local registered firm, before the non-resident firm is registered in Malaŵi.

PART III

Audit Assurance Quality Reviews – Mandate and Process

Audit assurance quality reviews – mandate and process

10.—(1) The Board shall perform quality assurance reviews or practice reviews in accordance with section 16 (1) (*u*) of the Act.

(2) The Board shall—

(*a*) define and enforce ethical practice and discipline among registered accountants; and

(*b*) take such steps as appear to the Board to be necessary or desirable to advance the standing and effectiveness of the accountancy profession in Malaŵi.

No civil or criminal liability for the production of information in good faith

11. A practising accountant who acts in good faith during a review of a firm or a practising accountant, and produces information as requested by a reviewer shall not be held liable under criminal or civil law for the production of information.

Exemptions of withholding information obtained from the performance review

12.—(1) A person who is or was concerned with the performance of the practice review shall not disclose any information obtained in the performance of the practice review except—

(*a*) for the purpose of any investigation or a hearing as a result of the review;

(*b*) where the person supplies the information in the performance of the review;

(*c*) where the person is required to do so by order of a Court of Law;

(*d*) where the Institute requires such information for purposes of conducting an investigation which may lead to disciplinary action or criminal prosecution;

(*e*) where the Institute requires such information for purposes of IFAC's Statement of Members' Obligations; or

(*f*) at the written request of, and to, any appropriate international regulator of audits and auditors, that requires the information for the purpose of inspection with the consent of the practising accountant.

(2) The Board shall ensure that a person who is or was concerned with the performance of the practice review holds the practice review information in strict confidentiality and any documentation pertaining to the completed cycle of a practising accountant or firm shall not to be retained by other users apart from the Board.

Quality Assurance Reviews

13. The Board or any person authorized by the Board, may at any time review the practice of a registered practising accountant and may for these purposes inspect and make copies of any information, including but not limited to any working papers, correspondence, books or documentation in the possession or under the control of a registered public auditor.

Objective of the reviews

14.—(1) The Board shall, through engagement reviews, monitor compliance with relevant professional standards in the performance of the attest function.

(2) The Board shall, through firms' reviews, inspect the design and implementation of the systems of quality control employed by audit firms.

(3) The Board through the reviews shall ensure that there is improved standards and the quality of work provided by practising accountants and audit firms.

Compliance by firms and practising accountants

15. The Board shall ensure compliance by firms and practising accountants with relevant professional standards in a manner which is most cost effective without compromising in thoroughness of the quality assurance process.

Outcome of the Quality Assurance process

16. The outcome of the quality assurance process shall be an ongoing pursuit of quality improvement by the firms and practising accountants who offer attest services to the public.

Engagement subject to reviews

17.—(1) Engagements subject to review are audits of financial statements and audits conducted on behalf of the Auditor General.

(2) The Board shall require a copy of the audit report from reviewers of the Auditor General.

(3) For firm reviews, the control system elements shall be leadership responsibilities, ethical requirements, client acceptance and continuance human resources, engagement performance and monitoring.

Engagement reviews

18.—(1) The Board shall carry out engagement reviews, where a sample of engagement files are reviewed at least once in a review cycle.

(2) Audit firms shall be subject to review, by the Board, at least once in a review cycle.

(3) The Board shall first find reviews satisfactory in a review cycle before proceeding to the next cycle. Engagement reviews shall be on a three to six years cycle.

(4) The reviews shall be performed by qualified professionals employed on full-time or part-time basis by the Board.

(5) The Board shall ensure that the reviewers meet the qualification guidelines from IFAC Statement of Membership Obligation 1 (SMO1).

Steps to be followed for quality assurance review

19.—(1) The Board, in order to undertake quality assurance practice reviews, shall, in the following order—

(*a*) give eight weeks' notice for carrying out the review to the practising accountant;

(*b*) request pre-review information from the practising accountant or firm and the information to be submitted shall include name of clients, year end, turnover, audit fee, status of audits and nature of business;

(*c*) perform the quality assurance review;

(*d*) discuss review findings by the reviewer with the practising accountant or firm;

(*e*) draft and submit a report to the practising accountant or firm within twenty-one days of the review;

(*f*) obtain comments in writing from practising accountant or firm within fourteen days after the report was submitted;

(*g*) draft a final report with recommendations of the review results;

(*h*) submit the final report, on an anonymous basis to the Practice Review Committee for a decision on the findings of the review;

(*i*) submit the recommendations of the Practice Review Committee to the Board for the Board's decision;

(*j*) advise the Board Secretary to relay the Board's decision to the practising accountant or firm; and

(*k*) receive communication from practising accountant or firm on the practising accountant or firm's implementation recommendations.

(2) The Practice Review Committee may use the option of using the internal review report to review the firms with established independent review process.

The Practice Review Committee

20.—(1) There shall be a Practice Review Committee which shall be a sub-committee of the Board and shall be made up of three to five members, appointed by the Board, who shall serve on a voluntary basis.

(2) The committee shall be made up of, among others, retired public auditors, registered chartered accountants and sector regulators and the committee's responsibilities shall be to—

(*a*) assess the appropriateness of the standard documentation used in the review process;

(*b*) determine the nature of attest engagements subject to practice review;

(*c*) determine the outcome of reviews on an anonymous basis; and

(*d*) assess the quality and consistency of review reports.

(3) The Practice Review Committee shall receive and review the reports from the quality assurance reviewers and shall make recommendations to the Board.

Reporting and evaluation

21.—(1) The quality assurance reviewer shall summarize the results of the quality assurance review in a format prescribed by the Board and shall submit the summary to the Practice Review Committee for evaluation.

(2) The Practice Review Committee shall evaluate the summary of the results and, where necessary, consult with the quality assurance reviewer, in order to make necessary recommendations to the Board.

Review decisions

22.—(1) The Practice Review Committee shall recommend the following review decisions to the Board—

(*a*) the performance is satisfactory and shall be subject to review in the next cycle;

(*b*) the performance is not satisfactory and that the committee shall conduct follow up reviews until the performance is satisfactory; or

(*c*) the performance is subject to an investigation referral and disciplinary action by the Institute.

(2) A performance shall be subject to an investigation referral, where—

(*a*) the Quality assurance reviewer's report did not meet the required standards and the users are at risk;

(*b*) the re-review indicates failure to implement corrective action by the practising accountant or firm;

(*c*) there is flagrant disregard of professional standards by the practising accountant or firm; and

(*d*) there is refusal to cooperate in the review process by the reviewee.

(3) Where a practising accountant or firm is aggrieved by a review decision of the Board and is of the view that the decision should be reconsidered, the practising accountant or firm may, within forty-five days, after the review decision was communicated to them, submit a detailed written request for consideration to the Secretary of the Board.

(4) The Secretary to the Board shall then submit the request to the Board for consideration at its next meeting.

(5) The Secretary to the Board shall communicate the final decision of the Board to the practising accountant or firm.

Review and re-review criteria

23.—(1) The Quality Practice Review Committee shall, annually, determine the review criteria subject to approval by the Board.

(2) The Practice Review Committee shall revise and adjust the review criteria, where necessary, after each year ends based on the results of reviews performed within a specific year with due consideration given to specific requirements of the relevant auditing standards.

Procedure in conducting review and re-review criteria

24.—(1) The Board shall, in conducting re-reviews, focus on assessing how identified deficiencies have been addressed by a practising accountant or firm, in the interim, since the initial review was conducted.

(2) A re-review shall entail a reviewer reviewing the same files for a new financial year and selecting an additional number of files as may be determined by the reviewer.

(3) A re-review of Independent Internal Review processes and firm reviews shall only focus on the addressing of identified deficiencies.

(4) Based on the results of the re-review, the Quality Assurance Committee or the Practice Review Committee shall make new recommendations to the Board.

(5) Each review cycle shall have a maximum of two reviews and if after a maximum of two re-reviews the practising accountant or firm has not yet addressed all the identified deficiencies, the Board shall take disciplinary action (refer to attached sanctions).

Cost of quality assurance review

25. A registered practising accountant or firm shall pay quality assurance reviews fees as may be determined by the Board from time to time.

PART IV
General Provisions

Extension of time

26. Notwithstanding anything contained in these Regulations, where a time period is specified under the regulations or in any request by the Board for an act to be done or a condition to be fulfilled, the person affected may request for an extension of such time in writing to the Board and the Board may grant such extension of time as it considers appropriate.

Invalidity affecting enforceability

27. Where the regulations are unenforceable due to changes in professional standards or any pronouncements from International Federation of Accountants, the section affected shall be suspended and the new standard or pronouncetment shall prevail.

SCHEDULE

PUBLIC ACCOUNTANTS AND AUDITORS ACT
(CAP. 53:06)

reg. 9 (1)

FORM 1

APPLICATION TO REGISTER AN AUDIT FIRM

(*Membership must be renewed annually*)

A. Full Name of Entity: .....

Physical Address: .....

.....

Postal Address: .....

.....

Email Address: .....

.....

Contact Phone Numbers: .....

B. Operating Revenue per annum .....

.....

C. Number of Audit Partners

No.	*Name*	*MAB Membership No.*	*Signature*

D. Number of Staff: .....

.....

E. Presence: (Please tick) Local International

F. Number of Clients Audited (Customer Base): Attach list

G. Details of the professional auditing services that the entity provides or intends to provide:

.....

.....

.....

.....

.....

DECLARATIONS AND SIGNATURE

1. We confirm that the information in this form is complete and true.

2. We will provide Malaŵi Accountants Board with a copy of registration or certificate of incorporation.

3. We acknowledge the role, duties and powers of the Malaŵi Accountants Board and agree to cooperate fully during its reviews.

4. We understand that an annual registration fee will be due upon lodging an application and thereafter at the commencement of MAB's financial year end and upon receiving an invoice/reminder from MAB.

Name ..... Designation .....

Signature ..... Date .....

PUBLIC ACCOUNTANTS AND AUDITORS ACT
(CAP. 53:06)

FORM 2 reg. 9 (2)

FEES

Matter	*K t*
Audit firm registration	750,000 00
Audit firm retainership	250,000 00
Foreign audit firm one-off assignment	300,000 00

PUBLIC ACCOUNTANTS AND AUDITORS ACT
(CAP. 53:06)

reg. 9 (6)

FORM 3

THE MALAŴI ACCOUNTANTS BOARD
CERTIFICATE OF ACCREDITATION

This is to certify that

.....

has this day been registered by the Board as an

AUDIT FIRM

Given under the common seal of the

MALAŴI ACCOUNTANTS BOARD

....
Chairman *Secretary*

Dated this ..... day of ..... 20.....

Certificate Number: .....

This Certificate is the Property of the Malaŵi Accountants Board

PROFESSIONAL ACCOUNTANCY BODIES REGULATIONS

ARRANGEMENT OF REGULATIONS

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SCHEDULE

G.N. 3/2017

PROFESSIONAL ACCOUNTANCY BODIES REGULATIONS

under s. 57

PART I
PRELIMINARY

Citation

1. These Regulations may be cited as the Professional Accountancy Bodies Regulations.

Interpretation

2. In these Regulations unless the context otherwise requires—

"accredited professional accountancy body" means an accredited professional accountancy body accredited under these Regulations;

"examining body" means an institution which has been accredited by the Board to set, administer and provide assessment for accountancy courses or syllabus for post-secondary school education in Malaŵi;

"IFAC" means International Federation of Accountants; and

"users" means any person who has been recognized as the user of services rendered by an accountancy or advisory service provider.

Application

3. These Regulations apply to the following situations—

(*a*) accreditation of all professional accountancy bodies intending to develop and administer accountancy examinations in Malaŵi;

(*b*) development and approval process of accountancy training syllabuses;

(*c*) maintain security and integrity of accountancy examinations in Malaŵi; and

(*d*) provision of accountancy training contracts.

Objectives of the regulations

4. These Regulations have been developed to ensure that—

(*a*) accountants trained in Malaŵi meet the requirements and standards by IFAC and are well knowledgeable in accounting skills;

(*b*) only professional accountancy bodies which have requisite resources as contained in regulation 5 and capacity are allowed to offer accountancy training;

(*c*) accountancy examinations administered in Malaŵi comply with the IFAC requirements and that the examinations is relevant to Malaŵi's business environment; and

(*d*) accountancy examinations administered in Malaŵi are credible and meet the minimum requirements and standards of the Board.

PART II

Accreditation of Professional Accountancy Bodies in Malaŵi

Application for accreditation

5. A professional accountancy body in Malaŵi administering or intending to administer accountancy examinations shall make an application to the Board for accreditation.

Requirements for accreditation

Schedule

6.—(1) A professional accountancy body shall make an application for accreditation to the Board in Form 1 set out in the Schedule hereto and shall submit the application form with the required fees as prescribed in Form 2 in the Schedule hereto.

(2) A professional accountancy body in order to be accredited by the Board, shall satisfy the following—

(*a*) that it is a member of IFAC and is in compliance with its membership obligations;

(*b*) that it has appropriate mechanisms for ensuring that its members participate in continuing professional development in line with international best practice;

(*c*) that it has mechanisms to ensure that its members are disciplined where appropriate; and

(*d*) that it keeps a register of its members which can easily be accessed by the Board.

(3) The Board, upon receipt of the application for accreditation, containing all necessary required documents and the prescribed fees, shall complete the assessment exercise within ninety days and shall within twenty-one days communicate its decision, in writing, to the professional body.

(4) Where an application for accreditation has been approved, the Board shall issue a certificate of accreditation, to the professional accountancy body in Form 3 set out in the Schedule hereto.

Schedule

(5) The Board's decision on the application for accreditation of a professional accountancy body shall be final and any aggrieved party may appeal to the High Court against the decision of the Board.

(6) A professional accountancy body which has been accredited by the Board shall pay an annual retainership fee prescribed in the Schedule hereto.

Schedule

Submission of financial statements

7.—(1) An accredited professional accountancy body shall submit to the Board, where the Board finds it appropriate, its annual financial statements.

(2) Without prejudice to the preceding provisions, the Board may require the accredited professional accountancy body to submit other accounting information the Board may require in order to effectively supervise and enforce the terms and conditions of the accreditation, and the accredited institution shall provide such information within ninety days.

Requirement to provide information

8.—(1) The Board shall, where necessary, request an accredited professional accountancy body to provide information to the Board, which will enable the Board to carry out its functions under the Act, in such manner and at such times as the Board may require.

(2) The Board may request the accredited professional accountancy body to submit periodic reports, statistics and other data and additional information in order to supervise and enforce effectively the terms of the accreditation.

(3) An accredited professional accountancy body which does not comply with the provisions of this regulation shall be liable to an administrative penalty which may be prescribed by the Board from time to time.

Quality in the administration of accountancy examinations

9. As part of ensuring quality in the administration of accountancy examinations, the Board shall conduct annual inspections of all accredited bodies to verify that the requirements as set out under these Regulations are being met.

Revocation of an accreditation certificate

10.—(1) The Board shall continue to monitor all accredited professional accountancy bodies to ensure compliance with the terms of accreditation, and where an accredited professional accountancy body does not comply with the terms of accreditation, the Board may revoke the certificate of accreditation.

(2) The Board shall revoke the certificate of accreditation of an accredited professional accountancy body where—

(*a*) the accredited professional accountancy body is declared bankrupt by a competent Court of Law;

(*b*) the accredited professional accountancy body has been deregistered by IFAC;

(*c*) there is evidence of financial mismanagement of the accredited body which has negatively affected the students and the body has not mitigated the loss to the students;

(*d*) the accredited professional accountancy body has failed to comply with requirements of any other written law in Malaŵi and is facing sanctions or penalties under that written law; or

(*e*) the professional accountancy body fails to remit retainership fees.

PART III
Accountancy Syllabus in Malaŵi

Submission of syllabus for accreditation

11.—(1) An accredited professional accountancy body setting accountancy examinations in Malaŵi shall submit the syllabus to the Board for its accreditation.

(2) An accredited professional accountancy body that offers international courses, whose syllabus has been accredited by the IFAC or other similar international bodies, shall submit proof of accreditation to the Board for its approval in order for such courses to be recognized as accredited in Malaŵi.

(3) Where an accredited professional accountancy body that offers international courses does not have physical offices in Malaŵi, the body shall take all necessary steps to submit proof of accreditation of its syllabus by IFAC or other similar international bodies to the Board for

its approval in order for such courses to be recognized as accredited by the Board in Malaŵi.

(4) The Board shall enter into working relationship with various international examination bodies to ensure that there is a reciprocal accreditation process for accountancy syllabi.

Application for approval to changes or modification to a syllabus

12.—(1) An accredited professional accountancy body registered in Malaŵi that makes or intends to make changes or modifications to its syllabus shall apply to the Board for approval of such changes and modifications to the syllabus, and such changes shall include—

(*a*) change in topics covered;

(*b*) the level of program;

(*c*) the format of the examinations; and

(*d*) the mode of offering the course.

(2) The accredited professional accountancy body shall apply to the Board for approval three months before effecting any changes to the syllabus.

(3) The Board may request an accredited professional accountancy body to make modifications or amendments to its syllabus as submitted to the Board and where the accredited professional accountancy body does not comply with the advice of the Board, the Board shall not register as a diplomate or a chartered accountant a student graduating from such courses.

(4) Where the Board rejects the changes or modifications in the syllabus, the Board shall notify the accredited professional accountancy body of its decision, in writing, specifying reasons for its rejection, and advising the accredited professional accountancy body on areas for improvement in order for the changes or modifications in syllabus to be accepted.

(5) An aggrieved party may appeal to the High Court against the decision of the Board.

Offences relating to accreditation

13. An accredited professional accountancy body which offers a course whose syllabus has not been accredited by the Board commits an offence and shall be liable upon conviction to a fine of K200,000.

PART IV

Security of Accountancy Examinations in Malaŵi

Preparation process for accountancy examinations

14.—(1) The Board shall ensure that accountancy examinations in Malaŵi are stored in a safe place by an accredited professional accountancy body and that the examinations provide adequate assessment in accordance with the level being examined.

(2) An accredited professional accountancy body shall ensure that accountancy examinations administered in Malaŵi undergo internal or external process of assessment, independent of the body administering the examinations, before the examinations are administered.

(3) An accredited professional accountancy body shall ensure regular review of contracts for examiners and where possible offer fixed term contracts to ensure that there is a review of performance for all examiners.

(4) An accredited professional accountancy body shall ensure that there are no cases of examination malpractice and the accredited professional accountancy body shall ensure that there are reserve papers where there is examination malpractice with regards to the main examination papers.

(5) The Board shall, where there are cases of examination malpractice, review the leakage cases and where there is evidence that the accredited professional accountancy body is involved in the examination malpractice—

(*a*) issue a letter of warning to the accredited professional accountancy body;

(*b*) advise the accredited professional accountancy body to take disciplinary action against its members of staff involved in the examination malpractice;

(*c*) suspend the accredited professional accountancy body's certificate of accreditation; or

(*d*) revoke the accredited professional accountancy body's certificate of accreditation:

Provided that during the review of the leakage cases, the accredited professional accountancy body shall be given an opportunity to be heard in accordance with the principles of natural justice.

Administration of accountancy examinations in Malaŵi

15.—(1) An accredited professional accountancy body shall, before administering examination, ensure that—

(*a*) the examining hall has—

(i) enough ventilation;

(ii) well spaced desks;

(iii) availability of rooms of convenience;

(iv) disability friendly facilities; and

(v) availability of safety tools such as fire extinguishers and horse reels;

(*b*) there is availability of adequate invigilators to supervise the examinations;

(*c*) candidates are properly inspected to ensure that they do not bring unauthorized materials into the examination hall; and

(*d*) there is availability of adequate examination papers and where applicable, adequate answer sheets.

(2) The accredited professional accountancy body shall ensure that where the examination is administered at different locations, the examination should commence at the same time to avoid cheating.

(3) The accredited professional accountancy body shall ensure that candidates are given enough notice of the examination, detailing the date, place and duration of the examination.

(4) The accredited professional accountancy body shall ensure that examination instructions shall be made available to the candidates before the examination is administered and the instructions shall include the following—

(*a*) what candidates are allowed to bring and not allowed to bring to an examination hall;

(*b*) when the candidates can be allowed to enter or leave the examination hall during the time the examinations are in progress;

(*c*) how candidates can behave in case of an emergency such as candidates falling sick or candidates receiving news of bereavement during the time the examinations are in progress;

(*d*) penalties for candidates caught cheating;

(*e*) instructions on how questions are to be answered on the answer sheet; and

(*f*) conducting surprise visits to examination halls.

Quality control and inspections

16.—(1) The Board shall ensure that quality of accountancy examination in Malaŵi is enhanced by—

(*a*) conducting regular training of trainers for personnel involved in administering accountancy examinations;

(*b*) making sure that regular assessment of examination papers is conducted by an accredited professional accountancy body before the examination is administered;

(*c*) making sure that reviewing of marked scripts and analyzing examination reports is conducted by an accredited professional accountancy body;

(*d*) setting a committee to deal with complaints from the students on issues dealing with accountancy training; and

(*e*) benchmarking regularly with similar international organizations on accountancy training and this may include membership into international organizations.

(2) An accredited professional accountancy body shall ensure that quality is maintained for administration of accountancy examination by—

(*a*) regularly reviewing the syllabus to ensure that it reflects on developments within the profession;

(*b*) ensuring that technology is deployed in the delivery of services to its students;

(*c*) maintaining a team of well trained and qualified trainers and examiners;

(*d*) instituting internal means of obtaining feedback from key stakeholders;

(*e*) availing resource materials to students such as library and computer laboratory facilities;

(*f*) continuous professional development programs for trainers and examiners; and

(*g*) benchmarking with other training and examining institutions within and outside Malaŵi.

Cheating during examination

17.—(1) The Board shall expect an accredited professional accountancy body to ensure that tight security is maintained during the development and administration of examinations.

(2) An accredited professional accountancy body shall suspend a candidate caught cheating during an examination for a maximum period of two years.

(3) An accredited professional accountancy body shall not be allowed to administer examinations to a candidate who has been suspended by another accredited professional accountancy body before expiry of the candidate's period of suspension as specified in subregulation (2).

(4) The following shall be considered as forms of cheating during an examination—

(*a*) bringing unauthorized materials during an examination including cases where the candidate has been caught using the material;

(*b*) a candidate caught canvassing, discussing or peeping on other candidate's paper; or

(*c*) using or bringing unauthorized electronic devices into the examination room during the time the examination is in progress such as phones, tablets or computers.

(5) An accredited professional accountancy body shall have a fair process of dealing with cheating cases including requesting a written explanation from a candidate who has been caught cheating and allowing for appeal procedures.

Circumstances considered as hardship cases

18.—(1) The Board may consider the following circumstances as hardship cases that may put the candidate not in the right state of mind—

(*a*) sickness of a candidate before or during an examination;

(*b*) receipt of news of the death of a close member of family such as father, mother, son or daughter, brother or sister, before or during an examination;

(*c*) accident of a candidate before or during examination;

(*d*) civil strike causing disruption of transport system to examination hall.

(2) For the avoidance of doubt, the Board may consider the following circumstances as hardship cases that may put the candidate not in the right state of mind—

(*a*) where the candidate fails to reach exam hall due to rain, wind or too much sun;

(*b*) where the candidate claims to be sick but there is no medical report to substantiate the candidate's claim;

(*c*) receipt of news of the death of other members of the family such as an uncle, auntie or cousin;

(*d*) transport problems to the examination hall;

(*e*) lack of preparedness to take the examination;

(*f*) pregnancy;

(*g*) sickness related to alcohol or drug abuse; or

(*h*) hunger, tiredness or body pains due to other factors other than sickness or accident.

(3) An accredited professional accountancy body shall set remedial procedures for a candidate who has proven to have a genuine hardship case and such remedies shall include allowing—

(*a*) the candidate to write supplementary examinations;

(*b*) the candidate to carry forward any examination fees paid to be used for future examination;

(*c*) refund of the examination fees to the candidate;

(*d*) the candidate to write the examination in a special room;

(*e*) special equipment to the examination hall such as a wheel chair or walking sticks; or

(*f*) a candidate to finish the examination later than the rest of candidates where the hardship circumstance caused the candidate to start writing the examinations later than the rest of the candidates.

(4) The accredited professional accountancy body shall not be allowed to take the following remedial measures—

(*a*) allowing the candidate to sit for the same paper after the rest of the candidates have completed and have been released from the examination hall, unless where the candidate was kept in isolation when the examination was being administered;

(*b*) lowering the examination mark for the candidate;

(*c*) using previous assessments results to grade the candidate for the examination;

(*d*) allowing the candidate to sit for another examination which is for a higher or lower level; or

(*e*) allowing another person to write the examination on behalf of the candidate.

PART V
Accountancy Training Contract

Accountancy training contract

19.—(1) The Board shall ensure that diplomate and chartered accountants undergo on job training to enable them take up challenging positions in the profession.

(2) The Board shall assign the Institute to administer the students training contract.

(3) The Institute shall model its training contract based on IFAC and other cooperating partners such as Institute of Chartered Accountants in England and Wales, Association of Chartered Certified Accountants and Chartered Institute of Management Accountant.

(4) The Institute shall design the training contract in order to—

(*a*) provide the trainee accountants necessary work skills to supplement theoretical knowledge obtained during the courses;

(*b*) allow for skills transfer from experienced qualified chartered accountants to upcoming accountants;

(*c*) preserve the integrity of the profession by ensuring that those registered as diplomate accountants and chartered accountants have been subjected to rigorous training;

(*d*) protect the interest of the users by ensuring that quality of the profession is maintained as new accountants are being registered; and

(*e*) align the accountancy profession in Malaŵi to international best practices.

(5) The student training contract shall specify the field of competences which the student has to acquire knowledge and such areas shall include but not limited to—

(*a*) strategic planning and leadership;

(*b*) investment and financial management;

(*c*) organizational effectiveness;

(*d*) individual and team leadership development;

(*e*) ethics and trust;

(*f*) stakeholder focus;

(*g*) communication;

(*h*) integrative approach;

(*i*) problem solving;

(*j*) professional development;

(*k*) professional self-examination;

(*l*) financial accounting and reporting;

(*m*) management accounting;

(*n*) taxation;

(*o*) assurance and other related services;

(*p*) finance and financial planning;

(*q*) information technology;

(*r*) company and business law; and

(*s*) corporate governance.

(6) The Institute shall administer evaluations or examinations of a candidate's technical competency, high-order cognitive skills, and pervasive qualities required to practice as a diplomate or chartered accountant in a rigorous, competency based manner which—

(*a*) substantially integrates and assesses knowledge across multiple subjects and the competencies, skills and qualities, set out in subregulation (5);

(*b*) emphasizes the ability to use and to apply knowledge and to exercise professional judgement; and

(*c*) is founded on a process that is objective, valid, fair, and reliable.

(7) The Institute shall ensure that the evolution of competency is integrated with professional skills and personal attributes akin to the responsibility of trainee accountants including—

(*a*) professional skills that facilitate the conception, synthesis, analysis and evaluation of information, the rendering of professional judgement, the making of decisions, and the resolution of challenges;

(*b*) personal attributes that promote and demonstrate competence, initiative, innovation, comprehensiveness, and strategic acumen;

(*c*) ethical and professional behaviour as specified from time to time by the Institute's professional and ethical committee; and

(*d*) disciplinary conduct and personal behaviour which will enhance the reputation of the profession as a whole.

Qualification for a training contract

20.—(1) A person studying for a diploma or degree in accounting which has been accredited by the Board shall qualify to be registered for a diplomate training contract.

(2) A person holding a diploma or degree or pursuing a professional accountancy course accredited by the Board shall apply for professional training scheme.

(3) The Institute shall scrutinize all applications for training contract by providing special forms which shall be filled by the student as well as the mentor.

(4) The student shall obtain an approval from the Institute before embarking on any training contract.

(5) The student who shall not undergo training contract arrangement shall not be registered as either a diplomate or chartered accountant in Malaŵi and in such cases, the student shall not be allowed to work in accountancy or any related field in Malaŵi.

Qualifications for mentors

21.—(1) The Institute shall allow a designated firm or company to offer opportunities as a training ground for accountants under the students training contract.

(2) The designated firm or company shall ensure that—

(*a*) its officer is capable of offering, to each candidate seeking to be registered, experience and mentorship in one or more of the requirements prescribed by these Regulations;

(*b*) it adheres to, and promote, the rules and standards set out in regulation 19 (5);

(*c*) it provides a diverse mix of assignments to ensure well rounded training and mentorship for candidates;

(*d*) it has experienced personnel to act as mentors for the students; and

(*e*) it is willing to satisfy the requirements of the Institute from time to time.

(3) Qualified accountants registered by the Institute shall act as mentors for trainee accountants under the scheme.

(4) The mentor shall be expected to have the following qualities—

(*a*) to be able to impart knowledge to other individuals;

(*b*) should be an accountant who is not serving a disciplinary sanction by the Institute;

(*c*) should be a registered chartered accountant by the Board for a period of not less than three years; and

(*d*) should have paid the annual subscription fee to the Institute.

Duties and responsibilities of mentors

22.—(1) The mentor shall ensure that the trainee accountant is properly equipped with the technical knowledge, work experience and professional and ethical skills required for membership depending with the relevant category.

(2) The mentor shall be responsible for ensuring that—

(*a*) there is a set time table detailing how the training is going to be covered;

(*b*) the trainee accountant is drilled and assisted to gain knowledge and skills on areas raised in regulation 19 (5) of these Regulations;

(*c*) there is proper documentation for areas which have been covered with the trainee accountant;

(*d*) there is sincerity in the recordings by trainee accountant on the area covered; and

(*e*) work submitted by the student is of high quality and meet the specifications from the Institute.

(3) The Institute shall consider hours spent on mentoring as contribution towards the annual continuous professional development hours for any member acting as a mentor, and the Continuous Professional Development Committee of the Institute shall have the mandate to decide on how to compute such hours.

Documentation and submissions

23.—(1) The trainee accountant shall be responsible for the submission of assessment results to the Institute.

(2) The Institute shall work towards providing a better and conducive platform for the trainee accountant to submit his work in a timely and effortless manner.

(3) The Institute may demand additional information from a trainee accountant or even a mentor where the Council of the Institute would like to verify the submissions.

(4) The Institute shall acknowledge receipt, and keep in a safe custody, information submitted by the trainee accountant to avoid or minimize the risk of losing such information.

(5) The Board may obtain documentations relating to students training scheme as part of ensuring quality of the profession.

(6) The Institute shall provide a booklet in which work done or completed shall be recorded and signed by the mentor or trainee.

Registration to full accountancy membership

24. Registration of trainee accountants shall be made where—

(*a*) for a diplomate accountant—

(i) there is evidence that the trainee accountant has been subjected to at least two hundred fifty days of training;

(ii) the trainee accountant has satisfied the minimum topical area coverage as may be specified by the Institute from time to time; and

(iii) the trainee accountant has obtained endorsement from at least two chartered accountants registered with the Institute;

(*b*) for chartered accountants—

(i) there is evidence that the trainee accountant has been subjected to at least five hundred days of training or two hundred fifty days of training after obtaining diplomate status;

(ii) the trainee accountant has satisfied the minimum topical area coverage as may be specified by the Institute from time to time;

(iii) the trainee accountant has obtained endorsement from at least two chartered accountants registered with the Institute; and

(iv) the trainee accountant has completed the professional accountancy course.

Termination of a training contract

25.—(1) A mentor or a trainee accountant may terminate a training contract and the person terminating shall notify the Institute of his decision to terminate.

(2) The trainee accountant may terminate the training contract where the trainee accountant is subjected to sexual harassment or discrimination and shall notify the Institute of his decision to terminate.

(3) The mentor shall not terminate the training contract where the student has already covered fifty per cent of the assessment period.

(4) The mentor shall terminate the contract where—

(*a*) it is no longer possible to supervise and assess the work of the trainee accountant due to changes in location of either party;

(*b*) continuation to offer the service has been compromised by other professional limitations such as where the mentor or the trainee accountant is under disciplinary action by the Institute;

(*c*) the trainee accountant or the mentor is incapacitated due to health reasons;

(*d*) the trainee accountant has terminated the contract;

(*e*) the trainee accountant is no longer employed and it is difficult for the trainee accountant to accumulate any work experience; or

(*f*) where there are issues of sexual harassment.

(5) The trainee accountant may change a mentor during the training contract.

(6) Where the trainee accountant wishes to change a mentor, he shall submit to the Institute, in writing, the reasons for his decisions, and the Institute shall in turn verify such reasons with the mentor to ensure that the trainee accountant does not change a mentor in order to simply obtain recommendation from the mentor even though the trainee accountant has not gained enough experience.

(7) The Institute may either approve or reject the request for change of the mentor made under subregulation (6).

(8) Where the Institute rejects, or feels the reasons advanced by the trainee accountant are inadequate, the Institute shall increase the remaining number of days of the assessment period as it considers necessary.

(9) A dispute between the mentor and the trainee accountant during the assessment period, shall be dealt with by the Membership Committee of the Institute and where either party is not satisfied with the decision of the Membership Committee, such aggrieved party may appeal to the Council of the Institute.

(10) Where a party is aggrieved with the decision of the Council of the Institute the aggrieved party may appeal to the Board against the decision.

(11) An aggrieved party may appeal to the High Court, only after exhausting all appeal procedures under these Regulations.

PART VI
General Provisions

Extension of time

26. Notwithstanding anything contained in these Regulations, where a time period is specified under the regulations or where the Board

makes a request for an act to be done or a condition to be fulfilled within a specified time period, the person affected may request the Board, in writing, for an extension of such time and the Board may grant such extension of time as it considers appropriate.

Invalidity affecting enforceability

27. Where these Regulations become unenforceable due to changes in accounting standards or any pronouncements from International Federation of Accountants, the part of the regulations affected shall be suspended and the new accounting standards or pronouncement shall apply.

SCHEDULE

PUBLIC ACCOUNTANTS AND AUDITORS ACT
(CAP. 53:06)

reg. 6 (1)

FORM 1

APPLICATION FOR ACCREDITATION OF
AN ACCOUNTANCY PROFESSIONAL BODY

A. Full Name of Professional Body: .....

Physical Address: .....

.....

Postal Address: .....

.....

Email Address: .....

Contact Phone Number(s): .....

B. MAB shall accredit the institution upon it fulfilling the following requirements—

(i) that it is a member of the International Federation of Accountants and is in compliance with its membership obligations;

(ii) that it has appropriate mechanisms for ensuring that its members participate; in continuing professional development in line with international best practice;

(iii) that it has mechanisms to ensure that its members are disciplined where appropriate;

(iv) that it keeps a register of its members in the form prescribed by the organization;

(v) that it is in good standing with MAB (By complying with fee/levy payments) (delegated activities for ICAM only);

(vi) abide by the laws of Malaŵi.

C. To retain its accreditation, the professional body shall pay the retainership fees annually and continues to comply with the requirements for accreditation as provided in subsection (B) above.

DECLARATIONS AND SIGNATURE

1. We confirm that the information in this form is complete and true.

2. We acknowledge the role, duties and powers of the Malaŵi Accountants Board and agree to cooperate full.

Name ..... Designation .....

Signature ..... Date .....

PUBLIC ACCOUNTANTS AND AUDITORS ACT
(CAP. 53:06)

FORM 2 reg. 6 (1)

FEES

Accreditation	. . . .	10% of a professional body's total membership fee but not less than K1,000,000
Annual Retainer	. . . .	10% of a professional body's total membership fee but not less than K1,000,000

PUBLIC ACCOUNTANTS AND AUDITORS ACT
(CAP. 53:06)

reg. 6 (4)

FORM 3

THE MALAŴI ACCOUNTANTS BOARD

CERTIFICATE OF ACCREDITATION

This is to certify that

.....

has this day been accredited by the Board as an

ACCOUNTANCY PROFESSIONAL BODY
OPERATING IN MALAŴI

Given under the common seal of the

MALAŴI ACCOUNTANTS BOARD

....
Chairman *Secretary*

Dated this ..... day of ..... 20.....

Certificate Number: .....

This Certificate is the Property of the Malaŵi Accountants Board

REGISTRATION OF ACCOUNTANTS REGULATIONS

ARRANGEMENT OF REGULATIONS

REGULATION

PART I
PRELIMINARY

1. Citation
2. Interpretation
3. Application
4. Objectives of the regulations

PART II
CLASSIFICATION, ELIGIBILITY, REQUIREMENTS AND REGISTRATION OF ACCOUNTANTS

5. Registration classification
6. Eligibility
7. Registration requirements
8. Registration of an accountant
9. Terms and conditions of registered members
10. Disciplinary proceedings

PART III
GENERAL PROVISIONS

11. Extension of time
12. Invalidity affecting enforceability

REGISTRATION OF ACCOUNTANTS REGULATIONS G.N. 4/2017

under s. 57

PART I
PRELIMINARY

1. These Regulations may be cited as the Registration of Accountants Regulations. Citation

2. In these Regulations unless the context otherwise requires— Interpretation

"Institute" means Institute of Chartered Accountants in Malaŵi; and

"users" means any person who has been recognized as the user of services rendered by an accountancy or advisory service provider.

Application

3.—(1) These Regulations apply to the following situations—

(*a*) registration of Diplomate Accountant; and

(*b*) registration of Chartered Accountant.

(2) The Board, in applying and implementing these Regulations, shall—

(*a*) have exclusive control over the registration of all accountants in Malaŵi;

(*b*) suspend or remove from the register any accountant upon proof, sufficient to satisfy the Board that the registered accountant has—

(i) violated or caused, aided or abetted the violation of the Act, or any regulations made under the Act;

(ii) failed to carry out a lawful order of the Board;

(iii) obtained or attempted to obtain, or assisted another person to obtain, or attempted to obtain a registration by fraudulent means; and

(*c*) review all operations of public practicing accountants to ascertain whether their operations conform to the requirements of these Regulations or the Act.

Objectives of the regulations

4. Objectives of these Regulations are—

(*a*) to promote accountancy profession in Malaŵi and ensure that the provision of accountancy services meet the required professional standards;

(*b*) to ensure fair and transparency in registration of Diplomate Accountants and Chartered Accountants;

(*c*) to set out procedures, standards and compliance requirements for all registered members by setting out rights and obligations, to ensure that the professional quality of accountancy services is maintained;

(*d*) to promote and enhance the responsibilities of the Board as a regulator of accountancy profession in Malaŵi;

(*e*) to implement policy and establish a regulatory framework for the transformation and operation of accountancy profession;

(*f*) to develop and transform accountancy profession to meet consumer demands and correspond to the changing economic environment and technology;

(*g*) to adopt a user-oriented approach that focuses on ensuring that there is quality of accountancy and auditing services;

(*h*) to safeguard the interests of users of accountancy and auditing services;

(*i*) to provide a platform for translating international accounting standards into local reporting with the aim of ensuring that the Malaŵi accountancy profession is abreast with current developments; and

(*j*) to define procedures and rules of registration of accounting professionals that establish a level playing field for all accounting professionals, based on open, objective, non-discriminatory and transparent ground that support development of the accountancy profession.

PART II
Classification, Eligibility, Requirements and Registration of Accountants

Registration classification

5.—(1) The Board shall maintain a register of accountants that shall be categorized as follows—

(*a*) Diplomate Accountants' register;

(*b*) Chartered Accountants' register; or

(*c*) Chartered Accountants' in public practice register.

(2) The Board shall register each accountant in Malaŵi as an individual regardless of whether the person is working in a partnership, a company or is unemployed.

(3) A person shall apply for registration as a Diplomate Accountant or Chartered Accountant through the Institute and not directly to the Board.

(4) A person registered as a Diplomate Accountant or Chartered Accountant may apply for a transfer of a certificate from one category to another in accordance with procedures prescribed under these Regulations.

(5) A person registering as a Diplomate Accountant or Chartered Accountant may seek clarification from the Institute where the person is in doubt of which category to register under before undertaking any accountancy services.

(6) The Board shall ensure that all registered accountants within the same certificate category are subjected to similar rules of operation.

(7) The Board shall ensure that there is clear specification of the scope of service to be provided under each of the registration categories and the appropriate set of basic rules in accordance with that category.

Eligibility

6.—(1) A person may apply for registration to the Board through the Institute, under any of the categories, provided that the person meets the registration requirements, as may be specified by the Board from time to time.

(2) The Board shall be entitled to set requirements for eligibility for each category of the register.

(3) A person shall not be qualified for registration as Diplomate Accountant or Chartered Accountant where—

(*a*) the person has been adjudged or otherwise declared bankrupt under a law in force in any country and has not been rehabilitated or discharged, regardless of—

(i) amount of debt involved and the duration for which the debt has been outstanding;

(ii) whether there are differences in legislation between the country where the declaration is made and Malaŵi;

(iii) the applicant has or is in the process of appealing against the declaration; and

(iv) the past record of the applicant as a law abiding citizen;

(*b*) the person has made an assignment to, or arrangement, or composition with his creditors under a law in force in any country and the assignment, arrangement or composition has not been rescinded or set aside; or

(*c*) within the period of five years immediately preceding the person's application for registration—

(i) the person has been convicted of a criminal offence within or outside the jurisdiction of Malaŵi punishable by a minimum term of six months' imprisonment without the option of a fine, which, in the opinion of the Board, is of a disgraceful or dishonorable nature to the accounting profession;

(ii) the person behaved in a manner which, in the opinion of the Board after consultation with the Institute, contravenes the code of ethics of the accounting profession; or

(iii) the person has been medically certified, within or outside the jurisdiction of Malaŵi, as mentally disordered or of unsound mind and the certification remains in force.

Registration requirements

7.—(1) All applications for registration shall be made through the Institute, and the Institute, upon being satisfied that the applicant has met the necessary requirements, shall forward the application to the Board, with its recommendations.

(2) A person shall submit the following information required for registration—

(*a*) for Diplomate Accountants—

(i) a filled out application form as shall be designed by the Institute from time to time;

(ii) evidence of completion of training, of at least two hundred fifty days, through a registered training contract;

(iii) recommendation from two referees who shall be accountants registered by the Board;

(iv) a letter of recommendation from the employer;

(v) a copy of a certificate, diploma or degree, certified by a commissioner of oaths or a member of the Institute issued by an institution accredited by the Board;

(vi) a recommendation from the Institute that the applicant has met registration requirements;

(*b*) for a Chartered Accountant—

(i) a filled out application form as shall be designed by the Institute from time to time;

(ii) evidence of completion of training through a registered training contract of at least over five hundred days of training or two hundred fifty days of training after obtaining diplomate status;

(iii) recommendation from two referees who shall be accountants registered by the Board;

(iv) a letter of recommendation from the employer;

(v) a certificate, diploma or degree issued by an institution accredited by the Board, certified by a commissioner of oaths or a member of the Institute;

(vi) recommendation from the Institute that the applicant has met registration requirements;

(*c*) for a Chartered Accountant in public practice—

(i) a filled out application form as shall be designed by the Institute from time to time;

(ii) evidence that the applicant has acquired three years post qualification experience in the office of a practicing accountant in an audit firm in auditing services;

(iii) submit the application with a recommendation from a supervisor or mentor on the person's competency in auditing services; and

(iv) the applicant has passed Malaŵi Tax, Malaŵi Law and Audit Assurance paper set by the Board unless exempted from such.

Registration of an accountant

8.—(1) Where the Board is satisfied that the applicant is qualified for registration, the Board shall direct the secretary of the Board to register the applicant in the appropriate part of the register and notify the applicant in writing through the Institute and the Board shall—

(*a*) in the case of a Diplomate Accountant or Chartered Accountant issue a registration certificate; and

(*b*) in the case of a Chartered Accountant in public practice, issue practicing certificate.

(2) Where the Board rejects the application for registration the Board shall notify the person, in writing through the Institute, of its decision, specifying reasons for its rejection:

Provided that the Board shall give the applicant an opportunity to defend his application where the applicant wishes to do so.

(3) Where applicable, the Board shall advise the person on areas for improvement in order for the application to be reconsidered and the person may reapply for registration having incorporated the recommendations of the Board.

Terms and conditions of registered members

9.—(1) The Board shall issue terms and conditions applicable to a registered member and shall notify the member upon issuance of a registration or practicing certificate.

(2) Where a registered member contravenes any of the Board's terms and conditions issued under subregulation (1), the registered member shall face disciplinary action.

Disciplinary proceedings

10.—(1) The Institute shall ensure maintenance of the professional conduct of its members and shall have powers to undertake disciplinary proceedings against its members.

(2) A member who is not satisfied by the decision of the Institute on the disciplinary hearing may appeal to the Board against such a decision.

(3) The Board, however, may request the Institute to conduct a disciplinary hearing where a complaint was made directly to the Board.

(4) The Institute shall submit to the Board, a written report of the disciplinary hearing proceedings and its decision, within fourteen days, after the Institute concludes the disciplinary hearing.

(5) The member may, within thirty days, appeal to the Board against any disciplinary sanction which has been imposed by the Institute and the period shall run from the date when he has been informed of the decision and not necessarily from the date when the hearing was made.

(6) A member may request the Board for an extension of the period in which he may lodge his appeal and the Board may grant the request where, in the opinion of the Board—

(*a*) there is evidence that communication of the decision of the Institute did not reach the member in time;

(*b*) there were technical difficulties for the member to lodge an appeal to the Board as the Board was closed during the stated period;

(*c*) the member had problems arising from sickness, bereavement or incarceration that it was not possible to lodge the appeal in time to the Board; or

(*d*) there is no reason which the Board may consider reasonable not to allow the extension of the appeal period.

(7) Where the member has not appealed within the specified thirty days period, the Board may go ahead and review the decision of the Institute and in reviewing the decision of the Institute, the Board may—

(*a*) uphold the decision of the Institute;

(*b*) request the Institute to lessen the sanction imposed;

(*c*) request the Institute to increase the sanction imposed; or

(*d*) request the Institute to reconsider rehearing the case.

(8) The Board may set aside the decision of the Institute where—

(*a*) the Institute failed to follow any procedure which is required to follow in a disciplinary hearing;

(*b*) the member was not accorded enough notice for the meeting;

(*c*) the Institute did not provide member with a charge sheet detailing the provisions which have been breached;

(*d*) the Disciplinary Committee was not properly instituted;

(*e*) the Institute failed to observe the rules of natural justice;

(*f*) the decision of the Institute was unreasonable in all circumstances of the case and in such case, the Board shall consider the penalty imposed on the member against whether—

(i) the contravention is minor;

(ii) the consequence from the violation is minor;

(iii) the member took prompt action to correct the contravention;

(iv) the contravention was accidental; or

(v) the member voluntarily disclosed the contravention to the Institute.

PART III
General Provisions

Extension of time

11. Notwithstanding anything contained in these Regulations, where a time period is specified under the regulations or in any request by the Board for an act to be done or a condition to be fulfilled, the person affected may request for an extension of such time in writing to the Board and the Board may grant such extension of time as it considers appropriate.

Invalidity affecting enforceability

12. Where the regulations are unenforceable due to changes in professional standards or any pronouncements from International Federation of Accountants, the section affected shall be suspended and the new standard or pronouncement shall prevail.

REVIEW OF STATUTORY FINANCIAL STATEMENTS AND FINANCIAL REPORTS OF PUBLIC INTEREST ENTITIES REGULATIONS

ARRANGEMENT OF REGULATIONS

REGULATION

PART I
PRELIMINARY

1. Citation
2. Interpretation

PART II
REVIEW FUNCTIONS AND PROCESSES

3. Objectives of the regulations
4. Mandate of the Board
5. Functions of the Committee
6. Objectives and scope of reviews
7. Reviewers
8. The review process
9. Reporting and evaluation
10. Re-review
11. Compliance
12. Fees
13. Confidentiality
14. Conflict of interest
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PART III
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17. Extension of time
18. Invalidity affecting enforceability

G.N. 5/2017

REVIEW OF STATUTORY FINANCIAL STATEMENTS AND FINANCIAL REPORTS OF PUBLIC INTEREST ENTITIES REGULATIONS

under s. 57

PART I
Preliminary

Citation

1. These Regulations may be cited as the Review of Statutory Financial Statements and Financial Reports of Public Interest Entities Regulations.

Interpretation

2. In these Regulations unless the context otherwise requires—

"Committee" means the Compliance, Regulation, Legal and Advisory Committee of the Board;

"public interest entity" means—

(*a*) an entity which is of significant public interest because its business, its size, its number of employees or its corporate status is such that it has a wide range of stakeholders; and

(*b*) includes but is not limited to the following credit institutions, insurance companies, banks, investment firms, pension firms, parastatals and listed companies;

"public" means a person who uses available services for purposes which are outside the person's trade, business or profession; and

"review" means a service under which an accountant obtains limited assurance that there are no material modifications that need to be made to an entity's financial statements for them to be in conformity with the applicable financial reporting framework such as International Financial Reporting Standards or Generally Accepted Accounting Practices and also in conformity with the Acts under which they are established.

PART II
Review Functions and Processes

Objectives of the regulations

3. The objectives of these Regulations are to monitor compliance of public interest entities with International Financial Reporting Standards and listing requirements.

Mandate of the Board

4.—(1) The Board shall review statutory financial statements and financial reports of public interest entities.

(2) The Board shall authorize the Committee to carry out the reviews.

(3) The Board may sign a Memorandum of Understanding with other regulators to provide the Board with evidence of public interest entities in compliance with listing requirements.

Functions of the Committee

5. The Committee or any person authorized by it shall—

(*a*) monitor the compliance of public interest entities with listing rules and requirements of other regulators;

(*b*) review the statutory financial statements and financial reports of a public interest entity and the effective implementation of any International Financial Reporting Standards and make recommendations to the Board; and

(*c*) advise the Board in relation to a public interest entity's compliance with International Financial Reporting Standards, the Companies Act and standards enforced by different regulators. Cap. 46:03

Objectives and scope of reviews

6.—(1) The objectives of reviews are to—

(*a*) improve standards of statutory financial statement and financial reporting by public interest entities; and

(*b*) monitor compliance of public interest entities with the relevant professional standards and listing requirements in compiling statutory financial statements and financial reports.

(2) The Board shall ensure that—

(*a*) public interest entities comply with relevant professional standards in a manner which is most cost effective without compromising on thoroughness of the financial reporting processes;

(*b*) reviews meet the requirements of the regulatory control aspects under the Act, the Malaŵi Stock Exchange and the requirements of other regulators; and

(*c*) the outcome of the reviews is an ongoing pursuit of quality improvement by the public interest entities to protect the interests of the public.

Reviewers

7. The Board shall employ qualified professional accountants, on a full-time or part-time basis, who shall conduct reviews.

The review process

8. The review of statutory financial statements and financial reports shall be conducted as follows—

(*a*) the Board shall conduct reviews at least once in every three to five years, however, the Board may conduct reviews whenever it considers necessary;

(*b*) the Board shall sample the public interest entities and schedule review date eight weeks in advance;

(*c*) the reviewer shall request pre-review information from public interest entities;

(*d*) the reviewer shall carry out the review;

(*e*) the reviewer shall present a formal review report to the Committee on an anonymous basis at quarterly meetings of the Committee in order for the Committee to make a recommendation to the Board on findings of the review;

(*f*) where the Committee agrees that additional information is required, the Committee may request the information from the Malaŵi Stock Exchange and any regulating body of the relevant entity being reviewed;

(*g*) the Committee shall submit its written report to the Board;

(*h*) the report shall include an explanation of the information considered, the basis for conclusion and recommendations regarding any remedial action;

(*i*) the Board shall advise the Committee what action, if any, has been taken after considering the report of the Committee; and

(*j*) the Board shall communicate its final decision to the public interest entity and its auditor through the Malaŵi Stock Exchange and the regulator regulating that public interest entity.

Reporting and evaluation

9.—(1) The reviewer shall summarize, document and submit the results of the statutory financial statements and financial reports reviews to the Committee for evaluation.

(2) The Committee shall evaluate the results and consult the reviewer, where necessary, in order to make necessary recommendations to the Board.

(3) The Committee shall reach one of the following conclusions and make the following recommendations to the Board—

(*a*) satisfactory which means that the public interest entity can be reviewed in the next cycle;

(*b*) not satisfactory leading to the conduct of follow up reviews until a satisfactory decision is reached; or

(*c*) investigation referral leading to a disciplinary action by the Board or Malaŵi Stock Exchange or the regulator regulating that public interest entity.

(4) The Committee shall make a recommendation for referral to investigation where—

(*a*) the public is at risk;

(*b*) a re-review indicates failure to implement corrective action;

(*c*) there is a flagrant disregard of professional standards; or

(*d*) the public interest entity refuses to cooperate in the review process.

Re-review

10.—(1) A re-review shall focus on assessing how the identified deficiencies have been addressed by a public interest entity in the interim since the initial review.

(2) A re-review of statutory financial statements and financial reports of a public interest entity shall be done within six months of the first review.

(3) The Committee shall make a new recommendation to the Board on the basis of the results of the re-review.

(4) If after the re-review the public interest entity does not address all identified deficiencies, the Board shall take disciplinary action against the public interest entity in consultation with the regulator regulating that public interest entity.

Compliance

11.—(1) The Board shall continue to monitor compliance of the public interest entity with listing requirements, other regulatory requirements, International Financial Reporting Standards reporting requirements and the Laws of Malaŵi.

(2) Where a public interest entity does not comply with the listing requirements, other regulatory requirements, International Financial Reporting Standards reporting requirements and the Laws of Malaŵi, the Board shall make recommendations to the public interest entity's regulator to undertake disciplinary proceedings against the entity and impose sanctions or penalties as may be necessary.

Fees

12.—(1) The Board shall determine fees for the conduct of reviews on an annual basis.

(2) The fees shall be based on a percentage of audit fees as determined by the Board from time to time.

(3) The Board shall work with other regulators to impose the consequences of non-payment of fees by a public interest entity.

Confidentiality

13.—(1) The Committee shall keep confidential all matters that are referred to it.

(2) Any information that comes to the attention of the Committee as a result of the activities of the Committee shall not be used for any other purpose other than that required under a written law.

(3) The Board shall keep all matters referred to it confidential unless and until there is a requirement to disclose the information by law.

(4) The Board may refer a matter to another regulator where there is *prima facie* evidence of something relevant to the purview of that regulator.

(5) The Board shall inform the relevant public interest entity of its intention to refer a matter to that entity's regulator.

(6) The Committee may share such information with the Practice Review Committee responsible for practice reviews which is responsible for monitoring of compliance with audit standards.

Conflict of interest

14. Where there is a conflict of interest, individuals who are invited to join the Committee shall recuse themselves from serving in the Committee.

Limitation of liability

15. The Committee, any committee member, any officer, employee of the Board or Malaŵi Stock Exchange shall not be liable to anyone in respect of anything done in good faith in exercise or performance of a power or duty conferred or imposed by, or under these Regulations or the listings requirements.

Indemnity

16. The Board shall indemnify the Committee, any committee member, and any officer or employee of the Board against any claim of any nature which may be made against them, any costs on an attorney and client scale which may be incurred by any of them in defending any claim which may be brought against them, arising out of the exercise or performance, in good faith, of power or duty conferred or imposed on them by, or under these Regulations or the listing requirements.

PART III
General Provisions

Extension of time

17. Notwithstanding anything contained in these Regulations, where a time period is specified under the regulations or in any request by the Board for an act to be done or a condition to be fulfilled, the person affected may request for an extension of such time in writing and the Board may grant such extension of time as it deems fit.

Invalidity affecting enforceability

18. Where the regulations are unenforceable due to changes in professional standards or any pronouncements from International Federation of Accountants, the section affected shall be suspended and the new standard or pronouncement shall prevail.

LAND ECONOMY SURVEYORS, VALUERS, ESTATE AGENTS AND AUCTIONEERS

CHAPTER 53:08

Containing Pages 1–5

L.R.O. 1/1991

CHAPTER 53:08

LAND ECONOMY SURVEYORS, VALUERS ESTATE AGENTS AND AUCTIONEERS

ARRANGEMENT OF SECTIONS

SECTION

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PRELIMINARY

1. Short title and commencement
2. Interpretation

PART II

RESTRICTIONS

3. Restriction on use of title of land economy surveyor, valuer, estate agent and auctioneer

PART III

BOARD OF REGISTRATION

4. Establishment of Board
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PART IV

REGISTRATION

6. Register
7. Registration within six months of coming into operation of this Act
8. Qualifications for registration after six months from coming into operation of this Act
9. Suspension or stricking out
10. Appeals
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13. Regulations

CHAPTER 53:08

LAND ECONOMY SURVEYORS, VALUERS ESTATE AGENTS AND AUCTIONEERS

An Act to provide for the registration, regulation and Control of Land Economy Surveyors, Valuers, Estate Agents and Auctioneers and for matters incidental thereto or connected therewith 5 of 1989 G.N. 56/1990

[1st July, 1990]

PART I

Preliminary

Short title

1. This Act may be cited as the Land Economy Surveyors, Valuers, Estate Agents and Auctioneers Act.

Interpretation

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

"Board" means the Board of Registration of Land Economy Surveyors, Valuers, Estate Agents and Auctioneers established by section 4;

"Chairman" means the Chairman of the Board;

"Registered person" means a person registered under this Act;

"Register" means the Register or, if there be more than one, a register kept by the Board under section 6.

PART II

Restrictions

Restriction on use of title of land economy surveyor, valuer, estate agent or auctioneer

3.—(1) After the expiration of six months from the date of the coming into operation of this Act no person shall practise under any name, title or style containing the words land economy surveyor, valuer, estate agent or auctioneer or, for the purpose of gain, make any other use of such name, title or style, unless he is registered under this Act as a land economy surveyor, valuer, estate agent or auctioneer.

(2) Any person who contravenes subsection (1) shall be guilty of an offence.

PART III

Board of Registration

Establishment of Board of Registration

4.—(1) For the purpose of this Act, there is hereby established the Board of Registration of Land Economy Surveyors, Valuers, Estate Agents and Auctioneers which shall consist of not less than five, and not more than nine, members appointed by the Minister and who shall include—

(*a*) the Chief Valuation and Estates Management Officer, who shall be a member *ex officio*;

(*b*) two land economy surveyors in private practice, nominated by the Surveyors Institute of Malaŵi;

(*c*) an estate agent eligible for registration under this Act;

(*d*) a land economy surveyor eligible for registration under this Act; and

(*e*) an auctioneer of immovable property eligible for registration under this Act.

(2) Unless the Minister otherwise directs, the Chairman of the Board shall be the Chief Valuation and Estates Management Officer.

(3) Members of the Board, other than a member *ex officio*, shall hold office for two years from the effective date of their respective appointments or for such shorter period as the Minister may specify in the instrument of appointment and shall be eligible for reappointment.

(4) At every meeting of the Board the quorum shall be formed by a simple majority of the total membership of the Board and the Chairman shall have a casting as well as a deliberative vote.

(5) If the Chairman is absent from a meeting the members who are present shall elect from amongst themselves a person to preside at that meeting and the person so elected shall have all the powers and duties of the Chairman for the purpose of that meeting.

(6) The Chief Valuation and Estates Management Officer shall discharge the executive functions of the Board.

(7) In the event of a vacancy on the Board, howsoever arising, the Minister may appoint another person to fill the vacancy for the remainder of the former member's term of office.

(8) The Board shall meet at least three times in each year.

(9) Subject to the provision of this Act, the Board shall determine its own procedure.

Power of Board to make rules

5. The Board may, with the approval of the Minister, make rules for all or any of the following purposes—

(*a*) the definition of unprofessional conduct, the mode of inquiry into and the method of dealing with such conduct and the penalties which may be imposed upon a registered person found guilty of such conduct;

(*b*) prescribing the scale of fees to be charged by registered persons for professional advice, services rendered and work done;

(*c*) prescribing terms and conditions subject to which articled pupils may be engaged; and

(*d*) the maintenance and improvement of the status of land economy surveyors, valuers, estate agents and auctioneers in Malaŵi.

PART IV

Registration

Register

6. The Board shall keep a register in which the name of every person, immediately on his being accepted for registration by the Board, shall be registered, showing against his name such particulars as the Board shall from time to time deem necessary, and the Board shall enter in such register all changes of registration particulars.

Registration within six months of coming into operation of this Act

7. Every person who has attained the age of twenty-two years may, upon making application for registration within six months after the coming into operation of this Act and upon payment of the prescribed registration fee, be registered as a land economy surveyor, valuer, estate agent or auctioneer provided that he proves to the satisfaction of the Board that his professional and general conduct has been such as not, in the opinion of the Board, to debar him from registration and that he—

(*a*) for the period of six months immediately preceding the coming into operation of this Act, was publicly and *bona fide* performing the work of a land economy surveyor, valuer, estate agent or auctioneer in Malaŵi; or

(*b*) is a full member of the Surveyors Institute of Malaŵi.

Qualification for registration after six months from coming into operation of this Act

8.—(1) No person shall after the expiration of a period of six months from the date of the coming into operation of this Act be registered as a land economy surveyor, valuer, estate agent or auctioneer, unless he shall at the date of his application for registration have attained the age of twenty-two years and paid the prescribed registration fee, and either—

(*a*) shall have passed a qualifying examination approved by the Board and have had not less than two years post qualification practical experience or articled pupilage in the work of a land economy surveyor, valuer, estate agent or auctioneer to the satisfaction of the Board; or

(*b*) shall satisfy the Board that he possesses a qualification which, in the opinion of the Board, furnishes a sufficient guarantee of the possession of the requisite knowledge and skill for the efficient practice of the work of land economy surveyor, valuer, estate agent or auctioneer.

(2) Notwithstanding subsection (1), the Board shall not register any person as a land economy surveyor, valuer, estate agent or auctioneer, unless it is satisfied that his professional and general conduct has been such as should not, in the opinion of the Board, debar him from registration.

Suspension

9. The Board shall have the power to—

(*a*) suspend a registered person; or

(*b*) strike out of the Register the name of a registered person, who shall have been found guilty of unprofessional conduct as defined by rules made under section 4.

PART V

Miscellaneous

Appeals

10. Any person aggrieved by any decision of the Board may appeal to the Minister, whose decision in the matter shall be final and shall not be subject to appeal to, or review or question by, any court and the Minister shall not be required to assign any reasons therefor.

11. A person who, without the authority of the Board in that behalf, given generally or specially— Offences

(*a*) makes any material entry in the Register;

(*b*) alters or changes any entry in the Register in any material particular;

(*c*) gives false information to the Board or to any person knowing it to be force or having cause to believe that it is force with a view to securing his registration or the registration of another person, whether or not he or that other person is registered,

shall be guilty of an offence.

12. A person guilty of an offence under this Act for which no other penalty is provided shall be liable to a fine of K2,000 and to imprisonment for one year. Penalty

13. The Minister may make regulations for carrying this Act into effect, and without prejudice to the generality of the foregoing, such regulations may provide for the payment of expenses incurred by the Board in the execution of its powers and the performance of its duties under this Act, and for the application of any revenue received by the Board. Regulations

LABOUR RELATIONS

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CHAPTER 54:01

LABOUR RELATIONS

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An Act to promote sound labour relations through the protection and promotion of freedom of association, the encouragement of effective collective bargaining and the promotion of orderly and expeditious dispute settlement, conducive to social justice and economic development

16 of 1996
1 of 2012
G.N. 69/1997

[1ST DECEMBER, 1997]

PART I

PRELIMINARY

Short title

1. This Act may be cited as the Labour Relations Act.

Interpretation

2.—(1) In this Act, unless the context otherwise requires—

"collective agreement" means a written agreement between an employer, or an employers' organization authorized by the employer, and a trade union concerning terms and conditions of employment and any other matter of mutual interest;

"Council" means the Tripartite Labour Advisory Council appointed under section 55;

"employee" means—

(*a*) a person who offers his or her services under an oral or written contract of employment, whether express or implied;

(*b*) a person who performs work or services for another person for remuneration or reward on such terms and conditions that he or she is in relation to that person in a position of economic dependence on, and under an obligation to perform duties for that person more closely resembling the relationship of employee than that of an independent contractor; and

(*c*) where appropriate, a former employee;

"employer" means any person or undertaking, corporation, company, public authority or body of persons who or

which employs an employee, and includes the heirs, successors and assigns of an employer;

"employers' organization" means any combination established by employers, the principal purposes of which are the representation and promotion of employers' interests and the regulation of relations between employers and employees;

"essential services" means services, by whomsoever rendered, and whether rendered to the Government or to any other person, the interruption of which would endanger the life, health or personal safety of the whole or part of the population;

"Industrial Relations Court" means the Industrial Relations Court established under section 110 (2) of the Constitution;

"lockout" means closing a place of employment, a suspension of work by an employer, or a refusal by an employer to continue to employ or re-engage any number of his or her employees, done to compel his or her employees, or to aid another employer to compel his or her employees, to agree to terms or conditions of, or affecting employment;

"organization" means a trade union or employers' organization;

"Registrar" means the Registrar of Trade Unions and Employers' Organizations appointed under section 9;

"sector" means an industry or a service;

"strike" means concerted action resulting in a cessation of work, a refusal to work or to continue to work by employees, or a slowdown or other concerted activity of employees that is designed to or does limit production or services, but does not include an act or omission required for the safety or health of employees, or a refusal to work under section 52;

"trade union" means any combination of persons, the principal purposes of which are the representation and promotion of employees' interests and the regulation of relations between employees and employers, and includes a federation of trade unions but not an organization or association that is dominated by an employer or employers' organization;

(2) This Act shall be interpreted so as to give effect to the Constitution and the obligations of any international treaty, including any international labour conventions entered into or ratified by Malaŵi.

(3) Any contractual term in restraint of any right recognized by this Act shall be void, whether agreed to before or after the coming into force of the Act.

Application

3.—(1) Subject to subsection (2), this Act applies to the private sector and the Government, including any public authority or enterprise.

(2) This Act does not apply to members of the armed forces, the prison service or the police, except those employed in a civilian capacity.

PART II

Freedom of Association

Freedom of association

4. Every person shall have the right to freedom of association, which shall include the freedom to establish and join organizations of his or her own choosing.

Rights of trade unions and employers' organizations

5. Every organization has the right to—

(*a*) draw up its constitution and rules, and elect its officers and representatives;

(*b*) organize its administration and activities, and formulate its programmes;

(*c*) take part in the formation, and become a member, of any federation of trade unions or employers' organizations and participate in its lawful activities;

(*d*) affiliate to and participate in the affairs of international workers' or employers' organizations, to make financial and other contributions to such organizations and to receive financial and other assistance from them.

Protection of employees

6.—(1) No person shall, in respect of any employee or any person seeking employment—

(*a*) require that he or she not be or not become a member of a trade union or require him or her to relinquish such membership;

(*b*) dismiss or prejudice such person because of trade union membership or participation in the formation or the lawful activities of a trade union;

(*c*) dismiss or prejudice such person because of his or her exercise or anticipated exercise of any right recognized by this Act or any other Act relating to employment, or for participating in any proceedings pursuant to those Acts;

(*d*) prevent or attempt to prevent such person from exercising any right recognized by this Act or any other Act relating to employment, or from participating in any proceedings under those Acts;

(*e*) threaten such person with any disadvantage for exercising any right recognized by or for participating in any proceedings under this Act or any other Act relating to employment;

(*f*) promise such person any benefit or advantage for not exercising any right recognized by or not participating in any proceedings under this Act or any other Act relating to employment;

(*g*) dismiss or prejudice such person for refusing to do work normally done by an employee who is lawfully on strike or who is locked out, unless such work constitutes an essential service.

(2) Where it is shown that an employee was dismissed or otherwise prejudiced and it is alleged that such dismissal or prejudice is contrary to subsection (1), the burden is on the employer to prove that the act was not committed in breach of the subsection.

Protection in respect of organizations

7.—(1) Any person eligible for membership of an organization pursuant to its constitution or rules, has a right to membership of that organization and to remain a member as long as he or she complies with the rules of the organization.

(2) No organization may discriminate in its constitution, rules or through its actions against any person on the grounds of race, colour, nationality, ethnic or social origin, national extraction, religion, political opinion, language, sex, marital status, family responsibilities, age, disability, property or birth.

(3) Subsection (2) shall not be construed so as to preclude any provision, programme or activity aimed at ameliorating the conditions of disadvantaged individuals or groups, including those disadvantaged on the grounds enumerated in subsection (2).

Remedies

8.—(1) Any complaint of infringement of the rights or protection contained in this Part may be presented to the Industrial Relations Court.

(2) Subject to subsection (3), the Industrial Relations Court shall make such order as it deems necessary to secure compliance with this Part, including an order for reinstatement of an employee, the restoration to him or her of any benefit or advantage, and an order for the payment of compensation.

(3) Where an employee is dismissed contrary to section 6, reinstatement will be ordered if so requested by the employee, along with any other remedy that the Industrial Relations Court deems appropriate, unless reinstatement is clearly not practicable.

PART III

Trade Unions and Employers' Organizations

Appointment of Registrar and Assistant Registrars

9.—(1) There shall be the office of the Registrar of Trade Unions and Employers' Organizations, which shall be a public office.

(2) The Minister may appoint one or more Assistant Registrars and other officers as may be required for the purposes of this Part.

Register

10.—(1) The Registrar shall keep and maintain a register of trade unions and employers' organizations containing the prescribed particulars relating to them and any alteration or change.

(2) A copy of any entry in the register, certified by the Registrar, shall be proof of the facts specified therein, until the contrary is shown.

Registration

11.—(1) The rights and benefits conferred by this Act upon organizations may be exercised only if those organizations are registered in accordance with this Part.

(2) Any seven or more members of an unregistered trade union, or two or more members of an unregistered employers' organization, any of whom may be officers of the organization, may apply to the Registrar for registration in the prescribed form, and the application shall be accompanied by—

(*a*) two certified copies of the organization's rules; and

(*b*) the prescribed fee.

(3) If, after having considered the application, the Registrar is satisfied that—

(*a*) there has been compliance with subsection (2);

(*b*) the applicant is a trade union or an employers' organization;

(*c*) the name does not so closely resemble that of another trade union or employers' organization so as to mislead or cause confusion;

(*d*) the rules submitted comply with section 12; and

(*e*) the applicant's constitution or rules do not discriminate contrary to section 7,

the Registrar shall register the applicant in the register of trade unions and employers' organizations.

(4) The Registrar shall notify an applicant of the registration or refusal of registration within thirty days of receiving the application.

(5) If the Registrar is not satisfied that the applicant has complied with the provisions of subsection (3), he or she shall notify the applicant, stating the reasons for refusal and providing the applicant with an opportunity to amend its application accordingly within thirty days of such notice.

(6) The Registrar may require an applicant to provide further information for the purpose of being satisfied that an application for registration complies with the provisions of this Act.

(7) Whenever the Registrar has registered an organization he or she shall issue to the applicant a certificate of registration, and that certificate, unless proven to have been cancelled or withdrawn, shall be conclusive evidence that the organization has been duly registered.

(8) An organization is deemed to be registered from the date of its entry in the register.

(9) Subject to subsection (10), any organization that was registered under the provisions of the Trade Union Act, immediately before the commencement of this Act, shall be deemed to be registered under this Act.

(10) An organization registered pursuant to subsection (9), shall submit to the Registrar proof of compliance with the requirements of this Part in the prescribed form within six months of the coming into force of the Act.

Effect of registration

12.—(1) Upon registration, every organization shall be a body corporate with the capacity to contract and to hold property, and to sue and be sued.

(2) Unless expressly provided in the rules of a registered organization, no person shall, by reason only that he or she is a member or officer of such organization, be liable for any of the obligations and liabilities of the organization.

Rules of registered trade unions and employers' organizations

13.—(1) The rules of every registered organization shall include provision for the following—

(*a*) the name of the organization;

(*b*) the principal objectives of the organization;

(*c*) the registered office to which all communications and notices may be addressed;

(*d*) the qualifications for membership;

(*e*) the grounds on which an officer or member may be suspended or expelled from office or membership;

(*f*) the fines and forfeitures that may be imposed on any member;

(*g*) the procedure to be followed when it is proposed to impose any fine or forfeiture or suspend or expel an officer or member, including provision that the affected person be fully informed in writing of the allegations, and that he or she shall have a reasonable opportunity to be heard and to appeal;

(*h*) the membership fees and other subscriptions payable, and the maximum period of arrears permitted, if any, before a member loses his or her good standing;

(*i*) any other circumstances under which a member shall cease to be entitled to the benefits of membership;

(*j*) where any financial benefit to members is provided for, the conditions under which a member may become entitled to the benefit;

(*k*) periodic elections to all offices and for the appointment of a temporary replacement if an officer becomes disqualified from holding office or incapacitated;

(*l*) the nomination of candidates for election as officers;

(*m*) positions as officers reserved for women at least in proportion to the female membership of the organization or twenty per cent of the positions, whichever is lower;

(*n*) the holding of a secret ballot for the election of officers whenever more or one candidate has been nominated for any office;

(*o*) the powers, functions and duties of officers;

(*p*) the convening and conduct of meetings of members or representatives of members, the quorum, if any, required at such meetings, the vote required for different decisions, and the keeping of minutes of the meetings;

(*q*) a general meeting open to all members or representatives of members to be held at least once every two years;

(*r*) the manner of altering the rules;

(*s*) the custody and investment of the organization's funds, the designation of the officer or officers responsible, and the annual audit of its accounts;

(*t*) the inspection of the register of members and other books of the organization by any member in good standing; and

(*u*) the manner of dissolving the organization and the disposal of the funds available at the time of the dissolution.

(2) Every member of an organization is entitled to receive free of charge a copy of the rules of the organization, and the organization shall deliver a copy to every member who requests it.

(3) The Registrar shall give a copy of the rules of a registered organization to any person on demand on payment of the prescribed fee.

Alteration of rules

14.—(1) A registered organization may, by a resolution duly passed by a majority of those voting, alter its rules.

(2) Within one month of an alteration being made, the organization shall send to the Registrar two copies of the resolution to alter the rules, along with a statement signed by an official of the organization certifying that there has been compliance with the rules of the organization regulating such alterations.

(3) The Registrar shall register the altered rules and issue to the organization a certificate stating that the alteration has been registered, unless the altered rules do not comply with sections 7 and 13.

(4) The alteration of the rules shall take effect from the date of registration, unless a later date is specified in the rules.

Change of name

15.—(1) A registered organization may, by a resolution duly passed by a majority of those voting, change the name under which it is registered.

(2) Within one month of a change being made, the organization shall send to the Registrar two copies of the resolution to change the name of the organization along with a statement signed by an official of the organization certifying that there has been compliance with the rules of the organization governing such change.

(3) The Registrar, if satisfied that the altered rules comply with section 11 (3) (*c*) shall register the new name and issue to the organization a new certificate of registration.

(4) The change of name shall take effect from the date of registration.

Amalgamation

16.—(1) Any organization may, by resolution duly passed by a majority of those voting, amalgamate with one or more trade unions or employers' organizations, as the case may be, whether or not the other organizations are registered.

(2) Within one month of the amalgamation, the organizations that have amalgamated shall send to the Registrar two copies of their respective resolutions to amalgamate and the rules of the amalgamated organization, along with a statement signed by an official of each organization certifying that there has been compliance with the rules of the organizations governing amalgamation.

(3) The Registrar if satisfied that there has been compliance with this section and section 11 (3) (*b*) to (*e*), shall register the amalgamated organization and make the necessary alterations to the register.

(4) The provisions of section 11 (4) to (8) shall apply to applications for amalgamation.

(5) Upon amalgamation, all assets, rights, obligations and liabilities of the organizations which have amalgamated shall devolve to the amalgamated organization.

Deposit and safeguard of funds

17.—(1) A registered organization shall, in accordance with generally accepted accounting practice, principles and procedures—

(*a*) keep books and records of accounts of its income, expenditure, assets and liabilities;

(*b*) prepare annual financial statements consisting of an income and expenditure statement for the financial year having ended and a balance sheet showing its assets, liabilities and financial position at the end of that financial year; and

(*c*) have its books and records of accounts and financial statements audited annually by an auditor appointed by

the organization, who shall not be a member of that organization.

(2) An organization shall maintain in a separate fund all moneys received or paid by the organization in respect of any contributory, provident or pension fund.

Annual return

18.—(1) Within six months after the end of its financial year, an organization shall submit to the Registrar a return containing the following—

(*a*) the audited financial statements referred to in section 17;

(*b*) a list of the names and postal addresses of its officers; and

(*c*) the number of members of the organization.

(2) Every member of the organization is entitled to receive free of charge a copy of the annual return and the organization shall deliver a copy to every member who requests it.

(3) The Registrar shall give a copy of the annual return of an organization to any person on demand on the payment of the prescribed fee.

Retention of documents

19.—(1) Every organization shall keep, for at least three years—

(*a*) a list of its members;

(*b*) the minutes of its meetings; and

(*c*) used ballot papers.

Disqualification for office

20. No person who has been convicted of any crime involving fraud or dishonesty shall, within five years of the date of such conviction, be an officer of an organization or a person employed in collecting the funds of an organization.

Cancellation of registration

21.—(1) The registration and the certificate of registration of an organization shall be cancelled by the Registrar—

(*a*) at the request of the organization upon its dissolution, after making such inquiries as the Registrar considers necessary; or

(*b*) by order of the Industrial Relations Court, if the organization is unable to continue to function as a trade union or employers' organization for any reason that cannot be remedied.

(2) Whenever the Registrar reasonably believes that an organization is unable to continue to function as a trade union or employers' organization or has ceased to exist, he or she shall notify the organization in writing that cancellation of the registration is being considered, state the reasons and give the organization thirty days to show cause why its registration should not be cancelled.

Reasons for decisions

22.—(1) Any person who is aggrieved by a decision of the Registrar made pursuant to this Part, may within thirty days of receiving written notification of the decision, apply in writing to the Registrar for a statement of his or her reasons for the decision.

(2) The Registrar shall, within thirty days of receipt of such application, furnish the applicant with a statement of reasons.

Remedies

23.—(1) Upon the application of any member or officer of an organization, the Industrial Relations Court may make any order that it deems necessary to prevent or stop a contravention of any provision of the rules of the organization.

(2) Upon the application of a member or officer of an organization, the Industrial Relations Court may make any order that it deems necessary to secure compliance with sections 17 and 18.

Appeals

24.—(1) Any person who is aggrieved by a decision of the Registrar may, within sixty days of the date of the decision, appeal against the decision to the Industrial Relations Court.

(2) Any person who is aggrieved by the failure of the Registrar to make a decision within the time required by the Act may apply to the Industrial Relations Court for a decision.

PART IV

Collective Bargaining and Organizational Rights

Enterprise-level bargaining

25.—(1) Where at least twenty per cent of—

(*a*) employees of an employer at one or more workplaces; or

(*b*) a particular category or categories of employees of the employer having a significant community of interest, are members of a particular trade union or more than one acting jointly, the employer shall recognize that trade union or those trade unions for the purpose of collective bargaining.

(2) For the purposes of subsection (1), senior managerial staff shall not be considered employees.

(3) Where at least twenty per cent of senior managerial staff of an employer at one or more workplaces are members of a particular trade union or more than one acting jointly, the employer shall recognize that trade union or those trade unions for the purposes of collective bargaining.

(4) Where there is a dispute as to the right of a trade union to be recognized for the purposes of collective bargaining, either party may refer the dispute to—

(*a*) the Industrial Relations Court where the employer is the Government, including any public authority or commercial enterprise in which the Government has a controlling interest;

(*b*) the Principal Secretary responsible for labour in all other cases.

(5) The Principal Secretary responsible for labour may make inquiries he or she deems necessary to determine the matter, and may require the parties to provide any further relevant information.

(6) Where a trade union has the right to be recognized for the purpose of collective bargaining, either party may give notice of collective bargaining and the collective bargaining shall take place within sixty days of the other party receiving the notice, unless the parties agree otherwise.

Sectoral-level bargaining

26.—(1) A trade union, or more than one acting jointly, representing employees in a sector, may request one or more duly authorized employers' organizations representing employers in that sector to enter into collective bargaining.

(2) An employers' organization, or more than one acting jointly, representing employers in a sector, may request one or more duly authorized trade unions representing employees in that sector to enter into collective bargaining.

(3) The respondent organization, shall give the requesting party a written reply within sixty days of receiving the request.

(4) Where one trade union, or more than one acting jointly, representing at least fifteen per cent of employees in a sector, has made a written request to enter into collective bargaining, and the employers' organization has failed to reply within sixty days of receiving the request, or has replied to the effect that the request has been refused, the trade union may apply in the prescribed form to the Minister requesting the establishment of an industrial council.

(5) Where one employers' organization, or more than one acting jointly, representing employers employing at least fifteen per cent of employees in a sector, has made a written request to enter into collective bargaining, and the trade union has failed to reply within sixty days of receiving the request, or has replied to the effect that the request has been refused, the employers' organization may apply in the prescribed form to the Minister requesting the establishment of an industrial council.

Establishment of industrial councils

27.—(1) If the Minister is satisfied that there has been compliance with section 26 (4) or (5), he or she may establish an industrial council.

(2) The Minister may require the parties to provide any further relevant information.

(3) The Minister shall notify the relevant parties of his or her decision within twenty-one days of receiving the application.

(4) A decision to establish an industrial council shall be published in the *Gazette* and in at least one newspaper in general

circulation in Malaŵi, along with a description of the sector, the relevant parties, and an invitation to the other trade unions and employers' organizations in the sector to apply to participate in the council.

Composition of industrial councils

28.—(1) Subject to subsection (2), the members of an industrial council shall include—

(*a*) the organizations applying under section 26 (4) or (5) and the respondent organizations;

(*b*) any other duly authorized organizations representing employees or employers in the sector requesting admission to the council, except where the Minister considers it inappropriate to include an organization in the industrial council due to the description of the sector or the fact that the organization is not sufficiently represented.

(2) An organization may apply to the Minister for an exemption from participating in the bargaining council on behalf of some or all of its members, based on the fact that effective collective bargaining is already taking place vis-á-vis those employers or trade union or that it is impracticable for that organization to be involved.

(3) An organization that has not been included in the industrial council or has been refused an exemption may apply to the Industrial Relations Court for a review of the decision within thirty days of receiving the decision of the Minister.

Meetings of industrial councils

29.—(1) Where an industrial council has been established, a first meeting of the parties shall be convened by the Minister within sixty days of such agreement or establishment, unless the parties agree otherwise.

(2) At the first meeting of the industrial council, the parties shall draw up an agreement to regulate the procedures of the industrial council.

(3) The agreement referred to in subsection (2) shall provide for—

(*a*) the appointment of representatives of the parties to the industrial council, half of whom shall represent the trade unions and the other half the employers' organizations that are party to the industrial council;

(*b*) the manner in which decisions are to be made; and

(*c*) the admission of additional trade unions and employers' organizations as parties to the industrial council.

(4) The parties shall meet once a year, unless the parties agree otherwise.

Functions of industrial council

30.—(1) The functions of the industrial council may include any matters agreed by the parties, including—

(*a*) negotiating wages and conditions of employment;

(*b*) the establishment of dispute resolution machinery;

(*c*) the development of an industrial policy for the industry concerned.

Duty to negotiate in good faith

31.—(1) All parties to the negotiation of a collective agreement shall bargain in good faith and make every reasonable effort to conclude a collective agreement.

Terms of collective agreements

32.—(1) A collective agreement shall—

(*a*) be in writing and signed by the parties to the agreement;

(*b*) contain the date on which it is to become effective;

(*c*) contain procedures for the avoidance and settlement of disputes arising out of the interpretation, application and administration of the agreement, which may include a reference to conciliation or arbitration; and

(*d*) provide for such other matters as may be agreed between the parties.

(2) The provisions of collective agreements shall not be less advantageous to employees than the provisions of this Act or regulations made thereunder or any other written law.

Enforceability of collective agreements

33.—(1) A collective agreement shall be binding upon—

(*a*) the parties to the agreement;

(*b*) the employees who are or become members of a trade union party to the agreement to the extent that the agreement relates to them;

(*c*) the employers who are or become members of an employers' organization party to the agreement to the extent that the agreement relates to their employees.

(2) The terms of the collective agreement shall be deemed to be incorporated into the employment contract of each employee who is covered by the collective agreement.

(3) Nothing in this Part shall affect the validity of a collective agreement in force immediately prior to the coming into force of this Act, and such agreement shall remain in force until it expires or is replaced by another collective agreement.

Submission of collective agreements

34. The parties to a collective agreement shall deposit a copy of the collective agreement with the Registrar.

Access to employer's premises

35.—(1) An employer shall not deny any officer or authorized representative of a trade union such access to the employer's premises as is reasonable and necessary for the lawful activities of the trade union.

(2) In granting access, an employer may impose reasonable conditions as to time and place—

(*a*) to avoid undue disruption of operations; or

(*b*) in the interest of safety.

(3) Prior to granting access, an employer may require the officer or trade union representative requesting access to provide proof of his or her identity and credentials.

Trade union subscriptions

36.—(1) An employee who is a member of a trade union may submit directly to his or her employer, or through his or her trade union, written authorization for the periodic deduction from the employee's wages of subscriptions payable to that trade union.

(2) An employee may revoke the authorization by giving one month's written notice to the employer and the trade union.

(3) An employer shall make the authorized deductions of subscriptions and shall promptly remit the funds collected to the trade union, along with—

(*a*) a list of the names of employees from whom wage deductions of subscriptions have been made on behalf of that trade union; and

(*b*) a detailed account of the amount collected and remitted.

(4) Nothing in this section shall prevent an employer and a trade union from agreeing on a reasonable fee for the services of deducting trade union subscriptions.

Leave for trade union activities

37.—(1) An employee who is an officer of a trade union is entitled to take reasonable time off during working hours for the purposes of carrying out trade union activities.

(2) An employee who is an officer of a trade union is entitled to take a reasonable leave of absence for training and secondment purposes related to trade union activities.

(3) Where a dispute arises as to the entitlement to and conditions of leave under subsection (1) or (2), the matter shall be referred to the Industrial Relations Court for determination.

Disclosure of information

38.—(1) Whenever an employer is engaged in collective bargaining with a trade union, the employer shall disclose to the trade union all relevant information so as to allow the trade union to engage effectively in such collective bargaining.

(2) Without limiting the generality of subsection (1), when a party to collective bargaining alleges financial incapacity as a ground for inability to agree to any terms or conditions or alterations thereof, such party shall fully disclose to the other party its financial position, including all relevant accounting documents.

(3) A party shall not be required to disclose—

(*a*) information that is legally privileged;

(*b*) information that constitutes an invasion of privacy of an employee, without the consent of that employee;

(*c*) trade or commercial secrets.

(4) Any information disclosed for the purpose of collective bargaining, which is not publicly available, shall be treated as confidential by the party receiving the information, and shall not be disclosed to any third party without the prior consent of the party providing the information.

(5) Parties to the negotiation of a collective agreement shall not make any false or fraudulent misrepresentations in regard to matters relevant to the negotiations.

Successor rights and obligations

39.—(1) If a business or part of it is sold, leased, transferred or otherwise disposed of—

(*a*) the purchaser, lessee or transferee, as the case may be, is bound by all the proceedings under this Act that were commenced before the date of the disposition; and

(*b*) if a collective agreement is in force, it continues to bind the purchaser, lessee or transferee, as the case may be, to the same extent as if it had been signed by the purchaser, lessee or transferee.

(2) Where a dispute arises regarding the application of this section, an affected party may apply to the Industrial Relations Court for a determination of the matter.

(3) In determining a dispute under this section, the Industrial Relations Court shall determine the rights, privileges and duties that have been acquired or retained in the light of the new circumstances.

Right to choose a representative

40. An employee has the right to be assisted by a representative of his or her choice, including an officer of an unregistered trade union, in an individual grievance or disciplinary matter.

Review of thresholds

41.—(1) Twenty-four months from the coming into force of this Act, the Council shall review the percentages set out in sections 25 and 26, and may make recommendations to the Minister for the revision of the percentages.

(2) Subject to subsection (3), the Minister may, on the recommendation of the Council, by notice published in the *Gazette*, amend the percentages set out in sections 25 and 26.

(3) The percentages set out in sections 25 and 26 shall not be increased to more than forty per cent.

PART V

Dispute Settlement

Definition of dispute

42. In this Part, "dispute" means any dispute or difference between an employer or employers' organization and employees or a trade union, as to the employment or non-employment, or

the terms of employment, or the conditions of labour or the work done or to be done, of any person, or generally regarding the social or economic interests of employees.

Reporting of disputes

43.—(1) Any dispute, whether existing or imminent, may be reported to the Principal Secretary responsible for labour by, or on behalf of, any of the parties to the dispute.

(2) Every party reporting a dispute shall send a copy of such report to the other party to the dispute.

(3) The Principal Secretary responsible for labour shall acknowledge in writing the receipt of any report within seven days.

Conciliation procedure

44.—(1) If a dispute is reported to the Principal Secretary responsible for labour and he or she is satisfied that the dispute settlement procedures established in a collective agreement covering the parties to the dispute have been exhausted, unless all parties have consented to waive those procedures, the Principal Secretary responsible for labour or any person authorized by him or her to do so, shall endeavour to conciliate the parties, subject to subsection (2).

(2) Where one of the parties to the dispute is the Government, including any public authority or commercial enterprise in which the Government has a controlling interest, the parties shall agree upon a conciliator, who shall endeavour to conciliate the parties.

(3) Where the parties are not able to agree on a conciliator under subsection (2) within seven days of the dispute being reported, the Industrial Relations Court shall, on the application of either party designate an independent arbitrator.

(4) The conciliation under subsections (1) and (2) shall be completed within twenty-one days of the receipt of the report, unless the parties to the dispute agree to extend the time.

(5) A dispute shall be deemed to be unresolved if a party fails to attend or the parties fail to reach agreement on the settlement of the dispute within the time prescribed in subsection (4).

(6) Where a settlement of the dispute has been effected pursuant to this section, it shall be recorded in writing and signed by the parties and the conciliator or arbitrator, as the case may be.

(7) The settlement agreement referred to in subsection (6) shall become binding on the parties on the date it is signed, unless the agreement states otherwise.

Unresolved disputes

45.—(1) If a dispute is unresolved and concerns—

(*a*) the interpretation or application of any statutory provision or any provision of a collective agreement or contract of employment; or

(*b*) an essential service, either party to such dispute, or the Principal Secretary responsible for labour in the case of paragraph (*b*), may apply to the Industrial Relations Court for determination of the dispute.

(2) If a dispute is unresolved and concerns matters other than those referred to in subsection (1)—

(*a*) where the parties to the dispute agree, the dispute shall be referred to the Industrial Relations Court for determination; or

(*b*) either or both parties may give notice in accordance with section 46 (3) that they intend to strike or lockout.

(3) If there is a question as to whether an unresolved dispute is covered under subsection (1) or (2), either party or the Principal Secretary responsible for labour may apply to the Industrial Relations Court for a determination.

(4) In an application under subsection (3), the Industrial Relations Court shall determine the question in a summary manner, whether or not by way of hearing witnesses.

(5) Subject to section 65 (2), the decision of the Industrial Relations Court shall be final.

Strike or lockout procedures

46.—(1) Subject to subsections (2) and (3), where there is an unresolved dispute under section 45 either party may take action by way of a strike or lockout anytime after the dispute is deemed to be unresolved.

(2) A party may not take action by way of strike or lockout if—

(*a*) the procedures set out in section 44 have not been complied with; or

(*b*) the dispute has been referred for determination under section 45 (1) or section 45 (2) (*a*).

(3) A party to a dispute intending to strike or lockout, shall give notice in writing to the other party and the Principal Secretary responsible for labour at least seven days before taking such action.

Strike or lockout in essential services

47.—(1) An employer or employee carrying on or engaged in an essential service shall not strike or lockout in connexion with any such essential service.

(2) The Minister may at any time apply to the Industrial Relations Court for a determination as to whether a threatened or actual strike or lockout involves an essential service.

(3) On an application under subsection (2), the Industrial Relations Court may, if it deems appropriate, enjoin the action concerned, subject to section 54.

Status of collective agreement and employment contract

48. Where action in pursuance of a strike or lockout takes place in conformity with this Act—

(*a*) the provisions of a collective agreement, if any, between the parties shall not be deemed to have been breached by reason only of such action;

(*b*) the contract of employment with respect to each employee involved in the strike or lockout shall not be deemed to have been breached by reason only of such action.

Civil immunity

49. No civil proceedings shall be brought against any employee, employer, organization or federation of organizations, or officer or member of such organizations, in respect of any strike or lockout in conformity with this Act, or any act not constituting a criminal offence committed by such person or organization in furtherance of such strike or lockout.

Right to return to employment

50.—(1) If an employee who has participated in a strike in conformity with this Act or who has been locked out by his or her employer, presents himself or herself for work after the end of the strike or lockout, the employer shall, within a reasonable period, reinstate such employee in the employment that he or she held immediately prior to the strike or lockout, unless material changes to the employers' operations have resulted in the abolition of such employment.

(2) Nothing in this section exempts an employer from ensuring that any termination of employment satisfies the requirements of the Employment Act.

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Temporary replacement of labour

51.—(1) An employer shall not employ a person to perform the work of an employee participating in a strike or who is locked out, unless such work is necessary to maintain minimum maintenance services.

(2) For purposes of subsection (1), where minimum maintenance services are not defined in the collective agreement between the parties, they shall be those services the interruption of which would result in material damage to a working area or machinery.

Refusal to do strikers' work

52. An employee has the right to refuse to do any work normally done by an employee or employees who are on strike or locked out, except in the case of an essential service.

Peaceful picketing

53.—(1) Where such presence is in furtherance of a lawful strike or a lockout, it shall be lawful for a person to be at or near his or her place of work or former place of work or a place of business of the employer or former employer for the purposes of peacefully communicating information or peacefully persuading any one—

(*a*) not to enter that place of work or business;

(*b*) not to work;

(*c*) not to deal in or handle that employers' products;

(*d*) not to do business with that employer.

(2) The right contained in subsection (1)shall extend to any officer of a trade union or employers' organization whose members are acting in furtherance of such strike or lockout.

Injunction in respect of strike or lockout

54.—(1) A party to a dispute may apply to the Industrial Relations Court alleging a violation of sections 46 to 53.

(2) The Industrial Relations Court shall not grant an injunction against any person instigating, participating in or otherwise supporting a strike or lockout or any act in furtherance of a strike or lockout unless—

(*a*) the application for an injunction has been served on the other parties to the proceedings;

(*b*) service has been effected at least forty-eight hours before the hearing of the application, save where the Industrial Relations Court is satisfied that the acts in question would endanger the life, safety or health of any person; and

(*c*) the other parties have been afforded a reasonable opportunity to be heard.

PART VI

Tripartite Labour Advisory Council

Establishment of the Council

55.—(1) The Minister shall appoint a Tripartite Labour Advisory Council (in this Part otherwise referred to as the "Council") consisting of—

(*a*) four persons appointed by the Minister;

(*b*) four persons nominated by the most representative trade union or trade unions and appointed by the Minister;

(*c*) four persons nominated by the most representative organization or organizations of employers and appointed by the Minister.

(2) At least one woman shall be nominated under each of subsection (1) (*a*), (*b*) and (*c*).

(3) Any vacancies on the Council shall be filled by the Minister in accordance with subsection (1).

Officers of the Council

56.—(1) One of the members appointed pursuant to section 55 (1) (*a*) shall be appointed Chairperson of the Council.

(2) In the absence of the Chairperson, one of the members appointed pursuant to section 55 (1) (*a*) shall act as Chairperson.

(3) An officer of the Ministry of Labour shall be appointed as Secretary of the Council.

Term of office

57. Members of the Council shall be appointed for a term of three years and shall be eligible for reappointment.

Functions of the Council

58.—(1) The Council shall advise the Minister on all issues relating to labour and employment, including the promotion of collective bargaining, the labour market, human resources development and the review of the operation and enforcement of the Act and any other Act relating to employment.

(2) The Council shall also advise the Minister with respect to matters concerning the activities of the International Labour Organization, including the following—

(*a*) Government replies to questionnaires concerning items on the agenda of the International Labour Conference and Government comments on proposed texts to be discussed by the Conference;

(*b*) proposals to be made to the competent authorities in connexion with submission of Conventions and Recommendations pursuant to Article 19 of the Constitution of the International Labour Organization;

(*c*) the re-examination at regular intervals of unratified Conventions and of Recommendations to which effect has not yet been given by Malaŵi, and consideration of what measures might be taken to promote their implementation or ratification;

(*d*) questions arising out of reports to be made to the International Labour Office pursuant to Article 22 of the Constitution of the International Labour Organization;

(*e*) proposals for the denunciation of ratified labour conventions.

Meetings of the Council

59.—(1) The Council shall meet at least once a year.

(2) Meetings of the Council shall be convened by the Chairperson as directed by the Minister or at the request of any five members of the Council.

Quorum

60. Three members of the Council shall constitute a quorum, as long as one representative from each of the Government, trade unions and employers' organizations is present.

Procedure

61.—(1) The Council may regulate its own procedure.

(2) The Council may establish standing or ad hoc committees to assist it.

(3) For the purposes of subsection (2), the Council may invite non-members to sit on the committees of the Council in an advisory capacity.

Allowances and expenses

62. The members of the Council shall be paid allowances and reimbursed reasonable expenses, as prescribed by the Minister.

PART VII

The Industrial Relations Court

Constitution and operation of the Industrial Relations Court

63. The Industrial Relations Court shall be constituted and operated in accordance with this Act.

Jurisdiction

64. The Industrial Relations Court shall have original jurisdiction to hear and determine all labour disputes and disputes assigned to it under this Act or any other written law.

Appeals

65.—(1) Subject to subsection (2), decisions of the Industrial Relations Court shall be final and binding.

(2) A decision of the Industrial Relations Court may be appealed to the High Court on a question of law or jurisdiction within thirty days of the decision being rendered.

(3) The lodging of an appeal under subsection (2), shall not stay the execution of an order or award of the Industrial Relations Court, unless the Industrial Relations Court or the High Court directs otherwise.

Composition
1 of 2012

66.—(1) The Industrial Relations Court shall consist of—

(*a*) the Chairperson who shall be appointed by the Chief Justice, on the recommendation of the Judicial Service Commission;

(*b*) the Deputy Chairperson who shall be appointed by the Chief Justice, on the recommendation of the Judicial Service Commission;

1 of 2012

(*c*) such equal number of persons, not exceeding twenty, as the Minister shall prescribe by Order published in the *Gazette*—

(i) nominated by the most representative organization of employees (the "employees' panel"), and appointed by the Minister; and

(ii) nominated by the most representative organization of employers (the "employers' panel") and appointed by the Minister.

1 of 2012

(2) At least one woman shall be represented on the panels under subsection (1) (*c*).

1 of 2012

(3) If within thirty days of receiving a request, no list of nominees or an incomplete list is supplied for the purposes of subsection (1) (*c*) by the most representative organization of employees or employers, the Minister may appoint such persons to the incomplete panel as he or she deems appropriate.

1 of 2012

(4) The Minister shall, by Order published in the *Gazette*, prescribe the minimum qualifications for the persons appointed to sit as panelists under this section, but so however that the minimum qualification so

prescribed shall be a Malaŵi School Certificate of Education or its equivalent.

Quorum and decision

67.—(1) Subject to subsection (3), a sitting of the Industrial Relations Court shall be constituted by the presence of the Chairperson or the Deputy Chairperson and one member from the employees' panel and one member from the employers' panel, as chosen by the Chairperson.

(2) Subject to subsection (3), the decision of a majority of the members in a sitting shall be the decision of the Industrial Relations Court.

(3) Where the dispute involves only a question of law, a sitting of the Industrial Relations Court may be constituted by the presence of the Chairperson or Deputy Chairperson sitting alone.

(4) Every decision, including any dissenting opinion, shall be issued to the parties within twenty-one days of the closing of the final sitting on the matter.

Appointment and vacation of office

68.—(1) The members of the Industrial Relations Court shall be appointed for a period of three years and shall be eligible for reappointment.

(2) A member of the employers' panel or employees' panel may resign from office by notice in writing addressed to the Minister.

(3) Any vacancies on the Industrial Relations Court shall be filled in accordance with section 66 within thirty days from the date on which the vacancy occurs.

Appointment of officers and Staff

69.—(1) The Chief Justice shall appoint a Registrar of the Industrial Relations Court.

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(2) The other staff of the Industrial Relations Court shall be appointed in accordance with the Public Service Act.

Allowances and expenses of members

70.—(1) The members of the employers' panel and employees' panel shall be paid allowances and reimbursed reasonable expenses, as prescribed by the Minister.

Procedure and evidence

71.—(1) The Chief Justice, on the advice of the Chairperson of the Industrial Relations Court, may make rules for the purpose of regulating the procedures of the Industrial Relations Court and such rules shall have regard to the need for informality, economy and dispatch in proceedings of the Industrial Relations Court.

(2) The Industrial Relations Court shall not be bound by the rules of evidence in civil proceedings.

(3) The Industrial Relations Court may order the giving or production of, and receive in evidence, any statement, document, information or matter which, in the opinion of the Court, may assist to deal with matters

before the Court, whether or not such evidence would otherwise be admissible in a court of law.

(4) The Industrial Relations Court may dispense with any evidence on any matter on which the parties to the proceedings have agreed in writing.

(5) The Industrial Relations Court, in arriving at any decision, may take into consideration any existing code of industrial practice agreed on by the Council.

Costs

72.—(1) Subject to subsection (2), the Industrial Relations Court shall not make any order as to costs.

(2) The Industrial Relations Court may make an order as to costs where a party fails to attend, without good cause, any conciliation meeting convened under this Act, or where the matter is vexatious or frivolous.

Representation of parties

73.—(1) A party to any proceedings before the Industrial Relations Court may—

(*a*) appear personally;

(*b*) be assisted or represented by a member or official of an organization of which he or she is a member, an officer of a trade union or employers' organization, a co-employee, labour officer or any other person that a party so appoints; or

(*c*) with leave of the Industrial Relations Court, be represented by a legal practitioner.

(2) Leave shall be granted under subsection (1) (*c*) where the other party is, or is represented by, a legal practitioner by virtue of subsection (1) (*a*) or (*b*).

Failure to attend

74. If a party fails to attend or to be represented at the proceedings of the Industrial Relations Court without good cause, the Industrial Relations Court may proceed in the absence of that party or representative.

Enforcement of orders

75. Any decision or order of the Industrial Relations Court shall have the same force and effect as any other decision or order of a competent court and shall be enforceable accordingly.

Part VIII

Miscellaneous

Procedures

76.—(1) Where no procedures are specifically set out in this Act any person or organization alleging a violation of a provision of the Act may apply to the Principal Secretary responsible for labour for conciliation.

(2) If the matter is not resolved through conciliation within fourteen days of an application being made to the Principal Secretary responsible for labour, the person or organization may bring the matter to the Industrial Relations Court for appropriate relief.

Notification of registration, etc., in the *Gazette*

77. The Registrar shall publish the following information in the *Gazette*—

(*a*) registration or a refusal to register an organization;

(*b*) cancellation of registration of an organization;

(*c*) registration of a change of name or amalgamation affecting any organization;

(*d*) receipt of a collective agreement.

Regulations

78. The Minister may make regulations for carrying the purposes and provisions of this Act into effect and prescribing all matters which are necessary or convenient to be prescribed for the better carrying out of the provisions of this Act.

Repeal and savings

79.—(1) The Trade Unions Act and the Trade Disputes (Arbitration and Settlement) Act are repealed.

(2) Any subsidiary legislation made under the Acts repealed by subsection (1), in force immediately before the commencement of this Act—

(*a*) shall remain in force unless in conflict with this Act, and shall be deemed to be subsidiary legislation made under this Act;

(*b*) may be replaced, amended or repealed by subsidiary legislation made under this Act.

SUBSIDIARY LEGISLATION
LABOUR RELATIONS REGULATIONS

G.N. 57/1998

under s. 78

Citation

1. These Regulations may be cited as the Labour Relations Regulations.

Interpretation

2. In these Regulations, unless the context otherwise requires—

"conciliator" means the Principal Secretary or any person authorized by him.

Application for registration

3.—(1) An application by an unregistered trade union for registration under section 11 (2) shall be in Form A.

(2) A certificate of registration of a trade union shall be in Form B.

(3) An application by an unregistered employers' organization under section 11 (2) shall be in Form C.

(4) A certificate of registration of an employers' organization shall be in Form D.

Proof of compliance

4.—(1) The proof of compliance required, under section 11 (10), to be submitted by a trade union shall be in Form E.

(2) The proof of compliance required, under section 11 (10), to be submitted by an employers' organization shall be in Form F.

Certificate regarding alteration of rules

5.—(1) A certificate by the Registrar stating that the alteration of rules by a registered trade union has been registered shall be in Form G.

(2) A certificate by the Registrar stating that the alteration of rules by a registered employers' organization has been registered shall be in Form H.

Statement of compliance regarding change of name

6. Statement by an official of an organization certifying that there has been compliance with the rules of the organization governing change of name under which it is registered shall be in Form I.

Statement of compliance regarding amalgamation

7. A statement, by an official of each organization that has amalgamated with one or more organizations, certifying that there has been compliance with the rules of the organizations governing amalgamation shall be in Form J.

Application for establishment of an industrial council

8.—(1) An application by a trade union requesting the Minister, under section 26 (4), to establish an industrial council shall be in Form K.

Application for exemption

(2) An application by an employers' organization requesting the Minister, under section 26 (5), to establish an industrial council shall be in Form L**.**

Notice of strike or lockout

9.—(1) An application by a trade union to the Minister for an exemption from participating in a bargaining council on behalf of some or all of its members shall be in Form M.

(2) An application by an employer's organization to the Minister for an exemption from participating in a bargaining council on behalf of some or all of its members shall be in Form N.

10.—(1) A notice by a party to a dispute intending to strike shall be in Form O.

(2) A notice of a party to a dispute intending to lockout shall be in Form P.

Meetings of industrial council

11.—(1) A written notice specifying the date, place and time of and the business to be discussed at a meeting of an industrial council shall be sent by the council so as to reach representatives of parties to the council and the Registrar not less than 7 days before the meeting.

(2) The quorum for a meeting of an industrial council shall be half of the total number of representatives of the parties to the council and half of whom shall be workers' and employers' representatives.

(3) Whenever an industrial council has by reason of a lack of quorum at any meeting been unable to transact business, notice in writing shall be sent by hand or post by the council to each representative of the parties to the council specifying the date on which and the place and time at which the meeting shall be reconvened.

(4) Two copies of the draft minutes of each meeting of an industrial council shall be sent to the Registrar not more than 7 days after the meeting and two copies of the confirmed minutes shall be sent to the Registrar not more than 14 days after the meeting.

Conciliation by the Principal Secretary

12.—(1) When a dispute has been referred to the Principal Secretary for conciliation under the Act, the Principal Secretary or any person authorized by him shall appoint a conciliator to attempt to resolve the dispute by conciliation within 21 days of the referral of such dispute.

(2) In endeavouring to conciliate the parties, the conciliator shall determine the process to be followed and the process may include—

(*a*) mediating the dispute;

(*b*) conducting a fact-finding exercise; and

(*c*) making a non-binding recommendation to the parties as to how the dispute may be settled.

(3) In conciliation proceedings, a party may appear—

(*a*) if the party is a natural person, in person, or by—

(i) a co-employee; or

(ii) a member, an office bearer or official of the party's trade union or employers' organization; and

(*b*) if the party is a juristic person, by—

(i) a director thereof; or

(ii) an employee thereof.

(4) At the end of the 21-day period contemplated in section 44 (4) the conciliator shall issue a certificate in Form Q stating whether or not the dispute has been resolved.

(5) The conciliators shall serve a copy of the certificate referred to in subregulation (4) on each party to the dispute or the person who represented a party in the conciliation proceedings.

(6) The conciliator shall file the original of the certificate referred to in subregulation (4) with the office of the Principal Secretary.

Determination by Principal Secretary

13.—(1) A referral of a dispute to the Principal Secretary under section 25 (4) shall be in Form R.

(2) When a dispute is referred to the Principal Secretary for determination in terms of section 25 (4), the Principal Secretary shall determine the dispute within 21 days of the referral.

(3) The Principal Secretary shall determine the dispute in a manner that he considers appropriate in order to determine the dispute fairly and quickly.

(4) Should the Principal Secretary consider it necessary to convene a formal hearing, such hearing shall be conducted expeditiously.

(5) At the expiry of the 21-day period contemplated in subregulation (2), the Principal Secretary shall make an award and a copy thereof shall be served on each party to the dispute or the person who represented the party in such proceedings.

Reporting of dispute

14.—(1) A report on a dispute, whether existing or imminent, to the Principal Secretary by, or on behalf of, any of the parties to the dispute shall be in Form S.

Application for conciliation

15. An application for conciliation under section 76 shall be in Form T.

Inspection of documents

16. Any person may, during normal business hours, inspect or copy at the office of the Registrar—

(*a*) the certificate of registration of any organization;

(*b*) the constitution or rules of any organization and any amendment thereto;

(*c*) the resolution to change the name of any organization;

(*d*) the statement signed by an official of an organization certifying that, in changing the name of the organization, there has been compliance with the rules of the organization governing such change;

(*e*) the resolution by an organization to amalgamate;

(*f*) the statement signed by an official of an organization certifying that, in amalgamating, there has been compliance with the rules of the organization governing amalgamation;

(*g*) the annual return of any organization;

(*h*) the statement by the Registrar of his reasons for the decision;

(*i*) the collective agreement of an industrial council.

Fees

17. The fees prescribed in the First Schedule shall be payable in respect of the matters specified therein in relation to such fees.

FORM A reg. 3 (1)

APPLICATION FOR REGISTRATION OF A TRADE UNION

Application in terms of s. 11 (2) for registration of a trade union

We the undersigned, apply for registration of .....
(*full name of trade union*)
.....

The position, names and addresses of office bearers are:

Position	Full Names	Address
1.	.....	.....
2.	.....	.....
3.	.....	.....
4.	.....	.....
5.	.....	.....
6.	.....	.....
7.	.....	.....

If more than seven office bearers, attach additional sheet.
We have ..... members.
(*number*)

Our postal address is .....
.....

Signed ....
Position
....
Position
....
Position
....
Position
....
Position
....
Position
....
Position

If more than seven applicants, attach additional sheet.

Date .....

Check!
Have you enclosed two certified copies of the trade union's constitution or rules and the prescribed fee?
Have at least 7 members of the union signed the application form?

FORM B reg. 3 (2)

CERTIFICATE OF REGISTRATION OF A TRADE UNION

This is to certify that

.....
(*full name of trade union*)

has, in terms of s. 11 (3) of the Labour Relations Act Cap. 54:01 been registered as a trade union with effect from .....
(*date*)

Reference number .....
.....
Date .....

Registrar of Trade Union and Employers Organization

FORM C reg. 3 (3)

APPLICATION FOR REGISTRATION OF AN EMPLOYERS' ORGANIZATION

Application in terms of s. 11 (2) for registration of an employers' organization

We, the undersigned, apply for registration of .....
(*full name of employers' organization*)

.....

The position, names and addresses of office bearers are:

Position	Full Names	Address
1.	.....	.....
2.	.....	.....
3.	.....	.....
4.	.....	.....
5.	.....	.....
6.	.....	.....
7.	.....	.....

If more than seven office bearers, attach additional sheet.

We have ..... members which employ ..... employees
(*number*) (*number*)

Our address is .....

Signed ....
Position

....
Position

....
Position

....
Position

....
Position

....
Position

....
Position

If more than seven applicants, attach additional sheet.

Date .....

Check!
Have you enclosed two certified copies of the trade organization's rules and the prescribed fee?
Have at least 2 members of the employers' organization signed the application form?

FORM D reg. 3 (4)

CERTIFICATE OF REGISTRATION OF AN EMPLOYERS' ORGANIZATION

This is to certify that

.....
(*full name of employers' organization*)

has, in terms of s. 11 (3) of the Labour Relations Act Cap. 54:01, been registered as an employers' organization with effect from .....
(*date*)

Date .....

Reference number .....

.....

Official Stamp of Registrar

Registrar of Trade Union and Employers Organization

FORM E reg. 4 (1)

PROOF OF COMPLIANCE BY A TRADE UNION

Proof of compliance with the provisions of Part III of the Labour Relations Act, s. 11 (10)

I, the undersigned, confirms that .....
(*full name of union*)

has complied with all the provisions of Part III of the Labour Relations Act.

As proof of compliance, I enclose:

(1) the original certificate of registration of the trade union;

(2) two certified copies of the union's rules.

The position, names and addresses of office bearers of the trade union are:

Position	Full Names	Address
1.	.....	.....
2.	.....	.....
3.	.....	.....
4.	.....	.....
5.	.....	.....
6.	.....	.....
7.	.....	.....

If there are additional office bearers, attach additional sheet.

Signed .....

Full names .....

Position .....

Date .....

Place .....

FORM F reg. 4 (2)

PROOF OF COMPLIANCE BY AN EMPLOYERS' ORGANIZATION

Proof of compliance with the provisions of Part III of the Labour Relations Act, s. 11 (10)

I, the undersigned, confirms that .....
(*name of employers' organizations*)

has complied with all the provisions of Part III of the Labour Relations Act.

As proof of compliance, I enclose—

(1) the original certificate of registration of the employers' organization;

(2) two certified copies of the organizations' rules.

The position, names and addresses of office bearers are—

Position	Full Names	Address
1.	.....	.....
2.	.....	.....
3.	.....	.....
4.	.....	.....
5.	.....	.....
6.	.....	.....
7.	.....	.....

If there are additional office bearers, annex additional sheet.

Signed .....

Full names .....

Position .....

Date .....

Place .....

FORM G reg. 5 (1)

CERTIFICATE REGARDING ALTERATION OF RULES OF TRADE UNION

This is to certify that the alteration of the rules of .....
(*full name of trade union*)

has been registered under s. 14(3) of the Labour Relations Act (Cap. 54:01).

Date .....

Reference number .....

.....

Official Stamp of Registrar

Registrar of Trade Union and Employers Organization

FORM H reg. 5 (2)

CERTIFICATE REGARDING ALTERATION OF RULES OF EMPLOYERS' ORGANIZATION

This is to certify that the alteration of the rules of .....
(*full name of employers' organization*)

has been registered under s. 14 (3) of the Labour Relations Act (Cap. 54:01).

Date .....

Reference number .....

.....

Official Stamp of Registrar

Registrar of Trade Union and Employers Organization

FORM I reg. 6

STATEMENT OF COMPLIANCE REGARDING CHANGE OF NAME OF AN ORGANIZATION

Statement by an official of an organization in terms of s. 15 (2) certifying that there has been compliance with the rules of the trade union governing a change of name.

I, the undersigned, confirms that:

(1) .....
(*previous name of organization in full*)

has changed its name to .....
(*new name of organization in full*)

(2) The change of name was effected pursuant to a resolution of members passed on ....., two certified copies of which are enclosed herewith.
(*date*)

(3) The procedure by which the change of name was effected complied with all the relevant provisions of the organization's rules, two certified copies of which are attached.

Signed .....

Full names .....

Position .....

Date .....

Place .....

FORM J reg. 7

STATEMENT OF COMPLIANCE REGARDING AMALGAMATION OF AN ORGANIZATION

Statement by an official of an organization in terms of s. 16 (2) certifying that there has been compliance with the rules of the organization governing amalgamation.

I, the undersigned, hereby certify that:

(1) .....

(*full name of an organization*)

has amalgamated with the organization(s) specified hereunder to form a new

organization .....

(*full name of new organization*)

(2) The amalgamation was effected pursuant to a resolution to amalgamate, such resolution having been passed by a majority of the members voting. Two certified copies of the resolution are attached.

(3) The procedure by which the amalgamation was effected complied with all the relevant provisions of the organization(s) rules governing such amalgamation.

Full names of amalgamating organizations:

1 .....

2 .....

3 .....

4 .....

(If more than 4, annex additional sheet).

Signed .....

Full names .....

Position .....

Date .....

Place .....

FORM K reg. 8 (1)

REQUEST BY A TRADE UNION FOR THE ESTABLISHMENT OF AN INDUSTRIAL COUNCIL

Request by a trade union, or more than one trade union acting jointly, for the establishment of an industrial council in terms of s. 26 (4).

(1) We, the undersigned, acting on behalf of:

(i) .....
(*full names of trade union requesting establishment of industrial council*)

(ii) .....

(iii) .....

(iv) .....

(If more than 4 trade unions, attach additional sheet).

request the establishment of an industrial council in the .....

.....

(*name of sector in respect of which the establishment of a council is requested*)

sector, to be known as .....
(*name of proposed industrial council*)

(2) We certify that:

(i) The trade union(s) specified above have requested in writing the employers' organization(s) specified hereunder to enter into sectoral-level bargaining and that such employers' organization(s) *has/have failed to reply within 60 days of receiving the request/refused to enter into sectoral-level bargaining. Two certified copies of each written request are attached.

*(Delete which is not applicable).

Names of employers' organization(s) to which request(s) for sectoral-level bargaining *has/have been addressed.

*(Delete which is not applicable).

.....

.....

.....

.....

.....

(ii) The total number of employees employed in the .....
(*name of sector*)

sector is .....
(*number*)

(iii) The membership of the trade union(s) requesting the establishment of the industrial council in the .....
(*name of sector*)

sector, is as follows:

Name of trade union(s) requesting establishment of industrial council	Number of employees employed in the sector who are members of the applicant trade unions

Full name of trade union .....

.....

Place .....

Date .....

Signed .....

Position .....

Full name of trade union .....

.....

Place .....

Date .....

Signed .....

Position .....

Full name of trade union .....

.....

Place .....

Date .....

Signed .....

Position .....

Full name of trade union .....

.....

Place .....

Date .....

Signed .....

Position .....

reg. 8 (2)

Form L

Request by an Employers' Organization for the Establishment of an Industrial Council

Request by an employers' organization, or more than one employers' organization acting jointly, for the establishment of an industrial council in terms of s. 26 (4).

(1) We, the undersigned, acting on behalf of

(i) .....

(*names of employers' organizations requesting establishment of industrial council*)

(ii) .....

(iii) .....

(iv) .....

(If more than 4 employers' organizations, attach additional sheet).

Request the establishment of an industrial council in the .....
(*name of sector in respect of*)

..... sector,
which the establishment of a council is requested)

to be known as .....
(*name of proposed industrial council*)

We certify that:

(i) The employer organization(s) specified above have requested in writing the trade union(s) specified hereunder to enter into sectoral-level bargaining and that such trade union(s) *has/have failed to reply within 60 days of receiving the request/refused to enter into sectoral-level bargaining. Two certified copies of each written request are attached.

*(Delete which is not applicable).

Full name(s) of trade unions to which requests for sectoral-level bargaining have been addressed.

.....

.....

.....

.....

(ii) The total number of employees employed in the .....
(*name of sector in respect of*)

.....
which the registration of an industrial council is sought)

sector is .....
(*number*)

(iii) The membership of the employers' organization(s) requesting the establishment of the industrial council in the .....
(*name of sector in respect*

.....
of which the registration of an industrial council is sought)

sector is as follows—

Name of employers' organization(s) requesting establishment of industrial council	Number of employees employed in the sector who are employed by member of the applicant employers' organizations

Full name of employers organization .....

Place .....

Date .....

Signed .....

Position .....

Full name of employers organization .....

Place .....

Date .....

Signed .....

Position .....

Full name of employers organization .....

Place .....

Date .....

Signed .....

Position .....

reg. 9 (1)

Form M

Application by a Trade Union For Exemption from Participating in an Industrial Council

Application by a Trade Union in terms of section 28 (2) for exemption from participating in an Industrial Council

We .....

(*full name of trade union*)

hereby apply for exemption from participating in the .....

(*full name of industrial council*)

Exemption is sought in respect of the following category/categories of members (state category of membership for which exemption sought)

.....

.....

.....

The grounds upon which exemption are sought are the following (see the provisions of s. 28 (2))—

.....

.....

.....

Signed .....

Position .....

Place .....

Date .....

FORM N reg. 9 (2)

APPLICATION BY AN EMPLOYERS' ORGANIZATION FOR EXEMPTION FROM PARTICIPATING IN AN INDUSTRIAL COUNCIL

Application by an employers' organization in terms of s. 28 (2) for exemption from participating in an industrial council.

We .....

(*full name of employers' organization*)

hereby apply for exemption from participating in the .....

(*full name of industrial council*)

.....

Exemption is sought in respect of the following members/employers (state members/employers for which exemption is sought)

.....

.....

.....

The grounds upon which exemption are sought are the following (see the provisions of s. 28 (2))—

.....

.....

.....

.....

.....

.....

Signed .....

Position .....

Place .....

Date .....

FORM O reg. 10 (1)

NOTICE OF INTENTION TO STRIKE

Notice of intention to commence strike action in terms of s. 46 (3) of the Labour Relations Act (Cap. 54:01).

To: .....

(*name and address of other party to dispute*)

and

To: Principal Secretary of Labour

Take notice that .....
(*full name*(*s*) *of other party/parties giving notice*)

.....

and .....
(*full name*(*s*) *of other party/parties to the dispute*)

.....

are in dispute regarding .....
(*brief description of dispute*)

.....

.....

.....

which dispute arose on .....
(*appropriate date on which dispute arose*)

Take further notice that .....
(*full name*(*s*) *of party/parties intending to commence strike action*)

intends to commence strike action on .....
(*date on which strike is to commence*)

Signed .....

Position .....

Place .....

Date .....

reg. 10 (2)

Form P

Notice of Intention to Lockout

Notice of intention to commence lockout in terms of s. 46 (3) of the Labour Relations Act (Cap. 54:01).

To: .....
(*name and address of other party to dispute*)

and

To: Principal Secretary of Labour

Take notice that .....
(*full name*(*s*) *of other party/parties giving notice*)

and .....
(*full name*(*s*) *of other party/parties to the dispute*)

are in dispute regarding .....
(*brief description of dispute*)

.....

.....

.....

which dispute arose on .....
(*appropriate date on which dispute arose*)

Take further notice that .....
(*full name*(*s*) *of party/parties intending to commence lockout*)

intends to commence strike action on .....
(*date on which lockout is to commence*)

Signed .....

Position .....

Place .....

Date .....

FORM Q reg. 12 (4)

CERTIFICATE STATING WHETHER OR NOT A DISPUTE HAS BEEN RESOLVED

This is to certify that the dispute between .....
and ..... which was referred to me on .....
day of ....., 20 ..... has/has not been resolved.

Date .....

Reference number .....

.....

The Conciliator

FORM R reg. 13 (1)

REFERRAL OF RECOGNITION DISPUTE

Referral of recognition dispute to Principal Secretary of Labour in terms of *s*. 25 (4) of the Labour Relations Act (Cap. 54:01).

(1) Details of party referring the dispute.

As the referring party are you:

*a trade union ☐

*an employers' organization ☐

*(tick appropriate box).

Name of trade union or employers' organization referring the dispute

.....

Address .....

.....

Telephone ..... Fax .....

Contact person .....

(2) Details of other party

Is the other party

*an employers' organization ☐

*a trade union ☐

*(tick appropriate box).

Name of employers' organization or trade union .....

.....

Address .....

.....

Telephone ..... Fax .....

Contact person .....

(3) Description of dispute (give brief discription of dispute)

.....

.....

.....

.....

.....

.....

.....

.....

(4) The dispute arose on .....

(*give approximate date on which dispute arose*)

(5) Special features (if any)

I/We would like to bring the following special features of this dispute to the attention of the Principal Secretary

.....

.....

.....

.....

.....

(6) Sector

The dispute exists in the ..... Sector.

(*sector in which dispute exists*)

(7) Desired outcome

The outcome I/We would like

.....

.....

.....

(8) Informing the other party

A copy of this form has been sent to the other party to the dispute. Proof of this is attached to this form.

Signed .....

Position .....

Place .....

Date .....

FORM S reg. 14

REPORTING OF A DISPUTE

Reporting of dispute to the Principal Secretary in terms of s. 43 (1) of the Labour Relations Act (Cap. 54:01).

(1) Details of party referring the dispute.

As the referring party are you:

*an employee ☐

*a trade union ☐

*an employer ☐

*an employers' organization ☐

*(tick appropriate box).

If the referring party is an employee

Your full names .....

Address .....

Telephone ..... Fax .....

Alternative contact person (e.g. a relative or friend)

Name .....

Address .....

Telephone ..... Fax .....

If the referring party is an employer, employers' organization or trade union

Name .....

(*full name of employer, employers' organization or trade union*)

Address .....

Telephone ..... Fax .....

Full name of person dealing with the matter .....

.....

(2) Details of other party

Is the other party:

*an employer ☐

*an employers' organization ☐

*an employee ☐

*a trade union ☐

*(tick appropriate box).

Name .....

(*full names of other party to the dispute*)

.....

Address .....

Telephone ..... Fax .....

Name of person dealing with the matter (if known) .....

.....

(3) Description of dispute (give brief discription of dispute)

.....

.....

.....

.....

.....

.....

.....

.....

.....

(4) The dispute arose on .....

(*give approximate date on which dispute arose*)

(5) Special features (if any)

I/We would like to bring the following special features of this dispute to the attention of the Principal Secretary

.....

.....

.....

.....

.....

(6) Sector

The dispute exists in the .....

(*name of sector in which dispute exists*)

(7) Desired outcome

The outcome I/We would like

.....

.....

.....

.....

.....

(8) Informing the other party

A copy of this form has been sent to the other party to the dispute. Proof of this is attached to this form.

Signed .....

Position .....

Place .....

Date .....

FORM T reg. 15

APPLICATION FOR CONCILIATION

Application for conciliation concerning violation of the Act to Principal Secretary of Labour in terms of s. 76 (1) of the Labour Relation Act (Cap. 54:01).

(1) Details of applicant

As the applicant are you:

*an employee ☐

*a trade union ☐

*an employer ☐

*an employers' organization ☐

*(tick appropriate box).

If the applicant is an employee

Your full names .....

Address .....

Telephone ..... Fax .....

If the applicant is an employer, employers' organization or trade union

Name .....

(*full name of employer, employers' organization or trade union*)

.....

Address .....

Telephone ..... Fax .....

Full name of person dealing with the matter .....

(2) Details of other party

Is the other party:

*an employer ☐

*an employers' organization ☐

*an employee ☐

*a trade union ☐

*(tick appropriate box).

Name .....

(*full names of other party to the dispute*)

.....

Address .....

Telephone ..... Fax .....

Name of person dealing with the matter (if known) .....

.....

(3) Description of violation of Act (give brief description of violation and state which section(s) of the Act have allegedly been violated).

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

(4) The violation occurred on .....

(*give approximate date on which violation occurred*)

(5) Special features (if any)

I/We would like to bring the following special features of this dispute to the attention of the Principal Secretary:

.....

.....

.....

.....

(6) Sector

The violation occurred in the .....

(*name of sector in which dispute exists*)

(7) Desired outcome

The outcome I/We would like:

.....

.....

.....

.....

(8) Informing the other party

A copy of this form has been sent to the other party. Proof of this is attached to this form.

Signed: .....

Position: .....

Place: .....

Date: .....

FIRST SCHEDULE reg. 17

Matter	*Fees* K	t
1. On registration of an organization	1,000	00
2. On change of names of an organization	500	00
3. On amalgamation of organizations, per each amalgamating organization	500	00
4. On alteration of rules of an organization	500	00
5. For inspecting documents, per folio	10	00
6. For copying documents, per folio	10	00

G.N. 16/1999
27/2009

INDUSTRIAL RELATIONS COURT (PROCEDURE) RULES

under s. 71 (1)

Citation

1. These Rules may be cited as the Industrial Relations Court (Procedure) Rules.

Interpretation

2. In these Rules, unless the context otherwise requires—

"Court" means the Industrial Relations Court established under section 110 (2) of the Constitution and includes any person authorized to preside over or to serve as a member of the Court in terms of section 66;

"Chairperson" means the Chairperson of the Court appointed in terms of section 66;

"Deputy Chairperson" means the Deputy Chairperson of the Court appointed in terms of section 66;

"day" means any day other than a Saturday, Sunday or public holiday;

"notice" means a written notice;

"party" means any party to Court proceedings and includes a person representing a party;

"process" means any document or form required to be served or filed in terms of the Act;

Cap. 18:05

"public holiday" has the same meaning as in the Public Holidays Act;

"Registrar" means the Registrar of the Court appointed in terms of section 69 (1) and includes any other person authorized to act in the place of the Registrar.

Office hours

3.—(1) The office of the Registrar shall be open every Monday to Friday, excluding public holidays, from 9.30 a.m. to 12.00 noon and from 2.00 p.m. to 4.00 p.m.

(2) Notwithstanding subrule (1), the Court or the Registrar may direct that any document be filed on any day and at any time.

Address of the Registrar

4. The address and other relevant particulars of the Registrar shall be as follows—

(*a*) physical address:

The Registrar, Industrial Relations Court, Livingstone Avenue, Limbe, Malaŵi.

(*b*) postal address:

The Registrar, Industrial Relations Court, P.O. Box 5596, Limbe, Malaŵi.

Duties of the Registrar

5.—(1) The Registrar shall number applications consecutively and the number of each application shall include the year in which it is filed.

(2) The Registrar may advise and assist a litigant, who in the opinion of the Registrar is indigent, to process any matter.

(3) The Registrar may, if requested to do so by the parties, and shall, if directed to do so by the Court, endeavour to assist the parties in any matter pending in the Court to arrive at a settlement.

(4) The Registrar may preside at any pre-hearing conference if directed to do so by the Court.

(5) In carrying out his functions under subrules (3) and (4), the Registrar may act as a conciliator.

(6) Without prejudice to the general duty of being responsible for the administrative functions of the Court, the Registrar shall—

(*a*) only accept a form or other document if the form or document is filled as permitted in terms of these Rules;

(*b*) only accept and list a matter which substantially complies with the requirements for listing provided for in these Rules;

(*c*) unless otherwise directed by the Court, list any matter on a list appropriate to the nature of the matter and in the order in which the matter became ready for a hearing after the close of pleadings;

(*d*) only on the direction of the Court, remove any matter from the list or restore any matter to the list;

(*e*) issue such process or documentation as may be necessary for a party to enforce any decision or order of the Court in terms of section 75;

(*f*) send any notice to parties which he deems necessary in achieving the objects of and in compliance with the provisions of the Act; and

(*g*) carry out or see to it that all directions and orders of the Court are carried out promptly.

(7) The Registrar shall perform his duties under the supervision of the Chairperson or Deputy Chairperson.

Judicial functions of the Registrar and Deputy Registrar G.N. 27/2009

5A.—(1) The Registrar and a Deputy Registrar shall have power to transact all such business and exercise all such authority as may be transacted and exercised by the Chairperson or Deputy Chairperson in Chambers, except in respect of the following matters or proceedings—

(*a*) matters or proceedings relating to the question of whether or not a dismissal was unfair;

(*b*) applications for stay of execution of any decision of the Court, or of the Chairperson or Deputy Chairperson;

(*c*) where a notice of motion raises for the determination of the Court a question as to the construction of a document or a question of law, the determination of the question; and

(*d*) any other matter or proceedings which by any of these rules is required to be heard by the Chairperson or the Deputy Chairperson.

(2) Any decision of the Registrar or a Deputy Registrar may be reviewed by the Chairperson or Deputy Chairperson on application by a party to the matter or proceeding; and upon such review, the Chairperson or Deputy Chairperson may—

(*a*) dismiss the application or confirm, set aside, vary or amend the decision of the Registrar or Deputy Registrar;

(*b*) determine the matter as if it was coming before him or her in the first instance and give such decision as the case may require; or

(*c*) refer the matter back to the Registrar, or Deputy Registrar with directions for further consideration.

Filing of documents

6.—(1) Documents may be filed with the Registrar by—

(*a*) handing the document to the Registrar;

(*b*) sending a copy of the document by registered post;

(*c*) telegram; or

(*d*) faxing the document or using other electronically printed transmission.

(2) A document shall be deemed to have been filed with the Registrar—

(*a*) on the date on which the document is handed to the Registrar;

(*b*) on the date on which the document sent by registered post or telegram is received by the Registrar; or

(*c*) on completion of the whole of the transmission of the facsimile or other electronically printed transmission.

(3) The Court shall, in respect of any document filed with the Court, levy a filing fee at the scale applicable in the High Court.

Mode of service of documents

7. A document that is required to be served on any person may be served in any one of the following ways, namely—

(*a*) by handing a copy of the document to the person;

(*b*) by leaving a copy of the document at the person's reputed place of residence or business with any other person who is apparently at least 16 years old and in charge of the premises at the time;

(*c*) by leaving a copy of the document at the person's reputed place of employment with any person who is apparently at least 16 years old and apparently in authority;

(*d*) by faxing a copy of the document to the person, if the person has a facsimile number or using other electronically printed transmission;

(*e*) by handing a copy of the document to any representative authorized in writing to accept service on behalf of the person; and

(*f*) if the person has chosen an address or facsimile number for service, by leaving a copy of the document at that address or by faxing it to that facsimile number.

Designation of officers of a company, firm, etc., to accept service

8. Officers on whom service shall be effected where the person to be served is a company, trade union, partnership, firm, association, municipality, statutory body or Government shall be as follows—

(*a*) if the person is a company or other body corporate, by serving a copy of the document on a responsible employee of the company or body corporate at its registered office or its principal place of business within the district in which the dispute first arose or, if there is no employee willing to accept service, by affixing a copy of the document to the main door of the office or place of business;

(*b*) if the person is a trade union or employers' organization, by serving a copy of the document on a responsible employee who at the time of service is apparently in charge of

the reputed main office of the union or employers' organization, the union's or employers' organization's office within the district in which the dispute first arose or the reputed office of the union or employers' organization or, if there is no person willing to accept service, by affixing a copy of the document to the main door of the office.

(*c*) if the person is a partnership, firm or association, by serving a copy of the document on a person who at the time of service is apparently in charge of the premises and apparently at least 16 years of age at the reputed place of business of such partnership, firm or association or, if such partnership, firm or association has no place of business by serving a copy of the document on a partner, the owner of the firm, the chairperson secretary or the manager or other controlling body of the partnership, firm or association, as the case may be;

(*d*) if the person is a municipality, by serving a copy of the document on the town clerk, assistant town clerk or any person acting on behalf of the town clerk or assistant town clerk;

(*e*) if the person is a statutory body, by serving a copy on the secretary or similar officer, a member of the board or committee of the body or any person acting on behalf of the body; or

(*f*) if the person is the Government, by serving a copy at the office of the Attorney General or other person authorized to act on behalf of the Government in respect of such proceedings.

Other means of service of documents

9. Notwithstanding rules 7 and 8, a document that is required to be served on any person may be served by any other means authorized by the Court.

Proof of service of documents

10.—(1) Service shall be proved in Court in any one of the following ways—

(*a*) by an affidavit by the person who effected service;

(*b*) if service was effected by facsimile or other electronically printed transmission by an affidavit of the person who effected service which must provide proof of the correct facsimile number and confirmation that the whole of the transmission was completed; or

(*c*) if the person on whom the document has been served is already on record as a party, by a signed acknowledgement or receipt by the party on whom the document was served.

(2) If the Court is not satisfied that service has taken place in accordance with this rule, it may make any order as to service that it deems fit.

Statement of claim

11. A document initiating proceedings, known as a "statement of claim", may follow the form set out in IRC Form 1 and shall—

(*a*) have a heading containing the following information—

(i) the title of the matter;

(ii) the case number assigned by the Registrar to the matter;

(iii) an address of the party delivering the document at which the party will accept notices and service of all documents in the proceedings; and

(iv) a notice advising the other party that if the party intends to oppose the matter, he must deliver a response in terms of rule 12 within 14 days of service of the statement of claim, failing which the matter may be heard in the party's absence and an order as to costs may be made against the party;

(*b*) have a substantive part containing the following information—

(i) the names, description and addresses of the parties;

(ii) a clear and concise statement of the material facts, in chronological order, on which the party relies, which statement must be sufficiently particular to enable any opposing party to reply to the document;

(iii) a clear and concise statement of the legal issues that arise from the material facts which statement must be sufficiently particular to enable any opposing party to reply to the document; and

(iv) the relief sought;

(*c*) be signed by the party to the proceedings or by his representative;

(*d*) express all dates, sums and numbers contained in the document in figures; and

(*e*) be accompanied by a schedule listing the documents that are material and relevant to the claim.

Response

12.—(1) Any party on whom a statement of claim is served may deliver a response to the statement.

(2) The response may follow the form set out in IRC Form 2.

(3) A response is required to be delivered within 14 days of the date on which the statement of claim is delivered.

Pre-hearing conference

13.—(1) The parties shall, when requested by the Court to do so, hold an informal conference at a mutually convenient time, date and place prior to the hearing of any matter.

(2) At the conference referred to in subrule (1), without prejudice to the rights of the parties, consideration may be given to the following matters—

(*a*) any means whereby the dispute may be settled, inclusive of such previous endeavours, if any, made by parties to settle the dispute by agreement or otherwise;

(*b*) any agreements as to nature and extent of the unresolved issues;

(*c*) such facts as are common cause or are admitted by any party;

(*d*) any steps which may shorten the hearing;

(*e*) discovery or exchange of document;

(*f*) the manner in which documentary evidence is to be dealt with;

(*g*) whether evidence on affidavit is to be admitted with or without cross-examination of the deponent;

(*h*) which party shall begin presenting his case;

(*i*) the necessity or otherwise for an on-the-spot inspection;

(*j*) securing the presence at Court of any witness; and

(*k*) any other matter or means whereby the proceedings may be shortened.

(3) Notwithstanding subrule (1), any party may on reasonable notice require the other party or parties, as the case may be, to attend a conference at a mutually convenient time, date and venue to attempt to agree on such matters referred to in subrule (2) as may be relevant.

(4) Notwithstanding subrules (1) and (3) the parties shall, when directed by the Court to do so, hold a further conference in chambers prior to the hearing of any matter during which the Chairperson, Deputy Chairperson or Registrar may preside.

(5) In exercising his functions under subrule (4), the presiding officer may also act as conciliator.

(6) The parties shall draw up and sign minutes recording the matters agreed to at the conferences referred to in subrules (1) and (3) as well as the matters still in dispute and the party initiating the proceedings shall ensure that a copy thereof is filed with the Registrar at least 3 days prior to the hearing.

(7) The Court may refuse to commence the hearing of the matter on the date set down if the pre-hearing minutes have not yet been filed and the Court may make such order as it deems fit in the circumstances.

Discovery of documents

14.—(1) A document or tape recording not disclosed may not, except with the leave of the Court granted on whatever terms the Court deems fit, be used for any purpose at the hearing by the person who was obliged to disclose it except that the document or tape recording may be used by a person other than the person who was obliged to disclose it.

(2) If the parties cannot reach an agreement regarding the discovery of documents and tape recordings, either party may apply to the Court for an appropriate order.

(3) For the purpose of this rule, a tape recording includes a soundtrack, film, magnetic tape, record or any other material on which visual images, sound or other information can be recorded.

Expert witnesses

15.—(1) Any party intending to call an expert witness shall deliver a notice to that effect together with a summary of the evidence of the expert witness to both the Registrar and the other party at least 14 days before the date of the hearing.

(2) If a party fails to comply with subrule (1), the Court may—

(*a*) decline to admit the evidence of the expert witness; or

(*b*) admit the evidence of the expert witness if it is satisfied that the failure was due to a good reason.

Interlocutory applications and matters not covered by these Rules

16.—(1) An interlocutory application or other application incidental to any proceedings pending before the Court in respect of which no procedure has been provided for by the Act or by these Rules shall be brought by a party on notice of motion which shall, as near as possible, be in the form set out in IRC Form 3.

(2) The applications referred to in subrule (1) shall be supported by an affidavit:

Provided that—

(*a*) applications as to procedural aspects need not be supported by affidavit; and

(*b*) depending on the nature of the application, the Court may dispense with such notice.

Postponements and withdrawals

17.—(1) Whenever a matter is settled out of Court or when parties agree to postpone a matter, the party who placed the matter on the list shall forthwith notify the Registrar by delivering a notice of postponement or withdrawal, as the case may be.

(2) Parties shall not, without the leave of Court, postpone or remove a matter from the list within 2 weeks of the hearing date unless such matter has been settled.

Evidence

18.—(1) Without prejudice to section 71, the Court may permit the parties together with or in lieu of other evidence to—

(*a*) adduce evidence by way of affidavit;

(*b*) argue a matter on a stated case; or

(*c*) argue a matter on the record of some other proceedings.

(2) The Court shall decide in its discretion which party shall commence leading evidence.

Heads of arguments

19. The Court may at any time before, during or after a hearing and in any matter call upon the parties to deliver a concise statement of the main points which the parties respectively intend to argue and a list of authorities intended to be referred to and shall specify the date by which those documents shall be delivered and the number of copies required.

Language to be employed in Court

20.—(1) The language to be employed in the Court shall be English and the evidence, all processes and all the records of proceedings in the Court shall be in English.

(2) If any of the parties or witnesses in proceedings before the Court does not understand English, then the proceedings shall be interpreted from English into the language understood by the parties or the witnesses concerned, as the case may be, and vice versa.

Oath of office

21.—(1) Before any interpreter may interpret in Court, he shall take an oath or make an affirmation in the following form—

"I, ...
(*Full names*)

do hereby swear/solemnly and sincerely affirm and declare that whenever I may be called upon to perform the functions of an interpreter in any proceedings in the Court, I shall truly and correctly and to the best of my ability interpret from the language I am called upon to interpret into English and vice versa".

(2) Any appointed member of the Court shall not perform any function of the Court unless he has taken an oath or made an affirmation in the following form—

"I, ...
(*Full names*)

do hereby swear/solemnly and sincerely affirm and declare that I will in my capacity as an appointed member of the Industrial Relations Court administer justice to all persons alike without fear, favour or prejudice".

Costs

22.—(1) Costs shall be taxed by the Registrar in accordance with the scale employed by the High Court for the time being.

(2) Costs taxed by the Registrar shall be subject to review by the Chairperson or Deputy Chairperson on application by one or more of the parties on notice to all other parties within 14 days of such taxation.

(3) An application for review under subrule (2) shall identify each disputed item or part of an item together with the grounds of objection to the allowance or disallowance thereof.

(4) Any party may within 14 days of receipt of an application under subrule (2) submit written contentions, including ones not advanced at the taxation, on each item sought to be reviewed and thereafter the Registrar shall frame his report and supply a copy to each party who may within 7 days of receipt thereof submit further contentions.

(5) The Registrar shall submit the documents under subrules (2) and (4) to the Chairperson or Deputy Chairperson who may decide the matter—

(*a*) on the documents alone;

(*b*) on the documents and such information as he may require from the Registrar; or

(*c*) if he deems fit, after hearing the parties in chambers.

Court records

23.—(1) The Court shall keep a record of—

(*a*) any judgement or ruling given by the Court;

(*b*) any evidence given in Court;

(*c*) any objection made to any evidence received or tendered;

(*d*) any on-the-spot inspection and any matter recorded as a result thereof; and

(*e*) the proceedings of the Court generally:

Provided that the Court may direct that argument need not be recorded.

(2) Records of the Court shall be kept by such means, including hand-written notes, shorthand notes or electronic recording as the Court may deem expedient.

(3) Hand-written notes, shorthand notes and electronic recordings shall be filed with the Registrar after they have been certified as correct by the person who made them.

(4) A transcript of the notes or record or a part thereof may be made on request of the Court or any of the parties upon payment of such fees as may be prescribed from time to time.

(5) After the person who made the transcription has certified it as correct, the transcript together with the hand-written notes, shorthand notes or electronic record shall be returned to the Registrar.

(6) The transcript of the hand-written notes, shorthand notes or electronic records certified as envisaged in subrule (3) shall be deemed to be correct until the contrary is proved.

Witness attendance and related costs

24.—(1) A witness who attends the Court by order of the Court shall be paid an allowance towards attendance, travel and subsistence as provided for in the Legal Practitioners Remuneration, Taxation of Costs, and Allowances to Witnesses Rules made under the Courts Act. Cap. 3:02

(2) A party who requires a witness to attend Court shall be liable to pay the witness an allowance towards attendance, travel and subsistence as provided for in the Legal Practitioners Remuneration, Taxation of Costs and Allowances to Witnesses Rules made under the Courts Act. Cap. 3:02

(3) Any party who anticipates any problem or possible problem in securing the attendance of a witness may request the Court to authorize the issue of a subpoena for the witness to appear before the Court on a date and at a time and place specified in the subpoena:

Provided that the party shall satisfy the Court that, in his opinion, the witness may be able to give material information concerning the alleged dispute, or he suspects or believes that the witness has in his possession, custody or under his control any book, document or thing which has any bearing on the alleged dispute:

Provided further that the party shall also satisfy the Court as to the grounds for anticipating any problem in securing the attendance of the witness:

Provided further that the provisions of subrule (2) shall apply in respect of the attendance, travel and subsistence costs of the witness.

General powers

25.—(1) Without prejudice to the decision-making power of the Court under section 67, the Court may on application or of its own motion at any time—

(*a*) before or after the expiry of any period condone any failure to comply with any rule including time periods save for the time within which an appeal may be lodged with the High Court and may abridge any time prescribed by these Rules;

(*b*) allow the allegations in any form to be amended at any time;

(*c*) if in any proceedings it appears that a party to the proceedings has been incorrectly or defectively cited, correct the error or defect or order the substitution of the party;

(*d*) join any other person as a party to the proceedings at any time on any such terms and conditions as it deems fit;

(*e*) make an order consolidating the disputes pending before it in separate proceedings where it deems such consolidation to be expedient and just;

(*f*) allow any party at any time to amend his application or his opposition;

(*g*) grant any order in the absence of a party if it is satisfied that the party had notice of the set hearing date;

(*h*) rescind on good cause being shown, any order made by it in the absence of a party;

(*i*) order any person who fails to comply with any notice or directive given in terms of these Rules to do so;

(*j*) order that any party who fails to comply with any notice or directive shall not be entitled to any relief in such proceedings;

(*k*) set aside any irregular step which has been taken by another party unless the party complaining of the irregular step has with knowledge of the irregularity taken any further step in the proceedings;

(*l*) declare, in the case of a partnership or firm, that any person was at a certain time or for a certain period a partner of a partnership or the proprietor of a firm;

(*m*) grant—

(i) urgent interim relief pending a decision by the Court after a hearing; and

(ii) an interdict or any other order in the case of any action that is prohibited by law regarding any trade dispute;

(*n*) before or during a hearing, grant a rule nisi and confirm or discharge a rule nisi on a return date if appropriate unless the Act otherwise provides; and

(*o*) preside at any pre-hearing conference.

(2) In any application referred to in subrule (1), the Court may make such order as it deems fit.

(3) The Chairperson or, in his absence, the Deputy Chairperson shall, in his discretion, decide when and for how long the Court shall be in recess during any year.

(4) The Court, in the exercise of its powers and discretion and in the performance of its functions, may act in such manner as it may consider expedient in the circumstances in order to achieve the objectives of the Act and in so doing it shall have regard to substance rather than form, save as is otherwise provided in the Act.

Default judgment

26.—(1) The Registrar shall enter judgment by default against a party if—

(*a*) the party does not respond to a statement of claim or an application within the prescribed time limit or any extension granted by the Court within which to deliver a response; or

(*b*) directed to do so by the Court.

(2) Subrule (1) (*a*) shall not apply if the party initiating the proceedings instructs the Registrar not to enter judgment by default.

(3) Notwithstanding that a default judgment has been entered, the person initiating the proceedings may request the Registrar to have the matter removed from the list if the matter has been settled.

(4) If the Registrar receives a request in terms of subrule (3), the Registrar shall remove the matter from the list.

Appeals Cap. 3:02

27. An appeal in terms of section 65 (2) shall be dealt with in terms of Order XXXI of the Subordinate Courts Rules made under the Courts Act.

Reckoning periods of time

28. Where an act is required to be done within a specified period of days after or from a specified date, the number of days shall be calculated by excluding the specified date and including the last day of the specified period of days:

Provided that where the last day of the specified period of days falls on a Saturday, Sunday or public holiday, the number of days shall be calculated by excluding—

(*a*) the specified date; and

(*b*) the Saturday, Sunday or public holiday, as the case may be.

ICR FORM I

rule 11

IN THE INDUSTRIAL RELATIONS COURT OF MALAŴI
APPLICANT'S STATEMENT OF CLAIM

Matter No. IRC ...../.....

In the dispute between

Applicant: .....

Respondent: .....

To: The Registrar
Industrial Relations Court
P.O. Box 5596
Limbe
Malaŵi

And to: (*Insert the Respondent's name and address*)

.....

.....

.....

.....

(1) Particulars of the Applicant:

(*a*) name (*if there are a number of Applicants, attach a list with all their names*)

.....

.....

(*b*) description (*e.g. individuals, firm, company, partnership, organization, trade union, undertaking, etc.*)

.....

(*c*) physical address .....

.....

(*d*) postal address .....

.....

(*e*) telephone No .....

(*f*) telefax No. .....

(*g*) address for service of documents in these proceedings .....

(2) Particulars of the Respondent:

(*a*) name.....

(*b*) description (*e.g. individual, firm, company, partnership, organization, trade union, undertaking, etc.*)

.....

(*c*) physical address .....

.....

(*d*) postal address .....

(*e*) telephone No .....

(*f*) telefax No. .....

(3) Employment particulars of the Applicant:

(*a*) date of commencement of employment with the Respondent:

.....

(*b*) nature of the Respondent's business:

.....

(*c*) nature of the Applicant's employment:

.....

(*d*) remuneration of the Applicant when so employed:

.....

(4) Brief description of alleged trade dispute: (*e.g. dismissal, suspension, withholding wages, etc.*)

.....

.....

.....

.....

(5) Particulars of alleged trade dispute: (*set out clear and concise particulars in paragraphs, including sub-paragraphs, consecutively numbered*)

.....

.....

.....

(6) Particulars of relief sought:

.....

.....

(7) Dates and venues of all attempts to settle the alleged dispute—

(*a*) before the District Labour Officer:

.....

.....

(*b*) before the Regional Labour Officer:

.....

.....

(*c*) before the Labour Commissioner/Principal Secretary responsible for labour:

.....

.....

(*d*) privately between the parties:

.....

.....

(8) List of books, documents and other relevant materials to this matter which are in the Applicant's possession or under his control:

.....

.....

.....

.....

(9) Notice to the Respondent—

(*a*) if the Respondent intends to oppose this application, he is required within 14 days after service on him of the

Applicant's statement of claim to deliver, in terms of rule 12, his statement of defence as near as may be in accordance with IRC Form 2;

(*b*) if the Respondent fails to deliver a statement of defence, a determination, including an order as to costs, may be made in his absence.

Signed at ..... this ..... day of ....., 20.....

.....
Applicant/Representative of the Applicant

NOTE: If the Respondent intends to counterclaim, he must deliver simultaneously with his statement of defence a statement as near as may be in accordance with IRC Form 1, with the necessary amendments to the required particulars to suit his specific counterclaim and the heading should be changed to read: "Respondent's Counterclaim".

IRC FORM 2

rule 12

IN THE INDUSTRIAL RELATIONS COURT OF MALAŴI
RESPONDENT'S STATEMENT OF REPLY

Matter No. IRC ...../.....

In the dispute between:

Applicant: .....

Respondent: .....

To: The Registrar
Industrial Relations Court
P.O. Box 5596
Limbe
Malaŵi

And to: (*Insert the Applicant's name and address*)

.....

.....

.....

.....

(1) Particulars of the Applicant:

(*a*) name .....

.....

(*b*) description (*e.g. individual, firm, company, partnership, organization, trade union, undertaking, etc.*)

(*c*) trade name (if any) .....

(*d*) physical address .....

.....

(*e*) postal address .....

(*f*) telephone No .....

(*g*) telefax No. .....

(*h*) address for service of documents in these proceedings:

.....

.....

(2) Objection to jurisdiction of the Court: (*complete only if applicable, set out fully the grounds for such objections*)

.....

.....

.....

(3) The Respondent's opposition to the applicant's statement of claim: (*set out clear and concise grounds of opposition with a specific admission or denial of the allegations in each paragraph and subparagraph*)

.....

.....

.....

.....

(4) Respondent's counter claim, if any: (*set out clear and concise grounds of counter claims*)

.....

.....

.....

(5) Relief sought: (*if the Respondent opposes the relief sought but thinks the Applicant is entitled to some other relief, set out particulars of such other relief*)

.....

.....

.....

(6) List of books, documents and other materials relevant to the Respondent's opposition which are in the Respondent's possession or under his control:

.....

.....

.....

Signed at..... this..... day of ....., 20.....

.....
Respondent/Representative of the Respondent

IRC FORM 3
rule 16 (1)
IN THE INDUSTRIAL RELATIONS COURT OF MALAŴI

Held at

Matter No. IRC ..... / .....

In the Matter between:

.....Applicant
and
.....Respondent

NOTICE OF MOTION

To: The Registrar
Industrial Relations Court
P.O. Box 5596
Limbe
Malaŵi

And to: (*Insert the Respondent's name and address*)

.....

.....

.....

Kindly take notice that the Applicant intends to bring an application at a time and date to be fixed by the Registrar for an order in the following terms:

.....

.....

.....

NOTE: The facts on which the Applicant relies for the relief sought must be set out clearly and concisely in an accompanying affidavit in paragraphs, including subparagraphs, consecutively numbered and any other supporting affidavit and document must be attached to this founding affidavit. The Respondent in his answering affidavit must either admit or deny each of these facts and must similarly set out facts on which he relies for opposing such application.

(*Set out the relief sought*)

.....

In the case of an urgent application, the Applicant must telephone the Registrar in advance for a suitable date and time and the paragraph relating to relief being sought should then read as follows:

"Kindly take notice that the Applicant intends to bring an urgent application at the Industrial Relations Court at ..... on the ..... day of ....., 20..... or soon thereafter as the matter can be heard, for an order in the following terms: (*Here set out the urgent relief sought*)"

.....

.....

.....

Take notice further that the affidavit of ..... together with the annexures thereto (if any), annexed hereto, will be used in support of this application.

Take notice further that the Applicant has chosen the following address at which service of process in these proceedings will be accepted.

.....

.....

.....

.....

Take notice further that the Respondent may file an affidavit in response with the Registrar and serve a copy thereof on the Applicant within 14 days of service of this application on the Respondent.

The Registrar is directed to place this matter on the list for a hearing and to notify the parties of the date, place and time of such hearing.

Signed at ..... this ..... day of ....., 20.....

.....
Applicant/Representative of the Applicant

NOTE: In the case of an urgent application, the last two paragraphs of the Notice of Motion are not applicable.

EMPLOYMENT

CHAPTER 55:01

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CHAPTER 55:01

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An Act to establish, reinforce and regulate minimum standards of employment with the purpose of ensuring equity necessary for enhancing industrial peace, accelerated economic growth and social justice and for matters connected therewith and incidental thereto

6 of 2000
27 of 2010
G.N. 47/2000
2/2002
24/2004
11/2011

[1ST SEPTEMBER, 2000]

PART I

PRELIMINARY

Citation

1. This Act may be cited as the Employment Act.

Application

2.—(1) Subject to subsection (2), this Act applies to the private sector and the Government, including any public authority or enterprise.

(2) This Act does not apply to members of the armed forces, the prisons service or the police, except those employed in a civilian capacity.

Interpretation

3. In this Act, unless the context otherwise requires—

"Commissioner" means the Labour Commissioner appointed pursuant to section 8;

"Court" means the Industrial Relations Court established under section 110 (2) of the Constitution;

"employee" means—

(*a*) a person who offers his services under an oral or written contract of employment, whether express or implied;

(*b*) any person, including a tenant share cropper, who performs work or services for another person for remuneration or reward on such terms and conditions that he is in relation to that person in a position of economic dependence on, and under an obligation to perform duties for, that

person more closely resembling the relationship of employee than that of an independent contractor; or

(*c*) where appropriate, a former employee;

"employer" means—

(*a*) any person, body corporate, undertaking, public authority or body of persons who or which employs an employee and includes heirs, successors and assignees of the employer; or

(*b*) where appropriate, a former employer;

"forced labour" means any work or service that is exacted from any person under the threat of any penalty and is not offered voluntarily, but does not include—

(*a*) any compulsory military service or work of a purely military character;

(*b*) any work or service that forms part of the normal communal or civil obligations of citizens of Malaŵi;

(*c*) any work or service exacted from a person as a consequence of a conviction by any court:

Provided the person is not hired by or placed at the disposal of a private individual, company or association and the work or service is carried out under the supervision and control of a public authority;

(*d*) any work or service exacted in emergency situations where the life or well being of the whole or part of the population is endangered, but only to the extent that the requiring of such labour is reasonably justifiable in the circumstances; or

(*e*) minor communal services of a kind performed by members of the community in the direct interest of the community:

Provided that the members of the community have been consulted concerning the need for such services;

"industrial undertakings" mean—

(*a*) mines, quarries and other works for the extraction of minerals;

(*b*) undertakings in which articles are manufactured, altered, cleaned, ornamented, finished, adapted for sale, broken up or demolished, or in which materials are transformed, including undertakings engaged in food processing, agro-processing activities, ship building or in the generation, transformation or transmission of electricity or motive power of any kind; or

(*c*) undertakings engaged in building and civil engineering work, including constructional, repair, maintenance, alteration and demolition work;

"labour officer" includes the Commissioner, Regional Labour Officer and District Labour Officer;

"remuneration" means the wage or salary and any additional benefits, allowances or emoluments whatsoever payable, directly or indirectly, whether in cash or in kind, by the employer to the employee and arising out of the employee's employment;

"wage" means all earnings, however designated or calculated, capable of being expressed in terms of money and fixed by mutual agreement or by law, which are payable by virtue of a written or unwritten contract of employment by an employer to an employee for work done or to be done or for service rendered or to be rendered.

PART II

Fundamental Principles

Prohibition against forced labour

4.—(1) No person shall be required to perform forced labour.

(2) Any person who exacts or imposes forced labour or causes or permits forced labour shall be guilty of an offence and liable to a fine of K10,000 and to imprisonment for two years.

Anti-discrimination

5.—(1) No person shall discriminate against any employee or prospective employee on the grounds of race, colour, sex, language, religion, political or other opinion, nationality, ethnic or social origin, disability, property, birth, marital or other status or family responsibilities in respect of recruitment, training, promotion, terms and conditions of employment, termination of employment or other matters arising out of the employment relationship.

(2) Subsection (1) does not preclude any provision, programme or activity that has as its object the improvement of conditions of disadvantaged persons, including those who are disadvantaged on the grounds enumerated in subsection (1).

(3) Any person who contravenes this section shall be guilty of an offence and liable to a fine of K10,000 and to imprisonment for two years.

Equal pay

6.—(1) Every employer shall pay employees equal remuneration for work of equal value without distinction or discrimination of any kind, in particular, on basis of race, colour, sex, language, religion, political or other opinion, nationality, ethnic or social origin, disability, property, birth, marital or other status or family responsibilities.

(2) Where a violation of subsection (1) is alleged, the employer shall bear the burden of proving that there was no violation.

Remedies for infringement of fundamental rights

7. Where a complaint alleging infringement of rights contained in this Part has been proved, the Court shall make such order as it deems necessary to ensure compliance with the provisions of this Part, including an order for reinstatement of an employee, the restoration to him of a benefit or advantage and an order for the payment of compensation.

PART III

Administration

The Labour Commissioner and labour officers

8.—(1) There shall be appointed in the public service an officer to be designated as the Labour Commissioner (in this Act otherwise referred to as the "Commissioner"), and other public officers subordinate to him, who shall be responsible for the effective administration and application of this Act.

(2) Without derogating from the generality of subsection (1), the Commissioner shall be responsible for—

(*a*) inspecting places of work as often and as thoroughly as is necessary;

(*b*) supplying relevant technical information and advice to employers, employees and other persons on labour matters;

(*c*) making proposals for the periodic review of this Act;

(*d*) the making of such reports as he shall consider appropriate or as the Minister may require; and

(*e*) any other matter that shall require administration under this Act.

(3) The Commissioner may, in writing, authorize any public officer to exercise any or all of the powers of the Commissioner, subject to such conditions, including territorial restrictions, as the Commissioner may stipulate in the authorization.

(4) In the performance of his duties under this Act, the Commissioner shall be subject to—

Cap. 1:03

(*a*) the general and special directions of the Minister; and

(b) for avoidance of doubt, the provisions of the Public Service Act.

(5) This Act shall be enforced by labour officers, acting subject to the direction of the Commissioner and, for that purpose, labour officers shall have the powers set out in section 9.

Powers of labour officers

9.—(1) A labour officer—

(*a*) may, subject to paragraph (*c*), enter any workplace freely and without prior notice at any hour of the day or night;

(*b*) may, subject to paragraph (*c*), enter by day any premises which he reasonably believes to be a workplace;

(*c*) shall not enter the private home of an employer pursuant to paragraphs (*a*) and (*b*) except with the consent of the employer or under the authority of a warrant issued by a magistrate;

(*d*) may, in general, carry out any examination, test or enquiry which he considers necessary in order to satisfy himself that the provisions of this Act or any other law relating to the employment of persons are being strictly observed and, in particular, may—

(i) interrogate, alone or in the presence of witnesses, the employer or the employees on any matter concerning the application of this Act and any other law relating to the employment of persons;

(ii) require the production of any records, books, registers or other documents, the keeping of which is prescribed by this Act or any other law relating to the employment of persons or conditions of work, in order to ensure that this Act and any other law relating to the employment of persons is being respected, and to copy such documents or take extracts there-from;

(iii) enforce the posting of any notices required by this Act or any other law relating to the employment of persons; and

(iv) take or remove, for purposes of analysis, samples of materials and substances used or handled, subject to the employer or the employer's representative being notified of any samples or substances taken or removed for this purpose;

(*e*) may require from employers and employees information as to the remuneration, hours and conditions of work;

(*f*) may inspect any record of accidents or occupational disease kept by the employer pursuant to the provisions of the Occupational Safety, Health and Welfare Act or any other law and require from an employer information as to the causes and circumstances relating to any accident or occupational disease that may have occurred on the employer's premises or in the course of employment; Cap. 55:07

(*g*) may be accompanied by a member of the police force if he has reasonable cause to apprehend any serious obstruction in the execution of his duty; and

(*h*) may take steps with a view to remedying defects observed in plant layout, installation or working methods which he reasonably believes constitute a threat to the health or safety of employees.

(2) In order to enable a labour officer to take steps under subsection (1) (*h*), a labour officer shall have powers to make orders requiring—

(*a*) such alteration to the plant installation or layout, to be carried out within a specified time limit, as may be necessary to secure compliance with the legal provisions relating to health or safety of employees; or

(*b*) in the event of imminent danger to the health or safety of the employees, measures with immediate executory force.

Labour officer to notify employer of his presence

10. A labour officer shall, when on an inspection visit, notify the employer or the employer's representative of his presence, unless the labour officer considers that such notification may be prejudicial to the performance of his duties.

Free access and assistance to a labour officer

11. An employer shall—

(*a*) grant an employee every opportunity and necessary facilities for communicating freely with a labour officer; and

(*b*) when so requested, afford every reasonable assistance to a labour officer.

Prohibition against victimization

12. No employer shall inflict a disadvantage on an employee for anything done by the employee in pursuance of the provisions of this Part.

Prohibition against revealing secret information

13.—(1) No labour officer shall, while in office or subsequently, reveal any manufacturing or commercial secret or working process which comes to his knowledge in the course of his duties.

(2) A labour officer shall treat as absolutely confidential the source of any complaint bringing to his notice a contravention of this Act and shall not reveal to the employer or the employer's representative that inspection was made in consequence of the receipt of a complaint that a breach of this Act appeared to have been committed.

Prohibition against conflict of interest

14. A labour officer shall not have any interest, direct or indirect, in the undertakings under his supervision.

Assistance to small enterprises

15. In exercise of his powers, a labour officer shall take into account the size, capitalization and degree of formality of the operation of undertakings under his supervision and shall make all

efforts to assist smaller and informal enterprises in understanding and complying with this Act and any other law relating to the employment of persons.

Reports

16.—(1) A labour officer shall within thirty days of conducting an inspection submit to the Regional Labour Officer a report in respect thereof.

(2) In addition to reports referred to in subsection (1), a labour officer shall, on such intervals as may be determined by the Commissioner but which intervals shall not be less than once a year, submit periodic reports to the Regional Labour Officer.

(3) The Regional Labour Officer shall every three months transmit to the Commissioner the reports submitted to him pursuant to subsections (1) and (2).

(4) The reports referred to in subsections (1) and (2) shall be drawn up in such manner and deal with such subjects as may be determined by the Commissioner.

Annual general report

17.—(1) The Commissioner shall publish an annual general report on the work of the inspection service.

(2) The annual report shall be published within a reasonable time after the end of the year to which it relates and, in any case, within twelve months after the end of the year.

(3) The annual general report shall be circulated to all registered employee's organizations and employer's organizations.

Content of the annual general report

18. The annual general report referred to in section 17 shall deal with all subjects under the control of the Commissioner including—

(*a*) laws and regulations relevant to the work of the inspection service;

(*b*) staff of the labour inspection service;

(*c*) statistics of workplaces liable to inspection and the number of workers employed therein;

(*d*) statistics of inspection visits;

(*e*) statistics of violations and penalties imposed in respect of the violations;

(*f*) statistics of industrial accidents; and

(*g*) statistics of occupational diseases.

Identity card

19. Every labour officer shall be furnished by the Secretary responsible for labour matters with an identity card and shall, if so required in the course of exercising his duties under this Act, produce the card.

Obstruction, etc., of labour officers

20. Any person who—

(*a*) wilfully obstructs a labour officer in the exercise of any of the powers conferred upon him by this Act;

(*b*) fails to comply with any lawful requirement or order of a labour officer given or made under this Act;

(*c*) prevents or attempts to prevent any employee from being examined under section 9 (1) (*d*); or

(*d*) fails to produce any book, register or other document upon being so required under section 9 (1) (*d*),

shall be guilty of an offence.

PART IV

Employment of Young Persons

Prohibition against child labour

21.—(1) Subject to subsection (2), no person under the age of fourteen shall be employed or work in any public or private agricultural, industrial or non-industrial undertaking or any branch thereof.

(2) Subsection (1) shall not apply to work done in homes, vocational technical schools or other training institutions:

Provided that work done in a vocational technical school or other training institution is—

(*a*) approved and supervised by a public authority; or

(*b*) an integral part of the educational or vocational training programme for which the school or institution is responsible.

Hazardous work

22.—(1) No person between the age of fourteen and eighteen years shall work or be employed in any occupation or activity that is likely to be—

(*a*) harmful to the health, safety, education, morals or development of such a person; or

(*b*) prejudicial to his attendance at school or any other vocational or training programme.

(2) The Minister may, in consultation with relevant organizations of employers and employees, specify, by notice published in the *Gazette*, occupations or activities which, in his opinion, are likely to have the effect mentioned in subsection (1).

23. Every employer shall keep a register of any person under the age of eighteen years employed by or working for him. Register of young persons

24. Any person who contravenes any provision of this Part shall be guilty of an offence and liable to a fine of K20,000 and to imprisonment for five years. Offences against this Part

PART V

Contracts

25.—(1) Unless otherwise provided by this Act, this Part applies to all types of contracts of employment. Types of contracts

(2) A contract of employment shall be in any one of the following forms—

(*a*) a contract for an unspecified period of time;

(*b*) a contract for a specified period of time;

(*c*) a contract for a specific task.

26.—(1) In a contract of employment in respect of a skilled worker, the parties may agree on the duration of the probationary period: Probationary period

Provided that the period shall not, in any event, exceed twelve months.

(2) During a probationary period, a contract of employment may be terminated at any time by either party without notice.

(3) For purposes of this section, "skilled worker" means an employee in an undertaking who has special ability to do something, which ability is gained through acquisition, programmed or otherwise, of knowledge, attitude and behaviour.

27.—(1) Every employer shall give to each employee a written statement of particulars of employment. Particulars of employment

(2) The statement referred to in subsection (1) shall be given—

(*a*) with respect to an employee in employment at the commencement of this Act, within three months of the commencement of this Act, to each employee who is employed by the employer; and

(*b*) with respect to an employee employed after the commencement of this Act, within one month of his reporting for work.

(3) The written statement referred to in subsections (1) and (2) shall include the following particulars—

(*a*) the names of the employee and of the employer;

(*b*) the date of commencement of the contract;

(*c*) the rate of remuneration and the method of calculating remuneration;

(*d*) the intervals at which remuneration is paid;

(*e*) the nature of the work to be performed;

(*f*) normal hours of work;

(*g*) any provision for the termination of the contract other than those provided by this Act;

(*h*) any disciplinary rule applicable to the employee.

(4) For the purposes of this section, "employer" means any person, body corporate, undertaking or body of persons who or which has in his employment at least five employees.

Termination of contracts

28.—(1) Subject to sections 29 and 57, a contract of employment for an unspecified period of time may be terminated by either party.

(2) A contract of employment for a specified period of time shall automatically terminate on the date specified for its termination and, unless it is expressly or tacitly renewed or prolonged, no notice shall be required for its termination;

(3) Where the purpose or effect of a contract of employment that is purported to be for a specified period of time or a specific task is the filling on a lasting basis of a post connected with the normal and permanent activity of an undertaking, it shall be deemed to be a contract of employment for an unspecified period of time.

(4) A contract of employment to perform a specific task shall terminate on the completion of the task and no notice of termination shall be required of either party:

Provided that in cases of ambiguity, where an employee is regularly and repeatedly employed and paid wages on the basis of completion of a quantity of work which can be completed in less than 24 hours, the contract of employment shall be deemed to be of an unspecified period of time.

Notice of termination of contracts

29.—(1) A contract of employment for an unspecified period of time may be terminated by either party upon giving the other party the following minimum period of notice in writing—

(*a*) where the contract is to pay wages at a monthly rate, one month's notice;

(*b*) where the contract is to pay wages at a fortnightly rate—

(i) one fortnight's notice where the employee has been employed for less than five years; and

(ii) one month's notice where the employee has been continuously employed for at least five years.

(*c*) where the contract is to pay wages at a weekly rate—

(i) one week's notice where the employee has been employed for less than two years;

(ii) one fortnight's notice where the employee has been continuously employed for a period of not less than two years but not exceeding five years; and

(iii) one month's notice where the employee has been continuously employed for at least five years;

(*d*) where the contract is to pay wages at a daily or hourly rate—

(i) one day's notice where the employee has been employed for less than six months;

(ii) one week's notice where the employee has been continuously employed for a period of not less than six months but not exceeding two years;

(iii) one fortnight's notice where the employee has been continuously employed for a period of not less than two years but less than five years; and

(iv) one month's notice where the employee has been continuously employed for a period of at least five years.

(2) Where the contract of employment for unspecified period of time is to pay wages at any rate, other than an annual rate, not provided for in subsection (1), either party may determine the contract at the close of any day without notice.

(3) The minimum period of notice in respect of a contract of employment for a specified period of time shall be fourteen calendar days.

Payment in lieu of notice

30.—(1) Section 29 shall not be taken to prevent either party from waiving his right to notice on any occasion or from accepting payment in lieu of notice.

(2) In lieu of providing notice of termination, the employer shall pay the employee a sum equal to the remuneration that would have been received and confer on the employee all other benefits due to the employee up to the expiration of the required period of notice.

(3) Where the employee terminates the contract without notice in circumstance in which notice was required, and the employer has not waived the right to notice, the employee shall be required to pay the employer in lieu of notice a sum equal to the remuneration that would otherwise have been due to the employee up to the expiration of the required period of notice:

Provided that the employee shall be entitled to be paid remuneration and to receive such other benefits which may have accrued at the date of termination.

Certificate of termination

31.—(1) On any termination of a contract of employment an employer, if so requested by the employee, shall provide the employee with a certificate indicating—

(*a*) the name and address of the employer;

(*b*) the nature of the employer's business;

(*c*) the length of the employee's continuous employment with the employer;

(*d*) the capacity in which the employee was employed prior to the termination;

(*e*) the wages and other remuneration payable at the date of termination of the contract; and

(*f*) where the employee so requests, the reason for the termination of employment.

(2) The certificate referred to in subsection (1) shall not contain any evaluation of the employee's work unless the evaluation is requested by the employee.

Transfer of contract

32.—(1) Except as provided in subsection (2), no contract of employment shall be transferred from one employer to another without the consent of the employee.

(2) Where an undertaking or a part thereof is sold, transferred or otherwise disposed of, the contract of employment of an employee in employment at the date of the disposition shall automatically be transferred to the transferee and all the rights and obligations between the employee and the transferor at the date of the disposition shall continue to apply as if they had been rights and obligations between the employee and the transferee and anything done before the disposition by or in relation to the transferor in respect of the employee shall be deemed to have been done by or in relation to the transferee.

(3) Subsection (2) shall not absolve any person of liability to be prosecuted for, convicted of and sentenced for any offence committed prior to the sale, transfer or disposition of the undertaking referred to in subsection (2).

Death of employer

33. If the employer's personal or legal position formed the basis of a contract of employment, the death of the employer shall cause the contract of employment to terminate one month from the date of the employer's death, unless it is otherwise terminated in accordance with section 57 (1) within that period.

Insolvency of employer

34.—(1) The insolvency or winding-up of the employer's business shall cause the contract of employment of any employee to terminate one month from the date of insolvency or winding-up, unless it is otherwise terminated in accordance with section 57 (1) within that period.

(2) This section shall not apply where, notwithstanding the insolvency or winding-up, the undertaking continues to operate or has been transferred.

(3) On the insolvency or winding-up of an employer's business, the claim of an employee or those claiming on his behalf to wages and other payments to which he is entitled under this Act or any contract shall have priority over all other creditors, including the State and the social security system, for the following amounts—

(*a*) wages, overtime pay, commissions and other forms of remuneration relating to work performed during the twelve weeks preceding the date of the declaration of insolvency or winding-up;

(*b*) holiday pay due as a result of work performed during the two years preceding the date of the declaration of insolvency or winding-up;

(*c*) amounts due in respect of other types of paid absence accrued during the three months preceding the date of the declaration of insolvency or winding-up; and

(*d*) severance pay, compensation for unfair dismissal and other payments due to employees upon termination of their employment.

Severance allowance 27 of 2010

35.—(1) On the termination of a contract as a result of redundancy or retrenchment, or due to economic difficulties, or technical, structural or operational requirements of the employer, or on the unfair dismissal of an employee by the employer, and not in any other circumstance, an employee shall be entitled to be paid by the employer, at the time of termination, a severance allowance to be calculated in accordance with Part I of the First Schedule.

(2)—(*a*) Notwithstanding the definition of "wage" in section 3, for purposes of calculation of severance allowance under subsection (1), "wage" means—

(i) basic salary;

(ii) housing or accommodation allowance or subsidy or housing or accommodation received as a benefit in kind;

(iii) car allowance of provision of a car, except to the extent that the car is provided to enable the employee to work;

(iv) any cash payments made to an employee, except those listed as exclusions in this section;

(v) transport allowance to enable the employee to travel to and from work; and

(vi) any other payment in kind received by an employee, except those listed as exclusions in terms of this section.

(*b*) for the purposes of this section, the car allowance shall be determined as the taxable value of the car calculated in accordance with the provisions of the Taxation Act;

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(*c*) notwithstanding the definition of "wage" in section 3, for purposes of calculation of severance allowance under subsection (1), "wage" does not include the following, unless a contract of employment or collective agreement expressly provides otherwise—

(i) any cash payment or payment in kind provided to enable the employee to work, including an equipment, tool or similar allowance;

(ii) a relocation allowance;

(iii) tips received from customers and gifts from the employer;

(iv) share incentive schemes;

(v) discretionary payments not related to an employee's hours of work or performance, including a discretionary profit-sharing scheme;

(vi) employer's contributions to medical aid, pension, provident fund or similar schemes;

(vii) employer's contributions to funeral or death benefit schemes;

(viii) an entertainment allowance; or

(ix) an education or schooling allowance;

(*d*) the value of payments in kind shall be determined as follows—

(i) a value agreed to in either a contract of employment or collective agreement, provided that the agreed value shall not be less than the cost to the employer of providing the payment in kind; or

(ii) the cost to the employer of providing the payment in kind.

(3) The Minister may, in consultation with organizations of employers and organizations of employees, by notice published in the *Gazette*, amend Part I of the First Schedule.

(4) The employment of an employee shall not be terminated for reasons connected with his capacity or conduct before the employee is provided an opportunity to defend himself against the allegations made, unless the employer cannot reasonably be expected to provide this opportunity.

(5) For the purposes of subsection (1), termination includes termination by reason of the insolvency or death of the employer, but does not include—

(*a*) termination of a contract of employment for a specified period of time where termination occurs at the expiration of the specified period; or

(*b*) a contract of employment for a specified task where the termination occurs at the completion of the task.

(6) The payment of a severance allowance under subsection (1) shall not affect the employee's entitlement, if any, to payment in lieu of notice under section 30 or to a compensatory or special award under section 63.

(7) Subsection (1) shall not apply where the employee—

(*a*) is serving a probationary period as provided for in section 26;

(*b*) is fairly dismissed for a reason related to his conduct;

(*c*) unreasonably refused to accept an offer of re-employment by the employer at the same place of work under no less favourable terms than he was employed immediately prior to the termination;

(*d*) is employed by a partnership and his employment ceases on the dissolution of the partnership and he enters into employment with one or more of the partners immediately after such dissolution or unreasonably refuses to accept an offer of employment by any such partner under no less favourable terms than he was employed immediately prior to the dissolution;

(*e*) is employed by a personal employer who dies, and the employee enters into the employment of the personal representative, widow, widower or any heir of the deceased employer immediately after such death or he unreasonably refuses to accept an offer of employment by such person on no less favourable terms than he was employed immediately prior to the death.

(8) A complaint that a severance allowance has not been paid may be presented to a District Labour Officer within three months of its being due and if the District Labour Officer fails to settle the matter within one

month of its presentation, it may be referred to the Court, in accordance with section 64 (2) or 64 (3), which, if the complaint has been proved, shall order payment of the amount due.

Gratuity
Cap. 55:02
27 of 2010

35A.—(1) Where, pursuant to the Pension Act, an employer has been exempted from providing pension benefits to employees, the employer shall, on the retirement, termination of employment or death of an employee, pay the employee gratuity in accordance with Part II of the First Schedule.

(2) An employee shall qualify for payment of gratuity if that employee has been employed by that employer for a minimum continuous period of three months in any given year.

(3) The Minister may, by notice published in the *Gazette*, amend Part II of the First Schedule.

PART VI

Hours of Work, Weekly Rest and Leave

Normal working hours, weekly rest, etc.

36.—(1) An employee's normal working hours shall be set out in the employment contract:

Provided that no employer shall require or permit any employee, other than a guard or any other category of employee exempted from this Part pursuant to section 38, to work for more than forty-eight hours during any week, excluding overtime.

(2) Subject to subsection (3), no employer shall require or permit a guard to work for more than forty-eight hours in a week, excluding overtime.

(3) An employer may require a guard to work for more than forty-eight hours where circumstances so demand:

Provided that any hours worked in excess of forty-eight hours shall be treated as overtime and paid at the rate of fifty per cent of the guard's basic pay.

(4) No employer shall require or permit an employee to work for more than six consecutive days without a period of rest, comprising at least twenty-four consecutive hours, which shall be taken on a customary day of rest or a day agreed upon between the parties:

Provided that the weekly rest period shall, whenever possible, be granted simultaneously to all employees concerned in each undertaking.

(5) Subsection (4) shall not apply to undertakings in which only members of the employer's family who do not earn wages work nor to

persons in commercial or retail undertakings holding high management positions.

Maximum daily working hours

37. No employer shall require or permit—

(*a*) a guard or shift worker to work for more man eight hours on any day;

(*b*) any employee, other than a guard or shift worker—

(i) who normally works not more than five days during a week, to work for more than twelve hours on any day; or

(ii) who normally works six days during a week, to work for more than eight hours on any day.

Exemption

38.—(1) The Minister may, by Order published in the *Gazette*, grant temporary exemption from any or all provisions of this Part—

(*a*) in case of accident, actual or imminent, *force majeure* or the need for urgent work to premises or equipment, but only in so far as may be necessary to avoid serious interference with the ordinary working of the undertaking;

(*b*) in the event of abnormal pressure of work due to special circumstances, in so far as the employer cannot ordinarily be expected to resort to other measures; and

(*c*) in order to prevent loss of perishable goods.

(2) Where temporary exemption is granted under subsection (1), the employees concerned shall be granted compensatory rest of a total duration of at least equivalent to that provided for in section 36 (4), and the hours worked beyond the maximum daily normal working hours shall be compensated as overtime, in conformity with section 39.

Overtime

39.—(1) Overtime shall be subject to the limitations set out in sections 36 (4) and 37.

(2) There shall be three classes of overtime known respectively as—

(*a*) ordinary overtime, which shall be time worked on a working day in excess of the hours normally worked by the employee in the undertaking concerned;

(*b*) day off overtime, which shall be time worked by an employee on a day on which he would otherwise be off duty; and

(*c*) holiday overtime, which shall be time worked on a public holiday.

(3) An employee shall for each hour of ordinary overtime be paid at the hourly rate of not less than one and one-half his wage for one hour.

(4) An employee shall for each hour of day-off overtime be paid at the hourly rate of not less than twice his wage for one hour.

(5) An employee shall for each hour of holiday overtime be paid at a rate of not less than twice the normal hourly rate.

Payment for working on public holiday

40.—(1) An employee, if not required to work on a public holiday, shall be entitled to leave of absence with full pay on the holiday:

Provided that—

(*a*) an employee who absents himself without reasonable cause on the working day preceding the public holiday shall not be paid for the public holiday;

(*b*) where more than one public holiday is observed on successive days then, in order to qualify for payment in respect of the public holidays, an employee shall not have been absent without reasonable cause for the equivalent number of working days immediately preceding the public holidays; and

(*c*) an employee who, having been required to work on a public holiday, fails so to do without reasonable cause shall not be entitled to payment in respect of the public holiday.

(2) Each hour worked on a public holiday shall be paid for at the hourly rate of wages in addition to the day's pay required to be given under subsection (1):

Provided that—

(*a*) when the hours worked on the public holiday exceeds the number of hours normally worked, the additional hours shall be paid for at twice the hourly rate; and

(*b*) where pay for a public holiday is not payable due to the absence of the employee from work on the day or days preceding the public holiday or holidays and the employer requires the employee to work on the public holiday or holidays, then the employee shall nevertheless be paid for all hours worked on the public holiday or holidays at twice the normal hourly rate.

Continuous employment

41.—(1) For the purpose of this Act, "continuous employment" shall begin from and include the first day on which an employee begins to work for an employer and shall continue up to and including the date of termination of employment.

(2) It shall be presumed, unless the contrary is shown, that the employment of an employee with an employer is continuous whether or not the employee remains in the same job.

(3) An employee's continuous employment shall not be treated as interrupted if the employee is absent from work for a period of six months—

(*a*) due to taking annual, maternity, sick or any other leave in accordance with this Act, any other enactment or agreement;

(*b*) due to his suspension, with or without pay, in accordance with the provisions of this Act, any other enactment or agreement;

(*c*) due to the termination of his employment prior to being reinstated or re-engaged in accordance with section 63 or under any agreement;

(*d*) due to having been temporarily laid-off by the employer;

(*e*) due to action in pursuance of a strike in which he participated;

(*f*) due to a lockout; or

(*g*) with the leave of his employer.

(4) Any period of time elapsing in the circumstances referred to in subsection (3) shall count for the purposes of calculating the continuous period of employment.

(5) Any period during which an employee is absent from work because of his participation in a strike shall not interrupt the continuity, but shall not count for the purposes of calculating the length of continuous employment.

Successor employer

42. Where an undertaking or a part of it is sold, leased, transferred or otherwise disposed of, the periods of employment of an employee with the two successive employers shall be deemed to constitute a single period of continuous employment with the successor employer.

Seasonal employment

43. Where an employer is engaged in an undertaking in which it is customary to employ some employees only at certain seasons of the year and an employee is employed for successive seasons, the employee shall be deemed to have been continuously employed for the aggregate of all the time he has actually performed work for the same employer for continuous seasons.

Annual leave

44.—(1) Every employee, except where otherwise provided for in this Act, shall be entitled to a period of annual leave with pay of not less than—

(*a*) eighteen working days if he works six days a week; and

(*b*) fifteen working days if he works five days a week,

and the leave shall be taken within six months of the entitlement to the leave falling due:

Provided that the leave may be deferred and accumulated by mutual agreement.

(2) Where an employee's length of service in any one year, including the period prior to the completion of the first year of continuous service, is less than the length of service required for the full entitlement set out in subsection (1), the employee shall be entitled to a period of annual leave with pay proportionate to his length of service during that year.

(3) Where an employee is employed on a less than full-time basis, any day on which the employee works shall, in the computation of periods of employment, be counted as one working day.

Date of leave

45.—(1) The leave referred to in section 44—

(*a*) shall be granted by the employer, in consultation with the employee, as from a date determined by the employer, but not later than six months after the end of the year in respect of which the leave entitlement arose;

(*b*) shall not be concurrent with any period of—

(i) sick leave granted pursuant to section 46;

(ii) maternity leave granted pursuant to section 47; or

(iii) notice of termination of contract of employment.

(*c*) shall be extended by one working day with full pay for each public holiday which falls within the employee's period of leave and which falls on a day which otherwise would have been an ordinary working day for the employee.

(2) Upon termination of an employee's employment, the employer shall pay him the remuneration in respect of any leave which accrued to the employee but was not granted before the date of termination of employment.

(3) The amount to be paid to an employee under this section shall be calculated at the rate of at least the wage which the employee was receiving immediately prior to the date upon which his leave commenced or his employment terminated, as the case may be.

Sick leave

46.—(1) An employee shall be entitled, after completing twelve months' continuous service, to at least four weeks' sick leave on full pay and eight weeks sick leave on half pay during each year.

(2) During sick leave, an employee shall be paid the normal rate of wages.

(3) An employer shall not be bound to grant sick leave unless the employee produces a certificate from a registered medical practitioner stating the nature of the employee's incapacity.

Maternity leave

47.—(1) A female employee shall be entitled, within every three years, to at least eight weeks marternity leave on full pay.

(2) During the period when an employee is on maternity leave, her normal benefits and entitlements, including her contractual rights and accumulation of seniority, shall continue uninterrupted and her period of employment shall not be considered to have been interrupted, reduced or broken.

(3) In the event of illness, certified by a registered medical practitioner, arising out of pregnancy or confinement, affecting the employee or her child, the employer shall grant the employee additional leave as the employer may deem fit.

Right to return

48.—(1) Upon the expiration of her maternity leave, an employee shall have the right to return to the same job with the same benefits and entitlements as immediately before her absence, unless—

(*a*) the job has ceased to exist because of the economic, technological or organizational requirements of the undertaking; or

(*b*) she is incapable of continuing to perform the job.

(2) In either of the circumstances mentioned in subsection (1), the employer shall take reasonable steps to find the employee a suitable alternative job within the undertaking.

(3) If no suitable alternative job can be found in accordance with subsection (2), or if the employee unreasonably refuses the offer of a suitable alternative job, the employer shall be entitled to terminate her employment with notice, subject to the requirements of section 28 and to providing a severance allowance under section 35.

Termination related to pregnancy

49.—(1) An employer who terminates the employment of an employee because the employee is pregnant or for any reason connected with her pregnancy shall be guilty of an offence and the burden of proving that the employment was not terminated because of pregnancy shall be on the employer.

(2) An employer who is convicted of an offence under subsection (1) shall be liable to a fine of K20,000 and imprisonment for five years.

(3) In addition to imposing a penalty under subsection (2), the Court may order—

(*a*) the employer to reinstate the employee, who shall be treated in all respects as if her employment had not been terminated; and

(*b*) an award of compensation as specified in section 63 (1) (*c*).

(3) Where reinstatement is ordered pursuant to subsection (3) (*a*), the employer shall be liable to pay wages to the employee for the period prior to such reinstatement.

(4) An employer who is ordered under subsection (2) to reinstate an employee and refuses to do so shall be guilty of an offence and liable to a fine of K500 for each day during which the offence continues.

PART VII

Wages

Payment of wages

50.—(1) The wages payable to an employee shall be paid in accordance with the terms of the employment contract:

Provided that they shall be paid—

(*a*) not less often than once a week or fortnight in the case of an employee whose wages are—

(i) fixed by the hour, day or week; or

(ii) calculated solely on a piece-work or task-work basis; or

(*b*) not less than once a month in the case of an employee whose wages are fixed on a monthly or yearly basis.

(2) Subject to the proviso to section 28 (4), where the contract of employment is for a specific task, wages may be paid upon the completion of the task or, if the employer and the employee so agree, weekly, fortnightly or monthly, in which case the contract shall not be considered to be one for a specific task.

(3) The wages payable to an employee—

(*a*) shall be paid to the employee or to a person specified by him in writing;

(*b*) shall be paid in legal tender; and

(*c*) may, with the consent of the employee, be paid by cheque in the sum of the wages payable.

(4) Subject to subsection 5, partial payment of wages in the form of allowances in kind may be made in undertakings or occupations where allowances are customary and—

(*a*) the allowances are appropriate for the personal use and benefit of the employee and the employee's family; and

(*b*) the value attributed to the allowance is fair and reasonable.

(5) The payment of wages in the form of liquor or noxious drugs shall not be permitted under any circumstance.

Pay statement and record keeping

51.—(1) Every employee in the public or private agricultural, industrial or commercial undertaking or any branch thereof shall receive with each payment of wages on accurate itemized statement from the employer in writing in a form which sets out—

(*a*) the employee's gross wages due at the end of the pay period;

(*b*) the amount of every deduction from his wages during the pay period and the purpose for which each deduction was made; and

(*c*) the employee's net wages payable at the end of the pay period.

(2) Every employer in the public or private agricultural, industrial or commercial undertaking or any branch thereof shall keep an accurate written record showing—

(*a*) wages and remuneration paid to each employee during the previous three years; and

(*b*) the gross amount payable to each employee, deductions made therefrom and reasons for the deductions.

(3) An employee shall have the right to complain to the District Labour Officer where an employer fails to provide an accurate pay statement or keep accurate records, as required by this section.

Prohibition relating to payment of remuneration

52.—(1) No employer shall—

(*a*) pay wages in the form of promissory notes, vouchers or coupons;

(*b*) require or permit an employee to pay or repay to him any remuneration payable or paid to the employee in accordance with this Act;

(*c*) require or permit a direct or indirect payment from the employee or deduction from the employee's wages for the purpose of obtaining or retaining employment;

(*d*) do any act or permit any act to be done as a direct or indirect result of which an employee is deprived of the benefit or of any portion of the benefit of any remuneration so payable or paid;

(*e*) require or permit an employee to give a receipt for or otherwise to represent that he received more than he actually received by way of remuneration;

(*f*) pay an employee by requiring the employee to make use of any store which is established—

(i) in connexion with the undertaking of the employer; or

(ii) for the sale of commodities to his employees;

(*g*) require or permit wages to be paid in any place of amusement or where alcoholic liquor or noxious drugs are sold, shop or store for the retail sale of merchandize, except in the case of persons employed therein;

(*h*) limit in any manner the freedom of the employee to dispose of his wages.

(2) No employer shall deduct from an employee's wages any amount, except—

(*a*) the employee's contribution to a compulsory social security scheme;

(*b*) an amount to be deducted in accordance with law or a court order:

Provided that such deduction shall not be more than one-half of the employee's wages for the period in respect of which the wages are being paid;

(*c*) an amount authorized by the employee in writing which is not greater in aggregate to an amount equal to one-half of the wages of the employee and which—

(i) is due to the employee in respect of housing furnished by the employer to the employee, goods sold by the employer to the employee or any loan or advance on his wages granted by the employer to the employee;

(ii) the employer has paid or has undertaken to pay in connexion with any loan granted to such employee in order to acquire a dwelling or in connexion with the hiring of a dwelling or other accommodation; or

(iii) the employee owes to a vacation, sick, medical, insurance, savings, provident or pension fund;

(iv) is deducted in accordance with section 36 of the Labour Relations Act. Cap. 54:01

Payment of remuneration on termination of employment 27 of 2010

53.—Wages and other remuneration due to an employee on the termination or completion of his contract of employment shall be paid within seven days after the termination or completion of such contract of employment.

Setting of minimum wages

54.—(1) The Minister, if he is of the opinion that it is expedient to fix the minimum wages of any group of wage earners, shall consult with organizations of workers and employers relevant to the group of wage earners as to the appropriate level of minimum wage to be prescribed.

(2) The Minister may, after the consultations referred to in subsection (1), publish in the *Gazette* a wages order prescribing the minimum wages to be paid to the group of wage earners to which such wages order applies.

(3) In prescribing minimum wages, the Minister shall, as far as possible, consider—

(*a*) the needs of workers and their families, the general level of wages, the cost of living, social security benefits and the relative living standards of other social groups; and

(*b*) economic factors, including the requirements of economic development, levels of productivity and any effect the wage might have on employment.

(4) The Minister shall, in consultation with representative organizations of workers and employers, reconsider the levels of minimum wages at least once every three years.

(5) The Minister shall consult with representative organizations of workers and employers at any time he is of the opinion that the procedure for setting wages set out in this section should in any way be modified.

No abatement of minimum wages

55.—(1) Minimum wages set under section 54 shall not be subject to abatement:

Provided that collective agreements may provide for wages which exceed the minimum wages.

(2) Any employer who pays wages in contravention of subsection (1) shall be guilty of an offence and liable to a fine of K50,000 and to imprisonment for ten years.

PART VIII

Discipline and Dismissal

Disciplinary action

56.—(1) An employer shall be entitled to take disciplinary action, other than dismissal, when it is reasonable to do so considering all the circumstances.

(2) For the purposes of this Part a "disciplinary action" includes—

(*a*) a written warning;

(*b*) suspension; and

(*c*) demotion.

(3) Subject to subsection (4), no employer shall impose a fine or other monetary penalty on an employee:

Provided that the employer may not pay wages to the employee for the period he has been absent from work without permission of the employer and without reasonable excuse.

(4) An employer may deduct an amount of money from an employee's wages as restitution for property damaged by the employee.

(5) In deciding whether the employer has acted reasonably, regard shall be had to the nature of the violation, the employee's duties, the penalty imposed by the employer, the procedure followed by the employer, the nature of any damage incurred and the previous conduct and the circumstances of the employee.

(6) A complaint that disciplinary action is unreasonable may be made to a labour officer for conciliation under section 64 (1).

(7) Where the labour officer fails to settle the matter within one month, the District Labour Officer may institute a prosecution under section 64 (2).

(8) The right of an employee to make a complaint under this section shall be without prejudice to any right the employee may enjoy under a collective agreement.

Justification for dismissal

57.—(1) The employment of an employee shall not be terminated by an employer unless there is a valid reason for such termination connected with the capacity or conduct of the employee or based on the operational requirements of the undertaking.

(2) The employment of an employee shall not be terminated for reasons connected with his capacity or conduct before the employee is provided an opportunity to defend himself against the allegations made, unless the employer cannot reasonably be expected to provide the opportunity.

(3) The following reasons do not constitute valid reasons for dismissal or for the imposition of disciplinary action—

(*a*) an employee's race, colour, sex, language, religion, political or other opinion, nationality, ethnic or social origin, disability, property, birth, marital or other status or family responsibilities.

Cab. 54:01

(*b*) an employee's exercise of any of the rights specified in Part II of the Labour Relations Act;

(*c*) an employee's temporary absence from work because of sickness or injury;

(*d*) an employee's exercise or proposed exercise of the right to remove himself from a work situation which he reasonably believes presents an imminent or serious danger to life or health;

Cab. 54:01

(*e*) an employee's participation or proposed participation in industrial action which takes place in conformity with the provisions of Part V of the Labour Relations Act;

(*f*) an employee's refusal to do any work normally done by an employee who is engaged in industrial action; or

(*g*) the filing of a complaint or the participation in proceedings against an employer involving alleged violations of laws, regulations or collective agreements.

Unfair dismissal

58. A dismissal is unfair if it is not in conformity with section 57 or is a constructive dismissal pursuant to section 40.

Summary dismissal

59.—(1) An employer is entitled to dismiss summarily an employee on the following grounds—

(*a*) where an employee is guilty of serious misconduct inconsistent with the fulfilment of the expressed or implied conditions of his contract of employment such that it would be unreasonable to require the employer to continue the employment relationship;

(*b*) habitual or substantial neglect of his duties;

(*c*) lack of skill that the employee expressly or by implication holds himself to possess;

(*d*) wilful disobedience to lawful orders given by the employer; or

(*e*) absence from work without permission of the employer and without reasonable excuse.

(2) In subsection (1), "summary dismissal" means termination of the contract of employment by the employer without notice or with less notice than that to which the employee is entitled by any statutory provision or contractual term.

Constructive dismissal

60. An employee is entitled to terminate the contract of employment without notice or with less notice than that to which the employer is entitled by any statutory provision or contractual term where the employer's conduct has made it unreasonable to expect the employee to continue the employment relationship.

Proof of reason for dismissal

61.—(1) In any claim or complaint arising out of the dismissal of an employee, it shall be for the employer to provide the reason for dismissal and if the employer fails to do so, there shall be a conclusive presumption that the dismissal was unfair.

(2) In addition to proving that an employee was dismissed for reasons stated in section 57 (1), an employer shall be required to show that in all circumstances of the case he acted with justice and equity in dismissing the employee.

(3) In the circumstances mentioned in section 60, it shall be for the employee to provide the reason which made the continuation of the employment relationship unreasonable.

Complaints of unfair dismissal

62.—(1) Within three months of the date of dismissal, an employee shall have the right to complain to the District Labour Officer that he has been unfairly dismissed, irrespective of whether notice has been given or not.

(2) The right of an employee to make a complaint under this section shall be without prejudice to any right that he may enjoy under a collective agreement.

(3) Where the District Labour Officer fails to settle the matter within one month, the matter may be referred to the Court in accordance with section 64 (2) or 64 (3).

Remedies for unfair dismissal

63.—(1) If the Court finds that an employee's complaint of unfair dismissal is well founded, it shall award the employee one or more of the following remedies—

(*a*) an order for reinstatement whereby the employee is to be treated in all respects as if he had not been dismissed;

(*b*) an order for re-engagement whereby the employee is to be engaged in work comparable to that in which he was engaged prior to his dismissal or other reasonably suitable work from such date and on such terms of employment as may be specified in the order or agreed by the parties; and

(c) an award of compensation as specified in subsection (4).

(2) The Court shall, in deciding which remedy to award, first consider the possibility of making an award of reinstatement or re-engagement, taking into account in particular the wishes of the employee and the circumstances in which the dismissal took place, including the extent, if any, to which the employee caused or contributed to the dismissal.

(3) Where the Court finds that the employee caused or contributed to the dismissal to any extent, it may include a disciplinary penalty as a term of the order for reinstatement or re-engagement.

(4) An award of compensation shall be such amount as the Court considers just and equitable in the circumstances having regard to the loss sustained by the employee in consequence of the dismissal in so far as the loss is attributable to action taken by the employer and the extent, if any, to which the employee caused or contributed to the dismissal.

(5) The amount to be awarded under subsection (4) shall not be less, than—

(*a*) one week's pay for each year of service for an employee who has served for not more than five years;

(*b*) two week's pay for each year of service for an employee who has served for more than five years but not more than ten years;

(*c*) three week's pay for each year of service for an employee who has served for more than ten years but not more than fifteen years; and

(*d*) one month's pay for each year of service for an employee who has served for more than fifteen years,

and an additional amount may be awarded where dismissal was based on any of the reasons set out in section 57 (3).

(6) Where the Court has made an award of reinstatement or re-engagement and the award is not complied with by the employer, the employee shall be entitled to a special award of an amount equivalent to twelve weeks' wages, in addition to a compensatory award under subsections (4) and (5).

PART IX

Miscellaneous Provisions

Disputes and complaints

64.—(1) Any person having a question, difference or dispute as to the rights or liabilities of any person, employer or employee

under this Act or a contract of employment may bring the matter to the attention of a labour officer who shall attempt to resolve the matter.

(2) Any person alleging a violation of a provision of this Act may file a complaint with the District Labour Officer who may institute or cause to be instituted a prosecution in order to enforce the provisions of this Act.

(3) Notwithstanding the provisions of subsections (1) and (2), any person alleging a violation of a provision of this Act may, where not otherwise specified, present his complaint to the Court for relief and where a time limit has been set for the presentation of a complaint by a complainant and the District Labour Officer chooses not to institute a prosecution, the limit shall be further extended for one month.

(4) No provision of this Act shall be interpreted so as to prevent a trade union or an employer's organization from representing a person having a question, difference or dispute under subsection (1) or alleging a violation of a provision of this Act under subsection (2) and this section shall be read as authorizing such representation.

Handling of complaints

Cap. 54:01

65. Complaints made under subsections (2) and (3) of section 64 shall be handled by the Court in accordance with provisions of the Labour Relations Act and any rules governing Court procedure and remedies:

Provided that the Court shall have jurisdiction to impose all penalties and remedies specifically provided for in this Act.

Offences and penalties

66.—(1) Any person who contravenes a provision of this Act for which no offence is specifically provided shall be guilty of an offence and liable to a fine of K5,000 and to imprisonment for one year.

(2) Any person who is guilty of an offence under this Act for which no penalty is specifically provided shall be liable to a fine of K5,000 and to imprisonment for one year.

Regulations

67. The Minister may, in consultation with organizations of employers and employees, make regulations for carrying the purpose and provision of this Act into effect and prescribing all matters which are necessary or convenient to be prescribed for the better carrying out of the provisions of this Act.

Repeals and savings

Second Schedule

68.—(1) The written laws specified in the Second Schedule are repealed.

(2) Any subsidiary legislation made under the Acts repealed by subsection (1), in force immediately before the commencement of this Act—

(*a*) shall remain in force unless in conflict with this Act and shall be deemed to be subsidiary legislation under this Act; and

(*b*) may be replaced, amended or repealed by subsidiary legislation made under this Act.

Transitional 27 of 2010

69.—(1) Every employer shall recognize as part of an employee's pension dues, each employee's severance due entitlement accrued from the date of employment of that employee to the date of commencement of this Act.

(2) For employers not providing pension or gratuity prior to the date of commencement of this Act, the severance entitlement referred to in subsection (1) shall be calculated according to the severance formula provided in the First Schedule to the Act in force immediately prior to the date of commencement of this Act.

(3) For employers providing pension or gratuity prior to the date of commencement of this Act, the severance entitlement referred to in subsection (l) shall be equal to the value of the severance entitlement calculated according to the severance formula provided in the First Schedule to the Act in force immediately prior to the date of commencement of this Act, less the sum of the accumulated employer pension contributions made or gratuity paid to the employee prior to the date of commencement of this Act and any growth on such contribution:

Provided that—

(*a*) the severance entitlement referred to in subsection (l) shall be greater than the sum of the accumulated employer pension contributions made or gratuity paid to the employee prior to the date of commencement of this Act and any growth on such contributions; or

(*b*) if the severance entitlement is equal to or less than the sum of the accumulated employer pension contributions made prior to the date of commencement of this Act and any growth on such contributions, the severance entitlement shall not be recognized as pension.

(4) The value of the severance due entitlement calculated under subsections (2) and (3) shall be escalated each year from the date of commencement of this Act at the rate of the average annual Consumer Price Index as published by the National Statistical Office from time to time.

Cap. 55:02

(5) Where, pursuant to the Pension Act, 2010, the employer is exempted from providing pension benefits to employees, the employer shall recognize the severance entitlement under subsection (l) as gratuity due to the employees.

(6) For the purposes of this section, "gratuity" means contractual gratuity as stipulated in an employment contract.

FIRST SCHEDULE

s. 35 (1) 27 of 2010 G.N. 2/2002 24/2004

PART I
SEVERANCE ALLOWANCE

Length of Service	*Severance Allowance*
Not less than one year, but not exceeding five years	Two weeks' wages for each completed year of service up to and including the fifth year.
Exceeding five years, but not exceeding ten years	Two weeks' wages for each completed year of service for the first five years, *plus* three weeks' wages for each completed year of service from the sixth year up to and including the tenth year.
Exceeding ten years	Two weeks' wages for each completed year of service for the first five years, *plus* three weeks' wages for each completed year of service from the sixth year up to and including the tenth year, *plus* four weeks' wages for each completed year of service from the eleventh year onwards.

In this Schedule, "wages" refers to the current wage of the employee.

PART II

s. 35A

SALARY THRESHOLD

1. Where an employer has been exempted under the Pension Act, that employer shall arrange to pay to the employees, on retirement, termination of employment, or death, a gratuity equal to five per cent of the monthly salary of the employee for each completed month of service. Cap. 55:02

2. For the purposes of this Part of the Schedule, a gratuity shall be calculated based on the final month's salary received by the employee, multiplied by the number of months served.

3. An employer whose employee's monthly salary is below K10,000 may be exempted from complying with the provisions of the Pension Act. Cap. 55:02

SECOND SCHEDULE

s. 68 (1)

1. The Regulation of Minimum Wages and Conditions of Employment Act Cap. 55:01
2. The Employment Act Cap. 55:02
3. The Employment of Women, Young Persons and Children Act Cap. 55:04
4. The Labour Legislation (Miscellaneous Provisions) Act Cap. 56:01
5. The African Emigration and Immigrant Workers Act Cap. 56:02

SUBSIDIARY LEGISLATION

EMPLOYMENT (MINIMUM WAGES) ORDER

under s. 54

G.N. 57/2000
25/2003
2/2005
29A/2007
30/2010
16/2012
57/2013
32/2015
34/2017

Citation

1. This Order may be cited as the Employment (Minimum Wages) Order.

Minimum wage for employees

2.—(1) The minimum daily wage to be paid to an employee shall not be calculated at a rate less favourable than that specified, in relation to the area of employment, below—

G.N. 32/2015
34/2017

(*a*) in the cities of Blantyre, Lilongwe, Mzuzu and the Municipality of Zomba, K962.00 per day; and

G.N. 32/2015
34/2017

(*b*) in all Townships and all other areas, K962.00 per day.

(2) The minimum rate payable in respect of weekly, fortnightly or monthly contracts shall be not less favourably than—

(*a*) weekly: the appropriate daily rate multiplied by six;

(*b*) fortnightly: the appropriate daily rate multiplied by twelve; and

(*c*) monthly: the appropriate daily rate multiplied by twenty-six.

(3) An employee whose terms of employment necessitate his rate of wages to be calculated on an hourly basis shall be remunerated at a rate not less favourable than the appropriate daily rate divided by the factor eight:

Provided that where the number of hours customarily worked by an undertaking is less than eight hours per day, the appropriate daily rate shall be divided by such lesser number and not by the factor herein prescribed.

EMPLOYMENT (HOUSING ALLOWANCE) ORDER

G.N. 58/2000
1/2005
28/2007

under s. 67

1. This Order may be cited as the Employment (Housing allowance) Order. Citation

2. This order shall apply to all employees in the cities of Blantyre, Lilongwe and Mzuzu, in the Municipality of Zomba and in all Townships and who are paid wages at the rate not exceeding— Minimum wage for employees

(*a*) in the case of employees in the cities of Blantyre, Lilongwe and Mzuzu, and in the Municipality of Zomba, K117.30 per day; and

(*b*) in the case of employees in all Townships, K95.45 per day.

3. An employee who is not provided with housing accommodation by his employer shall be paid by the employer a housing allowance in the case of an employee— Housing allowance

(*a*) in the cities of Blantyre, Lilongwe and Mzuzu, and in the Municipality of Zomba, not less than K12.00 per day; and

(*b*) in all Townships, not less than K10.00 per day.

4. An employee in receipt of a housing allowance greater than the allowance appropriate to him at the coming into operation of this Order shall not, by virtue only of this Order, have his allowance reduced. Saving

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EMPLOYMENT (MINIMUM WAGES) (APPRENTICES, CRAFTSMEN AND TRADESMEN) ORDER

G.N. 29/2007
22/2014
69/2017

under s. 54

1. This Order may be cited as the Employment (Minimum Wages) (Apprentices, Craftsmen and Tradesmen) Order. Citation

2. The minimum wages in respect of apprentices' wages shall be as set out in the First Schedule. Minimum wages for apprentices *First Schedule*

3. The minimum wages in respect of craftsmen who hold Malaŵi Advanced Craft Certificates shall be as set out in the Second Schedule. Minimum wages for craftsmen *Second Schedule*

Minimum wages for tradesmen *Third Schedule*

4. The minimum wages in respect of tradesmen who hold National Trade Test Certificates shall be as set out in the Third Schedule.

G.N. 22/2014
69/2017

FIRST SCHEDULE

para. 2

Minimum Wages for Apprentices

	Minimum Wages per month	
	K	*t*
2nd Year Apprentices	28,000	00
3rd Year Apprentices	31,000	00
4th Year Apprentices	35,000	00

SECOND SCHEDULE

para. 3

Minimum Wages for Craftsmen

	K	*t*
Malaŵi Advanced Craft Certificate	7,500	00
Malaŵi Craft Certificate	6,500	00

THIRD SCHEDULE

para. 4

Minimum Wages for Tradesmen

	K	*t*
Tradesmen—Grade I	7,500	00
Tradesmen—Grade II	6,500	00
Tradesmen—Grade III	5,500	00

EMPLOYMENT (EMPLOYMENT BOOK) (SCHEDULED EMPLOYEE) REGULATIONS

G.N. 2/2007

under s. 67

Citation

1. These Regulations may be cited as the Employment (Employment Book) (Scheduled Employee) Regulations.

Interpretation

2. In these Regulations, unless the context otherwise requires—

"book" means an Employment Book (Scheduled Employee) issued under these Regulations; and

"registering officer" means an officer in charge of an Employment Book Registration Office or some other person authorized in writing by the Minister to issue books.

Conditions of issue of a book

3. Upon application being made by any person for the issue to him of a book, the registering officer shall satisfy himself that the applicant—

(*a*) has, at the time of making the application or immediately preceding thereto, been in the employ of one employer for a period of not less than one year; or

(*b*) has in his possession a certificate of a trade test set out in Schedule I.

Applicant to complete form in Schedule II

Schedule II

4. Every applicant for a book shall complete the form of application set out in Schedule II before a registering officer and shall supply such a registering officer with two photographs certified to be true photographs of himself.

Registration of application

Schedule III

Schedule IV

5.—(1) The registering officer may, on application being made as provided in regulation 4 and upon making such inquiries as he may think fit, issue the applicant with a book in the form set out in Schedule III and shall, if he issues a book, register the details of the applicant in a register to be kept by him in the form set out in Schedule IV.

(2) Every registering officer shall keep a record of the issue of books by him and of the persons to whom such books have been issued.

Schedule V

(3) Every applicant who is issued with a book shall pay the fees specified in Schedule V.

(4) Every book issued by a registering officer shall contain a true photograph of the applicant and all details of the applicant set out in his application form, and such information shall be entered by the registering officer in the register.

(5) A registering officer may, after ten years have elapsed since the date of issue of any book, require the holder thereof to supply copies of a fresh photograph of himself and may substitute a copy of such fresh photograph for the photograph previously inserted in the book under subregulation (4).

(6) Whenever particulars of any educational or professional qualification or trade test are inserted in any book, the registering officer shall satisfy himself that the applicant is in fact in possession of such qualification or has passed such test, as the case may be, and shall certify accordingly by signing his name opposite the entry in the book relating to such qualification or test.

Appeal

6. If the registering officer refuses to issue a book, any applicant aggrieved by his decision may appeal to such officer as may be designated by the Minister to consider such appeals or, if no such officer has been designated, the Secretary responsible for labour whose decision shall be final.

Termination of engagement of an employee

7.—(1) Upon the termination of the engagement of an employee who is in possession of a book, the employer shall, within fourteen days of the termination, complete, sign and dispatch to the registering officer who issued the book the appropriate page thereof marked "A" and any person who fails to do so shall be guilty of an offence.

(2) The pages of the book marked "B" shall be completed in fall with the same information as that entered in the corresponding page "A" and shall be retained in the book.

(3) An employer who fails to complete the appropriate page "B" or any person who removes, willfully destroys or defaces any page marked "B" shall be guilty of an offence.

(4) Upon receiving notification of the termination of an engagement of an employee who has been issued with a book, the registering officer shall cause the particulars contained therein to be recorded in his register.

Loss of a book

8.—(1) The loss of any book issued under these Regulations shall be reported immediately by the holder of the book to the registering officer who issued the same.

Schedule II

(2) In case of any loss of the book, the holder thereof may make a fresh application in the form set out in Schedule II to the registering officer who issued the original book, and such registering officer, after satisfying himself as far as possible by comparing the particulars contained in the fresh application with

the particulars contained in the applicant's original form of application, and by making such other inquiries as he thinks fit, that the issue of a duplicate book is justified may issue such duplicate book.

(3) Any duplicate book issued under these regulations shall contain the copies of such particulars of the applicant as have been recorded in the register as to the names and addresses of previous employers dates of engagement and termination of engagement, nature of employment, minimum wages paid and any allowances paid whether in cash or in kind.

(4) The registering officer shall certify every duplicate book to be a true copy of the original.

(5) Every applicant for the issue of a duplicate book shall pay the appropriate fee set out in Schedule V. *Schedule V*

Cancellation and withdrawal of book

9.—(1) Any registering officer who has cause to know that the holder of a book has, within the previous five years, been convicted of any offence involving violence or dishonesty and has been sentenced therefor to a term of imprisonment of twelve months or over, may cancel or withdraw for such period as he thinks fit the holder's book without assigning any reason, and no refund of fees paid shall in any such case be made.

(2) Any person aggrieved by the decision of the registering officer under this regulation may appeal to such officer as may be designated by the Minister to consider such appeals or, if no such officer has been designated, to the secretary responsible for labour whose decision shall be final.

False statement

10.—(1) Any person who, with a view to obtaining the issue of a book, makes any statement which is false to his knowledge or which he does not believe to be true shall be guilty of an offence.

(2) Any person who, with a view to obtaining employment, willfully impersonates the holder of a book, or presents a book other than his own, shall be guilty of an offence.

Other offences

11. It shall be an offence for a person—

(*a*) to give, lend or sale to another person any book issued to him under these Regulations;

(*b*) to hold himself forth as being the receipt of a character or testimonial not actually give or issued in his regard;

(*c*) knowingly to make any false entry in a book or in the register of employment prescribed under these regulations or knowingly to give any false statement to any person in connexion with an employee;

(*d*) to make any entry in an employment book by any means other than blue or black ink.

Penalty

12. Any person guilty of an offence under these Regulations shall be liable to a fine of K5,000 and imprisonment for three months.

SCHEDULE I reg. 3

TRADE TESTS

Driving test referred to in section 24 of the Road Traffic Act.

Buildings Trades	*Grades*		
Bricklayer	III	II	I
Carpenter	III	II	I
Joiner	III	II	I
Plasterer	III	II	—
Painter/Glazier	III	II	—
Plumber and Pipefitter	III	II	I
Mainlayer	—	II	—
Tinsmith	III	—	—
Builders' tinsmith	—	II	—
Sawyer	III	II	—
Machinist (Woodwork)	III	II	—
Wall Tile	One grade		
Mason (Walling)	III	II	I
Electrical and Mechanical Trades			
Motor Vehicle Mechanic	III	II	I
Auto-Electrician	III	II	I
Electrician	III	II	I
General Fitter	III	II	I
Diesel Fitter	—	II	I
Welder	III	II	I
Machinist	III	II	I
Turner	III	II	I
Plant Operator	III	II	I
Agricultural Tractor Driver	III	II	I
Railway Trades			
Turner (Railway)	III	II	I
Truck Fitter and Erector (Railway)	III	II	I

Railway Trades	*Grades*		
Machinist, Metal (Railway)	III	II	I
Blacksmith (Railway)	III	II	I
Boilermaker (Railway)	III	II	I
Loco Fitter and Erector (Railway)	III	II	I
Machine Maintenance Fitter (Railway)	III	II	I
Grinder, Precision (Railway)	III	II	I
Foundry Moulder (Railway)	III	II	I
Coach Builder	III	II	I
Riveter (Railway)	III	II	I
Plater (Railway)	III	II	I
Tin and coppersmith (Railway)	III	II	I
Coach Trimmer (Railway)	III	II	—

SCHEDULE II regs. 4 and 8 (2)

APPLICATION FORM FOR AN EMPLOYMENT BOOK (SCHEDULED EMPLOYEE)

1. Full name of applicant: .....
2. Father's name: .....
3. Tribe: .....
4. Village Headman: .....
5. Chief: .....
6. District: .....
7. District Registration No: .....
8. Applicant's Postal Address at time of application: .....
9. Has the applicant previously been issued with an Employment Book at any registration office? If so, give particulars: .....
.....
10. Where and by whom is the applicant employed at the date of this application?
.....
11. In what capacity is the applicant employed? .....

I HEREBY CERTIFY that—

(*a*) ..... I have been employed for at least one year as ..... and/or I am in possession of Trade Test Certificate as a ..... ; and

(*b*) to the best of my knowledge and belief, the above-mentioned particulars are correct.

Signature of Witness or mark of Applicant (*necessary if Applicant is illiterate and to be completed in every such case*) .....

Signature of Applicant

Date: ....., 20 .....

NOTES:

1. Applicants are warned that the making of any false statement in this application render them liable to prosecution.
2. This application should be accompanied by two photographs of the applicant, one of which must be certified by the officer receiving this application as the photograph of the person signing the application. The photograph should be of the head and shoulders only and in size not more than 2″ × 1½″.
3. The applicant should note that he will be required to pay a fee to the registering officer before he is issued with an Employment Book.

SCHEDULE III reg. 5

EMPLOYMENT BOOK (SCHEDULED EMPLOYEE)

This Book is the property of the Employee

Employment Book (Scheduled Employee) No .....

Issued at the Registration Office

at: .....

on: .....

Name of owner: .....

Warning

Any person making any erasion of, or alteration to, any particulars entered in this Book, or who impersonates the owner of this Book, with a view to obtaining employment, renders himself liable to prosecution.

Chenjezo

Munthu aliyense amene afuta zilembo za mu bukhu ili kapena kuzisintha zilembo ali kupalamula mlandu. Munthu wina wosakhala mwini wake amene anyengezera kuti bukhu ili ndi lake nayesa kupeza nalo ntchito ali kupalamula mlandu.

NOTES:

1. This employment book is the personal property of the person named therein as holder; a duplicate will only be issued after careful inquiries.
2. Prospective Employers are advised to satisfy themselves that the photograph, signature and/or thumb-prints of the person presenting this Book are as affixed to this Book.
3. A separate details of employment page should be used by each Employer.
4. Upon termination of the engagement of the holder of this Book, the Employer is required to notify the authorities by returning within 14 days the tear out page marked "A" and headed "Details of Employment" to the Registration Office at which this Book was originally issued. Care should be taken to ensure that the page marked "B" is completed and left in the Book.

5. Any alteration made by Employers to particulars entered by them in this Book should be signed in full.
6. Entries should be made only in Black or Blue ink.
7. Wages should be written in words and NOT in figures.
8. In all correspondence, please quote the number of this Book.

Issued at: ..... Registration Office with Employment

Book No: .....

Fee of: ..... paid

.....

Signature of Registering Officer

Date of issue: .....

PARTICULARS OF HOLDER

1. Full Name: .....
2. Father's Name:.....
3. Tribe: .....
4. Village Headman: .....
5. Chief: .....
6. District: .....
7. District Registration No: .....
8. Approximate age of holder at time of issue: .....
9. Height of holder at date of issue: .....
10. Physical peculiarities (if any):

.....

.....

.....

.....

.....

PHOTOGRAPH
Head and shoulders
only 2″ × 1½″

.....

Signature of Holder

Particulars of previous Books issued:

No. ..... on ..... at .....

No. ..... on ..... at .....

No. ..... on ..... at .....

Educational or Professional Qualification and/or Trade Tests

Qualification	Where obtained	Date	Registration officer's Signature

HOLDER'S

Left Thumb-print

Right Thumb-print

No. 1A

Employment Book No. .....

DETAILS OF EMPLOYMENT

Name of employer (BLOCK LETTERS)

.....

Address: .....

Date of engagement: .....

Date of termination of engagement: .....

Nature of employment (*detailed*): .....

.....

.....

(*Signature of Employer*)

(Upon termination of employment this page must be posted to the Registering Officer by whom the Book was issued).

PERFORATED

No. IB

Employment Book No. .....

DETAILS OF EMPLOYMENT

Name of employer (BLOCK LETTERS):

.....

Address: .....

Date of engagement: .....

Date of termination of engagement: .....

Consolidated wage at termination of employment: .....

.....

Nature of employment (detailed): .....

.....

.....

Signature of Employer and date

This page must remain in the book

(Pages as above numbered up to 12)

SCHEDULE IV CONFIDENTIAL

REGISTER OF EMPLOYMENT BOOK (SCHEDULED EMPLOYEE) reg. 5 (1)

For Official use

On ..... I issued an Employment Book to a Malaŵian who gave his name as that of the Applicant, who appeared to be the person shown in the attached photograph and whose signature and/or thumb-prints were affixed below in my presence.

Registration Office: ..... Employment Book

Date: ..... Number: .....

Issued and fee of: ..... collected.

.....

Signature of Applicant

.....

Name of Applicant

Left Thumb-print	Right Thumb-print	Photograph

.....

Signature of Registration Officer

DETAILS OF EMPLOYMENT

(*To be filled in from particulars supplied by Employers*)

Date of engagement	Name and address of employer	Nature of employment	Rate of Wages	Allowances paid in cash or kind	Date of termination of engagement	Comments (if any)

SCHEDULE V regs. 5 (3) and 8

SCALE OF FEES

	K	t
Fees and issue of an Employment Book (scheduled Employee) . .	1,500	00
Fees on issues of a Duplicate Book	1,500	00

G.N. 3/2007

EMPLOYMENT (EMPLOYMENT BOOK) (NON-SCHEDULED EMPLOYEE) REGULATIONS

under s. 67

Citation

1. These Regulations may be cited as the Employment (Employment Book) (Non-Scheduled Employee) Regulations.

Interpretation

2. In these Regulations, unless the context otherwise requires—

"book" means an Employment Book (Non-Scheduled Employee) issued under these Regulations; and

"issuing officer" means an officer authorized in writing by the Minister to issue books;

Application for a book *Schedule I*

3.—(1) An applicant for a book shall complete the form of application set out in Schedule I and shall supply the issuing officer with two photographs certified to be true photographs of himself.

(2) The photographs shall contain only the head and shoulders of the applicant and shall not be less than two inches by one and one-half inches in size.

(3) When an applicant is unable to complete the form of application, it may be completed for him at his request by an issuing officer.

Issue of a book

4.—(1) The issuing officer, after making such inquires as he thinks fit and after satisfying himself that the photographs are true photographs of the applicant, may issue the applicant with a book in the form set out in Schedule II.

Schedule II

(2) One of the photographs shall be fixed to the book and form part thereof.

Register of books issued

5. A register shall be kept at the place of issue of all books issued.

Previous employment books

6. Before issuing a book, the issuing officer shall record particulars of any other employment books known to have been previously issued to the applicant.

Loss of books

7. The loss of a book issued under these Regulations shall be reported immediately by the owner to the issuing officer of the District where such book was issued.

Fee payable for book *Schedule III*

8. An applicant who is issued with a book shall pay the fee specified in Schedule III.

Impersonation

9. Any person who, with a view to obtain employment, impersonates the owner of a book or presents a book, other than his own, shall be guilty of an offence.

Other offences

10. It shall be an offence for any person—

(*a*) to make any statement which he knows to be false or which he does not believe to be true in any application form made under Regulation 3;

(*b*) to give, lend or sell to another person any book issued to him under these Regulations;

(*c*) to hold himself out as the recipient of a wage, or the owner of a testimonial or employment book, not actually paid or given to him personally or issued in his regard;

(*d*) knowingly to make any false entry in a book or in a register of books provided for under these Regulations;

(*e*) knowingly to make any false statement to any person in connexion with a book or any entry therein;

(*f*) to erase any entry made in any book;

(*g*) to make an entry in any book by any means other than with blue or blue-black ink and;

(*h*) being an employer or his authorized agent, to refuse to make an entry in a book when required to do so by the owner of the book at the termination of his contract of service.

Penalty

11. Any person guilty of an offence under these Regulations shall be liable to a fine of K5,000 and to imprisonment for three months.

SCHEDULE I reg. 3

APPLICATION FORM FOR AN EMPLOYMENT BOOK (NON-SCHEDULED EMPLOYEE)

1. Full name of applicant: .....
2. Father's name: .....
3. Tribe: .....
4. Village Headman: .....
5. Chief: .....
6. District: .....
7. District Registration No: .....
8. Applicant's Postal Address at time of application: .....
9. Has the applicant previously been issued with an Employment Book at any registration office? If so, give particulars: .....
.....
10. Where and by whom is the applicant employed at the date of this application?
.....
11. In what capacity is the applicant employed? .....

I HEREBY CERTIFY that—

(*a*) I have been employed for ..... as ..... and/or I am in possession of Trade Test Certificate as a ..... ; and

(*b*) to the best of my knowledge and belief, the above-mentioned particulars are correct.

Signature of Witness or mark of Applicant (*necessary if Applicant is illiterate and to be completed in every such case*)

.....
Signature of Applicant

Date: ....., 20 .....

NOTE:

1. Applicants are warned that the making of any false statement in this application may render them liable to prosecution.
2. This application should be accompanied by two photographs of the applicant, one of which must be certified by the officer receiving this application as the photograph of the person signing the application. The photograph should be of the head and shoulders only and in size not more than 2″ × 1½ ″.
3. The applicant should note that he will be required to pay a fee to the registering officer before he is issued with an Employment Book.

SCHEDULE II reg. 4

EMPLOYMENT BOOK (SCHEDULED EMPLOYEE)

This Book is the property of the Employee

Employment Book (Scheduled Employee) No. .....

Issued at the Registration Office

at .....

on .....

Name of owner .....

Warning

Any person making any erasion of, or alteration to, any particulars entered in this book, or who impersonates the owner of this Book, with a view to obtaining employment, renders himself liable to prosecution.

Chenjezo

Munthu aliyense amene afuta zilembo za mu bukhu ili kapena kuzisintha zilembo ali kupalamula mlandu. Munthu wina wosakhala mwini wake amene anyengezera kuti bukhu ili ndi lake nayesa kupeza nalo ntchito ali kupalamula mlandu.

NOTE:

1. This employment book is the personal property of the person named therein as holder; a duplicate will only be issued after careful inquiries.
2. Prospective Employers are advised to satisfy themselves that the photograph, signature and/or thumb-prints of the person presenting this Book are as affixed to this Book.
3. A separate details of employment page should be used by each Employer.

4. Upon termination of the engagement of the holder of this Book, the Employer is required to notify the authorities by returning within 14 days the tear out page marked "A" and headed "Details of Employment", to the Registration Office at which this Book was originally issued. Care should be taken to ensure that the page marked "B" is completed and left in the Book.

5. Any alteration made by Employers to particulars entered by them in this Book should be signed in full.
6. Entries should be made only in Black or Blue/Black ink.
7. Wages should be written in words and NOT in figures.
8. In all correspondence, please quote the number of this Book.

Issued at: ..... Registration Office with Employment

Book No: .....

Fee of: ..... Paid.

.....

Signature of Registering Officer

Date of issue: .....

PARTICULARS OF HOLDER

1. Full Name: .....
2. Father's Name: .....
3. Tribe: .....
4. Village Headman: .....
5. Chief: .....
6. District: .....
7. District Registration No. .....
8. Approximate age of holder at time of issue: .....
9. Height of holder at date of issue: .....
10. Physical peculiarities (if any):

.....

.....

.....

.....

.....

PHOTOGRAPH
Head and shoulders
only 2″ × 1½″

.....

Signature of Holder

Particulars of previous Books issued:

No. ..... on ..... at .....

No. ..... on ..... at .....

No. ..... on ..... at .....

Educational or Professional Qualification and/or Trade Tests

Qualification	Where obtained	Date	Registration officer's Signature

HOLDER'S

Left Thumb-print

Right Thumb-print

No. 1A

Employment Book No.: .....

DETAILS OF EMPLOYMENT

Name of employer (BLOCK LETTERS):

.....

Address: .....

Date of engagement: .....

Date of termination of engagement: .....

Nature of employment (*detailed*): .....

.....

.....

(*Signature of Employer*)

(Upon termination of employment this page must be posted to the Registering Officer by whom the Book was issued).

PERFORATED

No. IB

Employment Book No.:.....

DETAILS OF EMPLOYMENT

Name of employer (BLOCK LETTERS):

.....

Address: .....

Date of engagement: .....

Date of termination of engagement: .....

Consolidated wage at termination of employment: .....

Nature of employment (*detailed*): .....

.....

.....

(*Signature of Employer and date*)

This page must remain in the book
(Pages as above numbered up to 12)

SCHEDULE III reg. 8

SCALE OF FEES

	K	t
Fees on issue of an Employment Book (Non-Scheduled Employee) . .	1,000	00

G.N. 1/2012

EMPLOYMENT (PROHIBITION OF HAZARDOUS WORK FOR CHILDREN) ORDER

under s. 22

Citation

1. This Order may be cited as the Employment (Prohibition of Hazardous Work for Children) Order.

Interpretation

2. In this Order, unless the context otherwise requires—

"piece work" means work in terms of which the remuneration of the employee is based mainly on the quantity of work done; and

"task work" means work in terms of which the remuneration of employee is based mainly on the completion of set tasks.

Maximum daily and weekly working hours

3.—(1) Subject to subparagraph (2), a person between the ages of fourteen and eighteen years shall not work for more than forty hours in any week.

(2) A person under the age of eighteen years, who is enrolled in school, may not work for more than—

(*a*) twenty hours in a week during the school term;

(*b*) forty hours in any week that falls entirely within school holidays;

(*c*) three hours on any school day which is followed by another school day; or

(*d*) four hours on any school day followed by a non-school day, such as a Friday, or the last day of term.

Night work

4.—(1) A person under the age of eighteen years shall not work before 5 a.m. or after 6 p.m. on any day:

Provided that a child between the age of fifteen years but under the age of eighteen years, who is not expected to be at school the following day, may work between 6 p.m. and 9 p.m. if—

(*a*) the work is in a restaurant or a shop where there is adequate adult supervision and at least one supervisor is the same sex as the person; or

(*b*) the work is baby-sitting or child minding.

(2) An employer of a person employed under subparagraph (1) shall ensure that the parent or guardian of the person involved in night work agrees in writing to such employment.

(3) Where a person under the age of eighteen years is permitted to work after 6 p.m., the employer of such a person shall, at the end of the shift, provide such person with safe transport home, at no cost to the parent or guardian of the person.

Work in extreme temperatures

5. No person shall require or permit a person below the age of eighteen years to work in an environment involving extreme temperatures below 6°C or above 30°C due to their potential to jeopardize the safety, health, welfare and comfort of persons below the age of eighteen years—

(*a*) unless the cold and hot temperatures are as a result of natural climatic conditions, and adequate measures are taken to protect the person including that—

(i) adequate protective clothing is provided to maintain optimum body temperature;

(ii) presence in such environment shall not exceed one hour of continuous work;

(iii) adequate water breaks are taken at reasonable intervals taking into account individual susceptibility;

(iv) adequate potable water or any beverage is made available, and is conveniently accessible to all persons; and

(v) the persons are acclimatized to such working environment; and

(*b*) provided that such work does not exceed four hours every day.

Prohibited work

6.—(1) Subject to subparagraph (2), the list of work set out in the Schedule is prohibited for a person under the age of eighteen years.

(2) Such work shall not be prohibited where—

(*a*) the person is between the age of sixteen and eighteen;

(*b*) health and safety of that person is fully protected; and

(*c*) the person has received adequate training in performing the activities.

Lifting of heavy weights

7. A person under the age of eighteen years shall only lift weight that is substantially less than that lifted by adult workers of the same sex, and in any case should be reasonable so as not to jeopardize the safety, health and well-being of that person.

Transporting of heavy weights

8. The distance and weights which a person under the age of eighteen years may travel and carry respectively, shall be practically reasonable so as not to jeopardize the safety, health and well-being of that person.

Offences and penalties

9. A person who contravenes any provision of this Order commits an offence and shall, upon conviction, be liable to a fine of K1,000 and to imprisonment for three years.

SCHEDULE para. 6

LIST OF PROHIBITED WORK

1. AGRICULTURE SECTOR—

(*a*) *General and Commercial Farming:*

(i) handling or applying agricultural chemicals, veterinary drugs, pesticides or insecticides in any agricultural undertaking;

(ii) handling plants or soil immediately after the application of agricultural chemicals or during any other period specified on chemicals labels;

(iii) curing or processing agricultural products where there is exposure to temperatures or working at heights hazardous to safety, health and well-being of persons;

(iv) any activity involving dangerous machinery, dangerous equipment or dangerous tools;

(v) bee keeping or any other work involving exposure to bees.

(*b*) *Meat, Poultry and Fish Sector:*

(i) slaughtering of animals or work in an abattoir or a tannery;

(ii) meat, poultry or fish processing in a commercial undertaking;

(iii) offshore fishing in deep waters.

(*c*) *Tobacco Sector:*

(i) topping and suckering activities or handling tobacco leaves in the harvesting process;

(ii) handling or grading tobacco leaves in damp conditions or conditions of poor lighting or ventilation;

(iii) any other work involving tobacco in commercial tobacco estates and farms.

2. Industry—

(*a*) *Tobacco Sector:*

Handling, processing, manufacturing or packing of tobacco products.

(*b*) *Logging/Timber:*

Logging, harvesting or processing of timber including cutting timber and saw milling.

(*c*) *Hazardous Waste:*

Disposal, processing or any work in connexion with hazardous waste or garbage;

(*d*) *Alcohol Manufacturing Sector:*

Brewing, manufacturing or selling any liquid which in its final form would contain more than 1 per cent (1%) of alcohol.

(*e*) *Radiology Sector:*

Any work involving exposure to ionizing radiation such as x-rays.

(*f*) *Electrical Sector:*

Any work involving electrical work involving voltage cables or other power sources in excess of 120 volts.

(*g*) *Machinery Operation:*

(i) any work involving operating or involving vibrating and heavy duty equipment including—

(*aa*) tractors;

(*bb*) winches;

(*cc*) fork lifts;

(*dd*) front loaders;

(*ee*) earth moving equipment;

(*ff*) asphalt mixers;

(*gg*) heavy grader;

(*hh*) rock drills and riveters; or

(*ii*) similar heavy duty equipment;

(ii) any work involving welding or soldering using electric or gas welding machines; or

(iii) operating, cleaning or repairing any machinery in motion.

(*h*) *Transport Industry:*

(i) driving a motor vehicle;

(ii) any repairing or conducting maintenance of motor vehicles or its parts unless under supervision;

(iii) any work in vehicles transporting heavy goods.

(*i*) *Construction Sector:*

(i) any manufacturing, mixing or application of tar or asphalt;

(ii) work involving brick molding;

(iii) building, demolition or any process associated with engineering or construction, with or without the use of lifts and scaffolding.

(*j*) *Chemical Sector:*

Any work involving—

(i) manufacturing, processing, handling, storing, transporting or use of any chemical substances, that are toxic, explosive, combustible, flammable, oxidizing, corrosive, irritating, carcinogenic, mutagenic or teratogenic;

(ii) exposure to hazardous dust including but not limited to cement, tobacco dust, cotton dust, bagasse and silica;

(iii) any work involving exposure to asbestos or products containing Asbestos;

(iv) exposure to any hazardous substance which by virtue of its physical or toxicological properties constitutes a risk to the safety, health or welfare of the child.

(*k*) *Metal Industry:*

Any work involving—

(i) the use of or in proximity of industrial ovens, kilns, furnaces or boiler;

(ii) grinding or glazing of metal with or without the use of any power tool or grinding equipment;

(iii) operator of a smelter or furnace or rolling mills that forms and cut metals.

3. Entertainment Sector—

(*a*) any work in a bar, tavern, pub, shebeen or other establishment of entertainment whose business is to sell alcohol beverages to the general public for consumption on the premises;

(*b*) any work as a personal companion or providing escort services in bars, cocktail lounges, motels, hotels, message houses and other places of recreation or entertainment;

(*c*) any work in a casino or other gambling establishment;

(*d*) any work that involves loitering the streets or around any bar, tavern, pub, shebeen or other establishment of entertainment whose business is to sell alcoholic beverages to the general public for consumption on the premises;

(*e*) any work posing as a model in an advertisement for alcoholic beverages, tobacco products or condoms or that is connected with the advertisement of any of these products;

(*f*) any work involving exposure to material of a pornographic or adult content or involving the child in any pornographic or adult act, exhibition or production.

4. Tourism Sector—

(*a*) any work as a tour guide;

(*b*) any work that constitutes a risk to the safety, health and well-being of persons.

5. Health Sector—

(*a*) Any work in a healthcare or related facility where there will likely be exposure to biological agents or other agents including—

(i) viruses causing hepatitis;

(ii) Human Immune Virus (HIV);

(iii) bacterial causing tuberculosis;

(iv) anesthetics;

(v) anti-neoplastic medications; or

(vi) addictive drugs.

6. Miscellaneous—

Any work or activity—

(*a*) at a height of more than two metres above the ground;

(*b*) involving begging or soliciting for alms;

(*c*) involving exposure to a noise of a higher level than—

(i) 85dB (A) for forty hours per week; or

(ii) 135dB (A) for any period of time;

(*d*) mining, quarrying or excavation, including—

(i) any work underground;

(ii) underwater;

(iii) in confined spaces; or

(iv) with inadequate ventilation.

(*e*) selling or transporting any hazardous items for sale; or

(*f*) done in a confined space.

G.N. 7/2013

EMPLOYMENT (TRADE TEST FEES) REGULATIONS

under s. 67

Citation

1. These Regulations may be cited as the Employment (Trade Test Fees) Regulations.

Trade Test and Trade Test Certificate fees

2. The fees prescribed in the Schedule shall be payable in respect of matters specified therein in relation to such fees.

reg. 2

SCHEDULE

Matter	*Fee* K	t
1. On application for a Trade Test—		
(*a*) Grade III Trade Test	5,000	00
(*b*) Grade II Trade Test	7,500	00
(*c*) Grade I Trade Test	10,000	00
2. On issuance of a replacement of a Trade Test Certificate in respect of—		
(*a*) Grade III Trade Test	8,000	00
(*b*) Grade II Trade Test	10,000	00
(*c*) Grade I Trade Test	12,000	00

EMPLOYMENT (APPRENTICES, CRAFTSMEN AND TRADESMEN) REGULATIONS

G.N. 16/2017

under s. 67

[10th March, 2017]

1. These Regulations may be cited as the Employment (Apprentices, Craftsmen and Tradesmen) Regulations. Citation

2. The appearance and security features of the Trade Test Certificates shall be as set out in the Schedule hereto. Appearance and security features of the Trade Test Certificates *Schedule*

SCHEDULE

reg. 2

APPEARANCE AND SECURITY FEATURES FOR TRADE TEST CERTIFICATES

Trade Test Certificate	*Appearance*
Grade 3 Certificates	Background text shall be printed in cream colour on A4 Paper of 160gsm, bearing serial certificate numbers, Court of Arms and a generic silver hologram. Some Ultraviolet (UV) text and micro text shall be hidden.
Grade 2 Certificates	Background texts shall be printed in green colour on A4 paper of 160gsm, bearing serial certificate numbers, Court of Arms and a generic silver hologram. Some Ultraviolet (UV) text and micro text shall be hidden.
Grade 1 Certificates	Background text shall be printed in red colour on A4 paper of 160gsm, bearing serial certificate numbers, Court of Arms and a generic silver hologram. Some Ultraviolet (UV) text and micro text shall be hidden.

PENSION

CHAPTER 55:02

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PENSION

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4. Objectives of the Act
5. Application of the Financial Services Act

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21. Investment managers, custodians, administrators and pension brokers to be licensed
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CHAPTER 55:02

PENSION

6 of 2011
G.N. 13/2011

An Act to make provision for mandatory pension, and for matters relating to the supervision and regulation of pension funds and umbrella funds, and for matters connected therewith and incidental thereto

[1st June, 2011]

PART I
PRELIMINARY

Short title

1. This Act may be cited as the Pension Act.

Application of the Act

2.—(1) Unless expressly exempted by the Minister in writing, with the approval of the Cabinet, this Act shall apply to every employer and employee in Malaŵi.

(2) The Government, in its capacity as employer, shall be exempt from compliance with the provisions of this Act, provided that such exemption shall only be for a period not exceeding twenty-four months from the date of commencement of this Act.

Interpretation

3.—(1) In this Act, unless the context otherwise requires—

"administrator" means a person who, as a business, provides data management, specialist technical services to pension funds or umbrella funds, by arrangement with the trustee or operator of the funds concerned;

"advisory committee", in relation to a pension fund, means a board, committee or other body that—

(*a*) is established by or under the fund rules; and

(*b*) has the function of advising the trustee of the fund about issues relating to the fund that a member or an employer has raised;

"annuity" means the exchange of a capital sum for a regular income benefit, which may or may not increase at a predefined level or according to an appropriate index, payable for the remaining life of the recipient;

"beneficiary", in relation to a pension fund, means an individual who is, in accordance with the fund rules, entitled to a benefit from that fund;

"child" in relation to a member, means a child of the member, regardless of the circumstances of the birth of the child and includes an adopted child, and an unborn child in the womb of its mother;

"close relation" means spouse, brother, sister, parent, child, child of the spouse, aunt, uncle, grandparent, and the spouse of any of these;

"corporate trustee" means a trustee that is a body corporate;

"defined benefit fund" means a pension fund other than a defined contribution fund where under the fund rules a member's benefits are calculated, wholly or in part, by reference to any or all of the following—

(*a*) the amount of the fund member's remuneration at the date on which benefits are payable or a specified earlier date;

(*b*) the amount of the fund member's remuneration averaged over a specified period before the date on which benefits are payable; or

(*c*) an amount specified in the fund rules;

"defined contribution fund" means a pension fund that is not a defined benefit fund where under the fund rules a member's benefits on retirement has a value equal to the value of—

(*a*) the contributions paid by the member and by the employer in terms of the fund rules that determine the rates of both their contributions at a fixed rate;

(*b*) less such expenses as the trustees determine should be deducted from the contributions paid;

(*c*) plus any amount credited to the member's account upon the commencement of the member's membership of the fund or upon the conversion of the category of the fund to which the member belongs from a defined benefit fund to a defined contribution fund or upon the amalgamation of the fund with any other fund, other than amounts taken into account in terms of section (*d*);

(*d*) plus any other amounts lawfully permitted, credited to or debited from the member's individual account, if any,

as increased or decreased by fund investment return;

"dependant" in relation to a member, includes a spouse and a child of the member;

"director" shall bear the same meaning ascribed to that term in the Financial Services Act;

Cap. 44:05

"employee" means—

(*a*) a person who offers his services under an oral or written contract of employment, whether express or implied; or

(*b*) a person who performs work or services for another person, including the Government and other public institutions, for remuneration or reward on such terms and conditions, that he is, in relation to that person, in a position of economic dependence on and under an obligation to perform duties for, that person more closely resembling the relationship of employee than that of an independent contractor;

"employee contribution" means a contribution to a pension fund made by the employee, including a contribution deducted by the employer from the employee's remuneration where the employer is under an obligation to remit the amount concerned to the trustee of the fund;

"employer" means—

(*a*) any person, or undertaking, corporation, company, public authority or body of persons who or which employs an employee and include heirs, successors and assignees of the employer; and

(*b*) in relation to a pension fund, means a person who employs a member and who is liable, under the fund rules, to make employer contributions to the fund in respect of the member;

"employer asset" includes—

(*a*) an asset acquired from an employer or an associate of an employer;

(*b*) rights under a lease of fund assets to an employer or an associate of an employer; and

(*c*) a loan to, or rights acquired by the provision by the trustee of financial accommodation of any kind to an employer or an associate of an employer,

but does not include assets that are securities issued by or guaranteed by the Government;

"employer asset percentage", for a pension fund, means the percentage calculated using the following formula—

$$\frac{\textbf{total fair market value of fund's employer assets}}{\textbf{total fair market value of all fund assets}} \times \mathbf{100}$$

where employer assets are those invested in the equity or debt, listed or unlisted, of the employer, or any other financial commitment of the employer to the fund;

"employer contribution" means a contribution to a pension fund made by an employer in respect of an employee, excluding employee contributions, fees and other charges;

"employer representative", in relation to a group of trustees of a pension fund or the board of directors of a corporate trustee of a pension fund, means a member of the group, committee or board nominated by—

(*a*) the employers; or

(*b*) an organization representing the interests of employers;

"equal representation rule" means the rule referred to in section 26 (1) or (2);

"fully funded" in relation to a pension fund, means that the financial obligations to the pension fund's members, creditors and service providers are fully covered by the assets held in the fund's name, as confirmed in the case of a defined benefit fund by the valuation conducted by an actuary as at the effective date of the funding assessment;

"fund assets" of a pension fund or an umbrella fund means property of any kind held by the trustee or operator of the fund in that capacity;

"fund information", in relation to a pension fund, means information about—

(*a*) the fund's investment strategy;

(*b*) the fund's investment performance and financial position;

(*c*) fees and charges payable by, or borne by, members or beneficiaries in relation to the fund;

(*d*) the rights and entitlements of members or beneficiaries under the fund rules and otherwise in relation to the fund;

(*e*) the obligation of members to pay contributions under the fund rules; and

(*f*) the obligation of employers to pay contributions under the fund rules and to provide life insurance under the requirements of this Act,

or as specified by Registrar's Directive;

"guaranteed wages" means basic wages excluding overtime and bonuses;

"independent director", in relation to a corporate trustee of a pension fund, means a director of the corporate trustee who is not—

(*a*) a member;

(*b*) an employer;

(*c*) an associate of an employer;

(*d*) an employee of an employer or of an associate of an employer;

(*e*) in any capacity, a representative of a trade union, or other organization representing the interests of one or more members; or

(*f*) in any capacity, a representative of an organization representing the interests of one or more employers;

"independent trustee", in relation to a fund, means a trustee of the fund who is not—

(*a*) a member;

(*b*) an employer;

(*c*) an associate of an employer;

(*d*) an employee of an employer or of an associate of an employer;

(*e*) in any capacity, a representative of a trade union, or other organization representing the interests of one or more members; or

(*f*) in any capacity, a representative of an organization representing the interests of one or more employers;

"investment management agreement" means an agreement between the trustee of a pension fund or the operator of an umbrella fund

and an investment manager, for the investment of fund assets that for the purposes of the agreement, are under the control of the investment manager;

"investment manager" means a person who, as a business, invests fund assets of pension funds or umbrella funds by arrangement with the trustees or operators of the funds concerned;

"legal personal representative" means—

(*a*) in relation to a deceased person, the executor of the will or administrator of the estate of that person; and

(*b*) in relation to a person under a legal disability, the trustee or manager of the estate of that person appointed under law;

"lifetime flat annuity" means an annuity payable for the remaining lifetime of the recipient without increases;

"loan" includes the provision of credit and any other form of financial accommodation, whether or not enforceable, or intended to be enforceable, by legal proceedings;

"member", in relation to a pension fund, means a person who is, in accordance with the fund rules, a member of the fund;

"member account", or "member's account" means an account established under section 11;

"member information", in relation to a member of a pension fund, means information about the nature and extent of the member's entitlements under the fund rules and otherwise in relation to the fund;

"member representative", in relation to a group of trustees of a pension fund, a policy committee of a pension fund or the board of directors of a corporate trustee of a pension fund, means a member of the group, committee or board nominated by the members;

"most representative organization of employees" means the most representative organization of employees enjoying the right of freedom of association;

"most representative organization of employers" means the most representative organization of employers enjoying the right of freedom of association;

"national pension fund" means the national pension fund contemplated under section 6 (2);

"National Pension Scheme" means the Contributory National Pension Scheme established under section 6 (1);

"nomination" means a nomination made by a member under section 70;

"operator", in relation to an umbrella fund, means the trustee of the trust;

"Pension Administrator" means the National Pension Fund Administrator appointed under section 7;

"pension broker" means a person who as a business, provides consulting or advisory services to pension schemes or funds, including claims assistance, where required;

"pension fund" means—

(*a*) a pension scheme that is an indefinitely continuing trust whether as a restricted or unrestricted fund and includes a defined contribution fund or a defined benefit fund or a hybrid of the two; or

(*b*) an association of persons established with the object of providing annuities or lump sum payments for members or former members of such association upon their reaching retirement dates, or for the dependants of such members or former members, upon the death of such members; or

(*c*) a business carried on under a scheme or arrangement established with the object of providing annuities or lump sum payments for persons who belong or belonged to the class of persons for whose benefit that scheme or arrangement has been established, when they reach their retirement dates or for dependants of such persons upon the death of those persons;

"pension scheme" means a scheme the primary purpose of which is the provision of retirement benefits to a member of the scheme on his retirement from any business, trade, profession, vocation, calling, occupation or employment in which the member was engaged, whether or not it also provides for benefits to be paid in other circumstances (for instance, on the death or disablement of a person), but does not include—

(*a*) a contract of insurance; or

(*b*) a contract of employment merely because it provides for payments to be made on termination of the contract;

"pensionable emoluments" means guaranteed wages and other earnings, but not including personal investment income, capital gains or provision from employers in the form of houses or motor vehicles;

"principal officer" means the principal officer of a pension fund or umbrella fund appointed under section 32;

"programmed withdrawal" means the payment by the fund of regular income payments during the remaining life of the member from the date of retirement or the date at which an annuity is purchased;

"Registrar" means the Registrar of Financial Institutions appointed under the Financial Services Act, or a specialist registrar for pension funds, as may be defined in any modifications to the Financial Services Act; Cap. 44:05

"Registrar's directive" means a directive issued under this Act or the Financial Services Act;

"restricted fund" means a pension fund the rules of which restrict membership of the fund to officers and employees of a specified employer and its related bodies corporate;

"retire", in relation to a member, means attain the retirement age specified in the rules of the fund at which retirement is to take place, or meet any of the other conditions specified in the rules to take retirement;

"retirement age" means the age stipulated in the rules of a pension fund, which shall be between fifty years and seventy years, or as may be prescribed by the Minister for the purposes of this Act;

"scheme" means any plan, proposal, action, course of action, course of conduct, agreement, arrangement, understanding, promise or undertaking, whatever its legal form, whether express or implied and whether or not enforceable or intended to be enforceable;

"scheme rules", in relation to a pension fund or an umbrella fund, means the rules contained in a trust instrument, other document or legislation, or combination of them governing the establishment or operation of the fund;

"self-employed individual" means any person who is running a business on his own as a sole trader, whether he has employed any other person or not;

"service retirement" means a minimum of twenty years of continuous service by an employee with one employer;

"spouse" means a person's husband or wife in relation to a marriage recognized under section 22 (5) of the Constitution;

"statutory covenant" means a covenant set out in or prescribed under section 36 (1) or section 37 (1);

"totally and permanently disabled", in relation to a member, means permanently incapable, through infirmity of mind or body, from engaging in his business, trade, profession, vocation, calling, occupation or employment or in any other business, trade, profession, vocation, calling, occupation or employment for which he may be trained or fitted;

"trustee"—

(*a*) in relation to a pension fund with only one trustee, means the trustee of the fund appointed in accordance with the instrument creating the pension fund;

(*b*) in relation to a restricted fund where there is a group of individual trustees, means all of the trustees appointed in accordance with the instrument creating the restricted fund, acting together;

"umbrella fund" means a collective investment scheme as defined in the Securities Act, whose rules provide that only trustees of pension funds or operators of umbrella funds may be members of the scheme;

Cap. 46:06

"unrestricted fund" means a pension fund whose rules do not restrict membership of the fund to officers and employees of a specified employer and its related bodies corporate.

(2) Subject to subsection (1) and except where a contrary intention appears, words and expressions used in this Act shall bear the same respective meanings as they have in the Financial Services Act.

Cap. 44:05

(3) Without limiting the ordinary meaning of "operate", a person operates a pension scheme or an umbrella fund if the person—

(*a*) establishes or administers the scheme or fund;

(*b*) induces or attempts to induce a person to be a member of the scheme or fund or to make payments by way of contribution to or investment in the scheme or fund; or

(*c*) accepts or makes payments in connexion with the scheme or fund otherwise than as a member or beneficiary of the scheme or fund.

(4) A provision included in the fund rules of a pension fund to avoid a breach of a rule of law against remoteness of vesting shall not prevent the fund from being treated as an indefinitely continuing fund for the purposes of the definitions of "pension fund" in subsection (1).

Objectives of the Act

4. The objectives of this Act are to—

(*a*) ensure that every employer to which this Act applies provides pension for every person employed by that employer;

(*b*) ensure that every employee in Malaŵi receives retirement and supplementary benefits as and when due;

(*c*) promote the safety, soundness and prudent management of pension funds that provide retirement and death benefits to members and beneficiaries; and

(*d*) foster agglomeration of national savings in support of economic growth and development of the country.

5. This Act shall apply in addition to the Financial Services Act.

Application of the Financial Services Act Cap. 44:05

PART II
Contributory National Pension Scheme

6.—(1) There is hereby established a contributory National Pension Scheme (in this Act otherwise referred to as the "National Pension Scheme") for the purpose of ensuring that every employee in Malaŵi receives pension and supplementary benefits on retirement.

The Contributory National Pension Scheme

(2) The National Pension Scheme shall comprise—

(*a*) a national pension fund to be established under this Act, by the Minister, by Order published in the *Gazette*; and

(*b*) other pension funds licensed under this Act.

(3) Every employer shall make provision for every person under his employment to be a member of the National Pension Scheme.

7.—(1) There is hereby established a National Pension Administrator (in this Act otherwise referred to as the "Pension Administrator").

The National Pension Fund Administrator

(2) The Pension Administrator shall be a body corporate with perpetual succession and a common seal capable of suing and being sued in its corporate name and with power to do or perform all such acts and things as a body corporate may by law do or perform.

(3) The principal object of the Pension Administrator shall be to—

(*a*) act as an administrator for the National Pension Scheme; and

(*b*) set up and manage the national pension fund.

(4) There shall be a Board of Trustees which shall be responsible for the administrative and management policy of the Pension Administrator.

(5) The Board of Trustees shall consist of seven trustees appointed by the President on recommendation of the Minister, and shall include a

representative from the most representative organization of employers, most representative organization of employees, and either the Secretary to the Treasury or the secretary responsible for labour, or the secretary responsible for economic planning.

(6) A person shall not be appointed as trustee unless the Minister is satisfied that the person is a fit and proper person to hold the office of a trustee as defined by the Registrar, and qualified for the appointment by virtue of his qualification and experience in the following fields—

(*a*) financial markets and financial products;

(*b*) pension, insurance and social security;

(*c*) law;

(*d*) accounting; or

(*e*) economics and finance.

Cap. 5:03

(7) In addition to the powers, duties and functions of the trustees under the Trustees Incorporation Act, the Registrar may issue Registrar's directives on the powers, duties and functions of the trustees.

(8) The existence of the Pension Administrator shall not preclude the Registrar from licensing other pension funds whether as restricted or unrestricted or umbrella funds to participate in the management of funds under the National Pension Scheme:

Provided that the Pension Administrator shall at all times manage not more than twenty per cent of funds under the National Pension Scheme.

(9) The Registrar may, from time to time, by order published in the *Gazette*, revise the proportion of funds under the National Pension Scheme to be under the management of the Pension Administrator as provided under subsection (8).

(10) The Government shall at all times maintain capital of the Pension Administrator in compliance with the minimum capital and solvency directive issued by the Registrar.

(11) The Pension Administrator shall at all times comply with all other regulatory requirements prescribed and issued under all applicable financial services laws.

Designation of Government or other agency for some duties of the Pension Administrator

8.—(1) Notwithstanding section 7, the Minister may, upon consultation with the Minister responsible for labour and the Registrar, designate any Government agency or private organization to perform any part of the functions of the Pension Administrator.

(2) Any Government agency or private organization appointed under subsection (1) as Pension Administrator shall exercise all the powers and duties of the Pension Administrator as outlined under section 7, or in the Registrar's directives.

PART III
Mandatory Provisions

Obligation of employer

9.—(1) Subject to section 10, every employer shall make provision for every person under his employment to be a member of the National Pension Scheme.

(2) The Minister responsible for labour and the Registrar, in consultation with the Minister, shall be responsible for ensuring compliance with this Part.

(3) Any employer who, without reasonable excuse, fails to comply with this section, shall be liable to administrative penalties under the Financial Services Act. Cap. 44:05

Minister's power to exempt

10.—(1) The Minister, in consultation with the Minister responsible for labour and the Registrar, may by notice published in the *Gazette*, prescribe a salary threshold above which an employee's earnings shall not constitute part of that employee's pensionable emoluments.

(2) Notwithstanding the provisions of section 6 (1), the Minister shall, in consultation with the Minister responsible for labour and the Registrar, by order published in the *Gazette*, prescribe a salary threshold below which an employer and employee shall be exempted from complying with the requirements of section 9 and section 15:

Provided that—

(*a*) where an employer has more than five employees, that employer shall provide pension for those employees notwithstanding that the salary of those employees is below the salary threshold prescribed under this subsection; and

(*b*) employers who have existing pension schemes at the commencement of this Act shall ensure that every employee who was a member of such pension scheme continues to be a member of the pension scheme notwithstanding that the employee's salary is below the salary threshold prescribed under this subsection.

(3) The Minister, in consultation with the Minister responsible for labour, and the Registrar, may, by order published in the *Gazette*, exempt any class or category of employers or employees from complying with the requirements of this Act.

(4) Without limiting the provisions of section 91, all matters relating to employers and employees exempt by subsections (2) and (3) shall be governed by the provisions of the Employment Act.

Cap. 55:01

(5) Where the exemption under subsection (2) and subsection (3) no longer applies, an employer shall recognize as part of an employee's pension dues, the employee's entitlements accrued from the date of employment of the employee to the date when the employee becomes a member of the National Pension Scheme.

Trustees to establish separate accounts

11. The trustees of a pension fund shall establish and maintain a separate account in its books for each member, in accordance with the Registrar's directives.

Minimum contribution rates

12.—(1) Subject to subsection (2), and without limiting the powers of the Minister to make regulations on pension contribution, contributions relating to pensionable emoluments for an employee shall, under the National Pension Scheme, be made in the following manner—

(*a*) a minimum of ten per cent by the employer; and

(*b*) a minimum of five per cent by the employee:

Provided that the minimum contribution rate prescribed in paragraph (*a*) may be set at seven and a half per cent for the employer from the date of commencement of this Act until the latest 1st January before the expiry of two years from that date.

(2) The rates of contribution prescribed in subsection (1) may, upon agreement between an employer and an employee, be revised upwards, from time to time, provided that the Registrar shall be notified of any such revision.

(3) Notwithstanding the provisions of subsections (1) and (2), an employer may agree or elect to bear the full burden of the total contributions provided that in such case the employer's contribution shall not be less than the sum of the employer and employee contributions prescribed in subsection (1).

(4) An employee or a self-employed individual may, in addition to the total contributions being made by him and his employer, make voluntary contributions to his account:

Provided that such contributions do not exceed the threshold set by the Minister under section 10 (1).

(5) Subject to such directives as may be issued from time to time by the Registrar, and notwithstanding the requirements of section 9 and this

section, an employee shall be entitled to make voluntary contributions to any unrestricted fund or to the restricted fund to which the employer of that employee is currently contributing.

(6) In addition to the minimum contributions prescribed in subsections (1) and (3), an employer shall cover the cost of the pension fund in respect of those employees who elect to stay as members of the fund nominated by the employer.

Taxation

13.—(1) All contributions made by both the employee and employer, up to the limits specified in section 10 (1) and any income accruing to the credit of such contributions after being invested, shall be deductible from the relevant taxable income.

(2) Any lump sum received at retirement, as specified in section 68, shall be exempt from income tax.

Pension benefits to be transferable

14. An employee may transfer pension benefits accruing to his account to any unrestricted fund without giving any reason for the transfer, and upon such transfer the employer of that employee shall redirect the contribution that he is required to make under section 9 to the fund selected by the employee:

Provided that—

(*a*) the employee shall only be allowed to transfer pension benefits once in two years at most, or as may be determined by the Registrar in a Registrar's directive from time to time;

(*b*) in respect of the fees levied by any fund other than the fund nominated by the employer, the employer shall pay only that amount of the fees equal to the fees that would otherwise be paid for that member, to the nominated fund, not any excess above this amount; and

(*c*) the employer shall not be required to cover the costs of the transfer.

Life insurance policy

15.—(1) An employer shall, in addition to making pension contributions on behalf of its employees, maintain a life insurance policy in favour of each of its employees for a minimum life insurance policy cover of one times the annual pensionable emoluments of the employee.

(2) The benefits of the life insurance policy specified in subsection (1) shall form part of the member's death benefits and shall be distributed in accordance with section 70.

(3) The Minister may, by notice published in the *Gazette*, amend the minimum life insurance policy cover prescribed in subsection (1).

(4) The Minister may make regulations prescribing the manner in which the life insurance policy cover required in subsection (1) may be arranged.

PART IV
Registration and Licensing

Pension schemes and umbrella funds to be registered and trustees licensed

16.—(1) A person shall not operate a pension scheme unless—

(*a*) the scheme is registered as a pension fund and has legal personality; and

(*b*) the trustee of the fund is licensed as a trustee of the fund.

(2) A person shall not operate an umbrella fund unless—

(*a*) the fund is registered as an umbrella fund and has legal personality; and

(*b*) the operator of the fund is licensed as operator of the fund.

(3) Any person who contravenes subsection (1) or (2) commits an offence and shall be liable upon conviction—

(*a*) in the case of a natural person, to a fine of K10,000,000 and to imprisonment for four years; and

(*b*) in the case of a corporation, to administrative penalties as provided for in the Financial Services Act.

Cap. 44:05

Registration criteria for restricted funds Cap. 44:05

17.—(1) If an application is made in accordance with the Financial Services Act, for registration of a restricted fund as a pension fund, the Registrar shall so register the fund if—

(*a*) the fund rules provide that the fund shall be maintained solely to provide pensions or annuities for one or more of the following—

(i) members on their reaching retirement age;

(ii) members on their ceasing to be engaged in their business, trade, profession, vocation, calling, occupation or employment;

(iii) dependants of members on the members' deaths; or

(iv) for any of such purposes and the purpose of providing pensions or annuities for members on their ceasing to be engaged in their business, trade, profession, vocation, calling, occupation or employment because of ill-health;

(*b*) the fund rules provide for contributions to the fund to be made at specified times and rates;

(*c*) it appears to the Registrar that the fund complies with this Act and the other financial services laws;

(*d*) the trustee of the fund is licensed as required by this Act;

(*e*) the fund rules provide that each employer shall ensure that, for all employees of the employer who are eligible under the fund rules to be members, it is a condition of their employment that they be and remain a member of the fund or of some other registered pension fund;

(*f*) the fund assets shall be held by a custodian;

(*g*) subject to subsection (2), the fund rules provide that a trustee and, where the trustee is a corporate trustee, the directors of the trustee, are not to be paid any fee out of the fund assets for acting as trustee;

(*h*) if subsection (2) applies, the fee is, in the Registrar's opinion, reasonable in the circumstances;

(*i*) the principal officer has been approved by the Registrar in terms of the fit and proper person requirements as determined in the Registrar's directive; and

(*j*) the Registrar has no reason to believe that the fund and the trustee will not comply with this Act and other financial services laws, including the Registrar's directives, if the fund is registered.

(2) The fund rules may permit an independent trustee who is an individual, or, in the case of a corporate trustee, an independent director of the corporate trustee, to be paid a fee out of the scheme assets for acting as trustee or director.

Registration criteria for unrestricted funds Cap. 44:05

18. If an application is made in accordance with the Financial Services Act, for registration of an unrestricted fund as a pension fund, the Registrar shall not register the fund unless he is satisfied that—

(*a*) the fund rules provide that the fund shall be maintained solely to provide pensions or annuities for one or more of the following—

(i) members on their reaching retirement age;

(ii) members on their ceasing to be engaged in their business, trade, profession, vocation, calling, occupation or employment;

(iii) dependants of members on the members' deaths; or

(iv) for any of such purposes and the purpose of providing pensions or annuities for members on their ceasing to be engaged in their business, trade, profession, vocation, calling, occupation or employment because of ill-health;

(*b*) the fund rules provide for contributions to the fund to be made at specified times and rates;

(*c*) the fund complies with this Act and the other financial services laws;

(*d*) the trustee of the fund is licensed as required by this Act;

(*e*) the fund assets shall be held by a custodian;

(*f*) the principal officer has been approved by the Registrar in terms of the fit and proper person requirements as determined in the Registrar's directive;

(*g*) any fee payable in accordance with the fund rules out of the fund assets to the trustee for acting as trustee is, in the Registrar's opinion, reasonable in the circumstances; and

(*h*) the Registrar has no reason to believe that the fund and the trustee will not comply with this Act and other financial services laws, including the Registrar's directives, if the fund is registered.

Registration criteria for umbrella funds Cap. 44:05

19. If an application is made in accordance with the Financial Services Act, for registration of a fund as an umbrella fund, the Registrar shall not register the fund unless—

(*a*) the fund complies with this Act and the other financial services laws;

(*b*) the operator of the fund is licensed as required by this Act;

(*c*) the principal officer has been approved by the Registrar in terms of the fit and proper person requirements as determined in the Registrars directive; and

(*d*) the Registrar has no reason to believe that the fund and the operator will not comply with this Act and other financial services laws, including the Registrar's directives, if the fund is registered.

Notice of registration to Commissioner of Taxes

20. Upon registration of a pension fund or umbrella fund, the trustee or operator of that fund shall give notice to the Commissioner of Taxes of such registration, as required by a Registrar's directive.

Investment managers, custodians, administrators and pension brokers to be licensed

21.—(1) A person shall not act as—

(*a*) an investment manager for a pension fund;

(*b*) an investment manager for an umbrella fund;

(*c*) a custodian for a pension fund or an umbrella fund;

(*d*) an administrator for a pension fund; or

(*e*) a pension broker,

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unless he is licensed as such under the requirements of the Financial Services Act.

(2) Any person who contravenes subsection (1) commits an offence and shall be liable upon conviction—

(*a*) in the case of a natural person, to a fine of K10,000,000 and to four years imprisonment; and

(*b*) in the case of a corporation, to administrative penalties as provided in the Financial Services Act. Cap. 44:05

22. The provisions relating to licensing and registration of applications contained in the Financial Services Act, shall apply *mutatis mutandis* to this Act. Licensing and registration procedure Cap. 44:05

23.—(1) A person may be licensed as a trustee in respect of pension funds of a class specified in the licence. Licensing on a "class" basis

(2) A person may be licensed as an operator of umbrella funds of a class specified in the licence.

(3) An investment manager may be licensed in respect of pension funds of a class specified in the licence.

PART V
Requirements for Trustees, Investment Managers, Administrators, Custodians, Pension Brokers and Actuaries of Pension Funds and Umbrella Funds

Division 1
Trustees of Pension Funds and Operators of Umbrella Funds

24. A person shall not be appointed as a trustee of a pension fund, an operator of an umbrella fund or a director of a corporate trustee of a pension fund unless he has consented in writing to the appointment. Trustees, operators and directors to consent to appointment

25.—(1) An umbrella fund and an unrestricted fund shall have a single trustee, which shall be a body corporate. Composition of trustees

(2) A restricted fund which has an individual as a trustee—

(*a*) shall have at least six individuals as trustees called "a group of individual trustees".

(3) If—

(*a*) a vacancy occurs in the membership of a group of individual trustees of a restricted fund;

(*b*) immediately before the vacancy occurred, the fund had at least six individuals as trustees;

(*c*) the vacancy is filled within ninety days after it occurred; and

(*d*) immediately after the vacancy is filled, the fund has at least six individuals as trustees,

the fund shall be deemed to have had at least six individuals as trustees during the period of the vacancy.

Equal representation rule

26.—(1) If a restricted fund has a group of individual trustees, the group shall consist of equal numbers of employer representatives and member representatives.

(2) If a restricted fund has a corporate trustee that is not the trustee of another fund or trust, the board of directors of the corporate trustee shall consist of equal numbers of employer representatives and member representatives.

(3) For a fund where the equal representation rule applies, if—

(*a*) a vacancy occurs in the membership of a group of individual trustees or, if the trustee is a corporate trustee, on the board of directors of the corporate trustee;

(*b*) immediately before the vacancy occurred, the fund complied with the equal representation rule;

(*c*) the vacancy is filled within ninety days after it occurred; and

(*d*) immediately after the vacancy is filled, the fund complies with the equal representation rule,

the fund shall be deemed to have complied with the equal representation rule during the period of the vacancy.

Additional independent trustees and additional independent directors

27. If the fund rules of a restricted fund provide that—

(*a*) an independent additional trustee may be appointed as a trustee, or an independent additional director may be appointed as a director, at the request of the employer representatives, or the member representatives, who are the members of the group or board; and

(*b*) the additional independent trustee or additional independent director may not exercise a vote in any proceedings of the group or board,

the appointment of such an additional independent trustee or additional independent director does not contravene the equal representation rule.

Advisory committees

28.—(1) This section applies in respect of—

(*a*) an unrestricted fund; and

(*b*) a restricted fund which has a corporate trustee that is not the trustee of another fund or trust.

(2) The trustee shall make arrangements, whether through the fund rules or otherwise, in accordance with the Registrar's directives, for the establishment and operation of one or more advisory committees for the fund.

(3) While advisory committees shall not have power beyond the power to advise the trustee, in the event of a dispute by a member of the fund, failure of the trustee to provide evidence that it has failed to respond adequately to concerns raised by the advisory committee shall be regarded by the Registrar as a breach of the trustee's fiduciary responsibility to the members of the fund.

Rules for appointment of member representatives

29.—(1) This section applies to a pension fund to which the equal representation rule applies.

(2) The trustee shall establish rules, whether by inclusion in the fund rules or otherwise—

(*a*) setting out a procedure for appointing the member representatives; and

(*b*) ensuring that the member representatives so appointed shall be removed only by the same procedure as that by which they were appointed, except in the event of—

(i) mental or physical infirmity;

(ii) retirement;

(iii) termination of employment with a fund employer; or

(iv) such other circumstances as are prescribed in Registrar's directives for the purposes of this section.

(3) The trustee shall publish the rules established under subsection (2) in a way that will make members aware of the procedure for appointment and removal of member representatives.

(4) Any person who contravenes subsections (2) and (3) commits an offence and shall be liable to an administrative penalty under the Financial Services Act. Cap. 44:05

Division 2
Investment Managers, Administrators, Pension Brokers, Custodians and Actuaries of Pension Funds and Umbrella Funds

Investment managers, pension brokers, custodians and administrators to be bodies corporate

30. The Registrar shall not license an individual as—

(*a*) an investment manager or a custodian for pension funds or umbrella funds;

(*b*) an administrator of pension funds; or

(*c*) a pension broker.

Appointment of investment managers, pension brokers, custodians and administrators to be in writing

31.—(1) If the trustee of a pension fund—

(*a*) appoints a person other than a body corporate to be investment manager, administrator, pension broker or custodian for the fund; or

(*b*) appoints a person to be investment manager, administrator, pension broker, actuary or custodian for the fund otherwise than in writing,

the trustee and the person appointed shall each be liable to administrative penalties under the Financial Services Act.

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(2) If, in contravention to this Act, the operator of an umbrella fund—

(*a*) appoints a person other than a body corporate to be investment manager, pension broker or custodian for the fund; or

(*b*) appoints a person to be investment manager, pension broker or custodian for the fund otherwise than in writing,

that operator and the person appointed shall each be liable to administrative penalties under the Financial Services Act.

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(3) An appointment referred to in subsection (1) or (2) shall be void.

Appointment of principal officer

32.—(1) A pension fund or umbrella fund shall appoint a principal officer whose appointment shall be subject to the prior approval of the Registrar in terms of fit and proper person requirements as determined in the Registrar's directives.

(2) No pension fund or umbrella fund shall remove or change its principal officer except with the prior written approval of the Registrar.

Individual not to act as investment manager, pension broker, custodian or administrator

33.—(1) An individual shall not act as an investment manager, pension broker or a custodian for pension funds or umbrella funds.

(2) An individual shall not act as an administrator of pension funds.

(3) Any person who contravenes subsection (1) or (2) commits an offence and shall be liable upon conviction to a fine of K10,000,000 and to four years imprisonment.

PART VI
Requirements for Fund Rules of Pension Funds and Umbrella Funds

Pension fund rules to be enforceable

34. The fund rules of a pension fund shall be legally enforceable as between the members and the trustee, and as between the trustee and each employer.

Pension funds to be held on trust

35. The fund rules of a pension fund shall provide that—

(*a*) contributions to the fund, whether employer contributions or employee contributions, shall be paid to the trustee or as the trustee directs; and

(*b*) the fund assets shall be held by the trustee in trust for members, in accordance with this Act.

Statutory covenants for pension funds

36.—(1) The fund rules of a pension fund shall provide that the trustee of the fund covenants in favour of the members—

(*a*) to act honestly in all matters concerning the fund;

(*b*) to exercise, in relation to all matters affecting the fund, the same degree of care, skill and diligence as an ordinary prudent person would exercise in dealing with property of another for whom the person felt morally bound to provide;

(*c*) to obtain skilled advice to assist in instances in which the complexity of issues is such that an ordinary prudent person would not be expected to make sound decisions taking all facts into account, a service for which reasonable fees may be paid from the assets of the fund;

(*d*) to ensure that the trustee's duties and powers are performed and exercised in the best interests of the members and beneficiaries of the fund;

(*e*) to formulate an investment strategy having regard to the whole of the circumstances of the fund including, but not limited to, the following—

(i) the risk involved in making, holding and realising, and the likely return from, the fund's investments having regard to its objectives and its expected cash flow requirements;

(ii) the composition of the fund's investments as a whole, including the extent to which the investments are diverse or involve risks from inadequate diversification;

(iii) the liquidity of the fund's investments having regard to its expected cash flow requirements; and

(iv) the ability of the fund to discharge its existing and prospective liabilities;

(*f*) to give effect to the investment strategy formulated under paragraph (*e*);

(*g*) to keep the money and other assets of the fund separate from any money and assets—

(i) that are held by the trustee personally; or

(ii) that is money or are assets of another person, including an employer or a related party of an employer;

(*h*) not to do anything that would prevent the trustee from, or hinder the trustee in, properly performing or exercising the functions and powers of the trustee;

(*i*) if there are reserves of the fund, to formulate and to give effect to a strategy for their prudential management, consistent with the fund's investment strategy and its capacity to discharge its liabilities as and when they fall due; and

(*j*) such additional covenants as may be prescribed in Registrar's directives for the purposes of this section.

(2) The covenant referred to in subsection (1) (*h*) shall not prevent the trustee from engaging or authorizing persons to carry out specified actions on behalf of the trustee.

Statutory covenants for umbrella funds

37.—(1) The fund rules of an umbrella fund shall provide that the operator of the fund covenants in favour of the members—

(*a*) to act honestly in all matters concerning the fund;

(*b*) to exercise, in relation to all matters affecting the fund, the same degree of care, skill and diligence as an ordinary prudent person would exercise in dealing with property of another for whom the person felt morally bound to provide;

(*c*) to ensure that the operator's duties and powers are performed and exercised in the best interests of the members;

(*d*) not to do anything that would prevent the operator from, or hinder the operator in, properly performing or exercising the operator's functions and powers; and

(*e*) such additional covenants as may be prescribed in Registrar's directives for the purposes of this section.

(2) The covenant referred to in subsection (1) (*d*) shall not prevent the operator from engaging or authorizing persons to carry out specified actions on behalf of the trustee.

Consistency of statutory covenants

38.—(1) A covenant prescribed for the purposes of section 36 (1) (*j*) shall be capable of operating concurrently with all the covenants referred to in section 36 (1) and the other provisions of this Act.

(2) A covenant prescribed for the purposes of section 37 (1) (*e*) shall be capable of operating concurrently with all the covenants referred to in section 37 (1) and the other provisions of this Act.

Statutory covenants bind directors of trustee

39. If the trustee of a pension fund is a body corporate, the statutory covenants shall further have effect as covenants by each of the directors of the trustee to exercise the degree of care and diligence that a reasonable person in the position of director of the trustee would exercise in the trustee's circumstances, to ensure that the trustee performs the statutory covenants, and so operates as if the directors were parties to the fund rules.

Damages for breach of statutory covenants

40.—(1) A breach of a statutory covenant shall not be an offence and shall not result in the invalidity of a transaction, but a person who suffers loss or damage as a result of conduct of another person that is a breach of a statutory covenant may recover the amount of the loss or damage by action against that other person and against any person involved in the breach.

(2) It shall be a defence to an action for loss or damage suffered by a person as a result of the making of an investment by or on behalf of a trustee of a pension fund if it is established that the investment was made in accordance with an investment strategy formulated under the covenant set out in section 36 (1) (*e*).

(3) It shall be a defence to an action for loss or damage suffered by a person as a result of the management of reserves by a trustee of a pension fund if it is established that the management of the reserves was in accordance with the covenant set out in section 36 (1) (*i*).

(4) Subsections (2) and (3) shall apply to an action for loss or damage, whether brought under subsection (1) or otherwise.

Fund rules regarding indemnities, liability and advice

41.—(1) A provision in the fund rules of a pension fund or an umbrella fund shall be void if—

(*a*) it purports to preclude a licensed trustee of the pension fund or the licensed operator of the umbrella fund from being indemnified out of the fund assets in respect of a liability incurred while acting as trustee or as operator; or

(*b*) subject to subsection (2), it limits the amount of such an indemnity.

(2) A provision in the fund rules of a pension fund or an umbrella fund shall be void if it purports to—

(*a*) exempt a licensed trustee of the pension fund, or the licensed operator of the umbrella fund, from a liability arising as a result of the trustee or operator—

(i) failing to act honestly in a matter concerning the fund; or

(ii) intentionally or recklessly failing to exercise, in relation to a matter affecting the fund, the degree of care and diligence that the trustee or operator was required to exercise; or

(*b*) indemnify such a trustee or operator in respect of such a liability.

(3) The fund rules of a pension fund or an umbrella fund shall not prevent a licensed trustee of the pension fund or the licensed operator of the umbrella fund from seeking advice from any person in respect of any matter relating to performance of his duties or the exercise of his powers as trustee or operator.

(4) A provision in the fund rules shall be void if it purports to preclude the trustee or operator from being indemnified out of fund assets in respect of the cost of obtaining advice mentioned in subsection (3), or to limit the amount of such an indemnity.

Trustee directors may be indemnified

42.—(1) Subject to subsection (2), the fund rules of a pension fund or an umbrella fund may provide for a director of the licensed trustee, who is a corporate trustee, or of the licensed operator of the fund to be indemnified out of the fund assets in respect of a liability incurred while acting as such a director, and the director may be so indemnified out of the fund assets accordingly.

(2) A provision of the fund rules of a pension fund or an umbrella fund shall be void if it would have the effect of indemnifying a director of the licensed trustee, being a corporate trustee, or of the licensed operator, of the fund against a liability that arises because the director—

(*a*) fails to act honestly in a matter concerning the fund; or

(*b*) intentionally or recklessly fails to exercise, in relation to a matter affecting the fund, the degree of care and diligence that the director is required to exercise.

Pension fund trustees not to be subject to direction

43.—(1) The fund rules of a pension fund shall not permit a trustee to be subject, in the exercise of any of the trustee's powers in relation to the fund, to direction by any other person.

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

(*a*) a direction given by a court;

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(*b*) a direction given by the Registrar under the Financial Services Act;

(*c*) a nomination;

(*d*) in the case of a restricted fund, a direction given by an employer, or an associate of an employer, in circumstances prescribed in the Registrar's directives for the purposes of this section; or

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(*e*) a direction given by the Appeals Committee, as defined in the Financial Services Act.

(3) A provision of fund rules of a pension fund shall be void to the extent of its inconsistency with subsection (1).

Pension funds benefits to be portable

44.—(1) The fund rules of a pension fund that is a restricted fund shall provide that—

(*a*) if a member, continuing in employment with an employer, applies to switch to a registered unrestricted fund, the trustee shall pay the amount of the member's benefits in the fund to the trustee of the specified pension fund;

(*b*) if a member—

(i) ceases employment with an employer; and

(ii) does not take up employment with another employer within the period specified in Registrar's directives for the purposes of this section,

the trustee shall, on application by the member, pay the amount of the member's benefits in the fund to the trustee of another registered pension fund; and

(*c*) if a person becomes a member, the trustee shall accept payments in respect of the member from the trustee of another registered pension fund and shall credit to those amounts to the member's account in the fund.

(2) Without limiting the Registrar's power under the Financial Services Act, to issue Registrar's directives, Registrar's directives may make provision with respect to the calculation and payment of members' benefits for the purposes of this section. Cap. 44:05

45.—(1) Subject to this Act and the Registrar's directives, the fund rules of a pension fund shall not permit a discretion under such rules that is exercisable by a person other than a trustee to be exercised unless— Exercise of discretion in respect of pension funds

(*a*) those rules require the consent of the trustee to the exercise of that discretion; or

(*b*) the discretion is exercised in circumstances prescribed in, and in accordance with, Registrar's directives for the purposes of this subsection.

(2) A provision of fund rules of a pension fund shall be void to the extent of its inconsistency with subsection (1).

46. Fund rules of a pension fund shall not require that a decision of the trustee under those rules be made only with the consent or approval, however described, of an employer, unless the decision— Restriction on requirement for approval of trustee's decisions by employer

(*a*) increases the benefits or rates of benefits, payable under those rules;

(*b*) would have the effect of increasing the costs to the employer, of the administration of the fund;

(*c*) is made to comply with a written law or a direction of the Registrar or the Appeals Committee; or

(*d*) is of a kind prescribed by Registrar's directives for the purposes of this section.

Restriction on amendments to fund rules

47.—(1) The fund rules of a pension fund shall not permit those rules to be amended unless—

(*a*) the trustee consents to the amendment;

(*b*) the amendment only confers on the trustee the power to consent to amendments of those rules; or

(*c*) the amendment is for the purposes prescribed in Registrar's directives for the purposes of this subsection.

(2) The fund rules of a pension fund shall not permit the rules to be amended to make a person other than a licensed trustee eligible to be appointed as trustee.

(3) The fund rules of an umbrella fund shall not permit the rules to be amended to make a person other than a licensed operator eligible to be appointed as operator.

(4) A provision of fund rules of a pension fund or an umbrella fund shall be void to the extent of any inconsistency with subsections (1), (2) or (3).

(5) If the fund rules of a pension fund or an umbrella fund are amended, the trustee or operator of the fund shall give a copy of the amendment, as prescribed by Registrar's directives for the purposes of this subsection, to the Registrar.

(6) An amendment to the fund rules of a pension fund shall not have effect until—

(*a*) the day the Registrar approves the amendment; or

(*b*) on a day specified in the amendment but after the approval of the Registrar.

(7) The Registrar shall not approve amendment to the fund rules of a pension fund if—

(*a*) in the case of a restricted fund and subject to subsection (8), the fund rules as amended would provide that a trustee and, if the trustee is a corporate trustee, the directors of the trustee, are entitled to be paid a fee out of the fund assets for acting as trustee;

(*b*) in the case of an unrestricted fund, the fund rules as amended would provide that the trustee may be paid a fee payable out of the fund assets for acting as trustee that is not, in the Registrar's opinion, reasonable in the circumstances.

(8) Fund rules of a restricted fund may be amended to permit an independent trustee who is an individual or, in the case of a corporate

trustee, an independent director of the corporate trustee, to be paid a fee out of the fund assets for acting as trustee or director.

(9) The Registrar shall approve or refuse approval of an amendment to the fund rules in writing, within thirty days of receipt by the Registrar of a copy of the amendment under subsection (5):

Provided however that the Registrar may, by notice in writing to the trustee or operator, extend the period within which an application shall be considered.

(10) The Registrar may extend more than once the period for dealing with the application.

(11) The trustee or operator of a pension fund or umbrella fund shall give notice of any amendment to the fund rules, as prescribed by the Minister, to the Registrar within thirty days after the amendment comes into effect.

(12) Any person who contravenes subsection (11) shall be liable to an administrative penalty under the Financial Services Act. Cap. 44:05

PART VII

Prudential and Other Requirements for the Operation of Pension Funds and Umbrella Funds

Matters that Registrar's directives may cover Cap. 44:05

48. Without limiting the Registrar's power under the Financial Services Act, to issue Registrar's directives, Registrar's directives may make provision with respect to—

(*a*) contributions to pension funds, including who may make contributions and the circumstances in which a pension fund may accept contributions;

(*b*) payment of benefits from pension funds, including—

(i) the way in which amounts of benefits are to be calculated;

(ii) the form in which benefits may be paid; and

(iii) requirements relating to payment of benefits, based on conditions other than retirement age, under which retirement by a member may be permissible under the fund rules;

(*c*) commutation of pensions and annuities from pension funds;

(*d*) transferring entitlements to benefits from pension funds to other pension funds;

(*e*) the levels of assets that may be held by pension funds;

(*f*) the application of fund assets no longer required to meet payments of benefits to beneficiaries in pension funds, including

because the beneficiaries have ceased to be entitled to receive those benefits;

(*g*) the investment of fund assets of pension funds and umbrella funds and the management of those investments and limits to the proportion of assets that may be held by pension funds and umbrella funds in specified classes of investments;

(*h*) the number of individual trustees and the composition of boards or committees of trustees of pension funds;

(*i*) fit and proper person requirements for trustees, investment managers, custodians and administrators and principal officers;

(*j*) disclosure of information by trustees of a pension fund to other trustees of the fund;

(*k*) disclosure of information by an investment manager to the trustee or operator of a fund whose assets are managed by the investment manager or to the trustee or operator of a prospective client of the investment manager;

(*l*) disclosure of information, including the format of this information if necessary, to trustees by investment managers, custodians, pension brokers, administrators, actuaries and auditors concerning the fees and charges levied for the services rendered;

(*m*) specifications of the forms in which fees and charges may be expressed, facilitating clear comparison;

(*n*) maximum fees and charges to be applied by pension fund administrators, custodians, investment managers and brokers, and independent trustees;

(*o*) specifications of the types and forms of fees to be applied by pension fund administrators, custodians, investment managers and brokers, and independent trustees; and

(*p*) requirements relating to the role and mandate of a principal officer.

Investment management agreement not to exclude liability for negligence

49. A provision in an agreement between a trustee of a pension fund of the operator of an umbrella fund and an investment manager that purports to exempt the investment manager from liability for negligence, or to limit that liability, shall be void.

Provision of information in an investment management agreement

50.—(1) An investment management agreement shall include adequate provision to enable the trustee or operator to require the investment manager—

(*a*) to provide appropriate information as to the making of, and return on, the investments made with those assets; and

(*b*) to provide whatever information is necessary to enable the trustee or operator to assess the capability of the investment manager to select and manage the investments,

whenever it is necessary or desirable to do so.

(2) If an investment management agreement entered into before the commencement of this Part does not include provision required by subsection (1), the trustee or operator shall, as soon as practicable—

(*a*) ensure that the agreement is amended so that it contains such provision; or

(*b*) if the investment manager refuses to agree to such an amendment, terminate the agreement.

(3) The trustee or operator—

(*a*) may terminate an investment management agreement under subsection (2) (*b*) despite anything in the agreement; and

(*b*) shall not be under any liability to the investment manager because of such a termination.

Pension fund assets to be invested at arm's length

51.—(1) A trustee of a pension fund shall not invest fund assets unless—

(*a*) the trustee and the other party to the transaction are dealing with each other at arm's length in respect of that transaction; or

(*b*) the terms of the transaction are no more favourable to the other party than those that it is reasonable to expect would apply if the trustee were dealing with the other party at arm's length in similar circumstances.

(2) Subsection (1) applies to the investment manager of a pension fund in the same way as it applies to the trustee of the fund.

(3) Any person who contravenes subsection (1) or (2) commits an offence and shall be liable to an administrative penalty prescribed under the Financial Services Act. Cap. 44:05

(4) A contravention of subsection (1) or (2) shall not affect the validity of a transaction.

(5) A reference in this section to a trustee and another party to a transaction dealing with each other at arm's length is a reference to the trustee and the other party dealing with each other on the basis that—

(*a*) each is pursuing its own commercial interests in relation to the transaction; and

(*b*) neither is preferring the other's interests in relation to the transactions to its own interests.

Restriction on employer assets

52.—(1) A trustee of a pension fund shall not acquire an employer asset as an asset of the fund if—

(*a*) the fund's employer asset percentage is five per cent or more; or

(*b*) because of the acquisition of the asset, the fund's employer asset percentage would be more than five per cent .

(2) If at any time, including the time of commencement of this Part, the employer asset percentage of a pension fund is more than five per cent—

(*a*) the trustee shall notify the Registrar as soon as practicable;

(*b*) the trustee shall, within one month after the notification, formulate a plan to dispose of employer assets of the fund so that the fund's employer asset percentage will be no more than five per cent, and submit such plan to the Registrar.

(*c*) except that, in cases of employers listed on the Malaŵi Stock Exchange whose market capitalization is more than ten per cent of the corresponding total market capitalization, the Registrar may permit exceptions to this specified limit, having taken into account the risks to which the members of the fund are exposed, the exception extending over a period specified by the Registrar, no longer than two years, and which on expiry is subject to the notification contemplated in subsection (2) (*a*) of this section and reconsideration of the merits of extension.

(3) If the Registrar approves the plan, then, subject to any directions under subsection (6), the trustee shall implement the plan and report to the Registrar on the implementation of the plan every three months until the fund's employer asset percentage is five percent or less.

(4) The Registrar shall be deemed to have approved a plan submitted to him under subsection (2) (*b*) at the expiry of thirty days after the plan was submitted to him unless, within the thirty days, the Registrar gives written notice to the trustee—

(*a*) that approval is refused; or

(*b*) extending the period for dealing with the plan:

Provided that no such automatic provision applies to the exception contemplated under subsection (2) (*c*), and approval for such an exception may not be considered to have been received unless provided in writing by the Registrar and provided further that the Registrar may extend more than once the period for dealing with the plan.

(5) A person shall not take part in a scheme with the intention that the trustee of a pension fund acquire, either directly or indirectly through one or more interposed companies, partnerships or trusts, an employer asset contrary to this section.

(6) The Registrar may give a written direction to a trustee of a pension fund at any time in relation to disposal of employer assets.

(7) Any person who contravenes subsections (1), (2), (3) or (5) commits an offence and shall be liable to an administrative penalty prescribed under the Financial Services Act. Cap. 44:05

Financial assistance to pension fund members

53.—(1) A trustee or an investment manager of a pension fund shall not lend money of the fund, or use fund assets to give any other financial assistance, to a member or a close relation of a member.

(2) The trustee or an investment manager of an umbrella fund shall not lend money of the fund, or use fund assets to give any other financial assistance, to a member of the fund or an associate of a member of the fund.

(3) Without limiting the generality of subsection (1) or (2), lending money or giving financial assistance to a person includes lending money or giving financial assistance to a company where the person owns more than fifty per cent of the voting shares in the company.

(4) Any person who contravenes subsection (1) or (2) commits an offence and shall be liable to an administrative penalty prescribed under the Financial Services Act. Cap. 44:05

(5) Subsections (1) and (2) shall not apply to a loan made before the commencement of this Act that was not in breach of the fund rules of the fund concerned.

(6) For the avoidance of doubt, subsections (1) and (2) apply to an extension of the terms of a loan made before the commencement of this section.

Trustee or investment manager not to acquire assets from members or associates

54.—(1) The trustee or an investment manager of a pension fund shall not knowingly acquire an asset from a member or an associate of a member except as authorized by Registrar's directives.

(2) A person shall not take part in a scheme with the intention that the trustee or an investment manager of a pension fund acquire, either directly or indirectly through one or more interposed companies, partnerships or trusts, an asset from a member or an associate of a member, except as authorized by Registrar's directives.

(3) Any person who contravenes subsection (1) or (2) commits an offence and shall be liable to an administrative penalty prescribed under the Financial Services Act. Cap. 44:05

(4) For purposes of this section, "acquire an asset" does not include accepting money by way of contribution.

Trustee not to borrow pension funds

55.—(1) The trustee of a pension fund shall not borrow money or maintain an existing borrowing of money except as authorized by Registrar's directives.

(2) Any person who contravenes subsection (1) commits an offence and shall be liable to an administrative penalty prescribed under the Financial Services Act.

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Investment outside Malaŵi Cap. 45:01

56. Fund assets of a pension fund or an umbrella fund shall not be invested outside Malaŵi except in accordance with the Exchange Control Act.

Complaint resolution mechanism for pension funds

57.—(1) The trustee of a pension fund shall take reasonable steps to ensure that, at all times, arrangements are in force under which—

(*a*) persons referred to in subsection (2) have the right to make an inquiry or a complaint as specified in that subsection; and

(*b*) such inquiries and complaints are properly considered and dealt with within sixty days.

(2) For the purposes of subsection (1) (*a*)—

(*a*) a beneficiary or former beneficiary of the fund may make an inquiry into, or complaint about, the operation or management of the fund in relation to him;

(*b*) the legal personal representative of a former beneficiary of the fund may make an inquiry into, or complaint about, the operation or management of the fund in relation to the former beneficiary; and

(*c*) without limiting paragraph (*a*) or (*b*), any person may make an inquiry into, or complaint about, a decision of a trustee of such a fund that relates to the payment of a death benefit if he has or claims to have an interest in the death benefit.

PART VIII
Giving Information to Fund Members and Beneficiaries

Fund information and member information

58.—(1) The trustee of a pension fund shall ensure that—

(*a*) a person who becomes a member is given fund information before, or, if that is not practicable, as soon as practicable after, he becomes a member; and

(*b*) each member is given fund information, and member information relating to the member, at times prescribed by Registrar's directives for the purposes of this section.

(2) Information given under subsection (1) shall be meaningful, accurate and complete and demonstrably written in a manner that enhances member understanding.

Information for prospective members, applications for membership in respect of unrestricted funds

59.—(1) Without limiting the Registrar's power under the Financial Services Act, to issue Registrar's directives, the Registrar's directives may make provision with respect to offering membership in, and admitting persons as members of, unrestricted funds, including provision with respect to—

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(*a*) applications for membership;

(*b*) documents to be provided to applicants for membership and their employers; and

(*c*) the circumstances in which the trustee may admit a person to membership of a fund.

(2) An unrestricted fund may not turn down an application for membership on the basis that contributions are too small.

Trustee of pension funds to give information to members

60.—(1) The trustee of a pension fund shall comply with any reasonable request by a member—

(*a*) for information about the fund; or

(*b*) for information about his entitlements in the fund.

(2) The trustee of a pension fund shall not be obliged to comply with a request under subsection (1) if he complied with such a request within six months before the request was made.

PART IX
Contributions and Investment Returns

Employer to remit contributions promptly

61.—(1) If, under this Act or the fund rules of a pension fund, an employer is under an obligation to make employer contributions in respect of a member, the employer shall pay to the trustee, or as the trustee directs, the amount of those contributions no later than fourteen days after the end of the month in which the liability to make the contributions arose.

(2) An employer who contravenes subsection (1), shall be liable to administrative penalty prescribed under the Financial Services Act.

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(3) If—

(*a*) an employer of an employee is authorized, whether by the employee, by law or otherwise, to deduct an amount from the remuneration payable by the employer to the employee and to pay the amount of the deduction to a trustee of a pension fund by way of employee contribution; and

(*b*) the employer makes such a deduction,

the employer shall pay to the trustee (or as the trustee directs) the amount of the deduction no later than fourteen days after the end of the month in which deduction was or should have been made.

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(4) An employer who contravenes subsection (3) shall be liable to administrative penalty prescribed under the Financial Services Act.

(5) An employer who contravenes subsection (1) or subsection (3) shall be liable to pay the trustee of the pension fund interest, at the rate prescribed by the Minister by order published in the *Gazette*, in respect of each month or part of a month during which any such amount, including interest, is outstanding, until the full amount, including interest, is paid.

(6) The Registrar shall, through a Registrar's directive, determine the treatment of the money paid as interest under subsection (5).

Credit to member accounts for defined contribution funds

62.—(1) The trustee of a defined contribution fund shall credit the following amounts to a member's account—

(*a*) the amounts of the employer contributions and employee contributions paid to the trustee in respect of the member; and

(*b*) investment returns, in accordance with the fund rules and Registrar's directives.

(2) The trustee of a defined contribution fund who receives a contribution in respect of a member in a month shall allocate the contribution to the member's account within fourteen days from the date of receipt of the contribution from the employer.

Debits to member accounts

63. The trustee of a defined contribution fund shall debit a member's account, in accordance with the fund rules and Registrar's directives, with the following amounts—

(*a*) amounts of benefits paid from the fund in respect of the member;

(*b*) fees and charges;

(*c*) amounts owed by the member to the trustee in respect of the fund; and

(*d*) the proportion of the fund's investment losses allocated to the account in accordance with Registrar's directives.

PART X
Pensions and Other Benefits

Division 1
Payment of Benefits

Conditions for payment of benefits in respect of pension funds

64.—(1) Subject to this Act, benefits in respect of a member of a pension fund shall be payable out of the fund only if, on application, the trustee is satisfied that—

(*a*) the member has reached retirement age;

(*b*) the member has retired on the basis of years of service or any other conditions under the fund rules as approved by the Registrar;

(*c*) the member is retired on the advice of a qualified medical practitioner registered with the Medical Council of Malaŵi, or a legally constituted medical board certifying that the employee is totally and permanently disabled from carrying out the functions of his office;

(*d*) the member is about to leave or has left Malaŵi permanently;

(*e*) the member has died;

(*f*) the member has permanently left the service of the employer, in which case, except as set out in this section, the benefits may only be paid out for transfer to another pension fund;

(*g*) the Registrar has given permission under section 65; and

(2) An application for the purposes of this section shall be made—

(*a*) by or with the authority of the member;

(*b*) in the case of a member who has died or is under a legal disability, by or with the authority of the member's legal personal representative; or

(*c*) otherwise, in accordance with Registrar's directives.

Early payment of benefits

65.—(1) Subject to this Act, the Registrar may, on application by a member to the trustee, where the member has permanently left the service of the employer, whether because he has resigned or because the employer has terminated his employment, for any reason otherwise than in circumstances described in section 64 (*a*) to (*e*), permit the trustee of the fund to pay benefits to the member out of the fund if the Registrar is satisfied that—

(*a*) the member has not secured another employment for a period of more than six months; and

(*b*) benefits paid to the member are limited to that part of the contributions paid by the member, not the employer, and any investment income on these contributions.

(2) Permission under this section may be subject to specified conditions.

(3) The Registrar may issue a Registrar's directive in respect of the implementation of subsections (1) and (2).

Immediate vesting of contributions for pension funds

66. For the purpose of calculating and paying benefits in respect of members of pension funds, all contributions received by the trustee of the fund shall be taken into account without any period having to elapse or any other condition to be satisfied, including a condition that the employee has remained in service with the employer for a specified period.

Pension fund benefits to be paid as annuities

67.—(1) Except as provided by this Act or in the Registrar's directives—

(*a*) benefits payable in respect of a member of a pension fund shall be paid as an annuity by a licensed insurer:

Provided that the member may elect to receive payments in the form of a programmed withdrawal, within limits specified by the Registrar, which may be changed from time to time.

(*b*) an annuity payable to a member of a pension fund, or on their death after retirement, to a surviving widow or widower, shall be an annuity for life.

(2) Payments of an annuity or pension to a member of a pension fund on the basis that the member has retired shall not begin unless the trustee is satisfied that the member has reached retirement age, or has met the conditions for retirement as may be prescribed under section 64 (1) (*b*), or is totally and permanently disabled as described in section 64 (1) (*c*).

Commutation of annuities into lump sums

68.—(1) If the fund rules permit, a pension or annuity payable in respect of a member of a pension fund may, in accordance with the fund rules but subject to this section and the Registrar's directives, be commuted into a lump sum.

(2) The maximum that may be commuted shall be calculated as follows—

(*a*) calculate the amount of the lump sum that would be payable if all the pensions and annuities payable in respect of the fund member were commuted in accordance with the fund rules and the Registrar's directives;

(*b*) if the amount calculated under paragraph (*a*) does not exceed the amount prescribed for the purpose of this paragraph in the Registrar's directives, all the pensions and annuities payable in respect of the fund member may be commuted;

(*c*) otherwise, up to forty per cent of the amount calculated under paragraph (*a*) may be commuted; and

(*d*) if the pensions or annuities are payable on the basis that the member has left, or is about to leave, Malaŵi permanently all the pensions and annuities payable in respect of the member may be commuted.

Payment of benefits upon member leaving Malaŵi permanently

69. Benefits payable from a pension fund in respect of a member on the basis that the member has left, or is about to leave Malaŵi permanently shall be payable as follows—

(*a*) forty per cent of the amount payable shall be payable on granting of the application; and

(*b*) the balance of the amount payable shall be payable at the end of twelve months after the payment made under paragraph (*a*), but only if the trustee is then satisfied that the member has left Malaŵi permanently.

Death benefit nominations

70.—(1) A member of a pension fund may give the trustee a written nomination directing the trustee to pay the fund member's benefits on his death to all or any of the following—

(*a*) the member's widow or widower, as the case may be;

(*b*) the member's child; or

(*c*) the member's close relation.

(2) A nomination shall set out the amount or proportion of the benefits to be paid to each of the persons specified.

(3) A member may amend a nomination by written notice to the trustee in line with the fund rules.

(4) A member may revoke a nomination by written notice to the trustee.

(5) A nomination shall be revoked by the divorce or later marriage of the member.

(6) A nomination and a revocation of a nomination shall be signed by the member, but if the member is unable to sign his name, his thumb impression may be affixed in the presence of—

(*a*) a trustee of the fund;

(*b*) if the trustee is a corporate trustee a director or officer of the trustee; or

(*c*) a person prescribed by Registrar's directives for the purposes of this section.

(7) If the thumbprint of the member is so affixed, the nomination or revocation shall be deemed to be signed by the member.

(8) The trustee shall not accept a nomination or a revocation of a nomination if it appears to the trustee that the nomination or revocation was not made voluntarily.

Payment of death benefits

71.—(1) If a member's nomination to the trustee of a pension fund is current at the death of the member, then, subject to this section, benefits payable out of the fund on the member's death shall be paid as directed in the nomination.

(2) The trustee shall not pay the death benefits in accordance with the nomination if it appears to the trustee that the nomination was not made voluntarily.

(3) If, in relation to all or a part of the benefits payable on the death of a member of a pension fund—

(*a*) the member does not have a nomination current on his death; or

(*b*) the nomination is invalid; or

(*c*) under subsection 70 (8), the trustee has not accepted a nomination from the member,

then, subject to this Act and notwithstanding any other law to the contrary, those benefits, or that part of those benefits, shall be paid, in such proportions as the trustee determines, to a person or persons determined by the trustee of the fund, being a person or persons who, the trustee is satisfied, was or were financially dependent on the member at the time of his death.

(4) If a person to whom benefits are to be paid under this section, other than a surviving spouse of the member, is under the age of eighteen years, the amount of the benefit shall be held by the trustee in a separate trust for the person, to be paid to him when he turns eighteen years and the following shall apply in that case—

(*a*) the amount shall not be part of the fund assets of the pension fund, but may be invested and applied together with those fund assets;

(*b*) the trustee may at any time pay to the parent or guardian of the person any amount from the capital or income of the trust as the trustee thinks appropriate for the maintenance, education or welfare of the person;

(*c*) the trustee shall not be bound to see to the application of amounts paid under paragraph (*b*).

Death of an employee

72.—(1) Where an employee dies, his entitlements under the life insurance policy maintained under section 15 shall be paid to the deceased member's account.

(2) The trustee shall apply the amount paid under subsection (1) of this section in accordance with the requirements of section 71.

Division 2
Protection of Benefits

Benefits not to be attached

73.—(1) Except as provided by this Act—

(*a*) amounts paid as contribution to a pension fund in respect of a member;

(*b*) a member's entitlement to benefits in a pension fund; and

(*c*) amounts paid out of a pension fund by way of benefits in respect of a member,

shall not be liable to be attached, sequestrated or levied upon for or in respect of any debt or claim whatsoever.

(2) Except as provided by this Act, a member's entitlement to benefits in a pension fund is not part of his estate.

Effect of bankruptcy

74.—(1) The bankruptcy of an employee, and an act of bankruptcy by an employee, shall not affect—

(*a*) any liability of his employer to pay employer contributions to a pension fund; or

(*b*) any entitlement of the employee to benefits from a pension fund.

(2) Subsection (1) shall apply notwithstanding any other law, and despite any provision in the employee's contract of employment or in any other arrangement or understanding, express or implied, formal or informal, written or not and whether or not enforceable.

Benefits not to be assigned or pledged

75.—(1) A member's entitlement to benefits in a pension fund shall not be capable of being assigned or transferred, or pledged or charged or otherwise being subject to a security interest, however described.

(2) The trustee of a pension fund shall not recognize, or in any way encourage or sanction, a purported assignment or transfer of, or the granting of a pledge, charge or other security interest, however described, in respect of a member's entitlement to benefits.

PART XI
Miscellaneous Provisions

Missing employees

76. Notwithstanding anything to the contrary contained in any other law, where an employee is missing and is not found within a period of twenty-four months from the date he was reported missing, and a board of inquiry set up by the Registrar concludes that it is reasonable to presume that he has died, the provisions of sections 71 and 72 shall apply.

Significant adverse effects to be notified

77.—(1) If a trustee of a pension fund or an umbrella fund becomes aware that an event has occurred that has a significant adverse effect on the financial position of the fund, the trustee shall, within five days, give written notice to the Registrar setting out particulars of the event.

(2) If the pension fund referred to in subsection (1) above has a group of individual trustees and, within the five days, one of them gives

the notice as required by subsection (1), the notice shall be deemed to have been given by all of them.

(3) For the purposes of subsection (1), an event has a significant adverse effect on the financial position of a fund if, as a result of the event, at any time within the next twelve months the trustee will not, or may not, be able to make payments to beneficiaries as and when the obligation to make the payments arises.

Payment to employers restricted

78.—(1) Except as provided by this section, the trustee of an employer pension fund shall not pay an amount, or permit an amount to be paid, out of the fund to an employer.

(2) Subsection (1) shall not apply where its application would result in the arbitrary deprivation of a person's property.

Victimization of trustees

79.—(1) A person shall not victimize a trustee of, or an officer or employee of a corporate trustee of a restricted fund.

(2) Any person who contravenes subsection (1) commits an offence and shall be liable, upon conviction, to a fine of K10,000,000 and to four years imprisonment.

(3) If a person victimizes a trustee of, or an officer or employee of a corporate trustee of, a restricted fund the person victimized may recover the amount of any loss or damage he suffers as a result of the victimization by action against the defendant.

(4) For purposes of this section "victimize" means subject, or threaten to subject, the trustee, officer or employee to a detriment on the ground that the trustee, officer or employee—

(*a*) has exercised, is exercising or is proposing to exercise a power he has as trustee, or as an officer or employee of the trustee, or has exercised, is exercising or is proposing to exercise such a power in a particular way; or

(*b*) has performed, is performing or is proposing to perform a duty or function he has as trustee, or as an officer or employee of the trustee, or has performed, is performing or is proposing to perform such a duty or function in a particular way.

(5) For the purposes of this section—

(*a*) an employer subjects a trustee, or an officer or employee of a trustee, who is an employee of the employer to a detriment if he—

(i) dismisses the employee;

(ii) injures the employee in his employment; or

(iii) alters the position of the employee to the employee's prejudice;

(*b*) an employer shall not be deemed to subject an employee to a detriment merely because the employer—

(i) permanently ceases to be an employer of the fund;

(ii) temporarily ceases to contribute to the fund in respect of a class of members in which the employee is included; or

(iii) reduces the level of employer contributions to the fund in respect of a class of members in which the employee is included.

(6) In proceedings under subsection (3)—

(*a*) it is not necessary for the plaintiff to prove the defendant's reason for the alleged action; and

(*b*) it is a defence if it is established that the action was not motivated, whether in whole or in part, by the alleged reason.

Rule against remoteness of vesting

80. The rule of law against remoteness of vesting shall not apply in relation to a pension fund established after the commencement of this Act.

Protection for discharging obligations

81. A person shall not be liable in a civil action or civil proceeding in relation to an act done to discharge an obligation imposed by this Act, the regulations or Registrar s directives in relation to pension funds or umbrella funds.

Contravention of this Act, regulations or directives Cap. 44:05

82.—(1) Any person who contravenes this Act, the regulations or directives made hereunder, for which no penalty has been prescribed, shall be liable to administrative penalty under the Financial Services Act.

(2) A person on whom an administrative penalty has been imposed and who fails or refuses to comply with the administrative penalty commits an offence and shall be liable upon conviction to—

(*a*) in case of a natural person, to a fine of K10,000,000 or to four years imprisonment; and

(*b*) in case of a body corporate, then provisions of the Financial Services Act, shall apply. Cap. 44:05

Jurisdiction of the Industrial Relations Court Cap. 44:05 Cap. 54:01

83. In addition to the provisions of the Financial Services Act, the Industrial Relations Court established under the Labour Relations Act, shall have jurisdiction to hear and determine all labour related disputes arising out of this Act.

Regulations

84.—(1) The Minister may, upon the recommendation of the Registrar, make regulations for the better carrying out of this Act and for its better administration.

(2) Without derogating from the generality of the foregoing the Minister may make Regulations—

(*a*) with respect to the management, control and administration of the National Pension Scheme;

(*b*) prescribing the manner of payment of pension benefits; and

(*c*) requirements relating to transition to pension by employees and employers in pursuance of section 10;

(*d*) subject to Part XII, with respect to transitional provisions to enable existing pension schemes to comply with this Act.

(3) The Minister may make different provisions for different categories of funds and different kinds of pension schemes in regulations made under subsection (1).

(4) Notwithstanding section 21 (*e*) of the General Interpretation Act, any person who contravenes any regulations made under this Act shall be liable to such penalties as contained in the Financial Services Act.

Cap. 44:05

Non-application of the Estates Duty Act and any other law relating to deceased estates

85. The Estates Duty Act and any other law relating to deceased estates, shall not apply to a member's entitlement to benefits in a pension fund.

PART XII
Transitional Arrangements

Transitional

86.—(1) Where an employer, prior to the commencement of this Act or a period of one year before commencement, was contributing to a pension fund at rates higher than the minimum contribution rates prescribed in this Act, or maintaining a life insurance policy in favour of his employees at a value higher than the minimum prescribed under this Act, that employer shall not revise the rates downwards.

(2) Any downward adjustment in an employer's contribution rate or in the value of life insurance policy in contravention of subsection (1) shall be void.

(3) Notwithstanding the provisions of this Act, any employee who at the commencement of this Act is entitled to pension benefits under any pension scheme existing before the commencement of this Act but has three or less years until retirement date, shall be exempted from the requirements of this Act.

(4) Nothing in this Act shall preclude the right of any employee referred to in subsection (2) to be paid his pension as and when due.

Existing schemes

87.—(1) Notwithstanding any other provisions in this Act, any pension scheme existing before the commencement of this Act may continue to exist provided that—

(*a*) the pension scheme meets the licensing requirements under this Act;

(*b*) the pension scheme shall be fully funded and in case of—

(i) any defined contribution scheme, contributions in favour of each employee together with the income and asset growth attributable to these contributions but less the corresponding expenses attributable to these contributions shall be computed and credited to a member's account opened for the employee;

(ii) any defined benefit scheme, whether or not it is converted in the process to a defined contribution scheme, the value of the assets of the fund shall be allocated to the members in proportion to their respective actuarial liabilities, on the same calculation basis as used for the actuarial valuation that is used to confirm that the scheme is fully funded;

(*c*) the pension funds and assets shall be fully segregated from the funds and assets of the employer;

(*d*) the pension funds and assets shall be held by a custodian;

(*e*) every employee in the existing scheme shall be free to exercise the option of coming under a scheme of his choice and his employer shall compute and credit to his account his contributions and distributable income earned as at the date the employee exercises such an option subject to the directives issued by the Registrar;

(*f*) any amount computed under paragraph (*b*) of this subsection shall be transferred to the member account of the employee maintained with a pension fund administrator of his choice;

(*g*) all investments in assets other than specified as permissible investment for pension funds may be maintained and from the commencement of this Act all investments of newly received income shall be made in accordance with directives issued by the Registrar;

(*h*) the employer shall undertake to the Registrar that the pension fund shall be fully funded at all times and that any shortfall shall be made up within three years;

(*i*) the employer demonstrates to the Registrar that it possesses fit and proper managerial capacity for the management of pension funds and assets; and

(*j*) all rights by members of such a scheme to gain access to the benefits in the scheme in accordance with the rules of the scheme shall be retained in respect of benefits accumulated up to the date of

entry into force of this Act even after the scheme has been approved as meeting the requirements to be registered as a fund under the provisions of this Act.

(2) Any employer operating any defined benefit scheme shall undertake, at the end of the first financial year immediately following the date of entry into force of this Act and every two years thereafter, an actuarial valuation to determine the adequacy of his pension fund assets and shall submit this actuarial valuation to the Registrar for scrutiny, together with a plan of action for restoring the scheme to full funding consistent with the requirements of subsection (1) (*h*).

(3) All pension schemes existing before the commencement of this Act shall submit to the Registrar within three months of the commencement of the Act, a statement of affairs effective at the last anniversary of the scheme prior to the commencement of the Act which shall include assets, liabilities, a list of members and, in the case of a defined benefits scheme, the total pensionable salary of all members and the assumptions used in the assessment of scheme liabilities.

(4) The Registrar has the right, where the scheme fails to meet these requirements, to require the scheme to register as a pension fund and submit to the requirements of this Act within a period of time specified by the Registrar or be subject to the penalties set out in this Act for failure to register a pension fund.

(5) In the case of a non-compliant defined benefit scheme, the Registrar shall give to the employer notice of six months of the requirement to close the scheme to new members and commencement contributions to a fund. The financial viability of the closed defined benefit scheme shall be subject to the requirements of this section. Members of the scheme may be offered transfer of their interests to the fund established under the requirements of this Act, as long as the terms of transfer are certified by an actuary as fairly reflecting their interests in the closed scheme.

(6) Notwithstanding the provision of this Part, the Registrar may issue a directive for the better implementation of this Part.

Restricted pension fund

88.—(1) Any employer managing a pension scheme under the requirements of section 74 of this Act shall apply to the Registrar to be licensed as a restricted pension fund administrator to manage such pension fund either directly or through a wholly owned subsidiary of such employer dedicated exclusively for the management of such pension fund, provided that all its pension funds and assets are transferred to a custodian of its choice.

(2) An applicant under subsection (1) may be licensed by the Registrar as a restricted pension fund administrator if it meets the minimum requirements for a pension funds administrator.

(3) Any employer with pension funds and assets of less than such amount as may be determined by the Registrar in a directive from time to time, and that expresses a desire to maintain its existing scheme shall have such pension scheme administered by a pension fund administrator licensed under this Act.

Payment of contribution arrears

89.—(1) Any employer operating a pension scheme prior to the date of commencement of this Act shall remit all contribution arrears, if any, to the trustees of the fund within six months from that date.

(2) Any employer who contravenes subsection (1) shall be liable to an administrative penalty prescribed under the Financial Services Act. Cap. 44:05

Registrar's oversight

90. Every employer licensed as restricted pension fund administrator to manage its pension funds and assets under section 88 of this Act shall be subject to supervision and regulation by the Registrar and shall be deemed to be pension fund administrator and all provisions in this Act relating to the conduct and operations of a pension fund administrator shall apply to it.

Accrued severance liability

91.—(1) Every employer shall recognize as part of an employee's pension dues, each employee's severance due entitlement accrued from the date of employment of that employee to the date of commencement of this Act.

(2) For employers not providing pension or gratuity prior to the date of commencement of this Act, the severance entitlement referred to in subsection (1) shall be calculated in accordance with the provisions of the Employment Act.

(3) For employers providing pension or gratuity prior to the date of commencement of this Act, the severance entitlement referred to in subsection (1) shall be calculated as having a value equal to the value of—

(*a*) the severance entitlement calculated in accordance with the provisions of the Employment Act;

(*b*) less the sum of the accumulated employer pension contributions made or gratuity paid prior to the date of commencement of this Act and any growth on such contribution:

Provided that—

(i) the severance entitlement referred to in subsection (1) shall be greater than the sum of the accumulated employer pension

contributions made or gratuity paid to the employee prior to the date of commencement of this Act and any growth on such contribution; or

(ii) if the severance entitlement is equal to or less than the sum of the accumulated employer pension contributions made or gratuity paid to the employee prior to the date of commencement of this Act and any growth on such contributions the severance entitlement shall not be recognized as pension.

(4) The severance entitlement as calculated under subsection (2) and subsection (3) shall, subject to subsection (5), be transferred into a pension fund of the employee's choice within a period not exceeding eight years after the commencement of this Act:

Provided that such severance due entitlement shall be escalated for each year within the eight years that it is not transferred to a pension fund, at the rate of the average annual Consumer Price Index as published by the National Statistical Office from time to time.

(5) Notwithstanding subsection (4), the severance due entitlement shall, upon termination of an employment contract between the employer and employee become immediately transferable to a pension fund of the employee's choice.

(6) The Minister may, by order published in the *Gazette*, direct employers to provide, in a prescribed form, a schedule outlining how the employers shall comply with subsection (4).

(7) Any person who contravenes the provisions of this section commits an offence and shall be liable to an administrative penalty under the Financial Services Act.

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(8) In this section, "gratuity" means contractual gratuity as stipulated in an employment contract.

SUBSIDIARY LEGISLATION

PENSION (SALARY THRESHOLD AND EXEMPTIONS) ORDER

G.N. 32/2011

under s. 10

1. This Order may be cited as the Pension (Salary Threshold and Exemptions) Order. Citation

2. In this Order, unless the context otherwise requires— Definitions

"expatriates" means skilled professionals of foreign origin working in Malaŵi and holding a valid Temporary Employment Permit (TEP) issued by the relevant authorities in Malaŵi;

"seasonal workers" means employees whose work, because of its nature or because of factors peculiar to the industry in which it is performed, is available, at approximately the same time or times every year, for part or parts of the years; and

"tenant" means an employee in terms of the Employment Act, who enters the services of a landlord to grow a crop of the landlord or any other related services. Cap. 55:02

3. An employer whose employees' monthly pension emoluments is K10,000 or less, shall be exempt from complying with the requirements of section 9 and section 15 of the Act. Salary threshold

4. The classes or categories of employers and employees set out in the Schedule hereto shall be exempt from the application of the Act. Exempt categories or classes of employers and employees

SCHEDULE para. 2

EXEMPT CATEGORIES OF EMPLOYERS AND EMPLOYEES

1. Seasonal employees;
2. Tenants;
3. Expatriate employees in possession of Temporary Employment Permit;
4. Members of Parliament in their capacity as such;
5. Domestic workers.

[Subsidiary] *Pension (Interest Rate for Outstanding Employer Contributions) Order/Pension (Exempted Classes or Categories of Employers or Employees) Order*

G.N. 33/2011

PENSION (INTEREST RATE FOR OUTSTANDING EMPLOYER CONTRIBUTIONS) ORDER

under s. 61(5)

Citation

1. This Order may be cited as the Pension (Interest Rate for Outstanding Employer Contributions) Order.

Interest rate for outstanding employer contributions

2. The rate of interest payable by an Employer to a trustee of a pension fund in respect of each month or part thereof during which any employer contributions, including interest, is outstanding, shall be the bank rate plus ten per cent per annum.

G.N. 33/2015

PENSION (EXEMPTED CLASSES OR CATEGORIES OF EMPLOYERS OR EMPLOYEES) ORDER

under s. 10 (3)

Citation

1. This Order may be cited as the Pension (Exempted Classes or Categories of Employers or Employees) Order.

Exempted classes or categories *Schedule*

2. A person who is in the class or category of employees listed in the Schedule to this Order shall be exempted from the requirement to comply with the Act.

para. 2

SCHEDULE

CATEGORIES OF EMPLOYEES EXEMPTED FROM APPLICATION OF THE ACT

1. The President
2. The First Vice President
3. The Second Vice President

WORKERS' COMPENSATION

CHAPTER 55:03

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CHAPTER 55:03

WORKERS' COMPENSATION

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CHAPTER 55:03

WORKERS' COMPENSATION

An Act to provide for compensation for injuries suffered or diseases contracted by workers in the course of their employment or for death resulting from such injuries or diseases; to provide for the establishment and administration of a Workers' Compensation Fund; and to provide for matters connected therewith or incidental thereto

7 of 2000
G.N. 20/2011

[1st July, 2000]

PART I
PRELIMINARY

1. This Act may be cited as the Workers' Compensation Act.

Short title

Meaning of "worker"

2. In this Act, unless the context otherwise requires, "worker" means any person who has, whether before or after the commencement of this Act, entered into, or works under, a contract of service or apprenticeship with an employer in any employment, whether the contract is expressed orally or in writing or is implied:

Provided that the following persons shall be excepted from the definition of "worker"—

(*a*) a person whose employment is of a casual nature and who is employed otherwise than for the purposes of the employer's business, not being a person employed for the purposes of any game or recreation and engaged or paid through a club; or

(*b*) an outworker;

(*c*) a tributer;

(*d*) a member of the employer's family living in the employer's house;

(*e*) a member of the armed forces of Malaŵi; or

(*f*) any class of persons whom the Minister may, by notice published in the *Gazette*, declare not to be workers for the purposes of this Act.

Interpretation

3.—(1) In this Act, unless the context otherwise requires—

"assessment" means an assessment made under Part XI;

"business" means any industry, undertaking, trade, occupation or other activity in which a worker is employed;

"Commissioner" means the Commissioner for Workers' Compensation appointed under section 36 and includes any officer subordinate to him or any other person duly acting within the powers and duties of the Commissioner conferred by this Act;

"compensation" means compensation payable under this Act and includes medical aid and any benefit of any nature to which a worker or his dependants may be entitled under this Act;

"Board" means the Board established under section 27;

"dependants" means those members of the family of a worker who were wholly or in part dependant upon his earnings at the time of his death, or who but for the incapacity due to the injury have been so dependent; and, where the worker, being the parent or grandparent of an illegitimate child, leaves such child so dependent upon his earnings or, being an illegitimate child, leaves a parent or grandparent so dependant on his earnings shall include such an illegitimate child or parent or grandparent, respectively:

Provided that a person shall not be deemed to be a partial dependant of another person unless he was dependent partially on contributions from that other person for the provision of the ordinary necessaries of life suitable for persons in his class and position;

"earnings" includes wages paid to a worker by the employer, the value of any food, fuel or quarters supplied to the worker by the employer and any overtime payments or other special remuneration for work done, whether by way of bonus or otherwise, if of constant character or for work habitually performed, but does not include remuneration for intermittent overtime, or causal payments of a non-recurrent nature, or any *ex gratia* payment whether given by the employer or other person, or the value of a travelling allowance, or the value of any travelling concession, or a contribution paid by the employer of a worker towards any pension or provident fund, or a sum paid to a worker to cover any special expenses entailed on him by the nature of his employment;

"employer" includes the Government (except the armed forces of Malaŵi), a local authority, any body or association of persons, corporate or unincorporated, and the personal representative of a deceased employer, and where the services of a worker are temporarily lent or let on hire to another person by the person with whom the worker has entered into a contract of service or apprenticeship, the latter shall, for the purposes of this Act, be deemed to be the employer;

"Fund" means the Workers' Compensation Fund established under Part XI;

"injury" means a personal injury and includes the contraction of a scheduled disease;

"medical aid" means any or all the benefits for the worker under Part V; Cap. 36:01

"medical practitioner" means a person registered as such under the Medical Practitioners and Dentists Act;

"outworker" means a person to whom articles or materials are given out to be made up, cleaned, washed, altered, ornamented, finished or repaired, or adapted for sale in his own home or on other premises not under the control or management of the person who gave out the materials or articles;

"partial incapacity" means, where the incapacity is of a temporary nature, such incapacity as reduces the earning capacity of a worker in any employment in which he was engaged at the time

of the injury resulting in the incapacity, and, where the incapacity is of a permanent nature, such incapacity as reduces his earning capacity in any employment which he was capable of undertaking at that time:

Provided that every injury specified in the First Schedule, except such injury or combination of injuries in respect of which the percentage or aggregate percentage of the loss of earning capacity as specified in that Schedule against such injury or injuries amounts to one hundred per centum or more, shall be deemed to result in permanent partial incapacity;

"scheduled disease" means a disease specified in the Second Schedule;

"total incapacity" means such incapacity, whether of a temporary or permanent nature, as incapacitates a worker for any employment which he was capable of undertaking at the time of the injury resulting in such incapacity:

Provided that permanent total incapacity shall be deemed to result from an injury or from any combination of injuries specified in the First Schedule where the percentage or aggregate percentage of the loss of earning capacity as specified in that Schedule against such injury or injuries, amounts to one hundred per centum;

"tributer" means a person who is granted permission to win minerals, receiving a proportion of the minerals won by him or the value thereof.

(2) The exercise and performance of the powers and duties of the Government, a local authority or any other body, corporate or unincorporated, shall, for the purposes of this Act, be treated as the business of the Government or of such local authority or other body.

(3) If in any proceedings for the recovery of compensation it appears to the Commissioner that the contract of service or apprenticeship under which the injured person was working at the time of the injury was not legally valid or otherwise legally unenforceable, the Commissioner, if having regard to all the circumstances of the case he thinks it proper to do may, with the approval of the Board, deal with the matter as if the injured person at the material time had been a person working under a legally valid and enforceable contract of service or apprenticeship.

(4) Except for the purposes of section 25, any reference to a worker who has been injured and is dead shall, unless the context otherwise requires, include reference to his personal representative or his dependants or any of them or the Administrator General or such

other public officer as the Minister may appoint to act on behalf of the dependants of the worker.

(5) This Act shall apply to workers employed by or under the Government in the same way and to the same extent as if the employer were a private person, except in the case of persons in the armed forces of Malaŵi:

Provided that nothing in this subsection shall be construed as preventing the application of this Act to persons in the armed forces of Malaŵi by any written law governing or regulating the armed forces of Malaŵi.

PART II

Eligibility for Compensation in case of Injury other than the Contraction of a Scheduled Disease

Employer's liability for compensation for death or incapacity due to injury other than the contraction of a scheduled disease

4.—(1) If an injury, other than the contraction of a scheduled disease, arising out of and in the course of his employment is caused to a worker, his employer shall, subject to this Act, be liable to pay compensation in accordance with this Act.

(2) An employer shall not be liable to pay compensation under this Act—

(*a*) in respect of any injury which incapacitates the worker for a period of less than seven days from earning full wages or salary at the work at which he was employed;

(*b*) in respect of any incapacity or death resulting from deliberate self-injury; or

(*c*) if it is proved that the injury to the worker is attributable to the serious and wilful misconduct of that worker, or if the worker has at any time represented in writing to the employer that he was not suffering, or had not previously suffered, from that or a similar injury knowing that the representation was false:

Provided that where the injury results in death or serious permanent incapacity, the Commissioner may nevertheless, upon consideration of all the circumstances, award compensation to such extent as he considers appropriate with the approval of the Board.

(3) For the purpose of this Act, an injury incurred by a worker in the course of his employment shall be deemed, unless the contrary is proved, also to have arisen out of that employment.

(4) For the purposes of this Act, an injury incurred by a worker while he is acting for the purpose of and in connexion with his employer's business, and resulting in the death or serious permanent incapacity of

the worker shall be deemed to have arisen out of and in the course of his employment, not withstanding that the worker, at the time the injury was incurred, was acting in contravention of any statutory or other regulation applicable to his employment or any orders or instructions given by or on behalf of his employer, or that he was acting without orders or instructions from his employer.

(5) For the purposes of this Act, an injury incurred by a worker in or about any premises at which he is for the time being employed for the purposes of his employer's business shall be deemed to have arisen out of and during the course of his employment if the injury is incurred while he is taking steps in an actual or supposed emergency in or about those premises to rescue, succour or protect persons who are, or are thought to be, injured or imperilled or to avert or minimize damage to property owned or utilized by the employer or for which the employer was responsible to the owner.

(6) For the purposes of this Act, an injury incurred by a worker while he is travelling to or from his place of employment shall be deemed to have arisen out of and in the course of his employment if he is, with the express or implied permission of the employer, travelling on or by means of transport—

(*a*) provided by the employer for carrying workers employed by him; or

(*b*) which is under the control of the employer or accepted by the employer for use by a worker and the employer has expressly or impliedly authorized its use for carrying a worker or workers employed by him.

Compensation, how paid and by whom

5. Where an employer is liable to pay compensation under this Act to a worker or to the dependants or the personal representative of a worker, the compensation shall be paid by the Commissioner out of the Fund, on behalf of the employer, where the employer is subject to assessment under Part XI and where the employer has paid his assessment in accordance with regulations made by the Minister, on the recommendation of the Board, under this Act.

Workers engaged on business outside Malaŵi, etc.

6.—(1) Where the usual place of employment of a worker is in Malaŵi and he suffers injury while he is temporarily employed outside Malaŵi by the same employer, the worker shall be entitled to compensation from the employer in the same manner as if the injury were incurred during employment in Malaŵi.

(2) Where the usual place of employment of a worker is outside Malaŵi, and he suffers injury while he is temporarily employed inside

Malaŵi he shall be entitled to compensation from the employer in the same manner as if he were ordinarily employed in Malaŵi:

Provided that such worker shall not be entitled to payment of his compensation out of the Fund unless his employer has prior thereto agreed with the Commissioner to be assessed and has in fact paid his assessment in that regard.

(3) Where in the circumstances set out in subsections (1) and (2) the worker is also entitled to compensation under the law of another country and upon the worker electing to claim compensation under this Act, the Commissioner shall—

(*a*) before paying any compensation make due inquiries to satisfy himself that the worker has not already claimed under the law of that other country; and

(*b*) where compensation is paid to the worker under this Act, notify that fact to the person liable to pay compensation to the worker under the law of that other country.

(4) Where a worker is engaged in Malaŵi for the purpose of service in another country and he suffers injury while on his way to commence employment in such other country or while being repatriated to his place of engagement in Malaŵi, he shall be entitled to compensation from the employer in the circumstances set out in section 4 (6) whether the injury was incurred in Malaŵi or outside Malaŵi.

PART III

Compensation for Injury caused otherwise than by the Contraction of a Scheduled Disease

Compensation in fatal cases

7.—(1) Subject to section 10, where death results from injury caused otherwise than by the contraction of a scheduled disease to a worker in circumstances in which compensation is payable—

(*a*) if the worker leaves any dependants wholly dependent upon his earnings, the amount of compensation shall be a sum equal to forty-two times his monthly earnings at the time of the injury:

Provided that, where in respect of the same injury compensation has already been paid for permanent total incapacity or permanent partial incapacity, such compensation shall be deducted from the sum payable as compensation for the death of the worker, but in no case shall the estate of the deceased worker be liable to refund any sum, in excess of the amount payable hereunder upon death, paid to the deceased worker for such permanent total incapacity or permanent partial incapacity;

(*b*) if the worker leaves no dependants, the reasonable expenses of medical attendance on the deceased worker and the burial of his body shall be paid by the employer.

(2) Expenses due to any person under subsection (1) (*b*) shall be recoverable from the Fund.

Compensation in the case of permanent total incapacity

8.—(1) Subject to section 10, where permanent total incapacity results from injury to a worker in circumstances in which compensation is payable, the amount of compensation shall be a sum equal to fifty-four times the monthly earnings at the time of the injury.

(2) Where the permanent total incapacity is of such a nature that the injured worker must have the constant help of another person, compensation additional to that provided under subsection (1) shall be payable out of the Fund as approved by the Board.

Compensation in the case of permanent partial incapacity

9.—(1) Where permanent partial incapacity results from injury to a worker in circumstances in which compensation is payable, the amount of compensation shall be—

First Schedule

(*a*) in the case of an injury specified in the First Schedule, such percentage of the compensation which would have been payable in the case of permanent total incapacity as is specified in that Schedule as being the percentage caused by that injury; and

First Schedule

(*b*) in the case of an injury not specified in the First Schedule, such percentage of the compensation which would have been payable in the case of permanent total incapacity as is proportionate to the loss of earning capacity permanently caused by the injury in any employment which the employee was capable of undertaking at the time of his injury:

Provided that in no case shall the amount of compensation payable under this subsection be greater than the amount of compensation payable under section 8.

(2) Where more injuries than one are caused to the worker by the same accident, the amount of compensation payable under this section shall be aggregated, but not so as to exceed the amount which would have been payable if permanent total incapacity had resulted from the injuries.

Minister may prescribe maximum amount of compensation payable under this Act

10. Compensation payable under this Act shall be subject to such maximum amounts as the Minister may, on the advice of the Board, prescribe by order published in the *Gazette* and the Minister may prescribe different maximum amounts of compensation relative to the earning capacity of workers.

PART IV

Calculation and Distribution of Compensation

Method of calculating earnings

11.—(1) For the purposes of this Act the monthly earnings of a worker shall be computed in such manner as is best calculated to give the rate per month at which the worker was being remunerated during the previous twelve months if he has been employed by the same employer, but if not, then for any less period during which he has been in the employment of the same employer:

Provided that where by reason of the shortness of the time during which the worker has been in the employment of his employer or the casual nature of the employment or by reason of the terms of the employment, it is impracticable at the date of the injury to compute the rate of remuneration, regard may be had to the average monthly amount which, during the twelve months previous to the injury, was being earned by a person of similar earning capacity in the same grade employed at the same work by the same employer, or if there is no person so employed by a person of similar earning capacity in the same grade employed in the same class of employment and in the same District or locality.

(2) For the purposes of subsection (1), employment by the same employer shall be taken to mean employment by the same employer in the grade in which the worker was employed at the time of the injury uninterrupted by absence from work due to illness or any other unavoidable cause.

(3) Upon request by the worker or by the Commissioner or any duly authorized person acting on behalf of the worker under this Act to the employer who is liable to pay compensation, that employer shall furnish in writing a list of the earnings which have been earned by that worker upon which the amount of the monthly earnings may be calculated for the purposes of this section.

(4) Any employer who, without reasonable cause, fails to furnish a list upon request made under subsection (3) or who furnishes or causes to be furnished any such list which he knows or has reason to believe is false in any material particular shall be guilty of an offence and liable to a fine of K20,000.

Persons entitled to compensation

12.—(1) The compensation under this Act shall be payable to or for the benefit of the worker or, where death results from the injury, to or for the benefit of his dependants.

(2) Where there are both total and partial dependants, nothing in this Act shall be construed as presenting the compensation being allotted partly to the partial dependants.

(3) Where a dependant dies before a claim in respect of death is made under this Act or, if a claim has been made, before an order for the payment of compensation has been made, the personal representative of the dependant shall not be entitled to payment of compensation, and the claim for compensation shall be dealt with as if that dependant had died before the worker.

Distribution of compensation

13.—(1) Compensation payable where the death of a worker has resulted from an injury shall be paid by the Board out of the Fund on behalf of the employer.

(2) Compensation payable under sections 7, 8 or 9 shall be paid by the Board of the Fund and any sum so paid shall be paid to any person entitled thereto or be invested, applied or otherwise dealt with in such a manner as the Board thinks shall be beneficial to that person.

(3) The receipt issued by the Board shall be a sufficient discharge in respect of any amount paid by an employer to the Board under this Act.

(4) Any order or direction of the Board under this section shall be final.

PART V
Medical Aid

Medical expenses

14.—(1) In addition to any compensation payable under this Act, the employer shall be liable to defray the reasonable medical expenses incurred by a worker within Malaŵi, or, with the advice of the Secretary for Health and the approval of the Board, outside Malaŵi as a result of an injury which would entitle the worker to compensation under this Act, not exceeding such amount as may be prescribed by the Board in consultation with the Secretary for Health—

(*a*) in respect of medical, surgical, dental and hospital treatment, skilled nursing services and the supply of medicines;

(*b*) in respect of the supply, fitting, maintenance, repair and normal renewal of any artificial appliance, limb, apparatus or mechanical aid;

(*c*) in respect of reasonable transport charges incurred in transporting the worker to and from a place where facilities for examination and treatment or assessment are available, if travel to such place is certified to be necessary by the medical practitioner in charge of the case.

(2) In determining any dispute in respect of compensation or upon the application of any interested person, the Board may order the payment of any of the expense referred to in subsection (1) to the person

entitled to receive it, and if such expenses exceed the amount prescribed under that subsection the Board may apportion the amount available in such manner as he considers expedient.

(3) In case of an employer covered by section 5, any expenses which he incurs under subsection (1) shall be refunded to him by the Board out of the Fund.

Decisions of the Board in regard to medical aid

15.—(1) All disputes as to the necessity for, or the character or sufficiency of, any medical aid provided or to be provided under this Part shall be determined by the Board.

(2) In determining any question under subsection (1) the Board may call for such evidence as the Board considers desirable or necessary.

PART VI

Compensation for Injury due to the Contraction of Scheduled Diseases

Compensation where incapacity or death due to a scheduled disease

16.—(1) Where a medical practitioner grants a certificate—

(*a*) that a worker is suffering from a scheduled disease causing incapacity or that the death of a worker was caused by a scheduled disease; and

(*b*) that such disease was due to the nature of the worker's employment and was contracted within the period prescribed in the Second Schedule preceding the date of such incapacity or death,

Second Schedule

and the Board is satisfied on evidence that the allegations contained in the certificate are correct, the worker or, if the worker is dead, his dependants shall be entitled to compensation under this Act as if such incapacity or death were dealt with in accordance with the provisions of section 7, 8 or 9 and the other relevant provisions of this Act shall apply with any necessary modifications:

Provided that in no event shall the worker or his dependants be entitled to compensation in respect of any causation or aggravation of the disease which was due to employment outside Malaŵi, except in respect of a worker from Malaŵi employed outside Malaŵi by his employer within Malaŵi.

(2) In any case of any incapacity or death arising from a scheduled disease, if the worker has at any time represented in writing to the employer that he was not suffering, or had not previously suffered, from that or a similar scheduled disease, knowing that the representation was false, then the Board after considering all the circumstances, may declare forfeit the compensation provided for by this Act or such part

thereof as the Board thinks fit; and any sum paid as compensation to any person upon a false representation shall be recoverable by the Board as a civil debt owing to the Fund.

Employer's liability to pay compensation in case of incapacity or death due to scheduled disease

17.—(1) Compensation payable under section 16 shall be paid by the employer who last employed the worker during the period prescribed in the Second Schedule unless that employer proves that the disease was not contracted while the worker was employed by him and has not been aggravated by reason of conditions in his employment.

(2) The worker or his dependants if so required by the employer or the Board shall furnish to the employer from whom compensation is claimed such information as the worker possesses or as the dependants possess as to the names and addresses of all other employers who during the said period referred to in section 16 employed the worker in the occupation to the nature of which the disease is due.

(3) Where the employer alleges that the disease was in fact contracted while the worker was employed by some other employer and not while employed by him he may join such other employer as a party to the proceedings in such manner as may be prescribed, and, if the allegation is proved, that other employer shall be the employer from whom the compensation shall be recoverable.

(4) If the disease is of such a nature as to be contracted by a gradual process, any other employers who, during the period referred to in section 16 employed the worker in the occupation to the nature of which the disease is due may be required by the Board to make to the employer from whom compensation is recoverable such contributions as by agreement with such other employer or employers may be determined or, in default of such agreement, may seem to the Board to be appropriate.

Special provisions relating to incapacity or death due to scheduled disease

18.—(1) In the application of this Act to incapacity or death caused by a scheduled disease, references to the date of the injury shall be construed as meaning—

(*a*) in the case of a scheduled disease causing incapacity, the date of the certificate referred to in section 16; and

(*b*) in the case of death from a scheduled disease, the date of the death of the worker.

(2) The relevant provisions of this Act including those relating to the giving of notice of an injury to the worker by an employer to the Board, the making of a claim for compensation therefor and the calculation of the earnings of a worker shall apply in respect of the recovery of compensation under this Part with necessary modifications.

19. If a worker who becomes incapacitated or who dies as a result of any scheduled disease was, within the period prescribed in the Second Schedule preceding the incapacity or death, employed in any occupation specified in relation to that disease in the Second Schedule it shall be presumed unless or until the contrary is proved, that the disease was due to the nature of such employment.

Presumption as to cause of a scheduled disease *Second Schedule*

20. Nothing in this Part shall be construed as preventing compensation being recovered from any employer who employed the worker during the period referred to in section 16 if the employer who last employed the worker during that period proves that the disease was not contracted while the worker was employed by him, in which case section 17 (3) shall apply.

Right of worker to proceed against previous employer

21.—(1) The Minister may, after consultation with the Board, by notice published in the *Gazette*, delete from the Second Schedule any disease specified therein and may, in like manner, insert any other disease in that Schedule:

Minister to amend Second Schedule

Provided that the Minister shall cause to be published in the *Gazette* the intention to make such an order at least thirty days before the making of the order, and any person wishing to object to the making of such an order may make his objections in writing to the Minister.

(2) The Minister shall consider the merits of any objection made pursuant to subsection (1) but shall have power to make any decision thereon as he sees fit after consultation with the Board and shall be obliged to give reasons for his decision.

22. The Board may make rules providing for pre-engagement clinical tests in regard to scheduled diseases.

Pre-engagement clinical test for scheduled diseases

PART VII

Procedure for Obtaining Compensation

23. Proceedings under this Act for the recovery of compensation for an injury shall not be maintainable unless notice of the injury has been given to the Board by or on behalf of the worker as soon as practicable after it has been incurred and before the worker has voluntarily left the employment in which he was injured, and unless the application for compensation with respect to such injury has been made within twelve months from the date it was incurred or, in the case of death, within twelve months from the time of death:

Requirements as to notice of injury and application for compensation

Provided that—

(*a*) the want of, or any defect or inaccuracy in, such notice shall not be a bar to the maintenance of such proceedings if the employer is proved to have had knowledge of the injury from any other source

at or about the time it was incurred, or if it is found in the proceedings for settling the claim that the employer is not, or would not, if a notice or an amended notice were then given and the hearing postponed, be prejudiced in his defence by the want, defect or inaccuracy or such want, defect or inaccuracy was occasioned by mistake or other reasonable cause;

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(*b*) the notice may be given, and the application may be made, under this section by a Labour Officer or such other officer as may be so directed by the Board or his representative on behalf of the worker;

(*c*) the failure to give notice or to make an application within the period specified in this section shall not be a bar to the maintenance of such proceedings if it is proved—

(i) that the failure was occasioned by mistake or other reasonable cause, including the error or mistake of any person advising or assisting the worker under this Act; or

(ii) that the employer has failed to comply with section 24 (1).

Employers to report injuries

24.—(1) Every injury arising out of and in the course of employment which results in—

(*a*) the death of a worker or which may result in death to a worker;

(*b*) or is likely to result in some degree of permanent incapacity to a worker; or

(*c*) incapacitating a worker from following his normal employment for more than fourteen days,

and every injury or death of a worker from any cause whatsoever shall, within twenty-one days of the date when the injury occurred or the death occurs, be reported by the employer in the prescribed form to the Board.

(2) Any employer who without reasonable cause, fails to comply with the requirements of subsection (1) shall be guilty of an offence and liable to a fine of K20,000.

(3) Failure by an employer to comply with the requirements of subsection (1) shall not be a bar to the institution or maintenance of proceedings by the worker concerned for compensation under this Act.

Medical examination and treatment

25.—(1) Where a worker has given notice of an injury he shall, if the employer, before the expiry of seven days from the time at which notice has been given, offer to have him examined free of charge by a medical practitioner named by the employer, submit himself for such examination.

(2) For the purpose of subsection (1), the worker shall, when required, attend upon the medical practitioner named by his employer at the time and place notified to the worker by the employer or by the medical practitioner, provided such time and place are reasonable.

(3) In the event of the worker being, in the opinion of any medical practitioner unable or not in a fit state to attend on the medical practitioner named by the employer, that fact shall be notified to the employer, and the employer shall arrange with the medical practitioner so named to fix a reasonable time and place for a personal examination of the worker and the employer shall notify the worker accordingly.

(4) If the worker fails to submit himself for such examination, his right to compensation shall be suspended until such examination has taken place and if such failure extend for a period of fifteen days from the date when the worker was required to submit himself for examination no compensation shall be payable unless the Board is satisfied on consideration of all the circumstances that compensation or such part of it shall be payable.

(5) The worker shall be entitled at his own expense to have his own medical practitioner present at any medical examination under this section.

(6) Where the worker is not attended by a medical practitioner he shall, if so required by the employer, submit himself for treatment by a medical practitioner at the expense of the employer.

(7) If the worker fails to submit himself for treatment by a medical practitioner when so required under subsection (6), or, having submitted himself for such treatment, has disregarded the instructions of such medical practitioner, then if it is proved that such failure or disregard was unreasonable in the circumstances of the case and that the injury has been aggravated thereby, the injury and resulting incapacity shall be deemed to be of the same nature and duration as they might reasonably have been expected to be if the worker had submitted himself for treatment by, and duly carried out the instructions of, such medical practitioner, and compensation, if any, shall be payable accordingly:

Provided that where aggravation of the injury has resulted in death, the amount of compensation shall be the amount payable under this subsection or the amount payable under section 7, whichever is less.

(8) Where under this section a right to compensation is suspended, no compensation shall be payable in respect of the period of suspension.

Dependents of deceased worker

26. Where in any proceedings on a claim for compensation in respect of the death of a worker, the Board is satisfied that other or sufficient evidence as to the dependency on the deceased worker of a person claiming to be a dependant, or as to the degree of dependency, cannot be procured, or cannot be procured without undue hardship to the claimant or other party to the proceedings, the Board shall make reference to the rules of succession as provided for in the Wills and Inheritance Act. Cap. 10:02

PART VIII

Establishment of the Board

Establishment and composition of the Board

27.—(1) For the purposes of this Act there is hereby and established a Board to be known as the Workers' Compensation Trustee Board (hereinafter referred to as the "Board").

(2) The Board shall consist of—

(*a*) the following members appointed by the Minister—

(i) one member not being a public servant, who should be the Chairman;

(ii) three persons being members of the Employers Consultative Association of Malaŵi;

(iii) one person being a member of the Malaŵi Chamber of Commerce and Industry;

(iv) two persons each being a member of a different registered trade union;

(v) one person being a member of the Insurance Association of Malaŵi;

(vi) one person being a member of the Medical Council of Malaŵi;

(vii) one person being a member of the Nurses and Midwifes Council of Malaŵi.

(*b*) the following members, *ex officio*—

(i) the Secretary for Labour and Vocational Training; and

(ii) the Secretary for Health.

(3) The Board shall, from amongst its members, elect one member to be the Vice Chairman.

Tenure of office of the members of the Board and vacancies thereon

28.—(1) A member of the Board, other than a member *ex officio* shall hold office for such period not exceeding two years as specified in the instrument of his appointment.

(2) Upon expiry of the period for which a member is appointed he shall continue to hold office until his successor has been appointed, but in no case shall such further period exceed three months.

(3) The office of a member of the Board, other than a member *ex officio*, shall be vacated—

(*a*) upon his death;

(*b*) if he is absent without valid excuse from three consecutive meetings of the Board of which he has had notice;

(*c*) upon expiry of three months notice in writing of his intention to resign given by him to the Board and to the Minister;

(*d*) if he becomes of unsound mind; and

(*e*) if he becomes an undischarged bankrupt.

Remuneration of members of the Board

29. Members of the Board shall be paid such allowances, as the Minister shall determine.

Secretary

30. The Commissioner shall be the Secretary to the Board.

Meeting of the Board

31.—(1) The Board shall meet at places and times as the Board determines, and such meetings shall be convened by the Chairman.

(2) In the absence of the Chairman, the Vice Chairman shall preside and in the absence of both the Chairman and the Vice Chairman the members present, if constituting a quorum, shall elect one of their number to preside at that meeting.

(3) The Board shall conduct its meetings in such manner as the Board deems fit.

(4) A simple majority of the Board shall constitute a quorum.

(5) At all meetings of the Board the person presiding shall have a deliberative vote and, in the event of an equality of votes, shall also have a casting vote.

(6) Minutes of each meeting of the Board shall be kept by the Secretary and shall be confirmed at the succeeding meeting.

Committees of the Board

32. The Board may, as it deems appropriate, establish one or more committees to carry out any special or general functions determined by the Board and may delegate to any such committee such of the functions of the Board as it may deem expedient.

Functions of the Board

33.—(1) The Board shall be responsible for overseeing the administration of the Fund with the view to ensuring maximum efficiency and shall have such further functions and powers in relation to the execution and administration of this Act as are conferred upon it by this Part or by any regulations made under this Act.

(2) Without derogation from the generality of subsection (1), the functions of the Board shall be—

(*a*) to make recommendations to the Minister as to the maximum rates of assessments to be paid by employers and as to scales and classifications in relation thereto;

(*b*) to administer the Workers' Compensation Fund;

(*c*) to prevent accidents to workers by such means as the Board thinks fit, and cooperate with any other Government Department and other bodies and persons for that purpose, whether by making contributions towards their expenses or otherwise; and

(*d*) to consider data on work related accidents and injuries and to advise the Minister on policy matters relating to workers' compensation.

(3) The Board may, out of its funds, purchase, take on lease or hire or otherwise acquire such land, buildings, plant, machines and equipment as in the opinion of the Board are necessary for the performance of its functions.

(4) The Board may sell, transfer, lease, hire or otherwise dispose of any of its real or personal property.

Regulations

34. The Minister may, on the recommendation of the Board, make regulations for the better carrying out of the provisions of this Act and, without prejudice to the generality of the foregoing, such regulations may make provisions for—

(*a*) prescribing procedures, forms and fees;

(*b*) prescribing anything which is to be or may be prescribed under this Act;

(*c*) requiring employers to keep such records and to make such periodic and other returns as to such matters as the Board thinks fit, and prescribing a time limit for the making of such returns.

PART IX

Administration

Appointment of the Commissioner and other staff

35. For the administration of this Act, the Board shall, with the approval of the Minister, appoint—

(*a*) an officer to be designated as the Workers' Compensation Commissioner (in this Act referred to as the "Commissioner");

(*b*) such other staff subordinate to the Commissioner as may be deemed necessary.

Duties and functions of the Commissioner

36. The Commissioner shall, subject to this Act and to the general or special directions of the Board—

(*a*) receive notice of injuries and claims for compensation;

(*b*) inquire into or cause inquiry to be made into causes of injuries;

(*c*) adjudicate upon all claims and other matters coming before him for decision;

(*d*) determine whether any person is a worker, or an employer for the purposes of this Act;

(*e*) decide any question relating to—

(i) the right to compensation;

(ii) the submission, consideration and determination of claims for compensation;

(iii) computation of earnings;

(iv) the degree of incapacity of any worker;

(v) the amount and method of payment of any compensation;

(vi) the withholding, revision, discontinuance or suspension of any compensation;

(*f*) determine whether any person is a dependant within the meaning of this Act and, if so the degree of dependency;

(*g*) determine any question relating to the rendering of statements of wages;

(*h*) advise the Board on the determination of the liability for assessment, and method of payment of assessment;

(*i*) determine any other question falling within his purview in connexion with the application of this Act or in respect of any employer or worker;

(*j*) upon the expiry of each financial year, report to the Board on the administration of this Act during that year;

(*k*) collect, compile, analyse and maintain such statistics and information relating to the occurrence or cause of injuries and the grant of benefits to persons under this Act as he may deem necessary or as may be required by the Board;

(*l*) conduct research into causes and methods of prevention of accidents, injuries and diseases in respect of which compensation may become payable under this Act and make arrangements with any person having appropriate facilities for the conduct of any such research;

(*m*) investigate whether any disease should be included in or deleted from the Second Schedule and make recommendations to the Board in regard thereto; and

(*n*) perform such other functions and duties as may be assigned to him by the Board, or as are necessary, for the administration of this Act.

Powers of inspection and investigation

37.—(1) The Commissioner may, under the direction of the Board, in writing authorize, either generally or specially any competent person to investigate any matter falling within his purview and to report to him upon any such matter, and any person so authorized shall have the power to require and take affidavits or declarations as to any matter to which the investigation or report relates, or to take any other declarations

required under this Act, and in all cases to administer oaths and attest declarations.

(2) Upon the production of the written authority referred to in subsection (1), the person thereby authorized may, without previous notice and at all reasonable times, enter upon any land, works, premises or other place, and may question any employer or other person and inspect any part of the land, works, premises or other place or any books or documents which may contain information required for the purposes of this Act and take copies of, or extracts from, such books or documents.

(3) Any person who obstructs any person authorized under subsection (1) in the lawful exercise of his functions under this section or, in answer to any question or inquiry by such authorized person, makes or subscribes to any statement, knowing it is false, or refuses to answer any question or produce any document, asked for or demanded by such authorized person shall be guilty of an offence and be liable to a fine of K2,000.

(4) The Commissioner may, with the advice of the Board, himself exercise any of the powers under this section, and whenever the Commissioner is exercising any such power, all the provisions of this section shall apply.

Secrecy

38.—(1) If any person in the exercise of any powers conferred or in the performance of any duties imposed by or under this Act acquires information relating to the financial affairs of any other person, firm or business, or to any manufacturing or commercial secrets or working processes, he shall not, save for the purposes of legal proceedings under this Act, disclose such information to any other person, except—

(*a*) to a court of law or to any person who by law is invested with the power to compel the disclosure of such information; or

(*b*) to the Board or to any person acting in the execution of this Act in so far as such information may be necessary for the execution of this Act.

(2) Any person who wilfully contravenes the provisions of subsection (1) shall be guilty of an offence and shall be liable to a fine of K3,000.

Revision of Compensation by the Commissioner

39.—(1) The Commissioner may, with the advice of the Board, after giving notice in writing to the person concerned and giving him an opportunity to be heard, at any time review any compensation granted on any of the following grounds—

(*a*) that the worker has not submitted himself for medical examination or has not submitted a medical report when required to do so under the provisions of this Act;

(*b*) that the incapacity which gave rise to the award is continued or aggravated by the unreasonable refusal or wilful neglect of the worker to submit himself to medical treatment;

(*c*) that the worker has absented himself in such manner that no notice can reasonably be served on him;

(*d*) that the Commissioner is satisfied upon the opinion of a medical practitioner that the degree of incapacity has increased or diminished or that the worker is no longer suffering from permanent incapacity;

(*e*) that any compensation awarded is or has become either excessive or insufficient to meet the circumstances of the case;

(*f*) that the award was based on a mistake or misrepresentation of fact, or that a different award might have been made if evidence presently available, but which was not available when the Commissioner made the award, had been produced.

Cap. 10:02

(2) The Commissioner, after making such inquiry or receiving such evidence as he deems necessary, may confirm the award of compensation or order the discontinuance, suspension, reduction or increase of any such compensation with the approval of the Board.

Powers of the Commissioner in respect of witness, etc.

40.—(1) With the general or specific advice of the Board, the Commissioner may, and at the request of any interested party shall, summon any person who may be able to give material information concerning the subject of any investigation or formal inquiry held by him under this Act or under his control, any book, document or thing which has any bearing on the investigation or formal inquiry, to appear before him at a time and place specified in such summons, to be interrogated or to produce such book, document or thing, and the Commissioner may retain for further examination any book, document or thing so produced.

(2) The Commissioner may call, and administer an oath to, any person present at an investigation who was or might have been summoned under the provisions of subsection (1), and the Commissioner and any assessor may interrogate such person and require him to produce any relevant book, document or thing in his possession or custody or under his control.

(3) If any person, having been duly summoned under subsection (1), fails without sufficient cause to attend at the time and place specified in such summons, he shall be guilty of an offence and be liable to a fine of K2,000.

(4) Any person who, having been duly summoned under subsection (1) or been called under subsection (2), fails to remain in attendance

until excused by the Commissioner from further attendance or refuse to be sworn as a witness or fails to answer fully and satisfactorily to the best of his knowledge and belief all questions lawfully put to him, or to produce any book, document or thing in his possession or custody or under his control when lawfully required to do so, shall be guilty of an offence and be liable to a fine of K2,000.

(5) In connexion with the interrogation of any person by, or the production of any book, document or thing before the Commissioner, the law relating to privilege, as it applies to a witness summoned to give evidence or produce any book, document or thing before a court, shall apply.

(6) Any witness who knowingly gives false testimony touching any matter which is material to any question then pending in any investigation or formal inquiry or intended to be raised in the investigation or inquiry shall be guilty of an offence and liable to imprisonment for a period not exceeding one year; and it shall be immaterial whether such testimony is given on oath or under any other sanction authorized by law.

(7) Proceedings before the Commissioner need not take the form of proceedings in an open court and the Commissioner may exclude any persons who are not interested parties.

(8) A person summoned to appear before the Commissioner may, if the Commissioner, with the advice of the Board, is satisfied that he has, by reason of such appearance, suffered any pecuniary loss or been put to any expense, be paid out of the Fund such allowances as may be prescribed or the amount of such loss and such expense, whichever is less.

(9) Any person who wilfully hinders the Commissioner in the exercise of any of the powers conferred upon him by this section shall be guilty of an offence and be liable to a fine of K2,000.

Objections by workers or employers against decisions of the Commissioner

41.—(1) Any worker or employer affected by a decision of the Commissioner, may, within thirty days of such decision, or within such further period as the Commissioner may, on good cause shown, lodge with the Minister an objection against such decision.

(2) An objection under this section shall be in writing and may be in the prescribed form, accompanied by particulars containing—

(*a*) a concise statement of the circumstances in which the objection is made and the relief or order which the objector claims, or the question which he desires to have determined; and

(*b*) the full name and address of the objector and of any legal practitioner or other representative who represents or is to represent such objector.

(3) If, owing to being illiterate or blind or having any other physical disability, an objector is unable to complete the prescribed form or to supply the information required, the labour officer or District Commissioner of the district in which the objector resides shall fill in the objection and particulars in the prescribed form and shall lodge the objection with the Minister.

Objections on behalf of dependants in case of death of a worker

42.—(1) If an objection under section 41 arises out of a claim for compensation in respect of the death of a worker, the objection made on behalf of the dependants shall be made by the representative of deceased worker or, if there is no such representative, by a person appointed by the Commissioner to make such objection and in other respects to act as a representative of the deceased worker for the purposes of this Act, and the Commissioner, with the advice of the Board, shall have power to make such appointments; and, for the purposes of this subsection, "dependants" includes persons who claim or may be entitled to be dependants under the rules of the Wills and Inheritance Act. Cap. 10:02

(2) The representative of a deceased worker under subsection (1) shall comply with the provisions of section 41 as to the lodging of an objection and the particulars to accompany such objection.

Formal inquiry by the Commissioner

43. An objection lodged under the provisions of section 42 shall be considered and determined by the Commissioner in a formal inquiry in such manner as may be prescribed, and the Commissioner, with the advice of the Board, may confirm or vary any decision in respect of which the objection was lodged or give such other decision as in his opinion is equitable.

Appeal against a decision of the Commissioner made under section 36

44. Any person affected by a decision of the Board, made decision under section 43 may, within twenty-one days of such decision or within such further period as the court may on good cause shown allow, appeal to the court of a Chief Resident Magistrate.

Suspension of obligation

45. Except where the Commissioner otherwise orders, no obligation to pay any assessment, compensation or other amount to the Commissioner or the Fund, or in respect of a worker by reason of a decision of the Commissioner shall be suspended or deferred by reason of the fact that an objection has been lodged against such decision under section 41 or that an appeal has been lodged under section 44; but if, as a result of any such objection or review, the amount payable by reason of the original decision is varied the person who made the payment shall be entitled to a refund or be liable to pay the additional amount, as the case may be.

Commissioner may state a case for High Court

46.—(1) The Commissioner may, with the advice of the Board, and shall at the request of any interested party to any proceedings under this Act, state a special case on any question of law in connexion with any matter arising in such proceedings for the decision of the High Court.

(2) In any case so stated the Commissioner shall set forth—

(*a*) the facts which were established; and

(*b*) the view of the law which he has adopted in relation to those facts.

Commissioner may submit tribunals decision to the High Court

47. Whenever the Commissioner has any doubt as to the correctness of any decision given by the Workers' Compensation Tribunal on any question of law in connexion with this Act, he may submit that decision to the High Court and cause the matter to be argued before it, in order that it may determine the said question for future guidance.

Assessors

48.—(1) The Commissioner may with the approval of the Board appoint as an assessor any person skilled in technical questions to sit with the Commissioner and to act in an advisory capacity in a formal inquiry under the provisions of section 43.

(2) No person shall be appointed as an assessor under this section or, if appointed, sit as an assessor if—

(*a*) he is an employee of, or associated in any pecuniary manner with, the employer of the worker concerned; or

(*b*) he has, in connexion with the injury or death out of which the formal inquiry arises, given professional assistance or advice in regard to the accident or injury or question in dispute to any party to the inquiry or to any person who may become liable to pay such worker compensation under this Act.

(3) There shall be paid out of the Fund to any person appointed as an assessor under this section, other than any assessor being person employed in the public service, such fees as may be prescribed.

Applications for the Commissioner's determination by interested parties

49.—(1) Any interested party or any duly authorized person acting on behalf of a worker under this Act may apply to the Commissioner for a determination or order if—

(*a*) any question or matter to be determined by the Commissioner under this Act has arisen and requires determination;

(2) Applications to the Commissioner under subsection (1) shall be in the prescribed form.

Enforcement of determinations of the Commissioner

50. Determinations or orders of the Commissioner under this Act may be enforced as if they were determinations or orders of a Chief Resident Magistrate court in civil cases, irrespective of the value involved.

Appeals to the High Court

51. Subject to the conditions set out hereunder an appeal shall lie to the High Court from any order or determination of a court under section 44:

Provided that—

(*a*) unless some substantial question of law is involved, no appeal shall lie except with the leave of the court concerned or of the High Court if the amount in dispute in the case is less than K5,000;

(*b*) no appeal shall lie in any case in which the parties have agreed to abide by the determination of the court, or in which the order of the court gives effect to an agreement concluded between the parties; and

(*c*) no appeal shall lie after the expiration of thirty days from the order or determination of the court unless the High Court, after consideration of all the circumstances of any particular case, considers it just or proper to extend the time for appealing under this provision.

PART X

Appeal

Establishment of Workers' Compensation Tribunal

52.—(1) There shall be established a Workers' Compensation Tribunal, which shall have the jurisdiction, powers and authorities conferred upon it under this Part.

(2) The Workers' Compensation Tribunal shall consist of the following—

(*a*) one member, not being a public servant appointed by the Minister who shall be the Chairman;

(*b*) one person being a member of the Employers' Consultative Association of Malaŵi;

(*c*) one person being a member of a registered trade union;

(*d*) one person from the Medical Association of Malaŵi;

(*e*) one member from the Law Society of Malaŵi;

(*f*) one member from the Insurance Association of Malaŵi; and

(*g*) one person being a member of the Nurses and Midwifes Council of Malaŵi.

(3) Members of the Tribunal shall hold office for such period and upon such conditions as to remuneration and otherwise as the Board may determine.

(4) Members of the tribunal shall elect one member amongst themselves to be Vice-Chairman.

(5) No matter or thing done by the Chairman, Vice Chairman or any member officer or agent of the Workers' Compensation Tribunal, if done *bona fide* in the execution or purported execution of this Act shall subject any such person to any action, claim, liability or demand whatsoever.

Proceedings of Workers' Compensation Tribunal

53.—(1) The Chairman shall preside at all meetings of the Workers' Compensation Tribunal.

(2) All matters considered by the Workers' Compensation Tribunal shall be decided by the votes of a majority of the members present. In the event of an equality of votes, the Chairman shall have a casting vote in addition to his deliberative vote.

(3) A record shall be kept of all proceedings of the Workers' Compensation Tribunal, including a summary of any evidence given before it.

(4) Any interested party/parties may appear in person or may be represented before the Workers' Compensation Tribunal by a Legal Practitioner.

(5) The Chairman of the Workers' Compensation Tribunal after consultation with other members of the tribunal may, with the approval of the Minister, make rules regulating the procedure of such Tribunal:

Provided that such rules do not contravene accepted rules of the High Court.

Appeals to the Workers' Compensation Tribunal

54. Any person aggrieved by any decision of the Commissioner or Board made in pursuance of any power which they may exercise under this Act may appeal to the Workers' Compensation Tribunal within thirty days of receipt by him of the notification of such decision, and such court may either confirm or reverse the decision so appealed against or may make such other order as to such court may seem just.

Powers of the Workers' Compensation Tribunal

55.—(1) The Workers' Compensation Tribunal shall have powers upon the hearing of an appeal under section 54—

(*a*) to enter and inspect, authorize any person to enter and inspect, or examine any premises of interested persons for the purpose of enabling it to determine any question being considered by it;

(*b*) to administer oaths and to order persons to attend and give evidence or to produce or give discovery and inspection of documents in like manner as in proceedings in the High Court;

(*c*) to award costs of any proceedings before it and direct that such costs shall be taxed upon such scale and in such manner as may be prescribed by rules made under section 34, or to award a specific sum as costs; and

(*d*) to do all things which it is required or empowered to do by or under this Act.

(2) The proceedings of the Workers' Compensation Tribunal shall, for all purposes, be considered as judicial proceedings.

Appeals from the Workers' Compensation Tribunal

56.—(1) Save as otherwise provided in this section, the decision of the Workers' Compensation Tribunal shall be final.

(2) An appeal shall lie to the High Court from any order of the Workers' Compensation Tribunal on any point of law but not on any matter of fact. Upon such appeal the High Court may make such order as it thinks proper, including any direction as to costs.

(3) An appeal shall lie to the Supreme Court of Appeal from the High Court on any point of law but not on any matter of fact.

PART XI

Workers' Compensation Fund

Establishment of the Workers' Compensation Fund

57.—(1) There shall be established and maintained for the purposes of this Act, a fund to be known as the Workers' Compensation Fund, herein referred to as the Fund.

(2) There shall be paid into the Fund—

(*a*) any assessments payable by employers including the Government under this Act;

(*b*) any moneys paid by employers, including the Government, to the Commissioner under this Act;

(*c*) any moneys paid as penalties imposed under this Act, other than penalties imposed as fines by a court; and

(*d*) any other sums to which the Fund may become entitled.

Application of the Fund

58.—(1) Sums out of the Fund shall be applied by the Commissioner in line with the budget approved by the Board for the payment of—

(*a*) compensation to workers or dependants wherever any employer is liable to pay such compensation under this Act;

(*b*) expenditure lawfully incurred by the Commissioner in carrying out his functions under this Act; and

(*c*) any other expenditure lawfully incurred under this Act for due administration of the Fund.

(2) Any surplus in the Fund may, with the approval of the Board, be applied by the Commissioner in the reduction of future assessments or may be retained in the Fund.

(3) Any deficiency in the Fund may be made good by an increase in the amount of any future assessment.

(4) There may be established within the Fund such reserve funds as the Commissioner, with the approval of the Board, considers necessary or desirable for the purposes of this Act.

Holding of assets of the Fund

59.—(1) All moneys received by the Commissioner on behalf of the Fund shall be paid into a bank account and no money shall be withdrawn therefrom except by means of cheques signed by such person or persons as may be authorized by the Board in that behalf.

(2) A proportion of the Fund shall be held in liquid form and such proportion may be determined and varied from time to time by the Commissioner, with the approval of the Board, having regard to the due execution of this Act; and such liquid portion of the Fund may be held in any bank account or on deposit with banks or building societies registered in Malaŵi.

(3) The Commissioner shall hold the remainder of the Fund in investments approved, either generally or specifically, by the Board.

Accounts and audit

60.—(1) The Commissioner shall keep and maintain proper books of account and other books and records in relation thereto, in which shall be recorded all financial transactions of the Fund and he shall in every respect comply with the provisions of the Finance and Audit Act.

(2) The accounts of the Fund shall be examined and audited annually by auditors appointed by the Commissioner with the approval of the Board.

(3) The Commissioner shall furnish to the Board annually, or as often as the Board may direct, accounts in respect of the finances and other assets of the Fund.

(4) There shall be an actuarial valuation on the financial all viability of the Fund after every three years.

Liability to assessment

61.—(1) Every employer, including the Government, shall be liable to assessment under this Part.

(2) The Minister may, with the advice of the Board, make regulations for the making of assessments on employers regarding their contribution to the Fund.

PART XII
General

Remedies against both employer and stranger

62.—(1) Where the injury in respect of which compensation is payable was caused under circumstances creating a legal liability in some person other than the employer to pay damages in respect thereof, the worker may take civil proceedings in court against that person to recover such damages and to recover such compensation under this Act against any person liable to pay compensation, but shall not, save in the circumstances described in subsection (2), be entitled to recover both such damages and compensation.

(2) Notwithstanding anything contained in subsection (1)—

(*a*) where a worker has recovered from any person other than the employer damages in respect of an injury for which compensation is payable and the amount of such damages is less than the amount of the compensation so recoverable, the worker shall be entitled to recover from the person by whom such compensation is payable whichever amount is greater; and

(*b*) where the worker has recovered compensation in respect of an injury caused under circumstances creating a legal liability in some person other than the employer to pay damages in respect thereof and the amount of such compensation is less than the amount of the damages so recoverable from such person, the worker shall be entitled to take civil proceedings in court to recover from such person whichever amount is greater.

(3) If a worker has recovered compensation in respect of an injury caused under circumstances creating a legal liability in some person other than the employer to pay damages in respect thereof, the person by whom the compensation was paid, shall be entitled to be indemnified as regards the amount of compensation, including costs, by the person so liable to pay damages as aforesaid to the extent of the amount of the damages for which such person is liable, and any question of such indemnity shall, in default of agreement, be settled by civil suit or, by consent of the parties, by arbitration under the Arbitration Act. Cap. 6:03

(4) Nothing in this section shall be deemed to give the Commissioner power to award damages or to award costs against any person.

Proceedings independently of this Act

63. Where the injury was by the personal negligence or wilful act or default of the employer or of some other person for whose act or default the employer is responsible, nothing in this Act shall prevent proceedings to recover damages being instituted against the employer by civil suit independently of this Act:

Provided that—

(*a*) any damages awarded in such civil suit shall take into account any compensation previously paid under this Act in respect of the same injury;

(*b*) any compensation paid under this Act shall take into account any damages previously paid in respect of the same injury; and

(*c*) no such additional payment, if it is in excess of the amount of compensation payable under this Act, shall be made from the Fund.

Provisions in case of bankruptcy of employer

64.—(1) Where any employer has entered into a contract with any case of insurers in respect of any liability under this Act to any worker, then, in the event of the employer becoming bankrupt or making a composition or arrangement with his creditors, or, if the employer is a company, in the event of the company having commenced to be wound up either voluntarily or compulsorily or a receiver or manager of the company's business or undertaking having been duly appointed, or possession having been taken by or on behalf of the holders of debentures secured by a floating charge, of any property comprised in or subject to the charge the rights of the employer against the insurers as respects that liability shall, notwithstanding anything in any written law relating to bankruptcy and the winding-up of companies, be transferred to and vest in the worker and upon any such transfer the insurers shall have the same rights and remedies and be subject to the same liabilities as if they were the employer; but so however, that the insurers shall not be under any greater liability to the worker that they would have been under to the employer.

(2) If the liability of the insurers to the worker is less than the liability of the employer to the worker, the worker may prove for the balance in the bankruptcy or liquidation, or, as the case may be, he may take steps to recover the balance from the receiver or manager.

(3) There shall be included among the debts which—

Cap. 11:01

(*a*) under section 35 of the Bankruptcy Act are included in the distribution of the property or assets or a bankrupt; or

(*b*) under any written law relating to companies are, in the winding-up of a company, to be paid in priority to all other debts, the amount due in respect of any liability for compensation or assessment before the following dates, that is to say—

(i) in the circumstances of paragraph (*a*), the date of the receiving order; and

(ii) in the circumstances of paragraph (*b*), the date of the winding-up order, or the date of commencement of the winding-up of the company, whichever is appropriate.

(4) Where a bankrupt or a company in liquidation has entered into such a contract with insurers as is referred to in subsection (1) the provisions of subsection (3) shall not apply in respect of the liability of the employer to the worker or that part thereof which is met by the insurers.

Contracting out

65. Any contract or agreement whether made before or after the commencement of this Act, whereby a worker relinquished any right of compensation from an employed for injury arising out of and in the course of his employment, shall be null and void in so far as it purports to remove or reduce the liability of any person to pay compensation under this Act.

Compensation not to be assigned, charged or attached

66. Compensation payable under this Act shall not be capable of being assigned, charged or attached, and shall not pass to any other person by operation of law, nor shall any claim be set off against such compensation.

General penalty

67. Any person who commits an offence under this Act for which no other penalty is prescribed shall be liable to a fine of K2,000.

Offences relating to records and returns

68. Any person required to keep a record or to make a return by virtue of any regulation made under section 34 who fails to keep such a record, to make such a return within the time which he is required to make the return or makes or causes to be made a record or return which is false in any material particular, or having been duly required so to do, fails to give any information or explanation respecting the record or return which is in his power to give shall be guilty of an offence and liable to a fine as stipulated in the schedule hereto and if the contravention in respect of which he was so convicted is continued after the conviction he shall be guilty of a further offence and liable in respect thereof to a fine as stipulated in the schedule hereto.

Other laws

69.—(1) Except where otherwise expressly provided, the provisions of this Act shall be in addition to and not in substitution for the provisions of any other law.

Cap. 6:02

(2) The Limitations Act shall not apply in relation to claims for compensation.

Transitional

70. A claim for compensation in respect of an injury incurred before the commencement of this Act shall be dealt with under the Act repealed by section 71 as if this Act had not been enacted; but so, however, that the Commissioner shall be the court for the purpose of dealing with any such claim or with any dispute or question arising therefrom.

FIRST SCHEDULE

ss. 3 and 9

Schedule of Percentage of Incapacities

	Percentage of Incapacity Injury
Loss of two limbsww	100
Loss of both hands or of all fingers and thumbs	100
Loss of both feet	100
Total loss of sight	100
Total paralysis	100
Injuries resulting in being permanently bedridden	100
Any other injury causing permanent total disablement . .	100
Loss of arm at shoulder	70
Loss of arm between elbow and shoulder	60
Loss of arm at elbow	55
Loss of arm between wrist and elbow	50
Loss of hand at wrist	50
Loss of four fingers and thumb on one hand	50
Loss of four fingers	35
Loss of thumb—	
both phalanges	35
one phalange	35
Loss of index finger—	
three phalanges	10
two phalanges	8
one phalange	4
Loss of middle finger—	
three phalanges	6
two phalanges	4
one phalange	2
Loss of ring finger—	
three phalanges	5
two phalanges	4
one phalange	2

	Percentage of Incapacity Injury
Loss of little finger—	
three phalanges	4
two phalanges	3
one phalange	2
Loss of metacarpals—	
first or second (additional)	3
third, fourth or fifth (additional)	2
Loss of leg—	
at or above knee	70
below knee	60
Loss of foot	40
Loss of toe—	
all of one foot	15
great, both phalanges	5
great, one phalange	2
other than great, if more than one toe lost each . .	1
Loss of sight of one eye	30
Loss of hearing in one ear	10
Total loss of hearing	50

Scars from injuries or burns which result in disfigurement shall be treated as resulting in from 0 to 50 per cent permanent incapacity, according to their size and location.

Total permanent loss of the use of a member shall be treated as loss of such member.

The percentage of incapacity of ankylosis of any joint shall be reckoned as from 25 to 100 per cent of the incapacity for loss of the part at that joint, according to whether the joint is ankylose in a favourable or unfavourable position.

Where there is a loss of two or more parts of the hand, the percentage of incapacity shall not be more than for the loss of the whole hand.

Injuries which result in permanent incapacity but which are not included in this Schedule shall be assessed in relation to the percentage of incapacity specified in this Schedule, wherever possible.

SECOND SCHEDULE

Diseases

Description of Disease	*Name of Occupation and Occupation involving*	*Prescribed Period*
1. Anthrax	Work in connexion with animal carcasses or parts of such carcasses or of wool, hair, bristles, hides, skins hoofs or horns . .	2 weeks
2. Byssinosis	Any occupation in any room where any process up to and including the carding process is performed in factories in which the spinning or manipulation of raw or other waste cotton is carried on	1 year
3. Chrome ulceration or its sequelae	The use of or handling of chronic acid, chromate or bichromate of ammonium, potassium, sodium or zinc, or any preparation or solution containing any of these substances	1 year
4. Compressed air illness or its sequelae	Subjection to compressed air	1 year or in the case of arthritis 5 years
5. Glanders	Contact with equine animals or their carcasses	6 months
6. (*a*) Infection by leptospira icterohaemo rrhagiae	Work in places which are or are not liable to be infested with rats	3 weeks
(*b*) Infection by leptospira canicola	Work at dog kennels or in the care or handling of dogs	3 weeks
7. Pathological manifestations due to radium or other radioactive substances or X-rays	Exposure to the radioactive substances or X-rays	10 years
8. Primary epithelio-matous cancer or ulceration of the skin	The use or handling of, or exposure to tar, pitch, bitumen or mineral oil (including paraffin), or any compound, product or residue of any of these substances . .	10 years

Description of Disease	*Name of Occupation and Occupation involving*	*Prescribed Period*
9. Tobaccosis	Any occupation involving the handling of or exposure to tobacco dust	2 years
10. Toxic anaemia	The use or handling of, or exposure to the fumes or vapours of tetrachlorethane, nitro or aminoderivatives of benzene or its homologues	2 years
11. Toxic jaundice	The use or handling of, or exposure to tetrachlorethane, carbon tetracloride, arseniuretted hydrogen, trinitrotoluene nitro and amino derivatives of benzene or its homologues	3 months
12. Tuberculosis	Close and frequent contact with a source or sources of tuberculosis infection by reason of employment—	2 months
	(*a*) in the medical treatment or nursing of persons suffering from tuberculosis, or in a service ancillary to such treatment or nursing;	
	(*b*) in attendance upon a person or persons suffering from tuberculosis where the need for such attendance arises by reason of physical or mental infirmity;	
	(*c*) as a research worker engaged in research in connexion with tuberculosis;	
	(*d*) as a laboratory worker, pathologist or postmortem worker, where the occupation involves working with material which is a source of tuberculosis infection or in an occupation ancillary to such employment.	
13. Any disease contracted as a result of poisoning by—		
(*a*) Aniline compounds of benzene and its homologues	The use or handling of, or exposure to the fumes, dust or vapour of a nitro or amino-derivative of benzene, or a homologue of benzene	2 years

Description of Disease	*Name of Occupation and Occupation involving*	*Prescribed Period*
(*b*) Arsenic or the sequelae thereof	The use or handling of, or exposure to the fumes, dust or vapour of arsenic or a compound or arsenic or a substance containing arsenic	1 year
(*c*) Benzene or any of its homologues and the sequelae thereof or a nitro or amino-derivative of benzene, and the sequelae thereof	The use or handling of, or exposure to the fume of, or vapour containing benzene or any of its homologues or a nitro or amino-derivative of benzene or of a homologue benzene	1 year
(*d*) Carbon bisulphide	The use or handling of, or exposure to, the fumes of, or vapour containing, carbon bisulphide, or compound of carbon bisulphide or a substance containing carbon bisulphide	1 year
(*e*) Lead or the sequelae thereof	The use or handling of, or exposure to the fumes, dust or vapour of, lead or a compound of lead or a substance containing lead. . .	2 years
(*f*) Manganese or a compound of manganese	The use or handling of, or exposure to the fumes, dust or vapour of, manganese or a compound of manganese or a substance containing manganese	2 years
(*g*) Mercury or a compound of mercury	The use or handling of, or exposure to the dust or vapour of, mercury or a compound of mercury or a substance containing mercury	2 years
(*h*) Phosphorus or phosphine or poisoning due to the anticholinesterase action of organic phosphorus compounds	The use or handling of, or exposure to the fumes, dust vapour of, phosphorus or a compound of phosphorus or a substance containing phosphorus	3 years
14. Bilharzia	Work in connexion with water-scheme (irrigation) infested with fresh water snails of *Biompharia or balimus* species . .	6 weeks

Description of Disease	*Name of Occupation and Occupation involving*	*Prescribed Period*
15. Bagassosis	Work in connexion with molasses processing	
16. Unconsciousness/ death (carbon monoxide)	Exposure in mines after explosions and in iron and steel industry, and gas plants to carbon monoxide	mins-few hours
17. Chronic cadmium poisoning	Work in connexion with mining metallurgy, chemical industry, scrap metal treatment, and superphosphate fertilizers	12 years
18. Dermatoses	The use or handling of organic substances such as formaldehyde solvents or inorganic materials, acids, and alkalis	3–4 weeks
19. Noise induced hearing loss	Working in environments with continuous noise levels beyond 90 decibels without protective hearing devises	long-term
20. Mesothelioma (cancer of pleura and peritoneum)	The use or exposure to crocidolite, a form of asbestos	30–40 years
21. Mineral-dust pneu-moconiosis (silicosis, asbestosis)	Work in connexion to mining quarrying, pottery ceramics,masonry and drilling tunnels.	5–10 years
22. Undulent fever (Brucellosis)	Work related to animal husbandry veterinary, butchery and dairy	1–3 weeks
23. Viral hepatitis B	Work injuries related to health care waste, especially sharps	60–90 days

TECHNICAL, ENTREPRENEURIAL AND VOCATIONAL EDUCATION AND TRAINING

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CHAPTER 55:06

TECHNICAL, ENTREPRENEURIAL VOCATIONAL EDUCATION AND TRAINING

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6 of 1999
G.N. 24/1999

An Act to provide for the promotion and co-ordination of technical, entrepreneurial and vocational education and training; the establishment of the Technical, Entrepreneurial and Vocational Education and Training Authority of Malaŵi; the establishment of a Technical, Entrepreneurial and Vocational Education and Training Fund, the payment into the Fund of periodical contributions levied on employers and the application of the Fund towards defraying various costs and expenses relating to technical education and training; and further to provide for matters incidental to or connected with the forgoing

[1ST JULY, 1999]

PART I

Preliminary

1. This Act may be cited as the Technical, Entrepreneurial and Vocational Education and Training Act. Short title

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

"Authority" means the Technical, Entrepreneurial and Vocational Education and Training Authority of Malaŵi established under section 4;

"basic payroll" means the total basic annual emoluments paid by an employer to employees;

"Board" means the Board of the Authority established under section 6;

"Chairman" means Chairman of the Board elected pursuant to section 6;

"Committee" means a committee of the Board established under section 16;

"Executive Director" means the Executive Director of the Authority appointed under section 18;

"Fund" means the Technical, Entrepreneurial and Vocational Education and Training Fund established under section 28;

"levy" means the Technical Entrepreneurial and Vocational Education and Training Payroll-Levy imposed under section 20;

"member" means a member of the Board appointed as such under section 6;

"Resource Centre" means a Resource Centre designated as such under section 17;

"technical education and training" means technical, entrepreneurial and vocational education and training;

"Technical Qualification Committee" means the Technical Qualification Committee of the Authority established under section 12;

"Trade Advisory Committee" means a Trade Advisory Committee established under section 14.

PART II

Objectives of Technical Education and Training

3. The technical education and training to be carried out under this Act shall have the following broad objectives— Objectives of technical education and training

(*a*) to promote an integrated, demand-driven, competency based modular technical education and training system;

(*b*) to monitor gaps between supply and demand for skills;

(*c*) to support the adoption and application of appropriate technologies;

(*d*) to promote managerial and business skills, and a spirit of entrepreneurial culture with regard to both wage and self-employment;

(*e*) to facilitate sound and sustainable financing and funding mechanisms for technical education and training; and

(*f*) to facilitate and bring together the expertise and moderate the different interests of stakeholders of technical education and training.

PART III

Establishment of Technical, Entrepreneurial and Vocational Education and Training Authority of Malaŵi

Establishment of Authority

4.—(1) There is hereby established a body to be known as the Technical, Entrepreneurial and Vocational Education and Training Authority of Malaŵi (in this Act otherwise referred to as the "Authority") which shall be—

(*a*) a body corporate with perpetual succession and a common seal;

(*b*) in its corporate name, capable of sueing and being sued;

(*c*) capable of holding, purchasing and otherwise acquiring and disposing of any property, moveable or immoveable, for the purposes, or in the course, of carrying out its functions; and

(*d*) subject to this Act, capable of doing and performing all such acts and things as bodies corporate may by law do and perform.

(2) The Authority shall operate as an independent and autonomous body responsible for technical education and training in Malaŵi.

Functions of the Authority

5. The functions of the Authority shall be—

(*a*) to facilitate the provision of technical education and training opportunities, and facilities for such training;

(*b*) to facilitate the establishment of a technical education and training system which includes both basic and specialized training to meet the needs of both the formal and the informal sectors;

(*c*) to satisfy the demands of the labour market for employees with trade skills in order to improve production, and ensure maximum efficiency and relevance of technical education and training programmes;

(*d*) to ensure that the system of technical education and training is based on demand, is cost-effective and given a gradually decentralized planning and implementation

authority to all the Regions of Malaŵi to ensure maximum utilization of resources and relevance of technical education and training programmes;

(*e*) to foster and promote entrepreneurial values and skills, as an integral part of all technical education and training programmes;

(*f*) to promote access to technical education and training for disadvantaged groups;

(*g*) to secure adequate and sustainable financing for technical education and training;

(*h*) to raise the quality of technical education and training being provided by technical education and training institutions;

(*i*) to promote the provision of technical education and training according to needs within the framework of overall national socio-economic development plans and policies;

(*j*) to promote the balancing of supply and demand for skilled labour in both wage-employment and for skills needed for self-employment in rural and urban areas;

(*k*) to promote and to provide short tailor-made course programmes and in-service training in order to improve the performance and productivity of the national economy;

(*l*) to provide a competency-based technical education and training system, combining broad basic training, gradual specialization and practical work experience;

(*m*) to promote a flexible training approach and other appropriate teaching methodologies;

(*n*) to provide technical education and training for the formal and informal sectors through co-ordination with recognized existing institutions;

(*o*) to monitor and review technical education and training policy;

(*p*) to set standards and qualifications for any occupation, skill, technology or trade in line with the needs of the labour market;

(*q*) to approve curricula of registered institutions providing technical education and training; and

(*r*) to regulate the conduct of national examinations and issuing of certificates relating to technical education and training.

PART IV

Establishment of Board of the Authority

Establishment of Board of the Authority

6.—(1) There is hereby established a Board of the Authority (in this Act otherwise referred to as the "Board") which shall be the governing body of the Authority and which shall consist of—

(*a*) one member nominated by the Employers Consultative Association of Malaŵi, and appointed by the Minister;

(*b*) one member nominated by the Malaŵi Chamber of Commerce and Industry, and appointed by the Minister;

(*c*) one member nominated by the Malaŵi Congress of Trade Unions, and appointed by the Minister;

(*d*) one member nominated by the Council for Non-governmental Organizations in Malaŵi from a non-governmental organization which provides technical education and training, and appointed by the Minister;

(*e*) one member nominated by social organizations which provide technical education and training, and appointed by the Minister;

(*f*) one member nominated by technical colleges providing formal technical education and training, and appointed by the Minister;

(*g*) one member representing financial intermediaries in Malaŵi, and appointed by the Minister;

(*h*) one member representing women, appointed by the Minister;

(*i*) one member representing persons with disabilities, appointed by the Minister;

(*j*) one member representing the youth, appointed by the Minister; and

(*k*) the following *ex officio* members—

(i) the Secretary for Labour, or his designated representative;

(ii) the Secretary to the Treasury, or his designated representative;

(iii) the Secretary for Education, or his designated representative; and

(iv) the Secretary for Commerce and Industry, or his designated representative.

(2) The members shall elect a Chairman and Vice-Chairman from amongst their number.

(3) An *ex officio* member shall not be eligible to be elected Chairman or Vice-Chairman of the Board.

(4) A representative of an *ex officio* member shall be designated by, or on behalf of, the *ex officio* member by notice in writing to the Board to attend meetings thereof, and upon such designation such representative shall not attend to the business of the Board by representation.

(5) A member, other than an *ex officio* member, shall not, by virtue only of his appointment as a member, be deemed to be an officer in the public service.

(6) A member, other than an *ex officio* member, shall hold office for a period of three years from the date of his appointment, unless his appointment is terminated sooner than the expiry of that period, and shall be eligible for re-appointment.

(7) The names of all members of the Board as first constituted, and every change in the membership of the Board, shall be published in the *Gazette*.

Vacation of members from office

7.—(1) The office of a member, other than an *ex officio* member, shall be vacated—

(*a*) upon the expiry of the period of his appointment;

(*b*) upon his death;

(*c*) if he is adjudged a bankrupt;

(*d*) if he is sentenced for an offence against any written law to a term of imprisonment of, or exceeding, six months;

(*e*) if he is absent, without the permission of the Board, from three successive meetings of the Board of which he has had notice;

(*f*) upon notice in writing of his resignation; and

(*g*) if he becomes, by reason of mental or physical infirmity, incapable of performing his duties as a member.

(2) Whenever there is a vacancy in the office of a member, other than an *ex officio* member, the Minister shall, by notice published in the *Gazette*, appoint another person, nominated by the authority or institution which nominated the original member, to fill the vacancy.

(3) Subject to section 8 (4), the Board may act notwithstanding any vacancy in the membership of the Board.

Meetings of the Board

8.—(1) The Board shall meet at such place or places, and at such time or times, as the Chairman may determine, and shall meet at least once in every four months.

(2) An ordinary meeting of the Board shall be convened by at least fourteen days written notice to the members.

(3) The Chairman may, at his discretion, and shall at the written request of six or more members and within seven days of such request, cause an extraordinary meeting of the Board to be summoned at such place and time as he may appoint.

(4) The Chairman, or in his absence, the Vice-Chairman, shall preside at meetings of the Board, and the quorum at any meeting of the Board shall be one half of the members.

(5) In the absence of both the Chairman and Vice-Chairman, the members present and forming a quorum shall elect one of their number to preside over a meeting of the Board.

(6) Minutes of each meeting of the Board shall be kept by the secretary.

(7) The decision of the Board at any meeting on any matter shall be that of the majority of the members present and voting, and at all meetings the person presiding shall have, in the event of an equality of votes, a casting vote in addition to his deliberative vote.

(8) If a member acquires any pecuniary or other interest, direct or indirect, in any matter and is present at a meeting of the Board at which the matter is the subject of consideration by the Board, he shall, as soon as practicable after the commencement of the meeting, disclose the fact to the Board, and shall not take part in the consideration or discussion of, or vote on any question with respect to, the matter.

(9) Save as otherwise provided in this section, the Board may make standing orders for the regulation of its proceedings and business or the proceedings and business of any committee, and may vary, suspend or revoke any such standing orders.

Invited persons

9.—(1) The Board may, in its discretion at any time and for any length of period, invite any person to attend any meeting of the Board for the purpose of assisting or advising the Board in respect of any matter under consideration by the Board.

(2) Any person invited pursuant to subsection (1) may take part in the deliberations of the Board at any meeting he attends, but shall not be entitled to vote on any matter at any meeting of the Board.

Remuneration and expenses of members, etc.

10.—(1) Members of the Board, Technical Qualification Committee, Trade Advisory Committee and any committee of the Board shall be paid from the funds of the Authority such allowances as the Board may, subject to the approval of the Minister, determine.

(2) The Board may make provision for the reimbursement of any reasonable expenses incurred by a member of the Board, Technical Qualification Committee, Trade Advisory Committee or a committee of the Board in connexion with the business of the Board, Technical Qualification Committee, Trade Advisory Committee or a committee of the Board.

Powers of the Board

11. For the proper discharge of its functions, the Board shall, subject to any directions on matters of general policy which the Minister may give in that behalf, have the responsibility and power—

(*a*) to develop policies on technical education and training and to supervise the implementation of such policies at national level;

(*b*) to set policies and procedures for the use of the Fund, including—

(i) the approval of allocation criteria and budget norms for the Authority and other training providers;

(ii) the appointment of external auditors to audit the accounts of any beneficiary of the Fund;

(*c*) to approve the plans and annual budgets of the Authority;

(*d*) to establish a personnel and administration policy of the Authority;

(*e*) to prescribe guidelines and rules for the operation of the Technical Qualification Committee and Trade Advisory Committees;

(*f*) to approve the registration of technical education and training institutions in accordance with prescribed standards and rules; and

(*g*) to prescribe rules with respect to the following matters—

(i) syllabi;

(ii) trade testing systems, examination and certification;

(iii) registration, accreditation and inspection of technical education and training institutions;

(iv) registration and accreditation fees;

(v) student selection and vocational guidance and counselling;

(vi) technical teacher education and training;

(vii) apprenticeship training; and

(viii) such other rules which may be necessary for the implementation of the objectives and provisions of the Act.

Establishment of Technical Qualification Committee

12.—(1) For the better carrying out of the functions of the Board, there is hereby established a committee to be known as Technical Qualification Committee (in this Act otherwise referred to as a "Technical Qualification Committee") which shall consist of such number of members appointed by the Board, being not more than seven, as the Board may determine, and who shall be specialists in technical education and training curriculum development, standardization and assessment.

(2) Every member of the Technical Qualification Committee shall, unless he sooner resigns or otherwise ceases to hold office, hold office for a period of three years, and shall be eligible for reappointment.

(3) The Board shall appoint one of the number of its members to be the chairman of the Technical Qualification Committee.

(4) At all meetings of the Technical Qualification Committee the quorum shall be formed by one-half of the members.

(5) Save as otherwise provided in this section, the provisions of section 8 relating to the meetings of the Board shall apply, *mutatis mutandis*, to the meeting of the Technical Qualification Committee.

(6) An officer of the Authority designated by the Executive Director shall act as the secretary to the Technical Qualification Committee and shall, on the instructions of the chairman of the Committee, convene meetings of the Committee.

Functions of the Technical Qualification Committee

13.—The Technical Qualification Committee shall be responsible for—

(*a*) facilitating and promoting a unified national technical qualification system for technical education and training;

(*b*) developing and revising curricula and defining appropriate standards and assessment criteria for technical education and training;

(*c*) performing such other functions as the Board may determine.

Establishment of Trade Advisory Committees

14.—(1) For the better carrying out of its functions, the Board may establish such number of committees to be known as Trade Advisory Committees (in this Act otherwise referred to as "Trade Advisory Committees") as the Board may deem appropriate to perform such functions and responsibilities as the Board may determine.

(2) A Trade Advisory Committee may be established in respect of such industry, trade or occupation as the Board may determine.

(3) Each Trade Advisory Committee shall consist of such number of members appointed by the Board, being no more than seven, as the Board shall determine, of whom—

(*a*) one member shall represent the interests of technical education and training institutions;

(*b*) one member shall be a training specialist;

(*c*) two members shall represent the interests of employers in the industry concerned; and

(*d*) two members shall represent the interests of employees in the industry concerned.

(4) Every member of a Trade Advisory Committee shall, unless he sooner resigns or otherwise ceases to hold office, hold office for a period of three years, and shall be eligible for re-appointment.

(5) The Board shall appoint the chairman of the Trade Advisory Committee.

(6) At all meetings of a Trade Advisory Committee the quorum shall be formed by one-half of the members.

(7) Save as otherwise provided in this section, the provisions of section 8 relating to the meetings of the Board shall apply, *mutatis mutandis*, to the meetings of a Trade Advisory Committee.

(8) An officer of the Authority designated by the Executive Director shall act as the secretary to a Trade Advisory Committee and shall, on the instructions of the chairman of that Committee, convene meetings of the Committee.

Functions of Trade Advisory Committees

15.—(1) It shall be the responsibility of a Trade Advisory Committee to ensure that technical education and training programmes are in accordance with the needs of the labour market.

(2) Without prejudice to the generality of subsection (1), a Trade Advisory Committee shall perform the following specific functions—

(*a*) advise the Board on the establishment of new technical training and education programmes and the abolition of obsolete ones;

(*b*) assess training needs and determine training standards for the specific trades that Committee is covering;

(*c*) draw up training specifications and job descriptions for the trades to be taught;

(*d*) ensure co-ordination of related trade training activities;

(*e*) approve log-books and trade testing standards for the trades; and

(*f*) perform such other functions as may be assigned to it by the Board.

Other Committees of the Board

16.—(1) The Board may establish additional committees, to carry out any special or general functions determined by the Board, and may delegate to any such committees such functions as the Board may consider expedient.

(2) The chairman of a committee referred to in subsection (1) shall be appointed by the Board from amongst the members of the Board.

(3) A committee may invite any person to attend a meeting of the committee and to take part in the deliberations of the meeting, but such person shall not be entitled to vote.

(4) The chairman may—

(*a*) at any time and place, convene a meeting of the committee of which he is chairman;

(*b*) at any time, direct the chairman of any committee to convene a meeting of such committee and such chairman shall, as soon as is practicable, comply with such direction.

(5) At all meetings of a committee—

(*a*) the quorum shall be formed by one-half of the members;

(*b*) each member present shall have one vote on a question before the committee and, in the event of an equality of votes,

the chairman shall have, in addition to a deliberate vote, a casting vote.

(6) Subject to section 8 (9) every committee shall have power to regulate its own procedure.

(7) Every committee shall keep minutes of meetings and inform the Board of its activities.

(8) An officer of the Authority designated by the Executive Director shall act as secretary to a committee and shall, on the instructions of the chairman of that committee, convene meetings of that committee.

(9) Save as otherwise provided in this section, the provisions of section 8 relating to the meetings of the Board shall apply, *mutatis mutandis*, to the meetings of a committee.

Designation of Resource Centres

17.—(1) The Board may, by notice in writing, designate any technical education and training institution to be a technical education and training Resource Centre.

(2) A Resource Centre designated pursuant to subsection (1) shall serve as a satellite centre for technical education and training services within the catchment area, and shall perform such other functions as may be assigned to it by the Board, from time to time.

PART V

Management

Appointment of Executive Director

18.—(1) There shall be an Executive Director of the Authority (in this Act otherwise referred to as the "Executive Director") who shall be appointed by the Board on such terms and conditions of service as the Board shall determine.

(2) The appointment and terms and conditions of service of the Executive Director shall be subject to approval by the Minister.

(3) The Executive Director shall be the chief executive officer of the Authority and, subject to the general supervision and control of the Board, shall be responsible for—

(*a*) the management of the day to day operations of the Authority;

(*b*) the management of the funds, property and business of the Authority;

(*c*) the administration, organization and control of the other officers and staff of the Authority; and

(*d*) the effective administration and implementation of the provisions of this Act.

(4) The Executive Director shall, subject to subsection (5), hold office for a period of four years, and shall be eligible for re-appointment.

(5) The Board may, subject to the approval of the Minister, terminate the appointment of the Executive Director for—

(*a*) misconduct or misbehaviour; or

(*b*) inability, incapacity or incompetence to perform the duties of his office.

(6) The Executive Director shall devote his full time to the duties of his office and shall not, without the prior approval of the Board, hold any office of trust or profit, other than that of the Executive Director, or engage in any occupation for reward outside the office of Executive Director.

(7) The Executive Director or, in his absence such other officer of the Authority as the Executive Director may designate in writing, shall attend meetings of the Board, but shall not vote on any matter:

Provided that the person presiding at any meeting may, for good cause, require the Executive Director or such other officer to withdraw from the meeting.

(8) The Executive Director shall, on the instructions of the Chairman, convene meetings of the Board; and the Executive Director or an officer of the Authority duly designated by the Executive Director shall be secretary to the Board.

Appointment of other officers and staff

19. The Executive Director may, on such terms and conditions as the Board may determine, appoint such other officers and staff of the Authority, subordinate to the Executive Director, as may be required for the performance of the functions of the Authority.

PART VI

Technical, Entrepreneurial and Vocational Education and Training Payroll-Levy

Technical, Entrepreneurial and Vocational Education and Training Payroll-Levy

20.—(1) Subject to the provisions of this Part, there shall be charged and levied on every employer, and payable into the Fund, at the beginning of every year, a payroll-levy to be known as the Technical, Entrepreneurial and Vocational Education and Training Payroll-Levy (in this Act otherwise referred to as the "levy").

(2) The levy shall be the sum of money equal to two per cent of the basic payroll of an employer in respect of the previous year:

Provided that in the case of the Government the levy shall be one per cent of the basic payroll.

(3) The Minister may, on the recommendation of the Authority, by Order published in the *Gazette* revise the rate of levy prescribed in subsection (2).

(4) The levy may be paid in monthly instalments of up to twelve months and, where the Authority notifies an employer that the levy is due, payment shall be made within thirty days of the notification to the employer by the Authority.

(5) Where in any case the basic payroll of an employer cannot be ascertained with any reasonable accuracy, the Executive Director may, in writing, require the employer to pay a levy of such amount as the Executive Director may specify, and the employer shall pay the levy so specified within the time specified by the Executive Director.

(6) Any levy imposed and paid pursuant to this Act, shall be deductible for the purpose of ascertaining the taxable income of the employer in accordance with the Taxation Act.

Cap 41:01

Penalty upon failure to pay levy

21.—(1) Where an employer who is under this Act liable to pay a levy fails to pay the whole or any part of such levy in accordance with section 20 (4), an additional sum equal to twenty per cent of the unpaid levy shall become due and be payable by such employer by way of penalty.

(2) Any sum payable by way of penalty under this section shall, for the purposes of this Act, be deemed to be a levy and shall be collected and recoverable accordingly.

Summary recovery of unpaid levy, etc.

22.—(1) Any levy or penalty payable by an employer under the provisions of this Act shall be a debt due to the Authority and may be recovered from such employer as a civil debt by way of a summary suit at the instance of the Executive Director or any person authorized by the Executive Director in that behalf.

(2) Without prejudice to the method of recovery of levy and penalties prescribed by subsection (1), where any amount of levy or penalty is due from any employer, the Executive Director may file in a court of a resident magistrate having jurisdiction over the area in which the employer resides or carries on business, a certificate stating—

(*a*) the name and address of the employer from whom the levy is due; and

(*b*) the amount due.

(3) A certificate filed under this section shall be deemed to be a judgment of the court against the person named in the certificate for payment by such person to the Authority of the amount stated in the certificate together with interest thereon at twenty *per centum* per month from the date on which such certificate is filed until the date of payment, and every such judgment may be executed in the same manner as a judgment passed by a court of a resident magistrate in a civil suit.

(4) Subsections (2) and (3) shall apply notwithstanding that the amount involved exceeds the pecuniary jurisdiction of a court of a resident magistrate.

(5) Every certificate filed in a court of a resident magistrate pursuant to subsection (2) shall be prima facie evidence of the truth of the statements contained in such certificate.

Exemption from levy

23. The Minister may, on the recommendation of the Authority and by Order published in the *Gazette*, exempt any employer from the provisions of section 20.

Collection of levy

24.—(1) The levy payable under this Act may be paid directly to the Authority, or collected on behalf of the Authority, by such other agency as the Authority may, subject to the approval of the Minister, designate by Order published in the *Gazette*.

(2) The Minister may, on the advice of the Authority, make regulations relating to the collection of levy.

Maintenance of basic payroll by employers

25.—(1) Every employer shall keep and maintain, at his principal place of business in Malaŵi, an up-to-date record of a basic pay-roll in the prescribed form, of all employees in his employment, and such record shall at all reasonable times be available for inspection by an inspector or other officer authorized in that behalf by the Authority.

(2) Where any employer fails to maintain a basic payroll required by subsection (1), the Authority may make its own estimate of the basic payroll of the employer during the relevant period of twelve months, and such estimate shall be deemed to be the basic payroll of such employer for such period for the purposes of this Act.

False information, etc., to evade levy

26. Any person who, with intent to evade payment of any levy or any penalty due under this Act—

(*a*) makes any false statement to the Executive Director; or

(*b*) fails or omits to give any information, or to maintain a basic payroll required to be maintained under this Act or under regulations made under this Act; or

(*c*) gives any information or maintain a basic payroll which is false in any material particular,

shall be guilty of an offence and shall be liable to a fine of K50,000 and to imprisonment for three years or to both such fine and imprisonment.

Designation of inspectors

27.—(1) There shall be inspectors for the purposes of the administration of this Part and of the Fund, who shall be designated as such in writing by the Executive Director.

(2) Any person who obstructs or hinders an inspector in the performance of his duties under this Act shall be guilty of an

offence and liable to a fine of K 10,000 and to imprisonment for one year.

PART VII

Establishment of Technical, Entrepreneurial and Vocational Education and Training Fund

Establishment of Technical, Entrepreneurial and Vocational Education and Training Fund

28.—(1) There is hereby established a fund to be known as the Technical, Entrepreneurial and Vocational Education and Training Fund (in this Act otherwise referred to as the "Fund"), which shall be administered and managed by the Authority.

(2) The Fund shall be administered for the purposes of this Act in accordance with policies and procedures determined by the Board.

(3) Without prejudice to subsection (2), the Fund will be used to finance—

(*a*) approved technical education and training programmes;

(*b*) special programmes to support the technical education and training system;

(*c*) user-fee subsidization through scholarships, grants and loans in accordance with priorities determined by the Board;

(*d*) incentives to employers to directly invest in technical education and training;

(*e*) an endowment fund to support technical education and training; and

(*f*) governance and management structures of the technical education and training system.

Resources of the Fund

29. The resources of the Fund shall comprise—

(*a*) all assets currently comprising the Industrial Training Fund established under the Industrial Training Act repealed by section 38;

(*b*) such sums as may be paid as levy pursuant to Part VI;

(*c*) such sums as may be appropriated by Parliament to the Authority for purposes of the Fund; and

(*d*) such sums as may be paid to the Authority for purposes of the Fund by way of grants or donations from any source within or outside Malaŵi.

Management and auditing of the Fund

30.—(1) The authority shall maintain, with such bank as the Board may determine, a designated account into which shall be paid the levy and all the other money payable into the Fund.

(2) The Authority shall cause to be kept proper books of accounts of the payments made into and out of the Fund.

(3) The accounts relating to the Fund shall be—

(*a*) audited annually by independent auditors appointed by the Board; and

(*b*) examined by the Auditor General before being presented to the Minister in accordance with section 33.

PART VIII

Financial Provisions

Funds of the Authority

31.—(1) The funds of the Authority shall consist of—

(*a*) such moneys as may be appropriated by Parliament for the purposes of the Authority;

(*b*) registration and accreditation fees prescribed in accordance with rules made by the Board under section 11;

(c) such moneys as may be received by the Authority under subsection (2); and

(*d*) such moneys as may otherwise vest in or accrue to the Authority.

(2) The Authority may—

(*a*) accept money by way of grants or donations from any source in or outside Malaŵi;

(*b*) with the approval of the Minister, raise by way of loans from any source in or outside Malaŵi, such money as it may require for the discharge of its functions; and

(*c*) charge and collect fees in respect of programmes, publications, seminars, documents, consultancy services and other services provided by the Authority.

(3) Any funds received by the Authority in respect of a financial year which are not expended by the end of that financial year shall be placed in a reserve fund to be expended, subject to the budget of the Authority, during the ensuing financial year.

(4) The Authority may invest in such manner as it thinks fit, such of its funds as it does not immediately require for the performance of its functions.

Books and other records of accounts and audit

32.—(1) The Authority shall cause to be kept proper books of accounts and other records relating to its accounts.

(2) The accounts of the Authority shall—

(*a*) be audited annually by independent auditors appointed by the Authority; and

(*b*) be examined by the Auditor General before being presented to the Minister in accordance with section 33.

Annual reports

33.—(1) The Authority shall as soon as practicable, but not later than three months after the expiry of each financial year,

submit to the Minister a report concerning its activities during that financial year.

(2) The report referred to in subsection (1) shall be in such form as the Minister shall approve, and shall include information on the financial affairs of the Authority and of the Fund, and there shall be appended to the report—

(*a*) an audited balance sheet;

(*b*) an audited statement of income and expenditure; and

(*c*) such other information relating to the Authority and the Fund as the Board may consider appropriate or as the Minister may require.

(3) The Minister shall, during the meeting of the National Assembly next following receipt by him of the report referred to in subsection (1), lay the report before the National Assembly, and the Authority may publish the report for sale to the public.

Financial year

34. The financial year of the Authority shall be a period of twelve months commencing on 1st July in each year, and ending on 30th June in the following year, or such other dates the Minister may specify by Order published in the *Gazette*:

Provided that the first financial year of the Authority may be such shorter or longer period than twelve months as the Minister shall determine, but being not less than six months nor more than eighteen months.

PART IX

Miscellaneous Provisions

Exemption from personal liability

35. No member of the Board, the Technical Qualification Committee or any committee of the Board, or an employee of the Authority shall, in his personal capacity be liable in civil or criminal proceedings in respect of any act or omission done in good faith in the performance of his duties or functions under this Act.

Regulations

36. The Minister may, on the advice of the Authority, make regulations for carrying into effect the provisions of this Act.

PART X

Transitional Provisions

Vesting of assets, liabilities, etc.

37.—(1) All property, except any such property as the Minister may determine by notice published in the *Gazette*, which immediately before the commencement of this Act was vested in the Government for the use of the Industrial Training

Unit in the Ministry of Labour and Vocational Training for purposes of the Apprenticeship Act and the Industrial Training Act, repealed by section 38, shall, on the commencement of this Act, and without further assurance, vest in the Authority, subject to all interests, liabilities, charges, obligations and trusts affecting such property.

(2) Except as otherwise provided in subsection (1) in relation to property, all contracts, debts, obligations and liabilities of the Government attributable to the Industrial Training Unit in the Ministry of Labour and Vocational Training before the commencement of this Act shall remain vested in the Government and may be enforced by or against the government.

(3) All legal proceedings and claims which before the commencement of this Act are pending in respect of revenue to which the Apprenticeship Act and Industrial Training Act, repealed by section 38 apply, shall be continued or enforced by or against the Authority in the same manner as they would have been continued or enforce before the commencement of this Act.

(4) Unless the board otherwise determines, all persons who before commencement of this Act are employed by the Government for the purposes of the Apprenticeship Act and the Industrial Training Act, repealed by section 38, shall on the commencement of this Act, be deemed to be on secondment to the Authority until they are employed in the service of the Authority in accordance with this Act or their secondment with the Authority otherwise ceases in accordance with the terms of the secondment.

Repeal and savings
Cap. 55:06
Cap. 55:08

38.—(1) Subject to subsections (2) and (3), the Apprenticeship Act and the Industrial Training Act are repealed.

(2) Every contract of apprenticeship and every training scheme undertaken under the Apprenticeship Act and the Industrial Training Act, repealed by subsection (1), existing immediately before the commencement of this Act, shall continue in force and be executed until completion as if this Act had not been passed.

(3) Any subsidiary legislation made under the Apprenticeship Act and the Industrial Training Act, repealed by subsection (1), in force immediately before the commencement of this Act—

(*a*) shall remain in force, unless in conflict with this Act, and shall be deemed to be subsidiary legislation made under this Act; and

(*b*) may be replaced, amended or repealed by subsidiary legislation made under this Act.

SUBSIDIARY LEGISLATION

G.N. 26/2002

TECHNICAL, ENTREPRENEURIAL AND VOCATIONAL EDUCATION AND TRAINING (TRADE TESTING FEES) REGULATIONS

under s. 36

Citation

1. These Regulations may be cited as the Technical, Entrepreneurial and Vocational Education and Training (Trade Testing Fees) Regulations.

Fees

2. The fees prescribed in the Schedule shall be payable in respect of matters specified therein in relation to such fees.

SCHEDULE

(reg. 2)

Matter	*Fee* K t
1. On application for a Trade Test—	
(*a*) Grade III Trade Test	750 00
(*b*) Grade II Trade Test	1,500 00
(*c*) Grade I Trade Test	2,500 00
2. On issuance of a replacement of a Trade Test Certificate in respect of—	
(*a*) Grade III Trade Test	1,000 00
(*b*) Grade II Trade Test	1,500 00
(*c*) Grade I Trade Test	2,000 00

TECHNICAL, ENTREPRENEURIAL AND VOCATIONAL EDUCATION AND TRAINING (ENDOWMENT FUND) RULES

G.N. 33/2003

under ss. 11, 16 and 28

Citation

1. These Rules may be cited as the Technical, Entrepreneurial and Vocational Education and Training (Endowment Fund) Rules.

Interpretation

2. In these Rules, unless the context otherwise requires—

"Endowment Fund" means a subfund of the Technical, Entrepreneurial and Vocational Education and Training Fund;

"Finance and Administration Committee" means the Finance and Administration Committee established by the Board under section 16 of the Act.

Establishment of the Endowment Fund

3.—(1) There is hereby established, in terms of section 28 of the Act, an Endowment Fund.

(2) The Endowment Fund shall be a subfund of the Fund.

(3) The Endowment Fund shall be used to support technical education and training.

Allocation to the Endowment Fund

4.—(1) The money to be allocated to the Endowment Fund shall be approved by the Board on the recommendation of the Finance and Administration Committee at the end of each fiscal year.

(2) The money to be allocated to the Endowment Fund shall be derived from—

(*a*) interest gained on the accounts of the Fund;

(*b*) such a percentage as the Board may determine from time to time of—

(i) the levy contribution of the Government;

(ii) the fees collected in accordance with section 31 (c) of the Act;

(iii) grants or donations received from any source in or outside Malaŵi; and

(*c*) appropriations from Parliament.

(3) Funds derived directly from levy collected from private employers shall not be allocated to the Endowment Fund.

Use of the Endowment Fund

5.—(1) The Endowment Fund shall be administered in accordance with policies and procedures determined by the Board.

(2) Without prejudice to the generality of subparagraph (1), the Endowment Fund shall be used to finance programmes which are part of the approved annual action plans and budget of the Authority and in particular—

(*a*) approved technical, education and training programmes;

(*b*) special programmes to support the technical education and training systems;

(*c*) user-free subsidization through scholarships, grants and loans in accordance with policies determined by the Board;

(*d*) governance and management structures of the technical education and training system;

(*e*) establishment and maintenance of technical education and training physical infrastructure of the Authority; and

(*f*) settlement of legal costs pertaining to the Endowment Fund.

Management and Control of the Endowment Fund

6.—(1) The management and control of the Endowment Fund shall vest in the Board and the Board shall, on the recommendation of the Finance and Administration Committee—

(*a*) approve the annual action plan and budget of the Authority in respect of activities to be funded from the Endowment Fund;

(*b*) authorize expenditures in accordance with the Fund and administration policies and procedures of the Authority;

(*c*) advise on how the Endowment Fund shall be utilized;

(*d*) review utilization of funds and to issue reprimand to concerned officials, members and beneficiaries for such infringements as may be found; and

(*e*) receive and comment on the annual audit report of the Endowment Fund.

(2) The Executive Director shall be responsible for managing the endowment Fund and shall maintain all necessary books and accounts to enable him to produce annually, or at such periods as the Board may direct, an income and expenditure account and balance sheet and such other accounts as may be required by the Board.

(3) Without prejudice to the generality of paragraph (2) the duties of the Executive Director, in relation to the Endowment Fund shall include—

(*a*) preparing estimates of income and expenditure and submitting them to the Board for approval;

(*b*) maintaining books of accounts and all relevant documents and presenting them for inspection to the auditors and the Chairman of the Finance and Administration Committee;

(*c*) implementing directions of the Board;

(*d*) having accounts of the Endowment Fund audited timely and presenting the audit report to the Finance and Administration Committee not later than three months after the closure of the fiscal year; and

(*e*) to do all necessary activities for the proper operation of the Endowment Fund.

Investment

7.—(1) The capital of the Endowment Fund shall be invested in accordance with the principles laid down by the Board from time to time.

(2) The capital of the Endowment Fund or any part thereof shall not be invested in the following—

(*a*) precious metals;

(*b*) equipment leasing;

(*c*) currency speculations other than normal hedging of a larger portfolio;

(*d*) commodity futures;

(*e*) any other investment that is widely regarded as speculative by the Finance and Administration Committee;

(*f*) mutual funds with an investment philosophy of market timing or chart reading; and

(*g*) emerging markets investments.

TECHNICAL, ENTREPRENEURIAL AND VOCATIONAL EDUCATION AND TRAINING (APPRENTICESHIP TRAINING) RULES

G.N. 6/2004

under s. 11 (*g*) (vii)

Citation

1. These Rules may be cited as the Technical, Entrepreneurial and Vocational Education and Training (Apprenticeship Training) Rules.

Interpretation

2. In these Rules, unless the context otherwise requires—

"apprentice" means a person employed under a contract of apprenticeship;

"Apprenticeship Committee" means the Apprenticeship Committee established under rule 3 of these Rules;

"apprenticeship order" means an apprenticeship order made in accordance with rule 5;

"contract of apprenticeship" means an agreement made between an employer and an employee or, where the employee is below the age of 18, an employer and an employee and a parent or guardian of the employee, whereby the employer agrees to teach and the employee agrees to learn the trade or occupation in which the employer is engaged so that the employee attains a national qualification;

"national qualification" means a qualification registered on any of the levels of the Malaŵi National Qualifications Framework (MNQF) which a person attains after completing a programme or series of programmes;

"registered contract" means a contract of apprenticeship registered in accordance with rule 8;

"TEVET" means Technical, Entrepreneurial and Vocational Education and Training;

"Trade Union representative" means a member of a trade union resident in Malaŵi and duly appointed by the Trade Union to represent;

"TQF' means TEVET Qualifications Framework.

Establishment of the Apprenticeship Committee

3.—(1) There is hereby established a committee to be known as the Apprenticeship Committee.

(2) The Apprenticeship Committee shall consist of such number of members appointed by the Board, being no more than ten, as the Board shall determine, of whom one member shall be—

(*a*) from the Ministry of Labour and Vocational Training;

(*b*) from the Employers Consultative Association of Malaŵi;

(*c*) from Malaŵi Confederation of Chambers of Commerce and Industry;

(*d*) representing industry on rotational basis;

(*e*) from the Department of Human Resource Management and Development concerned with Malaŵi National Qualification Framework;

(*f*) from the Training Providers Association representing both public and private training providers;

(*g*) a representative of the apprentices or trainees chosen from colleges on rotation; and

(*h*) a Trade Union representative.

(3) Every member of the Apprenticeship Committee shall, unless he sooner resigns or otherwise ceases to hold office, hold office for a period of three years, and shall be eligible for re-appointment.

(4) The members of the Apprenticeship Committee shall, at their first meeting, appoint the chairperson of the Apprenticeship Committee.

(5) At all meetings of the Apprenticeship Committee, the quorum shall be formed by one-half of the members.

(6) An officer of the Authority, designated by the Executive Director, shall act as the secretary to the Apprenticeship Committee and shall, on the instructions of the chairperson of the Apprenticeship Committee, convene meetings of the Apprenticeship Committee.

Functions of the Apprenticeship Committee

4.—(1) The functions of the Apprenticeship Committee shall be to—

(*a*) estimate, on an annual basis, the number of apprentices required to be trained in particular disciplines in order to ensure that sufficient skilled workers are available to satisfy the requirements of the economy;

(*b*) provide guidance to all stakeholders and assist learners to optimally select the best discipline that best suit the learners' talents and the economy's needs for skilled workers;

(*c*) recommend, in consultation with Sector Advisory Committees, amendments to national standards which are part of qualifications required by apprentices;

(*d*) recommend, after consultations with the stakeholders, any such step that is deemed necessary for the betterment of the apprenticeship system; and

(*e*) perform such other functions as the Board may from time to time assign to the Committee.

(2) In the exercise of its functions, the Apprenticeship Committee may call upon any person to furnish it with any necessary information for the proper carrying out of its functions which the person may have in his possession and any person who,

without reasonable cause neglects, or refuses to furnish such information commits an offence.

Apprenticeship orders

5.—(1) Subject to this rule, the Apprenticeship Committee may from time to time, as it deems fit, make Apprenticeship Orders to regulate matters relating to apprenticeship.

(2) Without prejudice to the generality of the foregoing, the Apprenticeship Committee may make Orders to regulate—

(*a*) the minimum educational entry requirement for apprenticeship;

(*b*) the minimum age for admission to apprenticeship;

(*c*) the minimum discounted wage payable to apprentices;

(*d*) the maximum hours of work for apprentices;

(*e*) the national trades or occupations that are apprenticeable;

(*f*) other conditions of apprenticeship; and

(*g*) the returns and report to be kept by all the parties.

(3) The Apprenticeship Committee shall consult the Wages Advisory Board or any other relevant institution and shall make recommendations to the Board regarding the discounted wage before making an order regarding discounted wage payable to apprentices.

(4) An Apprenticeship Order shall take effect after it has been approved by the responsible Minister and published in the *Gazette.*

Application of an Apprenticeship Order

6. Where an Apprenticeship Order comes into force all contracts of apprenticeship affected by the Apprenticeship Order, including those existing at the date of the Apprenticeship Order coming into force, shall be deemed subject to the Order and modified accordingly:

Provided that any party to the contract of apprenticeship may apply to the Apprenticeship Committee for an exemption that the Apprenticeship Order should not apply to him in whole or in Part.

Contracts of apprenticeship

7.—(1) Every contract of apprenticeship shall be in writing and signed by the employer and apprentice, and where the apprentice is under the age of 18, a parent or guardian of the apprentice shall also sign the contract.

(2) The contract of apprenticeship shall be in the prescribed form contained in the Schedule to these Rules.

(3) An apprentice may enter into contract with more than one company or employer, on mutual agreement between the companies or employers and in such case the contract of apprenticeship shall stipulate the practice and institutional training periods for which each company or an employer shall be responsible.

(4) Where necessary, at the time of entering into the contract of apprenticeship, an employer may agree to let a part of the apprenticeship training to take place in another company.

(5) Where an apprentice has already successfully completed a part of the apprenticeship relevant to the contract, the contract may only be in regard to the remaining part of the practice and institutional training period required to obtain the qualification.

(6) The employer shall pay the apprentice a discounted wage during periods of industrial attachment and such wage shall not be below the minimum wage prescribed in the Apprenticeship Order.

(7) The employer shall be responsible for insuring an apprentice to cover cases of accidents or deaths during periods of industrial attachment and a training provider shall be responsible for insuring an apprentice to cover cases of accidents or death during periods of institutional training.

(8) Notwithstanding anything contained in the Stamp Duties Act, no stamp duty shall be payable on a contract of apprenticeship. Cap. 43:01

Registration

8.—(1) Every employer shall send the signed contract of apprenticeship to the TEVET Authority for registration within fifteen days after it was signed and a contract of apprenticeship shall become binding after its registration.

(2) The TEVET Authority may refuse to register a contract of apprenticeship if in its opinion it does not comply with these Rules or any Apprenticeship Order.

(3) Where the TEVET Authority refuses to register a contract of apprenticeship it shall inform the parties in writing its reasons for refusal.

Termination or extension of apprenticeship contract

9.—(1) A contract of apprenticeship shall not be terminated before the expiry of the period specified in the contract of apprenticeship unless—

(*a*) an apprentice has satisfied all the requirements for successful completion of qualification earlier than anticipated; or

(*b*) the Apprenticeship Committee has approved a termination having due regard to the reasons given and after hearing from both an employer and an apprentice.

(2) An apprenticeship contract may be extended upon the expiry of the period specified in the contract of apprenticeship where both parties have agreed to the extension and have notified the Apprenticeship Committee.

(3) An employer shall, at the request of an apprentice, extend the period of apprenticeship where the apprentice—

(*a*) was absent from the company due to illness for more than ten per cent of the stipulated apprenticeship period;

(*b*) was absent from the company due to an extension of institutional training period in accordance with rule 7 (4); or

Cap. 55.02

(*c*) was on maternity leave in accordance with the Employment Act.

Cancellation of a contract of apprenticeship

10.—(1) Where an apprentice misconducts himself or proves to be so incapable and incompetent that if he were an employee other than an apprentice it would be reasonable for his employer to discharge him, the employer may suspend the apprentice without pay and apply to the Apprenticeship Committee for the cancellation of the contract of apprenticeship.

(2) The Apprenticeship Committee shall consider the application after giving both parties an opportunity to be heard and may grant or refuse permission to cancel the contract of apprenticeship.

(3) Where permission to cancel the contract of apprenticeship is granted, the employer shall be entitled to backdate the cancellation of the contract of apprenticeship to the date the apprentice was suspended.

(4) Where permission to cancel the apprenticeship contract is not granted, the employer shall pay the apprentice all the wages in arrears for the period the apprentice was suspended.

Transfer of contract of apprenticeship

11.—(1) The rights and obligations of an employer under any contract of apprenticeship may, with the consent of an apprentice and approval of the Apprenticeship Committee, be transferred to another employer or group of employers.

(2) The Apprenticeship Committee may refuse to register a transfer if in its opinion such transfer is not in the interest of the apprentice.

(3) The employer to which the apprentice has been transferred shall apply, within one month of the transfer, to the TEVET Authority for registration of the new contract of apprenticeship.

Apprenticeship Subcommittee

12.—(1) The Apprenticeship Committee may—

(*a*) establish; or

(*b*) appoint a duly established Trade Advisory Committee (TAC) as Apprenticeship Sub-Committee for the purposes of implementing these Rules.

(2) Subject to subrule (3) an Apprenticeship Sub-Committee may, on behalf of the Apprenticeship Committee, exercise any of the functions of the Apprenticeship Committee.

(3) An Apprenticeship Sub-Committee shall in all matters act in accordance with the directions of the Apprenticeship Committee.

Dispute resolution

13.—(1) In an event of a dispute between an employer and an apprentice, the person aggrieved shall refer the matter to the Apprenticeship Committee.

(2) The Apprenticeship Committee may appoint or establish a relevant sub-committee or task force to handle the matter and the sub-committee or task force shall forward its recommendations to the Apprenticeship Committee.

(3) Where a party is not satisfied with the decision of the Apprenticeship Committee, that party may appeal to the Board within thirty days after the Apprenticeship Committee makes its decision.

(4) Any party aggrieved by the decision of the Board may apply to the High Court for a judicial review.

Training costs

14.—(1) A training provider shall invoice an employer regarding the on-going training of an apprentice on the basis of the national standard rates for apprenticeship training.

(2) The TEVET Authority shall reimburse the employer, who is a full contributor to the TEVET Fund, part of the costs incurred for the training of an apprentice in accordance with the TEVET Authority's reimbursement policy and procedures.

(3) The TEVET Authority may also reimburse an employer part of the costs incurred by the employer for transport of the apprentice to and from the training institution during the beginning and end of each training module.

(4) The TEVET Authority shall make reimbursements only for the apprentices known to the TEVET Authority and participating in duly approved training modules.

(5) The procedures regarding reimbursements shall be those prescribed by the TEVET Authority.

Quality log book

15. Every employer shall maintain a quality log book containing the following particulars for every apprentice under contract of apprenticeship with the employer—

(*a*) apprentice's personal details;

(*b*) details of his parents or legal guardian;

(*c*) record of highest educational achievements;

(*d*) programmes attended or entered into in pursuit of a qualification;

(*e*) monthly records of work performed and signed by a supervisor;

(*f*) particulars of any assessments undertaken;

(*g*) notification of overtime worked; and

(*h*) records regarding absence from work and reasons thereof.

Penalties

16. Any person who contravenes the provisions of these Rules commits an offence and on conviction shall be liable to a fine of K1,000 and to imprisonment for three months and where the offence is a continuing offence, to a further fine of K500 for each day during which the offence continues and in default of payment to a further imprisonment for one month.

SCHEDULE reg. 7

CONTRACT OF APPRENTICESHIP

THIS CONTRACT OF APPRENTICESHIP is made the .....
day of .....
..... two thousand and ..... BETWEEN
.....
whose registered office is at ..... and which has a place of business at ..... (hereinafter called the "employer") of the first part and ..... born on the .....
..... day of ....., 20 ..... (hereinafter called the "apprentice") of the second part and ..... the parent

or guardian of the apprentice of ..... (hereinafter called the "guardian") of the third part.

WHEREAS the apprentice has—

(*a*) attained the age of fifteen years having been born on the ..... day of ..... , ...;

(*b*) been examined by the registered medical practitioner .....

and certified by such practitioner to be of a sufficient standard of physical fitness to perform the work of the trade to which he is bound without danger to himself or others; and

(*c*) attained the following educational achievement: .....
.....

NOW THIS CONTRACT WITNESSETH as follows—

1. The apprentice of his own free will, and with the consent of his parent/guardian, hereby binds himself to serve the employer as an apprentice for a term of .... months/years from the date hereof to learn the trade of .....

2. The employer hereby agrees with the apprentice and with the parent/guardian as follows—

(*a*) the employer shall accept the apprentice as his apprentice during the said term (subject to a probationary period of 6 months on either side), and shall to the best of his power, skill and knowledge instruct, or cause the apprentice to be instructed, in accordance with such direction as may be given by Board, in .....

(*b*) the employer shall pay to the apprentice every calendar month during the said term, not less than such wages as may be specified in the Apprenticeship Order;

(*c*) where the employer provides food and lodging to his employees, he shall also provide the apprentice with food, drink and lodging;

(*d*) the employer shall, where the apprentice falls ill and the illness is caused by his employment, provide the apprentice with medical attention in accordance with the Employment Act;

(*e*) the employer shall release the apprentice to attend specified off-job education and training and final summative assessment;

(*f*) the employer shall maintain a quality log book of the apprentice;

(*g*) the employer shall produce the apprentice to any representative of the Board, if required to do so, and will at the end of the said term, if the apprentice desires, provide him with sufficient means for returning to his home; and

(*h*) the employer shall grant the apprentice such leave on full pay as may be prescribed in the Apprenticeship Order.

3. The apprentice and the parent/guardian hereby jointly and severally agree with the employer as follows—

(*a*) the apprentice shall faithfully and industriously serve the employer at .... or at any other place within Malaŵi as the employer may from time to time direct;

(*b*) the apprentice shall in all ways conform to the instructions of the employer and obey the lawful orders of the servants of the employer;

(*c*) the apprentice, if so required, shall reside in such quarters as the employer may from time to time appoint;

(*d*) the apprentice shall attend such courses of instruction as the employer may direct;

(*e*) the apprentice shall attend specified off-job education and training and final summative assessment;

(*f*) the apprentice shall keep his quality log book updated with his learning experience;

(*g*) the apprentice shall not do or knowingly allow any damage to be done to the goods, moneys, vehicles, machines, tools or other property of the employer in his custody or care, and shall not misuse or waste them or lend or dispose of them to anyone without the consent of the employer;

(*h*) the apprentice shall keep operational secrets of the employer as confidential and shall in all things behave towards the employer as a good and faithful apprentice; and

(*i*) the employer, subject to the approval in writing of the Board, shall be at liberty to deduct from the wages to be paid to the apprentice, any sum of money which may be reasonable for any loss of time occasioned by the unauthorized absence or other incapacity to work of the apprentice, and also for any loss which the employer may sustain by reason of the negligence or misconduct of the apprentice.

4. If the apprentice at any time is wilfully disobedient to the lawful orders or commands of the employer, or leaves the service of the employer, or is slothful or negligent or otherwise misbehaves himself towards the employer, or does not observe in all respects the terms of this contract, then, and in any such case, it shall be lawful for the employer to discharge the apprentice from his service without notice, having first obtained the consent thereto of the Board and in the event of such discharge this contract shall be terminated and after the endorsement thereon by the Board of the date of such termination shall be returned to the apprentice, who will not be granted any other kind of leaving certificate or record of training.

IN WITNESS WHEREOF the said parties have hereunto set their hands the day and year first above written.

Signed by the said apprentice: .....

Signed by the parent/guardian: .....

Signed by the employer: .....

CERTIFICATE OF COMPLETION

This is to certify that the person named herein has completed his apprenticeship under this contract this ..... day of ....., 20 .....

.....
(*Employer's Signature*)

Completion of contract registered by me

Date: .....

.....
Executive Director
Technical, Entrepreneurial and Vocational Education and Training Authority of Malaŵi

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TECHNICAL, ENTREPRENEURIAL AND VOCATIONAL EDUCATION AND TRAINING (QUALIFICATIONS FRAMEWORK) RULES

G.N. 7/2004

under ss. 11, 12 and 13

PART I

Preliminary

Citation

1. These Rules may be cited as the Technical, Entrepreneurial and Vocational Education and Training (Qualifications Framework) Rules.

Interpretation

2. In these Rules, unless the context otherwise requires—

"accreditation" means the certification, usually for a particular period of time, of a person, a body or an institution as having the capacity to fulfil a particular function in the quality assurance system set up by the Authority;

"applied competence" means the ability to put into practice, in the relevant context, the knowledge, skills and attitudes acquired in obtaining a qualification;

"assessor" means a person who is registered by the Authority in accordance with criteria established for this purpose to measure the achievement of specified standards and qualifications;

"core competence" means those generic abilities which form part of all teaching and learning as provided for in rule 10 (5);

"credit" means a nationally recognized symbol of competence in a specific standard acquired in ten (10) notional hours of learning time;

"Educational and Training Quality Assurance Body" means a body accredited to have the functions and responsibility of monitoring and auditing achievements in terms of national standards and qualifications;

"fundamental competence" means the learning which forms the grounding or basis needed to undertake the education, training or further learning required in obtaining a qualification;

"integrated assessment" means that form of assessment which permits the learner to demonstrate applied competence by using a range of formative and summative assessment methods;

"level descriptor" means that statement describing a particular level of the four levels of the Qualifications Framework;

"national standard" means registered statements of desired education and training competence and their associated assessment criteria together with administrative and other information as specified in these Rules;

"National Qualifications Framework" means a ladder where national standards and qualifications are registered;

"notional hours of learning" means the learning time that is conceived it would take an average learner to meet the competence defined;

"occupation" means a particular area of learning used as an organizing mechanism for the Qualifications Framework;

"occupational competence" means knowledge, skills and values related to a particular occupation;

"Occupational Working Group" means a body recognized or established in terms of rule 13, responsible for generating occupational standards or qualifications, and to which specific functions relating to the establishment of national standards and qualifications have been assigned;

"provider" means a body, which delivers learning programmes which culminate in specified standards or qualifications and manages the assessment thereof;

"qualification" means the formal recognition of the achievement of the required number, type and proportion of credits at specific levels of the Qualifications Framework as may be determined by the Technical Qualification Committee;

"Qualifications Framework" means the Technical, Entrepreneurial and Vocational Education and Training Qualifications Framework approved in terms of these Rules;

"qualified learner" means a person who has obtained a qualification;

"qualified audit" means the process of examining the indicators which show the degree of excellence achieved;

"registered" means registered in terms of these Rules;

"registered standard" means a standard or qualification registered under these Rules;

"recognition of prior learning" means the comparison of the previous learning and experience of a learner howsoever obtained against the learning outcomes required for a specified qualification, and the acceptance for purposes of qualification of that which meets the requirement;

"resolution" means a registered statement to desired competence and its allocated assessment criteria;

"standard" means a registered statement to desired competence and its allocated assessment criteria.

PART II

Objectives of the Qualifications Framework

Objectives of the Qualifications Framework

3. The objective of the Qualifications Framework are to—

(*a*) create an integrated national framework for learning achievements;

(*b*) facilitate access to education and training;

(*c*) provide guidance on career path mobility and progression;

(*d*) enhance the quality of vocational education and training;

(*e*) raise the standards of education and training; and

(*f*) assist in the creation of employment opportunities and thereby significantly contribute to the attainment of sustainable national development.

PART III

The Technical Qualification Committee

Functions of the Technical Qualification Committee

4.—(1) Pursuant to section 13 of the Act, the functions of Technical Qualification Committee shall include;

(*a*) facilitating and promoting a unified national technical qualification system for education and training;

(*b*) developing and revising curricula and defining appropriate standards and assessment criteria for technical education and training;

(*c*) overseeing the development of the Qualifications Framework and formulating and publishing policies and criteria for—

(i) registration of bodies responsible for generating occupational standards or qualifications; and

(ii) accreditation of bodies responsible for monitoring and auditing achievements in terms of occupational standards or qualifications;

(*d*) overseeing the implementation of the Qualifications Framework including—

(i) registration or accreditation of bodies referred to in paragraph (c) and the assignment of functions to them;

(ii) registration of national standards and qualifications;

(iii) taking steps to ensure compliance with provisions for accreditation; and

(iv) taking steps to ensure that standards and registered qualifications are internationally comparable; and

(*e*) advising the Authority on matters affecting the registration of standards and qualifications;

(2) The Technical Qualification Committee shall pursue the objectives of the Qualifications Framework as provided in the rule 3 and execute the functions as provided in subrule (1) (*c*), (*d*) and (*e*) in consultation and cooperation with relevant Government departments, statutory bodies, companies and institutions responsible for education and training.

Powers of the Technical Qualification Committee

5.—(1) For the proper discharge of its functions, the Technical Qualification Committee shall have the responsibility and powers to—

(*a*) establish sub-committees whose membership may include persons who are not members of the Technical Qualification Committee;

(*b*) dissolve or reconstitute a sub-committee;

(*c*) delegate any of its powers, excluding the powers referred to in this Rule to any of its sub-committees, but shall not be divested of a power so delegated and may at any time withdraw such a delegation; and

(*d*) cause research to be done which it considers relevant to the performance of its functions.

PART IV

The Qualifications Framework

Establishment of the Qualifications Framework

6. There is hereby established the Qualifications Framework whose principal purpose is to govern registration of technical standards and qualifications.

Structure of the Qualifications Framework

7.—(1) The Qualifications Framework shall consist of four levels, which shall be entitled Levels 1 to 4, and each level shall be described by a level descriptor as set out in the Schedule.

(2) Subject to subrule (3), entry into Level 1 of the Qualifications Framework shall be open-ended.

(3) A person may enter the system at any level but shall not proceed to a higher level until he has demonstrated competence on all the standards set at the level.

(4) A person shall get credits and recognition for the standards in which he has demonstrated competence but the full qualification shall only be awarded after mastery of all standards at the level concerned.

Level descriptors

8.—(1) The levels of the Qualifications Framework shall be described by problem solving level descriptors as set out in the Schedule.

(2) The assignment of levels to standards and qualifications shall occur as follows—

(*a*) each Trade Advisory Committee together with each Occupational Working Group shall, on a scale of four levels as envisaged in rule 7, reach agreement on the level of each standard submitted; and

(*b*) the agreement under paragraph (*a*) shall be arrived at after taking into account the way in which both the breadth and the depth of knowledge, skills and values have been advanced by learning.

Registration of standards and qualifications

9.—(1) Each standard and qualification which meet the requirements in rules 10 and 11 shall be registered on the Qualifications Framework by the Technical Qualification Committee.

(2) Each standard and qualification shall be identified by a unique title and code.

Requirements for the registration of standards

10.—(1) A standard shall be formulated so as to be used as an assessor's guide for developing assessment materials and procedures and an educator's guide for the preparation of learning materials.

(2) A standard shall consist of—

(*a*) a logo indicating approval by the Authority;

(*b*) a standard title;

(*c*) a standard number;

(*d*) a standard level on the Qualifications Framework;

(*e*) the credit attached to the standard;

(*f*) the sector and occupation of the standard;

(*g*) the purpose of the standard;

(*h*) the skills to be assessed;

(*i*) the knowledge to be assessed;

(*j*) the values and attitudes to be assessed;

(*k*) the core competencies to be assessed;

(*l*) the range statements as a general guide for the scope and context;

(*m*) the assessment criteria;

(*n*) the issue date; and

(*o*) a "notes" section which contains information that assists the standards users to better interpret and apply the standards for the particular needs.

(3) The notes referred to in paragraph (*o*) of subrule (2) may include the following type of information—

(*a*) technical terminology;

(*b*) cross references to other standards and qualifications; and

(*c*) specific reference for further information.

(4) Core competencies shall include but not be limited to—

(*a*) identifying and solving problems;

(*b*) working effectively with others as a member of a team;

(*c*) organizing and managing oneself and one's activities;

(*d*) collecting, analyzing, organizing and critically evaluating information;

(*e*) communicating effectively;

(*f*) using science and technology effectively and critically; and

(*g*) demonstrating an understanding of the world as a set of related systems.

(5) Core competencies contemplated in subrule (4) shall be embedded within a standard as specified in subrule (1):

Provided that where such a standard forms part of a qualification, those core competencies not included in the standard shall be embedded in the qualification as a fundamental standard.

Requirements for the registration of qualifications

11.—(1) A qualification shall not be registered unless it—

(*a*) represents a planned combination of competencies which have a defined purpose and which is intended to provide qualified learners with applied competence and a basis for further learning;

(*b*) adds value to the qualified learner in terms of enrichment of the person through the—

(i) provision of status, recognition, credentials, etc.;

(ii) enhancement of marketability and employability; or

(iii) opening-up of access routes to additional education and training;

(*c*) provides benefits to society and the economy through enhancing citizenship, increasing social, technical and economic productivity and providing specifically skilled and professional people;

(*d*) complies with the objectives of the Qualifications Framework contained in rule 3;

(*e*) has competencies which promote life-long learning;

(*f*) where applicable, is internationally comparable;

(*g*) incorporates integrated assessment appropriately to ensure that the purpose of the qualification is achieved, and such assessment shall use a range of formative and summative assessment methods such as portfolios, simulations, work-place assessment, written and oral examinations; and

(*h*) indicates in the rules governing the award of the qualification that the qualification may be achieved in whole or in part through the recognition of prior learning, which includes but is not limited to competence achieved through formal, informal or non-formal learning and work experience.

(2) A total of 120 (one hundred and twenty) credits per level shall be required for registration of a qualification at levels 1 to 4.

(3) The Technical Qualification Committee shall register a qualification according to the type and level, which shall be determined on the basis of the total number, type and proportion of credits required in accordance with the following—

(*a*) a foundation certificate at level 1 where it has a minimum of 120 (one hundred and twenty) credits (occupational 75%, fundamental 25%);

(*b*) an intermediate certificate where it has a minimum of 240 (two hundred and forty) credits of which 120 credits shall constitute (70% occupational, 30% fundamental);

(*c*) a higher certificate where it has a minimum of 360 (three hundred and sixty) credits of which 120 credits shall constitute (65% occupational, 35% fundamental); and

(*d*) a diploma where it has a minimum of 480 (four hundred and eighty) credits of which 120 credits shall constitute (60% occupational, 40% fundamental).

(4) The Technical Qualification Committee shall upon registration describe each qualification by level, occupation type, qualification title, problem solving level descriptors and number of credits.

Procedure of the registration of standards and qualifications

12. The following procedure shall apply in registering standards and qualifications—

(*a*) standards and qualifications generated by Occupational Working Groups shall be submitted to the Trade Advisory Committee for technical evaluation;

(*b*) the Trade Advisory Committee shall disseminate the standards and qualifications to other members in the industry for further comments;

(*c*) once comments have been incorporated by the Trade Advisory Committee into the final draft, the Trade Advisory Committee shall submit the standards and qualifications to the Technical Qualification Committee for registration;

(*d*) the registered standards and qualifications shall be submitted to the Board for approval; and

(*e*) the standards and qualifications shall be published, for public information in the *Gazette* and in at least two newspapers in wide circulation in Malaŵi.

Roles of Occupational Working Groups in generating standards and qualifications

13.—(1) Each Trade Advisory Committee may recognize or establish such Occupational Working Groups in its own defined sector as may be required.

(2) In recognizing or establishing Occupational Working Groups, the Trade Advisory Committee concerned shall first apply to its own structure and functions contemplated in this rule or a similar process acceptable to the Authority, and the same process shall then apply to bodies desirous of recognition or considered necessary to be established:

Provided that the Trade Advisory Committee shall—

(*a*) determine the purpose of the definition of the occupation and analyze its content;

(*b*) define the boundaries of discrete occupations in the sector by the value added by the occupation including but not restricted to process, product or service related to other occupations;

(*c*) identify traditional and non-traditional areas of study, occupational categories, technology and environment associated with the occupation and the sector; and

(*d*) project or forecast the linkage between the occupation and the sector.

PART IV

Quality Assurance of the Qualifications Framework

Accreditation

14.—(1) Education and Training Quality Assurance Bodies shall be accredited for the purpose of monitoring and auditing learning achievements in terms of national standards and qualifications and to which specific functions relating to the monitoring and auditing of national standards or qualifications shall be assigned in terms of paragraphs (*h*) and (*r*) of section 5.

(2) The Technical Qualification Committee may undertake the functions and responsibilities allocated to an Education and Training Quality Assurance Body where no Education and Training Quality Assurance Body has been accredited or where an Education and Training Quality Assurance Body fails to discharge its responsibilities.

(3) An organization or group of organizations seeking to be accredited as an Education and Training Quality Assurance Body shall be established in any of the following sectors—

(*a*) a social sector;

(*b*) an economic sector; or

(*c*) an education and training sub-system sector.

Role of the Qualification Committee in quality assurance

15.—(1) The Technical Qualification Committee shall perform the function of quality assurance of the Qualifications Framework.

(2) An organization or group of organizations representing a sector contemplated in rule 14 (3), which meets the criteria for accreditation as an Education and Training Quality Assurance Body indicated in subrule (3), may apply to the Authority for accreditation as an Education and Training Quality Assurance Body.

(3) To qualify for accreditation under subrule (2), an organization shall demonstrate that—

(*a*) there is need for an Education and Training Quality Assurance Body to be established in the sector in which it wishes to function;

(*b*) it has a primary focus for its quality assurance activities based upon its association with the identified sector and the identified mission of that sector;

(*c*) it has not duplicated the functions or parts of the functions of an existing Education and Training Quality Assurance Body unless the Authority deems such duplication or partial duplication necessary; and

(*d*) it has the capacity to perform the functions assigned to it by the Authority.

Criteria for accreditation of providers

16. A body may be accredited as a provider by an Education and Training Quality Assurance Body whose primary focus coincides with the primary focus of the provider:

Provided that the body seeking accreditation—

(*a*) is registered as a provider by the Authority in terms of the applicable legislation at the time of application for accreditation;

(*b*) has a quality management system which includes but is not limited to—

(i) quality management policies which define what the provider wishes to achieve;

(ii) quality management procedures which enable the provider to practice its defined quality management policies; and

(iii) review mechanisms which ensure that the quality management policies and procedures defined are applied and remain effective;

(*c*) is capable of developing, delivering and evaluating learning programmes which culminate in specified registered standards or qualifications;

(*d*) has the—

(i) necessary financial, administrative and physical resources;

(ii) policies and practices for staff selection, appraisal and development;

(iii) policies and practices for the management of assessment;

(iv) necessary reporting procedures; and

(v) ability to achieve the desired outcomes, using available resources and procedures considered by the Education and Training Quality Assurance Body to be needed to develop, deliver and evaluate learning programmes which culminate in specified registered standards or qualifications contemplated in paragraph (c); and

(vi) has not already been granted accreditation by or applied for accreditation to another Education and Training Quality Assurance Body contemplated in rule 15.

Certificate of accreditation as providers

17.—(1) Each registered provider shall, upon accreditation, be issued with a certificate of accreditation by the relevant Education and Training Quality Assurance Body.

(2) The certificate issued under subrule (1) shall be endorsed by the Technical Qualification Committee and shall state—

(*a*) that it is a constituent provider of the relevant Education and Training Quality Assurance Body; and

(*b*) the standards or qualifications for which accreditation is granted.

(3) Each accredited provider shall, in the first calendar month of the third year of accreditation and every third year thereafter, submit a report to the relevant Education and Training Quality Assurance Body stating the reasons why accreditation should be retained and indicating the results achieved by it during the previous years.

Withdrawal of accreditation of providers

18. The accreditation of a provider shall be withdrawn if the provider has contravened these Rules.

Appeal procedure

19.—(1) An organization wishing to appeal against a decision of a body contemplated in these Rules shall make a written submission to the Board to that effect together with reasons for the appeal within three calendar months of such decision being made.

(2) Should the Board uphold an appeal against a decision of a body contemplating in these Rules, that body shall—

(*a*) amend the decision accordingly;

(*b*) record such amendment in all the relevant documentation where the original decision was recorded; and

(*c*) make the necessary amendments to all the relevant documentation and issue revised versions of all relevant documentation.

SCHEDULE

The Qualifications Framework Template

	2	3	4	5
Level	*Occupational Type*	*Protected Qualification Title*	*Problem Solving Level Descriptors*	*Credit Requirements*
4	Technician	Diploma	Wide ranging competence requiring analysis and interpretation of information that has to be sought to produce innovative responses to concrete and unfamiliar problems	(480) 120 +
3	Artisan	Advanced Certificate	Well developed range of competence requiring interpretation of available information to produce a range of responses to concrete but unfamiliar problems	(360) 120 +
2	Operative	Intermediate Certificate	Moderate range of competence requiring some processing of easily available data to choose from a range of known responses to familiar problems	(240) 120 +
1	Assistant Operative	Foundation Certificate	Narrow range of competence requiring mostly recall of known solution to familiar problems	120 +

TECHNICAL, ENTREPRENEURIAL AND VOCATIONAL EDUCATION AND TRAINING (REGISTRATION OF EDUCATION AND TRAINING INSTITUTIONS) REGULATIONS

ARRANGEMENT OF REGULATIONS

REGULATION

1. Citation
2. Interpretation
3. Classification of institutions
4. Registration of institutions
5. Registration requirements
6. Certificate of registration and duration
7. Rejection of an application
8. Renewal of registration
9. Application to upgrade to a higher classification
10. Application for registration
11. Cancellation of registration
12. Register and publication of institutions
13. Reports and updating information
14. Appointment of Inspectors
15. Powers of inspectors
16. Obstruction of inspectors
17. Appeals
18. Offences and penalties

FIRST SCHEDULE
SECOND SCHEDULE
THIRD SCHEDULE
FOURTH SCHEDULE
FIFTH SCHEDULE

G.N. 58/2017

TECHNICAL, ENTREPRENEURIAL AND VOCATIONAL EDUCATION AND TRAINING (REGISTRATION OF EDUCATION AND TRAINING INSTITUTIONS) REGULATIONS

under s. 36

Citation

1. These Regulations may be cited as the Technical, Entrepreneurial and Vocational Education and Training (Registration of Education and Training Institutions) Regulations.

Interpretation

2. In these Regulations unless the context otherwise requires—

"aided institution" means an institution financially aided by the Government;

"Government institution" means an institution owned or controlled by the Government;

"institution" means any organization which provides regular instruction relating to technical, entrepreneurial, vocational education and training or from which such instruction emanates, whether by open distance learning or otherwise and includes private or an aided institution;

"inspector" means a person appointed as such under regulation 14 by the Authority to ensure that institutions comply with these Regulations;

"management board" means a management board of an institution referred to in regulation 5;

"principal" means the person appointed to head an institution referred to in regulation 5; and

"vice-principal" means the person appointed as second in command to the principal referred to in regulation 5.

Classification of institutions
First Schedule

3.—(1) The Authority shall determine the classification of institutions contained in the First Schedule hereto.

(2) The Authority may amend the classification of the institutions from time to time.

Registration of institutions
Second Schedule

4.—(1) Every institution shall apply to the Authority for registration in the prescribed form contained in the Second Schedule hereto.

(2) The application referred to in subregulation (1) shall—

(*a*) specify the classification of the institution;

(*b*) specify the level of the programmes and courses to be provided;

(*c*) specify such other particulars as the Authority may prescribe; and

(*d*) be accompanied by—

(i) such registration fees as may be prescribed by the Authority from time to time; and

(ii) an affidavit or a declaration stating that the proprietor, members of staff have not been found guilty of any criminal offence.

Registration requirements

5. An institution shall be eligible for registration if—

(*a*) it has a defined vision, mission and whose objectives specifically—

(i) relate to technical, entrepreneurial and vocational education and training;

(ii) are in line with TEVET Policy;

(*b*) the institution has a management board responsible for policy and governance issues;

(*c*) the institution has well qualified staff and management suitable for its classification including a principal and a vice-principal;

(*d*) the institution meets the technical entrepreneurial and vocational education and training standards set by the Authority;

(*e*) the premises of the institution, including any hostels or other buildings used by persons attending the institution are suitable for that purpose and are licensed as such by a competent authority;

(*f*) the institution has the ability to generate resources to enable it run sustainably at any point in time;

(*g*) the proprietor of a private or aided institution is a fit and proper person or body of persons to run the institution;

(*h*) the premises of the institution meets all the safety, health and sanitation requirements as prescribed by a competent authority;

(*i*) the institution has adequate rigorous process of self-evaluation and internal audit that are acceptable to all key stakeholders;

(*j*) the institution has clear procedures and appropriate staff for administration, financial management, dispute resolution and management of the institution;

(*k*) the institution has systems or mechanisms which provide for a forum for exchange of ideas between parents or guardians of students and staff of the institution; and

(*l*) the institution operates from premises that are not used by another existing institution.

Certificate of registration and duration *Third Schedule*

6.—(1) The Authority shall issue a certificate of registration in the prescribed form contained in the Third Schedule hereto to an institution which the Authority has registered under these Regulations.

(2) Registration of the institution shall be valid for a period of three years.

(3) The certificate of registration referred to in subregulation (1) shall contain—

(*a*) the name of the institution;

(*b*) the classification of the institution; and

(*c*) such other particulars as the Authority may prescribe.

Rejection of an application

7.—(1) Where the Authority is satisfied that an application does not meet the requirements set out in regulation 5, the Authority shall notify the proprietor or the management board of the institution in writing that—

(*a*) the application is rejected; or

(*b*) the application shall be granted after the proprietor or the management board has, within such period as specified by the Authority, complied with the registration requirements specified in regulation 5.

(2) If the proprietor or management board of an institution notified under subregulation (1) (*b*) fails, in the opinion of the Authority, to comply with the requirements specified in regulation 5 within the period prescribed by the Authority in the notification, the Authority shall reject the application and shall notify the proprietor or the management board in writing of its decision.

Renewal of registration

8.—(1) A proprietor or management board of an institution shall apply for renewal for registration six months prior to the expiration of its existing registration.

(2) In applying for renewal of registration, the institution shall provide substantive proof that it—

(*a*) continues to comply with all the requirements contained in regulation 5;

(*b*) is still financially secure and continues to use effective and internationally acceptable financial management procedures,

which can be independently verified by an auditor approved by its management board; and

(*c*) the graduates from the institution are marketable, that is, they readily get employment.

(3) If the Authority is satisfied with the information provided by the institution in accordance with subregulation (2), the Authority shall renew the registration of the institution for another period of three years subject to the institution paying the fees for renewal of registration as determined by the Authority from time to time.

Application to upgrade to a higher classification *Second Schedule*

9.—(1) Where an institution registered under a lower classification wishes to upgrade to a higher classification before the lapse of its registration period, it shall apply to the Authority in the prescribed form contained in the Second Schedule hereto.

(2) The application referred to in subregulation (1) shall—

(*a*) specify the current classification of the institution;

(*b*) specify the level of classification the institution wishes to be upgraded to;

(*c*) specify what the institution has done to meet the requirements of the higher classification; and

(*d*) be accompanied by such fees as may be prescribed by the Authority from time to time.

(3) The Authority shall—

(*a*) carefully consider the application by an institution to be upgraded to a higher classification; and

(*b*) visit the institution and examine the premises, consider the staff available and other relevant matters in order to determine whether the institution meets all the requirements of the higher classification.

(4) Where the institution meets all the requirements of the classification applied for, the Authority shall issue a new certificate of registration to the institution which shall be valid for a period of three years.

(5) Where the Authority is of the opinion that the institution does not meet the requirements of the higher classification, the Authority shall inform the institution in writing that its application is rejected and the Authority shall give reasons why it has rejected the application.

(6) Where an institution which was upgraded to a higher classification fails to maintain the requirements of the upgraded classification, the Authority shall cancel the registration of the institution:

Provided that the institution may apply for re-registration and the Authority may re-register the institution if the institution meets the requirements of the classification which the institution has applied for.

Application for registration

10.—(1) Any person who applies for registration under these Regulations, whether for an initial registration, renewal of registration or for upgrading to a higher classification shall pay the registration fees, fees for renewal of the registration or fees for upgrading classification, as the case may be, set out in the Fourth Schedule hereto.

Fourth Schedule

(2) The Authority may from time to time revise the fees referred to in subregulation (1).

Cancellation of registration

11.—(1) The Authority shall cancel the registration of an institution if the institution—

(*a*) ceases to comply with the requirements contained in regulation 5;

(*b*) is being managed or operated in a manner detrimental to the physical, mental or general welfare of the persons receiving instruction at that institution; or

(*c*) has remained closed for a continuous period of six months or more; or

(*d*) being an open distance learning institution it offers regular instruction other than through Open Distance Learning.

(2) The Authority shall notify the institution in writing—

(*a*) that the Authority shall cancel the registration of the institution on such a date as the Authority shall specify; or

(*b*) that the Authority intends to cancel the registration of the institution unless, within a period prescribed by the Authority, the institution complies with such requirements as specified by the Authority in the notification letter.

(3) The Authority shall, in its notification letter to the institution regarding cancellation of or intended cancellation, as the case may be, of the institution's registration—

(*a*) state clearly why it believes that a requirement or requirements is or are not being complied with by the institution;

(*b*) give the grounds for such belief; and

(*c*) invite the institution, giving it reasonable time, to give its submission on the matter.

(4) Where the proprietor or the management board of an institution fails, within the period prescribed by the Authority in the notification letter, to comply with the requirements specified therein, the Authority shall cancel the registration of the institution and notify the principal or the management board in writing accordingly.

(5) Where the Authority has notified an institution regarding cancellation or intended cancellation, as the case may be, of the institution's registration, the institution shall not—

(*a*) enrol any new students;

(*b*) commence any new programmes; or

(*c*) commence services at any new premises until such a time the Authority informs the institution that its registration is still valid.

(6) Where the Authority cancels the registration of an institution, it shall put notice to that effect in the *Gazette* and in at least two newspapers of wide circulation.

Register and publication of institutions

12.—(1) The Authority shall keep and maintain a register of institutions registered with the Authority and the register shall contain such particulars as the Authority may prescribe.

(2) The Authority shall at regular intervals, but not less than once in every year, cause to be published in the *Gazette* and in at least two newspapers of wide circulation a list of all institutions registered with the Authority under these Regulations.

Reports and updating information *Fifth Schedule*

13.—(1) Every registered institution shall submit bi-annually a report to the Authority in the prescribed form contained in the Fifth Schedule hereto regarding its activities and such other information as the Authority may require.

(2) An institution shall inform the Authority in writing within a period of fourteen days on the occurrence of any of the following—

(*a*) change in the proprietorship of the institution;

(*b*) change in the membership of the management board;

(*c*) change in the address or premises from where the institution was operating from;

(*d*) change in the principal and core staff;

(*e*) major change of funding, fee policy or funding source;

(*f*) major change in the education and training services offered; or

(*g*) major alterations to the premises including moving to new premises.

Appointment of Inspectors

14.—(1) The Authority shall appoint such number of inspectors as are necessary to ensure compliance of these Regulations.

(2) The Authority shall issue to every inspector appointed under this regulation a certificate of appointment and an identity card which shall be *prima facie* evidence of the inspector's appointment.

(3) The inspector shall—

(*a*) when on duty always wear his identity card; and

(*b*) on demand by a person affected by the exercise of the inspectors' power under these Regulations, produce for inspection his certificate of appointment referred to in subregulation (2).

(4) The inspectors shall conduct inspections of all the institutions registered by the Authority under these Regulations at least once a year.

Powers of inspectors

15. An inspector shall have the following powers under these Regulations —

(*a*) to enter and inspect, at any reasonable time, any institution registered under these Regulations;

(*b*) to demand the production of, and to inspect or make copies of books, or documents relating to the activities of the institution; and

(*c*) such other powers prescribed by the Authority which are necessary to ensure compliance with these Regulations.

Obstruction of inspectors

16. Any person who —

(*a*) willfully delays or obstructs an inspector in carrying out his duties under these Regulations; or

(*b*) knowingly or negligently gives an inspector false or misleading information orally, in writing or otherwise,

commits an offence.

Appeals

17.—(1) Any person aggrieved by the decision of an institution registered under these Regulations may appeal to the Authority within fourteen days from the date the person aggrieved received communication of the decision from the institution.

(2) Any person aggrieved by any decision made by the Authority may appeal to the Minister within fourteen days from the date the person aggrieved received communication of the decision from the Authority.

(3) Any person aggrieved by the decision of the Minister may apply to the High Court for judicial review within thirty days from the date the person aggrieved received communication of the decision from the Minister.

Offences and penalties

18.—(1) Any person who—

(*a*) operates an institution —

(i) which is not registered; or

(ii) has been notified in writing that its application for registration has been rejected or that its registration has been cancelled;

(*b*) infers, purports or holds out an institution as a registered institution when in fact it is not registered;

(*e*) withholds any information reasonably requested by the Authority;

(*f*) furnishes the Authority with false or misleading information regarding the registration requirements; or

(*e*) contravenes or fails to comply with any provision of these Regulations commits an offence.

(2) Notwithstanding the provisions of section 21 (*e*) of the General Interpretation Act, any person guilty of an offence under these Regulations, shall upon conviction be liable to a fine of K300,000 and to imprisonment for one year.

(3) In the case of a continuing offence, a person shall be liable to a further fine not exceeding K5,000 for each day that the offence continues after conviction or to a term of imprisonment not exceeding two years.

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reg. 3

FIRST SCHEDULE

CLASSIFICATION OF TRAINING INSTITUTION

		Category A	*Category B*	*Category C*	*Category D*	*Category E*
1. Trades/ Occupations/ Courses	(*a*) Number of trades to be offered	Minimum of 6 trades offered	Minimum of 4 trades offered	Minimum of 3 trades offered	Minimum of 2 trades offered	1 trade offered
	(*b*) Level of Trades offered	Minimum of 4 trades offered up to level 4 according to TQF	Minimum of 3 trades offered up to level 3 according to TQF	Minimum of 2 trades offered up to level 2 according to TQF	Minimum of 1 trade offered up to level 1 according to TQF	1 trade offered up to level 1 of the TQF
2. Qualifications of trainers	(*a*) Academic qualification of trainers	Minimum of MSCE or its equivalent	Minimum of MSCE or its equivalent	Minimum of MSCE or its equivalent	Minimum of MSCE or its equivalent	Minimum of MSCE or its equivalent
	(*b*) Professional qualification of trainers	Bachelors Degree, or Diploma/ TEVET Level 4 Certificate or its equivalent.	Diploma or TEVET Level 3 Certificate or its equivalent	Advanced Craft or TEVET Level 3 Certificate or its equivalent	Advanced Craft or TEVET Level 3 Certificate or its equivalent	Advanced Craft or TEVET Level 3 Certificate or its equivalent
	(*c*) Teaching certificate	Teaching Certificate with a minimum of 3 years teaching experience	Teaching Certificate	Teaching Certificate	Teaching Certificate	Teaching Certificate
	(*d*) Industrial experience of trainers	Minimum of 1 year post training industrial experience	Minimum of 1 year post training industrial experience	Minimum of 1 year post training industrial experience	Minimum of 1 year post training industrial experience	Minimum of 1 year post training industrial experience
3. Institutional capacity	(*a*) Trainer to Students Ratio	1:20	1:20	1:20	1:20	1:20
	(*b*) Infrastructure	Minimum requirements for establishing a training institution See Appendix	Minimum requirements for establishing a training institution See Appendix	Minimum requirements for establishing a training institution See Appendix	Minimum requirements for establishing a training institution See Appendix	Minimum requirements for establishing a training institution See Appendix

APPENDIX

1. MINIMUM REQUIREMENTS FOR ESTABLISHING A DAY TEVET TRAINING INSTITUTION

(1) One twin block or two separate classroom blocks for lessons and at least one workshop block for workshop practice in the case of a technical college.

(2) An office for the Principal or Administrator and a staff room for the available staff.

(3) Adequate office accommodation for the support staff.

(4) Adequate separate toilet facilities for male and female students.

(5) Adequate and separate toilet facilities for male and female staff.

(6) A twin classroom block or two separate blocks for a science laboratory and technical drawing room in the case of a technical college.

(7) Adequate* laboratory chemicals, equipment and apparatus for science laboratory and adequate drawing sets/equipment and appropriate drawing tables, as well as textbooks.

*An expert in a particular field/trade/occupation will establish if the tools/equipment/chemicals etc are adequate

(8) Adequate workshop machinery/equipment and tools.

(9) Syllabuses/appropriate Curricula.

(10) Mode(s) of assessment.

(11) Physically challenged structures.

N.B. With the workshop blocks, precautions must be taken during construction to ensure the internationally accepted specifications are met, and without compromising the health and safety regulations.

2. ESTABLISHING A BOARDING TEVET TRAINING INSTITUTION

In addition to the requirements for establishing a day TEVET training institution, a boarding TEVET training institution shall have hostels, dining or assembly hall, kitchen and an ablution block.

3. BUILDING SPECIFICATIONS AND OTHER REQUIREMENTS TO BE MET

(1) Classroom—

(*a*) the minimum area per student should be 1.45 sq m of floor space with adequate natural lighting and cross ventilation through window openings at the proportion of 1/5 of the floor area. Mean wall height shall be 2.75 m.

Where the ceiling follows the line of rafters, the minimum height shall be 2.59 m;

(*b*) all windows shall, where reasonably possible, be extended to within 0.305 m of the ceiling;

(*c*) if fluorescent bulbs are used to light the chalkboard shinny metal shield shall be fixed over the fluorescent bulbs facing the chalkboard;

(*d*) floor shall be made of solid concrete (7.6 cm thick) with a final cement finish on top;

(*e*) ventilation openings shall be provided at the ratio of 0.093 sq m of floor area;

(*f*) chalk board size shall be 4 m x 1.2 m and be placed on the front wall close to the door ways;

(*g*) the minimum size of a pin board at the back or side walls of each classroom shall be 2.4 m by 1.2 m or one standard ceiling board size for the entire back;

(*h*) doors shall open towards the outside of the classroom;

(*i*) each student shall be provided with a desk with a minimum top area of 0.6 m x 0.42 m per student; and

(*j*) there shall be a sufficient supply of portable drinking water at all times.

(2) Laboratories—

(*a*) the minimum size shall be 10.25 m by 7.6 m by 2.74 m high or 1.95 sq m per student floor space;

(*b*) there should be two classroom doors opening towards outside;

(*c*) the chalkboard size shall be the same as that one recommended for a classroom;

(*d*) there shall be a fume cupboard with an expeller to extract dangerous gases and fumes like those from bromine. The minimum inside space shall be 0.7 m by 0.6 m standing 1.42 m over laboratory bench level. The fume cupboard shall have an up and downward sliding door cover, a water drainage sink inside and a water tap;

(*e*) there shall be a chemical store within the laboratory with built in lockers and shelves;

(*f*) windows shall be made as per classroom standard with provision for curtain hanging;

(*g*) there shall be student experimental benches with a minimum of 1.5 m by 0.9 m top area and 0.86 m high each to carter for 4-6 students per time;

(*h*) each student shall be provided with a bench stool 0.6 m high;

(*i*) each laboratory shall have sinks at the ratio of one sink to 5-8 students; and

(*j*) ventilation openings and lighting shall be like those recommended for the classroom.

(3) Library—

(*a*) the reading room area shall at least be 1.44 sq m per student, to accommodate a class of 40 students; and

(*b*) the book display room area shall at least be 57.76 sq m and shall have bookshelves.

(4) Administrative

Facilities/Office-Space

Each school shall have an administration block with the following adequate facilities—

(*a*) headmaster's office;

(*b*) staff room;

(*c*) general office/enquiries;

(*d*) separate toilets or pit latrines for male and female staff; and

(*e*) general stationery stores, typewriters and ancillary office equipment.

(5) Boarding Facilities

(*a*) hostels—

(i) the minimum floor space per boarder shall be 4.65 sq m per student;

(ii) there shall be separate hostels for each sex;

(iii) like classrooms, hostels shall be well ventilated and well lit;

(iv) lighting through window and other openings shall be at the proportion of 1/8 of floor area;

(v) ventilation openings shall be provided at a proportion of 0.093 sq m to every 4.65 sq m of floor areas;

(vi) there shall be washing and bathing facilities with 1 bathing cubicle for every 10 students and 1 piped water, every cubicle shall have a shower rose;

(vii) the hostel floors shall be 7.62 cm thick concrete and with a normal cement floor finish; and

(viii) boarding Master's and Matron's houses shall be on the campus.

(*b*) dining hall/assembly hall—

(i) there shall be a minimum floor area of 0.81 sq m per student (i.e. 405 sqm for 500 students);

(ii) it shall have adequate natural lighting;

(iii) it shall be well ventilated;

(iv) it shall be adequately and appropriately furnished;

(v) it shall have one toilet or pit latrine for each sex; and

(vi) it shall have doors opening outwards.

(*c*) kitchen—

(i) the kitchen may be attached to the dining hall or built separately; and

(ii) it shall contain store rooms, a Matron's office and food preparation space in addition to the cooking space.

N.B. Storage of foodstuff in rooms used for sleeping purpose is prohibited

(6) Rooms for occasional gathering and use—

(*a*) assembly or dance halls shall be built with a floor space of 0.81 sq m per student with doors opening towards the outside;

(*b*) each assembly hall shall have one toilet or pit latrine for each sex;

(*c*) teaching area minimum toilets shall be provided as follows—

(i) 1 toilet for every 16 female students and 1 separate toilet for lady members of staff; and

(ii) 1 toilet for every 40 male students with 1 urinal for 40 boys, and a separate toilet for male members of staff;

(*d*) inside toilet wash up, water taps and sinks shall be 1 tap for every 20 students;

(*e*) the floors shall be 7.62 cm thick with a good cement floor finish; and

(*f*) in areas where pit latrines are used, the pit latrines shall be sunk at a minimum distance of 21 m away from the hostels, classrooms and other school buildings.

There shall be a minimum of 1 latrine for every 25 female students in the boarding area and 1 latrine for every 30 male students in the teaching area. Male students shall be provided with minimum urinals at the ratio of 1 four-metre urinal to every 50 students. Female students shall be provided with minimum latrines at the ratio of 1 latrine for every 12 students in the teaching area and 1 latrine for every 15 male students in the teaching area.

(7) Playground

There shall be adequate standard playfields for football, volley ball, basket ball, netball and running tracks.

(8) Water

There shall be a sufficient supply of portable drinking water at all times during and after school hours.

(9) Fire Fighting

All buildings shall be provided with appropriate fire fighting equipment.

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reg. 4 or 9

SECOND SCHEDULE

REGISTRATION OF TRAINING INSTITUTION

A. Application for Registration/Upgrading Form

1. Name of Proposed Training Provider .....

2. Postal Address of Proposed Training Provider .....

.....

3. Physical Address .....
.....
4. Telephone number(s) .....
5. Fax No .....
6. E-Mail address .....
7. District .....
8. Date of establishment .....
9. Name of Proprietor(s) .....
.....
10. Name of Principal .....
11. Name of Training Programme Coordinator .....
12. Type of proprietorship (Tick which fits your institution)

Government	Parastatal	Religious Org
Aided	NGO	Private

13. Type of Institution (Tick which fits your institution)

Boarding	Day	Day and Boarding
Single - Sex	Co-Education	Open Distance Learning

14. Vision
.....
.....
.....
15. Mission Statement
.....
.....
.....
.....
16. Objectives/Goals
    1. .....
    2. .....
    3. .....
    4. .....
    5. .....
    6. .....
    7. .....

17. Trade/Occupation/Course

OCCUPATION/COURSE	*Year*	*Female Students*	*Male Students*	*Total*
	1			
	2			
	3			
	4			
	1			
	2			
	3			
	4			
	1			
	2			
	3			
	4			
	1			
	2			
	3			
	4			
	1			
	2			
	3			
	4			
	1			
	2			
	3			
	4			

N.B. Where a table is not sufficient please use additional paper

18. Specific Target Group (Tick which fits your institution)

Orphans Street Kids

Secondary School Graduates

Disabled (Specify) .....

Others (Specify).....

19. Curriculum being used by Trade/Occupation/Courses

No.	*Program of study/Course*	*Mode of delivery (College based/ Open Distance Learning) (Indicate as applicable)*	*Examining Board*	*Title and Author of core text books being used*
1				
2				
3				
4				
5				
6				
7				
8				
9				
10				

N.B. Where a table is not sufficient please use additional paper

20. Names of Trainers/Instructors and their Qualifications

Name of Trainer	*Qualifications*		*Trade/ Occupation being taught*	*Highest Level Instructor is Handling*	*Work Experience (yrs) (May include Industrial Attachment for some occupations)*	*Teaching Certificate*	
	Academic	Professional				Year	College

N.B. Where a table is not sufficient please use additional paper

21. Names and Professional Qualifications for Board of Directors/Governors

Name	*Professional Qualification*

N.B. Where a table is not sufficient please use additional paper

22. Suitability of Buildings

Availability of documents supporting occupation of the buildings

YES NO

23. Suitability of classroom

Classroom Number	*Classroom Size (LxW)*	*Maximum Seating Capacity*	*No. of Students Available*	*Light Ratio*	*Ventilation Ratio*

24. List down the equipment that you will be using, that is learning or training aids, such as overhead projectors, computers, etc.

Equipment	*Quantity*	*Condition*

N.B. Where a table is not sufficient please use additional paper

25. State the proposed opening hours for the Training Institution Boarding Facilities .....

26. Number of hostels .....

Condition of hostels .....

27. Kitchen

Condition of kitchen .....

28. Dining Hall

Condition of Dining Hall .....

29. Availability of Good Sanitation, Occupational Safety and Power Supply

(*a*) Source of water.....

(*b*) Source of Power .....

(*c*) Are fire extinguishing facilities available? ..... YES NO

(*d*) Expiry date of contents of fire extinguishers .....

(*e*) Is there evidence of trained personnel to use the fire extinguishers? YES NO

(*f*) Are staff toilets available? ..... YES NO

(*g*) Number of staff toilets .....

(*h*) Type of staff toilets .....

(*i*) Are students' toilets available? ..... YES NO

(*f*) Number of students' toilets (specify teaching area, hostels, dining hall) .....

.....

(*k*) Type of students' toilets .....

(*l*) Is an equipped First Aid Kit available? ..... YES NO

30. Recreation

(*a*) Is Football Play Field available? ..... YES NO

(*b*) Condition of play fields .....

(*c*) Is Volleyball Pitch available? ..... YES NO

(*d*) Condition of Volleyball pitch.....

(*e*) Is Netball Pitch available? ..... YES NO

(*f*) Condition of Netball pitch .....

(*g*) Are there any other facilities? Specify .....

31. Accessibility of premises to accommodate people with special needs

.....

.....

32. Suitability of the locality as a centre of Education and Training

.....

.....

33. Declaration

I .....

Declare that the information given above is correct.

Date ..... Signature .....

NOTE: This application should be accompanied by a non-refundable fee of the amount prescribed for the category for which this application is made.

B. Evaluation

For Official use only.

34. Observations by TEVETA official

Item Number	*Comments*

N.B. Where a table is not sufficient please use additional paper

35. Agreements on areas of improvements between TEVETA and Applicant

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.....

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.....

NAME OF TEVETA Inspector ..... Signature .....

Name of Applicant ..... Signature .....

Name of Witness ..... Signature .....

Occupation .....

Address .....

NAME OF TEVETA Inspector ..... Signature .....

NAME OF TEVETA Inspector ..... Signature .....

NAME OF TEVETA Inspector ..... Signature .....

NAME OF TEVETA Inspector ..... Signature .....

NAME OF TEVETA Inspector ..... Signature .....

36. RECOMMENDATIONS TO THE EXECUTIVE DIRECTOR

.....

.....

.....

37. APPROVED/NOT APPROVED*

.....

…..... .....

EXECUTIVE DIRECTOR'S SIGNATURE DATE

*Delete whichever is not applicable

THIRD SCHEDULE

reg. 6

CERTIFICATE OF REGISTRATION

Training Institutions

In accordance with regulation 6 of the Technical, Entrepreneurial and Vocational Education and Training (Registration of Education and Training Institutions) Regulations, 2006, THIS IS TO CERTIFY THAT ..... situated at .... has been granted registration No ..... to operate as a recognized TEVET Training Provider in Category .....

by TEVETA

for the period commencing ..... to .....

This Registration is valid for the offering of the following occupations/trades:

.....
Registrar

.....
Executive Director

.....
Date

---

reg. 10

FOURTH SCHEDULE

REGISTRATION FEES

		K	*t*
1. Initial registration:			
	Category E	50,000	00
	Category D	75,000	00
	Category C	100,000	00
	Category B	125,000	00
	Category A	150,000	00
2. Renewal of registration:			
	Category E	50,000	00
	Category D	75,000	00
	Category C	100,000	00
	Category B	125,000	00
	Category A	150,000	00
3. Upgrading of classification:			
	From Category E to Category D	75,000	00
	From Category D to Category C	100,000	00
	From Category C to Category B	125,000	00
	From Category B to Category A	150,000	00

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reg. 13

FIFTH SCHEDULE

INSTITUTION BI-ANNUAL REPORT

Institutional Data

1. Name of Training Institution: .....
2. Registration Number: .....
3. Classification: .....
4. Postal and Email Address of Training Institution:

   .....

   .....

   .....

5. Physical Address: .....

.....

6. District .....

7. Proprietor(s) .....

.....

Vision

.....

.....

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Mission Statement

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.....

.....

.....

Objectives/Goals

1. .....
2. .....
3. .....
4. .....
5. .....
6. .....
7. .....

Staff available at the end of the year

Name	*Core Responsibility*	*Qualifications*	*Experience*

Staff who left the institution in the course of the year

Name	*Core Responsibility*	*Qualifications*

Curriculum Information

Occupations/Trades/Courses

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New Occupations/Trades/Courses to be introduced in the forthcoming year

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Infrastructure Adjustments

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.....

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Source of Income

Previous year's major source of income

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.....

.....

.....

New source of income, if any

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.....

.....

.....

Name of External Auditor

.....

.....

Achievements

(*a*) Academic (Pass rate and type of exam)

Trade/ Occupation/ Course	*Students registered*	*Students passed*	*Examining board*	*Reporting period*

N.B. Where a table is not sufficient please use additional paper

(*b*) Other

.....

.....

.....

.....

Challenges

.....

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General Comments

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TECHNICAL, ENTREPRENEURIAL AND VOCATIONAL EDUCATION AND TRAINING (REGISTRATION OF INFORMAL EDUCATION AND TRAINING INSTITUTIONS) REGULATIONS

ARRANGEMENT OF REGULATIONS

REGULATION

1. Citation
2. Interpretation
3. Registration of institutions
4. Registration requirements
5. Certificate of registration and duration
6. Rejection of an application
7. Renewal of registration
8. Cancellation of registration
9. Register and publication of institutions
10. Reports and updating information
11. Appointment of Inspectors
12. Powers of inspectors
13. Obstruction of inspectors
14. Appeals
15. Offences and penalties

FIRST SCHEDULE

SECOND SCHEDULE

THIRD SCHEDULE

G.N. 59/2017

TECHNICAL, ENTREPRENEURIAL AND VOCATIONAL EDUCATION AND TRAINING (REGISTRATION OF INFORMAL EDUCATION AND TRAINING INSTITUTIONS) REGULATIONS

under s. 36

Citation

1. These Regulations may be cited as the Technical, Entrepreneurial and Vocational Education and Training (Registration of Informal Education and Training Institutions) Regulations.

Interpretation

2. In these Regulations unless the context otherwise requires—

"aided institution" means an institution financially aided by the Government;

"Government institution" means an institution owned or controlled by the Government;

"institution" means any organization which provides regular instruction relating to informal technical, entrepreneurial, vocational education and training or from which such instruction emanates, whether by distance learning or otherwise and includes private or an aided institution;

"inspector" means a person appointed as such under regulation 11 by the Authority to ensure that institutions comply with these Regulations; and

"Steering Committee" means a Centre or College Steering Committee of an institution referred to in regulation 4.

Registration of institutions
First Schedule

3.—(1) Every informal institution shall apply to the Authority for registration in the prescribed form contained in the First Schedule hereto:

Provided that an existing institution at the time of coming into force of these Regulations shall be required to register within twelve months from the date these Regulations come into force.

(2) The application referred to in subregulation (1) shall—

(*a*) specify the name, contact and physical addresses;

(*b*) specify the level of the programmes and courses to be provided; and

(*c*) specify such other particulars as the Authority may prescribe.

Registration requirements

4. An institution shall be eligible for registration if—

(*a*) the institution shall have defined vision and mission statements and statements of objectives that specifically—

(i) relate to technical, entrepreneurial and vocational education and training;

(ii) are in line with TEVET Policy;

(*b*) the institution has a Steering Committee or centre management committee responsible for policy and governance issues of the institution;

(*c*) the institution has well qualified trainers and management;

(*d*) the institution meets the technical entrepreneurial and vocational education and training standards set by the Authority;

(*e*) the institution, is recognized by the local councils with traceable premises;

(*f*) the institution has in place mechanisms to enable it run sustainably;

(*g*) the proprietor of a private or public institution is a fit and proper person or body of persons to run the institution;

(*h*) the institution has an adequate rigorous process of self-evaluation and internal audit that are acceptable to all key stakeholders;

(*i*) the institution has clear procedures and appropriate staff for administration, financial accounting, dispute resolution and management of the institution; and

(*j*) the institution has systems or mechanisms which provide for a forum for exchange of ideas between parents or guardians of students, community representatives and staff of the institution.

Certificate of registration and duration *Second Schedule*

5.—(1) The Authority shall issue a certificate of registration in the prescribed form contained in the Second Schedule hereto to an informal institution which the Authority has registered under these Regulations.

(2) Registration of the institution shall be valid for a period of five years.

(3) The certificate of registration referred to in subregulation (1) shall contain—

(*a*) the name of the institution;

(*b*) the physical location of the institution; and

(*c*) such other particulars as the Authority may prescribe.

Rejection of an application

6.—(1) Where the Authority is satisfied that an application does not meet the requirements set out in regulation 4, the Authority shall notify the proprietor or the Steering Committee of the institution in writing that—

(*a*) the application is rejected; or

(*b*) the application shall be granted after the Steering Committee has, within such period as specified by the Authority, complied with the registration requirements specified in regulation 4.

(2) If the Steering Committee of an institution notified under subregulation (1) (*b*) fails, in the opinion of the Authority, to comply

with the requirements specified in regulation 4 within the period prescribed by the Authority in the notification, the Authority shall reject the application and shall notify the proprietor or the Steeling Committee in writing of its decision.

Renewal of registration

7.—(1) A proprietor or Steering Committee of an institution shall apply for renewal for registration six months prior to the expiration of its existing registration.

(2) In applying for renewal of registration, the institution shall provide substantive proof that it—

(*a*) continues to comply with all the requirements contained in regulation 4;

(*b*) is still financially secure and continues to use effective and nationally acceptable financial management procedures, which can be independently verified by an auditor approved by its Steering Committee; and

(*c*) the graduates from the institution are marketable, that is, they readily get employment.

(3) If the Authority is satisfied with the information provided by the institution in accordance with subregulation (2), the Authority shall renew the registration of the institution for another period of five years.

Cancellation of registration

8.—(1) The Authority shall cancel the registration of an institution if the institution—

(*a*) ceases to comply with the requirements contained in regulation 4;

(*b*) is being managed or operated in a manner detrimental to the physical, mental or general welfare of the persons receiving instruction at that institution; or

(*c*) has remained closed for a continuous period of twelve months or more.

(2) The Authority shall notify the institution in writing—

(*a*) that the Authority shall cancel the registration of the institution on such a date as the Authority shall specify; or

(*b*) that the Authority intends to cancel the registration of the institution unless, within a period prescribed by the Authority, the institution complies with such requirements as specified by the Authority in the notification letter.

(3) The Authority shall, in its notification letter to the institution regarding cancellation of or intended cancellation, as the case may be, of the institution's registration—

(*a*) state clearly why it believes that a requirement or requirements is or are not being complied with by the institution;

(*b*) give the grounds for such belief; and

(*c*) invite the institution, giving it reasonable time, to give its submission on the matter.

(4) Where the proprietor or the Steering Committee of an institution fails, within the period prescribed by the Authority in the notification letter, to comply with the requirements specified therein, the Authority shall cancel the registration of the institution and notify the principal or the Steering Committee in writing accordingly.

(5) Where the Authority has notified an institution regarding cancellation or intended cancellation, as the case may be, of the institution's registration, the institution shall not—

(*a*) enroll any new students;

(*b*) commence any new programmes; or

(*c*) commence services at any new premises until such a time the Authority informs the institution that its registration is still valid.

(6) Where the Authority cancels the registration of an institution, it shall put notice to that effect in the *Gazette* and in at least two newspapers of wide circulation.

Register and publication of institutions

9.—(1) The Authority shall keep and maintain a register of institutions registered with the Authority and the register shall contain such particulars as the Authority may prescribe.

(2) The Authority shall at regular intervals, but not less than once in every year, cause to be published in the *Gazette* and in at least two newspapers of wide circulation, a list of all institutions registered with the Authority under these Regulations.

Reports and updating information

10.—(1) Every registered institution shall submit annually a report to the Authority in the prescribed form contained in the Third Schedule hereto regarding its activities and such other information as the Authority may require.

(2) An institution shall inform the Authority in writing within a period of fourteen days on the occurrence of any of the following—

(*a*) change in the proprietorship of the institution;

(*b*) change in the membership of the Steering Committee;

(*c*) change in the address or premises from where the institution was operating from;

(*d*) major change of funding, fee policy or funding source;

(*e*) major change in the education and training services offered; or

(*f*) intention to build, renovate and move to new premises.

Appointment of Inspectors

11.—(1) The Authority shall appoint such number of inspectors as are necessary to ensure compliance of these Regulations.

(2) The Authority shall issue to every inspector appointed under this regulation a certificate of appointment and an identity card which shall be *prima facie* evidence of the inspector's appointment.

(3) The inspector shall—

(*a*) when on duty always wear his identity card; and

(*b*) on demand by a person affected by the exercise of the inspectors' power under these Regulations, produce for inspection his certificate of appointment referred to in subregulation (2).

(4) The inspectors shall conduct inspections of all the institutions registered by the Authority under these Regulations at least once a year.

Powers of inspectors

12. An inspector shall have the following powers under these Regulations—

(*a*) to enter and inspect, at any reasonable time, any institution registered under these Regulations;

(*b*) to demand the production of, and to inspect or make copies of books, or documents relating to the activities of the institution; and

(*c*) such other powers prescribed by the Authority which are necessary to ensure compliance with these Regulations.

Obstruction of inspectors

13.—(1) Any person who—

(*a*) willfully delays or obstructs an inspector in carrying out his duties under these Regulations; or

(*b*) knowingly or negligently gives an inspector false or misleading information orally, in writing or otherwise,

commits an offence.

Appeals

14.—(1) Any person aggrieved by the decision of an institution registered under these Regulations may appeal to the Authority within fourteen days from the date the person aggrieved received communication of the decision from the institution.

(2) Any person aggrieved by any decision made by the Authority may appeal to the Minister within fourteen days from the date the person aggrieved received communication of the decision from the Authority.

(3) Any person aggrieved by the decision of the Minister may apply to the High Court for judicial review within thirty days from the date the person aggrieved received communication of the decision from the Minister.

Offences and penalties

15.—(1) Any person who—

(*a*) operates an institution—

(i) which is not registered; or

(ii) has been notified in writing that its application for registration has been rejected or that its registration has been cancelled;

(*b*) infers, purports or holds out an institution as a registered institution when in fact it is not registered;

(*c*) withholds any information reasonably requested by the Authority;

(*d*) furnishes the Authority with false or misleading information regarding the registration requirements; or

(*e*) contravenes or fails to comply with any provision of these Regulations,

commits an offence.

(2) Notwithstanding the provisions of section 21 (*e*) of the General Interpretation Act, any person guilty of an offence under these Regulations, shall upon conviction be liable to a fine of K300,000 and to a term of imprisonment of one year.

(3) In the case of a continuing offence, a person shall be liable to a further fine not exceeding K5,000 for each day that the offence continues after conviction or to a term of imprisonment not exceeding two years.

APPENDIX

1. MINIMUM REQUIREMENTS FOR ESTABLISHING A DAY TEVET TRAINING INSTITUTION

(1) One twin block or two separate classroom blocks for lessons and adequate workshop facilities to accommodate four trades/occupation at a given time.

(2) An Administration office.

(3) Adequate separate toilet facilities for male (1:20) and female students (1:16).

(4) Adequate and separate toilet facilities for male and female staff.

(5) Adequate* textbooks relevant to trade(s) being taught.

(6) Adequate workshop machinery/equipment and tools.

N.B. With the workshop blocks, precautions must be taken during construction to ensure nationally accepted specifications are met, and the health and safety regulations must not be compromised.

2. BUILDING SPECIFICATIONS AND OTHER REQUIREMENTS TO BE MET

(1) Classroom—

(*a*) the minimum size of each classroom shall be 1.45 sq m per student floor space with adequate natural lighting and ventilation through window openings at the proportion of 1/5 of the floor area. Mean wall height shall be 2.75 m;

(*b*) where the ceiling follows the line of rafters, the minimum height shall be 2.59 m;

(*c*) all windows shall, where reasonably possible, be extended to within 0.305 m of the ceiling;

(*d*) if fluorescent bulbs are used to light the chalkboard shinny metal shield shall be fixed over the fluorescent bulbs facing the chalkboard;

(*e*) floor shall be made of solid concrete (7.6 cm thick) with a final cement finish on top;

(*f*) ventilation openings shall be provided at the ratio of 0.093 sq m of floor area;

(*g*) chalk board size shall be 4 m x 1.2 m and be placed on the front wall close to the door ways;

(*h*) the minimum size of a pin board at the back or side walls of each classroom shall be 2.4 m by 1.2 m or one standard ceiling board size for the entire back;

(*i*) doors shall open towards the outside of the classroom;

(*j*) each student shall be provided with a desk with a minimum top area of 0.6 m x 0.42 m per student; and

(*k*) there shall be a sufficient supply of portable drinking water at all times.

(2) Library/Reading room—

(*a*) The reading room area shall at least be 1.44 sq m per student, to accommodate a class of 40 students; and

(*b*) the book display room area shall at least be 57.76 sq m and shall have bookshelves.

(3) Rooms for occasional gathering and use

In areas where pit latrines are used, the pit latrines shall be sunk at a minimum distance of 21 m away from the hostels, classrooms and other school buildings. There shall be a minimum of 1 latrine for every 25 female students in the boarding area and 1 latrine for every 30 male students in the teaching area. Male students shall be provided with minimum urinals at the ratio of 1 four-metre urinal to every 50 students. Female students shall be provided with minimum latrines at the ratio of 1 latrine for every 12 students in the teaching area and 1 latrine for every 15 male students in the teaching area.

(4) Playground

Where possible there shall be adequate standard playfields for at least football, netball and running tracks.

(5) Fire Fighting

All buildings shall be provided with appropriate fire fighting equipment or facilities.

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reg. 3

FIRST SCHEDULE

REGISTRATION OF TRAINING INSTITUTION

A. Application for Registration/Upgrading Form

1. Name of the Proposed Training Provider

   .....

2. Date of establishment .....
3. Address of Proposed Training Provider
4. Telephone .....
5. Fax No .....
6. E-Mail address .....
7. Physical Address .....
8. District .....

9. Name (s) of Proprietor if privately owned

.....

.....

10. Name of Head of Institution

.....

11. Name of Training Programme Coordinator

.....

12. Type of proprietorship (Tick which fits your institution)

Government	Parastatal	Religious Org
Aided	NGO	Private

13. Type of Institution (Tick which fits your institution)

Boarding	Day	Day and Boarding
Single - Sex	Co-Education	Open Distance Learning

14. Vision

.....

.....

.....

15. Mission Statement

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.....

16. Objectives/Goals

1. .....
2. .....
3. .....
4. .....
5. .....
6. .....
7. .....

17. Trade/Occupation/Course

OCCUPATION/COURSE	*Year*	*Female Students*	*Male Students*	*Total*
	1			
	2			
	3			
	4			
	1			
	2			
	3			
	4			
	1			
	2			
	3			
	4			
	1			
	2			
	3			
	4			
	1			
	2			
	3			
	4			
	1			
	2			
	3			
	4			

N.B. Where a table is not sufficient please use additional paper

18. Specific Target Group (Tick which fits your institution)

Orphans Street Kids

Secondary School Graduates

Disabled (Specify) .....

Others (Specify) .....

19. Curriculum being used by Trade/Occupation/Courses

No.	*Program of study/Course*	*Mode of delivery (College based / Open Distance Learning) (Indicate as applicable)*	*Examining Board*	*Title and Author of core text books being used*
1				
2				
3				
4				
5				
6				
7				
8				
9				
10				

N.B. Where a table is not sufficient please use additional paper

20. Names of Trainers/Instructors and their Qualifications

Name of Trainer	*Qualifications*		*Trade/ Occupation being taught*	*Highest Level Instructor is Handling*	*Work Experience (yrs) (May include Industrial Attachment for some occupations)*	*Teaching Certificate*	
	Academic	Professional				Year	College

N.B. Where a table is not sufficient please use additional paper

21. Names and Professional Qualifications for Board of Directors/Governors

Name	*Professional Qualification*

N.B. Where a table is not sufficient please use additional paper

22. Suitability of Buildings

Availability of documents supporting occupation of the buildings

YES NO

23. Suitability of classroom

Classroom Number	*Classroom Size (LxW)*	*Maximum Seating Capacity*	*No. of Students Available*	*Light Ratio*	*Ventilation Ratio*

24. List down the equipment that you will be using, that is learning or training aids, such as overhead projectors, computers, etc.

Equipment	*Quantity*	*Condition*

N.B. Where a table is not sufficient please use additional paper

25. State the proposed opening hours for the Training Institution

.....

26. Availability of Good Sanitation, Occupational Safety and Power Supply—

(*a*) Source of water .....

(*b*) Source of Power .....

(*c*) Are fire extinguishing facilities available? YES NO

(*d*) Expiry date of contents of fire extinguishers .....

(*e*) Is there evidence of trained personnel to use the fire extinguishers?

YES NO

(*f*) Are staff toilets available? YES NO

(*g*) Number of staff toilets .....

(*h*) Type of staff toilets .....

(*i*) Are students' toilets available? YES NO

(*j*) Number of students' toilets (specify teaching area, hostels, dining hall)

.....

(*k*) Type of students' toilets .....

(*l*) Is an equipped First Aid Kit available? YES NO

27. Recreation

(*a*) Is Football Play Field available? YES NO

(*b*) Condition of play fields .....

(*c*) Is Netball Pitch available? YES NO

(*d*) Condition of Netball pitch .....

(*e*) Are there any other facilities? Specify .....

.....

28. Accessibility of premises to accommodate people with special needs

.....

.....

29. Suitability of the locality as a centre of Education and Training

.....

30. Declaration

I .....

declare that the information given above is correct.

Date ..... Signature .....

NOTE: This application should be accompanied by a non-refundable fee of the amount prescribed for the category for which this application is made.

B. Evaluation

For Official use only.

31. Observations by TEVETA official

Item Number	*Comments*

N.B. Where a table is not sufficient please use additional paper

32. Agreements on areas of improvements between TEVETA and Applicant.

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NAME OF TEVETA Inspector ..... Signature .....

Name of Applicant ..... Signature .....

Name of Witness ..... Signature .....

Occupation .....

Address .....

NAME OF TEVETA Inspector ..... Signature .....

NAME OF TEVETA Inspector ..... Signature .....

NAME OF TEVETA Inspector ..... Signature .....

NAME OF TEVETA Inspector ..... Signature .....

NAME OF TEVETA Inspector ..... Signature .....

33. RECOMMENDATIONS TO THE EXECUTIVE DIRECTOR

.....

.....

.....

34. APPROVED/NOT APPROVED*

.....

…..... .....

Executive Director's Signature Date

*Delete whichever is not applicable

SECOND SCHEDULE

reg. 5

CERTIFICATE OF REGISTRATION

Training Institutions

In accordance with regulation 5 of the Technical, Entrepreneurial and Vocational Education and Training (Registration of Informal Education and Training Institutions) Regulations, 2016, THIS IS TO CERTIFY THAT ..... situated at ..... has been granted registration No ..... to operate as a recognized Informal TEVET Training Provider

by TEVETA

for the period commencing ..... to .....

This Registration is valid for the offering of the following occupations/trades:

....

Registrar Executive Director

.....

Date

---

reg. 10

THIRD SCHEDULE

INSTITUTION ANNUAL REPORT

Institutional Data

1. Name of Training Institution

   .....

2. Registration Number

   .....

3. Address of Training Institution

   .....

   .....

4. Traditional Authority .....
5. District .....
6. Proprietor(s) if private .....

   .....

Vision

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Mission Statement

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Objectives/Goals

1. .....
2. .....
3. .....
4. .....
5. .....
6. .....
7. .....

Staff available at the end of the year

Name	*Core Responsibility*	*Qualifications*	*Experience*

Staff who left the institution in the course of the year

Name	*Core Responsibility*	*Qualifications*	*Experience*

Curriculum Information

Occupations/Trades/Courses

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New Occupations/Trades/Courses to be introduced in the forthcoming year

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Infrastructure Adjustments

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Source of Income

Previous Year's major source of income

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.....

New source of income, if any

.....

.....

Name of Auditor:

.....

.....

.....

Achievements—

(*a*) Academic (Pass rate and type of exam) .....

.....

.....

(*b*) Other .....

.....

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Challenges:

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General Comments

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OCCUPATIONAL SAFETY, HEALTH AND WELFARE

CHAPTER 55:07

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CHAPTER 55:07

OCCUPATIONAL SAFETY, HEALTH AND WELFARE

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21 of 1997
G.N. 72/1997

An Act to make provision for the regulation of the conditions of employment in workplaces as regards the safety, health and welfare of persons employed therein; for the inspection of certain plant and machinery, and the prevention and regulation of accidents occurring to persons employed or authorized to go into the workplaces; and to provide for matters connected with or incidental to the foregoing

[8TH DECEMBER, 1997]

PART 1

PRELIMINARY

Short title

1. This Act may be cited as the Occupational Safety, Health and Welfare Act.

Interpretation

2. (1) In this Act, unless the context otherwise requires—

"air receiver" means—

(*a*) any vessel, other than a pipe or coil, or an accessory, fitting or part of a compressor, for containing compressed air and connected with an air-compressing plant;

(*b*) any fixed vessel for containing compressed air or compressed exhaust gases and used for starting an internal combustion engine;

(*c*) any fixed or portable vessel, not being part of a spraying pistol used for the purpose of spraying by means of compressed air any paint, varnish, lacquer or similar material, or an insecticide; and

(*d*) any vessel in which oil is stored and from which it is forced by compressed air;

"article" includes any solid, liquid or gas, or any combination thereof;

"Board" means the Arbitration Board appointed under section 79;

"bodily injury" includes injury to health;

"building operation" means the construction, structural alterations, repair or maintenance of a building (including repainting, redecoration and external cleaning of the structure), the demolition of a building, and the preparation for, and laying the foundation of, an intended building, but does not include any operation which is a work of engineering construction within the meaning of this Act;

"Director" means the Director of Occupational Health, Safety and Welfare appointed under section 72;

"class or description" in relation to workplaces, includes a group of workplaces described by reference to locality;

"competent person" means a person with such practical and theoretical knowledge and actual experience of the type of machinery or plant which he or she has to examine as will enable him or her to detect defects or weaknesses which it is the purpose of the examination to discover, and to assess their importance in relation to the strength and functions of the particular machinery or plant;

"driving belt" means a device that transmits motion from one machinery component to another, and includes strap or rope or chain;

"fume" includes gas and vapour;

"gas plant" means an installation for generating, cleaning, storing and compressing gas in cylinders or containers;

"general register" means the register kept in accordance with section 70;

"hazardous substance" means any matter which by virtue of its chemical, physical or toxicological properties constitutes a risk to safety, health or welfare of persons;

"inspector" means a public officer appointed as such under section 72, and includes the Director;

"machinery" means—

(*a*) any locomotive or any stationary or portable engine, boiler or other steam apparatus; and

(*b*) any appliance or combination of appliances intended for developing, receiving, storing, transmitting or converting power, but does not include a vehicle;

"maintained" means kept in an efficient state, in efficient safe working order and in good repair;

"persons employed" means persons employed in engineering, agricultural, management, staff and skilled allied trade services in the formal and informal sector;

"occupier" means the person in actual occupation of a workplace, whether that person be the owner thereof or not;

"owner" means the person for the time being receiving the rents or profits of the premises in connexion with which the workplace is used, whether on his own account or as agent or trustee for any other person, or who would so receive the rents if the premises were leased;"

"prime mover" means every engine, motor or other appliance which provides mechanical energy derived from steam,

water, wind, electricity, the combustion of fuel or any other source;

"quarry" means any place, excavation or working, other than a mine, wherever, wherein or whereby any operation in connexion with the extraction of sand, stone, laterite or similar materials or minerals is carried on;

"railway" means any railway used for the purpose of public traffic, whether for passenger, goods or other traffic, and includes any works used in connexion with and for such purposes;

"sanitary conveniences" means urinals, water closets, earth closets, privies, ashpits, chemical closets and any similar convenience and includes washing facilities;

"steam receiver" means any vessel or apparatus, other than a steam boiler, steam container, a steam pipe or coil or a part of a prime mover, used for containing steam under pressure greater than atmospheric pressure;

"steam container" means any vessel (other than a steam pipe or coil) constructed with a permanent outlet into the atmosphere or into a space where the pressure does not exceed atmospheric pressure, and through which steam is passed at atmospheric pressure, or at approximately that pressure, for the purpose of heating, boiling, drying, evaporating or other similar;

"substance" means any matter of particular or definite chemical composition;

"transmission machinery" means every shaft, gear, drum, pulley, system of fast and loose pulleys, coupling, clutch, driving-belt or other device by which the motion of a prime mover is transmitted to, or received by, any machine or appliance;

"work of engineering construction" means the construction of any railway line or siding, otherwise than upon an existing railway, and the construction, structural alteration or repair (including repainting and repointing) or the demolition of any dock, harbour, inland navigation tunnel, bridge, viaduct, waterworks, reservoir, pipeline, aqueduct, sewer, road, sewage works, gasholder, and includes such other works as the Director may prescribe by notice in the *Gazette*;

"young person" means any person under the apparent age of eighteen years.

(2) For the purposes of this Act—

(*a*) machinery or plant shall be deemed to have been constructed or reconstructed before the date of coming into operation of this Act, and a workplace or building shall be

deemed to have been constructed, reconstructed, extended, added to or converted for use as a workplace, before the date of coming into operation of this Act or the coming into operation of any provision of the Act, if the construction, reconstruction, extension, addition or conversion was begun before the date of coming into operation of this Act, or the date of coming into operation of any provision of this Act, as the case may be;

(*b*) an apprentice shall be deemed to be a person employed;

(*c*) a person who works in a workplace, whether for wages or not, in collecting, carrying or delivering goods, carrying messages or running errands or any other legitimate purpose shall be deemed to be employed in the workplace.

Workplace

3.—(1) Subject to this section, the expression "workplace" means any premises in which, or within the close or curtilage or precincts of which, one or more persons are employed in any process for or incidental to any of the following purposes—

(*a*) the making of any article or of part of any article; or

(*b*) the altering, repairing, renovating, ornamenting, painting, spraying, polishing, finishing, cleaning, dyeing, washing or breaking up of any article;

(*c*) the adapting for sale of any article;

(*d*) the sorting, assembling or packaging, including washing or filling bottles or other containers, of any article;

(*e*) the painting, spraying, construction, reconstruction, assembling, repairing or breaking up of vehicles or parts thereof;

(*f*) the printing by letterpress, lithography, photogravure or other similar process, bookbinding, including any activity associated with the printing industry;

(*g*) the production and storage of gas in a holder of more than one hundred and fifty cubic metres storage capacity being premises in which, or within the close or curtilage or precincts of which, there is carried on by way of trade or for purposes of gain and over which the employer of the persons therein has the right of access or control.

(2) The expression "workplace" also includes the following premises in which one or more persons are employed, whether or not they are workplaces by reason of subsection (1)—

(*a*) any yard or dry dock, including the precincts thereof, in which ships, boats or vessels are constructed, reconstructed, assembled, repaired, refitted, finished or broken up;

(*b*) any premises in which the construction, reconstruction or repair of aircraft, locomotives, vehicles or other plant for use for transport purposes is carried on as ancillary to a transport undertaking or other industrial or commercial undertaking, which are not premises used for the purpose of

housing aircraft, locomotives or vehicles where only cleaning, washing or minor adjustments are carried out;

(*c*) any premises in which mechanical power is used in connexion with the making or repair of articles of metal or wood incidental to any business carried on by way of trade or for the purpose of gain;

(*d*) any premises in which building operations and works of engineering construction is undertaken;

(*e*) any premises in which articles are made or prepared incidental to carrying on of building operations or works of engineering construction, not being premises in which such operations or works are carried on;

(*f*) any premises in which persons are regularly employed in, or in connexion with, the generating of electrical energy for supply by way of trade, or for supply for the purpose of any industrial or commercial undertaking or of any public building or public institution, or for supply to streets or other public places;

(*g*) any premises in which mechanical power is used for the purposes of, or in connexion with, a water supply (being premises in which such persons are regularly employed);

(*h*) any premises in which the business of sorting or grading any articles is carried on as a preliminary to the work carried on in any workplace or incidental to the purposes of any workplace;

(*i*) any laundry carried on as ancillary to another business, or incidental to the purposes of any public institution;

(*j*) any premises in which the business of making or mending nets is carried on incidental to the fishing industry;

(*k*) any sewage works in which mechanical power is used, and any pumping station used in connexion with any sewage works, regardless of location;

(*l*) any premises in which the refrigeration of any article is carried on by way of trade or for purposes of gain, other than premises in which refrigeration is only incidental to the conduct of business engaged mainly in the sale of goods by retail, or a mortuary.

(3) Any line or siding, not being part of a railway, which is used in connexion with and for the purpose of a workplace shall be deemed to be part of the workplace and, if any such line or siding is used in connexion with more than one workplace belonging to different occupiers, the line or siding shall be deemed to be a separate workplace; and this Act shall apply as if such different occupiers were jointly the occupiers of the line or siding so deemed to be a workplace.

(4) Any workplace in which, with the permission of or under agreement with the owner or occupier, one or more persons carry

on any work which would constitute a workplace if the persons therein were in the employment of the owner or occupier, shall be deemed to be a workplace for the purposes of this Act and, in the case of any such workplace, this Act shall apply as if the owner or occupier of the workplace were the occupier and the persons working therein were persons employed in the workplace.

(5) Any premises belonging to a quarry or a mine being premises in which the dressing, breaking down, processing or preparation for sale of sand, stone or mineral is carried on and any place, excavation or working wherever, wherein or whereby any operation in connexion with the extraction of sand, stone, mineral or similar materials, is carried on, shall be deemed to be a workplace.

(6) Any premises in which agricultural activities such as chemical weeding, spraying, fumigation, or preservation is carried on shall be deemed to be a workplace.

(7) Premises shall not be excluded from the definition of a workplace by reason only that they are open air premises.

General application

4. Save as is in this Act otherwise expressly provided, this Act shall apply to all workplaces as defined by this Act.

Application to workplaces belonging to the Government

5. This Act shall also apply to—

(*a*) every workplace belonging to or in the occupation of the Government;

(*b*) building operations and works of engineering construction undertaken by, or on behalf of the Government; and

(*c*) the employment by, or under the Government, of persons engaged in demolishing, painting or renovating buildings.

PART II

Registration of Workplaces

Register of workplaces

6. The Director shall keep a register of workplaces in which he shall cause to be entered such particulars in relation to every workplace required to be registered under this Act as he may consider necessary or desirable.

Premises not to be used as workplaces unless registered

7.—(1) No person shall occupy or use a workplace unless he is the holder of—

(*a*) a registration certificate issued in respect of such premises under section 9 (2);

(*b*) a current provisional registration permit issued in respect of such workplace under section 9 (3).

(2) The occupier of a registered workplace shall not carry on therein any activity referred to in section 3 other than that

specified in the registration certificate or provisional registration permit, as the case may be.

Application for erection or alteration of workplaces

8.—(1) Every person who intends to—

(*a*) erect or cause to be erected any building for use as a workplace; or

(*b*) effect any structural or other alteration to any premises registered as a workplace under this Act; or

(*c*) alter or add to any existing building not registered as a workplace under this Act with the intention of using such building or a portion thereof as a workplace,

shall submit to the Director, in duplicate in the prescribed form, plans of the site, and of the proposed building, alterations or additions, together with the prescribed particulars.

(2) If the Director considers that—

(*a*) the proposed structural or other alterations to any premises registered as a workplace under this Act would result in such a workplace unsuitable in terms of the regulations for use as a workplace in respect of the activity which is specified in the registration certificate for such a workplace; or

(*b*) the proposed building or additions or the building altered in the manner proposed would not be suitable in terms of the regulations for use as a workplace of the nature proposed,

he shall disapprove such plans and particulars and shall give reasons for his disapproval.

(3) Where, in accordance with any written law, application is made to a local authority or a town planning committee for the approval of any plans for the erection, rebuilding or alteration of any building used or intended to be used for a workplace, such local authority or town planning committee, as the case may be, shall submit such plans to the Director for examination by him, and shall not approve such plans unless the Director has notified the local authority or town planning committee, as the case may be, in writing that he considers the building will be suitable for use as workplace of the nature proposed.

Application for registration of workplaces

9.—(1) Application for registration of any premises as a workplace under this Act shall be made to the Director in the prescribed form by the person occupying or intending to occupy such premises as a workplace.

(2) Every application for registration under this section shall be accompanied by plans of the proposed workplace, which shall give the following particulars—

(*a*) materials to be used in the building;

(*b*) material to be used in the roofing;

(*c*) provision for ventilation;

(*d*) provision of drainage;

(*e*) provision for natural and artificial lighting;

(*f*) provision of means of escape in case of fire;

(*g*) provision for sanitary facilities;

(*h*) provision for disposal of waste where applicable;

(*i*) provision of water supply; and

(*j*) such other additional information or drawings as the Director may require.

(3) As soon as possible after receipt of an application, and any additional information or drawings required under subsection (2), and after consultation with the relevant local authority or town planning committee, as the case may be, the Director shall—

(*a*) register the premises in respect of which the application is made by issuing a registration certificate in the prescribed form, specifying the activity in respect of which the workplace is registered, the name of the occupier and any other particulars as may be prescribed; or

(*b*) refuse to register the premises on any of the following grounds—

(i) that the premises are unsuitable for use as a workplace;

(ii) the activity to be carried on in the workplace or the siting of the workplace would be in contravention of any approved scheme, operative regional plan, operative master plan or operative local plan as defined in any written law; or

(iii) that the applicant has not obtained any licence or permit required under any in respect of the operations to be carried on the premises.

(4) After the registration of any premises as a workplace under this Act, no person shall effect or cause to be effected any structural or other alterations to such premises without the written prior approval of the Director, and if any such alteration is commenced or carried out without such approval, the Director may, by notice in writing to the occupier, cancel the registration certificate, whereupon the premises shall cease to be registered as a workplace under this Act.

(5) If the occupier of a workplace loses a registration certificate issued to him under subsection (3) or a duplicate registration certificate issued to him under this subsection, he shall, within fifteen days after the discovery of the loss, apply for a duplicate registration certificate from the Director and the application shall be accompanied by the prescribed fee.

(6) Application for renewal of registration of a workplace shall be made by the occupier annually as from 1st April of each

financial year by sending to the Director a written application in the prescribed form.

(7) Upon receipt of application under subsection (6) and if satisfied that the workplace to which the application relates is suitable for use as a workplace of the nature stated in the application, the Director shall renew the registration of the workplace and shall issue to the occupier a certificate of registration in the prescribed form.

(8) Registration shall, unless sooner determined, be effective for a period of twelve months but may be renewed annually.

(9) The occupier of a workplace shall exhibit the registration certificate issued to him in terms of this section on the premises.

(10) Any person who, without there having been issued to him a certificate of registration occupies or uses as a workplace any premises which were not occupied or used by him at the date of coming into operation of the Act shall be guilty of an offence and liable to a fine of K10,000, and if the contravention in respect of which he is convicted continues after conviction, he shall be liable to a fine of K500 for each day that the offence continues.

Notification of change

10. If, at any time after an application has been submitted to the Director in accordance with section 7 or section 8, any substantial change occurs with respect to the particulars set out in the application, the occupier of the premises to which the application relates shall forthwith inform the Director in writing of such change, and every applicant who fails to do so shall be guilty of an offence.

Transfer of workplace

11. When the right to occupy any workplace has been transferred, the transferee, or person acting in his behalf, shall forthwith send notice in writing to the Director stating the name and postal address of the transferee, the situation of the workplace and the nature of the trade or business to be carried on in the workplace, together with the prescribed transfer fee.

Fees for registration, etc.

12. The Minister may make regulations prescribing fees which shall be paid in respect of registration of existing workplaces, the registration of new workplaces and renewal of registration, the transfer of a workplace and the issue of duplicate certificates of registration.

PART III

Duties and Responsibilities

Duties of employers

13.—(1) It shall be the duty of every employer to ensure the safety, health and welfare at work of all his employees.

(2) Without prejudice to the generality of an employer's duty under subsection (1), the matters to which that duty extends includes in particular—

(*a*) the provision and maintenance of plant and systems of work that are safe and without risks to health;

(*b*) arrangements for ensuring safety and absence of risks to health in connexion with the use, handling, storage and transportation of articles and substances;

(*c*) the provision of information, instruction, training and supervision in accordance with section 65 to ensure the safety and health at work of his employees;

(*d*) as regards any place of work under the employer's control, the provision of maintenance in a manner that is safe and without risks to health, and the provision and maintenance of means of access to and egress from it that are safe and without such risks;

(*e*) the provision and maintenance of a working environment for his employees that is safe, without risks to health, and adequate as regards facilities and arrangements for their welfare at work.

(3) Except in such cases as may be prescribed, it shall be the duty of every employer to prepare and as often as may be appropriate, revise a written statement of his general policy with respect to the safety and health at workplace of his employees, and the organization and arrangements for the time being in force for carrying out that policy, and to bring the statement and any revision of it to the notice of all of his employees.

(4) The Minister may make regulations providing for—

(*a*) the appointment by trade unions of safety representatives from amongst the employees, to represent the employees in consultations with the employers under subsection (5), and the safety representative shall have such other functions as may be prescribed;

(*b*) the election by employees of safety representatives from amongst the employees, to represent employees in consultations with the employers under subsection (5), and the safety representatives may have such other functions as may be prescribed.

(5) It shall be the duty of every employer to consult with any safety representatives with a view to the making and maintenance of arrangements which will enable the employer and his employees to co-operate effectively in promoting and developing measures to ensure the safety and health at work of the employees, and in checking the effectiveness of such measures.

(6) In every such case as may be prescribed, it shall be the duty of every employer, if requested to do so by the safety representatives, to establish, in accordance with section 21, a safety committee to review measures taken to ensure the safety and health at work of employees, and the safety committee shall have such other functions as may be prescribed.

General duties of employers and self-employed persons to persons other than their employees

14.—(1) It shall be the duty of every employer to conduct his undertaking in such a way as to ensure that persons not in his employment who may be affected by the undertaking are not thereby exposed to risks to their safety or health.

(2) It shall be the duty of every self-employed person to conduct his undertaking in such a way as to ensure that other persons (not being his employees) who may be affected by the undertaking are not thereby exposed to risks to their safety or health.

(3) In every such case as may be prescribed, it shall be the duty of every employer and every self-employed person, in the prescribed manner, to give to persons (not being his employees) who may be affected by the way in which he conducts his undertaking prescribed information about such aspects of his undertaking as might affect their safety or health.

Duties of other persons

15.—(1) This section shall apply to non-domestic premises used as a place of work, and to any plant, equipment or substance used on such premises in connexion with any work performed thereon.

(2) It shall be the duty of every person who has, to any extent, control of premises to which this section applies, or of the means of access thereto or egress therefrom, or of any plant, equipment or substance in such premises, to take such measures as are reasonable for a person in his position to take to ensure that the premises, or means of access thereto or egress therefrom available for use by persons using the premises, and any plant, equipment or substance on the premises or provided for use thereon, is safe and without risks to health.

(3) Where, by virtue of any contract or tenancy, a person has an obligation of any extent in relation to—

(*a*) the maintenance or repair of any premises to which this section applies, or any means of access thereto, or egress therefrom; or

(*b*) the safety or the absence of risks to health arising from plant, equipment or substances in any such premises,

that person shall be treated, for the purposes of subsection (2) as being a person who has control of the matters to which his obligation extends.

(4) Any reference in this section to a person having control of any premises or matter is a reference to a person having control

of the premises or matter in connexion with the carrying on by him of a trade, business or other undertaking, whether for profit or not.

General duties of persons in control of workplaces in relation to harmful emissions

16.—(1) It shall be the duty of every person having control of any premises to use the best practicable means for preventing the emission into the atmosphere from the premises of noxious or offensive substances, and for rendering harmless and inoffensive such substances as may be so emitted.

(2) The Minister may, for purposes of subsection (1), by order published in the *Gazette*, prescribe any substance to be noxious or offensive.

(3) The reference in subsection (1) to the means to be used for the purposes therein mentioned, includes reference to the manner in which the plant provided for those purposes is used, and to the supervision of any operation involving the emission of the substances to which that subsection applies.

(4) Any reference in this section to a person having control of any premises is a reference to a person having control of the premises in connexion with the carrying on by him of a trade, business or other undertaking, whether for profit or not, and any duty imposed on any such person shall extend only to matters within his control.

General duties of manufacturers or suppliers as regard articles and substances used at workplaces

17.—(1) It shall be the duty of every employer to request from any person who designs, manufactures, imports or supplies any article for use at a workplace—

(*a*) to ensure that the article is designed and constructed to be safe and without risks to health when properly used;

(*b*) to carry out or arrange for the carrying out of such testing and examination as may be necessary for the performance of the duty imposed on him under subsection (1) (*a*);

(*c*) to take such steps as are necessary to secure that there is available, in connexion with the use of the article at workplace, adequate information about the use for which it is designed and has been tested, and about any conditions necessary to ensure that, when put to that use, the article will be safe and without risks to health.

(2) It shall be the duty of every person who undertakes the design or manufacture of any article for use at a workplace to carry out or arrange for the carrying out of any necessary research with a view to discover and, so far as is reasonably practicable, to eliminate or minimize any risks to safety or health to which the design or manufacture of the article may give rise.

(3) It shall be the duty of every person who erects or installs any article for use at a workplace in any premises where that

article is to be used by persons at work to ensure, so far as is reasonably practicable, that nothing about the way in which the article is erected or installed makes it unsafe or risky to health when properly used.

(4) It shall be the duty of every person who manufactures, imports or supplies any substance for use at a workplace—

(*a*) to ensure, so far as is reasonably practicable, that the substance is safe and without risks to health when properly used;

(*b*) to carry out or arrange for the carrying out of such testing and examination as may be necessary for the performance of the duty imposed on him under subsection (1) (*a*);

(*c*) to take such steps as are necessary to secure that there is available in connexion with the use of the substance at work, adequate information about the results of any relevant tests which have been carried out on, or in connexion with, the substance, and about any conditions necessary to ensure that it will be safe and without risks to health when properly used.

(5) It shall be the duty of every person who undertakes the manufacture of any substance for use at a workplace to carry out or, arrange for the carrying out of any necessary research with a view to discover and, so far as is reasonably practicable, eliminate or minimize any risks to safety or health to which the substance may give rise.

(6) Nothing contained in this section shall require any person to repeat any testing, examination or research which has been carried out otherwise than by him or at his instance, in so far as it is reasonable for him to rely on the results thereof for the purpose of those provisions.

(7) Any duty imposed on any person by any of the provisions of this section shall extend only to things done in the course of a trade, business or other undertaking carried on by him, whether for profit or not, and to matters within his control.

(8) Where a person (the "supplier") designs, manufactures, imports or supplies an article for or to another person (the "customer") for use at a workplace on the basis of a written undertaking by the supplier that the article is safe and without risks to health when properly used, the customer shall be relieved from the duty imposed by subsection (1) (*a*) to such extent as is reasonable having regard to the terms of the undertaking.

(9) Where a person (the "ostensible supplier") supplies any article or substance to another (the "customer") for use at a workplace under a hire-purchase agreement, conditional

sale agreement or credit sale agreement, and the ostensible supplier—

(*a*) carries on the business of financing the acquisition of goods by means other than such agreements; and

(*b*) in the course of that business acquires an interest in the article or substance supplied to the customer as a means of financing its acquisition by the customer from a third person (the "effective supplier"),

the effective supplier and not the ostensible supplier shall be deemed for purposes of this section as supplying the article or substance to the customer, and any duty imposed by this section on the ostensible supplier shall accordingly be imposed on the effective supplier and not on the ostensible supplier.

(10) For the purposes of this section, an article or substance shall not be regarded as properly used where it is used without regard to any relevant information or advice relating to its use which has been made available by a person by whom it was designed, manufactured, imported or supplied.

General duties of employees at workplaces

18. It shall be the duty of every employee while at a workplace—

(*a*) to take reasonable care for the safety and health of himself and that of other persons who may be affected by his acts or omissions; and

(*b*) as regards any duty or requirement imposed on an employer or any other person by this Act, to co-operate with the employer or other person so far as is necessary to enable that duty or requirement to be performed or complied with.

Interference with or misuse of safeguards

19. No person shall intentionally or recklessly interfere with or misuse anything provided in the interests of health, safety or welfare in pursuance of this Act.

Duty not to levy charges on employees

20. No employer shall levy or permit to be levied on any employee any charge in respect of anything done or provided in pursuance of this Act.

Safety committees

21. It shall be the duty of every employer to establish a safety committee in a workplace employing more than fifty employees or, having regard to the nature of the undertaking at the workplace, where the Director so directs.

PART IV

Health and Welfare

Cleanliness

22.—(1) Every workplace shall be kept clean, and free from effluvia arising from any drain, sanitary convenience or nuisance.

(2) Without prejudice to the generality of subsection (1)—

(*a*) accumulations of dirt and refuse shall be removed daily by a suitable method from the floors and benches of workrooms, and from stair cases and passages;

(*b*) the floor of every workroom shall be cleaned at least once every day by washing or, if it is effective and suitable, by sweeping or other method;

(*c*) all inside walls and partitions, and all ceilings or tops of rooms, and all walls, sides and tops of staircases shall—

(i) where they have a smooth and impervious surface, be washed with hot water and soap or other suitable detergent, or cleaned by any other suitable method, at least once in every period of six months;

(ii) where they are varnished or painted with a suitable varnish or paint applied in such a manner as to produce over the whole of the treated surface a compact continuous firm capable of being washed with hot water and soap or other suitable detergent, or cleaned by any other suitable method, be revarnished or repainted at intervals of not more than one year, and shall at least once in every period of six months be washed with hot water and soap or other suitable detergent or cleaned by any other suitable method;

(iii) in any other case, be kept whitewashed or colour-washed, and the whitewashing shall be repeated at least once in every period of six months;

(*d*) all outside walls shall be whitewashed or painted at least once every year;

(*e*) effective arrangements, as determined by the Director, shall be made for the treatment of wastes and effluent due to the manufacturing process carried on therein, so as to render such waste and effluent innocuous and for the safe disposal of the waste and effluent.

(3) Where it appears to the Director that in any class or description of workplace or part thereof any of the provisions of this section are not required for the purpose of keeping the workplace in clean state, or are by reason of special circumstances inappropriate or inadequate for such purpose, the Director may by notice published in the *Gazette*, direct that those provisions shall not apply to workplaces, or parts of workplaces, of that class or description, or shall apply as varied by the notice.

Overcrowding

23.—(1) A workplace shall not, while work is carried on, be so overcrowded as to cause risk of injury to the health of the persons employed therein.

(2) For purposes of subsection (1), a workplace shall be deemed to be overcrowded if the number of persons employed at any one time in any workroom is such that the amount of cubic

space allowed for each person so employed is less than eleven cubic metres.

(3) Every workroom shall be not less than three metres in height, as measured from the floor to the lowest point of the ceiling or, where there is no ceiling, to the lowest point of the roofing material.

(4) Where the Director is satisfied that owing to the special conditions under which the work is carried on in any workroom the application of subsection (2) or (3) to that workroom would be inappropriate or unnecessary, he may, by certificate in writing, except the workroom from those subsections, subject to any conditions specified in the certificate.

(5) If an inspector so requires, there shall be posted in the workroom a notice specifying the number of persons who may be employed in that room at any one time.

(6) In calculating the amount of cubic space in any room for purposes of this section, no space more than four metres from the floor shall be taken into account and, where a room contains a gallery, the gallery shall be treated as if it were partitioned off from the remainder of the room and forms a separate room.

(7) The Minister may make regulations with respect to any class or description of premises or parts thereof or any process, increasing the number of cubic metres to be allowed for every person employed in a workroom for purposes of this section.

Ventilation and temperature

24.—(1) Every workplace shall have effective and suitable provision for securing and maintaining the circulation of fresh air in each workroom, adequate ventilation of the room, and for rendering harmless, so far as practicable, all such fumes, dust and other impurities generated in the course of any process or work carried on in the workplace as may be injurious to health.

(2) Every workplace shall have effective and suitable provision for securing and monitoring in every workroom such temperature as will secure to workers therein reasonable conditions of comfort and prevent injury to health.

(3) Where the nature of the work carried on in the workplace involves, or is likely to involve, the production of excessively high temperatures, adequate measures shall be taken to protect employees therein by isolating the process which produces such temperatures in the workroom or insulating the hot parts or by other effective means.

Lighting

25.—(1) Every workplace shall have effective provision for securing and maintaining sufficient and suitable lighting, whether natural or artificial, in every part of a workplace in which persons are working or passing.

(2) All glazed windows and skylights used for the lighting of workrooms at every workplace shall, so far as practicable, be

kept clean on both the inner and outer surfaces and free from obstruction:

Provided that this subsection shall not affect the whitewashing or shading of windows and skylights for the purpose of mitigating heat or glare.

(3) The Minister may make regulations specifying a standard of suitable and sufficient lighting for purposes of this section.

Drainage of floor

26. Where any process is carried on which renders the floor at any workplace liable to be wet, and the wet is capable of being removed by drainage, effective means shall be provided and maintained for drainage and disposal of the wet.

Sanitary conveniences

27.—(1) Every occupier shall provide sufficient and suitable sanitary conveniences for persons employed in the workplace, which shall be maintained and kept clean, and effective provision shall be made for lighting the conveniences and, where persons of both sexes are or are intended to be employed (except in the case of workplaces where the only persons employed are members of the same family dwelling there), such conveniences shall afford proper separate accommodation with a distinct approach for persons of each sex.

(2) The Minister may make regulations specifying sufficient and suitable sanitary conveniences for purposes of this section.

Washing facilities

28.—(1) Every occupier shall provide at a workplace separate washing facilities for male and female employees, easily accessible, in the proportion of at least one wash hand basin and one shower for every twenty employees, per a shift where shifts are operational.

(2) The washing facilities referred to in subsection (1) shall be maintained in a clean and orderly condition for the use of all persons employed, and shall have separate entrances for each sex.

Drinking water

29.—(1) Every occupier shall provide at a workplace an adequate supply of clean and potable drinking water, maintained at suitable points conveniently accessible to all persons employed.

(2) Every supply of drinking water which is not laid on shall be contained in suitable vessels, and shall be renewed at least daily, and all practicable steps shall be taken to preserve the water and vessels from contamination; and a drinking water supply whether laid on or not, shall be clearly marked "DRINKING WATER" in English and in such vernacular languages as the Director may specify.

(3) The facilities provided for drinking water in accordance with this section shall be separated from those provided for washing in accordance with section 28.

Change rooms

30.—(1) Every occupier shall provide, for the use of employees at a workplace, adequate and suitable accommodation for hanging or stowing personal clothing not worn during working hours, and where protective clothing is provided to employees in accordance with section 58, a suitable place or places shall be provided for the storage of such protective clothing.

(2) An occupier shall not store, or permit to be stored, any goods or materials connected with work processes, or waste of any description, in any change room.

Seats

31. (1) Every occupier shall provide and maintain at a workplace a sufficient number of seats for the use of those employees whose work is ordinarily performed standing, and shall permit such employees to take advantage of any opportunities for resting which may occur in the course of their employment.

(2) Every occupier shall supply and maintain at a workplace chairs with suitable back-rest for the use of employees who ordinarily perform their work sitting.

Facilities for meals

32.—(1) Every occupier shall provide and maintain in good condition, suitable facilities where employees may prepare and consume their meals.

(2) No person shall be permitted to consume food or drink in any room where any poisonous or otherwise injurious substance is so used as to give rise to any dust or fume.

First aid

33.—(1) Every occupier shall provide and maintain a first aid box or cupboard of the prescribed standard which is readily accessible.

(2) Nothing except appliances or requisites for first aid shall be kept in a first aid box or cupboard.

(3) Each first aid box or cupboard shall be placed under the charge of a qualified first aider who shall be readily available during working hours, and a notice, in English and in such a vernacular language as the Director may specify, shall be affixed in every workroom stating the name of the person in charge of the first aid box or cupboard provided in respect of that room.

(4) Every occupier shall make arrangements for ensuring the removal for medical attention of employees who have suffered an accident or sudden illness.

(5) The Minister may make regulations prescribing the type and quantity of medical requisites to be available at workplaces and the establishment of clinics at workplaces.

Medical examination

34.—(1) Where, in the opinion of the Director, the nature of any process, activity or occupation in a workplace or on structural work is such as to make it necessary, in the interest of health or safety, for any person employed therein to be

examined by a medical practitioner, the Director may direct that such person shall be so examined before he is engaged in the process, activity or occupation, and at such intervals thereafter as the Director may direct.

(2) The expense of any medical examination referred to in subsection (1) shall be borne by the employer.

(3) Every medical practitioner who, upon examination of any person in accordance with this section, is of the opinion that such person is suffering from the effects of any dangerous substance contracted as a result of his employment in a workplace or whilst engaged on structural work, shall report the matter in writing to the Director.

PART V

Machinery Safety

Fencing and guarding of dangerous machinery

35.—(1) Every dangerous part of any moving machinery or component thereof shall be securely fenced, unless it is of such construction as to be safe to every person working on the premises as it would be if securely fenced:

Provided that, in so far as the safety of a dangerous part of machinery cannot by reason of the nature of the operation be secured by means of a fixed guard, the requirements of this section shall be deemed to have been complied with if a device is provided which, in the opinion of the Director, satisfactorily protects every person employed or working on the premises from coming into contact with that part.

(2) Any part of stock-bar which projects beyond the headstock of a lathe shall be securely fenced, unless it is in such a position as to be as safe to every person employed or working on the premises as it would be if securely fenced.

(3) Every part of any transmission machinery shall be securely fenced, unless it is in such a position or of such construction as to be safe to every person employed or working on the premises as it would be if securely fenced.

(4) The Minister may, with respect to any machine or any process in which a machine is used, make regulations requiring the fencing of materials or articles which are dangerous while in motion in the machine.

Provision as to unfenced machinery

36. In determining, for the purposes of section 35, whether any part of machinery is in position or of construction to be safe to every person employed or working on the premises as it would be if securely fenced—

(*a*) no account shall be taken of any person carrying out, while the part of machinery is in motion, an examination thereof or any lubrication or adjustment shown by such

examination to be immediately necessary, being an examination, lubrication or adjustment which it is necessary to carry out while the part of machinery is in motion; and

(*b*) in the case of any part of transmission machinery used in any process in any workplace with respect to which the Director has declared, by certificate in writing, that he is satisfied that, owing to the continuous nature of such process, the stopping of that part would seriously interfere with the progress of the process in such a workplace, no account shall be taken of any person carrying out in the workplace, by such methods and in such circumstances and subject to such conditions as may be specified in the certificate, any lubrication or any mounting or shipping of belts:

Provided that this section shall only apply where—

(*a*) the examination, lubrication or other operation is carried out by a worker who—

(i) has attained the apparent age of eighteen years;

(ii) has been sufficiently trained for the purpose of the work entailed by, and is acquainted with, the dangers of moving machinery arising in connexion with such examination, lubrication or other operation;

(iii) has been appointed by the occupier of the workplace, by certificate attached to the general register, to carry out such examination, lubrication or other operation, and has been furnished by the occupier with a copy of such certificate signed by him;

(iv) has been provided by the occupier with, and is wearing, a close-fitting and single-piece overall suit in good repair, which is so fastened as not to have dangling loose ends and has no external pockets other than a hip pocket;

(*b*) another person, instructed as to the steps to be taken in case of emergency, is immediately available within sight or hearing of any person carrying out such examination, lubrication or other operation;

(*c*) such steps as may be necessary, including where appropriate and reasonably practicable, the erection of a barrier, are taken to prevent any person, other than a person carrying out the operation, from being in a position where he is exposed to risk of injury from the machinery; and

(*d*) any ladder in use for the carrying out of such examination, lubrication or other operation is securely fixed or lashed, or is firmly held by a person stationed at the foot of the ladder.

Construction and maintenance of fencing

37. All fencing and other safeguard provided in accordance with the provisions of this Part shall be substantial construction, and shall be constantly maintained and kept in a position while the parts required to be fenced or safeguarded are in motion or in use, except when any such parts are necessarily exposed for

examination and for any lubrication or adjustment shown by such examination to be immediately necessary, and all the conditions specified in section 36 are complied with.

Hoists and lifts

38.—(1) Every hoist and lift at a workplace shall be of good mechanical construction, sound material and adequate strength, and shall, together with all gates, interlocking or other devices required by this section to be fitted, be properly maintained.

(2) Every hoist or lift shall be thoroughly examined at least once in every period of six months by a competent person, and a report of the result of every such examination, in the prescribed form and containing the prescribed particulars, shall be signed by the person making the examination, and shall within fourteen days be entered in or attached to the general register and a copy sent to the Director.

(3) Where any examination shows that the hoist or lift cannot continue to be used with safety unless certain repairs are carried out immediately or within a specified time, the person making the report shall within fourteen days of the completion of the examination send a copy of the report to the Director who may issue a prohibition notice in accordance with section 77.

(4) Every hoist way or lift way shall be efficiently protected by a substantial enclosure fitted with gates, being such an enclosure as to prevent, when the gates are shut, any person falling down the way or coming into contact with any moving part of the hoist or lift.

(5) Every gate referred to in subsection 4 shall be fitted with efficient interlocking or other devices to ensure that the gate cannot be opened except when the cage or platform is at the landing and that the cage or platform cannot be moved away from the landing until the gate is closed.

(6) Every hoist or lift and every enclosure referred to in subsection 4 shall be so constructed as to prevent any part of any person or any goods carried in the hoist or lift being trapped between any part of the hoist or lift and any fixed structure or between the counter-balance weight and any other moving part of the hoist or lift.

(7) The following information shall be displayed in a conspicuous place on every hoist or lift—

(*a*) the maximum working load; and

(*b*) the maximum number of persons which the hoist or lift is designed to carry,

and no load greater than the maximum working load, including goods and persons, shall be carried on any hoist or lift.

(8) The following additional requirements shall apply to hoists or lifts used for carrying persons, whether together with goods or otherwise—

(*a*) efficient automatic devices shall be provided and maintained to prevent the cage or platform overrunning;

(*b*) every cage shall, on each side from which access is afforded to a landing, be fitted with a gate, and in connexion with every such gate, efficient devices shall be provided to secure that, when containing persons or goods, the cage cannot be raised or lowered unless the gate is closed, and will come to rest when the gate is opened; and

(*c*) where the platform or cage is suspended by rope or chain, there shall be at least two ropes or chains separately connected with the platform or cage, each rope or chain and its attachments being capable of carrying the whole weight of the platform or cage and its maximum working load, and efficient devices shall be provided and maintained to support the platform or cage with its maximum chains or any of their attachments.

(9) In the case of a hoist or lift not connected with mechanical power—

(*a*) the reference to "six months" in subsection (2) shall be substituted by "twelve months";

(*b*) subsection (5) shall be modified to read—

"Any such gate as aforesaid shall be kept closed and fastened except when the cage or platform is at rest at the landing"; and

(*c*) subsection (8) shall not apply.

(10) The key to the motor room of every hoist or lift shall be kept readily available to fire and ambulance services for rescue or other emergency purposes.

(11) For the purposes of this section, no lifting machine or appliance shall be deemed to be a hoist or lift unless it has a platform or cage the direction of movement of which is restricted by a guide or guides.

(12) If it is shown to the satisfaction of the Director that it would be unreasonable in the special circumstance of the case to enforce any requirement of this section in respect of any class or description of hoist or lift, hoist way or lift way, the Director may by notice published in the *Gazette* exempt from such requirements any hoist, lift, hoist way or lift way of that class or description, and any such exemption may be unqualified or may be subject to such conditions as may be contained in the notice.

Escalators

39. Every escalator in a workplace shall be examined by a competent person after every period of six months, and a report of the result of every such examination in the prescribed form and containing the prescribed particulars shall be signed by the person making the examination and shall be submitted to the Director within fourteen days of the date of examination.

Cranes and other lifting machines

40.—(1) All parts and working gear whether fixed or movable, including the anchorage and fixing appliances, of every crane or other lifting machine shall be of good construction, sound material, adequate strength and free from patent defect, and shall be properly maintained.

(2) All parts and working gear of a crane or other lifting machine shall be thoroughly examined by a competent person at least once every twelve months and also after every substantial alteration or repair and a report of the result of every such examination in the prescribed form and containing the prescribed particulars shall be signed by the person making the examination and submitted to the Director within fourteen days of the date of examination.

(3) No lifting machine shall be taken into use in any workplace for the first time in that workplace unless it has been tested, and all such parts and working gear of the machine as are specified in subsection (1) have been thoroughly examined by a competent person, and that person has issued a signed certificate specifying the safe working load or loads of the machine:

Provided that this subsection shall not apply with respect to any lifting machine in respect of which there has been obtained, and kept available for inspection, a certificate of test and thorough examination issued by the manufacturer of the machine.

(4) All rails on which a travelling crane moves and every track on which the carriage of a transporter or runway moves shall be of proper size and adequate strength, and have an even running surface; and any such rails or track shall be properly laid, adequately supported or suspended, and properly maintained.

(5) There shall be conspicuously displayed on every lifting machine the safe working load or loads thereof, except that, in the case of a jib crane so constructed that the safe working load may be varied by the raising or lowering of the jib, there shall be attached either an automatic indicator of safe working loads or a table indicating the safe working loads at corresponding inclinations of the jib or corresponding radii of the load.

(6) No lifting machine shall, except for the purpose of a test, be loaded beyond the safe working load as marked or indicated in accordance with this section.

(7) If any person is employed or working on or near the wheel track of a self-propelled overhead travelling crane in any place where he would be liable to be struck by the crane, effective measures shall be taken to ensure that the crane does not approach within six metres of that place.

(8) A lifting machine shall not be operated except by a person trained and competent to operate that machine:

Provided that it shall be permissible for such machine to be operated by a person who is under the direct supervision of a qualified person for the purpose of training; and no person under eighteen years of age shall be employed to operate any lifting machine driven by mechanical power or to give signals to the operator of any such machine.

(9) For purposes of this section the expression "lifting machine" includes crane, crab, winch, toggle, pulley block, gin wheel, transporter or runway.

Chains, ropes and lifting tackle

41.—(1) Every occupier shall comply with the following provisions in relation to every chain, rope or lifting tackle used in a workplace for the purpose of raising or lowering persons, goods or materials—

(*a*) no chain, rope or lifting tackle shall be used unless it is of good construction, sound material, adequate strength and free from patent defect;

(*b*) a table showing the safe working loads of every kind and size of chain, rope, or lifting tackle in use and, in the case of a multiple sling, the safe working loads at different angles of the legs shall be prominently displayed on the premises, or alternatively in relation to any lifting tackle the safe working load thereof, or in the case of multiple sling, the safe working load at different angles of the legs, shall be plainly marked upon it;

(*c*) no chain, rope or lifting tackle shall be used for any load exceeding the safe working load;

(*d*) all chains, ropes and lifting tackle in use shall be thoroughly examined by a competent person at least once every period of six months or at such greater intervals as the Director may direct;

(*e*) no chain, rope or lifting tackle, except a fibre rope or fibre sling, shall be taken into use in any workplace for the first time unless it has been tested and thoroughly examined by a competent person, who shall determine the safe working load:

Provided that this paragraph shall not apply to any chain, rope or lifting tackle in respect of which there has been obtained and is kept available for inspection, a certificate of test and examination issued by the manufacturer of the chain, rope or lifting tackle; and

(*f*) wrought iron chains or lifting tackle in use in any workplace shall be annealed or otherwise treated by heat at such intervals as the Director may direct.

(2) For purposes of this section the expression "lifting tackle" includes chain, slings, rope, rope slings, hooks, shackles and swivels.

Steam boilers

42.—(1) Every steam boiler and all its fittings and attachments shall be of good construction, sound material, adequate

strength and free from patent defect, and shall be properly maintained.

(2) Every steam boiler, whether separate or one of a range—

(*a*) shall have attached to it—

(i) a suitable safety valve, separate from and incapable of being isolated by any stop-valve, which shall be adjusted to prevent the boiler being worked at a pressure greater than the maximum permissible working pressure, and shall be fixed directly to, or as close as practicable to the boiler;

(ii) a suitable stop-valve, connecting the boiler to the steam pipe;

(iii) a correct steam pressure gauge, connected to the steam space and easily visible by the boiler attendant, which shall indicate the pressure of steam in kilograms per square centimetre, and have marked upon it, in a distinctive colour, the maximum permissible working pressure;

(iv) at least one water gauge of transparent material or other type approved by the Director, to show the water level in the boiler, and, if the gauge is of the glass tubular type and the working pressure in the boiler normally exceeds two and half kilograms per square centimetre, the gauge shall be provided with an efficient guard but not so as to obstruct the reading of the gauge;

(v) where it is one or two or more boilers, a plate bearing a distinctive number which shall be easily visible shall be provided;

(*b*) shall have means for attaching a test pressure gauge; and

(*c*) shall have a suitable fusible plug or an efficient low-water alarm device:

Provided that paragraph (*a*) (ii) shall not apply with respect to economizers, and paragraphs (*a*) (iii) and (v), and paragraphs (*b*) and (*c*) shall not apply with respect to either economizers or superheaters.

(3) For the purposes of subsection (2) a lever-valve shall not be deemed a suitable safety valve unless the weight is secured on the lever in the correct position.

(4) No person shall enter or be in any steam boiler which is one of a range of two or more steam boilers unless—

(*a*) inlets through which steam or hot water might otherwise enter the boiler from any other part of the range are disconnected from that part; or

(*b*) all valves or taps controlling such entry are closed and securely locked, and, where the boiler has a blow-off pipe in common with one or more other boilers or delivering into a

common blow-off vessel or pump, the blow-off valve or tap on each such boiler is so constructed that it can only be opened by a key which cannot be removed until the valve or tap is closed and is the only key in use for that set of blow-off valves or taps.

(5) No work shall be permitted in any boiler-furnace or boiler-flue until it has been sufficiently cooled, by ventilation or otherwise, to make work safe for the person employed.

(6) Every steam boiler and all its fittings and attachments shall be thoroughly examined by an inspector at least once in every period of twelve months, and also after any extensive repair:

Provided that the person making any such examination may specify in writing a period exceeding twelve months but not exceeding eighteen months within which the next examination is to be made.

(7) Any examination in accordance with subsection (6) shall consist of an examination of the boiler when it is cold and the interior and exterior have been prepared in the prescribed manner, and, except in the case of an economizer or superheater, of an examination when it is under normal steam pressure, and the two parts of the examination may be carried out by different persons.

(8) The examination under steam pressure shall be made as soon as possible after the examination of the boiler when cold, and the person making the examination shall see that the safety valve is so adjusted as to prevent the boiler being worked at a pressure greater than the maximum permissible working pressure.

(9) A report of the result of every examination, in the prescribed form and containing the prescribed particulars, including particulars of the maximum permissible working pressure, shall be entered in or attached to the general register.

(10) No steam boiler which was previously been used shall be taken into use in any workplace for the first time in that workplace until it has been examined in accordance with the subsections (6), (7) and (8) and reported on in accordance with subsection (9).

(11) No new steam boiler shall be taken into use unless—

(*a*) there has been obtained from the manufacturer of the boiler, or from a boiler-inspecting company or association, a certificate specifying the maximum permissible working pressure thereof, and stating the nature of the tests to which the boiler and fittings have been submitted, and the certificate is kept available for inspection, and the boiler is so marked as to enable it to be identified as the boiler to which the certificate relates; and

(*b*) the steam boiler has been thoroughly examined by the inspector, and found to be of adequate strength and free from patent defect.

(12) Where the report of any examination under this section specifies condition for securing the safe working of a steam boiler, the boiler shall not be used except in accordance with those conditions.

(13) Where portable electric lights are used during the cleaning, repair or inspection of a steam boiler or auxiliary equipment, the user shall ensure that such lights are operated at a pressure not greater than 50 volts.

(14) Every steam boiler attendant shall be properly instructed as to his duties.

(15) For the purposes of this section—

(*a*) the examination of a boiler when it is cold and its examination when it is under steam pressure shall be treated as separate examinations;

(*b*) "maximum permissible working pressure" means, in case of a new steam boiler, that specified in the certificate referred to in subsection (10) and, in the case of a steam boiler which has been examined in accordance with this section, that specified in the report of the last examination;

(*c*) "steam boiler" means any closed vessel in which for any purpose steam is generated under pressure greater than atmospheric pressure, and includes any economizer used to heat water being fed to any such vessel, and any superheater used for heating steam.

(16) This section shall not apply to the boiler of any locomotive used on any railway or to the boiler of any ship.

Notification of repairs, etc. to boiler

43.—(1) The user of a steam boiler shall forthwith notify the Director in writing when—

(*a*) he proposes to execute major repairs such as general retubing, renewal of furnaces or flues, fixing of new plates or patches, and changing of stays and gussets;

(*b*) he ceases permanently to use a boiler;

(*c*) he transfers a boiler to any other person, in which case he shall advise the Director of the name and address of such person;

(*d*) he proposes to resite a stationary boiler; or

(*e*) a boiler is damaged.

(2) No person shall make any modification to any part of any steam boiler or steam receiver, not in accordance with the maker's instructions, without the prior approval of the Director.

Additional information on new boilers

44.—(1) In the case of new steam boilers, excepting those which are of welded construction, the user of the boiler shall supply the Chief Inspector with—

(*a*) the maker's complete specifications;

(*b*) dimensioned drawings of the complete boiler, showing the thickness of plates, riveting details and the strength of the materials used; and

(*c*) the maker's certificate.

(2) Every new boiler, whether of rivetted or fusion-welded construction, shall be constructed to conform with acceptable international specifications as may be approved by the Director, either generally or in any particular case.

Exemption for steam tube ovens, etc.

45. Section 42 (2), (3), (4) and (7) and section 43 shall not apply to steam tube ovens and steam tube hotplates used for the baking or heating of food:

Provided that—

(*a*) in the case of an oven—

(i) a thermometer for the purpose of indicating the temperature of the oven is fitted in a suitable position where it is easily visible, and is properly maintained, and an oven having more than one furnace or more than one baking chamber shall be fitted with at least one thermometer in respect of each furnace or baking chamber;

(ii) the ordinary maximum working temperature of the oven is marked in a distinctive colour on each thermometer;

(iii) the oven is not worked at a higher temperature than the ordinary maximum working temperature, unless a certificate has been obtained from the makers, and is kept available for inspection, certifying that the oven can safely be used at a higher temperature than the ordinary maximum working temperature and specifying the conditions, including the maximum permissible working temperature, at which it may be so used;

(*b*) in the case of a hotplate—

(i) a correct steam pressure gauge, easily visible and properly maintained, is fitted to at least one of the tubes, and is provided with an arrangement for recording the highest pressure generated in that tube at any time, and the maximum permissible working pressure is marked in a distinctive colour on each pressure gauge;

(ii) the hotplate is not worked at a pressure higher than the maximum permissible pressure;

(*c*) the brickwork surrounding the tubes in the furnace, whether of an oven or a hotplate, is properly maintained so as to prevent excessive exposure of tubes to the fire or flame;

(*d*) accumulations of dust, soot or other deposit are removed by brushing or other effective means from the flues and tubes of each oven or hotplate, and, in the case of an oven or hotplate fired with solid fuel, such removal is carried out at intervals of not longer than three months;

(*e*) every tube fitted to an oven or hotplate has been properly tested by hydraulic pressure before sealing up, and a certificate of such test specifying the test pressure applied, and signed by the person making or supervising such test, is kept available for inspection and such certificate may relate to tests of more than one tube;

(*f*) instructions for working the oven or hotplate are affixed on a placard prominently displayed near the working place at the oven or hotplate.

Steam receivers and steam containers

46.—(1) Every steam receiver and all its fittings shall be of good construction, sound material, adequate strength and free from patent defect, and shall be properly maintained.

(2) Every steam receiver which is not constructed and maintained to withstand with safety the maximum permissible working pressure of the boiler or the maximum pressure which can be obtained in the pipe connecting the receiver with any other source of supply, shall be fitted with—

(*a*) a suitable reducing valve or other suitable automatic appliance to prevent the safe working pressure of the receiver being exceeded;

(*b*) a suitable safety valve adjusted to permit the steam to escape as soon as the safe working pressure is exceeded, or a suitable appliance for cutting off automatically the supply of steam as soon as the safe working pressure is exceeded;

(*c*) a correct steam pressure gauge indicating the pressure of steam in the receiver in kilograms per square centimetre;

(*d*) except where only one steam receiver is in use, a plate bearing a distinctive number which is easily visible,

and the safety valve and pressure gauge shall be fitted either on the steam receiver or on the supply pipe between the receiver and the reducing valve or other appliance to prevent the safe working pressure being exceeded.

(3) For purposes of subsections (2) (*a*), (*b*), (*c*) and (*d*), any set of receivers supplied with steam through a single pipe and forming part of a single machine shall be deemed as one receiver, and for purposes of subsections (2) (*a*), (*b*) and (*c*) any other set of receivers supplied with steam through a single pipe shall be deemed as one receiver:

Provided that this subsection shall not apply to any such set of receivers unless a reducing valve or other appliance to prevent

the safe working pressure being exceeded is fitted on the single pipe.

(4) Every steam receiver and all its fittings shall be thoroughly examined by an inspector so far as the construction of the receiver permits, at least once in every period of twenty-four months, and a report of the result of every such examination, in the prescribed form and containing the prescribed particulars, including particulars of the safe working pressure, shall be entered in or attached to the general register.

(5) No steam receiver which has previously been used shall be used in any workplace for the first time unless it has been examined and reported on in accordance with subsection (4).

(6) No new steam receiver shall be used in any workplace unless—

(*a*) there has been obtained from the manufacturer of the receiver, or from a boiler-inspecting company or association, a certificate specifying the safe working pressure of the receiver, and the certificate is kept available for inspection, and the receiver is so marked as to enable it to be identified as the receiver to which the certificate relates; and

(*b*) the receiver has been thoroughly examined by the inspector, and found to be of adequate strength and free from patent defect.

(7) Every steam container shall be so maintained as to ensure that the outlet is at all times kept open and free from obstruction.

(8) For purposes of this section—

(*a*) "maximum permissible working pressure" means, in the case of a new steam receiver, that specified in the certificate referred to in subsection (6), and in the case of a steam receiver which has been examined in accordance with this section, that specified in the report of the last certificate;

(*b*) "safe working pressure" means, in the case of a new steam receiver, that specified in the certificate referred to in subsection (6), and in the case of a steam receiver which has been examined in accordance with subsection (5), that specified in the report of the last examination.

Air receivers

47.—(1) Every air receiver and its fittings shall be of sound construction and conform with acceptable international specifications as may be approved by the Director, generally or in any particular case.

(2) Every air receiver shall—

(*a*) have marked upon it, so as to be plainly visible, the safe working pressure;

(*b*) in the case of a receiver connected with an air compressing plant, either be constructed to withstand with safety the maximum pressure which can be obtained in the compressor, or be fitted with a suitable reducing valve or other suitable appliance to prevent the safe working pressure of the receiver being exceeded;

(*c*) be fitted with a suitable safety valve adjusted to permit the air to escape as soon as the safe working pressure is exceeded;

(*d*) be fitted with a correct pressure gauge indicating the pressure in the receiver in kilograms per square centimetre;

(*e*) be fitted with a suitable appliance for draining the receiver;

(*f*) be provided with a suitable manhole, handhole or other means to allow the interior of the air receiver to be thoroughly cleaned; and

(*g*) in a case where more than one receiver is in use in the workplace, bear a distinguishing mark which shall be easily visible:

Provided that paragraph (*e*) shall not apply to—

(i) any fixed or portable vessel, not being part of a spraying pistol, used for the purpose of spraying by means of compressed air, any paint, varnish, lacquer or similar material, or similar material, or any insecticide;

(ii) any vessel in which oil is stored and from which it is forced by compressed air.

(3) For purposes of subsection (2), any set of air receivers supplied with air through a single pipe shall be deemed as one receiver:

Provided that, where a suitable reducing valve or other suitable appliance to prevent the safe working pressure being exceeded is required to be fitted, this section shall not apply unless the valve or appliance is fitted on the single pipe.

(4) Every air receiver and all its fittings shall be properly maintained and shall be thoroughly examined by an inspector at least once in every period of twenty-four months, and a report of the result of every such examination and test, in the prescribed form and containing the prescribed particulars, including particulars of the safe working pressure, shall, as soon as practicable, be entered in or attached to the general register:

Provided that in the case of a receiver of solid drawn construction—

(*a*) the Director may specify in writing a period exceeding twenty-four months but not exceeding forty-eight months within which the next examination is to be made; and

(*b*) if it is so constructed that the internal surface cannot be thoroughly examined, a suitable hydraulic test of the receiver shall be carried out in lieu of visual internal examination.

(5) This section shall not apply to any air receiver forming part of a plant, machinery or equipment of any ship or to any air receiver on any locomotive, carriage, wagon or other rolling stock used on any railway for the haulage of goods or passengers.

(6) For purposes of this section "safe working pressure" means the pressure specified in the report of the last examination carried out in accordance with this section.

Gas plants

48.—(1) Subject to subsection (2), every gas generator, cleaning plant and storage plant shall be installed in the open air.

(2) An installation referred to subsection (1) may be protected by a shed or structure, and in respect of every such shed or structure—

(*a*) as much permanent ventilation, opening directly to the open air, as is practicable shall be provided; and

(*b*) the floor shall be recessed or filled so as to form a retaining space of sufficient capacity to contain at least seventy-five per cent of inflammable liquid contained therein, depending on the type of gas.

(3) Every shed or structure housing a gas generator, cleaning plant or storage plant shall be detached from other buildings.

(4) Every gas generator, cleaning plant and storage plant shall be so installed and maintained as to be free of leaks and to prevent unintentional opening of control valves.

(5) Fuel oils and inflammable liquids within a shed housing a gas generator shall not exceed in requirements for one day's production.

(6) All structures housing a gas plant shall be protected against lightning.

Gas cylinders

49. Cylinders for compressed, dissolved or liquified gases shall be—

(*a*) of sound material and good construction, and free from patent defects;

(*b*) distinctively identified as to their contents;

(*c*) fitted with a suitable pressure gauge;

(*d*) protected against excessive variation of temperature, direct rays of sunlight and continuous dampness while in storage;

(*e*) whether charged or empty, maintained in an upright position;

(*f*) handled with care to avoid violent shocks; and

(*g*) transported on suitably designed carriers.

Fees

50. The Minister may make regulations prescribing fees for any examination or test carried out under this Part, and such fees shall be paid in respect of each such examination or test.

PART VI

Health and Safety

Hazardous substances

51.—(1) Manufacturers, importers and suppliers of hazardous substances used at workplaces, including those in the agricultural sector, shall provide sufficient information on such substances with the precautions to be taken.

(2) In the use of all materials containing hazardous substances and in the removal and disposal of wastes; the health of the workers and of the public and the preservation of the environment shall be safeguarded.

(3) Hazardous substances shall be clearly labelled giving their relevant characteristics and instruction on their use.

(4) Containers of hazardous substances shall carry, or be accompanied by, instructions for the safe handling of the contents and procedures to be followed in case of spillage.

(5) In application of hazardous substances preference shall be given to means other than spraying, such as by brush or, where feasible roller.

(6) Where the use of toxic substances or other volatile chemical substances, including thinners and paints cannot be avoided, special control measures, including local exhaust ventilation, shall be instituted.

(7) Where the use of hazardous chemicals is likely to penetrate the skin and cause rash, skin contact with hazardous chemical shall be avoided and personal hygiene and the type of clothing worn shall be such as to enable rapid removal of any chemical from skin contact.

(8) Where it is necessary to deal with proven carcinogenic substances, particularly in work involving bituminous tar, asphalt, asbestos fibres, pitch, heavy oils, and aromatic solvents, strict measures shall be taken to avoid inhalation and skin contact.

Vessels, etc., containing dangerous substances

52.—(1) Every fixed vessel, structure, sump or pit of which the edge is less than one metre above the highest ground or platform from which a person might fall into, shall, if it contains any scalding, corrosive or poisonous liquid, either be securely covered or be securely fenced to at least one metre above that

ground or platform, and where by reason of the nature of the work neither secure covering nor secure fencing to that height is practicable, all practicable steps shall be taken by covering, fencing or other means to prevent any person from falling into the vessel, structure, sump or pit.

(2) Where any fixed vessel, structure, sump or pit contains any scalding, corrosive or poisonous liquid and is not securely covered, no ladder, stair or gangway shall be placed above, across or inside such vessel, structure sump or pit unless the ladder, stair or gangway is—

(*a*) at least five hundred millimetres wide; and

(*b*) securely fenced on both sides to a height of at least one metre and securely fixed.

(3) Where any vessel, structure, sump or pit referred to in subsection (2) adjoin, and the space between them, clear of any surrounding brick or other work, is less than five hundred millimetres in width or is not securely fenced on both sides to a height of at least one metre, secure barriers shall be placed to prevent passage between them.

Bulk storage of dangerous substances

53.—(1) Bulk storage of dangerous substances shall only be located at a suitable site approved by the Director.

(2) Every area for the bulk storage of dangerous substances shall—

(*a*) be constructed and maintained with suitable material;

(*b*) be adequately ventilated;

(*c*) have adequate storage space;

(*d*) be capable of containing not less than seventy-five per cent of spillage;

(*e*) have an inventory of the substances in storage maintained and prominently displayed.

(3) Storage tanks for the bulk storage of dangerous substances shall—

(*a*) be constructed and maintained with suitable material according to approved standards;

(*b*) have suitable containment for spillage of not less than seventy-five percentage; and

(*c*) have suitable venting facilities.

Precautions in relation to explosives, etc.

54.—(1) Where, in connexion with any grinding, sieving or other process giving rise to dust, gas or vapour there may escape into any workroom dust, gas or vapour of such a character and to such an extent as to be liable to explode on ignition, all practicable steps shall be taken to prevent such an explosion by—

(*a*) enclosure of any plant used in the process;

(*b*) removal or prevention of accumulation of the dust, gas or vapour; and

(*c*) exclusion or effective enclosure of possible sources of ignition.

(2) Where, in any plant used in any process referred to in subsection (1), there is present dust, gas or vapour of such a character and to such an extent as to be liable to explode on ignition, then, unless the plant is so constructed as to withstand the pressure likely to be produced by any such explosion, all practicable steps shall be taken to restrict the spread and effects of such an explosion by the provision, in connexion with the plant, of chokes, baffles and vents, or other equally effective appliances.

(3) No plant, tank or vessel which contains or has contained any explosive or inflammable substance shall be subjected to any welding, brazing or soldering operation, or to any cutting operation which involves the application of heat, until all practicable steps have been taken to remove the explosive or inflammable substance and any fumes arising therefrom, or to render them non-explosive or non-inflammable; and if any plant, tank or vessel has been subjected to any such operation as aforesaid, no explosive or inflammable substance shall be allowed to enter the plant, tank or vessel until the metal has cooled sufficiently to prevent any risk of igniting the substance.

(4) The Director may, in any case where he is satisfied that compliance with the requirements of subsection (3) is unnecessary or impracticable, by certificate in writing, grant exemption from any of the requirements of subsection (3), subject to such conditions as may be specified in the certificate.

Precautions in relation to work in confined spaces

55.—(1) Where work is done inside any chamber, tank, vat, pit or other confined space in which dangerous fumes are liable to be present—

(*a*) the confined space shall be provided with adequate means of egress for persons entering or working therein; and

(*b*) no person shall enter the confined space for any purpose unless—

(i) all practicable steps shall have been taken to remove any fumes which may be present and to prevent any ingress of fumes, and it has been ascertained, by a suitable test, that the space is free from dangerous fumes;

(ii) the person entering wears a belt to which there is securely attached a rope of which the free end is held by a person outside, and the person entering shall wear a suitable breathing apparatus; and

(iii) a suitable permit shall have been issued by a competent person to facilitate safe completion of the work.

Prevention of fire

56.—(1) There shall be provided and maintained in every workplace, adequate and suitable means for extinguishing fire, which shall be readily accessible.

(2) Chemical fire-extinguishers shall be freshly charged at intervals not greater than those specified by the manufacturers, or otherwise once annually, and tested by the application of such hydraulic pressure thereto as shall be suited to the type of extinguisher tested, at intervals of not more than four years; and the dates of recharging the extinguisher and the last hydraulic test shall be clearly marked on the body of the extinguisher or on a tab securely attached thereto.

(3) All stocks of inflammable substances shall be kept in a fire-resisting store or in a safe place outside any occupied building:

Provided that no such store shall be so situated as to endanger the means of escape from the workplace or from any part thereof in the event of a fire occurring in the store.

(4) No fire, flame, open light or other agent likely to ignite volatile and inflammable substances shall be allowed or used in any part of a workplace in which volatile and inflammable substances are used.

(5) No person shall smoke in any part of a workplace where volatile and inflammable substances are used, and a notice prohibiting smoking shall be posted in a conspicuous place in every such part of the workplace.

Means of escape in case of fire

57.—(1) Every workplace shall have adequate means of escape in case of fire for the persons employed therein.

(2) Every means of escape in case of fire shall be properly maintained and kept free from obstruction.

(3) The contents of any room in which persons are employed shall be so arranged or disposed that there is a free passageway for all persons employed in the room to a means of escape in case of fire.

(4) The doors of a workplace and of any room therein, and any doors which afford a means of exit for persons employed in the workplace from any building or from any enclosure in which the workplace is situated, shall not be locked or fastened in such a manner as not to be easily and immediately opened from the inside in case of fire.

(5) Any door in a workplace opening on to any staircase or corridor from any room in which more than ten persons are employed and, in the case of any workplace constructed or converted for use as a workplace after the coming into operation of this Act, all other doors affording a means of exit from the workplace for persons employed therein, shall, except in the case of sliding doors, be constructed to open outwards.

(6) Doors in a workplace giving access to stairways shall not open immediately on to a flight of stairs, but on to a landing of adequate width, in no case less than the width of the door opening on to that landing.

(7) Every window, door or other exit affording means of escape in case of fire or giving access thereto, other than the means of exit in ordinary use, shall be distinctively and conspicuously marked by a notice printed in red letters of an adequate size.

(8) In every workplace, effective steps shall be taken to ensure that all the persons employed are familiar with the means of escape in case of fire, and with the routine to be followed in case of fire.

(9) Where in any workplace, more than twenty persons are employed in the same building, or where explosive or highly inflammable materials are stored or used in any building in which persons are employed, effective provision shall be made for giving warning in case of fire, and the provision of warning shall be operated without exposing any person to undue risk, and be clearly audible throughout the workplace.

(10) Every hoist way or lift way inside a building constructed after the date of coming into operation of this Act shall be completely enclosed with fire-resisting materials, and all means of access to the hoist or lift shall be fitted with doors of fire-resisting materials.

(11) The Director may, in any case where he is satisfied that compliance with the requirements of subsection (10) is inappropriate or undesirable, by certificate in writing grant exemption from any of the requirements of subsection (10) subject to such conditions as may be specified in the certificate.

Protective clothing and appliances

58. Where in any workplace workers are employed in any process involving excessive exposure to heat, cold, noise, wet or to any injurious or offensive substance, or any welding process, suitable protective clothing and appliances, including, where necessary suitable gloves, footwear, screens, goggles, ear muffs and head covering, shall be provided and maintained at no cost to the employee for the use of such workers as required by the Director.

Removal of dust and fumes

59. In every workplace in which, in connexion with any dust process carried on, there is given off any dust or fume or other impurity of such a character and to such extent as to be likely to be injurious or offensive to the persons employed, or any substantial quantity of dust of any kind, all practicable measures, including the supply of breathing masks, shall be taken to protect the persons employed against inhalation of the dust or fume or other impurity and to prevent its accumulating in any workroom, and where the nature of the process makes it

practicable, exhaust appliances shall be provided and maintained, as near as possible to the point of origin of the dust or fume or other impurity, so as to prevent it entering the air of any workroom.

Protection of eyes

60.—(1) Where in any workplace workers are employed in any process involving dry grinding of metals, welding or cutting of metals by means of an electrical, oxy-acetylene or similar process or in any other process likely to entail injury to the eyes, suitable goggles or effective screens shall be provided to protect the eyes of workers.

(2) Where in any workplace electric arc welding is carried on, effective provision shall be made, by screening or otherwise, to prevent workers (other than persons employed in the welding process) being exposed to the electric arc flash.

Ionizing radiation

61.—(1) Ionizing and laser radiation likely to jeopardize the health and safety of workers shall be reduced to practicable levels in every workplace.

(2) In order to achieve proper containment, all work with radioactive substances or equipment shall be segregated from other works.

(3) Where radioactive substances or equipment are used, the working environment shall be monitored from time to time to determine levels of external radiation.

(4) A record of personal radiation doses and levels of radiation, in the working environment shall be maintained and kept readily available for inspection.

(5) The Minister may make regulations prescribing levels of permissible radiation doses.

Non-ionizing radiation

62.—(1) All workers performing operations where they are exposed to non-ionizing radiations shall be provided with adequate protection, and in the case of welding, torch cutting and soldering operations, with eye and face protection.

(2) For the purpose of detecting pre-cancerous lesions of the skin, workers continuously working under non-ionizing radiation exposure, including exposure to the sun, shall, where appropriate, be under medical surveillance.

Noise and vibration

63.—(1) Noise and vibrations likely to injure the health of workers shall be reduced to practicable levels in every workplace.

(2) No person shall be exposed to sound levels exceeding—

(*a*) 85 dB(A) of reasonably constant level for eight hours continuously in any one day;

(*b*) 135 dB(A) as measured with an instrument set at "fast", in any one day;

(*c*) 150 dB(A) in the case of impulse noise as measured with an instrument set at "fast", in any one day:

Provided that—

(i) if exposure is for periods other than eight hours, or if the sound level is fluctuating, an equivalent sound level shall be calculated, and this resultant value shall not exceed the equivalent of 85 dB(A);

(ii) the non-continuous exposure at a sound level in excess of 85 dB(A) shall be regarded as exceeding 85 dB(A).

(3) All areas where persons may be exposed to sound levels exceeding the limits set out in this section shall be identified as ear-protection areas and shall be suitably cordoned off.

(4) Entry to ear protection areas shall be restricted to authorized persons and all such persons shall use effective ear protection.

Lifting and handling of weights

64.—(1) Where reasonable and practicable, mechanical appliances shall be provided and used for lifting and carrying loads in all workplaces.

(2) No person should be employed to lift, carry or move any load which, by reason of its weight, is likely to injure his health or jeopardize his safety.

(3) The Minister may make regulations prescribing load limits for purposes of subsection (2).

Information and training

65.—(1) Every worker in a workplace shall be adequately and suitably—

(*a*) informed of potential health hazards to which he may be exposed to at the workplace;

(*b*) instructed and trained in the measures available for prevention and control and protection against health hazards at the workplace.

(2) All information, instruction and training referred to in subsection (1) shall be given in a language understood by the worker, and written, oral, visual and participative approaches shall be used to ensure that the worker assimilates the information, instruction or training, as the case may be.

(3) Specialized instruction and training shall be given to—

(*a*) drivers and operators of lifting appliances, transport vehicles, earth moving and materials handling equipment and plant, steam boilers and machinery or equipment of specialized or dangerous nature;

(*b*) workers engaged in the erection and dismantling of scaffolds;

(*c*) workers engaged in excavations, of shafts, earthworks, underground works or tunnels;

(*d*) workers handling explosives or engaged in blasting operations;

(*e*) workers in compressed air, coffer dams and caissons;

(*f*) workers engaged in the erection of prefabricated parts or steel structural frames or tall structures;

(*g*) workers handling hazardous substances;

(*h*) such other specialized categories of workers as by the Director may designate by notice published in the *Gazette*.

PART VII

Notification and Investigation of Accident, Dangerous Occurrences and Industrial Diseases

Notification of accidents

66. Where any accident occurs in a workplace which either—

(*a*) causes loss of life to a person employed in that workplace; or

(*b*) disables or is capable of disabling any person from carrying out normal duties at which he is employed,

written notice of the accident, in the prescribed form and accompanied by the prescribed particulars, shall forthwith be sent to the Director:

Provided that in the case of death or serious injury, the written notice shall, where practicable, be preceded by a telephone notification or any fastest means of communication available to facilitate immediate investigation.

Dangerous occurrences

First Schedule

67.—(1) The provisions of section 66 requiring notice of an accident occurring in a workplace to be given to the Director shall extend and apply to the classes of occurrences specified in the First Schedule, whether death or disablement is caused or not.

First Schedule

(2) The Minister may, by order published in the *Gazette*, amend the First Schedule.

Notification of industrial diseases

68.—(1) The occupier of any workplace who believes or suspects, or has reasonable ground for believing or suspecting, that any case of industrial disease as set out in the Second Schedule has occurred in the workplace shall forthwith send written notice of such case to the Director in the prescribed form; and the provisions of section 66 with respect to the notification of accidents shall apply to any such case in like manner as to any such accident as is mentioned in section 66.

Second Schedule

(2) The Minister may by order published in the *Gazette* amend the Second Schedule.

PART VIII

Records

Posting of abstract of the Act, etc.

69. There shall be kept posted in a conspicuous place in every workplace—

(*a*) the prescribed abstract of this Act;

(*b*) printed copies of any regulations made under Part VII which are for the time being in force in the workplace; or the prescribed abstracts of such regulations;

(*c*) every other notice and document required by this Act to be posted in the workplace;

(*d*) policy statement on safety and health at the workplace;

(*e*) a notice of the address of the Director.

General Register

70.—(1) There shall be kept in every workplace a register, in the prescribed form (hereinafter otherwise referred to as the "general register"), and there shall be entered in or attached to the register—

(*a*) every certificate issued in respect of the workplace by the Director;

(*b*) the prescribed particulars as to the washing, whitewashing or colour-washings, painting or varnishing of the workplace;

(*c*) the prescribed particulars of every accident and case of industrial disease occurring in the workplace of which notice is required to be sent to the Director;

(*d*) all reports and particulars required under this Act to be entered in or attached to the general register; and

(*e*) such other matters as may be prescribed.

(2) The occupier of a workplace shall send to the Director such extracts from the general register as the Director may, from time to time, require for the purpose of the execution of his duties under this Act.

Preservation of registers and records

71. The general register and every other register or record kept in accordance with this Act shall be preserved and shall be kept available for at least two years after the date of the last entry in the register or record for inspection by any inspector.

PART IX

Administration

Appointment of Inspectors

72.—(1) There shall be a Director of Occupational Safety, Health and Welfare (in this Act otherwise referred to as the "Director") and such other number of public officers as the Minister may, by notice published in the *Gazette*, appoint as

inspectors or under whatever title he may from time to time determine, for the purpose of the execution of this Act:

Provided that any public officer so appointed shall exercise such powers and duties as are conferred upon him under this Act, subject to the general and special directions of the Minister.

(2) Every inspector appointed pursuant to subsection (1) shall be issued with an identity card and shall when visiting a workplace or place to which any of the provisions of this Act apply, if so required, produce the identity card to the occupier or other person holding a responsible position of management at the workplace; and the identity card shall constitute *prima facie* evidence that the holder thereof is an inspector appointed by the Minister under subsection (1).

(3) No inspector shall publish or disclose to any person the details of any manufacturing or commercial or working process which may come to his knowledge in the course of his duties, except in so far as is necessary—

(*a*) for the purpose of a prosecution for an offence under this Act;

(*b*) for the purpose of Coroner's inquest;

(*c*) for the purpose of an inquiry under the Commissions of Inquiry Act in connexion with the safety of any premises, or in connexion with an accident happening therein, or in connexion with an industrial disease. Cap. 18:01

(4) An inspector shall treat as absolutely confidential the source of any complaint bringing to his notice a contravention of this Act, and shall give no intimation to the occupier or his representative that a visit of inspection was made in consequence of such complaint.

(5) Every person who contravenes subsection (3) or (4) shall be guilty of an offence.

Powers of inspectors

73.—(1) An inspector shall, for the purpose of administering, monitoring, and enforcing the provisions of this Act, have power—

(*a*) to enter, inspect and examine without prior notice, at all reasonable times a workplace, and every part thereof, when he has reasonable cause to believe that any person is employed therein;

(*b*) to enter, inspect and examine at all reasonable time any place which he has reasonable cause to believe to be a workplace, and any part of any building of which a workplace forms part and in which he has reasonable cause to believe that explosives or inflammable materials are stored or used;

(*c*) to take with him a police officer if he has reasonable cause to apprehend any serious obstruction in the execution of his duty;

(*d*) to require the production of the registers, certificates, notices and documents kept in pursuance of this Act and to inspect, examine and take copies of any of them;

(*e*) to make such examination and inquiry as may be necessary to ascertain whether this Act is complied with;

(*f*) to require any person whom he finds in a workplace to give such information as it is in his power to give as to who is the occupier of the workplace;

(*g*) to interview any person, either alone or in the presence of any other person, as he thinks fit, with respect to matters under this Act, and to require every such person to sign a declaration of the truth of the matters respecting which he is so interviewed; so, however, that no one shall be required to answer any question or to give any evidence tending to incriminate himself; and

(*h*) to exercise such other powers as may be necessary for carrying this Act into effect.

(2) The occupier of every workplace, his agent and servant shall furnish the means required by an inspector as necessary for an entry, inspection, examination, inquiry or the taking of samples, or otherwise for the exercise of his powers under this Act in relation to that workplace.

(3) Every person who—

(*a*) fails to permit, or refuses entry to an inspector to any workplace;

(*b*) fails to comply with an order, direction or requirement of an inspector made under this Act or any regulation;

(*c*) fails to produce any register, certificate, notice or documents which he is required by or in pursuance of this Act to produce, or refuses access to any such register, certificate, notice or documents to any inspector;

(*d*) wilfully withholds any information regarding the identity of the occupier of any workplace;

(*e*) conceals or prevents, or attempts to conceal or prevent, a person from appearing before or being interviewed by an inspector;

(*f*) in any manner whatsoever obstructs an inspector in the execution of his duties under this Act,

shall be guilty of an offence and liable to a fine of K10,000 and to imprisonment for six months; and where an inspector is so obstructed in a workplace the occupier of that workplace shall be guilty of an offence.

(4) Any notice or certificate issued by the Director under this Act may be issued for a limited period or without limit of period and may be varied or revoked by the Director:

Provided that this subsection shall not apply in respect of any certificate of registration of a workplace issued by the Director under Part II.

Power to deal with cause of imminent danger

74.—(1) Where any inspector finds any article or substance in any premises or place which he has power to enter, and has cause to believe that, in the circumstances in which he finds it, the article or substance is a cause of imminent danger or serious personal injury, he may seize such article or substance and cause it to be rendered harmless, whether by destruction or otherwise.

(2) Before any article or substance that forms part of a batch of similar articles or any substance is rendered harmless under this section the inspector shall, if it is practicable for him to do so, take a sample of the article or substance and give to the person having control of the premises where he found it, a portion of the sample marked in a manner sufficient to identify it.

(3) As soon as an article or substance has been seized and rendered harmless under this section, the inspector shall prepare and sign a written report giving particulars of the circumstances in which the article or substance was seized and dealt with by him, and shall—

(*a*) give a signed copy of the report to the person having control of the premises where the article or substance was found by him; and

(*b*) unless the person is the owner of the article or substance, also serve a signed copy of the report to the owner.

Inspectors not to disclose information

75.—(1) An inspector shall not disclose any information obtained by him in the course of his duties and in exercise of any of the powers conferred by this Act, including any information with respect to any manufacturing process or trade secret obtained by him in any premises entered by him by virtue of any such power, except—

(*a*) for the purposes of his functions;

(*b*) for the purposes of any legal proceedings or any investigation or inquiry authorized by Government;

(*c*) with the relevant consent, that is to say, in the case of information furnished in pursuance of a requirement imposed under section 73 of this Act, the consent of the person who furnished it, and, in any other case the consent of the person having control of the premises where the information was obtained.

(2) No inspector shall divulge to any person the source of any complaint, and in particular, any information with respect to any manufacturing process or trade secret obtained by him in any premises entered by him by virtue of any such power, except—

(*a*) for the purposes of his functions; or

(*b*) for the purposes of any legal proceedings or any investigation or inquiry authorized by Government;

(*c*) with the relevant consent, that is to say, in the case of information furnished in pursuance of a requirement imposed under section 73 of this Act, the consent of the person who furnished it, and, in any other case the consent of a person having responsibilities in relation to the premises where the information was obtained.

(3) Subject to subsection (1), no inspector shall divulge to any person the source of any complaint bringing to his notice any defect or breach of any provision of this Act, and shall give no information to any owner, occupier or employer that a visit or inspection of any factory or place of work was made in consequence of the receipt of such complaint.

Improvement notices

76.—(1) If an inspector is of the opinion that a person—

(*a*) is contravening any provision of this Act or regulations made thereunder; or

(*b*) has contravened one or more of the provisions of this Act or regulations made thereunder in circumstances that make it likely that the contravention will continue or be repeated,

the inspector may serve on any such person a notice (in this Part referred to as an "improvement notice").

(2) An improvement notice shall—

(*a*) state the opinion of the inspector;

(*b*) specify the provisions of the Act or regulations which have been or are contravened; and

(*c*) require that person to remedy the contravention or, as the case may be, the matters occasioning it within such period, ending not earlier than the period within which an appeal against the notice can be brought under section 80, as may be specified in the notice.

Prohibition notices

77.—(1) This section applies to any activities which are being or are about to be carried on by or under the control of any person, being activities to or in relation to which this Act or the regulations made thereunder apply or will, if the activities are so carried on, apply.

(2) Where in relation to any activity to which this section applies an inspector is of the opinion that, any activity carried on or about to be carried on by or under the control of any person involves or will involve a risk or serious personal injury, the inspector may serve on that person notice (in this Part referred to as a "prohibition notice").

(3) A prohibition notice shall—

(*a*) state the opinion of the inspector;

(*b*) specify the matters which, in the opinion of the inspector, give or, as the case may be, will give rise to the risk;

(*c*) where in the opinion of the inspector any of those matters involve or, as the case may be, will involve a contravention of any provision of this Act or the regulations made thereunder, specify the provisions or regulations made thereunder which are or will be contravened further specify reasons for that opinion; and

(*d*) direct that the activities to which the notice relates shall not be carried on by, or under the control of, the person on whom the notice is served unless the matters specified in the notice pursuant to paragraph (*b*) and any contravention of specified provisions or regulations in pursuance to paragraph (*c*) have been remedied.

(4) A direction given under subsection (3) shall take immediate effect if the inspector is of the opinion that the risk of serious personal injury is or, as the case may be, will be imminent, and shall have effect to the end of a period specified in the notice in any other case.

Provisions on prohibition notices and improvement notices

78.—(1) An improvement notice or a prohibition notice may include directions as to the measures to be taken to remedy any contravention or matter to which the notice relates, and any such directions—

(*a*) may be framed to any extent by reference to any code of practice approved by the Director; or

(*b*) may be framed so as to afford the person on which the notice is served a choice between ways of remedying the contravention or matter.

(2) Where an inspector serves an improvement notice in relation to any building to which any provision of this Act or regulations made thereunder apply, the notice shall not direct any measures which are more onerous than those necessary to comply with written law relating to buildings to which the building is required to conform.

(3) Where, in connexion with any premises used or about to be used as a workplace an inspector intends to serve an improvement notice or a prohibition notice requiring, or likely to lead to the taking of, measures affecting the means of escape in case of fire the inspector shall consult the fire authority of the area in which the premises are located and the views of the fire authority shall be taken into account by the inspector before the issuance of the notice.

(4) Where an improvement notice or prohibition notice which is to take immediate effect has been served—

(*a*) the notice may be withdrawn by an inspector at any time before the end of the period specified therein

in pursuance of section 76 or section 77 as the case may be; and

(*b*) the period so specified may be extended by an inspector at any time when an appeal against the notice is not pending.

Appointment of Arbitration Board

79.—(1) The Minister shall appoint an Arbitration Board (in this Act otherwise referred to as the "Board") consisting of—

(*a*) a Chairman, to be appointed by the Minister and designated as such;

(*b*) one person nominated by the Employers Consultative Association of Malawi and appointed by the Minister;

(*c*) one person nominated by the Malaŵi Congress of Trade Unions and appointed by the Minister;

(*d*) one person nominated by the Tea Association of Malaŵi and appointed by the Minister;

(*e*) one person nominated by the Malaŵi Bureau of Standards and appointed by the Minister;

(*f*) one person nominated by the Medical Council of Malaŵi and appointed by the Minister;

(*g*) one person nominated by the Tobacco Association of Malaŵi and appointed by the Minister; and

(*h*) the following *ex officio* members—

(i) the Director for Research and Environmental Affairs, or his designated representative;

(ii) the Principal Secretary responsible for Labour and Vocational Training, or his designated representative.

(2) A representative of an *ex officio* member referred to in subsection (1) (*h*) shall be designated by, or on behalf of, the *ex officio* member by notice in writing to the Board to attend the meetings thereof, and upon such designation such representative shall not attend to the business of the Board by representation.

(3) Members of the Board, other than *ex officio* members, shall be appointed for a term of three years and shall be eligible for reappointment.

(4) The Board shall regulate its own procedure.

Appeal against improvement or prohibition notice

80.—(1) Any person on whom an improvement notice or a prohibition notice is served may, within fourteen days from the date of service, appeal to the Board and on such appeal the Board may either cancel or affirm the improvement notice or prohibition notice and, in affirmation, the Board may do so either in the notice's original form or with such modification as the Board may deem fit in the circumstances.

(2) Where an appeal is filed in accordance with subsection (1)—

(*a*) in the case of an improvement notice, the operation of the notice shall be suspended until the appeal is finally disposed of; and

(*b*) in the case of a prohibition notice, the notice shall have effect unless, on the application of the appellant, the Board otherwise directs.

Certificate by the Director to be *gazetted*

81. Whenever the Director issues any certificate approving or authorizing any person for the purpose of this Act or excepting any workplace from the requirements of this Act or revokes any such certificate, notification of the exercise of such powers shall be published in the *Gazette*.

PART X

Offences, Penalties and Legal Proceedings

Offences

82.—(1) Every occupier or owner of a workplace who contravenes or fails to comply with any provision of this Act or regulations made hereunder shall be guilty of an offence.

(2) Every person employed in a workplace who contravenes or fails to comply with this Act or regulations made thereunder shall be guilty of an offence, and the occupier or owner, as the case may be, shall not be guilty of an offence by reason only of the contravention or failure to comply with the provisions of this Act or regulations made under the said provisions of Part X, or the contravention of the provision thereunder by an employee unless it is proved that the occupier or owner, as the case may be, failed to take all reasonable steps to prevent such contravention or failure to comply.

(3) Any occupier of a workplace who avails himself of any special exception allowed by or under this Act and fails to comply with any conditions attached to the exception, shall be deemed to have contravened this Act.

(4) If any persons are employed in a workplace otherwise than in accordance with this Act there shall be deemed to be a separate contravention in respect of each person so employed.

(5) Where an offence committed by a company, co-operative society or other body of persons under this Act is proved to have been committed with the consent or connivance of, or to have been facilitated by any neglect on the part of any chairman, director, manager, secretary or other officer of the company, co-operative society or other body of persons, such chairman, director, manager, secretary or other officer, as well as the company, co-operative society or other body of persons, shall be deemed to be guilty of the offence.

General penalty

83. Any person guilty of an offence under this Act for which no express penalty is provided shall be liable to a fine of K10,000 and if the offence in respect of which he was convicted continued after the conviction he shall in addition be liable to a fine of K500 for each day the offence continues.

Power of court to order contravention to be remedied

84. Where the occupier or owner of a workplace is convicted of an offence under this Act, the court may in addition to or instead of a penalty, order the occupier or owner, within the time specified in the order, to take such steps as may be so specified for remedying the matters in respect of which the contravention occurred, and may, on application, enlarge the time so specified, and where such an order is made, the occupier or owner shall not be liable under this Act in respect of the continuation of the contravention during the time allowed by the court, but if, after the expiration of that time as originally specified or enlarged by subsequent order, the order is not complied with, the occupier or owner, as the case may be, shall be liable to a fine of K500 for each day non-compliance continues.

Penalty in case of death or bodily injury

85. If any person dies or suffers any bodily injury as a result of the occupier or owner of a workplace having contravened any provision of this Act, the occupier or owner of the workplace shall, without prejudice to any other penalty, be liable to a fine of K20,000 and to imprisonment for twelve months, and the whole or any part of the fine may be applied for the benefit of the family of the deceased person or the injured person, as the case may be, as the court may order.

Penalty on persons actually committing offence for which occupier is liable

86. Where an act or default for which an occupier or owner of workplace is liable under this Act is in fact the act or default of agent, servant, worker or other person, that agent, servant, worker or other person shall be guilty of an offence and liable to the like penalty as if he were the occupier or owner, as the case may be.

Power of occupier or owner to exempt himself from liability on conviction of the actual offender

87.—(1) An occupier or owner of a workplace who is charged with an offence under this Act may, upon a charge duly made by him and on giving to the prosecution not less than three days' notice in writing of his intention to have any other person whom he charges as the actual offender, whether or not that person is his agent or servant, brought before the court at the time appointed for hearing the charge; and if, during the hearing, the occupier or owner of the workplace proves to the satisfaction of the court that—

(*a*) he has used all due diligence to enforce the provisions of this Act; and

(*b*) the other person committed the offence in question without his consent, connivance or wilful default,

that other person shall be liable to be convicted of the offence, and the occupier or owner shall not be guilty of the offence, and

if such person is convicted he shall, in the discretion of the court, be also liable to pay any costs incidental to the proceedings.

(2) Whenever it appears to the satisfaction of an inspector at the time of discovering an offence—

(*a*) that the occupier or owner of the workplace has used all due diligence to comply with the provisions of this Act;

(*b*) by which person the offence has been committed; and

(*c*) that the offence was committed without the consent, connivance or wilful default of the occupier or owner and in contravention of his orders,

the inspector may proceed against the person whom he believes to be the actual offender without first proceeding against the occupier or owner of the workplace.

Proceedings against persons other than occupiers or owners

88. Where, under this Act, any person is substituted for the occupier or owner of a workplace with respect to any provision of this Act, any order, summons, notice or proceedings which, for the purpose of any of such provision, is by or under this Act required or authorized to be served on or taken in relation to the occupier or owner, shall be required or authorized to be served on or taken in relation to that person.

Owner of machine liable in certain cases instead of occupier

89. Where in a workplace the owner or hirer of a machine or of an implement moved by mechanical power is a person other than the occupier of the workplace, the owner or hirer of such machine or implement shall be deemed to be the occupier of the workplace with respect to any offence under this Act committed in relation to a person who is employed in or about or in connexion with that machine or implement (and is in the employment or pay of the owner or hirer).

Special provisions as to evidence

90.—(1) Notwithstanding any written law to the contrary, in any proceedings under this Act it shall be sufficient to allege that the workplace is a workplace within the meaning of this Act, and to state the name of the ostensible occupier of the workplace or, where the occupier is a firm, the title of the firm, and the burden of proving that the premises are not a workplace, or that the occupier specified in the charge or information is not the occupier of the workplace, shall lie upon the person alleging such fact.

(2) Where any offence is committed under this Act by reason of a failure to make an examination, enter a report or do any other thing, at or within a time specified by this Act, the offence shall be deemed to continue until the examination is made, or the report entered or the other thing done, as the case may be.

(3) If a person is found in a workplace at any time at which work is going on or the machinery is in motion, except during the intervals for meals or rest, he shall, until the contrary is

proved, be deemed for the purpose of this Act to have been then employed in the workplace:

Provided that this subsection shall not apply to a workplace in which the only persons employed are members of the same family living on the premises.

(4) Where in any proceedings under this Act with respect to a young person it appears to the court that such a young person is apparently of or below such age the burden of proving that the person is not of or below such age shall lie on the person alleging such fact.

(5) Where any entry is required by this Act to be made in the general register or in any other register or record, the entry made by the occupier of a workplace or on his behalf shall, as against him, be admissible as evidence of the facts therein stated, and the fact that any entry so required with respect to the observance of any provision of this Act has not been made shall be admissible as evidence that provision has not been observed.

Service of documents

91.—(1) Any document, including any summons or order, required or authorized to be served under this Act may be served—

(*a*) on any person by delivering it to him, or by leaving it at or sending it by post to his residence or place of business;

(*b*) on any firm by delivering it to any partner of the firm, or by leaving it at, or sending it by post to the office of the firm;

(*c*) on the owner or occupier of a workplace, including any such owner or occupier being a company or a co-operative society (in any such a manner as aforesaid), or by delivering it, or a true copy thereof, to any responsible person who is not a young person.

(2) Any document referred to in subsection (1) may be addressed, for the purpose of the service thereof on the occupier of a workplace, to "the occupier" at the proper address of the workplace, without further name or description.

(3) This section shall apply, *mutatis mutandis*, to documents required or authorized under this Act to be sent to occupier, owner or person, and to the sending, addressing and delivery of such documents.

Power to modify agreements

92. If, by reason of an agreement between the owner and the occupier of premises the whole or any part of which has been let as a workplace, the owner or occupier is prevented from carrying out any structural or other alterations in the premises which are necessary to enable him to comply with this Act or in order to conform with any standard or requirement imposed by or under this Act, the owner or occupier, as the case may be, may apply to the High Court for the terms of the agreement to

be set aside or modified; and the High Court, after hearing the parties and any witnesses whom they may desire to call, may make such an order setting aside or modifying the terms of the agreement as it considers just and equitable in the circumstances of the case.

Power to apportion expenses

93. Where in any premises the whole or any part of which has been let as a workplace, any structural or other alterations are required in order to comply with this Act, or in order to conform with any standard or requirement imposed by or under this Act, and the owner or the occupier, as the case may be, alleges that the whole or part of the expenses of the alterations ought to be borne by the occupier or owner, the owner or the occupier, as the case may be, may apply to the High Court for the expenses of the alterations to be apportioned between them; and the High Court, after hearing the parties and any witnesses whom they may desire to call—

(*a*) may make such an order concerning the apportionment of their expenses as it considers just and equitable in the circumstances of the case, regard being had to the terms of any contract between the parties or, in the alternative;

(*b*) at the request of the owner or occupier, determine the lease.

PART XI

Miscellaneous Provisions

Indemnity

94. The Director or any other inspector shall not be held liable in damages or otherwise to any person by reason of the exercise or non-exercise in good faith of the powers conferred under this Act.

Regulations

95. The Minister may make Regulations for the better carrying out of the objects and purposes of this Act and for prescribing things and matters required to be prescribed under this Act.

Repeal and savings

96.—(1) Subject to subsection (2), the Factories Act is repealed.

Cap: 55:07

(2) Any subsidiary legislation made under the Factories Act repealed by subsection (1) in force immediately before the commencement of this Act—

(*a*) shall remain in force unless in conflict with this Act, and shall be deemed to be subsidiary legislation made under this Act;

(*b*) may be replaced, amended or repealed by subsidiary legislation made under this Act.

s. 67

FIRST SCHEDULE

Dangerous Occurrences

Section 67 requiring notice of an accident shall extend and apply to the classes of occurrences specified herein, whether death or disablement is caused or not—

(*a*) in a workplace; or

(*b*) in any premises, places or operations to which this Act applies.

Occurrences

1. Bursting of a revolving vessel, wheel, grindstone or grinding wheel, moved by mechanical power.
2. Collapse or failure of a crane, derrick, winch, hoist or other appliance used in raising or lowering persons or goods, or any part thereof, or the overturning of a crane.
3. Explosion or fire causing damage to the structure of any room or place in which persons are employed, or to any machine or plant contained therein, and resulting in the complete suspension of ordinary work in such room or place or stoppage of machinery or plant for not less than 24 hours.
4. Electrical short circuit or failure of electrical machinery, plant or apparatus, attended by explosion or fire and causing structural damage thereto, and involving its stoppage or disuse for not less than 24 hours.
5. Explosion of a receiver or container used for the storage at a pressure greater than atmospheric pressure of any gas or gases (including air), or any liquid or solid resulting from the compression of gas.
6. Explosion from a steam boiler, steam receiver or air receiver.

s. 68

SECOND SCHEDULE

Industrial Diseases

1. Lead poisoning, including poisoning by any preparation or compound of lead;
2. Phosphorus poisoning by phosphorus or its compounds;
3. Mercurial poisoning;
4. Manganese poisoning;
5. Arsenical poisoning by arsenic or its compounds;
6. Aniline poisoning;
7. Carbon bisulphide poisoning;
8. Benzene poisoning, including poisoning by any of its homologous, or their intro or amido derivatives;
9. Chrome ulceration due to chromic acid or bichromate of potassium, sodium or ammonium, or any preparation of these substances;
10. Anthrax;
11. Silicosis;

12. Pathological manifestations due to—

    (*a*) radium or other radioactive substances; and

    (*b*) X-rays;

13. Toxic anaemia;

14. Primary epitheliomatous ulceration of the skin, due to the handling or use of tar, pitch, bitumen, mineral oil or paraffin, or any compound, product or residue of any of these substances;

15. Compressed air illness;

16. Asbestosis;

17. Byssinosis;

18. Bagassosis;

19. Tobacosis;

SUBSIDIARY LEGISLATION

G.N. 46/2000
9/2011

OCCUPATIONAL SAFETY, HEALTH AND WELFARE (REGISTRATION, RENEWAL, TRANSFER AND EXAMINATION FEES) REGULATIONS

under s. 50

Citation **1.** These Regulations may be cited as the Occupational Safety, Health and Welfare (Registration, Renewal, Transfer and Examination Fees) Regulations.

Fees **2.** The fees specified in the Schedule are prescribed in respect of the matters referred to therein.

SCHEDULE reg. 2

REGISTRATION, RENEWAL, TRANSFER AND EXAMINATION FEES

Matter	*Fee* K	t
1. Registration of Pressure Vessels—		
(*a*) Electrically heated steam boilers	10,000	00
(*b*) Steam Receivers	5,000	00
(*c*) Air Receivers	5,000	00
(*d*) Steam Boiler, other than electrically heated boilers having an evaporative capacity of—		
(i) 1–1,000 kg/hour	10,000	00
(ii) 1,000–4,000 kg/hour	15,000	00
(iii) 4,001–7,500 kg/hour	20,000	00
(iv) over 7,500 kg/hour	25,000	00
(*e*) Water Tube Boilers	30,000	00
2. Registration of Hoists and Lifts	20,000	00
3. Registration, Renewal and Transfer of Workplaces:		
Category A—		
(*a*) Investment Capital of less than K8,000,000 and employing less than 20 employees	10,000	00
(*b*) Investment Capital of less than K8,000,000 and employing 21–50 employees	20,000	00
(*c*) Investment Capital of less than K8,000,000 and employing 51–200 employees	40,000	00
(*d*) Investment Capital of less than K8,000,000 and employing 201–500 employees	60,000	00

Matter	*Fee* K	t
(*e*) Investment Capital of less than K8,000,000 and employing over 500 employees	80,000	00
Category B—		
(*a*) Investment Capital of K8,000,000–K80,000,000 and employing less than 20 employees	20,000	00
(*b*) Investment Capital of K8,000,000–K80,000,000 and employing 21–50 employees	40,000	00
(*c*) Investment Capital of K8,000,000–K80,000,000 and employing 51–200 employees	80,000	00
(*d*) Investment Capital of K8,000,000–K80,000,000 and employing 201–500 employees	120,000	00
(*e*) Investment Capital of K8,000,000–K80,000,000 and employing over 500 employees	160,000	00
Category C—		
(*a*) Investment Capital of K80,000,000–K800,000,000 and employing less than 20 employees	30,000	00
(*b*) Investment Capital of K80,000,000–K800,000,000 and employing 21–50 employees	60,000	00
(*c*) Investment Capital of K80,000,000–K800,000,000 and employing 51–200 employees	120,000	00
(*d*) Investment Capital of K80,000,000–K800,000,000 and employing 201–500 employees	180,000	00
(*e*) Investment Capital of K80,000,000–K800,000,000 and employing over 500 employees	240,000	00
Category D		
(*a*) Investment Capital of K800,000,000–K1,600,000,000 and employing less than 20 employees	50,000	00
(*b*) Investment Capital of K800,000,000–K1,600,000,000 and employing 21–50 employees	100,000	00
(*c*) Investment Capital of K800,000,000–K1,600,000,000 and employing 51–200 employees	200,000	00
(*d*) Investment Capital of K800,000,000–K1,600,000,000 and employing 201–500 employees	300,000	00
(*e*) Investment Capital of K800,000,000–K1,600,000,000 and employing over 500 employees	400,000	00

Matter	*Fee* K	t
Category E—		
(*a*) Investment Capital of above K1,600,000,000 and employing less than 20 employees	70,000	00
(*b*) Investment Capital of above K1,600,000,000 and employing 21–50 employees	140,000	00
(*c*) Investment Capital of above K1,600,000,000 and employing 51–200 employees	280,000	00
(*d*) Investment Capital of above K1,600,000,000 and employing 201–500 employees	420,000	00
(*e*) Investment Capital of above K1,600,000,000 and employing over 500 employees	560,000	00
4. Examination or Testing of—		
(*a*) Steam Receivers	5,000	00
(*b*) Air Receivers	5,000	00
(*c*) Electrically heated steam boilers	20,000	00
(*d*) Steam boiler, other than electrically heated boilers having an evaporative capacity of		
(i) 1–1,000 kg/hour	10.000	00
(ii) 1,001–4,000 kg/hour	15,000	00
(iii) 4,001–7,500 kg/hour	20,000	00
(iv) over 7,500 kg/hour	30,000	00
(*e*) Water Tube Boilers	60,000	00

LAWS OF MALAŴI

VOL IX

L.R.O. 1/2018

LAND

CHAPTER 57:01

Containing Pages 1–20

CHAPTER 57:01

LAND

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CHAPTER 57:01

LAND

An Act to make provision for land in Malaŵi and for all matters incidental or connected thereto 16 of 2016 G.N. 61/2017

[1st September, 2017]

PART I

Preliminary

1. This Act may be cited as the Land Act. Short title

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

"authorized officer" means an officer duly authorized by the Minister for the purposes of this Act or any part thereof;

"Commissioner" means Commissioner for Lands;

"customary estate" means any customary land which is owned, held or occupied as private land within a traditional land management area and which is registered as private land under the Registered Land Act; Cap. 58:01

"customary land" means all land used for the benefit of the community as a whole and includes unallocated customary land within the boundaries of a traditional land management area;

"customary law" means the customary law applicable in the area concerned;

"freehold" means an estate in land which is held in perpetuity;

"Government land" means land acquired and privately owned by the Government and dedicated to a specified national or public use or made available for private uses at the discretion of Government;

"land" means the material of the earth, whatever may be the ingredients of which it is composed, whether soil, rock or other substance, and includes the surface covered with water, all things growing on that surface, buildings, other things permanently affixed to land and free or occupied space for an indefinite distance upwards as well as downwards, subject to limitations upon the airspace imposed, and rights in the use of airspace granted by international law;

"lease" includes an agreement for a lease, and any reference to a lease shall be construed as a reference to a lease granted under this Act or any other written law;

"local government authority" bears the meaning ascribed to it in the Local Government Act; Cap. 22:01

"magistrate" means a Resident Magistrate or other grade magistrate exercising jurisdiction of the area concerned;

"magistrate's court" means any subordinate court constituted under section 34 of the Courts Act; Cap. 3:02

"person who is not a citizen of Malaŵi" includes a company or other corporate or unincorporated body with majority ownership or control in the persons who are not citizens of Malaŵi;

"private land" means all land which is owned, held or occupied under a freehold title, leasehold title or as a customary estate or which is registered as private land under the Registered Land Act; Cap. 58:01

"public land" means land held in trust for the people of Malaŵi and managed by Government, a local government authority or a Traditional Authority and includes—

(*a*) any land held by the Government or a local government authority consequent upon a reversion thereof to the Government or local government authority, as the case may be, on the termination, surrender or falling in of any freehold or leasehold estate therein pursuant to any covenant or by operation of law;

(*b*) land acquired and privately owned by Government or a local government authority used for dedicated purposes such as Government buildings, schools, hospitals and public infrastructure;

(*c*) land gazetted for national parks, recreation areas, forest reserves, conservation areas, historic and cultural sites;

(*d*) land vested in Government as a result of uncertain ownership; abandonment or land that cannot be used for any purposes; and

(*e*) unallocated and communal land within the boundaries of a Traditional Land Management Area;

"public road" bears the same meaning as assigned thereto in the Public Roads Act; Cap. 69:02

"rules of good husbandry" means, due regard being given to the character and situation of the land in question—

(*a*) the maintenance of the land (whether arable, woodland or pasture) free from harmful weeds, clean and in a good state of cultivation and fertility and in good condition;

(*b*) the maintenance and clearing of drains, earthworks and access roads;

(*c*) the maintenance and proper repair of fences, hedges and field boundaries;

(*d*) the execution of repairs to any building upon the land; and

(*e*) such rules of good husbandry as may be prescribed or required under this Act or under any other written law; and

"traditional land management area" means an area demarcated and registered as falling within the jurisdiction of a Traditional Authority.

PART II

Administration

Commissioner for Lands

3. There shall be a Commissioner for Lands (in this Act otherwise referred to as the "Commissioner") who shall be a public officer.

Duties of the Commissioner

4.—(1) Subject to the special and general written direction of the Minister, the Commissioner shall—

(*a*) administer all land;

(*b*) make grants, leases or other dispositions;

(*c*) sign, seal, execute, perfect, deliver and accept—

(i) grants, leases or other dispositions of public land and surrenders;

(ii) agreements or licences in respect of the control of or use of running or stagnant water or affecting the dispositions of interests or rights therein;

(*d*) sign and issue documents including documents of consent;

(*e*) grant relief from liability to perform and extend the time for performance or observance of any covenant, condition, agreement or stipulation;

(*f*) except from any lease any implied covenant or covenants; and

(*g*) serve notices of determination of any lease.

(2) The Commissioner may delegate in writing any of his functions under this Act to any officer subordinate to him or to any authorized officer.

Delegation of powers by the Minister

5. The Minister may, subject to general or special directions, delegate to the Commissioner all or any of the powers and duties conferred on the Minister by this Act.

Protection of the Commissioner or authorized officers

6. A suit, prosecution or other legal proceeding shall not lie against the Commissioner or any authorized officer in respect of exercise or performance or purported exercise or performance in good faith, of any power or function under this Act.

PART III

General

Categories and classes of land

7.—(1) Land shall be categorized as either public land or private land.

(2) Public land shall be classified either as Government land or unallocated customary land.

(3) Private land shall be classified as freehold, leasehold or customary estate.

Vesting of land

8. All land is vested in perpetuity in the Republic.

Prohibition to grant freehold land

9. Freehold land shall not be allocated or granted to any person.

Powers of corporations to hold land

10.—(1) Land shall not be assured to or for the benefit of, or acquired by or on behalf of a body corporate, unless the body corporate is authorized by a licence issued by the Minister in consultation with the President to hold land in Malaŵi, but this section shall not apply to a body corporate incorporated in Malaŵi in accordance with the Companies Act or a body corporate established by or under a written law which empowers it to hold land in Malaŵi.

Cap. 46:03

(2) A disposition of any estate or interest in land in Malaŵi to or for the benefit of a body corporate shall, unless such body corporate is authorized in accordance with subsection (1) to hold land in Malaŵi, be of no effect and unenforceable in any court, and any documents of title relating to such unenforceable disposition shall not be registrable in Malaŵi.

(3) The Minister may make rules prescribing the particulars to be furnished, the forms to be used and the fees to be paid in relation to applications for, and grants of licences for the purposes of subsection (1).

(4) The Minister may, in consultation with the President, issue a licence pursuant to subsection (1) and where the President declines to issue a licence, he shall give reasons, in writing, for that refusal and the decision of the President shall be subject to judicial review.

Land designated for investment purposes

11.—(1) Land designated for investment purposes shall be identified, published in the *Gazette* and allocated to the Malaŵi Investment and Trade Centre Limited which shall create derivative

rights to investors in accordance with the Investment and Export Promotion Act. Cap. 39:05

(2) The size of land to be allocated to investors under this section shall be in accordance with land ceilings which the Minister may, in consultation with the Minister responsible for investment, set by notice published in the *Gazette*, based on the type of activity and location of the land.

The Minister may dispose of public land

12.—(1) The Minister may make and execute grants, leases or other dispositions of public land classified as Government land for any such estates, interests or terms, and for such purposes and on such terms and conditions, as he may think fit.

(2) The Minister shall reserve a rack rent in respect of every grant of a lease of Government land.

(3) Without prejudice to the generality of subsection (2), the Minister may reserve a rent which is less than a rack rent in leases granted under this section—

(*a*) to public utility bodies, statutory corporations, missions or religious bodies, scientific and philanthropic bodies, or any other organizations, associations, bodies or undertaking; and

(*b*) where, having regard to all the circumstances of the case, the Minister is satisfied that it is expedient, equitable or necessary to do so.

(4) For the purposes of this section, "rack rent" means rent that is calculated in relation to the annual and current value of the land.

Prohibition against disposal of state and official residences

13.—(1) Notwithstanding section 12 and any other written law, the Minister shall not make or execute grants, leases or other disposition of public land comprising a state residence or an official residence.

(2) A person shall not acquire the land referred to in this section as a personal possession.

Interest for delay in payment of rent

14.—(1) If any moneys due to the Government in respect of any rent payable under any lease, right to occupancy of land, or any other agreement relating to the occupation or use of land made under this Act or any other law remain unpaid at the end of a period of ninety days after the same became due and payable, the amount so remaining unpaid shall, at the end of such period, be paid with simple interest at ten per cent and the interest payable under this section shall be deemed to be part of such moneys and shall be recoverable by the Government in the same manner as such moneys are recoverable.

(2) The imposition of interest under this section shall not affect the powers conferred upon the Minister by section 25 of this Act to enforce a forfeiture of a lease and to re-enter upon land on the breach, or non-observance by a lessee of any of the covenants or conditions contained or implied in the lease.

(3) The exercise by the Minister of the powers conferred by section 25 of this Act, to enforce a forfeiture of a lease and re-enter upon land shall not affect the right of the Government to recover rent or any moneys due to the Government under subsection (1).

(4) The Minister may, in any case or class of cases, where the circumstances so warrant, exempt the lessee from payment of any penalty due by the lessee under subsection (1).

PART IV

Public Land

No implied right of entry

15. A right of entry into any Government land shall not be implied in favour of any person.

Use and occupation of Government land

16. The use and occupation of all Government land, other than Government land reserved for the use and occupation of the President, shall be controlled by the Minister.

Acquisition of unallocated customary land for public utility

17.—(1) Where it appears to the Minister that any unallocated customary land is needed for public utility, the Minister shall serve notice upon the traditional authority within whose traditional land management area the customary land is situated but this subsection shall not apply to any customary land required for use as a public road or for the widening or diversion thereof, for such land shall be acquired for that purpose in accordance with the Public Roads Act.

Cap. 69:02

(2) Whenever any unallocated customary land is required for temporary use for a public utility, such use not being in the opinion of the Minister likely to necessitate occupation for a period in excess of seven years, the Minister may authorize the temporary use and occupation of the land for such public utility, and such land shall remain customary land throughout the period of temporary use and occupation.

(3) On the expiry of the period mentioned in subsection (2), the Minister may authorize such temporary use and occupation for a further period of three years.

(4) Every notice under this section shall—

(*a*) with all reasonable dispatch be published in the *Gazette*; and

(*b*) invite any person claiming to be entitled to any interest in the land to which the notice relates to submit particulars of his claim to the Minister within two months of the date of the publication of such notice in the *Gazette*.

(5) For the purposes of this section "public utility" means a utility which is for the direct or indirect benefit of the community as a whole, or a part of the community within a traditional land management area.

Compensation to individuals for loss, damage or disturbance

18. A person who, by reason of—

(*a*) any acquisition made under section 17 (1); or

(*b*) the temporary use and occupation of customary land under section 17 (2) or (3),

suffers any disturbance of, or loss or damage to any interest which he may have or, immediately prior to the occurrence of any of the events referred to in this section, may have had in such land, shall be paid such compensation for such disturbance, loss or damage as is reasonable.

Conversion of customary land to registered land Cap. 58:01

19. Nothing in this Act shall be construed as preventing the registration of customary land under the Registered Land Act as private land.

Unlawful use of public land an offence, etc.

20. A person who uses or occupies any public land and is not entitled to such use or occupation by virtue of a valid grant, lease or other disposition made by the Minister under any law for the time being in force at the date of such grant, lease or disposition, commits an offence and upon conviction shall be liable to a fine of K500,000 and to imprisonment for three years, and, in the case of a continuing offence, to a further fine of K5,000 in respect of every day during which the offence continues.

PART V

Private Land

Interest in land which the Minister may grant

21.—(1) The Minister may, upon application by any person in a prescribed manner, grant or allocate leasehold or customary estate to such person on such terms and conditions as the Minister considers appropriate.

(2) For avoidance of doubt, the Minister shall not grant freehold title:

Provided that the exemption under section 85 of the Local Government Act, on rates payable or levied in respect of assessable Cap. 22:01

property owned by diplomatic missions, shall apply to land granted to diplomatic missions.

Minister or local government authority may accept surrenders

22. The Minister or a local government authority may accept the surrender of any lease made under this Act or any other written law on such terms and conditions as the Minister or the local government authority may consider appropriate.

Minister or local government authority may relieve from liability to perform covenants, etc.

23. The Minister or a local government authority, may, in his or its discretion, wholly or partially relieve any person from the liability to perform or observe any covenant, condition, agreement or stipulation binding on such person by virtue of any grant, lease or other disposition made under this Act or the existing laws, and may extend the time for the performance or observance of any such covenant, condition, agreement or stipulation.

Implied covenants in leases

24.—(1) In every lease granted under this Act, there shall be implied such covenants with the Minister or a local government authority by or on behalf of the lessee as may be prescribed to the extent that such covenants shall continue in full force and effect, save where earlier satisfied, throughout the term granted, but any such implied covenant may, in the Minister's or the local government authority's discretion, be expressly exempted from any such lease by the terms thereof, or may be expressly modified or varied thereby to such extent as the Minister or the local government authority may direct.

(2) In every lease granted under this Act, there shall be implied such covenant with the Minister or the local government authority by or on behalf of the lessee that the lessee shall not undertake any development of the leased land without first obtaining a grant of development permission from the Planning Committee for the area within which the leased land is situated or, where there is no Planning Committee, the Commissioner for Physical Planning where such grant is required under the Physical Planning Act.

Act 17 of 2016

Power of re-entry by Minister or local government authority

25. Where—

(*a*) a lessee is in breach or does not observe any of the covenants or conditions contained or implied in his lease, and on behalf of the lessee to be performed or observed;

(*b*) the lessee fails or neglects to comply with any orders, directions or instructions made or given under this Act; or

(*c*) the lessee, becomes bankrupt or makes any assignment for the benefit of his creditors or enters into an agreement or makes any arrangement with his creditors for the liquidation of his debts

by composition or otherwise, or shall suffer any execution to be levied on his effects, or, in the case of a lessee being a company, goes into liquidation whether voluntary (save for the purpose of amalgamation or reconstruction) or compulsory, and in any of the said cases, the Minister or a local government authority may, without prejudice to any other right which he or it may have in law or in equity, determine the lease by notice in writing to the lessee or by re-entry on any part of the demised premises in the name of the whole:

Provided that the Minister shall serve a notice on every creditor of the lessee to enable the creditor to make representations.

Exceptions and reservations

26.—(1) Unless otherwise expressly stated in the lease, there shall be implied in every lease, exceptions and reservations of the following in favour of the Minister—

(*a*) all mines, royal and base minerals, mineral substances of every description, mineral oil deposits, quarries, gravel, stone, flints, chalk, sand, clay and other valuable earth upon, in or under any part of the demised premises with, liberty to the Minister and any duly authorized officer to enter, search for, dig, win, take, dress, make merchantable and carry away the same at his pleasure and to sink necessary pits and shafts, erect buildings and fix machinery and works, but doing no wilful damage and making to the lessee reasonable compensation for any actual damage which he may sustain and a *pro rata* abatement of rent being allowed in respect of the extent of the surface so occupied or interfered with, but the lessee may, in accordance with the Mines and Minerals Act, take from the demised premises for his own use any limestone and other materials suitable for building, road metalling or agricultural purposes so long as such limestone and other materials or any products manufactured therefrom are not sold for profit; Cap. 61:01

(*b*) the right, subject to any prior grant, lease or other disposition by the Minister thereof, to control, use or make dispositions of interest or rights in any running or stagnant water, the whole extent of which is not included within the boundaries of the demised premises;

(*c*) right of way with or without vehicle or animals across the demised premises to and from any public land or land in the occupation of any lessee, tenant or licensee of the Minister; and

(*d*) right for any authorized officer, with or without others, to enter upon the demised premises and every part thereof including

buildings thereon at all reasonable times for all reasonable purposes.

(2) Nothing in this section shall prejudice, or be deemed ever to have prejudiced, the vesting of the minerals in the President or a Minister under any law relating to minerals for the time being in force, whether before or after the commencement of the Mines and Minerals Act.

Cap. 61:01

Revision of rent

27.—(1) There shall be implied in every lease granted by the Minister or a local government authority a right on the part of the Minister or the local government authority to revise the rent thereby reserved.

(2) Notwithstanding anything to the contrary contained in any lease subsisting at the commencement of this Act, in respect of all leases, whether made before, on or after the commencement of this section, the Minister or a local government authority may, at any time, by order or by-laws published in the *Gazette*, revise the rents thereby reserved, and after such first revision of those rents the Minister may further in like manner revise those rents. However where an authority, other than the Minister or a local government authority grants a lease, there shall be no need to publish such revision of rent in the *Gazette*.

(3) In the case of leases for agricultural estates, the rent payable may, in respect of such crops as the Minister may specify by order published in the *Gazette*, be deducted from the proceeds of the sales of such crops at the auction floors or at other source of payment in accordance with such arrangements as the Minister may agree with the authorities of the auction floors or other source of payment.

(4) Any rent payable for the purposes of any lease pursuant to this section shall be calculated in accordance with the formula to be prescribed by the Minister, by notice published in the *Gazette*.

Matters to be taken into account

28. The Minister or a local government authority shall, in revising any rent, take into consideration any enhanced value of the demised premises attributable to improvements effected thereon by the lessee during the term of the lease.

Procedure on alteration of rent

29.—(1) If the Minister or a local government authority decides to alter a rental on revision, he or it, as the case may be, shall cause the lessee to be notified in writing of the amount of the revised rental and the date from which it shall become payable, which date shall not be less than three months from the date of such notice.

(2) If the rental shall be increased on such revision and, if within six months of the date of the notice, the lessee does not notify the Minister or the local government authority in writing that he objects to the revised rental and intends to terminate his lease in accordance with section 30, the revised rental shall become payable as from the date specified.

Surrender *in lieu* of revision of rent

30.—(1) If a lessee notifies the Minister or the local government authority of his intention to terminate his lease under section 29, he may surrender his lease to the Minister or the local government authority at any time before the date specified as the date on which the revised rental shall become payable.

(2) If the lessee fails to surrender his lease before such date, the lease shall continue in full force and effect and the revised rental shall become payable as from the date specified.

Compensation for improvements on surrender

31. If a lessee surrenders his lease in accordance with section 30, he shall upon registration of the surrender in the Land Registry be entitled to such compensation in respect of any improvements effected by him upon the demised premises during the term, and such compensation shall be based on the unexhausted value of the improvements thereon.

Acceptance of rent not to waive breach of covenant

32. The acceptance by the Minister or a local government authority of any rent reserved by a lease, or any part thereof, shall not constitute or be construed as a waiver of any previous breach by the lessee of any of the covenants or conditions contained or implied in the lease and on his part to be performed and observed.

Authorized officer may distrain

33. An authorized officer may distrain for any rent due in respect of any land granted, leased or otherwise disposed of under this Act or any written law.

Service of notices

34.—(1) Subject to subsection (2), any notice required to be given under this Act or under any grant, lease or other disposition of land made thereunder, shall be deemed to be sufficiently served on a grantee, lessee or other person in favour of whom such other disposition is made, if addressed to him by prepaid registered post at his last known address, or, if such grantee, lessee or person is a company, at its registered office, or principal office or place of business in Malaŵi, and on the Minister if addressed to him by prepaid registered post.

(2) A notice served under subsection (1) shall be deemed to have been effected on the recipient seven days from the date of posting the notice to the recipient's address.

Fees

35.—(1) The Minister or local government authority may prescribe fees payable in respect of any matters provided under this Act.

(2) The Minister or the local government authority may, in any special case, by notice published in the *Gazette*, revise any such fee.

Prior written consent of the Minister or local government authority before sale, lease, etc., of private land

36.—(1) A person shall not sell or otherwise to convey, lease, transfer or assign any private land shall, without prior written consent of the Minister or a local government authority to sell, convey, lease, transfer or assign the land.

(2) The Minister of the local government authority shall grant or withhold consent within thirty days of receipt of the written request from the person who intends to sell the land.

(3) A person who acts, or attempts to act, in contravention of subsection (1) commits an offence and shall, upon conviction, be liable to a fine of K1,000,000 and to imprisonment for twelve months.

(4) Nothing in this section shall apply to—

(*a*) any offer of sale, conveyance, lease, transfer or assignment by or direct to the Government;

(*b*) any agreement to lease, or any lease, for a non-renewable term of not more than three years;

(*c*) any sale pursuant to any order of court or by any officer in the public service acting in his official capacity and pursuant to any written law; or

(*d*) any mortgage or other hypothecation by way of security for repayment of money lent in good faith or for the due performance of the terms and conditions of any contract entered into in good faith, except that this paragraph shall not apply to any mortgage or hypothecation given for the purpose of the evasion or avoidance of the provisions of this section.

(5) The Minister or any local government authority may, by regulations or by-laws, as the case may be, published in the *Gazette*, prescribe forms for the purposes of this section.

Grants of private land to persons who are not citizens of Malaŵi

37.—(1) Any grant of private land to any person who is not a citizen of Malaŵi, whether by way of sale, conveyance, assignment, lease, transfer or other transaction, shall not be for an estate greater than a lease of fifty years unless, for reasons fully explained in writing accompanying the application for the registration of the grant, a greater estate is required for the realization of investment.

(2) Without prejudice to subsection (1), where, at the time of transaction, the existing interest in the private land concerned is for an estate greater than fifty years, a grant of private land may be made extending up to the entire remaining estate.

Restriction of sale of private land to persons who are not citizens of Malaŵi

38.—(1) Without prejudice to the requirements of section 37 or any other provision of this Act, a person shall not sell, whether by private transaction or by tender, auction or other means, any private land to a person who is not a citizen of Malaŵi, unless—

(*a*) the intention to sell the private land has been published in a newspaper in daily circulation in Malaŵi not less than twenty-one days before the date of sale, specifying the price, location and size of the private land, any developments thereon and any other particulars sufficient to identify the land:

Provided that the government valuer appointed by the Minister shall be at liberty to verify the advertised purchase price prior to the sale;

(*b*) following the publication referred to in paragraph (*a*), no person who is a citizen of Malaŵi has made an offer, or has been able, to purchase the private land at a price that is not lower than the published price; and

(*c*) the purchaser, if not a citizen of Malaŵi, has purchased the private land at a price that is not lower than the published price.

(2) Where there is a difference between the value of the private land reached by the seller, on one hand, and the valuer appointed by the Minister under subsection (1) (*a*), on the other hand, either party may refer the difference for final resolution by the Land Economy Board.

(3) Notwithstanding any provision to the contrary in any other written law, no title to private land shall pass under any sale made or purportedly made in contravention of subsection (1), but registration of title upon such sale shall be *prima facie* evidence of validity of title to the land.

(4) Where there is evidence to show that the registration referred to under subsection (3) has been made in contravention of subsection (1), the Minister shall cancel the registration and avoid the transfer of title in the private land, by giving notice of such cancellation to the parties involved.

Non-development of freehold land

39. Where a holder of private land under freehold title has not developed the land or has not shown or effected his intention to

develop the land or dispose of it, within two years from the date the holder has been registered, the Minister may, without prejudice to any other powers conferred on him by this Act or any other written law—

(*a*) by written notice sent by prepaid registered mail to the person concerned addressed to his registered or his last known address, demand voluntary surrender of the land by that person to the Government within a period of ninety days from the date of the notice;

(*b*) in the event that there is no voluntary surrender as demanded under paragraph (*a*)—

Cap. 58:04

(i) acquire the land under the Lands Acquisition Act; or

(ii) consult with the Minister responsible for the physical planning for the exercise of the powers under section 64 of the Physical Planning Act.

Act 17 of 2016

Gifts of private land between non-citizens

40. No title to private land shall pass by way of gift *inter vivos* as between persons who are not citizens of Malaŵi.

PART VI

User of Land

Minister's power to regulate, manage or control the use of land

41.—(1) Subject to this Act, the Minister may, from time to time, by order published in the *Gazette*, or by regulations made under section 47, or by directions or instructions made or given by him in writing in any individual case, make provision for regulating, managing and controlling the use of all land other than public land or private land situate within a city, municipality or township.

(2) The Minister shall, before exercising any powers granted under subsection (1), consult with and have regard to the views of the Minister for the time being responsible for the administration of the Physical Planning Act.

Act 17 of 2016

(3) Without derogation from the generality of subsection (1), any such order, regulation, direction or instruction, may make provision regulating and controlling the use to which land may be put, the method of cultivation and growing of crops and keeping livestock, the maintenance of proper drainage of such land and the fencing, hedging and modes of access to such land, the preservation and protection of the source, course and banks of streams and generally for the good management and conservation of the soil, water, woodland, pasture and other natural resources thereof.

(4) The Minister may make or give different orders, regulations, directions or instructions in respect of different categories of land.

(5) A person who contravenes this section, or any order, regulation, direction or instruction made or given under this section commits an offence and upon conviction shall be liable—

(*a*) in the case of a natural person, to a fine of K500,000 and imprisonment for six months and for any continuing offence a fine of K5,000 per day; and

(*b*) in the case of a legal person, to a fine of K1,000,000 and a reasonable estimate of the cost of restoring the land to be assessed by experts in a relevant discipline, and, for any continuing offence, the directors, manager or any person concerned in the management of its affairs shall be liable to imprisonment for twelve months.

(6) If a person is convicted of an offence under this section, the Minister may, by notice terminate that person's right, however arising, to occupy land in respect of which such offence was committed, and the person shall, within thirty days after being given such notice, vacate the land, where the person fails, omits or refuses so to vacate the land, his use and occupation of it shall be unlawful.

Power of entry on land

42. Any authorized officer may at any reasonable time enter upon any land to which section 41 (1) applies for the purpose of ensuring that this Part is being complied with.

Obstruction and penalties

43. A person who obstructs or impedes another person lawfully exercising any powers or performing any functions or duties conferred or imposed upon him or under this Part, shall, upon conviction, be liable—

(*a*) in the case of a natural person, to a fine of K500,000 and imprisonment for six months; and

(*b*) in the case of a legal person, to a fine of K500,000.

Vesting of land after termination of right to occupy

44. Where, by virtue of section 42, the right of a person to occupy land is terminated by the Minister by order, then, from the date of such order, the land shall—

(*a*) if it is held by such person directly under a grant, lease or other disposition of public or customary land made under this Act or any written law, revert in the Republic as public land;

(*b*) if it is held by such person under a lease, license or other disposition of private land, revert in the person entitled to the land

on the termination of the lease, license or interest created by such other disposition; or

(*c*) in any other case, become vested in the Republic as public land.

PART VII

Trespass or Encroachment upon, or Unlawful Occupation of Land

Summons for trespass, encroachment or unlawful occupation

45.—(1) Where a person—

(*a*) trespasses or encroaches upon any public land or any private land other than a customary estate; or

(*b*) is deemed under this Act to be in unlawful use or occupation of any such land,

a magistrate having jurisdiction in the area where such land is situated may, upon a sworn complaint being made by a person who claims to have lawful title to the land, issue a summons to the alleged trespasser, encroacher, or unlawful user or occupier, (hereinafter referred to as the "defendant") requiring him to attend at the court of that magistrate to answer such complaint.

(2) Upon hearing of the summons, the magistrate court, if satisfied that the defendant has trespassed or encroached upon the land, or is deemed to be in an unlawful use or occupation thereof, shall make an order requiring the defendant, his family or other dependents, if any, to vacate the land within seven days, or such other longer period as the magistrate shall determine.

(3) If the defendant fails to comply with the order made by the magistrate court, he may be removed from the land by any authorized officer, police officer or officer of the court authorized in that behalf and for that purpose by the magistrate court.

(4) When determining in accordance with subsection (2), the period of time which shall be allowed to the defendant within which to vacate the land, the magistrate court shall take into consideration the period of time which may reasonably be required to enable the defendant, if he be so minded, for his own use and benefit—

(*a*) to take down, disassemble and remove from the land, or any part thereof, any buildings, structure, fence or improvement of any kind whatsoever which he may have erected upon or made to the land;

(*b*) to harvest, collect, take-in and remove from the land or any part thereof, any crops, plants, trees, shrubs or other matter which

he may have sown, planted or cultivated on the land during his occupation thereof; and

(*c*) to remove from the land any chattels belonging to him.

(5) The provisions of this section shall be in addition to, and not in substitution for, the provisions of any other written law relating to ejectment from land.

Procedure

46. The practice and procedure to be observed in any proceedings in the magistrate's court under this Part shall be the practice and procedure prescribed by, in or under the Courts Act with such variation as to forms or otherwise as this Part, and the circumstances of the case, may require.

Cap. 3:02

PART VIII

Miscellaneous

Regulations

47. The Minister may make regulations for the better carrying into effect of the provisions of the Act.

Certificate of Minister to be *prima facie* proof

48. In any proceedings before a court in which the question arises as to whether or not any land is public land or private land, a certificate purporting to be signed by the Minister shall be *prima facie* proof that the land is public land or private land, as the case may be.

Proof of citizenship in relation to land transactions

49. Where, in relation to any land transaction, a person who is party to such transaction is required, whether as a matter of law, procedure or practice, to disclose his citizenship to the Minister and claims to be a citizen of Malaŵi, he shall furnish to the Minister evidence of proof of his Malaŵi citizenship in accordance with the Malaŵi Citizenship Act or other applicable law in Malaŵi.

Cap. 15:01

Delegation

50.—(1) The Minister may, by notice published in the *Gazette*, delegate any authorized officer to exercise and perform such of the Minister's powers or duties under this Act as he may specify in the notice.

(2) Any authorized officer delegated with powers and duties under subsection (1) shall, in the exercise of his powers to allocate land for leases or grant leases under section 12 or to administer any lease so granted, consult with and take into account the views of the Commissioner for Physical Planning in respect of any matter concerning the use or development of the land so leased or to be leased.

Repeal and savings Cap. 57:01

51.—(1) The Land Act is hereby repealed.

(2) Any subsidiary legislation made under the repealed Act in force immediately before the commencement of this Act—

(*a*) shall remain in force, unless in conflict with this Act, and shall be deemed to be subsidiary legislation made under this Act; and

(*b*) may be replaced, amended, revoked or repealed by subsidiary legislation made under this Act.

(3) Any grant, right of occupancy, disposition, permit or licence made, issued or given under the law repealed under subsection (1) shall be as valid, and shall have effect, as if they were made, issued or given under this Act.

Savings with respect to mining and oil exploration and production Cap. 61:01 Cap. 61:02

52. Nothing in this Act shall prejudice the grant or issue, under the Mines and Minerals Act or the Petroleum (Exploration and Production) Act, of any licence or permit, as the case may be, or the exercise of rights conferred on the holder of any such licence or permit or any claim by the Acts.

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CHAPTER 58:01

REGISTERED LAND

6 of 1967
32 of 1970
18 of 1971
1 of 1981

An Act to make provision for the Registration of Title to Land, and for dealings in land so registered, and for purposes connected therewith

[9th May, 1967]

PART I

Preliminary

Short title

1. This Act may be cited as the Registered Land Act.

Interpretation

2. In this Act, except where the context otherwise requires—

"Allocation Officer" and "Allocation Record" have the meanings assigned to "Allocation Officer" and "Allocation Record" in the Customary Land (Development) Act;

Cap. 59:01

"application book" means the application book kept under section 5 (*d*);

"charge" means an interest in land securing the payment of money or money's worth or the fulfilment of any condition, and includes a subcharge and the instrument creating a charge;

"chargee" means the proprietor of a charge;

"chargor" means the proprietor of charged land or of a charged lease or charge;

"court", save as is otherwise expressly provided, means the High Court or a subordinate court held by a Resident Magistrate;

"dealing" includes disposition and transmission;

"disposition" means any act by a proprietor whereby his rights in or over his land, lease or charge are affected, but does not include an agreement to transfer, lease or charge;

"easement" means a right attached to a piece of land which allows the proprietor of the piece either to use the land of another in a particular manner or to restrict its use to a particular extent, but does not include a profit;

"to file" means to place in the relative piece file;

"guardian" means any person responsible (whether under customary law or otherwise) for protecting the interests of any person who is under a disability, whether by reason of age, unsoundness of mind or any other cause;

"incumbrance" means a lease, charge, easement, restrictive agreement or profit;

"instrument" includes any deed, judgment, decree, order or other document requiring or capable of registration under this Act;

"interest in land" includes ownership of land;

"land" includes land covered with water, all things growing on land and buildings and other things permanently affixed to land;

"Land Register" means the Land Register compiled under Division 2 of Part II;

"lease" means the grant with or without consideration, by the proprietor of land of the right to the exclusive possession of his land, and includes the right so granted and the instrument granting it, and also includes a sublease, but does not include an agreement for lease;

"lessee" means the holder of a lease;

"lessor" means the proprietor of leased land;

"licence" means a permission given by the proprietor of land or a lease which allows the licensee to do some act in relation to the land or the land comprised in the lease which would otherwise be a trespass, but does not include an easement or a profit;

"piece" means an area of land separately delineated on the registry map and given a number;

"periodic tenancy" means a tenancy from year to year, half-year to half-year, quarter to quarter, month to month, week to week or the like;

"personal representative" means executor of the will or administrator of the estate or part of the estate;

"private land" bears the same meaning as in section 2 of the Land Act; Cap. 57:01

"profit" means the right to go on the land of another and take a particular substance from that land;

"proprietor" means the person registered under this Act as the owner of land or a lease or a charge;

"the register" means the leaf of the land register kept in respect of a piece of land or of a registered lease;

"to register" means to make an entry, note or record in the register, and "registered", "unregistered" and "registration" bear a corresponding meaning;

"Registrar" means—

(*a*) the Chief Land Registrar or the Deputy Chief Land Registrar, appointed under section 6; or

(*b*) where a Land Registrar or an Assistant Land Registrar has been authorized under section 6 (4) to exercise or perform any particular power or duty, that Land Registrar or Assistant Land Registrar so far as concerns that power or duty;

"registration district" means a land registration district constituted under section 4;

"registration section" means a division of a registration district established under section 15 (3);

"registry" means a land registry established under section 5;

"registry map" means the map or series of maps referred to in section 15;

"transfer" means the passing of land, a lease or a charge by act of the parties and not by operation of law, and also the instrument by which such passing is effected;

"transmission" means the passing of land, a lease or a charge from one person to another by operation of law on death or insolvency or otherwise howsoever, and includes the compulsory acquisition of land under any written law;

"trustee" includes personal representative;

"valuable consideration" includes marriage, but does not include a nominal consideration.

Reconciliation with other laws

3. Except as otherwise provided in this Act, no other written law and no practice or procedure relating to land shall apply to land registered under this Act so far as it is inconsistent with this Act:

Provided that, except where a contrary intention appears, nothing contained in this Act shall be construed as permitting any dealing which is forbidden by the express provisions of any other written law or as overriding any provision of any other written law requiring the consent or approval of any authority to any dealing.

PART II

Organization and Administration

Division 1*—Land Registries and Officers*

Registration Districts

4.—(1) For the purposes of this Act, the Minister may, by order, constitute a part or parts of Malaŵi a land registration district or land registration districts and may at any time vary the limits of any such district.

(2) The Minister in such order may exclude from registration any kind of land or dealing which he considers cannot conveniently be registered in any such district.

Land registries

5. There shall be maintained in each registration district a land registry, in which there shall be kept—

(*a*) a register, to be known as the land register, in accordance with Division 2 of this Part;

(*b*) a copy of the registry map;

(*c*) piece files containing the instruments which support subsisting entries in the land register and any filed plans and documents;

(*d*) a book, to be known as the application book, in which shall be kept a record of all applications numbered consecutively in the order in which they are presented to the registry;

(*e*) an index, in alphabetical order, of the names of the proprietors of land, leases and charges, showing the numbers of the pieces in which they are interested; and

(*f*) a register and a file of powers of attorney.

Appointment of officers

6.—(1) There shall be appointed a Chief Land Registrar, who shall be responsible for administering the land registries in accordance with this Act.

(2) There may be appointed a Deputy Chief Land Registrar and so many Land Registrars and Assistant Land Registrars as may be necessary for the carrying out of this Act.

(3) The Deputy Chief Land Registrar shall have all the powers and may perform all or any of the duties conferred and imposed on the Chief Land Registrar by this Act or by any rules made thereunder, except the power of authorization conferred by subsection (4).

(4) The Chief Land Registrar may in writing authorize any Land Registrar or Assistant Land Registrar to exercise or to perform all or any of the powers or duties conferred or imposed on the Chief Land Registrar by this Act or by any rules made thereunder, and may at any time revoke or vary any such authorization:

Provided that no such authorization shall be deemed to divest the Chief Land Registrar of any of his powers or duties, and he may, if he thinks fit, exercise and perform all his powers or duties notwithstanding any such authorization.

(5) All officers exercising powers or performing duties conferred or imposed by this Act shall be subject to the general or special directions of the Minister.

General powers of Registrar

7. The Registrar may exercise the following powers in addition to any other powers conferred on him by this Act, that is to say—

(*a*) he may require any person to produce any instrument, certificate or other document or plan relating to the land, lease or charge in question, and that person shall produce the same;

(*b*) he may summon any person to appear and give any information or explanation respecting land, a lease or a charge, or any instrument, certificate or other document or plan relating to the land, lease or charge in question, and such person shall appear and give such information or explanation;

(*c*) he may refuse to proceed with any registration if any instrument, certificate or other document, plan, information or explanation required to be produced or given is withheld or any act required to be performed under this Act is not performed;

(*d*) he may administer oaths or take a declaration in lieu thereof, and may require that any proceedings, information or explanation affecting registration shall be verified on oath or by statutory declaration;

(*e*) he may order that the costs, charges and expenses incurred by him or by any person in connexion with any investigation or hearing held by him for the purposes of this Act shall be borne and paid by such persons and in such proportions as he may think fit.

Indemnity of officers

8. The Chief Land Registrar shall not, nor shall any other officer of the Registry, be liable to any action or proceedings for or in respect of any act or matter done or omitted to be done in good faith in the exercise or supposed exercise of the powers of this Act, or any rules made thereunder.

Seal of registry

9. Each registry shall have a seal, and every instrument purporting to bear the imprint of such a seal shall be received in evidence and, unless the contrary is shown, shall be deemed without further proof to be issued by or under the direction of the Chief Land Registrar.

Division 2—The Land Register

The Land Register

10.—(1) The Land Register shall comprise a register in respect of every piece required by this Act to be registered, and a register in respect of each lease required by this Act to be registered.

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(2) Each register shall show—

(i) whether the land is public land or private land; and

(ii) where the land is private land, and the Adjudication Record prepared under the Adjudication of Title Act, 1971, so records, that the title is provisional.

(3) Each register shall be divided into three sections as follows—

A—the property section, containing a brief description of the land or lease, together with particulars of its appurtenances and, where the title is provisional, of the information recorded in the Adjudication Record under section 16 (1) (*d*) of the Adjudication of Title Act, 1971, and a reference to the registry map and filed plan, if any;

B—the proprietorship section, containing the name and, where possible, the address of the proprietor and a note of any inhibition, caution or restriction affecting his right of disposition;

C—the incumbrances section, containing a note of every incumbrance.

(4) No entry shall be required in the proprietorship section of the register relating to any piece which is described as public land.

Compilation of Land Register
Cap. 59:01
32 of 1970
18 of 1971

11.—(1) Whenever an Allocation Record has become final under section 27 of the Customary Land (Development) Act and the Allocation Officer has delivered the Allocation Record to the Land Registrar or Assistant Land Registrar in charge of the registration district concerned, such Land Registrar or Assistant Land Registrar shall prepare a register for each piece of intended private land, intended public land and recorded customary land shown in the Allocation Record and for any lease which requires registration and shall register therein any of the particulars in the Allocation Record which require registration.

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(2) Whenever an Adjudication Record has become final under section 23 of the Adjudication of Title Act, 1971, and the Adjudication Officer has delivered the Adjudication Record to the Registrar, the Registrar shall prepare a register for each piece shown in the Adjudication Record and for any lease required to be registered, and shall register therein any of the particulars in the Adjudication Record which require registration.

Transitional provisions relating to rights, etc., acquired under charges, etc., registered under Cap. 58:02

11A. Nothing in this Act shall affect the rights, liabilities and remedies of the parties under any mortgage, charge, equitable mortgage or other form of security which, immediately before the registration under this Act of the land affected thereby, was registered under the Deeds Registration Act, and such rights liabilities and remedies shall be exercisable and enforceable in accordance with the law which was applicable thereto immediately before the registration of the land under this Act.

Manner of registration

12.—(1) The first registration of any piece shall be effected by the preparation of a register or registers in accordance with section 10 and the signing by the Registrar of the particulars of the proprietorship and the particulars of incumbrances, if any appearing thereon.

(2) Every subsequent registration shall be effected by an entry in the land register in such form as the Chief Land Registrar may from time to time direct, and by the cancellation of the entry, if any, which it replaces.

(3) No subsequent registration shall be made in regard to land or a lease of land within a Land Control Division declared under the Local Land Boards Act unless the Registrar is satisfied that the dealing in such land or a lease which requires registration has been given the consent of a Local Land Board or that no consent is required or a general consent has been given by the Minister in accordance with such Act. The Registrar shall file a copy of any consent given by a Local Land Board.

Cap. 59:02

Cancellation of obsolete entries

13. The Registrar may cancel any entry in the register which he is satisfied has ceased to have any effect.

New editions of register

14. The Registrar at any time may open a new edition of a register showing only subsisting entries and omitting therefrom all entries that have ceased to have any effect.

Division 3—*Maps, Parcels and Boundaries*

Registry map

15.—(1) The Director of Surveys shall, as soon as practicable, prepare and thereafter maintain a map or series of maps, to be called the registry map, for every registration district.

(2) Where for any registration district, or for a part thereof, no map has been so prepared, the Registrar may himself cause a map or series of maps to be prepared for that registration district, or for that part, and thereafter maintained, and such maps or series of maps shall be deemed to be the registry map until the Director of Surveys prepares a map or maps under subsection (1) and delivers it to the Registrar.

(3) On the registry map, every registration district shall be divided into registration sections, which shall be identified by distinctive names, and the registration sections may be further divided into blocks, which shall be given distinctive number or letters or combinations of numbers and letters.

(4) The pieces in each registration section or block shall be numbered consecutively, and the name of the registration section and the number and letter of the block, if any, and the number of the piece shall together be a sufficient reference to any piece.

(5) The Registrar may, at any time, cause registration sections or blocks to be combined or divided, or cause their boundaries to be varied.

(6) A plan may be filed in respect of a particular piece to augment the information available from the registry map, and the filing of the plan shall be noted in the register.

Power to alter registry map and to prepare new editions

16.—(1) Where the Registrar is maintaining the registry map he may, or in any other case he may require the Director of Surveys to, correct the line or position of any boundary shown on the registry map with the agreement of every person shown by the register to be affected by the correction, but no such correction shall be effected except on the instructions of the Registrar in writing in the prescribed form, to be known as a mutation form, and the mutation form shall be filed:

Provided that the Registrar or the Director, as the case may be, may correct an error in the registry map which does not affect the interest of any person.

(2) Whenever the boundary of a piece is altered on the registry map, the piece number shall be cancelled and the piece shall be given a new number.

(3) Where the Registrar is maintaining the registry map he may, or in any other case he may require the Director of Surveys to, prepare a new edition of the registry map or any part thereof, and there may be omitted from the new map any matter which the Registrar considers obsolete.

17. The Registrar may cause a survey to be made for any purpose connected with this Act, but, where the registry map is maintained by the Director of Surveys such survey shall be used to amend the registry map only if it is approved by the Director of Surveys. Further surveys

18.—(1) Except where, under section 19, it is noted in the register that the boundaries of a piece have been fixed, the registry map and any filed plan shall be deemed to indicate the general boundaries only of the piece. General boundaries

(2) Where any uncertainty or dispute arises as to the position of any boundary, the Registrar, on the application of any interested party, shall, on such evidence as the Registrar considers relevant, determine and indicate the position of the uncertain or disputed boundary.

(3) Where the Registrar exercises the power conferred by subsection (2), he shall make a note to that effect on the registry map and in the register and shall file such plan or description as may be necessary to record his decision.

(4) No court shall entertain any action or other proceedings relating to a dispute as to the boundaries of registered land unless the boundaries have been determined as provided in this section.

(5) Except where, as aforesaid, it is noted in the register that the boundaries of a piece have been fixed, the court or the Registrar may, in any proceedings concerning the piece, receive such evidence as to its boundaries as it or he thinks fit.

19.—(1) If the Registrar in his discretion considers it desirable to indicate on a filed plan, or otherwise to define in the register, the precise position of the boundaries of a piece or any parts thereof, or if any interested person makes application to the Registrar, the Registrar shall give notice to the owners and occupiers of the land adjoining the boundaries in question of the intention to ascertain and fix the boundaries. Fixed boundaries

(2) The Registrar shall, after giving all persons appearing by the register to be affected an opportunity of being heard, cause to be defined by survey the precise position of the boundaries in question, file a plan containing the necessary particulars and make a note in the register that the boundaries have been fixed, and thereupon the plan shall be deemed to define accurately the boundaries of the piece.

(3) Where the dimensions and boundaries of a piece are defined by reference to a plan verified by the Director of Surveys, a note shall be made in the register, and the piece shall be deemed to have had its boundaries fixed under this section.

Maintenance of boundary features

20.—(1) Every proprietor of land shall maintain in good order the fences, hedges, stones, pillars, walls, survey marks and other features which demarcate his boundaries, whether established pursuant to the requirements of any other written law or pursuant to an order of the Registrar or of the proprietor's own accord.

(2) The Registrar may in writing order the demarcation within a specified time of any boundary in such permanent manner as he may direct, and any person who fails to comply with such an order shall be liable to a fine of £10.

(3) The Registrar may in writing order which of adjoining proprietors shall be responsible for the care and maintenance of any feature demarcating a common boundary, and any proprietor so ordered to be responsible who allows the boundary feature or any part of it to fall into disrepair or to be destroyed or removed shall be liable to a fine of £10.

Interference with boundary features

21.—(1) Any person who defaces, removes, injures or otherwise impairs any boundary feature or any part of it unless authorized to do so by the Registrar shall be liable to a fine of £100 and to imprisonment for two months.

(2) Any person convicted of such an offence, whether or not any penalty therefor is imposed upon him, shall be liable to pay the cost of restoring the boundary feature, and such cost shall be recoverable as a civil debt by any person responsible under section 20 for the maintenance of the feature.

Combinations and subdivisions

22.—(1) Where contiguous pieces are owned by the same proprietor and are subject in all respects to the same rights and obligations, the Registrar, on application by the proprietor, may combine these pieces by closing the registers relating to them and opening a new register or registers in respect of the piece or pieces resulting from the combination.

(2) Upon the application of the proprietor of a piece for the division of his piece into two or more pieces, the Registrar shall effect the division by closing the register relating to the piece and opening new registers in respect of the new pieces resulting from the division, and recording in the new registers all subsisting entries appearing in the closed register:

Provided that—

(*a*) nothing shall be done under this section which would be inconsistent with this Act or any other written law; and

(*b*) no piece which is subject to a lease shall be subdivided so as to subdivide the land comprised in such lease.

Change of boundaries

23.—(1) The Registrar may, on the application of the proprietors of contiguous pieces who are desirous of changing the layout of their pieces, and with the consent in writing of all other persons in whose names any right or interest in such pieces is registered and of any cautioner, cancel the registers relating to such pieces and prepare new registers in accordance with the revised layout:

Provided that, where in the opinion of the Registrar a proposed change of boundaries involves substantial changes of ownership which should be effected by transfers without invoking this section, he may in his discretion refuse to effect such change.

(2) Upon any such change of boundaries, the new pieces shall, notwithstanding section 31, vest in the persons in whose names they are registered.

PART III

Effect of Registration

Interest conferred by registration 18 of 1971

24. Subject to this Act—

(*a*) the registration of a person as the proprietor of private land shall confer on that person the rights of owner of that land as private land;

(*b*) the registration of a person as the proprietor of a lease shall vest in that person the leasehold interest described in the lease, subject to all implied and expressed agreements, liabilities and incidents of the lease:

18 of 1971

Provided that if the title of the lessor is provisional the enforcement of any estate, right or interest affecting or in derogation of the right of the lessor to grant the lease shall not be prejudiced.

Effect of registration with provisional title

24A. Subject to this Act, the registration of any person as the proprietor of a piece of private land with a provisional title shall not affect or prejudice the enforcement of any estate, right or interest adverse to or in derogation of the title of that proprietor arising before the date of such registration, or under such instrument or in such other manner as is specified in the register of that piece, but save as aforesaid, such registration shall have the same effect as the registration of a person without such qualification.

Rights of proprietor

25. The rights of a proprietor, whether acquired on first registration or whether acquired subsequently for valuable consideration or by an order of court, shall be rights not liable to be defeated except as provided in this Act and the Land Act and shall be held by the proprietor, free from all other interests and claims whatsoever, but subject—

Cap. 57:01

(*a*) to the leases, charges and other encumbrances, if any, shown in the register; and

(*b*) unless the contrary is expressed in the register, to such liabilities, rights and interests as affect the same and are declared by section 27 not to require noting on the register:

Provided that—

(i) nothing in this section shall be taken to relieve a proprietor from any duty or obligation to which he is subject as a trustee, or as a family representative;

(ii) the registration of any person under this Act shall not confer on him any right to any minerals or to any mineral oils as defined in the Mining Act and the Mining Regulation (Oil) Act respectively unless the same are expressly referred to in the register.

Cap. 61:01
Cap. 62:01

Voluntary transfer

26. Every proprietor who has acquired land, a lease or a charge by transfer without valuable consideration shall hold it subject to any unregistered rights or interests subject to which the transferor held it, and subject also to the Bankruptcy Act and to the winding-up provisions of the Companies Act, but save as aforesaid such transfer when registered shall in all respects have the same effect as a transfer for valuable consideration.

Cap. 11:01
Cap. 46:03

Overriding interests

27. Unless the country is expressed in the register, all registered land shall be subject to such of the following overriding interests as may for the time being subsist and affect the same, without their being noted on the register—

(*a*) natural rights of water and support;

(*b*) rights of compulsory acquisition, sale, resumption, entry, search and user conferred by any other written law;

(*c*) leases or agreements for leases for a term not exceeding three years, and periodic tenancies within the meaning of section 39;

(*d*) any unpaid rates and other moneys which, without reference to registration under this Act, are expressly declared by any written law to be a charge upon land;

(*e*) rights acquired or in process of being acquired by virtue of any written law relating to the limitation of actions or by prescription;

(*f*) the rights of a person in actual occupation of land or in receipt of the rents and profits thereof save where inquiry is made of such person and the rights are not disclosed;

(*g*) electric supply lines, telephone and telegraph lines or poles, pipelines, aqueducts, canals, weirs and dams erected, constructed or laid in pursuance or by virtue of any power conferred by any written law:

Provided that the Registrar may direct registration of any of the liabilities, rights and interests hereinbefore defined in such manner as he thinks fit.

Conversion of provisional title
18 of 1971

27A.—(1) Any proprietor registered with provisional title or any other interested person may at any time apply to the Registrar to remove the qualification to which such provisional title is subject, and if the Registrar is satisfied that such qualification has ceased to be of effect, and after such advertisement as the Registrar may think fit, the Registrar shall make an order that the title shall cease to be provisional.

(2) On the making of an order under subsection (1) or on the application of the proprietor or of any other interested person after the expiration of twelve years from the date of first registration with a provisional title, the Registrar, subject to his being satisfied that the proprietor, or the successive proprietors, has, or have, been in possession during the said period, shall delete the word "provisional" from the register of the piece in question, and thereupon the title to such piece shall cease to be provisional.

Entries to constitute actual notice

28. Every proprietor acquiring any land, lease or charge shall be deemed to have had notice of every entry in the register relating to the land, lease or charge.

PART IV

Searches and Certificates

Searches and copies

29.—(1) Any person, on application in the prescribed form, may inspect during official hours of business any register and any sheet of the registry map or any filed instrument or plan.

(2) Any person, on application in the prescribed form, shall be entitled to a certified copy of any register or part of the registry map or any plan or instrument filed in the registry.

(3) Any person, on application in the prescribed form, may require an official search in respect of any piece, and the Registrar shall issue a certificate of official search setting forth particulars of the subsisting entries in the register of that piece.

Land certificates and certificates of lease
32 of 1970

29A.—(1) The Registrar shall, if requested by any proprietor of land or of a lease where no land certificate or certificate of lease has been issued, issue to him a land certificate or a certificate of lease, as the case may be, in the prescribed form, showing all subsisting entries in the register affecting that land or lease:

Provided that—

(i) only one such certificate shall be issued in respect of each piece of land or lease;

(ii) no certificate of lease shall be issued unless the lease is for a certain period exceeding five years.

(2) A land certificate or certificate of lease shall be only *prima facie* evidence of the matters shown therein, and the land or lease shall be subject to all entries in the register whether they are shown on the certificate or not.

(3) When there is more than one proprietor, the proprietors may concur in nominating one of their number who shall receive the certificate, and failing such concurrence the certificate shall be filed in the registry.

(4) The fact and date of the issue of a land certificate or certificate of lease shall be noted in the register.

Production of certificate

29B.—(1) If a land certificate or a certificate of lease has been issued, then, unless it is filed in the registry or the Registrar dispenses with its production, it shall be produced on the registration of any dealing with the land or lease to which it relates.

(2) A note of such registration shall be made in the certificate or the certificate may be destroyed and a new certificate may be issued to the new proprietor.

(3) If the disposition is a charge, the certificate shall be filed in the registry until the charge has been discharged.

Lost or destroyed certificates

29C.—(1) If a land certificate or certificate of lease is lost or destroyed, the proprietor may apply to the Registrar for the issue of a new certificate, and shall produce evidence to satisfy the Registrar of the loss or destruction of the previous certificate.

(2) The Registrar may require a statutory declaration that the certificate has been lost or destroyed.

(3) The Registrar, if satisfied with the evidence as to the destruction or loss of the certificate, and after the publication of such notice as he may think fit, may issue a new certificate.

(4) When a lost certificate is found, it shall be delivered to the Registrar for cancellation.

Evidence

30.—(1) A certified copy of the register or part of the registry map or any plan or instrument filed in the registry shall be admissible in evidence in all actions and matters and between all persons or parties, to the same extent as the original, and a signature on any such certified copy purporting to be the signature of the Registrar shall be presumed to be the signature of the Registrar until the contrary is proved.

(2) No legal practitioner, trustee, personal representative or other person in a fiduciary position shall be answerable in respect of any loss occasioned by relying on the accuracy of any such certified copy as is referred to in subsection (1).

(3) No process for compelling the production of the register, or of the registry map, or of any filed instrument or plan, shall issue from any court except with the leave of that court, which leave shall not be granted if a certified copy will suffice, and any such process, if issued, shall bear thereon a statement that it is issued with the leave of the court.

PART V

Dispositions

Division 1—General

Subsequent dealings

Cap. 59:02

31.—(1) No land, lease or charge shall be capable of being disposed of except in accordance with this Act and the Local Land Boards Act and every attempt to dispose of such land, lease or charge otherwise than in accordance with such Acts shall be ineffectual to create, extinguish, transfer, vary or affect any right or interest in the land, lease or charge.

(2) Nothing in this section shall be construed as preventing any unregistered instrument from operating as a contract, but no

action may be brought upon any contract for the disposition of any interest in land unless the agreement upon which such action is brought, or some memorandum or note thereof, is in writing and is signed by the party to be charged or by some other person thereunto by him lawfully authorized:

Provided that such an action shall not be prevented by reason only of the absence of writing where an intending purchaser or lessee who has performed or is willing to perform his part of a contract—

(*a*) has in part performance of the contract taken possession of the property or any part thereof; or

(*b*) being already in possession, continues in possession in part performance of the contract and has done some other act in furtherance of the contract.

(3) The death of any person by or on behalf of whom any instrument of dealing has been executed shall not affect the validity thereof, and any such instrument may be presented for registration as if the death had not occurred.

Protection of persons dealing in registered land

32.—(1) No person dealing or proposing to deal for valuable consideration with a proprietor shall be required or in any way concerned—

(*a*) to inquire or ascertain the circumstances in or the consideration for which such proprietor or any previous proprietor was registered;

(*b*) to see to the application of any consideration or any part thereof; or

(*c*) to search any register kept under the Deeds Registration Act. Cap. 58:02

(2) Where the proprietor of land, a lease or a charge is a trustee or family representative, no disposition by such trustee or family representative to a bona fide purchaser for valuable consideration shall be defeasible by reason of the fact that such disposition amounted to a breach of trust or did not conform with custom.

Additional fee for delayed registration

33. Where an instrument is presented for registration later than three months from the date of the instrument, then, as well as the registration fee, an additional fee equal to the registration fee shall be payable for each three months which have elapsed since such date:

Provided that—

(*a*) in no such case shall the sum of the additional fees exceed five times the original registration fee payable;

(*b*) the Chief Land Registrar may, in his sole discretion, remit any additional fee payable by virtue of this section, either in whole or in part.

Power to compel registration

34.—(1) If he is satisfied that any person, through his wilful default, has failed to register any instrument which is registrable under this Act, the Registrar may by notice in writing order such person to present such instrument for registration, and thereupon the registration fee and any additional fee payable under section 33 shall become due and shall be payable whether the instrument is presented for registration or not.

(2) Any person who fails to comply with an order of the Registrar under subsection (1) within one month of the service of the notice shall be liable to a fine of £25.

Priority of registered interests

35.—(1) Subject to subsection (3), interests appearing in the register shall have priority according to the order in which the instruments which led to their registration were presented to the registry, irrespective of the dates of the instruments and notwithstanding that the actual entry in the register may have been delayed:

Provided that where an instrument is prepared in the registry it shall be deemed to have been presented on the date on which application for its preparation was made to the Registrar.

(2) Instruments sent by post or under cover and received during the hours of business shall be deemed to be presented simultaneously immediately before the closing of the office on that day, and instruments so sent but received between the time of closing and the next opening of the office for business shall be deemed to be presented simultaneously immediately after such opening.

(3) Where more than one instrument or application are presented on the same day, or on different days but at so short an interval from each other that in the opinion of the Registrar there is doubt as to their order of priority, the Registrar may refuse registration until he has heard and determined the rights of the parties interested thereunder.

Stay of registration

36.—(1) Where any person proposing to deal with registered land has, with the consent in writing of the proprietor, applied for an official search and has stated in his application the particulars of the proposed dealing, the registration of any instrument affecting the land to be comprised in or affected by the proposed dealing shall be stayed for a period (hereinafter referred to as the suspension period) of fourteen days from the time at which application for the search was made, and a note shall be made in the register accordingly.

(2) If within the suspension period a properly executed instrument effecting the proposed dealing is presented for registration, such instrument shall have priority over any other instrument which may be presented for registration during the suspension period, and shall be registered notwithstanding any caution or other entry for which application for registration may have been made during the suspension period.

(3) Subject to subsection (2), any instrument or document for which application for registration is made during the suspension period other than that effecting the proposed dealing shall be dealt with in the same manner, shall have the same priority and shall be as effectual as if no stay of registration had been obtained.

Merger of registered interests

37. Where, upon the registration of a dealing, the interests of—

(*a*) lessor and lessee;

(*b*) chargor and chargee; or

(*c*) the proprietor of a piece which is burdened with an easement, profit or restrictive agreement and the proprietor of a piece which benefits therefrom,

vest in the same proprietor, such interests shall not merge unless a surrender or discharge is registered or the pieces are combined or there is a declaration of merger, which may be contained in the instrument evidencing the dealing.

Division 2—Leases

Leases

38. Subject to this Act and any other written law, the proprietor of land may lease the land or part of it to any person for a definite period or for a period which though indefinite may be terminated by the lessor or the lessee, and subject to such conditions as he may think fit:

Provided that, if only part is leased, the lease shall be accompanied by a plan or other description which the Registrar, in his absolute discretion, deems adequate to identify the part leased.

Periodic tenancies

39.—(1) Where in any lease the term is not specified and no provision is made for the giving of notice to terminate the tenancy, the lease shall be deemed to have created a periodic tenancy.

(2) Where the proprietor of land permits the exclusive occupation of the land or any part thereof by any other person at a rent but without any agreement in writing, that occupation shall be deemed to constitute a periodic tenancy.

(3) The period of a periodic tenancy deemed to be created by this section shall be the period by reference to which the rent is payable, and the tenancy may be determined by either party giving to the other notice, the length of which shall, subject to any other written law, be not less than the period of the tenancy.

Registration of leases

40. A lease for a specified period exceeding three years, or a lease which contains an option whereby the lessee may require the lessor to grant him a further term or terms which, together with the original term, exceed three years, shall be in the prescribed form, and shall be completed by—

(*a*) opening a register in respect of the lease in the name of the lessee; and

(*b*) filing the lease; and

(*c*) noting the lease in the encumbrances section of the register of the lessor's land or lease.

Lessor's consent to dealing with lease

41. Upon the registration of a lease containing an agreement, express or implied, by the lessee that he will not transfer, sub-let, charge or part with possession of the land leased or any part thereof without the written consent of the lessor, the agreement shall be noted in the register of the lease, and no dealing with the lease shall be registered until the consent of the lessor, verified in accordance with section 105 has been produced to the Registrar.

Lease of charged land

42. Where any land or a lease is subject to a charge, no lease of such land or lease shall be registered without the previous consent in writing of the proprietor of the charge, verified in accordance with section 105, unless the charge expressly dispenses with the necessity for such consent.

Duration of leases

43.—(1) Where the perod of a lease is expressed as commencing on a particular day, that day is excluded in computing that period.

(2) Where no day of commencement is named, the period commences on the date of execution of the lease, and that day is excluded in computing that period.

(3) Where the period is a year or a number of years, in the absence of an express agreement to the contrary, the lease shall last during the whole anniversary of the day on which such period commences.

Future leases

44.—(1) A lease may be made for a period to commence on a future date, not being later than twenty-one years from the date on which the lease is executed, but shall be of no effect unless it is registered.

(2) Any instrument purporting to create a lease to commence on a date more than twenty-one years after the date of the instrument, or to take effect on the fulfilment of any condition, is void.

Holding over

45.—(1) Where a person, having lawfully entered into occupation of any land as lessee, continues to occupy that land with the consent of the lessor after the termination of the lease he shall, in the absence of any evidence to the contrary, be deemed to be a tenant holding the land on a periodic tenancy on the same conditions as those of the lease so far as those conditions are appropriate to a periodic tenancy.

(2) For the purposes of this section, the acceptance of rent in respect of any period after the termination of the lease shall, if the former tenant is still in occupation and subject to any agreement to the contrary, be taken as evidence of consent to the continued occupation of the land.

Agreements implied in leases on part of lessor

46. Save as otherwise expressly provided in the lease, there shall be implied in every lease agreements by the lessor with the lessee binding the lessor—

(*a*) that, so long as the lessee pays the rent and observes and performs the agreements and conditions contained or implied in the lease and on his part to be observed and performed, the lessee shall and may peaceably and quietly possess and enjoy the leased premises during the period of the lease without any lawful interruption from or by the lessor or any person rightfully claiming through him;

(*b*) not to use or permit to be used any adjoining or neighbouring land of which he is the proprietor or lessee in any way which would render the leased premises unfit or materially less fit for the purpose for which they were leased,

and such other agreements as the Minister may have prescribed prior to the execution of the lease.

Agreements implied in leases on part of lessee

47. Save as otherwise expressly provided in the lease, there shall be implied in every lease agreements by the lessee with the lessor binding the lessee—

(*a*) to pay the rent reserved by the lease at the times and in the manner therein specified;

(*b*) to pay all rates, taxes and other outgoings which are at any time payable in respect of the leased premises during the continuance of the lease unless the same are payable exclusively by the lessor by virtue of any written law;

(*c*) to permit the lessor or his agent with or without workmen or others at all convenient times and after reason-

able notice to enter on the leased premises and examine their condition;

(*d*) to repair or otherwise make good any defect or breach of agreement for which the lessee is responsible and of which notice has been given by the lessor to the lessee, within such reasonable period as may be specified in the notice; and

(*e*) not to transfer, charge, sublease or otherwise part with the possession of the leased premises or any part thereof without the previous written consent of the lessor, but such consent shall not be unreasonably withheld,

and such other agreements as may have been prescribed by the Minister prior to the execution of the lease.

Meaning of "in repair"

48. Where an agreement is contained or implied in any lease to keep a building or a particular part of a building "in repair", it shall, in the absence of an express provision to the contrary, mean in such state of repair as that in which a prudent owner might reasonably be expected to keep his property, due allowance being made for the age, character and locality of the building at the commencement of the lease:

Provided that there shall not be read into such an agreement an undertaking to put any building into a better state of repair than that in which it was at the commencement of the lease.

Lessor's right of forfeiture

49.—(1) Subject to section 52 and to any provision to the contrary in the lease, the lessor shall have the right to forfeit the lease if the lessee—

(*a*) commits any breach of, or omits to perform, any agreement or condition on his part expressed or implied in the lease;

(*b*) is adjudicated bankrupt; or

(*c*) being a company, goes into liquidation, except for the purpose of amalgamation or reconstruction.

(2) The right of forfeiture may be—

(*a*) exercised, where neither the lessee nor any person claiming through or under him is in occupation of the land, by entering upon and remaining in possession of the land; or

(*b*) enforced by action in the court.

(3) The right of forfeiture shall be taken to have been waived if—

(*a*) the lessor accepts rent which has become due since the breach of agreement or condition which entitled the lessor to forfeit the lease or has by any other positive act shown an intention to treat the lease as subsisting; and

(*b*) the lessor is, or should by reasonable diligence have become, aware of the commission of the breach:

Provided that the acceptance of rent after the lessor has commenced an action in the court under subsection (2) shall not operate as a waiver.

Effect of forfeiture on subleases

50. The forfeiture of a lease shall terminate every sublease and every other interest appearing in the register relating to that lease, but—

(*a*) where the forfeiture is set aside by the court on the grounds that it was procured by the lessor in fraud of the sublessee; or

(*b*) where the court grants relief against the forfeiture under section 52,

every such sublease and other interest shall be deemed not to have terminated.

Notice before forfeiture

51. Notwithstanding anything to the contrary contained in the lease, no lessor shall be entitled to exercise the right of forfeiture for the breach of any agreement or condition in the lease, whether expressed or implied, until the lessor has served on the lessee a written notice—

(*a*) specifying the particular breach complained of;

(*b*) if the breach is capable of remedy, requiring the lessee to remedy the breach within such reasonable period as is specified in the notice; and

(*c*) in any case other than non-payment of rent, requiring the lessee to make compensation in money for the breach,

and the lessee has failed to remedy the breach within a reasonable time thereafter, if it is capable of remedy, and to make reasonable compensation in money.

Relief against forfeiture

52.—(1) A lessee upon whom a notice has been served under section 51, or against whom the lessor is proceeding, by action or re-entry, to enforce his right of forfeiture, may apply to the court for relief; and the court may grant or refuse relief, as the court, having regard to the proceedings and the conduct of the parties and the circumstances of the case, thinks fit, and, if it grants relief, may grant it on such terms as it thinks fit.

(2) The court, on application by any person claiming as sublessee or chargee any interest in the property or part of the property comprised in the lease forfeited or sought to be forfeited, may make an order vesting the property or such part in

such sublessee or chargee for the whole period of the lease or any less period, upon such conditions as the court in the circumstances of the case thinks fit:

Provided that nothing in this subsection shall apply in the case of a forfeiture arising from a breach to which the sublessee is a party or from the breach of an express agreement or condition against subleasing, parting with the possession of or disposing of the property leased.

(3) For the purpose of this section a lease limited to continue as long only as the lessee abstains from committing a breach of agreement or condition shall be and take effect as a lease to continue for any longer term for which it could subsist, but terminable by a proviso for re-entry on such breach.

(4) This section shall have effect notwithstanding any stipulation or agreement to the contrary and whether the lease is registered or not.

Variation and extension of leases

53. Subject to section 51, the agreements and conditions contained or implied in any registered lease may be varied, negatived or added to, and the period of any registered lease may from time to time be extended, by an instrument executed by the lessor and the lessee for the time being and registered before the expiration of the then current term of the lease.

Substitution of leases

54. Where upon the presentation of a lease for registration the Registrar is satisfied that the lessee is the person registered as the proprietor of a prior lease in respect of the same land, he shall cancel the registration of the prior lease and register the new lease subject to the incumbrances registered against the prior lease.

Subleases

55.—(1) Subject to any provision in his lease affecting his right to do so, the proprietor of a registered lease may be a sublease in the prescribed form, sublease for any period which is less than the remainder of the period of his lease.

(2) Save as otherwise expressly provided in this Act, the provisions of this Act affecting leases, lessors and lessees shall apply to subleases, sublessors and sublessees, with such adaptations as are necessary.

(3) If a lease is terminated by operation of law or under any law relating to bankruptcy or liquidation proceedings such termination shall terminate the sublease.

(4) In addition to the agreements specified by or prescribed under this Act to be implied in leases, there shall be implied in every sublease under this Act an agreement by the sublessor that he will, during the continuance of the sublease, pay the rent

reserved by the lease under which the sublessor holds, and observe and perform the agreements and conditions thereof.

(5) Where a sublessee has paid to the sublessor's lessor the rent or any part of the rent payable by the sublessor under the lease under which the sublessor holds, the sublessee shall be entitled to set off any sum so paid against the rent payable by him to the sublessor in respect of the sublease.

Surrender of leases

56.—(1) Where the lessor and the lessee agree that the lease shall be surrendered, it shall be surrendered in the following manner—

(*a*) an instrument shall be prepared in the prescribed form, or else the word "surrendered" shall be inscribed on the lease or on the duplicate or triplicate thereof;

(*b*) the instrument or inscription shall then be executed by the lessor and lessee;

(*c*) the Registrar shall then cancel the registration of the lease; and

(*d*) the instrument or inscribed lease shall then be filed, and thereupon, or upon such earlier date as is expressed in the instrument or inscription, the interest of the lessee shall cease.

(2) No lease which is subject to a charge or a sublease shall be surrendered without the consent in writing of the proprietor of the charge or sublease.

Determination of leases

57.—(1) Where—

(*a*) the period of a lease has expired;

(*b*) an event upon which a lease is expressed to terminate has happened;

(*c*) a lessor has lawfully re-entered; or

(*d*) a notice duly given to terminate the lease has expired,

and the lessor has recovered possession of the land leased, the lease and every other interest appearing on the register relating to the lease shall thereupon terminate, and the lessor may apply in writing to the Registrar to cancel its registration.

(2) An application under this section shall be supported by such evidence of the matters giving rise to the termination and the recovery of possession by the lessor as the Registrar may require, and the Registrar on being satisfied of the matters set forth in the application shall cancel the registration of the lease.

Voluntary registration of leases

58. Where application is made to the Registrar to register any lease which is not compulsorily registrable under this Act but which is capable of registration, the Registrar shall not register such lease unless—

(*a*) it is in the prescribed form, or in such form as the Registrar may approve; and

(*b*) in the case of a sublease, every lease superior to that sublease complies with condition (*a*) and is registered in priority to the sublease.

59. [Repealed by 1 of 1981.]

Division 3—*Charges*

Form and effect of charges

60.—(1) A proprietor may, by an instrument in the prescribed form, charge his land or lease or charge to secure the payment of an existing or a future or a contingent debt or other money or money's worth or the fulfilment of a condition, and the instrument shall, except where section 68 has by the instrument been expressly excluded, contain a special acknowledgement that the chargor understands the effect of that section, and the acknowledgement shall be signed by the chargor or, where the chargor is a corporation, by one of the persons attesting the affixation of the common seal.

(2) A date for the repayment of the money secured by a charge may be specified in the charge instrument, and where no such date is specified or repayment is not demanded by the chargee on the date specified the money shall be deemed to be repayable three months after the service of a demand in writing by the chargee.

(3) The charge shall be completed by its registration as an encumbrance and the registration of the person in whose favour it is created as its proprietor and by filing the instrument.

(4) A charge shall not operate as a transfer but shall have effect as a security only.

(5) There shall be included, in an instrument of charge securing the fulfilment of a condition or the payment of an annuity or other periodical payment not of the nature of interest on a capital sum, such provisions as the parties think fit for disposing, subject to section 72, of the money which may arise on the exercise by the chargee of his power of sale, either by setting aside the

proceeds of sale or part thereof and investing it to make future periodical payments, or by payment to the chargee of such proceeds or part thereof to the extent of the estimated capital value of the chargee's interest, or otherwise.

Second or subsequent charges

61. A proprietor whose land or lease or charge is subject to a charge may create a second or subsequent charge in the same manner as the first charge and the same provisions shall apply thereto, but any sale under the power expressed or implied in any such charge shall be expressed to be subject to all prior charges unless all those charges have been discharged.

Presumption that money paid is interest

62. If any question arises whether any payment made by the chargor is in respect of principal or interest, such payment shall be presumed to be in respect of interest to the extent of all interest which is due and payable at the date of payment.

Agreements implied in charges

63. There shall be implied in every charge, unless the contrary is expressed therein, such agreements by the chargor with the charge binding the chargor as may be prescribed by the Minister.

Chargee's consent to transfer

64. Where a charge contains an agreement, express or implied, by the chargor with the chargee that he will not transfer the land, lease or charge charged or any part thereof without the written consent of the chargee, the agreement shall be noted in the register, and no transfer by the chargor shall be registered until the written consent of the chargee, verified in accordance with section 105, has been produced to the Registrar.

Variation of charge

65. The amount secured, the method of repayment, the rate of interest or the term of the charge may be varied by the registration of an instrument of variation executed by the parties to the charge, but no such variation shall affect the rights of the proprietor of any subsequent charge, unless he has consented to the variation in writing on the instrument of variation.

Right of redemption

66.—(1) Subject to this section, a chargor, on payment of all money due and owing under the charge at the time of payment or on fulfilment of any condition secured thereby and on payment of any costs or expenses properly incurred by the chargee in exercising any power conferred on him by section 68, may redeem the charged land or lease or charge at any time before it has been sold under section 71, and any agreement or provision which purports to deprive the chargor of this right of redemption shall be void. For the purposes of this subsection, land, a lease or a charge shall be deemed to have been sold when a bid has been accepted at the auction sale.

(2) If the chargor wishes to redeem the charged land or lease

or charge before the date specified in the charge for repayment, he shall be entitled to do so on payment to the chargee, in addition to any other money then due or owing under the charge, interest on the principal sum secured thereby for the unexpired portion of the term of the charge.

(3) If the chargor seeks to redeem the charged land or lease or charge after the date specified in the charge, or where no such date is specified, he shall give the chargee three months' notice of his intention to redeem the charge or shall pay him three months' interest in lieu thereof.

(4) If at any time the chargor is entitled and desires to repay the money secured by the charge, and the chargee is absent or cannot be found, or the Registrar is satisfied that the charge cannot be discharged otherwise, the chargor may deposit the amount due with the Registrar in trust for the person entitled thereto, and thereupon the obligations of the chargor under the charge shall cease, and the Registrar shall cancel the registration of the charge and shall pay the amount deposited to the chargee if the chargee applies for it within six years of the date of deposit, and if the amount is not so paid it shall be paid into the Consolidated Fund.

Right of third party to transfer of charge

67. On his tendering to the chargee such sums as would have been payable to the chargee if the chargor had sought to redeem the charge under section 66, any of the following persons, that is to say—

(*a*) any person, other than the chargor, who has an interest in the land or lease or charge charged;

(*b*) any surety for the payment of the amount secured by the charge; or

(*c*) any creditor of the chargor who has obtained a decree for sale of the charged land, lease or charge,

may require the chargee to transfer the charge to him.

Chargee's remedies

68.—(1) If default is made in payment of the principal sum or of any interest or any other periodical payment or of any part thereof, or in the performance or observance of any agreement expressed or implied in any charge, and continues for one month, the chargee may serve on the chargor notice in writing to pay the money owing or to perform and observe the agreement, as the case may be.

(2) If the chargor does not comply, within three months of the date of service, with a notice served on him under subsection (1), the chargee may—

(*a*) appoint a receiver of the income of the charged property; or

(*b*) sell the charged property:

Provided that a chargee who has appointed a receiver may not exercise the power of sale unless the chargor fails to comply, within three months of the date of service, with a further notice served on him under that subsection.

(3) The chargee shall be entitled to sue for the money secured by the charge in the following cases only—

(*a*) where the chargor is bound to repay the same;

(*b*) where, by any cause other than the wrongful act of the chargor or chargee, the charged property is wholly or partially destroyed or the security is rendered insufficient and the chargee has given the chargor a reasonable opportunity of providing further security which will render the whole security sufficient, and the chargor has failed to provide such security;

(*c*) where the chargee is deprived of the whole or part of his security by, or in consequence of, the wrongful act or default of the chargor:

Provided that—

(i) in the case specified in paragraph (*a*) of this subsection—

(*a*) a transferee from the chargor shall not be liable to be sued for the money unless he has agreed with the chargee to pay the same; and

(*b*) no action shall be commenced until a notice served in accordance with subsection (1) has expired;

(ii) the court may, at its discretion, stay a suit brought under paragraph (*a*) or paragraph (*b*) of this subsection, notwithstanding any agreement to the contrary, until the chargee has exhausted all his other remedies against the charged property.

Appointment, powers, remuneration and duties of receiver

69.—(1) The appointment of a receiver under the powers conferred by section 68 shall be in writing signed by the chargee.

(2) A receiver may be removed at any time and a new receiver appointed by writing signed by the chargee.

(3) A receiver appointed under this section shall be deemed to be the agent of the chargor for the purposes for which he is appointed; and the chargor shall be solely responsible for the receiver's acts and defaults unless the charge otherwise provides.

(4) The receiver shall have power to demand and recover all the income of which he is appointed receiver, by action or otherwise, in the name of the chargor, and to give effectual receipts accordingly for the same.

(5) A person paying money to the receiver shall not be concerned to inquire into the validity of the receiver's appointment.

(6) Subject to subsection (8), the receiver shall be entitled to retain out of any money received by him all costs, charges and expenses properly incurred by him as receiver, and, for his remuneration, a commission at such rate, not exceeding five per cent of the gross amount of all moneys received, as is specified in his appointment, or if no rate is so specified at the rate of five per cent of that gross amount, or such other rate as the chargor and the chargee and other chargees, if any, agree or the court thinks fit to allow on application made by the receiver for that purpose.

(7) The receiver shall apply insurance money in making good the loss or damage in respect of which the money is received.

(8) Subject to subsection (7), the receiver shall apply all money received by him in the following order of priority—

(*a*) in discharge of all rents, rates, taxes and outgoings whatever affecting the charged property;

(*b*) in keeping down all annual sums or other payments, and the interest on all principal sums, having priority to the charge in right whereof he is receiver;

(*c*) in payment of his commission, costs, charges and expenses and of the premiums on fire, life and other insurance, if any, properly payable under the charge instrument or under this Act, and the cost of executing necessary or proper repairs directed in writing by the chargee;

(*d*) in payment of the interest accruing due in respect of any principal money due under the charge;

(*e*) in or towards the discharge of the money secured by the charge, if so directed in writing by the chargee,

and shall pay the residue, if any, of the money received by him to the person who, but for the appointment of the receiver, would have been entitled to receive the income of which he is appointed receiver, or who is otherwise entitled to the charged property.

Chargee's powers of leasing

70.—(1) The proprietor of a charge of land or a lease who has appointed a receiver under the powers conferred on him by section 68 shall, in the absence of any express provision to the contrary contained in the charge, have power, subject to this Act and any other written law—

(*a*) to grant leases in respect of the charged land or the land comprised in the charged lease or any part or parts thereof; and

(*b*) to accept a surrender of any lease so granted and of any lease created by the chargor,

and may, for such purposes, execute in the place of the chargor any instrument required to effect such lease or surrender.

(2) Every lease granted by a chargee shall—

(*a*) be made to take effect in possession not later than twelve months after its date;

(*b*) reserve the best rent that can reasonably be obtained, regard being had to the circumstances of the case, but without a fine or premium being obtained;

(*c*) be for a term not exceeding twenty-one years; and

(*d*) contain a declaration by the chargee that he has appointed a receiver, with the date of appointment.

Power of sale

71.—(1) A chargee exercising his power of sale shall act in good faith and have regard to the interests of the chargor, and may sell or concur with any person in selling the charged land, lease or charge, or any part thereof, together or in lots, by public auction for a sum payable in one amount or by instalments, subject to such reserve price and conditions of sale as the Registrar may approve, with power to buy in at the auction and to resell by public auction without being answerable for any loss occasioned thereby.

(2) Where the chargor is in possession of the charged land or the land comprised in the charged lease, the chargee shall become entitled to recover possession of the land upon a bid being accepted at the auction sale.

(3) A transfer by a chargee in exercise of his power of sale shall be made in the prescribed form, and the Registrar may accept it as sufficient evidence that the power has been duly exercised, and any person suffering damage by an irregular exercise of the power shall have his remedy in damages only against the person exercising the power.

(4) Upon registration of such transfer, the interest of the chargor as described therein shall pass to and vest in the transferee freed and discharged from all liability on account of the charge, or on account of any other encumbrance to which the charge has priority (other than a lease, easement, restrictive agreement or profit subsisting at the time the charge was effected or to which the chargee has consented in writing).

(5) A chargee, in exercising his power of sale, shall have the same powers and rights in regard to easements and restrictive agreements as are conferred upon a proprietor by sections 89 and 90.

Application of purchase money

72. The purchase money received by a chargee who has exercised his power of sale, after discharge of any prior encumbrances to which the sale is not made subject or after payment into court of a sum sufficient to meet any such prior encumbrances, shall be applied—

(*a*) first, in payment of all costs and expenses properly incurred and incidental to the sale or any attempted sale;

(*b*) secondly, in accordance with any express provision in the charge (as required by section 60) for disposing of such money and, in the absence of any such express provision, in discharge of the money due to the chargee at the date of the sale; and

(*c*) thirdly, in payment of any subsequent charges in the order of their priority,

and the residue of the money so received shall be paid to the person who immediately before the sale was entitled to redeem the charged land, lease or charge.

Variation of powers

73. Sections 66 (2) and (3), 68, 69, 70 and 71 may in their application to a charge be varied or added to in the charge:

Provided that any such variation or addition shall not be acted upon, unless the court, having regard to the proceedings and conduct of the parties and to the circumstances of the case, so orders.

No right of entry into possession or foreclosure

74. For the avoidance of doubt, it is hereby declared that the chargee shall not be entitled to foreclose, nor to enter into possession of the charged land or the land comprised in a charged lease or to receive the rents and profits thereof by reason only that default has been made in the payment of the principal sum or of any interest or other periodical payment or of any part thereof or in the performance or observance of any agreement expressed or implied in the charge.

Discharge of charge

75.—(1) A discharge, whether of the whole or of a part of a charge, shall be made by an instrument in the prescribed form, or (if of the whole) the word "Discharged" may be endorsed on the charge or the duplicate or triplicate and the endorsement executed by the chargee and dated.

(2) A discharge shall be completed by cancellation in the register of the charge, or part thereof as the case may require, and filing the instrument of discharge or the endorsed charge.

Satisfaction of charges

76. Upon proof to the satisfaction of the Registrar—

(*a*) that all money due under a charge has been paid to the chargee or by his direction; or

(*b*) that there has occurred the event or circumstance upon which, in accordance with any charge, the money thereby secured ceases to be payable, and that no money is owing under the charge, the Registrar shall order the charge to be cancelled in the register, and thereupon the land, lease or charge shall cease to be subject to the charge.

Further advances

77. Provision may be made in the charge for a chargee to make further advances or give credit to the chargor on a current or continuing account, but, unless that provision is noted in the register, further advances shall not rank in priority to any subsequent charge except with the consent in writing of the proprietor of the subsequent charge.

Consolidation

78. A chargee has no right to consolidate his charge with any other charge unless the right is expressly reserved in the charges or in one of them and is noted in the register against all the charges so consolidated.

Division 4—*Transfers*

Transfer

79.—(1) A proprietor, by an instrument in the prescribed form, may transfer his land, lease or charge to any person with or without consideration.

(2) The transfer shall be completed by registration of the transferee as proprietor of the land, lease or charge and by filing the instrument.

(3) The transferee of a charge may require the chargor to execute the transfer for the purpose of acknowledging the amount due under the charge at the date of execution of the transfer.

Certificates as to payment of rates

80. The Registrar shall not register any instrument purporting to transfer or to vest any land, or a lease of land, situated within the area of a rating authority unless there is produced to the Registrar a written statement by the authority that all rates and other charges payable to the authority in respect of the land for the last twelve years have been paid, expressed to be available until the day upon which, or until a day not earlier than that upon which, the instrument was registered:

Provided that no such statement shall be required where the instrument relates to—

(*a*) land which is subject to a lease, and the leasehold interest is, by virtue of any written law, the rateable property; or

(*b*) a lease, and the land or another leasehold interest is, by virtue of any written law, the rateable property.

81. A transfer to take effect on the happening of any event or on the fulfilment of any condition or at any future time shall not be capable of registration.

Transfer to take effect immediately

82.—(1) Any condition or limitation purporting to restrain absolutely a transferee or any person claiming under him from disposing of the interest transferred shall be void.

Conditions repugnant to interest transferred

(2) Any condition or limitation made in relation to a transfer which purports to determine the interest of the transferee on the happening of any future event or on the failure of any future event to happen shall be void.

(3) Except as provided in Division 5 of this Part, no transfer of land shall contain a direction that the land shall be used or enjoyed by the transferee in a particular manner.

83. No part of the land comprised in a register shall be transferred unless the proprietor has first subdivided the land and new registers have been opened in respect of each subdivision.

Transfer of part

84. On the transfer of a lease, unless the contrary is expressed in the transfer, there shall be implied—

Transfer of lease

(*a*) a warranty on the part of the transferor that the rent, agreements and conditions on the part of the lessee to be paid, performed and observed have been so paid, performed and observed up to the date specified in the transfer or, if no such date is specified, the date of the transfer; and

(*b*) an agreement on the part of the transferee to pay the said rent as from the day following the date specified in the transfer or the date of the transfer, as the case may be, and to perform and observe the said agreements and conditions.

85. A transferee from a lessor or from a lessee shall possess all the rights, and be subject to all the liabilities, of the lessor or lessee, as the case may be, expressed or implied in the lease, or arising or which have arisen thereunder, and the transferor shall cease to be under any obligation or possessed of any rights in respect of the lease:

Effect of transfer on agreements in lease

Provided that nothing in this section shall affect the rights or liabilities of the lessor or lessee, as the case may be, in respect of a breach of any of the agreements expressed or implied in the lease which occurred before the transfer.

86. In every transfer of land or a lease subject to a charge, there shall be implied an agreement by the transferee with the transferor to pay the interest secured by the charge at the rate and at the times and in the manner specified in the charge and to keep the transferor indemnified against the principal sum secured

Transfer subject to charge

by the charge and from and against all liability in respect of any of the agreements on the part of the transferor therein contained or implied.

Transfer subject to lease

87. A transfer of land which is subject to a lease shall be valid without the lessee acknowledging the transferee as lessor, but nothing in this section—

(*a*) affects the validity of any payment of rent made by the lessee to the transferor; or

(*b*) renders the lessee liable, on account of his failure to pay rent to the transferee, for any breach of agreement to pay rent, before notice of the transfer is given to the lessee by the transferee or transferor.

Transfer of unregistered lease

88. A transfer of a lease of registered land, which lease does not require registration and is not so registered, shall not itself require registration, but if application is made to the Registrar to register such transfer, he shall not do so unless the transfer is in the prescribed form and the lease and prior transfers or other dealings therewith have been registered.

Division 5—Easements, Restrictive Agreements, Profits and Licences

Easements

89.—(1) The proprietor of land or a lease may, by an instrument in the prescribed form, grant an easement over his land or the land comprised in his lease, to the proprietor or lessee of other land for the benefit of that other land.

(2) Any proprietor transferring or leasing land or a lease may in the transfer or lease grant an easement, for the benefit of the land transferred or leased, over land retained by him, or reserve an easement for the benefit of land retained by him.

(3) The instrument creating the easement shall specify clearly—

(*a*) the nature of the easement, the period for which it is granted and any conditions, limitations or restrictions intended to affect its enjoyment;

(*b*) the land burdened by the easement and, if required by the Registrar, the particular part thereof so burdened;

(*c*) the land which enjoys the benefit of the easement,

and shall, if so required by the Registrar, include a plan sufficient in the Registrar's estimation to define the easement.

(4) The grant or reservation of the easement shall be completed by its registration as an encumbrance in the register of the land burdened and in the property section of the land which benefits, and by filing the instrument.

(5) An easement granted by the proprietor of a lease shall be capable of existing only during the subsistence of the lease.

Restrictive agreements

90.—(1) Where an instrument, other than a lease or charge, contains an agreement (hereinafter referred to as a restrictive agreement) by one proprietor restricting the building on or the user or other enjoyment of his land for the benefit of the proprietor of other land, and is presented to the Registrar, the Registrar shall note the restrictive agreement in the encumbrances section of the register of the land or lease burdened by the restrictive agreement, either by entering particulars of the agreement or by referring to the instrument containing the agreement, and shall file the instrument.

(2) Unless it is noted in the register, a restrictive agreement is not binding on the proprietor of the land or lease burdened by it or on anybody acquiring the land or lease.

(3) If a restrictive agreement is noted in the Register, not only the proprietors themselves but also their respective successors in title shall be entitled to the benefit and subject to the burden of it respectively, unless the instrument otherwise provides.

Profits
Cap. 61:01

91.—(1) Subject to the Mining Act and any other written law, the proprietor of land or a lease may, by an instrument in the prescribed form, grant a profit.

(2) The instrument shall indicate clearly the nature of the profit, the period for which it is to be enjoyed and—

(*a*) whether it is appurtenant to other land or a lease or not; and

(*b*) whether it is to be enjoyed by the grantee exclusively or by him in common with the grantor.

(3) The grant of a profit shall be completed—

(*a*) by its registration as an encumbrance in the register of the land or lease which it affects;

(*b*) where it is appurtenant to other land or a lease, by its registration in the property section of the register of the land or lease to which it is appurtenant; and

(*c*) by filing the instrument.

(4) A profit which is not appurtenant to land may be dealt with as though it were land.

(5) A profit granted by the proprietor of a lease shall be capable of subsisting only during the subsistence of the lease.

Release and extinguishment of easements, profits and restrictive agreements

92.—(1) Upon presentation of a duly executed release in the prescribed form, the registration of the easement, profit or restrictive agreement shall be cancelled, and the easement, profit or restrictive agreement shall thereupon be extinguished.

(2) On the application of any person affected thereby, the Registrar may cancel the registration of an easement, profit or restrictive agreement upon proof to his satisfaction that—

(*a*) the period of time for which it was intended to subsist has expired;

(*b*) the event upon which it was intended to terminate has occurred; or

(*c*) it has been abandoned.

Discharge and modification of easements, profits and restrictive agreement

93. The court shall have power, on the application of any person interested in land affected by an easement, restrictive agreement or profit by order wholly or partially to extinguish or modify any such easement, profit or restrictive agreement (with or without payment by the applicant of compensation to any person suffering loss in consequence of the order), on being satisfied—

(*a*) that, by reason of changes in the character of the property or the neighbourhood or other circumstances of the case which the court deems material, the easement, profit or restrictive agreement ought to be held to be obsolete;

(*b*) that the continued existence of the easement, profit or restrictive agreement impedes the reasonable user of the land for public or private purposes without securing practical benefits to other persons or, as the case may be, will unless modified so impede such user; or

(*c*) that the proposed discharge or modification will not injure the person entitled to the benefit of the easement, profit or restrictive agreement.

Licences

94.—(1) Without prejudice to section 126, a licence is not capable of registration.

(2) A licence relating to the use or enjoyment of land is ineffective against a *bona fide* purchaser for valuable consideration unless the licensee has protected his interest by lodging a caution under that section.

Division 6—*Co-proprietorship and Partition*

Registration of more than one proprietor

95.—(1) Every instrument made in favour of two or more persons, and the registration giving effect to it, shall show—

(*a*) whether such persons are joint proprietors or proprietors in common; and

(*b*) where they are proprietors in common, the share of each proprietor.

(2) The Minister may for any registration section prescribe either—

(*a*) the maximum number (whether one or a greater number) of persons who are allowed to be registered in the same register as proprietors; or

(*b*) the maximum denominator of the vulgar fraction which expresses the share of any proprietor,

or both of them, and no dealing shall be registered if its effect would be that that number or that denominator, as the case may be, would be exceeded.

Characteristics of joint proprietorship and severance thereof

96.—(1) Where the land, lease or charge is owned jointly, no proprietor is entitled to any separate share in the land, and consequently—

(*a*) dispositions may be made only by all the joint proprietors; and

(*b*) on the death of a joint proprietor, his interest shall vest in the surviving proprietor or the surviving proprietors jointly.

(2) For avoidance of doubt, it is hereby declared that—

(*a*) the sole proprietor of any land, lease or charge may transfer the same to himself and another person jointly; and

(*b*) a joint proprietor of any land, lease or charge may transfer his interest therein to all the other proprietors.

(3) Joint proprietors, not being trustees, may execute an instrument in the prescribed form signifying that they agree to sever the joint proprietorship, and the severance shall be completed by registration of the joint proprietors as proprietors in common in equal shares and by filing the instrument.

Characteristics of proprietorship in common

97.—(1) Where any land, lease or charge is owned in common, each proprietor shall be entitled to an undivided share in the whole, and on the death of a proprietor his share shall be administered as part of his estate.

(2) No proprietor in common shall deal with his undivided share in favour of any person other than another proprietor in common of the same land, except with the consent in writing of the remaining proprietor or proprietors of the land, but such consent shall not be unreasonably withheld.

Partition of land owned in common

98.—(1) An application for the partition of the land owned in common may be made in the prescribed form to the Registrar by—

(*a*) any one or more of the proprietors; or

(*b*) any person in whose favour an order has been made for the sale of an undivided share in the land in execution of a decree,

and, subject to this Act and any written law by or under which minimum areas or frontages are prescribed or the consent of any authority to a partition is required, the Registrar shall effect the partition of the land in accordance with any agreement of the proprietors in common, or, in the absence of agreement, in such manner as the Registrar may order:

Provided that the Registrar may require the production of plans of the sub-divided pieces or may cause plans of the sub-divided pieces to be prepared before effecting the partition of the land.

(2) Partition shall be completed by closing the register of the piece partitioned and opening registers in respect of the new pieces created by the partition and filing the agreement or order.

When Registrar may order sale

99.—(1) Where for any reason the land sought to be partitioned is incapable of partition or the partition would adversely affect the proper use of the land, and a demand is made by the applicant or one or more of the other proprietors in common that the land or any share or shares in the land be sold, the Registrar shall, in default of any agreement between the proprietors in common, value the land and the shares of the proprietors in common and order the sale of the land or the sale of such shares by public auction or make such other order for the disposal of the application as he thinks fit.

(2) A proprietor in common shall be entitled to purchase the land or any share so offered for sale, either at the auction or at any time by private treaty.

Procedure where share small

100.—(1) Where the land sought to be partitioned is capable of partition generally, but the resultant share of any particular proprietor in common would be less in area than any minimum prescribed by or under any written law, the Registrar shall add such share to the share of any other proprietor or distribute such share amongst two or more other proprietors in such manner and in such proportions as, in default of agreement, he thinks fit.

(2) Where the Registrar proceeds in accordance with subsection (1), he shall assess the value of the share added or distributed and shall order that there be paid to the proprietor of the share by each proprietor who has received an addition to his share the value of such addition.

(3) Where any sum is payable under subsection (2) by any proprietor in common to any other proprietor in common, the Registrar may order that such sum be secured by way of charge on the share of the person liable to pay it.

Partition of family land

101.—(1) An application for the partition of family land may be made, in the prescribed form, to the Registrar by—

(*a*) the family representative;

(*b*) an adult member of the family; or

(*c*) the Minister.

(2) The Registrar shall forward the application to the Local Land Board having jurisdiction, and the Local Land Board shall proceed in accordance with section 10 of the Local Land Boards Act. Cap. 59:02

(3) On receipt from the Local Land Board of the partition agreement or order the Registrar shall complete the partition by closing the register of the family land and opening registers in respect of the new pieces created by the partition and filing the agreement or order.

Division 7—Succession on Death

Succession on death

102. Subject to Part VII, nothing in this Act shall affect the law of testate or intestate succession.

PART VI

Instruments and Agents

Form of instruments

103.—(1) Every disposition of land, a lease or a charge shall be effected by an instrument in the prescribed form or in such other form as the Registrar may in any particular case approve, and every person shall use a printed form issued by the Registrar unless the Registrar otherwise permits.

(2) Leases and charges shall be presented for registration in triplicate.

(3) Instruments shall contain a true statement of the amount or value of the purchase price or loan or other consideration (if any), and an acknowledgement of the receipt of the consideration.

Execution of instruments

104.—(1) Every instrument evidencing a disposition shall be executed by all persons shown by the register to be proprietors of the interest affected and by all other parties to the instrument:

Provided that the Registrar may dispense with execution by any particular party (other than the donee under a disposition by

way of gift) where he considers that such execution is unnecessary.

(2) Subject to section 117 (2), an instrument shall be deemed to have been executed only—

(*a*) by a natural person, if signed by him;

(*b*) by a corporation—

(i) if sealed with the common seal of the corporation, affixed thereto in accordance with section 43 (2) of the General Interpretation Act in the case of a statutory corporation, or in accordance with the articles of association in the case of a company; or

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(ii) in the case of a corporation not required by law to have a common seal, if signed by such persons as are authorized in that behalf by any law or by the statute or charter of the corporation or, in the absence of any express provision, by the persons duly appointed in writing for that purpose by the corporation, evidence of which appointment has been produced to the satisfaction of the Registrar.

Verification of execution

105.—(1) A person executing an instrument shall, subject to subsection (2), appear before the Registrar who shall verify the execution of the instrument as if he were an administrative officer authenticating a document in accordance with section 4 of the Authentication of Documents Act.

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(2) The Registrar may accept for registration an instrument the execution of which has been verified—

(*a*) under subsection (1); or

(*b*) by such other person as may be prescribed who has endorsed on or attached to the instrument a certificate in the prescribed form.

(3) In the case of official documents, section 6 of the Authentication of Documents Act shall apply.

(4) No instrument executed out of Malaŵi shall be registered unless it has been authenticated in accordance with Part V or section 16 of the Authentication of Documents Act.

(5) The Registrar may dispense with verification under this section—

(*a*) if he considers that it cannot be obtained or can be obtained only with difficulty and he is otherwise satisfied that the document has been properly executed; or

(*b*) in cases in which to his knowledge the document has been properly executed,

and shall record on the document his reasons for dispensing with the appearance of the parties.

106. No instrument required by law to be stamped shall be accepted for registration unless it is duly stamped. Stamps

107.—Subject to subsection (2) and to section 109 (2), all instruments accepted by the Registrar shall be retained in the registry for as long as they support a current entry in the register and for six years thereafter. Disposal of instruments

(2) When a lease or charge is registered particulars of registration shall be noted on the duplicate and the triplicate thereof, and the duplicate and the triplicate shall be returned to the person who presented them.

(3) Six years or more after an entry in the register has been superseded or has ceased to have any effect, the Registrar may destroy any instrument which supported the entry.

108.—(1) For the avoidance of doubt, it is hereby declared that the name of a person under the age of twenty-one years may be entered in the register either on first registration or as a transferee or on transmission. Minors

(2) Nothing in this section enables any such person to deal with land or any interest in land by virtue of such registration, and, where to his knowledge a minor is registered, the Registrar shall enter a restriction accordingly.

(3) Where a disposition by a minor whose minority has not been disclosed to the Registrar has been registered, such disposition may not be set aside only on the grounds of minority.

109.—(1) Except as provided in subsection (3), no instrument executed by any person as agent for any other person shall be accepted by the Registrar unless the person executing it was authorized in that behalf by a power of attorney executed and verified in accordance with sections 104 and 105. Agents and persons under disability

(2) The original of such power of attorney or, with the consent of the Registrar, a copy thereof certified by the Registrar shall be filed.

(3) Where any person who, if not under a disability, might have made any application, done any act or been a party to any proceeding under this Act or under any rules made thereunder is a minor, a person of unsound mind or a person under any other disability, the guardian of such person, or if there is no such guardian a person appointed under some written law to represent that person, may make any application, do any act and be party to any proceeding on behalf of that person, and shall generally represent that person for the purposes of this Act.

(4) Before accepting any document executed by a guardian or a person so appointed to represent a person under a disability,

the Registrar shall satisfy himself that the person claiming to be the guardian is entitled to execute the document or require the production of the appointment of the person so appointed, and shall file a note of the explanation which satisfied him or a copy of the appointment, as the case may be.

Gift to person under disability

110. A person under a disability who has been registered as proprietor of land, a lease or a charge acquired by him by way of gift may, within six months after he ceases to be under a disability, repudiate the gift if he has not already disposed of the subject-matter thereof, but no such repudiation shall be effective until—

(*a*) he has transferred the land, lease or charge to the donor who shall be bound to accept it; and

(*b*) the transfer has been registered.

Powers of attorney

111.—(1) Upon the application of the donor or the donee of a power of attorney which contains any power to dispose of any interest in land, such power of attorney shall be entered in the register of powers of attorney and the original, or with the consent of the Registrar a copy thereof certified by the Registrar, shall be filed in the file of powers of attorney.

(2) Every such power of attorney shall be in the prescribed form or such other form as the Registrar may in any particular case approve, and shall be executed and verified in accordance with sections 104 and 105.

(3) The donor of a power of attorney filed in accordance with subsection (1) may at any time give notice to the Registrar in the prescribed form that the power has been revoked, and thereupon the revocation shall be entered in the register of powers of attorney and noted upon the power, and the notice shall be filed in the file of powers of attorney.

(4) Any interested person may give notice in writing to the Registrar that a power of attorney which has been registered under subsection (1) has been revoked by the death, bankruptcy or disability of the donor or the death or disability of the donee, accompanied by such evidence as the Registrar requires, and thereupon the revocation shall be entered in the register of powers of attorney and noted upon the power, and the notice shall be filed in the file of powers of attorney.

(5) Subsections (3) and (4) do not apply to a power of attorney given for valuable consideration during any time during which it is, by virtue of the terms thereof, irrevocable.

(6) If owing to the length of time since the execution of a power of attorney or for any other reason the Registrar considers it desirable, he may require evidence that the power has not been

revoked, and may refuse to register any disposition by the donee of the power of attorney until satisfactory evidence is produced.

Effect of registered power of attorney

112.—(1) A power of attorney which has been registered under section 111 and of which no notice of revocation has been registered under that section shall be deemed to be subsisting as regards any person acquiring any interest in land affected by the exercise of the power, for valuable consideration and without notice of revocation and in good faith, or any person deriving title under such a person.

(2) Any person making any payment or doing any act in good faith in pursuance of a power of attorney registered under section 111 shall not be liable in respect of the payment or act by reason only that before the payment or act the donor of the power had died or become subject to a disability or become bankrupt, or had revoked the power, if the fact of death, disability, bankruptcy or revocation was not at the time of the payment or act known to the person making or doing the payment or act.

PART VII

Transmissions, Trusts and Family Representation

Transmission on death of joint proprietor

113. If one of two or more joint proprietors of any land, lease or charge dies, the Registrar, on proof to his satisfaction of the death, shall delete the name of the deceased from the register.

Transmission on death of sole proprietor or proprietor in common

114.—(1) If a sole proprietor or a proprietor in common dies, his personal representative or personal representatives, on application to the Registrar in the prescribed form and on production to him of the grant or grants, shall be entitled to be registered by transmission as proprietor, or in the case of two or more personal representatives as joint proprietors, in the place of the deceased with the addition after his name or their names of the words "as personal representative of ..... deceased" or "as personal representatives of ..... deceased", as the case may be.

(2) Upon production of a grant, the Registrar may, without requiring the personal representative or personal representatives to be registered, register by transmission—

(*a*) any transfer by the personal representative or personal representatives;

(*b*) any surrender of a lease or discharge of a charge by the personal representative, or personal representatives.

(3) In this section, "grant" means the grant of probate of the will or the grant of letters of administration of the estate of the

deceased proprietor, or an administration grant made by a Local Court under any written law.

Effect of transmission by death

115.—(1) A proprietor registered as personal representative, or, being a person beneficially entitled on the death of a proprietor, after transfer from a personal representative, shall hold the land, lease or charge subject to any liabilities, rights or interests which are unregistered but are nevertheless enforceable and subject to which the deceased proprietor held the same, but for the purpose of any dealing he shall be deemed to have taken such land, lease or charge, under a transfer for valuable consideration.

(2) The registration of any person by transmission shall relate back to and take effect from the date of the death of the proprietor.

Transmission on bankruptcy

116.—(1) A trustee in bankruptcy shall, upon production to the Registrar of a certified copy of the order of court adjudging a proprietor bankrupt, or directing that the estate of a deceased proprietor shall be administered according to the law of bankruptcy, be registered as proprietor of any land, lease or charge of which the bankrupt or deceased proprietor is proprietor, in his place, and a copy of the order shall be filed.

(2) A trustee in bankruptcy shall be described in the register as "trustee of the property of ....., a bankrupt".

(3) The trustee in bankruptcy shall hold any land, lease or charge of which he is registered as proprietor subject to any restrictions contained in the Bankruptcy Act or in any order of court and subject to any liabilities, rights or interests which are unregistered but are nevertheless enforceable and subject to which the bankrupt or the deceased proprietor held the same, but for the purpose of any dealing with such land, lease or charge the trustee in bankruptcy shall have all the rights and be subject to all the limitations conferred or imposed by this or any other written law on a proprietor who has acquired land, a lease or a charge for valuable consideration.

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Liquidation

117.—(1) Where a company is being wound up, the liquidator shall produce to the Registrar any resolution or order appointing him liquidator, and the Registrar shall enter the appointment in respect of any land, lease or charge of which the company is registered as proprietor, and shall file the copy of the resolution or order.

(2) An instrument executed by or on behalf of a company in liquidation delivered for registration after the appointment of the liquidator has been entered under subsection (1) shall be sealed

with the common seal of the company and attested by the liquidator or, in the case of a company not required by law to have a common seal, shall be signed by the liquidator whose signature shall be verified in accordance with section 105.

Transmission in other cases

118. Where the Government or any person has become entitled to any land, lease or charge under any law or by virtue of any order or certificate of sale made or issued under any law, the Registrar shall, on the application of any interested person supported by such evidence as he may require, register the Government or the person entitled as the proprietor.

Trusts

119.—(1) A person acquiring land or a lease or a charge in a fiduciary capacity may be described by that capacity in the instrument of acquisition and, if so described, shall be registered with the addition of the words "as trustee", but the Registrar shall not enter particulars of any trust in the register.

(2) An instrument which declares or is deemed to declare any trust, or a certified copy thereof, may be deposited with the Registrar for safe custody; but such instrument or copy shall not form part of the register or be deemed to be registered.

(3) Where the proprietor of land, a lease or a charge is a trustee, he shall hold the same subject to any unregistered liabilities, rights or interests to which it is subject by virtue of the instrument creating the trust, but for the purpose of any registered dealings, no person dealing in good faith for valuable consideration shall be deemed to have notice of the trust, nor shall any breach of the trust create any right to indemnity under this Act.

Co-trustees

120.—(1) Where two or more proprietors are registered as trustees or as trustees in bankruptcy, they shall hold as joint proprietors.

(2) Where the survivor of two or more trustees or trustees in bankruptcy would not be entitled to exercise alone the powers which are vested in them, the Registrar shall enter a restriction to that effect.

Family representation

121.—(1) Where land is family land the head of the family shall be registered as the proprietor with the addition of the words "as family representative".

(2) Where the proprietor of land, or a lease or a charge is a family representative he shall have the sole and exclusive right of dealing with the land, lease or charge:

Provided that nothing contained in this section shall preclude the family representative and family members from regulating

the occupation of the land among themselves according to custom.

(3) Nothing in this Act shall relieve any person registered as the family representative from any duty, customary or otherwise, to consult other members of the family. A person so registered shall be bound to exercise the powers vested in him by this Act on behalf of and for the collective benefit of the family, but any failure by such person to comply with such duty or obligation shall in no way concern or affect any person dealing with him in good faith for valuable consideration nor shall any such failure create any right to indemnity under this Act.

Replacement of family representative

122.—(1) The Registrar, on being notified by any member of a family of which the head is registered as family representative—

(*a*) of the death of the family representative;

(*b*) that the family representative is unable to act by reason of mental or physical incapacity, absence from Malaŵi, imprisonment or detention; or

(*c*) that the family representative is no longer acceptable to the majority of the members of the family,

shall refer the matter to the appropriate Local Land Board established under the Local Land Boards Act.

Cap. 59:02

(2) Upon receipt from the Local Land Board of the nomination of a new family representative, the Registrar shall delete the name of the registered family representative and substitute the name of the new family representative, and shall file the nomination.

PART VIII

Restraints on Disposition

Division 1—*Inhibitions*

Power of court to inhibit registered dealings

123.—(1) The court may make an order (hereinafter referred to as an inhibition) inhibiting for a particular time, or until the occurrence of a particular event, or generally until further order, the registration of any dealing with any land, lease or charge.

(2) A copy of the inhibition under the seal of the court, with particulars of the land, lease or charge affected thereby, shall be sent to the Registrar, who shall register it in the appropriate register, and no inhibition shall bind or affect the land, lease or charge until it has been registered.

124. So long as an inhibition remains registered, no instrument which is inconsistent with it shall be registered. Effect of inhibition

125. The registration of an inhibition shall be cancelled in the following cases and in no others— Cancellation of inhibition

(*a*) on the expiration of the time limited by the inhibition;

(*b*) on proof to the satisfaction of the Registrar of the occurrence of the event specified in the inhibition;

(*c*) on the land, lease or charge being sold by a chargee, unless such sale is itself inhibited; or

(*d*) by order of the court.

Division 2—*Cautions*

126.—(1) Any person who— Lodging of cautions

(*a*) claims any unregistrable interest whatsoever, in land or a lease or a charge;

(*b*) is entitled to a licence;

(*c*) has presented a bankruptcy petition against the proprietor of any registered land, lease or charge; or

(*d*) being a Bank, has advanced money on a current account to the proprietor of land or a lease or a charge,

may lodge a caution with the Registrar forbidding the registration of dispositions of the land, lease or charge concerned and the making of entries affecting the same.

(2) A caution may either—

(*a*) forbid the registration of dispositions and the making of entries altogether; or

(*b*) forbid the registration of dispositions and the making of entries to the extent therein expressed.

(3) A caution shall be in the prescribed form and shall state the interest claimed by the cautioner and the Registrar may require the cautioner to support it by a statutory declaration.

(4) The Registrar may reject a caution which he considers unnecessary.

(5) Subject to this section, the caution shall be registered in the appropriate register.

127.—(1) The Registrar shall give notice in writing of a caution to the proprietor whose land, lease or charge is affected by it. Notice and effect of caution

(2) So long as a caution remains registered, no disposition which is inconsistent with it shall be registered except with the consent of the cautioner or by order of the court.

Withdrawal and removal of caution

128.—(1) A caution may be withdrawn by the cautioner or removed by order of the court or, subject to subsection (2), by order of the Registrar.

(2)—(*a*) The Registrar may, on the application of any person interested, serve notice on the cautioner warning him that his caution will be removed at the expiration of the time stated in the notice.

(*b*) If at the expiration of the time stated the cautioner has not objected, the Registrar may remove the caution.

(*c*) If the cautioner objects to the removal of the caution, he shall notify the Registrar in writing of his objection within the time specified in the notice, and the Registrar, after giving the parties an opportunity of being heard, shall make such order as he thinks fit, and may in the order make provision for the payment of costs.

(3) On registration of a transfer by a chargee in exercise of his power of sale under section 71, the Registrar shall remove any caution which purports to prohibit any dealing by the chargor and which was registered after the charge by virtue of which the transfer has been effected.

(4) On the withdrawal or removal of a caution, its registration shall be cancelled, but any liability of the cautioner previously incurred under section 130 shall not be affected by the cancellation.

Second caution in respect of same matter

129. The Registrar may refuse to accept a further caution by the same person or anyone on his behalf in relation to the same matter as a previous caution.

Wrongful cautions

130. Any person who lodges or maintains a caution wrongfully and without reasonable cause shall be liable, in an action for damages at the suit of any person who has thereby sustained damage, to pay compensation to such person.

Division 3—*Restrictions*

Restrictions

131.—(1) For the prevention of any fraud or improper dealing or for any other sufficient cause, the Registrar may, either with or without the application of any person interested in the land, lease or charge, after directing such inquiries to be made and notices to be served and hearing such persons as he thinks fit, make an order (hereinafter referred to as a restriction) prohibiting or restricting dealings with any particular land, lease or charge.

(2) A restriction may be expressed to endure—

(*a*) for a particular period;

(*b*) until the occurrence of a particular event; or

(*c*) until the making of a further order,

and may prohibit or restrict all dealings or only such dealings as do not comply with specified conditions, and the restriction shall be registered in the appropriate register.

Notice and effect of restriction

132.—(1) Upon the entry of a restriction the Registrar shall give notice thereof in writing to the proprietor affected thereby.

(2) So long as any restriction remains registered, no instrument which is inconsistent with it shall be registered except by order of the court or of the Registrar.

Removal and variation of restrictions

133.—(1) The Registrar may at any time, upon application by any person interested or of his own motion, and after giving the parties affected thereby an opportunity of being heard, order the removal or variation of a restriction.

(2) Upon the application of a proprietor affected by a restriction, and upon notice thereof to the Registrar, the court may order a restriction to be removed or varied, or make such other order as it thinks fit, and may make an order as to costs.

PART IX

Prescription

Acquisition of land by prescription

134.—(1) The ownership of land may be acquired by peaceable, open and uninterrupted possession without the permission of any person lawfully entitled to such possession for a period of twelve years:

Provided that no person shall so acquire the ownership of customary or public land.

(2) Any person who claims to have acquired the ownership of land by virtue of subsection (1) may apply to the Registrar for registration as proprietor thereof.

Principles of possession

135.—(1) Where it is shown that a person has been in possession of land, or in receipt of the rents or profits thereof, at a certain date and is still in possession or receipt thereof, it shall be presumed that he has, from that date, been in uninterrupted possession of the land or in uninterrupted receipt of the rents or profits until the contrary be shown.

(2) Possession of land or receipt of the rents or profits thereof by any person through whom a claimant derives his possession

shall be deemed to have been possession or receipt of the rents or profits by the claimant.

(3) Where from the relationship of the parties or from other special cause it appears that the person in possession of land is or was in possession on behalf of another his possession shall be deemed to be or to have been the possession of that other.

(4) If a person whose possession of land is subject to conditions imposed by or on behalf of the proprietor, continues in such possession after the expiry of the term during which such conditions subsist without fulfilment or compliance with them by such person and without any exercise by the proprietor of his right to the land, such subsequent possession shall be deemed to be peaceable, open and uninterrupted possession within the meaning of section 134.

(5) For the purposes of subsection (4)—

(*a*) a tenancy at will shall be deemed to have terminated at the expiration of a period of one year from the commencement thereof unless it has previously been determined;

(*b*) a periodic tenancy shall be deemed to have terminated at the expiration of the period:

Provided that where any rent has subsequently been paid in respect of the tenancy it shall be deemed to have terminated at the expiration of the period for which the rent has been paid.

(6) Possession shall be interrupted—

(*a*) by dispossession by a person claiming the land in opposition to the person in possession;

(*b*) by the institution of legal proceedings by the proprietor of the land to assert his right thereto; or

(*c*) by any acknowledgement made by the person in possession of the land to any person claiming to be the proprietor thereof that such claim is admitted.

(7) No person possessing land in a fiduciary capacity on behalf of another may acquire by prescription the ownership of the land as against such other.

Procedure on application

136.—(1) The Registrar shall give notice of any such application to the proprietor of the land affected and to any other persons who may, in his opinion, be affected thereby; and may order that the application be advertised at the expense of the applicant in such manner as the Registrar may direct.

(2) After one month has elapsed from the date of giving notice under subsection (1) the Registrar, on being satisfied that the applicant has acquired the ownership of the land claimed, may allow the application and register him as proprietor of the land claimed, subject to any interests on the register which have not been extinguished by the possession.

Acquisition of easements and profits by prescription

137.—(1) Except in respect of customary or public land, easements and profits may be acquired without registration by peaceable, open and uninterrupted enjoyment thereof for a period of twelve years:

Provided that no easement or profit shall be so acquired unless the proprietor of the land burdened by such easement or profit is, or by reasonable diligence might have been, aware of such enjoyment and might by his own efforts have prevented it.

(2) Where any person claims to have acquired an easement or profit by virtue of subsection (1) he may apply to the Registrar for the registration thereof, and the Registrar, on being satisfied as to the claim and subject to such notices, advertisements and conditions as the Registrar may direct, shall register the easement or profit as an encumbrance on the register of the land affected and, in the case of an easement, in the property register of the land which benefits.

PART X

Rectification and Indemnity

Rectification by Registrar

138.—(1) The Registrar may rectify the register or any instrument presented for registration in the following cases—

(*a*) in formal matters and in the case of errors or omissions not materially affecting the interests of any proprietor;

(*b*) where any person has acquired an interest in land by prescription under Part IX;

(*c*) in any case and at any time with consent of all persons interested;

(*d*) where, upon resurvey, a dimension or area shown in the register or registry map is found to be incorrect, but in such case the Registrar shall first give notice to all persons appearing by the register to be interested or affected of his intention so to rectify.

(2) Upon proof of the change of the name or address of any proprietor, the Registrar shall, on the written application of the proprietor, make an entry in the register to record the change.

Rectification by court

139.—(1) Subject to subsection (2), the court may order rectification of the register by directing that any registration be cancelled or amended where it is satisfied that any registration including a first registration has been obtained, made or omitted by fraud or mistake.

(2) The register shall not be rectified so as to affect the title of a proprietor who is in possession or is in receipt of the rents or

profits and acquired the land, lease or charge for valuable consideration, unless such proprietor had knowledge of the omission, fraud or mistake in consequence of which the rectification is sought, or caused such omission, fraud or mistake or substantially contributed to it by his act, neglect or default.

Right to indemnity

140.—(1) Subject to this Act and any written law relating to the limitation of actions, any person suffering damage by reason of—

(*a*) any rectification of the register;

(*b*) any mistake or omission in the register which cannot be rectified under this Act, other than a mistake or omission in a first registration; or

(*c*) any error in a certificate of official search issued by the Registrar or in a copy of or extract from the register or in a copy of or extract from any document or plan, certified under this Act,

shall be entitled to be indemnified by the Government out of moneys provided by Parliament.

(2) No indemnity shall be payable to any person who has himself caused or substantially contributed to the damage by his fraud or negligence, or who derives title (otherwise than under a registered disposition made bona fide for valuable consideration) from a person who so caused or substantially contributed to the damage.

Amount of indemnity

141. Where an indemnity is awarded in respect of the loss of any interest in land, it shall not exceed—

(*a*) where the register is not rectified, the value of the interest at the time when the mistake or omission which caused the damage was made; or

(*b*) where the register is rectified, the value of the interest immediately before the time of rectification.

Procedure for claiming indemnity

142. The Registrar may, on the application of any interested party, determine whether a right of indemnity has arisen under this Part and, if so, award indemnity, and may add thereto any costs and expenses properly incurred in relation to the matter.

Recovery of indemnity paid

143. Where any moneys are paid by way of indemnity under this Part, the Minister shall be entitled to recover by suit or otherwise the amount so paid from any person who has caused or substantially contributed to the loss by his fraud or negligence, and to enforce any express or implied agreement or other right which the person who is indemnified would have been entitled to enforce in relation to the matter in respect of which the indemnity has been paid.

Errors in survey Cap. 59:01

144.—(1) Subject to the proviso to section 28 (2) of the Customary Land (Development) Act as between the Government and a proprietor, no claim to indemnity shall arise and no suit shall be maintained on account of any surplus or deficiency in the area or measurement of any land disclosed by a survey showing an area or measurement differing from the area of measurement disclosed on any subsequent survey or from the area or measurement shown in the register or on the registry map.

(2) As between a proprietor and any person from or through whom he acquired the land, no claim to indemnity shall be maintainable on account of any surplus or deficiency in the area or measurement above or below that shown in any other survey or above or below the area or measurement shown in the register or on the registry map, after a period of six months from the date of registration of the instrument under which the proprietor acquired the land.

PART XI

Decisions of Registrar and Appeals

Power of Registrar to state case

145. Whenever any question arises with regard to the exercise of any power or the performance of any duty conferred or imposed on him by this Act, the Registrar may state a case for the opinion of the High Court; and thereupon the High Court shall give its opinion thereon, which shall be binding upon the Registrar.

Appeals

146.—(1) If any person is dissatisfied by the refusal of the Deputy Chief Land Registrar or any Assistant Land Registrar to effect or cancel any registration, he may, within thirty days of the refusal, appeal in the prescribed form to the Chief Land Registrar, and the Chief Land Registrar may direct that such registration be effected or cancelled, as the case may require, or may uphold the refusal.

(2) (*a*) The Minister or any person aggrieved by a decision direction, order, determination or award of the Chief Land Registrar may, within thirty days of the decision, direction, order, determination or award, give notice to the Chief Land Registrar in the prescribed form of his intention to appeal to the High Court against the decision, direction, order, determination or award.

(*b*) On receipt of a notice of appeal, the Chief Land Registrar shall prepare and send to the Court and to the appellant, and to any other person appearing to him from the register to be affected by the appeal, a brief statement of the question in issue.

(*c*) On the hearing of the appeal, the appellant and the Chief Land Registrar and any other person who, in the opinion of the Court, is affected by the appeal may, subject to any rules of court, appear and be heard in person or by a legal practitioner.

(*d*) The Court may make such order on the appeal as the circumstances may require, and every such order shall be given effect to by the Chief Land Registrar.

(*e*) The costs of the appeal shall be in the discretion of Court.

Effect of appeal on disposition

147.—(1) An appeal to the Court shall not affect a disposition for valuable consideration made in good faith and registered before delivery of notice of the appeal to the Registrar.

(2) A note that an appeal is pending shall be made in the register affected by the appeal and any disposition shall be subject to such notice.

Appeal Rules

148. The Chief Justice may make rules of Court for regulating applications and appeals to the Court under this Act, and for the fees to be paid in respect thereof.

PART XII

Miscellaneous

Addresses

149. Any person who under this Act submits a caution or any instrument for registration, or is the proprietor of any land, lease or charge, shall furnish to the Registrar in writing a postal address within Malaŵi for service, and shall notify him in writing of any change in that address:

Provided that the Registrar may in his discretion dispense with this requirement in regard to any particular registration or kind of registration.

Service of notices

150. A notice under this Act shall be deemed to have been served on or given to any person—

(*a*) if served on him personally;

(*b*) if left for him at his last known place of residence or business in Malaŵi;

(*c*) if sent by registered post to him at his last known postal address;

(*d*) if served in any of the above-mentioned ways on an attorney holding a power of attorney whereunder such attorney is authorized to accept such service;

(*e*) if service cannot be effected in one of the abovementioned ways, by displaying it in a prominent place on the land affected.

Meaning of "opportunity of being heard"

151.—(1) Where by this Act a thing is to be or may be done after giving a person an opportunity of being heard, that person shall be deemed to have been given such an opportunity—

(*a*) if he attends before the Registrar personally or by a legal practitioner or other agent, and is given such an opportunity;

(*b*) if he intimates, personally or by a legal practitioner or other agent, that he does not wish to be heard; or

(*c*) if he fails to attend pursuant to a notice in writing indicating the nature of the thing to be done and appointing a day and time not less than seven days after service of the notice at which he will, if he attends before the Registrar, be heard.

(2) Where a person or a legal practitioner or other agent on his behalf attends before the Registrar concerning a matter on which he is entitled to an opportunity of being heard, or fails to attend pursuant to such a notice as aforesaid, the Registrar may, if he thinks fit, adjourn the hearing from time to time, and, notwithstanding failure to attend, may, if he thinks fit, hear such person at any time.

(3) Where by this Act all persons interested or affected are to be given an opportunity of being heard, it shall be sufficient if all persons who, according to any subsisting entry in the register, appear to be so interested or affected are given such opportunity.

Offences

152.—(1) Any person who—

(*a*) knowingly misleads or deceives any person authorized by or under this Act to require information in respect of any land or interest in land;

(*b*) fraudulently issues or makes or fraudulently procures the issue or making of, any certificate or other document, or any registration, or any erasure or alteration in any certificate or other document or in any register;

(*c*) fraudulently uses, assists in fraudulently using or is privy to the fraudulent use of any instrument or form purporting to be issued or authorized by the Registrar; or

(*d*) causes any defacement, obliteration, mutilation or unauthorized entry or alteration to be made on or in any register or filed instrument,

shall be liable to a fine of £200 and to imprisonment for three years.

(2) If any person after the delivery to him of a summons to attend before the Registrar or to produce any document neglects or refuses without reasonable cause to attend in accordance with the summons, or to produce any document which he is required by the summons to produce, or to answer upon oath or otherwise any question which is lawfully put to him by the Registrar under the powers conferred by this Act, he shall be liable to a fine of £20.

Fees

153.—(1) There shall be payable in respect of land certificates, certificates of lease, searches, surveys and survey plans, printed forms and all other matters connected with registration, such fees as shall from time to time be prescribed, and the Registrar may refuse registration until the fees are paid.

(2) The Registrar may act notwithstanding that the prescribed fee or any part thereof has not been paid, but the unpaid fee or part of a fee shall be recorded in the register.

(3) The Registrar may refuse to register a disposition of any land, lease or charge against which unpaid fees are recorded until such fees are paid.

Recovery of fees and expenses

154. Unpaid fees or expenses incurred by the Registrar shall constitute a civil debt recoverable by the Registrar in a magistrate's court.

Enforcement of Registrar's orders for payment

155. An order for the payment of a sum of money made by the Registrar under any power conferred by this Act shall be enforceable by a magistrate's court as if it were an order of that court.

Jurisdiction of courts

156. Civil suits and proceedings relating to the ownership or the possession of land, or to a lease or charge, registered under this Act, or to any interest in any such land, lease or charge, being an interest which is registered or registrable under this Act, or being an interest which is referred to in section 27, shall, notwithstanding the Courts Act, be tried by the High Court, or, where the value of the subject matter in dispute does not exceed £200, by the High Court or a subordinate court held by a Resident Magistrate.

Cap. 3:02

Rules

157. The Minister may make rules generally to give effect to the purposes and provisions of this Act, and in particular, and without prejudice to the generality of the foregoing, for prescribing the forms to be used under this Act and the fees payable for anything to be done thereunder, and for prescribing anything which under this Act may be prescribed.

158. Nothing in this Act shall prejudice any of the interests, rights, powers and privileges conferred on the Minister or the Government by any other written law. Savings of rights

159. Except as otherwise provided, this Act binds the Government. Act to bind Government

160. Any matter not provided for in this Act, or in any other written law relating to land, leases and charges registered under this Act and interests therein, shall be decided in accordance with the principles of justice, equity and good conscience. Other law

G.N. 131/1970

SUBSIDIARY LEGISLATION
APPOINTMENT

under s. 6

The Minister has appointed the person for the time being holding the office of Commissioner for Lands to be Chief Land Registrar for the purposes of the said Act.

G.N. 129/1970

ORDER

under s. 4

Constitution of the Lilongwe Land Registration District Cap. 59:01 sub.leg. p.14

The Minister has ordered that the area for the time being described in the Schedule to the Lilongwe Agricultural Development Area Order shall constitute the Lilongwe Land Registration District.

G.N. 85/1983

REGISTERED LAND (CAPITAL CITY OF LILONGWE LAND REGISTRATION DISTRICT) ORDER

under s. 4

Citation

1. This Order may be cited as the Registered Land (Capital City of Lilongwe Land Registration District) Order.

Constitution of the Capital City of Lilongwe Land Registration District

2. The areas specified in the Schedule hereto shall hereafter constitute the Capital City of Lilongwe Land Registration District.

para. 3

SCHEDULE

The areas designated as part of the Capital City of Lilongwe by the following Orders—

Cap. 39:02 sub.leg. pp. 12, 12*a*, 25 and

G.N. 132/1980 109/1986

(i) Capital City Development Corporation Designation Order, 1968 (G.N. 160/1968);

(ii) Capital City Development Corporation (Supplemental Designation) Order, 1972 (General Notice No. 40/1972);

(iii) Capital City Development Corporation (Supplemental Designation) Order, 1977 (General Notice No. 86/1977);

(iv) Capital City Development Corporation (Supplemental Designation and Land Vesting) Order, 1980 (G.N. 132/1980);

(v) Capital City Development Corporation (Supplemental Designation) Order, 1984 (G.N. 88/1984).

G.N. 51/1976

ORDER

under s. 4

Constitution of the Blantyre Land Registration District Cap. 22:01 sub. leg. p. A25

The Minister has ordered that the area for the time being within the boundaries of the City of Blantyre described in the City of Blantyre (Declaration of Boundaries) Order shall constitute a land registration district for the purposes of the Act. Such district shall be known as the Blantyre Land Registration District.

REGISTERED LAND RULES

under s. 157

G. N. 185/1970 114/1982 142/1983 15/1986 106/1995 8/2002 27/2011

Citation

1. These Rules may be cited as the Registered Land Rules.

Form of register

2. A register shall be in one of the forms in the First Schedule to these Rules, with such alterations and additions consistent with the provisions of section 10 of the Act as the Chief Land Registrar considers necessary or desirable; the title number of a piece and of any lease or sublease of that piece, whether of the whole or part of the piece, shall be the registration section and the piece number together, where applicable, with—

(*a*) in the case of a sublease, a letter suffix unique to that sublease, and

(*b*) in the case of a lease or sublease of a portion of a piece, a subdivisional number unique to that portion,

and letters and subdivisional numbers shall appear in the order in which the respective interests were created.

Forms of certificates

3. A land certificate and a certificate of lease shall be in the appropriate form in the Second Schedule to these Rules.

Other forms

4. The forms in the Third Schedule to these Rules shall, subject to section 103 of the Act, be used in all matters to which they refer.

Forms to be in English G.N. 15/1986

5.—(1) All forms shall be clearly and legibly completed in the English language with such alterations and additions as the Chief Land Registrar considers necessary or desirable. Instruments for which no form is provided or to which the scheduled forms cannot conveniently be adapted, shall be in such form as the Chief Land Registrar shall direct or allow, the scheduled forms being followed as nearly as circumstances permit.

(2) Every instrument presented for registration or filing in the Land Registry shall be on paper of durable quality and shall have endorsed thereon a certificate of preparation in the form set out in the Seventh Schedule signed by the person or firm presenting the instrument.

Verification of instruments G.N. 142/1983

6.—(1) In addition to the Registrar, the persons specified in the Fifth Schedule may verify any instrument for the purposes of section 105 (1) of the Act.

(2) A certificate for the purpose of paragraph (*b*) of subsection (2) of section 105 of the Act shall be in the form set out in the Sixth Schedule which may be typed, or otherwise legibly incorporated in ink, on any instrument presented for registration.

Fees

7. The fees specified in the second column of the Fourth Schedule to these Rules shall be paid in respect of the matters specified in the first column of that Schedule:

Provided that—

(i) on fees shall be payable by the Government;

(ii) where a piece is identified by reference to more than one sheet of the registry map, the sheets required to identify that piece shall, for the purposes of any fee, be deemed to be one sheet only.

Assessment of fees

8. Where any fee is calculated ad *valorem* and no consideration is expressed in the instrument the value on which the fee is calculated shall be the value for the purposes of assessment of stamp duty.

Registrar not to prepare instruments in certain cases

9.—(1) No instrument shall be prepared by the registrar except on behalf of the Government where the amount or value of the consideration exceeds K2,000 or where the amount or value of the annual rent or other annual payment reserved exceeds K200 and the Registrar may refuse to prepare an instrument in any other case where he is of the opinion that the parties to the transaction should obtain the advice of a legal practitioner.

(2) Where an instrument is prepared by the Registrar, his responsibility is limited to the preparation of that instrument, and he shall not be concerned with, nor be in any way liable for, any other issue which may arise between the parties to any transaction.

Refund of fees

10. No fee shall be refunded except by order of the Chief Land Registrar.

Agreements implied in charges G.N. 15/1986

11.—(1) In every charge, unless the contrary is expressed therein, the charger shall be deemed to have agreed in favour of the chargee as follows—

(*a*) to pay the principal money on the day therein appointed and, so long as the principal money or any part thereof remains unpaid, to pay interest thereon, or on so much thereof as for the time being remains unpaid, at the rate, at the times and in manner therein specified;

(*b*) to pay all rates, taxes and other outgoings which are at any time payable in respect of the charged property;

(*c*) to repair and keep in repair all buildings and other improvements upon the charged land or comprised in the charged lease and to permit the chargee or his agent, at all reasonable times until the charge is discharged and after reasonable notice to the chargor, to enter the land and examine the state and improvements;

(*d*) to insure and keep insured all buildings upon the charged land or comprised in the charged lease against loss or damage by fire in the joint names of the chargor and chargee with insurers approved by the chargee to the full value thereof;

(*e*) in the case of a charge of land or of a lease not to lease the charged land or any part thereof or sublease the whole or any part of the land comprised in the charged lease without the previous consent in writing of the chargee, but such consent shall not be unreasonably withheld;

(*f*) not to transfer the land lease or charge or any part thereof without the previous written consent of the chargee but such consent shall not be unreasonably withheld;

(*g*) in the case of a charge of a lease, during the continuance of the charge to pay the rent reserved by the lease and observe and perform the agreements and conditions thereof, and to keep the charges indemnified against all proceedings, expenses and claims on account of the non-payment of the said rent or any part thereof, or the breach or non-observance of the said agreements and conditions or any of them, and, if the lessee has an enforceable right to renew the lease, to renew it;

(*h*) where the charge is a second or subsequent charge, to pay the interest from time to time accruing due on each prior charge when it becomes due, and at the proper time repay the principal money due on each prior charge.

(2) Where the chargor fails to comply with any of the agreements implied by paragraphs (*b*), (*c*), (*d*) and (*g*) of subrule (1) then the chargee may spend such money as is necessary to remedy the breach, and may add the amount so spent to the principal money secured by the charge, and thereupon that amount shall be deemed for all purposes to be part of that principal money.

Certificate of registration under the Companies Act, Cap. 46:03

12. On application to register a charge created by a company registered under the Companies Act, there shall be produced to the Land Registrar a certificate that the charge has been registered under the relevant section of the Companies Act.

FIRST SCHEDULE r. 2

THE REGISTER

PART A—PROPERTY SECTION

[*Front*] [*To be printed on green paper*]

Edition:		
Opened:		
Registration Section	Easements, etc.	Nature of Title
		Absolute
Piece number		
Approximate Area		
Acres Hectares		
Registry Map sheet No.		

PART B—PROPRIETORSHIP SECTION

Entry No.	Date	Name of registered proprietor	Address of registered proprietor	Consider-ation and remarks	Signature of registrar

THE REGISTER

PART C—INCUMBRANCES SECTION

[*Back*]

Entry No.	Date	Nature of incumbrance	Further particulars	Signature of registrar

THE REGISTER r. 2

PART A—PROPERTY SECTION

[*Front*] [*To be printed on white paper*]

Edition:		
Opened:		
Registration Section	Particulars of Lease	Nature of title
	Lessor:	Leasehold
Piece number	Lessee:	
Approximate area Acres Hectares	Rent: Terms: From:	
Registry Map sheet No.	For appurtenances see the registered lease	

PART B—PROPRIETORSHIP SECTION

Entry No.	Date	Name of registered proprietor	Address of registered proprietor	Consider-ation and remarks	Signature of registrar

THE REGISTER

[*Back*] PART C—INCUMBRANCES SECTION

Entry No.	Date	Nature of incumbrance	Further particulars	Signature of registrar

SECOND SCHEDULE r. 3

REGISTERED LAND ACT

(CAP. 58:01)

[*Front*]

LAND CERTIFICATE

Registration District *Title No.*

....

This is to certify that ..... is [are] now registered as the absolute proprietor[s] of the land comprised in the above-mentioned title, subject to the entries in the register relating to the land and to such of the overriding interests set out in section 27 of the Registered Land Act as may for the time being subsist and affect the land.

Given under my hand and the seal of the ..... District Registry this ..... day of ....., 19.....

L.S. .....

Land Registrar

[*Back*]

At the date stated on the front hereof, the following entries appeared in the register relating to the land:

PART A—Property Section (easements, etc.)

PART B—Proprietorship Section (inhibitions, cautions and restrictions)

PART C—Incumbrances Section (leases, charges, etc.)

.....

Land Registrar

REGISTERED LAND ACT r. 3

(CAP. 58:01)

[*Front*]

CERTIFICATE OF LEASE

Registration District *Title No.*

....

Lessor

Rent

Term

This is to certify that ..... is [are] now registered as the proprietor[s] of the leasehold interest above referred to subject to the agreements and other matters contained in the registered lease, to the entries in the register relating to the lease and to such of the overriding interests set out in section 27 of the Registered Land Act as may for the time being subsist and affect the land comprised in the lease.

Given under my hand and the seal of the ..... District Registry this ..... day of....., 19.....

L.S. .....

Land Registrar

[*Back*]

At the date stated on the front hereof, the following entries appeared in the register relating to the lease:

PART A—Property Section (easements, etc.)

PART B—Proprietorship Section (inhibitions, cautions and restrictions)

PART C—Incumbrances Section (subleases, charges, etc.)

.....

Land Registrar

THIRD SCHEDULE

r. 4
G.N. 15/1986

FORM R.L. 1

REGISTERED LAND ACT

TRANSFER OF LAND

TITLE NO. .....

I/WE, ... in consideration of ..... (the receipt whereof is hereby acknowledged) HEREBY TRANSFER to ..... of ..... the land comprised in the above-mentioned title.

The Transferees declare that they hold the land as proprietors in common in the following undivided shares—

[or as joint proprietors]

Dated this ..... day of ....., 19.....

Signed by the Transferor in the presence of— }

Signed by the Transferee in the presence of— }

FORM R.L. 2

REGISTERED LAND ACT

TRANSFER OF LEASE

TITLE NO. .....

I/WE, ... in consideration of ..... (the receipt whereof is hereby acknowledged) HEREBY TRANSFER to ..... of ..... the leasehold interest comprised in the above-mentioned title.

The Transferees declare that they hold the leasehold interest as proprietors in common in the following shares—

[or as joint proprietors]

Dated this ..... day of ....., 19.....

Signed by the Transferor }
in the presence of— }
Signed by the Transferee }
in the presence of— }

FORM R.L. 3

REGISTERED LAND ACT

TRANSFER OF CHARGE

TITLE NO. .....

I/WE, ...
in consideration of .....
(the receipt whereof is hereby acknowledged) HEREBY TRANSFER
to ..... of .....
the charge shown as entry number ..... in
the incumbrances section of the register of the above-mentioned title.

The Transferor hereby declares that the amount of principal and interest owing by the Chargor at the date hereof is:

[And the Chargor hereby acknowledges that that is the amount now due and owing by him*].

Dated this ..... day of ....., 19.....

Signed by the Transferor }
in the presence of— }
Signed by the Transferee }
in the presence of— }
Signed by the Chargor in }
the presence of— }

* Delete these words if the Transferee does not require the Chargor to acknowledge.

FORM R.L. 4

REGISTERED LAND ACT

TRANSFER BY CHARGEE IN EXERCISE OF POWER OF SALE

TITLE NO. .....

I/WE, ...
having exercised the power of sale conferred upon me/us by the charge shown as entry number ..... in the incumbrances section of the register of the above-mentioned title, in consideration of (the receipt whereof is hereby acknowledged) HEREBY TRANSFER
to ..... of .....
the interest comprised in the above-mentioned title.

The Transferees declare that they hold the said interest as proprietors in common in the following undivided shares—

[or as joint proprietors]

Dated this ..... day of ....., 19.....

Signed by the Transferor[s] }
in the presence of— }
Signed by the Transferee[s] }
in the presence of— }

FORM R.L. 5

REGISTERED LAND ACT

TRANSFER OF PROFIT

TITLE NO. .....

I/WE, ...
In consideration of.....
(the receipt whereof is hereby acknowledged) HEREBY TRANSFER to....
..... of .....
the profit shown as entry number ..... in the incumbrances section of the above-mentioned title.

The Transferees declare that they hold the profit as proprietors in common in the following undivided shares—
[or as joint proprietors]

Dated this ..... day of ....., 19.....

Signed by the Transferor in the presence of— }

Signed by the Transferee in the presence of— }

FORM R.L. 6

REGISTERED LAND ACT

TRANSFER OF UNDIVIDED SHARE

TITLE NO. .....

I/WE, ...
in consideration of .....
(the receipt whereof is hereby acknowledged) HEREBY TRANSFER to ..... of .....
my/our undivided ..... share[s] [respectively] in the above-mentioned title.

The Transferees declare that they hold [the combined] undivided share[s] as proprietor in common in the following shares—

[or as joint proprietors]

I/WE, ...
the remaining proprietor[s] of the interest comprised in the above-mentioned title hereby consent to this transfer.

Dated this ..... day of ....., 19.....

Signed by the Transferor[s] in the presence of— }

Signed by the Transferee[s] in the presence of— }

Signed by the remaining proprietor[s] in the presence of— }

FORM R.L. 7

REGISTERED LAND ACT

TRANSFER BY PERSONAL REPRESENTATIVE TO PERSON ENTITLED UNDER A WILL OR ON AN INTESTACY

TITLE NO. .....

I/WE, ...
as personal representative[s] of ..... deceased
HEREBY TRANSFER to ....
of ..... (being the person[s] entitled thereto under the will [or on the intestacy] of the deceased) the interest of the deceased comprised in the above-mentioned title.

The Transferees declare that they hold that interest as proprietors in common in the following undivided shares—
[or as joint proprietors]

Dated this ..... day of ....., 19.....

Signed by the Transferor[s] }
in the presence of— }

Signed by the Transferee[s] }
in the presence of— }

FORM R.L. 8

REGISTERED LAND ACT

LEASE

TITLE NO. .....

I/WE, ...
HEREBY LEASE to ..... of .....
the land comprised in the above-mentioned title [or that portion of the land comprised in the above-mentioned title which is shown (on the registry map as piece number ..... / .....) or (on the filed plan as ..... number .....)] for the term of .....
from the ..... day of ..... at the rent of ..... payable .....

The Lessees declare that they hold the lease as proprietors in common in the following undivided shares—
[or as joint proprietors]

Dated this ..... day of ....., 19.....

Signed by the Lessor[s] }
in the presence of— }

Signed by the Lessor[s] }
in the presence of— }

FORM R.L. 9

REGISTERED LAND ACT

CHARGE

TITLE NO. .....

I/WE, ...
HEREBY CHARGE my/our interest in the above-mentioned title

[or the charge shown as entry number ..... in the incumbrances section of the register of the above-mentioned title] to secure the payment to ..... of ..... of the principal sum of ..... with interest at the rate of ..... per centum per annum.

The principal sum shall be repaid on the ..... day of ..... together with any interest then due.

And I/We, the above-named Chargor[s] hereby acknowledge that I/We understand the effect of section 68 of the Registered Land Act.

Dated this ..... day of ....., 19.....

Signed by the Chargor[s] in the presence of— }

Signed by the Chargee[s] in the presence of— }

FORM R.L. 10

REGISTERED LAND ACT

DISCHARGE OF CHARGE

TITLE NO. .....

I/WE, ... HEREBY DISCHARGE the Charge shown as entry number ..... in the incumbrances section of the register of the above-mentioned title wholly [or in relation to .....]

Dated this ..... day of ....., 19.....

Signed by the Chargee[s] in the presence of— }

FORM R.L. 11

REGISTERED LAND ACT

SURRENDER OF LEASE

TITLE NO. .....

I/WE, ... in consideration of* ..... (the receipt whereof is hereby acknowledged)* HEREBY SURRENDER the lease comprised in the above-mentioned title and the Lessor[s] HEREBY ACCEPT[S] the said surrender.

Dated this ..... day of ....., 19.....

Signed by the Lessee[s] in the presence of— }

Signed by the Lessor[s] in the presence of— }

* Delete if no monetary consideration.

FORM R.L. 12

REGISTERED LAND ACT

GRANT OF EASEMENT

TITLE NO. .....

I/WE, ... in consideration of ..... (the receipt whereof is hereby acknowledged) HEREBY GRANT to .....of..... the proprietor of the Interest comprised in title number .... the following easement: .....

Dated this ..... day of ....., 19.....

Signed by the Grantor[s] }
in the presence of— }
Signed by the Grantee[s] }
in the presence of— }

FORM R.L. 13

REGISTERED LAND ACT

GRANT OF PROFIT

TITLE NO. .....

I/WE, ... in consideration of ..... (the receipt whereof is hereby acknowledged) HEREBY GRANT to..... ..... of ..... the following profit to arise from the interest comprised in the above-mentioned title: .....

The profit is to be enjoyed in gross [or as appurtenant to the interest of the Grantee comprised in title number .....]

Dated this ..... day of ....., 19.....

Signed by the Grantor[s] }
in the presence of— }

FORM R.L. 14

REGISTERED LAND ACT

RELEASE OF EASEMENT, PROFIT OR RESTRICTIVE AGREEMENT

TITLE NO. .....

I/WE, ... being the person[s] now entitled to the benefit of the [easement] [profit] [restrictive agreement] shown as entry number ..... in the incumbrances section of the register of the above-mentioned title HEREBY RELEASE the [easement] [profit] [restrictive agreement].

Dated this ..... day of ....., 19.....

Signed in the presence of— }

FORM R.L. 15

REGISTERED LAND ACT

SEVERANCE OF JOINT PROPRIETORSHIP

TITLE NO. .....

I/WE, ... HEREBY SEVER out joint proprietorship of our interest in the above-mentioned title and apply to be registered as proprietor[s] in common in the following shares—

Dated this ..... day of ....., 19.....

Signed by the Proprietor[s] }
in the presence of— }

FORM R.L. 16

REGISTERED LAND ACT

APPLICATION FOR PARTITION

(To be used for cases arising under sections 98 and 101)

TITLE NO. .....

I/WE, ... HEREBY APPLY for the land comprised in the above-mentioned title to be partitioned in the following manner:

(Where the application relates to family land, the applicant must indicate here the capacity in which he makes the application:
.....)

Dated this ..... day of ....., 19.....

Signed by the Applicant }
in the presence of— }

FORM R.L. 17

REGISTERED LAND ACT

POWER OF ATTORNEY

TITLE NO. .....

I, ...
HEREBY APPOINT ..... of .....
to be my attorney and generally in relation to my interest in the above-mentioned title to do anything and everything that I myself could do, and for me and in my name to execute all such instruments and to do all such acts, matters and things as may be necessary or expedient for carrying out the powers hereby given.

[If the power is to be limited to particular acts only, delete everything after the word "attorney" and set out below what powers are to be conferred.]

Dated this ..... day of ....., 19.....

Signed by the Applicant }
in the presence of— }

FORM R.L. 18

REGISTERED LAND ACT

NOTICE OF REVOCATION OF A POWER OF ATTORNEY

TITLE NO. .....

I,..... HEREBY GIVE NOTICE that the Power of Attorney filed in the register of powers of attorney as No. ..... has been revoked—

(*a*) by me .....
or

(*b*) by the [death] [bankruptcy] [disability] of the donor .....
or

(*c*) by the [death] [disability] of the attorney. .....

[And I attach the following documents in support thereof—
.....]

Dated this ..... day of ....., 19.....

Signed in the presence of—}

FORM R.L. 19

REGISTERED LAND ACT

APPLICATION TO BE REGISTERED AS PROPRIETOR BY TRANSMISSION

TITLE NO. .....

I/WE, ...

as personal representative[s] of ..... deceased HEREBY APPLY to be registered by transmission as proprietor in place of the deceased of his interest in the above-mentioned title, and in support thereof attach the Grant as required by section 114(1) of the Act.

Dated this ..... day of ....., 19.....

Signed by the Representative[s] }
in the presence of— }

FORM R.L. 20

REGISTERED LAND ACT

CAUTION

TITLE NO. .....

I, ... of ..... claim an interest as ..... in the above-mentioned title and forbid the registration of dealings and the making of entries in the register relating to the title[altogether] [to the following extent:

.....]

without my consent until this caution has been withdrawn by me or removed by order of the Court or the Registrar.

Dated this ..... day of ....., 19.....

Signed in the presence of— }

FORM R.L. 21

REGISTERED LAND ACT

APPEAL TO THE CHIEF LAND REGISTRAR UNDER SECTION 146 (1)

TITLE NO. .....

I, ... HEREBY APPEAL against the refusal of the ..... Registrar to effect or cancel the following registration: .....

My grounds for appeal are as follows:.....

Dated this ..... day of ....., 19.....

.....

Signature of Appellant

FORM R.L. 22

REGISTERED LAND ACT

NOTICE OF INTENTION TO APPEAL TO THE SUPREME COURT

TITLE NO. .....

To: The Chief Land Registrar,

TAKE NOTICE that I intend to appeal to the Supreme Court against the decision taken by you in my appeal to you dated the .....

Dated this ..... day of ....., 19.....

.....

Signature of Appellant

FORM R.L. 23

REGISTERED LAND ACT

APPLICATION TO INSPECT THE REGISTER

TITLE NO. .....

I HEREBY APPLY to inspect the register of the above-mentioned title. I have paid inspection fee of..... as per land registration fee Receipt No. ..... of today.

Dated this ..... 19.....

Signature .....

Postal Address .....

Piece file checked on completion of search by: .....

(*Counter clerk's signature*)

CONDITIONS

1. Persons making searches may take brief notes in pencil, but no document shall be copied.

2. Under no circumstances may any note or mark be made on any register, document or file produced for inspection.

3. Persons making searches shall check the contents of any piece file produced to them and have it checked by the counter clerk, both before and on completion of the search, and obtain the counter clerk's initials on the duplicate search form, otherwise the person searching will be held responsible for any document lost or damaged.

4. The counter clerk's duty does not extend to answering questions on matters of title and no responsibility is accepted for any opinion which may be expressed by him.

FORM R.L. 24

REGISTERED LAND ACT

APPLICATION FOR OFFICIAL SEARCH AND FOR CERTIFIED COPIES

TITLE NO. .....

To: The Land Registrar,

DISTRICT REGISTRY

Please supply—

*(*a*) particulars of the subsisting entries in the register of the above-mentioned title;

*(*b*) a certified copy of each of the following—

I enclose postal Order/Money Order/Cash for .....†

I understand that any additional fee which is payable must be paid by me forthwith on demand.

Dated this ..... 19.....

.....

Signature of Applicant or his Solicitor

Postal Address .....

*Delete if not applicable.

†The minimum fee is .....

FORM R.L. 25

REGISTERED LAND ACT

CERTIFICATE OF OFFICIAL RESEARCH

TITLE NO..... SEARCH NO. .....

On the ..... day of ....., 19 ..... the following were subsisting entries on the register of the above-mentioned title—

PART A—PROPERTY Section (Easements, etc.)
Nature of title
Approximate area

PART B—Proprietorship Section
Name and address of proprietor—
Inhibitions, cautions and restrictions—

PART C—Incumbrances Section (leases, charges, etc.)
The following applications are pending—
The certified copies requested are attached.

The fees now payable are .....; please detach the form below, and remit this amount and return it to me within seven days of today's date.
Date: ....., 19..... .....
Land Registrar

To: The Land Registrar, Search No. .....
DISTRICT REGISTRY
Postal Order/Money Order/Cash for ..... enclosed herewith.
.....
Signature of Applicant
or his Solicitor

FORM R.L. 26

REGISTERED LAND ACT

MUTATION FORM

[*Front*]
TITLE NO..... Area of land: .....
Registry Map Sheet No.....
Registrar's Instructions to Director of Surveys—
1. Present boundaries of piece are shown on the sketch below.
2. (*a*) The proprietor wishes to subdivide as shown by the dotted lines on the sketch.
or
(*a*) The proprietors wish to change their common boundary, as shown by the dotted lines on the sketch.
(*b*) The new piece numbers will be: ..... relevant approximate area of land.
(*c*) Consent of Local Land Board below.
(*d*) The persons interested, and their addresses, are:.....

They will meet the District Surveyor on the land at a time appointed by him.
(*e*) Please advise when survey effected and registry map amended.

SKETCH

[*To be completed by Registrar*]

Date: ..... 19..... .....

Land Registrar

Application approved/refused ..... District.

..... Chairman Date: ..... 19.....

..... Local Land Board.

REGISTERED LAND ACT

MUTATION FORM—(*continued*)

[*Back*]

SKETCH

[*To be completed by District Surveyor*]

Not to scale

Date: ..... 19.....

.....

Signature of District Surveyor

Signature of parties present on the lend at the time of survey:

.....

To: Director of Surveys,

Please amend registry map to conform with above. The following additional information is supplied—

.....

District Surveyor

Date: ..... 19.....

To: Land Registrar,

District.

Registry map amended; application now fit for new registers.

.....

Date: ..... 19..... *for Director of Surveys*

[*This form to be completed in triplicate*]

FORM R.L. 27

G.N. 5/1986

REGISTERED LAND ACT

APPLICATION FOR RECORDING OF RIGHT TO TACK

(SECTION 77)

TITLE NO. .....

REGISTRATION DISTRICT: .....

I/WE, ...

of ..... HEREBY APPLY that the right to tack further advances created by the attached charge dated .....

be recorded in the land register of the above-mentioned title.

.....

Signature

FORM R.L. 28

REGISTERED LAND ACT

G.N. 15/1986

APPLICATION FOR RECORDING OF RIGHT OF CONSOLIDATION

(SECTION 78)

I/We, ...
of ..... HEREBY APPLY that the right to consolidate the charges described in the Appendix hereto be recorded in the land register.

APPENDIX

Date	Parties	Title No.	Amount Secured
.....	.....	.....	.....
.....	.....	.....	.....
.....	.....	.....	.....
.....	.....	.....	.....
.....	.....	.....	.....
.....	.....	.....	.....

.....
Signature

FOURTH SCHEDULE

r. 6 G.N. 114/1982 106/1995 8/2002 27/2011

FEES

First Column	*Second Column* K t
1. On application for lease of land	5,000 00
2. On application for consent to any land transaction	5,000 00
3. On application for registration or filing of any instrument for each title affected	5,000 00
4. On application for a land certificate of lease	5,000 00
5. On application to inspect under section 29 (1) of the Act, for each title inspected	5,000 00
6. On application for an official search under 29 (3) of the Act	5,000 00
7. On application for a certified copy of any register or part of the registry map or any plan or instrument under section 29 (*c*) of the Act	5,000 00
8. For opening a register consequent upon a partition or subdivision or combination for each piece resulting	5,000 00

First Column	*Second Column* K t
9. On application for combination of two or more pieces or partition of—	
(*a*) family land	5,000 00
(*b*) land other than family land	5,000 00
10. On application for the preparation of instruments prescribed by the Act	5,000 00
11. On application for the preparation of any instrument which, in the opinion of the Registrar, requires substantial additions to or variation from the prescribed form	10,000 00
12. For fixing a boundary on the application for any person under section 19 (1) of the Act	5,000 00
13. For approving the form of any document	5,000 00
14. On application for the filing of a power of attorney under section 111 of the Act	5,000 00
15. For rectification of land register	5,000 00
16. On verification of any instrument under rule 6 (2) of these rules	5,000 00
17. Confirmation of reserve price	5,000 00
18. For the preparation of any other document or instrument required under the Act but not otherwise specifically provided for in this Schedule	10,000 00

G.N. 142/1983

FIFTH SCHEDULE

Verification of Instruments

r. 6 (1)

Instruments executed in Malaŵi by—
Registrar General
District Commissioner
Principal Lands Officer
Senior Lands Officer
Notary Public

SIXTH SCHEDULE

Certificate

r. 6 (2)

I certify that on the ..... day of ....., 20....., ...
(*name*)
signed the above written or annexed *document/documents in my presence and .....
(*name*)
*is personally known to me/has been identified by .....
.....

.....
Signature and designation of person certifying

**Delete whichever does not apply*

SEVENTH SCHEDULE

G.N. 15/1986

Certificate of Preparation

This is to certify that this document was prepared by (*a*) ..... and that it is presented for registration by the undersigned (*b*) .....

Dated .....

(*a*) Name and address of person who prepared the document.

(*b*) Name and address of person who presented the document.

DEEDS REGISTRATION

CHAPTER 58:02

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CHAPTER 58:02

DEEDS REGISTRATION

ARRANGEMENT OF SECTIONS

SECTION

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2. Saving
3. Interpretation
4. Official seal
5. Power to sue
6. Compulsory registration of documents
7. Time for presenting documents for registration
8. Charges on land take priority according to date of registration
9. Holder of mortgage entitled to certificate of registration
10. Registration of recognizance
11. Registration of *lis pendens*
12. Cancellation of registration
13. Registration defined
14. Power of attorney
15. Registration of map accompanying document
16. Persons to present documents for registration
17. Description of parcels
18. Documents in foreign language
19. Fees and duties to be paid before registration
20. Right of Registrar to refuse documents
21. Registrar to refuse documents executed by companies in certain circumstances
22. Registration not to cure defect or confer validity
23. Copy documents to be numbered and filed in order of lodgment
24. Endorsed memorandum *prima facie* proof of registration
25. Indemnity of Deeds Registrar
26. Amendment of Register
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29. Penalties for fraud
30. Saving of obligation to make discovery
31. Penalty for non-registration of documents
32. Certified copy admissible as evidence of contents of lost or destroyed document
33. Production of filed document in Court
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35. Fees payable
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CHAPTER 58:02

DEEDS REGISTRATION

8 of 1916
8 of 1951
16 of 1958
28 of 1960
11 of 1963
6 of 1967
25 of 1968
51 of 1971
G.N.
106/1942
219/1964(N)
137/1966
166/1967
224/1971
89/1987
109/1987
26/2011

An Act to replace with amendments the law as to the registration of documents relating to land

[31st March, 1916]

Short title

1. This Act may be cited for all purposes as the Deeds Registration Act.

Saving
12 of 1910

2. All documents affecting land registered under the Registration of Documents Ordinance, 1910 (now repealed) or under any previous regulation shall be deemed to be registered under this Act.

Interpretation

3. In this Act unless the context otherwise requires—

"Deeds Registrar" means the Registrar General or such other person as the Minister may, by notice published in the *Gazette*, appoint to be Deeds Registrar for the purpose of this Act;

"Document" includes deeds and all instruments in writing which pass any interest in land or affecting land and in the case of a will means the probate of a will sealed in Malaŵi or letters of administration with will annexed sealed in Malaŵi;

"Deeds Registry File" shall consist of documents filed in chronological order in the archives of the Deeds Registry.

Official seal

4.—(1) The Deeds Registrar shall have an official seal.

(2) Judicial notice shall be taken by all courts of law of the said official seal and any instruments purporting to be sealed therewith shall be presumed to be a correct copy of the original.

Power to sue

5. The Deeds Registrar may sue and be sued by his official title.

Compulsory registration of documents

Cap. 58:01

6. From and after the commencement of this Act all deeds, conveyances, wills and instruments in writing whether under seal or not whereby any land or interest in or affecting land other than land registered in accordance with the Registered Land Act, may be affected at law or in equity whether executed prior or

subsequent to the date of this Act are subject to compulsory registration in the Deeds Registry Office: 25 of 1968

Provided that the Minister designated for the purpose of this section by the President may, in such areas and in respect of such leases or classes of leases or other instruments relating to land tenancy as he may specify by notice published in the *Gazette*, exempt such leases, classes of leases or other instruments from the requirement of registration under this section.

Time for presenting documents for registration

7.—(1) In the case of any deed or document the registration of which is declared by this Act to be compulsory—

(*a*) where such deed or document is executed after the commencement of this Act the same shall be presented for registration within three months from the date of its execution if executed within Malaŵi;

(*b*) where such deed or document is executed after the commencement of this Act but without Malaŵi the same shall be presented for registration within six months from the date of its execution;

(*c*) where such deed or document has been executed before the commencement of this Act and has not been registered but its effect continues after the commencement of this Act the same shall be presented for registration within three months of the commencement of this Act;

(*d*) the registration of any unregistered document executed before the commencement of this Act shall validate the transaction thereby effected as from the date of the document but subject to any interim registered acts touching the same land or interests and subject to any dealings of later date that may be registered under the next following paragraph;

(*e*) the High Court may in its discretion in any particular case extend the time for lodging any deed or document for registration upon such terms and conditions as it may deem reasonable.

(2) In calculating the time within which any deed or document shall be presented for registration in accordance with paragraph (*a*) or (*b*) of subsection (1), any period during which such deed or document is lodged with the Commissioners of Stamp Duties for purposes of adjudication of stamp duty under the Stamp Duties Act shall not be taken into account and such deed or document shall be presented for registration within thirty days after the date shown on the particular stamp stamped thereon pursuant to section 16 (2) or section 16 (3), as the case may be, of the said Stamp Duties Act. 51 of 1971 Cap. 43:01

Charges on land take priority according to date of registration

8. All charges upon land or any interest in land whether by way of mortgage or otherwise and whether equitable or otherwise and all transfers, assignments or leases of land shall take priority according to the date of registration.

All priorities given by this Act shall have full effect in all courts except in cases of actual fraud and all persons claiming thereunder any legal or equitable interests shall be entitled to corresponding priorities and no person shall lose any such priority merely in consequence of his having been affected with actual or constructive notice of a prior unregistered document except in cases of actual fraud.

Holder of mortgage entitled to certificate of registration

9. The holder of a mortgage or charge shall be entitled on demand to receive a certificate of registration on payment of the prescribed fees.

Registration of recognizance

10. A recognizance or bond entered into by order of the High Court may be registered as a charge on land or any interest in land on lodgment of a certificate from the Registrar of the High Court that such recognizance or bond has been duly filed.

Registration of *lis pendens*

11. A *lis pendens* to affect land or interest therein may be registered as a charge against the same on production of evidence of the institution of any proceedings in the High Court affecting the land or interest. Such evidence shall consist of the certificate of the Registrar of the High Court or any order of the High Court showing the institution of such proceedings.

Cancellation of registration

12. A recognizance, bond or *lis pendens* may be cancelled in the Register on the lodgment of a certificate from the Registry of the High Court showing that the same has been vacated.

Registration defined

13. Registration shall consist—

(*a*) where the land affected is not public land, in the filing of a copy of the document brought for registration in the Deeds Registry File, such copy to be duly certified by the Deeds Registrar as a true copy and in the entry in the Deeds Registry of the names of the parties, the date of the document, the date and hour of registration and briefly the nature of the document;

(*b*) where the land affected is public land, registration shall be defined as in the preceding paragraph with the addition that an extra copy must be lodged and certified for the use of Government;

(*c*) in the case of bonds, recognizances or *lites pendentes* referred to in section 10, 11 or 12, registration shall consist in the filing of the certificate of the Registrar of the High Court or a copy of the order of the Court.

14. If the instrument presented for registration has been executed under power of attorney the power of attorney or an office copy thereof shall be produced to the Registrar and in cases not falling within section 8 and 9 of the Conveyancing Act, 1882, of the United Kingdom evidence (by the statutory declaration of the attorney or otherwise) sufficient to satisfy the Registrar that the principal was alive at the time of execution of the instrument and that the power was then unrevoked shall also be produced.

Power of attorney

45 & 46 Vict., Cap. 39

15. When a map or plan is comprised in or annexed to any document a true copy of such map or plan shall be filed together with the copy of the document to which it refers.

Registration of map accompanying document

Persons to present documents for registration

16.—(1) Every document presented for registration under this Act must be presented either by a person executing or claiming an interest under the same or the representative or agent of such person and the Deeds Registrar may require to be satisfied as to the identity of the person by whom it is brought, or, in the case of a representative or agent, as to his authority.

(2) Every document presented for registration under this Act shall have endorsed thereon a certificate in the form set out in the Second Schedule signed by the person or firm presenting such document.

(3) A document may be presented for registration through the post or under cover if it is accompanied by the prescribed fee and by a letter requesting registration signed by the person or firm who has signed the form of certificate referred to in subsection (2).

Description of parcels

17.—(1) Every document on presentation for registration must contain a description of the land to which it refers sufficient for its proper identification and the Deeds Registrar may refuse to accept for registration any document as aforesaid which does not contain such a description.

(2) Every document presented for registration must contain the registered number of some previous document relating to the land to which it refers:

Provided that this subsection shall not apply to—

(*a*) a Grant of Probate, a Grant of Letters of Administration or other order of any Court;

(*b*) any disposition by the Minister responsible for Land or public land or customary land or any interest therein and any permit or licence in respect of any such land;

(*c*) a power of attorney;

(*d*) any certificate of title granted under the Lands Acquisition Act; Cap. 58:04

(*e*) any declaration by Order issued under Part V of the Land Act; Cap. 57:01

(*f*) any rights in respect of prospecting, mining and water issued under the Mining Act. Cap. 61:01

Documents in foreign language

18. If any document presented for registration be not in the English language it must be accompanied by a translation in English together with the requisite number of copies in English duly certified to the satisfaction of the Deeds Registrar and also by a true copy of the original document.

Fees and duties to be paid before registration

19. The Deeds Registrar shall refuse to register any document until he is satisfied that all Government duties and fees have been paid in respect thereof or in respect of the transaction or series of transactions of which the document forms a record in whole or in part if any such duties or fees are exigible.

Right of Registrar to refuse documents

20.—(1) The Deeds Registrar may in his discretion refuse to accept for registration any documents in which any interlineation, blank, erasure or alteration appears unless such interlineation, blank, erasure or alteration shall have been initialled by the parties to the document or otherwise validly incorporated in the same. On the registration of such document the Deeds Registrar will in addition initial such interlineation, blank, erasure or alteration.

(2) The Deeds Registrar shall refuse to register any document which purports, on the face of it, to have been executed outside Malaŵi by any party thereto unless—

(*a*) he is satisfied by affidavit or otherwise that the document was in fact executed inside Malaŵi; or

(*b*) such document has been authenticated in a manner which complies with the Authentication of Documents Act.

Cap. 4:06

Registrar to refuse documents executed by companies in certain circumstances

21.—(1) The Deeds Registrar shall refuse to register any document which is executed by, or on behalf of, a company within or without Malaŵi otherwise than under the common seal of that company, affixed in the presence of at least one director and the secretary of the company, whose signatures shall appear on the document, or in accordance with its constitution, when such document, if executed by an individual within Malaŵi, is by law required to be executed under seal:

Provided that such document may be registered if it is executed by an attorney of the company appointed by a power of attorney under the common seal of the company and in accordance with its constitution.

(2) For the purposes of this section—

(*a*) every company shall have its name engraved in legible characters upon its common seal in such a manner that, when the seal is affixed to any document, a permanent impressed or embossed mark is made on the document; and

(*b*) the impression upon any document of a rubber or other stamp bearing the name of a company or of a wafer seal upon which is written or printed the name of the company shall not be deemed to be a valid execution under the common seal of the company.

22. Registration shall not cure any defect in any document registered or confer upon it any validity which it would not otherwise have had except in so far as provided in this Act.

Registration not to cure defect or confer validity

23. The Deeds Registrar shall number every copy of documents filed consecutively entering the time of the day and the day of the month and the year when it is registered and shall file the copies in the order in which the documents are received by him.

Copy documents to be numbered and filed in order of lodgment

24.—(1) A memorandum signed by the Deeds Registrar shall be endorsed on every document or copy of a document registered containing a sufficient reference to the number and position of the document in the Register which memorandum shall be proof of the due registration of the document in the absence of sufficient evidence to the contrary.

Endorsed memorandum *prima facie* proof of registration

(2) Where any extension of time for registration is granted by order of the High Court reference to such order of Court shall be made in the margin of the Register and in the endorsement of the document presented for registration.

25. The Deeds Registrar shall not nor shall any person acting under any order or general Rule made in pursuance of this Act be liable to any action, suit or proceedings for or in respect of any act or matter *bona fide* done or omitted to be done in the exercise or supposed exercise of the powers of this Act or any order or general Rule made in pursuance of this Act.

Indemnity of Deeds Registrar

26. Where any person alleges that any error or omission, has been made in the Register or that any entry or omission therein has been procured by fraud or mistake the Deeds Registrar shall if he shall consider such allegation satisfactorily proved correct such error or omission or entry as aforesaid.

Amendment of Register

27. If the Registrar shall refuse to correct any error, omission or entry in pursuance of an application under the last preceding section any person aggrieved by such refusal may apply to the Court for an order that the Register be rectified and the Court may make an order for the rectification of the Register in such manner as it shall direct.

Appeal and reference to the Court

28. The non-registration of a document the registration whereof is compulsory according to this Act will render such document null and void.

Effect of non-registration

29. If any person commits any of the following offences—

Penalties for fraud

(*a*) fraudulently procures or attempts fraudulently to procure or is privy to the fraudulent procurement of any entry, erasure or alteration in the Register; or

(*b*) in any affidavit or certificate required or authorized to be made for any purpose under this Act or under any order or general Rules made in pursuance of this Act wilfully makes a false statement in any material particular,

he shall be guilty of a misdemeanour and if convicted on information shall be liable to a fine of K200 and to imprisonment for one year.

Saving of obligation to make discovery

30. Nothing in this Act shall entitle any person to refuse to make a complete discovery in any legal proceedings or to answer any question or interrogatory in any civil proceedings but no such discovery or answer shall be admissible in evidence against that person in any criminal proceeding under this Act.

Penalty for non-registration of documents

31. Any person wilfully or negligently failing to register any document which is subject to compulsory registration under this Act shall be liable on summary conviction to a penalty of K100 or on information to a penalty of K200.

Certified copy admissible as evidence of contents of lost or destroyed document

32. In the event of the loss or destruction of any document registered under this or any previous Act or regulation a copy certified to be a true copy under the hand of the Deeds Registrar shall be admissible in evidence of its contents in all Courts of Justice in Malaŵi saving all just and lawful exceptions.

Production of filed document in Court

33. Where the production in court is required of any filed documents an official of the Registry will attend with the document on receipt of an application made to that effect accompanied by payment of the prescribed fee and expenses if any.

Search

34. Subject to such directions as the Deeds Registrar may think proper any person is entitled on payment of the prescribed fees to search the indexes and registers at the office of the Registrar and to have a certified copy of any entry in the Registers and Records in the custody of the Registrar or an official search against index of names but no document filed in the office of the Registrar shall be permitted to be taken therefrom.

Fees payable *First Schedule*

35.—(1) In respect of the registration of documents under this Act the fees stated in the First Schedule shall be payable, provided always that the Court may remit or reduce any of the prescribed fees in special cases for reasons to be recorded.

(2) The Minister may from time to time by notice published in the *Gazette* rescind, revoke, amend or vary the said First Schedule in whole or in part and may add thereto such fees as may be deemed fit.

36. The Minister may from time to time make Rules for the better carrying into effect of this Act. Power of Minister to make Rules

Such Rules may provide a penalty not exceeding K10 recoverable on summary conviction before a magistrate for any breach thereof.

FIRST SCHEDULE

s. 35 G.N. 80/1987 109/1987 31/2002 26/2011

First Column	*Second Column* K t	
1. On registration of any document . .	5,000 00	
2. For making a photostat copy of any document	5,000 00	plus such sum per page to recoup the cost of the paper used as the Deeds Registrar may, from time to time, determine.
3. For certifying a copy of any document in addition to any charges under paragraph 2	500 00	per page
4. For certificate of official seal . .	1,000 00	per page
5. For leave to search indices and registers of one title	5,000 00	for each day of search
6. On requisition to produce a document or documents in Court (in addition to any expenses as provided by section 33 of the Act)	5,000 00	
7. For any act not specifically prescribed . .	5,000 00	
8. For any act where the fee would otherwise be payable by Government . .	Nil.	

SECOND SCHEDULE

s. 16 (2)

This is to certify that this document was prepared by (*a*) .....

..... and that it is presented for registration by the undersigned.

(*b*) .....

Date .....

(*a*) Name and address of person who prepared the document or, in the case of a Government Department or office, the words "the Government" to be inserted.

(*b*) Name and address of person or firm presenting the document.

SUBSIDIARY LEGISLATION

G.N. 23/1969

APPOINTMENT OF DEEDS REGISTRAR

under s. 3

The Commissioner for Lands has been appointed to be Deeds Registrar.

G.N. 18/1969

EXEMPTION FROM REQUIREMENT OF REGISTRATION

under s. 6

The Minister has exempted the following instruments from the requirement of registration under section 6—

All Licences for the occupation of land issued by the Minister under the powers conferred upon him by section 5 of the Land Act in connexion with Agricultural Settlement or Re-Settlement in any part of Malaŵi.

Cap. 57:01

G.N. 197/1971

EXEMPTION FROM REQUIREMENT OF REGISTRATION

under s. 6

The Minister has exempted the following instruments from the requirement of registration under section 6—

All leases, tenancy agreements or licences for the occupation of land granted by the Malaŵi Housing Corporation or the Capital City Development Corporation where the term granted does not exceed 364 days.

G.N. 106/1942

DEEDS REGISTRATION RULES

under s. 36

1. These Rules may be cited as the Deeds Registration Rules.

2. Copies of documents presented for registration shall be on paper of durable quality with a left-hand margin one inch wide. The Registrar may refuse to register any document which does not comply with these requirements.

CONVEYANCING

CHAPTER 58:03

Current Page 1

CHAPTER 58:03

CONVEYANCING

ARRANGEMENT OF SECTIONS

SECTION
1. Short title
2. Application of the Conveyancing Act, 1911 (1 and 2 Geo. 5. c. 37)

An Act to Make Provision for the Application of the Conveyancing Act, 1911, of the United Kingdom to Malaŵi

11 of 1952
6 of 1967

[10TH JULY, 1952]

1. This Act may be cited as the Conveyancing Act. Short title

2.— (1) The Conveyancing Act, 1911, of the United Kingdom, is hereby applied to Malaŵi: Application of the Conveyancing Act, 1911 (1 and 2 Geo. 5. c. 37)

Provided that the said Act shall not apply to land registered in accordance with the Registered Land Act.

(2) In the application of the said Act to Malaŵi, references therein to "the court" shall be construed as references to the High Court of Malaŵi. Cap. 58:01

LANDS ACQUISITION AND COMPENSATION

CHAPTER 58:04

Containing Pages 1–8

CHAPTER 58:04

LANDS ACQUISITION AND COMPENSATION

ARRANGEMENT OF SECTIONS

SECTION

PART I

PRELIMINARY

1. Short title
2. Interpretation

PART II

ACQUISITION

3. Power to acquire land
4. Preliminary investigation
5. Notice of intention to acquire
6. Notice to yield up, and power to take, possession
7. Service of notices, etc.
8. Acquisition of portion of house or other building

PART IIA

COMPENSATION

9. Compensation
10. Assessment of appropriate compensation
10A. Matters to be taken into consideration in assessing compensation for alienated land
11. Effect of payment of compensation

PART III

REVERSION

12. Reversion to the Government
13.–14. [*Repealed by* 9 *of* 2017]

PART IV

MISCELLANEOUS AND GENERAL

15. Minister may withdraw from acquisition
16. Service of notice not an admission
17. Penalty for hindering or obstructing
18. Regulations

CHAPTER 58:04

LANDS ACQUISITION AND COMPENSATION

21 of 1970
5 of 1971
9 of 2017
G.N. 63/2017

An Act to provide for the acquisition of land and compensation; and for incident matters

[24TH AUGUST, 1971]

PART I

PRELIMINARY

Short title
9 of 2017

1. This Act may be cited as the Lands Acquisition and Compensation Act.

Interpretation

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

9 of 2017

"court" means a court of competent jurisdiction;

9 of 2017
Cap. 57:01

"land" has the meaning as ascribed to that term under section 2 of the Land Act;

"transfer" includes convey, assign, surrender or otherwise alienate or dispose of and "transfer" and "transferor" as nouns shall be correspondingly construed;

Cap. 57:01

"public land" has the meaning ascribed to that term by the Land Act.

PART II

ACQUISITION

Power to acquire land
9 of 2017

3. Subject to the provisions of this Act, the Minister may acquire land for public utility either compulsorily or by agreement, and pay compensation therefor as may be agreed or determined under this Act.

Preliminary investigation
9 of 2017

4.—(1) Where there is need to acquire land under this Act for public utility, it shall be lawful for any person authorized by the Minister under section 3 in that behalf, and for his servants and agents to—

(*a*) enter upon any land in question or any land in the vicinity thereof and survey and take levels;

(*b*) dig or bore under the subsoil;

(*c*) do all other acts necessary to ascertain whether the land is or may be suitable; or

(*d*) clear, set out and mark the boundaries of the land proposed to be acquired and the intended line of work, if any, proposed to be done on it.

(2) Any entry upon land under this section shall be preceded by a notice of not less than seven days to the occupier.

(3) The Minister shall pay for any damage done by persons entering any land pursuant to this section.

Notice of intention to acquire

5.—(1) If the Minister resolves that it is desirable or expedient compulsorily to acquire any land under this Act, he shall serve notice upon the persons who are possessed of an interest in the land or upon such of those persons as are after reasonable enquiry known to him.

(2) Every notice under this section shall with all reasonable dispatch be published in the *Gazette*.

(3) Every notice under this section shall invite any person claiming to be entitled to any interest in the land to which the notice relates to submit particulars of his claim to the Minister within two months of the date of the publication of such notice in the *Gazette*.

Notice to yield up, and power to take, possession

6.—(1) The Minister may by notice under section 5 direct the persons upon whom such notice is required to be served by that section, or may by any subsequent notice direct such persons, and any other persons believed by him to be in possession of the land to which the notice in question relates, to yield up possession of such land upon the expiration of the period specified in the notice which period shall not be less than two months from the date of the service of the notice:

Provided that where the Minister considers that the land is urgently required the persons aforesaid may be required to yield up possession on the expiration of such lesser period as the Minister may direct.

(2) On the expiration of the period referred to in subsection (1) the Minister and all persons authorized by him may take possession of the land.

Service of notices, etc

7.—(1) Every notice under section 5 or section 6 shall be served either personally on the persons to be served or by leaving it at their last usual place of residence or business if any such place can after reasonable enquiry be found; and if any such person is absent from Malaŵi or if he or his last usual place of residence or business cannot after reasonable enquiry be found, such notice shall be left with

the occupier of such land or his agent or, if such occupier or agent cannot after reasonable enquiry be found, shall be affixed upon some conspicuous part of such land.

(2) If any such person be a body corporate such notice shall be deemed duly served if it be left at the principal office of such body corporate in Malaŵi or if no such office can, after reasonable enquiry, be found, such notice shall be deemed duly served if served upon some officer (if any) or agent (if any) of such body corporate in Malaŵi if such officer or agent can, after reasonable enquiry, be found.

(3) Where any such notice has been published the acquisition of the property to which it relates shall not be invalid by reason only of any irregularity in the service or publication of the notice.

Acquisition of portion of house or other building

8. Where he is willing and able to yield up possession of the whole thereof, no person shall be required to yield up to the Minister possession of part only of any house or other building.

9 of 2017

PART IIA

Compensation

Compensation 9 of 2017

9.—(1) Subject to the provisions of this Act, where any land is acquired by the Minister under this Act, the Minister shall pay in respect thereof, appropriate compensation agreed or determined in accordance with the provisions of this Act.

(2) Any compensation payable under this section shall be paid in one lump sum.

Assessment of appropriate compensation 9 of 2017

10.—(1) Unless otherwise agreed between parties, appropriate compensation shall be assessed by an independent valuer appointed by the Minister.

(2) An assessment of compensation shall be calculated based on any of the following grounds—

(*a*) loss of occupational rights;

(*b*) loss of land;

(*c*) loss of structure;

(*d*) loss of business;

(*e*) relocation costs;

(*f*) loss of good will;

(*g*) costs of professional advice;

(*h*) nuisance;

(*i*) loss or reduction of tenure; or

(*j*) disturbances, if it is not too remote and is a natural and reasonable consequence of the disposition of the land.

Matters to be taken into consideration in assessing compensation for alienated land
9 of 2017

10A.—(1) In assessing the amount of compensation under section 10, the following matters, and no other matters, shall be taken into consideration—

(*a*) the market value of the land, or interest therein of the claimant at the valuation date;

(*b*) the damage, if any, sustained by the person interested, at the valuation date, by reason of the severance of such land from his land by reason of the exercise of the powers conferred by this Act;

(*c*) if, in consequence of the matters giving rise to the claim, the claimant is compelled to change his residence or place of business, reasonable expenses, if any, incidental to such change;

(*d*) any increase in the value of the land or other benefit likely to accrue at the valuation date from the proposed development to the person interested; and

(*e*) the relief obtained by the claimant as a result of the taking of the land against the necessity of carrying out, in whole or in part, any order or direction against the land made under any law for the time being in force relating to the use and protection of land when the work required by the order or direction has not been commenced or completed at the valuation date.

(2) For the purposes of subsection (1) (*a*)—

(*a*) if the market value has been increased by means of any improvement made by the claimant or his predecessor in interest within two years before the valuation date, such increase shall be disregarded unless it is proved that the improvement was made in good faith and not in contemplation of the acquisition;

(*b*) the following matters shall not be taken into consideration—

(i) any enhancement of the market value due to the proposal to change use of the land;

(ii) any increased value thereof due to use of the land or any premises thereon which is contrary to the law or could be restrained by a court;

(iii) any damage sustained by the claimant which, if caused by a private person, would not be a good cause of action;

(iv) the special suitability or adaptability of the land for the proposed development;

(v) the degree of urgency which has led to the taking of the land; and

(vi) any disinclination of the claimant to part with his interest in the land.

(3) For the purposes of subsection (1) (*d*), the increase in value of the other land and the other benefit likely to accrue shall, where the land forms part of an estate—

(*a*) not less than one hundred sixty hectares in extent and not more than four hundred hectares in extent, be deemed equal in value to two *per centum* of the total area of the estate;

(*b*) exceeding four hundred hectares in extent, be deemed equal in value to four *per centum* of the total area of the estate:

Provided that—

(i) where the land taken is improved land, this subsection shall not operate to deprive the person interested of compensation in respect of damage to, or destruction of, surface rights existing at the valuation date on the land taken; and

(ii) where the land taken forms part of an estate less than one hundred and sixty hectares in extent, it shall not, in the absence of evidence, be assumed that there is any increase in the value or other benefit to be taken into consideration.

(4) For the purposes of this section, "estate" means an undivided area of land for commercial agricultural purposes or otherwise, the legal right to occupy which is vested in a person other than the Government.

Effect of payment of compensation

11. The payment to the person who appears to be entitled thereto (or into court if the identity of such person, or any question of apportionment, is in dispute) of compensation under this Act shall operate as a complete discharge of the Minister from all claims in respect of the land, but shall not bar any subsequent proceedings against the person to whom the same was awarded by any person claiming to have a better right to the compensation or the right to a share thereof:

Provided that no proceedings under this subsection by any person claiming to have a better right to any compensation or a right to a share therein shall be commenced after the expiration of three years from the date of the payment of the compensation by the Minister.

PART III

Reversion

Reversion to the Government 9 of 2017

12.—(1) Where a notice to acquire any land under this Act has been published in terms of section 5, such land shall revert to the Government as public land within two months of the publication of such notice.

(2) Notwithstanding subsection (1), where a person possessed of an interest in the land obtains a court order against the notice to acquire land, such land shall not revert to the Government until the court order is removed or the court decides in favour of the Minister.

13.–14. [*Repealed by* 9 *of* 2017]

PART IV

Miscellaneous and General

Minister may withdraw from acquisition

15. Nothing in this Act shall be construed as requiring the Minister to complete the acquisition of any property unless he has taken possession thereof:

Provided that where the acquisition of any land is not completed the Government shall pay to the owner thereof all such costs and expenses as may have been incurred by him by reason of or in consequence of the proceedings for acquisition and compensation for any loss or damage which may have been sustained by reason or in consequence of the notice of intended acquisition.

Service of notice not an admission 9 of 2017

16. The fact that a notice has been served or published in terms of this Act shall not be regarded as an admission by the Minister that the person named in any such notice or the person on whom any such notice was served or any other person has any interest in the land specified in the notice or any part thereof, or debar the Minister from alleging in any proceedings under this Act or otherwise that all rights in or in relation to such land are vested in the Republic.

Penalty for hindering or obstructing 9 of 2017

17.—(1) Any person who wilfully fails to comply with a notice to yield up possession, or who willfully hinders or obstructs any duly authorized person taking possession of any land in terms of this Act or exercising any rights or performing any

functions under this Act in relation thereto, shall be guilty of an offence and liable to a fine of K100,000 and to imprisonment for six months.

(2) The court may issue an order of ejectment in addition to penalties under subsection (1), or upon application to such court.

Regulations

18. The Minister may make regulations for the better carrying out of the provisions of this Act and in particular, but without derogating from the generality of the foregoing, may make regulations prescribing anything which in terms of this Act may be prescribed.

ADJUDICATION OF TITLE

CHAPTER 58:05

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CHAPTER 58:05

ADJUDICATION OF TITLE

ARRANGEMENT OF SECTIONS

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2. Interpretation
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Officers

4. Appointment and general powers of officers

PART III

Claims and Demarcation

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20. Objection to the Adjudication Record
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PART VII

MISCELLANEOUS

25. Fees
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18 of 1971
26 of 1988

An Act to provide for the adjudication of rights and interests in land, other than customary land, and for matters connected therewith and incidental thereto

[10TH AUGUST, 1971]

PART I

PRELIMINARY AND APPLICATION

Short title

1. This Act may be cited as the Adjudication of Title Act.

Interpretation

2. In this Act, except where the context otherwise requires—

"adjudication area" means an area to which this Act has been applied under section 3;

"Adjudication Officer" means an Adjudication Officer appointed under section 4;

"Adjudication Record" means the Adjudication Record prepared in accordance with the provisions of section 18 in respect of an adjudication section;

"adjudication section" means an adjudication section declared under section 5;

Cap. 58:01 "charge" bears the meaning ascribed to that word by the Registered Land Act;

Cap. 58:02 "Deeds Registrar" bears the meaning ascribed to that term by the Deeds Registration Act;

"Demarcation Map" means a demarcation index map prepared under section 13 in respect of an adjudication section;

"Demarcation Officer" means a Demarcation Officer appointed under section 4;

Cap. 58:01 "easement" bears the meaning ascribed to that term by the Registered Land Act;

"guardian" means any person (whether under customary law or otherwise) responsible for protecting the interests of any person who is under a disability, whether by reason of age, unsoundness of mind or any other cause;

"interest in land" means any right or interest in or over land which is capable of being recorded under the provisions of this Act;

"land" includes land covered with water, all things growing on land, buildings and other things permanently affixed to land;

"piece" means a piece of land separately shown on a Demarcation Map and thereon given a number;

"profit" bears the meaning ascribed to that word by the Registered Land Act; Cap. 58:01

"Recording Officer" means a Recording Officer appointed under section 4;

"the register", "to register", "registered" and "registration" bear the meanings ascribed to those terms by the Registered Land Act; Cap. 58:01

"Registrar" bears the meaning ascribed to that term by the Registered Land Act; Cap. 58:01

"Survey Officer" means a Survey Officer appointed under section 4.

Application

3.— (1) Whenever it appears expedient to the Minister that the adjudication and registration of rights and interests in land, not being customary land, in any area, should be effected the Minister may, by Order published in the *Gazette*, declare that this Act shall apply to that area and thereupon that area shall become an adjudication area.

(2) Any Order under this section shall define the situation and limits of the adjudication area to which it relates either by means of a plan or by a description, or by both, and the Minister may at any time, by Order published in the *Gazette*, vary the limits of the adjudication area.

PART II

Officers

Appointment and general powers of officers

4.— (1) Whenever an Order made under section 3 is published, the Minister shall appoint an Adjudication Officer for the adjudication area it declares and such Demarcation Officers, Recording Officers and Survey Officers as may be necessary for performing the duties and exercising the powers imposed and conferred upon them by this Act in relation to such area.

(2) The Adjudication Officer shall, subject to the directions (whether general or special) of the Minister, be in charge of the adjudication under this Act of rights and interests in land in the area for which he is appointed and may issue such general or special directions as he thinks necessary to the other officers appointed under subsection (1) for such area, and may himself perform and exercise all or any of the duties given under this Act to Demarcation Officers and Recording Officers.

(3) The Adjudication Officer shall be competent to administer oaths and take affidavits in any inquiry made by him and to issue summonses, notices or orders requiring the attendance of such persons or the production of such documents as he may consider necessary for carrying out the adjudication.

(4) A Demarcation Officer or Survey Officer may at any reasonable time enter upon any land within the adjudication area for the purpose of demarcating or surveying any piece therein and may summon any person who can give information regarding the boundaries of any such piece to point out the boundaries.

PART III

Claims and Demarcation

Adjudication sections

5. The Adjudication Officer shall divide each adjudication area into two or more adjudication sections or declare the whole area to be a single adjudication section, and shall give each such adjudication section a distinctive name.

Notices by Adjudication Officer

6.—(1) The Adjudication Officer shall prepare a separate notice in respect of each adjudication section, and in such notice shall—

(*a*) specify the situation and limits of the adjudication section;

(*b*) declare that all interests in land in such section will be ascertained and recorded in accordance with the provisions of this Act;

(*c*) require any person who claims any interest in land within the adjudication section to make a claim thereto either in person or by agent within the period, to the person, at the place and in the manner specified in the notice;

(*d*) require all claimants to land, or to any interest in land, within the adjudication section to mark or indicate the boundaries of the land in such manner and before such date as shall be required by the Demarcation Officer.

(2) The Adjudication Officer shall as soon as possible after preparing a notice under subsection (1)—

(*a*) cause such notice to be published in the *Gazette* and at such administrative and other offices as he thinks fit; and

(*b*) cause the substance of such notice to be made known throughout the adjudication section and elsewhere in such manner as he considers to be most effective for the purpose of bringing it to the attention of all persons affected thereby.

Staying of land suits

7.—(1) Except with the consent in writing of the Adjudication Officer, no action concerning land or any interest in land in an adjudication section shall be begun in any civil court until proceedings under this Act with regard to such land or interest have been completed.

(2) Where at the time of the publication of a notice under section 6 an action concerning land, or an interest in land, in the adjudication section referred to in such notice is pending or in progress such action shall, where practicable, be determined before the adjudication under this Act of the land or interest therein is commenced:

Provided that it shall be lawful for the Adjudication Officer at any stage of such action to order that it shall be stayed and it shall be stayed accordingly.

Claims and attendance

8.—(1) Every person claiming an interest in land within an adjudication section shall make his claim in the manner and within the period fixed by the relevant notice given under section 6.

(2) Every person whose presence is required by the Adjudication Officer, Demarcation Officer or Recording Officer, as the case may be, shall attend, in person, or by agent, at the time and place specified. If any such person fails so to attend the demarcation, recording or other proceeding may continue in his absence.

Safeguarding of rights of absent persons and minors

9.—(1) If the Adjudication Officer, Demarcation Officer or Recording Officer is satisfied that any person who has not made a claim has a claim to any interest in land within the adjudication section the Adjudication Officer, Demarcation Officer or Recording Officer may, but shall not be bound to, proceed as if a claim had been made, and may call upon the Deeds Registrar to supply him with a certified copy of any document relevant thereto and registered under the provisions of the Deeds Registration Act.

Cap. 58:02

(2) If the Adjudication Officer, Demarcation Officer or Recording Officer is satisfied that a claim might be established by a minor and no person has been appointed to represent the minor, he shall appoint a person to represent the minor, and shall proceed as if a claim by, or on behalf of, such minor had been made.

Notice of demarcation and recording

10.—(1) Not less than seven clear days before the demarcation of land in an adjudication section is begun, the Demarcation Officer shall give notice of such demarcation and of the time and place at which it will begin, in such manner as the Adjudication Officer shall deem to be most likely to bring the notice of the demarcation to the attention of the persons likely to be affected thereby.

(2) Such notice shall require every claimant to indicate the boundaries of the land affected by his claim in the manner specified in the notice.

Indication of land claimed

11. Subject to any general or particular directions issued by the Adjudication Officer, the Demarcation Officer shall within each adjudication section—

(*a*) ensure that the boundaries of each piece of land which is the subject of a claim are indicated or demarcated in accordance with the requirements of the notice given under section 10;

(*b*) indicate or cause to be indicated the boundaries of—

(i) any public roads, public rights of way and other public land;

(ii) any customary land; and

(iii) any unclaimed land.

Special powers of Demarcation Officer

12.—(1) The Demarcation Officer may—

(*a*) divide the adjudication section into blocks which shall be given such distinctive numbers or letters or combinations of numbers and letters as he may determine;

(*b*) with the consent in writing of all the persons having, or claiming, any interest in the land affected thereby, adjust the boundaries of any land in the adjudication section or re-allot the same to ensure the more beneficial occupation thereof or to effect a more suitable subdivision thereof.

26 of 1988

(2) In exercising any powers under subsection (1) (*b*), the Demarcation Officer shall consult with and have regard to the views of the Commissioner for Town and Country Planning.

Duties of the Survey Officer

13. Subject to any general or particular directions issued by the Adjudication Officer, the duties of the Survey Officer shall be—

(*a*) to carry out such survey work as may be required in the execution of the adjudication process; and

(*b*) to prepare or cause to be prepared a demarcation index map of the adjudication section on which shall be shown every separate piece of land identified by a distinguishing number, except that rivers and public roads shall not be required to be identified by a number.

Duties of Recording Officer

14. The Recording Officer shall consider all claims to any interest in land and after such investigations as he considers necessary shall prepare in accordance with the provisions of section 18 an Adjudication Record in respect of every piece of land shown on the Demarcation Map.

Disputes

15.—(1) If in any case—

(*a*) there is a dispute as to any boundary whether indicated to the Demarcation Officer or demarcated or readjusted by him, which the Demarcation Officer is unable to resolve; or

(*b*) there are two or more claimants to any interest in land and the Recording Officer is unable to effect agreement between them,

the Demarcation Officer or the Recording Officer, as the case may be, shall refer the matter to the Adjudication Officer.

(2) The Adjudication Officer shall adjudicate upon and determine any dispute referred to him under subsection (1), having due regard to any law which may be applicable, and shall make and sign a brief record of the proceedings.

PART IV

Principles of Adjudication and Preparation of Adjudication Record

Principles of adjudication

16.—(1) In preparing an Adjudication Record—

(*a*) if the Recording Officer is satisfied that a person—

(i) has a good documentary title to the land, not being customary land, referred to in such Record and that no other person has acquired a title to such land under any law; or

(ii) has acquired ownership of the land, not being customary land, referred to in such Record by prescription by virtue of the principles set out in Part IX of the Registered Land Act, Cap. 58:01

the Recording Officer shall record such person as the owner of the land;

(*b*) if the Recording Officer is satisfied that a person is in possession of, or has a right to possession of the land, not being customary land, referred to in such Record, but is not satisfied that such person is entitled to be recorded under paragraph (*a*) as the owner of the land, the Recording Officer may record such person as provisional owner of the land and, if he does so, shall also record—

(i) the date on which the possession, if any, of that person began, or is deemed to begin or have begun;

(ii) particulars of any deed, instrument or other document under or by virtue of which some estate, right or interest in such land adverse to or in derogation of the entitlement of that person might exist; or

(iii) any qualification which affects the title;

(*c*) if the Recording Officer is satisfied that any land, other than customary land, referred to in such Record is subject to any right which is registrable as a lease, charge, easement, profit or restrictive agreement under the Registered Land Act, he shall record such particulars as shall enable the right and the name of the person entitled to the benefit thereof to be registered under the said Act; Cap. 58:01

(*d*) if the Recording, Officer is satisfied that any land, other than customary land, referred to in such Record is entirely free from private rights, or that the rights existing in or over it do not amount to full ownership and are not such as to enable him to record any person as provisional owner under paragraph (*b*), he may record such land as public land.

(2) In performing his duties under this section the Recording Officer shall observe the rules contained in section 17.

(3) In this section, the term ""good documentary title" means a title founded on documentary evidence which—

(*a*) consists of, or commences with—

(i) a written law;

(ii) a grant or conveyance from the State; or

(iii) a grant, conveyance, assignment or mortgage which is more than thirty years old; and

(*b*) establishes that a person is entitled to land as owner in freehold.

Rules to be followed in adjudication

17.—(1) All unoccupied land, other than customary land, shall be deemed to be public land until the contrary is proved.

(2) The exercise by any person of any rights in or over one or more pieces of land shall not be taken as a presumption in his favour of any rights in or over any greater extent of land than that in or over which such rights are exercised.

(3) Where two or more persons have rights which will entitle them to be registered as joint proprietors or proprietors in common under the Registered Land Act, the Recording Officer shall record such persons as joint owners or owners in Common, as the case may be, and if owners in common, the share of each such owner.

Cap. 58:01

Adjudication Record

18.—(1) The Adjudication Record shall consist of a form in respect of each piece of land, which form shall show—

(*a*) the number and approximate area of the piece as shown on the Demarcation Map;

(*b*) either the name and description of the person entitled to be registered as the owner of the piece with particulars of his entitlement and of any restriction affecting his power of dealing with it, or the fact that the piece is public land or customary Land;

(*c*) such particulars of any right registrable under the Registered Land Act as shall enable it to be registered as a lease, charge, easement, profit or restrictive agreement, as the case may be, affecting the piece together with the name and description of the person entitled to the benefit thereof and particulars of any restriction affecting his power of dealing with it;

Cap. 58:01

(*d*) if any person shown in the Adjudication Record is under a disability, whether by reason of age, unsoundness of mind or otherwise, the name of his guardian;

(*e*) a list of the documents, if any, produced to the Recording Officer and retained by him;

(*f*) the date on which the form is completed.

(2) When completed the form shall be signed by the Recording Officer and, in the case of privately owned land, shall, where possible, include an acknowledgment signed by the owner of the piece or by his agent, and by any person recorded under the provisions of subsection (1) (*c*) as having an interest in such piece, that such owner and every such person accepts the Record.

Notice of completion of Adjudication

19. When the Adjudication Record in respect of any adjudication section has been completed, the Adjudication Officer shall sign and date a certificate to that effect and shall forthwith, by Notice published in the *Gazette*, give notice of the completion thereof and of the place or places at which the same can be inspected together with the relevant Demarcation Map.

PART V

Objections and Finality

Objection to the Adjudication Record

20.—(1) Any person named in, or claiming an interest in any land referred to in, any Adjudication Record or Demarcation Map who considers such Record or Map to be inaccurate or incomplete in any respect may, within sixty days of the date upon which the notice of completion of the Adjudication Record is published, inform the Adjudication Officer stating the grounds of his objection.

(2) The Adjudication Officer, after giving reasonable notice to all persons affected by the objection, shall hear the objection, and shall allow or dismiss the objection or otherwise determine the matter in such manner as he thinks just.

Procedure in hearing objections

21.—(1) In hearing an objection the Adjudication Officer shall, so far as may be practicable, follow the procedure directed to be observed in the hearing of civil suits save that in his absolute discretion he may admit evidence which would not be admissible in a court of law, and may use evidence adduced in any other claim or contained in any official record and may call evidence of his own motion.

(2) Any proceedings conducted under this Act by the Adjudication Officer shall be deemed to be a judicial proceeding for the purposes of Chapter XI of the Penal Code. Cap. 7:01

(3) A record of all proceedings on an objection shall be made or caused to be made by the Adjudication Officer.

Correction of Adjudication Record

22.—(1) Any correction in the Adjudication Record required by a decision of the Adjudication Officer given under section 20 shall be made by the Recording Officer, and any alteration in the Demarcation Map required by such decision shall be made by the Survey Officer.

(2) At any time before the Adjudication Record becomes final the Recording Officer may—

(*a*) correct any error or omission not materially affecting the interests of any person; and

(*b*) with the consent of every person whose interest is affected, make in the Adjudication Record any alteration which in his opinion is necessary.

Finality of Adjudication Record

23. After the expiry of sixty days from the date of the publication of the notice of completion of the Adjudication Record, or on determination of all objections in accordance with section 20, whichever shall be the later, the Adjudication Record shall, subject to the provisions of the Registered Land Act, become final and the Adjudication Officer shall sign a certificate to that effect and shall deliver the Adjudication Record and the relevant Demarcation Map to the Registrar, together with all documents received by him in the process of adjudication. Cap. 58:01

PART VI

Appeals

Appeals

24.—(1) Any person, including the Minister, who is aggrieved by any act or decision of the Adjudication Officer and desires to question it or any part of it on the ground that it is erroneous in point of law or on the ground of failure to comply with any procedural requirement of this Act, may within three months from the date of the certificate of the Adjudication Officer under section 23 or within such extended time as the High Court, in the interests of justice, may allow, appeal to that Court in the prescribed form.

(2) On any such appeal the Court may, if satisfied that the decision is erroneous in point of law or that the interests of the appellant have been substantially prejudiced by failure to comply with the procedural requirements of this Act, make such order or substitute for the decision of the Adjudication Officer such decision as it may consider just and may order rectification of the register, and the order or decision of the High Court shall be final and conclusive and shall not be questioned in any proceedings whatsoever.

Cap. 58:01

(3) Notwithstanding the provisions of section 140 of the Registered Land Act no indemnity shall be payable to any person by reason of any rectification of the register under subsection (2).

(4) A decision of the Court on appeal under subsection (1) shall be in writing and copies of it shall be furnished by the Court to the Registrar, to the appellant and to all other parties to the appeal and, by the Registrar, to all other parties who, in his opinion, may be affected by the appeal.

(5) Any person, including the Minister, appealing under subsection (1) shall give notice to the Registrar of his intention to appeal and the Registrar shall enter a restriction under section 131 of the Registrered Land Act in every register affected by the appeal.

PART VII

Miscellaneous

Fees

25. Every person who is a party to any proceedings under section 20 shall be required to pay such fees in respect of the proceedings as may be prescribed.

Offences

26. Any person who—

(*a*) after the delivery of a summons issued under the provisions of this Act, wilfully neglects or refuses to attend in pursuance of such summons, or to produce any document which he is required to produce;

(*b*) wilfully neglects or refuses to answer upon oath or otherwise any question which may lawfully be put to him under this Act by any officer;

(*c*) without reasonable cause wilfully neglects or refuses to indicate his land or to assist in the demarcation of his land when required under this Act to do so by a Demarcation Officer,

shall be guilty of an offence and liable to a fine of one hundred Kwacha or to imprisonment for six months.

Indemnity of officers

27. No officer shall be liable to any action or proceedings for or in respect of any act or matter in good faith done or omitted to be done in exercise or supposed exercise of the powers conferred by this Act.

Regulations

28. The Minister may make Regulations for the purpose of carrying into effect the provisions and purposes of this Act.

SUBSIDIARY LEGISLATION
ADJUDICATION OF TITLE (LILONGWE AREA) ORDER

G.N. 2/1973 58/1985 124/1985

under s. 3

Citation

1. This Order may be cited as the Adjudication of Title (Lilongwe Area) Order.

Application of Act

2. The Adjudication of Title Act, is hereby applied to all land, not being customary land, in the areas more particularly described in the Schedule hereto.

SCHEDULE

Cap. 39:02 sub. leg. p.12 G.N. 40/1972 86/1983

Those areas of land designated as part of the Capital City of Lilongwe by the Capital City Development Corporation Designation Order, 1968, and by the Capital City Development Corporation (Supplemental Designation) Order, 1972, and by the First Schedule to the Capital City Development Corporation (Supplemental Designation and Land Vesting) Order, 1980, the boundaries of which areas are more particularly described and delineated on Survey Department Sketch Plans Nos. 80/68,92/71,93/71,4/78,9/78 and 125/83 thereon edged with red colour.

ADJUDICATION OF TITLE (LILONGWE AGRICULTURAL DEVELOPMENT AREA) ORDER

G.N. 17/1976

under s. 3

Citation

1. This Order may be cited as the Adjudication of Title (Lilongwe Agricultural Development Area) Order.

Application of Act

2. The Adjudication of Title Act is hereby applied to all land, not being customary land, in the areas more particularly described in the Schedule hereto.

SCHEDULE

All customary land lying within the following boundary:

Commencing at the confluence of the Lingadzi River and the Kamankuku Dambo at Grid Reference WV 807582, which point lies on the Capital City Designated Area boundary (Government Notice 160/68) follow the western boundary of the Capital City Designated Area to the point where it meets the Chinsapo Local Authority Forest boundary at Grid Reference WV 798510, on the Lilongwe/Likuni road; thence following the western boundary of the Chinsapo Local Authority Forest to the point where that boundary meets the Kadakala Stream at Grid Reference WV 799493, which point lies on the Capital City Designated Area boundary; thence following the southern boundary of the Capital City Designated Area to the point where it meets the Lilongwe/Dedza road (MI) at Grid Reference WV 851488; thence following the Lilongwe/Dedza road to the point where it crosses the Nathenje River at Grid Reference WV 985436; thence up the Nathenje River to its source at Grid Reference WV 974285; thence in a straight

line for approximately one mile to Grid Reference WV 987288, which point lies at the head of an unnamed dambo; thence down that dambo to its confluence with the Diampwe River at Grid Reference XV 026294; thence up the Diampwe River to its confluence with the Kanjuli Dambo at Grid Reference WV 932165; thence up the Kanjuli Dambo to the point where it is crossed by the Chikandira-Gomesi track at Grid Reference WV 923142; G.N. 93/1963 thence along the Chikandira-Gomesi track in a southerly direction to the point where it meets the Dzalanyama Forest Reserve boundary at Grid Reference WV 942093; thence along the eastern boundary of the Dzalanyama Forest Reserve to the point where it meets the Malaŵi/Mozambique international boundary at Grid Reference WU 933957; thence in a general westerly and then north-westerly direction along the Malaŵi/Mozambique international boundary to the point where the northern boundary of the Dzalanyama Forest Reserve leaves the said international boundary at Grid Reference WV 332412; thence along the northern boundary of the Dzalanyama Forest Reserve to the point where it is crossed by the Namitete Stream at Grid Reference WV 381329; thence down the Namitete Stream to its confluence with the Bua River; thence down the Bua River to its confluence with the Nambuma Stream; thence up the Nambuma Stream to the point where it is crossed by the Nambuma Mission track at Grid Reference WV 645850; thence along the Nambuma Mission track and the Nambuma-Dangaliro road in an easterly direction to Grid Reference WV 702859; thence along the old road from Nambuma to Jumpha in an easterly direction to the point where it crosses the Mapanda Dambo at Grid Reference WV 730863; thence down the Mapanda Dambo to the confluence with the unnamed dambo at Grid Reference WV 742843; thence upstream to the head of the dambo at Grid Reference WV 737842; thence across the watershed on a south-westerly direction to Grid Reference WV 732836, which is the head of an unnamed dambo; thence down the dambo to its confluence with the Chiwangombe Stream at Grid Reference WV 728807; thence down the Chiwangombe Stream to its confluence with the Mteza Stream at Grid Reference WV 751778; thence down the Mteza Stream to its confluence with the Lingadzi River at Grid Reference WV 786607; thence down the Lingadzi River to its confluence with the Kamankuku Dambo, being the point of commencement.

G.N. 52/1976

ADJUDICATION OF TITLE (BLANTYRE CITY WEST) (ADJUDICATION AREA) ORDER

(*Revoked by G.N.* 88/1987)

G.N. 53/1976

ADJUDICATION OF TITLE (BLANTYRE CITY EAST) (ADJUDICATION AREA) ORDER

(*Revoked by G.N.* 88/1987)

G.N. 88/1987

ADJUDICATION OF TITLE (BLANTYRE CITY) (ADJUDICATION AREA) ORDER

under s. 3

Citation

1. This Order may be cited as the Adjudication of Title (Blantyre City) (Adjudication Area) Order.

Application of Cap. 58:05

2. The Adjudication of Title Act is hereby applied to all land, not being customary land in the area more particularly described in the Schedule hereto, which said area shall, for the purpose of the Act, be known as the Blantyre City Adjudication Area.

Revocation of Cap. 58:05 sub. leg. p. 14

3. The Adjudication of Title (Blantyre City West) (Adjudication Area) Order and the Adjudication of Title (Blantyre City East) (Adjudication Area) Order are hereby revoked.

SCHEDULE

G.N. 47/1974
G.N. 127/1974
G.N. 132/1975

The areas of land comprised in the Wards of Michiru, Chilomoni, Blantyre West, Nancholi, Likubula, Blantyre Central, Blantyre East, Soche West, Soche East, Misesa, Nyambadwe, Ndirande West, Ndirande North, Ndirande South, Chichiri, Limbe Central, Limbe East, Limbe West, Nkolokoti, Mapanga, Mzedi, Bangwe, Namyango, Chigumula and South Lunzu, the said Ward areas being more particularly described in the Second Schedule to the Municipal Councils (Composition of Councils, Terms of Office, Nomination and Appointment of Councillors) Order, 1984, together with such other Lands as were added to and embodied in the City of Blantyre by virtue of the provisions of the Local Government (Urban Areas) (City of Blantyre) (Alteration of Boundaries) Order, 1974, and the Municipal Councils (Composition of Councils, Terms of Office, Nomination and Appointment of Councillors) (Amendment) (No. 3) Order, 1975.

ADJUDICATION OF TITLE (MUNICIPALITY OF ZOMBA) ORDER

G.N. 30/1994

1. This Order may be cited as the Adjudication of Title (Municipality of Zomba) Order. Citation

2. The Adjudication of Title Act is hereby more applied to all land in the area more particularly described in the Schedule hereto, which area shall, for the purposes of the Act, be known as the Municipality of Zomba Adjudication Area. Application of the Act

SCHEDULE para. 2

Commencing at the point where the northern boundary of Changalume–Zomba Road (S73) crosses the Satema Stream at G.R. 461973 the boundary follows the Satema Stream upstream to where it is crossed by the Zomba Mountain Road (S65) at G.R. 459994; thence in an easterly direction along the northern boundary of the said road to the point where it crosses an unnamed stream at G.R. 478990; thence up the said unnamed stream to its source at G.R. 478991; thence in a straight line to beacon C39 of plot No. 195 as delineated on Department of Surveys Plan S.D. 4446; thence along the boundary of the said plot on a bearing of 44°.37'.2O" for a distance of 109.90 metres to beacon C41 of the said plot; thence in a straight line on a bearing of 41°.01'.00" for a distance of 416.91 metres to beacon H8 at the north-east corner of the Zomba Hospital plot No. 93 as delineated on Department of Surveys Plan SD. 3722; thence along the northern boundary of the said plot on a bearing of 80°.38'.50" for a distance of 123.04 metres to beacon H9 of the said plot; thence in a straight line on a bearing of 64°.56'.00" for distance of 115.11 metres to the point of commencement.

ADJUDICATION OF TITLE (KARONGA TOWNSHIP) ORDER

G.N. 15/1996

1. This Order may be cited as the Adjudication of Title (Karonga Township) Order. Citation

2. The Adjudication of Title Act is hereby applied to all land, not being customary land, in the area more particularly described in the Schedule hereto, which said area shall, for the purpose of the Act, be known as the Karonga Township Adjudication Area. Application of the Act

SCHEDULE

All that piece of land as shown on Survey Department Sketch Plan No. 1443/89 commencing at G.R. 032971 on Map Sheet No. 0933D4 being a point on the shore of Lake Malaŵi, the boundary follows a straight line on a bearing of 276°. 10' for a distance of approximately 1,650 metres to a point where it meets the Kadikira Stream to

its source G.R.016973; thence by the Kadikira Stream to its source G.R. 998964; thence in a south-westerly direction on a bearing of 261°.00' for a distance of approximately 1,500 metres to a confluence of two unnamed streams G.R.983962; thence by the stream downstream to its confluence with Phopa Stream G.R.983969; thence by the Phopa Stream upstream to a point G.R.975972; thence of north-westerly direction on bearing of 327°.00' for a distance of approximately 1,700 metres to the source of Chilambiro Stream G.R.968986; thence by the Chilambiro Stream downstream to its confluence with North Rukuru River G.R.961021; thence along the left bank of the North Rukuru River downriver to its mouth on Lake Malaŵi; thence along the lakeshore in a southerly direction to the point of commencement.

G.N. 16/1996

ADJUDICATION OF TITLE (CITY OF MZUZU) ORDER

Citation

1. This Order may be cited as the Adjudication of Title (City of Mzuzu) Order.

Application of the Act

2. The Adjudication of Title Act is hereby applied to all land, not being customary land, in the area more particularly described in the Schedule hereto, which said area shall, for the purposes of the Act, be known as the City of Mzuzu Adjudication Area.

para. 2

SCHEDULE

All that piece of land representing approximately 11,200 hectares in extent and which is more particularly delineated and shown on Department of Surveys Sketch Plan No. 54/80.

G.N. 74/1997

ADJUDICATION OF TITLE (SALIMA TOWNSHIP) ORDER

Citation and commencement

1. This Order may be cited as the Adjudication of Title (Salima Township) (Adjudication Area) Order, and shall come into operation on the 1st August, 1997.

Application of the Act

2. The Adjudication of Title Act is hereby applied to all land, not being customary land in the area more particularly described in the Schedule hereto, which said area shall, for the purpose of the Act, be known as the Karonga Township Adjudication Area.

SCHEDULE

All that piece of land representing approximately 900.00 (nine hundred decimal point nought nought) hectares in extent and which is more particularly delineated and shown on Department of Surveys Sketch Plan No. 180/75.

ADJUDICATION OF TITLE (KASUNGU TOWNSHIP) ORDER

G.N. 75/1997

1. This Order may be cited as the Adjudication of Title (Kasungu Township) (Adjudication Area) Order, and shall come into operation on the 1st August, 1997.

Citation and commencement

2. The Adjudication of Title Act is hereby applied to all land, not being customary land in the area more particularly described in the Schedule hereto, which said area shall for the purpose of the Act be known as the Kasungu Township Adjudication Area.

Application of the Act

SCHEDULE

All that piece of land representing approximately 3,548.00 (three thousand, five hundred and forty eight decimal point nought) hectares in extent and which is more particularly delineated and shown on Department of Surveys Sketch Plan No. 166/78.

ADJUDICATION OF TITLE REGULATIONS

under s. 28

G.N. 3/1973
105/1982
100/1989

1. These Regulations may be cited as the Adjudication of Title Regulations.

Citation

2. The form set out in the First Schedule shall be used for the purposes of any claim pursuant to sections 6 and 8 of the Act made by a person respecting an interest in land.

Form of claim

3. An Adjudication Record shall be in the form set out in the Second Schedule.

Form of Adjudication Record

4.—(1) Subject to subregulation (2), the fees specified in the second column of the Third Schedule shall be paid in respect of the corresponding matters specified in the first column of that Schedule:

Fees
G.N. 105/1982
100/1989

Provided that such fees shall not be payable by the Government.

(2) The Minister may, in respect of any adjudication area or a section of any adjudication area, suspend, for a definite or an indefinite period, payment of the fees payable under subregulation (1); and the Minister shall cause notice of such suspension to be published in the *Gazette*.

FIRST SCHEDULE

MALAŴI GOVERNMENT
ADJUDICATION OF TITLE ACT
(Cap. 58:05)

ADJUDICATION OF TITLE REGULATIONS

Claim to an Interest in Land — Form I
(*Sections* 6 and 8)

Note: Please complete in Block Letters

1. Adjudication Area:
2. Adjudication Section:
3. Full name and address of claimant:
4. If claim submitted by an agent, name and address of agent: .....
.....
5. Plot No. or other description of land over which claim is made: ....
.....
6. Details of interest claimed (Note: claims may only be submitted as owner or as a person entitled to the benefit of a lease, charge, easement, profit or restrictive agreement): .....
7. List of documents upon which the claim is based. The original title deeds should, if possible, be attached to this form.

Date	Deed No.	Type of document	Parties

8. If the claim is not based on documentary evidence, full details must be supplied together with the date on which it is claimed that the interest arose: .....
.....

Date ....

Signature of Claimant or Agent

SECOND SCHEDULE
MALAŴI GOVERNMENT
ADJUDICATION OF TITLE ACT
(CAP. 58:05)
ADJUDICATION OF TITLE REGULATIONS
ADJUDICATION RECORD FORM II

1. Adjudication Area:
2. Adjudication Section:
3. Number of Approximate Area of piece:
4. Description of piece: Private Land/Public Land (delete whichever is not applicable).
5. (*a*) If the piece is private land, state full names, address and description of the owner, and, where two or more persons are entitled, whether they are joint owners or owners in common, the share of each owner. State also details of title i.e. Absolute/ Provisional (delete whichever is not applicable) listing all documents in support, and if provisional state reasons:

Description	Date	Consideration (if applicable)	Parties
.....			

(*b*) If any person shown on this record is under a disability by reason of age, unsoundness of mind or otherwise, the name of his guardian.
.....

(*c*) Particulars of rights registerable under the Registered Land Act affecting the piece such as a lease, mortgage, charge, easement, profit, or restrictive agreement together with the name and description of the person entitled to the benefit thereof (and particulars of any restriction on his power of dealing with it).

.....

6. List of documents, if any, produced to the Recording Officer and retained by him: .....

Date ....

Recording Officer

Signatures of all persons whose names appear in paragraph 5 (*a*) and 5 (*c*) above accepting this record as correct .....

THIRD SCHEDULE

G.N. 105/1982 56/1983

Fees

reg. 4

First Column	*Second Column* K t
1. On a claim in respect of an interest in land—	
(*a*) where the value of the interest in land does not exceed K20,000 or where the annual rent or other annual payment reserved does not exceed K100	40 00
(*b*) in any other case	80 00
2. On a claim in respect of a mortgage, charge, easement, profit or restrictive agreement	10 00

CUSTOMARY LAND (DEVELOPMENT)

CHAPTER 59:01

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CHAPTER 59:01

CUSTOMARY LAND (DEVELOPMENT)

ARRANGEMENT OF SECTIONS

SECTION

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2. Interpretation
3. Application

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Officers and Committee

4. Appointment and general powers of officers
5. Appointment of Land Committee
6. Functions of the Committee

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CHAPTER 59:01

CUSTOMARY LAND (DEVELOPMENT)

5 of 1967
26 of 1988

An Act to provide for the Ascertainment of Rights and Interests in Customary Land, for the Better Agricultural Development of Customary Land and for Purposes connected therewith and Incidental thereto

[9TH MAY, 1967]

PART I

PRELIMINARY AND APPLICATION

Short title

1. This Act may be cited as the Customary Land (Development) Act.

Interpretation

2. In this Act, except where the context otherwise requires—

"Allocation Officer" means an Allocation Officer appointed under section 4;

"agent" means an agent duly authorized by law, including customary law;

"Committee" means a Land Committee appointed under section 5;

"customary land", "private land" and "public land" bear the same meaning as in section 2 of the Land Act;

Cap. 57:01

"Demarcation Officer" means a Demarcation Officer appointed under section 4;

"Demarcation Map" means a Demarcation Map prepared under section 14;

"development area" means an area to which this Act has been applied under section 3;

"development section" means a development section declared under section 7;

"family land" means customary land which is held, occupied or used by members of a family on the allocation of the head of that family;

"guardian" means any person responsible (whether under customary law or otherwise) for protecting the interests of any person who is under a disability, whether by reason of age, unsoundness of mind or any other cause;

"interest in land" means any right or interest in or over land which is capable of being recorded under this Act;

"land" includes land covered with water, all things growing on land, buildings and other things permanently affixed to land;

"piece" means a piece of land separately shown on the Demarcation Map and given a number;

"Recording Officer" means a Recording Officer appointed under section 4;

"Survey Officer" means a Survey Officer appointed under section 4.

Application

3.—(1) Whenever it appears expedient to the Minister that the ascertainment of interests in customary land and the better agricultural development of such land in any area should be effected the Minister may, by order, declare that this Act shall apply to such area. In such order or in a further order, the Minister may prescribe a development scheme for such area.

(2) Where, on the date on which this Act is applied to any area of land, any demarcation and recording of rights and interests in such land and development of such land have been carried out, then, if the Minister is satisfied that such demarcation, recording and development have been carried out substantially in accordance with the principles of this Act he may, by order, declare that such demarcation, recording and development shall be deemed to have been carried out under this Act and may in such order make such transitional provisions as may be necessary to effect the completion of the allocation process and development of such land in accordance with this Act. Any Allocation Record or Demarcation Map prepared in accordance

with such order shall be deemed to have been prepared under this Act.

(3) Any order under this section shall define the situation and limits of the area to which it relates either by means of a plan or by description, or by a combination of plan and description.

(4) If the Allocation Officer at any time considers that it is impracticable or undesirable to carry out this Act in any part of the development area because it is not yet ready or for any other reason is unsuitable, he shall refer the matter to the Minister who may by order declare that such land shall be excluded from the area declared under subsection (1).

PART II

Officers and Committee

Appointment and general powers of officers

4.—(1) On or after the publication of an order made under section 3, there shall be appointed an Allocation Officer for the development area and such Demarcation Officers, Recording Officers and Survey Officers as may be necessary for performing the duties and exercising the powers imposed and conferred upon them by this Act.

(2) The Allocation Officer shall, subject to the directions of the Minister, be in charge of the allocation and may issue instructions to the officers subordinate to him. The Allocation Officer may himself exercise all or any of the powers given under this Act to Demarcation Officers and Recording Officers.

(3) The Allocation Officer shall be competent to administer oaths in any enquiry made by him and to issue summonses, notices or orders requiring the attendance of such persons or production of such documents as he may consider necessary for carrying out the allocation.

(4) A Demarcation Officer or Survey Officer may at any reasonable time enter upon any land within the development area for the purpose of demarcating or surveying any piece therein and may summon any person who can give information regarding the boundaries of any such piece to point out the boundaries.

Appointment of Land Committee

5.—(1) For any development section or part of a development section within the development area the Allocation Officer, after consultation with the District Commissioner within whose District the development area is situated, may appoint not less than six persons resident within the development area to form a panel from which he may from time to time select not less than five persons to form a Land Committee.

(2) The Allocation Officer shall appoint an executive officer for each Committee who shall attend, and may speak, at any meeting of the Committee, but shall not vote.

(3) The executive officer shall keep a record of the proceedings of the committee in such form as the Allocation Officer shall direct.

Functions of the Committee

6. The Committee appointed for a development section shall have the powers conferred by section 16 and in addition shall—

(*a*) advise the Allocation Officer or Demarcation Officer or Recording Officer upon any point of customary law on which he has sought their guidance;

(*b*) represent the interest of absent persons, minors and persons under disability, where no guardian or other representative has been appointed;

(*c*) bring to the attention of officers engaged in the allocation any potential claim which for any reason may not have been made;

(*d*) assist generally in the allocation process.

PART III

Claims and Demarcation

Development sections

7. The Allocation Officer shall divide the development area into two or more development sections or declare the whole area to be a single development section, and shall give each development section a distinctive name.

Notice by Allocation Officer

8. A separate notice shall be published in respect of each development section, and in each such notice the Allocation Officer—

(*a*) shall specify as nearly as possible the situation and limits of the development section;

(*b*) shall declare that interests in land within the development section will be ascertained and recorded and provision made for the development of the land in accordance with this Act; and

(*c*) shall fix a period within which any person claiming any interest in land within the development section is required to make his claim either in person or by his agent.

Cesser of powers of customary authorities

9.—(1) As from the date of a notice under section 8, a '*mwini dziko*' or other customary authority shall, in relation to land within the development section, cease to have and exercise any customary functions and the right if any, to monetary or other payment in respect of the performance of such functions:

Provided that, upon the Allocation Record becoming final in accordance with section 27, such functions shall revest in the '*mwini dziko*' or other customary authority in relation to land recorded as customary land in the Allocation Record.

(2) Except with the consent in writing of the Allocation Officer, no person shall proceed with, and no customary authority shall take cognizance of, any dispute concerning any interest in land in a development section after publication of a notice under section 8:

Provided that, upon the Allocation Record becoming final in accordance with section 27, this subsection shall cease to apply to any dispute concerning an interest in land recorded as customary land in the Allocation Record.

(3) The hearing of any such dispute which was begun before the publication of the notice mentioned in section 8 shall, where practicable, be determined before the allocation of the land affected by such dispute is commenced.

(4) Any such hearing which has not been completed before such allocation is commenced shall, unless the Allocation Officer otherwise directs, be stayed.

Notice of demarcation and recording

10.—(1) Not less than seven clear days before the demarcation of any development section is begun, the Demarcation Officer shall give notice of the intended demarcation of land in that section, and of the time and place at which it will begin, in such manner as the Allocation Officer shall deem to be most likely to bring the matter to the knowledge of the persons to be affected by that demarcation.

(2) Such notice shall require every claimant to indicate the boundaries of the land affected by his claim in the manner specified in the notice.

Claims and attendance

11.—(1) Every person claiming any interest in land within a development section shall make his claim in the manner and within the period fixed by the notice given under section 10.

(2) Every person whose presence is required by the Allocation Officer, Demarcation Officer, Recording Officer or by the Committee, as the case may be, shall attend in person or by agent at the time and place specified.

(3) If any such person fails to attend in person or by agent, the demarcation, recording or other proceeding may continue in his absence.

(4) If the Allocation Officer, Demarcation Officer, Recording Officer or Committee is satisfied that any person who has not made a claim has a claim to any interest in land within the development section then the Adjudication Officer, Recording Officer or Committee may, but shall not be bound to, proceed as if a claim had been made.

Indication of land claimed

12. Subject to any instruction issued by the Allocation Officer,the Demarcation Officer shall first within each development section—

(*a*) see that the boundaries of any land which is the subject of a claim are indicated in accordance with the requirements of the notice given under section 10;

(*b*) indicate or cause to be indicated the boundaries of other land referred to in sections 20 and 21.

Demarcation of pieces
26 of 1988

13.—(1) The Demarcation Officer shall then proceed to demarcate or cause to be demarcated any land which in his opinion should appear as a piece on the Demarcation Map, and in so doing may—

(*a*) set aside out of land in the development section such land as may in his opinion be required for the present or future needs of the community as roads, sites for villages, schools, public buildings, graveyards and open places, and any detriment caused to owners of pieces by such setting aside shall be shared as equitably as possible between all owners in the development section:

Provided that in such case the Demarcation Officer shall consult with and have regard to the views of the Commissioner for Town and Country Planning; 26 of 1988

(*b*) effect or cause to be effected such measures as shall be required by any development scheme prescribed by the Minister;

(*c*) if he considers the existing layout of the land to be uneconomic or inconvenient for the use of the land or inconsistent with the development scheme, prepare a fresh layout and by exchange of land or otherwise adjust the existing layout;

(*d*) demarcate any right of way necessary to give access to a public road or water in favour of any piece completely surrounded by other pieces;

(*e*) terminate any such customary right as is referred to in section 19 (2) if he considers such right unnecessary or inconsistent with any development scheme prescribed by the Minister;

(*f*) make such alignment of boundaries of land adjoining a public road as may be required in the public interest;

(*g*) clear any boundary or other line which it may be necessary to clear for the purpose of such demarcation.

(2) The Demarcation Officer may request any person having an interest in any land to assist in the demarcation of such land in such manner as the Demarcation Officer may require.

Duties of the Survey Officer

14. Subject to any instructions issued by the Allocation Officer, the duties of the Survey Officer shall be—

(*a*) to carry out such survey work as may be required in the execution of the allocation process;

(*b*) to prepare or cause to be prepared a Demarcation Map of each development section, on which shall be shown every piece identified by a distinguishing number, except that public roads and rivers shall not require to be identified by a number.

Duties of the Recording Officer

15. The Recording Officer shall consider all claims to any interest in land and after such investigation as he considers necessary shall prepare in accordance with section 22 a record in respect of every piece shown on the Demarcation Map.

Disputes

16.—(1) If in any case—

(*a*) there is a dispute as to any boundary whether indicated to the Demarcation Officer or demarcated or readjusted by him, which the Demarcation Officer is unable to resolve; or

(*b*) there are two or more claimants to any interest in land and the Recording Officer is unable to effect agreement between them,

the Demarcation Officer or the Recording Officer as the case may be shall refer the matter to the Committee.

(2) The Committee shall adjudicate upon and determine any dispute referred to them under subsection (1), having due regard to any customary law which may be applicable.

Procedure in Committee

17.—(1) If a member of a Committee has an interest, direct or indirect, in any land the subject of a claim or a

dispute referred to the Committee under section 16, and is present at a meeting of the Committee at which thedetermination of that claim or dispute is under consideration, he shall, at the meeting as soon as practicable after its commencement, disclose the fact and shall not take part in the consideration or discussion of, or vote on any

question with respect to, the determination of that claim or dispute.

(2) Each Committee shall elect one of its members to be chairman, who shall preside at all meetings at which he is present; and if at any meeting the chairman is absent, the members present shall elect one of themselves to preside at that meeting.

(3)—(*a*) The quorum of a Committee where the total number of members is an even number shall be one-half of of that number, and, where the total number of members is an even number, shall be one-half of the even number that is greater than that number by one;

(*b*) in the event of an equality of votes the chairman or other member presiding shall have a casting as well as an original vote.

(4) Any decision of a Committee shall be signified in writing and signed by the chairman or executive officer.

(5) A committee shall not be disqualified for the transaction of business by reason of any vacancy in its membership; and any proceedings therein shall not be invalid by reason only that some person, who was not entitled to do so, took part in the proceedings.

Reconsideration of decisions by Committee

18.—(1) Any person named in or affected by a decision of the Committee who considers himself aggrieved thereby may, within fourteen days of such decision, lodge an objection with the executive officer of the Committee concerned stating in what manner the decision is alleged to be incorrect.

(2) Upon receipt of an objection, or if in any case the Allocation Officer so directs, the Committee shall reconsider their decision and shall thereafter submit their finding to the Recording Officer who shall make any entry in or alteration to the Allocation Record as may be required to give effect to the decision of the Committee.

PART IV

Principles of Allocation and Allocation Record

Intended private land

19.—(1) If the Recording Officer is satisfied—

(*a*) that any person has customary rights in a piece which entitle that person to be registered as the proprietor of land under the Registered Land Act he shall record that person as the owner of that piece; Cap. 58:01

(*b*) that two or more persons have customary rights in a piece which entitle those persons to be registered as joint proprietors or proprietors in common under the Registered Land Act he shall record such persons as joint owners or owners in common, as the case may be, and if owners in common the share of each such owner;

(*c*) that any family has customary rights in a piece which entitle the head of that family to be registered as the proprietor of family land under the Registered Land Act he shall record the head of such family as owner of family land.

Cap. 58:01

(2) Subject to section 13 (1) (*e*), if the Recording Officer is satisfied that any piece recorded under subsection (1) is subject to a customary right which is registrable as a lease, charge, easement, restrictive agreement or profit under the Registered Land Act he shall record such particulars as may be necessary to enable the right, and the name of the person entitled to the benefit thereof, to be registered, and shall so record any easement demarcated under section 13 (1) (*d*).

Recorded customary land

20. If the Recording Officer is satisfied that any piece falls into the category of—

(*a*) village residential land;

(*b*) "*dambo*" land;

(*c*) unallocated garden land; or

(*d*) land used for any other special purpose of the community,

he shall record such piece as customary land, together with a note of the category of such piece:

Provided that nothing in this section shall operate to prevent such piece being allocated at any later time under this Act.

Intended public land

21.—(1) The Recording Officer shall record any land set aside by the Demarcation Officer under section 13 (1) (*a*) for the needs of the community as intended public land, and shall specify the purpose for which the land is used or reserved.

(2) Upon the Allocation Record becoming final in accordance with section 27, land recorded as public land shall be deemed to have been declared public land under section 27 (1) of the Land Act.

Cap. 57:01

Allocation Record

22.—(1) The Allocation Record shall consist of a form in respect of each piece, which form shall show—

(*a*) the number and approximate area of the piece as shown on the Demarcation Map;

(*b*) the owner of the piece, or that the piece is recorded customary land or intended public land;

(*c*) the date on which the form is completed.

(2) When completed the form shall be signed by the Recording Officer and, in the case of intended private land, by the owner of the piece and by any person recorded under section 19 (2) as having an interest in such piece.

Notice of completion of Allocation Record

23. When the Allocation Record in respect of any development section has been completed the Allocation Officer shall sign and date a certificate to that effect and shall forthwith give notice of the completion thereof and of the place or places at which the same can be inspected together with the Demarcation Map.

PART V
Objections and Finality

Objection to the Allocation Record

24.—(1) Any person named in or affected by the Allocation Record or Demarcation Map who considers such Record or Map to be inaccurate or incomplete in any respect may, within sixty days of the date upon which the notice of completion of the Allocation Record is published, inform the Allocation Officer stating the grounds of his objection.

(2) The Allocation Officer, after giving reasonable notice to all persons affected by the objection, shall hear the objection, and shall allow or dismiss the objection or otherwise determine the matter in such manner as he thinks just.

Procedure in hearing objections

25.—(1) In hearing an objection the Allocation Officer shall, so far as may be practicable, follow the procedure directed to be observed in the hearing of civil suits save that in his absolute discretion he may admit evidence which would not be admissible in a court of law, and may use evidence adduced in any other claim or contained in any official record and may call evidence of his own motion.

(2) Any proceeding conducted under this Act by the Allocation Officer shall be deemed to be a judicial proceeding for the purpose of Chapter XI of the Penal Code. Cap. 7:01

(3) A record of all proceedings on an objection shall be made or caused to be made by the Allocation Officer.

Correction of Allocation Record

26.—(1) Any correction in the Allocation Record required by a decision of the Allocation Officer given under section 24 shall be made by the Recording Officer, and if necessary the Survey Officer shall alter the Demarcation Map to give effect to such decision.

(2) At any time before the Allocation Record becomes final the Recording Officer may correct any error or omission not materially affecting the interests of any person and may, with the consent of every person whose interest is affected, make in the Allocation Record any alteration which in his opinion is necessary.

Finality of the Allocation Record

Cap. 58:01

27. After the expiration of sixty days from the date of the publication of the notice of completion of the Allocation Record, or on determination of all objections in accordance with section 24, whichever shall be the later, the Allocation Record shall, subject to the Registered Land Act be final and the Allocation Officer shall sign a certificate to that effect and shall deliver the Allocation Record and the Demarcation Map to the Registrar of the registration district in which the development section is situated.

PART VI

Miscellaneous

Charge on land

28.—(1) Every piece of intended private land in an Allocation Record may from the date of such Record becoming final be charged in favour of the Government, if the Minister so prescribes, with an amount which shall represent the proportionate cost of the allocation of land in the development section in which the piece is situated and of any development or fresh lay-out of the piece made in accordance with section 13.

(2) The amount of such charge shall be recoverable from the owner of the piece in such manner and over such period as may be prescribed by the Minister, but nothing in this section shall prevent the exercise of the remedies of the Government as chargee under the Registered Land Act:

Cap. 58:01

Provided that if such charge is calculated upon the area of the piece as shown in the Demarcation Map and such area exceeds by more than ten per centum the actual area of the piece, then the amount of the charge shall be reduced accordingly and any overpayment resulting from such reduction shall be refunded to the owner of the piece.

Fees

29. Every person who is a party to any proceedings before the Committee or the Allocation Officer shall be required to pay such fees in respect of the proceedings as may be prescribed.

Offences

30.—(1) Any person who—

(*a*) after the delivery of a summons issued under this Act, wilfully neglects or refuses to attend in pursuance of such

summons, or to produce any document which he is required to produce;

(*b*) wilfully neglects or refuses to answer upon oath or otherwise any question which may lawfully be put to him by an officer or the Committee;

(*c*) without reasonable cause wilfully neglects or refuses to indicate his land or to assist in the demarcation of his land when required to do so by a Demarcation Officer; or

(*d*) fails to comply with the requirements of section 17 relating to persons having an interest in the proceedings of the Committee,

shall be liable to a fine of K100 and to imprisonment for six months.

(2) No prosecution for an offence contrary to subsection (1) (*d*) shall be instituted except with the consent of the Director of Public Prosecutions.

Indemnity of Officers

31. No officer, or member of the Committee, shall be liable to any action or proceedings for or in respect of any act or matter in good faith done or omitted to be done in exercise or supposed exercise of the powers conferred by this Act or any regulations made thereunder.

Regulations

32. The Minister may make regulations for carrying into effect the provisions and purposes of this Act.

SUBSIDIARY LEGISLATION

G.N. 250/1967 29/1969 123/1969 107/1971 108/1971

LILONGWE AGRICULTURAL DEVELOPMENT AREA ORDER

under s. 3

Citation

1. This Order may be cited as the Lilongwe Agricultural Development Area Order.

Application of Act

2. The Act shall apply to all customary land within the area of the Lilongwe District described in the Schedule.

SCHEDULE

All customary land lying within the following boundary—

Commencing at the confluence of the Lingadzi River and the Kamankuku Dambo at Grid Reference WV 807582, which point lies on the Capital City Designated Area boundary (Government Notice 160/68) follow the western boundary of the Capital City Designated Area to the point where it meets the Chinsapo Local Authority Forest boundary at Grid Reference WV 798510, on the Lilongwe/Likuni road; thence following the western boundary of the Chinsapo Local Authority Forest to the point where that boundary meets the Kadakala Stream at Grid Reference WV 799493, which point lies on the Capital City Designated Area boundary; thence following the southern boundary of the Capital City Designated Area to the point where it meets the Lilongwe/Dedza road (M1) at Grid Reference WV 851488; thence following the Lilongwe/Dedza road to the point where it crosses the Nathenje River at Grid Reference WV 985436; thence up the Nathenje River to its source at Grid Reference WV 974285; thence in a straight line for approximately one mile to Grid Reference WV 987288, which point lies at the head of an unnamed dambo; thence down that dambo to its confluence with the Diampwe River at Grid Reference XV 026294; thence up the Diampwe River to its confluence with the Kanjuli Dambo at Grid Reference WV 932165; thence up the Kanjuli Dambo to the point where it is crossed by the Chikandira-Gomesi track at Grid Reference WV 923142; thence along the Chikandira-Gomesi track in a southerly direction to the point where it meets the Dzalanyama Forest Reserve boundary (Government Notice 93/63) at Grid Reference WV 942093; thence along the eastern boundary of the Dzalanyama Forest Reserve to the point where it meets the Malaŵi/Mozambique international boundary at Grid Reference WU 933957; thence in a general westerly and the north-westerly direction along the Malaŵi/Mozambique international boundary to the point where the northern boundary of the Dzalanyama Forest Reserve leaves the said international boundary at Grid Reference WV 332412; thence along the northern boundary of the Dzalanyama Forest Reserve to the point where it is crossed by the Namitete Stream at Grid Reference WV 381329; thence down the Namitete Stream to its confluence with the Bua River; thence down the Bua River to its confluence with the Nambuma Stream; thence up the Nambuma Stream to the point where

it is crossed by the Nambuma Mission track at Grid Reference WV 645850; thence along the Nambuma Mission track and the Nambuma-Dangaliro road in an easterly direction to Grid Reference WV 702859; thence along the old road from Nambuma to Jumpha in an easterly direction to the point where it crosses the Mapanda Dambo at Grid Reference WV 730863; thence down the Mapanda Dambo to the confluence with the unnamed dambo at Grid Reference WV 742843; thence upstream to the head of the dambo at Grid Reference WV 737842; thence across the watershed on a curve in a south-westerly direction to Grid Reference WV 732836, which is the head of an unnamed dambo; thence down the dambo to its confluence with the Ciwangombe Stream at Grid Reference WV 728807; thence down the Ciwangombe Stream to its confluence with the Mteza Stream at Grid Reference WV 751778; thence down the Mteza Stream to its confluence with the Lingadzi River at Grid Reference WV 786607; thence down the Lingadzi River to its confluence with the Kamankuku Dambo, being the point of commencement.

LOCAL LAND BOARD

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CHAPTER 59:02

LOCAL LAND BOARDS

7 of 1967
6 of 1987

An Act to provide for the Establishment and powers of Local Land Boards, and for matters incidental thereto and connected therewith

[9TH MAY, 1967]

PART I

PRELIMINARY

Short title

1. This Act may be cited as the Local Land Boards Act.

Interpretation

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

"Board" means a Local Land Board appointed by the Minister under section 4;

"Division" means a Land Control Division declared by the Minister in accordance with section 3;

Cap. 58:01

"family land" means land of which the proprietor is registered as family representative under the Registered Land Act;

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"interest in land" means any right or interest in or over land which is capable of being registered under the Registered Land Act;

"land" includes land covered with water, all things growing on land, and buildings and other things permanently fixed to land;

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"Registrar" means the Land Registrar or Assistant Registrar in charge of the Registry established under the Registered Land Act for the registration district in which the Land Control Division is situated.

Application
Cap. 58:01

3. The Minister may, by order, declare that a land registration district constituted, under the Registered Land Act shall be a Land Control Division for the purposes of this Act.

Local Land Boards
6 of 1987

4.—(1) There shall be established for each Division a Local Land Board which shall consist of—

(*a*) the District Commissioner in whose District the Division is situated, who shall be Chairman;

(*b*) not more than two public officers appointed by name or by office by the Minister;

(*c*) two persons appointed by the Chiefs of the Division; and

(*d*) such number of persons, being not less than five nor more than nine, as the Minister shall appoint, from residents within the Division.

(2) The Registrar shall be the executive officer of the Board, who shall attend and may speak at any meeting of the Committee, but shall not vote.

(3) A member of the Board who fails to attend three consecutive meetings of the Board without proper cause shall, if the Board so recommends to the Minister and the Minister so approves, cease to be a member of the Board.

(4) A member of the Board appointed pursuant to paragraphs (*b*), (*c*) or (*d*) of subsection (1) may at any time resign his membership by giving notice in writing to the Minister, and from the date specified in the notice he shall cease to be a member of the Board.

Board procedure

5.—(1) The Chairman shall preside at all meetings of a Board at which he is present and, if he is absent, the members of the Board present at a meeting shall elect one of themselves to preside at that meeting.

(2) (*a*) The quorum of a Board, where the total number of members of the Board is an even number, shall be one-half of that number and, where the total number of members is an uneven number, shall be one-half of the even number that is greater than that number by one.

(*b*) In the event of an equality of votes the Chairman or other member presiding shall have a casting as well as an orginal vote.

(3) If a member of the Board has an interest, direct or indirect, in any matter before the Board, and is present at a meeting of the Board at which the matter is under consideration, he shall, at the meeting, as soon as practicable after its commencement, disclose the fact and shall not take part in the consideration or discussion of, or vote on any question with respect to, the determination of that matter.

(4) The Board may require the attendance of any party to, or any person interested in or affected by, any matter before the Board and may demand the production of any document or other evidence relating to the matter.

(5) Where any person whose presence is required is not present, or any document, the production of which has been demanded, is not produced, the Board may postpone hearing the matter to give a reasonable opportunity for the appearance of such person or the production of such document.

PART II

Consent to Transactions

Restriction on land transactions

6.—(1) No person shall, in respect of land situate in a Division, except with the consent of the Board, or by virtue of a general consent given by the Minister in accordance with section 7—

(*a*) sell, lease, charge, exchange, partition, subdivide or in any way dispose of or deal with any such land or any interest in such land; or

(*b*) acquire any such land or any interest in such land (otherwise than by prescription) on behalf of himself or on behalf of any other person:

Provided that nothing in this subsection shall apply to—

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(i) a transmission (within the meaning of the Registered Land Act) any such land or of an interest in any such land on the death of the owner, unless such transmission involves a subdivision of the land;

(ii) any transaction made by or in favour of the Government.

(2) Any agreement for sale, leave, charge, exchange, partition or subdivision or for any other transaction to which subsection (1) applies, shall be unenforceable—

(*a*) subject to subsection (3), if the Board has refused its consent thereto, as from the date of such refusal; or

(*b*) if the application to the Board for its consent thereto has not been made within a period of thirty days from the date of the making of such agreement, as from the expiry of such period,

and if any money or other valuable consideration has been paid under any agreement which becomes unenforceable as aforesaid, such money or consideration shall be a civil debt recoverable from the person to whom it has been paid by the person who paid the same.

(3) Notwithstanding subsection (2), when the consent of a Board to any dealing has been refused and such refusal is reversed by Order of the Minister upon review under section 13, then any agreement which has become unenforceable by reason of subsection (2), shall, subject to any conditions in the Order, be enforceable.

7.—(1) The Minister may, by order— General consent and no consent

(*a*) give general consent in respect of all transactions or of any specified class of transaction in a Division or part of a Division;

(*b*) direct the Board that consent shall not be given to any transactions in a part of a Division or to any class of transaction in the Division or part of a Division.

(2) A copy of every order under subsection (1) shall be sent to the Registrar and to the District Commissioner of the District in which the land to which it relates is situated.

(3) An order under this section need not be published in the *Gazette* but shall be published in the Division or part of the Division to which it relates in such manner as the District Commissioner considers will bring it to the knowledge of the persons likely to be affected by the order.

8.—(1) Every application for consent under this Act shall be made in duplicate in the prescribed form, shall be signed by the applicant or by a person lawfully authorized to act on his behalf and shall be submitted to the appropriate board through the Registrar. Submission and disposal of applications

(2) Every decision of a Board shall be noted on the application to which it relates together with—

(*a*) the reasons for refusal where consent has been refused; or

(*b*) any conditions which may have been imposed where consent has been granted.

(3) One copy shall be returned to the applicant and the other shall be sent to the Registrar.

9. A Board may, in granting consent, impose such conditions not inconsistent with the Registered Land Act as the Board thinks fit. Consent upon condition Cap. 58:01

PART III

FAMILY LAND MATTERS

10.—(1) When an application made under section 101 of the Registered Land Act for the partition of family land has been referred to the Board by the Registrar, the Board shall first ascertain the names of the members of the family entitled to a share of the land and the size of each such share, and then shall effect the partition of the land with the agreement of the members or in the absence of agreement in such manner as the Board may order having due regard to the rules of customary law affecting the land. Partition of family land Cap. 58:01

(2) Sections 98, 99 and 100 of the Registered Land Act (which relate to the partition of land owned in common, when the Registrar may order sale and the procedure where a share is small) shall apply with necessary modifications and the Board shall perform the duties and exercise the powers of the Registrar provided for in those sections as if the members of the family entitled to a share of the land were proprietors in common.

(3) The partition agreement or order when completed shall be forwarded to the Registrar.

Replacement of family representative Cap. 58:01

11.—(1) Where the Registrar has made reference to a Board under section 122 of the Registered Land Act for the replacement of a family representative, then, on proof to the satisfaction of the Board—

(*a*) of the death of the family representative;

(*b*) that the family representative is unable to act by reason of mental or physical incapacity, absence from Malaŵi, imprisonment or detention; or

(*c*) that the family representative is no longer acceptable to the majority of the members of the family,

the Board shall nominate a new family representative.

(2) In nominating a new family representative the Board shall have due regard to the wishes of the members of the family and any custom affecting the land.

(3) The nomination of a new family representative shall be reported by the Board to the Registrar in writing.

PART IV

Other Powers of the Board

Land use

Cap. 57:01

12. The Board shall perform such functions in relation to the powers of control of user of land vested in the Minister by Part VI of the Land Act as may be conferred upon the Board by regulations, directions or instructions issued by the Minister under such Part.

PART V

Miscellaneous

Review

13.—(1) Any person whose application for consent to any transaction has been refused by the Board, or who considers himself adversely affected by a condition imposed by the Board in granting consent or by a decision of the Board given under section 10 or section 11 may, within fifteen days of such refusal, by notice in writing, require the Board to refer the matter for review by the Minister.

(2) Upon receipt of such notice, or of a notice by the Minister that the Minister intends to review a decision of the Board, the Board shall forthwith refer the matter for review by the Minister, who shall review the matter and make such order therein as he thinks fit.

(3) Section 5 (4) and (5) shall, with any necessary modifications, apply to a review under this section as they apply to the hearing of an application or other proceeding before the Board.

Offences

14.—(1) Any person who takes part or attempts to take part in a transaction which is unenforceable under section 6 or aids or abets such transaction or who contravenes a condition imposed by the Board or the Minister shall be liable to a fine of K200 and to imprisonment for one year.

(2) A court which convicts a person under subsection (1), shall have the power to order the eviction of such person from any land occupied by him in pursuance of an unenforceable transaction or as a result of a contravention of a condition imposed by a Board or the Minister.

(3) Any person who is required to attend before the Board or the Minister or produce any document or other evidence, and who fails to attend or produce such document or other evidence, shall be liable to a fine of K40 and to imprisonment for three months.

Regulations

15. The Minister may make regulations for the better carrying out of this Act.

G.N. 129/1970

SUBSIDIARY LEGISLATION

G.N. 133/1970

LOCAL LAND BOARDS (LILONGWE LAND CONTROL DIVISION) ORDER

under s. 3

Citation

1. This Order may be cited as the Local Land Boards (Lilongwe Land Control Division) Order.

Constitution of the Lilongwe Land Control Division

2. The area constituted as the Lilongwe Land Registration District under the Registered Land (Lilongwe Land Registration District) Order, shall be the Lilongwe Land Control Division for the purposes of the Local Land Boards Act.

G.N. 180/1970 163/1983

LOCAL LAND BOARDS REGULATIONS

under s. 15

Citation

1. These Regulations may be cited as the Local Land Boards Regulations.

Form of application for consent

2. Every application for consent under the Act shall be made in duplicate in Form I set out in the Schedule to these Regulations.

Fee G.N. 163/1983

3. There shall be payable on every application for consent referred to in regulation 2 a fee of K3.

Form of application for replacement of family representative G.N. 87/1987

4. Every application for replacement of family representative under this Act shall be in duplicate in Form I set out in the Schedule to these Regulations.

Fee for an application under reg. 4 G.N. 87/1987

5. There shall be payable on every application for replacement of a family representative referred to in regulation 4 a fee of K3.

(regs. 2 and 4)

SCHEDULE

LOCAL LAND BOARDS ACT

APPLICATION FOR CONSENT OF LOCAL LAND BOARD

(*To be submitted in duplicate in respect of each transaction and sent to or left at the appropriate District Registry*)

To: The Local Land Board.

I Hereby apply to the ..... Local Land Board for its consent to the transaction described below and give the following information—

1.—(*a*) Present registered proprietor of interest (full name in block letters).

(*b*) Nationality.

(*c*) Address.

2.—(*a*) Proposed purchaser, transferee, chargee, etc. (full name in block letters).

(*b*) If a company or other incorporated association, names of directors or principal officials, authorized and issued share capital and principal shareholders or members.

(*c*) Nationality.

(*d*) Address.

3. Nature of transaction (e.g. sale, gift, lease, charge, etc.).

4. If the land affected is leasehold, or the proposed transaction is a lease, give the date of expiry of the lease.

5. Description of land—

Title Number.

Area.

Locality.

6.—(*a*) Purchase price or annual rent.

Estimated value of the land (if a gift).

Amount of loan (if a charge).

Rate of interest (if a charge).

Any other information affecting the amount of the consideration, particularly regarding the description and area of crops with estimated yields and value thereof included in the dealing.

(*b*) Full description and approximate value of improvements on land included in the dealing.

(*c*) Any other consideration passing between the parties.

7. If a transfer or lease of the land, proposed development programme of purchaser or lessee, including funds available and approximate timetable.

Does the purchaser/lessee intend to reside on the land?

8.—(*a*) Other agricultural land registered in the name of the proposed purchaser or lessee, or in which he has an interest (indicate whether contiguous to land being purchased or leased).

(*b*) Particulars of agricultural land held and disposed of by proposed purchaser or lessee in the last three years.

9. Farming experience of proposed purchaser/lessee.

We hereby declare that the above information is true to the best of our knowledge and belief.

.....	.....
Signature of registered proprietor or authorized agent	*Signature of intending purchaser, lessee, chargee, etc., or authorized agent*
Date	Date .....

DECISION OF LOCAL LAND BOARD

(*To be completed and signed by the Chairman of the Board*)

(*a*) Application approved/refused.

(*b*) If application approved, set out below any conditions to which the approval is subject—

(*c*) If application refused, set out below or on a separate paper which should be attached to this application the reasons for such refusal.

Date ....

Chairman
Local Land Board

LOCAL LAND BOARDS ACT

APPLICATION FOR REPLACEMENT OF FAMILY REPRESENTATIVE

(*To be submitted in duplicate*)

TITLE NO. .....

I/We .....
.....
of .....
.....
pursuant to section 11 *of Local Land Boards Act* (Cap. 59:02) HEREBY apply for the replacement of a family representative.

Fee paid ..... G.R. Receipt No. .....

Dated this day of ,19 .

Signed .....
Applicant(*s*)

Signed .....
Secretary

DECISION OF LOCAL LAND BOARD

(*To be completed and signed by the Chairman of the Board*)

(*a*) Application approved/refused.

(*b*) If application approved, set out below any conditions to which the approval is subject—

(*c*) If application refused, set out below or on a separate paper which should be attached to this application the reasons for such refusal.

Date..... .....

Chairman
Local Land Board

LAND SURVEY ACT

CHAPTER 59:03

Containing Pages 1–31

CHAPTER 59:03

LAND SURVEY

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CHAPTER 59:03

LAND SURVEY

An Act to provide for land surveys; the establishment of the Land Surveyors Registration Board; the licensing and control of land surveyors; the establishment of the Malaŵi Geographic Information Council, and to provide for matters connected therewith or incidental thereto 18 of 2016 G.N. 62/2017

[1st September, 2017]

PART I

PRELIMINARY

1. This Act may be cited as the Land Survey Act. Short title

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

"Board" means the Land Surveyors Registration Board established under section 4;

"cadastre" means a methodically arranged public inventory of data on properties within a district based on a survey of the property boundaries;

"general plan" means a document containing geometrical, numerical and verbal representations of a piece of land, which has been approved or certified by the Surveyor General or a copy thereof prepared in the Surveyor General's office and approved and certified as aforesaid, and includes a document which has, at any

time prior to the commencement of this Act, been accepted as a diagram in the Deeds Registry or Land Registry;

"government surveyor" means the Surveyor General or, as the case may be, any officer of the Department of Surveys who is authorized in writing by the Surveyor General to perform the duties of a surveyor under this Act, or any government officer being a surveyor;

Cap. 57:01 "land" has the meaning ascribed to the word in the Land Act;

"licensed surveyor" means a land surveyor duly licensed as a surveyor under this Act;

"owner" includes—

(*a*) every lessee, tenant or licensee of land and his successors in title and every occupier of land, whether as supervisor, overseer or manager or otherwise; and

(*b*) any agent who receives rents or profits on behalf of such person;

"parcel" means a piece of land with defined boundaries to which a property right of a person applies;

"plan" includes any aerial photograph where such aerial photograph is approved by the Surveyor General as suitable for survey purposes, chart, diagram, and map or any photographic copy of any such aerial photograph, chart, diagram, or map;

"registrar" means the Registrar of the Board appointed pursuant to section 23;

"register" means the register of licensed surveyors, surveying technicians or graduate surveyors, kept and maintained by the Board under section 34;

"survey" means every type of land survey, including cadastral surveys and aerial surveys;

"survey mark" means any trigonometrical station, continuous operating reference station, signal station, benchmark of whatever type, reference mark, boundary beacon, peg, picket, mark or pole, whether above or below the surface of the ground, which is fixed, placed or set up by or under the direction of, a surveyor, for the purpose of any survey and includes, when so fixed or placed, a properly cut survey point on any rigid building or structure of permanent material and construction;

"surveying technician" means a surveyor registered as such under this Act; and

"surveyor" means a Government surveyor, licensed surveyor, surveying technician or graduate surveyor who is duly registered under this Act.

PART II

Administration

Surveyor General and other officers

3.—(1) There shall be established in the public service, an office of the Surveyor General which shall be responsible for the administration of this Act.

(2) A person shall not be recruited in accordance with the Malaŵi Public Service Regulations as Surveyor General unless that person is licensed and registered as a surveyor under this Act.

(3) There shall be appointed such other officers, who are qualified surveyors, employed in the Surveyor General's office who may, if so authorized by the Surveyor General, either generally or specifically, perform any of the duties or do any of the acts or things required or authorized by this Act to be done by the Surveyor General.

Duties and functions of the Surveyor General

4. Subject to the general or special directions of the Minister, the Surveyor General shall—

(*a*) carry out surveys on public land and any land on behalf of Government, for grant, lease and easement purposes;

(*b*) supervise and control the survey and charting of land for purposes of registration;

(*c*) take charge and preserve all records appertaining to the survey of parcels of land;

(*d*) direct and supervise the conduct of trigonometric, topographic and level surveys and such geodetic and geophysical operations as the Minister may direct;

(*e*) take charge of and preserve all records of all surveys and operations carried out under paragraph (*c*);

(*f*) supervise the preparation of maps and other geo-information products as the Minister may direct from data derived from any surveys and the amendment of such maps and geo-information products; and

(*g*) generally administer the provisions of this Act.

PART III

Land Surveyors Registration Board

Establishment of Land Surveyors Registration Board

5. There is hereby established a Land Surveyors Registration Board (hereinafter referred to as the "Board") which shall—

(*a*) be a body corporate with perpetual succession and common seal;

(*b*) capable of suing and being sued in its corporate name; and

(*c*) have power to do and perform such things and acts which a body corporate may by law do or perform.

Powers and functions of the Board

6.—(1) The Board shall be the sole authority for licensing and registering surveyors in Malaŵi and in that regard, shall have the following powers and functions—

(*a*) approve minimum qualifications and training acceptable for registration as a surveyor;

(*b*) approve, in consultation with the National Council for Higher Education, educational and training institutions within and outside Malaŵi as institutions with recognized training in land surveying;

(*c*) set up and conduct such tests, examinations and trial surveys as may be required for purposes of this Act;

(*d*) appoint such examiners and invigilators as may be necessary for the purpose of administering any examinations under this Act;

(*e*) grant surveyor licences;

(*f*) keep and maintain a register of licensed surveyors, surveying technicians and graduate surveyors;

(*g*) advise the Minister on policies relating to technical and professional matters within the scope of this Act including fees and other charges to be prescribed under this Act;

(*h*) determine other methods, apart from examinations, to be used in assessing the suitability of an applicant for licensing and registration under this Act;

(*i*) prescribe principles of conduct and ethics to be followed by surveyors in the course of their practice as surveyors;

(*j*) exercise disciplinary control over surveyors and to prescribe and impose disciplinary measures against such surveyors, if necessary;

(*k*) establish such committees of the Board as may be considered necessary for implementation of this Act; and

(*l*) do all such acts, matters and things as may be necessary for fulfilling the functions of the Board.

(2) The Board shall cause to be published in the *Gazette*, once every year, a list of surveyors registered under this Act.

Composition of the Board

7. The Board shall consist of the following seven members—

(*a*) the following persons nominated by the Surveyors Institute of Malaŵi and appointed by the Minister—

(i) five licensed surveyors, two of whom shall be from private practice; and

(ii) one member, being a land surveyor and a full member of the Surveyors Institute of Malaŵi of good standing in the Institute;

(*b*) the Surveyor General or his designated representative, *ex officio*; and

(*c*) the composition of the Board shall have not less than forty per cent and not more than sixty per cent of either sex.

Chairperson and Vice Chairperson of the Board

8.—(1) Members of the Board shall elect a Chairperson and Vice Chairperson from among their number at the first meeting of the Board which shall be convened by the Registrar and attended by all members.

(2) The Surveyor General or his designated representative shall not be eligible to be elected as Chairperson or Vice Chairperson.

(3) The Minister shall cause a notice of every appointment to the Board to be published in the *Gazette*.

Disqualification of members of the Board

9. A person shall not qualify to be appointed, or shall be disqualified from continuing to hold office, as a member of the Board if that person—

(*a*) is an undischarged bankrupt;

(*b*) has been convicted, at any time, of an offence under this Act;

(*c*) has, within the preceding three years, been convicted of an offence under any written law and sentenced to imprisonment of not less than six months; or

(*d*) has been convicted, within the preceding six years, of an offence involving fraud or dishonesty.

Tenure and nature of office of members of the Board

10.—(1) Members of the Board shall serve on a part time basis.

(2) A member of the Board, not being an *ex officio* member, shall hold office for a period of three years and shall be eligible for re-appointment for one further term.

Vacancies and filling of vacancies in the Board

11.—(1) The office of a member of the Board, not being an *ex officio* member, shall become vacant if—

(*a*) the member dies;

(*b*) the member resigns by notice in writing to the Minister; or

(*c*) he becomes disqualified from continuing to hold office pursuant to section 9.

(2) A vacancy in the Board shall be filled by a person appointed in accordance with section 7.

Meetings of the Board

12.—(1) The Board shall meet at least once every year:

Provided that the Chairperson may, at any time and shall, upon application in writing by at least three members of the Board, convene a meeting of the Board.

(2) The Chairperson shall preside at meetings of the Board, but in the absence of the Chairperson, the Vice Chairperson shall preside and perform the functions of the Chairperson at any such meeting.

(3) Where both the Chairperson and Vice Chairperson are absent at a meeting, the members of the Board present shall elect a member from among their number to preside at that meeting.

(4) The Registrar or such other person as the Registrar may designate, shall take and keep minutes of proceedings of every meeting of the Board or its committees.

(5) A simple majority of the members of the Board shall constitute a *quorum* at a meeting of the Board.

(6) Decisions of the Board on any matter shall be made by a vote of the majority of members of the Board present and voting thereon, but in the event of an equality of votes, the Chairperson or the member presiding shall have a casting vote in addition to his deliberative vote.

(7) Subject to the provisions of this Act, the Board shall have power to regulate its own procedure at meetings.

Committees of the Board

13.—(1) The Board may—

(*a*) establish such number of committees as it considers necessary for the performance of its functions and the exercise of its powers under this Act; and

(*b*) without prejudice to the exercise of any of its powers under this Act, assign any of those functions to such committees.

(2) A committee of the Board shall comprise a member of the Board who shall be the chairperson of the committee, and other persons who may include persons who are not members of the Board but who are not members of staff of the secretariat of the Board and at least the appointees shall be forty per cent and not more than sixty per cent of either sex.

(3) The Board may, at any time, direct a chairperson of any committee to convene a meeting of the committee and the chairperson of such committee shall, as soon as it is practicable, comply with such direction.

(4) Every committee shall keep minutes of its meetings and inform the Board of its activities and conduct its proceedings in such manner as the Board may direct.

(5) A committee shall have power to determine its own procedure at meetings.

Allowances of members of the Board and its committees

14. A member of the Board or member of a committee of the Board shall be paid such allowances to cover expenses reasonably incurred by the member in respect of attendance of meetings of the Board or committee, as may be prescribed by the Minister.

Invited persons

15.—(1) The Board or any committee of the Board, may invite any person to attend any of its meetings in order to assist or advise the Board or the committee in respect of a matter under consideration at the meeting.

(2) The person invited pursuant to subsection (1) may take part in the deliberations of the Board or committee of the Board but that person shall not be entitled to vote on any matter at the meeting.

Board not liable for acts done in good faith

16. The Board or any member of a committee of the Board, shall not be liable for any act or omission done in good faith in the exercise of the functions and duties of the Board under this Act.

Funds of the Board

17. The funds and property of the Board shall consist of such sums of money—

(*a*) as may, from time to time, be payable to the Board from moneys appropriated by Parliament for that purpose;

(*b*) or other property, real or personal, as may be payable to, or vest in the Board pursuant to this Act or any other written law; and

(*c*) or other property, real or personal, as may be payable to or vest in the Board by way of a donation, or accrue to the Board from any trust.

Investment of surplus sums of money Cap. 37:02

18. The Board may, in accordance with the Public Finance Management Act, invest any sums which are not immediately required for immediate use by the Board.

Borrowing powers of the Board Cap. 37:02 Cap. 37:01

19. Subject to the provisions of the Public Finance Management Act and the Public Audit Act, the Board may borrow such sums of money as it may require to discharge its functions under this Act.

Financial year of the Board

20. The financial year of the Board shall be the financial year of the Government.

Books of accounts, audits and reports

21.—(1) The Board shall cause to be kept, proper books of accounts and other records in relation to all moneys and other property vested, received or otherwise obtained, and of all moneys expended or other property sold or otherwise disposed of, by the Board.

(2) The accounts of the Board shall be audited annually by professional auditors appointed by the Board.

(3) Expenses incurred in relation to and incidental to, annual audits shall be paid out of the funds of the Board.

Annual report of the Board

22.—(1) The Board shall, as soon as it is practicable, but not later than three months after the end of each financial year, submit to the Minister, an annual report of its work and operations.

(2) The annual report shall include a balance sheet, an income and expenditure account and the annual report of auditors.

(3) The Minister shall lay the annual report before Parliament.

Registrar

23.—(1) The Board shall, with the approval of the Minister, appoint a Registrar who shall be a registered surveyor, on such terms and conditions as the Board shall determine.

(2) The Registrar shall be the chief executive officer of the Board and shall act as a secretary to the Board.

(3) Where no Registrar is appointed by the Board in accordance with subsection (1), the Minister may, in consultation with the Board, designate a public officer in the Department of Surveys as a secretary to the Board.

Duties of the Registrar

24. Subject to the general and special directions of the Board, the Registrar shall be responsible to the Board for the day to day management of the Board and supervision of staff of the Board.

Other staff

25.—(1) The Board shall appoint other staff, subordinate to the Registrar, as the Board shall consider necessary for the exercise of its powers and performance of its duties and functions.

(2) The staff of the Board shall serve on such terms and conditions as the Board shall determine.

(3) The Board may, by directions in writing, delegate to the Registrar, the appointment of its staff in such junior ranks as the Board shall specify, and the Registrar shall report to the Board every appointment made pursuant to this section.

Attendance of meetings by staff

26.—(1) The Registrar or any other officer of the Board as the Registrar may, with the approval of the Board designate, may attend meetings of the Board or any committee of the Board to record minutes of the meetings and take part in the deliberations thereof subject to the directions of the Board or the committee of the Board, but shall not be entitled to vote.

(2) Where at any meeting, the deliberations of the Board or committee of the Board concern the Registrar or any staff of the Board designated to attend the meeting, the Board or the committee of the Board, as the case may be, may exclude the Registrar or such officer from attending the meeting.

PART IV

Licensing, Registration and Duties of Surveyors

Application for a licence and registration

27.—(1) Save as otherwise provided in this Act, a person shall not engage in the practice of land surveying in Malaŵi, or hold himself out as being entitled so to do, unless he is registered as a licensed surveyor under this Act.

(2) Any application for a licence and registration under this Act shall be made to the Board in the prescribed manner and shall be accompanied by a prescribed fee.

(3) Any person who engages in the practice of land surveying in contravention of this Act commits an offence.

Qualifications for licensed surveyors

28.—(1) A person shall not be registered as a licensed surveyor unless that person—

(*a*) holds a degree in land surveying from a university approved by the Board in consultation with the National Council for Higher Education for purposes of this Act;

(*b*) produces a certificate that he has served at least two years as an assistant in practical field surveys under the direct personal

supervision of a licensed surveyor practising as such, under the Act or in any country as the Minister list by notice published in the *Gazette*:

Provided that no less than half such period shall have been spent in doing title surveys the nature of which shall be approved by the Board;

(*c*) possesses a commission or a licence entitling him lawfully to practise as a land surveyor in any country listed in the notice published in the *Gazette* pursuant to subparagraph (*b*);

(*d*) is a holder of the qualification of fellow or professional associate of the Royal Institute of Chartered Surveyors of the United Kingdom in land surveying; or

(*e*) has passed an examination which has been set by the Board to confer a qualification equivalent to any of the qualifications referred to in subparagraphs (*a*) and (*b*).

(2) In addition to having any of the requirements under subsection (1), the person shall—

(*a*) furnish testimonials or other evidence of good character to the satisfaction of the Board; and

(*b*) satisfy the Board through an examination, or by other method prescribed by the Board, that he is familiar with the provisions of this Act and all other written laws of Malaŵi relating to land survey.

(3) Notwithstanding subsection (1), the Board may require a person who applies to be registered as a licensed surveyor, to satisfy the Board either by carrying out to the satisfaction of the Board, a trial survey or show such other evidence as the Board may determine, that he is capable of conducting surveys in accordance with this Act.

(4) If a person has undergone training which, in the opinion of the Board is equivalent to serving as an assistant in practical field survey as provided for under subsection (1) (*b*), that person may be granted exemption from such portion of the period of service as the Board may determine:

Provided that the exemption shall not—

(*a*) reduce the requisite period of training to less than one year; or

(*b*) be granted in respect of training served before the completion of the applicant's first year of study.

(5) A certificate indicating proof of service as an assistant to a licensed surveyor under subsection (1) (*b*) shall be in the form prescribed by the Board, and shall be accompanied by an annexure in the form of a diary containing detailed particulars of all survey work carried out, signed by the licensed surveyor who supervised the applicant, and the applicant, as an employee.

Licensing and registration of surveyors

29. A person who qualifies to be registered as a licensed surveyor under this Act and satisfies the conditions under section 28 shall, upon application to the Board, be entitled to be issued with a licence.

Qualifications for registration as a licensed surveyor

30. A person may be registered as a licensed surveyor, if he—

(*a*) holds a qualification approved by the Board or has satisfied the Board that he holds a qualification which, in the opinion of the Board, is a sufficient guarantee of the possession by him of the requisite knowledge and skill for the efficient practice of the work of a surveyor under section 28;

(*b*) is a full member of the Surveyors Institute of Malaŵi or such other institution or society as the Minister may, by notice published in the *Gazette*, declare to be of adequate standing in the field of land surveying; and

(*c*) proves to the satisfaction of the Board, that his professional and general conduct has been such as would not, in the opinion of the Board, debar him from registration under this Act.

Qualifications for registration as a graduate surveyor

31.—(1) A person may be registered as a graduate surveyor under this Act if he has, as a result of an examination obtained from an approved institution, a degree or other qualification which the Board considers acceptable for registration.

(2) Every graduate surveyor registered pursuant to this section shall be entitled to practice land surveying as a surveyor in training by agreement with and under the direction or control of a registered licensed surveyor.

Qualifications for registration as a surveying technician

32.—(1) A person may be registered as a surveying technician under this Act if he has—

(*a*) obtained a diploma or a certificate in land surveying from an approved institution or obtained other qualifications approved by the Surveyors Institute of Malaŵi in consultation with the National Council for Higher Education, which the Board considers acceptable for registration; and

(*b*) received practical training as a technician for a period of not less than two years from an institution approved by the Board.

(2) The Board may direct the Registrar to register an applicant pursuant to this section if the Board is satisfied that the applicant—

(*a*) is a fit and proper person to be registered; and

(*b*) has complied with all the relevant requirements of this section.

Certificate of registration

33. The Registrar shall issue to every person registered as a licensed surveyor, graduate surveyor, or surveying technician, as the case may be, under this Act, a certificate of registration in a form as may be prescribed by the Minister.

Registers

34.—(1) The Board shall keep and maintain separate registers of all—

(*a*) licensed surveyors;

(*b*) graduate surveyors; and

(*c*) surveying technicians.

(2) A register shall contain—

(*a*) names, addresses and qualifications of registered surveyors;

(*b*) the respective dates of their registration; and

(*c*) any other particulars which may be prescribed.

(3) The Registrar shall keep custody of the registers at the offices of the Board or at such other place in Malaŵi as the Board may direct.

(4) A register shall, at all reasonable times, be open to inspection by—

(*a*) public officers in the course of duty;

(*b*) a person registered under this Act; and

(*c*) members of the public upon payment of a prescribed fee.

Corrections of registers

35.—(1) The Registrar may, on his own or on application by an interested party, with the prior approval of the Board, make necessary alterations or corrections in any register in relation to any entry therein.

(2) The Registrar shall remove from the relevant register, the name of a registered surveyor who is deceased and shall, when directed by the Board to do so, remove from any register, any entry which has been incorrectly or fraudulently made therein.

(3) The Registrar may, with the written consent of the person concerned, remove from any register, the name of any person who has ceased to practise land surveying in Malaŵi.

(4) The Registrar shall reinstate in the register, a name removed from any register pursuant to subsection (3), on the request in writing by the person concerned.

Duties of a surveyor

3**6.**—(1) A surveyor licensed under this Act shall—

(*a*) carry out every survey undertaken by him in accordance with this Act in a manner that will ensure the accuracy of the survey and any plan, survey data, or other record of the survey;

(*b*) deposit with the Surveyor General, for filing in the Surveyor General's office, plans, survey data and records of survey he undertakes;

(*c*) be responsible for the corrections of every survey carried out by him or under his supervision and for the correctness of any plan and diagram which bears his signature; and

(*d*) when required by the Surveyor General, without delay, adjust the position of any survey mark which has been fixed, placed or set up in an incorrect survey.

(2) The Surveyor General may direct a surveyor, within ninety days, to correct any inaccuracy or error in any plan, survey data or other record where such error or inaccuracy exceeds the limit of error allowable under this Act to the execution of surveys and the preparation of plans, survey data and other records.

Surveying instruments to be accurate

37.—(1) A surveyor shall ensure that all surveying instruments he uses for the purpose of carrying out surveys are in a proper state of adjustment and that all distance measuring instruments so used are properly standardized.

(2) A surveyor shall, when called upon by the Surveyor General, produce to the Surveyor General, a surveying instrument or distance measuring instrument which he uses for testing, as the Surveyor General may consider appropriate.

(3) Where the Surveyor General finds that the surveying instrument or distance measuring instrument produced pursuant to subsection (2) is defective or inaccurate, he may order the surveyor to remedy the defect or to rectify the inaccuracy and the surveyor shall not use the instrument until the defect is remedied or the inaccuracy rectified, as the case may be.

(4) If the Surveyor General is of the opinion that a surveying instrument or distance measuring instrument is in such a condition as to render it impossible to remedy a defect or rectify an inaccuracy, he may condemn the instrument.

(5) Where the Surveyor General condemns a surveying instrument or distance measuring instrument under this Act—

(*a*) the surveying instrument or distance measuring instrument shall no longer be used for carrying out of any survey; or

(*b*) he may, by order in writing, specify the class of work for which the surveying instrument or distance measuring instrument may be used.

Complaints against a surveyor

38.—(1) A person with a complaint against a surveyor shall submit a signed written complaint to the Board.

(2) The Board may, where the complaint made under subsection (1) is justified, inquire into the complaint and shall fix a time and place for the purpose of holding an inquiry.

(3) The Board shall, at least thirty days prior to the date fixed for the inquiry, send a notice in writing through registered post to the last known address of the surveyor against whom the complaint is made.

(4) A surveyor against whom the complaint is made, shall be entitled to be heard in his defence, either personally or may be represented by a legal practitioner at an inquiry made pursuant to this section.

(5) The findings and decision of the Board on any inquiry under this section shall be made in writing.

(6) A surveyor with regard to whom the findings and decision of the Board are made, may apply to the High Court for judicial review within thirty days of the date of the findings and decision of the Board.

Misconduct and disciplinary measures

39.—(1) The Board may invoke disciplinary measures on a registered surveyor, where, after an inquiry, it is proven to the satisfaction of the Board, that the registered surveyor has carried out any following acts of misconduct—

(*a*) signed a plan, survey data or other record of a survey relating to any land in respect of which he has not carried out, personally supervised the whole of such survey, or examined and satisfied himself of the correctness of the entries in any field book, calculations, working plans or other records, which may have been made by any another person;

(*b*) signed a plan which he knows or ought to have known by the exercise of reasonable care, to be incorrect;

(*c*) performed through negligence or incompetence, an incorrect survey;

(*d*) made an entry in a field book or other document which purports to have been made as a result of actual observation or measurement in a field when in actual fact, was not so made;

(*e*) supplied erroneous information to the Board in connexion with a survey mark or boundary which he knows or ought to have known by the exercise of reasonable care, to be erroneous;

(*f*) demanded or received a sum for fees, charges or expenses either less or more than the amount prescribed under this Act;

(*g*) been convicted of an offence involving moral turpitude, or such improper conduct as, in the opinion of the Board, renders him unfit to practise as a surveyor;

(*h*) obtained his licence by misrepresentation, or has had his licence or his qualification of fellow or professional associate under section 28 (1) (*d*) suspended or cancelled; or

(*i*) failed to obey any order or instruction given to him by the Board under this Act or to carry out any duty imposed upon him under this Act.

(2) The Board may invoke the following disciplinary measures for a misconduct under subsection (1)—

(*a*) caution the surveyor in writing;

(*b*) suspend the surveyor from practicing as a surveyor for any period not exceeding two years and enter the reasons for such suspension in the register; or

(*c*) remove the name of such surveyor from the relevant register.

(3) In addition to the measure imposed on the surveyor under subsection (2), the Board may order the surveyor to pay the cost of any correction necessitated by his negligence.

(4) The Board may—

(*a*) reinstate any surveyor whose name has been removed from the register; or

(*b*) terminate or reduce the period of suspension of a surveyor who has been suspended from practice.

(5) Where the Board has suspended a surveyor from practice or has removed the name of a surveyor from the register, the surveyor shall surrender his licence to the Board and the Board may retain the licence either until the licence expires, or until the name of the surveyor is reinstated in the register or until the expiry or termination of the period of his suspension, as the case may be.

(6) The Board shall cause to be published in the *Gazette*, a notice of—

(*a*) the removal of the name of a surveyor from the register;

(*b*) the suspension from practice of a surveyor; and

(*c*) the reinstatement in the register of the name of a surveyor or the termination or reduction of the period of suspension of a surveyor.

Persons other than surveyors forbidden to carry out land surveys

40.—(1) A person, other than a licensed surveyor registered under this Act, shall not—

(*a*) carry out any survey for the purpose of preparing any plan, survey data or other record required under the provisions of this Act to be deposited with, examined and approved by, the Surveyor General, or to be referred to in any manner whatsoever, in any other document to be deposited or examined and approved;

(*b*) carry out any survey affecting the delimitation of the boundaries or the location of the beacons or other boundary marks of any land; or

(*c*) hold himself out or act in any manner whatsoever, as a surveyor or perform any of the functions of a surveyor.

(2) Any person who contravenes subsection (1) commits an offence and shall, on conviction, be liable to a fine of K500,000 and to imprisonment for six months.

Survey plans to be deposited with the Surveyor General and to be property of the Government

41.—(1) All plans, survey data and records of surveys deposited with the Surveyor General in pursuance of any requirement imposed by this Act or any regulations or rules made hereunder, shall become the property of the Government.

(2) No plan, survey data or other record deposited in the office of the Surveyor General pursuant to this Act shall be altered or amended in any way, without the written permission of the Surveyor General.

(3) Any person who alters or amends in any way, a plan, survey data or other record deposited in accordance with this section without the written permission of the Surveyor General, commits an

offence and shall on conviction, be liable to a fine of K500,000 and to imprisonment for six months.

Aerial and topographic survey and topographic mapping

42.—(1) A person who intends to carry out an aerial survey of any land in Malaŵi, shall, at least thirty days before the survey is carried out, notify the Surveyor General in writing of his intention to cause the survey to be made.

(2) A person who carries out an aerial survey in accordance with subsection (1) and any topographic survey, shall within thirty days of completion of the survey, submit to the Surveyor General—

(*a*) one printed copy of every photograph taken for the purpose of such aerial survey together with one copy of any plan made as a result of the survey; and

(*b*) copies of all data and subsequent maps and plans.

(3) A surveyor shall, within thirty days of the completion of any topographical mapping in Malaŵi, submit copies of all data and subsequent maps and plans to the Surveyor General for quality control and archiving.

(4) The Surveyor General shall store all data, maps and plans relating to any topographical mapping in a good and secure place.

(5) The Surveyor General shall, from time to time, compile non-existing maps and amend existing plans and maps, and sell information taking into account the provisions of the Copyright Act. Cap. 49:03

(6) Any person who fails to comply with this section, commits an offence and shall on conviction, be liable—

(*a*) in case of a natural person, a fine of K500,000 and to imprisonment for twelve months; and

(*b*) in the case of a legal person, a fine of K1,000,000.

Approval of surveys by the Surveyor General

43. The Surveyor General shall examine all data, plans and diagrams of surveys of land and where he is satisfied that such surveys have been properly carried out, approve all such plans and diagrams.

Surveyor General may cancel approval of a plan

44.—(1) Where any plan approved by the Surveyor General under this Act is found to be incorrect by reason of any error or omission in a survey, the Surveyor General may cancel his approval of the plan and in every such case, cause to be made and deposited, a corrected plan.

(2) Upon the cancellation of any plan in accordance with subsection (1), the Surveyor General shall in writing, notify—

(*a*) the owner of the land to which the plan relates;

(*b*) the traditional authority in case of land under a Traditional Land Management Area;

(*c*) the Minister in case of public or government land; or

(*d*) a land registrar, if any.

PART V

Survey Marks and Boundaries

Survey marks and boundaries lawfully established

45.—(1) Notwithstanding anything contained in any written law, the position of any survey mark fixed, placed or set up for the purpose of denoting the boundaries of any land shall be deemed, under this section, to have been lawfully established.

(2) A survey mark fixed, placed or set up for the purpose of denoting a boundary of any land shall be deemed to have been lawfully established where the position of the mark is in agreement with—

(*a*) the position established in another survey and where a plan based on the survey has been approved by the Surveyor General for the purpose of establishing the survey mark; or

(*b*) an order of the High Court.

Survey of Traditional Land Management Areas etc.

46.—(1) The boundaries of any area declared as a Traditional Land Management Area, a district or a local government area shall be surveyed and registered in the Land Registry under the traditional authority or local government authority of the area.

(2) Where a Traditional Land Management Area is registered, all the villages and the public land within the area shall be surveyed and registered.

Sites of trigonometrical stations and fundamental benchmarks reserved to Government

47. Every trigonometrical station or fundamental benchmark shall be deemed to comprise the land within five metres of the center mark of the station or within five metres of the center of the pillar of a fundamental benchmark as the case may be, together with a right of way to and from the trigonometric station or fundamental benchmark and shall, notwithstanding any alienation thereof, be reserved to the use of the Government and be deemed to have been and to be excepted out of such alienation.

Blasting of rock within area reserved for a fundamental benchmark prohibited

48.—(1) A person shall not carry out rock blasting operations within a radius of one hundred metres from any fundamental benchmark without prior written authorization of the Surveyor General.

(2) Any person who contravenes this section commits an offence and shall on conviction, be liable—

(*a*) in the case of a natural person, to a fine of K500,000 and to imprisonment for twelve months; and

(*b*) in the case of a legal person, to a fine of K1,000,000.

No posts or fences to be placed near survey mark

49. A person shall not place a fence, post, fence anchor or any other erection, or make any excavation, within half a metre of a plot boundary beacon and ten metres from other survey marks, except with the prior written authorization of the Surveyor General.

Preservation and maintenance of survey marks

50.—(1) Every owner of land shall preserve and maintain in proper order and repair, and in a manner as may be prescribed, every survey mark fixed, placed or set on his land for the purpose of denoting the boundary of the land, whether the survey mark was erected for the purpose of, or in connexion with, a survey of that land under this Act or any other written law, or for the purpose of, or in connexion with, a survey of a land contiguous to the land on which the survey mark is situate.

(2) The owner of the land in subsection (1) shall immediately report to the Surveyor General when the survey mark cannot be found is obliterated, removed, or requires repair and if the owner is within a Traditional Land Management Area shall report to the Land Committee.

(3) Any person who fails to comply with subsections (1) and (2) commits an offence and shall, on conviction, be liable—

(*a*) in the case of a natural person, to a fine of K500,000 and to imprisonment for twelve months; and

(*b*) in the case of legal person, a fine of K1,000,000.

Surveyor General may call upon owner of land to restore survey mark

51.—(1) Where a survey mark has not been maintained in proper order or repair, or has been removed or obliterated, the Surveyor General may serve on the owner of the land upon which the survey mark is situate, a notice in writing either by delivering the notice to the owner, or by transmitting the notice as a registered letter calling upon the owner to restore the survey mark to the condition prescribed for that survey mark or to cause the survey mark to be replaced in the prescribed manner, as the case may be.

(2) Where a survey mark is to be restored or re-erected, the restoration or re-erection shall be carried out by a surveyor.

(3) The restoration or re-erection of the survey mark shall be done within six weeks of the delivery of the notice in subsection (1).

(4) Where a survey mark is not restored or re-erected within six weeks of the date from which the notice in subsection (1) was delivered or posted, the Surveyor General may cause the survey mark to be restored or re-erected and in such case, the owner of the land, and the owners of all land jointly affected by this section, shall be liable in equal shares, for the cost of such restoration or re-erection.

(5) The Surveyor General may recover from every such owner in subsection (4), all costs incurred by the Surveyor General:

Provided that—

(*a*) where the owner of the land or the servant or agent of the owner, has damaged, removed or obliterated the survey mark, the entire cost of the repair, restoration or erection of such survey mark shall be borne by the owner of the land; or

(*b*) where a survey mark which requires restoration or re-erection or any part of the survey mark is on public land or on land contiguous to public land, the Surveyor General may exercise his powers under this subsection without waiting for the expiration of six weeks.

(6) In the case of a local government authority, the local government authority shall be responsible for the maintenance of all survey marks erected in accordance with this Act on all roads, lands and premises in respect of which the local government authority is responsible for the upkeep and maintenance.

(7) Any destruction or damage to any survey mark in a local government area may be made good by the Surveyor General at the expense of the local government authority responsible for that area.

Offences, penalties and compensation

52.—(1) Any person who, without lawful excuse—

(*a*) alters, moves, disturbs or willfully damages or destroys a survey mark, whether permanent or temporary, erected for the purpose of, or in connexion with, a survey operation, whether the survey mark is on his own land or not, and whether the survey mark is above or below the surface of the land; or

(*b*) fixes, places or sets up a survey mark without the supervision of a surveyor or anyone authorized by the Surveyor General in that behalf, whether or not his intention is to alter the

boundary line of a piece of land or to deceive any person as to the position of a boundary line,

commits an offence and shall, on conviction, be liable to a fine of K500,000 and to imprisonment for twelve months.

(2) The removal or disturbance of any survey mark for the purpose of erecting another survey mark in its place shall not constitute a lawful excuse under this section unless a surveyor or a person authorized in writing by the Surveyor General in that behalf, personally superintends such removal or disturbance and the erection of such other survey mark.

(3) Nothing in this section shall be construed as exempting any person from being charged and punished under the Penal Code or any other written law in respect of any such act or omission as is described in this section. Cap. 7:01

(4) A person whose property is destroyed or otherwise incurs damages as a result of an offence committed under this section may be awarded compensation.

(5) For the purpose of awarding compensation in respect of any damage caused by the commission of an offence under subsection (1)—

(*a*) a survey mark in connexion with which the offence was committed shall be deemed to be the property of any person on whose land or on a boundary of the land the survey mark was situate; and

(*b*) a fundamental benchmark, reference mark or trigonometrical station, in connexion with which the offence was committed, shall be deemed to be the property of the Surveyor General.

Authority to remove survey marks

53.—(1) Any person who, for the purpose of carrying out any work which he may lawfully perform, intends to remove or disturb any survey mark, shall apply to the Surveyor General for authority to effect the removal or disturbance.

(2) The Surveyor General may authorize the removal or disturbance of the survey mark and may, at the expense of the applicant, employ a surveyor or an authorized officer to personally effect or supervise the removal or disturbance and subsequent replacement of the survey mark or the erection or placing of another survey mark to indicate the position of the removed or disturbed survey mark, in such manner as the Surveyor General may direct.

PART VI

Malaŵi Geographic Information Council

Establishment of the Malaŵi Geographic Information Council

54. There is hereby established the Malaŵi Geographic Information Council (hereinafter referred to as the "Council") which shall—

(*a*) be a body corporate with perpetual succession and common seal;

(*b*) capable of suing and being sued in its corporate name; and

(*c*) have power to do and perform such things and acts which a body corporate may by law do or perform.

Functions and powers of the Council

55. The Council shall be the sole authority for licensing and registering spatial data in Malaŵi and shall have functions and powers to—

(*a*) establish and enforce national spatial data standards;

(*b*) establish and maintain centralized and decentralized spatial data access points and nodes;

(*c*) enter into, agreements, memoranda of understanding and grant data user licences for spatial data transfer;

(*d*) act as an advisory body on policies and technical issues relating to spatial data development and management;

(*e*) advise the Minister on fees payable for data development, update, management and transfer;

(*f*) assist in the development and maintenance of a national spatial data infrastructure;

(*g*) audit the quality of metadata provided to major access points;

(*h*) audit availability and quality of framework data; and

(*i*) perform any other function for implementation of this Act.

Composition of the Council

56. The Council shall comprise the following seven members—

(*a*) the Surveyor General, *ex officio* who shall be the Chairperson of the Council; and

(*b*) the following members appointed by the Minister on recommendation from bodies comprising users and producers of geographic information—

(i) two members representing the user and producer community from the public sector;

(ii) two members representing the user and producer community from the private sector;

(iii) one member from a public university; and

(iv) one member nominated by the Surveyors Institute of Malaŵi;

(*c*) the composition of the Council shall have not less than forty per cent and not more than sixty per cent of either sex.

Secretary to the Council

57. The Surveyor General shall appoint a public officer from the Department of Surveys to serve as secretary to the Council.

Nature of service and tenure of a member of the Council

58.—(1) A member of the Council shall not, by virtue only of his appointment to the Council, be deemed to be an officer in the public service or hold a public office.

(2) A member of the Council or committee of the Council shall serve on part time basis.

(3) A member of the Council, other than the Surveyor General, or member of a committee of the Council shall hold office for a term of three years and shall be eligible for re-appointment for only one further term immediately following the expired term.

Disqualifications

59. A person shall not qualify to be appointed, or continue to hold office as a member of the Council, where that person—

(*a*) is an undischarged bankrupt; or

(*b*) has been convicted of an offence under this Act.

Vacancies and filling of vacancies

60.—(1) The office of a member of the Council, other than the Surveyor General, shall become vacant where—

(*a*) the member dies;

(*b*) the member resigns by notice in writing to the Minister; or

(*c*) if, in accordance with section 59, he becomes disqualified from continuing to hold office.

(2) A vacancy in the Council shall be filled by a person appointed in accordance with section 56.

Meetings of the Council

61.—(1) The Council shall meet at least once every year:

Provided that the Chairperson may, on his own motion, and shall, on application in writing by at least three members of the Council, convene a meeting of the Council at any time.

(2) The Chairperson shall preside at meetings of the Council, but in the absence of the Chairperson, the members of the Council present and forming *quorum* shall elect one of their number to preside over the meeting.

(3) Minutes of proceedings of every meeting of the Council or any committee of the Council shall be taken and kept by the secretary of the Council and shall be subject to confirmation by the Council or committee, as the case may be, at a subsequent meeting.

(4) Five members of the Council shall constitute a *quorum* at any meeting of the Council.

(5) Decisions of the Council on any matter shall be made by the vote of a simple majority of members of the Council present and voting thereon.

(6) In the event of an equality of votes, the member presiding at the meeting shall have a casting vote in addition to his deliberative vote.

(7) Subject to this Act, the Council shall have power to regulate its own procedure at meetings.

Committees of the Council

62.—(1) The Council may establish such committees as it considers necessary for the performance of its functions and exercise of its powers, and may assign to those committees, any of its functions without prejudice to the power of the Council to perform the functions itself.

(2) Every committee of the Council shall be chaired by a member of the Council and may include persons who are not members of the Council.

(3) The Council may, at any time, direct the chairperson of any committee to convene a meeting of such committee and the chairperson shall, as soon as is practicable, comply, with such direction.

(4) Every committee shall keep minutes of its meetings and inform the Council of its activities and conduct its proceedings in a manner directed by the Council.

(5) Subject to this Act and any general or special directions of the Council, every committee of the Council shall have power to determine its own procedure.

Allowances of members of the Council and its committees

63. A member of the Council shall be paid such allowances to cover expenses reasonably incurred by him in respect of attendance of meetings of the Council, as may be prescribed by the Minister.

Invited persons

64.—(1) The Council or any committee of the Council, may invite any person to attend any meeting of the Council or of the committee of the Council, as the case may be, for the purpose of assisting or advising the Council or the committee of the Council in respect of any matter under consideration by the Council or the committee of the Council.

(2) A person invited pursuant to subsection (1), may take part in the deliberations of the Council or committee of the Council at any meeting but shall not be entitled to vote on any matter at that meeting.

Funds of the Council

65. The funds and property of the Council shall consist of—

(*a*) such sums as may, from time to time, be payable to the Council from moneys appropriated by Parliament for that purpose;

(*b*) sums of money or other property, real or personal, as may be payable to or vest in the Council pursuant to this Act or any other written law; and

(*c*) such sums of money or other property, real or personal as may be payable to or vest in the Council by way of a donation or accrue to the Council from any trust.

Investment of surplus funds Cap. 37: 02

66. Subject to the Public Finance Management Act, the Council may invest any sums which are not immediately required for its use in such manner as the Minister may approve.

Borrowing powers of the Council Cap. 37: 01 Cap. 37: 02

67. Subject to the provisions of the Public Finance Management Act, and the Public Audit Act, the Council may borrow, such sums as it may require to fulfil its obligations or discharge its functions under this Act.

Financial year of the Council

68. The financial year of the Council shall be the financial year of the Government.

Accounts and reports

69.—(1) The Council shall cause to be kept proper books of accounts and other records in relation to all moneys and other property vested, received or otherwise obtained and of all moneys expended or other property sold or otherwise disposed of by the Council.

(2) The accounts of the Council shall be audited annually by professional auditors appointed by the Council.

(3) The expenses of any audit shall be paid out of funds of the Council.

Annual report

70.—(1) The Council shall, as soon as it is practicable but not later than six months after the end of each financial year, submit to the Minister, an annual report of its work and operations.

(2) The annual report shall include a balance sheet on income and expenditure account and annual report of auditors, shall be laid before Parliament by the Minister.

PART VII

Miscellaneous Provisions

Government not liable for incorrect survey

71. The Surveyor General or any officer employed by the Government shall not be liable for any incorrect survey or work appertaining thereto, done in good faith by a Government surveyor, notwithstanding that the survey, work, any plans, survey data or other record appertaining thereto, has been approved by the Surveyor General.

Board or Council not liable for acts done in good faith

72.—(1) The Board or a member of the Board shall not be liable for any act done in good faith in the exercise of functions and duties of the Board under this Act.

(2) The Council or a member of the Council shall not be liable for any act done in good faith in exercise of the function and duties of the Council under this Act.

Plans and records, etc., *prima facie* evidence of contents therein

73. A survey plan, survey data or other record relating to the survey of any land, signed by a surveyor and approved by the Surveyor General, shall be admissible as *prima facie* evidence of the contents thereof in all courts and judicial proceedings.

Power of Surveyor General to enter land and to use material thereon

74.—(1) The Surveyor General, a Government surveyor and any person generally or specially authorized by the Surveyor General in writing may, for the purpose of performing any duties under this Act or any other written law, may—

(*a*) enter any land with assistants or servants, animals, vehicles, appliances and instruments as are necessary for, or incidental to, the performance of such duties;

(*b*) fix, place, or set up a survey mark, whether permanent or temporary, upon the land entered;

(*c*) make use of any brushwood, stone, sand, gravel, clay or other materials of a like nature on which no work has been expended by the owner of the land without tender or payment by way of compensation to any person, and, except within a municipality or township, of any water, whether conserved or not, found upon or in such land;

(*d*) cut and remove trees, branches, underwood, growth or vegetation of any kind whatsoever, in the vicinity of a survey mark that may interfere with the functions of the survey mark; and

(*e*) enter, at all reasonable hours, any building or enclosed place:

Provided that—

(i) reasonable notice of the intention to exercise any of the powers conferred by this section shall be given to the owner or occupier of the land or in the case of land under Traditional Land Management Area, to the appropriate traditional authority; and

(ii) as little damage and inconvenience as possible shall be caused by the exercise of any of the powers conferred by this section.

(3) The owner or occupant of the land which is entered shall be entitled to compensation for any avoidable damage caused to the building or to any other property belonging to the owner or occupier of the land which is entered.

(4) Any person who—

(*a*) in any manner whatsoever prevents, obstructs or impedes the exercise of any powers conferred by subsection (1); or

(*b*) moves, obscures, damages or destroys any flag, peg, signal or other mark of a temporary nature lawfully placed on any land in connexion with any surveying operations before the completion of such operations,

commits an offence and shall, upon conviction, be liable to a fine of K500,000 and to imprisonment for twelve months.

Regulations

75.—(1) The Minister may make regulations for the purpose of implementing this Act generally, and, in particular on the following matters—

(*a*) the method of executing surveys and the information to be recorded in plans, survey data and other records of surveys and the manner and form in which such information is to be recorded;

(*b*) the persons who, and the times at which, such persons may have access to any plans, survey data or other records in the office of the Surveyor General and the fees which may be charged in connexion therewith;

(*c*) the degree of accuracy to be attained and the limit of error allowable in the execution of surveys and the preparation of plans, survey data and other records;

(*d*) the method in which surveys shall be based on existing, primary, secondary and tertiary triangulations;

(*e*) methods of surveying land, including general boundaries;

(*f*) plans, survey data and other records which are required to be deposited with the Surveyor General;

(*g*) plans, survey data and other records which are required to be examined and approved by the Surveyor General and the method of such examination and approval;

(*h*) methods to be employed by the Surveyor General to test the accuracy of surveys the results of which are recorded on plans, survey data and records deposited with the Surveyor General at the date of the commencement of this Act;

(*i*) methods of correcting any inaccuracy or error in any plan, survey data or any record of any survey;

(*j*) forms and dimensions of survey marks, the manner of marking survey marks for identification and the manner of their construction, erection, protection, inspection, maintenance and repair;

(*k*) material from which survey marks are to be constructed and the method of fixing, placing and setting up of the survey marks;

(*l*) units of measure to be used on any specified plans;

(*m*) fees, charges or expenses to be paid for any survey or class of survey or for the demarcating and measuring the boundaries of any land, and the person or authority responsible for the payment of, and the method of recovering, such fees, charges or expenses;

(*n*) fees, charges and expenses to be paid for the examination and approval by the Surveyor General of plans, survey data and other records required to be examined and approved under this Act and for any other work undertaken by the Surveyor General in connexion therewith;

(*o*) fees, charges and expenses to be paid in respect of any plan, survey data, record or other document issued under this Act or in respect of any act done under this Act;

(*p*) fees, charges and expenses to be paid in respect of any act or matter performed or dealt with by any officer in the office of Surveyor General;

(*q*) control and conduct of trigonometrical, topographical and level surveys, and geodetic and geophysical operations that are required in Malaŵi;

(*r*) recording and preserving all information relating to surveys and operations executed under paragraph (*q*);

(*s*) preparation of maps from the data derived from surveys, and the compilation and revision of such maps from time to time as may be required;

(*t*) the construction, erection and maintenance of such control points as are necessary for trigonometrical, topographical and level surveys; and

(*u*) any other matter as considered necessary for implementation of this Act.

(2) Notwithstanding section 21 (*e*) of the General Interpretation Act, the regulations made under this Act may provide for offences whose penalties do not exceed a fine of K250,000 and a term of imprisonment of not more than six months. Cap. 1:01

76.—(1) The Land Survey Act is hereby repealed. Repeal and savings Cap. 59:03

(2) Any subsidiary legislation made under the repealed Act and in force immediately before the commencement of this Act—

(*a*) shall remain in force unless in conflict with this Act and be deemed to be subsidiary legislation made under this Act; and

(*b*) may be replaced, amended, or repealed by subsidiary legislation made under this Act.

(3) Any survey approvals, survey licences and survey marks and boundaries made, granted and lawfully established under the repealed Act, shall be valid and have effect as if they were made, granted and lawfully established under this Act.

TEMPORARY CONTROL OF PREMISES

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CHAPTER 60:01

TEMPORARY CONTROL OF PREMISES

ARRANGEMENT OF SECTIONS

SECTION

1. Short title
2. Application
3. Interpretation
4. Establishment, membership and protection of tribunals
5. Proceedings of tribunal
6. General powers of tribunal
7. Orders of tribunal
8. Appeals
9. Statutory tenancies
10. Implied covenants in statutory tenancies
11. Powers of tribunal to vary terms of statutory tenancies
12. Order for possession of premises
13. Determination of statutory tenancy by tenant
14. Jurisdiction of courts
15. General law of landlord and tenant applicable
16. Penalties
17. Power of High Court to make Rules
18. Duration of Act

Schedule

An Act to Make Provision for the Temporary Control of Certain Premises and for Purposes connected therewith

43 of 1955
G.N. 22/1963
1/1965

[1st January, 1956]

1. This Act may be cited as the Temporary Control of Premises Act. Short title

2. This Act shall apply to all premises to which the Rent and Mortgage Interest (Restriction) Ordinance, 1944 (now repealed) applied on the 31st December, 1955, and which were subject to a tenancy at such date: Application 13 of 1944

Provided that this Act shall not apply to any such premises which are, on the 1st January, 1956, let under a tenancy agreement which—

(*a*) has been drawn by a legal practitioner; and

(*b*) has been duly stamped and registered before such date; and

(*c*) has, at such date, at least one year to run.

Interpretation

3. In this Act, unless the context otherwise requires—

"landlord" means any person other than a tenant who is, or would be but for this Act, entitled to possession of the premises and any other person from time to time deriving title under the original landlord, and includes a sublessor;

"let" includes sublet;

"order" includes any decision, determination, judgment or finding;

"premises" means any premises to which this Act applies;

"prescribed date" means the date prescribed by the Minister in accordance with section 11;

"statutory tenancy" means a tenancy created by operation of section 9;

"tenancy agreement" means any agreement between a landlord and a tenant whereby premises are let or agreed to be let;

"tenant" includes a subtenant and any person from time to time deriving title under the original tenant;

"tribunal" means a rent tribunal established under section 4.

Establishment, membership and protection of tribunals

4.—(1) The Minister may, by notice published in the *Gazette*, establish a rent tribunal for any area of Malaŵi.

(2) A tribunal shall consist of a chairman and such other members as the Minister may, by notice published in the *Gazette*, from time to time appoint.

(3) The Minister may appoint, either generally or for any period, a deputy chairman of a tribunal to act as chairman of such tribunal in the absence of the chairman.

(4) A tribunal may appoint and employ officers, valuers, inspectors, clerks and other staff for the better carrying out of this Act.

(5) No matter or thing done by any chairman, member, officer, or agent of a tribunal, if done *bona fide* in the execution or purported execution of this Act, shall subject any such person to any action, claim, liability or demand whatsoever.

Proceedings of tribunal

5.—(1) The chairman, or in his absence the deputy chairman, shall preside at all meetings of a tribunal.

(2) Three members shall constitute a quorum at any meeting of a tribunal.

(3) All matters considered by a tribunal shall be decided by the votes of a majority of the members present. In the event of an equality of votes, the chairman shall have a casting vote in addition to his deliberative vote.

(4) A tribunal may take into consideration any evidence which it considers relevant, notwithstanding that such evidence would not be admissible in a court of law.

(5) All notices or other documents issued under the hand of the chairman of a tribunal shall be deemed to have been issued by such tribunal.

(6) The proceedings of a tribunal shall ordinarily be open to the public, but a tribunal may, in its discretion, direct that the public be excluded from any proceedings or part thereof.

(7) A record shall be kept of all proceedings of a tribunal, including a summary of any evidence given before it.

(8) A tribunal shall give at least seven days' notice of the date appointed for the hearing of any matter to all parties concerned.

(9) Before any decision of a tribunal is made, any person having an interest therein, or his representative, shall be given an opportunity to be heard.

(10) Any interested party may be represented before a tribunal by a legal practitioner or by any person whom the tribunal may, in its discretion, admit to be heard on his behalf.

(11) The proceedings of a tribunal shall be deemed to be judicial proceedings.

(12) In so far as no sufficient provision is made by Rules made in accordance with section 17 a tribunal may regulate its own procedure.

General powers of tribunal

6. A tribunal shall have power to do all things which it is required or empowered to do by or under this Act, and in particular shall have power—

(*a*) to enter and inspect, or to authorize any person in writing under the hand of the chairman to enter and inspect, any premises for the purpose of enabling it to determine any question being considered by it;

(*b*) to administer oaths and to order persons to attend and give evidence or to produce or give discovery and inspection of documents in like manner as in proceedings in the High Court;

(*c*) to award costs of any proceedings before it and to direct that such costs shall be taxed upon such scale and in such manner as may be prescribed or to award a specific sum as

costs, provided that each party to any such proceedings shall bear his own costs unless the tribunal shall for special reasons otherwise determine;

(*d*) to determine whether or not any premises are premises to which this Act applies;

(*e*) to determine the terms and conditions of a tenancy agreement or statutory tenancy;

(*f*) to make an order for the recovery of possession of premises, subject to section 12;

(*g*) upon such grounds as it may consider sufficient, to review once any order made by it within one month of the making of such order, except where an appeal or reference by way of case stated has been entered in the High Court, and on such review the tribunal may reopen and rehear wholly or in part the proceedings in respect of which such order was made and take fresh evidence and may reverse, vary or confirm its previous order.

Orders of tribunal

7.—(1) A certified copy of any order of a tribunal shall be admissible in evidence in the proceedings of any tribunal or any court as *prima facie* proof of such order.

(2) Any person, upon application to a tribunal, shall be entitled to a certified copy of any order made by such tribunal, upon payment of such fee as may be prescribed.

Cap. 58:02

(3) Any order made by a tribunal under section 11 and 12 shall be registrable under the Deeds Registration Act as a document affecting land. The tribunal making such order shall cause the original order and a certified copy thereof to be transmitted to the Deeds Registrar for registration together with the appropriate fee. The original order shall, after registration, be returned to the Deeds Registrar to the tribunal. No stamp duty shall be chargeable upon such order.

Appeals

(4) A certified copy of an order made by a tribunal may be filed in the High Court by any party to the proceedings before the tribunal in respect of which the order was made or by the tribunal of its own motion. Any such order, when filed, may be enforced in the same manner as an order of the High Court.

Appeals

8.—(1) Except as otherwise provided by section 6 (*g*) and by this section any order made by a tribunal shall be final and conclusive.

(2) An appeal shall lie to the High Court from any order of a tribunal on any point of law. Upon such appeal the High Court may make such order as it thinks proper, including any direction as to costs.

(3) A tribunal may, of its own motion, and shall, if so requested by a party to proceedings before it, state a case for the opinion of the High Court on any point of law. The High Court, upon delivering its opinion, shall have power to make such order as it thinks fit, including any direction as to costs.

(4) The High Court may make Rules governing appeals or references by way of case stated to the High Court providing for fees to be paid, scales of costs and the practice and procedure to be followed.

(5) An appeal shall lie to the Supreme Court of Appeal from the High Court on any point of law.

(6) Any order made by the High Court or the Supreme Court of Appeal shall, for the purposes of this Act, have the same effect as if it were the order of a tribunal.

Statutory tenancies

9. Subject to this Act every tenancy of premises shall, on the 1st January, 1956, become a statutory tenancy for a term of four years certain from the said date upon the same terms and conditions as were subsisting on the 31st December, 1955.

Implied covenants in statutory tenancies

10. There shall be implied in every statutory tenancy the covenants set out in the Schedule:

Provided that where such covenants are inconsistent with the terms and conditions of a tenancy agreement, the tenancy agreement shall prevail.

Powers of tribunal to vary terms of statutory tenancies

11. Notwithstanding this Act a tribunal, upon the application, before such date as shall be prescribed by the Minister, of a landlord or tenant of any premises, or of its own motion shall have power—

(*a*) to alter the rent payable and fix such rent as it may consider reasonable;

(*b*) to alter the terms and conditions of a statutory tenancy in such manner as it may consider reasonable;

(*c*) to alter the term of a statutory tenancy to such period, not being less than two years not more than six years unless both landlord and tenant agree to the contrary, as it may consider reasonable:

Provided that where premises are, on the 1st January, 1956, let under a tenancy agreement for a term which would, but for this Act, have expired on or before the 31st December, 1957, a tribunal may order that the statutory tenancy of such premises shall determine upon the date upon which, but for this Act, the term granted under the tenancy agreement would have expired;

(*d*) where a landlord has failed to carry out any repairs for which he is liable—

(i) to have such repairs carried out at the cost of the landlord, and if the landlord fails to pay the cost of such repairs, to recover the cost thereof by requiring the tenant to pay rent to the tribunal or to the High Court for such period as is necessary to defray the cost of such repairs, and the receipt of the tribunal or the High Court shall be a good discharge for any rent so paid; or

(ii) to authorize the tenant to carry out such repairs and to deduct the cost thereof from the rent payable to the landlord.

Order for possession of premises

12.—(1) Notwithstanding section 9 an order for possession of premises may be made by a tribunal, upon application by a landlord before the prescribed date, upon any of the following grounds—

(*a*) that the rent lawfully due from the tenant has not been paid, or that any other covenant or obligation of the statutory tenancy has been broken or not performed;

(*b*) that the tenant or any licensee of or any person residing with the tenant has been guilty of conduct which is a nuisance or annoyance to adjoining occupiers or has been convicted of using the premises or allowing the premises to be used for an immoral or illegal purpose;

(*c*) that the condition of the premises has deteriorated owing to acts of waste by or the neglect or default of the tenant or any licensee of or any person residing with the tenant;

(*d*) that the tenant has given notice to quit;

(*e*) that, in the case of a dwelling-house, it is reasonably required by the landlord for occupation as a residence for himself or for his wife or children and the tribunal is satisfied that suitable alternative accommodation, which is reasonable as regards rent, is available or will be available to the tenant at the time the order takes effect or that the tenant owns a dwelling-house suitable for his own accommodation which is available to him or will be available at the time the order takes effect, or would have been so available but for his own act;

(*f*) that the landlord owns premises which he has previously occupied as a residence and which he reasonably required for occupation as a residence for himself or his wife or his children and that he has complied with any term or condition of the tenancy agreement relating to notice or, if there is no such term or condition, has given the tenant one month's notice to quit in writing;

(*g*) that, in the case of a dwelling-house, it is reasonably required for occupation by some person in the whole time employment of the landlord;

(*h*) that, in the case of business premises, they are reasonably required by the landlord for his own occupation and the tribunal is satisfied that suitable alternative accommodation, which is reasonable as regards rent, is available or will be available to the tenant at the time the order takes effect or that the tenant owns business premises suitable for his own accommodation which are available to him or will be available to him at the time the order takes effect or would have been so available but for his own act;

(*i*) that, in the case of a dwelling-house, it was let by the landlord before the 1st January, 1956, during the temporary absence of the landlord from Malaŵi either for a definite term which has expired or upon the condition that it should be vacated by the tenant upon the return of the landlord to Malaŵi;

(*j*) that the landlord requires possession of the premises to enable the reconstruction or rebuilding thereof to be carried out, in which case a tribunal may include in any order for possession an order requiring the landlord to grant to the tenant a new lease of the reconstructed or rebuilt premises or part thereof on such terms and conditions and for such period not exceeding three years as the tribunal thinks fit;

(*k*) that the tenant, where the same is his liability, has failed to keep the premises in good and tenantable repair:

Provided that no order for possession of such premises shall be made unless the tenant has failed to effect such repairs within one month of being requested in writing by the landlord to do so;

(*l*) that the tenant has, since the 1st January. 1954, assigned, sublet or transferred possession of the premises or any part thereof without the consent of the landlord;

(*m*) that the premises are reasonably required for the purpose of the execution of the statutory duties or powers of a local authority, planning committee or other statutory body or for any purpose which, in the opinion of the tribunal, is in the public interest.

(2) No order for possession of premises shall be made in the exercise of the powers conferred by subsection (1) unless the tribunal considers it reasonable to make such an order.

(3) An order made against a tenant for possession of premises under this section shall not affect the rights under this Act of any subtenant to whom the premises or any part thereof have been

lawfully sublet before proceedings for the recovery of possession were commenced nor be in any way operative against such subtenant who shall, subject to this Act, be deemed to become, from the date of such order, the tenant of the landlord upon the terms and conditions of his previous subtenancy.

(4) Upon the making of an order for the recovery of possession of premises, a tribunal may stay or suspend the execution of such order or postpone the date of possession for such period, not exceeding six months, as it thinks fit, and subject to such conditions, if any, in regard to payment by the tenant of arrears of rent or otherwise, as the tribunal thinks fit.

Determination of statutory tenancy by tenant

13. The tenant of any premises may, at any time before the 1st April, 1956, or within three months of any order made in accordance with section 11, determine his statutory tenancy of such premises by giving one month's notice in writing to the landlord.

Jurisdiction of courts

14. No order for possession of premises, except on the ground that rent lawfully due from the tenant has not been paid, shall be made by any court until after the prescribed date or until after the determination of any application made to a tribunal in respect of such premises, whichever is the later.

General law of landlord and tenant applicable

15. Except as otherwise provided by this Act, the law relating to landlord and tenant for the time being in force in Malaŵi shall apply to all statutory tenancies.

Penalties

16.—(1) Any person who contravenes or fails to comply with any order made by a tribunal shall be liable to a fine of £100 and to imprisonment for six months.

(2) Any person convicted of an offence under subsection (1) may, in addition to or in lieu of any other punishment, be ordered to pay compensation to any person who has suffered loss or damage by reason of such offence.

Power of High Court to make Rules

17. The High Court may make Rules prescribing anything which, under this Act, may be or is to be prescribed and generally for the better carrying out of the purposes of this Act.

Duration of Act

18. This Act shall expire upon such date as the Minister may declare by order published in the *Gazette*.

SCHEDULE

s. 10

A. Covenants by the Tenant

1. To pay the rent on the first day of every calendar month in advance.

2. To bear, pay and discharge all existing and future rates, taxes, assessments, duties, impositions, outgoings and burdens whatsoever assessed, charged or imposed upon the premises or any part or parts thereof taken separately, or upon the owner or occupier in respect thereof.

3. To bear the cost of all electric light consumed upon the premises as and when supplied thereto.

4. To keep the interior of the premises and all additions thereto erections and structures, and the landlord's fixtures therein, in good and substantial repair and condition (fair wear and tear excepted).

5. Not to make or permit to be made any alteration in, or addition to, the premises without the previous written consent of the landlord, or to cut, maim or injure or suffer to be cut, maimed or injured any walls or timbers thereof.

6. To permit the landlord and his surveyor and agents at all reasonable times to enter upon the premises and to view the condition thereof, and upon notice being given by the landlord, to repair in accordance with the covenant hereinbefore contained.

7. To permit the landlord and his agents, together where necessary with workmen and appliances, at all reasonable times to enter upon the premises to take inventories of the fixtures thereof and to carry out repairs thereto or to adjoining premises.

8. Not to assign, underlet or part with the possession of the premises, or any part thereof, without the previous written consent of the landlord which consent shall not be unreasonably withheld in the case of a respectable and responsible person.

9. Not to permit or suffer any part of the premises to be used so as to cause a nuisance or annoyance to the occupier of adjoining premises or the neighbourhood.

10. To yield up the premises with all additions thereto being fixtures at the determination of the tenancy in good and substantial repair and condition in accordance with the covenants hereinbefore contained.

11. To pay all costs, charges and expenses (including legal practitioners' costs and surveyors' fees) incurred by the landlord for the purpose of or incidental to the preparation and service of a notice under section 14 of the Conveyancing and Law of Property Act, 1881, of the United Kingdom requiring the tenant to remedy a breach of any of the stipulations hereinbefore contained, notwithstanding that forfeiture for such breach shall be avoided otherwise than by relief granted by the Court. 44 & 45 Vict. c. 41

12. In the case of a dwelling-house, not to use the premises for business, trade or professional purposes without the consent of the landlord.

B. Covenants by the Landlord

1. That the tenant paying the rent and rates hereby reserved and observing and performing the several stipulations herein on his part contained shall peaceably hold and enjoy the premises during the term, without interruption by the landlord or any person rightfully claiming under and in trust for him.

2. To keep the walls, main timbers, roof and structures of the premises in good and substantial repair and condition.

C. General Covenants

1. If any part of the rent shall be unpaid for twenty-one days after becoming payable (whether formally demanded or not) or if the tenant shall become bankrupt or make any assignment for the benefit of, or enter into any arrangement for composition with, his creditors, or if any covenant on the tenant's part herein contained shall not be performed or observed then, and in any of the said cases, it shall be lawful for the landlord at any time thereafter to re-enter in and upon the premises or any part thereof in the name of the whole and thereupon the lease shall absolutely determine, but without prejudice to the right of the landlord in respect of any breach of the tenant's covenants herein contained.

2. In the event of the premises being destroyed or damaged by fire then if the same shall be absolutely destroyed or so damaged as to render them unfit for occupation for a period of more than fourteen days, the rent therefor shall be suspended until the premises shall have been so far repaired by the landlord as to enable the same to be re-occupied.

3. Any request, consent or notice required to be made, given or served in the terms of the lease shall be sufficiently made, given or served to or upon the tenant if left addressed to the tenant on the premises, or forwarded by post to the tenant to his last known address in Malaŵi, and shall be sufficiently made, given or served to or upon the landlord if delivered to him personally or forwarded by post to his last known address in Malaŵi, and a request, consent or notice sent by post shall be deemed to be made, given or served at the time when, in due course of post, it would be delivered at the address to which it is sent.

SUBSIDIARY LEGISLATION

ESTABLISHMENT OF RENT TRIBUNALS

G.N. 8/1956

under s. 4 (1)

Rent tribunals have been established for the following areas—

(1) The City of Blantyre.
(2) Dedza District.
(3) Mangochi District.
(4) Lilongwe District.
(5) Mulanje District.
(6) Ncheu District.
(7) Zomba District.

TEMPORARY CONTROL OF PREMISES (APPEALS) RULES

G.N. 138/1956 1/1965

under s. 8 (4)

Citation

1. These Rules may be cited as the Temporary Control of Premises (Appeals) Rules.

Time and fee for appeal

2.—(1) Any appeal under section 8 (2), or request to state a case for the opinion of the High Court under section 8 (3) of the Act, shall be in writing signed by the party to the proceedings or his agent and shall be lodged with the Chairman of the tribunal whose order or determination is questioned within thirty days of such order or determination:

Provided that no notice of appeal, nor request to state a case, shall be received out of time without the leave of the High Court.

(2) The fee for such appeal or request to state a case shall be one Kwacha, excluding any service fee which may be payable.

Transfer of case upon appeal

3. On receiving an appeal under section 8 (2) of the Act the Chairman of the tribunal in question shall enter the appeal together with the date thereof upon the record and shall forthwith transmit the record of the proceedings in the case to the Registrar of the High Court with a certificate under the hand of the Chairman of the tribunal subjoined to the record.

Action on receipt of request to state a case

4. On receipt of a request to state a case under section 8 (3) of the Act the Chairman of the tribunal shall state and sign a case setting forth the facts and the grounds of the order or determination in question and shall transmit the same to the Registrar of the High Court.

Service of appeal

5. On the receipt of an appeal under section 8 (2) or case stated under section 8 (3) of the Act the Registrar of the High Court shall serve a copy of the said appeal or case stated upon the respondent.

High Court fees

6. The practice and procedure, fees to be paid and scales of costs in such appeals or references by way of case stated shall in so far as they are not inconsistent with these Rules be the same as in civil appeals to the High Court.

Supreme Court of Appeal fees

7. The practice and procedure, fees to be paid and scales of costs governing appeals to the Supreme Court of Appeal from the High Court under section 8 (5) of the Act shall be the same as those governing civil appeals to the Supreme Court of Appeal from the High Court.

G.N. 9/1956

NOTICE

under s. 11

The 1st May, 1956, has been prescribed as the date before which applications shall be made to a tribunal established under the Temporary Control of Premises Act.

G.N. 10/1956

TEMPORARY CONTROL OF PREMISES (FORMS AND FEES) RULES

under s. 17

Citation

1. These Rules may be cited as the Temporary Control of Premises (Forms and Fees) Rules.

Forms

2. Except as hereinafter provided the forms to be used in proceedings before a tribunal shall be the forms in use in the High Court from time to time with such modification as may be necessary or proper to adapt the same to the matter concerned.

Applications

3.—(1) Every application for the determination of a matter under the Act shall be made to the chairman of the tribunal established in the area in which the premises to which the application relates are situated.

(2) Every application shall be substantially in the form set out in the First Schedule or in such other form as the tribunal may allow; it shall be in triplicate and shall be signed by the applicant or his legal practitioner.

(3) The chairman shall cause a copy of such application to be served on the opposite party (hereinafter called "the respondent").

Taxation of costs

4. Where a tribunal directs the costs of any proceedings before it to be taxed, the costs shall be taxed by the chairman on the scale applicable to civil proceedings in the High Court.

Fees

5. The fees specified in the Second Schedule shall be payable in proceedings before a tribunal in respect of the several matters to which they relate.

Remittance of fees

6. A tribunal may in its discretion for such reasons as it may think good and sufficient remit the whole or part of any fee.

FIRST SCHEDULE

r. 3 (2)

Temporary Control of Premises Act

To the Rent Tribunal of ..... at .....

Application No ..... of .....19.....

Application

Full name of applicant .....
Occupation .....
Place of residence .....
Address for service .....
State whether Tenant or Landlord or otherwise .....
Full name of respondent .....
Occupation .....
Place of residence .....
Postal address .....
State whether Tenant or Landlord or otherwise .....
Full description of Premises concerned .....
.....
.....
Where situate .....

Were premises subject to the Rent and Mortgage Interest (Restriction) Ordinance, 1944 (No. 13 of 1944) on 31st December, 1955?

.....

Order or Relief sought .....

.....

.....

Plain and concise statement of the facts on which application is based

.....

.....

.....

.....

Signature of Applicant .....

Signature of Legal Practitioner (if any) .....

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r. 5

SECOND SCHEDULE

Fees

	K	t
1. On application for the determination of any matter or matters under the Act (including service of application and registration fee required by section 7 (3) of the Act), a separate fee to be payable in respect of each tenancy	3	50
2. On the issuing of every witness summons or notice at the request of a party	0	50
3. For service of summons, notice or other document on a party or other person at the request of a party	0	50
4. On taxation of any bill of costs, for every ten folios ..	0	50
5. For a certified copy of any order of a tribunal	0	50
6. For a certified copy of any record of document—		
For the first folio of 100 words	0	50
For each subsequent folio	1	00
7. For an uncertified copy of any record of documents—		
Per folio	0	03
8 On filing any document for the filing whereof no other special fee is prescribed in this Schedule	0	50

ENVIRONMENT MANAGEMENT

CHAPTER 60:02

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CHAPTER 60:02

ENVIRONMENT MANAGEMENT

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An Act to make provision for the protection and management of the environment and the conservation and sustainable utilization of natural resources and for matters connected therewith and incidental thereto

23 of 1996
G.N. 14/1997
42/1998

[21ST OCTOBER, 1996]

PART I

PRELIMINARY

1. This Act may be cited as the Environment Management Act.

Short title

Interpretation

2. In this Act unless the context otherwise requires—

"ambient air" means the atmosphere surrounding the earth but does not include the atmosphere within a structure or within any underground space;

"analysis" means the examination of any matter, substance or process for the purpose of determining its composition or quality or its effect (whether physical, chemical or biological) on any segment of the environment;

"analyst" means an analyst appointed under section 49;

"biological diversity" means the variability among living organisms from all sources including, *inter alia*, terrestrial, marine and other aquatic ecological systems and the ecological complexes of which they are part, and includes diversity within or between species and of ecosystems;

"conservation" means the preservation of the natural resources and their protection from misuse, fire or waste;

"Council" means the National Council for the Environment established under section 10 (1);

"dangerous" means harmful or dangerous to public health, plant or animal life or to the environment and "danger" shall be construed accordingly;

"developer" means any person who has proposed or has undertaken to implement a project;

"Director" means the Director of Environmental Affairs appointed under section 9 (1);

"District Development Committee" means the District Development Committee established in every district to initiate, monitor and co-ordinate development policies and activities in that district;

"effluent" means waste water or other fluid originating from a domestic or an agricultural or industrial activity, whether treated or untreated and whether discharged directly or indirectly into the environment;

"environment" means the physical factors of the surroundings of the human being including land, water, atmosphere, climate, sound, odour, taste, and the biological factors of fauna and flora, and includes the cultural, social and economic aspects of human activity, the natural and the built environment;

"environmental audit" means the systematic documentation and periodic and objective evaluation of the protection and management of the environment and the conservation and sustainable utilization of natural resources;

"environmental impact assessment" means a systematic evaluation of a project to determine its impact on the environment and the conservation of natural resources;

"environmental impact assessment report" means the environmental impact assessment report required under section 25 (1);

"environmental monitoring" means the continuous or periodic assessment of the actual and potential impact of any activity on the environment;

"environmental planning" means planning that takes into account environmental issues;

"*ex-situ*" means conservation outside the natural habitat of a biological organism;

"genetic resource" means any genetic material of actual or potential value;

"hazardous substance" means any chemical, waste, gas or gaseous matter, medicines, drugs, plant, animal or microorganism which is injurious to human health or the environment;

"hazardous waste" means waste which is poisonous, corrosive, noxious, explosive, inflammable, radioactive, toxic or harmful to the environment;

"*in-situ*" means conservation within the natural ecological system and habitat of a biological organism;

"inspector" means an environmental inspector designated under section 45 (1);

"lead agency" means any public office or organization including every Ministry or Government department which is conferred by any written law with powers and functions for the protection and management of any segment of the environment and the conservation and sustainable utilization of natural resources of Malaŵi;

"licensing authority" means any person on whom is conferred power under any written law to issue licences in respect of any thing or activity required under that written law to be done or carried out otherwise than in accordance with a licence;

"National Environmental Action Plan" means the national environmental action plan launched by the Government in December 1994, outlining environmental strategies, measures and programmes necessary for promoting the protection and management of the environment and the conservation and sustainable utilization of natural resources;

"natural resources" means the natural resources of Malaŵi wherever located;

"occupier" means a person in occupation or control of any premises, and, in relation to premises different parts of which are occupied by different persons, means the person in occupation or control of each such different part;

"oil" includes—

(*a*) crude oil, diesel oil, fuel oil, lubricating oil, petrol and paraffin, and any other petroleum product capable of causing pollution whether in a solid or liquid form; and

(*b*) any other substance which may be prescribed by the Minister, by notice published in the *Gazette*, to be oil for the purposes of this Act;

"owner", in relation to any premises, means—

(*a*) the registered owner of the premises in question;

(*b*) the lessee or sublessee of the premises in question;

(*c*) the agent, attorney or the personal representative of the owner of the premises;

(*d*) the person in actual possession of the premises or entitled to receive the rent of the premises, whether on his own account or as agent or trustee of any other person or as receiver;

(*e*) in relation to any vessel, includes the charterer, pilot or other person in actual control of the vessel, whether or not the vessel is registered in or outside Malaŵi;

"ozone layer" means the ozone layer as defined in the *Vienna Convention for the Protection of the Ozone Layer, 1985*;

"pollutant" means any substance whether in a liquid, solid or gaseous form which directly or indirectly—

(*a*) adversely alters or destroys the quality of the environment; or

(*b*) is dangerous or potentially dangerous to public health, plant or animal life,

and includes objectionable odours, radioactive substances or particles, noise, vibration, or any substance or particle that causes temperature change or physical, chemical or biological change to the environment;

"pollution" means any direct or indirect alteration of the physical, thermal, chemical, biological, or radioactive properties of the environment caused by the discharge, emission or deposit of waste or a pollutant into the environment in such amounts and for such duration and under such conditions as to cause an actual or potential danger to the environment;

"premises" includes any land, whether covered by buildings or not, any place underground and any land covered by water and hereditament of any tenure and description;

"project" means a development activity or proposal which has or is likely to have an impact on the environment;

"project brief" means the project brief required under section 24(2);

"proprietary information" means any proprietary information protected by law or by any international treaty or convention to which Malaŵi is a party;

"Public Appointments Committee" means the Public Appointments Committee established under section 56 (7) of the Constitution;

"segment" in relation to the environment, means any portion or part of the environment expressed in terms of volume, space, area, quantity, quality or time or any combination thereof;

"sustainable utilization" means the use or exploitation of natural resources which guards against the extinction, depletion or degradation of any natural resource of Malaŵi and permits the replenishment of natural resources by natural means or otherwise;

"Technical Committee" means the Technical Committee on the Environment established under section 16;

"Tribunal" means the Environmental Appeals Tribunal established under section 69;

"vehicle" has the meaning ascribed to it in the Road Traffic Act; Cap. 69:01

"vessel" includes a ship, boat, floating structure or aircraft;

"waste" includes domestic, commercial or industrial waste whether in a liquid, solid, gaseous or radioactive form which is discharged, emitted or deposited into the environment in such volume, composition or manner as to cause pollution;

"water" includes surface and underground water, drinking water and water in a river, stream, watercourse, public reservoir, well, dam, canal, channel, lake, swamp or open drain and water in a gaseous or solid form.

PART II

General Principles

National environmental policy

3.—(1) It shall be the duty of every person to take all necessary and appropriate measures to protect and manage the

environment and to conserve natural resources and to promote sustainable utilization of natural resources in accordance with this Act and any other written law relating to the protection and management of the environment or the conservation and sustainable utilization of natural resources.

(2) Without prejudice to the generality of subsection (1), every person required under any written law to exercise power or perform functions relating to the protection and management of the environment or the conservation and the sustainable utilization of natural resources shall take such steps and measures as are necessary for—

(*a*) promoting a clean environment in Malaŵi;

(*b*) ensuring the sustainable utilization of the natural resources of Malaŵi;

(*c*) facilitating the restoration, maintenance and enhancement of the ecological systems and ecological processes essential for the functioning of the biosphere, and the preservation of biological diversity;

(*d*) promoting public awareness and participation in the formulation and implementation of environmental and conservation policies of the Government;

(*e*) promoting co-operation with foreign governments and international or regional organizations in the protection of the environment and the conservation and sustainable utilization of natural resources;

(*f*) promoting scientific research, technological development and training relating to the protection and management of the environment or the conservation and sustainable utilization of natural resources.

Natural and genetic resources

4. The natural and genetic resources of Malaŵi shall constitute an integral part of the natural wealth of the people of Malaŵi and—

(*a*) shall be protected, conserved and managed for the benefit of the people of Malaŵi; and

(*b*) save for domestic purposes, shall not be exploited or utilized without the prior written authority of the Government.

Right to a decent environment

5.—(1) Every person shall have a right to a clean and healthy environment.

(2) For purposes of enforcing the right referred to in subsection (1), any person may bring an action in the High Court—

(*a*) to prevent or stop any act or omission which is deleterious or injurious to any segment of the environment or likely to accelerate unsustainable depletion of natural resources;

(*b*) to procure any public officer to take measures to prevent or stop any act or omission which is deleterious or injurious to any segment of the environment for which the public officer is responsible under any written law;

(*c*) to require that any on-going project or other activity be subjected to an environmental audit in accordance with this Act.

(3) Any person who has reason to believe that his or her right to a clean or healthy environment has been violated by any person may, instead of proceeding under subsection (2), file a written complaint to the Minister outlining the nature of his or her complaint and particulars, and the Minister shall, within thirty days from the date of the complaint, institute an investigation into the activity or matter complained about and shall give a written response to the complainant indicating what action the Minister has taken or shall take to restore the claimant's right to a clean and healthy environment, including instructing the Attorney General to take such legal action on behalf of the Government as the Attorney General may deem appropriate.

(4) Subsection (3) shall not be construed as limiting the right of the complainant to commence an action under subsection (2):

Provided that an action shall not be commenced before the Minister has responded in writing to the complainant or where the Attorney General has commenced an action in court against any person on the basis of a complaint made to the Minister.

Role of lead agencies

6. Nothing in this Act shall be construed as divesting any lead agency of the powers, functions, duties or responsibilities conferred or imposed on it by any written law relating to the protection and management of the environment and the conservation and sustainable utilization of natural resources or limiting such powers, functions, duties or responsibilities.

Inconsistent provisions in other written laws

7. Where a written law on the protection and management of the environment or the conservation and sustainable utilization of natural resources is inconsistent with any provision of this Act, that written law shall be invalid to the extent of the inconsistency.

PART III
Administration

Duties and powers of the Minister

8.—(1) It shall be the duty of the Minister to promote the protection and management of the environment and the conservation and sustainable utilization of natural resources, and the Minister shall, in consultation with lead agencies, take such measures as are necessary for achieving the objects of this Act.

(2) Without prejudice to the generality of the foregoing, the Minister shall—

(*a*) formulate and implement policies for the protection and management of the environment and the conservation and sustainable utilization of natural resources;

(*b*) co-ordinate and monitor all activities concerning the protection and management of the environment and the conservation and sustainable utilization of natural resources;

(*c*) prepare plans and develop strategies for the protection and management of the environment and the conservation and sustainable utilization of natural resources, and facilitate co-operation between the Government, local authorities, private sector and the public in the protection and management of the environment and the conservation and sustainable utilization of natural resources;

(*d*) initiate, facilitate or commission research and studies on any aspect of the protection and management of the environment and the conservation and sustainable utilization of natural resources;

(*e*) prepare and lay before the National Assembly at least once in every year a report on the state of the environment;

(*f*) co-ordinate the promotion of public awareness on the protection and management of the environment and the conservation and sustainable utilization of natural resources;

(*g*) monitor trends in the utilization of natural resources and the impact of such utilization on any segment of the environment;

(*h*) receive and investigate any complaint by any person relating to the protection and management of the environment and the sustainable utilization of natural resources;

(*i*) recommend to the Government, on the advice of the Council, international or regional treaties, conventions or agreements relating to the protection and management of the environment and the conservation and sustainable utilization of natural resources to which Malaŵi should become party;

(*j*) promote international and regional co-operation in the protection and management of the environment and the conservation and sustainable utilization of natural resources shared between Malaŵi and other countries;

(*k*) on the recommendations of the Council, prescribe, by notice published in the *Gazette*, projects or classes or types of projects, for which environmental impact assessment is necessary under this Act;

(*l*) on the recommendations of the Council, prescribe, by notice published in the *Gazette*, environmental quality criteria and standards necessary for the maintenance of essential ecological processes and a healthy environment;

(*m*) carry out such other activities and take such other measures as may be necessary or expedient for the administration and achievement of the objects of this Act.

(3) In discharging his duties under this section, the Minister shall, where appropriate, consult the Minister responsible for any segment of the environment.

Appointment of Director of Environmental Affairs

9.—(1) There shall be appointed in the public service a Director of Environmental Affairs (in this Act otherwise referred to as the "Director") and such other suitably qualified public officers as may be required for the proper administration of this Act.

(2) The Director shall—

(*a*) carry out the duties and functions provided under this Act and such other duties as the Minister may, from time to time, assign to him;

(*b*) be responsible to the Minister for the proper discharge of his functions under this Act and for the implementation of such policies relating to the protection and management of the environment and the conservation and sustainable utilization of natural resources as the Minister may determine;

(*c*) furnish the Council with such information or documents as the Council may require and, from time to time, report to the Council the status of the environment and natural resources.

Establishment and composition of the National Council for the Environment

10.—(1) There is hereby established a council to be known as the National Council for the Environment (in this Act otherwise referred to as the "Council") which shall consist of—

(*a*) the Chairman of the Council who shall be appointed by the President on the recommendation of the Minister;

(*b*) the Secretary to the President and Cabinet, or his representative;

(*c*) all Principal Secretaries of Ministries, or their representatives;

(*d*) the General Manager of the Malaŵi Bureau of Standards, or his representative;

(*e*) the General Manager of the National Herbarium and Botanical Gardens of Malaŵi, or his representative;

(*f*) one member nominated by the Malaŵi Chamber of Commerce and Industry representing the industrial sector and appointed by the Minister;

(*g*) one member nominated by and representing nongovernmental organizations concerned with the protection and management of the environment and the conservation of natural resources and appointed by the Minister;

(*h*) one representative of the University of Malaŵi appointed by the Minister;

(*i*) one member nominated by and representing the National Commission for Women in Development and appointed by the Minister.

(2) The Vice-Chairman of the Council shall be appointed by the Minister from amongst the members of the Council who are not public officers.

(3) The Director shall be the Secretary to the Council.

Tenure of office and vacancies

11.—(1) The Chairman, Vice-Chairman and the members of the Council referred to in section 10 (2) (*f*) to (*i*) shall hold office for three years and shall be eligible for reappointment.

(2) The Chairman, Vice-Chairman and any member referred to in section 10 (2) (*f*) to (*i*) shall cease to be a member of the Council—

(*a*) if he or she resigns as a member of the Council;

(*b*) if he or she ceases to be a member or employee of the organization that nominated him or her for appointment as a member of the Council;

(*c*) if, upon conviction of any offence, he or she is sentenced to a term of imprisonment exceeding six months without the option of a fine;

(*d*) if he or she is of unsound mind; and

(*e*) in circumstances where the member is compromised to such an extent that his or her ability to impartially exercise the duties of his or her office is seriously in question.

Functions of the Council

12. The Council shall—

(*a*) advise the Minister on all matters and issues affecting the protection and management of the environment and the conservation and sustainable utilization of natural resources;

(*b*) recommend to the Minister measures necessary for the integration of environmental considerations in all aspects of economic planning and development;

(*c*) recommend to the Minister measures necessary for the harmonization of activities, plans and policies of lead agencies and non-governmental organizations concerned with the protection and management of the environment and the conservation and sustainable utilization of natural resources.

Proceedings of the Council

13.—(1) Save as is provided in this section, the Council shall regulate its own procedure.

(2) The Council shall hold at least four ordinary meetings in a year, and such number of extraordinary meetings as may be necessary, at such place or places and at such time or times, as the Chairman may determine.

(3) The Chairman shall convene an extraordinary meeting on his own motion or at the request of one-third of the members of

the Council within such reasonable period as the Chairman shall deem appropriate.

(4) Half of the members shall form a quorum at a meeting of the Council.

(5) The Chairman, or in his absence the Vice-Chairman, shall preside at any meeting of the Council and, in the absence of both the Chairman and the Vice-Chairman, the members present shall elect amongst their number a chairman to preside at the meeting of the Council.

(6) A decision of the Council on any question shall be by a majority of the members present and voting at the meeting and, in the event of an equality of votes, the person presiding at the meeting shall have a casting vote in addition to his or her deliberative vote.

(7) The Council may invite any person whose presence is in its opinion desirable to attend and participate in the deliberations of the Council but that person shall have no right to vote.

(8) The Council shall cause to be kept minutes of the proceedings of every meeting of the Council and of every meeting of any committee constituted by the Council.

Disclosure of interest

14.—(1) If any person is present at a meeting of the Council or a committee of the Council at which any matter in which that person or his spouse is directly or indirectly interested in a private capacity is the subject of consideration he shall, as soon as practicable after the commencement of the meeting, disclose that interest and shall not, unless the Council or committee otherwise directs, take part in any consideration or discussion of, or vote on, any question touching that matter.

(2) A disclosure of interest made under this section shall be recorded in the minutes of the meeting at which it is made.

Allowances of members of the Council

15. A member of the Council or committee shall be paid such allowance as the Minister may determine.

Technical Committee on the Environment

16.—(1) There is hereby established a committee to be known as the Technical Committee on the Environment (in this Act otherwise referred to as the "Technical Committee") which shall consist of not less than ten members and not more than twenty members each of whom shall have sufficient knowledge and training in the protection and management of the environment and the conservation and sustainable utilization of natural resources.

(2) The members of the Technical Committee shall be appointed by the Minister on the recommendation of the Council and shall serve in a personal capacity for such period, and shall be paid such allowances and remuneration, as the Minister may determine.

(3) A member of the Technical Committee may, by written notice to the Minister, at any time resign his position.

Functions of the Technical Committee

17. The Technical Committee shall—

(*a*) examine any scientific issue which may be referred to it by the Minister, the Council, the Director or any lead agency relating to the protection and management of the environment and sustainable utilization of natural resources and shall recommend to the Minister, the Council or lead agency, as the case may be, such action as is necessary for achieving the purposes of this Act;

(*b*) carry out investigations and conduct studies into the scientific, social and economic aspects of any activity, occurrence, product or substance which may be referred to the Minister, the Council, the Director or any lead agency and shall, at the completion of the investigation or study, recommend to the Minister, the Council or lead agency, as the case may be, such action as is necessary for achieving the objectives of this Act;

(*c*) recommend to the Council the criteria, standards and guidelines for environmental control and regulation, including the form and content of environmental impact assessments.

Proceedings of the Technical Committee

18.—(1) The Technical Committee shall adopt its own rules of procedure and every meeting of the Committee shall be presided over by a Chairman elected by the members from amongst their number, and the Director shall be the Secretary to the Committee.

(2) The Technical Committee may, where it deems it necessary, invite any person to attend and participate in the meetings of the Committee provided that such a person shall not have a right to vote at such a meeting.

Functions of District Development Committees

19. A District Development Committee shall, in addition to its existing role—

(*a*) under the supervision of the District Environmental Officer, prepare every five years, a district environmental action plan;

(*b*) co-ordinate the activities of lead agencies and nongovernmental organizations in the protection and management of the environment and conservation and sustainable utilization of natural resources in the district;

(*c*) promote and disseminate information relating to the environment through public awareness programmes and prepare reports on the state of the environment in the district every two years at least two months before the end of each second calendar year.

District Environmental Officer

20.—(1) There shall be appointed for each district a District Environmental Officer who shall be a public officer.

(2) The District Environmental Officer shall be a member of the District Development Committee and shall—

(*a*) advise the District Development Committee on all matters relating to the environment and in the performance of its functions under section 19;

(*b*) report to the Director on all matters relating to the protection and management of the environment and conservation and sustainable utilization of natural resources;

(*c*) submit such reports to the Director as the Director may require;

(*d*) promote environmental awareness in the district on the protection and management of the environment and the conservation of natural resources;

(*e*) gather and manage information on the environment and the utilization of natural resources in the district; and

(*f*) perform such other functions as the Director may, from time to time, assign to him.

PART IV

Environmental Planning

Environmental planning at national level

21. The Minister shall lay before the National Assembly a copy of the National Environmental Action Plan for approval at its next meeting after the commencement of this Act and the Minister shall thereafter review it every five years subject to approval by the National Assembly.

Purposes and contents of action plan

22. The purpose of the National Environmental Action Plan shall be to promote and facilitate the integration of strategies and measures for the protection and management of the environment into plans and programmes for the social and economic development of Malaŵi.

Planning at district level

23.—(1) The district environmental action plan prepared under section 19 (a) shall—

(*a*) be in conformity with the National Environmental Action Plan;

(*b*) identify environmental problems in the district in question;

(*c*) be approved by the Minister on the recommendation of the Council; and

(*d*) be disseminated to the public by the District Development Committee.

(2) No person shall implement a development activity or project in any district otherwise than in accordance with the district environment action plan for the district in question.

PART V

Environmental Impact Assessment, Audits and Monitoring

Projects for which an environmental impact assessment is required

24.—(1) The Minister may, on the recommendation of the Council specify, by notice published in the *Gazette*, the types and sizes of projects which shall not be implemented unless an environmental impact assessment is carried out.

(2) A developer shall, before implementing any project for which an environmental impact assessment is required under subsection (1), submit to the Director, a project brief stating in a concise manner—

(*a*) the description of the project;

(*b*) the activities that shall be undertaken in the implementation of the project;

(*c*) the likely impact of those activities on the environment;

(*d*) the number of people to be employed for purposes of implementing the project;

(*e*) the segment or segments of the environment likely to be affected in the implementation of the project;

(*f*) such other matters as the Director may in writing require from the developer or any other person who the Director reasonably believes has information relating to the project.

(3) Where, upon examining the project brief, the Director considers that further information is required to be stated in the project brief before an environmental impact assessment is conducted, the Director shall require the developer, in writing, to provide such further information as the Director shall deem necessary.

Environmental impact assessment reports

25.—(1) Where the Director considers that sufficient information has been stated in the project brief under section 24, the Director shall require the developer, in writing, to conduct, in accordance with such guidelines as the Minister may, by notice published in the *Gazette* prescribe, an environmental impact assessment and to submit to the Director, in respect of such assessment, an environmental impact assessment report giving—

(*a*) a detailed description of the project and the activities to be undertaken to implement the project;

(*b*) the description of the segment or segments of the environment likely to be affected by the project and the means for identifying, monitoring and assessing the environmental effects of the project;

(*c*) the description of the technology, method or process to be used in the implementation of the project and of any available alternative technology, method or process, and the

reasons for not employing the alternative technology, method or process;

(*d*) the reasons for selecting the proposed site of the project as opposed to any other available alternative site;

(*e*) a detailed description of the likely impact the project may have on the environment and the direct, indirect, cumulative, short-term and long-term effects on the environment of the project;

(*f*) an identification and description of measures proposed for eliminating, reducing or mitigating any anticipated adverse effects of the project on the environment;

(*g*) an indication of whether the environment of any other country or of areas beyond the limits of national jurisdiction is or are likely to be affected by the project and the measures to be taken to minimize any damage to the environment;

(*h*) an outline of any gaps, deficiencies and the adverse environmental concerns arising from the environmental impact assessment and from the compilation of the environmental impact assessment report;

(*i*) a concise description of the method used by the developer to compile the information required under this section.

(3) The environmental impact assessment report shall be open for public inspection provided that no person shall be entitled to use any information contained therein for personal benefit except for purposes of civil proceedings brought under this Act or under any written law relating to the protection and management of the environment or the conservation or sustainable utilization of natural resources.

Review of environmental impact assessment reports

26.—(1) Upon receiving the environmental impact assessment report, the Director shall invite written or oral comments from the public thereon, and where necessary may—

(*a*) conduct public hearings at such place or places as the Director deems necessary for purposes of assessing public opinion thereon;

(*b*) require the developer to redesign the project or to do such other thing as the Director considers desirable taking into account all the relevant environmental concerns highlighted in the environmental impact assessment report, any comments made by the public and the need to achieve the objectives of this Act;

(*c*) require the developer to conduct a further environmental impact assessment of the whole project or such part or parts of the project as the Director may deem necessary, or to revise the information compiled in the environmental impact assessment report;

(*d*) recommend to the Minister to approve the project subject to such conditions as the Director may recommend to the Minister.

(2) In considering whether or not to recommend to the Minister the approval of any project or of any condition, the Director shall take into account any likely impact of the project on the environment and the actual impact of any existing similar project on the environment.

(3) A licensing authority shall not issue any licence under any written law with respect to a project for which an environmental impact assessment is required under this Act unless the Director has certified in writing that the project has been approved by the Minister under this Act or that an environmental impact assessment is not required under this Act.

Environmental audits

27.—(1) The Director shall, in consultation with such lead agency as he may consider appropriate, carry out or cause to be carried out periodic environmental audits of any project for purposes of enforcing the provisions of this Act.

(2) For purposes of subsection (1), the Director may require a developer to keep such records and submit to the Director such reports as the Director may deem necessary.

(3) A developer shall take all reasonable measures for mitigating any undesirable effects on the environment arising from the implementation of a project which could not reasonably be foreseen in the process of conducting an environmental impact assessment and shall, within a reasonable time, report to the Director such effects and measures.

Monitoring existing projects

28. The Director shall take such measures as are necessary for ensuring that the implementation of any project commenced before the coming into force of this Act complies with the provisions of this Act.

Fees

29. The Minister may, by notice published in the *Gazette*, prescribe such fees as may be necessary for covering reasonable costs for scrutizing environmental impact assessment reports and for the subsequent monitoring of a project which has been approved for implementation under this Act.

PART VI

Environmental Quality Standards

Power to prescribe environmental quality standards

30.—(1) The Minister may, on the advice of the Council, prescribe environmental quality standards generally and, in particular, for air, water, soil, noise, vibrations, radiation, effluent and solid waste.

(2) The prescription of the environmental quality standards under subsection (1) shall be based on scientific and environ-

mental principles and shall take into account the practicability and availability of appropriate technology for ensuring compliance with such standards.

(3) The Minister may prescribe different environmental quality standards to apply in different areas of Malaŵi with respect to different segments of the environment and the Minister may, from time to time, vary such standards.

PART VII

Environmental Management

Environmental incentives

31. The Minister, on the recommendation of the Council and in consultation with the Minister of Finance, shall determine—

(*a*) such fiscal incentives as are necessary for promoting the protection and management of the environment and the conservation and sustainable utilization of natural resources; and

(*b*) such measures as are necessary for preventing the unsustainable use of natural resources and controlling the generation of pollutants.

Environmental protection areas

32.—(1) The Minister may, on the recommendation of the Council, declare any area of Malaŵi, other than an area declared to be a wild reserve, forest reserve, game reserve, national park or monument under any written law, to be an environmental protection area.

(2) In determining whether or not to declare any area an environmental protection area, the Minister shall have regard to—

(*a*) representations made by any person who has sufficient interest in the area;

(*b*) the natural features and beauty of the area;

(*c*) the flora and fauna of the area;

(*d*) the unique or special geological, physiographical, ecological or historical and cultural features of the area;

(*e*) any special scientific feature or biological diversity of or existing in the area;

(*f*) the proneness of the area to any hazards against which the area requires protection;

(*g*) the interests of the local communities in or around the area;

(*h*) the need for the Government to comply with any international obligation under any treaty, convention or an agreement to which Malaŵi is party.

(3) The Director shall, in consultation with relevant lead agencies, prepare an environmental protection plan for the

protection and management of every environmental protection area, and the environmental protection plan shall—

(*a*) set out policies for the protection and management of the environmental protection area; and

(*b*) provide for the development of social amenities and facilities necessary for carrying out scientific research in the environmental protection area.

Environmental protection orders

33.—(1) The Director shall have power to issue environmental protection orders against any person whose acts or omissions have or are likely to have adverse effects on the protection and management of the environment and the conservation and sustainable utilization of natural resources, and the environmental protection orders shall be in the prescribed form and, if no such form is prescribed, in such form as the Director may determine.

(2) Notwithstanding the provisions of any other law to the contrary, the environmental protection order may require the person against whom it is made to—

(*a*) take such measures as are necessary for the restoration of any land degraded by reason of the activities of the person against whom the environmental protection order is made including the replacement of soil, the replanting of trees and other flora, and the restoration, as far as may be possible, of unique geological, physiographical, ecological or historical features of the land and of waste disposal sites;

(*b*) stop, prevent or modify any action or conduct which causes or contributes or is likely to cause or contribute to pollution;

(*c*) remove, at the expense of the person against whom the environmental protection order is made, any waste or refuse deposited by that person, or with his or her knowledge or authority, in a place specified in the environmental protection order and to dispose of the waste or refuse in such manner and place and within such period as may be specified in the environmental protection order;

(*d*) pay such compensation as may be specified in the environmental protection order to any person whose land is degraded by the action or conduct of the person against whom the environmental protection order is made.

(3) An environmental protection order issued under subsection (1) shall, in addition to the matters referred to in that subsection, specify—

(*a*) the activity considered by the Director to be detrimental to the protection and management of the environment and the conservation and sustainable utilization of natural resources;

(*b*) the particulars of the person or persons against whom it is made;

(*c*) the period within which anything required to be done by the person against whom it is made shall be done;

(*d*) the penalties which may be imposed for non-compliance with the environmental protection order; and

(*e*) such other matters as the Director may consider necessary for the protection and management of the environment and the conservation and sustainable utilization of natural resources.

(4) The Director shall have power to inspect, at any reasonable time, any activity on any premises for purposes of determining whether the activity is harmful to the environment or the conservation of natural resources or whether to make an environmental protection order under subsection (1).

(5) For purposes of subsection (4) the Director may enter any premises at any reasonable time to enforce the environmental protection order and the Director shall not be responsible for the consequences of any action reasonably taken by him in good faith under this section.

(6) Subject to subsection (5), any person aggrieved with the environmental protection order may, within thirty days from the date on which it is made, appeal to the Tribunal, and the appellant shall indicate whether the appeal is against the whole environment protection order or against only a part or parts thereof and, if so, which part or parts.

(7) The Director may delegate the power referred to in subsections (4) and (5) to an inspector or any person duly authorized by him and anything done by that person shall be deemed to be done by the inspector or by the Director and shall be valid for all purposes.

(8) An environmental protection order shall be served on the person against whom it is made or his agent or legal practitioner.

Enforcement of environmental protection order

34.—(1) Where a person against whom an environmental protection order is served fails, neglects or refuses to take the action specified in the environmental protection order, the Director shall take such action as he deems appropriate for achieving the purposes for which the environmental protection order is made.

(2) Where the Director has taken action pursuant to subsection (1), the Director shall be entitled to recover in full from the person against whom the environmental protection order is made the expenses reasonably incurred by the Director for taking such action, and if the expenses remain unpaid for a period of more than thirty days from the date of first demand in writing by the Director, the amount in respect of the expenses shall be recoverable by the Government as a civil debt.

Conservation of biological diversity

35.—(1) The Minister may, on the advice of the Council—

(*a*) identify the components of the biological diversity of Malaŵi;

(*b*) determine the component or components of biological diversity which is or are threatened with extinction;

(*c*) prepare and maintain an inventory of the biological diversity of Malaŵi;

(*d*) determine actual and potential threats to the biological diversity of Malaŵi and devise such measures as are necessary for preventing, removing or mitigating the effect of those threats;

(*e*) devise measures for the better protection and conservation of rare and endemic species of wild fauna and flora;

(*f*) develop national strategies, plans and programmes for the conservation of the biological diversity of Malaŵi;

(*g*) require in writing any developer, including the Government, to integrate the conservation and sustainable utilization of the biological diversity of Malaŵi in any project the implementation of which has or is likely to have detrimental effects to the biological diversity of Malaŵi;

(*h*) on the recommendation of the Technical Committee, prohibit or restrict access by any person to or the exportation of any component of the biological diversity of Malaŵi.

(2) The Minister may, on the advice of the Council and in consultation with the Minister responsible for the matter in question, take such action or measure as is necessary for—

(*a*) promoting such land use methods as are compatible with the conservation of the biological diversity of Malaŵi;

(*b*) the selection and management of environmental protection areas for the conservation of the various terrestrial and aquatic ecological systems in Malaŵi;

(*c*) the establishment and management of buffer zones near environmental protection areas;

(*d*) the protection of threatened animal and plant species, habitats and ecological systems;

(*e*) controlling the importation of alien and plant species;

(*f*) identifying, promoting and integrating traditional knowledge into the conservation and sustainable utilization of the biological diversity of Malaŵi; and

(*g*) the establishment and management of germplasm banks, botanical gardens, zoos and animal orphanages and such other similar facilities.

(3) Where the Minister considers it desirable so to do, he may, on the advice of the Council, recommend to the Minister responsible for wildlife, the release of any animal or animal

species conserved *ex-situ* or *in-situ* into its natural habitat or ecological system.

Access to genetic resources

36.—(1) The Minister, on the recommendations of the Council, may, by regulations published in the *Gazette*, control or restrict access by any person to the genetic resources of Malaŵi.

(2) Without prejudice to the generality of subsection (1), the regulations may—

(*a*) prohibit the exportation of germplasm, except in accordance with a licence issued by the Minister and subject to such conditions as the Minister may impose;

(*b*) provide for the sharing of benefits arising from the technological exploitation of germplasm originating from Malaŵi between the owner of the technology and the Government;

(*c*) provide for fees payable in respect of an export licence issued under subsection (2) (*a*) and for a charge payable for accessing germplasm.

Waste management

37.—(1) The Minister, on the recommendations of the Council, may, by regulations published in the *Gazette*, control the management, transportation, treatment and recycling, and safe disposal of waste and for prohibiting littering of public places.

(2) The Minister may recommend to the Minister responsible for local government the promulgation of such rules or the formulation of such measures as are necessary to regulate the collection, transportation and safe disposal of waste by local authorities.

(3) The Minister may, on the recommendation of the Council—

(*a*) formulate criteria and standards for the classification and analysis of waste and shall, subject to the rules or measures referred to in subsection (2), determine the method or methods for safe disposal of waste;

(*b*) control the handling, storage, transportation, classification, importation, exportation and destruction of waste;

(*c*) monitor any waste disposal site and direct the control of any such site if its continued use as a waste disposal site constitutes or is likely to constitute a hazard to the health of the people living in the vicinity of, or to the environment adjacent to, the site.

Licences for waste

38.—(1) No person shall handle, store, transport, classify or destroy waste other than domestic waste, or operate a waste disposal site or plant, or generate waste except in accordance with a licence issued under this section.

(2) The Minister may, on the advice of the Council, grant to any person a licence to handle, store, transport, classify or destroy any waste, including hazardous waste, or to generate waste or to operate a waste disposal site or plant, subject to such conditions as the Minister may determine.

(3) An application for a licence under this section shall be in the prescribed form or, if no such form is prescribed, in such form as the Minister may determine, and the form shall contain the applicant's full names, postal and physical address and such other particulars as the Minister may require.

(4) Any person who, at the commencement of this Act, is carrying on the business of handling, storing, transporting, classifying, destroying or disposing of waste shall apply for a licence under this section within six months from the date of the commencement of this Act.

(5) The Minister may, at anytime, revoke any licence issued under this section or vary any condition attached to the licence if the activity in respect of which the licence is issued constitutes an imminent, actual or potential hazard to the environment or natural resources or if the licensee violates any condition endorsed on the licence.

(6) The Minister may delegate the power to issue a licence under this section to the Director and any thing done by the Director in the exercise of that power shall be valid for all purposes as if it had been done by the Minister.

Importation and exportation of hazardous waste Cap. 18:08

39.—(1) Notwithstanding the Control of Goods Act, no person shall import or export any hazardous waste or substance, except under a permit issued by the Minister subject to such conditions as the Minister may determine, and in the case of exportation, the exporter shall before a permit is issued produce to the Minister written confirmation from an appropriate authority of the receiving country that the hazardous waste or substance may be exported to that country.

(2) No person shall transport within Malaŵi hazardous waste or substances, except under a permit issued by the Minister subject to such conditions as the Minister may impose.

Classification of pesticides and hazardous substances

40.—(1) The Minister may, in consultation with the Minister responsible for agriculture, make rules for classifying pesticides and hazardous substances, and for determining their toxicity.

(2) Without prejudice to the generality of subsection (1), the rules may make provision—

(*a*) requiring the registration, labelling and packaging of pesticides and hazardous substances;

(*b*) for measures for controlling the manufacture, importation and exportation of pesticides and hazardous substances;

(*c*) for the distribution, storage, handling and transportation of pesticides and hazardous substances;

(*d*) for monitoring the impact of pesticides and hazardous substances and their residuary effect on public health, the environment and natural resources;

(*e*) for restricting or banning pesticides and hazardous substances.

Protection of the ozone layer

41.—(1) The Director shall carry out national studies on substances, activities and practices that deplete or are likely to deplete the stratospheric ozone layer and other components of the stratosphere, and on the completion of each study, the Director shall submit the report of the study to the Minister.

(2) The Minister may, on the recommendation of the Council, make regulations—

(*a*) restricting or prohibiting the use of any appliance, equipment or any other thing which uses ozone depleting substances;

(*b*) requiring any person to make, in such manner and in such form as the Minister may determine, regular reports to the Minister on the generation, consumption and importation of ozone depleting substances;

(*c*) providing for the progressive reduction and eventual elimination of substances that deplete the ozone layer;

(*d*) providing for the control of activities and practices likely to deplete the ozone layer; and

(*e*) providing for such as matters as are necessary for protecting the stratospheric ozone layer.

Cap. 18:08

(3) Notwithstanding the provisions of the Control of Goods Act, no person shall import or export any appliance, equipment or any other thing which uses substances that deplete the stratospheric ozone layer except under a licence issued by the Minister and subject to such conditions as the Minister may determine.

PART VIII

Pollution Control

Discharge of pollutants

42.—(1) No person shall discharge or emit any pollutant into the environment, except in accordance with this Act.

(2) It shall be the duty of any person to prevent the discharge or emission of any pollutant into the environment otherwise than in accordance with this Act and to comply with such general or specific directions of the Minister or Director for preventing, minimizing or cleaning up, removing or disposing of any pollutant discharged or emitted into the environment.

(3) Any person who discharges or emits any pollutant into the environment otherwise than in accordance with this Act may be required by the Minister to clean up, remove or dispose of the pollutant in such manner and within such period as the Minister shall direct.

Licence to discharge effluent, etc.

43.—(1) No person shall discharge effluent or emit any gas or other gaseous substances into the environment except under a licence issued by the Minister subject to such conditions as the Minister shall determine.

(2) The Minister may revoke any licence issued under this section if the licensee fails to comply with the conditions of the licence or any provision of this Part:

Provided that no licence shall be revoked without the licensee being given a reasonable opportunity to be heard.

(3) The Minister may, by notice published in the *Gazette*, prescribe such fees as he shall deem necessary for the monitoring, cleaning up, removing or disposing of pollutants discharged or emitted into the environment.

Prohibition of pollution

44. No person shall pollute or permit or cause any other person to pollute the environment.

PART IX

Inspection, Analysis and Records

Environmental inspectors

45.—(1) For purposes of ensuring compliance with the provisions of this Act, the Minister may, by notice published in the *Gazette*, designate such number of public officers as he may consider necessary to be environmental inspectors whose functions shall be to administer, monitor and enforce measures for the protection and management of, and for the prevention and abatement of pollution to, the environment.

(2) Every inspector shall be issued with an identity card, and the identity card shall constitute *prima facie* evidence that the holder thereof is an inspector duly designated by the Minister under subsection (1).

(3) An inspector shall, on demand by any person affected by the exercise of the powers of the inspectors under this Act, produce for inspection, the identity card referred to in subsection (2).

Powers of inspectors

46.—(1) An inspector may, for the purpose of performing the functions referred to in section 45 (1), enter, at any reasonable time, any premises to examine any activity which the inspector reasonably considers to be detrimental to the environment or natural resources and to collect therefrom samples of any pollutant or other substance for analysis at any laboratory designated by the Minister under section 48.

(2) Upon entering the premises, the inspector may require the owner or occupant or the agent of the owner or occupant of the premises to produce for inspection any book, document or record or copies thereof for retention by the inspector concerning any matter relevant to the administration of this Act.

(3) It shall be the duty of the owner or occupant or the agent of the owner or occupant of the premises to render an inspector reasonable assistance in the performance by the inspector of the functions referred to in section 45 (1).

(4) An inspector may—

(*a*) inspect and examine any vehicle, in or upon which he has reasonable cause to believe that a pollutant or other article or substance which he believes to be a pollutant is being or has been transported;

(*b*) order the production of any document pertaining to the transportation of the pollutant or such other article or substance;

(*c*) collect any sample of the pollutant of any such substance from the vehicle or place where it has been delivered for analysis at a laboratory designated by the Minister under section 48;

(*d*) request information from any person who has or appears to have custody or control of the pollutant or such other article or substance or the vehicle in which it is or has been transported.

Procedure for taking samples

47.—(1) An inspector shall, before collecting from the premises or vehicle a sample of any pollutant or other article or substance which the inspector believes to be a pollutant, inform the owner or occupier of the premises or vehicle or other person in control of the vehicle from which the sample is to be taken of his intention to do so.

(2) The inspector shall place the sample in three separately sealed packages and shall deliver one package each to the Director, to the laboratory at which the sample will be tested or analyzed and to the owner or occupier of the premises or vehicle or other person in control of the vehicle.

(3) Any dispute arising from the manner in which a sample is collected by an inspector or in connexion with the results of any laboratory test or analysis of the sample shall be referred by the aggrieved person or the Director, as the case may be, to the Tribunal.

Establishment or designation of analytical laboratories

48. The Minister may, by notice published in the *Gazette*, establish, or where he deems it necessary, designate such laboratories as he thinks fit to be analytical laboratories or reference laboratories at which samples taken under this Act may be tested or analyzed.

Appointment of analysts

49. There shall be appointed in the public service such number of analysts as may be required to carry out such functions and exercise such powers as are necessary for achieving the purposes of this Act.

Certificate of analysis, etc.

50.—(1) There shall be issued by every analyst in respect of any test or analysis, a certificate showing the results of the test or analysis.

(2) The certificate shall state the method or methods used in carrying out the test or analysis and shall be signed by the analyst who carried out the test or analysis.

(3) A certificate issued under this section shall be prima facie evidence of the results of any test or analysis carried out under this Act.

Keeping of records

51.—(1) The Director may, by notice published in the *Gazette*, prescribe the activities in respect of which records shall be kept for the purposes of this Act and may require any person in possession or control of such records to transmit the records to the Director at such intervals as the Director may determine.

(2) The records shall be used by the Director or an inspector for purposes of environmental auditing, monitoring, control and inspection and such other purposes related to the protection and management of the environment and the conservation and sustainable utilization of natural resources.

Public access to information and prohibition of disclosure

52.—(1) Subject to subsection (3), every person shall have access to any information submitted to the Director or any lead agency relating to the implementation of the provisions of this Act or any other law relating to the protection and management of the environment and to the conservation and sustainable utilization of natural resources.

Cap. 49:01
Cap. 49:02

(2) Notwithstanding subsection (1), no person shall be entitled to have access to proprietary information (to which the Trade Marks Act or the Patents Act applies) submitted to or received by the Director under this Act unless with the prior written consent of the owner of the proprietary information.

(3) No person shall, without the consent of the Director, publish or disclose to any person, otherwise than in accordance with the provisions of this Act, the contents of any document, communication or information which relates to and which has come to his knowledge in the course of his duties under this Act.

(4) Any person who contravenes subsection (3) shall be guilty of an offence and shall be liable, upon conviction, to a fine of not less than K2,000 and not more than K100,000, and to imprisonment for twelve months.

PART X

Environmental Fund

Establishment of Environmental Fund

53.—(1) There is hereby established a fund to be known as the Environmental Fund (in this Act otherwise referred to as the "Fund").

(2) The Fund shall consist of—

(*a*) such sums as shall be appropriated by Parliament for the purposes of the Fund;

(*b*) advances made to the Fund under section 55;

(*c*) such sums or other assets as may be received for the purposes of the Fund by way of voluntary contributions or donations;

(*d*) such sums as are paid by way of fees or other penalties in respect of licences issued under this Act.

Vesting of Fund in the Minister Cap. 37:01

54. The Fund shall be vested in the Minister and, subject to this Act and the Finance and Audit Act, shall be administered in accordance with his directions.

Advances to the Fund

55. If in any financial year the income of the Fund together with any surplus income brought forward from a previous year, is insufficient to meet the actual or estimated liabilities of the Fund, the Minister responsible for finance may make advances to the Fund in order to meet the deficiency or any part thereof and such advances shall be made on such terms and conditions, whether as to repayment or otherwise, as the Minister responsible for finance may determine.

Objects of the Fund

56. The objects for which the Fund is established shall be the protection and management of the environment and the conservation and sustainable utilization of natural resources.

Application of the Fund

57. Without derogation from the generality of section 56, the Fund, may be applied to—

(*a*) research and training which is calculated to promote the protection and management of the environment and the conservation and sustainable utilization of natural resources;

(*b*) the acquisition of land, equipment, materials and other assets and the construction of buildings in order to promote the objects of the Fund;

(*c*) the cost of any scheme which the Minister considers to be in the interest of the protection and management of the environment and the conservation and sustainable utilization of natural resources;

(*d*) meeting any expenses arising from the establishment and maintenance of the Fund; and

(*e*) any purpose which the Minister considers to be in the interest of the objects of the Fund.

Books and other records of account, audit and reports of the Fund
Cap. 37:01
Cap. 37:01

58.—(1) The Minister shall cause to be kept proper books and other records of account in respect of receipts and expenditures of the Fund in accordance with the Finance and Audit Act.

(2) The accounts of the Fund shall be audited by the Auditor General who shall have all the powers conferred upon him by the Finance and Audit Act.

(3) The Minister shall cause to be prepared, as soon as practicable, but not later than six months after the end of the financial year, an annual report on all the financial transactions of the Fund.

(4) The report referred to in subsection (3) shall include a balance sheet, an income and expenditure account and the annual report of the Auditor General and shall be laid by the Minister before the National Assembly.

Holdings of the Fund

59.—(1) All sums received for the purposes of the Fund shall be paid into a bank account and no amount shall be withdrawn therefrom except by means of cheques signed by such persons as are authorized in that behalf by the Minister.

(2) Any part of the Fund not immediately required for the purposes of the Fund may, on the recommendation of the Council, be invested in such manner as the Minister, after consulting with the Minister responsible for finance, may determine.

Financial year

60. The financial year of the Fund shall be the period of twelve months commencing on 1st April in one year and ending on the 31st March of the following year:

Provided that the first financial year of the Fund may be a period shorter or longer than twelve months as the Minister shall determine, but in any case not longer than eighteen months.

PART XI

Offences

General offences

61.—(1) Any person who contravenes any provision of this Act for which no other penalty is specifically provided shall be guilty of an offence and liable, upon conviction, to a fine of not less than K10,000 and not more than K500,000 and to imprisonment for five years.

(2) Any person who is convicted of an offence under subsection (1) shall, in addition to the fine provided for in that subsection, be liable to a fine of K5,000 for each day the offence continues to be committed.

Hindering, obstructing, etc., of inspectors

62. Any person who—

(*a*) hinders or obstructs an inspector in the execution of his or her duties under this Act;

(*b*) fails to comply with a lawful order or requirement made by an inspector in accordance with this Act;

(*c*) prevents the Director or an inspector or any person duly authorized by the Director or inspector from gaining entry upon or into any premises which he or she is empowered under this Act to enter;

(*d*) impersonates the Director or an inspector or any person duly authorized by the Director or inspector;

(*e*) prevents an inspector from having access to any record or document required by the inspector for purposes of this Act;

(*f*) misleads or gives false information to the Director or an inspector or any person duly authorized by the Director or inspector under this Act; or

(*g*) fails to comply with measures directed by the Minister, the Director or an inspector for the protection and management of the environment and the conservation and sustainable utilization of natural resources,

shall be guilty of an offence and shall be liable, upon conviction, to a fine of not less than K5,000 and not exceeding K200,000 and to imprisonment for two years.

Offences relating to environmental impact assessments

63. Any person who contravenes section 24 (3) or fails to prepare an environmental impact assessment report or knowingly gives false information in an environmental impact assessment report contrary to section 25 shall be guilty of an offence and shall be liable, upon conviction, to a fine of not less than K5,000 and not exceeding K200,000 and to imprisonment for two years.

Offences relating to records

64. Any person who—

(*a*) fails to keep records required under this Act or under any regulations made under this Act;

(*b*) fraudulently or knowingly alters any such records,

shall be guilty of an offence and be liable, upon conviction, to a fine of not less than K5,000 and not exceeding K200,000 and to imprisonment for two years.

Offences relating to environmental standards and guidelines

65. Any person who—

(*a*) violates any environmental standard established under this Act;

(*b*) violates any measure prescribed under this Act; or

(*c*) uses natural resources otherwise than in accordance with this Act,

shall be guilty of an offence and shall be liable upon conviction to a fine of not less than K5,000 and not more than K200,000 and to imprisonment for two years.

Offences relating to hazardous materials, processes, and wastes

66. Any person who—

(*a*) fails to manage hazardous materials, processes and wastes in accordance with this Act;

(*b*) knowingly or fraudulently mislables wastes, pesticides or chemicals;

(*c*) aids or abets the illegal trafficking in wastes, chemicals, pesticides or hazardous processes, wastes or substances,

shall be guilty of an offence and shall upon conviction be liable to a fine of not less than K20,000 and not more than K1,000,000 and to imprisonment for ten years.

Offences relating to pollution

67.—(1) Any person who discharges or emits any pollutant into the environment otherwise than in accordance with this Act shall be guilty of an offence and shall be liable, upon conviction, to a fine of not less than K20,000 and not more than K1,000,000 and to imprisonment for ten years.

PART XII
Legal Proceedings

Immunity of officials

68. No legal proceeding shall be brought against the Minister, Director, an inspector, an analyst or any other person duly authorized by the Minister, the Director, inspector or analyst to do anything authorized under this Act, in respect of anything done in good faith under the provisions of this Act.

Establishment of Environmental Appeals Tribunal

69. There is hereby established an Environmental Appeals Tribunal (in this Act otherwise referred to as the "Tribunal") which shall—

(*a*) consider appeals against any decision or action of the Minister, Director or inspector under this Act;

(*b*) consider appeals against the refusal by the Minister or Director to issue a licence under this Act;

(*c*) consider appeals against the revocation by the Minister or Director of a licence issued under this Act;

(*d*) consider appeals against the closure pursuant to this Act of any premises;

(*e*) consider such other issues relating to the protection and management of the environment and the conservation and sustainable utilization of natural resources as the Minister, the Director or any person may refer to it.

Composition of Tribunal

70.—(1) The Tribunal shall consist of—

(*a*) a suitably trained and qualified person appointed by the President, on the recommendation of the Minister, who shall be the Chairman; and

(*b*) two other members appointed by the President, on the recommendation of the Minister, both of whom shall be sufficiently qualified in the protection and management of the environment and the conservation and sustainable utilization of natural resources,

and the appointment of each member of the Tribunal shall be subject to confirmation by the Public Appointments Committee.

(2) The decisions of the Tribunal shall be by a majority.

(3) The Tribunal shall not be bound by rules of evidence and shall admit as evidence any matter which in its opinion shall assist it to arrive at a just and equitable decision for the advancement of the purposes of this Act.

(4) The Tribunal shall make its own rules of procedure and shall have power to—

(*a*) summon any person to give evidence in any proceedings before the Tribunal or to produce to the Tribunal any document relevant to the proceedings before it;

(*b*) confirm, vary, amend or alter a decision made by the Minister, the Director or inspector or reverse or substitute such decision for any decision which is just and equitable and which is in the interest of the protection and management of the environment or the conservation and sustainable utilization of natural resources.

(7) Any person aggrieved with the decision of the Tribunal may appeal to the High Court within thirty days from the date of the decision of the Tribunal.

Failure to attend

71. If a party fails to attend or to be represented at the proceedings of the Tribunal without good cause, the Tribunal may proceed in the absence of that party or representative.

Representation of parties

72.—(1) A party to any proceedings before the Tribunal may—

(*a*) appear personally; or

(*b*) be assisted or represented by a legal practitioner.

Enforcement orders

73. Any decision or order of the Tribunal shall have the same force and effect as any other decision or order of a competent court and shall be enforceable accordingly.

Costs

74.—(1) Subject to subsection (2), the Tribunal shall not make any order as to costs but nothing in this subsection shall prevent a legal practitioner from agreeing with his or her client the payment of solicitor and own client costs.

(2) The Tribunal may make an order as to costs where a party fails to attend, without good cause, any proceedings of the Tribunal or where the matter is vexatious or frivolous.

Liability of bodies corporate, etc.

75.—(1) Where an offence under this Act is committed by a body corporate or a partnership—

(*a*) in the case of the body corporate, every director, manager or similar officer of the body corporate shall be guilty of the offence; and

(*b*) in the case of a partnership, every partner shall jointly and severally be guilty of the offence.

(2) A person shall not be guilty of an offence under subsection (1), if he proves to the satisfaction of the court that the act constituting the offence was done without his knowledge, consent or connivance and that he did his part to prevent the commission of the offence having regard to all the circumstances of the case.

PART XIII

Miscellaneous Provisions

Closure of premises

76.—(1) Where the Director believes, on reasonable grounds, that this Act or any regulations made thereunder, have been contravened, the Director may, subject to subsection (2), order the closure of any premises by means of, or in relation to which the Director reasonably believes the contravention was committed.

(2) The closure of any premises shall cease after the provisions of this Act or any regulations made thereunder have, in the opinion of the Director, been complied with, unless before that time court proceedings have been instituted in respect of the contravention, in which event the premises shall remain closed until the proceedings are finally concluded.

Regulations

77. The Minister may make regulations for the better carrying out of the purposes of this Act.

SUBSIDIARY LEGISLATION

ENVIRONMENT MANAGEMENT (MANAGEMENT OF OZONE DEPLETING SUBSTANCES) REGULATIONS

under s. 41

PART I

Preliminary

1. These Regulations may be cited as the Environment Management (Management of Ozone Depleting Substances) Regulations. Citation

2. In these Regulations, unless the context otherwise requires— Interpretation

"consumption" means production plus imports less exports of ozone depleting substances;

"CFCs" means chlorofluorocarbons listed in the First Schedule;

"HCFCs" means hydrochlorofluorocarbons listed in the Third Schedule;

"ODS" means ozone depleting substances listed in the First, Second, Third and Fifth Schedules;"

"ODS Technologies" means the equipment or materials containing or made with ozone depleting substances listed in the Fourth Schedule;

"Protocol" means the Montreal Protocol on Substances that Deplete the Ozone Layer of 1987 and as amended at London, Copenhagen and Vienna;

"refrigerant" means a substance, whether part or mixture, that is used as a coolant in a refrigerator, freezer, cold room, dehumidifier, heat pump or an air conditioner; and

"training" means training in refrigeration and air conditioning.

3. These Regulations shall apply to— Application

(*a*) every importer and distributor of ozone depleting substances;

(*b*) every importer of technology which uses ozone depleting substances;

(*c*) every company and an individual who services refrigerators, air conditioners including mobile and other ozone depleting substances technologies;

(*d*) every company and an individual using servicing fire extinguishers;

(*e*) any company, an individual and farmer using ODS;

(*f*) the relevant Government ministries and departments; and

(*g*) the general public.

PART II

Control Measures

Import permit for ODS

4.—(1) (*a*) Any person who wants to import ODS shall apply for an import permit from the Minister:

(*b*) An import permit shall be in the form set out in the Sixth Schedule.

(2) The Department of Customs and Excise shall submit to the Minister duplicate copies of all import declarations of the ODS.

(3) Any person who supplies or distributes the ODS shall keep a record of names and addresses of the persons to whom the ODS have been supplied or distributed.

(4) (*a*) Any person importing ODS shall cause all the containers of ODS to have a label bearing the:

(i) name of the manufacturer;

(ii) the name of the country of origin; and

(iii) Chemical Abstracts (CAS) Registry number;

(*b*) Any person who contravenes the provisions of subregulation 4 (*a*) commits an offence.

Export permit

5. Any person exporting ODS shall apply to the Minister for an export permit.

Second hand refrigerators

6. With effect from 1st April, 1998, no person shall import second-hand refrigerators and air conditioners which are designated to use CFC-12 (R-12) or CFC-11 (R-11) as coolant.

New CFC refrigerators

7. With effect from 1st January, 1999, no person shall import brand new CFC refrigerators and air conditioners.

Vehicles fitted with air conditioners, etc.

8. With effect from 1st January, 1999, any person importing vehicles fitted with an air conditioner or refrigeration unit shall ensure that the cooling units are fitted with CFC-free coolants.

Aerosol products

9.—(1) With effect from the date of entry into force of the Regulations and subject to subregulation (2), no person shall bring into the country any aerosol product which uses CFCs as carrier gases or propellants.

(2) Medical aerosols used in asthma metered dose inhalers (MDIs) may continue being imported.

Import of new ODS

10. With effect from 1st January, 2004, no person shall import new ODS.

Use of ODS

11. With effect from 2007, no person shall use ODS listed in the First and Second Schedules.

Investment project

12. With effect from the date of entry into force of these Regulations, no person shall engage in investment projects using ODS projects listed in the First and Second Schedule.

Servicing an air conditioner, etc.

13. An air-conditioner or refrigerator technician shall not vent out any refrigerant that is an ODS when installing, serving, maintaining or repairing the equipment.

Leak detector or leak detecting method

14. Any person who owns or is responsible for a refrigerator or an air-conditioner shall have a leak detector or leak detecting method.

Retrofitting CFC refrigeration, etc.

15. No person shall retrofit CFC refrigeration and air-conditioning equipment with HCFC.

Fire fighting services

16.—(1) No person shall use halons where alternatives like carbon dioxide, water, dry powder, foams and inert gases can be used.

(2) No fire station shall use halons in fire fighting demonstrations of exercises.

(3) With effect from 1st January, 2001, no person shall refill the fire-extinguishing systems with new halons rather than recycled halons.

(4) With effect from 1st January, 2003, no person shall sell fire-extinguishers with halons, except for critical uses in defence and aviation.

(5) With effect from 1st January, 2007, no person shall use halons, whether used or recycled, except for uses in defence and aviation.

Offence and penalty

17.—(1) Any person who contravenes any provision of these Regulations commits an offence and upon conviction shall be liable to a fine of not less than K10,000 and not more than K500,000 and to imprisonment for five years.

(2) Any person who is convicted to an offence under subregulation (1) shall, in addition to the fine provided for in that subregulation, be liable to a fine of K5,000 for each day the offence continues to be committed.

FIRST SCHEDULE reg. 2

CHLOROFLUOROCARBONS (CFCs)

IUPAC Name	*Chemical Formula*	*Montreal Protocol Nomenclature*
Trichlorofluoroethane		CFC-11
Dichlorodifluoroethane		CFC-12
Monochlorotrifluoroethane		CFC-13
Trichlorotrifluoroethane		CFC-113
Dichlorotetrafluoroethane		CFC-114
Monochloropentafluoroethane		CFC-115
Pentachlorofluoroethane		CFC-111
Tetrachlorodichloroethane		CFC-112
Heptachlorofluoropentane		CFC-211
Hexachlorodifluoropentane		CFC-212
Pentachrolotrifluoropentane		CFC-213
Tetrachlorotetrafluoropentane		CFC-214
Trichloropentafluoropentane		CFC-215
Dichlorohexafluoropentane		CFC-216
Monochloroheptafluoropentane		CFC-217

SECOND SCHEDULE reg. 2

PART I

HALOES

IUPAC Name	*Chemical Formula*	*Montreal Protocol Nomenclature*
Bromochlorodifluoromethane	CF_2BrCI	Halon 1211
Bromotrifluoromethane	CF_3Br	Halon 1301
Dibromotetrafluoroethane	C_2F4Br_2	Halon 2402

PART II

CHLORINATED CARBON COMPOUNDS

Tetrachloroethane	CCI_4	Carbon Tetrachloride
1,1,1 -Trichloroethane	$C_2H_3CI_2$	Methyl Chloroform

THIRD SCHEDULE reg. 2

HYDROCHLOROFLUOROCARBONS (HCFCs)

IUPAC Name	*Chemical Formula*	*Montreal Protocol Nomenclature*
Hydrodichlorofluoromethane	$CHFCI_2$	HCFC-21
Hydrochlorodifluoromethane	CHF_2CI	HCFC-22

Dihydrochlorofluoromethane	CH_2FCI	HCFC-31
Hydrotetrachlorofluoroethane	C_2HFCI_4	HCFC-121
Hydrotrichlorodifluoromethane	$C_2HF_2CI_3$	HCF-122
Hydrodichlorotrifluoroethane	$C_2HF_3CI_2$	HCFC-123
Hydrochlorotetrafluoroethane	C_2HF_4CI	HCFC-124
Dihydrotrichlorofluoroethane	$C_2HF_2CI_3$	HCFC-131
Dihydrodichlorodifluoroethane	$C_2H_2F_2CI_3$	HCFC-132
Dihydrochlorotrifluoroethane	C_2HCF_3CI	HCFC-133
Trihydrodichlorofluoroethane	$C_2H_3FCI_2$	HCFC-141
Trihydrotrichlorodifluoroethane	$C_2H_3F_2CI$	HCFC-142
Tetrahydrodichlorofluoroethane	$C_2H_4FCI_2$	HCFC-151
Hydrohexachlorofluoropentane	C_2HFCI_6	HCFC-221
Hydropentachlorodifluoroethane	$C_3HF_2CI_5$	HCFC-222
Hydrotetrachlorodifluoropentane	$C_3HF_3CI_4$	HCFC-223
Hydrotrichlorotetrafluoropentane	$C_3HF_4CI_3$	HCFC-224
Hydrodichloropentafluoropentane	$C_3HF_5CI_2$	HCFC-225
Hydrochlorohexafluoropentane	C_3HF_6CI	HCFC-226
Hydropentachlorofluoropentane	C_3HFCI_5	HCFC-231
Dihydrotetrachlorodifluoropentane	$C_3H_2F_2CI_4$	HCFC-232
Dihydrotrichlorotrifluoropentane	$C_3H_2F_3CI_3$	HCFC-233
Dihydrodichlorotetrafluoropentane	$C_3H_2F_4CI_2$	HCFC-234
Dihydrochloropentafluoropentane	$C_3H_2F_5CI$	HCFC-235
Dihydrotetrachlorofluoropentane	$C_3H_2FCI_4$	HCFC-241
Trihydrochlorodifluoropentane	$C_3H_3F_2CI$	HCFC-242
Trihydrodichlorotrifluoropentane	$C_3H_3F_3CI_2$	HCFC-243
Trihydrochlorotetrafluoropentane	$C_3H_3F_4CI$	HCFC-244
Tetrahydrotrichlorofluoropentane	$C_3H_4F_1CI_3$	HCFC-251
Tetrahydrodichlorodifluoropentane	$C_3H_4F_2CI_2$	HCFC-252
Tetrahydrochlorotrifluoropentane	$C_3H_4F_3CI$	HCFC-253
Pentahydrodichlorofluoropentane	$C_3H_3F_1CI_2$	HCFC-261
Pentahydrochlorodifluoropentane	$C_3H_5F_2CI$	HCFC-262
Hexahydrochlorofluoropentane	C_3H_6FCI	HCFC-271

FOURTH SCHEDULE reg. 2

Equipment using or Containing or made with Ozone Depleting Substances

1. Automobile and truck air conditioning units.
2. Domestic and commercial refrigeration and air conditioning/heat pump equipment containing annex A substances e.g.
   - Refrigerators;
   - Freezers;
   - Cold rooms;
   - Dehumidifiers;

Ice machines;

Air-conditioning and heat pump units.

3. Aerosol products, except medical aerosols.
4. Portable fire-extinguishers.
5. Flexible and rigid foams e.g. mattress.

FIFTH SCHEDULE

reg. 2

Methyl Bromide

IUPAC Name	*Chemical Formula*	*Montreal Protocol Nomenclature*
Bromomethane	CH_3Br	Methyl Bromide

SIXTH SCHEDULE

Import Permit

1. Application—

Name of Importing Company: .....

Business Address: .....

.....

.....

Telephone Number: .....

Fax Number: .....

Contact Person: .....

Designation: .....

Type of importer: Distributor ( ) End-user ( )

2. Products to be imported—

Description of Products			Tariff Number	Quantity to be imported in kgs
Chemical Formula	Scientific Name (IUPAC)	Trade Name		

ENVIRONMENT (SPECIFICATION OF PROJECTS REQUIRING ENVIRONMENTAL IMPACT ASSESSMENT) NOTICE

G.N. 58/1998

Citation

1. This Notice may be cited as the Environment (Specification of Projects Requiring Environmental Impact Assessment) Notice.

Specification of projects requiring environmental impact assessment

2. The projects specified in the Schedule shall not be implemented unless an environmental impact assessment is carried out.

SCHEDULE para. 2

PROJECTS FOR WHICH ENVIRONMENTAL IMPACT ASSESSMENT IS REQUIRED

1. Agriculture/Aquaculture Projects—
   (*a*) agricultural drainage projects of more than 1 hectare;
   (*b*) irrigation schemes designed to serve more than 10 hectares;
   (*c*) land development for the purposes of agriculture on a piece of land greater than a 20-hectare holding;
   (*d*) agricultural projects necessitating the resettlement of 20 or more families;
   (*e*) any change from one agricultural land use to another on a piece of land greater than a 20-hectare holding;
   (*f*) use of more than 1 tonne of fertilizer/hectare per annum on a piece of land greater than a 20-hectare holding except for lime applications;
   (*g*) use of the following concentrations of pesticides on a piece of land greater than a 5-hectare holding—
      (i) more than 5 litres per hectare of ultra-low volume pesticides, per application; or
      (ii) more than 1 litre per hectare of aerial applications of pesticides; or
      (iii) more than 20 kg per hectare for each application of granular pesticides;
   (*h*) construction of fish-farming or ornamental pond(s) where the capacity is greater than 100 m^3 or where there is any direct discharge from a fish pond to a receiving water body; and
   (*i*) any proposal to introduce fish species in an area where they do not presently exist.
2. Projects in the Food and Beverage Production Industry—
   (*a*) construction of new abattoirs or slaughtering houses with a capacity of greater than 100 animals per day and expansions to existing abattoirs or slaughtering houses to a capacity of greater than 100 animals per day;
   (*b*) construction of new canning and bottling operations with a work space of greater than 5,000 m^2 or expansion to an existing canning or bottling operation to a work space of greater than 5,000 m^2;

(*c*) construction of new breweries and distilleries with a production capacity of greater than 25,000 litres per day or expansions to existing breweries or distilleries to a production capacity of greater than 25,000 litres per day;

(*d*) construction of new sugar production operations or expansions to existing sugar production operations by greater than 10 *per cent*; and

(*e*) construction of, or expansions to, tea or coffee processing industries.

3. Water Resources Development Projects—

(*a*) construction of, or expansion of, ground water utilization projects where the utilization will be greater than 15 litres per second or where the well is 60 metres or deeper;

(*b*) construction of new water pipelines or canals longer than 1 kilometre, or expansions to existing water pipelines or canals by longer than 1 kilometre, where the cross-sectional area is greater than 20 square metres and the volume of water to be carried will be greater than 50 cubic metres per second;

(*c*) water pumping stations adjacent to lakes, rivers and reservoirs which withdraw more than 2 cubic metres per second;

(*d*) drinking water supply schemes to serve a population of greater than 10,000 people or expansions of existing schemes to serve such a population, or water reticulation networks with more than 10 kilometres of pipeline;

(*e*) construction of reservoirs with a capacity of more than 500,000 litres or with a surface area of greater than 100 hectares or expansions of existing reservoirs by greater than 500,000 litres or greater than 100 hectares; and

(*f*) construction or expansion of dams with a height of 4.5 metres or higher.

4. Infrastructure Projects—

(*a*) construction of new sanitary sewerage works, or expansion of existing sanitary sewerage works, to serve a population of more than 5,000 people;

(*b*) construction of new storm sewerage works, to drain an area of greater than 10 hectares;

(*c*) any new sewage outfall to a receiving water body or location or sewerage systems or septic tanks within 1 kilometre of a water body;

(*d*) construction or expansion of septic tanks servicing more than 100 people or 20 homes or which receive more than 100 cubic metres per day of waste water;

(*e*) construction of new highways and feeder roads or expansion of existing high ways and feeder roads;

(*f*) construction of new airports and airstrips or expansion of existing airports and airstrips and their ancillary facilities;

(*g*) construction of new, or expansions to existing, railway lines;

(*h*) construction of new, or expansions to existing, railway lines; and

(*i*) establishment or expansion of industrial estates.

5. Waste Management Projects—
   (*a*) establishment or expansion of any of the following hazardous waste management facilities—
      (i) incineration plant;
      (ii) off-site recovery plant;
      (iii) off-site waste disposal facility;
      (iv) off-site storage facility;
      (v) landfill-site;
   (*b*) establishment or expansion of any of the following municipal solid waste management facilities serving a population of greater than 1,000 people—
      (i) landfill site;
      (ii) incineration facility;
      (iii) composting facility;
      (iv) recover/recycling facility;
      (v) waste depots/transfer sections; and
   (*c*) establishment or expansion of on-site waste treatment facilities.

6. Energy Generation, Transmission and Storage Projects—
   (*a*) construction or expansion of electrical generating facilities designed to operate at greater than 4 MW or, in the case of hydroelectric generating facilities, where the total head is greater than 20 metres or, where there is a firm flow or 100 cubic metres per second or greater;
   (*b*) construction of electrical transmission facilities operating at a voltage of 132 kV or greater;
   (*c*) construction or expansion of oil and gas pipelines longer than 1 kilometre;
   (*d*) construction or expansion of storage facilities (including service stations) for oil, gas, petrol or diesel located within 3 kilometres of commercial, industrial or residential area and with a storage capacity of 500,000 litres or more; and
   (*e*) all activities associated with nuclear power development.

7. Industrial Projects—
   (*a*) construction of, and expansions to, industries involving the use, manufacturing, handling, storage, transport or disposal of hazardous or toxic chemicals as regulated under the hazardous chemicals regulations made under the Act;
   (*b*) construction of, or expansion to, any of the following industrial operations—
      (i) tanneries;
      (ii) pulp and paper mills;
      (iii) lime plants;
      (iv) cement plants;
      (v) all types of smetters;
      (vi) petrochemical plants;

(vii) chemical plants;
(viii) soap and detergent plants;
(ix) fertilizer manufacturing operations; and

(*c*) construction of textile manufacturing operations (including carpet-making) which consume greater than 5,000 m2 of surface area or expansions to existing textile manufacturing operations to a capacity of more than 5,000 m2.

8. Mining and Quarrying Projects—
   (*a*) any mining and quarrying activity for which an exclusive prospecting licence, a mining claim licence or a mining licence is required;
   (*b*) any extraction of sand, gravel, clay or topsoil material (be it from the ground, banks or beds or water bodies) by means of any explosive or heavy machinery; and
   (*c*) any explosive manufacturing and blasting operation.
9. Forestry Projects—
   (*a*) establishment or expansion of logging operations covering an area of greater than 50 hectares;
   (*b*) establishment of or expansions to existing logging operations on hill sides with a slope of greater than 10 per cent covering an area of greater than 10 hectares or any conversion of forested land with a slope of greater than 10 per cent to another land use on a piece of land greater than 10 hectares;
   (*c*) establishment of logging or conversion of forested land to another land use within the catchment area of reservoirs; and
   (*d*) establishment of forest plantation of greater than 50 hectares.
10. Land Development, Housing and Human Settlement Projects—
   (*a*) establishment of, or expansion to an existing, housing development of a size greater than 5 hectares or where more than 500 people are intended to be housed;
   (*b*) resettlement programmes for 500 or more people or the creation of refugee camps intended to shelter 500 or more people;
   (*c*) filling in of water bodies for the purposes of land development where the surface area of the gross fill deposit is greater than 5 hectares; and
   (*d*) land reclamations projects greater than 100 hectares.
11. Remedial Flood and Erosion Control Project—
   (*a*) construction of breakwaters, seawalls, jetties, dikes and groynes of greater than 2 metres in height or 1 kilometre in length to remedy shoreline erosion or flooding;
   (*b*) construction of dams or weirs with a height of greater than 2 metres or which divert more than 20 cubic metres per second or any bypass channels or channel realignments to remedy riverine erosion or flooding; and
   (*c*) shoreline stabilization projects where the shoreline involved is greater than 1 kilometre.

12. Tourism Development Projects—
    (*a*) construction of resort facilities and hotels with a capacity of more than 50 people or expansions to existing facilities by a factor of greater than 50 people;
    (*b*) construction of safari lodges and operations with a capacity of more than 50 people or expansions to existing facilities by a factor of greater than 50 people;
    (*c*) construction of marine facilities with more than 10 boat slips or expansion of existing marine facilities by more than 10 boat slips; and
    (*d*) development of tourism master plans which have several projects associated with them.
13. Projects, in proximity to, or which have the potential to affect—
    (*a*) areas of unique historical, cultural, scientific or geographical significance or which have received some kind of world heritage designation;
    (*b*) national parks, game reserves and protected areas;
    (*c*) wetlands;
    (*d*) water bodies;
    (*e*) flood zones;
    (*f*) major sources of drinking water, including communal wells;
    (*g*) cemeteries or ancestral shrines; and
    (*h*) residential, school and hospital areas, as designated in local planning documents.
14. Major Policy Reforms—
    (*a*) degazettment of forestry reserves;
    (*b*) changes to zoning plans; and
    (*c*) proposed introduction of any exotic species.

ENVIRONMENT MANAGEMENT (GUIDELINES FOR ENVIRONMENTAL IMPACT ASSESSMENT) NOTICE

G. N. 14/1999

under s. 25 (1)

Citation

1. This Notice may be cited as the Environment Management (Guidelines for Environmental Impact Assessment) Notice.

Guidelines for environmental impact

2. Environmental impact assessment of a project shall be conducted in accordance with guidelines contained in a document entitled "Guidelines for Environmental Impact Assessment" which is published as General Notice No. 48 of 1999 dated 12th March, 1999.

[Subsidiary]

Environment Management (Environmental Impact Assessment Fees) Regulations

G.N. 10/2004

ENVIRONMENT MANAGEMENT (ENVIRONMENTAL IMPACT ASSESSMENT FEES) REGULATIONS

under s. 29

Citation

1. These Regulations may be cited as the Environment Management (Environmental Impact Assessment Fees) Regulations.

Fees

2. The fees prescribed in the Schedule shall be payable in respect of the matters specified therein in relation to such fees.

SCHEDULE reg. 2

	Matter	*Fee* K t
1.	On submission of a project brief	50,000 00
2.	On examination of an environmental impact assessment report—	
	(*a*) where the cost of the project does not exceed K17,000,000	50,000 00
	(*b*) where the cost of the project exceeds—	
	(i) K17,000,000 but does not exceed K1,000,000,000	$\frac{3}{1000}$ of the cost of the project
	(ii) K1,000,000,000	3,000,000 00

ENVIRONMENT MANAGEMENT (CHEMICALS AND TOXIC SUBSTANCES MANAGEMENT) REGULATIONS

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ENVIRONMENT MANAGEMENT (CHEMICALS AND TOXIC SUBSTANCES MANAGEMENT) REGULATIONS

G.N. 12/2008

under s. 40

Part I
Preliminary

Citation

1. These Regulations may be cited as the Environment Management (Chemicals and Toxic Substances Management) Regulations.

Interpretation

2. In these Regulations unless the context otherwise requires—

"carrier" means any person who carries out the transportation of chemicals or toxic substances and includes his agents or assignees;

"chemical" means a chemical substance in any form whether by itself or in a mixture or preparation whether manufactured or obtained from nature and includes such substances used as industrial chemicals, for consumer use but excludes pesticides and fertilizers, medicines and drugs and for the purposes of these Regulations includes toxic chemicals;

"chemical wastes" means any unwanted or waste chemical or chemical formulation generated from any process which can cause danger to both human health and the environment;

"disposer" means the person licensed to dispose of chemicals or toxic substances under these Regulations;

"disposal" means final placement or destruction of toxic substances, chemicals and chemical formulations, pesticides, and containers of toxic substances from removal actions or accidental releases.

"exporter" means any person under the jurisdiction of the state of export who arranges for chemicals or toxic substances to be exported;

"formulation" means the combination of various ingredients designed to render the product useful and effective for the purpose claimed; the form of the chemical or toxic substances as purchased by users;

"hazardous chemicals" means any chemical which has the likelihood of causing adverse effects or injury to human health or the environment and which has been so designated by the Director;

"hazardous waste" includes all unwanted substances or materials generated in any process be it chemical or otherwise which can cause danger to human health or the environment and which has been so designated by the Director;

"importer" means any person under the jurisdiction of the state of import who arranges for toxic substances or chemicals to be imported;

"label" means the written, printed or graphic matter on, or attached to, a toxic substance or chemical; or its immediate container and the outside container or wrapper of the retail package of the toxic substances or chemical;

"manufacture" in relation to a chemical means to prepare, compound, formulate, mix, make, pack, label, or otherwise treat the chemical with a view of meeting a specific purpose but does not include the carrying on a *bona fide* research relating to the chemical or any act incidental to such research;

"registered user" for the purposes of these Regulations means a person approved by the Director to use a restricted chemical or toxic substance;

"restricted chemical" means a chemical registered by the Director for specific use or to be used only under stipulated conditions;

"toxic substance" means a chemical or mixture that may present an unreasonable risk of injury to health or the environment;

"trade name" means that name under which the chemical or toxic substance is labeled, registered and promoted by the manufacturer and which can be used exclusively by the manufacturer to distinguish the product from other chemicals containing the same active ingredient;

"transit" means the passage of chemicals from one border through the national territory of Malaŵi including storage in transit bonds.

Application

3.—(1) These Regulations shall apply to any person in Malaŵi whose undertaking involves or includes the manufacturing, repackaging, importation, exportation, transportation, distribution, sale or other mode of handling toxic substances and chemicals and in respect of any activity in relation to toxic substances and chemicals which involves a risk of harm to human health or the environment.

(2) These Regulations shall not apply to any chemicals or toxic substances which are regulated under the Pesticides Act, or the Pharmacy, Medicines and Poisons Act. Cap. 35:03 Cap. 35:01

Part II
Management of Chemicals and Toxic Substances

Licences

4.—(1) (*a*) No person shall engage in the business of manufacturing, repackaging, importing, exporting, transporting, distributing, sale or other mode of handling chemicals and toxic substances without a licence issued by the Director in the prescribed form;

(*b*) an applicant for any licence provided for under these Regulations—

(i) shall be resident in Malaŵi;

(ii) where the applicant is resident outside Malaŵi, the applicant shall designate a representative resident in Malaŵi;

(*c*) an application for a licence under the Act in relation to—

(i) the manufacturing or repackaging of chemicals or toxic substances shall be in the form set out in the Third Schedule hereto;

(ii) the importation of chemicals or toxic substances shall be in the form set out in the Fourth Schedule hereto; and

(iii) the exportation of chemicals or toxic substances shall be in the form set out in the Fifth Schedule hereto;

(iv) the transportation of chemicals or toxic substances shall be in the form set out in the Sixth Schedule hereto; and

(v) the distribution of chemicals or toxic substances shall be in the form set out in the Seventh Schedule hereto.

(2) The Director may reject any application form if any part of the application form is illegible or not properly completed.

(3) A licence to—

(*a*) manufacture or repackage chemicals or toxic substances shall be in the form set out in the Eighth Schedule hereto;

(*b*) import chemicals or toxic substances shall be in the form set out in the Ninth Schedule hereto;

(*c*) export chemicals or toxic substances shall be in the form set out in the Tenth Schedule hereto;

(*d*) transport chemicals or toxic substances shall be in the form set out in the Eleventh Schedule hereto; or

(*e*) distribute chemicals or toxic substances shall be in the form set out in the Twelfth Schedule hereto.

(4) The applications referred to in subregulation (1), shall be accompanied by the fee prescribed or contained in the Thirteenth Schedule hereto.

Minimum requirements for manufacture, etc.

5. Any person who applies for a licence under these Regulations shall ensure that his business complies with applicable conditions as set out hereunder—

(*a*) in the case of manufacturing or repackaging of chemicals or substances, the minimum requirements set out in Part I of the Fifteenth Schedule hereto;

(*b*) in the case of transporting of chemicals or toxic substances, the minimum requirements set out in Part II of the Fifteenth Schedule hereto; and

(*c*) in the case of distribution of chemicals or toxic substances as a wholesaler or retailer, the minimum requirements set out in the Part III of the Fifteenth Schedule hereto.

Publication of applications for licences

6. The Director shall publish all applications for licences in the *Gazette* and in at least one widely circulating newspaper and shall charge the costs of such advertisement to the applicant.

Duration of licences

7. Every licence which is issued in respect of chemicals or toxic substances to any person pursuant to the Act shall be valid for one year from the date of issue, and may be renewed thereafter.

Production and return of licences

8.—(1) Whenever the Director—

(*a*) cancels any licence;

(*b*) varies or amends the conditions of any licence; or

(*c*) imposes any new condition in respect of or on the renewal of any licence,

the Director shall request the holder of the licence to produce such licence within such period as may be specified, and the holder thereof shall produce such licence within the specified period.

(2) Any person who fails to comply with a request made in accordance with subregulation (1) commits an offence.

(3) Where the Director varies, amends or imposes any new condition in respect of a licence, he shall return such licence duly endorsed to the holder thereof within three months.

Application for renewal of a licence

9.—(1) Every application for the renewal of a licence shall be—

(*a*) in the form set out in the Fourteenth Schedule hereto;

(*b*) lodged with the Director at least two months before the expiry of the licence hereto; and

(*c*) accompanied by the appropriate fee in respect of the licence.

(2) If an application for the renewal of a licence is lodged with the Director after the time limit as specified in subregulation (1), there shall be paid in addition to the renewal fee an appropriate fee in respect of the licence as determined from time to time.

Categories and registration of chemicals

10.—(1) The Director shall in accordance with the provisions of the Act, from time to time, establish in the *Gazette* a list of chemicals or toxic substances which fit in categories identified under the first Schedule hereto or which have characteristics identified in the First Schedule hereto which need to be controlled or prohibited.

(2) The Director shall give written notification to manufacturers and importers dealing with chemicals in the First Schedule hereto affected by his decision.

(3) An application for the registration of a chemical or toxic substances shall be made by—

(*a*) the person who has the right to distribute the product in Malaŵi; or

(*b*) any other person registered by the Director.

(4) Every application for the registration of a chemical shall be submitted to the Director in the form set out in the Second Schedule hereto and shall be accompanied by—

(*a*) detailed information of all advertising materials and package inserts which the applicant intends to use;

(*b*) samples of the product or the raw materials thereof shall be made available for analysis;

(*c*) a copy of any literature in support of the application:

Provided that the Director may require additional copies of such literature;

(*d*) additional package inserts and labels or copies of the package;

(*e*) at least three copies of all records and chemical data sheet which shall include information on chemical composition, properties and antidotes and information relating to manufacture and packaging in process control records, final products analytical records and authorized for release, and any other relevant records; and

(*f*) the prescribed fee, together with such additional fee as the Director may require for the purpose of analyzing the chemical product.

(5) Every applicant shall, without delay, inform the Director either before or after the registration of a chemical product—

(*a*) of any alteration of the information or particulars furnished by him in applying for registration in terms of subregulation (2); and

(*b*) whether the chemical product is to be imported as a finished product into, or labeled or repackaged or dealt with in any manner, in Malaŵi.

(6) For the purposes of paragraph (*b*) of subregulation (4), "finished product", in relation to a chemical product, means a chemical which is wholly manufactured outside Malaŵi and is imported into Malaŵi ready for sale without having to be relabeled or repackaged.

(7) An application for the retention of the registration of a registered chemical product shall be submitted to the Director, in the form set out in the Eighteenth Schedule hereto at least two months before the expiry of the licence and shall be accompanied by the prescribed fee.

Conditions for registered chemicals

11. Where the Director approves registration of a chemical product, he shall fix as a condition of registration, the product's specific use and the conditions under which the chemical is to be used.

Rejection of application

12.—(1) The Director may reject an application for registration if—

(*a*) the application is not complete;

(*b*) the application contains information which is misleading, erroneous, deceptive or likely to deceive;

(*c*) the chemical is likely to cause adverse effect to human health, animals, plants or the environment even when handled and used according to given instructions;

(*d*) the chemical is provisionally cleared;

(*e*) the container, or label does not meet the requirements of these Regulations;

(*f*) the applicant is considered unsuitable or incapable of carrying out the obligation imposed under these Regulations; or

(*g*) the chemical is toxic contrary to indications on the label.

(2) Where the Director rejects an application for registration of a chemical, he shall inform the applicant in writing the reasons for the rejection.

(3) Where the Director rejects an application for registration of a chemical he shall enter the chemical in the register of banned chemicals stating the identity of the chemical, the reasons for banning it and any other particulars the Director may specify.

Labelling of chemicals

13.—(1) Every chemical product shall, unless otherwise directed by the Director, bear or incorporate a label on the product package or container in which the chemical product is sold, on which is printed, in clear and indelible letters in the English language and any other local language as the Director may direct or approve the following particulars which relate to the chemical—

(*a*) the name and address of the person who owns the chemical;

(*b*) the name and address of the manufacturer including the physical address;

(*c*) the approved name of the chemical product and the proprietary name or trade mark, if any, of the chemical product;

(*d*) inherent physical and chemical properties, toxicity to human beings and impact on the environment;

(*e*) chemical composition;

(*f*) production batch number, date of manufacture and the expiry date of the chemical;

(*g*) the required storage conditions or other necessary precautions to prevent harm to human health and the environment;

(*h*) the chemical classification as determined in accordance with regulation 10 and the directions on safe use including proper disposal methods;

(*i*) any warning notices and hazard symbol which shall be in colour or print other than the colour referred to in subparagraphs (*a*) to (*j*);

(*j*) the antidote for use in cases of accidents; and

(*k*) any other particulars as may be directed by the Director:

Provided that the label shall contain no warranties, guarantees or liability exclusion clauses inconsistent with the provisions of the Act or these Regulations.

(2) In the case of a small package containing a chemical product, it shall be adequate to record information required under paragraphs (*c*), (*d*), (*e*) and (*f*) on the outer label.

(3) Every chemical product shall, where possible, be marked with the logo of the owner of the chemical product or manufacturer thereof, as the case may be, and such other distinguishing mark for the purpose of identifying such chemical product.

Packaging of chemicals

14.—(1) The Director shall not approve a container for the packaging of chemicals unless he is satisfied that the container—

(*a*) shall not react chemically or physically with the chemical;

(*b*) is of sufficient strength and shall not pose any risk during handling and transportation of the chemical; and

(*c*) is durable enough to prevent the chemical from escaping.

(2) The Director may, at any time, direct the seller of a chemical to submit for inspection an approved container in which the chemical is contained.

(3) Every package of a chemical product shall, unless otherwise directed by the Director, contain a package insert on which is printed, in clear and indelible letters in the English language and any other local language as may be directed or approved by the Director the following particulars which relate to the chemical product—

(*a*) the name and address of the owner of the chemical product;

(*b*) the name and address of the manufacturer of the chemical product;

(*c*) the approved name of the active ingredient of the chemical product and the proprietary name or trade mark, if any, of the chemical product;

(*d*) the logo, if any, of the owner of the chemical product or manufacturer thereof;

(*e*) the chemical composition and percentage of any toxic agent inherent in the chemical product;

(*f*) adequate directions for handling including safety precautions in transportation, storage, use and disposal of obsolete chemicals or chemicals waste to prevent harmful effects to human health and the environment;

(*g*) chemical classification as determined in accordance with regulation 10;

(*h*) warnings relating to risks associated with the use of the chemical product;

(*i*) identification of the chemical product;

(*j*) the form in which the chemical product is presented whether liquid, dust, granulars, baits or wettable powders and the colour thereof;

(*k*) the date of publication of the package insert including expiry date of the product;

(*l*) a summary of the relevant information concerning the purpose and beneficial, harmful or other effects of the chemical product and the possible dangers that may arise from exposure to the chemical product;

(*m*) relevant information, including particulars in regard to a specific medicinal product as an antidote (if known), concerning the treatment of a user in case of an accident or harmful exposure relating to the chemical product; and

(*n*) any other particulars or warning notices as the Director may direct.

Procedures for restricting the use of a chemical product

15.—(1) Before making a decision to restrict the use or to the handling of a chemical, the Director shall—

(*a*) ensure that there is evidence that the chemical causes or is likely to cause adverse effects to human health, animals, plants or the environment;

(*b*) require the applicant to show cause in writing within a period of thirty days from the date of the letter, why the restriction or ban should not be imposed on the chemical;

(*c*) publish in the *Gazette* the intention to impose a ban on or restrict the use and handling of the chemical.

(2) Upon receipt of the submission from the applicant, the Director shall—

(*a*) invite the applicant to attend a meeting and give the applicant the opportunity to make oral submissions in person or through a representative to the Technical Committee on the Environment; and

(*b*) consider any other information available to the Technical Committee on the Environment, including submission of experts in the field of chemical management.

(3) Where the Director considers it necessary in the public interest to protect human health or the environment, he shall suspend use of the chemical pending a final decision to restrict use or ban handling of such chemical.

(4) The Director may lift the ban or restrict use.

Register of Chemicals

16. The Director shall enter in the register in respect of each chemical product registered, the—

(*a*) date of the application for registration of the chemical product;

(*b*) number allocated to the application for registration;

(*c*) proprietary name or trade mark of the chemical product, if any;

(*d*) logo of the owner of the chemical product or manufacturer thereof, if any;

(*e*) particulars of the patent of the chemical product, if any;

(*f*) approved name of the chemical product;

(*g*) form in which the chemical product is presented whether liquid or otherwise and the colour thereof;

(*h*) inherent physical and chemical properties and the level of toxicity of the chemical product;

(*i*) qualitative and quantitative details of every ingredient in a specified unit of the chemical product;

(*j*) name and business address of the owner of the chemical product;

(*k*) name and business address of the manufacturer of the chemical product;

(*l*) country of origin of the chemical product;

(*m*) number allocated to the inspection report of the place of manufacture, if applicable;

(*n*) date of registration of the chemical products;

(*o*) registration number of the chemical products;

(*p*) shelf-life or life span of the chemical products;

(*q*) specific use of the chemical product and any other conditions if it falls under regulation 11;

(*r*) classification of the chemical product determined in accordance with regulation 10;

(*s*) date and particulars of any variation in the conditions of registration of the chemical product;

(*t*) payment of any fee for the retention or registration of the chemical product; and

(*u*) date of the cancellation of the registration of the chemical product where applicable.

Certificate of registration for a chemical product

17. After registering a chemical product, the Director shall issue a certificate of registration in the prescribed form.

Production and return of registration certificate for chemical products

18.—(1) Whenever the Director—

(*a*) cancels the registration of any chemical product;

(*b*) varies or amends the conditions of registration of any chemical product; or

(*c*) imposes any new conditions on the registration of any chemical product,

the Director shall request the holder of the registration certificate concerned to produce such certificate within one month and the holder thereof shall produce such certificate within the specified period.

(2) Any person who fails to comply with a request made in accordance with subregulation (1) commits an offence.

(3) Where the Director varies, amends or imposes any new condition on any registration certificate, the Director shall return such certificate, duly endorsed, to the holder thereof within a period of three months.

(4) The holder of a certificate which has been varied or amended shall comply with the conditions within a period of three months of the date of amendment or variation.

Importation of chemical products

19. No person shall, without prior written approval of the Director, import a chemical product which has one-half or less than one-half of its shelf-life span remaining upon arrival in Malaŵi.

Handling chemical with less than half shelf-life

20. No person shall, without prior written approval of the Director deliver, receive, accept or sell any chemical product whose shelf-life or remaining life span is less than one-half.

Sale of expired products

21.—(1) No person shall sell any chemical or chemical product after a date later than the expiry date which appears on the package of such chemical product.

(2) Any person who sells any expired chemical product in contravention of subregulation (1) commits an offence.

(3) The Director shall have power to confiscate and destroy any products that have expired.

Chemicals to be sold by licensed persons

22. No person shall sell any chemical product unless his business has been—

(*a*) licensed under these Regulations; or

(*b*) authorized in terms of these Regulations:

Cap. 35:01
Cap. 35:03

Provided that this regulation shall not apply to the sale of toxic substances regulated under the Pharmacy, Medicine and Poisons Act or the Pesticides Act.

Prohibition sale of unlabeled chemical products

23. No person shall sell any chemical product whose composition is not labeled in accordance with the requirements of regulation 13.

Safe keeping of registered chemicals, etc.

24.—(1) Any person who sells chemicals listed in the First Schedule hereto shall not store, keep or display such chemicals on an open shelf or in an open area or on any part of his premises to which members of the public have access.

(2) Any person who has under his control or custody or uses chemicals referred to in subregulation (1), shall exercise all reasonable care in the custody, safe keeping and use thereof.

Local authorities to make by-laws for management of chemicals and toxic substances

25.—(1) Every local authority shall make by-laws relating to the management of toxic substances and chemical wastes in their respective area of jurisdiction:

Provided that—

(*a*) such by-laws shall not be in conflict with the Act and these Regulations; and

(*b*) such by-laws shall ensure that the disposal method of chemical wastes is in an environmentally sound manner.

(2) Every local authority shall be responsible for management of chemicals and toxic substances, and such management shall be in accordance with the provisions of the Act and these Regulations.

Duty to treat chemical wastes

26.—(1) No industry or medical facility shall discharge any chemical wastes in any state into the environment unless such wastes have been treated in accordance with acceptable international methods that are approved by the Director in consultation with the relevant local authority.

(2) Any person whose operations discharge chemical wastes into the environment at the date of entry into force of these Regulations shall within ninety days submit a written proposal specifying the time schedule within which compliance with these Regulations shall be achieved.

(3) It shall be an offence for any person to discharge any chemical waste whether treated or not into a disposal site or plant unless such disposal site or plant has been approved and licensed in accordance with and upon the conditions set out in these Regulations and for such purpose.

Voluntary compliance

27. Every industry shall develop a voluntary compliance code which shall outline the industry's goal for—

(*a*) chemical waste reduction and minimization;

(*b*) chemical waste treatment on site and emission standards; and

(*c*) disposal plans.

Application to operate chemical waste disposal site or plant

28.—(1) Any person who intends to operate a chemical disposal site or plant shall apply to the Director for a chemical waste disposal licence.

(2) An application for a licence to operate a chemical waste disposal site or plant shall be in the form set out in the Sixteenth Schedule hereto and shall be accompanied by the appropriate fee.

(3) A person carrying out a business of operating a chemical waste disposal site or plant before the commencement of these Regulations shall apply for a licence within ninety days from the date these Regulations come into force.

(4) A person who operates a chemical waste disposal site or plant without a licence commits an offence.

Licence to own or operate a chemical waste or plant

29.—(1) The Director may grant a licence in the form set out in the Seventeenth Schedule hereto to own or operate a chemical waste disposal site or plant, if—

(*a*) a written approval has been obtained by the applicant from the environmental officer of the local authority within which the chemical waste disposal site or plant is located;

(*b*) the local authority is satisfied that the owner or operator of the site has the ability and the appropriate facilities to manage the site or plant without causing any damage to public health or the environment, taking into account the findings and recommendations of the approved environmental impact assessment submitted by the owner or operator; and

(*c*) notice has been given by the applicant in the *Gazette* and such local newspapers of daily circulation as the Director shall deem fit on the proposed chemical waste disposal site or plant, sixty days before issue of the licence.

(2) Any licence to own or operate a chemical waste disposal site or plant shall be subject to the following conditions—

(*a*) the site or plant shall be located away from a residential or commercial area and water sources;

(*b*) the site or plant shall have hazard and safety signs approved by the Director displayed in appropriate places indicating the disposal site or plant and the nature of operations it carries out;

(*c*) the site or plant shall be enclosed and secure from scavenging;

(*d*) the site or plant shall be operated in a way which would avoid pollution of surface and underground water, air or soil;

(*e*) highly toxic or hazardous chemical wastes shall be disposed of or treated in accordance with conditions specified in the licence or in accordance with any general guidelines issued by the Director in consultation with the Director responsible for local government;

(*f*) suitable ventilation shall be provided at the disposal site or plant to prevent harmful effects to personnel;

(*g*) the personnel working at the chemical waste disposal site or plant shall be provided with—

(i) adequate training in chemical waste management;

(ii) adequate protective and safety clothing;

(iii) adequate and appropriate equipment or facilities for the operations of the disposal site or plant;

(iv) shelter;

(v) first aid training and facilities;

(vi) communication facilities; and

(*h*) the personnel working at the chemical disposal site or plant shall undergo a medical check up, at least once every six months.

(3) A licence to own or operate a chemical waste disposal site or plant shall be valid for one year and may be renewed for a like period at a prescribed fee:

Provided that the Director may, where he deems necessary, issue a licence to any applicant under regulation 5 for the temporary storage of any chemical waste pending final disposal on condition that such temporary storage meets the approved standards for the storage of such a category of chemical waste approved under these Regulations.

(4) Any person who—

(*a*) operates or owns a chemical disposal site or plant without a licence; or

(*b*) discharges chemical waste onto a site or plant which is unlicensed, commits an offence.

Environmental impact assessment

30.—(1) No disposal site or plant for chemical wastes shall be licensed under these Regulations unless an environmental impact assessment has been carried out in accordance with the provisions of the Act.

(2) Any person operating a disposal site or plant shall carry out annual audits of the environmental performance of his site or plant and shall submit his report to the Director.

Disposal of toxic substances

31.—(1) Where a person intends to dispose or treat toxic substance and wastes he shall, in addition to the provisions of regulations 24 and 25, indicate in his application for a licence, the

disposal operations he intends to carry out in accordance with the categories identified in the First and Second Schedules hereto and shall enclose—

(*a*) a detailed description of the process he intends to use and its possible effects;

(*b*) a detailed description of the soil structure and geology of the area;

(*c*) a detailed plan for control of emissions;

(*d*) a plan for managing leakages;

(*e*) a detailed health impact assessment;

(*f*) a detailed drawing indicating the structure, construction and surroundings of the disposal site or plant;

(*g*) a decommissioning plan; and

(*h*) any other matter that may be required by the Director.

(2) In granting a licence for the disposal of highly toxic substances or wastes, the Director shall clearly indicate the disposal operation permitted and identified in accordance with the categories set out in the First Schedule hereto.

(3) Any person who contravenes this regulation commits an offence.

Prevention of pollution from disposal sites and treatment plants

32. Even person who operates a toxic substance or chemical wastes disposal site or treatment plant shall take all necessary measures to prevent pollution from sites or plants including the erection of necessary works and taking of mitigation measures.

Part III
International Trade in Toxic Substances and Chemicals

National authority for prior informed consent procedure

33.—(1) The Director shall be the national authority for the operation of the prior informed consent procedure for the import, export or any other trans-boundary movement of toxic substances and chemicals.

(2) The Director shall closely liaise with the designated authorities of other states under any international conventions or arrangements to which Malaŵi is a party; and international organizations with competence in the field of the management of toxic substances and chemicals under any convention or arrangement to which Malaŵi is a party, for the purpose of monitoring imports and exports and controlling the movement of toxic substances and chemicals in Malaŵi territory.

(3) The Director shall disseminate information on toxic substances and chemicals management to the public.

Notification procedures and prior informed consent

34. A licence for export of chemicals shall not be issued by the Director unless accompanied by the relevant documentation for notification in accordance with Form A contained in the Eighteenth Schedule hereto and as required by the prior informed consent procedure as set out in these Regulations and the appropriate fee set in the Thirteenth Schedule hereto.

Control of importation of chemicals

35.—(1) No person shall import a chemical into Malaŵi without a licence issued by the Director under these Regulations.

(2) The Director shall not issue a licence to import a chemical into Malaŵi unless accompanied by documentation for notification in accordance with Form B contained in the Eighteenth Schedule hereto and as required by the Prior Informed Consent procedure as set out in these Regulations and the appropriate fee set out in the Thirteenth Schedule hereto.

(3) In considering every application to import chemicals, the Director shall ensure that—

(*a*) the applicant is aware of the toxicity of the chemical and the risk involved in its use and handling;

(*b*) the applicant is capable of handling the risks arising from the importation of such a chemical and has in this behalf an adequate insurance coverage or similar guarantee;

(*c*) the applicant has plans and means to dispose of any surplus chemicals and containers in an environmentally sound manner;

(*d*) the applicant shall distribute the chemical only to those wholesalers and retailers appropriately licenced under these Regulations;

(*e*) the applicant shall comply with such other measures as may be determined by the Director; and

(*f*) the requirements of the Prior Informed Consent procedure set out in these Regulations have been fulfilled.

(4) A licence to import a chemical shall be valid for such consignments and for such a period as may be determined by the Director.

Restrictions on importing severely restricted chemicals

36. The Director shall grant a licence to import severely restricted chemicals or other toxic substances if—

(*a*) the exporting country permits the use of the chemicals within its jurisdiction;

(*b*) no other alternative chemical is available; and

(*c*) there are adequate management plans.

Control of exportation of chemicals

37.—(1) No person shall export a chemical from Malaŵi without a licence issued under these Regulations.

(2)—(*a*) In considering every application to export chemicals, the Director shall ensure that—

(i) the requirements for the prior informed consent set out in regulation 34, where appropriate, have been fulfilled; and

(ii) the application meets such other requirements as may be determined by the Director; and

(*b*) a licence to export a chemical shall relate to such a consignment of chemicals and be for such a period as may be determined by the Director.

Restrictions on exporting severely restricted chemicals

38. The Director shall grant a licence to export severely restricted chemicals or other toxic substances if—

(*a*) the importing country permits the use of chemicals within its jurisdiction;

(*b*) the chemical in question is required as a raw material for recycling or recovery in the country of import; and

(*c*) the import is in accordance with an agreement or arrangement that conforms to the requirements as contained in these Regulations.

Ports of entry and routes

Cap. 42:01

39. A licence issued under these Regulations shall only entitle the licensee to transport chemicals or toxic substances, through designated ports of entry and routes under the Customs and Excise Act.

Part IV
Miscellaneous Provisions

Reporting

40.—(1) Any person who is licensed to carry out any procedures or activities under these Regulations shall submit to the Director annual reports on the conduct of the licensed activities.

(2) Where special reporting procedures are a condition of any licence under the Regulations, such reporting procedures shall take precedence over the provisions of subregulation (1).

Duty to keep records

41.—(1) A holder of a licence shall—

(*a*) keep records of the licensed activities and all transactions related thereto; and

(*b*) submit the records referred to in paragraph (*a*) hereof to the Director every year from the commencement of the licensed activities.

(2) The Director may order a licensee under these Regulations to install mechanisms at the expenses of the licensee or to take samples and analyze them as the Director may direct.

Communication of decision of licence

42. Where a person applies for a licence under these Regulations, the Director shall communicate his decision to the applicant within a period of three months.

Improvement notice

43.—(1) Where an inspector has reasonable cause to believe that any person is violating these Regulations, he may issue against such a person an improvement notice or take any other measures appropriate for correcting the situation.

(2) An improvement notice issued under subregulation (1) shall not prejudice criminal proceedings which may be taken under any of the provisions of the Act.

Cancellation of licence

44. The Director may suspend or revoke a licence issued under these Regulations if he is satisfied that the conditions attached to the granting of the licence have not been complied with or if the Director is satisfied that continued operation of the activity may be injurious to the human health or the environment.

Offence and penalties

45. Any person who contravenes the provisions of these Regulations commits an offence and shall be subject to the penalties prescribed in the Act.

FIRST SCHEDULE reg. 10

REPUBLIC OF MALAŴI

ENVIRONMENT MANAGEMENT ACT

(Cap. 60:02)

ENVIRONMENT MANAGEMENT (CHEMICALS AND TOXIC SUBSTANCES MANAGEMENT) REGULATIONS

Categories of Chemicals to be Controlled

1. Industrial Chemical
   (*a*) Crocidolite
   (*b*) Polybrominated Biphenyls (PBBs)
   (*c*) Polychlorinated Biphenyls (PCBs)
   (*d*) Polychlorinated Terphenyls (PCTs)
   (*e*) Iris (2, 3 dibromopropyl) Phosphate
2. Biochemicals

SECOND SCHEDULE reg. 10

REPUBLIC OF MALAŴI

ENVIRONMENT MANAGEMENT ACT

(Cap. 60:02)

ENVIRONMENT MANAGEMENT (CHEMICALS AND TOXIC SUBSTANCES MANAGEMENT) REGULATIONS

Application form for Registration of Chemicals or Toxic Substances

I/We ..... hereby make application for full registration/provisional registration of the following chemical which we intend to import into Malaŵi and state that the particulars of the chemical are as follows—

1. Brand name:
2. Other common names, if any:
3. Nature of the chemical:
4. Formulation (*i.e.* emulsifiable, concentrate wet table powder, etc.):
5. Use:
6. Method of application:
7. Composition:
   (*a*) *active constituents*: *common names* **percentage**
   *proportion in metric units of w/w.w/v,v/v or in acid equivalents

(*b*) mode of action of each active constituent:
active constituent mode of action

(*c*) molecular and structural formulae of each of the active constituents:
active constituent *molecular formulae* *structural formulae*

8. Residue data:

(*a*) nature of residues occurring in or on crops/animals/products treated with the formulation under tropical or subtropical conditions, in case of pesticides:

(*b*) information on persistence in soil and water and possible or known breakdown mechanism:

9. Toxicological properties of each active constituent—

(*a*) general toxicity to wildlife, fish and bees:
active constituent *toxicity to the above*

(*b*) acute toxicity
active constituent *acute toxicity*
LD50 on test animals
Oral dermal respiratory

(*c*) toxicity to skin and possible danger through inhalation
active constituent *toxicity as stated above*

(*d*) symptoms of poisoning
active constituent oral *inhalation dermal eyes*

(*e*) first aid and antidote:
active constituent *first aid antidote*

10. Use precautions—

(*a*) agents and chemicals with which product is known to be:

(i) compatible:

(ii) incompatible:

(*b*) flammability:

(*c*) corrosiveness:

(*d*) stability on storage:

(*e*) stability on duration:

(*f*) recommendation for cleaning, measuring, and spray equipment:

(*g*) safety precautions for handling and application:

(*h*) procedures for both container disposal and disposal or deactivation of the excess chemical:

11. Package material and pack sizes (dimension and net volume/weight proposed for import and marketing):

12. Manufacturers name and address:

13. Action by other authorities—
    (*a*) evidence of registration approval, revocation or rejection by other authorities outside Malaŵi:
    (*b*) name countries for which full registration of this product has been granted:
    (*c*) if rejected or revoked give reasons:
14. Name and physical address of proprietor/importer:

Date: ....

Signature of Applicant and Title

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1. Full registration/provisional registration granted with no restriction:
2. Full registration/provisional registration granted with the following restrictions:
3. Registration not granted for the following reasons:
4. Comments:
5. Registration No.:

Date: ..... Signature:.....

Director
Environmental Affairs Department

THIRD SCHEDULE reg. 4

(To be completed in Triplicate)

REPUBLIC OF MALAŴI

ENVIRONMENT MANAGEMENT ACT

(Cap. 60:02)

ENVIRONMENT MANAGEMENT (CHEMICALS AND TOXIC SUBSTANCES MANAGEMENT) REGULATIONS

Application for a Licence for Manufacturing/Repackaging of Toxic Substances And Chemicals

I/We ..... hereby apply for a licence to manufacture/repackage toxic substances and chemicals, of which particulars are given below—

1. Name and address of applicant: .....
2. Location of premises: .....
3. Name, qualification and experience of supervising chemist (attach curriculum vitae):
4. Physical (*describe whether industrial, residential, or commercial and whether it is near schools or recreational areas*): .....

5. Other key officers: .....

   Name Qualification Title
6. Equipment or technology possessed: .....
7. Type of chemicals to be manufactured or repackaged (*indicate number in accordance with First Schedule and describe whether liquid or otherwise and their characteristics*):
8. Quantity of chemicals to be manufactured in kilogrammes or tonnes for solids or in cubic centimetres if liquid or gases: .....
9. Registration number: .....
10. Sources of raw materials: .....
11. Type of containers to be used for packaging or repackaging: .....
12. Type of labels on the container (*describe whether industrial, residential, or commercial and whether it is near schools or recreational areas*): .....
13. Describe safety measures at the premises including protective equipment, first aid kits and first aid personnel: .....
14. Measures of containment and treatment of fumes, dusts, spillage and leakages:.. .....
15. Chemical wastes disposal methods: .....

    Attachments:

    (*a*) Description of manufacturing equipment (*Appendix* I)

    (*b*) Description of manufacturing process (*Appendix* II)

    (*c*) An environment impact assessment of proposed manufacturing or formulation (*Appendix* III)

    (*d*) Curriculum vitae of key officers in the production process (*Appendix* IV)

Date:..... .....

Signature of Applicant and Title

FOR OFFICIAL USE ONLY

Date received: .....

Fee paid (MK): .....

Comments of the lead agency: .....

Date:..... .....

Name and Signature of Responsible Officer

Decision of the Technical Committee on the Environment:.....

.....

Date: ..... Signature: .....

Director

Department of Environmental Affairs

[Subsidiary]

Environment Management (*Chemicals and Toxic Substances Management*) *Regulations*

FOURTH SCHEDULE reg. 4

(To be completed in Triplicate)

REPUBLIC OF MALAŴI

ENVIRONMENT MANAGEMENT ACT

(Cap. 60:02)

ENVIRONMENT MANAGEMENT (TOXIC SUBSTANCES AND CHEMICALS MANAGEMENT) REGULATIONS

Application for a Licence to Import Chemicals or Toxic Substances

I/We ..... hereby apply for a licence to import chemicals of which particulars are given below—

1. Address of Applicant: .....
2. Type of chemicals to be imported (*indicate number in accordance with First Schedule and describe whether liquid or otherwise*): .....
3. Country of origin of the chemical: .....
4. Regulatory action in country of origin: .....
5. Status of the chemical in the country of origin: .....
6. Mode of transporting the chemicals into the country and the safety precautions to be used: .....
7. Quantity of the chemicals to be imported: .....
8. The permitted use of the chemical: .....
9. Proprietary name or the trade name of the chemical: .....
10. Physical address of premises where storage would be done: .....
11. Describe safety measures at the premises: .....
12. Surroundings of the premises: .....
13. Final destination of the chemicals: .....
14. Safety consideration in case of an accident: .....
15. Chemical wastes disposal plans: .....
16. Port of Entry: .....
17. Any other information: .....

Date: ....

Signature of Applicant and Title

FOR OFFICIAL USE ONLY

Date received: .....

Fee paid (MK): .....

Comments of the lead agency or designated National Authority: .....
.....

Date: ....

Name and Signature of Responsible Officer

Decision of the Technical Committee on the Environment: .....
.....

Date: ..... Signature.....

Director
Department of Environmental Affairs

FIFTH SCHEDULE reg. 4

(To be completed in Triplicate)

REPUBLIC OF MALAŴI

ENVIRONMENT MANAGEMENT ACT

(CAP. 60:02)

ENVIRONMENT MANAGEMENT (CHEMICALS AND TOXIC SUBSTANCES MANAGEMENT) REGULATIONS

APPLICATION FOR A LICENCE TO EXPORT CHEMICALS

I/We ..... hereby apply for a licence to export chemicals, of which particulars are given below—

1. Address of Applicant: .....
2. Type of chemical(s) to be exported (*indicate classification in accordance with regulation 9 and describe whether liquid or otherwise*): .....
3. Characteristics of chemical(s): .....
4. The permitted use of the chemicals: .....
5. The proprietary name or trademark of the chemical: .....
6. The registration number of the chemical: .....
7. The recipient country: .....
8. Have the Prior Informed Consent procedures been satisfied: ....
9. Describe the mode of exporting the chemicals to the recipient country and the safety precautions to be used: .....
10. Indicate if the recipient country permits the use of the chemical within it jurisdiction: .....
    .....
11. Any other information: .....
12. Port of entry: .....

Date received: .....

Fee paid (MK): .....

Comments of the lead agency or designated National Authority: .....

.....

Date: ....

Name and Signature of Responsible Officer

Decision of the Technical Committee on the Environment: .....

.....

Date: ..... Signature.....

Director
Department of Environmental Affairs

SIXTH SCHEDULE reg. 4

(To be completed in Triplicate)

REPUBLIC OF MALAŴI

ENVIRONMENT MANAGEMENT ACT

(Cap 60:02)

ENVIRONMENT MANAGEMENT (CHEMICALS AND TOXIC SUBSTANCES MANAGEMENT) REGULATIONS

Application for a Licence for Transportation of Toxic Substances and Chemicals

I/We ..... hereby apply for a licence to transport toxic substances and chemicals of which particulars are given below—

1. Address of Applicant:
2. Type of chemicals to be transported (*indicate number in accordance with First Schedule or Second Schedule and describe whether liquid or otherwise and their characteristics*): .....
   .....
3. Characteristics: .....
4. Origin and destination of the consignment: .....
5. Number and type of vehicles to transport the chemicals: .....
6. Quantity of chemicals per vehicle to be transported: .....
7. Type of containers to be used in transporting chemicals: .....
8. Type of labels on containers (describe and attach sample): .....
9. Type of labels to be used on carrier vehicles in case of petrochemicals: .....
10. Describe safety precautions during transportation: .....

11. Licensed premises or sites/plants to which toxic substances or chemicals are to be transported: .....
12. Any other information: .....

Date: ....

Signature of Applicant and Title

FOR OFFICIAL USE ONLY

Application received by: ..... on..... 20.....

Fee paid (MK): ..... In words: .....

Date: ..... Signature.....

Director
Department of Environmental Affairs

SEVENTH SCHEDULE reg. 4

(To be completed in Triplicate)

REPUBLIC OF MALAŴI

ENVIRONMENT MANAGEMENT ACT

(Cap. 60:02)

ENVIRONMENT MANAGEMENT (CHEMICALS AND TOXIC SUBSTANCES MANAGEMENT) REGULATIONS

Application for a Licence to Distribute Chemicals

I/We ..... hereby apply for a licence to distribute chemicals of which particulars are given below—

1. Address of Applicant: .....
2. Qualification and experience in handling chemicals: .....
3. Type of chemical(s) to be distributed: .....
4. Characteristics of chemicals: .....
5. The permitted use of the chemical(s): .....
6. The proprietary name or trademark of the chemical: .....
7. The Registration number of the chemical(s): .....
8. Quantity: .....
9. Indicate if distribution will be to wholesalers or retailers: .....
10. Location of premises: .....
    .....
11. Describe safety precautions at the premises: .....
12. Any other information: .....

Date: ....

Signature of Applicant and Title

FOR OFFICIAL USE ONLY

Application received by: ..... on..... 20.....

Fee paid (MK): ..... In words: .....

Date: ..... Signature.....

Director
Department of Environmental Affairs

EIGHTH SCHEDULE reg. 4

REPUBLIC OF MALAŴI

ENVIRONMENT MANAGEMENT ACT

(Cap. 60:02)

ENVIRONMENT MANAGEMENT (CHEMICALS AND TOXIC SUBSTANCES MANAGEMENT) REGULATIONS

Licence to Manufacture/Repackage Chemicals

Licence No. .....

Name: .....

Address: .....

(*Plot No., village, town, city, district*)

You are hereby licensed to manufacture repackage the following chemicals:

(*classification of chemicals indicated by number in*..... *Schedule*)

1. .....

2. .....

3. .....

Concentration: .....

Quantity: .....

Specific use: .....

Address of licensed premises for manufacture or repackaging: .....

.....

This licence is valid from ..... 20..... to ..... 20.....

This licence is granted subject to the following conditions: .....

Date: ..... Signature: .....

Director
Department of Environmental Affairs

NINTH SCHEDULE reg. 4

REPUBLIC OF MALAŴI

ENVIRONMENT MANAGEMENT ACT

(CAP. 60:02)

ENVIRONMENT MANAGEMENT (CHEMICALS AND TOXIC SUBSTANCES MANAGEMENT) REGULATIONS

LICENCE TO IMPORT CHEMICALS

Licence No. .....

Name: .....

Address: .....

(*Plot No., village, town, city, district*)

You are hereby licensed to import the following chemicals: .....

(*indicated by number in* ..... *Schedule*)

1. .....

2. .....

3. .....

Purposes for which the imported chemicals are licensed: .....

From (*Name and address*): .....

Quantity: .....

Concentration.....

The import shall be made through: .....

(*border/customs control post*)

Address of licensed premises for storage or repackaging where necessary: .....

.....

This licence is valid from ..... 20..... to ....., 20.....

This licence is granted subject to the following conditions: .....

(*Attach a copy of authorization by the state from which importation is to be made*)

Date: ..... Signature: .....

Director

Department of Environmental Affairs

[Subsidiary]

Environment Management (*Chemicals and Toxic Substances Management*) *Regulations*

TENTH SCHEDULE

REPUBLIC OF MALAŴI

ENVIRONMENT MANAGEMENT ACT

(Cap. 60:02)

ENVIRONMENT MANAGEMENT (CHEMICALS AND TOXIC SUBSTANCES MANAGEMENT) REGULATIONS

Licence to Export Chemicals

Licence No. .....

Name: .....

Address: .....
(*Plot No., village, town, city, district*)

You are hereby licensed to import the following chemicals: .....

.....

(*indicated by number in Schedule*):

1. .....

2. .....

3. .....

(*Name and address*):

The export shall be made through: .....
(*border/customs control post*)

This licence is granted subject to the following conditions:

(*Attach a copy of authorization by the state from which importation is to be made*)

1. .....

2. .....

3. .....

Date: ..... Signature: .....
Director
Department of Environmental Affairs

ELEVENTH SCHEDULE reg. 4

REPUBLIC OF MALAŴI

ENVIRONMENT MANAGEMENT ACT

(CAP. 60:02)

ENVIRONMENT MANAGEMENT (CHEMICALS AND TOXIC SUBSTANCES MANAGEMENT) REGULATIONS

LICENCE TO TRANSPORT CHEMICALS

Licence No. .....

Name: .....

Address: .....

You are hereby licensed to manufacture/repackage the following chemicals (*indicated by number in Schedule*):

1. .....

2. .....

To (*Location, district*): .....

From (*Location, district*): .....

Number, type and registration number of vehicles licensed: .....

.....

This licence is valid from ..... , 20 ..... to ....., 20.....

This licence is granted subject to the following conditions: .....

.....

Date: ..... Signature.....

Director

Department of Environmental Affairs

TWELFTH SCHEDULE reg. 4

REPUBLIC OF MALAŴI

ENVIRONMENT MANAGEMENT ACT

(CAP. 60:02)

ENVIRONMENT MANAGEMENT (CHEMICALS AND TOXIC SUBSTANCES MANAGEMENT) REGULATIONS

LICENCE TO DISTRIBUTE CHEMICALS

Licence No. .....

Name: .....

Address: .....

(*Plot No., village, town, city, district*)

You are hereby licensed to distribute the following chemicals: (*indicated by number in Schedule*)

1. .....

2. .....

3. .....

To: (*wholesalers retailers, etc.*)

Quantity: .....

Specific use: .....

This licence is valid from ..... , 20 ..... to ....., 20.....

This licence is granted subject to the following conditions: .....

.....

Date: ..... Signature: .....

Director
Department of Environmental Affairs

THIRTEENTH SCHEDULE reg. 4

REPUBLIC OF MALAŴI

ENVIRONMENT MANAGEMENT

(Cap. 60:02)

ENVIRONMENT MANAGEMENT (CHEMICALS AND TOXIC SUBSTANCES MANAGEMENT) REGULATIONS

Fees

Matter	*Fees payable on first application*		*Fees payable Column 1 renewal of licence*	
	K	t	K	t
1. Application for licence to manufacture/ repackage chemicals	50,000	00	30,000	00
2. Application for licence to import chemicals	50,000	00	30,000	00
3. Application for licence to export chemicals	50,000	00	30,000	00
4. Application for licence to transport chemicals (carrier)	50,000	00	30,000	00
5. Application for licence to distribute chemicals	50,000	00	30,000	00
6. Application for licence to operate/ own a disposal site or plant . .	50,000	00	30,000	00

FOURTEENTH SCHEDULE reg. 4

(To be completed in Triplicate)

REPUBLIC OF MALAŴI

ENVIRONMENT MANAGEMENT ACT

(CAP. 60:02)

ENVIRONMENT MANAGEMENT (CHEMICALS AND TOXIC SUBSTANCES MANAGEMENT) REGULATIONS

APPLICATION FOR RENEWAL OF A LICENCE

Name of Applicant: .....

Address: .....

Application for Renewal of a licence for: .....

manufacturing/repackaging chemicals: .....

Importing chemicals: .....

Exporting chemicals: .....

Transportation of chemicals: .....

Wholesale/distribution of chemicals: .....

Retail of chemicals: .....

Location of business: .....

Current licence number: .....

Chemical applied for: .....

Does the applicant seek any changes in the conditions of the current licence?

I certify that the information provided is complete and correct.

Date: ..... Signature: .....

Director
Department of Environmental Affairs

FOR OFFICIAL USE ONLY

1. Date of receipt of application: .....
2. Application Fee MK in words: .....
3. Date of inspection of premises (a separate inspection report is required): .....
4. Approved
5. Rejected Licence number
6. Further information required
7. Reasons if (5) is applicable: .....

FIFTEENTH SCHEDULE reg. 4

REPUBLIC OF MALAŴI

ENVIRONMENT MANAGEMENT ACT

(Cap. 60:02)

ENVIRONMENT MANAGEMENT (CHEMICALS AND TOXIC SUBSTANCES MANAGEMENT) REGULATIONS

Minimum Requirements for Manufacturing, Packaging, Transportation Storage or Distribution of Chemicals

PART I

Minimum Requirements for Manufacturing, Packaging of Chemicals

1. Premises

1.1 Premises should be located away from home, drinking water sources and areas liable to flooding.

1.2 Premises should be maintained in a good state of repair. The condition of buildings should be reviewed regularly and repairs effected where necessary.

1.3 Premises should have sufficient space to provide hygienic working conditions, allow an efficient flow of work, and permit effective communication and suspension, and clear access to fire fighting equipment.

1.4 Floors in processing areas should be made of impervious materials, laid on, and even surface, free from cracks and open joints, and should allow prompt and efficient removal of any spillage. Walls should be sound and finished with a smooth, impervious, washable and non-flammable surface.

1.5 Premises in which chemical products are stored, manufactured or repackaged should be made secure, with access restricted to authorized personnel.

1.6 Roofing must be able to keep out rain and must be designed to allow for fumes and heat to be vented in case of fire.

1.7 Pretreatment facilities should be provided to reduce the amount and toxicity of wastes.

1.8 Drains should be of adequate size, and should have trapped quellies and proper ventilation. Open channels should be avoided where possible, but if they are necessary, they should be shallow to facilitate cleaning or easy recovery of the chemical for reuse/disposal. Drainage should be directed to pretreatment facilities.

1.9 Air intakes and exhausts, and associate pipe work and trucking should be sited to avoid occupational safety hazards and reduce emission into the environment.

1.10 Manufacturing areas should not be used as a general right of way for personnel or, except of materials used in the manufacturing process, for storage of materials.

1.11 Waste material should not be allowed to accumulate but should be collected in suitable receptacles for removal to collection points outside the building and disposed of in accordance with the requirements under regulation. Special care is necessary over the disposal of waste containing dangerous, highly toxic chemicals.

Disposal of raw materials printed packing materials and rejected products should be carefully controlled and documented.

1.12 There should be made available written clearing procedures and schedules for manufacturing or repackaging and storage areas. The amounts of harmful chemicals stocked should be reported and the quantities emitted into the environment.

1.13 Adequate space, preferably separated from the processing areas, should be provided for storing equipment, and storage of cleaning materials, signs should be available indicating non-smoking, non-eating areas, location of emergency equipment. Emergency phones and emergency exit routes.

2. Storage Areas

2.1 Goods must be checked on arrival for identity, quantity and condition.

2.2 Storage areas should be designed, laid-out and be of sufficient capacity to permit effective and orderly segregation of various categories of material stored and where possible access should be restricted to authorized personnel.

2.3 Segregated storage should be provided for rejected, recalled, expired or returned goods. There should also be physical separation of chemicals that react with each other and separation of chemicals from foodstuffs, feedstuffs and pharmaceuticals.

2.4 Labels and other printed packaging materials, should be stored in a secure manner that will permit issue only to authorized persons in accordance with formal documented procedures. Storage arrangements should permit separation of different labels and other printed materials and avoidance of a mix-up.

2.5 All goods should be stored under cover to avoid risk of harmful exposure to personnel.

2.6 Every area for the bulk storage should be under cover to avoid risk of harmful exposure to personnel and should be—

(*a*) adequately ventilated;

(*b*) capable of containing not less than seventy-five per cent of spillage;

(*c*) have an inventory of the substances in storage maintained and prominently displayed; and

(*d*) provide for separate locations for solid and liquid products.

2.7 Products in storage shall have—

(*a*) product data sheets;

(*b*) hygiene and safety instructions; and

(*c*) emergency instructions and procedures.

2.8 Storage facilities should only stock the quantity needed in the immediate future.

3. Equipment

3.1 Equipment should be designed and located to suit the process and products for which it is to be used. Equipment should be maintained so as to be fit to perform the contemplated functions and present no hazard to personnel.

3.2 All necessary and protective equipment should be provided.

3.3 Manufacturing equipment should be easily and conveniently cleanable, both inside and outside. There should be available written instructions for cleaning of equipment and suitable clearing facilities should be provided.

3.4 Equipment should not be a hazard to human health and the environment through leaking joints, lubricant drips or through inappropriate modifications or adaptations.

3.5 Equipment used for weighing, measuring, testing and recording should be subject to regular recorded checks for accuracy and working order, in accordance with a written planned maintenance schedule.

3.6 Emergency equipment should be available, for example, fire fighting, and emergency showers.

4. Personnel

4.1 The key personnel are the persons responsible for production or repackaging and the person responsible for quality control, who should be different persons, neither of whom should be responsible to the other, but who should both have a responsibility for achieving the requisite quality.

4.2 Manufacturing or repackaging operations shall be carried out under the supervision of a chemist with adequate relevant post-graduate training with the support of suitably qualified personnel such as a chemical technologist or assistant.

4.3 All quality control operations shall be carried out under the supervision of an appropriate trained chemist with relevant post-graduate training with the support of suitably qualified personnel such as a laboratory technologist or assistant.

4.4 Personnel involved in the manufacturing or repackaging of toxic substances or chemicals shall be provided with—

(*a*) adequate protective and safety clothing;

(*b*) adequate and appropriate equipment or facilities for handling toxic substance and chemicals;

(*c*) proper training and information of potential health hazards to which he may be exposed to and the measures available for prevention and control and protection against health hazards as required under section 65 of the Occupational Safety Health and Welfare Act. (Cap. 55:07)

5. Production

5.1 Manufacturers are required to use less harmful chemicals during production to reduce the amount of hazardous wastes.

5.2 The quality of the chemical shall comply with the requirements under these Regulations.

PART II

Minimum Requirements for Transportation and Storage of Toxic Substances and Chemicals

1.1 Adequate and appropriate facilities and equipment to transport, store or handle toxic substances and chemicals in an environmentally sound manner is a prerequisite.

1.2 The facility should be in a position to report the amounts of harmful chemicals they stock and the quantities emitted into the environment.

1.3 The collection and transportation of toxic substances and chemicals shall be conducted in a manner that would not cause spillage, harmful emissions, leakage and scattering of the substances.

1.4 The vehicle, pipelines and equipment for the transportation of toxic substances and chemicals shall be in such a state as not to cause the scattering, harmful emissions or the flowing of the substances.

1.5 Chemicals must not be loaded together with food and other materials destined for human or animal consumption and use.

2. Personnel

2.1 The personnel involved in the collection, transportation or storage of toxic substances shall be provided with—

(*a*) adequate protective and safety clothing;

(*b*) adequate and appropriate equipment or facilities for handling toxic substances; and

(*c*) proper training and information.

2.2 Drivers in particular should be given written summaries of emergency response procedures to be followed in case of an accident involving chemicals.

2.3 The personnel involved in the collection, transportation or storage of toxic substances and chemicals shall undergo such medical check-ups as are necessary commensurate to the risks faced by the employees and the medical report of fitness shall be kept by the town clerk of every local authority.

3. Vehicles

3.1 The vehicle for transporting or other means of conveyance and the premises for storage of toxic substances and chemicals shall be labelled in such a manner as prescribed by the Director.

3.2 The condition of the vehicle must be checked before loading, and unsound floors and protrusions likely to damage the packs must be avoided.

3.3 Stability of the load must be ensured.

3.4 Vehicle must carry documents, for example Transport Emergency (TREM) Card, that will identify the following, in the event of an accident—

(*a*) the dispatching company, including its address and phone numbers;

(*b*) the products being carried; and

(*c*) basic hazards and precautions to be taken.

3.5 Suitable fire-extinguisher, protective and clean-up equipment should be available for the driver.

3.6 The quality of the chemical shall comply with the requirements under these regulations.

PART III

Minimum Requirements for Distribution of Toxic Substances and Chemicals

1. Domestic Sale

1.1 A person may sell chemicals if he has been granted a licence by the Director under regulation 4.

1.2 A chemical shall be distributed and used for specific purpose only as stipulated under these Regulations e.g. restricted to agricultural, industrial, domestic or public health purposes.

1.3 A chemical shall be produced or manufactured in the form (i.e. whether liquid or otherwise) as indicated by these Regulations and the concentration levels shall conform to the specifications under these Regulations.

1.4 A distributor of chemicals must comply with labelling, packaging, storage and other requirement stipulated under these Regulations.

2. Advertising

2.1 The use of false or misleading statements or visual presentations is strictly prohibited. In particular, the use of statements and pictures that exaggerate or otherwise misrepresent the safety and effectiveness of a chemical.

2.2 Adverts should consist of accurate, factual statements that can be substantiated by testing and technical information.

2.3 Adverts should stress the importance of reading the label and following appropriate safety precautions.

3. Import and Export

3.1 A person may import chemicals into Malaŵi if he is licensed to do so under regulation 4.

3.2 A licensed person shall import into Malaŵi only those chemicals registered under regulation 10.

3.3 A licensed importer of chemicals shall display proof of his licence or other documentation to customs officials when bringing shipments of chemicals into the country.

3.4 The importer shall be required to certify in writing that a shipment complies with these Regulations.

3.5 A person may export chemicals if he is licensed to do so under regulation 4.

3.6 Severely restricted chemicals shall be exported only with the prior consent of the recipient country.

SIXTEENTH SCHEDULE reg. 4

(To be completed in Triplicate)

REPUBLIC OF MALAŴI

ENVIRONMENT MANAGEMENT

(CAP. 60:02)

ENVIRONMENT MANAGEMENT (CHEMICALS AND TOXIC SUBSTANCES MANAGEMENT) REGULATIONS

APPLICATION FOR A LICENCE TO OWN/OPERATE A CHEMICAL WASTE DISPOSAL SITE/PLANT

I/We ..... hereby apply for a licence to own/operate a chemical waste disposal site/plant, of which particulars are given below—

1. Address of Applicant: .....
2. Location and District of site/plant: .....
3. Approval by the Local Authority (*attach a written approval by the environmental officer of the Local Authority*).
4. Type of chemical(s) to be disposed off at site/plant: .....
5. Characteristics of the chemical(s): .....
6. Form of the chemical(s): .....
   (*a*) liquid: .....
   (*b*) dust: .....
   (*c*) granular: .....
   (*d*) baits:.....
   (*e*) wettable powders:.....
   (*f*) other (specify): .....
7. Quantity being disposed off/per annum:.....
   (*a*) liquid: .....
   (*b*) dust: .....
   (*c*) granular: .....
   (*d*) baits.....
   (*e*) wettable powders: .....
8. Estimated life span of plant/site: .....

9.— (*a*) proposed hectarage/area of site/plant (*include site plan and designation*):

— (*b*) description of soil structure and geology of the area

10. Executive summary of environmental impact assessment (*please attach*) Any other information.

.....

Signature of Applicant and Title

FOR OFFICIAL USE ONLY

Application received by: .....

MK ..... in words

Signature .....

Director, Environmental Affairs Department

SEVENTEENTH SCHEDULE reg. 4

(To be completed in Triplicate)

REPUBLIC OF MALAŴI

ENVIRONMENT MANAGEMENT

(CAP. 60:02)

ENVIRONMENT MANAGEMENT (CHEMICALS AND TOXIC SUBSTANCES MANAGEMENT) REGULATIONS

LICENCE TO OWN/OPERATE A CHEMICAL WASTE DISPOSAL SITE

Licence No. .....

Name: .....

Physical address: .....

You are hereby licensed to own operate a chemical waste disposal site/plant at Plot No. .....

(*village, town city, district*)

This licence is valid from ..... , 20 ..... to ....., 20....

This licence is granted subject to the following conditions: .....

.....

Date: .....

Date: ..... Signature: .....

Director
Department of Environmental Affairs

EIGHTEENTH SCHEDULE reg. 4

REPUBLIC OF MALAŴI

ENVIRONMENT MANAGEMENT ACT

(CAP. 60:02)

ENVIRONMENT MANAGEMENT (CHEMICALS AND TOXIC SUBSTANCES MANAGEMENT) REGULATIONS

NOTIFICATION SCHEME FOR BANNED AND SEVERELY REGISTERED CHEMICALS

FORM A: INFORMATION REGARDING EXPORT

1. Country of export: .....
2. Ministry/Department and Responsible Authority/Firm: .....
3. Name(s) of chemical: .....
   (*common name; trade name*)
4. Specification, irrelevant for control action: .....
5. Code numbers: .....
   (*a*) Chem. Abstr. Services Reg. No. (CAS): .....
   (*b*) Other number(s) specify: .....
6. Country of destination: .....
7. Designated National Authority or national authorities to which this information is addressed: .....
8. Notification of control action sent: .....
   (*a*) Date(s): .....
   (*b*) Copy attached: .....
   (*c*) Reference address of Designated National Authority: .....
9. Information regarding export: .....
10. Name, title and address of person providing this information: .....
11. Date: .....

FORM B. NOTIFICATION FOR CONTROL ACTION

1. Country: .....
2. Ministry Department and Responsible Authority: .....
3. Name(s) of chemical (chemical name) (IUPAC): common name: trade names:
   .....
4. Specification, if relevant for control action (e.g. for pesticides): .....
5. Code numbers: .....
   (*a*) Chem. Abstr. Services Reg. No. (CAS): .....
   (*b*) Customs Cooperation Council No. (CCC): .....
   (*c*) Other number(s) specify: .....

6. Control action: .....

USE(S) CONTROLLED AND SUMMARY OF CONTROL ACTION	EFFECTIVE DATE	REF. TO NATION DOCUMENT

7. Reasons supporting the control action (relevant to protection of human health and the environment): .....
8. Contact point where additional information may be obtained: ....
9. Designated alien authority: .....
10. Name and title of official issuing this notification: .....
11. Date: .....

ENVIRONMENT MANAGEMENT (WASTE MANAGEMENT AND SANITATION) REGULATIONS

ARRANGEMENT OF REGULATIONS

REGULATION

Part I
Preliminary Regulation

1. Citation
2. Interpretation

Part II
Role of Local Authorities

3. Local authorities to prepare waste management plans
4. Local authorities to promote integrated solid waste management
5. Local authorities to operate a municipal sewage collection system
6. Local authorities to promote colour coding of waste containers by waste type

Part III
Management of General or Municipal Solid Waste

7. Waste separation at source
8. General responsibility for proper storage of municipal solid waste
9. Generator of waste may dispose of waste in certain circumstances
10. Collection of municipal solid waste
11. Disposal of general or municipal solid waste

Part IV
Solid Waste Recycling and Recycling Facilities

12. Recyclables
13. Application for a licence to own or operate a recycling facility
14. Licence to own or operate a recycling facility
15. A business to recycle solid waste materials
16. Solid waste reduction and recycling plan annual reports
17. Contents of a solid waste reduction and recycling plan
18. Contents of annual report on waste reduction and recycling

REGULATION

19. Certification of solid waste reduction and recycling plans and reports

PART V
MANAGEMENT OF MUNICIPAL LIQUID WASTE

20. Effluent
21. Discharges to water
22. Discharges
23. Discharges into the environment
24. Sewage facility
25. Management and operations of a sewage facility
26. Non-domestic waste connection to municipal sewage system
27. Semi-solid waste
28. Discharge monitoring
29. Monitoring of receiving environment
30. Reporting

PART VI
MANAGEMENT OF HAZARDOUS WASTE

31. Submission of false information, etc.
32. Hazardous waste
33. Labeling of waste
34. Directions for handling hazardous wastes
35. Compliance code by industries
36. Disposal of hazardous waste
37. Infectious waste
38. Containment of infectious waste
39. Handling of waste
40. Storage and transfer of infectious wastes
41. Infectious waste treatment methods
42. Infectious waste records
43. Medical waste reduction
44. Waste audit by medical facilities

PART VII
TRANSPORTING AND STORAGE OF WASTE

45. Transportation and storage of waste
46. Licence for waste transportation or storage
47. Conditions attached to licences
48. Materials for storage of waste

REGULATION

Part VIII
Waste Disposal Site or Plant

49. Environmental impact assessment
50. Application for a licence to own or operate a waste disposal site or plant
51. Licence to own or operate a waste disposal site or plant
52. Conditions for a waste disposal site or plant
53. Methods of disposal
54. Requirements for personnel working at waste disposal site or plant
55. Prevention of pollution from waste disposal sites or treatment plants

Part IX
Trans-Boundary Movement of Wastes

56. Trans-boundary movement of wastes
57. Restrictions on exporting hazardous wastes or other wastes
58. National authority for prior informed consent procedure
59. Notification procedures and prior informed consent
60. Ports of entry and routes

Part X
Miscellaneous Provisions

61. Location of disposal of wastes
62. Reporting procedures
63. Duty to keep records
64. Register of licences
65. Communication of decision
66. Improvement notice
67. Cancellation of licence
68. Selling or offering for sale a container previously used for storage of hazardous waste
69. Polluter responsible to pay for pollution
70. Duty of care
71. Skips
72. Pit latrines
73. Refuse pits
74. Public and private lavatories and washing places
75. Offences and penalties
76. Local authorities to make by-laws
77. Transitional provision

SCHEDULES

First Schedule—Solid Waste Management Hierarchy

Second Schedule—Colour Coding Waste Containers by Waste Type

Third Schedule—Application for a Licence to Own/Operate a Waste Recycling Facility

Fourth Schedule—Licence to Own/Operate a Recycling Facility

Fifth Schedule—Solid Waste Reduction and Recycling Plan

Sixth Schedule—Quality Standards for Effluent to Inland Surface Water

Seventh Schedule—Categories of Hazardous Wastes to be Controlled

Eighth Schedule—List of Hazardous Characteristics

Nineth Schedule—Application for a Licence for Transportation of Waste

Tenth Schedule—Application for a Licence for Storage of Waste

Eleventh Schedule—Licence to Transport Wastes

Twelfth Schedule—Licence for Storage of Waste

Thirteenth Schedule—Application for a Licence to Own/Operate a Waste Disposal Site/Plant

Fourteenth Schedule—Licence to Own/Operate a Waste Recycling Facility

Fifteenth Schedule—Disposal Operations

Sixteenth Schedule—Movement Document for Trans-boundary Movement of Wastes

Seventeenth Schedule—Licence to Export Wastes

Eighteenth Schedule—Licence to Import Wastes

Nineteenth Schedule—Notification Document for Trans-boundary Movement of Wastes

Twentieth Schedule—Fees

Environment Management (*Waste Management and Sanitation*) *Regulations* **[Subsidiary]**

ENVIRONMENT MANAGEMENT (WASTE MANAGEMENT AND SANITATION) REGULATIONS

under s. 37

Part I
Preliminary

1. These Regulations may be cited as the Environment Management (Waste Management and Sanitation) Regulations. Citation

2. In these Regulations, unless the context otherwise requires— Interpretation

"agricultural solid wastes" include wastes resulting from the production and processing of farm or agricultural products, including manures, pruning and crop residues wherever produced;

"business" shall have the same meaning assigned thereto under the Business Licensing Act; Cap.46:01

"carrier" means any person who carries out the transportation of wastes including hazardous wastes and includes his agents or assignees;

"collection" means the act of collecting solid waste at the place of waste generation by a local government authority or approved private collection agent;

"commercial solid waste" includes all types of solid wastes generated by stores, offices and other commercial sources but does not include domestic waste or industrial waste;

"composting" includes a controlled microbial degradation of organic matters yielding a safe and nuisance free product;

"construction and demolition wastes" include the waste building, materials packaging and rubble resulting from construction, remodeling, repair and demolition operations on houses, commercial buildings and other structures;

"domestic sewage" means human excrement, water borne human excretion or the water-carried wastes from liquid or non-liquid culinary purposes, washing, cleansing, laundering, food processing or ice production;

"disposal site or plant" means the land or water area on which waste disposal facilities are physically located and includes a large incinerator;

"domestic wastes" means wastes generated from residences and includes garbage and rubbish;

"exporter" means any person under the jurisdiction of the state of export who arranges for the export of wastes including hazardous wastes;

"garbage" includes all kitchen and table food waste, animal or vegetable waste that attends or results from the storage, preparation, cooking or handling of foodstuffs;

"generator" means any person whose activity generates wastes or if that person is not known, the person who is in possession or control of the wastes;

"groundwater" means subsurface water at or below a water table in fully saturated geologic materials and formations;

"hazardous wastes" means any waste which has been identified in the Seventh Schedule hereto or any waste having the characteristics defined in the Eighth Schedule hereto and includes medical waste and infectious waste;

"importer" means any person under the jurisdiction of the state of import who arranges for wastes including hazardous wastes to be imported;

"incinerator" includes any equipment used for the volume reduction or destruction of combustible wastes by burning, from which the exhaust gases pass through a flue;

"industrial wastes" include all types of solid wastes and semi-solid wastes which result from industrial processes and manufacturing;

"infectious wastes" include—

(*a*) disposable equipment, instruments, utensils and other materials of a disposable nature which require special precaution because of contamination by disease causing organisms;

(*b*) microbiological laboratory wastes, including cultures and stocks of infectious agents from clinical research or industrial laboratories, and disposable culture dishes and devices used to transfer, inoculate and mix cultures;

(*c*) pathological wastes, including human or animal tissues, organs and body parts, removed during surgery, autopsy and biopsy;

(*d*) human blood and blood products, including waste blood, blood serum and plasma;

(*e*) used sharps, including used hypodermic needles, syringes, scalpel blades, pasteur pipettes and broken glass; and

(*f*) contaminated animal carcasses, body parts and bedding, especially those intentionally exposed to pathogens in

research, in the production of biological or the "in viro" testing of pharmaceuticals.

"litter" means all improperly discarded waste material including convenience food, beverage, and other product packages or containers constructed of steel, aluminum, glass, paper, plastic and other natural and synthetic materials, thrown or deposited on the lands and waters of the nation;

"local authority" means a local authority as defined under the Local Government Act; Cap. 22:01

"medical waste" means waste which is generated or produced as a result of diagnosis, treatment or immunization of human beings or animals, and includes waste sharps and bio-hazardous waste which is generated by bio-hazardous research through production and testing of biologicals including serums, vaccines, antigens and anti-toxins;

"Director" means the Director responsible for environmental issues;

"municipal liquid waste" means—

(*a*) effluent that originates from any source and is discharged into a municipal sewer system;

(*b*) effluent from residential sources that is discharged to the ground; or

(*c*) effluent specified by the Director to be included in a waste management plan;

"municipal sewage" means domestic sewage, wastewater or municipal liquid waste originating primarily from residences, but may include contributions from—

(*a*) commercial, institutional and industrial sources; and

(*b*) inflow and infiltration;

"municipal solid waste" means waste that is generally non-hazardous and may be disposed of without any special considerations and includes trash and garbage and bulky waste;

"recyclables" means waste materials of the type required to be recycled pursuant to these Regulations;

"recycling" means any process by which materials are diverted from the solid waste stream and are collected, separated, processed and returned to the economic mainstream in the form of raw materials or product for re-use;

"recycling facility" means a facility which is able to accept and process recyclable materials in accordance with acceptable international standards and these Regulations;

"recycling plan" means a plan describing a programme for waste reduction at source and recycling;

"resource recovery" means the reclamation or salvage of wastes for re-use, conversion to energy or recycling;

"re-use" means using an object and material again, either for its original purpose or for a similar purpose, without significantly altering the physical form of the object or material;

"septic tank" means a watertight vessel into which municipal sewage is continually conveyed such that solids within the municipal sewage settle, anaerobic digestion of organic materials occurs and an effluent is discharged;

"sewage facility" means works operated by a municipality or any licensed person to gather, treat, transport, store, utilize or discharge sewage;

"solid waste management" includes—

(*a*) a planned programme for effectively controlling the generation, storage, collection, transportation, processing, and reuse, conversion or disposal of solid wastes in a safe, sanitary, aesthetically acceptable, environmentally sound and economic manner; and

(*b*) all administrative, financial, environmental, legal and planning functions as well as the operational aspects of solid waste handling, disposal and resource recovery systems necessary to achieve established objectives.

"transit" means the passage from one border to another border through the national territory of Malaŵi including storage in transit bonds;

"waste" includes—

(*a*) general or municipal solid waste;

(*b*) hazardous waste; and

(*c*) municipal liquid waste.

Part II
Role of Local Authorities

Local authorities to prepare waste management

3.—(1) Every local authority shall prepare a waste management plan for the area of its jurisdiction which shall include the following—

(*a*) type of waste generated by area;

(*b*) management of each type of waste generated; and

(*c*) resources required for managing each type of waste in terms of budget and equipment.

(2) A local authority shall keep records of waste management services in its area of jurisdiction from the point of generation to the point of disposal and such records shall include—

(*a*) the source;

(*b*) waste type or types;

(*c*) quantities of waste handled;

(*d*) classification of waste;

(*e*) recyclability of the types of waste managed; and

(*f*) recommended disposal methods and mechanisms for monitoring compliance with such disposal methods.

Local authorities to promote waste management

4.—(1) A local authority shall promote an integrated waste management system and shall adopt the waste management hierarchy as provided in the First Schedule hereto.

(2) A local authority shall progressively upgrade landfills from dump sites to sanitary or engineered landfills.

(3) Local authorities shall promote waste composting at source as the only way to reduce the amount of waste to be disposed at landfills.

Local authorities to operate a municipal sewage collection system

5. A local authority shall operate and maintain a municipal sewage collection system in its area of jurisdiction.

Local authorities promote colour coding of waste containers by waste type

6.—(1) Local authorities shall promote colour coding of waste containers by waste type to ensure and promote waste segregation.

(2) Waste containers shall be colour coded as provided in the Second Schedule hereto.

Part III
Management of General or Municipal Solid Waste

Waste separation at source

7.—(1) Any person who generates or collects solid waste shall sort out the waste by separating hazardous waste from the general or municipal solid waste.

(2) The general or municipal solid waste shall be further sorted out into categories of wastes that can be recycled or reclaimed and waste that is earmarked for disposal.

General responsibility for proper storage of municipal waste

8.—(1) Every generator of waste shall be responsible for the safe and sanitary storage of all general or municipal solid waste accumulated on his or her property so as not to promote the propagation, harborage or attraction of vectors or the creation of nuisances.

(2) Any method of storage adopted by a generator pursuant to subregulation (1) shall accommodate the anticipated solid waste loading and shall allow for efficient and safe waste removal or collection.

Generator of waste may dispose of waste in certain circumstances

9. Any generator of waste may, without licence under these Regulations, but with special permission from a local authority, dispose of general or municipal solid waste which is non-hazardous in an environmentally sound manner in accordance with by-laws made by a local authority:

Provided that this shall not apply to the disposal of large amounts of such waste.

Collection of municipal solid waste

10.—(1) A local authority shall be responsible for the collection of the general or municipal solid waste in its area of jurisdiction and this shall be done at such a frequency as to prevent the piling of waste.

(2) Notwithstanding subregulation (1), a local authority may assign private contractors to collect general or municipal waste to ensure effective and efficient collection services.

(4) Where the same vehicle is used to collect both types of waste, the separation shall be maintained during collection, transportation and offloading at the respective waste disposal sites or recycling facilities.

(5) Recyclables shall be delivered only at any recycling facility licensed for that purpose under these Regulations and not to a waste disposal site or plant.

Disposal of general or municipal solid waste

11.—(1) General or municipal solid waste may be disposed of at any waste disposal site or plant identified and maintained by a competent local authority or owned or operated by any person licensed to do so under these Regulations.

(2) An operator of a waste disposal site or plant shall keep the following records in respect of any waste disposed of at the site or plant—

(*a*) the source;

(*b*) weight of the wastes; and

(*c*) type of wastes.

(3) Any person who discharges wastes into a site or plant which is unlicensed commits an offence.

Part IV
Solid Waste Recycling and Recycling Facilities

Recyclables

12. For the purposes of these Regulations, the following materials may be recycled—

(*a*) paper;

(*c*) plastics;

(*d*) metals such as aluminium foil, beverage cans, metal, food cans;

(*e*) tyres; and

(*f*) leaf and yard waste and other organic materials including agricultural solid wastes.

Application for a licence to own or operate a recycling facility

13.—(1) Any person who intends to own or operate a recycling facility shall apply to the Director for a licence.

(2) The application shall specify the types of waste that is intended to be recycled at the facility and shall be in the form set out in the Third Schedule hereto and shall be accompanied by a fee specified in the Twentieth Schedule hereto.

(3) Where the application is for a licence to recycle hazardous wastes, the applicant shall indicate the recycling process that he intends to employ in accordance with the categories specified under Part VI and shall enclose—

(*a*) a detailed description of the possible effects of the process that he intends to employ; and

(*b*) any other matter that may be required by the Director.

Application for a licence to own or operate a recycling facility

14.—(1) The Director may grant a licence in the form set out in the Fourth Schedule hereto to own or operate a recycling facility if—

(*a*) a written approval has been obtained from the local authority responsible for the area within which the recycling facility is located; and

(*b*) the Director is satisfied that the owner or operator has the ability and appropriate facilities to manage the recycling facility without causing any damage to public health and the environment, taking into account the findings of any environmental impact assessment submitted by the owner or operator.

(2) In granting a licence for the recycling of hazardous wastes, the Director shall clearly indicate the recycling process permitted and identified in accordance with the categories identified under Part VI.

(3) A licence to own or operate a recycling facility shall be valid for one (1) year and may be renewed for a like period at a fee set out in the Twentieth Schedule hereto.

A business to recycle solid waste materials

15.—(1) A business may recycle any commercial solid waste which is recyclable under these Regulations and for which there is a viable market.

(2) For the purposes of this regulation, businesses shall be classified into the following size categories—

(*a*) large business with two hundred fifty or more employees;

(*b*) medium sized business with one hundred to one hundred forty nine (149) employees;

(*c*) small business with less than one hundred employees.

(3) Pursuant to subregulation (1), a business shall place containers for all required recyclable materials in adequate sizes and quantities in each location where trash containers are located and shall clearly label each container to indicate the appropriate material to be placed inside for recycling.

Solid waste reduction and recycling plan and annual reports

16.—(1) Every business shall prepare and submit to the Director a wastes reduction and recycling plan demonstrating how the business shall recycle or reduce the amount of solid wastes going to a disposal site or plant with the goal of reducing solid waste disposal by at least fifty per cent (50%) annually, by volume or weight.

(2) Every business shall prepare and submit to the Director an annual report providing information on wastes reduction and recycling activities conducted during the previous calendar year.

Contents of a solid waste reduction and recycling plan

17. A solid wastes reduction and recycling plan shall be in the form set out in the Fifth Schedule hereto and shall contain the following—

(*a*) a description of the business, including—

(i) name and address of the property owner and the reporting business;

(ii) names of all entities affiliated with the business, including any parent or subsidiary businesses;

(iii) number of full-time and part-time employees;

(iv) number of square metres occupied by the business; and

(v) the activities conducted by the business.

(*b*) a description of the businesses' current solid waste generation, including—

(i) estimated tonnage of all solid waste produced;

(ii) identification of recyclable solid waste as provided in regulation 12;

(*c*) a description of the businesses' waste reduction and recycling methods;

(*d*) name of the person responsible for—

(i) coordinating recycling and waste reduction activities;

(ii) preparation of the annual report on waste reduction and recycling; and

(iii) responding to the Director on actions concerning implementation and enforcement of these Regulations; and

(*e*) name and address of the licensed contractor responsible for collecting the materials to be recycled and the names of the facilities where materials are delivered.

Contents of annual report on waste reduction and recycling

18. An annual report referred to in regulation 16 shall include the following information on waste reduction and recycling activities—

(*a*) any change in the description of the business as submitted in the waste reduction and recycling plan, including—

(i) the purpose of and activities conducted by the company;

(ii) the number of full-time and part-time employees; and

(iii) the number of square metres occupied by the company;

(*b*) identification of the total annual tonnage of solid waste generated and the annual tonnage of each type of material being reduced or recycled;

(*c*) name and address of the licensed contractor responsible for collecting the materials to be recycled and sites where materials are delivered;

(*d*) a description of the progress in waste reduction and re-use efforts undertaken by the company;

(*e*) a description of the company's efforts to educate employees about its recycling programme.

Certificate of solid waste reduction and recycling plans and reports

19. All plans and reports on waste reduction and recycling shall be signed by a person authorized to bind a business, and must certify that the information is correct to the best of his knowledge.

Part V
Management of Municipal Liquid Waste

Effluent

20.—(1) No person shall discharge effluent or provide reclaimed water that exceeds the effluent quality limits for use as reclaimed water or for discharge to the environment as specified in the Sixth Schedule hereto.

(2) Disinfected effluent may be used for—

(*a*) domestic or agricultural water extraction;

(*b*) recreational uses; or

(*c*) aquatic food production.

(3) No person shall use chlorine to disinfect an effluent which is to be discharged to surface water unless the effluent is dechrolinated before discharge.

Discharges to water

21.—(1) A person must not provide or use reclaimed water unless—

(*a*) the standards for use of reclaimed water as set out in the Sixth Schedule are met; and

(*b*) an environmental audit has been conducted.

(2) A person providing or using reclaimed water shall—

(*a*) provide an alternative method of disposing of the reclaimed water and describe that method in the operating plan; and

(*b*) satisfy the Director that no alternative method described in paragraph (*a*) is required to assure public health protection and treatment reliability.

(3) No person shall provide reclaimed water unless specifically authorized by a local authority having jurisdiction in the area.

Discharges

22. No person shall introduce effluent to water unless—

(*a*) the effluent quality standards for discharges to water as set out in the Sixth Schedule hereto are met; and

(*b*) there is adequate proof that the receiving water body shall efficiently dilute the effluent so as to prevent any hazard to the environment or public health.

Discharges into the environment

23. No person shall discharge effluent into the environment unless it meets prescribed environment standards.

Sewage facility

24.—(1) A sewage facility shall be designed in such a way as to ensure that the construction method, the materials used and the constructed facility meet the design criteria of such a facility undertaken by a competent professional who has expertise in the particular aspect of the design.

(2) Where the sewage facility is to serve a population greater than five thousand persons, a staged approach to the design should be taken as follows—

(*a*) concept level planning;

(*b*) preliminary engineering; and

(*c*) detailed design.

Management and operations of a sewage facility

25.—(1) The owner or operator of a sewage facility shall develop an operating plan for the facility.

(2) The operating plan shall specify the following—

(*a*) proper operation and maintenance of the sewage facilities;

(*b*) for reclaimed water use on vegetation, the maximum application rate based on agrology studies for the vegetation to which the reclaimed water is applied;

(*c*) emergency procedures;

(*d*) facility monitoring; and

(*e*) staff education and certification.

(3) This regulation shall not apply to a municipal sewage collection system.

Non-domestic waste connection to municipal sewage system

26.—(1) No person shall release any non-domestic waste into a municipal sewage system unless—

(*a*) the person releasing the non-domestic waste ensures that its quality meets the standards set by a competent local authority before being released;

(*b*) the sewage facility owner ensures that the requirements of this regulation and the quality of any bio-solids meet the requirements of an authorization issued by a competent local authority.

(2) A local authority shall not accept the discharge of non-domestic waste into municipal sewage collection system unless the local authority—

(*a*) has adopted a source control by-law or equivalent measures to regulate the discharge of non-domestic waste into the sewer system; or

(*b*) demonstrates, to the satisfaction of the Director that a source control by-law or equivalent measures are not required to protect the sewage facility or the receiving environment.

(3) The source control by-law shall include—

(*a*) provision for the pre-treatment of industrial, commercial and institutional discharges to the municipal sewer system;

(*b*) pre-treatment requirements to ensure that the final discharge of effluent meets the effluent quality standards set out in these Regulations and that the quality of any bio-solids meets the requirements of an authorization by a competent local authority.

(4) For the purposes of this regulation "non-domestic waste" means liquid waste other than domestic waste.

Semi-solid waste

27.—(1) A person shall not dispose of semi-solid waste to a sewage facility unless—

(*a*) the sewage facility is capable of treating these wastes, in accordance with acceptable standards as may be prescribed under the Act or any other written law;

(*b*) the quality of any bio-solids removed from the sewage facility shall meet the requirements of an authorization given by a competent local authority.

(2) Where necessary to protect the sewage facility, the owner or operator of the facility shall install pre-treatment or containment facilities.

(3) For the purposes of this regulation "semi-solid waste" means septic tank pumpage, holding tank solids and sewage sludge.

Discharge monitoring

28.—(1) Any person who discharges municipal liquid waste into the environment shall—

(*a*) install a suitable sampling facility for obtaining a sample of the effluent;

(*b*) provide and maintain a suitable flow measuring device to record the effluent volume discharged over any specified period as may be directed by the Director;

(*c*) monitor effluent quantity and quality as directed by the Director in writing.

(2) A local authority shall develop guidelines to promote appropriate disposal methods for semi-solid wastes by private septic tank emptying operators.

(3) Any person who discharges solid wastes indiscriminately shall be guilty of an offence.

Monitoring of receiving environment

29.—(1) Any person who discharges municipal liquid waste into the environment shall—

(*a*) monitor the receiving environment to provide data to assess the potential impact of the discharge and to ensure that the discharge does not and shall not cause water quality parameters outside the initial dilution zone, to exceed any known water quality guidelines;

(*b*) ensure that the monitoring programme is designed by a qualified professional knowledgeable in such matters;

(*c*) when conducting a receiving environment monitoring programme, provide at least one control sampling station located up stream, upgradient or outside the influence of the initial dilution zone of the effluent.

(2) A receiving environment monitoring programme shall document pre-discharge conditions.

(3) Where the Director considers that the seasonal variations of parameters within the receiving environment are significant he/she shall require the discharger to carry out pre-discharge monitoring during the most critical period of the year as may be determined by the Director.

Reporting

30.—(1) A person who discharges municipal liquid waste into the environment shall retain the following information at all times—

(*a*) effluent flow and effluent quality data; and

(*b*) receiving environment monitoring data.

(2) The data required under subregulation (1) and any other associated quality control work shall be submitted to the Director in a format acceptable to the Director.

Submission of false information. etc.

31. Any person who, with intent to mislead—

(*a*) submits false monitoring data; or

(*b*) fails to retain monitoring data in accordance with regulation 29 commits an offence.

Part VI
Management of Hazardous Wastes

Hazardous wastes

32. The Director shall from time to time publish in the *Gazette* and in at least one (1) of the local newspapers of daily circulation a list of wastes which fit in categories specified under the Seventh Schedule hereto or which have characteristics specified in the Eighth Schedule hereto which are hazardous and need to be controlled.

Labeling of waste

33. Each container or package of hazardous wastes shall have a label written in English and such other relevant local languages in characters that are easily legible affixed into the container which shall at the minimum contain the following—

(*a*) identity of the hazardous wastes;

(*b*) name and address of the generator of wastes;

(*c*) net contents;

(*d*) normal storage stability and methods for safe storage;

(*e*) name and percentage by weight of other ingredients or half-life of radio-active material;

(*f*) warning or caution statements which may include all, some or any of the following as appropriate—

(i) the words "warning" or "caution";

(ii) the words "danger! keep away from unauthorized persons";

(iii) the word "poison" marked indelibly in red or on contrasting background;

(iv) a pictogram of a skull and crossbones; and

(*g*) a statement of first aid measures including the antidote when inhaled or ingested and a direction that a physician must be contacted immediately.

(2) Vehicles or other conveyances carrying hazardous wastes shall be labeled in accordance with subregulation (1) (*f*) and any such label shall contain no warranties, guarantees or liability exclusion clauses.

Directions for handling hazardous wastes

34. Each container or package of hazardous waste shall contain a leaflet giving adequate directions for handling the waste including safety precautions in transporting, storage and disposal of the hazardous waste and measures for cleaning any equipment used.

Compliance code by industries

35. Every industry shall develop a compliance code which shall outline the industry goals for—

(*a*) waste reduction and minimization;

(*b*) waste treatment on site; and

(*c*) disposal plans.

Disposal of hazardous waste

36.—(1) No industry, business or medical facility shall discharge any hazardous waste in any state into the environment unless such wastes have been treated in accordance with acceptable international methods that are approved by a competent local authority in consultation with the Director.

(2) Hazardous wastes whether treated or not shall not be discharged into a disposal site or plant unless such disposal site or plant has been approved and licensed for that purpose in accordance with these Regulations.

(3) Any person who contravenes this regulation commits an offence.

In Infectious waste

37.—(1) No person may mix infectious waste in the same bag or waste receptacle with solid waste which is not infectious, unless mixing the wastes is necessary to protect the health or safety of patients, employees or other persons.

(2) Adequate measures shall be taken to protect waste handlers and other persons from exposure when separating infectious wastes from solid waste that is not infectious.

(3) No person may transport general solid waste and infectious waste on the same vehicle or conveyance unless the wastes are in separate and identifiable containers or bags.

Containment of infectious waste

38.—(1) No person shall transport infectious waste from the property where the waste was generated unless the person puts the waste in containers or bags which protect waste handlers and other persons from exposure to the infectious waste.

(2) In the case of sharps, the person shall ensure that the sharps are contained in rigid, puncture-resistant labelled containers made of materials which include metal or rigid plastic, designed to

prevent the loss of the contents and labelled with the legible words "sharps", "infectious waste" or "bio-hazard".

(3) Where the waste is infectious waste other than sharps, it shall be contained according to all of the following—

(*a*) the waste shall be placed in a single plastic bag that is tear resistant or if necessary, a double bag that meets the same standard or a rigid re-usable container;

(*b*) the bag or re-usable container shall be securely sealed to prevent leakage or expulsion of contents under normal handling;

(*c*) all re-usable containers shall be disinfected after being emptied.

(4) No person may open a secured bag or container of infectious waste which is ready for transportation until immediately before treating the waste unless—

(*a*) repackaging is necessary to prevent spills or leakages; or

(*b*) the person is conducting a waste audit or training session.

Handling waste

39.—(1) No person shall handle, load, unload, process or treat infectious waste unless adequate measures are taken to protect waste handlers and other persons from exposure to the infectious waste.

(2) Such measures shall ensure that—

(*a*) all containers or bags are handled and transported in such a way as to prevent the loss or spilling of the contents;

(*b*) nuisance conditions shall be prevented from developing including measures to prevent odors by refrigerating the waste, among other methods;

(*c*) all infectious waste shall be loaded and unloaded by hand or by a safe mechanical method which does not damage containers or spill their contents; and

(*d*) untreated infectious waste is not compacted.

Storage and transfer of infectious wastes

40.—(1) Infectious waste generators may temporarily accumulate infectious waste in individual containers near the place where the waste is generated prior to moving the waste to a disposal facility.

(2) Notwithstanding subregulation (1), no person may store infectious wastes unless the person protects waste handlers and other persons from exposure.

Infectious waste treatment methods

41.—(1) No person shall dispose of infectious waste in a solid waste disposal facility unless the infectious waste has undergone treatment which effectively renders the waste non-infectious.

(2) The treatment method shall be in accordance with acceptable international methods that are approved by a local authority in consultation with the Director and shall be chosen by considering the properties of the waste being treated and the degree of microbial contamination and shall be one or more of the following—

(*a*) incineration in a controlled air, multi-chambered incinerator which provides complete combustion of the waste to carbonized or mineralized ash;

(*b*) steam disinfection, which includes autoclaving and subjects the waste to a combination of operational temperature, pressure (where applicable) and time proven to render the waste non-infectious at the design capacity of the relevant equipment used;

(*c*) chemical disinfection which exposes the infectious waste to an appropriate type and concentration of disinfectant for a period of time sufficient to render the waste non-infectious;

(*d*) mechanical grinding and chemical disinfection, which prevents the release of infectious liquid or infectious gaseous discharges into the environment;

(*e*) mechanical grinding and heat disinfection, which includes low frequency wave radiation and microwave radiation and exposes infectious waste to heat for a period of time sufficient to render it non-infectious; or

(*f*) gas disinfection, which allows for gas to penetrate all the infectious waste to render it non-infectious.

(3) No person shall treat the following categories of infectious waste in any other way except as follows—

(*a*) human tissue, by—

(i) a method which renders the tissue both non-infectious and unrecognizable as human tissue; or

(ii) incineration;

(*b*) animal tissue, by—

(i) a method which renders the tissue non-infectious;

(ii) incineration; or

(iii) burial;

(*c*) sharps, by—

(i) any method which renders the sharp non-infectious and renders the sharps broken non-re-usable, such as by a grinding or shredding process; or

(ii) incineration;

(*d*) bulk blood, by:

(i) biological treatment in a municipal or industrial waste water treatment plant which has been approved under these Regulations and may be transported to such facility through the sewer system;

(ii) incineration; or

(iii) methods which render the blood non-infectious; and

(*e*) body fluids and blood-contaminated urine and feaces shall be treated by any method in paragraph (*d*) or by disposal into a septic tank.

Infectious waste records

42.—(1) An infectious waste generator shall keep records of the amounts of infectious wastes generated and sent off-site for treatment and disposal.

(2) The records may consist of any of the following—

(*a*) copies of infectious wastes manifest;

(*b*) invoices or records received from the infectious waste treatment facility;

(*c*) logs or other written documentation of the amount of infectious waste sent off-site for treatment and disposal.

(3) The records under this regulation shall be kept for at least three years after they were created and if the three year period expires during an unresolved enforcement action, the period shall automatically extend until resolution of the pending enforcement action.

Medical waste reduction

43.—(1) Medical facilities shall adopt and implement policies aimed at—

(*a*) reducing the amount of medical waste generated by medical facilities;

(*b*) preventing the mixing of infectious waste with non-infectious waste;

(*c*) promoting practical alternatives to disposable items; and

(*d*) maintaining effective waste reduction programmes.

(2) Each medical facility shall prepare a medical waste reduction plan for—

(*a*) separating, reducing and managing the medical waste generated;

(*b*) evaluating alternatives to disposable products; and

(*c*) maintaining waste reduction efforts.

(3) The medical waste reduction plan shall—

(*a*) include or refer to specific written policies and procedures for informing volunteers, patients and others about waste disposal in order to prevent non-infectious waste from being put in containers meant for infectious waste;

(*b*) provide for the training of employees and medical personnel who work within the medical facility.

Waste audit by medical facilities

44.—(1) Each medical facility shall audit the facility's current solid waste management practices at least every three years.

(2) The audit shall identify—

(*a*) the source areas for solid waste in general and the types of waste that are generated within each source area;

(*b*) quantity of medical waste generated during the previous twelve months and also the rate at which the facility generated the medical waste;

(*c*) how medical waste is collected, stored, transported and treated from the point of generation to the point of final disposal;

(*d*) how non-infectious waste is prevented from being mixed with infectious waste and any waste types that are currently mixed with or may be mixed with infectious wastes.

Part VII
Transportation and Storage of Waste

Transportation and storage of waste

45.—(1) No person shall engage in the business of transporting, handling or storage of wastes without first applying for a licence from the Director in accordance with the provisions of the Act.

(2) An application for a licence to transport wastes shall be in the form set out in the Ninth Schedule hereto and shall be accompanied by the fee prescribed in the Twentieth Schedule hereto.

(3) An application for a licence for storage of wastes shall be in the form set out in the Tenth Schedule hereto and both application shall be accompanied by the fee prescribed in the Twentieth Schedule hereto.

(4) In addition to the provisions of the Act, the Director in granting a licence to any person for the purposes of this regulation shall be satisfied—

(*a*) that the applicant has adequate and appropriate facilities and equipment to transport, handle or store wastes in an environmentally sound manner;

(*b*) with the proposed collection schedule of wastes of the applicant and, in the case of storage, that the premises are suitable for storing such a category of wastes as applied for.

(5) Any person who contravenes subregulation (1) commits an offence.

Licence for waste transportation or storage

46.—(1) The Director shall publish his intention to issue a licence for the transportation or storage of wastes by notice in the *Gazette* and in at least one of the local newspapers of daily circulation sixty days before the licence is granted.

(2) A licence to transport wastes shall be in the form set out in the Eleventh Schedule hereto and a licence for storage of wastes shall be in the form set out in the Twelfth Schedule hereto:

Provided that the Director may, where he deems it necessary, issue a licence to any applicant for the temporary storage of any waste pending final disposal if the temporary storage meets the standards required for the storage of such a category of waste under these Regulations.

(3) Subject to the Act and these Regulations, a licence granted under this regulation shall be valid for such a period as the Director shall determine:

Provided that the Director may limit the validity of period of the licence to a specific number of transactions where necessary.

Conditions attached to licences

47.—(1) The Director shall subject a licence to transport wastes granted under regulation 46 to the following conditions, that—

(*a*) the collection and transportation shall be conducted in such a manner that shall not cause scattering of the wastes;

(*b*) the vehicles, pipelines and equipment for the transportation of wastes shall be in such a state as not to cause the scattering of, or the flowing of the wastes, or the emission of bad smell from the wastes;

(*c*) there shall be adequate cleaning facilities at waste disposal sites or plants where the transported wastes will be disposed of to ensure that the vehicles or other equipment used for transportation of wastes are cleaned regularly.

(2) The Director shall attach the following conditions to the licences for transportation and storage of wastes—

(*a*) that the personnel involved in the collection, transportation or storage of wastes shall be provided with—

(i) adequate protective and safety clothing;

(ii) adequate and appropriate equipment or facilities for handling wastes;

(iii) safe and secure sitting facilities in the vehicles for transportation of wastes; and

(iv) proper training and information;

(*b*) the licensee shall ensure that the personnel involved in the collection, transportation or storage of wastes undergo such medical check-ups as may be necessary, in view of the risks faced by the employees, and medical reports of fitness shall be kept by the licencee for inspection;

(*c*) an inspector may at any reasonable time subject the personnel involved in collection, transportation or storage of wastes to a medical check-up and the costs of such examination shall be borne by the licensee;

(*d*) the vehicles for transporting or other means of conveyance and the premises for storage of wastes shall be labeled in such a manner as may be determined by the Director;

(*e*) the premises for storage of waste are safe and secure to prevent scavenging; and

(*f*) any other condition which the Director shall consider relevant for the transportation and storage of wastes.

(3) In addition to the powers contained in the Act, an inspector may at any reasonable time stop and inspect any vehicle or conveyancer used for the transportation of wastes and enter upon any premises where waste is stored.

Materials for storage of waste

48.—(1) Any person who applies for a license for storage of wastes under regulation 46 shall provide a sample of the container or packaging material in which the wastes shall be stored.

(2) The container or packaging material submitted under regulation (1) shall be suitable for the storage of wastes for which the application for storage has been made and shall—

(*a*) not be reactive to the wastes in question;

(*b*) be capable of protecting the health of persons involved in handling the wastes, the neighboring community and the environment in general; and

(*c*) be leak or puncture proof.

(3) Every container or packaging material which is used for storage of hazardous wastes shall be labeled in accordance with these Regulations.

Part VIII
Waste Disposal Site or Plant

Environmental impact assessment

49.—(1) No disposal site or plant shall be licensed under these Regulations unless an environmental impact assessment has been carried out in accordance with the provisions of the Act.

(2) Any person operating a disposal site or plant shall carry out annual audit of the environmental performance of his site or plant and shall submit his reports to the Director.

Application for a licence to own or operate a waste disposal site or plant

50.—(1) Any person who intends to own or operate a waste disposal site or plant shall apply to the Director for a licence.

(2) An application for a licence to operate a waste disposal site or plant shall specify whether the facility shall be for the disposal of general or municipal solid waste or the disposal of hazardous waste or for the disposal of both and shall be in the form set out in the Thirteenth Schedule hereto and shall be accompanied by the fee prescribed in the Twentieth Schedule hereto.

(3) Where the application is for a licence for the disposal of hazardous wastes, the applicant shall indicate the disposal operations that he intends to carry out in accordance with the categories identified in the Seventh and Eighth Schedules hereto and shall enclose—

(*a*) a detailed description of the process he intends to employ and its possible effects;

(*b*) a detailed description of the soil structure and geology of the area;

(*c*) a plan for managing leachate, incinerator fumes, fly ash and other by-products from the waste;

(*d*) a detailed drawing indicating the structure, construction and surroundings of the waste disposal site or plant; and

(*e*) any other matter that may be required by the Director.

(3) Any person who operates a waste disposal site or plant without a licence commits an offence.

Licence to own or operate a waste disposal site or plant

51. The Director may grant a licence in the form set out in the Fourteenth Schedule hereto to own or operate a waste disposal site or plant if—

(*a*) a written approval has been obtained by the applicant from the local authority within the area of which the waste disposal site or plant is located;

(*b*) that the Director is satisfied that the owner or operator has the ability and resources to manage the facility without causing any damage to public health and the environment, taking into account the findings of any environmental impact assessment submitted by the applicant; and

(*c*) notice has been given by the applicant in the *Gazette* or such local newspapers of daily circulation as the Director shall deem fit on the proposed waste disposal site or plant, sixty days before the issue of the licence.

Conditions for a waste disposal site or plant

52.—(1) Each waste disposal site or plant shall—

(*a*) be at least outside a radius of one thousand metres away from a residential or commercial area and water sources;

(*b*) have hazard and safety signs displayed at appropriate places indicating the disposal site or plant and the nature of operations it carries out in accordance with the Fifteenth Schedule hereto;

(*c*) be enclosed and secure from scavenging;

(*d*) be operated in a way which would—

(i) avoid polluting surface and underground water;

(ii) avoid the emission of bad smells from the site or plant to levels beyond any standards prescribed by the Director under section 30 of the Act; and

(iii) prevent the breeding of rats, mosquitoes and other vermin at the site or plant;

(*e*) have equipment to control accidental fires;

(*f*) make provision to confine wind blown materials within the active area of disposal;

(*g*) have means of ventilation to remove bio-gas generated from the site or plant and the smell from the site or plant shall be controlled; and

(*h*) install equipment for the collection and testing of leachate.

Methods of disposal

53.—(1) General or municipal waste shall be compacted and completely covered at the end of each day with a compacted layer of at least six centimeters of soil.

(2) Sewage sludge may be disposed of at a waste disposal site or plant after treatment.

(3) Any waste which is deemed to be hazardous under these Regulations shall be disposed of in a specially designated cell and shall be compacted to a thickness of at least one metre and each layer of wastes shall be covered with at least fifty centimeters of soil.

(4) Where the waste disposal site or treatment plant is for disposal of hazardous waste only, then the waste shall be disposed of or treated in accordance with conditions specified in the licence or in accordance with any general guidelines issued by the Director in consultation with the Director responsible for Local Government.

(5) Any person who disposes of hazardous wastes contrary to these Regulations commits an offence.

Requirements for personnel working at waste disposal site or plant

54.—(1) The personnel working at the waste disposal site or treatment plant shall be provided with—

(*a*) adequate protective and safety clothing;

(*b*) adequate water and appropriate equipment or facilities for the operations of the disposal site or plant;

(*c*) shelter;

(*d*) first aid training and facilities;

(*e*) communication equipment and facilities; and

(*f*) adequate cleaning facilities for vehicles.

(2) The personnel working at the waste disposal site or treatment plant shall undergo a medical check-up at least once every year.

Prevention of pollution from waste disposal sites or treatment plants

55.—(1) Every person who operates a waste disposal site or plant shall take all necessary measures to prevent pollution from such site or plant including the erection of necessary works and the taking of mitigating measures.

(2) In taking mitigating measures to prevent pollution, the operation of such a waste disposal site or plant shall comply with any directions given by an inspector under the Act.

Part IX
Trans-boundary Movement of Wastes

Trans-boundary movement of waste

56.—(1) Any person who wishes to export or import wastes from or into Malaŵi shall complete a movement document in the form set out in the Sixteenth Schedule hereto which shall be accompanied by the fee prescribed in the Twentieth Schedule hereto.

(2) The movement document shall be submitted to the Director and a copy of which shall be submitted to the local authority of the area to which the imported wastes are destined, or of the area where the wastes to be exported are situated.

(3) The Director shall issue an export licence which shall be in the form set out in the Seventeenth Schedule hereto after considering the movement document submitted under subregulation (1) and taking into account the provisions of the Act.

(4) The Director shall issue an import licence, which shall be in the form set out in the Eighteenth Schedule hereto after considering the movement document submitted under subregulation (1) and taking into account the provisions of the Act.

(5) Where a licence is issued under the provisions of this regulation, a copy of such licence shall be sent to the Malaŵi Revenue Authority for the necessary customs verifications and control.

Restrictions on exporting hazardous wastes or other wastes

57. The Director shall grant a licence to export hazardous wastes or other wastes if—

(*a*) the applicant does not have the technical capacity or suitable disposal sites to dispose of the wastes in question in an environmentally sound and efficient manner;

(*b*) the wastes in question are required as raw materials for recycling or recovery in the state of import; and

(*c*) the export is in accordance with an agreement or arrangement that conforms with the requirements contained in Article 11 of the Basel Convention.

National authority for prior informed consent procedure

58.—(1) The Director shall be the national authority for the operation of the prior informed consent procedure for the import, export or any other trans-boundary movement of hazardous wastes.

(2) The Director shall closely liaise with the designated national authorities of other states under any international conventions or arrangements to which Malaŵi is a party and international organizations with competence in the field of the management of hazardous wastes under any convention or arrangement to which Malaŵi is a party for the purpose of monitoring and controlling the movement of hazardous wastes in Malaŵian territory.

(3) The Director shall disseminate information on hazardous wastes management to the public.

Notification procedures and prior informed consent

59.—(1) A licence for export of wastes shall not be issued by the Director unless the Director has—

(*a*) notified the designated national authority of the state of import of wastes by sending a copy of—

(i) the movement document in the form set out in the Sixteenth Schedule hereto;

(ii) the notification document for trans-boundary movement of wastes in the form set out in the Nineteenth Schedule hereto;

(iii) the comments that the Director made on the documents;

(iv) the necessary consents received from such authorities;

(*b*) transmitted copies of the documents provided for in paragraph (*a*) to the international body designated under any agreement or arrangement to which Malaŵi is a party or participant and has received favourable comments from such a body.

(2) The Director shall not grant a licence to any person who wishes to import any wastes into Malaŵi which is hazardous in accordance with the categories identified in the Seventh Schedule hereto unless—

(*a*) the Director has received from the designated national authority of the state in which the wastes is generated, a movement document conforming with the provisions of the Sixteenth Schedule and the notification document conforming with the provisions of the Nineteenth Schedule hereto;

(*b*) the applicant has submitted a valid licence or letter of authority from the designated authority of the state where the wastes are generated permitting the export of the wastes; and

(*c*) the Director has received comments from the international body designated under any agreement or arrangement to which Malaŵi is a party or participant on the status of the wastes to be imported.

Ports of entry and routes

60.—(1) A licence issued under these Regulations shall only entitle the licensee to transport wastes through the customs points of entry designated as such under the Customs and Excise Act.

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(2) No hazardous wastes shall be transported by water except for hazardous wastes generated from islands within the territorial jurisdiction of Malaŵi.

Part X
Miscellaneous Provisions

Location of disposal of wastes

61.—(1) Any generator of wastes shall dispose of wastes within the area of jurisdiction of the local authority where the waste is generated.

(2) Where a person wishes to move wastes from one local authority to another, he shall notify in writing the environmental officers of the local authority from the area of which he is moving the wastes, and of the local authority of the area to which he is moving the wastes, before he applies for any licence under these Regulations.

(3) The environmental officers from the two local authorities shall consult and satisfy themselves that—

(*a*) the intended disposal site and the proposed methods of disposal or storage are in accordance with sound environmental management; and

(*b*) the Act and these Regulations have been complied with.

(4) Where the environmental officers are satisfied in accordance with subregulation (3), they shall make a recommendation to the Director for consideration to grant a licence under these Regulations.

Reporting procedures

62.—(1) Any person who is licensed to carry out any activities under these Regulations shall submit to the Director bi-annual reports on the conduct of the licensed activities.

(2) Where special reporting procedures are a condition of any licence under these Regulations, such procedures shall take precedence over regulation (1).

Duty to keep records

63.—(1) The holder of a licence under these Regulations shall—

(*a*) keep records of the licensed activities and all transactions related thereto; and

(*b*) submit the records referred to in paragraph (*a*) to the Director every twelve months from the commencement of the licensed activities.

(2) The Director may order the holder of a licence under these Regulations to install mechanisms at the expense of the holder of the licence to take samples and analyze them as the Director may direct.

Register of licences Communication of decision

64. The Director shall maintain a register of holders of licences to transport wastes, for storage of wastes or for operating recycling facilities and wastes disposal sites or plants.

Improvement notice

65. Where a person applies for a licence under these Regulations, the Director shall communicate his decision to the applicant within three months.

Improvement notice

66.—(1) Where an inspector has reasonable cause to believe that any person is violating these Regulations, he may issue against such a person an improvement notice or take any other measures appropriate for correcting the situation.

(2) An improvement notice issued under subregulation (1) shall not prejudice criminal proceedings which may be taken under any of the provisions of the Act.

Cancellation of licence

67. In addition to the provisions of the Act, the Director may suspend or revoke a licence issued under these Regulations if he is satisfied that—

(*a*) the conditions attached to the granting of the licence have not been complied with; or

(*b*) continued operation of the activity will be injurious to the health of the neighbouring environment in general.

Selling or offering for sale a container previously used for storage of hazardous waste

68. Any person who sells or offers for sale a container which has previously been used for the storage of hazardous wastes to be used for any purpose other than storage of wastes commits an offence.

Polluter responsible to pay for pollution

69. Any generator, collector or transporter of wastes or any person responsible for disposal of wastes who pollutes the environment by poor management of wastes shall be responsible to pay for any damage to the environment occasioned by such pollution.

Duty of care

70.—(1) Every person, business or industry shall exercise duty of care by avoiding indiscriminate disposal of litter, garbage, commercial solid waste, and construction and demolition wastes.

(2) Any person who contravenes this provision commits an offence.

Skips

71.—(1) Where a skip is provided by a local authority, it shall be securely fenced or a person shall be placed at such skip to guard it to reduce scavenging.

(2) A local authority shall not provide a skip for waste collection at a hospital to encourage hospitals to provide waste transfer stations which shall comprise secure rooms with restricted access:

Provided that a skip may be permissible only for the out-patient areas.

Pit latrines

72.—(1) Where a household uses a pit latrine, it shall be an improved pit latrine which shall be—

(*a*) properly ventilated;

(*b*) built with slab; and

(*c*) be at least two and half metres in depth from ground level to the bottom of the pit:

Provided that where the surface of the water table is more than two and half metres below ground level, a depth of two metres from ground level to the bottom of the pit shall be permissible.

(2) A pit latrine shall be located at least thirty metres away from any well, spring, stream, underground water supply, water reservoir, pool or borehole.

Refuse pits

73.—(1) The use of refuse pits shall only be permissible in areas where local authorities are not able to provide refuse collection services.

(2) When the refuse pit is full, the refuse shall be burned, buried or composted.

Public and private lavatories and washing places

74.—(1) A local authority shall provide or cause to be provided public and private toilets and washing places in its area of jurisdiction.

(2) Such toilets and washing places shall comply with any by-laws that a local authority may adopt to promote public health and sound management of municipal liquid waste.

Offences and penalties

75. Any person who contravenes the provisions of these Regulations commits an offence and on conviction shall be liable to the penalties prescribed under the Act.

Local authorities to make by-laws

76.—(1) Every local authority shall make by-laws prescribing the management of wastes in its jurisdiction.

(2) The by-laws made under subregulation (1) shall—

(*a*) not be in conflict with the Act and these Regulations;

(*b*) ensure that the disposal method of wastes is environmentally sound.

(3) Every local authority shall be responsible for the waste management system in its area of jurisdiction and such system shall be in accordance with the Act and these Regulations.

Transitional provision

77.—(1) Any person whose operations discharge wastes into the environment at the date of entry into force of these Regulations, shall within six months submit a written proposal specifying the timeframe within which compliance with these Regulations shall be achieved.

(2) Any person carrying out the business of operating a waste disposal site or plant or a recycling facility before the commencement of these Regulations shall apply for a licence within six months from the date these Regulations come into force.

FIRST SCHEDULE reg. 4

REPUBLIC OF MALAŴI

ENVIRONMENT MANAGEMENT ACT

(Cap. 60:02)

ENVIRONMENT MANAGEMENT (WASTE MANAGEMENT AND SANITATION) REGULATIONS

Solid Waste Management Hierarchy

From the Most Preferred to the Least Preferred

1. Source reduction
2. Re-use
3. Recycling

SECOND SCHEDULE reg. 6

REPUBLIC OF MALAŴI

ENVIRONMENT MANAGEMENT ACT

(Cap. 60:02)

ENVIRONMENT MANAGEMENT (WASTE MANAGEMENT AND SANITATION) REGULATIONS

Colour Coding of Waste Containers by Waste Type

	Waste Type	*Colour Coding*
1.	General waste	Black
2.	Toxic waste	Red
3.	Cytotoxic waste	Red
4.	Human anatomical waste	Red
5.	Microbiological laboratory waste	Yellow
6.	Human blood and body fluid waste	Yellow
7.	Waste sharps	Yellow

THIRD SCHEDULE reg. 13

REPUBLIC OF MALAŴI

ENVIRONMENT MANAGEMENT ACT

(Cap. 60:02)

ENVIRONMENT MANAGEMENT (WASTE MANAGEMENT AND SANITATION) REGULATIONS

Application for a Licence to Own/Operate a Waste Recycling Facility

I/WE ..... hereby apply for a licence to own operate a waste recycling facility, whose particulars are given below:

Name and address of applicant: .....

Location and District of site/plant: .....

Approval of Town and Country Planning Authority:

Type of wastes to be recycled at the facility: .....

In the case of hazardous waste:

(*a*) the processes to be employed: .....

(*b*) possible adverse effects of proposed process: .....

Quantity being recycled/per annum tonnes/Kg: .....

Estimated life span of facility: .....

Proposed hectarage/area of facility (*include facility plan and design*): .....
.....

Executive summary of environmental impact assessment (*please attach*):.....

Any other information: .....

Date:.....Signature:.....Designation/Title:.....

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Application received by:..... on ....., 20.....

Fees payable is MK .....

Fee paid MK (in words): .....

Date:..... Signature: .....

Director, Department of Environmental Affairs

FOURTH SCHEDULE reg. 14

REPUBLIC OF MALAŴI

ENVIRONMENT MANAGEMENT ACT

(Cap. 60:02)

ENVIRONMENT MANAGEMENT (WASTE MANAGEMENT AND SANITATION) REGULATIONS

Licence to Own/Operate a Recycling Facility

Licence No.: .....

Name: .....

Address: .....

You are hereby licensed to own/operate a waste recycling facility at Plot No.: .....

(village, town, city, district): .....

The validity period of this licence is from: ..... , 20..... to ....., 20.....

This licence is subject to the following conditions: .....

.....

.....

.....

.....

Date: ..... Signature: .....

Director, Department of Environmental Affairs

FIFTH SCHEDULE reg. 17

REPUBLIC OF MALAŴI

ENVIRONMENT MANAGEMENT ACT

(Cap. 60:02)

ENVIRONMENT MANAGEMENT (WASTE MANAGEMENT AND SANITATION) REGULATIONS

Solid Waste Reduction and Recycling Plan

A description of the company including—

(*a*) name and address of the property owner and the reporting company: .....
.....

(*b*) names of all entities affiliated with the company: .....
.....

(*c*) number of full-time and part-time employees: .....

(*d*) square metres occupied by the company: .....

(*e*) the activities conducted by the company: .....

A description of the company's current solid waste generation, including—

(*a*) estimated tonnage of all solid waste produced: .....

(*b*) identification of recyclable solid waste: .....

A description of the company's waste reduction and recycling methods: .....

.....

.....

.....

.....

.....

Name(s) of the persons responsible for coordinating recycling and waste reduction activities:

.....

.....

.....

Name and address of licensed collector responsible for collecting materials to be recycled and the facilities where materials are delivered:

.....

.....

SIXTH SCHEDULE reg. 20

REPUBLIC OF MALAŴI

ENVIRONMENT MANAGEMENT ACT

(CAP. 60:02)

ENVIRONMENT MANAGEMENT (WASTE MANAGEMENT AND SANITATION) REGULATIONS

QUALITY STANDARDS FOR EFFLUENT TO INLAND SURFACE WATER

Table 1—Tolerance Limits for Industrial Effluents

Characteristics	*Tolerance Limits*
Total suspended solids, mg/I, max.	30
Particle size of total suspended solids, mg/I	Shall pass 850 micron
Total dissolved solids, mg/l, max.	500
Total residual chloride mg/l, max.	1
PH	6,5 to 9,0

Characteristics	*Tolerance Limits*
Temperature (in any section of the stream within 15 metres down stream from the effluent outlet), °C, max. . .	40°C
Biochemical oxygen demand for 5 days at 20°C, mg/l, max.	60
Chemical oxygen demand after 1 hour's quiescent settlement, mg/l, max.	20
Oils and grease and other liquids immiscible with water, mg/l, max	2,5
Edible oils, mg/l, max.	10
Colour, TCU, max.	25,0
Turbidity, NTU, max.	25,0
Effluent volume/day m^3, mg/l, max.	5,0
Dilution ratio, effluent: receiving water body, max. . .	8,0
Radioactive materials:	
Alpha emitters, u c/ml, max.	10
Beta emitters, u c/ml, max.	10
Insecticides	Nil
Pesticides:	
Organochlorides, mg/l, max.	0,10
Organophosphates, mg/I, max.	0,20

Table 2—Tolerance limits for sewage effluents discharged into inland surface waters

Characteristics	*Tolerance limit*
Total suspended solids, mg/I, max.	30
Biochemical oxygen demand for 5 days at 20°C, mg/l max.	20

SEVENTH SCHEDULE reg. 32

REPUBLIC OF MALAŴI

ENVIRONMENT MANAGEMENT ACT

(Cap. 60:02)

ENVIRONMENT MANAGEMENT (WASTE MANAGEMENT AND SANITATION) REGULATIONS

Categories of Hazardous Wastes to be Controlled

WASTE STREAMS:

Y 1 Clinical wastes from medical care in hospitals, medical centers and clinics;

Y 2 Wastes from the production and preparation of pharmaceutical products;

Y 3 Waste from pharmaceutical, drugs and medicines;

Y 4 Waste from the production, formulation and use of biocides and phytopharmaceuticals;

Y 5 Wastes from the manufacture, formulation and use of organic solvents;

Y 6 Wastes from the production, formulation and use of organic solvents;

Y 7 Wastes from heat treatment and tempering operations containing cyanides;

Y 8 Waste mineral oils unfit for their originally intended use;

Y 9 Waste oils/water, hydrocarbons/water mixtures, emulsions;

Y10 Waste substances and articles containing or contaminated with polychlorinated biphenlys (**PCB**s) and/or polychlorinated terpheryls (**PCT**s) and/or polybrominated biphenyls (**PBB**s);

Y11 Waste tarry residues arising from refining, distillation and any pyrolytic treatment;

Y12 Wastes from production, formulation and use of inks, dyes, pigments, paints, lacquers, varnish;

Y13 Wastes from production, formulation and use of resins, latex, plasticizers, glues/adhesives;

Y14 Waste chemical substances arising from research and development or teaching activities which are not identified and/or are new and whose effects on man and/or environment are not known;

Y15 Wastes of an explosive nature not subject to other legislation.;

Y16 Wastes from production, formulation and use of photographic chemicals and processing materials;

Y17 Wastes resulting from surface treatment of metals and plastics;

Y18 Residue arising from individual wastes disposal operations.

WASTE HAVING AS CONSTITUENTS:

Y19 Metal carbonyls;
Y20 Beryllium, beryllium compounds;
Y21 Hexavalent chromium compounds;
Y22 Copper compounds;
Y23 Zinc compounds;
Y24 Arsenic, arsenic compounds;
Y25 Selenium, selenium compounds;
Y26 Cadmium, cadmium compounds;

WASTE HAVING AS CONSTITUENTS:

Y27 Antimony, antimony compounds;
Y28 Tellurium, tellurium compounds;
Y29 Mercury, mercury compounds;
Y30 Thallium, thallium compounds;
Y31 Lead, lead compounds;
Y32 Inorganic fluorine compounds excluding calcium fluoride;
Y33 Inorganic cyanides;
Y34 Acid solutions or acids in solid form;
Y35 Basic solutions or bases in solid form;
Y36 Asbestos (dust and fibres);
Y37 Organic phosphorus compounds;
Y38 Organic cyanides;
Y39 Phenols, phenol compounds including chlorophenols;
Y40 Ethers;
Y41 Halogenated organic solvents;
Y42 Organic solvents excluding halogenated solvents;
Y43 Any congenor or polychlorinated dibenzo-furan;
Y44 Any congenor or polychlorinated dibenzo-P-dioxin;
Y45 Organohalogen compounds other than substances referred to in this Schedule (e.g. Y39, Y41, Y42, Y43, Y44); and
Y46 Organotin compounds (**TBT**).

CATEGORIES OF OTHER HAZARDOUS WASTES TO BE CONTROLLED:

Y47 Wastes collected from households, including sewage and sewage sludges;
Y48 Residues arising from the incineration of household wastes; and
Y49 Wastes resulting from mining, habitat modification, agricultural activities and industrial operations not specified in this Schedule and/or characterized in the Second Schedule.

EIGHTH SCHEDULE reg. 32

REPUBLIC OF MALAŴI

ENVIRONMENT MANAGEMENT ACT

(CAP. 60:02)

ENVIRONMENT MANAGEMENT (WASTE MANAGEMENT AND SANITATION) REGULATIONS

LIST OF HAZARDOUS CHARACTERISTICS

UN	*Code*	*Characteristics Class*
1.	H1	*Explosive* An explosive substance or waste is a solid or liquid substance or waste (or mixture of substances or wastes) which is in itself capable by chemical reaction of producing gas at such a temperature and pressure and at such a speed as to cause damage to the surroundings.
3.	H3	*Flammable Liquids* The word "flammable" has the same meaning as "inflammable". Flammable liquids are liquids, or mixtures or liquids containing solids in solution or suspension (for example paints, varnishes, lacquers, etc., but not including substances or wastes otherwise classified on account of their dangerous characteristics) which give off a flammable vapour at temperatures of not more than 60.5°C, open-up test. Since the results of open-up tests and of closed-up tests are not strictly comparable and even individual results by the same test are often variable, regulations varying from the above figures to make allowance for such difference would be within the spirit of this definition.
4.1	H4.1	*Flammable solids* Solids or wastes solids, other than those classed as explosives, which under conditions encountered in transport are readily combustible, or may cause or contribute to fire through friction.
4.2	H4.2	*Substances or wastes liable to spontaneous combustion* Substances or wastes which are liable to spontaneous heating under normal conditions encountered in transport, or to heating up on contact with air, and being then liable to catch fire.
4.3	H4.3	*Substances or wastes, which in contact with water emit flammable gases* Substances or wastes which, by interaction with water, are liable to become spontaneously flammable or to give off flammable gases in dangerous quantities.
5.1	H5.1	*Oxidizing* Substances or wastes which, while in themselves not necessarily combustible, may, generally by yielding oxygen cause, or contribute to, the combustion of other materials.

UN	*Code*	*Characteristics Class*
5.2	H5.2	*Organic per oxides* Organic substances or wastes, which contain the bivalent -0-0- structure, are thermally unstable substances which may undergo exothermic self-accelerating decomposition.
6.1	H6.1	*Toxic or Poisonous* (*Acute*) Substances or wastes liable either to cause death or serious injury or harm to human health if swallowed, inhaled or by skin contact.
6.2	H6.2	*Infectious substances extremely hazardous to health* Substances or wastes containing viable micro-organisms or their toxins which are known or suspected to cause disease in animals or humans.
8.	H8	*Corrosives* Substances or wastes which, by chemical action, will cause severe damage when in contact with living tissue, or in the case of leakage, will materially damage, or even destroy, other goods or the means of transport; they may also cause other hazards.
9.	H10	*Liberation of toxic gases in contact with air or water* Substances or wastes which, by interaction with air or water, are liable to give off toxic gases in dangerous quantities.
9.	H11	*Toxic* (*delayed or chronic*) Substances or wastes which, if they are inhaled or ingested or if they penetrate the skin, may involve delayed or chronic effects including carcinogenicity.
9.	H12	*Ecotoxic* Substances or wastes which if released, present or may present immediate or delayed adverse impacts in the environment by means of bio-accumulation and/or toxic effects upon biotic systems.
9.	H13	Capable, by any means, after disposal, of yielding another material, e.g. leachate, which possesses any of the characteristics listed above.
10.	H14	*Radioactive wastes.*
11.	H15	Persistent wastes; wastes which contaminate the environment for long periods of time.
12.	H16	Carcinogenic wastes which may lead to development of cancer in human beings or animals.

NINTH SCHEDULE reg. 46

(To be completed in Triplicate)

REPUBLIC OF MALAŴI

ENVIRONMENT MANAGEMENT ACT

(CAP. 60:02)

ENVIRONMENT MANAGEMENT (WASTE MANAGEMENT AND SANITATION) REGULATIONS

APPLICATION FOR A LICENCE FOR TRANSPORTATION OF WASTES

I/WE ..... hereby apply for a licence to transport wastes, whose particulars are given below:

Name and address of applicant(s): .....

Location and District applied for: .....

Number and type of vehicles to transport waste: .....

Quantity of wastes per vehicle to be transported: .....

Quantity of wastes to be disposed of (tonnes/kg per annum) and source: .....

.....

Licensed sites/plant to which wastes are to be transported: .....

.....

Collection schedule:.....

Any other information: .....

Date: ..... Signature: .....Designation/Title: .....

FOR OFFICIAL USE ONLY

Application received by: ..... on ....., 20.....

Fees payable is MK .....

Fee paid MK (in words): .....

Date:..... Signature:.....

Director, Department of Environmental Affairs

TENTH SCHEDULE reg. 46

(To be completed in Triplicate)

REPUBLIC OF MALAŴI

ENVIRONMENT MANAGEMENT ACT

(CAP. 60:02)

ENVIRONMENT MANAGEMENT (WASTE MANAGEMENT AND SANITATION) REGULATIONS

APPLICATION FOR A LICENCE FOR STORAGE OF WASTE

I/WE ..... hereby apply for licence to store wastes, whose particulars are given below:

Name and address of applicant(s): .....

Address of premises for the storage: .....

.....

(Plot No., village, town, district, city): .....

Type of wastes to be stored (*indicate number in accordance with Fourteenth Schedule and describe*) whether liquid, solid or gaseous and their possible impacts:

.....

Quantity of wastes to be stored in kg or tonnes for solids or in cm3 if liquid or gases:

.....

Type of containers in which the wastes are packaged: .....

Type of labels on the container (*describe and attach sample*): .....

.....

Are there any other materials stored in the premises? (*describe*): .....

.....

Surroundings of the premises (*describe whether industrial, residential, commercial and whether it is near schools or recreational areas*): .....

.....

Duration of storage applied for: .....

Final destination of the wastes: .....

.....

Specifications of the construction of the premises including ventilation or other measures and suitability for storage for the specific wastes (*describe and attach building plans*): .....

.....

.....

.....

Describe the safety measures at the premises: .....

Measures for containment and treatment of leachate if applicable: .....

Date: ..... Signature of Applicant: .....

FOR OFFICIAL USE ONLY

Date received: .....

Fee paid MK (in words): .....

Comments of the lead agency: .....

.....

.....

Comments of the Authority: .....

.....

.....

Date: .....

Name and signature of Responsible Officer: .....

Decision of the Technical Committee on the Environment: .....

.....

.....

.....

Date:..... Signature: .....

Director, Department of Environmental Affairs

Date when decision was communicated to Applicant (*attach communication to this form*): .....

Name of Responsible Officer: .....

Date:..... Signature: .....

ELEVENTH SCHEDULE reg. 46

REPUBLIC OF MALAŴI

ENVIRONMENT MANAGEMENT ACT

(Cap. 60:02)

ENVIRONMENT MANAGEMENT (WASTE MANAGEMENT AND SANITATION) REGULATIONS

Licence to Transport Wastes

Licence No. TR/W: .....

Name: .....

Address: .....

You are hereby licensed to transport wastes to (*location/district*): .....

From (*location/district*): .....

Number, type and registration number of vehicles licenced: .....

This licence is valid from: ....., 20..... to ....., 20.....

This licence is granted subject to the following conditions: .....

.....

.....

.....

.....

Date:..... Signature: .....

Director, Department of Environmental Affairs

TWELFTH SCHEDULE reg. 46

REPUBLIC OF MALAŴI

ENVIRONMENT MANAGEMENT ACT

(Cap. 60:02)

ENVIRONMENT MANAGEMENT (WASTE MANAGEMENT AND SANITATION) REGULATIONS

Licence for Storage of Waste

Licence No. ST/W: .....

Name and address: .....

(Plot No., village, town, city, district): .....

You are hereby licensed to operate a storage facility for the following wastes (*indicated by number in Schedule*): .....

1. .....
2. .....
3. .....
4. .....
5. .....
6. .....
7. .....

at the following address: .....

(Plot No., village, town, city, district):

This licence shall be valid from: ....., 20..... to ....., 20.....

This licence is subject to the following conditions: .....
.....
.....
.....

Date: ..... Signature: .....

Director, Department of Environmental Affairs

THIRTEENTH SCHEDULE reg. 50

REPUBLIC OF MALAŴI

ENVIRONMENT MANAGEMENT ACT

(CAP. 60:02)

ENVIRONMENT MANAGEMENT (WASTE MANAGEMENT AND SANITATION) REGULATIONS

APPLICATION FOR A LICENCE TO OWN/OPERATE A WASTE DISPOSAL SITE/PLANT

I/WE ..... hereby apply for a licence to own/operate a wastes disposal site/plant, whose particulars are given below:

Name and address of applicant(s): .....

Location and District of site/plant: .....

Approval of Town and Country Planning Authority: .....

Type of wastes to be disposed of at site/plant:.....

Quantity being disposed of/per annum tonnes/Kg: .....

(*a*) land fill: .....

(*b*) compost: .....

(*c*) incinerator: .....

(*d*) other (specify): .....

Estimated life span of plant/site: .....

Proposed hectrage/area of site/plant (include site plan and design): .....

Executive summary of environmental impact assessment (please attach): .....

Any other information: .....

Date:..... Signature: .....

Designation/Title

FOR OFFICIAL USE ONLY

Application received by: ..... on ....., 20.....

Fee paid MK (in words): .....

Date:..... Signature: .....

Director, Department of Environmental Affairs

FOURTEENTH SCHEDULE reg. 14

REPUBLIC OF MALAŴI

ENVIRONMENT MANAGEMENT ACT

(CAP. 60:02)

ENVIRONMENT MANAGEMENT (WASTE MANAGEMENT AND SANITATION) REGULATIONS

LICENCE TO OWN/OPERATE A WASTES RECYCLING FACILITY

Licence No.: .....

Name: .....

Address: .....

You are hereby licensed to own/operate a wastes recycling facility at Plot No.: .....

(village, town, city, district) .....

The validity period of this licence is from: ....., 20..... to ....., 20.....

Date: ..... Signature:.....

Director, Department of Environmental Affairs

FIFTEENTH SCHEDULE regs. 11, 32 and 36

REPUBLIC OF MALAŴI

ENVIRONMENT MANAGEMENT ACT

(CAP. 60:02)

ENVIRONMENT MANAGEMENT (WASTE MANAGEMENT AND SANITATION) REGULATIONS

DISPOSAL OPERATIONS

D1 Deposit into or onto land, (e.g. landfill, etc.);

D2 Land treatment (e.g. biodegradation of liquid or sludgy discards in soils, etc.;

D3 Deep injection, (e.g. injection of pumpable discards into wells, salt domes or naturally occurring repositories, etc.);

D4 Surface impoundment, (e.g. placement of liquid or sludge discards into pits, ponds or lagoons, etc.);

D5 Specially engineered landfill (e.g. placement into lined discrete cells which are capped and isolated from one another and the environment, etc.);

D6 Biological treatment not specified elsewhere in this Schedule which results in final compounds or mixtures which are discarded by means of any of the operations in this Schedule;

D7 Physico-chemical treatment not specified elsewhere in this Schedule which results in final compounds or mixtures which are discarded by means of any of the operation, (e.g. evaporation, drying, calcinations, neutralization, precipitation, etc.)

D8 Incineration on land;

D9 Incineration at sea;

D10 Permanent storage (eg. Emplacement of containers in a mine, etc.);

D11 Blending or mixing prior to submission for any of the operations in this Schedule;

D12 Repackaging prior to submission to any of the operations in this Schedule;

D13 Storage pending any of the methods of disposal;

D14 Use of a fuel (other than in direct incineration) or other means to generate energy;

D15 Solvent reclamation/regeneration of organic substances, which are not used as solvents;

D16 Reclamation/recycling of organic substances, which are not used as solvents;

D17 Reclamation/recycling of metals and metal compounds;

D18 Reclamation/recycling of other inorganic materials;

D19 Regeneration of acids or bases;

D20 Recovery of components used for pollution abatement;

D21 Recovery of components from catalysts;

D22 Used oil re-refining or other reuses of previously used oil;

D23 Land treatment resulting in benefit to agriculture or ecological improvement;

D24 Use of residual materials obtained from any of the operations numbered D1-D26;

D25 Exchange of wastes for submission to any of the operations numbered D1-D26;

D26 Accumulation of material intended for any operation in this Schedule.

SIXTEENTH SCHEDULE reg. 56

REPUBLIC OF MALAŴI

ENVIRONMENT MANAGEMENT ACT

(CAP. 60:02)

ENVIRONMENT MANAGEMENT (WASTE MANAGEMENT AND SANITATION) REGULATIONS

MOVEMENT DOCUMENT FOR TRANS-BOUNDARY MOVEMENT OF WASTES

Notification for wastes shipment was issued at: .....

Date of issuance: ..... / ...../ .....

- Notification for a single shipment.
- Notification for multiple shipment for the period.

This shipment is number: ..... general notification number: .....

of total shipments included in the .....

.....

[1] To be used in triplicate, one copy to Malaŵi Revenue Authority.

1. EXPORTER NOTIFIER ([1])

2. GENERATOR(S) OF WASTES

3. DISPOSER OF THE WASTES

4. WASTES

5. ITINERARY

6. CONSENT OF THE COMPETENT LOCAL AUTHORITY
(*to be completed by the generator or/exporter/importer*)

7. CARRIER OF THE WASTES OR HIS AGENT

8. CONSENT OF THE COMPETENT LOCAL AUTHORITY
(*to be completed by the generator or/exporter/importer*)

(*a*)

ANNEX TO THE NOTIFICATION AND MOVEMENT DOCUMENT

1. The Notifier is:

   — the person who wants to transit hazardous wastes through Malaŵi.

2. "Designation to the wastes" means a designation of the nature and the concentration of the most hazardous components, in terms of toxicity and other dangers presented by the wastes both in handling and in relation to the proposed disposal method.
3. As per Annex IV of the Basel Convention: D or R Code.
4. This must include the point of entry and the point of exit of the wastes, inside or outside the country.
5. In the case of a general notification covering several shipments, the expected dates of each shipment have to be specified. If this is not known, the expected frequency of the shipments.

SEVENTEENTH SCHEDULE reg. 56

REPUBLIC OF MALAŴI

ENVIRONMENT MANAGEMENT ACT

(Cap. 60:02)

ENVIRONMENT MANAGEMENT (WASTE MANAGEMENT AND SANITATION) REGULATIONS

Licence to Export Wastes

Licence No. EX/HW: .....

Name and address: .....

(*Plot No., village, town, city, district*): .....

To (*name and address*): .....

This export shall be made through: ..... border/customer control post

The validity period of this licence is from ....., 20..... to ....., 20.....

This licence is subject to the following conditions:

1. .....
2. .....
3. .....
4. .....

5. .....
6. .....

(*attach a copy of authorization by the state to which the export is to be made*)

Date: ..... Signature:.....

Director, Department of Environmental Affairs

EIGHTEENTH SCHEDULE reg. 56

REPUBLIC OF MALAŴI

ENVIRONMENT MANAGEMENT ACT

(CAP. 60:02)

ENVIRONMENT MANAGEMENT (WASTE MANAGEMENT AND SANITATION) REGULATIONS

LICENCE TO IMPORT WASTES

Licence No. IM/HW: .....

Name and address of importer: .....

(Plot No. village, town, city, district): .....

Purpose for which the imported wastes are licensed: .....

You are hereby licensed to import the following wastes: .....

From (*name and address*): .....

To (*name and address*): .....

This import shall be made through: border/customs control post: .....

The validity period of this licence is from: ....., 20..... to....., 20.....

This licence is subject to the following conditions:

1. .....
2. .....
3. .....
4. .....
5. .....
6. .....

(*attach a copy of authorization by the state to which the export is to be made*)

Date: ..... Signature: .....

Director, Department of Environmental Affairs

NINETEENTH SCHEDULE reg. 22

REPUBLIC OF MALAŴI

ENVIRONMENT MANAGEMENT ACT

(CAP. 60:02)

ENVIRONMENT MANAGEMENT (WASTE MANAGEMENT AND SANITATION) REGULATIONS

NOTIFICATION DOCUMENT FOR TRANS-BOUNDARY MOVEMENT OF WASTES (FOR TRANSIT PURPOSES ONLY)

1. NOTIFIER

2. GENERATOR(S) OF WASTES

Name: .....

Address: .....

.....

Telephone: ..... Telefax: .....

E-mail: .....

Contact person (name, address, telefax, E-mail)

Process by which the wastes were generated: .....

.....

.....

.....

Site of generation: .....

3. REASON FOR WASTES EXPORT/IMPORT

Why the wastes cannot be diposed, in the country of origin:

.....

.....

.....

.....

.....

.....

Why the wastes would have to be exported/imported through Malaŵi:

.....

.....

.....

.....

.....

.....

.....

4. WASTES

Wastes Description:

Y number: . H number: UN class: UN number:

Shipping name: .....

Physical state at 20°C:

Powder ☐ solid ☐ paste/viscous ☐ sludge ☐

liquid ☐ gaseous ☐ other ☐

Estimated quantity (Kg or L) per shipment: .....

Type of packaging: .....

Number of packages: .....

Special handling requirements including emergency provision in case of accidents:

.....

.....

.....

.....

5. EXPORTER/IMPORTER OF THE WASTES

Component authority and details of approval: .....

.....

.....

.....

.....

Exporter/Importer of the wastes in the country of origin/destination:

Name: .....

Address: .....

.....

Telephone: ..... Telefax: .....

E-mail: .....

6. DISPOSER OF THE WASTES

Name: .....

Address: .....

.....

Telephone: ..... Telefax: .....

E-mail: .....

(*Contact person in case of emergency*)

Approximate date of disposal: .....

Actual site of disposal: .....

Signature and official stamp of disposer:.....

7. TRANSIT

Projected length of time the wastes shipment shall be on transit on Malaŵi territory:

.....

Expected date of entry: .....

Expected date of exit:.....

Means of transport envisaged: .....

Information relating to insurance: .....

(Guarantee that the person responsible shall fully compensate any damage caused to human health, property or the environment, by the wastes in question during transit).

8. DECLARATION

I/we* ..... being the exporter/importer* hereby declare that on I/we* entered into a contract with the disposer and that I/we* shall be bound by the terms of the said contract (attach a copy of contract).

Signed: .....

(*Exporter/Importer**)

I/we* ..... being the exporter/importer* hereby guarantee/declare that the above information is correct and true.

Signed: .....

(*Exporter/Importer**)

*delete whichever is not applicable.

TWENTIETH SCHEDULE regs 13, 14, 45, 50 and 56

FEES

Column 1 *Matter*	*Column* 2 *Fees payable on first application* K t	*Column* 3 *Fees payable on renewal of licence* K t
1. Application for a licence to own or operate a recycling facility	50,000 00	30,000 00
2. Application for a licence to transport wastes	50,000 00	30,000 00
3. Application for a license to store wastes	50,000 00	30,000 00
4. Application for a licence to operate, own a disposal site or plant . .	50,000 00	30,000 00
5. Application for a licence to export waste (movement document) . .	50,000 00	30,000 00
6. Application for a licence to import wastes (movement document) . .	50,000 00	30,000 00

ENVIRONMENT MANAGEMENT (PLASTICS) REGULATIONS

ARRANGEMENT OF REGULATIONS

REGULATION

1. Citation
2. Interpretation
3. Prohibition of certain plastic bags and sheets
4. Exemptions
5. Marking of plastic bags
6. Offences and penalties
7. Phased implementation of prohibition

ENVIRONMENT MANAGEMENT (PLASTICS) REGULATIONS

G.N. 4/2015

under s. 37

Citation

1. These Regulations may be cited as the Environment Management (Plastics) Regulations.

Interpretation

2. In these Regulations, unless the context otherwise requires—

"commercial distribution of plastics" means making plastic bags or sheets directly or indirectly available for various purposes including packaging of goods, carrying of goods or carrying waste, at a price;

"mark" includes any symbol, sign, drawing, design, badge, emblem, representation, heading, name, word, signature, letter or numeral, or any combination of two or more thereof;

"plastic bag" means—

(*a*) a plastic carrier bag with handles which is designed for the purpose of carrying goods;

(*b*) a plastic flat bag constructed with no handles and with or without gussets which is designated for the purpose of carrying goods; or

(*c*) a plastic refuse bag which is designed for the purpose of carrying wastes;

"plastic sheet" means a flat plastic sheet used for various purposes including wrapping fresh food products and construction works;

"primary packaging material" means the first level product packaging material that contains an item being sold;

"plastic wrap" means thin plastic film typically used for sealing food items in containers to keep them fresh over a long period of time and includes cling film, stretch wrap, shrink wrap, cling wrap or food wrap;

"plastic bread wrapping" means a flimsy bread bag, a shrinklene bread bag and a wickered bread bag which are designed for the purpose of packaging bread;

"plastic film" means, a continuous, thin unwoven membranous skin or layer of flexible material made of polymers of ethylene or propylene and combinations thereof; and

"trade" means the sale of plastic bags or sheets to any person, including but not limited to manufacturers, wholesalers and retailers of goods for use in the Republic of Malaŵi.

Prohibition of certain plastic bags and sheets

3. The importation, manufacture, trade and commercial distribution of plastics, plastic bags and plastic sheets made of plastic film with a wall thickness of less than sixty micrometres is prohibited for use within Malaŵi.

Exemptions

4. The following plastics made of plastic film are exempted from the prohibition set out in regulation 3—

(*a*) plastic bread wrapping;

(*b*) plastic bags, plastic wrap and plastic sheets used solely to contain or wrap—

(i) fresh meat and fresh meat products;

(ii) fresh fish and fresh fish products; and

(iii) fresh poultry and fresh poultry products whether pre-packaged or not;

(*c*) plastic bags used as primary packaging solely used to package—

(i) fruits or nuts;

(ii) confectionary products;

(iii) dairy products;

(iv) cooked food whether hot or cold;

(v) liquid or frozen products;

(vi) seeds;

(vii) small hardware items;

(viii) medicinal products; and

(ix) veterinary products;

(*d*) polythene tubes for seedlings;

(*e*) laundry dry cleaning bags;

(*f*) plastic bags used in waste storage and disposal such as bin liners and refuse; and

(*g*) any other plastic bags that the Minister may designate as exempt from the ban.

Marking of plastic bags

5.—(1) Each plastic bag shall have printed on it in English and a local language, the following information—

(*a*) the name and registration number of the manufacturer; and

(*b*) thickness of the plastic bag.

(2) Each recyclable plastic bag shall have written on it the words "recycled" or "reusable" or symbol indicating that it is recyclable or reusable.

Offences and penalties

6.—(1) Any person who imports, manufactures, trades or engages in commercial distribution of plastics, plastic bags and plastic sheets made of plastic film with a wall thickness of less than sixty micrometres, commits an offence and on conviction, shall be liable to imprisonment for a term of three months.

(2) The Court may, on conviction of a person for an offence under subparagraph (1), further make an order for the confiscation or forfeiture of any equipment or property which is part of the subject matter of the offence.

Phased implementation of prohibition

7.—(1) The Minister, may enter into arrangements with manufactures, importers, distributors of plastics and other relevant stakeholders, for a phased implementation of the prohibition set out in regulation 3.

(2) The phased implementation of the prohibition shall be published in a newspaper of wide circulation in Malaŵi.

BIOSAFETY

CHAPTER 60:03

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CHAPTER 60:03

BIOSAFETY

ARRANGEMENT OF SECTIONS

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An Act to provide for the safe management of biotechnological activities and to provide for matters connected therewith and incidental thereto

13 of 2002
G.N. 26/2007

[20TH AUGUST, 2007]

PART I
PRELIMINARY PROVISIONS

1. This Act may be cited as the Biosafety Act. Short title

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

"accident" means any incident involving an unintended general release of biotechnological products which could have an immediate or delayed adverse impact on the environment;

"appeals committee" means an appeals committee appointed under section 35;

"biotechnology" means any technique that uses living organisms or parts of organisms to—

(*a*) make or modify products;

(*b*) improve plants or animals: or

(*c*) develop micro-organisms for specific purposes;

"contained use" means any activity in which organisms are genetically modified or in which genetically modified organisms are cultured, stored, used, transported, destroyed or disposed of and for which physical barriers or a combination of physical, chemical or biological barriers are used to limit contact thereof with the environment;

"environment" means the aggregate of surrounding objects, conditions and influences that affect the life and habits of man or any other organisms or collection of organisms;

"Fund" means the Biosafety Fund established under section 7;

"general release" means the introduction of genetically modified organisms into the environment, by whatever means, where the organisms are no longer under the control of any person;

"gene therapy" means a technique for delivering functional genes to replace aberrant ones into living cells by means of a genetically modified vector or by physical means in order to genetically alter the living cell;

"genetically modified organism" means an organism whose genes or genetic material has been modified in a way that does not occur naturally through mating or natural recombination;

"hazard" means an intrinsic biological chemical or physical characteristic of genetically modified organisms or products thereof which could lead to an adverse impact on the environment;

"inspector" means a person appointed as an inspector under section 30;

"organism" means any biological entity, whether microscopic or not, capable of replication;

"permit" means a permit issued under section 18;

"risk" means the combination of the magnitude of the consequences of a hazard, if it occurs, and the likelihood that the consequences will occur;

"trial release" means the deliberate release of genetically modified organisms into the environment under conditions where the degree of dissemination of the genetically organisms is limited by chemical or physical barriers or by built-in barriers which prevent the survival of such organisms in the environment;

"waste" means any matter, whether gaseous, liquid, solid or any combination thereof, which is an undesirable or superfluous by-product, emission, resolve or remainder of any process or activity in connexion with genetically modified organisms.

Application

3. This Act shall apply to—

(*a*) the genetic modification of organisms;

(*b*) the importation, development, production, testing, release, use and application of genetically modified organisms; and

(*c*) the use of gene therapy in animals, including human beings.

PART II
Administration

Administration of the Act

4. This Act shall be administered by the Minister responsible for environmental affairs, and such other officers subordinate to him as may be appointed under this Part, whose offices shall be public offices.

Appointment of other officers

5. In addition to the Minister, there shall be appointed in the public service such other officers subordinate to the Minister, as may be required for the proper performance of his functions.

Functions of the Minister

6. The Minister shall—

(*a*) formulate and review guidelines on biosafety;

(*b*) establish contact and maintain liaison with appropriate bodies involved in biosafety;

(*c*) promote awareness of biosafety issues;

(*d*)maintain an inventory of all premises and persons involved in biotechnology;

(*e*) approve safety aspects of import, export, manufacture, processing and selling of genetically modified organisms and products thereof;

(*f*) conduct an inquiry, including a public inquiry, into any matter requiring an investigation under this Act;

(*g*) collect or arrange for the collection of information relating to accidents involving biotechnological matter;

(*h*) collect and disseminate information on safety procedures;

(*i*) advise generally on all biosafety activities including—

(i) the application of biotechnology;

(ii) the biosafety manpower requirements of Malaŵi;

(iii) biosafety research and technology;

(iv) biosafety education, not only at advanced level in respect of quality and quantity of potential manpower training, but also at lower levels in respect of general science education for the public; and

(v) biosafety documentation, statistics, surveys and general information;

(*j*) carry out independently or in collaboration with any appropriate person, body of persons, agency or institution such surveys and investigations as he may consider necessary;

(*k*) sponsor such national and international biosafety conferences as he may consider appropriate;

(*l*) act as a channel for liaison with the outside world for the routing of information and resources of aid to assist the country's research efforts; and

(*m*) promote and ensure the maximum coordination of and cooperation in all biosafety activities in order to benefit from the concentration of efforts and to minimize undesired duplications in order to achieve maximum efficiency from, and throughout, the entire socio-economic system.

PART III
Biosafety Fund

Establishment of the Biosafety Fund

7.—(1) There is hereby established a fund to be known as the Biosafety Fund (in this Act otherwise referred to as the "Fund").

(2) The Fund shall consist of—

(*a*) such sums as shall be appropriated by Parliament for the purposes of the Fund;

(*b*) all fees payable under this Act;

(*c*) the levy imposed under section 8;

(*d*) such sums or other assets as may be received for the purpose of the Fund by way of voluntary contributions or donations; and

(*e*) such sums as are paid by way of penalties or costs in respect of offences under this Act.

Levy

8. The Minister may, from time to time, by order published in the *Gazette*, impose a levy on gross or net income accruing to any person or class of persons licensed under this Act and such levy shall be applied for the objects of the Fund as the Minister may specify in the order.

Vesting of the Fund in the Minister Cap. 37:01

9. The Fund shall be vested in the Minister and, subject to this Act and the Finance and Audit Act, shall be administered in accordance with his directions.

Advances to the Fund

10. If in any financial year the income of the Fund, together with any surplus income brought forward from a previous year, is insufficient to meet the actual or estimated liabilities of the Fund, the Minister responsible for finance may make advances to the Fund in order to meet the deficiency or any part thereof and such advances shall be made on such terms and conditions, whether as to repayment or otherwise as the Minister responsible for finance may determine.

Objects of the Fund

11. The objects for which the Fund is established shall be the safe management of biotechnological activities.

Application of the Fund

12. Without derogation from the generality of section 11, the Fund may be applied to—

(*a*) research and training which is calculated to promote the safe management of biotechnological activities;

(*b*) the acquisition of land, equipment, materials and other assets and the construction of buildings in order to promote the objects of the Fund;

(*c*) the cost of any scheme which the Minister considers to be in the interest of the safe management of biotechnological activities;

(*d*) meeting any expenses arising from the establishment and maintenance of the Fund; and

(*e*) any purpose which the Minister considers to be in the interest of the objects of the Fund.

Books and other records of accounts, audit and reports of the Fund Cap. 37:01

13.—(1) The Minister shall cause to be kept proper books and other records of account in respect of receipts and expenditures of the Fund in accordance with the Finance and Audit Act.

Cap. 37:01

(2) The accounts of the Fund shall be audited by the Auditor General who shall have powers conferred upon him by the Finance and Audit Act.

(3) The Minister shall cause to be prepared, as soon as practicable, but not later than six months after the end of the financial year an annual report on all the financial transactions of the Fund.

Holdings of the Fund

14.—(1) All sums received for the purposes of the Fund shall be paid into a bank account and no amount shall be withdrawn therefrom except by means of cheques signed by such persons as are authorized in that behalf by the Minister

(2) Any part of the Fund not immediately required for the purposes of the Fund may be invested in such manner as the Minister responsible for finance, may determine.

Financial year

15. The financial year of the Fund shall be the period of twelve months commencing on 1st July in one year and ending on the 30th June of the following year:

Provided that the first financial year of the Fund may be a period shorter or longer than twelve months as the Minister shall determine, but in any case not longer than eighteen months.

PART IV
Licences and Permits

Licensing authority

16. The Minister shall be the licensing authority responsible for the granting, renewal, variation, suspension and revocation of licences under this Act.

GMO licence

17. Subject to the provisions of this Act and except in accordance with a licence granted under this section (hereinafter referred to as a "GMO licence"), no person shall engage in—

(*a*) the genetic modification of organisms;

(*b*) the importation, development, production, testing, release, use and application of genetically modified organisms; and

(*c*) the use of gene therapy in animals, including human beings.

Special arrangements

18.—(1) The Minister may grant a permit to an applicant authorizing him to engage in activities mentioned in section 17 for—

(*a*) scientific research or experimental purposes; or

(*b*) emergency supply of food for human beings.

(2) An application for permit under subsection (1) shall be made in the prescribed form and shall be accompanied by the prescribed fees.

(3) A permit issued under subsection (1) may exempt the holder thereof from any or all provisions of this Act.

(4) The Minister may, by notice in writing given to the holder of a permit under subsection (1)—

(*a*) revoke the permit; or

(*b*) vary or revoke the conditions to which the permit is subject or specify further conditions.

Other classes of licences

19.—(1) Subject to the provisions of this Act and except in accordance with a licence granted under this section (hereinafter referred to as a "product licence"), no person shall, in the course of business earned on by him—

(*a*) sell, supply, export or import genetically modified organisms or products thereof;

(*b*) procure for sale, supply or exportation of genetically modified organisms or products thereof; and

(*c*) procure the manufacture of genetically modified organisms or products thereof for sale, supply or export.

(2) No person shall in the course of any business carried on by him, manufacture genetically modified organisms or products thereof except in accordance with a licence granted for that purpose (hereinafter referred to as a "manufacturer's licence").

(3) No person shall, in the course of any business carried on by him, sell or supply genetically modified organisms or products thereof by way of wholesale dealing except in accordance with a licence granted for that purpose (hereinafter referred to as a "wholesale dealer's licence").

(4) No person other than a person lawfully carrying on a retail pharmacy business shall sell or supply genetically modified organisms or products thereof by way of dispensing except in accordance with a licence granted for that purpose (hereinafter referred to as a "dispensing licence").

Exemptions

20. The provisions of section 19 shall not apply to the importation of genetically modified organisms or products thereof in such circumstances as may be specified by the Minister in a notice published in the *Gazette*.

Application for a licence

21.—(1) Any application for a licence under this Act shall be made in the prescribed form.

(2) Any application referred to in subsection (1) shall contain a description of products to which the licence will relate.

Matters to be considered before issuing a licence

22. Where an application is made for a licence under this Act the Minister shall, before issuing the licence to which the application relates, consider the following—

(*a*) the safety of genetically modified organisms or products thereof of each description to which the application relates;

(*b*) the efficacy of genetically modified organisms or products thereof of each such description for the purposes for which the organisms or products are proposed to be administered;

(*c*) the quality of products of each description, according to the specification and the method or proposed method of manufacture of genetically modified organisms or products thereof, and the organisms or products when sold or supplied will be of that quality;

(*d*) the operations and procedures proposed to be carried out pursuant to the licence;

(*e*) the premises in which operations and procedures are to be carried out;

(*f*) the equipment which is or will be available on the premises for carrying out operations and procedures;

(*g*) the qualifications of the person under whose supervision operations and procedures will be carried out;

(*h*) the arrangements made or to be made for securing the safekeeping of, and the maintenance of adequate records in respect of, genetically modified organisms or products thereof manufactured or assembled in pursuance of the licence;

(*i*) the premises on which genetically modified organisms or products thereof of the description to which the application relates will be stored;

(*j*) the equipment which is or will be available for storing products on those premises;

(*k*) the equipment and facilities which are or will be available or distributing genetically modified organisms or products thereof from those premises; and

(*l*) the arrangement made or to be made for securing the safekeeping of, and the maintenance of adequate records in respect of genetically modified organisms or products thereof stored on or distributed from those premises.

Issue of licences

23.—(1) If the Minister is satisfied that the applicant is a fit and proper person to engage in activities set out in section 17 or to carry on any business set out in section 19, the Minister may issue to the applicant the licence appropriate to such business subject to such general or special conditions as the Minister may consider appropriate to impose.

(2) A licence issued under subsection (1) shall be in such form, and shall be for such duration, as may be prescribed.

(3) Where the Minister considers that the applicant is not fit and proper person to whom a licence should be issued, he shall refuse to issue a licence.

Suspension and revocation of a licence

24.—(1) Subject to this Part, the Minister may—

(*a*) suspend licence for such period as he may determine;

(*b*) revoke the licence; or

(*c*) vary the provisions of the licence.

(2) The suspension or revocation or a licence under this section may be limited to biotechnological products of one or more descriptions, or to any particular premises or to a particular part of any premises.

Variation of a licence

25. Subject to section 21, the Minister may on the application of holder of a licence under this Part vary the provisions of the licence in accordance with any proposals contained in the application, if the Minister is satisfied that the variation will not adversely affect the safety, quality or efficacy of genetically modified organisms or products thereof.

PART V

Containers, Packages and Identification of Genetically Modified Organisms or Products Thereof

Labelling

26.—(1) No person shall, in the course of a business carried on by him, sell or supply or have in his possession for the purpose of selling or supplying genetically modified organisms or products thereof in a container or package which is not labelled in accordance with regulations made under section 41.

(2) Without prejudice to subsection (1), no person shall, in the course of a business carried on by him, sell or supply, genetically modified organisms or products thereof of any description in a

container or package which is labelled or marked in such a way that the container or package—

(*a*) falsely describes the genetically modified organisms or product; or

(*b*) is likely to be misleading as to the nature, efficacy or quality of genetically modified organism or product or as to the uses or effects of genetically modified organisms or product of that description.

(3) Any person who contravenes this section shall be guilty of an offence.

Leaflets

27.—(1) No person shall, in the course of a business carried on by him, supply or have in his possession for the purpose of supplying together with genetically modified organisms or products thereof a leaflet relating to such organisms or products which does not comply with regulations made under section 41.

(2) Without prejudice to subsection (1), no person shall, in the course of a business carried on by him, supply together with genetically modified organisms or products thereof or have in his possession for the purpose of so supplying a leaflet which—

(*a*) falsely describes genetically modified organisms or products thereof to which it relates; or

(*b*) is likely to be misleading as to the nature, efficacy or quality of such genetically modified organisms or products thereof.

(3) Any person who contravenes this section shall be guilty of an offence.

PART VI
Promotion of Sales of Genetically Modified Organisms or Products Thereof

Regulations on advertisement

28. The Minister may make regulations which may prohibit issue of advertisements—

(*a*) relating to genetically modified organisms or products thereof of a description or a class specified in the regulations;

(*b*) likely to lead to the use of genetically modified organisms or products thereof or any other substance or article, for the purpose of treating or preventing a disease so specified or of ascertaining the existence, degree or extent of a physiological condition so specified or of permanently or temporarily preventing or otherwise interfering with the normal operation of a physiological function so specified or for the purpose of artificially inducing a condition of body or mind so specified;

(*c*) likely to lead to the use of genetically modified organisms or products thereof of a particular description or class specified in the regulations or the use of any other substance or article of a description or class so specified for any such purpose as is mentioned in paragraph (*b*); and

(*d*) relating to genetically modified organisms or products thereof and containing a word or phrase specified in the regulations, as being a word or phrase which, in the opinion of the Minister, is likely to mislead the public as to the nature or effects of the organisms or products.

Meaning of advertisement

29.—(1) In this Part "advertisement" includes every form of advertising, whether in a publication, or by the display of any notice or by means of any catalogue, price list, letter, whether circular or addressed to a particular person, or by exhibition of a photograph or a cinematograph film, or by way of sound recording, sound broadcasting or television.

(2) Notwithstanding anything contained in subsection (1), "advertisement" does not include spoken words except—

(*a*) words forming part of a sound recording or embodied in a sound-track associated with a cinematograph film;

(*b*) words broadcast by way of sound broadcasting or television or transmitted to subscribers to a diffusion service; and

(*c*) anything spoken in public.

(3) Save as regulations made under section 28 may otherwise provide, the following shall not for purposes of this Part constitute an advertisement—

(*a*) the sale or supply, or offer or exposure for sale or supply of genetically modified organisms or products thereof in a labelled container or package; and

(*b*) the supply, together with genetically modified organisms or products thereof, of leaflet relating solely to the use of the organism or product supplied.

PART VII
Inspection

Inspection

30.—(1) The Minister shall, for purposes of ensuring compliance with the provisions of this Act, appoint such number of inspectors as he considers appropriate.

(2) Every inspector shall be issued with a certificate of authority and the certificate of authority shall constitute *prima facie* evidence

that the holder thereof is an inspector duly appointed by the Minister under subsection (1).

(3) A person shall not be qualified for appointment as an inspector unless he is competent in biotechnology or biosafety.

(4) A person appointed under subsection (1) shall hold office subject to such conditions as the Minister may determine.

(5) An inspector shall, on demand by any person affected by the exercise of the powers under this Act, produce for inspection, the certificate of authority referred to in subsection (2).

Entry into premises

31.—(1) Subject to the provisions of this section, an inspector may, at any reasonable time and on production of his certificate of authority, enter any premises—

(*a*) for the purpose of ascertaining whether there is or has been on or in connexion with those premises any contravention of this Act, and

(*b*) generally for the purposes of discharging his functions under this Act.

(2) An inspector may, at any reasonable time and on production of his certificate of authority—

(*a*) enter any ship, aircraft or any vehicle for the purpose of ascertaining whether there is in the ship, aircraft or vehicle any substance or article imported in contravention of this Act; or

(*b*) enter any ship, aircraft or any vehicle for any purpose for which the inspector is authorized to enter any premises under subsection (1).

Mode of inspection

32.—(1) For the purpose of ascertaining whether there is or has been a contravention of this Act, an inspector may inspect—

(*a*) any substance or article appearing to him to be a genetically modified organism or product thereof;

(*b*) any article appearing to him to be a container or package used or intended to be used to contain any genetically modified organism or product thereof or to be a label or leaflet used or intended to be used in connexion with a genetically modified organism or product thereof; or

(*c*) any plant or equipment appearing to him to be used or intended to be used in connexion with the manufacture of a genetically modified organism or product thereof and the means employed, at any stage of the process of manufacture for testing the materials after they have been subjected to those processes.

(2) Where an inspector requires a sample of any substance or article appearing to him to be—

(*a*) a genetically modified organism or product thereof sold or supplied or intended to be sold or supplied; or

(*b*) a substance or article used or intended to be used as an ingredient in the manufacture or development of a genetically modified organism or product thereof,

he shall, if he does not obtain the sample by purchase, obtain the sample of that substance or article from the person by whom the product is sold and supplied or intended to be sold, supplied or manufactured.

(3) For the purpose of this section, an inspector may—

(*a*) require any person involved in the importation, development, production, use, application, release and distribution of genetically modified organisms or products thereof to produce any books or documents relating to the business which are in his possession or under his control; and

(*b*) take copies of, or of any entry in, any book or document produced in pursuance of paragraph (*a*).

(4) An inspector may seize and detain any substance or article which he has reasonable cause to believe to be a substance or article in relation to which, or by means of which, an offence under this Act is being or has been committed, and any document which he has reasonable cause to believe to be a document which may be required as evidence in proceedings under this Act.

(5) In exercising the powers under this section, an inspector may, in order to ensure that the provisions of this Act are observed, require any person who owns the substance or article or has authority over the substance or article which is contained in a container or package or a vending machine, to break open any container or package or open any vending machine or to permit the inspector to do so.

(6) Where an inspector seizes any substance or article, including any document pursuant to subsection (4), he shall inform of that fact the person from whom it is seized and, in the case of anything seized from a vending machine, the person whose name and address are stated on the machine as being those of the owner of the machine or, if no name and address are so stated, the occupier of the premises on which the machine stands or to which it is affixed.

(7) An inspector entering any premises, ship, aircraft or vehicle, pursuant to section 31 may take with him such other persons and such equipment as may appear to him to be necessary and, on leaving any such premises, ship, aircraft or vehicle, he shall, if the premises are unoccupied or the occupier, or in the case of a ship, aircraft, vehicle, the master, commander or other person in charge

of it is temporarily absent, leave it as effectively secured against trespass as he found it.

(8) Any person who—

(*a*) willfully obstructs an inspector in the discharge of his duties;

(*b*) willfully fails to comply with any requirement properly made to him by an inspector; or

(*c*) without reasonable cause fails to give to the inspector any assistance or information which the inspector may reasonably require of him for the purpose of the performance of his duties under this Act,

shall be guilty of an offence.

(9) If any person, in giving any such information as is mentioned in subsection (8)(*c*), makes any statement which he knows to be false or which he does not believe to be true, he shall be guilty of an offence.

(10) Nothing in this section shall be construed as requiring a person to answer any question or give any information if to do so might incriminate that person or, where that person is married, the husband or wife of that person.

Non-disclosure of information

33.—(1) If any person discloses to any other person—

(*a*) any information with respect to any manufacturing process or trade secret obtained by him in premises which he has entered pursuant to this Act; or

(*b*) any information obtained by him or furnished to him pursuant to this Act,

he shall unless the disclosure was made in the performance of his duty and to an authorized person, be guilty of an offence and shall be liable to a fine of K100,000 and to imprisonment for two years.

Inspectors not to be personally liable for acts done by them under this Act

34. An inspector shall not be personally liable in respect of any act done by him in good faith in the course of his employment and in the execution or purported execution of any duty under this Act.

PART VIII
Appeals

Appeals

35.—(1) Any person who is aggrieved by—

(*a*) any refusal, suspension, revocation or variation of a licence, permit or certificate issued under this Act, or

(*b*) any decision directly applicable to him taken by the Minister or any person exercising powers under this Act,

may within thirty days appeal in writing to the Minister who shall appoint an appeals committee for purpose of hearing the appeal in question.

Appeals committee

36.—(1) An appeals committee shall consist of five persons who, in the opinion of the Minister, have expert knowledge and who are otherwise suitable to determine the issues raised in the appeal.

(2) The Minister shall designate one of the members of the appeals committee as chairperson of the committee.

(3) A member of the appeals committee shall excuse himself as a member of the appeals committee if he has any direct or indirect interest in the subject matter of the appeal or if for any reason there is likely to be conflict of interest as a result of his participation in the proceedings of the committee.

(4) There shall be paid to members of an appeals committee such remuneration or allowances as the Minister may determine.

Powers of appeals committee

37.—(1) An appeals committee shall have, in relation to the hearing of any appeal, the power to—

(*a*) confirm, set aside, vary, alter, reverse or amend the decision which is the subject of the appeal;

(*b*) refer the relevant matter back to the Minister for his reconsideration;

(*c*) order persons to attend and give evidence or to produce or give discovery and inspection of documents in like manner as in proceedings in the High Court:

Provided that the appeal committee may in its absolute discretion admit evidence which would not be admissible in a court of law and may use evidence contained in any official record and may call evidence of its own motion;

(*d*) award costs of any proceedings before it and to direct that such costs shall be taxed upon such scale and in such manner as may be prescribed;

(*e*) make such order as it may deem fit; and

(*f*) the power to do all things which it is required or empowered to do by or under this Act.

(2) The decision of the appeal committee on any appeal shall be—

(*a*) made in writing;

(*b*) sent to all the parties to the appeal and, where he was not a party, to the Minister; and

(*c*) available for public inspection.

(3) Any person who, having appealed under section 35, is aggrieved by the decision of the appeals committee may, within thirty days thereof, apply to the High Court for judicial review of the decision of the committee.

PART IX
Miscellaneous Provisions

Secrecy to be observed

38.—(1) Every person employed under this Act shall not disclose to any person, except in the performance of his duties under this Act or when required to do so by any written law, any information which he may have acquired in the course of his duties in relation to the financial or business affairs of any person, undertaking or business.

(2) Any person who contravenes subsection (1) shall be guilty of an offence and, upon conviction, be liable to a fine of K200,000 or to imprisonment for two years.

Offences

39. Any person who—

(*a*) contravenes any provision of this Act, directive or order lawfully given or requirement lawfully imposed under this Act;

(*b*) omits or refuses—

(i) to furnish any information when required by the Minister to do so: or

(ii) to produce any document when required to do so by a notice issued by the Minister; or

(*c*) knowingly furnishes any false information to the Minister, shall be guilty of an offence.

Penalty for offences

40.—(1) A person guilty of an offence under this Act for which no specific penalty is provided shall be liable to a fine of K1,000,000 or to an amount equivalent to the financial gain generated by the offence, if such amount be greater, and to imprisonment for ten years.

(2) Upon conviction of any person for an offence under this Act, the court may, in addition to any other penalty imposed, declare any genetically modified organism or product thereof, substance or article seized and detained by an inspector and found to have been used in, or in connexion with, the commission of that offence to be forfeited, and may order it to be destroyed, without compensation, in such manner as the court might specify, and any expenditure incurred, if any, shall be recoverable from the person as a civil debt owed to the Fund.

Regulations

41.—(1) The Minister may make regulations for better carrying into effect of the purposes of this Act.

(2) Without prejudice to the generality of subsection (1), the regulations may provide for—

(*a*) anything required to be prescribed under, or for the purposes of, this Act;

(*b*) any forms required for the purposes of this Act;

(*c*) fees payable in respect of any service provided;

(*d*) the furnishing of reports to the Minister on biosafety matters including accidents;

(*e*) requirements pertaining to—

(i) release or contained use of genetically modified organisms or products thereof;

(ii) laboratories; and

(iii) registration of facilities where biotechnological processes are undertaken;

(*f*) descriptions or classes of genetically modified organisms or products thereof or of any articles or substances required to be specified under this Act;

(*g*) the control, regulation or regulation of the sale or supply, export or the importation, of genetically modified organisms or products thereof or any article or substance of any specified description or class;

(*h*) the manner in which containers and packages of genetically modified organisms or products thereof may be labelled;

(*i*) the manner in which leaflets relating to the advertisement of genetically modified organisms or products thereof may be made;

(*j*) such requirements as may be necessary with respect to—

(i) the manner in which, or persons under whose supervision, genetically modified organisms or products thereof may be prepared or may be dispensed;

(ii) the amount of space to be provided in any premises for persons preparing or dispensing genetically modified organisms or products thereof, the separation of any such space from the remainder of the premises and the facilities to be provided in any premises for such persons;

(iii) the accommodation to be provided in any premises for the sale or supply of genetically modified organisms or products thereof;

(iv) the accommodation to be provided in any premises for members of the public to whom genetically modified organisms or products thereof are sold or supplied or for whom genetically modified organisms or products thereof are being prepared or assembled;

(v) the amount of space to be provided in any premises for members of the public and storage of genetically modified organisms or products thereof;

(vi) the safe keeping of genetically modified organisms or products thereof;

(vii) the disposal of genetically modified organisms or products thereof which have become unusable or otherwise unwanted;

(viii) precautions to be observed before genetically modified organisms or products thereof are sold or supplied;

(ix) the keeping of records relating to the sale or supply of genetically modified organisms or products thereof;

(x) the supply of genetically modified organisms or products thereof distributed as samples;

(xi) sanitation, cleanliness, temperature, humidity or other factors relating to the construction, location and use of automatic machines for the sale of genetically modified organisms or products thereof;

(*k*) fees payable upon registration or renewal of registration and upon application for a licence or certificate or renewal of licence or certificate; and

(*l*) anything to be prescribed under this Act.

(3) Any regulation made under this Act may, notwithstanding the provisions of section 21 (*e*) of the General Interpretation Act, prescribe a fine of up to K200,000 and imprisonment for up to two years for an offence committed against any provision of such regulation. Cap. 1:01

SUBSIDIARY LEGISLATION

BIOSAFETY (MANAGEMENT OF GENETICALLY MODIFIED ORGANISMS) REGULATIONS

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BIOSAFETY (MANAGEMENT OF GENETICALLY MODIFIED ORGANISMS) REGULATIONS

G.N. 30/2007

PART I
PRELIMINARY

Citation

1. These Regulations may be cited as Biosafety (Management of Genetically Modified Organisms) Regulations.

Interpretation

2. In these Regulations, unless the context otherwise requires—

"applicant" means a person who submits an application for a licence or permit under the Act;

"Committee" means the National Biosafety Regulatory Committee established under regulation 3;

"Biosafety Registrar" means the officer appointed as such under regulation 8;

"operator" means any person who conducts activities under a licence or permit issued under the Act;

"register" means a register established under regulation 8 and containing particulars of Genetically Modified Organisms and activities that are licensed or permitted under the Act;

"risks to human health" means the potential adverse effects of biotechnology activities or their products on human health;

"reviewer" means a reviewer appointed under regulation 11.

PART II
Institutional Framework

National Biosafety Regulatory Committee

3.—(1) There shall be a National Biosafety Regulatory Committee which shall consist of the following members, nominated by their institutions and appointed by the Minister—

(*a*) the Secretary responsible for Agriculture and Food Security or his designated representative;

(*b*) the Secretary responsible for Health or his designated representative;

(*c*) the Secretary responsible for Industry and Trade or his designated representative;

(*d*) the Director General of the Malaŵi Bureau of Standards or his designated representative;

(*e*) Secretary responsible for Labour or his designated representative;

(*f*) the Secretary responsible for Justice or his designated representative;

(*g*) the Director of Forestry or his designated representative;

(*h*) the Secretary responsible for Women and Child Welfare or his designated representative;

(*i*) the Secretary responsible for Nutrition, HIV and Aids or his designated representative;

(*j*) the Director of National Parks and Wildlife or his designated representative;

(*k*) the Executive Director for the Council for Non-Governmental Organizations or his designated representative;

(*l*) the Commissioner for Malaŵi Revenue Authority or his designated representative;

(*m*) the Inspector General of the Malaŵi Police Service or his designated representative; and

(*n*) the Executive Director for Consumers Association of Malaŵi or his designated representative.

(2) Members of the Committee shall be paid such an allowance as the Minister shall determine:

Provided that the Minister may make provision for reimbursement of any reasonable expense incurred by a member of the Committee in connexion with the business of the committee.

(3) The Minister shall appoint the Chairperson of the National Biosafety Regulatory Committee.

(4) The members of the Committee shall, at their first meeting, elect a Vice Chairperson from amongst their number.

(5) In the absence of the Chairperson and Vice-Chairperson the members of the Committee present shall elect a person from their number to preside over a meeting.

(6) The person presiding over a meeting shall exercise all the powers and perform all the duties of the Chairperson whenever the Chairperson is not present.

(7) A member of the Committee whose period of office has expired may be eligible for reappointment.

(8) Each institution shall designate a member and an alternate to serve on the Committee.

(9) The quorum for any meeting of the Committee shall be a simple majority of members.

(10) A decision on any matter before the Committee shall be by a simple majority of votes of the members present.

(11) In the case of an equality of votes, the person presiding over a meeting shall have a casting vote.

(12) The committee shall determine its own procedures for meetings.

(13) The Biosafety Registrar shall be the Secretary to the Committee.

Immunity from suit

4. No action, suit or other proceedings shall be brought or instituted personally against any member of the Committee or public officer in respect of any act done in good faith in the course of carrying out the provisions of the Act or these Regulations.

Tenure of office and vacancies

5.—(1) The members of the Committee shall hold office for a period of three (3) years and may be eligible for reappointment.

(2) A member of the Committee shall cease to be a member of the Committee if—

(*a*) he resigns as a member of the committee;

(*b*) he ceases to be a member or employee of the institution that nominated him for appointment as member of the Committee;

(*c*) upon, conviction of any offence, he is sentenced to a term of imprisonment without the option of a fine;

(*d*) he is of unsound mind or an undischarged bankrupt;

(*e*) he is absent from three (3) consecutive meetings of the Committee, without a valid excuse, of which he has had notice;

(*f*) he dies; or

(*g*) the member is compromised to such an extent that his ability to impartially exercise the duties of his office is seriously in question.

Functions of the Committee

6. The Committee shall—

(*a*) evaluate all applications concerning or related to genetically modified organisms and products thereof and make recommendations to the Minister in that regard;

(*b*) advise, on request or of its own accord, the Minister on matters concerning genetic modification of organisms, inter alia—

(i) on all aspects relating to the introduction of genetically modified organisms into the environment;

(ii) on all proposals for specific activities or projects concerning the genetic modification of organisms;

(iii) on all aspects concerning the contained use of genetically modified organisms;

(iv) on the exportation and importation of genetically modified organisms;

(v) on the amendment or withdrawal of a licence or permit issued under the Act; and

(vi) on proposed regulations and guidelines;

(*c*) liaise, through the relevant institutions, with international groups or organizations concerned with biosafety and biotechnology;

(*d*) invite knowledgeable persons to assist the Committee on any aspect related to genetically modified organisms and;

(*e*) carry out such other functions that are necessary for the effective implementation of these Regulations.

Disclosure of Interest

7. A member of the Committee who has an interest, direct or indirect, in any matter before the Committee shall disclose such interest and shall not take part in the consideration or discussion of the matter.

Appointment of the Biosafety Registrar

8.—(1) There shall be appointed, in the public service, a Biosafety Registrar and such other suitably qualified officers as may be required for the administration of these Regulations.

(2) The Biosafety Registrar shall exercise such powers and perform such duties as may be conferred upon him by the Minister, and the Committee.

Functions of the Biosafety Registrar

9.—(1) The Biosafety Registrar shall—

(*a*) ensure that the provisions of the Act and these Regulations are known to the relevant authorities and the general public;

(*b*) maintain a register of all biotechnological activities in Malaŵi and all licences and permits issued under the Act;

(*c*) receive all documents relating to applications and appeals and transmit them to the Committee and the Minister;

(*d*) liaise with the Secretariat of the Convention on Biological Diversity;

(*e*) transmit information on biosafety to the Biosafety Clearing House Mechanism;

(*f*) facilitate and ensure the training of all inspectors in relevant aspects of biosafety and biotechnology;

(*g*) maintain a register of experts in biotechnology and biosafety; and

(*h*) perform any other functions as may be conferred upon him by the Minister or the Committee.

Inspectors

10.—(1) Subject to the provisions of section 30 (2) and (3) of the Act, the institutions represented on the Committee shall nominate from their institutions suitably qualified public officers for appointment as inspectors by the Minister in accordance with the section 30 of the Act.

(2) Where the Committee has ascertained or suspects, on reasonable grounds, that genetically modified organisms are being imported or locally produced or used contrary to the provisions of the Act, these Regulations or the conditions of a licence or permit issued thereunder, the Committee shall instruct inspectors to—

(*a*) require the cessation of any genetic modification activity at the facilities where the provisions of the Act or the conditions of a licence or permit have not been or are not being complied with;

(*b*) ensure that appropriate measures are undertaken by all users at all times with a view to protect human health and the environment from hazards;

(*c*) serve notice upon any person by whom or on whose behalf genetically modified organisms are being imported into, produced or used in Malaŵi contrary to the Act or these Regulations, for the removal of such genetically modified organisms, to a place or facility and in a manner prescribed by the Committee; or

(*d*) destroy such genetically modified organisms or cause them to be destroyed, subject to procedures stipulated in the guidelines issued by the Minister.

Reviewers

11.—(1) The Committee may, before it considers any application for a licence or a permit, appoint one or more experts in any relevant field to review the application so as to provide the Committee with sufficient information to enable it make an informed decision.

(2) In the performance of the powers of appointment in accordance with subregulation (1) above, the Committee shall ensure that the composition of the reviewers reflects the expertize necessary to undertake a proper review of the subject in question and shall determine the size of each review team.

(3) The reviewers shall be responsible for reviewing risk assessment reports and auditing processes in order to establish the impact of the biotechnological activities on the environment and human health.

(4) The reviewers shall submit a report to the Committee, in respect of any assessment undertaken, giving, *inter alia*,—

(*a*) an opinion of the viability of the project under consideration;

(*b*) a description of any measures or actions that need to be taken to ensure the safe use of genetically modified organisms; and

(*c*) an outline of any gaps, deficiencies and the adverse human and environmental concerns.

(5) The reviewers shall, when compiling their report, have regard to the provisions of regulation 15.

PART III
Licences and Permits

Required information for applications for licences and permits for trial release and contained use

12.—(1) Any person making an application for a licence or a permit for trial release and contained use under the Act shall provide to the Committee the information contained in the First Schedule hereto.

(2) Notwithstanding the provisions of subregulation (1) a permit referred to in the said subregulation shall not be required for organisms that are used under conditions of contained use in academic and research facilities.

(3) A licence or permit issued under the Act shall be in the format contained in the Second Schedule hereto and shall be valid for a period of one (1) year.

(4) Any person making an application for a licence or permit to export or import genetically modified organisms shall take into account the requirements of the Cartagena Protocol on Biosafety.

Fees

13.—(1) Any person making an application or granted a licence or permit under these Regulations shall pay the fees set out in the Third Schedule hereto and the fees shall accompany each application or be paid before any licence or permit is granted, as the case may be.

(2) The Committee may recommend to the Minister to exempt indigenous Malaŵian researchers from paying fees under these Regulations.

(3) The Minister, on the recommendation of the Committee, shall determine the fees under these Regulations and may revise the fees from time to time.

Applications for licence for general release of genetically modified organisms

14.—(1) A person who has been granted a licence or permit under the Act and proposes to release into the environment genetically modified organisms, shall make an application for a licence to the Minister in accordance with requirements contained in the Fifth Schedule hereto.

(2) The applicant shall publish the application for the proposed general release of genetically modified organisms in two (2) widely circulating newspapers.

(3) The publication referred to in subregulation (2), shall contain the following details—

(*a*) full name and address of the applicant;

(*b*) a full description of the genetically modified organisms that the applicant proposes to release;

(*c*) a description of the proposed general release including the area and environment in which the release is to take place;

(*d*) a request that interested parties submit comments or objections in connexion with the intended release to the Biosafety Registrar within a period specified in the notice:

Provided that such period shall not be less than thirty (30) days after the date on which the notice appears in newspaper; and

(*e*) the address of the Biosafety Registrar, to which comments or objections may be submitted.

(4) The Biosafety Registrar shall refer any comments or objections received from interested parties to the Committee.

(5) The Committee shall, when reviewing an application for general release, consider all the comments and objections referred to the Committee in connexion with the said application.

Risk assessment of activities

15.—(1) No licence shall be issued unless a suitable and sufficient assessment of the risks that may be created thereby to the environment or human health is undertaken.

(2) The applicant shall conduct risk assessment in a scientifically sound manner, appropriate to the type of permit or licence being sought and in accordance with internationally recognized risk assessment techniques and shall, inter alia, take into account available information concerning any potential exposure to the genetically modified organisms.

(3) Risk assessments shall be based on the information included in the application and shall also cover the information set out in the Fourth Schedule hereto and any other available scientific evidence.

(4) Lack of scientific knowledge or lack of consensus on the safe use of genetically modified organisms shall not in itself be interpreted as indicating a particular level of risk, an acceptable risk or an absence of risk.

Licensing of facilities and maintenance of records

16.—(1) Subject to the provisions of subregulation (4), all facilities, for the purpose of carrying out genetic modification of organisms activities, shall be registered and licensed for such purposes.

(2) An application for the registration and licensing of a facility shall be made in a prescribed form and accompanied by a locality map that clearly indicates where the facility is situated and the construction materials to be used.

(3) Applications for licensing a facility that has already been active prior to the commencement of these Regulations, shall be made within six (6) months from the date of the commencement of these Regulations:

Provided that, where the Minister deems it necessary, upon the advice of the Committee, that a facility be registered prior to the expiration of the six (6) months period, the Minister may, by a written notice to the operator, require that a particular facility be licensed within a period specified in that notice.

(4) The Biosafety Registrar shall within three (3) weeks from the date of the issuance of facility licence, furnish the successful applicant a copy of the guidelines and conditions for the maintenance of the facility.

(5) The operator of a licensed facility shall, inter alia, keep and maintain the licence referred to in subregulation (4) and all records pertaining to risk assessments.

(6) The licence and records referred to in subregulation (5) shall, on request, be made available to the Biosafety Registrar or an inspector.

(7) The operator shall at all times, notify the Biosafety Registrar of any change to the information provided in terms of this regulation such as any extensions, improvements, modifications and damage to the facility.

(8) The operator shall not dispose of any list, register and record maintained in terms of this regulation except with the written permission of the Biosafety Registrar.

(9) Any person who contravenes the provisions of this regulation commits an offence and shall, upon conviction, be liable to a fine of two hundred thousand Kwacha (K200,000) and to imprisonment for three (3) years.

Time within which to determine applications

17.—(1) The Minister shall attend to applications for licences and permits within a reasonable time and in any event decisions relating to any application shall be made not later than three (3) months from the date the committee receives the application.

(2) Notwithstanding subregulation (1), where an applicant is required to furnish further information for the determination of his application, the number of days taken by the applicant to submit the required information shall not be included in the time set down for determining the application.

Processing of applications

18.—(1) All applications for licences and permits under the Act shall be made to the Biosafety Registrar.

(2) Upon receipt of an application, the Biosafety Registrar shall—

(*a*) acknowledge, in writing, receipt of such application within five (5) working days of such receipt; and

(*b*) determine whether the application conforms with the requirements of the Act, these Regulations and relevant international requirements, and if—

(i) the application does not conform to the relevant requirements in any respect, immediately refer the application back to the applicant and request the applicant to rectify the application; or

(ii) the application conforms to the relevant requirements submit the application to the Committee for consideration.

(3) The applicant or his authorized representative may appear in person before the Committee to answer any questions or provide any explanation pertaining to his application.

(4) The applicant shall publish in two (2) widely circulating newspapers a brief description of the application for a licence or permit under the Act and invite comments from members of the general public on such application.

(5) All public comments shall be made to the Biosafety Registrar within thirty (30) days of the publication of the application in accordance with subregulation (4).

(6) The Committee may—

(*a*) approve or reject the application depending on whether the proposed activity may pose significant risk to the conservation and sustainable use of biological diversity and human health and make the necessary recommendations to the Minister and shall give reasons for its decision; or

(*b*) refer the application back to the applicant for further and better particulars.

(7) When deciding an application for a general release licence, the Committee shall also consider the provisions of section 22 of the Act.

(8) In addition to the risk assessment report, the Committee shall consider the socio-economic impact of the general release of the genetically modified organism on a community living in the vicinity where the genetically modified organisms is proposed to be released.

(9) Where an applicant discovers any new information relating to the application that is being processed, he shall immediately notify the Biosafety Registrar of the new information.

(10) Upon receipt of the new information referred to in subregulation (9), the Biosafety Registrar shall refer the details thereof to the Committee which shall decide the effect of such information on the application.

Review of decisions

19.—(1) Any applicant may apply to the Minister to review his decision with respect to an activity conducted or proposed to be conducted by the applicant where the applicant considers that—

(*a*) change of circumstances has since occurred that may have had a material effect on the decision or the outcome of the risk assessment upon which the decision was based; or

(*b*) additional scientific or technical information has become available that may have a material effect on the decision including any conditions, limitations or requirements imposed under a licence or permit.

(2) If the Minister, upon consultation with the Committee, is satisfied that a change is warranted, he may revise the decision and any conditions in the licence or permit in a manner that is consistent with the new information.

PART IV
Miscellaneous Provisions

Accidents

20.—(1) In the event of an accident involving genetically modified organisms, it shall be the responsibility of the operator to ensure that—

(*a*) the Biosafety Registrar is notified immediately both verbally and in writing of such accident regarding—

(i) the circumstances of the accident;

(ii) the identity and quantity of the genetically modified organisms released;

(iii) any information that is necessary to assess the impact of the accident on the environment and human health;

(iv) the emergency measures taken to avoid or mitigate any adverse impact of such accident on the environment and human health: and

(v) the capacity to deal with the situation occasioned by the accident; and

(*b*) all appropriate short term, medium term and long term measures are taken to avoid or mitigate any adverse impact of such accident on the environment and human health.

Caution and determination of liability

21.—(1) Operators shall take appropriate measures to avoid any adverse impact on the environment and human health, which may arise from any trial release or contained use involving genetically modified organisms.

(2) The liability for damage caused to the environment and biodiversity by the use or release of a genetically modified organism shall be borne by the operator.

Public access to information and confidentially

22.—(1) Subject to subregulation (2), every person shall have access to information submitted to the Biosafety Registrar under these Regulations.

(2) No person shall disclose any information acquired by him through the exercise of his powers or the performance of his duties in terms of these Regulations, except—

(*a*) in so far as it is necessary for the proper application of the provisions of the Act;

(*b*) for the purposes of any legal proceedings under the Act;

(*c*) when ordered to do so by any competent court; or

(*d*) if he is authorized to do so by the Committee or Minister.

(3) The Biosafety Registrar shall, after consultation with the applicant, recommend to the Committee which information should be kept confidential and shall inform the applicant of his decision provided that the following information shall not be kept confidential—

(*a*) the description of the genetically modified organisms, the name and address of the applicant, and the purpose of the contained use, confined field trial or general release;

(*b*) the methods and plans for the monitoring of the genetically modified organisms and for emergency measures in the case of an accident; and

(*c*) the evaluation of foreseeable impacts, in particular any pathogenic or ecologically disruptive impacts.

(4) Notwithstanding the provisions of subregulation (2), the Biosafety Registrar may, after being satisfied on the grounds of information furnished by the applicant that certain information should be withheld in order to protect the intellectual property of the applicant, withhold such information for the period needed to protect such rights.

(5) If, for whatever reasons. the applicant withdraws an application, any party who has knowledge of the details of the application shall keep confidential the information supplied.

(6) Any person who contravenes subregulation (5), commits an offence and shall, upon conviction, be liable to the penalty prescribed under section 33 of the Act.

Requirements for effective management of waste

23.—(1) An operator who possesses or controls waste arising from biotechnology activities shall manage and dispose of the waste in such a manner that the waste shall not negatively impact on the environment and human health.

(2) An operator shall comply with all relevant national and local authority legislation in force in the management and disposal of waste arising from biotechnology activities.

(3) Any person who contravenes subregulations (1) and (2) commits an offence and shall, upon conviction, be liable to a fine of two hundred thousand Kwacha (K200,000) and to two (2) years imprisonment:

Provided that if the person commits a further offence he shall be liable to a fine of twenty thousand Kwacha (K20,000) during each day the offence continues.

Advertisements

24.—(1) No person shall advertise genetically modified organisms in a manner which misleads the general public or makes false claims regarding the use of genetically modified organisms.

(2) The Biosafety Registrar shall, after consultation with the Committee, instruct an inspector to confiscate genetically modified organisms which contravene subregulation (1).

(3) Any person who contravenes subregulation (1) commits an offence and shall, upon conviction, be liable to a fine of two hundred thousand Kwacha (K200,000) or to an amount equivalent to the financial gain generated by the offence.

Guidelines

25. In addition to the information required for all applications under these Regulations, the Minister shall issue guidelines to be followed by applicants in the conduct of biotechnology activities.

Appeals

26.—(1) An appeal under the Act shall—

(*a*) be lodged in writing within thirty (30) days from the date on which the applicant was notified in writing of the decision or action concerned and shall state:

(i) the reference number and the date of the document by means of which such applicant was notified of that decision or action; and

(ii) the grounds on which the appeal is based; and

(*b*) be accompanied by the fees set out in the Third Schedule contained hereto.

(2) The applicant shall lodge the appeal with the office of the Biosafety Registrar.

(3) The applicant shall be notified in writing by the Biosafety Registrar not less than fourteen (14) days in advance of the date, time and place at which he is to appear before the appeals committee.

(4) The applicant shall be entitled to legal representation during any appearance before the appeals committee.

(5) An appeals committee shall provide the Minister with a decision on the appeal within thirty (30) days after the hearing of the appeal.

FIRST SCHEDULE regs. 12 and 14

Required Information for Applications of Licences and Permits

SECTION ONE

PART I
General Information

1. The name and address of the applicant, and the name, qualifications and experience of the scientists and of every other person responsible for planning and carrying out the release of the organisms, and for the supervision, monitoring and safety of the release.
2. The name and address of the collaborating institution or institutions, and of the name, qualifications and experience of the scientists and of every other person responsible for planning and carrying out the release of the organisms, and for the supervision, monitoring and safety of the release.
3. The curriculum vitae of all the scientists and other persons involved in paragraphs 1 and 2 above.
4. The title of the project.

PART II
Information Relating to the Parental or Recipient Plant

5. The full name of the plant—
   (*a*) family name;
   (*b*) genus;
   (*c*) species;
   (*d*) subspecies;
   (*e*) cultivar/breeding line; and
   (*f*) common name.
6. Information concerning—
   (*a*) the reproduction of the plant—
      (i) the mode or modes of reproduction;
      (ii) any specific factors affecting reproduction; and
      (iii) generation time, and
   (*b*) the sexual compatibility of the plant with other cultivated or wild plant species, including the distribution in Malaŵi of the compatible species.
7. Information concerning the survivability of the plant—
   (*a*) its ability to form structures for survival or dormancy; and
   (*b*) any specific factors affecting survivability of the plant.
8. Information concerning the dissemination of the plant—
   (*a*) the means and extent (such as an estimation of how viable pollen and/or seeds decline with distance, where applicable) of dissemination; and
   (*b*) any specific factors affecting dissemination.
9. The geographical distribution of the plant.
10. Where the application relates to a plant species which is not normally grown in Malaŵi, a description of the natural habitat of the plant, including information on natural predators, parasites, competitors and symbionts.
11. Any other potential interactions, relevant to the genetically modified organism, of the plant with organisms in the ecosystem where it is usually grown, or elsewhere, including information on toxic effects on humans, animals and other organisms.

PART III
Information Relating to the Genetic Modification

12. A description of the methods used for the genetic modification.
13. The nature and source of the vector used.
14. The size, intended function and name of the donor organism or organisms of each constituent fragment of the region intended for insertion.

PART IV
Information Relating to the Genetically Modified Plant

15. A description of the trait or traits and characteristics of the genetically modified plant which have been introduced or modified.
    - The information on the sequences actually inserted.
    - The information on the expression of the insert such as the parts of the plant where the insert is expressed, such as roots, stem or pollen.
16. Information on how the genetically modified plant differs from the parental recipient plant in the following respects—
    (*a*) mode or modes and/or the rate of reproduction;
    (*b*) dissemination, and
    (*c*) survivability.
17. The genetic stability of the insert and phenotypic stability of the genetically modified plant.
18. Any change to the ability of the genetically modified plant to transfer genetic material to other organisms.
19. Information on any toxic, allergenic or other harmful effects on human health arising from the genetic modification.
20. Information on the safety of the genetically modified plant to animal health, particularly regarding any toxic, allergenic or other harmful effects arising from the genetic modification, where the genetically modified plant is intended to be used in animal feeding stuffs.
21. The mechanism of interaction between the genetically modified plant and target organisms, if applicable.
22. The potential changes in the interactions of the genetically modified plant with non-target organisms resulting from the genetic modification.
23. The potential interactions with the abiotic environment.
24. A description of detection and identification techniques for the genetically modified plant.
25. Information about previous releases of the genetically modified plant, if applicable.

PART V
Information Relating to the Site of Release
(Applications for Licences or Permits for release only)

26. The location and size of the release site or sites.
27. Details of any sexually compatible wild relatives or cultivated plant species present at the release sites.
28. The proximity of the release sites to officially recognized biotopes or protected areas which may be affected.

PART VI
Information Relating to the Release
(Applications for Licences or Permits for Trial release only)

29. The purpose of the release of the genetically modified plant, including its initial use and any intention to use it as or in a product in the future.
30. The foreseen date or dates and duration of the release.
31. The method by which the genetically modified plants will be released.
32. The method for preparing and managing the release site, prior to, during and after the release, including cultivation practices and harvesting methods.
33. The approximate number of genetically modified plants (or plants per square meter) to be released.

PART VII
Information on Control, Monitoring, Post-Release and Waste Treatment Plans
(Applications for Licences or Permits to release only)

34. A description of any precautions to—
    (*a*) maintain the genetically modified plant at a distance from sexually compatible plant species, both wild relatives and crops; and
    (*b*) any measures to minimize or prevent dissemination of any reproductive organ of the genetically modified plant (such as pollen, seeds, tuber).
35. A description of the methods for post-release treatment of the site or sites.
36. A description of the post-release treatment methods for the genetically modified plant material, including wastes.
37. A description of monitoring plans and techniques.
38. A description of any emergency plans.
39. Methods and procedures to protect the site.

PART VIII
Information on Methodology

40. A description of the methods used or a reference to standardized or internationally recognized methods used to compile the information required by this Schedule, and the name of the body or bodies responsible for carrying out the studies.

SECOND SCHEDULE regs. 12 and 14

LICENCE/PERMIT

FORM C

This Licence/Permit is hereby granted to: .....

.....

.....

..... (*Name, Contact Address and description of applicant*) in accordance with the Biosafety Act.

.....

.....

.....

..... (*description of the genetically modified organism, products, trials and release*) located at: .....

.....

.....

.....

..... (*geographical description of the location of the site of the facility*).

This Licence/Permit is issued subject to the Regulations under which it is issued and the conditions attached hereto. It may be withdrawn should the holder breach any provisions of the Act, Regulations or the attached conditions.

..... (*Name of applicant*) being the holder, including his/her agents, undertakes to abide by the conditions of this Licence/Permit and to promptly report any matter that may prejudice the interests of Malaŵi and other conditions attached to the grant of this Licence/permit.

This Licence/Permit is not transferable.

Signed: ..... Dated: .....

Minister

THIRD SCHEDULE reg. 13

Fees

1. Every application shall be accompanied by a non-refundable scrutiny fee of K300,000.
2. Fees payable on the application of a permit or licence—

	Matter	*Fee Payable on Grant of Licence*	
Application for—		K	t
(*a*)	development of genetically modified organisms	500,000	00
(*b*)	contained use of genetically modified organisms	1,000,000	00
(*c*)	confined field trial of genetically modified organisms	3,000,000	00
(*d*)	general release and marketing of genetically modified organisms	3,000,000	00
(*e*)	importation of genetically modified organisms for commercial use	3,000,000	00
(*f*)	exportation of genetically modified organisms	10,000	00
(*g*)	appeal	50,000	00

FOURTH SCHEDULE reg. 15

PART I

Information to be Included in a Assessment Report

1. An identification of the characteristics of the recipient organism which are relevant to the assessment of the relevant genetically modified organisms.
2. A description of the way in which the characteristics of the organisms have been affected by genetic modification.
3. An identification of any known risks of damage to the environment resulting from the release into the environment of the recipient non-modified organism.
4. An assessment of whether the genetic modification has been characterized sufficiently for the purpose of evaluating any risks of damage to the environment.
5. An identification of any new risks of damage to the environment that may arise from the release of the relevant genetically modified organisms as compared to the release of the corresponding non-modified organism, based on the environmental risk assessment.
6. A conclusion which addresses the proposed use of the product, risk management and the proposed monitoring plan, and states whether the relevant genetically modified organisms should be marketed and under which conditions, or should not be marketed, including reasons for that conclusion.

PART II
Risk Assessment Procedures

Objective of Risk Assessment

1. The objective of risk assessment under these Regulations is to identify and evaluate the potential adverse effects of genetically modified organisms on the conservation and sustainable use of biological diversity in the likely potential receiving environment, taking also into account risks to human health.

Use of Risk Assessment

2. Risk assessment is, inter alia, used by competent authorities to make informed decisions regarding genetically modified organisms.

General Principles

3. Risk assessment shall be carried out in a scientifically sound and transparent manner, and take into account expert advice of, and guidelines developed by, relevant international organizations.
4. Lack of scientific knowledge or scientific consensus shall not necessarily be interpreted as indicating a particular level of risk, an absence of risk or an acceptable risk.
5. Risks associated with genetically modified organisms or products thereof, namely, processed materials that are of genetically modified organism origin, containing detectable novel combinations of replicable genetic material obtained through the use of modern biotechnology, shall be considered in the context of the risks posed by the non-modified recipients or parental organisms in the likely potential receiving environment.
6. Risk assessment shall be carried out on a case-by-case basis. The required information may vary in nature and level of detail from case to case, depending on the living genetically modified organism concerned, its intended use and the likely potential receiving environment.

Methodology

7. The process of risk assessment may on the one hand give rise to a need for further information about specific subjects, which may be identified and requested during the assessment process, while on the other hand, information on other subjects may not be relevant in some instances.
8. Risk assessment entails, as appropriate, the following steps:

   (*a*) an identification of any novel genotypic and phenotypic characteristics associated with the genetically modified organism that may have adverse effects on biological diversity in the likely potential receiving environment, taking also into account risks to human health;

   (*b*) an evaluation of the likelihood of these adverse effects being realized, taking into account the level and kind of exposure of the likely potential receiving environment to the genetically modified organism;

   (*c*) an evaluation of the consequences should these adverse effects be realized;

   (*d*) an estimation of the overall risk posed by the genetically modified organism based on the evaluation of the likelihood and consequences of the identified adverse effects being realized;

(*e*) recommendation as to whether or not the risks are acceptable or manageable, including, where necessary, identification of strategies to manage these risks; and

(*f*) where there is uncertainty regarding the level of risk, it may be addressed by requesting further information on the specific issues of concern or by implementing appropriate risk management strategies and/or monitoring the genetically modified organism in the receiving environment.

Points to Consider

9. Depending on the case, risk assessment takes into account the relevant technical and scientific details regarding the characteristics of the following subjects—

(*a*) *recipient organism or parental organisms:* the biological characteristics of the recipient organism or parental organisms, including information on taxonomic status, common name, origin, centres of origin and centres of genetic diversity, if known, and a description of the habitat where the organisms may persist or proliferate;

(*b*) *donor organism or organisms*: taxonomic status and common name, source, and the relevant biological characteristics of the donor organisms;

(*c*) *vector*: characteristics of the vector, including its identity, if any, and its source or origin, and its host range;

(*d*) *insert or inserts and/or characteristics of modification*: genetic characteristics of the inserted nucleic acid and the function it specifies, and/or characteristics of the modification introduced;

(*e*) *genetically modified organisms*: identity of the genetically modified organism, and the differences between the biological characteristics of the genetically modified organism and those of the recipient organism or parental organisms;

(*f*) *detection and identification of the genetically modified organism*: suggested detection and identification methods and their specificity, sensitivity and reliability;

(*g*) *information relating to the intended use*: information relating to the intended use of the genetically modified organism, including new or changed use compared to the recipient organism or parental organisms; and

(*h*) *receiving environment*: information on the location, geographical, climatic and ecological characteristics, including relevant information on biological diversity and centres of origin of the likely potential receiving environment.

FIFTH SCHEDULE reg. 4

SECTION ONE

INFORMATION TO BE INCLUDED IN APPLICATIONS FOR GENERAL RELEASE OR MARKETING OF GENETICALLY MODIFIED ORGANISMS

PART I

GENERAL INFORMATION

1. The name and address of the applicant, and the name, qualifications and experience of the scientist and of every other person who will be responsible for planning and carrying out the release of the organisms, and for the supervision, monitoring and safety of the release.
2. The title of the project.

PART II

INFORMATION RELATING TO THE ORGANISMS

Characteristics of Donor, Parental and Recipient Organisms

3. Scientific name and taxonomy.
4. Usual strain, cultivator or other name.
5. Phenotypic and genetic markers.
6. The degree of relatedness between donor and recipient or between parental organisms.
7. The sensitivity, reliability (in quantitative terms) and specificity of detection and identification techniques.
8. The description of the geographic distribution and of the natural habitat of the organisms including information on natural predators, prey, parasites and competitors, symbionts and hosts.
9. The organisms with which transfer of genetic material is known to occur under natural conditions.
10. Verification of the genetic stability of the organisms and factors affecting that stability.
11. The following pathological, ecological and physiological traits—

    (*a*) the classification of hazard according to existing legislation concerning the protection of human health and the environment; and

    (*b*) the generation time in natural ecosystems and the sexual and asexual reproductive cycle.

    (*c*) information on survivability, including seasonability and the ability to form survival structures, including seeds, spores and sclerotia;

    (*d*) pathogenicity, including infectivity, toxigenicity, virulence, allergenicity, ability to act as a carrier (vector) of pathogen, possible vectors, host range including non-target organisms and possible activation of latent viruses (proviruses) and ability to colonise other organisms;

(*e*) antibiotic resistance, and potential use of these antibiotics in humans and domestic organisms for prophylaxis and therapy; and

(*f*) involvement in environmental processes, including primary production, nutrient turnover, decomposition of organic matter and respiration.

12. The sequence, frequency of mobilization and specificity of indigenous vectors, and the presence in those vectors of genes which confer resistance to environmental stresses.
13. The history of previous genetic modifications.

Characteristics of the Vector

14. The nature and source of the vector.
15. The sequence of transposons, vectors and other non-coding genetic segments used to construct the genetically modified organisms and to make the introduced vector and insert functions in those organisms.
16. The frequency of mobilization, genetic transfer capabilities and/or methods of determination of the inserted vector.
17. The degree to which the vector is limited to the DNA required to perform the intended function.

Characteristics of the Modified Organisms

18. The methods used for the modification.
19. The methods used—

    (*a*) to construct the insert or inserts and to introduce it or them into the recipient organism, and

    (*b*) to delete a sequence.
20. The description of any insert and/or vector construction.
21. The purity of the insert from any unknown sequence and information on the degree to which the inserted sequence is limited to the DNA required to perform the intended function.
22. The methods and criteria used for selection.
23. The sequence, functional identity and location of the altered, inserted or deleted nucleic acid segment or segments in question, and in particular any known harmful sequence.

Characteristics of the Genetically Modified Organisms in their Final Form

24. The description of genetic trait or traits or phenotypic characteristics and in particular any new traits and characteristics which may be expressed or no longer expressed.
25. The structure and amount of any vector or donor nucleic acid remaining in the final construction of the modified organisms.
26. The stability of the organisms in terms of genetic traits.
27. The rate and level of expression of the new genetic material in the organisms, and the method and sensitivity of measurement of that rate and level.
28. The activity of the gene product.

29. The description of identification and detection techniques, including techniques for the identification and detection of the inserted sequence and vector.
30. The sensitivity, reliability (in quantitative terms), and specificity of detection and identification techniques.
31. The history of previous releases or uses of the organisms.
32. In relation to human health, animal health and plant health—

(*a*) the toxic or allergenic effects of the organisms and/or their metabolic products;

(*b*) the comparison of the organisms to the donor, recipient or (where appropriate) parental organisms regarding pathogenicity;

(*c*) the capacity of the organisms for colonization; and

(*d*) if the organisms are pathogenic to humans who are immuno competent—

(i) diseases caused and mechanism of pathogenicity including invasiveness and virulence;

(ii) communicability;

(iii) infective dose;

(iv) host range and possibility of alteration;

(v) possibility of survival outside of human host;

(vi) presence of vectors or means of dissemination;

(vii) biological stability;

(viii) antibiotic resistance patterns;

(ix) allergenicity;

(x) availability of appropriate therapies; and

(*e*) the other product hazards.

PART III
Information Relating to the Conditions of Release

The Release

33. The description of the proposed deliberate release. including the initial purpose or purposes of the release and any intention to use the genetically modified organism as or in a product in the future.
34. The intended dates of the release and time planning of the experiment including frequency and duration of releases.
35. The preparation of the site before the release.
36. The size of the site.
37. The method or methods to be used for the release.
38. The quantity of organisms to be released.
39. The disturbance on the site, including the type and method of cultivation, and mining, irrigation or other activities.
40. The worker protection measures taken during the release.

41. The post-release treatment of the site.
42. The techniques foreseen for elimination or inactivation of the organisms at the end of the experiment or other purpose of the release.
43. Information on, and the results of, previous releases of the organisms, and in particular, releases on a different scale or into different ecosystems.

The environment (both on the site and in the wider environment)

44. The geographical location and national grid reference of the site or sites on to which the release will be made, or the foreseen areas of use of the product.
45. The physical or biological proximity of the site of the organisms to humans and other significant biota.
46. The proximity to significant biotopes, protected areas or drinking water supplies.
47. The climatic characteristics of the region or regions likely to be affected.
48. The geographical, geological and pedological characteristics.
49. The flora and fauna, including crops, livestock and migratory species.
50. The description of the target and non-target ecosystems likely to be affected.
51. The comparison of the natural habitat of the recipient organisms with the proposed site or sites of release.
52. Any known planned developments or changes in land use in the region which could influence the environmental impact of the release.

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Information Relating to the Interactions Between the Organisms and the Environment

Characteristics Affecting Survival, Multiplication and Dissemination

53. The biological features which affect survival, multiplication and dissemination.
54. The known or predicted environmental conditions which may affect survival, multiplication and dissemination, including wind, water, soil, temperature and pH.
55. The sensitivity to specific agents.

Interactions with the Environment

56. The predicted habitat of the organisms.
57. The studies on the behaviour and characteristics of the organisms and their ecological impact carried out in simulated natural environments, such as microcosms, growth rooms and greenhouses.
58. The capability of post-release transfer of genetic material—
    (*a*) from the genetically modified organisms into organisms in affected ecosystems; and
    (*b*) from indigenous organisms to the genetically modified organisms.
59. The likelihood of post-release selection leading to the expression of unexpected or undesirable traits in the genetically modified organisms.

60. The measures employed to ensure and to verify genetic stability, the description of genetic traits which may prevent or minimize dissemination of genetic material, and methods to verify genetic stability.
61. The routes of biological dissemination, known or potential modes of interaction with the disseminating agent, including inhalation, ingestion, surface contact and burrowing.
62. The description of ecosystems to which the organisms could be disseminated.
63. The potential for excessive population increase of the organisms in the environment.
64. The competitive advantage of the organisms in relation to the unmodified recipient or parental organism or organisms.
65. The identification and description of the target organisms if applicable.
66. The anticipated mechanism and result of interaction between the released organisms and the target organisms if applicable.
67. The identification and description of non-target organisms which may be adversely affected by the release of the genetically modified organisms, and the anticipated mechanisms of any identified adverse interaction.
68. The likelihood of post-release shifts in biological interactions or in the host range.
69. The known or predicted interactions with non-target organisms in the environment, including competitors, preys, hosts, symbionts, predators, parasites and pathogens.
70. The known or predicted involvement of the organisms in biogeochemical processes.
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72. Methods for tracing the organisms and for monitoring their effects.
73. Specificity (to identify the organisms, and to distinguish them from the donor, recipient or, where appropriate, the parental organisms), sensitivity and reliability of the monitoring techniques.
74. Techniques for detecting transfer of the donated genetic material to other organisms.
75. Duration and frequency of the monitoring.

Control of the Release

76. Methods and procedures to avoid and/or minimize the spread of the organisms beyond the site of release or the designated area for use.
77. Methods and procedures to protect the site from intrusion by unauthorized individuals.
78. Methods and procedures to prevent other organisms from entering the site.

Waste Treatment

79. Type of waste generated.

80. Expected amount of waste.
81. Description of treatment envisaged.

Emergency Response Plans

82. Methods and procedures for controlling the organisms in case of unexpected spread.
83. Methods, such as eradication of the organisms, for decontamination of the areas affected.
84. Methods for disposal or sanitation of plants, animals, soils, and any other thing exposed during or after the spread.
85. Methods for the isolation of the areas affected by the spread.
86. Plans for protecting human health and the environment in case of the occurrence of an undesirable effect.

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Information on Methodology

87. A description of the methods used or a reference to standardized or internationally recognized methods used to compile the information required by this Schedule, and the name of the body or bodies responsible for carrying out the studies.

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PART I
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1. The proposed commercial name of the product and names of the genetically modified organisms in the product, and any specific identification, name or code used by the applicant to identify the genetically modified organism.
2. The name and address in Malaŵi of the person who is responsible for the marketing, whether it be the manufacturer, importer or distributor.
3. The name and address of the supplier or suppliers of control samples.
4. A description of how the product and the genetically modified organism are intended to be used, highlighting any differences in use or management of the genetically modified organism compared to similar non-genetically modified products.
5. A description of the geographical area or areas and types of environment where the product is intended to be used within Malaŵi, including, where possible, an estimate of the scale of use in each area.
6. A description of the intended categories of users of the product, such as industry, agriculture or consumer use by the public.

7. Information on the genetic modification for the purposes of placing on one or several registers modifications in organisms, which can be used for the detection and identification of particular products to facilitate post-marketing control and inspection. This information should include where appropriate the lodging of samples of the genetically modified organism or its genetic material with the Minister, and details of nucleotide sequences or other type of information which is necessary to identify the product and its progeny, for example, the methodology for detecting and identifying the product, including experimental data demonstrating the specificity of the methodology. Information that cannot be placed, for confidentiality reasons, in the publicly accessible part of the register should be identified.
8. The proposed labelling, which must include, in a label or an accompanying document, at least in summarized form, a commercial name of the product, a statement that this product contains genetically modified organisms", the name of the genetically modified organism and the name and address of the person established in Malaŵi who is responsible for marketing the product, and how to access the information in the publicly accessible part of the register.

PART II
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9. The measures to be taken in the event of the escape of the organisms in the product or misuse of the product.
10. Specific instructions or recommendations for storage and handling of the product.
11. Specific instructions for carrying out monitoring and reporting to the applicant stipulated in the Guidelines issued by the Minister.
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CHAPTER 61:01

MINES AND MINERALS

An Act to make provision with respect to searching for and mining minerals, to repeal the Mining Act and certain other Acts and to provide for matters connected therewith and incidental thereto

1 of 1981
2 of 1983
G.N. 31/1981

[1ST JUNE, 1981]

PART I

PRELIMINARY

Short title

1. This Act may be cited as the Mines and Minerals Act.

Vesting of minerals, etc.

2.—(1) The entire property in, and control over, minerals in land in Malaŵi are vested in the President on behalf of the people of Malaŵi; but without prejudice to the exercise of any right under or pursuant to this Act.

(2) Nothing in subsection (1) shall operate so as to affect any interest of a person in earth, clay, granite, limestone, marble, sand, stone or other similar substance upon or in land, being an interest created by virtue of any Certificate of Claim or ownership of land or other disposition made by or on behalf of the British Crown.

(3) Subject to sections 115 and 116, no person shall carry on in Malaŵi reconnaissance, prospecting or mining operations, except under and in accordance with a Mineral Right, a non-exclusive prospecting licence, a claim or a mineral permit.

(4) Any person who contravenes subsection (3) is guilty of an offence and liable on conviction—

(*a*) in the case of an individual, to a fine of one thousand Kwacha or to imprisonment for a term of two years, or to both; or

(*b*) in the case of a body corporate, to a fine of twenty thousand Kwacha.

Interpretation
2 of 1983

3.—(1) In this Act, unless the context otherwise requires—

"authorized officer", in relation to any provision of this Act, means a person designated as such under section 6 (2) for the purposes of that provision;

"body corporate" means a company or a corporation;

"building and industrial minerals" means basalt, clay, dolomite, granite, gravel, gypsum, laterite, limestone, marble, sand, sandstone, or salt, used for agricultural, building, roadmaking or industrial purposes in Malaŵi, and includes such other minerals as may be prescribed;

"claim" means a claim registered under Part IV;

"claim area" means an area of land subject to a claim;

"Commissioner" means the Commissioner for Mines and Minerals appointed pursuant to section 5;

Cap. 46:03

"company" means a corporate body incorporated under the Companies Act;

"conditions" includes terms, limitations and stipulations;

"conserve" means, in relation to natural resources, to protect, improve and use natural resources in accordance with principles that will ensure the highest sustainable benefit in terms of economic, social, cultural and aesthetic values;

"corporation" means a corporate body incorporated in or outside Malaŵi, whether by Act or otherwise, but does not include a company;

Cap. 57:01

"customary land" has the meaning assigned by the Land Act:

"drilling" means the perforation of the earth's surface otherwise than by pitting, trenching or sinking a shaft, whether the hole is vertical, inclined or horizontal, and includes all operations for preventing the collapse of the sides of the hole or for preventing the hole from becoming filled with extraneous matter (including water);

"exclusive prospecting licence" means a licence granted under section 26;

"holder" means—

(*a*) in relation to a Mineral Right, the person whose name is for the time being recorded pursuant to section 58 or 60 as being the holder of the Minister Right; or

(*b*) in relation to a claim, the person whose name is for the time being registered pursuant to section 76;

"in default" means in breach of any provision of this Act or of any condition of a Mineral Right, a non-exclusive prospecting licence or a claim;

"land" includes land beneath water;

"lawful occupier", in relation to any customary land, includes such persons, or such class of persons, as may be prescribed;

"mine", when used as a noun, means any place, excavation or working in or on which any operation connected with mining is carried on, together with all buildings, premises, erections and appliances belonging or appertaining thereto, above or below the ground, for the purpose of winning, treating or preparing minerals, obtaining or extracting any mineral or metal by any mode or method or for the purpose of dressing mineral ores;

"mine", when used as a verb, means intentionally to win minerals and includes any operations directly or indirectly necessary for or incidental to mining operations;

"mineral" means any substance, whether in solid, liquid or gaseous form, occurring naturally in or on the earth, formed by or subject to a geological process, but does not include—

(*a*) water, not being water taken from a borehole, well, excavation or natural saltpan for the extraction therefrom of a substance in solution therein and of commercial value; or

(*b*) soil, not being soil taken from the earth for the extraction therefrom of a substance of commercial value contained therein or for the manufacture therefrom of a product of commercial value; or

(*c*) petroleum as defined in section 3 of the Petroleum (Exploration and Production) Act; Cap. 61:02

"mineral permit" means a permit issued under section 81;

"Mineral Right" means a reconnaissance licence, an exclusive prospecting licence or a mining licence;

"mining area" means an area of land subject to a mining licence;

"mining licence" means a licence granted under section 38;

"mining operation" means operations carried out in the course of mining;

"monument" has the meaning assigned by the Monuments Act; Cap. 29:01

"non-exclusive prospecting licence" means a licence issued under section 73;

"private land" has the meaning assigned by the Land Act; Cap. 57:01

"prospect" means intentionally to search for minerals and includes the determination of their extent and economic value;

"prospecting area" means the area of land subject to an exclusive prospecting licence;

"prospecting operations" means operations carried out in the course of prospecting;

"public land" has the meaning assigned by the Land Act; Cap. 57:01

"radioactive mineral" means a mineral which contains by weight at least one-twentieth of one per cent (0.05 per cent) of uranium or thorium or any combination thereof, and includes—

(*a*) monazite sand and other ore containing thorium; and

(*b*) carnotite, pitchblende and other ore containing uranium;

"reconnaissance area" means an area of land subject to a reconnaissance licence;

"reconnaissance licence" means a licence granted under section 17;

"reconnaissance operations" means the search for minerals by geophysical surveys, geochemical surveys and photogeological surveys or other remote sensing techniques and surface geology in connexion therewith;

"Register" means the Register referred to in section 58;

"the Regulations" means regulations made under section 128;

Cap. 29:01

"relic" has the meaning assigned by the Monuments Act;

"salt" means—

(*a*) sodium chloride or sodium carbonate, occurring naturally, whether individually or as a mixture;

(*b*) any naturally occurring salt or mixture of salts, soluble in water, which may be prescribed;

"this Act" includes the Regulations;

"working for profit" means producing a mineral for use or sale.

(2) In this Act, a reference to minerals in any land includes a reference to minerals on or under the land.

(3) In this Act—

(*a*) a reference to the conditions of a Mineral Right is a reference to the conditions on which the Mineral Right is granted, as from time to time varied; and

(*b*) a reference to the conditions of a claim is a reference to the conditions on which the claim is, for the time being, registered.

(4) In this Act, a reference to a programme of reconnaissance operations, prospecting operations, or mining operations, in relation to the holder of a Mineral Right, is a reference to operations of that kind which the holder is, from time to time, required to carry on.

Service of documents

4.—(1) A document or notice required or permitted to be served on, or given to, a person under or for the purposes of this Act, may be served or given—

(*a*) in the case of an individual (other than the Minister or the Commissioner), by serving it personally upon the individual or by sending it by post to him at his usual or last known place of abode or business or at the address kept pursuant to section 66;

(*b*) in the case of the Minister or the Commissioner, in the manner prescribed;

(*c*) in the case of a body corporate—

(i) by leaving it at the registered or principal office of the body corporate with some individual apparently employed by the body corporate and apparently not less than sixteen years of age;

(ii) by sending it by post to the body corporate at the registered or principal office of the body corporate; or

(iii) by delivering it to some individual in the employment or acting on behalf of the body corporate who is authorized by the body corporate, or agrees, to accept service of or to receive the document or any document.

(2) For the purposes of subsection (1) (*c*), the principal office of a body corporate incorporated outside Malaŵi is its principal office within Malaŵi or the address kept pursuant to section 66.

(3) Where a person has more than one place of abode or business a document or notice may be served on, or given to, the person under this section at any of those places.

(4) Where a document or notice is sent by post pursuant to this section, service or notice is deemed to have been effected or given under this section, unless the contrary is proved, at the time at which the document or notice would be delivered in the ordinary course of post.

PART II

Administration

Commissioner for Mines and Minerals

5. The Minister may appoint a person to be the Commissioner for Mines and Minerals, and such other persons to be officers as he may consider necessary for the administration of this Act.

Performance of Commissioner's functions, etc.

6.—(1) Anything required or permitted by or under this Act to be done by the Commissioner may be done by any public officer who is authorized, either specially or generally, in that behalf in writing by the Commissioner, and for the purpose of doing so that officer is deemed to be the Commissioner.

(2) The Commissioner may designate any public officer to be an authorized officer for the purposes of this Act or any provision of this Act.

Prohibition against disclosure of information

7.—(1) Subject to subsection (2), no information furnished, or information in a report submitted, pursuant to section 66 by the holder of a Mineral Right, shall, for as long as the Mineral Right has effect, be disclosed, except with the consent of the holder of the Mineral Right.

(2) Nothing in subsection (1) operates to prevent the disclosure of information where the disclosure is made—

(*a*) for or in connexion with the administration of this Act;

(*b*) for the purpose of any legal proceedings;

(*c*) for the purpose of any investigation or inquiry conducted under this Act;

(*d*) to any consultant to the Government, or to any public officer, who is approved by the Commissioner as a proper person to receive the information.

(3) Any person who contravenes subsection (1) is guilty of an offence and liable on conviction to a fine of one thousand Kwacha or to imprisonment for a term of two years, or to both.

Officers holding certain shares to notify Minister

8.—(1) In this section, "officer" means a public officer for the time being engaged in the administration of this Act.

(2) Where an officer, either directly or indirectly, holds any shares in a body corporate which is the holder of a Mineral Right, he shall, without delay, notify the Minister in writing of that fact giving in the notice particulars of the shares held by him.

(3) For the purposes of this section, the holding by the wife or husband (not herself or himself being an officer) of an officer of any shares of the kind referred to in subsection (2), is deemed to be a holding by the officer of the shares.

(4) This section applies with respect to shares whether acquired before or after the commencement of this Act, or whether acquired by a person before he became an officer.

Indemnity 2 of 1983

9. A public officer does not incur any liability in respect of the exercise or performance, or purported exercise or performance, by him in good faith of any function under and for the purposes of this Act.

PART III

Mineral Rights

Division 1—General

Agreements with respect to the grant of Mineral Rights

10. The Minister, on behalf of the Republic, may enter into an agreement (not inconsistent with this Act) with any person with respect to all or any of the following matters, namely—

(*a*) the grant to that person, or to any person (including anybody corporate to be formed) identified in the agreement, of a Mineral Right on the conditions (if any) specified in the agreement;

(*b*) conditions or the conditions to be included in the Mineral Right as granted or renewed; or

(*c*) any matter incidental to or connected with the foregoing.

Applications

11.—(1) An application under this Part—

(*a*) shall be made to the Minister, or, if so prescribed, to the Commissioner;

(*b*) shall be in or to the effect of a form approved by the Minister;

(*c*) shall be accompanied by the prescribed fee; and

(*d*) may be withdrawn by the applicant giving to the Minister or, in the case of an application made to the Commissioner, to the Commissioner a notice of withdrawal.

(2) Any application under this Part required to be made to the Minister shall be made to him through the Commissioner.

(3) The Minister may, by notice served on an applicant for the grant or renewal of a Mineral Right, or for the enlargement of a prospecting area or a mining area under section 68, direct the applicant to publish details of his application at a time or times and in the manner specified in the notice, or give details of his application to such persons and in a manner specified in the notice.

Power of Minister to obtain information concerning applications, etc.

12.—(1) The Minister may, by notice served on an applicant for the grant of a Mineral Right, require the applicant to furnish him, within such reasonable, time as is specified in the notice,—

(*a*) with such further information relevant to the application as may be described in the notice; and

(*b*) if the applicant, or any of the applicants, is a body corporate, with such information as may be described in the notice to enable him to ascertain to what extent the controlling power in the direction of the affairs of the body corporate is a corporation incorporated outside Malaŵi, or an individual or individuals resident outside Malaŵi.

(2) To enable him to dispose of an application for the grant of a Mineral Right, the Minister—

(*a*) may cause such investigations, negotiations or consultations to be carried on as he considers necessary; and

(*b*) may, by notice served on the applicant for the grant of the Mineral Right, require the applicant to furnish him, within such reasonable time as is specified in the notice, with such proposals, by way of alteration to or in addition to any proposals in the application, as the Minister specifies in the notice.

Restriction on persons to whom Mineral Right may be granted

13. No Mineral Right—

(*a*) shall be granted to an individual unless he is a citizen of Malaŵi or has been ordinarily resident in Malaŵi during the period of four years immediately preceding the date on which his application for the grant of a Mineral Right is made;

(*b*) being a reconnaissance licence or an exclusive prospecting licence, shall be granted to a body corporate unless the body corporate is—

(i) a company;

(ii) a corporation incorporated in Malaŵi; or

(iii) a corporation (not being a corporation of a kind referred to in subparagraph (ii)) approved by the Minister; or

(*c*) being a mining licence, shall be granted to a body corporate unless the body corporate is—

(i) a company; or

(ii) a corporation incorporated in Malaŵi.

Form of Mineral Right

14. A Mineral Right shall be in accordance with such form as the Minister approves.

Restriction on exercise of rights by holder of Mineral Right

15. Where the doing of any act is regulated or prohibited by a written law (other than this Act), nothing in this Act shall be construed as authorizing the holder of a Mineral Right to do the Act—

(*a*) otherwise than in accordance with the written law; and

(*b*) without first obtaining the licence, permit, authority, or other instrument (if any), required under the written law for the doing of the act.

Division 2—Reconnaissance Licences

Application for reconnaissance licence

16. An application for the grant of a reconnaissance licence—

(*a*) shall give in respect of the person or, if there is more than one person, of each person making the application—

(i) in the case of an individual, his full name and nationality; or

(ii) in the case of a body corporate, its name and place of incorporation, the names and nationality of the directors or equivalent officers and, if the body corporate has a share capital, the name of any person who is the beneficial owner of more than five per cent of the issued share capital;

(*b*) shall be accompanied by a plan of the area over which the licence is sought, drawn in such manner and showing such particulars as the Minister may require;

(*c*) shall identify the minerals in respect of which the licence is sought;

(*d*) shall be accompanied by a statement giving particulars of the financial and technical resources available to the applicant for the licence;

(*e*) shall give or be accompanied by a statement giving particulars of the programme of reconnaissance operations proposed to be carried out in the area of land over which the licence is sought, an estimate of the cost of carrying out the programme and of the period required for completion of the programme, and an estimate of any significant effect which the carrying out of the programme would be likely to have on the environment or on any monument or relic in the area over which the licence is sought; and

(*f*) may set out any other matter which the applicant wishes the Minister to consider.

Disposal of application for reconnaissance licence

17.—(1) Subject to this Act, on application duly made, the Minister may grant on such conditions as he may determine, or refuse to grant, a reconnaissance licence over any area of land.

(2) The area of land over which a reconnaissance licence is granted shall be of such shape, orientation and dimensions, as may be prescribed in, or as may be determined in accordance with, the Regulations.

Restriction on grant of reconnaissance licence

18.—(1) No reconnaissance licence shall be granted over an area of land in, or which constitutes,—

(*a*) a prospecting area if a person, other than the person to whom the reconnaissance licence would be granted, is the holder of an exclusive prospecting licence over the area in respect of a mineral of which the reconnaissance licence would relate;

(*b*) a mining area; or

(*c*) a claim area.

(2) Where an area of land is subject to a reconnaissance licence which, pursuant to section 20 (4), gives to the holder of the licence an exclusive right to carry on reconnaissance operations in that area, no other reconnaissance licence shall be granted over land in, or which constitutes, that area in respect of any mineral to which that exclusive right relates.

(3) Where it is necessary to fly over any land for the purpose of the exercise of any right under section 23, nothing in this section operates to prevent any such flight from being undertaken.

Notice of decision on application for reconnaissance licence

19.—(1) The Minister shall give notice to an applicant for the grant of a reconnaissance licence of his decision on the application and, if he is prepared to grant the licence, he shall give in the notice details of the proposed licence.

(2) If an applicant, within sixty days after he is given notice pursuant to subsection (1) that the Minister is prepared to grant a reconnaissance licence, fails to give notice to the Minister of his willingness to accept the proposed licence, his application lapses.

Contents of reconnaissance licence

20.—(1) A reconnaissance licence shall—

(*a*) state the date of the grant of the licence and the period for which it is granted;

(*b*) include a description and, if the Minister so directs, a plan of the area of land over which it is granted;

(*c*) state the conditions on which it is granted; and

(*d*) identify any mineral to which the licence relates.

(2) Subject to any relevant agreement of a kind referred to in section 10, there may be included in, or in a statement appended to, a reconnaissance licence either or both of the following conditions, namely—

(*a*) a condition that in, or in relation to, the reconnaissance area, the holder of the licence will, during a specified period, carry out the programme of reconnaissance operations and expend the amounts specified in the licence; or

(*b*) a condition requiring the holder of the licence, in respect of any period and in the manner specified, to submit to the Minister acceptable proposals for the carrying out of a programme of reconnaissance operations and the expenditure of amounts in, or in relation to, the reconnaissance area during that period.

(3) Where the Minister is satisfied that an initial period is required to make the necessary preparations to carry on reconnaissance operations, he may specify in a reconnaissance licence a period (not exceeding three months) as the preparation period.

(4) A reconnaissance licence may, in respect of any mineral to which the licence relates, confer on the holder of the licence the exclusive right to carry on reconnaissance operations in the reconnaissance area.

Term of reconnaissance licence

21.—(1) The term of a reconnaissance licence is the period for which the licence is granted, not exceeding twelve months, stated in the licence, and any preparation period specified in the licence pursuant to section 20 (3).

(2) The term of a reconnaissance licence commences on and includes the date on which the licence is granted, as stated in the licence.

Miscellaneous provisions concerning reconnaissance licences

22.—(1) Subject to this section, where the holder of a reconnaissance licence applies for the grant of an exclusive prospecting licence over an area of land in the reconnaissance area and the application has not been finally dealt with before the date on which the reconnaissance licence would, but for this subsection, cease to have effect, the reconnaissance licence continues to have effect over the area of land until—

(*a*) notice is given to the applicant pursuant to section 28 of the refusal to grant the exclusive prospecting licence; or

(*b*) as the case may be, the date of the grant of the exclusive prospecting licence, as stated in the exclusive prospecting licence.

(2) Where an exclusive prospecting licence is granted to the holder of a reconnaissance licence, the land subject to that exclusive prospecting licence ceases to be subject to that reconnaissance licence, but no other reconnaissance licence is affected by the grant of that exclusive prospecting licence.

(3) Where an area of land becomes a mining area, it ceases to be subject to any reconnaissance licence to which it was subject immediately before becoming a mining area.

(4) Subsection (1) shall not have effect—

(*a*) to prevent the cancellation under this Act of a reconnaissance licence; or

(*b*) if an application for the grant of an exclusive prospecting licence is withdrawn.

Rights of holder of reconnaissance licence

23.—(1) Subject to this Act and the conditions of the licence, a reconnaissance licence, while it has effect, confers on the holder of the licence the right to carry on reconnaissance operations in or over the reconnaissance area, and for the purpose of the exercise of that right the holder may, subject to this Act and the conditions of the licence, in particular, either himself, or by way of employees or agents, enter the reconnaissance area, and erect camps and temporary buildings, or erect installations in any waters forming part of the reconnaissance area.

(2) The holder of a reconnaissance licence shall not engage in drilling, excavation or other subsurface techniques, except where and to the extent he is authorized by his licence to use any of those techniques.

Duties of holder of reconnaissance licence

24.—(1) The holder of a reconnaissance licence—

(*a*) shall, subject to subsection (2), carry on reconnaissance operations in accordance with his programme of reconnaissance operations;

(*b*) shall, subject to subsection (2), expend in, or in relation to, the reconnaissance area an amount not less than the amount required by the licence or otherwise to be so expended; and

(*c*) shall carry on reconnaissance operations in accordance with the requirements of this Act.

(2) The Minister may, on application made to him by the holder of a reconnaissance licence, limit, reduce, vary or suspend any obligation arising pursuant to subsection (1) (*a*) or (*b*) either conditionally or unconditionally.

Division 3—Exclusive Prospecting Licences

Application for exclusive prospecting licence

25. An application for the grant of an exclusive prospecting licence—

(*a*) shall give information of the kind referred to in section 16 (*a*), and shall give or be accompanied by a statement giving particulars of the kind referred to in section 16 (*d*)

(*b*) shall identify the minerals in respect of which the licence is sought;

(*c*) shall be accompanied by a plan of the kind referred to in section 16 (*b*);

(*d*) shall state the period for which the licence is sought;

(*e*) shall give or be accompanied by a statement giving particulars of the programme of prospecting operations proposed to be carried out in the area of land over which the licence is sought and an estimate of the cost of carrying out the programme, and an estimate of any significant effect which the carrying out of the programme would be likely to have on the environment and on any monument or relic in the area over which the licence is sought;

(*f*) shall give or be accompanied by a statement giving particulars of the applicant's proposals with respect to the employment and training of citizens of Malaŵi;

(*g*) shall be accompanied by a statement giving particulars of expected infrastructure requirements; and

(*h*) may set out any other matter which the applicant wishes the Minister to consider.

Disposal of application for exclusive prospecting licence

26.—(1) Subject to this Act and to any relevant agreement of a kind referred to in section 10, on application duly made, the Minister may grant on such conditions as he may determine, or refuse to grant, an exclusive prospecting licence over any area of land.

(2) The area of land over which an exclusive prospecting licence is granted shall be of such shape, orientation and dimensions as may be prescribed in, or as may be determined in accordance with, the Regulations.

Restriction on grant of exclusive prospecting licence

27.—(1) No exclusive prospecting licence shall be granted over an area of land in, or which constitutes—

(*a*) a mining area; or

(*b*) a claim area.

(2) Where an area of land is subject to an exclusive prospecting licence, no other exclusive prospecting licence shall be granted over land in, or which constitutes, that area in respect of any mineral to which the subsisting exclusive prospecting licence relates.

(3) Where an area of land is subject to a reconnaissance licence which gives, pursuant to section 20 (4), to the holder of the licence an exclusive right to carry on reconnaissance operations in respect of the land, an exclusive prospecting licence shall not be granted in respect of any mineral to which that exclusive right relates, over land in, or which constitutes, that area, to a person other than the holder of the reconnaissance licence.

(4) No exclusive prospecting licence shall be granted to an applicant unless—

(*a*) the applicant has adequate financial resources, technical competence and experience to carry on effective prospecting operations;

(*b*) the programme of proposed prospecting operations is adequate;

(*c*) the applicant's proposals for the employment and training of citizens of Malaŵi are adequate; and

(*d*) the applicant is not in default.

Section 19 to apply to application for exclusive prospecting licence

28. The provisions of section 19 apply in relation to an application for the grant of an exclusive prospecting licence as they apply in relation to an application for the grant of a reconnaissance licence.

Contents of exclusive prospecting licence

29.—(1) An exclusive prospecting licence shall—

(*a*) state the date of the grant of the licence and the period for which it is granted;

(*b*) identify the mineral in respect of which it is granted;

(*c*) include a description and, if the Minister so directs, a plan of the area of land over which it is granted; and

(*d*) state the conditions on which it is granted.

(2) Where the Minister is satisfied that an initial period is required to make the necessary preparations to carry on prospecting operations he may, in an exclusive prospecting licence, specify a period (not exceeding three months) as the preparation period.

(3) There shall be appended to an exclusive prospecting licence a programme for the employment and training of citizens of Malaŵi.

Programme prospecting operations

30.—(1) In addition to conditions included in an exclusive prospecting licence under section 29 (1), or on any extension of the licence under section 50,—

(*a*) the licence is subject to the condition that not later than one month before the anniversary in any year of the grant of the licence, the holder of the licence shall submit to the Minister in detail an adequate programme with respect to work and expenditure to be carried out or made in the year of the licence immediately following; and

(*b*) the programme so submitted is deemed to constitute a requirement of the licence with respect to prospecting operations and expenditure.

(2) The requirement in subsection (1) (*a*) that the programme submitted shall be adequate is deemed to have been met where the programme submitted satisfies the requirements (if any) with respect to work and expenditure contained in a relevant agreement of a kind referred to in section 10.

Option

31. There may be included in an exclusive prospecting licence provision with respect to the exercise, by the Republic or a person identified in the licence, of an option to acquire on stipulated terms, or on terms to be agreed, an interest in any mining venture which may be carried on in relation to land in, or which constitutes, the prospecting area.

Term of exclusive prospecting licence

32.—(1) The term of an exclusive prospecting licence is the period for which the licence is granted, not exceeding three years, stated in the licence, and any preparation period specified in the licence pursuant to section 29 (2).

(2) The term of an exclusive prospecting licence commences on and includes the date of the grant of the licence, as stated in the licence.

Miscellaneous provisions concerning exclusive prospecting licences

33.—(1) Subject to this section, where the holder of an exclusive prospecting licence applies for the grant of a mining licence over any area of land in, or which constitutes, the prospecting area, and the application has not been finally dealt with before the date on which the exclusive prospecting licence would, but for this subsection, cease to have effect, the exclusive prospecting licence continues to have effect over that area of land until—

(*a*) notice is given to the applicant pursuant to section 40 of the refusal to grant the mining licence; or

(*b*) as the case may be, the date of the grant of the mining licence, as stated in the mining licence.

(2) Where a mining licence is granted over any area of land wholly or partly in one, or more than one, prospecting area—

(*a*) the exclusive prospecting licence held by the person to whom the mining licence is granted ceases to have effect in the mining area; and

(*b*) the exclusive prospecting licence held by any other person—

(i) ceases to have effect if the prospecting area covered by the licence is within, or is constituted by the same area of land as, the mining area; or

(ii) as the case may be, continues to have effect only in relation to land outside the mining area.

(3) Subsection (1) shall not have effect—

(*a*) to prevent the cancellation under this Act of an exclusive prospecting licence; or

(*b*) if an application for the grant of a mining licence is withdrawn.

(4) An exclusive prospecting licence may continue to have effect pursuant to this section notwithstanding that the prospecting area has ceased to be in the shape or to have the dimensions prescribed in respect of prospecting areas or, as the case may be, approved in respect of that area.

Rights of holder of exclusive prospecting licence

34. Subject to this Act and the conditions of the licence, an exclusive prospecting licence, while it has effect, confers on the holder of the licence the exclusive right to carry on prospecting operations in the prospecting area for the mineral to which the licence relates, and for the purpose of the exercise of that right the holder may, subject to this Act and the conditions of the licence, in particular, either himself, or by way of his employees or agents, enter the prospecting area and erect camps and temporary buildings, or erect installations in any waters forming part of the prospecting area.

Duties of holder of exclusive prospecting licence

35. The holder of an exclusive prospecting licence—

(*a*) shall commence prospecting operations within three months of the date of the grant of the licence, as stated in the licence;

(*b*) shall, subject to sections 36 and 54, carry on prospecting operations in accordance with his programme of prospecting operations;

(*c*) shall give to the Minister notice of the discovery—

(i) of any mineral to which his licence relates of possible commercial value; and

(ii) of any mineral deposit of possible commercial value, within thirty days of the discovery;

(*d*) shall, subject to section 36, expend in, or in relation to, the prospecting area an amount not less than the amount required by the licence or otherwise to be so expended;

(*e*) shall, subject to section 36, employ and train citizens of Malaŵi in accordance with the proposals in that connexion particulars of which have been given in or appended to the licence; and

(*f*) shall carry on prospecting operations in accordance with the requirements of this Act.

Variation, etc., of obligations

36.—(1) The Minister may, on application made to him by the holder of an exclusive prospecting licence, limit, reduce, vary or suspend any obligation arising pursuant to section 35 (*b*), (*d*) or (*e*) either conditionally or unconditionally.

(2) To enable him to dispose of an application under subsection (1) the Minister may, by notice served on the applicant, require the applicant to furnish him, within such reasonable time as is specified in the notice, with such information relevant to the application as may be described in the notice.

Division 4—Mining Licences

Application for mining licence

37.—(1) An application for the grant of a mining licence may be made by the holder of an exclusive prospecting licence or by a person who is not such a holder.

(2) Where an application for the grant of a mining licence is made by the holder of an exclusive prospecting licence, the application shall be made—

(*a*) only in respect of land subject to the exclusive prospecting licence;

(*b*) only if the holder has given notice to the Minister of the discovery in commercial quantities of any mineral to which his licence relates; and

(*c*) not later than two months, or such further period as the Minister may allow, after that notice was given to the Minister.

(3) An application for the grant of a mining licence—

(*a*) shall give information of the kind referred to in section 16 (*a*);

(*b*) shall identify the minerals which it is proposed to mine;

(*c*) shall state the number of the exclusive prospecting licence (if any) held by the applicant and shall give details of any exclusive prospecting licence held by the applicant, or by any person controlling, controlled by or under joint or common control with, the applicant, during the preceding four years;

(*d*) shall be accompanied by a plan of the area over which the licence is sought drawn in such manner as the Minister may require and showing—

(i) the name of each lawful occupier of a holding in, or partly in, that area and, in the case of more than one such holding, the boundaries within that area of each such holding; and

(ii) such other particulars as the Minister may require;

(*e*) shall state the period for which the licence is sought;

(*f*) shall give or be accompanied by a statement giving details of the mineral deposits in the area of land over which the licence is sought, including details of all known minerals proved, estimated or inferred, ore reserves and mining conditions;

(*g*) shall be accompanied by a technological report on mining and treatment possibilities and the intention of the applicant in relation thereto;

(*h*) shall give or be accompanied by a statement giving particulars of the programme of proposed mining operations including a statement of—

(i) the estimated date by which the applicant intends to work for profit;

(ii) the estimated capacity of production and scale of operations;

(iii) the estimated overall recovery of ore and mineral products;

(iv) the nature of the products;

(v) proposals for the prevention of pollution, the treatment of wastes, the safeguarding of natural resources, the progressive reclamation and rehabilitation of land disturbed by mining and for the minimization of the effects of mining on surface water and ground water and on adjoining or neighbouring lands;

(vi) the residual effects on the environment of the mining operations and proposals for their minimization;

(vii) any particular risks (whether to health or otherwise) involved in mining the mineral, and proposals for their control or elimination; and

(viii) any significant effect which the carrying out of the programme would be likely to have on the environment and on any monument or relic in the area over which the licence is sought and proposals for eliminating or controlling that effect;

(*i*) shall give or be accompanied by a statement giving a detailed forecast of capital investment, operating costs and revenues and the anticipated type and source of financing;

(*j*) shall be accompanied by a report on the goods and services required for the mining operations which can be obtained within Malaŵi and the applicant's proposals with respect to the procurement of those goods and services;

(*k*) shall give or be accompanied by a statement giving particulars of the applicant's proposals with respect to the employment and training of citizens of Malaŵi;

(*l*) shall be accompanied by a statement giving particulars of expected infrastructure requirements; and

(*m*) may set out any other matter which the applicant wishes the Minister to consider.

(4) Where an application for the grant of a mining licence is made by a person who is not the holder of an exclusive prospecting licence the application shall, in addition to the matter referred to in subsection (3), give or be accompanied by a statement giving particulars of the financial and technical resources available to the applicant for the licence.

Disposal of application for mining licence

38.—(1) Subject to this section, section 39 and to any relevant agreement of a kind referred to in section 10, on application duly made by the holder of an exclusive prospecting licence the Minister shall grant, on such conditions as he may determine, the mining licence applied for.

(2) Subject to this section and section 39, on application duly made by a person who is not the holder of an exclusive prospecting licence, the Minister may grant, on such conditions as he may determine, or refuse to grant, the mining licence applied for.

(3) To enable him to dispose of an application for the grant of a mining licence, the Minister may, by notice given to the applicant, require the applicant, at his own expense, to commission an independent study by consultants acceptable to the Minister for the purpose of—

(*a*) assessing the feasibility of the programme of mining operations proposed in the application; or

(*b*) assessing, or making recommendations about, such other matters arising out of, or connected with, the application, as the Minister may specify in the notice.

Restriction on grant of mining licence

39.—(1) No mining licence shall be granted over an area of land in, or which constitutes,—

(*a*) a mining area; or

(*b*) a claim area.

(2) Where an area of land is subject to a reconnaissance licence which, pursuant to section 20 (3), gives to the holder of the licence an exclusive right to carry on reconnaissance operations in that area in respect of any mineral, a mining licence shall not be granted over land in, or which constitutes, the reconnaissance area, in respect of any such mineral, to any person other than the holder of the reconnaissance licence.

(3) No mining licence over land in, or which constitutes, a prospecting area shall be granted to a person who is not the holder of a prospecting licence over that land.

(4) Subject to any relevant agreement of a kind referred to in section 10, no mining licence shall be granted to an applicant unless—

(*a*) the programme of proposed mining operations—

(i) takes proper account of environmental and safety factors; and

(ii) will ensure the most efficient and beneficial use of the mineral resources concerned;

(*b*) the area of land over which the licence is sought is not in excess of the area reasonably required to carry out that programme;

(*c*) the applicant has adequate financial resources, technical competence and experience to carry on effective mining operations;

(*d*) the applicant's proposals for the employment and training of citizens of Malaŵi are adequate;

(*e*) the applicant's proposals with respect to the procurement of goods and services obtainable within Malaŵi are satisfactory;

(*f*) any relevant option given pursuant to section 31 has been exercised and given effect to or satisfactory arrangements have been made for that purpose; and

(*g*) the applicant is not in default.

(5) Where an application for the grant of a mining licence is duly made by the holder of an exclusive prospecting licence, the Minister shall not refuse an application for the grant of a mining licence on a ground referred to in subsection (3) (*a*), (*b*), (*d*), (*e*), (*f*) or (*g*) unless he has—

(*a*) given notice to the applicant of his intention to refuse to grant the licence on that ground (giving particulars); and

(*b*) specified in the notice a date before which the applicant may make appropriate proposals to remove the ground for refusal or, as the case may be, remedy the default, or make representations in relation thereto,

and the applicant has not, before that date—

(*c*) given notice to the Minister containing proposals or representations which the Minister accepts; or

(*d*) remedied the default.

Section 19 to apply to application for mining licence

40. The provisions of section 19 apply in relation to an application for the grant of a mining licence as they apply in relation to an application for the grant of a reconnaissance licence.

Contents of mining licence

41.—(1) A mining licence shall—

(*a*) state the date of the grant of the licence and the period for which it is granted; and

(*b*) identify the mineral in respect of which it is granted.

(2) There shall be appended to a mining licence particulars of the holder's proposals for the employment and training of citizens of Malaŵi which shall form part of the licence.

(3) Subject to any relevant agreement of a kind referred to in section 10, there may be included in, or in a statement appended to, a mining licence either or both of the following conditions, namely—

(*a*) a condition that in, or in relation to, the mining area, the holder of the licence will, during a specified period, carry out the programme of mining operations and expend the amounts specified in the licence; or

(*b*) a condition requiring the holder of the licence, in respect of any period and in the manner specified, to submit to the Minister acceptable proposals for the carrying out of a programme of mining operations and the expenditure of amounts in, or in relation to, the mining area during that period.

(4) There may be included in a mining licence conditions with respect to the processing, disposal or sale of the minerals to be mined.

Term of mining licence

42.—(1) The term of a mining licence is the period (not exceeding twenty-five years), or the estimated life of the ore body which it is proposed to mine, whichever is the shorter, stated in the licence.

(2) The term of a mining licence commences on and includes the date of the grant of the licence, as stated in the licence.

Rights of holder of mining licence

43.—(1) Subject to this Act and the conditions of the licence, a mining licence, while it has effect, confers on the holder of the licence the exclusive right to carry on prospecting and mining operations in the mining area and for the purpose of the exercise of that right the holder may, subject to this Act and the conditions of the licence, in particular—

(*a*) use employees and agents;

(*b*) take all reasonable measures in that area, including the use of necessary equipment and the erection of necessary installations, plant and buildings for mining, and transporting, dressing, treating, smelting or refining any mineral recovered; and

(*c*) dispose of any mineral product recovered, and stack or dump any mineral or waste products in a manner approved by the Minister.

(2) The holder of a mining licence—

(*a*) shall not intentionally carry on prospecting or mining operations for a mineral unless it is a mineral to which his licence relates; and

(*b*) shall not mine any mineral deposit, particulars of which have not been given pursuant to section 37 (3) (*f*) in his application, or in a statement accompanying his application, for the grant of the licence, without the approval of the Minister given under subsection (3).

(3) Where in the exercise of his rights the holder of a mining licence discovers any mineral deposit particulars of which were not given pursuant to section 37 (3) (*f*) in his application, or in a statement accompanying his application, for the grant of the licence, the holder—

(*a*) shall within the period of thirty days after the discovery give notice and particulars of the mineral deposit and the circumstances in which the discovery was made; and

(*b*) may, in the notice, request the Minister to give his approval to the mining of the mineral deposit in accordance with a programme of mining operations stated in the notice.

(4) Subject to subsection (5), on a request made pursuant to subsection (3) (*b*), the Minister—

(*a*) shall, if the mineral deposit consists, or consists primarily, of minerals to which the mining licence relates, and the programme of mining operations stated in the notice containing the request is satisfactory, give his approval to the request; or

(*b*) may, in any other case, give or refuse to give his approval to the request.

(5) The Minister may, pursuant to subsection (4), by notice served on the holder of the licence, give his approval—

(*a*) to the request as made; or

(*b*) to the request as amended with the agreement of that holder,

unconditionally or subject to such conditions as are agreed by the holder.

(6) The instrument in which the Minister gives an approval under subsection (5) is deemed to form part of the mining licence concerned.

(7) Before giving his approval to any request under this section the Minister may, by notice served on the holder of the licence, require the holder to comply with any of the requirements of section 37 (3) as if the request were an application for the grant of a mining licence in respect of the minerals to which the request relates.

Duties of holder of mining licence

44.—(1) The holder of a mining licence—

(*a*) shall, subject to subsection (2) and section 54, carry on mining and development operations and commence production in accordance with his programme of mining operations;

(*b*) shall, subject to subsection (2), employ and train citizens of Malaŵi in accordance with the instrument containing proposals in that connexion appended to the licence;

(*c*) shall, subject to subsection (2), expend in, or in relation to, the mining area an amount not less than the amount required by the licence or otherwise to be so expended;

(*d*) shall carry on mining operations in accordance with the requirements of this Act;

(*e*) shall demarcate, and keep demarcated, in the manner prescribed the area of land subject to the licence; and

(*f*) shall give notice to the Minister when he begins to work for profit.

(2) The Minister may, on application made to him by the holder of a mining licence, limit, reduce, vary or suspend any obligation arising pursuant to subsection (1) (*a*), (*b*) or (*c*) either conditionally or unconditionally.

Use of wasteful practices

45.—(1) Where the Commissioner considers that the holder of a mining licence is using wasteful mining or treatment practices, he may give notice to the holder accordingly (giving in the notice particulars of the practices) and require the holder to show cause, by notice given to the Commissioner, within such period as the Commissioner shall specify in the notice given to the holder, why he should not cease to use those practices.

(2) Where, within the period specified in a notice given to the holder of a mining licence pursuant to subsection (1), the holder fails, by notice given to the Commissioner, to satisfy the Commissioner that he is not using the wasteful practices concerned, or that the practices are not wasteful, or that the use of those practices is justified, the Commissioner may give notice to the holder directing him to cease using all of those practices or the practices specified, by such date as is so specified, and the holder shall do so.

Cessation, etc., of production from mine

46.—(1) The holder of a mining licence shall give notice to the Commissioner—

(*a*) twelve months in advance, if he proposes to cease production from a mine in the mining area concerned;

(*b*) six months in advance, if he proposes to suspend production from any such mine; or

(*c*) three months in advance, if he proposes to curtail production from any such mine,

and shall give in the notice the reason for the cessation, suspension or curtailment.

(2) Where, for any reason beyond his control, the holder of a mining licence ceases, suspends or curtails production from a mine in the mining area concerned he shall, within fourteen days after the cessation, suspension or curtailment, give notice thereof to the Commissioner.

Power of Commissioner on cessation, etc.

47. Where, pursuant to section 46 (1) or (2), notice is given to him, or if he otherwise becomes aware, of any cessation, suspension or curtailment of production from a mine, the Commissioner shall cause the matter concerned to be investigated and thereafter—

(*a*) he shall give his approval, conditionally or unconditionally, to the cessation, suspension or curtailment by notice to the holder of the mining licence; or

(*b*) he shall direct the holder of the mining licence by notice given to the holder to resume full production, or production at such level as is specified in the notice, by such date as is so specified, and the holder shall do so.

Unit development

48.—(1) This section applies where the Minister determines that, in the interest of the effective recovery of minerals from neighbouring or contiguous mining areas, it is desirable that the holders of mining licences in respect of those areas should coordinate their operations for the recovery of the minerals.

(2) Where this section applies the Minister may direct the holders of the mining licences concerned to enter into an agreement, within the period specified by the Minister, for or in relation to the co-ordination of their operations for the recovery of minerals, and to lodge the agreement with the Minister forthwith for approval.

(3) Before giving any direction under subsection (2) the Minister shall afford each holder of a mining licence concerned reasonable opportunity to make representations to him in writing.

Division 5—Renewal and Amendment of Mineral Rights

Application for renewal of reconnaissance licence

49.—(1) The holder of a reconnaissance licence may, not later than three months before the expiration of the licence, apply for the renewal of the licence in respect of all or any part of the reconnaissance area.

(2) An application under subsection (1)—

(*a*) shall state the period for which renewal of the licence is sought;

(*b*) shall be accompanied—

(i) by a report on reconnaissance operations then carried out; and

(ii) by a statement giving particulars of the programme of reconnaissance operations proposed to be carried out in the period of renewal, an estimate of any significant effect which the carrying out of the programme would be likely to have on the environment and on any monument or relic in the area over which renewal of the licence is sought, and an estimate of the cost of carrying out the programme;

(*c*) shall, if renewal of the licence is sought in respect of part only of the reconnaissance area, be accompanied by a plan identifying that part of the reconnaissance area; and

(*d*) shall give particulars of any alteration in the matter shown in the application for the grant of the licence pursuant to section 16 (*a*) and (*d*).

(3) On application duly made for the renewal of a reconnaissance licence, the Minister—

(*a*) may, if he is satisfied that it would be in the public interest to do so, renew the licence, with or without variation of the conditions of the licence, for a period not exceeding twelve months; and

(*b*) if not so satisfied, shall refuse to renew the licence.

Application for renewal of exclusive prospecting licence

50.—(1) The holder of an exclusive prospecting licence may, not later than three months before the expiration of the licence, apply for the renewal of the licence in respect of an area of land—

(*a*) of such shape as may be prescribed; and

(*b*) which is not greater in extent than half of the prospecting area as at the date of the grant of the licence, unless the Minister otherwise permits.

(2) An application under subsection (1)—

(*a*) shall state the period for which renewal of the licence is sought;

(*b*) shall be accompanied—

(i) by a report on prospecting operations then carried out and the costs incurred in carrying them out; and

(ii) by a statement giving particulars of the programme of prospecting operations proposed to be carried out in the period of renewal, an estimate of any significant effect which the carrying out of the programme would be likely to have on the environment and on any monument or relic in the area over which renewal of the licence is sought, and an estimate of the cost of carrying out the programme;

(*c*) shall be accompanied by a plan identifying the area of land in respect of which renewal of the licence is sought; and

(*d*) shall give particulars of any alteration in the matter shown in the application for the grant of the licence pursuant to section 25 (*a*).

(3) Subject to subsections (4) and (5), on application duly made for the renewal of an exclusive prospecting licence, the Minister shall renew the licence for a period not exceeding two years.

(4) The Minister shall refuse to renew an exclusive prospecting licence—

(*a*) if—

(i) the applicant is in default;

(ii) the programme of prospecting operations proposed to be carried out is not satisfactory; or

(iii) the area of land in respect of which renewal of the licence is sought does not meet the requirements of subsection (1) (*a*) and (*b*);

(*b*) if the Minister has given to the applicant notice of his intention to refuse to renew the licence—

(i) giving in the notice particulars of the ground for the intended refusal; and

(ii) stating a date before which the applicant may take appropriate action or make representations in relation to that ground; and

(*c*) if the applicant has not, before that date, remedied the default or, in a notice given to the Minister, made appropriate amendments to his application, or made representations, which in the opinion of the Minister remove the ground for the intended refusal.

(5) An application under subsection (1) for the renewal of an exclusive prospecting licence may be made on not more than two occasions and, accordingly, the power under subsection (3) may be exercised in relation to an exclusive prospecting licence on not more than two occasions.

(6) Where a prospecting licence has been renewed pursuant to subsection (3) on two occasions, the Minister—

(*a*) on the request of the holder of the licence; and

(*b*) if he considers it in the public interest to do so,

may, by instrument in writing, extend the term of the licence with effect from the date of expiry of the last period of renewal for such period, and on such conditions, as are specified in the instrument.

Application for renewal of mining licence

51.—(1) The holder of a mining licence may, not later than twelve months before the expiration of the licence, apply for the renewal of the licence in respect of all or any part of the mining area.

(2) An application under subsection (1)—

(*a*) shall state the period for which renewal of the licence is sought;

(*b*) shall be accompanied by a statement giving particulars of the programme of mining operations proposed to be carried out in the period of renewal, an estimate of any significant effect which the carrying out of the programme would be likely to have on the environment and on any monument or relic in the area over which renewal of the licence is sought, and an estimate of the cost of carrying out the programme;

(*c*) shall be accompanied by a statement giving details of—

(i) the latest proved, estimated or inferred ore reserves;

(ii) the capital investment to be made in, and production costs and revenue forecasts in respect of, the period of renewal;

(iii) any expected changes in methods of mining and treatment; and

(iv) any expected increase or reduction in mining activities and the estimated life of the mine;

(*d*) shall, if renewal of the licence is sought in respect of part only of the mining area, be accompanied by a plan indentifying that part of the mining area; and

(*e*) shall give particulars of any alteration in the matter shown in the application for the grant of the licence pursuant to section 37 (3) (*a*), (*d*), (*h*) (v), (vi) and (vii), (*j*) and (*l*).

(3) Subject to subsection (4), on application duly made for the renewal of a mining licence, the Minister shall renew the licence, with or without variation of the conditions of the licence, for a period not exceeding fifteen years.

(4) The Minister shall refuse to renew a mining licence—

(*a*) if—

(i) the applicant is in default;

(ii) the development of the mining area has not proceeded with reasonable diligence;

(iii) minerals in reasonable quantities do not remain to be produced; or

(iv) the programme of mining operations proposed to be carried out is not satisfactory;

(*b*) if the Minister has given to the applicant notice of his intention to refuse to renew the licence—

(i) giving in the notice particulars of the ground for the intended refusal; and

(ii) stating a date before which the applicant may take appropriate action or make representations in relation to that ground; and

(*c*) if the applicant has not, before that date, remedied the default or, in a notice given to the Minister, made appropriate amendments to his application, or make representations which, in the opinion of the Minister, remove the ground for the intended refusal.

(5) In determining whether or not to vary the conditions of a mining licence on renewal, the Minister shall have regard and give effect to any relevant agreement of a kind referred to in section 10.

Notice of disposal of application for renewal of Mineral Right

52.—(1) The Minister shall give notice to an applicant for the renewal of a reconnaissance licence, an exclusive prospecting licence or a mining licence of his decision on the application and, if he renews the licence, the notice—

(*a*) shall state the period of renewal;

(*b*) shall set out any variation in the conditions of the licence; and

(*c*) shall include a plan of the area of land in respect of which the licence is renewed if that area differs from the area of land subject to the licence immediately before the renewal of the licence.

(2) Subject to any relevant agreement of a kind referred to in section 10, there may be included in, or in a statement appended to, a notice referred to in subsection (1) either or both of the following conditions, namely—

(*a*) a condition that in, or in relation to, the reconnaissance area, prospecting area or mining area, as the case may be, the holder of the licence concerned will, during a specified period, carry out the programme of reconnaissance, prospecting or mining operations, as the case may be, specified in the notice; or

(*b*) a condition requiring the holder of the licence concerned, in respect of any period and in the manner specified, to submit to the Minister acceptable proposals for the carrying out of a programme of reconnaissance, prospecting or mining operations, as the case may be, and the expenditure of amounts, in or in relation to, the reconnaissance area, the prospecting area or the mining area, as the case may be, during that period.

Licence to have effect pending disposal of application for renewal

53.—(1) Subject to this section, where an application under this Part for the renewal of a Mineral Right is not finally dealt with before the date on which the Mineral Right would, but for this subsection, cease to have effect, the Mineral Right continues to have effect over the area of land over which renewal of the Mineral Right is sought until notice is given pursuant to section 52 of the refusal to renew or, as the case may be, of the renewal of the Mineral Right.

(2) The period for which a Mineral Right is renewed commences on and includes the date on which the Mineral Right would have ceased to have effect if an application for the renewal of the Mineral Right had not been made.

(3) Subsection (1) shall not have effect—

(*a*) to prevent the cancellation under this Act of a Mineral Right; or

(*b*) if an application for the renewal of a Mineral Right is withdrawn.

Amendment of prospecting or mining programme

54.—(1) The holder of an exclusive prospecting licence or a mining licence may amend his programme of prospecting or mining operations and, subject to subsection (2), the amendment has effect when particulars of the amendment are given in a notice served on the Minister.

(2) An amendment which substantially alters a programme of prospecting or mining operations does not have effect unless application has been made pursuant to section 36 or 44 (2) to the Minister and the Minister has, under section 36 or 44 (2), agreed to the amendment.

Division 6—Surrender, Cancellation and Suspension of Mineral Rights

Surrender

55.—(1) The holder of a reconnaissance licence, an exclusive prospecting licence or a mining licence who wishes to surrender all or part of the land subject to the licence shall apply to the Commissioner for a certificate of surrender, in respect of the land, not less than three months before the date on which he wishes the surrender to have effect.

(2) An application under subsection (1)—

(*a*) shall state the date on which the applicant wishes the surrender to have effect;

(*b*) shall, if part only of the land subject to the licence is to be surrendered, identify the land to be surrendered by the inclusion of a plan thereof;

(*c*) shall give particulars of reconnaissance, prospecting or mining operations carried on in respect of the land to be surrendered; and

(*d*) shall be supported by such records and reports in relation to those operations as the Commissioner may reasonably require.

(3) Subject to subsections (4) and (5), on application duly made under subsection (1) the Commissioner shall issue a certificate of surrender, either unconditionally or subject to such conditions as are specified in the certificate, in respect of the land to which the application relates.

(4) Where an application is made under subsection (1) the Commissioner shall consult with the Minister.

(5) The Commissioner shall not issue a certificate of surrender—

(*a*) to an applicant who is in default;

(*b*) to an applicant who fails to comply with any reasonable requirement of the Commissioner for the purposes of subsection (2) (*d*); or

(*c*) if the Commissioner is not satisfied that the applicant will leave land to be surrendered and on which reconnaissance, prospecting or mining operations have been carried on in a condition which is safe and which accords with good mining practice.

Effect of certificate of surrender

56.—(1) Where, pursuant to section 55 (3), a certificate of surrender is issued, the Commissioner—

(*a*) shall, if part only of the land subject to a reconnaissance licence, an exclusive prospecting licence or a mining licence is surrendered, amend the licence accordingly; or

(*b*) shall, in any other case, cancel the licence,

and in either case the Commissioner shall give notice to the applicant for the certificate of surrender of the amendment or, as the case may be, the cancellation, and of the issue of the certificate of surrender.

(2) Land in respect of which a certificate of surrender is issued shall be treated as having been surrendered with effect from the date on which notice of the surrender is given pursuant to subsection (1) to the applicant for the certificate.

(3) The surrender of any land does not affect any liability incurred before the date on which the surrender has effect in respect of the land, and any legal proceedings that might have been commenced or continued in respect of the liability against the applicant for the certificate may be commenced or continued against that applicant.

Suspension or cancellation of Mineral Right

57.—(1) Subject to this section, where the holder of a reconnaissance licence, an exclusive prospecting licence or a mining licence—

(*a*) fails to use in good faith the land subject to the licence for the purpose for which the licence was granted;

(*b*) uses that land for any purpose other than the purpose for which the licence was granted;

(*c*) fails to comply with any requirement of this Act (not being exempted under this Act from doing so) with which he is bound to comply;

(*d*) fails to comply with a condition of the licence (not being exempted under this Act from doing so);

(*e*) fails to comply with a direction lawfully given under this Act or with a condition on which any certificate of surrender is issued or on which any exemption or consent is given under this Act;

(*f*) fails to comply with the conditions, relating to the exercise of his rights under his licence, which are contained in a relevant agreement of a kind referred to in section 10; or

(*g*) fails to pay any amount payable by him under this Act within one month after the amount becomes due,

the Minister may, on that ground, by notice in writing served on the holder of the licence, suspend or cancel the licence.

(2) The Minister shall not, under subsection (1), suspend or cancel a licence on a ground referred to in that subsection unless—

(*a*) he has, by notice in writing served on the holder of the licence, given not less than thirty days notice of his intention to so suspend or cancel the licence on that ground;

(*b*) he has, in the notice, specified a date before which the holder of the licence may, in writing, submit any matter which he wishes the Minister to consider; and

(*c*) he has taken into account—

(i) any action taken by the holder of the licence to remove that ground or to prevent the recurrence of similar grounds; and

(ii) any matters submitted to him by the holder of the licence pursuant to paragraph (*b*).

(3) The Minister shall not, under subsection (1), suspend or cancel a licence on a ground referred to in paragraph (*g*), if, before the date specified in a notice referred to in subsection (2), the holder of the licence pays the amount of money concerned together with an amount of interest (if any) which the Minister considers reasonable in all the circumstances of the case.

(4) The Minister may, by notice in writing served on the holder of a reconnaissance licence, an exclusive prospecting licence or a mining licence, cancel the licence—

(*a*) if the holder (being an individual) is—

(i) adjudged bankrupt; or

(ii) enters into any agreement or scheme of composition with his creditors or takes advantage of any law for the benefit of debtors; or

(*b*) if, in the case of a holder that is a body corporate, an order is made or a resolution is passed winding up the affairs of the company or corporation, unless the winding up is for the purpose of amalgamation or reconstruction and the Minister has been given notice thereof.

(5) Where two or more persons constitute the holder of a reconnaissance licence, an exclusive prospecting licence or a mining licence, the Minister shall not, under subsection (4), cancel the licence on the occurrence, in relation to one or some only of the persons constituting the holder, of an event entitling the Minister to so cancel the licence, unless he is satisfied that any other person or persons constituting the holder are unwilling, or would be unable, to carry out the duties and obligations of the holder of the licence.

(6) On the cancellation of a reconnaissance licence, an exclusive prospecting licence or a mining licence, the rights of the holder of the licence thereunder cease, but the cancellation does not affect any liability incurred before the cancellation and any legal proceedings that might have been commenced or continued against the former holder of the licence may be commenced or continued against him.

Division 7—Transfers and Registration

Records

58.—(1) The Commissioner shall cause a record to be kept in a Register of every Mineral Right granted and of any dealings with, or affecting, a Mineral Right.

(2) When a Mineral Right is granted the Commissioner shall cause the name of the person to whom the Mineral Right is granted to be recorded in the Register as the registered holder of the Mineral Right.

Interest in Mineral Right to be created by instrument in writing

59.—(1) A legal or equitable interest in, or affecting, a Mineral Right, is not capable of being created, transferred, assigned, effected or dealt with, whether directly or indirectly, except by instrument in writing.

(2) The creation of a legal or equitable interest in, or affecting, a Mineral Right, does not affect the liability of the holder of the Mineral Right for any breach of the conditions of the Mineral Right or of any of the provisions of this Act.

Transfer of Mineral Right to be approved by Minister, etc.

60.—(1) Unless the Minister approves—

(*a*) the transfer of a Mineral Right; or

(*b*) an instrument by which a legal or equitable interest in, or affecting, a Mineral Right, is created, assigned, effected or dealt with, whether directly or ,indirectly,

the transfer, or the instrument (in so far as it operates as provided in paragraph (*b*)), is of no force.

(2) An application for the approval by the Minister under subsection (1) of a transfer or an instrument shall be made to the Commissioner in accordance with the Regulations.

(3) Subject to subsections (4) and (5), on application duly made under subsection (2), the Minister may give, or refuse to give, his approval, or may give his approval subject to such conditions as he deems necessary in the circumstances to impose.

(4) The Minister shall not give his approval to the transfer of, or to any instrument operating as provided in subsection (1) (*b*) in relation to, a reconnaissance licence.

(5) The Minister shall give his approval to the transfer of an exclusive prospecting licence or a mining licence when the transferee—

(*a*) is a person controlling, controlled by, or under common control with, the transferor; and

(*b*) is not a person disqualified under any provision of this Act from holding a Mineral Right.

(6) If the Minister gives his approval to the transfer of a Mineral Right the Commissioner shall cause the name of the transferee to be recorded in the Register as the registered holder of the Mineral Right, but legal proceedings that might have been commenced or continued against the former registered holder may be commenced or continued against him notwithstanding the transfer.

(7) The reference in subsection (1) (*a*) to "the transfer of a Mineral Right" includes a transfer of a Mineral Right by operation of law.

61. The Minister may require any person making application under section 60 to the Commissioner to furnish to the Commissioner such information as the Minister may reasonably require to enable him to dispose of the application, and the applicant shall comply with the requirement.

Minister may require information

62.—(1) The Commissioner may give a certificate with respect to any matter referred to in subsection (2).

Evidentiary provision

(2) A certificate of the Commissioner—

(*a*) that a Mineral Right was granted, transferred, suspended or cancelled on, or with effect from, a date specified in the certificate;

(*b*) that any land, identified in the certificate is, or was on a date specified in the certificate, subject to a Mineral Right;

(*c*) that a mineral specified in the certificate is a mineral to which a Mineral Right relates;

(*d*) that any condition specified in the certificate is, or was on a date so specified, a condition of a Mineral Right;

(*e*) that a certificate of surrender was issued in respect of land identified, on a date specified, in the certificate given by the Commissioner;

(*f*) that any condition specified in the certificate is a condition on which a certificate of surrender was issued or on which any consent or approval so specified was given; or

(*g*) that a person named in the certificate is, or was on a date specified in the certificate, the holder of a Mineral Right,

shall be received in proceedings before any court or tribunal as evidence of that fact, but without prejudice to the right to adduce evidence in rebuttal.

63.—(1) A copy of any entry in the Register may be obtained on payment of the prescribed fee.

Inspection of Register

(2) The Register shall, at all reasonable times, be open for inspection by any person on payment of the prescribed fee, and a person may take copies of any licence or entry in the Register on payment of the prescribed fee.

64. Where the Commissioner is satisfied that there has been a mistake made in, or that some matter has been incorrectly entered in, the Register, he shall rectify the Register by correcting that mistake or incorrect entry.

Register may be rectified

65. A person who wilfully—

Offences in relation to registration

(*a*) makes, or causes to be made or concurs in making, a false entry in the Register; or

(*b*) produces or tenders in evidence a document falsely purporting to be a copy of or extract from an entry in the Register or of or from an instrument lodged with the Commissioner under this Division,

is guilty of an offence and liable on conviction to a fine of two hundred and fifty Kwacha or to imprisonment for a term of six months, or to both.

Division 8—Miscellaneous Duties with respect to submitting Reports, etc.

First Schedule

66.—(1) The First Schedule applies with respect to the duty of the holder, or former holder, of a Mineral Right to furnish information, submit reports or keep records.

(2) The holder of a Mineral Right—

(*a*) shall establish immediately after the grant of the Mineral Right, and keep established while the Mineral Right subsists, an address in Malaŵi; and

(*b*) shall give notice of that address to the Minister, and of any variation of the address which may be made from time to time.

Division 9—Miscellaneous

Application for inclusion of additional minerals in licence

67.—(1) This section applies where—

(*a*) the holder of an exclusive prospecting licence or mining licence, in the course of searching for or mining the mineral to which his licence relates, finds another mineral (in this section called an "additional mineral"); and

(*b*) in the circumstances it would be impracticable or impossible to mine the mineral to which the licence relates without also mining that additional mineral.

(2) Where this section applies, the holder of the exclusive prospecting licence or mining licence concerned may make application to the Minister for the inclusion in the licence of the additional mineral and the Minister, subject to this section, if satisfied that this section applies, shall approve the application.

(3) The Minister is not required to approve an application referred to in subsection (2) if the applicant is unwilling to make such alterations to his programme of prospecting or mining operations as are reasonably necessary to cover adequately the searching for or mining of the additional mineral.

(4) Where the Minister approves an application referred to in subsection (2) he shall do so subject to the condition that the exclusive right to search for or mine the additional mineral shall arise only where that mineral is found together with a mineral to

which the licence otherwise relates in such circumstances that it would not be practicable, or possible, to mine such last-mentioned mineral without also mining the additional mineral.

(5) Notice of the Minister's decision under subsection (2) shall be given to the holder of the exclusive prospecting licence or, as the case may be, mining licence concerned; and in the event that the Minister approves the application, the licence is, subject to subsection (4), deemed to relate to the additional mineral.

(6) In any case where this section would not apply by reason of the requirement of subsection (1) not being met, the Minister may, if he considers that it would be in the interest of the development of the mineral resources of Malaŵi to do so, approve an application by the holder of an exclusive prospecting licence or a mining licence to include a further mineral in the licence; and in that event the licence is deemed to relate to the further mineral, subject to any conditions imposed on the giving of the approval.

Enlargement of prospecting area or mining area

68.—(1) The holder of an exclusive prospecting licence or a mining licence may apply to the Minister to have his prospecting area or, as the case may be, mining area enlarged in the manner specified in the application and the Minister may, subject to subsection (2), approve the application or refuse to do so.

(2) The Minister shall not approve an application made under subsection (1)—

(*a*) unless he is satisfied that to do so would be in the interest of the development of the mineral resources of Malaŵi; or

(*b*) if, by reason of this Act, the Minister could not then grant to the holder making the application an exclusive prospecting licence or, as the case may be, a mining licence over the area of land by the addition of which the prospecting area or mining area is to be enlarged, or could only do so subject to any condition which could not be satisfied.

(3) The approval of the Minister under subsection (1) may be given unconditionally, or subject to such conditions as the Minister may determine and specify in a notice given pursuant to subsection (4).

(4) Notice of the Minister's decision under subsection (1) shall be given to the holder of the prospecting licence or, as the case may be, mining licence concerned, and in the event that the Minister approves the application, the prospecting or mining area is deemed to have been enlarged accordingly.

(5) To enable him to dispose of an application made under subsection (1) the Minister may, by notice served on the applicant, require the applicant to furnish him, within such reasonable time as is specified in the notice, with such information relevant to the application as may be described in the notice.

Recovery of unexpended amounts

69.—(1) Subject to subsection (3), when the amount expended in, or in relation to, a reconnaissance area, a prospecting area or a mining area is less than the amount required to be so expended by a reconnaissance licence, an exclusive prospecting licence or a mining licence, or otherwise, the amount of the shortfall is a debt due to the Republic and may be recovered in a court of competent jurisdiction.

(2) In proceedings pursuant to subsection (1) a certificate of the Minister certifying that a specified amount is payable by an identified person shall be received as evidence of that fact, but without prejudice to the right to adduce evidence in rebuttal.

(3) The right to recover an amount pursuant to this section is subject to the provisions of a relevant agreement of a kind referred to in section 10 limiting that right.

Control of company not to be given without consent of Minister
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70.—(1) A company which is the holder of a mining licence shall not, without the prior consent in writing of the Minister—

(*a*) register the transfer of any equity share or shares in the company to any particular person or his nominee; or

(*b*) enter into an agreement, arrangement, or understanding, whether or not having legal or equitable force, with any particular person,

if the effect of doing so would be to give to the particular person or any other person, control of the company.

(2) On application duly made to him in writing for his consent under this section, the Minister shall give his consent if he considers that the public interest would not be prejudiced by the change of control of the company, but otherwise shall refuse to give his consent; and for the purpose of considering any such application the Minister may call for and obtain such information as he considers necessary to determine the application.

(3) For the purposes of this section—

(*a*) a person is deemed to have control of a company—

(i) if the person or his nominee holds, or the person and his nominee hold a total of, twenty per cent or more of the issued equity shares in the company;

(ii) if the person is entitled to appoint, or prevent the appointment of, half, or more than half, of the directors of the company; or

(iii) if the person is entitled to exercise, or control the exercise of, the right to cast votes in respect of not less than two-fifths of the total number of votes in respect of equity shares in the company;

(*b*) "equity shares", in relation to a company, means shares in the company having voting rights in all circumstances at a general meeting of the company, and includes preference shares, other than preference shares which do not have such voting rights;

(*c*) "preference shares" means shares which carry the right to payment of a dividend of a fixed amount, or not exceeding a fixed amount, in priority to payment of a dividend on another class or other classes of shares, whether with or without other rights; and

(*d*) the reference in paragraph (*a*) (iii) to the entitlement to control the exercise of the right to cast votes shall be read as including an entitlement to control the exercise of that right directly or indirectly, and includes control that is exercisable as a result of or by means of trusts.

PART IV

Non-Exclusive Prospecting Licences and Claims

Definition

71. In this Part, "District" means one of the districts into which Malaŵi is divided for purposes of administration in accordance with the Regional and District Boundaries and Place Names Act.

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Restriction on exercise of rights by holder of non-exclusive prospecting licence or claim

72. Where the doing of any act is regulated or prohibited by a written law (other than this Act), nothing in this Act shall be construed as authorizing the holder of a non-exclusive prospecting licence or a claim to do the act—

(*a*) otherwise than in accordance with the written law; and

(*b*) without first obtaining the licence, permit, authority, or other instrument (if any), required under the written law for the doing of the act.

Non-exclusive prospecting licence

73.—(1) Subject to this section, the Commissioner may issue to any person a non-exclusive prospecting licence.

(2) Subject to subsection (5), a non-exclusive prospecting licence—

(*a*) shall not be issued to an individual unless he is a citizen of Malaŵi;

(*b*) shall not be issued to a company unless it is a company whose entire share capital is beneficially owned by citizens of Malaŵi or by a corporation which, in the opinion of the Minister, has been established for a public purpose, or partly by such citizens and partly by such a corporation;

(*c*) shall not be issued to a corporation unless it is a corporation incorporated in Malaŵi.

(3) A non-exclusive prospecting licence shall not be issued to a person unless the Commissioner is satisfied that that person intends, within the limits of his competence and resources, to undertake prospecting operations.

(4) The power to issue a non-exclusive prospecting licence is subject to the Regulations.

(5) Where the Minister is satisfied that it is in the public interest to do so and so certifies to the Commissioner, the Commissioner may issue a non-exclusive prospecting licence—

(*a*) to an individual who is not a citizen of Malaŵi but who has been ordinarily resident in Malaŵi during the period of four years immediately preceding the date on which his application for the grant of a licence is made; or

(*b*) to a company or corporation other than one of a kind referred to in subsection (2) (*b*) or (*c*).

Rights under non-exclusive prospecting licence

74.—(1) A non-exclusive prospecting licence may authorize the holder of the licence to prospect in all districts, or in any district or part of a district identified in the licence, for any mineral identified in the licence.

(2) The holder of a non-exclusive prospecting licence may, subject to this Act and the conditions of the prospecting licence, enter on any land in which he is authorized to prospect, and carry on prospecting operations for any mineral to which his licence relates.

(3) The holder of a non-exclusive prospecting licence shall not prospect—

(*a*) in land—

(i) in a reconnaissance area for any mineral in respect of which the holder of the reconnaissance licence has been granted exclusive rights pursuant to section 20 (4);

(ii) in a prospecting area for any mineral to which the prospecting licence relates; or

(iii) in a mining area;

(*b*) in land in a claim area, unless he is the holder of the claim.

(4) Subject to this Act and the conditions of the non-exclusive prospecting licence, for the purpose of the exercise of the right referred to in subsection (2), the holder of a non-exclusive prospecting licence may, in particular, erect camps and temporary buildings, or erect installations in any waters forming part of the land on which he is authorized to prospect.

Term and renewal of non-exclusive prospecting licence

75.—(1) A non-exclusive prospecting licence has effect for the period of twelve months from and including the date of the issue of the licence.

(2) Subject to subsections (3) and (4) and the Regulations, the Commissioner, on application duly made, may renew a non-exclusive prospecting licence for a period of twelve months from the date on which it would cease to have effect if not renewed.

(3) The Commissioner shall not renew a non-exclusive prospecting licence unless he is satisfied—

(*a*) that the applicant has undertaken, in good faith, within the limits of his competence and resources during the period for which he has held the licence, prospecting operations; and

(*b*) intends, within those limits, to undertake in good faith further prospecting operations.

(4) The Commissioner shall not renew a non-exclusive prospecting licence if the applicant is in default.

Pegging of claim

76.—(1) Subject to this Act, the holder of a non-exclusive prospecting licence may peg a claim or claims in accordance with the Regulations.

(2) Where the holder of a non-exclusive prospecting licence, pursuant to subsection (1), pegs a claim, he shall, within thirty days of doing so, apply in accordance with the Regulations for registration, in the manner prescribed, of the claim.

(3) Subject to the Act, on application duly made for the registration of a claim, the claim shall be registered, either unconditionally or subject to such conditions as are specified.

Restriction on registration of claim

77.—(1) A claim shall not be registered pursuant to section 76 in respect of land in which the person applying for registration of the claim is not entitled to prospect.

(2) The Commissioner shall refuse to register a claim—

(*a*) if he has reasonable grounds to believe that minerals in payable quantities have not been discovered within the proposed claim area;

(*b*) if he has reasonable grounds to believe that the applicant does not intend to carry on, in goods faith, within the limits of his competence and resources, mining operations in the proposed claim area;

(*c*) if he has reasonable grounds to believe that it is not in the public interest that a claim should be registered in respect of the proposed claim area; or

(*d*) if the applicant is in default and the Commissioner is not prepared, under this paragraph, to waive the default.

(3) Where the Commissioner has refused to register a claim on a ground referred to in subsection (2), the applicant may appeal against the decision to the Minister whose decision is final.

(4) The Commissioner may refuse to register a claim if the applicant fails, within a reasonable period specified by the Commissioner, to furnish the Commissioner with satisfactory evidence of the existence of the mineral for which the claim is pegged, within the area of the claim.

Period of validity and renewal of claim

78.—(1) Subject to this Act, a claim registered pursuant to section 76—

(*a*) is valid from the day when the claim was pegged until the 31st March next following that day; and

(*b*) on application made to the Commissioner in accordance with the Regulations, may be renewed for further periods of twelve months each, commencing on the 1st April in each year.

(2) A claim shall not be renewed pursuant to subsection (1)—

(*a*) unless the Commissioner is satisfied that minerals in payable quantities remain in the claim area;

(*b*) unless the Commissioner is satisfied that the applicant has carried on, in good faith, within the limits of his competence and resources, mining operations in the claim area and intends to continue doing so; or

(*c*) if the applicant is in default and the Commissioner is not prepared, under this paragraph, to waive the default.

(3) Where the Commissioner has refused to renew a claim on a ground referred to in subsection (2), the applicant may appeal against the decision to the Minister whose decision is final.

Rights and duties of holder of claim

79.—(1) Subject to this Act and the conditions of the claim, the holder of a claim has the right to enter a claim area and the exclusive right, while the claim is registered, to prospect and mine therein, and to remove therefrom and dispose of, the minerals in respect of which the claim is registered pursuant to section 76.

(2) The holder of a claim shall—

(*a*) within the limits of his competence and resources carry on, in good faith, in the claim area mining operations;

(*b*) furnish the Commissioner with such information relating to his mining or prospecting operations carried on in the claim area as the Commissioner may reasonably require or as may be prescribed; and

(*c*) carry put promptly any directions relating to his mining or prospecting operations which may be given to him by the Commissioner for the purpose of ensuring safety, or good mining practice.

Cancellation of claim

80.—(1) Where the holder of a claim—

(*a*) fails to use, in good faith, the land in the claim area for mining operations;

(*b*) uses the land in the claim area for any purpose other than mining operations;

(*c*) fails to comply with any requirement of this Act (not being exempted from doing so) with which he is bound to comply;

(*d*) fails to comply with a condition of the claim (not being exempted from doing so);

(*e*) fails to comply with a direction lawfully given under this Act or with a condition on which any exemption or consent is given; or

(*f*) fails to pay any amount payable under this Act by him within one month after the amount becomes payable,

the Commissioner may, on that ground, by notice in writing served on the holder of the claim cancel the claim.

(2) The Commissioner may, by notice in writing served on the holder of a claim, cancel the claim—

(*a*) if the holder (being an individual) is—

(i) adjudged bankrupt; or

(ii) enters into an agreement or scheme of composition with his creditors or takes advantage of any law for the benefit of debtors;

(*b*) if, in the case of a holder that is a company or a corporation, an order is made or a resolution is passed winding up the affairs of the company or corporation unless the winding up is for the purpose of amalgamation or reconstruction and the Commissioner has been given notice thereof.

(3) On the cancellation of a claim, the rights of the holder of the claim thereunder cease, but the cancellation does not affect any liability incurred before the cancellation and any legal proceedings that might have been commenced or continued against the former holder of the claim may be commenced or continued against him.

(4) Where the Commissioner has cancelled a claim under subsection (1) or (2), the person who was the holder of the claim may appeal against the cancellation to the Minister whose decision is final.

PART V

Mineral Permits

Issue of mineral permit

81. A District Commissioner, or a person authorized by the Minister for the purposes of this section, may, on the prescribed fee being paid, issue to any person a mineral permit.

Rights under mineral permit

82. Subject to this Act, the holder of a mineral permit may enter upon public land or customary land and mine any prescribed mineral.

Restriction on exercise of rights under mineral permit

83.—(1) The holder of a mineral permit shall not, pursuant to section 82, enter—

(a) a forest reserve as defined in section 2 of the Forest Act; Cap. 63:01

(*b*) a national park established under section 3 of the National Parks Act; Cap. 66:07

Cap. 66:03

(c) a game reserve declared or proclaimed under section 10 of the Game Act; or

Cap. 29:01

(*d*) upon any monument or relic which is protected under section 7 of the Monuments Act, nor mine therein any prescribed mineral.

(2) The holder of a mineral permit shall not, pursuant to section 82, mine any prescribed mineral in a prospecting area, a claim area or a mining area, without the consent of the holder of the licence or claim concerned.

(3) The holder of a mineral permit shall not, pursuant to section 82,—

(*a*) carry on mining operations underground;

(*b*) use explosives; or

(*c*) use any powered machinery in his mining operations except for the purpose of loading material in, or moving material from, the area where he carries on those operations.

Cancellation of mineral permit

84. The Minister may, where he considers it necessary or desirable to do so, cancel a mineral permit.

Record of mineral permits

85. Any person issuing a mineral permit shall supply a copy of the permit to the Commissioner who shall maintain a record, in such manner and containing such particulars as he may determine, of copies so supplied to him.

PART VI

Financial

Royalty on minerals obtained under mining licence, etc.

86.—(1) Subject to this Act, the holder of a mining licence shall, in accordance with this Act and his licence, pay, to the Republic, royalty in respect of minerals obtained by him in the mining area.

(2) Royalty is payable pursuant to subsection (1)—

(*a*) at the rate fixed in, or computed in accordance with the provisions of, the mining licence concerned; or

(*b*) if no rate is so fixed or provision so made in the mining licence concerned, at the rate prescribed.

(3) Provision may be made in the Regulations for the payment of royalty in respect of minerals obtained in a reconnaissance area or a prospecting area.

Royalty on minerals obtained under a claim

87.—(1) Subject to this Act, the holder of a claim shall, in accordance with this Act, pay royalty to the Republic in respect of minerals obtained by him in the claim area.

(2) Royalty is payable pursuant to subsection (1) at the rate prescribed.

Prohibition on disposal of minerals

88. If the holder of a mining licence fails to pay any royalty payable by him on or before the due date or any extension thereof allowed by the Minister, the Minister may, by notice served on the holder of the mining licence, prohibit the disposal of any mineral from the mining area concerned, or from any other mining area held by that holder, until all outstanding royalty has been paid or until an arrangement has been made, acceptable to the Minister, for the payment of the royalty, and the holder shall comply with the notice.

Remission of royalty, etc.

89.—(1) The Minister may, after consultation with the Minister for the time being responsible for finance, remit in whole or in part, any royalty payable on any mineral, or on any mineral obtained from a particular deposit, for such period as he may determine, if he considers it expedient in the interests of the production of the mineral to do so.

(2) The Commissioner may exempt from liability with respect to royalty samples of minerals acquired for the purpose of assay, analysis or other examination.

(3) The Minister may, on application made to him by the holder of a mining licence or a claim, defer payment of any royalty due from the holder for such period and subject to such conditions as he may determine.

Annual charges in respect of Mineral Rights

90.—(1) There shall be payable to the Republic by the holder of any Mineral Right an annual charge of such amount as may be prescribed, or as may be computed in such manner as may be prescribed.

(2) The annual charge payable pursuant to subsection (1) is payable on the grant of a Mineral Right and thereafter annually on the anniversary of the grant until the termination of the Mineral Right.

Security for compliance

91. The Minister may, from time to time, make such arrangements as appear appropriate to him to secure that the holder of a Mineral Right complies with this Act, and in particular may accept guarantees, whether from shareholders or otherwise, in respect of that compliance.

Minister may require information to be furnished

92.—(1) Where the Minister has reason to believe that a person is capable of giving information or producing or making available books or documents relating to minerals obtained, or the value of minerals obtained, he may, by instrument in writing served on that person, order that person—

(*a*) to furnish to him in writing, within the period and in the manner specified in the instrument, any such information;

(*b*) to attend before him or a person specified in the instrument, at such time and place as is so specified, and there to answer questions relating to minerals obtained, or the value of minerals obtained; or

(*c*) to produce or make available to a person specified in the instrument, at such time and place as is so specified, books or documents in his custody, power or control relating to minerals obtained or the value of minerals obtained.

(2) A person is not excused from furnishing information, answering a question or producing or making available books or documents when required to do so under this section, on the ground that the information so furnished, the answer to the question, or the production or making available of any books or documents, might tend to incriminate him or make him liable to a penalty, but the information so furnished is not admissible in evidence against him in any proceedings other than proceedings for an offence against this section.

(3) Where books or documents are made available pursuant to a requirement under subsection (1) (*c*) the person to whom the books or documents are made available may make copies of, or take extracts from, the books or documents.

(4) A person shall not—

(*a*) refuse or fail to comply with a requirement under subsection (1) to the extent to which he is capable of complying with it;

(*b*) in purported compliance with such a requirement, knowingly furnish information that is false or misleading in a material particular;

(*c*) when attending before the Minister or any person in pursuance of such a requirement, knowingly make a statement or produce a document which is, or produce books which are, false or misleading in a material particular; or

(*d*) when making available books or documents in pursuance of such a requirement, knowingly make available books which are, or a document which is, false or misleading in a material particular.

(5) Any person who contravenes subsection (4) is guilty of an offence and liable on conviction to a fine of one thousand Kwacha or to a term of imprisonment of two years, or to both.

Recovery of royalty, etc.

93.—(1) Royalty payable under section 86 or 87 and any annual charge payable under section 90, are debts due to the Republic and are recoverable in a court of competent jurisdiction.

(2) In proceedings pursuant to subsection (1) a certificate of the Minister certifying that a specified amount of royalty, or an annual charge of a specified amount, is payable by an identified person shall be received as evidence of that fact; but without prejudice to the right to adduce evidence in rebuttal.

(3) Where two or more persons constitute the holder of a mining licence or a claim when royalty becomes payable, those persons are jointly and severally liable for the payment of royalty under section 86 or 87, or any annual charge payable under section 90; but without prejudice to any right to contribution existing between them.

PART VII

Protection of the Environment

Protection of natural resources to be taken into account

94.—(1) In deciding whether or not to grant a Mineral Right, the Minister shall take into account the need to conserve the natural resources in or on the land over which the Mineral Right is sought, or in or on neighbouring land.

(2) In deciding whether or not to issue a non-exclusive prospecting licence or to register a claim, the Commissioner shall take into account the need to conserve the natural resources in or on land to be covered by the licence or over which the claim is to be registered, or in or on neighbouring land.

(3) The Minister may, pursuant to section 38 (3), require environmental impact studies to be carried out.

Conditons for the protection of the environment, etc.

95.—(1) There may be included in a Mineral Right conditions with respect to—

(*a*) the prevention, limitation or treatment of pollution;

(*b*) the minimization of the effects of mining on adjoining or neighbouring areas and their inhabitants.

(2) On the registration of a claim, any condition of a kind referred to in subsection (1) may be imposed as a condition on which the claim is registered.

Rehabilitation of area damaged by prospecting or mining

96.—(1) There may be included in a prospecting or mining licence such conditions relating to—

(*a*) the reinstatement, levelling, regrassing, reforesting and contouring of any part of the prospecting or mining area that may have been damaged or deleteriously affected by prospecting or mining operations; and

(*b*) the filling in, sealing or fencing off, of excavations, shafts and tunnels,

as may be prescribed, or as the Minister may, in any particular case, determine.

(2) There may be included as a condition on which a claim is registered any condition, of a kind referred to in subsection (1), which may be prescribed for the purposes of that subsection.

(3) Where any condition is to be included in a prospecting or mining licence pursuant to subsection (1) the Minister may require the applicant for the licence to lodge with the Commissioner, within such time as the Minister may require, security for the performance of the conditions in such amount and form as the Minister deems appropriate.

Direction to comply with conditions of Mineral Right for protection of environment

97.—(1) Where a Mineral Right over any land is wholly or partly determined or cancelled, or expires, the Minister may, by notice served on the person who is or was the last holder of the Mineral Right, direct him to take such steps within such time as may be specified in the notice, to give effect, in relation to the land which is no longer subject to the Mineral Right, to any conditions included in the Mineral Right pursuant to section 95 or 96.

(2) Any person to whom a direction is given under subsection (1) who, without reasonable excuse, fails or neglects to comply with the direction is guilty of an offence and liable on conviction—

(*a*) in the case of an individual, to a fine of one thousand Kwacha or to imprisonment for a term of two years, or to both; or

(*b*) in the case of a body corporate to a fine of twenty thousand Kwacha.

(3) If a person to whom a direction is given under subsection (1) does not comply with the direction, the Minister may cause to be taken any steps specified in the notice containing the direction.

(4) Costs and expenses incurred pursuant to subsection (3) in taking any steps referred to in that subsection are a debt due to the Republic and are recoverable in a court of competent jurisdiction.

(5) In any proceedings instituted for the recovery from a person to whom a direction was given under subsection (1) of a debt due by that person to the Republic under subsection (4), a certificate of the Minister that a specified amount is the amount of the debt due shall be received as evidence of that fact; but without prejudice to the right to adduce evidence in rebuttal.

(6) A debt due by any person to the Republic under subsection (4) is recoverable notwithstanding that that person is convicted of an offence under subsection (2).

(7) Where two or more persons constitute, or constituted, the holder of a Mineral Right, those persons are jointly and severally liable for the payment of any costs and expenses which may be recovered under this section from the person who is or was the last holder of the Mineral Right; but without prejudice to any right to contribution existing between them.

PART VIII

Reserved Minerals

Definitions

98. In this Part, unless the context otherwise requires—

"precious metals" means gold, silver, platinum and platinoid metals, in an unmanufactured state, and includes all such slimes, concentrates, slags, tailings, residues and amalgams as are valuable for their content of the aforementioned precious metals;

"precious stones" means rough and uncut diamonds, emeralds, rubies and sapphires, not forming part of any tool or instrument or abrasive powder used in an industrial process, and includes any other stones which may be prescribed;

"reserved minerals" means precious metals, precious stones and any other mineral which may be prescribed;

"reserved minerals licence" means a licence issued under section 100.

Possession, etc., of reserved minerals

99.—(1) Subject to this section, no person—

(*a*) shall possess any reserved minerals—

(i) unless they were obtained by him pursuant to the exercise of rights under a Mineral Right, a non-exclusive prospecting licence, or a claim, of which he is the holder; or

(ii) unless he is the holder of a reserved minerals licence authorizing him to buy the mineral concerned, or an employee of any such holder duly authorized and acting as such; or

(*b*) shall, in Malaŵi, buy any reserved minerals unless he is the holder of a reserved minerals licence authorizing him to buy the minerals.

(2) Nothing in subsection (1) operates to prevent a *bona fide* museum, educational or scientific establishment from possessing or purchasing reasonable amounts of reserved minerals for the purpose of display, teaching or scientific study.

(3) This section is subject to such exceptions as may be prescribed.

Reserved minerals licence

100.—(1) Subject to the Regulations, the Commissioner may, on the prescribed fee being paid, issue to any person a reserved minerals licence.

(2) Subject to subsection (3), a reserved minerals licence authorizes the holder to buy such reserved minerals as are identified in the licence.

(3) The holder of a reserved minerals licence shall not buy any reserved minerals from any person unless that person is entitled, under this Part, to possess those reserved minerals.

(4) The holder of a reserved minerals licence shall keep such records in such form and containing such particulars as may be prescribed.

(5) The Regulations may make provision with respect to the term, renewal and cancellation of reserved minerals licences.

Offences

101. Any person who contravenes section 99 (1) or 100 (3) is guilty of an offence and liable on conviction—

(*a*) in the case of an individual, to a fine of one thousand Kwacha or to imprisonment for a term of two years, or to both; or

(*b*) in the case of a body corporate, to a fine of twenty thousand Kwacha.

PART IX

Restrictions and Surface Rights

Definition

102. In this Part, "Authority" means—

(*a*) a Mineral Right;

(*b*) a non-exclusive prospecting licence;

(*c*) a claim; or

(*d*) a mineral permit.

Restrictions on exercise of rights in relation to certain land
2 of 1983

103.—(1) The holder of an Authority shall not exercise any of his rights under the Authority or under this Act—

(*a*) except with the written consent of the President in respect of—

(i) any land set apart for any public purpose (other than mining);

(ii) any land dedicated as a place of burial or which is a place of religious significance; or

(*b*) except with the written consent of the lawful occupier thereof in respect of—

(i) any land which is the site of, or which is within two hundred metres (or such greater distance as may be prescribed) of, any inhabited, occupied or temporarily unoccupied house or building;

(ii) any land within fifty metres (or such greater distance as may be prescribed) of land which has been cleared or ploughed or otherwise *bona fide* prepared for the growing of, or upon which there are growing, agricultural crops (including orchards or fuel-wood plantations);

(iii) any land from which, during the year immediately preceding, agricultural crops have been reaped;

(iv) any land which is the site of, or within one hundred metres (or such greater distance as may be prescribed) of, any cattle dip-tank, dam, or other body of water, not being public water as defined in the Water Resources Act, Cap. 72:03

but where any consent so required is, in the opinion of the Minister, being unreasonably withheld, the Minister may, on such conditions (if any) as he may impose, direct in writing that the need for the consent shall be dispensed with and, in that event, this paragraph shall not have effect in so far as it requires the consent of the lawful occupier concerned to be given;

(*c*) in respect of any land reserved for the purposes of any railway track, or which is within fifty metres (or such greater distance as may be prescribed) of the boundaries of any land so reserved, except with the written consent of the responsible railway administration;

(*d*) in respect of any land within, or within two hundred metres (or such greater distance as may be prescribed) of the boundaries of, any township, except with the written consent of the local authority having control over the township; or

(*e*) in respect of any land comprising a street, road reserve as defined in the Public Roads Act or aerodrome, except with the written consent of the Minister or other authority having control thereof. Cap. 69:02

(*f*) in respect of a production area (as defined in section 3 of the Petroleum (Exploration and Production) Act, except with the written consent of the holder of the petroleum production licence concerned. Cap. 61:02

(2) Any dispute as to whether or not subsection (1) (*b*) applies in respect of any land or as to whether any person is a lawful occupier of that land shall be decided by the Minister whose decision is final.

(3) Any consent under subsection (1) (*a*), (*c*), (*d*) or (*e*) may be given unconditionally or subject to such conditions as are specified in the instrument of consent.

(4) For the purposes of subsection (1) (*a*), "public purpose" means a purpose prescribed as such.

104.—(1) The lawful occupier of any land in a reconnaissance area, a prospecting area, a mining area or a claim area, retains any right which he may have to graze stock upon or to cultivate the surface of the land, except in so far as the grazing or cultivation interferes with reconnaissance, prospecting or mining operations in any such area.

(2) The lawful occupier of land in a mining area or a claim area shall not erect any building or structure in the area without the consent of the holder of the mining licence or claim concerned; but if the Minister considers that the consent is being unreasonably withheld, he may give his consent to the lawful occupier doing so and, in that event, the lawful occupier may do so.

(3) The rights conferred by an Authority shall be exercised reasonably and so as to affect as little as possible the interests of any lawful occupier, or of the land subject to the Authority, or on which rights under the Authority are exercised, consistent with the reasonable and proper conduct of operations pursuant to the Authority.

Compensation for disturbance of rights, etc.

105.—(1) Where, in the course of reconnaissance, prospecting or mining operations, any disturbance of the rights of the lawful occupier of any land or damage to any crops, trees, buildings, stock or works thereon is caused—

(*a*) the holder of the Authority, by virtue of which the operations are carried on; or

(*b*) if the operations are carried on by or on behalf of a person who is not the holder of an Authority or otherwise than in accordance with an Authority, every person by or on whose behalf the operations are carried on,

is liable to pay to the lawful occupier fair and reasonable compensation in respect of the disturbance or damage according to the respective rights or interests of the lawful occupier concerned.

(2) The amount of the compensation payable to a lawful occupier pursuant to this section may be determined by agreement between the holder of the Authority, or the person referred to in subsection (1) (*b*), concerned and the lawful occupier or, if not so agreed, may be assessed by the Commissioner under Part XI.

Notice of intention to commence reconnaissance or prospecting operations, etc.

106.—(1) Subject to such exceptions as may be prescribed, the holder of a reconnaissance or an exclusive prospecting licence, before commencing prospecting operations in any private land, shall give to any lawful occupier of the land notice of his intention to commence the operations, in such manner and form as may be prescribed.

(2) The reference in subsection (1) to "prospecting operations" includes a reference to reconnaissance operations, but only to the extent that the reconnaisance operations involve surface or subsurface techniques.

[PART X: Affecting sections 107–109 repealed by 2 of 1983].

PART XI

Disputes

Commissioner may decide disputes

110.—(1) The Commissioner may inquire into and decide all disputes between persons engaged in reconnaissance, prospecting or mining operations, either among themselves, or in relation to themselves and third parties (other than the Government) not so engaged, in connexion with—

(*a*) the boundaries of any reconnaissance, prospecting, mining or claim area;

(*b*) any act committed or omitted, or alleged to have been committed or omitted in the course of, or ancillary to, reconnaissance, prospecting or mining operations;

(*c*) the assessment and payment of compensation pursuant to this Act; or

(*d*) any other matter which may be prescribed.

(2) Subject to subsection (3), the Commissioner may, in his discretion, refuse to decide any dispute referred to him under this Part and, if he does so, he shall notify the parties to the dispute in writing accordingly.

(3) The Commissioner shall not refuse to act under subsection (1) (c) in respect of any compensation to be assessed for the purposes of section 105.

(4) The Commissioner may make any decree or order which may be necessary for the purpose of giving effect to his decision in proceedings pursuant to this Part, and may order the payment, by any party to a dispute, of such compensation as may be reasonable, to any other party to the dispute.

Enforcement of Commissioner's decrees and orders

111.—(1) The Commissioner may send a copy, certified under his hand, of any decree or order made by him to the Registrar of the High Court, and the High Court shall enforce the decree or order of the Commissioner in the same manner in which it would enforce its own decrees or orders; but no such decree or order shall be so enforced until the period for an appeal under section 112 has passed or, if there is such an appeal within that period, unless the Minister rejects the appeal or the appeal is withdrawn.

(2) Where on an appeal under section 112 the Minister varies or alters any decree or order of the Commissioner or makes a new decree or order, the appeal shall be treated, for the purposes of subsection (1), as having been dismissed and the decree or order as so varied, altered or made shall be enforced under that subsection.

(3) The fees payable upon the enforcement of a decree or order are those which would be payable upon the enforcement of a like decree or order made by the High Court.

Appeal to Minister

112.—(1) Any person aggrieved by a decision, decree or order of the Commissioner made or given pursuant to this Part may appeal to the Minister within the period of thirty days after the date on which notice of the decision, decree or order is given to that person.

(2) No appeal lies to the Minister against a decision of the Commissioner under section 110 (2).

(3) On appeal under subsection (1), the Minister may rescind or affirm the decision, decree or order appealed from or make a new decision, decree or order, and that decision, decree or order is final.

113.—(1) No person shall commence proceedings in a court in respect of any dispute of a kind referred to in section 110, or prescribed pursuant to section 110 (1) (*d*), unless the Commissioner has refused pursuant to subsection (2) of that section to decide the dispute. Jurisdiction of courts excluded

(2) Where the Commissioner refuses pursuant to section 110 (2) to decide a dispute the period of limitation for bringing any action with respect to the matter giving rise to the dispute commences when the Commissioner so refuses

114. The Regulations may make provision with respect to— Regulations with respect to proceedings

(*a*) the initiation and conduct of proceedings under section 110 and the keeping of records and notes of evidence concerning any such proceedings; and

(*b*) appeals under section 112.

PART XII

Miscellaneous

115.—(1) Subject to this section and the Regulations, nothing in this Act operates to prevent— Right to take building and industrial minerals

(*a*) a citizen of Malaŵi from taking minerals of any kind from customary land, to the extent and in the manner which custom permits, and from which it has been customary to take minerals of that kind;

(*b*) a person from taking from land, in respect of which he is the lawful occupier, building and industrial minerals for the purpose of construction, on the land, of any dwelling house, factory, workshop or store, including the outbuildings or appurtenances thereof;

(*c*) any forest officer, game control officer or national parks officer, in his official capacity, from taking in a forest reserve, a game reserve or a national park, as the case may be, building and industrial minerals for the purposes of building, bridge-building, road-making and other constructional purposes in the reserve or park;

(*d*) the exercise of the right under the proviso to paragraph (a) of section 15 of the Land Act; Cap. 57:01

(*e*) the exercise of the power under section 29 of the Public Roads Act; Cap. 69:02

(*f*) the Capital City Development Corporation established under the Capital City Development Corporation Act from taking from the land designated under section 9 of that Act building and industrial minerals for the purpose of building, bridge-building, road-making and other constructional purposes on that land. Cap. 39:02

(2) Nothing is subsection (1) or in any Act referred to in subsection (1) shall be treated as authorizing a person to take any mineral from a prospecting area, a mining area or a claim area without the written consent of the holder of the prospecting licence, mining licence or claim concerned, as the case may be.

(3) Any dispute as to whether or not a person is entitled to take minerals pursuant to subsection (1) (*a*) shall be decided by the Minister responsible for land matters whose decision is final.

(4) In this section—

"forest reserve" and "forest officer" have the respective meanings assigned by section 2 of the Forest Act:

Cap. 63:01

"game reserve" and "game control officer" have the respective meanings assigned by sections 10 and 2 of the Game Act;

Cap. 66:03

"national park" and "national parks officer" have the respective meanings assigned by section 2 of the National Parks Act.

Cap. 66:07

Scientific investigation

116.—(1) The Commissioner may, by instrument in writing, consent to the carrying on by any person of reconnaissance or prospecting operations in the course of a scientific investigation with respect to the geology or mineral resources of Malaŵi.

(2) An instrument of consent under this section is subject to such conditions (if any) as are specified in the instrument.

(3) An instrument of consent under this section authorizes the person to whom it is issued to carry on the reconnaissance or prospecting operations specified in the instrument—

(*a*) in the area; and

(*b*) subject to the conditions (if any),

specified in the instrument, in the course of the scientific investigation.

(4) Subject to subsections (5) and (6), any authorized officer, or any person authorized in writing for the purpose of this section by the Commissioner, for the purpose of collecting information on the geology and mineral resources of Malaŵi, may enter on any land and, for that purpose, carry on any prescribed operation.

(5) An Authorized officer or a person authorized shall not, pursuant to subsection (4), enter on any land or place referred to in section 103 without obtaining the consent required under that section in relation to the land or place.

(6) Where the doing of any act is regulated or prohibited by a written law (other than this Act) nothing in this section shall be construed as authorizing the person specified in the instrument to. do the Act—

(*a*) otherwise than in accordance with the written law; and

(*b*) without first obtaining the licence, permit, authority, or other instrument (if any), required under the written law for the doing of the act.

(7) Notwithstanding any provision of that written law, if the President is satisfied that any licence, authority, or other instrument, required in pursuance of subsection (6) (*b*) is being unreasonably withheld he may, in his absolute discretion, direct the issue thereof.

Power of Commissioner and authorized officers

117.—(1) For the purposes of this Act, the Commissioner or an authorized officer, at all reasonable times,—

(*a*) may enter any area, structure, vehicle, vessel, aircraft or building that, in his opinion, has been, is being or is to be used in connexion with reconnaissance, prospecting or mining operations;

(*b*) may inspect and test any machinery or equipment that, in his opinion, has been, is being or is to be used in connexion with any of the operations referred to in paragraph (*a*);

(*c*) may take or remove for the purpose of analysis or testing, or for use in evidence in connexion with an offence against this Act, samples of minerals or other substances from a mine or any area where any of the operations referred to in paragraph (*a*) are being carried on;

(*d*) may inspect, take extracts from, and make copies of, any document relating to any of the operations referred to in paragraph (*a*);

(*e*) may, with respect to the health and safety of persons employed by a holder of a Mineral Right or a claim in or in connexion with any of the operations referred to in paragraph (*a*), issue directions to and impose restrictions on the holder or any persons so employed, by instrument in writing;

(*f*) may order, by instrument in writing—

(i) the cessation of operations on or in, and the withdrawal of all persons from, any structure or building that is being used in connexion with any of the operations referred to in paragraph (*a*); or

(ii) the discontinuance of the use of any machinery or equipment,

which he considers unsafe, unless and until such action as is necessary for safety and specified in the instrument is taken and completed; or

(*g*) may make such examinations and inquiries as are necessary to ensure that the provisions of this Act, and any directions issued, conditions imposed or orders made under this Act, are being complied with.

(2) Before exercising any of his powers under subsection (1), if there is any person who is or appears to be in charge of the area, structure, vehicle, vessel, aircraft, building, machinery, equipment or matter or thing in respect of which the power is about to be exercised, the Commissioner or an authorized officer shall identify himself to that person and to any person to whom he is about to give an order or a direction.

(3) Any person who is aggrieved by a decision, direction or order of the Commissioner or an authorized officer made under this section may appeal in writing to the Commissioner or, in the case of a decision, direction or order made by the Commissioner, to the Minister, who shall, as soon as practicable hear and dispose of the appeal, but the bringing of the appeal does not affect the operation of the decision, direction or order appealed from pending disposition of the appeal.

(4) On an appeal under subsection (3), the Commissioner or the Minister, as the case may be, may rescind or affirm the decision, direction or order appealed from or may make a new decision, direction or order in substitution therefor, and that decision, direction or order is final.

(5) In exercising his powers under subsection (1), the Commissioner or an authorized officer may be accompanied by any person who the Commissioner or the authorized officer, as the case may be, believes has special or expert knowledge of any matter being inspected, tested or examined.

(6) A person who is an occupier or person in charge of any building, structure or place, or the person in charge of any vehicle, vessel, aircraft, machinery or equipment referred to in subsection (1), shall provide the Commissioner or an authorized officer with all reasonable facilities and assistance (including the provision of necessary means of transport) for the effective exercise of the Commissioner's or an authorized officer's powers under this section.

(7) Any person who—

(*a*) without reasonable excuse, obstructs, molests or hinders the Commissioner or an authorized officer in the exercise of his powers under this section; or

(*b*) knowingly or recklessly makes a statement or produces a document that is false or misleading in a material particular to the Commissioner or an authorized officer engaged in carrying out his duties and functions under this section,

is guilty of an offence and liable on conviction to a fine of five hundred Kwacha or to imprisonment for a term of six months, or to both.

Removal of minerals

118.—(1) Minerals shall not be removed from any land from which they have been obtained, nor disposed of, in any manner, except—

(*a*) subject to subsection (2), by the holder of a Mineral Right, a non-exclusive prospecting licence or a claim for the purspose of sampling or analysis;

(*b*) by such a holder in accordance with the terms of the Mineral Right, non-exclusive prospecting licence or claim concerned; or

(*c*) as otherwise permitted by this Act.

(2) The holder of a Mineral Right, a non-exclusive prospecting licence or a claim shall not, pursuant to subsection (1) (*a*), take or send out of any land samples of minerals without the written consent of the Commissioner.

(3) Any person who contravenes subsection (1) or (2) is guilty of an offence and liable on conviction—

(*a*) in the case of an individual, to a fine of five hundred Kwacha or to imprisonment for a term of six months, or to both; or

(*b*) in the case of a body corporate, to a fine of ten thousand Kwacha.

Permit to export minerals

119.—(1) The Minister may grant to any person a permit to export minerals from Malaŵi on conditions determined by the Minister and specified in the permit; but the grant of such a permit does not exempt the person concerned from complying with the requirements of any other law relating to the export of minerals.

(2) Any person who exports any mineral from Malaŵi otherwise than under and in accordance with a permit granted under subsection (1) is guilty of an offence and liable on conviction—

(*a*) in the case of an individual, to a fine of one thousand Kwacha or to imprisonment for a term of two years, or to both; or

(*b*) in the case of a body corporate, to a fine of twenty thousand Kwacha.

(3) This section shall not apply with respect to such minerals as may be prescribed.

Acquisiton of land

120. Where the President considers that any land is required to secure the development or utilization of the mineral resources of Malaŵi he may direct that the land be compulsorily acquired under the Lands Acquisition Act.

Cap. 58:04

Production of books, etc.

121. The Minister may direct the holder of a Mineral Right or a claim, at a reasonable time and place specified in the direction, to make available to, or to produce for inspection by, the Commissioner or an authorized officer, any books, accounts, vouchers, documents or records of any kind, concerning the Mineral Right or claim, and if the holder fails or neglects to do so he is guilty of an offence and liable on conviction to a fine of one thousand Kwacha.

Identity, of persons exercising certain rights, to be established

122. A person exercising any right under a reconnaissance licence, a prospecting licence or a non-exclusive prospecting licence on any land shall, if required to do so by any lawful occupier of the land, produce evidence that he is the holder, or an agent or employee of the holder, of such a licence; and if he fails to do so he may be treated as a trespasser.

Removal of property by holder of Mineral Right

123.—(1) Subject to any relevant agreement of a kind referred to in section 10, where a Mineral Right has been wholly or partly determined or cancelled, or has expired, the Minister may, by notice served on the person who is or was the holder of the Mineral Right, direct that person to remove or cause to be removed from the relinquished area concerned, all property brought into that area by any person engaged or concerned in the operations authorized by the Mineral Right, or to make arrangements that are satisfactory to the Minister with respect to that property.

(2) A person to whom a direction under subsection (1) is given who refuses or fails to comply with the direction within the period specified in the notice by which the direction was given is guilty of an offence and liable on conviction to a fine not exceeding five thousand Kwacha.

Removal and sale of property

124.—(1) Where a direction under section 123 has not been complied with, the Minister—

(*a*) may do or cause to be done all or any of the things required by the direction to be done;

(*b*) may remove or cause to be removed, in such manner as he thinks fit, all or any of the property from the relinquished area concerned;

(*c*) may dispose of, in such manner as he thinks fit, all or any of the property referred to in paragraph (*b*); and

(*d*) may, if he has served a copy of the notice by which the direction was given on a person whom he believed to be an owner of the property or part of the property, sell or cause to be sold by public auction or otherwise as he thinks fit, all or any of the property referred to in paragraph (*b*) that belongs, or that he believe to belong, to that person.

(2) The Minister may deduct from the proceeds of a sale of property under subsection (1) that belongs, or that he believes to belong, to a particular person—

(*a*) all or any part of any costs and expenses incurred by him under that subsection in relation to that property;

(*b*) all or any part of any costs and expenses incurred by him in relation to the doing of anything required by a direction under section 123 to be done by the person; and

(*c*) all or any part of any fees or amounts due and payable under this Act by the person.

(3) The costs and expenses incurred by the Minister under subsection (1)—

(*a*) if incurred in relation to the removal, disposal or sale of property, are a debt due by the owner of the property to the Republic; or

(*b*) if incurred in relation to the doing of anything required by a direction under section 123 to be done by a person who is or was the holder of a Mineral Right, are a debt due by that person to the Republic,

and to the extent to which they are not recovered under subsection (2) are recoverable in a court of competent jurisdiction, as a debt due to the Republic.

(4) Subject to subsection (3), no action lies in respect of the removal, disposal or sale of property under this section.

Obstruction of holder of Mineral Right, etc.

125. Any person who, without reasonable excuse, obstructs, molests, hinders or prevents the holder of a Mineral Right, a non-exclusive prospecting licence, or a claim, in or from the doing of any act which that holder is authorized to do by this Act, is guilty of an offence and liable on conviction to a fine of one thousand Kwacha or to imprisonment for a term of two years, or both.

Offence committed by body corporate

126. When an offence which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity, he, as well as the body corporate, is guilty of that offence and liable to be proceeded against and punished accordingly.

Miscellaneous offences

127. Any person who—

(*a*) in, or in connexion with, any application under this Act or in response to any invitation or requirement of the Minister or the Commissioner under this Act (otherwise than under section 117), knowingly or recklessly gives information which is false or misleading in a material particular;

(*b*) in any report, return or affidavit submitted in pursuance of any provision of this Act, knowingly or recklessly includes or permits to be included any information which is false or misleading in a material particular;

(*c*) places or deposits, or is accessory to the placing or depositing of, any mineral or substance in any place with the intention of misleading any other person as to the mineral possibilities of that place;

(*d*) mingles or causes to be mingled with any sample of ore any substance which will enhance the value or in any way change the nature of the ore with the intention to cheat, deceive or defraud,

is guilty of an offence and liable on conviction—

(*e*) in the case of an individual, to imprisonment for a term of two years; or

(*f*) in the case of a body corporate, to a fine of thirty thousand Kwacha.

PART XIII

Regulations

Regulations

128.—(1) The Minister may make regulations prescribing all matters that by this Act are required or permitted to be prescribed or are necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) In particular, but without limiting the generality of subsection (1), the Regulations may include provision for or with respect to—

(*a*) reconnaissance operations, prospecting for minerals and the carrying on of related operations, and for those purposes the execution of works, the methods which may or may not be used and the duties of specified persons in relation to reconnaisances or prospecting operations;

(*b*) mining for minerals and the carrying on of related operations, and for those purposes the execution of works, the methods which may or may not be used and the duties of specified persons in relation to mining operations;

(*c*) the functions of officers acting in the administration of this Act;

(*d*) the regulation of matters relating to sanitation and health;

(*e*) the reporting of cases of accident or death occurring in the course of reconnaissance, prospecting or mining operations, or in any related operations, and the holding of inquiries into accidents;

(*f*) the demarcation of reconnaissance, prospecting or mining areas;

(*g*) the determination and amount of royalty payable, and the manner of the payment and collection of royalty;

(*h*) the circumstances in which fees or rents may be charged and the amounts thereof;

(*i*) the making of searches in connexion with claims or Mineral Rights, or interests created therein, the granting of certificates in connexion therewith, and the effect of any such certificate;

(*j*) the issue and conditions of a non-exclusive prospecting licence and the exercise of rights thereunder;

(*k*) the pegging of claims (including the number and class of claims which may be pegged), and the registration of claims;

(*l*) the exercise of rights in, and the duties to be performed (including work obligations) in relation to, land subject to a claim;

(*m*) the transfer of, and the creation of shares in, a claim, and the respective rights of the transferor and transferee;

(*n*) the amalgamation, surrender or cancellation of claims, whether in respect of all or some only of the land in claim areas; or

(*o*) amending the First Schedule to this Act.

(3) Regulations made pursuant to subsection (2) (*g*)—

(*a*) may prohibit the export of any mineral unless or until royalty payable thereon has been paid or secured;

(*b*) may specify the person or persons by whom royalty shall be paid, and may specify whether two or more persons are jointly and severally liable to pay royalty;

(*c*) may provide for the examination of mineral consignments and the issue of export permits in respect thereof; and

(*d*) may provide for the performance by persons identified in the Regulations of functions with respect to royalty and its collection.

(4) The power under this section to make regulations may be exercised—

(*a*) either in relation to all cases to which the power extends, or in relation to all of those cases subject to specified exceptions, or in relation to any specified cases or class of cases; and

(*b*) so as to make, as respects the cases in relation to which it is exercised,—

(i) the same provision for all those cases, a different provision for different cases or classes of cases, or different provisions as respects the same case or class of case for different purposes of this Act; or

(ii) any such provision either unconditionally or subject to any specified condition.

PART XIV

Transitional Provisions and Savings

Transitional provisons and savings

129. The transitional provisions and savings in the Second Schedule shall have effect.

Repeals

130. *Repeals**

FIRST SCHEDULE (s. 66)

Records and Reports

Duties of holder of reconnaissance licence

1.—(1) Subject to subparagraph (4), the holder of a reconnaissance licence—

(*a*) shall furnish such information in connexion with the programme of reconnaissance operations as the Minister may, from time to time, require; and

(*b*) shall, at half-yearly intervals commencing six months after the grant of the licence, submit to the Minister reports on the progress of the programme of reconnaissance operations.

(2) Where a reconnaissance licence is determined or cancelled, or expires, the person who was the holder of the licence immediately before the determination, cancellation or expiration shall, not later than three months thereafter, submit to the Minister a report setting forth his evaluation of the mineral prospects of the former reconnaissance area.

(3) A report submitted pursuant to subparagraph (2) shall be accompanied by the negatives of all aerial photographs taken in the course of carrying on the programme of reconnaissance operations, together with—

(*a*) all geological, geochemical and geophysical maps, profiles, tapes, diagrams and charts made by or for the former holder;

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*The following Acts were repealed—
Mining Act (Cap. 61:01);
Mining Regulation (Oil) Act (Cap. 62:01);
Radio-active Minerals Act (Cap. 62:02),

and all subsidiary legislation made thereunder was revoked except the Mining (Safety) Regulations (see *post* p. 90).

(*b*) copies of all tests and analyses made by or for that holder;

(*c*) copies of all reports made by or for that holder, including interpretations concerning the mineral prospects in the reconnaissance area; and

(*d*) a statement of the costs incurred by that holder in the performance of the programme of reconnaissance operations.

(4) The Minister may, on application made to him by the holder or former holder of a reconnaissance licence, dispense with or modify all or any of the requirements of subparagraph (1), (2) or (3).

Duties of holder of exclusive prospecting licence

2.—(1) Subject to subparagraph (2), the holder of an exclusive prospecting licence—

(*a*) shall keep; at the address referred to in section 66 (2) (*a*), full and accurate records of his prospecting operations which shall show—

(i) boreholes drilled;

(ii) strata penetrated; with detailed logs of the strata;

(iii) minerals discovered;

(iv) the results of any seismic survey or geochemical or geophysical analysis;

(v) the results of any analysis or identification of minerals removed under section 118;

(vi) the geological interpretation of the records maintained under subparagraphs (i) to (v) exclusive;

(vii) the number of persons employed;

(viii) other work done in connexion with the exclusive prospecting licence;

(ix) costs incurred; and

(x) such other matters as may be prescribed; and

(*b*) shall submit, at least once in every three months of the term of the licence, copies of those records to the Minister, together with any reports prepared as a result of those records.

(2) The Minister may, on application made to him by the holder of an exclusive prospecting licence, dispense with or modify all or any of the requirements of subparagraph (1).

Duties of holder of mining licence

3.—(1) Subject to subparagraph (2), the holder of a mining licence shall—

(*a*) keep, at the address referred to in section 66 (2) (*a*), full and accurate technical records of his mining operations in the mining area, in such form as the Minister may approve;

(*b*) keep at that address copies of all maps, geological reports, including interpretations, mineral analyses, aerial photographs, core logs, analyses and tests, and all other data, obtained and compiled by the holder in respect of the mining area;

(*c*) keep at that address accurate and systematic financial records of his operations in the mining area and such other books of accounts and financial records as the Minister may require; and if the holder is engaged in any other activity not connected with his mining operations he shall maintain separate books of account in respect of his mining operations;

(*d*) submit to the Minister such reports, records and other information as the Minister may, from time to time, require concerning the conduct of operations in the mining area; and

(*e*) furnish the Minister with a copy of every annual financial report within three months of the end of each financial year showing the profit or loss for the year and the state of financial affairs of the holder at the end of each financial year.

(2) The Minister may, on application made to him by the holder of a mining licence, dispense with or modify all or any of the requirements of subparagraph (1).

Duty on termination of Mineral Right, etc.

4. Where—

(*a*) a Mineral Right terminates pursuant to section 56 (1) (*b*) or 57; or

(b) the term of an exclusive prospecting licence or mining licence expires,

the person who was the holder of the Mineral Right immediately before the termination or expiration shall deliver to the Minister—

(*c*) all records which the former holder maintained pursuant to this Act with respect to the Mineral Right;

(*d*) all plans or maps of the area of land that was subject to the Mineral Right and which were prepared by or on the instructions of the former holder; and

(*e*) such other documents as the Minister may, by notice given to the former holder, require him to so deliver.

SECOND SCHEDULE (s. 129)

Transitional Provisions and Savings

Definitions

1. In this Schedule—

"the commencement" means the 1st day of June, 1981;

"the repealed Act" means the Mining Act repealed by section 130 (1).

General savings

2. Except insofar as the context or subject-matter otherwise indicates or requires, nothing in this Schedule affects—

(*a*) anything duly done or commenced to be done under the repealed Act;

(*b*) any liability incurred under the repealed Act;

(*c*) any penalty, forfeiture or punishment incurred in respect of any offence committed against any provision of the repealed Act; or

(*d*) any investigation, inquiry, legal proceedings or remedy in respect of any such liability, penalty, forfeiture or punishment,

and any such investigation may be continued or enforced, and any such penalty, forfeiture or punishment may be imposed and enforced, as if this Act had not been enacted.

Prospecting rights

3. A prospecting right issued under section 13 of the repealed Act that is in force immediately before the commencement is deemed to be a non-exclusive prospecting licence issued on the same conditions under this Act on the commencement—

(*a*) for the unexpired term (as at the commencement) of the prospecting right issued under section 13; and

(*b*) authorizing the holder of the right so issued to prospect in all areas covered by the right for any mineral for which he is authorized by virtue of the right so issued to prospect,

and the provisions of this Act apply accordingly.

Exclusive prospecting licence

4.—(1) An exclusive prospecting licence granted under section 18 of the repealed Act that is in force immediately before the commencement is deemed to be an exclusive prospecting licence granted on the same conditions under this Act on the commencement—

(*a*) for the unexpired term (as at the commencement) of the licence granted under section 18; and

(*b*) authorizing the holder of the licence so granted to prospect in the area of land identified in the licence for any mineral identified in the licence,

and the provisions of this Act apply accordingly.

(2) The Commissioner shall cause the name of the person who, immediately before the commencement, was the holder of an exclusive prospecting licence granted under section 18 of the repealed Act to be recorded pursuant to section 58 as the registered holder of the exclusive prospecting licence.

Claims

5.—(1) A claim that was registered under the repealed Act, and that subsists immediately before the commencement, is deemed to be a claim registered on the same conditions under this Act, and the provisions of this Act apply accordingly.

(2) The period of validity of a claim to which subparagraph (1) applies is the same as it would have been if this Act had not be enacted, but without prejudice to any right of renewal under and in accordance with this Act.

Mining leases

6.—(1) A mining lease granted under section 43 of the repealed Act that is in force immediately before the commencement is deemed to be a mining licence granted on the same conditions under this Act on the commencement—

(*a*) for the unexpired term (as at the commencement) of the lease granted under section 43; and

(*b*) over the area of land subject to the lease so granted in respect of the minerals to which that lease relates,

and the provisions of this Act apply accordingly.

(2) The Commissioner shall cause the name of the person who, immediately before the commencement, was the holder of a mining lease granted under section 43 of the repealed Act to be recorded pursuant to section 58 as the registered holder of the mining licence.

Mineral permits

7. A permit issued under section 98 of the repealed Act that is in force immediately before the commencement is deemed to be a mineral permit granted on the same conditions under this Act on the commencement, and the provisions of this Act apply accordingly.

General provision

8. For the avoidance of doubt it is hereby declared that any prospecting right, exclusive prospecting licence, mining lease or permit to which this schedule applies, is subject to the provisions of this Act which apply to the corresponding instrument under this Act, including, in particular, the provisions of this Act relating to cancellation.

Rules

9. The Minister may, by rules under this paragraph, make whatever provisions seem to him to be necessary or desirable for a smooth transition from arrangements under the repealed Act to arrangements under this Act.

SUBSIDIARY LEGISLATION

MINES AND MINERALS (CLAIMS) REGULATIONS

G.N. 35/1981
103/1988
24/2011

under s. 128

Citation

1. These Regulations may be cited as the Mines and Minerals (Claims) Regulations.

Limitation on number of claims

2. A person may peg not more than three claims in respect of each non-exclusive prospecting licence held by him.

Shape, etc., of claim area

3.—(1) A claim area shall, as nearly as circumstances permit, be in the shape of a rectangle.

(2) A claim area shall not exceed, in dimension, two hectares.

Mode of taking possession of a claim

4.—(1) Any person pegging a claim shall, before lodging an application for registration thereof, erect—

(*a*) at one corner of the area claimed a beacon, as defined by subregulation (3), which shall be known as the "location beacon" and shall bear the following information, namely—

(i) the length and width of the area claimed in metres; and

(ii) the magnetic bearings of the boundary lines forming the corner at which the location beacon is erected; and

(*b*) at each of the remaining corners of the area claimed a substantial post or cairn of stones projecting at least one metre above the ground on which shall be clearly and indelibly marked the initials of the person pegging the claim and the date of pegging, and shall cut at each corner of the area claimed two trenches each not less than 3 metres in length and 30 centimetres in depth along the boundary lines forming each corner of the area claimed.

(2) The location beacon and corner posts or cairns and trenches shall be maintained in good order and condition by the holder of the claim during the time that the claim is held.

(3) A location becaon shall consist of a post not less than 2 metres long, and not less than 10 centimetres in diameter or 7 centimetres square, supported in an upright position by a mound of stones not less than one metre high and not less than one metre square at the base. When stones are not available earth may be used. A board or metal plate not less than 30 centimetres square shall be securely attached to the post and placed so as to face inward, and shall bear in painted characters the following information—

(*a*) the name of the applicant, and the company, syndicate or person represented, if any;

(*b*) the date of the erection of the beacon;

(*c*) the number of the non-exclusive prospecting licence of the applicant; and

(*d*) the magnetic bearing of the sides converging at, or passing through, the beacon.

Mode of application G.N. 103/1988 24/2011

5.—(1) Any person desiring to register a claim shall sign an application in Form I in the First Schedule in triplicate.

(2) The application shall be forwarded or produced to the Commissioner together with—

(*a*) a fee of K3,000;

(*b*) the rent payable; and

(*c*) a plan in triplicate giving the dimensions in metres of the area of the claim to be registered and as full particulars and measurements as possible to enable the area to be located on the general maps of the district,

within thirty days after the claim is pegged.

(3) The Commissioner shall record on the application the date and time of its receipt by him.

Registration

6. Subject to the provisions of the Act, if the approval of the Minister has been obtained, the Commissioner shall, if satisfied that the application is in order, issue a claim in Form II in the First Schedule and shall register the claim in the manner prescribed in these Regulations.

Number of claims to be posted

7. On receiving notification of the registration of the claim and of the official number thereof, the holder of the claim shall clearly paint and keep painted during the period of the claim that number on the location beacon of the claim.

Priority of application

8. If application is received for the same area or for overlapping areas from two or more persons, priority of claim shall be determined by reference to the time the application was received in proper form by the Commissioner, the area having been duly and correctly beaconed.

Application for renewal

9.—(1) Application for the renewal of a claim shall be made by delivering the claim issued in Form II in the First Schedule together with the prescribed rent and a statement of the kind mentioned in regulation 23 (1) to the Commissioner not more than two months, nor less than one month, before the claim is due to expire.

(2) Where an application for the renewal of a claim has been duly made but the holder of the claim has not been notified as to whether his application is allowed before the date on which the claim would, but for this regulation, expire, the holder may continue his prospecting and mining operations unless and until notified that his application has been disallowed.

(3) The renewal of a claim runs from the date on which the claim would have expired if not renewed.

(4) The renewal of a claim shall not operate as a waiver of any breach of, or non-compliance with, any of the conditions or requirements of the Act or the Regulations.

Suspension of work

10.—(1) The holder of a claim or a person duly authorized by him may apply to the Commissioner for the suspension or partial suspension of operations, and the Commissioner may allow or refuse to allow the application.

(2) An application shall be in Form III in the First Schedule, in duplicate, and a certificate of suspension shall be in Form V in the First Schedule.

(3) The Commissioner may grant a renewal of a certificate of suspension for such period as is endorsed on the certificate.

(4) The holder of a claim shall keep posted conspicuously within the claim area the certificate of suspension during the period of suspension.

Ground in excess

11. When any person has pegged more ground than he is entitled to, any other person may peg such ground on any side of the claim area, provided that no shaft is interfered with.

Taking forcible possession of claim

12. Any person taking forcible possession of the whole or any part of a claim area or commencing to work the same when his right to take possession thereof or to work the same is in dispute—

(*a*) is liable to forfeit all right and title to possession of the claim; and

(*b*) is guilty of an offence and liable to a fine not exceeding K100.

Obligations on abandonment

13.—(1) Any person who abandons his claim shall forthwith notify the Commissioner of the abandonment.

(2) Any person who abandons his claim or whose claim expires or has been forfeited—

(*a*) shall forthwith fill up, fence or secure to the satisfaction of the Commissioner or an authorized officer all shafts, pits, holes and excavations in such manner as to prevent persons or stock inadvertently entering them; and

(*b*) shall remove all location beacons and all boundary posts thereon.

(3) Any person who fails or neglects to comply with subregulation (2) is guilty of an offence and liable to a fine not exceeding K250 or to imprisonment for a term not exceeding six months, and in addition shall be liable to pay such sum as the Commissioner may certify to be the estimated cost of ensuring compliance therewith.

Transfer of whole claim

14.—(1) The holder of a claim may, in Form VI in the First Schedule, transfer the same, and the transferee shall, within thirty days of the date of the transfer, apply to the Commissioner for registration of the transfer, submitting Form VI in triplicate and, on payment of the prescribed fees, the Commissioner shall register the transfer in the Register of Claims kept pursuant to regulation 19.

(2) When a claim is transferred, the transferee shall, within thirty days of registration of the transfer, cause his name to be clearly painted on the location beacon of the claim in place of that of the former holder and shall maintain the same during the time that he holds the claim.

Transfer of share in claim, etc.

15.—(1) The holder of a claim may divide his interest in the claim into such shares as he shall think fit, and may, subject to this regulation, allot shares or create or transfer any interest therein.

(2) The holder of a claim shall apply for the registration of any such transfer, allocation or interest with the Commissioner by submitting Form VII in the First Schedule to the Commissioner within thirty days of the transfer, allocation or division concerned.

(3) Where any interest in a claim rests in or devolves upon any person by way of testamentary disposition or otherwise (whether absolutely or as security only), that person shall within thirty days thereafter register the interest with the Commissioner.

(4) When a share in a claim is transferred, the transferee shall, within thirty days of registration of the transfer, cause his name to be clearly painted on the location beacon of the claim in addition to those of the other holders of shares and shall maintain the same during the time that he holds any share in that claim.

Miscellaneous provisions with respect to transfer of claims

16.—(1) The Commissioner may, for good and sufficient reason, extend the period of thirty days within which an application is required under regulation 14 or 15 to be made, on payment of the appropriate additional fee.

(2) The Commissioner may refuse to register the transfer of a claim, or of any rights or interest thereunder, to any person to whom the issue or renewal of a prospecting right could be refused under the Act or these Regulations.

(3) The transferor shall be liable for compliance with the requirements of the Act and these Regulations, and for the payment of fees, until the transfer is effected, and then such liability shall pass to the transferee.

Amalgamation of claims

17.—(1) The Commissioner may permit the amalgamation of adjoining claims of the same class so that the total working obligation on each of the claims so amalgamated may be performed on any one or more claims, and so that the prescribed return may be an aggregate in respect of all such amalgamated claims.

(2) An application to amalgamate claims shall be made in Form III in the First Schedule, in duplicate, to the Commissioner who may on payment of the prescribed fees give to the applicants a certificate of amalgamation in Form IV in that Schedule.

Survey

18. The Commissioner may, if satisfied that a survey is necessary for the prevention of differences as to the boundaries of the land or for securing a proper definition of the area included or to be included in any claim, give notice to the applicant or the holder requiring the land to be surveyed and a plan approved by the Commissioner for Lands to be submitted.

Registration

19.—(1) The Commissioner shall keep a Register of Claims and of documents assigning or transferring the same or any right, title or interest thereunder.

(2) The Commissioner shall file in the Register of Claims a copy of every claim.

(3) Any person desiring to register any document assigning, transferring or surrendering any claim or any right or interest under the same, shall send the original document with two copies thereof and two copies of any plan attached to the document, together with the prescribed fee, to the office of the Commissioner with a request that the same shall be registered.

(4) The Commissioner having first satisfied himself that the copy of the original document and of the plan (if any) is correct and that the requisite approval of the assignment, transfer or surrender has been obtained, and that the document if liable to stamp duty has been duly stamped, shall endorse on the document over his signature the word "Registered" together with the date on which the document was presented for registration and shall return the document so endorsed to the person who shall have presented the same for registration and shall file a copy in the Register of Claims.

(5) The Commissioner shall, upon request and on payment of the prescribed fees, allow searches in a Register of Claims at all reasonable times, and furnish copies of or extracts from any entry in such Register.

Notice of grant, etc., of claim

20. Notice shall be given by the Commissioner in the *Gazette* of the grant, cancellation or surrender of a claim.

Non-resident holder of claim to appoint attorney

21. Every holder of a claim when not resident in Malaŵi shall appoint and have at all times when not so resident an attorney who is resident in Malaŵi and who has full powers to represent the holder in all matters relating to the claim; the holder shall, as soon as possible after making such an appointment, send to the Commissioner for his retention a copy of the power of attorney and of any document by which the power of attorney is altered.

Accounts to be kept by the holder of a claim

22. There shall be kept, at the principal office within Malaŵi of the holder of a claim, accurate and regular accounts containing full particulars of all minerals obtained under the claim, and the manner in which they have been disposed of, and a record of the number of persons employed in mining operations in the claim area.

Returns to be furnished

23.—(1) On or before the 30th September in each year every holder of a claim shall send to the Commissioner a written statement in duplicate setting forth—

(*a*) the name of the holder;

(*b*) the date and number of the claim;

(*c*) any change which may have been made in the appointment of the attorney, and, in the case of a company, in the officers of the company, during the preceding 12 months;

(*d*) the nature of the operations being conducted in the claim area;

(*e*) the average number of persons employed in the area in mining or prospecting during the preceding 12 months;

(*f*) the amount paid in wages to persons actually engaged in mining or prospecting operations in the claim area or in supervising such operations during the preceding 12 months, and the amount of wages paid;

(*g*) the nature and value of any machinery or plant brought on to or removed from the claim area since the previous return;

(*h*) the kind and quantity of minerals obtained during the preceding 12 months and the manner in which they have been disposed of; and

(*i*) particulars of the occurrence of the death of, or any accident to, any of the persons mentioned in paragraph (*f*) during the preceding 12 months,

and shall furnish any further particulars relating to the foregoing that the Commissioner may require.

(2) The Commissioner may demand that, as soon as circumstances permit after the date of renewal of a claim, a written statement in duplicate showing the working costs of the mining or prospecting operations in the claim area during the preceding year shall be sent to him by the holder of a claim.

(3) The statements required by this regulation shall be signed and certified to be correct—

(*a*) in the case of an individual holder resident in Malaŵi, by the holder; or

(*b*) in the case of an individual holder not so resident, by the duly appointed attorney of the holder.

Titles to be produced when demanded

24. The holder of a claim shall produce his title whenever demanded by any officer of the Department of Lands or by any District Commissioner.

Fees and rent

25.—(1) The fees set out in the Second Schedule shall be paid in respect of the matters and things specified in that Schedule.

G.N. 103/1988
24/2011

(2) The holder of a claim shall pay rent of K2,000 for every year or part of a year ending on the 31st March.

(3) The rent payable under subregulation (2) is payable in advance to the Commissioner without demand and is in addition to any royalty payable.

FIRST SCHEDULE

Forms

Form I

MINES AND MINERALS ACT

Application for Registration of a Claim
(*regulation* 5)

To the Commissioner for Mines and Minerals—

Please register the Claim or Transfer mentioned in the following particulars:

Name, nationality and address of applicant	No. and date of non-exclusive prospecting licence	Kind of Claim to be registered	Date when Claim was pegged	Locality of Claim

I hereby declare the above to be true in every particular.

Dated the ..... day of ....., 19 .....

.....
Signature of Applicant

Received the above application this .....
day of ....., 19 ..... at .....a.m./p.m.

.....

Commissioner

for Mines and Minerals

FORM II

MINES AND MINERALS ACT

CLAIM

(*regulations* 6 *and* 9)

No. .....

THE EXCLUSIVE RIGHT, subject to the provisions of the Mines and Minerals Act, and of the Regulations thereunder now in force or which may come into force during the continuance of this claim or any renewal thereof, from the ..... day of ...., 19 ..... to the 31st day of March, 19 ....., IS HEREBY GRANTED to ....

(*here insert name, address and description of claim-holder*)

of ..... to prospect and mine for ..... within the area described on the application for registration of this claim and on the plan attached thereto.

Rent: K10 No. ..... of .....

This ..... day of ....., 19 .....

.....

Commissioner for Mines and Minerals

FORM III

MINES AND MINERALS ACT

APPLICATION FOR (1) { AMALGAMATION / SUSPENSION OF WORK

(*regulations* 10 *and* 17)

To the Commissioner for Mines and Minerals—

We, the undersigned, being the owners of (2) ....claims adjoining Nos. (3) ..... and situate at ..... in the .... District hereby

apply for permission to (1) { amalgamate the said / suspend work on } .....

.....

Dated the ..... day of ....., 19 .....

Registered Nos. (3)	Titles (3)	Reasons for which (1) is desired { Amalgamation / Suspension of work

.....

Signature of Applicants

(1) Strike out whichever is inapplicable.
(2) State how many adjoining claims.
(3) State serial title numbers in register.

FORM IV

MINES AND MINERALS ACT

CERTIFICATE OF AMALGAMATION OF CLAIMS

(*regulation* 17)

No. .....

I CERTIFY THAT I have this day amalgamated the .... Claims Nos. ..... respectively, held by ..... and situate at .....

Dated the ..... day of ....., 19 .....

.....
Commissioner
for Mines and Minerals

FORM V

MINES AND MINERALS ACT

CERTIFICATE OF SUSPENSION

(*regulation* 10)

No. .....

I CERTIFY THAT suspension of work on the Claim No. ..... at ..... held by ..... is allowed until the ..... day of ....., 19.....

CONDITIONS

(*here set out the conditions, if any*)

Dated the ..... day of ....., 19.....

.....
Commissioner
for Mines and Minerals

FORM VI

MINES AND MINERALS ACT

TRANSFER OF CLAIM

(*regulation* 14)

I, ..., of ..... in consideration of ..... do hereby transfer to him my claim No. ..... subject to all and singular the terms and conditions under which the said claim has been held by me and I, ... of....., do hereby accept the said ..... subject to the terms and conditions aforesaid.

Dated the ..... day of ....., 19 .....

....., *Transferor*

....., *Transferee*

Witness .....

Address .....

.....

FORM VII

MINES AND MINERALS ACT

TRANSFER OF SHARE IN CLAIM

(*regulation* 15)

I, ... of ..... in consideration of ..... paid to me by .... of ..... do hereby transfer to him a ..... share in Claim No. ..... situate at ..... (*locality of claim*) subject to all and singular the terms and conditions under which the said claim or share therein has been held by me, and I,.....of..... do hereby accept the said ..... share subject to the terms and conditions aforesaid.

Dated at ..... this ..... day of ....., 19 .....

....., *Transferor*

....., *Transferee*

Witness .....

Address .....

.....

SECOND SCHEDULE

FEES

(*regulation* 25)

	K
For the registration of any document in the office of the Commissioner for Mines and Minerals.	2
Certificate of amalgamation of claims	5
Certificate of suspension of working conditions of claim	5
For search in register, for every half-hour or part thereof	5
For copy of or extract from any registered document, for every folio (A4 size)	2

G.N. 36/1981

MINES AND MINERALS (DISPUTES) REGULATIONS

under s. 128

Citation

1. These Regulations may be cited as the Mines and Minerals (Disputes) Regulations.

Procedure

2. The mode of proceeding in a dispute under Part XI of the Act shall be as follows—

(*a*) the person complaining shall lodge a memorandum in duplicate at the office of the Commissioner;

(*b*) the memorandum shall be in or to the effect of a form approved by the Commissioner and shall specify shortly the subject-matter of the complaint and the relief claimed;

(*c*) upon receipt of the memorandum the Commissioner shall give notice, in such form as the Commissioner approves, by post or otherwise to the person complained against, of the nature of the complaint, and of the time and place at which the same will be heard and determined; and

(*d*) at the time and place appointed the parties shall attend and state their cases before the Commissioner and may call evidence on oath in support thereof, and the Commissioner having heard the statement and any such evidence shall give his decision.

Power of Commissioner

3.—(1) The Commissioner may—

(*a*) adjourn any hearing to any other time or place;

(*b*) proceed in the absence of any party; or

(*c*) seize or cause to be seized any mineral and detain it pending his decision.

(2) The law concerning procedure for the time being regulating proceedings before and the powers of subordinate courts of the first grade in the exercise of their civil jurisdiction shall, so far as practicable and subject to any necessary modifications, apply to proceedings before the Commissioner.

Commissioner to keep record and take notes

4.—(1) The Commissioner shall keep a record of all cases heard and complaints decided by him and shall take or cause to be taken notes in writing of all evidence given before him.

(2) Any person interested in any dispute is entitled to obtain a copy of any decision given or order made in respect of the dispute on payment of the prescribed fee.

Fees

5. The fees set out in the Schedule shall be paid in respect of the matters and things specified in the Schedule.

SCHEDULE reg. 5

Fees

	K
On making a complaint by lodging a memorandum	20
For every notice to be given pursuant to regulation 2 (*c*)	5
For every order of the Commissioner	5
For every witness summons	5
Hearing fee	10
For a copy of an order of the Commissioner	5
For a copy of a decision of the Commissioner, for every folio (A4 size)	2

[Subsidiary]

Mines and Minerals (*Mineral Rights*) *Regulations*

G.N. 32/1981
101/1988
4/2001
23/2011

MINES AND MINERALS (MINERAL RIGHTS) REGULATIONS

under s. 128

Citation

1. These Regulations may be cited as the Mines and Minerals (Mineral Rights) Regulations.

Shape of area of land over which a Mineral Right is granted or renewed

2.—(1) Subject to subregulation (2), the area of land over which a Mineral Right is granted or renewed shall be rectilinear in outline, and in the case of a reconnaissance or an exclusive prospecting licence the corners shall be formed either at trigonometrical stations, international boundary pillars or bench marks, or if necessary at other fixed points which are marked on the 1:50 000 maps of the National Topographical Series.

(2) Where the Minister is satisfied in any particular case (whether the grant or renewal of a Mineral Right) that it is not desirable or possible to comply with any one or more of the requirements of subregulation (1) the area of land concerned shall be as determined by the Minister in that particular case.

Dimensions of Mineral Right

3.—(1) Subject to subregulation (4), the area of land over which a reconnaissance licence is granted or renewed shall not exceed 100,000 square kilometres.

(2) Subject to subregulation (4), the area of land over which an exclusive prospecting licence is granted shall not exceed 2,500 square kilometres.

(3) Subject to subregulation (4), the area of land over which a mining licence is granted—

(*a*) shall not, where the applicant for the licence is not the holder of an exclusive prospecting licence, exceed 250 square kilometres; and

(*b*) shall not, in any other case, exceed the area of land subject to the exclusive prospecting licence held by the applicant.

(4) Where the Minister is satisfied in any particular case that it is desirable that the area of land over which a reconnaissance licence is granted or renewed, or over which an exclusive prospecting licence or a mining licence is granted, should exceed the area referred to in subregulation (1), (2) or (3) (*a*), as the case may be, the area of land concerned shall be of such dimension as is determined by the Minister in that particular case.

Demarcation of mining area

4.—(1) The manner in which the holder of a mining licence shall, for the purpose of complying with section 44 (1) (*e*) of the Act, demarcate and keep demarcated the area of land subject to the licence shall be as provided in this regulation.

(2) A mining area shall be demarcated by the erection of beacons so placed as to afford evidence of the boundaries of the mining area, or in such other manner as may be agreed between the Commissioner and the holder of the mining licence concerned.

Service of documents on Minister, etc.

5. A document or notice required or permitted under or for the purposes of the Act to be served on or given to the Minister or the Commissioner may be served or given—

(*a*) by sending it by post in an envelope addressed to the Secretary for Forestry and Natural Resources, Private Bag 350, Capital City, Lilongwe 3; or

(*b*) by leaving it with the Secretary for Forestry and Natural Resources or his sufficient deputy, or the Commissioner, at the Ministry of Forestry and Natural Resources, Capital City, Lilongwe 3.

Application for approval of transfer, etc.

6. A person seeking the approval of the Minister under section 60 (2) of the Act shall deliver, or cause to be delivered, to the Commissioner—

(*a*) an application for approval giving particulars of the proposed transfer and including a certified copy of the instrument by which the transfer is to be effected; or

(*b*) as the case may be, an application for approval giving particulars of the legal or equitable interest concerned and including a certified copy of such instrument.

Fees

7. The fees set out in the Schedule shall be paid in respect of the matters and things specified in the Schedule.

Annual charges
G.N. 101/1988
4/2001
23/2011

8.—(1) Subject to subregulation (2), annual charges payable pursuant to section 90 of the Act are—

(a) in the case of a reconnaissance licence, K1,000 per square kilometre;

(*b*) in the case of an exclusive prospecting licence, K10,000 per square kilometre; and

(*c*) in the case of a mining licence, K50,000 per square kilometre.

(2) Where the annual charges payable in respect of a Mineral Right are specified, or the manner of their calculation is specified, in a relevant agreement of a kind referred to in section 10 of the Act the annual charges payable in respect of the Mineral Right shall be, or shall be calculated, as so specified.

SCHEDULE reg. 7

G.N. 101/1988
4/2001
23/2011

Fees

Application for—	*K*	*t*
(*a*) a reconnaissance licence	100,000	00
(*b*) an exclusive prospecting licence	50,000	00
(*c*) a mining licence	100,000	00
(*d*) renewal of a Mineral Right	100,000	00
(*e*) a certificate of surrender	1,000	00
(*f*) approval of the Minister (under section 60 of the Act)	1,000	00

G.N. 40/1981
95/1985
10/1988
5/2001
21/2011
44/2015

MINES AND MINERALS (MISCELLANEOUS FEES) REGULATIONS

under s. 128

Citation

1. These Regulations may be cited as the Mines and Minerals (Miscellaneous Fees) Regulations.

Fees
G.N. 44/2015
Schedule

2. The fees specified in Column 2 of the Schedule hereto are payable in respect of the matters referred to in Column 1 of the Schedule.

G.N. 95/1985
10/1988
5/2001
21/2011
44/2015

SCHEDULE

PRESCRIBED FEES

Column 1 *Matter*	*Column 2* *Fee* *K*	*t*
(*a*) For the grant of a permit to export minerals under section 119 of the Act	2,500	00
(*b*) For the issue of a mineral permit under section 81 of the Act—		
(i) for excavation of clay or earth and burning of bricks, per 1,000 bricks	200	00
(ii) for excavation of raw limestone, per tonne . .	300	00
(iii) in respect of lime excavated and burnt, per tonne	300	00
(iv) for excavation of sand or other like substance, per tonne	100	00
(v) for excavation of building stone, per tonne . .	100	00
(*c*) For a reserved mineral licence—		
(i) upon issue	10,000	00

Column 1 *Matter*	*Column 2* *Fee* *K*	*t*
(ii) upon each renewal	10,000	00
(iii) upon issue of an export permit under the Mines and Minerals (Reserved Minerals Licence) Regulations	2,500	00
(*d*) Sample preparation—		
(i) crushing of rock samples per 250g or part thereof	3,000	00
(ii) pulverizing of rock samples per 250g or part thereof	3,000	00
(iii) drying and sieving, sample size of less than 5kg	2,000	00
(iv) drying and sieving, sample size of 5 to 10kg	3,000	00
(v) drying and sieving, sample size of 11 to 30kg	9,000	00
(vi) drying and sieving, sample size of 31 to 80kg	20,000	00
(vii) drying and sieving, sample size of 81 to 150kg	35,000	00
(viii) drying and sieving, sample size of more than 150kg	45,000	00
(*e*) Water Sample—		
(i) Alkalinity titrimetric method	3,000	00
(ii) Total hardness titrimetric method . .	3,000	00
(iii) Calcium (Ca) and Magnesium (Mg) titrimetric method	3,000	00
(iv) Dissolved solids evaporation method . .	4,000	00
(v) Suspended solids evaporation method . .	4,000	00
(vi) Total solids evaporation method	4,000	00
(vii) Fluorine (F) calorimetric method. . . .	3,000	00
(viii) Nitrate (NO_3) calorimetric method . .	3,000	00
(ix) Phosphorous pentoxide (P_2O_5) calorimetric method	4,000	00
(x) Sodium (Na) and Potassium (K) frame photometry method	4,000	00
(xi) Silica (SiO_2) frame photometry method . .	3,000	00
(xii) Conductivity meter per cell method . .	3,000	00
(xiii) Potential of Hydrogen (pH) electrode method	3,000	00
(xiv) Sulphate (SO_4) turbid metric method . .	3,000	00

	Column 1 *Matter*	*Column 2* *Fee* *K*	*t*
(xv)	Trace elements: Nickel (Ni), Manganese (Mn), Iron (Fe), Cobalt (Co), Molybdenum (Mb), Silver (Ag), Copper (Cu) and any other elements using Atomic Absorption Spectrometer (A.A.S) per element per sample	5,000	00
(*f*)	Solid rock and specific minerals—		
(i)	Available lime titrimetric method . .	4,000	00
(ii)	Magnesium (Mg) and Calcium (Ca) titrimetric method	4,000	00
(iii)	Chlorine (Cl) titrimetric method	4,000	00
(iv)	Magnesium (Mg) and Calcium (Ca) using Atomic Absorption Spectrometer (A.A.S) . .	5,000	00
(v)	Iron (Fe) using Atomic Absorption Spectrometer (A.A.S)	5,000	00
(vi)	Trace elements using Atomic Absorption Spectrometer (A.A.S)	5,000	00
(vii)	Sodium (Na) and Potassium (K) frame photometry method	3,000	00
(viii)	Silicon (Si) calorimetric method	3,000	00
(ix)	Aluminum (Al) calorimetric method . .	3,000	00
(x)	Iron (Fe) calorimetric method	3,000	00
(xi)	Titanium (Ti) calorimetric method . .	3,000	00
(xii)	Phosphorous (P) calorimetric method . .	3,000	00
(xiii)	Sulphate (SO_4) calorimetric method . .	3,000	00
(xiv)	Barium (Ba) and Sulphate (SO_4) gravimetric method	3,000	00
(xv)	Hydronium ion (H_3O^+) gravimetric method	3,000	00
(xvi)	Hydroxyl ion (OH^-) gravimetric method . .	3,000	00
(xvii)	Loss of ignition gravimetric method . .	3,000	00
(xviii)	Carbon dioxide (CO_2) gravimetric method . .	3,000	00
(xix)	Fluorine (F) Acid or filtration method . .	4,000	00
(xx)	Nitrogen (N) electrode method	4,000	00
(xxi)	Nitrogen (N) titrimetric method per element per sample	4,000	00
(xxii)	Reactivity test titrimetric method per element per sample	4,000	00

Column 1 *Matter*	*Column 2* *Fee* *K*	*t*
(xxiii) Reduction in alkalinity titrimetric method per element, per sample	4,000	00
(xxiv) Sound test rhelogical method per element per sample	4,000	00
(xxv) Organic Matter Content Redox method per sample	5,000	00
(xxvi) Atomic Absorption Spectrometry (A.A.S) . .	3,000	00
(*g*) Coal analysis—		
(i) Coal, proximate analysis (moisture content)	1,000	00
(ii) Coal, proximate analysis (ash content) . .	1,000	00
(iii) Coal, proximate analysis (volatile matter) . .	1,000	00
(iv) Coal, proximate analysis (fixed carbon) . .	1,000	00
(v) Coal ultimate analysis (Carbon)	1,000	00
(vi) Coal ultimate analysis (Hydrogen) . .	1,000	00
(vii) Coal ultimate analysis (Sulphur)	2,000	00
(viii) Coal ultimate analysis (Chlorine) . .	1,000	00
(ix) Coal ultimate analysis (calorific value) . .	3,000	00
(x) Coal ultimate analysis (specific gravity) . .	500	00
(xi) Coal ultimate analysis (swelling index) . .	2,000	00
(xii) Coal ultimate analysis (acid decomposition of coal and analysis/Elt)	2,000	00
(xiii) Coal ultimate analysis (Phosphorous) . .	3,000	00
(xiv) Coal ultimate analysis (heavy mineral separation)	1,000	00
(*h*) Lapidary or Rock section services—		
(i) Sorting and grading of gemstones, per kg . .	10% of the declared or sales returns	
(ii) Gemstone identification (using spectrometer). .	2,000	00
(iii) Physical tests (gemstone)	3,000	00
(iv) Cutting and polishing (granite or agate), per face	3,000	00
(v) Cutting and polishing (any other rocks), per face	2,000	00
(vi) Petrographic analysis, per hour	4,000	00
(vii) Thin sectioning, per section	5,000	00

	Column 1 *Matter*	*Column 2* *Fee* *K*	*t*
(*i*)	Industrial mineral services—		
(i)	Sieve test (particle size)	5,000	00
(ii)	Liquid limit determination	5,000	00
(iii)	Plastic limit determination	5,000	00
(iv)	Dry shrinkage determination	5,000	00
(v)	Firing shrinkage	6,000	00
(*j*)	Drilling services—		
(i)	Drilling rig drilling, per meter	60,000	00
(ii)	Minuteman drilling, per meter	55,000	00
(iii)	Water pump hiring, per day	40,000	00
(*k*)	Publications		
(i)	Bulletins of geological survey	15,000	00
(ii)	Memoirs of the geological survey . .	8,000	00
(iii)	Records of the geological survey. . . .	5,000	00
(iv)	Annual Reports of geological survey . .	10,000	00
(v)	Bulletins of geological survey, in soft copy . .	15,000	00
(vi)	Geological map (Scale 1:250 000 in colour) in soft copy	15,000	00
(vii)	Geological map (Scale 1:100 000 in colour) in soft copy	15,000	00
(viii)	Geological map (Scale 1:1 000 000 in colour) and in soft copy processing fee	15,000	00
(ix)	Geological map (Scale 1:250 000 in colour) soft copy processing fee.	15,000	00
(x)	Geological map (Scale 1:100 000 in colour) soft copy processing fee.	15,000	00
(xi)	Geological map (scale 1:1 000 000 in colour)	10,000	00
(xii)	Geological map (scale 1:250 000 in colour). .	10,000	00
(xiii)	Geological map (scale 1:100 000 in colour). .	10,000	00
(xiv)	Mineral resources map (scale 1:1 000 000 in colour)	10,000	00
(xv)	Airborne geophysical map (scale 1:50 000 in black and white)	10,000	00
(xvi)	Airborne geophysical map (scale 1:100 000 in black and white)	10,000	00

Column 1 *Matter*	*Column 2* *Fee* *K*	*t*
(xvii) Airborne geophysical map (scale 1:250 000 in black and white)	10,000	00
(xviii) Airborne geophysical map (scale 1:1000 000 in black and white)	10,000	00
(xix) High resolution airborne geophysical paper map (scale 1:1,000,000 in colour) . .	33,250	00
(xx) High resolution gravity paper map (scale 1:250,000 in colour)	27,750	00
(xxi) High resolution airborne geophysical paper map (Scale 1:100,000 in colour)	20,250	00
(xxii) High resolution airborne geophysical map (scale 1:1,000,000 in PDF)	75,000	00
(xxiii) High resolution airborne geophysical map (scale 1:100,000 in PDF)	75,000	00
(xxiv) Magnetic (line data per line km)	10	00
(xxv) Radiometric (line data per line km) . .	10	00
(xxvi) Gravity (line data per line km)	25	00
(xxvii) Radiometric (grids only per km^2) . .	75	00
(xxviii) Magnetic (grids only per km^2)	75	00
(xxix) Gravity (grids only per km2)	1,50	00
(xxx) 1QDS entire digital data set with xyz and grid files	775,000	00
(xxxi) DEM per km^2	75	00
(xxxii) Seismicity map (scale 1:1 000 000 in colour)	10,000	00
(xxxiii) Consultancy reports	20,000	00
(xxxiv) Technical reports (unpublished), per page . .	500	00

MINES AND MINERALS (NON-EXCLUSIVE PROSPECTING LICENCE) REGULATIONS

under s. 128

G.N. 33/1981
102/1988
6/2001
22/2011

Citation

1. These Regulations may be cited as the Mines and Minerals (Non-Exclusive Prospecting Licence) Regulations.

Application for licence

2. Any person wishing to obtain a non-exclusive prospecting licence shall make application therefor in duplicate to the Commissioner; the application shall be in or to the effect of a form approved by the Commissioner.

Application for renewal of licence

3.—(1) Any person wishing to renew a non-exclusive prospecting licence shall make application in writing in that behalf to the Commissioner not more than two months nor less than one month before the expiry of the licence which is to be renewed.

(2) An applicant for the renewal of a non-exclusive prospecting licence shall submit to the Commissioner—

(*a*) his licence; and

(*b*) in such detail as the Commissioner may require, a report on the prospecting operations carried out by the applicant together with a description of the prospecting operations which the applicant intends to carry out during the renewal period.

Filing of application

4. Every application for the grant or renewal of a non-exclusive prospecting licence shall be filed in the office of the Commissioner for a period of three years from the date of the application and shall be open for inspection by the public on payment of a fee of K250.

Information

5. An applicant for the grant or renewal of a non-exclusive prospecting licence may be required to give information as to whether he has been convicted of a criminal offence and, if he has been so convicted, to give particulars of every such conviction.

Restriction

6. A non-exclusive prospecting licence shall not be issued to an individual, whether alone or in partnership, who is under 18 years of age.

Duties of holder of licence

7.—(1) The holder of a non-exclusive prospecting licence—

(*a*) shall, himself or by his agent, be present and in control at the place at which prospecting work is being carried out under the authority of the licence; and

(*b*) shall produce to the Commissioner, an authorized officer or a police officer, when required to do so, his licence.

(2) Any person who fails or neglects to comply with subregulation (1) is guilty of an offence and liable on conviction to a fine of K5,000.

Licence not transferable

8. A non-exclusive prospecting licence may not be transferred.

Form of licence

9. A non-exclusive prospecting licence shall be in a form approved by the Commissioner.

Fees
G.N. 102/1988 22/2011

10. The fees to be paid in respect of a non-exclusive prospecting licence are, in respect of each District or part of a District included in the licence—

(*a*) on issue, K2,000; and

(*b*) on each renewal, K2,000.

G.N. 14/1982

MINERAL PERMITS (PRESCRIBED MINERALS) REGULATIONS

under s. 128

Citation

1. These Regulations may be cited as the Mineral Permits (Prescribed Minerals) Regulations.

Prescribed minerals

2. For the purposes of section 82 of the Act the prescribed minerals are those listed in the Schedule hereto.

SCHEDULE

Basalt	Laterite
Clay	Salt
Granite	Sand
Gravel	Sandstone
Gypsum	

G.N. 39/1981

MINES AND MINERALS (PRESCRIBED OPERATIONS) REGULATIONS

under s. 128

Citation

1. These Regulations may be cited as the Mines and Minerals (Prescribed Operations) Regulations.

Prescribed operations

2. The operations which may be carried on under section 116 (4) of the Act are—

(*a*) entering at all reasonable times upon any land with such persons, vehicles, appliances, instruments and materials as are necessary for the purpose of collecting information on the geology and mineral resources of Malaŵi;

(*b*) breaking up for that purpose the surface of any land;

(*c*) taking and carrying away for that purpose samples and specimens of soils, rocks or minerals;

(*d*) fixing any post, stone, mark or object to be used in the survey of any land for that purpose;

(*e*) digging up any ground in order to fix any post, stone, mark or object referred to in paragraph (*d*); or

(*f*) entering into or upon and passing over any land through which it may be necessary to pass for that purpose,

but—

(*g*) no act of a kind referred to in paragraph (*d*) shall be effected within any walled or fenced garden or orchard without the consent of the owner or lawful occupier thereof; and

(*h*) before abandoning any land in respect of which any such right has been exercised all excavations made shall be backfilled or otherwise made safe.

Manner of carrying on operations

3. Any person carrying on operations under section 116 (4) of the Act shall cause as little damage and inconvenience as possible in doing so, and the owner and lawful occupier of any land on which any such operations are carried on is entitled to recover from the Republic compensation for any damage sustained by him which is directly attributable to those operations having been carried on.

MINES AND MINERALS (PUBLIC PURPOSES) (PRESCRIPTION) REGULATIONS

G.N. 38/1981

under s. 128

Citation

1. These Regulations may be cited as the Mines and Minerals (Public Purposes) (Prescription) Regulations.

Public purpose

2. For the purposes of section 103 of the Act, a purpose is a public purpose when it is necessary or expedient in the interests of defence, public safety, public order, public health, town and country planning, or the development or utilization of any property for the public benefit.

MINES AND MINERALS (RESERVED MINERALS) REGULATIONS

G.N. 119/1988

under s. 128

Citation

1. These Regulations may be cited as the Mines and Minerals (Reserved Minerals) Regulations.

Reserved Minerals

2. In addition to precious metals and precious stones defined in section 98 of the Act, the minerals specified in the Schedule hereto are reserved minerals.

reg. 2

SCHEDULE

RESERVED MINERALS

(Additional to those defined in section 98)

Acquamarines
Amethysts
Topaz
Smoky quartz

G.N. 99/1985

MINES AND MINERALS (RESERVED MINERALS LICENCE) REGULATIONS

under s. 128

Citation

1. These Regulations may be cited as the Mines and Minerals (Reserved Minerals Licence) Regulations.

Application for licence
First Schedule, Part I

2. An application for a reserved minerals licence shall be made to the Commissioner and shall be in the form set out in Part I of the First Schedule.

Form of licence
First Schedule, Part II

3. A reserved minerals licence shall be in the form set out in Part II of the First Schedule.

Records

4.—(1) A licensee shall, in respect of every reserved mineral under his licence, keep records of the particulars specified in subregulation (2) and such other records or particulars as the Commissioner may, in any particular case, specify.

(2) Where the licensee—

(*a*) is the purchaser of a reserved mineral, he shall keep a record of—

(i) the name and address of the seller;

(ii) the serial number, description and location of vendor's mineral right, claim or non-exclusive prospecting licence;

(iii) the mass and description of the reserved mineral;

(iv) the amount paid, and date of payment, to the seller; and

(v) the date of delivery of the reserved mineral to him;

(*b*) is the seller of the reserved mineral, he shall keep a record of—

(i) the name and address of the purchaser;

(ii) the mass and description of the reserved mineral;

(iii) the amount paid, and the date of payment, to him; and

(iv) the date of delivery of the reserved mineral to the purchaser;

(*c*) exports a reserved mineral, he shall keep a record of—

(i) the serial number of the parcel;

(ii) the date of certification by the Department of Geological Survey under regulation 8 (2);

(iii) the number and date of export permit; and

(iv) the estimated value in the Malaŵi Kwacha.

(3) Every licensee shall, within fourteen days after the end of the month in which he purchased, sold or exported a reserved mineral, submit to the Commissioner a copy of the record kept in respect of that reserved mineral pursuant to this regulation.

(4) The Commissioner or any public officer acting in the course of his official duties in connexion with a reserved minerals licence may, at any reasonable time, enter upon the premises of the licensee for the purpose of inspecting any records kept pursuant to this regulation.

Duration and termination of licence

5.—(1) Subject to subregulation (2), a reserved minerals licence shall remain in force for a period of one year from the date of issue and may be renewed from time to time.

(2) If the Commissioner is satisfied that the licensee—

(*a*) has failed to pay the prescribed licence fee;

(*b*) has failed to comply with—

(i) any requirement of the Act or these Regulations;

(ii) any condition of the licence; or

(iii) any directions given to him by the Commissioner in accordance with the requirements of the Act or of these Regulations,

the Commissioner may, by giving the licensee thirty days written notice, terminate the licence.

Consequence of termination of licence

6.—(1) The licensee under a reserved minerals licence which has been terminated pursuant to regulation 5 (2) shall—

(*a*) surrender to the Commissioner any reserved mineral bought or held under that licence and still in his possession;

(*b*) if any reserved mineral bought or held by him under that licence is no longer in his possession, give full account of the manner in which he disposed of it.

(2) The Commissioner shall hold, dispose of or otherwise deal with any reserved mineral surrendered to him pursuant to paragraph (*a*) of subregulation (1) in accordance with such directions as the Minister may give.

Licensee's right of appeal

7.—(1) A licensee who is aggrieved by the decision of the Commissioner to terminate the licence may, within fourteen days after receipt by him of the written notice of termination or within such longer period as the Minister may allow, appeal in writing to the Minister against such decision, stating the subject matter and grounds of the appeal.

(2) Upon receipt of the appeal pursuant to subregulation (1), the Minister shall consider the appeal and may allow or dismiss it or make such other ruling thereon as he considers appropriate and his decision thereon shall be final and shall not be subject to review by any court.

(3) For the purpose of considering an appeal under this regulation, the Minister may call upon the licensee, the Commissioner or any other person to adduce such further or other evidence on the matter as he considers necessary to enable him determine the appeal.

Exportation of reserved minerals

8.—(1) No person shall export a reserved mineral, unless—

(*a*) he is a holder of a valid export permit issued under subregulation (3); and

(*b*) the reserved mineral is packed in a sealed parcel addressed to a named consignee and marked with a stamp of the Department of Geological Survey approved by the Minister, certifying the mass and description of the reserved mineral.

(2) A person intending to apply for an export permit to export a reserved mineral shall, before making the application, send the reserved mineral to the Department of Geological Survey, P.O. Box 27, Zomba, or to such other address of that Department as the Chief Geologist may specify in respect of any district or number of districts. Upon receipt of the reserved mineral, the Department of Geological Survey shall certify its mass and description and shall pack it in a sealed parcel and clearly mark on the parcel the name and address of the consignee of the reserved mineral and its mass and description so certified; but so, however, that where a parcel contains several reserved minerals the mass and description of each shall be marked on the parcel.

Second Schedule, Parts I and II

(3) On application made in the form set out in Part I of the Second Schedule by a holder of a reserved mineral licence, the Commissioner may issue to that licensee an export permit in the form set out in Part II of that Schedule.

(4) An export permit issued under subregulation (3) shall—

(*a*) authorize the person to whom it is issued to export the reserved mineral or minerals described, and to the consignee named, therein;

(*b*) be valid for the period specified therein;

(*c*) not be transferrable;

(*d*) be issued upon payment of the prescribed fee;

(*e*) be subject to such conditions as the Commissioner may specify therein.

(5) No Claim shall lie against the Government, the Minister, the Commissioner or an officer of the Department of Geological Survey for loss of, or any damage to, a reserved mineral caused in the handling of that reserved mineral by that Department pursuant to subregulation (2).

(regs. 2 and 3) FIRST SCHEDULE

Part I—Form of application for a reserved minerals licence

MINES AND MINERALS ACT
(CAP. 61:01)
MINES AND MINERALS (RESERVED MINERALS LICENCE) REGULATIONS

(*regulation* 2)

NOTE: This application must be made in duplicate and submitted to the Commissioner of Mines and Minerals, Private Bag 350, Capital City, Lilongwe 3.

I/We (*name in full*) .....
of (*address*) .....
.....
hereby apply for a reserved minerals licence under which I/We intend to buy, hold and sell the following reserved mineral/minerals—

1. .....
2. .....
3. .....
4. .....

Date: ..... Signed: .....
Name: .....
(*in block letters*)
Official designation: .....
(*if any*)

Part II—Form of a reserved minerals licence

MINES AND MINERALS ACT
(CAP. 61:01)

MINES AND MINERALS (RESERVED MINERALS LICENCE) REGULATIONS
(*regulation* 3)

LICENCE NO.....
..... (*name of licensee, in full*) of *(Address*) .....
.....
is hereby licensed to buy, hold and sell the following reserved minerals—

1. .....
2. .....
3. .....
4. .....

This licence, unless renewed, is valid until the .....
..... day of ....., 19..... and is subject to the general condition that the licensee shall comply with the requirements of the Act and of the Regulations and is further subject to the special conditions specified below.

Date of issue: ..... Signed: .....
Commissioner of Mines and Minerals
(Official Stamp)

FEE PAID: K .....

SPECIAL CONDITIONS

1. .....
2. .....
3. .....
4. .....

RENEWALS

Renewed for a further period of up to—

Official Stamp of
the renewing Officer

1. ....., 19.....
2. ....., 19.....
3. ....., 19.....

SECOND SCHEDULE (reg. 8)

Part I—Form of an application for a permit to export a reserved mineral

MINES AND MINERALS ACT

(CAP. 61:01)

MINES AND MINERALS (RESERVED MINERALS LICENCE) REGULATIONS

APPLICATION FOR AN EXPORT PERMIT

(*regulation* 8)

NOTE: This application must be made in duplicate and submitted to the Commissioner of Mines and Minerals, Private Bag 350, Capital City, Lilongwe 3.

I/We (*name in full*) ..... of (*address*) ....., ..., being the holder of a valid reserved minerals licence number ....., hereby apply for an export permit under which I/we intend to export—

(*a*) the following reserved mineral/minerals—

	Description	*Mass*
1.	.....	.....
2.	.....	.....
3.	.....	.....
4.	.....	.....

(*b*) to the following consignee—

Full name	*Address*
.....	.....
.....	.....
	.....
	.....

(*c*) at an estimated value of .....Kwacha; and

(*d*) in a parcel sealed by the Department of Geological Survey under serial number .....

Date: ..... Signed: .....

Name: .....

(*in block letters*)

Official designation: .....

(*if any*)

Part II—Form of Export Permit

MINES AND MINERALS ACT

(CAP. 61:01)

MINES AND MINERALS (RESERVED MINERALS LICENCE) REGULATIONS

(*regulation* 8)

EXPORT PERMIT NO .....

.....(*name of permit holder*) of (*address*) ..... is hereby authorized to export the following reserved mineral/minerals—

Description	*Mass*
1.	.....
2.	.....
3.	.....
4.	.....

to the following consignee—

Full name	*Address*
.....	.....
.....	.....
	.....

under a parcel sealed by the Department of Geological Survey under Serial No. .....

This export permit is valid for a period of ..... months from the date of issue and is subject to the general condition that the holder shall comply with the requirements of the Act and of the Regulations and is further subject to the special conditions, if any, specified below.

Date of issue: ..... Signed: .....
Commissioner of Mines and Minerals

FEE PAID: K.....

(Official Stamp)

SPECIAL CONDITIONS

1. .....
2. .....
3. .....
4. .....

MINES AND MINERALS (ROYALTY) REGULATIONS

under s. 128

G.N. 34/1981

1. These Regulations may be cited as the Mines and Minerals (Royalty) Regulations. Citation

2. The Mining Regulations revoked by section 130 (2) of the Act shall continue to apply with respect of royalty payable on minerals obtained before the commencement; but without prejudice to the exercise of any power, or the recovery of any such royalty, under Part VI of the Act. Application of Mining Regulations Cap. 61:01 sub. leg. p. 36*a*

3.—(1) Royalty is payable on the demand of the Commissioner.

(2) When it is desired to export minerals, the Commissioner may make an estimate of the amount of the royalty to be paid, which amount shall be paid, or security given for its payment, before export. Demand and methods of calculation, etc.

(3) Within six months of the export, or such extended time as the Commissioner may allow, a sales account in respect of the minerals exported shall be produced to the Commissioner and any adjustment made which may be necessary to effect payment of the royalty actually payable.

Returns

4. The holder of a claim or a mining licence shall furnish to the Commissioner returns in such form, at such intervals, and containing such information with respect to the determination of royalty, as the Commissioner may approve, specify or require.

Schedule

5. Subject to section 86 (2) (*a*) of the Act and regulation 2, the holder of a claim or of a non-exclusive prospecting licence or of a Mineral Right shall pay royalty in respect of minerals obtained by him by virtue thereof in accordance with the Schedule.

SCHEDULE (reg. 5)

ROYALTY

Interpretation

1.—(1) In this Schedule—

"disposal of " in relation to a mineral, means the sale, barter, export, deposit as a pledge or security, donation as a gift, or other disposition, with or without consideration, of the mineral, and includes the loss of the mineral by theft or otherwise after the mineral has been obtained;

"gross value", in relation to a mineral, means—

(*a*) the actual gross sum realized by the sale thereof, less such deduction as the Commissioner may allow in respect of expenditure on the transportation of the mineral prior to sale or other disposal where it is shown to the satisfaction of the Commissioner that the expenditure was borne or would have been borne by the person for assessed royalty in respect of the mineral; or

(*b*) where subparagraph (2) applies, the sum determined by the Commissioner pursuant to that subparagraph;

"precious metals" has the meaning assigned thereto by section 98 of the Act;

"semi-precious stones" means agates and such other stones as may be prescribed as being semi-precious stones for the purposes of the Act.

(2) Where—

(*a*) any mineral is not sold or is disposed of otherwise than by way of sale; or

(*b*) in the opinion of the Commissioner any mineral is disposed of for a consideration less than its true value,

the Commissioner may determine the sum for which, in his opinion, the mineral could be, or could have been, disposed of and that sum is the gross value of the mineral.

Rates of royalty

2. Royalty is payable in respect of—

(*a*) building and industrial minerals at the rate of—

(i) seven per cent of the gross value of the minerals where the minerals are exported in an unmanufactured state; or

(ii) five per cent of the gross value of the minerals in any other case;

(*b*) precious stones at the rate of—

(i) ten per cent of the gross value of the minerals where the precious stones are exported as rough uncut stones; or

(ii) five per cent of the gross value of the minerals in any other case;

(*c*) semi-precious stones at the rate of—

(i) ten per cent of the gross value of the minerals where the semi-precious stones are exported as rough uncut stones; or

(ii) five per cent of the gross value of the minerals in any other case;

(*d*) radioactive minerals at the rate of five per cent of the gross value of the mineral;

(*e*) precious metals at the rate of five per cent of the gross value of the minerals; or

(*f*) any other minerals at the rate of—

(i) five per cent of the gross value of the minerals where the minerals are exported in an unmanufactured state; or

(ii) five per cent of the gross value of the minerals in any other case.

MINING (SAFETY) REGULATIONS

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MINING (SAFETY) REGULATIONS

G.N. 99/1982

under s. 128

PART I

PRELIMINARY

Citation and application

1. These Regulations may be cited as the Mining (Safety) Regulations, and shall apply to all mining and prospecting operations including quarrying and opencast working.

Interpretation

2.—(1) In these Regulations, unless the context otherwise requires—

"bank" means the top, and the area immediately surrounding the top, of a shaft or winze;

"conveyance" means a truck, cage, skip, bucket or kibble;

"haulage way" means any inclined rail-track, not being an inclined shaft, on which conveyances are raised or lowered while attached to a rope which is attached to or surrounds a drum;

"inspector" means an officer appointed under section 5 of the Act;

"kep" means a device in a shaft or at bank on which conveyances used in a shaft rest;

"manager" means the person responsible for the management of operations;

"operations" means mining and prospecting operations including quarrying and opencast working;

"tramming" means the movement on rails of conveyances for which the motive power is secured only to the conveyance.

(2) For the purposes of the definition "haulage way", "inclined shaft" means an inclined rail-track, whether underground or partly underground, rising overall more than .25 metre vertically in .30 metre horizontally on which conveyances are raised or lowered while attached to a rope which is attached to or surrounds a drum.

Regulations to be kept available for reference

3.—(1) A copy of these Regulations shall be kept available for easy reference on all land where operations are being carried out.

(2) An abstract of these Regulations shall be kept posted in such a place that all persons employed in operations shall have access to and the opportunity to read them.

Power of manager to give written directions

4.—(1) A manager may give written directions for the conduct and guidance of persons employed in operations.

(2) Such directions shall not come into force until approved in writing by the Commissioner.

(3) Such directions shall remain in force until cancelled by the Commissioner or by the manager with the written consent of the Commissioner.

(4) A copy of such directions shall be kept posted in such a place that all employees shall have access to and the opportunity to read them.

(5) Any person employed in operations who contravenes any such directions applicable to him is guilty of an offence.

Notice to be given on starting and stopping work

5. Notice of the proposed starting, re-starting or cessation of operations shall be sent to the Commissioner by the manager concerned in the form set out in the Schedule.

Part II

Health, Safety and Accidents

6. It is the duty of the manager to ensure that all necessary measures are taken for the prevention of danger to life or property whether or not the measures are specified in these Regulations.

Duty of manager to take measures to prevent danger

7. A manager or foreman or person in any similar supervisory capacity shall not, by his instruction, default or negligence, cause or permit to exist any state of affairs which is reasonably calculated to endanger the safety of persons or property.

Duty of all persons in authority to prevent danger

8. No person employed in operations—

Negligence of employees

(*a*) shall fail to take all necessary and proper precautions to ensure the safety of persons and property;

(*b*) shall act in such an unskilful or unworkmanlike manner as to be likely to endanger persons or property;

(*c*) shall, without authority, remove, alter or render unserviceable any structure, apparatus or machine, which is intended to provide for health or safety.

9. Any person employed in operations who observes anything which he considers might be dangerous to life or property shall—

Action on observing danger

(*a*) take immediate measures to prevent the entry of persons into the danger area;

(*b*) take all measures necessary to obviate the danger if it is safe to do so and if it is his normal duty to do so; and

(*c*) inform a person in authority over him of the danger, if he has not taken all measures necessary to obviate it.

10.—(1) No material or object shall be placed or permitted to remain in any place from which it might fall, or in any place in which it might be accidentally pushed and thereby caused to fall, constituting a danger to persons or property.

Measures against falling

(2) Where persons may be expected to stand, walk or work near the edge of any excavation or structure, there shall be maintained fencing, barricades, walls, or similar structures, adequate to prevent persons from falling over such edge.

(3) Every person working in a place from which he might slip or fall a vertical distance of more than 2 metres shall be provided with and shall wear a safety belt in good condition and constructed from sound and suitable material; and such safety belt shall be securely attached to a rope, of adequate strength, which shall be either fastened to a strong anchorage or firmly held and controlled by a person other than the wearer of the safety belt.

Fencing of unused excavations

11. Fencing, barricades, walls and similar structures shall be provided and maintained to prevent entry into every unused excavation.

Overhead cover

12. Overhead cover of adequate strength shall be provided and maintained for the protection of persons who otherwise might be exposed to danger from falling objects.

Safety helmets

13. Every person underground and every person employed in operations who may be exposed to danger from falling objects shall be provided with and shall wear a safety helmet of a pattern that has been approved by an inspector.

Safety footwear

14. Every person underground and every person employed in operations who moves rock manually shall be provided with and shall wear safety footwear of a pattern that has been approved by an inspector.

Leg-guards and goggles

15. Every person employed in operations who breaks rock by hammering shall be provided with and shall wear leg-guards and goggles, each being of a pattern that has been approved by an inspector.

General dust precautions

16. Where, in connexion with any process, there is produced dust of a kind and quantity as to be likely to be injurious to persons, the manager shall ensure—

(*a*) that the entry of the dust into the air, and its accumulation in any place where it might be harmful, is minimized by means of adequate measures taken as near as possible to the point of origin of the dust; and

(*b*) that any of the dust which enters the air is trapped, removed, or so dispersed as to render it harmless.

Dust from rock drills

17. Every percussion rock drill used in underground workings—

(*a*) shall be supplied with water at a pressure of not less than 2.20 kilograms per square centimetre and in such quantity and manner that all dust made by drilling is wetted; and

(*b*) shall be fitted with front-head air release ports.

Safeguards against radio-activity

18. The Commissioner, for the purpose of safeguarding (to such extent as he thinks necessary) the health of persons who might be exposed to radio-activity, may issue written instructions, and such instructions shall be obeyed.

First aid equipment

Cap. 55:07 sub. leg. p.63

19.—(1) Wherever persons are employed in operations there shall be provided and maintained, in a readily accessible place, a first aid box or cupboard equipped to the standard prescribed in regulations 2 to 4 inclusive of, and the Schedule to, the Factories (First Aid) Regulations.

(2) Nothing except appliances or requisites for first aid shall be kept in a first aid box or cupboard.

(3) There shall also be provided and maintained such additional equipment as an inspector may in writing direct; for the purposes of this subregulation "equipment" includes ambulances, and sling-stretchers suitable for raising persons from excavations.

(4) Every first aid box or cupboard, and all additional equipment provided in pursuance of subregulation (3), shall be placed under the charge of responsible persons of whom at least one shall be readily available during every working hour.

Reporting accidents

Cap. 7:01

20.—(1) If any accident occurs during operations which results in—

(*a*) loss of life, or grievous harm as defined in section 4 of the Penal Code, to any person; or

(*b*) serious damage to the property of any person or of the Government,

the manager shall without delay report the accident by telephone or telegram to the Commissioner or to an inspector and shall also send, to the same official, full details of the accident in writing as soon as reasonably practicable.

(2) After an accident such as described in subregulation (1) (*a*) has occurred, the scene of the accident shall be left undisturbed until the Commissioner or an inspector has completed an investigation of the accident; but nothing in this subregulation shall be construed so as to require any delay in the carrying out of rescue work, or work necessary for the safety of persons or property, or in the resumption of operations after 72 hours have elapsed since the time of the accident.

(3) Nothing in this regulation shall relieve any person of any duty to report the accident, or to take any other action, which he may have under any other written law.

PART III

Surface and Underground Operations in General

Attendant required for excavating machines

21. Every dragline, face shovel, front-end loader, grab, or similar appliance loading into a vehicle, shall have an attendant who shall control the movements of such appliance and vehicle and shall prevent persons from entering an area where they might be exposed to danger from such movements.

No person to remain during loading of vehicle if thereby endangered

22. No person shall remain in a vehicle while it is being loaded by an appliance mentioned in regulation 21 if he is endangered by so remaining.

Operation of vehicles

23. A vehicle transporting persons, goods or materials—

(*a*) shall be in good repair and efficient working order;

(*b*) shall be driven in a skilful, careful and workmanlike manner; and

(*c*) shall not be loaded in such a manner or to such an extent as to interfere with its safe operation or its capability of being safely driven.

Safeguards to prevent vehicles from overrunning

24. Where a vehicle is used for tipping material into any bin, pit or excavation or over the edge of any embankment or earthwork, there shall be provided adequate physical means of preventing the vehicle from overrunning the edge of such bin, pit, excavation, embankment or earthwork.

Safeguards for poisonous or injurious water

25. Water containing poisonous or injurious substances shall be retained in an area or receptacle which shall be fenced or closed in such a manner that neither persons nor animals can have easy access to it, and adequate notices shall be displayed warning against the use of such water.

Structures controlling water to be adequate

26. All artificial watercourses, drains, dams and spillways shall be of a size and strength that is adequate for their purpose.

PART IV

Surface Operations

Undercutting by hand forbidden

27. No face cut by hand in an opencast working or quarry shall be undercut.

Faces to be examined

28. The manager of an opencast working or quarry shall ensure that all faces are frequently and adequately thoroughly examined for cracks and subsidences by a person competent to assess the likelihood of a fall or slip and the danger likely to arise from any such fall or slip.

Inspector may give orders for safety of faces

29.—(1) An inspector may give such orders concerning the faces of opencast workings or quarries as he considers to be necessary for the safety of persons or property, and such orders shall be obeyed.

(2) Without prejudice to the generality of subregulation (1) such orders may relate to—

(*a*) the steepness of slopes;

(*b*) the construction of benches;

(*c*) the horizontal width of benches;

(*d*) the vertical interval between benches; and

(*e*) the drainage of water on or near faces or benches.

PART V

Underground Operations

Support of excavations

30. All parts of an underground working in which work is in progress or which can be used for travelling shall be adequately supported so that ground or rock therein cannot fall.

Safety pillars

31. An inspector may give orders concerning the locality and dimensions of pillars to be left in underground workings for the safety of underground workings or for the safety of persons or structures whether above ground or underground, and such orders shall be obeyed.

Persons not to be in unsafe places

32. No person shall pass through or be required to pass through an unsafe place, and no person shall remain or be required to remain in an unsafe place unless he is working to make that place safe.

Healthy atmosphere to be ensured

33. All necessary measures shall be taken to ensure that all persons underground are in an atmosphere which does not contain gas or dust in quantities that are dangerous to health, and which in circulation, temperature and relative humidity creates conditions in which work can be performed without distress.

Egress to be possible without hoisting or hauling, etc.

34. In any underground part of a mine in which work is being carried on there shall be provided suitable and adequate means by which persons working there can reach the surface by a route which does not necessitate the use of mechanical or manual hoisting or hauling; and an inspector may order that there shall be a second such route from any underground part of a mine if in his opinion a second route is necessary for safety, and such order shall be obeyed.

Precautions regarding approach to abandoned workings or to water

35. Whenever there is reason to believe that workings may be near to abandoned workings or to an accumulation of water, then boreholes not less than 3 metres long shall be drilled ahead of the newer workings and boreholes of the maximum depth which space allows or 3 metres deep, whichever is the less, shall be drilled above, below and to each side of the newer workings.

Illumination

36.—(1) Every machine while working at pumping, hauling or hoisting shall be brightly illuminated.

(2) The leading truck of a train, and any solitary truck, when in motion, shall carry a light in front.

(3) Every person in any underground part of a mine which has no fixed illumination shall be provided with a light designed to last for not less than the period for which he is expected to remain underground.

Clearance or refuges in tunnels

37. Where persons walk in tunnels in which tramming takes place there shall be either—

(*a*) clearance of not less than .50 metre between each side of the tunnel and the widest conveyance used therein; or

(*b*) refuges provided at intervals of not more than 30 metres, each of which being large enough to allow 3 persons to stand clear of any passing conveyance.

Travelling-ways in shafts, etc., to be partitioned

38. In all haulage-ways, shafts and winzes in which persons may be expected to walk or climb while conveyances are in motion in them, there shall be a travelling-way which shall be completely separated, from the part in which conveyances move, by a partition strong enough to protect persons in the travelling-way from falling objects.

Construction and erection of ladders

39. All ladders shall—

(*a*) be at all times sufficiently strong to be safe for use;

(*b*) be securely fastened in position save as provided in regulation 42;

(*c*) be erected so that they do not overhang persons using them;

(*d*) rise less than 1.75 metres vertically in a horizontal distance of .30 metre if they exceed 9 metres in length;

(*e*) be so placed that the free tread of feet on the rungs is not obstructed; and

(*f*) have rungs not more than .25 metre apart, centre to centre.

Ladders to project above top of platforms, etc.

40. Ladders, if placed against the top of any platform required by regulation 41 or the top of any shaft or winze, shall project not less than 1 metre above such top except where strong handgrips are fastened above such top for not less than 1 metre and at vertical intervals of not more than .25 metre.

Platforms in ladderways

41. All ladderways—

(*a*) rising more than .80 metre vertically in .30 metre horizontally shall have platforms at vertical intervals of not more than 9 metres and the manhole in every such platform shall be covered by any ladder resting on the platform;

(*b*) rising more than .20 metre vertically in .30 metre horizontally and less than .80 metre in .30 metre horizontally shall have platforms at verticals of not more than 18 metres.

Ladders during sinking or deepening to be provided

42. In all shafts and winzes that are being sunk or deepened—

(*a*) chain ladders shall be provided to extend from the bottom timbers to the bottom of the shaft or winze and such chain ladders shall not be more than 9 metres long; and

(*b*) fixed ladders shall be provided from the bottom timbers upwards.

43. While work is in progress at the bottom of a shaft or winze, no work shall be performed above the bottom and no conveyance shall be hoisted or lowered in the shaft or winze unless all persons employed at the bottom are protected from falling objects by a platform of adequate strength which extends over the entire area of the shaft or winze and any openings in the platform are kept shut when not in use.

Platform to protect persons at bottom of shaft or winze

PART VI

Hauling And Hoisting

44. Haulage ways and conveyances on them shall be equipped with such devices as an inspector directs or approves to effect the derailment of any runaway conveyance.

Derailment devices on haulage ways

45. No haulage or hoist powered by a prime mover shall be brought into operation until after it has been examined by an inspector and he has stated in writing that it is satisfactory and may be brought into operation.

Power operated haulages and hoists to be examined

46. All mechanical failures, malfunctions and accidents occurring to or in connexion with any haulage or hoist shall be reported immediately to an inspector.

Mechanical defects and accidents to be reported

47. At the brow of every haulage way there shall be a device approved by an inspector which can be used and shall be used in such a manner that conveyances cannot move onto the incline until required to do so.

Device at brow of haulage way to prevent accidental descent

48. The drum in connexion with all hauling and lowering apparatus used with a haulage way shall be so placed that the operator of the drum has a clear view of the brow of the haulage way.

Operator of drum to have clear view of brow

49. The drum in connexion with all hauling and lowering apparatus shall be equipped with an effective brake capable of holding without slipping when no prime mover is connected to the drum twice the normal maximum load.

Drum of haulage apparatus, etc., to be equipped with brake

50.—(1) Every haulage way longer than 15 metres in which the operator of the hauling or lowering apparatus does not have a clear view of the other end of the haulage way, and every haulage way longer than 60 metres, shall have a device for communicating definite signals between stopping places and the hauling or lowering apparatus.

Signalling apparatus for haulage ways

(2) The signals referred to in subregulation (1) shall conform with regulations 56 (1) and 57 and shall be displayed in the manner prescribed in regulation 58.

Construction and use of hand-operated windlasses

51. In regard to every hand-operated windlass—

(*a*) the handles shall be so made that no part of them can revolve in the drum;

(*b*) the supports of the drum shall be so made that they are rigid;

(*c*) the drum shall be of sufficient height above the top of the shaft or pit to allow any article hoisted by the rope to swing clear of the top;

(*d*) the drum shall be equipped with an efficient brake capable of holding without slipping twice the normal maximum load;

(*e*) the rope shall be securely fastened to the drum and there shall be at least four turns of the rope round the drum when the free end of the rope is at the bottom of the shaft or pit; and

(*f*) the windlass shall not be used for hoisting or lowering for a vertical distance greater than 30 metres.

Construction of winding engines

52. Every winding engine which is powered by a prime mover and which is used in connexion with a shaft or winze shall be—

(*a*) fitted on each drum with an efficient brake capable of holding without slipping when the prime mover is not connected to the drum twice the normal maximum load;

(*b*) so constructed that the rope cannot slip off the drum; and

(*c*) fitted with a means of showing the position of every conveyance if hoisting is done from more than one place.

Requirements regarding ropes for hoisting

53.—(1) Every rope used for hoisting in a shaft or winze shall—:

(*a*) be capable at every part of its length of supporting at least six times the normal maximum load;

(*b*) be passed round its drum at least four times when any conveyance hoisted by it is at its lowest point of travel;

(*c*) be examined thoroughly at monthly or more frequent intervals by a competent person who shall be appointed by the manager and who shall enter in a book kept solely for the purpose the following particulars—

(i) identification of the rope which was examined;

(ii) the date of the examination;

(iii) details of any defects observed; and

(iv) his signature at the end of the entry.

(2) The rope used for hoisting in a shaft or winze shall be made of wire if the portion in use is longer than 30 metres.

(3) Every rope made of wire and used for hoisting in a shaft or winze—

(i) shall be adequately lubricated at monthly or more frequent intervals; and

(ii) shall be re-capped at least once every six months.

Construction of cages

54.—(1) All cages used for raising or lowering persons shall—

(*a*) be completely covered by a roof and be closed in on both sides;

(*b*) be fitted with gates or bars at both ends, adequate to prevent any person falling out;

(*c*) have prominently exhibited inside, a notice stating the maximum number of persons permitted to travel therein;

(*d*) be equipped with such guide-shoes, safety-catches, and detaching devices, as an inspector directs.

(2) No person shall enter a cage if by so doing he would make the number of persons about to travel therein exceed the maximum permitted number.

Equipment of shafts

55. All shafts and winzes in which winding takes place over a length greater than 30 metres shall—

(*a*) be equipped with a winding engine powered by a prime mover;

(*b*) be equipped, with an effective device for transmitting signals between the driver of the winding engine, each station in the shaft, the bank, and the bottom if sinking or deepening is in progress;

(*c*) if vertical, be equipped with effective guides for any conveyance being wound;

(*d*) if used for winding persons—

(i) be equipped with gates at bank and at all levels; and

(ii) be equipped with keps at bank.

Code of winding signals

56.—(1) The code of signals to be used in connexion with winding shall be—

Knocks or rings	*Meaning*
1	Raise, when conveyance is at rest
1	Stop, when conveyance is in motion
2	Lower
3	Persons are about to travel
5	Blasting signal
7	Accident signal

(2) Upon hearing the blasting signal, the engine driver shall forthwith raise the conveyance about 3 metres and then lower it to its previous position.

Additional signals

57. The manager may authorize signals in addition to, but not inconsistent with, the code prescribed in regulation 56 (1).

Signal code to be displayed

58. At every place where the signals prescribed in regulation 56 (1) can be made or received, the code of signals including any additional signals authorized pursuant to regulation 57 shall be displayed in characters sufficiently large to be read without difficulty from a distance of 3 metres by a person with normal sight.

Appointment of drivers of winding engines, etc.

59.—(1) The manager shall appoint as a winding engine driver only a person—

(*a*) having no physical infirmity likely to interfere with the efficient performance of his duties; and

(*b*) who has proved to the satisfaction of the manager that he possesses the skill and knowledge necessary to perform his duties efficiently.

(2) Notwithstanding subregulation (1), the manager may in writing appoint a learner winding engine driver not having the skill and knowledge referred to in paragraph (*b*) thereof if, and only if, the manager ensures that the winding engine is operated by the learner only when under the close supervision of a winding engine driver appointed in accordance with that subregulation.

(3) Subject to subregulation (2), no winding engine shall be operated except by a person who has been appointed in writing by the manager in accordance with subregulation (1).

Winding engine to be operated only after signal

60. A winding engine shall not be operated except after receipt of a signal prescribed in regulation 56 (1) or 57.

Winding engine not to be operated if fault known or suspected

61. No winding engine shall be operated while there is any known or suspected defect in it or in any appliance moved by it or in any appliance controlling such movement, except for such operation as is necessary for the repair or investigation of a known or suspected defect.

Drum not to be unclutched before testing brake

62. The drum of a winding engine shall not be unclutched unless the brake has been tested immediately beforehand by applying power to the drum in the direction of the load after the brake has been applied to the drum and it has been proved that the brake is capable of holding the load being carried by that drum.

Lowering on brakes prohibited

63. Power alone shall be employed in lowering a conveyance; lowering on brakes only is prohibited.

Material projecting above conveyance to be secured

64. All material which projects above the top of a conveyance while being raised or lowered in a shaft or winze shall be fastened to the winding rope or to the conveyance in such a manner that it cannot come into contact with any other plant or equipment.

Clearance under winding sheave

65. The distance between bank and the lowest part of any winding sheave shall be not less than 8 metres or twice the maximum circumference of the drum of the relative winding engine plus the height of the tallest conveyance used plus the capping of the rope, whichever is the less.

PART VII

Miscellaneous

Offences and penalties

66.—(1) Any person who contravenes any provision of these Regulations shall be guilty of an offence and liable to a fine of K300 and to imprisonment for a term of three months.

(2) Any person who knowingly disobeys an instruction of the Commissioner issued under regulation 18 or an order given by an inspector given under regulation 19 (3), 29 (1), 31 or 34, being an instruction or order applicable to such person and with which it is considered by the Court that he ought in the circumstances to have complied, shall be guilty of an offence.

(3) Any person convicted of an offence under regulation 4 (5) or under subregulation (2) of this regulation is liable to a fine of K200 and to imprisonment for two months.

SCHEDULE reg. 5

Form

MINING (SAFETY) REGULATIONS

NOTICE OF PROPOSED STARTING, RE-STARTING OR CESSATION OF OPERATIONS

1. *Type of Operation:*
   Prospecting
   Mining
   Opencast working
   Quarrying
   (Delete where not applicable)
2. *Conducted at* (District and locality): .....
3. *Under the Authority of:*
   Mining Licence No.
   Exclusive Prospecting Licence No.
   Non-exclusive Prospecting Licence No.
   Claim No.
   Government Quarrying with Certificate of Registration as a factory No.
   (Delete where not applicable)
4. *Worked by* (name and address of holder of Authority in 3 above):
   .....
   .....
5. *Will* Start / Re-start / Case } *operations on:*
   (Delete where not applicable)
6. *Number of persons employed:*
7. *Explosives used*: YES/NO
   (Delete where not applicable)
8. *Type of machinery used and total power:*

Signature of Manager: .....

Date .....

[Subsidiary] *Mines and Minerals* (*Uranium Mining and Milling*) *Regulations*

G.N. 9/2010

MINES AND MINERALS (URANIUM MINING AND MILLING) REGULATIONS

under s. 128

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MINING AND MINERALS (URANIUM MINING AND MILLING) REGULATIONS

under s. 128

PART I

PRELIMINARY

Citation

1. These Regulations may be cited as the Mines and Minerals (Uranium Mining and Milling) Regulations.

Interpretation

2. In these Regulations, unless the context otherwise requires—

''abandonment of a mine or mill'' means the discontinuance of all mining or milling activities at the mine site;

"best practicable technology" means that technology from time to time relevant to any particular uranium mining or milling project which produces the minimum environmental pollution and degradation that can reasonably be achieved having regard to—

(*a*) the level of effluent control achieved, and the extent to which environmental pollution is prevented and degradation is minimized, in mining and milling operations in the uranium industry anywhere in the world;

(*b*) evidence of detriment to the environment after the commencement, during operation and after closure of the particular uranium mining or milling project;

(*c*) the physical location of the particular uranium mining or milling project; and

(*d*) the efficacy of equipment and facilities in use on the particular uranium mining or milling project in reducing environmental pollution and degradation;

"Director" means the Director of Mines in the Ministry responsible for mining matters;

"Director of Environmental Affairs" means the Director of Environment Affairs appointed under section 9 (1) of the Environment Management Act;

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"environmental Minister" means the Minister responsible for Environmental Affairs;

"EIA" means the approved Environmental Impact Assessment for the grant of a mining licence;

"IAEA" means International Atomic Energy Agency;

"IAEA Guidelines" means the international safety standards, codes and guides issued by the IAEA from time to time;

Cap. 60:02

"Inspector" means environmental Inspector designated under section 45 (1) of the Environmental Management Act;

"mill" means a facility at which ore is processed and treated for the recovery of uranium concentrate, including any tailings-handling and water treatment system associated with the facility;

"owner" means a person who is licenced to mine and process uranium ore to produce uranium concentrate;

"tailings" means all the processing effluents that are generated in a milling operation; and

"waste rock" means overburden and bedrock that must be fractured and removed to gain access to or upgrade ore.

Application of Regulations

3.—(1) These Regulations shall apply in addition to the general requirements for mining licences under the Act and any applicable legislation.

(2) These Regulations shall be applied and interpreted in accordance with any legislation governing radiation issues and all operations subject to these Regulations shall be managed in such a way that any radiation doses to workers or members of the public arising from the operation must not exceed the relevant limits specified in such legislation.

PART II
Licence Applications

Planning and design of mines and mills

4.—(1) An application for a mining licence in respect of uranium shall contain the following information in relation to the plan and description of the mine or relevant mill—

(*a*) a description of the site geology and mineralogy;

(*b*) a description of the site evaluation process and of the investigations and preparatory work to be done at the site and in the surrounding area;

(*c*) a surface plan indicating the boundaries of the mine or mill and the area where the activity to be licensed is proposed to be carried on;

(*d*) a plan showing the existing and planned structures, excavations and underground development if, any;

(*e*) a description of, the mine or mill, including the installations, their purpose and capacity, and any excavations and underground development if any;

(*f*) a description of and the schedule for the planned mining or milling and the proposed methods for carrying on the activity;

(*g*) a description of any activity that may have an impact on the development of the mine or mill, including any mining related activity that was carried on at the site before the date of submission of the application to the Minister; and

(*h*) the proposed plan for the decommissioning of the mine or mill.

(2) An application for a mining licence in respect of uranium shall comply with the general requirements for mining licences under the Act, and the information required of applicants for mining licences under these Regulations is in addition to the information required by any provision of the Act and any other applicable legislation.

Environment and waste management Cap. 60:02

5. Subject to the requirements of the Environment Management Act, an application for a mining licence in respect of uranium shall contain the following information in relation to the environment and waste management—

(*a*) the programme to determine the environmental baseline characteristics of the site and the surrounding area;

(*b*) the proposed location, the proposed maximum quantities and concentrations, and the anticipated volume and flow rate of releases of radioactive and other hazardous substances into the environment, including their physical, chemical and radiological characteristics;

(*c*) the anticipated liquid and solid waste streams within the licensed area;

(*d*) the anticipated ingress of fresh water and any diversion or control of the flow of uncontaminated surface and ground water;

(*e*) the anticipated sources, quantities, composition and characteristics of any backfill;

(*f*) the proposed environmental protection policies and programmes;

(*g*) the proposed effluent and environmental monitoring programmes;

(*h*) the proposed measures to control releases of radioactive and other hazardous substances into the environment;

(*i*) a description of the proposed waste management system;

(*j*) the proposed positions for, and qualifications and responsibilities of, environmental protection workers; and

(*k*) the programme to inform persons living in the vicinity of the licensed area, of the general nature and characteristics of the anticipated effects of the activity to be licensed on the environment.

Health and safety

6. An application for a mining licence in respect of uranium shall contain the following information in relation to health and safety—

(*a*) the negative effects on the health and safety of persons that may result from the activity to be licensed, and the measures that will be taken to prevent or mitigate those negative effects;

(*b*) the proposed worker health and safety policies and programmes;

(*c*) the proposed measures to prevent and control the spread of any radioactive contamination in accordance with the applicable IAEA Guidelines;

(*d*) the proposed positions, qualifications and responsibilities of radiation protection workers;

(*e*) the proposed training programme for workers; and

(*f*) a sensitization programme for the local community on health and safety.

PART III
Construction and Operation

Preparation of mine site and construction

7. No person shall commence construction of any part of a uranium mine or mill without notification to the Director.

Commencing operations

8. No person shall commence operations of any part of a uranium mine or mill without notification to the Director.

Compliance with approvals and authorizations

9.—(1) It shall be the duty of every licensee to construct and operate all facilities of a uranium mine or mill in strict accordance with all approvals and authorizations granted.

(2) It shall be the duty of every licensee to promptly notify the Director of any changes in construction and on operating conditions or any other matters which are likely to significantly increase radiation exposures to workers or members of the public, or requirements for the management of radioactive waste, and which are not provided for in approvals or authorizations already given.

(3) Nothing in these Regulations shall be interpreted to prevent or discourage the licensee from attaining higher environmental, health and safety standards than those specified.

PART IV
Radiation Safety

Imposition of additional dose constraints

10. The Director may impose additional dose constraints, discharge limits or other requirements, consistent with the applicable IAEA Guidelines, on an operation in order to ensure adequate levels of radiation protection.

Radiation management plan

11.—(1) Before the commencement of any mining or milling of uranium, a radiation management plan shall be designed by the licensee and presented to the Director for approval, and the Director shall approve the radiation management plan where it satisfies the requirement of subregulation (2).

(2) The radiation management plan shall adhere strictly to the approved EIA plan that was the basis for the grant of a mining licence, and any provision of the radiation management plan that would result in any substantial change to the approved EIA plan shall be approved by the Director in liaison with the Director of Environmental Affairs.

(3) The radiation management plan shall include a description of the operations to which it applies, and the measures that are intended to be taken to control the exposure of employees and members of the public to radiation at or from the operational area including—

(*a*) demonstrated access to appropriate professional expertise in radiation protection;

(*b*) a plan for monitoring radiation exposure and for assessing the doses received by exposed employees;

(*c*) the provision of appropriate equipment, staffing, facilities and operational procedures;

(*d*) details of induction and training courses;

(*e*) record keeping and reporting;

(*f*) a plan for dealing with incidents, accidents and emergencies involving exposure to radiation; and

(*g*) a system of periodic assessment and review of the adequacy and effectiveness of procedures instituted under the radiation management plan to ensure currency and to facilitate a process of continual improvements consistent with best practicable technology.

Radioactive waste management plan

12.—(1) Before the commencement of mining or milling of uranium, a radioactive waste management plan for that stage must be devised by the licensee and presented to the Director for approval and the Director shall approve the radioactive waste management plan where the Director is satisfied that the requirements of subregulation (3) have been met.

(2) The radioactive waste management plan shall provide—

(*a*) an outline of the processes generating waste, a description of the waste generated; and

(*b*) a description of the environment into which the waste will be discharged or disposed, including the baseline radiological characteristics.

(3) The radioactive waste management plan shall adhere strictly to the approved EIA plan that was the basis for the grant of a mining licence, and any provision of the radioactive management plan that would result in any substantial change to the approved EIA plan must be approved by the Director of Environmental Affairs in liaison with the Director.

(4) The radioactive waste management plan shall provide for the proper management of radioactive waste arising from the mining or milling operations and shall include—

(*a*) a description of the proposed system for waste management including the facilities and procedures involved in the handling, treatment, storage and disposal of radioactive waste;

(*b*) prediction of environmental concentrations of radionuclides and radiation doses to people from the proposed waste management practices, including demonstration that the radiation protection requirements of these Regulations will be met both at the present time and in the future in accordance with the approved EIA;

(*c*) a programme for monitoring the concentration of radionuclides in the environment and assessment of radiation doses to members of the public arising from the waste management practices;

(*d*) contingency plans for dealing with accidental releases, or circumstances which might lead to uncontrolled releases of radioactive waste, to the environment;

(*e*) a schedule for reporting on the operation and results of monitoring and assessments required by this plan;

(*f*) a system of periodic assessment and review by the licensee and the Director of the adequacy and effectiveness of procedures instituted under the radioactive waste management plan to ensure currency and to take account of potential improvements consistent with best practicable technology; and

(*g*) a plan for decommissioning the operation and the associated waste management facilities and rehabilitating the site.

Restricted release zones

13.—(1) All areas, whether on the surface or underground which might come into contact with products, intermediate products or by-products of a uranium ore treatment plant, or with the liquid effluent from the mine or the ore treatment plant shall be designated as restricted release zones in accordance with the relevant IAEA Guidelines.

(2) All restricted release zones shall be demarcated on the ground by the licensee and defined in accordance with the applicable IAEA Guidelines and each such demarcation shall require the approval of the Director and may be re-demarcated by the licensee only with the approval by the Director.

(3) Unless otherwise specifically approved by the Minister responsible for water affairs, the water management system with respect to a uranium mining licence area shall be established in a manner allowing no intentional releases to the environment of water from a restricted release zone, and the licensee shall not allow to flow from a restricted release zone liquid water other than the natural sub-surface flow of groundwater, provided that this requirement shall not apply to seepage which cannot be prevented by the use of the best practicable technology.

(4) In the event that approval is given under subregulation (3) by the Minister responsible for water affairs for water to be released from a restricted release zone, the approval of the Minister responsible for water affairs shall, subject to the Water Resources Act, specify the following— Cap. 72:03

(*a*) the maximum approved rate of discharge;

(*b*) the maximum concentration of contaminants in water to be discharged;

(*c*) the maximum quantity of contaminants to be released in any one discharge and in any one specified period; and

(*d*) the maximum length of the approved period of continuous discharge.

(5) On receipt of an approval given under subregulation (3), the licensee shall promptly provide a copy of the approval to the Director, including all details referred to in subregulation (4).

(6) The licensee shall keep and make available to the Director, and the Minister responsible for water affairs, records of actual discharges made and such records shall specify—

(*a*) the actual rate of discharge;

(*b*) the period of discharge;

(*c*) the concentration of contaminants in the discharged water; and

(*d*) the total quantity of contaminants released in each discharge and in each year.

(7) Mineralized waste rock shall not be deposited outside a restricted release zone without the approval of the Director.

(8) Equipment which has been in contact with the products, intermediate products or by-products of the ore treatment plant, or with liquid effluents from the mine or the ore treatment plant, may be removed from within a restricted release zone only if such equipment has been cleaned to standards specified in the applicable IAEA Guidelines.

(9) The products, intermediate products or by-products of the ore treatment plant or liquid effluent from a uranium mine or the ore treatment plant shall not be taken, or allowed to move outside the limits of a restricted release zone without the approval of the Director. This clause shall not apply to yellow cake transported in accordance with Part 7 of these Regulations.

Technology and operating procedures

14.—(1) The licensee shall ensure that the mining, milling and related operations shall be carried on in accordance with the best practicable technology.

(2) The licensee shall—

(*a*) establish, implement and maintain written operating procedures;

(*b*) train its workers to perform their work in accordance with the operating procedures; and

(*c*) verify compliance with the operating procedures.

Instructions and supervision of employees

15. The licensee shall—

(*a*) ensure that all employees are, upon commencing work, properly instructed in the radiation aspects of their work, and in the precautions necessary to control their exposure to radiation, and to avoid radiation accidents, and that re-instruction of employees is undertaken at appropriate intervals;

(*b*) ensure that employees are properly supervised in the performance of their work to ensure that they act in accordance with approvals and authorizations, and the requirements of these Regulations; and

(*c*) ensure that appropriate expertise in the fields of radiation protection and radioactive waste management is available.

Radiation safety training programmes

16.—(1) The licensee shall train all its workers in basic radiation safety measures in accordance with the relevant IAEA Guidelines.

(2) Where a worker successfully completes the training programme in basic radiation safety, the licensee shall issue to the worker a certificate indicating that the worker has completed a training programme in basic radiation safety.

(3) The licensee shall provide, for approval, a copy of the training programme referred to in subregulation (2) to the Director.

Radiation Safety Officer

17. The licensee shall appoint a Radiation Safety Officer, being a person qualified in the principles and practices of radiation protection in the mining and milling of radioactive ores who shall be responsible to the licensee for radiation protection associated with the mine and mill.

Prevention and mitigation measures

18.—(1) A licensee shall put in place measures to prevent or mitigate the effects of accidental releases of hazardous substances on the environment, the health and safety of persons and the maintenance of security, including measures to—

(*a*) assist relevant Government authorities in planning and preparing to limit the adverse effects of an accidental release;

(*b*) immediately notify relevant Government authorities of an accidental release or the imminence of an accidental release;

(*c*) report information to relevant Government authorities during and after an accidental release;

(*d*) assist relevant Government authorities in dealing with the adverse effects of an accidental release; and

(*e*) test the implementation of the measures to control the adverse effects of an accidental release.

(2) The testing of the implementation of the measures referred to in subregulation (1) (*e*) shall be carried out at such frequency and recorded in such manner as may be approved by the Director.

Security and restrictions on public access

19.—(1) The licensee shall put in place adequate security measures to stop acts of sabotage or attempted sabotage at the mine or mill or the unauthorized removal of any substance or equipment from the mine or mill area.

(2) The licensee shall put in place adequate security measures to prevent unauthorized public access to the mine or mill site area.

(3) The security plans to implement the provisions of subregulations (1) and (2) be in accordance with the applicable IAEA Guidelines and shall be submitted to the Director for approval.

(4) The licensee shall promptly inform the Director of any acts of sabotage or attempted sabotage at the mine or mill or the unauthorized removal of any substance or equipment from the mine or mill area.

Warning systems

20. The licensee shall—

(*a*) post signs at all entrances to each area where the dose rate of gamma radiation exceeds 25 μSv/h, designating the area as a radiation area and indicating the dose rate of gamma radiation in that area; and

(*b*) provide every person who is to enter an area where the dose rate of gamma radiation exceeds 100 μSv/h with a direct-reading dosimeter.

Hygiene and personal protective equipment

21. The licensee shall—

(*a*) provide every person who is to enter the mining or milling area with appropriate personal protective equipment as may be approved by the Director;

(*b*) ensure that every person who enters a restricted release zone uses facilities at the mine site for bathing and for laundering clothing used by that person immediately after leaving such area; and

(*c*) ensure that every worker undergoes periodic medical examinations in such a manner and on such frequency as may be approved by the Director, and in giving his approval the Director shall have regard to the applicable IAEA Guidelines.

Reporting of discharges and defects

22. The licensee shall—

(*a*) report any unauthorized effluent discharges to the Director and the Minister responsible for water affairs;

(*b*) investigate promptly any defect, due to design or malfunction discovered in plant equipment or working procedures which is likely

to significantly increase radiation exposures to workers or members of the public, or endanger the security of waste management facilities, record the results of such an investigation and report the results to the Director; and

(*c*) ensure that any defect referred to above is promptly remedied, and the situation resulting from the defect is brought under control.

PART V
Record Keeping

Records to be kept

23.—(1) The licensee shall keep a record of—

(*a*) the operating and maintenance procedures of the mine or mill;

(*b*) the mine plans showing the actual and planned mine workings;

(*c*) the schedules for all of planned mining operations;

(*d*) the plans of every tailings-containment structure and area and every diversion structure and system associated with the waste management system;

(*e*) the design of the uranium mine or mill and of the components and systems installed at the mine or mill;

(*f*) the method and relevant data used to ascertain the doses of radiation received by the workers at the uranium mine or mill and the intake of radioactive substances by those workers;

(*g*) any measurement made in accordance with the mining licence or these Regulations;

(*h*) the inspections and maintenance carried out in accordance with the mining licence or these Regulations;

(*i*) the quality of water in the licence area;

(*j*) the quality of air delivered by each main fan;

(*k*) the efficiency of each dust control system; and

(*l*) the training received by each worker.

(2) The licensee shall keep the records required under these Regulations—

(*a*) in a filing format approved by the Director;

(*b*) in the custody or control of a competent person; and

(*c*) updated on such regular basis as may be prescribed by the Director.

(3) The licensee shall ensure that the Director has access to the records referred to in subregulation (1).

(4) The licensee shall post, at a location within the uranium mine or mill that is accessible to all workers and where it is most likely to come to their attention, a summary of the relevant measurements made in respect of every work place in accordance with the Act and these Regulations.

PART VI
Rehabilitation, Decommissioning and Abandonment of Mining Site

Mine site rehabilitation

24.—(1) The sites of mining and ancillary operations, the tailings and water retention system and other areas where the ground has been disturbed shall be rehabilitated and re-vegetated by the licensee to the satisfaction of the Director of Environmental Affairs and in accordance with a plan updated from time to time and approved by the Director of Environmental Affairs.

(2) In re-vegetating the sites of mining and ancillary operations, the licensee shall establish appropriate ground cover plants in accordance with the directions of the Director and shall fence and protect the establishing vegetation as may be necessary to bring about the rapid restoration of stable vegetation.

(3) The obligations of the licensee under subregulations (1) and (2) above shall cease upon issue of a certificate of re-vegetation by the Director.

(4) Prior to the commencement of works, the licensee shall prepare contour maps in sufficient detail to permit restoration of disturbed areas to their original contours or to such other contours as the Director may approve.

(5) Before mining operations commence, the licensee shall conduct a vegetation survey of the mining and milling area to the satisfaction of the Director.

Decommissioning

25.—(1) A licensee shall not commence decommissioning of any part of a mine, processing plant or waste management facility to which these Regulations apply without authorization from the Minister.

(2) An application for authorization to decommission shall include the following information—

(*a*) a description of and the proposed schedule for the decommissioning work, including the proposed starting date and the expected completion date of the decommissioning work and the rationale for the schedule;

(*b*) the condition of the site to be decommissioned, including the facilities and waste to be rehabilitated, levels of contamination, and quantities of waste;

(*c*) details of rehabilitation measures to be undertaken;

(*d*) management of waste generated during rehabilitation and decommissioning;

(*e*) the anticipated final state of the site after rehabilitation and decommissioning, including estimates of the levels of residual contamination;

(*f*) details on ongoing monitoring and surveillance that will be required after rehabilitation and decommissioning; and

(*g*) contingency plans, and plans for remediation of any defects in the rehabilitation and decommissioning that may become apparent.

Abandonment

26.—(1) A licensee shall not abandon a mine or mill to which these Regulations apply without authorization from the Minister.

(2) An application to abandon a uranium mine or mill shall contain the following information in addition to the information required by any provisions of any other law—

(*a*) the results of the decommissioning work;

(*b*) the results of the environmental monitoring programmes; and

(*c*) a programme to inform persons living in the vicinity of the site of the mine or mill of the general nature and characteristics of the anticipated effects of the abandonment on the environment and the health and safety of these persons.

PART VII
Handling, Storage and Transportation

Transportation and storage of radioactive material
Cap. 60:02

27.—(1) No person shall engage in the handling, transportation and storage of radioactive minerals or concentrate without an authorization as required under section 39 of the Environmental Management Act.

(2) Persons authorized to engage in the handling, transportation and storage of radioactive minerals or concentrate shall have the primary responsibility for ensuring its safety and security during handling, transportation and storage.

(3) The requirements adopted pursuant to this Part shall take into account the technical requirements of Regulations for the Safe Transport of Radioactive Materials issued by the IAEA.

Owner shall appoint agent

28.—(1) A person shall not transport radioactive material of which they are the owner, or cause or allow that material to be transported, unless they have as an agent a person resident in Malaŵi and appointed by the owner for the purposes of this Regulation.

(2) An owner shall, on the appointment of an agent, give notice in writing of the appointment to the environmental Minister specifying—

(*a*) the name and address of the agent; and

(*b*) the date of the appointment.

(3) A notice of appointment of an agent shall be accompanied by an acceptance in writing to act as agent signed by the agent.

(4) Notice of a change of agent shall be given in the same manner as the notice of appointment of an agent and the provisions of subregulations (2) and (3) shall apply *mutatis mutandis*.

(5) Any requirement or order that may be made of, or given to an owner of radioactive minerals or concentrate pursuant to this Regulation shall be deemed to be made of or given to the owner if it is made of or given to the agent of the owner.

Grant of permit for transportation or radioactive minerals or concentrates Cap. 60:02

29.—(1) Any owner of radioactive minerals or concentrates wishing to transport such minerals or concentrate shall first apply for a permit for transportation of radioactive minerals under the Environmental Management Act.

(2) On application made to the environmental Minister, the environmental Minister may grant a permit—

(*a*) to the owner of radioactive minerals or concentrate authorizing the transport of radioactive minerals or concentrate owned by the owner; and

(*b*) to the occupier of premises authorizing the premises occupied by the owner to be used for the storage of radioactive minerals or concentrate.

Conditions of a permit

30.—(1) A permit shall—

(*a*) be subject to such conditions specified in the permit as the environmental Minister considers necessary for the safe packaging, storage or transport of radioactive minerals or concentrate in accordance with specifications provided in the relevant IAEA Guidelines;

(*b*) expire on the date specified in the permit; and

(*c*) specify the premises in which radioactive minerals or concentrate is to be stored, if it is a permit authorizing the occupier of premises to use those premises for storage of that material.

(2) Without limiting the generality of subregulation (1) (*a*), the power to impose conditions includes the power to impose conditions specifying—

(*a*) the type and condition of vehicle by which the radioactive minerals or concentrate is to be transported;

(*b*) the person or organization by whom the radioactive minerals or concentrate is to be transported;

(*c*) the points of commencement and conclusion of the journey and the route between those points by which the radioactive minerals or concentrate is to be transported;

(*d*) the number and weight of loads of radioactive minerals or concentrate to be transported; and

(*e*) the time periods within which each load of radioactive minerals or concentrate is to be transported.

Suspension and cancellation of permit

31.—(1) The environmental Minister may, by notice in writing served on the licensee, suspend or cancel a permit—

(*a*) where the licensee is in breach of any of the conditions of the permit;

(*b*) where the licensee has committed an offence against these Regulations, the Act, or any other relevant law; or

(*c*) where the environmental Minister is of the opinion that, in the interests of the safety of any person or for the purpose of preventing damage to the environment, the permit should be cancelled or suspended.

(2) The environmental Minister shall not cancel or suspend a permit, under subregulation (1) (*a*) and (1) (*b*) on a ground referred to in those subregulations unless he has, by notice in writing served on the holder of the permit, given not less than thirty days notice of the environmental Minister's intention to so suspend or cancel the permit on that ground.

Delay or accident to vehicle

32. Where radioactive material is being transported by a vehicle and the vehicle is involved in an accident, or is subject to unusual delay, or contamination of the environment, or danger to any person has occurred or may occur from a leakage or spillage of the material being transported, the person in control of the vehicle shall—

(*a*) forthwith notify an inspector of that incident;

(*b*) obey such instructions as an inspector may give; and

(*c*) take all reasonable steps to prevent access to the vehicle or the vicinity of the material by any person unless authorized by an inspector to have such access.

Damage to packages or containers in storage

33. Where a person becomes aware that damage has occurred to a package or container containing radioactive material on the licensed premises, that person shall—

(*a*) forthwith notify an inspector of that incident;

(*b*) obey such instructions as an inspector may give; and

(*c*) take all reasonable steps to prevent access to the package, container and material or the vicinity of the package, container and material by any person unless that person is authorized by an inspector to have such access.

Danger to persons or environment

34.—(1) Where radioactive material is being packaged, stored or transported and, in the professional opinion of an inspector—

(*a*) a person may be in danger; or

(*b*) damage to the environment may result, from contamination caused by a leakage or spillage of radioactive material from a container or package, the inspector shall immediately inform the Director.

(2) An inspector may, if he is of the opinion that danger or damage referred to in subregulation (1) may occur—

(*a*) use such power as is reasonably necessary to prevent any person entering or remaining in the vicinity of the danger;

(*b*) require the owner of the radioactive material to remove any thing or do any other work to reduce or prevent danger or damage; and

(*c*) if the owner fails to carry out a requirement made under subregulation (2) (*b*) the inspector shall remove or authorize any person to remove any thing or do any other work to reduce or prevent danger or damage.

(3) The costs of any work ordered under subregulation (2) (*c*) shall be borne by the owner.

(4) Where radioactive material is being packaged, stored or transported and an inspector believes on reasonable grounds that a person is in danger from radioactive contamination the inspector may require the person to undergo such medical examination as the inspector directs.

Powers of inspection

35.—(1) The Director, an inspector, or any authorized officer may—

(*a*) enter and inspect licensed premises, examine any records required to be kept under this Part and take notes or extracts therefrom;

(*b*) enter and inspect any premises which they suspect on reasonable grounds are being or have been used for the illegal storage of radioactive minerals or concentrate;

(*c*) require a person in control of a vehicle, which they suspect on reasonable grounds is being used for the transport of radioactive minerals or concentrate, to stop the vehicle;

(*d*) detain a vehicle, which they suspect on reasonable grounds is being used illegally for the transport of radioactive minerals or concentrate, and inspect the vehicle and its load;

(*e*) require the driver of any vehicle, which he suspects on reasonable grounds is illegally carrying radioactive minerals or concentrate, to take the vehicle to the nearest available weighing facility and either the driver or the Director or inspector is to carry out, or cause to be carried out, the weighing of the vehicle and its load; and

(*f*) install and use any equipment or measuring device for sampling, measuring or analyzing any substance or material which the Director or inspector believes on reasonable grounds may be, or may contain, radioactive minerals or concentrate.

(2) The Director, an inspector, or any officer authorized by the Director may, where they suspect on reasonable grounds that an offence may have been committed against this Part—

(*a*) seize any vehicle, radioactive minerals or concentrate, package, container, document, paper, record or other thing relating to or used in connection with the packaging, storage or transport of radioactive minerals or concentrate which they believe on reasonable grounds is related to the offence; and

(*b*) require a person who they suspect, on reasonable grounds to have committed the offence to provide his name and such information relating to the packaging, storage and transport of radioactive minerals or concentrate as the Director or inspector thinks fit.

Seized materials

36.—(1) Where the Director or an inspector has seized materials under Regulation 35, the Director or the inspector shall, as soon as practicable, deliver the seized materials to the Director or a person nominated by the Director.

(2) The Director or a person nominated by the Director may retain the seized materials for 30 days after the date of its delivery to the Director or a person nominated by the Director or, if a prosecution in relation to the seized materials is instituted within that time, until the prosecution is disposed of.

(3) Where prosecution in relation to a seized material is instituted within the 30 days referred to in subregulation (2) and the person prosecuted is found guilty, the court before which the person is found guilty may order that the seized material be forfeited to the Republic.

(4) Where prosecution is not instituted within the 30 days referred to in subregulation (2) or, where the court does not order, under subregulation (3) that a seized material be forfeited to the Republic, the Director or other person having possession of the seized material shall return it to the person from whom it was seized or to the premises from which it was seized.

PART VIII
Export of Radioactive Minerals and Concentrates

Export of radioactive minerals and concentrates

37.—(1) Where a person is granted a permit under section 119 of the Act in respect of the export of radioactive minerals including natural uranium concentrates, such export from Malaŵi shall be on condition that such materials shall—

(*a*) only be exported to States which are a party to the Nuclear Non-Proliferation Treaty and which apply IAEA safeguards;

(*b*) be duly reported to the IAEA by the Government of Malaŵi in accordance with Malaŵi's obligations under IAEA Comprehensive Safeguards Agreement and Additional Protocol;

(*c*) be shipped in accordance with the standards established by the Convention on the Physical Protection of Nuclear Material and in accordance with the applicable IAEA Guidelines; and

(*d*) be sold pursuant to a written contract which contains a binding clause ensuring that the subject concentrates and any material subsequently derived there from shall be used exclusively for peaceful non-explosive purposes and shall be subject to IAEA safeguards.

PART IX
Miscellaneous

Application of these Regulations to other radioactive minerals

38. The Director may direct that these Regulations be applied, in whole or in part, to mining and mineral processing operations other than uranium operations that have the potential to produce significant occupational radiation exposures, or to generate waste having the potential to cause a significant increase in the radiological exposure of members of the public or the environment.

Appeals

39.—(1) Any person aggrieved with the decision or direction of the Director under these Regulations may appeal to the Minister within 30 days after the date of service of the notice relating to the decision.

(2) Any person aggrieved with the decision or direction of the Minister may appeal to the High Court within 30 days after the date of service of the notice relating to the decision.

Transitional provision

40.—(1) The Director may, by notice published in the *Gazette*, exempt any person who is a holder of a mining licence prior to the coming into force to these Regulations from the operation of any provisions of these Regulations.

(2) The Director may, in making a decision to exempt, consult any relevant authority that may by law have responsibility for enforcement or implementation of the terms and conditions of the licence.

(3) The notice pursuant to subregulation (1) shall specify the relevant authorities consulted and provide the reasons for the exemption.

Offence and penalty

41.—(1) Any person who contravenes or fails to comply with any provision of these Regulations commits an offence and shall be liable on conviction to a fine not exceeding K2000 and to imprisonment for six months.

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PETROLEUM (EXPLORATION AND PRODUCTION)

An Act to make provision with respect to searching for and producing petroleum, and to provide for matters connected therewith and incidental thereto 2 of 1983 G.N. 36/1984

[30TH MARCH, 1983]

1.—(1) This Act may be cited as the Petroleum (Exploration and Production) Act. Short title

2.—(1) The entire property in, and control over, petroleum in land in Malaŵi is vested in the Life President on behalf of the people of Malaŵi; but without prejudice to the exercise of any right under or pursuant to this Act. Vesting of petroleum, etc.

(2) Subject to section 68, no person shall carry on in Malaŵi exploration or production operations, except under, and in accordance with, a licence.

(3) Any person who contravenes subsection (2) is guilty of an offence and liable on conviction—

(*a*) in the case of an individual, to a fine of one thousand Kwacha or to imprisonment for a term of two years, or to both; or

(*b*) in the case of a body corporate, to a fine of fifty thousand Kwacha.

Interpretation

3.—(1) In this Act, unless the context otherwise requires—

"authorized officer" means a person designated as such under section 6 (2);

"block" means a block constituted as provided in the Regulations and includes part of a block so constituted;

"body corporate" means a company or a corporation;

"Commissioner" means the Commissioner for Petroleum Exploration and Production appointed pursuant to section 5;

"company" means a corporate body incorporated under the Companies Act;

Cap. 46:03

"conditions" includes terms, limitations and stipulations;

"corporation" means a corporate body incorporated in or outside Malaŵi, whether by Act or otherwise, but does not include a company;

"discovery block", in relation to an exploration area, has the meaning assigned by section 25 (5);

"drilling" means the perforation of the earth's surface, otherwise than by pitting, trenching or sinking a shaft, whether the hole is vertical, inclined or horizontal, and includes all operations for preventing the collapse of the sides of the hole or preventing the hole from becoming filled by extraneous materials (including water) and the fitting of wellheads, coring and logging, and any operations incidental to the foregoing;

"explore" means intentionally to search for petroleum and includes the evaluation of any discovery of petroleum;

"exploration area" means the area constituted by a block that is or by the blocks that are subject to a petroleum exploration licence;

"exploration operations" means operations carried on in the course of exploring for petroleum;

"good oilfield practices" means all those things that are generally accepted as good, safe and efficient in the carrying on of exploration for petroleum or, as the case may be, operations for the production of petroleum;

"holder", in relation to a licence, means the person to whom the licence is granted and includes every person to whom the licence is lawfully assigned;

"in default" means in breach of any provision of this Act or of any condition of a licence, or of any provision of a relevant agreement of a kind referred to in section 10;

"land" includes land beneath water;

"lawful occupier" in relation to customary land, includes such persons, or such class of persons, as may be prescribed;

"licence" means a petroleum exploration licence or a petroleum production licence, or both, as the context requires;

"licensee" means the holder of a licence;

"monument" has the meaning assigned by the Monuments Act; Cap. 29:01

"natural gas" means gas obtained from a well and consisting primarily of hydrocarbons;

"petroleum" means—

(*a*) any naturally occurring hydrocarbons, whether in a gaseous, liquid or solid state;

(*b*) any naturally occurring mixture of hydrocarbons, whether in a gaseous, liquid or solid state; or

(*c*) any naturally occurring mixture of one or more hydrocarbons (whether in a gaseous, liquid or solid state) and any other substance,

and includes any petroleum as defined by paragraph (*a*), (*b*) or (*c*) that has been returned to a natural reservoir, but does not include coal, shale, or any substance that may be extracted from coal or shale;

"petroleum exploration licence" means a licence granted under section 16;

"petroleum production licence" means a licence granted under section 28;

"petroleum reservoir" means a naturally occurring discrete accumulation of petroleum;

"private land" has the meaning assigned by the Land Act; Cap. 57:01

"production area" means the area constituted by a block that is or by the blocks that are subject to a petroleum production licence;

"production operations" means operations carried on for or in connexion with the production of petroleum;

"public land" has the meaning assigned by the Land Act; Cap. 57:01

"the Regulations" means regulations made under section 78;

"relic" has the meaning assigned by the Monuments Act; Cap. 29:01

"this Act" includes the Regulations;

"well" means a hole, made by drilling in connexion with exploration or production operations, but does not include a seismic shot hole.

(2) In this Act, a reference to a year of the term of a licence is a reference to a period of one year commencing on the date from and including which the licence has effect and ending on any anniversary of that date.

(3) In this Act, a reference to the conditions of a licence is a reference to the conditions of the licence as modified from time to time.

Service of documents

4.—(1) A document or notice required or permitted to be served on, or given to, a person under or for the purposes of this Act, may be served or given—

(*a*) in the case of an individual (other than the Minister or the Commissioner), by serving it personally upon the individual or by sending it by post to him at his usual or last known place of abode or business;

(*b*) in the case of the Minister or the Commissioner, in the manner prescribed;

(*c*) in the case of a body corporate—

(i) by leaving it at the registered or principal office of the body corporate with some individual apparently employed by the body corporate and apparently not less than sixteen years of age;

(ii) by sending it by post to the body corporate at the registered or principal office of the body corporate; or

(iii) by delivering it to some individual in the employment or acting on behalf of the body corporate who is authorized by the body corporate, or agrees, to accept service of or to receive the document or any document.

(2) For the purposes of subsection (1) (*c*), the principal office of a body corporate incorporated outside Malaŵi is its principal office within Malaŵi.

(3) Where a person has more than one place of abode or business a document or notice may be served on, or given to, the person under this section at any of those places.

(4) Where a document or notice is sent by post pursuant to this section, service or notice is deemed to have been effected or given under this section, unless the contrary is proved, at the time at which the document or notice would be delivered in the ordinary course of post.

PART II

Administration

Commissioner for Petroleum Exploration and Production

5. The Minister may appoint a person to be the Commissioner for petroleum Exploration and Production, and such other persons to be officers as he may consider necessary for the administration of this Act.

Performance of Commissioner's functions, etc.

6.—(1) Anything required or permitted by or under this Act to be done by the Commissioner may be done by any officer who is authorized, either specially or generally, in that behalf in writing by the Commissioner, and for the purpose of doing so that officer is deemed to be the Commissioner.

(2) The Commissioner may designate any public officer to be an authorized officer for the purposes of this Act.

Information not to be disclosed

7.—(1) Subject to subsection (2), information furnished, and information in a report submitted, pursuant to the Regulations by a licensee shall not, for as long as the licence has effect, be disclosed, except with the consent of the licensee.

(2) Nothing in subsection (1) operates to prevent the disclosure of information when the disclosure is made—

(*a*) for or in connexion with the administration of this Act;

(*b*) for the purpose of any legal proceedings; or

(*c*) to any consultant to the Government, or to any public officer, who is approved by the Commissioner as a proper person to receive the information.

(3) Any person who contravenes subsection (1) is guilty of an offence and liable on conviction to a fine of one thousand Kwacha or to imprisonment for a term of two years, or to both.

Public officers holding certain shares to notify Minister

8.—(1) In this section, "public officer" means a public officer engaged in the administration of this Act.

(2) Where a public officer, either directly or indirectly, holds any shares in a body corporate which is the holder of a licence, he shall, without delay, notify the Minister in writing of that fact giving in the notice particulars of the shares held by him.

(3) For the purposes of this section, the holding by the wife or husband (not herself or himself being a public officer) of a public officer of any shares of the kind referred to in subsection (1) is deemed to be a holding by the public officer of the shares.

(4) This section applies with respect to shares—

(*a*) acquired by the holder whether before or after the appointment to public office;

(*b*) held whether before or after the commencement of this Act.

Indemnity of public officers

9. A public officer does not incur any liability in respect of the exercise or performance, or purported exercise or performance, by him in good faith of any function under and for the purposes of this Act.

PART III

LICENCES

Division 1—General

Agreements with respect to the grant of licences

10.—(1) With the consent of the Life President, the Minister, on behalf of the Republic of Malaŵi, may enter into an agreement (not inconsistent with this Act) with any person with respect to all or any of the following matters, namely—

(*a*) the grant to that person, or to any person (including any body corporate to be formed) identified in the agreement, of a licence on the conditions (if any) specified in the agreement;

(*b*) conditions or the conditions to be included in the licence as granted or renewed; or

(*c*) any matter incidental to or connected with the foregoing.

(2) There may be included in an agreement under subsection (1) provision with respect to a contract of insurance or other form of security required to be kept in force under section 61.

Applications

11.—(1) An application under this Act—

(*a*) shall be made in accordance with the Regulations;

(*b*) shall be made in or to the effect of a form approved by the Minister;

(*c*) shall be made to the Minister or, if it is so provided in the Regulations, to the Commissioner; and

(*d*) may be withdrawn by the applicant giving to the Minister or, in the case of an application made to the Commissioner, to the Commissioner a notice of withdrawal.

(2) An application shall be accompanied by the fee (if any) prescribed in respect of the application.

(3) The Minister shall, by written notice served on an applicant for the grant of a licence, require the applicant to do either or both of the following, namely—

(*a*) publish details of his application at a time or times, and in a manner, specified in the notice;

(*b*) give details of his application to the persons, and in a manner, specified in the notice.

(4) The Minister shall cause an applicant for the grant or renewal of a licence to be notified in writing of his decision on the application giving, where he is prepared to grant or renew the licence, details of the conditions on which it will be granted or renewed—

(*a*) and if the applicant notifies the Minister, in writing, within sixty days (or such further period as the Minister may allow) of being so notified, that he accepts those conditions, the licence shall be issued on those conditions;

(*b*) but if the applicant fails so to notify the Minister, the application lapses.

Power of Minister to obtain information concerning applications, etc.

12.—(1) The Minister may, by written notice served on the applicant for the grant of a licence, require the applicant to furnish him, within such reasonable time as is specified in the notice—

(*a*) with such further information relevant to the application as may be described in the notice; and

(*b*) if the applicant, or any of the applicants, is a body corporate, with such information as may be described in the notice to enable him to ascertain to what extent the controlling power in the direction of the affairs of the body corporate is a corporation incorporated outside Malaŵi, or an individual or individuals resident outside Malaŵi.

(2) To enable him to dispose of an application for the grant of a licence, the Minister—

(*a*) may cause such investigations, negotiations or consultations to be carried on as he considers necessary; and

(*b*) may, by written notice served on the applicant for the grant of the licence, require the applicant to furnish him, within such reasonable time as is specified in the notice, with such proposals, by way of alteration to or in addition to any proposals in the application, as the Minister specifies in the notice.

Restriction on persons to whom licence may be granted

13. No licence—

(*a*) shall be granted to an individual unless he is a citizen of Malaŵi or has been ordinarily resident in Malaŵi during the period of four years immediately preceding the date on which his application for the grant of a licence is made;

(*b*) being a petroleum exploration licence, shall be granted to a body corporate unless the body corporate is—

(i) a company;

(ii) a corporation incorporated in Malaŵi; or

(iii) a corporation (not being a corporation of a kind referred to in subparagraph (ii)) approved by the Minister; or

(*c*) being a petroleum production licence, shall be granted to a body corporate unless the body corporate is—

(i) a company; or

(ii) a corporation incorporated in Malaŵi.

Form of licence

14. A licence shall be in accordance with such form as the Minister approves.

Restriction on exercise of rights by holder of licence

15. When the doing of any act is prohibited or regulated by a written law (other than this Act), nothing in this Act shall be construed,—

(*a*) where the doing of the act is so prohibited, as authorizing a licensee to do the act; or

(*b*) where the doing of the act is so regulated, as authorizing a licensee to do the act—

(i) otherwise than in accordance with the written law and any authority referred to in subparagraph (ii); and

(ii) without first obtaining any authority (howsoever described) required under the written law for the doing of the act.

Division 2—Petroleum Exploration Licence

Disposal of application for petroleum exploration licence

16.—(1) Subject to the provisions of this Act, on application in writing duly made, the Minister may grant on such conditions as he may determine, or refuse to grant, a petroleum exploration licence in respect of any block or blocks.

(2) A petroleum exploration licence shall not be granted in respect of a block which is, at the time the application for the grant of the licence is made, comprised in a licence already granted.

Content of petroleum exploration licence

17.—(1) A petroleum exploration licence—

(*a*) shall—

(i) state the date of the grant of the licence;

(ii) identify the block or blocks to which the licence relates; and

(iii) state the conditions on which the licence is granted; and

(*b*) may contain such other matter as the Minister may determine for the purposes of subsection (2) or (3) or otherwise.

(2) There may be included in a petroleum exploration licence provision with respect to the exercise by the Republic, or a person identified in the licence, of an option to acquire on stipulated terms, or on terms to be agreed, an interest in any venture for the production of petroleum which may be carried on in any block or blocks to which the licence relates when granted.

(3) Where the Minister is satisfied that an initial period is required to make the necessary preparations to carry on exploration operations, he may specify in a petroleum exploration licence a period (not exceeding one year) as the preparation period.

Rights conferred by petroleum exploration licence

18. A petroleum exploration licence, while it remains in force, confers on the licensee, subject to this Act and to the conditions specified in the licence or to which the licence is otherwise subject, the exclusive right to explore for petroleum, and to carry on such operations and execute such works as are necessary for that purpose, in the exploration area.

Application for renewal of petroleum licence

19. Subject to this Act, a licensee may apply for the renewal of a petroleum exploration licence in accordance with the Regulations.

Grant or refusal of renewal of petroleum exploration licence

20.—(1) Subject to subsection (2), on application duly made pursuant to section 19 for the renewal of a petroleum exploration licence, the Minister shall grant a renewal of the licence on such conditions as are reasonably necessary to give effect to the application and the requirements of this Act.

(2) Subject to subsection (3), the Minister shall refuse to grant a renewal of a petroleum exploration licence if the licensee is in default unless the Minister considers that special circumstances exist which justify the granting of the renewal notwithstanding the default.

(3) The Minister shall not refuse to grant the renewal of a petroleum exploration licence on application being duly made under section 19 unless—

(*a*) he has given to the applicant written notice of his intention to do so—

(i) giving in the notice particulars of the ground for the intended refusal; and

(ii) stating in the notice a date before which the applicant may take appropriate action or make representations in relation to that ground; and

(*b*) the applicant has not, before that date, remedied the default or, in a written notice given to the Minister, made representations which, in the opinion of the Minister, remove the ground for the intended refusal.

Term of petroleum exploration licence

21.—(1) A petroleum exploration licence, unless sooner determined, shall, by virtue of this subsection continue in force—

(*a*) for any preparation period specified in the licence pursuant to section 17 (3);

(*b*) for the period stipulated in the licence, not exceeding four years, next after the date of the grant of the licence or, if there is a preparation period, next after the expiration of that period;

(*c*) for the renewal period, not exceeding three years, following the date upon which any renewal of the licence is granted pursuant to section 20; and

(*d*) for any period added pursuant to section 42 (3) to the term of the licence.

(2) Where a petroleum exploration licence would otherwise cease to be in force then, by virtue of this subsection, the licence shall, unless sooner determined, continue in force in respect of any block subject to the licence to which an application, duly made, for the grant of—

(*a*) a renewal of the licence; or

(*b*) a petroleum production licence,relates, until—

(*c*) the application is finally dealt with—

(i) by the renewal of or refusal to renew the licence; or

(ii) as the case may be, by the grant of or refusal to grant the petroleum production licence; or

(*d*) the application lapses.

(3) Where a petroleum exploration licence would otherwise cease to be in force then, by virtue of this subsection, the licence shall, unless sooner determined, continue in force in respect of any discovery block or blocks in the exploration area until a

notice is given pursuant to section 25 (1), or until the lapse of the period of thirty days referred to in section 25 (1), whichever first occurs.

(4) Where a notice given pursuant to section 25 (1) states that a discovery is, in the opinion of the licensee, of potential commercial interest and the petroleum exploration licence relating to the discovery would otherwise cease to be in force then, by virtue of this subsection, the licence shall, unless sooner determined, continue in force in respect of the discovery block or blocks in the exploration area—

(*a*) for the period specified in section 25 (2); and

(*b*) for any extension of that period allowed by the Minister pursuant to section 25 (3).

Duties of licensee

22.—(1) Subject to subsections (3) and (4), a licensee shall in, or in relation to, the exploration area, meet the requirements, with respect to work and expenditure,—

(*a*) stipulated in the licence; and

(*b*) of each programme submitted pursuant to subsection (2).

(2) A licensee shall, not later than one month before the anniversary in any year of the grant of a petroleum exploration licence, submit to the Minister in detail an adequate programme with respect to work and expenditure to be carried out or made in the year of the term of the licence immediately following the anniversary concerned.

(3) The Minister may, on application made to him in writing by a licensee, by instrument in writing limit, reduce, vary or suspend any obligation arising pursuant to subsection (1), either conditionally or unconditionally.

(4) A licensee may, for good cause, amend the details of any programme of work and expenditure which he is required under subsection (1) to carry out, but—

(*a*) the licensee shall forthwith give notice in writing to the Minister of any such amendment, giving in the notice details of and the reason for the amendment; and

(*b*) no such amendment shall have effect so as to reduce the minimum requirements of the overall programme of work and expenditure to be carried out or made in the term of the licence.

(5) Where a licensee fails to carry out any part of the work programme stipulated in his petroleum exploration licence, or in a work programme submitted pursuant to subsection (2), then without prejudice to any other right which may be invoked in respect of that failure the relevant provisions of the licence (if any) apply for the purpose of determining the liquidated damages payable to the Republic.

(6) The requirement in subsection (2) with respect to an adequate programme with respect to work and expenditure is deemed to have been met in any case where the programme submitted pursuant to that subsection satisfies the requirements (if any) with respect to work and expenditure contained in a relevant agreement of a kind referred to in section 10.

Relinquishment of part of exploration area

23. The First Schedule applies with respect to the relinquishment of any part of an exploration area.

Division 3—Discovery of Petroleum

Discovery of petroleum to be notified

24.—(1) Where any significant discovery of petroleum is made in an exploration area, the licensee—

(*a*) shall forthwith inform the Minister of the discovery;

(*b*) shall, within a period of thirty days after the date of the discovery, furnish to the Minister particulars in writing of the discovery;

(*c*) shall promptly run tests in respect of the discovery and thereafter forthwith submit to the Minister evaluated test results in respect of the discovery; and

(*d*) shall, subject to subsection (3), take promptly all steps that are reasonable, in the circumstances relating to the discovery, to ascertain the quantity of the petroleum—

(i) in the petroleum reservoir to which the discovery related;

or

(ii) if part only of that reservoir is within the exploration area, in that part.

(2) Where petroleum is discovered in an exploration area, the Minister may, from time to time, by notice in writing served on the licensee, direct the licensee—

(*a*) to furnish to him, within the period specified in the notice, particulars in writing of—

(i) the chemical composition and physical properties of the petroleum;

(ii) the stratigraphical position and depth of the discovery;

and

(iii) any other matters relating to the discovery that are specified by the Minister in the notice; and

(*b*) to do, within the period specified in the notice, such things as the Minister thinks necessary, and specifies in the notice, to ascertain the chemical composition and physical properties of the petroleum.

(3) The Minister may by instrument in writing exempt, wholly or partly, from the requirement of subsection (1) (*d*), the licensee, either unconditionally or subject to such conditions as are specified in the instrument of exemption.

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Discovery of petroleum of potential commercial interest

25.—(1) Where petroleum is discovered in an exploration area and the licensee has, pursuant to section 24 (1) (*c*), submitted to the Minister evaluated test results in respect of the discovery the licensee shall, within thirty days of the date of submission of such evaluated results, serve on the Minister a notice in writing stating that the discovery is or, as the case may be, is not, in the opinion of the licensee, of potential commercial interest.

(2) Where a notice served under subsection (1) states that the discovery is, in the opinion of the licensee, of potential commercial interest the licensee may, unless the licence is sooner determined, within a period of two years after the date on which such notice is served, apply under section 27 (1) for the grant of a petroleum production licence with respect to the discovery block or blocks in the exploration area.

(3) If the licensee fails within the period specified in subsection (2), or within such further period as the Minister allows, to apply for a petroleum production licence with respect to the discovery block or blocks in the exploration area, the Minister may, if the petroleum exploration licence is then in force in respect of that discovery block or blocks, by notice in writing served on the licensee direct that the licence shall cease to have effect with respect to that block or those blocks and the licence shall so cease to have effect.

(4) Where a notice served under subsection (1) states that the discovery is not, in the opinion of the licensee, of potential commercial interest—

(*a*) the Minister may, subject to subsection (6), if the petroleum exploration licence is then in force in respect of the discovery block or blocks in the exploration area, within a period of twelve months from the date on which such notice is so served, by notice in writing served on the licensee direct that the licence shall cease to have effect with respect to that block or those blocks and the licence shall so cease to have effect; and

(*b*) during that period of twelve months, and any subsequent period if the Minister does not pursuant to paragraph (*a*) direct that the licence shall cease to have effect in respect of that block or those blocks, section 24 (2) shall not apply in respect of the discovery.

(5) For the purposes of this section, "discovery block", in relation to an exploration area, means a block in the exploration area comprising the geological feature, as outlined by the relevant geological or geophysical data, in which the discovery of petroleum is located.

(6) The Minister shall not give a direction under subsection (4) (*a*) unless he forms the opinion, as a result of evidence available to him, that the discovery is of potential commercial interest.

Investigations

26.—(1) Where the licensee, pursuant to section 25 (1), has served a notice stating that a discovery of petroleum is, in the opinion of the licensee, of potential commercial interest the Minister may, by written notice served on the licensee, direct that the licensee carry out, within a period of not less than two years specified in the notice, such prescribed investigations and studies as the Minister thinks appropriate for the purpose of assessing the feasibility of the construction, establishment and operation of an industry for the production of petroleum in the discovery block or blocks concerned.

(2) The licensee shall furnish to the Minister, within the period specified in the notice under subsection (1), such reports, analyses and data resulting from the investigations and studies carried out under this section as the Minister, by written notice served on the licensee, may require.

Division 4—Petroleum Production Licence

Application for petroleum production licence

27.—(1) A licensee whose petroleum exploration licence is in force may, within the period specified in section 25 (2) or within such further period as the Minister may allow under section 25 (3), apply pursuant to this subsection for the grant of a petroleum production licence with respect to any discovery blocks in the exploration area, or with respect to any part thereof, which the licensee satisfies the Minister contain a petroleum reservoir or part of a petroleum reservoir.

(2) A person may apply pursuant to this subsection for the grant of a petroleum production licence in respect of a block or blocks, or part thereof, which he satisfies the Minister contains or, as the case may be, contain a petroleum reservoir or part of a petroleum reservoir, notwithstanding that he does not hold a petroleum exploration licence in respect of the block or blocks or does not hold any petroleum exploration licence.

Disposal of application for petroleum production licence

28.—(1) Subject to section 29,—

(*a*) on application duly made pursuant to section 27 (1) the Minister shall grant the petroleum production licence applied for, on such conditions as are reasonably necessary to give effect to the application and the requirements of this Act; and

(*b*) on application duly made pursuant to section 27 (2) the Minister may grant on such conditions as he may determine, or refuse to grant, the petroleum production licence applied for.

(2) For the purpose of determining the conditions to be included in a licence to be granted pursuant to subsection (1) (*a*), the Minister shall give effect to any relevant agreement of a kind referred to in section 10.

Restriction on grant of petroleum production licence

29.—(1) A petroleum production licence shall not be granted to an applicant—

(*a*) unless—

(i) the proposals of the applicant take proper account of environmental and safety factors;

(ii) the proposals of the applicant would ensure the most efficient, beneficial and timely use of the petroleum resources concerned;

(iii) the applicant has adequate financial resources and technical and industrial competence and experience to carry on effective production operations;

(iv) the applicant would be able and willing to comply with the conditions on which a licence would be granted;

(v) the applicant's proposals for the employment and training of citizens of Malaŵi are satisfactory; and

(vi) any relevant option given pursuant to section 17 (2) has been properly exercised and given effect to, or arrangements satisfactory to the Minister have been made for that purpose;

(*b*) if the applicant is in default, unless the Minister considers that special circumstances exist which justify the grant of the licence notwithstanding the default.

(2) The Minister shall not refuse an application for the grant of a petroleum production licence on application being duly made pursuant to section 27 (1) unless—

(*a*) he has given to the applicant written notice of his intention to do so—

(i) giving in the notice particulars of the ground for the intended refusal; and

(ii) stating in the notice a date before which the applicant may take appropriate action or make representations in relation to that ground; and

(*b*) the applicant has not, before that date, remedied the default or, in a written notice given to the Minister, made representations which, in the opinion of the Minister, remove the ground for the intended refusal.

(3) A petroleum production licence shall not be granted to an applicant pursuant to section 25 (2) in respect of a block which is, at the time the application for the grant of the licence is made, comprised in a licence already granted to a person other than the applicant.

Content of petroleum production licence

30.—(1) A petroleum production licence—

(*a*) shall—

(i) state the date of the grant of the licence;

(ii) identify the block or blocks to which the licence relates;

(iii) state the conditions on which the licence is granted; and

(iv) give effect to subsection (3);

(*b*) may contain such other matter as the Minister may determine for the purposes of subsection (2) or (4) or otherwise.

(2) Where the Minister is satisfied that an initial period is required to make the necessary preparations to carry on production operations he may specify in a petroleum production licence such period as he thinks fit as the preparation period.

(3) There shall be included in a petroleum production licence provision with respect to the duty, and the extent thereof, of the licensee to supply petroleum or petroleum products to meet the requirements of Malaŵi.

(4) There may be included in a petroleum production licence conditions with respect to the refining, disposal or sale of petroleum which may be recovered in the production area.

Rights conferred by petroleum production licence

31. A petroleum production licence, while it remains in force, confers on the licensee, subject to this Act and to the conditions specified in the licence or to which the licence is otherwise subject, exclusive rights—

(*a*) to carry on exploration and production operations in the production area;

(*b*) to sell or otherwise dispose of petroleum recovered; and

(*c*) to carry on such operations and execute such works in the production area as are necessary for or in connexion with any matter referred to in paragraphs (*a*) and (*b*).

Application for renewal of petroleum production licence

32. Subject to the Regulations, a licensee may apply for the renewal of a petroleum production licence in accordance with the Regulations.

Grant or refusal of renewal of petroleum production licence

33.—(1) Subject to subsection (2), on application duly made pursuant to section 32 for the renewal of a petroleum production licence, the Minister may grant a renewal of the licence on such conditions as he deems fit or refuse to grant a renewal.

(2) The Minister shall refuse to grant a renewal of a petroleum production licence if the licensee is in default unless the Minister considers that special circumstances exist which justify the granting of the renewal notwithstanding the default.

Term of petroleum production licence

34.—(1) A petroleum production licence, unless sooner determined, shall, by virtue of this subsection, continue in force—

(*a*) for any preparation period specified in the licence pursuant to section 30 (2);

(*b*) for the period of twenty-five years next after the date of the grant of the licence or, if there is a preparation period, next after the expiration of that period;

(*c*) for any period for which the licence is renewed pursuant to section 33 (1); and

(*d*) for any period added pursuant to section 42 (3) to the term of the licence.

(2) Where a petroleum production licence would otherwise cease to be in force then, by virtue of this subsection, the licence shall, unless sooner determined, continue in force in respect of any block subject to the licence to which an application, duly made, for the grant of a renewal of the licence relates until—

(*a*) the application is finally dealt with by the grant of or refusal to grant the renewal; or

(*b*) the application lapses.

Division 5—Miscellaneous

Directions

35.—(1) The Minister may, by notice in writing served on a licensee, give to the licensee a direction, consistent with good oilfield practices, as to any matter with respect to which regulations may be made under section 78.

(2) A licensee who fails or neglects to comply with a direction given under subsection (1) is guilty of an offence and liable on conviction to a fine of ten thousand Kwacha.

(3) In proceedings on a prosecution for an offence under subsection (1), it is a sufficient defence if the accused person proves that he promptly took all reasonable steps to comply with the direction.

Compliance with directions

36. Where a licensee fails or neglects to comply with a direction given to him under and in accordance with section 35 the Minister may cause to be done all or any of the things required by the direction to be done, and the costs and expenses incurred in doing so are a debt due to the Republic and may be recovered in a court in Malaŵi.

Unit development

37.—(1) In this section, "unit development", in relation to a petroleum reservoir, means the co-ordination of operations for the recovery of petroleum being carried on or to be carried on in a production area in which there is part of the reservoir, with other operations for the recovery of petroleum being carried on or to be carried on in any other area in which there is part of the same reservoir.

(2) A holder of a petroleum production licence may, from time to time, enter into an agreement in writing with the Republic or a licensee for or in relation to the unit development of a petroleum reservoir.

(3) The Minister may, of his own motion, or on application made to him in writing by a holder of a petroleum production licence in whose production area there is a part of a petroleum reservoir, for the purpose of securing the more effective recovery of petroleum from that petroleum reservoir, direct in writing any holder of a licence whose production area includes part of that petroleum reservoir to enter into an agreement in writing with the person or persons (including the Republic), and within the period specified by the Minister in the direction for or in relation to the unit development of that petroleum reservoir, and to lodge the agreement with the Minister forthwith for approval.

(4) Where—

(*a*) a holder of a licence who is directed under subsection (3) to enter into an agreement for or in relation to the unit development of a petroleum reservoir does not enter into such agreement within the specified period; or

(*b*) a holder of a licence enters into such an agreement but the agreement is not lodged with the Minister in accordance with subsection (3),

the Minister may, by notice in writing served on the holder, direct him to submit to the Minister, within the period specified in the notice, a scheme for or in relation to the unit development of the petroleum reservoir, and the holder shall do so.

Directions as to recovery of petroleum

38.—(1) Where Petroleum is not being recovered in a production area and the Minister is satisfied that there is recoverable petroleum in that area, he may, by notice in writing served on the holder of the petroleum production licence, direct the holder to take all necessary and practicable steps to recover that petroleum.

(2) Where the Minister is not satisfied with the steps taken or being taken by the holder of a licence to whom a direction has been given under subsection (1), the Minister may, by notice in writing served on the holder, give to the holder such directions, specified in the notice, as the Minister thinks necessary for or in relation to the recovery of petroleum in the production area.

(3) Where petroleum is being recovered in a production area, the Minister may, by notice in writing served on the holder of the petroleum production licence, direct the holder to take all necessary and practicable steps to increase (to an extent not exceeding the capacity of existing production facilities) or reduce the rate at which the petroleum is being recovered to such rate as the Minister specifies in the notice.

(4) Where the Minister is not satisfied with the steps taken or being taken by the holder of a licence to whom a direction has been given under subsection (3), the Minister may, by notice in writing served on the holder, give to the holder such directions, specified in the notice, as the Minister thinks necessary for or in

relation to the increase or reduction of the rate at which petroleum is being recovered in the production area.

(5) Nothing in this section, or in any direction given under this section, shall be construed as requiring the holder of a petroleum production licence to do anything which is not in accordance with good oilfield practices or to refrain from doing anything which is in accordance with good oilfield practices.

Penalty for late payments

39.—(1) Where the liability of a person under this Act or a licence to pay an amount is not discharged at or before the time when the amount is payable, there is payable by that person an additional amount calculated at the rate of one-third of one per cent per day, upon so much of that amount as from time to time remains unpaid, to be computed from the time that the amount became payable until it is paid.

(2) The Minister may, in a particular case, for reasons that in his opinion are sufficient, remit the whole or part of an amount payable under this section.

Information to be furnished, etc.

40.—(1) Where the Minister has reason to believe that a person is capable of giving information or producing or making available data relating to exploration or production operations or petroleum obtained or the value thereof he may, by notice in writing, require that person—

(*a*) to furnish to him that information or data within the period and in the manner specified in the notice;

(*b*) to attend before him or a person identified in the notice, at such time and place as is specified in the notice, and there to answer questions relating to those operations or petroleum obtained or the value thereof; or

(*c*) to furnish to a person identified in the notice, at such time and place as is specified in the notice, data in his custody or power relating to those operations or petroleum obtained or the value thereof.

(2) A person is not excused from furnishing information or data or answering a question when required to do so under this section on the ground that the information or data so furnished, or the answer to the question, might tend to incriminate him or make him liable to any penalty, but the information or data so furnished or his answer to the question shall not be admissible in evidence against him in any proceedings other than proceedings for an offence against this section.

(3) Where any data is furnished, pursuant to a requirement under subsection (1) (*c*), the person to whom it is furnished may make copies or take extracts from the data.

(4) Any person who—

(*a*) refuses or fails to comply with the requirement in a notice under subsection (1) to the extent to which he is capable of complying with it;

(*b*) in purported compliance with a requirement referred to in subsection (1) (*a*), knowingly or recklessly furnishes information or data that is false or misleading in a material particular; or

(*c*) when attending before the Minister or any other person under a requirement referred to in subsection (1) (*b*) or furnishing any data to any person under a requirement referred to in subsection (1) (*c*), knowingly or recklessly makes a statement or produces any data that is false or misleading in a material particular,

is guilty of an offence and liable on conviction to a fine of ten thousand Kwacha.

(5) In this section, "data" includes books, documents, tapes, diagrams, profiles and charts.

Division 6—Cancellation and Force Majeure

Cancellation

41.—(1) Subject to this section and section 42, where a licensee is in default the Minister may, by notice in writing served on the licensee, cancel his licence.

(2) The Minister shall not, under subsection (1), cancel a licence on the ground of any default unless—

(*a*) the Minister has, by notice in writing served on the licensee, given not less than thirty days notice of the Minister's intention so to cancel the licence on that ground;

(*b*) the Minister has, in the notice, specified a date before which the licensee may, in writing, submit any matter which he wishes the Minister to consider; and

(*c*) the Minister has taken into account—

(i) any action taken by the licensee to remove that ground or to prevent the recurrence of similar grounds; and

(ii) any matters submitted to the Minister by the licensee pursuant to paragraph (*b*).

(3) The Minister shall not, under subsection (1), cancel a licence on the ground that the licensee has failed to pay any amount payable by him under this Act or his licence if, before the date specified in a notice referred to in subsection (2) (*b*), the licensee pays the amount concerned, together with any amount which may be payable pursuant to section 39.

(4) The Minister may, by notice in writing served on a licensee, cancel the licence—

(*a*) if the licensee (being an individual) is—

(i) adjudged bankrupt; or

(ii) enters into any agreement or scheme of composition with his creditors or takes advantage of any law for the benefit of debtors; or

(*b*) if, in the case of a licensee that is a body corporate, an order is made or a resolution is passed winding up the affairs of the body corporate, unless the winding up is for the purpose of amalgamation and the Minister has consented to the amalgamation, or is for the purpose of reconstruction and the Minister has been given written notice of the reconstruction.

(5) Where two or more persons constitute a licensee the Minister shall not, under subsection (4), cancel the licence on the occurrence, in relation to one or some only of the persons constituting the licensee, of an event entitling the Minister under that subsection to cancel the licence, if the Minister is satisfied that any other person or persons constituting the licensee is or are willing and would be able to carry out the duties and obligations of the licensee.

(6) The Minister shall, on the written application of a licensee made not earlier than five years after the licence has effect, cancel a petroleum production licence either wholly or in relation to any block or blocks on such conditions, if any, as the Minister determines and specifies in the instrument of cancellation.

(7) On the cancellation of a licence, the rights of the licensee thereunder cease, but the cancellation does not affect any liability incurred before the cancellation and any legal proceedings that might have been commenced or continued against the former licensee may be commenced or continued against him.

Force majeure

42.—(1) Any failure on the part of a licensee to fulfil any of the conditions of his licence or to meet any requirement of this Act or a relevant agreement of a kind referred to in section 10 shall be deemed not to be a breach of the licence, this Act or the agreement, in so far as the failure results from an act of war, hostility, insurrection, or an exceptionl, inevitable and irresistible natural phenomenon, or from any other cause prescribed in the licence or relevant agreement as constituting *force majeure*.

(2) Where a licensee fails to fulfil any of the conditions of his licence because of the occurrence of circumstances of a kind referred to in subsection (1), he shall forthwith notify the Minister giving particulars of the failure and its cause.

(3) Where a licensee is prevented from exercising any of his rights under his licence for any period because of the occurrence of circumstances of a kind referred to in subsection (1), then that period, as agreed by the Minister, shall be added to the term of his licence; but the Minister may refuse to agree to the addition of any period to the term of a licence if in his opinion the licensee could, by taking any reasonable steps which were open to him, have exercised those rights during that period, notwithstanding any such occurrence.

(4) This section does not apply with respect to any requirement to meet an obligation under a licence or this Act to make any payment of royalty, annual charges, rent or fees.

PART IV

Financial

Royalty on petroleum recovered under licence

43.—(1) Subject to this Act, the holder of a petroleum production licence shall, in accordance with his licence and this Act, pay royalty in respect of petroleum recovered by him in the production area.

(2) Where provision is made in a petroleum production licence for the payment of royalty in kind, the word "pay" and cognate expressions in section 42 (4) and this Part shall be construed accordingly.

Prohibition on disposal of petroleum

44. If the holder of a petroleum production licence fails to pay any royalty payable by him on or before the due date, or any extension thereof allowed by the Minister, the Minister may, by order served on the holder of the licence, prohibit the removal of, or any dealings in or with, any petroleum from the production area concerned, or from any other production area held by that holder, or from both, until all outstanding royalty has been paid or until an arrangement has been made and accepted by the Minister for the payment of the royalty; and the holder shall comply with the order.

Remission of royalty, etc.

45. The Minister may, on written application made to him by a licensee and after consultation with the Minister responsible for finance,—

(*a*) remit, in whole or part, any royalty payable; or

(*b*) defer payment of any royalty,

on such conditions (if any) as he may determine and specifies in the instrument of exemption.

Security for compliance and recovery of royalty

46.—(1) The Minister may, from time to time, make such arrangements as appear appropriate to him to secure that the holder of a licence complies with this Act and his licence, or either, and in particular may accept guarantees, whether from shareholders or otherwise, in respect of such compliance.

(2) Subject to subsection (4), royalty payable pursuant to section 43 is a debt due to the Republic and may be recovered in a court.

(3) A certificate of the Minister certifying that a specified amount of royalty is payable by a person specified in the certificate shall, in any proceedings instituted against that person for the recovery of any royalty, be received as evidence of that fact, but without prejudice to the right to adduce evidence in rebuttal.

(4) This section does not apply in any case where the royalty concerned is payable in kind.

PART V

Protection of the Environment and Work Practices

Division 1—General

Protection of natural resources to be taken into account

47.—(1) In deciding whether or not to grant a licence and on the conditions to be included in a licence the Minister shall take into account the need to conserve and protect the natural resources in or on the land over which the licence is sought and in or on adjoining and neighbouring lands.

(2) The Minister may, pursuant to section 12 (2), require environmental impact studies to be carried out.

Work practices for holder of licence

48.—(1) The holder of a licence shall—

(*a*) carry out exploration and production operations in the exploration or production area in a proper, safe and workmanlike manner and in accordance with good oilfield practices; and

(*b*) take all reasonable steps necessary to secure the safety, health and welfare of persons engaged in those operations in and about the exploration or production area.

(2) In particular, and without limiting the generality of subsection (1), the holder of a licence shall—

(*a*) control the flow and prevent the waste or escape in the exploration or production area of petroleum, gas (not being petroleum), or water;

(*b*) prevent the escape in the exploration or production area of any mixture of water or drilling fluid and petroleum or any other matter;

(*c*) prevent damage to petroleum bearing strata in any area in respect of which the licence is not in force;

(*d*) keep separate in the manner prescribed—

(i) each petroleum reservoir discovered in the exploration or production area; and

(ii) such of the sources of water (if any) discovered in the exploration or production area as the Commissioner, by notice in writing served on the holder, directs;

(*e*) prevent water or any other matter entering any petroleum reservoir through the wells in the exploration or production area except when required by, and in accordance with, good oilfield practices;

(*f*) prevent the pollution of any aquifer, estuary, harbour, lake, reservoir, river, spring, stream, water-well, and all other areas of water by the escape of petroleum, drilling fluid, chemical additive, gas (not being petroleum), or any waste product or effluent; and

(*g*) furnish to the Commissioner, prior to the drilling of any well, a detailed report on the technique to be employed, an estimate

of the time to be taken, the material to be used and the safety measures to be employed, in the drilling of the well.

(3) Where the consent in writing of the Commissioner has been obtained, nothing in this section operates to prevent the holder of a licence from flaring natural gas in accordance with the terms of the instrument of consent.

(4) Nothing in this section operates to prevent the holder of a licence from flaring natural gas where, in an emergency, flaring is required to safeguard the health and safety of persons in the exploration or production area or to prevent damage to the property of any person in the exploration or production area.

(5) The holder of a licence shall furnish to the Commissioner reasonable notice of his intention to abandon any well, and the closure or plugging of any well shall be carried out only with the prior consent in writing of the Commissioner and in the manner approved by the Commissioner.

(6) A holder of a licence who contravenes a requirement of this section is guilty of an offence and liable on conviction to a fine of fifty thousand Kwacha.

(7) In proceedings on a prosecution for an offence under this section, it is a sufficient defence if the accused person proves that he promptly took all reasonable steps to comply with the requirement of this section.

Maintenance, etc., of property

49.—(1) A holder of a licence shall—

(*a*) maintain in good condition and repair all structures, equipment and other property in the area subject to the licence and used in connexion with the operations in which he is engaged;

(*b*) remove from that area all structures, equipment and other property that are not either used or to be used in connexion with those operations; and

(*c*) take reasonable steps to warn persons who may, from time to time, be in the vicinity of any such structure, equipment or other property of the possible hazards resulting therefrom.

(2) Subsection (1) does not apply in relation to any structure, equipment or other property that was not brought into the area subject to a licence by or with the authority of the holder of the licence.

(3) A holder of a licence who contravenes subsection (1) (*a*), (*b*) or (*c*) is guilty of an offence and liable on conviction to a fine of ten thousand Kwacha.

Drilling near boundaries

50.—(1) A holder of a licence shall not drill a well any part of which is less than one thousand metres from a boundary of the area subject to the licence except with the consent in writing of the Commissioner and in accordance with such conditions, if any, as are specified in the instrument of consent.

(2) Where a holder of a licence does not comply with subsection (1), the Commissioner may, by notice in writing served on the holder, direct him to do one or more of the following within the period specified in the notice, namely—

(*a*) plug the well;

(*b*) close off the well;

(*c*) comply with such directions relating to the drilling or maintenance of the well as are specified in the notice.

(3) A person who fails or neglects to comply with a direction given under subsection (2) is guilty of an offence and liable on conviction to a fine of ten thousand Kwacha.

Removal of property, etc., by holder of licence

51.—(1) Where a licence has been cancelled or has expired, or has ceased by relinquishment to include any area, the Minister may, by notice in writing served on the person who is or was the holder of the licence, direct that person, within the period specified in the notice—

(*a*) to remove or cause to be removed from any area that was, but is no longer, subject to the licence all property brought into that area by any person engaged or concerned in the operations authorized by the licence, or to make arrangements that are satisfactory to the Minister with respect to that property;

(*b*) to plug or close off, to the satisfaction of the Minister, all wells made in that area by any person engaged or concerned in those operations; and

(*c*) to make provision, to the satisfaction of the Minister, for the conservation and protection of the natural resources in that area.

(2) Nothing in this section, or in any direction given under this section by the Minister, shall be construed as requiring any person who is or was the holder of a licence to do anything which is not in accordance with good oilfield practices or to refrain from doing anything which is in accordance with good oilfield practices.

(3) A person to whom a direction under subsection (1) is given who refuses or fails to comply with the direction within the period specified in the notice concerned is guilty of an offence and liable on conviction to a fine of five thousand Kwacha.

Removal disposal and sale of property

52.—(1) Where a direction under section 51 has not been complied with, the Minister may—

(*a*) do or cause to be done all or any of the things required by the direction to be done;

(*b*) remove or cause to be removed, in such manner as he thinks fit, all or any of the property from the area that was, but is no longer, subject to the licence;

(*c*) dispose of, in such manner as he thinks fit, all or any of the property referred to in paragraph (*b*); and

(*d*) if he has served a copy of the notice by which the direction was given on a person whom he believed to be an owner of the property or part of the property, sell or cause to be sold by public auction, or otherwise as he thinks fit, all or any of the property referred to in paragraph (*b*) that belongs, or that he believes to belong, to that person.

(2) The Minister may deduct from the proceeds of a sale of property under subsection (1) that belongs, or that he believes to belong, to a particular person—

(*a*) all or any part of any costs and expenses incurred by him under that subsection in relation to that property;

(*b*) all or any part of any costs and expenses incurred by him in relation to the doing of anything required by a direction under section 51 to be done by the person; and

(*c*) all or any part of any fees or amounts due and payable under this Act by the person.

Costs and expenses of removal, disposal and sale of property

53.—(1) The costs and expenses incurred by the Minister under section 52,—

(*a*) if incurred in relation to the removal, disposal or sale of property, are a debt due by the owner of the property to the Republic;

(*b*) if incurred in relation to the doing of anything required by a direction under section 51 to be done by a person who is or was the holder of a licence, are a debt due by that person to the Republic,

and to the extent to which they are not recovered under section 52 (2) are recoverable in a court as a debt due to the Republic.

(2) Subject to subsection (1), no action lies in respect of the removal, disposal or sale of property under section 52.

Division 2—Civil Liability for Pollution

Definition

54. In this Division, in addition to the definition in section 3, "production operations" includes the sinking of a well in the course of exploring for petroleum.

Liability for petroleum pollution

55.—(1) Where any petroleum is discharged as a result of any occurrence taking place during production operations, the licensee carrying on those operations is liable, except as otherwise provided by this Act,—

(*a*) to reimburse any person (including the Republic) that suffers damage caused directly by contamination following the discharge;

(*b*) for the cost of any measures reasonably taken after the discharge for the purpose of preventing or reducing any such damage;

(*c*) to reimburse any person (including the Republic) that suffers damage caused directly by any measures so taken.

(2) For the purposes of this Act, where more than one discharge results from the same occurrence or from a series of occurrences having the same origin, they shall be treated as one discharge, but any measures taken subsequent to the first of them are deemed to have been taken after the discharge.

(3) In this section, "damage" includes loss, and includes damage suffered as a result of injury to soil or water in their physical aspects, together with natural vegetation associated therewith, and injury to or destruction—

Cap. 66:05

(*a*) of fish (as defined in section 3 of the Fisheries Act) in any water;

(*b*) of aquatic or terrestrial mammals; and

(*c*) of reptiles and avifauna.

(4) The extent of the liability incurred under this section in respect of any discharge of petroleum may be limited (whether as to amount or otherwise) by the Regulations.

Exemption from liability under section 55

56.—(1) A licensee does not incur any liability under section 55 in respect of any discharge of petroleum if he proves that the discharge—

(*a*) resulted from an act of war, hostility, insurrection or an exceptional, inevitable and irresistible natural phenomenon; or

(*b*) was due wholly to anything done or left undone by another person, not being a servant or agent of the licensee, with intent to do damage.

(2) If a licensee proves that damage caused by contamination resulted wholly or partly either from an act or omission done with intent to cause damage by the person who suffered the damage or from the negligence of that person, the licensee shall be exonerated wholly or partly from his liability to that person.

Other liability not affected

57. Section 55 is without prejudice to any liability which arises apart from that section.

Limitation

58. No action to enforce a claim in respect of a liability incurred under section 55 shall be entertained by a court unless the action is commenced not later than two years after the occurrence or, as the case may be, the first of the occurrences resulting in the discharge giving rise to the liability.

Liability for cost of preventive measures where section 55 does not apply

59. Where—

(*a*) after a discharge of petroleum during production operations measures are taken for the purpose of preventing or reducing damage which may be caused by contamination resulting from the discharge; and

(*b*) any person incurs, or might but for the measures taken have incurred, a liability, otherwise than under section 55, for any such damage,

then, notwithstanding that subsection 1 (*b*) of that section does not apply, he is liable for the cost of the measures whether or not the person taking them does so for the protection of his interest or in the performance of a duty.

Saving of recourse action

60. Nothing in this Act prejudices any claim, or the enforcement of any claim, which a person incurring any liability under this Act may have against another person in respect of that liability.

Compulsory insurance against liability for pollution

61.—(1) No licensee shall carry on production operations unless there is in force in respect of any liability that the licensee may incur under section 55 as a result of those operations a contract of insurance or other security satisfactory to the Minister, in an amount determined by the Minister.

(2) A licensee who does not comply with subsection (1) is guilty of an offence and liable on conviction to a fine of five thousand Kwacha for each day during which the offence continues.

Rights of third parties against insurers

62.—(1) Where it is alleged that a licensee has incurred any liability under section 55 as a result of any discharge of petroleum occurring while there is in force in respect of that liability such a contract of insurance or other security as is referred to in section 61, proceedings to enforce a claim in respect of the liability may be brought against the person who provided the insurance or other security (in subsection (2) referred to as "the insurer").

(2) In any proceedings brought against the insurer by virtue of this section it is a defence (in addition to any defence affecting the licensee's liability) to prove that the discharge or escape was due to the wilful misconduct of the licensee himself.

PART VI

Restrictions and Surface Rights

Restriction on exercise of rights in relation to certain land

63.—(1) The holder of a licence shall not exercise any of his rights under the licence or under this Act—

(*a*) except with the written consent of the President in respect of—

(i) any land set apart for any prescribed public purpose;

(ii) any land dedicated as a place of burial or which is a place of religious significance; or

(iii) any monument or relic which is protected under section 7 of the Monuments Act; Cap. 29:01

(*b*) except with the written consent of the lawful occupier thereof in respect of—

(i) any land which is the site of, or which is within two hundred metres (or such greater distance as may be prescribed) of, any inhabited, occupied or temporarily unoccupied house or building;

(ii) any land within fifty metres (or such greater distance as may be prescribed) of land which has been cleared or ploughed or otherwise *bona fide* prepared for the growing of, or upon which there are growing, agricultural crops (including orchards or fuel-wood plantations);

(iii) any land from which, during the year immediately preceding, agricultural crops have been reaped; or

(iv) any land which is the site of, or within one hundred metres (or such greater distance as may be prescribed) of, any cattle dip, tank, dam, or other body of water, not being public water as defined in the Water Resources Act, Cap. 72:03

but where any consent so required is, in the opinion of the Minister, being unreasonably withheld, the Minister may, on such conditions (if any) as he may impose, direct in writing that the need for the consent shall be dispensed with and, in that event, this paragraph shall not have effect in so far as it requires the consent of the lawful occupier concerned to be given;

(*c*) in respect of any land reserved for the purposes of any railway track, or which is within fifty metres (or such greater distance as may be prescribed) of the boundaries of any land so reserved, except with the written consent of the responsible railway administration;

(*d*) in respect of any land within, or within two hundred metres (or such greater distance as may be prescribed) of the boundaries of, any township, except with the written consent of the local authority having control over the township;

(*e*) in respect of any land comprising a street or road reserve as defined in the Public Roads Act or aerodrome, except with the written consent of the Minister or other authority having control thereof; Cap. 69:02

(*f*) in respect of any controlled area under section 22 of the Water Resources Act, except with the written consent of the Minister responsible for water resources; or Cap. 72:03

(*g*) in respect of a mining area (as defined in section 2 of the Mines and Minerals Act), except with the written consent of the holder of the mining licence concerned. Cap. 61:01

(2) Any dispute as to whether or not subsection (1) (*b*) applies in respect of any land or as to whether any person is a lawful occupier of that land shall be decided by the Minister whose decision is final.

(3) Any consent under subsection (1) (*a*), (*c*), (*d*), (*e*) and (*f*) may be given unconditionally or subject to such conditions as are specified in the instrument of consent.

Right to graze stock, etc.

64.—(1) The lawful occupier of any land in an exploration area or a production area retains any right which he may have to graze stock upon or to cultivate the surface of the land, except in so far as the grazing or cultivation interferes with exploration or production operations in any such area.

(2) The lawful occupier of land in a production area shall not erect any building or structure in the area without the consent of the holder of the petroleum production licence; but if the Minister considers that the consent is being unreasonably withheld he may give his consent to the lawful occupier doing so and, in that event, the lawful occupier may do so.

(3) The rights conferred by a licence shall be exercised reasonably and so as to affect as little as possible the interests of any lawful occupier of the land subject to the licence or on which rights under the licence are exercised, consistent with the reasonable and proper conduct of operations pursuant to the licence.

(4) Without limiting the generality of subsection (3), a person carrying on operations under a licence shall not, except where that person gives to the Minister prior notice in writing of the expected nature and duration of the interference, take action which in any way will interfere with—

(*a*) fishing; or

(*b*) navigation,

being lawfully carried on.

Compensation for disturbance of rights, etc.

65. Where, in the course of exploration or production operations, any disturbance of the rights of the lawful occupier of any land or damage to any crops, trees, buildings, stock or works thereon is caused, the holder of the licence, by virtue of which the operations are carried on, is liable to pay to any lawful occupier fair and reasonable compensation in respect of the disturbance or damage according to the respective rights or interests of the lawful occupier concerned.

Notice of intention to commence exploration or production operations

66. Subject to such exceptions as may be prescribed, the holder of a licence, before commencing exploration or production operations in any private land, shall give to any lawful occupier of the land notice of his intention to commence the operations, in such manner and form as may be prescribed.

PART VII

General

Control of company not to be given without consent of Minister

67.—(1) A company which is the holder of a licence shall not, without the prior consent in writing of the Minister—

(*a*) register the transfer of any equity share or shares in the company to any particular person or his nominee; or

(*b*) enter into an agreement, arrangement, or understanding, whether or not having legal or equitable force, with any particular person,

if the effect of doing so would be to give to the particular person or, in the case mentioned in paragraph (*b*), the particular person or any other person, control of the company.

(2) On application duly made to him in writing for his consent under this section, the Minister shall give his consent if he considers that the public interest would not be prejudiced by the change of control of the company, but otherwise shall refuse to give his consent; and for the purpose of considering any such application the Minister may call for and obtain such information as he considers necessary to determine the application.

(3) For the purposes of this section—

(*a*) a person is deemed to have control of a company—

(i) if the person or his nominee holds, or the person and his nominee hold a total of, twenty per cent or more of the issued equity shares in the company;

(ii) if the person is entitled to appoint, or prevent the appointment of, half, or more than half, of the directors of the company; or

(iii) if the person is entitled to exercise, or control the exercise of, the right to cast votes in respect of not less than two-fifths of the total number of votes in respect of issued equity shares in the company;

(*b*) "equity shares", in relation to a company, means shares in the company having voting rights in all circumstances at a general meeting of the company, and includes preference shares, other than preference shares which do not have such voting rights;

(*c*) "preference shares" means shares which carry the right to payment of a dividend of a fixed amount, or not exceeding a fixed amount, in priority to payment of a dividend on another class or other classes of shares, whether with or without other rights;

(*d*) the reference in paragraph (*a*) (iii) to the entitlement to control the exercise of the right to cast votes shall be read as including an entitlement to control the exercise of that right directly or indirectly, and includes control that is exercisable as a result of or by means of trusts.

Scientific investigation

68.—(1) In this section, "reconnaissance operations" means the search for petroleum by geophysical surveys and photogeological surveys or other remote sensing techniques and surface geology in connexion therewith.

(2) Subject to subsection (3), the Minister may, by instrument in writing, consent to the carrying on by any person of reconnaissance operations and such other operations as may be specified in the instrument in the course of a scientific investigation with respect to the geology or petroleum resources of Malaŵi.

(3) The Minister shall not issue an instrument under subsection (2) to a person unless the person, if required by the Minister—

(*a*) discloses to the Minister the sources of the finance for the scientific investigation;

(*b*) accepts as a condition of consent that the results of the investigation will be made freely available to the Government.

(4) An instrument of consent under this section is subject to such conditions (if any) as are specified in the instrument.

(5) An instrument of consent under this section authorizes the person to whom it is issued to carry on the reconnaissance and other operations specified in the instrument—

(*a*) in the area; and

(*b*) subject to the conditions (if any),

specified in the instrument, in the course of scientific investigation.

(6) A person so authorized shall not, pursuant to subsection (5), enter on any land or place referred to in section 63 without obtaining the consent required under that section in relation to the land or place.

(7) Section 15 applies in relation to a person to whom an instrument of consent is issued under subsection (2) as it applies in relation to a licence.

Discovery of mineral to be notified Cap. 61:01

69.—(1) When a significant discovery of any mineral (as defined in section 4 of the Mines and Minerals Act) is made in an exploration area or a production area, the licensee shall, within a period of thirty days after the date of the discovery, furnish to the Minister particulars in writing of the discovery.

(2) A licensee who fails to comply with subsection (1) is guilty of an offence and liable on conviction to a fine of five thousand Kwacha.

Powers of Commissioner and authorized officers

70.—(1) For the purposes of this Act, the Commissioner or an authorized officer, at all reasonable times, may—

(*a*) enter any area, structure, vehicle, vessel, aircraft or building that, in his opinion, has been, is being or is to be used in connexion with exploration or production operations;

(*b*) inspect and test any machinery or equipment that, in his opinion, has been, is being or is to be used in connexion with any of the operations referred to in paragraph (*a*);

(*c*) take or remove, for the purpose of analysis or testing or for use in evidence in connexion with proceedings for an offence against this Act, samples of minerals or other substances from any area where any of the operations referred to in paragraph (*a*) are being carried on;

(*d*) inspect, take extracts from, and make copies of, any document relating to any of the operations referred to in paragraph (*a*);

(*e*) with respect to the health and safety of persons employed by a licensee in or in connexion with any of the operations referred to in paragraph (*a*) issue directions to and impose restrictions on the licensee, or any persons so employed, by instrument in writing;

(*f*) order, by instrument in writing,—

(i) the cessation of operations on or in, and the withdrawal of all persons from, any structure or building that is being used in connexion with any of the operations referred to in paragraph (*a*); or

(ii) the discontinuance of the use of any machinery or equipment,

which he considers unsafe, unless and until such action as is necessary for safety and specified in the instrument is taken and completed;

(*g*) make such examinations and inquiries as are necessary to ensure that the provisions of this Act, and any directions issued, conditions imposed, or orders made, under this Act, are being complied with.

(2) Before exercising any of his powers under subsection (1), if there is any person who is or appears to be in charge of the area, structure, vehicle, vessel, aircraft, building, machinery, equipment or matter or thing in respect of which the power is about to be exercised, the Commissioner or an authorized officer shall identify himself to that person and to any person to whom he is about to give an order or a direction.

(3) Any person who is aggrieved by a decision, direction or order of the Commissioner or an authorized officer made under this section may appeal in writing to the Commissioner or, in the case of a decision, direction or order made by the Commissioner, to the Minister, who shall, as soon as practicable, hear and dispose of the appeal, but the bringing of the appeal does not affect the operation of the decision, direction or order appealed from pending disposition of the appeal.

(4) On appeal under subsection (3), the Commissioner or the Minister, as the case may be, may rescind or affirm the decision, direction or order appealed from or may make a new decision, direction or order in substitution therefor, and that decision, direction or order is final.

(5) In exercising his powers under subsection (1), the Commissioner or an authorized officer may be accompanied by any person who the Commissioner or the authorized officer, as the case may be, believes has special or expert knowledge of any matter being inspected, analysed, tested or examined.

(6) A person who is an occupier or person in charge of any building, structure or place, or the person in charge of any vehicle, vessel, aircraft, machinery or equipment referred to in subsection (1), shall provide the Commissioner or an authorized officer with all reasonable facilities and assistance (including the provision of necessary means of transport) for the effective exercise of the Commissioner's or authorized officer's powers under this section.

(7) Any person who—

(*a*) without reasonable excuse, obstructs, molests or hinders the Commissioner or an authorized officer in the exercise of his powers under this section; or

(*b*) knowingly or recklessly makes a statement or produces a document that is false or misleading in a material particular to the Commissioner or an authorized officer engaged in carrying out his duties and functions under this Act,

is guilty of an offence and liable on conviction to a fine of five hundred Kwacha or to imprisonment for a term of six months, or to both.

Removal of petroleum

71.—(1) Petroleum shall not be removed from any land from which it has been recovered, or disposed of, in any manner, except—

(*a*) subject to subsection (2), by a licensee for the purpose of sampling or analysis;

(*b*) by a licensee in accordance with the terms of the licence concerned; or

(*c*) as otherwise permitted by this Act.

(2) A licensee shall not, pursuant to subsection (1) (*a*), remove from any land samples of petroleum without the written consent of the Commissioner.

(3) Any person who contravenes subsection (1) or (2) is guilty of an offence and liable on conviction—

(*a*) in the case of an individual, to a fine of five hundred Kwacha or to imprisonment for a term of six months, or to both; or

(*b*) in the case of a body corporate, to a fine of five thousand Kwacha.

Acquisition of land
Cap. 58:04

72. Where the President considers that any land is required to secure the development or utilization of the petroleum resources of Malaŵi he may direct that the land be acquired under the Land Acquisition Act.

Identity of person exercising certain rights to be established

73. A person exercising any right under a petroleum exploration licence on any land shall, if required to do so by any lawful occupier of the land, produce evidence that he is the holder, or an agent or employee of the holder, of a licence; and if he fails to do so he may be treated as a tresspasser.

Obstruction of licensee

74. Any person who, without reasonable excuse, obstructs or hinders a licensee from doing any act which that holder is authorized to do by this Act is guilty of an offence and liable on conviction to a fine of one thousand Kwacha or to imprisonment for a term of two years, or to both.

Offence committed by body corporate

75. When an offence which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity, he as well as the body corporate is guilty of that offence and liable to be proceeded against and punished accordingly.

Miscellaneous offences

76. Any person who—

(*a*) in, or in connexion with, any application under this Act, or in response to any invitation or requirement of the Minister or the Commissioner under this Act, knowingly or recklessly gives information which is false or misleading in a material particular;

(*b*) in any report, return or affidavit submitted in pursuance of any provision of this Act, knowingly or recklessly includes or permits to be included any information which is false or misleading in a material particular;

(*c*) places or deposits, or is accessory to the placing or depositing of, any pertroleum or substance in any place with the intention of misleading any other person as to the possibility of a petroleum reservoir existing in that place;

(*d*) tampers with samples of minerals, rock or petroleum taken in the course of exploration or production operations by adding to or taking from any such sample any substance, or by in any way modifying the physical or chemical properties of any such sample, with the intention of misleading any person as to the existence, extent or content of a petroleum reservoir,

is guilty of an offence and liable on conviction—

(*e*) in the case of an individual, to imprisonment for a term of two years; or

(*f*) in the case of a body corporate, to a fine of twenty thousand Kwacha.

Licensee to indemnify Republic

77. A licensee shall, at all times, keep the Republic indemnified against all actions, claims and demands that may be brought or made against the Republic by reason of anything done by the

licensee, or the servants or agents of the licensee, in the exercise or purported exercise of the rights of the licensee under this Act or his licence.

PART VIII

Regulations

Regulations

78.—(1) The Minister may make regulations prescribing all matters that by this Act are required or permitted to be prescribed or are necessary or convenient to be prescribed or for giving effect to this Act, including in particular provision for or with respect to—

(*a*) exploration for petroleum and the carrying on of operations, and the execution of works, for that purpose;

(*b*) the recovery of petroleum and the carrying on of operations, and the execution of works, for that purpose;

(*c*) conserving, and preventing the waste of, the natural resources, whether petroleum or otherwise;

(*d*) the form and content of, and conditions with respect to, applications for licences or renewal of licences;

(*e*) the construction, erection, maintenance, operation or use of installations or equipment;

(*f*) the control of the flow and the prevention of the escape or petroleum or water, and the prevention of the escape of water or drilling fluid or a mixture of water or drilling fluid or any of the matter;

(*g*) the prevention of pollution and measures to be taken for the purpose of preventing or reducing damage from pollution;

(*h*) the removal of structures, equipment and other property brought into Malaŵi in connexion with exploration for, or the recovery or conveyance of, petroleum that are not used or intended to be used in connexion with that exploration, recovery or conveyance;

(*i*) the maintenance of pressure in, or the repressurizing of, a petroleum reservoir and the recycling of petroleum;

(*j*) the secondary or tertiary recovery of petroleum from a petroleum reservoir and the methods to be used in such recovery;

(*k*) the underground disposal of petroleum, water and other substances produced in association with exploration for or the production of petroleum;

(*l*) the rates, or the method of setting the rates, at which petroleum and water may be recovered from any well or petroleum reservoir;

(*m*) the methods to be used for the measurement of petroleum, water and other substances from a well;

(*n*) safety standards and the health, safety and welfare of persons employed in or in connexion with exploration for, or the production or conveyance of, petroleum;

(*o*) taking, preserving and furnishing to the Minister cores, cuttings and samples from wells and samples of petroleum and water;

(*p*) the registration of instruments and the effect of the registration of, or failure to register, instruments;

(*q*) the transfer of licences or interests in licences;

(*r*) the taking of logs or directional surveys or making other down-hole investigations;

(*s*) annual charges;

(*t*) fees;

(*u*) the amount of any royalty to be paid and the manner of payment of any royalty.

(2) The power under this section to make regulations may be exercised—

(*a*) either in relation to all cases to which the power extends, or in relation to all of those cases subject to specified exceptions, or in relation to any specified cases or class of cases; and

(*b*) so as to make, as respects the cases in relation to which it is exercised,—

(i) the same provision for all those cases, a different provision for different cases or classes of cases, or different provisions as respects the same case or class of cases for different purposes of this Act; or

(ii) any such provision either unconditionally or subject to any specified condition.

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(3) Regulations made under this section may, notwithstanding section 21 (*e*) of the General Interpretation Act, make provision for such penalty not exceeding two thousand Kwacha or such term of imprisonment not exceeding six months, or both such fine and imprisonment, as the Minister thinks fit to impose for offences thereunder.

PART IX

Miscellaneous

Minister to act subject to the directions of the Life President

79. The Minister, in the exercise of his functions under this Act, shall act subject to the general or special directions of the Life President.

s. 23

SCHEDULE

Relinquishment

Relinquishment

1.—(1) A licensee may, at any time when a petroleum exploration licence is in force and by giving to the Minister not less than six months previous notice in writing of the intention to do so, relinquish any block or blocks in the exploration area identified in the notice.

[Subsidiary]

(2) Any relinquishment pursuant to subparagraph (1) is without prejudice to any obligation incurred by the licensee in respect of the area relinquished prior to the date of the relinquishment.

(3) An area relinquished pursuant to subparagraph (1) shall, unless the Minister otherwise determines, be such as to ensure that the remaining exploration area constitutes a single area or not more than three discrete areas.

(4) Where, pursuant to this paragraph, any area is relinquished then the exploration licence concerned ceases to have effect with respect to that area.

Relinquishment on grant of petroleum production licence

2. Any part of an exploration area over which a petroleum production licence is granted to the licensee shall cease to be part of the exploration area.

Relinquishment for purposes of renewal of petroleum exploration licence

3.—(1) Subject to any relevant agreement of a kind referred to in section 10, the number of blocks in respect of which an application for a renewal of a petroleum exploration licence may be made shall not exceed the number which is one-half in total of the number of blocks in respect of which the licence was issued or first renewed, as the case may be.

(2) For the purpose of determining the number of blocks in respect of which a petroleum exploration licence was granted or first renewed, there shall not be taken into account any block excluded from the exploration area pursuant to section 25 (3) or (4) and any discovery block subsisting in the exploration area at the date on which the application for the renewal is made.

G.N. 48/1984
31/2009

SUBSIDIARY LEGISLATION
PETROLEUM (APPLICATIONS) REGULATIONS

under s. 78

Citation

1. These regulations may be cited as the Petroleum (Applications) Regulations.

Application for grant of petroleum exploration licence
G.N. 31/2009

2.—(1) An application for the grant of a petroleum exploration licence—

(*a*) shall give in respect of the person or, if there is more than one person, of each person, making the application—

(i) in the case of an individual, his full name and nationality;

(ii) in the case of body corporate, its name and place of incorporation, the names and nationality of the directors or equivalent officers and, if the body corporate has a share capital, the name of any person who is the beneficial owner of more than five per cent of the issued share capital;

(*b*) shall identify the block or blocks in respect of which it is made;

G.N. 31/2009

(*c*) shall, subject to subregulation (2), be in respect of not more than one block;

(*d*) shall give or be accompanied by a statement giving particulars of work and minimum expenditure proposed to be carried out or expended in respect of the block or blocks over which the licence is sought, and an estimate of any significant effect which the proposed exploration operations would be likely to have on the environment and on any monument or relic in any such block;

(*e*) shall give or be accompanied by a statement giving particulars of the applicant's proposals with respect to the employment and training of citizens of Malaŵi; and

(*f*) may set out any other matter which the applicant wishes the Minister to consider.

G.N. 31/2009

(2) The Minister may consider an application in respect of more than one block but not more than two blocks where he is satisfied that special circumstances exist for doing so.

(3) Where an application relates to more than one block, the blocks identified in an application for the grant of a petroleum exploration licence—

(*a*) shall be so situated as to form a single area; and

(*b*) shall be such that each block in the area has a side in common with at least one other block in the area.

Application for renewal of petroleum exploration licence

3.—(1) An application for the renewal of a petroleum exploration licence—

(*a*) shall, subject to subregulation (2), be made not later than ninety days before the day on which the licence is due to expire;

(*b*) shall be accompanied by—

(i) particulars of the work carried out in, and the amount expended in respect of, the exploration area during the term of the licence up to and including a date that is not earlier than fourteen days immediately preceding the date of the application or, where the application is for a second renewal of the licence, up to and including a date that is not earlier than fourteen days immediately preceding the date of the application; and

(ii) adequate proposals of the applicant for work and minimum expenditure in respect of the block or blocks specified in the application and, in particular, details of the programme to be performed in the first year of the renewal period being applied for;

(*c*) shall be made not more than twice; and

(*d*) may set out any other matter that the applicant wishes the Minister to consider.

(2) The Minister may accept an application for the renewal of a petroleum exploration licence later than ninety days before, but not in any case after, the date of expiry of the licence.

(3) The requirement in subregulation (1) (*b*) (ii) with respect to adequate proposals is deemed to have been met in any case where the proposals pursuant to subregulation (1) (*b*) (ii) accompanying an application satisfy the requirements (if any) with respect to work and expenditure contained in a relevant agreement of a kind referred to in section 10 of the Act.

Application for grant of petroleum production licence

4.—(1) Subject to subregulation (2), an application for the grant of a petroleum production licence—

(*a*) shall give in respect of the person or, if there is more than one person, or each person, making the application—

(i) in the case of an individual, his full name and nationality;

(ii) in the case of a body corporate, its name and place of incorporation, the names and nationality of the directors or equivalent officers and, if the body corporate has a share capital, the name of any person who is the beneficial owner of more than five per cent of the issued share capital;

(*b*) shall give full information as to the applicant's financial status, technical competence and experience;

(*c*) shall state the number of the applicant's petroleum exploration licence (if any);

(*d*) shall state the period for which the licence is sought;

(*e*) shall identify the composition of the petroleum which it is intended to produce;

(*f*) shall give a comprehensive report of the petroleum deposit, which report shall include a description of the petroleum reservoir or deposit, the form of the petroleum and an estimate of the petroleum and an estimate of the petroleum reserves;

(*g*) shall give details, illustrated by an approval plan, of the area in respect of which the application is made;

(*h*) shall give a technological report on production and processing possibilities and state the applicant's intention in relation thereto;

(*i*) shall contain a proposed programme of production and processing operations which shall include—

(i) the date by which the applicant intends to produce petroleum for use or sale;

(ii) the capacity of production and scale of operations;

(iii) the estimated overall recovery of petroleum and by-products;

(iv) the nature of the petroleum and by-products;

(v) the marketing arrangements made for the sale of the petroleum and by-products;

(vi) proposals for the prevention of pollution, the treatment of wastes, the safeguarding of natural resources, the progressive reclamation and rehabilitation of lands disturbed by petroleum production and for the minimization of the effect of such extraction on adjoining or neighbouring lands; and

(vii) a statement of any significant effect which the carrying out of petroleum production would be likely to have on the environment and on any monument or relic in the area over

which the licence is sought and proposals for controlling or eliminating that effect;

(*j*) shall give a detailed forecast of capital investment, operating costs and sales revenues and the anticipated type and source of financing;

(*k*) shall contain proposals with respect to the employment and training of citizens of Malaŵi;

(*l*) shall give a report of the goods and services required for the production and processing operations which can be obtained within Malaŵi and the applicant's intention in relation thereto;

(*m*) shall give details of expected infrastructure requirements; and

(*n*) may set out any other matter that the applicant wishes the Minister to consider.

(2) The Minister may, by instrument in writing, dispense with or modify any of the requirements of subregulation (1) in relation to an application where he considers it appropriate to do so on the ground that the requirement has already been met by the applicant or that the information to which the requirement relates is already available to the Minister.

Application for renewal of petroleum production licence G.N. 31/2009

5.—(1) An application for the renewal of a petroleum production licence—

(*a*) shall, subject to subregulation (2), be made not later than twelve months before the day on which the licence is due to expire;

(*b*) shall be accompanied by—

(i) particulars of the work carried out, the petroleum recovered and the amounts expended and received in respect of the production area up to and including a date that is not earlier than one month immediately preceding the date of the application; and

(ii) adequate proposals of the applicant for work and minimum expenditure in respect of the production area during the renewal period being applied for; and

(*c*) may set out any other matter that the applicant wishes the Minister to consider.

(2) The Minister may accept an application for the renewal of a petroleum production licence later than twelve months before, but not in any case after, the date of expiry of the licence.

[Subsidiary]

Petroleum (*Constitution of Blocks*) *Regulations*

G.N. 40/1984
33/2009

PETROLEUM (CONSTITUTION OF BLOCKS) REGULATIONS

under s. 78

Citation

1. These regulations may be cited as the Petroleum (Constitution of Blocks) Regulations.

Reference map showing blocks
G.N. 33/2009

2.—(1) The Minister shall cause to be prepared a reference map showing the geographical area of Malaŵi, divided into blocks as provided in this Regulation.

(2) For the purpose of the preparation of the reference map pursuant to subregulation (1), the following considerations have been made for the division of the country into blocks—

(*a*) the geology and occurrence of Malaŵi's major sedimentary basins;

(*b*) the structural geology of the sedimentary basins;

(*c*) the existing seismic data;

(*d*) the country's major deltaic environments; and

(*e*) possible threshold sediment volumes that may be necessary for an economic deposit discovery.

(3) Each block on the reference map prepared pursuant to subregulation (1) shall, on the map, be given a number or a letter, as shown in the Schedule to these Regulations, for the purpose of identification.

G.N. 33/2009

SCHEDULE

reg. 2

REFERENCE COORDINATES FOR OIL AND GAS EXPLORATION BLOCKS

BLOCK 1

A	543000	8762000	F	602000	8877000
B	621000	8762000	G	602000	8894000
C	622000	8861000	H	593000	8894000
D	612000	8861000	I	593000	8926000
E	612000	8877000	J	603000	8926000

From J follow border between Malaŵi and Tanzania to A in anticlockwise direction.

BLOCK 2

A	689000	8762000	F	602000	8877000
B	621000	8762000	G	602000	8894000
C	622000	8861000	H	593000	8894000
D	612000	8861000	I	593000	8926000
E	612000	8877000	J	603000	8926000

From J follow border between Malaŵi and Tanzania to A in clock-wise direction.

BLOCK 3

A	689000	8762000	F	622000	8619000
B	621000	8762000	G	622000	8573000
C	621000	8703000	H	635000	8573000
D	607000	8703000	I	665000	8573000
E	607000	8619000			

From I follow border between Malaŵi and Mozambique to A in anticlock-wise direction.

BLOCK 4

A	702000	8509000

From A follow border between Malaŵi and Mozambique to B in a clock-wise direction.

B	753000	8451000	F	661000	8480000
C	753000	8400000	G	635000	8480000
D	716000	8400000	H	635000	8573000
E	661000	8400000	I	665000	8573000

From I follow border between Malaŵi and Mozambique to A in a clock-wise direction.

BLOCK 5

A	760000	8218000

From A follow border between Malaŵi and Mozambique to B in anticlock-wise direction.

B	753000	8451000	E	716000	8259000
C	753000	8399000	F	716000	8218000
D	716000	8400000			

BLOCK 6

A	760000	8218000

From A follow border between Malaŵi and Mozambique to D in a clock-wise direction.

D	640000	8259000	F	716000	8218000
E	716000	8259000			

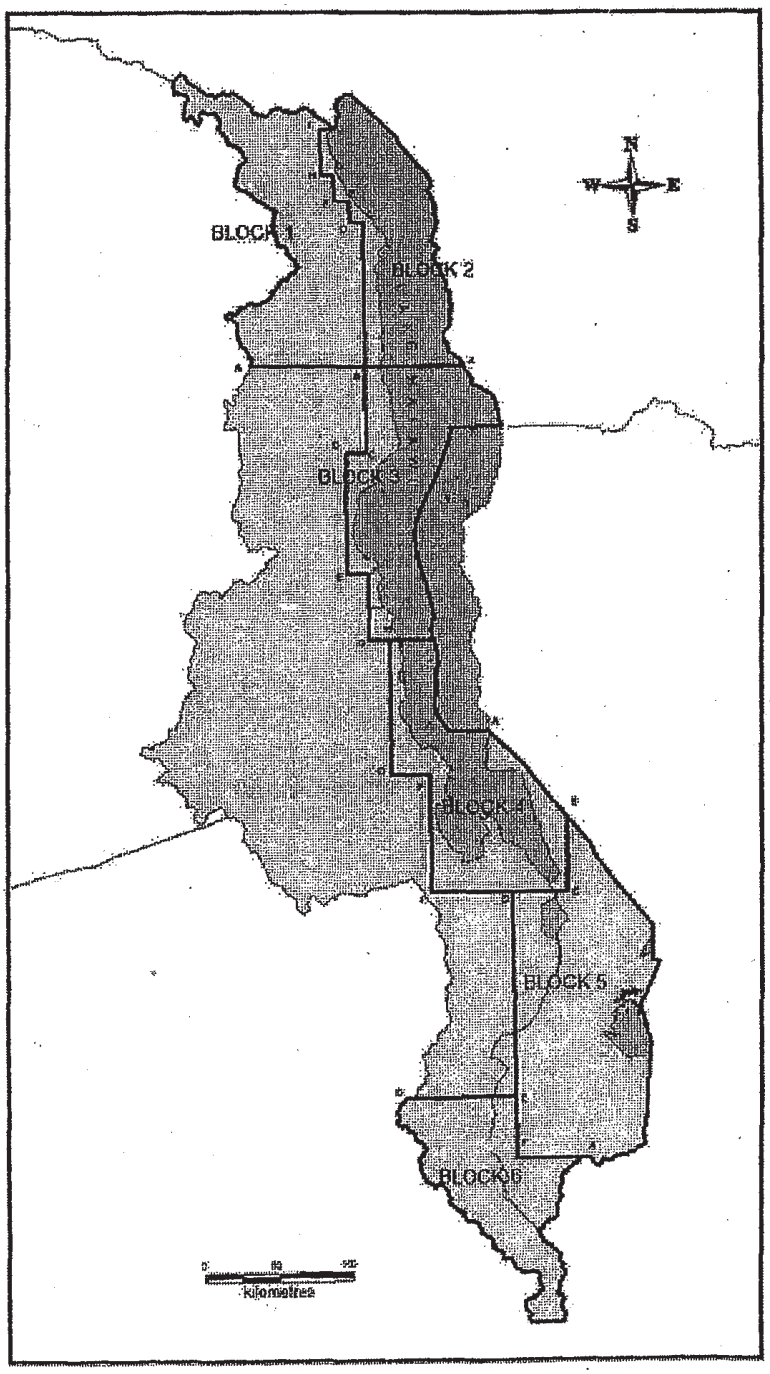
N
W
E
S
BLOCK 1
BLOCK 2
BLOCK 3
BLOCK 4
BLOCK 5
BLOCK 6
kilometres

Reference map to be deposited

3.—(1) The reference map prepared pursuant to regulation 2 (1) shall be deposited at such office as may, from time to time, be appointed by the Minister by notice published in the *Gazette*.

(2) The Minister may, from time to time, certify a map to be a true copy of the reference map prepared pursuant to regulation 2 (1) and any such copy shall be received in all proceedings as evidence of the contents of the reference map so prepared.

Interpretation of references in licences

4. Any reference in a petroleum exploration licence or in a petroleum production licence to an identified block shall be interpreted as a reference to the block so identified on the reference map prepared pursuant to regulation 2 (1).

PETROLEUM (GENERAL PROVISIONS) REGULATIONS

G.N. 39/1984
32/2009

under s. 78

Citation

1. These regulations may be cited as the Petroleum (General Provisions) Regulations.

Investigations
G.N. 32/2009

2. The investigations and studies for the purposes of section 26 of the Act are—

(*a*) technical and economic feasibility studies relating to the recovery, processing and transportation of petroleum from the discovery block or blocks in the exploration area;

(*b*) studies of proposed sites for facilities that would be required by the industry referred to in subsection (1) of that section;

(*c*) studies of port or berthing facilities, and roads, pipelines or other transportation facilities;

(*d*) investigations into—

(i) suitable water facilities and reticulation systems for industrial and town purposes;

(ii) the location and design of a suitable airstrip and associated landing and terminal facilities, if so required for that industry; and

(iii) the generation and transmission of electricity as so required for that industry;

(*e*) investigations into the development, if so required, of a suitable town for the industry referred to in subsection (1) of that section including the design of housing facilities and associated civic, cultural and social facilities;

(*f*) investigations of any other works, services or facilities that may be so required for that industry in relation to the discovery block or blocks in the exploration area;

(*g*) studies of future labour requirements for the industry; and

G.N. 32/2009

(*h*) impact studies into the possible effects of that industry on the environment.

Survey of wells, etc.

3.—(1) The Commissioner may, at any time, by notice in writing served on a holder of a licence, direct the holder—

(*a*) to carry out a survey of the position of any well, structure or equipment specified in the notice; and

(*b*) to furnish promptly to the Commissioner a report in writing of the survey.

(2) Where the Commissioner is not satisfied with a report of a survey furnished to him under subregulation (1) by the holder of a licence, he may, by notice in writing served on the holder direct the holder to furnish promptly information in writing in connexion with the survey.

G.N. 53/1984
30/2009

PETROLEUM (PRESCRIBED FEES AND ANNUAL CHARGES) REGULATIONS

under s. 78

Citation

1. These Regulations may be cited as the Petroleum (Prescribed Fees and Annual Charges) Regulations.

Fees

2. The fees prescribed in the First Schedule are payable in respect of the matters referred to in that Schedule.

Charges
G.N. 30/2009

3.—(1) The annual charges prescribed in the Second and Third Schedules are payable in respect of the matters referred to in those Schedules, unless the Minister otherwise directs.

(2) Any annual charge payable pursuant to these Regulations is payable on the grant of the licence concerned and thereafter annually on the anniversary of the grant until the termination of the licence.

FIRST SCHEDULE reg. 2 G.N. 30/2009

Fees

Application for grant of petroleum exploration licence . .	K250,000
Application for grant of petroleum production licence . .	K500,000
Application for renewal of petroleum exploration licence . .	K500,000
Assignment of petroleum exploration licence	K150,000
Assignment of petroleum production licence	K510,500

SECOND SCHEDULE reg. 3

1. The annual charge in respect of a petroleum exploration licence shall be—
   (*a*) five hundred Kwacha (K500) per square kilometre of the area subject to the licence;
   (*b*) seven hundred and fifty Kwacha (K750) per square kilometre of the area subject to the licence after first renewal; and
   (*c*) one thousand Kwacha (K1,000) per square kilometre of the area subject to the licence after second renewal.
2. The annual charge in respect of a petroleum production licence shall be—
   (*a*) two thousand five hundred Kwacha (K2,500) per square kilometre of the area subject to the licence; and
   (*b*) three thousand Kwacha (K3,000) per square kilometre of the area subject to the licence for any subsequent renewals.

THIRD SCHEDULE reg. 3 G.N. 30/2009

(*a*) training fees shall be at seven million Kwacha (K7,000,0000) for Exploration Licence per annum per block;

(*b*) training fees for a Production Licence shall be at twenty-one million Kwacha (K21,000,000) per annum per block

(*c*) social contribution shall be at a minimum of seven million Kwacha (K7,000,000) per annum per block for exploration; and

(*d*) social contribution shall be at twenty-one million Kwacha (K21,000,000) per annum per block for production.

[Subsidiary] *Petroleum* (*Records, Reports and Accounts*) *Regulations*

G.N. 42/1984

PETROLEUM (RECORDS, REPORTS AND ACCOUNTS) REGULATIONS

under s. 78

Citation

1. These regulations may be cited as the Petroleum (Records, Reports and Accounts) Regulations.

Records, etc.

2.—(1) Subject to these regulations, the holder of a licence shall keep at an address in Malaŵi notified to the Minister accurate records containing full particulars of the following matters, namely—

(*a*) the drilling, operation, deepening, plugging or abandonment of wells;

(*b*) the strata and subsoil through which wells are drilled;

(*c*) the casing inserted in wells and any alteration to such casing;

(*d*) any petroleum, water and other economic minerals or dangerous substances encountered; and

(*e*) the areas in which any geological or geophysical work has been carried out.

(2) The holder of a licence shall keep at the address referred to in subregulation (1) accurate geological maps and plans, geophysical records, and interpretations thereof, relating to the areas subject to the licence.

(3) The holder of a licence shall give to the Minister in such form as the Minister directs—

(*a*) at half-yearly intervals commencing six months after the grant of the licence—

(i) a summary of all geological and geophysical work carried out;

(ii) a summary of all drilling activity and results obtained; and

(iii) a list of maps, or reports and of other geological and geophysical data prepared for the holder,

in or in respect of the period concerned;

(*b*) within sixty days after the end of each year of the term of the licence—

(i) a record describing the results of all exploration and production operations carried out by the holder in the year concerned; and

(ii) estimates (if available) of economically recoverable reserves of crude oil and natural gas at the end of the year concerned; and

(*c*) summaries of exploration wells drilled, including lithological groups, letter classification boundaries and hydrocarbon zones, within six months of the completion of drilling or, in the case of information that cannot reasonably be obtained in that period, as soon as possible after the completion of drilling.

Duties on termination of licence

3. Subject to these regulations, when a licence is determined or cancelled or expires, the person who was the holder of the licence immediately before the determination, cancellation or expiration of the licence shall forthwith deliver to the Minister—

(*a*) all records which the former holder maintained pursuant to these regulations with respect to the licence;

(*b*) all plans or maps of the area that was subject to the licence and which were prepared by or on the instructions of the former holder;

(*c*) all tapes, diagrams, profiles and charts which were so prepared; and

(*d*) such other documents as the Minister may, by notice given to the former holder, require the former holder to so deliver.

Accounts

4. Subject to these regulations, the holder of a licence shall keep at an address in Malaŵi notified to the Minister, accurate accounts containing full particulars of the following matters, namely—

(*a*) the gross quantity of any crude oil and natural gas won and saved from the area subject to the licence;

(*b*) the grades and gravity of any crude oil produced and the composition of natural gas produced;

(*c*) any quantities of—

(i) crude oil;

(ii) natural gas;

(iii) each refined petroleum product, including liquefied petroleum gases; and

(iv) sulphur, in any form, or any other minerals in any form or any other gases, liquids or solids,

disposed of by way of sale or otherwise, the consideration received the quantity disposed of, and the name of the person to whom any such quantity was disposed;

(*d*) the quantity of petroleum injected into the formation of—

(i) crude oil;

(ii) natural gas;

(iii) each refined petroleum product, including liquefied petroleum gases; and

(iv) other liquids or gases;

(*e*) the quantity consumed for drilling and other production operations (other than quantities reported under paragraph (*d*)) and consumed in pumping to field storage and refineries in Malaŵi of—

(i) crude oil;

(ii) natural gas; and

(iii) each refined petroleum product, including liquefied petroleum gases;

(*f*) the quantity of crude oil refined by or on its behalf in Malaŵi;

(*g*) the quantity of natural gas treated in Malaŵi by him or on his behalf for the removal of liquids and liquefied petroleum gases, and the quantity of—

(i) butane;

(ii) propane; and

(iii) any other liquid or gases or any solids,

obtained from it;

(*h*) the quantity of natural gas flared.

Modification of duties under the Regulations

5. The Minister may, on written application made to him by the holder or former holder of a licence, by instrument in writing, dispense with or modify any of the requirements of these regulations, in their application to that holder or former holder, to the extent and on the conditions (if any) stated in the instrument.

G.N. 41/1984

PETROLEUM (REGISTRATION AND TRANSFER OF LICENCES) REGULATIONS

under s. 78

Citation

1. These regulations may be cited as the Petroleum (Registration and Transfer of Licences) Regulations.

Record to be kept

2. The Commissioner shall cause to be kept a record, in such form as the Commissioner determines, in which shall be entered—

(*a*) the name and address of each person to whom a licence is granted; and

(*b*) any dealings with or affecting a licence.

Interest in licence to be created by instrument in writing

3.—(1) A legal or equitable interest in, or affecting, a licence, is not capable of being created, transferred, assigned, affected or dealt with, whether directly or indirectly, except by instrument in writing.

(2) The creation of a legal or equitable interest in, or affecting, a licence, does not affect the liability of the licensee for any breach of the conditions of the licence or of any of the provisions of the Act.

Transfer, etc. of licence to be approved by Minister

4.—(1) Unless the Minister in writing approves—

(*a*) the transfer of a licence; or

(*b*) an instrument by which a legal or equitable interest in, or affecting, a licence is created, assigned or dealt with, whether directly or indirectly,

the transfer or the instrument (in so far as it operates as provided in paragraph (*b*)), is of no force.

(2) A person seeking the approval of the Minister under subregulation (1), shall make application to him in the prescribed form.

(3) Subject to subregulations (4) and (5), on application made under subregulation (2), the Minister may give or refuse to give his approval, or give his approval subject to such conditions as he deems necessary in the circumstances to impose.

(4) The Minister shall give his approval to the transfer of a petroleum exploration licence where the transferee—

(*a*) is a person controlling, controlled by or under common control with the transferor; and

(*b*) is not a person disqualified under any provision of the Act from holding a petroleum exploration licence.

(5) Where the Minister gives his approval under subregulation (4), he shall cause the name of the transferee to be recorded as the holder of the licence, and any legal proceedings which may be or have been commenced against the transferor may be commenced or, as the case may be, continued notwithstanding the transfer.

(6) For the purposes of subregulation (1) (*a*), the reference to "the transfer of a licence" includes the transfer of a licence by operation of law.

Minister may require additional information

5. The Minister may require any person making application under regulation 4 to furnish to him in writing such additional information as he may reasonably require to enable him to dispose of the application, and the applicant shall comply with the requirement.

Evidentiary provision

6.—(1) The Commissioner may give a certificate with respect to any matter referred to in subregulation (2).

(2) A certificate of the Commissioner—

(*a*) that a licence was granted, transferred, suspended or cancelled on, or with effect from, a date specified in the certificate;

(*b*) that any block, identified in the certificate, is, or was on a date specified in the certificate, subject to a licence;

(*c*) that a condition specified in the certificate is a condition on which any consent or approval, so specified, was given;

(*d*) that any condition specified in the certificate is, or was on a date so specified, a condition of a licence;

(*e*) that a person named in the certificate is, or was on a date specified in the certificate, the holder of a licence,

shall be received in proceedings before any court or tribunal as evidence of that fact, but without prejudice to the right to adduce evidence in rebuttal.

ATOMIC ENERGY

CHAPTER 61:03

Containing Pages 1–101

CHAPTER 61:03

ATOMIC ENERGY

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CHAPTER 61:03

ATOMIC ENERGY

16 of 2011
G.N. 20/2012

An Act to provide for adequate protection of the people and the environment in present and future generations against the harmful effects of ionizing radiation by controlling and regulating the importation, exportation, production, processing, handling, use, holding, storage, transportation and disposal of radiation sources, nuclear materials, and any other radioactive materials; to provide for the establishment of the Atomic Energy Regulatory Authority and provide for its governance and management; and to provide for matters connected therewith and incidental thereto

[22nd June, 2012]

PART I

Preliminary

Short title

1. This Act may be cited as the Atomic Energy Act.

Interpretation

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

"accident" means any event relating to a radiation source, including an operating error, equipment failure or other mishap, the consequences or potential consequences of which are not negligible from the point of view of radiation safety or nuclear security;

"activity" means the design, manufacture, construction, import, export, distribution, sale, loan, commissioning, use, operation, maintenance, repair, transfer, decommissioning or possession of radiation sources for industrial, education, research, agricultural and medical purposes; the transport of radioactive materials; the mining and processing of radioactive minerals; the closing down of associated facilities; the cleanup of sites affected by residues from past activities; and radioactive waste management activities such as the discharge of effluent; any activity involving nuclear material as defined in the Safeguards Agreement;

"Authority" means the Atomic Energy Regulatory Authority established under section 5;

"Board" means the Board of Directors of the Authority appointed under section 6;

"clearance" means the removal of radioactive materials or radioactive objects within authorized activities and practices from any further regulatory control;

"disposal" in relation to radioactive waste, includes its removal, deposit, or destruction, its discharge, whether into water or into air or into a sewer or drain or its burial, and "dispose of" shall be construed accordingly;

"dose limit" means the prescribed maximum value of the effective amount of radiation to which a person has been exposed and which is determined in the manner prescribed in section 43;

"Executive Director" means the Executive Director of the Secretariat appointed under section 16;

"exemption" means a determination by the Authority that a source, practice or activity need not be subject to some or all aspects of regulatory control on the basis that the radiation risks to individuals, the public and the environment caused by the exempted practice or source may be sufficiently low as to be of no regulatory concern;

"export" means the physical transfer, originating from Malaŵi, into an importing state, of nuclear material and related equipment, information and technology, as defined by the Authority;

"facility" means irradiation installations, mining and milling facilities, waste management facilities and any other place where radioactive materials are produced, processed, used, handled, stored or disposed off or where radiation generators are installed on such a scale that consideration of protection and safety is required;

"import" means the physical transfer, into Malaŵi, originating from an exporting state, of nuclear material and related equipment, information and technology, as defined by the Atomic Energy Regulatory Authority;

"inspector" means a person appointed under section 37;

"International Atomic Energy Agency" or "IAEA" means the International Atomic Energy Agency established by the statute of the IAEA in 1957;

"International instrument" includes—

(*a*) the IAEA Statute and all instruments developed or issued thereunder;

(*b*) the Treaty on the Non-proliferation of Nuclear Weapons adopted at the United Nations Offices in New York, United States of America on 12th June, 1968, and came into force on 5th March, 1970;

(*c*) the African Nuclear-Weapon-Free Zone Treaty, which was signed at Pelindaba in 1966 and came into force on 15th July, 2009;

(*d*) the Convention on Early Notification of a Nuclear Accident adopted on 26th September, 1986 in Vienna, Austria and came into force on 27th October, 1986;

(*e*) the Convention on Assistance in Case of a Nuclear Accident or Radiological Emergency which was adopted on 26th September, 1986 in Vienna, Austria, and came into force on 26th February, 1987; and

(*f*) the Agreement between Malaŵi and the International Atomic Energy Agency for the Application of Safeguards in connection with the Treaty on the Non-Proliferation of Nuclear Weapons (hereinafter referred to as the "Safeguards Agreement"), and the Additional Protocol thereto.

"intervention" means any action intended to reduce or avert exposure or the likelihood of exposure to sources which are not part of a controlled practice or which are out of control as a consequence of an accident;

"ionizing radiation" means, for the purposes of radiation protection, radiation capable of producing ion pairs in biological materials;

"licence" means an authorization granted by the Authority to a person, natural or judicial, who has submitted an application to carry out an activity or practice, as provided for in section 25;

"licensee" means the holder of a current licence granted for an activity or practice, who has recognized rights and duties for the activity or practice, particularly in relation to protection and safety;

"notification" means a document submitted to the Authority by an operator to notify an intention to carry out an activity or practice as provided for in section 22;

"operator" means any organization or person that is authorized or responsible for nuclear, radiation or radioactive waste, or transport safety, when undertaking activities or sources of ionizing radiation. This includes, *inter alia*, private individuals, non-governmental organizations, governmental bodies, consignees or carriers, licensees or hospitals;

"practice" means any human activity that introduces additional sources of exposure or exposure pathways or extends exposure to additional people or modifies the network of exposure pathways from existing sources, so as to increase the exposure or the likelihood of exposure of people or the number of people exposed;

"premises" include—

(*a*) any facility;

(*b*) any land, whether developed or not;

(*c*) any place underground;

(*d*) any land covered by water;

(*e*) any building, structure, vehicle, vessel, aircraft or container;

"radiation source" or "source" means anything that may cause radiation exposure, such as by emitting ionizing radiation or releasing radioactive substances or materials;

"radioactive material" means any matter or substance containing one or more radionuclides but does not include any material the activity or concentration of which does not exceed the prescribed exemption levels;

"radioactive source" means radioactive material that is unsealed or permanently sealed in a capsule or closely bonded, in a solid form and which is not exempt from regulatory control and includes any radioactive material released through the breakage or leaking of such a source. It does not include nuclear material or material encapsulated for disposal;

"radioactive waste" means material, in whatever physical form, remaining from activities, practices or interventions and for which no further use is foreseen, that contains, or is contaminated with, radioactive substances, and has an activity or activity concentration higher than the level set for clearance from requirements of this Act;

"Secretariat" means the Secretariat of the Authority referred to under section 16;

"security" means measures to prevent unauthorized access or damage, loss, theft or unauthorized transfer of radioactive sources or nuclear material.

Scope

3.—(1) This Act shall apply to all activities and practices involving the peaceful uses of radiation sources, nuclear material and other radioactive material, conducted in the territory or under the jurisdiction or control of Malaŵi, including production, possession, use, import, export, transportation, transfer, handling and management or any other activities or practices identified by the Authority.

(2) This Act shall not apply to activities or practices involving exposures that have been excluded from regulatory control through regulations established by the Authority.

(3) This Act shall not apply to the regulation of sources of non-ionizing radiation.

Objectives

4. The objectives of this Act are—

(*a*) to provide for the beneficial and peaceful uses of nuclear energy and its applications;

(*b*) to provide for the adequate protection of the public, workers and the environment, now and in the future, against the harmful effects of ionizing radiation and for the safety and security of radiation sources, radioactive material and any other radioactive material;

(*c*) to establish the Atomic Energy Regulatory Authority with the functions and responsibilities set forth in this Act for the purpose of exercising regulatory control over the peaceful uses of radiation sources, nuclear material and other radioactive material;

(*d*) to establish and maintain a regulatory system for the adoption of standards, licences, inspection and enforcement to govern all activities and practices falling within the scope of this Act; and

(*e*) to enable Malaŵi to meet its obligations under relevant international instruments entered into by Malaŵi.

PART II
The Atomic Energy Regulatory Authority

Establishment of the Atomic Energy Regulatory Authority

5.—(1) There is hereby established the Atomic Energy Regulatory Authority which shall—

(*a*) be a body corporate with perpetual succession and a common seal;

(*b*) be capable of suing and of being sued in its name; and

(*c*) have power, subject to the provisions of this Act, to do all things a body corporate may by law do or perform.

(2) There shall be a board of the Authority (hereinafter referred to as the "Board") which shall be responsible for the administration of the Authority, and a Secretariat which shall provide technical support to the Board.

Composition of the Board

6.—(1) The Board shall consist of the following members appointed by the President—

(*a*) a person working in the ministry responsible for mines and energy and nominated by the Minister responsible for mines and energy;

(*b*) a person working in the ministry responsible for health and nominated by the Minister responsible for health;

(*c*) a person working in the ministry responsible for labour and nominated by the Minister responsible for labour;

(*d*) a person working in the Department of Environmental Affairs and nominated by the Minister responsible for environmental affairs;

(*e*) a person working in the ministry responsible for foreign affairs and nominated by the Minister responsible for foreign affairs;

(*f*) a person working in the ministry responsible for justice and nominated by the Minister responsible for justice;

(*g*) a person working in the Ministry of Finance and nominated by the Minister responsible for finance;

(*h*) a person representing the trade unions nominated by the trade unions; and

(*i*) a person representing the non-governmental organization nominated by Council for Non-Governmental Organizations in Malaŵi.

(2) The persons to be appointed under subsection (1) shall be chosen for their ability, professional qualifications, experience and competency necessary for discharging their functions as members of the Board of the Authority.

(3) A person shall not be appointed as a member of the Board if the person—

(*a*) is not a Malaŵian citizen;

(*b*) has personal direct or indirect interest in the regulated activities;

(*c*) has been declared bankrupt;

(*d*) has been convicted of an offence involving fraud or dishonesty; or

(*e*) has been convicted of an offence under any written law and sentenced to a term of imprisonment without the option of a fine.

(4) The President shall designate one member of the Board, who has the highest level of competence in the field of peaceful uses of atomic energy and related activities, to be the Chairperson of the Authority.

Responsibilities and functions of the Authority

7. The responsibilities, power and functions, of the Authority shall be to—

(*a*) advise the Government on policies, measures and matters related to protection and prevention of harmful effects of ionizing radiation to the public, workers and the environment;

(*b*) recommend to the Minister the regulations upon which its regulatory actions are based and disseminate the regulations;

(*c*) ensure that its regulatory principles and criteria are adequate and valid, and take into consideration internationally recognized standards and recommendations;

(*d*) set out specific conditions for issuing, amending, suspending or revoking licences;

(*e*) issue, amend, suspend or revoke licences for the import, export, possession, use, transportation and decommissioning of radiation sources or facilities in which radioactive material or ore is mined, processed, used or stored, as well as for the safe management of radioactive waste;

(*f*) reject the application for a licence if it does not meet regulatory requirements and the criteria specified by the Authority;

(*g*) define the obligations of the licensee, including financial securities, to be met as conditions for conducting activities or practices;

(*h*) confirm the competence of personnel responsible for the safe operation of the facility, activity, or practice;

(*i*) define and grant exemptions from regulatory control;

(*j*) enter any premises or facility at any time to perform an inspection;

(*k*) ensure that corrective actions are taken in the event of non-compliance or violation of this Act, applicable regulations or the conditions of specific licences, if unsafe or potentially unsafe conditions are detected at any premises where authorized activities are conducted;

(*l*) take the necessary enforcement actions in the event of violations of safety requirements or investigate any alleged breach of the provisions of this Act;

(*m*) determine the necessary staffing and organizational structure for the implementation of the regulatory programme;

(*n*) enter into cooperative agreements with relevant national agencies on matters related to radiation safety, nuclear security and safeguards;

(*o*) cooperate with other relevant authorities, advise and provide them with information on safety and security matters in emergency planning and preparedness;

(*p*) maintain contacts for cooperation and information exchange with regulatory bodies of other countries and relevant international organizations on matters relating to the safety and security of radioactive sources, in particular for the implementation of

international legal instruments to which Malaŵi is or considers becoming party to;

(*q*) define a domestic threat and the assessment of vulnerability with respect to any threat for the variety of sources used within Malaŵi, based on the potential for loss of control or malicious acts involving one or more radioactive sources;

(*r*) establish regulatory measures for the security of nuclear material, radioactive sources and other radioactive materials, related equipment and associated facilities, including measures for the detection, prevention and response to unauthorized or malicious acts involving such materials, equipment or facilities;

(*s*) establish, if necessary in cooperation with other authorities including the Malaŵi Revenue Authority, a system of control for the import and export of nuclear material, radioactive sources and other items required to be controlled taking into account international treaty obligations;

(*t*) establish and maintain a state system of accounting for and control of nuclear material;

(*u*) make available to other public institutions, national and international organizations, and the public, information on incidents and abnormal occurrences, and other information, as appropriate;

(*v*) determine and recommend to the Minister fees for notifications, authorizations, approvals and licensing;

(*w*) ensure that appropriate records relating to the safety of the facilities and activities are retained and retrievable;

(*x*) design awareness programmes and implement the same for the civic awareness of this law and all other related matters; and

(*y*) carry out such other activities as are necessary or conducive for the better performance of its functions under this Act.

Delegation of powers and assignment of functions

8.—(1) The Board may, subject to such conditions as the Board may determine, delegate or assign in writing to—

(*a*) the Chairperson;

(*b*) a member of the Board;

(*c*) an advisory committee of the Board; or

(*d*) an officer of the Secretariat,

any power conferred upon or function assigned to the Board by this Act, other than the functions referred to in paragraphs (*a*), (*e*), (*j*) and (*o*) of section 7.

(2) The terms and conditions regulating the exercise of the powers delegated under this section shall be contained in the instrument of delegation.

(3) A person shall, in the exercise of a delegated power or function assigned under this section, comply with such directions or guidelines as the Board may, from time to time, communicate in writing to that person.

(4) A delegation or assignment under subsection (1) shall not divest the Board of a power delegated or a function assigned.

Meetings of the Board

9.—(1) The Board shall meet to transact its business at least every three months at such places and times as the Chairperson may determine and may regulate its own procedure.

(2) The Chairperson—

(*a*) may at any time convene an extraordinary meeting of the Board;

(*b*) shall, at the request of one-third of members in writing, convene an extraordinary meeting of the Board,

to be held at a time and place determined by the Chairperson.

(3) The quorum of any meeting of the Board shall be a simple majority of the Board members.

(4) The Board shall cause minutes to be kept of the proceedings of every meeting of the Board and every meeting of an advisory committee of the Board.

(5) The meetings of the Board shall be presided by the Chairperson.

(6) In the absence of the Chairperson the members present and forming quorum shall elect one of their number to preside at the meeting of the Board, who shall, with respect to that meeting and the business transacted thereto, have all the powers of the Chairperson.

(7) A decision of the Board on any matter shall be made by at least half of the members present and voting at the meeting.

(8) The Board may invite any person to assist it on any matter if the Board is satisfied that the person concerned has such qualifications, expertize or experience that he is likely to render useful assistance to the Board.

(9) A person invited under subsection (8) in relation to a particular matter may take part in the proceedings of the Board concerning that matter, but shall not vote on that matter or take part in any other proceedings of the Board.

Tenure of office and filling of vacancies

10.—(1) Subject to this Act, a member of the Board shall hold office for a period of three years from the date of appointment and may be eligible for re-appointment but in any event, a member of the Board shall not be appointed for more than two terms of office.

(2) The office of the member shall become vacant—

(*a*) upon the member's death;

(*b*) if the member is absent without reasonable excuse from three consecutive meetings of the Board of which the member has had notice;

(*c*) if the member ceases to work for the ministry which nominated the member to the Board;

(*d*) if the member becomes mentally or physically incapable of performing the duties of a member of the Board;

(*e*) if the member is declared bankrupt;

(*f*) if the member is convicted of an offence involving fraud or dishonesty; or

(*g*) if the member is convicted of an offence under any written law and is sentenced to a term of imprisonment without the option of a fine.

(3) On vacation of office by a member, the vacancy shall be filled by a person appointed in accordance with the relevant provisions of section 6 under which the former member was appointed:

Provided that if the remaining period is less than six months, the Minister may decide not to recommend to the President to have the vacancy filled until the expiry of the period.

Advisory committees and consultants

11.—(1) The Board may establish such advisory committees as may be deemed necessary and appropriate for the conduct of its regulatory responsibilities.

(2) The Authority may engage experts from outside its permanent staff as advisers, consultants, reviewers or technical experts to assist in the conduct of its regulatory responsibilities.

(3) The use of advisory committees or outside experts shall not relieve the Authority from its responsibilities under this Act or other written laws or applicable regulations.

(4) The Authority shall ensure that technical support received from advisory committees or experts is provided in a manner hat avoids any conflict of interest or improper influence on its regulatory decision making.

Allowances of members of the Board

12. The members of the Board or any committee shall be paid such allowances as the Board may, with the approval of the Minister, determine.

Disclosure of interest

13.—(1) If a member is present at a meeting of the Board at which any matter is the subject of discussion and in which the member has sufficient interest, directly or indirectly, the member shall, as soon as is practicable, before the commencement or during the meeting, declare such interest and shall not, unless the Board or the committee otherwise directs, take part in any discussion of, or vote on, any question pertaining to the matter.

(2) A declaration of interest made under subsection (1) shall be recorded in the minutes of the meeting at which it is made.

Prohibition of publication or disclosure

14.—(1) A person shall not, without a written consent given by, or on behalf of the Board, publish or disclose to any person other than in the course of duties, the contents of any document, communication, or information which relates to, and which has come to the person's knowledge in the course of the person's duties under this Act.

(2) Any person who, without written consent given by, or on behalf of, the Board, publishes or discloses to any person any document, communication or information in contravention of subsection (1) commits on offence and shall, on conviction, be liable to imprisonment for fifteen years.

Seal of the Authority

15. The Board shall determine the seal of the Authority, which shall be kept by the Executive Director at a registered office.

Composition of the Secretariat

16.—(1) The Secretariat of the Authority shall consist of the Executive Director and other employees of the Authority appointed under this Act.

(2) The President shall appoint an Executive Director of the Authority, subject to confirmation by the Public Appointments Committee of the National Assembly.

(3) A person shall not be appointed Executive Director unless such a person—

(*a*) is a Malaŵian citizen;

(*b*) holds at least a post graduate degree in the fields of sciences or law, and has relevant experience in the field of atomic energy;

(*c*) has not been declared bankrupt;

(*d*) has not been convicted of an offence involving fraud or dishonesty;

(*e*) has not been convicted of an offence under any written law and has not been sentenced to a term of imprisonment without the option of a fine; and

(*f*) has no personal interest, direct or indirect, in the regulated activities.

(4) The Executive Director shall serve for a renewable term of four years up to a maximum of two terms.

(5) Government shall ensure that the Secretariat of the Authority has adequate, suitable and competent staff to fulfill the Authority's responsibilities under this Act and applicable regulations.

(6) The Executive Director shall recruit the necessary staff of the Secretariat subject to approval of the Board.

(7) The Board shall, subject to the approval of the Minister, determine the terms and conditions of service for the Secretariat.

(8) The Executive Director shall exercise disciplinary control over the staff recruited by him under subsection (6).

(9) The Executive Director—

(*a*) shall be responsible for the day-to-day administration and management of the affairs of the Authority and in that regard shall be answerable to the Board;

(*b*) shall attend meetings of the Board and may attend meetings of any committee of the Board on request and may address the meetings, but shall not vote at any meeting;

(*c*) shall be the Secretary to the Board, and shall, on the instructions of the Chairperson, convene meetings of the Board;

(*d*) shall, where he is not available, delegate a senior officer of the Secretariat to serve as secretary to the Board and the officer shall be entitled to attend all meetings of the Board and of the committees; and

(*e*) shall subject to the special or general directions of the Board, perform actions which he considers to be expedient for the purposes of the Authority.

Functions of the Secretariat

17. The Secretariat of the Authority shall have the following functions, to—

(*a*) establish and maintain a national register of radiation sources and of licensed persons to carry out an activity or practice;

(*b*) define in the licence the detailed conditions, including financial obligations, to be placed on the licensee;

(*c*) review and assess submission on safety from an applicant both prior to granting the licence and periodically during operation, as required;

(*d*) conduct inspections and visits and facilitate the performance of verification activities by designated inspectors of the International Atomic Energy Agency in accordance with the Safeguards Agreement and the Additional Protocol thereto;

(*e*) establish appropriate mechanisms for informing the public, media, and other stakeholders about the regulatory process, and radiation safety and security aspects of regulated activities or practices and about incidents and accidents;

(*f*) collect and disseminate information on the work of the Authority; and

(*g*) perform such other functions from time to time as may be assigned by the Board.

PART III
Financial Provisions

Funding of the Authority

18.—(1) The Government shall provide the Authority with adequate financial resources, to enable the Authority to fulfill its responsibilities under this Act and applicable regulations.

(2) The funds of the Authority shall consist of such moneys as may—

(*a*) be appropriated by Parliament for the purposes of the Authority;

(*b*) be collected as fees, penalties and other charges; and

(*c*) otherwise vest or accrue to the Authority.

(3) The Authority may, subject to the approval of the Minister—

(*a*) accept grants or donations:

Provided that the grants or donations do not come from persons that are subject to regulatory control of the Authority and do not lead to any conflict of interest; or

(*b*) raise by way of loans, such moneys as it may require to discharge its functions.

(4) The Authority may invest in such manner as it thinks fit such funds as it does not immediately require for the performance of its functions.

19. The financial year of the Authority shall be the period of twelve months commencing on 1st July in one year and ending on the 30th of June of the following year; or such other dates as the responsible Minister may specify by order published in the *Gazette*: Financial year

Provided that the first financial year of the Authority may be a period shorter or longer than twelve months but in any event not longer than eighteen months.

20.—(1) The Authority shall— Accounts

(*a*) keep and maintain proper books of accounts and other records relating to its funds and other assets of the Authority; and

(*b*) in every aspect comply with the Public Finance Management Act, Public Audit Act and Public Procurement Act so far as these Acts are applicable to statutory bodies. Cap. 37:02 Cap. 37:01 Cap. 37:03

(2) The accounts of the Authority shall be audited annually by the Auditor General.

(3) The auditor's fees shall be paid by the Authority.

21.—(1) The Authority shall prepare, as soon as practicable, but not later than three months after the end of the financial year, an annual report of the activities of the Authority. Annual Report

(2) The Board shall submit a report to the Minister, and the Minister shall lay the report before the National Assembly annually.

(3) The report referred to in subsection (1) shall include also information on the financial affairs of the Authority and there shall be appended to the report—

(*a*) an audited balance sheet;

(*b*) an audited statement of income and expenditure; and

(*c*) such other information as the Minister may require.

(4) The Authority shall publish the report and disseminate it to the general public.

PART IV
Notification and Licensing

22. Any person who intends to engage in an activity or practice shall submit a notification to the Authority of his intention to carry out such activity or practice in the form and within the time limits required by the Authority, and specified in the regulations. Requirement for a notification

Requirement for a licence

23. A person shall not engage in any activity or practice unless specifically licensed by the Authority.

Licence process

24. The Authority shall make publicly available information on the licensing process, including, *inter alia*—

(*a*) criteria to be considered in licensing decisions and their legal basis, including a requirement that an explanation of the reasons for rejection of a submission shall be provided to the applicant;

(*b*) conditions and qualifications that shall be met by the applicant for a licence;

(*c*) procedures and requirements for suspension, modification, renewal, revocation or relinquishment of licences;

(*d*) procedures and requirements for public participation in the licensing process;

(*e*) procedures and requirements for the release of information concerning licensing proceedings, including measures for the protection of classified and proprietary information; and

(*f*) description of any fees required for licences.

Conditions for granting licences

25.—(1) Prior to being granted a licence, the applicant shall present sufficient evidence that he—

(*a*) possesses an adequate understanding of the fundamental principles of radiation protection, nuclear safety and security;

(*b*) shall take all steps necessary for the protection and safety of workers and the public, including by keeping doses below the relevant threshold and ensuring that all reasonable steps are taken to minimize adverse effects in the population, at present and in the future;

(*c*) shall plan and implement the technical and organizational measures necessary to ensure adequate safety, including effective defenses against radiological hazards;

(*d*) shall prepare and implement an appropriate emergency plan;

(*e*) shall ensure compliance with the dose limits established by the Authority and shall monitor the radiation exposure of workers;

(*f*) possesses adequate human and financial resources to conduct the proposed activity or practice in a manner that ensures nuclear safety and security;

(*g*) has made all necessary contractual arrangements for the return of the radioactive source, at the end of its useful life, to the supplier, its successor, and in any case to the exporting country or the place of origin;

(*h*) has made adequate financial arrangements for waste disposal, decommissioning and potential liability for radiological damage;

(*i*) shall provide access by inspectors of the Authority to premises necessary for the performance of their duties;

(*j*) shall not modify the conduct of any licensed activity or practice in a manner that could affect the protection of workers, the public and the environment as well as the nuclear security, without seeking the approval of the Authority; and

(*k*) shall provide, upon request or pursuant to the requirements in relevant regulations, all information considered to be necessary by the Authority.

(2) The Authority shall further, prior to granting a licence, take into consideration, the impact of the proposed activity or practice on the environment, and the social, economic, cultural and recreational conditions of any of the community concerned.

(3) Notwithstanding subsections (1) and (2), the Authority shall, in granting a licence or a renewal of a licence, take into consideration relevant Government policies and any written law and any other matter that the Board may consider likely to have a bearing on the activities of the licensee.

Validity, renewal and transfer of licences

26.—(1) A licensee shall, before the expiry of a licence, and within the prescribed period, apply to the Authority for renewal of the licence.

(2) A licence shall cease to be valid when any time limit established therein has expired or any condition of the licence has not been met, in accordance with the enforcement process established by the Authority.

(3) A licence shall not be transferable.

Modification of conditions of licence

27.—(1) The Authority may modify the conditions of a licence on its own motion or on application by the licensee.

(2) Where the Authority intends to modify the conditions of a licence, it shall inform the licensee in the prescribed manner of its intention to do so and give the licensee an opportunity to be heard.

Refusal to issue licence

28.—(1) The Authority may refuse to issue a licence if—

(*a*) the applicant fails to meet the conditions as specified under section 25, or in applicable regulations;

(*b*) any licence formerly issued to the applicant under this Act has been revoked by the Board;

(*c*) the applicant has been convicted of an offence involving fraud or dishonesty; or

(*d*) the applicant has been convicted of an offence under any written law and sentenced to a term of imprisonment without the option of a fine.

(2) Where the Authority refuses to issue a licence under subsection (1), it shall, within ninety days from the receipt of the application, notify the applicant in writing of the refusal to issue the licence to the applicant and shall state the reasons for the refusal.

Revocation and suspension of licence

29.—(1) The Authority may, where it is satisfied that a licensee is not operating in accordance with the terms and conditions of the licence, this Act or prescribed regulations, and after affording the licensee a reasonable opportunity to be heard, revoke or suspend a licence if the breach—

(*a*) would pose an unacceptable risk to the public or the environment;

(*b*) continues after two consecutive warnings; or

(*c*) causes the Board to believe that it is likely that the licensee is unable to fulfill his duties under the licence or under this Act.

(2) The Authority shall revoke a licence if the licence was obtained fraudulently or by deliberate or negligent submission of false information.

(3) Where the Authority suspends a licence, it may direct the storage of radiation sources under such conditions to prevent exposure of the public or workers to potential radiation hazards above prescribed limits.

(4) Where the Authority revokes or suspends a licence, it shall take such action as it deems necessary to ensure that all the activities authorized by the licence cease immediately.

Relinquishment of licence

30. A licence may be relinquished by the licensee upon notice to the Authority and upon a determination by the Authority that relinquishment will not jeopardize the protection of the public or the environment.

PART V
Responsibilities of a Licensee

Responsibilities of licensee

31.—(1) The primary responsibility for the safety and security of radiation sources and nuclear materials rests with the licensee who may seek further advice from the Authority.

(2) A licensee shall—

(*a*) carry out the activity or practice in accordance with the provisions of this Act, the regulations and the conditions of his licence;

(*b*) keep records and compile reports relating to radiation safety and security regulations required to be observed under this Act;

(*c*) prepare, in consultation with the Authority, radiation safety and security rules within an activity or practice; and

(*d*) provide the Authority with any requested assistance in the performance of its regulatory functions.

(3) During operation, and in case of intended modification of the conditions of the licence, the licensee shall provide all available information, as may be required by the Authority.

(4) A licensee undertaking more than one licensed activity or practice shall keep separate records and reports for each activity or practice.

Duty of licensee to appoint radiation safety officer

32.—(1) A licensee shall, after consultations with the Authority, appoint a qualified and technically competent person to oversee radiation protection.

(2) The functions of the person appointed to oversee radiation protection shall be prescribed in regulations.

(3) The Authority may, where necessary, direct a licensee to appoint more than one person to oversee radiation protection in respect of such portions of the operations of the licensee as the Authority may determine.

Notice of intended termination of operations

33. Where a licensee intends to terminate operations, he shall, at least six months prior to commencement of termination, notify the Authority in a prescribed manner, of his intended termination of operations and shall follow the prescribed termination procedure or where no procedure is prescribed, such procedure as the Authority may determine in order to ensure the nuclear safety and security of the public and the environment.

Notice of incidents or accidents

34.—(1) A licensee shall, immediately, and in any case, within twenty four hours, notify the Authority of any incident or accident which has occurred, as may be defined in the regulations.

(2) A licensee shall, within a period prescribed by the Authority, submit to the Authority a written report of the incident or accident referred to in subsection (1).

Liability of licensee

35.—(1) Every licensee shall be responsible for ensuring that no radiation emitted as a result of the carrying on of his undertaking on his premises, causes any harm or injury to any person or damage to any property which is on the premises or elsewhere subject to subsection (4).

(2) No person other than the licensee shall be under any liability in respect of any harm to any person or any damage to any property caused by any radiation to which subsection (1) applies.

(3) No licensee shall incur any liability by virtue of subsection (1) in respect of any radiation whose emission, or the causing of any harm to any person or any damage to any property by their emission, is attributable to hostile action in the course of civil strife, any armed conflict, including any armed conflict within Malaŵi.

(4) Whenever a physical or mental disability occurs in a person, and which an approved medical practitioner—

(*a*) ascribes to radiation exposure, the disability shall be presumed to have resulted from exposure to radiation from a source of strength sufficient to give rise to such disability;

(*b*) ascribes to radiation as well as to other causes, the following factors shall be considered for the purposes of establishing the cause of the disability, namely—

(i) if the disability is of a nature known to be capable of being caused by either radiation or any other cause that it appears that the person may have been exposed to a source of radiation of a strength sufficient to have caused the disability, it shall be presumed that the disability arose from one or more of such exposures, if no record of personal exposures have been maintained to a standard approved by the Authority;

(ii) if the disability is of a nature known to be capable of arising from radiation and from any other possible cause, and there exists a person who indicates that there have occurred in relation to him exposures in excess of the recommended dose limits, it shall be presumed that the disability occurred as a result of that radiation exposure; or

(iii) if the disability is of a nature known to be capable of rising from radiation and from any other possible cause, and there exists a personal radiation exposure record in respect of that person which has been maintained to a standard approved by the Authority, it shall be presumed that the disability did not arise from radiation exposure if the record indicates that the exposures have been within the permissible limits on all possible occasions of exposure.

PART VI
Inspections and Enforcement

Inspections programme

36.—(1) The Authority shall establish an inspection programme, including announced and unannounced inspections, to monitor compliance with the requirements of this Act or any applicable regulations or conditions of a licence.

(2) The Authority shall ensure that the inspection programme is supported by adequate financial, technical and human resources to meet its objectives.

(3) The Authority shall establish qualification requirements for a training programme for inspectors.

Conduct of inspections

37. The Authority may conduct any inspections and carry out such other examination, as may be necessary, to confirm and verify compliance with the provisions of this Act, applicable regulations and conditions of a licence.

Appointment of inspectors

38.—(1) The Authority shall, with the approval of the Board, appoint such number of suitably qualified inspectors to enforce compliance with the provisions of this Act, applicable regulations and conditions of a licence.

(2) The Authority shall issue to the inspectors appointed under subsection (1) identification cards signed by the Executive Director.

(3) An inspector shall, while exercising his powers or performing his duties in terms of this Act, on request by any interested person, produce the identification card.

Powers and functions of inspectors

39.—(1) Subject to the restrictions provided for in the regulations, an inspector shall, for the purposes of monitoring or enforcing compliance with this Act, have access at any time, to all parts of the premises or facilities where activities or practices are carried out, with a view to—

(*a*) obtaining information about the status of their radiation safety and security of activities and practices being conducted by a licensee;

(*b*) verifying compliance with the provisions of this Act and applicable regulations and conditions of licences;

(*c*) investigating any incident or accident involving nuclear material or radiation sources;

(*d*) questioning any person who has duties which, in the view of an inspector may be pertinent to the inspection being carried out or an enquiry being conducted;

(*e*) taking samples in a prescribed manner, of any material and make such examinations and enquiries as may be necessary to ascertain whether the provisions of this Act, any other applicable written law, standards and guidelines are being complied with;

(*f*) seizing any radioactive material or source which, on reasonable grounds, the inspector believes has not been authorized;

(*g*) conducting inspections to assess radiation safety, security conditions and compliance with this Act, applicable regulations and other requirements specified in the licence; and

(*h*) exercising such other powers as are necessary for carrying out the provisions of this Act into effect.

(2) A licensee, either by himself, his servants, agents or otherwise shall not hinder or obstruct an inspector, from entry, inspection, examination, inquiring, taking of samples or otherwise in the exercise of his powers under this Act.

(3) Except for an unannounced inspection, the Authority shall give reasonable notice to the licensee that an inspection is to be carried out.

Duty of inspectors

40.—(1) An inspector shall document the inspection results in a report, which he shall submit to the Executive Director, within a prescribed time.

(2) The Authority shall make the inspection results available to the licensee and any other entities as required.

(3) The report referred to in subsection (1) shall be recorded and kept by the Authority.

Compliance order

41.—(1) Where the Authority determines that a licensee is not in compliance with any condition of the licence, or is in contravention of any provision of this Act or applicable regulations, the Authority may, by notice in writing, direct the licensee to restore compliance.

(2) A notice under subsection (1) containing a direction to restore compliance shall be sent to the licensee, as may be required by the directly affected parties and shall—

(*a*) state the relevant condition or provision of this Act to which the contravention is related;

(*b*) contain clear reference to the findings, which constitute a contravention of the condition or provision;

(*c*) specify the period within which compliance shall be restored; and

(*d*) specify the period, not being less than fourteen days from the date of receiving the notice, within which representations or objections may be made by the licensee or directly affected parties.

(3) After the Executive Director has received representations as contemplated in subsection (2) (*d*), he may recommend to the Board to—

(*a*) uphold the order of compliance;

(*b*) vary the original order of compliance; or

(*c*) withdraw the order of compliance.

(4) Where the Board decides to uphold or vary the order, the Executive Director shall issue a notice to the licensee to whom the original order was directed—

(*a*) informing the licensee of the Board's decision; and

(*b*) indicating the period, not being less than fourteen days, within which the licensee shall comply with the order.

Compliance order in urgent matters

42.—(1) The Executive Director may, after hearing the parties concerned, direct a licensee to take immediate action to discontinue or refrain from an activity or practice, where he is satisfied that the licensee is not complying with any condition of the licence, or is contravening any provision of this Act, and that immediate action is necessary to—

(*a*) protect the health of any person;

(*b*) prevent irreversible damage to the environment; or

(*c*) prevent serious damage to property.

(2) Where the licensee does not comply with a direction issued under subsection (1), the Executive Director may take any necessary action, to prevent any significant damage, on behalf of the licensee at the cost of the licensee.

PART VII
Radiation Safety Principles

Fundamental principles

43. The following principles of radiation protection shall apply to all activities and practices conducted in the Republic of Malaŵi—

(*a*) Justification: No activity or practice shall be licensed unless it produces sufficient benefit to exposed persons or to society in a manner that offsets the radiation harm that it may cause, taking into account social, economic and other relevant factors;

(*b*) Optimization: In relation to radiation exposures from any particular activity or practice, radiation protection measures shall ensure that doses, the number of persons exposed and the likelihood of incurring exposure is at all times kept as low as reasonably achievable taking into account social and economic factors; and

(*c*) Dose Limitation: Activities and practices shall be conducted in a manner that ensures that the total dose that a person may experience does not exceed the dose limits established by the Authority, in accordance with international standards, so that no person is subject to an unacceptable risk attributable to radiation exposure.

Regulatory control of radiation safety

44.—(1) Based on internationally recognized guidelines, the Authority shall adopt a categorization of sources based on the potential injury to the public, workers and the environment that may occur if such sources are not safely managed or securely protected.

(2) The regulatory programme of the Authority, including the licensing and inspection system as prescribed in Part IV and Part VI, shall be based on the categorization of sources.

(3) The Authority shall establish dose limits to persons, in accordance with international standards, and the limits shall not be exceeded in carrying out regulated activities.

(4) The Authority shall identify sources or practices to be exempt from regulatory control based on the following criteria—

(*a*) that the radiation risk for persons is sufficiently low to be of no regulatory concern;

(*b*) that the collective radiological impact is sufficiently low that regulatory control is not warranted; and

(*c*) that the activity sources or practice is considered to be inherently safe, with no likelihood of creating situations that could result in a failure to meet the criteria in paragraph (*a*) or (*b*).

(5) The Authority shall establish clearance levels or values, within licensed activities below which radioactive material or radioactive objects within authorized activities and practices can be released from regulatory control.

PART VIII
Medical Practices

Medical practices involving the use of radiation sources

45. Where medical practices involving the use of radiation sources, are carried out, the Authority shall prescribe, the following—

(*a*) the qualifications and training requirements for users;

(*b*) measures to protect persons using radiation sources;

(*c*) measures to protect patients, including the justification of practices and optimization of exposures;

(*d*) design and performance criteria for radiation producing equipment and devices containing radionuclide; and

(*e*) measures for the safety and security of radioactive sources.

Protection of patients

46. A person licensed to conduct medical practices shall ensure that no patient shall be administered with a dose due to a diagnostic or therapeutic procedure unless the exposure is prescribed by a medical

practitioner who is assigned the primary task and obligations for ensuring overall patient protection and safety in the prescription of, and during the delivery of, medical exposures.

PART IX
Emergency Preparedness and Response

Requirement for an emergency plan

47.—(1) The Authority shall not grant a licence to conduct an activity or practice, unless and until an applicant has developed, and the Authority has approved, an emergency preparedness and response plan.

(2) The Authority shall establish, by regulation or conditions prior to issuing a licence, where applicable, a requirement that the applicant prepares, and the Authority approves, on-site and off-site emergency plans for any facility, activity, practice or source that could give rise to a need for emergency intervention.

(3) In the preparation of emergency plan the following shall be taken into account, *inter alia*—

(*a*) an assessment of the nature, likelihood and potential magnitude of resulting damage, including the population and territory at risk from an accident, malicious act or incident; and

(*b*) the results of any accident analyses and any lessons learned from experience or incidents and accidents that have occurred in connection with similar activities or practices.

(4) The specific requirements of an emergency plan shall be prescribed by the Authority.

(5) Preparation of emergency plains for facilities, activities, practices or sources that could involve significant nuclear or radiological damage shall be coordinated with all relevant emergency intervention or response organizations, including—

(*a*) the Office of the President and Cabinet;

(*b*) the Office of Commissioner for Disaster Preparedness, Relief and Rehabilitation;

(*c*) the ministry responsible for Defence;

(*d*) the ministry responsible for Home Affairs;

(*e*) the ministry responsible for Water Affairs;

(*f*) the ministry responsible for Health;

(*g*) applicable District Assemblies;

(*h*) Malaŵi Meteorological Services; and

(*i*) emergency services including fire brigades, hospitals and police services.

(6) The licensee shall periodically review and update the emergency plan as prescribed by the Authority.

Compliance with the emergency plan

48. In the event of a radiological emergency, a licensee shall implement the emergency plan as approved by the Authority.

National plan for radiation emergencies

49.—(1) A national emergency plan for responding to potential radiological emergencies shall be developed and maintained by the Authority and approved by the Cabinet.

(2) Review and approval of the emergency plan mandated under subsection (1) shall be done in consultation with—

(*a*) the Office of the President and Cabinet;

(*b*) the Office of Commissioner for Disaster Preparedness, Relief and Rehabilitation;

(*c*) the ministry responsible for Defence;

(*d*) the ministry responsible for Home Affairs;

(*e*) the ministry responsible for Water Affairs;

(*f*) the ministry responsible for Health;

(*g*) applicable District Assemblies;

(*h*) Malaŵi Meteorological Services; and

(*i*) emergency services including fire brigades hospitals and police services.

(3) The national radiological emergency plan may be coordinated with and take into account the provisions of—

Cap. 33.05

(*a*) the Disaster Preparedness and Relief Act;

(*b*) the Disaster Risk Reduction Policy;

(*c*) Operational Guidelines for Disaster Risk Management in Malaŵi; and

(*d*) the Country Programme Action Plan, as revised from time to time.

(4) The national radiological emergency plan shall include an allocation of responsibilities and actions among relevant public institutions and non-governmental organizations, including arrangements for communications and public information.

50. In the event of a nuclear or radiological emergency occurring outside Malaŵi which may pose a risk of radioactive contamination spreading into Malaŵi, the Authority shall comply with relevant international instruments.

Emergency with transboundary effects

PART X
Radioactive Waste Management

51. Radioactive waste generated outside the territory of Malaŵi shall not be imported into Malaŵi for any purpose.

Prohibition of the import of radioactive waste

52. At all stages of the management of radioactive waste the following principles shall be applied by all persons and entities, including public institutions so that—

General principles

(*a*) the public, workers and the environment are adequately protected against radiological and other hazards;

(*b*) the generation of radioactive waste is kept to the minimum practicable;

(*c*) the relationships among different steps in radioactive waste management are taken into account;

(*d*) the protective measures for radioactive waste management are implemented in a manner that reflects internationally recognized criteria, standards and guidance specifically those adopted by the International Atomic Energy Agency;

(*e*) the biological, chemical and other hazards that may be associated with radioactive waste management are adequately addressed;

(*f*) the criticalness of removing residual heat generated during radioactive waste management is adequately addressed;

(*g*) the actions imposing reasonably predictable impacts on future generations greater than those permitted for the current generation are avoided; and

(*h*) the undue burdens on current and future generations are avoided.

53.—(1) The Minister, on the recommendation of the Authority, may make regulations prescribing the manner of safe management and storage and discarding of radioactive waste.

Regulations on radioactive waste management

(2) To ensure the safe and secure management of radioactive waste in Malaŵi, the Authority shall establish—

(*a*) applicable safety and security requirements and regulations for the protection of the public, workers and the environment from

adverse impacts of radioactive waste and spent fuel management activities;

(*b*) a system of licensing of radioactive waste management activities;

(*c*) a system of institutional control, regulatory inspection and documentation and reporting for radioactive waste management activities; and

(*d*) a system of enforcement to ensure compliance with applicable regulations and the terms and conditions of licences for radioactive waste management activities.

Licence requirement for radioactive waste

54. A person or entity shall not operate a radioactive waste management facility without a licence issued by the Authority.

Responsibility for safety and security of radioactive waste

55.—(1) The primary responsibility for ensuring the safety and physical protection of a radioactive waste inside or outside a radioactive waste management facility throughout its life shall rest with the relevant licensee.

(2) The responsibility for ensuring the safety and physical protection of radioactive waste for which no licensee nor an entity can be determined shall rest within the Authority.

Disposal plan

56.—(1) A licensee of a radioactive waste management facility shall prepare a plan for the closure of the facility that includes both active and passive institutional controls.

(2) The licensee shall submit to the Authority the plan referred to in subsection (1) for approval prior to the commencement of the operation of the facility.

Export of radioactive waste

57. Radioactive waste generated within the country may be exported only upon the issuance of a licence by the Authority.

PART XI
Transportation of Radioactive Material

Requirement for a licence to transport radioactive material

58.—(1) A person nor an entity shall not engage in the transportation of radioactive material without a licence.

(2) Any transportation of radioactive material shall be carried out in compliance with national standards and applicable written law, and the technical requirements of the Regulations for the Safe Transport of Radioactive Material of the International Atomic Energy Agency, as amended from time to time.

(3) The licensee shall have the primary responsibility for ensuring the safety and security of the radioactive material during transportation.

Regulations on transportation of radioactive material

59.—(1) The Authority shall establish requirements for the transportation of radioactive materials to, from and within the country.

(2) The requirements adopted pursuant to this section shall take into account the technical requirements of the latest edition of the Regulations for the Safe Transportation of Radioactive materials issued by the International Atomic Energy Agency.

(3) The requirements adopted pursuant to this section shall include measures for the physical protection of radioactive material consistent with guidance documents issued by the International Atomic Energy Agency.

PART XII

Mining and Processing

Licence for mining and processing radioactive minerals

60.—(1) A person nor an entity shall not engage in mining and processing of radioactive minerals without a licence issued by the Authority.

(2) The Authority shall establish requirements for granting a licence to conduct mining and processing activities involving materials that could pose risks from exposure to ionizing radiation, including the following—

(*a*) any exploration activity involving possible exposure to radiation;

(*b*) removal of radioactive minerals from the site for testing or evaluation, unless exempt;

(*c*) excavation activities at a site, including a test mine, for evaluation or delineation of the ore body;

(*d*) siting, construction or operation of a mine or processing facility;

(*e*) temporary storage, transportation and export of the product of mining or milling activities;

(*f*) radioactive waste management;

(*g*) rehabilitation of the mining site; and

(*h*) decommissioning or closure of a mine or processing facility.

(3) The Authority shall establish a system of monitoring and inspection to verify compliance with this Act, applicable regulations and any licences issued pursuant to this section.

Application for a licence

61. An applicant for a licence to conduct mining or processing activities involving radioactive minerals from a site shall provide information, *inter alia* and as applicable, on the following—

(*a*) mining rights;

(*b*) site characteristics, including geology and hydrology;

(*c*) siting or construction plans;

(*d*) conceptual design of the mining or processing facility;

(*e*) proposed work activities, extraction techniques and types of equipment involved;

(*f*) quantities of the uranium or thorium to be removed from the ore;

(*g*) transportation of the ore and final protection;

(*h*) estimates of exposures and doses for workers;

(*i*) measures to be taken for radiation protection;

(*j*) procedures for prevention of accidents;

(*k*) plans for effluent management systems and related procedures;

(*l*) procedures for dealing with accidental releases of radioactive or non-radioactive contaminants to the environment, including mitigation of hazards;

(*m*) impact on public health and safety and the environment;

(*n*) siting of tailings and storage facilities or stockpiles of ore and waste rock;

(*o*) proposed rehabilitation and decommissioning plans, including financial arrangements for decommissioning; and

(*p*) physical protection and security measures.

Responsibilities of a licensee for safety and security of activities

62.—(1) A licensee shall bear the primary responsibility for ensuring the safety and security of any mining and processing activities conducted pursuant to the licence.

(2) The licensee shall ensure compliance with this Act and all applicable regulations and requirements of the licence issued by the Authority.

(3)—(*a*) The licensee shall notify the Authority of his intention to introduce modifications to any activity or practice it is licensed to conduct; and

(*b*) where these modifications may have implications for the safety or security, the licensee shall not implement those modifications unless authorized by the Authority.

(4) The licensee shall maintain records as required by the Authority and shall make them available for inspection.

PART XIII
Security, Physical Protection and Safeguards

National register of radioactive sources

63.—(1) The national register of radiation sources referred to in section 17 shall include the categories of radioactive sources.

(2) The Authority shall adopt measures to protect the information contained in the national register to ensure the safety and security of these sources.

Import and export of radioactive sources

64.—(1) Based on internationally recognized guidance, the Authority shall develop regulatory requirements and procedures for the licensing of the import, export and transit of radioactive sources from, to or through the country.

(2) The procedures established under subsection (1) shall provide for an evaluation of information to ensure that a recipient is licensed to receive the requested source and has the capacity to ensure its safety and security.

Recovery of orphan sources

65.—(1) The Authority shall coordinate the development of a national strategy for promptly gaining or regaining control over orphan sources.

(2) The national strategy shall be developed in consultation with—

(*a*) the Office of the President and Cabinet;

(*b*) the Office of Commissioner for Disaster Preparedness, Relief and Rehabilitation;

(*c*) the National Disaster Preparedness and Relief Committee;

(*d*) the Ministry responsible for Defence;

(*e*) the Ministry responsible for Home Affairs;

(*f*) the Ministry responsible for Health;

(*g*) Malaŵi Meteorological Services;

(*h*) the Ministry responsible for Water Affairs; and

(*i*) emergency services including fire brigades and hospitals and police services, and approved by Cabinet.

(3) The Authority shall require licensees to promptly report any loss of control over radioactive sources or any other situation or incident that could pose a significant risk to the safety or security of the public and the environment.

(4) For the purposes of this section, "orphan sources" refers to a sealed source of radioactive material contained in a small volume in one or more of the following conditions—

(*a*) in an uncontrolled condition that requires removal to protect public health and safety from a radiological threat;

(*b*) controlled or uncontrolled, but for which a responsible party cannot be readily identified;

(*c*) controlled, but the material's continued security cannot be secured;

(*d*) if held by a licensee, the licensee has few or no options for, or is incapable of providing for, the safe disposition of the material;

(*e*) in the possession of a person, not licensed to possess the material, who did not seek to possess the material; or

(*f*) in the possession of the Government radiological protection, for the sole purpose of mitigating a radiological threat because the orphan source is in any one of the conditions described in paragraphs (*a*) to (*e*), and for which Government does not have a means to provide appropriate disposition of the materials.

Peaceful use commitments

66.—(1) Nuclear material in Malaŵi shall be used exclusively for peaceful nuclear activities and in accordance with relevant international obligations undertaken by Malaŵi.

(2) A person shall not engage in any activity involving nuclear material unless previously and specifically licensed by the Authority.

(3) A person shall not engage in the import or export of nuclear material or of other specified equipment and non-nuclear material, without a licence issued by the Authority.

(4) A person shall not carry out research and development activities which are related to the nuclear fuel cycle regardless of whether the activities involve nuclear material, unless such person has informed the Authority in writing and has obtained a licence prior to the commencement of the activities.

(5) Any person performing activities subject to the Safeguards Agreement shall submit to the Authority the information and data necessary for compliance with the undertakings arising from such instruments.

Prohibited activities

67.—(1) The uses of nuclear energy and ionizing radiation in Malaŵi shall be for peaceful purposes only.

(2) Any activities or practices related to the acquisition or development of nuclear explosives, radiological dispersal devices, or

other non-peaceful uses of nuclear or other radioactive materials and related technology or assisting others in such activities are strictly prohibited.

(3) Any person who contravenes subsection (2) commits an offence and shall, upon conviction, be liable to life imprisonment.

Application of safeguards

68.—(1) To ensure compliance with the commitments of Malaŵi pursuant to the Treaty on the Non-Proliferation of Nuclear Weapons and the Treaty of Pelindaba, the International Atomic Energy Agency shall have the right to apply safeguards as provided for in the Safeguards Agreement and Additional Protocol thereto between Malaŵi and the International Atomic Energy Agency.

(2) The Authority shall be the organizer and coordinator for implementing the obligations of Malaŵi arising from the Safeguards Agreement.

(3) The Authority shall—

(*a*) verify the implementation of the obligations of Malaŵi arising from the Treaty, to prevent diversion of nuclear material to the manufacturer of nuclear weapons;

(*b*) collect and provide to the International Atomic Energy Agency the information required to fully implement the Safeguards Agreement, including information resulting from the conduct of verification of activities provided for in the Safeguards Agreement and the Additional Protocol thereto;

(*c*) provide for inspections within the territory of Malaŵi by inspectors of the International Atomic Energy Agency, including provision of access; and

(*d*) coordinate with the ministry responsible for foreign affairs in connection with the provision of information regarding the Safeguards Agreement.

Cooperation in the implementation of safeguards

69.—(1) The Government, all public institutions and licensees shall cooperate fully with the International Atomic Energy Agency in the implementation of safeguards, including by—

(*a*) promptly providing any information required pursuant to the Safeguards Agreement and the Additional Protocol thereto;

(*b*) providing access to facilities and other locations as required by the Safeguards Agreement and the Additional Protocol thereto;

(*c*) cooperating with and facilitating the performance of International Atomic Energy Agency inspectors in their tasks; and

(*d*) rendering the necessary services as requested by International Atomic Energy Agency inspectors.

(2) The duly authorized representatives and designated inspectors of the Atomic Energy Regulatory Authority shall have access to any facilities or other locations provided for under the Safeguards Agreement and the Additional Protocol thereto, with a view to conducting the verification activities authorized by the Safeguards Agreement and the Additional Protocol thereto.

(3) Any person performing activities subject to the Safeguards Agreement and the Additional Protocol thereto shall be obliged to allow the duly authorized representatives and designated inspectors of the International Atomic Energy Agency to carry out any measures the International Atomic Energy Agency considers necessary or appropriate to ascertain compliance by Malaŵi with its undertakings, arising from the Safeguards Agreement and the Additional Protocol thereto.

PART XIV
Offences and Penalties

Offences relating to licences

70.—(1) Any person who carries out an activity or practice without a licence issued by the Authority under this Act, commits an offence and shall, upon conviction, be liable to fifteen years imprisonment.

(2) In addition to the penalties provided in subsection (1), the radioactive material or source shall be liable, pursuant to a court order, to seizure, impoundment, sealing, seizure of operation, destruction or disposal in such a manner as the court may consider necessary to protect the public and the environment and may only be returned to the original owner on the order of the court and under such conditions set out in the licence issued under this Act.

Hindering and obstructing of inspectors

71. Any person who—

(*a*) hinders or obstructs an inspector in the execution of his duties under this Act;

(*b*) fails to comply with a lawful order or requirement made by an inspector in accordance with this Act;

(*c*) prevents the Executive Director or an inspector or any person duly authorized by the Executive Director from gaining entry upon or into any premises which he is empowered under this Act to enter;

(*d*) impersonates the Executive Director or an inspector or any person duly authorized by the Board;

(*e*) prevents an inspector from having access to any record or document required by the inspector for purposes of this Act;

(f) misleads or intentionally gives false information to the Executive Director or an inspector or any person duly authorized by the Board under this Act; or

(*g*) fails to comply with measures directed by the Authority, the Executive Director or any inspector for the protection and management of the environment and the conservation and sustainable utilization of natural resources,

commits an offence and shall, upon conviction be liable, to a fine of K2,000,000 and to fifteen years imprisonment; and in addition shall, for each day the offences continue shall be liable to a fine of K10,000.

Offences relating to records

72. Any person who—

(*a*) fails to keep or furnish the Authority with records required under this Act or under any regulations made under this Act; or

(*b*) fraudulently or knowingly alters any such records,

commits an offence and shall, upon conviction be liable, to a fine of K500,000 and to two years imprisonment.

Prohibition of disclosure of information by employee of Authority

73.—(1) Every person employed by the Authority shall not disclose any information obtained by him in the course of his duties and in the exercise of any of the powers conferred by this Act.

(2) Any person who violates this provision, regardless of whether such person has ceased to be employed by the Authority, commits an offence and shall, upon conviction, be liable to fifteen years imprisonment.

Handling of radioactive or nuclear material and devices

74.—(1) Any person who, without lawful authority, receives, possesses, transfers, alters, or disposes of, radioactive or nuclear material or a device—

(*a*) with the intent to cause—

(i) death or serious bodily injury; or

(ii) substantial damage to property or to the environment; or

(*b*) which causes or is likely to cause death or serious injury to any person or substantial damage to property or to the environment,

commits an offence and shall, upon conviction be liable, to thirty years imprisonment.

(2) Any person who is involved in—

(*a*) theft or robbery of radioactive or nuclear material;

(*b*) embezzlement or fraudulently obtaining radioactive or nuclear material; or

(*c*) an act which constitutes the carrying, sending, or moving of radioactive material into, within or out of Malaŵi without lawful authority,

commits an offence and shall, upon conviction be liable, to thirty years imprisonment.

(3) Any person who threatens to commit an offence set forth in subsection (2) (*a*) in order to compel a natural or legal person, international organization or state to do or to refrain from doing any act, commits an offence and shall, upon conviction, be liable to life imprisonment.

(4) Any person who demands radioactive or nuclear material or a device by threat, or by use of force, or by any other form of intimidation, under circumstances which indicate the credibility of the threat, commits an offence and shall, upon conviction be liable to thirty years imprisonment.

Use of radioactive or nuclear materials

75.—(1) Any person who, without lawful authority, uses or disperses in any way radioactive or nuclear material or uses or makes a device—

(*a*) with the intent to cause—

(i) death or serious bodily injury; or

(ii) substantial damage to property or to the environment;

(*b*) to compel a natural or legal person, an international organization, or a state to do or refrain from doing an act; or

(*c*) which causes or is likely to cause death or serious injury to any person or substantial damage to property or to the environment,

commits an offence and shall, upon conviction, be liable to life imprisonment.

(2) Any person who threatens to commit the offence set forth in subsection (1), commits an offence and shall, upon conviction, be liable to life imprisonment.

General offence and penalty

76. Any person who carries out an activity or practice in contravention of the provisions of this Act commits an offence, and if no other penalty is provided for, shall, upon conviction, be liable to fifteen years imprisonment.

Extraditable offences

77. The offences set forth in this Part shall be considered as extraditable offences, subject to the written laws and procedures of Malaŵi.

PART XV
Appeals

Appeal procedure

78.—(1) Any person aggrieved by a decision made pursuant to this Act, including a decision to issue a licence, may appeal to the Board not later than thirty days after the notification of such refusal.

(2) Where an appeal is made under subsection (1), the Executive Director shall give all relevant information to the Board as the Executive Director considers necessary to enable the Board to determine the appeal.

(3) Any person aggrieved by the decision of the Board may appeal to the Minister within thirty days after the Board makes its decision.

(4) The Board or the Minister, as the case may be, in determining the appeal may recommend to the Executive Director or the Board, as the case may be, to review his or its decision.

(5) Any person who is aggrieved by the decision of the Minister to uphold the decision of the Board under subsection (3) may apply to the High Court for judicial review within thirty days of the receipt of the notification of the Minister's decision.

PART XVI
Miscellaneous Provisions

Indemnification

79. No legal proceedings shall be brought against the Executive Director, an inspector, or any other person duly authorized by the Authority, the Executive Director, or inspector to do anything authorized under this Act, in respect of anything done in good faith under the provisions of this Act.

Confidentiality of sources of information

80. The Authority shall establish a policy on confidentiality of information provided to it.

Offences by corporate bodies

81. Any act or omission, which if done by an individual is an offence under this Act or any regulations made under it, shall, if done by a body corporate, be deemed an offence committed by every director, secretary or manager, unless the director, secretary or manager proves that the offence was committed without their consent, knowledge or connivance and that the director, secretary or manager exercised all due diligence to prevent the commission of the offense as the director, secretary or manager ought to have exercised, having regard to the nature of their functions and all circumstances of the case.

Regulations

82.—(1) The Minister may, on recommendation of the Authority, make regulations for the better carrying out of the provisions of this Act.

(2) Without prejudice to the generality of subsection (1), the regulations made under this section may—

(*a*) prescribe the application and licence forms to be used under this Act;

(*b*) limit the use of radioactive material or equipment producing harmful ionizing radiation for any specific purpose, including use of medical or dental purposes;

(*c*) prescribe fees for services rendered by the Authority; and

(*d*) prescribe anything required to be prescribed under this Act.

(3) Any regulation made under this Act may, notwithstanding the provisions of section 21 (*e*) of the General Interpretation Act, prescribe a fine of up to K5,000,000 and imprisonment for up to five years for contravention of any provision of such regulation.

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Transitional provisions

83.—(1) Any person conducting an activity or practice within the scope of this Act at the time this Act enters into force, shall inform the Authority, submit a notification to, or where applicable, apply for a licence as required under this Act, within two months of the entry into force.

(2) Upon entry into force of this Act, the Authority shall review, within three months, the results of past activities or practices in order to determine whether any intervention is needed to ensure that remedial or protective action is taken to protect the public, workers and the environment.

(3) Any person conducting any activity or practice governed by this Act, pursuant to an authorization granted under any relevant written law, at the time this Act enters into force, shall, subject to subsection (2), be considered as having been granted a temporary authorization.

(4) Any person considered as having been granted such a temporary authorization shall take all necessary measures to bring such activities or practices in line with provisions of this Act, within three months after its entry into force.

(5) Any person to whom subsection (1) applies shall pay the applicable prescribed fees to the Authority.

SUBSIDIARY LEGISLATION

ATOMIC ENERGY REGULATIONS

G.N. 22/2012

under s. 82

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PART I
Preliminary

Citation

1. These Regulations may be cited as Atomic Energy Regulations.

Interpretation

2. In these Regulations, unless the context otherwise requires—

"category 1, 2 or 3 radioactive source" means the International Atomic Energy Agency Categorization of Radio Active Sources contained in the Fourth Schedule;

"critical group" means a group of members of the public which is reasonably homogeneous with respect to its exposure for a given radiation source and given exposure pathway and is typical of individuals receiving the highest effective dose or equivalent dose, as applicable from the given source;

"defence in depth" means a hierarchical deployment of different levels of diverse equipment and procedures to prevent the escalation of anticipated operational occurrences and to maintain the effectiveness of physical barriers placed between a radiation source or radioactive material and workers, members of the public or the environment, in operational states and, for some barriers, in accident conditions;

"disused radioactive source" means radioactive source which is no longer used, and is not intended to be used, for the practice for which a licence is granted;

"dose constraint" means a prospective and actual source related restriction on the individual dose delivered by the source which serves as a bound in the optimization of protection and safety of the source. For occupational exposures, the dose constraint is a source related value of individual dose used to limit the range of options considered in the process of optimization. For public exposure, the dose constraint is an upper bound on the annual doses that members of the public should receive from the planned operation of any controlled source. The dose to which the dose constraint applies is the annual dose to any critical group, summed over all exposure pathways, arising from the predicted operation of the controlled source. The dose constraint for each source is intended to ensure that the sum of doses to the critical group from all controlled sources remains within the dose limit. For medical exposure the dose constraint levels should be interpreted as guidance levels, except when used in optimizing the protection of persons exposed for medical research purposes or of persons, other than workers, who assist in the care, support or comfort of exposed patients;

"exemption level" means a value, established by the Authority and expressed in terms of activity concentration, total activity, dose rate or radiation energy, at or below which a source of radiation may be granted exemption from regulatory control without further consideration;

"legal person" means any organization, corporation, partnership, firm, association, trust, estate, public or private institution, group, political or administrative entity or other persons designated in accordance with national legislation, who or which has responsibility and authority for any action having implications for protection and safety;

"management" means the administrative and operational activities that are involved in the manufacture, supply, receipt, possession, storage, use, transfer, import, export, transport, maintenance, recycling or disposal of radioactive sources;

"principal parties" mean the persons having the main responsibilities for the application of these Regulations, including registrants, licensees and employers;

"orphan radioactive source" means radioactive source which is not under regulatory control because it has never been under regulatory control, or because it has been abandoned, lost, misplaced, stolen, or transferred without a proper licence;

"registration" means a form of licence for practices of low or moderate risks whereby the legal person responsible for the practice has, as appropriate, prepared and submitted a safety assessment of the facility and equipment to the Authority. The practice or activity is licensed with conditions or limitations, as appropriate;

"regulatory control" means any form of control or regulation applied to facilities or activities by an Authority for reasons related to radiation protection or to the safety of radiation sources;

"safety culture" means the assembly of characteristics and attitudes in organizations and individuals which establishes that, as an overriding priority, protection and safety issues receive the attention warranted by their significance;

"spent radioactive source" means radioactive source that is no longer suitable for its intended purpose as a result of radioactive decay;

"storage" means the holding of radioactive sources, spent fuel or radioactive waste in a facility that provides for its containment, with the intention of retrieval;

"vulnerable radioactive source" means radioactive source for which control is inadequate to provide assurance of long term safety and security, such that it could relatively be easily acquired by unlicensed persons or could, relatively easily become orphaned.

PART II
General Provisions

Purpose

3.—(1) These Regulations specify the basic requirements—

(*a*) for the protection of people against exposure to ionizing radiation, for the safety of radiation sources, for the safety of radioactive waste management, and for the protection of the environment, (hereinafter referred to as "protection and safety") and;

(*b*) to prevent unlicensed access or damage to, and loss, theft or unlicensed transfer of radioactive sources, so as to reduce the likelihood of accidental harmful exposure to such sources.

(2) These Regulations shall not relieve a licensed legal person from the duty to take any additional actions as may be appropriate and necessary to protect the environment or the health and safety of people.

Scope

4. These Regulations shall apply to the adoption, introduction, conduct, discontinuance, or cessation of a practice and to the design, manufacture, construction or assembly, acquisition, import or export,

distribution, selling, loaning or hiring, locating, commissioning, processing, possession, use and operation, maintenance or repair, transfer or decommissioning, disassembly, transport, storage and recycling or disposal of a radiation source within a practice unless exposure from the source is specifically excluded under regulation 7 or is exempted under regulation 16.

Application

5.—(1) The sources within any practice to which the requirements for practices of these Regulations shall apply include—

(*a*) radioactive materials and devices that contain radioactive material, produce radiation or nuclear material, including consumer products, sealed radioactive sources, unsealed sources, and radiation generators;

(*b*) installations and facilities containing radioactive materials or devices containing radioactive material or that produce radiation which are used for industrial, medical, agricultural, research and education purposes;

(*c*) radioactive waste resulting from applications and to radioactive waste management facilities and activities including—

(i) effluent discharges;

(ii) waste that contains only naturally occurring materials, whatever the origin of that waste;

(iii) disused radioactive sources; and

(iv) any other radiation source specified by the Atomic Energy Regulatory Authority, including sources in the environment such as radon.

(2) The specific radioactive waste provisions contained in regulations 74–78 shall apply only to waste arising from medical, agricultural, industrial, research and education applications, mining and milling activities, including associated radioactive waste management activities, such as collection, segregation, characterization, classification, treatment, conditioning, and storage.

(3) These Regulations shall apply to intervention by legal persons licensed to possess radiation sources in the event of radiological emergencies involving their sources.

Exposures

6. The exposures to which the safety requirements of these Regulations apply are any occupational exposure, medical exposure or public exposure due to any relevant practice or radiation source within the practice, including both normal exposures and potential exposures.

Exclusions

7. The following exposures are excluded from the application of these Regulations—

(*a*) exposures from natural radioactivity in the body;

(*b*) cosmic radiation;

(*c*) unmodified concentrations of natural radionuclides in raw materials; and

(*d*) any other radiation sources that is essentially unamenable to control as may be determined by the Authority.

Responsible parties

8.—(1) The principal parties which have the main responsibilities for the application of these Regulations shall be—

(*a*) legal persons responsible for notified or licensed practices or sources within practices; and

(*b*) employers of workers who do not report directly to legal persons.

(2) Other parties which shall have subsidiary responsibilities for the application of these Regulations may include, as appropriate—

(*a*) suppliers;

(*b*) workers;

(*c*) radiation protection and waste safety officers;

(*d*) medical practitioners;

(*e*) health professionals;

(*f*) qualified experts;

(*g*) ethical review committees; and

(*h*) any other party to whom the principal party has delegated specific tasks.

(3) The general responsibilities of the principal parties include—

(*a*) to establish radiation safety objectives, to protect people and the environment from the harmful effects of ionizing radiation, in conformity with the relevant requirements of these Regulations;

(*b*) to develop, implement and document a radiation safety programme commensurate with the nature and extent of the risks associated with the practices and interventions under their responsibility and sufficient to ensure compliance with the requirements of these Regulations and in particular, this programme shall include the following actions—

(i) to determine and continually review the measures needed to achieve the radiation safety objectives, to ensure that resources

needed for their implementation are provided and regularly to verify that radiation safety objectives are being achieved;

(ii) to identify and prevent, or promptly correct, any failures or shortcomings in the radiation safety measures;

(iii) to facilitate consultation and cooperation among all relevant parties with respect to radiation safety; and

(iv) to keep appropriate records regarding the discharge of their responsibilities; and

(*c*) to ensure that—

(i) radioactive sources are managed in accordance with the licence;

(ii) when radioactive sources are not in use, they are safely stored;

(iii) any transfer of sources to another person is licensed and documented and that the receiving person or entity is licensed in accordance with the applicable regulatory requirements to receive the transferred source;

(iv) arrangements are made for the safe management of radioactive sources (minimum Category 1, 2 and 3 as referred to in the Fourth Schedule), including financial provisions where appropriate, once they have become disused;

(v) the import and export of Category 1 and 2 radioactive sources is done in accordance with these Regulations;

(vi) sources are shipped and received in accordance with regulatory requirements; and

(vii) assistance is provided to relevant authorities or law enforcement authorities in recovering any lost or stolen source.

Access to premises and information

9.—(1) Legal persons responsible for notified or licensed practices or sources within practices shall permit representatives of the Authority immediate access to premises and facilities in which such practices are conducted or sources located in order to obtain information about the status of radiation safety and verify compliance with regulatory requirements.

(2) Each legal person engaged in a practice to which these Regulations apply, shall make available to the Authority, information and records regarding radiation safety and security of sources as required.

Non-compliance, incidents and accidents

10.—(1) In the event of a breach of any applicable requirement of these Regulations, principal parties shall, as appropriate—

(*a*) investigate the breach and its causes, circumstances and consequences;

(*b*) take appropriate action to remedy the circumstances and to prevent a recurrence of similar situations;

(*c*) report to the Authority within twenty-four hours, or as required, on the causes of the breach, its circumstances and consequences, and on the corrective or preventive actions taken or to be taken; and

(*d*) take whatever other actions are necessary as required by these Regulations.

(2) Whenever a situation involving the loss of control through loss or theft of a Category 1, 2 or 3 radioactive source has occurred or is occurring, the Authority shall be informed as soon as it is discovered that there has been a loss of control of the Category 1, 2 or 3 radioactive source.

(3) Failure to take corrective or preventive actions within a reasonable time in accordance with these Regulations shall be grounds for enforcement in accordance with regulation 11.

Enforcement

11.—(1) The Authority may revoke, suspend or modify a licence to use a radiation source where the Authority finds that there is an undue threat to health and safety or non-compliance with the Act or other applicable regulatory requirements.

(2) Where the Authority finds that legal persons responsible for notified or licensed practices or sources within practices have not complied with the Act, applicable regulations and regulatory requirements commensurate with the nature of the infraction, the Authority shall impose upon them the prescribed fines.

(3) The Authority shall refer any wilful violations or attempted violations of these Regulations or requirements to the Director of Public Prosecutions for prosecution.

(4) Any person who contravenes any provision of these Regulations commits an offence and shall, upon conviction, be liable to a fine of 5,00,000 K and to five years imprisonment.

Applicability of other regulations and requirements, and resolution of conflicts

12.—(1) The requirements of these Regulations are in addition to, and not in place of, other applicable national and international laws and regulations.

(2) Nothing in these Regulations shall be construed as—

(*a*) relieving employers from complying with applicable national and international laws and regulations governing safety and security of sources; or

(*b*) restricting any actions that may otherwise be necessary for safety and security of sources.

(3) Where a conflict exists between requirements contained in these regulations and other laws or regulations, the Authority shall be notified of the conflict in order to initiate steps towards resolution.

Additional requirements

13.—(1) The Authority may prescribe other requirements by order, or conditions of a licence, in addition to those established under these Regulations, as considered necessary to—

(*a*) protect the public;

(*b*) protect the environment; or

(*c*) minimize risk from radiation hazards.

(2) A licensed legal person shall comply with the additional requirements referred to in subregulation (1).

(3) Except as specifically licensed, no official interpretation of these Regulations binding on the Authority can be made by any officer or employee of the Authority other than a written interpretation by the Executive Director of the Authority.

General obligations

14.—(1) A person shall not engage in activities, which involve radioactive waste, practices or radiation sources as specified in regulation 4, unless the requirements of these Regulations, including requirements of notification and licence, are fulfilled.

(2) An applicant and a licensee, as the case may be, shall pay the applicable fees contained in the fifth schedule as prescribed by the Minister from time to time.

(3) The Authority shall determine the formula to calculate the applicable fees, and the authority may, from time to time, review the formula.

PART III

Administrative Requirement

Requirements for notification

15.—(1) Unless exempt from notification as provided for in regulation 16 (1) or (3), any legal person—

(*a*) who, on the day these Regulations enter into force, is responsible for a practice or in possession of a radioactive source referred to in regulation 4, shall submit a notification to the Authority within ninety days from the effective date and shall provide the information in the notification, specified in the First Schedule hereto; and

(*b*) who intends to initiate a practice or to possess a radiation source referred to in regulation 4, shall submit a prior notification to the Authority of the intention.

(2) After notification, each legal person who is required to apply to the Authority for a licence and who submits such an application in accordance with regulation 17, may continue with the existing activities specified in the notification, in conformity with the applicable requirements of these Regulations, until the Authority revokes the permission or grants the licence.

Exemption of practices and sources

16.—(1) The Authority may exempt practices and sources within a practice from the specific safety requirements specified under these Regulations:

Provided that they comply with exemption levels defined by the Authority.

(2) Exemptions shall not be granted for practices considered not to be justified as specified in regulation 22 (2) and regulation 46 (4).

(3) the following practices and sources within a practice are automatically exempt from the specific safety requirements of these Regulations, including the requirements for notification, registration or licensing—

(*a*) the radioactive materials for which the total activity of a given nuclide present on the premises at any one time or its activity concentration contained in a mass of one thousand kilograms (1000 kg) or less of material does not exceed the exemption levels; or

(*b*) the apparatus containing radioactive material exceeding the quantities or concentrations specified above:

Provided that—

(i) it is of a type approved by the Authority; and

(ii) it is constructed in the form of a sealed radioactive source, and it does not cause, in normal operating conditions, a dose rate exceeding 1 $\mu Sv \cdot h^{-1}$ at a distance of 0.1 m from any accessible surface of the apparatus nor a dose to any member of the public exceeding 10 μSv in a year; or

(*c*) the operation of any electrical apparatus to which these Regulations apply, other than that referred to in (*d*) below:

Provided that—

(i) it is of a type approved by the Authority; and

(ii) it does not cause in normal operating conditions a dose rate exceeding 1 $\mu Sv \cdot h^{-1}$ at a distance of 0.1 m from any accessible surface of the apparatus; or

(*d*) the operation of any cathode ray tube intended for the display of visual images or other electrical apparatus operating at a potential difference not exceeding 30 kV:

Provided that it does not cause in normal operating conditions a dose rate exceeding 1 $\mu Sv \cdot h^{-1}$ at a distance of 0.1 m from any accessible surface of the apparatus.

Requirements for licence

17.—(1) Except as provided in regulations 15 and 16, a legal person who wishes to engage in a practice or possess a radiation source referred to in regulation 3, shall apply to the Authority for a licence and shall pay the fees prescribed in the fifth schedule.

(2) In the case of existing practices or sources for which notification is made in accordance with regulation 15 (1) (*a*), such application shall be submitted within ninety days.

(3) Where the application is in respect of—

(*a*) an industrial irradiation installation;

(*b*) an installation processing radioactive materials;

(*c*) a medical facility;

(*d*) industrial radiography facility; or

(*e*) is for any use of source that the Authority has not designated as suitable for registration from the date these Regulations enter into force, the application shall be in respect of a licence.

(4) Any legal person applying for a licence, shall—

(*a*) submit to the Authority relevant information necessary to support the application, including—

(i) an evaluation of the nature, magnitude and likelihood of the exposures attributed to the practice and sources within the practice;

(ii) a safety assessment, in cases where this is prescribed by the Authority, to be submitted as part of the application;

(iii) an emergency plan, if applicable;

(iv) a determination of the characteristics and activity of any radioactive material to be discharged to the environment with an assessment of the resulting doses to the critical group; and

(v) a final disposal solution for generated radioactive waste and disused sealed sources according to the agreed national policy and strategy;

(*b*) take all necessary steps for the protection and safety of—

(i) Workers;

(ii) Members of the public; and

(iii) Where applicable, patients; and

(*c*) ensure the availability of human and financial resources for decommissioning of the facility and the management of radioactive waste.

(3) Applications for licences involving Category 1, 2 or 3 radioactive sources shall include a description of the arrangements for the safe management of the source, including financial provisions where appropriate, once they have become disused.

(4) The applicant shall clearly identify any information in the application which needs to be kept confidential in accordance with regulation 28.

(5) Any legal person responsible for a source to be used for medical exposure shall include in the application for a licence, the qualifications in radiation protection of the medical practitioners, who shall be designated by name or by qualification credentials, in the licence as the only individuals permitted to prescribe medical exposure by means of the licensed source.

Responsibilities of licensees

18.—(1) A licensee shall bear the responsibility of establishing and implementing the administrative and technical measures that are necessary for ensuring protection and safety for both the practices and sources for which they are licensed; and for compliance with all applicable requirements of these Regulations.

(2) The licensee may appoint and shall specifically identify other persons to carry out actions and tasks related to the responsibilities, referred to in subregulation (1) but shall retain the responsibility for the actions and tasks themselves.

(3) The licensee shall notify the Authority of his intentions to introduce modifications to any practice with a radiation source for which he is licensed where the modifications may have significant implications for safety, and the licensee shall not carry out any such modification unless specifically authorized by the Authority.

(4) The licensee shall in an application to the Authority—

(*a*) designate by name or qualifications any person who has key assignments related to safety; and

(*b*) specify other workers assigned tasks in the handling and operation of radiation sources that may substantially affect protection and safety.

(5) The licensee shall ensure that only workers referred to in subregulation (4) are permitted to fulfill such required assignments and tasks referred to in subregulation (4).

(6) The licensee shall ensure that such persons meet the requirements for training specified in these Regulations.

(7) The licensee shall ensure that, as applicable and appropriate, the location, design, construction and assembly, commissioning, operation and maintenance, and decommissioning of sources as well as devices and facilities are based on sound engineering practices that—

(*a*) take into account approved codes of practice, standards, and technical and scientific developments;

(*b*) are supported by reliable managerial and organizational features; and

(*c*) include adequate margins in the design, construction and operation of sources.

(8) The licensee shall ensure that the appropriate safety and security measures are in place and taken during the entire life cycle of radiation sources, from the moment of their manufacturing up to their final disposal.

(9) For this purpose, the licensee shall ensure that a multilayer system of provisions, defence in depth, for protection and safety commensurate with the magnitude and likelihood of the potential exposures involved is applied to the sources under his responsibility such that a failure at one layer is compensated for or corrected by subsequent layers, for the purposes of—

(*a*) preventing accidents that may cause exposure;

(*b*) mitigating the consequences of any accident should it occur; and

(*c*) restoring sources to safe conditions after any accident.

(10) The licensee shall ensure that the safety of the facility or of the waste shall not be jeopardized by any provision made for the purpose of complying with national or international requirements concerning safeguards of the material.

Requirements for reporting to the Authority

19.—(1) A licensee shall—

(*a*) notify the Authority by telephone or facsimile as soon as practicable, but in any case not later than twenty-four hours after discovery of any accident or incident which has the potential for, or has resulted in, serious injury or death of a patient, or which involves more than one patient in accordance with regulation 51;

(*b*) submit to the Authority, within seven days after discovery of the accident or incident, a written report which states the cause of the accident or incident and includes information on the doses, corrective measures and any other relevant information;

(*c*) report a summary of the public exposure monitoring results to the Authority as prescribed and promptly inform the Authority of any abnormal results which lead or could lead to an increase of public exposure;

(*d*) report discharges of radioactive waste into the environment to the Authority at intervals as may be specified in the licence and promptly report any discharges exceeding the licensed limits; and

(*e*) report promptly, but in any case not later than twenty-four hours and within seven days, submit a written report to the Authority of any releases of radioactive material into the environment above the clearance criteria established by the Authority.

(2) In addition to the radiation safety related reports above, the licensee shall make the following reports to the Authority—

(*a*) radioactive source inventory data and subsequent changes to those data, except for routine movements of the source allowed in the licence;

(*b*) unusual events or incidents, such as—

(i) loss of control over a radioactive source;

(ii) unlicensed access to, or unlicensed use of, a source; or

(iii) discovery of any orphan sources;

(*c*) any intentions to introduce modifications to any practice with a radioactive source whenever the modifications could have significant implications for safety; and

(*d*) a copy of relevant parts of any contract or acceptance document relating to the return of radioactive sources intending to be imported.

(3) The licensee shall report to the Authority any breach of these Regulations within twenty four hours, and shall include the information required by regulation 10.

(4) For radioactive sources in Category 1, 2 and 3, the licensee shall inform the Director of Public Prosecution and the Authority immediately of—

(*a*) lost sources; and

(*b*) actual or attempted theft of sources.

(5) Additional reports regarding radioactive waste shall be made in accordance with regulation 82.

(6) Unless otherwise specified, all reports required under this regulation shall be made in writing within seven days.

Feedback of operating experience

20.—(1) A licensee shall ensure that information on normal operation performance as well as abnormal conditions and events significant to radiation safety is disseminated or made available, as appropriate, to the Authority and other relevant parties, including other users, as specified by the Authority.

(2) In addition, and where applicable, the licensee shall make suitable arrangements with suppliers of sources to establish and maintain mechanisms for transfer from the licensee to suppliers of any information on the use, maintenance, disposal and malfunctioning that may be relevant for future improvements in the design and fabrication of the sources they have supplied.

Clearance levels

21. Radiation sources, including substances, materials, radioactive waste and objects within licensed practices may be released from further compliance with the safety requirements of these Regulations where they comply with clearance levels established by the Authority.

PART IV
Radiation Protection Requirements

Justification of practices

22.—(1) The Authority shall not license any practice unless it is likely to produce sufficient benefit to the exposed individuals or to society to offset the radiation harm that it might cause, taking into account social, economic and other relevant factors.

(2) At the request of the Authority, an applicant for a licence shall provide sufficient information and evidence on the benefits and the potential harm, to support the justification of the practice or source and the Authority may refuse to grant a licence on the basis that it is not justified.

(3) The following practices are deemed not justifiable where they may result in an increase, by deliberate addition of radioactive material or by activation, in the activity of the associated commodities or products—

(*a*) except for justified practices involving medical exposures, practices involving food, beverages, cosmetics or any other commodity or product containing radioactive material and intended for ingestion, inhalation or percutaneous intake by, or application to, a human being;

(*b*) practices involving use of radiation or radioactive materials in commodities or products such as toys and personal jewellery or adornments; and

(*c*) any other practices determined by the Authority as unjustified.

Dose limitation

23.—(1) The normal exposure of individuals shall be restricted so that neither the total effective dose nor the total equivalent dose to relevant organs or tissues, caused by the possible combination of exposures from licensed practices, exceeds any relevant dose limit specified in the Second Schedule hereto, except in the special circumstances considered in regulation 46.

Second Schedule

Second Schedule

(2) Dose limits specified in the Second Schedule shall not apply to medical exposures from licensed practices.

Optimization of protection and safety

24.—(1) In relation to exposures from any particular source within a practice, a licensee shall optimize radiation safety in order that the magnitude of individual doses, except for the volume of interest in cases of therapeutic medical exposures, the number of people exposed and the likelihood of incurring exposures are kept as low as reasonably achievable, economic and social factors being taken into account, within the restriction that the dose to individuals delivered by the source be subject to dose constraints, as it is specified in regulation 25.

(2) The licensee shall, to the extent practicable, use procedures and engineering controls based upon sound radiation safety principles to achieve this objective.

Dose constraints

25.—(1) Except for medical exposure, the optimization of the radiation safety measures associated with a given practice shall satisfy the condition that the resulting doses do not exceed dose constraints which are equal to the dose limits specified in the Second Schedule or any lower values established by the Authority.

Second Schedule

(2) In case of any source that can release radioactive material to the environment, the Authority shall establish dose constraints so that the prospective annual doses to members of the public, including people distant from the source and people of future generations, summed over all exposure pathways, including contributions by other practices and sources, are unlikely to exceed the dose limits specified in the Second Schedule or any lower values.

Second Schedule

Guidance levels for diagnostic medical exposure

26.—(1) Medical practitioners, in the conduct of diagnostic procedures involving exposure to radiation as well as in the optimization of protection of patients, shall use guidance levels for medical exposure and the guidance level of activity for discharge from a hospital, respectively.

(2) The guidance levels shall be established by relevant professional bodies or well known specialists, in consultation with the Authority, to provide an indication on what doses are achievable with current good practice for average sized patients.

(3) The guidance levels shall be applied with flexibility to allow higher exposures if these are indicated by sound clinical judgements and shall be revised as required by technological and scientific developments and international standards.

PART V
Management Requirements

Safety culture

27. A licensee shall establish a management system, commensurate with the size and nature of the licensed activity and practice, which ensures that—

(*a*) policies and procedures are established that identify protection and safety as the highest priority;

(*b*) problems affecting protection and safety are promptly identified and corrected in a manner commensurate with their importance;

(*c*) the responsibilities of each individual for protection and safety are clearly identified and each individual is suitably trained and qualified;

(*d*) clear lines of authority for decisions on protection safety are defined; and

(*e*) organizational arrangements and lines of communications are established that result in an appropriate flow of information on protection and safety at and between the various levels in the entire organization of the licensee.

Confidentiality of information

28. A licensee shall establish an information management system, commensurate with the size and nature of the licensed activity, which ensures—

(*a*) that the confidentiality of information that it receives in confidence from another party is protected; and

(*b*) that information received in confidence from another party is only provided to a third party with the consent of the person who furnished the information.

Management system

29.—(1) A licensee shall establish management system programmes based on standards acceptable to the Authority that provide, as appropriate—

(*a*) adequate assurance that the specific requirements relating to radiation safety and radioactive waste are satisfied;

(*b*) adequate assurance that the specific requirements relating to security of sources are satisfied;

(*c*) assurance that the components of the safety systems are of a quality sufficient for their tasks; and

(*d*) quality control mechanisms and procedures for reviewing and assessing the overall effectiveness of safety measures.

(2) Management system programmes shall include periodic exercises, annually for Category 1, 2 and 3 radioactive sources, and evaluation of emergency plans with subsequent revision as necessary.

(3) Management system programmes for radioactive waste management shall be submitted to the Authority for approval as part of the licence application.

Human factors

30.—(1) A licensee shall ensure that all personnel on whom protection and safety depend, are—

(*a*) appropriately trained and qualified so that they understand their responsibilities and can perform their duties with appropriate judgement and according to defined procedures; and

(*b*) periodically retrained or re-qualified as may be appropriate.

(2) All employees shall be informed, at least annually of the importance of effective safety measures and be trained in their implementation, as appropriate.

(3) The Authority shall routinely, evaluate and require the licensee to update training programmes as necessary.

(4) The licensee, in co-operation with suppliers, as appropriate, shall follow sound ergonomic principles in designing equipment and preparing operating procedures, in order to facilitate the safe use of equipment and minimize the contribution of human errors to accidents or incidents.

(5) The licensee shall provide appropriate equipment, safety systems and procedures which—

(*a*) reduce, as far as practicable, the possibility of human errors leading to unplanned exposure of any person;

(*b*) provide means to detect human errors and correct or compensate for them; and,

(*c*) facilitate intervention in the event of an accident or incident.

Radiation protection officers and qualified experts in radiation safety

31.—(1) A licensee shall have on his staff qualified experts in radiation safety who shall be available for providing advice on the observance of these Regulations, where required by the Authority.

(2) The qualifications of experts in radiation safety shall include a level of academic knowledge and of professional experience compatible with the levels of risks associated with the licensed practices or sources within a practice.

(3) A radiation protection officer shall be technically competent in radiation protection matters relevant to a given type of practice and the radiation protection officer shall oversee the application of the requirements of these Regulations to that practice.

(4) The licensee may propose to use a radiation protection officer in place of a qualified expert in radiation safety on the basis of the relatively low risk of the practice.

(5) The licensee shall keep the Authority informed of the arrangements made with respect to subregulations (1) and (2) above.

PART VI
Verification of Safety

Safety assessment

32. Where the Authority requires, or to meet management system requirements, a licensee shall prepare safety assessments for radiation sources and for sources within practices, including radioactive waste management activities, in order to—

(*a*) identify ways in which normal exposures and potential exposures could be incurred, account being taken of the effect of events external to the sources as well as events directly involving the sources and their associated equipment;

(*b*) determine the expected magnitudes of normal exposures;

(*c*) estimate the probabilities and the magnitudes of potential exposures; and

(*d*) assess the quality and extent of the protection and safety provisions.

Monitoring, testing and verification of compliance

33.—(1) A licensee shall conduct monitoring and measurements of the parameters necessary for verification of compliance with the requirements of these Regulations and a licence.

(2) For the purposes of monitoring and verification of compliance, the licensee shall provide suitable equipment and introduce verification procedures.

(3) The licensee shall ensure that equipment is properly maintained and tested and calibrated at appropriate intervals with reference to standards traceable to national or international standards.

Inventory and records

34.—(1) A licensee shall maintain records of the results of monitoring and verification of compliance, including the inventory of radiation sources and radioactive waste, the transfer of radiation sources, radiation monitoring, testing of instruments and safety systems, calibrations and other checks carried out in accordance with requirements of these Regulations.

(2) Individual radioactive source records shall include the—

(*a*) location of the source;

(*b*) radionuclide;

(*c*) radioactivity on a specified date;

(*d*) serial number or unique identifier;

(*e*) chemical and physical form;

(*f*) source use history, including recording all movements into and out of the storage location;

(*g*) receipt, transfer or disposal of the source; and

(*h*) other information, as appropriate, to enable the source to be identifiable and traceable.

PART VII
Occupational Exposure Protection

General responsibilities *Second Schedule*

35.—(1) A licensee and an employer of workers who are engaged in activities that involve or could involve occupational exposure shall be responsible for the protection of the workers against any occupational exposure which is not excluded from these Regulations.

(2) The licensee and employer shall ensure, for all workers engaged in activities that involve or could involve occupational exposure, that—

(*a*) occupational exposures are limited to the doses specified in the Second Schedule hereto;

(*b*) radiation safety is optimized in accordance with regulations 23 and 24;

(*c*) policies, procedures and organizational arrangements for occupational radiation safety are established to implement the relevant requirements of these Regulations, and the resulting decisions on measures to be adopted for this purpose are recorded and made available to relevant parties, including workers, through their representatives where appropriate;

(*d*) suitable and adequate devices and equipment for radiation safety are provided, including personal protective devices and monitoring equipment, and training arrangements are made for their proper use;

(*e*) radiation safety and health surveillance services are provided, as required, through qualified experts;

(*f*) arrangements are made to facilitate consultation and cooperation with workers, through their representatives where appropriate, about measures which are needed to achieve adequate radiation safety by an effective implementation of these Regulations;

(*g*) necessary conditions are provided and arrangements are made to promote a safety culture in the work force and achieve adequate training of workers on radiation safety matters;

(*h*) occupational exposures are limited to within the doses specified in the Second Schedule hereto;

(3) If workers are to be engaged in work that involves or could involve a radiation source which is not under the control of their employer, the licensee responsible for the source shall—

(*a*) obtain from the employer, as a pre-condition for engagement of such workers, information on their previous occupational exposure history and other information as may be necessary to provide protection and safety in compliance with these Regulations;

(*b*) provide such workers with adequate protective measures and safety provisions; and

(*c*) make dosimetric and other appropriate information available to the employer for the purpose of demonstrating that the level of protection provided to such workers is compatible with the requirements of these Regulations.

(4) The licensee and employer shall ensure that workers under their responsibility who are exposed to radiation from sources other than natural sources that are not directly related to or required by their work receive the same level of protection as if they were members of the public.

(5) The licensee and employer shall ensure that workers are informed of their obligations and responsibilities for their own protection and the protection of others against radiation and for the safety of radiation sources and in particular, the licensee and employers shall ensure that workers—

(*a*) follow any applicable rules and procedures for protection and safety;

(*b*) properly use the monitoring devices and the protective equipment and clothing provided;

(*c*) abstain from any wilful action that could put themselves or others in situations that contravene the requirements of these Regulations; and

(*d*) promptly report to the licensee and employer any circumstances that could adversely affect safety conditions or the requirements of these Regulations.

(6) The licensee and employer shall record any report received from a worker that identifies any circumstances that could affect safety conditions or compliance with the requirements of these Regulations, and shall take appropriate remedial actions.

Conditions of service

36.—(1) A licensee or an employer shall ensure that the conditions of service of workers are independent of the existence or the possibility of occupational exposure and shall not use special compensatory arrangements or preferential treatment with respect to salary or special insurance coverage, working hours, length of vacation, additional holidays or retirement benefits as substitutes for the provision of proper protection and safety measures to ensure compliance with the requirements of these Regulations.

(2) The licensee or employer shall advise female workers that they should notify the employer if pregnant and where a female worker has notified the employer that she is pregnant, the employer shall adapt the working conditions with respect to occupational exposure to ensure that the unborn baby is afforded the same broad level of protection which is required for members of the public:

Provided that notification of pregnancy shall not be considered a reason to exclude a female worker from work.

(3) The licensee shall not subject a person under the age of sixteen years to occupational exposure and the licensee shall not allow a person under the age of eighteen years to work in a controlled area unless supervised and then only for the purpose of the training.

Classification of areas

37.—(1) A licensee shall designate as a controlled area, any area in which specific protective measures or safety provisions are or could be required for—

(*a*) controlling normal exposures or preventing the spread of contamination during normal working conditions; and

(*b*) preventing or limiting the extent of potential exposures.

(2) The licensee shall—

(*a*) determine the boundaries of any controlled area on the basis of the magnitude and likelihood of expected exposures and the nature and extent of the required protection and safety provisions;

(*b*) delineate controlled areas by physical means or, where this is not reasonably practicable, by some other suitable means;

(*c*) where a radiation source is brought into operation or energized only intermittently or is moved from place to place, delineate controlled area by means that are appropriate under the prevailing circumstances and specific exposure times;

(*d*) display a warning symbol, recommended by the International Organization for Standardization (ISO), and appropriate instructions at access points and other appropriate locations within controlled areas;

(*e*) establish occupational protection and safety measures, including local rules and procedures that are appropriate for controlled areas;

(*f*) restrict access to controlled areas by means of administrative procedures, such as the use of work permits, and by physical barriers, which could include locks or interlocks; the degree of restriction being commensurate with the magnitude and likelihood of the expected exposures; and

(*g*) provide at entrances and exits of controlled areas appropriate means for change of clothing, contamination monitoring and personal decontamination.

(3) The licensee shall designate as a supervised area, any area not already designated as a controlled area, but where occupational exposure conditions need to be kept under review even though specific protection measures and safety provisions are not normally needed.

(4) The licensee shall delineate and identify the supervised areas by appropriate means, taking into account the nature and extent of radiation hazards in those areas.

(5) The licensee shall periodically review conditions to determine the possible need to revise the protection measures or safety provisions, including the boundaries of controlled or supervised areas.

Local rules and supervision

38.—(1) A licensee and an employer shall, in consultation with workers, through their representatives, where appropriate—

(*a*) establish in writing, in a language comprehensible to the workers and others, such rules and procedures, as are necessary, to ensure adequate levels of protection and safety for workers and other persons;

(*b*) include in the local rules and procedures the values of any relevant licensed level, investigation level or other reference level and the procedure to be followed in the event that any such level is exceeded;

(*c*) ensure that any work involving occupational exposure is adequately supervised and take all reasonable steps to ensure that the rules, procedures, protective measures and safety provisions are observed; and

(*d*) and when required by the Authority, designate a qualified expert in radiation safety as radiation protection officer.

(2) The licensee and employer shall—

(*a*) provide to all workers adequate information on—

(i) the health risks due to their occupational exposure, whether normal exposure or potential exposure;

(ii) adequate instruction and training on protection and safety, including information on general and local rules and procedures and on available protection and safety provisions; and

(iii) the significance for protection and safety of their actions;

(*b*) make arrangements for an appropriate health surveillance programme in accordance with regulation 42;

(*c*) provide to female workers who are liable to enter controlled areas or supervised areas appropriate information on—

(i) the risk to the unborn baby due to exposure of a pregnant woman;

(ii) the importance for a female worker of notifying her employer as soon as she suspects that she is pregnant; and

(iii) the risk to an infant ingesting radioactive material by breast feeding;

(*d*) provide to those workers who could be affected by an emergency plan appropriate information, instruction and training; and

(*e*) keep records of the training provided to individual workers.

Personal protective equipment

39. A licensee and an employer shall—

(*a*) minimize the need for relying on administrative controls and personal protective equipment for protection and safety during normal operations by providing appropriate well engineered controls and satisfactory working conditions;

(*b*) if necessary, ensure that workers are provided with suitable and adequate personal protective equipment, including as appropriate—

(i) protective clothing;

(ii) protective respiratory equipment with information on its protection characteristics and instructions on its proper use;

(iii) protective aprons and gloves and organ shields;

(*c*) arrange for regular testing and maintenance to be carried out on all personal protective equipment, including, as required, special equipment for use in the event of accidents and interventions;

(*d*) take into account the following factors when assigning personal protective equipment for a given task—

(i) medical fitness to sustain possible extra physical effort while using the protective equipment; and

(ii) additional work time or inconvenience or additional non-radiological risks associated with the use of the protective equipment.

Exposure assessment

40.—(1) A licensee and an employer shall arrange for the assessment of the occupational exposure of workers and ensure that adequate arrangements are made with appropriate dosimetry services under an adequate management system programme.

(2) The licensee or employer shall ensure that individual monitoring is undertaken for any worker who is normally employed in a controlled area, where this is feasible and in cases where individual monitoring is not feasible, the occupational exposure of the workers shall be assessed on the basis of the results of monitoring of the workplace and of information on the locations and duration of exposure of the workers.

(3) The licensee and employer shall ensure that for any worker who is normally employed in a supervised area or who enters a controlled area only occasionally, his occupational exposure is assessed, but the assessment may be on the basis of the results of monitoring of the workplace or of individual monitoring.

(4) The nature, frequency and precision of individual monitoring shall be determined taking into consideration the magnitude and possible fluctuations of exposure levels and the likelihood and magnitude of potential exposures.

(5) The licensee and employer shall ensure that workers who may be exposed to radioactive contamination, including workers who use protective respiratory equipment, are identified and shall arrange for appropriate monitoring to the extent necessary to demonstrate the effectiveness of the protection provided and to assess the intake of radioactive material or the committed doses, as appropriate.

Monitoring of workplace

41.—(1) A licensee, in cooperation with an employer, where appropriate, shall establish, maintain and keep under review a programme for the monitoring of the workplace commensurate with the nature of and the risks associated with the radiation source.

(2) The nature and frequency of monitoring of workplaces shall—

(*a*) be sufficient to enable—

(i) evaluation of the radiological conditions in all workplaces;

(ii) assessment of the exposure of workers in controlled areas and supervised areas; and

(iii) review of the classification of controlled and supervised areas; and

(*b*) depend on the levels of ambient dose equivalent and airborne and surface activity concentration, including their expected fluctuations and the likelihood and magnitude of potential exposures.

(3) The programmes for monitoring of the workplace shall specify—

(*a*) the quantities to be measured;

(*b*) where and when the measurements are to be made and at what frequency;

(*c*) the most appropriate measurement methods and procedures; and

(*d*) reference levels and the actions to be taken if they are exceeded.

(4) The licensee shall keep appropriate records of the findings of the workplace monitoring programme, which shall be made available to workers, where appropriate through their representatives.

Health surveillance

42. A licensee and an employer, in accordance with the rules established by the Authority, shall make arrangements for appropriate health surveillance based on the general principles of occupational health and designed to assess the initial and continuing fitness of workers for their intended tasks.

Records of worker exposure

43.—(1) A licensee and an employer shall maintain records of exposure for each worker for whom assessment of occupational exposure is required under regulation 41 and such worker exposure records shall include information on—

(*a*) the general nature of the work resulting in exposure, the doses and intakes at or above the relevant recording levels and the data upon which the dose assessments are based;

(*b*) the periods of employment with different employers, if any, and the corresponding doses and intakes in each period of employment; and

(*c*) the doses or intakes due to emergency interventions or accidents, which shall be distinguished from doses and intakes received during work in normal conditions.

(2) The licensee and employer shall—

(*a*) provide access by workers to information regarding their own exposure records and, where appropriate, to workplace monitoring records; and

(*b*) upon request of the Authority or other persons or organizations with a demonstrated need for such records, including relevant employers and supervisors of the health surveillance programme, provide access to worker exposure records with due care and attention to the maintenance of appropriate confidentiality.

(3) Exposure records for each worker shall be retained by the licensees and employers, or by the Authority in case the licensees and employers cease their activities.

(4) These records shall be preserved at least until the worker attains or would have attained the age of seventy five years, and for not less than thirty years after the termination of the work involving occupational exposure.

Special circumstances

44.—(1) If a practice which is justified and for which radiation safety is optimized, presents special circumstances which require a temporary change in some dose limitation requirements of these Regulations, a licensee shall not make any such temporary change without the approval of the Authority.

(2) An application submitted by the licensee to obtain the approval referred to in subregulation (1), shall include evidence to demonstrate that—

(*a*) all reasonable efforts have been made to reduce exposures and optimize radiation safety provisions in accordance with the requirements of these Regulations; and

(*b*) the relevant employers and workers, through their representatives where appropriate, have been consulted on the need for and the conditions of the temporary change in dose limitation requirements.

(3) Any temporary change in a dose limitation requirement of these Regulations shall be limited to specified work areas and shall be in accordance with the time and dose limitations for special circumstances specified in the Second Schedule.

Second Schedule

PART VIII
Medical Exposure Protection

General responsibilities

45.—(1) A licensee shall ensure that—

(*a*) no patient is administered a diagnostic or therapeutic medical exposure unless the exposure is prescribed by a medical practitioner;

(*b*) medical practitioners are assigned the primary task and obligation of ensuring overall patient protection and safety in the prescription of and during the delivery of medical exposure;

(*c*) medical and paramedical personnel are available as needed, and either are health professionals or have appropriate training to adequately discharge assigned tasks in the conduct of the diagnostic or therapeutic procedures that the medical practitioner prescribes;

(*d*) for therapeutic uses of radiation, including teletherapy and brachytherapy, the calibration, dosimetry and management system requirements of these Regulations are conducted by or under the supervision of a qualified expert in radiotherapy physics;

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(*e*) the exposure of individuals incurred knowingly while voluntarily helping, other than in their occupation, in the care, support or comfort of patients be constrained as specified in the Third Schedule; and

(*f*) training of personnel is carried out according to criteria approved by the Authority.

(2) The licensee shall to the extent practicable, ensure that for diagnostic uses of radiation, the imaging and management system requirements of these Regulations are fulfilled with the advice of a qualified expert in radiodiagnostic physics, nuclear medicine physics and radiopharmacy in the compounding of radiopharmaceuticals, as appropriate.

(3) A medical practitioner shall promptly inform the licensee of any deficiencies or needs regarding compliance with these Regulations with respect to protection and safety of patients and shall take such actions as may be appropriate to ensure the protection and safety of patients.

Justification of medical exposure

46.—(1) Medical practitioners shall consider the justification of medical exposures that they prescribe by weighing the diagnostic or therapeutic benefits they produce against the radiation detriment they might cause, taking into account the benefits and risks of available alternative techniques that do not involve medical exposure.

(2) Any radiological examination for occupational, legal or health insurance purposes undertaken without reference to clinical indications

is deemed to be unjustifiable unless it is expected to provide useful information on the health of the individual examined or unless the specific type of examination is justified by those requesting it in consultation with competent professional bodies.

(3) Mass screening of population groups involving medical exposure is deemed to be unjustifiable unless the expected advantages for the individuals examined or for the population as a whole are sufficient to compensate for the economic and social costs, including the radiation detriment.

(4) The exposure of humans for medical research is deemed to be unjustifiable, unless it is—

(*a*) in accordance with the provisions of the World Medical Association Declaration of Helsinki, Ethical Principles for Medical Research Involving Human Subjects and follows the guidelines for its application prepared by the Council for International Organizations of Medical Sciences (CIOMS) in collaboration with the World Health Organization (WHO), International Ethical Guidelines for Biomedical Research Involving Human Subjects; and

(*b*) subject to the advice of the licensee's Ethical Review Committee and to any other applicable laws and regulations.

Optimization of protection for medical exposures
Third Schedule

47. In addition to satisfying the general requirements for optimization of radiation safety specified in these Regulations, licensees, in cooperation with suppliers, where appropriate, shall satisfy the prescriptive design and operational requirements specified in Third Schedule hereto.

Calibration, clinical dosimetry and management system for medical exposures

48.—(1) A licensee shall ensure that—

(*a*) the calibration of radiation sources used for medical exposure is traceable to a standards dosimetry laboratory in the country or abroad if accepted by the Authority;

(*b*) each type of radiotherapy equipment is calibrated in terms of the relevant dosimetric quantities and irradiation conditions;

(*c*) unsealed sources for nuclear medicine procedures are calibrated in terms of activity of the radio-pharmaceuticals to be administered; and

(*d*) calibrations of equipment are carried out at the time of commissioning of a source, after any maintenance procedure that may affect the calibration, and at regular intervals established or approved by the Authority.

(2) The licensee shall ensure that important values of clinical dosimetry parameters are determined and documented.

(3) Management system programmes for medical exposures shall include—

(*a*) measurements of the physical parameters of the radiation generators, imaging devices and irradiation installations at the time of commissioning and periodically thereafter;

(*b*) verification of the appropriate physical and clinical factors used in patient diagnosis or treatment;

(*c*) written records of relevant procedures and results;

(*d*) verification of the appropriate calibration and conditions of operation of dosimetry and monitoring equipment; and

(*e*) as far as possible, regular and independent quality audit reviews of the management system programme for radiotherapy procedures.

Dose constraints

49.—(1) The optimization of protection of persons exposed for medical research purposes, if such medical exposure does not produce direct benefit to the exposed individuals, shall be subjected to individual dose constraints established on a case-by-case basis by the Authority or other institutional body assigned a similar function.

(2) A licensee shall constrain any dose to individuals incurred while voluntarily helping (other than in their occupation) in the care, support or comfort of patients undergoing medical exposure, and to visitors to patients who have received therapeutic amounts of radionuclides or who are being treated with brachytherapy sources, to a level not exceeding that specified in the Third Schedule.

Third Schedule

Guidance levels

50. A licensee shall ensure that guidance levels for medical exposure, determined as specified in regulation 26, are revised as technology improves and are used as guidance by medical practitioners, in order that—

(*a*) corrective actions are taken as necessary if doses or activities fall substantially below the guidance levels, and the exposures do not provide useful diagnostic information and do not yield the expected medical benefit to; and

(*b*) reviews are considered if doses or activities exceed the guidance levels, as an input to ensuring optimized protection of patients and maintaining appropriate levels of good practice.

Maximum activity for patients in therapy and discharge from hospital

51.—(1) In order to restrict the exposure of any members of the household of a patient who has undergone a therapeutic procedure with sealed or unsealed radionuclides and of members of the public, such a patient shall not be discharged from hospital before the activity of radioactive material in the body falls below the level specified by the Authority unless otherwise justified, and the justification is documented.

(2) A licencee shall provide written instructions to the patient concerning contact with other persons and relevant precautions for radiation protection where necessary.

Investigation of accidental medical exposure

52.—(1) A licensee shall promptly investigate any of the following situations—

(*a*) any therapeutic treatment delivered to either the wrong patient or the wrong tissue, or using the wrong pharmaceutical, or with a dose or dose fractionation differing substantially from the values prescribed by the medical practitioner;

(*b*) any diagnostic exposure substantially greater than intended or resulting in doses repeatedly and substantially exceeding the established guidance levels; and

(*c*) any repeated equipment failure, accident, error, mishap or other unusual occurrence with the potential for causing a patient exposure significantly different from that intended.

(2) The licensee shall, with respect to any investigation required above—

(*a*) calculate or estimate the doses received and their distribution within the patient;

(*b*) indicate the corrective measures required to prevent recurrence of such an accident or incident;

(*c*) implement all the corrective measures that are under his own responsibility;

(*d*) notify the Authority by telephone or facsimile as soon as practicable, but in any case not later than twenty-four hours after discovery, of any accident or incident which has the potential for, or has resulted in, serious injury or death of a patient, or which involves more than one patient;

(*e*) submit to the Authority, within seven days after discovery of the accident or incident, a written report which contains the cause of the incident and includes information on the doses, corrective measures and any other relevant information; and

(*f*) inform the patient and his doctor about the accident or incident.

Records related to medical exposures

53. A licensee shall keep and make available, as appropriate, records of equipment calibration, clinical dosimetry and management system, as well as any other necessary information to allow retrospective assessments of the doses received by patients.

PART IX
Public Exposure Protection

General responsibilities

54.—(1) A licensee shall apply the requirements of these Regulations to any public exposure delivered by a practice or source for which they are responsible, unless the exposure is excluded from the application of these Regulations or the practice or source delivering the exposure is exempt from the requirements of these Regulations.

(2) The licensee shall be responsible, with respect to the sources under his responsibility, for the establishment, implementation and maintenance of—

(*a*) radiation safety policies, procedures and organizational arrangements for control of public exposure;

(*b*) measures for ensuring—

(i) the optimization of the protection, subject to constraints as may be appropriate, of members of the public whose exposure is attributable to such sources; and,

(ii) the limitation of the normal exposure of the relevant critical group, which is attributable to such sources, in order that the total exposure is not higher than the dose limits for members of the public as specified in the Second Schedule;

Second Schedule

(*c*) measures for ensuring the safety of such sources, in order that the likelihood of public exposures is controlled in accordance with the requirements of these Regulations;

(*d*) suitable and adequate facilities, equipment and services for the protection of the public, the nature and extent of which are commensurate with the magnitude and likelihood of the exposure;

(*e*) appropriate radiation safety training, and periodic retraining, to the personnel having functions relevant to the protection of the public;

(*f*) appropriate monitoring equipment and surveillance programmes to assess public exposure;

(*g*) informing the public, and particularly critical groups, about radiation safety measures to be taken in case of an accident or incident such as lost radioactive sources; and

(*h*) adequate records of the surveillance and monitoring.

Control of visitors

55. A licensee shall—

(*a*) ensure that visitors to any controlled area are accompanied by a person knowledgeable about the radiation safety measures for that area;

(*b*) provide adequate information, instruction and protective means, as necessary, to visitors before they enter a controlled area to ensure appropriate protection of the visitors and workers who may be affected by their actions; and

(*c*) ensure that adequate control over entry of visitors to a supervised area is maintained and that appropriate signs are posted in such areas.

Sources of external irradiation

56. A licensee shall ensure that, if a source of external irradiation can cause exposure to the public—

(*a*) prior to commissioning, the floor plans and equipment arrangement for all new installations and all significant modifications to existing installations utilizing such sources of external irradiation are subject to review and approval by the Authority;

(*b*) specific dose constraints for the operation of such a source are established to the satisfaction of the Authority; and,

(*c*) shielding and other protective measures that are optimized, in accordance with the requirements of these Regulations, are provided as appropriate for restricting public exposure to the satisfaction of the Authority.

Radioactive contamination in enclosed spaces

57. A licensee shall ensure that—

(*a*) for sources for which they are responsible, measures that are optimized in accordance with the requirements of these Regulations are taken as appropriate for restricting public exposure in areas accessible to the public; and

(*b*) specific containment provisions are established for the construction and operation of those sources in order to avoid or minimize spread of radioactive contamination in areas accessible to the public.

Monitoring of public exposure

58. A licensee shall, as appropriate—

(*a*) establish and carry out a monitoring programme, of magnitude and complexity commensurate with the type of and risks associated with the sources under his responsibility, which is sufficient to ensure that the requirements of these Regulations are complied with and to assess the exposure of members of the public from sources of external irradiation or discharges of radioactive materials into the environment, as appropriate;

(*b*) keep appropriate records of the results of the monitoring programmes; and

(*c*) report a summary of the monitoring results to the Authority at approved intervals and promptly inform the Authority of any abnormal results which lead or could lead to an increase of public exposure.

Consumer products

59.—(1) A person shall not supply consumer products capable of causing exposure to radiation to members of the public unless—

(*a*) such exposure is excluded from these Regulations under regulation 7;

(*b*) such products meet the exemption requirements specified in regulation 16 or have otherwise been exempted by the Authority; or

(*c*) such products are licensed by the Authority for use by members of the public.

(2) A person who imports consumer products, as exempt products, for subsequent sale and distribution shall include in the application to the Authority for a licence to distribute, a copy of the exporter's or other legal persons' licence issued by the Authority in the country of manufacture or origin which authorizes distribution to members of the public in that country.

(3) A person who imports consumer products for sale and distribution, as exempt products shall ensure that—

(*a*) legible labels are visibly and firmly affixed to each consumer product and its package, stating, in English and the local language, that—

(i) the product contains radioactive material; and

(ii) the sale of the product to the public has been licensed by the relevant Authority; and

(*b*) basic information and instructions on the precaution of use and disposal of the product, written in English and the local language, are made available with the product.

PART X
Requirements for the Design, Protection and Supply of Radiation Sources

General responsibilities

60. A licensee shall ensure that, as applicable and appropriate, the location, design, construction and assembly, commissioning, operation and maintenance and decommissioning of sources are based on sound engineering practice that—

(*a*) takes into account approved codes of practice, standards, and technical and scientific developments;

(*b*) is supported by reliable managerial and organizational features; and

(*c*) includes adequate safety margins in the design, construction and operation of sources.

Design of radiation sources

61. A licensee, in specific cooperation with a supplier where appropriate, shall—

(*a*) ensure, on procurement of new equipment containing radiation generators or sources, that such equipment and sources conform to applicable standards of the International Electrotechnical Commission (IEC) and the International Standards Organization (ISO) except for IEC and ISO standards, other standards applied in the country of origin of such equipment and sources shall have the acceptance of the competent authority in this matter;

(*b*) ensure that sources and equipment are tested to demonstrate compliance with the appropriate specifications;

(*c*) conduct a safety assessment, either generic or specific, for the sources for which they are responsible, according to the requirements of regulation 32;

(*d*) ensure that performance specifications and operating and maintenance instructions, including protection and safety instructions, are provided in English and local languages and in compliance with the relevant IEC and ISO standards with regard to accompanying documents, and that this information is translated into the local language when appropriate; and

(*e*) ensure that, where practicable, the operating terminology and operating values are displayed on operating consoles or other control systems in an appropriate language as specified in paragraph (*d*) above.

Supply and procurement of radioactive sources

62.—(1) A licensee who supplies and distributes radioactive sources shall ensure that the persons to whom the sources are being supplied are licensed to receive the sources.

(2) The licensee shall, before purchasing or otherwise acquiring a radioactive source—

(*a*) make arrangements with respect to the safe management of the source, including financial provisions, where appropriate, once the source becomes disused; and

(*b*) submit to the Authority details of the arrangements, including copies of any contractual arrangements.

(3) The licensee supplying radioactive sources or devices incorporating radioactive sources shall provide the recipient with all relevant technical information to permit their safe management.

Domestic transfer of radiation sources

63. A licencee shall not transfer radiation sources to another party unless—

(*a*) he is licensed to do so by the Authority;

(*b*) the recipient possesses a valid licence for the sources; and

(*c*) the recipient is provided with all relevant technical information to permit the safe management of the sources.

PART XI
Import and Export of Category 1 or 2 Radioactive Sources

Export category 1 or 2 radioactive sources

64.—(1) A licensee who intends to export Category 1 or 2 radioactive source shall apply to the Authority for an export licence and shall pay the fees prescribed in the fifth schedule.

(2) The application for licence to export a source shall include a copy of the recipient licence to receive and possess the source to be exported that includes at least the following information—

(*a*) name of the recipient;

(*b*) recipient location and legal address or principal place of business;

(*c*) relevant radionuclides and radioactivity;

(*d*) uses of the source, if appropriate; and

(*e*) recipient licence expiration date, if any.

(3) Other information to be submitted as part of the application for licence to export, may include, as applicable—

(*a*) copies of relevant parts of any contractual agreements to re-import the source; and

(*b*) justification or explanation of any need to use the "exceptional circumstances" provisions.

(4) After receiving a licence to export the source, the licensee shall ensure that—

(*a*) the export of the source is conducted in compliance with all applicable transport requirements of the International Atomic Energy Agency Regulations for the Safe Transport of Radioactive Material;

(*b*) the competent authority of the importing country is notified in advance, at least seven days to the extent practicable, of each shipment with the following information in writing—

(i) the estimated date of export;

(ii) exporting facility;

(iii) recipient;

(iv) radionuclide(s) and radioactivity;

(v) aggregate activity level; and

(vi) the number of radioactive sources and, if available, their unique identifiers; and

(*c*) for Category 1 sources only, the notification described above shall be accompanied by a copy of the consent from the competent authority of the importing country to import the sources.

Import of category 1 and 2 radioactive sources

65.—(1) A licensee who intends to import Category 1 or 2 radioactive sources shall apply to the Authority for an import licence.

(2) The application for the licence to import a source shall include the following information—

(*a*) name of the exporter,

(*b*) exporter location and legal address or principal place of business,

(*c*) name of the recipient;

(*d*) recipient location and legal address or principal place of business;

(*e*) relevant radionuclides and radioactivity;

(*f*) uses of the source, if appropriate;

(*g*) details of the arrangements for the safe management of the source, including financial provisions where appropriate, once they have become disused, including copies of any contractual agreements; and

(*h*) justification or explanation of any need to use the "exceptional circumstances" provisions, if applicable.

(3) After receiving the licence to import the source, the licensee shall ensure that the import of the source is in compliance with all applicable transport requirements of the International Atomic Energy Agency Regulations for the Safe Transport of Radioactive Material.

PART XII
Radioactive Waste Management Requirements

Radioactive waste classification

66. A licensee shall classify radioactive waste in accordance with specific requirements provided by the Authority in accordance with the International Atomic Energy Agency Safety Series No. 111-G 1.1-Classification of Radioactive Waste Safety Guide.

General responsibilities

67. A licensee shall be responsible for the safe management of the radioactive waste generated by the practices or sources for which he is licensed and shall take all necessary measures to ensure that—

(*a*) generation of the activity and volume of radioactive waste are kept to the minimum practicable by suitable design, operation and decommissioning of its facilities;

(*b*) radioactive waste is managed by appropriate classification, segregation, treatment, conditioning, storage and disposal, and maintaining records of such activities;

(*c*) disposal of radioactive waste is not unnecessarily delayed; and,

(*d*) submission of the necessary reports to the Authority of required information at intervals, as may be specified in the licence.

Licence application

68. A person or organization shall not generate, keep or manage radioactive waste except in accordance with a licence issued by the Authority under regulation 17.

Appointment of radioactive waste management officer

69.—(1) A licensee shall appoint, if necessary and where required by the Authority, a technically competent person with the appropriate independence and authority to be a radioactive waste management officer in order to assist the licensee in the safe and efficient on-site management of radioactive waste.

(2) In discharging his duties, the radioactive waste management officer shall—

(*a*) make and maintain contact with all relevant persons involved with radioactive waste to provide an authoritative point of advice and guidance;

(*b*) liaise as needed with the radiation protection officer and with other radioactive waste management organizations;

(*c*) establish and maintain a detailed record-keeping system for all stages of radioactive waste management, including the inventory of radioactive waste;

(*d*) ensure proper radioactive waste conditioning;

(*e*) ensure that on-site transfer of radioactive waste is carried out in accordance with written safety procedures;

(*f*) ensure that waste packages for off-site transportation are prepared to be in compliance with transport regulations;

(*g*) obtain approval from the Authority for the transport of radioactive waste;

(*h*) ensure appropriate shielding, labelling, physical security and integrity of waste packages;

(*i*) ensure that any discharge of effluents is made below the limits licensed by the Authority;

(*j*) ensure that solid waste disposed off in a municipal landfill is in accordance with clearance levels established by the Authority;

(*k*) report on accidents and inappropriate waste management practices to the licensees' management; and

(*l*) maintain an up-to-date knowledge of the characteristics of discharge and disposal options.

Control of radioactive waste generation

70. A licensee shall ensure that appropriate measures are taken to keep generation of radioactive waste and its environmental impact and cost to the minimum practicable by—

(*a*) avoiding the use of unnecessarily hazardous or toxic materials;

(*b*) minimizing the activity of waste by using the minimum quantity of radioactive material needed;

(*c*) using short lived radionuclides, where practicable and an appropriate selection of materials for the construction of facilities;

(*d*) incorporating into the design of facilities features to facilitate future decommissioning;

(*e*) minimizing the amount of waste by preventing unnecessary contamination of materials;

(*f*) applying careful planning to the design, construction, administration, operation and decommissioning of facilities so that the generation of radioactive waste is kept to the minimum practicable; and

(*g*) maintaining consistency with the management strategy and systems.

Collection, segregation, and characterization of radioactive waste

71.—(1) A licensee shall ensure that waste is collected, segregated, and characterized, at the point of origin in accordance with the classification system established by the Authority and the following criteria—

(*a*) non-radioactive and radioactive;

(*b*) short-lived, for instance half-lives less than one hundred days, suitable for decay storage;

(*c*) activity and radionuclide content;

(*d*) physical and chemical form—

(i) liquid—

(A) aqueous; and

(B) organic;

(ii) non-homogeneous, for instance containing sludges or suspended solids;

(iii) solid—

(A) combustible or non-combustible, if applicable; and

(B) compactable or non-compactable, if applicable;

(*e*) spent sealed sources;

(*f*) non-radiological hazardous waste, for instance toxic, pathogenic, infectious, genotoxic or biological; and

(*g*) mixed waste, that is radioactive and hazardous waste.

(2) After segregation, each waste stream shall be kept in separate containers.

(3) The licensee shall ensure that the waste containers are—

(*a*) labeled clearly and easily identified;

(*b*) bear a radiation trefoil when in use for radioactive waste;

(*c*) robust;

(*d*) compatible with the waste contents; and

(*e*) able to be filled and emptied safely.

(4) The following information shall be recorded for each waste container—

(*a*) identification number;

(*b*) radionuclides;

(*c*) activity if measured or estimated or date of measurement;

(*d*) origin, room, laboratory, individual, etc., if applicable;

(*e*) potential or actual hazards, chemical, infectious, etc.;

(*f*) surface dose rate or date of measurement;

(*g*) quantity weight or volume; and

(*h*) responsible person.

Conditioning of radioactive waste

72.—(1) A licensee shall select waste packages that are compatible with planned storage or disposal options and which meet waste acceptance criteria as approved by the Authority for storage and disposal.

(2) In selecting a conditioning process, the licensee shall consider whether safety will be improved from the use of a matrix material and shall ensure compatibility of the radioactive waste with the selected materials and processes.

(3) The licensee shall ensure that the waste packages are designed and produced in such a way so that radionuclides are confined under both normal conditions and under the accident conditions that may occur during handling, storage, and disposal.

Radioactive waste processing facilities

73.—(1) A licensee shall ensure that facilities for the processing of radioactive waste have sufficient capacity to process all such waste generated and in particular, storage capacity is sufficient enough to account for uncertainties in the availability of facilities for treatment, conditioning and disposal,

(2) The licensee shall ensure that the design of a facility takes into account the possible need to process waste arising from incidents or accidents.

Discharge or release of radioactive materials to the environment

74.—(1) A licensee shall ensure that radioactive materials from licensed practices and sources are not discharged into the environment unless—

(*a*) such discharge is within the limits specified in the licence and is carried out in a controlled manner using licensed methods; or

(*b*) the activity discharged is confirmed to be below clearance or other disposal levels established by the Authority as specified in regulation 16.

(2) The licensee shall, during the operational stages of a source under his responsibility—

(*a*) keep all radioactive discharges as far below the licensed limits as is reasonably achievable;

(*b*) monitor and record the discharges of radionuclides with sufficient detail and accuracy to demonstrate compliance with the licensed discharge limits and to permit estimation of the exposure of the critical group;

(*c*) report discharges to the Authority at intervals as may be specified in the licence; and

(*d*) report promptly to the Authority any discharges exceeding the licensed limits.

(3) Whether an activity is released within the clearance levels established by the Authority or radioactive waste is discharged under licence, the licensee shall consider the non-radiological hazards of the released waste and shall comply with the requirements of any other regulations concerning those hazards.

Waste storage

75. A licensee shall store radioactive waste in such a way as to protect human health and the environment and in particular shall not store the radioactive waste in the vicinity of corrosive, explosive or easily flammable materials.

Acceptance criteria for storage of radioactive waste

76.—(1) A licensee shall define acceptance criteria for waste packages and after consultation with the Authority, the licensee shall decide which type of pre-treatment, treatment and conditioning is required.

(2) The licensee shall, in defining criteria for acceptance of waste packages in a storage facility, take account of the known or likely requirements for subsequent disposal of the radioactive waste.

(3) The licensee shall ensure that the integrity of waste packages in storage is maintained until it is retrieved for further treatment, conditioning or disposal.

(4) Where there may be a significant time lag before an acceptable disposal route becomes available, the licensee shall ensure that the waste package container provides integrity throughout the storage period and is capable of being—

(*a*) retrieved at the end of the storage period;

(*b*) enclosed in an overpack, if necessary; and

(*c*) transported to and handled at a disposal facility.

Radioactive waste storage facilities

77.—(1) An applicant for a licence to operate a radioactive waste storage facility shall—

(*a*) meet safety requirements for the protection of human health and the environment by appropriate planning for the design, construction, operation and maintenance of the respective facility, including provisions for eventual retrieval of the waste;

(*b*) design the facility—

(i) on the basis of assumed conditions for its normal operation and assumed incidents or accidents;

(ii) for the likely period of storage, and taking into account the potential for degradation;

(iii) in such a way that the waste can be retrieved whenever required;

(iv) so that it is adequately ventilated to exhaust any gas generated in normal conditions or under anticipated accident conditions;

(v) so that measures to prevent, detect and control fires are incorporated as required; and

(vi) so that radiological monitoring and visual inspection is readily possible.

Recycle and reuse of radioactive materials

78. A licensee shall, in relation to recycling and re-use of radioactive material—

(*a*) not disassemble any disused radioactive source unless specifically allowed in the licence;

(*b*) before declaring the radioactive material as waste, consider whether the licensee or any other organization can make use of the material; and

(*c*) if appropriate, transfer radioactive material after being licensed by the Authority.

Management of disused radioactive sources

79.—(1) A licensee shall review his radioactive source inventory at least annually to identify any sources that are not in routine use and have become disused.

(2) Unless the licence allows otherwise, the licensee shall make arrangements for the prompt management of any disused radioactive source in compliance with regulation 17 (4) (v).

Radioactive waste from mining and milling operations

80.—(1) A licensee shall ensure that the same established safety requirements that apply to the disposal of radioactive waste also apply, *mutatis mutandis*, to the waste from mining and milling operations.

(2) The licensee shall propose to the Authority which option has to be followed for the siting, design, construction, operation, closure and post-closure activity for a mining and milling waste disposal facility and the Authority shall determine whether or not to approve the option.

Existing facilities and past practices

81. A legal owner of an existing facility and past practices containing radioactive waste shall be responsible for its safe management, decommissioning and disposal.

Radioactive waste records and reports

82.—(1) A licensee shall record, report to the Authority and update the inventory of radioactive waste in his possession.

(2) The licensee shall send before the 15th of January of each year to the Authority a copy of his waste inventory and a report for the previous year, giving types, quantities and destinations of—

(*a*) cleared materials released into the environment;

(*b*) waste discharged into the environment;

(*c*) disused radioactive sources returned to suppliers; and

(*d*) such other details as the Authority may require.

(3) The Authority has the right to inspect and review the kept radioactive waste records at any time.

(4) If any radioactive waste has been lost, stolen or is missing, the licensee shall immediately, but in any case not later than twenty-four hours, inform the Authority and within seven days submit a written report on the matter and the actions which have been taken.

PART XIII
Decommissioning Requirements

Decommissioning

83.—(1) A licensee shall establish and maintain a decommissioning plan commensurate with the type and status of the facility.

(2) The licensee shall submit an application for permission to decommission a facility to the Authority and the application shall contain the final decommissioning plan and a justification of the proposed decommissioning option.

(3) The licensee shall remain responsible for the safety of a facility during the decommissioning operations.

(4) During all phases of decommissioning, the licensee shall ensure that workers, the public and the environment are properly protected from hazards, including radiological hazards resulting from decommissioning activities.

(5) An applicant for a licence shall ensure that the initial design and any subsequent modifications of a facility include consideration of future decommissioning requirements.

Decommissioning plan

84.—(1) An applicant for a licence for a facility shall develop a decommissioning plan which demonstrates that decommissioning can be accomplished safely and the initial decommissioning plan shall be prepared and submitted by the applicant in support of the licence application for the construction of the facility.

(2) A licensee shall periodically review the initial decommissioning plan and update it as appropriate, taking into account the operating history of the facility.

(3) When applying for a licence to decommission the facility, the licensee shall submit a final decommissioning plan to the Authority.

PART XIV
Transportation of Radioactive Sources or Waste

Transport requirements

85. A licensee transporting radioactive sources or radioactive waste, either domestically or internationally, shall do so in compliance with all applicable transport requirements of the International Atomic Energy Agency Regulations for the Safe Transport of Radioactive Material.

PART XV
Requirements for Emergency Intervention

Responsibilities of a licensee

86.—(1) If a licensed practice or source, including radioactive waste within a practice, has a potential for accidents that may provoke unplanned exposure of any person, a licensee shall ensure that an emergency plan appropriate for the source and its associated risks is prepared and is kept operational.

(2) The effectiveness of the emergency plan referred to in subregulation (1) shall be verified to the satisfaction of the Authority by means of systematic drills.

(3) If a licensed source is involved in an accident or incident, the licensee shall be responsible for taking such protective actions as may be required for the protection of occupationally exposed workers undertaking intervention and for the protection of the public from exposure as set forth in the licence application and emergency plans approved by the Authority, or as might otherwise by required by the Authority to protect against, mitigate or remediate a hazardous situation involving the licensed sources.

Licensee emergency response planning requirements

87. A licensee responsible for a source, including radioactive waste for which prompt intervention may be required, shall ensure that the emergency plan defines on-site responsibilities and takes account of off-site responsibilities of other intervening organizations appropriate for implementation of the emergency plan and the emergency, and the plans shall, as appropriate—

(*a*) characterize the content, features and extent of a potential emergency, taking into account the results of any accident analysis and any lessons learned from operating experience and from accidents that have occurred with sources of a similar type—

(i) identify the various operating and other conditions of the source which could lead to the need for intervention;

(ii) describe the methods and instruments for assessing the accident and its consequences on and off the site;

(iii) provide for protection and mitigation actions, and assignment of responsibilities for initiating and discharging such actions;

(iv) provide for rapid and continuous assessment of the accident as it proceeds and determining the need for protective actions;

(v) allocate responsibilities for notifying the relevant authorities and for initiating intervention;

(vi) provide procedures, including communication arrangements for contacting any relevant intervening organization, for instance civil or defence and for obtaining assistance from fire-fighting, medical, police and other relevant organizations;

(vii) provide for training personnel involved in implementing emergency plans and be rehearsed at suitable intervals based on requirements defined in regulation 29 (2) in conjunction with designated authorities; and

(viii) provide for periodic review and updating of the plan.

Implementation of intervention

88.—(1) A licensee shall ensure that the protective actions or remedial actions aimed at reducing or averting accidental exposures are only undertaken when they are justified, taking into account health, social and economic factors.

(2) The form, scale and duration of any justified intervention shall be optimized so as to produce the maximum net benefit under the prevailing social and economic circumstances.

(3) The licensee shall promptly notify the Authority when an accidental situation requiring intervention has arisen or is expected to arise and shall keep the Authority informed of—

(*a*) the current situation and its expected evolution;

(*b*) the measures taken to terminate the accident and to protect workers and members of the public; and

(*c*) the exposures that have been incurred and that are expected to be incurred.

Protection of workers undertaking an intervention

89.—(1) A worker undertaking an intervention shall not be exposed in excess of the maximum single year dose limit for occupational exposure specified in the Second Schedule hereto except—

(*a*) for the purpose of saving life or preventing serious injury;

(*b*) if undertaking actions intended to avert a large collective dose; or

(*c*) if undertaking actions to prevent the development of catastrophic conditions.

(2) While undertaking intervention under these circumstances, the licensee shall take reasonable efforts to keep doses to workers below twice the maximum single year dose limit, except for life saving actions, in which case every effort shall be made to keep doses below ten times the maximum single year dose limit in order to avoid deterministic effects on health.

(3) In addition, the licensee shall ensure that workers undertaking actions in which their doses may approach or exceed ten times the maximum single year dose limit do so only when the benefits to others clearly outweigh their own risk.

(4) The licensee shall only use those workers who volunteer to undertake actions in which the dose may exceed the maximum single year dose limit and the licensee shall clearly and comprehensively inform the workers in advance of the associated health risk, and to the extent feasible, the workers shall be trained in the actions that may be required.

(5) The licensee shall ensure that once the emergency phase of an intervention has ended, workers undertaking recovery operations, such as repairs to equipment and buildings, waste disposal or decontamination are subject to the full system of detailed requirements for occupational exposure specified in these Regulations.

(6) The licensee shall take all reasonable steps to provide appropriate protection during the emergency intervention and to assess and record the doses received by workers involved in emergency intervention and when the intervention has ended, the licensee shall inform workers involved about the doses received and the consequent health risk.

(7) The licensee shall ensure that workers are not normally precluded from incurring further occupational exposure because of doses received in an emergency situation, but the licensee shall seek medical advice from a qualified medical doctor before any exposure if a worker who has undergone an emergency exposure receives a dose exceeding ten times the maximum single year dose limit, or at the worker's request.

Use of international safety standards and other publications

90.—(1) An applicant for a licence may propose to apply recommendations regarding facilities and equipment, procedures, qualifications and training of personnel, maintenance and management system contained in safety and good practice publications issued by the International Atomic Energy Agency, World Health Organization, Pan American Health Organization or other international bodies as methods by which performance requirements in these Regulations shall be met and in such cases, the applicant shall—

(*a*) identify the document; and

(*b*) identify both the particular recommendation or part of the document being adopted and the performance requirement in these Regulations it is intended to implement.

(2) The Authority shall determine whether the proposal referred to in subregulation (1) is acceptable.

(3) The applicant for a licence may adopt, by reference any of the documents listed under References, to the extent that they are relevant to the particular practice and the applicant may propose to use other relevant documents that are not listed under References provided that the documents are clearly identified and copies of the relevant parts of the documents are included with the application.

(4) The Authority, on its own initiative or upon request, may revise and update the list under References from time to time.

reg. 15

FIRST SCHEDULE

Form for Notification of Practices and Sources

Atomic Energy Regulations Authority

(Use one form for each source to be notified)

1. Name and address of the legal person: .....

   .....

   .....

2. Name and address of the organization: .....

   .....

   .....

3. Nature of the practice in which the source is used: .....

   .....

   .....

4. Identification of each source: .....

   .....

   .....

Radionuclide

Activity (Bq): .....

Chemical form: .....

Sealed source: YES/NO If Yes = Manufacturer: .....

Model: .....

Radiation Generating Equipment

Manufacturer: .....

Model: .....

Operating potential: .....

Nature of the equipment in which the source is installed: .....

.....

Model (if appropriate): .....

Date: .....

.....

Signature for Legal Person

SECOND SCHEDULE

Dose Limits for Exposures Incurred from Practices

Occupational Dose Limits

reg. 23

The occupational exposure of any worker shall be so controlled that the following limits are not exceeded—

(*a*) an effective dose of 20 mSv per year averaged over five consecutive years;[1]

(*b*) an effective dose of 50 mSv in any single year;

(*c*) an equivalent dose to the lens of the eye of 150 mSv in a year; and

(*d*) an equivalent dose to the extremities (hands and feet) or the skin of 500 mSv in a year.

For apprentices of 16 to 18 years of age who are training for employment involving exposure to radiation and for students of age 16 to 18 years who are required to use sources in the course of their studies, the occupational exposure shall be so controlled that the following limits be not exceeded—

(*a*) an effective dose of 6 mSv in a year;

(*b*) an equivalent dose to the lens of the eye of 50 mSv in a year; and

(*c*) an equivalent dose to the extremities or the skin of 150 mSv in a year.

Special Circumstances

When, in special circumstances, a temporary change in the dose limitation requirements is approved—

(*a*) the dose averaging period mentioned in paragraph (*a*) above may exceptionally be up to 10 consecutive years as specified by the regulatory body, and the effective dose for any worker shall not exceed 20 mSv per year averaged over this period and shall not exceed 50 mSv in any single year, and the circumstances shall be reviewed when the dose accumulated by any worker since the start of the extended averaging period reaches 100 mSv; or

(*b*) the temporary change in dose limitation shall be as specified by the regulatory body, but shall not exceed 50 mSv in any year and the period of the temporary change shall not exceed 5 years.

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[1] The start of the averaging period shall be coincident with the first day of the relevant annual period starting from the date of entry into force of the Regulations, with no retroactive averaging.

DOSE LIMITS FOR THE PUBLIC

The estimated average doses to the relevant critical groups of members of the public that are attributable to practices shall not exceed the following limits—

(*a*) an effective dose of 1 mSv in a year;

(*b*) in special circumstances, an effective dose of up to 5 mSv in a single year provided that the average dose over five consecutive years does not exceed 1 mSv per year;

(*c*) an equivalent dose to the lens of the eye of 15 mSv in a year; and

(*d*) an equivalent dose to the skin of 50 mSv in a year.

INTERNAL EXPOSURE

Internal exposure caused by inhalation or ingestion of radioactive material shall be estimated in accordance with the methodologies, parameters and values contained in the International Basic Safety Standards for Protection against Ionizing Radiation and for the Safety of Radiation Sources, International Atomic Energy Agency Safety Series No. 115 [3], Schedule II.

DOSE LIMITATIONS FOR COMFORTERS AND VISITORS OF PATIENTS

The dose limits set out in this Part shall not apply to comforters or visitors of patients. However the dose of any such comforter or visitor shall be constrained so that it is unlikely that the dose will exceed 5 mSv during the period of the diagnostic examination or treatment. The dose to children visiting patients who have ingested or have been injected with radioactive material shall be similarly constrained to less than 1 mSv.

THIRD SCHEDULE

MEDICAL EXPOSURE DESIGN AND OPERATIONAL REQUIREMENTS

reg. 45

Design of Sources and Equipment

(1) The requirements related to the design and procurement of sources and the accountability and security of sources of these Regulations shall apply to sources used in medical exposure where relevant and, in particular, equipment used in medical exposure shall be so designed that—

(*a*) failure of equipment or components can be promptly detected so that any unplanned exposure of patients can be avoided or minimized; and

(*b*) the risk of delivering unplanned exposure to patients by human error is minimized.

(2) Licensees, in cooperation with suppliers where relevant or appropriate, shall—

(*a*) ensure that radiation generators, sources and accessories are designed and manufactured so as to facilitate the keeping of medical exposures as low as reasonably achievable consistent with obtaining adequate diagnostic information or therapeutic results;

(*b*) ensure that equipment containing sources for medical exposure is conform to applicable international (e.g. *IEC, ISO*) and national standards;

(*c*) ensure that performance specifications and operating and maintenance instructions including radiation safety aspects, are provided in a major world language understandable to the users as well as in the local language;

(*d*) identify and take all reasonable measures to prevent failures and human errors that could result in unplanned medical exposures, including the establishment of adequate procedures for calibration, management system and operation of diagnostic and therapeutic equipment as well as the selection, training and periodic retraining of suitably qualified personnel;

(*e*) ensure that any radiation emitting equipment is provided with radiation beam control mechanisms, including safety interlocks and clear and fail-safe 'on-off' indicators;

(*f*) ensure that devices are provided to limit the exposure to the area being examined or treated and keep exposure rates outside this area, due to radiation leakage or scattering, as low as reasonably achievable;

(*g*) ensure that, when appropriate, monitoring equipment is installed or is available to give warning of an unusual situation or trend in the use of radiation emitting equipment for diagnostic or therapeutic applications.

Operational Aspects

(1) *Diagnostic exposure*

A licensee shall make sure that—

(*a*) the medical practitioners who prescribe or conduct radiological diagnostic examinations:

(i) ensure that the appropriate equipment is used;

(ii) ensure that the exposure of patients is the minimum necessary to achieve the required diagnostic objective, taking

into account norms of acceptable image quality established by appropriate professional bodies and relevant guidance levels for medical exposure;

(iii) take into account relevant information from previous examinations in order to avoid unnecessary additional examinations;

(iv) avoid radiological examinations causing exposure of the abdomen or pelvis of women who are pregnant or likely to be pregnant unless there are strong clinical reasons for such examinations;

(v) plan any diagnostic examination of the abdomen or pelvis of women of reproductive capacity, between the ages of 12–50 years, so as to deliver the minimum dose to any embryo or foetus that might be present;

(vi) ensure that portable and mobile radiological equipment is used only for examinations where it is impractical or not medically acceptable to transfer patients to a stationary radiological installation and only after proper attention has been given to the radiation protection measures required in its use; and

(vii) ensure that, whenever feasible, shielding of radiosensitive organs such as the gonads, lens of the eye, breast and thyroid is provided as appropriate;

(*b*) the medical practitioner, the technologist or other imaging staff select the following parameters, as relevant, such that their combination produce the minimum patient exposure consistent with acceptable image quality and the clinical purpose of the examination, paying particular attention to this selection for paediatric radiology and interventional radiology—

(i) the area to be examined, the number and size of views per examination (*e.g. number of films or computed tomography slices*) or the time per examination (*e.g. fluoroscopic time*);

(ii) the type of image receptor (*e.g. high versus low speed screens*);

(iii) the use of antiscatter grids;

(iv) proper collimation of the primary X ray beam to minimize the volume of patient tissue being irradiated and to improve image quality;

(v) appropriate values of operational parameters (*e.g. tube generating potential, current and time or their product*);

(vi) appropriate image storage techniques in dynamic imaging (*e.g. number of images per second*); and

(vii) adequate image processing factors (*e.g. developer temperature and image reconstruction algorithms*).

(2) *Nuclear Medicine*

A licensee shall make sure that—

(*a*) medical practitioners who prescribe or conduct diagnostic applications of radionuclides—

(i) ensure that the exposure of patients is the minimum required to achieve the intended diagnostic objective taking into account relevant guidance levels for medical exposure;

(ii) take into account relevant information from previous examinations in order to avoid unnecessary additional examinations;

(iii) avoid administration of radionuclides for diagnostic procedures to women pregnant or likely to be pregnant unless there are strong clinical indications;

(iv) for mothers in lactation, recommend discontinuation of nursing until the radiopharmaceutical is no longer secreted in an amount estimated to give an unacceptable effective dose to the nursling; and

(v) ensure that administration of radionuclides to children for diagnostic procedures is carried out only if there is a strong clinical indication, and the activity of the radionuclides administered is reduced according to body weight, body surface area or other appropriate criteria.

(*b*) the medical practitioner, the technologist or other imaging staff, as appropriate, endeavour to achieve the minimum patient exposure consistent with acceptable image quality by—

(i) appropriate selection of the best available radiopharmaceutical and its activity, noting the special requirements for children and for patients with impairment of organ function;

(ii) use of methods for blocking the uptake in organs not under study and for accelerated excretion when applicable; and

(iii) appropriate image acquisition and processing.

(3) *Therapeutic exposure*

A licencee shall make sure that the medical practitioners who prescribe or conduct radiotherapy procedures with radiation sources or with radionuclides—

(*a*) ensure that the prescribed absorbed dose is delivered to the planning target volume or organ;

(*b*) ensure that exposure of normal tissue during radiotherapy is kept as low as reasonably achievable consistent with delivering the required dose to the planning target volume, and organ shielding is used when feasible and appropriate;

(*c*) avoid radiotherapeutic procedures causing exposure of the abdomen or pelvis of women who are pregnant or likely to be pregnant unless there are strong clinical indications;

(*d*) avoid administration of radionuclides for therapeutic procedures to women who are pregnant or likely to be pregnant or who are nursing, unless there are strong clinical indications;

(*e*) plan any therapeutic procedure for pregnant women so as to deliver the minimum dose to any embryo or foetus; and

(*f*) inform the patient of possible risks.

FOURTH SCHEDULE

reg. 2

Categorization of Radioactive Sources

The International Atomic Energy Agency Categorization of Radioactive Sources provides an internationally harmonized basis for risk informed decision making, and can be used by national authorities in establishing the appropriate degree of regulatory control for many activities relating to the safety and security of radioactive sources. The categorization system is based on the concept of 'dangerous sources'–which are quantified in terms of 'D-values'. The D-value is the radionuclide-specific activity of a source which, if not under control, could cause severe deterministic effects for a range of scenarios that include both external exposure from an unshielded source and inadvertent internal exposure following dispersal (e.g.: by fire or explosion) of the source material. A full list of radionuclide-specific D-values is given in IAEA-EPR-D-Values 2006 [30] and the D-values for the radionuclides from Annex 1 of the Code of Conduct are given in Table IV-1 below—

TABLE IV-1. Activities corresponding to thresholds of categories (From Annex I of Code)

Radionuclide	Category 1 1000 × D		Category 2 10 × D		Category 3 D	
	(TBq)	(Ci)[a]	(TBq)	(Ci)[a]	(TBq)	(Ci)[a]
Am-241	6.E+01	2.E+03	6.E-01	2.E+01	6.E-02	2.E+00
Am-241/Be	6.E+01	2.E+03	6.E-01	2.E+01	6.E-02	2.E+00
Cf-252	2.E+01	5.E+02	2.E-01	5.E-00	2.E-02	5.E-01
Cm-244	5.E+01	1.E+03	5.E-01	1.E+01	5.E-02	1.E+00
Co-60	3.E+01	8.E+02	3.E-01	8.E+00	3.E-02	8.E-01
Cs-137	1.E+02	3.E+03	1.E+00	3.E+01	1.E-01	3.E+00
Gd-153	1.E+03	3.E+04	1.E+01	3.E+02	1.E+00	3.E+01
Ir-192	8.E+01	2.E+03	8.E-01	2.E+01	8.E-02	2.E+00
Pm-147	4.E+04	1.E+06	4.E+02	1.E+04	4.E+01	1.E+03
Pu-238	6.E+01	2.E+03	6.E-01	2.E+01	6.E-02	2.E+00
Pu-239[b]/Be	6.E+01	2.E+03	6.E-01	2.E+01	6.E-02	2.E+00
Ra-226	4.E+01	1.E+03	4.E-01	1.E+01	4.E-02	1.E+00
Se-75	2.E+02	5.E+03	2.E+00	5.E+01	2.E-01	5.E+00
Sr-90 (Y-90)	1.E+03	3.E+04	1.E+01	3.E+02	1.E+00	3.E+01
Tm-170	2.E+04	5.E+05	2.E+02	5.E+03	2.E+01	5.E+02
Yb-169	3.E+02	8.E+03	3.E+00	8.E+01	3.E-01	8.E+00
Au-198**	2.E+02	5.E+03	2.E+00	5.E+01	2.E-01	5.E+00
Cd-109*	2.E+04	5.E+05	2.E+02	5.E+03	2.E+01	5.E+02
Co-57*	7.E+02	2.E+04	7.E+00	2.E+02	7.E-01	2.E+01
Fe-55*	8.E+05	2.E+07	8.E+03	2.E+05	8.E+02	2.E+04
Ge-68*	7.E+02	2.E+04	7.E+00	2.E+02	7.E-01	2.E+01
Ni-63*	6.E+04	2.E+06	6.E+02	2.E+04	6.E+01	2.E+03
Pd-103*	9.E+04	2.E+06	9.E+02	2.E+04	9.E+01	2.E+03
Po-210*	6.E+01	2.E+03	6.E-01	2.E+01	6.E-02	2.E+00
Ru-106 (Rh-106)*	3.E+02	8.E+03	3.E+00	8.E+01	3.E-01	8.E+00
Tl-204*	2.E+04	5.E+05	2.E+02	5.E+03	2.E+01	5.E+02

[a] The primary values to be used are given in TBq. Curie values are provided for practical usefulness and are rounded after conversion.

[b] Criticality and safeguards issues will need to be considered for multiples of D

[*] These radionuclides are very unlikely to be used in individual radioactive sources with activity levels that would place them within Categories 1, 2 or 3 and would, therefore, not be subject to those paragraphs of the Code relating to national registries or to import and export controls.

The category of a source can be determined by dividing the activity of the source ('A' in TBq) by the D-value for the relevant radionuclide, and comparing the A/D value with those given in column 2 of table IV-2.

In some situations it may be appropriate to categorize a source on the basis of A/D alone for example, when the practice for which the source may be used is unknown or not confirmed, as may happen at the time of import or export of the source. However, when the circumstances of use of the source are known, the regulatory body may make a judgement to modify this initial categorization using other information about the source or its use. In some circumstances it may, therefore, be convenient

to assign a category on the basis of the practice in which the source is used, as shown in column 3 in table IV-2).

NOTE: The categorization system set is composed of five categories, as shown in Table IV-2 below. This number of categories is considered sufficient to enable the practical application of the scheme, without unwarranted precision. Within this categorization system, sources in Category 1 are considered to be the most 'dangerous' because they can pose a very high risk to human health if not managed safely and securely. An exposure of only a few minutes to an unshielded Category 1 source may be fatal. At the lower end of the categorization system, sources in Category 5 are the least dangerous; however, even these sources could give rise to doses in excess of the dose limits if not properly controlled, and therefore need to be kept under appropriate regulatory control. Categories should not be subdivided as this would imply a degree of precision that is not warranted and would lead to a loss of international harmonization.

TABLE IV-2. Categories for radioactive sources and some typical sources and practices with those categories

Category	Activity ratio (A/D)[a]	Source[b] and practice
1	A/D≥ 1000	Radioisotope thermoelectric generators (RTGs) Irradiators Teletherapy sources Fixed, multi-beam teletherapy (gamma knife) sources
2	1000>A/D≥10	Industrial gamma radiography sources High/medium dose-rate brachytherapy sources
3	10>A/D≥1	Fixed industrial gauges that incorporate high activity sources[c] Well logging gauges
4	1 >A/D≥ 0.01	Low dose-rate brachytherapy sources (except eye plaques and permanent implants) Industrial gauges that do not incorporate high activity sources Bone densitometers Static eliminators
5	0.01 > A/D and A > Exempt[b]	Low dose-rate brachytherapy eye plaques and permanent implant sources X ray fluorescence devices Electron capture devices Mossbauer spectrometry sources Positron Emission Tomography (PET) check sources

[a] Some D-values are given in Ref. [21.29].
[b] Factors other than A/D alone have been taken into consideration in assigning the sources to a category as indicated in Annex 1 of Ref. [22].

UNLISTED PRACTICES

For radioactive sources used in practices not listed in Table 3, the regulatory body may assign a category to the source based on the A/D ratio.

SHORT HALF-LIFE RADIONUCLIDES AND UNSEALED SOURCES

In some practices, such as nuclear medicine, radionuclides with a short half-life are used in a source form that is unsealed. Examples of such applications include 99mTc in radiodiagnosis and 131I in radiotherapy. In such situations, the principles of the categorization system may be applied to determine a category for the source, but a judgement should be made in choosing the activity on the basis of which to calculate the ratio A/D. These situations should be considered case by case.

AGGREGATION OF SOURCES

For an aggregation of sources of a single radionuclide in a single storage or use location where sources are in close proximity, such as in storage facilities or manufacturing processes, the total activity shall be treated as one source for the purposes of assigning a category. If sources with several radionuclides are aggregated, then the sum of the A/D ratios shall be used to determine the category in accordance with the formula:

$$\text{Aggregate A/D} = \sum_{\mathbf{n}} \frac{\sum \mathbf{i} A_{\mathbf{i,n}}}{\mathbf{D_n}}$$

Where:

Ai,*n* = activity of each individual source i of radionuclide n.

Dn = D value for radionuclide *n*.

FIFTH SCHEDULE regs. 14, 17, 64

Fees

A person who intends to engage in any activity or practice involving a radiation source, nuclear material or any other radioactive material must ensure that such activity or practice is licensed in accordance with Section 23 of the Atomic Energy Act.

Fees to engage in any activity or practice			K	t
1. Application Fee (Non-Refundable)	. .	. .	20,000	00
2. Renewal Fee (Non-Refundable)	. .	. .	20,000	00

3. Annual Licence to Possess and Use a radiation source (Number of radiation sources in the same location to be dealt with under one license)		
For less than 3 radiation sources		
Category 1	500,000	00
Category 2	450,000	00
Category 3	400,000	00
Category 4	350,000	00
Category 5	300,000	00
For more than 3 radiation sources but less than 6		
Category 1	1,200,000	00
Category 2	950,000	00
Category 3	850,000	00
Category 4	750,000	00
Category 5	600,000	00
For more than 6 radiation sources		
Category 1	2,400,000	00
Category 2	1,900,000	00
Category 3	1,700,000	00
Category 4	1,500,000	00
Category 5	1,200,000	00
4. License to mine and/or process radioactive minerals		
1 year	3,000,000	00
2 years	5,500,000	00
5. Licence to transport radioactive material or radioactive minerals . . . . . (Per consignment)	400,000	00
6. Licence to import category 1 and category 2 radioactive source . . . . . (per import for one source)	400,000	00
7. Licence to export category 1 and category 2 radioactive source . . . . . (per import for one source)	400,000	00
8. Licence to generate, keep or manage radioactive waste (Annual)	2,000,000	00
9. Licence to operate Radioactive waste storage facility (Annual)	2,000,000	00
10. Licence to decommission a mining facility . .	8,000,000	00

NOTE:—The categorization system set is composed of five categories, as shown in Table IV-2 below. This number of categories is considered sufficient to enable the practical application of the scheme, without unwarranted precision. Within this categorization system, sources in Category 1 are considered to be the most 'dangerous' because they can pose a very high risk to human health if not managed safely and securely. An exposure of only a few minutes to an unshielded Category 1 source may be fatal. At the lower end of the categorization system, sources in Category 5 are the least dangerous; however, even these sources could give rise to doses in excess of the dose limits if not properly controlled, and therefore need to be kept under appropriate regulatory control. Categories should not be subdivided as this would imply a degree of precision that is not warranted and would lead to a loss of international harmonization.

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3	10>A/D≥1	Fixed industrial gauges that incorporate high activity sources Well logging gauges
4	1>A/D≥0.01	Low dose-rate brachytherapy sources (except eye plaques and permanent implants) Industrial gauges that do not incorporate high activity sources Bone densitometers Static eliminators
5	0.01>A/D and A>Exempted	Low dose-rate brachytherapy eye plaques and permanent implant sources X ray fluorescence devices Electron capture devices Mossbauer spectrometry sources Positron Emission Tomography (PET) check sources

[a] Some D-values are given in Ref. [21, 29]

[b] Factors other than A/D alone have been taken into consideration in assigning the sources to a category as indicated in Annex 1 of Ref. [22].

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11 of 1997
5 of 2017
G.N. 3/1998
64/2017

An Act to provide for participatory forestry, forest management, forestry research, forestry education, forest industries, protection and rehabilitation of environmentally fragile areas and international co-operation in forestry and for matters incidental thereto or connected therewith

[22ND DECEMBER, 1997]

PART I

PRELIMINARY

Short title

1. This Act may be cited as the Forestry Act.

Interpretation
5 of 2017

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

"Minister" means the Minister for the time being responsible for forestry matters;

"Board" means the Forest Management Board establishment under section 15;

Cap. 57:01

"customary land" has the meaning assigned thereto in the Land Act;

5 of 2017
Act 19 of 2016

"customary land committee" bears the meaning ascribed to it in the Customary Land Act;

"forest" means an area of land proclaimed to be a forest under this Act or unproclaimed land with trees on it;

"forest management agreement" means an agreement made under section 31;

"forest plantation agreement" means an agreement made under section 36 for establishment and management of forest plantations;

"forest produce" includes trees, timber, firewood, branch wood, poles, bamboos, chips, sawdust, plants, grass, reeds, peat, thatch, bedding, creepers, leaves, moss, fruits, seed, galls, slabs, roots, bark, rubber, gum, resin, sap, flowers, fungi, honey, wax, earth, water, soil, stones, vertebrates, invertebrates, wild animals, hides, horns, bones, ivory, meat and such other produce as the Minister may, by notice published in the *Gazette*, declare to be forest produce;

"Fund" means the Forest Development and Management Fund established under section 55;

Cap. 69:02

"highway authority" has the meaning assigned thereto in the Public Roads Act;

"licensing officer" means, in relation to any licence under this Act, an officer not below the rank of Principal Forestry Officer who may be authorized to issue licences;

"livestock" includes cattle, horses, mules, donkeys, pigs, sheep and goats;

"local government authority" bears the meaning ascribed to it in the Local Government Act; 5 of 2017 Cap. 22:01

"management authority" in relation to a village forest area, means a person designated as the management authority pursuant to the agreement establishing the village forest area;

"National Forest Plan" means a plan prepared under section 5;

"officer" means the Director of Forestry and any officer appointed pursuant to section 4;

"private land" has the meaning assigned thereto in the Land Act; Cap. 57:01

"protected forest area" means an area declared as such under section 26;

"public land" has the meaning assigned thereto in the Land Act; Cap. 57:01

"river" includes all natural or artificial water courses in which water ordinarily flows or remains either throughout the year or during particular seasons;

"timber" means any tree or part of a tree which has fallen or has been felled and any part of a tree which has been cut and all wood whether sawn, split, hewn, processed or otherwise fashioned;

"tree" means a woody perennial plant having a single well defined stem and a more or less defined crown and includes palm, shrubs, bush, climber, seedling, sapling and reshoots of all ages and of all kinds and any part thereof;

"village forest area" means an area of customary land established as such by an agreement under section 30;

"village natural resources management committee" means a committee elected by stakeholders of the village forest areas.

Purposes of this Act

3. The purposes of this Act are—

(*a*) to identify and manage areas of permanent forest cover as protection or production forest in order to maintain environmental stability; to prevent resource degradation and to increase social and economic benefits;

(*b*) to augment, protect and manage trees and forest on customary land in order to meet basic fuelwood and forest produce needs of local communities and for the conservation of soil and water;

(*c*) to promote community involvement in the conservation of trees and forests in forest reserves and protected forest areas in accordance with the provisions of this Act;

(*d*) to empower village natural resources management committees to source financial and technical assistance from the private sector, Non-Governmental Organizations and other organizations;

(*e*) to promote sustainable utilization of timber, fuelwood and other forest produce;

(*f*) to promote optimal land use practices through agroforestry in smallholder farming systems;

(*g*) to upgrade the capability of forestry institutions in the implementation of their resource management responsibilities and in development of human resources in forestry;

(*h*) to control trafficking in wood and other forestry produce including exportation and importation;

(*i*) to protect fragile areas such as steep slopes, river banks, water catchment and to conserve and enhance biodiversity;

(*j*) to provide guidelines in planning and implementation of forestry research and forestry education;

(*k*) to establish a forestry administration; and

(*l*) to promote bilateral, regional and international co-operation in forest augmentation and conservation.

PART II

Administration

Director of Forestry and other officers

4. There shall be appointed in the public service an officer to be designated as the Director of Forestry and other officers subordinate to him, who shall be responsible for the administration of this Act subject to any general and specific directions of the Minister.

Duties of the Director of Forestry

5. The Director of Forestry shall be responsible for—

(*a*) planning, promoting, conducting and assisting in the activities required to maintain, restore and develop the forest cover necessary for soil and water conservation, maintenance of biological diversity and the supply of forest produce;

(*b*) conducting and maintaining inventories of the forest resources and preparing both national forestry plans and forestry management plans;

(*c*) conducting and co-ordinating research into the growth, management, protection and sustainable utilization of forest resources;

(*d*) promoting participatory forestry;

(*e*) facilitating the formation of village natural resources management committees and the establishment of rules of village forest areas;

(*f*) undertaking training programmes for subordinate, technical and professional staff in the Department of Forestry to the highest levels possible;

(*g*) promoting proper harvesting systems, transportation, marketing and sustainable utilization of forest produce;

(*h*) encouraging and promoting proper co-ordination of forestry related activities carried out by other organizations;

(*i*) promoting forest recreation and tourism in forest areas;

(*j*) exercising the control and the management of forest reserves and protected forest areas in accordance with the provisions of this Act;

(*k*) promoting the empowerment of local communities in the augmentation, control and management of customary land trees and forests in accordance with the provisions of this Act;

(*l*) carrying out silvicultural operations or other forest work including operations to prevent pests and diseases, construction of buildings, water works, and roads, erection of power lines, telephone lines and radio masts and any other activities that enhance forest development in any part of a forest reserve or forest plantation;

(*m*) preparing and updating National Forestry Plans in accordance with the National Forestry Policy;

(*n*) co-ordinating forestry development and implementing the Forestry Programme of Action in the Southern Africa Development Community region.

Inspection by an officer

6. Pursuant to the provisions of this Act, and officer may—

(*a*) demand the production by any person of a licence or other authority for any activity committed by such persons for which such licence or other authority is required by or under this Act;

(*b*) without a warrant—

(i) stop and inspect any carrier or vehicle which the officer reasonably suspects is carrying any forest produce which has been obtained in contravention of this Act or for which a transportation document is required under this Act;

(ii) center any premises in a forest reserve, any land or premises in which any activity licensed under this Act is conducted, or any village forest area or protected forest area and inspect such premises or land;

(iii) enter upon any land building, tent, carriages, motor vehicle, trailer, aircraft, boat or locomotive for ensuring that the provisions of this Act are being complied with, or for the purpose of detecting any offence against this Act; and

(iv) enter any land or premises and inspect silvicultural, forest harvesting and forest produce processing activities and wherever necessary provide advice on proper methods for carrying out such activities.

Barriers across roads

7. Any officer may, after consultation with the highway authority, temporarily place a barrier approved by the highway authority across any road in a manner consistent with such road safety standards and specifications as the highway authority shall specify for the purpose of examining or searching any motor vehicle or questioning any person in connexion with the provisions of this Act.

Search

8. Wherever an officer has reason to believe that any person to have committed an offence under this Act, the officer may search the person or property of such person or property in such person's possession or control.

Seizure of forest produce and article

9.—(1) Any officer or police officer may seize and detain—

(*a*) any forest produce which the officer or police officer reasonably suspects has been obtained or removed in contravention of this Act;

(*b*) any article which the officer or police officer reasonably suspects has been used in committing an offence under this Act.

(2) Any officer or police officer who seizes and detains any forest produce or article under subsection (1) shall issue a seizure certificate.

(3) Any village natural resources management committee may seize and detain any forest produce or article which the village natural resources management committee reasonably suspects has been obtained or removed from the village forest area in contravention of rules made by such village natural resources management committee.

Custody of seized forest produce and article

10. Any forest produce or article seized under section 9 shall be kept safely in the custody of an officer or the village natural resources management committee.

Disposal of seized forest produce and article

11.—(1) Any forest produce or article in the custody of an officer or the village natural resources management committee under section 10 shall be retained until the case in connexion with which the forest produce or article was seized has been tried and concluded or a decision not to prosecute has been made:

Provided that—

(*a*) where any person has been tried and found guilty or where a person fails to claim the seized forest produce or article after being acquitted, the forest produce or article shall be disposed of at the discretion of the Director of Forestry;

(*b*) where a decision has been made not to prosecute, the seized forest produce or article may be returned to the owner;

(*c*) where any seized forest produce or article is perishable, the Director of Forestry may order the forest produce or article to be sold or disposed of as he sees fit.

(2) Any forest produce or article in the custody of a village natural resources management committee in accordance of section 9 (3) shall be retained until the offence in connexion with which it was seized has been tried and concluded or a decision not to prosecute has been made:

Provided that—

(*a*) where any person has been tried and found guilty or where a person fails to claim after being acquitted the forest produce or article shall be disposed of at the discretion of the village natural resources management committee according to its rules;

(*b*) where a decision has been made not to prosecute, the seized forest produce or article may be returned to the owner;

(*c*) where any seized forest produce or article is perishable, the village natural resources management committee may order the forest produce or article to be sold or disposed of in accordance with its rules.

Money from the sale of forest produce or articles to be paid into the Fund

12. Wherever the disposal of government seized forest produce or articles is by sale, all monies realized shall be payable into the Fund established under section 55.

Arrest of a person for committing offence

13.—(1) Where any person is found committing or is reasonably suspected of having or of being about to commit an offence under this Act, any officer may, without warrant, arrest such person.

(2) Any person arrested pursuant to subsection (1) shall be charged with an appropriate offence before a court of law.

Prosecution by officers

14. The Director of Public Prosecutions may in writing nominate, by rank, any officer or class of officers of the Department of Forestry to undertake and prosecute criminal proceedings in respect of any offence committed under this Act.

PART III

Forestry Management Board

Establishment of the Board

15. There is hereby established a Board to be known as the Forestry Management Board.

Composition of the Board

16.—(1) The Board shall consist of—

(*a*) the following *ex officio* members—

(i) the Secretary for Natural Resources or his designated representative;

(ii) the Secretary for Agriculture and Livestock Development or his designated representative;

(iii) the Secretary for Lands and Valuation or his designated representative;

(iv) the Secretary for Local Government and Rural Development or his designated representative;

(v) the Principal Secretary responsible for District Administration in the Office of the President and Cabinet or his designated representative;

(vi) the Secretary for Energy and Mining or his designated representative;

(vii) the Secretary for Works and Supplies or his designated representative;

(viii) the Secretary for Research and Environmental Affairs or his designated representative;

(ix) the General Manager of National Herbarium and Botanic Gardens or his designated representative;

(x) the General Manager of the Electricity Supply Commission of Malaŵi or his designated representative;

(xi) the Director of Forestry;

(xii) the Director of National Parks and Wildlife;

(xiii) the Director of Fisheries;

(*b*) and the following members who shall be appointed by the Minister—

(i) one member representing the University of Malaŵi;

(ii) not less than three and not more than five members representing the general public; and

(iii) a representative of the Timber Association of Malaŵi.

(2) The Minister shall appoint one of the members to be Chairman of the Board.

(3) A member of the Board appointed under subsection (1) (*b*), (i), (ii) and (iii) shall hold office for a period of two years unless his appointment be sooner terminated and shall be eligible for re-appointment.

(4) The membership of the Board as first and subsequently appointed and every change in the membership to the Board shall be published in the *Gazette*.

(5) The office of the Director of Forestry shall provide the Secretariat of the Board.

(6) The office of a member appointed pursuant to subsection (1) (*b*), (i), (ii) and (iii) shall become vacant—

(*a*) upon his death;

(*b*) if he is absent from three consecutive meetings of the Board without the approval of the Chairman or without other valid cause;

(*c*) upon the expiry of one month's notice in writing of his intention to resign his office given by the member to the Minister; and

(*d*) if he is convicted of an offence under the Act.

Functions of the Board

17. The functions of the Board shall be to advise the Minister on all matters relating to tree and forest management in Malaŵi, including in particular but not limited to—

(*a*) advising on the declaration and revocation of areas which for the purpose of protecting forest species, biotic communities, sites of special interest or aesthetic values, the Board considers should be declared forest reserves or protected forest areas;

(*b*) advising on the import, export and re-export of tree species specimen into and out of Malaŵi;

(*c*) initiating, overseeing and approving environmental impact assessments in forest reserves, protected forest areas and fragile sites.

Meetings of the Board

18.—(1) The Board shall meet not less than twice a year at such places and times as the Chairman may determine.

(2) The Board shall further meet at any time at the request, in writing, of any three of its members.

(3) The Board may, at the discretion of the Chairman, invite any person or persons to attend any meeting of the Board and such person or persons may take part in the proceedings of the meeting but shall not be entitled to vote.

(4) In the absence of the Chairman from any meeting of the Board the members present, if constituting a *quorum*, shall elect one of their number to preside at the meeting.

(5) One third of the members of the Board shall constitute a *quorum*.

(6) At all meetings of the Board the decisions shall be reached by a simple majority, and the Chairman or other person presiding shall have, in the event of an equality of votes, a casting vote in addition to his deliberative vote.

(7) The Chairman of the Board shall report to the Board at each meeting thereof the action taken in respect of any matter on which the Board has advised the Minister.

(8) The Board shall determine its own procedure.

Members of the Board not deemed public officers

19. A member of the Board, who is not a public officer shall not, by virtue only of his membership to the Board, be deemed to be an officer in the public service.

Allowances

20. Members of the Board shall be paid an honorarium determined by the Minister and shall be paid reasonable travelling expenses and subsistence allowance while engaged upon the business of the Board at the rate prescribed by the Minister.

PART IV

Forest Reserves and Protected Forest Areas

Purposes of this Part

21. The purpose of this Part is to provide for the declaration, conservation and management of forest reserves, protected forest areas and the biodiversity.

Declaration of forest reserves

22. The Minister may, after consultation with the Minister responsible for land matters, by order published in the *Gazette*, declare any public land not already reserved for another public purpose to be a forest reserve.

Acquisition of land for forest reserve
Cap. 57:01
Cap. 58:04

23. Any area of land proposed for a forest reserve and which is not public land shall first be acquired in accordance with the provisions of the Land Act and the Lands Acquisition Act.

Management of forest reserves

24. In assuring the protection and management of forest reserves, the Director of Forestry shall prepare management plans as stipulated in section 5.

Co-management of forest reserves

25. The Director of Forestry may enter into agreement with local communities for implementation of the management plans that is mutually acceptable to both parties.

Declaration of protected forest areas
5 of 2017

26.—(1) Where the Minister finds that the protection of soil and water resources, outstanding flora and fauna requires that any area of land be maintained or established as a forest, the Minister may, by order published in the *Gazette*, after consultations with the Minister responsible for land matters, the Minister responsible for physical planning, the Minister responsible for agriculture, the Minister responsible for Irrigation and Water Development, the owner or occupier and, in case of customary land, the traditional authority, declare such land to be a protected forest area.

(2) Where the Minister considers that land which requires protection as a forest reserve or protected forest area, is liable to serious degradation if not immediately protected, the Minister may declare such land to be a protected forest area for such period not exceeding one year as may be necessary to complete the consultations required by section 22 or subsection (1).

Management of protected forest areas

27. A declaration made under section 26 shall state the measures required for protection of the areas, the assistance to be provided by the Department of Forestry towards accomplishing such measures and the

obligations of the owner, occupier or traditional authority to maintain and protect the forest resources of the area.

Revocation of declaration

28.—(1) The Director of Forestry may recommend to the Minister to revoke or modify, by notice published in the *Gazette*, a declaration of a forest reserve or protected forest area with respect to any land, and the Minister shall first require a comprehensive environmental impact assessment.

(2) The Minister may, by notice published in the *Gazette*, amend such order the purpose of which is to delineate or exercise land from a forest reserve or protected forest area subject to advice from the Board.

(3) Any environmental impact assessment made pursuant to the provisions of subsection (1), shall investigate the ecological consequences of proposed resolution of modification and the report of the assessment shall be submitted to the Minister together with the advice of the Director of Forestry within ninety days of completion of the assessment being made.

(4) The Minister shall not decide upon a proposal related to revocation or modification of a forest reserve or protected forest area until the Minister is in receipt of the report referred to in subsection (3).

PART V

Customary Land Forest

Purpose of this Part

29. The purpose of this Part is to provide for promotion of participatory forestry on customary land through protection, control and management of trees and forests by the people on customary land, the demarcation and management of village forest areas, ownership of indigenous forest trees, establishment of three nurseries and regulation of forest produce.

Demarcation of village forest areas
5 of 2017

30. Notwithstanding anything contained in this Act, a customary land committee may, with the advice of the Director of Forestry, demarcate on unallocated customary land a village forest area which shall be protected and managed in the prescribed manner for the benefit of that village community.

Forest management agreement

31.—(1) For the proper management of village forest areas, the Director of Forestry may enter into a forest management agreement with a management authority providing for—

(*a*) the specifications of the nature of the forestry and other practices to be followed;

(*b*) the assistance to be provided by the Department of Forestry and provision for use and disposition of the produce and revenue therefrom.

(*c*) allocation of land to individuals or families for afforestation and revocation of such allocation if applicable provisions of the agreement are not adhered to by the occupier of the land so allocated;

(*d*) formation of village natural resources management committees for the purposes of managing and utilizing village forest areas.

(2) Subject to the performance of unfulfilled obligations under a forest management agreement to the right of third parties, a forest management agreement may be terminated by either party.

(3) In the event of any dispute arising under a forest management agreement, the matter shall be referred to the Minister:

Provided that any party aggrieved with the Minister's decision may apply to the High Court for review of the Minister's decision.

(4) Any area designated as a village forest area but without the forest management agreement shall be managed in accordance with section 30.

(5) Any educational, religious or interested institutions in consultation with a village headman may demarcate, establish and manage a forest area or woodlot on customary land with the advice of the Director of Forestry subject to the provisions of subsections (1), (2) and (3).

Minister may make rules
5 of 2017

32.—(1) The Minister may make rules which shall apply to all customary land outside forest reserves and protected forest areas.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may—

(*a*) provide for the protection of water catchment and fragile areas, rehabilitation of degraded areas and any other activity which would be conducive to good land husbandry;

(*b*) facilitate the establishment and management of forest by village natural resources management committees for the benefit of local communities;

5 of 2017

(*c*) encourage local government authorities, non-governmental organizations and the private sector to contribute towards the provision of forestry extension services, as well as the establishment and management of plantations in accordance with guidelines provided by the Department of Forestry;

(*d*) provide for the establishment and maintenance of nurseries to provide seedlings for tree planting programmes;

(*e*) authorize the payment, of grants or bonuses out of public funds for the encouragement of forestry;

(*f*) provide for the declaration of endangered or essential tree species and their management;

(*g*) prescribe a mechanism for sharing costs and benefits between the Department of Forestry and village natural resources management committees in regard to forest produce confiscated from customary land forests.

Approval of by-laws

33. Any rules made by village natural resources management committees shall be approved by the Minister.

Right to naturally growing trees

34.—(1) Any person who or community which protects a tree or forest, whether planted or naturally growing in any land which that person or community is entitled to use, shall acquire and retain the ownership of the tree and forest with the right to sustainable harvest and disposal of the produce.

(2) Any tree or forest owner under subsection (1) may seek the advice of the Director of Forestry on the management and utilization of his tree or forest.

PART VI

Afforestation

Purpose of this Part

35. The purpose of this Part is to provide for the promotion of tree growing in forest reserves, public land, customary land and private land by the Government, non-governmental organizations and the community.

Forest plantation agreement

36. Notwithstanding anything to the contrary contained in this Act, the Minister may authorize the Director of Forestry to enter into a forest plantation agreement with any nongovernmental organization or community who may wish to plant trees in forest reserves, public land, customary land and private land, and such agreement shall—

(*a*) provide for the obligation to grow and manage tree species as specified in the agreement and in accordance with the plantations management plan which shall be approved by the Director of Forestry;

(*b*) convey the right to harvest the forest plantation in accordance with the terms of the agreement;

(*c*) provide for advice and assistance from the Department of Forestry in growing and managing the plantations;

(*d*) specify obligations of each of the parties to the agreement.

Right to planted forest produce

37. Any person who plants any tree species on any land which that person is entitled to use for that purpose shall acquire and retain the right to harvest the resulting produce and to dispose of it freely.

PART VII

Forest Protection

Purpose of this Part

38. The purpose of this Part is to provide for the protection of trees, forest and forest produce against fires, pests and diseases.

Prohibition against fires

39.—(1) No person shall light or cause to be lit a fire in any forest reserve or protected forest area except in places designated for that purpose or as otherwise authorized by an officer.

(2) An officer may order the closure of any place designated for the lighting of fires in a forest reserve or protected forest area and no person shall during such closure permit a fire to be lit in such place.

(3) No person shall light or cause to be lit a fire in any village forest area except with the authorization of the management authority subject to the provisions and conditions of the forest management agreement.

(4) Any person who lights a fire in or near a forest reserve, protected forest area or village forest area shall take all necessary precautions to prevent the fires escaping from control and shall be liable for any damage to the forest reserve, protected forest area or village forest area caused by any failure to take such precautions.

Declaration of fire protection area

40. The Director of Forestry may, by notice published in the *Gazette*, declare any forest area to be a fire protection area and the notice shall regulate the lighting of fires in such area.

Assistance in fire fighting

41. Any officer may require any person to assist in averting or extinguishing any fire threatening a forest reserve, protected forest area or village forest area.

Forest pest and desease control

42. Notwithstanding anything to the contrary contained in this Act, the Minister may authorize the Director of Forestry to—

(*a*) order the spraying or clearing of a compartment of a plantation or of a whole plantation for the purpose of controlling the spreading of pests and diseases;

(*b*) control movement of timber and other forest produce through issue of permits as the pest and disease situation may demand;

(*c*) issue silvicultural notes and technical orders for purposes of controlling pests and diseases;

(*d*) suspend further planting of tree species which are susceptible to pests and diseases;

(*e*) provide for control of vermin causing excessive damage beyond economic threshold in forest reserves;

Cap. 64:01

(*f*) provide for effective phytosanitation for all forest produce and all parts of the tree in accordance with the Plant Protection Act and to regulate importation of tree seed

and other wood and forestry produce for purposes of pest and disease control.

43.—(1) Any person who conveys into, or possesses or uses within any forest reserve or protected forest area any weapon, trap, explosive, poison or hunting animal shall be guilty of an offence.

(2) This section shall not apply to any officer acting in the performance of his duties.

Prohibition of possession or use of weapons, traps, explosives, poisons or hunting animals

44. Unless under a licence, no person shall deposit litter or noxious waste in forest reserves, protected forest areas and village forest areas.

Prohibition of deposition of litter and waste

PART VIII

Utilization of Forest Produce in Forest Reserves and Customary Land

45. The purpose of this Part is to provide for licensing and sustainable use of forest land and utilization of forest produce on customary land, public land, forest reserves and protected forest areas.

Purpose of this Part

46. Unless under a licence, no person shall—

Acts under licence

(*a*) cut, take, fell, destroy, uproot, collect and remove forest produce from a forest reserve, customary land, public land and protected forest area;

(*b*) cultivate crops, graze livestock, clear land, dig or break up land for any road or for any purpose whatsoever on such area of the forest reserve and protected forest area that may be specified in the licence;

(*c*) prospect for and extract minerals in a forest reserve and protected forest area;

(*d*) squat, reside, erect any building, livestock enclosures or any structure in a forest reserve and protected forest area;

(*e*) perform such other acts as may be specified in the licence in the forest reserve and protected forest area.

47. The Director of Forestry may issue to any person a permit in the prescribed form to export or import or re-export certain types of forest produce.

Permit for exportation, importation and re-exportation of forest produce

48. The Minister may, in consultation with the Minister responsible for trade, make regulations imposing restrictions on imports and exports and re-exports of certain type of forest produce.

Restrictions on, exports, import and re-exports of forest produce

Waiver of fees, etc.

49. The Director of Forestry may, subject to the general or special directions of the Minister, direct in writing that any fees or royalties payable under this Act shall be waived in whole or in part for a specified period.

Forest produce from customary land

50.—(1) A resident of any village may collect forest produce from customary land other than village forest areas for domestic use.

(2) Any disposal of forest produce in a village forest area shall be in accordance with the provisions of the applicable forest management agreement.

(3) Where the wood arising from any activity on customary land is in excess of community domestic needs, the excess wood shall be disposed of by the village natural resources management committee for the benefit of that community.

Suspension of a licence

51. The Director of Forestry may, at any time that it appears to him that there has occurred or is about to occur a violation of any provision of this Act or of any condition of a licence, order the suspension of any or all operations under any licence until the licensee has taken necessary measures to remedy or prevent the violation.

Grounds on which a licence may be refused

52. The Director of Forestry may refuse to issue a licence if—

(*a*) the applicant fails to comply with any prescribed conditions;

(*b*) any licence formerly held by the applicant under this Act has been revoked by the Director of Forestry within the previous twelve months;

(*c*) the applicant has been convicted of an offence under this Act within the previous twenty-four months;

(*d*) he is satisfied on reasonable ground that the applicant is not a fit or proper person to hold such licence; or

(*e*) he is satisfied that the interest of forest management shall be better served by a temporary freeze in issuing of licence of that class.

Cancellation of a licence

53.—(1) The Director of Forestry may revoke any licence issued to any person under this Part if he is reasonably satisfied of the existence of any ground that would entitle him under section 52 to refuse to issue a licence to that person.

(2) The Director of Forestry shall notify the licensee in writing of any cancellation under this section and shall state his reasons in writing.

Appeal to the Minister against refusal, suspension or cancellation of a licence

54.—(1) An applicant who has been refused a licence under section 52 may, within thirty days, appeal to the Minister in writing.

(2) Any licensee whose licence is cancelled under section 53 may, within thirty days, appeal to the Minister in writing.

(3) The Minister may, on proper cause being shown, allow an appeal out of the time prescribed.

(4) The Minister shall be free to hear the views of the Director of Forestry in determining an appeal under this section and may uphold, vary or quash the decision of the Director of Forestry.

(5) Any person aggrieved by the decision of the Minister may apply to the High Court for a review of the Minister's decision.

PART IX

Forest Development and Management Fund

Establishment of the Fund

55.—(1) There is hereby established a Fund to be known as the Forest Development and Management Fund (in this Act referred to as the "Fund").

(2) the Fund shall consist of—

(*a*) such sums as shall be appropriated by Parliament for the purpose of the Fund;

(*b*) advances made to the Fund under section 57;

(*c*) such sums as may be received for the purposes of the Fund by way of voluntary contributions;

(*d*) levies from a metre cube of wood felled or extracted by the Forestry Department;

(*e*) payments made into the Fund under section 12; and

(*f*) such sums or other assets may be donated for the purposes of the Fund by any foreign government, international agency or foreign institution or body.

The Fund to vest in the Minister Cap. 37:01

56. The Fund shall be vested in the Minister and, subject to this Act, shall be administered in accordance with his directions subject to the provisions of the Finance and Audit Act.

Advances to the Fund

57. If in any financial year the income of the Fund together with any surplus income brought forward from a previous year is insufficient to meet the actual or estimated liabilities of the Fund, the Minister responsible for finance may make advances to the Fund in order to meet the deficiency or any part thereof and such advances shall be made on such terms and conditions, whether as to repayment or otherwise, as the Minister responsible for finance may determine.

Objects of the Funds

58. The objects for which the Fund is established shall be the conservation, augmentation and management of forest resources and forest lands in Malaŵi.

Application of the Fund

59. Without derogation from the generality of section 57, the Fund may be applied to—

(*a*) the inculcation of the twin concepts of multiple purpose management and sustainability in forestry into local communities;

(*b*) the provision of an enabling environment for the participation of the local communities in forest management and conversation;

(*c*) maintenance of equipment and records;

(*d*) the cost of any scheme which the Minister considers to be in the interest of the management of forest reserves;

(*e*) meeting any expenses arising from the establishment and maintenance of the fund; and

(*f*) any purpose which the Minister considers to be in the interest of the objects of the Fund.

Books and other records of accounts, audit and reports of the Fund Cap. 37:01

60.—(1) The Minister shall cause to be kept proper books and other records of account in respect of receipts and expenditures of the Fund in accordance with the provisions of the Finance and Audit Act.

Cap. 37:01

(2) The accounts of the Fund shall be audited by the Auditor General, who shall have all powers conferred upon him by the Finance and Audit Act.

(3) The Minister shall cause to be prepared, as soon as practicable, but not later than six months after the end of the financial year, an annual report on all the financial transactions of the Fund.

(4) The report under subsection (3) shall include a balance sheet, an income and expenditure account and annual report of the Auditor General and shall be laid by the Minister before the National Assembly.

Holdings of the Fund

61.—(1) All sums received for the purposes of the Fund shall be paid into a bank account and no amount shall be withdrawn therefrom except by means of cheques signed by such persons as are authorized in that behalf by the Minister.

(2) Any part of the Fund not immediately required for the purposes of the Fund may, on the recommendation of the Board, be invested in such manner as the Minister, after consulting with the Minister responsible for finance, may determine.

Financial year

62. The Financial year of the Fund shall be the period of twelve months ending on 31st March in each year.

PART X

Offences and Penalties

Purpose of this Part

63. The purpose of this Part is to define offences against this Act and to provide for penalties.

Offences relating to forest reserves and protected forest areas

64. Any person who, without authority under this Act—

(*a*) fells, cuts, takes, destroys, removes, collects, uproots any indigenous tree or forest property in a forest reserve or protected area;

(*b*) connives with or causes another person to fell, cut, take, destroy, remove, collect, uproot any indigenous tree or forest property in a forest reserve or protected area;

(*c*) squats, resides, erects a building, hut, livestock enclosures or any structure in a forest reserve or protected area;

(*d*) clears, cultivates, digs or breaks up land for any road or for any purpose whatsoever and grazes livestock in a forest reserve or protected areas,

shall be guilty of an offence and liable upon conviction to a fine of K5,000 and to imprisonment for a term of two years.

Offences relating to fires

65.—(1) Any person who lights or causes to be lit a fire in a forest reserve, protected forest area or village forest area in contravention of section 39 shall be guilty of an offence and liable upon conviction to a fine of K10,000 and to imprisonment for a term of five years.

(2) Any person who permits a fire to burn out of control in, or to spread to a forest reserve or village forest area shall be guilty of an offence and liable upon conviction to a fine of K10,000 and to imprisonment for a term of five years.

(3) Any person who, without reasonable cause, refuses to assist in averting or extinguishing a fire when required to do so under section 41, shall be guilty of an offence and liable upon conviction to a fine of K2,000 and to imprisonment for a term of one year.

Offences relating to wildlife

66. Subject to the provisions of this Act, any person who—

(*a*) pursues, kills, hunts, molests, captures or injures any animal, bird, fish, or reptile;

(*b*) collects eggs or spawns from a forest reserve, a protected forest area or a village forest area,

shall be guilty of an offence and liable upon conviction to a fine of K10,000 and to imprisonment for a term of five years.

Offences relating to forest pests and diseases

67. Any person who knowingly contravenes the provisions of section 43 of this Act shall be guilty of an offence and liable upon conviction to a fine of K10,000 and to imprisonment for a term of five years.

Offences relating to possession or trafficking of forest produce

68.—(1) Any person who—

(*a*) knowingly received forest produce illegally; or

(*b*) is found in possession of forest produce without a permit;

(*c*) trafficks in forest produce without a licence, shall be guilty of an offence.

(2) Any person who is convicted of an offence under subsection (1) shall be liable to a fine upon conviction of K20,000 and to imprisonment of ten years.

Offences relating to obstruction of officers

69. Any person who—

(*a*) obstructs or hinders any officer in the performance of his functions under this Act;

(*b*) wilfully or recklessly gives to any officer false or misleading information which the officer is entitled to obtain under this Act;

(*c*) refuses to furnish to any officer on request, particulars or information which the officer is entitled to obtain under this Act, shall be guilty of an offence and liable upon conviction to a fine of K10,000 and to imprisonment for a term of five years.

Offences relating to official documents or stamps

70. Any person who, without lawful authority—

(*a*) counterfeits or alters any licence, permit or pass required under this Act;

(*b*) alters or defaces any prescribed document issued under this Act;

(*c*) makes upon or affixes to any forest produce a mark used in connexion with forest produce by the Department of Forestry,

shall be guilty of an offence and liable upon conviction to a fine of K20,000 and to imprisonment for a term of ten years.

Offences relating to possession or use of weapons, traps, explosives and poisons for hunting animals

71.—(1) Any person who contravenes the provisions of section 43 shall be guilty of an offence and liable upon conviction to a fine of K20,000 and to imprisonment for a term of ten years.

(2) This section shall not apply to any officer acting in the performance of his duties.

Offences relating to deposition of litter and waste

72. Any person who contravenes the provisions of section 44 shall be guilty of an offence and liable upon conviction to a fine of K5,000 and to imprisonment for a term of two years.

Offences relating to import, export and re-export of forest produce

73. Any person who imports, exports or re-exports or attempts to import, export or re-export any forest produce—

(*a*) through any place other than a custom's post or port; or

(*b*) without producing to a customs officer a valid licence to import or export or re-export the forest produce as the case may be,

shall be guilty of an offence and liable upon conviction to a fine of K10,000 and to imprisonment for a term of not less than five years.

Additional orders upon conviction

74.—(1) Upon conviction of any person of an offence under this Act, the court may in addition to any other penalty provided by this Act, order—

(*a*) that any forest produce which has been used in the commission of the offence shall be forfeited to the Government;

(*b*) that where any forest produce has been damaged, injured or removed in the commission of the offence, the person convicted shall pay compensation equivalent to the value of the forest produce so damaged, injured or removed;

(*c*) that the person convicted shall pay ten times the amount of any royalties and other fees which, had the act constituting the offence been authorized, would have been payable in respect thereof;

(*d*) the demolition and removal of any building, enclosure, hut, kraal, structure or anything erected, standing or being in the area in contravention of this Act;

(*e*) the destruction, uprooting or removal of any crop standing or being in the area in contravention of this Act;

(*f*) the seizure of any carrier or vehicle which has been used in committing the offence.

(2) Where an order is made under subsection (1) in respect of forest produce from a village forest area, the forest produce and article ordered to be forfeited and the amount ordered to be paid shall be forfeited and paid to the management authority in respect of that area.

Authority to compound offences

75.—(1) The Director of Forestry may authorize any officer not below the rank of Principal Forestry Officer where the Director of Forestry is satisfied that an offence against this Act has been committed, and such person consents in writing to compounding under this section, to compound such offences by charging a sum of money not exceeding one and half the maximum fine prescribed for the offence and no further court proceedings shall be instituted.

(2) Where any article has been seized in connexion with the offence compounded under this section, the officer compounding the offence shall dispose of the article according to section 11.

(3) Any offence in respect of which a prosecution is actually pending shall not be compounded under this section other than with the consent of the court before which the prosecution is pending.

(4) Any money received and any article confiscated under subsection (1) or (2) in respect of forest produce from a village forest area shall be paid to the management authority in respect of that area.

PART XI

International Co-operation in Forestry

Purpose of this Part

76. The purpose of this Part is to provide for the promotion of the management of cross-border forests and forests resources

and implementation of agreed national obligations arising from bilateral, regional and international environmental and other related Conventions to which Malaŵi is a party.

Cross-border management

77. For the proper management of cross-border forests and forest resources, the Director of Forestry may jointly produce management plans which shall lead to the realization of common forestry goals in cross-border areas.

Regional fora

78. Implementation of common plans may be reviewed in regional fora such as Joint Permanent Commissions of Cooperation, the Southern Africa Development Community and others.

Cross-border trade in forest produce

79. To assure sustainable utilization and marketing forest resources across borders, the Director of Forestry shall institute mechanisms for the verification of the legality of the forest produce being imported or exported.

Implementation of agreements

80. The Minister may, by an order published in the *Gazette*, specify the measures for the proper implementation of relevant provisions of any convention on forestry to which Malaŵi is a party.

PART XII

Miscellaneous

Charcoal licensing

81.—(1) No person shall make or sell charcoal from indigenous timber or tree except pursuant to a licence issued under this section.

(2) Upon application in the prescribed form, a licensing officer may, where the officer finds that the making of charcoal shall utilize plantation timber or indigenous timber or trees consistently with the applicable forest management plan or forest management agreement or forest plantation agreement, issue a licence to make charcoal in such quantity and from such timber or trees as may be specified in the licence.

Permit for wood using and wood processing industries

82. No person shall engage in commercial processing of any wood or forest produce without a permit from the Director of Forestry and such commercial wood processing industries shall include—

(*a*) tobacco curing, brick and tile making, wood carving, lime making, bamboo baskets making and chair making; and

(*b*) wood processing industries, including sawmilling, veneer and plywood, blackboard, fibre and particle board, pulp and paper and any other industries.

Utilization of and trafficking in indigenous timber from private land

83.—(1) No indigenous wood shall be moved from any private land to any place outside the private land without a permit issued by the Director of Forestry. Any revenue realized from the removal of the indigenous wood from leasehold land shall all accrue to the village natural resources management committee in the area.

(2) No indigenous endangered tree species shall be cut down without the written permission of the Director of Forestry.

(3) Indigenous wood may be used on a sustainable basis for any purpose within the demised area without the written permission of the Director of Forestry.

General indemnity

84. The Director of Forestry or any other officer shall not be held liable in damages or otherwise to any person by reason of his exercise or non-exercise in good faith of the powers vested in him under this Act.

Disposal of forest produce from private land Cap. 57:01

85. On application by a lessee in accordance with the Land Act, the Director of Forestry may grant permission for forest produce to be removed from, and used outside, the demised premises on payment of all prescribed royalties to the village natural resources management committee in the area.

PART XIII

Regulations

Regulations

86. The Minister may make regulations for carrying this Act into effect and, without prejudice to the generality of the foregoing, such regulations may—

(*a*) prescribe the form and contents of any application, licence or agreement;

(*b*) prescribe the conditions of any category of licence or agreement;

(*c*) prescribe the rates and manner of payment of royalties, application fees and other fees;

(*d*) regulate or prohibit access to any part of a forest reserve;

(*e*) regulate forest utilization practices;

(*f*) require the recording and reporting of information regarding sustainable utilization of forest and forest produce and approving the form, contents and manner of making records and reports, as submitted by the Director of Forestry;

(*g*) prescribe the methods and requirements of scaling and making forest produce;

(*h*) prescribe the marks to be used by officers in connexion with forest produce;

(*i*) provide for the registration of forest property marks and regulating their use;

(*j*) prescribe standards for the grading of wood and wood products, and requiring that any wood or wood product be graded according to such standards;

(*k*) regulate the transportation, processing, sale of forest produce, including competitive bidding, and requiring permits, licences and documentation of such activities; and

(*l*) prescribe anything required to be prescribed under this Act.

PART XIV

Repeal and Savings

Repeal and savings Cap. 63:01

87.—(1) The Forest Act is hereby repealed.

(2) Any subsidiary legislation made under the Act repealed by subsection (1) in force immediately before the commencement of this Act—

(*a*) shall, unless in conflict with this Act, continue in force and be deemed to be subsidiary legislation made under this Act;

(*b*) may be replaced, amended or repealed by subsidiary legislation made under this Act.

(3) Any agreement or similar arrangement made pursuant to the provisions of the Act repealed by subsection (1) shall continue in force until terminated in accordance with terms and conditions thereof.

G.N. 28/2001
49/2003
8/2006
23/2010

SUBSIDIARY LEGISLATION
FOREST RULES

PART I
PRELIMINARY

Citation

1. These Rules may be cited as the Forest Rules.

Interpretation

2. In these Rules, unless the context otherwise requires—

"council" has the meaning assigned thereto in the Local Government Act; Cap. 22:01

"firewood" means all straight parts of a tree which do not exceed two metres in length and includes all crooked and unsound parts of any size;

"log" means all sound, straight parts of a tree which are more than two metres long and more than twenty centimetres mean diameter;

"pole" means all sound, straight parts of a tree which are more than two metres long but not more than twenty centimetres mean diameter;

"protected trees" means the trees specified in the First Schedule;

"public road" has the meaning assigned thereto in the Public Roads Act; Cap. 69:02

"stacked cubic metre" means a stack of firewood one metre in length, in width and in height.

PART II
PROHIBITION AND OFFENCES AND FIRE PROTECTION IN FOREST RESERVES

Acts prohibited without a licence

3. No person shall, without a licence in that behalf issued under these Rules, do or cause to be done in a forest reserve any of the following acts—

(*a*) fell, cut, take, work, burn, injure or remove any tree or forest produce;

(*b*) squat, reside, erect any building, hut or cattle enclosure:

Provided that nothing in this paragraph shall require the issue of a licence in any case where a person resides in a forest reserve under the terms of a lease granted by the Minister responsible for land;

(*c*) graze or pasture livestock or permit livestock to trespass;

(*d*) clear, cultivate or break up land for the construction of any road, for cultivation, or for any other purpose whatsoever;

(*e*) pursue, kill or capture animals or birds;

(*f*) alter or remove any beacon, boundary mark or fence;

(*g*) camp in any forest reserve, without observing the rules from time to time affecting such camping; and

(*h*) keep bees or collect honey or beeswax.

Precautions by those contiguous with a reserve

4. The Director of Forestry may require the owner or occupier of any land contiguous to a forest reserve to take such reasonable precautions to prevent a fire spreading from such land into a forest reserve as the Director of Forestry may specify in writing from time to time.

Director of Forestry shall have boundaries indicated

5. The Director of Forestry shall cause the boundaries of every forest reserve to be indicated in as clear a manner as he considers reasonable in all the circumstances.

PART III
Village Forest Areas

Acts prohibited without Village Natural Resources Management Committee permission

6. No person shall, without the permission in writing of the Village Natural Resources Management Committee in whose name a village forest area has been registered—

(*a*) squat or reside or erect any building, hut or cattle enclosure;

(*b*) graze or pasture livestock or permit livestock to trespass;

(*c*) clear, cultivate or break up land for cultivation or otherwise;

(*d*) alter or remove any beacon, boundary mark or fence;

(*e*) fell, cut, take, work, burn, injure or remove any tree or forest produce;

(*f*) set fire to any grass or undergrowth; or

(*g*) keep bees or collect honey or beeswax, in the village forest area.

7. No person shall, for any purpose whatever, kindle any fire within a village forest area without taking all reasonable and proper precautions to prevent damage to any forest produce within such village forest area.

PART IV
Licences

Special conditions on licences

8.—(1) There may be endorsed on any licence issued under the Act special conditions.

(2) Special conditions referred to in subrule (1), may relate to one or more of the following—

(*a*) the provision by the licensee of a deposit, guarantee, surety, security, liquidated damages or sum of money to be drawn upon or confiscated for non-fulfilment or breach of the conditions of the licence;

(*b*) the information which may be required to be given to a forestry officer by the licensee, concerning his operations and concerning the transport, manufacture production, output, sale, use, export or import of the forest produce taken under his licence, the records to be kept by him and the returns to be submitted to a forestry officer;

(*c*) the liability of the licensee for damage to trees or other forest produce due to his negligence or to the negligence of his officers, agents or servants;

(*d*) the methods by which and the order in which operations of exploitation, fire protection and fire fighting should be carried out;

(*e*) the measuring or computing or recording of forest produce by methods other than those specified in these Rules; and

(*f*) the construction, layout and operation of tramway, waterways and roads for the extraction of forest produce, and the transport of such produce to depots or along specified routes or for any other purpose whatsoever.

Limits on licences

9. No licence shall grant exclusive rights.

Persons who may take under licence

10. No person shall take, purchase or be in possession of any forest produce to which a licence relates except with the authority of the licensee.

Produce derived from operations of licence

11. All forest produce derived from the operations of a licensee, except the produce which the licensee is authorized to take under the terms of his licence, shall remain the property of the Government.

Fees and Royalties

12.—(1) The royalties to be paid in respect of forest produce taken, or for cutting and taking, under licences issued under these Rules shall be those set out in the Second Schedule:

Provided that the Director of Forestry may dispose of planted trees or forest produce derived from forest reserves or public land or from artificially established plantations.

(2) The fees to be paid in respect of licences for—

(*a*) camping;

(*b*) residing in rest houses, lodges, cottages or huts;

(*c*) operating business;

(*d*) import or export of forest produce;

(*e*) scientific collection of forest produce;

(*f*) the grazing of livestock; and

(*g*) the keeping of bees,

shall be those set out in the Third Schedule.

Cutting of trees

13.—(1) No licence to cut forest produce shall, in the absence of express provision to that effect, be deemed to authorize the cutting of a protected tree or a tree situate within—

(*a*) a forest reserve;

(*b*) a strip of land situated within or on either side of a watercourse;

(*c*) protected hill slope; or

(*d*) eight metres of a public road.

(2) A strip of land shall be deemed to be situated on either side of a watercourse if it is situated within a minimum width of one metre and a maximum of eight metres from the banks of the watercourse:

Provided that the width of the strip of land may be increased or decreased, subject to a maximum of eight metres, by the Minister issuing a notice to the occupier of the land.

PART V

Felling Conditions

Height of cutting point

14. Unless otherwise stated in the licence, trees shall not be cut higher than forty-five centimeters from the ground.

Manner of cutting

15. All felling, cutting, exploitation, conversion and other operations performed under licence shall be carried out in such manner as to cause the least possible waste of, or damage to, forest produce and stump.

Disposal of waste

16. All branch wood, slash, and waste left in any forest reserve shall, within one month of the felling of the tree or trees from which such branch wood or waste was derived, be cut up and drawn clear for a distance of not less than five metres from all growing trees and fresh stumps.

PART VI

Measurement and Removal of Forest Produce

Volume of timber fires

17. Unless otherwise laid down in any licence—

(*a*) the volume of timber in a log shall be calculated by multiplying the length from end to end, by the mean cross-sectional area, as determined from the mean diameter measured under bark;

(*b*) the volume of a stand shall be calculated by multiplying the stand area by the stocking and the mean tree volume; and

(*c*) the diameter of a pole shall be the diameter measured at the butt end over bark.

Stacking of firewood

18. All firewood cut under licence shall be assembled in stacked cubic metres before removal or conversion into charcoal, unless the forestry officer who issued the licence shall have endorsed on the licence permission to stack in any other manner.

Removal of produce

19. No sawn timber, logs or poles shall, unless permission to the contrary be endorsed on the licence, be removed until such produce has been measured or checked by a forestry officer.

Time for removal of produce

20. All forest produce cut under licence shall, unless permission to the contrary be endorsed on the licence, be removed within three months of the date of the expiration of the licence.

Until fees paid, produce is Government property

21. Until fees have been paid forest produce licensed to be taken and removed shall remain the property of the Government and may not be charged, hypothecated, mortgaged, sold, ceded or assigned, nor may any lien be created thereon.

PART VII
Offences and Penalties

Offence and Penalty

22. Any person who contravenes any of the provisions of these Rules or any of the conditions of any licence granted to him under these Rules shall be guilty of an offence and liable to a fine of K1,000 and to imprisonment for three months.

FIRST SCHEDULE

reg. 2

Protected Trees

Botanical Name	*Vernacular Name*
Adina microcephala	Mwenya, Chonya, Mgweya, Mung'ona, Mwina, Mungwina, Mluona
Afzelia quanzensis	Mkongomwa, Msokosa, Mnangaliondo, Ipapa, Mpapa, Mpapadende
Borassus aethiopum	Mvumo, Mdikwa, Makoma, Mulala
Bridelia micrantha	Msopa, Chisopa, Mpasa, Mlewezi, Msongamino, Mwisya
Burkea africana	Mkalati, Kalinguti, Kawidzi, Kawidzu, Nakapanga

Botanical Name	*Vernacular Name*
Colophospernum mopane	Tsanya, Sanya, Ntsano, Mopani, Mpani
Cordyla africana	Mtondo
Hypaene crinita	Mgwalangwa, Mkomkoma, Makoma, Mulala
Khaya anthotheca	Mbawa, Muwawa, Bulamwiko
Pterocarpus angolensis	Mlombwa, Mtumbati, Mbira, Nawazi
Terminalia sericea	Naphini. Nyapini, Mpini, Nalinsi, Mkodoni, Mpululu, Njoyi
Widdringtonia cuppresodes	Mkungudza
Dalbergia melanoxylon	Phingo. Nanyula, Kasalusalu, Kasarusaru
Percopsis angolensis	Muwanga

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SECOND SCHEDULE

reg. 13 (1)

Royalties

1. INDIGENOUS TREES

Fees

Class	*Botanical Name*	*Vernacular Name*	*Price per cubic metre* K t
I	*Khaya anthotheca*	Mbawa, Muwawa, Bulamwiko	15,000 00
	Entandrophragma excelsum	Mukarikari, Mululu	15,000 00
	Adima microcephala	Mwenya, Chonyo, Mwina, Mungwira Mung'ona, Mgwenya, Mluona.	15,000 00
	Chlorophora excelsa	Ngunda, Mvule	15,000 00
	Combretum imberbe	Msimbiti	15,000 00
	Trichilia enetica	Msikidzi, Msyunguti	15,000 00
	Colophospernum mopane	Tsanya, Sanya, Ntsano, Mopani, Mpani	15,000 00
	Dalbergia melanoxylon	Phingo, Kasalusalu Nanyula, Kasarusaru	15,000 00
	Pterocarpus angolensis	Mlombwa, Mtumbati Mtumbali, Mbira, Nawazi	15,000 00
	Pericopsis angolensis	Muwanga, Mubanga Mbanga, Mwanga	15,000 00
II	*Ocotea usambarensis*	Botoko	8,000 00
	Strombosia scheffleri	Mvivi	8,000 00
	Entandrophragma Caudatum	Nayalai, Napalali, Gundang'oma	8,000 00

Class	*Botanical Name*	*Vernacular Name*	K t
	Apodytes dimidiata	Mzaza, Katole, Mchima, Msuwi, Mnyembedwe, Mtibulo . .	8,000 00
	Burttdavya nyasica	Mbvule	8,000 00
	Albizia gummifera	Mtangatanga, Bua, Chikwani, Chikolola, Mpepe, Msenjere, Mkalankhanga, Skapya . .	8,000 00
	Afzelia quanzensis	Mkongomwa, Msambafumu, Mpapadende, Mpapa, Ipapa, Msokosa, Chikunda, Mnangaliondo, Mkongwa	8,000 00
	Newtonia buchanani	Mkweranyani	8,000 00
	Podocarpus species	Nanjula, Mwenye, Mkachi, Nkanguni, Mkute	8,000 00
	Burkea africana	Mkalati, Kalinguti, Kawidzi, Kawidzu, Kapanga	8,000 00
	Bombax stolzii	Mtonjeranga, Thonjemanga . .	8,000 00
	Swartizia madagascarensis	Chinyenye, Kampango. . . .	8,000 00
III	*Chrysophyllum species*	Mutu, Chifira, Mufu, Njundo, Njale, Namazuwa, Mlombeya	8,000 00
	Sterculia species	Msetanyani, Njale Mgoza, Mpepe, Mucheska, Chitondo, Muyamba	8,000 00
	Diospyros mesopiliformis	Msumwa, Mchenje, Mchenya, Njelenje	8,000 00
	Dialiopsis africana	Mtalala, Mlimbauta, Masakala, Mtutumuko, Chiwangalanya . .	8,000 00
	Faurea species	Musese, Chinsense Chiere . .	8,000 00
	Mitragyna rubrostipulata	Mufwafwada	8,000 00
	Cordyla africana	Mtondo	8,000 00
	Polyscias fulva	Mpembati, Mukwajo, Mwaja, Mwaza	8,000 00
	Terminalia, sericea	Naphmi, Mpululu, Njoyi, Nalinsi, Gonondo	8,000 00
	Ficalhoa laurifolia	Ndopa, Mlunganya, Muuse . .	8,000 00
	Bridelia micrantha	Mpasa, Msopa, Mlewezi, Mwisya, Chisopa, Msongamino	8,000 00
	Hagenia anthelmintica	Mkwerete, Mknwale, Mthethe, Chigongolo	8,000 00
	Acacia Polyacantha	Mgobe	8,000 00

Class	*Botanical Name*	*Vernacular Name*	K t
	Rauvolfia caffra	Mwembi, Mvumbamvula, Nanyungu, Muimbi, Munyezani, Nyensani	8,000 00
IV	*Parkia filicoidea*	Mkundi, Mgundi, Musyepwa . .	8,000 00
	Xymalos nomospora	Mulaka, Mpelekeso, Mpekeso, Nakaswaga, Chikakalaka . .	8,000 00
	Fagara species	Pupwe, Mkurungu, Mlunguchulu	8,000 00
	Vitex doniana	Mpindimbi, Mfuru, Msimpsya, Mpyumbya, Mpsyimpsya	8,000 00
V	*All other non-planted species*	. . . . .	8,000 00
VI	*Widdringtonia Cuppresoides*	Mkungusa, Mkungudza, Mulanje Cedar	20,000 00
	Juniperus procera	Changalume	20,000 00

2. EXOTIC TREES

Class	*Botanical Name*	*Vernacular Name*	K t
	Cypress species	Mkungudza	10,000 00
	Eucalyptus species	Bulugamu	10,000 00
	Gmelina arborea	Malayina	10,000 00
	Pinus species	Payini	10,000 00

3. POLES

Species	*Butt diameter Bark (in centimetres)*	*Per pole*
Eucalyptus and other exotic species not specified elsewhere in this Schedule		K t
	less than 6	80 00
	6 but less than 8	100 00
	8 but less than 10	160 00
	10 but less than 12	200 00
	12 but less than 14	240 00
	14 but less than 16	300 00
	16 but less than 18	320 00
	18 but less than 20	340 00
	20 and over	by volume

Indigenous species	less than 6	100 00
	6 but less than 8	160 00
	8 but less than 10	200 00
	10 but less than 12	240 00
	12 but less than 14	320 00
	14 but less than 16	340 00
	16 but less than 18	360 00
	18 but less than 20	380 00
	20 and over	by volume

4. FUEL WOOD

Type	*Proposed Rate (domestic use)* K t	*Proposed Rate (industrial use)* K t
Exotic fuelwood, cut and stacked by purchaser, per cubic metre (m^3)	700 00	1,000 00
Indigenous fuelwood, cut and stacked by purchaser per cubic metre (m^3)	700 00	2,500 00
Exotic fuelwood, per headload	20 00	N.A.
Indigenous fuelwood, per headload	150 00	N.A.
Exotic fuelwood, per bicycle load	200 00	N.A.

5. BAMBOO

Butt diameter (in centimetres)	*Per Pole* K t
Less than 5	10 00
5 but less than 10	30 00
10 and above	50 00

6. PALMS

Botanical Name	*Vernacular Name*	*Price Per tree* K t
Phoenix reclinata	Kanjedza, Kanchinda, Kanjesa	3,000 00
Hyphanena Crinita	Mgwalangwa, Makoma	3,000 00
Borassus aethiopium	Mvumo, Makoma	3,000 00

7. PLANTS

	Price per plant K t
Wild Cycads and Succulents	5,000 00

8. NON-WOOD FOREST PRODUCTS (NWFP)

Type	*Use/Purpose*	
Fruits, Vegetables, Mushrooms, Caterpillars, Insects, Tubes, Tubers, Thatch grass		
	(*a*) domestic	Free
	(*b*) Commercial	By agreement

9. OTHER FOREST PRODUCE

Royalties in respect of other forest produce may be determined by agreement between the Director of Forestry and the buyer.

10. DISCRETION

The Director of Forestry may sell produce in this Schedule by Competitive Bidding.

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THIRD SCHEDULE r. 13 (2)

FEES

1. CAMPING

	Per person per night K t
Camping Site/Area	
Camping on rest-house ground with access to refrigeration	1,000 00
Camping on rest-house grounds without access to refrigeration . .	500 00
Camping at any other place in a forest reserve	400 00
Hut occupation, other than a permanent Campsite	1,000 00

2. REST-HOUSE OCCUPATION

Guest Houses Lodges	*Facilities*	*Per person per night* K	t
Kazela Guest House	(a) executive room, self-contained	3,500	00
	(b) executive room, self-contained, double . .	4,500	00
	(c) ordinary room, sharing toilet and shower room—		
	(i) single	1,500	00
	(ii) double	2,000	00
Kasito Lodge I	(a) per bed	2,500	00
	(b) exclusive use of room.	10,000	00
Kasito Lodge II	(a) per bed	2,500	00
	(b) exclusive use of room.	5,000	00
Mangochi Forestry Guest House	per bed	2,500	00
Chintheche Forestry Guest House	per room	2,500	00
	Children under 5 years of age	No fee	
	Children 5 to 12 years	50% of the adult rate	

3. BUSINESS OPERATIONS

Business Activities	*Per annum* K	t
(*a*) *Moble Sawmill*		
(i) application fee	2,000	00
(ii) operational fee, per sawmill, per sawing season	20,000	00
(iii) yard/site fee	5,000	00
(iv) residential fee, as per 6 m^2, per hut	1,500	00
(*b*) *Permanent sawmill*		
(i) application fee, per sawmill	2,000	00
(ii) per annum	50,000	00
(iii) residential fee, per m^2, per annum	100	00

		K	t
(*c*)	*Logging*		
	(i) application fee	2,000	00
	(ii) logging fee	50,000	00
(*d*)	*Construction of Lodges, Camps, Rest-Houses or Huts*		
	(i) application fee	2,000	00
	(ii) operational fee, per annum	10,000	00
	(iii) residential fee, per m^3, per annum	100	00
(*e*)	*Beekeeping*	200	00
	(i) application fee	2,000	00
	(ii) operational fee, per hive per year	200	00
(*f*)	*Abstraction of water from a forest reserve*		
	(i) application fee	2,000	00
	(ii) forest management fee	To be negotiated	
	(iii) permanent structure fee, per m^2 per annum	100	00
(*g*)	*Abstraction of water from a forest reserve for generating hydro electric power*		
	(i) application fee	2,000	00
	(ii) environmental levy, per annum	To be negotiated	
	(iii) permanent structure fee, per m^2	100	00
(*h*)	*Water tank construction in a reserve*		
	(i) application fee	2,000	00
	(ii) operational fee per tank per annum	50,000	00
	(iii) residential fee	100	00
(*i*)	*Dam construction for commercial purposes*		
	(i) application fee	2,000	00
	(ii) operational fee, per annum	20,000	00
	(iii) residential fee, per m^2, per annum	100	00
(*j*)	*Dam construction, local communities*		
	(i) application fee	Free	
	(ii) operational fee, per annum	Free	
(*k*)	*Grocery*		
	(i) application fee, per building	2,000	00
	(ii) operational fee, per building per annum	7,500	00
	(iii) residential fee per m^2, per annum	100	00

		K	t
(*l*)	*Maize mill*		
	(i) application fee	2,000	00
	(ii) operational fee, per annum	5,000	00
	(iii) residential fee, per m^2	100	00
(*m*)	*Private school*		
	(i) application fee	2,000	00
	(ii) operational fee, per annum	10,000	00
	(iii) residential fee	100	00
(*n*)	*Church or mosque building*		
	(i) application fee	2,000	00
	(ii) residential fee, per annum per m^2	100	00
(*o*)	*Regular religious ceremonies in a forest reserve*		
	(i) application fee	2,000	00
	(ii) residential fee, per m^2 per annum	100	00
(*p*)	*Installation of telecommunication equipment*		
	(i) application fee	2,000	00
	(ii) operational fee, per annum	50,000	00
	(iii) residential fee, per m^2 per annum	100	00
(*q*)	*Installation of electricity grid*		
	(i) application fee	2,000	00
	(ii) operational fee per km, per annum	1,000	00
(*r*)	*Installation of telephone lines*		
	(i) application fee	2,000	00
	(ii) operational fee, per km, per annum	1,000	00
	(iii) residential fee, per m^2 per annum	1,000	00
(*s*)	*Tour operations in a forest reserve*		
	(i) application fee	2,000	00
	(ii) operational fee, per annum	7,000	00
	(iii) temporary structure fee, per m^2 of the structure	500	00
(*t*)	*Picnic, sight seeing or trekking*		
	(i) students and pupils of Malaŵian origin	Free	
	(ii) others, entry fee, per head	200	00
	(iii) vehicle entry fee	100	00
(*u*)	*Hunting* (*Sports*)		
	(i) application fee	2,000	00
	(ii) operational fee, per day	10,000	00

		K	t
(*v*)	*Ranching*		
	(i) application fee	2,000	00
	(ii) operational fee, per animal, per annum	1,000	00
	(iii) residential or structure fee, per m^2, per annum	100	00
(*w*)	*Grazing, adjacent communities*		
	Fee per head	Free	
(x)	*Road construction in a forest reserve*		
	(i) application fee	2,000	00
	(ii) environmental rehabilitation fee	Based on number of trees felled or damaged	
(*y*)	*Collection of forest biodiversity resources for scientific purposes—*		
	(i) application fee	2,000	00
	(ii) operational fee, per collection	5,000	00
(*z*)	*Ornamental tree collection—*		
	(i) application fee, per collection	2,000	00
	(ii) operational fee, per annum	10,000	00
(*aa*)	*Gemstone, mining or quarry operation—*		
	(i) application fee	2,000	00
	(ii) operational fee, per annum	10,000	00
	(iii) residential fee, per 6 m^2 hut	1,500	00
(*bb*)	*Arts and craft in forest reserve or Curio making*		
	(i) application fee	2,000	00
	(ii) operational fee, per annum	10,000	00
	(iii) residential or structure per 6 m^2 huts	1,500	00
(*cc*)	*Fishing (sport)*		
	Entry fee	2,000	00
(*dd*)	*Aquaculture fish farming*		
	(i) application fee	2,000	00
	(ii) operational fee, per hectare, per annum	20,000	00
	(iii) residential or structure fee, per m^2 per annum	100	00

Export of Forest Produce

	Price K	t
Export License Application fees	2,000	00
License fees	10,000	00
Export fee	5,000	00
Transfer certificate per consignment fee	2,000	00

FORESTRY (COMMUNITY PARTICIPATION) RULES

G.N. 29/2001

under s. 32

PART I
Preliminary

1. These Rules may be cited as the Forestry (Community Participation) Rules. Short title

2. In these Rules, unless the context otherwise requires— Interpretation

"community" includes village natural resources management committees, local authorities, by whatever name called, non-governmental organizations and the private sector.

PART II
Community Participation

3. The objectives of community participation shall be— Objectives of community participation

(*a*) to promote co-management of forest resources;

(*b*) to sustainably manage forests on customary land;

(*c*) to empower the community in the management of forest resources in forest reserves and forests on customary land;

(*d*) to promote community tree-planting and management;

(*e*) to promote the role of men, women and the youth in the management of forest resources;

(*f*) to enhance sustainable management, conservation and utilization of forest resources; and

(*g*) to share costs and benefits between the Department of Forestry and the community in regard to forest produce from customary land forests and forest reserves.

4.—(1) A community shall have the responsibility of conserving and managing the forest resources within its area of jurisdiction in collaboration with the Director of Forestry. Duties of community

(2) Without derogating from the generality of the provisions of sub-rule (1), a community shall have power to—

(*a*) develop a reciting system in collaboration with the Director of Forestry;

(*b*) enforce any forestry regulations as mandated by the Director of Forestry;

(*c*) seize any forest produce reasonably believed to have been obtained in contravention of the Act; and

(*d*) to convey to the Board and the Director its recommendations on the conservation and management of forest resources.

Committees of a community

5. A community may, for the proper management of its affairs, under these Rules, form such committees as the community may deem appropriate.

Constitution of a community

6. A community shall adopt a constitution by which the operations of that community shall be governed.

Management plan

7. A community shall, with the assistance of the Director of Forestry, prepare a management plan for purposes of ensuring sustainable forest management, conservation and utilization.

Access to records

8. The Director of Forestry shall have access to all records kept by a community pursuant to these Rules.

Consultations on Forestry plans, regulations, etc.

9. Except where it is unnecessary or impracticable to do so, regulations and any other subsidiary legislation related to the sustainable conservation, management and utilization of forestry resources shall not be made or amended unless the Director of Forestry has carried out consultations with the community.

Meetings with the Director

10. A community may request meetings with the Director of Forestry to discuss management plans, regulations or any other subsidiary legislation or amendment thereto.

G.N. 25/2001

FORESTRY (MULANJE CEDAR) (LICENSING) RULES

under s. 26

Citation

1. These Rules may be cited as the Forestry (Mulanje Cedar) (Licensing) Rules.

Application and interpretation

2. These Rules apply with respect to every licence issued under the Forest Rules for the cutting and taking of the wood of the tree known as Mulanje Cedar (*Widdringtonia cuppresoides*) in and from Mulanje Mountain Forest Reserve.

Issue of licences

3. Licences shall be issued by the Director of Forestry only.

Validity of licences

4. Licences shall be valid for the period from 1st April to 31st October in the same year, both dates inclusive.

Conditions to be included in licences

5. All licences shall be subject to conditions specified in the Schedule to these Rules.

Restrictions on licences removal

6. Licences shall not authorize—

(*a*) the felling of any other tree species;

(*b*) the cutting or taking of healthy Mulanje Cedar trees;

(*c*) the cutting or taking of any timber outside the area specified in the licence; and

(*d*) the cutting or taking of any quantity of timber greater than the volume determined in accordance with rule 7 and in respect of which the licensee shall have paid the appropriate fee.

Determination of volume

7.—(1) After felling, the volume of every tree to be included in a licence shall be determined by a forestry officer who shall compute the volume of saw logs realized from the trees felled as selected by the licensee using the Mulanje Cedar tables.

(2) From the volume of a tree as determined in accordance with sub-rule (1), the forestry officer shall deduct such amount as he estimates to be the volume of any decayed wood and wood which cannot be sawn into planks.

Timber to be marked before removal

8. No timber shall be removed from the area specified in the licence until after such timber has been marked with the official stamp of the Department of Forestry.

SCHEDULE reg. 5

1. No more than two pitsaws nor more than four persons working in pairs may at any time be employed in cutting in the licensed area.

2. The licensee shall permit a forestry officer to mark all timber to which the licence relates before removal of such timber from the licensed area.

3. The licensee shall remove or cause to be removed from the Reserve, on or before 31st October in the year in which the licence is issued, all timber to which the licence relates and any timber not so removed shall become the property of the Government.

4. The licensee shall be required to adequately fill in or cause to be filled in all pits dug by him or on his behalf and remove all benches in the licensed area.

5. The licensee undertakes that neither he nor his employees shall reside in the Reserve except at such place within the licensed area as shall have been approved for the purpose by a forestry officer.

6. The licensee undertakes that neither her nor his employees shall light any fire in the Reserve except one fire to be attended to all times and to be used exclusively for domestic purposes at the place approved under condition 5.

7. The licensee accepts liability to compensate the Government for any damage, whether caused by fire or otherwise, occasioned by any negligent or unlawful act or omission on his part or on the part of any of his employees.

8. The licensee undertakes that he and his employees shall take all reasonable steps to avert and, if possible, extinguish any unattended fire, howsoever caused within, or in the proximity of, the licensed area, even if not called upon to assist for the purpose by a forestry officer under rule 7 of the Forest Rules.

9. The licensee shall provide such further information as the forestry officer may require.

G.N. 15/2001

FORESTRY (PROHIBITED FOREST AREAS) ORDER

under s. 26

Citation

1. This Order may be cited as the Forestry (Protected Forest Areas) Order.

Declaration of Protected Forest

2. The areas listed in the Schedule are declared to be protected forest areas.

SCHEDULE

PROTECTED FOREST AREAS

1. Kongwe Hills (Mangochi)
2. Michiru Hills (Blantyre — along Blantyre–Zalewa road)

FORESTRY (FOREST DEVELOPMENT AND MANAGEMENT FUND) REGULATIONS

G.N. 8/2013

under s. 86

ARRANGEMENT OF REGULATIONS

REGULATION

1. Citation
2. Interpretation
3. Disbursements from the Fund
4. Responsibility for the Fund
5. Use of an overdraft facility
6. Annual estimates
7. Surpluses and deficiencies
8. Remittances to the Consolidated Fund

[1st July, 2013]

Citation

1. These Regulations may be cited as the Forestry (Forest Development and Management Fund) Regulations.

Interpretation

2. In these Regulations, unless the context otherwise requires—

"Fund" means the Forest Development and Management Fund established under section 55 of the Act.

Disbursements from the Fund

3. Any payment from the Fund of an amount exceeding K30,000,000 shall only be made upon approval of the Secretary to the Treasury.

Responsibility for the Fund

4. The Director responsible for forestry shall be responsible for administering the Fund, and shall, subject to the supervision and direction of the Secretary to the Treasury, maintain all necessary books and accounts to enable him produce annually, or at such other period as the Secretary to the Treasury may direct, an Income and Expenditure Account and such other accounts as may be required.

Use of an overdraft facility

5. No money shall be raised for the purposes of the Fund by means of an overdraft at any bank unless the permission of the Secretary to the Treasury has first been obtained.

Annual estimates

6. Annual Estimates of Income and Expenditure of the Fund shall be submitted, in quadruplicate, by the Secretary responsible for forestry for the approval of the Secretary to the Treasury.

Surpluses and deficiencies

7. When submitting the Annual Estimates in accordance with paragraph 6, the Secretary responsible for forestry shall submit proposals for dealing with any actual or expected surplus or deficiency of the Fund and shall conform to such directions as the Secretary to the Treasury may think fit to give in relation thereto.

Remittances to the Consolidated Fund

8.—(1) Subject to subparagraph (2), the Fund shall remit 20% of its revenues to the Consolidated Fund, and the remaining 80% shall be retained by the Fund for its operational costs.

(2) Donations made to the Department of Forestry and levies collected by or on behalf of the Department of Forestry shall not be part of the revenues to be remitted to the Consolidated Fund.

PLANT PROTECTION

CHAPTER 64:01

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CHAPTER 64:01

PLANT PROTECTION

ARRANGEMENT OF SECTIONS

SECTION
1. Short title
2. Interpretation
3. Inspectors
4. Duties of owners of land
5. Powers of inspectors
6. Owners to provide access and facilities to inspectors
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CHAPTER 64:01

PLANT PROTECTION

An Act to provide for the eradication of pests and diseases destructive to plants to prevent the introduction and spread of pests and diseases destructive to plants, and for matters connected therewith and incidental thereto 11 of 1969

1. This Act may be cited as the Plant Protection Act. Short title

2.—(1) In this Act, unless the context otherwise requires— Interpretation

"board of inquiry" means a board of inquiry appointed under section 7;

"container" means any case, package, pot, sack or other thing used as a container and includes any covering, wrapping or packing material;

"disease" means any abnormal condition of a plant, communicable or believed to be communicable by the transfer of a causative agent or by the propagation of an affected plant;

"growing medium" means a medium, including soil, capable of being used for the propagation or culture of plants;

"host plant" means a plant capable of being the host of a pest;

"infested area" means any area or place in which a pest exists;

"injurious organism" means any organism or like agent including a virus which is—

(*a*) inimical to the growth or existence of living plants;

(*b*) injurious to plants or plant products; or

(*c*) capable of producing a disease;

"inspector" means a person authorized in writing by the Minister to exercise the powers or perform the duties of an inspector under this Act;

"invertebrate" means a living invertebrate animal organism in whatever stage of development it may be;

"nursery" means land or premises where nursery stock is grown or cultivated;

"nurseryman" means the owner or other person responsible for the management of a nursery;

"nursery stock" means woody perennial plants grown or cultivated for the purposes of trade;

"owner" in relation to land or premises includes a joint owner, part owner, lessee or occupier, or the agent of such owner, joint owner, part owner, lessee or occupier;

"pest" means an injurious organism which has been declared to be a pest under subsection (2);

"phytosanitary certificate" means a certificate issued by an officer of the plant protection service of Malaŵi, or of any other country concerned, as to the health of a plant or a growing medium;

"plant" means any member of the vegetable kingdom, whether living or dead, and includes any part of a plant, or the fruit or flowers thereof, whether severed therefrom or not, and any unmanufactured plant product;

"quarantine area" means an area declared to be a quarantine area under this Act;

"vehicle" includes an aircraft or a railway train.

(2) For the purposes of this Act, the Minister may, by notice, declare any injurious organism to be a pest either generally or in respect of a particular type of plant and either with a view to its control or the prevention of its introduction or spread, or for some other purpose.

Inspectors

3.—(1) The Minister may, in writing, authorize any person to exercise the powers or perform the duties of an inspector under this Act, or such of them as shall be specified in such written authorization.

(2) Every inspector shall, in the exercise of his powers or the performance of his duties under this Act, comply with any directions or instructions which the Minister may from time to time issue for the purposes of this Act.

Duties of owners of land

4.—(1) An owner of land or premises shall take all measures prescribed or required by or under this Act, and such additional or alternative measures as are reasonably necessary for the eradication, reduction or prevention of the spread of a pest or disease which an inspector may, in accordance with the provisions of this Act, in writing order him to take.

(2) If an owner of land or premises fails or neglects to take all or any of the measures which he is required to take in accordance with this section, an inspector may—

(*a*) on giving the owner not less than seven days' notice in writing of his intention so to do, cause the measures to be taken;

(*b*) if he is satisfied that the measures must be taken without delay, cause the measures to be taken immediately without giving the notice referred to in paragraph (*a*).

(3) An owner of land or premises shall, without prejudice to any other penalty incurred by reason of his failure or neglect to take the measures which he is required to take in accordance with subsection (1), be liable to pay the costs incurred by the inspector in respect of the measures he causes to be taken in accordance with subsection (2), which shall be recoverable as a debt due to the Government.

Powers of inspectors

5.—(1) An inspector may, in the performance of his functions under this Act, and upon production of his written authorization by the Minister, if demanded—

(*a*) at all reasonable times enter upon and inspect any land, premises, buildings, vehicles or vessels on or in which growing media or plants may be found, or on or in which he reasonably suspects that a pest may be found;

(*b*) inspect any growing media, and plants, and for the purpose of detecting pests, expose the roots of any plant, remove bark or cut any plant or open any container which he believes to contain growing media or plants liable to harbour a pest;

(*c*) order the taking of measures which are prescribed or are reasonably necessary for the eradication or prevention of a pest;

(*d*) declare any plants, growing media or containers to be infested with a pest;

(*e*) order the destruction at any time of any host plants or any plants declared by him to be infested with a pest, or any plant which is growing on land or in any growing media contrary to the provisions of this Act or any regulations made thereunder;

(*f*) if he reasonably suspects the presence of a pest on land, premises or in a building, declare the area in which the land, premises or building is situated to be an infested area, and in writing prohibit for a period not exceeding fourteen days, the removal from the land, premises or building of growing media, plants, containers or other things whatsoever capable of spreading a pest;

(*g*) subject to the provisions of subsection (2), order the seizure, detention and destruction without compensation of any imported growing medium or plant or injurious organism or invertebrate, together with the container thereof—

(i) which is imported in contravention of the provisions of this Act or any regulations made thereunder;

(ii) which is imported otherwise than in accordance with the conditions of a permit to import issued under this Act or any regulations made thereunder;

(iii) which is not at the time of importation accompanied by such a certificate of origin, phytosanitary certificate, or other document as may be prescribed or which is accompanied by such a certificate or other document which is incorrect in a material particular.

(2) Where an importer or owner of a growing medium or plant or other thing which has been the subject of an order of destruction under this section, other than a growing medium or plant which has been declared by an inspector to be infested with a pest, gives notice of his intention to appeal in accordance with section 7 the order of destruction shall not take effect unless and until the period specified for lodging notice of appeal is elapsed and no notice of appeal has been lodged, or the appeal is dismissed, withdrawn or abandoned.

Owners to provide access and facilities to inspectors

6. An owner of land, premises, a building, vehicle or vessel, or of a growing medium or plant, and the agent of such owner, shall afford an inspector access thereto and shall give such information and provide such labour and facilities as the inspector may require for the purposes of carrying out an inspection under this Act.

Appeals

7.—(1) Subject to the provisions of subsection (2), the importer or owner of a growing medium or plant or other thing, the destruction of which has been ordered in accordance with the provisions of this Act may, within seven days of the date of the order, lodge with the Minister a notice of appeal against the order:

Provided that there shall be no right of appeal in respect of—

(i) an order for the destruction of a growing medium or plant declared by an inspector to be infested with a pest; or

(ii) an order of destruction made under section 5 (1) (*e*).

(2) A notice of appeal shall be in writing and shall specify the grounds of the appeal.

(3) The Minister may, after such inquiries as he considers necessary thereupon determine the appeal himself or may if he considers it desirable refer the appeal to a board of inquiry appointed by him in accordance with the provisions of this section.

(4) A board of inquiry for the purposes of this section shall consist of three members appointed by the Minister of whom—

(*a*) one member, who shall be the chairman, shall be a legal practitioner; and

(*b*) not less than two members shall be persons who are not public officers.

(5) The powers, rights and privileges of a board of inquiry shall be the same as those conferred upon commissioners by the Commissions of Inquiry Act and the provisions of sections 9 to 13 of that Act shall *mutatis mutandis* apply in relation to the proceedings of a board of inquiry appointed under this section and to a person summoned to give evidence or giving evidence before a board of inquiry. Cap. 18:01

(6) The board of inquiry shall as soon as possible report its findings and make recommendations in writing to the Minister who shall thereupon determine the appeal giving due consideration to the findings and recommendations of the board of inquiry.

(7) If a board of inquiry recommends that an appeal be dismissed it may also recommend that the appellant pay to the Government the costs incurred by the Government in connection with the appeal or may make such other recommendation as it considers appropriate, and the Minister in determining the appeal may give effect to such recommendations.

(8) Any determination by the Minister shall be final and shall not be questioned in any court and any order by the Minister that the appellant shall pay any of the costs of the Government in connection with the appeal shall constitute a debt owing by the appellant to the Government which may be sued for in any court.

(9) Members of a board of inquiry who are not public officers shall be paid, out of moneys appropriated for the purpose by Parliament, such remuneration as the Minister may prescribe.

(10) All members of a board of inquiry shall be paid, out of moneys appropriated for the purpose by Parliament, such allowances to meet the reasonable expenses incurred by them in connection with an appeal as the Minister may prescribe.

Sale by nurserymen of plants infested with an injurious organism

8. If within three days of the delivery to him of plants sold by a nurseryman, the purchaser of the plants finds that they are infested with an injurious organism he may return the plants to and at the expense of the nurseryman and shall thereupon be freed from the liability to pay for them, or if he has paid for them he may recover the purchase price.

Compensation

9.—(1) Subject to the provisions of this Act, the Minister may, out of moneys appropriated for the purpose by Parliament, pay compensation to the owner of a growing medium or plant destroyed under the powers conferred by this Act.

(2) If the owner of the growing medium or plant so requires, the Minister may appoint two assessors, one of whom shall be nominated by the owner, to assist him in assessing the amount of compensation payable.

Limitation of action against Government

10. No claim shall lie against the Government, the Minister, the Permanent Secretary, an inspector or any other servant or agent of the Government for anything done in good faith under the powers conferred by this Act.

Offences

11.—(1) A person who—

(*a*) wilfully resists, obstructs, impedes or hinders an inspector in the exercise of his powers or the performance of his duties under this Act or any regulations made thereunder;

(*b*) contravenes or fails to comply with any of the provisions of this Act or of any regulations made thereunder or of any order or direction made or given under this Act, or of any regulations made thereunder, with which it is his duty to comply; or

(*c*) without reasonable cause contravenes or fails to comply with any of the conditions of a permit or other document issued in accordance with this Act or of any regulations made thereunder; or

(*d*) maliciously introduces a pest on to land or premises in Malaŵi; or

(*e*) on being required to do so fails or refuses to produce to an inspector a permit, certificate or other document which he is required to have in accordance with this Act, or any regulations made thereunder; or

(*f*) fails or refuses without reasonable cause to give information to an inspector when required to do so in accordance with this Act or knowingly gives false or incomplete information; or

(*g*) for the purpose of obtaining, whether for himself or any other person, the issue of a permit, certificate or other document makes a declaration or statement which he knows to be false in any particular or does not know or believe to be true or knowingly makes use of a declaration, statement or document containing the same;

shall be guilty of an offence and liable—

(i) for an offence under paragraph (*d*), to a fine of four hundred pounds and to imprisonment for four years;

(ii) for any other offence, to a fine of one hundred pounds and to imprisonment for six months.

(2) An inspector may seize and detain, and may order the destruction without compensation of, a growing medium, plant or other thing whatsoever which is removed from an infested or quarantine area in contravention of the provisions of this Act or an order made in accordance with the provisions of this Act.

(3) The confiscation or destruction of a growing medium, plant or other thing in accordance with subsection (2) shall not free the person responsible for its illegal removal from liability to prosecution.

Regulations

12.—(1) The Minister may make regulations for the better carrying out of the purposes and provisions of this Act, and without prejudice to the generality of the foregoing such regulations may provide for—

(*a*) the form of and the fees payable in respect of any permits or certificates or other documents required under this Act, and the manner of applications to be made in respect thereof;

(*b*) the issue of, the duration of, the cancellation, surrender or amendment of, and the conditions which may be attached to, any permit, certificate or other document required under this Act;

(*c*) the regulation, prohibition, restriction or control of the import or export of any plant, or class of plant or any growing medium, invertebrate, pest or other injurious organism;

(*d*) the disinfection, treatment, destruction or disposal of pests, or plants infested or appearing to be infested with a pest, or anything whatever, whether similar in nature to a plant or not, which is liable to infest a plant with a pest;

(*e*) the prohibition, restriction and regulation of the removal, transport or export of pests, growing media or plants;

(*f*) the control and destruction of any plant infested with a pest;

(*g*) the prohibition, restriction and regulation of the cultivation and harvesting of plants if a pest cannot otherwise be readily or adequately controlled or eradicated;

(*h*) the control and destruction of host plants not under cultivation for the current season's crop;

(*i*) the reporting of the occurrence of a pest and the collection and transmission of specimens of a pest;

(*j*) the methods of planting, cleaning, cultivating and harvesting to be adopted and the precautions and measures, including the destruction of plants, to be taken by an owner of land for the purpose of eradicating a pest or of preventing or controlling attacks by or the spread of a pest;

(*k*) the destruction after harvest of a particular kind of plant by a specified date;

(*l*) the disinfection, fumigation or other treatment of any land, building, vehicle or vessel used for the storage or conveyance of any plant, agricultural produce or anything else whatever likely to infest a plant with a pest;

(*m*) the declaration of areas infested with a pest as infested areas and of areas around infested areas as quarantine areas;

(*n*) the registration and inspection of nurseries, the regulation of the sale or removal of plants from nurseries and the regulation of the sale of nursery stock;

(*o*) the payment and recovery of fees for any services carried out by an inspector under this Act;

(*p*) the detention and inspection before importation or exportation of growing media and plants and their containers, and the grant of phytosanitary certificates in accordance with such inspection;

(*q*) the disinfection, fumigation or treatment of imported growing media and plants and their containers;

(*r*) the immediate destruction, without compensation, of imported growing media and plants which, on inspection, appear to be infested with a pest or an injurious organism;

(*s*) the immediate destruction, without compensation, of an imported invertebrate if, in the opinion of an inspector, the invertebrate might be a potential danger to agriculture;

(*t*) the prohibition of the importation of growing media, invertebrates and plants except by specified ports or places of entry and routes and by specified methods of transport;

(*u*) the detention of imported growing media, invertebrates and plants for observation and the precautions to be taken during detention;

(*v*) the imposition and recovery of fees for sorting, disinfecting, fumigating or treating growing media and plants on importation;

(*w*) the disposal of imported growing media and plants in respect of which prescribed fees are not paid and of the proceeds, if any, resulting from their disposal;

(*x*) the issue of permits as a pre-requisite to the importation of growing media, injurious organisms, invertebrates and plants;

(*y*) the production of phytosanitary certificates signed by responsible persons or authorities in the country or territory of origin relating generally or specifically to—

(i) the freedom of imported growing media, invertebrates and plants, or the area in which they were produced or grown, from injurious organisms; and

(ii) the treatment of imported growing media and plants before despatch from their place of origion;

(*z*) the production of certificates of origin of imported growing media, injurious organisms, invertebrates and plants and for the furnishing by the importer of particulars relating to imported growing media, injurious organisms, invertebrates and plants.

SUBSIDIARY LEGISLATION

G.N. 106/1969 32/1982

PLANT PROTECTION (EXPORT) REGULATIONS

under s. 12

Citation

1. These Regulations may be cited as the Plant Protection (Export) Regulations.

Interpretation

2. In these Regulations, unless the context otherwise requires—

"phytosanitary certificate" means a statement in the form in the Schedule hereto issued by an inspector certifying that he has, before despatch, thoroughly examined the plants to which the statement relates, or a representative sample thereof, and found the plants or sample to be substantially free from any pest or disease.

Application

3.—(1) These Regulations shall apply to the export of all plants except tung oil, tea, cotton lint, coffee, cut flowers, fresh fruit and vegetables.

(2) These Regulations shall not apply to any consignment of plants imported in any vehicle, aircraft or vessel and then exported in such vehicle, aircraft or vessel without at any time having been unloaded therefrom, or to anything in transit through Malaŵi which is consigned by a method approved by the Permanent Secretary or which has been transhipped for re-export within seven days of their arrival in Malaŵi.

Phytosanitary certificate G.N. 32/1982

4.—(1) Save as is provided in regulation 3 (1) no person shall export or cause to be exported any plants from Malaŵi without having applied for and obtained a phytosanitary certificate relating to such plants.

(2) A fee of K5 shall accompany every application for a certificate.

Powers of inspector

5.—(1) Upon receiving an application for a phytosanitary certificate, an inspector shall order that the plants shall be made available for his inspection at a place specified by him and he shall thereupon examine the plants to which the application relates or a representative sample of such plants and he may give such orders as he considers necessary for the disinfection, fumigation and treatment of the plants and of the vehicle, aircraft or vessel in which the plants are to be exported.

(2) When an inspector is satisfied that the orders, if any, given by him under subregulation (1) have been complied with in relation to the plants or vehicle, aircraft or vessel in which the plants are to be exported, he shall issue a phytosanitary certificate in accordance with the result of his examination.

(3) In giving any order under the provisions of subregulation (1) an inspector may order that only a specific chemical shall be used for fumigation or other treatment, and that such chemical shall be applied at such concentration and by such means as he may direct.

SCHEDULE

MALAŴI GOVERNMENT

Plant Protection Act

(Cap. 64:01)

Phytosanitary Certificate

This is to Certify

that the plants, parts of plants or plant products described below or representative samples of them were thoroughly examined on (date) ..... by (name) ..... an authorized officer of the plant protection service and were found to the best of his knowledge to be substantially free from injurious diseases and pests; and that the consignment is believed to conform with the current phytosanitary regulations of the importing country both as stated in the additional declaration hereon and otherwise.

Fumigation or disinfection treatment (if required by importing country):—

Date	Treatment .....
Duration of exposure	Chemical and concentration .....

Additional Declaration

	....., 19.....
	(Signature) .....
(Stamp)	(Rank) .....

Description of the Consignment

Name and address of exporter .....
Name and address of consignee .....
Number and description of packages .....
Distinguishing marks.....
Origin (if required by importing country) .....
Means of conveyance .....
Point of entry .....
Quantity and name of produce .....
Botanical name (if required by importing country) .....

G.N. 107/1969

PLANT PROTECTION (IMPORT) REGULATIONS

under s. 12

Citation

1. These Regulations may be cited as the Plant Protection (Import) Regulations.

Interpretation

2. In these Regulations unless the context otherwise requires—

"eastern Africa" means Kenya, Uganda and Tanzania;

"forest tree" means any tree which is commonly grown for the production of timber and not solely for ornamental purposes;

"form" means the appropriate form prescribed in the Schedule to these Regulations;

"palm" means any plant belonging to the natural order "palmates";

"permit" means a permit in form No. 2 in the Third Schedule;

"phytosanitary certificate" means a certificate issued by a competent authority in the exporting country which is substantially the same as form No. 3 in the Third Schedule and which certifies that the plants or a representative sample thereof to which the certificate relates have been examined and found to be substantially free from any pest or disease;

"protective treatment" means the sorting, disinfecting, fumigation or other treatment or quarantine of growing media, plants or containers in terms of these Regulations and cognate expressions shall be construed accordingly;

"quarantine" means the detention and culture of plants in isolation under the supervision of the Ministry under such conditions, at such place and for such period as the Permanent Secretary may determine;

"soil" means a growing medium which is neither sterile nor inert;

"southern Africa" means Angola, Botswana, Lesotho, Malaŵi, Moçambique, Rhodesia, South Africa, Swaziland and Zambia;

"submit" in relation to a permit or a phytosanitary or other certificate relating to a consignment of growing media, injurious organisms, invertebrates or plants, means the submission of the permit or certificate to an inspector at the place of inspection or port of entry of the consignment, and cognate expressions shall be construed accordingly;

"vegetable" means a herbaceous plant, grown for human consumption in whole or in part, but does not include cereals, fodder crops, culinary herbs, spices and soft fruits;

"vegetative material" means—

(*a*) any growing plant; or

(*b*) any part of a plant, other than the seed,

which can be used for and is intended to propagate the plant, and includes budwood, cuttings, fruits, grafts, rooted material, suckers, bulbs, bulbils, corms, rhizomes, and tubers.

Goods in transit

3. The provisions of these Regulations shall not apply to anything in transit through Malaŵi which is consigned by a method approved by the Permanent Secretary or which have been transhipped for re-export within seven days of their arrival in Malaŵi.

Permit to import

4.—(1) Save as is otherwise provided, no person shall import vegetative material, mushroom or other fungal spawn, seeds or any unmanufactured plant product, or any rooting compost, soil or other growing media, unless a permit authorizing such importation is submitted.

(2) No person shall import any live insect or other invertebrate, or any plant pathogen unless a permit authorizing such importation is submitted.

Permit subject to conditions

5.—(1) Where a permit in terms of regulation 4 has been issued but stipulates that certain conditions must be fulfilled, an inspector may refuse to allow the import unless he is satisfied that these conditions have been fulfilled or are capable of being fulfilled.

(2) Where a condition of import is that the plants shall be accompanied by a phytosanitary certificate such certificate shall be substantially the same as form No. 3 in the Third Schedule hereto.

Application for permit

6.—(1) Application for a permit to import any item indicated in regulation 4 shall be made to the Permanent Secretary and, if the Permanent Secretary so requires, shall be made in form 1, in the Third Schedule hereto.

(2) The Permanent Secretary may—

(i) issue a permit;

(ii) refuse to issue a permit; or

(iii) cancel, suspend or amend any permit which has been issued.

Exemption from permits

7. Subject to the provisions of these regulations, no permit shall be required for the importation of—

(*a*) cured tobacco of the previous season's crop from Rhodesia or Zambia;

(*b*) cut flowers intended for ornament;

(*c*) fruit, other than citrus fruit and tomatoes, from Moçambique, Rhodesia, South Africa or Zambia;

(*d*) grains and pulses produced in Africa intended for human consumption;

(*e*) plants, or parts of plants, carried by travellers by road or rail and intended for consumption as food on the journey;

(*f*) seeds of ornamental flowering plants, excluding trees and shrubs, other than Althaea, Berberis, Helianthus, Hibiscus, Hollyhock, Malva, Nicotiana and Pyrethrum;

(*g*) seeds of vegetables other than those of aubergine (egg plant, brinjal), beans, Capsicum (green peppers or chillies), lettuce, pea, Physalis (Cape gooseberry) and tomato;

(*h*) vegetables, except potatoes and tomatoes, from Moçambique, Rhodesia, South Africa or Zambia;

(*i*) a plant, other than citrus or grape vines, produced in a nursery approved by the Permanent Secretary.

Powers of inspector

8. Subject to the provisions of these Regulations an inspector may—

(*a*) cause any vehicle known to have brought or suspected of having brought a pest or disease or plant known or suspected of being infested with a pest or disease into Malaŵi, to be protectively treated;

(*b*) detain for inspection any growing medium, plant or container on importation;

(*c*) cause any growing medium, plant or container detained in terms of paragraph (*b*) to be protectively treated whether or not the growing medium, plant or container is diseased or infested with a pest;

(*d*) cause any imported growing medium or plant which appears to be diseased or infested with a pest listed in the Second Schedule hereto, or with any other pest or disease which, in the opinion of the inspector is of a particularly dangerous nature, and any other plant in the same container, to be destroyed immediately.

Treatment

9. Unless the Permanent Secretary otherwise directs, the protective treatment of any imported growing medium, plant or container shall be carried out on Government premises.

Restrictions on imports

10.—(1) No person shall import—

(*a*) any plant packed in soil which is not the product of a nursery approved by the Permanent Secretary and bears a label certifying such origin;

(*b*) fresh fruits from Asia or the Pacific Islands;

(*c*) any plant or part of a plant specified in the First Schedule hereto;

(*d*) any grain, pulse or similar produce unless it is accompanied by a phytosanitary certificate stating that it has been fumigated in an approved manner not more than fourteen days prior to entry into Malaŵi;

(*e*) rooted vegetative material of any plant, unless it is certified as having been rooted in a sterile medium, from any country outside eastern and southern Africa;

(*f*) vegetative material of any plant species or cultivar from any country outside eastern and southern Africa;

without the consent in writing of the Minister.

(2) The Minister shall not give his consent to the importation of any plant or part of a plant mentioned in subregulation (1) (*a*) (*b*) (*c*) (*e*) and (*f*) unless he is satisfied that the importation is made—

(*a*) (i) for scientific purposes; or

(ii) because the plant cannot be grown from seed; and

(*b*) under the direct supervision of the Ministry.

FIRST SCHEDULE

Plants and Parts of Plants the Importation of Which is Prohibited Without the Special Written Authority of the Minister

1. *Acacia* species, vegetative material from countries outside Africa.
2. Banana from countries other than eastern Africa, Moçambique, Rhodesia, South Africa and Zambia.
3. Beans, *Phaseolus* species, vegetative material from all countries and seeds from Australia, eastern Europe, Mexico and the United States of America.
4. *Capsicum* species, all parts except seed.
5. Cereals, small, such as barley, oats, rice, rye, and wheat, all parts except seed.

6. Chestnut, and all other species of *Castanea*, all parts except seed, from countries other than eastern and southern Africa.
7. *Crysanthemum*, all parts except seed.
8. *Citrus*, rooted vegetative material from all countries except Rhodesia and Zambia.
9. Clover (*Trifolium* species), including shamrock, all parts except seed and ornamental foliage.
10. Cocoa (*Theobroma cacao*), all parts.
11. Coconut, all parts except seed.
12. Coffee, all parts except seed.
13. Conifers, all parts except seed.
14. Cotton, all parts except seed, seed-cotton, lint and seed-bran.
15. *Dahlia*, vegetative material from South Africa.
16. Elm, and all other species of *Ulmus* and *Zelkova*, all parts.
17. *Eucalyptus* species, vegetative material, from countries outside Africa.
18. Grape vine, and all other species of *Vitaceae*, all parts, except seed, from countries other than eastern and southern Africa.
19. *Hibiscus*, and all other species of *Malvaceae*, all parts except seed.
20. Lucerne, all parts except seed.
21. Maize, all parts except seed.
22. Oak (*Quercus* species), vegetative material, from countries other than southern Africa.
23. *Opuntia* species, including spineless cactus, all parts.
24. Palms from all American countries.
25. Pea (*Pisum, Dolichos, Lathyrus* and *Vicia* species), all parts except seed.
26. Peach, including nectarine, stones and seed from countries other than Rhodesia and South Africa.
27. Plane (*Platanus* species), all parts except seed.
28. Potato, seed tubers, from all countries except Australia, the United Kingdom and southern Africa.
29. Rice, all parts except grain for food.
30. Rose, and all other species of *Rosaceae*, from Asia or the Pacific Islands.
31. Rubber (*Hevea* species) from South and Central America.
32. Soya bean, all parts except seed; and seeds from Australia, eastern Europe, Mexico and the United States of America.
33. Sunflower (*Helianthus* species) including Jerusalem artichoke, all parts except seed.
34. Sweet potato, all parts, except tubers for consumption from eastern and southern Africa.
35. Tea, all parts, from countries other than eastern Africa and Rhodesia.
36. Tobacco, all parts except trade samples and seed, and cured tobacco from eastern and southern Africa.
37. Tomato, all parts, except fruit from eastern Africa, Moçambique, Rhodesia and Zambia, and seeds.
38. Forest trees, all parts except seed.

SECOND SCHEDULE

Pests and Diseases of a Particularly Dangerous Nature the Presence of Which Renders an Imported Plant Liable to Immediate Destruction

Anthracnose of tobacco	*Colletotrichum tabacum* Boning
Bacterial blight of grapes	*Erwinia vitivora* (*Baccarini*) Du Plessis
Bacterial blight of peas	*Pseudomonas pisi* Sackett
Bacterial canker of tomato	*Corynebacterium michiganense* (E.F.S.) Jensen
Bacterial ring-rot of potato	*Corynebacterium sepedonicum* (Spieck and Kotth.) Skaptason and Burkholder
Bacterial streak of sugar cane	*Xanthomonas albilineans* (Ashby) Dowson
Blister blight of tea	*Exobasidium vexans* Massee
Blue mould of tobacco	*Peronospora tabacina* Adam
Cereal foot rots	*Helminthosporium* species
Chestnut canker	*Endothia parasitica* (Murr.)
Chlorotic streak virus of sugar cane	*Guignardia citricarpa* Kiely
Citrus canker	*Xanthomonas citri* (Hasse) Dowson
Coffee Berry Disease	*Colletotrichum coffeanum* Noack
Crown gall	*Agrobacterium tumefaciens* (Smith & Townsend) Conn.
Crown wart of lucerne	*Urophlyctis alfalfae* (Lagerh.) Magnus
Dodder	*Cuscuta species*
Dutch Elm disease	*Ceratocystis ulmi* (Buism.) C. Moreau
Ergot of rye	*Claviceps purpurea* Fr. (Tul)
Fiji disease virus of sugar cane	*Saccharum* virus 2. Smith
Fireblight	*Erwinia amylovora* (Burrill) Winslow et al.
Internal cork virus disease of sweet potato	*Corynebacterium insidiosum*
Lucerne wilt	(McCulloch) Jensen
Onion smut	*Urocystis cepulae* Frost
Panama disease of banana	*Fusarium oxysporum* f. cubense (E.F.S.) Snyder & Hansen
Pierce's disease of the grape (lucerne dwarf virus)	*Medicago* virus 3. Smith
Rose mosaic virus	*Rosa* virus 1. Smith
Rose streak virus	*Rosa* virus 4. Smith
Rose wilt virus	*Rosa* virus 3. Smith
Stewart's disease of maize	*Xanthomonas stewarti* (E.F.S.) Dowson
Strawberry red core	*Phytophthora fragariae* Hickman
Tomato spotted wilt virus (kromnek)	*Lycopersicum* virus 3. Smith
Wart disease of potato	*Synchytrium endobioticum* (Schilb.) Percival
Potato root eelworm (golden nematode)	*Heterodera rostochiensis* Wollenw
Root knot eelworm	*Meloidogyne* species

Stem and bulb eelworm	*Ditylenchus dipsaci* (Kuhn)
American bollworm	*Haliothis armigera* Hubn.
Apple codling moth	*Cydia pomonella* (L)
Cereal midges	*Contarinia species and Sitodiplosis* species
Cherry fruit-fly	*Rhagoletis cerasi* (L)
Chrysanthemum midge	*Diarthrononmyia chrysanthemi* Ahlb.
Citrus Black Fly	*Aleurocanthus woglumi* Ashby
Coffee berry borer	*Stephanoderes hampei* Ferr.
Colorado beetle	*Leptinotarsa decemlineata* (Say)
Dry wood termite	*Cryptotermes brevis* (Wlk.)
European house-borer	*Hylotrupes bajulus* (L)
Japanese beetle	*Popillia japonica* Newn.
Khapra beetle	*Trogoderma granarium* Ev.
Mediterranean fruit fly	*Ceratitis capitata* Wiedm.
Oriental fruit fly	*Dacus dorsalis* Hend.
Oriental fruit moth	*Cydia molesta* Busck.
Pink bollworm	*Platydra gossypiella* (Saund)
Red scale	*Aonidiella aurantii* Mask
San Jose scale	*Quadraspidiotus perniciosus* (Comst.)
Tobacco moth	*Ephestia elutella* Walk
Woolly aphis (American blight)	*Eriosoma lanigerum* (Ham.)

THIRD SCHEDULE FORM NO. 1

MALAŴI GOVERNMENT

PLANT PROTECTION ACT

(CAP. 64:01)

PLANT PROTECTION (IMPORT) REGULATIONS

APPLICATION FOR A PERMIT FOR THE IMPORTATION OF PLANTS

THE SECRETARY TO THE MINISTRY OF AGRICULTURE
(PLANT IMPORTATION PERMITS),
P.O. Box 748,
LIMBE Date .....

I, ...
(*State full name*)

of .....
.....
(*State postal and residential addresses*)

hereby apply to import by .....
(*State mode of importation i.e. whether by post, rail, road, or air freight*)

from .....
(*State full name of consignor*)

of .....
through .....
(*State port of entry in Malaŵi if mode of importation is not by post*)

the following plants .....
(*State number and kinds of plants*) .....
.....

for the purpose of .....
(*State which one or more of the following applies: sale, private use, manufacture, consumption or propagation for sale*)

I intend to grow these plants at .....
(*State exact locality if plants are to be grown*)
.....
(*Signature of Applicant*)

MALAŴI GOVERNMENT FORM NO. 2

PLANT PROTECTION ACT

(CAP 64:01)

PLANT PROTECTION (IMPORT) REGULATIONS

PERMIT AUTHORIZING THE IMPORTATION OF GROWING MEDIA/INJURIOUS ORGANISMS/INVERTEBRATES/PLANTS

(This permit is to be sent by the importer to the supplier who shall ensure that it accompanies the growing media/injurious organisms/ invertebrates/plants.)

Permission is granted to .....
of .....
to import in one consignment, within six months of the date of this permit by .....
from .....
of .....
through .....
the following .....
.....

subject to the following conditions .....
.....
.....
.....

Date ....
for Secretary for Agriculture

FORM NO. 3

MALAŴI GOVERNMENT

PLANT PROTECTION ACT

(CAP 64:01)

PHYTOSANITARY CERTIFICATE

THIS IS TO CERTIFY

that the plants, parts of plants or plant products described below or representative samples of them were thoroughly examined on (date) ..... by (name) ..... an authorized officer of the ..... plant protection service and were found to the best of his knowledge to be substantially free from injurious diseases and pests; and that the consignment is believed to conform with the current phytosanitary regulations of the importing country both as stated in the additional declaration hereon or otherwise.

Fumigation or disinfection treatment (if required by importing country):

Date ..... Treatment .....

Duration of exposure .... Chemical and concentration .....

ADDITIONAL DECLARATION

.....19.....

(Signature) .....

(Rank) .....

Description of the Consignment

Name and address of exporter .....
Name and address of consignee .....
Number and description of packages .....
Distinguishing marks.....
Origin (if required by importing country) .....
Means of conveyance .....
Point of entry .....
Quantity and name of produce .....
Botanical name (if required by importing country) .....

PLANT PROTECTION (FUMIGATION) REGULATIONS

ARRANGEMENT OF REGULATIONS

REGULATION

1. Citation
2. Interpretation
3. Essential fumigation equipment: First Schedule
4. Fumigators must possess Forms No. 1 and No. 2 of Second Schedule
5. Notice of intention to fumigate where phytosanitary certificate required
6. Inspector may be present at fumigation
7. Procedure to be followed in fumigating
8. Inspection of equipment
9. Competence of fumigators
10. Unsatisfactory fumigation: Re-fumigation
11. Certificate of Competence where fumigation is unsatisfactory
12. Fumigants and application

FIRST SCHEDULE
(Regulation 3)

Essential equipment for fumigation

SECOND SCHEDULE
(Regulations 4 and 9)

Forms

THIRD SCHEDULE
(Regulation 7)

Fumigation Procedure—Directions

FOURTH SCHEDULE
(Regulation 12)

Fumigants

PLANT PROTECTION (FUMIGATION) REGULATIONS G.N. 114/1973

under s. 12

Citation

1. These Regulations may be cited as the Plant Protection (Fumigation) Regulations.

Interpretation

2. In these Regulations, unless the context otherwise requires—

"fumigant" means any gaseous or readily volatilized chemical used as a pesticide or any substance or substances producing such a chemical;

"fumigation" means the application of a fumigant to any growing medium, plant, commodity or building for the purpose of destroying injurious organisms, and cognate words shall be construed accordingly;

"sand-snake" means a cylinder of hessian, at least three inches in diameter, and two feet in length, filled with sand and sealed at each end.

Essential fumigation equipment: *First Schedule*

3. Before commencing any fumigation, the person who intends to fumigate shall have on hand at the site of the proposed fumigation, and available for use in the operation, the equipment listed in the First Schedule, and such equipment shall be in good repair.

Fumigator must possess Forms No. 1 and No. 2 of *Second Schedule*

4. No person shall commence any fumigation, unless he has in his possession a Record of Fumigation Form and a Certificate of Clearance Form, being Form No. 1 and Form No. 2, respectively, of the Second Schedule.

Notice of intention to fumigate when phytosanitary certificate required

5. Where—

(*a*) under the Act, or any other written law, or any instruction of the Minister, a phytosanitary certificate is required to be obtained by the owner in respect of any fumigation; or

(*b*) any owner desires to obtain a phytosanitary certificate in respect of any particular fumigation which he intends to have carried out,

such owner shall, not less than twenty-four hours before the commencement of the fumigation, cause notice in writing of his request for a phytosanitary certificate in respect of such intended fumigation to be served upon an inspector, and such notice shall contain particulars of the date, time and place of the intended fumigation and of the fumigant intended to be used therefor unless the inspector, acting in his discretion, deems the furnishing of all or any of such particulars unnecessary.

Inspector may be present at fumigation

6. An inspector shall be entitled to be present at any fumigation made pursuant to a notice served under regulation 5, and shall be entitled to direct the same.

Procedure to be followed in umigating

7. The procedure to be followed in the fumigation of buildings and commodities shall be as set forth in the Third Schedule.

Inspection of equipment

8. An inspector shall be entitled to inspect, at all reasonable times, all equipment used, or intended to be used, in any process of fumigation, and such equipment shall be kept readily available by the fumigator for any such inspection.

Competence of fumigators

9. The Minister may, at any time and as often as he deems it necessary, require any person who undertakes, or intends to undertake, contracts for fumigation for reward, to show to the satisfaction of any duly authorized inspector, or other public officer, as the case may be, that he, or any employee of his responsible for carrying out any fumigation on his behalf, possesses sufficient knowledge of both the theory and practice of fumigation to engage in such operations. Upon being satisfied that such

person possesses such knowledge, the said duly authorized inspector, or other public officer, as the case may be, shall issue to such person a Certificate of Competence in Fumigation in the form set out in Form 3 of the Second Schedule.

Unsatisfactory fumigation: Re-fumigation

10. Where any inspector has cause to believe that any fumigation has not been carried out in a satisfactory manner, or in accordance with these Regulations, he may order that the building or commodity be refumigated as often as such inspector may deem it necessary until the said building or commodity has been fumigated to the inspector's satisfaction. If the fumigation is one for which a phytosanitary certificate is requested or required, the inspector shall not issue such certificate until such fumigation has been properly and satisfactorily executed.

Certificate of Competence where fumigation is unsatisfactory

11. Where a re-fumigation has been ordered under regulation 10, the inspector may require that the person responsible for the unsatisfactory fumigation which necessitated the re-fumigation procure a Certificate of Competence in Fumigation pursuant to regulation 9 before undertaking any further or other fumigation under these Regulations, and this requirement may be imposed on any such person whether he has undertaken, undertakes or intends to undertake, contracts for fumigation for reward or otherwise. If, however, the person responsible for any such unsatisfactory fumigation is the holder of a Certificate of Competence in Fumigation, the inspector may cancel such Certificate and may require the said person to procure a new such Certificate under regulation 9 before undertaking any further fumigation operations.

Fumigants and application

12. The fumigants to be used in any fumigation under these Regulations shall be those fumigants set forth in the Fourth Schedule and shall be used for the respective specific fumigation purposes, and in the respective specific manner, set forth in the said Schedule in respect of such respective fumigation purposes.

FIRST SCHEDULE Regulation 3

Essential Equipment for Fumigation

(*a*) Fumigation sheets of a size adequate to cover completely any produce to be fumigated allowing an overlap on the ground all round of at least one foot.

(*b*) Sand-snakes or heavy chains sufficient in number completely to seal the fumigation sheet to the ground.

(*c*) Where methyl bromide cylinders are used, dispersal tube systems sufficient to ensure even distribution of gas.

(*d*) Where methyl bromide cans are used, applicators adequate in number to secure even distribution of gas.

(*e*) Respirators with appropriate canisters sufficient in number to supply one to each person engaged in fumigation.

(*f*) Halide detector lamp or gas concentration meter.

(*g*) Sufficient warning notices in English and Chichewa to warn any person of his approach to the fumigation operation.

(*h*) Where fumigation sheets are to be joined, clamps sufficient in number for such purpose.

SECOND SCHEDULE Regulations 4 and 9

FORMS

PLANT PROTECTION ACT FORM NO. 1

(CAP. 64:01)

RECORD OF FUMIGATION

Record of Fumigation No. .....

1. Date and time of application of fumigant .....
2. Name of owner .....
3. Location of premises .....
4. Situation on premises (Diagram if more than one stack)..... .....
5. Commodity .....
6. Distinguishing marks of commodity to be fumigated.....
7. (Tobacco only) Nature of Liners .....
8. Dimensions of stacks or building and cubic capacity .....
9. Nature of infestation if known .....
10. Number and sizes of sheets used .....
11. Dosages required for each stack or room .....
12. (Methyl bromide cylinders only) identification numbers and weights of each cylinder at beginning and end of application to each stack or room (for main and booster doses of tobacco) .....
13. Date and time of commencement of airing .....
14. Date and time of issue of clearance certificate .....
15. Person to whom clearance certificate given .....
16. Air temperature at time of application of fumigant .....
17. Evidence, if any, of efficacy of treatment (e.g. presence of dead insects) ....
18. Name of person responsible for fumigation .....

Signed .....

Rank : .....

Date : .....

PLANT PROTECTION ACT FORM NO. 2

(CAP. 64:01)

CERTIFICATE OF CLEARANCE

Certificate of Clearance No. .....

This is to certify that I have carried out fumigation on the premises of ..... in accordance with Record of Fumigation number..... and now declare the premises free of gas and ready for reoccupation.

Signed .....

Rank .....

Date and time .....

PLANT PROTECTION ACT FORM NO. 3

(CAP. 64:01)

CERTIFICATE OF COMPETENCE IN FUMIGATION

This is to certify that I have today examined ..... as to both his theoretical and practical competence in fumigation with ..... and found that he has the knowledge adequate to enable him to carry out such fumigation satisfactorily.

Signed .....

for Permanent Secretary for Agriculture and Natural Resources

Date .....

THIRD SCHEDULE Regulations 7

FUMIGATION PROCEDURE

DIRECTIONS

Building:

Where an entire building is to be fumigated the walls and roof must be rendered impervious to gas, and all doors and ventilators, as well as all cracks or joints, shall be sealed while the fumigation is in progress, and a warning notice shall be placed outside each entrance to the building.

Commodities:

(*a*) Where any commodity is to be fumigated it shall be placed in a stack or stacks in such a manner as to allow full penetration of the fumigant throughout such stack or stacks.

(*b*) Before commencing fumigation—

(i) indoors, the floor of the building in which the operation is to be carried out shall be of concrete or firm dry earth and shall be examined thoroughly to ensure that it is impervious to gas. If the floor is not of concrete or of firm dry earth, or if it is found not to be impervious to gas, the commodity to be fumigated shall be stacked on a fumigation sheet in accordance with these directions;

(ii) out of doors, the commodity to be fumigated shall be stacked on a concrete slab, or on a fumigation sheet in accordance with these directions.

(*c*) For fumigation by—

(i) Methyl bromide, the distribution piping shall be placed in position on top of the stack;

(ii) Aluminium phosphide, the tablets shall be distributed evenly around the stack, preferably in papier mache egg-trays, ensuring that adjacent tablets do not touch each other, and such fumigant shall be applied in the manner and at the dosage appropriate thereto, as set out in the Fourth Schedule.

(*d*) A fumigation sheet shall be fitted over each stack, completely covering the same so that a one-foot wide margin of the sheet shall be extending on to the floor all round the stack.

(*e*) The sand-snakes, or chains, shall be placed in position on the floor on top of the extended margin of the sheet all round the stack, ensuring that each sand-snake, or chain, touches those on each side of it.

(*f*) The warning notices shall be placed in position; at least one warning notice at each accessible corner of each stack. If the stacks are inside a building a warning notice shall also be placed outside each entrance to the building.

(*g*) Where methyl bromide is to be used as the fumigant each person present shall put on a respirator and see that it is properly fitted. Respirators shall continue to be worn by all present throughout the operation until after compliance with direction (*h*); and at least two persons shall be present at all times until the fumigation is concluded.

(*h*) A check for leaks shall be made. Wherever possible, a halide lamp or gas concentration meter shall be used for this purpose.

If any leaks are found, they shall be sealed off immediately, by adjusting the position of the sand-snakes, chains or clamps.

When the stack or stacks are found free of leaks, respirators may be removed.

(*i*) Record of Fumigation (Form No. 1, Second Schedule) shall be completed as far as item 12 and delivered to the owner, and the owner shall be instructed that unauthorized persons must not be permitted access to the fumigation area.

(*j*) If the stack or stacks are indoors and the relevant period of fumigation has elapsed, all doors, windows and ventilators to the building, in which the stack or stacks are located, shall be opened. The fumigation sheets covering the stack or stacks shall be removed, and the building vacated quickly. Respirators shall be worn by all persons before entering the building during this operation, and shall be worn throughout the operation. The warning notices shall be put back in position. When the building is declared free of gas by the fumigator, the respirators may be taken off, the warning notices removed, and general access to the building permitted.

(*k*) If the stack or stacks are outdoors and the relevant period of fumigation has elapsed, the fumigation sheet covering each stack

may be removed and the warning notices put back in position. Respirators shall be worn by all persons present during this operation.

When the fumigator declares the area free of gas, the respirators may be taken off, the warning notices removed, and general access to the area permitted.

(*l*) A building, or an area, shall not be declared free of gas by the fumigator until the halide lamp, or gas concentration meter, shows that the building, or area, is safe, or all smell of phosphine gas has dissipated.

(*m*) The fumigator shall complete items 13 to 18 of the Record of Fumigation and a Certificate of Clearance (Form No. 2, Second Schedule) and deliver them to the owner.

(*n*) Where a phytosanitary certificate is required, a copy of the Record of Fumigation (Form No. 1, Second Schedule) and of the Certificate of Clearance (Form No. 2, Second Schedule) shall be delivered to the inspector who was notified pursuant to regulation 5.

FOURTH SCHEDULE Regulation 12

Fumigants

DOSAGE RATES (per 1,000 cu. ft. or 30 cu. m)

[Exposure time given is the minimum. It is always advantageous to lengthen it. If the commodity temperature is below 20°C the times should be increased by 50 per cent.]

	Fumigant	*Commodity*	*Quantity*	*Minimum Exposure Time*
1.	Methyl bromide	Grain, rice, cassava, flour, etc.	2 lb.	24 hours
		Beans, groundnuts, cotton	3 lb.	24 hours
		Tobacco (with polythene liners)	4 lb. followed by additional 2 lb. after 24 hours	72 hours (total)
		Tobacco (with paper liners)	4 lb.	72 hours
		Tobacco (no lining)	3 lb.	72 hours
		Empty buildings	2 lb.	24 hours
		Tobacco seedbeds	1 lb. per 100 square feet	48 hours
2.	Aluminium phosphide	Grain, rice, cassava, flour, etc.	45 tablets	3 days
		Tobacco	20 tablets	5 days
		Beans, groundnuts	30 tablets	3 days
		Empty buildings	20 tablets	3 days
		If *Trogoderma granarium* is present (not at present known in Malaŵi) 45 tablets for at least 5 days exposure time must be used.		

3.	DDVP—Dichlorvos	Empty buildings	2 gms a.i.	weekly application
4.	Ethylene dibromide (EDB)	Tobacco seedbeds	By injector gun using 5 ml. (ccs) per injection point. Spacing 38 cm. × 38 cm. (15 in. × 15 in.) to depth of 25-30 cm. (10-12 in.).	
5.	Dichloro-propanedi-chloropropane (DD)	As EDB but 8 ml. per injection point.		

NOXIOUS WEEDS

CHAPTER 64:02

Containing Pages 1–5

CHAPTER 64:02

NOXIOUS WEEDS

ARRANGEMENT OF SECTIONS

SECTION

1. Short title
2. Interpretation
3. Duty of persons responsible to clear
4. Power to enter upon land
5. Notice to be served on persons responsible for infected land
6. Manner in which notices may be served
7. Penalty for failure to comply with notice
8. Inspector may clear at expense of person responsible
9. Penalty for obstruction of weed inspector in exercise of his duty
10. Noxious weed not to be disposed of in certain ways
11. Power to take samples of seed and treatment of plant, seed or grain offered for sale
12. Penalty for offering for sale infected seed, etc.
13. Local Authorities authorized to make By-laws *ad hoc*
14. Responsible person in any district may petition Government to have plant declared noxious weed
15. Minister may declare plant to be noxious weed or remove any plant from list of noxious weeds
16. Regulations

An Act to make Provision for the Eradication of Noxious Weeds

[31st October, 1936]

17 of 1936
8 of 1951
1 of 1963
G.N. 22/1963
50/1963
1/1965
137/1966

Short title

1. This Act may be cited as the Noxious Weeds Act.

Interpretation

2. In this Act, except where the context otherwise requires—

"clear" means to dig up or pull up and burn noxious weeds, or to employ other means of destruction authorized by the Minister;

"noxious weed" means any plant which the Minister may by notice published in the *Gazette* declare to be a noxious weed, either throughout the whole of Malaŵi or in one or more Districts or portions of Districts thereof;

"owner", in relation to unoccupied land, includes—

(*a*) in the case of a company or an association, the manager or, if his name be not known, any director of the company or association;

(*b*) in the case of a partnership, the manager or, if his name be not known, any member of the partnership;

"person responsible", in relation to land, means—

(*a*) the occupier of land, or in the case of unoccupied land the registered owner thereof;

(*b*) in the case of a mining location, the holder of such location;

(*c*) in the case of public land or customary land over which grazing or other rights have been granted, the holder of such rights;

(*d*) in the case of land in customary land, the occupier or person who has the use of such land, or the Chief who has jurisdiction thereover, or all or any of the inhabitants of the nearest village;

(*e*) in the case of commonage or town lands or roads or other areas, the Municipal Council or Town Council under whose control or within whose jurisdiction such land, road or other area is situate;

"weed inspector" means any person authorized by the Minister to perform the duties of an inspector under this Act. Magistrates, District Commissioners, Assistant District Commissioners, and all members of the police force shall be *ex officio* weed inspectors for the purposes of this Act.

Duty of persons responsible to clear

3. It shall be the duty of every person responsible under this Act to clear or cause to be cleared any noxious weeds growing or occurring on the land in respect of which he is responsible. It shall further be the duty of any person to report forthwith to the nearest known weed inspector the occurrences of any noxious weeds on any land in respect of which such person is responsible.

Any person contravening this section shall be liable to a fine of £10 or in default of payment to imprisonment for one month.

Power to enter upon land

4. A weed inspector may at all reasonable times enter upon any land, whether enclosed or not, for the purpose of ascertaining if any noxious weeds are growing thereon.

Notice to be served on persons responsible for infected land

5. If a weed inspector finds any noxious weed growing or occurring upon land, he may by notice in writing to the person responsible require him to clear such land within a reasonable time to be specified in the notice, and it shall thereupon be the duty of the person responsible to do so. Such notice shall indicate the particular noxious weed occurring upon the land and as nearly as practicable the portion or portions of the land on which the said noxious weed occurs.

6. Any notice under this Act shall be in writing, signed by the person giving such notice. Such notice shall be deemed to be duly served— Manner in which notices may be served

(*a*) if served personally upon the person responsible; or

(*b*) if left addressed to the person responsible at his usual or last known place of abode; or

(*c*) if posted in a prepaid registered letter addressed to the person responsible at his last known place of abode or business.

7. Any person responsible who fails to comply with any such notice shall be liable to a fine of £25, or in default of payment to imprisonment for three months. Penalty for failure to comply with notice

8. If the person responsible fails to clear the land as aforesaid, or if such notice cannot be served in the manner prescribed by section 6, a weed inspector may, upon receiving written authority from the Permanent Secretary, enter upon the land with or without assistance and eradicate any noxious weed found thereon; but nothing herein contained shall relieve the person responsible from any penalty he may have incurred under this Act, and the Permanent Secretary may recover the cost, charges and expenses of clearing the land aforesaid by action in any competent court. Inspector may clear at expense of person responsible

9. Any person who obstructs or hinders a weed inspector in the exercise of his duty under this Act shall be guilty of an offence and shall be liable to the penalty prescribed in section 7. Penalty for obstruction of weed inspector in exercise of his duty

10. No person shall throw any noxious weed or the seed of such noxious weed into any river or stream, or on to any road or land. Noxious weed not to be disposed of in certain ways

Any person disobeying this section shall be liable to the penalty prescribed in section 7.

11. Any weed inspector may at all reasonable times enter any premises where any plant, seed or grain is offered for sale and may take samples thereof, and should such weed inspector find any plant, seed or grain which is likely to propagate or spread the growth of noxious weeds, such plant, seed or grain shall, when deemed necessary by the inspector, be treated by or at the expense of the consignee or vendor, or in the manner prescribed by or to the satisfaction of the inspector, and if not so treated, or if such treatment be deemed ineffectual, the Permanent Secretary may cause such plant, seed or grain to be destroyed. Power to take samples of seed and treatment of plant, seed or grain offered for sale

12. Any person who knowingly sells or offers or exposes for sale any plant, seed or grain which is likely to propagate or spread the growth of noxious weeds shall be liable to the penalty prescribed in section 7. Penalty for offering for sale infected seed, etc.

Local Authorities authorized to make By-laws *ad hoc*

13. Every Municipal Council and Town Council shall have power to make By-laws or Regulations compelling occupiers of land within the Municipality or Township to keep their land free from noxious weeds.

Contravention of such By-laws or Regulations shall be punishable in the same way as in the case of Municipality or Township By-laws or Regulations.

Responsible person in any district may petition Government to have plant declared noxious weed

14. Any responsible person or persons in any District or portion of a District of Malaŵi may petition the Minister to declare any plant to be a noxious weed for the purpose of this Act in such District or portion of a District. On receipt of such petition the Minister shall cause notice to be given in the *Gazette* setting forth the nature of the petition and calling upon any responsible persons in the said District or portion of a District to lodge, in writing, within a reasonable time to be fixed by such notice, objections (if any) to the said petition being acceded to. Thereupon, on the expiration of the period fixed for receiving objections, the Minister shall take the same into consideration and may grant or refuse the petition.

Minister may declare plant to be noxious weed or remove any plant from list of noxious weeds

15. Notwithstanding the last preceding section, the Minister may at any time, by notice published in the *Gazette*, declare any plant to be a noxious weed, either throughout the whole of Malaŵi or in one or more Districts or portions of Districts thereof, and may by like notice remove any plant from the list of plants declared noxious weeds:

Provided that at least thirty days before exercising his powers under this section the Minister shall, by publication in the *Gazette* and in the local press, signify his intention of declaring a plant to be a noxious weed.

Regulations

16. The Minister may make, alter and amend Regulations, not inconsistent with this Act, prescribing the measures to be taken to prevent the introduction and spread of noxious weeds, the authority and duties of weed inspectors and generally for the better carrying out of the objects and purposes of this Act. The penalty for contravention of any such regulation shall be that prescribed in section 7.

SUBSIDIARY LEGISLATION

DECLARATION OF NOXIOUS WEEDS

under s. 15

The following plants have been declared to be noxious weeds throughout the whole of Malaŵi in terms of section 15 of the Act—

Indian hemp	G.N. 167/1953
Eichhornia crassipes (water hyacinth)	G.N. 97/1956
Acanthospermum hispidum DC (upright Starbur)	G.N. 20/1957
Lantana Camara	G.N. 122/1961

SPECIAL CROPS

CHAPTER 65:01

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CHAPTER 65:01

SPECIAL CROPS

ARRANGEMENT OF SECTIONS

SECTION

1. Short title
2. Interpretation
3. Special Crops
4. Authority for special crops
5. Powers of Authority
6. Licences

An Act to make provision for the development and marketing of special crops and for the establishment of Special Crop Authorities 27 of 1963 1 of 1969 9 of 1972

[7TH SEPTEMBER, 1963]

1. This Act may be cited as the Special Crops Act. Short title

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

"Authority" means an Authority established by the Minister under section 4;

"special crop" means a crop declared by the Minister to be a special crop under section 3.

3. When the Minister is satisfied that the development of any crop should be promoted or fostered under this Act, he may declare that crop to be a special crop. Special crops

4.—(1) Whenever a crop is declared to be a special crop under section 3, the Minister shall, by order published in the *Gazette*, establish an Authority for promoting and fostering the development of a special crop in such areas as the Minister shall determine: Authority for special crops

Provided that nothing in this section shall prevent the Minister from making an Authority responsible for the development of more than one special crop in one or more areas.

(2) An Authority established under subsection (1) shall, by the name by which it is established by the Minister, be a body corporate having perpetual succession, a common seal and power to hold land, and may in its corporate name sue and be sued, and, for and in connexion with the purposes of this Act, shall be capable of purchasing, selling, leasing or otherwise acquiring or disposing of, holding or managing both movable and immovable property, entering into such contracts as may be necessary or

expedient, and performing all such acts as bodies corporate may perform, subject both to this Act and to any other law in force in Malaŵi.

Powers of Authority

5.— (1) An order under section 4 establishing an Authority may, in relation to the Authority and the special crop, make provision for all or any of the following matters—

(*a*) the authentication of the seal, the signification of the decisions and the execution of documents of the Authority;

(*b*) the appointment of a Chairman of the Authority and its members and the regulation of meetings and procedure and voting thereat;

(*c*) the terms of office of the Chairman and members;

(*d*) the remuneration of and allowances to be paid to the Chairman and members;

(*e*) the appointment of committees and the delegation of powers to such committees or to officers of the Authority;

(*f*) the appointment and remuneration of officers;

(*g*) the functions of the Authority, which may include—

(i) the establishment and management of nurseries;

(ii) the purchase and sale of seed and seedlings;

(iii) the control and supervision of cultivation of crops;

(iv) the inspection of growing and harvested crops;

(v) the purchase, transportation and storage of crops;

(*h*) the powers of the Authority, which may include power—

(i) to employ and remunerate agents and employees;

(ii) subject to the provisions of any law generally regulating the borrowing powers of the Government and statutory corporations constituted under any law of Malaŵi, to raise loans whether by bank overdraft or otherwise;

(iii) with the approval of the Minister, to impose levies on growers for financing its operations and to provide for the manner in which and the persons by whom any such levies shall be collected;

(iv) to create and operate price stabilization funds in respect of the special crops for which it is responsible;

(v) to make loans for the purpose of the development of special crops;

(vi) to engage in the marketing of special crops;

(vii) to regulate and control the marketing of special crops;

(viii) to establish or acquire, and to operate, factories for the processing of special crops and to enter into agreements with other persons operating factories for them to purchase or process special crops;

(ix) to invest moneys not immediately required for use;

(x) with the approval of the Minister, to do such other things as in the opinion of the Authority will assist in the development of the special crops in the area for which the Authority was established;

(xi) to do any other thing which is incidental or conducive to the exercise of its powers under this Act;

(*i*) the manner of utilization of profits;

(*j*) the manner in which accounts shall be kept, audited and produced by the Authority;

(*k*) the imposition of a penalty, which shall not exceed a fine of K100 or imprisonment for a term of three months or both such fine and imprisonment for the contravention of any of the provisions of the order.

(2) An order under section 4 may make different provisions with respect to different special crops or in relation to different parts of the area for which the Authority was established.

(3) An order under section 4 shall not be made so as to conflict with the provisions of any other Act relating to agricultural crops.

(4) Any Authority established under the provisions of section 4 shall act in accordance with any general or special directions given by the Minister and not otherwise.

(5) The Minister may, by order published in the *Gazette*, amend or revoke an order, and any order of revocation may provide for the winding up of the affairs of an Authority and for distributing, transferring or otherwise disposing of the property and liabilities of the Authority, and for all such matters as appear to the Minister to be connected with or incidental to the dissolution of the Authority.

Licences 9 of 1972

6.—(1) When a crop has been declared to be a special crop, and an Authority in respect of that special crop has been established in any area, no person shall grow, sell, barter or buy that special crop in such area unless he is the holder of a valid licence authorizing him so to do.

(2) The Minister may, by Regulation, prescribe—

(*a*) the form and manner in which and the person to whom an application for a licence shall be made;

(*b*) the form and manner in which and the person by whom a licence shall be issued;

(*c*) the conditions that attach to any licence;

(*d*) the manner in which records or registers of all applications for licences and licences shall be kept;

(*e*) the fee that shall be paid on the issue of a licence;

(*f*) the person who and the circumstances in which that person may enter any land, building, vehicle, aircraft or vessel to ascertain whether the terms and conditions of any licence are being complied with;

(*g*) the penalty for failure to comply with the provisions of any regulations.

9 of 1972

(3) The Minister may, in his discretion, and without assigning any reasons therefor, refuse to issue a licence to any person, or revoke or suspend any licence that has been issued. Any decision of the Minister to refuse, revoke or suspend any licence shall be final and shall not be questioned in any court.

1 of 1969

(4) Any person who fails to comply with subsection (1) shall be liable to a fine of K2,000 and to imprisonment for three years, and in the case of a continuing offence to a further fine of K20 and to further imprisonment for one week for each day during which the offence continues.

(5) In addition to any fine or imprisonment or both which may be imposed by a court under the last preceding subsection, the court may order the special crop in respect of which the offence was committed to be forfeited.

Cap. 65:02

(6) The provision of section 6 (1) shall not apply to persons growing tobacco as tenants registered under the Tobacco Act.

SUBSIDIARY LEGISLATION

SPECIAL CROPS DECLARATIONS

under s. 3

G.N.
212/1963
225/1965
138/1967
34/1970
176/1970
168/1971
124/1973
11/1979
12/1979
31/1980
1/1996

The Minister has declared the crops listed in the Schedule hereto to be special crops for the purposes of the Act.

SCHEDULE

Cashew

Coffee

Cotton

Groundnuts

Macadamia

Tea

Tobacco (*nicotiana tabacum*)

Tung

Flue-cured Tobacco

KASUNGU FLUE-CURED TOBACCO AUTHORITY ORDER

under s. 4

[*Revoked by G.N.* 3/2003]

G.N. 123/1978

KASUNGU FLUE-CURED TOBACCO AUTHORITY LICENSING REGULATIONS

under s. 6

Citation and application

1. These Regulations may be cited as the Special Crops Kasungu Flue-Cured Tobacco Authority Licensing Regulations and shall apply within every Flue-Cured Tobacco Development Area, in relation to every holding within such Area.

Interpretation Cap. 65:01 sub. leg. p. 10

2. In these Regulations, unless the context otherwise requires—

"Authority" means the Kasungu Flue-Cured Tobacco Authority established under the Kasungu Flue-Cured Tobacco Authority Order, hereinafter referred to as the "Order";

"Flue-Cured Tobacco Development Area" means any area of land described in the Schedule to the Order;

"grower" means the holder of a grower's licence issued pursuant to subregulation (1) of regulation 4;

"holder" means any person to whom a holding has been allotted by the Authority;

"holding" means any subdivision of any Flue-Cured Tobacco Development Area allotted to any person by the Authority and used or intended to be used by such person for the primary purpose of growing flue-cured tobacco;

"licence" means a grower's licence issued pursuant to subregulation (1) of regulation 4.

Non-application of Cap. 65:01 sub. leg. p. 31

3. The provisions of the Special Crops (Licensing) Regulations shall not apply in relation to the growing, buying, bartering or selling of flue-cured tobacco by any holder within any Flue-Cured Tobacco Development Area.

Grower's licence

4.—(1) The Authority may, on application by any holder, issue to such holder a grower's licence in respect of his holding.

Schedule Form I

(2) Every application for a grower's licence shall be in Form I set out in the Schedule.

Schedule Form II

(3) Every grower's licence shall be in Form II set out in the Schedule.

Conditions of licence

5. It shall be a condition of every licence that the grower shall—

(*a*) purchase from the Authority all seeds, fertilizer and stores required from time to time for the growing of flue-cured tobacco on his holding;

(*b*) during the duration of his licence, except with the consent of the Authority, not sell or otherwise dispose of any draught animal, of any equipment or other goods or materials purchased by him from, or supplied to him by, the Authority under these Regulations;

(*c*) employ such number of labourers on his holding upon such terms and conditions of service as the Authority may from time to time require and approve;

(*d*) market solely through the agency of the Authority any flue-cured tobacco grown on his holding;

(*e*) authorize the Authority to retain all proceeds of sale of such flue-cured tobacco until all such crop is sold and to deduct from such proceeds any amount outstanding and due by him to the Authority pursuant to these Regulations;

(*f*) conform to such accounting methods and procedure as may from time to time be laid down by the Authority;

(*g*) accumulate, on deposit with the Authority and in such amounts as the Authority may from time to time deem necessary, a sum of money sufficient to—

(i) provide for periodic contributions towards the fixed and working capital of the Authority, such contributions to be determined from time to time by the Authority in accordance with a rate to be made applicable in common to all growers in any one scheme specified by the Authority;

(ii) provide for the purchase by him, at such price as the Authority may determine, of such draught animals, equipment or other goods as are supplied to him from time to time by the Authority for exclusive use on his holding; and

(*h*) do or perform, or refrain from doing or performing, all such acts or things as the Authority may, in lawful exercise of any power conferred upon it by the Order, require of him to do or perform or to refrain from doing or performing.

Food crops

6. Any grower may, with the consent of the Authority and subject to such conditions as the Authority may impose, use such portion of his holding as shall be agreed with the Authority for the purpose of growing such food crops as may be necessary for his subsistence and for that of his immediate family living with him.

Duration and termination of licence

7.—(1) Subject to subregulations (2) and (3), every licence shall remain in force for the period specified therein and may be renewed from time to time.

(2) If the Authority is satisfied that the licensee under any licence—

(*a*) is unable to pay his debts to the Authority when due and payable or to pay, when due and payable, any other moneys that he may be lawfully required to pay to the Authority under these Regulations or otherwise;

(*b*) fails to look after his flue-cured tobacco crop or has, for any reason, become incapable of looking after such crop;

(*c*) is in breach of any provision of these Regulations or conditions of such licence, the authority may, by giving to the licensee thirty days written notice thereof, terminate the licence issued to such licensee.

(3) Any licensee may terminate his licence by giving the Authority not less than six months written notice of termination of such licence with effect from the 31st day of July next following the expiry of such notice.

Consequences upon termination of a licence

8.—(1) Upon notice of termination of any licence being issued or received by the Authority—

(*a*) the Authority, unless the Minister otherwise directs, may seize and sell the licensee's flue-cured tobacco crop for the purpose of realizing such sums of money as may be outstanding or owing by the licensee to the Authority under these Regulations;

(*b*) the licensee shall, if so required by the Authority, refund to the Authority such sum of money as the Authority may require in respect of costs incurred by the Authority in training him as a tobacco farmer, but so, however, that no licensee shall be required to make such refund if his licence was terminated by mutual agreement of the Authority and the licensee or on grounds of the licensee's ill health or mental or physical disability.

(2) Whenever the Authority has exercised the power of sale given to it by paragraph (*a*) of subregulation (1), the Authority shall, upon termination of the licence, pay to the licensee at such time or times as the Authority may determine—

(*a*) such balance as may be standing to the credit of the licensee in any account with the Authority;

(*b*) an amount equivalent to the value, as assessed by the Authority, of all permanent fixtures attached to the holding by such licensee with the consent of the Authority.

Licensee's right of appeal

9.—(1) If any licensee is aggrieved by any decision of the Authority or by any act done by the Authority in exercise of its powers pursuant to these Regulations he may, within fourteen days after receipt by him of notice in writing of such decision or of the doing of such act, or within such longer period as the Minister may allow, appeal to the Minister by notice in writing stating the subject matter and grounds of such appeal.

(2) Upon receipt of any notice of appeal pursuant to subregulation (1), the Minister shall consider the appeal and may allow or dismiss it or make such other ruling thereon as he considers appropriate.

(3) For the purposes of the consideration of any such appeal the Minister may call upon the licensee or the Authority to adduce such further or other evidence on the matter, as he considers necessary to enable him to determine the appeal.

Duplicate licences

10.—(1) Where the Authority is satisfied that any licence has been lost, stolen, defaced or destroyed it may cancel such licence and issue to the licensee thereunder a duplicate licence in its stead.

(2) Every duplicate licence issued pursuant to subregulation (1) shall bear the words "Duplicate Licence" conspicuously printed or written thereon and shall be so issued on payment of a fee of one Kwacha.

Register

11. The Authority shall keep a register of all applications received under these Regulations and shall retain a true copy of each licence and duplicate licence issued and such register and copy licences shall be kept at the principal office of the Authority in Malaŵi and may be inspected—

(*a*) by any public officer acting in the course of his official duties;

(*b*) by any licensee, solely in respect of his licence; and

(*c*) by any applicant, solely in respect of his application.

Right of entry

12. For the purposes of ascertaining that these Regulations are being complied with, any person duly authorized in writing in that behalf by the Minister or by the Authority may enter upon any land, building, vehicle, aircraft or vessel within any Flue-Cured Tobacco Development Area where any flue-cured tobacco is, or is reasonably believed to be, grown, purchased, sold, stored or transported.

Licences to be available for inspection

13. Every licence shall, on the demand of any person duly authorized in that behalf by the Minister or by the Authority, be produced by the holder thereof for inspection by such authorized person for any of the purposes of these Regulations.

Offences

14.—(1) Any person who—

(*a*) in any application made under these Regulations, knowingly or recklessly, makes any statement which is false or misleading in any material fact;

(*b*) not being duly authorized in that behalf, alters any licence or any particular shown thereon;

(*c*) wrongfully purports to lend, transfer or assign any licence issued to him or to any other person; or

(*d*) without reasonable cause or excuse, fails or refuses to comply with any demand lawfully made upon him pursuant to regulation 13, shall be guilty of an offence.

(2) Any person who is guilty of an offence under subregulation (1) shall—

(*a*) in the case of a first offence, be liable to a fine of forty Kwacha or to imprisonment for a term of one month; and

(*b*) in the case of any second or subsequent offence, be liable to a fine of one hundred Kwacha or to imprisonment for a term of three months.

SCHEDULE

Form I—Form of Application for a Grower's Licence

SPECIAL CROPS ACT reg. 4 (2)

SPECIAL CROPS (KASUNGU FLUE-CURED TOBACCO AUTHORITY) LICENSING REGULATIONS

Application for a Grower's Licence

Note: This application may be made only by persons who have been licensed to occupy a holding in a Flue-Cured Tobacco Development Area, and must be submitted, in duplicate, to the Chairman, Kasungu Flue-Cured Tobacco Authority, Private Bag 12, Lilongwe.

I (*name in full*): .....
.....
of (*postal address*): .....
.....
..... and (*home village address, if any*): .....
Village: ..... Chief ..... District .....
having been licensed to occupy Holding No. .....
situate at ..... Scheme in the ..... Flue-Cured Tobacco Development Area, hereby apply for a grower's licence in respect of the flue-cured tobacco season 20 ...../ 20 ..... under which licence I intend to grow .....hectares of flue-cured tobacco.

I hereby confirm that I am not the holder of any other licence to grow tobacco of any kind for the tobacco growing season 20 ...../ 20 ..... and I further undertake not to apply for any such licence.

Date ....

Signature of applicant or his duly authorized agent

FORM II

SPECIAL CROPS ACT reg. 4 (3)

CAP. 65:01

SPECIAL CROPS (KASUNGU FLUE-CURED TOBACCO AUTHORITY) LICENSING REGULATIONS

GROWER'S LICENCE

Licence Number: .....
Name of grower (*in full*): .....
Address of grower—
(*a*) Postal address: .....
(*b*) Home village address:
Village: .....
Chief: .....
District: .....
Holding No.: ..... or Farm .....
Block No.: ..... Management Section .....
Scheme: .....
The said (*name of grower*)
.....having been licensed to occupy Holding No. .....in the (*name of area*) ..... Flue-Cured Tobacco Area, is hereby licensed to grow approximately ..... hectares of flue-cured tobacco on such holding during the growing season ending on 31st July, 20 ..... subject to the provisions of the Special Crops (Kasungu Flue-Cured Tobacco Authority) Licensing Regulations. Issued by the Authority this ..... day of ....., 20 .....

Signed: .....

for and on behalf of the Authority

RENEWALS

Renewed for a further flue-cured tobacco growing season—

(1) 20 ..... / 20 ..... Signed .....
for and on behalf of the Authority
Date: .....

(2) 20 ..... / 20 ..... Signed .....
for and on behalf of the Authority
Date: .....

(3) 20 ..... / 20 ..... Signed .....
for and on behalf of the Authority
Date: .....

G.N. 26/1967
129/1968
56/1969
267/1969
268/1970
63/1971
88/1971
117/1985

SMALLHOLDER TEA AUTHORITY ORDER

under s. 4

Citation

1. This Order may be cited as the Smallholder Tea Authority Order.

Interpretation

2. In this Order, unless the context otherwise requires—

"Authority" means the Smallholder Tea Authority established under this Order;

"green leaf" means leaf detached from tea plants but not artificially dried or processed in any way;

"grower" means any person who has planted or is cultivating tea or who intends to plant and cultivate tea as a smallholder;

"licensed grower" means a grower licensed under any rules for the time being in force pertaining to the growing of tea by smallholders;

"nursery" means any place where planting material is prepared and cultivated;

"planting material" includes seeds, seedlings, roots, stumps, cuttings and any other means of propagating tea;

G.N. 267/1969
117/1985

"smallholder" means a person growing not more than 4 hectares of tea on any land whether customary, private or public;

"tea location" means an area, the boundaries of which are defined by the Authority, and within which growers have common interests;

"tea" means tea grown by a smallholder.

Establishment of the Smallholder Tea Authority

3. There is hereby established an Authority, to be known as the Smallholder Tea Authority, for promoting and fostering the development of tea by smallholders in the areas of Mulanje, Thyolo and Nkhata Bay districts.

Composition of Authority

4.—(1) The Authority shall consist of—

(*a*) the Principal Secretary, who shall be Chairman;

(*b*) the Deputy Secretary (Agriculture);

(*c*) a representative nominated by the Tea Association and appointed by the Minister;

(*d*) the Secretary to the Treasury;

(*e*) not more than two persons noted for their ability and experience in the field of finance or commerce as the Minister may appoint;

(*f*) not more than three growers' representatives who shall—

(i) be appointed by the Minister who, in making such appointments, shall be advised by the district committees set up under paragraph 13 of this Order;

(ii) be appointed from areas in which, in the opinion of the Minister, tea growing or interest in tea growing warrants representation;

(*g*) not more than one other member who, in the opinion of the Minister, is qualified to further the work of the Authority; and

(*h*) a representative, if the institution so desires, appointed by the Minister on the advice of any institution which provides medium- or long-term loan, for so long as such loan is outstanding.

(2) The holder of any of the public offices referred to in subparagraph (1) (*a*), (1) (*b*) or (1) (*d*) and any person appointed under subparagraph 1 (*c*) or 1 (*h*) may appoint any person to be his alternate at any meeting of the Authority by causing a letter of appointment signed by him to be delivered to the Chairman before or at that meeting. G.N. 129/1968

5.—(1) Except as hereinafter provided a growers' representative shall, subject to subparagraph (3), hold the office of a member of the Authority for three years: Period of holding office

Provided that—

(*a*) at the expiration of one year from the date of this Order one growers' representative to be selected by the Authority shall retire from office;

(*b*) at the expiration of two years from the date of this Order another growers' representative, similarly selected, shall retire from office.

(2) Representatives shall be eligible for reappointment.

(3) The Minister may, at his discretion, revoke any appointments made under paragraph 4 (1) (*e*), (*f*), (*g*) or (*h*).

(4) Appointments made under paragraph 4 (1) (*e*), (*f*), (*g*) and (*h*) shall subject to subparagraph (3) be for one year and such members shall be eligible for reappointment.

(5) The Authority shall elect a Deputy Chairman who shall carry out the functions of the Chairman in the absence of the Chairman appointed under paragraph 4.

(6) Appointments made under paragraph 4 shall be notified in the *Gazette*.

6. The Authority shall have the following functions— Functions of the Authority

(*a*) to prepare and carry out schemes for tea development including—

(i) establishment and management of nurseries;

(ii) purchase of planting material;

(iii) sale to growers and others of planting material;

(iv) growing of tea for demonstration or commercial purposes;

(v) supervision of tea cultivation by growers;

(vi) inspection of growing and harvested tea;

(vii) purchase, collection, transportation and marketing of green leaf from growers;

(viii) processing of green leaf or sale of green leaf to others for that purpose;

(ix) transportation and sale of made tea;

(x) providing such other services as shall be conducive to the development of tea growing;

(*b*) to deduct from moneys held on behalf of growers by the Authority or the price due on sale of tea by growers to the Authority any levies or fees for services or materials provided.

Powers of the Authority

7. The Authority shall have the following powers—

(*a*) to employ agents for the implementation of any scheme or for the performance of any function of the Authority under this Order, on such terms as may be agreed and with the Minister's approval;

(*b*) to raise loans by bank overdrafts or otherwise on terms and for purposes approved by the Minister, subject to the Finance and Audit Act;

Cap. 37:01

(*c*) to pay to growers any sums received from processing factories, after making any provision necessary under subparagraph (*g*);

(*d*) to give credit to growers;

(*e*) to enter into agreements with processing factories for the sale or processing of green leaf;

(*f*) to establish, acquire and operate tea processing factories, to enter into agreements for the establishment of such factories and to promote and purchase shares in any company incorporated in Malaŵi, for the purpose of growing, processing, or marketing tea;

(*g*) to create and operate a price stabilization fund or any other reserve funds which the Minister may approve;

(*h*) to invest or deposit at interest any moneys standing to the credit of the Authority;

(*i*) to operate a bank account;

(*j*) to do any other thing which will assist in the development of tea;

(*k*) to define the areas of tea locations;

(*l*) with the approval of the Minister, by Order published in the *Gazette*—

(i) to impose a levy or levies on growers for the purpose of financing the operations of the Authority;

(ii) to regulate and control the marketing of tea by growers;

(iii) to control the purchase and sale and distribution by licensing or otherwise of planting material;

(iv) to provide for any other matter which is approved by the Minister as being in the furtherance of the development of tea or incidental or conducive to the exercise of any of the functions or powers of the Authority.

Collection of levies

8. Levies imposed by the Authority shall be collected by way of deduction from the payments made to growers for the sale of tea and shall be made in such manner as the Authority shall direct.

Meetings

9. Meetings of the Authority shall be convened under the direction of the Chairman and notice in writing of each meeting shall be delivered or sent by post at least twenty-one days before the meeting specifying the object of the meeting.

Voting

10. Decisions of the Authority shall be taken by a majority of the votes of the members or their alternates present and voting provided that—

(*a*) the person acting as Chairman shall have a casting vote;

(*b*) every member shall declare any pecuniary interest in the subject under discussion, whereupon the Chairman will rule whether such member shall take part in the discussion and voting.

Quorum

11.—(1) Subject to subparagraphs (2) and (3) a quorum at a meeting of the Authority shall be a majority of the members.

(2) A quorum shall not be constituted unless the Permanent Secretary of the Ministry responsible for Agriculture and the Secretary to the Treasury or their respective alternates are present.

(3) For the purpose of forming a quorum an alternate shall be deemed to be a member.

Appointment of staff

12.—(1) The Authority may appoint a General Manager and such other staff as it considers necessary.

(2) The terms and conditions of service of persons employed by the Authority shall be determined by the Authority subject to the approval of the Minister.

(3) The power to dismiss, discipline and control persons in the employment of the Authority shall be vested in the Authority, subject to a right of appeal to the Minister in the case of senior staff of the rank of technical officer or equivalent and above.

Establishment of District Committees

13.—(1) The Authority may set up District Committees for each of the Districts of Thyolo, Mulanje and Nkhata Bay to advise the Authority on any subject referred to them by the Authority.

(2) A District Committee shall consist of—

(*a*) five members, elected annually by the growers in the District;

(*b*) a member or members of Parliament from the District concerned, appointed by the Minister in his discretion;

(*c*) the general manager or his representative.

(3) A member of a District Committee may resign before the termination of his term of office by giving notice in writing thereof to the general manager.

Remuneration

14. Members of the Authority, other than public servants shall receive such remuneration and allowances (if any) as the Minister may approve. A member of the Authority who is a public servant may be paid from the funds of the Authority an allowance at the rate payable in accordance with Government regulations, if no allowance is paid to him from public funds.

Common seal

15. The common seal of the Authority shall not be affixed to any instrument except in pursuance of a resolution of the majority of the members of the Authority present at any meeting and in the presence of the General Manager and such member of the Authority as the Chairman shall appoint, both of whom shall sign every instrument to which the common seal is attached:

Provided that if no General Manager has been appointed, the common seal may be affixed to an instrument in the presence of two members appointed by the Chairman, who shall both sign such instrument.

Signification of documents

16. All documents, other than those requiring the seal, made by the Authority and all decisions of the Authority may be signified under the hand of the Chairman or any member authorized on that behalf by the Authority, or under the hand of the General Manager.

Financial year

17. The financial year of the Authority shall be from the 1st day of July in each year to the 30th day of June in the following year.

Auditing of accounts
G.N. 56/1969

18.—(1) The accounts of the Authority shall be audited annually by an auditor approved by the Minister.

(2) The Authority shall within four months of the end of each financial year cause to be prepared, signed and transmitted to the auditor all such accounts as are for the time being required under Part V A of the Finance and Audit Act, 1966, together with such other accounts and reports as the Minister may require.

(3) The auditor shall be entitled to examine all books and papers in the possession or control of the Authority and may

require from members, employees or agents of the Authority such information as he considers necessary for the proper performance of his duties.

TEA ORDER

under para. 7 *of the Smallholder Tea Authority Order*

G.N. 58/1968
174/1968
65/1969
219/1971
27/1987

1. This Order may be cited as the Tea Order. Citation

2. "Project Manager" means the person appointed by the Authority to be its senior executive. Interpretation

3. No grower may establish a tea nursery except with the written permission of the Authority, which may attach to such permission such conditions as it considers appropriate. Permission

4. [*Deleted by G.N.* 219/1971].

5. A grower may use only planting material which has been supplied by the Authority. Planting material

6. A grower will be required at all times to maintain his tea garden to the standards of soil and plant husbandry laid down from time to time by the Project Manager. Standards of soil and plant husbandry

7. A grower will uproot and destroy tea plants in his garden if required to do so in writing by the Authority. Uprooting and destruction

8. A grower may offer green leaf for sale only to the Authority: Sale of green leaf

Provided that where a grower already had a green leaf sale agreement with a factory at the time of the establishment of the Authority, he may, with the written approval of the Authority, continue to sell his leaf to the factory so long as his agreement lasts.

9. The Authority may at its discretion refuse to buy green leaf offered. Discretion to refuse to buy

10. Green leaf accepted by the Authority shall be weighed in the presence of the person delivering it, and a receipt shall be issued for the weight of the leaf in kilograms: Weighing

Provided that a reduction in weight may be made by the Authority if surface moisture is present on the green leaf.

11. The price to be paid to growers by the Authority for green leaf shall be such as may be from time to time published by notice in the *Gazette*. Price

12. No person shall— Made tea

(*a*) convert fresh green tea leaf as plucked from the tea bush into made tea by any means except under and in accordance with the terms of the grower's licence issued under this Order

by the Authority, or without the authority in writing of the Authority;

(*b*) sell, exchange, give, offer or expose for sale or otherwise dispose of any made tea manufactured or prepared in contravention of subparagraph (*a*).

Penalties

13. Any person who contravenes or fails to comply with any of the provisions of this Order shall be liable to a fine of K100 and to imprisonment for 6 months, and in addition, any made tea belonging to him or found in the possession of any person convicted of an offence under paragraph 12 shall be confiscated and destroyed in such manner as the Court may direct:

Provided that this power of the Court shall relate only to the made tea which is the subject of the charge before the Court.

G.N. 101/1985 27/1988

TEA LEVY ORDER

under para. 7 *of the Smallholder Tea Authority Order*

Citation

1. This Order may be cited as the Smallholder Tea Authority (Tea Levy) Order.

Tea levy G.N. 27/1988

2. The Authority shall levy a cess of 2 tambala per kilogram to be known as "capital cess" on all green tea leaf purchased by the Authority from growers.

Commencement of levy

3. Capital cess shall be levied from the fifth year following the year of registration of the grower.

G.N. 175/1971 120/1980 121/1982

SMALLHOLDER COFFEE AUTHORITY ORDER

under s. 4

[*Revoked by G.N.* 23/1999]

G.N. 1/1990

SMALLHOLDER COFFEE AUTHORITY (DECLARATION OF COFFEE LOCATION AREAS) ORDER

under para. 7 (*g*) (ii)

[*Revoked by G.N.* 23/1999]

SPECIAL CROPS (TREE NUT AUTHORITY) ORDER

G.N. 129/1973

under s. 4

Citation

1. This Order may be cited as the Special Crops (Tree Nut Authority) Order.

Interpretation

2. In this Order unless the context otherwise requires—

"Authority" means the Tree Nut Authority established under paragraph 3;

"fruit" means the nut surrounded by the husk;

"kernel" means the oil bearing part of the nut;

"nut" means the kernel surrounded by the shell;

"tree nut" means any tree nut which may be declared as such under the "Special Crops Act".

Establishment of Authority

3. There is hereby established an Authority to be known as the Tree Nut Authority (hereinafter referred to as "the Authority") for promoting and fostering the development of tree nut industry in all areas of Malaŵi.

Composition of Authority

4.—(1) The Minister shall, by notice published in the *Gazette*, appoint the members of the Authority other than the members representing the Tree Nut Growers' Association.

(2) The Authority shall consist of—

(*a*) one member designated as Chairman by the Minister;

(*b*) one member representing the Agricultural Development and Marketing Corporation appointed by the Minister;

(*c*) six members representing the Tree Nut Growers' Association (hereinafter referred to as the Association), appointed from a panel of ten individuals nominated by the said Association.

(3) The Minister may appoint to the Authority such additional members as he deems essential to the Authority in the exercise of its powers and functions.

(4) No person shall be appointed to the Authority who—

(*a*) is an undischarged bankrupt;

(*b*) has, during the preceding three years, been sentenced for an offence against any written law to a term of imprisonment of, or exceeding, six months, otherwise than as an alternative to, or in default of, the payment of a fine;

(*c*) has, during the preceding five years, been convicted of an offence involving fraud or dishonesty.

(5) Members of the Authority shall not by virtue only of their appointments to the Authority be deemed to be officers in the public service.

(6) Alternate members may, when not acting under the provisions of subsection (4), attend meetings of the Authority as observers only, but shall have no voice in the proceedings of, and no voting powers at, any such meeting.

(7) No person shall be appointed to the Authority who—

(*a*) is an undischarged bankrupt;

(*b*) has, during the preceding three years, been sentenced for an offence against any written law to a term of imprisonment of, or exceeding, six months, otherwise than as an alternative to, or in default of, the payment of a fine;

(*c*) has, during the preceding five years, been convicted of an offence involving fraud or dishonesty.

(8) Members of the Authority shall not by virtue only of their appointments to the Authority be deemed to be officers in the public service.

(9) The names of all members of the Authority as first constituted and every change in membership thereof shall be published in the *Gazette*.

Tenure of office of members

5.—(1) Members of the Authority other than members representing the Association, shall, subject to this paragraph hold office for such period, being not less than two years, as may be specified in their respective appointments.

(2) Members of the Authority representing the Association shall hold office as such so long as they remain members of the said Association:

Provided that at the expiration of one year from the date of this Order and at the expiration of one year thereafter, three members shall retire by rotation, the order of which shall be decided by the Authority by ballot.

(3) The office of a member shall be vacated—

(*a*) upon the expiry of the period specified in his appointment;

(*b*) upon his death;

(*c*) if he is adjudged bankrupt;

(*d*) if he is sentenced for an offence against any written law to a term of imprisonment of, or exceeding, six months, otherwise than as an alternative to, or in default of, the payment of a fine;

(*e*) if he is convicted of an offence involving fraud or dishonesty;

(*f*) in the case of a member other than the Chairman if he is absent, without the permission of the Chairman, from three successive meetings of the Authority of which he has notice;

(*g*) upon the expiry of one month's notice in writing of his intention to resign his office given by him to the Minister;

(*h*) upon his being given notice by the Minister of the termination of his appointment;

(*i*) if, in the opinion of the Minister, he becomes, by reason of mental or physical infirmity, incapable of performing his duties as a member of the Authority;

(*j*) if the Minister, or the Association is satisfied that the private interests of the member conflict or are liable to conflict with his duties as a member and that consequently it is inexpedient for him to continue to hold office as a member.

(4) Upon the expiry of the period for which a member of the Authority is appointed, he shall continue to hold office until his successor has been appointed, but in no case shall such further period exceed three months.

(5) A retiring appointed member shall be eligible for reappointment if not disqualified under paragraph 4 (4).

Remuneration of members

6. Any member of the Authority who is not an officer in the public service shall be paid by the Authority such remuneration and allowances, if any, as the Minister may in his case fix.

Meetings

7.—(1) At the first meeting of the Authority, the members present shall elect a Vice-Chairman.

(2) The Authority may meet at such places and times as the Chairman may determine or as he may be directed by the Minister, and shall meet at least twice in every year unless, in the opinion of the Minister, there are valid reasons for not so doing.

(3) Meetings of the Authority shall be convened by at least seven days notice thereof in writing being given to the members by the Chairman.

(4) The Chairman shall preside at all meetings of the Authority or, in his absence from any meeting, the Vice-Chairman, who, for the purposes of that meeting, shall exercise all of the powers and perform all of the duties of the Chairman.

(5) The Chairman, or in his absence, the Vice-Chairman, together with four other members shall form a quorum.

(6) Meetings of the Authority shall be conducted in such manner as may be directed by the Minister or, in the absence of such direction, in such manner as the Authority deems fit.

(7) Minutes of each meeting shall be kept by the Secretary and shall be confirmed at the succeeding meeting by the Chairman, or in his absence, by the Vice-Chairman.

(8) Decisions of the Authority shall be made by a majority of the members present at a meeting of the Authority; at all such meetings the person presiding shall have a deliberative vote, and, in the event of an equality of votes, shall also have a casting vote.

Member to declare pecuniary interest

8.—(1) If a member of the Authority or his spouse, or any company of which he or she is a director or major shareholder, or any partner of such member or of his spouse, has or acquires any pecuniary interest, direct or indirect, in any matter in which his private interests conflict with his duties as a member and which is the subject of consideration by the Authority he shall, as soon as is practicable after becoming aware of such interest in such matter, disclose the facts relating thereto to the Chairman and to the Minister.

(2) A member referred to in sub-paragraph (1) shall not take part in the consideration of, or vote on, any question before the

Authority which relates to the matter referred to in that sub-paragraph, without the written permission of the Chairman and the Minister.

Functions of the Authority

9. The Authority shall have the following functions—

(*a*) to promote the development of tree nut industry on commercial lines to the maximum benefit of the growers and the country;

(*b*) to prepare and carry out schemes for the development of the tree nut industry either directly or through the employment of agents;

(*c*) to control the sale of nuts, fruit or kernel sold either to the Authority directly or to its agents;

(*d*) to control the import and export of nuts, fruits, kernel or any tree nut products;

(*e*) to approve the methods of the marketing of nut oil by any agency;

(*f*) to register and license tree nut growers and tree nut buyers and factories for processing tree nut products;

(*g*) to determine and fix prices (annually) which shall be paid for tree nut products;

(*h*) to purchase tree nuts from growers;

(*i*) to process and market tree nuts;

(*j*) to control and authorize the expenditure of money collected as levy;

(*k*) to keep a record of tree nut sales of each grower;

(*l*) to provide such other services and facilities as shall be conducive to the development of tree nut industry.

Powers of the Authority

10. The Authority shall have the following powers—

(*a*) with the approval of the Minister to employ agents for the implementation of any tree nut schemes or for the performance of any function of the Authority under this Order on such terms as may be agreed;

(*b*) to raise loans by bank overdrafts or otherwise on terms and for purposes approved by the Minister, subject to the Finance and Audit Act; Cap. 37:01

(*c*) to promote and purchase shares in any company incorporated in Malaŵi for the purpose of growing, processing or marketing of tree nuts;

(*d*) to establish or acquire, and to operate, factories for the processing of tree nuts and to enter into agreements with other persons operating factories for them to purchase or process tree nuts;

(*e*) to invest or deposit at interest any moneys standing to the credit of the Authority;

(*f*) to acquire land for the purpose of carrying out its functions under this Order;

(*g*) with the approval of the Minister by order published in the *Gazette*—

(i) to impose a levy or levies on growers for the purpose of financing the operations of the Authority;

(ii) to provide for any other matter which is approved by the Minister as being in the furtherance of the development of the tree nut industry of incidental or conducive to the exercise of any of the functions or powers of the Authority;

(iii) to do any other thing which will assist in the development of the tree nut industry.

Collection of levies

11. Levies imposed by the Authority under paragraph 10 (g) shall be collected by way of deduction from payments made to growers for the sale of tree nuts and shall be made in such manner as the Authority shall direct.

Appointment of staff

12.—(1) The Authority may appoint a Secretary and such other staff as it considers necessary.

(2) The terms and conditions of service of the persons employed by the Authority shall be determined by the Authority subject to the approval of the Minister.

(3) The power to dismiss, discipline and control persons in the employment of the Authority shall be vested in the Authority.

Common seal

13. The common seal of the Authority shall not be affixed to any instrument except in pursuance of a resolution of the majority of the members of the Authority present at any meeting and in the presence of the Chairman, and such member of the Authority as the Chairman shall appoint, both of whom shall sign every instrument to which the common seal is attached.

Signification of documents

14. All documents, other than those requiring seal, made by the Authority and all decisions of the Authority may be signified under the hand of the Chairman or Vice-Chairman, in the absence of the Chairman.

Financial year
G.N. 33/1979
69/1989

15. The financial year of the Authority shall be from the 1st day of April in each year to the 31st day of March in the following year.

Auditing of accounts

16.—(1) The accounts of the Authority shall be audited annually by an auditor approved by the Minister.

(2) The Authority shall, within a period of four months after the end of its financial year, or such longer period as the Minister

may approve, cause to be prepared, signed and transmitted to the auditor—

(*a*) a balance sheet showing in detail the assets and liabilities of the authority; and

(*b*) such other statements of accounts as the Minister may require.

(3) The auditor shall be entitled to examine all books and papers in the possession or control of the Authority, and may require from members, employees or agents of the Authority such information as is necessary for the performance of his duties.

(4) The Authority shall, within four months of the end of its financial year, or such longer period as the Minister may approve, submit to the Minister a report on its operations during the year, together with audited accounts.

SMALLHOLDER SUGAR AUTHORITY ORDER

ARRANGEMENT OF PARAGRAPHS

PARAGRAPH

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G.N. 30/1978

SMALLHOLDER SUGAR AUTHORITY ORDER

under s. 4

PART I

Preliminary

Citation

1. This Order may be cited as the Smallholder Sugar Authority Order.

Interpretation

2. In this Order, unless the context otherwise requires—

"Authority" means the Smallholder Sugar Authority established under paragraph 4;

"holding" means the sub-division of the settlement area allocated to a smallholder;

"licence to grow and sell" means a certificate to grow and sell sugar-cane on lands held under a sublease from the Dwangwa Sugar Corporation Limited to the Authority and allocated to a smallholder;

"Management" means the Managing Agents or the Project Manager appointed under paragraph 8;

"Managing Agents" mean the body corporate, firm or any organization employed by the Authority from time to time under paragraph 10 (1);

"settlement area" means the lands held under a sublease from the Dwangwa Sugar Corporation Limited to the Smallholder Sugar Authority and allocated to smallholders.

"smallholder" means a person who has been granted a right of occupancy or a tenancy under the Special Crops (Sugar-cane) (Licensing) Regulations;

"training farms" mean estates run by the Management for training selected persons for up to two years prior to their becoming smallholders;

Non-application of Cap. 65:01 sub. leg. p. 31

3. Save as is otherwise expressly provided by this Order, the provisions of the Special Crops (Licensing) Regulations shall not apply to smallholders licensed to grow sugar-cane on lands held under a sublease from the Dwangwa Sugar Corporation Limited to the Authority.

PART II

The Authority

Establishment of Authority

4. There is hereby established an Authority to be known as the Smallholder Sugar Authority for promoting and fostering the development of sugar-cane grown by smallholders in such areas as the Minister shall declare.

Composition

5.—(1) The Minister shall, by notice published in the *Gazette*, appoint the members of the Authority other than the *ex officio* members.

(2) The Authority shall consist of—

(*a*) one member designated as Chairman by the Minister;

(*b*) one member designated as Vice-Chairman by the Minister;

(*c*) the Secretary for Agriculture and Natural Resources, *ex officio*;

(*d*) the Secretary to the Treasury, *ex officio*;

(*e*) two members representing the Dwangwa Sugar Corporation Limited, nominated by the said Corporation;

(*f*) one member representing the Commonwealth Development Corporation, nominated by the said Corporation;

(*g*) one member representing the smallholders, appointed from a panel of three individuals nominated by the said small-holders;

(*h*) two ordinary members;

(*i*) the Project Manager.

(3) Any of the following members may appoint any person to be his alternate at any meeting of the Authority by causing a letter of appointment signed by him to be delivered to the Chairman before or at that meeting—

(*a*) the holder of any of the public offices specified in sub-paragraph (1);

(b) the representatives of the Dwangwa Sugar Corporation Limited and the Commonwealth Development Corporation.

Tenure of office of members

6. (1) Members of the Authority, other than ex officio members, shall, subject to this paragraph, hold office for such period, being not less than three years, as may be specified in their respective instruments of appointment.

(2) *Ex officio* Members of the Authority shall hold office as such so long as they hold the public offices by virtue of which they are members pursuant to paragraph 5.

(3) The office of a member, other than an *ex officio* member, shall be vacated—

(*a*) upon the expiry of the period specified in his instrument of appointment;

(*b*) upon his death;

(*c*) if he is adjudged bankrupt;

(*d*) if he is sentenced for an offence against any written law to a term of imprisonment of, or exceeding, six months, otherwise than as an alternative to, or in default of, the payment of a fine;

(*e*) if he is convicted of an offence involving fraud or dishonesty;

(*f*) in the case of a member other than the Chairman, if he is absent, without the permission of the Chairman, from three successive meetings of the Authority of which he has notice;

(*g*) upon the expiry of one month's notice in writing of his intention to resign his said office given by him to the Minister;

(*h*) upon his being given notice by the Minister of the termination of his appointment;

(*i*) if, in the opinion of the Minister, he becomes, by reason of mental or physical infirmity, incapable of performing his duties as a member of the Authority;

(*j*) if the Minister, or the authority by which he is nominated, is satisfied that the private interests of the member conflict or are liable to conflict with his duties as a member and that consequently it is inexpedient for him to continue to hold office as a member.

(4) Upon the expiry of the period for which a member of the Authority, who is not a member *ex officio*, is appointed he shall continue to hold office until his successor has been appointed, but in no case shall such further period exceed three months.

(5) A retiring appointed member shall be eligible for re-appointment if not disqualified under subparagraph (3).

(6) Where the office of any member of the Authority appointed under paragraphs 5 (2) (*e*), 5 (2) (*g*) or 5 (2) (*h*) is vacated pursuant to subparagraph (3), the Minister shall require the relevant body to submit to him a panel of three names for the purposes of appointment of a new member.

Meetings of the Authority

7.—(1) The Authority may meet at such places and times as the Chairman may determine.

(2) Meetings of the Authority shall be convened by at least fourteen days' notice thereof in writing being given to the members by the Chairman.

(3) The Chairman shall preside at meetings of the Authority or, in his absence from any meeting, the Vice-Chairman, who, for the purposes of that meeting, shall exercise all of the powers and perform all of the duties of the Chairman.

(4) The Chairman or, in his absence, the Vice-Chairman together with four other members shall form a quorum:

Provided that a quorum shall not be constituted unless the Secretary for Agriculture and Natural Resources and the Secretary to the Treasury or their respective alternates are present.

(5) For the purposes of this paragraph, an alternate shall be deemed to be a member for the purposes of forming a quorum.

Project Manager

8.—(1) The Authority shall appoint a Project Manager and such other staff as it deems meet.

(2) The terms and conditions of service of persons employed by the Authority shall be determined by the Authority subject to the general or special directions of the Minister.

(3) The power to dismiss, discipline and control persons in the employment of the Authority shall be vested in the Authority, subject to a right of appeal to the Minister in the case of senior staff of the rank of technical officer or its equivalent and above:

Provided that where the Authority has appointed Managing Agents under paragraph 10 (1), such Managing Agents shall, with the approval of the Authority, determine the terms and conditions of service of persons so employed and exercise the powers to dismiss, discipline and control any such persons subject to a right of appeal to the Minister in the case of senior staff of the rank of technical officer or its equivalent and above.

Local Committees

9.—(1) The Authority may establish local committees for specified areas to advise on any problems arising between the smallholders and the management in that area.

(2) Any local committee established under subparagraph (1) shall consist of—

(*a*) the Project Manager;

(*b*) a representative of the smallholders appointed by the Minister;

(*c*) a chief appointed by the Minister; and

(*d*) a Member of Parliament for that area.

PART III

Powers and Objects of the Authority

Powers of the Authority

10. The Authority shall have the following powers—

(1) to employ Managing Agents for the implementation of any scheme or for the performance of any function of the Authority under this Order, on such terms as may be agreed with the approval of the Minister;

(2) subject to the Finance and Audit Act to raise moneys by way of loan or bank overdraft;

(3) to invest and deal with any of its moneys not immediately required in securities, and, in such manner as it may think fit, to vary or realize such investments;

(4) to purchase, take on lease or in exchange, hire, or otherwise acquire any real or personal, moveable or immoveable property, and any rights or privileges in or over any such

property, which it considers necessary for the purpose of performing its functions;

(5) to give credit to smallholders for financing any crops grown in the settlement area and to deduct amounts in respect of capital contributions or to make provisions for taxation on trading profit and any outstanding debts incurred by the smallholders from any moneys payable to such smallholders from time to time under this Order;

(6) to levy appropriate charges, at rates approved by the Minister, for the provision of irrigation water, management and accounting expenses, the amortisation of the capital cost of the scheme and such other services as are provided under the direction of the Minister;

(7) to operate accounts for smallholders in respect of any transactions made under the Order on which interest may be paid or charged;

(8) to arrange for the sale of sugar-cane to the factory or to make such arrangements through the Managing Agents, as the case may be;

(9) to receive the proceeds of sale of the sugar-cane from the factory on behalf of the smallholders in accordance with such agreement as may, from time to time, be in force;

(10) to make regulations, with the prior approval of the Minister—

(*a*) to control the relationship between the smallholders and the management;

(*b*) to do all things incidental or conducive to the performance of its powers or functions under this Order.

Functions of the Authority

11. The Authority shall have the following functions—

(1) to prepare and carry out sugar development schemes including—

(*a*) the establishment of training farms;

(*b*) the provision of a central agricultural machinery and transport pool for hire to smallholders;

(*c*) the provision of a central purchasing and selling agency for use by the smallholders;

(*d*) the provision of a central accounting agency for the benefit of the smallholders;

(*e*) the development of new farms for smallholders;

(*f*) the provision of an estate management service and of a cane cutting service for the benefit of smallholders; and

(*g*) the provision of any other essential service;

(2) to deduct from any moneys payable to a smallholder from time to time under this Order such amount or amounts in respect of any levies or fees for services or materials, rendered or provided, as the case may be, capital contributions and provisions for taxation on the trading profit, or, for any other expense incurred by the Authority on behalf of any such smallholder.

PART IV

Financial Provisions

Funds of the Authority

12. The funds of the Authority shall consist of—

(*a*) such sums as may be payable to the Authority from moneys appropriated by Parliament for the purpose;

(*b*) such moneys or other assets as may accrue to or vest in the Authority whether in the course of the exercise of its functions or powers, or otherwise;

(*c*) such moneys or other assets as may accrue to or vest in the Authority by way of grants, subsidies, bequests, donations, gifts, subscriptions, rents, interest or royalties, from the Government or any other person;

(*d*) such sums as are derived from the sale of any property, real or personal, by or on behalf of the Authority;

(*e*) such moneys or other assets as may be donated to the Authority by any foreign government, international agency or other overseas body.

Books, accounts, audit and reports

13.—(1) The Authority shall cause to be kept proper books of account and other books in relation thereto.

(2) The accounts of the Authority shall be audited annually by professional auditors appointed by the Authority with the approval of the Minister. The expenses of the audit and incidental thereto shall be paid from the funds of the Authority.

(3) The Authority shall, as soon as is practicable, but not later than six months after the end of each financial year, submit to the Minister an annual report upon its work and operations.

(4) Such report shall include a balance sheet, an income and expenditure account and the annual report of the auditors, and shall be laid by the Minister before the National Assembly pursuant to section 32F of the Finance and Audit Act. Cap. 37:01

Allowances

14.—(1) Any member of the Authority who is not an officer in the public service shall be paid by the Authority such remuneration and allowances, if any, as the Minister may in his case determine.

(2) Any member of the Authority who is an officer in the public service shall be paid from the funds of the Authority

allowances at the appropriate relevant rate payable in accordance with the Malaŵi Public Service Commission Regulations:

Provided that such member shall not be paid any allowances from the funds of the Authority if he has been paid such allowances from public funds.

15. Fees for services rendered for which a charge is levied, shall be deducted from moneys due and payable to smallholders under this Order and any such deductions shall be made in such manner as the Authority deems fit

Fees for services

PART V

Miscellaneous

16.—(1) The common seal of the Authority shall not be affixed to any instrument except in pursuance of a resolution of the majority of the members of the Authority present at any meeting.

Common seal

(2) The common seal shall be affixed—

(*a*) in the presence of the Chairman and Project Manager; or

(*b*) in the presence of the Chairman or the Project Manager together with one duly authorized member of the Authority.

(3) Every instrument to which such seal is affixed shall be signed by the two persons in whose presence the seal is so affixed.

(4) Where no Project Manager has been appointed, the Chairman may appoint two members in whose presence the common seal may be affixed to any instrument, and such instrument shall be signed by both such members.

SPECIAL CROPS (LICENSING) REGULATIONS

under s. 6

G.N. 211/1963 212/1965 118/1985 6/1986

1. These Regulations may be cited as the Special Crops (Licensing) Regulations.

Citation

2. In these Regulations, unless the context otherwise requires—

Interpretation

"application" means an application for a licence;

"licence" means a licence under section 6 of the Act to grow, buy, barter or sell a special crop in a special crop area;

"special crop" means a crop declared to be a special crop by the Minister under section 3 of the Act;

"special crop area" means that area in respect of which the Minister has established an Authority for promoting and developing a special crop.

Applicants

3.—(1) Any person who is, or will be when the licence comes into force, the—

(*a*) owner of;

(*b*) occupier of;

(*c*) lessee of;

(*d*) manager of;

(*e*) person otherwise entitled to use; or

(*f*) person otherwise using,

land in a special crop area and intends to grow a special crop thereon shall apply for a licence.

(2) Any person who intends to buy, barter or sell a special crop in a special crop area shall apply for a licence on or before the 31st day of October in the year next preceding the year in which he so intends.

Applications

4.—(1) Every application shall be in writing, signed by the applicant, and submitted to the Regional Agricultural Officer of the Region in which the estate of the applicant is situate.

(2) Applications shall be made on the appropriate section of Form I of the First Schedule or on clearly legible copies of such form. Printed copies of Form I may be obtained at the places listed in the Second Schedule or from the Ministry of Agriculture, P.O. Box 30134, Capital City, Lilongwe 3.

Licences

5.—(1) Each licence shall be issued on the appropriate section of Form II of the First Schedule. In issuing any licence, those sections of Form II that do not apply to the licensee shall be deleted.

(2) No licence issued under these Regulations shall exempt the holder thereof from the requirements to obtain a licence or permit under any other law in force in Malaŵi.

Conditions

6. In addition to any special conditions that may be endorsed on any licence, the following conditions shall apply to all licences—

(*a*) the licence grants permission only with respect to the particular special crop and the particular special crop area or part thereof specified in the licence;

(*b*) the licence is valid until the date of expiry endorsed thereon unless it is sooner surrendered, suspended or revoked:

G.N. 6/1986

Provided that in the case of a coffee grower's licence, the licence shall be validated annually by the Minister issuing to the grower a certificate in Form III set out in the First Schedule;

(*c*) the licence shall be available for inspection by the Minister or any person authorized by him in writing for any of the purposes of regulation 9;

(*d*) the licence is valid only with respect to the person named therein any may not be loaned, transferred or assigned.

Duplicate licences

7. When the Principal Secretary is satisfied that any licence issued under these Regulations has been lost, stolen, defaced or destroyed, he may cancel the validity of such licence and issue a duplicate licence. A duplicate licence shall bear the words "Duplicate Licence" conspicuously thereon, and shall be issued only on payment of a fee of one Kwacha.

Register

8.—(1) The Principal Secretary shall arrange to keep a register of all applications received and a copy of each licence issued under these Regulations.

(2) The register shall be kept at the offices of the Ministry of Agriculture, Lilongwe.

(3) The register may be inspected only—

(*a*) by a public officer acting in the course of his official duties:

(*b*) by an applicant or a licensee only in respect of his application or licence.

Entry

9. The Minister, or any person authorized by him in writing, may, for the purpose of ascertaining that these Regulations or any licence issued under these Regulations are being complied with, enter upon or into any land, building, vehicle, aircraft or vessel where any special crop is or is reasonably believed to be grown, purchased, bartered, sold, stored or transported.

Offences

10.—(1) Any person who—

(*a*) wilfully obstructs or hinders any properly authorized person from carrying out his duties under regulation 9;

(*b*) knowingly or recklessly makes a statement in any application that is false or substantially misleading in any material particular;

(*c*) not being authorized to do so, alters or amends any licence or any particular in any licence;

(*d*) lends, transfers or assigns any licence issued to him to any other person;

(*e*) fails or neglects without reasonable cause to have his licence available for inspection by the Minister or by any person authorized by him in writing for the purposes of regulation 9,

shall be guilty of an offence.

(2) Any person convicted of an offence against these Regulations shall, in the case of a first conviction, be liable to a fine of K40 or to imprisonment for one month, and in the case of a second or subsequent conviction to a fine of K100 and to imprisonment for three months.

FIRST SCHEDULE

THE SPECIAL CROPS ACT

regs. 4 and 5
G.N. 118/1985
6/1986

THE SPECIAL CROPS (LICENSING) REGULATIONS

FORM I—APPLICATIONS

(Two copies to be submitted by 31st October to the Regional Agricultural Officer of the Region where the estate is situated.)

G.N. 118/1985

Section A

APPLICATION FOR LICENCE TO GROW AND SELL

(This section to be completed by occupiers of private land who wish to grow a special crop on their land by paid labour.)

I/We (*name in full*) .....
of (*address*) .....
hereby apply for a licence to grow and sell (*describe special crop*) ..... in the season 19...../..... on our (*name*) ..... Estate in the ..... District, held by us under Deed No. .....

Total hectarage of estate .....

Hectarage of special crop to be grown .....

Quantity expected to be sold .....

Date ....
(*Signature*)

G.N. 11/1985

Section B

APPLICATION FOR LICENCE TO BUY AND RESELL

(To be completed by occupiers of private land who wish to buy a special crop grown on their estate other than by paid labour.)

I/We (*name in full*) .....
of (*address*) .....
hereby apply for a licence to buy for resell (*describe special crop*) .... which will be grown in the season 19 / by tenants on our (*name*) ..... Estate in the ..... District, held by us under Deed No. ....

Total hectarage of estate .....

No. of tenants producing special crop .....

Estimated hectarage of special crop .....

Estimated quantity to be bought .....

Date ....
(*Signature*)

Section C

COMMENTS BY REGIONAL AGRICULTURAL OFFICER

.....

.....

THE SPECIAL CROPS ACT

THE SPECIAL CROPS (LICENSING) REGULATIONS

FORM II—LICENCE

Section A

LICENCE TO GROW AND SELL

Part (i)

Name of licensee .....
of (*address*) .....
is hereby licensed in the season 19 / to grow by paid labour and sell (*describe special crop*) ..... on (*name*) .....
Estate in the ..... District, held under Deed No. .....
Hectare of special crop .....

This licence shall be valid until 30th September next following the season for which issued, unless extended or suspended.

This licence is issued under and subject to the provisions of the Special Crops Act, any Regulations made thereunder and the following special conditions—

.....

.....

.....

Date of issue ....
No. of licence ..... (*Issuing Authority*)

Part (ii)

Quantity for which licence is valid .....

Date of issue ....
(*Issuing Authority*)

Section B

LICENCE TO BUY AND RESELL

Part (i)

Name of licensee .....
of (*address*) .....
is hereby licensed in the season 19 / to buy and resell (*describe special crop*) ..... on (*name*) .....
Estate in the ..... District, held under Deed No. .....
Hectare of special crop .....
No. of tenants producing special crop .....

This licence shall be valid until 30th September next following the season for which issued, unless extended or suspended.

This licence is issued under and subject to the provisions of the Special Crops Act, any Regulations made thereunder and the following special conditions—

.....

.....

.....

Date of issue ....

No. of licence ..... (*Issuing Authority*)

Part (*ii*)

Quantity for which licence is valid .....

Date ....

(*Issuing Authority*)

G.N. 6/1986

SPECIAL CROPS ACT reg. 6 (b)

(CAP. 65:01)

SPECIAL CROPS (LICENSING) REGULATIONS

FORM III—ANNUAL VALIDATION CERTIFICATE FOR COFFEE GROWER'S LICENCE

CERTIFICATE NO. .....

Licence No. .....

Grower's name .....

District .....

Agricultural Development Division .....

.....

This certificate validates for the period ..... to .....

Coffee Grower's Licence No. .....

issued to the above-named grower; and, where applicable, increases the hectarage of the licensed area as follows—

	Hectares
Hectarage of the original licensed area . .	_____
*Hectarage of additional area	_____
Total	_____

reg. 4

SECOND SCHEDULE

1. Agricultural Development and Marketing Corporation
   Headquarters, P.O. Box 5052, Limbe.
   Area Offices, P.O. Box 5, Lilongwe.
2. Offices of Regional Agricultural Officer
   Northern Region, P.O. Box 13, Mzuzu.
   Central Region, P.O. Box 92, Lilongwe.
   Southern Region, P.O. Box 32, Blantyre.
3. Offices of all District Commissioners and Assistant District Commissioners.

MALAŴI TOBACCO RESEARCH AUTHORITY ORDER

G.N. 17/1980
97/1985

under s. 4

Citation
G.N. 97/1985

1. This Order may be cited as the Malaŵi Tobacco Research Authority Order.

Interpretation
G.N. 97/1985

2. In this Order "the Authority" means the Malaŵi Tobacco Research Authority established by paragraph 3.

Establishment of the Authority
G.N. 97/1985

3. There is hereby established an Authority to be known as the Malaŵi Tobacco Research Authority for promoting and fostering the development of tobacco in Malaŵi.

Composition of the Authority

4.—(1) The Authority shall consist of a Chairman appointed by the Minister and of the following *ex officio* members—

(*a*) the Principal Secretary of the Ministry of Agriculture;

(*b*) the Chief Agricultural Research Officer of the Ministry of Agriculture;

(*c*) the Chief Agricultural Development Officer of the Ministry of Agriculture;

(*d*) the General Manager of the Authority;

(*e*) the Project Manager of the Kasungu Flue-Cured Tobacco Authority;

and of the following persons appointed by the Minister for a term of office of three years—

(*f*) two members nominated by the Chairman of the Agricultural Development and Marketing Corporation;

(*g*) two members nominated by the Tobacco Association one to represent the growers of burley tobacco and the other to represent the growers of flue-cured tobacco;

(*h*) two members nominated by the Tobacco Exporters Association.

MALAŴI TOBACCO RESEARCH AUTHORITY ORDER

under s. 4

[*Revoked by G.N.* 99/1989.]

SPECIAL CROPS (NATIONAL COFFEE AUTHORITY) ORDER

G.N. 46/1989
3/1990

under s. 4

1. This Order may be cited as the Special Crops (National Coffee Authority) Order. Citation

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

"Association" means the Coffee Growers Association;

"Authority" means the National Coffee Authority established under paragraph 3;

"coffee" means the beans and cherries of a coffee tree whether parchment, green or roasted and includes ground, decaffeinated, liquid and soluble coffee;

"decaffeinated coffee" means green, roasted or soluble coffee from which caffeine has been extracted;

"dried cherry" means dried fruit from coffee tree;

"green coffee" means coffee in the naked bean form before roasting;

"parchment coffee" means the green coffee bean contained in the parchment skin;

"roasted coffee" means the green coffee roasted to any degree and includes ground coffee;

3. There is hereby established an Authority to be known as the National Coffee Authority (in this Order referred to as the "Authority") for promoting and fostering the development of coffee in all areas of Malaŵi. Establishment of Authority

4.—(1) The Authority shall consist of the following members appointed by the Minister— Composition

(*a*) one member whom the Minister shall designate as the Chairman of the Authority;

(*b*) one member representing the Smallholder Coffee Authority, a body corporate established under the Smallholder Coffee Authority Order;

(*c*) six members representing the Association, nominated by the Association from amongst its members;

(*d*) the following *ex-officio* members—

(i) the Secretary for Agriculture or his representative,

(ii) the Secretary for Trade and Industry or his representative;

(iii) the Secretary to the Treasury or his representative; and

(iv) the Secretary for Economic Planning and Development or his representative.

(2) The Minister may appoint to the Authority such additional members, not exceeding three in number, as he deems qualified to assist the Authority in the exercise of its powers and functions, but such members shall not have the right to vote.

(3) No person shall be appointed to the Authority who—

(*a*) is an undischarged bankrupt;

(*b*) has, during the preceding three years, been sentenced for an offence against any written law to a term of imprisonment exceeding six months, otherwise than as an alternative to, or in default of, the payment of a fine;

(*c*) has, during the preceding five years been convicted of an offence involving fraud or dishonesty.

(4) Members of the Authority shall not by virtue only of their appointments to the Authority be deemed to be officers in the public service.

(5) The names of all members of the Authority as first constituted and every change in membership thereof shall be published in the *Gazette*.

Tenure of office of members

5.—(1) Members of the Authority, other than ex-officio members, shall subject to this paragraph, hold office for such period, being not more than two years, as may be specified in their respective instruments of appointment.

(2) The office of a member of the Authority shall be vacated—

(*a*) upon the expiry of the period specified in his appointment;

(*b*) upon his death;

(*c*) if he is adjudged bankrupt;

(*d*) if he is sentenced for an offence against any written law to a term of imprisonment of, or exceeding six months, otherwise than as an alternative to, or in default of, the payment of a fine;

(*e*) if he is convicted of an offence involving fraud or dishonesty;

(*f*) in the case of a member other than the Chairman if he is absent, without permission of the Chairman, from three successive meetings of the Authority which he has had notice;

(*g*) upon giving one month's notice in writing to the Minister of his intention to resign;

(*h*) upon his being given notice by the Minister of the termination of his appointment;

(*i*) if, in the opinion of the Minister, he becomes, by reason of mental or physical infirmity, incapable of performing his duties as a member of the Authority; and

(*j*) if the Minister, of himself or on the advice of the Association, is satisfied that the private interests of the member conflict or are liable to conflict with his duties as a member and consequently it is inexpedient for him to continue to hold office as a member.

(3) Upon the expiry of the period for which a member of the Authority is appointed, he shall continue to hold office until his successor has been appointed, but in no case shall further period exceed three months.

Renumeration of members

6. Any member of the Authority who is not an officer in the public service shall be paid by the Authority such remuneration and allowances as the Minister may determine.

Meetings

7.—(1) At the first meeting of the Authority, the members present shall elect a Vice-Chairman.

(2) The Authority may meet at such places and times as the Chairman may determine and shall meet at least three times in every year unless, in the opinion of the Minister, there are valid reasons for not so doing.

(3) Meetings of the Authority shall be convened by at least seven days' notice thereof in writing being given to the members by the Chairman.

(4) The Chairman shall preside at all meetings of the Authority or, in his absence from any meeting, the Vice-Chairman, who, for the purposes of that meeting, shall exercise all of the powers and perform all of the duties of the Chairman.

(5) The Chairman or, in his absence, the Vice-Chairman together with four other members shall form a quorum.

(6) The Authority shall have the power to regulate its own procedure.

(7) Minutes of every meeting of the Authority shall be kept by the Secretary and shall be confirmed at the succeeding meeting by the Chairman or in his absence, by the Vice-Chairman.

(8) Decisions of the Authority shall be made by a majority of the members present; and the person presiding shall have a deliberative vote and, in the event of an equality of votes, shall also have a casting vote.

Member to declare pecuniary interest

8.—(1) A Member who is aware that he has a personal, proprietary or pecuniary interest in a matter which is to be considered or is being considered by the Authority shall declare the interest to the Chairman in writing and shall not be entitled to take part in the deliberations or to vote on the matter.

(2) A member who is unable to attend a session of the Authority—

(*a*) may, with the written consent of the Chairman submit to the Authority, in writing, his views on any matter to be considered by the Authority; and

(*b*) shall not be entitled to vote on any matter which has been considered by the Authority at that session.

Functions of the Authority

9. The Authority shall have the following functions—

(*a*) to promote the development of the coffee industry in Malaŵi on commercial lines;

(*b*) to prepare and carry out schemes for the development of the coffee industry either directly or through agents;

(*c*) to control the sale of coffee either directly or through agents;

(*d*) to control the exports and imports of coffee either directly or through agents;

(*e*) to approve the method of marketing coffee;

(*f*) to licence and register—

(i) coffee growers and coffee buyers; and

(ii) factories for processing coffee;

(*g*) to control all matters of a phytosanitary nature and to license and register coffee seed producers and commercial coffee plant nurseries;

(*h*) to appoint an agent to keep records of coffee production and sales of each grower;

(*i*) to control and authorize the expenditure of money collected as levy;

(*j*) to provide research and such other services and facilities as shall be conducive to the development of the coffee industry.

Powers of the Authority

10. The Authority shall have the following powers—

(*a*) with the approval of the Minister to employ agents for the implementation of any coffee industry schemes or for the performance of any function of the Authority under this Order on such terms as may be agreed;

(*b*) to raise loans by bank overdrafts or otherwise on terms and for purposes approved by the Minister, subject to the Finance and Audit Act; Cap. 37:01

(*c*) to promote and purchase shares in any company incorporated in Malaŵi for the purpose of growing, processing or marketing of coffee;

(*d*) to establish or acquire, and to operate, factories for the processing of coffee and to enter into agreements with other persons operating factories for them to purchase or process coffee;

(*e*) to invest or deposit at interest any moneys standing to the credit of the Authority

(*f*) to acquire land for the purpose of carrying out its functions under this Order;

(*g*) with the approval of the Minister and by notice published in the *Gazette*—

(i) to impose a levy or levies on growers for the purpose of financing the operations of the Authority;

(ii) to provide for any other matter which is approved by the Minister as being in the furtherance of the development of the coffee industry or incidental or conducive to the exercise of any of the functions or powers of the Authority; and

(iii) to do any other thing which will assist in the development of the coffee industry.

Collection of levies

11. Levies imposed by the Authority under paragraph 10 (*g*) shall be collected in such manner as the Authority may direct.

Appointment of staff

12.—(1) The Authority may appoint a Secretary and such other staff as it considers necessary.

(2) The terms and conditions of service of the persons employed by the Authority shall be determined by the Authority subject to the approval of the Minister.

(3) The power to dismiss, discipline and control persons in the employment of the Authority shall be vested in the Authority.

Common seal

13. The common seal of the Authority shall not be affixed to any instrument except in pursuance of a resolution of the

majority of the members of the Authority present at any meeting and in the presence of the Chairman, and such member of the Authority as the Authority shall appoint, both of whom shall sign every instrument to which the common seal is attached.

Signification of documents

14. All documents, other than those requiring seal, made by the Authority and all decisions of the Authority may be signified under the hand of the Chairman or, in his absence, the Vice-Chairman.

Financial year

15. The Minister may, by notice published in the *Gazette*, from time to time, determine the financial year of the Authority.

Auditing of accounts

16.—(1) The accounts of the Authority shall be audited annually by an auditor approved by the Minister.

(2) The Authority shall, within a period of four months after the end of its financial year, or such longer period as the Minister may approve, cause to be prepared, signed and transmitted to the auditor—

(*a*) a balance sheet showing in detail the assets and liabilities of the Authority; and

(*b*) such other statements of accounts as the Minister may require.

(3) The Auditor shall be entitled to examine all books and papers in possession or control of the Authority, and may require from members, employees or agents of the Authority such information as is necessary for the performance of his duties.

(4) The Authority shall, within four months of the end of its financial year, or such longer period as the Minister may approve, submit to the Minister a report on its operations during the year, together with audited accounts.

Special Crops (*National Coffee Board*) (*Imposition of a Coffee Levy*) *Order* **[Subsidiary]**

under s. 10 (*g*) (*i*)

1. This Notice may be cited as the Special Crops (National Coffee Board) (Imposition of a Coffee Levy) Notice. Citation G.N. 79/1991

2. There is hereby imposed a levy on growers at the following maximum rates— Coffee levy

(*a*) for estate growers with 20 or more hectares of planted coffee—

	K	t
(i) per hectare of planted coffee	10	00
(ii) per tonne of green coffee produced . .	150	00

(*b*) for smallholder growers under the Smallholder Coffee Authority Scheme and other growers with less than 20 hectares of planted coffee—

(i) per hectare of planted coffee	6	00
(ii) per tonne of green coffee produced . .	10	00

TOBACCO

CHAPTER 65:02

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CHAPTER 65:02

TOBACCO

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CHAPTER 65:02

TOBACCO

18 of 1970
5 of 1971
16 of 1971
8 of 1972
5 of 1975
9 of 1986

An Act to amend and to consolidate the law relating to the production, manufacture and marketing of tobacco and matters incidental thereto

[24th August, 1970]

PART I

Preliminary

Short title

1. This Act may be cited as the Tobacco Act.

Interpretation
16 of 1971
9 of 1986
Cap. 67:03

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

"Corporation" means the body corporate established by section 3 of the Agricultural Development and Marketing Corporation Act;

"domestic tobacco grower" means a person who grows tobacco within the scheduled areas for his own use or consumption by himself or his family;

"economic crop" means a crop grown for the purpose of commerce and not for use or consumption by the grower or his family;

"manufactured tobacco" means tobacco made into cigarettes, snuff, pipe mixture, roll, twist, cigars, cigarillos, cake, plug or stick;

"owner" includes the agent, manager, overseer or other person in charge of any land;

"scheduled area" means an area declared as such by the Minister by notice in the *Gazette*;

"sell" with its grammatical variations and cognate expressions, includes "barter";

"tenant" means any person who is cultivating tobacco on his own behalf on private or public land to which he himself has no title;

"tobacco" means unmanufactured tobacco, whether cured or uncured, but does not include "nicotiana rustica";

"tobacco grower" means a person who, within the scheduled areas, grows tobacco as an economic crop, on his own behalf, by his own labour or by the labour of his servant.

PART II

The Uprooting of Tobacco, Tobacco Seed

Tobacco plants to be uprooted at direction of Minister

3.—(1) The Minister may, by notice published in the *Gazette*, fix dates prior to which all tobacco of the preceding planting shall be uprooted.

(2) Such dates may vary in respect of—

(*a*) tobacco grown in different parts of Malaŵi;

(*b*) tobacco grown in nurseries, fields or gardens, or for seed;

(*c*) tobacco of different types.

(3) Any person who fails to uproot tobacco plants prior to any date applicable to such plants which may have been fixed by the Minister under subsection (1) shall be guilty of an offence.

Persons responsible for uprooting

4. The persons responsible for uprooting tobacco plants under section 3 shall be—

(*a*) in the case of tobacco planted by a tenant, the tenant;

(*b*) in the case of tobacco planted on land which is leased or subleased, the lessee or sublessee;

(*c*) in the case of tobacco planted on land which is not leased or subleased, the owner of such land;

(*d*) in any other case, the person who planted the tobacco or caused it to be planted, or both such persons.

Tobacco seed

5.—(1) No person shall use, sell, import into Malaŵi or issue to any person any seed to be used for growing tobacco unless the seed has been approved by the Minister or by an officer of the Ministry authorized by the Minister in that behalf.

(2) No person shall grow tobacco for seed production except with the permission in writing of the Minister or of an officer of the Ministry authorized by the Minister in that behalf.

(3) No person other than an officer of the Ministry shall issue seed to any tobacco grower or domestic tobacco grower, and no such grower shall grow tobacco except from seed issued to him by an officer of the Ministry. 16 of 1971 9 of 1986

(4) Any person who contravenes or fails to comply with any of the provisions of this section shall be guilty of an offence and, in addition to any other penalty, the court shall order that any tobacco—

(*a*) grown from seed which has not been approved under subsection (1);

(*b*) grown for seed production or grown from seed produced contrary to subsection (2); or

(*c*) grown from seed issued otherwise than in conformity with subsection (3),

shall be destroyed, with such time as the court shall direct, by the owner of such tobacco or by his agent, or, in default of his so doing, by such other person as the court shall appoint, or shall order that such tobacco be forfeited.

PART III

Tobacco Registration

Registration of tobacco growers
8 of 1972

6.—(1) No person shall grow tobacco within the scheduled areas unless he is registered in accordance with this Act.

(2) Application for registration shall be made at such time, to such persons, in such places and in such manner as may be prescribed and may be refused for such reasons as may be prescribed.

(3) Any person who is aggrieved by the refusal of his application for registration may appeal to such person and in such manner as may be prescribed and any regulations made under this Act may provide for a further appeal and that such further appeal may be final.

(4) Registers for the purposes of this section shall be kept at such places, by such persons and in such form as may be prescribed, and shall be open to inspection at all reasonable times by the Minister or by any person authorized by him in writing in that behalf.

(5) Upon the registration of a tobacco grower or domestic tobacco grower under this section, the person keeping the register shall issue to such grower a certificate of registration in such from, valid for such period and subject to such conditions as may be prescribed.

(6) No person shall be registered to grow tobacco both on customary land and as a tenant.

(7) Any person who grows tobacco in any scheduled area without being registered as a tobacco grower in accordance with this Act shall be guilty of an offence.

Selling prohibited without registration certificate

7. No person required to be registered under this Part shall sell tobacco without first producing to the buyer a valid certificate of registration or, if he is selling on behalf of another person, the written authority and the valid certificate of registration of that other person. Any person who fails to comply with this section shall be guilty of an offence.

Endorsement of registration certificate

8. Every person who buys tobacco from a registered grower shall endorse on the back of the grower's certificate of registration the quantity of tobacco bought, the date of the purchase, and such other particulars as may be prescribed, and shall sign and

date the endorsement. Any person who fails to comply with this section shall be guilty of an offence.

Registration certificate not transferable

9.—(1) A certificate of registration issued under this Part shall not be transferable.

(2) No person shall have in his possession for any purpose a certificate of registration and a written authority which is not his own except when he is selling tobacco as the agent of a registered tobacco grower and, for the purpose of such agency, has in his possession the certificate of registration and the written authority of that registered tobacco grower.

(3) The Minister or any officer authorized in that behalf may require any person growing tobacco in a scheduled area to produce for his inspection his certificate of registration or, when a person is acting as a selling agent for a registered grower, the written authority and the certificate of registration of his principal.

(4) Any person who contravenes subsection (1) or (2), or who refuses or neglects to produce for inspection his or his principal's certificate of registration when required to do so under subsection (3) shall be guilty of an offence.

PART IV

Marketing

Purchase of tobacco forbidden except by certain persons

Cap. 65:03
16 of 1971

10.—(1) Tobacco shall not be bought elsewhere than on auction floors licensed under the Control of Tobacco Auction Floors Act, except by the following persons—

(*a*) the Corporation;

(*b*) a person who holds a valid tobacco-buying licence issued under Part VI;

(*c*) a person who is buying tobacco as the agent, duly authorized in writing, of the Corporation; or

(*d*) a person specially authorized in writing by the Minister.

(2) Where the holder of a tobacco-buying licence fails to buy any tobacco in respect of which the licence was issued, he shall report to the Corporation that such tobacco is available for purchase. The Corporation or its authorized agent may buy such tobacco at such price as may appear to the Corporation to be equitable.

(3) Any person who contravenes subsection (1) or (2) shall be guilty of an offence.

Minister may define tobacco classes and may fix prices

11.—(1) The Minister may from time to time define the classes and grades in which tobacco may be sold or bought.

(2) (*a*) The Minister may from time to time fix the prices to be paid by the persons referred to in paragraphs (*a*), (*b*), (*c*) and (*d*)

of section 10 (1) for different classes and grades of tobacco and may fix different prices in respect of different areas of the country.

(*b*) The prices fixed under this subsection shall be published in the *Gazette*.

(3) The Minister may from time to time fix tobacco quotas in respect of all registered growers selling tobacco to the corporation.

Restriction on sale of certain tobacco
16 of 1971

12.—(1) A person growing tobacco on customary land shall sell such tobacco only to the Corporation, unless the Minister specially authorizes another person, in writing, to buy such tobacco.

(2) Any person who contravenes or fails to comply with subsection (1) shall be guilty of an offence.

PART V

Cess

Meaning of tobacco

13. For the purposes of this Part—

"tobacco" means manufactured or unmanufactured cured tobacco other than tobacco imported into Malaŵi by a manufacturer for use by such manufacturer in the manufacture within Malaŵi of pipe tobacco, cigarettes, cigars, cigarillos, cake, plug or stick tobacco.

Imposition of cess
5 of 1975

14.—(1) The Minister may, by order, prescribe a cess at an expressed rate per stated unit of net weight to be levied, paid and collected in respect of—

(*a*) tobacco sold in Malaŵi;

(*b*) tobacco exported from Malaŵi;

P*r*ovided that—

(i) such cess shall not be paid twice in respect of the same tobacco;

(ii) no cess shall be paid by any person in respect of tobacco grown by him and sold to a person authorized to buy tobacco under paragraphs (*a*), (*b*), (*c*) or (*d*) of section 10 (1).

(2) An order made under subsection (1) may provide for cess at different rates on different types of tobacco, or may exempt any type of tobacco from liability for cess.

Tobacco not to be manufactured or exported unless cess paid

15.—(1) Any person who sells any tobacco and does not immediately upon completion of the sale pay any amount due for cess in respect of such tobacco shall be guilty of an offence.

(2) Any person who exports any tobacco in respect of which the cess has not been paid shall be guilty of an offence.

(3) Any person who is guilty of an offence under this section shall be liable to a fine of K200 and to imprisonment for six months.

16. The proceeds of the cess paid and collected under this Part shall be used exclusively for the benefit of the tobacco industry in such manner as the Minister may from time to time approve.

Proceeds of cess to be used for benefit of tobacco industry

PART VI

Tobacco Buying Licences

17.—(1) The Minister may by notice published in the *Gazette* designate any organization or person to be a licensing authority for the issue of licences to buy tobacco for the purposes of paragraphs (*b*) and (*c*) of section 10 (1), in this Act referred to as tobacco buying licences, and may assign to such licensing authority responsibility for any area or areas of Malaŵi.

Designation of licensing authorities

(2) In carrying out their or his duties under this Act, a licensing authority shall act subject to the general or specific directions of the Minister.

18. Application for a tobacco buying licence shall be made to the Minister, or to the licensing authority designated by him to be responsible for the area in which such licence is required:

Application for licence 8 of 1972

Provided that where a licence to buy and resell tobacco has been issued to an owner of land in respect of his tenants under the Special Crops Act, no licence to buy tobacco shall be required under this section.

Cap. 65:01

19. The Minister may issue an exclusive tobacco buying licence in respect of any area or areas of Malaŵi or in respect of a particular grade or class of tobacco, and where the Minister has issued such a licence no other tobacco buying licence shall be issued in respect of same area or areas, or in respect of the same grade or class of tobacco.

Exclusive tobacco growing licence

20. In respect of an application for a tobacco buying licence a licensing authority may—

Procedure for licensing authority

(*a*) if the application is approved, issue the licence to the applicant as soon after such approval as possible;

(*b*) if the application is refused, advise the applicant in writing of such refusal as soon after such refusal as possible, and forward a copy of such advice to the Minister.

21.—(1) Unless the Minister otherwise directs in any case, a licence shall not be refused by a licensing authority except on one or more of the following grounds—

Grounds for refusal of licence

(*a*) that the applicant has knowingly given false or misleading information or made false or misleading statements in his application;

(*b*) that the applicant has been convicted within five years preceding the date of application of an offence against this Act, or any written law replaced by this Act;

(*c*) that an exclusive tobacco buying licence has been granted in respect of the tobacco or area for which the application was received;

(*d*) that the Minister has determined that for the purpose of maintaining adequate stocks of tobacco within the area for which the licensing authority is responsible, licences may be issued only in respect of a designated quantity of tobacco and licences have been issued in respect of that quantity.

(2) The Minister may, in his discretion, direct that any application for a licence shall be refused, and his decision shall be final and shall not be questioned in any court.

Revocation or suspension of licences

22.—(1) A tobacco buying licence may be revoked or suspended by a licensing authority when the licensee has—

(*a*) knowingly given false or materially misleading statements or information in his application;

(*b*) violated or failed to comply with the terms or conditions of his licence;

(*c*) been convicted of an offence against this Act.

(2) The Minister may, in his discretion, revoke or suspend any tobacco buying licence or exclusive tobacco buying licence, and his decision shall be final and shall not be questioned in any court.

Appeal

23. Where an application for a tobacco buying licence is refused by a licensing authority, or when such a licence is revoked or suspended by a licensing authority, the person involved may, within thirty days of the receipt of notification of such refusal, revocation or suspension, appeal in writing to the Minister, and the Minister's decision shall be final and shall not be questioned in any court.

Register

24.—(1) Each licensing authority shall maintain a permanent register of all licences issued by such licensing authority.

(2) The register shall be kept as the Minister may direct.

(3) The register shall be open to inspection by the Minister or by any person authorized by the Minister to inspect such register.

Condition of licence

25. It shall be a condition of every tobacco buying licence or exclusive tobacco buying licence that the licensee may not purchase tobacco—

(*a*) in excess of any amount specified in his licence;

(*b*) which has not been grown on the area of land specified on his licence;

(*c*) of a grade or class excluded on his licence.

PART VII

Miscellaneous

Evidence

26. In any prosecution for an offence under this Act—

(*a*) any tobacco which is the subject of a charge shall be presumed to be tobacco within the meaning of those expressions as defined in this Act, and the burden of proving the contrary shall be on the accused;

(*b*) a certificate under the hand of the Commissioner for Lands that any land is customary land, public land or private land, or that any land is not included in the area of land specified in any licence, shall be admitted as evidence of the facts stated in such certificate, and the burden of proving the contrary shall be on the accused.

Power of entry

27.—(1) The Minister, or any person authorized by him in writing, may, during daylight hours, enter upon or into any land, building, vehicle, aircraft or vessel where tobacco is grown, purchased, stored or transported for the purpose of ascertaining that the provisions of this Act or the conditions of any licence or authority issued under this Act are being complied with.

(2) The Minister, or a person authorized by him under subsection (1), may call upon the owner, occupier or manager of, such land, building, vehicle, aircraft or vessel to—

(*a*) produce books or records relating to such land, building vehicle, aircraft or vessel as is used in connexion with the subject matter of this Act;

(*b*) produce books or records that will enable him to check the accuracy of any return or application made or required under this Act; or

(*c*) permit reasonable samples of tobacco to be taken to ascertain that this Act and the conditions of any licence or authority are being complied with.

(3) Any person who obstructs or refuses entry to a person authorized by the Minister under subsection (1) or fails, neglects or refuses to produce books or records or to permit samples to be taken under subsection (2) shall be guilty of an offence.

Display of licence, etc., and price list

28. A person buying tobacco under the provisions of paragraphs (*a*), (*b*), (*c*) or (*d*) of section 10 (1) shall, at the beginning of and throughout each day upon which he exercises his right to buy, prominently display at the place of purchase both a copy of his authority to buy and the prices offered for the classes and grades of tobacco which he is authorized to buy. Any person who fails to comply with this section shall be guilty of an offence.

False statements

29. If any person—

(*a*) in connexion with an application for registration as a grower of tobacco or for the issue of any licence or permit under this Act; or

(*b*) in or in connexion with any return required by this Act or any record or book kept in pursuance of this Act,

knowingly makes any statement or gives any information which is false in any material particular, he shall be guilty of an offence.

Hindrance of person performing duty

30. Any person who wilfully obstructs or hinders any person in the performance of his duties under this Act shall be guilty of an offence.

Failure to produce document

31. Any person who refuses to produce for inspection a licence, certificate, register or other document issued under or required by this Act to any person authorized to inspect such licence, certificate, register or other document, shall be guilty of an offence.

Order prohibiting sale, etc., where licence, etc., believed violated

32. Where the Minister or a person authorized by him in that behalf has reasonable grounds to believe that the terms or conditions of a licence or an authority to buy tobacco issued for the purposes of paragraphs (*a*), (*b*), (*c*) or (*d*) of section 10 (1) are not being complied with in respect of certain tobacco, he may issue an order prohibiting the sale, exchange or movement of such tobacco or any part thereof for not more than five days. Any person who fails to comply with such an order shall be guilty of an offence.

Hours during which tobacco may be bought

33. The buying of tobacco by persons authorized under paragraphs (*a*), (*b*), (*c*) and (*d*) of section 10 (1) shall not be undertaken outside such hours of the day as the Minister may, from time to time, by notice published in the *Gazette*, direct, and any such person who buys tobacco outside such hours shall be guilty of an offence.

Compliance with conditions of licence, etc.

34. Any person who buys tobacco contrary to the conditions of his licence or authority to buy tobacco shall be guilty of an offence.

Penalties

35.—(1) Any person who is convicted of an offence against this Act for which no special penalty is provided shall be liable to a fine of K1,000 and to imprisonment for one year.

(2) A court may, in addition to any other penalty, order that any tobacco in respect of which an offence has been committed shall be forfeited.

Regulations

36. The Minister may make regulations for the better carrying out of the purposes of this Act, and without prejudice to the generality of the foregoing such regulations may provide for—

(*a*) the duties of licensing authorities and other public officers under this Act;

(*b*) the forms to be used for any registration certificate, licence, return or application;

(*c*) the manner in which any payment for tobacco shall be made;

(*d*) the fees for any licence, certificate or application;

(*e*) general conditions to be attached to licences required under this Act and further specific conditions which may be imposed by a licensing authority;

(*f*) the returns to be made for the purposes of this Act;

(*g*) the manner in which tobacco may be cured;

(*h*) the movement of tobacco within Malaŵi;

(*i*) any matter to be or which may be prescribed under this Act.

Special Crops Act to prevail in case of conflict Cap 65:01

37. When any tobacco or any class or grade of tobacco has been declared to be a special crop in relation to the whole or any part of Malaŵi under the Special Crops Act, then in respect of that area and of that tobacco or class or grade thereof, where the provisions of the Special Crops Act and any order made thereunder conflict with the provisions of this Act or of any regulations made thereunder, then the provisions of the Special Crops Act and any order made thereunder shall prevail.

Cap. 65:01

SUBSIDIARY LEGISLATION

G.N. 212/1971

DECLARATION OF SCHEDULED AREAS

under s. 2

The Minister has declared the following to be scheduled areas for the purpose of the Act—

NORTHERN REGION

CENTRAL REGION

SOUTHERN REGION

G.N. 213/1970 121/1985 89/1986 101/1989

TOBACCO (REGISTERED GROWERS) REGULATIONS

under s. 12

Citation

1. These Regulations may be cited as the Tobacco (Registered Growers) Regulations.

PART I

REGISTRATION OF TOBACCO GROWERS ON CUSTOMARY LAND

Interpretation G.N. 89/1986 101/1989

2. In this Part the expression "registering officer" means in respect of burley tobacco, dark-fired tobacco, sun-cured tobacco, fire-cured tobacco and oriental tobacco grown on customary land, the Agricultural Development and Marketing Corporation or its representative.

Register of tobacco growers

3. Every registering officer shall keep a permanent register of persons registered to grow tobacco on customary land in his area in the form set out in the First Schedule.

Application for registration G.N. 89/1986

4. Any person wishing to grow tobacco on customary land shall apply for registration to the registering officer of his area, on or before such date as the Minister may, in relation to any growing season, determine by a notice published in the *Gazette*, at such markets of the Agricultural Development and Marketing Corporation as the registering officer may appoint. The registering officer may require any applicant for registration to produce a tax receipt or some other means of identification.

Certificate of registration and its surrender

5. Every person registered under this Part shall be issued with a certificate of registration in the form set out in the Second Schedule, which certificate shall remain valid until the last sale of tobacco by such person in the year following the issue of the

certificate, after which the certificate shall be surrendered forthwith to the supervisor of the Agricultural Development and Marketing Corporation market at which such last sale was made, or, if the tobacco was sold to a person holding a tobacco buying licence or an authority from the Minister to buy tobacco grown on customary land, to such person.

Forwarding of surrendered certificate

6. Every person to whom a certificate of registration is surrendered under regulation 5 shall forthwith forward the same to the registering officer by whom such certificate was issued.

Grounds for refusal to register

7.—(1) A registering officer may refuse to register any applicant for registration under this Part if, in his opinion, such applicant is not a fit and proper person to grow tobacco for all or any of the following reasons—

(*a*) that the land on which the applicant intends to grow tobacco, or the climatic conditions obtaining in the area, are not suitable for the purpose;

(*b*) that the applicant's methods and standards of cultivation, or of curing or handling tobacco are unlikely to produce leaf of an approved type and of reasonable quality;

(*c*) that the applicant does not give adequate consideration to the care and maintenance of the soil and timber resources available to him;

(*d*) that the applicant has inadequate or unsatisfactory curing accommodation at his disposal;

(*e*) that the applicant has been convicted of failing to uproot tobacco in breach of any notice under section 3 of the Act, or of any other offence against the Act or any regulations made thereunder;

(*f*) that the applicant has used or intends to use seed of a type not approved under section 5 of the Act, or has cured, or intends to cure, tobacco by a method other than that prescribed by the Tobacco (Method of Curing) Regulations;

(*g*) that the applicant is the husband or wife of a person to whom registration under this Part has already been refused.

(2) Any applicant aggrieved by a refusal to register under subregulation (1) may appeal to the Minister for the time being responsible for agriculture or any person authorized by him, whose decision shall be final.

Conditions of certificate

8. It shall be a condition of every certificate of registration issued under regulation 5 that the applicant shall only sell the tobacco grown by him at the market specified in such certificate, or to the holder of a tobacco buying licence issued under the Act or to a person authorized by the Minister to buy tobacco grown on the area of customary land on which such applicant's tobacco has been grown.

Record as quantity and quality of tobacco sold

9.—(1) Every supervisor of a market or holder of a tobacco buying licence or person authorized by the Minister to buy tobacco grown on customary land who buys tobacco from a person registered under this Part shall enter on the back of the certificate of registration of such person any comments relevant to the condition and quality of such tobacco.

(2) The registering officer to whom a certificate of registration is sent under regulation 6 shall enter, in that part of the permanent register which refers to the holder of such certificate, particulars of the amount of tobacco sold by him during the preceding season and any relevant comments regarding his fitness as a tobacco grower and the condition and quality of the tobacco sold by him recorded by the buyer of such tobacco.

PART II

Registration of Tobacco Growers on Private or Public Land

Register of tenants growing tobacco on private and public land

10.—(1) The owner, lessee, occupier or manager of any private or public land shall keep a permanent register, in the form set out in the Third Schedule, of all tenants who grow tobacco for sale on such land. Such owner, lessee, occupier or manager shall be the registering authority for the purposes of this Part.

(2) A separate permanent register shall be kept by the registering authority in respect of each separate property owned, leased or managed by him.

(3) Any registering authority who fails to keep a permanent register in accordance with subregulations (1) and (2) shall be liable to a fine of K100.

Inspection of permanent register

11. Every permanent register kept under regulation 10 shall be open at all reasonable times for inspection by Minister for the time being responsible for agriculture or any person authorized by him.

Application for and certificate of registration G.N. 89/1986

12.—(1) Every person wishing to grow tobacco for sale as a tenant shall apply for registration to his registering authority on or before such date as the Minister may, in relation to any growing season, determine by a notice published in the *Gazette*. The Programme Manager of the relevant Agricultural Division may, on cause being shown, allow a registering authority to register growers after this date.

(2) The registering authority shall issue to every person registered under this Part a certificate of registration in the form set out in the Fourth Schedule and shall complete the particulars required on such certificate.

(3) A certificate of registration under this Part shall be valid until the last sale of tobacco made by the holder thereof in the year

following the issue of such certificate, after which the certificate shall be surrendered forthwith to the person who bought such tobacco, and such person shall forthwith forward the certificate to the registering authority who issued the same.

Sale must be to licensed or authorized buyer

13. It shall be a condition of every certificate of registration issued under this Part that the applicant shall only sell the tobacco grown by him to the person licensed or authorized to buy tobacco grown on the land in question.

PART III

Miscellaneous

Offences

14. Any person who—

(*a*) fails to surrender a certificate of registration as required by regulation 5 or regulation 12 (3);

(*b*) sells tobacco in breach of a condition of his certificate of registration as prescribed by regulation 8 or regulation 13; or

(*c*) uses or attempts to use a certificate of registration which is,to his knowledge, invalid,

shall be liable to a fine of K100 and to imprisonment for three months.

FIRST SCHEDULE r. 3

No. .....

PERMANENT REGISTER OF TOBACCO GROWERS

Chief ..... Village .....

Name ..... Registered area .....

Market of sale .....

Year	*Endorsements and Remarks*	*kg sold*

SECOND SCHEDULE r. 5

CERTIFICATE OF REGISTRATION OF A TOBACCO GROWER

	Date	*Weight Sold*	*Grade*

Area of registration .....

Name of grower .....

Registered No. .....

Village .....

Chief .....

	Date	*Weight Sold*	*Grade*
District			
Market of sale			
Day of Sale			
Date of issue			
Signature of registering officer			

THIRD SCHEDULE r. 10 (1)

PERMANENT REGISTER OF TOBACCO GROWERS REGISTERED TO GROW TOBACCO FOR SALE OF PRIVATE OR PUBLIC LAND

G.N. 121/1985

Ref. No.	*Name*	*Village*	*Chief*	*District*	*Type of tobacco grown*	*Hectarage*

FOURTH SCHEDULE r. 12 (2)

CERTIFICATE OF REGISTRATION OF A TOBACCO GROWER ON PRIVATE OR PUBLIC LAND

Year ..... Name of estate ..... District .....
No. .....
Name .....
Village .....
Chief .....
District .....
Type of tobacco .....
Hectarage .....
Date of issue .....
Signature of registering officer .....

G.N. 176/1972
184/1972
120/1985
42/1986

TOBACCO (RATE OF CESS) ORDER

under s. 14

Citation

1. This Order may be cited as the Tobacco (Rate of Cess) Order.

Rate of cess on tobacco

2. The rate of cess to be levied, paid and collected in respect of the tobacco specified in column 1 of the Schedule hereto shall be that respectively specified in column 2 of the said Schedule, whether such tobacco is sold in or exported from Malaŵi.

SCHEDULE

G.N. 42/1986

Column 1 *Type of Tobacco*	*Coloumn 2* *Rate of Cess*
1. All unmanufactured Flue-cured and Burley Tobacco	1.00 tambala per kilogram or part thereof
2. All unmanufactured Turkish Tobacco	0.485 tambala per kilogram or part thereof

TOBACCO (METHOD OF CURING) REGULATIONS

G.N. 212/1970
88/1986

under s. 36

1. These Regulations may be cited as the Tobacco (Method of Curing) Regulations. Citation

2. Within the areas specified in the Schedule all tobacco produced on customary land shall be cured by the method prescribed in the schedule in respect of such areas: Application

Provided that the Minister for the time being responsible for agriculture or any person authorized by him may, in his discretion, exempt any person from this regulation.

3. Where any person is exempted from regulation 2, he shall be so informed in writing, or the fact that he has been so exempted shall be entered on his registration card issued to him under the Tobacco (Registered Growers) Regulations or any written law replacing or being in substitution for such Regulations. Exemption

4. Any person who cures tobacco in contravention of regulation 2 shall be liable to a fine of K100 and to imprisonment for three months. Offence and penalty

SCHEDULE

Area	*Method of Curing*	
(*a*) Blantyre, Chiradzulu, Zomba, Mulanje and Thyolo Districts	Fired	
(*b*) All Districts of the Central Region, except Ntcheu, Mchinji and Kasungu Districts . .	Dark fired	
(*c*) Mchinji, Kasungu, Ntcheu and Mangochi Districts	Sun/air	
(*d*) Northern Region	Dark fired and Sun/air	G.N. 88/1986

TOBACCO (CONTROL OF MOVEMENT) REGULATIONS

G.N. 8/1971
17/2010

under s. 36

1. These Regulations may be cited as the Tobacco (Control of Movement) Regulations. Citation

2. No tobacco shall be moved within Malaŵi between the hours of sunset and sunrise except when such tobacco is moved— Restriction of tobacco movement G.N. 17/2010

(*a*) for the purpose of sale at auction floors licensed under this Act or for the purposes of sale to a person licensed to buy and resell tobacco under this Act; or

(*b*) by a person licensed to grow and sell or to buy and resell tobacco.

Offence and penalty G.N. 17/2010

3. Any person, tobacco transporter or carrier who is found moving, transporting or otherwise taking away tobacco outside the prescribed hours in contravention of regulation 2 commits an offence and on conviction, shall be liable to a fine of K2,000 and to imprisonment for six months, and the tobacco shall be forfeited to the Malaŵi Government.

G.N. 9/1971
18/2010

TOBACCO (EXPORT) REGULATIONS

under s. 36

Citation

1. These Regulations may be cited as the Tobacco (Export) Regulations.

Restriction on exportation of tobacco Cap. 18.08

2.—(1) No person shall export any type of tobacco grown or produced in Malaŵi or tobacco sold over the auction floors in any year unless he is in possession of an export permit issued under the Control of Goods Act.

(2) The Minister shall publish a notice in the *Gazette* requesting persons to apply for export licences in accordance with the provisions of the Control of Goods Act.

(3) Any person who exports tobacco in contravention of subregulation (1) commits an offence of smuggling and shall be liable on conviction, to a fine of K2,000 and to imprisonment for six months, and the tobacco shall be forfeited to the Malaŵi Government.

(4) For the purposes of this regulation, "smuggling" includes illegal exportation and movement of tobacco across the territory of Malaŵi.

TOBACCO (INTEGRATED PRODUCTION SYSTEM) REGULATIONS

G.N. 4/2014

under s. 36

ARRANGEMENT OF REGULATIONS

REGULATION

1. Citation
2. Interpretation
3. Integrated production system contract
4. Minimum contract terms
5. Grower identification
6. Register of specified information regarding contracts
7. Complaints concerning contracts
8. Financing of farmers
9. Offences

Citation

1. These Regulations may be cited as the Tobacco (Integrated Production System) Regulations.

Interpretation

2. In these Regulations, unless the context otherwise requires—

"ARET" means the Agriculture Research Extension Trust;

"Commission" means the Tobacco Control Commission established under section 3 of the Control of Tobacco Auction Floors Act; and

"tobacco buyer" means a licensed or authorized tobacco buying company which has entered into an integrated production system contract with a tobacco grower or a tobacco growers association under these Regulations.

Integrated production system contract

3.—(1) An integrated production system shall involve the establishment of contractual obligations between tobacco growers and tobacco buyers for the growing and marketing of required tobacco volumes and quality in a sustainable manner.

(2) Tobacco growers may enter into funded or non-funded contracts with tobacco buyers in the process of tobacco production and marketing.

(3) For tobacco growers and tobacco grower associations to work with tobacco buying companies on this integrated production system, both shall sign a formal contract.

(4) Each grower shall enter into a contract, whether on his own or through growers associations, with no more than one tobacco buyer in each tobacco growing season, but in cases where the grower has registered more than one estate for that season, he may enter into a contract in respect of each registered estate.

Minimum contract terms

4.—(1) Funded and non-funded contracts shall contain the following minimum contract terms—

(*a*) the agreed volume, expressed in kilograms (yield per hectare);

(*b*) commitments by the grower to sell, and by the tobacco buyer, to buy the entire crop of the grower, within an agreed production variance of 10%;

(*c*) a commitment by the grower to grant the tobacco buyer the first option to purchase the grower's crop which is in excess of the agreed variance;

(*d*) the agreed price for each grade of tobacco, which shall be no less than the minimum price set and published by the Commission in the *Gazette*;

(*e*) a commitment from the grower to comply with good agricultural practices and minimum standards in tobacco growing as specified by ARET or the tobacco buyer;

(*f*) the duration of the contract, which shall be one year, subject to renewal;

(*g*) that the tobacco provided shall represent the crop throw;

(*h*) that the grower has insurance to underwrite the cost of production for that growing season, including the financing provided by the tobacco buyer, in case the grower is unable to deliver a crop; and

(*i*) a commitment by the tobacco buyer to promote recommended technologies as prescribed by ARET.

(2) Funded and non-funded contracts shall contain the registration number(s) of the grower(s) who are a party to the contract.

(3) Contracts not containing the minimum terms specified in subregulations (1) and (2) shall be invalid.

(4) Contracts between tobacco buyers and tobacco growers who are illiterate, shall be invalid unless—

(*a*) a written translation is made into a language the illiterate grower understands; or

(*b*) the English version of the contract is explained to the illiterate grower in a language he understands by a person who is independent of the buyer; and

(*c*) the contract acknowledges that the steps in (*a*) or (*b*) above have been followed.

(5) Every year, tobacco growers and tobacco grower associations shall negotiate with tobacco buyers on contract terms before buyers submit their contract forms to the Commission for clearance.

(6) Each tobacco buyer shall submit to the Commission the negotiated and agreed contract terms for inspection and clearance before grower identification for the season starts.

Grower identification

5.—(1) Tobacco buyers shall identify tobacco growers for contracts either on their own or through grower associations.

(2) Contract forms shall be filled in quadruplet: one for the tobacco buyer, one for the grower association and two to be given to the growers, who will submit one copy to the Commission when registering.

(3) Each contract entered into with tobacco growers shall include the minimum contract terms provided under regulation 3.

(4) The Commission shall keep and maintain a register of information provided under regulation 4.

Register of specified information regarding contracts

6.—(1) The register shall identify for each growing season, the contracts that have been entered into for that season, pursuant to the information provided to the Commission in accordance with these Regulations.

(2) The Commission shall update or cause to be updated the register of tobacco growers when the grower is registering with the Commission.

(3) The register shall be confidential and shall not be made available for inspection by the public.

Complaints concerning contracts

7.—(1) The Commission may investigate complaints by any party to the contract regarding the fairness in terms of the negotiation and implementation of the contract.

(2) The Commission shall communicate any complaint it considers to be well-founded to the party concerned and address it accordingly.

Financing of farmers

8.—(1) Tobacco buyers may, where necessary, provide financing to its contracted tobacco growers either directly or indirectly through commercial banks.

(2) Where the tobacco buyers have arranged such financing, they are under obligation to a full disclosure of the loan amount including quantities of each input type, interest rates and any other related costs.

(3) Where the tobacco buyers have arranged such financing, tobacco growers shall execute farmer stop orders in accordance with the Farmers' Stop Order Act in favor of the tobacco buyers and shall register the same with operators of selling floors through the Commission.

(4) Tobacco growers or tobacco growers association shall not register the same registration number with different buyers for as long as there is an active farmer stop order registered on that particular number.

(5) The Commission shall use its database to ensure that there is no double registration.

Offences

9. Any person who knowingly contravenes or fails to comply with any of the provisions of these Regulations commits an offence and shall be liable to an administrative penalty of K50,000 for tobacco growers and K500,000 for tobacco buyers.

CONTROL OF TOBACCO AUCTION FLOORS

CHAPTER 65:03

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CHAPTER 65:03

CONTROL OF TOBACCO AUCTION FLOORS

ARRANGEMENT OF SECTIONS

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43 of 1970
9 of 1986

An Act to provide a Commission to control the tobacco auction floors, to confer powers and duties thereon and to make provision for matters incidental thereto or connected therewith

[10TH DECEMBER, 1970]

PART I

PRELIMINARY

Short title

1. This Act may be cited as the Control of Tobacco Auction Floors Act.

Interpretation
9 of 1986

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

"auction floor buyer's licence" means a licence to buy tobacco on the auction floors granted under section 21;

"auction floor licence" means a licence granted under section 18;

"commercial grading of tobacco" means the grading of tobacco by a grader;

"Commission" means the Tobacco Control Commission established under section 3;

"grader" means a person who carries on the business of grading tobacco for profit or gain but does not include a grower or buyer of tobacco who grades his own tobacco or any employee or servant of such a grower or buyer;

"registered seller" means a seller who is registered under section 23;

"tobacco" means un-manufactured tobacco, whether cured or uncured but does not include "nicotiana rustica" or oriental.

PART II

Tobacco Control Commission

Tobacco Control Commission

3.—(1) There shall be a Commission to be known as the Tobacco Control Commission which shall be a body corporate having perpetual succession and a common seal and shall be capable of suing and being sued, and of purchasing and alienating land, and, subject to this Act, of performing all such acts and things as bodies corporate may by law perform.

(2) The Commission shall, in the exercise of its powers and the performance of its duties, under this Act or any other written law, be subject to the general or special directions of the Minister.

Composition of Commission

4.—(1) The Commission shall consist of the following members appointed by the Minister in his discretion—

(*a*) a Chairman appointed by the Minister;

(*b*) two members to represent the Agricultural Development and Marketing Corporation;

(*c*) two members to represent the Tobacco Association;

(*d*) two members to represent the Tobacco Exporters Association;

(*e*) four members to represent tobacco farmers;

(*f*) two members to represent the Government.

(2) (*a*) The members appointed under subsection (1) shall hold office during the Minister's pleasure and shall retire annually.

(*b*) Any members retiring as aforesaid shall be eligible for reappointment.

(3) Any member appointed under subsection (1) may resign by notice given in writing to the Minister, such resignation to take effect on the date specified in the notice, or 7 days after receipt of the notice by the Minister, whichever is the later.

Meetings of Commission

5.—(1) The Commission shall meet not less than twice in each year and at such other times as the Chairman shall direct.

(2) Five members of the Commission shall constitute a quorum. In the absence of both the Chairman and his alternate, the members present shall elect a Chairman.

(3) The Chairman of any meeting shall have a deliberative vote and, in the case of equality of votes, a casting vote.

(4) The members of the Commission shall be paid out of the funds of the Commission any reasonable expenses incurred by them in connexion with the business of the Commission.

Appointment of secretary and other officers

6. The Commission may appoint a secretary and such other officers as it may consider necessary for assisting it in the proper execution of its duties and there shall be paid to such secretary or officers from the funds of the Commission such remuneration as the Commission may determine.

Duties and powers of the Commission

7.— (1) It shall be the duty of the Commission—

(*a*) to advise the Government on the sale and export of tobacco;

(*b*) to promote and expand the sale of tobacco;

(*c*) to collate statistics relating to tobacco;

(*d*) to distribute market studies and information relating to tobacco;

(*e*) to control and regulate the sale of tobacco on the auction floors in Malaŵi.

(2) In addition to the other powers conferred upon it by this Act, the Commission shall, with the approval of the Minister, have power—

(*a*) to acquire, lease or hire any property which it considers necessary for the purpose of exercising its functions;

(*b*) to insure against losses, damages, risks and liabilities which it may incur;

(*c*) to enter into contracts in connexion with the exercise of its functions or the performance of its duties;

(*d*) to incur expenditure in the furtherance of any scheme for the better marketing of tobacco or for the development of external markets for tobacco.

Protection of members of Commission

8. No member of the Commission shall be liable to any suit, claim or demand by reason of anything done in good faith or for any decision made in the rightful exercise of his discretion in his capacity as such member.

Appeals from decisions of Commission

9. Any person aggrieved by a decision of the Commission in the exercise of its functions or the performance of its duties under this Act may appeal to the Minister, whose decision thereon shall be final and shall not be questioned in any court.

PART III

Finances of Commission

Revenue of Commission

10. The revenue of the Commission shall include—

(*a*) all charges levied by the Commission;

(*b*) all other fees, cesses, dues or rents received by the Commission; and

(*c*) the interest on money invested by the Commission.

11. Unless the Minister shall otherwise permit, all moneys received by the Commission shall be paid into a bank registered under the Banking Act and shall be credited to such of the Commission's accounts as may be appropriate. Bank accounts Cap. 44:01

12. The Commission may invest all or any part of its moneys— Investment of moneys by Commission

(*a*) in the purchase of any security issued by the Government of Malaŵi;

(*b*) in deposits in any bank or building society registered under the Banking Act or the Building Societies Act, as the case may be; or Cap. 44:01 Cap. 32:01

(*c*) in such other manner as may be approved by the Minister and the Minister for the time being responsible for finance.

13.—(1) The expenses of the Commission incurred in the execution of the functions, duties and powers conferred upon it, or in the discharge of any of its liabilities, shall be defrayed out of the funds of the Commission. Expenses of Commission

(2) The Commission may create such general and other reserves as may be approved by the Minister and may credit to such reserves such appropriations as may be authorized in the annual estimates of the Commission.

14.—(1) It shall be lawful for the Commission from time to time to raise loans, whether by way of bank overdraft or otherwise, in such amounts and on such conditions as may be approved under the Finance and Audit Act, for the proper carrying out of this Act. Raising of loans by Commission Cap. 37:01

(2) Such loans may be secured on the property and revenues of the Commission, including any lands which may be specifically placed at the disposal of the Commission under any law:

Provided that this section shall not be deemed to confer any powers of alienating such lands other than such powers as may be conferred by any such law.

15.—(1) The Commission shall cause a true account to be kept of all its financial transactions during each financial year. Keeping of accounts

(2) The Commission may keep such special accounts, including capital and renewals accounts, as it may consider necessary, and shall keep such further or other accounts as the Minister may from time to time direct.

(3) All accounts of the Commission shall be open to inspection by any member of the Commission.

Audit of Commission's accounts

16. The accounts of the Commission shall be audited at the end of every one of the Commission's financial years by an auditor approved by the Minister.

Financial year of Commission

17. The financial year of the Commission shall be such as may be prescribed by the Minister with the approval of the Minister for the time being responsible for finance.

PART IV

Auction Floor Licences

Licensed auction floors

18.—(1) No person shall use any premises for the sale of tobacco by auction unless he holds a valid auction floor licence in respect of such premises in the prescribed form granted by the Minister and licensing such premises as a licensed auction floor.

(2) The grant to an applicant of an auction floor licence shall be made on payment of the prescribed fee, subject to the discretion of the Minister, bearing in mind the number of such licences which have already been granted in the year in respect of which the application for a licence is made.

(3) Every auction floor licence shall, unless previously surrendered, revoked or suspended, be valid until the 31st day of December in the year in which it is granted.

(4) The Commission may, from time to time, after prior consultation with the holders of auction floor licences, and with the approval of the Minister, fix a tariff of weighing, selling and commission charges, which tariff shall be published in the *Gazette*, and it shall be a condition of every auction floor licence that the licensee's charges shall not exceed such tariff.

(5) If the holder of an auction floor licence or his manager or any other person employed by him for conducting the sale of tobacco on the auction floor to which such licence relates—

(*a*) fails to comply with, or contravenes, any condition to which the licence is subject; or

(*b*) is convicted of an offence against this Act, the Minister may, in his discretion—

(i) forthwith revoke such licence; or

(ii) suspend such licence for such period as he may deem reasonable to enable appropriate investigations to be carried out, and thereafter revoke such licence or allow it to continue.

(6) No part of the fee paid for such licence shall be refunded on the cancellation, revocation or suspension of such licence.

(7) Any provision in any other Act which may require any person to hold a licence or permit to sell any article shall not apply to the holder of an auction floor licence or to his manager or to any other person employed by him for conducting the sale of tobacco on the licensed auction floor to which such licence relates in respect of the sale of such tobacco.

(8) Every holder of an auction floor licence shall comply with all lawful directions of the Commission and shall render to the Commission the prescribed returns.

(9) Whenever the Minister has reason to believe that sales on any auction floor are the subject of rigging or any other corrupt practice, or is otherwise satisfied that it is in the interests of fair trading so to do, he may order the holder of the auction floor licence concerned to suspend business on the auction floor until further notice.

Minister may require holder of auction floor licence to give information

19.—(1) The Minister may require any holder of an auction floor licence to disclose to him the amount of tobacco sold by such holder, or by his manager or other person employed by him, on behalf of any person, and the price for which such tobacco was sold, and any such holder who does not comply with such requirement or who, in complying with such request, knowingly or recklessly makes any false statement or gives any false information shall be guilty of an offence.

(2) The Minister shall treat any information given to him by reason of a requirement made under subsection (1) as confidential:

Provided that where the exercise of the Minister's powers under subsection (1) results in the disclosure of an alleged offence, such information may be used in the prosecution of such offence.

Sale days and hours

20.—(1) The Commission may from time to time appoint for each licensed auction floor days on which, or hours during which, tobacco of different type may be offered for sale, and it shall be a condition of every auction floor licence that tobacco may only be offered for sale on such days or during such hours.

(2) Any appointment made by the Commission under subsection (1) shall—

(*a*) be published by posting a copy in a prominent position at the licensed auction floor to which it applies and shall come into force upon the date of such publication;

(*b*) be broadcast as a public announcement by the Malaŵi Broadcasting Corporation.

Tobacco sold on auction floors to be graded

21. No person shall sell tobacco on a licensed auction floor unless such tobacco has been graded in accordance with regulations made under this Act. Any person who contravenes this section shall be guilty of an offence.

PART V

Auction Floor Buyer's Licence

Auction floor buyer's licence

22.—(1) No person shall buy tobacco on a licensed auction floor unless he is the holder of a valid auction floor buyer's licence, in the prescribed form, granted by the Minister.

(2) The grant of an auction floor buyer's licence shall be at the discretion of the Minister and shall be subject to such conditions as the Minister may deem fit to impose.

(3) There shall be paid on the grant of an auction floor buyer's licence such fee as may be prescribed, and no part of such fee shall be repaid on the cancellation, revocation or suspension of such licence.

(4) An auction floor buyer's licence shall, unless previously surrendered, revoked or suspended, be valid until the 31st December of the year in which it is granted.

(5) An auction floor buyer's licence may be granted to a company or partnership, and in any such case such company or partnership shall register with the Commission the name of every person who is authorized to buy tobacco in Malaŵi on its behalf, and every person so registered by any such company or partnership shall be deemed to be the holder of an auction floor buyer's licence.

(6) If the holder of an auction floor buyer's licence or any person who is deemed by virtue of subsection (5) to be the holder of such licence—

(*a*) fails to comply with, or contravenes, any condition to which such licence is subject;

(*b*) is convicted of an offence against this Act,

the Minister may, in his discretion—

(i) forthwith revoke such licence; or

(ii) suspend such licence for such period as he may deem reasonable to enable appropriate investigations to be carried out, and thereafter revoke such licence or allow it to continue.

(7) Where the holder of an auction floor buyer's licence has been convicted of an offence against this Act and the court has ordered the cancellation of such licence, or where such licence has been revoked by the Minister, the Commission may refuse to register such holder as a person authorized to buy tobacco in Malaŵi on behalf of a company or partnership which holds an auction floor buyer's licence.

(8) Every company or partnership holding an auction floor buyer's licence in accordance with subsection (5) shall render to the Commission the prescribed returns and shall comply with all lawful directions of the Commission.

(9) Any person who contravenes subsection (1) or who, being the holder of an auction floor buyer's licence, fails to comply with or contravenes any condition to which such licence is subject, shall be guilty of an offence.

PART VI

Registered Sellers

Registration of tobacco sellers on the auction floors

23.—(1) No person shall sell his tobacco on an auction floor unless he is registered as a seller by the Commission.

(2) Application for registration shall be made at such time to such persons in such places and in such manner as may be prescribed and may be refused for such reasons as may be prescribed.

(3) Any person who is aggrieved by the refusal of his application for registration may appeal to the Minister whose decision shall be final and shall not be questioned in any court.

(4) Registers for the purposes of this section shall be kept at such places, by such persons and in such form as may be prescribed, and shall be open to inspection at all reasonable times by the Minister or by any person authorized by him in writing in that behalf.

(5) Upon the registration of such registered sellers under this section, the person keeping the register shall issue to such seller a certificate of registration in such form and subject to such conditions as may be prescribed:

Provided that such seller grows tobacco in accordance with Part 11 of the Tobacco Act within the scheduled areas declared under section 2 of the Tobacco Act.

Cap. 65:02

PART VII

Tobacco Graders and Grades

Minister to define tobacco classes and grades

24.—(1) The Minister shall from time to time define the classes and grades in which tobacco may be sold or bought.

(2) The classes and grades in which tobacco may be sold or bought shall be the same as those defined under section 11 of the Tobacco Act.

No grading without prescribed licence

25.—(1) No person shall carry on the business of a grader unless the Minister has issued to him such licence as may be prescribed.

(2) The Minister shall not license as a grader any person who is licensed as an auction floor buyer:

Provided that this subsection shall not come into operation until the Minister, by notice published in the *Gazette*, directs that it shall come into operation.

(3) Any person who carries on the business of a grader without a licence shall be guilty of an offence.

Commercial grading premises shall be licensed

26. All premises where commercial grading of tobacco is carried out shall be licensed by the Commission after due consultation with the Minister.

Appointment of grading inspectors

27.—(1) With the approval of the Minister the Commission shall appoint a grading inspector or grading inspectors who will have the power of entry to all licensed commercial grading premises for the purpose of inspecting the premises themselves and the grading of tobacco on such premises.

(2) A grading inspector shall have power to open any bale of tobacco presented for sale at any licensed auction floor or at any commercial grading premises.

Labelling of graded tobacco

28.—(1) Every grader shall label distinctively each bale of tobacco graded by him with his licensed name and number for identification purposes.

(2) Any grader who wilfully fails to label his graded tobacco shall be guilty of an offence.

PART VIII

Commission—General

Tobacco used in manufacture

29.—(1) No person shall use for the purpose of manufacture for sale any tobacco grown in Malaŵi which has not been sold to such person or his agent across a licensed auction floor:

Provided that this section shall not apply to tobacco grown on customary land in excess of the requirements of the Farmers Marketing Board or of a person authorized to buy such tobacco under section 12 of the Tobacco Act and made by the grower into roll, twist, snuff, coil or ball tobacco for local sale or trade.

(2) Any person who uses tobacco for the purposes of manufacture in contravention of this section shall be guilty of an offence.

Commission may arrange for disposal of surplus tobacco

30.—(1) If at any time the Commission deems fit, it may, with the written approval of the Minister, arrange for the collection of surplus tobacco into pools and for the disposal of such tobacco through the Commission.

(2) For the purposes of this section, "surplus tobacco" means tobacco delivered to a licensed auction floor for sale and remaining unsold and not removed therefrom after due notice given under section 31.

(3) The powers, duties and functions of the Commission under this section shall be such as may be prescribed by the Minister.

31. If at any time the owner of any tobacco left unsold on a licensed auction floor has failed to remove such tobacco after receiving such notice to do so as the Commission may deem sufficient, the Commission may authorize the owner of such licensed auction floor to destroy such tobacco without liability to pay compensation to the owner of such tobacco.

Power of Commission to authorize destruction of tobacco left on floor

PART IX

Miscellaneous

32. Any person aggrieved by a decision of the Commission may appeal to the Minister whose decision shall be final and shall not be questioned in any court.

Appeals

33. Any person who wilfully obstructs or hinders any person in the performance of his duties under this Act shall be guilty of an offence.

Hindrance of person performing duty

34. Any person who refuses to produce for inspection a licence or other document issued under or required by this Act to any person authorized under the Act to inspect such licence or other document shall be guilty of an offence.

Failure to produce document

35.—(1) Where the Minister or a person authorized by him in that behalf has reasonable grounds to believe that the terms or conditions of a licence issued under Part IV, V and VII are not being complied with, he may issue an order prohibiting the sale, exchange, movement or grading of such tobacco until investigations therein have been completed.

Order prohibiting sale, etc., where licence, etc., believed violated

(2) Any person who fails to comply with such an order shall be guilty of an offence.

36. The Minister, a grading inspector or the Chairman of the Commission or any person authorized either by the Minister or by the Chairman of the Commission in writing in that behalf may enter upon any land or premises used for the purpose of buying or grading or handling tobacco for the purposes of ascertaining whether this Act is being complied with.

Power of entry

37.—(1) Any person who, in making any application under this Act or any return required by or under this Act, knowingly or recklessly gives false information or makes any false statement shall be guilty of an offence.

Offences and penalties

(2) Any person who is guilty of an offence against this Act shall be liable to a fine of K200 and to imprisonment for three months.

(3) When any person who holds a licence or permit under this Act is convicted of an offence against this Act, the Court may, in addition to any other penalty, order the cancellation of such licence or permit or order that any tobacco in respect of which an offence has been committed shall be forfeited.

Regulations

38. The Minister may make regulations for the better carrying out of the purposes of this Act, and without prejudice to the generality of the foregoing such regulations may provide for—

(*a*) the forms to be used for any licence, return or application;

(*b*) the fees for any licence or application;

(*c*) general conditions to be attached to licences required under this Act;

(*d*) the returns to be made for the purposes of this Act;

(*e*) the penalties for breaches of the regulations;

(*f*) any matter to be or which may be prescribed under this Act.

SUBSIDIARY LEGISLATION

CONTROL OF TOBACCO AUCTION FLOORS (RETURNS AND LICENCES) REGULATIONS

G.N. 183/1971 44/1986 91/1986

under s. 38

Citation

1. These Regulations may be cited as the Control of Tobacco Auction Floors (Returns and Licences) Regulations.

Auction floor owner's licence

2.—(1) Every auction floor licence shall be in Form I in the Schedule.

(2) Every owner of a licensed auction floor shall, on or before the 31st December in every year, render a return to the Secretary to the Commission in Form II in the Schedule, which return shall contain particulars of all tobacco purchased at his auction floor during the preceding season.

Auction floor buyer's licence

G.N. 91/1986

3.—(1) Every application for an auction floor buyer's licence shall be in Form III in the Schedule.

(2) Every auction floor buyer's licence shall be in Form IV in the Schedule.

(3) There shall be paid on the grant of an auction floor buyer's licence a fee of K500.

Return by auction floor buyer

4. Every holder of an auction floor buyer's licence shall render to the Secretary to the Commission, on or before the 15th January in every year, a return in Form V in the Schedule setting forth details of every purchase of tobacco by him during the preceding season together with particulars of the manner of disposal of every such purchase of tobacco.

Permit to export tobacco

G.N. 91/1986

5.—(1) Every permit to export tobacco shall be in Form VI in the Schedule.

(2) A fee of K10 shall be paid in respect of every permit to export tobacco.

Import permit

6. Every permit to import tobacco shall be in Form VII in the Schedule.

Returns by tobacco growers

7.—(1) Every grower of tobacco shall, when required so to do by either the Minister or the Commission, submit to the Minister or the Commission, as the case may be, a return, in Form VII in the Schedule, of the estimated production of tobacco by him in the current season on every estate or area of land owned or used by him for the purpose of growing tobacco, together, with particulars of any tobacco sold by him during the current season.

(2) Every return required under subregulation (1) shall be completed and sent to the Minister or the Secretary to the Commission within 21 days of the despatch of the requisition therefor by the Minister or the Commission, as the case may be.

8.—(1) If any person fails to comply with these Regulations, the Minister may cancel his registration as a seller of tobacco under the Control of Tobacco Auction Floors (Delivery Quotas) Regulations, 1971.

Sub. leg. p.27

(2) Any person who fails to comply with these Regulations or who wilfully or recklessly makes any false statement in any return required to be made thereunder shall be liable to a fine of K100.

SCHEDULE

FORM I

CONTROL OF TOBACCO AUCTION FLOORS ACT

(CAP. 65:03)

AUCTION FLOOR LICENCE No.....

Licence is hereby granted to ..... of ..... to use the premises situated at ..... as a licensed auction floor, subject generally to the Control of Tobacco Auction Floors Act and in particular to section 18, and to the following special conditions—

(1) A summary of sales shall be submitted daily and weekly in such forms as required by the Minister from time to time.

(2) .....

This licence expires on the 31st December, 19 .....
FEE: K1,000

.....
Minister of Agriculture

FORM II

CONTROL OF TOBACCO AUCTION FLOORS ACT

(CAP. 65:03)

RETURN

To: The Secretary,

Tobacco Control Commission, P.O. Box 5080, Limbe.

I/We, being the Owners of the ..... Auction Floor submit herewith a return of purchases of tobacco by licensed buyers on the above-mentioned auction floor during the year 19 .....

Name of Buyer	Amount purchased in lb.				
	Flue-cured	Fire-cured		Air or Sun-cured	Burley
		Northern Division	Southern Division		
.....	.....	.....	.....	.....	.....
.....	.....	.....	.....	.....	.....
.....	.....	.....	.....	.....	.....
.....	.....	.....	.....	.....	.....
.....	.....	.....	.....	.....	.....
TOTALS . .					

The average price per lb. was
- Flue-cured .....
- Fire-cured N. Division .....
- Fire-cured S. Division .....
- Air or Sun-cured .....
- Burley .....

Signature .....
Date .....

FORM III

CONTROL OF TOBACCO AUCTION FLOORS ACT
(CAP. 65:03)
APPLICATION FOR AUCTION FLOOR BUYER'S LICENCE

To: The Secretary,
Tobacco Control Commission, P.O. 5080, Limbe.

I/We ..... of ..... hereby apply for a licence to purchase tobacco on the ..... Auction Floor during the year ending 31st December, 19 .....

The fee of K100 is enclosed.

The following persons will be authorized to buy tobacco under the licence—

Names of buyers .....
.....
.....
.....

Signature .....
Address .....
Date .....

FORM IV

CONTROL OF TOBACCO AUCTION FLOORS ACT

(CAP. 65:03)

AUCTION FLOOR BUYER'S LICENCE

Licence is hereby granted to .....
of ..... to purchase tobacco subject to the Control of Tobacco Auction Floors Act on licensed auction floors during the year ending 31st December, 19 .....

The grant of this licence is subject to the following conditions—

(*a*) that you undertake to make arrangements for the removal of any purchase made by you at a sale before you commence to bid on an auction floor;

(*b*) .....

(*c*) .....

(*d*) .....

The under-mentioned persons are authorized to buy tobacco under this Licence—

(Names of buyers) .....
.....
.....

FEE: K100

Date ....

Minister of Agriculture and Natural Resources

FORM V

CONTROL OF TOBACCO AUCTION FLOORS ACT

(CAP. 65:03)

RETURN OF TOBACCO ON HAND

To: The Secretary,
Tobacco Control Commission, P.O. Box 5080, Limbe.

PURCHASES ON HAND

I/We certify that the following quantities of tobacco remained on hand for export at 31st December of last year for which I/we shall require an export permit—

	A	B	
	Green Stocks	*Packed Weight Stocks*	*Total Equivalent Green Weights of A and B*
Flue-cured	.....	.....	.....
Fire-cured	.....	.....	.....
Sun/Air cured . .	.....	.....	.....
Burley	.....	.....	.....

Signature .....

Address .....

Date .....

This return should be submitted not later than 15th January annually.

FORM VI

CONTROL OF TOBACCO AUCTION FLOORS ACT

(CAP. 65:03)

PERMIT TO EXPORT FROM MALAŴI TOBACCO PURCHASED OVER A LICENSED AUCTION FLOOR IN MALAŴI

Permission is hereby granted to ..... of ..... to export tobacco purchased over a licensed auction floor during the year 19 .....

This permit is issued subject to the following conditions—

(*a*) details of shipment giving—

(1) type of tobacco (if fire-cured, specify whether Northern or Southern Division);

(2) whether leaf, strips, scrap or stems;

(3) weight—(*a*) dry weight—(*b*) equivalent green weight;

(4) f.o.r. value; and

(5) destination

shall be supplied under confidential cover to the Secretary, Tobacco Control Commission, not later than the 15th of each month for railings during the previous month;

(*b*) .....

.....

This permit expires on the ..... day of ....., 19 .....

FEE: 50t paid

Date .....

Licence No. .....

FORM VII

CONTROL OF TOBACCO AUCTION FLOORS ACT

(CAP. 65:03)

PERMIT TO IMPORT TOBACCO

Permission is hereby granted to ..... of ..... to import tobacco into Malaŵi for sale on licensed auction floors during the year of .....

This permit is subject to the holder complying with the Control of Tobacco Auction Floors Act, the Tobacco Act, the Customs and Excise Act, and any subsidiary legislation thereunder.

This Permit expires on the 31st December, 19 .....

Date .....

Permit No.....

G.N. 44/1986 91/1986

FORM VIII

CONTROL OF TOBACCO AUCTION FLOORS ACT

(CAP. 65:03)

ESTIMATE

MARCH RETURN:

MAY RETURN:

To: Tobacco Control Commission
P.O. Box 5080, Limbe

I/We estimate that the following quantity(ies) of tobacco will be produced on my/our estate known as ..... in the ..... District during the 19 ..... season—

	Amounts in kg	Area in hectares
Flue cured	.....	
Fire cured	.....	

Signature .....

Date ..... *Name and address* .....

.....

.....

JUNE RETURN:

JULY RETURN:

To: Tobacco Control Commission
P.O. Box 5080
Limbe

I/We estimate that the following quantity(ies) of tobacco will be produced on my/our estate known as ..... in the ..... District during the 19 ..... season—

	Amounts in kg	Area in hectares
Fired cured	.....	
Air and sun cured . .	.....	
Oriental	.....	
Dark fired	.....	

Signature .....

Date ..... *Name and address* .....

.....

.....

NOTES—(1) This, return, includes tobacco already sold during the current season.

(2) A separate return is required for each estate in respect of the March return, which must be submitted by 1st April. If any grower is in any difficulty in framing this estimate, the hectarage to be planted multiplied by the average production during past years will give a sufficiently accurate estimate.

(3) Growers are advised that a return in which the estimates for firecured and sun/air-cured are bracketed together will not be accepted by the Commission. Growers must state the quality of each type they are likely to produce and the probable hectarage; any variation in the weight of either type actually produced and the hectarage can be corrected in the June and July returns.

(4) With regard to the June and July returns, these must be submitted by the 1st June and 1st July respectively. The estimates in these cases need not be rendered for each estate separately, but the total production and hectarage should be given for each type of tobacco being produced, whether any tobacco has been sold or not.

(5) Failure by a grower to render these returns by the due date may lead to a cancellation by the Commission of the registration as a seller of tobacco of such grower until such time as the Commission may think fit.

FORM IX

CONTROL OF TOBACCO AUCTION FLOORS ACT G.N. 91/1986

(CAP. 65:03)

GRADER'S LICENCE

Licence is hereby granted to ..... of ..... to carry on the business of grading tobacco on the premises specified below for growers for the period commencing on the 1st January, 19..... and terminating on the 31st December, 19....., for which licence the sum of K200 has been paid.

The licence is issued subject to the observance by the licensee of the Regulations issued from time to time by the Minister under section 38 of the Control of Tobacco Auction Floors Act.

Premises:

Date ....

Minister of Agriculture

CONTROL OF TOBACCO AUCTION FLOORS (GRADING) REGULATIONS

G.N. 184/1971 86/1973 40/1986

under s. 38

1. These Regulations may be cited as the Control of Tobacco Auction Floors (Grading) Regulations. Citation

2. In these Regulations, unless the context otherwise requires— Interpretation

"funked" used with reference to tobacco means that the tobacco has no visible sign of mould, but is known to have been mouldy or has an aroma characteristic of tobacco which has been or is about to become mouldy;

"mixed bales" means bales of tobacco containing only one type of tobacco of different grades;

"scrap" means any tobacco which does not conform to any of the grades set forth in the Schedule or to the description of "strip tobacco" and shall consist of portions of leaf free from loose stem and any foreign matter or tobacco dust;

"split bales" means bales of tobacco containing one type of tobacco of not more than two different grades and packed so that each grade is separately divided from the other;

"strip tobacco" means clean and sound tobacco leaf having the midrib removed therefrom so as to leave not more than one quarter of the midrib remaining at the tip of the leaf.

Grading before sale

3. No person shall send any tobacco for sale to a licensed auction floor unless such tobacco has been graded into one of the categories set forth in the Schedule or it is "strip" tobacco or "scrap":

Provided that a bale of tobacco may be packed with a majority of leaves of mouldy, carbonized or funked tobacco, if the bale is declared upon consignment and sale to be "mouldy", "carbonized" or "funked", as the case may be.

SCHEDULE

G.N. 40/1986

Tobacco Grades

FIRE CURED AND SUN/AIR CURED:

1.	Heavy Bodied Wrapper . .	(*a*) over 0.58 m (*b*) 0.53 m to 0.58 m . . (*c*) 0.48 m to 0.53 m (*d*) 0.41 m to 0.48 m	(Fully ripe, not torn, without perish or disease)
2.	Thin Bodied Wrapper . .	(*a*) over 0.58 m (*b*) 0.53 m to 58 m . . (*c*) 0.48 m to 0.53 m (*d*) 0.41 m to 0.48 m	(Fully ripe, not torn, without perish or disease)

3.	Heavy Bodied Filler . .	(*a*)	over 0.58 m . .	(Fully ripe, not torn, without perish or disease)
		(*b*)	0.53 m to 0.58 m	
		(*c*)	0.48 m to 0.53 m	
		(*d*)	0.41 m to 0.48 m	
		(*e*)	0.30 m to 0.41 m . .	(Thick and Thin Bodied disease)
		(*f*)	0.20 m to 0.30 m	
4.	Thin Bodied Filler . .	(*a*)	over 0.58 m	(Fully ripe, not torn, without perish or disease)
		(*b*)	0.53 m to 0.58 m	
		(*c*)	0.48 m to 0.53 m	
		(*d*)	0.41 m to 0.48 m	
5.	Mottled Filler . .	(*a*)	over 0.48 m	(Mottled and Light Coloured Filler, not badly torn, without perish or disease)
		(*b*)	under 0.48 m . .	
6.	Greenish Filler . .	(*a*)	over 0.58 m	(A greenish cast or running green, not badly torn, without perish or disease)
		(*b*)	0.53 m to 0.58 m	
		(*c*)	0.48 m to 0.53 m	
		(*d*)	0.41 m to 0.48 m	
		(*e*)	0.30 m to 0.41 m	
7.	Heavy Bodied Torn Filler	(*a*)	over 0.48 m	(Fully ripe, torn, without perish or disease)
		(*b*)	under 0.48 m . .	
8.	Light Bodied Torn Filler . .	(*a*)	over 0.48 m	(Fully ripe, torn, without perish or disease)
		(*b*)	under 0.48 m	
9.	Non-descript	(*a*)	over 0.48 m	(Ripe, badly torn, perish or disease, etc.)
		(*b*)	under 0.48 m	
10.	Hard Green		over 0.48 m	(Greenish, badly torn, perished, diseased, etc., and all qualities of hard green)

11. By-products	(*a*)	Strips . .	(Means clean and sound tobacco having the midrib removed so as to leave not more than one-quarter of the midrib remaining at the top of the leaf)
	(*b*)	Scrap	(Consists of portions of leaf that will not pass through 0.03 m mesh or sieve; free from foreign matter and dust)
	(*c*)	Fine Scrap	(Consists of pieces of tobacco that will pass through a 0.03 m mesh or sieve, but not through a 0.01 m one and must be free from dust, loose stem and foreign matter)
	(*d*)	Nicotine Dust	(Consists of pieces of tobacco which are not big enough to be included in the "Fine Scrap" classification)

BURLEY

Grade No.		
1FC . .	Coloury over 0.48 m. .	Good texture and without blemish, green or damaged leaf
1FCR . .	Light red over 0.48 m	Good texture and without blemish, green or damaged leaf
2FC . .	Coloury over 0.48 m . .	Torn, blemished and perished leaf
2FCR	Light red over 0.48 m	Torn, blemished and perished leaf
2FCW	Coloury and tan over 0.48 m	Waterstained leaf
3FC . .	Coloury under 0.48 m	Good texture and without blemish, green or waterstained leaf
3FCR	Light red under 0.48m	Good texture and without blemish, green or waterstained leaf
4FC . .	Coloury under 0.48 m	Torn, blemished and perished leaf
4FCR	Light red under 0.48 m	Torn, blemished and perished leaf
4FCW	Coloury and tan under 0.48 m	Waterstained leaf

Grade No.		
1C	Coloury over 0.58 m.	Good texture and without blemished, green or damaged leaf
1CR	Light red	Good texture and without blemished, green or damaged leaf
1R	Red	Good texture and without blemish, green or damaged leaf
1CS	Coloury over 0.58 m	Slightly blemished, slightly torn, but not perished. No green or waterstained leaf
1CSR	Light red	Slightly blemished, slightly torn, but not perished. No green or waterstained leaf
1RS	Red	Slightly blemished, slightly torn, but not perished. No green or waterstained leaf
1CSB	Coloury over 0.58 m	Spotted, slightly torn leaf but not perished, green or waterstained
1CRSB	Light red	Spotted, slightly torn leaf but not perished, green or waterstained
1RSB	Red	Spotted, slightly torn leaf but not perished, green or waterstained
2C	Coloury 0.48 m to 0.58 m	Same quality as 1C, 1R, 1R
2CR	Light red	Same quality as 1C, 1R, 1R
2R	Red	Same quality as 1C, 1CR, 1R
2CS	Coloury 0.48 m to 0.58m	Same quality as 1CS, 1CRS and 1RS
2CRS	Light red	Same quality as 1CS, 1CRS and 1RS
2RS	Red	Same quality as 1CS, 1CRS and 1RS
2CSB	Coloury 0.48 m to 0.58 m	Same quality as 1CSB, 1CRSB and 1RSB
2CRSB	Light red	Same quality as 1CSB, 1CRSB and 1RSB
2RSB	Red	Same quality as 1CSB, 1CRSB and 1RSB

Grade No.		
3C	Coloury 0.41 m to 0.48 m	Same quality as 1CS, 1CRS and 1RS
3CR	Light red	Same quality as 1CS, 1CRS and 1RS
3R	Red	Same quality as 1CS, 1CRS and 1RS
3CB	Coloury 0.41 m to 0.48 m	Same quality as 1CSB, 1CRSB and 1RSB
3CRB	Light red	Same quality as 1CSB, 1CRSB and 1RSB
3RB	Red	Same quality as 1CSB, 1CRSB and 1RSB
4C	Coloury 0.30 m to 0.41 m	Same quality as 1CS, 1CRS and 1RS
4CR	Light red	Same quality as 1CS, 1CRS and 1RS
4R	Red	Same quality as 1CS, 1CRS and 1RS
4CB	Coloury 0.30 m to 0.41m	Same quality as 1CSB, 1CRSB and 1RSB
4CRB	Light red	Same quality as 1CSB, 1CRSB and 1RSB
4RB	Red	Same quality as 1CSB, 1CRSB and 1RSB
5C	Coloury 0.23 m to 0.30 m	Sound and torn leaf but not shattery, perished, green or waterstained
5R	Red	Sound and torn leaf but not shattery, perished, green or waterstained
6C	Coloury	Torn and blemished leaf without green or waterstained
6CR	Light red	Torn and blemished leaf without green or waterstained
6R	Red	Torn and blemished leaf without green or waterstained
7C	Coloury under m 0.48	Same as 6

Grade No.		
7CR	Light red	Same as 6
7R	Red	Same as 6
8C	Coloury over 0.48 m	Shattery and blemished leaf without green or waterstained
8R	Red	Shattery and blemished leaf without green or waterstained
9C	Coloury 0.30 m to 0.48 m	Same as 8
9R	Red	Same as 8
10RC	Coloury over 0.48 m	Greenish leaf without waterstained
10GR	Red	Greenish leaf without waterstained
11GC	Colour 0.30 m to 0.48 m	Same as 10
11GR	Red	Green
12	Over 0.48 m	Black, waterstained, perished and green
13	Under 0.48 m	Same as 12
14	Coloury	Strips
15	Red	Strips
16	—	Scrap
17	Mottled (red)	Over 0.48 m
18	Mottled (red)	Under 0.48 m
19	Mottled (light red)	Over 0.48 m
20	Mottled (light red)	Under 0.48 m
21	Mottled (coloury)	Over 0.48 m
22	Mottled (coloury)	Under 0.48 m
23	Mottled (yellow)	Over 0.48 m
24	Mottled (yellow)	Under 0.48 m

Description of Flyings

F—Flyings consist of leaf normally grown at the bottom of the stalk. Usually numbering from three to five leaves. Relatively thin and fluffy leaves which show the highest degree of maturity.
Colour—Coloury and light tan

Special Factors

F — Flyings
C — Coloury
CR— Light red or tan
S — Slightly blemished and torn
B — Spotted and slightly torn
W — Waterstained

Flue-Cured

NOTE— In the grades of flue-cured tobacco described below only leaf of an approximately similar length may be tied in the same hand. Hands of both short leaf and long leaf of the same grade must not be baled together. Where hands consist of leaves of the same grade of 0.30 m or over, there must not be a discrepancy of more than 0.13 m in length between the leaves, and discrepancy of not more than 0.08 m between the leaves where the hands consist of leaves under 0.30 m in length.

	No. of Grades
WRAPPER GRADES	3
WL WO WR	
LEAF GRADES	66
L1L L10 L1R	
L2L L20 L2R L2S	
L3L L30 L3R L3S L3D L3LK L30K L3RK L3KR	
L4L L40 L4R L4S L4D L4LK L40K L4RK L4KR	
L5L L50 L5R L5S L5D L5LK L50K L5RK L5KR	
L2LF L20F L2RF L2LV L20V	
L3LF L30F L3RF L3LV L30V L3RV L3GL L3GO L3GR L3M	
L4LF L40F L4RF L4LV L40V L4RV L4GL L4GO L4GR L4M	
L5LF L50F L5RF L5GL L5GO L5GR L5M	
LEAF GRADES (SHORT)	8
TL TLK TGL	
TO TOK	
TR TRK TGR	
SMOKING LEAF GRADES	13
H1L H10	
H1L H20	
H3L H30 H3R	
H4L H40 H4R	
H5L H50 H5R	
CUTTER GRADES	28
C1L C10	
C2L C10	
C3L C30 C3LF C30F C3LV	
C4L C40 C4LF C40F C4LK C40K C4LV C40V C4M	
C5L C50 C5LF C50F C5LK C50K C5KR C5LV C50V C5M	
LUG GRADES	36
X1L X10	
X2L X20 X2LF X20F X2LV X20V	
X3L X30 X3LF X30F X3LK X30K X3LV X30V X3G	
X4L X40 X4LF X40F X4LK X40K X4KR X4LV X40V X4G	
X4M X5L X50 X5LF X50F X5LK X50K X5G X5M	
PRIMINGS	22
P2L P20 P2LF P20F	
P3L P30 P3LF P30F P3G	
P3L P40 P4LF P40F P4G P4K	
P5L P50 P5LF P50F P5G P5K P5M	
STRIPS	13
A1L A10 A1R A1G	
A2L A20 A2R A2G	
A3L A30 A3R A3G A3M	

	No. of Grades
SCRAP	4
BL BO BR BG	
NON-DESCRIPT	
N1L N1GL 2NA (Strips)	
N10 N1GO NB (Scrap)	
N1D N1GD	
N1K	
TOTAL GRADES	203

KEY TO STANDARD GRADE MARKS

Groups	*Qualities*	*Colours*
W —Wrappers	1—Fine	L —Lemon
L —Leaf	2—Choice	O —Orange
T —Short leaf	3—Good	R —Light Mahogany
H —Smoking leaf	4—Fair	S —Dark Mahogany
C —Cutters	5—Low	D —Walnut
X —Lugs		KR —Dappled red
P —Primings		G —Green
A —Strips		
N —Non-Descript		

SPECIAL FACTORS

F —High Maturity (in leaf, cutter, lug and priming grades only)
V —Greenish
GL —Green tobacco on the Lemon Side
GO —Green tobacco on the Orange Side
GR —Green tobacco on the Mahogany Side
} in Leaf Grades only
K —Variegated (grey, slick, slatey or unnatural colour shade)
LL —Loose Leaf
M —Mixed (lacking in uniformity to the extent of 35 per cent or more)
U —Unsound (damaged, mouldy, funked)".

CONTROL OF TOBACCO AUCTION FLOORS (DELIVERY QUOTAS) REGULATIONS

G.N. 185/1971 90/1986

under s. 38

Citation

1. These Regulations may be cited as the Control of Tobacco Auction Floors (Delivery Quotas) Regulations.

Interpretation

2. In these Regulations, unless the context otherwise requires—

"licensed auction floor" means an auction floor licensed for the purposes of selling tobacco under section 18 of the Act;

"registered seller" means a person who is registered as a tobacco seller in accordance with section 23 of the Act.

Registration of sellers

3.—(1) Any person wishing to sell tobacco on an auction floor shall apply to the Commission in writing for registration as a registered seller.

(2) When the Commission registers a person as a registered seller it shall allocate to him a registration number, which number shall be used by the registered seller as an identity mark on every consignment of tobacco which he sells on an auction floor.

Payment instructions

4. Immediately upon the receipt by him of the registration number allocated to him by the Commission, every seller shall forward to the owner of the auction floor at which he intends to deliver tobacco for sale payment instructions in the form set forth in the Schedule, which payment instructions shall be complied with by the owner of the licensed auction floor to which those instructions are forwarded unless the Commission is satisfied that the same are, or are calculated to be, confusing.

Quota

5.—(1) The Commission may allocate to every registered seller a quota expressed in terms of bales of tobacco.

(2) During such periods as the Commission may determine, no registered seller shall deliver tobacco to an auction floor for sale in excess of the quotas allocated to him under subregulation (1).

Return in writing of deliveries G.N. 90/1986

6.—(1) Upon his being required so to do in writing by either the Minister or by the Commission, every holder of an auction floor licence shall furnish daily to the Minister or the Commission a return in writing of deliveries of tobacco for sale received at his premises from registered sellers and from commercial tobacco-grading firms acting as agent for registered sellers during the 24-hour period ended at 12 o'clock mid-night on the day next preceding the day on which the return is required to be made.

(2) Upon his being required so to do in writing by the Minister or the Commission, every holder of an auction floor licence shall, within such period as the Minister or the Commission may specify, submit a return in writing of deliveries of tobacco for sale received at his premises in every year from registered sellers and from commercial tobacco-grading firms acting as agents for registered sellers.

Excess tobacco

7.—(1) The holder of an auction floor licence shall not retain or store at his premises any tobacco delivered thereto for sale by or on behalf of a registered seller which exceeds the quota allocated to him under regulation 5(1).

(2) Any registered seller and any commercial tobacco-grading firm acting as agent for a registered seller who delivers tobacco for sale to an auction floor in excess of the quota allocated to the registered seller under regulation 5 (1) shall remove such excess within 24 hours of the time of delivery thereof at the auction floor.

(3) If a registered seller or a commercial tobacco-grading firm, as the case may be, fails to comply with subregulation (2), the holder of the auction floor licence in respect of the auction floor to which such excess was delivered shall return the excess to the registered seller or commercial tobacco-grading firm, as the case may be, at the risk and expenses of the registered seller.

(4) Notwithstanding anything contained in subregulations (1), (2) and (3) the Commission may, if it thinks fit, permit such excess to be retained or stored by the holder of an auction floor licence subject to such conditions as it may impose.

Measurement of quota

8.—(1) Every bale of tobacco which is delivered for sale to an auction floor by a registered seller or by a commercial tobacco-grading firm acting as agent for a registered seller on and after a date on which quotas are allocated under regulation 5 (1) shall form part of the quota allocated to such seller, whether such bale be subsequently withdrawn from sale or not:

Provided that no bale of tobacco which is delivered to an auction floor for sale on or after the date on which quotas were allocated shall count as part of registered seller's quota if such bale had been delivered to and accepted by a railway company or road transport contractor for delivery to such auction floor prior to such date.

(2) Regulation 7 (2), (3) and (4) shall apply *mutatis mutandis* to a bale of tobacco which is withdrawn from sale for any reason whatsoever.

Limit on amount stored G.N. 90/1986

9. The Commission may from time to time fix the quantity of tobacco for sale which may be stored at any one time at an auction floor, and no tobacco in excess of such quantity shall be so stored:

Provided that this regulation shall not apply to tobacco which is rejected or withdrawn from sale.

SCHEDULE

CONTROL OF TOBACCO AUCTION FLOORS ACT

(Cap. 65:03)

CONTROL OF TOBACCO AUCTION FLOORS (DELIVERY QUOTAS) REGULATIONS, 1971

Sub. leg. p.27

Payment Instructions

To: .....
.....
.....

(Insert name and address of owner of licensed auction floor)

Dear Sir,

I/We hereby direct that all payments when due to me/us in respect of my/our* tobacco sold by you, under registered number/numbers* .... be paid—

*(*a*) To me/us* direct.

*(*b*) To my/our* account at .....

*(*c*) To .....

These instructions shall continue in effect throughout the year 19 ..... unless earlier revoked.

Yours faithfully,

Signature .....
Designation .....
Full Name of Registered Grower
.....
Address .....
Date .....

*Delete as applicable.

NOTE—No payments will be made until this form is received by the owner of the licensed auction floor.

G N. 186/1971 92/1975 41/1986

CONTROL OF TOBACCO AUCTION FLOORS (LICENSED AUCTION FLOORS) REGULATIONS

under s. 38

Citation

1. These Regulations may be cited as the Control of Tobacco Auction Floors (Licensed Auction Floors) Regulations.

Interpretation

2. In these Regulations, unless the context otherwise requires—

"funked" used with reference to tobacco means that the tobacco has no visible sign of mould, but is known to have been mouldy or has an aroma characteristic of tobacco which has been or is about to become mouldy;

"licensed auction floor" means an auction floor licensed for the purpose of selling tobacco under section 18 of the Act;

"loose leaf" means sound leaf tobacco which is packed without being tied in hands;

"nest" with its grammatical variations means the packing of tobacco into bales in such a manner as to be calculated to deceive the buyer thereof as to the nature and quality of the contents thereof;

"sales supervisor" means the person authorized by the Commission to supervise sales of tobacco on licensed auction floors;

"starter" means the employee of an owner of a licensed auction floor who is authorized to place an approximate value on tobacco offered for sale on such auction floor.

Duties of owners

3. Every owner of a licensed auction floor shall ensure that—

(*a*) reasonable care is used in the handling and storing of tobacco at the licensed auction floor and that bales of tobacco are laid on the floor and placed in such a manner as the Commission may from time to time require;

(*b*) suitable storage facilities are available for tobacco awaiting sale at all times during the tobacco selling season and that such storage facilities are used exclusively for the storing of tobacco awaiting sale during that season;

(*c*) fertilizers, insecticides, fungicides and other substances which are liable to contaminate tobacco are not stored or kept in any place where tobacco is, or is to be stored or offered for sale;

(*d*) covered bays are provided for the loading and unloading of tobacco at the licensed auction floor to the satisfaction of the Commission;

(*e*) accounts in respect of purchases of tobacco at the licensed auction floor are presented to the buyers thereof not later than 9.30 a.m. on the day following the sale of such tobacco at the licensed auction floor;

(*f*) bales of tobacco are properly sewn up after they have been put up for auction;

(*g*) coupon tickets are securely attached to each bale showing the amount bid per kilogram of tobacco in any bale, the weight thereof and the name of the buyer; all disputes concerning the weight of any bale of tobacco where the discrepancy amounts to three kilograms or more shall be referred to the Commission by the sales supervisor not later than two o'clock in the afternoon on the day next following the day on which the tobacco which is the subject of the dispute was sold;

(*h*) all tobacco is weighed not more than 72 hours before the day on which it is sold;

(*i*) any interest which the auctioneer, any employee of the auctioneer and any buyer (other than in his capacity as a buyer) has in any tobacco which is to be sold at the licensed auction floor is disclosed to every interested person prior to the time of the sale;

(*j*) such packing materials as the seller may specify are returned to him as soon as is practicable after the same shall have been returned to the owner of the licensed auction floor by the buyer under regulations 16 and 17;

(*k*) payment after the deduction of authorized charges is made to the seller of any tobacco not later than 24 hours after the same shall have been sold if the seller has previously

delivered payment instructions in accordance with regulation 4 of the Control of Tobacco Auction Floors (Delivery Quotas) Regulations, 1971;

(*l*) no bid is accepted from a buyer who has failed to settle his amount in accordance with regulation 16 (1) (*a*)or has not made an arrangement for settlement satisfactory to the seller.

Records

4.—(1) Every owner of a licensed auction floor shall keep a book in a form approved by the Commission in which shall be entered the number of bales of tobacco received in each day from each seller for sale on the auction floor together with the name of the seller and the registered number allocated to the seller under regulation 3 of the Control of Tobacco Auction Floors (Delivery Quotas) Regulations, 1971.

Sub. leg. p.27

(2) Every entry made in the book referred to in subregulation(1)shall be made in the order in which each bale of tobacco is received and such tobacco shall be sold in that order according to its type.

(3) No tobacco which is received at a licensed auction floor after 5 p.m. on the day preceding a sale shall be sold at the sale on the day next following its receipt except with the permission of the sales supervisor.

(4) No tobacco shall be withdrawn from sale by the seller from the sale to which it has been allocated by the owner of the licensed auction floor except with the permission of the sales supervisor.

Liability for loss

5. The owner of a licensed auction floor shall be liable for any loss occasioned to the seller or the buyer, as the case may be, of any tobacco auctioned by error by himself, his servants or agents and shall make good any loss occasioned thereby.

Packing
G.N. 41/1986

6.—(1) Every bale of tobacco consigned to a licensed auction floor shall be packed with uncontaminated tobacco in good handling and keeping condition:

Provided that a bale of tobacco may be packed with a majority of leaves of mouldy, carbonized or funked tobacco, if the bale is declared upon consignment and sale to be "mouldy", "carbonized" or "funked", as the case may be.

(2) Every bale of tobacco shall be properly packed so as to facilitate the inspection and storage thereof and, in particular, shall be—

(*a*) wrapped in hessian or such other material as the Commission may from time to time approve;

(*b*) sewn with cotton twine or such other material as the Commission may from time to time approve, so that no single stitch exceeds 0.08 metre in length and that no gap between

stitches exceeds 0.08 metre in length, which stitches shall be locked on the sides of the bale as near to the corners as is practicable.

Specifications G.N. 92/1975 41/1986

7.—(1) Except with the permission of the sales supervisor all tobacco which is intended for sale at a licensed auction floor shall be packed in bales of a size of 0.91 metre by 0.61 metre or 0.76 metre by 0.76 metre with a depth not exceeding 0.61 metre.

(2) No bale of tobacco intended for sale at a licensed auction floor shall weigh more than 108 kilograms or less than 22.5 kilograms.

(3) The size of hands of graded tobacco intended for sale at a licensed auction floor shall be not less than 0.03 metre and not more than 0.04 metre across the butt and the depth of the tie shall be not less than 0.04 metre and not more than 0.05 metre.

(4) The tobacco leaf used in tying a hand of graded tobacco shall be leaf of the same grade as the tobacco contained in the hand.

(5) Sound leaf tobacco of or exceeding 0.20 metre in length shall not be baled as loose leaf tobacco.

(6) Tobacco packed as tied leaf, loose leaf or as tobacco strip shall be straight laid in packing.

(7) Every seller shall cause the registered number allocated to him under regulation 3 of the Control of Tobacco Auction Floors (Delivery Quotas) Regulations 1971 to be stencilled on two sides and on one side end of each bale of tobacco which he delivers for sale to a licensed auction floor in characters not less than 0.08 metre in height. Sub. leg. p.27

(8) Split bales of tobacco containing not more than two different grades of tobacco may be offered for sale if the minimum weight thereof is not less than 22.50 kilograms and not more than 108 kilograms and the word "split" is clearly printed and prominently displayed on any such bale and it is declared as being a "split" bale at the time it is put up for auction.

(9) "Mixed" bales of tobacco which contain only one type of tobacco may be offered for sale if they do not exceed 67.50 kilograms and not less than 22.50 kilograms net weight and the word "mixed" is clearly printed on the bale and it is declared as "mixed" at the time that it is put up for auction.

(10) In this regulation "split" bales and "mixed" bales shall have the meanings assigned thereto under the Control of Tobacco Auction Floors (Grading) Regulations, 1971. Sub. leg. p.27

Notification of intention to sell to Permanent Secretary

8.—(1) Every seller who intends to offer for sale at a licensed auction floor any tobacco grown in a year other than the year in which it is intended to be sold shall notify the Permanent Secretary of his intention so to do not later than the 1st March in the year in which it is intended to offer such tobacco for sale.

(2) No tobacco referred to in subregulation (1) shall be sent to a licensed auction floor for sale unless it is accompanied by a certificate issued by the Permanent Secretary stating that that tobacco has been inspected within 30 days of the day on which that tobacco is intended to be sold and that there is no evidence that the tobacco is infested with stored tobacco beetle (lasioderma serricorne F.) or stored tobacco worm (ephestia elutella Hb) or any other pest of stored tobacco declared as such under section 2 of the Plant Protection Act. Cap. 64:01

Refusal to sell and repudiation of purchase

9.—(1) A seller may refuse to accept the price bid for any tobacco which he has offered for sale by tearing the coupon attached to a bale containing any such tobacco before accounting data has been extracted from such bale.

(2) A buyer whose bid has not been accepted under subregulation (1) may repudiate the purchase by him of a number of bales of tobacco equivalent to the number in respect of which such bid has been refused in respect of the same registered number or market as that of the tobacco in respect of which his bid has been so refused:

Provided that the accounting data shall not be entered up nearer than four rows behind the tobacco being currently sold.

(3) No seller who has made a bid for any tobacco being sold by him may refuse to accept the final price bid for such tobacco.

Discovery of damaged tobacco

10. When, before the accounting data has passed such tobacco, the buyer thereof discovers that it is badly handled, mixed, funked, damaged or wet he may notify the sales supervisor of his desire to repudiate the purchase of such tobacco.

Discovery of nested bale

11. Where a buyer discovers that a bale of tobacco which has been purchased by him is nested he may report that fact to the sales supervisor, who shall inspect the bale and report his findings to the Commission, and if the Commission is satisfied that such bale is nested it may—

(*a*) cancel the sale of such bale; and

(*b*) confiscate the bale; and

(*c*) order the seller of such bale to make good any loss which has been occasioned to the buyer as a result of the sale of such bale:

Provided that no report by a buyer under this regulation shall be considered unless the same is made to the sales supervisor within 48 hours of the sale to which such report relates.

Discovery of mouldy tobacco

12. Where a buyer discovers that a bale of tobacco purchased by him contains mouldy tobacco, the presence of which was not apparent at the time of the sale thereof, he may report such fact to the sales supervisor, who shall forthwith inspect the bale and report his findings to the Commission, and the Commission may, if it is satisfied that the bale contained mouldy tobacco, cancel the sale:

Provided that no report by a buyer under this regulation shall be considered unless the same is made to the sales supervisor within 48 hours of the sale to which such report relates.

Dispute over ownership

13. Where two or more buyers claim to be the purchaser of the same bale of tobacco such tobacco shall, if every one of such buyers save one does not abandon his claim, be re-offered for sale.

Suspicion of tobacco beetle

14. The sales supervisor or any employee of an owner of a licensed auction floor may cause any tobacco sent for sale to a licensed auction floor which he suspects of being infested with stored tobacco beetle (lasioderma serricorne F.) to be removed from the licensed auction floor at the expense of the seller and shall forthwith report the matter to the Commission and to the Permanent Secretary.

Rejection by sales supervisor

15.—(1) The sales supervisor may reject any bale of tobacco which does not conform to the standards laid down by the Minister under these Regulations, or under any other regulations in that behalf made by the Minister, and any bale of tobacco so rejected shall, unless re-offered, be returned to the seller at the expense of the seller.

(2) The decision of the sales supervisor shall be final and not subject to appeal where there is any dispute as to—

(*a*) the grade of any tobacco in any bale;

(*b*) whether tobacco in any particular bale is of different grades in sufficient proportion to justify the rejection of any such bale;

(*c*) whether tobacco in any particular bale is nested or composed of loose leaf.

Duties of buyer

16.—(1) Every buyer shall—

(*a*) settle his account in respect of all tobacco purchased by him within half an hour of the close of banking hours on the normal business day next following the day of the sale;

(*b*) remove all tobacco purchased by him from the licensed auction floor within 5 hours of the close of the sale thereof, after which time the owner of the licensed auction floor shall be under no responsibility or liability whatsoever in respect of the custody, storage or safe keeping of such tobacco;

(*c*) give a receipt which shall be clipped with his distinctive mark in respect of all tobacco purchased by him at and removed by him from a licensed auction floor;

(*d*) make into bundles, containing not more than 25 pieces, the hessian or other specified material in which tobacco purchased by him was wrapped, and return such hessian or other specified material, or an equivalent amount of the same quality and size, to the owner of the licensed auction floor;

(*e*) mark each bundle made up under paragraph (*d*) with the registered number or mark, if any, of the seller of the tobacco which was wrapped in the material contained in such bundle together with the number of pieces contained therein:

Provided that a buyer shall not be required to comply with paragraphs (*d*) and (*e*) in respect of any hessian or other specified material which is the subject of a special arrangement as to their return made between the buyer and the seller of the tobacco which was wrapped in such hessian or other material.

(2) If any tobacco is not removed from a licensed floor in accordance with subregulation (1) (*b*) the Minister may suspend the auction floor buyer's licence of the buyer so failing to comply until such time as he is satisfied that proper arrangements have been made by such buyer for the removal of all tobacco purchased by him.

(3) All tobacco shall be cleared within the time fixed by the Minister, commencing with the first row of bales and thereafter in rotation until the last row is cleared.

Failure to return wrapping

17. A buyer who has not made a special arrangement with the seller for the return to the seller of the hessian or other specified material in which the tobacco purchased by him was wrapped, and who fails to comply with regulation 16 (1) (*d*) shall pay to the owner of the licensed auction floor for and on behalf of the seller the sum of 50 tambala in respect of each piece of hessian or other specified material not returned by him to the seller by the 31st January in the year next following the year of the sale, and in default of so doing he may be sued therefor by the owner of the licensed auction floor in the name, and at the suit, of such owner.

Position of buyer

18. No buyer shall take up his position in the line between the starter, auctioneer or ticket marker.

Dispute

19. In the event of any dispute arising under or as to any of these Regulations, except a dispute as is referred to in regulation 15 (*a*), the same shall be referred to the Minister through the Commission, whose decision in such matter shall be final and not subject to appeal.

Alteration of particulars

20. No alteration of any particulars recorded on any bale of tobacco shall be made except by a person authorized in that behalf by the Commission:

Provided that—

(i) a buyer of any bale of tobacco may make an alteration in respect of his own grade classification of such bale;

(ii) a buyer who takes over a bale of tobacco from either the house account or from another buyer may make any necessary alteration as to that fact on the bale ticket of such bale.

Initialling of alterations

21. Any person who makes an alteration under regulation 20 shall initial the same and, in the case of an alteration made under proviso (ii) to that regulation, the alteration shall also be initialled by every previous buyer of the bale.

Sale of rejected bales

22. Any bale of tobacco which has been rejected in accordance with regulation 15 (1) at a previous sale may be re-offered for sale once only if such bale be declared at the time of such subsequent sale as being a re-offered bale.

Any bale of tobacco which, when re-offered under this regulation, is rejected or not purchased, shall be returned to the seller at the seller's expense.

Disposal of unsold bales

23. The owner of a licensed auction floor may destroy or dispose of bales which have not been sold at any auction within 14 days of the end of such auction if the owner thereof has not given instructions with regard to the disposal thereof.

G.N. 187/1971 43/1986

CONTROL OF TOBACCO AUCTION FLOORS (GRADERS' LICENSING) REGULATIONS

under s. 38

Citation

1. These Regulations may be cited as the Control of Tobacco Auction Floors (Graders' Licensing) Regulations.

Appointment of grading inspectors

2.—(1) The Minister may appoint fit and proper persons to be grading inspectors for the purpose of enforcing and supervising these Regulations.

(2) Any person who obstructs a grading inspector in the execution of his duty shall be guilty of an offence.

Business of grading tobacco

3.—(1) No person shall carry on the business of grading tobacco for profit or gain unless he is licensed as a grader under these Regulations:

Provided that this subregulation shall not apply to a grower of tobacco who grades his own crop, or any employee or servant of such grower.

(2) Every application for a grader's licence shall be made in writing to the Minister through the Commission, and the Minister may issue or refuse to issue such a licence, at his discretion.

(3) Every applicant for a grader's licence shall furnish to the Minister such information as the Minister may require with respect to his qualifications as a grader and the facilities which he has available for grading tobacco, together with the names and qualifications of the persons who will be in charge of grading tobacco under his supervision.

(4) Any person who, not being a grower of tobacco grading his own crop of tobacco or an employee or servant of such a grower, grades tobacco for profit or gain without being licensed in that behalf under the Act shall be guilty of an offence.

Licence validity, issuance and fee

4.—(1) Every grader's licence shall, unless the same shall be cancelled under these Regulations or any other regulations made under the Act be valid until the 31st December of the year in respect of which it is issued.

(2) The Minister may issue a grader's licence in the name of an individual, a company or a partnership.

(3) A fee of K50 shall be paid by the licensee in respect of every grader's licence.

(4) No person shall be employed or commissioned to be in charge of grading tobacco unless that person has practical experience of grading tobacco to the satisfaction of the Minister.

(5) No person shall be employed or commissioned as an assistant tobacco grader unless, in the opinion of a grading inspector, the employment of such person is necessary for the proper handling of tobacco being, or having been, graded.

Method of grading

5.—(1) Every licensed grader shall grade tobacco in accordance with these Regulations and any other regulations, made in that behalf by the Minister under the Act, and any licensed grader who fails to comply with or contravenes this subregulation shall be guilty of an offence.

(2) Every grader's licence shall specify the premises on which tobacco may be graded and no licensed grader shall grade tobacco on any premises not specified in the relevant grader's licence.

(3) Every building in which tobacco is graded shall be properly constructed and suitably lighted.

(4) Adequate storage space shall be provided in a properly constructed enclosed building with floors or floor covering suitable for storing bales of tobacco prior to or after the same being graded.

(5) The floors of grading and storage sheds shall be constructed of suitable material of such construction as to permit of their being kept properly clean, and every such floor shall be covered with suitable material unless the floor be constructed of smooth impervious cement, smooth tarmac or smooth wood.

(6) If the Minister shall so direct, in any particular case, a grading shed shall be equipped with adequate means of maintaining therein a degree of humidity, to the satisfaction of the Minister, suitable for the proper handling of tobacco.

(7) All tobacco which has been, or is to be, graded shall be packed in the manner prescribed by these Regulations or any other regulations in that behalf made by the Minister under the Act.

(8) All tobacco which has been graded shall be properly stored prior to its being baled and despatched to an auction floor.

Grading return
Form I

6. As soon as is practicable after any tobacco has been graded, the licensed grader shall send to the owner of such tobacco a grading return in Form I in the Schedule, or in such other form as the Minister may approve.

Cancellation of licence

7. The Minister may, after considering a report of a grading inspector, cancel the licence of any licensed grader if he is of opinion that such grader has not been complying with or has contravened any of the provisions of these Regulations or of any other regulations in that behalf made by the Minister under the Act:

Provided that the Minister shall not cancel the licence of any licensed grader unless he has been afforded an opportunity of making such representations as he may wish to make.

Inspection of premises

8. For the purpose of ascertaining whether these Regulations and any other regulations made by the Minister under the Act are being complied with, a grading inspector may, without previous notice and at any reasonable time of the day, enter upon any premises used by a licensed grader for the purpose of grading or storing tobacco, and also enter upon any premises which such grading inspector may reasonably suspect as being used for the purpose of grading or storing tobacco, and make such examination or enquiry as such grading inspector may deem necessary.

9. Any person who is convicted of an offence under these Regulations shall be liable to a fine of K200 and to imprisonment for three months. Penalty

SCHEDULE G.N. 43/1986

FORM I

CONTROL OF TOBACCO AUCTION FLOORS ACT
(CAP. 65:03)

GRADING RETURN

Owner's Name: ..... Reg. No: .....

Date graded: .....

Weight received: ..... kg Remnants: ..... kg

Weight graded: ..... kg

Weight for despatch to floors ..... kg leaf

..... kg strips

..... kg scrap

Total weight for despatch to floors ..... kg

Remnants of graded tobacco on hand % ..... kg

Loss in grading

Remarks

.....

.....

.....

Date: ..... Signed: .....

CONTROL OF TOBACCO AUCTION FLOORS (REJECTION OF CONTAMINATED TOBACCO) REGULATIONS

G.N. 160/1972 6/2005

under s. 38

1. These Regulations may be cited as the Control of Tobacco Auction Floors (Rejection of Contaminated Tobacco) Regulations. Citation

2. The Tobacco Control Commission shall have power to reject any tobacco brought to any auction floors— Power of Commission to reject contaminated tobacco

(*a*) containing contaminants set out in Column 1 in excess of the quantities respectively set out in Column 2 of the Schedule;

(*b*) packed in any bale, and mixed with plastic or plastic material, synthetics or other non-tobacco-related substances or objects.

Owner of rejected tobacco to remove plastic, etc.

3.—(1) Any tobacco rejected pursuant to regulation 2 (*b*) shall be withdrawn from sale at the auction floors forthwith, and shall not be brought back for sale at any auction floors unless the seller or owner of the tobacco has removed, at his own expense, every piece of plastic or plastic material, synthetic or other non-tobacco-related substance or object found or embedded in every bale of tobacco brought to the auction floors, and the seller or owner of the tobacco has certified in writing to the Tobacco Control Commission that the tobacco is free of any plastic or plastic material, synthetics or other non-tobacco-related substances or objects.

(2) Any tobacco packed in any bale, and found to be mixed with plastic or plastic material, synthetics or other non-tobacco-related substances or objects after purchased by any buyer and in possession of the buyer before loss of identity of the bale shall be reported to, and the contamination certified by, the Tobacco Control Commission, and shall be rid of plastic or plastic material, synthetics or other non-tobacco-related substances or objects at the expense of the seller or owner of the tobacco in the current or subsequent selling season.

Rejected tobacco not to be sold

4. Any tobacco rejected pursuant to regulation 2 shall not be sold within Malaŵi or be exported from Malaŵi without the prior written authority of the Tobacco Control Commission.

Auction floors not to accept tobacco from persons whose tobacco is rejected

5. No person in-charge of any auction floors shall accept tobacco from any person whose tobacco has previously been rejected pursuant to regulation 2 without the prior written approval of the Tobacco Control Commission.

Penalties

6.—(1) Any person whose tobacco is rejected at any auction floors pursuant to regulation 2 shall be liable to pay to the Tobacco Control Commission a penalty of K25 per kg of the rejected tobacco.

(2) The Tobacco Control Commission shall cause the person in-charge of any auction floors to deduct the penalty payable under this regulation from the proceeds of the sale of tobacco of the seller or owner of the tobacco, and shall deposit all penalties payable under this regulation into a fund to be administered by the Tobacco Control Commission for the promotion of a tobacco grower information programme, or any other purpose approved by the Tobacco Control Commission.

(3) The Tobacco Control Commission shall have the power to suspend, for such period as the Tobacco Control Commission shall determine, any person from selling tobacco at any auction floors who persistently brings to any auction floors tobacco mixed with plastic or plastic material, synthetics or other non-tobacco-related substances or objects.

SCHEDULE reg. 2 (*a*)

Column 1	*Column 2*
DDT	1.00 ppm
Lindane	1.00 ppm
Dieldrin	0.20 ppm
Aldrin	0.20 ppm

COTTON

CHAPTER 65:04

Containing Pages 1–42

CHAPTER 65:04

COTTON

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CHAPTER 65:04

COTTON

1 of 2013
G.N. 7/2014

An Act to provide for the establishment of the Cotton Council; to provide for the regulation, improvement and development of the cotton industry and to provide for matters related thereto

[1st February, 2014]

PART I
Preliminary

Short title

1. This Act may be cited as the Cotton Act.

Interpretation

2.—(1) In this Act, unless the context requires otherwise—

"administrative penalty" means a penalty that may be imposed by the Council pursuant to section 77;

"agro-inputs" include certified seeds, fertilizers, agro-chemicals and equipment necessary for the application of such agro-chemicals;

"buyer" means any person who pays a grower money in exchange of ownership of seed cotton;

"buying licence" means a buying licence issued under section 41;

"contract farming" means a binding arrangement, whether written or oral between a grower and a buyer to produce and sell seed cotton under pre-agreed conditions;

"cotton buyer" means a person licensed as such under this Act;

"Cotton Development Fund" means the fund established pursuant to section 64;

"cotton lint" means the fibrous component of ginned cotton;

"cotton plant" means the growing plants, cuttings, buds and grafts, seeds, leaves, bolls or any portion of the cotton plant in a natural state;

"cotton seed" means seed produced from seed cotton whether fuzzy or de-linted;

"cotton seed dressing" means chemical approved by the Ministry against pre-plant and post-emergent plant pest and diseases;

"cotton quarantine area" means an area declared to be as such under this Act;

"Council" means the Cotton Council of Malaŵi established under section 3;

"extension officer" means an extension officer appointed in accordance with the provisions of this Act;

"foreign material" means any physical material that is aggregated with seed cotton, cotton seed or lint that is not related to cotton, and includes sand, stones, metallic objects, feathers, plastics, polypropylene and water;

"ginnery" means any premises wherein seed cotton is separated into cotton lint and cotton seed;

"ginning licence" means a ginning licence issued under section 52 that grants a person the right to gin seed cotton;

"grower" means any person who grows cotton;

"inspector" means a cotton inspector appointed in accordance with the provisions of section 18;

"licensed ginner" means a holder of a valid ginning licence;

"member" means a member of the Council and includes the Chairperson of the Council;

"nesting" means the process of concealing materials of a non-cotton nature in a consignment of cotton intended for sale;

"seed cotton" means the component of cotton harvested from the cotton plant, graded or ungraded comprising lint still affixed to seed;

"society" means a cooperative society registered under the Cooperative Societies Act; and Cap. 47:02

"trader" means any person who buys seed cotton for the purpose of resale.

PART II
THE COTTON COUNCIL OF MALAŴI

Establishment of the Cotton Council of Malaŵi

3. There is established a council to be known as the Cotton Council of Malaŵi which shall—

(*a*) have perpetual succession and a common seal;

(*b*) in its corporate name, be capable of suing and being sued;

(*c*) be capable of purchasing or acquiring and managing in any manner and alienating any property;

(*d*) be capable of entering into any contract or agreement; and

(*e*) be capable of doing all such other things or acts for the proper performance of its functions under the provisions of this Act which may lawfully be done or performed by a body corporate.

Composition of the Council

4.—(1) The Council shall consist of the following members appointed by the Minister—

(*a*) a representative of an association of owners of estates that produce cotton;

(*b*) two representatives of cotton growing smallholder farmers associations;

(*c*) a representative of cotton seed producer association;

(*d*) a representative of cotton buyers and ginners association;

(*e*) a representative of cotton processors association;

(*f*) a representative of pesticide suppliers association;

(*g*) the following *ex officio* members—

(i) the Secretary responsible for Agriculture or his designated representative;

(ii) the Secretary responsible for Industry and Trade or his designated representative;

(iii) the Secretary for Justice or his designated representative; and

(iv) the Secretary to the Treasury or his designated representative.

(2) The Minister shall appoint the Chairperson of the Council from among members of the Council and the members of the Council shall elect a Vice-Chairperson from among their number.

(3) A member, *ex officio* or any person employed in the public service shall not be eligible to be appointed Chairperson or elected Vice-Chairperson of the Council.

(4) Every member shall attend meetings of the Council in person or through a designated representative and, where a member is unable to attend any meeting of the Council, he may request that his apologies for failure to attend be registered.

(5) A member shall not, by virtue only of his appointment to the Council, be deemed to be an officer in the public service.

(6) A member, other than an *ex officio*, shall hold office for a period of three years from the date of his appointment and may be eligible for re-appointment for another three year term.

(7) The Minister shall publish in the *Gazette* the names of all members as first constituted, and every change in the membership thereafter.

Vacation of members from office

5.—(1) The office of a member, other than a member, *ex officio*, shall become vacant—

(*a*) upon the expiry of the period of his appointment;

(*b*) upon his death;

(*c*) if he is adjudged bankrupt;

(*d*) if he is convicted of an offence—

(i) under section 7; or

(ii) under any other written law, and sentenced to a term of imprisonment without the option of a fine;

(*e*) if he is convicted of an offence involving fraud or dishonesty;

(*f*) if he is absent, without any reasonable justification, from three consecutive meetings of the Council of which he has had notice;

(*g*) upon his giving the Minister one month written notice of his intention to resign his office;

(*h*) when he becomes, by reason of mental or physical infirmity, incapable of performing his duties as a member;

(*i*) when any circumstance arises that, if he were not a member, would cause that member to be disqualified for appointment as a member;

(*j*) when, on the recommendation of the majority of members, the Minister so directs; or

(*k*) when the member assumes a public office.

(2) Whenever there is a vacancy in the office of a member, the Minister shall, in consultation with the nominating association, appoint another person to fill the vacancy and the person so appointed shall hold office for the remaining term of his predecessor:

Provided that, when the remaining period is less than six months, the Minister may decide not to have the vacancy filled until the expiry of the period.

(3) Subject to section 6 (6), the Council may act notwithstanding any vacancy in the membership of the Council.

Meetings of the Council

6.—(1) The Council shall meet at such place, and such time, as the Chairperson may determine, and shall meet at least once in every three months.

(2) Six members of the Council shall constitute a quorum at any meeting of the Council.

(3) An ordinary meeting of the Council shall be convened after giving the members at least fourteen days written notice with an agenda attached to the notice.

(4) The Chairperson may, at his discretion, and shall at the written request of four or more members of the Council and within seven days of such request, cause an extraordinary meeting of the Council to be summoned at such place and time as he may appoint.

(5) The Chairperson, or in his absence, the Vice-Chairperson shall preside at meetings of the Council.

(6) In the absence of both the Chairperson and Vice-Chairperson, the members present and forming a quorum shall elect one of their numbers to preside over a meeting of the Council, and the member so elected shall exercise all the powers and perform all the duties of the Chairperson.

(7) Subject to this Act, the Council may make rules for the regulation of its proceedings and business, or the proceedings and business of any of its committees, and may vary, suspend or revoke any such rules.

(8) Minutes of each meeting of the Council or a committee of the Council shall be kept by the Executive Director of the Council, who shall act as the Secretary at the meeting.

(9) Minutes of each meeting of the Council or a committee of the Council shall be confirmed at the next meeting.

(10) The decision of the Council at any meeting on any matter shall be that of the majority of the members present and voting, and at all meetings the person presiding shall, in the event of an equality of votes, have a casting vote in addition to his deliberative vote.

Disclosure of interest

7.—(1) If a member has any pecuniary interest, direct or indirect, in any matter and is present at a meeting of the Council at which the matter is the subject of consideration by the Council, he shall, as soon as practicable after the commencement of the meeting, disclose the fact to the Council and shall not take part in the consideration or discussion of, or vote on any question with respect to the matter.

(2) Any member who contravenes subsection (1) commits an offence and on conviction shall be liable to a fine of K100,000 and to imprisonment for twelve months.

Invited persons

8.—(1) The Council may, at its discretion, invite any person to attend any meeting of the Council for the purpose of assisting or advising the Council on any matter under consideration by the Council.

(2) Any person invited pursuant to subsection (1) may take part in the deliberations of the Council at any meeting he attends, but shall not be entitled to vote on any matter at any meeting of the Council.

Committees of the Council

9.—(1) For the better carrying into effect of the purposes for which the Council is established, the Council may establish such committees, as the Council may deem appropriate, to perform such functions and responsibilities as the Council shall determine.

(2) The Council shall appoint the chairperson of each committee from among the members.

(3) The Council may include any person with relevant expertise in cotton industry as a committee member but the person shall not become a member of the Council by virtue of this appointment.

(4) The provisions of section 6 relating to the meetings of the Council shall apply *mutatis mutandis*, to the meetings of any committee.

Allowances and expenses of members

10.—(1) Members of the committees of the Council shall be paid such allowances as may be determined by the Council and approved by the Minister from time to time.

(2) The Council may make provision for the reimbursement of any reasonable expenses incurred by a member or a member of a committee of the Council or a person invited under section 8, connected with the business of the Council or the committee.

Functions of the Council

11.—(1) The Council shall exercise its powers and perform its functions in such a manner that it best promotes and fosters the development of the cotton industry in Malaŵi.

(2) The functions of the Council shall include carrying out such activities and doing such things as are necessary, advantageous, proper or for the benefit of cotton growers and the cotton industry.

(3) Without prejudice to the generality of subsection (2), the functions of the Council shall include to—

(*a*) advise the Government on matters of policy, strategies and other matters regarding the cotton industry;

(*b*) monitor the following groups of persons, in liaison with the Minister, through registration, on terms and conditions prescribed by the Council—

(i) growers;

(ii) buyers;

(iii) ginners;

(iv) processors; and

(v) all other persons dealing with cotton;

(*c*) advise the Government on production, marketing, quality and standards of cotton;

(*d*) facilitate domestic as well as international cotton market research;

(*e*) advise Government on development and application of new technologies in the cotton industry;

(*f*) ensure that national environmental protection standards are applied in production of cotton and cotton products;

(*g*) promote the formation of associations of stakeholders and monitor and advise on their activities;

(*h*) collect, maintain and disseminate statistical information on production and processing of cotton;

(*i*) protect the interests of farmers against syndicate of buyers;

(*j*) oversee the implementation of the Council policies; and

(*k*) carry out any other function advantageous to the cotton industry in Malaŵi and to meet the objectives of the Act.

(4) The Council may delegate the exercise of its powers to its members or its Secretariat at any time when the Council is not meeting.

(5) The exercise of powers under subsection (4) shall, unless and so far as the Council may otherwise require, be reported without unreasonable delay to a meeting of the Council.

(6) The Council, if satisfied, may indorse the decision made under the delegated powers by its members or Secretariat.

Powers of the Council

12.—(1) The Council shall have power to—

(*a*) grant permits or licences to operators, ginners buyers and exporters of seed cotton, cotton seed, cotton lint;

(*b*) issue export permits for seed cotton, cotton seed, cotton lint and other cotton by-products;

(*c*) ensure the compliance of established quality standards for cotton seed, seed cotton and cotton lint by persons licensed under this Act;

(*d*) provide for a forum for discussions and negotiations among various stakeholders in the cotton industry;

(*e*) determine the quantity of cotton seed required for the purpose of planting having regard to geographical location;

(*f*) hear and settle disputes amicably among the stakeholders in the cotton industry; and

(*g*) do anything or enter into any transaction which, in the opinion of the Council, aims to facilitate the proper and efficient carrying out of its activities and the proper exercise of its functions under the provisions of this Act.

(2) The Minister may, if he considers it expedient, direct the Council to perform any commercial function for a specified period.

(3) The Council shall have power, for the purpose of carrying out its functions, to do all such acts and things as appear to be requisite, advantageous or convenient for or in connection with the carrying out of its functions incidental or conducive to their proper discharge, and may carry out any activity in that behalf either alone or in association with the Government, a local authority or any other person or body of persons.

Policy directions to the Council

13. The Minister may give to the Council policy directions of a general or specific nature regarding the carrying out of its functions and the exercise of its powers in relation to matters appearing to the Minister to affect the national interest and the Council shall give effect to every such policy direction.

Research and Training Institute

14. The Council shall support institutions engaged in research or training for cotton industry for the following objectives—

(*a*) to generate foundation seed and manage a seed multiplication programme;

(*b*) to ensure that new varieties of cotton comply with local and international standards;

(*c*) to facilitate research in cotton;

(*d*) to facilitate the development of new varieties of cotton;

(*e*) to regulate the extension services in cotton production; and

(*f*) promote capacity building in cotton production.

PART III
Secretariat of the Council

Establishment and composition of the Secretariat

15.—(1) There is hereby established a Secretariat of the Council for the purposes of performing duties assigned to it and day to day administration and implementation of the Act.

(2) The Secretariat of the Council shall consist of an Executive Director, any other office the Council may deem necessary and such other suitably qualified officers as may be required for the proper administration of this Act.

Appointment of Executive Director and other staff

16. The Council shall appoint an Executive Director and such other officers as the Council may consider necessary to assist the Council in the execution of its duties, on such terms and conditions of service as the Council may determine.

Duties of the Executive Director

17.—(1) The Executive Director shall perform such duties as the Council shall assign to his or her office and ensure the effective administration and implementation of this Act.

(2) Without derogation from the generality of the duties of the Executive Director conferred under subsection (1), the director shall be responsible for the day to day administration of the Council.

Cotton Inspectors

18.—(1) The Council shall establish an office of Cotton Inspectors.

(2) The Executive Director, with approval by the Council, shall appoint Cotton Inspectors.

Duties of Cotton Inspectors

19.—(1) The duties of Cotton Inspectors shall include supervising the purchase of seed cotton, ginning and export of cotton lint, cotton seed and other cotton products.

(2) In discharging the duties conferred on the Cotton Inspectors under subsection (1), the inspectors shall, among others, have power to—

(*a*) inspect seed cotton, cotton seed, cotton ginneries and cotton warehouses;

(*b*) to ensure that farmers are applying and using the authorized pesticides specified in the First Schedule hereto;

(*c*) take samples and verify the quality of seed cotton, cotton seed and cotton lint as provided for in this Act or as may be prescribed; and

(*d*) check the weights, scales and other instruments used in cotton industry.

(3) The Minister may, in consultation with the Council, by notice published in the *Gazette*, amend the First Schedule.

PART IV
Cotton Production

Varieties of cotton

20.—(1) The Minister shall prescribe specific varieties of cotton to be grown in respective parts of Malaŵi.

(2) A person shall not grow a cotton variety that is different from the variety, which the Minister has prescribed to be grown in a particular area.

(3) Any person who contravenes the provisions of this section commits an offence.

Restriction on cotton seed importation, breeding and multiplication

21.—(1) A person shall not import, breed or multiply cotton seed or cotton plant for any purpose without a permit issued by the Council.

(2) Any person who contravenes the provisions of this section commits an offence and shall be liable to an administrative penalty.

(3) The Council shall destroy the seeds or plants referred to in subsection (1) and the cost for the destruction thereof shall be payable by the person responsible.

(4) The Council shall make arrangements for multiplication of foundation and certified cotton seeds for planting.

Certified seeds grown

22.—(1) Every grower shall only grow cotton seeds that have been certified by the Seed Services Unit of the Ministry responsible for agriculture.

(2) Any person who contravenes the provision of this section commits an offence and shall be liable to an administrative penalty.

Reservation of cotton seeds

23.—(1) The Council shall cause to be reserved such quantity and quality of cotton seeds as the Minister may, from time to time, by notice in writing, direct, and shall hold such cotton seeds to the direction of the Minister.

(2) The Council, in consultation with the Ministry, may require any person to set aside for distribution to growers any cotton seed in his possession and may require any person to produce any cotton seed required for distribution in advance of any other cotton seed that he is producing through ginning raw cotton.

(3) Any cotton seeds reserved under subsection (1) shall become the property of the Minister from the date of the notice to reserve the seeds.

(4) All cotton seeds reserved pursuant to the provisions of subsection (3) shall be treated or dressed, bagged, transported, delivered, stored and sold to the public in the prescribed manner.

(5) Every package of cotton seed offered for sale shall be labelled in accordance with specifications set out under the provisions of the Seed Act or any other written law. Cap. 67:06

Distribution and planting of cotton seed

24.—(1) The Council shall, in liaison with the Minister, annually cause certified cotton seed to be distributed to growers for purposes of planting.

(2) The distribution of cotton seed under subsection (1) shall be made through persons duly authorized and in consultation with the seed certification unit of the Ministry responsible for agriculture, and no person shall dress and distribute certified cotton seed without a written authority from the Council.

(3) A person shall not plant cotton seed other than the seed which the Council, in liaison with the Ministry, has caused to be distributed.

Power to prohibit movement of cotton seed

25.—(1) The Minister may, in consultation with the Council, and by notice published in the *Gazette*, prohibit the export or import of cotton seed either generally or from any specified area for a specified period or until a further notice is issued in that behalf.

(2) When the Minister has issued a prohibition according to subsection (1), any person shall not export or cause to be exported or import or cause to be imported, cotton seed.

(3) Any person who contravenes this section commits an offence and on conviction shall be liable to an administrative penalty.

Declaration of quarantine area

26.—(1) The Minister may, in consultation with the Council, if he considers it necessary for the purpose of preventing an outbreak, or spread of any cotton, pest or disease, by order, declare any area to be a cotton quarantine area and may in such order—

(*a*) prohibit or regulate the sowing in such area of cotton seed or any other crop specified in the order known to harbour pest or disease of cotton; or

(*b*) prohibit the removal from such area without a written permit issued by the Minister, of any seed cotton or cotton seed or any plant or any article which contains or, which in his opinion, is likely to harbour pest or disease of cotton.

(2) The Minister may, by written notice, require any person to remove to any place or to destroy any seed cotton, cotton seed or cotton refuse in his possession or control, within the time specified in the notice, in such cotton quarantine area.

(3) Where a person fails to comply with the notice referred to in subsection (2), the Minister may, after giving the person written notice of not less than seven days of his intention to do so, cause the removal or destruction of the seed cotton, cotton seed or cotton refuse to be effected and the person shall, without prejudice to any penalty which he may have incurred by reason of such failure, be liable to pay all costs of such undertaking, which costs shall be recoverable as a debt due to the Government.

(4) Any person who contravenes or fails to comply with the provisions of any order or notice made or issued under this section commits an offence and shall be liable to an administrative penalty.

Prevention of diseases

27.—(1) The Minister may, by order, for the purpose of preventing or controlling the occurrence or spread of any pest or disease of cotton within any area specified in such order—

(*a*) require that within such area and time—

(i) all or any cotton plants, cotton residues or any plant specified in the order, be uprooted and burned by any person possessing or having control over the same; or

(ii) all or any seed cotton, cotton seed or cotton refuse be burned;

(*b*) any grower within such area forthwith to harvest such of his seed cotton as, in the opinion of the Minister, is ready for harvesting; or

(*c*) prohibit any person within such area from planting any cotton seed or cotton plant before a date specified in the order.

(2) Any person who contravenes or fails to comply with any of the provisions of any order made under this section commits an offence and shall be liable to an administrative penalty.

(3) Where any person fails to carry out the provisions of any order made under subsection (1), the Minister may, after giving not less than seven days' notice in writing of his intention to do so, cause such measures to be taken as may be necessary to carry out the provisions of the order and thereupon such person shall, without prejudice to a penalty which he may have incurred by reason of such failure, be liable to pay all the costs of such undertaking which costs shall be recoverable as a debt due to the Government.

Destruction of infested cotton material

28.—(1) The Minister may, in consultation with the Council, by notice in writing, direct the owner or any person having charge of any cotton seed, seed cotton or cotton plant harbouring or likely to harbour any cotton pest or cotton disease, to destroy such cotton seed, seed cotton or cotton plant either within any specified time or forthwith and in any specified manner.

(2) Any person who, without reasonable excuse, fails to comply with the notice issued under subsection (1), commits an offence and shall be liable to an administrative penalty.

(3) Any inspector may enter any premises in which any cotton seed, seed cotton or cotton plant in respect of which a notice has been issued under subsection (1) and destroy such cotton seed, seed cotton or cotton plant immediately if a person on whom such notice has been served fails to comply with its provisions.

(4) Notwithstanding subsection (1), if any authorized officer is of the opinion that any cotton seed, seed cotton or cotton plant is harbouring any cotton pest or cotton disease of such nature which justifies the

immediate destruction of such seed or plant, the inspector may order and supervise the destruction of the cotton seed, seed cotton or cotton plant immediately.

(5) No compensation shall be payable in respect of any cotton seed or plant destroyed in accordance with any of the provisions of this section.

Authorized pesticides

Cap. 35:03

29.—(1) Every grower shall use only the pesticides prescribed under the First Schedule hereto, and the manner of the use shall be in accordance with the Pesticides Act.

First Schedule

(2) Any person who uses or causes to be used any pesticides other than the ones prescribed in the First Schedule hereto commits an offence and shall be liable to an administrative penalty.

Destruction of infested cotton plants

30.—(1) The Minister may, in consultation with the Council and by notice published in the *Gazette*, fix a date prior to which all cotton plants in a specified area shall be uprooted and destroyed in that year and may, in the same instrument, fix a date later in point of time before which no cotton may be planted in that area.

(2) Upon the issue of the notice under subsection (1), it shall be the duty of every occupier of land in that area to uproot and destroy by fire or any other method prescribed in the notice, any cotton plants growing at the time of the publication of the notice or between that time and the date before which cotton may not be planted as specified in subsection (1).

(3) Any person who contravenes the provisions of any notice published under subsection (1) commits an offence and shall be liable to an administrative penalty.

Exemption

31. The Minister may, in consultation with the Council, exempt any person from compliance with the provisions of any notice published under section 27, if the Minister is satisfied that the exemption is desirable for the purpose of scientific or experimental work.

PART V
Regulation of the Marketing and Processing of Cotton

Registration to engage in marketing and processing of cotton

Second Schedule

32.—(1) On application by any person, the Council may, in accordance with the provisions of this Act and regulations made under this Act in the form contained in the Second Schedule hereto, register any person to undertake the following—

(*a*) deal in cotton seed;

(*b*) deal in seed cotton;

(*c*) operate a ginnery;

(*d*) deal in cotton lint; and

(*e*) export cotton lint, cotton seed, seed cotton and other cotton products.

(2) The Council may refuse to register an applicant under subsection (1) if the application does not meet the prescribed requirements.

(3) The Council may revoke or suspend a registration where the registered person fails to comply with the terms and conditions of the registration and the revocation or suspension shall be in addition to any other penalty to which the registered person may be liable under this Act.

(4) The Council shall not refuse to register a person solely by reason that the person has not previously been engaged in any of the undertakings.

(5) A person aggrieved by any refusal, revocation or suspension of a registration may apply to the Court for judicial review regarding the decision of the Council.

(6) A registration issued under this section shall be valid for one year but may be renewable on payment of the prescribed fee.

(7) The Minister shall, on recommendation of the Council, prescribe the terms and conditions for registration including the form and method of application for registration under this section.

(8) Every applicant shall pay the fees payable on application and on the issuing of the registration contained in the Ninth Schedule hereto.

Ninth Schedule

(9) Every holder of a registration shall forward to the Council all information that the Council shall prescribe.

General offences and penalties

33. Any person who contravenes a provision of this Act or a condition of any registration, commits an offence and shall be liable to an administrative penalty and cancellation of the registration by the Council.

Replacement of a lost or destroyed registration

34.—(1) Where a registration issued under this Act is lost or destroyed, the holder of the registration may apply to the Council with proof, to the satisfaction of the Council, of the loss or destruction of the registration.

(2) If the Council is satisfied with the application, it shall issue a certified copy of the registration on payment of a fee contained in the Ninth Schedule hereto.

(3) A certified copy of the registration shall be a registration for the purpose of this Act.

PART VI
Marketing, Licensing and Warehousing

Cotton marketing season

35. The Council shall, in consultation with the Minister and the Ministry responsible for industry and trade, announce the commencement and closure of the cotton marketing season.

Grower to grade seed cotton

36. Every grower shall grade all seed cotton into the appropriate grades as determined under section 37 before the sale of seed cotton.

Determination of the grades of cotton

37. The Council may by order, determine grades of seed cotton for sale at specified areas and for a specified period.

Prohibition against mixing different grades of seed cotton

38.—(1) A person shall not mix different grades of seed cotton.

(2) Any person who knowingly or negligently sells seed cotton without first grading the same, or knowingly or negligently mixes unmerchantable cotton with graded cotton, commits an offence and on conviction shall be liable to an administrative penalty.

(3) Any person who knowingly or negligently buys improperly graded seed cotton or graded cotton mixed with unmerchantable cotton, commits an offence and shall be liable to an administrative penalty.

Prohibition against inclusion of foreign materials and nesting

39.—(1) A person shall not allow or cause any foreign material to be present or nesting in any seed cotton meant for sale.

(2) Any person who allows or causes any foreign material to be present or nesting in any seed cotton meant for sale, commits an offence and on conviction shall be liable to an administrative penalty.

Restriction on cotton buying

40.—(1) A person shall not buy seed cotton, unless he is a holder of a valid seed cotton buying licence.

(2) Notwithstanding the provisions of subsection (1), where an association or cooperative society licensed as a cotton buyer, buys seed cotton through its members, such members shall not be required to be licensed as cotton buyers.

(3) A cotton buyer shall not buy seed cotton at any place other than at a cotton buying post specified in his cotton buying licence.

(4) Any person who contravenes any of the provisions of this section commits an offence and shall be liable to an administrative penalty.

Cotton buying licence
Third Schedule
Fourth Schedule

41.—(1) The Council shall, on application for the relevant licence as contained in the Third Schedule hereto, issue to the applicant a cotton buying licence in the form contained in the Fourth Schedule hereto.

(2) The licence issued under this section shall entitle the holder thereof to buy seed cotton and shall specify the cotton buying post or posts at which the holder shall conduct the buying operations.

(3) Any person who applies for a licence under this Act, on issue of the initial licence or renewal thereof, shall pay the applicable fees as set out in the Ninth Schedule hereto.

Ninth Schedule

(4) A cotton buying licence shall, unless previously revoked or surrendered, remain in force up to the time specified in the licence for the specific growing areas but on application the Council may extend the validity of the licence on sufficient grounds.

Production of licence by a buyer

42.—(1) A cotton buyer shall produce his buying licence at all reasonable times upon request by an inspector.

(2) Any buyer who fails, without reasonable cause, to produce his licence when so requested, commits an offence and shall be liable to an administrative penalty.

Non-assignability of cotton licence

43. A cotton buying licence shall not be assignable or transferable.

Cotton warehousing

44.—(1) A person shall not erect or operate a cotton warehouse for the purpose of storing seed cotton unless he obtains a prior written permission from the Council.

(2) Any person who contravenes the provisions of this section, commits an offence and shall be liable to an administrative penalty.

Cotton buying posts

45.—(1) The Council may, by notice, order any premises or place to be a cotton buying post either temporarily or on permanent basis and a person shall not sell any seed cotton except at a cotton buying post.

(2) Any person who contravenes the provisions of this section, commits an offence and shall be liable to an administrative penalty.

Purchase of seed cotton

46.—(1) The Council may, by order—

(*a*) fix a date in each year prior to which no seed cotton shall be bought in any specified area;

(*b*) fix a date in each year after which no seed cotton shall be bought in any specified area; and

(*c*) fix hours and days on which the premises of cotton buyers shall be kept open for the purpose of conducting business.

(2) Any cotton buyer who contravenes or fails to comply with the provisions of any order made under this section, commits an offence and shall be liable to an administrative penalty.

Prices to be linked to world market

47. All traders in cotton industry shall be guided in their dealing in respect of prices by taking into account, among other factors, the cost of production and the prevailing international market prices.

Conditions to be observed by cotton buyers

48.—(1) Every cotton buyer shall—

(*a*) at all times when his premises are open for business, display in the English and Chichewa version, and in any other local language commonly used in the area, in conspicuous letters, the prices offered by him per unit weight of each grade of seed cotton;

(*b*) display standard grade sample box approved by the Council;

(*c*) keep and render such accounts of his dealings in seed cotton as may be prescribed;

(*d*) display a weighing scale properly serviced, inspected and approved by the Weights and Measurements Department of the Ministry responsible for industry and trade or the Malaŵi Bureau of Standards;

(*e*) store all seed cotton in his possession in a cotton store at one or any of the cotton buying posts at which he is licensed to buy or in such storage facility as the Council may approve;

(*f*) buy seed cotton offered to him at the prices exhibited;

(*g*) keep all cotton separate according to grades;

(*h*) ensure that all cotton purchased by him is correctly graded; and

(*i*) submit to the Council a return of seed cotton purchased on contract farming or a return of seed cotton grown on customary land, in the Form A or B respectively as contained in the Fifth Schedule hereto.

(2) A cotton buyer shall—

(*a*) not buy seed cotton at a price less than the price exhibited;

(*b*) not buy seed cotton without issuing produce receipts to the farmers in respect of all seed cotton purchased; and

(*c*) buy seed cotton and transfer payment to the seller not later than fourteen days after the purchase.

(3) Any cotton buyer who contravenes or fails to comply with any of the provisions of this section commits an offence.

Inspection of premises and records

49.—(1) A cotton inspector may at all times—

(*a*) enter any premises used by cotton buyers for the purposes of inspecting the premises, any seed cotton and scales thereon;

(*b*) inspect and make copies of entries in any books of accounts or other documents required to be kept under the provisions of this Act; and

(*c*) suspend the seed cotton buying operation by seizing the weighing scale, impounding the seed cotton bought and revoking the buying licence.

(2) Any person who obstructs an inspector lawfully exercising his powers under this section or refuses the inspector permission to exercise such power or fails to cooperate with the inspector in the exercise, by the inspector of any such power, commits an offence and shall, upon conviction, be liable to a fine of K500,000 and to imprisonment for two years.

Records of transactions

50.—(1) Any person who buys or collects seed cotton, cotton seed and cotton lint shall keep on the premises on which such cotton is purchased or collected, proper books in which he shall record in duplicate, every day, the following particulars of each individual transaction—

(*a*) the name of the seller or owner;

(*b*) the grade of cotton;

(*c*) the weight of the cotton and the container; and

(*d*) the destination to which such cotton is dispatched.

(2) Every person under obligation to keep books under subsection (1) shall forward such records to the Council and the Ministry, once every month in arrears.

(3) Any person who contravenes the provisions of this section or who fails to produce the said books when required to do so by any inspector commits an offence and upon conviction is liable to an administrative penalty.

PART VII
Ginning and Baling

Registration of a ginnery

51. A person shall not erect or register or cause to be erected or registered a new cotton ginnery unless the following particulars have been submitted to and approved by the Council—

(*a*) the name and address of the proposed ginner;

(*b*) the name and address of each director or partner and the shareholding of each shareholder;

(*c*) processing capacity of the ginnery;

(*d*) planned production of the ginnery;

(*e*) capacity number and area of warehouses;

(*f*) existing transport facilities;

(*g*) number and quality of skilled, semi-skilled and non-skilled personnel employed or to be employed; and

(*h*) financial credit worthiness from a reputable bank.

(2) A person granted a registration certificate shall complete construction of the ginnery within two years from the date of the issuance of the certificate.

(3) The certificate of registration shall not be transferred to another person.

(4) A person shall not operate a ginnery unless the ginnery has been duly inspected and certified by the Council.

(5) The Council may, in its discretion, limit the number of ginneries which may be constructed or operated in any particular area.

(6) Any person who contravenes the provisions of this section or of any orders made under this section commits an offence.

Ginning licence

52.—(1) A person shall not gin seed cotton or bale cotton lint unless he is a holder of a valid ginning licence issued by the Council, and any ginning licence shall, unless revoked or suspended, remain in force for a period of one year from the date of issue.

Sixth Schedule

Seventh Schedule

(2) An application to gin or bale cotton shall be made to the Council in the form contained in the Sixth Schedule hereto and the Council shall issue to the applicant a licence in the Form contained in the Seventh Schedule hereto.

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

Conditions for ginning licence

53.—(1) A holder of a ginning licence shall be entitled to gin seed cotton and bale cotton lint on the premises and in accordance with such conditions as to machinery, plant, storage accommodation and output specified in the licence.

(2) Any holder of a ginning licence who fails to comply with any order or condition lawfully made or imposed by the Council, commits an offence and shall be liable to an administrative penalty.

(3) The Council may, for good and sufficient reasons, refuse to issue a ginner's licence, and in that event the Council shall inform the applicant the grounds for the refusal within fourteen days.

Eighth Schedule

(4) Every registered ginner shall forward to the Council and to the Minister, within twenty one days after completing ginning, a cotton and baling return in the Form contained in the Eighth Schedule hereto containing the details of all cotton ginned; and such details shall include—

(*a*) the quantities ginned during the season, specifying the amount of seed cotton ginned, cotton lint output, cotton seed output and other by-products;

(*b*) the grades into which these quantities are classified; and

(*c*) the appropriate ginning out-turn.

Movement of seed cotton

54.—(1) A person shall not move or cause to be moved any seed cotton from one region to another except in accordance with a permit issued by the Council.

(2) Any person who contravenes the provisions of this section commits an offence and shall be liable to an administrative penalty.

Register of ginneries

55. The Council shall keep and maintain a register of all ginneries in respect of which licences have been issued.

Ginning licence not assignable

56. A ginning licence shall not be assignable or transferable.

Duties of holder of ginning licence

57.—(1) It shall be a condition of every ginning licence that the licence holder shall—

(*a*) maintain and work the ginnery in a proper and workmanship manner and in such a way as not to cause deterioration or damage to the seed cotton, cotton lint, or cotton seed handled therein;

(*b*) ensure that all seed cotton delivered to the ginnery is correctly graded and shall keep the cotton separate according to its appropriate grades;

(*c*) keep all seed cotton, cotton seed and cotton lint which has been salvaged from damage by fire or water separate from all other seed cotton, cotton seed and cotton lint and shall gin the seed cotton and bale the cotton lint only in accordance with the prescribed instructions from the Council;

(*d*) keep such records and make such returns as may be prescribed;

(*e*) keep all seed cotton, cotton seed and cotton lint in his possession or control properly stored in the ginnery buildings or stores;

(*f*) keep the ginnery and its precincts in a clean and sanitary condition;

(*g*) take all reasonable precautions for the prevention of fire as may be prescribed;

(*h*) if so required by the Council, gin before any other seed cotton in respect of seed of which the Council has given notice of its intention to exercise its powers under the provisions of section 20;

(*i*) produce cotton lint free from all seeds or parts of seeds or other substances whatsoever which ought to have been removed therefrom by the processes of ginning if the same had been carried out in a proper and workmanship manner;

(*j*) gin all seed cotton which may be delivered to him for ginning up to the maximum capacity of the ginnery;

(*k*) ensure that seed cotton is always in satisfactory dry state before being fed to the gins and the rate of feed shall not exceed the maximum advised by the gin manufacturers;

(*l*) keep all gins adjusted so that whole seeds or pieces of seed do not pass into the ginned lint and that only lint passes over the rollers of roller gins or through the breast bars of saw gins;

(*m*) maintain gins in such a manner that oil, grease or any form of lubricant does not come into contact with the seed cotton, cotton seed or the ginned lint;

(*n*) fit gins so that the seed issuing from them contains, as far as possible, no unginned cotton and no avoidable broken seed;

(*o*) bale lint in such a manner that all hoops are intact and that the lint is adequately covered with approved bale wrappers;

(*p*) take all reasonable steps to exclude dirt and any extraneous matter from lint prior to and during baling;

(*q*) ensure that prior to removal from the ginnery, bales are stored in such a manner as to be protected from adverse weather conditions;

(*r*) keep all seed cotton delivered for ginning separate in the appropriate prescribed grades; and

(*s*) commence ginning to ensure that all the seed required for planting shall be in the hands of those responsible for its distribution to growers by the dates prescribed by the Minister.

(2) Any holder of a ginning licence who contravenes any of the provisions of this section, commits an offence and shall be liable to an administrative penalty.

(3) Where any ginnery or any machinery in any ginner is being maintained or used in such a manner as to cause deterioration or other damage to any cotton handled in such ginnery, or cause danger to the workers in the ginnery the Council may suspend the ginning licence relating to such ginnery until such time as it is satisfied that the cause of such deterioration or other damage has been removed.

(4) A holder of a ginning licence shall provide toll ginning services to a person who requests for such services within a reasonable time, and in any case the holder of a ginning licence shall provide the services within sixty days from the date of the application for toll ginning services was made.

Form of licences

58.—(1) Licences granted under this Act shall be—

(*a*) in the prescribed manner;

(*b*) valid for a specific period;

(*c*) subject to such terms and conditions as may be prescribed or endorsed therein; and

(*d*) issued subject to the payment of prescribed fees contained in the Ninth Schedule hereto.

Ninth Schedule

(2) The Council may refuse to grant a licence to an applicant if the applicant does not meet the prescribed requirements.

Cancellation or suspension of a licence and appeal

59.—(1) The Council may cancel or suspend a licence, if the holder of the licence fails to comply with terms and conditions of his licence or for a good and sufficient cause; such cancellation or suspension, as the case may be, shall be in addition to any penalty to which the licence holder may be liable under this Act.

(2) Any person aggrieved by the decision of the Council in refusing to grant a licence under section 55 (2), or cancelling or suspending a licence under subsection (1), may appeal to the Minister within thirty days from the day of the refusal, cancellation or suspension.

(3) A person aggrieved by the decision of the Minister may apply to the High Court for judicial review.

PART VIII
Purchase, Sale and Export of Cotton Lint and Cotton Seed

Sale or export of cotton lint and cotton seeds

60. Subject to the provisions of this Act, any person may purchase—

(*a*) cotton lint and cotton seeds for export, or resale within Malaŵi; or

(*b*) seed cotton for resale within Malaŵi.

Restriction on purchase and export of cotton

61.—(1) Any person shall not in any manner whatsoever—

(*a*) export any seed cotton, cotton lint or cotton seed, unless he is a holder of a valid export permit issued by the Council under the provisions of this Act;

(*b*) exchange, barter, or enter into any agreement for exchange or barter of cotton seed or cotton lint; or

(*c*) purchase, sell, export or dispose of, any seed cotton, cotton lint or cotton seed, unless he applies and obtains a licence from the Council in accordance with the provisions of this Act.

(2) Any person who contravenes any provision of this section or contravenes any of the terms and conditions of a licence granted under this Act, commits an offence and shall be liable to an administrative penalty.

PART IX
Financial Provisions

Funds of the Council

62. The finances of the Council shall include—

(*a*) money appropriated by Parliament;

(*b*) all charges levied by the Council;

(*c*) all other fees, cesses, dues or rents received by the Council;

(*d*) all the interest on money invested by the Council;

(*e*) revenues from commercial activities such as sale of seed cotton, cotton seed and cotton lint from farms of the Council;

(*f*) donations and gifts from any other sources; and

(*g*) donor funded projects.

Application of funds of the Council

63. The Council, may use any funds available to it under section 62 for all or any of the following purposes—

(*a*) remuneration of members of staff and technical advisers of the Council;

(*b*) provision of offices and of houses for members of the staff of the Council and of furniture and equipment therefor, as the Council may deem necessary;

(*c*) payment of such remuneration, travelling and other expenses and subsistence allowances to members of the Council on such scale and subject to such conditions as may be approved by the Minister;

(*d*) experiment, investigation and research in connection with the cotton industry;

(*e*) collection and dissemination of statistics and other information relating to cotton and its production and distribution;

(*f*) promotion of exhibition for the display of cotton;

(*g*) establishment or support of libraries, laboratories, experimental stations, workshops and factories, and the provision of facilities ancillary thereto;

(*h*) the promotion of the merits of Malaŵi cotton and increasing its sale by efforts to extend existing markets and exploiting new markets and matters incidental thereto;

(*i*) the payment of expenses and other charges incurred by the Council or for which the Council may become liable in the course of its operations;

(*j*) assisting the cotton industry of Malaŵi in such manner as the Council may think fit; and

(*k*) for any purpose that the Council deems will promote or enhance the development of the cotton industry.

Investment of funds and borrowing powers

64.—(1) The Council may, with the approval of the Minister, invest any funds which may, from time to time, be standing to its credit, and which are not immediately required for any of the purposes specified in section 63 in such investments as the Minister may approve.

Cap. 37:02

(2) The Council may, subject to the Public Finance Management Act and with the approval of the Minister, raise or borrow sums of money for the purposes of discharging its functions under this Act, and

may, for that purpose, mortgage or charge the whole or any part of its property.

Powers to impose levy

65. There shall be raised, collected and paid in respect of all cotton processed or imported into Malaŵi, a cotton levy at such rate as the Minister may, after consultation with the Minister responsible for finance, impose, by notice published in the *Gazette*.

Payment of levy

66. Any levy imposed under the provisions of section 65 shall be paid by all cotton buyers, processors, exporters and importers and such levy shall be collected and expended as prescribed by the regulations made under this Act.

Establishment of the Cotton Development Fund

67.—(1) The Council shall cause to be established a fund for cotton development to be known as the Cotton Development Fund (hereinafter referred to as the "Fund") into which moneys realized from cess or levy shall be paid and the Council shall collect such cess or levy on behalf of the Board of Trustees.

(2) The sources of money for the Fund shall include—

(*a*) any cess or levy determined by the Minister for the purpose;

(*b*) any other source as may be determined by the cotton stakeholders from time to time; and

(*c*) any donations, or grants from Government, donor agency or individuals.

(3) The purpose of the Fund shall include financing the following activities—

(*a*) research and development;

(*b*) extension services;

(*c*) training and human resource development;

(*d*) subsidising prices for cotton seeds for planting and agro-inputs;

(*e*) the administration of the Fund; and

(*f*) such other activities beneficial to the cotton industry as may be deemed fit by Council.

(4) The Fund shall be managed by a Board of Trustees to be appointed by the Minister on recommendation of stakeholders from names proposed by the following institutions—

(*a*) Cotton Growers Association;

(*b*) Cotton Ginners Association;

(*c*) the Ministry responsible for Agriculture; and

(*d*) the Society of Accountants in Malaŵi.

(5) The Executive Director of the Council shall be a member of the Board of Trustees of the Fund, and shall also be the Secretary of the Board of Trustees of the Fund.

Audit of accounts

68.—(1) The Council shall cause to be kept such books of accounts and other books in relation thereto and to all its undertakings, funds, activities and property.

(2) The Minister may from time to time require, and shall, within a period of four months after the end of the Council's financial year or within such longer period as the Minister may approve, cause to be compared, signed and transmitted to the auditor—

(*a*) a balance sheet showing in detail the assets and liabilities of the Council; and

(*b*) such other statements of account as the Minister may require.

(3) The accounts of the Council shall be examined, audited and reported upon annually by the Auditor General or by an auditor appointed by the Council and approved by the Auditor General.

(4) The Council shall produce and submit to the auditor all books and accounts of the Council, with all vouchers in support thereof, and all books, papers and writings in its possession or control relating thereto.

(5) The auditor shall be entitled to require from all members, officers, employees and agents of the Council such information and explanation as he may consider necessary for the performance of his duties as an auditor.

(6) The expenses of and incidental to the audit shall be paid by the Council.

Report and accounts to be submitted to Minister

69.—(1) The Council shall, within a period of six months after the end of its financial year or within such longer periods as the Minister may approve, submit to the Minister, a report of its operations during such year and the yearly balance sheet and such other statements of account as the Minister may require together with the auditor's report thereon.

(2) The Council shall, if the Minister so requires, publish the report, the balance sheet and the other statements in such manner as the Minister may specify.

(3) The Minister shall lay before the National Assembly the Council's report, the auditor's report, the balance sheet, and such other statements of account as he may have required under subsection (1).

(4) The Minister shall lay the reports, balance sheet and statement referred to in subsection (3) herein within thirty days after receipt of the reports and statements by him or if the National Assembly is not then sitting, within a reasonable time after the commencement of the next sitting.

Financial year of the Council

70. The financial year of the Council shall be a period of twelve months from 1st July to June 30th of the next year or on such other date as the Minister may specify by order published in the *Gazette*:

Provided that the first financial year of the Council may be shorter or longer than the period of twelve months.

Council to operate on sound financial principles

71. The Council shall perform its functions in accordance with sound financial principles.

PART X
Miscellaneous Provision

Immunity of members and employees of the Council

72. No action or other proceedings shall lie against a member or an employee of the Council in respect of any act or a thing done or omitted to be done in good faith in the exercise of his powers, duties and functions under this Act.

Government institutions and private companies and others, to cooperate with the Council

73. Every ministry, department, other division of the Government, statutory corporation or private company, shall afford the Council all reasonable opportunity for consultation and shall, subject to any written law, provide the Council with any information that the Council may require.

Fees

Ninth Schedule

74.—(1) Any person who applies for registration or for a licence, as the case may be, under this Act shall, upon issue of an initial registration or licence and on renewal thereof, as the case may be, pay the applicable fees specified in the Ninth Schedule hereto.

(2) The Minister may, on the advice of the Council, from time to time, revise the fees referred to in subsection (1) by notice published in the *Gazette*.

Regulations

75.—(1) The Minister may, on the recommendation of the Council, make regulations for, or with respect to, any matter which by this Act is required or permitted to be prescribed, or which is necessary or expedient to be prescribed for carrying out or giving effect to this Act.

(2) Without prejudice to the generality of subsection (1), the regulations may make provision with respect to—

(*a*) governing the cultivation, baling, marketing, transportation, warehousing, ginning, importation and exportation of cotton;

(*b*) the forms and particulars to be included in any return, information or statistics to be submitted by cotton growers, buyers, ginnery operators, exporters and importers under the provisions of this Act;

(*c*) the grading or classification and definitions of grades fixed in respect of cotton whether locally manufactured or imported;

(*d*) the inspection of all cotton whether locally grown or ginned or imported and for the appointment of inspectors and prescribing their additional duties or powers;

(*e*) the grading, sampling, inspection, weighing and determination of quality of cotton;

(*f*) for records or information to be kept and returns to be made by the cotton growers, buyers, ginnery operators, exporters and importers of cotton;

(*g*) prohibiting or control of the import or export of cotton seed, seed cotton or cotton lint;

(*h*) the variety and quality of cotton seed to be used for sowing in any specified area or region;

(*i*) packing materials to be used for packing seed cotton by farmers and ginners;

(*j*) handling of seed cotton in the gins;

(*k*) the method of bagging, transporting, delivery, storing and supplying to growers of cotton seed which has been reserved under the provisions of section 20;

(*l*) regulating and controlling the lay-out, erection and use of cotton buying posts and their inspection and management;

(*m*) control of erection of ginneries and conditions upon which they may be erected, maintained and operated;

(*n*) the conditions upon which ginning licences may be issued;

(*o*) the regulation of the purchase and sale of seed cotton;

(*p*) prevention of the outbreak of fire at cotton buying posts or other premises used for seed cotton buying;

(*q*) the procedure on appeals of aggrieved parties;

(*r*) determining the rate of levy to be imposed on cotton;

(*s*) the fees to be paid for anything to be done under this Act;

(*t*) the manner in which seed cotton, cotton seed and cotton lint shall be stored, providing for the storage of different types of seed cotton and cotton seed separately and prescribing the specification in conformity with which cotton warehouses shall be built and maintained;

(*u*) the methods of packing seed cotton and prescribing the maximum weight which may be packed in any one bag or bale;

(*v*) the types of containers used in transporting seed cotton; and

(*w*) regulating the weighing of seed cotton.

(3) Regulations made under this section may be applicable to the whole of Malaŵi or to any specified part thereof.

Council to make rules

76. The Council may, with the approval of the Minister, make rules for the better carrying out of its functions and powers under this Act, and without prejudice to the generality of the foregoing, the Council may make rules—

(*a*) regulating the applications for, and the issue of any licence or permit authorized to be issued under this Act;

(*b*) regulating the ginning of seed cotton;

(*c*) regulating the purchase, receipt, storage, baling, disposal and export of cotton lint and cotton seed;

(*d*) regulating and prescribing powers, duties, functions, responsibilities and remuneration of officers, employees and agents of the Council and of inspectors;

(*e*) prescribing the fee for any service to be rendered by the Council to ginners, growers and other persons; and

(*f*) regulating the submission of returns by ginners, growers, agents and other persons engaged in the cotton industry.

Administrative penalties

77.—(1) If the Council is satisfied, on reasonable grounds, that a person has contravened a provision of this Act, the Council may impose administrative penalties on the person by doing one or more of the following—

(*a*) giving the person a written warning;

(*b*) directing the person to do a specified act, or refrain from doing a specified act, for one or more of the following purposes—

(i) to remedy the effects of the contravention;

(ii) to compensate persons who have suffered loss because of the contravention;

(iii) to ensure that the person does not commit further contravention of the provisions this Act or any regulations made hereunder; or

(*c*) requiring the person to pay a monetary penalty as may be determined by the Council with the approval of the Minister.

(2) Before taking action under subsection (1), the Council shall give the person written notice of the proposed action, specifying the grounds

for it and the facts supporting those grounds, and allowing twenty-one days after the notice is given for the person to ask for a hearing on the matter.

(3) If the person requests a hearing on the matter, the Council shall hold a hearing before taking the action. The hearing shall be held in private, unless the person consents to the hearing being held in public.

(4) A person on whom an administrative penalty has been imposed but fails or refuses to comply with the administrative penalty, commits an offence and shall, on conviction, be liable to a fine of K1,000,000 and to four years imprisonment.

(5) Where the administrative penalty imposed by the Council is a monetary penalty and the person on whom the monetary penalty has been imposed does not pay the monetary penalty for more than thirty days from the date of the initial demand in writing by the Council the amount in respect of the monetary penalty shall be recoverable by the Council as a civil debt.

(6) The Council may, on application, waive payment of some or all of a monetary penalty imposed under subsection (1) (*c*).

Offences by bodies corporate relating to state of mind

78.—(1) Where it is necessary to establish, for the purposes of this Act, the state of mind of a body corporate in relation to particular conduct, it is sufficient to show that—

(*a*) the conduct was engaged in by a director, employee or agent of the body corporate within the scope of his actual or apparent authority; and

(*b*) the director, employee or agent had the state of mind.

(2) A reference in subsection (1) to the state of mind of a person includes a reference to—

(*a*) the knowledge, intention, opinion, belief or purpose of the person; and

(*b*) the person's reasons for the intention, opinion, belief or purpose.

(3) A reference in this section to engaging in conduct includes a reference to failing or refusing to engage in conduct.

Offences by bodies corporate relating to liability of directors

79. Where an offence against a provision of this Act or regulations made hereunder is committed by a body corporate, each director of the body corporate shall be guilty of the offence and on conviction shall be liable to the same penalty unless it is established that he took reasonable precaution and exercised due diligence to avoid the commission of the offence.

Penalties for offences by bodies corporate

80. Where a body corporate is convicted of an offence under this Act, the court may, if the court thinks fit, impose a pecuniary penalty not exceeding an amount equal to five times the amount of the maximum

pecuniary penalty that could be imposed by the court on an individual convicted of the same offence.

Penalties for continuing or subsequent offences

81.—(1) Any person convicted of a continuing or a subsequent offence under this Act, shall be liable to a fine of K10,000 every day during which the offence is continued or to imprisonment for six years as the case may be.

(2) Where in this Act a penalty is provided for a continuing or subsequent offence, the penalty shall apply—

(*a*) in the case of a continuing offence, if the person continues to contravene the provision of this Act after he has already contravened that provision; or

(*b*) in the case of a subsequent offence, if that person contravenes the same provision of this Act of which he has already been convicted.

General penalty

82. Any person who commits an offence against a provision of this Act where no penalty is provided for shall, upon conviction, be liable to a fine of K1,000,000 and imprisonment for four years.

Penalties for contravening regulations Cap. 1:01

83. Any regulations made under this Act may, notwithstanding the provisions of section 21 (*e*) of the General Interpretation Act, prescribe a fine of up to K1,000,000 and imprisonment for up to four years for contravention of any provision of such regulation.

Repeal and savings Cap. 65:04

84.—(1) The Cotton Act is hereby repealed.

(2) Any subsidiary legislation made under the Act repealed under subsection (1) in force immediately before the commencement of this Act—

(*a*) shall remain in force and be deemed to be subsidiary legislation made under this Act, unless it is in conflict with this Act; and

(*b*) may be amended or revoked by subsidiary legislation made under this Act.

FIRST SCHEDULE

s. 29

Authorized Pesticides for Cotton Pest Control in Malaw

Common Name	*Chemical Group*	*Trade Names*	*Common Formulations*	*Target Pests*
Imidacloprid Thiamethoxam	Chloranicotinyl Thianicotinyl	Gaucho Cruiser	WS FS	Aphids, elegant grasshopper, termites and other early pests
Carbaryl Profenofos Profenofos Triazophos	Carbamate Organophosphate Organophosphate	Sevin Curacron Hostathion	WP EC EC	All cotton pests except African bollworm, aphid, red spidermite, lygus and helopeltis
Dimethoate Sub-carbosulfen	Organophosphate Organophosphate	Rogor Pefekthian Marshall	EC EC	Aphid, red spidermite
Lambadacyhalothrin Cyfluthrin Fenvalcrate Cypermethrin Deltamethrin Polytrin C Fenpropathrin Cis-Cypermethrin	Pyrethroid Pyrethroid Pyrethroid Pyrethroid Pyrethroid Pyrethroid/ Organophosphate Pyrethroid Pyrethroid	Karate Baythroid Sumicidin Cyupermethrin Decis, Decitab Danital Fastac	EC EC EC EC EC, TB EC EC	African bollworm

SECOND SCHEDULE s. 32

REPUBLIC OF MALAŴI

COTTON ACT

(CAP. 65:04)

REGISTRATION FORM TO DEAL IN COTTON SEED/DEAL IN SEED COTTON/OPERATE A GINNERY/DEAL IN COTTON LINT/EXPORT LINT*

SECTION A

PARTICULARS OF APPLICANT

A.1 Full Name of Applicant: .....

A.2 Address of Applicant, or in the case of a body corporate, the registered office:

…….....……

A.3 Telephone Number of Applicant: …….....….....…..; and ….....……

A.4 Fax Number of Applicant: ….....…….....…….....

A.5 E-mail Address of Applicant: …….....…….....…….....…

A.6 Contact Person:

Name: …….....…….....……

Telephone No.: ……....…....…..... Fax No.: .....…….....……

E-mail Address: ...…….....…….....…….

A.7 Legal Form of Applicant (specify whether company, partnership, individual, cooperative, trust, or others): …….....…….....……

A.8 If the Applicant is a company provide the following details:

(*a*) full names of shareholders and percentage holding

(*b*) full names and occupation of Directors

(*c*) Certificate of Incorporation

(*d*) Memorandum and Articles of Association

SECTION B

COMMENCEMENT DATE, PURPOSE AND DURATION OF REGISTRATION

B.1 Desired date from which the registration (if granted) is to take effect: .....

…….....

B.2 Duration of the registration from commencement date: …….....

to: .....…..

B.3 Purpose for registration: to deal in cotton seed/deal in seed cotton/operate a ginnery/deal in lint cotton/export lint*

B.4 Type of application (first issue, or renewal): …… to .....

*Delete whichever is inapplicable.

SECTION C

INFORMATION ON HUMAN RESOURCES

1. Submit details of the number of staff and employees and their categories and grades in the service of or to be recruited by the applicant, showing their qualification and number of years of experience in similar jobs; and
2. Provide details of top management personnel of the applicant.

SECTION D

PERMITS FROM OTHER GOVERNMENT OR REGULATORY AUTHORITIES

Submit copies of permits or approvals issued by public or local authority or other regulatory agencies necessary for the purpose specified under B3 in the application.

SECTION E

ENVIRONMENTAL CONSIDERATION

Provide a brief description of the likely negative impact of the activity specified under B3 on natural resources and environmental and mitigation measures proposed.

Provide a copy of the approved environmental mitigation plan (if any is required) by the relevant authority.

SECTION F

ADDITIONAL INFORMATION

Please provide any other relevant information which the applicant wishes to include with this application: .....

.....

.....

THIRD SCHEDULE s. 41

REPUBLIC OF MALAŴI

COTTON ACT

(Cap. 65:04)

Form A

Application for Cotton Buying Licence in Respect of Cotton Grown on Private Estate

The Licencing Officer:

……....…….

……....…….

……....…….

I/We* apply for a licence to purchase seed cotton grown on my/our* ……..……. estate.

*Delete whichever is inapplicable.

The place at which purchase will take place is: …….....……

…….....……

The hectarage of cotton under cultivation on my/our* estate in the current season is: ……
……..... hectares.

The estimated production of seed cotton on my/our* estate in the current season is: ……
…..…….....….kg.

I/We* enclose the licence fee of K…….....….....….....……

Signature of Applicant: .....……..

Address: …….....…….……

….…….....……

Date: …….…….....……..

FORM B

APPLICATION FOR COTTON BUYING LICENCE IN RESPECT OF COTTON GROWN ON CUSTOMARY LAND

The Licensing Officer:

……....…….

……....…….

……....…….

I/We* apply for a licence to purchase seed cotton grown on customary land.

The place at which purchase will take place is: …….....…….

The following are the reasons which I/We* wish to advance in support of this application:

…….....…….....……..

…….....…….....……..

…….....…….....……..

…….....….....……..

…….....….....……..

I/We* enclose the licence fee of K.....……

Signature of Applicant: .....……..

Address: …….....…….……

….…….....……

Date: …….…….....……..

*Delete whichever is inapplicable.

FOURTH SCHEDULE s. 41

REPUBLIC OF MALAŴI

COTTON ACT

(CAP. 65:04)

FORM A

COTTON BUYING LICENCE IN RESPECT OF COTTON GROWN ON A PRIVATE ESTATE

No. ……..

Licence is hereby granted to: ……..……..……..... of: …….....… to purchase seed cotton grown on the licencee's estate, subject to the Act, and to the following conditions*:

(*a*) The amount of seed cotton to be purchased under this licence shall not exceed: …….....……kg. This figure is subject to revision at any time during the validity of the Licence;

(*b*) The licence is valid only for the purchase of seed cotton at the following place …….....….....……

(*c*) The prices to be paid for seed cotton purchased under this licence shall be those from time to time fixed by the Minister.

This licence expires on the: …….....…….....….., 20.....

Fee K…….....……..

Dated this ……..… day of ....…….....…….....…….…., 20.……

……

Licensing Officer

FORM B

COTTON BUYING LICENCE IN RESPECT OF COTTON GROWN ON CUSTOMARY LAND

No. ……

Licence is hereby granted to ……..... of: ……..... .....……. to purchase seed cotton grown on customary land, subject to the Act, and to the following conditions:*

(*a*) The amount of seed cotton to be purchased under this Licence shall not exceed ……kg;

(*b*) The licence is valid only for the purchase of seed cotton at the following place: …. .....……

(*c*) The prices to be paid for seed cotton purchased under this licence shall be those from time to time fixed by the Minister.

This licence expires on the …….....…….....…, 20 ……

Fee K …….....…….

Dated this ……....….. day of …….....…....., 20…….

……

Licensing Officer

*Delete whichever is inapplicable.

FIFTH SCHEDULE s. 48 (1) (*i*)

REPUBLIC OF MALAŴI

COTTON ACT

(CAP. 65:04)

FORM A

RETURN OF SEED COTTON PURCHASED ON CONTRACT FARMING

To: THE EXECUTIVE DIRECTOR
THE COTTON COUNCIL OF MALAŴI
P.O. BOX …….

I hereby submit details of seed cotton purchased by me from contracted farmers during the week ended: …….....…....., 20……

	During the week (kg)	Total to date (kg)
First grade cotton: …….....……	…….....….	…….....….
Other cotton:…….....……	…….....….	…….....….
Total:	…….....…..	…….....….

Signature: …….....……...…
Address: …….....…….....
Date: …….....……...……

FORM B

RETURN OF PURCHASES OF SEED COTTON GROWN ON CUSTOMARY LAND

To: THE EXECUTIVE DIRECTOR

THE COTTON COUNCIL OF MALAŴI

P.O. BOX …….

I hereby submit details of seed cotton grown on customary land purchased by me at the under-mentioned centres during the week ended:.....……, 20……

		First Grade Cotton			Other Cotton		
Place of Purchase	District	Weight (kg)	Amount paid to growers		Weight (kg)	Amount paid to growers	
			K	t		K	t

Signature of Applicant: .....……..
Address: …….....…….…….
….…….....……
Date: …….…….....……..

s. 52

SIXTH SCHEDULE
REPUBLIC OF MALAŴI
COTTON ACT
(CAP. 65:04)
APPLICATION FOR A LICENCE TO GIN AND BALE

The Licencing Officer:
……
……
……
I/We* apply for a licence to gin and bale.
The place at which ginning and baling will take place is:……..…….....…….
The estimated amount of the cotton that can be ginned and baled is:…….....……. kg.
The following are the reasons which I/We* wish to advance in support of this application:
.....
.....
.....
.....
.....
I/We* enclose the application fee of K…….....…….....

Signature of Applicant: .....……..
Address: …….....…….…….
….…….....……
Date: …….…….....……..

*Delete whichever is inapplicable.

SEVENTH SCHEDULE s. 52

REPUBLIC OF MALAŴI COTTON ACT

(CAP. 65:04)

LICENCE TO GIN AND BALE COTTON

Region: …….....……... District: …….....…….....……

Name of licence holder: .....…….....…….

Factory at: …….....…….....……..

Licence is hereby given to the above-named to gin and bale cotton at the factory stated in this licence.

This licence expires on the: …….....…….…….....……

Fee: K…….....…….

Dated this …….....……. day of ….....…..……....., 20….....

.....

Licensing Officer

Region: …….....……

EIGHTH SCHEDULE s. 53

COTTON ACT

COTTON GINNING AND BALING RETURN

To: Minister of Agriculture
PO. Box 30134
Capital City
LILONGWE 3

The Executive Director
Cotton Council of Malaŵi
PO. Box…….....…..

Address: …….....……
....…….....…..
Date: ...….....……..

I hereby inform you that the particulars relating to the quantities of seed cotton received and ginned at my factor at: .....…… in the District of: …….. during the month of: …..……., 20……. are as follows:

	Quantity Received at Ginnery		Quantity Ginned		Quantity of Lint Produced		Ginning Percentage	
	During the month kg	Total to date kg	During the month kg	Total to date kg	During the month kg	Total to date kg	During the month kg	Total to date kg
First grade cotton from customary land markets								
Other cotton from customary land markets								
First grade cotton from private estates								
Other cotton from private estates								

Signature: …….....…….

This form must be completed by the holder of a ginning licence and forwarded to the Minister within fourteen days after the end of each calendar month during which his ginnery is in operation, provided that where no cotton is ginned during the month a NIL return shall be forwarded and when ginning is finished the Minister shall be notified.

s. 74 (1)

NINTH SCHEDULE

Fees

Matter	*Amount Payable* K t
1. Application for initial registration for—	
(*a*) dealing in cotton seed	20,000 00
(*b*) dealing in seed cotton	20,000 00
(*c*) operating a ginnery	20,000 00
(*d*) dealing in lint cotton	20,000 00
(*e*) exporting lint	20,000 00
2. Fee upon issue and renewal of registration for—	
(*a*) dealing in cotton seed	50,000 00
(*b*) dealing in seed cotton	50,000 00
(*c*) operating a ginnery	50,000 00
(*d*) dealing in lint cotton	50,000 00
(*e*) exporting lint	50,000 00
3. Replacement of registration	50,000 00
4. Application for licence to buy cotton	20,000 00
5. Fee upon issue and renewal of cotton buying licence . .	50,000 00
6. Application for licence to gin and bale cotton	20,000 00
7. Fee upon issue and renewal of licence to gin and bale cotton	50,000 00

AGRICULTURE (GENERAL PURPOSES)

CHAPTER 65:05

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CHAPTER 65:05

AGRICULTURE (GENERAL PURPOSES)

ARRANGEMENT OF SECTIONS

SECTION
1. Short title and commencement
2. Interpretation
3. Regulation of the agriculture industry
4. Incidental and supplementary provisions
5. Application of regulations, etc.

CHAPTER 65:05

AGRICULTURE (GENERAL PURPOSES)

An Act to make miscellaneous provisions for the general regulation of the agriculture industry 11 of 1987 G.N. 62/1987

[1st June, 1987]

1. This Act may be cited as the Agriculture (General Purposes) Act. Short title

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

"agricultural crop" does not include—

(*a*) tobacco;

(*b*) cotton;

(*c*) any crop declared under the Special Crops Act to be a special crop and for which an authority under that Act has been established; and Cap. 65:01

(*d*) any other crop which the Minister may, by order published in the *Gazette*, declare not to be an agricultural crop for the purposes of this Act.

3.— (1) The Minister may by regulations published in the *Gazette*, make such provisions as he considers appropriate, expedient or necessary for the proper regulation of activities in the agriculture industry not otherwise regulated by or under another written law. Regulation of the agriculture industry

(2) Without prejudice to the generality of the power conferred by subsection (1), such regulations may provide for—

(*a*) the licensing of buying, selling or otherwise marketing of agricultural crops, including the exportation thereof;

(*b*) the persons or class of persons to whom a licence may be issued;

(*c*) the minimum or maximum price payable to producers of agricultural crops;

(*d*) the standardization and inspection of assized weighing instruments or equipment for use in buying agricultural crops from producers;

(*e*) exportation procedures, including the remittance back to Malaŵi of export proceeds arising from sale of agricultural crops abroad;

(*f*) the form of application for licences and the person to whom an application for a licence shall be made;

(*g*) the form of licences;

(*h*) the conditions that attach to any licence;

(*i*) the form and manner in which records or registers of all applications for a licence and licences shall be kept;

(*j*) the person who, and the circumstances in which that person, may enter any place, vehicle, aircraft or vessel to ascertain compliance with the terms and conditions of a licence; and

(*k*) the penalty for contravention of, or failure to comply with, the provisions of the regulations and such penalty shall have effect notwithstanding the provisions of section 21 (*e*) of the General Interpretation Act.

Cap. 1:01

(3) The Minister may, in his discretion and without assigning any reasons therefor, refuse to issue a licence to any person or cancel or suspend a licence issued to any person, and the decision of the Minister to refuse to issue a licence or to cancel or suspend a licence shall be final and shall not be subject to review by, or be questioned in, any court.

Incidental and supplementary provisions

4. Regulations made under section (3) may further—

(*a*) make provision for empowering such authorities or persons as may be specified in the regulations to make rules or orders for any of the purposes for which the regulations may be made;

(*b*) make provision for the delegation and transfer of powers conferred, and duties imposed, by or under the regulations; and

(*c*) contain such other incidental and supplementary provisions as appear to the Minister to be necessary or desirable for the purposes of the regulations.

Application of regulations, etc.

5. Regulations made under this Act and any rules or orders made under such regulations may be made so as to apply generally to the agriculture industry or to any particular agriculture crop or to any particular trade, business, undertaking or enterprise in the agriculture industry and so as to have effect either throughout Malaŵi or in any particular part of Malaŵi.

SUBSIDIARY LEGISLATION

SMALLHOLDER AGRICULTURAL PRODUCE (MARKETING) REGULATIONS

G.N. 63/1987
45/1989

under s. 3

[*Revoked by G.N.* 75/1994]

AGRICULTURAL PRODUCE (MARKETING) REGULATIONS

G.N. 63/1987
45/1989
75/1994
14/2008

under s. 3

Citation

1. These Regulations may be cited as the Agricultural Produce (Marketing) Regulations.

Interpretation

2. In these Regulations, unless the context otherwise requires—

"authorized officer" means an officer in the public service designated as such by the Minister under regulation 7;

"licensing officer" means the Secretary for Agriculture or such other officer in the public service as he may authorize to act on his behalf;

"Malaŵi national" means—

(*a*) in the case of an individual, a citizen of Malaŵi;

(*b*) in the case of a company or other body of persons, whether corporate or unincorporate, a company or body of persons wholly owned or majority controlled by citizens of Malaŵi;

"agricultural produce" means the produce of any agricultural crop specified in the Second Schedule.

Buying of agricultural produce

3. No person shall, for profit or gain, engage in the business of buying any agricultural produce from producers unless he is a holder of a valid licence issued under these Regulations.

Application for licence

4.—(1) Any person who is a Malaŵi national may apply to the licensing officer to engage in the business of buying agricultural produce from producers.

(2) Every application for a licence shall be in Form APMR I set out in the First Schedule, and shall be accompanied by the application fee prescribed in the Third Schedule.

(3) Any application fee paid under subregulation (2) shall not be refundable, whether or not a licence is granted.

Issuing of licence

5. If a licensing officer is satisfied that the applicant for a licence is a fit and proper person and is a Malaŵi national, he may issue to that person a licence in Form APMR II set out in the First Schedule.

Conditions of licence

6. A licence issued under these Regulations shall be—

(*a*) issued upon payment by the applicant of the licence fee prescribed in the Third Schedule;

(*b*) valid from the date of issue to the following 31st March;

(*c*) subject to the following conditions, that is to say—

(i) that the licensee shall buy the agricultural produce by means of approved weights and measures made available at his own expense and shall ensure that such instruments are at all times properly assized;

(ii) that the licensee shall buy the agricultural produce between the hours of sunrise and sunset only;

(iii) that the licensee shall at all reasonable times allow authorized officers free access to examine the instruments of weights and measures used by him and generally for the purposes of regulation 6;

(iv) that the licensee shall not export any agricultural produce bought by him, except upon an export licence issued to him under the Control of Goods Act or any other written law.

Cap. 18:08

Authorized officer

7.—(1) The Minister may designate officers in the public service to be authorized officers for the purpose of ensuring that a licensee complies with the conditions of his licence and generally with the provisions of these Regulations.

(2) In the performance of his duties under subregulation (1), an authorized officer may at any reasonable time enter upon any place, vehicle, aircraft or vessel.

Offences

8. Any person who—

(*a*) contravenes regulation 3;

(*b*) fails to comply with the conditions of the licence set out in regulation 6 (*c*); or

(*c*) wilfully obstructs or hinders an authorized officer in the performance of his duties,

shall be guilty of an offence and liable to a fine of K1,000 and to imprisonment for three months.

FIRST SCHEDULE reg. 4 and 5

PART I

FORM OF APPLICATION FORM APMR I

NOTE: This application is to be completed in triplicate and submitted to the Secretary for Agriculture at such address as shall be notified in the *Gazette* and shall be accompanied by a non-refundable application fee of K10.

I/We (name in full): .....

of (address): .....

Previous Licence No. (if any): .....

Nationality: .....

hereby apply for a licence to buy the following produce during the licence period ending on the 31st March, 20.....

Produce	*Estimated quantities*
1.	.....
2.	.....
3.	.....
4.	.....
5.	.....
Date:	Signature: .....
	Name: .....
	Designation (if any): .....

PART II

FORM OF LICENCE FORM APMR II

LICENCE TO BUY AND SELL AGRICULTURAL PRODUCE

Licence No. .....

Name of Licencee: .....

of (address): .....

is hereby licensed to buy and sell agricultural produce.

This licence is valid from the date of issue to the 31st March, 20 ....., and is subject to the provisions of the Agriculture (General Purposes) Act, the Agricultural Produce (Marketing) Regulations, 1994, and to any special provisions endorsed overleaf.

Date of issue: ..... Signed: .....

Issuing Officer

Licence fee paid K ..... *for Secretary for Agriculture*

General Receipt No.: ..... (Official Stamp)

Date: .....

SECOND SCHEDULE

reg. 3
G.N. 14/2008

Agricultural Produce

Paddy Rice	Cassava
Groundnuts	Sorghum
Beans	Wheat
Peas	Bullrush millet
Grams	Chillies
Sunflower seed	Ginger
Castor seed	Cardamom
Sesame	

THIRD SCHEDULE

reg. 4

Fees

1. Upon application	K10.00
2. Upon issue of licence	K50.00

AGRICULTURAL PRODUCE (MAIZE MARKETING) REGULATIONS

G.N. 15/2008

under s. 3

Citation

1. These Regulations may be cited as the Agricultural Produce (Maize Marketing) Regulations.

Designation of ADM ARC as sole buyer of maize from smallholder farmers and seller of maize

2.—(1) The Agricultural Development and Marketing Corporation (hereinafter referred to as "ADMARC") is hereby designated as the sole buyer of maize from smallholder farmers and seller of maize in Malaŵi.

(2) ADMARC shall—

(*a*) buy maize at a price which shall not be below the price; and

(*b*) sell maize at a price which shall not be above the price, specified in the Schedule.

Application of Cap. 65:05

3. The Agricultural Produce (Marketing) Regulations shall apply, *mutatis mutandis*, to the buying and selling of maize.

SCHEDULE reg. 2 (2)

MAIZE PRICES

BUYING PRICE

K45.00 per kilogram, or

K2,250.00 per 50 kilogram bag

SELLING PRICE

K52.00 per kilogram, or

K2,600.00 per 50 kilogram bag

LAWS OF MALAŴI

VOL X

L.R.O. 1/2018

PROTECTION OF ANIMALS

CHAPTER 66:01

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CHAPTER 66:01

PROTECTION OF ANIMALS

ARRANGEMENT OF SECTIONS

SECTION

1. Short title
2. Interpretation
3. Offences of cruelty
4. Court may order destruction of animal
5. Court may deprive person convicted of cruelty of ownership of animal
6. Compensation for damage done by cruelty to an animal
7. Injured animals
8. Search warrants
9. Powers of police officers
10. Employers and owners to produce drivers or animals if so required
11. Costs
12. Payments out of fine
13. Infirmaries
14. Power to make Rules

An Act to make provision for the protection of animals

16 of 1944
5 of 1961
30 of 1969
G.N. 22/1963
50/1963

[4th October, 1944]

Short title

1. This Act may be cited as the Protection of Animals Act.

Interpretation

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

"animal" means any domestic or captive animal;

"domestic animal" means any horse, ass, mule, bull, sheep, pig, goat, dog, cat, or fowl, or any other animal of whatsoever kind or species, and whether a quadruped or not, which is tame or which has been or is being sufficiently tamed to serve some purpose for the use of man;

"captive animal" means any animal (not being a domestic animal) of whatsoever kind of species, and whether a quadruped or not, including any bird, fish, or reptile, which is in captivity, or confinement, or which is maimed, pinioned, or subjected to any appliance or contrivance for the purpose of bindering or preventing its escape from captivity or confinement;

"inspector" means a person appointed as such for the purposes of this Act by the Minister; and

"veterinary officer" means an officer in the service of the Veterinary Department of the Government.

Offences of cruelty

3.—(1) If any person—

(*a*) shall cruelly beat, kick, ill-treat, override, overload, torture, infuriate, or terrify any animal, or shall cause or procure, or, being the owner, permit any animal to be so used, or shall by wantonly or unreasonably doing or omitting to do any act, or causing or procuring the commission or omission of any act, cause any unnecessary suffering or being the owner, permit unnecessary suffering to be so caused to any animal;

(*b*) shall convey or carry, or cause or procure, or, being the owner, permit to be conveyed or carried, any animal in such a manner or position as to cause that animal any unnecessary suffering;

(*c*) shall cause, procure, or assist at the fighting or baiting of any animal; or shall keep, use, manage or act or assist in the management of, any premises or place for the purpose, or partly for the purpose, of fighting or baiting any animal, or shall permit any premises or place to be so kept, managed, used, or shall receive or cause or procure any person to receive, money for the admission of any person to such premises or place;

(*d*) shall wilfully, without any reasonable cause or excuse, administer, or cause or procure, or being the owner, permit, such administration of, any poisonous or injurious drug or substance to any animal, or shall wilfully, without any reasonable cause or excuse, cause any such substance to be taken by any animal; or

(*e*) shall subject, or cause or procure, or being the owner permit to be subjected, any animal to any operation which is performed without due care and humanity,

such person shall be guilty of an offence of cruelty within the meaning of this Act, and shall be liable to a fine of £25 and to imprisonment for six months.

(2) For the purpose of this section, an owner shall be deemed to have permitted cruelty within the meaning of this Act if he shall have failed to exercise reasonable care and supervision in respect of the protection of the animal therefrom:

Provided that, where an owner is convicted of permitting cruelty within the meaning of this Act by reason only of his having failed to exercise such care and supervision he shall not be liable to imprisonment without the option of a fine.

(3) Nothing in this section shall render illegal any act done by a registered medical practitioner or by a veterinary surgeon, which may be lawfully done under the Cruelty to Animals Act, 1876, of the United Kingdom, by a person licensed under that Act, or shall apply— 30 of 1969 39 & 40 Vict., c. 77

(*a*) to the commission or omission of any act in the course of the destruction, or the preparation for destruction, of any animal as food for mankind, unless such destruction or such preparation was accompanied by the infliction of unnecessary suffering; or

(*b*) to the coursing or hunting of any captive animal, unless such animal is liberated in an injured, mutilated, or exhausted condition; but a captive animal shall not, for the purposes of this section, be deemed to be coursed or hunted before it is liberated for the purpose of being coursed or hunted, or after it has been recaptured, or if it is under control.

Court may order destruction of animal

4. Where the owner of an animal is convicted of an offence of cruelty within the meaning of this Act, it shall be lawful for the court to direct that the animal be destroyed, and to assign the animal to any suitable person for that purpose; and the person to whom such animal is so assigned shall as soon as possible, destroy such animal or cause or procure such animal to be destroyed, in his presence without unnecessary suffering. Any reasonable expenses incurred in destroying the animal may be ordered by the court to be paid by the owner, and thereupon shall be recoverable summarily as a civil debt.

Court may deprive person convicted of cruelty of ownership of animal

5. If the owner of any animal shall be guilty of cruelty within the meaning of this Act to the animal, the court, upon his conviction thereof, may, if it thinks fit, in addition to any other punishment deprive such person of the ownership of the animal and may make such order as to the disposal of the animal as it thinks fit in the circumstances:

Provided that no order shall be made under this section unless it is shown by evidence as to a previous conviction, or as to the character of the owner, or otherwise, that the animal, if left with the owner, is likely to be exposed to further cruelty.

Compensation for damage done by cruelty to an animal

6. If any person shall by cruelty, within the meaning of this Act to any animal, do or cause to be done, any damage or injury to the animal or any person or property, he shall upon conviction for the cruelty under this Act, be liable upon the application of the person aggrieved to be ordered to pay as compensation to such person, such sum not exceeding £10, as the court before which he is convicted may consider reasonable; the sum so ordered to be paid shall be recoverable as if it were a fine:

Provided that this section shall not—

(*a*) prevent the taking of any other legal proceedings in respect of any such damage or injury, so that a person be not twice proceeded against in respect of the same claim; nor

(*b*) affect the liability of any person to be proceeded against and punished under this Act for an offence of cruelty within the meaning of this Act.

Injured animals 30 of 1969

7.—(1) If a District Commissioner, inspector, veterinary surgeon, veterinary officer or police officer of or above the rank of inspector finds on any road or in any public place, any animal so diseased or so severely injured or in such physical condition that, in his opinion having regard to the means available for removing the animal, there is no possibility of removing it without cruelty, he may, without the consent of the owner, slaughter the animal, or cause or procure it to be slaughtered, with such instruments or appliances, and with such precautions, and in such manner, as to inflict as little suffering as practicable, and remove the carcass or cause or procure it to be removed from the road or public place.

(2) Any expense which may be reasonably incurred in carrying out subsection (1) may be recovered from the owner summarily as a civil debt, and subject thereto, any such expense shall be defrayed out of moneys provided by Parliament.

Search warrants

8.—(1) If a magistrate or a police officer of or above the rank of inspector, upon information in writing, and after such inquiry as he thinks necessary, has reason to believe an offence under this Act is being or is about to be or has been committed in any place, he may either himself enter and search, or, by his warrant, authorize any inspector, veterinary officer or police officer above the rank of constable to enter and search the place.

Cap. 8:01

(2) The provisions of the Criminal Procedure and Evidence Code relating to searches under that Code, shall, so far as those provisions can be made applicable, apply to a search under subsection (1).

Powers of police officers

9.—(1) A police officer may apprehend without warrant any person who he has reason to believe is guilty of an offence under this Act which is punishable by imprisonment without the option of a fine, whether upon his own view thereof or upon the complaint and information of any other person who shall declare his name and place of abode to such police officer.

(2) Where a person having charge of a vehicle or animal is apprehended by a police officer for an offence under this Act, it shall be lawful for that or any other police officer, to take charge of such vehicle or animal, and to deposit the same in some place of safe custody until the termination of the proceedings or until

the court shall direct such vehicle or animal to be delivered to the person charged or the owner, and the reasonable costs of such detention; including the reasonable costs of veterinary treatment where such treatment is required, shall, in the event of a conviction in respect of the said animal, be recoverable from the owner summarily as a civil debt, or, where the owner himself is convicted, shall be part of the costs of the case.

Employers and owners to produce drivers or animals if so required

10.—(1) Where proceedings are instituted under this Act, against the driver or conductor of any vehicle, it shall be lawful for the court to issue a summons directed to the employer of the driver or conductor, as the case may be, requiring him, if it is in his power so to do, to produce the driver or conductor at the hearing of the case.

(2) Where proceedings are instituted under this Act it shall be lawful for the court to issue a summons directed to the owner of the animal requiring him to produce either at, or at any time before, the hearing of the case, as may be stated in the summons, the animal for the inspection of the court, if such production is possible without cruelty.

(3) Where a summons is issued under either of the foregoing subsections, and the owner or employer, as the case may be, fails to comply therewith without satisfactory excuse, he shall be liable to a fine of £5 for the first occasion and of £10 for the second or any subsequent occasion on which he so fails, and may be required to pay the costs of any adjournment rendered necessary by his failure.

Costs

11.—(1) In all cases of a conviction for an offence under this Act, the court may order the person convicted to pay all or any part of the costs and expenses of his prosecution. Any money payable by virtue of an order under this section shall be recoverable as if it were a fine.

(2) The court may order that the whole or such portion of the costs and expenses as the court thinks fit paid by or recovered from the convicted person shall be paid to the prosecutor or complainant.

Payments out of fine

12. Where in any proceedings under this Act any fine is imposed the court may award any sum or sums not exceeding half the total fine to the person, not being a police officer, who shall complain and prosecute, or to such other person or society as the court shall think fit.

Infirmaries

13.—(1) The Minister may, by order appoint places to be infirmaries for the treatment and care of animals in respect of which offences under this Act have been committed.

(2) The court before which a prosecution for such an offence has been instituted may direct that the animal in respect of which the offence is alleged or proved to have been committed shall be sent for treatment and care to an infirmary, and be there detained until it is, in the opinion of the court, again fit for the work or labour on which it has been ordinarily employed.

(3) The cost of the treatment, feeding and watering of the animal in the infirmary shall be payable by the owner of the animal, according to such scale or rates as the Minister may from time to time prescribe.

(4) If the owner refuses or neglects to pay such cost, and to remove the animal within such time as the court may prescribe, the court may direct that the animal be sold and that the proceeds of the sale be applied to the payment of such cost.

(5) The surplus, if any, of the proceeds of the sale shall, on application made by the owner within two months after the date of the sale, be paid to him, but the owner shall not be liable to make any payment in excess of the proceeds of the sale. In the event of no application being made within the said period of two months, the said surplus shall be disposed of as if it were a fine.

Power to make Rules

14.—(1) The Minister may make Rules for carrying this Act into effect.

(2) In particular and without prejudice to the generality of the foregoing power, such Rules may provide—

(*a*) for insuring for animals carried on inland waters a proper supply of food and water and proper ventilation during the passage and on landing;

(*b*) for protecting animals from unnecessary suffering during the passage and on landing;

(*c*) for protecting animals from unnecessary suffering during inland transit; and

(*d*) for prescribing and regulating the payment and recovery of expenses incurred under any rule.

CONTROL AND DISEASES OF ANIMALS

CHAPTER 66:02

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CHAPTER 66:02

CONTROL AND DISEASES OF ANIMALS

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CHAPTER 66:02

CONTROL AND DISEASES OF ANIMALS

ARRANGEMENT OF SECTIONS

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22. Penalties

An Act to consolidate and amend the law relating to the control and diseases of animals

41 of 1967
30 of 1969
G.N. 242/1969
143/1976

[29TH DECEMBER, 1967]

1. This Act may be cited as the Control and Diseases of Animals Act. Short title

2. In this Act— Interpretation

"animal" means any bull, cow, ox, heifer, calf, sheep, goat, horse, mule, donkey, pig, domestic fowl and any game animal as defined in the definition of the expression "game" or "game animal" contained under the Game Act, any wild carnivore tamed and kept as a pet, guinea fowl, pigeon, pea-fowl, dog, cat and any other creature which the Minister has, by order under section 4, declared to be an animal for the purposes of this Act; Cap. 66:03

"carcass" means the carcass of an animal and includes part of a carcass, and the meat, bones, hide, skin, hoofs, horns or other part of an animal separately or otherwise or any portion thereof;

"disease" means anthrax, atrophic rhinitis of pigs, bovine and caprine pleuropneumonia, clostridial infections (including blackquarter), East Coast fever, epidemic tremor of chickens, foot and mouth disease, glanders and farcy, infectious cervico-vaginitis and epididymitis, lumpy skin disease, lymphangitis, mange, Newcastle disease of poultry, rabies, rinderpest, senkobo skin disease, sheep pox, swine erysipelas, swine fever, trypanosomiasis and tuberculosis and any other disease which the Minister has, by notice under section 4, declared to be a disease for the purposes of this Act;

"dog" means any quadruped of the species *canis familiaris;*

"infected area" means an area declared to be an infected area by an order made under section 4, in respect of which no declaration has been so made that the area is free from disease;

"inspector" means any Professional Officer, Technical Officer or Technical Assistant employed by the Department of Veterinary Services of the Government of Malaŵi;

"owner" in relation to a dog or other animal means any person in whose custody, possession or charge it is, also any person in whose house or premises it is kept or found unless such last-mentioned person shall prove that it does not belong to him and is not in his custody, possession or charge;

30 of 1969

"veterinary officer" means an officer in the service of the Government who is a veterinary surgeon.

Diseased animals to be separated and notification made

3.—(1) Every person having in his possession or charge an animal affected or suspected of being affected with disease shall—

(*a*) keep such animal separate from animals not so affected or suspected, and cause the animal affected or suspected to be tied up, or put in an enclosed place; and

(*b*) forthwith give notice of the fact of the animal being affected or suspected to the nearest inspector or police officer.

(2) Any police officer so notified shall forthwith notify the nearest inspector, who shall give such directions and take such steps as may be necessary for the purpose of ascertaining the existence and nature of the disease, and on being satisfied that

such disease exists he shall forthwith report the disease to the Chief Veterinary Officer.

Power of Minister and others to make orders and declarations regarding infected areas, diseases and animals

4.—(1) The Minister, the Chief Veterinary Officer, or any person duly authorized in writing by either of them, may at any time, by order made under his hand—

(*a*) declare any area within Malaŵi to be an infected area as regards any disease named in such order;

(*b*) extend, diminish or otherwise alter the limits of an infected area;

(*c*) declare an infected area to be free from disease;

(*d*) for the purpose of preventing disease, prohibit the removal of animals, or of any carcass, litter, dung or fodder from any area described in such order.

Any such order made shall take effect immediately upon the signing thereof and shall as soon as practicable thereafter be published in the *Gazette*.

(2) The Minister may by notice declare any disease of animals to be a disease for the purposes of this Act.

(3) The Minister may by notice declare any animal to be an animal for the purposes of this Act.

Provisions for infected areas

5.—(1) The following provisions shall, in the absence of other provisions made by rules under this Act, apply to all infected areas as and when so declared under section 4—

(*a*) no person shall remove any animal from any one place in the infected area to any other place therein, without a written permit to do so from an inspector;

(*b*) no person shall remove any animal from any place in the infected area, to any place outside, without a written permit to do so from an inspector;

(*c*) a permit shall be in such form, and subject to such conditions, as the inspector shall deem proper, and the person to whom it is issued shall comply with such conditions;

(*d*) the holder of a permit shall produce the same for inspection on demand by an inspector, police officer above the rank of sergeant or any other person duly authorized by an inspector or such police officer;

(*e*) the owner of any animals liable to be affected by the named disease in the infected area shall herd or keep them as far as reasonably practicable from any public road;

(*f*) the owner of any animal within the infected area shall, when required by an inspector, isolate such animal from other animals, or remove it from the infected area;

(*g*) no person shall leave the infected area without having complied with such reasonable precautions for preventing the spread of disease as may be required by an inspector;

(*h*) the owner of an animal dying from disease shall forthwith cause the carcass either to be buried at a depth of not less than four feet below the surface of the ground, or to be totally destroyed by burning.

(2) Any person who fails to comply with any of the provisions specified in subsection (1) or in any Rules shall be guilty of an offence.

Power of Minister to prohibit import or export

6. The Minister may, by an order made under his hand which shall take effect immediately and be subsequently published in the *Gazette*, prohibit, either indefinitely, or for such time as he may think fit, or may regulate the importation into Malaŵi of all animals, or any specified numbers or kinds of animals, or of carcasses, hides, skins, horns, hoofs, hair, wool, semen, litter, dung or fodder, from all places outside Malaŵi or from any specified country, territory or port, or the exportation thereof from Malaŵi.

Quarantine stations

7. The Minister may establish quarantine stations at such places as he may deem convenient, and may direct that any animals imported or in course of importation shall be placed therein for such period as he shall determine. The animals shall be placed in the quarantine stations in such manner, at such time, and subject to such supervision and be subjected to such tests, as the Minister shall direct, and shall be housed in sheds or other receptacles prepared by the Government or by the owners or consignees of the animals. All expenses incurred in connexion with the detention of such animals in quarantine shall be defrayed by the owners or consignees.

Power of Minister to make rules

8. The Minister may make rules for the better carrying into effect of this Act and in particular for all or any of the following purposes—

(*a*) the prevention of, the introduction of, or spread of disease in Malaŵi;

(*b*) the control, isolation, muzzling, inoculation, seizure, detention, removal and slaughter of animals suffering or suspected to be suffering from any disease or known or suspected to have been in contact with diseased animals otherwise exposed to the infection or contagion of disease or of any dog;

(*c*) the manner in which any carcass is to be buried, destroyed or otherwise disposed of;

(*d*) prohibiting or regulating the movement of animals within Malaŵi;

(*e*) the destruction of buildings and places wherein animals suffering from any disease have been stalled or kept;

(*f*) the cleansing and disinfection of any public market, private auction or sale yard, railway premises, railway rolling stock or any vehicle, vessel or aircraft wherein any animal has been placed, kept or carried;

(*g*) the disinfection or treatment of all animals which have been in contact with diseased animals, or which have been in an infected area, and to amend generally or for any special purpose the provisions relating to infected areas contained in section 5;

(*h*) the disinfection of persons and their clothing coming into contact with or employed about diseased or suspected animals;

(*i*) quarantine;

(*j*) limiting the compensation payable under section 11 in respect of any class of animals specified in the rule;

(*k*) the fees to be paid for any services rendered under this Act;

(*l*) authorizing the destruction of any dog or other animal unlawfully introduced into Malaŵi;

(*m*) providing for the registration of dogs throughout Malaŵi or in any particular area and prescribing the persons by whom such registration shall be carried out, the conditions to be complied with, the forms to be used, the badges to be issued and the fees to be paid, and any other matters or things in connection with such registration;

(*n*) providing for the compulsory immunization of dogs or other animals against rabies or any other disease throughout Malaŵi or in any particular area and prescribing the fees to be paid for such immunization.

Slaughter

9. A veterinary officer may cause to be slaughtered any animal affected, or suspected of being affected, with any disease, or any animal which has been in contact with a diseased animal, or has been otherwise exposed to the infection or contagion of disease.

Disposal of carcasses

10.—(1) Subject to any rules made by the Minister, the carcass of any animal slaughtered under this Act, shall be buried or sold, or otherwise disposed of, under such conditions as an inspector shall direct.

(2) Any person who fails to comply with a direction under subsection (1) shall be guilty of an offence.

Indemnity and payment of compensation

11. No action shall lie against the Government or any officer thereof for any act done under this Act and no compensation shall be payable to any person for any such act unless the Minister otherwise directs:

Provided that there shall be paid to the owner as compensation for any animal, other than a dog, slaughtered under this Act and not affected with disease at the time of slaughter, and in relation whereto the owner has not been guilty of any breach of this Act, the value of such animal immediately before it was slaughtered but so that the compensation shall not exceed such amount as the Minister may have fixed as the limit of compensation by rules made under section 8.

Power to enter and examine

12. An inspector may enter any land, building, shed, place, carriage, van, truck, other vehicle, vessel or aircraft containing or carrying or used for the purpose of containing or carrying animals, and may examine any animals found therein, for the purpose of ascertaining whether any such animal is suffering from disease or for the purpose of ascertaining whether any rules, orders, or directions as to cleansing and disinfecting, made under this Act, and for the time being in force, have been properly carried out.

Power to detain vehicles and vessels

13. Where any inspector or police officer has reason to believe that this Act has not been or is not being complied with in a vehicle or on board a vessel in Malaŵi, he may detain such vehicle or vessel or cause it to be detained until the Minister or Chief Veterinary Officer otherwise directs.

Detention and arrest

14. When any person is seen or found committing, or is reasonably suspected of being engaged in committing an offence against this Act, or any rule, notice, order or direction hereunder, an inspector or police officer may without warrant stop or detain him: and if his name and address be not known to the officer stopping or detaining him, and he fails to give such information to the satisfaction of such officer, such officer may without warrant arrest him.

Obstruction

15. If any person obstructs or impedes, or attempts to obstruct or impede, an inspector or police officer in the execution of his duty under this Act, he shall be guilty of an offence.

Seizure of animals, etc.

16.—(1) An inspector or a police officer, may seize any animal in respect of which he has reason to suspect that an offence against this Act is being committed, and remove any such animal to any pound, enclosure or other place selected by an inspector, and there detain such animal, subject to the orders of a court.

(2) Wherever any animal shall have been seized and detained under the preceding subsection, the officer making such seizure shall, with all practicable speed, report the same to a court having jurisdiction within the District in which such animal has been so seized.

(3) A court, if it is satisfied that there is reason to believe that an offence as aforesaid has been committed in respect of any animal seized and detained under this section, may order that the owner of such animal shall pay to the Chief Veterinary Officer such sum as it may consider reasonable to cover the expenses connected with the removal to the place of detention and the keep of such animal during such detention, and may order that unless such sum be paid within a time to be specified in such order, the animal be forfeited:

Provided however that no order shall be made under this subsection unless the owner of such animal shall have had an opportunity of appearing before the court to show cause why such order should not be made.

Forfeiture when offender not found and disposal of forfeited animals

17.—(1) Whenever it shall be reported to a court that any animal has been seized and detained under section 16, but that the person who is alleged to have committed an offence in respect of such animal is unknown or cannot be found, the court may, if satisfied by evidence on oath that there is reason to believe that an offence against this Act has been committed in respect of such animal, order that such animal be forfeited.

(2) An animal ordered to be forfeited under this section or section 16 (3) or 22 shall be sold by auction unless the Chief Veterinary Officer directs that it shall be slaughtered.

Complaints as to dogs

18.—(1) Any person may complain to a court that a dog is dangerous, not under proper control, or a nuisance by reason of its barking or otherwise, and on such complaint the court may issue a summons directed to the owner calling upon him to show cause why the dog should not be kept under proper control, or, if dangerous or a nuisance, destroyed and on the return of such summons, unless cause be shown to the contrary, the court may order that the dog be kept under proper control or destroyed.

(2) If the owner fails to comply with an order made under subsection (1), he shall be liable to a fine of K10 for every day during which the default continues.

Damages for injuries by dog

19. In any action against the owner of a dog for damages in respect of injury done to any person or to any domestic animal or bird by that dog, it shall not be necessary for the person seeking such damages to show a previous propensity in the dog,

or the owner's knowledge of such previous propensity or to show that the injury was attributable to neglect on the part of the owner.

Presumption of age

20. In any proceedings under this Act a dog or other animal shall be presumed to be over the age referred to in the particular provision under which proceedings are brought unless the contrary is proved.

Owner to produce dog for inspection

21. Every owner of a dog shall produce his dog, under proper control, for inspection at the request of an inspector, or a police officer above the rank of sergeant.

Penalties

22. A person guilty of an offence under this Act, for which no other penalty is prescribed, or who fails to comply with any rule, notice, order or direction hereunder, shall be liable for every such offence or failure to a fine of K200 and to imprisonment for six months; and any animals, carcass, litter, dung or fodder, in respect of which such offence has been committed may be forfeited.

SUBSIDIARY LEGISLATION

NOTE

DECLARATION OF INFECTED AREAS

under s. 4

The declarations made (and still in force by virtue of section 14 *of the General Interpretation Act, Cap.* 1:01) *under section* 4 *of the Diseases of Animals Ordinance,* 1922*, No.* 15 *of* 1922*, are not published here. Some are published as Government Notices, others as General Notices in the Gazette.*

The declarations made under section 4 *of the Act are not published here. They are published as General Notices in the Gazette.*

ANIMAL (IMPORT) RULES

G.N. 235/1968

under s. 6

1. These Rules may be cited as the Animal (Import) Rules. Citation

2. In these Rules, unless the context otherwise requires— Interpretation

"animal" includes animal semen, poultry, eggs and rabbits;

"animal by-product" means any carcass, meat meal, blood meal, bone meal, biological products of animal origin, sera and vaccines for use on animals;

"fodder" includes all types of forage used for animal food, and grains of any variety including grain offal.

3. No person shall import or cause to be imported into Malaŵi any animal or animal by-product except under a permit in writing issued by the Chief Veterinary Officer under rule 4 who may attach to it such conditions as he deems necessary to prevent the introduction of disease into Malaŵi. Any person who imports or causes to be imported any animal of animal by-product without such permit or who contravenes any of the provisions or conditions of the said permit shall be guilty of an offence. Restriction on importation

4.—(1) The Chief Veterinary Officer may, upon written application being made addressed to: Permits

Chief Veterinary Officer
P.O. Box 30134
Capital Hill
Lilongwe 3

or to the office of any veterinary officer, issue a permit under these Rules.

(2) The issue of a permit in accordance with these Rules shall not relieve the holder of such permit from any requirements of any other law of Malaŵi in regard to imports, customs or excise.

Exemptions

5. No person shall be required to obtain a permit in accordance with these Rules—

(*a*) if the animal is in course of transit by air through Malaŵi from a place outside Malaŵi to another place outside Malaŵi and is not off-loaded within the boundaries of Malaŵi;

(*b*) if the animal by-product or fodder is in course of transit by air or rail through Malaŵi from a place outside Malaŵi to another place outside Malaŵi and is off-loaded only for the purpose of transhipment.

Cancellation of permit

6.—(1) The Chief Veterinary Officer shall have power to cancel at any time a permit issued under these Rules.

(2) In any case where a permit is cancelled the Chief Veterinary Officer shall, by notice in writing, inform—

(*a*) the holder of such permit; and

(*b*) the Controller of Customs and Excise,

of such cancellation.

Powers of Chief Veterinary Officer

7.—(1) The Chief Veterinary Officer may require any animal, animal by-product or fodder—

(*a*) to be examined by a veterinary officer;

(*b*) to be held in quarantine for such period as is necessary to ensure that no disease is introduced into Malaŵi;

(*c*) to be returned to its point of origin;

(*d*) to be destroyed where, in his opinion, there is no practical alternative method of preventing the introduction of disease into Malaŵi.

(2) Where any animal, animal by-product or fodder is held in quarantine or required to be returned to its point of origin or destroyed, the person who imports such animal, animal by product or fodder shall be liable for all costs in connexion with such quarantine, return or destruction.

DISEASES OF ANIMALS RULES

ARRANGEMENT OF RULES

RULE

1. Citation
2–16. [*Repealed*]
17. Duties of veterinary officer and inspector
18. Power to require any animal to be disinfected and to take blood smears, etc.
19. Stray animals found suffering from disease
20. Payment for use of private land to quarantine travelling or stray animals
21. Destruction of carcasses of stray livestock
22. Carcass or carcasses not to be removed
23. Grass and herbage not to be removed from infected land
24. Compulsory dipping
25. Construction of dipping tanks may be ordered
26. Powers of inspectors
27. Penalty for failing to dip animals in areas not exempted
28. Intervals of dipping
29. Power to temporarily exempt from compulsory dipping
30. Power of Minister to temporarily exempt persons living in African areas
31. Movement of animals from exempted areas
32. Power to require provision of dipping facilities
33. Power of Government to act on behalf of absentee owners
34. Provision of dipping tanks in certain areas
35. Precautionary measures
36. Power to prohibit exhibition and public sale of stock
37. Disinfection of railway trucks, loading pens, etc.
38. Stock sale yards to be cleansed and disinfected
39. Testing with mallein, etc.
40. Power to direct treatment of animals affected with disease
41. Power to brand animals in quarantine, etc.
42. Power to enter land and erect fences for quarantine purposes
43. Gates opened or left open
44. Delegation of powers
45. Recovery of fees and moneys due
46. Power to detain animals pending payment of fees
47. Sale of animals where fees not paid
48. Reporting of deaths of cattle
49. Cattle registers
50. Duty to give information
51. Infected area adjoining Malaŵi
52. Movement of animals may be prohibited
53. Publication of orders

Diseases of Animals Rules **[Subsidiary]**

DISEASES OF ANIMALS RULES

G.N. 79/1923
231/1924
14/1933
11/1934
109/1944
91/1950
147/1950
Ord. 8 of 1951
s. 23 and Sch.
G.N. 22/1963
50/1963
9/1964(N)
1/1965
234/1968

deemed to be made under s. 8

[*made under s.* 9 *of the Diseases of Animals Ordinance,* 1922*, No.* 15 *of* 1922 (*now repealed*)]

1. These Rules may be cited as the Diseases of Animals Rules. Citation

2–16. [*Repealed by* 234/1968]

Quarantine and other Treatment of Animal affected by Disease or which are suspected of being affected

17. A veterinary officer or inspector investigating a reported or suspected outbreak of disease shall, if he is of opinion that any animal or animals are infected with any disease, or has reason to believe that any animal or animals have been exposed to infection, forthwith cause the said animal or animals to be isolated (if such has not already been done) or dealt with in such other manner as he may deem expedient in order to prevent the spread of such disease, provided that an inspector shall not cause any animal to be slaughtered except on the instructions of a veterinary officer; and may direct that no other animals shall be brought or allowed to remain on any part of the estate, farm, land or area which has become infected. Duties of veterinary officer and inspector

18.—(1) Any veterinary officer or inspector may, at any time, require any animal to be sprayed, dipped, washed or otherwise disinfected, inoculated, or to undergo a period of quarantine, if he should consider the same to be necessary in order to prevent the spread of disease. Power to require any animal to be disinfected and to take blood smears, etc.

(2) Any veterinary officer may, for the purpose of detecting or diagnosing disease, take or cause to be taken from any animal blood smears, or apply such other tests as he may consider necessary.

19. When stray animals are found to be suffering from disease— Stray animals found suffering from disease

(*a*) they shall, if found on private land be confined and isolated by the owner and occupier of the land as near as

possible to the place where they have been found, or if found on any public or customary land, or any road, be confined and isolated at such place near to that at which they have been found as any veterinary officer, inspector, police officer or administrative officer may direct;

(*b*) all animals which have been in contact with such stray animals and which by reason of such contact have become liable to infection, shall be quarantined, and the owner of the stray animals shall pay to the owner of the animals quarantined all expenses incurred by reason of such quarantine;

(*c*) the person detaining any such stray animal shall forthwith cause the nearest inspector or police officer to be notified of such detention.

Payment for use of private land to quarantine travelling or stray animals

20. Whenever any travelling or stray animal shall be detained in quarantine on any occupied land, by reason of the appearance of disease amongst such animals, the owner of the animals shall be liable to pay to the occupier of the land for the use of the land, such sum not exceeding 20 tambala per diem in respect of each animal, during the period it is so detained in quarantine, as the Chief Veterinary Officer shall determine.

Destruction of carcasses of stray livestock

21.—(1) The occupier of land finding the carcass of any stray livestock on his land, shall either cause such carcass to be buried or burned, or give notice of the presence of such carcass to the police, and in such last case shall take all reasonable precautions to prevent such carcass being disposed of otherwise than by being burned or buried, pending the arrival of the police.

(2) The police, on receiving notice of the presence of the carcass of any stray livestock upon any public land or customary land or private land or upon any public road, shall take immediate steps to have such carcass buried or burned and shall notify the same to the nearest veterinary officer.

(3) Any expenses incurred by the police or the occupier of land in, or in connexion with, the disposing of a carcass as required by this rule, may be recovered from the owner thereof as for work done on his behalf at his request.

Carcass or carcasses not to be removed

22. No person other than a veterinary officer or inspector or a person acting on the instructions of a veterinary officer or inspector, shall remove or attempt to remove any animal which has been buried or, except for the purpose of burial or burning, any carcass which has been ordered to be buried or burned, in pursuance of the Act or of any rule, order or direction thereunder.

Grass and herbage not to be removed from infected land

23. No person shall remove from any infected area, or from any place on which animals are detained in quarantine, any grass or other herbage, dung, litter, fodder or earth, except with the sanction of the veterinary officer in charge of such area or place.

Compulsory Dipping

Compulsory dipping

24. The Minister may, by notice published in the *Gazette*, order compulsory dipping of any animal to be named in the notice from such date as he may prescribe within the whole or any portion of any area, or may suspend compulsory dipping with such area absolutely, or for such time or in regard to such animals as he may deem fit.

Construction of dipping tanks may be ordered

25. The Minister may, within any area in which compulsory dipping has been ordered, by notice served by post require the owner of not less than one hundred head of cattle, within a time to be specified in the notice, to construct an efficient tank for the dipping of his cattle. Any owner aforesaid failing without reasonable excuse to construct such tank within such time shall be liable to a fine of K40.

Powers of inspectors

26. Every veterinary officer and inspector shall have power and authority to inspect any animals at any time and to take or require to be sent to him at the office of the administrative officer a sample or samples from the contents of any dipping tank. Any person who shall refuse to allow a veterinary officer or inspector to enter upon any land or to examine animals, or who shall refuse to send a sample or samples of the contents of any dipping tank when lawfully required so to do, or who shall impede or hinder or attempt to impede or hinder a veterinary officer or inspector in the execution of his duties, shall be liable to a fine of K40.

Penalty for failing to dip animals in areas not exempted

27. An owner or person having the care or charge of animals in an area where compulsory dipping is in force who shall fail to dip his animals, unless exempted in terms of rule 30, shall be liable to a fine of K200, or, in default of payment, to imprisonment for twelve months.

Intervals of dipping

28. An owner or person having the care or charge notwithstanding that his animals are free from tick-infestation, shall be liable to the penalties prescribed in the last preceding rule if it is shown that he has failed to dip them at regular intervals of seven days or such shorter intervals as may have been prescribed by the Chief Veterinary Officer:

Provided always that if it should appear that it was impossible or inexpedient to dip such animals within seven days or such shorter intervals as aforesaid, the onus of proof of which shall be on the owner, the said intervals may be exceeded, but in no case beyond fourteen days in all.

Power to temporarily exempt from compulsory dipping

29. The Chief Veterinary Officer or any person duly authorized by him thereto in writing may, for consideration of weather, drought or condition of the animals, or for other causes beyond the control of the owner or person having the care or charge thereof, temporarily exempt owners or persons having the care or charge of animals in any areas from rule 27 hereof, and may during such period prescribe the intervals of dipping. A list of all exemptions granted under this rule shall be posted, whilst in operation, at the administrative officer's office and all police stations in the District and at the inspector's office in the area in

which the animals affected are located. No movement of animals shall be permitted from any area in which exemption from dipping under this rule is in force, unless the animals are twice dipped within fourteen days immediately prior to removal.

Power of Minister to temporarily exempt persons living in African areas

30. The Minister may, by notice published in the *Gazette*, temporarily exempt persons living in areas chiefly inhabited by Africans from the obligations of rules 27 and 28 hereof until such time as the Minister may be satisfied that arrangements have been made to dip the animals in such areas.

Movement of animals from exempted areas

31. No movement of animals from areas exempted in terms of rule 29 shall be permitted except at points of exit fixed by the Minister by notice published in the *Gazette*, after such period of detention and dipping at such points as may be from time to time prescribed.

Power to require provision of dipping faculties

32. The owners of land, on which African owners of animals reside, may be required by the Minister to provide facilities, including the erection and maintenance of efficient dipping tanks and the provision of effective tick-destroying agents, for the dipping of such animals on terms and conditions to be approved of by him. Any owner of land failing to make provision as aforesaid shall be liable to a fine of K40, but the payment of such fine or the undergoing of imprisonment in default thereof shall not relieve the said owner of his obligation to provide the said facilities.

Power of Government to act on behalf of absentee owners

33. Should any person, owner of land or animals be absent from or not have a representative in Malaŵi having authority to carry put the requirements of these Rules, the Minister may authorize the due performance of such requirements in such manner as he may deem expedient, and any disbursements thereby incurred shall be recoverable by immediate distress and sale or at the option of the Minister as a civil debt.

Provision of dipping tanks in certain areas

34. The Minister may provide dipping tanks for public use, and fix or approve a scale of fees for the dipping of animals in such tanks and may further regulate the charges to be made and levied by the owners of private dipping tanks in respect of the dipping thereat of animals belonging to others.

Precautionary measures

35. The Chief Veterinary Officer or any person duly authorized by him may from time to time stipulate precautionary measures to be taken by any owner of cattle or his representative before cattle are permitted to be dipped in any dipping tank provided for public use.

Miscellaneous

Power to prohibit exhibition and public sale of stock

36. The Chief Veterinary Officer with the sanction of the Minister first obtained may, for the purpose of preventing the spread of any disease, prohibit in any District or portion thereof, the holding of any exhibition of livestock or the sale of livestock in open markets or in private sale yards.

Disinfection of railway trucks, loading pens, etc.

37. Every railway company shall cause all its railway trucks, which have been used for the transport of livestock, and all loading and unloading pens and enclosures and everything connected therewith, to be disinfected by being swept and washed thoroughly with lime wash before being again used for the conveyance of stock.

Stock sale yards to be cleansed and disinfected

38. All public markets for livestock and private sale yards and all structures and enclosures connected therewith in which livestock have been confined shall, if considered advisable by a veterinary officer, be cleansed and disinfected at the close of each day. This cleansing shall be carried out to the satisfaction of any officer of the Veterinary Department inspecting the same.

Testing with mallein, etc.

39. Testing with mallein and tuberculin, inoculation for rinderpest or pleuro-pneumonia, ovination (vaccination against sheep pox), and such other technical operation as the Chief Veterinary Officer shall from time to tune notify, shall only be carried out under the immediate directions of a veterinary officer, or in such other manner as the Chief Veterinary Officer may direct.

Power to direct treatment of animals affected with disease

40. It shall be lawful for the Chief Veterinary Officer in any case when he shall think fit for the purpose of preventing the spread of disease, to order that no person other than a veterinary officer or a person acting under the directions of a veterinary officer, shall treat any animal or animals which is or are infected with a contagious or infectious disease.

Power to brand animals in quarantine, etc.

41. A veterinary officer may cause any animal or animals within an infected area or which have been placed in quarantine to be branded with a registered Departmental brand.

Power to enter land and erect fences for quarantine purposes

42. The Chief Veterinary Officer or any person authorized by him may, for the purpose of restricting the movement of animals for the purpose of quarantine, enter upon any land, whether privately owned or not, and may erect and maintain thereon any fences, notice boards, or beacons, and may remove any fence, notice board or beacon so erected.

Gate opened or left open

43. No person shall, in any infected area or on any land on which animals are kept in quarantine, open and leave open any gate in any fence erected to restrict the movement of cattle or for the purposes of quarantine.

Delegation of powers

44. Whenever the Chief Veterinary Officer shall be temporarily absent from the head office of the Veterinary Department, the officer for the time being in charge at such office may, subject to any general or special instructions from the Chief Veterinary Officer, exercise or perform any of the powers or duties conferred or imposed on the Chief Veterinary Officer by these Rules, or any other Rule for the time being in force under the Act.

Recovery of fees and moneys due

45. The Chief Veterinary Officer, or any veterinary officer authorized by the Chief Veterinary Officer in this behalf, may sue on behalf of the Veterinary Department for any fees or moneys due to the Government for or in respect of anything done under or by virtue of the Act or any Rules under the Act.

Power of detain animals pending payment of fees

46. It shall be lawful for any veterinary officer to detain or direct the detention of any animal in respect of which services have been rendered by the Veterinary Department, until the fees payable in respect of such services, together with any expenses incurred by the Government by reason of such detention, have been paid.

Sale of animals where fees not paid

47. Whenever the owner of any animal in respect of which services have been rendered by the Veterinary Department is unknown or cannot be found, and whenever the owner of any animal in respect of which such services have been rendered has, after demand made, neglected to pay for the services rendered and to remove the animal, the Chief Veterinary Officer may cause such animal to be sold by public auction and shall, after deducting any moneys due for services rendered and the expenses of and in connexion with the sale, pay the balance of the proceeds of the sale to the owner in default, or, if the owner of the animal sold is not known or cannot be found, the balance (if any) as aforesaid shall be paid into the Consolidated Fund:

Provided that if in such last case any person shall, within two years of the sale, prove that he was the owner at the date of the sale of such animal sold, he shall be entitled to receive the amount of the balance so paid into the Consolidated Fund.

Reporting of deaths of cattle

48. The Chief Veterinary Officer may at his discretion, after due notification in the *Gazette*, declare it compulsory in any District for all people owning or in charge of cattle to inform

immediately the Chief Veterinary Officer or nearest veterinary officer of any deaths occurring among such cattle.

Cattle registers

49. The Chief Veterinary Officer may at his discretion, after due notification in the *Gazette*, cause to be kept within any District or area a register of all cattle within such District or area and shall furnish each owner of cattle with a copy of the entry of registration relating to the cattle of such owner.

Duty to give information

50. For the purpose of enabling the register above prescribed to be made and kept, every owner or person in charge of cattle shall give to the Chief Veterinary Officer or other person duly authorized by him all information which the Chief Veterinary Officer or such other person may require. If any owner or person in charge of cattle shall neglect or refuse to give such information as aforesaid when lawfully demanded, or shall wilfully give false information, he shall be deemed to have committed an offence against these Rules.

Movement of Animals within Malaŵi on Outbreak of Disease in Territory Adjoining Malaŵi

Infected area adjoining Malaŵi

51. The Chief Veterinary Officer shall, if he is credibly informed that any area adjoining Malaŵi has become infected with a disease, cause a notice to be published in the *Gazette* to that effect.

Movement of animals may be prohibited

52. After the publication of a notice under rule 51, the Chief Veterinary Officer may, by order under his hand, prohibit the movement of animals into, out of, within or through any District in Malaŵi in which, in his opinion, there is a risk of the spread of such infection, subject to such conditions as he may specify in such order.

Publication of orders

53. All orders made by the Chief Veterinary Officer under rule 52 shall be made known in the District affected thereby by being affixed to the notice boards of administrative and Chiefs' headquarters therein and in such other manner as the Chief Veterinary Officer shall consider necessary.

G.N. 58/1960
88/1971

COMPULSORY DIPPING NOTICE

under r. 24 *of the*

Diseases of Animals Rules

It is hereby ordered that all cattle within the Districts hereunder mentioned and being also within a radius of five miles of a

Government operated dipping tank or spray race, shall be dipped in accordance with the Diseases of Animals Act and the Rules made thereunder—

Southern Region	. .	all Districts.
Central Region	. .	the Ntcheu, Dedza, Lilongwe, Mchinji, Dowa and Kasungu Districts.
Northern Region	. .	the Mzimba, Rumphi and Karonga Districts.

PROHIBITION OF TREATMENT EXCEPT BY VETERINARY OFFICERS

G.N. 53/1928

under r. 40 *of the*

Diseases of Animals Rules

The treatment of animals suffering from the contagious disease, trypanosomiasis or "fly stuck", is prohibited except by a veterinary officer or a person acting under the directions of a veterinary officer.

Owners of animals suspected of suffering from trypanosome infection, i.e. being "fly stuck", should apply to the nearest veterinary officer for advice as to the measures to be adopted for dealing with the disease.

COMPULSORY REPORTING OF CATTLE DEATHS NOTICE

G.N. 14/1925

under r. 48 *of the*

Diseases of Animals Rules

The Chief Veterinary Officer has declared it compulsory in the following Districts for all persons owning or in charge of cattle to inform him, or the nearest veterinary officer, immediately of any deaths occurring among such cattle— G.N. 242/1969 143/1976

Blantyre District
Zomba District
Chikwawa District
Nsanje District

NOTIFICATION OF REGISTERS TO BE KEPT IN CERTAIN AREAS

under r. 49 *of the*

Diseases of Animals Rules

G.N. 242/1969 The Chief Veterinary Officer has notified that a Register of Cattle will be kept in the following areas—

G.N. 15/1925 (*a*) the Karonga District;

G.N. 87/1941 (*b*) within an 8-kilometre radius of the dipping tanks at Nanjiri, Malimbwe, Namaguya, Masula and Nathenje, all in the Lilongwe District.

G.N. 49/1924
1/1965

DISEASES OF ANIMALS (DESTRUCTION OF PACKING LITTER) RULES

deemed to be made under s. 8

Citation

1. These Rules may be cited as the Diseases of Animals (Destruction of Packing Litter) Rules.

Destruction of packing litter

2. All hay, straw and other litter used in the packing of goods imported either directly or indirectly from Europe into Malaŵi must be destroyed by burning immediately after the goods are unpacked.

Control and Diseases of Animals (*Veterinary Services Fees*) *Rules* **[Subsidiary]**

CONTROL AND DISEASES OF ANIMALS (VETERINARY SERVICES FEES) RULES

G.N. 64/1973
28/1979

under s. 8

1. These Rules may be cited as the Control and Diseases of Animals (Veterinary Services Fees) Rules. Citation

2. In these Rules— Interpretation

"cattle" means any bull, cow, heifer or ox over the age of one year.

3. Where the Government has provided facilities for or services in connexion with— Fees to be paid to Government for facilities or services

(*a*) the dipping or spraying of cattle;

(*b*) the buying or selling of cattle;

(*c*) the vaccination of cattle;

(*d*) any veterinary treatment on cattle at the discretion of a veterinary officer; or

(*e*) any advice on all matters pertaining to cattle breeding,

every owner of such cattle shall pay to the Government fees to be known as veterinary services fees (hereinafter referred to as "fees").

4. The fees to be payable to the Government pursuant to rule 3 shall be 50 tambala per head per annum and shall be collected by the District Council, or where a District Council does not exist, or is temporarily dissolved, by the Chief having jurisdiction in the area where such cattle are for the time being ordinarily kept. Collection of fees

5. The fees specified in rule 4 hereof shall fall due and shall be collected not later than the 31st day of December in each year. Fees when due

6. An amount equal to twenty-five per centum of all fees collected pursuant to rule 4 shall be paid by Government to the District Council or Chief by whose agency such fees have been collected. Commission on fees

7. All fees payable under these Rules shall constitute a debt due to the Government and may be recovered by suit in any court of competent jurisdiction. Fees to constitute a debt

DISEASES OF ANIMALS (CATTLE) RULES

G.N. 86/1942
41/2003

deemed to be made under s. 8

[*made under s.* 9 *of the Diseases of Animals Ordinance,* 1922 *No.* 15 *of* 1922 (*now repealed*)]

1. These Rules may be cited as the Diseases of Animals (Cattle) Rules. Citation

2. The Chief Veterinary Officer after notification in the *Gazette* may require all owners or persons in charge of cattle in any prescribed area— Information to be furnished by owners and persons in charge of cattle

(*a*) to inform forthwith the nearest veterinary officer of any death among such cattle and to deliver to the veterinary officer within 24 hours of such death, the spleen of the deceased animal;

(*b*) to inform forthwith the nearest veterinary officer of any sickness among such cattle;

(*c*) to maintain and give veterinary treatment to such cattle in such manner as the veterinary officer shall direct;

(*d*) to assemble such cattle for inspection in such manner as the veterinary officer shall direct; and

(*e*) to give such information as to sickness, increases and decreases in and to keep such records of such cattle as the veterinary officer shall require.

3. Any person who fails to comply with any requirement made under rule 2 hereof shall be liable to a fine of K2,000 and to imprisonment for one month. Penalties G.N. 41/2003

COMPLIANCE WITH RULES NOTICE

G.N. 170/1948
59/1960

under r. 2 *of the*

Diseases of Animals (*Cattle*) *Rules*

It is hereby notified that all owners or persons in charge of cattle within an 8-kilometre radius of Government dipping tanks are required to comply with the Diseases of Animals (Cattle) Rules.

The said Rules require all owners or persons in charge of cattle—

(*a*) to inform forthwith the nearest veterinary officer of any death among such cattle and to deliver to the veterinary officer within 24 hours of such death, the spleen of the deceased animal;

(*b*) to inform forthwith the nearest veterinary officer of any sickness among such cattle;

(*c*) to maintain and give veterinary treatment to such cattle in such manner as the veterinary officer shall direct;

(*d*) to assemble such cattle for inspection in such manner as the veterinary officer shall direct;

(*e*) to give such information as to sickness, increases and decreases in and keep such records of such cattle as the veterinary officer shall require.

Failure to comply with any of these requirements renders the person responsible for the failure liable to a fine of K2,000 and to imprisonment for one month.

G.N. 158/1958 35/2003

DISEASES OF ANIMALS (STOCK ROUTE) RULES

deemed to be made under s. 8

[*made under s.* 9 *of the Diseases of Animals Ordinance,* 1922 *No.* 15 *of* 1922 (*now repealed*)]

Citation

1. These Rules may be cited as the Diseases of Animals (Stock Route) Rules.

Interpretation

2. In these Rules, "stock route" means the route approved by the Chief Veterinary Officer for the movement of cattle from Phazi in the Northern Region to Kasungu, Lilongwe, Salima and other destinations in the Central Region.

Conditions for issue of permit

3. No permit shall be issued under rule 3 of the Diseases of Animals Rules for any movement of cattle down the stock route until the fee payable under these Rules has been paid.

Identification of cattle using stock route

4. All cattle using the stock route shall be branded or otherwise identified in a manner approved by the Chief Veterinary Officer.

Fees
G.N. 35/2003

5.—(1) A fee of K50 per head of cattle shall be payable in advance to the Government by the owner of any cattle using the stock route.

(2) Such fee shall be payable in respect of all services rendered by the Government in connexion with the use of the stock route and shall be payable in lieu of any other fees, dues or charges prescribed under the Act.

SWINE FEVER RULES

G.N. 209/1968

under s. 8

Citation

1. These Rules may be cited as the Swine Fever Rules.

Interpretation

2. In these Rules unless the context otherwise requires—

"swine" means any domesticated porcine animal;

"pig meat" means any part of a swine, warthog or wild pig carcass which has either been slaughtered or which has died;

"infected area" means any area which has been declared to be an infected area for the disease "swine fever" under section 4 of the Act.

Issue of permit

3.—(1) An inspector may issue to any owner or person in charge of any swine a permit in the form in the Schedule (hereinafter called the "permit") which said permit may impose such restrictions as the inspector may in his discretion determine.

(2) No person shall remove, cause to be removed or allow to be removed any pig meat from any one place in an infected area to any other place in such infected area without having previously obtained from an inspector a permit.

(3) No person shall remove, cause to be removed or allow to be removed any pig meat from any place in an infected area to any place outside an infected area without a permit from an inspector.

Production of permit

4. The holder of a permit shall produce the same for inspection on demand by any inspector, police officer above the rank of sergeant, or other person duly authorized in writing by the Chief Veterinary Officer.

[Subsidiary] *Swine Fever Rules*

Confinement of swine

5. The owner or person in charge of swine in an infected area shall at all times keep them contained in a house or pen unless prior written authority to release them has been obtained from an inspector.

Detention and destruction of swine

6. Any swine whether the owner or person in charge of them be known or not, found at large in an infected area may be detained or destroyed by an inspector unless the owner or person in charge can produce to the said inspector a relevant permit granted under rule 3.

r. 3 SCHEDULE

CONTROL AND DISEASES OF ANIMALS ACT

(Cap. 66:02)

SWINE FEVER RULES

Permit to Move Swine

..... of .....

..... is authorized under the Control and Diseases of Animals Act to move the swine described below from.....to.....

.....under the following conditions:*

.....

No.	Description of swine to be moved	Remarks

The permit must be carried by the person accompanying the swine and be produced on demand by any inspector, police officer over the rank of sergeant or person duly authorized in writing by the Chief Veterinary Officer.

G.N. 242/1969

Station ..... Issuer of Permit .....

Date ..... Rank .....

*The issuer of the permit should state the route to be followed, the method of transport and the period for which the permit is available.

PREVENTION OF TRYPANOSOMIASIS RULES

G.N. 222/1968

under s. 8

1. These Rules may be cited as the Prevention of Trypanosomiasis Rules. Citation

2. The Chief Veterinary Officer may cause to be erected and maintained decontamination sheds or tsetse fly barriers in any place or along any route in any area declared to be an infected area as regards trypanosomiasis. Decontamination sheds, etc.

3. The Chief Veterinary Officer may, by notice published in the *Gazette*, require all persons travelling in an infected area as regards trypanosomiasis to proceed by a specified route and to present themselves together with their baggage and any vehicle, bicycle or animal on which they are travelling or of which they may be in charge for decontamination at a decontamination shed or tsetse fly barrier. Travelling in infected area

4. Every person who reaches a point along a road or on a route at which a decontamination shed or tsetse fly barrier has been established shall, if required by the person in charge thereof allow himself and his baggage and any vehicle, bicycle or animal on which they are travelling or of which he may have charge to be decontaminated. Decontamination of travellers

[Subsidiary] *Animals Quarantine Rules*

G.N. 223/1968
144/1978

ANIMALS QUARANTINE RULES

under s. 8

Citation

1. These rules may be cited as the Animals Quarantine Rules.

Power to quarantine

2. The Chief Veterinary Officer may direct that any animal imported into Malaŵi be held in quarantine or in isolation at such a place and for such a time as the Chief Veterinary Officer may in writing specify, and may order that such animal be given such examination, tests and treatment as may be considered expedient.

Costs and fees payable for animals held

3.—(1) Subject to sub-rule (2)—

(*a*) the owner of an animal held under Rule 2 shall, in respect of such animal pay—

G.N. 144/1978

(i) all or part of the costs of such quarantine, isolation, examination, test or treatment

Schedule, Part I

(ii) the stabling fees specified in Part I of the Schedule hereto,

Schedule, Part II

(iii) the fees specified in Part II of the Schedule hereto for such examination, test or treatment as may be given to the animal, and

(iv) any additional costs incurred by reason of the provision of any food to any animal by the holding authority; and

Schedule, Part III

(*b*) the owner of an animal held otherwise than under Rule 2 shall, in respect of such animal, pay the fees specified in Part III of the Schedule hereto plus any costs incurred by reason of feeding the animal on special diet at his request.

(2) The Chief Veterinary Officer may reduce or waive the fees chargeable under sub-rule (1) in any particular case where in his opinion, the fees would cause undue hardship to the owner of the animal.

Stray animals

4. When stray animals are found to be suffering from disease—

(*a*) they shall, if found on private land, be confined and isolated by the owner or occupier of the land as near as possible to the place where they have been found, or if found on any public land, or on any road, be confined and isolated at such place, near to that at which they have been found, as an inspector may direct;

(*b*) all animals which have been or may have been in contact with such stray animals, and which by reason of such contact or suspected contact have become liable to infection, shall be quarantined, and the owner of the stray animals shall pay to the owner of such animals quarantined all expenses incurred by reason of such quarantine;

(*c*) the person detaining any such stray animals shall forthwith cause the nearest available inspector to be notified of such detention.

Payment for stray animals—costs

5. Whenever any stray animals shall be detained in quarantine on any occupied land, by reason of the appearance of disease amongst such animals, the owner of such animals shall be liable to pay to the occupier of the land for the use of the land, such sum not exceeding twenty tambala per day, in respect of each animal, during the period it is so detained in quarantine, as the Chief Veterinary Officer shall determine.

Carcasses of stray animals

6. The occupier of land finding the carcass of any stray animal on his land, shall either cause such carcass to be buried or burned, or immediately give notice of the presence of such carcass to the police.

Removal of carcass

7. No person other than an inspector or a person acting on the instructions of an inspector shall remove or attempt to remove any animal which has been buried or, except for the purpose of burial or burning, any carcass which has been ordered to be buried or burned.

Removal of grass, dung, etc.

8. No person shall remove from any place in which animals are quarantined or isolated any grass or other herbage, dung, litter, fodder or earth, except on the written permission of an inspector.

Marking of animals

9. An inspector may cause any animal or animals within an infected area or which have been placed in quarantine or isolation to be branded or otherwise marked for identification in such manner as may be directed by the Chief Veterinary Officer.

Power to sell animals

10. Whenever the owner of any animal in respect of which services have been rendered is unknown or cannot be found, and whenever the owner of any animal in respect of which such services have been rendered has, after demand made, neglected to pay for the services rendered and to remove the animals, the Chief Veterinary Officer, after the expiry of thirty days, may cause such animal to be sold by public auction and shall, after deducting any moneys due for services rendered and the expenses of and in connexion with the sale, pay the balance of the proceeds of the sale to the owner in default, or, if the owner of the animal sold is not known or cannot be found, the balance, if any, as aforesaid shall be paid into the Consolidated Fund:

Provided that in such last case if any person shall, within two years of the sale, prove that he was the owner at the date of the sale of such animal sold, he shall be entitled to receive the amount of the balance so paid into the Consolidated Fund.

Power to erect fences, etc.

11. The Chief Veterinary Officer or any person authorized by him may, for the purpose of restricting the movement of animals

for quarantine or isolation, enter upon any land, whether privately owned or not, and may erect and maintain thereon any fences, notice boards or beacons, and may remove any fence, notice board or beacon so erected.

G.N. 144/1997

SCHEDULE

PART I

Stabling Fees

	Fees, per day per animal K	t
Horses, cattle, pigs, sheep and goats	0	06
Dogs and cats	0	30
Poultry	0	05
Cage birds	0	10
Other animals	0	30

PART II

Fees for Examination, Test and treatment

	Fees per animal for each examination, test or treatment K	t
1. For the examination of—		
(i) horses, mules and donkeys	1	00
(ii) cattle, sheep, goats and pigs	0	50
(iii) dogs and cats	0	50
2. For testing with—		
(i) mallein	0	50
(ii) tuberculin	0	50
3. For vaccination against—		
(i) anthrax	0	20
(ii) blackquarter	0	20

PART III

Other Fees

	Fees, per day per animal K	t
Grazing	0	06
Holding with either hay or silage provided	0	20
Holding with hay and silage provided	0	30
Holding with hay, silage and concentrated feed provided	0	40
Dogs and cats	0	30

Control and Diseases of Farm Animals Rules **[Subsidiary]**

CONTROL AND DISEASES OF FARM ANIMALS RULES

G.N. 224/1968

under s. 8

Citation

1. These Rules may be cited as the Control and Diseases of Farm Animals Rules.

Interpretation

2. In these Rules unless the context otherwise requires—

"farm animal" means cattle, sheep, goats and swine.

Notification of death or disease

3.—(1) The owner or person in charge of any farm animal shall notify the nearest inspector of the death of any such farm animal within a period of twenty-four hours of death.

(2) The owner or person in charge of any farm animal shall notify the nearest inspector of any apparent disease in such animal, within twenty-four hours of the first symptoms being noticed.

Examination

4. The owner or person in charge of any farm animals shall assemble such farm animals for the purposes of examination and enumeration in such manner as an inspector may in writing direct.

Keeping of records

5. The owner or person in charge of any farm animals shall give such information as to sickness, increases or decreases in, and keep such records of, such animals as an inspector shall require.

Isolation

6. An inspector investigating a reported or suspected outbreak of disease, shall, if he is of opinion that any farm animals are infected with any disease, or has reason to believe that any farm animals have been exposed to infection, forthwith cause the said farm animals to be isolated or dealt with in such other manner as he may deem expedient in order to prevent the spread of such disease; and may direct that no other animals shall be brought or allowed to remain on any part of the estate, farm, land or area which has become infected:

Provided that an inspector shall not cause any farm animal to be slaughtered except on the instructions of a veterinary officer.

Disinfecting and testing

7.—(1) Any inspector may, at any time, require any farm animal or premises in which animals have been or are kept, to be sprayed, dipped, washed or otherwise disinfected, inoculated, or to undergo a period of quarantine if he should consider the same to be necessary in order to prevent the spread of disease.

(2) Any inspector may, for the purpose of detecting or diagnosing disease, apply such tests as he may consider necessary.

Prohibition of exhibitions

8. The Chief Veterinary Officer or Principal Veterinary Officer may, for the purpose of preventing disease, prohibit the holding of any exhibition of farm animals whether at an agricultural show or elsewhere or the sale of animals in open market, or in private sales.

Disinfection of vehicles

9. All vehicles, railway trucks, ships and aircraft used for the purpose of transporting animals shall be washed and disinfected by being swept and washed with a disinfectant approved by the Chief Veterinary Officer before being used again for the conveyance of animals.

Removal of grass, etc.

10.—(1) No person shall remove from any infected area any grass or other herbage, dung, litter, fodder or earth, except with permission in writing of an inspector.

(2) No person shall in any infected area open or leave open any gate in any fence erected to restrict the movement of farm animals.

MOVEMENT OF FARM ANIMALS RULES

G.N. 234/1968

under s. 8

Citation

1. These Rules may be cited as the Movement of Farm Animals Rules.

Interpretation

2. In these Rules, unless the context otherwise requires—

"farm animals" mean any cattle, sheep, goats, swine or poultry.

Restriction on movement

3. No farm animals shall be moved from one District to any other District without a permit authorizing such movement granted under rule.

Permits

4.—(1) Every inspector is hereby authorized to issue permits under rule 3 and the Chief Veterinary Officer may appoint such other persons as he may think fit to issue such permits, and may direct the area for which such person may issue permits:

Provided however that a permit for the movement of any farm animals infected with disease, or which have been in contact with any farm animals infected with disease, shall not be granted except by or with the sanction of a veterinary officer.

(2) Every permit shall be in the form in the Schedule.

Possession of permits

5.—(1) The person to whom a permit for the movement of any farm animals shall have been granted shall be guilty of an offence if any breach of these Rules is committed by himself or his servants or agents.

(2) The person in charge of farm animals during the movement authorized by the permit shall be in possession of the permit at all times during such movement.

Production of permits

6. The person in charge of any farm animals which are being moved under a permit shall, on demand made by any issuer of permits, or police officer, or by the owner or occupier of any land over which the farm animals are being moved, thereupon produce the permit to the said issuer of permits, police officer, owner or occupier.

Detention by issuer of permits

7. Whenever an issuer of permits shall have reason to believe that any farm animals are being moved without a permit in breach of these Rules he may detain such animals.

Detention by land owners

8. Whenever an owner or occupier of land shall find any farm animals being moved over the land owned or occupied by him and has reasonable cause to believe that such movement requires a permit and the person in charge of such farm animals does not on demand produce a permit authorizing such movement he may detain such farm animals, but shall forthwith report such detention to an inspector.

Removal of detained farm animals

9. Any person other than an inspector or police officer, or a person acting on the instructions of any such inspector or officer, who shall remove any farm animals detained under rule 7 or rule 8 except with the consent of the person by whose orders the farm animals have been detained, shall be guilty of an offence.

Appearance of disease

10. Whenever disease shall appear or be suspected among any farm animals in respect of which a permit has been issued, the person in charge of the farm animals shall immediately report the fact to the nearest issuer of permits, and shall not proceed with the movement of the farm animals without the written permission of an inspector.

Deaths

11. The person in charge of any farm animals in respect of which a permit has been issued shall report to the inspector, nearest to the place to which such animals are authorized to be moved, any deaths amongst such animals moved, and any animals disposed of on the journey.

SCHEDULE

r. 4

CONTROL AND DISEASES OF ANIMALS ACT

(Cap. 66:02)

MOVEMENT OF FARM ANIMALS RULES

Permit to Move Farm Animals

..... of .....is authorized under the Control and Diseases of Animals Act to move the farm

animals described below from .... to ..... under the following conditions—

.....

.....

No.	Description of Farm Animals to be moved	Remarks

This permit must be carried by the person accompanying the farm animals and be produced on demand by any inspector, police officer over the rank of sergeant or person duly authorized in writing by the Chief Veterinary Officer.

Station ..... Issuer of Permit .....
Date ..... Rank .....

NOTE: The issuer of the permit should state the route to be followed, the method of transport and the period for which the permit is available.

PREVENTION OF RABIES RULES

G.N. 60/1969
6/1972

under s. 8

PART I

GENERAL

Citation

1. These Rules may be cited as the Prevention of Rabies Rules.

Interpretation

2. In these Rules, unless the context otherwise requires—

"carnivore" means any wild carnivore tamed and kept as a pet and any domesticated carnivore;

"infected area" means any area declared to be an infected area in respect of rabies under section 4 of the Act.

PART II

CONTROL OF ANIMALS

Notification of suspected animals

3. If any person knows or suspects any dog, carnivore or other animal—

(*a*) has bitten any person without apparent cause;

(*b*) is infected with or suffering from rabies; or

(*c*) has been in contact with any animal known or suspected to be infected with or suffering from rabies,

he shall immediately notify the nearest Inspector, Administrative Officer or Police Officer, and such person notified shall, if other than an Inspector, immediately convey such notification to the nearest Inspector.

Destruction and disposal

4.—(1) Any person having reasonable cause to believe that a dog, carnivore or other animal is suffering from rabies may kill such dog, carnivore or other animal.

(2) The carcass of any dog, carnivore or other animal killed under subrule (1) shall be buried at a depth of not less than four feet below the surface of the ground and any person who has killed an animal under the provision of these Rules who fails so to bury such carcass shall be guilty of an offence.

Control of suspected animal

5.—(1) The owner or other person in charge of a dog, carnivore or other animal which—

(*a*) has bitten any person without apparent cause;

(*b*) is suspected to be infected with or suffering from rabies; or

(*c*) is suspected of having been in contact with any animal known or suspected to be infected with or suffering from rabies,

shall either kill such dog, carnivore or other animal or shall secure and confine it immediately and keep it secure and confined so as effectively to prevent it having access to any person or other animal.

Powers of Inspector

6. An Inspector may at any time detain and take into possession any dog, carnivore or other animal if, in his opinion, it is desirable to do so for the purpose of close observation for suspected rabies or for the prevention of rabies, and if believed to be suffering from rabies may cause such dog, carnivore or other animal to be killed:

Provided that an Inspector may preserve or order the preservation of any part of an animal so killed for scientific investigation.

Movement

7. In any infected area—

(*a*) movements of dogs or carnivores into, out of, through or within the area shall be prohibited:

Schedule

Provided however that an Inspector may grant a permit in the form in the Schedule hereto for the transit by rail, air, road or water through the area of any dog or carnivore which is securely crated and not released at any point within the area;

(*b*) every dog or carnivore shall be secured by the person in charge of such dog or carnivore in such manner as the Chief Veterinary Officer may by notice specify:

Provided that an Inspector may, under such conditions as he may specify in writing, exempt any dog or carnivore from the provision of this paragraph;

(*c*) any dog or carnivore found wandering at large or ineffectively secured may be seized, detained, isolated or destroyed by an Inspector or any person duly authorized in writing by an Inspector.

PART III

Vaccination Against Rabies

Declaration of specified area

8.—(1) The Chief Veterinary Officer may, by notice published in the *Gazette* declare any area to be a specified area in respect of the vaccination of dogs against rabies. All dogs over the apparent age of three months in a specified area shall be vaccinated against rabies in accordance with these Rules.

(2) The owner or person in charge of any dog which—

(*a*) is in a specified area;

(*b*) is over the apparent age of three months; and

(*c*) has not been vaccinated against rabies in accordance with these Rules,

shall be guilty of an offence.

Vaccination

9. Every dog shall, at the age of three months, be vaccinated against rabies by a veterinary officer and thereafter shall be re-vaccinated at intervals of not more than thirty-six months.

Marking of dogs' ears

10.—(1) Immediately after the dog has been vaccinated against rabies the inside surface of an ear of the dog shall be marked with an indelible tattoo in such a way that it will remain as permanent evidence of such vaccination.

(2) When a dog has been vaccinated for the first time its left ear shall be tattooed in the manner provided in subrule (1). After second vaccination the right ear of the dog shall be tattooed in the manner provided in subrule (1). When a dog is presented for a third or subsequent vaccination if the tatoos in respect of the first and second vaccinations are clearly visible no further tattooing shall be required if the owner of the dog so requests and the veterinary officer performing the vaccination agrees. If such relief from further tattooing is accorded the onus will remain upon the owner of the dog to ensure that the first two tattoos remain visible.

(3) If the owner of a dog is requested to produce it for inspection as regards its vaccination status he will be required to prove to the Inspector that the dog has been properly vaccinated—

(*a*) by showing the Inspector the ears of the dog marked with the appropriate tattoos; and

(*b*) by producing to the Inspector a valid and current certificate of vaccination.

Schedule

(4) After a dog has been vaccinated by an Inspector such Inspector shall, at the request of the owner or person presenting the dog for vaccination, issue in respect of the dog a certificate of vaccination, in the form in the Schedule hereto duly signed by the Inspector.

Vaccinated dogs

11. (1) After the expiration of seven days from the publication of a declaration of specified area in respect of rabies under rule 7, any Inspector or other person duly authorized in writing by the

Inspector may detain or destroy any unvaccinated dog found within the specified area.

(2) For the purpose of this rule any dog which is found within the specified area and which does not bear on its ears the tattoo marks specified in rule 8 shall be deemed to be unvaccinated.

Replacement certificates Schedule

12. When a certificate in the form in the Schedule hereto has been issued and has subsequently been lost an Inspector may, on satisfactory proof being produced to him that a dog has in fact been vaccinated, issue a replacement certificate.

PART IV

Detention and Destruction

Diseased dogs and bitches in season

13.—(1) Any Inspector or Police Officer may seize and detain—

(*a*) any dog which is in a diseased or neglected condition or which appears to be ownerless;

(*b*) any bitch which is in season and is not being confined in a manner which has previously been directed by an Inspector.

(2) Any such dog or bitch referred to in subrule (1) above shall be detained for three clear days after it has been seized and may thereupon be destroyed unless the Inspector considers that it is in a fit condition to be returned to its owner.

(3) Any Inspector issuing directions under this rule may himself carry out the directions or may cause them to be carried out by some other person.

Form I

SCHEDULE

CONTROL AND DISEASES OF ANIMALS ACT

(Cap. 66:02)

PREVENTION OF RABIES RULES

Permit to Move Dogs and/or Carnivores

of

is authorized under the Control and Diseases of Animals Act to move the dogs and/or carnivores described below from .....
to .....by rail/air/road/water via .....
and under the following conditions:*

No.	Description of dogs and/or carnivores to be moved	Remarks

This permit must be carried by any person accompanying the dogs and/ or carnivores and be produced on demand by any Government Officer, transporter or owner of land over which the dogs and/or carnivores may pass. If the dogs and/or carnivores are unaccompanied this permit must be securely affixed to the crate in which the dogs and/ or carnivores are secured.

Station Issuer of Permit

Date .....

*The issuer of the permit should state in detail the route to be followed, any special conditions which he attaches to the permit and the period for which the permit is valid.

FORM II

CONTROL AND DISEASES OF ANIMALS ACT

(CAP. 66:02)

PREVENTION OF RABIES RULES

CERTIFICATE OF VACCINATION

This is to certify that I have today vaccinated a ..... dog/bitch with rabies vaccine modified live virus avianized Serial No. .. .. at the request of .....of .... being the owner/person in charge of the animal.

Marking of dog .....

Weight of dog .....

Signed .....

Veterinary Officer *Stamp*

Dated this ..... day of ....., 19.....

DECLARATION OF SPECIFIED AREA

G.N. 61/1969

under r. 8 *of the*

Prevention of Rabies Rules

The Chief Veterinary Officer has declared the whole of Malaŵi to be a specified area in respect of the vaccination of dogs against rabies.

DECLARATION OF A DISEASE OF ANIMALS

G.N. 98/1969

under s. 4

The Minister has declared "Rift Valley Fever" to be a disease of animals for the purposes of the Act.

DIPPING RULES

under s. 8

42 of 1967
G.N.
190/1969
244/1969
5/1970
174/1970
88/1971
154/1972
65/1973
37/2003

Citation

1. These Rules may be cited as the Dipping Rules.

Interpretation

2. In these Rules, unless the context otherwise requires—

"an approved dipping fluid" means an insecticide of such a type and in such a dilution as the Chief Veterinary Officer may from time to time approve;

"cattle" means any bull, cow, heifer, calf or ox;

"dipping" means a complete immersion of cattle in a dip tank or in a spray race containing approved dipping fluid and in a manner approved by the Chief Veterinary Officer;

"dip tank" means any effective contrivance approved by the Chief Veterinary Officer for the cleansing of cattle by submersion and includes structures incidental thereto;

"spray race" means any effective contrivance constructed by the Government or by a private individual which is approved by the Chief Veterinary Officer in which it is possible to immobilize cattle while they are sprayed completely with an approved dipping fluid or through which it is possible to pass one or more cattle and while passing they can be sprayed completely with the approved dipping fluids;

"tick infestation" means the presence on any cattle of one or more engorging ticks.

Dipping requirements

3. All cattle in Malaŵi which normally reside within eight kilometres of a Government dip tank or of a dip tank owned by a private individual and which is approved by the Government, and all cattle, no matter where situated, which consist of 100 or more head in the possession of or under the control of one person shall be dipped in a dip tank or in a spray race at intervals of not more than one week.

Powers of inspector

4.—(1) An inspector may at any time inspect any cattle for the purpose of ascertaining whether there is tick infestation and may inspect any dip tank or spray race used for cattle and may take or require to be sent to him a sample of the contents of any dip tank or spray race.

(2) Any person who refuses to allow an inspector to enter upon any land for the above purpose or to examine any such animals on such land or who refuses or neglects to send a sample of the contents of any dip tank or spray race when required so to do or who hinders or impedes or attempts to hinder or impede an inspector in the execution of his duties shall be guilty of an offence.

Offences

5.—(1) Any person in control of or having the care of cattle which require to be dipped under the provisions of rule 3 who shall fail so to dip his animals shall, unless exempted under rule 8, be guilty of an offence.

(2) Any person in control of, or having the care of, cattle found to be suffering from tick infestation shall, notwithstanding that he is dipping his cattle in accordance with rule 3, be guilty of an offence.

Directions

6. The Minister may, by notice in the *Gazette*, direct that within any area any animal named in such notice shall be dipped at such intervals and from such date as he may prescribe or may, by notice in the *Gazette*, suspend, for such period or in such area as he may think fit, the provisions of all or any of these Rules.

Requirement to construct dip tank

7.—(1) The Minister may, by notice in writing served by prepaid post, require any person who is the owner of, in possession of or in control of a 100 or more head of cattle to construct an efficient dip tank or spray race for the dipping of such cattle within such time as may be specified in the notice.

(2) Any person who fails to comply with the requirements of such notice within the time prescribed shall be liable to a fine of K40 in respect of each day during which he fails to comply with such notice.

Powers to exempt

8.—(1) The Chief Veterinary Officer or any person duly authorized by him may, for reasons of weather, drought, the condition of the cattle, or other causes beyond the control of the person having possession or control of the said cattle, exempt such person or persons in any area from the provisions of rule 3 or may vary the prescribed dipping intervals. A list of all such exemptions granted shall be posted at the office of the Inspector so granting them, at all police stations in the district in which the exemptions apply and at the office of the Inspector of the area of district in which the animals so exempted are situated.

(2) No cattle in respect of which an exemption has been granted under subrule (1) shall be moved from the place where they are normally resident to any other place without the permission in writing of an Inspector.

Power to spray cattle

9. If it appears to the Minister that there is no person within Malaŵi who is responsible for cattle which are subject to these Rules, or if it is not possible to serve a person with any notice under these Rules, the Minister may authorize such cattle to be sprayed, dipped or otherwise treated as he may direct and any expenses so incurred shall be recoverable by distress or sale of such cattle.

Public dip tanks

10. The Minister may prescribe dip tanks or spray races for public use and may approve privately-owned dip tanks or spray races for the use of the public. The dip tanks and spray races approved for the purpose of these Rules are set out in the Schedule hereto.

Dipping in public dip tanks

11. The Chief Veterinary Officer or any person duly authorized by him may from time to time prescribe such precautionary measures as he may deem fit which must be taken by any person responsible for cattle before they are permitted to be dipped in any approved dip tank or spray race.

Penalties G.N. 37/2003

12. Any person who fails to comply with these Rules or any notice or direction made hereunder shall be guilty of an offence and shall be liable to a fine of K10,000 and to imprisonment for six months.

SCHEDULE

42 of 1967
G.N.
190/1969
244/1969
5/1970
174/1970
268/1970
88/1971
154/1972

NORTHERN REGION:

Chitipa District:

Ifumbo	Mwankumbwa (Nyondo)
Kailizi	Uledi
Kapelemela	Upighu
Kaseye	Wenya

Karonga District:
Chantacha
Chonanga
Kaporo
Katumbi
Kayuni
Kwawa
Mlale
Mwakasungula (Malema)
Mwangulukulu
Mwaungulu
Mwawembe
Ngara
Ngerenge
Nyungwe
Simion
Timothy

Mzimba District:
Balala
Bongowongo
Chimutu Hara
Choma
Daniel Gausi
Ekwendeni
Elangeni
Emfeni
Emoneni
Euthini/Chindi
Gowoka
Gugu
Jata
Jenda
Jombo Enukweni
Kamibanga
Kampupu
Kamteteka
Kanyenyezi
Kapando
Kapopo
Katundu
Luzi
Madise
Magido
Mbawa
Milala (Manyamula)
Mpherembe
Mzalangwe
Mzikubola (Embangweni)
Mzimba
Phazi
Swaswa
Thewerekere
Yesaya Nkosi
Zombwe

Rumphi District:
Chikulamayembe (Bolero)
Katumbi
Muhuju

Central Region:

Dedza District:
Bembeke
Chilungaminga
Chimangwana
Chiphazi
Chirikumwendo
Dedza
Kafotokoza
Kanjule
Linthipe Bridge
Linthipe Valley
Magunditsa
Maonde
Mkomeko
Mpatamilonde
Msunduzi
Nandulu
Mtakataka
Tsoyo

Dowa District:
Chimangamasasa
Dzoole
Kamsonga
Lumbadzi
Madisi
Majiga
Mponela
Moya
Msakambewa
Namwiri
Pakuya
Simakumi

Kasungu District:

Bua Estate	Kasungu
Chamakala	Lisandwa Estate
Chamwavi	Mchenga
Chioza	Mpasadzi
Kasikidzi	Rusa

Lilongwe District:

Bunda College of Agriculture	Lingadzi
Bwemba	Livuadzi
Chadza	Madzadsi
Chankandwe	Malandi
Chikuse	Malimbwe
Chilinda	Manchichi
Chimbalanga	Masula
Chingila/Njobvu	Mbadzi
Chisikwa	Mchoka
Chitedze Agricultural Research Station	Nachiola
	Namaguya
Dzalanyama Ranch (3 dipping tanks)	Namitete
	Nanjiri
Falls Estate	Nathenje
Jumpha	Nkhandabingu
Kadoko	Nkhoma
Kalumbu	Nkoko
Kathamba	Nkukwa
Katola	Pirilaranjuzi
Kawale	Sinyala
Likuni	Tanga

Mchinji District:

Kochirira/Bongeza	Tembwe
Likase	

Ncheu District:

Dombole	Mlangeni
Dzunje	Mpamadzi
Gowa	Mzama
Kamphulusa	Mtonda
Kwataine	Ncheu
Lizulu	

Nkhotakota District:

Nkhotakota	Dwambazi Holding Ground

Salima District:

Chilata Experimental Station	Mpatsanjoka
Kuti	Ulele

Southern Region :

Blantyre District:

Chapima	Mikolongwe
Chilangoma	Mpemba
Chileka	Mvundula
Chiradzulu	Nchema

Nkhotakota District:

Nkhotakota	Dwambazi Holding Ground

Salima District:

Chilata Experimental Station	Mpatsanjoka
Kuti	Ulele

Southern Region:

Blantyre District:

Chapima	Mikolongwe
Chilangoma	Mpemba
Chileka	Mvundula
Chiradzulu	Nchema

Chitcra
Dyanyama
Hombola
Matindi
Matope
(*Estates*)
Chikowa
Chingaluwe
Chisombezi
Leslies Dairies
Chikwawa (*Lower Shire*):
Bangula
Chikwawa/Lisuli
Chilikha
Chimombo
Makwira
Muona
Mangochi District:
Mponda
Mulanje District:
Dulankhani
Luchenza/Chonde
Mpasa
Putheya
(*Estates*)
Chingosi
Chisambo
Chitakali
Eldorado
Esperanza
Glenorchy
Limbuli
Lujeri
Mwanza District:
Ligowi
Thyolo District:
(*Estates*)
Bandanga
Bvumbwe
Chitopola
Chiwale
Glanea
Golha
Kasembereka
Khonjeni
Mafisi
Makwasa
Nguludi
Nsambi/Neno
Symon
Thumbwe
Ndata
Njuli
M. H. Sabbatini
Ndalapa
Ngabu
Nsanje
Tengani
Tomali
Sombani
Thuchila
Tuthuwa
Mimosa
Mini-Mini
Nachimango
Ruo
Sayama
Thornwood
Thuchila
Malamulo Mission
Minaga
Namikwenya
Naming'omba
Nasonia
Nchima
Olicana Farm
Satemwa
Zoa

Zomba District:

Domasi	Naisi
Kathebwe	Namasalima
Likangala	Namiwawa
Mikoko	Nkula/Njala
Mposa	

(*Estates*)

Chimpeni	Mpalanganga
Makoka	Rathdrum
Mbala	Toleza

ERADICATION OF EAST COAST FEVER RULES

G.N. 191/1969
205/1970

under s. 8

1. These Rules may be cited as the Eradication of East Coast Fever Rules. Citation

2. In these Rules, unless the context otherwise requires— Interpretation

"approved dipping fluid" means an insecticide of such a type and in such a dilution as the Chief Veterinary Officer may from time to time approve;

"cattle" means any bull, cow, heifer, calf or ox;

"dipping" means a complete immersion of cattle in a dip tank or in a spray race containing approved dipping fluid and in a manner approved by the Chief Veterinary Officer;

"eradication area" means any part of an infected area in respect of East Coast Fever which the Chief Veterinary Officer has under rule 3, by notice in the *Gazette*, declared to be an area to which these Rules shall apply;

"hand dressing" means a liberal application by hand or brush of an approved dipping fluid to the ears, anal region and tails of cattle;

"infected area" means any area which has been declared to be an infected area in respect of East Coast Fever under section 4 of the Act;

"spray" means the complete saturation of cattle with an approved dipping fluid either by hand or by a power-spray;

"tick infestation" means the presence on any cattle of one or more engorging ticks.

Declaration of eradication area

3. The Chief Veterinary Officer may declare to be an eradication area any part of an infected area which has been declared to be an infected area in respect of East Coast Fever.

Restrictions on movement of cattle into eradication area

4.—(1) No owner or person in charge of any cattle may move cattle from an infected area which has not been declared to be an eradication area into an eradication area without a permit issued by the Chief Veterinary Officer.

G.N. 205/1970

(2) The Chief Veterinary Officer may issue to any owner or person in charge of any cattle a permit in the form in the Schedule hereto (hereinafter called the "permit"), which permit shall contain such conditions as the Chief Veterinary Officer may in his absolute discretion determine.

Restrictions on movement of cattle out of eradication area

5.—(1) No owner or person in charge of cattle shall move any cattle from any part of an infected area which has been declared an eradication area to an area which has not been declared to be an infected area without a permit in the form in the Schedule hereto.

G.N. 205/1970

(2) The Chief Veterinary Officer may issue to any owner or person in charge of any cattle a permit in the form in the Schedule hereto (hereinafter called the "permit"), which permit shall contain such conditions as the Chief Veterinary Officer may in his absolute discretion determine.

Restrictions on movement of cattle into infected area

6. No owner or person in charge of any cattle shall move cattle from an eradication area to an infected area which has not been declared an eradication area except as provided for by the Movement of Farm Animals Rules.

Production of permits

7. Any person to whom a permit has been issued or any person moving cattle under a permit shall produce the permit for inspection on demand by any inspector, police officer or other person duly authorized in writing by the Chief Veterinary Officer to inspect permits.

Hand dressing, dipping, etc. requirements

8. In an eradication area an inspector may require cattle to be treated either by hand dressing, dipping or spraying with an approved dipping fluid, at such places, at such intervals and at such times as he shall determine. Such determination shall be communicated to the owner or person in charge of the cattle by written notice served on them or by notice published in a conspicuous place at a District Headquarters or police station which said notice shall inform the persons concerned of such requirements as the inspector may have made with regard to the hand dressing, dipping or spraying of the cattle concerned.

Offences

9. Any owner or person in charge of cattle who moves cattle without a permit, who fails to produce the permit when lawfully demanded to do so or who fails to treat his cattle when so required to do shall be guilty of an offence.

Saving
G.N. 190/1969

10. Nothing done under these Rules shall in any way be taken as amending or waiving any requirements under the Dipping Rules.

SCHEDULE

CONTROL AND DISEASES OF ANIMALS ACT

(Cap. 66:02)

ERADICATION OF EAST COAST FEVER RULES

Permit to Move Cattle

..... of .....
..... is authorized under the Control and Diseases of Animals Act, to move the cattle described below from ..... to .....
.....under the following conditions:
.....
.....

No.	Description of cattle to be moved	Remarks

The permit must be carried by the person accompanying the cattle and be produced on demand by any inspector, police officer over the rank of sergeant or person duly authorized in writing by the Chief Veterinary Officer.

Station ..... Issuer of Permit .....
Date ..... Rank .....

Note : The issuer of the permit should state the route to be followed, the method of transport and the period for which the permit is available.

CONTROL AND DISEASES OF ANIMALS (ERADICATION OF BOVINE TUBERCULOSIS) RULES

G.N. 119/1972
36/2003

under s. 8

Citation

1. These Rules may be cited as the Control and Diseases of Animals (Eradication of Bovine Tuberculosis) Rules.

Interpretation

2. In these Rules, unless the context otherwise requires—

"cattle" means any bull, cow, heifer, calf or ox;

"prescribed area" means any area prescribed by the Minister under Regulation 3;

"tuberculin test" means any test approved by the Chief Veterinary Officer for determining whether cattle are infected with bovine tuberculosis.

Application

3. The Minister may, by notice published in the *Gazette*, declare any area of Malaŵi, including the whole of Malaŵi, to be an area to which these Rules shall apply.

Movement of cattle into or out of prescribed areas
Cap. 66:02, sub. leg. (p. 4)

4.—(1) Cattle shall not be moved into a prescribed area save under and in accordance with a permit issued by an inspector, and in accordance with the Movement of Farm Animals Rules.

(2) An inspector may issue to any owner of cattle wishing to move such cattle into a prescribed area a permit in the form set out in the Schedule hereto (hereinafter referred to as a permit), which permit may contain such conditions as the inspector may in his discretion determine. Before issuing a permit the inspector may require evidence that all the cattle to be moved are free from bovine tuberculosis.

(3) Cattle may not be moved out of a prescribed area save in accordance with the Movement of Farm Animals Rules.

Production of permit

5. Any person to whom a permit has been issued, or any person moving cattle under the authority of a permit, shall produce such permit for inspection on demand by any inspector, police officer or other person duly authorized in writing by the Chief Veterinary Officer to inspect permits.

Cattle to be produced for inspection, etc.

6. In a prescribed area all owners of cattle shall produce such cattle at any reasonable time and place demanded by an inspector for treatment, vaccination, inoculation, testing, inspection or any other purpose connected with the diagnosis, prevention or treatment of bovine tuberculosis as the inspector may at his discretion require. The requirement and the determination of time and place shall be communicated to the owner by written notice served on him personally, or by a written notice published in a conspicuous place at the relevant District Headquarters or police station.

Slaughter of infected cattle

7. Any cattle determined by an inspector to be infected with bovine tuberculosis shall be slaughtered by the owner or by such person as the inspector shall authorize, at such time and place as the inspector shall determine.

Offences and penalties G.N. 36/2003

8. Any owner of cattle who contravenes or fails to comply with these Rules, or who fails to slaughter his cattle when requested to do so by an inspector under rule 7, shall be guilty of an offence and shall be liable to a fine of K10,000 and to imprisonment for three months.

SCHEDULE

r. 4

CONTROL AND DISEASES OF ANIMALS ACT

(CAP. 66:02)

ERADICATION OF TUBERCULOSIS RULES

PERMIT TO MOVE CATTLE

..... of .....

.....

is authorized under the Control and Diseases of Animals Act to move the cattle described below from .....

.....

to .....

under the following conditions: .....

.....

No.	Description of cattle to be moved	Remarks

The permit must be carried by the person accompanying the cattle and be produced on demand by any inspector, police officer or person duly authorized in writing by the Chief Veterinary Officer.

Station: ..... Issuer of Permit: .....

Date: ..... Rank: .....

The issuer of the permit should state the route to be followed, the method of transport and the period for which the permit is available.

ARRANGEMENT OF RULES

RULE
1. Citation, commencement and application
2. Interpretation
3. Registering authorities
4. Application for registration of dog
5. Certificates of registration and register
6. Expiry of certificates of registration
7. Separate certificates of registration to be issued
8. Tags
9. Duplicate tags and certificates of registration
10. Applicants for certificates of registration or renewal thereof to tender evidence of vaccination, etc.
11. Dogs to wear collars
12. Transfer of ownership of dog
13. Production of dog and certificate
14. Dogs from outside area
15. Exemptions
16. Fees
17. Offences

First Schedule
Second Schedule

CONTROL OF DOGS RULES

G.N. 265/1971
5/1973
6/1973

under s. 8

Citation, commencement and application

1.—(1) These Rules may be cited as the Control of Dogs Rules.

(2) These Rules shall come into operation on such date as the Minister may, by notice, appoint:

Provided that rules 11, 12, 13 and 17 shall not come into operation until one month after that date.

(3) These Rules shall apply in such Districts or parts thereof as the Minister may specify by notice published in the *Gazette*.

Interpretation

2. In these Rules, unless the context otherwise requires—

"area" means a District or part thereof to which these Rules have been applied under subrule 1 (3);

"certificate of registration" means a certificate of registration issued under rule 5;

"registered" means registered under these Rules and cognate expressions bear corresponding meanings;

"registering authority" means a registering authority referred to in rule 3;

"vaccination certificate" means a certificate issued by an inspector under rule 10 of the Prevention of Rabies Rules.

Cap. 66:02 sub. leg. p. 44

3. The local authority for any District, or part of a District, shall be the registering authority for such District, or part thereof:

Registering authorities

Provided that the Minister may by notice published in the *Gazette* declare that with respect to the area referred to in the notice such person or authority as he may therein specify shall be the registering authority for such area in lieu of the local authority therefor.

4. Application for the registration under these Rules of any dog shall be made either orally on in writing to the registering authority for the area in which the applicant is resident.

Application for registration of dog

5. Every owner of an unregistered dog of the apparent age of six months or over shall register such dog and obtain in respect thereof a certificate of registration. Such certificate shall be in Form A in the First Schedule and each registering authority shall maintain a register consisting of duplicate copies of all certificates of registration issued by it.

Certificates of registration and register

6.—(1) Unless renewed under subrule (2), a certificate of registration shall expire after twelve months from the date of issue of the certificate.

Expiry of certificates of registration

(2) Upon application made either orally or in writing, and upon payment of the prescribed fee, a currently valid certificate or registration may, on its being produced by the applicant, be renewed for a further period of one year by the registering of the area in which the owner of the dog to which such certificate relates has his place of residence at the time of such application.

7. A separate certificate of registration shall be issued in respect of each dog registered.

Separate certificates of registration to be issued

8. A registering authority shall, when issuing, or renewing a certificate of registration also issue to the owner of the dog to which the certificate relates a tag stamped with a distinctive number and with the name of such registering authority. The number stamped on each tag shall be clearly entered on the certificate to which it relates by the registering authority.

Tags

9.—(1) On production of a currently valid certificate or registration to the registering authority which originally issued it, such authority shall, on payment of the prescribed fee, issue a duplicate tag in replacement of one which is established to the satisfaction of the authority to have been stolen, lost or destroyed.

Duplicate certificates of registration

(2) On production of such evidence as the registering authority may consider satisfactory of the theft, loss or destruction of any currently valid certificate of registration, and upon payment of

the prescribed fee, such authority shall issue a duplicate certificate of registration in replacement of the one stolen, lost or destroyed.

Applicants for certificates or registration or renewal thereof to tender evidence of vaccination, etc.

10. Any person applying for a certificate or duplicate certificate of registration for a dog, or for the renewal of such a certificate, shall at the time of such application tender the prescribed fee and shall produce for the inspection of the registering authority concerned a vaccination certificate relating to such dog issued not more than thirty six months prior to such application, and, if so required by the authority, the dog itself. No such authority may issue, or renew, a certificate of registration if the person applying therefor fails fully to comply with the provisions of this rule.

Attachments of tags to dogs

11. Every tag issued in respect of a dog under rule 8 shall be attached to that dog by such means as the Secretary may prescribe:

Provided that the registering authority may, on being satisfied that the owner of any dog causes and will cause such dog to wear a collar at all times, permit such tag to be attached to such dog by means of its collar.

Transfer of ownership of dog

12. On the transfer of any registered dog from one person to another, the relevant certificate of registration shall be forwarded to the registering authority which issued it (or in the case of a renewed certificate, which last renewed it) the transferee's name and address shall be endorsed on such certificate, if it is currently valid. Such endorsement shall be deemed to constitute an issue of such certificate to the transferee.

Production of dog and certificate

13. Every owner of a dog which is required to be registered under these Rules shall, if requested by any inspector or police officer, and within a reasonable time after such request, produce or cause to be produced for inspection by such inspector or police officer, the certificate of registration relating to such dog and at the same time, if so required, the dog itself.

Dogs from outside area

14. The provisions of these Rules shall not apply to any unregistered dog introduced into an area with the permission in writing of the registering authority for such area or an inspector until such dog has been in such area for a period of fourteen days if such dog is led on a leash or chain when in any street or public place.

Exemptions

15. The Minister may by notice published in the *Gazette* exempt any owner, or any class of owner, from all or any of the provisions of these Rules.

Fees

16. The fees specified in the second column of the Second Schedule shall be payable to the registering authority for the matters and things specified in the first column of that Schedule.

Offences

17. Any person who—

(*a*) being the owner of a dog fails or neglects to register such dog when required to do so under these Rules, or having so registered it, fails or neglects to keep the relevant certificate of registration currently valid;

(*b*) being the owner of a dog fails to comply with any of the provisions of rules 11, 12 or 13; or

(*c*) causes or permits any tag issued under these Rules to be borne on a collar worn by any dog other than the dog in respect of which such tag was issued,

shall commit an offence and be liable, for a first offence, to a fine of K50 and imprisonment for three months, and for a second or subsequent offence be liable to a fine of K100 and to imprisonment for six months.

FIRST SCHEDULE FORM A

CONTROL AND DISEASES OF ANIMALS ACT

(CAP. 66:02)

CONTROL OF DOGS RULES

CERTIFICATE OF REGISTRATION/RENEWAL OF REGISTRATION OF A DOG

(RULE 5)

It is hereby certified that one dog, hereunder described, the property of .....

(*Name and address of owner*)

.....

has been registered under the Control of Dogs Rules

Breed ..... Sex .....

Colour, markings, etc., for purpose of identification:

.....

(*Here put description of dog*)

and that tag number ..... has (this day)* been issued in respect thereof.

And that the fee of 75t has been paid.

.....

for Registering Authority

Date .....

This Certificate must be produced for renewal on .....

*Delete where inapplicable

SECOND SCHEDULE

FEES PAYABLE

(RULE 16)

First Column	*Second Column*
Registering any dog under these Rules and issuing the relevant Certificate of registration	75t
Renewing any Certificate of registration	75t
For each duplicate tag or Certificate of registration supplied	50t

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G.N. 4/1973

CONTROL OF DOGS RULES (APPLICATION) NOTICE

under r. 1 (3)

of the Control of Dogs Rules

Citation

1. This Notice may be cited as the Control of Dogs Rules (Application) Notice.

Application of G.N. 265/1971

2. The Control of Dogs Rules, are hereby specified to apply to the Districts listed in the Schedule hereto.

SCHEDULE

The City of Blantyre
The City of Lilongwe
The Municipality of Zomba
The City of Mzuzu

G.N. 17/1990

CONTROL AND DISEASES OF ANIMALS (PROHIBITION OF IMPORTATION OF ANIMALS) ORDER

under s. 6

Citation

1. This Order may be cited as the Control and Diseases of Animals (Prohibition of Importation of Animals) Order.

Prohibition of importation of animals

2. The importation of the animals of a kind specified in the *First Column* of the Schedule from the country specified in relation to such animals in the *Second Column* of the Schedule is hereby prohibited on account of the presence in that country of the disease specified in the *Third Column* of the Schedule.

SCHEDULE

First Column	*Second Column*	*Third Column*
Livestock and by-products thereof	Zimbabwe	Foot and Mouth Disease

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FISHERIES CONSERVATION AND MANAGEMENT

CHAPTER 66:05

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CHAPTER 66:05

FISHERIES CONSERVATION AND MANAGEMENT

ARRANGEMENT OF SECTIONS

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An Act to make provision for the regulation, conservation and management of the fisheries of Malaŵi and for matters incidental thereto or connected therewith 25 of 1997 G.N. 77/1997

[1ST OCTOBER, 1998]

PART I

PRELIMINARY

1. This Act may be cited as the Fisheries Conservation and Management Act. Short title

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

"aquaculture establishment" means any area, enclosure, impoundment, premise or structure set up or used on or in land or water for the cultivation of freshwater fish and

includes any cage or raft or other structure used for the cultivation of fish;

"Board" means the Fisheries Advisory Board established under section 5;

"commercial fisherman" means—

(*a*) in the case of an individual, a person who is engaged or intends to engage in fishing for sale throughout the year or a specified season or part of a season each year and who relies on his fishing activities for part of his income; or

(*b*) in the case of a corporate body or association of persons, one that has an appreciable investment in the fishing industry or intends to make one;

"commercial fishing" means, taking fish for sale;

"convention" includes a treaty, agreement or other arrangement;

"convention area" means, in relation to any bilateral or multilateral convention, the area to which the convention relates;

"convention fisheries officer" means a person appointed by the government of another country to enforce, or having power under the laws of another country to enforce, a convention that provides for the safeguarding or conduct of fishing operations or operations ancillary thereto to which Malaŵi is a party;

"convention fishing vessel" means a fishing vessel registered in a country which is a party to a convention to which Malaŵi is also a party;

"Director" means the Director of Fisheries appointed pursuant to section 3;

"fish" means any vertebrate fish or any aquatic crustacean, mollusc or other shellfish or other coldblooded aquatic animal, whether alive or dead, and their young, fry, eggs or spawn and shells and parts thereof but does not include any reptile;

"fisheries protection officer" means the Director and any of the fisheries protection officers referred to in section 3 (7);

"fishing" means—

(*a*) the catching or taking of fish;

(*b*) any other activity which can reasonably be expected to result in the catching or taking of fish; or

(*c*) any operation on water in support of or in preparation for any activity described in paragraphs (*a*) and (*b*);

"fisheries management authority" means any local community organization established for the purposes of promoting local participation in the conservation and management of fisheries in Malaŵi;

"fishing licence" includes a fishing permit issued under this Act;

"fishing vessel" means any vessel, of whatever size and in whatever way propelled, used in fishing operations or for the processing, storage or carriage of fish or any operation (including transhipment of fish) ancillary thereto, but does not include any vessel used for the transport of fish or fish products as part of a general cargo;

"fishing waters" means—

(*a*) all waters within the land borders of Malaŵi capable of supporting fish; and

(*b*) those parts of Lake Malaŵi over which Malaŵi exercises sovereignty;

"foreign fishing vessel" means any fishing vessel other than a local fishing vessel or a convention fishing vessel;

"forest officer" has the same meaning as in the Forest Act; Cap. 63:01

"Fund" means the Fisheries Fund established under section 22;

"large scale commercial fisherman" means a commercial fisherman prescribed as such;

"local fishing vessel" means any fishing vessel—

(*a*) wholly owned by one or more persons ordinarily resident in Malaŵi; or

(*b*) wholly owned by a company, society or association of persons incorporated in or established under the laws of Malaŵi and controlled by one or more persons ordinarily resident in Malaŵi;

"master", in relation to a fishing vessel, includes the person in command or in charge of the fishing operations on board the vessel;

"processing", in relation to fish, includes cleaning, filleting, icing, freezing, canning, salting, smoking, cooking, pickling, drying or otherwise preserving or preparing fish by any method;

"processing establishment" means any premises or vessel on or in which any fish is processed or stored but does not include any restaurant, hotel or eating house or any premises where fish is prepared and stored for sale by retail to the public;

"registrable vessel" means a vessel prescribed as being subject to registration under this Act;

"small scale commercial fisherman" means a commercial fisherman other than a large scale commercial fisherman;

"transhipment of fish" includes the passing of fish from one fishing vessel to another, whether or not the fish has first been taken on board the vessel from which the fish is passed;

"vessel" means a steamer, motor vessel, launch, boat, canoe, hovercraft, submersible or floating craft of any description;

Cap. 66:07

"wildlife officer" has the same meaning as in the National Parks and Wildlife Act.

PART II

Administration

The Director of Fisheries and Fisheries protection officers

3.—(1) There shall be appointed in the public service an officer to be designated as the Director of Fisheries (in this Act otherwise referred to as the "Director") and other officers subordinate to him who shall be responsible for—

(*a*) the conservation of fish stocks;

(*b*) the taking of such measures as he may consider appropriate for the protection of fish stocks from the effects of pollution and siltation and from the effects to fish stocks of measures taken to eliminate or control pollution and siltation;

(*c*) the assessment of fish stocks and the collection of statistics;

(*d*) the development and management of fisheries;

(*e*) the monitoring, control and surveillance of fishing operations;

(*f*) subject to section 6, the preparation and periodic review of fisheries management plans and the submission of such plans to the Board and to the Minister;

(*g*) the regulation and control of fishing operations, including aquaculture and operations ancillary thereto;

(*h*) the issue, variation, suspension and revocation of permits and licences for fishing, aquaculture, transhipment and other activities for which permits or licenses are required under this Act;

(*i*) the collection of fees in respect of permits and licences and registration of fishing vessels;

(*j*) the making of such reports as he shall consider appropriate or as the Minister may require;

(*k*) any other matter that shall require administration under this Act.

(2) Subject to subsection (3), the Director may, in writing, authorize any public officer to exercise any or all of the powers

of the Director, either concurrently with him or in his absence subject to such conditions, including territorial restrictions, as the Director may stipulate in the authorization.

(3) The Director shall personally exercise the powers provided for under section 50.

(4) In the performance of his duties under this Act, the Director shall be subject to the general and special directions of the Minister.

(5) A direction under subsection (4) may include a requirement that a category of fishing licences shall be referred to the Minister before the grant of such licence.

(6) This Act shall be enforced by fisheries protection officers, acting subject to the direction of the Director and, for that purpose, fisheries protection officers shall have the powers set out in sections 30, 31 and 32.

(7) For purposes of this Act, the following persons shall be fisheries protection officers—

(*a*) fisheries officers in the Department of Fisheries;

(*b*) members of the Malaŵi Police Force;

(*c*) forest officers;

(*d*) wildlife officers;

(*e*) environmental officers;

(*f*) persons in command or in charge of any vessel, aircraft or hovercraft of the armed forces of Malaŵi or of the Government of Malaŵi;

(*g*) such other public officers as the Minister may designate by notice published in the *Gazette*; and

(*h*) any person authorized by or acting under the orders of any of the persons specified in paragraphs *a, b, c, d, e, f* and *g*.

(8) The Director of Public Prosecutions may in writing nominate, by rank, any officer or class of officers of the Department of Fisheries to undertake and prosecute criminal proceedings in respect of an offence committed under this Act.

Honorary fisheries officers

4.—(1) The Director may, by notice published in the *Gazette*, appoint suitable persons to be honorary fisheries officers to assist in the carrying into effect of the provisions of this Act.

(2) The appointment of an honorary fisheries officer shall be—

(*a*) made for a period of three years but shall be renewable; and

(*b*) subject to such conditions as shall be prescribed or as the Director shall otherwise impose in the instrument of appointment.

(3) Honorary fisheries officers shall exercise such of the powers of fisheries protection officers as shall be prescribed in the instrument of appointment.

Fisheries Advisory Board

5.—(1) There is hereby established a board to be known as the Fisheries Advisory Board (in this Act otherwise referred to as the "Board") which shall consist of—

(*a*) a Chairman appointed by the Minister;

(*b*) a Vice-Chairman elected by and from among members of the Board;

(*c*) the following *ex officio* members—

(i) the Principal Secretary responsible for natural resources;

(ii) the Director;

(iii) the Principal Secretary responsible for community services, or his designated representative;

(iv) the Principal Secretary responsible for agriculture, or his designated representative;

(v) the Principal Secretary responsible for research and environmental affairs, or his designated representative; and

(vi) the Principal Secretary responsible for irrigation, or his designated representative;

(*d*) three members nominated by and from among small scale commercial fishermen and appointed by the Minister;

(*e*) three members nominated by and from among fisheries protection officers and appointed by the Minister;

(*f*) one member nominated by and from among large scale commercial fishermen and appointed by the Minister;

(*g*) one member nominated by and from among fish traders and appointed by the Minister; and

(*h*) three members appointed by the Minister from the general public and one of whom shall be a person knowledgeable in consumer concerns.

(2) Where there is no association representing any of the persons referred to in paragraphs (*d*), (*e*), (*f*) or (*g*) of subsection (1), the members shall be nominated by the Director after appropriate consultations with fisheries protection officers, fishermen or fish traders, as the case may be.

(3) For the purpose of carrying out its functions under section 6 (*a*), the Board shall appoint a technical sub-committee from among the members of the Board, excepting the Director, and such subcommittee shall have the quorum provided for in subsection (10) and may advise the Director directly on behalf of the Board.

(4) A member of the Board shall, subject to subsections (5) and (6), serve for a term of three years and shall be eligible for reappointment.

(5) An appointed member of the Board, other than an *ex officio* member, may resign his office at any time by notice, in writing, addressed to the Minister.

(6) The Minister may remove from office any member of the Board, other than an *ex officio* member, if the Minister is satisfied that the member—

(*a*) has become insolvent or has assigned his estate for the benefit of, or made a composition or other arrangements with, his creditors;

(*b*) has been absent from three consecutive meetings of the Board without the approval of the Chairman or without other valid cause;

(*c*) has been convicted of an offence under this Act;

(*d*) has been convicted by a competent court of a criminal offence and sentenced to imprisonment for not less than six months, without the option of a fine, whether or not such sentence has been suspended, and has not received a free pardon;

(*e*) is otherwise incapacitated; or

(*f*) has financial or other interest that is likely to affect prejudicially the exercise and performance by him of his functions as a member of the Board; and

(*g*) appointed under paragraphs (*d*), (*e*), (*f*) or (*g*) of subsection (1), has ceased to be a small scale fisherman, large scale fisherman, fish trader or fisheries protection officer, as the case may be.

(7) On the occurrence of a vacancy in the membership of the Board, the Minister shall appoint a new member for the remainder of the term of the vacating member.

(8) The membership of the Board as first and subsequently appointed and every change in the membership thereof shall be published in the *Gazette*.

(9) Half of the members of the Board shall constitute a quorum.

(10) The Board may, in addition to the sub-committee provided for in subsection (3), appoint and delegate functions to other subcommittees of the Board the quorum for meetings of which shall be the chairman and the secretary of the sub-committee and half of the remaining members thereof.

(11) A public officer nominated by the Director shall be the secretary of the Board.

(12) A member of the Board, technical sub-committee or subcommittee shall be paid such allowances as the Minister may determine.

(13) Subject to this Act, the Board may regulate its procedures and meetings in such manner as it shall consider fitting.

Functions of the Board

6. The Board shall advise the Minister generally on the development, administration, conservation and management of the fisheries of Malaŵi and shall in particular—

(*a*) consider and advise on fisheries management plans and reviews of the plans prepared by the Director prior to the submission of such plans or reviewed plans to the Minister;

(*b*) consider and advise on proposals for the introduction of measures prohibiting or restricting the catching of species of fish;

(*c*) consider and advise on proposals for the enactment of legislation that may affect the fishing industry;

(*d*) consider and advise on proposals for agreements or arrangements to be entered into pursuant to section 52 and proposals for the entry into or accession to conventions that may relate, wholly or in part, to fishing matters;

(*e*) consider matters referred to the Board and advise the Government thereon;

(*f*) submit such proposals to the Government as it shall consider appropriate;

(*g*) have such other functions and duties as the Minister may, from time to time, prescribe.

PART III

Local Community Participation

Purposes of this Part

7. The purpose of this Part is to provide for local community participation in conservation and management of fisheries in Malaŵi; and

Fisheries management agreement

8.—(1) For proper management of fisheries, the Director may enter into a fisheries management agreement with a fisheries management authority providing for—

(*a*) a management plan; and

(*b*) assistance to be provided by the Department of Fisheries.

(2) Subject to performance of unfulfilled obligation under a fisheries management agreement to the right of third party, a fisheries management agreement may be terminated by either party.

(3) In the event of any dispute arising under a fisheries management agreement, the matter shall be referred to the Minister:

Provided that any party aggrieved with the decision of the Minister may apply to the High Court for review of the decision.

9.—(1) The Minister may, on the recommendation of the Board, make rules for the better carrying into effect of the purposes of this Part. Minister may make rules

(2) Without prejudice to the generality of subsection (1), the rules may—

(*a*) provide for conservation and management of fisheries;

(*b*) facilitate the establishment of fisheries management authorities for the benefit of the local communities;

(*c*) encourage District Councils, non-governmental organizations, the private sector and other relevant institutions to contribute towards provision of fisheries extension services, as well as establishment and management of aquaculture, in accordance with guidelines provided by the Department of Fisheries;

(*d*) provide for declaration of endangered species and their management;

(*e*) authorize payments of grants or bonus out of public funds for encouragement of fisheries;

(*f*) prescribe a mechanism for sharing costs and benefits between the Department of Fisheries and fisheries management authorities in regard to confiscated fisheries produce; and

(*g*) provide for procedure to be followed with regard to registration of local registrable fishing vessels and licensing of persons to be engaged in commercial fishing.

PART IV

Registration of Local Registrable Fishing Vessels

10.—(1) Every owner of a local registrable fishing vessel who intends to use the vessel for fishing shall apply to the Director for registration in the prescribed manner. Registration of local registrable fishing vessels

(2) A vessel shall not be registered under this section unless—

(*a*) it has been registered, if so required, under the Inland Waters Shipping Act and otherwise complies with the requirements of that Act; (*b*) the vessel carries such identification markings as may be prescribed; Cap. 71:01

(*c*) the vessel carries such equipment and complies with such other requirements as shall be prescribed; and

(*d*) the owner of the vessel has supplied such information and complied with such other requirements as may be prescribed.

(3) The Director may revoke a registration under this section if the registered vessel falls into delinquency in relation to any of the requirements of subsection (2) but shall restore such

registration on being satisfied that the delinquency has been remedied.

(4) The registration of a registrable local fishing vessel shall subject to subsection (5), be valid for one year or such shorter period as may be stipulated in the registration certificate.

(5) A registration shall not be transferable except as may be prescribed.

(6) This section shall apply to foreign fishing vessels if so prescribed and, where it is so applied, no foreign fishing vessel shall be used for commercial fishing in the fishing waters unless it is registered under this section.

(7) The Director shall maintain a register of local registrable fishing vessels in which he shall register such particulars of vessels as may be prescribed.

Control of fishing by registrable local fishing vessels

11.—(1) No local registrable fishing vessel shall be used for commercial fishing in the fishing waters unless it is registered under section 10 and the person using the vessel, or a person working on his behalf, is authorized so to fish by a licence granted under Part VI.

(2) Where a local registrable fishing vessel is used in contravention of subsection (1), the master, owner, charterer or hirer of the vessel shall be guilty of an offence and liable to a fine not exceeding K50,000 and to imprisonment for ten years and to a further fine of K200 per day for each day that the offence continues after conviction.

PART V
Foreign Fishing Vessels

Fishing by foreign fishing vessels prohibited without a licence

12.—(1) No foreign fishing vessel shall be used for commercial fishing in the fishing waters unless the owner or charterer thereof is authorized to fish by a licence granted under Part VI of this Act.

(2) Where any fishing vessel is used in contravention of subsection (1), the master, the owner and the charterer shall be guilty of an offence and liable to a fine of not less than K20,000 and not exceeding K1,000,000 and imprisonment for ten years and to a further fine of K200 per day for each day that the offence continues after conviction.

Notification of fish on board by foreign fishing vessels entering fishing waters

13.—(1) The master of a foreign fishing vessel that has fish on board shall—

(*a*) prior to entry of the vessel into the fishing waters; or

(*b*) prior to the vessel leaving an area of the fishing waters in which the owner or charterer is licensed to fish,

notify a fisheries protection officer of the amounts and descriptions of fish on board the vessel.

(2) A master who fails to give the notification required under subsection (1) shall be guilty of an offence and liable to a fine not exceeding K50,000 and to imprisonment for ten years.

(3) The giving of a notification under subsection (1) shall not of itself constitute a defence to a prosecution for an offence under section 16.

PART VI

Fishing Licences, Conditions and Other Controls

Prohibition of commercial fishing without a licence

14.—(1) No person shall engage in commercial fishing in the fishing waters except under the authority of a licence.

(2) An application for a licence shall be made to the Director in the prescribed form and shall be accompanied by the prescribed fees.

(3) A person who contravenes subsection (1) shall be guilty of an offence and liable to a fine of K20,000 and to imprisonment for four years.

Grant of fishing licences and conditions relating thereto

15.—(1) Subject to subsection (2), the grant of fishing licence shall be in the discretion of the Director and the licence may authorize fishing generally or may confer limited authority by reference in particular to—

(*a*) the area in which fishing is authorized;

(*b*) the period, times or particular voyages during which fishing is authorized;

(*c*) the quantities, description and size of fish which may be taken; or

(*d*) the method of fishing.

(2) Every fishing licence—

(*a*) shall specify the fishing gear that is permitted to be used for fishing by or on behalf of the licencee;

(*b*) shall not be transferable, except as may be prescribed;

(*c*) may authorize fishing either unconditionally or subject to such conditions as may appear to the Director to be necessary or expedient for the regulation of fishing, the conservation or management of fisheries in the fishing waters or for the economic benefit of Malaŵi and, without prejudice to the generality of the foregoing, may contain conditions as to—

(i) the landing of fish caught under the authority of the licence;

(ii) the use to which fish may be put;

(iii) the marking of fishing vessels used by licencee;

(iv) the marking of fishing gear;

(*v*) the records of fishing operations that shall be kept on board fishing vessels;

(vi) the navigation equipment and charts to be carried on board fishing vessels; and

(vii) the place or places where the licencee may carry out transhipment of fish,

and if a licence condition is contravened, the licencee or the master, as the case may be, of the fishing vessel concerned in such contravention shall be guilty of an offence and liable to a fine of K20,000 and to imprisonment for four years.

Illegal holding of fish

16.—(1) Subject to subsection (2), no master shall take or allow to remain on board a fishing vessel, within the fishing waters, fish which has not been taken under the authority of and in accordance with a fishing licence or other licence provided for under this Act.

(2) It shall be a defence to a prosecution for an offence arising under subsection (1) if the person charged satisfies the court that the fish was not taken or caught in the fishing waters.

Stowage of gear

17.—(1) Where a fishing vessel is in any area of the fishing waters and the person using the vessel is—

(*a*) prohibited under this Act from fishing in that area; or

(*b*) permitted by fishing licence or otherwise to fish only for certain species or descriptions of fish in that area,

fishing gear of the fishing vessel or so much of the gear as is not required for permitted fishing, shall be stowed in such manner that it is not readily available for use for fishing or in such manner as may be prescribed.

(2) Where this section is contravened, the master of the vessel concerned shall be guilty of an offence and liable to a fine of K10,000 and to imprisonment for two years and to a further fine of K200 per day for each day that the offence continues after conviction.

Transhipment and export of fish

18.—(1) The Minister may make regulations for the licensing of the transhipment or receiving of fish by fishing vessels in fishing waters or the transport from the fishing waters by any vessel of fish transhipped from any other vessel.

(2) The regulations made under subsection (1) may apply such restrictions and conditions on the granting of licences or permits as the Minister shall consider appropriate and, in particular, may provide for—

(*a*) the areas in which transhipping may take place;

(*b*) the times when fish may be transhipped or transported; or

(*c*) the numbers of transhipments and transportations that may be undertaken and the quantities and descriptions of fish that may be transhipped or transported.

(3) The regulations made under subsection (1) may empower the Director to impose such conditions on the grant of licences thereunder as he shall consider necessary for the regulation of the transhipment or export of fish or the economic benefit of Malaŵi including conditions as to the treatment on board fishing vessels of fish received on board, and different conditions may be imposed in respect of different fishing vessels or fishing vessels of different descriptions.

PART VII

Special Arrangements

Fisheries research permits, etc.

19.—(1) The Minister may, on the recommendation of the Director, grant a permit to an applicant authorizing fishing in the fishing waters or specified areas of the fishing waters for—

(*a*) scientific research or experimental purposes, the collection of specimens for museums, aquaria or similar institutions; or

(*b*) emergency supply of food for human beings.

(2) An application for a permit under subsection (1) shall be made to the Director in the prescribed form and shall be accompanied by the prescribed fees.

(3) A permit issued under subsection (1) may exempt the holder thereof from any or all provisions of this Act.

(4) The Minister may, by notice in writing given to the holder of a permit under subsection (1)—

(*a*) revoke the permit; or

(*b*) vary or revoke the conditions to which the permit is subject or specify further conditions to which the permit is subject.

PART VIII

Aquaculture

Establishment and operation of aquaculture

20.—(1) No person shall establish or operate an aquaculture establishment to which this section applies—

(*a*) otherwise than under the authority of, and in accordance with the conditions of, an aquaculture permit granted by the Director under section 21; and

(*b*) unless he has been granted rights to use water for that purpose under the Water Resources Act. Cap. 72:03

(2) Any person who establishes or operates an aquaculture establishment in contravention of subsection (1) or harvests the

products of such an establishment without the authority of the owner thereof shall be guilty of an offence and liable to a fine of K20,000 and to imprisonment for four years.

(3) This section shall apply to such aquaculture establishments as may be prescribed by the Minister by notice published in the *Gazette*.

Aquaculture permits

21.—(1) An application for an aquaculture permit shall be made to the Director in the prescribed form and shall be accompanied by the prescribed fees.

(2) An aquaculture permit shall—

(*a*) not be transferred without the prior written consent of the Director;

(*b*) confer on the permit holder exclusive rights to harvest the products of the aquaculture establishment within the area specified in the permit;

(*c*) be subject to such conditions as appear to the Director to be necessary or expedient for the regulation of aquaculture, the management of fisheries or for the economic benefit of Malaŵi and, without prejudice to the generality of the foregoing, may contain conditions relating to—

(i) the siting, design and materials used in the construction of the aquaculture establishment;

(ii) sanitary conditions of fish and fish products;

(iii) measures for the prevention of the escape of fish farmed for aquaculture;

(iv) measures for the prevention of fish diseases;

(*v*) the marketing of fish and fish products of the aquaculture establishment; and

(vi) measures to be taken to minimize the escape of waste products and the pollution of land and water.

PART IX

Fisheries Fund

Establishment of Fisheries Fund

22.—(1) There is hereby established a fund to be known as the Fisheries Fund (in this Act otherwise referred to as the "Fund").

(2) The Fund shall consist of—

(*a*) such sums as shall be appropriated by Parliament for the purposes of the Fund;

(*b*) advances made to the Fund under section 24;

(*c*) such sums or other assets as may be received for the purposes of the Fund by way of voluntary contributions; and

(*d*) payments made into the Fund under sections 40 (5), 45 (4), 50 (9) and 51 (2).

23. The Fund shall be vested in the Minister and, subject to this Act, shall be administered in accordance with his directions subject to the provisions of the Finance and Audit Act. Fund to vest in Minister

Cap. 37:01

24. If in any financial year the income of the Fund together with any surplus income brought forward from a previous year is insufficient to meet the actual or estimated liabilities of the Fund, the Minister responsible for finance may make advances to the Fund in order to meet the deficiency or any part thereof. Advances to the Fund

25. The objects for which the Fund is established shall be the conservation, development, promotion, management and administration of fisheries and fish habitats and to start, operate and expand projects relating to management or conservation of fisheries and fish habitats. Objects of the Fund

26.—(1) Without derogation from the generality of section 25, the Fund may be applied to— Application of the Fund

(*a*) research and training which is calculated to promote proper management of fisheries;

(*b*) the acquisition of land, equipment, materials and other assets and the construction of buildings in order to promote the objects of the Fund;

(*c*) the cost of any scheme which the Minister considers to be in the interest of the management of fisheries;

(*d*) meeting any expenses arising from the establishment and maintenance of the Fund; and

(*e*) any purpose which the Minister considers to be in the interest of the objects of the Fund.

(2) No personal emoluments or pensions of any public officer shall be paid out of the Fund.

27.—(1) The Minister shall cause to be kept proper books and other records of account in respect of receipts and expenditures of the Fund in accordance with the provisions of the Finance and Audit Act. Books and other records of account, audit and reports of the Fund

Cap. 37:01

(2) The accounts of the Fund shall be audited by the Auditor General, who shall have all the powers conferred upon him by the Finance and Audit Act.

(3) The Minister shall cause to be prepared, as soon as practicable, but not later than six months after the end of the financial year, an annual report on all the financial transactions of the Fund. Cap. 37:01

(4) The report under subsection (3) shall include a balance sheet, an income and expenditure account and the annual report of the Auditor General and shall be laid by the Minister before the National Assembly.

28.—(1) All sums received for the purposes of the Fund shall be paid into a banking account and no amount shall be Holdings of the Fund

withdrawn therefrom except by means of cheques signed by such persons as are authorized in that behalf by the Minister.

(2) Any part of the Fund not immediately required for the purposes of the Fund may, on the recommendation of the Board, be invested in such manner as the Minister, after consulting with the Minister responsible for finance, may determine.

Financial year

29. The Financial year of the Fund shall be the period of twelve months ending on 31st March in each year:

Provided that the first financial year of the Fund may be a period shorter or longer than twelve months as the Minister shall determine, but in any case not longer than eighteen months.

PART X

Enforcement

General powers of fisheries protection officers relating to fishing vessels

30.—(1) For the purpose of enforcing this Act, a fisheries protection officer may exercise the following powers with respect to any fishing vessel in the fishing waters—

(*a*) to stop the vessel;

(*b*) to require the master to stop fishing and take the fishing gear of the vessel back on board;

(*c*) to require the master to facilitate the boarding of the vessel by all appropriate means;

(*d*) to go on board the vessel and take with him such other persons as he may require to assist him in the exercise of his powers;

(*e*) to require the master, the crew or any of them to produce, and to examine and take copies of any certificate of registration, licence, official log book, official paper, article of agreement, record of fish caught and any other document relating to the vessel and to the crew or any member thereof or to any person on board the vessel which is in their respective possession or control on board the vessel;

(*f*) to require the master to appear and give any explanation concerning the vessel and any crew or any person on board the vessel and any document mentioned in paragraph (*e*);

(*g*) to make any search, examination or enquiry which he considers to be necessary to determine whether any provision of this Act has been contravened;

(*h*) to arrest and take, or require the master to take the vessel to any place, port or harbour in Malaŵi for the purpose of carrying out any search, examination or enquiry;

(*i*) in the case of any person whom he has reasonable grounds to believe is committing or has committed an offence

against this Act, without summons, warrant or other process, to arrest the suspected offender and take or require the master of the vessel to take the vessel in respect of which he has reasonable grounds to believe that an offence has been committed, together with the crew thereof to a port or harbour in Malaŵi and to bring the crew before a competent court, or to detain the crew and the vessel in Malaŵi until the alleged offence has been tried;

(*j*) having regard to the safety of the vessel, to take steps to immobilize vessel seized, taken or detained in accordance with this section for the purpose of preventing the vessel being taken by any person prior to the release of the vessel under section 38 or 40 by the Court;

(*k*) in the case of any offence against sections 11, 12, or 14 or regulations made under section 61, to seize any vessel together with its equipment, stores and cargo which he believes has been used in the commission of such offence or in respect of which he has reasonable grounds to believe such offence has been committed;

(*l*) to seize any fishing gear, instrument or appliance which he believes has been used in the commission of such offence under sections 11, 12 or 14 or regulations made under section 61;

(*m*) to seize any fish which he believes has been taken or fish product produced in the commission of such offence under sections 11, 12 or 14 or regulations made under section 61; and

(*n*) to seize or take copies of any documents which he believes is relevant to any such offence under sections 11, 12 or 14 or regulations made under section 61.

(2) A fisheries protection officer having reasonable grounds for believing that an offence has been committed against this Act may stop, board and search outside the fishing waters any foreign fishing vessel which he has reasonable belief has been used in the commission of that offence or in relation to which he has grounds to believe such offence has been committed and bring such vessel and all persons, fishing gear, fish and other things on board the vessel into the fishing waters.

(3) In exercising the powers referred to in subsections (1) and (2), a fisheries protection officer may use such force as may be reasonably necessary.

(4) The powers contained in this section may be exercised in respect of a fishing vessel irrespective of whether the vessel is at the time of such exercise engaged in activities or any activity in any way related to fishing.

Powers of inspection

31.—(1) A fisheries protection officer may, for the purposes of determining whether an offence has been committed against this Act—

(*a*) require any person to produce for inspection any licence or permit required to be held by such person under this Act for doing any act or carrying out any activity which the officer sees that person doing or carrying out or believes, on reasonable grounds, to have done or carried out;

(*b*) inspect any fishing gear, fish, fish product, explosive, poison or article in such person's possession; and

(*c*) require such person to furnish his full name and address and to produce adequate means of identification.

(2) A fisheries protection officer may for the purpose of the enforcement of this Act—

(*a*) require any vehicle, aircraft, vessel or other means of conveyance, to stop;

(*b*) enter any vehicle, aircraft, vessel or other means of conveyance, with or without assistance, and inspect the same; and

(*c*) upon an inspection under paragraph (*b*), require the person in charge of the vehicle, aircraft, boat or other conveyance to—

(*i*) produce any manifest or other documents listing cargo on board; and

(ii) answers any question concerning such cargo or any other content of the vehicle, aircraft, boat or other conveyance.

(3) If, upon an inspection under subsection (1) or (2), a fisheries protection officer has reasonable grounds to believe that an offence against this Act is being or has been committed, he may exercise such of the powers provided under section 32 as may be appropriate.

Powers of search, seizure, demolition and arrest

32.—(1) Subject to section 33, a fisheries protection officer may, where he has reasonable belief that an offence is being or has been committed against this Act—

(*a*) enter and search, with or without assistance, any land, building, camp, tent or other premises or any vehicle, aircraft, vessel or other means of conveyance and open and search any baggage, pack or other thing;

(*b*) require any person to produce for inspection or copying, in whole or in part, any record or other document that the officer has reasonable grounds to believe contains any information relevant to the administration of this Act;

(*c*) seize any fishing gear, explosive, poison, chemical, machinery, equipment, vehicle, vessel, pack animal, aircraft or other thing that he has reasonable grounds to believe has been or is being used or possessed in the commission of such offence;

(*d*) seize any fish or fish product which he has reasonable grounds to believe has been, or had been attempted to be,

caught, processed, traded, imported or exported or is possessed in contravention of this Act;

(*e*) demolish any construction, barrier or trap that appears to him to have been erected or constructed contrary to the provisions of this Act or take possession of the same in the name of the Government; and

(*f*) arrest without warrant any person whom he has reasonable grounds to believe is committing or has committed an offence under this Act.

(2) Any fish, fish product, fishing gear, vehicle or other thing that may be seized pursuant to subsection (1) may be so seized whether or not any owner or person in possession or control thereof can be found.

(3) For the purpose of carrying out the powers provided under subsection (1) (*a*), a fisheries protection officer may break open any hold, compartment, container or other receptacle (including any place or thing that could be used as a receptacle) on a vehicle, aircraft, vessel or any premises.

(4) In carrying out a search under this section in any place, a fisheries protection officer may—

(*a*) use or cause to be used any data processing system at the place for the purpose of examining any data contained in or available to the system; and

(*b*) reproduce any record or cause to be reproduced from the data in the form of a printout or other intelligible output and take the printout for examining or copying and use or cause to be used any copying equipment at the place to make copies of any record or other document.

(5) A fisheries protection officer may erect a temporary barrier across any road or place and any person approaching the barrier shall, upon being required by the officer so to do, stop and allow the officer to carry out such search of his person, vehicle, pack animal or baggage as the officer shall consider appropriate:

Provided that such barrier shall conform to specifications laid down by the Director who shall act in consultation with other relevant authorities including more particularly those responsible for roads and road traffic.

Warrant to enter a dwelling place

33.—(1) A fisheries protection officer may not enter a dwelling place except with the consent of the occupier or owner thereof or under the authority of a warrant issued by a magistrate.

(2) When on an ex parte application, a magistrate is satisfied that—

(*a*) there are reasonable grounds to believe that there is in a dwelling place any thing in respect of which this Act applies;

(*b*) entry to the dwelling place is necessary for any purpose relating to the administration of this Act; and

(*c*) entry to the dwelling place has been refused or there are reasonable grounds to believe that entry will be refused,

the magistrate may at any time sign and issue a warrant authorizing the fisheries protection officer named in the warrant to enter and search the dwelling place, subject to any condition that may be specified in the warrant.

(3) A fisheries protection officer may use such force as may be reasonably necessary to execute a warrant under this section.

Fisheries protection officer to give receipt

34. A fisheries protection officer who seizes any fish or other thing under section 30 or 32 shall, where feasible, give a written receipt therefor.

Control of weirs

35.—(1) All fishing weirs shall comply with such dimensions and conditions as the Director shall prescribe.

(2) Where any fishing weir does not comply with dimensions and conditions prescribed under subsection (1), the Director shall, if the owner or person having care and control of it can be found, direct that person to alter the weir so as to comply with such dimensions and conditions.

(3) If a direction given under subsection (2) is not complied with within the time stipulated by the Director or, if no time is stipulated, within a reasonable time after the direction is given or if the owner of the weir or person having care or control of it cannot be found, a fisheries protection officer may enter on such land and destroy the weir or alter it to comply with the prescribed dimensions and conditions.

(4) No compensation shall be payable to the owner of a weir altered or destroyed pursuant to this section.

Powers of fisheries protection officers and convention fisheries officers to enforce conventions

36.—(1) For the purpose of enforcing the provisions of any convention with respect to the conduct or safeguarding of fishing operations to which Malaŵi is a party, a convention fisheries officer may, in relation to a convention fishing vessel, and a fisheries protection officer may, in relation to a local fishing vessel or a foreign fishing vessel, exercise anywhere within the convention area outside the fishing waters the powers under section 30.

(2) This section shall not authorize a fisheries protection officer or convention fisheries officer to do anything not authorized by the convention which he purports to enforce nor authorize him to exercise in relation to a vessel registered in a country which is a party to the convention any power which the government of that country has informed the other parties to the convention is not to be exercised in relation to its fishing vessels.

(3) Any person who, on any fishing vessel within the fishing waters or on a local fishing vessel outside fishing waters—

(*a*) fails without reasonable excuse to comply with any requirement imposed or to answer any question asked by a fisheries protection officer under this section;

(*b*) prevents or attempts to prevent any other person from complying with any requirement imposed or answering any question asked by a fisheries protection officer under this section; or

(*c*) obstructs any fisheries protection officer while exercising any of the powers conferred on him under this section or wilfully obstructs such officer in the exercise of any of those powers,

shall be guilty of an offence and liable to a fine of K20,000 and to imprisonment for four years.

(4) Subsection (3) shall apply in relation to things done on a local fishing vessel in a convention area outside the fishing waters by or in relation to a convention fisheries officer who is exercising powers to enforce the provisions of the convention relating to that area as it applies in relation to things done on any fishing vessel within those limits by or in relation to a fisheries protection officer.

Indemnity

37. No civil or criminal action shall lie against the Director, a public officer, a fisheries protection officer, an honorary fisheries officer, a convention fisheries officer or any other person acting under the authority of the Director in respect of any act done or omitted to be done by him in good faith in the purported exercise of his powers under this Act if there shall have been reasonable cause for such act or omission.

Security for release of a fishing vessel

38.—(1) Where a fishing vessel is arrested, seized or detained under this Act and an information or charge is laid against the master, the owner or the charter of the vessel in respect of the offence for which the vessel has been arrested, seized or detained, the master, the owner or the charterer or the agent of the owner or of the charterer of the vessel may, at any time before the determination of the information or charge, apply to the court before which the information or charge is due to be determined for the release of the vessel on the provision of security in accordance with this section.

(2) Where, on hearing an application pursuant to subsection (1), the Court—

(*a*) is satisfied that reasonable security has been given to the Government in respect of the aggregate of the maximum penalty to which the defendant may be liable and the costs and expenses that the Government may recover under section 46, the Court may order the release of the fishing vessel; or

(*b*) order the release of the fishing vessel on the execution by any suitable person or persons approved by the Court of a reasonable bond in favour of the Government in the prescribed form and conditioned in accordance with subsection (4) in an amount not less than the aggregate of the maximum penalty to which the defendant may be liable and the costs and expenses that the Government may recover under section 46.

(3) Notwithstanding subsection (2), the Court may, where it is satisfied that there are special circumstances to justify it doing so, order that the bond shall be in a specified amount that is less than the amount required by that subsection.

(4) The condition of the bond shall be that if—

(*a*) the defendant is found not guilty of the information or charge; or

(*b*) the defendant, on being convicted of the information or charge, pays in full, within fourteen days after he is convicted, the amount of the fine imposed by the Court and the amount of all costs and expenses due from him to the Government under section 46, the bond shall be of no effect but that otherwise the bond shall remain in full force and effect.

(5) The amount specified in the bond shall be recoverable in full in any court of competent jurisdiction as a debt due to the Government, jointly and severally, by the person or persons by whom the bond is given unless the person or persons prove the due performance of the condition for which the bond was made.

(6) In this section, "fishing vessel" includes all equipment on board or used by a vessel and all fish seized from the vessel under this Act and detained on board the vessel in the custody of the Government.

Disposal of seized fish and other perishables

39.—(1) Where any fish or other thing of a perishable nature is seized in accordance with section 30 or 32 the Director may, notwithstanding any other provision of this Act—

(*a*) return the fish or other thing to the person from whom it was seized on receiving security that is, in the opinion of the Director, adequate for the equivalent value of the fish or thing by way of a bond or other stipulation conditioned for payment of such equivalent value in the event that such amount shall be adjudged by the Court to be forfeited to the Government; or

(*b*) cause the sale of the fish or other thing at its reasonable market value and, if court proceedings are instituted, pay the proceeds of sale into Court pending an order by the Court in respect of the forfeiture or otherwise of the proceeds or, if no proceedings are instituted, release the proceeds to the person from whom the fish or other thing was seized.

(2) Where any live fish is seized in accordance with section 30 or 32 it may be released or destroyed at the discretion of the seizing officer where he considers such act desirable in order to prevent undue suffering to the seized fish or for other good and sufficient reason.

(3) Any live fish of a species listed in Appendix 1 to the *Convention on International Trade in Endangered Species* seized in accordance with section 30 or 32 may not be disposed of so as to become an object of trade.

Persons arrested, etc., to be brought before Court

40.—(1) Any person arrested and, subject to section 39, any vessel, article or thing arrested, detained or seized shall be brought before, or be under the jurisdiction of, a court of competent jurisdiction as soon as it is reasonably possible, but not later than forty-eight hours after the arrest, detention or seizure, or if the period of forty-eight hours expires outside ordinary court hours or on a day which is not a court day, the first court day after such expiry.

(2) Where no prosecution pursuant to subsection (1) is instituted within thirty days of the arrest, any vessel, article or other thing detained or seized when in the possession of or under the control of arrested person or the proceeds of sale thereof shall, subject to section 39 (2), be returned to that person.

(3) Where a person who has been charged with an offence under this Act fails to appear to answer the charge within ninety days, the Director may apply to the Court for the vessel, article or other thing detained or seized in accordance with section 30 or 32 to be forfeited to the Government and the Court shall make such order as it shall consider just.

(4) Subject to subsection (5) and section 39, where a vessel, article or any other thing is detained or seized in accordance with section 30 or 32 and no person is arrested, the vessel, article or thing shall be returned to the owner or the person having possession, care or control of it at the time of detention or seizure.

(5) If the lawful owner of a vessel, article or any other thing detained or seized in accordance with section 30 or 32 cannot be traced within thirty days of such seizure, it shall be forfeited to the Government and, subject to section 39 (3) and otherwise to other provision of this Act, be disposed of as the Director, in his discretion, shall consider fit, and, if disposed by sale, any proceeds of sale thereof shall be paid into the Fund.

(6) Where a vessel, article or any other thing has been detained or seized in accordance with section 30 or 32 and the Court does not order the forfeiture of the vessel, article or other thing, it, or any proceeds realized from its disposal, shall be returned to the owner thereof or the person having the possession, care or control of it at the time of detention or seizure.

(7) Where an owner of a vessel, article or any other thing or a person having possession, care or control of it at the time of its arrest, detention or seizure is convicted of an offence under this Act and a fine is imposed—

(*a*) the vessel, article or thing may be detained until the fine is paid;

(*b*) the vessel, article or thing may be sold in satisfaction of the fine; or

(*c*) any proceeds realized from its disposal under subsections 3 and 5 may be applied in payment of the fine.

PART XI

Prohibitions and Offences

Prohibition of transfer, etc., of fish

41.—(1) No person shall, without a permit granted by the Director—

(*a*) transfer fish from an aquacultural establishment or any other water to any different aquacultural establishment or water;

(*b*) stock any water with fish; or

(*c*) introduce into any water any fish not indigenous thereto.

(2) An application for a permit under subsection (1) shall be made to the Director in the prescribed form and shall be accompanied by the prescribed fees.

(3) Any person who contravenes subsection (1) shall be guilty of an offence.

(4) Where the Director is satisfied that subsection (1) has been contravened, he may cause the fish to be seized and destroyed or otherwise disposed of.

Prohibited fishing methods

42.—(1) No person shall—

(*a*) use any explosive, device capable of producing an electric current, poison or other noxious substance for the purpose of killing, stunning, disabling or catching fish or in any way rendering such fish more easily caught;

(*b*) use any other method of fishing or gear that is unlawful; or

(*c*) carry or have in his possession or control, any explosive, device capable of producing an electric current, poison or other noxious substance, or gear that is unlawful in circumstances indicating an intention of using such explosive, device, poison, noxious substance or gear for the purpose of killing, stunning, disabling or catching fish or in any way rendering such fish more easily caught.

(2) Any unlawful explosive, device capable of producing an electric current, poison or other noxious substance or gear

prescribed under this section found on board any vessel or in the possession or control of any person within the vicinity of any of the fishing waters shall be presumed, unless the contrary is proved, to be intended for the purposes referred to in subsection (1).

(3) Any person who—

(*a*) contravenes subsection (1); or

(*b*) lands, sells, receives or is found in possession of fish knowing or having reasonable cause to believe it to have been taken in contravention of this section,

shall be guilty of an offence and liable to a fine not exceeding K30,000 and to imprisonment for six years.

Pollution, etc., of rivers, streams, lakes or other parts of the fishing waters

43.—(1) No person shall disturb, injure, poison, kill or detrimentally affect any fish, fish spawning ground, including any aquatic plant life or food for fish in any river, stream, lake or other part of the fishing waters by casting, discharging, introducing or allowing to fall, flow or percolate into such waters any sawdust or sawmill refuse, oil, chlorinated hydrocarbon, biocide, pesticide, toxic or any other substance, heavy metal or other material or rubbish which could lie on the bed of such waters.

(2) For purposes of subsection (1), a person shall be considered to discharge any of the substances referred to therein if he places or discharges or causes or permits to be placed or discharged any waste or natural water containing waste in a position where that waste or any other waste emanating as a result of a natural process from that waste is liable to fall or descend into or be washed or percolate into or to be carried by wind, tide or current into any natural water.

(3) Any person who contravenes subsection (1) shall be guilty of an offence.

(4) Any person who has been convicted of an offence under subsection (3) shall be guilty of an offence if he neglects or refuses to remove the material in respect of which the contravention arose within a reasonable time after having been ordered so to do by a fisheries protection officer.

(5) Any person convicted of an offence under this section shall be liable to a fine of not less than K20,000 and not exceeding K1,000,000 and if the offence is a continuing one, to a further fine of K1,000 per day for each day that the offence continues after conviction.

Obstruction, etc., of fisheries protection officers

44.—(1) Any person who—

(*a*) resists arrest or wilfully obstructs a fisheries protection officer in the exercise of his powers under this Act;

(*b*) refuses or neglects to comply with any order, requisition, direction or notice lawfully made or given under this Act;

(*c*) without reasonable excuse fails to—

(i) answer any question asked by a fisheries protection officer; or

(ii) produce anything required to be produced, in pursuance of this Act;

(*d*) subject to section 33, fails to allow a search or inspection under this Act; or

(*e*) prevents or attempts to prevent another person from complying with orders, requisitions or directions or from answering such questions or producing anything or allowing a search or inspection,

shall be guilty of an offence and liable to a fine of K30,000 and to imprisonment for six years.

(2) Any person who—

(*a*) for the purposes of obtaining any licence, permit or registration; or

(*b*) in purported compliance with any requirement to provide any information under this Act,

provides information which he knows to be false in a material particular or recklessly provides information which is false in a material particular shall be guilty of an offence and liable to a fine of K10,000 and to imprisonment for two years.

(3) Any person who, without lawful authority, alters or defaces any registration certificate, licence, permit, return or other document issued, furnished or kept pursuant to this Act shall be guilty of an offence and liable to a fine of K5,000 and to imprisonment for one year.

Offences, penalties and proceedings

45.—(1) Any person who contravenes any provision of this Act for which no offence is specifically provided shall be guilty of an offence.

(2) Any person who is guilty of an offence under this Act for which no penalty is specifically provided shall be liable to a fine of K20,000 and to imprisonment for four years.

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(3) Any regulation made under this Act may, notwithstanding the provisions of section 21 (*e*) of the General Interpretation Act, prescribe a fine of up to K5,000 and imprisonment for up to one year for an offence committed against any provision of such regulation.

(4) Where any person is convicted of an offence under this Act, the Court may, in addition to any other penalty that it may impose, order that any fishing gear, instrument or appliance used in the commission of such offence and any fish on board a fishing vessel or the proceeds of sale thereof, if already sold, be forfeited to the Government and, if so forfeited, be disposed of in such manner as the Director may direct:

Provided that if the disposal is by sale, the proceeds thereof shall be paid into the Fund.

(5) For the purposes of any proceedings under this Act, any fish found on board a fishing vessel shall be presumed to have been caught—

(*a*) within the fishing waters or in an area where the vessel is required to have a licence or permit to fish; and

(*b*) within the vicinity of the vessel at the time the fish is so found where the licence or permit to fish specifying the vessel restricts fishing to a particular area,

unless the contrary is proved.

(6) An attempt to commit an offence under this Act shall itself constitute an offence and may be dealt with in like manner as if the attempted offence had been committed.

(7) Any master who tranships, receives on board a fishing vessel, transports or in any other manner deals with fish caught or transhipped in contravention of this Act shall be guilty of an offence.

(8) Any person who aids, abets, counsels or procures an offence under this Act or conspires to commit such offence shall be guilty of the offence so aided, abetted, counselled or procured or conspired to be committed.

(9) Notwithstanding any law providing for the limitation of time within which proceedings may be commenced, any proceeding in respect of an offence under this Act involving a foreign fishing vessel may be commenced at any time after the commission of the offence.

(10) A certificate signed by the Director or any officer authorized by him to the effect that on a date specified in the certificate—

(*a*) a fishing vessel specified in the certificate was not registered, licensed or specified in a permit under this Act;

(*b*) the accused person or any other named person was not the holder of a licence or permit under this Act; or

(*c*) a person was registered as the owner of a vessel or was the holder of a licence or permit under this Act,

shall, in the absence of proof to the contrary, be sufficient evidence of the matter stated in the certificate.

PART XII

Court Proceedings, Administrative Proceedings and Penalties

Jurisdiction of magistrate's courts

46.—(1) All penalties, costs, expenses, offences and proceedings under this Act may be recovered, prosecuted and taken before a magistrate's court.

(2) In respect of offences under this Act and notwithstanding any other written law to the contrary the magistrate courts are hereby given extended territorial jurisdiction and jurisdiction to impose any penalty provided for under this Act and may award the Government such costs and expenses incurred in relation to the prosecution of charges.

Convention offences

47.—(1) The Minister may by order published in the *Gazette* provide for the enforcement of any restriction or obligation relating to fishing contained in a convention to which Malaŵi is a party.

(2) An order made under subsection (1) may provide for the imposition by a magistrate's court of penalties for contravention of such restrictions and obligations.

(3) Any person who uses a fishing vessel within the fishing waters in contravention of any restriction referred to in subsection (1) shall be guilty of an offence.

Liability of members of companies, etc.

48. Where any offence under this Act is committed by a company or by any member of a partnership, firm or business, society or association of persons, every director or officer of that company or any other member of the partnership or other person concerned with the management of such partnership, firm or business, society or association of persons shall be liable for the offence unless he proves to the satisfaction of the Court that—

(*a*) he used due diligence to secure compliance with this Act; and

(*b*) the offence was committed without his knowledge, consent or connivance.

Forfeiture of licence, permit or registration

49. Upon the conviction of any person of an offence under this Act, the court shall, in addition to any other penalty provided for in this Act, forfeit any licence, permit or registration granted or made under this Act and any fees paid for that licence, permit or registration, and the convicted person shall be ineligible, for a period of three years from the day of the conviction, to holding any such licence or permit or of being so registered under this Act.

Administrative penalties

50.—(1) Where the Director has reasonable grounds to believe that—

(*a*) an offence under this Act has been committed by any person;

(*b*) the offence is of a minor nature; and

(*c*) having regard to the previous conduct of the person concerned and of the vessel, if a vessel is involved, it would be appropriate to impose a penalty under this section,

he may cause a notice, in writing, in accordance with subsection (2) to be served on that person.

(2) A notice under subsection (1) shall be in the prescribed form and shall specify—

(*a*) the nature of the offence and the date of its commission;

(*b*) a summary of the facts upon which the allegation that an offence has been committed is based; and

(*c*) any other matter that the Director considers relevant to the imposition of a penalty,

and shall be endorsed with a statement setting out the provisions of this section.

(3) Any person on whom a notice under subsection (1) is served may, within thirty days after such service, by notice in writing to the Director require that the proceedings in respect of the alleged offence be dealt with by the court or admit the offence.

(4) Where pursuant to subsection (3) a person opts to have the alleged offence dealt with by a court—

(*a*) no further proceedings shall be taken under this section by the Director; and

(*b*) nothing in this section shall be construed to prevent proceedings in respect of the alleged offence to be dealt by the Court or the imposition by the Court of any penalty or forfeiture under this Act upon such conviction in such proceedings.

(5) Where pursuant to subsection (3), a person opts to admit the offence he may, by notice in writing to the Director—

(*a*) admit the offence; and

(*b*) make submissions to the Director as to the matters he wishes the Director to take into account in imposing any penalty under this section.

(6) Where a person on whom a notice under subsection (1) is served does not, within thirty days after the notice is served on him—

(*a*) require that proceedings in respect of the alleged offence be dealt with by the Court; or

(*b*) admit the offence,

he shall, on the expiration of that period, be presumed to have admitted the offence.

(7) Where pursuant to this section a person admits or is presumed to have admitted an offence, the Director may, after taking into account any submissions by the person under subsection (5), impose a monetary penalty on the person in respect of the offence not exceeding one half of the maximum penalty to which the person would be liable if he were convicted of the offence by the Court.

(8) Where the Director imposes a penalty on a person under this section in respect of an offence, the Director shall serve that

person with a notice in writing in the prescribed form of the particulars of the penalty and place where the penalty should be paid.

(9) A person on whom a penalty is imposed under this section shall pay the penalty within thirty days after the notice of the penalty is served on him in accordance with subsection (8) and the penalty shall be paid into the Fund.

(10) Without prejudice to the requirement of subsection (9), a penalty imposed under this section shall be recoverable by the Government from the person on whom it has been imposed in the same manner as a fine is recoverable on conviction of an offence.

(11) Where an offence has been admitted or is presumed to have been admitted under this section no further charge may be laid in respect of the offence against the person who has admitted or is presumed to have admitted the offence.

(12) This section shall not apply—

(*a*) in respect of any offence under section 11 or 12; or

(*b*) to any offence or alleged offence in respect of which a charge has already been preferred.

Detention or forfeiture of fishing vessel on failure to pay fine

51.—(1) If any fine or amount of costs is adjudged to be due by the owner, master or charterer of any fishing vessel in respect of a contravention of any provision of this Act, the Court may, if no security or if it considers that insufficient security has been given to the Government, order that in default of payment the defendant shall give security for the payment of the amount due and if such security is not given, the Court may order the detention of the fishing vessel used in the contravention and such fishing vessel may be detained in Malaŵi until the amount due is paid or sufficient security is given.

(2) If a fine is not paid or security is not given within thirty days of the order of the Court or such longer period as the Court may determine, the Court may order that, in the case of any offence under section 11, 12 or 13 any vessel and equipment used in the commission of the offence shall be forfeited to the Government and, if so forfeited, be disposed of in such manner as the Director may direct:

Provided that if the disposal is by sale, the proceeds thereof shall be paid into the Fund.

PART XIII

International Co-operation in Fisheries

Fisheries access agreements

52.—(1) The Minister may, on the recommendation of the Board, enter into fisheries access agreements with other foreign states providing for allocation of fishing licences to commercial fishermen of such states.

(2) Any agreement entered into under this section shall include a provision establishing the responsibility of the foreign state to take necessary measures to ensure compliance by commercial fishermen from that state with the terms and conditions of the agreement and with the laws relating to fishing in the fishing waters.

Cross-border management

53. For the proper management of cross-border fisheries, the Director may produce management plans which lead to the realization of common fisheries goals in shared bodies of water.

Regional fora

54. Implementation of common plans may be reviewed in bilateral or regional fora, such as Joint Permanent Commissions of Cooperation and the Southern Africa Development Community.

Implementation of agreements

55. The Minister may, on the recommendation of the Board, specify by an order published in the *Gazette*, the measures for the proper implementation of relevant provisions of any agreement on fisheries to which Malaŵi is a party.

PART XIV

Miscellaneous

Applications, fees and charges

56.—(1) All applications under this Act shall be—

(*a*) made in the prescribed manner; and

(*b*) accompanied by all information, including documents required under this Act.

(2) All applications made pursuant to this Act shall be accompanied by the appropriate prescribed fee and all licences, permits, certificates and other documents shall be issued subject to such conditions as shall be endorsed thereon and such other conditions and such fees as may be prescribed.

(3) The Director shall be empowered to levy such charges for services and other actions undertaken by him or on his behalf as shall be prescribed.

Suspension or cancellation of registration, licences or permits

57.—(1) The Director may suspend or cancel any registration, licence or permit made or granted under this Act or amend any of the terms or conditions thereof if—

(*a*) the licencee or person owning the registered vessel has been convicted of an offence under this Act;

(*b*) he is satisfied that the registration, licence or permit was granted in error or on the basis of false or misleading information;

(*c*) he has proof to believe that the holder thereof has contravened any of the conditions to which the registration, licence or permit is subject;

(*d*) he considers that such cancellation or suspension is required for the regulation of fishing or aquaculture, the

conservation or management of fisheries or for the economic benefit of Malaŵi; or

(*e*) so requested by the holder thereof.

(2) The Director may, and in the case of a cancellation or suspension under subsection (1) (*d*) shall, order a refund of part or all of the fee paid for such cancelled or suspended registration, licence or permit.

(3) The Director shall, within fourteen days of a suspension, cancellation or variation of conditions under this section, notify the holder of the registration or the licencee, as the case may be, in writing, of such suspension, cancellation, variation and he shall give reasons therefor.

Appeals against suspension, cancellation or variation of registrations, licences or permits

58.—(1) Where a registration certificate, licence or permit has been suspended, cancelled or varied under section 57, the person aggrieved by such suspension, cancellation or variation may appeal in writing to the Minister within thirty days.

(2) Any person who, having appealed to the Minister under subsection (1), is aggrieved by the decision of the Minister may, within thirty days thereof, apply to the High Court for judicial review of the decision of the Minister.

Fishing districts and district fees

59.—(1) For the purposes of the issue of licences and permits, the levying of licence and permit fees and the administration and expenditure of the district fees provided for in subsection (2), the Director may, from time to time, by notice published in the *Gazette* designate fishing districts and may in like manner alter or rescind any fishing district.

(2) Fees prescribed pursuant to this Act, whether for licences, permits or for any other matter, may include, in addition to a fee payable to the Government, a district fee to be collected by the Director at the same time and in the same manner as the fee payable to the Government.

(3) District fees shall be used for the benefit of the people in the fishing district in respect of which the licence, permit or other matter for which the fee was paid relates.

(4) District fees shall be administered in such manner as shall be prescribed.

Statistical information

60.—(1) The Director may, prior to the registration of a local fishing vessel or the issue of a fishing licence, require the applicant to provide him with such statistical information concerning fishing as he may direct.

(2) The Director shall have power to require commercial fishermen and persons owning or working on local fishing vessels and fish wholesalers and retailers and proprietors of catering establishments to make returns in such form as he may decide and at such periods as may

be prescribed of all fish which are caught, landed, bought or sold by them.

61.—(1) The Minister may, on the recommendation of the Board, make regulations for the better carrying into effect of the purposes of this Act. Regulations

(2) Without prejudice to the generality of subsection (1), the regulations may provide for—

(*a*) anything which is to be or may be prescribed under this Act;

(*b*) the conservation; management and protection of fish resources, including the establishment of closed areas and close seasons, the prescription of the limits on the amounts, sizes and weights of fish caught, retained or traded, the prescription of mesh sizes of nets, the control of use of types of fishing gear and the attachment of identification marks thereto, the control and prohibition of methods of fishing and the protection of fish stocks and their habitats from the actual or potential effects of pollution or siltation or from the actual or potential effects of measures taken to eliminate or control pollution or siltation;

(*c*) measures to protect fish breeding grounds from damage caused by specific fishing methods or the clearing or collection of aquatic plants;

(*d*) the manner of and conditions for recognition by the Government of associations and other bodies that represent fishermen or fish traders;

(*e*) the prescribing of fish for which a licence to fish shall be required by persons other than commercial fishermen;

(*f*) the licensing of any kind of fishing including any activity related to fishing;

(*g*) the regulation of recreational and subsistence fishing including restrictions on the amount of fish that may be caught;

(*h*) a quota or total allowable catch for any fish or in respect of any method of fishing in any part of the fishing waters and authorizing the Director to allocate any such quota or total allowable catch to such commercial fishermen as he may specify by notice published in the *Gazette*;

(*i*) the different categories of commercial, amateur, recreational or other fishing licences;

(*j*) the regulation of the import and export of live fish and fry, eggs and spawn thereof;

(*k*) the promotion and control of the cultivation of fish, including the issue by the Director of a code of practice for the maintenance and operation of aquaculture establishments;

(*l*) the regulation of the landing of fish, including the designation of landing places and the control of the handling and transportation of fish and fish products;

(*m*) the licensing of fish processing establishments;

(*n*) the regulation of the export and import of fish and fish products;

(*o*) the control of quality standards and grading of fish sold, exported or imported and the making of rules by the Director in respect thereof;

(*p*) the payment of fees on applications for permits, licences and registrations and on the issue of permits, licences or registrations;

(*q*) the conditions and procedures of applications for any licences, permits or other documents and their forms;

(*r*) the appointment of local agents for foreign commercial fishermen;

(*s*) the placing of observers on fishing vessels;

(*t*) the provision by applicants for licences and licencees of bonds or other forms of security for securing their compliance with the obligations under and the terms and conditions of their licences;

(*u*) reports to be made for the purposes of this Act;

(*v*) compliance with and the implementation of obligations of Malaŵi under any convention and may include the application to convention vessels of any of the provisions of this Act which do not relate exclusively to foreign fishing vessels with any necessary modifications to provisions relating to any matters, including qualifications for ownership of fishing vessels; and

(*w*) the establishment of local fisheries committees to which the Director, in his discretion, may delegate some powers.

Repeal and savings Cap. 66:05

62.—(1) The Fisheries Act is repealed.

(2) Any subsidiary legislation made under the Fisheries Act repealed by subsection (1), in force immediate before the commencement of this Act—

(*a*) shall remain in force unless in conflict with this Act, and shall be deemed to be subsidiary legislation made under this Act; and

(*b*) may be replaced, amended or repealed by subsidiary legislation made under this Act.

Transitional Cap 66:05

63.—(1) Subject to subsection (3), every licence, permit and authority granted or issued under the Fisheries Act shall continue to have effect until the expiry thereof in accordance with the terms thereof.

(2) Every local fishing vessel shall be deemed to be registered for the purposes of this Act for thirty days from the coming into

force of the Act and thereafter a fishing vessel shall be considered to be registered for the purposes of this Act until the vessel is registered or registration is refused pursuant to this Act provided that application for registration has been made within thirty days of the coming into force of the Act for the registration of the vessel under the Act.

(3) Where an owner of a fishing vessel fails to apply for registration within thirty days of the coming into force of this Act or is refused registration of the vessel a person permitted to fish under subsection (1) who is using the vessel shall within fourteen days of such refusal or within forty-four days of the coming into force of this Act, where the owner fails to apply, cease to use such vessel.

(4) A person who is operating an aquacultural establishment when by regulations made under this Act he is required to obtain a permit for such establishment shall be considered to be licensed to operate the establishment for thirty days from such regulations coming into force and thereafter until such permit is granted or refused provided that application has been made for such permit within thirty days of the coming into force of the regulations.

SUBSIDIARY LEGISLATION

G.N. 26/2000

FISHERIES CONSERVATION AND MANAGEMENT (LOCAL COMMUNITY PARTICIPATION) RULES

under s. 59

PART I

Preliminary

Short title

1. These Rules may be cited as the Fisheries Conservation and Management (Local Community Participation) Rules.

Interpretation

2. In these rules, unless the context otherwise requires—

"Committee" means a Beach Village Committee;

"fishing industry" includes fishing, fish processing, fish marketing and fish trading;

"subcommittee" means a subcommittee of a Beach Village Committee formed pursuant to rule 8;

PART II

Beach Village Committees

Formation of Committees

3. Persons engaged in fishing in a particular fishing beach may form a Committee.

Jurisdiction of a Committee

4.—(1) The jurisdiction of a Committee shall be over one particular beach.

(2) Where two or more Committees have competing jurisdiction over a beach, the Director shall determine the respective jurisdictions of the Committees.

Objects of Committees

5. The object of Committee shall be to participate in the conservation and management of fisheries resources.

Duties of Committees

6.—(1) A Committee shall have the responsibility for the conservation and management of fisheries resources within its area of jurisdiction.

(2) Without derogating from the generality of the provisions of subrule (1), a Committee shall have power to—

(*a*) scrutinize applications in respect of registration of fishing vessels of small-scale commercial fishermen and subsistence fishermen;

(*b*) scrutinize applications for fishing licences by small-scale commercial fishermen and subsistence fishermen;

(*c*) keep records of vessels registered and licences issued in respect of its area of jurisdiction;

(*d*) enforce fishing regulations pertaining to—

(i) fish species;

(ii) fish size;

(iii) close season;

(iv) fish sanctuaries (closed areas);

(*v*) gear size, type and stowage thereof; and

(vi) methods of fishing;

(*e*) enforce conditions specified in licences; and

(*f*) seize fishing vessels and fishing gears which are reasonably believed to have been used in contravention of the Fisheries Conservation and Management Act:

Provided that the seized item shall be surrendered to a fisheries protection officer within 48 hours after the seizure.

(3) For purposes of paragraphs (*a*) and (*b*) of subrule (2), the Director shall afford a Committee an opportunity to be heard in respect of applications relating to its area of jurisdiction.

Composition of a Committee

7. A Committee shall consist of persons who are engaged in any aspect of fishing industry associated with a fishing beach.

Subcommittees

8. For the proper management of the affairs of a Committee, each Committee shall form a subcommittee which shall consist of the following office bearers—

(*a*) chairperson;
(*b*) vice-person;
(*c*) secretary;
(*d*) vice-secretary;
(*e*) treasurer;
(*f*) vice-treasurer;
(*g*) five subcommittee members.

Honorary fisheries officers Cap. 66:05

9. The office bearers of a subcommittee shall be appointed honorary fisheries officers under section 4 (1) of the Fisheries Conservation and Management Act.

Constitution of Committee

10.—(1) A Committee shall adopt a constitution by which the operations of the Committee shall be governed.

(2) A constitution of a Committee shall contain, *inter alia,* particulars pertaining to matters set out in the First Schedule.

PART III

Registration of Local Vessels

Registration of local fishing vessels

11. An owner of a local fishing vessel who intends to use the vessel for small-scale commercial or subsistence fishing shall apply to the Director for registration of the vessel through the Committee having jurisdiction over the beach in which he intends to do the fishing.

Register of local fishing vessels

12. A Committee shall keep a register of local fishing vessels registered to fish within its area of jurisdiction.

Suspension or cancellation of licences Cap. 66:05

13. A Committee may recommend to the Director that he should suspend or cancel any registration or licence made or granted under the Fisheries Conservation and Management Act or amend any of the terms or conditions thereof if—

(*a*) the licensee or person owning the registered vessel is in breach of these Rules;

(*b*) the Committee is satisfied that the registration or licence was made or granted in error or on the basis of false or misleading information;

(*c*) the Committee has reason to believe that the holder of the registration or licence has contravened any of the conditions to which the registration or licence is subject; and

(*d*) the Committee considers that such suspension or cancellation is required for the conservation and management of fisheries resources or economic benefit of Malaŵi.

Reports to the Director

14. A committee shall every three months provide to the Director—

(*a*) a copy of its register of local fishing vessels; and

(*b*) a report on any new registration.

PART IV

Fishing Licences

Fishing prohibited without authority

15. No person shall fish in fishing waters falling within the jurisdiction of a Committee unless he is authorized to do so by a licence or written authority of a Committee.

Application for a licence

16. Written authority of a Committee under rule 15 shall be in the form set out in the Second Schedule.

Large-scale commercial fishing prohibited

17. Unless expressly authorized by the Director in writing, large-scale commercial fishing within the areas of the jurisdiction of a Committee is prohibited.

PART V

Fishermen's Association

Formation of fishermen's association

18.—(1) Committees may form fishermen's associations.

(2) Fishermen's association shall be required to have legal personality.

Coverage of a fishermen's association

19. Subject to the Director determining otherwise, the area of a fishermen's association shall be the same as that of the corresponding fishing district.

Duties of fishermen's association

20. The duties of a fishermen's association shall include—

(*a*) representing the interests of the fishing population in its area; and

(*b*) conveying to the Board and the Director its recommendations on the conservation and management of fisheries resources.

Consultations on fishing plans, regulations, etc.

21. Except where it is unnecessary or impracticable to do so, management plans, regulations and any other subsidiary legislation related to the conservation and management of fisheries resources shall not be made nor amended unless the Director provides fishermen's associations with the proposed management plans regulations or and other subsidiary legislation or amendments thereto, as the case may be.

Meetings with the Board and Director

22. A fishermen's association or a group of fishermen's associations may request meetings with the Board and the Director to discuss management plans, regulations or any other subsidiary legislation or amendments thereto as the case may be.

Composition of a fishermen's association

23. A fishermen's association shall consist of persons who are engaged in any aspect of fishing industry associated with the area covered by the association.

Selection of office bearers

24. For the proper management of its affairs, a fishermen's association shall have office bearers who shall be selected from the members of the association.

Honorary fisheries officers Cap. 66:05

25. The office bearers of a fishermen's association shall be honorary fisheries officers under section 4 of the Fisheries Conservation and Management Act.

Constitution of fishermen's association

26.—(1) A fishermen's association shall adopt a constitution by which the operations of the association shall be governed.

(2) A constitution of a fishermen's association shall contain, *inter alia*, particulars pertaining to matters set out in the Third Schedule.

FIRST SCHEDULE (reg. 10 (2))

Constitution of a Village Beach Committee

Article 1: Name and address
Article 2: Objects
Article 3: Area of jurisdiction
Article 4: Membership of Committee
Article 5: Meetings of Committee
Article 6: Office bearers
Article 7: Duties and responsibilities of office bearers
Article 8: Meetings of office bearers
Article 9: Funding
Article 10: Fiscal year
Article 11: Amendment

SECOND SCHEDULE (reg. 16)

Authority to Fish within the Jurisdiction of a Committee

I. ..... Chairman/Secretary of .....

(*name of Committee*)

hereby certify that ..... is hereby authorized to fish in fishing waters falling within the jurisdiction of the above-named Committee.

Date: ....

Signature of Chairman/Secretary

THIRD SCHEDULE (reg. 26 (2))

Constitution of a Fishermen's Association

Article 1: Name and address
Article 2: Objects
Article 3: Area to be covered by the Association
Article 4: Membership of Association
Article 5: Office bearers
Article 6: Duties and responsibilities of office bearers
Article 7: Meetings of office bearers
Article 8: Funding
Article 9: Fiscal year
Article 10: Amendment

FISHERIES CONSERVATION AND MANAGEMENT REGULATIONS

G.N. 32/2000
8/2003
17/2011

under s. 61

PART I
Preliminary

1. These Regulations may be cited as the Fisheries Conservation and Management Regulations. Short title

2. In these Regulations, unless the context otherwise requires— Interpretation

"area" means any expanse or any part of the course of any fishing waters, as the case may be, which is specified and delineated for the purposes of these Regulations in accordance with directions in that behalf contained in the First Schedule;

"beach seine net" means a fishing net partly or wholly operated from a beach or shore;

"bottom trawl net" means a trawl net which when in operation has a part of it touching the bed of a lake or river;

"Chambo" means any fish of the genus *Oreochromis* of the sub genus *Nyasalapia* and of the species *squamipinnis*, *saka lidole* and *karongae*;

"chirimila net" means a partially encircling fishing net used in Lake Malaŵi to catch Utaka (*Copadichromis species*) or Usipa (*Engraulicypris sardella*);

"cod end" means the end part of a fishing net which is usually closed during fishing and is capable of holding fish while in the water;

"gill net" means any static or drifting fishing net which is used to catch fish by enmeshing or entangling them;

"headline" means any rope or line which when a fishing net is in use or lies normally in the water is attached to the upper part of the net and, in the case of a moving net, the leading edge of that upper part;

"headline length" means the length of the upper part of any fishing net as mounted or attached to the foot ropes;

"kauni" means a chilimira net which has been modified to fish for Chambo (*Oreochromis*) at night;

"licensee" means a person to whom a fishing licence or a permit has been granted under these Regulations;

"licensed foreign fishing vessel" means a foreign fishing vessel specified in a commercial fishing licence granted to a non-resident of Malaŵi;

"Lower Shire Area" means that part of the Shire River below Kapichira Falls to the Mozambique border and its associated waters;

"midwater trawl net" means a trawl fishing net which when in use does not touch the bed of a lake or river;

"mile" means an international nautical mile or 1,852 metres;

"net" means a fabric of rope, cord, twine or any other material knotted or woven into meshes and designed or fitted to catch fish;

"nkacha net" means an open water seine net with a foot rope that is weighted to the bottom when in operation;

"Register" shall mean the Register of local fishing vessels kept by the Director pursuant to regulation 11;

"registered fishing vessel" means a local fishing vessel registered under regulation 11;

"registration certificate" means a certificate of registration of a fishing vessel issued under regulation 11;

"ring net" means a seine fishing net used for offshore fishing;

"seine net" means a net used for catching fish by surrounding them;

"trawl net" means any fishing net or part thereof that is used by being drawn over the bed of any waters or through any waters by one or more vessels or mechanical devices;

"Upper Shire River" means that part of the Shire River between Lake Malaŵi and Lake Malombe.

PART II
Administration

Identity cards for fisheries protection officers

3.—(1) The Director shall cause each fisheries protection officer to be issued with an identity card in a form approved by the Director.

(2) Where a person in possession of an identity card issued to him under subregulation (1) ceases to be a fisheries protection officer, he shall forthwith surrender the identity card to the Director.

(3) A fisheries protection officer shall, when practicable and if so requested produce his identity card when exercising any powers under sections 30, 31, or 32 of the Act.

PART III

General Provisional Relating to Registrations, Licences and Permits

Application for registration, licence or permit

4.—(1) An application for registration of a local registrable fishing, vessel or a renewal thereof shall be made to the Director not less than thirty days before the registration or renewal is required to come into effect or at such later time as the Director shall allow.

(2) An application for a local fishing licence or a renewal thereof shall be made to the Director not less than thirty days before the licence or renewal is required to come into effect or at such later time as the Director shall allow.

(3) Subject to regulation 5, an application—

(*a*) shall be signed;

(*b*) shall contain or be accompanied by all the information, including documents, required under the Act;

(*c*) shall contain any other information required by the Director; and

(*d*) may be made by the applicant or his duly authorized agent.

(4) An application for registration of a local registrable fishing vessel or a renewal thereof shall be in the form set out in the Second Schedule.

(5) An application for a local fishing licence or a renewal thereof shall be in the form set out in the Third Schedule.

Assistance in completing applications

5.—(1) A person who has difficulty with reading or writing or in understanding a form provided for under regulation 4 (1) shall, on request, be entitled to receive assistance from a fisheries officer in the completion of such form.

(2) A fisheries officer who gives assistance pursuant to subregulation (1) shall ensure that the applicant to whom he gives such assistance is fully aware of the statements made on his behalf in the application.

(3) Where an application has been completed pursuant to this regulation, the applicant shall sign or place his mark or thumbprint where provision is made for the signature of the applicant and the assisting fisheries officer shall countersign the document and clearly state his name and office and give the date of the counter signature.

(4) Where an application has been completed pursuant to this regulation, the applicant shall sign a statement to the effect that—

(*a*) the application was translated for him; and

(*b*) he understood the effect of the information on the application and the interpretation.

(5) Statements made in an application completed pursuant to this regulation shall, unless the contrary is proved, be statements made by the applicant, for the purposes of the Act.

Conditions applicable to all registrations, licences and permits

6.—(1) No registration shall be made or licence or permit granted or any registration, licence or permit renewed under these Regulations unless—

(*a*) an application has been made in accordance with these Regulations; and

(*b*) any information requested by the Director relevant to the operation of the relevant fishing vessel or to fishing by the applicant has been provided in the manner requested.

(2) The registration of a vessel or the grant of a licence or permit pursuant to these Regulations shall be within the discretion of the Director.

Registration certificates and licences and permits to be produced for inspection

7. The owner named in registration certificate and a licensee shall keep the certificate licence or permit in a legible condition and shall produce it for inspection within a reasonable time of a request from a fisheries protection officer or, if the conditions of a licence or permit so provide, shall produce the licence or permit immediately on such request.

Transfer of registration of local fishing vessel and commercial fishing licence

8.—(1) Except as provided under subregulation (2), a commercial fishing licence or registration of a local fishing vessel shall not be transferable.

(2) Where the Director is satisfied that the owner of a registered fishing vessel or the licensee of a commercial fishing licence, being an individual, has—

(*a*) died; or

(*b*) become incapacitated from carrying on using his vessel or fishing,

he shall transfer the registration of the vessel or the fishing licence to the member of the family of the owner of the vessel or the licensee either notified in the application under regulation 4 and endorsed on the registration certificate or the fishing licence or named, in the case of paragraph (*a*), by the surviving spouse or, in the case of paragraph (*b*), by the owner of the vessel or the holder of the licence.

(3) "A member of the family" for the purposes of this regulation means a spouse, child or spouse of a child of the owner of the vessel or licensee or next of kin identified in accordance with the customs of the community of the owner of the registered vessel or licensee.

PART IV

Registration of Local Fishing Vessels

Registrable fishing vessels

9. A local fishing vessel that is used for commercial fishing or is intended to be used for such fishing shall be a registrable vessel.

Specific conditions for registration of local fishing vessels

10.—(1) No local fishing vessel shall be registered or have its registration renewed unless—

(*a*) in circumstances where the Inland Waters Shipping Act requires that the vessel be issued with a certificate of survey, an appropriate certificate has been issued; and Cap. 71:01

(*b*) the Director is satisfied that the vessel is a local fishing vessel as defined in section 2 of the Fisheries Conservation and Management Act. Cap. 66:05

(2) For the purpose of deciding whether a vessel is a local fishing vessel as defined in the Fisheries Conservation and Management Act— Cap. 66:05

(*a*) a person shall be considered to be ordinarily resident if he has resided in Malaŵi for a period of not less than eighteen months during the period of two years preceding the application for registration and the Director is satisfied that he is likely to continue to reside in Malaŵi; and

(*b*) a company or any other incorporated body shall be considered to be controlled by one or more persons if, in the opinion of the Director, not less man seventy-five per cent of the votes are controlled by that person or persons at meetings of the company or incorporated body.

Registration of local fishing vessels

11.—(1) The Director on receipt of an application for registration of a local fishing vessel and on being satisfied that the Act has been complied with and having decided in his discretion to register such vessel shall enter in the register kept for that purpose—

(*a*) the name, if any, of the vessel;

(*b*) the number assigned to the vessel pursuant to subregulation (3);

(*c*) the name and address of the owner;

(*d*) the name and address of a person nominated by the applicant as the successor of the applicant to registration for the purposes of regulation 18; and

(*e*) such other particulars as the form of application shall require to be given for the purpose of registration.

(2) Notwithstanding subregulation (1), no entry in the register of fishing vessels shall confer, take away or in any way affect any title to or any interest in the fishing vessel.

(3) The Director shall, when he registers a vessel, assign to it a registered number which shall be recorded in the register and shall issue to the owner of the vessel a certificate of registration of the vessel.

(4) The number referred to in subregulation (3) shall be placed on the vessel in such place and in such manner as the Director shall notify the owner of the vessel.

(5) A registration of a fishing vessel shall be subject to such conditions as may be endorsed on the register and the registration certificate.

(6) There shall be issued in respect of a fishing vessel entered in a register under subregulation (1) a registration certificate which shall be in the form set out in the Forth Schedule.

Change of name of a local fishing vessel

12.—(1) After the registration of a local fishing vessel, no change of the name, if any, of the registered fishing vessel shall be made without the authority in writing of the Director given after application by the owner and upon the Director being satisfied that the application is made on reasonable grounds.

(2) An application for change of name of a vessel under subregulation (1) shall be in a form set out in the Fifth Schedule.

Notification of charter, lease or demise, loss or irreparable damage to a registered local fishing vessel

13.—(1) Where any registered fishing vessel is chartered, leased or demised to any person, the person recorded in the register as the owner of the vessel shall within seven days of such charter, lease, or demise notify the Director in writing of the name and address of the person to whom the vessel has been chartered, leased or demised and shall deposit a copy of the charter, lease or demise document and the registration certificate with the Director.

(2) The owner of a registered fishing vessel shall inform the Director of the loss or destruction of or irreparable damage to a registered fishing vessel within seven days of such loss, destruction or damage.

(3) Upon notification under subregulation (1), the Director shall enter in the Register the name and address of the person to whom the vessel has been chartered, leased or demised.

(4) If the registration of the registered fishing vessel has not been revoked under regulation 16, the owner shall within seven days of the expiry or termination of the charter, lease or demise referred to in subregulation (1) notify the Director in writing of such expiry or termination.

Termination and revocation of registration of a local fishing vessel

14.—(1) Subject to subregulation (2) and regulation 10, the registration of a registered fishing vessel shall terminate on the death of the person registered as the owner of the vessel or on the liquidation of a corporate body registered as the owner.

(2) The Director may revoke the registration of any registered fishing vessel where he is satisfied that—

(*a*) the registration was granted in error or based on misleading information;

(*b*) the vessel has ceased to be a local fishing vessel; or

(*c*) the vessel has been lost, destroyed or damaged beyond repair.

Notification of change of address and other matters

15. Within thirty days of any change of address or change on any other matter or particular contained in the form of application for registration or renewal of registration of a local fishing vessel and entered in the register under regulation 11(1), the registered owner shall give notification in writing thereof to the Director.

No alterations to registration certificates and replacements

16.—(1) No person, other than the Director, shall alter, make illegible or deface a registration certificate or a replacement registration certificate.

(2) Where a registration certificate is lost, destroyed or so damaged as to make it illegible, the owner of the certificate shall apply to the Director for a replacement certificate.

(3) An application for a replacement certificate under subregulation (2) shall be in a form set out in the Sixth Schedule.

PART V

Local Fishing Licences

Categories of local fishing licences

17. There shall be the following local fishing licences—

(*a*) commercial fishing licence;

(*b*) sport fishing licence; and

(*c*) subsistence fishing licence.

Commercial fishing licences

18.—(1) A commercial fishing licence shall authorize the person named therein to undertake commercial fishing personally.

(2) A commercial fishing licence shall be in the form set out in the Seventh Schedule.

(3) There shall be the following sub-categories of commercial fishing licence—

(*a*) large-scale commercial fishing licence;

(*b*) small-scale commercial fishing licence; and

(*c*) live fish collection commercial fishing licence.

(4) A large-scale commercial fishing licence shall be required by a commercial fisherman who intends to use a fishing vessel powered by an engine or engines with a total capacity of not less than 20 horsepower and a person to whom such a licence is granted shall be a large-scale fisherman for the purposes of the Act.

(5) A small-scale commercial fishing licence shall be required by a commercial fisherman who intends to use a fishing vessel powered by an engine or engines with a total capacity of less than 20 horsepower or intends to use a fishing vessel with no engine power and a person to whom such a licence is granted shall be a small-scale fisherman for the purposes of the Act.

(6) A person who intends to fish for live fish for sale or for the purposes of aquaculture shall require a live fish collection commercial fishing licence.

(7) Notwithstanding regulation 4 (1), an application for a licence under subregulation (5) shall be made not less than sixty days before me licence is required.

Specific conditions on issue or renewal of commercial fishing licence

19. No commercial fishing licence shall be granted or renewed unless—

(*a*) any vessel intended for use by the applicant has been registered under regulation 11;

(*b*) the Director is satisfied that the applicant is a commercial fisherman; and

(*c*) the Director is satisfied that the applicant, being a natural person, is ordinarily resident or, being a body established or incorporated under the laws of Malaŵi is controlled by one or more persons ordinarily resident within Malaŵi within the meaning of regulation 10 (2).

Period of validity of commercial fishing licence and conditions

20.—(1) Every commercial fishing licence shall, unless therein otherwise provided, expire one year next following the date of its being issued.

(2) A commercial fishing licence shall stipulate—

(*a*) the fishing gear that may be used by the licensee;

(*b*) the number of units of fishing gear that the licensee may use at any one time whether in one area or a number of areas; and

(*c*) the number of fishing vessels that may be used by the licensee.

(3) A commercial fishing licence shall be subject to further conditions relating to quantities of species of fish that may be caught, by-catches, fishing gears and fishing methods, areas of fishing, times of fishing and such other conditions as may be attached to or endorsed on the licence.

Sport or subsistence fishing licences

21.—(1) A person who fishes for sport or subsistence shall require a licence to fish if that person fishes—

(*a*) for a species of fish declared under these Regulations, or by the Director by notice published in the *Gazette*, to be a controlled species of fish; or

(*b*) using fishing gear declared by the Director by notice published in the *Gazette* to be controlled fishing gear.

(2) An applicant for a sport fishing licence need not be a resident of Malaŵi but he shall specify any vessel not registered or based in Malaŵi intended for use under the authority of the licence.

(3) A person who fishes for subsistence fishes in order to provide, without payment therefor, food for himself and persons dependent on him including members of his community.

(4) No sport or subsistence fishing licence shall be granted or renewed unless the Director is satisfied that the applicant is not intending to engage in commercial fishing under the licence.

(5) No subsistence fishing licence shall be granted or renewed unless the Director is satisfied that the applicant is ordinarily resident in Malaŵi within the meaning of regulation 10 (2).

(6) Regulation 20 shall apply to sport and subsistence licences except that shorter licence periods may be applied to fishing for specific species of fish.

(7) Sport and subsistence fishing licences shall not be transferable.

(8) A sport and subsistence fishing licence shall be in the form set out in the Eighth Schedule.

Trout fishing

22.—(1) Rainbow trout is declared to be a controlled species of fish for the purposes of these Regulations.

(2) The conditions contained in the Ninth Schedule shall apply to sport licences in respect of trout fishing.

PART VI

Foreign Fishing Licences

Categories of foreign fishing licences

23. Foreign fishing licences shall be limited to commercial licences of which there shall be the following categories—

(*a*) large-scale foreign fishing licence; and

(*b*) small-scale foreign fishing licence.

Application for a foreign fishing licence

24.—(1) An application for a foreign fishing licence shall be made to the Director in respect of a specified foreign fishing vessel in the form set out in the Tenth Schedule not less than sixty days before the licence is required to come into effect.

(2) An application under subregulation (1) may be limited to persons using vessels registered in or coming from a flag state which has been accorded fishing rights under an agreement between the Government and the government of that state or a competent regional organization in accordance with section 52 of the Act.

(3) An application under subregulation (1)—

(*a*) shall be signed;

(*b*) shall contain or be accompanied by all the information, including documents, required under the Act;

(*c*) shall contain any other information required by the Director; and

(*d*) may be made by applicant or his duly authorized agent.

(4) The Director may, if he considers that an application made under this regulation contains false or misleading information, refuse to grant a licence to the applicant.

(5) A foreign fishing licence shall be in the form set out in the Eleventh Schedule.

Non-transferability of foreign fishing licence and conditions

25. Subject to regulation 27, a foreign fishing licence granted in respect of a foreign fishing vessel shall not be transferable and shall be subject to conditions relating to the quantities of species of fish that may be caught, by-catches, fishing gears and fishing methods, areas of fishing, times of fishing and such other matters as the Director shall consider appropriate and as may be attached to or endorsed on the licence.

Period of validity of foreign fishing licence

26. Every foreign fishing licence shall, unless therein otherwise provided, expire one year next following the date of its being issued.

Exchange of foreign fishing licences

27. A licence of a foreign fishing licence may, at the discretion of the Director, surrender a foreign fishing licence in exchange for another fishing licence specifying another foreign fishing vessel of no greater size and of similar characteristics to those of the vessel specified in the original licence valid for the balance of the period for which the licence being surrendered is valid.

PART VII

Cooperation by Fishing Vessels with Government Authorities

Assistance to and provision of accommodation and facilities for observers and fisheries protection officers

28.—(1) The master of a fishing vessel shall, when in the fishing waters and when requested to do so by the Director, permit and assist observers to board and remain on board the vessel for the purpose of recording scientific data and other observations and permit them to retain and remove any samples and records that they may have been taken.

(2) When an observer is on board a fishing vessel and he remains on board for a period of more than four hours, the master of the vessel shall, if the vessel has the requisite facilities, provide the observer with suitable food and accommodation at no cost to the observer or to the Government.

(3) The master of a fishing vessel shall, if the vessel has the requisite facilities, provide suitable food and accommodation to any fisheries protection officer forced by circumstances to stay on his vessel for a period of more than four hours.

(4) The master shall—

(*a*) if his vessel has such equipment, at the request of a fisheries protection officer or observer allow him to send or receive messages by means of the communications equipment of his vessel;

(*b*) at the request of a fisheries protection officer or an observer proceed to the nearest and most convenient place for the purpose of embarking or disembarking the officer or observer; and

(*c*) provide all other reasonable protection assistance within his power to enable a fisheries protection officer or observer to carry out his duties and functions.

(5) No person shall forcibly remove, assault, oppose, impede, intimidate or interfere with a fisheries protection officer or observer when on board a fishing vessel.

Licence to be carried on foreign fishing vessel and to be available for inspection

29. The master of a licensed foreign fishing vessel shall, when in the fishing waters, carry and make available for inspection by any fisheries protection officer the licence to fish specifying that fishing vessel.

Compliance with instructions from patrol vessels

30.—(1) The master of a fishing vessel within the fishing waters shall comply with any instruction or order given from a Government patrol vessel.

(2) A fishing vessel intended for inspection shall be informed of the intention by a Government patrol vessel normally by voice communication or, where such voice communication is not practicable, by a series of flashing white lights directed towards the vessel whereupon the master of the fishing vessel shall stop carrying out his present activity and cause his vessel to follow the patrol vessel or allow boarding, as the case may be.

PART VIII

Stowage of Gear, Identification Marks and Protection of Fixed Gear

Requirements to display identification markings, lights and shapes

31.—(1) Each registered local fishing vessel and each licensed foreign fishing vessel shall at all times when in the fishing waters display identification markings in accordance with the conditions of registration or of the licence, as the case may be.

(2) Every vessel engaged in fishing in the fishing waters shall display such lights and shapes for the activity in which the vessel is engaged as are stipulated in notices issued by the Director and published in the *Gazette*.

(3) In the fishing waters, all fishing gear which is not physically attached to a fishing vessel shall be marked permanently with the identification markings of the vessel to which it belongs or if it does not so belong the fishing licence number of the owner of the gear and its position shall be reported by the person using it to the Director.

(4) All static fishing gear, including fixed long lines, left unattended in the fishing waters shall be adequately marked by buoys, lights or other effective devices so as to indicate its presence by day or night in accordance with notices issued by the Director and published in the *Gazette*.

(5) Fishing vessels engaged in line shooting or trawling, including pair trawling, shall display or use such shapes, signals or markers as shall be stipulated in notices issued by the Director and published in the *Gazette*.

Protection of fixed gear

32.—(1) The master of any vessel in the fishing waters shall take all reasonable measures to avoid causing damage to static fishing gear marked in accordance with regulation 31, pot marks, floating gear and traditional fishing devices.

(2) In the event that a vessel becomes entangled with or damages any of the gear referred to in subregulation (1), the master shall—

(*a*) attempt to restore the gear;

(*b*) where practicable, return the gear to the water and log its position; and

(*c*) make a full report of the incident and steps taken by him in accordance with paragraphs (*a*) and (*b*) to a fisheries officer at the earlier opportunity.

PART IX

Conservation Measures

Restrictions on net mesh, mouth sizes, headline lengths, depths and fishing times

33.—(1) No trawl net or other net along a lake bed shall be carried or used for fishing in the areas set out in the First Column of Part 1 of the Twelfth Schedule unless—

(*a*) the meshes forming the cod end of the net have the size; and

(*b*) the net mouth size has the maximum circumference, set out in the Second and Third Columns of Part 1 of the Ninth Schedule.

(2) No beach seine net shall be carried or used for fishing in the areas set out in the First Column of Part 2 of the Twelfth Schedule unless—

(*a*) the meshes forming the cod end of the net have the minimum size;

(*b*) the headline does not exceed the length; and

(*c*) the net does not exceed the depth,

set out in the Second, Third and Fourth columns of Part 2 of the Twelfth Schedule.

(3) No gill net shall be carried or used for fishing in the areas set out in the First Column of Part 3 of the Twelfth Schedule unless—

(*a*) the meshes forming the cod end of the net have the minimum size; and

(*b*) the net does not exceed the depth,

set out in the Second and Third Columns of Part 3 of the Twelfth Schedule.

(4) No chirimila net may be used in the fishing waters with a headline length that exceeds 70 m (231 ft).

(5) No attachment shall be made to any net except to the underside of the net for the purpose of preventing or reducing damage to the net:

Provided that the attachment shall only be secured at its forward and lateral sides and if made of netting shall have a mesh size of not less than 75 millimetres.

(6) No cod end shall measure more than half the size of a trawl net or other net towed along the bed of a lake or river.

(7) The following rules shall apply to the measurement of the meshes of nets—

(*a*) the net shall be wet when measured unless made from man-made fibre;

(*b*) the opening of the mesh shall be measured by means of a graduated flat wedged gauge 2 millimetres thick and having a taper of 2 centimetres in 8 centimetres inserted into the mesh and, in cases of doubt, a weight of not more than 1 kilogram shall be attached to the gauge; and

(*c*) the mesh size shall be taken as the average of the measurements of any twenty consecutive meshes along the longitudinal axis of the upper side of the net starting from ten meshes from the after end and clear of the selvedges, strengthening ropes and lacings.

Restrictions on use of fishing gear

34.—(1) No trawl net or ring net shall be used—

(*a*) within one mile of any of the shoreline of Lake Malaŵi;

(*b*) in waters of a depth of less than 18 metres; or

(*c*) between the hours of 1700 hours and 0700 hours.

(2) No bottom trawl net pulled by a vessel powered by an engine or engines above one hundred horsepower shall be used in waters of less than a depth of forty metres in Lake Malaŵi and no midwater trawl net may be used in Area A.

(3) The fishing gear referred to in Part 4 of the Twelfth Schedule shall not be used in the area or areas specified in that Part during the periods or times specified therein.

(4) No beach seine net may be used at any time on the Upper Shire River.

(5) The fishing gear set out in Part 5 of the Twelfth Schedule shall not be used for fishing in corresponding entries in the Areas Column.

(6) The types and sizes for Nkacha and Usipa rig rift net which may be used and the conditions, areas and times of their operation shall be those set out in Parts 6 and 7 of Twelfth Schedule.

Control of use of underwater breathing apparatus for fishing

35.—(1) No person shall without a permit in writing granted by the Director and subject to such conditions as may be specified in such permit use in the fishing waters an aqualung or other underwater breathing apparatus when fishing with a spear, spear gun, harpoon or net commercially or for sport purposes.

(2) An application for a permit referred to in subregulation (1) shall be in the form set out in the Thirteenth Schedule and the permit shall be in the form set out in the Fourteenth Schedule.

Size limits of fish

36. No person shall kill, take, sell or offer or expose for sale any fish listed in the First Column of the Fifteenth Schedule of less than the lengths set out in the second column measured, in each case, from the point of the snout to the end of the tail fin when the fish is laid out.

Close seasons

37.—(1) The Director may, by notice published in the *Gazette*, declare that during such period and within such area of the fishing waters as may be specified in the notice, fishing for such species of fish as shall be specified in the notice shall be unlawful notwithstanding the issue of any licences or permits for the catching of such species of fish.

(2) No person shall fish for rainbow trout between the 1st May and the 31st August in any year.

PART X

AQUACULTURE

Requirement for aquaculture permit and application

38.—(1) Any person who operates an aquaculture establishment and—

(*a*) the establishment occupies an area of not less than four hectares; or

(*b*) fish bred, reared or kept at the establishment are intended for export,

shall require an aquaculture permit.

(2) An application for an aquaculture permit shall be made not less that sixty days before the licence is required to come into effect unless the Director shall allow a lesser period.

(3) An application for an aquaculture permit shall be in the form set out in the Sixteenth Schedule and an aquaculture permit shall be in the form set out in the Seventeenth Schedule.

Specific condition on issue or renewal of aquaculture permit

39. No aquaculture permit shall be issued or renewed unless the Director is satisfied that the aquaculture establishment satisfies or will satisfy, when established, the conditions applicable to it that the Director proposes to attach to the grant of the permit in accordance with section 19.

Period of validity of aquaculture permits

40. Every aquaculture permit issued under this Part shall, unless earlier cancelled by the Director or under any other written law, be valid for such period being not less than five years as shall be stipulated in the permit.

Conditions applicable to aquaculture permits

41. Every permit issued under this Part shall be subject to the following conditions—

(*a*) the aquaculture establishment shall be so operated as to minimize the risk of the development of diseases in the fish stocks of the establishment and the spread of such diseases and in particular shall be maintained and operated in accordance with such code of practice for the maintenance and operation of aquaculture establishments as the Director may publish from time to time in the *Gazette*;

(*b*) fish harvested from the establishment shall be handled in a sanitary manner and shall be transported in containers approved by the Director;

(*c*) notification shall be given to the Director of any diseases affecting the stock of the aquaculture establishment as the Director shall declare by notice given, from time to time, in the *Gazette* to be a notifiable disease;

(*d*) accurate records shall be maintained relating to the operations of the establishment which shall be open to inspection by the Director;

(*e*) returns concerning the operation of the establishment shall be made to the Director as he shall from time to time require;

(*f*) the applicant shall insure with an insurer approved by the Director against loss to the applicant occasioned by measures taken in accordance with regulation 42 and shall maintain such insurance; and

(*g*) such other conditions as may be attached or endorsed on the permit.

Measures for dealing with outbreaks of diseases

42.—(1) The holder of an aquaculture permit shall take such measures as shall be advised to him by the Director for the prevention of the spread of disease to or from the stock of his establishment.

(2) Measures taken under subregulation (1) may include the destruction and disposal of the stock or part of the stock of the aquaculture establishment by the permit holder under the supervision of the Director or, with the assent of the permit holder to such destruction and disposal, by the Director.

Compensation for destruction of stock

43. Where the stock or part of the stock of an aquaculture establishment has been destroyed pursuant to regulation 42 and the Director is satisfied that the stock was not diseased, the Government may pay the permit holder compensation for the stock so destroyed in an amount decided by the Government in its absolute discretion.

PART XI

Landing and Sampling of Fish and Fishing Returns

Landing and sampling of fish

44.—(1) Fish caught by licensees shall be landed at such places as the Director shall stipulate by notice in the *Gazette*.

(2) A licensee shall permit a fisheries officer to remove a reasonable quantity of fish landed at a place stipulated under subsection (1) for purposes of research.

Fishing information and fishing returns

45.—(1) Both large-scale and small-scale commercial fishermen shall furnish any fisheries officer, when so requested by the officer, with details concerning catches made by them including the areas in which and times when such fish have been caught.

(2) The giving of information pursuant to subregulation (1) shall not relieve a large-scale commercial fisherman from a requirement to keep records or make returns in accordance with the conditions of his licence.

PART XII

Enforcement

Inspection and seizure of fish

46.—(1) A fisheries protection officer may inspect—

(*a*) any store holding fish;

(*b*) any fish when landed in accordance with regulation 44;

(*c*) any fish prior to export, whether in store, on land or on board ship; and

(*d*) any imported fish when landed or, prior to landing, on board ship.

(2) A fisheries protection officer may, on an inspection under subregulation (1), seize fish which in his opinion—

(*a*) does not conform with these regulations; or

(*b*) is not fit for human consumption.

(3) Fish seized under subregulation (2) shall be dealt with in accordance with the Act and, in the case of fish referred to in paragraph (*b*), a report shall be made by the fisheries protection officer without delay to the health authorities.

Bonds

47. For the purpose of section 38 (2) of the Act, every bond shall be in the form set out in the Eighteenth Schedule.

Administrative penalties

48. For the purpose of section 50 of the Act—

(*a*) a notice under subsection (1) of the section shall be in the form set out in the Nineteenth Schedule;

(*b*) a notice under subsection (3) of the section shall be in the form set out in the Twentieth Schedule;

(*c*) a notice under subsection (7) of the section shall be in the form set out in the Twenty-First Schedule.

PART XIII

MISCELLANEOUS

Offences and penalties

49.—(1) Any person who fails to comply with any requirement of these Regulations, any condition of any permit issued under these Regulations or any order, requisition, or direction lawfully issued by any fisheries protection officer under these Regulations shall be guilty of an offence.

(2) Any person who is guilty of an offence under these Regulations shall, where no other penalty is provided, be liable to a fine of K5,000 and to imprisonment for one year.

Sport and other non-commercial fishing

50.—(1) Subject to subregulation (3), these Regulations shall not, unless specifically provided or the context so requires, apply to fishing for sport, subsistence or any other non-commercial reason.

(2) A non-commercial fisherman shall not sell by wholesale or by retail fish caught by him.

(3) All non-commercial fishermen shall be subject to regulations 33, 34, 35, 36 and 37.

Fees

51. The fees prescribed in the Twenty-Second Schedule shall be payable in respect of the matters specified therein in relation to such fees.

FIRST SCHEDULE (reg. 2)

Description of Areas Referred to in Regulations and Conditions of Licences and permits

Bearings are true bearings to nearest degree. Grid references of trigonometrical stations are to nearest ten metres and those of other points to nearest hundred metres. Co-ordinates are to nearest second of an arc.

PART I

Reference Points

1. A point at Cape Ngombo at latitude 13° 43′ 18″ south, longitude 34° 51′ 29″ east (Grid Reference YV. 009.824).

2. Trigonometrical Station 348/MWS on Lipangala Hill near the village of Saidi Mwazungu at latitude 13° 59′ 15″ south, longitude 35° 09′ 10″ east (Grid Reference YV. 3257.5269).

3. The northern most point of Boadzulu Island at latitude 14° 14′ 42″ south, longitude 35° 08′ 37″ east (Grid Reference YV. 313.243).

4. Trigonometrical Station 375/MWS on Ulande Hill at latitude 14° 14′ 19″ south, longitude 35° 04′ 42″ east (Grid Reference YV. 2419.2507).

5. Trigonometrical Station 261/MWT at Monkey Bay at latitude 14° 04′ 05″ south, longitude 34° 55′ 26″ east (Grid Reference YV. 0783.4404).

6. The western extremity of Domwe Island at Cape Maclear at latitude 13° 58′ 03″ south, longitude 34° 49′ 02″ east (Grid Reference YV. 962.552).

7. Trigonometrical Station 381/MWS on Manga Hill near Mtakataka at latitude 14° 12′ 27″ south, longitude 32° 29′ 24″ east (Grid Reference XV. 6080.2900).

8. Trigonometrical Station 383/MWS on Maleri Island at latitude 13° 53′ 44″ south, longitude 34° 37′ 26″ (Grid Reference XY 7553.6334).

9. Trigonometrical Station 26/NYP on Senga Hills at latitude 13° 42′ 44″ south longitude 34° 36′ 18″ (Grid Reference XV. 7357.8367).

10. Trigonometrical Station 22/NYS on Ntunthama Hill at latitude 13° 51′ 16″ south, longitude 34° 23′ 43″ east (Grid Reference XV. 5072.6804).

11. Sungu point at latitude 13° 34′ 47″ south, longitude 34° 31′ 34″ east (Grid Reference XV. 652.986).

12. Kirambu point at latitude 13° 16′ 55″ south, longitude 34° 20′ 33″ east (Grid Reference XA. 454.314).

13. Cape Gilambo, latitude 13° 19′ 29″ south, longitude 34° 47′ 25″ east (Grid Reference XA. 935.265).

PART II

Areas

1. The south-east arm is that portion of Lake Malaŵi south-east of a straight line on a bearing of 9° from Point 6 to Point 1.

Area A is that portion of south-east arm south of a line on a bearing of 96° from Point 4 through Point 3.

Area B is that portion of the south-east arm north of a line on a bearing of 96° from Point 4 through Point 3 but south of a line on a bearing of 70° from Point 5 to Point 2.

Area C is that portion of the south-east arm north of a line on a bearing of 70° from Point 5 to Point 2.

2. The south-west arm is that portion of Lake Malaŵi lying west of the Nankhumba Peninsula and Domwe Island and of a line on a bearing of 9° from Point 6 to Point 1 and south of a line on a bearing of 93° from Point 9 to Point 1.

Area D is that part of the south-west arm lying south of a line bearing 53° from Point 7 to Point 6.

Area E is that part of the south-west arm lying north of a line bearing 53° from Point 7 to Point 6 but south of a line bearing 291° from Point 6 through Point 8.

Area F is that part of the south-west arm lying north of a line bearing 291° from Point 6 through Point 8.

3. The Domira Area is that part of the Malaŵi waters of Lake Malaŵi lying north of a line bearing 93° from Point 9 to Point 1 and south of a line bearing 97° from Point 12 to Point 13.

Area G is that part of the Domira Area lying south and east of line bearing 25° from Point 10 through Point 11.

Area H is that part of the Domira Area lying north and west of a line bearing 25° from Point 10 through Point 11.

4. Area UN are those areas of the waters of Malaŵi not described in the foregoing.

SECOND SCHEDULE (reg. 4) (4))

APPLICATION FOR REGISTRATION/RENEWAL OF REGISTRATION OF A LOCAL REGISTRABLE FISHING VESSEL

To: The Director of Fisheries

1. I, ...
(*Full Name*)

of .....
(*Business Address*)

and .....
(*Residential Address*)

the owner(s) of the vessel described below do hereby apply for registration/renewal of registration of that vessel in accordance with regulations ..... of the Fisheries Conservation and Management Regulations, 2000.

2. Description of vessel—

(*a*) name of vessel: .....

(*b*) location of vessel: .....

(*c*) purpose of which it is intended to use vessel (e.g. large-scale commercial fishing, small-scale commercial fishing, etc.): .....
.....

(*d*) area in which it is intended to use vessel :.....

(*e*) registration number of the vessel, if application is for renewal of registration: .....
.....

3. Any other information: .....

Date: ....

Signature/mark/thumb print of the owner

FOR OFFICIAL USE ONLY

Application received by: .....

on .....

Fee paid MK ..... (in words)

Date: ....

Signature
Director of Fisheries

THIRD SCHEDULE (reg. 4(5))

APPLICATION FOR A LOCAL FISHING LICENCE/RENEWAL OF A LOCAL FISHING LICENCE

To: The Director of Fisheries

1. I, ...
(*Full Name*)

of .....
(*Full Address*)

*(duly authorized in that behalf by the partnership or body corporate specified in paragraph (4) hereby apply (for and on behalf of the said society partnership/body corporate) for a local fishing licence/renewal of a local fishing licence.

2. State whether applicant is a resident of Malaŵi *YES/NO.

3. Description of applicant's present fishing activities, if any:
.....
.....

4. State business name, if any: .....

5. Location of applicant's present or proposed fishing base: .....
.....
.....

6. State whether vessel intended for use under the authority of the licence is registered or based in Malaŵi: .....
.....

7. State the subcategory of local fishing licence required (that is, commercial fishing licence, sport fishing licence or subsistence fishing licence: .....
.....

8. State capacity of engine or engines to power the fishing vessel, if any: .....

9. Brief but precise description of the fishing gear that applicant proposes to use (that is, indicate size and type of net, whether two or single boat operation, etc.): .....

10. Location of base for the fishing gear listed under paragraph 9:
.....

11. Description of fishing waters in which applicant proposes to use the fishing gear listed under paragraph 9: .....
.....

12. List beaches or places it is proposed to land fish: .....
.....

13. Indicate whether or not provisional arrangements have been made to market the fish that would be caught under the licence if granted: *YES/NO.

14. If the answer to the question in paragraph 13 is yes, describe the arrangements: .....
.....
.....
.....

15. Has any previous application for a fishing licence been made by the applicant, any member of the applicant's family or any person having an interest in the application: *YES/NO.

16. If the answer to the question in paragraph 15 is yes, please give full details: .....
.....
.....
.....

17. Licence number, if application is for renewal of licence: .....

18. Any other information: .....
.....
.....

19. I hereby state that this application was translated for me by a fisheries officer in accordance with regulation 5 and I understand the effect of the information on the application and the interpretation:
.....
Signature of applicant who has requested and has been given assistance in completing this application

Date: ....
Signature/mark/thumb print of the owner

**Delete as necessary*

Where the application is made for and on behalf of a partnership or a body corporate, it must be signed by a partner or the secretary to the body corporate, as the case may be.

FOR OFFICIAL USE ONLY

Application received by: .....

on: .....

Fee paid MK ..... (in words)

Date: ....

Signature
Director of Fisheries

FOURTH SCHEDULE (reg. 11(6))

REGISTRATION CERTIFICATE IN RESPECT OF A LOCAL REGISTRABLE FISHING VESSEL

I, ..., Director of Fisheries, hereby certify that the fishing vessel whose particulars are hereunder has been registered under the Fisheries Conservation and Management Act—

1. Registration number of the vessel: .....
2. Name of vessel: .....
3. Identification marks: .....
4. Port of registration: .....
5. Owner(s): .....
6. Owner(s) office and address: .....
7. Boat size—

   Overall length: .....

   Breadth: .....

   Draft: .....

   Horse power: .....
8. Gross tonnage: .....
9. Fish held tonnage: .....

Date: ....

Signature
Director of Fisheries

FIFTH SCHEDULE (reg. 12(2))

APPLICATION FOR CHANGE OF A NAME OF A REGISTERED FISHING VESSEL

To: The Director of Fisheries

1. I, ...
(*Full Name*)

of .....
(*Business Address*)

and .....
(*Residential Address*)

the owner(s) of a registered fishing vessel described below do hereby apply for change of the name of the said vessel from its present name, namely: .....

to .....
(*proposed new name*)

2. Registered number of the vessel: .....

3. Date of registration of the vessel: .....

4. Reason for the proposed change of name of the vessel: .....
.....

5. Any other information: .....
.....
.....

Date: ....
Signature of the owner

FOR OFFICIAL USE ONLY

Application received by: .....

on: .....

Fee paid MK: ..... (*in words*)

Date: ....
Signature
Director of Fisheries

SIXTH SCHEDULE (reg. 16(3))

APPLICATION TO REPLACE A REGISTRATION CERTIFICATE

1. I, ...
(*Full Name*)

of .....
(*Business Address*)

and .....
(*Residential Address*)

the owner(s) of the vessel described below do hereby apply for replacement of the registration certificate described below—

2. Description of vessel—

(*a*) name of the vessel: .....

(*b*) registered number of the vessel: .....

3. Description of the registration certificate—

(*a*) number of registration certificate: .....

(*b*) date of issue of the registration certificate: .....

4. State why you need the registration certificate to be replaced: .....
.....

5. Full account of how the registration certificate got lost, destroyed or so damaged as to make it illegible: .....
.....
.....

6. Any other information: .....
.....
.....
.....

Date: ....
Signature/mark/thumb print of the owner

FOR OFFICIAL USE ONLY

Application received by: .....
on: .....
Fee paid MK: .....(*in words*)
Date: ....
Signature
Director of Fisheries

SEVENTH SCHEDULE (reg. 18 (2))

COMMERCIAL FISHING LICENCE

This is to certify that ..... of ..... being owner of the fishing vessel described hereunder has been permitted the use of the said vessel for the purpose of fishing within the fishing waters from ..... to ..... according to the following stipulations—

1. Large-scale/small-scale/live fish collection commercial fishing licence:
2. Method(s) of fishing: .....
   .....
3. Fishing gear: .....
4. Species of fish to be taken: .....
5. By-catches: .....
6. Area to be fished: .....
   .....
7. Period limitation: .....
8. Allowable catch: .....
9. Storage of gear when not in use: .....
10. Transfer, transhipment, landing and processing restriction: .....
    .....
11. Restriction on entry to any port or place: .....
12. Vessel name: .....
13. Registration number: .....
14. Port of registration: .....
15. Vessel marking: .....
16. Engine capacity: .....
17. Entry, exit and reporting procedure: .....
18. Compliance with the Fisheries Conservation and Management Act:
    .....
19. Name of the family member to whom the licence should be transferred in the event of death of the licensee: .....
    .....
20. Special conditions detailed overleaf.

Date: ....

Signature
Director of Fisheries

**Delete the inapplicable*

FOR OFFICIAL USE ONLY

Fees paid MK ..... (*in words*)

EIGHTH SCHEDULE (reg. 21 (8))

SPORT/SUBSISTENCE FISHING LICENCE

This is to certify that .....
of ..... has been permitted to fish within the fishing waters for sport or subsistence from ..... to ..... according to the following stipulations—

1. Controlled species of fish to be taken: .....

   .....

2. Controlled fishing gear to be used: .....

3. Method of fishing: .....

4. Area to be fished: .....

5. Allowable catch: .....

6. Where a vessel is to be used, particulars thereof: .....

   .....

   .....

7. Special conditions detailed overleaf.

Date: ....

Signature
Director of Fisheries

FOR OFFICIAL USE ONLY

Fees paid MK: ..... (*in words*)

NINTH SCHEDULE (reg. 22 (2))

CONDITIONS TO ATTACH TO A SPORT LICENCE IN RESPECT OF TROUT FISHING

1. A sport licence in respect of trout fishing (hereinafter called "a licence") shall entitle the person named therein to fish for trout in trout fishing waters only.

2. Trout fishing waters are—

   (*a*) Zomba Mountain—Mulunguzi Stream from its source including all tributaries to the point six hundred yards below the Mulunguzi Dam where the steam goes down a precipice;

(*b*) Mulunguzi Dam;

(*c*) Chagwa Dam;

(*d*) Mulanje Mountain—Lichinga Stream from its source including all tributaries within the Mulanje Forest Reserve;

(*e*) Likubula Stream from its source including the Capeluka and Malembe Streams and all other tributaries within the Mulanje Forest Reserve;

(*f*) Nyika Plateau—Chelinde Stream from its source including all tributaries for a distance of twenty-five miles;

(*g*) North Rukuru Stream from its source including all tributaries for a distance of twenty-five miles; and

(*h*) Dembo Stream from its source including all tributaries for a distance of fifteen miles and Chelinde Dam, Little Mwenyenyezi Dam and Big Mwenyenyezi Dam.

3. A licence shall not authorize a person to fish for trout between the 1st May and the 31st August in any year.

4. Fishing under the licence is authorized only between the hours 0430 and 1930.

5. The maximum number of trout that may be killed shall be, irrespective of the length of validity of the licence—

(*a*)	one day	6
(*b*)	one week	24
(*c*)	one month	50
(*d*)	a season	100

6. The licence shall be carried when fishing and produced in accordance with the Act.

7. The method of fishing permitted under the licence is fly fishing for all the trout waters.

8. The minimum size of trout that may be caught and retained at any dam shall be 25 cm (10 in).

9. All trout caught and retained shall be entered in a trout fishing return endorsed on the licence.

10. The person named in the licence shall cease fishing when the daily, weekly, monthly or seasonal quota has been caught.

11. A licence shall be returned by prepaid post to the Director within fourteen days of expiry.

TENTH SCHEDULE (reg. 26 (1))

Application for a Foreign Fishing Licence

To: The Director of Fisheries

1. I, ...
(*Full Name*)

   of .....
(*Full Address*)

   *(duly authorized in that behalf by the society, partnership or body corporate specified in paragraph (3) hereby apply (for and on behalf of the said partnership/body corporate) for a foreign fishing licence.

2. State the subcategory of the foreign fishing licence required (that is, large-scale or small-scale foreign fishing licence) .....
3. State business name, if any: .....
4. Description of the applicant's present fishing activities, if any:

   .....

   .....
5. State location of applicant's present fishing base, if any: .....

   .....
6. Name of the fishing vessel: .....
7. Identification marks: .....
8. Port of Registration: .....
9. Owner(s)/Charterer(s): .....
10. Fishing vessel size—

    (*a*) overall length: .....

    (*b*) breadth: .....

    (*c*) draft: .....
11. Gross tonnage: ..... tonnes
12. Fish hold tonnage: .....
13. Number and nationality of crew: .....

    .....
14. Previous fishing history in the fishing waters:

Year						
Total catch						

15. Area within which fishing is now requested: .....
.....
16. Specific period for which fishing is requested: .....
.....
17. Species of fish to which licence is sought to apply: .....
.....
18. Specific methods to be used—
    (*a*) Pole and line—Number of poles: .....
    (*b*) Longlining—Number of hooks: .....
    (*c*) Purse seining—Length and depth of net (m): .....
    (*d*) Other methods (*please specify*): .....
19. Intended disposal of catch—
    (*a*) within Malaŵi—
        (i) for processing
        (ii) for local sales
        (iii) for transhipment and export (unprocessed)
    (*b*) transhipment within fishing waters ultimate destination: .....
    .....
    (*c*) transportation on board the fishing vessel out of fishing waters ultimate destination: .....
    .....
    (*d*) combination of (*a*)–(*c*) please specify: .....
    .....
20. Intended use of ports and related facilities within Malaŵi—
    (*a*) for disposal of catch, state port: .....
    (*b*) obtaining ice, fuel, fishing gear, provisions or recreation; state port: .....
    (*c*) repairs, outfitting or maintenance; state port: .....
    .....
21. Do you intend or would you be willing to train residents of Malaŵi in the methods of fishing employed by the fishing vessel: *YES/NO.

I/We, owner(s)/charteier(s)/certified legal representatives of the fishing vessel, certify that the above information is true and accurate:

Dated: ....

Signature

**Delete as necessary*

Where the application is made on behalf of a partnership or a body corporate it must be signed by the partner or secretary to the body corporate, as the case may be.

FOR OFFICIAL USE ONLY

Application received by: .....
on: .....
Fee paid MK: .....(*in words*)
Date: ....

Signature
Director of Fisheries

ELEVENTH SCHEDULE reg. 24 (5)

FOREIGN FISHING LICENCE

This is to certify that .....

of .....

being the owner of the fishing vessel described hereunder has been permitted the use of the said vessel for the purpose of fishing within the fishing water from ..... to ..... according to the following stipulations—

1. Large-scale/small-scale/live fish collection commercial fishing licence*
2. Method(s) of fishing: .....
   .....
3. Fishing gear: .....
4. Species of fish to be taken: .....
5. By-catches: .....
6. Area to be fished: .....
7. Period limitation: .....
8. Allowance catch: .....
   .....
9. Stowage of gear when not in use: .....
   .....
10. Transfer, transhipment, landing and processing restriction: .....
    .....
11. Restriction on entry to any port or place: .....
    .....
12. Vessel name: .....
13. Registration number: .....
14. Port of registration: .....
15. Vessel marking: .....
16. Engine capacity: .....
17. Entry, exit and reporting procedure: .....
18. Compliance with the Act. .....
19. Special conditions detailed overleaf. .....

Date: ....

Signature
Director of Fisheries

**Delete the inapplicable*

FOR OFFICIAL USE ONLY

Fee paid MK (*in words*).....

TWELFTH SCHEDULE (regs. 33 and 34)

Restrictions on Sizes of Fishing Gear and Prohibited Fishing Periods And Times

PART 1
Trawl Nets

Fishing area	*Minimum cod end mesh size*	*Maximum net mouth size*
Lake Chilwa	Prohibited	25 m (82 ft)
Lake Malaŵi	38 mm (1.5 in)	37 m (121.4 ft)

PART 2
Beach Seine Nets

Fishing area	*Minimum cod end mesh size*	*Maximum head line length*	*Maximum net depth*
1. All waters (Mosquito nets)	No restriction	3 m (9.8 ft)	1.5 m (4.9 ft)
2. Lake Malaŵi (Kambuzi seine)	19 mm (.75 in)	150 m (492 ft)	10 m (32.8 ft)
3. Lake Malaŵi (Usipa net)	No restriction	100 m (328 ft)	6 m (19.7 ft)
4. Lake Malaŵi (Chambo seine)	95 mm (3.5 in)	19 mm (0.75 in)	18 m (59 ft)
5. Lake Malombe (Nkacha)	19 mm (0.75 in)	100 m (328 ft)	10 m (32.8 ft)
6. Lake Malombe (Kambuzi seine)	19 mm (3.5 in)	500 m (3280)	NA
7. Lake Malombe (Chambo seine)	90 mm (3.5 in)	1,000 mm (3280)	NA
8. Lake Chirwa	25 mm (½ in)	300 mm (984 ft)	5 m (16.4 ft)
9. Lower Shire River	19 mm (¾ in)	200 m (656 ft)	15m (49.5 ft)
10. Lake Chiuta	Prohibited		
11. Chia-Lagoon	Prohibited		

PART 3
Gill Nets

Fishing area	*Minimum mesh size*	*Maximum net depth*
South-East Arm		
Lake Malaŵi	95 mm (3.75 in)	No Restriction
Remainder of Lake		
Malaŵi south of Latitude 12' 15"	95 mm (3.75 in)	No restriction
Upper Shire River	76 mm (3.0 in)	NA
Lower Shire River	64 mm (2.5 in)	3 m (9.8 ft)
Lake Malombe	90 mm (3.5 in)	NA
Lake Chilwa	70 mm (2.75 in)	3 m (9.8 ft)
Lower Shire River	63 mm (2.5 in)	3 m (9.8 ft)

PART 4
Prohibited Fishing Periods and Times

Lake Malaŵi

(1) The beach seine nets numbered 2, 3 and 4 in Part 2 of this Schedule and permitted for use in Lake Malaŵi shall not be used between the 1st November and the 31st December (inclusive).

(2) The usipa beach seine net numbered 3 in Part 2 of this Schedule and permitted for use in Lake Malombe shall not be used between the hours of 6 a.m. and 6 p.m. in any day.

(3) The beach seine net numbered 5 in Part 2 of this Schedule and permitted for use in Lake Malombe shall not be used between the 1st January and the 31st March (inclusive).

(4) The beach seine net numbered 6 in Part 2 of this Schedule and permitted for use in Lake Malombe shall not be used between the 1st November and the 31 st December.

(5) The beach seine net numbered 5 in Part 2 of this Schedule shall not be used between the hours of 6 p.m. and 6 a.m. in any period of 24 hours.

(6) The beach seine net numbered 8 in Part 2 of this Schedule and permitted for use in Lake Chiuta shall not be used between 1st December and 31st January (inclusive).

(7) Beach seine nets permitted for use in Lake Chilwa and Mpoto Lagoon shall not be used between 1st November and 30th April.

(8) Beach seine nets permitted for use in Lake Chilwa and Mpoto Lagoon shall not be used between the hours of 6 p.m. and 6 a.m.

PART 5
Prohibited Fishing Gears

Areas	*Fishing Gear*
All waters	Chalira
Lake Chiuta	Nkacha nets and beach seine nets
Lake Chilwa and Mpoto Lagoon	Nkacha nets and scoop netting
Lake Malaŵi—shallow waters	Bottom trawls pulled by more than 100 hp
Lake Chilwa and Mpoto Lagoon	Fishing while staying on floating island (*Chimbowela*)
Lake Malaŵi—Areas A, D, and E	Kambuzi beach seine
Lake Malaŵi	Kauni for Chambo
Lake Malaŵi—Area A	Mid-water Trawls
Lake Malombe	Mosquito nets
Upper Shire River	Nkacha nets
Lower Shire	Mosquito nets
Lake Malaŵi	Nkacha nets

PART 6
Nkacha Nets

Where Used	*Minimum Headline Length*	*Maximum Mesh Size*	*Prohibited Depth*	*Fishing Time*
Lake Malombe	250 m (273 yds)	19 mm (¾ in)	No restriction	from 6 p.m. to 6 a.m., October, November and December

PART 7
Usipa Rig Rifts Nets

Where Used	*Maximum Depth*	*Mesh Size*
Lake Malaŵi	No restriction	13 mm (½ in)

THIRTEENTH SCHEDULE (reg. 35 (2))

Application for a Permit to Use Underwater Breathing Apparatus for Fishing

1. Name of applicant: .....
2. Address: .....
   .....
3. State purpose for catching the fish (i.e. commercial or sport):
   .....

4. Brief but precise description of the underwater breathing apparatus that the applicant proposes to use: .....
5. Area of fishing waters within which the underwater breathing apparatus is to be used: .....
6. Fishing gear to be used: .....

Date:..... .....

Signature of Applicant

FOR OFFICIAL USE ONLY

Application received by: ..... on: .....

Fee paid MK ..... (*in words*)

.....

Director of Fisheries

FOURTEENTH SCHEDULE reg. 35 (2)

UNDERWATER BREATHING APPARATUS PERMIT

.....

(*Name of permit holder*)

of .....

(*Address of permit holder*)

is hereby permitted to use underwater breathing apparatus when fishing commercially or for sport purposes according to the following stipulations—

1. Type of underwater breathing apparatus: .....
2. State fishing gear (e.g. spear, harpoon, etc.): .....
3. Area to be fished: .....
4. Period limitation: .....
5. Allowable catch: .....
   .....
6. Species of fish to be taken: .....
7. Special conditions detailed overleaf.

Date: ....

Signature, Director of Fisheries

FOR OFFICIAL USE ONLY

Fee paid MK..... (*in words*)

FIFTEENTH SCHEDULE reg. 36

Size Limits of Fish

Species of Fish	*Size limit*
All species of Chambo	150 mm (6 in)
All species of *Opsaridium microlepis* (mpasa)	300 mm (12 in)
All species of the *genera Tilapia Oreochromis*	100 mm (4 in)
Kasawala	100 mm (4 in)

SIXTEENTH SCHEDULE reg. 38 (3)

Application for an Aquaculture Permit

To: The Director of Fisheries

1. I, ...
   of .....
   hereby apply for an aquaculture permit.
2. Location of the proposed aquaculture establishment: .....
   .....
3. Size of the proposed aquaculture establishment: .....
4. Purpose for which the fish is to be bred (e.g. export, commercial, subsistence, etc.): .....
   .....
5. Results of an environmental impact assessment: .....
   .....
   .....
6. Any other information: .....
   .....

Date: ....

Signature of Applicant

FOR OFFICIAL USE ONLY

Application received by: ..... on: .....

Fee paid MK ..... (*in words*)

Date: ....

Signature
Director of Fisheries

SEVENTEENTH SCHEDULE (reg. 38 (3))

AQUACULTURE PERMIT

.....

(*Name of permit holder*)

of .....

(*Address of permit holder*)

is hereby permitted to operate an aquaculture establishment at .....

.....

according to the following stipulations—

1. Size of the establishment: .....
2. Purpose for which the fish is to be bred: .....
3. Compliance with the Fisheries Conservation and Management Act
4. Special conditions detailed overleaf
5. Valid until: .....

Date: ....

Director of Fisheries

FOR OFFICIAL USE ONLY

Fee paid MK ..... (in words)

EIGHTEENTH SCHEDULE (reg. 47)

BOND TO SECURE RELEASE OF A FISHING VESSEL FROM FORFEITURE

..... know all men by these presents that

..... of ..... is/are held and firmly

bound to the Republic of Malaŵi in the sum of K ..... for the payment of which sum to the Republic the said ..... does/do jointly and severally bind himself/themselves/itself executors and administrators/successors firmly by these presents.

WHEREAS (hereinafter called the defendant), is the licensee named in Licence No. ..... issued under the Fisheries Conservation and Management Act, 1997, *in respect of the vessel referred to in the said licence/and is the owner of a vessel registered pursuant to the said Act under number: .....

AND WHEREAS an information/charge has been laid against the Defendant

in the (Magistrate) Court at ..... under No. ..... (specify number of information charge); or

NOW THE CONDITION OF THE ABOVE WRITTEN BOND is such that if:

(*a*) the Defendant is found not guilty of the information/charge; or

(*b*) the Defendant on being convicted of the information/charge pays in full within 14 days after he is convicted the amount of the fine imposed by the Court and the amount of all costs due from him to the Republic under section ..... of the Act *and the fishing vessel is within that time surrendered to the Republic for forfeiture,

then the above written obligation shall be of no effect but that otherwise it shall remain in full force and effect.

Dated this ..... day of ....., 20 .....

Signed by the above named .....)

in the presence of .....)

(or as the case may require in the case of a body corporate)

**Complete or delete as applicable*

NINETEENTH SCHEDULE (reg. 48 (*a*))

NOTICE OF ALLEGED OFFENCE

Notice No. .....

IN THE MATTER of section 50 of the Fisheries Conservation and Management Act (Cap. 66:05)

To: .....

.....

.....

1. TAKE NOTICE that I have reasonable cause to believe that on the .... day of ..... at ..... you committed/your fishing vessel was involved in an offence against (specify section or regulation applicable) in that you/your vessel (specify details of offence) being an offence relating to fishing within the fishing waters/within an area where a licence/permit to fish is required which I consider appropriate to be dealt with under section 46 of the Act.

2. The following is a summary of the facts on which this allegation is based (specify a sufficient summary to fully and fairly inform the recipient of the allegations against him: .....

3. I consider the following matters to be relevant to the imposition of a penalty in this case: .....

4. This notice is served on you pursuant to section 50 of the Fisheries Conservation and Management Act (Cap. 66:05). The provisions of the whole of that section are set out in full as indicated below. Dated this ..... day of ..... 20 .....

.....
Director of Fisheries

Delete as applicable

50.—(1) Where the Director has reasonable grounds to believe that—

(*a*) an offence under this Act has been committed by any person;

(*b*) the offence is of a minor nature; and

(*c*) having regard to the previous conduct of the person concerned and of the vessel, if a vessel is involved, it would be appropriate to impose a penalty under this section,

he may cause a notice in writing, in accordance with subsection (2) to be served on that person.

(2) A notice under subsection (1) shall be in the prescribed form and shall specify—

(*a*) the nature of the offence and the date of its commission;

(*b*) a summary of the facts upon which the allegation that an offence has been committed is based; and

(*c*) any other matter that the Director considers relevant to the imposition of a penalty,

and shall be endorsed with a statement setting out the provisions of this section.

(3) Any person on whom a notice under subsection (1) is served may, within thirty days after such service, by notice in writing to the Director require that the proceedings in respect of the alleged offence be dealt with by the Court or admit the offence.

(4) Where pursuant to subsection (3) a person opts to have the alleged offence dealt with by a court—

(*a*) no further proceedings shall be taken under this section by the Director; and

(*b*) nothing in this section shall be construed to prevent proceedings in respect of the alleged offence to be dealt by the Court or the imposition by the Court of any penalty or forfeiture under this Act upon such conviction in such proceedings.

(5) Where pursuant to subsection (3), a person opts to admit the offence he may, by notice in writing to the Director—

(*a*) admit the offence; and

(*b*) make submissions to the Director as to the matters he wishes the Director to take into account in imposing any penalty under this section.

(6) Where a person on whom a notice under subsection (1) is served does not, within thirty days after the notice is served on him—

(*a*) require that proceedings in respect of the alleged offence be dealt with by the Court; or

(*b*) admit the offence,

he shall, on the expiration of that period, be presumed to have admitted the offence.

(7) Where pursuant to this section a person admits or is presumed to have admitted an offence, the Director may, after taking into account any submissions by the person under subsection (5), impose a monetary penalty on the person in respect of the offence not exceeding one half of the maximum, penalty to which the person would be liable if he were convicted of the offence by the Court.

(8) Where the Director imposes a penalty on a person under this section in respect of an offence, the Director shall serve that person with a notice in writing in the prescribed form of the particulars of the penalty and place where the penalty should be paid.

(9) A person on whom a penalty is imposed under this section shall pay the penalty within thirty days after the notice of the penalty is served on him in accordance with subsection (8) and the penalty shall be paid into the Fund.

(10) Without prejudice to the requirement of subsection (9), a penalty imposed under this section shall be recoverable by the Government from the person on whom it has been imposed in the same manner as a fine is recoverable on conviction of an offence.

(11) Where an offence has been admitted or is presumed to have been admitted under this section no further charge may be laid in respect of the offence against the person who has admitted or is presumed to have admitted the offence.

(12) This section shall not apply—

(*a*) in respect of any offence under section 11 or 12; or

(*b*) to any offence or alleged offence in respect of which a charge has already been preferred.

TWENTIETH SCHEDULE reg. 48 (*b*)

NOTICE REQUIRING PROCEEDINGS TO BE DEALT WITH IN COURT

To: The Director of Fisheries

.....

.....

TAKE NOTICE that I require that any proceedings in respect of the alleged offence referred to in your notice number ..... served on me under section 48 (*a*) of the Fisheries Conservation and Management Act (Cap. 66:05), be dealt with before the Court.

Dated this ..... day of ....., 2000.

.....

Signature and Name

TWENTY-FIRST SCHEDULE reg. 48 (*c*)

NOTICE OF IMPOSITION OF ADMINISTRATIVE PENALTIES

To: .....
.....
.....

1. TAKE NOTICE that I have on the ..... day of ....., imposed on you a monetary penalty of MK ..... in respect of the offence committed by you on the ..... day of ....., against ..... (specify section or regulation applicable).
2. This penalty must be paid to the Government within 30 days after the notice is served on you.
3. Payment shall be made to the office of the Fisheries Officer at ....

Dated this ..... day of ....., 20 .....

.....

Director of Fisheries

TWENTY-SECOND SCHEDULE reg. 51 G.N. 17/2011

FEES

ANNUAL FEES FOR REGISTRATION OF COMMERCIAL FISHING UNITS

The total licence fee is calculated by the following formula—

TOTAL LICENCE FEE = (ACR * UCR * BF) + Registration fee where:

ACR = area catch rate;

UCR = unit catch rate;

BF = basic fee; and

RF = registration fee.

The area catch rate is the ratio of the catch of any mechanized gear in an administrative area of any water body in relation to that which would be realized if the same were to operate on Lake Chilwa *ceteris paribus* (all other factors being equal).

The unit catch rate is the ratio of the catch of any mechanized gear operating in any water body in relation to that of a trawler unit of up to 37 kW operating on Lake Chilwa which is equal to one unit.

The basic fee *sensu stricto* is the minimum fees to be paid, net of registration fees by a trawler unit of up to 37 kW operating on Lake Chirwa.

The registration fee depends on the power of the engine.

Registration fee for various engine category—

Water body	*Engine size*	*Fee*
Lake Chilwa	0–33 kW	—
Lake Malaŵi	34–67 kW	K10,000
Lake Malaŵi	over 67 kW	K20,000

COMMERCIAL FISHING LICENCE AND FEE CRITERIA

(For definitions for the commercial fishing areas in Malaŵi, *See* the First Schedule)

Lake	*Commercial Fishing Areas*	*Shallow*	*Deep*
Chilwa	Entire Lake	1	1
Malombe	Entire Lake	1	1
Malaŵi	A	3.3	NA
	B	2.7	2.7
	C	1.8	1.4
	D	1.7	1.0
	E	1.7	1.0
	F	1.7	1.0
	G	1.7	1.0
	H	1.7	1.0
	N	0.5	0.5

THE FEES

Bottom Trawl Fishery (Shallow Waters)

Area	*Area Catch Rate*	*Unit Catch Rate*	*Basic fee*	*Registration Fee*	*Licence Fee*
A	3.3	4	K5,000	K10,000	K76,000
B	2.7	4	K5,000	K10,000	K64,000
C	1.8	4	K5,000	K10,000	K46,000
D	1.7	4	K5,000	K10,000	K44,000
E	1.7	4	K5,000	K10,000	K44,000
F	1.7	4	K5,000	K10,000	K44,000
G	1.7	4	K5,000	K10,000	K44,000
H	1.7	4	K5,000	K10,000	K44,000
N	0.5	4	K5,000	K10,000	K20,000

Bottom Trawl Fishery (Deep Waters)

Area	*Area Catch Rate*	*Unit Catch Rate*	*Basic fee*	*Registration Fee*	*Licence fee*
B	2.7	10	K5,000	K20,000	K155,000
C-N	1.4	10	K5,000	K20,000	K90,000

ANNUAL GEAR BASIC FEES

Gear	*Basic fee*	*Qualification*
Gillnets	K500	Per 100 m
Nkacha nets	K3,000	Per 50 m
Kambuzi seines	K3,000	Per 50 m
Usipa beach seines	K3,000	Per 50 m
Matemba beach seines	K3,000	Per 50 m
Chambo seines	K3,000	Per 50 m
Chirimila	K10,000	Per unit
Chambo ring net	K5,000	Basic fee
Chambo midwater trawl	K5,000	Basic fee
Chisawasawa bottom trawl	K5,000	Basic fee
Utaka midwater trawl	K5,000	Basic fee
Usipa lift net	K40,000	Per unit
Aquarist licence	K150,000	Per enterprise

ANNUAL FISH FARMING PERMIT FEES

Establishment	*Permit Fees*	*Qualifications*
Small-scale Pond Culture	K 100	Farm pond up to 1 ha
Large-scale Pond Culture	K0.50	Per m^2 of pond area greater than 1 ha
Re-circulated Pond System	K 25	Per m^3 of pond
Cage Culture	K 5	Per m^3 of cage size up to $100m^3$
Cage Culture	K 25	Per m^3 of cage size greater than 100 m^3

FISHERIES CONSERVATION AND MANAGEMENT (CLOSE SEASON FOR LAKE CHILWA AND MPOTO LAGOON) NOTICE

G.N. 9/2003

under s. 37

1. This Notice may be cited as the Fisheries Conservation and Management (Close Season for Lake Chilwa and Mpoto Lagoon) Notice. Citation

2. No person shall, whether by himself, his agents or his servants, fish for any species of fish— Prohibition of fishing

(*a*) in Lake Chilwa or Mpoto Laboon between 1st December and 31st March; and

(*b*) in Domasi River, Likangala River, Mnombo River and Sombani River between 1st May and 31st December.

3. No weir shall be erected across any river mentioned in paragraph 2 (*b*) between 1st December and 31st March. Erection of weirs

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NATIONAL PARKS AND WILDLIFE

CHAPTER 66:07

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CHAPTER 66:07

NATIONAL PARKS AND WILDLIFE

ARRANGEMENT OF SECTIONS

SECTION

PART I
PRELIMINARY

1. Short title
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11 of 1992
15 of 2004
11 of 2017
G.N. 57/1994

An Act to consolidate the law relating to national parks and wildlife management; to establish the Wildlife Advisory Board; and to provide for matters incidental to or connected therewith

[1ST APRIL, 1994]

PART I
PRELIMINARY

Short title

1. This Act may be cited as the National Parks and Wildlife Act.

Interpretation
15 of 2004
11 of 2017

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

"aircraft" includes all flying machines, whether or not powered by engines of any sort, whether captive, navigable, or free, and whether or not controlled by human agency, and all ground effect machines or hovercraft;

"animal" includes any member of the animal kingdom and includes man;

15 of 2004

"Board" means the Wildlife Advisory Board established under section 17;

"certificate of ownership" has the meaning ascribed to it under section 88;

15 of 2004

"community conservation area" means a conservation area in respect of which authority and responsibility to manage and utilize certain wildlife resources therein is vested in the local community;

"dangerous animal" includes hyena, lion, leopard, hippo, elephant, rhinoceros, buffalo, or crocodile;

"dependent young" means any juvenile animal patently depending on an adult of the same species for sustenance or protection;

"Director" means the Director of National Parks and Wildlife; 15 of 2004

"domestic animal" means any animal which is sufficiently tame to serve some purpose for the use of man, whether or not such use is utilitarian, and includes individual animals which were once tamed or which are in the process of being so tamed;

"endangered species" means any plant or animals occurring within or outside a protected area declared as such pursuant to section 43A; 15 of 2004 11 of 2017

"environmental inspector" has the same meaning as in the Environment Management Act; 15 of 2004 Cap. 60:02

"firearm" has the same meaning as in the Firearms Act; 15 of 2004 Cap. 14:08

"fisheries officer" has the same meaning as in the Fisheries Conservation and Management Act; 15 of 2004 Cap. 66:05

"forest officer" has the same meaning as in the Forestry Act; 15 of 2004 Cap. 63:01

"Fund" means the National Parks and Wildlife Fund established under section 100;

"game species" means a species of animals designated as game species under section 44;

"Government trophy" has the meaning ascribed to it under section 90;

"hours of darkness" means the period between one-half hour after sunset and one-half hour before sunrise;

"hunt" means to attempt to take;

"officer" means the Chief Parks and Wildlife Officer and any of the officers mentioned in section 6 (3); 15 of 2004

"listed species" means plant or animal species listed under any international, regional or bilateral agreement to which Malaŵi or the Government is a party, and under regulations made pursuant to section 43A or 99;

"local community" includes corporate and incorporate persons and non-governmental organizations; 15 of 2004

"plant" means any member of the plant kingdom and includes the seeds of any plant species;

"professional hunter's licence" means a licence issued pursuant to section 92;

"protected area" includes a national park, wildlife reserve and nature sanctuary; 15 of 2004

"protected species" means any plant or animal within a protected area and declared as such pursuant to section 43; 11 of 2017

"re-export" in relation to specimens, means to export a specimen previously imported into Malaŵi;

"specimen" means any wild plant or animal, alive or dead, whether or not native to Malaŵi, and any readily recognizable part or derivative of such plant or animal;

"sustainable yield level" means the highest rate of harvesting a specified wildlife population which can be maintained indefinitely without reducing the capacity of the population to continue providing the said rate of harvesting;

"take" in relation to an animal, means to wound, capture, or kill the animal, or remove or destroy its nest or egg or any part of it;

"wild animal" means any animal which is *rerae naturae*, but does not include any domestic animal;

"wildlife" means any wild plant or animal of a species native to Malaŵi and includes animals which migrate through Malaŵi, and biotic communities composed of those species.

15 of 2004 "wildlife district" means a district designated as such pursuant to section 121A;

15 of 2004 "wildlife management authority" means any local community organization or other private organization established for the purposes of promoting local community participation in the conservation and management of wildlife.

Purposes of this Act 15 of 2004

3.—(1) The purposes of this Act are—

(*a*) the conservation of selected examples of wildlife communities in Malaŵi;

(*b*) the protection of rare, endangered and endemic species of wild plants and animals;

(*c*) the sustainable use of wildlife and minimization of conflict between human beings and animals;

(*d*) the control of dangerous vertebrate species;

(*e*) the control of import, export and re-export of wildlife species and specimens;

(*f*) the implementation of relevant international treaties, agreements or any other arrangement to which Malaŵi or the Government is a party;

(*g*) the promotion of local community participation and private sector involvement in conservation and management of wildlife; and

(*h*) the protection and management of protected areas.

(2) For the better achievement of the purposes of this Act, the Minister and every other person responsible for the administration of this Act shall ensure that any measures taken or instituted under this Act are based on the results of scientific investigation including the monitoring of species status and habitat condition:

Provided that where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as reason for postponing cost-effective measures to prevent degradation of wildlife.

(3) The provisions of this Act which relate to the management of species in wild habitats, shall refer only to species presently or formerly native to Malaŵi and shall not be construed as authorizing the introduction of exotic plants or animals into wild habitats within Malaŵi.

Ownership of wild animals or plants 15 of 2004 11 of 2017

4.—(1) Where any plant or animal other than a protected species, endangered species or listed species is lawfully taken by any person, the ownership of such plant or animal shall, subject to the provisions of this Act, vest in that person.

11 of 2017

(2) If any protected species, endangered species or listed species is lawfully taken pursuant to a licence issued under this Act, the ownership of such animal or plant shall, subject to the provisions of this Act and to the terms and conditions of the licence, vest in the licensee.

(3) If prior to the commencement of this Act, any wild plant or animal is lawfully vested in any person such plant or animal shall, subject to the provisions of this Act, vest or continue to be vested in that person.

(4) Except with the authority under any licence, nothing in this section shall be deemed to transfer to any person the ownership of any protected species, endangered species or listed species found dead or dying, or a protected plant that has been cut down.

11 of 2017

(5) If any person takes any protected species, endangered species or listed species or protected plant in contravention of this Act, the ownership of the animal or plant shall not be transferred to that person.

11 of 2017

PART II

Administration

Chief Parks and Wildlife Officer and other officers

5. For the purpose of implementing this Act, there shall be appointed in the public service an officer to be designated as the Chief Parks and Wildlife Officer and other officers subordinate to him who shall be responsible for the administration of this Act subject to any general or special directions of the Minister.

Duties of the Chief Parks and Wildlife Officer 15 of 2004 11 of 2017

6.—(1) The Chief Parks and Wildlife Officer shall, subject to the general or special directions of the Minister, be responsible for the management of national parks and wildlife throughout Malaŵi and, in particular, for implementing the provisions of this Act, and shall exercise control over protected areas in accordance with the provisions of this Act and any order declaring a protected area.

(2) Every officer shall exercise such functions and duties as may be conferred upon him by this Act or as may be delegated or assigned to him by the Chief Parks and Wildlife Officer and wildlife management authority.

(3) For purposes of this Act, the following persons shall be officers—

(*a*) parks and wildlife officers;

(*b*) fisheries officers, forest officers, environmental inspectors, customs officers, members of the Malaŵi Police Service, members of the Malaŵi Defence Force and Honorary Parks and Wildlife Officers as the Minister may designate by notice published in the *Gazette*; and

(*c*) such other public officers as the Minister may designate by notice published in the *Gazette*.

(4) The Minister may, by regulations, set out circumstances in which any of the persons specified in paragraphs (*a*), (*b*) and (*c*) of subsection (3) may authorize or order any person to perform duties under this Act.

(5) Notwithstanding the definition of "worker" in the Workers' Compensation Act, an officer, other than an Honorary Parks and Wildlife Officer, who—

Cap. 55:03

(*a*) suffers injuries in the course of performing his duties under this Act; or

(*b*) dies as a result of injuries suffered in the course of performing his duties under this Act,

shall be paid compensation which shall be calculated in accordance with the provisions of the Workers' Compensation Act.

Cap. 55:03

(6) The Director may, in the performance of his duties under this Act, delegate in writing any of his duties to a wildlife management authority or any other public officer.

(7) Every wildlife management authority and every officer shall, in the performance of his duties under this Act, be subject to the directions of the Director.

(8) The Minister may, on the recommendation of the Board, make regulations providing for conduct of officers, by class or generally, in the performance of their duties under this Act:

Provided that the services of a public servant shall not be terminated except in accordance with the procedure laid down in the Public Service Act.

Cap. 1:03

Appointment of an Honorary Parks and Wildlife Officer
15 of 2004

7.—(1) The Minister may appoint any person to be an Honorary Parks and Wildlife Officer to assist in the implementation of this Act for such period not exceeding three years as the Minister shall specify in the instrument of appointment, and may, in like manner, renew or revoke any such appointment and shall cause notice of the appointment, renewal or revocation to be published in the *Gazette*.

(2) The appointment of any Honorary Parks and Wildlife Officer may be—

(*a*) general, in which case it shall authorize the officer to act in any part of Malaŵi; or

(*b*) limited, authorizing the officer to act only within a specified part or specified parts of Malaŵi.

(3) An Honorary Parks and Wildlife Officer may at any time be called by the Chief Parks and Wildlife Officer to serve on such official duties under this Act and for such length of time as may be agreed between the officer and the Chief Parks and Wildlife Officer.

(4) Subject to subsection (3), an Honorary Parks Wildlife Officer shall perform his duties under this Act on voluntary basis and the Government shall not be bound to pay an Honorary Parks and Wildlife Officer.

Powers of officers
15 of 2004

8.—(1) Any officer may, without warrant, enter upon any land, building, tent, motor vehicle, trailer, container, aircraft or boat for the purpose of ensuring that the provisions of this Act are being complied with or for the purpose of preventing or detecting any offence under this Act.

(2) Subject to subsection (3), an officer may carry and use firearms.

(3) The Minister may, on the recommendation of the Board, make regulations—

(*a*) specifying, by name or rank, officers or class of officers who may carry and use firearms;

(*b*) governing the carrying and use of firearms by officers; and

(*c*) governing the discipline and conduct of officers authorized under this Act to carry and use firearms.

Cap. 14:08

(4) An officer shall, for purposes of the Firearms Act, be deemed to be a person in the service of the Government acting in accordance with his duties as such.

Seizure of specimens and articles
15 of 2004

9.—(1) Any officer may, without warrant, search any land, building, tent, motor vehicle, trailer, container, aircraft, boat or any baggage or package—

(*a*) if he has reasonable grounds for believing that any person has committed or is committing or is about to commit an offence under this Act; or

(*b*) to verify any document or matter purported to have been issued under this Act,

and if such officer finds any specimen or article which appears to have been obtained, possessed, used or about to be used in committing an offence under this Act, he shall seize such specimen or article.

(2) Any officer who seizes any specimen or article pursuant to subsection (1) shall give to the person from whom it was seized a receipt therefor in the prescribed form if any, signed by the officer.

Return of seized specimens and articles

10. Where the Chief Parks and Wildlife Officer is notified in writing by the Director of Public Prosecutions that no prosecution should be instituted for an offence committed in connexion with or in respect of any specimen or article seized under section 9, or where such prosecution has, if concluded, not resulted in the conviction of that person in respect thereof, any specimen or article seized shall be returned to its owner within fourteen days of the receipt by the Chief Parks and Wildlife Officer of such written notice from the Director of Public Prosecutions:

Provided that any such specimen or article shall not be so returned if the court has ordered it to be forfeited or destroyed under the provisions of this Act or any other written law.

Barriers to be placed across roads

11. Any officer may place or cause to be placed a barrier across any road for the purpose of examining or searching any motor vehicle or trailer or questioning any person:

Provided that such barrier shall conform to specifications laid down by the Chief Parks and Wildlife Officer who shall act in consultation with the other relevant authorities including, more particularly those responsible for roads and road traffic.

Arrest of persons for committing offences

12.—(1) Where any person is found committing or is reasonably suspected of having committed or of being about to commit an offence under this Act, any officer may without warrant arrest such person.

(2) Any person arrested pursuant to subsection (1) shall, as soon as possible, through police officers be charged with the appropriate offence and be taken before a court, and shall not be detained longer than is necessary.

Prosecution by officers

13.—(1) The Director of Public Prosecutions may, at the written request of the Chief Parks and Wildlife Officer, in writing nominate, by name or rank, any officer or class of officer of the Department of National Parks and Wildlife to undertake and prosecute criminal proceedings in respect of any offence alleged to have been committed by any person in contravention of this Act and may at any time, without assigning any reason thereof, in writing, cancel any such nomination.

(2) In undertaking or prosecuting any proceedings pursuant to subsection (1), such officer shall act in accordance with the general or special directions of the Director of Public Prosecutions and shall, for the purpose of any such proceedings, have the powers of a public prosecutor appointed under any written law for the time being in force.

Production of documents for inspection
15 of 2004

14. Any document issued pursuant to this Act shall, upon request, be produced by the holder thereof for inspection by any officer.

Obstruction of officers, etc. 11 of 2017

15. Any person who—

(*a*) obstructs any officer in the performance of his functions under this Act;

(*b*) refuses to furnish to any officer on request, particulars or information to which the officer is entitled by or under this Act;

(*c*) willfully or recklessly gives to any officer false or misleading information which the officer is entitled to obtain under this Act,

commits an offence.

Alteration, etc., of official record 15 of 2004 11 of 2017

16. Any person who, without lawful authority—

(*a*) alters, defaces or removes any official record maintained in pursuance of this Act or any regulation or order made under this Act; or

(*b*) alters or defaces any prescribed document issued under this Act,

commits an offence.

PART III
Wildlife Research and Management Board

Establishment of the Board

17. There is hereby established a board to be known as the Wildlife Research and Management Board.

Composition of the Board 15 of 2004

18.—(1) The Board shall consist of—

(*a*) the following *ex officio* members—

(i) the Director;

(ii) the head of Wildlife Research Unit, or his designated representative;

(iii) the Commissioner for Local Government, or his designated representative;

(iv) the Director of Fisheries, or his designated representative;

(v) the Director of Forestry, or his designated representative;

(vi) the Director of Environmental Affairs, or his designated representative;

(vii) the Director of Tourism, or his designated representative;

(*b*) one member with recognized qualifications, experience or specialization in matters relevant to conservation, preservation or protection of wildlife;

(*c*) two members representing the private sector appointed by the Minister;

(*d*) three members representing the general public; and

(*e*) two members representing non-governmental organizations appointed by the Minister.

(2) The minister shall designate one of the members to be Chairman of the Board.

(3) A member of the Board appointed under subsection (1) (*b*), (*c*) and (*d*) shall hold office for a period of three years unless his appointment be sooner terminated and shall be eligible for reappointment.

(4) The membership of the Board as first and subsequently appointed and every change in the membership to the Board shall be published in the *Gazette*.

(5) The office of the Chief Parks and Wildlife Officer shall provide the Secretariat of the Board.

(6) The office of a member appointed pursuant to subsection (1) (*b*), (*c*), (*d*) and (*e*) shall become vacant—

(*a*) upon his death;

(*b*) if he is absent from three consecutive meetings of the Board without the approval of the Chairman or without other valid cause;

(*c*) upon the expiry of one month's notice in writing of his intention to resign his office, given by the member to the Chairman;

(*d*) if he is convicted of an offence under this Act; or

(*e*) if the Minister so directs.

Functions of the Board
15 of 2004
11 of 2017

19. The function of the Board shall be to advise the Minister on all matters relating to protected areas and wildlife management in Malaŵi, including in particular but not limited to—

(*a*) advising on the declaration of areas which, for the purpose of protecting wildlife species, biotic communities, sites of special interest or aesthetic values and promoting education on wildlife, the Board considers should be declared protected area under this Act; and

(*b*) advising on the import, export and re-export of wildlife specimens into and out of Malaŵi.

Meetings of the Board

20.—(1) The Board shall meet not less than twice a year at such places and times as the Chairman may determine.

(2) The Board shall further meet at any time at the request, in writing, of any three of its members.

(3) The Board may at the discretion of the Chairman invite any person or persons to attend any meeting of the Board and such person or persons may take part in the proceedings of that meeting but shall not be entitled to vote.

(4) In the absence of the Chairman from any meeting of the Board the members present, if constituting a quorum, shall elect one of their number to preside at the meeting.

(5) A majority of the members of the Board shall constitute a quorum.

(6) At all meetings of the Board the decisions shall be reached by a simple majority, and the Chairman or other person presiding shall have a deliberative vote and, in the event of an equality of votes, shall have a casting vote.

(7) The Chairman of the Board shall report to the Board at each meeting thereof the action taken in respect of any matter on which the Board has advised the Minister.

(8) The Board shall determine its own procedure.

Members of the Board not deemed public officers

21. A member of the Board who is not a public officer shall not, by virtue only of his membership to the Board, be deemed to be an officer in the public service.

Allowances
15 of 2004

22. A member of the Board or a committee thereof shall be paid such allowances as the Minister may determine.

PART IIIA
Local Community Participation and Private Sector Involvement

15 of 2004

Purposes of this Part
15 of 2004

22A. The purpose of this Part is to provide for local community participation and private sector involvement in conservation and management of wildlife.

Wildlife management agreement
15 of 2004

22B.—(1) For proper management of wildlife, the Director may enter into a wildlife management agreement with a wildlife management authority providing for, *inter alia*—

(*a*) a management plan;

(*b*) assistance to be provided by the Department of National Parks and Wildlife; and

(*c*) rights and duties of the wildlife management authority.

(2) The Director may enter into concession agreements for purposes of managing, and investing in, such protected areas, in whole or part thereof, as may be determined by the Board.

(3) Subject to performance of unfulfilled obligations under a wildlife management agreement or a concession agreement or the rights of a third party, a wildlife management agreement or a concession agreement may be terminated by either party.

(4) In the event of any dispute which cannot be resolved by the parties arising under a wildlife management agreement or a concession agreement, the matter shall be referred to the Minister:

Provided that any party aggrieved with the decision of the Minister may, within thirty days of the decision of the Minister apply to the High Court for review of the decision.

Minister may make rules
15 of 2004

22C.—(1) The Minister may, on the recommendation of the Board, make rules for the better carrying into effect of the purposes of this Part.

(2) Without prejudice to the generality of subsection (1), the rules may—

(*a*) provide for conservation and management of wildlife;

(*b*) provide for private sector involvement in the management of, and investment in protected areas;

(*c*) facilitate the establishment of wildlife management authorities;

(*d*) encourage local government authorities, non-governmental organizations, the private sector and other relevant institutions to contribute towards provision of wildlife extension services in accordance with guidelines provided by the Director;

(*e*) provide for the establishment and management of community conservation areas outside protected areas;

(*f*) authorize payments of grants or bonus out of public funds for encouragement of the management of wildlife; and

(*g*) prescribe a mechanism for sharing costs and benefits between the Department of National Parks and Wildlife and wildlife management authorities.

PART IV

Environmental and Social Impact Assessments

15 of 2004
11 of 2017

Request to conduct an environmental and social impact assessment
15 of 2004
11 of 2017

23.—(1) Any person who has a good and sufficient reason to believe that any proposed or existing government process or activity of the government or any other organization or person may have an adverse effect on any wildlife species or community such person may request, through the Board, the Minister that a environmental and social impact assessment be conducted.

(2) Whenever the Minister receives such request under this section he may within thirty days of receipt thereof call upon the Board to conduct the assessment.

Submission of the assessment reports to the Minister
15 of 2004
11 of 2017

24.—(1) Where the Board is called upon pursuant to section 23 to conduct an environmental and social impact assessment it shall arrange for the assessment to be conducted and shall submit a report of its findings to the Minister within ninety days of being called upon to conduct the assessment.

(2) In conducting the assessment, the Board may—

(*a*) use any powers available to it under this Act as it may consider necessary;

(*b*) utilize the services of the Director;

(*c*) invite written or oral comments from the public; and

(*d*) conduct public hearings at such place or places as the Board deems necessary for purposes of assessing public opinion.

Contents of the assessment reports

25. Any report submitted by the Board to the Minister pursuant to section 24 (1) shall include—

(*a*) a statement of the existing or anticipated impacts upon wildlife, including an account of the species, communities, and habitats affected and the extent to which they are or may be threatened;

(*b*) a statement of whether rare, endangered or endemic species are or may be affected;

(*c*) a list of alternative actions, including inaction, which might be taken to remove or lessen adverse impacts; and

(*d*) its recommendations for subsequent government action.

PART V

Declaration and Management of Protected Areas

15 of 2004

Declaration of protected areas
15 of 2004
11 of 2017

26.—(1) For the purposes of this Act, there shall be declared protected areas of public land to be known as protected areas.

(2) The declaration and management of protected areas shall be subject to the provisions of sections 27 to 41.

Purposes of protected areas
15 of 2004
11 of 2017

27. The purposes of protected areas shall be—

(*a*) to preserve selected examples of biotic communities of Malaŵi and their physical environments;

(*b*) to protect areas of aesthetic beauty and of special interest;

(*c*) to preserve populations of rare, endemic and endangered species of wild plants and animals;

(*d*) to assist in water catchment conservation;

(*e*) to promote education on wildlife;

(*f*) to provide an enabling environment for nature based tourism in and around them;

(*g*) without prejudice to the purposes listed in paragraphs (*a*) to (*d*), and within any limitations imposed by them, to provide facilities for studying the phenomena therein for the advancement of science and understanding; and

(*h*) without prejudice to the purposes listed in paragraphs (*a*) to (*c*), and within any limitations imposed by them, to provide facilities for public use and enjoyment of the resources therein.

Procedure for declaration of protected areas
15 of 2004
11 of 2017

28.—(1) The Minister may, by order published in the *Gazette*, declare any area of land or water within Malaŵi to be a protected area and may, in like manner, alter the boundaries of, or disestablish, any protected area so declared, and the Minister shall first require the

matter to be comprehensively studied by or under the auspices of the Board.

11 of 2017

(2) The Minister may amend such order, but any order the purpose of which is to alienate or excise land from a protected area shall be of no effect unless and until approved by a resolution of the National Assembly.

(3) Any study made pursuant to the provision of subsection (1) shall investigate the ecological consequences of the proposed boundary change or disestablishment, and the report of the study shall be submitted to the Minister together with the advice of the Board within ninety days of the study being made.

11 of 2017

(4) The Minister shall not decide upon any proposal relating to boundary change or disestablishment of any protected area until he is in receipt of a report made pursuant to subsection (3).

Acquisition of land for protected areas
15 of 2004
11 of 2017
Cap. 57:01
Cap. 58:04

29. Any area of land proposed for protected areas status and which is not public land shall first be acquired as public land in accordance with the provisions of the Land Act and Lands Acquisition Act.

Temporary management measures
15 of 2004
11 of 2017

30.—(1) When an area is proposed for declaration as a protected area and action to do so in accordance with this Act has been started, the Minister may, on the recommendations of the Board, make administrative arrangements for managing the area by imposing temporary management measures effective for a period of not exceeding six months pending declaration of the area as a protected area, and shall cause notice of the institution of such arrangements to be given in the *Gazette*.

(2) Any area to which temporary management measures apply shall be managed by the Chief Parks and Wildlife Officer in accordance with the administrative arrangements made under subsection (1).

(3) Any person who fails to comply with any directive or instruction of the Chief Parks and Wildlife Officer or of any officer duly acting on behalf of the Chief Parks and Wildlife Officer in the management of an area under this section commits an offence; and for the avoidance of doubt, the offence hereby created is a strict liability offence.

11 of 2017

Description of the area to be declared a protected area
15 of 2004
11 of 2017

31. Any order made under section 28 declaring a protected area shall incorporate a description of the area which shall include—

(*a*) the proposed name of the protected area; and

(*b*) an exact delimitation of the boundary which shall include a description of the land which may have been acquired pursuant to section 29.

Prohibition of entering or residing in protected areas without authority
15 of 2004
11 of 2017

32.—(1) Any person who, except in accordance with the provisions of this Act, enters into or resides in, or attempts to enter into or reside in, any protected area commits an offence.

(2) This section shall not apply to—

(*a*) the Minister, the Director, a member of the Board, an officer or an employee of the Department of National Parks and Wildlife in the course of performing his duties requiring his presence in a national or nature sanctuary; or

(*b*) any person in possession of a permit to enter or reside in the protected area issued under subsection (3).

(3) The Chief Parks and Wildlife Officer may issue to any person a permit, in the prescribed form, to enter or reside in any protected area, subject to payment by that person of the prescribed fee, if any.

Prohibition of possession or use of weapons, traps, explosives or poisons
15 of 2004
11 of 2017

33.—(1) Except as otherwise provided by section 39 or by section 40 or under a valid hunting licence issued pursuant to Part VII, any person who conveys into, or possesses or uses within, any protected area any weapon, trap, explosive or poison commits an offence.

(2) This section shall not apply to any officer acting in the performance of his duties.

Prohibition of deposition of litter or waste
15 of 2004
11 of 2017

34. Any person who discards or deposits any litter or any waste material in a protected area otherwise than into a receptacle provided for the purpose commits an offence.

Other prohibited acts in a protected area
15 of 2004
11 of 2017

35. Except as otherwise provided by section 39 or by section 40 or under a valid hunting licence issued pursuant to Part VII, any person who, in a protected area—

(*a*) hunts, takes, kills, injures, or disturbs any wild plant or animal, or any domestic animal or cultivated plant occurring lawfully therein;

(*b*) takes, destroys, damages, or defaces any object of geomorphological, archaeological, historical, cultural, or scientific interest, or any structure lawfully placed or constructed therein;

(*c*) prepares land for cultivation or settlement, prospects for minerals or mines or attempts any of these operations;

(*d*) drives, conveys, or introduces any wild animal into a protected area;

(*e*) drives, conveys or introduces any domestic animal into a protected area or who permits any domestic animal, of which he is for the time being in charge, to stray into a protected area,

commits an offence.

Destruction of domestic animals by officers
15 of 2004
11 of 2017

36. Any officer who finds a domestic animal within a protected area and is satisfied that its presence there is unlawful may destroy the animal forthwith, and the owner of such animal shall not be entitled to compensation.

Prohibition of introduction of plants into protected areas
15 of 2004
11 of 2017

37.—(1) Except as otherwise provided by section 39, any person who conveys or introduces any plant, whether of a wild or cultivated species, into a protected area commits an offence.

(2) The Chief Parks and Wildlife Officer may order the destruction or removal of any plant, and any seedling or offshoot thereof, brought into a protected area in contravention of subsection (1).

Prohibition against fire in protected areas
15 of 2004
11 of 2017

38. Except as otherwise provided by section 39, or by section 41 (2) (*b*), any person who starts or maintains any fire in a protected area commits an offence.

Control of harvest in protected areas
15 of 2004
11 of 2017

39. Where it is intended to harvest resource within a protected area—

(*a*) the Chief Parks and Wildlife Officer may, subject to the provisions of this Act, issue authority to any person, in the prescribed form, absolving him from compliance with the provisions of sections 33 (1) and 35 (*a*) to the extent specified in the authority; and

(*b*) the Chief Parks and Wildlife Officer shall be responsible for regulating and controlling harvesting in the protected area; and in exercising his responsibility under this paragraph the Chief Parks and Wildlife Officer shall ensure that the annual harvest does not exceed sustainable yield level unless it is judged desirable by the Minister to exceed temporarily such level for the purposes of management.

Board to be appraised of the data
15 of 2004
11 of 2017

40.—(1) If the Chief Parks and Wildlife Officer is satisfied that an otherwise unlawful act specified by sections 34 to 37 should be carried out in any protected area in the interests of better wildlife management, he shall appraise the Board of all data relevant on the subject and shall request the opinion of the Board.

(2) If the Board, having considered any matter submitted by the Chief Parks and Wildlife Officer pursuant to subsection (1), is of the opinion that an otherwise unlawful act should be carried out in the interests of better wildlife management, it shall, with the approval of the Minister, issue written instructions to any officer authorizing him to undertake the act.

41.—(1) The Minister shall, by notice published in the *Gazette*, make provision to the extent necessary for implementing management measures of protected areas.

Regulations for use of protected areas
15 of 2004
11 of 2017

(2) The Minister may, on the recommendation of the Board, make regulations which shall provide for—

(*a*) conditions under which any person, vehicle, boat or aircraft may enter, travel through, reside in, or be kept in a protected area;

(*b*) the prohibition or regulation of lighting camp or picnic fires in a protected area;

(*c*) fees for entry into protected areas or for services or amenities provided therein;

(*d*) prohibition or control of low flying aircraft over a protected area;

(*e*) rules for persons within a protected area;

(*f*) prohibition or control of commercial enterprises within a protected area; and

(*g*) the efficient management of a protected area.

(3) Any person who contravenes the provisions of any regulations made under subsection (2) commits an offence.

PART VI

Protected Species, Endangered Species or Listed Species

11 of 2017

42. The purpose of this Part is to provide the classification of species of wild plants and animals as protected species, endangered species or listed species in order that those particular species of plants or animals are accorded appropriate management priority.

Purpose of this Part
11 of 2017

43.—(1) The Minister may, from time to time, by order published in the *Gazette*, declare any species of wild plant or wild animal specified in such order to be classified as a protected species, endangered species or listed species under this Act.

Declaration of protected species, endangered species or listed species
15 of 2004
11 of 2017

(2) Any order made under subsection (1) may apply to an individual species throughout Malaŵi, or to all or some species in a specified area, or to varieties of a species including sex and age groups.

43A.—(1) The Minister may, from time to time, cause to be published in the *Gazette* a list of all species to be classified as endangered species or listed species under this Act.

Endangered species or listed species
15 of 2004
11 of 2017

(2) An order made under subsection (1) may apply to—

(*a*) an individual species throughout Malaŵi;

(*b*) to all or some species in a specified area; or

(*c*) to varieties of a species including sex and age groups.

Game species
15 of 2004
11 of 2017

44.—(1) Some protected species, endangered species or listed species of animals other than endangered species or listed species shall be classified as game species for purposes of hunting.

(2) The Chief Parks and Wildlife Officer shall, after consultation with the Board, cause to be published in the *Gazette* a list of all species that are to be classified as game species under this Act.

(3) The Chief Parks and Wildlife Officer, after consultation with the Board may, at any time, by notice published in the *Gazette* vary the list, in effect at that time, of game species.

(4) Game species may be hunted under any licence issued in terms of Part VII.

Wild animals or plants which are not game species, protected species, endangered species or listed species
11 of 2017

45. Wild plants and wild animals other than game species, protected species, endangered species or listed species shall not be subject to the restrictions on hunting or taking under Part VII, but shall be subject to all other provisions of this Act and to the provisions of any other written law.

PART VII
Licences to take or Hunt Wildlife

Purpose of this Part

46. The purpose of this Part is to regulate the hunting and taking of wildlife resources.

General prohibition against hunting or taking without a licence
15 of 2004
11 of 2017

47.—(1) Except as otherwise provided by this Act, any person who hunts or takes any protected species, endangered species or listed species, except in accordance with the conditions of a licence and, where so required under this Act, a permit issued pursuant to this Part commits an offence:

Provided that any officer shall not be required to possess a licence or a permit while acting in the performance of his duties or in exercising his powers under this Act.

(2) In any proceedings for an offence against subsection (1) the onus of proving that the hunting or the taking was in accordance with a valid licence and, where so required under this Act, a permit shall rest upon the accused.

Classes of licences
15 of 2004

48.—(1) For the purposes of this Act there shall be the following classes of licences—

(*a*) a bird licence;

(*b*) a game licence;

(*c*) hunting licence;

(*d*) a special licence;

(*e*) a visitor's licence;

(*f*) an animal captivity licence;

(*g*) a game farming licence;

(*h*) a game ranching licence; and

(*i*) a professional hunter's licence.

(2) The Minister may, on the recommendations of the Board, by notice published in the *Gazette*, prescribe in respect of the forthcoming year—

(*a*) the conditions attached to each class of licences;

(*b*) the numbers of each class of licences which may be issued during the course of a year for specified areas;

(*c*) the methods by which each class of licences may be issued or offered for sale;

(*d*) the species, sorts or varieties, and the numbers or quantities of each class which may be hunted or taken under each class of licences;

(*e*) the methods of hunting or taking which may or may not be used;

(*f*) the areas and times of the year in or during which hunting or taking is lawful; and

(*g*) the fees payable in respect of each class of licences.

(3) Licences under this Act shall be issued by the Chief Parks and Wildlife Officer, other officers subordinate to him as he may authorize in that behalf and such other persons as the Minister may by notice published in the *Gazette* designate as persons also authorized to issue licences under this Act.

(4) Every licence under this Act shall be in the prescribed form and shall be issued upon application made in the prescribed form.

(5) No licence under this Act shall be issued to a person who has not attained the age of eighteen years.

Permits
15 of 2004

48A.—(1) The Minister may, on recommendation of the Board, by notice published in the *Gazette*, specify classes of licences in respect of which the obtaining of a permit under this Act shall be a condition precedent to hunting under the authority of the licence.

(2) Permits under this Act shall be issued by such persons in a wildlife district as the Director may by notice in the *Gazette* designate.

(3) Every permit under this Act shall be in a prescribed form.

Licence not transferable
15 of 2004

49. Except as otherwise provided by the Act, any licence and permit issued under this Part shall not be transferable to any other person.

Bird licence

50.—(1) A bird licence shall authorize the licensee to hunt species of birds specified in the licence subject to and in accordance with the conditions prescribed generally for such class of licences or specially endorsed on his licence.

(2) Subject to section 52, a bird licence shall only be issued to citizens or residents of Malaŵi.

Game licence

51.—(1) Subject to the provisions of this Act and the conditions prescribed for such licence, a game licence shall authorize the licensee to hunt species specified in the licence subject to and in accordance with the conditions prescribed generally for such class of licences or specially endorsed on his licence.

(2) Subject to section 52, a game licence shall only be issued to citizens or residents of Malaŵi.

Visitor's licence

52. Notwithstanding sections 50 and 51, a visitor's licence shall only be issued to a visitor to Malaŵi on such conditions as the Minister may prescribe, and shall authorize the licensee to hunt birds or game.

Special licence
11 of 2017

53. A special licence shall be issued in respect of protected species, endangered species or listed species and shall authorize the licensee to hunt or to take protected species, endangered species or listed species specified therein subject to and in accordance with the conditions prescribed generally for such classes of licence specially endorsed on his licence and in every case shall be issued for the purpose of—

(*a*) scientific research or the furtherance of scientific research relative to the species;

(*b*) scientific or educational or other proper use of the species in zoological institutions, botanical gardens, educational institutions, museums, herbaria and like institutions.

Hunting licence
15 of 2004
11 of 2017

54.—(1) A hunting licence shall authorize the licensee to hunt wild animals which are protected species, endangered species, or listed species.

(2) A hunting licence for hunting wild animals which are protected species, endangered species and listed species shall—

(*a*) outside a protected area, be issued only in connexion with a professional hunter's licence and, subject to, and, in accordance with the conditions prescribed generally for such class of licence or specially endorsed on the professional hunter's licence; and

(*b*) inside a protected area, be issued subject to the granting of a special permit by the Director, issued only in connexion with a professional hunter's licence and, subject to, and, in accordance with the conditions prescribed generally for such class of licence or specially endorsed on the professional hunter's licence.

Animal captivity licence
15 of 2004
11 of 2017

54A.—(1) Subject to the provisions of this Act and the conditions prescribed for such a licence, an animal captivity licence shall authorize the licensee to keep in captivity protected species, endangered species or listed species specified in the licence subject to and in accordance

with the conditions prescribed generally for such class of licences or specially endorsed on his licence.

(2) An animal captivity licence shall only be issued to citizens or residents of Malaŵi.

(3) The Minister shall, from time to time, publish in the *Gazette* a set of standards for the keeping of wild animals in captivity. 11 of 2017

54B.—(1) Subject to the provision of this Act and the conditions prescribed for such a licence, a game farming licence shall authorize the licensee to rear both game species and domestic animals for the purpose of utilization. Game farming licence 15 of 2004

(2) A game farming licence shall only be issued to citizens or residents of Malaŵi.

54C.—(1) Subject to the provisions of this Act and the conditions prescribed for such a licence, a game ranching licence shall authorize the licensee to rear game species for purposes of utilization. Game ranching licence 15 of 2004

(2) A game ranching licence shall only be issued to citizens or residents of Malaŵi.

54D. Subject to the provisions of this Act and the conditions prescribed for such a licence, a professional hunter's licence shall authorize the licensee to conduct and be responsible for the activities of licensed hunting. Professional hunter's licence 15 of 2004

55.—(1) The Chief Parks and Wildlife Officer may refuse to issue a licence if— Grounds on which a licence may be refused 15 of 2004

(*a*) the applicant fails to comply with any prescribed condition;

(*b*) any licence formerly held by the applicant under this Act has been revoked by the Chief Parks and Wildlife Officer within the previous twelve months;

(*c*) the applicant has been convicted of an offence under this Act during the previous twenty-four months;

(*d*) the Chief Parks and Wildlife Officer is satisfied on reasonable grounds that the applicant is not a fit or proper person to hold such licence; or

(*e*) the Chief Parks and Wildlife Officer is satisfied that the interests of wildlife management will be better served by a temporary freeze in issuing of licences of that class.

(2) The Chief Parks and Wildlife Officer shall notify the applicant in writing of any refusal under this section, and shall state his reasons therein.

56.—(1) An applicant who has been refused a licence under section 55 may appeal to the Minister in writing within thirty days after the date of a notice given pursuant to section 57 (2) but the Minister may, on proper cause shown, allow an appeal out of the time prescribed. Appeal to the Minister against refusal of issuance of licence 15 of 2004

(2) The Minister shall hear the views of the Chief Parks and Wildlife Officer in determining an appeal under this section and may uphold, vary or quash the decision of the Chief Parks and Wildlife Officer.

Cancellation of a licence

57.—(1) The Chief Parks and Wildlife Officer may revoke any licence issued to any person under this Part if he is reasonably satisfied of the existence of any ground that would entitle him under section 55 to refuse to issue a licence to that person.

(2) The Chief Parks and Wildlife Officer shall notify the licensee in writing of any cancellation under this section and shall state his reasons in writing.

Appeal to the Minister upon cancellation of a licence
15 of 2004

58.—(1) Any licensee whose licence is cancelled under section 57 may appeal to the Minister in writing within thirty days after the date of a notice given pursuant to section 59 (2) but the Minister may on proper cause shown, allow an appeal out of the time prescribed.

(2) The Minister shall hear the views of the Chief Parks and Wildlife Officer in determining an appeal under this section and may uphold, vary or quash the decision of the Chief Parks and Wildlife Officer.

Cancellation or suspension of a licence

59.—(1) The Minister may, on the advice of the Board or the Chief Parks and Wildlife Officer, suspend or cancel any licence issued under this Part, either in its entirety or in respect of specified areas, periods, species, or sorts or varieties of species, if the interests of wildlife management so require.

(2) Upon suspension or cancellation of any licence under subsection (1), the Chief Parks and Wildlife Officer shall notify the licensee thereunder either—

(*a*) in the case of an individual licensee, by written notice to him; or

(*b*) in the case of a general suspension or cancellation, by publishing notices in the *Gazette* and in two consecutive issues of the daily local newspaper.

(3) A notice issued under subsection (2) in respect of cancellation may request surrender of licences to the Chief Parks and Wildlife Officer.

(4) A licensee under any licence suspended or cancelled under subsection (1) may appeal to the Minister in writing within thirty days after the date of a notice given under subsection (2) (*a*), or thirty days after publication of a notice in the *Gazette* made under subsection (2) (*b*).

(5) In determining such appeal, the Minister shall be free to hear the views of the Board or the Chief Parks and Wildlife Officer.

(6) The decision of the Minister on determination of an appeal shall be final.

60.—(1) Every licensee under this Part shall—

Inspection of a licence and the keeping of records
15 of 2004
11 of 2017

(*a*) have the licence in his possession whenever he is hunting or taking any animal or plant;

(*b*) produce the licence for inspection by an officer upon request; and

(*c*) keep a true record, in the prescribed form, of all game species hunted or taken by him during validity of the licence.

(2) Any person who contravenes this section commits an offence.

61. In the case of animals—

Method of computing numbers or quantities of animal hunted or taken
11 of 2017

(*a*) in computing the numbers or quantities of protected species, endangered species or listed species hunted or taken under a licence issued pursuant to this Part, only animals that are killed, wounded, captured or taken shall be counted;

(*b*) if any protected species, endangered species or listed species is killed or wounded through accident or error by any licensee under this Part whose licence entitles him to hunt such animal shall be counted as having been hunted under such licence.

62.—(1) Any licensee under this Part may employ or use another person to assist him as a guide, tracker or porter in hunting protected species, endangered species or listed species.

Guides, trackers and porters
11 of 2017

(2) Any person employed under subsection (1), not being himself a licensee, who chases, drives or employs any weapon against any protected species, endangered species or listed species commits an offence.

(3) Nothing in this section shall be construed as preventing the holder of a professional hunter's licence issued under section 92 from assisting his employer.

PART VIII
Methods of Hunting and Taking, and Responsibilities of Hunters

63. The purpose of this Part is to regulate methods of hunting and taking of animals and with a view to ensuring that wildlife resources are better managed and the opportunity to hunt made available to as many eligible persons as possible.

Purpose of this Part

64. Any person who, for the purpose of hunting, taking or assisting another to hunt or take, any wild animal or plant, causes any fire commits an offence.

Prohibition of use of fire for hunting
15 of 2004
11 of 2017

65. Except as may be authorized under a special licence issued pursuant to section 53, or as permitted under the provisions of Part IX, any person who hunts any dependent young or any female accompanied

Prohibition of hunting of dependent young
11 of 2017

by dependent young of any protected species, endangered species or listed species commits an offence.

Prohibited acts against killing protected species, endangered species or listed species, etc.
11 of 2017

66.—(1) Except as may be authorized by the conditions contained in any licence issued under this Act, any person who—

(*a*) for the purpose of or in connexion with hunting or taking of protected species, endangered species or listed species possesses, prepares, makes, buys, sells or uses any poison, birdlime, trap, net, snare or similar substance or device capable of killing, capturing or wounding, any protected species, endangered species or listed species;

(*b*) makes, prepares or uses any excavation, fence, enclosure or any device fixed to the ground or upon plants, capable of killing, capturing or wounding, any protected species, endangered species or listed species,

commits an offence.

(2) The onus of proving that an act under this section was done lawfully shall lie on the accused person.

Regulations for weapons to be used in hunting
15 of 2004
11 of 2017

67.—(1) The Minister may from time to time, on the recommendations of the Chief Parks and Wildlife Officer, make regulations specifying the types, sizes, and calibres of weapons which may lawfully be used for hunting any protected species, endangered species or listed species.

11 of 2017

(2) A person who contravenes the provision of any regulation made under this section commits an offence.

Prohibition of hunting during hours of darkness
11 of 2017

68. Except as may be authorized by the conditions contained in any licence issued under Part VII, any person who, during the hours of darkness, hunts or assists in the hunting of any protected species, endangered species or listed species commits an offence.

69. [*Repealed by Act No.* 15 *of* 2004]

Use of motor vehicle, aircraft or radio communication prohibited
11 of 2017

70.—(1) Except as provided by subsection (2) or as may be authorized by the conditions contained in any licence under this Act, any person who—

(*a*) discharges any weapon at any protected species, endangered species or listed species from or within fifty metres of any motor vehicle, aircraft, or boat;

(*b*) uses any motor vehicle, aircraft or boat to drive or stampede any protected species, endangered species or listed species; or

(*c*) uses any aircraft or radio communication system to locate any protected species, endangered species or listed species for the purpose of hunting it,

commits an offence.

(2) Nothing in subsection (1) shall prohibit the use of a motor vehicle, aircraft or boat for the purpose of driving off any wild animal from the land or water upon which an aircraft is about to land or take off.

Regulations for use of domestic animals in hunting
15 of 2004
11 of 2017

71.—(1) The Minister may from time to time, make regulations—

(*a*) prohibiting the use of any domestic animal as an aid to hunting any protected species, endangered species or listed species; or

(*b*) specifying the conditions under which any domestic animal may be used to hunt any protected species, endangered species or listed species.

(2) Any person who contravenes the provisions of any regulation made under this section commits an offence.

Regulations for use of substances or devices in hunting
15 of 2004
11 of 2017

72.—(1) The Minister may from time to time, make regulations—

(*a*) prohibiting or controlling the use of baits, decoys, calling devices, hides, blinds, stands, or any other substances or devices to bring protected species, endangered species or listed species into closer range of hunters;

(*b*) specifying the conditions under which any substance or device may be used to hunt any protected species, endangered species or listed species;

(*c*) prohibiting or controlling hunting in the vicinity of salt licks, water holes or isolated watering places used by wild animal; or

(*d*) specifying procedures which any hunter may be required to follow after killing any protected species, endangered species or listed species;

(2) Any person who contravenes the provisions of any regulation made under this section commits an offence. 11 of 2017

PART IX
Hunting Dangerous Animals, Killing in Error, Wounding and Molesting Animals

Purposes of this Part
11 of 2017

73. The purposes of this Part are—

(*a*) to authorize the killing without licence of protected species, endangered species or listed species under circumstances where human life or property is threatened by the animals which circumstances are defined in sections 79 and 80;

(*b*) to make provision with respect to the killing or wounding of protected species, endangered species or listed species through error or accident;

(*c*) to provide for subsequent action to the wounding of a dangerous animal; and

(*d*) to prohibit molesting or ill-treating wild animals.

Killing a protected species, endangered species or listed species in self-defence
11 of 2017

74. Any person may kill or attempt to kill any protected species, endangered species or listed species in defence of himself or of another person or any property, crop or domestic animal if immediately and absolutely necessary:

Provided that nothing in this section shall absolve from liability of an offence under this Act, any person who at the time of attempted killing was committing any offence under this Act.

Killing a game species in defence of property
11 of 2017

75. Any person may attempt to kill or kill any game species which is causing material damage to any land, crop, domestic animal, building, equipment or other property of which the person is either the owner or the servant of the owner acting on his behalf in safeguarding the property.

Ownership of carcass not transferable
11 of 2017

76.—(1) Except as otherwise provided by this Act, or by the conditions of any licence issued under Part VI, the killing of any protected species, endangered species or listed species under section 74 or 75 shall not be deemed to transfer ownership of the carcass thereof to any person.

(2) Any person who kills a protected species, endangered species or listed species under section 74 or section 75 shall, as soon as practicable, report the facts to any officer and shall, unless otherwise entitled to retain the same under the conditions of any licence issued under Part VII, hand over the carcass or such parts thereof as the officer may direct.

(3) Any person who contravenes this section commits an offence.

Reports to be made to an officer where protected species, endangered species or listed species cause damage to property
11 of 2017

77.—(1) Subject to this Act, any person having reason to believe that any protected species, endangered species or listed species is causing or is about to cause material damage to any land, crop, domestic animal, building, equipment or other property may report the facts to an officer.

(2) An officer who receives a report pursuant to subsection (1) shall, as soon as practicable, assess the extent of the threat posed by the said animal and take any necessary action he considers fit in the circumstances.

11 of 2017

(3) In deciding what action should be taken to minimize damage to property caused by a protected species, endangered species or listed species, an officer shall carefully consider the status of the species and if he decides to kill or attempts to kill the animal, he shall do so only as a last resort and if only he has reasonable ground for believing that this course of action will not endanger survival of the species.

Reports to be made to an officer where protected species, endangered species or listed species is killed through error or by accident
11 of 2017

78.—(1) If any person kills any protected species, endangered species or listed species through accident or error he shall, as soon thereafter as may be practicable, report the facts to an officer and shall hand over the carcass or such parts thereof as the officer may direct.

(2) Nothing in subsection (1) shall apply to any person if such person is entitled under any licence issued under Part VII to hunt a protected or

game species of that species and sort, in the circumstances under which he killed such animal and no offence under this Act shall have been committed in relation to the killing of such animal. 11 of 2017

(3) Any person who contravenes this section commits an offence. 11 of 2017

Wounded protected species, endangered species or listed species 15 of 2004 11 of 2017

79.—(1) Any person who in any circumstances wounds any protected species, endangered species or listed species and fails without reasonable cause to use all reasonable endeavour to kill such animal at the earliest opportunity, commits an offence.

(2) Subsection (1) shall not be construed as authorizing any person to follow any wounded animal—

(*a*) into a protected area, unless the person holds a licence authorizing him to hunt the animal in the protected area; or

(*b*) onto private land upon which the person has no permission to enter.

(3) Any person who believes that he has wounded any protected species, endangered species or listed species which in such wounded condition has entered a protected area shall immediately report the facts to an officer who shall as he sees fit, decide whether or not the animal should be killed and shall issue instructions accordingly. 11 of 2017

(4) Any person who believes that he has wounded any protected or game species which in such wounded condition has entered private land upon which he has no permission to enter shall, immediately report the facts to the owner of the land.

(5) An owner of land who receives a report pursuant to subsection (1) shall decide whether or not the person making the report is to be permitted to enter his land for the purpose of hunting the animal, and the landowner's decision in this regard shall be final.

(6) Any person who contravenes this section commits an offence.

Wounded dangerous animals 15 of 2004 11 of 2017

80.—(1) Any person who, in any circumstances whatsoever, wounds any dangerous animal and fails to kill or capture it within 24 hours after its wounding shall, immediately report the facts to an officer.

(2) Any officer who receives a report pursuant to subsection (1) shall take immediate steps to locate the wounded animal, assess its condition and decide, as he sees fit, whether or not to kill it and shall either carry out the act himself or give instructions accordingly:

Provided that if the animal enters a protected area provisions of subsections (2) or (3) of section 79, as the case may be, shall apply.

(3) The provisions of section 79 (1) in respect to private land shall not apply to a person entering such land in pursuit of a dangerous animal wounded by him:

Provided that he reports the facts to the owner of the land as soon as practicable.

11 of 2017

(4) Any person who contravenes this section commits an offence.

Dangerous animal posing threat to human life or property
11 of 2017

81.—(1) If any dangerous animal is believed to be threatening or about to threaten human life or property, any person may request any officer for assistance in minimizing or preventing the threat.

(2) Where an officer receives a request pursuant to subsection (1) he shall, as soon as practicable, take steps to minimize or prevent the threat, and such steps may include the killing of the animal:

11 of 2017

Provided that if the animal is a protected species, endangered species or listed species the killing shall only be undertaken subject to section 74 or 75.

Molesting or provoking wild animals prohibited
11 of 2017

82. Any person who willfully and without just excuse or cause—

(*a*) molests or provokes any wild animal in a manner which results or is likely to result in its destruction; or

(*b*) molests or provokes any wild animal in a manner which results or is likely to result in the provocation, harassment or destruction of such wild animal,

commits an offence.

Protection of wild animals
11 of 2017

83. A person who causes unnecessary or undue suffering to any wild animal, whether the animal lives in the wild or is being kept in captivity, commits an offence.

Use of repellant substances or devices
11 of 2017

84. Nothing in this Part shall be construed as prohibiting the use of repellant substances or devices which are not capable of killing or injuring any protected or game species by a property owner or his servant for the purpose of repelling any wild animal from his property.

PART X
Commerce Related to Wildlife

Purpose of this Part

85. The purpose of this Part is to regulate commerce in wildlife and its specimens with the goal of better safeguarding the resource.

Prohibition of possession, sale and buying, of protected species, endangered species or listed species
11 of 2017

86.—(1) Except as otherwise provided by subsection (2), any person who possesses, buys, sells, transfer or receives in transfer, or who attempts to possess, buy, sell, transfer or receive in transfer any specimen of a game species, protected species, endangered species or listed species commits an offence.

(2) The provisions of subsection (1) shall not apply to possession of any specimen lawfully acquired under a licence issued under Part VII, by a person who is in possession of a valid certificate of ownership issued pursuant to section 88 (3).

Regulations for controlling trade or dealings in protected species, endangered species or listed species
11 of 2017

87.—(1) The Minister may from time to time, on the recommendation of the Board make regulations providing for—

(*a*) the control of trade in live animals of such species as the Minister shall prescribe in the regulations and the control of trade in the carcasses, meat and skins and other specimens of such animals;

(*b*) the control of industry engaged in the manufacturing of articles derived from protected species, endangered species or listed species;

(*c*) the control of the taxidermy industry; and

(*d*) the issue of permits to persons engaged in the foregoing occupations, and for prescribing fees payable for such permits.

(2) Any person who contravenes any regulation made under this section commits an offence.

Certificate of ownership
15 of 2004
11 of 2017

88.—(1) Any person who, under a licence issued under Part VII, takes possession of a specimen of a protected species, endangered species or listed species other than specimen for human consumption shall within fourteen days, present the specimen together with his licence to the Chief Parks and Wildlife Officer and if he wishes to retain the specimen he may apply in writing or in the prescribed form, if any, to the Chief Parks and Wildlife Officer for a certificate of ownership in respect thereof.

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

(3) Where the Chief Parks and Wildlife Officer is satisfied that an applicant under subsection (1) is in lawful possession of any specimen, he may issue a certificate of ownership which shall be in the prescribed form.

(4) Where the Chief Parks and Wildlife Officer is satisfied that a certificate of ownership issued under subsection (3) has been issued through fraud, misrepresentation or error, he may revoke the certificate and the person to whom the certificate was issued shall forthwith upon demand by the Chief Parks and Wildlife Officer surrender the certificate to him for cancellation and a person who, without valid reason, fails so to surrender the certificate commits an offence.

(5) Any person aggrieved by the cancellation of a certificate of ownership pursuant to subsection (4) may, within thirty days of its cancellation, appeal in writing to the Minister.

(6) In determining an appeal under subsection (5), the Minister shall hear the views of the Chief Parks and Wildlife Officer, and may uphold the decision of the Chief Parks and Wildlife Officer or instruct him to reissue the certificate of ownership.

Transfer of ownership of specimen
11 of 2017

89.—(1) Any person who transfers or purports to transfer ownership of any specimen of a prescribed species, whether by gift, sale or otherwise shall at the time of the transfer, or the purported transfer be in possession of a certificate of ownership in respect of the specimen.

(2) Upon the transfer of any specimen, the transferor shall surrender the certificate to the Chief Parks and Wildlife Officer who shall thereupon issue a new certificate to the new owner but the Chief Parks and Wildlife Officer shall retain the certificate surrendered to him.

(3) Any person who receives by transfer the ownership of any specimen of a prescribed species shall, at the time of the transfer, obtain from the transfer or in respect of the specimen a certificate of ownership endorsed pursuant to subsection (2).

(4) Any person who contravenes this section commits an offence.

(5) Nothing in this section shall apply to any transfer of ownership occasioned by operation of law.

Government trophy
11 of 2017

90.—(1) Any specimen of any protected species, endangered species or listed species the absolute ownership of which has not passed to any person under the provisions of this Act, shall be a government trophy for the purposes of this Act.

(2) Any person who obtains any government trophy by any means shall, as soon thereafter as may be practicable, report the facts to an officer and, if required, shall deliver up the trophy to the officer.

(3) Any person who contravenes subsection (2) commits an offence.

(4) Any specimens so received or collected by an officer pursuant to subsection (2) shall be delivered by him to the Chief Parks and Wildlife Officer and all specimens received by the Chief Parks and Wildlife Officer shall be subject to the provisions of Part XIII.

Dealings in government trophy
11 of 2017

91.—(1) Any person who unlawfully possesses or who purports to buy, sell, or otherwise transfer or deal in any government trophy, commits an offence.

11 of 2017

(2) Except as otherwise provided by section 90, possession by any person of a specimen of a protected species, endangered species or listed species without a certificate of ownership shall, for the purposes of this section, be *prima facie* evidence of the specimen being a government trophy and of unlawful possession thereof by such person.

Professional hunter's licence

92.—(1) For the purposes of this Act, there shall be a professional hunter's licence which shall authorize the licensee to conduct business as a professional hunter and to solicit clientele.

(2) Upon application in the prescribed form, the Chief Parks and Wildlife Officer may, on the recommendations of the Board and with prior approval of the Minister, issue a professional hunter's licence subject to such conditions as may be prescribed and upon payment of the prescribed fee.

(3) A professional hunter's licence shall not absolve the licensee from compliance with any other written law that may relate to his business.

(4) A professional hunter's licence shall, unless sooner revoked or cancelled, be valid for the period endorsed on the licence which period shall in no case be longer than twelve months.

Certain prohibited acts by non-professional hunters
11 of 2017

93. A person who is not a licensee under a valid professional hunter's licence who—

(*a*) conducts business as a professional hunter;

(*b*) advertises himself as a professional hunter;

(*c*) solicits any contract or commission under which or for which he is to act in the capacity of a professional hunter; or

(*d*) for gain or reward, assists any other person to hunt any protected or game species except as a guide, tracker, porter or in some other like capacity,

commits an offence.

Suspension or cancellation of a professional hunter's licence
15 of 2004

94.—(1) The Chief Parks and Wildlife Officer may, on the recommendation of the Board and with the approval of the Minister, cancel professional hunter's licence if the licensee—

(*a*) is convicted of an offence under this Act;

(*b*) fails to comply with any condition of the licence; or

(*c*) is not, in the opinion of the Chief Parks and Wildlife Officer conducting the business of a professional hunter in a fit and proper manner and the Chief Parks and Wildlife Officer shall forthwith suspend such professional hunter's licence pending consideration of its cancellation under this subsection.

(2) The Chief Parks and Wildlife Officer shall notify the licensee in writing of any decision to suspend or cancel as the case may be, the professional hunter's licence and shall state the reasons for the decision.

(3) A licensee whose licence is cancelled under this section may appeal to the Minister in writing within thirty days after the date of the notice of cancellation given under subsection (2).

(4) In determining any appeal under subsection (4), the Minister may hear the views of the Board and the Chief Parks and Wildlife Officer and may uphold the cancellation or may instruct the Board and the Chief Parks and Wildlife Officer to reinstate the validity of the licence.

Restrictions on the professional hunter's licence
11 of 2017

95. A professional hunter's licence shall not authorize the licensee to hunt any wild animal which is a protected species, endangered species, listed species or game species except as may be necessary in defence of human life or property as provided by sections 74 and 75, or to prevent the escape of an animal wounded by his client, that client being himself a licensee under a licence valid for that animal.

PART XI

Import, Export and Re-Export of Wildlife Specimens of Protected Species, Endangered Species or Listed Species

11 of 2017

Purpose of this Part
11 of 2017

96. The purpose of this Part is to control the import and export of wildlife specimens in order to—

(*a*) assist in managing the wildlife resources of Malaŵi; and

(*b*) assist conservation efforts that may be subject to international, regional or bilateral agreement to which Malaŵi or the Government is a party.

Import, export or re-export permits
11 of 2017

97. The Director may issue to any person a permit in the prescribed form, to import or to export, or to re-export any specimen of a game species, protected species, endangered species or listed species:

Provided that—

(*a*) in the case of a protected species the Director shall first require the person to produce a valid certificate of ownership in respect thereof; and

(*b*) in the case of a endangered species or listed species, the Director shall require the person, in addition to a valid certificate of ownership, to produce evidence of compliance with the requirements of any international, regional or bilateral agreement relevant to such species to which Malaŵi is Party to, or the requirements of this Act, or any other Regulations made under this Act.

Importation, exportation and re-exportation to meet customs laws
11 of 2017

98. Any person who imports, exports or re-exports or attempts to import or export or re-export any specimen of a protected species, endangered species or listed species—

(*a*) except through a customs post or port; or

(*b*) without producing to a customs officer a valid permit to import, to export or to re-export the specimen,

commits an offence.

Additional restrictions on imports, exports or re-export of specimens
11 of 2017

99.—(1) The Minister may, after consulting the Minister responsible for Trade and Industry, make regulations imposing additional restrictions on imports, exports or re-exports of specimens of game species, protected species, endangered species or listed species and for the purposes of such regulations the Minister may incorporate the requirements under any international, regional or bilateral agreement relevant to such species to which Malaŵi or the Government is a party.

11 of 2017

(2) Any person who contravenes regulations made under subsection (1) commits an offence.

PART XII
National Parks and Wildlife Fund

Establishment of the Fund
15 of 2004

100.—(1) There is hereby established a fund to be known as the National Parks and Wildlife Fund (in this Act referred to as the "Fund").

(2) The Fund shall consist of—

(*a*) such sums as shall be appropriated by Parliament for the purposes of the Fund;

(*b*) advances made to the Fund under section 102;

(*c*) such sums as may be received for the purposes of the Fund by way of voluntary contributions;

(*d*) proceeds from disposal of any specimen or article under Part XIV;

(*e*) such sums or other assets as may be donated for the purposes of the Fund by any foreign government, international agency or foreign institution or body;

(*f*) such sums as are payable under this Act by way of fees and fines; and

(*g*) such sums as may otherwise vest or accrue to the Department of National Parks and Wildlife.

The Fund to vest in the Minister
Cap. 37:01

101. The Fund shall be vested in the Minister and, subject to this Act, shall be administered in accordance with his directions subject to the provisions of the Finance and Audit Act.

Advances to the Fund

102. If in any financial year the income of the Fund together with any surplus income brought forward from a previous year, is insufficient to meet the actual or estimated liabilities of the Fund, the Minister responsible for finance may make the advances to the Fund in order to meet the deficiency or any part thereof and such advances shall be made on such terms and conditions, whether as to repayment or otherwise, as the Minister responsible for finance may determine.

Objects of the Fund
15 of 2004

103. The objects for which the Fund is established shall be the development, promotion, management and administration of protected areas in Malaŵi.

Application of the Fund
15 of 2004

104. Without derogation from the generality of section 103, the Fund, may be applied to—

(*a*) research and training which is calculated to promote proper management of protected areas;

(*b*) the acquisition of land, equipment, materials and other assets and the construction of buildings in order to promote the objects of the Fund;

(*c*) the cost of any scheme which the Minister considers to be in the interest of the management of protected areas and wildlife;

(*d*) meeting any expenses arising from the establishment and maintenance of the Fund; and

(*e*) any purpose which the Minister considers to be in the interest of the objects of the Fund.

Books and other records of account, audit and reports of the Fund
Cap. 37:01

105.—(1) The Minister shall cause to be kept proper books and other records of account in respect of receipts and expenditures of the Fund in accordance with the provision of the Finance and Audit Act.

Cap. 37:01

(2) The accounts of the Fund shall be audited by the Auditor General, who shall have all the powers conferred upon him by the Finance and Audit Act.

(3) The Minister shall cause to be prepared, as soon as practicable, but not later than six months after the end of the financial year, an annual report on all the financial transactions of the Fund.

(4) The report under subsection (3) shall include a balance sheet, an income and expenditure account and the annual report of the Auditor General and shall be laid by the Minister before the National Assembly.

Holdings of the Fund

106.—(1) All sums received for the purposes of the Fund shall be paid into a banking account and no amount shall be withdrawn therefrom except by means of cheques signed by such persons as are authorized in that behalf by the Minister.

(2) Any part of the Fund not immediately required for the purposes of the Fund may, on the recommendation of the Board, be invested in such manner as the Minister, after consulting with the Minister responsible for finance, may determine.

Financial year of the fund
Cap. 37:02
11 of 2017

107. The Financial year of the Fund shall be the Financial year as defined in the Public Finance Management Act.

PART XIII
Penalties and Forfeitures

General penalty
15 of 2004
11 of 2017

108. Subject to the provisions of this Act, a person who is convicted of an offence under this Act for which no other penalty is provided for shall be liable to a fine of K2,000,000 and to imprisonment for a term of four years.

Offences relating to game species
15 of 2004
11 of 2017

109. Any person who is convicted of an offence involving—

(*a*) taking, hunting, molesting or reducing into possession any game species; or

(*b*) possession of, selling, buying, transferring, or receiving in transfer, or attempting to possess, sell, buy, transfer or receive in transfer any specimen of game species,

shall be liable to a fine of K2,000,000 and to imprisonment for a term of four years.

Offences relating to protected species other than game species
15 of 2004
11 of 2017

110. Any person who is convicted of an offence involving—

(*a*) taking, hunting, molesting, or reducing into possession any protected species other than game species;

(*b*) possession of, selling, buying, transferring or receiving in transfer or attempting to possess, sell, buy, transfer or receive in transfer any specimen of protected species other than game species,

shall be liable to a fine of K5,000,000 and to imprisonment for a term of ten years, and in any case the fine shall not be less than the value of the specimen involved in the commission of the offence.

Offences relating to endangered species

110A. Any person who is convicted of an offence involving—

(*a*) taking, hunting, molesting, or reducing into possession any endangered species;

(*b*) possession of, selling, buying, transferring or receiving in transfer or attempting to possess, sell, buy, transfer or receive in transfer any specimen of endangered species;

(*c*) the contravention of provision of this Act which provides for the conduct of a licensee under a professional hunter's licence; or

(*d*) the contravention of sections 33, 35 (*c*) and 38 of this Act,

shall be liable to a fine of K15,000,000 and to imprisonment for a term of thirty years, and in any case the fine shall not be less than the value of the specimen involved in the commission of the offence.

Offences relating to listed species

110B. Any person who is convicted of an offence involving—

(*a*) taking, hunting, molesting, or reducing into possession any listed species;

(*b*) possession of, selling, buying, transferring or receiving in transfer or attempting to possess, sell, buy, transfer or receive in transfer any specimen of listed species; or

(*c*) the contravention of provision of this Act which provides for the conduct of a licensee under a professional hunter's licence,

shall be liable to imprisonment for a term of thirty years.

Offences under section 98
15 of 2004
11 of 2017

111. Any person who is convicted of an offence under section 98 or under regulations made pursuant to section 99 shall be liable to imprisonment for a term of thirty years.

Offences relating to devices

112. If any person is convicted of an offence under this Act in respect of any excavation, fence, enclosure or any other device fixed in or on the ground or upon vegetation, which the person has made, used or had in his possession for the purpose of hunting in contravention of this Act, the court shall, in addition to any other penalty imposed, order the device to be destroyed or obliterated in such manner as the court may specify, and any expenditure incurred, if any, shall be recoverable from the person as a civil debt owed to the Government.

Forfeiture as an additional penalty

113.—(1) Upon the conviction of any person of an offence under this Act where it considers forfeiture to be necessary, the court shall, notwithstanding any other written law and subject to the provisions of section 108 and in addition to any other penalty imposed, declare any specimen, domestic animal or any firearm or other weapon, trap, net, poison, material or any motor vehicle, aircraft, boat, or any other article taken by or used in connexion with the commission of the offence to be forfeited to the Government.

(2) Upon the conviction of any person of an offence referred to in section 99, the court may, in addition to any other penalty imposed, declare any specimen, domestic animal or article as specified under subsection (1) to be forfeited to the Government.

(3) The disposal of any specimen, domestic animal or article forfeited to the Government under this section shall be subject to the provisions of Part XIV.

Conditional order of forfeiture

114.—(1) When a court is required under subsections 115 (1) and (2) to make a declaration of forfeiture in respect of any article the ownership of which requires registration under any written law, the court shall make a conditional order of forfeiture in the prescribed form.

(2) Upon the making of a conditional order of forfeiture pursuant to subsection (1), the Chief Parks and Wildlife Officer shall, within thirty days thereafter, cause to be published in the *Gazette* and in two consecutive issues of a local newspaper in general circulation, a notice of the order.

(3) If ownership of the article is registered in the name of any person other than the convicted party, the Chief Parks and Wildlife Officer shall, within seven days after publication of the notice in the *Gazette* cause a copy thereof to be sent to the person concerned.

(4) Any person who wishes to claim right of ownership in the article may, within sixty days of the last publication of the conditional order, lodge with the court a written application for discharging of the order, setting out his claim of ownership in the article.

(5) Upon an application made under subsection (4), the court shall set a date for a hearing of the application and serve notice of the hearing on the applicant and on the Government.

(6) In any hearing of any application made under subsection (4), the burden of proof shall be upon the applicant, and the conditional order shall not be discharged unless the applicant proves, that he was not privy to the offence and that the article was, at the time that the offence was committed, being used for that purpose without his knowledge or consent.

(7) If an application made under subsection (4) fails to win discharge of a conditional order, the court shall declare the article finally forfeited to the Government.

(8) Where upon any application made under subsection (4), a court is satisfied that an article is owned jointly by, or is the subject of a rental agreement between, the applicant and the convicted person, and the applicant has discharged the burden of proof in accordance with subsection (6), the court shall declare forfeited all of the estate, interest or rights of the convicted person therein, and shall order them to be disposed of as it deems fit.

(9) Any right of any claimant under any rental agreement to repossess any article which is subject to a conditional order of forfeiture made under subsection (1) shall be suspended pending determination of any application made under subsection (4).

Seized goods may be subject of forfeiture order

115.—(1) If any article the ownership of which requires registration under any written law is seized as a result of an offence under this Act and the person responsible is unknown and cannot be found for the purpose of charging him with the offence or having been charged, fails to appear to answer the charge, the Chief Parks and Wildlife Officer may apply to the court for a declaration of forfeiture.

(2) Upon receipt of an application from the Chief Parks and Wildlife Officer under subsection (1), the court shall make a conditional order of forfeiture in the prescribed form and the provisions of subsections (2) to (9) of section 114 shall apply.

Surrender of licence, permit and certificate in event of conviction

116. If any licensee under any licence or the holder of any permit or certificate issued under this Act is convicted of an offence under this Act which involves the licence, permit or certificate, the court shall, in addition to any other penalty imposed, order the person to surrender it forthwith to the Chief Parks and Wildlife Officer to be dealt with by him in accordance with the provisions of this Act.

PART XIV

Disposal of Government Trophies, Forfeited Specimens, Domestic Animals and other Articles

Disposal of specimens by the Chief Parks and Wildlife Officer

117. Whenever the Chief Parks and Wildlife Officer takes possession of any government trophy or any confiscated specimen, domestic animal, or article, he shall cause receipt thereof to be recorded in the prescribed register and shall safeguard it until such time as it may be disposed of in

accordance with the provisions of section 118 and shall be recorded by the Chief Parks and Wildlife Officer in the prescribed register.

Disposal of dead or live specimens, of protected species, endangered species or listed species 11 of 2017

118.—(1) Where the Chief Parks and Wildlife Officer takes possession of a dead specimen of a protected species, endangered species or listed species he shall at his discretion either—

(*a*) destroy the specimen;

(*b*) donate the specimen, without requiring payment, to a recognized scientific or educational institution;

(*c*) sell it in whole or in parts; or

(*d*) retain the specimen in his official custody either permanently or pending disposal in accordance with paragraphs (*a*) or (*b*) or (*c*) of this subsection.

11 of 2017

(2) Where the Chief Parks and Wildlife Officer takes possession of a live specimen of any protected species, endangered species or of any listed species and such specimen is, in his opinion, capable of normal survival in its natural habitat, he shall cause the said specimen to be returned to the said habitat:

Provided that if the specimen, in the opinion of Chief Parks and Wildlife Officer, requires to be withheld temporarily from the wild for the purpose of better ensuring its eventual survival, the Chief Parks and Wildlife Officer may direct that the specimen be so withheld.

(3) Where the Chief Parks and Wildlife Officer, takes possession of any live specimen of any protected species, endangered species or listed species other than game species or listed species and such specimen is, in his opinion, permanently incapable of normal survival in its natural habitat he may—

(*a*) donate the specimen, without requiring payment, to a recognized zoological, botanical, scientific or educational institution; or

(*b*) retain the specimen in his official custody either permanently or pending disposal in accordance with paragraph (*a*).

(4) Where the Chief Parks and Wildlife Officer takes possession of—

(*a*) any live game species which is, in his opinion, incapable of normal survival in its natural habitat;

(*b*) the meat of any game species; or

(*c*) any live domestic animal,

he shall dispose of the animal or meat as he considers fit:

Provided that if the disposal is by sale, any sums received shall be payable in accordance with the provisions of Part XII.

119. [*Repealed by Act No.* 15 *of* 2004]

120. Any specimen, domestic animal or article held in the custody of the Chief Parks and Wildlife Officer under this Act shall be held by him solely in his official capacity, and nothing in this Act shall be construed as giving the person holding the office of Chief Parks and Wildlife Officer any private right of ownership over any specimen, domestic animal or article.

Specimens or articles to be held by Chief Parks and Wildlife Officer

PART XIVA
International Cooperation in Wildlife

120A. The purpose of this Part is to provide for the promotion of the management of cross-border wildlife and wildlife resources and the implementation of agreed national obligations arising from bilateral, regional and international environmental and other related conventions to which Malaŵi is a party.

Purpose of this Part
15 of 2004

120B. For the proper management of cross-border wildlife resources, the Director may produce management plans, which lead to the realization of common wildlife goals in cross-border areas.

Cross-border management
15 of 2004

120C. Implementation of common plans may be reviewed in bilateral or regional fora such as a Joint Permanent Commissions of Cooperation, and the Southern African Development Community.

Regional fora
15 of 2004

120D. To ensure sustainable utilization and marketing of wildlife produce resources across borders, the Director shall institute mechanisms for the verification of the legality of the wildlife produce being imported or exported.

Cross-border trade in wildlife
15 of 2004

120E. The Minister may, by an order published in the *Gazette*, specify the measures for the proper implementation for relevant provisions of any convention on environment to which Malaŵi is a party.

Implementation of agreement
15 of 2004

PART XV
Miscellaneous

121. —(1) Nothing in this Act shall make it unlawful for the Director or any officer acting with the authority of the Director—

Qualified exemptions, indemnities and exclusions
15 of 2004
11 of 2017

(*a*) to hunt or authorize any person to hunt any animal in any area including a protected area where—

(i) such hunting is required in the interests of proper research, management and administration;

(ii) he considers it necessary for the safety of the public or the protection of livestock, crops or other properly; or

(iii) he considers it necessary for the prevention of undue suffering by an animal; or

(*b*) to bring any weapon, ammunition, vehicle or other thing into a protected area for the enforcement of this Act.

(2) Neither the Government nor any officer thereof shall be responsible for any loss or damage which may occur to any person or to any property during a search or act of seizure under this Act or whilst such property is detained under this Act unless the same has been caused maliciously, fraudulently or through gross neglect.

(3) Nothing in this Act shall render an officer guilty of an offence under this Act in respect of anything done by him in good faith in the course of his duty as such officer.

(4) No civil or criminal action shall lie against an officer in respect of any act done or omitted to be done by him in good faith in the purported exercise of any powers under this Act if there shall have been reasonable cause for such act or omission.

11 of 2017

(5) Persons who enter or who are permitted to reside in protected areas shall do so at their own risk and no liability shall attach to the Government, an officer or any public officer for any loss of life or injury sustained by any person or loss of or damage to any property of any person in any protected area by reason of presence, action of depredation of any animal; but so however that this subsection shall not apply to an officer and members of the family of an officer who have been permitted to enter or reside in a protected area.

Wildlife districts and permits
15 of 2004

121A. —(1) For purposes of the issue of permits, the levying of permit fees and the administration and expenditure of permit fees, the Director may, from time to time, by notice published in the *Gazette* designate wildlife districts and may in like manner alter or rescind any wildlife district.

(2) Permit fees prescribed pursuant to this Act shall be collected in a wildlife district by such persons as the Director may, by notice published in the *Gazette*, designate.

(3) Permit fees shall be used for the benefit of the people in the wildlife district in which it is collected.

(4) Permit fees shall be administered in such manner as shall be prescribed.

Application for judicial review
15 of 2004

122. Any person who, having appealed under sections 56 (1), 58 (1), 59 (1), 59 (4), 88 (5) or 94 (3), is aggrieved by the decision of the Minister may, within thirty days of the decision of the Minister, apply to the High Court for judicial review of the decision of the Minister.

Regulations

123. The Minister may make regulations for carrying this Act into effect and, without prejudice to the generality of the foregoing power, such regulations may—

(*a*) provide for returns to be furnished to the Minister or the Chief Parks and Wildlife Officer by holders of licences, permits, certificates or records issued or maintained under this Act;

(*b*) prescribe forms to be used under this Act;

(*c*) prescribe fees payable under this Act;

(*d*) provide for the remission in special cases of any fees payable under this Act;

(*e*) provide for the hearing and determination of appeals to the Minister;

(*f*) provide for the furtherance of public knowledge concerning the management of wildlife by such means as may be considered appropriate; and

(*g*) prescribe anything required to be prescribed under this Act.

PART XVI
Repeal And Savings

Repeal and savings

124. —(1) The following Acts are hereby repealed—

(*a*) the Game Act; Cap. 66:03

(*b*) Wild Birds Protection Act; Cap. 66:04

(*c*) Crocodiles Act; and Cap. 66:06

(*d*) National Parks Act. Cap. 66:07

(2) Any subsidiary legislation made under the Acts repealed by subsection (1) in force immediately before the commencement of this Act—

(*a*) shall, unless in conflict with this Act continue in force and be deemed to be subsidiary legislation made under this Act;

(*b*) may be replaced, amended or repealed by subsidiary legislation made under this Act.

(3) Any subsidiary agreement or similar arrangement made pursuant to the provisions of the Acts repealed by subsection (1) shall continue in force until terminated in accordance with the terms and conditions thereof.

SUBSIDIARY LEGISLATION

G.N. 80/1994

NATIONAL PARKS AND WILDLIFE (USE OF SUBSTANCES OR DEVICES IN HUNTING) REGULATIONS

under s. 72

Citation

1. These Regulations may be cited as the National Parks and Wildlife (Use of Substances or Devices in Hunting) Regulations.

Use of gin traps

2. —(1) No person shall be in possession of or use a gin trap in hunting any animal.

(2) This regulation shall not apply to an officer while acting in the performance of his duties under the Act.

Unlawful methods

3. —(1) Subject to subregulation (2), no person shall without the written permission of an officer—

(*a*) use or have in his possession for the purpose of hunting any animal, any net, trap, pitfall, snare, or similar appliance:

Provided that where any snare, pitfall or trap is used on or immediately adjacent to cultivated land, no such written permission shall be required;

(*b*) use, together with any firearm, any light, lamp or flare for the purpose of hunting any animal:

Provided that this paragraph shall not apply to any person lawfully hunting crocodiles;

(*c*) use any bait, decoy, or calling device or any other substance or device to bring protected species into closer range for hunting;

(*d*) use hides, blinds or stands in hunting;

(*e*) hunt any animal in the vicinity of salt licks, water holes or isolated watering places used by wild animals;

(*f*) discharge any weapon at any protected species from or within fifty metres of any motor vehicle, aircraft or boat:

Provided that a person lawfully hunting crocodiles may discharge a weapon from a boat.

(2) This regulation shall not apply to an officer while acting in the performance of his duties under the Act.

Seizure of gin traps and other articles

4. An officer may seize any article, appliance, device, or substance mentioned in regulation 2 or regulation 3 found in the possession of any person without the written permission of the Chief Parks and Wildlife Officer in such circumstances as to lead to a reasonable suspicion that it has been used or that there is an

intention to use it for the purpose of hunting, and shall take any thing so seized before a Magistrate to be dealt with according to law.

NATIONAL PARKS AND WILDLIFE (CONTROL OF TRADE IN LIVE ANIMALS) REGULATIONS

G.N. 81/1994

under s. 87 (1)

Citation

1. These Regulations may be cited as the National Parks and Wildlife (Control of Trade in Live Animals) Regulations.

Trading in live wild animals

2. No person shall carry on trade in live wild animals unless he is in possession of a live wild animal dealer's permit which shall be in the form set out in the First Schedule and such permit shall be issued subject to payment of appropriate fee set out in the Second Schedule.

FIRST SCHEDULE reg. 2 (*c*))

NATIONAL PARKS AND WILDLIFE ACT

(Cap. 66:07)

NATIONAL PARKS AND WILDLIFE (CONTROL OF TRADE IN LIVE ANIMALS) REGULATIONS

A Live Wild Animal Dealer's Permit

Mr./Miss/Mrs./Messrs .....

of (address) .....

.....

.....

is hereby permitted to domesticate the following wild animals

(*a*) .....

(*b*) .....

(*c*) .....

at ..... on the following conditions (conditions to include how animals are to be obtained) .....

.....

.....

Date of issue: .....

Date of expiry: .....

Fee paid: K .....

.....

Chief Parks and Wildlife Officer

SECOND SCHEDULE reg. 2

FEES

Matter	*Fee per Annum* K	t
A live Wild Animal Dealer's permit	5,000	00

G.N. 82/1994

NATIONAL PARKS AND WILDLIFE (WILDLIFE RANCHING) REGULATIONS

under s. 87

Citation

1. These Regulations may be cited as the National Parks and Wildlife (Wildlife Ranching) Regulations.

Interpretation

2. In these Regulations, unless the context otherwise requires—

"permit" means a permit to operate a wildlife ranch issued under regulation 3;

"ranched animal" means an animal lawfully raised or introduced on a wildlife ranch;

"wildlife ranch" means a managed area of land harbouring wildlife roaming freely in such area, but does not include a zoo.

Permit to operate a wildlife ranch

3.—(1) No person shall operate a wildlife ranch unless he has a wildlife ranching permit in the form set out in the First Schedule and such permit shall be subject to payment of appropriate fee.

(2) A permit shall not be issued to any applicant unless—

(*a*) the applicant has no record of previous conviction under the Act;

(*b*) the applicant has title documents for land ownership or use;

(*c*) the area for the proposed wildlife ranch is wholly fenced;

(*d*) the applicant has carried out an appropriate study on the numbers, species of animals, and suitability of the habitat;

(*e*) the applicant has produced a management plan for the proposed wildlife ranch; and

(*f*) the Chief Parks and Wildlife Officer has approved the study carried out pursuant to paragraph (*d*) and the management plan produced pursuant to paragraph (*e*).

Inspection

4. Every wildlife ranch shall be subject to inspection by officers during normal working hours.

Harvesting

5. Harvesting on wildlife ranches shall be done with the approval of the Chief Parks and Wildlife Officer.

Release into the wild

6. A person operating a wildlife ranch on which crocodiles are raised shall make available to the Department of National Parks and Wildlife for release into the wild at least 10 per cent of the hatchlings of each egg collection effort after rearing to a length of at least one metre.

Destruction of escaping animals

7. Any person operating a wildlife ranch may destroy or cause to be destroyed any animal escaping from that wildlife ranch.

Records

8. Any person operating a wildlife ranch shall—

(*a*) keep and maintain records of stock levels;

(*b*) submit to the Chief Parks and Wildlife Officer a return of the stock levels and of the sales of specimens;

(*c*) submit data on sales on an annual basis; and

(*d*) provide officers access to the wildlife ranch for collection of biological data.

Killing of animals on a wildlife ranch

9. No person shall kill an animal on a wildlife ranch in any manner other than by shooting it with a firearm.

FIRST SCHEDULE

NATIONAL PARKS AND WILDLIFE

(Cap. 66:07)

NATIONAL PARKS AND WILDLIFE (WILDLIFE RANCHING) REGULATIONS

WILDLIFE RANCHING PERMIT

Mr./Miss/Mrs./Messrs .....

Address .....

.....

.....

is/are hereby permitted to operate a Wildlife Ranch at .....

.....

.....

subject to the regulations and conditions laid down in the Wildlife Ranching Regulations.

Date of issue: .....

Date of expiry: .....

Fee paid: K .....

(Official Stamp)

.....

Chief Parks and Wildlife Officer

SECOND SCHEDULE reg. 3 (1)

FEES

Matter	*per Annum* K	t
Wildlife ranch permit	5,000	00

G.N. 83/1994
70/1997

NATIONAL PARKS AND WILDLIFE (HUNTING WEAPONS) REGULATIONS

under s. 67

Citation

1. These Regulations may be cited as the National Parks and Wildlife (Hunting Weapons) Regulations.

Interpretation

2. In these Regulations, unless the context otherwise requires—

"crocodile" does not include a crocodile on a wildlife ranch;

"game species" does not include birds;

"protected species" means buffalo, crocodile, elephant or hippopotamus.

Hunting weapons
G.N. 70/1997

3. The weapon to be used in hunting protected species shall be a rifle.

Hunting game species
G.N. 70/1997

4. No person shall hunt any game species unless he is using a rifle which has a calibre of more than 0.22 or a short gun:

Provided that no person shall hunt crocodiles using a rifle which has a calibre of less than 0.375 or a short gun.

Hunting protected species

5. No person shall hunt any protected species unless he is using a rifle of at least 0.375 calibre and of at least 4,000 foot pounds muzzle energy.

G.N. 85/1994
71/1997
55/2011

NATIONAL PARKS AND WILDLIFE (FEES) REGULATIONS

Citation

1. These Regulation may be cited as the National Parks and Wildlife (Fees) Regulations.

Fees

2. The Fees prescribed in the Schedules shall be payable in respect of the matters specified therein in relation to such fees.

FIRST SCHEDULE

G.N. 55/2011
reg. 2

Licence Fees

Matter	*Fees per Annum* — *Fee per Malaŵian* K t	*Fees per Annum* — *Fee per non-Malaŵian* (US$)
1. Professional hunter's licence	300,000 00	5,000
2. Bird licence	5,000 00	200
3. Game licence	5,000 00	300
4. Visitor's licence	—	100
5. Hunting licence	50,000 00	700
6. Crocodile farming licence	10,000 00	150
7. Game ranching or farming licence . .	10,000 00	100
8. Animal captivity licence	5,000 00	50
9. Crocodile hunting licence	50,000 00	700

SECOND SCHEDULE

G.N. 55/2011
reg. 2

Permit Fees

Matter	*Fee per Malaŵian* K t	*Fee per non-Malaŵian* (US$)
1. Trophy dealer's permit . .	40,000 00 per annum	Not applicable
2. Export permit	3,000 00 each	50
3. Import permit	3,000 00 each	50
4. Re-export permit . .	3,000 00 each	50
5. Research permit . .	3,000 00 each	100

THIRD SCHEDULE

G.N. 55/2011
reg. 2

Park Entry Fees

Fees for Entry of Each Person per Day for Person above 12 Years of Age

Visitor Category	*Fee per visitor per day*
1. Malaŵian citizen	K450
2. Resident foreigner	US$7
3. Non-resident foreigner	US$10
4. All persons below age of 12 years	NIL

G.N. 55/2011
reg. 2

FOURTH SCHEDULE

Vehicle Entry Fees

Vehicle Category	*Fees for each weight category in US$*
1. Malaŵian Registered Vehicle—	
(*a*) Less than 2,000 kg (2 metric tons)	3
(*b*) Between 2,000 and 5,000 kg	5
(*c*) Over 5,000 kg (>5 metric tons)	10
2. Non-Malaŵian Registered Vehicle—	
(*a*) Less than 2,000 kg (2 metric tons)	3
(*b*) Between 2,000 and 5,000 kg	7
(*c*) Over 5,000 kg (>5 metric tons)	15
3. Aircraft Landing Fees—	
(*a*) Malaŵi Registered:	
(i) Aircraft weight not exceeding 20,000 kg rounded to the nearest 1,000	2 per 1,000 kg
(ii) Aircraft exceeding 20,000 kg	5 per 1,000 kg
(*b*) Non-Malaŵian Registered:	
(i) Aircraft weight not exceeding 20,000 kg rounded to the nearest 1,000	5 per 1,000 kg
(ii) Aircraft exceeding 20,000 kg	8 per 1,000 kg
Photographic fees	$700

G.N. 55/2011
reg. 2

FIFTH SCHEDULE

Hire of Guides Fees

	Fee per visitor per trip per day US$	*Fee per visitor in a group visit per day* US$
1. Regular trip . .	10	3
2. Wilderness trail . .	10	5
3. Night safari guide . .	10	5

SIXTH SCHEDULE reg. 2 G.N. 55/2011

SPORT FISHING LICENCE FEES

Matter	*Fees* US$
1. Daily fishing	10
2. Weekly fishing	30
3. Monthly fishing	100
4. Annual fishing	500

The licensee shall use own fishing accessories.

No person shall be allowed to catch and take more than six fish per day.

NATIONAL PARKS AND WILDLIFE (CONTROL OF TROPHIES AND TRADE IN TROPHIES) REGULATIONS

G.N. 86/1994
53/2011

under s. 87

1. These Regulations may be cited as the National Parks and Wildlife (Control of Trophies and Trade in Trophies) Regulations. Citation

2. In these Regulations, unless the context otherwise requires— Interpretation

"ivory" means a tusk of an elephant or any part thereof;

"trophy" means ivory and the whole or any part of the horn, head, tusk, bone, or skin of any protected species and includes the eggs, egg shells, nests or plumage of any protected bird, but does not include any article manufactured from any trophy.

3. No person shall carry on a trade in trophies or manufacture articles from trophies for sale unless he is in possession of a trophy dealer's permit in the form set out in the First Schedule, and such permit shall be issued subject to payment of appropriate fee set out in the Second Schedule. Trading in trophies

4. Where any person has brought to an officer a rhinoceros horn or other ivory which under section 90 of the Act is a government trophy, or has given information to any officer leading to the recovery of a rhinoceros horn or other ivory, the Chief Parks and Wildlife Officer may, subject to the directions of the Minister, pay a reward at 20 per cent of the value of ivory or, in the case of rhinoceros horn, K10,000 per kg. Reward for recovery of rhinoceros horn or ivory G.N. 53/2011

5. The Officer to whom a rhinoceros horn or other ivory is produced shall cause it to be weighed and indelibly marked with the particular mark allocated to the district as shown in the Third Schedule, the year of registration, and a serial number and shall enter such particulars in a register which shall be in the form set out in the Fourth Schedule. Registration of rhinoceros horn and ivory

G.N. 86/1994
53/2011

reg. 3

FIRST SCHEDULE

NATIONAL PARKS AND WILDLIFE ACT

(Cap. 66:07)

NATIONAL PARKS AND WILDLIFE (CONTROL OF TROPHIES AND TRADE IN TROPHIES) REGULATIONS

A Trophy Dealer's Permit

Name of Dealer: .....

Address: .....

.....

is hereby permitted to carry on a trade or to manufacture articles from trophies for sale.

Physical Address: .....

.....

Telephone No.: .....

Subject to the Act and Regulations made thereunder and conditions endorsed on this permit—

1. The manufacture of articles from or trade in trophies shall be carried on only at the address stated above unless a change of address is notified in writing to an officer entitled to grant a permit.
2. The premises and workshops where this trade and manufacture are carried on shall be open to inspection by an officer during normal working hours.
3. Any certificate of ownership in respect of stock in trade or raw material on the premises shall be available for inspection by an officer during normal business hours.
4. The holder of this permit shall maintain a register showing all purchases of trophies and their disposal and he shall enter in such register the numbers of the certificates of ownership relating to such trophies.

Date of issue: .....

Date of expiry: .....

Fee paid: .....

G.R. No.: .....

Issuing Officer: ..... Title: .....

(Official Stamp)

.....

(*Signature of Officer Granting Permit*)

SECOND SCHEDULE reg. 3 G.N. 53/2011

FEES

Matter	*Fee per Annum* K t
Trophy Dealer's Permit	40,000 00

THIRD SCHEDULE reg. 5 G.N. 86/1994 53/2011

MALAŴI GOVERNMENT

NATIONAL PARKS AND WILDLIFE ACT

DISTRICT MARKS FOR IVORY AND RHINOCEROS HORN

Balaka	BLK	Mulanje	MJ
Blantyre	BT	Mwanza	MN
Chikwawa	CK	Mzimba	MZ
Chiradzulu	CZ	Neno	NN
Chitipa	CP	Nkhata Bay	NB
Dedza	DZ	Nkhotakota	KK
Dowa	DA	Nsanje	NE
Karonga	KA	Ntcheu	NU
Kasungu	KU	Ntchisi	NS
Likoma	LA	Phalombe	PE
Lilongwe	LL	Rumphi	RU
Machinga	MHG	Salima	SA
Mangochi	MH	Thyolo	TO
Mchinji	MC	Zomba	ZA

FOURTH SCHEDULE reg. 5

REGISTER OF IVORY AND RHINOCEROS HORN

State Whether Tusk or Horn	Weight	Registration Number	Remarks

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NATIONAL PARKS AND WILDLIFE (PROTECTED AREAS) REGULATIONS

G.N. 87/1994 73/1997 54/2011

1. These Regulations may be cited as the National Parks and Wildlife (Protected Areas) Regulations. Citation

2. In these Regulations, unless the context otherwise requires— Interpretation

"camping site" means any site within a protected area which has been declared as such by the Chief Parks and Wildlife Officer;

"lodge" means a place of accommodation of the public declared by the Chief Parks and Wildlife Officer to be a lodge;

"permit" means a permit issued under these Regulations;

"prescribed fee" means the appropriate fee specified in the relevant Schedule to these Regulations;

"protected area" means a park or wildlife reserve declared to be a national park or wildlife reserve under section 28 and includes any river bordering, or in, a park or wildlife reserve;

"road" means any road, track or route demarcated for motor vehicles within the boundaries of a protected area and includes any bridge, culvert, crossing or drift, but does not include a public road;

"observation place", in relation to a protected area, means a place which has been declared by the Chief Parks and Wildlife Officer as the place for public observation of wildlife in that protected area;

Cap. 69:02 "public road", has the meaning ascribed thereto in the Public Roads Act;

"Parks and Wildlife Officer", in relation to any protected area means an officer of or above the rank of Technical Officer (T.O.) performing duties in relation to that protected area.

Permit to enter a protected area

3.—(1) No person shall enter a protected area with or in a motor vehicle unless there is a valid permit in respect of that motor vehicle.

(2) A permit shall be in the form prescribed in Form 1 of the First Schedule.

(3) No permit to enter a protected area shall be issued in respect of any motor vehicle carrying goods or designed primarily for the carriage of goods, unless—

(*a*) in the case of any motor vehicle carrying goods, whether or not it is constructed primarily for that purpose, the goods are—

(i) the personal effects of the occupants of the motor vehicle or for use by any person within the protected area;

(ii) camping equipment, utensils and stores for use by the occupants of the motor vehicle or for use by any person within the protected area; or

(iii) trade or other goods destined for any hotel, shop, lodge or camping place within the protected area or for use by any person within the protected area; or

(*b*) in the case of any other vehicle, entry of such vehicle into the protected area is solely for the purpose of transportation within, or removal from, the protected area of any goods specified in paragraph (*a*) or goods not intended for use in the protected area.

(4) A permit shall not be required for a motor vehicle which is in the protected area for transit purpose only.

(5) A permit to enter a protected area shall not be issued to a person who has been prohibited to enter a protected area under regulation 16.

4. Except with the written permission of the Director, no person shall camp or remain on a camping site during the hours of darkness unless he has paid the prescribed fee.

5.—(1) The Director or a Parks and Wildlife Officer may prohibit persons or vehicles from travelling on or in any part of a protected area of a road.

(2) Where, on the authority of the Director, any part of a protected area or of a road has been closed to the public or to any kind of traffic or to any class of vehicles, no person shall travel in or on such part or cause the prohibited kind of traffic or the prohibited class of vehicle to travel in or on such part.

(3) For the purpose of this regulation, a part of the protected area or of a road, shall be deemed closed if, on the authority of the Director or a Parks and Wildlife Officer, there has been placed with respect thereto a notice, sign, mark, fence, gate, barricade or line of stones, indicating that it has been closed to the public or to any kind of traffic or class of vehicles.

6. Except with the written permission of the Director or a Parks and Wildlife Officer, no person shall—

(*a*) enter or leave a protected area other than at a place designated by the Director as an entrance or exit;

(*b*) enter a protected area (other than Liwonde National Park and Lake Malaŵi National Park) otherwise than in a motor vehicle having four or more wheels; or

(*c*) enter or remain within water areas of the Liwonde National Park and Lake Malaŵi National Park;

(*d*) enter a protected area by means of an aircraft unless the aircraft is authorized so to enter and to land at an authorized landing ground;

(*e*) be within a protected area unless he is within 25 metres of a motor vehicle or boat or is in an observation place;

(*f*) knowingly alight from a vehicle in a protected area within 200 meters of any live animal (other than an insect or bird) unless he is in an observation place;

(*g*) exceed a speed of 40 kilometres per hour in a motor vehicle within a protected area;

(*h*) sound a motor horn within a protected area;

(*i*) cut or remove any vegetation in a protected area, or damage or remove any object or geological, prehistoric, archaeological, historical or scientific interest in a protected area;

(*j*) remove from a protected area any animal or vegetation whether alive or dead other than animal or vegetation lawfully introduced into a protected area by the person removing it;

(*k*) in case of the Nyika National Park, drive any vehicle on those parts of section of M9 (Mphora–Kaperekezi) and S103 roads (Chilinda turn-off to Kasaramba) which are inside the boundary of the said national park, between the hours of 6.00 p.m. and 6.00 a.m.

(*l*) in the case of Nkhotakota Wildlife Reserve, drive any vehicle on the section of the M10 road (Mbobo–Wozi) which is within the boundary of the said wildlife reserve, between the 6.00 p.m. and 6.00 a.m.; or

(*m*) be allowed to enter Nyika National Park or Nkhotakota Wildlife Reserve after 4.00 p.m. and before 6.00 a.m.

7.—(1) Except with the permission of the Director, no person, while within a protected area, shall molest, provoke, feed or disturb any animal.

(2) For the purposes of this regulation, any person who approaches or follows any animal, or makes any sudden movement or noise, or flashes a light or intentionally does something to cause an animal to move away from where it is, to change its direction of travel, to increase its pace or speed, to become frightened or to stampede shall be deemed to have disturbed the animal.

8. Except with the written permission of the Director, no person shall intentionally discharge any weapon or release any appliance so that a projectile therefrom passes over any portion of, or falls within, a protected area.

9. Except with the written permission of the Director or a Parks and Wildlife Officer, no person, while within a protected area, shall—

(*a*) light a fire, or cause a fire to be lighted;

(*b*) leave any fire which has been lighted, or which he has caused to be lighted, unextinguished; or

(*c*) discard any burning object.

10. Except with the written permission of the Director or a Parks and Wildlife Officer, no person shall—

(*a*) display any notice or advertisement within a protected area or at any entrance to or on the boundary of a protected area; or

(*b*) collect any money from members of the public, sell any goods, or offer any goods for sale or carry on any trade within a protected area.

11. Except with the written permission of the Director or a Parks and Wildlife Officer, no person shall—

(*a*) place, erect, damage, move, loosen, alter, break, cut, destroy or in any way interfere with fencing, fence post, gate, beacon or boundary of a protected area;

(*b*) place, erect, mark, spoil, damage, disfigure, alter, bend, cover, move or remove any signboard, notice board or any notice within a protected area or on any boundary of a protected area.

12.—(1) No person, unless he in a *bona fide* tourist driving himself or being driven in a motor vehicle hired for visiting a protected area, shall drive a public service motor vehicle within a protected area, except under and in accordance with a permit in Form II set out in the First Schedule issued by the Director or a Parks and Wildlife Officer.

(2) The Director or a Parks and Wildlife Officer may refuse to issue a permit required under subregulation (1) or may endorse, suspend or cancel any such permit already issued.

(3) Where a permit issued under subregulation (1) has been suspended or cancelled, the holder thereof, when applying again for the issue of such permit, shall disclose the fact of such suspension or cancellation.

13. Except with the permission of the Director, no person shall—

(*a*) unless in an emergency, land any aircraft in a protected area except at an airfield at which landing of aircraft has been generally authorized by an order of the Director;

(*b*) except for the purpose of landing or taking off or in an emergency, fly in a protected area an aircraft at an altitude of less than five hundred metres above the ground.

14.—(1) No person, other than an officer, shall make use of or wear any badge, uniform or emblem authorized to be worn by an officer of a protected area.

(2) No person shall—

(*a*) make use of or wear any badge, uniform or emblem or nearly resembling a badge, uniform, or emblem authorized to be worn by an officer of a protected area;

(*b*) unlawfully hold himself out as being an officer.

15.—(1) The Director, a Parks and Wildlife Officer or any other officer authorized in writing in that behalf, may issue orders, notices, and directions, either orally or in writing, for the purposes of—

(*a*) directing traffic in a protected area;

(*b*) prohibiting the use of any part of a protected area or any road therein;

(*c*) prohibiting visitors to a protected area from using any radio set or musical instrument or restricting the use thereof;

(*d*) preventing any damage or injury to any animal or plant, or any behaviour on the part of any person in a protected area which is likely to disturb or provoke any animal.

(2) It shall be a condition of any person's entry into a park that he shall comply with any lawful order or direction, whether oral or written, given or issued by the Director or any other officer.

(3) If any person contravenes any direction or order lawfully given to him under the provisions of the preceding paragraph, the Parks and Wildlife Officer may either orally or in writing forthwith cancel such a person's entry permit, without refund or any fees paid.

16. If in the opinion of the Director or a Parks and Wildlife Officer the presence of any person within a protected area is or would be detrimental to the proper management and control of the protected area, the Director or Parks and Wildlife Officer may order such person to leave and the Director may, in addition, prohibit him from entering the protected area or other protected area for a period not exceeding three years.

17.—(1) For the issue of a permit or granting of a permission under these Regulations, the appropriate fee specified in Part I of Second Schedule shall be charged and payable.

(2) The fees specified in Part II of the Second Schedule shall be payable for the taking of photographs within a protected area, where the Director or a Parks and Wildlife Officer has reasonable grounds to believe that such photographs are intended for sale or public exhibition or for any other purpose from which monetary rewards, gain, commission or profit will or is intended to result:

Provided that no fee shall be payable in respect of any photographs taken by an employee of the Government in the course of his employment.

(3) In this regulation, the expression "photographs" means pictures, images, or likenesses, whether cinematographic or still, obtained by means of camera.

18. Any person who contravenes the provisions of these Regulations commits an offence and shall be liable— Penalties

(*a*) in the case of a first offence, to a fine of not less than K200 but not more than K500 and to imprisonment for a term of three months;

(*b*) in the case of a second or subsequent offence, to a fine of not less than K500 but not more than K1,000 and to imprisonment for a term of six months.

FIRST SCHEDULE regs. 3 and 12 G.N. 86/1994 53/2011

FORMS Form 1

NATIONAL PARKS AND WILDLIFE ACT

(Cap. 66:07)

NATIONAL PARKS AND WILDLIFE (PROTECTED AREAS) REGULATIONS

Motor Vehicle Permit

Mr./Miss/Mrs/Messrs .....

.....

.....

is hereby permitted to enter .....

.....

with or in a motor vehicle registration number .....

subject to the Act and Regulations made thereunder and conditions endorsed on the permit.

Date of issue .....

Date of expiry .....

Fees paid .....

(Official Stamp)

Signature: .....

for Director

Form 2

NATIONAL PARKS AND WILDLIFE ACT

(Cap. 66:07)

NATIONAL PARKS AND WILDLIFE (PROTECTED AREAS) REGULATIONS

Public Service Motor Vehicle Permit

Mr./Miss/Mrs/Messrs .....

.....

.....

is/are hereby permitted to drive a public service motor vehicle registration number ..... within .... subject to the Act and Regulation made thereunder and conditions endorsed on the permit.

Date of issue: ..... Date of expiry: .....

Fees paid: ..... File No.: .....

(Official Stamp)

.....
Director

G.N. 87/1994
73/1997

SECOND SCHEDULE

reg. 17

PART I

Permit Fees

	Fees, in United States dollars
A. Permit for entry of each person—	
(*a*) Malaŵians:	
(i) above the age of 12 years	1 00
(ii) below the age of 12 years	Free
(*b*) Non-Malaŵians but resident in Malaŵi:	
(i) above the age of 12 years	3 00
(ii) below the age of 12 years	Free
(*c*) Non-residents:	
(i) above the age of 12 years	5 00
(ii) below the age of 12 years	Free
B. Permit for each motor vehicle—	
(*a*) Vehicles registered in Malaŵi:	
(i) tare weight less than 2,000 kilos	1 00
(ii) tare weight 2,000 kilos to 5,000 kilos . .	2 00
(iii) tare weight over 5,000 kilos	10 00
(*b*) Vehicles not registered in Malaŵi:	
(i) tare weight less than 2,000 kilos	2 00
(ii) tare weight 2,000 kilos to 5,000 kilos . .	5 00
(iii) tare weight over 5,000 kilos	10 00
C. Permit for camping—	
(*a*) Where tents are provided:	
(i) above the age of 12 years, per bed . .	5 00
(ii) below the age of 12 years	Free

	Fees, in United States dollars
(*b*) Where no tents are provided:	
(i) above the age of 12 years, per person . .	3 00
(ii) below the age of 12 years	Free
D. Permit for the landing of an aircraft weighing—	
(*a*) not more than 20,000 kilos, calculated to the nearest 1,000 kg, per 1,000 kg	1 00
(*b*) more than 20,000 kg, per 1,000 kg	2 00
E. Permit for accommodation in National Parks and Wildlife Reserves—	
(*a*) Lake Malaŵi National Park:	
Single	5 00
Double	8 00
Triple	10 00
Extra bed	6 00
(*b*) Lengwe National Park:	
Single	12 00
Double	18 00
Triple	21 00
Full	23 00
(*c*) Liwonde National Park (Chinguni Cottage):	
Single	8 00
Double	12 00
Triple	14 00
Extra bed	5 00
(*d*) Majete Wildlife Reserve:	
Chalet, per person	5 00
(*e*) Nkhotakota Wildlife Reserve, Bua and Chipata, per person	5 00
F. Permit for other services—	
(*a*) Hire of guides:	
(i) regular, per trip	2 00
(ii) wilderness trial, per day	10 00
(iii) porter on trial, per day	15 00
(*b*) Sport fishing (Kasungu, Vwaza and Liwonde):	
(i) hire of rod	2 00
(ii) fishing daily (up to 6 fish per day) . .	4 00
(iii) fishing weekly (up to 6 fish per day) . .	28 00
(iv) fishing monthly (up to 6 fish per day) . .	100 00
(v) fishing annually (up to 6 fish per day) . .	160 00
(*c*) Angling (Nkhotakota and Majete), per rod . .	20 00

PART II

PHOTOGRAPHY FEES

(*a*) Cinematography filming in a protected area 60 00

(*b*) Still photography—one person or more than one person travelling together and forming one photographic unit:

(i) filming in a protected area, per person 100 00

(ii) filming in a protected area, per one photographic unit 100 00

NB: The fees shall be paid in United States Dollars or Malaŵi Kwacha equivalent thereof.

G.N. 88/1994
56/2011

NATIONAL PARKS AND WILDLIFE (MISCELLANEOUS FORMS) REGULATIONS

under s. 123

Citation

1. These Regulations may be cited as the National Parks and Wildlife (Miscellaneous Forms) Regulations.

Form

2. The forms set out in the Schedule shall be used for the purposes of the provisions of the Act to which they relate and the particulars contained in those forms and not particularly prescribed by the Act are hereby prescribed as particulars required for the purposes of the Act.

G.N. 88/1994
56/2011

SCHEDULE reg. 2

MALAŴI GOVERNMENT

FORM 1

PERMIT TO ENTER A NATIONAL PARK, WILDLIFE RESERVE AND NATURE SANCTUARY

Under s. 32 (3)

OFFICIAL ENTRY INTO: …….....……..……

NATIONAL PARK/WILDLIFE RESERVE/NATURE SANCTUARY

Permission is hereby granted to: …….., and a party of …… travelling in vehicle number …… to enter free of charge for a period of… …… days, starting from .....

Details of the purpose of the visit are as follows—

.....

.....

.....

.....

(Official Stamp)

.....

Director

MALAŴI GOVERNMENT

FORM 2

AUTHORITY TO HARVEST IN PROTECTED AREA

Under s. 39 (*a*)

Mr./Mrs./Miss/Dr./Rev.: …….…… of …….. is authorized to harvest from National Park/Wildlife Reserve/Nature Sanctuary the following species—

Species to be Harvested	*Quantity to be Harvested*

Date permit issued: …….....…. Date of expiry: ...…….….

(Official Stamp)

.....
Director

MALAŴI GOVERNMENT

FORM 3

APPLICATION FOR ISSUE OF LICENCE(S)
under s. 48

1. TYPE OF LICENCE FOR WHICH YOU ARE APPLYING (Delete whichever does not apply)
   (*a*) Bird Licence
   (*b*) Game Licence
   (*c*) Hunting Licence
   (*d*) Visitors Licence
   (*e*) Animal captivity licence
   (*f*) Game farming/ranching licence
   (*g*) Crocodile hunting licence
   (*h*) Crocodile farming licence
   (*i*) Professional hunting licence
2. Full Name: ....…….....……..
3. Postal and Physical Address: ….....…….
   .....

4. State type of firearms in your possession: …….
   ……
   ……
5. State numbers of valid Firearms Licences for the firearms listed in (4) above:
   ……
   ……
   ……
6. For what area do you wish to have the licence: …….……
   ……
7. What species do you wish to hunt or take (applicants for hunting licence or special licence only):
   ……
   ……
   ……
8. A licence cannot be issued unless the applicant has firearms appropriate for the species to be hunted and has valid firearms licences for the said firearms. Provided that where the application is for a special licence the purpose of which is to take or hunt species for which a firearm is not necessary, e.g. plants, insects, small birds and small mammals, this condition shall not apply.
9. Application is approved/not approved.
   Signature: …… Title: …….

MALAŴI GOVERNMENT

FORM 4

BIRD LICENCE

under s. 48

1. Subject to the provisions of the National Parks and Wildlife Act and any subsidiary legislation made under the Act, permission is hereby granted to: ……
   ……. of …….……..... to hunt by any lawful means the bird species specified in the Schedule to this licence. Bird species deleted from the Schedule or not listed in the Schedule may not be hunted.
2. This licence shall be valid in (indicate area for which licence is valid) ……
   ……
3. This licence is not valid for hunting bird species in any Wildlife Reserve, National Park, Forest Reserve and Nature Sanctuary or any other area in which the hunting of bird species is prohibited by law.
4. This licence will expire on: ……

5.

Bird Type	*Bird limit (per season per gun)*
Guinea Fowl	100
Red necked Francolin	50
Wild Ducks (except Black Duck)	100
Pigeons and Doves	200
Egyptian and Spurwing Geese	20

6. This licence may not be issued unless the applicant presents an application form for issue of the Bird Licence approved by the Director or an officer duly authorized in that behalf.

7. Fee paid K…… G.R. No. ……

   Issuing Officer: ……

   Title: ……. Date: …….……..……

8. Attention is drawn to the closed seasons for the various species which is printed on the reverse of this licence.

9. The duplicate of this licence should be attached to the application form for issue of a Bird Licence and both must be forwarded to the National Parks Office in the area which the licence is issued.

(Reverse side of Bird Licence)

REGISTER OF BIRDS TAKEN OR KILLED

under s. 60 (1) (*c*)

Date	*Type*	*Number*	*Locality*

I declare that the above is a true record of all birds killed by me in Malaŵi under the Licence No. …….....……., 20..... at ……

Date: ……. Signature of Holder: ……

Passed

Date: …….. ……..

Signature of Examining Officer

Closed seasons for different species are as follows—

Ducks and Geese	1st January to 31st July
Francolins and Quails	1st February to 30th September
Guinea Fowls	1st December to 31st May
Pigeons and Doves	1st May to 30th November

MALAŴI GOVERNMENT

FORM 5

GAME LICENCE

under s. 48

1. Subject to the provisions of the National Parks and Wildlife Act and any subsidiary legislation made under the Act, permission is hereby granted to:

   …….....……..... of …….....……. to hunt by any lawful means the game species specified in the Schedule.

   Fee paid K……..... G.R. Number: ……....….

   Issuing Officer: ……..….... Date: ….....…

2. This licence shall be valid in:

   .....……

3. This licence is not valid for hunting game species in a Wildlife Reserve, National Park, Forest Reserve, within a radius of five kilometres of any protected area, or any other area in which the hunting of game species is prohibited by law.

4. This licence shall expire on:……

SCHEDULE

TYPE OF GAME TO BE HUNTED

Game Species	*Local Names*	*Number Permitted*
Common Duiker	Gwape, Insa	3
Bush Buck (male)	Mbawala	1
Bush Pig	Nguluwe	5

(Reverse side of Game Licence)

MALAŴI GOVERNMENT

REGISTER OF GAME SPECIES HUNTED OR TAKEN

Under s. 60 (1) (*c*)

Species	*Number*	*Sex*	*Locality*	*Date*	*Remarks*

I declare that the above is a true record of all animals killed by me in Malaŵi under the Licence No.: …… granted to me on the ……, 20..... at: ……
…….

Signature of Holder: ……... Date: ……

Passed Date: …… ……

Examining Officer's Signature

MALAŴI GOVERNMENT

FORM 6

HUNTING LICENCE

under s. 48

1. Subject to the provisions of the National Parks and Wildlife Act and any subsidiary legislation made under the Act, permission is hereby granted to:

   ……...…….……

   of ……... to hunt by any lawful means in Wildlife Reserve/Game Ranch/farm the following species—

	Species	*Number to be Hunted*	*Place of Hunting*
1			
2			
3			
4			
5			

2. This licence is issued in connexion with Professional Hunting Licence No.: ……. Issued to: ……
   of …….

   The licensee may only hunt as a client to the Professional Hunter and not otherwise.

3. This licence shall expire on: …...…….……

4. This licence may not be issued unless the applicant presents an application form for issue of a hunting licence approved by the Director or an officer duly authorized in that behalf.

5. Fee paid K…...…… G.R. No.: .....

   Issuing Officer: …...…… Title: .....

   Signature: …...…… Date: .....

   THIS LICENCE IS NOT TRANSFERABLE

(Reverse side of Game Licence)

MALAŴI GOVERNMENT

FORM 7

REGISTER OF GAME SPECIES HUNTED OR TAKEN
under s. 60 (1) (*c*)

Species	*Number*	*Sex*	*Locality*	*Date*	*Remarks*

I declare that the above is a true record of all game species hunted or taken by me in Malaŵi under Licence No.: …….. granted to me on the: ……, 20……

At: ……

Signature of Holder: ……....…… Date: .…….....……

Passed Date: ……..……..…… ……
Signature of Examining Officer

MALAŴI GOVERNMENT

FORM 8

VISITOR'S LICENCE
Under s. 48

1. Subject to the provisions of the National Parks and Wildlife Act and any subsidiary legislation made under the Act, permission is hereby granted to: …… of ……. who is ordinarily resident in: …… (name of country) whose nationality is …….. to hunt by any lawful means the following: …….……

2. This licence shall be valid in:

   ..…….……..
   (indicate area for which licence is valid)

3. The licence is not valid for hunting game species in any Wildlife Reserve, National Park, Nature Sanctuary, Forest Reserve or any other area in which hunting of game species is prohibited by law.

4. This licence shall expire on: …….....

5. This licence may not be issued unless the applicant presents an application form for issue of a Visitor's Licence approved by the Director or an officer duly authorized in that behalf.

6. Fee paid K……. G.R. No.: ……

Issuing Officer: ……

Signature:……. Date:……..……

THE LICENCE IS NOT TRANSFERABLE

(Reverse side of the Visitor's Licence)

MALAŴI GOVERNMENT

REGISTER OF GAME SPECIES HUNTED OR TAKEN

Under s. 60 (1) (*c*)

Species	*Number*	*Sex*	*Locality*	*Date*	*Remarks*

I declare that the above is a true record of all game species hunted or taken by me in Malaŵi under Licence No.: ……..……. granted to me on the ……..…..……, 20…… at..……...……

Date: …… ……
(*Signature of Holder*)

Date Passed: ……. …….....……
(*Signature of Examining Officer*)

MALAŴI GOVERNMENT

FORM 9

CERTIFICATE OF OWNERSHIP OF SPECIMEN

Under s. 88 (3)

Permit No. …….…. Name: ……
of …….....…….. (address), is entitled to possess the following specimens—

1. ……
2. …...……..…
3. …….....…..
4. ……..…...

If Ivory—

District Mark(s): ..... Registration No(s.): .....
Weight: ..... Station of Issue: .....
Fee paid K..... G.R. No. .....
Issuing Officer: ..... Title: .....
Signature: ..... Date: .....

MALAŴI GOVERNMENT

FORM 10

PROFESSIONAL HUNTING LICENCE

Under s. 92

1. Subject to the provisions of the National Parks and Wildlife Act and any subsidiary legislation made under the Act, permission is hereby granted to: ..... of ..... to conduct business as a professional hunter and to solicit clientele.
2. This licence is issued under the following conditions—
   (*a*) .....
   (*b*) .....
   (*c*) .....
   (*d*) .....
3. This licence may not be issued unless the applicant presents an application for issue of a Professional Hunting Licence approved by the Director.
4. This licence shall expire on .....
5. Fee paid K..... G.R. No. .....

Issuing Officer: ..... Title: .....
Signature: ..... Date: .....

MALAŴI GOVERNMENT

FORM 11

APPLICATION FOR PROFESSIONAL HUNTING LICENCE

Under s. 92 (2)

1. Full Names: .....
2. Full Address: .....
   .....
3. Nationality (and if non-Malaŵian): .....
   Passport Number: .....
4. Previous experience as a Professional Hunter:
   .....
   .....
   .....
   .....
   .....
5. Have you passed the Malaŵi Professional Hunters' Examination?
   Yes/No If yes, state when: .....
6. Have you ever been convicted of an offence under this Act?
   Yes/No (If yes, explain): .....
   .....
   .....
   .....
   .....
7. Have you ever been convicted of a criminal offence?
   Yes/No (If yes, explain):
   .....
   .....
   .....
   .....
8. How much money do you plan to invest into this business? K.....
   .....
   .....
   .....
   (support your statement with relevant documents and attach to this application)
9. I declare that the information given is true to the best of my knowledge and belief.
   Signature: ..... Date: .....
10. Recommendations of the Board: .....
    .....
    .....
    .....
    .....
11. The application is approved/not approved.

.....
Director

MALAŴI GOVERNMENT

FORM 12

PERMIT TO IMPORT, EXPORT OR RE-EXPORT SPECIMEN OF A PROTECTED SPECIES OR LISTED SPECIES

Under s. 97

This is to certify that: .....
of: ..... is permitted
to import from: ..... or export/re-export
from Malaŵi the following specimen(s): .....
.....
.....
.....

Fee Paid K..... G.R. No.: .....
Issuing Officer: ..... Title: .....
Signature: ..... Date: .....
If Ivory—Registration Number(s): .....
Year of Registration: ..... Date: .....

.....
Director

MALAŴI GOVERNMENT

FORM 13

REGISTER OF GOVERNMENT TROPHIES OR CONFISCATED SPECIMENS, DOMESTIC ANIMALS OR ARTICLES

Under s. 117

Item	*Date*	*Received*	*Source*	*Remarks*

Signature of Receiving Officer: .....

- In the case of items forfeited to the Government under section 113, Case Number: .....
- Remarks to include date and mode of disposal of the item(s).

G.N. 70/2017

NATIONAL PARKS AND WILDLIFE (PROTECTED, ENDANGERED AND LISTED SPECIES) (DECLARATION) ORDER

under ss. 43, 43A, 43B

Citation

1. This Order may be cited as the National Parks and Wildlife (Protected, Endangered and Listed Species) (Declaration) Order.

Species declared as protected, endangered or listed

2. The species of wild plants, fungi and wild animals specified in the Schedule hereto are hereby declared to be protected species, endangered species or listed species, for the purposes of the Act.

Revocation GN 89/1994

3. The National Parks and Wildlife (Protected Species) Declaration Order 1994 is revoked.

SCHEDULE

PROTECTED, ENDANGERED AND LISTED SPECIES

PART I

Protected Species of Wild Plants, Fungi and Animals

A. Plant and Fungi Species

Any plant or fungi species whatsoever in a protected area that is not already defined as either an endangered species or a listed species within this Order.

B. Mammal Species

Any mammal species whatsoever in a protected area that is not already defined as either a game species, endangered species or a listed species within this Order.

C. *Reptile Species*

Any reptile species whatsoever in a protected area that is not already defined as either an endangered species or a listed species within this Order.

D. Amphibian Species

Any amphibian species whatsoever in a protected area that is not already defined as either endangered species or a listed species within this Order.

E. Fish Species

Any fish species whatsoever in a protected area that is not already defined as either an endangered species or a listed species within this Order.

F. Bird Species

Any bird species whatsoever in a protected area that is not already defined as either an endangered species or a listed species within this Order.

G. Invertebrate Species

Any invertebrate species whatsoever in a protected area that is not already defined as either an endangered species or a listed species within this Order.

PART II

Endangered Species of Wild Plants, Fungi and Animals

A. Plant and Fungi Species

(1) Any plant or fungi species categorized as endangered in the International Union for Conservation of Nature (IUCN) Red list of Threatened Species.

(2) Any plant or fungi species listed in Appendix II of the Convention on International Trade in Endangered Species of Wild Flora and Fauna (CITES).

(3) Any of the plant or fungi species listed below—

BOTANICAL NAME	COMMON NAME
Adina microcephala	Mwenya, Chongo, Mgwenya, Mung'oma, Mwina, Mungwira.
Afzelia quanzensis	Mkongomwa, Msokosa, Mangaliondo, Msambamfumu, Mkongwa, Chifuuda, Ipapa, Mpapa, Mpapandende.
Borassus aethiopum	Mvumo, Mdikwa
Bridelia micrantha	Makoma, Mulala, Msopa, Chisopa, Mpasa, Mlewezi, Msongamino, Mwisya
Burkea Africana	Mkalakati, Kalinguti, Kawidzi, Kawidzu, Nakapanga
Colophospermum mopane	Tsanya, Sanya, Ntsano, Mopani, Mpani
Cordyla Africana	Mtondo
Hyphaena recrinata	Mgwalangwa, Mkomakoma, Makoma, Mulala
Khaya anthotheca	Mbawa, Muwawa, Bulamwiko, African White or Red, Mahogony

Pterocarpus angolensis	Mlombwa
Tarminalia sericea	Naphini, Mpini, Nalinsi, Mkondani Mpululu, Njoyi
Pericopsis angolensis	Muwanga, Mbanga
Phyllanthus nyikae	Jade Plant
Indigofera hilaris	Red indigo bush, Gale of the wind, Seed-under-Leaf
Ceropegia	Chain of hearts, collar of hearts, String of hearts species
Pimpinella nyasica	Milkweed
Glossostelma nyikense	Nyika Orchid
Brachythrix malaŵiensis	Asterids
Glossostelma nyikense	Sonchus
Brachythrix pawekiae	Brachythrix of Malaŵi
Brachythrix sonchiodes	Brachythrix
Helichrysum tithoniodes	Sonchus
Osteospermum nyikensis	Sonchus
Vernonia fractiflexa	African Daisy
Vernonia kawoziensis	Bitterleaf
Impatiens rubromaculata	Bitterleaf
Crassula nyikensis	Impatiens, Touch-Me-Not
Dalbergia melanoxylon	Mphingo
Orchidaceae species	Any orchid species
Cactaceae species	Any cacti species
Cycadaceae species	Any cycad species

B. Mammal Species

(1) Any mammal species categorized as endangered in the IUCN Red list of Threatened Species.

(2) Any mammal species listed in Appendix II of the CITES.

(3) Any of the mammal species listed below—

SCIENTIFIC NAME	COMMON NAME
Canis adustus	Side-striped Jackal
Caracal caracal	Caracal
Felis silvestris	Wild Cat
Leptailurus serval	Serval
Crocuta crocuta	Spotted Hyaena
Aonyx capensis	African Clawless Otter
Lutra maculicollis	Spotted-necked Otter

Nandinia binotata	African Palm Civet, Two-spotted Palm Civet
Civettictis civetta	African Civet
Aepyceros melampus	Impala
Alcelaphus lichtensteinii	Lichtenstein's Hartebeest
Cephalophus harveyi	Harvey's Duiker, Harvey's Red Duiker
Cephalophus natalensis	Red Forest Duiker
Hippotragus equinus	Roan Antelope
Hippotragus niger	Sable Antelope
Kobus ellipsiprymnus	Waterbuck
Kobus vardonii	Puku
Neotragus moschatus	Suni
Oreotragusoreotragus	Klipspringer
Ourebia ourebi	Oribi
Philantomba monticola	Blue Duiker
Raphicerus sharpie	Sharpe's Grysbok
Redunca arundinum	Reedbuck
Syncerus coffer	African Buffalo
Tragelaphus angasii	Nyala
Tragelaphus oryx	Eland
Tragelaphus strepsiceros	Greater Kudu
Hippoposideros gigas	Commerson's Leaf-nosed Bat
Otomops martienesseni	Large-eared Free-tailed Bat
Eidolon helvum	African Straw-coloured Fruit Bat
Hipposideros gigas	Giant Leaf-nosed Bat
Rhinolophus deckenii	Decken's Horse-shoe Bat
Rhinolophus sakejiensis	Sakeji Horseshoe Bat
Rousettus lanosus	Long-haired Rousette Bat
Tadarida aegyptiaca	Egyptian Free-tailed Bat
Tadarida ventralis	African Giant Free-tailed Bat
Myosorex gnoskei	Nyika Burrowing Shrew
Elephantulus fuscus	Dusky Sengi
Rhyschocyon cirnei	Checkered Giant Sengi
Equus burchelli	Burchell's Zebra
Cercopithecus mitis	Blue Monkey
Galagoides species	All Bushbaby species
Otolemur crassicaudatus	Thick-tailed Bushbaby
Anomalurus derbianus	Lord Derby's Flying Squirrel or Anomalure

Graphiurus johnstoni	Johnston's Dornouse
Hystrix africaeaustralis	Cape Crested Porcupine
Otomys lacustris	Lake Vlei Rat, Tanzania Vlei Rat
Paraxerus lucifer	Black and Red Bush Squired
Orycteropus afer	Aardvark, Antbear
Mellivora capensis	Honey Badger

C. Reptile Species

(1) Any reptile species categorized as endangered in the IUCN Red list of Threatened Species.

(2) Any reptile species listed in Appendix II of the CITES.

(3) Any of the reptile species listed below—

SCIENTIFIC NAME	COMMON NAME
Crocodylus niloticus	Nile Crocodile
Geochelone pardalis	Leopard Tortoise
Kinixys belliana	Bell's Hinged Tortoise
Cycloderma frenatum	Zambezi Soft-shelled Terrapin
Pelusios sinuatus	Serrated hinged Terrapin
Python (*sebae*)*natalensise*	Southern African Python
Dispholidus typhus	Boomslang
Dendroaspis angusticeps	Green Mamba
Dendroaspis polylepis	Black Mamba
Elapsoidea semiannulata	Half-banded Garter Snake
Prosymna ambigua	East African Shovel Snout
Naja haje	Egyptian (Banded) Cobra
Naja melanoleuca	Forest Cobra
Naja mossambica	Mozambique Spitting Cobra
Bitis arietans	Puff Adder
Bitis gabonica	Gaboon Viper
Causus rhombeatus	Rhombic Night Adder
Causus defilippii	Snouted Night Adder
Proatheris superciliaris	Peter's Domino-bellied Swamp Viper, Lowland, Swamp Viper
Eumecia johnstonii	Johnston's Skink
Platysaurus mitchelli	Mitchells Flat Lizard

Varanus examthematicus	Rock or White-throated Monitor
Varanus niloticus	Nile or Water Monitor
Agama mossambica	Mozambique Agama
Chamaeleonidae species	All species of Chamaeleon (including all Chamaeleo, Rhampholeon, Rieppeleon, Trioceros species)
Nadzikambia mlanjensis	Mulanje Forest Chamaeleon
Lygodactylus rex	King Dwarf Gecko

D. Amphibian Species

(1) Any amphibian species categorized as endangered in the IUCN Red list of Threatened Species.

(2) Any amphibian species listed in Appendix II of the CITES.

(3) Any of the amphibian species listed below—

SCIENTIFIC NAME	COMMON NAME
Arthroleptis francei	France's squeakers
Arthroleptis reichei	Reiche's squeaker
Bufo kisoloensis	Kisolo Toad
Bufo lindneri	Lindner's Toad
Bufo nyikae	Nyika Dwarf Toad
Afrixalus brachycnemis	Lesser Banana Frog
Hyperolius pictus	Variable Reed Frog
Hyperolius puncticulatus	Spotted reed frog
Hyperolius spinigularis	Spiny-throated Reed Frog
Afrana johnstoni	Johnston's river Frog
Phrynobatrachus rungwensis	Rungwe puddle Frog
Phrynobatrachus stewartae	Stewart's puddle Frog
Ptychadena broadleyi	Broad ley's ridged Frog
Strongylopus cuelleborni	Fulleborn's stream Frog
Changamwe caecilian	Boulengerula changamwensis

E. Fish Species

(1) Any fish species categorized as endangered in the IUCN Red list of Threatened Species.

(2) Any fish species listed in Appendix II of the CITES.

(3) Any of the fish species listed below—

SCIENTIFIC NAME	COMMON NAME
Abactochromis, Cyathochromis, Cynotilapia, Genyochromis, Gephyrochromis, Idotropheus, Labeotropheus, Labidochromis, Maylandia, Melanochromis, Petrotilpia, Pseudotropheus, Tropheops species	Mbuna, Cichlids

F. BIRD SPECIES

(1) Any bird species categorized as endangered in the IUCN Red list of Threatened Species.

(2) Any bird species listed in Appendix II of the CITES.

(3) Any of the bird species listed below—

SCIENTIFIC NAME	COMMON NAME
Ardeola idea	Madagascar Squacco Heron
Egretta vinaceigula	Slaty Egret
Ciconia episcopus	White Stock
Ciconia episcopus	Woolly necked Stork
Phoeniconaias minor	Lesser Flamingo
Ana sparsa	African Black Duck
Oxyura maccoa	Maccoa Duck
Accipiter rufiventris	Red-breasted sparrowhawk
Aquila nipalensis	Steppe Eagle
Aquila nipalensis	Lesser Spotted Eagle
Aquila nipalensis	Tawny Eagle
Aquila nipalensis	Black (Verraux's) Eagle
Aquila nipalensis	Wahlberg's Eagle
Buteo oreophilus	Forest Buzzard
Circaetus cinerascens	Westen-banded snake Eagle
Circaetus cinereus	Brown Snake Eagle

Circaetus gallicus	Short-toed (Black-breasted) Snake Eagle
Circus macrouris	Pillid Harrier
Haliaeetus vocifer	African Fish Eagle
Hieraaetus ayresii	Ayre's Hawk Eagle
Hieraaetus fasciatus	African Hawk Eagle
Hieraaetus pennatus	Booted Eagle
Lophaetus occipitalis	Long-crested Eagle
Polemaetus bellicosus	Martial Eagle
Sagittarius serpentarius	Secretary Bird
Stephanoaetus coronatus	Crowned Eagle
Terathopius ecaudatus	Bataleur Eagle
Gyphohierax angolens	Palm-nut Vulture
Torgos tracheliotus	Lappet-faced Vulture
Pandion haliaetus	Osprey
Falco concolor	Sooty Falcon
Falco fasciinucha	Taita Falcon
Falco naumanni	Lesser Kestrel
Falco vespertinus	(Westerm) Red-footed Falcon
Balearica regulorum	Southern Crowned Crane
Grus carunculatus	Wattled Crane
Neotis denhami	Stanley's (Denjam's) Bustard
Francolinus levaillanti	Red-winged Francolin
Numida meleagris	Helmeted Guineafowl
Gallinago media	Great Snipe
Numenius arquata	Curlew
Rynchops flavirostris	African Skimmer
Agapornis lilianae	Lilian's (Nyasa) Lovebird
Poicephalus cryptoxanthus	Brown-headed Parrot
Poicephalus meyeri	Meyer's Parrot
Poicephalus robustus	Brown-necked (Cape) Parrot
Tauraco livingstonii	Livingstones's Turaco
Tauraco porphyreolophus	Purple-erested Turaco
Tauraco schalowi	Schalow's Turaco
Tyto alba	Barn Owl
Tyto capensis	Grass Owl
Bubo lacteus	Giant Eagle Owl

Bubo africanus	Spotted Eagle Owl
Bubo capensis	Cape Eagle Owl
Glaucidium capense	Barred Owlet
Glaucidium perlatum	Pearl-spotted Owlet
Otus leucotis	White-faced Owl
Otus senegalensis	African Scops Owl
Scotopelia peli	Pel's Fishing Owl
Strix woodfordii	Wood Owl
Asio capensis	Marsh Owl
Apaloderma narina	Narina Trogon
Apaloderma vittatum	Bar-tailed Trogon
Coracias caudate	Lilac-breasted Roller
Coracias garrulous	European Roller
Coracias naevia	Purple Roller
Coracias spatulate	Racket-tailed Roller
Eurystomus glaucurus	Broad-billed (Cinnamon) Roller
Bucorvus leadbeateri	Southern Ground Hornbill
Dendropicos stierlingi	Sterling's Woodpecker
Mesopicus griseocephalus	Olive Woodpecker
Hirundo atrocaerulea	Blue Swallow
Alethe choloensis	Cholo Alethe
Cossypha anomala	Olive-flanked Robin
Zoothera guttate	Spotted Ground Thrush
Acrocephalus griseldis	Basra Reed-Warbler
Apalis chariessa	White-winged Apalis
Apalis thoracica flavigularis	Yellow-throated (Bar-throated) Apalis
Sheppardia gunning	Gunning's Akalat, East Coast Akalat
Nectarinia afra whytei	Greater Double-collared Sunbird
Ploceus olivaceiceps	Olive-headed Weaver
Agapornis	Love Bird
Accipiter rufiventris	Red-breasted Sparrowhawk
Apaloderma narina	Narina Trogon
Apaloderma vittatum	Bar Tailed Trogon
Alethe fuelleborni	White-chested Alethe
Andropadus masukuensis	Shelley's Greenbul
Andropadus nigriceps	Eastern Mountain Greenbul

Apalis cinerea	Grey Apalis
Anthus caffer	Bushveld Pipit
Apalis ruddi	Rudd's Apalis
Ardeola goliath	Goliath Heron
Ardeola rufuventris	Rufous-bellied Heron
Batis fratrum	Woodward's Batis
Batis mixta	Forest Batis
Bias musicus	Black-and white Flycatcher
Bradypterus cinnamomeus	Cinnamon Bracken Warbler
Bycanistes brevis	Silvery-cheeked Hornbill
Centropus cuprecaudus	Coppery-tailed Coucal
Cercococcyx montanus	Barred Long-tailed Cuckoo
Chloropeta similis	Mountain Yellow Warbler
Ciconia abdimii	Abdim's Stork
Ciconia nigra	Black Stork
Cisticola nigriloris	Black-lored Cisticola
Cisticola njombe	Churring Cisticola
Columba delegorgei	Bronze-naped Pigeon
Coracina caesia	Grey Cuckoo-shrike
Corythaixoides concolor	Grey Lourie
Crex crex	Corn Crake
Egretta vinaceigula	Saddlebill (Saddle-billed Stork)
Euplectes psammochromius	Mountain Marsh Whydah
Glareola nuchalis	Rock Pratincole
Corythaixoides personatus	Bare-faced Go-away Bird
Gorsachius leuconotus	White-backed Night Heron
Guttera pucherani	Crested Guinea-fowl
Illadopsis pyrrhoptera	Mountain Illadopsis
Leptoptilos crumeniferus	Marabou Stork
Malaconotus viridis	Gorgeous Bush Shrike
Indicator meliphilus	Eastern Least Honeyguide
Mirafra africana	Rufous-Naped Lark
Modulatrix stictigula	Spot Throat
Mycteria ibis	Yellow-billed Stork
Nectarinia johnstoni	Scarlet-tufted Malachite Sunbird
Nectarinia outstaleti	Oustalet's White-bellied Sunbird

Nectarinia veroxii	Grey Sunbird
Nettapus auratus	Pygmy Goose
Onychognathus tenuirostris	Slender-billed (Chestnut-winged) Starling
Onychognathus walleri	Waller's (Red - winged) Starling
Oriolus chlorocephalus	Green-headed Oriole
Otus senegalensis	African Scops Owl
Pelecanus onocratulus	White Pelican
Pelecanus rufescens	Pink-backed Pelican
Phoenicopterus roseus	Greater Flamingo
Phyllastrephus flavirostris alfredi	Yellow-streaked Bulbul
Pinarornis plumosus	Boulder Chat
Pitta angolensis	African Pitta
Platalea alba	African Spoonbill
Plegadis falcinellus	Glossy Ibis
Plocepasser rufoscapulalus	Chestnut-mantled Sparrow-weaver
Ploceus baglafecht	Baglafecht Weaver
Podica senegalensis	African Finfoot
Pogoniulus simplex	Eastern Green Tinkerbird
Pseudoalcippe abyssinica	African Hill Babbler
Pterocles bicinctus	Double-banded Sandgrouse
Quelea cardinalis	Cardinal Quelea
Serinus citrinipectus	Lemon-breasted Canary
Sheppardia sharpeisharpie	Sharpe's Akalat
Stactolaema olivacea	Green Barbet
Sylvia Ingens	Brown Parisoma
Tockus lencomelas	Southern Yellow-billed Hornbill
Threskiornis aethiopicus	Sacred Ibis
Tardus olivaceus	Olive Thrush

G. Invertebrate Species

(1) Any invertebrate species categorized as endangered in the IUCN Red list of Threatened Species.

(2) Any invertebrate species listed in Appendix II of the CITES.

PART III

LISTED SPECIES OF WILD PLANTS, FUNGI AND ANIMALS

A. Plant and Fungi Species

(1) Any plant or fungi species categorized as critically endangered in the IUCN Red list of Threatened Species.

(2) Any plant or fungi species listed in Appendix I of the CITES.

(3) Any plant or fungi species listed below—

BOTANICAL NAME	COMMON NAME
Widdringtonia whytei	Mulanje Cedar, Mulanje Cedarwood, Mulanje Cypress
Encephalartos gratus	Mulanje Cycad

B. Mammal Species

(1) Any mammal species categorized as critically endangered in the IUCN Red list of Threatened Species.

(2) Any mammal species listed in Appendix I of the CITES.

(3) Any of the mammal species listed below—

SCIENTIFIC NAME	COMMON NAME
Lycaon pictus	African Wild Dog, Cape Hunting Dog
Acinonyx jubatus	Cheetah
Panthera leo	African Lion
Panther pardus	Leopard
Diceros bicornis	Black Rhinoceros
Ceratotherium simum	white Rhinoceros
Smutsia (*manis*) *temminckii*	Ground Pangolin, Cape Pangolin, Scaly Anteater
Loxodonta africana	African Elephant
Giraffa	Giraffa
Connochaetes taurinus	Nyasa Wildebeet

C. Reptile Species

(1) Any reptile species categorized as critically endangered in the IUCN Red list of Threatened Species.

(2) Any reptile species listed in Appendix I of the CITES.

D. Amphibian Species

(1) Any amphibian species categorized as critically endangered in the IUCN Red list of Threatened Species.

(2) Any amphibian species listed in Appendix I of the CITES.

E. Fish Species

(1) Any fish species categorized as critically endangered in the IUCN Red list of Threatened Species.

(2) Any fish species listed in Appendix I of the CITES.

F. Bird Species

(1) Any bird species categorized as critically endangered in the IUCN Red list of Threatened Species.

(2) Any bird species listed in Appendix I of the CITES.

(3) Any of the bird species listed below—

SCIENTIFIC NAME	COMMON NAME
Gyps Africans	African White-backed Vulture
Necrosyrtes monachus	Hooded Vulture
Trigonoceps occipitalis	White-headed Vulture
Psittacus erithacus	African Grey Parrot

G. Invertebrate Species

(1) Any invertebrate species categorized as critically endangered in the IUCN Red list of Threatened Species.

(2) Any invertebrate species listed in Appendix I of the CITES.

G.N. 79/1994
113/1995

NATIONAL PARKS AND WILDLIFE (GAME SPECIES) (CLASSIFICATION) NOTICE

under s. 44

Citation

1. This Notice may be cited as the National Parks and Wildlife (Game Species) (Classification) Notice.

Species to be classified as game species

2. The protected species of animals listed in the Schedule are hereby classified as game species under this Act during the following year.

SCHEDULE para. 2

A. Mammals

1. Male Bushbuck
2. Warthog
3. Common Duiker

This declaration excludes immature individuals and females accompanied by their young.

B. Birds

Helmeted Guinea Fowl, Rednecked Fracolin, Common Quail, Wild Geese, Wild Ducks (except Black Ducks), Pigeons and Doves, Egyptian and Spurwing Geese, and Snipe.

This declaration excludes eggs of all species, birds in Cities, Municipalities and Towns except on the authority of the appropriate council and all species outside the hunting season described in Form 4 to National Parks and Wildlife (Miscellaneous Forms) Regulations.

C. Reptiles

Crocodile

D. Fish

Tiger Fish, Chambo, Mpasa, and Sanjika in a national park or wildlife reserve.

NATIONAL PARKS AND WILDLIFE (HANDLING AND USE OF FIREARMS) REGULATIONS

G.N. 49/2011

under s. 6

Citation

1. These Regulations may be cited as the National Parks and Wildlife (Handling and Use of Firearms) Regulations.

Officers authorized to use firearms

2.—(1) The following officers shall be authorized to carry and use firearms in the performance of their duties—

(*a*) the Director of Parks and Wildlife;

(*b*) the Deputy Director;

(*c*) Assistant Directors;

(*d*) Principal Parks and Wildlife Officers;

(*e*) Senior Parks and Wildlife Officers;

(*f*) Parks and Wildlife Officers;

(*g*) Senior Assistant Parks and Wildlife Officers;

(*h*) Assistant Parks and Wildlife Officers;

(*i*) Senior Parks and Wildlife Assistant;

(*j*) Parks and Wildlife Assistant; and

(*k*) Parks and Wildlife Scouts.

(2) The following officers may be authorized to carry and use firearms in the performance of their duties—

(*a*) honorary Parks and Wildlife Officers;

(*b*) DNPW Watchmen;

(*c*) fence attendant; and

(*d*) all public officers designated as officers under section 6 of the Act.

Circumstances when firearms may be used

3.—(1) An officer may use a firearm in the following circumstances—

(*a*) when the life of an officer is in immediate danger;

(*b*) when another officer's life is in immediate danger;

(*c*) to control wildlife; and

(*d*) in defence of human life or property.

(2) The onus that the firearm was used rightfully shall be upon the person using it.

Code of Conduct and Administrative Orders

4. An officer shall follow the Code of Conduct and Administration orders issued by the Department of National Parks and Wildlife from time to time.

Handling of firearms

5. In handling or using firearms, an officer shall—

(*a*) exercise all firearms safety precautions;

(*b*) fire the weapon when it is absolutely necessary and in the circumstances stipulated in regulation 3;

(*c*) not carry or use firearms under the influence of intoxicating substances; and

(*d*) not leave any firearms unsecured.

G.N. 51/2011

NATIONAL PARKS AND WILDLIFE (VALUES OF ANIMALS) REGULATIONS

under s. 121

Citation

1. These Regulations may be cited as the National Parks and Wildlife (Values of Animals) Regulations.

Value of animals

2. The values specified in the Schedule shall be the values of animals and shall be used for any purpose required under the Act—

SCHEDULE reg. 2

VALUES OF ANIMALS

	Animal	*Value US$*
1.	Elephant	25,000
2.	Rhino	55,000
3.	Hippo	8,000
4.	Buffalo	8,000
5.	Roan antelope	21,000
6.	Sable antelope	9,000
7.	Kudu	5,000
8.	Water buck	5,000
9.	Eland	10,000
10.	Leopard	8,000
11.	Cheetah	10,000
12.	Crocodile	8,000
13.	Wild dog	10,000
14.	Nyala	10,000
15.	Zebra	8,000

	Animal	*Value US$*
16.	Lion	10,000
17.	Duikers	1,000
18.	Grysbok	1,000
19.	Jackal	1,000
20.	Oribi	1,000
21.	Honey badger	1,000
22.	Hyena	1,000
23.	Klipspringer	1,000
24.	Livingstone suni	5,000
25.	Warthog	1,000
26.	Hartebeest	5,000
27.	Bush pig	1,000
28.	Reedbuck	1,000
29.	Impala	1,000
30.	Bushbuck	1,000
31.	Puku	5,000
32.	Pangolin	500

All animals not on this list shall be valued at US$500.

G.N. 52/2011

NATIONAL PARKS AND WILDLIFE (CONDUCT OF OFFICERS) REGULATIONS

Citation

1. These Regulations may be cited as the National Parks and Wildlife (Conduct of Officers) Regulations.

Officers to comply with Act, Regulations, etc.

2. Officers shall perform their duties and functions in accordance with the Act and these Regulations and subject to any general or special directions the Director may issue from time to time.

Functions of officers

3. Without derogating from the generality of regulation 2, an officer shall perform the following functions—

(*a*) investigate and detect any violation of the Act and Regulations made thereunder;

(*b*) carry out arrests of persons who are suspected of committing an offence under the Act;

(*c*) carry out prosecution of any offence under the Act, upon being granted authority to do so by the Director of Public Prosecutions;

(*d*) investigate any reports of problem animals and take such action as may be deemed necessary in accordance with the Act;

(*e*) prepare reports and maintain records as the Director may require from time to time; and

(*f*) carry out such duties and functions as may be delegated or directed by the Director.

MEAT AND MEAT PRODUCTS

CHAPTER 67:02

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CHAPTER 67:02

MEAT AND MEAT PRODUCTS

ARRANGEMENT OF SECTIONS

SECTION

1. Short title
2. Interpretation
3. Appointment of inspectors, graders, etc.
4. Power to make regulations
5. Offences and penalties
6. Suspension of certain powers of Local Authorities where regulations apply
7. Suspension of certain powers of District Councils where regulations apply

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An Act to provide for the improvement and control of the production, processing, manufacture, grading, sale, marketing and distribution of meat, and meat products and for matters connected therewith and incidental thereto

3 of 1975
G.N. 183/1975

[1st December, 1975]

Short title

1. This Act may be cited as the Meat and Meat Products Act.

Interpretation

2.—(1) In this Act, unless the context otherwise requires—

"carcase" means the carcase of any livestock and includes any part of such carcase;

"Government mark" means a mark authorized by the Minister for use by a grader appointed under section 3 when marking a carcase in accordance with this Act;

"grader" means any person for the time being appointed as such under section 3;

"inspector" means any person for the time being appointed as such under section 3;

"livestock" means cattle, sheep, pigs, goats, poultry and such other animals as the Minister may declare to be livestock pursuant to subsection (2);

"meat" means the carcase, or offal, or any part of the carcase or offal, or any product of the carcase or offal of any livestock and, in the case of poultry, includes the eggs thereof;

"slaughterhouse" means a place for slaughtering livestock, the meat of which is intended for human consumption, and includes any place in connexion therewith for the confinement of animals while awaiting slaughter any such place used or for keeping, or subjecting to any treatment or process, products of the slaughter of animals in such slaughterhouse.

(2) The Minister may by Order made by notice published in the *Gazette*, extend the definition of "livestock" appearing in subsection (1), by declaring the said term to include such other animals as may be designated in such Order to be livestock for the purposes of this Act.

Designation of inspectors, graders, etc.

3.—(1) There shall be inspectors for the purpose of this Act, who shall be officers in the public service, designated by the Minister.

(2) There shall be graders for the purpose of this Act, who shall be officers in the public service, designated by the Minister.

Power to make regulations

4.—(1) The Minister may make regulations for the better carrying out of this Act, and without prejudice to the generality of the foregoing such regulations may make provision—

(*a*) regulating and controlling the production manufacture, processing, marketing, distribution and sale of meat or meat products;

(*b*) prescribing minimum standards to which carcases, meat or meat products shall conform, whether as a condition of importation or exportation, or of sale within Malaŵi and for the seizure, detention, condemnation and destruction, either with or without compensation, of any carcases, meat or meat product considered by any grader, inspector or other prescribed person to be unfit for human consumption;

(*c*) prescribing the manner of handling, transporting, storing and packing of any carcase, meat or meat products;

(*d*) authorizing the inspection, examination sampling, analysis, treatment and control of any livestock intended for slaughter for human consumption and of the food of such livestock and prescribing conditions upon, and the manner in which, livestock and food may be taken for any such purpose, either with or without compensation;

(*e*) fixing the minimum, maximum or specific prices determined by reference to deadweight and grade or liveweight and grade, which shall be paid for livestock delivered to slaughterhouses and there tendered for sale whether for the purpose of slaughter or otherwise;

(*f*) prescribing the methods to be employed in the slaughter of animals in slaughterhouses and the implements to be used for such purposes;

(*g*) requiring the registration and licensing in such manner, and upon payment of such fees, as may be prescribed of the producers (including persons who keep poultry with a view to selling the carcases or eggs thereof for human consumption), manufacturers, processors, distributors and sellers of meat and meat products and providing for the suspension or cancellation of any such registration or licensing;

(*h*) prescribing the qualifications, powers and duties of inspectors, graders and other persons appointed to exercise powers and to perform duties under this Act, including power to enter and to remain in or upon slaughterhouses and premises used in connexion with the production, storage, processing, manufacture, grading, sale, marketing and distribution of meat and meat products for the purposes of this Act;

(*i*) requiring the production to, and authorizing the examination, inspection, analysis and testing by, officers appointed under this Act of carcases, meat and meat products and any article used in connexion with carcases, meat and meat products or the production, processing, manufacture, grading, sale, marketing and distribution thereof, prescribing charges in respect thereof, and conditions upon and the manner in which carcases, meat and meat products or articles or parts or samples of any of them may be taken, either with or without compensation;

(*j*) authorizing the opening by officers appointed under this Act or other persons for the purpose of inspection, any package which contains, or which is reasonably thought to contain, carcases, meat or meat products;

(*k*) prescribing the books, accounts, vouchers and records to be kept and maintained by persons carrying on any business to which this Act relates;

(*l*) authorizing the examination and inspection by officers appointed under this Act or other persons of all books and documents relating to the production, processing, manufacture, grading, sale, marketing and distribution of any carcases, meat or meat products;

(*m*) prescribing that save with the permission in writing of the Minister, no person shall import into, or export from, Malaŵi any carcase, meat or meat product, and prescribing the form and manner in which such permission may be sought and further empowering the Minister to grant such permission subject to such exceptions, conditions and qualification, if any, as he may see fit to impose;

(*n*) prescribing that, save with the permission in writing of the Minister, no person shall sell any meat, carcase or meat product, and prescribing the form and manner in which such permission may be sought and further empowering the Minister to grant such permission subject to such exceptions, conditions and qualifications, if any, as he may see fit to impose;

(*o*) prescribing that any person who occupies premises which he uses, or permits to be used, as a slaughterhouse, without being the holder of a current valid licence to do so under this Act, shall be guilty of an offence.

L.R.O. 1/1976

(*p*) controlling and regulating the establishment, design, construction, standards, locality, supervision, equipment, maintenance and management of slaughterhouses and of premises used in connexion with the production, storage, manufacture, processing, marketing, distributing or selling of carcases, meat and meat products;

(*q*) for the examination, grading and marking of carcases of livestock required to be graded under this Act; to make provision for the various grades to be used for such purpose, their respective names, designations and marks, and for the criteria applicable to each such grade;

(*r*) for the production of carcases of livestock to graders, for examination, grading and marking in accordance with this Act;

(*s*) for the marks to be used by graders;

(*t*) for appeals from any decision of any registrar, licensing officer, grader, inspector or other officer appointed under this Act, in the exercise, or purported exercise, of his powers or functions under this Act, and for the fees to be paid and the procedure to be followed in connexion with such appeals;

(*u*) prescribing the fees or charges for services rendered under this Act;

(*v*) requiring returns, reports and estimates to be furnished by producers, manufacturers, processors, marketers, distributors and sellers of carcases, meat and meat products;

(*w*) prescribing the forms of applications, permits, licences, registers, and other documents and prescribing the marks to be used for purposes of this Act;

(*x*) exempting from any of the provisions of this Act or of any regulation made thereunder any person or class of persons or any meat or meat product;

(*y*) prescribing any matter to be or which may be prescribed under this Act.

(2) Regulations made under subsection (1) may be made to apply to the whole of Malaŵi or to specified areas of Malaŵi and different regulations may be made in respect of different areas of Malaŵi or for different kinds or grades of meat or meat products.

Offences and penalties

5. Any person who contravenes any provision of this Act or of any regulation made thereunder shall be liable on first conviction to imprisonment for a term of twelve months or to a fine of K200.00 and on a second or subsequent conviction to imprisonment for a term of two years and to a fine of K400.00.

Suspension of certain powers of Local Authorities where Regulations apply
Cap. 22:01

6. Whenever in accordance with section 4 (2), Regulations made under section 4 (1) are made to apply to any Local Government Area, or to any specified place within such Local Government Area, as the case may be, the powers of the Local Authority for such area in respect of slaughterhouses and the killing of a livestock provided for by paragraph (7) of Part 4 of the First Schedule to the Local Government (Urban Areas) Act and the powers of such Local Authority in respect of diseased animals provided for by paragraph (9) of the said Part 4 of the said First Schedule to the said Act, shall be suspended and shall not be exercisable by such Local Authority in such Area or specified place, as the case may be, for so long as the aforesaid Regulations made under this Act continue to apply to such Area or specified place.

Suspension of certain powers of District Councils where Regulations apply
Cap. 22:02

7. Whenever in accordance with section 4 (2), Regulations made under section 4 (1) are made to apply to any area of a District Council or to any specified place within such area, as the case may be, the powers of such District Council in respect of the control, regulation, supervision or licensing of slaughterhouses provided by paragraph (1) of Part IX of the First Schedule, and by paragraphs (5) (*d*) and (6) (*c*) of Part I of the Third Schedule, to the Local Government (District Councils) Act, shall be suspended and shall not be exercisable by such District Council in such area or specified place, as the case may be, for so long as the aforesaid Regulations made under this Act continue to apply to such area or specified place.

SUBSIDIARY LEGISLATION

Law Revision Commissioner's Note:

Under the provision of section 14 (i) (e) of the General Interpretation Act.

Any subsidiary legislation hereinafter shown as made under the Meat Marketing Act (Now repealed) is deemed to remain in force only to the extent that it is capable of being enacted under the Meat and Meat Products Act and is not inconsistent therewith.

G.N. 71/1976

MEAT AND MEAT PRODUCTS (EXEMPTIONS) REGULATIONS

under s. 4

Citation

1. These Regulations may be cited as the Meat and Meat Products (Exemptions) Regulations.

Exemptions

2. The meats set out in the Schedule hereto shall be exempt from the provisions of the Meat and Meat Products Act.

SCHEDULE

All imported tinned meats

All imported potted meats

Meat soups

Meat pies

Meat pasties

Edible meat fats

Tallow

All cooked meats other than cooked pork, cooked ham and cooked bacon

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G.N. 64/1965
268/1970

SPECIFIED AREAS NOTICE

under s. 4 (1)

The Minister has declared the Town Planning Area of the City of Blantyre, the Town Planning Area of Zomba and that part of the Thyolo District lying on the Blantyre side of the Nswadzi River to be areas specified for purposes of section 4 (1) of the Act.

SPECIFIED PLACES NOTICE

G.N. 115/1985

under s. 4 (2)

Citation

1. This Notice may be cited as the Specified Places Notice.

Specified places for purchase of cattle

2. The Cold Storage Company Limited, having been granted a licence to own, operate, manage and conduct abattoir in the City of Blantyre and City of Lilongwe, shall be required to purchase all cattle offered to it at the places specified in the Schedule hereto.

SCHEDULE (reg. 2)

1. The cattle market situate in the area known as the Likangala Dip-Tank site near Zomba;

2. The cattle market situate in the area behind and adjacent to the produce market in Lilongwe;

3. The cattle market situate 0.80 kilometres north-east of Mponela near the bank of the Kasangadzi River;

4. The cattle market situate in the area adjacent to the area known as the Kwataine Dip-Tank site in Ntcheu District;

5. The cattle market situate in the area known as the Dedza Dip-Tank site in Dedza District;

6. The cattle market situate in the area known as the Phazi Dip-Tank site approximately 82.13 kilometres south of Mzimba;

7. The cattle market situate 1.20 kilometres south-west of Mzimba Boma and adjacent to the airfield known as the Mzimba Cattle Market;

8. The cattle market situate in the area known as the Gowoka Dip-Tank site approximately 77.29 kilometres north of Mzimba;

9. The cattle market situate 1.20 kilometres from M1-S8 road junction and adjacent to S8 road approximately 8.05 kilometres south of Rumphi known as the Bwengu Cattle Market;

10. The cattle market situate 1.60 kilometres north of Nthalire Traditional Court near the bank of Ziwa River known as the Nthalire Cattle Market;

11. The cattle market situate in the area known as the Kaseye Dip-Tank site;

12. The cattle market situate 182.80 metres west of Karonga Kamuzu Highway and approximately 41.87 kilometres south of Karonga known as the Ngara Cattle Market;

13. The cattle market situate in the area known as the Nsanje Dip-Tank site;

14. The cattle market situate in the area known as the Bangula Dip-Tank site;

15. The cattle market situate in the area known as the Ngabu Dip-Tank site;

16. The cattle market situate in the area known as the Muona Dip-Tank site;

17. The cattle market situate in the area known as the Kanjedza Dip-Tank site;

18. The cattle market situate in the area known as the Symon Dip-Tank site;

19. The cattle market situate in the area known as the Mikoko Dip-Tank site;

20. The cattle market situate approximately 0.40 kilometres south of the Chigumukile Trading Centre known as the Putheya Cattle Market;

21. The cattle market situate on the west side of the Neno-Kirk Range road approximately 0.80 kilometres north of Neno Trading Centre known as the Neno Cattle Market;

22. The cattle market situate 548.40 metres from the Nathenje Trading Centre on the west bank of the Nathenje River known as the Nathenje Cattle Market;

23. The cattle market situate 3.60 kilometres south-west of Mitundu Trading Centre on the east bank of the Lisungwe River known as the Namaguya Cattle Market;

24. The cattle market situate 4.83 kilometres north of Kasungu on the north bank of the Kavunguti River known as the Kasungu Cattle Market;

25. The cattle market situate 32.20 kilometres from Lilongwe Town Centre on the north side of the main Lilongwe-Salima road known as the Chikusa Cattle Market;

26. The cattle market situate 182.80 metres north of the Linthipe Bridge and in the area known as the Linthipe Dip-Tank site;

27. The cattle market situate on the east bank of Namitete River, on the south side of the main Lilongwe-Mchinji road known as the Namitete Cattle Market;

28. The cattle market situate 40.26 kilometres west of Namitete on the west side of the main Lilongwe-Mchinji road near the south bank of the Bua River known as the Tembwe Cattle Market;

29. The cattle market situate 6.44 kilometres north-west of Chief Chikakula near the north bank of the Mteza River known, as the Malindi Cattle Market;

30. The cattle market situate 4.83 kilometres north of Dowa Boma on the Dowa-Nkhotakota road in the area known as the Moya Dip-Tank site known as the Dowa Cattle Market.

MEAT MARKETING REGULATIONS

under s. 9

G.N. 17/1966
83/1969
6/1974
116/1985
74/1986

Citation

1. These Regulations may be cited as the Meat Marketing Regulations.

Interpretation

2. In these Regulations, unless the context otherwise requires—

"appellant" means a person who has appealed from the decision of a Government grader in the manner prescribed by section 9 of the Act;

"appropriate authority"—

(*a*) in relation to the prescribed areas comprising the Town Planning Area of Zomba, means the District Commissioner, Zomba;

(*b*) in relation to the prescribed area comprising the Town Planning Area of Blantyre and Limbe, means the District Commissioner, Blantyre;

(*c*) in relation to the prescribed area comprising that part of the Thyolo District on the Blantyre side of the Nswadi River, means the District Commissioner, Thyolo; G.N. 6/1974

(*d*) in relation to the prescribed area comprising the Town Planning area of Lilongwe (as more particularly specified in Government Notice No. 11 of 1971) means the District Commissioner, Lilongwe;

"grader" means a person appointed to grade livestock and meat in terms of section 7 (1) of the Act;

"inspector" means a person appointed an inspector in terms of section 7 (1) of the Act;

"prescribed area" means an area prescribed in terms of section 5 of the Act;

"Secretary" means the Secretary for Agriculture.

PART I

CATTLE

Grading of carcasses of cattle G.N. 6/1974

3. The carcasses of cattle which are liable to be graded in terms of the Act in consequence of the cattle having been slaughtered in a prescribed area for sale or export, in any form whatsoever, shall be graded by a Government grader at a slaughter-house, in accordance with the First Schedule, in one of the following grades—

(*a*) Choice Grade Chiller Beef;

(*b*) Prime Grade Chiller Beef;

(*c*) Standard Quality Grade Beef;

(*d*) Commercial Quality Grade Beef;

(*e*) Inferior Quality Grade Beef; and

(*f*) Veal.

Marking of graded carcasses of cattle

4. The carcasses of cattle which have been graded in terms of regulation 3 shall be marked by a Government grader with a roller-mark in accordance with the following provisions—

(*a*) Choice Grade Chiller Beef shall be marked with the word "CHOICE";

(*b*) Prime Grade Chiller Beef shall be marked with the word "PRIME";

(*c*) Standard Quality Grade Beef shall be marked with the number "1111";

(*d*) Commercial Quality Grade Beef shall be marked with the number "4444";

(*e*) Inferior Quality Grade Beef shall be marked with the letters "XXXX"; and

(*f*) Veal shall be marked with the word "VEAL":

Provided that no internal cuts shall be so marked.

PART II

SHEEP

Grading of carcasses of sheep

5. The carcasses of sheep which are liable to be graded in terms of the Act in consequence of the sheep having been slaughtered in a prescribed area for sale or export, in any form whatsoever, shall be graded by a Government grader at a slaughterhouse, in accordance with the Second Schedule, in one or other of the following grades—

(*a*) Choice Lamb;

(*b*) Prime Lamb;

(*c*) Grade 1 Mutton; and

(*d*) Grade 2 Mutton.

Marking of graded carcasses of sheep G.N. 6/1974

6. The carcasses of sheep which have been graded in terms of regulation 5 shall be marked by a Government grader with a roller-mark in accordance with the following provisions—

(*a*) Choice Lamb shall be marked with the word "CHOICE";

(*b*) Prime Lamb shall be marked with the word "PRIME";

(*c*) Grade 1 Mutton shall be marked with the number "1111";

(*d*) Grade 2 Mutton shall be marked with the number "2222":

Provided that no internal cuts shall be so marked.

PART III

GOATS

Grading and marking of carcasses of goats

7. The carcasses of goats which are liable to be graded in terms of the Act in consequence of the goats having been slaughtered in a prescribed area for sale or export, in any form whatsoever, shall be graded by a Government grader at a slaughter-house as goatmeat, and shall be marked by a Government grader with a roller-mark in accordance with the following provisions—

(*a*) Grade 1 Goat shall be marked with the mark "Goat 1111";

(*b*) Grade 2 Goat shall be marked with the mark "Goat 2222":

Provided that no internal cuts shall be so marked.

PART IV

Appeals and Offences

Appeal from decision of grader

8.—(1) Any person whose livestock carcasses have been graded by a Government grader in terms of these Regulations and who is dissatisfied with the decision of the Government grader in regard to the grading of such carcasses shall, subject to subregulation (2), be entitled to appeal from such decision to the Secretary.

(2) No appeal shall lie in terms of this regulation unless the person—

(*a*) notifies the Government grader in writing, on the same day as the decision in regard to the grading of the carcasses is given and before the carcasses are removed from the place of grading, of his intention to appeal; and

(*b*) within seventy-two hours of so notifying his intention to appeal, lodges with the Secretary a notice of appeal and pays, in aid of the costs of the appeal, a fee of two Kwacha for each carcass in respect of which the appeal is lodged.

(3) For the purposes of subregulation (2), a notice of appeal lodged with the Chief Veterinary Officer, Malaŵi, shall be regarded as having been lodged with the Secretary.

(4) An appeal lodged in terms of this regulation shall be decided by two or more persons, with a special knowledge of meat grading, nominated by the Secretary, and the decision of such persons shall be communicated to the appellant within ten days of the date on which the notice of appeal was lodged.

(5) If an appeal lodged in terms of this regulation—

(*a*) is upheld, the fee paid in respect of the carcass concerned shall be wholly refunded to the appellant;

(*b*) is dismissed, the fee paid in respect of the carcass concerned may be refunded to the appellant, in whole or in part, if the Secretary, after considering all the circumstances, so directs.

Delivery of ungraded or unmarked carcasses prohibited

9. Except with the permission of the appropriate authority, no person shall sell at, distribute in, or consign or deliver to any place within a prescribed area any carcass, liable to be graded in terms of the Act, which has not been graded and marked in accordance with these Regulations.

Imported sheep carcasses must show country of origin

10. No person shall sell, distribute, consign or deliver any sheep carcasses imported into Malaŵi which have not been marked to indicate the country of origin.

Removal of subcutaneous fat

11. No person, other than a consumer, shall remove the subcutaneous fat from any carcass graded in terms of these Regulations or interfere in any way with the markings of any such carcass.

PART V

Powers of Inspectors

Inspection

12. An inspector may inspect any abattoir, slaughter-house, butchery, factory or works where livestock are slaughtered, or where carcasses or livestock are treated, processed, prepared, dressed, dealt in or stored, for the purpose of ascertaining whether any carcass of livestock therein has been graded or roller-marked in accordance with the regulations made in terms of the Act or otherwise.

Demand for production of carcasses and account books

13.—(1) An inspector may demand the production of any carcass and any books of accounts relating thereto.

(2) An inspector may seize any books, documents, carcasses and other meat foods which, in the opinion of the inspector, may afford evidence of a contravention of the Act or any regulation made thereunder.

(3) An inspector shall, if so required, issue a receipt for any books, documents, carcasses or other meat foods seized in terms of subregulation (2).

Written authority

14. When exercising any powers conferred by these Regulations, an inspector shall, if so required, produce a written authority from the Minister to exercise such powers.

PART VI

Import and Export of Meat

Import and export of meat
G.N. 235/1968
83/1969

15.—(1) No person may import into, or export from, Malaŵi, any meat without the written permission of the Minister.

(2) An application made under these Regulations for the import of meat shall be deemed also to be an application made under the Animal (Import) Rules.

PART VII

Licensing of Abattoirs

Licence required for abattoir, etc.

16.—(1) No person may own, manage or conduct any abattoir, slaughter-house, factory or other works where livestock are slaughtered or where livestock are treated, processed, prepared and dressed, in an area specified by the Minister under section 4 (1) of the Act unless he has first obtained a licence in the form specified in the Third Schedule.

(2) Any licence issued under subregulation (1) shall be valid until revoked in writing by the Minister.

(3) It shall be a condition of issue of an abattoir licence that the holder of such licence shall maintain premises suitable for the holding and humane slaughter of livestock, and for the efficient processing, handling and storage of meat.

PART VIII

Marketing of Meat

17. No person shall expose or display any meat for sale in an area specified by the Minister under section 4 (1) of the Act unless the meat is clearly marked according to its grade in the manner specified in the Fourth Schedule. Display of meat requires marking

FIRST SCHEDULE reg. 3 G.N. 6/1974 116/1985

PART I

Manner of Grading Cattle Carcasses

1. *Choice Grade Chiller Beef—*

(*a*) Beef of this grade shall be derived from steers or maiden heifers having not more than six permanent incisors and a carcass weight of not less than 180 Kilograms Cold Dressed Weight. The carcass shall be of good conformation and the quarters plump and well fleshed, with an even covering of firm white or creamy-white fat, with the kidney and channel fat well developed and with a liberal distribution of fat in the lean at the point of quartering. The beef shall be properly dressed, free from objectionable bruises or taint, bright and sound in condition; G.N. 116/1985

(*b*) Carcasses of young bulls shall qualify for grading as Choice Grade Chiller Beef if they have no permanent incisors and meet all other requirements of that grade. G.N. 6/1974

2. *Prime Grade Chiller Beef—*

Beef of this grade shall be derived from steers or maiden heifers, not more than five years of age and which do not show any pronounced ossification of the spinal processes or in the lumbar region and have a carcass weight of not less than 146.25 kilograms Cold Dressed Weight. The quarters shall be plump and well fleshed, but the development of internal and external fat may be somewhat less than in the Choice Grade. There shall be a fair distribution of fat in the lean at the point of quartering. The beef shall be properly dressed, free from objectionable bruises or taint, bright and sound in condition. G.N. 6/1974 116/1985

3. *Standard Quality Grade Beef—*

Beef of this grade shall be derived from steers, cows or bulls of any age. The quarters shall be moderately well fleshed and moderately covered with fat except for bulls; the latter shall be well covered with fat.

4. *Commercial Quality Grade Beef—*

Beef of this grade shall be derived from steers, cows or bulls of any age. The quarters shall be fairly well fleshed and shall carry some covering of fat.

5. *Inferior Quality Grade Beef—*

Beef of this grade shall be derived from steers, cows or bulls below the standard of the foregoing grades.

6. *Veal—*

Veal shall be derived from a cattle carcass having a hot dressed weight not exceeding 46.35 kilograms, well fleshed and in sound condition. G.N. 116/1985

PART II

Manner of Grading Live Cattle

1. *Feeder Grade A—*

Animals in this grade shall not have more than four permanent incisor teeth and shall have a minimum live weight of 247.50 kilograms and must be of a type and conformation suitable, in the opinion of the grader, for intensive feeding.

G.N. 116/1985

2. *Feeder Grade B—*

Animals in this grade shall be steers and heifers having not more than six permanent incisor teeth and shall have a minimum live weight of 225 kilograms and must be of a type and conformation suitable, in the opinion of the grader, for intensive feeding.

G.N. 116/1985

3. *Standard Grade—*

G.N. 6/1974

Cows and steers in this grade shall be fairly well fleshed and in medium condition. Bulls in this grade shall be in a really fat condition.

4. *Commercial Grade—*

Cattle in this grade shall be in a reasonable condition with no indication of poverty.

5. *Inferior Grade—*

Cattle in this grade shall be steers, cows or bulls below the standard of the foregoing grades.

reg. 5
G.N. 6/1974
74/1986

SECOND SCHEDULE

Manner of Grading Sheep and Goat Carcasses

1. *Choice Lamb—*

Carcasses of good conformation and good even finish, derived from lambs having no permanent incisors.

2. *Prime Lamb—*

Carcasses of good conformation and reasonable finish, derived from lambs, having not more than two permanent incisors.

3. *Grade 1 Mutton*

Carcasses of reasonably good conformation, finish and quality, derived from sheep having not more than four permanent incisors.

4. *Grade 2 Mutton—*

Carcasses of fair conformation, finish and quality, derived from sheep having more than four permanent incisors.

5. *Grade 1 Goat—*

Shall be carcasses of good conformation and reasonable finish derived from goats having not more than four permanent incisors.

6. *Grade 2 Goat—*

Shall be derived from carcasses of goats having more than four permanent incisors.

THIRD SCHEDULE reg. 16

ABATTOIR LICENCE

(*Issued under regulation* 16 *of the Meat Marketing Regulations*)

(Name) ..... of (Address) .....

is hereby licensed to own, operate, manage and conduct an abattoir for the purpose of slaughter of livestock and the dressing, preparation, treatment and storage of meat at (Address of premises) .....

This licence shall be valid until revoked in writing by me.

Dated at ..... this ..... day of ....., 20.....

.....
Minister of Agriculture

FOURTH SCHEDULE reg. 17

MANNER OF MARKETING MEAT

All meat offered or displayed for sale shall be clearly marked according to its grade, and shall bear the same markings as laid down in regulations 4, 6 and 7 of these Regulations, provided only that as distinct from a roller-mark, the meat shall be marked with a ticket or label which shall take the form of block letters or figures (as appropriate) on a white background, such letters and figures shall not be less than 1.27 centimetres in height and the stroke of such figures or letters shall be not less than 0.25 centimetre in width. G.N. 116/1985

PIG GRADING REGULATIONS

under s. 9

G.N. 124/1971 130/1973 114/1985 39/2003

1. These Regulations may be cited as the Pig Grading Regulations. Citation

2. In these Regulations, unless the context otherwise requires— Interpretation

"dead weight" means cold dressed weight as determined in accordance with regulation 3;

"slaughter-house" means a slaughter-house licensed to operate for the slaughtering, processing and storage of livestock in an area prescribed by the Minister under subsection (1) of section 4 of the Act.

3. The cold dressed weight of a pig carcass shall be determined by weighing the carcass within one hour of slaughter and by deducting three per centum to the nearest kilogram from the weight so obtained. Cold dressed weight G.N. 114/1985

[Subsidiary]

Pig Grading Regulations

Classification and grading G.N. 39/2003

4. The carcasses of all pigs which are liable to be graded in terms of the Act in consequence of the pigs having been slaughtered for sale or export in any form whatsoever shall be classified and graded at a slaughter-house by a Government grader in accordance with the provisions of the First Schedule and roller-marked in accordance with the provisions of the Second Schedule:

Provided that—

(*a*) the carcass of a pig slaughtered for export need not be roller-marked; and

(*b*) internal cuts of meat shall not be so marked.

Regrading of carcass

5. A Government grader may regrade a carcass if—

(*a*) there is brought to his notice a defect caused by—

(i) soft and oily fat; or

(ii) fishy flavour or other taint which was not apparent when the carcass was graded; or

(*b*) the pig was slaughtered as a casualty; or

Cap. 67:02 sub. leg. p. 8

(*c*) in the opinion of the persons nominated by the Secretary,

in terms of regulation 8 paragraph (4) of the Meat Marketing Regulations, the original grading was inaccurate.

Interference with graded carcass

6. No person other than the consumer shall remove the skin of a pig carcass graded in terms of regulation 4 or interfere in any way with the marking thereon.

Returns

7. A Government grader shall, in respect of every pig carcass graded by him in terms of regulation 4, furnish to the manager of the slaughter-house in which the pig was slaughtered a return, in duplicate, in the form prescribed in the Third Schedule. One copy of such a return shall be forwarded by the manager of the slaughter-house to the seller when payment is made and one copy shall be retained by the manager of the slaughter-house.

Appeals

8. Any person whose pig carcass has been classified and graded in terms of regulation 4 and who is dissatisfied with the decision of the Government grader in regard to the classification or grading of such carcass shall be entitled to appeal from such decision in the manner prescribed in regulation 8 of the Meat Marketing Regulations. The whole of regulation 8 of the Meat Marketing Regulations shall be deemed to apply to the procedure for appeals in respect of classification and grading of pig carcasses.

Records

9. The Manager of any slaughter-house permitted to slaughter pigs shall—

(*a*) institute a system of serial numbers;

(*b*) clearly mark the pig carcass with the appropriate serial number before it is graded by a Government grader;

(*c*) keep a record of a serial number marked on such pig carcass; and

(*d*) furnish a return to the Government grader showing, in respect of such pig carcass, the serial number marked thereon, and dead weight thereof and the name of the seller.

FIRST SCHEDULE

reg. 4 G.N. 114/1985 39/2003

Classes and Grades of Pig Carcasses

1. A pig carcass which weighs—

(*a*) less than 25 kilograms shall be classified as an underweight pig;

(*b*) not less than 25 kilograms and not more than 45 kilograms shall be classified as a Porker;

(*c*) more than 45 kilograms and not more than 55 kilograms shall be classified as a Cutter;

(*d*) more than 55 kilograms but not more than 70 kilograms shall be classified as a Baconer;

(*e*) more than 72 kilograms but not more than 85 kilograms shall be classified as an Overweight Pig if suitable for curing into bacon;

(*f*) more than 85 kilograms derived from a sow or castrated pig and unsuitable for curing into bacon shall be classified as a Sow or Other Pig;

(*g*) any weight and derived from a boar shall be classified as a Boar;

(*h*) any weight and not suitable for inclusion in any of the above grades shall be classified as an Inferior.

2. Subject to the provisions of paragraph 4, an Underweight Pig carcass shall be any carcass from a female or castrated male and shall be graded as an Underweight Pig on the Government grader's assessment of the general appearance and quality of the carcass in accordance with the following standard—Carcass well fleshed, hams well fleshed, back fat neither excessive nor deficient; fat reasonably white and firm; skin thin and smooth. Skin pigmentation may be present if it is so faint that it does not detract from value of carcass. Good all-round suitability for pork or manufacture.

3. Subject to the provisions of paragraph 4, a Porker or Cutter shall be graded as follows—

Grade A. Carcass very well fleshed; side long; good depth of loin; shoulder, head and collar light; hams broad and well fleshed; back fat neither excessive nor deficient; fat reasonably white and firm; suitable fat covering over breastbone; fine bone with well-sprung ribs; skin thin and smooth. Skin pigmentation may be present if it is so faint that it does not detract from value of carcass. Excellent all-round suitability for pork.

GRADE B. Of good all-round suitability for pork but lacking Grade A standard as defined above.

GRADE X. Below standard of Grade A or B on account of excessive fatness or under finish.

4. A Porker or Cutter shall be graded X if—

(*a*) it has a faulty conformation;

(*b*) the carcass has a fishy flavour or other taint; or

(*c*) it was before slaughter—

(i) a male pig not castrated within twelve weeks of birth; or

(ii) a pig suffering from disease or injury rendering it unsuitable for the fresh pork trade.

G.N. 114/1985

5. Subject to the provisions of this Schedule a Baconer shall be graded as follows—

	Maximum mid back	*Fat measurement shoulder*	*Rump*	*Minimum fat measurement mid back*
GRADE A	0.04 m	0.06 m	0.04 m	0.05 m
GRADE B	0.04 m	0.06 m	0.05 m	0.05 m
GRADE C	0.05 m	0.07 m	0.05 m	0.05 m
GRADE X	Carcass which cannot be graded as A, B or C because it is overfat or unfinished but otherwise suitable for manufacture of bacon.			

6. A Baconer shall be graded as X if—

(*a*) in the opinion of the Government grader it is unsuitable for the manufacture of bacon on account of—

(i) faulty conformation; or

(ii) softness or oiliness;

(*b*) it was before slaughter—

(i) a male pig which had not been castrated within twelve weeks after birth;

(ii) a rig pig of which the carcass is unsuitable for the manufacture of bacon;

(iii) a sow;

(iv) a gilt which has reached a stage of pregnancy which renders the carcass unsuitable for the manufacture of bacon; or

(v) a pig suffering from disease or injury rendering the carcass unsuitable for the manufacture of bacon; or

(*c*) the carcass has a fishy flavour or taint.

G.N. 114/1985

7. Subject to the provisions of this Schedule an overweight pig shall conform to the following measurements—

	Maximum mid back	*Fat measurement shoulder*	*Rump*	*Minimum fat measurement mid back*
GRADE A	0.05 m	0.07 m	0.05 m	0.05 m
GRADE B	Carcass below standard of Grade A above on account of excessive fatness or under finish and suitable for curing into bacon or manufacture.			

8. For the purpose of determining the fat measurements of a Baconer or an Overweight Pig—

(*a*) the measurements shall be taken with a gauge;

(*b*) the mid back measurement shall be taken at the middle of the back where the fat is thinnest;

(*c*) the shoulder measurement shall be taken at the fattest part of the shoulder; and

(*d*) the rump measurement shall be taken at the middle of the rump muscle.

9. A Baconer shall be graded according to the highest grade applicable to its measurement.

10. Subject to the provisions of this Schedule a Sow or Other Pig shall be graded as follows—

GRADE STANDARD—Any carcass from a sow or castrated pig or suitable quality for manufacturing purposes shall be graded Standard on the Government grader's assessment of the general appearance and quality of the carcass.

GRADE X—Any carcass from a sow or castrated pig falling below the Standard grade as defined above, but not falling into the Inferior class.

11. Subject to the provisions of this Schedule a Boar shall be graded as follows—

GRADE STANDARD—Any carcass from an uncastrated pig of suitable quality for manufacturing purposes shall be graded Standard on the Government grader's assessment of the general appearance and quality of the carcass.

GRADE X—Any carcass from an uncastrated pig below the quality of Standard grade as defined above, but not falling into the Inferior class.

12. Subject to the provisions of this Schedule any carcase of any weight from a female, castrated or uncastrated pig, which is either too emaciated or too fat to fall into any of the classes and grades shall be classified as Inferior.

13. Any reference in the Schedule to the weight of a pig carcass shall be construed as a reference to the cold dressed weight of that carcass.

G.N. 39/2004 reg. 4

SECOND SCHEDULE

Roller-Marking for Pig Carcasses

Class and Grade	Roller-mark
Underweight Pig	1
Porker—	
Grade A	1
Grade B	2
Grade X	3
Cutter—	
Grade A	1
Grade B	2
Grade X	3
Baconer—	
Grade A	1
Grade B	2
Grade C	3
Grade X	4
Overweight Pig—	
Grade A	AOWT
Grade B	BOWT
Sow or Other Pig—	
Grade Standard	S1
Grade X	S2
Boar—	
Grade Standard	B1
Grade X	B2
Inferior Pig	X

THIRD SCHEDULE

reg. 7
G.N.114/1985

Pig Carcass Grading Returns

Name of Producer ..... Registered No. of Producer .....
Address ..... Number of Pigs .....
..... Slaughtered at .....
..... Slaughtered at .....
..... Date of Slaughter.....
..... Factory Lot No. .....

Factory Serial No.	*Ear No.*	*Cold Dressed Weight*	*Class*	*Back Fat Grades*			*Payment Grade*	*Remarks*	*Price per kg*	K	t
				Rump	*Mid Back*	*Shoulder*					
TOTAL											

Deductions: .....

Abbreviations—"Class Column" B = Baconer S = Sow and Other U/P = Underweight Pig
O/P = Overweight Pig BO = Boar C = Cutter
P = Porker I = Inferior

Date ....., 19.....

Signature of Government Grader .....

This signature relates to grading details only

[Subsidiary] *Pig Minimum Prices Order/Specified Areas Notice*

G.N. 174/1974

PIG MINIMUM PRICES ORDER

under s. 4

Citation

1. This Order may be cited as the Pig Minimum Prices Order.

Minimum prices

2. The prices set out in the Schedule shall be the minimum prices payable for pig carcasses by reference to grade and deadweight as specified by the Pig Grading Regulations.

SCHEDULE

Class and Grade	*Price per kg cold dressed weight*
Underweight Pig	25t
Porker Grade A	34t
,, B	32t
,, X	20t
Cutter Grade A	26t
,, B	20t
,, X	17t
Baconer Grade A	31t
,, B	28t
,, C	23t
,, X	19t
Overweight Pig Grade A	24t
,, B	22t
Sow or other Pig Standard Grade	22t
Sow or other Pig X Grade	13t
Boar Standard Grade	10t
,, X ,,	5t
Inferior Pig	7t

SPECIFIED AREAS NOTICE

under s. 4

G.N. 11/1971

The Minister has declared the following areas to be specified for the purposes of section 4 of the Act—

The Town Planning area of Lilongwe and that part of Lilongwe District lying on the Lilongwe Town side of the line drawn from a point where the Mchinji and Kasungu roads join the Lilongwe Salima road at Chiponde due south-east to a point where Nathenje River joins the Nanjiri River. From this point due south following Nathenje River to a point where Mwana Ng'ombe River joins Nathenje River then due south-west to Sinyala Market. From there the line runs due north-west along the road to Likuni River. From

there due north to a point on Chirikhande River approximately $1\frac{1}{2}$ miles west of the bridge on the Lilongwe-Nsaru road. From there the line follows Chirikhande River, the Lingadzi River and main Mchinji road to its junction with Lilongwe-Salima road at Chiponde.

MEAT INSPECTION REGULATIONS

ARRANGEMENT OF REGULATIONS

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G.N. 40/1976
40/2003

MEAT INSPECTION REGULATIONS

under s. 4

PART I

PRELIMINARY

Citation

1. These Regulations may be cited as the Meat Inspection Regulations.

Interpretation

2. In these Regulations, unless the context otherwise requires—

"slaughter-house category A" means a slaughter-house from which carcasses may be exported;

"Meat Inspector category A" means—

(*a*) a veterinary officer of the Ministry of Agriculture or;

(*b*) a technical officer of the Department of Animal Health and Livestock Development possessing a Certificate in Meat Inspection or its equivalent; and

(*c*) an officer of the Ministry of Health who has undergone a course on meat hygiene;

"Meat Inspector category B" means—

(*a*) a veterinary officer of the Ministry of Agriculture;

(*b*) a technical officer of the Department of Animal Health and Livestock Development possessing a Certificate in Meat Inspection or its equivalent;

(*c*) an officer of the Ministry of Health who has undergone a course on meat hygiene; or

(*d*) a Veterinary Assistant;

"blood" means blood derived from an animal intended for human consumption;

"examining in detail" in relation to any lymph node means examining by making multiple incisions into the node;

"offals" means any part of the dead animal removed from the carcass in the process of dressing it but does not include hide,skin, horn or hoof;

"viscera" means stomachs and intestines;

"casualty animal" means an animal which is slaughtered else where than in a slaughterhouse consequent upon an accident, illness or other emergency.

PART II

Management of Slaughterhouses

General prohibitions affecting meat applicable to category A and B slaughter-houses

3.—(1) No person shall add any substance to meat or meat products, use any substance as an ingredient in the preparation of meat or meat products, abstract any constituent from meat or meat products, or subject meat or meat products to any other process or treatment, so as (in any case) to render the meat or meat products injurious to health, with intent that such meat or meat products shall be sold for human consumption in that state.

(2)—(*a*) No person shall bring or permit to be brought into a slaughterhouse any animal which he knows or suspects to be diseased unless he takes such animal or causes it to be taken to that part of the lairage provided for the segregation of such animals.

(*b*) No person shall bring or permit to be brought into a slaughterhouse the carcass of any animal which has died or has been slaughtered and not bled; provided that any such carcass may be taken direct to a processing and sterilizing plant.

(*c*) Subject to the provisions of paragraph (2) (*b*) of this regulation, no person shall bring or permit to be brought into a slaughterhouse any undressed carcass unless it is accompanied by a certificate issued by a veterinary officer stating—

(i) the reason for the slaughter of the animal;

(ii) whether or not to the best of his knowledge and belief it was suffering from any disease liable to render the meat unfit for human consumption;

(iii) particulars of any drugs which to the best of his knowledge and belief have been administered to the animal and which might affect the meat.

(3) No person shall bring or permit to be brought into a slaughterhouse the dressed carcass of an animal slaughtered elsewhere other than in a slaughterhouse unless—

(*a*) the carcass (with or without its offal) is accompanied by a certificate issued by a Meat Inspector certifying that the carcass and its offal have been inspected and passed as fit for human consumption; or

(*b*) the carcass is accompanied by its offal, including the stomach and intestines where practicable, and by a certificate issued by a Veterinary Surgeon stating—

(i) the reason for the slaughter of the animal;

(ii) whether to the best of his knowledge and belief it was suffering from any disease liable to render the meat unfit for human consumption; and

(iii) particulars of any drugs which to the best of his knowledge and belief have been administered to the animal and which might affect the meat.

(4) The carcass of a casualty animal, or the meat or blood derived therefrom, shall not be sold for human consumption until it has been inspected in a slaughterhouse into which it has been brought in accordance with the provisions of this Part of these regulations.

(5) The carcass of a casualty animal shall, if it is to be dressed elsewhere than in a slaughterhouse, be so dressed—

(*a*) as soon as may be practicable after the animal has been slaughtered;

(*b*) at or as near as is practicable to the place where it is slaughtered; and

(*c*) as to ensure that the organs and viscera remain identifiable with the carcass of the animal or the portions into which the carcass has been divided.

(6) Where back bleeding ensues upon the slaughter of a casualty animal the pleura shall not be completely detached from the carcass until the carcass has been examined by a Meat Inspector and the Meat Inspector has authorized the removal of the pleura.

(7) If the person dressing the carcass of a casualty animal, or any person having the custody or control of the meat derived from any such animal has reason to believe that there is in the meat evidence of disease, he shall not knowingly take any action which might alter or destroy that evidence.

(8) Any person engaged in dressing the carcass of a casualty animal shall comply with the provisions of this regulation and the employer or person having control of any person so engaged shall take all reasonable steps to ensure compliance with the provisions of this regulation.

(9) The owner of the carcass of a casualty animal, the meat to be derived from which is intended for human consumption, shall bring the carcass of the animal or, where the carcass has been dressed, the meat, into a slaughterhouse for inspection by a Meat Inspector, who shall ensure that the organs and viscera are identifiable with the carcass from which they were derived.

(10) The person having charge of the slaughterhouse into which it is proposed to bring the carcass of, or the meat derived from a casualty animal shall accept the carcass, or the meat, into the

slaughterhouse only if there is furnished to him a statement signed by a Veterinary Surgeon containing the following particulars—

(*a*) the reason for the animal having been slaughtered elsewhere than in a slaughterhouse;

(*b*) that the animal was not at the time of slaughter suffering from any disease liable to make the carcass unfit for human consumption;

(*c* of any drug which, to the knowledge of the surgeon, has been administered to the animal before slaughter and which might affect the meat or blood derived from the animal.

Transfer of meat from one slaughterhouse to

4.—(1) The carcass of an animal, or any portion of meat into which any such carcass has been divided, may be brought into a slaughterhouse other than that in which it was inspected only if there is produced to the person having charge of the slaughterhouse into which the carcass or the portion of meat, as the case may be, is to be brought, a certificate signed by the inspector who inspected the carcass or the portion of meat that the carcass or the portion has been inspected by him and is fit for human consumption.

(2) If a Meat Inspector finds on examination, any meat or meat products to be unfit for human consumption, he may seize such meat or meat products and inform the owner of his intention to destroy or sterilize the said meat or meat products. If the owner is dissatisfied with the decision of the Meat Inspector, the opinion of a Veterinary Officer or another Meat Inspector category A will be sought and such decision shall be final.

(3) Subject to the provisions of subregulation (2), where any meat or meat product, other than liver or portion thereof, which is unfit for human consumption is voluntarily surrendered to a Meat Inspector, such Inspector shall order the destruction or sterilization of such unfit meat or meat product forthwith and he shall issue a rejection certificate in accordance with the form specified in Appendix II.

PART III

Power to Inspect

Power to inspect meat exposed for sale

5. A Meat Inspector may at all reasonable times examine any meat intended for human consumption which has been sold, or is offered or is exposed for sale, or in the possession of, or has been deposited with, or consigned to, any person for the purpose of sale, and if it appears to him to be unfit for human consumption may seize such meat and remove it for destruction or sterilization. In this regulation meat offered as prize or reward, or by way of advertisement, is deemed to have been offered " for sale ".

PART IV

Seizure and Condemnation

Seizure and condemnation of meat

6.—(1) An officer who seizes any meat shall inform the person in whose possession the meat was found of his intention to have it destroyed or sterilized, and any person who might be liable to prosecution in respect of the meat shall, if he chooses request the second opinion of a Veterinary Officer or Meat Inspector category A and be entitled to call witnesses as to the original quality of the meat.

(2) It appears to the second Meat Inspector that any meat brought before him, whether seized under the provisions of this part or not, is unfit for human consumption, he shall condemn it and order it to be destroyed or to be so disposed of so as to prevent it from being used for human consumption.

(3) Any person who sells, exposes for sale, or has in his possession for the purposes of sale, or consigns to any person for sale, any meat intended for, but unfit for human consumption shall be guilty of an offence. In the case of the person who consigns unsound meat, it shall be a defence if he can prove that at the time when he delivered or dispatched the meat, it was fit for human consumption or that he gave notice to the consignee that the meat was in fact not intended for human consumption.

PART V

Ante Mortem Inspection

Ante mortem inspection by Meat Inspectors

7.—(1) No animal shall be slaughtered for human consumption or for the production of meat products intended for human consumption unless it has been inspected by a Meat Inspector ante mortem and found healthy. Animals showing any signs of sickness shall be segregated from all other animals and shall be slaughtered separately.

(2) No animal which has entered the lairage shall be removed therefrom, whether for slaughter or otherwise, unless permission in writing has been issued by a Meat Inspector.

(3) During the Inspection the following details shall be noted—

(*a*) Any symptoms of disease which may influence the general health of the animal or depreciate the quality of the meat;

(*b*) Any symptoms indicating the presence of any scheduled or infectious disease;

(*c*) General condition of the animal;

(*d*) Any abnormality of locomotion;

(*e*) Any disease affecting the skin;

(*f*) Any evidence of digestive or alimentary disturbance;

(*g*) Any disease affecting the urogenital system and udder; and

(*h*) Any evidence of respiratory disease.

(4) If upon making an examination of any animal, the Meat Inspector is satisfied that it might be prejudicial to public health that the meat to be derived from the animal should be sold for human consumption he shall give instructions to the person having the care of the animal for the time being that the animal shall be segregated and slaughtered in accordance with the provisions of subregulation (5) or otherwise disposed of as the Meat Inspector may direct having regard to the nature of the disease from which the animal is suffering.

(5) If any animal segregated as aforesaid is to be slaughtered in a slaughter-house, it shall be slaughtered in a place therein used solely for the purpose of slaughtering animals so segregated or if there is no such place in the slaughter-house, then at a time other than that at which the slaughter of other animals is taking place therein.

(6) If Ante-mortem inspection reveals an animal to be suffering from any of the following diseases—

(*a*) Tetanus;

(*b*) Rabies;

(*c*) Anthrax;

(*d*) Blackleg;

(*e*) Foot and Mouth Disease,

the animal shall not be dressed for human consumption and after slaughter the carcass shall be removed to the sterilizing plant directly or otherwise destroyed.

PART VI
Post-Mortem Inspection

Post-mortem inspection by Meat Inspectors

8.—(1) Post-mortem inspection shall be made when the carcass is being dressed. Until this inspection has been completed all parts of the carcass and offal shall remain identifiable with the carcass.

(2) In any one working day a Meat Inspector shall not carry out a post-mortem inspection on more than 50 cattle, or 100 pigs, or 100 goats, or 100 sheep.

General investigation

9.—(1) When examining the carcass of any animal the Meat Inspector shall have regard to—

(*a*) its state of nutrition (bodily condition);

(*b*) any evidence of bruising, haemorrhage or abnormal colour;

(*c*) any local or general oedema;

(*d*) the efficiency of bleeding;

(*e*) any swelling deformity or other abnormality of bones, joints, musculature or umbilicus;

(*f*) the age and sex of the animal from which it was derived;

(*g*) any abnormal odour;

(*h*) the condition of pleura and peritoneum; and

(*i*) any other evidence of abnormality.

Examination of lymph nodes

10. In examining a carcass of an animal the following shall be examined in detail—

(*a*) retropharyngeal (in bovine animals) and submaxillary (in swine);

(*b*) bronchial and mediastinal;

(*c*) portal; and

(*d*) mesenteric.

Care to be taken in incising or excising

11.—(1) The organs and viscera of an animal shall be examined in detail by making the necessary multiple excisions and deep incisions where applicable.

(2) Any incision or excision shall be made, if possible, in such a manner as not to impair the market value of the carcass or organ.

Examination of head G.N. 40/2003

12. In examining the head of any bovine, the Meat Inspector shall—

(*a*) examine the surface and substance of the tongue;

(*b*) inspect the palate and roof of the mouth and examine in detail the retropharyngeal, and parotid lymph nodes;

(*c*) examine the external and internal cheek muscle of a bovine animal making several deep incisions paralleled to the lower jaw;

(*d*) inspect the eyes;

(*e*) in a young calf the Meat Inspector may make such lesser examination as seems to him sufficient in the circumstances of the case;

(*f*) in examining the head of any pig, the Meat Inspector shall examine so far as is practicable, the lips, gums and tongue and shall examine in detail the submaxillary lymph nodes;

(*g*) in examining the head of any sheep or goat, the Meat Inspector shall examine so far as practicable, the lips, gums and tongue.

Examination of abdominal cavity G.N. 40/2003

13. In examining the abdominal cavity of any animal, the Meat Inspector shall—

(*a*) examine the outer surface, and if he considers it necessary, the inner surfaces of the stomachs and intestines and examine the surface and substance of the spleen and the surface of the omentum;

(*b*) examine in detail the gastrosplenic lymph nodes of bovine animals and mesentenic lymph nodes of any animal;

(*c*) examine the surface and substance of the liver in all cases and incise the thick end of the liver of any adult bovine animal;

(*d*) incise the bile ducts in any case in which he considers it necessary to do so;

(*e*) examine in detail the portal lymph nodes of any bovine animal, by making multiple incisions;

(*f*) examine the renal and adrenal nodes by making multiple incisions and, if necessary, expose decapsulate and incise the kidneys;

(*g*) examine the substance and outer surface and, if he considers it necessary, the inner surface of the uterus;

(*h*) examine the substance of the ovaries;

(*i*) examine the navel in calves.

Examination of thoracic cavity

14. In examining the thoracic cavity of any animal, the Meat Inspector shall—

(*a*) examine the lungs by palpation as well as by observation and incise them at the base unless he is satisfied, without doing so that they are diseased;

(*b*) examine in detail the bronchial and mediastinal lymph nodes of any bovine animal, horse or pig unless he is satisfied, without doing so, that they are diseased;

(*c*) open the pericardium and examine the heart muscles and—

(i) in the case of a bovine animal, open the heart by an incision through the left ventricle, and make further incision into the heart wall from the inside;

(ii) in the case of any animal other than an adult bovine animal, incise the heart wall if he considers it necessary to do so;

(*d*) examine the diaphragm for evidence of cysticercus bovis;

(*e*) examine the oesophagus.

Examination of udder

15. In examining the udder of—

(*a*) a cow or sow, the Meat Inspector shall incise the udder through the cisterns and examine it by observation and palpation and shall examine in detail the supramammary lymph nodes;

(*b*) any female animal other than a cow or sow, the Meat Inspector shall examine the udder by observation and palpation and, if he considers it necessary incise the udder and examine in detail the supramammary lymph nodes;

(*c*) a cow, the Inspector shall in addition examine the precrural lymph nodes.

Examination of testicles and penis

16. In examining the testicles and penis of any animal the Meat Inspector shall—

(*a*) examine their outer surface and substance;

(*b*) examine in detail the superficial inguinal lymph nodes of a male bovine animal or a boar, and if he considers it necessary examine in detail the superficial lymph nodes of any other male animal;

(*c*) in a bovine animal examine the precrural lymph nodes.

Examination of feet

17. In examining the carcass of any bovine animal or pig, the Meat Inspector shall examine the feet and in the case of any other animal shall examine the feet if he deems it necessary to do so.

Examination of shoulder muscles

18. In examining the shoulder muscles of an adult bovine animal the Meat Inspector shall examine the shoulders by making deep incisions on the shoulder muscles, and if he considers it necessary shall make such several deep incisions on each shoulder. In the case of pigs, deep incisions shall not be made on animals intended for the production of bacon.

Serous membranes

19. The pleura and peritoneum shall be examined.

Examination of joints

20. An incision shall be made into any swollen joint.

Examination of blood

21. In examining the blood the inspector shall note the colour, staining ability, evidence of clots and foreign matter.

PART VII
Diseases

Tuberculosis G.N. 40/2003

22.—(1) When Tuberculosis is found anywhere in a bovine or pig carcass, all nodes of the carcass shall be cut and the bones of the spine and sternum examined by splitting the said bones.

(2) The presence of a tuberculous lesion in any lymph node of an organ shall be held to be evidence of disease in the organ.

(3)—(*a*) When tuberculosis has been found the following organs shall be rejected—

the head, including the tongue—

(i) when the retro-pharyngeal, parotid, and sub-maxillary nodes, or any two of these are affected;

(ii) when the retro-pharyngeal node alone in bovine animals, or the sub-maxillary node alone in swine, is affected, unless the lesions are small, inactive, and calcareous, and node is not enlarged:

Provided that in such a case the head shall be passed, after removal of the nodes, the base of the tongue, and the pharynx with the structures in its immediate neighbourhood;

(*b*) The entire carcass and organs shall be rejected when the following are found—

(i) tuberculosis with emaciation;

(ii) generalized tuberculosis.

(*c*) In determining whether the disease is generalized, the conclusion shall be based on the sum total of the evidence of disease throughout the entire carcass and organs, and the following shall be regarded as such evidence—

(i) miliary tuberculosis of both lungs, with any evidence of tuberculosis elsewhere;

(ii) where lesions are multiple, acute, and actively progressive;

(iii) where there is multiple and widespread infection of the carcass lymph nodes;

(iv) where there are diffuse acute lesions of both serous membranes (pleura and peritoneum) and any of the carcass lymph nodes are enlarged or contain visible tuberculous lesions;

(v) where, in addition to the presence of tuberculous lesions in the respiratory and digestive tracts, there are also lesions present in the substance of any of the following: spleen, kidney, udder (or uterus or ovary), testicles, brain and spinal cord or their membranes;

(*d*) all cases of tuberculosis not included in the above shall be regarded and treated as localized lesions and the parts containing lesions and those contiguous thereto shall be rejected;

(*e*) the short forequarter (which includes the first 5 ribs, neck and forelegs) shall be rejected only when lesions exist in one or more of the following: lymph nodes costo cervical, presternal, suprasternal, 1st intercostal, prescapular and axillary;

(*f*) the short hind quarter shall be rejected by incision midway between the popliteal and iliac nodes and the hip joint when lesions exist in the popliteal lymph node; and

(*g*) the udder shall be rejected only when lesions exist in the supramammary lymph nodes. The external genital organs or scrotal fat shall be rejected only when lesions exist in the superficial inguinal nodes.

Other diseases

23. The following diseases and conditions shall also necessitate the rejection of the entire carcasses and organs—

(1) actinomycosis generalized;

(2) actinobacillosis generalized;

(3) anaplasmosis when carcass fevered;

(4) antrax;

(5) babesiosis when carcass fevered;

(6) blackleg;

(7) blue tongue;

(8) bruising, general, extensive and severe, with or without gangrene;

(9) cysticerous cellulosae (measly pork) N.B. in the examination of all pig carcasses, the leaf seam (sub-peritoneal fact) shall be raised and the inner surface of the abdominal muscles, examined for evidence of Cysticercus Cellulosae;

(10) caseous lymphadenitis if the carcass is in poor condition or the lesions are either multiple, acute or actively progressive, or inactive but widespread;
(11) decomposition;
(12) oedema general;
(13) emaciation, general pathological;
(14) East Coast Fever;
(15) erysipelas acute;
(16) fever;
(17) Foot and Mouth Disease;
(18) glanders;
(19) heartwater;
(20) immaturity (stillborn or unborn carcasses);
(21) jaundice;
(22) leptrospirosis;
(23) leukaemia;
(24) malignant catarrh;
(25) malignant neoplasms, unless localized to one organ;
(26) mastitis, acute, septic or gangrenous;
(27) metritis acute septic;
(28) melanosis generalized;
(29) Nairobi sheep disease;
(30) odour—associated with disease or otherwise prejudicial to health;
(31) paratyphod of pigs;
(32) pericarditis, septic;
(33) peritonitis, acute diffuse or septic;
(34) pneummonia, septic or gangrenous;
(35) pleurisy, septic;
(36) pyaemia—including joint or umbilical pyaemia;
(37) polyarthritis;
(38) rabies;
(39) rinderpest;
(40) sarcoysts—if generalized in the musculature and visible to the naked eye;
(41) septicaemia or septic intoxication;
(42) swine fever;
(43) tetanus;
(44) transit fever;
(45) trichinosis;
(46) trypanosomiasis;
(47) tumours, multiple;
(48) uraemia.

Rejection of individual organs or part of carcass

24. An organ or part of a carcass shall be unfit for human consumption if affected with or showing lesions of any of the following diseases and conditions and only the affected organ or part of the carcass with the contiguous tissue shall be rejected—

(1) actinobacillosis—localized;
(2) actinomycosis—localized;
(3) abrasions;
(4) abscess;
(5) arthritis—localized;
(6) bladder worm;
(7) bruiseing;
(8) calcification—muscle or soft organs;
(9) contamination (pus or exedates);
(10) degeneration—(muscle);
(11) infiltration—haemorhagic or watery;
(12) inflammation localized;
(13) liver fluke;
(14) malformations;
(15) maggots;
(16) moulds;
(17) pigmentation localized;
(18) round worm;
(19) sarcocysts—if infection is localized;
(20) skin lesions;
(21) tumours if confined to one organ;
(22) tapeworms;
(23) wounds.

Blood

25. Blood shall be unfit for human consumption when—

(i) The carcass and organs are condemned,

(ii) It is contaminated with extraneous matter.

Diseases not listed in regulations 22, 23 and 24

26. Judgment of diseases not listed under paragraphs 22, 23 and 24 shall be at the discretion of the Meat Inspector.

Cysticercus bovis

27.—(1) When less than 10 cysticercus cysts are found in any one carcass the affected parts should be excised and rejected and the remainder of the carcass released for human consumption if the carcass and organs are kept frozen at a temperature not exceeding 14°F for not less than 14 days or 20°F for not less than 21 days:

Provided that the intestines and tallow may be released for human consumption in all such cases.

(2) When more than 10 cysticercus cysts are found in any one carcass with the presence of viable cysts the entire carcass shall be rejected.

(3) In all cases of cysticercosis, the head, heart, oesophagus and tongue shall be rejected.

Abscesses

28. If an abscess is found in any carcass or in any organ of a pig, or if the Meat Inspector has reason to suspect the presence of any such abscess he shall require the carcass to be split through the

spinal column and shall make multiple incisions into the superficial inguinal, supramammary, cervical, prepectoral, prescapular, subdorsal, sub-lumbar, iliac and precrural lymph nodes.

Trichinosis

29. Except where it has been established that there has been no case of trichinosis in the country during the preceding three years a special examination for trichinosis shall be carried out on any carcass.

PART VIII

Miscellaneous Examinations

Bacteriological examination of meat slaughtered in category A slaughterhouse

30.—(1) The Meat Inspector shall commit to a laboratory approved by the Minister any portion of meat or offal for bacteriological examination should he suspect that for any reason that meat or offal is unfit for human consumption. A sample of approximately one pound of the suspected organ and corresponding lymph node shall also be submitted to the said laboratory.

(2) Should the period between stunning and evisceration exceed one hour, the carcass shall not be released until a complete bacteriological examination has been carried out.

(3) When a casualty animal has been delivered to any category A slaughterhouse the carcass shall not be released until a complete bacteriological examination has been carried out.

(4) Where a complete bacteriological examination is to be carried out the following specimens will be submitted to a laboratory approved by the Minister—

(*a*) the undamaged spleen and one kidney;

(*b*) a piece of liver from the hilus region (approximately 1 lb.) plus the portal lymph nodes and if possible the attached but emptied gall bladder;

(*c*) a piece of muscle (approximately 1 lb.) covered by fascia preferably from the axillary region. In the case of a pig the complete axillary region with skin cut as close as possible to the rib cage.

(5) Sampling shall take place as soon as possible after slaughter using clean, scalded knives and other instruments. The lymph nodes shall be submitted unincised and all samples shall be sent free from contamination.

(6) The specimen shall be forwarded immediately after cooling to a laboratory approved by the Minister.

(7) The specimen shall be packed in a water absorbent material and dispatched by the most speedy route.

(8) The individual samples shall be so marked that they may be identified with the suspect carcass and be accompanied by the relevant information on the nature of the disease suspected.

(9) The final judgment on the suspect carcass shall be postponed till the result from the laboratory is at hand and must not in any case be made before 48 hours after slaughter.

Preparation and inspection of meat derived from animals slaughtered in slaughter-houses G.N. 40/2003

31.—(1) The carcass of an animal slaughtered in a slaughter-house shall be dressed immediately after the animal has been slaughtered.

(2) Where back bleeding ensures upon the slaughter of an animal the pleura shall not be completely detached from the carcass until the carcass has been inspected by a Meat Inspector.

(3) No serous membrane will be removed nor shall any evidence if disease be modified or obliterated by washing, stripping or in any other manner before inspection by a Meat Inspector.

(4) The head and feet may be cut off if so desired from cattle, sheep and goat carcasses.

(5) Ears, eyes, sexual organs, anus and the navel in pigs shall be removed immediately.

(6) All hair, scurf, dirt and claws shall be removed from pig carcasses and the carcasses shall be thoroughly washed and cleaned before any incision is made for inspection or evisceration.

(7) When a carcass is to be dressed with the skin or hide attached, the skin or hide shall be thoroughly washed and cleaned before any incision is made for the purpose of removing any part thereof or evisceration except that where calves are slaughtered by the ritual method the heads shall be removed from the carcasses before washing the carcass.

(8) The organs, viscera and blood derived from an animal shall, after they have been removed from the body, be kept until such time as an inspector directs, in such manner as he may direct for the purpose of ensuring their identity with the carcass.

(9) If the person dressing the carcass of an animal has reason to believe that there is in the meat or blood evidence of disease, he shall take no action, and ensure that no other person takes any action, which might alter or destroy that evidence, and shall comply with any instructions given by a Meat Inspector designed to ensure that such evidence as aforesaid is not altered or destroyed.

(10) Blood intended for human consumption shall be collected into receptacles used only for collecting such blood and shall be kept apart from blood not intended for human consumption.

(11) The employer or other person having control of any person engaged in dressing the carcass of an animal shall take all reasonable steps to ensure compliance with the provisions of this regulation.

(12) The meat or blood derived from an animal shall not be removed from a slaughter-house until it has been inspected by a Meat Inspector.

(13) The carcass of an animal shall be divided into such portions as the Meat Inspector may require to enable him to make his inspection and the Meat Inspector may, for the purpose of inspection, direct that the portions into which the carcass is so divided shall be retained in the slaughter-house for such period as he may think fit.

(14) The Meat Inspector shall, so far as is practicable, make his inspection of the meat derived from an animal slaughtered in a slaughter-house while the organs and viscera are being removed from the carcass of the animal failing which he shall inspect the meat of the animal as soon as practicable after the carcass of the animal has been dressed.

(15) In making his inspection of the meat and blood derived from an animal the Meat Inspector shall comply with the provisions of these regulations.

(16) Subject to the provisions of paragraph (17), if, upon an inspection of the meat or blood derived from any animal (including any meat or blood isolated in accordance with the provisions of paragraph (15)) the Meat Inspector is satisfied that the meat or blood is unfit for human consumption, he shall issue a rejection certificate in respect of such meat or part thereof, or the blood, as the case may be.

(17) Following inspection of a carcass and of offal the Meat Inspector shall record his conclusions in duplicate in accordance with the form specified in Appendix I.

APPENDIX I

Killing Sheet

No.

Date .....

To .....

Address .....

The following are the hot dressed weights of the animals slaughtered for you today.

Lot No. .....

	Cattle			Calves	Pigs	Sheep	Goats	For Office use only
	Side	Side	Total					K T
1								
2								
3								
4								
5								
6								
7								
8								
9								
10								
11								
12								
13								
14								
15								
16								
17								
18								
19								
20								

HIDES

C/S Condemnations .....
Offal Condemnations .....
.....
.....

SUMMARY FOR OFFICE USE ONLY	*Government Meat Inspector*	
	K	t
.....	.....	.....
.....	.....	.....
.....	.....	.....
.....	.....	.....
.....	.....	.....
.....	.....	.....

Signature.....

APPENDIX II

REJECTION CERTIFICATE

TO BE COMPLETED BY MEAT INSPECTOR

Owner of carcass or edible offal (1)	*Description of carcass parts of carcass or organs* (2)	*Disease or other cause of condemnation* (3)	*Weight Meat* (*actual weight*) (4)	*Condemned Offal* (*actual where possible or estimate*) (5)
.....	.....	.....	.....	.....
.....	.....	.....	.....	.....
.....	.....	.....	.....	.....

OBSERVATIONS BY MEAT INSPECTOR
I hereby surrender the above meat/offal as unfit for food Signature of owner
or
owner's representative
.....
Date ..... 19.....
.....

This is to certify that on the .....
.....
the above-mentioned carcasses, parts of carcasses or organs, at .....
..... slaughterhouse have been examined and found to be unfit for human consumption for reasons stated.

Date ..... 19.....
.....
Signature of Meat Inspector

MOVEMENT OF LIVESTOCK REGULATIONS

G.N. 38/2003

under s. 4

1. These Regulations may be cited as the Movement of Livestock Regulations. Citation

2.—(1) No person shall move livestock intended for sale between 6.00 p.m. and 6.00 a.m. Prohibition of movement of livestock

(2) No person shall move livestock intended for sale outside the designated trek routes.

(3) All livestock, intended for slaughter, moving along the designated trek routes shall report to the trek route stations.

3. The trek routes specified in the Schedule are designated trek routes. Designated trek routes

SCHEDULE

1. Chilumba to Mzuzu.
2. Nthalire through Rumphi to Mzuzu.
3. Nthalire through Rumphi, Gowoka, Mzimba, Phazi, Kasungu, Mponela to Lilongwe.
4. Mchinji through Namitete to Lilongwe.
5. Bwanje through Dedza to Lilongwe.
6. Ntcheu through Phalula to Blantyre/Lunzu.
7. Nsanje through Chikwawa, Bvumbwe to Blantyre.
8. Chikwawa through Mpatamanga to Blantyre.
9. Mwanza through Mpatamanga to Blantyre.
10. Mzimba through Chikangawa to Nkhata Bay.
11. Mzimba through Kanjuchi to Nkhotakota.

FERTILIZERS, FARM FEEDS AND REMEDIES

CHAPTER 67:04

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CHAPTER 67:04

FERTILIZERS, FARM FEEDS AND REMEDIES

ARRANGEMENT OF SECTIONS

SECTION

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2. Interpretation
3. Restriction on sale, etc., of remedies
4. Use of sterilizing plant
4A. Security of supply
5. Invoices required in the case of sale of fertilizers and farm feeds [Repealed by 8 of 1996]
6. Minister may exclude any fertilizer, farm feed or remedy from the Act
7. Appointment of registering officer
7A. Committees
7B. Composition of committees
7C. Committees may co-opt persons to attend meetings
7D. Tenure of office of committee members
7E. Allowances payable to members
7F. Meetings of the committee
7G. Non-liability of members of the committee
7H. Members to declare interests
8. Registration of remedies and sterilizing plants
9. Cancellation of registration
10. Appeal against decision of registering officer
11. Appointment of inspectors and analysis
12. Powers of inspector
13. Offences and penalties
14. Procedure and evidence
15. Special defences in case of prosecution
16. Regulations
17. Publication of returns
18. Compensation for injury arising from use of farm requisite

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An Act to provide for the registration of sterilizing plants and certain remedies; to provide for the establishment of committees for fertilizers, farm feeds and remedies; to regulate and restrict the sale of fertilizers, farm feeds and certain remedies, and substances of animal origin intended for the manufacture of fertilizers or farm feeds and to provide for matters incidental to the foregoing

12 of 1970
9 of 1991
8 of 1996
G.N. 34/1989

[1st April, 1970—Fertilizers and Sterilizing Plants] 23rd August, 1973—Farm Feeds, 1st May, 1989—Remedies 10th May, 1991

1. This Act may be cited as the Fertilizers, Farm Feeds and Remedies Act. Short title

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

"advertisement" includes any statement, picture, design or device—

(*a*) published in any newspaper or public print; or

(*b*) contained in any handbill, circular or other matter which is distributed to members of the public through the post or brought to the notice of the public in any other manner whatsoever;

"analyst" means a person appointed to be an analyst under section 11;

"brand" means the impression or representation of any letter, number, geometrical figure, mark, sign or symbol and includes any combination of such impressions or representations;

9 of 1991 "committee" means any committee established under section 7A;

"compost" means vegetable matter or mixed vegetable and animal matter so decomposed as to form an organic manure;

"farm feed" means—

(*a*) (i) any substance obtained by a process of crushing, gristing or grinding or by the addition to any substance the removal therefrom of any ingredient;

(ii) any condimental feed or mineral substance which possesses or is alleged to possess nutritive properties; or

(iii) any substance of animal origin, which is intended or offered for the feeding of poultry, domestic animals or livestock;

(*b*) any stock lick or substance which can be used and is used as a stock lick, whether or not such stock lick or substance possesses medicinal properties;

(*c*) any substance declared by the Minister, by notice published in the *Gazette*, to be a farm feed for the purposes of this Act,

but does not include straw, chaff, unground hay, silage, cereal in the grain, or any substance which falls within this definition but which has been crushed, gristed or ground for a farmer in accordance with his directions for own use, unless such substance has been declared to be a farm feed under paragraph (*c*);

"farmer" means a person who devotes his attention to farming in Malaŵi, either exclusively or together with some profession, business or other occupation;

"farming requisite" means any fertilizer, farm feed or remedy, or any substance used in the manufacture of a fertilizer, farm feed or remedy;

"fertilizer" means any substance which is intended or offered for improving or maintaining the growth of plants or the productivity of the soil, but does not include farmyard or stable manure, kraal manure, compost, wood ash, gypsum, town refuse or night soil when sold in its original condition and under its name;

"inspector" means a person appointed an inspector under section 11;

"registrar" means the person appointed under section 7; 9 of 1991

"remedy" means any substance which is intended or offered—

(*a*) for the destruction of any noxious plant or insect;or

(*b*) in regard to poultry, domestic animals, livestock or plants, for the prevention, treatment or cure of any disease, infestation or other unhealthy or unfavourable condition, or for the maintenance of health, but does not include any substance prescribed by a veterinarian for a specific patient or group of patients;

"sell" includes to offer, advertise, keep, expose, transmit, convey, deliver or prepare for sale or exchange, or to dispose of for any consideration whatever, or to transmit, convey or deliver in pursuance of a sale, exchange or disposal as aforesaid;

"sterilizing plant" means a plant used for the sterilizing of bones or other substances derived from an animal carcass.

Restriction on sale, etc., of remedies 8 of 1996

3. No person shall import, sell or distribute any remedy unless—

(*a*) it is registered under this Act;

(*b*) it is packed in the prescribed manner;

(*c*) the container in which it is sold complies with prescribed requirements and is branded, labelled, marked or sealed in the prescribed manner; and

(*d*) it is of the composition, efficacy, fineness and purity specified in the application for its registration, and possesses all other properties specified in such application:

Provided that any remedy shall be deemed to comply with paragraph (*d*) if its composition varies within such limits as may be prescribed.

Use of sterilizing plant

4. No person shall use any sterilizing plant for the sterilizing of bones or other substances derived from an animal carcass unless such plant has been registered under this Act.

Security of supply 8 of 1996

4A. The Minister may, for the purpose of ensuring supply of farm requisites, and on such terms and conditions as he deems fit, enter into arrangements with any supplier of farm requisites, or person dealing with farm requisites.

5. [*Repealed by* 8 *of* 1996]

Minister may exclude any fertilizer, farm feed or remedy from the Act

6. Subject to such conditions as he may therein specify, the Minister may by order exclude any fertilizer, farm feed or remedy from the operation of any or all the provisions of this Act.

Registrar
9 of 1991

7.—(1) The Minister may appoint a public officer serving in the Ministry of Agriculture to be the Registrar for the purposes of this Act.

(2) The Registrar shall be secretary to every committee established under this Act and shall perform such other duties as the Minister or the chairman of the committee may assign to him.

Committees
9 of 1991

7A.—(1) The Minister may establish any number of committees for the purposes of this Act and such committees shall act in accordance with and be subject to any special or general directions of the Minister.

(2) Committees under this section may be established for the following functions—

(*a*) to advise the Minister on matters relating to the registration, sell and use of fertilizers, farm feeds or remedies;

(*b*) to keep a record of fertilizers, farm feeds or remedies; and

(*c*) to consider and deal with such matters as the Minister may refer to it or require of it.

Composition of committees

7B.—(1) The Minister shall, by notice published in the *Gazette*, appoint the members of any committee established under this Act.

(2) The Minister may appoint to the committee such additional members as he deems essential to the committee in the exercise of its powers and functions.

(3) No person shall be appointed to the committee who—

(*a*) is an undischarged bankrupt;

(*b*) has, within three years last past, been convicted of an offence under this Act;

(*c*) has, within three years last past, been convicted of an offence under any written law and been sentenced therefor to imprisonment for a term of six months or more without the option of a fine; and

(*d*) has, within five years last past, been convicted of an offence involving fraud or dishonesty.

(4) Members of the committee shall not, by virtue only of their appointments to the committee be deemed to be officers in the public service.

(5) The names of all members of the committee as first constituted and every change in membership thereof shall be published in the *Gazette*.

Committees may co-opt persons to attend meetings

7C. (1) A committee may co-opt any one or more persons to attend any particular meeting for the purpose of assisting or advising the committee in respect of any particular matter under consideration by the committee.

(2) Any person co-opted pursuant to subsection (1) may take part in the deliberations of the committee at any meeting he so attends, but shall have no voting powers.

Tenure of office of committee members

7D. (1) Members of the committee shall, subject to the provisions of this section, hold office for a period of not exceeding two years as may be specified in their respective appointments.

(2) *Ex officio* members of any committee shall hold office as such so long as they hold the office by virtue of which they are members of the committee.

(3) A retiring member shall be eligible for reappointment.

(4) On the expiry of the period for which a member, other than an *ex officio* member, is appointed he shall continue to hold office until his successor has been appointed, but in no case shall such further period exceed three months.

(5) The office of a member, other than an *ex officio* member, shall be vacated—

(*a*) upon the happening to him of an event which would disqualify him from appointment;

(*b*) upon his death;

(*c*) if he is adjudged a bankrupt;

(*d*) if he is convicted of an offence under this Act;

(*e*) if he is convicted of an offence under any other written law and sentenced therefor to imprisonment for a term of six months or more without the option of a fine;

(*f*) if he is convicted of an offence involving fraud or dishonesty;

(*g*) if he is absent from three consecutive meetings of the committee without the permission of the chairman or the committee or without valid excuse;

(*h*) upon the expiry of one month's notice in writing of his intention to resign his office given by him to the Minister;

(*i*) upon the expiry of one month's notice in writing terminating his appointment to such office given to him by the Minister;

(*j*) if he becomes mentally or physically incapable of performing his duties as a member of the committee; and

(*k*) if the Minister so directs.

Allowances payable to members

7E. The Minister may pay to all or any of the members of a committee such allowance as he may determine as honorarium or for attending to the specific business of the committee.

Meetings of the committee

7F. (1) A committee may meet at such places and times as the chairman of the committee may determine or as he may be directed by the Minister and such meetings shall be convened by notice to the members given by the chairman.

(2) At every meeting of the committee the chairman or, if one be appointed, the vice-chairman shall preside and in their absence, the members present shall elect one of their number to preside at that meeting and the person so elected shall have all of the powers and shall perform all of the duties of the chairman for that meeting and the person presiding shall have deliberative and a casting vote.

(3) Save where otherwise provided by this Act, a committee shall conduct its proceedings in such manner as may be directed by the Minister or, in the absence of such direction, in such manner as a committee deems fit.

(4) Minutes of each meeting of a committee shall be kept by the Registrar and shall be confirmed at the succeeding meeting by the committee.

(5) At every meeting of a committee the quorum shall be constituted by a majority of its membership.

Non-liability of members of the committee

7G. No member of the committee shall be personally liable for any act or default of his, or of the committee, done in the exercise in good faith of the functions of the committee.

Members to declare interests

7H. (1) If a member of the committee or his spouse, or any company of which he or she is a director or major shareholder, or any partner of such member or a partner of his spouse has or acquires any pecuniary interest, direct, or indirect, in any matter in which his private interests conflict with his duties as a member and which is the subject of consideration by the committee he shall, as soon as he becomes aware of such interest in such matter, disclose the facts relating thereto to the committee and the Minister.

(2) A member referred to in subsection (1) shall not take part in the consideration of, or vote on, any question before the committee which relates to the matter referred to in that subsection.

(3) For the purposes of this section, the expression "major shareholder" means any person who, at the relevant time, in his own right or by right of any other person, has the power to exercise or control not less than ten per centum of the voting rights in the relevant company, whether by reason of share holdings, debenture holdings, proxy or otherwise.

Registration of remedies and sterilizing plants
9 of 1991
8 of 1996

8. (1) An Application for the registration of a remedy or sterilizing plant shall be made to the Registrar in the prescribed form for consideration by the relevant committee established under section 7A.

(2) As soon as practicable after the receipt of an application under subsection (1) the committee shall—

(*a*) if it is satisfied that the remedy or sterilizing plant in question is suitable and sufficiently effective for the purposes for which it is intended and complies with the prescribed requirements, register such remedy or sterilizing plant; or

(*b*) if it is not satisfied in accordance with paragraph (*a*), refuse to register such remedy or sterilizing plant.

(3) Any registration under this section shall be valid until cancelled under this Act or until and including the 31st March next after the date of such registration, whichever is the earlier.

(4) The committee may impose such conditions in regard to any registration under this section as it thinks fit.

(5) Any person who fails to comply with any condition imposed under subsection (4) or with any such condition as amended by the Minister under section 10 (2) shall be guilty of an offence, and shall be liable to a fine of K10,000 and to imprisonment for a period of 12 months.

Cancellation of registration
9 of 1991
8 of 1996

9. If the committee referred to in section 8 is satisfied—

(*a*) that any person has failed to comply with any condition subject to which any remedy or sterilizing plant had been registered;

(*b*) that any remedy or sterilizing plant registered under this Act does not comply with any regulation made under this Act; or

(*c*) that any sterilizing plant registered under this Act does not sterilize bones or other substances derived from an animal carcass effectively,

the committee, may cancel the registration thereof.

Appeal against decision of registering officer
9 of 1991
8 of 1996

10.—(1) Any applicant for the registration of any remedy or sterilizing plant who is aggrieved by the decision of the committee referred to in section 8 to refuse registration or to impose conditions in regard thereto or to cancel any registration, may appeal to the Minister against such decision.

(2) Upon such appeal the Minister may uphold the decision of the registering officer or make an order instructing the committee—

(*a*) to register the remedy or sterilizing plant in question;

(*b*) to strike out all or any of the conditions imposed by the committee or to amend such conditions; or

(*c*) to restore the registration, and the committee shall comply with such order.

(3) Any decision of the Minister under this section shall be final and shall not be questioned in any court.

Appointment of inspectors and analysts

11. The Minister may appoint persons as inspectors and analysts for the purposes of this Act.

Powers of inspector

12.—(1) An inspector or any other officer specially authorized thereto by the Minister may at all reasonable times—

(*a*) enter upon any premises, place or vehicle at or in which there is or is on reasonable grounds suspected to be any farming requisite or sterilizing plant;

(*b*) inspect any farming requisite or any sterilizing plant or any other machinery utilized in connexion with the manufacture of any farming requisite, or any book, record or document found in or upon such premises, place or vehicle;

(*c*) seize any farming requisite, book, record or document found in or upon such premises, place or vehicle which appears to afford evidence of a contravention of any provision of this Act;

(*d*) take samples of any farming requisite in such quantities as may be necessary for the purpose of examination or analysis under this Act:

Provided that any officer specially authorized by the Minister under this subsection shall on request produce his authority to enter upon any such premises, place or vehicle.

(2) The inspector or the officer specially authorized under subsection (1) shall give a receipt to the person from whose custody any farming requisite, book, record or document has been taken under subsection (1) (*c*). Such farming requisite, book, record or document shall be returned to the person from whose custody it was taken immediately after it has been decided that no prosecution will be instituted or the trial of the relevant person has been concluded, as the case may be:

Provided that such farming requisite shall not be returned at the conclusion of such trial if it has been declared forfeited under section 13.

(3) Any sample taken under subsection (1) (*d*) shall be taken in accordance with the methods prescribed and in the presence of the person who is in charge of such farming requisite or his representative, and such sample shall, in the presence of such person or such representative be divided into three parts, each of which shall forthwith be fastened up and sealed and suitably labelled or marked in such manner as its nature may permit. One part shall then be transmitted to an analyst together with a certificate in the prescribed form signed by such inspector or officer. The second part together with a copy of the aforesaid certificate shall be handed or forwarded under registered cover to the owner or seller of such farming requisite or to his agent. The third part shall be retained by the inspector or officer aforesaid.

(4) The analyst to whom one part of a sample has been transmitted under subsection (3) shall with all convenient speed analyse or test the article delivered to him, and the result of the analysis or test shall be stated in a certificate in the prescribed form.

(5) The owner of the farming requisite from which the sample was taken may claim from the Minister an amount equal to the market value of the sample.

Offences and penalties

13.—(1) Any person who—

(*a*) contravenes any provision of this Act;

(*b*) obstructs or hinders any inspector, analyst or other officer in the exercise of his powers or the performance of his duties under this Act;

(*c*) with fraudulent intent tampers with any sample taken in accordance with this Act;

(*d*) makes use in connexion with any fertilizer, farm feed or remedy of any certificate, invoice or other document issued in respect of any other fertilizer, farm feed or remedy;

(*e*) makes any false or misleading statement in connexion with— 8 of 1996

(i) any remedy in the application for the registration; or

(ii) any fertilizer, farm feed or remedy in any advertisement thereof or in the course of the sale thereof;

(*f*) sells any fertilizer, farm feed or remedy upon the container of which a false or misleading statement in connexion with such contents is printed or written;

(*g*) sells or supplies any farming requisite which is not of the kind, nature, composition, strength, potency or quality described or represented when so sold or supplied,

shall be guilty of an offence and shall be liable to a fine of K200 and to imprisonment for a period of 6 months.

(2) The court convicting any person of an offence under this Act may, upon the application of the prosecutor, declare any farming requisite in respect of which the offence has been committed, and all farming requisites in respect of which such person has been convicted, and of which such person is the owner, or which are in his possession, to be forfeited.

Procedure and evidence

14.—(1) In any criminal proceedings under this Act—

(*a*) any quantity of a farming requisite in or upon any premises, place or vehicle at the time a sample thereof is taken under this Act shall, unless the contrary is proven, be deemed to be of the same composition, to have the same degree of efficacy and to possess in all other respects the same properties as that sample;

(*b*) any person who is proved to have tampered with any sample shall be deemed to have acted with fraudulent intent unless the contrary is proved;

(*c*) a certificate stating the result of an analysis or test carried out under section 12 (4) and purporting to be signed by the analyst who carried out such analysis or test shall be accepted as *prima facie* proof of the facts stated therein:

Provided that at the request of the accused not less than ten days before the trial such analyst shall be summoned to give oral evidence;

(*d*) any statement or entry contained in any book or document kept by any manufacturer, importer or owner of a farming requisite or by the manager, agent or employee of such person, or found upon or in any premises occupied by, or any vehicle used in the business of such person, shall be admissible in evidence against him as an admission of the facts set forth in that statement or entry, unless it is proved that that statement or entry was not made by such person, or by any manager, agent or employee of such person in the course of his work as manager, or in the course of his agency or employment:

Provided that no such statement or entry shall be tendered in evidence unless such person has been given not less than ten days' written notice of intention to produce such statement or entry and an opportunity to inspect the same and make a copy thereof.

(2) No prosecution shall be instituted as a result of any analysis or test performed under section 12 (4) unless a copy of the analyst's certificate has been transmitted at least twenty-one days before the institution of such prosecution to the person who is to be the accused.

Special defences in case of prosecution

15.—(1) It shall be a sufficient defence for a person charged with the sale of fertilizer, farm feed or remedy in contravention of section 3 (*d*) if he proves to the satisfaction of the court—

(*a*) that he purchased such fertilizer, farm feed or remedy under a registered name or brand as being the same in all respects as the article which he purported to sell; and

(*b*) that he had no reason to believe at the time of the sale that it was in any respect different from such article; and

(*c*) that he sold it in the original container and in the state in which it was when he purchased it; and

(*d*) that the container thereof was branded, labelled, marked or sealed in the prescribed manner.

Regulations 8 of 1996

16.—(1) The Minister may make such regulations as may appear to him to be necessary or expedient for the proper carrying out of the purposes and provisions of this Act, and, without prejudice to the generality of the foregoing, such regulations may provide for—

(*a*) the manner in which remedies and sterilizing plants may be registered, the forms to be used, the fees to be paid and the information to be furnished with any application for registration;

(*b*) the description under which any substance registered as a remedy, or sold as fertilizer, farm feed, or remedy, and prescribing the conditions under which any such substance may be registered or sold, as the case may be, under any particular name or brand;

(*c*) the composition, efficacy, fineness, purity or other property required in any substance before it is sold or registered as a fertilizer, farm feed or remedy, as the case may be;

(*d*) the requirements as to the containers in which fertilizers, farm feeds or remedies shall be packed and the manner in which such containers shall be branded, labelled, marked or sealed;

(*e*) the process by which fertilizers, farm feeds or remedies or substances used in the manufacture of fertilizers, farm feeds or remedies shall be sterilized, and the manner of inspection of sterilizing plants;

(*f*) the methods to be employed, the fees to be paid, and the certificates to be issued in respect of the examination, analysis or test of samples taken under this Act;

(*g*) requiring any person who has in his possession or under his control any fertilizers, farm feeds or remedies to keep records relating thereto in the form and manner prescribed and to render returns in the form and manner and at the times prescribed; and

(*h*) prescribing any other matters required to be or which may be prescribed under this Act.

(2) Different regulations may be made in respect of different classes of fertilizers, farm feeds and remedies, or in respect of different classes or groups of persons.

(3) Any regulations made under this section may prescribe penalties for any contravention thereof but not exceeding the penalty provided under section 13 (1).

Publication of returns
8 of 1996

17. The Minister may from time to time cause to be published in the *Gazette* a return showing the names of the manufacturers, importers or dealers in remedies which have been registered under this Act. Such return shall state the name and the chemical constituents of each remedy so registered and such other particulars as the Minister may deem necessary.

Compensation for injury arising from use of farm requisite

18. Where a farm requisite is sold or supplied otherwise than in accordance with the provisions of this Act, then any person whose land, crops, poultry, domestic animals, livestock or plants are injuriously affected by such farm requisite shall be entitled to claim compensation for such injury from the person who sold or supplied the farm requisite concerned.

[Subsidiary] *Notice*

G.N. 234/1970
102/1992

SUBSIDIARY LEGISLATION

NOTICE

under reg. 2

The Minister has specified that the fertilizer or type of fertilizer referred to hereunder shall have the composition set out opposite thereto and hereunder for the purposes of the said Regulations—

SCHEDULE

PART A

COMPOUND FERTILIZERS

	N	P_2O_5	K_2O	B	S
Compound A . .	2 0.5 Nit 1.5 Amm	18	15 15 Sul	0.1 0.1	
Compound B . .	4 1.0 Nit 3.0 Amm	18	15 Sul 15 Sul	0.1	
Compound C . .	6 2 Nit 4 Amm	18	15 10 Sul 5 Chlor	0.1	
Compound D . .	6 2.64 Nit 5.36 Amm	18	15 10 Sul 5 Chlor	0.1	
Compound S . .	6 1.5 Nit 4.5 Amm	18	6 Sul	0.1	
Compound 20.20.0 . .	20 8.3 11.7 Amm	20	0 0		
Compound J . .	15 5.5 Nit 9.5 Amm	5	20 20 Chlor		
Compound V . .	4 1 Nit 3 Amm	18	15 15 Chlor	1.5	
Super Compound B (SB)	5.33 1.73 Nit 3.6 Amm	24	20 13.75 Sul 6.25 Chlor	1.5	8.4
Super Compound C (SC)	8 2.64 Nit 5.36 Amm	24	20 13.75 Sul 6.25 Chlor	1.5	6.8
Super Compound D (SD)	10 3.3 Nit 6.7 Amm	24	20 13.75 Sul 6.25 Chlor	1.5	7.0
Compound 23.21.0	23 8 Nit 15 Amm	21	0		

PART B

STRAIGHT FERTILIZERS

(*a*) Phosphate (Straight)

	% Citric Soluble P_2O_5	% Water Soluble P_2O_5	Total %
Single Superphosphate . .	19.0	18.5	19.0
Double Superphosphate . .	44.8	44.0	44.8
Di-ammonia phosphate . .	18	48	0
Mono-ammonia phosphate	11	51	0

(*b*) Nitrogen (straight)

	Nitrate %	Amm %	Total %
Urea	—	46	46
CAN (26)	13	13	26
CAN (28)	14	14	28
CAN (30)	15	15	30
Ammonium sulphate . .	—	21	21
Nitrate of soda . .	16	—	16

(*c*) Potash (straight)

	% K	Amm %	% K_2O
Muriate of potash . .	50	—	60
Sulphate of potash . .	40	—	48

FERTILIZERS AND FARM FEEDS (STERILIZATION OF ANIMAL PRODUCTS) REGULATIONS

G.N. 140/1970
65/1996

under s. 16

ARRANGEMENT OF REGULATIONS

REGULATION
1. Citation
2. Application for registration of a sterilizing plant
3. Appeals against decisions of registering officer
4. Sterilizing of containers
Schedules

Citation

1. These Regulations may be cited as the Fertilizers and Farm Feeds (Sterilization of Animal Products) Regulations.

Application for registration of a sterilizing plant

G.N. 65/1996

2.—(1) An application for the registration of a sterilizing plant shall be made by completing in triplicate Part I of the form set out in the First Schedule and submitting it to the Registrar, Ministry of Agriculture and Natural Resources, P.O. Box 30134, Capital City, Lilongwe 3.

G.N. 65/1996

(2) The Registrar shall, on registering a sterilizing plant, issue a certificate of registration by completing Part 2 of the aforesaid form and returning the certificate to the applicant.

Appeals against decisions of registering officer

G.N. 65/1996

3. An applicant who wishes to appeal under section 10 of the Act shall—

(*a*) request the Registrar, in writing, for the reasons for his refusing the application, imposing conditions or cancelling the registration and the Registrar shall, within twenty-one days of the receipt of such request, furnish the applicant, in writing, with such reasons; and

(*b*) within sixty days of being notified of the refusal, imposition of conditions or cancellation, appeal to the Minister, in writing, against the registering officer's decision.

Sterilizing of containers

4. Substances of animal origin, after being sterilized, shall not be sold in containers that have previously been used for such substances unless such containers have been sterilized by one of the methods specified in the Second Schedule.

FIRST SCHEDULE reg. 2

PRESCRIBED FORM

FERTILIZERS, FARM FEEDS AND REMEDIES ACT

PART I

APPLICATION FOR THE REGISTRATION OF A STERILIZING PLANT

1. Name of applicant .....
2. Address of applicant .....
3. Address where plant is situated .....
4. Name and Trade Mark (if any) of plant .....
5. Nature of materials to be sterilized .....
6. Number of sterilizing units .....
7. Method of sterilization* .....

Period of registration for which application is made .....

.....20..... to the 31st March, 20.....

Date ..... Signature .....

**See* the Second Schedule.

PART II

FOR OFFICIAL USE ONLY

No. CERTIFICATE OF REGISTRATION

I hereby certify that the sterilizing plant referred to in Part I has been registered.

Date ..... Registering Officer .....

SECOND SCHEDULE reg. 4

METHODS OF STERILIZING SUBSTANCES OF ANIMAL ORIGIN AND USED CONTAINERS

Bones and other substances of animal origin and containers previously used for such substances shall be sterilized by one of the following methods—

1. Subjection to moist heat under a pressure of not less than 2.11 kg per square centimetre for not less than thirty minutes.
2. In the case of bones, after being broken up, subjection to the vapour of benzol boiling between 95°C and 115°C for not less than eight hours.
3. In the case of blood, subjection to moist heat at a temperature of not less than 95°C for not less than ninety minutes.
4. In the case of marine products, subjection to heat for twenty minutes at a temperature of not less than 100°C.
5. In the case of used containers, subjection to steam under a pressure of not less than 1.76 kg per square centimetre for not less than fifteen minutes.

FERTILIZERS REGULATIONS

ARRANGEMENT OF REGULATIONS

REGULATIONS

1. Citation
2. Interpretation

PART I

QUALITY OF FERTILIZER

3. Composition and fineness of fertilizers
4. Approval of brand [*Revoked by G.N.* 64/1996]
5. Appeals against decisions of registering Officer [*Revoked by G.N.* 64/1996]

PART II

LABELLING OF CONTAINERS

6. Labelling of containers
7. Information on invoices [*Revoked by G.N.* 64/1996]

REGULATION

PART III

SAMPLING AND ANALYSIS

8. Taking of samples
9. Analysis and sampling at the request of purchaser
10. Certificate of sampling
11. Results of analysis
12. Limits of variation
13. Method of analysis
14. Imported fertilizer not complying with requirements

PART IV

GENERAL

15. Labelling of containers
16. Offences and penalties
Schedules

G.N. 142/1970
123/1985
64/1996

FERTILIZERS REGULATIONS

under s. 16

Citation

1. These Regulations may be cited as the Fertilizers Regulations.

Interpretation

2. In these Regulations, unless the context otherwise requires—

"fee" means the appropriate fee prescribed in the First Schedule;

"form" means the appropriate form prescribed in the Second Schedule;

"specified composition" in relation to a fertilizer or type of fertilizer means the required composition thereof as specified by the Minister from time to time by notice published in the *Gazette*.

PART I

G.N. 64/1996

QUALITY OF FERTILIZER

Composition and fineness of fertilizers
G.N. 64/1996

3.—(1) Fertilizers listed in the Third Schedule shall have the specified composition set out in relation to such fertilizer in the Third Schedule.

(2) Fertilizers listed in the Fourth Schedule shall comply with the minimum fineness requirements listed in relation to such fertilizer in the Fourth Schedule.

(3) No product shall be imported, sold or distributed as fertilizer if such product is contaminated with heavy metal or

other substance that would be harmful to the soil, or the environment, or to public health.

4. [*Revoked by G.N.* 64/1996.]

5. [*Revoked by G.N.* 64/1996.]

PART II

Labelling of Containers

Labelling of containers G.N. 64/1996

6.—(1) The container in which a fertilizer is sold shall be duly and legibly marked or labelled in English with the relevant information set out in the Third Schedule.

(2) Any figures or numerals used for representing the chemical composition of a fertilizer shall be preceded or followed by the appropriate symbol.

7.—[*Revoked by G.N.* 64/1996.]

PART III

Sampling and Analysis

Taking of samples

8.—(1) The manner of taking samples of fertilizers shall be as follows—

G.N. 123/1985

(*a*) where the fertilizer is packed in containers, samples shall be taken at random from different parts of the whole quantity, as follows:

G.N. 123/1985

(i) if the quantity of fertilizer does not exceed three tonnes, from not less than two unopened containers per 1.01 tonne or part thereof; and

(ii) if the quantity exceeds 3.03 tonnes, from one additional unopened container for every additional 1.01 tonne or part thereof:

Provided that in no case need samples be taken from more than twenty containers;

(*b*) where the fertilizer is not packed in containers, not less than six samples shall be taken from different parts of the whole quantity, where possible in the ratio of two samples per 1.01 tonne or part thereof:

Provided that in all not more than fifty samples need be taken.

G.N. 123/1985

(2) Where the fertilizer is packed in containers the samples shall be taken by means of a sampling probe not less than 0.03 metre in diameter.

(3) Where the fertilizer is not packed in containers the samples shall be taken by means of a sampling probe not less

than 0.3 meter in diameter or by such other means as will ensure as far as is practicable, the taking of a representative sample.

(4) The samples taken in accordance with subregulation (1) in respect of a whole consignment shall form a bulk sample which shall not be less than 4.50 kg in weight and need not exceed 6.75 kg in weight.

G.N. 123/1985

(5) The bulk sample thus obtained shall be thoroughly mixed, formed into a flattened heap and quartered. One quarter randomly selected shall then be rejected and the remainder remixed and requartered. This procedure of mixing, quartering and rejection shall be repeated until the original bulk sample has been reduced to approximately 1.35 kg in weight. The resultant sample shall then be dealt with as specified in section 12 (3) of the Act.

G.N. 123/1985

(6) In the case of liquid fertilizers, the samples shall be taken by such means as will ensure as far as is practicable the taking of a representative sample.

Analysis and sampling at the request of purchaser

9.—(1) The purchaser of a fertilizer may request an inspector to sample and analyse such fertilizer in the manner prescribed in section 12 (3) of the Act and regulation 8.

(2) The purchaser shall pay the appropriate fee for such sampling and analysis.

Certificate of sampling

10. The certificate referred to in section 12 (3) of the Act shall be in form No. 3.

Results of analysis

11. The analyst to whom a sample of a fertilizer has been submitted in accordance with section 12 (3) of the Act shall state the results of the analysis on form No. 4.

Limits of variation G.N. 64/1996

12. A fertilizer shall be deemed to comply with these Regulations if, upon analysis, the composition is found not to differ from the specified composition by more than the variations set out in the Fifth Schedule.

Method of analysis

13. The methods of analysing fertilizers for the purposes of the Act shall be those set out in the Sixth Schedule.

Imported fertilizer not complying with requirements

14.—(1) If an examination, analysis or test of samples of fertilizer being imported into Malaŵi shows that any such fertilizer does not comply with the requirements of the Act or these Regulations, the Minister may—

(*a*) order such fertilizer:

(i) to be destroyed without compensation; or

(ii) at the option of the importer to be removed from Malaŵi within a specified period; or

(*b*) permit the removal thereof from the port of entry subject to such conditions as he may impose.

PART IV

General

15. No person shall— Labelling of containers G.N. 64/1996

(*a*) add to or abstract from any fertilizer any substance or portion so as to alter its composition with the intention that the fertilizer so treated may be sold under its name in an altered state;

(*b*) knowingly sells fertilizer under the brand or name of such fertilizer but altered in its composition.

16. Any person not complying with any of the requirements of these Regulations shall be guilty of an offence and shall be liable to a fine of K 1,000 and to imprisonment for six months. Offences and penalties G.N. 64/1996

FIRST SCHEDULE (reg. 2)

Fees

The fee for the analysis of a sample at the request of the purchaser shall be K2 for each determination, with a maximum charge of K8 for any one sample.

SECOND SCHEDULE (reg. 2) G.N. 64/1996

PRESCRIBED FORMS

[Forms No. 1 and No. 2 *deleted by G.N.* 64/1996]

Form No. 3

FERTILIZERS, FARM FEEDS AND REMEDIES ACT

CERTIFICATE OF SAMPLING

To be completed in triplicate

I hereby certify that the accompanying are samples of .... taken by me on .... at (full address) ..... from stock in charge of .....in the presence of (state name and address of witness) ....

The following further particulars are given in connexion with the samples—

Samples No.	*Brand*	*Name*	*Quantity represented by sample*
.....	.....	.....	.....
.....	.....	.....	.....
.....	.....	.....	.....

Other particulars: .....

.....

.....

.....

....

Signature of Witness *Inspector*

Place: .....

Date: .....

NOTE—A copy of this certificate shall be handed or forwarded to the owner or seller or to his agent. The second copy shall be forwarded to the analyst and the third copy shall be retained by the Inspector.

FORM NO. 4

FERTILIZERS, FARM FEEDS AND REMEDIES ACT

CERTIFICATE OF ANALYSIS OF FERTILIZER

To be completed in triplicate

Brand .....

Name of Fertilizer .....

Sample Size .....

Sample Number .....

Name of Laboratory .....

ANALYTICAL REPORT

	Actual analysis per centum	*Registered analysis per centum*
Total nitrogen (expressed as N)	.....	.....
Ammoniacal nitrogen (expressed as N)	.....	.....
Nitric nitrogen (expressed as N)	.....	.....
Water-soluble phosphorus (expressed as P_2O_5)	.....	.....
Citric acid-soluble phosphorus (expressed as P_2O_5)	.....	.....
Total phosphorus (expressed as P_2O_5)	.....	.....
Potassium (expressed as K_2O)	.....	.....
Chloride (expressed as Cl)	.....	.....
Boron (expressed as B)	.....	.....

Observations: .....
.....
.....
.....

Date: ....
Analyst

THIRD SCHEDULE (reg. 3, 6 and 7) G.N. 64/1996

PART A

FERTILIZER MIXTURES

Compound Fertilizers

			N	P_2O_5	K_2O	S	B	Zn
B:	4:18:15	Max	5	20	17	4	0.1	
		Min	3	16	13	4		
C:	6:18:15	Max	8	20	17	4	0.1	
		Min	5	16	13	4	0.1	
D:	8:18:15	Max	10	20	17	4	0.1	
		Min	7	16	13			
S:	6:18:6	Max	8	20	7			
		Min	5	16	5			
X:	20:10:5	Max	22	12	6			
		Min	18	8	4			
J:	15:5:20	Max	17	6	22			
		Min	13	4	18			
3:2:1 (25)		Max	13	21	6			
		Min	10	17	4	4	0.1	
23:21:0 + 4S		Max	25	22		5		
		Min	20	28		3		
0:22:30		Max	24	32				
		Min	20	28				
Diammonium Phosphate (DAP)		Max	19	48			0.15	
		Min	17	44				
Monoammonium Phosphate (MAP)		Max	12	52			0.15	
Super B (5.33:24:20)		Max	6	26	22		0.15	
		Min	4	22	18	6		
Super C: (8:24:20)		Max	10	26	22		0.15	
		Min	6	22	18	6		
Super D: (10:24:20)		Max	12	26	22		0.15	
		Min	9	22	18	6		
10:20:20		Max	12	22	22			
		Min	8	18	18			
20:20:5+ 4S+ 0.1Zn		Max	22	22	6	6	0.1Zn	
		Min	18	18	4			

Calcium Nitrate (15.5%N+ 19.0% Calcium) (Water soluble)

Urea—S:(8:l) (40%N + 5% SO_4)

Mixture B, and C should contain 0.1 per cent Boron and Mixture S should contain at least 0.04 per cent Boron.

PART B

STRAIGHT FERTILIZERS

FERTILIZERS SPECIFICATION

(i) Phosphates	P_2O_5		
Total			
	% Citric Soluble	% Water Soluble	P_2O_5
FERTILIZER			
Straights			
Single Superphosphate	19.0	18.5	19.0
Double Superphosphate	44.8	44.0	44.8
(ii) Nitrogen			
	% Nitrate	% Ammonia	Total
Urea	—	46	46
Calcium Ammonium Nitrate	13	13	25–30
Ammonium Sulphate	—	21	21
Nitrate of Soda	16	—	16
Ammonium Nitrate	17	17	34
(iii) Potash			
	% K	% K_2O	
Muriate of Potash	50	60	
Sulphate of Potash	40	48	

FOURTH SCHEDULE (reg. 3)

MINIMUM REQUIRED FINENESS

Fertilizer	*Fineness Requirements*
Basic slag, rock phosphate, fused magnesium phosphate	Ground so that not less than 80 per cent will pass through a sieve, mesh No. 100.
Bone meal	Ground so that not less than 85 per cent will pass through a sieve, mesh No. 8.
Bone flour	Ground so that 100 per cent will pass through a sieve, mesh No. 8, and not less than 50 per cent will pass through a sieve, mesh No. 16.

FIFTH SCHEDULE (reg. 3)

Fertilizer	*Limits of Variation*
All fertilizers not mentioned elsewhere in this Schedule	All forms of nitrogen (expressed as N): not more than 1/10th of the specified composition above and below the specified composition with a minimum of 0.3 per cent of N and a maximum of 1.0 of N.

	All forms of phosphorus (expressed as P_2O_5): not more than 1/15th of the specified composition above and below the specified composition with a minimum of 0.5 per cent of P_2O_5 and a maximum of 2.0 per cent of P_2O_5.
	Potassium (expressed as K_2O): not more than 1/15th of the specified composition above and below the specified composition with a minimum of 0.7 per cent of K_2O.
	Chloride (expressed as Cl): not more than 0.5 per cent of chloride (Cl) above and below the specified composition.
	Boron (expressed as B): where the boron content is 0.05 per cent of B or less, not more than 1/3rd of the specified composition above and below the specified composition. Where the boron content is greater than 0.05 per cent of B, not more than 1/5th of the specified composition above and below the specified composition.
Straight Fertilizers	The tolerance for Straight Fertilizers shall not be more than 1/20th of the specified composition above and below the specified composition with a minimum and a maximum of either N or P_2O_5 or K_2O provided under this Schedule.
Ammoniated super-phosphates and bone products	Total nitrogen (expressed as N): not more than 0.5 per cent of nitrogen above and below the specified composition.

	All forms of phosphorus (expressed as P_2O_5): not more than 1/20th of the specified composition above and below the specified composition with a minimum of 0.5 per cent. of P_2O_5 and a maximum of 2.0 per cent. of P_2O_5.
Guanos	Total nitrogen (expressed as N): not more than 1/5th of the specified composition with a minimum of 0.3 per cent. of N. and a maximum of 1.5 per cent. of N.
	Total phosphorus (expressed as P_2O_5): not more than 1/10th of the specified composition above and below the specified composition with a minimum of 0.5 per cent. of P_2O_5 and a maximum of 2.0 per cent. of P_2O_5.
	Potassium (expressed as K_2O): not more than 1/5th of the specified composition above and below the specified composition.
Boron and fertilizer borate	Boron (expressed as B): not more than 1/10th of the specified composition above and below the specified composition with a maximum of 1.0 per cent. of B.

SIXTH SCHEDULE

METHODS OF ANALYSIS

1. *Preparation of the sample for analysis*

1.1 If the sample contains any extraneous matter which cannot be conveniently ground and homogenized with the rest of the material, such matter should be removed, weighed and allowed for in calculating the results of the analysis.

1.2 Where a fertilizer is too moist to be ground in its original condition, the sample should be thoroughly mixed and a portion thereof taken for moisture determination as described at 2.1 below.

The remaining portion shall be dried at 100°C., except where the fertilizer may lose ammonia on heating or contains soluble phosphorus compounds. In these latter cases, the sample should be dried either by placing it in a desiccator over anhydrous calcium chloride or silica gel, or alternatively by passing dry air at room temperature over it until it is in a suitable condition for grinding. The dried sample should then be treated appropriately as described under 1.4 and 2.2 below.

1.3 The results of analysis of the dried sample should be adjusted to and expressed on the "as received" basis.

1.4 *Crystalline, dry powder or granular fertilizers.*—Grind the sample to pass through a mesh No. 16 sieve, mix thoroughly and finely grind a portion of about 250 g. in a mortar.

1.5 *Basic slag.*—Grind the sample to pass through a mesh No. 100 sieve.

1.6 *Liquid fertilizers.*—The sample should be thoroughly mixed before analysis. The prepared portion of the sample shall be stored in a non-corrodible container fitted with an air-tight screw-cap or stopper.

2. *Determination of moisture*

2.1 *In absence of volatile constituents.*—In duplicate, weigh to the nearest mg. about 5 g. of the sample, heat in the oven at 100°C. for 5 hours, cool in a desiccator, and weigh again.

In the case of sodium nitrate, ammonium sulphate and potassium salts, heat to constant weight at 130°C.

2.2 *In presence of volatile constituents.*—In duplicate, weigh to the nearest mg. about 5 g. of the sample and dry by placing in a vacuum desiccator overnight under not less than 20 in. vacuum, or by subjection to passage of dry air at room temperature overnight, as mentioned at 1.2 above. Weigh again.

2.3 Calculate the loss in weight as a percentage of the original weight.

3. *Preparation of extracts*

3.1 If the fertilizer is mixture or a substance in an impure state, extract it for the required elements as described under the respective headings below.

3.2 If the material is a pure compound, however, and is soluble in water (e.g. sulphate of ammonia, muriate of potash or sulphate of potash), extract it by dissolving an accurately weighed (correct to the nearest mg.) portion of the sample in a measured volume of water and determine the required constituents on aliquots drawn from such solutions.

4. *Determination of nitrogen*

4.1 *Reagents to be used:*

(*a*) Concentrated sulphuric acid (preferably nitrogen-free).

(*b*) Salicylic acid (analytical reagent grade).

(*c*) Zinc dust or sodium thiosulphate.

(*d*) Mixed catalyst.—Grind and mix together: 160 g. anhydrouspotassium sulphate (K_2SO_4) or sodium sulphate (Na_2SO_4)10 g. cupric sulphate ($CuSO_4 . {}_5H_2O$) 3 g. selenium powder.

(*e*) Capryl alcohol or paraffin wax.

(*f*) Sodium hydroxide: 46 per cent. aqueous solution.

(*g*) Boric acid: 2 per cent. aqueous solution, dissolved in boiling water.

(*h*) Mixed indicator.—To 3 parts of 0.1 per cent., bromcresol green in 90 per cent. ethyl alcohol, add 2 parts of 0.1 per cent. methyl red in 90 per cent. ethyl alcohol.

(*i*) N/70 Hydrochloric acid.—Add 1.23 ml. concentrated hydrochloric acid (analytical reagent grade) to water and dilute to 1 litre.

(*j*) Ammonium alum.

(*k*) Sucrose (analytical reagent grade).

(*l*) Indigo solution.—Cautiously add 40 ml. of concentrated sulphuric acid to 1 g. of indigo carmine and stir until dissolved. Pour the solution into 800 ml. of water and dilute to 1 litre. Adjust the strength of the solution to comply with the following test:

Add 20 ml. to a solution of 4 mg. of potassium nitrate in 20ml. of water. Add rapidly 40 ml. of concentrated sulphuric acid and heat to boiling: the blue colour is just discharged in 1 minute.

(*m*) Ferrous sulphate.

(*n*) Sodium nitrate.

(*o*) Magnesium oxide (carbonate-free): Analytical reagent grade magnesium oxide heated at 600-700°C. in a muffle furnace for 2 hours and stored in a desiccator over potassium hydroxide pellets.

4.2 *Test for absence of nitrates.*

(*a*) Shake 5 g. of the sample with 80 ml. of water in 100 ml. volumetric flask. Add 1 g. of ammonium alum, dilute to 100 ml. shake well and filter into a dry beaker. Dilute 1 ml. of the filtrate with 8 ml. of water. Add 1 ml. of standard indigo solution and 10 ml. of concentrated sulphuric acid. Heat to boiling point. If the blue colour is not discharged, regard the sample as free from nitrates, or

(*b*) Shake 5 g. of the sample with 25 ml. of hot water and filter. To 1 volume of this solution add 2 volumes of concentrated sulphuric acid (nitrogen-free), and allow to cool. Add a few drops of concentrated ferrous sulphate solution in such a way that the fluids do not mix. If nitrates are present, a purple colour appears at the junction which afterwards turns brown or, if only minute quantities of nitrates exist, a reddish colour. (To another portion of the solution add 1 ml. of 1 per cent. sodium nitrate solution and test as above to determine whether sufficient sulphuric acid was added in the first test.)

4.3 *Total nitrogen* (*organic and ammoniacal*) *in absence of nitrates:*

(i) In duplicate, weigh to the nearest mg. about 1 g. of the sample (or an amount containing not more than 250 mg. of nitrogen) and transfer to a Kjeldahl digestion flask. Add 15 ml. of concentrated sulphuric acid followed by 1.7 g. of mixed catalyst. * Add a few glass beads or porcelain chips to avoid local overheating and control bumping. Heat gently until frothing ceases, adding 2–3 drops of capryl alcohol, or about 0.5 g. of paraffin wax, if frothing is excessive. Increase the heat and

continue the digestion until the liquid is clear (pale green or practically colourless). Continue heating for a further hour. Cool, transfer to a 100 ml. volumetric flask and make up to the mark with water. Carry out a blank determination on the reagents using 1 g. of sucrose in place of the sample.

(ii) Transfer a 2 ml. (or suitable) aliquot of the extract obtained at 4.3 (i) above to a Markham still. Add 5 ml. of 46 per cent. sodium hydroxide solution (or enough to ensure an excess of alkali) through the funnel of the still with the stoprod in position. Then lift the stoprod and allow most of the alkali to pass into the still; wash the funnel with 5–10 ml. of water, letting most of the washings run into the still too. Steamdistil, collecting the distillate in a 100 ml conical flask containing 10 ml. of 2 per cent. boric acid to which 5 drops of the mixed indicator have been added and in which the delivery tube of the still dips. Distil until the wine-red colour turns green, taking care not to lose any of the liberated ammonia. Proceed for 1 minute after the green colour has appeared, and then continue distilling for a further minute with the tube above the solution in the receptacle. The rate of distillation should be at least 5 ml. per minute.

(iii) Titrate the recovered ammonia against N/70 hydrochloric acid from a microburette until the original wine-red colour reappears. Express the result in terms of percentage total nitrogen in the sample as received.

1 ml. N/70 HC1=0.2 mg. nitrogen

4.4 *Total nitrogen (organic, ammoniacal and nitric) in presence of nitrates*

(i) In duplicate, weigh to the nearest mg. about 1 g. of the sample (or an amount containing not more than 250 mg. of nitrogen) and transfer to a Kjeldahl digestion flask. Add 15 ml. of concentrated sulphuric acid and 0.5 g. of salicylic acid, swirl and allow to stand for 30 minutes. Add 1 g. of zinc dust or 5 g. of sodium thiosulphate followed by 1 g. of mixed catalyst and a further 10 ml. of concentrated sulphuric acid. Carry on the extraction as described from the point marked * in paragraph 4.3 (i) above and continue to complete the determination as in paragraphs 4.3 (ii) and (iii), expressing the result as percentage total nitrogen in the sample as received.

1 ml. N/70 HC1=0.2 mg. nitrogen

4.5 *Ammoniacal nitrogen*

(i) In duplicate, weigh to the nearest mg. about 2 g. of the sample, transfer to a 100 ml. volumetric flask, dissolve or take up by shaking in about 80 ml. of water, make up to the mark and filter if necessary.

(ii) Transfer 5 ml. of the solution (or a quantity containing not more than 25 mg. of nitrogen) to a Markham still, and add

a little water. Add 2 ml. of 46 per cent. sodium hydroxide solution through the funnel of the still as described in paragraph 4.3 (ii). (If the sample contains urea, 0.5 g. of carbonatefree light magnesium oxide suspended in water should be used instead of 46 per cent. sodium hydroxide.) Steam-distil and proceed to complete the determination as described in paragraphs 4.3 (ii) and (iii). Carry out a blank test on the re-agents. Express the result as percentage ammoniacal nitrogen in the sample as received.

1 ml. N/70 HC1=0.2 mg. nitrogen

4.6 *Ammoniacal and nitrate nitrogen*

(i) In duplicate, weigh to the nearest mg. about 1 g. of the sample, transfer to a 100 ml. volumetric flask, add 80 ml. of water, shake well to dissolve, dilute to volume and filter if necessary.

(ii) Transfer 5 ml. of the solution or filtrate (or a volume containing not more than 25 mg. of nitrogen) to a Markham still. Add 0.5 g. of zinc dust by washing with water through the funnel of the still. Add 2 ml. of 46 per cent. sodium hydroxide solution (or 0.5 g. of carbonate-free light magnesium oxide if urea is known to be present in the sample). Add as much water as the inner jacket of the still can hold without hindering the steam distillation process. Allow to stand in the cold for 15 minutes with the delivery tube of the still dipping in 10 ml. of 2 per cent. boric acid to which 5 drops of mixed indicator have been added, in a 250 ml. conical flask. Then warm gently by passing steam at a slow rate for up to 30 minutes. Slowly increase the temperature and distil at the rate of 5 ml. per minute for 30 minutes, i.e. until about 150 ml. distillate has been collected.

(iii) Titrate the recovered ammonia as described in paragraph 4.3 (iii). Carry out a reagent blank determination in which only the sample is omitted. Express the result as percentage ammoniacal plus nitrate nitrogen in the sample as received.

1 ml. N/70 HC1=0.2 mg. nitrogen

(*Note*—The difference between the result obtained in this determination and that in the determination in section 4.5 gives the amount of nitrate nitrogen in the sample.)

5. *Determination of phosphorus*

5.1 *Colorimetric ammonium phosphosmolybdate methods*

(i) *Reagents to be used*

(*a*) 50 per cent. (volume/volume) hydrochloric acid.

(*b*) Ammonium molybdate reagent (1.5 per cent. ammonium molybdate solution in 3.5 N hydrochloric acid).—Dissolve 15 g. ammonium molybdate [$(NH_4)_6Mo_7O_{24}$ $_4H_2O$] in about 300 ml. of water warmed to 50°C., filtering if necessary. Cool; then slowly add 350 ml. of concentrated hydrochloric acid, stirring rapidly. Cool and make up to 1 litre with water. Store in a brown glass-stoppered bottle.

(*Note*—This reagent must be renewed every 2 months.)

(*c*) *Stannous chloride.*—Dissolve 1.25 g. stannous chloride ($SnCl_2.{}_2H_2O$) in 5.6 ml. concentrated hydrochloric acid, warming slightly if necessary to dissolve. Cool and make up to 50 ml. with freshly boiled and cooled water.

(*d*) Calcium acetate solution.—Dissolve 120 g. calcium acetate in litre of water and slowly add 1 litre of alcohol.

(ii) *Extraction*

In duplicate, weigh to the nearest mg. about 0.5 g. of the sample into an evaporation basin. (If the sample contains organic matter, saturate with calcium acetate solution and ignite in the muffle furnace at a temperature not exceeding 550°C. until all organic matter is destroyed, i.e. until a uniformly grey ash is obtained. Allow to cool.) Add 10 ml. of 50 per cent. hydrochloric acid, swirling carefully to mix. Evaporate to dryness in a sand bath on a hotplate. Remove, allow to cool somewhat and take up in 2.5 ml. of 50 per cent. hydrochloric acid. Add some hot water and filter into a 100 ml. volumetric flask, using a policeman to loosen and remove the residue from the basin. Wash through the filter paper several times with small portions of hot water, collecting the washings in the flask. Cool, make up to the mark with water and mix well.

(iii) *Determination*

Pipette a 2 ml. aliquot of the extract into a 50 ml. volumetric flask and * add from a burette 10 ml. of the ammonium molybdate reagent. Make up to the mark with water and then add 0.25 ml. of the stannous chloride reagent from a microburette. Shake to mix thoroughly. Stand to allow maximum colour development and measure the intensity of the blue colour on the Hilger absorptiometer after 5 minutes but within 20 minutes (N.B. The colour fades after 20 minutes) using Filter 70 and a 2 cm. cell.

Determine the amount of phosphorus (as percentage P_2O_5) in the sample from known dilution factors and the weight of the sample, making use of a calibration curve prepared by plotting absorptiometer scale readings against known concentrations of phosphorus in a series of standard solutions prepared as described under paragraph 5.1.1 (iv) below.

(iv) *Calibration curve*

Phosphorus (P) stock solution.—Dissolve in water 0.2195 g. of analytical grade potassium dihydrogen phosphate (KH_2PO_4), previously dried at 105°C. for 1 hour, and add 25 ml. of 7N sulphuric acid. Make up to 1 litre in a volumetric flask. This solution contains 50 mg. of phosphorus per litre (i.e. 50 mg. P/litre).

Phosphorus P standard solutions.—From a burette measure into a series of 50 ml. volumetric flasks 0.5,1.0,1.5, 2.0, 3.5, 5.0, 7.5 and 10 ml. of the 50 mg. P/litre stock solution (i.e. 0.025, 0.050, 0.075, 0.100, 0.175, 0.250, 0.375 and 0.500 mg. P) and

dilute to 50 ml. with water. Withdraw 2 ml. aliquots ** from each flask, transfer to a corresponding second series of 50 ml. volumetric flasks and proceed with the determination as described from the point marked * in paragraph 5.1.1 (iii) above.

Plot a calibration curve relating absorptiometer scale readings to the phosphorus concentrations represented by the 2 ml. aliquots withdrawn and referred to at ** in the paragraph immediately above.

5.1.2 *Colorimetric phosphomolybdate method for total phosphorus in basic slag*

(i) *Extraction*

In duplicate, weigh to the nearest mg. about 0.5 g. of the sample into a 400 ml. beaker, wet thoroughly with 20 ml. of water and then add a further 80 ml. of water with continuous stirring. Warm the mixture and add dropwise with stirring 10 ml. of concentrated hydrochloric acid, followed by 5 ml. of concentrated nitric acid. Gently boil the solution for 10 minutes, cool and dilute to about 200 ml. with water. Stir to mix and then filter the solution into a 250 ml. volumetric flask through a filter paper which has previously been washed with 20-30 ml. of a solution of 2 per cent. strength (v/v) in respect of nitric acid and 4 per cent. in respect of hydrochloric acid. Wash through the filter paper with several small portions of water into the flask and make up to the mark. Shake to mix thoroughly.

(ii) *Determination*

Proceed as in paragraph 5.1.1 (iii).

5.1.3 *Colorimetric phosphomolybdate method for citric acid-soluble phosphorus in all fertilizers*

(i) *Extraction*

In duplicate weigh to the nearest mg. about 0.5 g. of the sample and transfer to a stoppered bottle of about 500 ml. capacity. Add 250 ml. of a 2 per cent. solution of pure crystallized citric acid (monohydrate) to the sample in the bottle, shaking to avoid possible caking. Shake the bottle continuously for 30 minutes. Pour the whole of the liquid at once onto a large filter paper and collect the filtrate. If the filtrate is not clear, pass it again through the same filter.

(ii) *Determination*

Proceed as in paragraph 5.1.1 (iii).

5.1.4 *Colorimetric phosphomolybdate method for water-soluble phosphorus in all fertilizers*

(i) *Extraction*

In duplicate, weigh to the nearest mg. about 1 g. of the sample and transfer to a stoppered bottle of about 500 ml.

capacity. Add 200 ml. of water and shake the bottle continuously for 30 minutes. Filter into a 250 ml. volumetric flask. Wash through the filter with 2–3 large portions of water, make up to the mark and mix well.

(ii) *Determination*

Proceed as in paragraph 5.1.1 (iii).

5.2 *Spectrophotometric vanadophosphomolybdate methods*

5.2.1 *Reagents to be used*

(*a*) Concentrated hydrochloric acid.

(*b*) Concentrated nitric acid.

(*c*) Calcium acetate solution.—Dissolve 120 g. calcium acetate in 1 litre of water and slowly add 1 litre of alcohol.

(*d*) Crystallized citric acid (monohydrate).

(*e*) Potassium dihydrogen phosphate (KH_2PO_4).—Containing at least 99.8 per cent. of monopotassium dihydrogen phosphate.

(*f*) Vanadium molybdate reagent.—Dissolve separately 20 g. of ammonium molybdate and 1 g. of ammonium vanadate in hot water. Cool and then mix by slowy adding the molybdate solution to the vanadate solution. Acidify with 140 ml. of concentrated nitric acid and dilute to 1 litre.

(*g*) 1-N Sodium hydroxide.—Dissolve 40.00 g. of sodium hydroxide in water, cool and make up to 1 litre in a volumetric flask. Store in a waxed brown glass bottle.

(*h*) Standard phosphate solution.—Dissolve in water 1.9173 g. of potassium dihydrogen phosphate previously dried at 105°C. for 1 hour, and dilute to 1 litre. Make a 5-fold dilution. [1 ml.=0.2 mg. phosphoric acid (P_2O_6)].

5.2.2 *Spectrophotometric vanadophosphomolybdate method for total phosphorus in all fertilizers except basic slag*

(i) *Extraction*

(*a*) *In the absence of organic matter*

In duplicate, weigh to the nearest mg. about 5 g. of the sample into a 400 ml. beaker, add 100 ml. of water and stir thoroughly. Heat to boiling and, to the boiling mixture, add 10 ml. of concentrated hydrochloric acid in a thin stream, followed by 10 ml. of concentrated nitric acid. Boil gently for 10 minutes, cool, transfer to a 500 ml. volumetric flask and dilute to the mark. Mix well and filter the solution through a dry filter paper into a dry flask, discarding the first 10–20 ml. and retaining the rest of the filtrate.

(*b*) *In the presence of organic matter*

In duplicate, weigh to the nearest mg. about 5 g. of the sample into an evaporation basin of about 5 cm. diameter and saturate with calcium acetate solution. Dry the

contents slowly and ignite in a muffle furnace at a temperature not exceeding 550°C. until all organic matter is destroyed. Allow to cool and carefully transfer the contents to a 400 ml. beaker.

Add 100 ml. of water, stir thoroughly and heat to boiling. To the boiling mixture add slowly 10 ml. of concentrated hydrochloric acid and 10 ml. of concentrated nitric acid and continue boiling for a further 10 minutes. Cool, transfer to a 500 ml. volumetric flask and dilute to the mark. Mix well and filter through a dry filter paper into a dry flask, discarding the first 10–20 ml. of the filtrate and retaining the rest.

(ii) *Standardization of the spectrophotometer* (*calibration graph*)

From a burette measure into a series of 100 ml. volumetric flasks 25.0, 26.0, 27.0, 28.0, 29.0, 30.0 and 31.0 ml. of the standard phosphate solution (i.e. 5.0, 5.2, 5.4, 5.6, 5.8, 6.0 and 6.2 mg. P_2O_5). And 25 ml. of the vanadomolybdate reagent to each flask and dilute to 100 ml. with water, making sure the reagent and the dilution water are at room temperature. Shake and allow to stand for 10 minutes.

Set the spectrophotometer to a correct wave-length (say 4,000 or 4,200 Å), fill two 1 cm. cells with the 5 mg. P_2O_5 solution and check the optical density of the cells. If there is a small difference, select the cell with the smaller reading as the standard reference cell.

Determine the apparent optical density at room temperature (corrected for cell differences) of the 5.2, 5.4, 5.6, 5.8, 6.0 and 6.2 mg. P_2O_5 solutions referred to the 5.0 mg. P_2O_5 solution as standard.

Plot a calibration graph of scale readings against known P_2O_5 contents.

(iii) *Determination* (*procedure for all determinations except water-soluble phosphorus*)

Successively dilute a portion of the extract prepared so that the final volume of about 25 ml. contains between 5.5 and 6.2 mg. P_2O_5, taking care that the dilution water is at room temperature.

Transfer this final volume to a 100 ml. volumetric flask, add 25 ml. of the vanadomolybdate reagent at room temperature, dilute to the mark, mix and allow to stand for 10 minutes. Measure the difference in optical density at room temperature between the two solutions and determine the P_2O_5 content of the volume of the unknown solution from the calibration curve.

From the known dilution factors and weight of the sample, calculate the P_2O_5 content of the sample.

Note:—Prepare a fresh reference standard for each series of readings on the instrument.

5.2.3 *Spectrophotometric vanadophosphomolybdate method for total phosphorus in basic slag*

(i) *Extraction*

In duplicate, weigh to the nearest mg. about 2.5 g. of the sample into a 400 ml. beaker, wet thoroughly with 20–30 ml. of water with continuous stirring, and then add a further 70 ml. of water. Warm the mixture and add dropwise with stirring 10 ml. of concentrated hydrochloric acid, followed by 10 ml. of concentrated nitric acid. Gently boil the solution for 10 minutes, cool and dilute to 250 ml. in a volumetric flask. Mix well and filter the solution through a dry filter paper into a dry flask, rejecting the first 20–30 ml. of the filtrate and retaining the rest.

(ii) *Determination*

Proceed as described in paragraph 5.2.2 (iii) above.

5.2.4 *Spectrophotzometric vanadophosphomolybdate method for citric acid-soluble phosphorus in all fertilizers*

(i) *Extraction*

In duplicate, weigh to the nearest mg. about 2.5 g. of the sample and transfer to a glass-stoppered bottle of about 500 ml. capacity. Add 250 ml. of a 2 per cent. solution of pure crystallized citric acid (monohydrate), shaking the bottle to avoid possible caking. Shake continuously for 30 minutes. Pour the whole of the liquid at once onto a large filter paper and collect the filtrate. If the filtrate is not clear, pass it again through the same filter.

(ii) *Determination*

Proceed as described in paragraph 5.2.2 (iii) above.

5.2.5 *Spectrophotometric vanadophosphomolybdate method for water-soluble phosphorus in all fertilizers*

(i) *Extraction*

In duplicate, weigh to the nearest mg. about 10 g. of the sample and transfer to a glass-stoppered bottle of about 500 ml. capacity. Add 400 ml. of water and shake continuously for 30 minutes. Transfer the contents to a 500 ml. volumetric flask make up to the mark, mix well and filter, collecting the filtrate in a dry flask.

(ii) *Determination*

To 25 ml. of the extract add 1 ml. of concentrated nitric acid. Heat to almost boiling on a hotplate and maintain at this temperature for 10 minutes. Cool, neutralize with 1-N sodium hydroxide solution and complete the determination as in paragraph 5.2.2 (iii) above.

6. *Determination of potassium*

6.1 *Flame photometric methods*

6.1.1 *Reagents to be used*

(*a*) Concentrated hydrochloric acid.

(*b*) Ammonium oxalate, $(NH_4)_2C_2O_4$.—A saturated aqueous solution.

(*c*) Concentrated ammonia, NH_4OH_4.—A solution of specific gravity 0.96.

(*d*) Potassium dihydrogen phosphate, KH_2PO_4: Containing at least 99.8 per cent. of monopotassium dihydrogen phosphate.

(*e*) Standard potash solution.—Dissolve 5.779 g. of potassium dihydrogen phosphate (KH_2PO_4) previously dried for 1 hour at 105°C. and dilute to 1 litre in a volumetric flask. Shake well. Transfer 50 ml. of this solution to a 1 litre volumetric flask and dilute to the mark. Shake well. This final solution now contains 100 mg. K_2O per litre (i.e. 100 mg. K_2O/1.).

6.1.2 *Method for potassium salts other than those containing ammonium, calcium, iron, aluminium or other interfering substances*

(i) *Extraction*

In duplicate, weigh to the nearest mg. about 0.5 g. of the sample and transfer to a 400 ml. beaker. Add 10 ml. of concentrated hydrochloric acid and 50 ml. of water and bring to boiling, using a stirring with a flattened end to break down any crystals or lumps. Dilute with water to about 100 ml. and boil gently for a few minutes. Cool, transfer to a 250 ml. volumetric flask and make up to the mark. Mix well and filter through a dry filter paper.

Successively dilute a measured portion of the extract so that the final solutions contains approximately 16 mg. K_2O/1. and determine the potash content of the extract as described under paragraph 6.1.2 (iii) below.

(ii) *Standardization of the flame photometer (calibration graph)*

From the standard (100 mg. K_2O/1.) potash solution obtained under paragraph 6.1.1 (*e*) above, prepare a set of accurate dilutions containing 10, 12, 14, 16, 18 and 20 mg. K_2O/1. (e.g. by correspondingly diluting 10, 12, 14, 16, 18 and 20 ml. of the standard solution to 100 ml. in a series of 100 ml. volumetric flasks). Set the sensitivity of the flame photometer so that 100 scale divisions (i.e. full-scale deflection) are equivalent to the 20 mg. K_2O/1. solution. Spray the 10, 12, 14, 16 and 18 mg. K_2O/1. solutions three times. Take the median reading (not the mean) and construct a calibration graph. (N.B.—After spraying each different strength solution, spray the 20 mg. K_2O/l. solution again to ensure that the sensitivity of the flame photometer has not changed.)

(iii) *Determination*

Reset the photometer at 100 scale divisions with the 20 mg. K_2O/1. solution. Spray the diluted fertilizer extract obtained as described under paragraph 6.1.2 (i) above, and

read the approximate K_2O content of the solution from the graph prepared as described in paragraph 6.1.2 (ii) above.

Prepare two further dilutions of the standard K_2O solution to contain respectively 1 mg. K_2O/1. more and 1 mg. K_2O/1. less than the estimated K_2O content of the diluted solution of the sample. Successively spray the low standard solution, the diluted solution of the sample, and the high standard solution. Repeat this twice more. Take the median result of each set of three readings and calculate the K_2O content of the sample solution and hence of the fertilizer, from the proportionality of the radiation given by the sample solution and that given by the two standard solutions containing respectively 1 mg. K_2O/1. more and 1 mg. K_2O/1. less than the predicated K_2O content.

(*Note.*—Diluted standard solutions should be freshly prepared, and the photometer must be set up in a vibration-free position and a dust-free atmosphere.)

6.1.3 *Method for potassium in mixed fertilizers containing little or no organic matter, or in salts containing ammonium, calcium, iron, aluminium or other interfering substances*

(i) *Extraction*

In duplicate, weigh to the nearest mg. about 2.5 g. of the sample and place in a 400 ml. beaker. Add 125 ml. of water and 50 ml. of saturated ammonium oxalate solution. Boil for 30 minutes, adding, if necessary, a small quantity of a potassium-free anti-foaming agent (e.g. capryl alcohol). Cool, add a slight excess of concentrated ammonia solution and cool to room temperature. Dilute to 250 ml. in a volumetric flask, mix and filter through a dry filter paper.

Successively dilute a measured portion of the extract so that the final solution contains approximately 16 mg. K_2O/1. and determine the potash content as described in paragraph 6.1.2 (iii) above.

6.1.4 *Method for potassium in mixed fertilizers containing organic matter*

(i) *Extraction*

In duplicate, weigh to the nearest mg. about 10 g. of the sample into an evaporation basin and gently incinerate in a muffle furnace at a temperature not exceeding 500°C. to destroy organic matter. Grind the residue to eliminate any lumps. Add 125 ml. of water and 50 ml. of saturated ammonium oxalate solution and boil for 30 minutes. Cool, add a slight excess of concentrated ammonia solution, cool to room temperature, and dilute to 500 ml. in a volumetric flask. Mix well and filter through a dry filter paper.

Successively dilute a measured portion of the extract so that the final solution contains approximately 16 mg. K_2O/1. and determine the potash content as described in paragraph 6.1.2 (iii) above.

7. *Determination of calcium*

7.1 *Volumetric method*

7.1.1 *Reagents to be used*

(*a*) 0.02N versenate solution.—Dissolve 3.723 g. of disodium ethylenediamine tetraacetate (EDTA) and make up to 1 litre with water. Standardize this solution at least once per month against 0.02N calcium chloride solution (1.001 g. of analytical reagent grade calcium carbonate previously dried at 105°C., dissolved in about 250 ml. of water containing 5 ml. of concentrated analytical reagent grade hydrochloric acid, boiled, cooled and made up to 1 litre with water=0.02N calcium chloride), using 2 ml. of 10 per cent. potassium hydroxide solution in a volume of about 50 ml. for buffering but omitting reagent (*b*) below.

(*b*) Sodium diethyldithiocarbamate (0.3 per cent. aqueous solution). Shake vigorously to dissolved; filtering is not necessary.

(*c*) Potassium hydroxide (10 per cent. aqueous solution).

(*d*) Concentrated hydrochloric acid.

(*e*) Murexide/sodium chloride mixture as an indicator.—To 100 g. sodium chloride add 0.5 g. ammonium purpurate; grind to mix well.

OR

(*f*) Alizarin indicator.—Dissolve 0.5 g. of the indicator solid in 75 ml. of triethanolamine and make up to 100 ml. with absolute ethanol.

7.1.2 *Procedure*

(i) *Extraction*

In duplicate, weigh to the nearest mg. about 0.4 g. of the sample into a 250 ml. beaker and add 10 ml. of concentrated hydrochloric acid. Heat, if necessary, to dissolve. Add 20 ml. of water and boil down to about 5 ml. Then dilute and filter while hot into a 100 ml. volumetric flask. Cool and make up to the mark with water.

(ii) *Determination*

Pipette a suitable aliquot (2 ml. is adequate if the sample has a high calcium content) into a 250 ml. conical flask. Add 1 ml. of 0.3 per cent. sodium diethyldithiocarbamate, 20 ml. of 10 per cent. potassium hydroxide solution, and about 0.3 g. of murexide/sodium chloride (or 6 drops of alizarin) indicator. Titrate against 0.02N versenate (EDTA) solution, using a microburette. (The colour change at the end point is from wine-red to violet.) Calculate the calcium content from the titre obtained and from the weight of the sample equivalent to the aliquot of the extract taken.

1 ml. 0.02N EDTA=0.4008 mg. Ca.

Express the result in terms of percentage calcium oxide in the sample.

$$\% \text{ CaO} = \% \text{ Ca} \times 1.40$$

7.2 *Gravimetric method*

7.2.1 *Reagents to be used*

(*a*) Concentrated hydrochloric acid.

(*b*) Ammonium oxalate solutions.—6 per cent. and 0.1 per cent. aqueous solutions.

(*c*) Ammonium hydroxide (1:1).—50 per cent. aqueous solution (v/v).

(*d*) Methyl red indicator.—Dissolve 0.1 g. of methly red in 250 ml. of ethanol.

7.2.2 *Procedure*

(i) *Extraction*

In duplicate, weigh to the nearest mg. about 0.5 g. of the sample and place in a 400 ml. beaker. Add 10 ml. of water and 10 ml. of concentrated hydrochloric acid, and heat, if necessary, to dissolve. Dilute to about 200 ml. with water. Filter if necessary (i.e. if suspended impurities are present). Add 3–4 drops of methyl red indicator and heat to boiling. While boiling, add 500 ml. of warm 6 per cent. ammonium oxalate solution. To the hot solution add dropwise, with stirring, 1:1 ammonium hydroxide, maintaining the temperature at about 80°C. or above, until the solution is neutral or faintly alkaline. Stand warm for at least 1 hour. After the precipitate has settled, test for complete precipitation by adding a few drops of 6 per cent. ammonium oxalate solution (run the solution down a glass rod).

If precipitation is complete, filter through paper suitable for fine precipitates (e.g. Whatman No. 40 paper), washing the precipitate of calcium oxalate chloride-free with cold 0.1 per cent. ammonium oxalate. (Test for chloride by taking 5 ml. of the washings and adding dilute nitric acid followed by a few drops of dilute silver nitrate solution: if no precipitate forms, then the calcium oxalate precipitate is chloride-free; if a precipitate forms with silver nitrate, continue washing with cold 0.1 per cent. ammonium oxalate till choride-free.)

(ii) *Determination*

Then transfer the precipitate and the filter paper to a tared crucible previously ignited at 500°C. and cooled. Dry in the oven at 110-120°C. When dry, ignite in the muffle furnace for 2 hours with the temperature maintained at 500°C. or just below. (*Note*.—Cover the crucible with a lid during ignition but slightly tilt the lid over to one side to permit oxidation.) Cool the crucible in a desiccator and weigh the resultant *calcium carbonate*. Return to the furnace and ignite at 500°C. for a further 1 hour. Cool and reweigh.

(If a change in weight occurs, some of the carbonate has been converted to oxide: moisten with a few drops of a saturated ammonium carbonate solution, dry in the oven at 110°C. cool and weigh. Gain in weight proves oxide was present.) Calculate the percentage calcium content from the weight of the calcium carbonate obtained and that of the sample taken:

$$\% \text{ Ca} = \frac{\text{wt. of } CaCO_3 \times 0.4004 \times 100}{\text{wt. of sample taken}})$$

(*Note*.—In this gravimetric method, calcium may also be finally determined as the oxide by igniting the calcium carbonate precipitate obtained and subjecting it to dissociation at 900°C. until constant weight is attained. The percentage calcium content is then calculated from the weight of the calcium oxide obtained and that of the sample taken:

$$\% \text{ Ca} = \frac{\text{wt. of CaO} \times 0.7147 \times 100}{\text{wt. of sample taken}})$$

8. *Determination of magnesium* (*e.g. in dolomite*)

8.1 *Reagents to be used*

(*a*) 0.02N versenate (EDTA) solution.—As described under paragraph 7.1.1 (*a*).

(*b*) Sodium diethyldithiocarbamate (0.3 per cent. aqueous solution).—As under paragraph 7.1.1 (*b*).

(*c*) Ammonium chloride/ammonium hydroxide buffer solution (pH 10).—Dissolve 67.5 g. of ammonium chloride in 570 ml. of concentrated ammonium hydroxide solution and make up to 1 litre with water.

(*d*) Eriochrome Black-T indicator.—Dissolve 0.5 g. of Eriochrome Black-T powder and 4.5 g. of hydroxylamine hydrochloride in 100 ml. of 95 per cent. ethanol.

(*e*) Concentrated hydrochloric acid.

8.2 *Procedure*

(i) *Extraction (for magnesium in presence of calcium e.g. dolomite)*
Follow the procedure described in paragraph 7.1.2 (i).

(ii) *Determination*
Pipette a suitable aliquot (2 ml. is adequate if calcium content is high) into a 250 ml. conical flask. Add 1 ml. of 0.3 per cent. sodium diethyldithiocarbamate, 5 ml. of ammonium chloride/ ammonium hydroxide buffer solution and 10 drops of Eriochrome Black-T indicator solution. Titrate with 0.02N versenate (EDTA) solution, using a microburette. (The end-point colour change is from wine-red to blue.) In presence of calcium, the total amount of EDTA solution added to reach this end-point gives a measure of the sum of calcium and

magnesium. The difference between the quantity of EDTA solution used to determine the content of calcium alone and that used to determine the sum of calcium and magnesium in an equivalent aliquot of the extract represents the magnesium content of the aliquot.

In the absence of calcium, the titre obtained represents the amount of magnesium present in the aliquot.

Calculate the magnesium content of the sample from the direct or differential titre obtained (whichever is applicable) and from the weight of the sample equivalent to the aliquot of the extract taken.

1 ml. 0.02N EDTA=0.2432 mg. Mg.

Express the result in terms of percentage magnesium oxide in the sample.

$$\% \text{ MgO} = \% \text{ Mg} \times 1.66$$

9. *Determination of boron*

9.1 *Reagents to be used*

(*a*) 5 per cent. nitric acid solution.

(*b*) Bismuth nitrate solution.—Dissolve 22 g. of bismuth nitrate in 8 ml. of concentrated nitric acid and dilute to 100 ml. with water.

(*c*) 10 per cent. sodium hydroxide solution.

(*d*) 0.02N sodium hydroxide solution.—Carbon dioxide free.

(*e*) Mannitol.

(*f*) Bromothymol blue indicator solution.

9.2 *Procedure*

(i) *Extraction*

In duplicate, weigh to the nearest mg. about 2.5 g. of the sample and transfer to a 400 ml. beaker. Add 2 ml. of concentrated nitric acid and 50 ml. of water, stir, warm, and dilute to 100 ml. with water. Warm to 75°–85°C. (do not boil as boric acid is volatile) and slowly add from a burette with continuous stirring 5 ml. of bismuth nitrate solution for each 25 mg. of phosphorus (P_2O_5) present. Keep the solution hot during precipitation. Allow the precipitate to settle, cool, wash into a 250 ml. volumetric flask and dilute to the mark. Filter through a dry paper, discarding the first 10–20 ml.

(ii) *Determination*

To a 100 ml. aliquot add a few drops of bromothymol blue indicator solution and then 10 per cent. sodium hydroxide solution until the indicator turns blue. Filter and wash the precipitate several times with cold water to give a total volume of filtrate of 150–200 ml. Using a pH meter, adjust to pH 5, adding 5 per cent. nitric acid solution. Heat to about 85°C. (do not boil) and stir vigorously to expel carbon dioxide.

Cool and titrate with 0.02N sodium hydroxide solution to pH 6.3. Add 10 g. of mannitol and readjust to pH 6.3 with 0.02N sodium hydroxide solution. Continue to add 10 g. portions of mannitol and to adjust to pH 6.3 until, after the final addition of mannitol, the pH remains constant at 6.3. The total amount of 0.02N sodium hydroxide solution used *after the first addition of mannitol* corresponds to the amount of boron present in the solution.

Carry out a reagent blank determination.

Calculate the amount of boron in the portion taken for analysis from the factor:

1.0 ml. 0.02N NaOH=0.216 mg. B

10. *Determination of chloride*

10.1 *Reagents to be used*

(*a*) Dilute nitric acid.—Dilute 1 volume of concentrated nitric acid with 1 volume of water.

(*b*) Nitrobenzene.—Analytical reagent grade.

(*c*) 0.1N silver nitrate solution.

(*d*) 0.1N potassium thiocyanate solution.

(*e*) Ferric alum indicator solution.—Prepare a saturated solution of ferric ammonium sulphate and add a small quantity of dilute nitric acid.

10.2 *Procedure*

(i) *Extraction*

In duplicate, weigh to the nearest mg. about 5 g. of the sample and transfer to a stoppered bottle of about 500 ml. capacity marked at 250 ml. Add 200 ml. of water and shake continously for 30 minutes. Transfer through a filter paper into a 250 ml. volumetric flask, washing several times with small portions of water. Make up to the mark and shake to mix well.

(ii) *Determination*

Dilute an aliquot of the extract (containing about 70 mg. Cl) to 100 ml. with water, add 10 ml. of dilute nitric acid, an excess of 0.1N silver nitrate solution, 2–3 ml. of nitrobenzene and 1 ml. of ferric alum indicator. Shake vigorously to coagulate the precipitate. Titrate the residual silver nitrate with 0.1N potassium thiocyanate solution until a faint reddish-brown colour persists. Carry out a reagent blank determination.

Calculate the amount of chloride in the portion taken for analysis from the relationship:

1 ml. 0.1N $AgNO_3$=3.55 mg. Cl

11. *Determination of sulphate*

11.1 *Reagents to be used*

(*a*) Concentrated hydrochloric acid.

(*b*) Concentrated nitric acid.

(*c*) 5 per cent. barium chloride ($BaCl_2$) solution.

11.2 *Procedure*

(i) *Extraction*

In duplicate, weigh to the nearest mg. about 1 g. of the sample and transfer to a 250 ml. beaker. Add 20 ml. of concentrated hydrochloric acid followed by 4 ml. of concentrated nitric acid. Evaporate just to dryness on a hotplate in the fume chamber, covering the beaker with a watchglass to avoid loss through spattering. Cool, add 2 ml. of concentrated hydrochloric acid and dilute to about 200 ml. with hot water. Filter into a 500 ml. volumetric flask, washing 4–5 times with hot water. Cool, make up to the mark and shake well.

(ii) *Determination*

To a 100 ml. aliquot in a 400 ml. beaker, add water until the volume is about 200 ml. Heat to boiling and slowly add 20 ml. of 5 per cent. barium chloride solution with stirring. Maintain at gentle boiling for about 15 minutes, allow the precipitate to settle and add a few drops of the 5 per cent. barium chloride solution to confirm that precipitation is complete. Stand for at least 2 hours (preferably overnight) to obtain a coarse, easily-filtered precipitate.

Filter by decantation through filter paper of suitable texture (e.g. Whatman No. 40), washing the precipitate with hot water. Transfer the precipitate quantitatively to the filter paper and continue washing with hot water until the filtrate is chloride-free (i.e. until a clear solution, or no more than a very faint opalescence, results after adding dilute silver nitrate solution to a portion of the washings acidified with about 1 ml. of dilute (2N) nitric acid).

Place the filter paper plus the precipitate in a previously ignited, cooled and weighed silica or porcelain crucible, and dry in the oven at 100°C. Transfer to the muffle furnace and gradually raise the temperature until the paper begins to char. (*N.B.*—The paper must not catch fire.) Then heat at 500–600°C. until incineration is complete.

Cool in a desiccator and weigh as barium sulphate, $BaSO_4$.

(iii) *Calculation*

As barium sulphate contains 41.153 per cent. sulphate, the amount of sulphate in the sample can be calculated from the relationship:

$$\% \, SO_4 \text{ in sample} = \frac{\text{wt. of } BaSO_4 \text{ precipitate obtained} \times 41.153}{\text{wt. of sample equivalent to the aliquot of extract taken}}$$

FERTILIZERS, FARM FEEDS AND REMEDIES (FARM FEEDS) REGULATIONS

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G.N. 159/1973
63/1996

FERTILIZERS, FARM FEEDS AND REMEDIES (FARM FEEDS) REGULATIONS

under s. 16

PART I

PRELIMINARY

Citation

1. These Regulations may be cited as the Fertilizers, Farm Feeds and Remedies (Farm Feeds) Regulations.

Interpretation

2. In these Regulations, unless the context otherwise requires—

"additives" means any substance added to a compound or a protein concentrate in the course of manufacturing for some specific purpose other than as a direct source of nutrient;

"authorized officer" means an officer specially authorized by the Minister of Agriculture and Natural Resources;

"composition" means the percentages of the constituents of a farm feed;

"concentrate" means a material of relatively high content designed for further mixing before feeding, at an inclusion rate of 5 per cent or more with planned proportions of cereals and other feedstuffs either on the farm or by a feedstuffs compounder;

"constituent" means a component of a farm feed determined by chemical means;

"crude protein" means protein and other nitrogenous compounds, and is expressed as the total nitrogen content of a farm feed multiplied by a factor of 6.25;

"form" means the appropriate form prescribed in the First Schedule;

"formation" means the percentage of straights included in a farm feed;

"ingredient" means a component part of a mixture or one of the constituents of a mixture;

"mixed feed" means a number of different straights mixed and blended in appropriate proportions, to provide properly balanced diets for all types of stock at every stage of growth and development and includes minerals, trace elements, vitamins and other additives;

"*per centum*" or "percentage" means *per centum* or percentage by weight to be specified either on dry weight basis or on fresh weight basis;

"protein equivalent" means urea or biuret, and is expressed as the nitrogen content of these ingredients multiplied by a factor of 6.25;

"straight" means a single feeding stuff of animal or vegetable origin which may or may not have undergone some processing before purchase;

"supplements" means technical products for use at less than 5 per cent of the total ration in which they are included, and designed to supply planned proportions of vitamins, trace elements, one or more non-nutrient additives and other special ingredients.

PART II

Labelling of Farm Feeds

G.N. 63/1996

Requirement and application for registration

3. All farm feeds for sale to the general public shall be labelled with the following information—

(*a*) the name and brand of the farm feed;

(*b*) the composition of the farm feed, including— G.N. 63/1996

(i) crude protein (nitrogen × 6.25);

(ii) protein equivalent;

(iii) fat (ether extra);

(iv) crude fibre

(v) calcium (Ca);

(vi) phosphorous (P); and

(*c*) ingredients of which the farm feed is compounded and their percentage inclusion.

4. [*Revoked by G.N. 63/1996.*]

5. [*Revoked by G.N. 63/1996.*]

6. [*Revoked by G.N. 63/1996.*]

Farm feed to comply with specifications

7. Where a farm feed consists or is compounded of ingredients prescribed in the Third Schedule, such farm feed or ingredient shall comply with the specifications in that Schedule.

Constituents G.N. 63/1996

8.—(1) Where any constituent claimed to have nutritive value, other than those set out in the Second Schedule, is used in any farm feed, the label shall state—

(*a*) in the case of inorganic constituents other than salt, the percentage of the constituent expressed in terms of the elemental form;

(*b*) in the case of salt, the maximum percentage of sodium chloride expressed as NaCl; and

(*c*) in the case of added vitamins, antibiotics and drugs, the content of the active constituent.

(2) No product shall be used as a constituent if such product is contaminated so as to be harmful to livestock or the consumer or to public health.

Sterilization Cap. 67:04 sub. leg. p. 13 G.N. 63/1996

9. No person shall sell a farm feed containing any ingredient of animal origin unless such substance has been sterilized in accordance with the Fertilizer and Farm Feeds (Sterilization of Animal Products) Regulations, and a certificate to that effect has been issued.

10. [*Revoked by G.N.* 63/1996.]

11. [*Revoked by G.N.* 63/1996.]

PART II

Conditions of Sale

Restrictions

12. No person shall register or sell any farm feed which—

(*a*) except in the case of liquid farm feed, or blood meal contains more than 12 1/2 per centum of moisture; or

(*b*) is manufactured or intended for consumption by pigs or poultry and which, when prepared according to the instructions of the manufacturer, will contain more than 1 per centum of salt expressed as NaCl.

Labelling of containers G.N. 63/1996

13.—(1) For the purposes of section 16 of the Act and subject to the provisions of this regulation, the container in which the farm feed is sold shall be durably and legibly marked or labelled in English with—

(*a*) the brand and name of the farm feed; and

(*b*) the particulars specified in the Second Schedule and the numerical values of the farm feed.

(2) In the case of protein concentrate feeds the label shall bear a statement of the proportions in which it is recommended that the concentrate shall be fed with grain meal.

(3) In the case of poultry mashes, the label shall state whether the feed is completely balanced or is intended for feeding with grain and other feedstuff.

(4) Where a farm feed contains urea, biuret, antibiotics or drugs, the label shall bear—

(*a*) a statement giving instructions for use; and

(*b*) an appropriate warning.

(5) Where a label or inscription upon a container claiming a content of a constituent, other than those set out in the Second Schedule, the content shall be registered, and in the case of—

(*a*) inorganic constituents, the elemental content shall be stated except for salt where the maximum percentage, expressed as NaCl shall be stated; and

(*b*) added vitamins, antibiotics and drugs, the contents of the active ingredients shall be stated.

14. [*Revoked by G.N.* 63/1996.]

PART IV

Sampling and Analysis

Sampling procedure

15.—(1) The manner of taking samples of farm feeds for the purpose of examination or analysis, in terms of section 12 of the Act, shall be in accordance with the provisions of this regulation.

(2) Where the farm feed is packed in containers, the samples shall be taken from different parts of the whole quantity by means of a sampling probe not less than one inch in diameter and if the quantity of farm feed—

(*a*) does not exceed three tonnes, from not less than two unopened containers per tonne or part thereof;

(*b*) exceeds three tonnes, from one additional unopened container for every additional tonne or part thereof:

Provided that in no case need samples be taken from more than twenty containers.

(3) Where the farm feed is not packed in containers, not less than two samples per ton or part thereof shall be taken from different parts of the whole quantity by means of a sampling

probe or by such other means as will ensure as far as practicable, the taking of a representative sample:

Provided that in all, not less than six samples shall be taken, but not more than fifty samples need be taken.

(4) Where farm feed consists of material that cannot be satisfactorily sampled with a sampling probe, portions shall be taken by some other suitable means from the selected containers or, if it is not in containers, from different parts of the farm feed.

(5) The several quantities taken for sampling in terms of this regulation shall, after any matted portions have been torn up, be thoroughly mixed together and reduced to a sample approximately six pounds in weight which shall then be used for analysis.

Sampling and analysis at the request of a purchaser

16.—(1) The purchaser of a farm feed may request an inspector or authorized officer to sample the farm feed in the manner prescribed in regulation 15.

(2) The fee for the analysis of a sample at the request of a purchaser shall be—

(*a*) in the case of a farmer, three Kwacha for the determination of a constituent with a maximum charge of ten Kwacha for any one sample;

(*b*) in the case of any other person, five Kwacha for the determination of a constituent with a maximum charge of twenty Kwacha for any one sample.

Certificate of sampling

17. A certificate on form F.F. 3 shall be issued for each sample taken and shall be issued at the time of sampling in triplicate, the original to be retained by the supplier, the duplicate to be attached to the sample, and the triplicate retained by the authorized officer taking the sample.

Certificate of analysis

18. The analyst to whom a sample of farm feed has been submitted shall state the results of the analysis of form F.F. 4.

Limits of variations G.N. 63/1996

19.—(1) A farm feed shall be deemed to comply with the provisions of these Regulations if upon analysis, the composition is found not to differ from the composition by more than the variations set out in the Fourth Schedule.

G.N. 63/1996

(2) Where no limit of variation is prescribed in the Fourth Schedule, the accepted variation shall be within one-tenth more or less than the stated amount.

Methods of analysis

20. The methods of analysing farm feeds for the purposes of the Act shall be those set out in the Fifth Schedule.

PART V

General

Offences
G.N. 63/1996

21.—(1) No person shall—

(*a*) add to or remove from any farm feed any substance or portion so as to alter its composition or formulation with the intention that the farm feed so treated may be sold under its name in the altered state; or

(*b*) knowingly sell any farm feed under its name but altered in composition or formulation.

(2) No person shall use any figures or numerals on any label or inscription upon a container save as is otherwise provided in these Regulations. G.N. 63/1996

FIRST SCHEDULE

PRESCRIBED FORMS

G.N. 63/1996

[Forms *F.F.* 1 and *F.F.* 2 *deleted by G.N.* 63/1996.]

Form F.F. 3

FERTILIZERS, FARM FEEDS AND REMEDIES ACT

(Cap. 67:04) reg. 17

CERTIFICATE OF SAMPLING

(*To be completed in triplicate*)

I hereby certify that the accompanying are samples of ..... taken by me on (date) ..... at (*full address*) .....
.....
from stock in charge of ..... in the presence of .....
(*state full name and address of witness*)

The following further particulars are given in connexion with the samples:

Samples No.	*Brand*	*Name*	*Quantity represented by sample*
.....	.....	.....	.....
.....	.....	.....	.....
.....	.....	.....	.....
.....	.....	.....	.....
.....	.....	.....	.....
.....	.....	.....	.....
.....	.....	.....	.....

Other particulars .....

.....

.....

.....

....

Signature of Witness *Authorized Officer*

Place .....

Date .....

NOTE—A copy of this certificate shall be handed to the grower or seller or to his agent. The second copy shall be forwarded to the analyst and the third copy shall be retained by the authorized officer.

FORM F.F. 4

FERTILIZERS, FARM FEEDS AND REMEDIES ACT

(CAP. 67:04) reg. 18

CERTIFICATE OF ANALYSIS OF FARM FEED

(*To be completed in triplicate*)

I hereby certify that I received on the ..... day of .....20.....from .... a sample of

Brand	*Name of Farm Feed*	*Sampled at*	*Sample No.*	*Laboratory No.*

ANALYTICAL REPORT

		Actual Analysis	*Registered Analysis*
Crude protein (nitrogen × 6.25)	. .	%	%
Protein equivalent	. .	%	%
Fat (ether extract)	. .	%	%
Crude fibre	. .	%	%
Calcium (Ca)	. .	%	%
Phosphorus (P)	. .	%	%
.....		%	%
.....		%	%

NOTE—The data are reported on fresh/dry* weight basis.
* *delete whichever is not applicable.*

Observations .....

.....

Date ....
Analyst

SECOND SCHEDULE (regs. 5, 8 and 13)

FERTILIZERS, FARM FEEDS AND REMEDIES ACT G.N. 63/1996

(CAP. 67:04)

INFORMATION TO BE GIVEN ON CONTAINERS

PART I

Farm Feed	*Particulars to be given on containers*
1. Blood meal, dried yeast	The percentage of crude protein
2. Meat meal, maize germ meal and dried milk products	The percentages of crude protein and fat
3. Ground cereal grains, brewers grains, cereal grain by-product not mentioned in this Schedule and fruit and citrus pulp and lucerne (alfalfa) meal	The percentages of crude protein and crude fibre
4. Ground oilseeds, oilcakes and meals, hominy chop, rice bran, beans and peas	The percentages of crude protein, fat and crude fibre
5. Molasses	The percentage of sugar (both reducing and non-reducing forms of sugar expressed as sucrose)
6. Molasses feeds	The percentages of sugar (both reducing and non-reducing forms of sugar expressed as sucrose) and crude fibre
7. Fish meal and whale meal	The percentages of crude protein, fat, calcium (expressed as Ca), phosphorus (expressed as P) and salt (expressed as NaCl)
8. Meat and bone meal, bone meal	The percentages of crude protein, fat, calcium (expressed as Ca) and phosphorus (expressed as P)
9. Mineral feeds	The maximum and minimum percentages of the principal constituents (expressed in the elemental form except for common salt, which shall be expressed as NaCl).

SECOND SCHEDULE

FERTILIZERS, FARM FEEDS AND REMEDIES ACT

(Cap. 67:04)

G.N. 63/1996

PART II

Farm Feed	*Particulars to be given on containers*
1. Mixed feeds for sheep and cattle	The percentages of crude protein and crude fibre and where a farm feed contains: (*a*) Urea or biuret, the percentage of protein equivalent which shall be stated next to the percentage of crude protein, and (*b*) Antibiotics or drugs, such statement as the registering officer may require.
2. Mixed feeds for poultry ..	The percentages of crude protein, crude fibre, calcium (Ca), phosphorus (P) and where a farm feed contains antibiotics or drugs such statement as the registering officer may require.
3. Other mixed feeds not mentioned in this Schedule	The percentages of crude protein and crude fibre and where a farm feed contains antibiotics or drugs such statement as the registering officer may require.

Note—The percentages of crude protein, protein equivalent, crude fibre, calcium, phosphorus and salt shall be stated to the first decimal place.

THIRD SCHEDULE (reg. 7)

FERTILIZERS, FARM FEEDS AND REMEDIES ACT

(Cap. 67:04)

SPECIFICATIONS

Farm feed or ingredient	*Specification*
1. Blood meal	Ground, sterilized, artificially dried blood containing not less than 80 per centum crude protein and not more than 15 per centum moisture.

Farm feed or ingredient	*Specification*
2. Hominy chop	A mixture of maize bran, maize germ and some of the starchy part and containing not less than 4 per centum ether extract (fat) and not more than 14 per centum fibre.
3. Meat and bone meal	Ground, sterilized, artificially dried meat and bone containing not less than 50 per centum crude protein and not more than 11 per centum ether extract (fat). An antioxydent should be added.
4. Rice bran	Ground, containing not more than 2 1/2 per centum of outer husk and with not less than 11 per centum crude protein and not more than 11 per centum crude fibre.
5. Groundnut cake meal	Containing not less than 40 per centum crude protein and not more than 8 per centum crude fibre, and not more than 7 per centum fat.

FOURTH SCHEDULE (reg. 19)

FERTILIZERS, FARM FEEDS AND REMEDIES ACT G.N. 63/1996

(CAP. 67:04)

LIMITS OF VARIATION

Farm Feed	*Limit of Variation*
1. Blood Meal	Crude protein, not more than 1/10th of the registered percentage above or 1/20th of the registered percentage below the registered percentage.
2. Meat and bone meal	Crude protein, not more than 1/6th of the registered percentage above or 1/20th of the registered percentage below the registered percentage. Fat, not more than 1/8th of the registered percentage above or below the registered percentage. Calcium and phosphorus, not more than 1/5th of the registered percentage above or below the registered percentage.
3. Ground cereal grains, brewers grains, cereal grain by-products not mentioned elsewhere in this Schedule, dried fruit and citrus pulp and lucerne	Crude protein, not more than 1/6th of the registered percentage above or 1/20th of the registered percentage below the registered percentage. Crude fibre, not more than 1/8th of the registered percentage above or 1/4th of the registered percentage below the registered percentage.

L.R.O. 1/2000

	Farm Feed	*Limit of Variation*
4.	Farm feeds including compounded feeds not mentioned elsewhere in this Schedule.	Crude protein, not more than 1/6th of the registered percentage above or 1/20th of the registered percentage below the registered percentage. Crude fibre, not more than 1/8th of the registered percentage above or 1/4th of the registered percentage below the registered percentage. Fat, not more than 1/8th of the registered percentage above or below the registered percentage with a maximum of 1 per centum. Calcium and phosphorus, not more than 1/10th of the registered percentage above or below the registered percentage with a minimum of 0.2 per centum Ca or P and a maximum of 1 per centum Ca or P Salt, not more than 0.5 per centum NaCl above the registered percentage, provided that in feeds for pigs and poultry the salt content of the feed when prepared according to the instructions of the manufacturer shall not exceed 1 per centum NaCl.

G.N. 63/1996 NOTE—Where no limit of variation is stated, the variation allowed shall be within 1/10th more or less of the stated amount.

FIFTH SCHEDULE (reg. 20)

METHODS OF ANALYSIS

PREPARATION OF THE SAMPLE FOR ANALYSIS

1.—(1) If the sample contains any extraneous matter of material than cannot be conveniently ground, weigh the whole sample, remove and weigh the extraneous matter or material, and allow for the portion removed in calculating the results of analysis.

(2) Where the sample is in a fine condition and passes a sieve having apertures one millimetre square, mix the sample thoroughly.

(3) Where the sample is in a coarse condition or contains larger pieces of material, grind so that the whole sample passes a sieve having apertures one millimetre square.

(4) Where the sample is too moist to be ground in its original condition, mix the sample thoroughly and remove a portion for a moisture determination. Dry the remaining portion at 100°C, or at a specified lower temperature for material which may deteriorate or decompose at 100°C.

Express the results of analysis of the dried samples in terms of the sample as received.

(5) Where the sample is of such a nature that it cannot be conveniently ground, mix the sample thoroughly.

(6) Store an approximately 250 g portion of the prepared sample in a non-corrodible container with an air-tight closure.

DETERMINATION OF MOISTURE

2. Weigh to the nearest milligramme about 5 g of the sample, heat at 100°C for 2 to 3 hours, cool in a desiccator and weigh. Reheat for another hour, cool and reweigh. If the difference in weight exceeds 2 mg continue the heating and cooling procedure until a weight constant within 2 mg is attained. Calculate the total loss of weight as a percentage of the original weight and regard as moisture.

DETERMINATION OF TOTAL NITROGEN AND CRUDE PROTEIN

3.—(1) *Apparatus*:

1. Kjeldahl flasks (100 or 200 ml)
2. Volumetric flasks (50 ml)
3. Conical flasks (100 ml)
4. Microburette
5. Pipettes
6. Markhan still

(2) *Reagents:*

Mixed catalyst: Grind and mix together—

160 g anhydrous potassium sulphate (K_2SO_4) or sodium sulphate (Na_2SO_4)

10 g cupric sulphate ($CuSO_4 . 5H_2O$)

3 g selenium powder (Se).

Sodium hydroxide (NaOH): 46 per cent aqueous solution.

Boric acid (H_3BO_3): 2 per cent aqueous solution dissolved in boiling water.

Mixed indicator: 3 parts 0.1 per cent brom-cresol green in 90 per cent ethanol plus 2 parts 0.1 per cent methyl red in 90 per cent ethanol.

N/70 *hydrochloric acid* (HCl): 1.23 ml AR concentrated hydrochloric acid/litre standardize against a standard NaOH solution.

AR concentrated sulphuric acid (H_2SO_4): (Nitrogen-free preferably).

(3) *Procedure*—

(*a*) *Digestion* (*Extraction*)

To 1 g accurately weighed sample placed in a Kjeldahl flask add approximately 1.7 g mixed catalyst, 1.5 ml water and 12 ml concentrated sulphuric acid (N-free). Swirl to mix well and stand for 15–20 minutes.

Digest on the Kjeldahl digestion unit in the fume chamber, applying gentle heat for about 10 minutes first, with frequent swirling of the flask to prevent frothing, then heating strongly with occasional swirling, until a clear pale green extract is obtained. Then digest for a

further 1 hour after this change. (N.B.—Total heating time should not exceed 2 hours, to avoid loss of ammonia.)

Cool the flask and then add 10–15 ml water, shake and cool. When cool, transfer to a 50 ml volumetric flask through a funnel, washing the Kjeldahl flask several times into the volumetric flask using several small quantities of water. Make up to the mark.

In this extract:

1 ml = 0.02 g original sample.

(*b*) *Distillation*

Pipette a 2 ml aliquot (= 0.04 g sample) of the above extract into a Markham still and add 10 ml 46 per cent sodium hydroxide solution through the funnel with the funnel plug in position. Then lift the funnel plug and allow most, but not all, of the sodium hydroxide solution to pass into the still.

Wash the funnel with 5–10 ml. water, letting most, but not all, of it run into the still. (N.B.—Volume of 46 per cent. sodium hydroxide solution require=4/5 volume of concentrated sulphuric acid used, approximately.)

Steam distil, collecting liberated ammonia in a 100 ml. conical flask containing 5 ml. 2 per cent. boric acid to which 5–6 drops mixed indicator have been added. Distil till the wine-red colour of the solution in the conical flask flashes to green. Ensure the tip of the delivery tube of the condenser is dipping in boric acid from the start of distillation until 1 minute after the solution turns green. Continue distilling for a further 1 minute after this change, but with the tube above the solution in the conical flask, then wash the tip of the delivery tube into the conical flask, using a wash bottle of distilled water. (Rate of distillation should be at least 5 ml./Minute.)

Notes on Distillation

(i) Should the alkaline mixture run over into the condenser during distillation, dismantle the apparatus and wash thoroughly before steaming out.

(ii) At the start of each day's distillation, pass steam through the apparatus for several minutes, collecting the distillate in boric acid and titrating it, to ensure that the Markham still is free from ammonia and/or sodium hydroxide contamination.

(*c*) *Titration*

Titrate the recovered ammonia with N/70 hydrochloric acid from a microburette until the colour changes from green to the original wine red (or pink).

Correct the burette readings by subtracting a reagent blank reading determined as above but with the farm feed material omitted.

Calculation—

Since 2 ml. aliquot of extract taken= 0.04 g. material
and 1 ml. N/70 hydrochloric acid = 0.1 mg. nitrogen,

then $$\% \text{ N} = \frac{\text{Corrected mls. of N/70 HCl used}}{2}$$

To obtain percentage of crude protein, multiply percentage of nitrogen 6.25.

DETERMINATION OF PROTEIN EQUIVALENT

4.—(1) *Reagents to be used—*

Urease solution

(*a*) To standardize the urease, determine its alkalinity by dissolving 0.1 g. in 50 ml. of water and titrating with standard N/10 hydrochloric acid, using methyl-red indicator. Then prepare a neutralized 1 per cent. solution of urease and add different quantities of the solution to 0.1 g. portions of pure urea and proceed with the enzymatic digestion and distillation as described in the procedure at 4 (2) below.

(*b*) To prepare the urease solution for the actual determination, dissolve urease in water in such a proportion that 10 ml. of the neutralized solution will convert at least 0.1 g. of pure urea under the conditions described below.

The solution must be freshly prepared for each determination.

Magnesium oxide

25 per cent. calcium chloride solution

Defoaming solution—Dissolve 50 g. of diglycol stearate in 375 ml. of benzine, 75 ml. of alcohol and 250 ml. of dibutyl phthalate, warming if necessary.

N/10 hydrochloric or sulphuric acid

N/10 sodium hydroxide solution

Methyl-red indicator—screened or unscreened

4.—(2) *Procedure*—

Weigh to the nearest milligramme about 1 g. of the sample and transfer to a Kjeldahl flask. Add 250 ml. of water and 10 ml. of urease solution and stopper tightly. Allow the digestion to proceed for one hour with occasional shaking.

Remove the stopper, washing it and the neck of the flask with water, and add 2 g. of magnesium oxide, 1 ml. of 25 per cent. calcium chloride solution and 5 ml. of the defoaming solution or an effective amount of any other suitable nitrogen-free, defoaming agent.

Connect to a distillation apparatus and distil into an appropriate volume of N/10 acid until 100 ml. of the distillate has passed over.

Titrate the excess of acid with N/10 sodium hydroxide solution using methyl-red indicator.

Carry out a blank determination on all reagents.

Express the result in terms of protein equivalent.

1 ml. N/10 acid=0.00875 g. protein equivalent.

DETERMINATION OF FAT AND OIL (ETHER EXTRACT)

5.—(1) *Apparatus*:

1. Soxhlet extraction apparatus (Quickfit).
2. Heating mantles (electrothermal extraction unit).
3. Whatman extraction thimbles (single layer thickness).
4. Filter paper (11.0 cm. or 12.5 cm. Whatman No. 1).
5. Razor blade.

(2) *Reagents*:

1. Petroleum ether (boiling range 80°C–100°C) or benzine (repurified).
2. Washed sand—wash with distilled water and heat in the muffle furnace at 500°C for several hours, then wash again and dry.

OIL

(3) *Procedure*:

(*a*) *Preparation*

If the sample is oil seeds (e.g. groundnuts), first determine the moisture content on, say, 15 g. of the sample, drying the

sample in an oven at 98°C for at least 4 hours (preferably overnight). Then remove the testa and weigh it separately to determine % of testa. Note the weight of total dry kernel. Cut up a proportion of the dry kernel into thin slices, using a sharp razor blade and proceed as follows—

(*b*) *Extraction*

In duplicate weigh to the nearest mg. about 2.5 g. of the sliced sub-sample (or otherwise homogeneously prepared sample) and carefully wrap it in folded Whatman No. 1 filter paper. Place in a labelled (use lead pencil) extraction thimble and plug the thimble with oil-free cotton wool. Place in a soxhlet extractor.

One-quarter fill the extractor and two-thirds fill the labelled extraction flask with petroleum ether (or benzine) and extract the oil for 6 hours on an electrothermal extract unit, setting the apparatus so that it siphons once every 4–5 minutes.

Cool, dismantle the apparatus, remove the filter paper from the thimble and dry it in the oven at 98°C for about 30 minutes. Place the dried sample residue in a mortar and grind to a fine consistency with about 2 to 3 g. clean sand. Wrap in the same filter paper and return to the original thimble, plug, replace in the extractor and continue extraction for a further 2 hours.

(*c*) *Recovery of extractant*

After cooling, remove the thimble, pouring all the extractant into the extraction flask. Place on the heating mantles again and allow to siphon twice. Then proceed to recover the extractant by distillation until about 20 ml. of solution remains in the extraction flask. Allow to cool.

(*d*) *Drying of extract*

Dismantle the extraction apparatus and place the flask in the oven for 1 hour at 100°C to volatilize all remaining extractant. Cool in a desiccator and weigh. Repeat oven drying, cooling and weighing until the weight is constant. (Note: weight of flask + oil + residue (impurities) = w_1.)

Remove the oil by dissolving in hot petroleum ether or benzine and decanting, leaving any residual impurities in the extraction flask. Wash similarly twice till all the oil is removed. Dry the flask + residue at 100°C for 30 minutes, cool and weigh (=w_2).

Calculation

(i) Per cent. oil in dry kernel = $\dfrac{w_1 - w_2}{\text{weight of sample taken}} \times 100$

(ii) To find % oil at a given % moisture content—

$$\%\text{Oil} = \frac{(100 - a)\,yz}{(100 - \text{m})\,x}$$

where a = given % moisture content at which the oil content is to be expressed

m = % moisture on whole nut as determined in the laboratory

x = weight of whole nut taken before drying

y = weight of kernel (i.e. weight of whole nut-weight of testa)

z = % oil in dry kernel

e.g. at 6% *moisture content*—

$$\%\text{Oil} = \frac{(100—6)\,yz}{(100—\text{m})\,x}$$

$$\%\text{Oil} = \frac{94yz}{(100—\text{m})\,x}$$

ETHER EXTRACT (OR RESIN)

(4) *Procedure*—

If the sample is other than oil seeds (e.g. maize flour, etc.) accurately weigh about 2.5 g. sample and proceed to extract it as described above but using a previously cleaned, dried and weighed extraction flask.

After drying the extract to constant weight, obtain the weight of the ether extract by subtracting the weight of the flask from the weight of the flask+extract. In other words, re-dissolution of the extract in petroleum, ether or benzine is unnecessary as the empty flask is weighed at the beginning instead of at the end of the procedure.

DETERMINATION OF CRUDE FIBRE

6.—(1) *Reagents to be used*—

1.25% *Sulphuric acid*—Prepare a sulphuric acid solution of 0.2555 normality.

1.25% *sodium hydroxide solution*—Prepare a solution containing 1.25 g.

per litre of sodium hydroxide.

1% *hydrochloric acid.*

Ethyl alcohol (95%v/v).

(2) *Procedure*—

Weigh to the nearest milligramme about 2 g. of the sample and extract the bulk of the fat. (The residue from the ether extract determination may be used.)

Transfer to a conical flask of such dimensions that 200 ml. of liquid will form a layer 1-1½ inches deep.

Heat to boiling 200 ml. of 1.25% sulphuric acid and add to the flask. Connect the flask to a reflux condenser and bring the contents of the flask to boiling within one minute, then boil gently and continuously

for 30 minutes. The contents of the flask should be rotated at 5-minute intervals during the boiling period. Care should be taken to ensure that no material is out of contact with the boiling liquid.

At the end of 30 minutes immediately filter with suction through a Whatman No. 541 filter-paper supported on a pre-warmed Hartley funnel or through an equivalent filtering system. The time of filtration for the 200 ml. of liquid should not exceed 10 minutes. Wash the residue with boiling water until the washings are no longer acid.

Heat to boiling 200 ml. of 1.25% sodium hydroxide solution and with this wash the residue back into the original conical flask.

Boil for 30 minutes observing the precautions stated for the acid treatment.

At the end of 30 minutes, immediately filter with suction through a suitable filtercrucible. Wash the residue once with boiling water, then with hot 1 per cent. hydrochloric acid, and then again with boiling water until the washings are no longer acid. Finally, wash three times with ethyl alcohol.

Dry the crucible and residue for 2 hours at 100°C, cool and weigh. Ignite, until free from carbonaceous material, at a temperature not exceeding 600°C, cool and weigh.

Express the loss in weight on ignition of the dried residue as a percentage of the original sample weight.

DETERMINATION OF CALCIUM

(A titrimetric method using versenate (EDTA))

7.—(1) *Apparatus:*

1. Evaporating basins (silica)
2. Hotplate
3. Filtration apparatus, using 12.5 cm. Whatman No. 2 paper
4. Volumetric flasks (100 ml.)
5. Conical flasks (100 ml. and 250 ml.)
6. Policeman (rubber ended glass rod)
7. Pipette
8. Burettes and microburette (5 ml. 10 ml.)
9. Measuring cylinder (25 ml.)

(2) *Reagents:*

1:1 *hydrochloric acid:* Dilute a quantity of concentrated HC1 with an equal quantity of distilled water

4.5% *hydroxylamine hydrochloride* in ethanol

2% *sodium cynide* in water

N/50 versenate solution: Dissolve 3.72 g. disodium *ethylenediamine tetra-acetate* (EDTA) and make up to 1 litre with distilled water.

Standardize this solution at least once a month against N/50 calcium chloride solution (1.001 g. AR 105°C dried calcium carbonate dissolved

in approximately 250 ml. water containing 5 ml. AR concentrated hydrochloric acid, boiled, cooled and made up to 1 litre with water to give a .02N calcium chloride solution).

HSN (2-hydroxy-1-(2-hydroxy-4-sulpho-1-naphthyl-azo)3-naphthoic acid) indicator:

100 g. sodium sulphate (anhydrous)

1 g. HSN indicator

Mix thoroughly in a mortar

Potassium hydroxide (KOH): 10% aqueous solution

Ammonium hydroxide—ammonium chloride buffer solution (pH 10): Dissolve 67.5 g. ammonium chloride in some water. Add 570 ml. concentrated ammonium hydroxide and make up to 1 litre with distilled water.

Sodium diethyldithiocarbamate: 0.3 % solution in water.

(3) *Procedure—*

(*a*) *Extraction*

Place an accurately weighed 2 g. sample in a silica evaporating basin and ignite in the muffle furnace at 500°C until a uniformly whitish grey ash is obtained (approximately 30 minutes). Cool and moisten the ash with a few drops of water. Then add 10 ml. 1:1 hydrochloric acid and carefully evaporate to dryness on a hotplate. Cool, then add in all a further 5 ml. 1:1 hydrochloric acid from a burette, breaking the ash and stirring with a policeman.

Transfer the contents into a 100 ml. volumetric flask through a funnel, using 12.5 cm Whatman No. 2 paper and washing with hot water. Cool and make up to the mark with distilled water.

(*b*) *Determination*

To a 5 ml. aliquot (=0.1 g. material) in 250 ml. connical flask:—20 ml. distilled water

1 ml. 0.3% sodium diethyldithiocarbamate

20 ml. 10% potassium hydroxide

1 ml. 2% sodium cyanide

1 ml. 4.5% hydroxylamine hydrochloride

a speck of HSN indicator

and titrate immediately against 0.02N EDTA contained in a microburette, swirling quickly and constantly, until the colour flashes to blue. Note the number of mls. of EDTA used. (N.B. On standing, the original purple colour quickly re-appears.)

Calculation

(i) 1 ml. 0.02N EDTA=0.0004008 g. calcium

let y be the number of mls. of EDTA used,

then % calcium $= \dfrac{y \times 0.004008 \times 100}{z}$

$= \dfrac{0.04008y}{z}$

where z = weight of original material equivalent to the aliquot taken (e.g. if 5 ml. aliquot is taken), then:

$$\% \text{ calcium} = \frac{y \times 0.0004008 \times 100}{0.1}$$

$$= 0.4008y$$

(ii) to convert % calcium to % calcium oxide:

$$\% \text{ calcium oxide} = \% \text{ calcium} \times 1.40$$

$$\% \text{ calcium oxide} = \frac{1.40 \times 0.04008y}{z}$$

DETERMINATION OF PHOSPHORUS

(A colorimetric method)

8.—(1) *Apparatus:*

1. Evaporation basins
2. Muffle furnace
3. Hotplate with sand bath, or water bath
4. Filtration apparatus using 12.5 cm. Whatman No. 2 or No. 1 paper
5. Volumetric flasks (100 ml. and 50 ml.)
6. Policeman
7. Pipette (2 ml.)
8. Burette and microburette
9. Absorptiometer

(2) *Reagents:*

50% HC1 v/v aqueous solution

Ammonium molybdate (1.5 per cent. ammonium molybdate in 3.5N hydrochloric acid)

Dissolve 15 g. (NH4)6Mo7O24.4H2O in about 300 ml. water warmed to 50°C (filter if necessary). Cool, then slowly add 350 ml. concentrated hydrochloric acid, stirring rapidly. Cool and make up to 1 litre with water. Store in a brown glass-stoppered bottle; renew every 2 months.

Stannous chloride reagent: Dissolve 1.25 g. $SnCl_2.2H_2O$ in 5.6 ml. concentrated hydrochloric acid (warm slightly to dissolve if necessary). Cool and make up to 50 ml. with freshly boiled and cooled distilled water.

(3) *Procedure*

(*a*) *Extraction*

Place an accurately weighted 0.5 g. sample in an evaporating basin and ignite in a muffle furnace at 550°C until the ash is uniformly grey. Cool, then moisten with a few drops of distilled water. Add 10 ml. 50 per cent. hydrochloric acid, carefully swirling to mix, and evaporate on a hot plate (using a sand bath) to dryness. Remove, cool, then add 2.5 ml. 50 per cent. hydrochloric acid, triturate, add some hot water and

mix, using a policeman. Filter through 12.5 cm. Whatman No. 2 or No. 1 paper into a 100 ml. volumetric flask. Wash the basin several times with hot water, each time pouring the wash into the 100 ml. flask. Cool, make up to the mark, stopper and shake.

(*b*) *Determination*

Pipette a 2 ml. aliquot (=0.01 g. sample) into a 50 ml. volumetric flask. Add (using a burette) 10 ml. ammonium molybdate reagent and make up to the mark with water.

Finally add 0.25 ml. stannous chloride reagent from a microburette and mix thoroughly. Stand to permit full colour development and measure the colour intensity on the absorptiometer after 5 minutes, using Filter 70 and Cell 2 cm. (N.B. The Colour fades after 20 minutes.)

Calculation

$$\text{(i)}\ \%\ P = \frac{100y}{1{,}000{,}000z}$$

$$= \frac{y}{10{,}000z}$$

where y = parts per million from a calibration curve prepared as described below, z = weight of original material equivalent to the aliquot taken, e.g. where 2 ml. aliquot (=0.01 g. material) is taken, as in the case above procedure,

$$\text{(i)}\ \%\ P = \frac{\text{parts per million from graph} \times 100}{1{,}000{,}000 \times 0.01}$$

$$= \frac{\text{parts per million (p.p.m.)}}{100}$$

(4) *Calibration curve*

(*a*) Phosphorus stock solution: Dissolve 0.2195 g. 40°C dried analytical reagent grade potassium dihydrogen phosphate (KH_2PO_4) in about 400 ml. distilled water, add 25 ml, 7N sulphuric acid (H_2SO_4) mix, cool and make up to a litre with distilled water. The solution contains 50 parts per million phosphorus (i.e. 50 p.p.m. P)

(*b*) Phosphorus standard solutions: Prepare a 2 parts per million phosphorus per millilitre (2 p.p.m. P/ml.) solution by diluting solution (1) above 25 times (e.g. 10 ml. of solution (1) to 250 ml. with distilled water). Then, using this solution and the aliquots shown in column 1 below, prepare a series of calibration standards and proceed to develop the colours in 50 ml. volumetric flasks. Plot a graph connecting absorptiometer readings with parts per million phosphorus p.p.m. P) standard solutions.

Col. 1	Col. 2	Col. 3	Col. 4
Mls. 2 *p.p.m. solution taken*	*Concentration of final solution* (*p.p.m./ml.*)	*p.p.m.*/50 *ml.* (*for graph*)	*% Phosphorus*
1	.04	2	.02
2.5	.10	5	.05
5.0	.20	10	.10
10.0	.40	20	.20
15.0	.60	30	.30
20.0	.80	40	.40
25.0	1.00	50	.50
30.0	1.20	60	.60

DETERMINATION OF SODIUM CHLORIDE

9. (1) *Reagents to be used—*

Calcium oxide—Solid

Dilute nitric acid—Dilute 1 volume of concentrated nitric acid with 1 volume of water

Nitrobenzine—Analytical reagent grade

N/10 silver nitrate solution

N/10 potassium or ammonium thiocyanate solution

Ferric alum indicator solution—Prepare a saturated solution of ferric ammonium sulphate and add a small quantity of dilute nitric acid.

(2) *Procedure—*

Weigh to the nearest milligramme 4 g. of the sample into a dish, mix with 1 g. of finely divided calcium oxide and sufficient water to give a thin paste. Dry the mixture carefully and ignite at a temperature not exceeding 550°C until all organic matter is destroyed.

Cool, moisten with a little water and dissolve the ash in 25 ml. of dilute nitric acid.

Filter and wash into a 250 ml. conical flask and dilute with water to 150 ml. When cool, add an excess of N/10 silver nitrate, 2–3 ml. of nitro-benzine and 1 ml. of ferric alum indicator. Shake vigorously to coagulate the precipitate. Titrate the residual silver nitrate with N/10 potassium or ammonium thiocyanate solution until a faint redish-brown colour persists.

1 ml. N/10 silver nitrate=5.845 mgm. NaCl.

DETERMINATION OF SUGAR

10. (1) *Reagents to be used—*

Potassium oxalate solution—Dissolve 50 g. of potassium oxalate in water and dilute to 1 litre

Zinc acetate solution—Dissolve 219 g. of crystallized zinc acetate and 30 ml. of glacial acetic acid in water and dilute to 1 litre.

Potassium ferrocyanide solution—Dissolve 106 g. of crystallized potassium ferrocyanide in water and dilute to 1 litre.

N hydrochloric acid

Phenolphthalein indicator solution—Dissolve 250 mg. of phenolphthalein in 150 ml. of ethyl alcohol and dilute with 250 ml. of water.

10 per cent. sodium hydroxide solution—Dissolve 100 g. of sodium hydroxide in water and dilute to 1 litre.

Fehling's solution—Mix equal volumes of a solution of copper sulphate and a solution of sodium potassium tartrate prepared as follows—

Copper sulphate solution—Dissolve 69.28 g. of copper sulphate ($CuSO_4.5H_2O$) in water and dilute to 1 litre.

Sodium potassium tartrate solution—Dissolve 346 g. of sodium potassium tartrate and 100 g. of sodium hydroxide in water and dilute to 1 litre.

Note: The strength of the Fehling's solution should be such that 10 ml. is equivalent to 0.0525 g. of invert sugar. It should be checked or standardized by titrating with a solution of pure sucrose as follows—

Dissolve 2.375 g. sucrose (dried at 100°C) in about 100 ml. of water in a 300 ml. beaker, add 15 ml. of N hydrochloric acid and add sufficient water to give a volume of 150 ml. Heat to boiling point, boil for 2 minutes, cool, add 2 or 3 drops of phenolphthalein solution, just neutralize with 10 per cent. sodium hydroxide solution, transfer to a 500 ml. volumetric flask and dilute to 500 ml. Then follow the procedure described in paragraph 10 (2) (*b*) (iii). 1 ml. of this sucrose solution=0.00475 g. sucrose=0.0050 g. invert sugar.

Methylene blue solution—Dissolve 2.5 g. of methylene blue in water and dilute to 250 ml.

(2) *Procedure*—

(*a*) *Preparation of the sample*

(i) When the substance is in solid form—weigh to the nearest 10 mg. about 20 g. of the sample or a sufficient quantity to contain about 2 g. of sugar. Grind in a mortar with hot water (temperature not to exceed 60°C) and transfer with the aid of water to a 250 ml. beaker using in all about 120 ml. of water. Stir well and decant through muslin into a 250 ml. volumetric flask, allowing to drain until the liquid is substantially removed, and then squeeze the residue on the muslin. Return the residue to the beaker, add about 50 ml. of water, mix, and decant through the muslin into the volumetric flask, again squeezing the residue after draining. Repeat

this treatment with a further 50 ml of water, and finally squeeze the residue on the muslin. Add 5 ml of potassium oxalate solution to the contents of the volumetric flask followed by 5 ml of zinc acetate solution, mix well and then add 5 ml of potassium ferrocyanide solution, dilute to 250 ml, mix well and filter. Determine the sugar in 50 ml of the filtrate by the method described in paragraph (*b*) below.

(ii) When the substance is in liquid form—weigh to the nearest milligramme about 5 g of the sample and wash with water into a 250 ml volumetric flask using about 200 ml of water. To clear the solution add 5 ml of zinc acetate solution. Mix, then add 5 ml of potassium ferrocyanide solution, again mix dilute to 250 ml, mix and filter. Determine the sugar in 25 ml of filtrate by the method described in paragraph (*b*) immediately below.

(*a*) *Determination of the sugar content*

(i) Inversion of the sucrose.

Transfer the measured volume of filtrate obtained as described in paragraph (1) (i) or paragraph (1) (ii) to a 300 ml beaker, add 15 ml of N hydrochloric acid, dilute to 150 ml with water, cover with a glass and heat to the boiling point. Continue to boil for 2 minutes, cool, add 2 or 3 drops of phenolphthalein indicator solution, just neutralize with 10 per cent sodium hydroxide solution, transfer to a 200 ml volumetric flask and dilute to 200 ml. Filter if necessary.

(ii) Preliminary estimation. (This estimation is usually necessary where the percentage of sugar is unknown.)

Transfer exactly 10 ml of Fehling's solution to a 250 ml conical flask and add 20 ml of water. Add from a burette approximately 10 ml of the filtrate prepared as described in paragraph (*b*) (i), heat to boiling point and boil briskly for 1 minute. Add 3 drops of methylene blue solution and titrate from the burette at the rate of 1 ml of the filtrate per 15 seconds until the blue colour is discharged, the contents of the flask being kept boiling throughout the titration. Note the total number of millilitres required and call this x ml. This titration should not be outside the range 15–40 ml, otherwise the determination should be repeated using a more appropriate initial volume of the filtrate.

(iii) Exact determination.

To 10 ml of Fehling's solution in a 250 ml conical flask add from a burette (x–1) ml of the filtrate prepared as described in paragraph (*b*) (i), together with sufficient water to make a total volume of 60 ml. Heat to boiling point, boil briskly for 1½ minutes and add 3 drops of methylene blue solution. Titrate from the burette at the rate of approximately 0.25 ml per 15 seconds until the blue colour is discharged, the contents of the flask being kept boiling briskly throughout the titration which must not take more than 1½ minutes. Then the total number of millilitres used in the determination equals the sugar equivalent of 10 ml of Fehling's solution.

Not more than 1 ml of filtrate should be required for the completion of the titration. If more than 1 ml is required, then the determination should be repeated using a more closely calculated volume or

filtrate for the original addition. The time taken from the initial boiling point until the end of the titration should be about 3 minutes. If this time is exceeded by more than 20 seconds, the titration should be repeated.

10 ml Fehling's solution=0.525 g invert sugar. The total copper reducing power should finally be expressed in terms of sucrose ($C_{12}H_{22}O_{11}$).

G.N. 94/1989

FERTILIZERS, FARM FEEDS AND REMEDIES (REMEDIES) REGULATIONS

under s. 16

ARRANGEMENT OF REGULATIONS

REGULATION

1. Citation
2. Interpretation
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6. Approval of brands
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First Schedule
Second Schedule
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Citation

1. These Regulations may be cited as the Fertilizer, Farm Feeds and Remedies (Remedies) Regulations.

Interpretation

2. In these Regulations—

"active ingredient" means the substance in a remedy which—

(*a*) prevents the establishment of, controls or destroys undesirable plants, insects or animals, or which prevents or cures a disease, infection or infestation or other unhealthy condition of a plant or a product derived therefrom; or

(*b*) stimulates or retards the rate of plant growth;

"common name" means the name assigned to the pesticide active ingredient as being internationally recognized as the common or genetic name of the active ingredient;

"experimental remedy" means a chemical to be assessed in Malaŵi for primary biological activity, and not available to the public as a remedy;

"label" means the written, or graphic matter on, or attached to, a pesticide or the immediate container thereof and the outside container or wrapper of the package of the pesticide;

"pest" means any form of plant or animal life or any pathogenic agent which is injurious or potentially injurious to plants or plant products;

"pesticide" means any substance or mixture of substances intended for preventing, destroying or controlling any pest including unwanted species of plants during the production, processing, storage, transport or marketing of food and agricultural commodities, and includes substances intended for use as a plant growth regulator, defoliant, desiccant or fruit and substances applied to crops either before or shortly after harvest to protect the commodity from deteriorating during storage, but does not include fertilizers or other plant nutrients and agents such as veterinary medicines and feed additives;

"recognized research institution" means a research institution recognized by the Minister as competent to carry out research into remedy use;

"register" means a book where all remedies are recorded as an indication that their use in Malaŵi is authorized;

"season" means a period in which the plant is to be protected by the remedy under conditions in which the plant is normally grown;

"similar environment" means an environment that closely resembles the environment in which the pesticide will be used;

"trade name" means the name under which the pesticide is sold;

Application for registration

3.—(1) Every application for registration of a remedy shall be submitted, in triplicate, to the registering officer on Form P.R. 1, set out in the First Schedule.

(2) Every application shall be accompanied with—

(*a*) three copies of the draft of the label which is intended for use on the container in which the remedy is to be sold; and

(*b*) any advertisement which is intended for immediate use in respect of such remedy if registration is successful; and

(*c*) two samples of the remedy, in an amount to be determined by the registering officer; and

(*d*) a registration fee of K150.

(3) The registering officer shall consider an application in respect of a remedy manufactured outside Malaŵi only if the application is submitted through a representative who is registered with the Ministry of Trade, Industry and Tourism and is licensed as an importer of remedies in Malaŵi.

(4) No application for registration shall be considered by the registering officer unless such application—

(*a*) complies with the Malaŵi Standards in current use, the specification against which the remedy is manufactured or any internationally recognized specification for that remedy formulation;

(*b*) complies with the requirements of these Regulations and any such requirements that may, from time to time, be prescribed; and

(*c*) contains adequate experimental data and information collected in Malaŵi or similar environment on the efficacy of the pesticide, its toxicity, persistence, intended use and such further information as may be required to determine whether the remedy is suitable for the purpose for which it is intended and to determine whether the use of the pesticide will be beneficial to the user and the country as a whole.

(5) The proprietary rights in the data and information referred to in subregulation 3 (4) (*c*) shall be duly protected.

Registration

4.—(1) The registering officer shall, when registering a remedy—

(*a*) issue a certificate of registration; and

(*b*) forward the certificate to the applicant.

(2) Registration shall not be complete unless a copy of the approved label or a fascimile thereof is received by the registering officer.

(3) A registration certificate issued under this regulation shall apply only to the remedy formulation to which the certificate relates.

(4) A remedy registered under this regulation shall not be altered in any way so as to change its formulation, composition or usage or in any other manner unless the registering officer so approves.

(5) Before the registering officer registers any remedy, he shall ensure that such a remedy has not been banned elsewhere, and that is registered in the country of origin.

Import of experimental remedy

5.—(1) No person, except an approved research institution, shall import into Malaŵi any experimental remedy unless he is authorized in writing on Form P.R. 3 set out in the Third Schedule, by the registering officer to do so. No details of the remedy need be given at this stage except name, active ingredient, toxicity, approximate quantity and intended use.

(2) Any person who imports an experimental remedy shall, not later than seven days after the arrival of the remedy in Malaŵi, complete in triplicate, and forward to the registering officer Form P.R. 4 set out in the Fourth Schedule, except that where an

experimental remedy is imported by an approved research institution, such an institution shall, at the discretion of the registering officer, only be required to supply the registering officer with the name or designation and intended experimentation of the experimental remedy using Form P.R. 6 set out in the Sixth Schedule.

(3) No experimental remedy shall be offered to any person other than a person approved by the registering officer to participate in the experimentation.

(4) In granting permission to import an experimental remedy under this regulation the registering officer shall issue a certificate in Form P.R. 5 set out in the Fifth Schedule within fourteen days after receipt of Form P.R. 4 and the registering officer may impose such conditions as may be necessary with regard to the experimentation with the remedy.

(5) It shall be a condition for the importation of experimental remedy that plants or products thereof treated with the experimental remedy shall not be sold or disposed of or consumed without the written authority of the registering officer.

(6) The experimental period shall be for a minimum of three seasons except where satisfactory proof is supplied that the remedy has been similarly tested and registered or approved in a similar environment, the Minister may reduce the period to one season.

(7) The label affixed to a container in which a remedy is imported for purposes other than sale shall be clearly marked with the words "FOR EXPERIMENTAL PURPOSES ONLY—NOT FOR SALE".

(8) A remedy imported into Malaŵi for re-export within a period of fourteen days while remaining in unopened original containers shall be subject to subregulation (1) and shall be exported within the said fourteen days and where repackaging will be done before re-export, such remedy shall be subject to subregulations (1), (2), (3) and (4), and shall be exported within a reasonable time as agreed upon with the registering officer.

Approval of brands

6.—(1) Subject to subregulation (2) the registering officer shall, before registering any brand, receive confirmation from the Registrar of Trade Marks, and satisfy himself that the name of the brand does not resemble the name of any other brand.

(2) A remedy shall not be registered under a brand if in the opinion of the registering officer the brand is—

(*a*) of an insufficiently distinctive nature; or

(*b*) so similar to a brand under which a remedy had already been registered as to be liable to be mistaken for the other brand; or

(*c*) of a quantity not complying with the specifications indicated on the label as specified in regulation 7 and such information shall be shown on certificate of analysis issued by the Malaŵi Bureau of Standards or any other institution recognized by the Minister; or

(*d*) misleading in any other way.

Labelling of containers

7.—(1) No person shall sell any remedy unless the label is securely affixed to the container and it is in the English language or, where the registering officer considers it appropriate, in the Chichewa language as well.

(2) The label, which shall be verbally and graphically identical in all respects to that approved by the registering officer under these regulations shall state—

(*a*) the name and address of the applicant;

(*b*) the company brand or symbol;

(*c*) the brand of the remedy;

(*d*) the registration number under which the remedy is registered, and the identity of each lot or batch of the product in numbers or letters that can be read, transcribed and communicated by anyone without the need for codes or other means of deciphering;

(*e*) the net quantity by weight or volume in the container;

(*f*) the common and trade names, and the percentage of active ingredient provided that such percentages and quantities of active and inert matter shall be verified by the Malaŵi Bureau of Standards or any other institution recognized by the Minister;

(*g*) the purpose for which the remedy has been registered;

(*h*) the directions for use of the remedy, the target pest, target crop, dosage, timing of treatment, safety period and any other similar information required by the registering officer;

(*i*) the precautionary measures to be observed in handling and using the remedy;

(*j*) the appropriate warning with regard to the poisonous nature of the remedy specified in this regulation;

(*k*) the symptoms of poisoning;

(*l*) the remedial treatment in the case of poisoning where applicable;

(*m*) the date of manufacture and shelf life of the pesticide;

(*n*) a warning against the re-use of containers and instructions for the safe disposal or decontamination of empty containers; and

(*o*) any other information which the registering officer may approve or consider to be necessary.

(3) Remedies which are transported to premises where they are further to be processed or packed for the retail trade shall be clearly marked with the particulars specified under this regulation.

(4) A symbol shall be printed on, or securely affixed to, the label in a colour approved by the registering officer and such symbol shall occupy an area of not less than one-twentieth of the area of the label.

(5) The symbol of approved colour shall be located on the label in a position equi-distant from the two vertical sides and be delienated from the rest of the label by a black border to emphasize the approved colour.

(6) The symbol of approved colour shall be—

(*a*) a triangle to denote marketing for agricultural use; and

(*b*) a circle to denote marketing for stored products use.

(7) A symbol specified in subregulation (6) may be superimposed where the uses and marketing thereof are found to be the same or where the remedy is used for both purposes.

(8) The colour coding of the symbols and warning shall be as specified in the Seventh Schedule.

(9) Within the symbol of approved colour, there shall be printed such information in the English language or, where the registering officer considers it appropriate, in the Chichewa language as well as the registering officer thinks necessary to denote toxicity or hazardous nature.

(10) Within the symbol of approved colour there shall be printed, the words "skull and cross-bones".

(11) Except with the permission of the registering officer, no label shall contain any information other than that provided for in this regulation.

(12) No label, approved by the registering officer, shall be altered without the written approval of the registering officer.

Containers

8.—(1) No remedy shall be sold, transported or stored unless the registering officer is satisfied that the container in which the remedy is to be packed is of sufficiently durable construction and material.

(2) A container which contains any combustible substance shall be of suitable material.

(3) Remedies which contain inflamable or volatile ingredients shall be packed in durable containers.

(4) No remedy shall be packed in a container that resembles a container of a consumable product.

Safety during use

9. Any user of a remedy shall, when using such a remedy, be required to take appropriate safety precautions and to facilitate in these precautions being taken—

(*a*) every label shall bear warning or precautionary statements advising the user on how to handle, use and apply the product with safety;

(*b*) in the case of very toxic remedies bearing a "red label"—

(i) persons selling such category of remedy to the public shall also stock appropriate safety clothing and equipment such as face masks and gloves;

(ii) all persons who use such remedy shall ensure that they wear appropriate protective clothes and apparatus when handling and using the remedy;

(iii) all persons who buy such remedies shall ensure that if they employ other people to handle and apply the remedy and they shall cause such employees to wear appropriate protective clothes and apparatus;

(iv) a person who sells remedies shall have a register in which he shall enter all the details of his transactions such as names of buyers and quantity of the remedy sold; and such a register shall be made available to the registering officer or his nominee on demand for inspection.

Sampling inspection and analysis

10.—(1) An inspector or any other officer charged with the collection of a remedy for the purposes of these Regulations shall collect a sample determined by an approved research institution.

(2) A sample of a remedy shall be analysed following methods prescribed from time to time by the Malaŵi Bureau of Standards or any other institution recognized by the Minister.

(3) A remedy shall be deemed to have complied with the provisions of these Regulations if, upon analysis, the composition is found to be in conformity with the declared percentages and quantities of ingredients referred to in regulation 7 (2) (*f*).

(4) The applicant may request an inspector or any authorized officer to collect samples from containers using approved sampling procedures and send such samples to the Malaŵi Bureau of Standards or any other institution recognized by the Minister for analysis.

(5) Sampling, inspection and analysis shall be conducted as need arises.

Prohibition

11. The Minister may, by General Notice in the *Gazette*, restrict or prohibit the use of a remedy specified in such notice and such restriction or prohibition may be either general or specific.

Savings

12. Upon the commencement of these Regulations—

(*a*) a remedy the registration of which was recommended upon the basis of whose recommendation was research work carried out in Malaŵi or similar environment prior to the commencement of these Regulations shall be automatically registered;

(*b*) any remedy for which there is insufficient data to support registration thereof, shall be treated as experimental remedy;

(*c*) where there is no data available concerning a remedy, no additional importations shall be permitted except as provided for in regulation 5.

Offences and penalties

13. Any person who fails to comply with the provisions of these Regulations shall be guilty of an offence and shall be liable to a fine of K200 or to imprisonment for a term of 6 months.

FIRST SCHEDULE

FORM P.R. 1

FERTILIZERS, FARM FEEDS AND REMEDIES ACT

(CAP. 67:04)

FERTILIZERS, FARM FEEDS AND REMEDIES (REMEDIES) REGULATIONS

APPLICATION FOR REGISTRATION OF A REMEDY

(UNDER REGULATION 3)

A. To be submitted to the registering officer, in triplicate.

1. Name of applicant: .....

2. Address of applicant:

(*a*) Postal: .....
.....
.....

(*b*) Business: .....
.....
.....

3. Type of remedy (fungicide, insecticide, etc.): .....
.....
.....

B. Information to be submitted with this application for all remedies for which registration is sought.

1. Brand name: .....

2. Full chemical name of each ingredient: .....
.....
.....

3. Common name of each active ingredient: .....
.....
.....

4. The empirical and structural formulae for each active ingredient: .....
.....
.....
.....

5. Proposed formulation: .....
.....
.....

6. Percentage of purity on a mass-by-mass or mass-by-volume basis (specify), of each active ingredient and other ingredients (including inert matter) in the remedy stating which method or percentage applies to each ingredient: .....
.....
.....

7. Physical and chemical properties of each ingredient with specific reference to type of formation: .....
.....
.....

8. Size of containers in which remedy is to be sold, and nett-weight: .....
.....
.....

9. Nature of containers in which remedy is to be sold: .....
.....
.....

10. Stability of formulation—

(*a*) on storage: .....
.....

(*b*) on dilution: .....
.....

(*c*) shelf life from date of manufacture: .....
.....

11. Corrossiveness of equipment: .....
.....

12. Phytotoxicity: .....
.....

13. Toxicology: .....

14. Safety precautions to be observed in handling, use and storage .....
.....
.....

15. Hazard to wild life: .....
.....
.....

16. Residue data: .....
.....
.....

17. Proposed use: .....
.....
.....
18. Directions for use: .....
.....
.....
19. Biological effectiveness and benefit in use: .....
.....
.....

I hereby apply for the registration, under the Fertilizers, Farm Feeds and Remedies (Remedies) Regulations, 1989, of the remedy of which particulars are given above, and I certify that these particulars are to the best of my knowledge, true and correct.

Date: ....
Signature of applicant and Official Stamp

NOTE: The detailed information required under these regulations or any other information that the registering officer requires must accompany the application. Any claims made for biological effectiveness and statements made respecting residues, etc., must be supported by detailed relevant experimental data.

SECOND SCHEDULE

FORM P.R. 2

FERTILIZERS, FARM FEEDS AND REMEDIES ACT

(CAP. 67:04)

FERTILIZERS, FARM FEEDS AND REMEDIES (REMEDIES) REGULATIONS

CERTIFICATE OF REGISTRATION OF A REMEDY

(UNDER REGULATION 3)

Number:

It is hereby—

(*a*) certified that the remedy referred to in Form P.R. 1 has been registered; and

(*b*) approval has been granted of the labels and advertisements copies of which are attached hereto, and which are to be used in connexion with the said remedy.

This registration expires on ..... and is subject to the following conditions: .....
.....
.....
.....
....
Date and Official Stamp *Registering Officer*

THIRD SCHEDULE

FORM P.R. 3

FERTILIZERS, FARM FEEDS AND REMEDIES ACT

(CAP. 67:04)

FERTILIZERS, FARM FEEDS AND REMEDIES (REMEDIES) REGULATIONS

APPLICATION FOR IMPORTATION OF A REMEDY TO BE USED ONLY FOR EXPERIMENTATION

(UNDER REGULATION 5)

To be submitted to the registering officer, in triplicate.

1. Name of applicant: .....
.....

2. Address of applicant—

(*a*) Postal: .....
.....

(*b*) Business: .....
.....

3. Type of remedy (fungicide, insecticide, etc.): .....
.....
.....

4. Active ingredient: .....
.....

5. (*a*) Oral LD 50 .....
.....

(*b*) Dermal LD 50 .....
.....

6. Brand name: .....
.....

7. Common name: .....
.....

8. Approximate quantity: .....
.....

9. Intended use: .....
.....
.....

10. Name of manufacturer: .....
.....
.....

11. Address of manufacturer: .....
.....
.....

12. Proposed use: .....
.....
.....

I hereby apply for importing, under the Fertilizers, Farm Feeds and Remedies (Remedies) Regulations, 1989, the remedy for experimental purposes particulars of which are given above.

Date: ....

Signature of Applicant and Official Stamp

For Official use only—
Date application received: .....
Experimental Registration Number: .....
.....
Your application to import .....
.....
..... has not been/been approved.
Reasons for non-approval .....
.....
.....
.....
.....
.....
.....
.....

FOURTH SCHEDULE

FORM P.R. 4

FERTILIZERS, FARM FEEDS AND REMEDIES ACT

(CAP. 67:04)

FERTILIZERS, FARM FEEDS AND REMEDIES (REMEDIES) REGULATIONS

APPLICATION FOR REGISTRATION OF A REMEDY TO BE USED ONLY FOR EXPERIMENTATION

(UNDER REGULATION 5)

Information to be submitted, in triplicate, to the registering officer in respect of experimental remedy.

1. Name of applicant: .....
2. Address of applicant—
   (*a*) Postal: .....
   .....
   (*b*) Business: .....
   .....
3. Name, code or number of remedy: .....
   .....
4. Type of remedy (fungicide, insecticide, etc.): .....
   .....
5. Chemical group: .....
   .....

6. Toxicological data, if available—
   (*a*) humans and animals: LD 50 oral (state type of animal), LD 50 dermal, LD 50 inhalation: .....
   (*b*) symptoms of poisoning: .....
   (*c*) first aid: .....
7. Weight or volume of remedy imported: .....
8. Suggested use: .....
9. Location of trials: .....
10. Plot size to be agreed: .....
11. Person conducting the trials: .....

Date: ....

Signature of applicant and Official Stamp

FIFTH SCHEDULE

FORM P.R. 5

FERTILIZERS, FARM FEEDS AND REMEDIES ACT

(CAP. 67:04)

FERTILIZERS, FARM FEEDS AND REMEDIES (REMEDIES) REGULATIONS

CERTIFICATE OF REGISTRATION OF A REMEDY TO BE USED ONLY FOR EXPERIMENTATION

(UNDER REGULATION5)

Number:

I hereby certify that the remedy .....has been registered for experimental purposes.

The registration number is: .....

The registration expires on: .....and is subject to the following conditions: .....
.....
.....
.....
.....
.....

Date: ....

Registering Officer and Official Stamp

SIXTH SCHEDULE

FORM P.R. 6

FERTILIZERS, FARM FEEDS AND REMEDIES ACT

(CAP. 67:04)

FERTILIZERS, FARM FEEDS AND REMEDIES (REMEDIES) REGULATIONS

FORM NOTIFICATION BY A RECOGNIZED RESEARCH INSTITUTE TO THE REGISTERING OFFICER FOR POSSESSION OF A REMEDY UNDER TEST

(UNDER REGULATION 5)

To be submitted to the registering officer, in triplicate.

1. Name of the research institute: .....
2. Address of the research institute—
   (*a*) Postal: .....
   .....
   (*b*) Business: .....
   .....
3. Type of remedy (fungicide, insecticide, etc.): .....
   .....
   .....
   .....
4. Registration number: .....
5. Brand name: .....
6. Common name: .....
   .....
7. Approximate quantity: .....
   .....
8. Proposed use: .....
   .....
   .....
   .....
   .....
   .....
   .....

Date: ....

Signature of Scientist and Official Stamp

SEVENTH SCHEDULE (reg. 7 (8)

Pesticide toxicity	*Symbol colour code*	*Warning*
Acute oral LD 50 up to mg/k	Red	Very dangerous poison
Acute dermal LD 50 up to 200 mg/kg	Red	Very dangerous poison
Acute inhalation LC 50 up to 200 mg/m^3	Red	Very dangerous poison
Acute oral LD 50 51–500 mg/kg	Purple	Dangerous poison
Acute dermal LD 50 201–2,000 mg/kg	Purple	Dangerous poison
Acute inhalation LD 50 201–2,000 mg/m^3	Purple	Dangerous poison
Acute oral LD 50 501–5,000 mg/kg	Amber	Poison
Acute dermal LD 50 2,001–20,000 mg/kg.	Amber	Poison
Acute inhalation LC 50 2,001–20,000 mg/m^3	Amber	Poison
Acute oral LD 50 greater than 5,000 mg/kg	Green	Harmful if swallowed
Acute dermal LD 50 greater than 20,000 mg/kg	Green	Harmful
Acute inhalation LC 50 greater than 20,000 mg/m^3. . . .	Green	Harmful

MILK AND MILK PRODUCTS

CHAPTER 67:05

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CHAPTER 67:05

MILK AND MILK PRODUCTS

ARRANGEMENT OF SECTIONS

SECTION
1. Short title
2. Interpretation
3. Power to make regulations
4. Establishment of dairy advisory committee
5. Establishment of national milk marketing board
6. Establishment of specialized bodies
7. Appointment of Inspectors, etc.

An Act to provide for the improvement and control of the production, processing and marketing of milk and milk products

43 of 1971
G.N. 161/1972
20 of 1986

[1st November, 1972]

1. This Act may be cited as the Milk and Milk Products Act. Short title

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

"milk" means exclusively the normal mammary secretion obtained from one or more milkings from cows and other bovines without either addition thereto or extraction therefrom;

"milk product" means any product exclusively derived from milk, such as butter, cheese, ghee, cream, dried milk or condensed milk, whether or not substances necessary for the manufacturing process but not intended to take the place in part or in whole of any milk constituent have been added thereto;

"premises" includes any building together with the land on which it is situated and the adjoining land used in connexion therewith, and includes any vehicle, conveyance or vessel;

"producer" means a person owning or having control of animals from which milk is obtained;

"sale" includes supplying milk under arrangements for free supply or in the course of any business otherwise than under such arrangements.

3.—(1) The Minister may make regulations for the better carrying out of the purposes of this Act, and without prejudice to the generality of the foregoing such regulations may make provision for— Power to make regulations

(*a*) prescribing grades for milk or any form of milk product, and minimum standards to which such milk or milk product shall conform, whether as a condition of importation or of exportation or of sale within Malaŵi;

(*b*) fixing the price to be paid for any grade or type of milk or milk product to producers, manufacturers, processors, distributors or sellers, with power to fix different prices on a basis of quota or for different seasons or circumstances;

(*c*) prescribing the manner of handling, transporting and storing of any milk product intended for the use of or consumption by any person other than the producer thereof;

(*d*) regulating and controlling the production, manufacture, processing, distribution or sale of any form of milk or milk product;

(*e*) imposing a levy or cess on any form of milk or milk product, or imposing different rates as between different forms of produce, or as between produce for export and produce for consumption in Malaŵi;

(*f*) prescribing the terms and form in which contracts for the sale of milk by producers, other than producers who sell direct to consumers, shall be made;

(*g*) providing for the creation and administration of schemes for die pooling of milk or milk products by producers in such area or areas as may be prescribed and for the distribution to producers of the proceeds of sale of such milk or milk products after deduction of such expenses as may be prescribed;

(*h*) controlling and regulating premises used in connexion with the production, manufacture, processing, distribution or sale of milk or milk products, including the design, standards, construction and maintenance of such premises;

(*i*) the inspection, examination, treatment and control of animals or stock feed used in connexion with the production of milk or milk products;

(*j*) requiring the registration and licensing, in such manner and upon payment of such fees as may be prescribed, of producers, manufacturers, processors, distributors and sellers of milk or milk products, and of any premises used by them;

(*k*) controlling or regulating the importation or exportation of milk or milk products;

(*l*) prescribing fees or charges for services rendered under this Act;

(*m*) requiring returns, reports and estimates to be furnished by producers, manufacturers, processors, distributors and sellers of milk and milk products;

(*n*) prescribing the forms of applications, and of licences, marks, registers and all other documents to be used for the purpose of this Act;

(*o*) prescribing the manner of marking articles intended for use in connexion with milk or milk products, including wrappers or packages intended to contain milk or milk products;

(*p*) prescribing the qualifications, powers and duties of inspectors and other persons appointed to exercise powers and perform duties under this Act, including the power to enter premises used in connexion with the production, manufacture, processing, distribution or sale of milk or milk products for the purposes of this Act;

(*q*) for the examination, inspection, analysis and testing of milk or milk products or any article used in connexion with milk or milk products or the production, manufacture, processing, distribution or sale thereof, prescribing charges in respect thereof, and the conditions upon and the manner in which samples of such milk, milk products or articles may be taken, whether compulsorily or otherwise;

(*r*) authorizing the opening by prescribed persons or officers, for the purpose of inspection, of any package which contains or is reasonably thought to contain milk or milk products;

(*s*) prescribing the books, accounts, vouchers and records to be kept by persons carrying on business in milk or milk products;

(*t*) authorizing the examination and inspection by prescribed persons or officers of all books and documents relating to the production, manufacture, processing, distribution or sale of any milk or milk product.

(2) Regulations made under subsection (1) may be made to apply to the whole of Malaŵi or to specified areas of Malaŵi, and different regulations may be made in respect of different areas of Malaŵi or for different grades of milk or for different types of milk products.

Establishment of daily advisory committee

4.—(1) The Minister may by order establish a dairy advisory committee for the whole of Malaŵi, or for such areas of Malaŵi as may be specified in such order, or may establish separate dairy advisory committees for different areas of Malaŵi.

(2) The functions of the dairy advisory committee, or dairy advisory committees established under subsection (1), shall be to advise the Minister on the development of milk production, the premises used therefor, systems of distribution, and the sale of milk and milk products.

Establishment of national milk marketing board

5.—(1) When the Minister considers it necessary or advisable in the interests of the milk or milk products industry, or the country as a whole, he may, by order, establish a national milk marketing board, which may be a body corporate, and shall have such powers and functions as the Minister shall in such order specify.

(2) The powers and functions of the national milk marketing board shall, in accordance with any special or general directions of the Minister, include the formulation, development, co-ordination

and administration of a national policy with regard to milk and milk products, covering all aspects of milk production, the manufacture, processing, sale and distribution of milk and milk products, maximum and minimum prices, the importation and exportation, the standards and quality of milk and milk products.

(3) When the Minister has established a national milk marketing board in accordance with this section, any dairy advisory committee or all dairy advisory committees established under section 4 shall, from the date of such establishment, cease to function.

Establishment of spcialized bodies
20 of 1986

6.—(1) Where the Minister considers it desirable so to do in order to foster the development of the milk and milk products industry, he may, by Order published in the *Gazette*, establish specialized bodies to engage in such commercial activities in the production or marketing of milk and milk products as he may specify in such Order.

(2) A body established under subsection (1) may be a body corporate and shall have such powers as the Minister may specify in the Order.

Appointment of inspectors, etc.

7. The Minister may appoint suitable persons to be inspectors, milk tester-graders or samplers or other officers for the purposes of this Act, who shall exercise such powers as may be specified in regulations made under this Act.

SUBSIDIARY LEGISLATION

MILK AND MILK PRODUCTS (DAIRY ADVISORY COMMITTEE) (ESTABLISHMENT) ORDER

G.N. 31/1973

under s. 4

Citation

1. This Order may be cited as the Milk and Milk Products (Dairy Advisory Committee) (Establishment) Order.

Establishment of a Dairy Advisory Committee

2. A Dairy Advisory Committee for the Southern Region, to be known as the Southern Region Dairy Advisory Committee, is hereby established.

MALAŴI DAIRY INDUSTRIES CORPORATION (ESTABLISHMENT) ORDER

G.N. 45/1987

under s. 6

PART I

Preliminary

Citation

1. This Order may be cited as the Malaŵi Dairy Industries Corporation (Establishment) Order.

Interpretation

2. In this Order—

"Board" means the Board of Directors of the Corporation appointed under paragraph 4.

PART II

Establishment and Composition of the Malaŵi Dairy Industries Corporation

Establishment of the Corporation

3. There is hereby established a body to be known as the Malaŵi Dairy Industries Corporation which shall—

(*a*) be a body corporate with perpetual succession and a common seal;

(*b*) in its corporate name, be capable of suing and being sued;

(*c*) be capable of holding, purchasing and otherwise acquiring and disposing of any property, moveable or immoveable, for the purposes, or in the course, of carrying out its functions; and

(*d*) be capable of doing and performing all such acts and things as bodies corporate may by law do and perform.

Board of the Corporation

4. The operations of the Corporation shall be managed and controlled by a Board of Directors which, subject to the special or general directions of the Minister, may exercise all the powers of the Corporation.

Composition of the Board

5.—(1) The Board shall consist of—

(*a*) one member appointed by the Minister and designated by him as chairman of the Board;

(*b*) two members appointed by the Minister from the private sector, one as representative of the retail trade, and the other as representative of consumers, of dairy products;

(*c*) two members representing the interests of producers appointed by the Minister, one as representative of smallholder producers and the other as representative of estate producers, of dairy products;

(*d*) the following *ex officio* members—

(i) the Secretary for Agriculture or his representative;

(ii) the Secretary to the Treasury or his representative;

(iii) the Secretary to the President and Cabinet or his representative; and

(iv) the Secretary for Trade, Industry and Tourism or his representative;

(*v*) the Chief Veterinary Officer.

(2) A member of the Board shall, subject to the power of the Minister at any time to terminate the appointment of that member, or unless he otherwise ceases to be a member, hold office for such period, not exceeding two years, as the Minister may specify in the instrument of appointment or, if no such period is specified, for a period of two years from the date of his appointment, and shall be eligible for re-appointment.

(3) Any member of the Board may at any time resign his membership by giving notice in writing to the Minister, and from the date specified in the notice he shall cease to be a member of the Board.

(4) A member of the Board shall be paid out of the funds of the Corporation such allowance as the Minister may from time to time determine.

(5) Upon the appointment of the Board and upon every appointment thereto of a member, the Minister shall cause notice of such appointment to be published in the *Gazette* and such notice shall specify the current membership of the Board resultant upon such appointment.

(6) Where any member of the Board ceases to be a member before the normal expiration of the term of his office, the Minister may appoint another person in his stead to hold office until the expiry of the term.

(7) In subparagraphs (2), (3), (4), (5) and (6) of this paragraph—

"member" means a member of the Board who is not an *ex officio* member.

Procedure at meeting of the Board

6.—(1) The Board shall meet at such times and places as may be necessary or expedient for the transaction of its business.

(2) At any meeting of the Board five members thereof shall constitute a quorum.

(3) The Board may elect any member thereof to be vice-chairman of the Board.

(4) At any meeting of the Board the chairman shall preside or, in the absence of the chairman, if a vice-chairman has been elected the vice-chairman shall preside or, if no vice-chairman has been elected or if the vice-chairman is also absent, the members present at the meeting shall elect one of their number to be chairman for that meeting.

(5) In the event of an equality of votes, the chairman of the meeting shall have a casting vote in addition to his deliberative vote.

(6) Minutes in proper form of each meeting of the Board shall be kept and shall be confirmed by the Board at the next meeting and signed by the chairman of that next meeting.

(7) Subject to this paragraph and to any directions given by the Minister, the Board may regulate its own procedure.

(8) The Board may in its discretion invite any person, and the Minister may nominate any officer in the public service to attend any meeting of the Board, and such person or officer may, with the consent of the chairman of the meeting, speak but shall not be entitled to vote at that meeting.

Vacancies, etc., not to invalidate proceedings

7. Subject to the provisions of paragraph 3 relating to a quorum, the Board may act notwithstanding any vacancy in the membership thereof and no act or proceedings of the Board shall be invalid by reason only of some defect in the appointment of a person who purports to be a member thereof.

Members not deemed public officers

8. A member of the Board shall not, by virtue only of his membership, be deemed to be an officer in the public service or an officer of the Corporation.

Committees of the Board

9.—(1) The Board may, with the consent of the Minister, establish one committee or more to carry out any special or general functions determined by the Board and may delegate to any such committee such of the functions and powers of the Board as the Board may consider expedient.

(2) The chairman of the Board shall, by reason of his office, be a member of every committee established pursuant of subparagraph (1).

(3) The chairman of each committee shall be appointed by the Board from amongst the members of the Board.

(4) Each committee may co-opt as members of such committee persons who are not members of the Board and any of such members so co-opted may or may not be officers in the public service.

(5) The chairman of each committee may, at any time and at any place, convene a meeting of the committee of which he is chairman.

(6) The Board may, at any time, direct the chairman of any committee to convene a meeting of such committee and such chairman shall, as soon as is practicable, comply with such direction.

(7) Every committee shall keep minutes of its meetings and shall inform the Board of its activities and shall conduct its proceedings in such manner as the Board may direct.

(8) The Minister may nominate any officer in the public service to attend any meeting of any committee, and that officer may take part in the proceedings of any such meeting as if he were a member of such committee, save that he shall not be entitled to vote thereat.

(9) Any member of a committee who is not an officer in the public service shall, in respect of expenses incurred by him in travelling and subsistence while discharging his duties as such member of that committee, be paid out of the funds of the Corporation, such allowances as the Board may determine and as may be, either generally or specially, approved by the Minister.

PART III

Purposes, Functions and Powers of the Corporation

Purpose of the Corporation

10. The purpose of the Corporation shall be to foster a commercial basis—

(*a*) the improvement and multiplication of livestock for the production of milk and milk products;

(*b*) the manufacture, processing, sale and distribution of milk and milk products.

Functions of the Corporation

11.—(1) The functions of the Corporation shall be to engage, on a commercial basis, in—

(*a*) the production of livestock for the production of milk and milk products;

(*b*) the processing of milk and milk products;

(*c*) purchasing, from smallholder and estate producers, milk of acceptable commercial standard and quality;

(*d*) the establishment and operation of factories and other processing and marketing infrastructure necessary for the fulfilment of its functions and for furthering the development of dairy farming as a viable economic enterprise for both smallholder and estate farmers;

(*e*) the processing of milk and milk products to standards suitable for human consumption;

(*f*) the production, marketing or otherwise disposing, within Malaŵi, of the Corporation's milk and milk products, livestock and crops; and the Corporation may, with the approval of the Minister and subject to any other written law, export any quantities and such products which are surplus to demand in Malaŵi;

(*g*) the transportation of milk and milk products from designated centres and collection points to the processing factory or other processing facility; but so, however, that in carrying out this function it shall not be deemed to be the responsibility of the Corporation to develop such centres and collection points nor to subsidize the costs of such transportation to the processing facility.

(2) In the performance of its functions the Corporation shall be subject to the general or special directions of the Minister.

General powers of the Corporation

12. Subject to the provisions of the Act and to this Order and to any other written law, the Corporation shall have power for the purpose of carrying out its functions to do all such acts as appear to it to be necessary, desirable, advantageous or convenient for, or in connexion with, the carrying out of its functions or to be incidental or conducive to their proper discharge and may carry out its functions either alone or in association with any other person or body.

PART IV
Management of the Corporation

General Manager and other staff of the Corporation

13.—(1) Subject to subparagraph (2), the Board shall appoint a General Manager of the Corporation who shall be the Chief executive officer of the Corporation and shall be entitled to be present and to speak, but not to vote, at meetings of the Corporation.

(2) The appointment of the General Manager of the Corporation and the terms and conditions of his service shall be subject to the approval of the Minister.

(3) Subject to the approval of the Minister, the Board may from time to time appoint, on terms and conditions determined by the Board, such other officers, clerks and servants, subordinate to the General Manager, as it considers necessary for carrying out the functions of the Corporation.

Pensions and other funds

14.—(1) The Corporation may establish and maintain pension, superannuation, provident and other funds as it may consider desirable for the provision of payments or other allowances upon death, sickness, injury, superannuation, resignation, retirement or discharge of members of its staff.

(2) The Corporation may pay money out of the revenue of the Corporation to the funds referred to in subparagraph (1) and may provide for the contribution of moneys to such funds by members of its staff.

(3) The Corporation may contract with insurance companies and other bodies for the maintenance of any funds required for the purposes of this paragraph.

PART V

Financial Provisions

Funds of the Corporation

15.—(1) The funds of the Corporation shall consist of—

(*a*) such sums as may, from time to time, be payable to the Corporation from the moneys appropriated by Parliament for the purpose;

(*b*) such moneys or other assets as—

(i) shall vest in the Corporation by virtue of paragraph 22;

(ii) may accrue to or vest in the Corporation in the course of the exercise of its functions or power or otherwise;

(iii) may accrue to or vest in the Corporation by way of grants, subsidies, donations, bequests, gifts, subscriptions, rents, interest or royalties, from the Government or any other person or body;

(iv) such sums as are derived from the sale of any property, moveable or immoveable, by or on behalf of the Corporation.

Investment

16. The Corporation may, with prior written approval of the Minister given either generally or specially and subject to such conditions as he may impose, invest such part of its funds as are not for the time being required for the purposes of its operations.

Accounts

17.—(1) The Corporation shall keep proper accounts and other records in relation thereto and shall prepare in respect of each financial year of the Corporation a statement of accounts in a form which conforms to the best commercial standards or in a form which the Minister may otherwise direct.

Cap. 37:01

(2) Subject to any directions given by the Minister for the time being responsible for Finance under section 45 of the Finance and Audit Act, the accounts of the Corporation for each financial year shall be audited and reported upon within six months after the end of that financial year by professional auditors appointed in respect of that financial year by the Board and approved by the Minister.

(3) As soon as the accounts of the Corporation for a financial year have been audited, the Corporation shall send to the Minister a copy of the statement of accounts prepared in respect of that financial year together with a copy of the report of the auditors and the report upon its work and operations during that financial year.

Conduct of financial affairs Cap. 37:01

18. Subject to the provisions of the Finance and Audit Act, the Corporation shall conduct its financial affairs in a manner commensurate with the best commercial practices.

Borrowing powers Cap. 37:01

19. Subject to the provisions of section 31 (1) of the Finance and Audit Act, the Corporation may borrow, by way of overdraft, loans or otherwise, such sums as it may require for meeting its obligations or carrying out its operations.

Financial year

20. The financial year of the Corporation shall be a period of twelve months ending 30th September each year:

Provided that the first financial year of the Corporation may be a period shorter or longer than twelve months, but not exceeding twenty-four months, ending on 30th September of such year as the Minister may specify by general notice published in the *Gazette*.

PART VI

Miscellaneous Provisions

Execution of documents

21.—(1) All deeds, instruments, contracts and other documents shall be deemed to be duly executed by or on behalf of the Corporation—

(*a*) if sealed with the common seal of the Corporation and signed by two members of the Board designated for that purpose;

(*b*) if executed in that behalf by the chairman of the Board, or other member thereof appointed by the Board for that purpose, and by the General Manager or any other officer of the Corporation acting in that office.

(2) A deed, instrument, contract or other document executed in accordance with subparagraph (1) shall, subject to any exception that may be taken thereto on any ground other than that of the competence of the party executing the same on behalf of the Corporation, be effectual in the law to bind the Corporation and its successors thereto and may be varied or discharged in like manner as that in which it was executed.

PART VII

Transitional

Transfer of assets, etc.

22.—(1) All property, assets, rights, liabilities (except those liabilities relating to the Malaŵi Milk Marketing Project which by agreement with the Government, may be converted into equity capital of the Corporation held by the Government), obligations, agreements and other arrangements (other than arrangements with foreign Governments or other foreign donor agencies) existing at the commencement of this Order and vested in, acquired, incurred or entered into by or on behalf of the Government in respect of—

(*a*) the Malaŵi Milk Marketing Project; and

(*b*) the Malaŵi/Canada Dairy Cattle Development Project,

shall, upon the commencement of this Order, be deemed to have vested in or to have been acquired, incurred or entered into by or on behalf of the Corporation and shall become enforceable by or against the Corporation to the same extent as they were enforceable by or against the Government.

(2) Where the transfer of any property transferred to or vested in the Corporation under subparagraph (1) is required by any written law to be registered, the Board shall, within one year from the commencement of this Order or within such other period as the written law may prescribe, apply to the appropriate registering authority for the registration of the transfer and thereupon the registering authority shall, at no cost to the Corporation or any person by way of registration fees, stamp or other duties—

(*a*) make such entries in the appropriate register as shall give effect to the transfer;

(*b*) where appropriate, issue to the Corporation a certificate of title or other statutory evidence of ownership of the property or make such amendments on such certificates or in the appropriate register as may be necessary; and

(*c*) make any necessary endorsements on such deeds or other documents as may be presented to such registering authority relating to the title, right or obligation concerned.

MILK AND MILK PRODUCTS REGULATIONS

ARRANGEMENT OF REGULATIONS

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MILK AND MILK PRODUCTS REGULATIONS

under s. 3

PART I

Preliminary

Citation

1. These Regulations may be cited as the Milk and Milk Products Regulations.

Interpretation

2. In these Regulations—

"approved laboratory" means the Central Veterinary Laboratory located in Lilongwe or any other laboratory which the Minister may approve from time to time for the examination of milk and milk products;

"butter" means the fatty product derived from gathering the milk fat or cream into a mass that may also contain a portion of other milk constituents not separated in good manufacturing practice and may contain salt or food colour; and

(*a*) not less than 80 per cent of butter fat;

(*b*) not more than 2 per cent solid not fat milk; and

(*c*) not more than 16 per cent of water;

"cheese" means any cheese made by coagulating the casein of whole milk, cream, skim milk, recombined whole or skim milk or mixtures thereof with or without the addition of proportionately small amount of other ingredients such as ripening ferments, rennet, harmless acid producing bacterial cultures, special mould cultures, salt seasoning, flavouring and colouring materials and preservatives;

"chocolate milk" means the milk made from—

(*a*) milk, milk powder, skim milk powder;

(*b*) cocoa or chocolate; and

(*c*) sweetening agent,

and contains food colour and flavouring preparations, pH stabilizing agent, stabilizing agent; salt and contain not less than 1 per cent milk fat;

"cottage cheese" means the product in the form of discrete curd particles prepared from skim milk, recombined skim milk, harmless lactic acid producing bacterial cultures with or without milk, creat rennet salt and other harmless additives;

"cream" means a portion of milk which contains not less than 18 per cent milk fat;

"cultured or lactic acid fermented dairy product" means a product made by fermenting cream, whole milk, skim milk, recombined skim milk powder or a mixture thereof by means of an appropriate bacterial culture and/or desirable enzymes with or without the addition of salt, stabilizer, flavouring and food colouring material and preservatives and includes yoghurt, buttermilk, sour cream and salad cream;

"dairy farm" means the place at which cows are kept for the production of milk;

"dairy plant" includes every place or building where milk is received from dairy farmers and dairy products are processed, manufactured or pasteurized; but does not include the

operation and use of any freezing device in restaurants and retail establishments by means of which ice cream mix prepared from a commercial ice cream mix powder or purchased as a liquid mix from a licensed dairy plant, is frozen;

"dairy product" includes products that originate from raw milk and may or may not have harmless food additives;

"distributor" means any person who distributes or retails or supplies milk to any person whether or not for gain or reward;

"farm dairy" means the duly licensed location for the milking of cows and the preparation of milk for delivery;

"flavoured milk" means milk made from milk, milk powder, skim milk or skim milk powder; a flavouring preparation and a sweetening agent which may contain a food colour; stabilizing agent; salt and not less than 0.05 per cent milk fat;

"ghee" means the fatty product obtained by the evaporation of the water content by boiling and the removal of milk solids not fat by decantation containing not less than 99.9 per cent of milk fat subsequent to the destabilization of the milk fat emulsion of milk, cream or butter and may contain traces of water and milk solids not fat;

"homogenized milk" means milk that has been subjected to a mechanical treatment that prevents separation of the milk fat to such an extent that after 48 hours of quiescent storage no visible cream separating appears on the milk, and the fat percentage of the top 100 millilitres of milk in a one litre cylinder, or proportionate volumes in containers of other sizes, does not differ by more than 10 per cent of itself from the fat per cent of the remaining milk after thorough mixing;

"ice cream" means the frozen food made from ice cream mix by freezing and may contain cocoa and its products, fruit, nuts, confections and flavouring preparation; and made from mix containing 36 per cent solids, 10 per cent fat and shall contain not more than 10,000 bacteria per gram and 10 coliform organisms per gram;

"ice cream mix" means the unfrozen pasteurized combination of cream, milk, other milk products and other edible oils, sweetened with sugar (sucrose) and other sweeteners and may contain emulsifiers, including egg, stabilizing agent (maximum 0.5 per cent), emulsifier (maximum 1 per cent) flavouring preparations, food colour, pH adjusting and sequestering agents and contains not less than 36 per cent solids and 10 per cent fat;

"ice milk" means the frozen food made from ice milk mix by freezing and containing—

(*a*) the constituents of ice cream;

(*b*) not less than 10 per cent solids;

(*c*) not less than 2 per cent milk fat or other edible fat; and

(*d*) the same bacterial standards as ice cream;

"ice milk mix" means the unfrozen pasteurized constituent of ice milk which contains not less than 33 per cent solids and 3 per cent fat;

"inspector" means the Chief Veterinary Officer or any other person duly authorized to supervise the application of these Regulations;

"label" means that part of a container which conveys the information as required of a dairy product label (as detailed in these Regulations);

"milk collection centre" means the duly licensed location established for the purpose of receiving and bulking milk or cream;

"milk grader" means a person duly licensed to certify the quality of milk in accordance with the standards set forth in these Regulations;

"Ministry" means the Ministry of Agriculture;

"pasteurization" means the process of heating every particle of the milk—

(*a*) to a temperature of not less than 63 degrees centigrade, holding it at such temperature for not less than 30 minutes and then immediately cooling it to a temperature of 8 degrees centigrade or lower with the holding method of pasteurization; or

(*b*) to a temperature of not less than 72 degrees centigrade, holding it at such temperature for not less than 16 seconds, and then immediately cooling it to a temperature of 8 degrees centigrade or lower in high temperature short-time pasteurization equipment; or

(*c*) in any other manner and with equipment approved by the Minister;

"raw milk" means milk which has been homogenized and contains not less than 3 per cent BF;

"reconstituted or recombined milk" means milk prepared by recombining butter fat from butter or butter oil with skim milk powder and water;

"registered producer" means a producer registered under regulations whose premises, equipment and milk holding methods meet the requirements for the production of premium or bonus grade milk;

"skim milk" means milk from which a sufficient portion of milk fat has been removed to reduce its milk fat content to less than 0.1 per cent;

"shebert" means a frozen food, other than ice cream or ice milk, made from a milk product and may contain—

(*a*) water;

(*b*) a sweetening agent;

(*c*) fruit or fruit juice;

(*d*) citric or tartaric acid;

(*e*) a flavouring preparation;

(*f*) a food colour;

(*g*) stabilizing agent (not more than 9.75 per cent); and contains—

(i) not more than 5 per cent of milk solids including milk fat or other edible fat, and

(ii) not less than 0.35 per cent acid determined by filtration and expressed as lactic acid;

"standard or standardized milk" means milk of which the composition, particularly the milk fat portion is lowered below that of milk or skim milk, and the minimum milk fat is one and a half per cent;

"whipping cream" means cream which contains not less than 32 per cent milk fat;

"whole milk" means exclusively the normal mammary secretion obtained from one or more milkings of cows without either addition thereon or extraction therefrom.

Application of regulations

3. Except where otherwise specified, these Regulations shall apply to—

(*a*) classes of milk, fluid milk products as herein defined;

(*b*) any milk used or the milk from which any constituent is used in the production of any fluid milk product; and

(*c*) any milk used in the manufacture of butter, cheese, ice cream mix, ice cream and any dairy product approved by the Minister.

PART II

Adulteration of Milk and Milk Products

Adulteration of milk and milk products

4.—(1) No person shall sell, keep or offer for sale or supply milk or any milk product which has been adulterated.

(2) Except as is provided in these Regulations, milk shall be deemed to have been adulterated if—

(*a*) any water has been added thereto;

(*b*) any preservative or colouring matter has been added thereto;

(*c*) any product or thing foreign to milk has been added thereto; or

(*d*) any constituent of milk has been removed therefrom.

Adulteration by addition of water

5.—(1) Any milk with a specific gravity of less than 1.028 measured with a lactometer shall be considered to be adulterated by the addition of water.

(2) Where milk samples are examined by the cryoscopic method for the determination of added water, milk which has a freezing point of 0.530 degree below zero centigrade or higher shall be considered to have been adulterated by the addition of water.

(3) The standardization of the milk fat content of milk at not less than 1.5 per cent by the addition of whole milk, skim milk or cream shall not be deemed to be an adulteration, but where any of these are added to milk, they shall be produced and supplied in accordance with these Regulations.

Adulterated fluid milk

6. Any fluid milk or fluid milk product shall be deemed to have been adulterated if—

(*a*) any product or thing not specified in the definition thereof in these Regulations has been added thereto; and

(*b*) any constituent of milk has been removed therefrom except such removals as may be required or permitted by these Regulations.

Prohibition of sale of misbranded milk

7. No person shall sell, offer for sale or supply milk or a fluid milk product which is misbranded.

Misbranded milk and milk products

8.—(1) Milk and milk products shall be deemed to be misbranded if the container or any label affixed thereto is not clearly printed in plain legible characters of not less than 10 point type with the following information—

(*a*) the class of milk or milk product contained therein in accordance with these Regulations;

(*b*) the word "pasteurized", if the contents have been pasteurized;

(*c*) the word "standard" or "standardized" if the contents have been standardized;

(*d*) the percentage of milk fat if the contents are cream of low fat cream; and

(*e*) the identity of the plant at which the contents were processed and pasteurized.

(2) Subregulation (1) shall not apply to milk which is being brought into a plant from the premises of a producer or while such milk is on the premises of the producer.

(3) Notwithstanding subregulation (1), any dairy plant which has or any producer or distributor who has, when these Regulations come into force, a supply of containers or labels which do not comply with subregulation (1) may continue to use such containers or labels for a period not exceeding one year from the date of coming into force of these Regulations.

(4) Notwithstanding the provisions of subregulation (1), containers may be labelled with a trade or descriptive name in place of the name of the class of milk contained therein; provided that the Minister has approved the use of such trade or descriptive name.

PART III

Milk Production and Milk Registration

Requirements

9.—(1) No person shall sell or offer for sale or supply any milk in fluid form without meeting the requirements approved by the Minister.

(2) In order to satisfy these requirements any person shall make his herd and premises available at any reasonable time for inspection by an Inspector.

Examination of herd

10.—(1) At regular intervals as determined by the Minister, a producer or any other person shall have his herd examined and tested for the presence of tuberculosis, brucellosis, Str. agalactia mastitis and other diseases as may from time to time be specified by the Minister.

(2) In the case of positive reactors to the tuberculosis and brucellosis tests, the producer shall dispose of such reactors as ordered.

(3) In the case of Str. agalactia mastitis, the producer shall treat or cull infected cows as ordered.

(4) In the case of the diseases specified in subregulations (1), (2), (3) and other disease conditions, the producer shall abide by and carry out any directions given by the Minister.

Disease control facilities

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11.—(1) A registered producer shall have adequate tick control facilities available as prescribed by the Department of Veterinary Services and Animal Industry, and shall make use of these facilities and shall comply with the provision of Control and Diseases of Animals Act.

(2) Where it is found that any milking cow kept on the premises is in a condition which may be harmful to the quality of milk or cream produced or kept on such premises, the cow shall be removed or isolated and any other action shall be taken as may be instructed by the Department of Veterinary Services and Animal Industry.

Certificate of Registration

12.—(1) No registered producer and person owning or operating a dairy farm or possessing one or more milk cows shall sell or offer for sale or supply to a licenced dairy plant or distribute any milk in fluid form in the premium or bonus grade without first obtaining a Certificate of Registration in Form I set out in the Schedule. Such Certificate shall specify the premises with respect to which it is issued and be limited to such premises.

(2) A Certificate of Registration under this regulation shall be valid for one year.

(3) Where the Minister is of the opinion that the holder of Certificate of Registration is producing or is in possession of, or supplying a product that is not suitable for human consumption; or is guilty of any breach of these Regulations, he may suspend or revoke the Certificate of Registration.

Inspection of dairy farm

13.—(1) Before a Certificate of Registration is issued an inspection shall be made to the applicant's premises, herd and method of production, handling and storage of milk.

(2) No Certificate of Registration shall be issued except for premises where there is suitable and sufficient supply of water for domestic purposes, equipment washing and for cooling of milk and the use of livestock.

(3) Every receptacle used for the storage or conveyance of water shall be emptied and cleaned as may be necessary to prevent contamination of the water and such receptacle shall be maintained in a suitable condition for the purpose for which it is required.

Farm dairy

14. Every farm dairy where the cows are milked shall be a place distinct from where the cows are housed or held and shall meet the following minimal requirements—

(*a*) the milkshed shall be covered with a roof; with or without walls, adequately lighted and ventillated by natural or artificial means;

(*b*) the floor area or place of milking shall have a hard compact floor, not liable to form mud or pools of water when wet; and

(*c*) shall be sufficiently sloped to ensure effective drainage.

Milk equipment

15.—(1) Milk equipment used during milking shall be—

(*a*) water containers that may be readily cleaned;

(*b*) milk pails of seamless construction internally and used only for the purpose of containing milk;

(*c*) udder cloths of the type generally used for the purpose of washing udders; and

(*d*) separate stiff bristle brushes, with bristles of an adequate length and sufficient number for the purpose of washing and scrubbing of the milk handling equipment.

(2) Where milk is filtered or strained after milking, only metal or plastic strainers of the type in which disposable filter pads or discs are inserted and which are discarded after each milking session shall be sued.

(3) No milk shall be poured through a reusable filter cloth for the purpose of straining or filtering.

Equipment for conveyacing

16. Equipment for the transportation of milk following milking or for temporary holding of milk pending transport shall—

(*a*) be a type generally used for milk, free from internal seams, fitted with a cover of the mushroom or other pattern adequately covering the opening; or

(*b*) be uncoloured glass bottles or jars of a type that can be readily cleaned and brushed internally; fitted with hard texture bungs or stoppers or rubber of plastic material, or separate metal lid which can be cleaned.

Cleaning of equipment

17.—(1) All milk equipment prescribed in regulation 16 and any other approved equipment shall be thoroughly cleaned immediately after use and as soon as possible following transportation of any milk and its transfer to another container at any collection or milk plant.

(2) The minimum cleaning requirements shall be—

(*a*) washing and brushing with water; and when detergents and sanitizers are used, the same shall not have pronounced odour which may subsequently taint the milk;

(*b*) rinsing with clean water; and

(*c*) drying without use of a drying cloth.

Treatment of udder cloth

18.—(1) Udder cloths shall not be washed or rinsed together with other milk utensils or in the same water for this purpose but shall be washed or rinsed separately.

(2) After washing and rinsing, the udder cloths shall be hanged to dry over a line or shall be supported fully exposed to sunlight and circulation of air with the lower edges of the cloth at least one metre above the ground.

Storage of equipment

19. Any milking equipment shall, after cleaning and drying, be stored in a clean place to avoid contamination either directly or indirectly.

Quality control test

20.—(1) The Minister may approve the use of sediment, lactometer alcohol, resazurin or methylene blue tests or any other tests as he may from time to time approve, to the milk of each registered producer in order to determine the quality of the milk and instruct such producer concerning these tests.

(2) At regular intervals of 12 months in the case of tuberculosis, and 3 months in the case of brucellosis and mastitis caused by Str. agalactia, a registered producer shall have his herd examined and tested by the inspectors or any other person duly authorized.

(3) Where the examination of the herd reveals the presence of—

(*a*) tuberculosis by a positive tuberculin tests, the reactors shall be disposed of as directed;

(*b*) brucellosis, the reactors shall be disposed of as directed and the herd shall be kept under observation by examination of samples of milk or blood until the herd is free of this disease;

(*c*) mastitis caused by Str. agalactia, the registered producer; on notification of the presence of this disease in the herd; shall be given a period of 12 months in which to eradicate the infection by treatment and/or culling of infected cows from the herd as indicated through the testing of individual cows in the herd.

(4) Any registered producer who fails to comply with this regulation shall be liable to an imposition of a 10 per cent reduction in the price paid for the milk or to the loss of the quality bonus for premium quality milk or both.

Examination of employees

21.—(1) Every registered producer who has reason to suspect that any person employed on his registered premises is suffering from a communicable disease possible of transmission through the medium of milk; shall within 12 days give notice to the relevant health officer, who may, if he deems it necessary, order such producer not to sell or offer for sale or supply for human consumption in fluid form any milk produced or kept on such premises until the danger from infection has been controlled.

(2) If an inspector suspects any person on registered premises to be suffering or having recently suffered from any communicable disease possible to transmission through the medium of milk or of being a carrier of such disease the inspector shall require that such person be examined by a registered medical practitioner.

PART IV

Dairy Plant Licence

Issue of licences for dairy plant

22.—(1) No person shall operate or allow to be operated a dairy plant or other plant or factory in which milk is used, where any portion of the milk brought into such plant is sold, offered for sale, or supplied for human consumption in fluid form or its products without first obtaining a licence from the Minister. Such licence shall specify the premises with respect to which it is issued and be limited to such premises and shall be in Form IV set out in the Schedule.

(2) Every licence issued under this regulation shall be valid for a period of one year and may be suspended or revoked at any time, for any period, by written notice, if in the opinion of the Minister, any condition which may be unsatisfactory exists in such a plant, or for any breach of these Regulations.

Conditions of licence for the grant of licence

23.—(1) Any application for the grant of a licence under this part, whether by way of renewal of an existing licence or otherwise, shall be in a Form IV set out in this Schedule.

(2) A plant licence shall not be issued for the operation of a dairy plant unless—

(*a*) the building plans, equipment, methods of processing, storing and handling of the milk by an applicant of a proposed plant have been approved or an inspection has been made of an existing plant to ensure that building, equipment, methods of processing, storing and handling of milk or its products meet the approval of the Minister;

(*b*) there exists on the premises adequate supply of suitable water for all requirements of such premises;

(*c*) there exists on the premises ample facilities for the cleaning and sanitizing by effective methods of all the milk handling equipment used on such premises, or in the delivering of milk and milk products to or from such premises; and

(*d*) there exist on the premises ample facilities for the cooling and cold storage under sanitary conditions of all milk products.

Appeals

24.—(1) Where the Minister refuses to grant a licence or suspends or revokes a licence for violation of the Act or the Regulations made thereunder, a notice shall be served on the holder of the licence, or the applicant, informing him of the decision.

(2) The Minister's decision shall be final.

Condition for use of licence

25.—(1) A licence to operate a dairy plant shall restrict the use of the facilities of such plant, including all the equipment installed therein for the receiving, processing and storage of milk and milk products and other compatible food products prior to delivery to the retail and wholesale distributors.

(2) The holder of a licence shall ensure that every person engaged or associated with the factory by way of employment or contract, whether at the milk plant or at a collection or cooling centre, or engaged in milk collection or delivery shall take all practical precautions for preventing milk and milk products from being unnecessarily exposed to heat from the sun, or contaminated by dirt, dust, water, rain or otherwise.

Cleaning of vehicles

26.—(1) The holder of a licence shall ensure that the vehicles used for the conveyance of milk and milk products to, at and from the dairy plant, whether in cans or other containers—

(*a*) are maintained in a clean and sanitary condition;

(*b*) where a vehicle has been used for the conveyance of materials and commodities that may be a source of contaimination to milk and milk products, are thoroughly cleaned and sanitized; and

(*c*) are clearly identified by the name and head office address of the dairy plant.

(2) No person shall transport milk and milk products in the same vehicle with animals, birds or other materials that are likely to be a source of contamination.

Dairy plant

27. The holder of a dairy plant licence shall—

(*a*) keep accurate records of all milk receipts; whether from collection centres, direct from producers or other dairy plants;

(*b*) record the production of all milk and milk products processed, transferred to other dairy plants or sold to the retail and wholesale trade;

(*c*) prepare a current list of all estate milk producers and bulk groups supplying milk to the dairy plant and make such lists available to each milk cooling centre; and

(*d*) retain these records for inspection for a period of one year

PART V

Dairy Plant Premises and Equipment

Requirements of dairy premises

28.—(1) All dairy plant premises shall at all times be kept in a clean and sanitary condition.

(2) All walls and ceilings and other parts of any structure on the premises shall be of sound construction, well painted and cleaned or otherwise treated or disinfected as and when deemed necessary by the Inspector.

(3) The floors of any building shall be of concrete or of water tight non-absorbent construction.

(4) All washings and drainage from dairy premises shall be dealt with and disposed of in a manner approved by the Inspector.

(5) The dairy plant premises shall not be used for any other purposes other than that of preparing or manufacturing dairy products, other compatible food products and storing dairy utensils.

Storage of milk and milk products

29.—(1) Every dairy plant shall have suitable arrangements for keeping milk and milk products for human consumption in fluid form separate from all other milk and cream supplied at all times.

(2) Every room used or intended for the processing of milk and other dairy products, and for the handling or storing of such products, shall be separated from all other rooms and from each

other by door and shall be well ventilated and constructed so as to be capable of thorough cleaning.

Cleaning of equipmernt

30. All dairy plant equipment shall be of a type approved by the Minister and shall at all times be cleaned after use with hot water, detergents or any other equally effective methods and techniques approved by the Minister, and such equipment shall be in good state of repair.

Thermometers to be fitted

31. In order to ensure the proper pasteurization of every particle of milk and milk products, there shall be fitted—

(*a*) an indicating thermometer to indicate the pasteurization and cooling temperature when the milk is pasteurized and cooled in a vat pasteurizer, and when the cooling takes place outside the vat pasteurizer, an indicating thermometer shall also be fitted to indicate the temperature of the milk as it leaves the cooling apparatus;

(*b*) an indicating thermometer to indicate the temperature of the milk flowing from the holding and cooling sections of high temperature short-time pasteurizers;

(*c*) a recording thermometer in vat pasteurizers to record the time and temperature pasteurization;

(*d*) a recording thermometer to record the temperature of the milk as it leaves the holding section of high temperature short-time pasteurizer; and

(*e*) a flow diversion valve to divert underheated milk before it flows into any cooling section or cooler of high temperature short-time pasteurizer.

Specifications of charts and records made by thermometer

32.—(1) The following specifications shall apply to charts and records made by thermometers fitted to pasteurizing plant—

(*a*) in case of recording thermometers fitted to a vat pasteurizer in the holder method, the scale divisions relating to the temperature of pasteurization shall not be greater than 1 degree centigrade in the temperature range of 60 degrees centigrade to 66 degrees centigrade and shall be adequately spaced to permit accurate reading of temperature pasteurization and cooling;

(*b*) in case of recording thermometers fitted to HTST pasteurizer plant, the scale divisions rating to the temperature of pasteurization shall not be greater than 1 degree centigrade in the range of 70 degrees centigrade to 80 degrees centigrade and shall be adequately spaced to permit accurate reading of the temperature of pasteurization and cooling;

(2) The record on each recording thermometer chart shall show the date of pasteurization, the product pasteurized and the relationship between the temperature registered by the indicating thermometer attached to the pasteurizer and the recording thermometers

after the pasteurizing temperature has become stabilized soon after the start of the pasteurization process;

(3) The pasteurizing temperature shown on the recorder chart shall be regularly adjusted to correspond with the temperature shown on the indicating thermometer and it shall not at anytime record a higher reading than that of the indicating thermometer during the pasteurization process.

(4) When more than one pasteurizer is installed in the plant the recording chart must indicate the pasteurizer being recorded.

Retention of charts for inspection

33. The charts referred to in regulation 33 shall be retained at the dairy plant and shall be available for inspection for a period of one year before such charts are disposed of.

PART VI

Dairy Plant and Milk Collection Centre Personnel

Suspension of milk sales for human consumption

34.—(1) An Inspector may at any time suspend or cause any dairy plant to cease selling, offering for sale or supplying milk for human consumption in fluid form if he considers that any condition exists that is or might be dangerous to the public.

(2) The Inspector may at any time order that any or all of the employees of any plant or others who may come into contact, direct or indirect, with milk or milk equipment, undergo a medical examination in the manner prescribed by the Minister.

Provision of uniforms

35.—(1) All persons employed in a dairy plant or collection centre shall at all times be and remain clean.

(2) The dairy plant shall—

(*a*) provide sufficient supply of uniforms and footwear of a protective nature suitable for use by its employees in plant operation; and

(*b*) maintain such uniforms and footwear in a clean and sanitary condition.

PART VII

Distributor's Licence

Issue of licences

36.—(1) No person may sell, offer for sale, supply or distribute any milk, cream or other milk products for human consumption without first obtaining a licence from the Minister and such licence shall be in Form VI set out in the Schedule.

(2) A licence under this regulation shall not be issued for premises, unless an inspection has been made to the premises, equipment and methods of storing and handling of milk and milk products.

(3) An application for distributor's licence shall be made to the Minister in Form VIII set out in the Schedule.

(4) The distribution of milk and other dairy products in the cities of Blantyre, Lilongwe and Mzuzu and Municipality of Zomba shall be limited to products pasteurized and processed in licensed dairy plants.

PART VIII

Distributor's Premises

Premises for distribution of milk

37.—(1) All premises for distribution of milk shall at all times be kept in a clean and sanitary condition.

(2) Milk, cream and other dairy products shall not be stored in any room, place or vessel, or conveyed in anything where it is likely to be exposed to any condition that may affect the quality of the milk and dairy products.

(3) A distributors' premises shall include all rooms or portions of rooms, and all vehicles used for the sale, storage or distribution of milk and milk products.

Distributor's equipment

38.—(1) Refrigerators used for the storage of milk, cream and other milk products on licensed premises shall be arranged in a manner that any other commodity which might affect the quality and healthfulness of milk and other milk products, is not to be placed in or near the same compartment and shall in all cases be satisfactory to the Inspector.

(2) All vehicles used for the distribution of milk cream and other milk products shall be kept in a clean and sanitary condition to protect the milk, cream and other dairy products from exposure to contamination and external sources of heat including sunlight.

Distributor not to open container

39.—(1) Subject to subparagraph (2) no distributor shall open any milk, cream or other dairy product container on his premises, and shall not transfer milk, cream or other fluid milk product from one container to another.

(2) Subregulation (1) shall not apply to retail shops or restaurants holding a distributor's licence which sell milk, cream and other dairy products to be consumed on the premises, and to a producer, distributor who distributes any milk product from one container to another in the farm dairy on his licensed premises.

Milk in shops, restaurants, etc.

40. Milk kept for sale in any retail shop, restaurant, market, bakery or other establishment, shall at all times, register when tested, a temperature not higher than 5 degrees centigrade and shall be stored in a closed cooler box or refrigerator and no container with milk for sale shall be allowed to stand outside the closed cooler box, or refrigerator, except during intervals when milk is being placed therein or removed therefrom for sale.

Supplies of milk to hotels, etc.

41.—(1) Any owner, operator, manager or any person in charge of every restaurant, hotel or any other place where customers are served with milk, cream, or other dairy products from bulk

supplied for consumption on the premises, shall on request, inform an inspector of the source of supply of the milk, cream, or other dairy product sold or supplied in dairy plant and distributor at least once a month.

(2) The samples of pasteurized milk required by subsection (1) shall include on each occasion at least one sample of each of pasteurized milk processed by the dairy plant or handled by a distributor.

(3) When an examination of pasteurized milk authorized by subregulation (2) reveals that the sample from any class of pasteurized milk contained more that 500,000 colonies of bacteria per millilitre and/or than 5 colonies of coliform bacteria per millilitre, the Inspector shall notify the dairy plant or distributor of such a fact and that further samples of the particular class of pasteurized milk be submitted for examination to determine whether these Regulations are complied with.

(4) When a dairy plant or distributor has been notified as authorized by regulation (3) the next sample taken in accordance with subregulations (5) and (6) shall be the first in a series of samples on which compliance or otherwise shall be based.

(5) Where a series of samples are being submitted to determine whether there is compliance or not with these Regulations such samples shall not be taken more frequently than 6 days apart.

(6) The series of samples submitted to determine whether there is compliance or not with these Regulations shall be taken from the class of pasteurized milk notified to the dairy plant as exceeding the limit specified in subregulation (3).

(7) The bacterial content of pasteurized milk shall not exceed 500,000 colonies per millilitre 5 colonies of coliform bacteria more frequently than once in 4 consecutive examinations is a series of samples taken in accordance with subregulations (4) to (6).

(8) When the bacterial content of pasteurized milk exceeds 500,000 colonies per millilitre or 5 colonies of coliform bacteria more frequently than once 4 consecutive samples taken in accordance with subregulations (4) to (7) it shall be deemed that the milk from the dairy or distributor concerned is contrary to these Regulations.

PART VIII

Bacterial Standards-Pasteurized Milk in Dairy Plants and Distributors Premises

Requirements

42.—(1) The standards and other requirements contained in this Part shall apply to pasteurized milk in a dairy plant or distributor's premises.

(2) Notwithstanding subregulation (1), an inspector or any other person duly authorized may take routine samples of milk referred to in regulation from any vehicle operated by a dairy plant or milk distributor or from the dairy plant or distributor's premises for the purpose of these Regulations.

Submission of samples.

43.—(1) The Inspector shall arrange for the submission and examination of samples of pasteurized milk from each dairy plant and distributor at least once a month.

(2) The samples of pasteurized milk required by subsection (1) shall include on each occasion at least one sample of each class of pasteurized milk processed by the dairy plant or handled by a distributor.

(3) When an examination of pasteurized milk authorized by subregulation (2) reveals that the sample from any class of pasteurized milk contained more than 500,000 colonies of bacteria per millilitre and/or than 5 colonies of coliform bacteria per millilitre, the Inspector shall notify the dairy plant or distributor of such fact and that further samples of the particular class of pasteurized milk may be submitted for examination to determine whether these Regulations are complied with.

(4) When a dairy plant or distributor has been notified as authorized by regulation (3) the next sample taken in accordance with subregulations (5) and (6) shall be the first in a series of samples on which compliance or otherwise shall be based.

(5) Where a series of samples are being submitted to determine whether there is compliance or not with these Regulations such samples shall not be taken more frequently than 6 days apart.

(6) The series of samples submitted to determine whether there is compliance or not with these Regulations shall be taken from the class of pasteurized milk notified to the dairy plant as exceeding the limit specified in subregulation (3).

(7) The bacterial content of pasteurized milk shall not exceed 500,000 colonies per millilitre 5 colonies of coliform bacteria more frequently than once in 4 consecutive examinations in a series of samples taken in accordance with subregulations (4) to (6).

(8) When the bacterial content of pasteurized milk exceeds 500,000 colonies per millilitre or 5 colonies of coliform bacteria more frequently than once in 4 consecutive samples taken in accordance with subregulations (4) to (7) it shall be deemed that the milk from the dairy or distributor concerned is contrary to the requirements of these Regulations.

Offences in connexion with quality of milk

44.—(1) When it is found that pasteurized milk being sold, offered for sale or supplied by a dairy plant or milk distributor is contrary to these Regulations as outlined in subregulation (8) or regulation 41, the Minister may suspend or revoke the licence.

(2) Notwithstanding subregulations (3) to (8) inclusive of regulation 43, it shall be deemed that milk from a dairy plant or distributor is contrary to these Regulations if upon examination of a sample of pasteurized milk from these sources, it is found to contain unpasteurized milk when subjected to the phosphatase test.

(3) When it is found that pasteurized milk being sold; offered for milk distributor is contrary to these Regulations as outlined in subregulation (2), immediate action shall be taken by the dairy plant concerned to ensure that adequate pasteurization is being carried out.

(4) The Minister may institute court action, where pasteurized milk from a dairy plant or distributor is contrary to these Regulations, and that when further sample is taken and subjected to the phosphatase test contain unpasteurized milk or improperly pasteurized milk.

(5) The limitation on point of sampling contained in subregulation (2) of regulation 43 shall not apply to samples of pasteurized milk examined for subregulations (2) and (3).

Fines

45. Any person who contravenes these Regulations shall be guilty of an offence and be liable to a fine of K1,000 and to imprisonment for a term of 1 year.

PART X

Milk and Milk Products Samples

Submission of samples

46.—(1) Subregulations (2) to (9) inclusive shall apply to the procuring, taking, identifying transporting, testing and reporting on all samples of milk obtained for the purpose of determining compliance with these Regulations.

(2) All samples of milk shall be taken in the presence of or with the knowledge of the person owning or occupying or managing or in charge of the premises on which the milk is kept.

(3) All samples shall be submitted to the laboratory approved by the Minister.

(4) Every sample shall be taken by an inspector appointed pursuant to the Products Act.

(5)—(*a*) All samples must be identified.

(*b*) The following information concerning the samples shall be recorded—

(i) the date and time of sampling;

(ii) the date and time of container filling where samples are obtained from or submitted in retail containers, if this information is available;

(iii) the storage temperature where samples are obtained from milk storage; and

(iv) the date of pasteurizing if this information is available.

(6)—(*a*) Samples should be submitted in the retail containers wherever practicable.

(*b*) Where it is not practicable to submit the sample in a retail container, the sample shall be submitted in a sterilized bottle or other container supplied by and conforming to the requirement of the approved laboratory concerned.

(*c*) Aseptic sanitary techniques, as directed by the approved laboratory shall be used in all sampling.

(7)—(*a*) After the sample is taken, it shall immediately be placed in a suitable box containing ice or other refrigerant in a separate compartment.

(*b*) The temperature of the sample shall be maintained below 7 degrees centigrade and preferably 5 degrees centigrade and above 0 degrees centigrade until laboratory analysis.

(*c*)—(i) Samples shall be delivered to an approved laboratory for bacterial examination within 24 hours of sampling.

(ii) Other tests, including the phosphatase tests shall also be conducted when required.

(8) The results of all tests shall be communicated within seven days of such finding to—

(*a*) the Minister;

(*b*) the producer, distributor, dairy plant or distributor from whose premises or vehicle the sample or samples were obtained; and

(*c*) to such other persons or agencies as may be deemed proper by the Minister.

(9) Except as otherwise required by these Regulations, all samples shall be taken, identified, transported, tested and reported in a manner approved by the Minister in consultation with the approved laboratory.

Testing methods

47. Bacteriological and chemical test testing procedures including sampling methods to determine compliance to the requirements shall be conducted by procedures recognized by professional associations of bacteriologist and chemists until such time as official bacteriological and chemical testing procedures as applied to the analysis of dairy products are established in Malaŵi or alternatively, international methods as recognized and accepted.

PART XI

Miscellaneous Provisions

Powers of inspector

48.—(1) Subject to these Regulations, an inspector may at all reasonable times—

(*a*) enter and inspect any premises, place or vehicle where milk and milk products intended for sale are stored or produced and inspect all milk products found therein or thereon, and all utensils, machinery or apparatus therein or thereon or used in connexion therewith;

(*b*) enter and inspect any cooling chamber or vehicles used for the storage or carriage of milk products;

(*c*) for the purposes of inspection and of taking the sample, open any package which contains or is suspected to contain any dairy produce;

(*d*) examine all books and documents relating to any dairy plant but shall not have access to any secret or classified document relating to the product of milk products.

(2) If after any inspection under these Regulations, the Inspector is satisfied that any premises, place or vehicle so inspected is in an unclean condition, or any chemical or scales or measures, or any apparatus used in testing milk and milk products and drums or other utensils used for dairy products are not fit to be used or the water used in connexion with the manufacture of dairy produce is pathogenic, he may—

(*a*) require the premises and all utensils or apparatus, cooling chamber, vehicle or other equipment to be cleaned, disinfected, and rendered wholesome to his satisfaction;

(*b*) require any chemical to be made fit for the use which it is intended or any scales or measure or apparatus to be replaced or corrected;

(*c*) require any premises, place or vehicle to be made fit for use to his satisfaction, and any diseased livestock to be removed from the premises and the premises or vehicles to be disinfected;

(*d*) prohibit the use of any utensils, machinery or apparatus, cooling chamber or vehicle for dairy produce until the defects have been remedied to his satisfaction.

Qualifications and appointment of milk graders or testers

49.—(1) No person shall test or grade any milk or milk product unless he is the holder of a certificate of competency issued by the Minister to the effect that the person concerned is competent to grade milk and milk products.

(2) A certificate of competency shall be in Form VII set out in the Schedule.

Milk grader's certificate

50. The Minister may issue a Milk Grader's Certificate with or without conditions as he thinks fit.

(2) A Grader's Certificate shall be in Form VII set out in the Schedule.

(3) The Minister shall keep a register of the names of persons to whom a Milk Grader's Certificate has been issued.

Fees

51. Every application under these Regulations for a Producers Certificate of Registration, a Distributor's Licence or a Dairy Plant Licence shall be accompanied with an appropriated fee as specified in the Second Schedule.

FIRST SCHEDULE

FORM I

MILK AND MILK PRODUCTS ACT

(CAP. 67:05)

MILK AND MILK PRODUCTS REGULATIONS

(*regulation* 12 (1))

APPLICATION FOR PRODUCERS CERTIFICATE OF REGISTRATION

I/We, hereby apply for a Producers Certificate of Registration for 19..... to sell .....to ....in .... as required by the regulations made under the Milk and Milk Products Act (Cap. 67:05).

Name of Applicant: .....

Location of the Farm: .....

Address: .....

.....

Date of Inspection of Premises: .....

Name of Inspector: .....

Date of Application: .....

.....

Signature of Producer

FORM II

MILK AND MILK PRODUCTS ACT
(CAP. 67:05)
MILK AND MILK PRODUCTS REGULATIONS
(*regulation* 12 (2))
PRODUCERS CERTIFICATE OF REGISTRATION

No. .....

This is to certify that ..... is granted this Certificate in respect of the premises situated at .... to be used for the purpose of ....

This Certificate is issued subject to the provisions of the Milk and Milk Products Act (Cap. 67:05) and to the regulations made thereunder, and the Certificate shall expire on the ..... day of ...., 19.....

Fee paid: K.....

Dated this ..... day of ....., 19.....

Application No. .....

.....
Minister of Agriculture

FORM III

MILK AND MILK PRODUCTS ACT
(CAP. 67:05)

MILK AND MILK PRODUCTS REGULATIONS
(*regulation* 23 (1))
APPLICATION FOR A DAIRY PLANT LICENCE

I/We, hereby apply for a licence to operate a dairy plant as required by the regulations made under the Milk and Milk Products Act (Cap. 67;05).

Name of Applicant: .....

Address: .....

Trade Name: .....

Location: .....

Date of Inspection of Premises: .....

Name of Inspector: .....

Date of Application: .....

.....
Signature of Applicant

FORM IV

MILK AND MILK PRODUCTS ACT

(CAP. 67:05)

MILK AND MILK PRODUCTS REGULATIONS

(*regulation* 23 (1)

DAIRY PLANT LICENCE

No. .....

Licence is hereby granted to ..... to operate a Dairy Plant to manufacture or process milk and other dairy products at ..... pursuant to the regulations made under the Milk and Milk Products Act (Cap. 67:05).

This licence expires on the ....., 19.....

Fee paid: K .....

Dated this ..... day of ....., 19.....

.....

Minister of Agriculture

FORM V

MILK AND MILK PRODUCTS ACT

(CAP. 67:05)

MILK AND MILK PRODUCTS REGULATIONS

(*regulation* 36)

APPLICATION FOR DISTRIBUTOR'S LICENCE

I/We, hereby apply for a licence to distribute milk and dairy products pursuant to the regulations made under Milk and Milk Products Act (Cap. 67:05).

Name of Applicant: .....

Address: .....

Trade Name: .....

Location: .....

Date of Application: .....

.....

Signature of Applicant

FORM VI

MILK AND MILK PRODUCTS ACT

(CAP. 67:05)

MILK AND MILK PRODUCTS REGULATIONS

(*regulation* 36)

DISTRIBUTOR'S LICENCE

No. .....

Licence is hereby granted to ..... to operate a milk and milk products distribution facility to store and distribute milk and dairy products at ..... pursuant to the regulations made under the Milk and Milk Products Act (Cap. 67:05).

This licence expires on the ....., 19.....

Fee paid: K.....

Dated this ..... day of ....., 19.....

.....

Minister of Agriculture

FORM VII

MILK AND MILK PRODUCTS ACT

(CAP. 67:05)

MILK AND MILK PRODUCTS REGULATIONS

(*regulations* 49 *and* 50)

CERTIFICATE OF COMPETENCY IN MILK AND MILK PRODUCTS GRADING AND/OR TESTING MILK AND MILK PRODUCTS

No. ..... CLASS: .....

This is to CERTIFY that ..... is appointed as milk grader/tester and is competent to undertake such work for the purposes of the Milk and Milk Products Act (Cap. 67:05).

.....

Minister of Agriculture

SECOND SCHEDULE

FEES r. 51

Matter	*Amount of fee* K	t
For an application for—		
(*a*) Producers Certificate of Registration	20	00
(*b*) Distributor's Licence	20	00
(*c*) Dairy Plant Licence	50	00

SEED

CHAPTER 67:06

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CHAPTER 67:06

SEED

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69. Exemptions from the provisions of this Act
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71. Regulations

An Act to provide for the regulation and control of the production, sale, importation and exportation of seed for sowing, and for the testing and minimum standards of germination and purity thereof, and further to provide for the certification of seed and for matters incidental to or connected therewith

5 of 1988
9 of 1996
G.N. 12/1997
13/1997

[13TH, JANUARY 1997]

PART I

PRELIMINARY

Short title

1. This Act may be cited as the Seed Act.

Interpretation
9 of 1996

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

"advertisement" includes any statement, picture, design or device—

(*a*) published in any newspaper or other publication in general circulation to the public; or

(*b*) contained in any handbill, circular or other matter which is distributed to members of the public through the post or brought to the notice of the public in any other manner;

"certified seed" means any prescribed seed which is certified under the provisions of Part IX;

"container" includes a bag, barrel, case, tin, package or any other container in which seed is placed or packed;

"contract of sale" includes an agreement to sell;

"Controller of Seeds" means the officer in the public service designated as such under the provisions of section 3;

"Imported Certified Seed" means any prescribed seed certified in the country of its origin imported by a registered seed importer and certified as Imported Certified Seed under the provisions of Part IX;

"label" includes any legend, work, mark, symbol or design applied or attached to, or accompanying, any seed or package of seed;

"licensed seed seller" means any seed seller licensed under Part VI;

"Malaŵi certified seed" means any prescribed seed produced in Malaŵi and certified as such under the provisions of Part IX;

"official seed-tester" means any public officer designated as an official seed-tester under Part IV;

"owner", in relation to any seed, includes any person having for the time being the possession, custody or control thereof;

"prescribed seed" means any seed declared as such by an order made under section 33;

"purity" means analytical purity expressed as a percentage by weight;

"seed" means the part of any plant, customarily referred to as seed, intended for planting and includes seed potatoes;

"seed cleaner" means any person engaged in the trade or business of removing impurities from seed;

"seed cleaning plant" includes any premises used for the removal of impurities from seed;

"seed importer" means any person who, either exclusively or in conjunction with any other trade or business, imports seed into Malaŵi for resale;

"seed inspector" means any person designated as seed inspector under section 21;

"seed producer" means any person who, either exclusively or in conjunction with any other trade or business, produces seed for sale;

"seed seller" means any person who, either exclusively or in conjunction with any other trade or business, sells seed for sowing;

"seed-testing station" means any premises, suitably equipped for the purpose, where seed is tested for its purity and germination capacity;

"sell" includes to exchange or barter or to offer, advertise, keep, expose, transmit, convey or deliver for or in pursuance of a sale, exchange or barter;

"special variety" means any variety of prescribed seed which has been specified by the Minister pursuant to section 44 for the purposes of Part IX;

"variety" means a subdivision of any kind which can be differentiated from other subdivisions of that kind by growth, plant, fruit or other characteristics and any uniform group which is a first generation hybrid reconstituted on each occasion by crossing two or more breeding stocks maintained by inbreeding.

PART II

Administration

Controller of Seeds

3.—(1) There shall be a Controller of Seeds for the purposes of this Act, who shall be an officer in the public service, and who, subject to the general and special directions of the Minister, shall be responsible for the administration of this Act.

(2) The Controller of Seeds may, subject to the general or special directions of the Minister, delegate any of his powers or functions under this Act to any officer in the public service.

Registers
9 of 1996

4. The Controller of Seeds shall keep and maintain all registers prescribed or required under this Act, each of which shall contain such particulars as are prescribed in respect of such register.

PART III

Registration of Seed Importers, Seed Cleaners and Seed Sellers

5–14. [*Repealed by* 9 *of* 1996]

PART IV

Seed Tests

Establishment of seed testing stations
9 of 1996

15. The Minister may establish and maintain, or designate one or more seed testing stations in Malaŵi.

Designation of official seed testers
9 of 1996

16. Upon the establishment or designation of a seed testing station, and from time to time thereafter as occasion may require, the Minister shall, by notice published in the *Gazette*, designate an official seed tester or official seed testers, as the case may be, for each such seed testing station.

Registers of seed testers and seed testing stations

17. The Controller of Seeds shall keep and maintain the following registers—

(*a*) a register of official seed testers, which shall contain—

(i) the name and address of each official seed tester appointed under this Act;

(ii) such other particulars as may be prescribed;

(*b*) a register of seed testing stations, which stations shall contain—

(i) the name and address of each seed testing station established under this Act; and

(ii) such other particulars as may be prescribed.

Prohibition against testing of prescribed seed except in seed testing stations

18.—(1) Any person who, in any place which is not a seed testing station, tests or purports to test for the purposes of this Act any prescribed seed shall be guilty of an offence.

(2) Upon the conviction of any person of an offence under subsection (1), the court may, in addition to any other penalty imposed, declare any machinery, equipment and chemicals and any prescribed seed found in the place concerned to be forfeited or order them to be destroyed without compensation.

Delivery of samples for official test
9 of 1996

19.—(1) Any person who has produced or acquired any prescribed seed which has not been tested may take a sample of the seed to a seed testing station together with a statement in writing specifying such particulars as may be prescribed.

(2) The delivery of a sample of prescribed seed pursuant to subsection (1) shall be subject to payment of such fee as may be prescribed.

(3) Upon receipt at the seed testing station of any sample taken pursuant to subsection (1), the official seed tester shall test the sample in the manner prescribed and shall furnish to the person who sought the test a report there of setting out the date upon which the test was made, the findings resultant thereon and such other particulars as may appear to the official seed tester necessary for, or relevant to, the report.

20. Any reports, certificates or other documents issued or furnished by a seed testing station for the purposes of this Act shall be in the forms prescribed.

Reports to be in forms prescribed

PART V

Seed Inspection

21.—(1) There shall be seed inspectors licensed as such by the Minister for the purposes of this Act

Seed inspectors 9 of 1996

(2) An application for a licence as a seed inspector shall be made to the Minister in the prescribed form, and shall be accompanied with the prescribed fees.

(3) The Minister shall cause a certificate of authority to be issued to each seed inspector.

(4) A seed inspector shall produce for inspection his certificate of authority upon the demand of any person affected by the exercise by him of any of his powers under this Act.

22. The authority of a seed inspector issued under section 21 may be—

Authority of seed inspectors may be general or limited

(*a*) general, whereby the seed inspector shall be empowered to exercise all the powers of a seed inspector anywhere in Malaŵi; or

(*b*) limited, either—

(i) as to the specific powers exercisable by the seed inspector; or

(ii) as to the place or district in which such powers are exercisable by the seed inspector.

23. A seed inspector may take samples of any seed for any of the following purposes—

Powers to take samples of seed

(*a*) for test or examination to determine whether the seed is prescribed seed or restricted seed; or

(*b*) for test to determine whether if the seed is prescribed seed it conforms to the standards of purity and germination prescribed therefor under this Act; or

(*c*) for such other purposes as may be deemed necessary by the seed inspector in relation to the exercise of his powers under this Act.

24.—(1) A seed inspector may, for any of the purposes of this Act, and at all reasonable times, enter upon any land, building, premises or vehicle at or in which he has reasonable cause to believe that any prescribed seed or restricted seed is being stored, sold or transported for sale in contravention of this Act, or is being packed in packages or other containers which are marked or labelled, or are being marked or labelled, with any

Powers to search premises and seize certain goods 9 of 1996

description, mark or date in contravention of this Act, and may, without liability for any payment to any person whosoever, take samples of the seed found therein and the owner of the land, building, premises or vehicle, or his agent or the person in custody or control thereof shall on demand furnish to the seed inspector a statement in writing containing such particulars with respect to the seed as may be required by the seed inspector who, further, may seize and remove therefrom and detain any prescribed seed or restricted seed or any package or container or any label, stamp or device for marking, stamping or labelling, or any book, record or document found therein, which would afford evidence of a contravention of this Act.

(2) Every seed inspector shall, on demand by the owner, or the person having custody of such land, building, premises, plant or vehicle, produce his authority to enter upon such land, building, premises, plant or vehicle.

(3) Any seed inspector who has seized and detained any item or thing pursuant to the authority under subsection (1), shall give to the person from whom such item or thing was seized a receipt for the seizure and detention thereof signed by such seed inspector.

(4) Any prosecution for an offence arising from the findings of an inspection conducted under subsection (1) shall be instituted only with the consent of the Chief Public Prosecutor; and in the event of the Controller of Seeds being advised in writing by the Chief Public Prosecutor that no prosecution should be instituted, then any item or thing seized in the course of the inspection shall be returned to the owner thereof or to the person from whose custody it was taken within ten days from the date of the receipt by the Controller of Seeds of such advice.

Prohibition against obstruction, etc., of seed inspectors

25. Any person who—

(*a*) obstructs or impedes a seed inspector in the due exercise of his powers under this Act; or

(*b*) refuses to furnish to a seed inspector, on request, any particulars or information to which the seed inspector is entitled under this Act; or

(*c*) wilfully or recklessly gives to a seed inspector or an authorized officer any false or misleading particulars or information with respect to any fact or matter to which the seed inspector is entitled under this Act,

shall be guilty of an offence.

PART VI

Licensing of Seed Sellers

26–32. [*Repealed by* 9 *of* 1996].

PART VII

Prescribed Seed

Power of Minister to declare seed to be prescribed seed 9 of 1996

33. The Minister may from time to time, by order published in the *Gazette*, declare any seed to be a prescribed seed, and for each kind specify minimum standards of germination and other characteristics of seed quality.

Treating and cleaning of prescribed seed

34.—(1) If, upon test made under Part IV, it is found and reported by an official seed tester that any prescribed seed does not conform to the prescribed standards of germination or purity, the owner thereof shall forthwith arrange for the prescribed seed to be treated or cleaned.

(2) Where any prescribed seed has been treated or cleaned pursuant to subsection (1), the owner may request a seed inspector to take, and the seed inspector thereupon shall take, a further sample thereof as required under this Act, which sample shall be sent by the seed inspector to a seed testing station for further test, and the owner may, as often as he so desires, cause further treatments or cleanings of such prescribed seed to be effected and further tests to be made in like manner until such time as the prescribed seed is found and reported by the official seed tester to conform to the standards of germination and purity prescribed therefor.

Duties of seller on sale of prescribed seed

35.—(1) Subject to the provisions of this Act, any person who sells, for sowing, any prescribed seed which has been tested in accordance with the provisions of this Act and found to conform to the standards prescribed shall—

(*a*) if the prescribed seed is sold in sealed containers, cause to be printed or stamped upon each such container or upon a label attached thereto or enclosed therein in such a way as to be legible without opening the container, in clear and legible letters and figures—

(i) the words "tested seed";

(ii) the date upon which the prescribed seed was tested; and

(iii) such other particulars as may be prescribed;

(*b*) if the prescribed seed is sold in bulk quantities—

(i) and the seller is the person who caused the test to be made, furnish to the buyer at the time of sale a statement in writing containing the name and address of the seed testing station where the test was made, the date of the test, and a declaration by the seller that the bulk quantity sold by him is all or part of that from which the sample tested was taken, together with such other particulars as may be prescribed;

(ii) and the seller is not the person who caused the test to be made, furnish to the buyer at the time of sale a copy of the statement furnished, under the provisions of subparagraph (i), by the person who caused such test to be made, and shall endorse thereon a declaration that the bulk quantity sold by him is all or a part of that to which such statement was related at the time he procured the prescribed seed.

(2) Any person who fails to comply with the requirements of subsection (1) shall be guilty of an offence.

(3) The validity of a contract for the sale of prescribed seed, or the right to enforce such a contract, shall not be affected by non-compliance with this section.

(4) For the purposes of this section—

(*a*) the expression "in bulk quantities" includes any quantity of seed, but does not include seed which is packed and sold in sealed containers;

(*b*) the word "sale" includes "gift".

Disposal of sub-standard prescribed seed

36. Subject to the provisions of section 34, if a sample of any prescribed seed is, upon test, found and reported by an official seed tester not to conform to the standards of germination and purity prescribed for such prescribed seed, the Controller of Seeds may—

(*a*) if such prescribed seed has been seized and detained in accordance with the provisions of this Act—

(i) subject to such conditions as to its sale and use as he may impose, direct its return either to the owner thereof or to the person from whose custody or control it was taken and in so directing the Controller of Seeds may impose such conditions as to its sale or use as he may consider necessary; or

(ii) order it to be destroyed without payment of compensation to the owner if, upon reasonable grounds, he is satisfied that it is in a state dangerous to public health or injurious to animals or plants;

(*b*) if the prescribed seed has not been seized or detained in accordance with the provisions of this Act—

(i) permit the owner thereof to retain the prescribed seed subject to such conditions as to its sale or use as the Controller of Seeds may impose;

(ii) order it to be destroyed at the premises where located or to be seized by the Controller of Seeds and destroyed, in either case without payment of compensation to the owner, if, upon reasonable grounds, he is satisfied that it is in a state dangerous to public health or injurious to animals or plants.

PART VIII

Import and Export of Seed

37–38 [*Repealed by* 9 *of* 1996]

Conditions for importation of prescribed seed
9 of 1996

39.—(1) No seed importer shall import any prescribed seed into Malaŵi unless—

(*a*) such seed is not restricted seed;

(*b*) such seed conforms to the standards of germination and purity and other requirements prescribed therefor;

(*c*) if such seed is packed in a container, such container complies with the provisions of section 35 as to the manner of labelling;

(*d*) the genus, species and variety of such seed, and the country of its origin, is shown on an invoice or delivery note accompanying such seed at the time of its importation.

(2) The Minister may exempt any seed importer, or any particular species, variety or class of prescribed seed, from subsection (1) and such exemption may be subject to such conditions as the Minister may, in his discretion, impose.

(3) A person who fails to comply with subsection (1) or with any condition imposed by the Minister under subsection (2) shall be guilty of an offence.

Testing of imported prescribed seed
9 of 1996

40.—(1) Upon importation into Malaŵi of any prescribed seed, the seed importer to whom the prescribed seed is consigned shall, within seven days of its delivery to him, cause a sample thereof to be taken in the manner prescribed and sent for test to a seed testing station.

(2) No person shall sell or otherwise dispose of imported prescribed seed prior to the receipt, by the seed importer who imported such prescribed seed, of a report on the test of the sample thereof from the seed testing station confirming that the imported prescribed seed conforms to the prescribed standards of germination and purity.

(3) A person who contravenes or fails to comply with subsection (1) or (2) shall be guilty of an offence.

Importation of trade samples
9 of 1996

41. Nothing contained in this Act shall be construed as prohibiting the importation by any seed importer, by post, of a sample of any prescribed seed not exceeding one kilogram and which is being imported into Malaŵi solely as a trade sample and its quantity is of no commercial value.

Court may order forfeiture and disposal of illicit prescribed seed

42. Upon the conviction of any person of an offence under this Part the court may, in addition to any other penalty imposed, declare any prescribed seed or restricted seed found in possession or under the control of the defendant and connected with the commission of the offence to be forfeited and may order it to be destroyed without compensation.

PART IX

Certification of Seed and Production of Seed for Certification

Certification of seed 9 of 1996

43. Subject to the provisions of this Part, seed may be certified by the Controller of Seeds—

(*a*) in the case of seed produced in Malaŵi, as "Malaŵi Certified Seed"; or

(*b*) in the case of imported seed, as "Imported Certified Seed".

Variety of certified seed 9 of 1996

44. The Minister may, by order published in the *Gazette*, specify the variety or varieties of seed which may be cultivated for the purpose of producing seed for certification as Malaŵi Certified Seed or as Imported Certified Seed.

Notification of intention to produce seed for certification 9 of 1996

45.—(1) Any person who intends to produce seed for certification may notify the Controller of Seeds of his intention.

(2) The notification referred to in subsection (1) shall be made in the prescribed form and shall specify—

(*a*) the variety or varieties of seed to be produced;

(*b*) the location where the seed is to be produced;

(*c*) the area in hectares that is to be planted; and

(*d*) the name of the seed inspector who has been engaged to inspect the fields and to test the seed for certification, and shall be accompanied with the prescribed fees.

(3) Notification under this section shall be valid for one season for the production of one crop only of a particular specified variety or varieties to which it relates.

Register of seed producers 9 of 1996

46. For the purposes of this Part, the Controller of Seeds shall keep and maintain a register of seed producers which shall contain—

(*a*) the name and addresses of all seed producers;

(*b*) particulars of the specified variety or varieties to be grown by each seed producer;

(*c*) particulars of the location and area of the land where each such specified variety is to be grown by each seed producer;

(*d*) such other particulars as may be prescribed.

47–49 [*Repealed by* 9 *of* 1996]

Certification of seed by the Controller of Seeds 9 of 1996

50.—(1) Upon it being shown to the satisfaction of the Controller of Seeds that a particular seed lot—

(*a*) is of a specified variety;

(*b*) is of known derivation;

(*c*) has been produced on the land designated in the register;

(*d*) has been sown, cultivated and produced as prescribed;

(*e*) has been inspected during cultivation as prescribed; and

(*f*) has been tested in accordance with the provisions of this Act and found to conform to the standards of germination and purity,

the Controller of Seeds may certify such seed as Malaŵi Certified Seed.

(2) Having certified any seed as Malaŵi Certified Seed the Controller of Seeds shall issue to the seed producer a certificate in the prescribed form in respect of such seed, and shall enter the particulars of such certification in the register of seed producers in relation to the seed producer concerned.

Certified seed of Malaŵi to be produced from approved seed
9 of 1996

51. No seed producer shall use for the production of Malaŵi Certified Seed any variety of seed which has not been approved for such purpose by the Controller of Seeds.

Certificate to be produced on sale of Malaŵi Certified Seed
9 of 1996

52.—(1) Upon any sale of Malaŵi Certified Seed by any seed producer, he shall, at the time of such sale—

(*a*) produce for inspection by the buyer the certificate issued under this Part in respect of such seed; and

(*b*) furnish to the buyer a true copy of such certificate countersigned by him as the producer of such Malaŵi Certified Seed.

(2) A seed producer who fails to comply with this section shall be guilty of an offence.

Certification of imported seed as Imported Certified Seed
9 of 1996

53.—(1) The Controller of Seeds may, upon application by a seed importer, certify as Imported Certified Seed any seed of specified variety which—

(*a*) has been imported into Malaŵi by the applicant;

(*b*) has been tested in accordance with the provisions of this Act;

(*c*) has been certified as certified seed under the laws of the country of its origin;

(*d*) is accompanied by a certificate which the Controller of Seeds considers acceptable for purposes of certification under this Part; and

(*e*) is shown to the satisfaction of the Controller of Seeds to have been produced under conditions, and to conform to standards, equal to or higher than those prescribed for the production and certification of Malaŵi Certified Seed.

9 of 1996

(2) Where the Controller of Seed has certified any imported seed as Imported Certified Seed, he shall issue to the seed importer a certificate in the prescribed form in respect of such certification.

(3) The Controller of Seeds shall keep and maintain a register of seed importers which shall contain—

(*a*) the name and address of the seed importer;

(*b*) the variety and quantity of seed imported;

(*c*) the country of origin of the seed;

(*d*) the date of testing in the country of origin;

(*e*) the name of the certifying authority in the country of origin;

(*f*) the number of the certificate; and

(*g*) such other particulars as may be prescribed.

Duties of seller on sale of certified seed in sealed containers

54.—(1) Any person who sells, for sowing, any certified seed in sealed containers shall cause to be printed or stamped upon each such container or on a label attached thereto or enclosed therein in such a way as to be legible without opening the container, in clear and legible letters and figures—

(*a*) in the case of Malaŵi Certified Seed—

(i) the words "Malaŵi Certified Seed" in lieu of the words "tested seed" as required under section 35;

(ii) the date of testing;

(iii) the number of the certificate issued in respect thereof; and

(iv) such other particulars as may be prescribed;

(*b*) in the case of Imported Certified Seed—

(i) the words "Imported Certified Seed" in lieu of the words "tested seed" as required under section 35;

(ii) the date of testing;

(iii) the number of the certificate issued in respect thereof; and

(iv) such other particulars as may be prescribed.

(2) Any person who fails to comply with this section shall be guilty of an offence.

Prohibition against sale of uncertified seed

55. Any person who—

(*a*) sells as certified seed any seed which is not certified under this Act; or

(*b*) for the purposes of sell, uses, in the description or name of any seed, the word "certified" or any cognate word in relation to seed which is not certified under this Act, shall be guilty of an offence.

Prohibition against sale of certified seed without possession of appropriate certificate

56.—(1) Any person who sells in bulk quantities—

(*a*) any Malaŵi Certified Seed or Imported Certified Seed, for sowing, without having in his possession or under his control, at the time of such sale, the certificate or a copy of the certificate issued or furnished under this Part in respect of such seed;

(*b*) any Malaŵi Certified Seed or Imported Certified Seed, for sowing, and who fails to furnish the buyer, at the time of such sale, the prescribed certificate or a copy of certificate required to be so furnished under this Part in respect of such seed, shall be guilty of an offence.

(2) The validity of a contract for the sale of certified seed, or the right to enforce such a contract, shall not be affected by non-compliance with this section.

(3) For the purposes of this section, the expression "in bulk quantities" includes any quantity of seed taken, for the purpose of a particular sale, from any larger quantity of seed, but does not include seed which is packed and sold in sealed containers.

PART X

Offeences and Miscellaneous Provisions

Failure to comply with Act or regulations

57. Any person who contravenes or fails to comply with any of the provisions of this Act, or regulations, requirements or conditions lawfully prescribed thereunder, shall be guilty of an offence.

Prohibition against tampering with samples 9 of 1996

58. Any person who—

(*a*) tampers with any seed so as to procure that any samples of such seed, taken under and for the purposes of this Act, does not correctly represent the bulk from which the sample was taken; or

(*b*) otherwise tampers with any sample taken under this Act; or

(*c*) with intent to deceive, causes or permits to be sent to any seed testing station to be tested, for the purposes of this Act, a sample of any seed which to his knowledge does not represent the bulk from which it was taken,

shall be guilty of an offence.

Prohibition against altering, defacing or removing official records, etc.

59. Any person who, without lawful authority, alters, defaces or removes—

(*a*) any register, index or other such official record maintained in pursuance of this Act or of any order or requirement made thereunder; or

(*b*) any entry appearing in any such register, index or other such official record, shall be guilty of an offence.

Prohibition against altering, etc., documents and marks

60. Any person who, without lawful authority, alters or defaces—

(*a*) any certificate, report, record, invoice, accounts or other document, prescribed, issued, furnished or kept under this Act or under any order, requirement, condition or regulation made thereunder; or

(*b*) any label, note, docket or mark placed upon any container under this Act or under any order, requirement or condition made thereunder, or who removes any such label, note, docket or mark from any such container,

shall be guilty of an offence.

Secrecy

61. Any person who—

(*a*) is employed for the purposes of this Act, publishes or communicates to any person without lawful authority any information acquired by him in the course of his employment; or

(*b*) is in possession of any information which to his knowledge has been disclosed in contravention of this Act, publishes or communicates that information to any other person,

shall be guilty of an offence and be liable to a fine not exceeding K500 or to imprisonment not exceeding one year.

62. [*Repealed by* 9 *of* 1996].

Prohibition against sale of untested prescribed seed

63.—(1) Save as provided by section 68, no person shall sell any prescribed seed for sowing unless the said seed has previously been tested as provided by this Act, and upon such test has been found to be of the standards of germination and purity prescribed for such seed.

(2) Any person who fails to comply with this section shall be guilty of an offence.

(3) Upon the conviction of any person of an offence under this section, the court may, in addition to any other penalty imposed, declare any such untested prescribed seed found in the possession or under the control of the defendant to be forfeited or may order it to be destroyed without compensation.

Prohibition against sale of substandard prescribed seed

64.—(1) If, upon test made pursuant to the provisions of this Act, any prescribed seed is not found to conform to the standards of germination and purity prescribed for such seed and is so reported in the report on such test furnished by an official seed tester, such prescribed seed shall not be sold by any person, for sowing, save with the consent in writing of the Controller of Seeds previously obtained, and subject to any conditions as regards such sale as the Controller of Seeds may impose.

(2) Any person who sells any prescribed seed in contravention of subsection (1) shall be guilty of an offence.

(3) Upon conviction of any person of an offence under this section, the court may, in addition to any other penalty imposed, declare any such sub-standard prescribed seed found in the possession or under the control of the defendant to be forfeited or may order it to be destroyed without compensation.

65.—(1) Any person who sells, for sowing, any prescribed seed under a description other than its varietal name shall be guilty of an offence.

Prohibition against sale of prescribed seed under name other than varietal name

(2) In this section, "varietal name" means the name given to a specific variety of seed by its originator or discoverer.

66.—(1) A person guilty of an offence under this Act for which a penalty has not been specified shall be liable to a fine of K5,000 and to imprisonment for one year.

Penalty
9 of 1996

(2) Any regulations made under this Act may, notwithstanding the provisions of section 21 (*e*) of the General Interpretation Act, prescribe a fine of up to K2,000 and imprisonment for up to six months for an offence committed against any provision of such regulations.

9 of 1996
Cap. 1:01

67. All registers maintained by the Controller of Seeds under this Act shall, at all reasonable times, be open to the inspection by any person applying to the Controller of Seeds on payment of the prescribed fee.

Inspection of registers

68. The provisions of this Act shall not apply—

When Act not applicable to sale of prescribed seed
9 of 1996

(*a*) to any sale of prescribed seed, which is not Malaŵi Certified Seed and which has been produced by a seed producer on his own land and is sold by him—

(i) for sowing by the buyer, and not for purposes of resale; or

(ii) to a seed cleaner in order that it may be cleaned before being sold for sowing:

Provided that it is sold in a container or containers, upon which, or upon the label or labels attached to which, appear clearly and legibly the words "for cleaning purposes only";

(iii) for use as food or as farm feed or for industrial purposes.

(*b*) to any sale of prescribed seed, which is not certified seed, by or to a person exempted from the provisions of this Act by an order made by the Minister under section 69.

69. The Minister may, from time to time, by order published in the *Gazette*, exempt any person or class of persons from the provisions of this Act.

Exemptions from the provisions of this Act

70. [*Repealed by* 9 *of* 1996].

71. The Minister may make regulations for the better carrying out of this Act and, without prejudice to the generality of the foregoing, such regulations may make provision for—

Regulations
9 of 1996

(*a*) the forms of registers, notifications, certificates, licences and reports required to be prescribed under this Act and such other forms as the Minister deems proper to prescribe for the purposes of this Act;

9 of 1996

(*b*) the forms of records to be kept by the Controller of Seeds for the purposes of this Act;

9 of 1996 (*c*) the form of records to be kept and returns to be made by seed cleaners, seed importers, seed producers and seed sellers for purposes of this Act;

(*d*) the qualifications of official seed testers under this Act;

9 of 1996 (*e*) standards of quality and performance of scientific equipment and the variety of such equipment to be maintained in any seed testing station, and the Minister may make provision for different standards and equipment for different seed testing stations;

(*f*) the operation and management of seed testing stations, including the number of official seed testers to be attached to each such seed testing station and the forms of records to be kept by seed testing stations for the purposes of this Act;

(*g*) the manner in which samples are to be taken under this Act, the forms to be used in and about the taking of such samples, and the fees and expenses to be paid for and in respect of the taking of such samples under particular circumstances;

(*h*) the methods to be employed by seed testing stations and official seed testers in the testing of prescribed seed;

(*i*) the standards of germination and purity of specified varieties for purposes of certification as certified seed under Part IX;

9 of 1996 (*j*) the conditions under which prescribed seed for sowing intended for sale may be displayed for sale or stored by any seed producer, seed cleaner or seed seller;

(*k*) the manner and methods of labelling, stamping, marking or sealing of containers in which any prescribed seed or certified seed is sold;

(*l*) the prevention of the use of false or misleading statements in advertising any prescribed seed for sale;

(*m*) the prohibition or restriction of the disposal, acquisition or use of any prescribed seed as farm feed or fertilizer;

9 of 1996 (*n*) standards of quality and performance of equipment and the variety of such equipment to be maintained at any seed cleaning plant;

(*o*) the methods to be employed by seed cleaners in and about the cleaning of prescribed seed;

9 of 1996 (*p*) the inspection of land notified by a seed producer as land on which he intends to produce seed for certification as Malaŵi Certified Seed;

9 of 1996 (*q*) the examination and testing of any seed intended for use by a seed producer in the production of seed for certification as Malaŵi Certified Seed and the methods to

be employed by seed producers in and about the cultivation and production of seed for such certification and further for the periodic inspection of growing crops intended for the production of seed for certification as Malaŵi Certified Seed;

(*r*) the control, limitation or prohibition of the cultivation by a seed producer of any specified crops on land contiguous or adjacent to lands upon which seed intended for certification as Malaŵi Certified Seed is being grown by the seed producer; 9 of 1996

(*s*) the control of weeds on the land of any seed producer which is being used for the production of seed intended for certification as Malaŵi Certified Seed or on any other land of the seed producer adjacent or contiguous to such land; 9 of 1996

(*t*) the country or countries of origin of imported seed of any specified variety, and the certifying authority in such country or countries whose certificate thereof as certified seed may form the basis of an application by a seed importer for the certification of such seed as Imported Certified Seed under Part IX; 9 of 1996

(*u*) any fees payable under this Act; 9 of 1996

(*v*) any thing or matter which this Act requires to be prescribed. 9 of 1996

SUBSIDIARY LEGISLATION

G.N. 32/1997

SEED (FEES AND FORMS) REGULATIONS

under s. 71

Citation

1. These Regulations may be cited as Seed (Fees and Forms) Regulations.

Fees

2. The fees prescribed in the First Schedule shall be payable in respect of matters specified therein in relation to such fees.

Forms

3. The forms set out in the Second Schedule shall be used for purposes of the Act, and such particulars as are contained in those forms and not particularly prescribed by the Act are hereby prescribed as particulars required under the Act.

FIRST SCHEDULE reg. 2

	Matter	*Fee* K t
1.	Inspection of—	
	(*a*) any basic hybrid and vegetable seed crops, for each inspection, per hectare	60 00
	(*b*) any open-pollinated crops intended for the production of certified seed, for each inspection, per hectare . .	25 00
2.	Labels attached to containers in which seed is presented or represented for certification, per label (if seed is to be inspected for certification by government officer) . .	3 00
3.	Seals attached to containers in which seed is presented or represented for certification, per seal (if seed is to be inspected for certification by a government officer) . .	3 00
4.	Notification of fields for certification or basic seed production	10 00
5.	Requests to inspect registers, per request	5 00
6.	Seed testing (any sample), per sample	5 00

reg. 3

SECOND SCHEDULE

FORMS

SEED ACT FORM NO. 1

(CAP. 67:06)

REGISTER OF OFFICIAL SEED TESTERS

(UNDER SECTION 17)

Name of Official Seed Tester	*Address*	*Education Qualification*	*Date on which he/she ceased to be an Official Seed Tester*	*Remarks (if any)*

FORM NO.II

SEED ACT
(CAP. 67:06)

REGISTER OF SEED TESTING STATIONS

(UNDER SECTION 17)

1. Name and address of the seed testing station

2. Tests that can be conducted—

(*a*) Purity [ ]
(*b*) Germination [ ]
(*c*) Moisture [ ]
(*d*) Seed health [ ]
(*e*) Genetic purity [ ]
(*f*) TZ Test [ ]
(*g*) Hetrogenity test [ ]
(*h*) Other tests .....
.....

3. Details of the samples tested—

Year	*Crop Variety*	*Class of Seed*	*Name and Address of Sender*	*Date of receipt of Sample and Memo*	*Condition of Seed on the Package*	*Period No. and Date off*	*Result Purity Germ. Others*

FORM III

SEED ACT

(CAP. 67:06)

FORM OF MEMORANDUM TO BE SENT ALONG WITH SEED SAMPLE

(UNDER SECTION 19)

To: Seed Testing Station

.....

.....

The sample described below is sent herewith for analysis

1. Serial number of the sample .....
2. Date and place of collection .....

3. Origin .....
4. Kind (*common name / scientific name*) .....
   .....
5. Variety .....
6. Quantity of the prescribed seed .....
7. Tests required .....
8. Lot is—cleaned/uncleaned/treated/untreated .....
9. Name of the treating material, (if treated) .....
   .....
10. A copy of this memorandum and specimen impression of the seal used to seal the packet of samples is being sent separately by post/hand.

    Name of the sender of sample .....

    Date ....

    Signature

FORM IV

SEED ACT

(CAP. 67:06)

FORM OF SEED TESTING REPORT/CERTIFICATE BY THE SEED TESTING STATION

(UNDER SECTION 20)

Republic of Malaŵi Official Seed Testing Laboratory	*Station Number (Please quote in any correspondence)*
.....	.....
.....	.....

Telephone .....

Sample description .....

.....

Date received ..... Date reported .....

Sent by .....

Purity %
Germination %
Hard seed %
Injurious weed %
Seeds %
Other seed %
Inert matter %

Tested by International Methods

Remarks .....

Sample drawn by .....

.....

Controller of Seeds

FORM V

SEED ACT

(CAP. 67:06)

NOTIFICATION OF SEED PRODUCER

(UNDER SECTION 45)

1. Name .....
2. Profession .....
3. Complete address .....
4. Previous experience of certified seed production (if any).....
5. Location of the land where seed is proposed to be produced.....
6. Percentage of germination and purity of seed to be used as source of production .....
7. Name of the crops grown in previous four crop seasons (only in case of groundnuts, sunflower, rhodegrass, tobacco and potatoes) .....
8. Details of the seed production programme offered for certification—

Variety	*Class of Seed Proposed to be Produced*	*Area (H A)*	*Proposed Date of Sowing*	*Source Class of Seed*	*Isolation Distance*	*Remarks*

NOTE: Notification is to be submitted by the seed producer, at least 10 days before the proposed sowing date.

9. Details of payment—

Field inspection fee .....

Signature of Seed Producer .....

FOR OFFICIAL USE

Date of receipt ..... Notification number allocated

.....

FORM VI

SEED ACT

(CAP. 67:06)

REGISTER OF SEED PRODUCERS

(UNDER SECTION 46)

Name and Address of the Seed Producer	*Location and Where Specified Variety is to be Grown*	*Duration of the Registration for which it is Valid*	*Crop Variety*	*Area Certificate Class of Seed*	*Qty. of Number and Date*	*Seed Certificate*

FORM VII

SEED ACT

(CAP. 67:06)

MALAŴI CERTIFIED SEED

(UNDER SECTION 50)

1. Certificate number .....
2. Kind of seed (*common name/scientific name*) .....
   .....
3. Variety .....
4. Class of seed .....
5. Lot number .....
6. Date of test .....
7. Issued by .....
8. Title .....

.....
Controller of Seed

SEED REGULATIONS

G.N. 37/1997

under s. 71

PART I

Preliminary

1. These Regulations may be cited as the Seed Regulations. Citation

PART II

Minimum Standards for Prescribed Seed

2. No person shall sell or otherwise supply any prescribed seed of any crop variety unless the prescribed seed conforms to the minimum level of purity and germination standards specified in the First Schedule. Minimum levels of purity and germination of prescribed seed

PART III

Seed Certification

3. No person shall sell or otherwise supply any prescribed seed specified in Part I of the Second Schedule unless the prescribed seed has been certified through official certification, and meets the requirements specified in Part II of the Second Schedule. Seed certification

PART IV

Labelling

4. The labels specified in Part I of the Third Schedule shall be used to identify different classes of seed. Labels

5.—(1) The particulars specified in Part II of the Third Schedule are prescribed as additional particulars for purposes of section 35 of the Act. Particulars and manner of labelling

(2) The particulars of a label, including the particulars specified in subparagraph (1), shall appear on and be attached to each container in a conspicuous place, and where practicable a label containing those particulars shall also be put inside the container.

6. The label shall not contain any statement, design, device, name or abbreviation which is false or misleading, or likely to be misleading, in respect of any particulars concerning the prescribed seed contained in the container. Label not to contain false or misleading statement

Label not to contradict Act or regulations

7. The label shall not contain any reference to the Act or these Regulations or any comment on or explanation of any particulars or declaration required by the Act or these Regulations which directly or indirectly contradicts, qualifies or modifies such particulars.

Prohibition against denial of responsibility or labels, etc.

8. Nothing shall appear on a label or in any advertisement pertaining to any prescribed seed which denies or limits responsibility or liability for any statement or particulars required by or under the Act or these Regulations to appear on such label or advertisement.

PART V

Seed Testers And Seed Inspectors

Qualifications of seed testers

9. A person shall not be qualified for appointment as Seed Tester unless he or she—

(*a*) has attended training as a seed tester and has passed such examinations as the Controller of Seeds may consider appropriate; and

(*b*) has had a minimum working experience of one year in seed testing.

Duties of a seed tester

10. A seed tester shall analyse samples in accordance with the procedure laid down by the International Seed Testing Association as amended from time to time.

Qualification of Seed Inspectors

11. A person shall not be qualified for appointment as Seed Inspector unless he or she has attended training as a Seed Inspector and has passed such examination as the Controller of Seeds may consider appropriate.

Duties of a Seed Inspector

12. In addition to the duties specified under the Act, a Seed Inspector shall—

(*a*) inspect as frequently as may be required under the Act all places used for growing, cleaning, storage, transporting or sale of any prescribed seed;

(*b*) ensure that the conditions of registration or licence specified under the Act are being observed;

(*c*) procure and send for analysis, if necessary, samples of any prescribed seed which he has reason to believe is being produced, stocked, sold, exhibited, or transported for sale in contravention of the provisions of the Act or these Regulations;

(*d*) investigate any complaint which may be made to him or her in writing in respect of any contravention of the provisions of the Act or these Regulations;

(*e*) maintain a record of all inspections made and action taken by him or her in the performance of his or her duties, including the taking of samples and the seizure of stocks and submit copies of such records to the Controller of Seeds;

(*f*) when so authorized by the Controller of Seeds, seize and detain prescribed seed that does not comply with minimum standards; and

(*g*) perform such other duties as may be entrusted by the Controller of Seeds.

PART VI

Sampling of Prescribed Seed

Sampling of prescribed seed for laboratory test

13. Sampling of prescribed seed for laboratory tests shall be in accordance with procedures laid down, from time to time, in the International Rules for seed testing published by International Seed Testing Association.

FIRST SCHEDULE (reg. 3)

Minimum Standards Of Purity And Germination For Prescribed Seed

Scientific Name	*English Name*	*Purity percentage*	*Germination percentage*
Cereals			
Eleusine coracana	Finger millet	97	70
Hordeum vulgare L.	Barley	98	80
Oryza sativa	Rice	97	75
Sorghum bicolor L.	Sorghum	98	70
Triticum aestivum	Wheat	98	80
Zea mays L.	Maize	99	90
Pulses			
Cajanus cajan L.	Pigeon peas	98	75
Glycine max L.	Soyabeans	98	70
Phaseolus vulgaris	Beans	98	75
Pisum sativum L.	Peas	98	75
Vigna unguiculata	Cowpeas	98	75
Oil Seeds			
Arachis hypogaea L.	Groundnuts	95	80
Helianthus annuus L.	Sunflower	97	70
Vegetables			
Allium cepa L.	Onion	98	60
Amaranthus spp.	Amaranth; Pigweed	97	60

Scientific Name	*English Name*	*Purity percentage*	*Germination percentage*
Apium graveolens L.	Celery	98	65
Beta vulgaris	Swisschard	98	70
Brassica chinensis L.	Chinese Cabbage	98	70
Brassica juncea	Mustard	98	70
Brassica napus L.	Cauliflower	97	60
Brassica oleracea L.	Cabbage	98	75
Brassica rapa L.	Rape	98	70
Capsicum spp.	Pepper; chilli	98	55
Citrullus lanatus	Watermelon	98	75
Cucurbita Pepo L.	Squash	98	75
Cucumis melo L.	Melon	98	75
Cucumis sativus L.	Cucumber	95	55
Daucus carota L.	Carrot	98	75
Hibiscus esculentus L.	Okra	95	50
Lactuca sativa L.	Lettuce	98	75
Lycopersican Tomato		98	75
Raphanus sativus L.	Radish	98	75
Solarium melongena L.	Eggplant	98	75
Spinach oleracea L.	Spinach	96	60
STIMULANTS			
Nicotiana tabacum L.	Tobacco		
	Burley	99	85
	Flues	99	90
FIBRE CROPS			
Gossypium hirsutum L.	Cotton	95	70
	Cotton (Acid Delinted)	98	80
PASTURE LEGUMES			
Oesmodium spp.	Greenleaf; Silverleaf	97	50
Leucaena Leucocephala	Leucaena	98	60
Macroptilium atropurpuceum	Siratro	97	50
Stylosanthes spp.	Stylo	97	60
PASTURE GRASSES		PLSC Per cent	
Cenchrus ciliaris L.	Buffel grass	15	
Chloris gayana L.	Rhodes grass	15	
Eragrostis curvula	Love grass	75	
Panicum maximum	Guinea grass	15	

SECOND SCHEDULE

reg. 4

PART I

Seed Crops for Compulsory Certification

Nicotiana tabacum (tobacco)

Hybrid maize

Sunflower (*Heliathis annuus*)

PART II

A. Specific Requirements Relating to Tobacco (*Nicotiana Tabacum*)

1. *Nursery Management*

(*a*) Source of seed: only breeder or basic seed shall be sown on nurseries intended for the production of tobacco certified seed;

(*b*) Land requirements: nurseries shall be established on land which has not carried any tobacco crop for the past three years;

(*c*) Isolation: nurseries shall be established 50 metres away from any other tobacco plants or any buildings where tobacco is handled.

2. *General Hygiene*

(*a*) A regular spraying programme using recommended chemicals against dangerous seed-borne diseases and pests shall be followed;

(*b*) Washing of hands and footwear in an approved detergent by anybody entering the nursery shall be enforced;

(*c*) No smoking or snuffing of any type of tobacco shall be allowed within the enclosed nursery site.

3. *Field Management*

Land requirements:

(*a*) Lands intended for the production of certified seed shall not have carried any tobacco crop in the previous three years;

(*b*) Lands intended for the production of certified seed shall be 360 metres away from any other tobacco crops and at least 100 metres from buildings where leaf tobacco is handled;

(*c*) Those lands shall also be 50 metres away from any lands which carried tobacco last season and must not be situated in the direction of run-off from such lands.

4. *Plant Requirements*

(*a*) The grower shall within five weeks of transplanting, remove progressively, the leaves of the lower third of the plant including the seed bed leaves;

(*b*) Suckers shall not be allowed to grow more than 5 cm in length;

(*c*) Off-types and diseased plants shall be removed;

(*d*) All compact areas of poor growth shall be excluded for the purposes of seed production;

(*e*) Any plant which flowers prematurely shall be topped;

(*f*) When the plants come into full flower the five leaves below the seed head greater than 15 cm in length shall be removed;

(*g*) There shall be nil incidence of anthracnose at any inspection and nil incidence of off-type plants at flowering.

5. *Harvesting*

(*a*) Harvested seed heads shall be dried in sheds or barns which are at least 50 metres away from any curing barns, grading sheds, or any other source of possible contamination;

(*b*) Should the need to use any of the structures listed in paragraph (*b*) arise, such structure shall first be whitewashed and the floor, walls, tiers, etc., disinfected with recommended disinfectant;

6. Seed Standards

Prior to being offered for certification the seed shall be treated with a recommended seed treatment.

B. Specific Requirements Relating to Maize (*Zea Mays*)

1. *Land Requirements*

A piece of land may be registered as a unit only if no plants of any species of Zea have been established thereon for seed production during the growing season preceding the registration thereof.

2. *Planting Requirements*

(*a*) Plants shall be established in rows;

(*b*) Gap-filling shall not be allowed;

(*c*) Where seed of a hybrid is to be produced—

(i) the plants of the seed parent and those of the pollen parent shall be established in different rows, and

(ii) rows containing the plants of the pollen parent shall be clearly marked.

3. *Isolation Requirements*

(*a*) A unit shall be surrounded by an isolation area which—

(i) in the case of the intended production of basic seed of an inbred line, shall be 720 metres wide;

(ii) in the case of the intended production of basic seed of an open-pollinated variety, shall be 400 metres wide;

(iii) in the case of the production of a certified hybrid variety, shall be 360 metres wide;

(iv) and in the case of certified open-pollinated variety, shall be 200 metres wide.

(*b*) An isolation area shall be free of plants of any variety or species of Zea which shed pollen at the stage on which the plants on the unit concerned show pollen-susceptible silks, unless—

(i) in the case of the intended production of basic seed, they have been established from breeder seed of the same variety; and

(ii) in the case of the intended production of certified seed, they have been established from basic seed of the same variety.

(*c*) In the case of inadequate isolation distance the planning of a minimum number of border rows, shall be permissible provided that—

(i) in the case of the intended production of seed or a hybrid, a minimum isolation distance of 150 m shall be met;

(ii) in the case of the intended production of seed of an open-pollinated variety, a minimum isolation distance of 100 metres shall be met;

(iii) border rows shall be planted either parallel or at right angles to the rows of the crop and a pathway 2 metres wide shall be left between the border rows and the crop;

(iv) only breeder or basic seed shall be used for planting the border rows; and

(v) natural or physical barriers shall not be recognized as a means of isolation.

4. *Requirements for Plants*

(*a*) The number of deviating plants in either male or female parent in a unit shall not exceed 0.1 per cent at commencement of pollination.

(*b*) The number of pollen shedding plants of the seed parent at the stage at which 5 per cent of the seed parent plants show pollen-susceptible silks shall not exceed 0.25 per cent at any one inspection and provided that the cumulative total for three consecutive inspections shall not exceed 0.25 per cent;

(*c*) Any part of the tassel which is 5 cm long or more and is found to be shedding pollen shall be counted as full tassel.

5. *Separation of Fields*

(*a*) Units of land separated by the required isolation distance or by a maximum difference in time of planting of 21 days between inbred lines and 28 between hybrids shall be treated as separate crops for the purpose of inspection.

(*b*) Units of land separated by less than the isolation distance required or less than the required number of days in planting time shall be treated as separate crops for the purposes of inspection:

Provided that—

(i) should one crop be rejected on the basis of poor detasselling, then the rejected crop plus the neighboring crop to the following distance must be destroyed;

(ii) if the fault is ×2 but less than ×3 the acceptance standard is 1/20th of the isolation distance;

(iii) if the fault is ×3 but less than ×4 the acceptance standard is 1/10th of the isolation distance;

(iv) if the fault is greater than ×4 the acceptance standard is 1/5th of the isolation distance; and

(v) if the grower refuses to destroy the rejected crops then the full isolation distance must be met.

6. *Removal of the Pollen Parent*

(*a*) Plants of the pollen parent shall be removed from the units soon after pollination is over or not later than 30th May in each year;

(*b*) the seed parent shall not be harvested before an inspection is made to check the removal of the plants of the pollen parent and a written confirmation by a government seed inspector has been issued to the grower.

7. The seed grower shall pick and dehusk the seed parent cobs and shell them after removing any off-colour, rotten and insect damaged grains:

Provided that in the case of a single cross hybrid and any inbred lines—

(*a*) those cobs shall not be shelled before they have been inspected by a government seed inspector and a written authorization to shell has been issued to the grower;

(*b*) the seed cobs referred in 7 (*a*) shall not contain more than 0.1 per cent deviating cobs; and

(*c*) deadline for cob selection shall be 15th September in each year.

8. *Seed Requirements*

(*a*) After shelling the seed shall not contain more than 2.5 per cent rotten, broken or pest damaged grain;

(*b*) The seed shall achieve a purity standard of not less than 99 per cent and a germination standard of not less than 90 per cent; and

(*c*) Seed shall be delivered at a moisture content of not more than 12.5 per cent.

C. Specific Requirements Relating to Sunflower (Helianthis annuus)

1. *Land Requirements*

A piece of land may be registered as a unit only if no plant of any species of Helianthis have been established thereon for seed production during the growing season preceding the registration thereof.

2. *Planting Requirements*

(*a*) Plants shall be established in rows;

(*b*) Gap filling shall not be allowed;

(*c*) Where seed of a hybrid is to be produced—

(i) the plant of the seed parent and those of the pollen parent shall be established in different rows; and

(ii) rows containing the plants of the pollen parent shall be clearly marked.

3. *Isolation Requirements*

(*a*) A unit shall be surrounded by an isolation area which—

(i) in the case of the intended production of basic seed of an inbred line, shall be 3,000 metres wide;

(ii) in the case of the intended production of basic seed of an open-pollinated variety, shall be 400 metres wide;

(iii) in the case of the production of certified hybrid variety, shall be 1,500 metres wide; and

(iv) in the case of open-pollinated variety, shall be 200 metres wide;

(*b*) An isolation area shall be free of plants of any variety of species of *Helianthis* which shed pollen at the stage on which the plants on the unit concerned show pollen-susceptible heads unless—

(i) in the case of the intended production of basic seed, they have been established from breeder seed of the same variety; and

(ii) in the case of the intended production of certified seed, they have been established from basic of the same variety;

(*c*) In the case of inadequate isolation distance the planning of a minimum number of border rows shall be permissible provided that—

(i) border rows shall be planted either parallel or at right angles to the rows of the crop and pathways 2 metres wide shall be left between the border rows and the crop;

(ii) only breeder or basic seed shall be used for planting the border rows; and

(iii) natural or physical barriers shall not be recognized as a means of isolation.

4. *Requirements for Plants*

(*a*) The number of deviating plants in male or female parent in unit shall not exceed 0.1 per cent at commencement of pollination;

(*b*) The number of pollen shedding plants of the seed parent at the stage at which 5 per cent of the seed parent plant show pollen-susceptible heads shall not exceed 0.25 per cent at any one inspection and provided that the cummulative total for three consecutive inspections shall not exceed 0.25 per cent;

(*c*) The following should be removed in addition to diseased and odd-looking plants—

(i) all female plants showing multi-heads or multi-branches at the budding stage;

(ii) all plants showing more vigorous growth than the average plants (male and female lines) at the budding stage;

(iii) all thin stalked and weak-looking plants (male and female lines) before flowering; and

(iv) all female heads showing pollen.

5. *Separation of Fields*

Units of land separated by the required isolation distance or by a maximum difference in time of planting of 21 days between inbred

lines and 28 days between hybrids shall be treated as separate crops for the purpose of inspection.

6. *Removal of the Pollen Parent*

(*a*) Plants of the pollen parent shall be removed from the units soon after pollination is over or no later than 30th May in each year.

(*b*) The seed parent shall not be harvested before an inspection is made to check the removal of the plants of the pollen parent and a written confirmation by a government seed inspector has been issued to the grower.

7. The seed grower shall harvest the seed parent heads and thresh them after removing any off-colour, rotten and insect damaged grains:

Provided that in the case of a hybrid and any inbred lines—

(*a*) those heads shall not be threshed before they have been inspected by a government seed inspector and a written authorization to thresh has been issued to the grower;

(*b*) the seed head referred to in paragraph (*a*) shall not contain more than 0.1 per cent off-type seed colour heads.

8. *Seed Requirements*

(*a*) After threshing the seed shall not contain more than 2.5 per cent rotten, broken or pest damaged grain.

(*b*) The seed shall achieve a purity standard of not less than 97 per cent and germination standard of not less than 70 per cent.

(*c*) Seed shall be delivered at a moisture content of not more than 10 per cent.

THIRD SCHEDULE reg. 5

PART I

LABELS

The following seed tags or labels shall be used to identify classes of seed—

1. *Prescribed Certified Seed—*

(*a*) Breeders Seed—White with diagonal purple stripes;

(*b*) Basic Seed—White

(*c*) Certified Seed—Blue

2. *Prescribed Tested Seed—Red*

PART II

ADDITIONAL LABELLING PARTICULARS

1. *Crop kind.*
2. Variety—(*If the variety is registered in Malaŵi, the name under it is registered must be used; if the variety is not registered in Malaŵi, the name given shall be distinct from that of any variety registered in Malaŵi*).]
3. *Seed lot number.*

4. Date of testing (*seed producers may do their own seed testing at their own facilities*).
5. Net content weight.
6. If—

(*a*) seed in container has been treated, a statement to that effect; and

(*b*) the substance of the chemical used for the treatment and present with the seed is harmful to human beings or animals, a caution statement to that effect.

7. In the case of Malaŵi certified seed, the certificate number and the words "tested seed".
8. The name and address of the person packaging or supplying the seed.

SEED (DECLARATION OF PRESCRIBED SEED) ORDER

G.N. 23/1997

under s. 33

Citation

1. The Order may be cited as the Seed (Declaration of Prescribed Seed) Order.

Prescribed seed

2. The seed specified in the Schedule shall be prescribed seed for purposes of the Act.

SCHEDULE (reg. 2)

LIST OF PRESCRIBED SEED

Scientific Name	*English Name*
CEREALS	
Eleusine coracana	Finger millet
Hordeum vulgare L.	Barley
Oryza sativa	Rice
Sorghum bicolor L.	Sorghum
Triticum aestivum	Wheat
Zea mays L.	Maize
PULSES	
Cajanus cajan L.	Pigeon pea
Glycine max L.	Soya bean
Phaseolus vulgaris	Beans
Pisum sativum L.	peas
Vigna unguiculata	cow peas
OIL SEEDS	
Arachis hypogaea L.	Groundnuts
Helianthus annus L.	Sunflower
VEGETABLES	
Allium cepa L.	Onion

Scientific Name	*English Name*
Amaranthus spp	Amaranth; pigweed
Apium graveolena L.	Celery
Beta vulgaris	Swiss-chard
Brassica chinensis L.	Chinese cabbage
Brassica juncan	Mustard
Brassica napua L.	Cauliflower
Brassica oleracea L.	Cabbage
Brassica rapa L.	Rape
Capsicum spp.	Pepper; Chilli
Citrullus lanatus	Water melon
Curcurbits pepo Duch L.	Squash
Cucumis melo L.	Melon
Cucumis sativus L.	Cucumber
Daucus carota L.	Carrot
Hibiscus esculentus L.	Okra
Lactuca sativa L.	Lettuce
Lycopersican lycopercicum	Tomato
Raphanus sativus L.	Radish
Solanum melongena L.	Egg plant
Spinach oleracea L.	Spinach
STIMULANTS	
Nicotiana tabacum L.	Tobacco
	Burleys
	Flues
	Oriental
	Fire cured/sun air
Camellina sinesis	Tea
Coffee arabica	Coffee
FIBRE CROPS	
Gossypium hirsutum L.	Cotton
	Cotton (Acid Delinted)
PASTURE LEGUMES	
Oesmodium spp	Green leaf
	Silver leaf
Leucaena leucocephala	Leucaena
Macroptilium atropurpuceum	Siratro
Stylosanthes spp	Stylo
PASTURE GRASSES	
Cenchrus ciliaris L.	Buffel grass
Chloris gayana L.	Rhodes grass
Eragrostis curvula	Love grass
Panicum maximum	Guinea grass

COMMUNICATIONS

CHAPTER 68:01

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CHAPTER 68:01

COMMUNICATIONS

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FIRST SCHEDULE
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CHAPTER 68:01

COMMUNICATIONS

An Act to provide for the regulation of the provision of services in the electronic communications sector, posts, information society; for the establishment of the Malaŵi Communications Regulatory Authority, the Malaŵi Broadcasting Corporation and the Malaŵi Posts Corporation; and for matters connected therewith or incidental thereto

34 of 2016
G.N. 24/2017

[1st June, 2017 (Except section 104)]

PART I

Preliminary

Short title

1. This Act may be cited as the Communications Act.

Objectives

2. The objectives of this Act are—

(*a*) to recognize the convergence of technologies and services for telecommunications, broadcasting, and information through the establishment of technology and service-neutral licensing regimes;

(*b*) to remove unnecessary barriers to entry, and attract investment, in the communications sector;

(*c*) to facilitate the deployment and use of communications services;

(*d*) to encourage the adoption of new services and technologies within the communications sector;

(*e*) to encourage the participation of indigenous Malaŵians in the communications sector;

(*f*) to facilitate the provision of affordable communication services;

(*g*) to facilitate technology neutrality; and

(*h*) to ensure consumer protection.

Interpretation

3. In this Act, unless the context otherwise requires—

"access" means making available facilities or services of any licensee under defined conditions, on exclusive or non-exclusive basis, for the purpose of providing communications services, including access to—

(*a*) network elements and associated facilities, which may involve the connection of equipment by fixed or non-fixed means, and includes access to the local loop, facilities and services necessary to provide services over the local loop;

(*b*) physical infrastructure, including buildings, cable engineering networks, ducts, masts and poles;

(*c*) relevant software systems, including operational support systems;

(*d*) number translation facilities, or to systems offering equivalent functionality;

(*e*) fixed and mobile networks, in particular for roaming;

(*f*) conditional access systems for digital television services; or

(*g*) virtual network services;

"allocation" means the apportionment of a given scarce resource for the purpose of its use by one or more communications services under given conditions;

"apparatus" means equipment, an instrument, or any other object for use in the provision or the reception of communications services, and includes a fitting to, or accessory of, the equipment, instrument or object;

"Authority" means the Malawi Communications Regulatory Authority established under section 4;

"broadcasting" means any form of transmission of content intended for reception by the public whether conveyed by means of radio or electronic communications;

"broadcasting service" means any service that consists of broadcasting, but does not include—

(*a*) a service that provides only data or text, whether with or without associated still images;

(*b*) a service in which the provision of audio-visual material or audio material is incidental to the provision of that service; or

(*c*) a service or a class of service that the Authority may, by regulation, prescribe;

"broadcasting signal distribution" means the process whereby the output signal of a broadcasting service is taken from the point of origin, being the point where such signal is made available in its final content format, and is conveyed to any broadcast target area by means of electronic communications, and includes multi-channel distribution;

"class assignment" means an assignment issued by the Authority pursuant to this Act, granting entities, subject to certain rules, the right to use frequencies or numbers, as specified by the Authority;

"class assignee" means the holder of a class assignment;

"class licence" means a licence issued by the Authority, as distinct from an individual licence, issued on the same terms to each applicant of a category of users in respect of the operation of a type

of an electronic communications network or communications service that does not require the use of scarce resources;

"class licensee" means the holder of a class licence;

"commercial broadcasting" means a broadcasting service operating for profit or as part of a profit entity, but excludes any public broadcasting service;

"common carrier" means an entity licensed to provide electronic communications network services and is obliged to provide signal distribution for broadcasting services on a non-discriminatory and non-exclusive basis;

"communications service" refers to any electronic communications service, broadcasting service or postal service;

"communications technology" means the application of communications and computing technologies to the creation, management and use of information through the use of hardware, software, networks, as well as media for the collection, storage, processing, transmission and presentation of information and related services;

"community" includes a geographically founded community or a group of entities or sector of the public, having a specific and ascertainable common interest;

"community broadcasting service" means a content service that—

(*a*) serves a particular community;

(*b*) is carried on for non-profitable purposes; and

(*c*) is fully controlled by a non-profit making entity;

"consumer" means a person who uses or seeks to obtain broadcasting, postal or electronic communications services for personal use;

"content" means information in the form of sound, data, text or images, whether still or moving, except where transmitted in private communications;

"content service licensee" means a holder of a content service licence;

"convey" includes transmit and transport, and "conveyance" shall be construed accordingly;

"courier service" means an individualized and time sensitive service for collection, acceptance, conveyance and delivery of postal articles on a door to door basis;

"coverage area" means an area in which a communication service is intended to be received;

"dominant market player" means an entity that holds, either on its own or in conjunction with other entities, a significant market power;

"electronic communications" means the emission, transmission or reception of signals, including content or intelligence of any nature, partially or fully transmitted by any radio, electromagnetic, photo electronic or photo optical system, but does not include—

(*a*) wire or direct oral communication;

(*b*) communications made through a tone-only paging device;

(*c*) communication from a tracking device;

(*d*) electronic funds transfer information stored by a financial institution in a communications system used for electronic storage and the transfer of funds; or

(*e*) postal or broadcasting service;

"electronic communications licence" means a network service licence and an application service licence;

"electronic communications market" means an area of activity identified by the Authority, as constituting a single market within the communications technology sector;

"electronic communications network" means transmission systems and, where applicable, switching or routing equipment and other resources that permit the conveyance of signals by wire, radio, optical or other electronic means;

"electronic communications numbering" means a number, sign or other mark that an electronic communications licensee, in the delivery of electronic communications services, uses to identify electronic communications facilities in order to connect between the place of transmission and the place of reception, or identify the type of content or transmission that the electronic communications facility is to deliver;

"electronic communications services" means a service provided by one or more electronic communications network;

"essential facilities" means facilities of an electronic communications network or service that—

(*a*) are exclusively or predominantly provided by a single or limited number of suppliers; and

(*b*) are economically or technically difficult to substitute or duplicate in order to provide a service;

"exempted licensee" means a licensee who is exempted from certain conditions in order to operate its activities;

"exempted service" means a licensed service for which certain conditions and fees are not required by the Authority in order for the service provider to commence its operations;

"facility services" means any services comprising electronic communication infrastructure, including earth station, fixed links and cables, radio communication transmitters and links, satellite hubs, satellite control station, submarine cables, and cable landing station;

"frequency" means electromagnetic waves of radio communications frequencies propagated in space without artificial guide;

"frequency allocation" means the reservation of one or more radio frequency bands for a particular use or uses;

"frequency assignment" means the reservation of one or more radio frequencies for use by a particular entity in accordance with the national frequency plan;

"frequency spectrum licence" means a licence issued to grant the right to use the radio-frequency spectrum to operate a network facility or radio communication equipment of a specified kind at a specified frequency, or in any specified frequency band or bands, and which may include spectrum assignments and apparatus assignments;

"frequency spectrum service" means a service involving the transmission, emission or reception of radio waves for specific communications purposes;

"individual licence" means a licence issued by the Authority to a particular entity on terms specific to that entity;

"interconnexion" means the physical and logical connexion of two or more electronic communications networks;

"interconnexion agreement" means an agreement between licensees in relation to the interconnexion of their services;

"interconnexion provider" means a person providing an interconnexion service to other licensees in accordance with a licence issued by the Authority;

"licence area" means the geographical area specified in a licence;

"message" means any communication sent, received or made by communications systems or services, or given to any entity to be sent or delivered by electronic communications networks or services;

"multi-channel distribution service" means a broadcasting signal distribution service that provides broadcasting signal distribution for more than one channel at the same time on the same signal;

"postal service" means any system for the collection, dispatch, conveyance, handling and delivery of letters, postcards, printed papers, commercial papers, samples, parcels or other similar articles;

"post office" means any building, house, room, receptacle, vessel, vehicle or place where postal articles are received, sorted, dispatched or delivered;

"postage" means the amount chargeable for the transmission of an article by post, and includes any special charges or fees for supplementary services supplied in connexion with the transmission of an article by post;

"postal article" means any article in the course of transmission by post, including any letter, postcard, newspaper, book, document, pamphlet, pattern, sample packet, small packet, parcel package, or any other article tendered for dispatch, or specified as a postal article by the Universal Postal Union or in a postal licence;

"postal services licensee" means any entity licensed to provide postal services;

"postal tariff" means any charges raised by the postal services licensee for the provision of postal services;

"public content service" means any content service provided by the Malaŵi Broadcasting Corporation, or any other public state-owned enterprise holding a broadcasting service licence to this purpose;

"public postal service" means any postal service provided by the Malaŵi Posts Corporation, or other state-owned enterprise holding a postal services licence;

"scarce resources" means finite resources required in the operation of electronic communication, including radio spectrum, numbers and rights of ways;

"subscriber" means a person having a contract with an authorized provider of a communications service in order to obtain any communications services;

"subscription content service" means a content service provided under a subscription contract;

"television content service" means a content service consisting of the transmission of visual images or other visible signals, with or without accompanying sounds, where the visual images are such that their sequences are seen as moving pictures;

"terminal equipment" means any electronic communications equipment connected at the terminal end of a public electronic communications network for the purpose of sending and receiving network services to and from end users;

"type approval" is a procedure where the Authority certifies the acceptability of an electronic equipment or product based on conformity of the equipment or the product to minimum regulatory technical and safety requirement before the equipment or the product is used;

"universal access" means access to publicly available communications services;

"universal service" means a defined set of products and communications services of a general public interest to which customers are entitled to use without discrimination in terms of accessibility, price and quality;

"Universal Service Fund" means the Fund established under section 157; and

"Universal Service Fund Committee" means the committee to be established by the Authority under section 159.

PART II

The Malaŵi Communications Regulatory Authority

Establishment of the Authority

4.—(1) There is hereby established an authority to be known as the Malaŵi Communications Regulatory Authority.

(2) The Authority shall—

(*a*) be a body corporate with perpetual succession and shall have a common seal;

(*b*) be capable of suing and being sued in its corporate name;

(*c*) be capable of acquiring and disposing of any movable or immovable property and do such things and perform such acts as bodies corporate may, by law, do or perform; and

(*d*) perform such functions and exercise such powers as are conferred by this Act.

Ministerial policy directions

5.—(1) The Authority may, where necessary, seek the general direction of the Minister as to the manner in which it is to carry out its duties under this Act.

(2) The directions given by the Minister under subsection (1) shall be in writing and shall be published in the *Gazette.*

(3) Except as provided for under this Act or any other law, the Authority shall be independent in the performance of its functions.

Duties, functions and powers of the Authority

6.—(1) The Authority shall regulate and monitor the provision of communications services and ensure that, as far as it is practicable, reliable and affordable communications services are provided throughout Malaŵi and are sufficient to meet the demand for such services in accordance with the principles of transparency, certainty, market orientation, efficiency, and consumer satisfaction.

(2) Notwithstanding the generality of, and subject to the principles referred to in, subsection (1), the Authority shall—

(*a*) be vested with the legal ownership of spectrum on behalf of the Republic of Malaŵi;

(*b*) grant licences for the provision of communications services;

(*c*) protect the interests of consumers, purchasers and other users of communications services;

(*d*) promote access to information and the development of human resources in the communications sector;

(*e*) promote efficiency and competition among entities engaged in the provision of communications services or in the supply of communication equipment;

(*f*) encourage the introduction of new technology and communications services in accordance with recognized international standards and applicable international law;

(*g*) promote research and development in communications services;

(*h*) foster the development of communication service technologies in accordance with recognized international standards and applicable international law;

(*i*) advise the Government on policy issues relating to the communications sector;

(*j*) monitor the activities of licensees to ensure compliance with the Act and the terms and conditions of their licences;

(*k*) establish a type approval regime for terminal equipment or any other electronic equipment;

(*l*) collect and publish information with respect to communications services;

(*m*) develop and publish technical standards for regulated communications goods and services;

(*n*) receive and investigate complaints relating to communications services and to take the necessary action;

(*o*) carry out projects to promote the development of the communications sector;

(*p*) provide technical support and represent the Government at international communications fora;

(*q*) ensure compliance with national and international communications standards and obligations laid down by international communication agreements and treaties to which Malaŵi is a party and to issue certificates of compliance in relation thereto;

(*r*) ensure the safety and quality of service for communications services;

(*s*) protect public health and safety;

(*t*) negotiate with the relevant Ministries, local authorities and private land owners with respect to rights of way;

(*u*) render technical assistance on communication matters to the Minister; and

(*v*) generally implement the objectives of this Act and do all such things as are necessary, incidental or conducive to the better carrying out of the functions of the Authority.

Membership of the Authority

7. The Authority shall consist of—

(*a*) six members, appointed in accordance with section 8; and—

(*b*) the following *ex officio* members—

(i) the Secretary for Information or his representative;

(ii) the Secretary to the Treasury or his representative; and

(iii) the Solicitor General or his representative.

Appointment of members of the Authority

8.—(1) The President shall appoint members of the Authority, other than *ex officio* members, and each appointment shall be

subject to confirmation by the Public Appointments Committee of Parliament.

(2) A person to be appointed as a member of the Authority shall—

(*a*) be a citizen of, and resident in, Malaŵi;

(*b*) possess qualifications, expertize and experience in any of the fields of posts, telecommunications technology, electronic communications, broadcasting, frequency planning, law, information communication technology, economics or finance; and

(*c*) not be a person who has, within the last three years, been convicted by a competent court of a crime which is punishable with imprisonment without an option of a fine.

(3) In appointing members of the Authority under subsection (1), the President shall have regard to gender equality and the need for continuity of service on the Authority and balance representation in terms of qualifications referred to in subsection (2).

(4) The names of all members of the Authority, and every change of membership, shall be published in the *Gazette.*

Disqualification from membership

9. A person shall be disqualified from being appointed as a member Authority if the person—

(*a*) is a Member of Parliament;

(*b*) is a Minister or Deputy Minister;

(*c*) holds a position in a political party;

(*d*) is an undischarged bankrupt;

(*e*) has, within the last three years, been convicted by a competent court of a crime which is punishable with imprisonment without an option of a fine;

(*f*) is a minor; or

(*g*) holds or has a direct or indirect interest of five per cent shareholding in an entity holding a licence or authorization issued under this Act, or has any other direct or indirect financial interest in any licensee.

Chairperson of the Authority

10.—(1) The President shall appoint one of the members of the Authority as Chairperson.

(2) In the event of the office of the Chairperson becoming vacant, members of the Authority shall elect one amongst themselves to

exercise the powers and perform the duties of the Chairperson, until a new Chairperson is appointed.

Tenure and vacation of office of members of the Authority

11.—(1) A member of the Authority, other than an *ex officio* member, shall hold office for a period of three years and shall be eligible for re-appointment for one more term.

(2) Subject to section 13, the office of a member of the Authority, other than an *ex officio* member, shall become vacant—

(*a*) if he resigns;

(*b*) upon his death;

(*c*) if he knowingly fails to declare a conflict of interest relating to any matter under consideration by the Authority;

(*d*) if he has been absent from three consecutive meetings of the Authority, of which he has had prior notice, without a reasonable cause;

(*e*) if he becomes, by reason of mental or physical infirmity, incapable of efficiently performing his duties as a member of the Authority;

(*f*) if he becomes disqualified by reason of section 9; or

(*g*) if he is guilty of conduct that brings disrepute to the Authority.

Filling of vacancies

12. A vacancy on the membership of the Authority shall be filled by the appointment of a new member in accordance with section 7 as read with section 8, and the member so appointed shall hold office for the unexpired period of his predecessor's term of office, but the vacancy may not be filled if the unexpired period is less than six months.

Removal from office of a member of the Authority

13. A member of the Authority shall not be removed from office on grounds set out in section 11 (2) (*c*), (*d*), (*e*), (*f*), and (*g*), except after due inquiry, and only upon a decision of the appointing authority.

Meetings of the Authority

14.—(1) The Authority shall meet to conduct the business of the Board at least once every three months, at such places and times as the Chairperson may, in consultation with the Director General, determine.

(2) The Chairperson of the Authority shall convene meetings of the Authority by giving the members at least seven days written notice, unless the Chairperson notifies the members in writing that the urgency of the matter to be discussed requires a shorter period of notice.

(3) The *quorum* for any meeting of the Authority shall be two-thirds of all members of the Authority.

Committees of the Authority

15.—(1) The Authority may, for the purpose of performing its functions under this Act, establish committees of the Authority, and delegate to any such committees any of its functions as it considers necessary.

(2) The Chairperson of every committee shall be a person who is a member of the Authority, but an *ex officio* member shall not be a Chairperson.

(3) The Chairperson of the Authority shall not be a member of a committee.

(4) The Authority shall pay a member of a committee, from the funds of the Authority, an allowance that the Minister responsible for public service may, on recommendation of the Board, approve for attendance at meetings of the committee.

(5) Subject to the general or special directions of the Authority and to the provisions of this Act, every committee of the Authority shall have power to determine its own procedure.

Co-opted persons

16. The Authority may, at its discretion, invite any person with specific knowledge, information or expertize to attend any of its meetings and address it on a matter, but such person shall not be eligible to vote at the meeting on any decision of the Authority.

Governance powers of the Authority

17. Without prejudice to the generality of section 6, the Authority shall have the power to—

(*a*) issue guidance, and give directions to the Director General;

(*b*) approve strategic plans, action plans and budget support programmes submitted by the Director General;

(*c*) approve annual reports and financial reports submitted by the Director General;

(*d*) hire consultants to assist the Authority in the discharge of its functions, where necessary; and

(*e*) issue rules, directives, opinions and make recommendations on any recurrent question related to the regulated missions of the Authority as defined under this Act.

Honoraria of members of the Authority

18.—(1) A member of the Authority shall be paid such allowances or other benefits as the Minister responsible for public service may, on recommendation of the Authority, from time to time, approve.

(2) The allowances and other benefits referred to in subsection (1) shall be paid from the funds of the Authority.

The Director General of the Authority

19.—(1) The Authority shall, appoint the Director General who shall be the chief executive officer of the Authority and shall, subject to the general supervision of the Authority, be responsible for the day to day operations of the Authority.

(2) The Director General of the Authority shall be a person with sufficient experience and qualifications in any of the following areas—

(*a*) communications industry;

(*b*) finance;

(*c*) economics;

(*d*) engineering;

(*e*) accountancy;

(*f*) commerce;

(*g*) law; or

(*h*) administration,

and shall be required to demonstrate knowledge and excellence in one or more of the areas of electronic communications, postal and broadcasting services.

Tenure of office of the Director General of the Authority

20.—(1) The Director General of the Authority shall be appointed to a term of office of three years, and may be re-appointed for further two terms of three years each.

(2) The Director General of the Authority shall be removed from office on any of the following grounds—

(*a*) incompetence;

(*b*) misconduct that brings the Authority into disrepute;

(*c*) undischarged bankruptcy;

(*d*) non-disclosure of interest;

(*e*) if he has been convicted by a competent court of a crime which is punishable with imprisonment without an option of a fine;

(*f*) involvement in active politics; or

(*g*) incapability to perform his duties as Director General by reason of mental or physical infirmity.

(3) The Director General of the Authority shall not be removed from office unless he has been given an opportunity to be heard.

Powers and functions of the Director General of the Authority

21.—(1) The Director General of the Authority shall be in charge of the overall administration of the Authority and, in particular, shall have the following powers and functions—

(*a*) implementing the decisions of the Authority;

(*b*) keeping the Authority informed of the activities of the Authority;

(*c*) submitting strategic plans, action plans and budget support programmes to the Authority for approval;

(*d*) implementing the strategic plans, action plans and budget support programmes;

(*e*) ensuring that activities of the Authority comply with the relevant laws, policies and regulations;

(*f*) acting on behalf of the Authority; and

(*g*) generally perform such functions and duties as may be assigned to him by the Authority.

(2) The Director General or, in his absence, such other employee of the Authority as he may designate, shall attend meetings of the Authority and of any committees of the Authority and may address such meetings, but shall not vote on any matter.

Other staff of the Authority

22.—(1) The Authority shall appoint other staff subordinate to the Director General after calling for nominations by way of public advertisement, and the appointment shall only be based on qualification, experience and capacity in matters relating to the operational requirements of the Authority.

(2) The staff appointed by the Authority under subsection (1) shall not be below the rank of director.

(3) The Director General shall have the power to appoint, subject to procedure for public service recruitment, employees below the rank of director.

(4) The Authority shall pay the employees of the Authority such remuneration, allowances, pension, gratuity and other benefits as the Authority may, after having obtained professional advice, consider as being competitive in the employment market in Malaŵi.

Disclosure of conflicts of interest

23.—(1) Any member of the Authority who is present at a meeting of the Authority at which any matter in which he has an interest or

may have an interest is being considered, shall disclose such interest as soon as is practicable after the commencement of the meeting and the member shall not take part in any consideration or discussion of, or vote on, any question touching on such matter.

(2) The Director General shall disclose to the Chairperson of the Authority any interest he has in any matter that is under consideration by the Authority, and shall not attend any meeting of the Authority or of any committee of the Authority while any question touching the matter is being discussed.

(3) Any employee of the Authority or any consultant, adviser or subcontractor of the Authority shall disclose to the Director General any interest that he has or that may arise in the course of duties related to the operations of the Authority, and the Director General of the Authority, shall make decisions considered appropriate in each case and submit a report thereon to the Authority.

Confidentiality

24.—(1) A person shall not publish or disclose to any entity, other than in the course of the entity's duties, the contents of any document, communication or information which has come to the person's knowledge in the course of his duties under this Act.

(2) Any member of the Authority, employee, consultant, adviser or subcontractor of the Authority who holds confidential information, or any person who has, directly or indirectly, obtained any such information from a member of the Authority, employee, consultant, adviser or subcontractor of the Authority, whom that person knows or has reasonable cause to believe held the information by virtue of his office, and who—

(*a*) deals in any contract or proposed contract to which the information relates and in which the Authority is involved;

(*b*) counsels or instigates anyone else to deal in any such contract or proposed contract, knowing or having reasonable cause to believe that the other entity would deal in such contract or proposed contract; or

(*c*) communicates to anyone else the information held or, as the case may be, obtained by him if he knows or has reasonable cause to believe that such other entity or any other entity would make use of the information for the purpose of dealing in, or counselling or causing anyone else to deal in, any contract or proposed contract to which the information relates, and in which the Authority is involved,

commits an offence and is liable to a fine of K5,000,000 and imprisonment for five years.

(3) This section shall apply to any information that—

(*a*) a member of the Authority, employee, consultant, adviser or subcontractor of the Authority holds by virtue of his office or dealings with the Authority;

(*b*) would not be expected, or would not be reasonable for it, to be disclosed by a member of the Authority, employee, consultant, adviser or subcontractor of the Authority except in the proper performance of the functions of his office; or

(*c*) the member of the Authority, employee, consultant, adviser or subcontractor of the Authority holding the information knows or ought to know that it is unpublished information in relation to any contract or proposed contract of the Authority.

(4) The provisions of this section shall continue to apply to any member of the Authority, employee, consultant, adviser or subcontractor of the Authority, notwithstanding the expiry or termination of the term of office of the member or the employment of the employee, consultant, adviser or subcontractor of the Authority, as the case may be.

Oath of secrecy

25. A member of the Authority, an employee, a consultant, an adviser and a subcontractor of the Authority, shall sign an oath of secrecy upon being appointed on the Board or being engaged by the Authority, as the case may be.

Delegation of powers

26.—(1) The Authority may delegate some of its functions under this Act to the Director General, any member of the Authority, or member of staff of the Authority.

(2) The Director General of the Authority may, with the approval of the Authority, delegate any power or function assigned to him under this Act, to any member of staff of the Authority.

Advisory fora

27.—(1) The Authority may establish consultative or advisory fora in the communications sector to assist the Authority with the discharge of its functions under this Act.

(2) The Authority may contribute out of its annual budget to the expenses of any forum established under subsection (1).

Funds of the Authority

28.—(1) The operational and financial costs of the Authority shall be provided through—

(*a*) fees, levies and other moneys payable to the Authority under this Act;

(*b*) fines payable to the Authority in respect of breaches of licence terms, conditions and obligations;

(*c*) grants or donations received by the Authority;

(*d*) such moneys as are from time to time appropriated to the Authority by Parliament; and

(*e*) proceeds from the sale by the Authority of any of its assets or equipment to which it has title.

(2) The Authority may charge fees in respect of publications, seminars, documents, and other services provided by the Authority.

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(3) Subject to the Public Finance Management Act, the Authority may borrow such amounts as it may require for the performance of its functions under this Act.

(4) The Authority may invest, on short term deposit with any bank or financial institution in Malaŵi, any of its moneys that are not immediately required for the performance of its functions under this Act.

(5) All the moneys of the Authority which, at the end of each financial year, are in excess of the Authority's budgetary requirements for that year shall be paid into the Consolidated Fund, but the Authority may be entitled to retain such sums as it reasonably requires for its operations.

Accounts and audit

29.—(1) The Authority shall maintain proper books of accounts and other records relating to its accounts.

(2) The Authority shall appoint independent auditors to audit the accounts of the Authority annually and a copy of the audited accounts shall be sent to the Auditor General for examination before final presentation to the Minister.

(3) The financial year of the Authority shall be the same as the financial year of Government.

Annual report

30.—(1) As soon as practicable, but not more than six months after the expiry of each financial year, the Authority shall submit to the Minister a report concerning its activities during that financial year.

(2) The report referred to in subsection (1) shall be in the form and contain information as required by the Minister.

(3) There shall be appended to the report referred to in subsection (1)—

(*a*) an audited statement of financial position;

(*b*) an audited statement of income and expenditure;

(*c*) justification for retention of any sums, where applicable; and

(*d*) such other information as the Minister may consider appropriate.

PART III

Regulation of Electronic Communications Services

Requirement of licence for provision of electronic communications services

31.—(1) Subject to subsection (2), a person shall not provide electronic communications services except in accordance with a licence issued by the Authority.

(2) Notwithstanding section 33, a frequency spectrum licence shall be required in addition to any electronic communications licence where the operation of an electronic communications network or the provision of an electronic communications service entails the use of radio frequency.

(3) A person who contravenes subsection (1) commits an offence and is liable to a fine of K5,000,000 and imprisonment for five years.

Authority to prescribe types and categories of electronic communications licences

32. The Authority may make rules prescribing the types and categories of electronic communications licences.

Exemptions

33.—(1) The Authority may, in consultation with the Minister, exempt an entity or class of entities, for a period of time, from some of the requirements and obligations relating to an individual licence or a class licence issued under this Act.

(2) The Authority shall make rules providing for the criteria of eligibility and application process, for exemptions.

(3) The Authority may, where necessary, reverse its decision made under subsection (1), and in the event of such reversal, the Authority shall provide reasonable notice to the affected entity.

Licence eligibility

34. The Authority shall not issue a licence under this Act unless the applicant for the licence is duly registered under the relevant written laws of Malaŵi.

Local ownership requirement

35. An electronic communications licensee shall maintain a local shareholding of at least twenty per cent.

Publication of rules relating to type or category of licence

36.—(1) The Authority shall publish in the *Gazette* and any other media, rules relating to each type or category of licence that may be issued under this Act.

(2) Where a type or category of a licence is not provided for in the rules, the Authority shall, within a reasonable time, adopt provisional conditions allowing a person to start providing an electronic communications service, refuse the licence application, or exempt the person from the requirement of obtaining the licence.

Application for a licence

37.—(1) A person who wishes to provide electronic communications services shall apply to the Authority for a licence in the prescribed manner.

(2) The Authority may, within thirty days of receiving the application, request further details or information in respect of the application.

(3) The Authority shall, within sixty days of receiving an application, grant or reject the application for a licence.

(4) The Authority shall, where an application for a licence is rejected, inform the applicant accordingly in writing, giving reasons why the application was rejected.

Grant of a licence through a restricted procedure

38.—(1) The Authority shall, where the operation of an electronic communications services requires the allocation of scarce resources, grant a licence through a restricted procedure in accordance with this Act.

(2) Where the Authority considers that the granting of a licence should be subject to a restricted procedure, the choice of the successful applicant shall be based, as far as reasonably possible, on objective criteria made known to all applicants in advance.

Issue of a licence

39. The Authority shall issue a licence under this Act if—

(*a*) the application complies with the provision of this Act; and

(*b*) the applicant is financially and technically capable of meeting his obligations and the terms and conditions of the licence.

General licence conditions

40.—(1) A licence issued by the Authority shall—

(*a*) be issued on payment by the applicant of the appropriate initial licence fees;

(*b*) state the terms and conditions on which it is issued;

(*c*) specify the services that may be provided; and

(*d*) come into effect upon publication in the *Gazette.*

(2) The Authority shall ensure that all licences issued under this Act have standard terms and conditions in respect of the category or type of the licence.

Amendment of a licence

41.—(1) The Authority may amend a licence—

(*a*) if it is necessary in the interest of the efficient management of the communications sector and provided that the amendment shall not cause substantial prejudice to the licensee;

(*b*) if it is necessary to comply with any international agreement to which Malaŵi is a party;

(*c*) if it is in the public interest; or

(*d*) with the agreement of the licensee.

(2) Where the Authority intends to amend a licence, it shall publish the proposed amendment in the *Gazette* for public comments and allow not less than thirty days from the date of the publication to give an opportunity to any person with an interest in the matter to make representations.

(3) Upon receipt of the representations on amendment of the licence under this section, the Authority shall consider the representations and determine whether to effect the amendment or not.

(4) The amendment of the licence under this section shall come into effect upon final publication in the *Gazette.*

Transfer, assignment, etc., of a licence or rights thereunder

42.—(1) A licensee shall not transfer, assign, pledge or otherwise dispose of its licence or any rights thereunder within twelve months of being granted the licence.

(2) Subject to subsection (1), a licensee shall not transfer, assign, pledge or otherwise dispose of the licence or any rights unless the licensee has rolled out its services.

(3) A licensee shall not transfer, assign, pledge or otherwise dispose of its licence or any rights thereunder, without the prior written consent of the Authority, which consent may be given subject to such reasonable terms and conditions as the Authority may impose, provided that the Authority shall not unreasonably withhold the consent.

(4) A licensee may apply to the Authority in the prescribed manner for consent to transfer, assign, pledge or otherwise dispose of its licence or any rights thereunder.

(5) An application made under subsection (4) shall be accompanied by an application for grant of a licence by the person to whom the licensee intends to transfer the licence.

(6) The Authority shall, in considering an application for the transfer of a licence, have regard to the same terms and conditions as those that apply to the grant of a new licence, but the Authority may, in its discretion, refuse to grant the application.

(7) For purposes of this section—

(*a*) "transfer of licence" includes the acquisition of control of the licence holder; and

(*b*) "control" as used with respect to any person, means the possession, directly or indirectly, of the power to direct or affect the direction of the management of that person, whether through the ownership of shares, voting, securities, partnership or other ownership interests, agreement or otherwise.

(8) The Authority shall grant or refuse to grant its consent to transfer a licence or any rights thereunder, within thirty days from the date of application.

(9) Where consent is not granted, the Authority shall, within fourteen days from the date a decision not to grant the consent was made, provide a written explanation to the applicant, giving reasons for not granting the consent.

Suspension or revocation of a licence

43.—(1) The Authority may suspend or revoke a licence granted under this Act if—

(*a*) the licensee has failed to comply with this Act or the terms and conditions of his licence;

(*b*) the licensee has contravened the provisions of any other written law relevant to the communications sector;

(*c*) the licensee has failed to comply with any rules or lawful orders given by the Authority;

(*d*) the licensee—

(i) enters into receivership or liquidation;

(ii) takes any action for its voluntary winding-up or dissolution;

(iii) enters into any scheme of arrangement, other than in any such case for the purpose of reconstruction or amalgamation, upon terms and within a period as may previously have been approved in writing by the Authority; or

(iv) is the subject of any order made by a competent court or tribunal for its compulsory winding-up or dissolution;

(*e*) the licensee has ceased, however briefly, to fulfil the eligibility requirements under this Act; or

(*f*) the suspension or revocation is in the public interest.

(2) Before the suspension or revocation of a licence under this section, the Authority shall inform the licensee by written notice, as soon as practicable, of its intention to suspend or revoke the licence and the reasons thereof.

(3) The affected licensee shall be given a reasonable opportunity to make written submissions to the Authority within a period specified in the notice, which period shall not be less than fourteen days from the date of the notice.

(4) The affected licensee may, within the period specified in the notice, make written submissions to the Authority and the Authority shall consider such submissions before making a determination in relation to the suspension or revocation of the licence.

(5) Subject to subsections (3) and (4) of this section, the suspension or revocation of a licence shall take effect on the expiry of thirty days from the date on which the notice of the Authority's determination under subsection (4) of this section is served on the licensee.

(6) When the suspension or revocation of a licence has taken effect, the Authority shall, as soon as practicable, cause the suspension or revocation to be published in at least one national daily newspaper.

(7) A delay or failure to publish the notice of suspension or revocation shall not in any manner affect the validity of the suspension or revocation.

Application for renewal of a licence

44.—(1) An application for renewal of a licence shall be made at least six months before the expiry of the licence.

(2) An application for the renewal of the licence under subsection (1) shall be made in the prescribed manner upon payment of the prescribed fees.

(3) In considering an application for a renewal of a licence, the Authority shall have regard to whether—

(*a*) the licensee performed in accordance with the obligations of his licence;

(*b*) the licensee continues to meet the eligibility requirements under this Act;

(*c*) the licensee continues to be financially and technically capable of meeting his obligations under this Act and any other related laws; and

(*d*) the licensee has not, during the validity period of his licence, contravened the provisions of this Act, the terms and conditions of the licence, the rules issued by the Authority or any other relevant laws and regulations.

(4) The Authority shall not renew a licence where the licensee has committed a substantial breach of the licence.

Obligation to roll out

45.—(1) Subject to subsection (3), a licensee shall be required to roll out its network and provide services within the period prescribed by the Authority in the licence.

(2) Where a licensee fails to roll out within the prescribed period, the licence shall be deemed to be automatically revoked.

(3) The Authority may extend the roll out period referred to in subsection (1)—

(*a*) only once;

(*b*) for a period not longer than the initial roll out period; and

(*c*) only on grounds of a *force majeure* event as accepted by the Authority.

Individual licence

46.—(1) The Authority may grant individual licence for the operation of electronic communications network or the provision of electronic communications network.

(2) The Authority shall classify an individual licence under the categories set out in the First Schedule.

First Schedule

Scope of a class licence

47. The Authority shall issue a class licence authorizing the operation or provision of electronic communications services, save for licences connected with any of the following—

(*a*) use of frequency spectrum;

(*b*) use of numbers;

(*c*) operation of electronic communications networks or facilities; or

(*d*) any other activities that the Authority may determine from time to time.

Class licence to state terms and conditions of issuance

48. A class licence issued by the Authority shall state the terms and conditions upon which the licence is issued.

Sub-classification

49. The Authority may, from time to time, sub-classify communication services under this Act, and such sub-classification shall be published in the *Gazette.*

Registration under a class licence

50.—(1) An applicant for a class licence shall, prior to undertaking an activity applied for, complete the appropriate registration form for the class licence and file it with the Authority.

(2) The Authority shall register an applicant under the appropriate class licence, within sixty days of receiving the application.

(3) The Authority shall determine the format of class licence registration forms.

Establishment of new licence categories

51. The Authority may at any time establish a new licence category or, with reasonable notice, abolish an existing licence category.

Licence fees

52.—(1) A licensee shall pay the Authority such fees as may be prescribed by the Authority in accordance with this Act, and such fees shall include—

(*a*) an initial licence fee payable before the licence is issued;

(*b*) an annual licence fee;

(*c*) licence renewal fees;

(*d*) where applicable, a fee in respect of any scarce resource; and

(*e*) any other fees or levies, including, but not limited to, the contribution to the Universal Service Fund.

(2) The Authority may, from time to time, review the licence fees.

Provision of essential services

53.—(1) The Authority may, by notice published in the *Gazette*, require any licensee to provide the following essential services—

(*a*) emergency services, with priority routing, enabling any member of the public to make contact with, in particular, the police, the fire brigade and the ambulance service;

(*b*) directory services, enabling any subscriber to obtain, through automated means, a telephone number listed in the telephone directory;

(*c*) customer care services, enabling any subscriber to obtain assistance regarding matters such as access to services, setting up calls and remedying faults; and

(*d*) such other services as may be determined by the Authority from time to time by notice published in the *Gazette*.

(2) The following essential services shall be provided free of charge—

(*a*) emergency service;

(*b*) customer care; and

(*c*) such other services as may be determined by the Authority by notice published in the *Gazette*.

Protection of subscriber information

54.—(1) Subject to any written law or an order issued by the High Court on an *inter partes* hearing, a communications service licensee shall not disclose subscriber information which is in its custody.

(2) A licensee who contravenes subsection (1) commits an offence and shall, upon conviction, be liable to a fine of K10,000,000.

PART IV

Economic Regulation

Promotion of fair competition

55.—(1) The Authority shall, in the performance of its functions under this Act, promote, develop and enforce fair competition and equality of treatment among operators in any business or service relating to the communications service sector.

(2) In the exercise of its powers under this Part, the Authority shall coordinate with the Competition and Fair Trading Commission established under the Competition and Fair Trading Act.

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Regulation of interconnexion, access, etc.

56. The Authority shall regulate the implementation of interconnexion, access, co-location and infrastructure sharing, based on the catalogues, interconnexion agreements and framed tariffs enforced by licensees.

Market analyses and dominant market players

57.—(1) The Authority shall—

(*a*) conduct annual market analyses; and

(*b*) after conducting the market analyses, publish in the *Gazette*, for the following year but not later than 31st December of each year, a list of—

(i) all retail and wholesale communications services markets that, in the Authority's opinion, require *ex-ante* regulatory control; and

(ii) licensees deemed as holding a dominant position for each identified communications service market.

(2) The Authority shall, in consultation with the Competition and Fair Trading Commission and within twelve months of the

commencement of this Act, issue rules defining the criteria to be used when determining a dominant position in a relevant market.

(3) A licensee shall be deemed as holding a dominant position in a relevant market if the licensee—

(*a*) holds a large market share;

(*b*) has control of essential facilities;

(*c*) is involved in a vertical relationship that could harm competition in the market applicable to the particular category of licence as determined by the Authority; or

(*d*) any other factors as determined by the Authority.

(4) The Authority shall deem a licensee as holding a dominant position in a given relevant communications service market for a given calendar year where, in its opinion, the licensee may, acting alone, be able to profitably and materially restrain or reduce competition within the relevant communications service market and during the calendar year concerned.

(5) The Authority shall deem licensees as holding a joint dominant position in a given relevant communications service market for a given calendar year where, in its opinion, the licensees may, acting jointly, and in particular because of factors giving rise to a connexion between the licensees, be able to adopt a common policy on the market and act, to a considerable extent, independently of their competitors and customers, within the relevant communications service market and during the calendar year concerned.

(6) The Authority may, by giving notice of not less than twenty-eight days and published in the *Gazette*, amend, for the remainder of a calendar year concerned, any list published pursuant to subsection (1).

Obligations for dominant market players

58. The Authority shall require any licensee found to be a dominant market player to—

(*a*) publicly make available information regarding interconnexion, access and infrastructure sharing;

(*b*) submit to the Authority its technical and price offers with respect to interconnexion, access and infrastructure sharing by such a date as the Authority may determine;

(*c*) modify any offers submitted under paragraph (*b*) in order to make the offers compliant with this Act;

(*d*) have a separate account for interconnexion, access and infrastructure sharing costs and fees, and any other business activities sufficiently detailed to allow the Authority identify all elements of revenue and costs, together with the basis for their calculation;

(*e*) for the purpose of enabling the provision of communications services to the public in relation to the communications services market concerned, offer access to a licensee requesting for the access; and

(*f*) comply with any other obligation as determined by the Authority from time to time.

Power to prevent anti-competitive practices

59. If it appears to the Authority that a licensee is taking or intends to take any action that—

(*a*) may constitute an abuse of a dominant position in relation to the provision of any electronic communications service; or

(*b*) has or is likely to have the effect of placing another licensee engaged in communications activities at a competitive disadvantage in relation to that licensee,

the Authority may, after giving the licensee concerned an opportunity to make representations, order the licensee to cease or refrain from taking such action.

PART V

Interconnexion

Interconnexion agreements

60.—(1) An application service or network service licensee may, with the approval of the Authority, enter into an agreement with any other application service or network service licensee for the purpose of connecting their application or network services on terms and conditions that the licensees may agree.

(2) The interconnexion agreement shall be in writing and shall set out the contractual terms and conditions agreed by the parties, including—

(*a*) the interconnexion location between the two networks;

(*b*) the interconnexion costs;

(*c*) the interconnexion charges; and

(*d*) maintenance fees.

(3) The Authority may make rules prescribing any matter which it considers necessary for inclusion in interconnexion agreements.

61. The Authority shall make rules prescribing interconnexion terminal rates to be applied by all licensees when negotiating interconnexion agreements.

Rules for interconnexion terminal rates

62.—(1) A licensee who is entitled to interconnexion as determined by the Authority may request to another licensee for the two licensees to interconnect for the purposes of enabling the provision of electronic communications services to the consumers.

Interconnexion request

(2) Subject to subsection (4), upon receipt of the application referred to in subsection (1), the licensee who has received the application shall be obliged to interconnect for the purposes of enabling the provision of electronic communications services to the consumer.

(3) An interconnexion request made pursuant to subsection (1) shall include the following—

(*a*) the type of interconnexion required;

(*b*) the technical requirements based on the technical standard of interconnexion provision;

(*c*) the date when interconnexion is required; and

(*d*) an estimate of the interconnexion capacity required.

(4) An electronic communications services licensee may refuse an interconnexion request on any of the following grounds—

(*a*) that the interconnexion request is unreasonable;

(*b*) that the application service or network service licensee would be prejudiced; or

(*c*) that the interconnexion would cause irreparable damage to the property of the licensee.

63.—(1) Parties to an interconnexion agreement shall negotiate technical and commercial terms of the agreement in a fair and transparent manner.

Negotiations in interconnexion agreements

(2) In order to ensure compliance with this Act or regulations made under it, the Authority may, on its own initiative, during the course of negotiations between the parties, set out matters that the interconnexion agreement shall contain.

(3) Where parties fail to reach an agreement within two months, the Authority may order the interconnexion of the parties' electronic communications networks on such terms and conditions as the Authority may determine.

(4) The Authority shall issue minimum guidelines in accordance with which application service or network service licensees shall negotiate interconnexion agreements.

Application for approval of interconnexion

64.—(1) Licensees shall, after negotiating an interconnexion agreement, submit to the Authority an application for approval of the interconnexion.

(2) The application made under subsection (1) shall be accompanied by a copy of the proposed interconnexion agreement.

(3) Upon receipt of the application and the proposed interconnexion agreement, the Authority shall, within thirty days, consider and make a decision on the application.

(4) Where the Authority fails to make a decision on the application within the thirty days, the application shall be deemed to have been approved by the Authority.

Order to enter into an interconnexion agreement

65.—(1) The Authority may, on its own motion or upon a request from any application service or network service licensee, order two or more licensees to enter into an interconnexion agreement if—

(*a*) a negotiated agreement is not possible; or

(*b*) the Authority is of the view that such agreement shall promote fair competition.

(2) Before making an order under subsection (1), the Authority shall give each licensee a notice of thirty days, stating the reasons for the intended order and to give the licensees an opportunity to make representations.

Maximum interconnexion rates

66.—(1) Notwithstanding any interconnexion agreement, the Authority may fix maximum interconnexion rates.

(2) For the purpose of determining interconnexion rates under subsection (1), the Authority shall take into account—

(*a*) accessibility and affordability of electronic communication services; and

(*b*) fair treatment and competition among licensees.

Registration of interconnexion agreements

67.—(1) The Authority shall maintain a register of all interconnexion agreements entered into by application service and network service licensees, which shall, without revealing the terms and conditions of the agreement, contain the names of the parties, a general description of the matter governed by the agreement and the effective date and duration of the agreement.

(2) Any interconnexion agreement reached pursuant to this Part shall be submitted to the Authority for registration within fourteen working days from the date the agreement was signed by all the parties, and such agreement shall be open to inspection by the public at the premises of the Authority.

(3) The Authority may request modification of the terms or conditions of an agreement submitted to it pursuant to subsection (2), and where an agreement has been modified, it shall be re-submitted to the Authority for registration.

(4) A licensee may, in agreement with another party, modify the terms or conditions of an agreement after complying with the approval requirements under section 64:

Provided that where the approval has been granted, the licensee shall resubmit the modified agreement to the Authority for registration.

(5) The Authority shall register an agreement reached pursuant to this Part within fourteen working days from the date the agreement was submitted to the Authority.

(6) Any information obtained by a network service licensee from another network service licensee and which, at the time it was obtained, was previously unknown and publicly unavailable, shall remain publicly unavailable and shall be used only for the purpose for which it was supplied.

PART VI

Access to Electronic Communication Networks

Access agreements, and access to electronic communication networks

68.—(1) The Authority shall annually publish in the *Gazette* a list of electronic communication networks of licensees whose access may be shared with other licensees.

(2) For purposes of providing communication services to the public, a licensee shall have the right to request and negotiate in good faith an agreement for access to an electronic communication network.

(3) A licensee who has received a request pursuant to subsection (2) shall, for purposes of providing communication services to the public, be obliged to negotiate such an agreement.

(4) A licensee who has received a request pursuant to subsection (2) may refuse the request on any of the following grounds—

(*a*) that the request for access is unreasonable;

(*b*) that the space available is insufficient to implement such access;

(*c*) that the licensee may be prejudiced; or

(*d*) that the access may cause irreparable damage to the property of the licensee.

(5) Where parties fail to reach an agreement within a period of forty-two days from the date of receiving a written request, the matter may be referred to the Authority by either party for examination and determination, and the Authority may order the requested licensee to allow access to its electronic communication networks on such terms and conditions as the Authority may prescribe.

(6) Any network service licensee shall, for purposes of providing communication services to the public, offer access to a licensee who has requested access—

(*a*) on reasonable and non-discriminatory terms and conditions, particularly with respect to price; and

(*b*) of at least the same technical quality as the technical quality provided on the electronic communication network of the requesting licensee or, as the case may be, of the requesting licensee's own communications services.

(7) The Authority may, from time to time, make rules prescribing any matters that the Authority shall consider necessary for inclusion in access agreements.

Registration of access agreements

69.—(1) Parties to an access agreement shall not implement the agreement without first having it registered with the Authority.

(2) Any access agreement reached pursuant to this Part shall be submitted to the Authority for registration within fourteen working days from the date the agreement was signed by all the parties, and such agreement shall be open to inspection by the public at the premises of the Authority.

(3) The Authority shall maintain a register of all access agreements entered into which shall, without revealing the terms and conditions of the agreement, contain the names of the parties to the agreement, a general description of the matter governed by the agreement and the effective date and duration of the agreement.

(4) Any information obtained by either party to an access agreement as a result of a negotiation and which, at the time it was obtained, was previously unknown to the party obtaining it and publicly unavailable may, for as long as the information remains publicly unavailable, be used only for the purpose for which it was supplied.

PART VII

Co-location and Infrastructure Sharing

Co-location and infrastructure sharing agreements

70.—(1) Where an electronic communication service licensee intends to install any facility on, over or under a public or private land, or to use the land in any way, the licensee shall have the right to negotiate in good faith and enter into a co-location or infrastructure sharing agreement with the relevant infrastructure provider.

(2) A co-location and infrastructure sharing agreement shall be in writing and shall set out the contractual terms and conditions agreed by the parties, including—

(*a*) the scope and specifications of the facilities to be provided;

(*b*) the service and maintenance of facilities;

(*c*) the charges for the facilities;

(*d*) the technical specifications;

(*e*) the financial conditions for payment;

(*f*) the provision of co-location for facilities;

(*g*) the duration, re-negotiation and review of the agreement; and

(*h*) the dispute resolution procedures.

(3) An infrastructure provider shall—

(*a*) co-locate and share communication facilities on a first-come-first-served basis; and

(*b*) co-locate and share facilities with other providers in accordance with principles of impartiality and non-discrimination.

Request for co-location and infrastructure sharing

71.—(1) An infrastructure provider shall, upon request from a qualifying licensee for co-location or infrastructure sharing, provide the licensee with a co-location or infrastructure sharing offer, together with the relevant information to facilitate a feasibility study on the licensee's network.

(2) The infrastructure provider shall, within thirty days from the date the request was made, provide the requesting party with the relevant information as contemplated in subsection (1).

(3) An infrastructure provider who has received a request pursuant to subsection (1) may refuse the request on any of the following grounds—

(*a*) that the request is unreasonable;

(*b*) that the space available is not sufficient to implement a co-location;

(*c*) that the infrastructure provider may be prejudiced;

(*d*) that the infrastructure sharing may cause harmful interferences; or

(*e*) that the infrastructure sharing may cause irreparable damage to the property of the infrastructure provider or the interoperability of his infrastructure.

(4) A refusal under subsection (3) shall be made in writing to the requesting party and shall state the reasons for the refusal.

Registration of co-location and infrastructure sharing agreements

72. A co-location and infrastructure sharing agreement reached pursuant to this Part shall be submitted to the Authority for registration within fourteen working days from the date the agreement was signed by all the parties, and such agreement shall be open to inspection by the public at the premises of the Authority.

Disputes relating to interconnexion agreements, etc.

73.—(1) The Authority may, at the request of any party to an interconnexion agreement, an access to electronic communication networks agreement, or a co-location and infrastructure sharing agreement, intervene in order to resolve a dispute which—

(*a*) relates to the interconnexion agreement, the access to electronic communication networks agreement, or the co-location and infrastructure sharing agreement; and

(*b*) has not, within two months of it arising, been resolved by the parties.

(2) The Authority shall issue rules providing for the procedures for resolving disputes relating to interconnexion agreements, access to electronic communication networks agreements, and co-location and infrastructure sharing agreements.

PART VIII

Regulation of Tariffs

Setting or revision of tariffs

74.—(1) Subject to this Act, a licensee may, with prior approval of the Authority, set or revise the tariffs for the services that it provides to the public.

(2) A licensee shall set or revise tariffs under this section, based on justifiable economic reasons.

(3) The setting or revision of tariffs by the licensee pursuant to subsection (1) shall—

(*a*) be transparent, based on objective criteria and non-discriminatory;

(*b*) guarantee equal treatment;

(*c*) not contain discounts that unreasonably prejudice the competitive opportunities of other licensees providing application services to the public; and

(*d*) be sufficiently clear to enable end users to determine the description of the service, the details relating to the nature of the service and the applicable fees.

Justification for tariff setting or revision

75.—(1) A licensee shall—

(*a*) when seeking approval to set or revise tariffs under section 74, give a detailed justification of such tariffs; and

(*b*) not apply any tariffs without the prior approval of the Authority.

(2) The Authority may monitor and review the tariffs as approved under this Act to ensure that they comply with the principles set out in section 74.

Obligations of a licensee to publish approved tariffs

76. A licensee shall, upon approval of the tariffs by the Authority—

(*a*) publish the tariffs, at the licensee's own expense, in at least two daily newspapers that have the widest circulation in Malaŵi, seven days before the introduction of the tariffs; and

(*b*) provide its communications service in accordance with the published tariffs.

Tariff register

77. The Authority shall maintain a register of tariffs submitted by licensees, which register shall be open to the public for inspection on such terms and conditions as the Authority may determine.

Tariff reframing

78.—(1) The Authority may reframe tariffs in order to promote fair competition and the granting of new licences.

(2) The Authority shall reframe tariffs by fixing price caps for one or several communication services, and the price caps fixed shall be for over a period of years or on a progressive term.

(3) Before implementing any tariff reframing, the Authority shall conduct a market analysis in consultation with the Competition and Fair Trading Commission.

(4) The Authority shall reframe tariffs in order to make the tariffs cost efficient and to remove cross-subsidization between distinctive communication services.

(5) The Authority shall make rules on tariff reframing.

Investigations on tariffs

79. The Authority may, on its own motion or following a complaint made by any person, investigate tariffs set up by a licensee for purposes of ensuring compliance with this Act.

Offences relating to tariffs

80. Any licensee who contravenes any provision of this Part commits an offence and shall, upon conviction, be liable to a fine of K10,000,000 and imprisonment for ten years.

PART IX

Management of Frequency Spectrum

Management of frequency spectrum

81.—(1) The Authority shall manage frequency spectrum through the allocation, assignment and use of frequencies.

(2) The Authority shall make rules—

(*a*) governing the allocation, assignment and use of frequencies;

(*b*) defining the standard assignment conditions of a frequency spectrum licence;

(*c*) governing the prevention of harmful interference with other frequency spectrum users; and

(*d*) establishing minimum performance standards of electronic appliances with regard to manufacture, import, sale, shipment and use of such appliances.

National frequency allocation plan

82.—(1) The Authority shall develop and manage a national frequency allocation plan.

(2) The national frequency allocation plan shall—

(*a*) be divided into a number of frequency bands that the Authority shall deem appropriate for the purpose of regulating communications under this Act;

(*b*) designate one or more bands to be used primarily by the Government for national security matters;

(*c*) specify the general purpose for which any other band may be used; and

(*d*) include such other matters as the Authority shall deem necessary to give full effect to the national frequency allocation plan.

(3) The Authority may, in consultation with licensees, revise, vary, suspend or revoke the national frequency allocation plan, and shall issue a public notice to that effect.

Designation of frequency bands

83.—(1) The Authority may designate bands of frequency spectrum to be used under a frequency spectrum licence, as well as bands of frequency spectrum to be used without a frequency spectrum licence.

(2) A person shall not undertake any activity that requires a frequency spectrum licence without first obtaining the appropriate licence from the Authority.

(3) Where an activity does not require a frequency spectrum licence, the Authority shall assign a frequency to a person in accordance with the national frequency allocation plan and in a transparent and non-discriminatory manner.

(4) Where the Authority reasonably considers that a frequency band should be subject to a restricted granting procedure, the Authority shall not assign that frequency band except in accordance with a restricted granting procedure to be set out by the Authority.

(5) The Authority may, in respect of any frequency spectrum licence, determine and impose certain terms and conditions, including the area for which the frequency spectrum licence is valid.

(6) Where applicable, any frequency spectrum licence issued under this section shall be issued at the same time as any related communications licence.

(7) A person who contravenes subsection (2) commits an offence and shall, upon conviction, be liable to a fine of K1,000,000 and imprisonment for two years.

Prohibition on transfer of frequency spectrum

84. A licensee shall not transfer the right to use any frequency to a third party.

Frequency coordination

85.—(1) Frequency spectrum licensees shall, in good faith, coordinate their respective frequency usage with other licensees in order to—

(*a*) avoid harmful interference among frequency spectrum licensees;

(*b*) ensure efficient use of any applicable frequency band; and

(*c*) allow the provision of cost-efficient services.

(2) Where frequency spectrum licensees are unable or unwilling to coordinate in good faith in terms of subsection (1), the Authority shall intervene and make a decision as it deems appropriate.

(3) The Authority shall issue rules governing the coordination contemplated in subsection (1), which may include procedures for the expedited resolution of disputes among frequency spectrum licensees.

Power of entry and search

86.—(1) The Authority may require any person whom it has reasonable cause to believe is a person required to hold a frequency spectrum licence or other authorization under this Act to produce the licence or authorization.

(2) The Authority may, where authorized by a warrant issued by a magistrate court, at any reasonable time, enter and search premises that are owned or occupied by any person that the Authority has reasonable cause to believe is—

(*a*) using frequencies in contravention of this Act; or

(*b*) causing harmful interference with other communications.

(3) The Authority may, having entered and searched the premises, and upon being satisfied that an offence under this Act has been committed or is about to be committed—

(*a*) stop the operation of the illegal activity;

(*b*) seal the premises;

(*c*) seize any equipment that is being used for illegal purposes; or

(*d*) take any other action that it deems necessary.

PART X

Regulation of Electronic Communication Numbering

Regulation of electronic communication numbering

87. The Authority shall regulate all electronic communication numbering and ensure efficient use by—

(*a*) monitoring compliance; and

(*b*) maintaining a national electronic communication numbering register for all assigned numbers.

National numbering plan

88.—(1) The Authority shall develop a national numbering plan for the efficient use and allocation of numbers.

(2) The national numbering plan shall consist of a scheme of identification to ensure that electronic communications are correctly

and efficiently directed to the point of reception for which they are intended.

(3) The Authority shall maintain and manage a record of the status of all number ranges, codes and blocks of numbers comprising the national numbering plan in a central numbering database system.

(4) The Authority may revise, vary or revoke the national numbering plan, and shall issue a public notice to that effect.

Assignment of numbers or blocks of numbers

89.—(1) The Authority shall assign electronic communication numbers to licensees—

(*a*) in accordance with the national numbering plan; and

(*b*) in a transparent and non-discriminatory manner.

(2) Any person intending to undertake activities covered by an assignment shall, prior to undertaking such activities, apply for such assignment.

(3) Where the Authority considers that a number or block of numbers should be subject to a restricted granting procedure, the Authority shall not assign that number or block of numbers, except in accordance with a restricted granting procedure to be set out by the Authority.

(4) The Authority shall include standard conditions as set out in rules for any assignment of numbers.

(5) The Authority may, in respect of any assignment of numbers, determine and impose certain terms and conditions, including the area for which the assignment is valid.

Rights not to be transferred

90. A person to whom a number has been assigned shall not transfer the rights to use that number to any third party.

Rules relating to number portability, etc.

91. The Authority shall issue rules relating to—

(*a*) the introduction of number portability;

(*b*) the creation of a national number portability database; and

(*c*) cost allocation and cost recovery among electronic communications licensees.

PART XI

Registration of Generic Numbers and Sim Cards

Registration of generic numbers and SIM cards

92.—(1) A person who uses a generic number or owns or intends to use a SIM card for voice telephony services shall register that generic number or SIM card with any electronic communications

licensee or with the distributor, agent or dealer of the electronic communications licensee, authorized to provide or sell generic numbers or SIM cards.

(2) Any electronic communications licensee or the distributor, agent or dealer of the electronic communications licensee, shall—

(*a*) where a potential subscriber is a natural person, obtain and fill in a form the following information—

(i) the full name of the subscriber;

(ii) the identity card number, or any other document that proves the identity of the subscriber; and

(iii) the residential and business or registered physical address of the subscriber;

(*b*) where the potential subscriber is a legal entity, obtain and fill in a form, particulars of the subscriber, together with a certified copy of the subscriber's—

(i) certificate of registration or incorporation;

(ii) business licence; and

(iii) where applicable, tax payer identification certificate number; and

(*c*) obtain from the potential subscriber any other information that the electronic communications licensee deems necessary.

(3) An electronic communications licensee, or the distributor, agent or dealer of the electronic communications licensee, shall, before filling in the particulars of a potential subscriber referred to in subsection (2)—

(*a*) verify the information; and

(*b*) retain, either in hard copy or electronically, all certified copies of the documents obtained.

Distributors, agents and dealers to submit information to licensees

93.—(1) A distributor, agent or dealer who sells or distributes generic numbers or SIM cards for telephony services shall, within seven days from the date of the sale or distribution, submit to its respective electronic communications licensee the information and documents obtained under section 94.

(2) Where there is a change to the information submitted under subsection (1), a distributor, agent or dealer shall, within seven

days from the date of the change, notify the respective electronic communications licensee of the change.

(3) A distributor, agent or dealer who fails to comply with this section commits an offence and shall, upon conviction, be liable to a fine of K5,000,000 and imprisonment for five years.

Sale or distribution of generic numbers or SIM cards

94.—(1) A person shall not—

(*a*) sell or distribute a generic number or SIM card without authorization from an electronic communications licensee; or

(*b*) use an unregistered generic number or SIM card.

(2) A person who contravenes this section commits an offence and shall, upon conviction, be liable to a fine of K1,000,000 and imprisonment for two years.

PART XII

Electronic Communications Equipment, Appliances and Devices

Technical and performance standards for equipment connected to a network

95.—(1) The Authority shall establish and publish technical and performance standards with regard to the manufacture, import, sale, shipment and use of all electronic communications equipment, appliances and devices to be used for connexion to an electronic communications network in Malaŵi.

(2) In establishing such standards, the Authority shall—

(*a*) where appropriate, seek submissions from other interested parties, in particular, those parties that would most likely be affected by the standards; and

(*b*) take due account of any relevant standards prescribed by international organizations to which Malaŵi is a member.

(3) The Authority shall issue rules with respect to technical standards for equipment to be connected to an electronic communications network.

Approval of type of equipment to be connected to a network

96.—(1) A licensee shall not use any equipment for connexion to an electronic communications network without the prior approval by the Authority of the type of equipment to be used.

(2) The Authority may, at the request of any licensee, manufacturer or supplier of equipment, conduct type approval tests and issue type approval certificates in respect of electronic communications equipment intended for use in Malaŵi.

PART XIII

Regulation of Content Services

Authority to regulate content services

97.—(1) The Authority shall regulate content services in accordance with this Act.

(2) The Authority shall facilitate the investment and development of the broadcasting sector in Malaŵi, and shall, in particular—

(*a*) issue licences to operators of content services;

(*b*) promote the development of content services;

(*c*) ensure fair competition between different content service licensees;

(*d*) promote universally accessible and affordable content services of reliable quality;

(*e*) promote broadcasting ethics applicable to content services; and

(*f*) resolve disputes involving content service licensees.

(3) The Authority may make rules of content service with regard to the type, nature, form, scope, standards and attributes of the service.

(4) The Authority may make rules describing the conditions pursuant to which content service licensees shall enter into agreements with signal distributors for transmission.

Requirement of licence to provide content services

98. A person shall not provide content services without a content licence issued by the Authority under this Act.

Types of content licences

99. The Authority shall issue the following types of content licences—

(*a*) public content licence;

(*b*) commercial content licence;

(*c*) community content licence;

(*d*) subscription content management; and

(*e*) any other type as the Authority may determine from time to time.

Public content licences

100.—(1) The Authority may designate one or more public content licensees to perform any of the functions relating to the operation and provision of public content services in Malaŵi.

(2) The Authority shall, when considering the granting of a public content licence, have due regard to the objectives set out in section 2, and in particular, shall take into account the following—

(*a*) the demand for the proposed content service within the proposed licence area;

(*b*) the need for the proposed content service within that area, with regard to content services already existing in that area; and

(*c*) the technical quality of the proposed content service with regard to developments in content technology.

Commercial content licences

101. The Authority shall, when considering the granting of a commercial content licence, have due regard to the objectives set out in section 2, and in particular, shall take into account the following—

(*a*) the expected technical quality of the proposed content service, with regard to developments in content technology;

(*b*) the capability, expertize and experience of the applicant;

(*c*) the financial means and business record of the applicant;

(*d*) the business record of entities that are in a position to control the operations of the licensee, either in an individual capacity or directly or indirectly in relation to the licensee's management or corporate structure; and

(*e*) whether the applicant or the entities referred to in paragraph (*d*) have been convicted of an offence under this Act.

Community content licences

102. The Authority shall, when considering the granting of a community content licence, have due regard to the objectives set out in section 2, and in particular, shall take into account the following—

(*a*) whether the applicant is fully controlled by a non-profit making entity and operates for non-profit purposes;

(*b*) whether the applicant intends to serve the interests of the relevant community;

(*c*) in relation to the provision of the proposed content service, whether the applicant has the support of the relevant community or those associated with or promoting the interests of the community;

(*d*) whether the applicant intends to encourage members of the relevant community or those associated with or promoting the interests of the community, to participate in the selection of the applicant's programmes;

(*e*) whether the applicant has never been convicted of an offence under this Act;

(*f*) the expected technical quality of the proposed content service, having regard to developments in broadcasting technology;

(*g*) the capability, expertize and experience of the applicant;

(*h*) the financial means and business record of the applicant; and

(*i*) any other condition that the Authority may deem necessary.

Content licence not to be granted to entities that are political in nature

103. The Authority shall not grant a content licence to any political party, movement, organization, body, entity or alliance that is political in nature.

Limitations on foreign ownership

104. A person who is not a citizen of Malaŵi shall not, directly or indirectly—

(*a*) exercise control over content service; or

(*b*) have a financial interest or an interest in voting shares or paid up capital in content service licence, exceeding twenty per cent.

Public content service fees

105.—(1) The Authority shall include in the licence of a public content service licensee designated under section 100 a right of the licensee to collect appropriate fees from any person who has equipment that is capable of receiving television programmes, as approved by the Authority.

(2) A designated public content service licensee shall—

(*a*) upon payment of the appropriate fees, issue a television licence; and

(*b*) use the fees exclusively for the purpose of financing public television services.

(3) A designated public content service licensee may enter into a commercial agreement with any other entity for the purpose of collecting fees under this section.

Restriction on subscription content services

106. A subscription content services licensee shall not acquire exclusive rights that prevent or hinder the free-to-air broadcasting of Malaŵian sporting events of national importance, as may from time to time be determined by the Authority.

Examination of programmes by the Authority

107.—(1) A content service licensee shall, at the request of the Authority, produce to the Authority a recording of every programme broadcast in the course of its broadcasting service for examination or reproduction, within sixty days from the date of the broadcast.

(2) Subsection (1) shall not be construed as requiring or authorizing the Authority, in the performance of its functions, to view programmes prior to their broadcast.

(3) The Authority shall, in addition to the provisions of this Part, regulate content services with respect to the matters set out in the Second Schedule.

Second Schedule

PART XIV

The Malaŵi Broadcasting Corporation

Establishment of the Malaŵi Broadcasting Corporation

108.—(1) There is hereby established a corporation to be known as the Malaŵi Broadcasting Corporation, which shall be a public broadcasting services licensee.

(2) The Malaŵi Broadcasting Corporation shall—

(*a*) be a body corporate with perpetual succession and a common seal;

(*b*) be capable of suing and being sued in its corporate name;

(*c*) be capable of acquiring and disposing of any movable or immovable property; and

(*d*) subject to this Act, have the power to do or perform all such acts or things as bodies corporate may by law do or perform.

Public service obligations of the Malaŵi Broadcasting Corporation

109.—(1) The Malaŵi Broadcasting Corporation shall provide public broadcasting services in accordance with the following principles—

(*a*) the provision of programmes that educate, entertain and inform;

(*b*) the encouragement of free and informed opinion on all matters of public interest;

(*c*) the need to reflect the wide diversity of Malaŵi's cultural life; and

(*d*) respect for human rights, the rule of law, and the Constitution.

(2) The Malaŵi Broadcasting Corporation shall, in the provision of its broadcasting services—

(*a*) function without any political bias and independently of any person or entity;

(*b*) support the democratic process;

(*c*) refrain from broadcasting any matter expressing its opinion or the opinion of Corporation, on current affairs or on matters of public policy:

Provided that the Corporation shall not be restrained from making editorial comments;

(*d*) provide balanced coverage of any elections; and

(*e*) operate with regard to the public interest.

Duties, functions and powers of the Malaŵi Broadcasting Corporation

110.—(1) The duties and functions of the Malaŵi Broadcasting Corporation shall be—

(*a*) to provide public broadcasting services throughout Malaŵi; and

(*b*) to perform such undertakings and provide such other services as are conducive to the exercise of the functions and fulfilment of the service obligations specified in this Act, or as are ordinarily within the functions of a public broadcasting service.

(2) Subject to the provisions of this Act, the Malaŵi Broadcasting Corporation shall have the power to—

(*a*) enter into contracts that may be necessary for the Corporation to carry out its duties and functions;

(*b*) construct, acquire, maintain and repair buildings and premises and to carry out works required for the purposes of the Corporation;

(*c*) acquire, maintain and repair broadcasting equipment and other facilities required for the purposes of the Corporation, except where the Corporation becomes a content provider;

(*d*) solicit and broadcast paid advertisements and sponsored programmes;

(*e*) collect broadcasting fees payable under this Act; and

(*f*) receive and use the net proceeds from issuance of broadcasting fees under this Act.

Board of the Malaŵi Broadcasting Corporation

111.—(1) There shall be a Board of the Malaŵi Broadcasting Corporation which shall be responsible for directing the affairs of the Corporation.

(2) The Board of the Malaŵi Broadcasting Corporation shall consist of—

(*a*) five members appointed in accordance with section 112; and

(*b*) the following *ex officio* members—

(i) the Secretary for Information or his representative;

(ii) the Secretary to the Treasury or his representative;

(iii) the Solicitor General or his representative; and

(iv) the Secretary for Education or his representative.

Appointment of members of the Board of the Malaŵi Broadcasting Corporation

112.—(1) The President shall appoint members of the Board of the Malaŵi Broadcasting Corporation, other than *ex officio* members and each appointment shall be subject to confirmation by the Public Appointments Committee of Parliament.

(2) A person to be appointed as a member of the Board of the Malaŵi Broadcasting Corporation shall—

(*a*) be a citizen of, and resident in, Malaŵi;

(*b*) possess qualifications, expertize and experience in any of the fields of broadcasting, education, engineering, law, information communication technology, business, finance, or public administration; and

(*c*) not be a person who has, within the last three years, been convicted by a competent court of a crime which is punishable with imprisonment without an option of a fine.

(3) In appointing members of the Board of the Malaŵi Broadcasting Corporation under subsection (1), the President shall have regard to gender equality and the need for continuity of service on the Board of the Malaŵi Broadcasting Corporation.

(4) The names of all members of the Board of the Malaŵi Broadcasting Corporation, and every change of membership, shall be published in the *Gazette.*

(5) A person shall not qualify to be appointed as a member of the Board of the Malaŵi Broadcasting Corporation if that person—

(*a*) holds a position in a political party;

(*b*) has, within the last three years, been convicted by a competent court of a crime which is punishable with imprisonment without an option of a fine;

(*c*) is an undischarged bankrupt;

(*d*) is a minor;

(*e*) is a Member of Parliament; or

(*f*) is a Minister or a Deputy Minister.

(6) The President shall appoint one of the members of the Board of the Malaŵi Broadcasting Corporation as Chairperson.

(7) In the event of the office of the Chairperson of the Board of the Malaŵi Broadcasting Corporation becoming vacant, members of the Board shall elect one amongst themselves to exercise the powers and perform the duties of the Chairperson, until a new Chairperson is appointed.

Tenure of office and vacancies

113.—(1) A member of the Board of the Malaŵi Broadcasting Corporation, other than an *ex officio* member, shall hold office for a period of three years and shall be eligible for re-appointment to one more term.

(2) The office of a member of the Board of the Malaŵi Broadcasting Corporation shall become vacant, if the member—

(*a*) resigns;

(*b*) dies;

(*c*) is declared bankrupt;

(*d*) knowingly fails to declare a conflict of interest relating to any matter under consideration by the Board;

(*e*) is absent, without a good and justifiable reason, from three consecutive meetings of the Board of which he has had prior notice;

(*f*) becomes, by reason of mental or physical infirmity, incapable of performing his duties as a member;

(*g*) is found guilty of conduct that brings the Corporation into disrepute; or

(*h*) is disqualified under section 112 (5).

(3) A vacancy on the Board of the Malaŵi Broadcasting Corporation shall be filled by the appointment of a new member in accordance with the manner provided for in section 111 as read with section 112, and the member so appointed shall hold office for the

unexpired period of his predecessor's term of office, but the vacancy may not be filled if the unexpired period is less than six months.

Honoraria of members of the Board of the Malaŵi Broadcasting Corporation

114.—A member of the Board of the Malaŵi Broadcasting Corporation shall be paid, allowances and other benefits from the funds of the Corporation, as the Minister responsible for public service may, on recommendation of the Board, from time to time, approve.

Meetings of the Board of the Malaŵi Broadcasting Corporation

115.—(1) The Board of the Malaŵi Broadcasting Corporation, in consultation with the Director General, shall meet to conduct the business of the Board at least once every three months, at such places and times as the Chairperson may determine.

(2) The Chairperson of the Board of the Malaŵi Broadcasting Corporation shall convene meetings of the Board by giving the members at least seven days' written notice, unless the Chairperson notifies the members in writing that the urgency of the matter to be discussed requires a shorter period of notice.

(3) The *quorum* for any meeting of the Board of the Malaŵi Broadcasting Corporation shall be two thirds of all members of the Corporation.

(4) The Chairperson of the Malaŵi Broadcasting Corporation shall preside at any meeting of the Board, and in his absence, the members present shall elect one of the members to preside at the meeting.

(5) A decision of the Board of the Malaŵi Broadcasting Corporation at any meeting shall be that of half of the members present at the meeting, and in the event of an equality of votes, the person presiding shall have a casting vote in addition to his deliberative vote.

(6) Subject to this Act, the Board of the Malaŵi Broadcasting Corporation shall have the power to determine its own procedure.

(7) Meetings of the Board of the Malaŵi Broadcasting Corporation shall be held at a place and at a time that the Chairperson of the Board may direct, but the Director General may, in the absence of the Chairperson and before the election of an interim Chairperson under subsection (4), convene such meeting.

Committees of the Board of the Malaŵi Broadcasting Corporation

116.—(1) The Board of the Malaŵi Broadcasting Corporation may establish one or more committees, and delegate to any such committee or committees any of its functions as it considers necessary.

(2) The Board of the Malaŵi Broadcasting Corporation may invite any person to attend any of the meetings of its committees, and that person shall be entitled to participate in the deliberations of the meetings, but shall not have the right to vote.

(3) The Chairperson of every committee of the Board of the Malaŵi Broadcasting Corporation shall be a person who is a member of the Board.

(4) A member of a committee of the Board of the Malaŵi Broadcasting Corporation shall be paid such allowances from the funds of the Corporation as the Minister responsible for public service may, on recommendation of the Board, approve.

(5) Subject to the general or special directions of the Board and to the provisions of this Act, every committee of the Board of the Malaŵi Broadcasting Corporation shall have the power to determine its own procedure.

(6) The Chairperson of the Board of the Malaŵi Broadcasting Corporation shall not be a member of any committee of the Board.

Director General and other employees of the Malaŵi Broadcasting Corporation

117.—(1) The Board of the Malaŵi Broadcasting Corporation shall, appoint the Director General, who shall be the chief executive officer of the Corporation and shall, subject to the general supervision of the Board, be responsible for the day to day operations of the Corporation.

(2) The Director General shall be appointed to a term of office of three years, and may be re-appointed for further two terms of three years each.

(3) The Director General shall be removed from office on any of the following grounds—

(*a*) incompetence;

(*b*) misconduct that brings the Corporation into disrepute;

(*c*) undischarged bankruptcy;

(*d*) non-disclosure of interest;

(*e*) if he has been convicted by a competent court of a crime which is punishable with imprisonment without an option of a fine;

(*f*) involvement in active politics; or

(*g*) incapability to perform his duties as Director General by reason of mental or physical infirmity.

(4) The Director General shall not be removed from office unless he has been given an opportunity to be heard.

(5) The Director General or, in his absence, such other employee of the Malaŵi Broadcasting Corporation as he may designate, shall attend meetings of the Board of the Corporation and of any committees of the Board and may address such meetings, but shall not vote on any matter.

(6) The Board of the Malaŵi Broadcasting Corporation shall appoint other staff subordinate to the Director General after calling for nominations by way of public advertisement, and the appointment shall only be based on qualification, experience and capacity in matters relating to the operational requirements of the Corporation.

(7) The staff appointed by the Board of the Malaŵi Broadcasting Corporation under subsection (6) shall not be below the rank of director.

(8) The Director General shall have the power to appoint, subject to procedure for public service recruitment, employees below the rank of director.

(9) The Board of the Malaŵi Broadcasting Corporation shall pay the employees of the Corporation such remuneration, allowances, pension, gratuities and other employment benefits as the Board may, after having obtained professional advice, consider as being competitive in the employment market in Malaŵi.

(10) A member of the Board of the Malaŵi Broadcasting Corporation, an employee, a consultant, an adviser and a subcontractor of the Corporation shall sign an oath of secrecy upon being appointed on the Board or being engaged by the Corporation, as the case may be.

Funds of the Malaŵi Broadcasting Corporation

118.—(1) The funds of the Malaŵi Broadcasting Corporation shall consist of—

(*a*) such sums as may, from time to time, be appropriated to the Corporation by Parliament;

(*b*) such moneys or other assets as may accrue to or vest in the Corporation by way of grants, subsidies, donations, bequests, gifts, subscriptions, rents, interest or royalties, from the Government or any other person;

(*c*) such sums as are derived from the sale of any property by or on behalf of the Corporation;

(*d*) fees and charges payable under this Act; and

(*e*) any charges that the Corporation may raise in respect of commercial advertising, sponsored programmes and other services.

(2) The Malaŵi Broadcasting Corporation may, subject to any directions of a general nature which may be given to the Board by the Minister of Finance, invest on short term deposit with any bank or financial institution in Malaŵi such part of its funds that are not immediately required for the purposes of its operations.

Cap. 37:02

(3) Subject to the Public Finance Management Act, the Malaŵi Broadcasting Corporation may borrow money for the purposes of carrying out its duties and functions by—

(*a*) issuing loan stock on such terms as may be approved by the Minister of Finance; or

(*b*) way of an overdraft or credit in Malaŵi or outside Malaŵi, with the approval of, and subject to such limitations as may be imposed by, the Minister of Finance.

Accounts and audit

119.—(1) The Malaŵi Broadcasting Corporation shall keep proper books and other records relating to its accounts.

(2) The accounts of the Malaŵi Broadcasting Corporation shall—

(*a*) be audited annually by independent auditors appointed by the Board of Corporation; and

(*b*) be examined by the Auditor General before final approval by the Board, and before being presented to the Minister in accordance with section 120.

(3) The financial year of the Malaŵi Broadcasting Corporation shall be the same as the financial year of the Government.

Annual reports

120.—(1) As soon as practicable, but not later than six months after the expiry of each financial year, the Malaŵi Broadcasting Corporation shall publish in the *Gazette* and submit to the Minister a report concerning its activities during that financial year.

(2) The report referred to in subsection (1) shall be in a form approved by the Minister, after consultation with the Board of the Malaŵi Broadcasting Corporation, and shall include information on the financial affairs of the Corporation, and the following shall be appended to the report—

(*a*) an audited statement of financial position;

(*b*) an audited statement of income and expenditure; and

(*c*) such other information that the Minister may require.

PART XV

Regulation of Postal Services

Power to make postal services rules

121. The Authority may make rules describing types of postal services in terms of their nature, form, scope, mode of postage, technology used, service standards and attributes.

Licensing of postal services

122.—(1) A person shall not carry out any commercial postal services without a licence issued under this Act.

(2) The Authority shall issue postal licences for the following postal activities—

(*a*) conveyance of postal articles from one place to another;

(*b*) performance of all services incidental to receiving, collecting, sending, dispatching and delivering of postal articles, except—

(i) trade announcements, circulars, printed extracts from newspapers or advertisements not addressed to any specific entity;

(ii) postal articles delivered by an employee of a sender;

(iii) postal articles delivered by a messenger employed by a sender specifically for the purpose, not being a person employed or engaged in the course of the sender's business or employment of delivering or procuring the delivery of postal articles; and

(iv) postal articles for delivery to another entity or entities to whom they are directed, without hire, reward or other profit or advantage for receiving, carrying or delivering them; and

(*c*) any other services that the Authority may determine from time to time.

Categories of postal licences

123. For the purposes of this Act, the Authority shall issue the following categories of postal licences—

(*a*) public postal licences to allow the holder thereof, being a public entity, to provide postal services;

(*b*) postal services licences to allow the holder thereof, being a private commercial entity, to provide postal services;

(*c*) courier services licences to allow the holder thereof to provide courier services; and

(*d*) any other category that the Authority may determine from time to time.

Allocation, management, etc., of addresses and postcodes

124. The Authority shall—

(*a*) allocate, manage and regulate addresses and postcodes;

(*b*) regulate the publication and sale of postcode lists and directories;

(*c*) require postal services licensees to make deliveries available for publication free of charge; and

(*d*) issue rules to regulate the publications.

Terms and conditions of a public postal service licence

125.—(1) A licence issued to a public postal service licensee designated under this Act shall include the following terms and conditions—

(*a*) that the licensee shall have exclusive rights to install personal letter boxes and collection boxes;

(*b*) that the licensee shall have exclusive rights to use the words "Post Office" "letter box" or "postage stamps" for a period to be determined by the Authority; and

(*c*) any other terms and conditions considered appropriate by the Authority.

(2) The Authority may make rules governing the determination of the scope of exclusive rights to be enjoyed by the public postal licensee.

Financial services Cap. 44:05

126.—(1) Subject to the Financial Services Act, the Authority may authorize a postal services licensee to provide such financial services as the Authority may approve.

(2) The financial services referred to in subsection (1) shall include—

(*a*) the issuance of—

(i) money orders, including postal orders;

(ii) postal checks; and

(iii) postal travellers' checks;

(*b*) the collection and payment of bills;

(*c*) the provision of savings services; and

(*d*) such other financial services as approved by the Authority.

Confidentiality of correspondence and integrity of postal articles

127.—(1) A postal services licensee shall protect the confidentiality of correspondence and the integrity of postal articles.

(2) A postal services licensee, its employees or agents, shall protect a postal article and ensure that—

(*a*) the postal article is not opened;

(*b*) the contents of the postal article are not disclosed;

(*c*) the postal article is not delivered to an entity other than the addressee, without the consent of the addressee; and

(*d*) the postal article is not opened by or disclosed to, an entity other than the addressee, without the consent of the addressee.

(3) Notwithstanding subsections (1) and (2), the following acts shall not constitute a violation of the confidentiality of correspondence or the integrity of a postal article—

(*a*) opening of correspondence by an individual residing at the same address as the addressee;

(*b*) submission of correspondence for verification and inspection by any authority authorized by law to verify or inspect such correspondence;

(*c*) opening of a postal article for purposes of ascertaining details pertaining to the sender or addressee that are necessary in order to return or deliver the postal article; or

(*d*) opening of a postal article that is reasonably suspected to contain material or substances whose dispatch, use, importation, exportation or distribution is prohibited or regulated by law.

(4) An employee of the Malaŵi Posts Corporation may open any mail, if authorized to do so by express warrant of the Postmaster General.

(5) The Postmaster General may grant a warrant to open any mail in any individual circumstances if he has reason to believe that an offence may have been committed under this Act or any other written law.

(6) A person who fails to comply with this section commits an offence and shall, upon conviction, be liable to a fine of K500,000 and imprisonment for twelve months.

Postage stamps and postal charges

128.—(1) A public postal licensee shall have exclusive rights to issue postage stamps, but may enter into an arrangement with any entity to sell the postage stamps.

(2) A public postal licensee may, subject to such rules as the Authority may prescribe, issue postage stamps of such kinds and

denoting such values as the licensee may deem necessary for the purposes of this Part.

(3) Any postage stamp issued under this section shall be used for the payment of any postage or other sum chargeable under this Act in respect of any postal service, except where the Authority determines that the payment may be made in some other manner.

Philatelic materials

129. Philatelic materials produced by a public postal licensee shall—

(*a*) belong to the Government and shall be kept in such custody as the Authority may direct; and

(*b*) include—

(i) postage stamps;

(ii) artwork, proofs, progressive sheets, printed sheets and printed plates of postage stamps; and

(iii) date-stamps, slogan dyes, and other artefacts used in connexion with the production of postage stamps.

Exemption from postal charges

130.—(1) The Authority may make rules governing the exemption of certain classes of entity from postal charges on postal articles, from commissions, fees or other charges payable for services rendered.

(2) Without prejudice to the generality of subsection (1), such rules may exempt certain entities from payment of postal charges on postal articles for charitable purposes.

Delivery of postal articles

131.—For the purposes of this Act, a postal article is deemed to have been delivered if it is—

(*a*) delivered into the personal letter box or personal bag of the addressee;

(*b*) left at the house or office of the addressee;

(*c*) left with the addressee, or with his employee or agent, or another entity authorized to receive it;

(*d*) left at a place where the addressee is a guest or is resident, whether the place is a hotel, hostel or any lodging of a similar nature; or

(*e*) left with the proprietor or manager of the addressee.

Certificate of posting

132.—(1) A postal services licensee shall, at the request of a sender of an unregistered postal article intended for transmission by

letterbox, give the sender a certificate of posting of the postal article upon payment of an appropriate fee.

(2) The certificate of posting of a postal article referred to in subsection (1) shall not convey any entitlement to compensation or be acceptable as proof of the nature of the contents of the postal article to which it relates.

(3) A sender shall not return a postal article in respect of which a certificate of posting has been issued.

Undelivered and undeliverable postal articles

133.—(1) A postal services licensee may, where the licensee is not able to deliver a postal article to the addressee or return the postal article to the sender, open and examine the postal article for the purpose of determining from its contents the identity of the addressee or sender.

(2) A postal services licensee shall, if after an examination of the postal article—

(*a*) identifies the addressee or the sender, re-seal the postal article and enclose or append a written explanation of the reasons for the opening; or

(*b*) fails to identity the addressee or the sender, hold the postal article for a period of up to six months from the date of the examination and, if during that period any entity proves to be entitled to receive the postal article, deliver it to that entity.

(3) If no delivery of the postal article is made under subsection (2) (*b*), the postal services licensee may—

(*a*) destroy the postal article or any of its contents; or

(*b*) sell any of the contents of the postal article and credit the proceeds to the licensee's income.

(4) If the postal article is disposed of under subsection (3), the postal services licensee shall make a record of the disposal and store such record together with other such records in a manner prescribed, or as approved by the Authority, for a period of not less than twelve months from the date of the disposal, and make such record available for inspection by the Authority at its request.

(5) The postal services licensee shall not be held liable for any postal article disposed of under this section.

Contract for the transport of postal articles

134. A postal services licensee may enter into a contract with any entity providing a regular transport service within Malaŵi for the purpose of carrying postal articles.

Prohibited postal articles

135. A person shall not send by post—

(*a*) explosive, inflammable, dangerous, filthy, noxious or deleterious substance, or any sharp instrument not properly protected, or any living creature that is either noxious or likely to injure any individual or damage any postal article in the course of transmission by post;

(*b*) indecent or obscene printing, painting, photograph, lithograph, engraving, book or card or any other indecent or obscene article;

(*c*) a postal article having thereon, or on the cover thereof, any words, marks or designs of any indecent, obscene, seditious, scurrilous, threatening or grossly offensive character;

(*d*) a postal article bearing any fake stamp or purporting to be prepaid with any postage stamp that has previously been used to prepay any other postal article, or which has previously been used in payment of any stamp duty; or

(*e*) other article that the Authority may prohibit by rules made under this Act and in line with Universal Postal Union Articles.

Obligation of a licensee to inform the Authority of an illicitly posted article

136.—(1) A postal services licensee who receives a postal article which the licensee reasonably suspects to have been sent in contravention of this Act or any other written law, shall immediately inform and hand over the postal article to the Authority or any other law enforcement agency.

(2) The Authority or other law enforcement agency may forfeit, detain, destroy or in any manner dispose of, the postal article found to have been posted in contravention of this Act.

(3) The forfeiture, detention, destruction or disposal of the postal article or its contents shall not relieve the sender from liability for any offence committed under this Act or any other written law.

Liability for lost, damaged, etc., postal articles

137.—(1) A postal services licensee shall be liable to pay compensation for the destruction, damage, loss, misplacement, non-delivery, or failure to guarantee the confidentiality of correspondence or the integrity of postal articles.

(2) A postal services licensee shall submit to the Authority its compensation policy in respect of the destruction, damage, loss, misplacement or non-delivery of postal articles three months after being issued with a postal services licence.

(3) A postal services licensee shall not be liable to pay compensation where—

(*a*) the sending of the postal article is prohibited under this Act;

(*b*) the postal article is insured for a value equal to or in excess of its value; or

(*c*) the addressee of the postal article has signed for and retained the postal article without objection.

(4) A postal customer shall apply to a postal services licensee for compensation where his postal article has been destroyed, damaged, lost, misplaced, undelivered or delivered with delay.

(5) Where a postal services licensee fails to comply with a request or claim for compensation from a postal customer, the postal customer may complain to the Authority.

PART XVI

The Malaŵi Posts Corporation

Establishment of the Malaŵi Posts Corporation

138.—(1) There is hereby established a corporation to be known as the Malaŵi Posts Corporation, which shall be a public postal services licensee.

(2) The Malaŵi Posts Corporation shall—

(*a*) be a body corporate with perpetual succession and a common seal;

(*b*) be capable of suing and being sued in its corporate name;

(*c*) be capable of acquiring and disposing of any movable or immovable property; and

(*d*) subject to this Act, have the power to do or perform all such acts or things as bodies corporate may by law do or perform.

Duties, functions and powers of the Malaŵi Posts Corporation

139.—(1) The Malaŵi Posts Corporation shall have the following duties and functions—

(*a*) to provide postal services and to perform other services incidental to transmission of postal articles;

(*b*) to establish and operate post offices; and

(*c*) subject to the Financial Services Act, to provide financial services. Cap. 44:05

(2) In the exercise of its duties and functions conferred under this Act, the Malaŵi Posts Corporation shall have power to—

(*a*) enter into contracts;

(*b*) construct, acquire, maintain and repair buildings and premises and carry out works;

(*c*) acquire, manufacture, maintain and repair equipment and facilities;

(*d*) levy rates and charges for any service performed by the Corporation or for the use by any entity of the premises, equipment or facilities provided by the Corporation; and

(*e*) represent Malaŵi in matters relating to the Universal Postal Union, the Pan-African Postal Union and such other international organizations as the Minister may decide.

Board of the Malaŵi Posts Corporation

140.—(1) The Board of the Malaŵi Posts Corporation shall consist of—

(*a*) four members, appointed by the President and confirmed by the Public Appointment Committee of Parliament;

(*b*) the following *ex officio* members—

(i) the Principal Secretary responsible for postal service, or his representative;

(ii) the Secretary to the Treasury or his representative; and

(iii) the Comptroller of Statutory Corporations, or his representative.

(2) In appointing members of the Board of the Malaŵi Posts Corporation under subsection (1), the President shall have regard to gender equality and the need for continuity of service on the Board of Malaŵi Posts Corporation.

(3) A person to be appointed as a member of the Board of the Malaŵi Posts Corporation shall—

(*a*) be a citizen of, and resident in, Malaŵi;

(*b*) possess qualifications, expertize and experience in any of the fields of postal services, education, engineering, law, information communication technology, business, finance, or public administration; and

(*c*) be a person who is committed to principles of fairness, openness and accountability.

(4) The names of all members of the Board of the Malaŵi Posts Corporation, and every change of membership, shall be published in the *Gazette.*

(5) A person shall not qualify to be appointed as a member of the Board of the Malaŵi Posts Corporation if that person—

(*a*) holds a position in a political party;

(*b*) has, within the last three years, been convicted by a competent court of a crime which is punishable with imprisonment without an option of a fine;

(*c*) is an undischarged bankrupt;

(*d*) is a minor;

(*e*) is a Member of Parliament; or

(*f*) is a Minister or Deputy Minister.

(6) The President shall appoint one of the members of the Board of the Malaŵi Posts Corporation as Chairperson.

(7) In the event of the office of the Chairperson of the Board of the Malaŵi Posts Corporation becoming vacant, members of the Board shall elect one amongst themselves to exercise the powers and perform the duties of the Chairperson, until a new Chairperson is appointed.

Tenure of office and vacancies

141.—(1) A member of the Board of the Malaŵi Posts Corporation, other than an *ex officio* member, shall hold office for a period of three years and shall be eligible for re-appointment to one more term.

(2) The office of a member shall become vacant if the member—

(*a*) resigns;

(*b*) dies;

(*c*) is declared bankrupt;

(*d*) knowingly fails to declare a conflict of interest relating to any matter under consideration by the Board;

(*e*) is absent, without a good and justifiable reason, from three consecutive meetings of the Board of which he has had prior notice;

(*f*) becomes, by reason of mental or physical infirmity, incapable of performing bis duties as a member;

(*g*) is found guilty of conduct that brings the Corporation into disrepute; or

(*h*) is disqualified under section 140 (5).

(3) A vacancy on the Board of the Malaŵi Posts Corporation shall be filled by the appointment of another member in the same manner as provided in section 140, and the member so appointed shall hold office for the unexpired period of his predecessor's term of office, but the vacancy may not be filled if the unexpired period is less than six months.

Honoraria of members of the Board of the Malaŵi Posts Corporation

142. A member of the Board of the Malaŵi Posts Corporation shall be paid, allowances and other benefits from the funds of the Corporation, as the Minister responsible for public service may, on recommendation of the Board, approve.

Meetings of the Board of the Malaŵi Posts Corporation

143.—(1) The Board of the Malaŵi Posts Corporation shall meet to conduct the business of the Board at least once every three months, at such places and times as the Chairperson may, in consultation with the Postmaster General, determine.

(2) The Chairperson of the Board of Malaŵi Posts Corporation shall convene meetings of the Board by giving the members at least seven days' written notice, unless the Chairperson notifies the members in writing that the urgency of the matter to be discussed requires a shorter period of notice.

(3) The *quorum* for any meeting of the Board of the Malaŵi Posts Corporation shall be two thirds of all the members of the Corporation.

(4) The Chairperson of the Board of the Malaŵi Posts Corporation shall preside at any meeting of the Board, and in his absence, the members present shall elect one of the members to preside at the meeting.

(5) A decision of the Board of the Malaŵi Posts Corporation at any meeting shall be that of half of the members present at the meeting, and in the event of an equality of votes, the person presiding shall have a casting vote in addition to his deliberative vote.

(6) Subject to this Act, the Board of the Corporation shall have the power to determine its own rules of procedure.

(7) Meetings of the Board of the Corporation shall be held at a place and at a time that the Chairperson may direct, but the Postmaster General may, in the absence of the Chairperson and before the election of an interim Chairperson under subsection (4), convene such meeting.

Committees of the Board of the Malaŵi Posts Corporation

144.—(1) The Board of the Malaŵi Posts Corporation may establish one or more committees, and may delegate to any such committee or committees any of its functions as it considers necessary.

(2) The Board of the Malaŵi Posts Corporation may invite any person to attend any of the meetings of its committees, and that person shall be entitled to participate in the deliberations of the meetings, but shall not have the right to vote.

(3) The Chairperson of every committee of the Board of the Malaŵi Posts Corporation shall be a person who is a member of the Board.

(4) A member of a committee of the Board of the Malaŵi Posts Corporation shall be paid such allowances from the funds of the Corporation as the Minister responsible for public service may, on recommendation of the Board, approve.

(5) Subject to the general or special directions of the Board of the Malaŵi Posts Corporation and to the provisions of this Act, every committee of the Board shall have the power to determine its own procedure.

(6) The Chairperson of the Board of the Malaŵi Posts Corporation shall not be a member of any committee of the Board.

Postmaster General of the Malaŵi Posts Corporation

145.—(1) The Board of the Malaŵi Posts Corporation shall appoint the Postmaster General who shall be the chief executive officer of the Corporation and shall, subject to the general supervision of the Board, be responsible for the day to day operations of the Corporation.

(2) A person to be appointed Postmaster General shall—

(*a*) have experience and capacity in matters relating to the postal industry, finance, economics, accountancy, commerce, law or postal administration; and

(*b*) be required to demonstrate knowledge and excellence in one or more of the areas of postal services.

(3) The Postmaster General shall be appointed to a term of office of three years, and may be re-appointed for further two terms of three years each.

(4) The Postmaster General shall be removed from office on any of the following grounds—

(*a*) incompetence;

(*b*) misconduct that brings the Corporation into disrepute;

(*c*) undischarged bankruptcy;

(*d*) non-disclosure of interest;

(*e*) has been convicted by a competent court of a crime which is punishable with imprisonment without an option of a fine;

(*f*) involvement in active politics; or

(*g*) incapability to perform his duties as Director General by reason of mental or physical infirmity.

(5) The Postmaster General shall not be removed from office unless he has been given an opportunity to be heard.

(6) The Postmaster General shall attend meetings of the Board of the Malaŵi Posts Corporation and of any committees of the Board, and may address such meetings, but shall not vote on any matter, provided that the person presiding at any meeting may, for good cause, require the Postmaster General to withdraw from the meeting.

Other employees of the Malaŵi Posts Corporation

146.—(1) The Board of the Malaŵi Posts Corporation shall appoint other staff subordinate to the Postmaster General after calling for nominations by way of public advertisement, and the appointment shall only be based on qualification, experience and capacity in matters relating to the operational requirements of the Corporation.

(2) The staff appointed by the Board under subsection (1) shall not be below the rank of director.

(3) The Postmaster General shall have the power to appoint employees below the rank of director.

(4) The Board of the Malaŵi Posts Corporation shall pay the employees of the Corporation such remuneration, allowances, pension, gratuities and other employment benefits as the Board may, after having obtained professional advice, consider as being competitive in the employment market in Malaŵi.

(5) Members of the Board of the Malaŵi Posts Corporation, consultants, advisers and subcontractors of the Corporation shall sign an oath of secrecy upon being appointed on the Board or being engaged by the Corporation, as the case may be.

Funds of the Malaŵi Posts Corporation

147.—(1) The funds of the Malaŵi Posts Corporation shall consist of—

(*a*) such sums as may, from time to time, be allocated to the Corporation by Parliament and the Universal Service Fund Committee;

(*b*) such moneys or other assets as may accrue to or vest in the Corporation by way of grants, subsidies, donations, bequests, gifts,

subscriptions, rents, interest or royalties, from the Government or any other person;

(*c*) such sums as are derived from the sale of any property by or on behalf of the Corporation; and

(*d*) such sums as the Corporation may charge in respect of its services.

(2) The Malaŵi Posts Corporation may, subject to any directions of a general nature which may be given to its Board by the Minister of Finance, invest such part of its funds that are not immediately required for the purposes of its operations.

(3) Subject to the Public Finance Management Act, the Corporation may borrow money for the purposes of carrying out its duties and functions by— Cap. 37:02

(*a*) issuing loan stock on such terms as may be approved by the Minister of Finance; or

(*b*) way of an overdraft or credit in Malaŵi or outside Malaŵi, with the approval of, and subject to such limitations as may be imposed by, the Minister of Finance.

Accounts and audit

148.—(1) The Malaŵi Posts Corporation shall keep proper books of accounts and other records relating to its accounts.

(2) The accounts of the Corporation shall—

(*a*) be audited annually by independent auditors appointed by the Board; and

(*b*) be examined by the Auditor General before final approval by the Board, and before being presented to the Minister in accordance with section 149.

(3) The financial year of the Malaŵi Posts Corporation shall be the same as the financial year of the Government.

Annual report

149.—(1) As soon as practicable, but not later than six months after the expiry of each financial year, the Malaŵi Posts Corporation shall publish in the *Gazette* and submit to the Minister a report relating to its activities during that financial year.

(2) The report referred to in subsection (1) shall be in a form approved by the Minister, after consultation with the Malaŵi Posts Corporation, and shall include information on the financial affairs of the Corporation, and the following shall be appended to the report—

(*a*) an audited statement of financial position;

(*b*) an audited statement of income and expenditure;

(*c*) audited statement of cash flows; and

(*d*) such other information that the Minister may require.

Exemption from liability of the Malaŵi Posts Corporation

150.—(1) Unless otherwise provided in its licence or in regulations made under this Act, the Malaŵi Posts Corporation shall not incur any liability—

(*a*) by reason of loss, non-delivery or delayed delivery of, or damage to, any postal article in the course of transmission by other postal licensees or foreign postal services providers; or

(*b*) by reason of detention or disposal of any postal article in accordance with the provisions of this Act.

(2) Nothing in this Part shall be construed as exempting the Malaŵi Posts Corporation, the Postmaster General or any employee of the Corporation from liability for damage or loss caused to any entity by reason of negligence or fraud in relation to the activities of the Corporation.

PART XVII

Consumer Protection

General principle

151.—(1) The Authority shall protect the interests of consumers, purchasers and other users of communication services.

(2) In the exercise of its functions under subsection (1), the Authority shall—

(*a*) monitor and regulate—

(i) price charges;

(ii) the quality of service;

(iii) supply of terminal equipment to consumers; and

(iv) complaints handling among licensees;

(*b*) promote awareness among consumers of communication services; and

(*c*) deal with any other matters connected with or incidental to consumer protection.

Obligations of licensees

152.—(1) Every licensee shall, in respect of its specific services and in accordance with the rules made by the Authority under this Act—

(*a*) enter into a customer service contract with consumers which shall be made available to the public;

(*b*) meet such minimum standards of quality of service as the Authority may specify and publish;

(*c*) establish and publish corresponding service level agreements applicable to each service it offers to the public with the agreements to be submitted to the Authority for prior approval;

(*d*) comply with all the terms and conditions specified in its service level agreements;

(*e*) deal reasonably with consumers; and

(*f*) address consumer complaints.

(2) The customer service contract entered into under subsection (1) (*a*) shall include—

(*a*) the services to be provided by the licensee;

(*b*) the rights and obligations of the parties;

(*c*) remedies available to consumers;

(*d*) service level agreements; and

(*e*) any other term or condition as specified by the Authority.

(3) A licensee shall not publish a customer service contract unless the contract has been approved by the Authority.

(4) A licensee that contravenes this section shall be liable to a fine to be determined by the Authority from time to time in a Schedule of penalties.

Code of conduct

153.—(1) The Authority shall, in consultation with licensees, prepare and publish a code of conduct for licensees, which shall be published in the *Gazette.*

(2) The code of conduct referred to in subsection (1) shall include rules relating to the following—

(*a*) the provision of information to consumers regarding services, rates and performance;

(*b*) fault repair of services;

(*c*) advertisement or promotion of services;

(*d*) the provision of, and access to, network services by persons with disabilities;

(*e*) consumer charging, billing, collection and credit practices; and

(*f*) any other matter relating to the provision of services under this Act.

Compliance with relevant laws Cap. 48:10 Cap. 48:09

154. Every licensee shall, in the provision of its services under this Act, adhere to the provisions of the Consumer Protection Act, the Competition and Fair Trading Act, and information and communication technology consumer rights and obligations.

PART XVIII

Universal Service and Access

Scope of universal service

155.—(1) Universal service shall be composed of—

(*a*) access to the public fixed line and mobile telephone network;

(*b*) access to the internet;

(*c*) public payphone;

(*d*) directory services;

(*e*) free emergency services;

(*f*) access to basic postal services and basic financial services;

(*g*) access to broadcasting services; and

(*h*) any other services that the Authority may determine, subject to the prior written approval of the Minister.

Duties and functions of the Authority in relation to universal services and access

156.—(1) The duties and functions of the Authority in relation to universal services and universal access shall be—

(*a*) to define the expected components of universal services and the remote areas that are un-served or under-served areas and communities;

(*b*) to set out the operations to be undertaken to ensure universal services;

(*c*) to propose annual and multi-annual universal access programmes and budgets, as well as activity plans to be submitted to the Universal Service Fund Committee;

(*d*) to define, plan and coordinate the implementation and monitoring of the universal access and universal service;

(*e*) to designate one or more licensees to be in charge of the universal service or components of the universal service; and

(*f*) to ensure that the provision of universal services is made on affordable tariffs that are accessible to all.

(2) In defining the components and areas under subsection (1) (*a*), the Authority shall consider—

(*a*) the level of competition in a particular area or community;

(*b*) the availability of services in a particular area or community;

(*c*) the absence of infrastructure coverage;

(*d*) any barriers to the use of available services; and

(*e*) the commercial viability of network facilities of communications services in a particular area or community.

Establishment of the Universal Service Fund

157. There is hereby established the Universal Service Fund which shall be managed by the Authority, and shall become operational on such date as the Minister shall appoint, by notice published in the *Gazette.*

Purpose of the Universal Service Fund

158.—(1) The Universal Service Fund shall be used for purposes of the implementation of universal service and universal access.

(2) Without prejudice to the generality of subsection (1), the proceeds of the Universal Service Fund shall be used to—

(*a*) offer subsidies on a competitive basis to licensees in order to provide them with incentives to provide universal access in areas that are not economically viable or that are marginally viable without subsidies;

(*b*) provide other financial incentives and assistance;

(*c*) meet administrative expenses associated with the execution of the duties, functions and responsibilities of the Universal Service Fund Committee, the management of the Universal Service Fund, publication and independent audit costs of annual reports of the Fund, and the staff costs for the implementation of the Fund, which shall not exceed a certain amount, as determined in regulations made under this Act; and

(*d*) conduct research and consultancy assignments related to universal access.

Establishment and composition of the Universal Service Fund Committee

159.—(1) The Authority shall establish a Universal Service Fund Committee which shall be composed of—

(*a*) one member nominated by each of the communications services sectors;

(*b*) one member nominated by the consumer protection organizations;

(*c*) the Director General of the Authority; and

(*d*) one representative from Government, as identified by the Minister.

(2) The members nominated under subsection (1), shall be appointed by the Authority.

Financing of the Universal Service Fund

160. The Universal Service Fund shall be financed through—

(*a*) operators' levy as prescribed in the licensee, which shall be set by the Authority and reviewed from time to time;

(*b*) moneys appropriated by Parliament;

(*c*) grants, subsidies, bequests, donations, gifts and subscriptions from Government or any other person;

(*d*) competitive minimum subsidy auctions;

(*e*) public access projects designed to generate income for long-term financial self-sustainability; and

(*f*) funds made available by the Authority.

Tenure of office for members

161. Members of the Universal Service Fund Committee shall hold office for a period of three years, and shall be eligible for re-appointment to one more term.

Rules of the Universal Service Fund Committee

162. The Authority shall develop rules relating to the functioning of the Universal Service Fund Committee, which may include the following—

(*a*) appointment;

(*b*) disqualification;

(*c*) vacancies;

(*d*) meetings; and

(*e*) any other matter relating to the functions of the Committee.

Functions of the Universal Service Fund Committee

163. The Universal Service Fund Committee shall be in charge of—

(*a*) reviewing all proposed annual and multi-annual universal access programmes and budgets, as well as activity plans submitted by the Authority; and

(*b*) providing written comments and specific recommendations for improving the proposed annual and multi-annual universal access programmes and budgets, and the activity plans.

Selection of universal service licensees

164.—(1) The Authority shall select and designate one or more licensees to be in charge of providing universal services components in order to have a satisfactory coverage area in Malaŵi.

(2) The Authority may designate several licensees to handle various components and to cover various coverage areas.

(3) For purposes of subsections (1) and (2), the Authority shall select a licensee after a tendering process based on technical and financial conditions, and if applicable, the net cost of service provision and based on principles of fair and equitable selection process.

(4) Notwithstanding subsection (3), the Authority may, where it fails to select a licensee, designate, with the approval of the concerned licensees, one or more licensees to implement the universal services.

Obligations of licensees in relation to universal service licence

165.—(1) The Authority shall specify obligations for licensees selected to implement the universal service.

(2) The obligations under subsection (1) shall—

(*a*) specify appropriate equipment, goods or services to be supplied;

(*b*) specify the manner in which the licensee shall fulfill its universal service obligations; and

(*c*) set out appropriate conditions for supplying universal services in various selected areas.

Accounting and reporting obligations for universal service licensees

166.—(1) A licensee selected to implement the universal services shall—

(*a*) keep books and accounts and maintain proper records of its operations in accordance with accepted accounting standards; and

(*b*) on an annual basis and in any case within six months after the end of the Government's financial year, submit a report on the accounts and targets reached as stated in the specific conditions of the licence, and shall, in particular, provide—

(i) a copy of the report to the Universal Service Fund Committee on the performance audit carried out during the financial year; and

(ii) information on the implementation of the universal services.

(2) The Authority shall require a licensee selected to implement the universal services to have its accounts audited annually by an independent auditor.

(3) A licensee who fails to comply with its obligations in terms of universal service implementation commits an offence and shall, upon conviction, be liable to a fine of K1,000,000.

(4) Notwithstanding the fine imposed under subsection (3), the licensee shall repay, with interest, the subsidy received from the Fund for the purpose of the implementation of the universal service.

PART XIX

Electronic Monitoring and Enforcement

Establishment of electronic monitoring system

167. The Authority shall use the appropriate technology to establish, install, and maintain an electronic monitoring system to monitor the activities of licensees to ensure and enforce compliance with this Act and licences issued by the Authority:

Provided that a system shall not be used for monitoring actual content of communication, network traffic or for any other purpose other than for its monitoring mandate under this Act.

Licensee's obligation to connect with electronic monitoring system

168.—Where the establishment of the electronic monitoring system requires connexion between the system and a licensee's network, the licensee shall co-operate with the Authority to ensure that it provides appropriate interface sites between the Authority's electronic monitoring system and the licensee's network to ensure direct submission of data to the monitoring system.

Monitoring in accordance with the Act

169. The Authority shall carry out electronic monitoring in accordance with this Act and regulations made under this Act.

Contravention of licensee's obligations

170.—(1) A licensee that fails to discharge its obligation under this Part commits an offence and shall, upon conviction, be liable to a fine of K20,000,000.

(2) Notwithstanding the fine imposable under subsection (1), the Authority shall reserve the right to impose any regulatory sanction under this Act.

PART XX

Complaints and Disputes

Lodge of complaints and disputes

171.—(1) A licensee shall refer to the Authority any complaint or dispute relating to electronic communications and postal services.

(2) The Authority shall investigate any complaint or dispute referred to it where it appears to the Authority that—

(*a*) the complainant has an interest in the matter to which the complaint relates; and

(*b*) the complaint is not frivolous or vexatious.

(3) In particular, the Authority may hear and determine—

(*a*) disputes between or among licensees;

(*b*) disputes between licensees and the public involving alleged breaches of the Act, regulations, rules or licences;

(*c*) disputes between, or complaints relating to, licensees and consumers; and

(*d*) disputes relating to agreements between or among licensees.

(4) The Authority may, where necessary, make representations to the licensee on behalf of the complainant or to the complainant on behalf of the licensee, as the Authority may deem appropriate.

(5) For the purposes of dealing with consumer complaints, the Authority shall establish a dedicated unit that shall receive and follow up on complaints from consumers.

(6) The Authority shall adopt rules and procedures on handling complaints or disputes referred to it under this Act.

Dispute resolution techniques

172.—(1) When presented with a dispute, the Authority shall, wherever practicable, apply conciliation, mediation and alternative dispute resolution techniques in resolving the dispute.

(2) The Authority shall establish and maintain a procedure by which any matter which—

(*a*) relates to the provision of communications service;

(*b*) has not, after allowing reasonable period, been resolved between a consumer and a communications service provider; and

(*c*) in relation to which the Authority has been requested to act by a consumer,

may be resolved in an effective, timely, fair and relatively cheap manner.

(3) The Authority may intervene at the request of any party in order to resolve any dispute between holders of licence to offer communications services.

Compliance orders

173.—(1) Where the Authority is satisfied that a person has breached or is likely to breach any requirement under this Act, the Authority shall make an appropriate order against that person.

(2) The order made by the Authority under subsection (1) may include any of the following—

(*a*) a compliance order requiring the person to comply with the provisions of this Act;

(*b*) a cease and desist order requiring a person to stop or refrain from doing an act which is in contravention of this Act;

(*c*) a compensation order;

(*d*) suspension or withdrawal of a licence for a maximum period of three years; or

(*e*) any other order considered appropriate by the Authority.

(3) An order made under this section shall be in writing, shall specify reasons and shall be served on the person concerned.

(4) A person who fails to comply with any order made under this section commits an offence and is liable to a fine of K5,000,000 and imprisonment for five years.

(5) Notwithstanding subsection (4), the Authority may take any appropriate action against a licensee who fails to comply with a provision of this Act or any other legal or regulatory provision applicable to the activities of the licensee.

Appeals against orders of the Authority

174. A person who is not satisfied with an order of the Authority may appeal to the High Court within thirty days from the date the order was made.

PART XXI

Offences

Use of communication services without payment

175. A person who uses an electronic communications service without paying for the applicable charge commits an offence and shall, upon conviction, be liable to a fine of K1,000,000 and imprisonment for two years.

Unlawful intercept

176.—(1) A licensee operating an electronic communications network or providing an electronic communications service who, other than in the course of its duty, intercepts, interferes with the contents of, or modifies, any message sent as part of the electronic communications service, commits an offence and shall, upon conviction, be liable to a fine of K5,000,000 and imprisonment for five years.

(2) A person who, without lawful authority under this Act or any other written law—

(*a*) intercepts, attempts to intercept, or causes any other person to intercept or to attempt to intercept, any communications;

(*b*) discloses or attempts to disclose to any person the contents of any communications, knowingly or having reason to believe

that the information was obtained through the interception of any communications in contravention of this Act; or

(*c*) uses or attempts to use the contents of any communications, knowingly or having reason to believe that the information was obtained through the interception of any communications in contravention of this Act,

commits an offence and shall, upon conviction, be liable to a fine of K5,000,000 and imprisonment for five years.

Disclosure of content

177. A licensee, an employee or agent of the licensee, who—

(*a*) discloses, other than in accordance with this Act, the content of a message which is part of an electronic communication service or information about a user; or

(*b*) misuses an electronic communications service,

commits an offence and shall, upon conviction, be liable to a fine of K1,000,000 and imprisonment for two years.

Sabotage and theft

178.—(1) A person who steals electronic communication infrastructure equipment commits an offence and shall, upon conviction, be liable to a fine of K10,000,000 and to imprisonment for ten years.

(2) A person who is found in possession of stolen electronic communication infrastructure equipment commits an offence and shall, upon conviction, be liable to a fine of K5,000,000 and to imprisonment for five years.

(3) A person who unlawfully destroys or damages electronic communication infrastructure equipment commits an offence and shall, upon conviction, be liable to a fine of K10,000,000 and to imprisonment for ten years.

Interference with transmission of electronic communications

179. A person who, without lawful cause, interferes with or obstructs the transmission or reception of any electronic communications, commits an offence and shall, upon conviction, be liable to a fine of K1,000,000 and to imprisonment for two years.

Transmission of prohibited articles

180. A person who sends by post any postal article or thing which is injurious, indecent or prohibited under this Act commits an offence and shall, upon conviction, be liable to a fine of K5,000,000 and imprisonment for five years.

Operation of a postal service without a licence

181. A person who operates a postal service without a licence issued by the Authority commits an offence and shall, upon conviction, be liable to a fine of K1,000,000 and to imprisonment for two years.

Conveyance of a postal article without a licence

182. A person who—

(*a*) conveys a postal article, other than in accordance with the terms of a valid postal licence; or

(*b*) performs any service incidental to conveying a postal article, other than in accordance with the terms of a valid postal licence,

commits an offence and shall, upon conviction, be liable to a fine of K1,000,000 and imprisonment for two years.

Damaging letter boxes

183. A person who—

(*a*) places in or against any letter box provided by a postal licensee for the reception of postal articles, any fire, or any explosive, or dangerous, filthy, noxious, deleterious substance or any fluid;

(*b*) causes a nuisance in or against such letter box; or

(*c*) does anything likely to destroy or damage such letter box or its appurtenances or contents,

commits an offence and shall, upon conviction, be liable to a fine of K1,000,000 and imprisonment for two years.

Opening of postal articles

184. A person who unlawfully—

(*a*) intercepts, attempts to intercept, or causes any other person to intercept or to attempt to intercept any postal article;

(*b*) discloses or attempts to disclose to any other person the contents of any postal article; or

(*c*) uses or attempts to use the contents of any postal articles,

commits an offence and shall, upon conviction, be liable to a fine of K1,000,000 and imprisonment for two years.

Disclosure of contents of postal articles

185. A person who unlawfully reveals, discloses or in any way makes known the contents of any postal article that is opened in accordance with this Act commits an offence and shall, upon conviction, be liable to a fine of K1,000,000 and imprisonment for two years.

Fake stamps

186. A person who—

(*a*) makes or knowingly alters, deals in, peddles, distributes, or sells any fake stamp, or knowingly uses for postal purposes any fake stamp;

(*b*) has any fake stamp in his possession without lawful excuse;

(*c*) makes or, without lawful excuse, has in his possession, any dye plate, instrument or material for making fake stamps; or

(*d*) makes, issues or sends by post any stamped or embossed envelope, wrapper, card, form, or paper in imitation of one issued under the authority of a licensee,

commits an offence and shall, upon conviction, be liable to a fine of K1,000,000 and imprisonment for two years.

Provision of broadcasting services without a licence

187.—(1) A person who provides broadcasting services without a licence issued under this Act commits an offence and shall, upon conviction, be liable to a fine of K5,000,000 and imprisonment for five years.

(2) A person who—

(*a*) has in his possession equipment capable of receiving television broadcasts; and

(*b*) has not paid the prescribed fees,

commits an offence and shall, upon conviction, be liable to a fine of K250,000 and imprisonment for six months.

Impersonation

188. A person who falsely holds himself out to be—

(*a*) a member of the Authority, an employee of the Authority or a person authorized by the Authority; or

(*b*) a licensee, an employee of a licensee or a person authorized by the licensee,

commits an offence and shall, upon conviction, be liable to a fine of K1,000,000 and imprisonment for two years.

General offences by a licensee

189. A licensee who—

(*a*) fails to comply with an order, directive or public notice issued by the Authority in the exercise of its functions under this Act;

(*b*) refuses, delays or fails to produce any document or other information relating to communication services or networks, which may be required to be produced under this Act;

(*c*) knowingly or without reasonable grounds for believing the same to be true, provides to the Authority a document or other information that is false or misleading in any material aspect, whether upon demand or otherwise;

(*d*) publishes or otherwise discloses any information in contravention of this Act;

(*e*) hinders the Authority from carrying out any of its functions under this Act;

(*f*) resists, hinders or obstructs an officer or agent of the Authority from—

(i) entering or inspecting any premises;

(ii) stopping and searching any vehicle;

(iii) examining any book, accounts or other records; or

(iv) otherwise discharging his duties under this Act; or

(*g*) refuses, delays or fails to comply with any order, prohibition, direction, demand, requirement or notice lawfully made, served, published or otherwise given under this Act,

commits an offence and shall, upon conviction, be liable to a fine of K5,000,000 and imprisonment for five years.

General penalty

190. A person who commits an offence under this Act for which no punishment has been provided for in this Act shall, upon conviction, be liable to a fine of K5,000,000 and imprisonment for five years.

PART XXII

Transitional and Miscellaneous Provisions

Unbundling of, and access to, essential facilities

191.—(1) Electronic communications licensees shall publish and keep up to date a reference offer for unbundled access to their essential facilities as determined by the Authority.

(2) The offer referred to in subsection (1) shall be sufficiently unbundled to enable a beneficiary not to pay for network elements of facilities that are not necessary for the supply of its services, and shall contain a description of the components of the offer, associated terms and conditions, including charges.

(3) Network services licensees shall meet reasonable requests from other licensees to access their local loops and related facilities using transparent, fair and non-discriminatory conditions.

(4) Requests shall only be refused on the basis of objective criteria, relating to technical feasibility, or the need to maintain network integrity.

(5) Where access is refused by a network services licensee, the aggrieved party may submit the matter for dispute resolution in accordance with this Act.

(6) Network services licensees shall charge prices for unbundled access to the local loop and related facilities set on the basis of cost orientation.

Supervision by the Authority

192.—(1) The Authority shall ensure that charging for unbundled access to the local loop encourages fair and sustainable competition.

(2) The Authority shall have the power to impose changes on the reference offer for unbundled access to the local loop and related facilities, including price, where such changes are justified.

(3) The Authority may, where justified, intervene on its own initiative in order to ensure non-discrimination, fair competition, economic efficiency and maximum benefit for customers.

Access to public or private land

193.—(1) A licensee providing facility services shall apply to the relevant authority having jurisdiction over private or public land or property requesting entry to, or acquisition of, the land or property under applicable land laws.

(2) Subject to subsection (1) a licensee providing facility services may, for the purposes of enabling the provision of any communications service to the public—

(*a*) enter upon any public or private land and survey the land or any portion of it; or

(*b*) enter upon any public or private land in order to construct, erect, place, maintain, examine, alter or remove any line, pole or radio link installation that is, respectively, either the property of the network services licensee, or is under the control of the network services licensee.

(3) A licensee providing facility services shall enjoy the rights and comply with the obligations specified in the Code of Conduct set out in the Third Schedule.

Third Schedule

Transparency of the Authority

194. The Authority shall be open and transparent in its operations and shall, in this regard—

(*a*) submit to Parliament an annual report detailing its activities, its financial performance and its annual audited accounts for the previous financial year, within six months after the end of the Government financial year;

(*b*) publish, in electronic format, the annual report, one month after its submission to Parliament; and

(*c*) publish, in electronic format, details of the contributions to, and allocations from, the Universal Service Fund, one month after the submission of the annual report to Parliament.

Enforcement orders and sanctions

195.—(1) Notwithstanding any criminal sanctions under this Act, the Authority may, if it is satisfied that a licensee has breached any provision of this Act, or a term or condition of its licence, make any appropriate order or impose a sanction on the licensee, and shall inform the licensee in writing of its decision.

(2) An order made or sanction imposed under subsection (1) shall include the following—

(*a*) requiring the licensee to remedy the breach;

(*b*) ordering the licensee to pay compensation;

(*c*) ordering the licensee to account for the profits made out of the breach;

(*d*) ordering the licensee to pay a fine;

(*e*) suspending the licensee's licence;

(*f*) revoking the licensee's licence; or

(*g*) any other order the Authority may deem appropriate.

Appeals against decisions of the Authority

196. A licensee aggrieved by a decision of the Authority made under this Act may, within thirty days of receiving the order, apply to the High Court for judicial review of the decision.

Joint and vicarious liability

197.—(1) Where an entity charged with an offence under this Act is a body corporate, any person who, at the time the offence was committed was a chief executive officer, manager or officer of such body corporate, may be charged jointly in the same proceedings with the body corporate, if the person was party to the offence committed.

(2) A person who is a partner in a firm shall be jointly and severally liable for acts or omissions of other partners in the firm so far as the acts or omissions relate to the firm.

(3) A licensee shall be vicariously liable for the acts or omissions of its agent, clerk, servant or other person, in so far as the acts or omissions relate to the business of the licensee.

Initiation of court action

198.—A consumer of communication services or products, a recognized consumer organization, or any aggrieved entity, may initiate court action against any licensee for an offence committed against the consumer, the consumer organization or the entity, provided that the consumer, the consumer organization or the entity

has previously filed a complaint with the Authority, and is not satisfied with the decision of the Authority.

Code of conduct

199.—(1) A licensee may develop a code of conduct providing for best practices when carrying out its activities.

(2) A licensee that develops a code of conduct shall notify, and provide a copy to, the Authority.

Regulations

200.—(1) The Minister may, on recommendation from the Authority, make regulations for the better carrying into effect the provisions of this Act.

(2) Without prejudice to the generality of subsection (1), the regulations may provide for—

(*a*) the financial management of the affairs of the Authority;

(*b*) the content of service level agreements;

(*c*) the protection of consumers of the services provided under this Act;

(*d*) the manner in which the Authority may exercise any power or perform any duty or function under this Act;

(*e*) standard terms and conditions of each licence category or type;

(*f*) universal services;

(*g*) the minimum local ownership requirement and procedures for the approval and transfer of ownership in any entity holding a licence;

(*h*) electronic monitoring;

(*i*) any matter that under this Act is required or permitted to be prescribed; or

(*j*) any matter that the Minister considers necessary or expedient to give effect to the objectives of this Act.

Cap. 1:01

(3) Notwithstanding section 21 (*e*) of the General Interpretation Act, the regulations made under this Act may create offences in respect of any contravention to the regulations, and may for any such contravention impose a fine of up to K5,000,000 and to imprisonment for up to five years.

Power to make rules

201.—(1) In the exercise of its functions under this Act, the Authority may make such rules as are necessary for the better carrying out of the provisions of this Act.

(2) The Authority shall publish in the *Gazette* the rules made under this Act.

(3) The Authority shall, within twenty-eight days of the publication in *Gazette* of the rules, inform the public, through the print and electronic media, of the publication of the rules.

Consultations with interested parties

202.—(1) Where the Authority intends to take a decision in accordance with this Act, it shall consult with any interested party, and shall give the interested party an opportunity to comment on the proposed decision within a period specified by the Authority.

(2) The Authority shall publish the results of any consultation launched publicly and the results shall be made available through such means as the Authority considers appropriate in the circumstances, except in the case of information that the Authority considers to be confidential.

Repeal and savings Cap. 68:01

203.—(1) Subject to subsection (2), the Communications Act is hereby repealed.

(2) Any subsidiary legislation made under the repealed Act in force immediately before the commencement of this Act—

(*a*) shall remain in force, unless in conflict with this Act, and shall be deemed to be subsidiary legislation made under this Act; and

(*b*) may be replaced, amended, revoked or repealed by subsidiary legislation made under this Act.

Transitional provisions

204.—(1) Any licence issued or permission granted in accordance with the repealed Act shall, unless otherwise expressly provided for in this Act or in any other written law, continue to be in force and be deemed to have been issued or granted by the Authority or the Minister, as the case may be, under this Act.

(2) Any frequency assignment made under the repealed Act shall continue to be in force and be deemed to have been made under this Act, provided that—

(*a*) the information relating to the frequency assignment is made available to the Authority; and

(*b*) any conditions contained in a frequency licence applicable to the frequency assignment are complied with.

(3) Any approval for equipment given under the repealed Act shall continue to be in force and be deemed to have been made under this Act.

(4) Members of the Authority, the Malaŵi Broadcasting Corporation, and the Malaŵi Posts Corporation as constituted immediately before the coming into force of this Act, shall continue

to hold office as members until the appointment of new Members in accordance with this Act.

(5) The Authority shall, within twenty-four months from the commencement of this Act, convert all licences issued or granted under the repealed Act, and the Authority may extend the twenty-four months period by a period not exceeding six months after the expiry of the twenty-four months period.

Legal proceedings

205. Any legal proceedings commenced immediately before the coming into force of this Act by or against the Malaŵi Communications Regulatory Authority, the Malaŵi Broadcasting Corporation, or the Malaŵi Posts Corporation established under the repealed Act, shall be deemed to have been commenced by or against the Authority, the Malaŵi Broadcasting Corporation, or the Malaŵi Posts Corporation, respectively established under this Act.

Transfer of assets, funds, liabilities, etc.

206.—(1) All property, funds and assets, except any such property, funds and assets as the Minister may determine by notice published in the *Gazette*, which, immediately before the commencement of this Act were vested in the Malaŵi Communications Regulatory Authority, the Malaŵi Broadcasting Corporation, or the Malaŵi Posts Corporation established under the repealed Act, for the use of the Authority, the Malaŵi Broadcasting Corporation, or the Malaŵi Posts Corporation shall, on the commencement of this Act, and without further assurance, be deemed to have vested in or to have been acquired by or on behalf of the Authority, the Malaŵi Broadcasting Corporation, or the Malaŵi Posts Corporation, respectively established under this Act, subject to all interests, liabilities, charges, obligations and trusts affecting such property, funds and assets.

(2) Except as otherwise provided in subsection (1), in relation to property, funds and assets, all debts, obligations, liabilities, agreements and other arrangements existing at the commencement of this Act and vested in, acquired, incurred or entered into by or on behalf of the Malaŵi Communications Regulatory Authority, the Malaŵi Broadcasting Corporation, or the Malaŵi Posts Corporation established under the repealed Act, shall, on the commencement of this Act, be deemed to have vested in or to have been acquired, incurred or entered into by or on behalf of the Authority, the Malaŵi Broadcasting Corporation, or the Malaŵi Posts Corporation, respectively established under this Act, and shall become enforceable by or against the Authority to the same extent as they were enforceable by or against the Malaŵi Communications Regulatory Authority, the Malaŵi Broadcasting Corporation, or the Malaŵi Posts Corporation, established under the repealed Act.

Transfer of employees

207. Unless the Authority, the Malaŵi Broadcasting Corporation, or the Malaŵi Posts Corporation otherwise determines, all persons who, immediately before the commencement of this Act, were employed by the Malaŵi Communications Regulatory Authority, the Malaŵi Broadcasting Corporation, or the Malaŵi Posts Corporation established under the repealed Act shall, on the commencement of this Act, be deemed to have been transferred to the employment of the Authority, the Malaŵi Broadcasting Corporation, or the Malaŵi Posts Corporation, respectively established under this Act, on terms and conditions of service not less favourable than the terms and conditions of service with the Malaŵi Communications Regulatory Authority, the Malaŵi Broadcasting Corporation, or the Malaŵi Posts Corporation, respectively established under the repealed Act, and, for the purpose of determining their rights thereunder, their services shall be regarded as being continuous from the time they were employed, respectively, by the Malaŵi Communications Regulatory Authority, the Malaŵi Broadcasting Corporation, or the Malaŵi Posts Corporation, established under the repealed Act.

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s. 46 (2)

FIRST SCHEDULE

Licence Categories

1. The Authority shall issue the following categories of licences for purposes of Part III of the Act—

(*a*) network services licences, to allow the holder thereof to construct their own or make available an electronic communications network;

(*b*) facility services licences, to allow the holder thereof to construct their own or make available facilities used for the provision of communications services;

(*c*) application services licences, to allow the holder thereof to provide one or more communications services;

(*d*) content service licences, to allow the holder thereof to provide one or more content services;

(*e*) frequency spectrum licences; and

(*f*) postal services licences.

2. The duration of each licence shall be specified by the Authority in its rules or in the specific conditions of the licence.

3. An entity shall not operate, manage and provide network services or facility services in Malaŵi except in accordance with the terms and conditions of a network services licence issued by the Authority.

4. An entity shall not provide application services except in accordance with the terms and conditions of an application services licence issued by the Authority.

5. An entity shall not provide broadcasting services except in accordance with the terms and conditions of a content licence issued by Authority.

6. The Authority shall define each broadcasting service licence in relation to one of the following categories—

(*a*) public broadcasting services;

(*b*) commercial broadcasting services;

(*c*) community broadcasting services; and

(*d*) any other licence as may be determined by the Authority.

7. A content licensee shall enter into an agreement with the holder of a network services licence for purposes of distribution of signals. The agreement shall include a service level agreement in order to evaluate the quality of the services provided by the network services licensee.

8. An entity shall not provide postal services except in accordance with the terms and conditions of a postal licence issued by the Authority.

SECOND SCHEDULE

s. 107 (3)

Regulation for Content Services

1. The Authority shall have the power to make rules and to control the content provided through content services.

2. The main principles for content regulation shall consist of—

(*a*) protecting the public against offensive and harmful content;

(*b*) excluding material likely to encourage crime or other illegal acts;

(*c*) presenting comprehensive, accurate and impartial news;

(*d*) presenting religious material in a balanced and responsible manner;

(*e*) protecting children and young persons; and

(*f*) appropriate advertising and sponsorships.

3. The Authority shall issue rules specifying—

(*a*) the percentage of local content and independent and original productions;

(*b*) the extent to which content service licensees shall provide—

(i) content produced in Malaŵi;

(ii) content produced by independent producers; and

(iii) content of an original nature; and

(*c*) the times of the day or week when such content shall be provided.

4. The regulations and rules pertaining to local content and independent and original productions shall be designed to—

(*a*) stimulate the production of content in Malaŵi; and

(*b*) prevent the excessive provision of content that is not relevant to, or not conducive to the development of, Malaŵi society.

5. The Authority may, in respect of the television content licence, impose and specify in the licence, such conditions regarding local television content and independent television production that, without derogating from the generality of the foregoing, may include any conditions requiring the content licensee—

(*a*) to annually expend a specified sum of money, subject to reasonable annual escalation or, alternatively, a specified minimum percentage of its gross revenues, on programmes that have local television content;

(*b*) to allocate a specified minimum percentage of its local broadcasting time to television programmes that have local television content;

(*c*) in the case where the content licensee has a regional or local licence area, to allocate a specified minimum percentage of broadcasting time to local television programmes that have been produced in the relevant region or locality; and

(*d*) to allocate a specified minimum portion of the percentage referred to in paragraph (*a*), (*b*) or (*c*), whichever is applicable to a prescribed diversity of television programmes that are independent television productions.

6. The Authority may, in relation to a sound broadcasting service, prescribe conditions in terms of which the content licensee is required to broadcast a specified minimum percentage of musical works that qualify as local music.

7. The Authority shall issue rules for advertising on broadcasting services.

8. Without derogating from the powers granted to the Authority to issue rules pertaining to advertising and sponsorships, such rules may include provisions—

(*a*) prohibiting, restricting or regulating advertisements of specified goods, products, services or activities, or prohibiting, restricting or regulating specified forms and methods of advertising or sponsorship;

(*b*) prohibiting, restricting or otherwise regulating political advertising; and

(*c*) restricting or otherwise regulating the extent, relative to other content, of coverage of advertising and sponsorships that a content service licensee may give in the provision of its service, including, but not limited to—

(i) the maximum amount of time to be allocated to advertisements in any hour or other period;

(ii) the minimum interval that shall elapse between any two periods allocated to advertising;

(iii) the number of such periods to be allowed in any hour or day;

(iv) the prominence that may be given to advertisements or sponsorships; and

(v) the exclusion of advertisements or sponsorships from a specified part of a broadcasting services licensees.

9. The Authority shall issue rules for political advertising on broadcasting services.

10.—(1) Rules issued by the Authority under paragraph 9 shall apply to political advertisement, including any advertisement that—

(*a*) is inserted or placed by or on behalf of a body, organization or group whose objects are wholly or mainly of a political nature; and

(*b*) is directed towards a political end.

(2) Objects of a political nature and directed towards a political end shall include objects that—

(*a*) influence the outcome of elections or referenda;

(*b*) bring about changes of the law in all or any part of Malaŵi;

(*c*) influence policies or decisions of national, regional or local governments;

(*d*) influence public opinion on a matter; or

(*e*) promote the interests of a political party or other organization or group, for political ends.

(3) A content licensee shall not carry any political advertisement, except during a period that is designated as an election period, being a period not exceeding thirty days, immediately before an election.

11. Rules issued by the Authority under paragraph 9 and designed to regulate political advertisements—

(*a*) shall determine the maximum coverage that a content licensee may give to political advertisements during an election period;

(*b*) shall determine the conditions applicable to the dissemination of political advertisements by broadcasting service licensees during an election period;

(*c*) shall give primacy to the fundamental principle that all political parties or organizations are to be treated equitably and fairly;

(*d*) shall provide that no political advertisement may be carried by a content licensee later than forty-eight hours prior to the commencement of the relevant polling period;

(*e*) may differentiate between different classes of content licensees and, in particular, may provide that certain specified classes of content licensees shall not have any obligation to carry political advertisements;

(*f*) shall provide that any content licensee that carries or that elects to carry political advertisements, shall treat all political parties and organizations equitably and fairly, and shall not discriminate against any political party or organization or give preference to any political party or organization, or subject any political party or organization to any prejudice; and

(*g*) shall give due regard to the rights and freedoms entrenched in the Constitution of Malaŵi.

12. The Authority shall issue rules for the provision of content of an educational nature on broadcasting services.

13. The rules may impose an obligation on content licensees, or on certain specified classes of content licensees, to ensure that a specified proportion of content provided by each of the licensees constitutes content of an educational nature.

14. The rules contemplated in paragraph 12—

(*a*) shall include an appropriate definition of the term "content of an educational nature";

(*b*) shall specify—

(i) the extent to which content licensees are obliged to finance the production of content of an educational nature; and

(ii) the extent to which content licensees may acquire and provide content of an educational nature produced by other entities;

(*c*) may distinguish between various categories of content of an educational nature and impose different obligations on content licensees in relation to such categories; and

(*d*) shall include provisions designed to ensure that content of an educational nature provided by content licensees—

(i) is of high quality;

(ii) is suitable to meet the needs and requirements of the Malaŵian society; and

(iii) constitutes content of an educational nature.

15. A content licensee shall broadcast a counter-version presented by any entity or body of entities affected by an assertion of fact in any programme transmitted by that licensee, if the entity or body of entities concerned claims that the assertion of fact is in fact false.

16. Notwithstanding paragraph 15, a content licensee shall not transmit a counter-version if—

(*a*) the entity or organization concerned has no direct interest in the transmission of the counter-version; or

(*b*) the counter-version is not of reasonable length, and in particular, if it is substantially longer than the part of the broadcast that dealt with the false assertion of fact.

17. The counter-version referred to in paragraph 15 shall—

(*a*) be limited to a factual account;

(*b*) not contain any material that may reasonably be anticipated to expose the content service licensee to legal action if such material were to be broadcast;

(*c*) be made in writing;

(*d*) specify the programme and the assertions to which the objection is raised; and

(*e*) be signed by the entity affected or, in the case of an organization, by the chief executive officer thereof.

18. The entity or body of entities affected shall not be entitled to insist on the transmission of a counter-version if the counter-version referred to in paragraph 15 is presented to the content licensee more than thirty days after the date of broadcast of the false assertion of fact.

19. The content licensee shall—

(*a*) at the first opportunity, but not later than ten days from receiving a counter-version referred to in paragraph 15, broadcast the counter-version within the same programme or programme section as the one in which the false assertion was made and at the same time of day or, if that is not possible, at a time equal in value to that of the programme objected to;

(*b*) broadcast the counter-version without any omissions and interruptions; and

(*c*) broadcast the counter-version free of charge.

20. A content service licensee shall, immediately upon receipt of the counter-version referred to in paragraph 15, inform the Authority of that fact, and shall keep and store the programme objected to and the counter-version until the content licensee receives a notice to the contrary from the Authority.

21. The freedom of all content licensees is indivisible from and subject to the same restraints as those relevant to individuals, and is founded on the individual's right to be informed and to freely receive and disseminate opinions.

22. Content licensees shall—

(*a*) not broadcast any material that is indecent or obscene or offensive to public morals, including abusive or insulting language, or offensive to religious beliefs of any section of the population, or likely to prejudice the safety of the Republic or public order and tranquility;

(*b*) exercise due care and sensitivity in the presentation of material that depicts or relates to acts of brutality, violence, atrocities, drug abuse, or obscenity; and

(*c*) exercise due care and responsibility in the presentation of programmes where a large proportion of the audience is likely to be children.

23. Content licensees shall report news truthfully, accurately and objectively.

24. News shall be presented in an appropriate context and in a balanced manner, without intentional or negligent departure from the facts.

25. Where a report is founded on opinion, supposition, rumour or allegation, it shall be presented in such a manner as to indicate clearly that that is the case.

26. Where it subsequently appears that a broadcast report was incorrect in a material respect, it shall be rectified forthwith, without reservation or delay.

27. Content licensees shall be entitled to comment on and criticize any actions or events of public importance.

28. Comment shall be presented in such manner that it appears clearly to be comment.

29. Comment shall be an honest expression of opinion.

30. In presenting a programme in which controversial issues of public importance are discussed, a content licensee shall make reasonable efforts to present differing points of view in the same programme or in a subsequent programme within a reasonable period of time and in substantially the same time slot.

31. An entity whose views, deeds or character have or has been criticized in a broadcasting programme on a controversial issue shall be given a reasonable opportunity by the content licensee to respond to such criticism, should that entity so request.

32. During any election period, all content licensees shall ensure equitable treatment of political parties, election candidates and electoral issues.

33. Where news and comment are concerned, content licensees shall exercise exceptional care and consideration in matters involving the private lives and private concerns of individuals, but may bear in mind that the right to privacy may be overridden by a legitimate public interest.

34. No payment shall be made to anyone involved in crime, or who has been engaged in crime in order to obtain information, unless compelling public interest requires otherwise.

THIRD SCHEDULE

s. 193 (3)

Code of Conduct for Licensees Providing Facility Services

1. A facilities service licensee may, for the purposes of the provision of communication services in accordance with its licence, enter upon any land, including any road, footpath or other land reserved for public purposes, and construct and maintain a communication facility upon, over or under any such land, and alter or remove the same, provided that—

(*a*) lines installed over any land shall be placed at the minimum height above the surface of the ground prescribed by regulations made under this Act; and

(*b*) lines installed under any land shall be placed at the minimum height above the surface of the ground prescribed by regulations made under this Act.

2. Subject to any written law, if a facilities service licensee finds it necessary to move any line or other facility constructed upon, over or under any land, owing to any work on the part of any person or public authority, the cost of the alteration or removal shall be borne by that person or public authority.

3. Where a facilities service licensee undertakes any work which disturbs the surface of a road or footpath, it shall—

(*a*) restore or re-instate the surface to its original condition; or

(*b*) compensate the relevant authority or owner of the road.

4. In taking any action under paragraph 3, due regard shall at all times be had to visual amenity and the preservation of the environment.

5. If any local authority requires that in a particular area electricity supply and communication services shall be provided by means of underground cable, each facilities service licensee shall enter into an agreement with the local authority as to the installation and use of ducts and other facilities necessary for the running of underground cables.

6. Where ducts and other facilities are provided by the local authority under paragraph 5, the costs of provision shall be payable by the facilities

service licensees and other public utilities making use of the facilities in proportion to their use.

7. A facilities service licensee or his representative authorized in writing may, for the purposes of provision of communication services in accordance with his licence—

(*a*) at all times on reasonable notice, enter upon any land and install and maintain any line upon, over or under that land;

(*b*) cut back or prune any branch of a tree which may in any way injure, or which is likely to injure, impede, or interfere with any line; and

(*c*) do and perform all other acts and things necessary for the purpose of establishing, constructing, repairing, improving, examining, altering, or removing any line.

8. A facilities service licensee shall not exercise the powers conferred by paragraph 7 except with the prior consent of the owner of the land upon, over or under which any line is or is to be placed.

9. A facilities service licensee shall not, by reason of the exercise of the rights conferred by paragraph 7, acquire any right other than that of user only in the land upon, over or under which any line is or is to be placed.

10. A facilities service licensee shall do as little damage as possible to land and to the environment and shall pay reasonable compensation to all interested persons for any damage or loss sustained by them by reason of the exercise of the powers under paragraph 7.

11. A facilities service licensee or his representative authorized in writing may, with the prior written consent of the occupier, enter any private premises for the purposes of—

(*a*) the provision of public communication services in accordance with his licence;

(*b*) the installation, maintenance or removal of any line; or

(*c*) the inspection or testing of any terminal equipment.

12. A telecommunication operator shall not interfere with or obstruct any means of entering or leaving any private premises.

13. A facilities service licensee shall pay compensation to the owner of private premises, not being the occupier, in the event that the exercise of the right of access granted under paragraph 11 depreciates the value of the owner's interest in the premises.

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An Act to amend and consolidate the law relating to road traffic and vehicles in Malaŵi and for matters connected therewith or incidental thereto 26 of 1997 G.N. 1/1998

[15TH JANUARY, 1998]

PART I

PRELIMINARY

1. This Act may be cited as the Road Traffic Act. Short title

2. In this Act, unless the context otherwise indicates— Interpretation

"ambulance" means a motor vehicle specially constructed or adapted for the purpose of conveying sick or injured persons to or from a place for medical treatment and which is registered as such;

"animal" means any horse, cattle, ass, mule, sheep, pig, goat or dog;

"articulated motor vehicle"means a combination of motor vehicles consisting of a truck-tractor and a semi-trailer;

"authorized officer" means a road traffic examiner, motor vehicle examiner, weighbridge inspector or a traffic police officer and includes any other person whom the Minister may, from time to time, by regulation declare to be an authorized officer;

"breakdown vehicle" means a motor vehicle designed or adapted solely for the purpose of recovering or salvaging motor vehicles and which is registered as such;

"breath test" means a test for the purpose of indicating the concentration of alcohol in a person's blood carried out on that person's breath by means of a device and procedures authorized by the Minister;

"bridge" includes a culvert and a causeway;

"builder" means any person who, for the purposes of the business of selling motor vehicles, manufactures or assembles motor vehicles in whole or in part from used components;

"bus" means a motor vehicle designed or adapted for the conveyance of ten or more persons including the driver;

"certificate of fitness" in relation to a motor vehicle, means a certificate issued under section 71;

"combination of motor vehicles" means two or more motor vehicles coupled together;

"cross" or any like expressions, means to move on a public road in a direction which intersects the normal course of travel of traffic on such road;

"Director" means the Director of Road Traffic appointed under section 3 or his duly authorized representative;

"driver" means any person who drives or attempts to drive any vehicle or who rides or attempts to ride any pedal cycle or who guides any draught, pack or saddle animal or herd or flock of animals, and "drive" or any like word has a corresponding meaning;

"driver's licence" means a driver's licence referred to in Part V;

"driver's licence testing centre" means a driver's licence testing centre referred to in Part V;

"enforcement agency" means the Malaŵi Police Service or any local authority which has a traffic warden in its employment or any other agency authorized by some written law to enforce traffic law;

"examiner" means a road traffic examiner or a motor vehicle examiner as the case may be appointed under Part II;

"fire-fighting vehicle" means a motor vehicle designed or adapted solely or principally for fighting fires and which is registered as such;

"freeway" means a public road or a section of a public road which has been designated as a freeway by an appropriate road traffic sign;

"goods" means any movable property;

"gross combination mass", in relation to a motor vehicle which is used to draw any other motor vehicles, means the maximum mass of any combination of motor vehicles, including the drawing vehicle and load as specified by the manufacturer thereof or, in the absence of such specification, as determined by the Director;

"gross vehicle mass" in relation to a motor vehicle, means the maximum mass of such vehicle and its load as specified by the manufacturer or, in the absence of such specification, as determined by the Director;

"highway authority" has the meaning assigned thereto in the Public Roads Act; Cap. 69:02

"importer" means any person who, for the purposes of his business of selling motor vehicles, imports new or used motor vehicles into Malaŵi;

"instructor" means any person who for direct or indirect reward—

(*a*) instructs any person in the driving of a motor vehicle;

(*b*) teaches any other person the rules of the road or road traffic signs in order to obtain a learner's or a driver's licence;

"intersection" means the area embraced within the prolongation of the lateral boundary lines of two or more public roads, open to vehicular traffic, that join one another at any angle, whether or not one such public road crosses the other;

"intoxicating liquor" has the meaning assigned thereto in the Liquor Act; Cap. 50:07

"learner's licence" means a learner's licence referred to in Part IV;

"left" means left reckoned by reference to the direction or towards which the vehicle, animal or person is facing at the material time;

"manufacturer" means a person who, for the purposes of his business of selling motor vehicles, manufactures or assembles new motor vehicles;

"medical practitioner" means any person registered as such under the Medical Practitioners and Dentists Act; Cap. 36:01

"motorcycle" means a motor vehicle which has two wheels and includes any such vehicle having a side-car attached;

"motor quadrucycle" means a motor vehicle, other than a motor cycle or a tractor, which has four wheels and which is designed to be driven by the type of controls usually fitted to a motor cycle;

"motor trader" means any person who is engaged in the business of buying, selling, exchanging or repairing motor vehicles required to be registered and licenced in terms of the Automotive Trades Registration and Fair Practices Act or of building permanent structures onto such vehicles and who complies with the prescribed conditions; Cap. 50:05

"motor tricycle" means a motor vehicle, other than a motor cycle or a tractor, which has three wheels and which is designed to be driven by the type of controls usually fitted to a motor cycle;

"motor vehicle" means any self-propelled vehicle and includes—

(*a*) a trailer; and

(*b*) a vehicle having pedals and an engine or an electric motor as an integral part thereof or attached thereto and which is designed or adapted to be propelled by means of such pedals and engine or motor, but does not include—

(i) any vehicle propelled by electrical power derived from storage batteries and which is pedestrian-controlled; or

(ii) any vehicle with a mass of not more than two hundred and thirty kilograms and specially designed and constructed, and not merely adapted, for the use of any person suffering from some physical defect or disability and used solely by such person;

"motor vehicle inspection station" means a motor vehicle inspection station registered under section 64;

"operate on a public road" or any like expression in relation to a vehicle, means to use or drive a vehicle or to permit a vehicle to be used or driven on a public road, or to have or to permit a vehicle to be on a public road;

"operator" means the person responsible for the use of a motor vehicle of any class contemplated in Part VII, and who has been registered as the operator of such vehicle;

"owner" in relation to a vehicle, means—

(*a*) the person who has the right to the use and enjoyment of a vehicle in terms of a contractual agreement with the title holder of such vehicle;

(*b*) any person referred to in paragraph (*a*), for any period during which such person has failed to return that vehicle to the title holder in accordance with the contractual agreement referred to in paragraph (*a*);

(*c*) the person who is a title holder and has the use and enjoyment of the vehicle; or

(*d*) a motor trader who is in possession of a vehicle for the purpose of sale, and who is registered as such under section 11; and "owned" or any like word has a corresponding meaning;

"park" means to keep a vehicle, whether occupied or not, stationary for a period of time longer than is reasonably necessary for the actual loading or unloading of persons or goods, but does not include any such keeping of a vehicle by reason of a cause beyond the control of the person in charge of such vehicle;

"pedal cycle" means any bicycle or tricycle designed for propulsion solely by means of human power;

"pedestrian crossing" means—

(*a*) that marked portion of a public road at an intersection included within the prolongation or connexion of the kerb line and adjacent boundary line of such road; or

(*b*) any other portion of public road designated as a pedestrian crossing by appropriate road traffic signs;

"prescribed territory" means any state or territory declared by the Minister by notice published in the Gazette to be a prescribed territory;

"professional driver" means the driver of a motor vehicle in respect of which an operator is registered;

"professional driving permit" means a professional driving permit referred to in Part V;

"public road" has the meaning assigned thereto in the Public Roads Act; Cap. 69:02

"rescue vehicle" means a motor vehicle designed or adapted solely for the purpose of rescuing persons and which is owned or controlled by a department of the government, local authority or a body of persons approved by the Director and is registered as such;

"road service permit" means a road service permit referred to in Part VII;

"road traffic examiner" means a road traffic examiner appointed under Part II;

"road traffic sign" means a road traffic sign prescribed under section 89;

"roadworthy" in relation to a vehicle, means a vehicle which complies with the relevant provisions of this Act and is otherwise in a fit condition to be operated on a public road;

"semi-trailer" means a trailer having no front axle and so designed that at least fifteen per cent of its tare is superimposed on and borne by a vehicle drawing such trailer;

"sidewalk" means that portion of a verge intended for the exclusive use of pedestrians;

"tare" in relation to a motor vehicle, means the mass of such vehicle ready to travel on a road and includes the mass of—

(*a*) any spare wheel and all other accessories and equipment supplied by the manufacturer as standard for the particular model of motor vehicle concerned;

(*b*) anything which is a permanent part of the structure of such vehicle;

(*c*) anything affixed to such vehicle so as to form a structural alteration of a permanent nature; and

(*d*) the accumulators, if such vehicle is self-propelled by electrical power, but does not include the mass of—

(i) fuel; and

(ii) anything affixed to such vehicle which is not of the nature referred to in paragraph (*b*) or (*c*);

"title holder" in relation to a vehicle, means—

(*a*) the person who has to give permission for the alienation of that vehicle in terms of a contractual agreement with the owner of such vehicle, or

(*b*) the person who has the right to alienate that vehicle,

and who is registered as such under section 11;

"tractor" means a motor vehicle designed or adapted mainly for drawing other vehicles and not to carry any load thereon, but does not include a truck-tractor;

"traffic lane" means a longitudinal division of a public road of sufficient width to accommodate the passage of a single line of vehicles;

"traffic signal" means a road traffic sign which, by means of automatic signals, alternately directs traffic to stop and permits it to proceed;

"traffic warden" means a traffic warden referred to in section 182;

"trailer" means a vehicle which is not self-propelled and which is designed or adapted to be drawn by a motor vehicle, but does not include a side-car attached to a motor cycle;

"truck-tractor" means a motor vehicle designed or adapted—

(*a*) for drawing other vehicles; and

(*b*) not to carry any load other than that imposed by a semi-trailer or by ballast,

but does not include a tractor;

"vehicle" means a device designed or adapted principally to travel on wheels or crawler tracks and includes such a device which is connected with a draw-bar to a breakdown vehicle and is used as part of the towing equipment of a breakdown vehicle to support any axle or all the axles of a motor vehicle which is being salvaged other than such a device which moves exclusively on rails;

"verge" means that portion of a road, street or thoroughfare which is not the roadway.

PART II

Registering Authority and Officers

Appointment of Director of Road Traffic

3. There shall be appointed a Director of Road Traffic who shall, subject to the general or special directions of the Minister,

exercise such powers and perform such duties as are conferred upon him by or in pursuance of this or any other Act.

Appointment of officers

4.—(1) For the purposes of this Act, the Director may, subject to this Act, delegate any of his duties to authorized officers.

(2) Each authorized officer shall be under the direction of the Director.

Establishment of Committee for Road Traffic Law Enforcement

5.—(1) The Minister shall, by notice published in the *Gazette*, establish a Committee for Road Traffic Law Enforcement consisting of members representing such organizations as shall be prescribed in the notice.

(2) The Committee referred to in subsection (1) shall advise the Minister with regard to any matter relating to road traffic law enforcement and shall perform such other functions assigned to it by the Minister.

Determination and enforcement of national policy on road traffic law enforcement

6.—(1) The Minister may determine the national policy to be followed in respect of road traffic law enforcement.

(2) The Minister may make regulations in relation to the policy referred to in subsection (1) and the enforcement thereof.

Powers and duties of an examiner

7.—(1) In addition to the powers and duties conferred upon him by or under this Act an examiner may, subject to the provisions of this Act or any other written law—

(*a*) require the driver of any vehicle to stop such vehicle and by notice in writing as prescribed, direct the owner, operator, driver or person in charge of any vehicle, wherever found, which in his opinion does not comply with the requirements for a certificate or fitness to produce such vehicle for inspection, examination or testing to an appropriately registered motor vehicle inspection station for such class of vehicle at a time and place specified in such notice;

(*b*) in respect of any motor vehicle, demand from the owner, operator or driver thereof the production of any document required from such person in respect of that motor vehicle in terms of this Act, or any like document issued by a competent authority outside Malaŵi;

(*c*) require from any instructor—

(i) where such instructor is engaged in teaching or instructing for gain another person in the driving of a motor vehicle, forthwith; or

(ii) where such instructor is not so engaged, within seven days,

to produce evidence of his registration;

(*d*) examine any motor vehicle in order to satisfy himself whether it is the motor vehicle in respect of which a document referred to in paragraph (*b*) was issued;

(*e*) impound any document referred to in paragraph (*b*) which appears to be or which the officer has reasonable grounds to believe that it is invalid or which has been or appears to have been unlawfully altered or defaced or which is being put to unlawful use, and where any document is so impounded, the examiner shall issue a receipt in respect thereof to the person concerned;

(*f*) require the owner, operator, driver or person in charge of any vehicle forthwith to furnish his name and address, and give any other particulars required as to his identification, and where applicable, immediately to produce a professional driving permit;

(*g*) demand from any person immediately to produce a licence or any other document authorizing him to drive a motor vehicle, and to produce any other document which he is required to have in respect of any motor vehicle in terms of this Act;

(*h*) impound any licence or document produced to him in terms of paragraph (*g*) which in his opinion may afford evidence of a contravention of any provision of this Act, and where any licence or document is so impounded, the examiner shall issue a receipt in respect thereof to the person concerned;

(*i*) require any person, whether or not such person is in any vehicle, to furnish his name and address and to give any other particulars required as to identification, as well as such information as is within his power to furnish and which may lead to the identification of the owner, operator or driver of such vehicle;

(*j*) at any reasonable time, having regard to the circumstances of the case, on the production of a search warrant, and in the exercise of any power or the performance of any duty which in terms of this Act he is authorized or required to exercise or perform, enter any premises on which he has reason to believe that any vehicle is kept;

(*k*) if he is a motor vehicle examiner, inspect, examine and test or cause to be inspected, examined or tested any vehicle in order to determine whether it is roadworthy and for that purpose may dismantle the vehicle or any part thereof or its equipment or accessories:

Provided that he shall reassemble any vehicle so dismantled unless he is requested by the person in charge of the vehicle not to do so;

(*l*) drive any vehicle when necessary in the performance of his duties, if in the case of a motor vehicle, he is

licensed to drive a motor vehicle of the class concerned; and

(*m*) test any applicant for a learner's licence or driver's licence in the manner and in regard to the matters as prescribed, in order to determine whether such applicant is fit and competent to obtain a learner's licence or driver's licence for the class of vehicle for which he applies.

(2) No examiner shall test any applicant for a driver's licence under section 24 unless such examiner himself is licensed to drive a vehicle of the class for which the applicant applies to obtain a driver's licence.

Powers and duties of a traffic police officer

8. A traffic police officer may, subject to the provisions of this Act and any other written law—

(*a*) exercise or perform all the powers or duties conferred upon an examiner in section 7 (1) except those referred to in paragraphs (*k*), (*l*) and (*m*) of that section;

(*b*) when in uniform, require the driver of any vehicle to stop such vehicle;

(*c*) on production of an identity card cause to be inspected, examined and tested at a motor vehicle inspection station, any part and the functioning of any vehicle and the equipment thereof, with a view to ascertaining whether such vehicle or the functioning thereof and the equipment comply with the provisions of this Act:

Provided that no such motor vehicle inspection station instructed by such officer to inspect, examine or test such vehicle shall, in the exercise of the authority hereby conferred upon it, permit any person to dismantle the mechanism or any working parts of any motor vehicle unless that person is a motor vehicle examiner or a licensed motor vehicle inspector and if he has so dismantled such vehicle, he shall reassemble the dismantled mechanism or parts unless he is requested by the person in charge of the vehicle not to do so;

(*d*) ascertain the dimensions of, the load on, or the mass, axle mass load or axle unit mass load of any vehicle or the mass of any combination of vehicles, laden or unladen, and, if necessary for the purpose of ascertaining such mass, require any vehicle or combination of vehicles to proceed to a weighbridge or mass measuring device, and if the mass of any vehicle or combination of vehicles exceeds the mass allowed under this Act, prohibit the operation of such vehicle or combination of vehicles on a public road until such mass has been reduced or adjusted to comply with this Act:

Provided that where the load on a vehicle includes any hazardous cargo, indivisible cargo, perishable cargo,

or cargo for which a special overload permit has been issued, the reduction and handling of the mass should be undertaken as prescribed by this Act or any other written law;

(*e*) drive any vehicle when necessary in the performance of his duties if, in the case of any motor vehicle, he is licensed to drive a motor vehicle of the class concerned;

(*f*) if any person, being the driver or apparently in charge of a vehicle, appears to such officer, by reason of his physical or mental condition, howsoever arising, to be incapable for the time being of driving or being in charge of such vehicle, temporarily forbid such person to continue to drive or be in charge of such vehicle and make such arrangements for the safe disposal or placing of the vehicle as in his opinion may be necessary or desirable in the circumstances;

(*g*) regulate and control traffic upon any public road, and give such directions as may, in his opinion, be necessary for the safe and efficient regulation of the traffic and, where he is of the opinion that the driver of a motor vehicle is hampering or impeding the normal flow of traffic on a public road, direct the driver to remove the vehicle from such road and to follow another route;

(*h*) require any person to furnish his name and address and give any other particulars which are required for his identification or for any process if such officer reasonably suspects such person of having committed an offence under this Act or if in the opinion of such officer he is liable to give evidence in regard to the commission or suspected commission of any such offence;

(*i*) in respect of any motor vehicle, demand from the owner, operator or driver thereof to produce any document prescribed under this Act;

(*j*) impound any document referred to in paragraph (i) produced to him and which in his opinion may afford evidence of a contravention of or failure to comply with any provision of this Act, and where any document is so impounded, the traffic police officer shall issue a receipt therefore to the person concerned;

(*k*) require any professional driver or the operator or owner of any motor vehicle to produce for inspection and to have a copy made of—

(i) any record or document which that person is required under this Act to carry or have in his possession or which is required to be affixed to any such motor vehicle; or

(ii) any record which that person is required under this Act to preserve;

(*l*) at any time enter any motor vehicle of an operator and inspect such vehicle and any recording device installed therein for the purposes of Part V of this Act, and inspect and make a copy of any record regarding the vehicle which has been produced by such recording device;

(*m*) at any time enter upon any premises on which he has a reason to believe that a motor vehicle of an operator is kept or that any record or other document required to be kept under Part V of this Act are to be found, and inspect such vehicle, and inspect and copy any such record or document;

(*n*) if he has reason to believe that an offence under Part V of this Act has been committed in respect of any record or document inspect by him, impound that record or document, and where any document is so impounded, the traffic police officer shall issue a receipt therefor to the person concerned;

(*o*) inspect any motor vehicle or part thereof and impound any document issued in connexion with the registration and licensing of such motor vehicle which relates to such motor vehicle, where it is found that the engine or chassis number of such motor vehicle differs from the engine or chassis number as specified on the document, and direct that such motor vehicle be taken to any police station specified by such traffic police officer for police clearance, and may, after such clearance has been obtained, return the impounded document to any person who is entitled thereto, or notify the owner of the motor vehicle concerned that such vehicle must be re-registered, as the case may be;

(*p*) by means of an approved speed measuring device, detect and measure the speed of any vehicle moving on a public road; and

(*q*) by means of an approved device, administer a breath test to any driver of a vehicle or any person being the holder of a driver's licence occupying the seat next to a holder of a learner's licence while the holder of the learner's licence is or was driving a vehicle on a public road.

Failure to comply with instruction or direction of an authorized officer

9.—(1) No person shall—

(*a*) fail to comply with any instruction or direction given to him by an authorized officer or obstruct, hinder or interfere with any authorized officer in the exercise of any power or the performance of any duty under this Act;

(*b*) in order to compel any person referred to in paragraph (*a*) to perform or to abstain from performing any act in respect of the exercise of his powers or the performance of his

duties, or on account of such person having performed or abstained from performing such an act, threaten or suggest the use of violence against or restraint upon such person or any of his relatives or dependants, or threaten or suggest any injury to the property of such person or of any of his relatives or dependants.

(2) Whenever the production of any document which is not required to be affixed to a vehicle or to be kept with him in a vehicle by any person is demanded under section 7 (*b*) or 8 (*i*), the production thereof at any police station or office set aside by a competent authority for use by a traffic police officer, within a period of seven days after being so demanded, shall be deemed to be sufficient compliance with the demand.

(3) Whenever any document is produced under subsection (2) at any police station or office referred to in that subsection, the officer-in-charge of such police station or office so set aside shall forthwith notify accordingly the officer who made the demand concerned and shall issue an acknowledgement of production of such document to the person producing it.

(4) Where a document is not produced under subsection (2) and any process is to be handed to or served upon a person under this Act and any other written law, an examiner or traffic police officer may require the imprint of the left thumb of the person to whom the process relates on such process, and such person shall be obliged to furnish such imprint in the manner and at the place or places on that document and copies thereof as directed by the examiner or traffic police officer concerned:

Provided that if it is not possible to obtain the left thumb print of such person, the imprint of any other finger may be required, in which case the finger thus used shall be identified in writing by the examiner or traffic police officer concerned under each imprint of such finger.

(5) Any person convicted of an offence under subsection (1) shall be liable to a fine not exceeding K5,000 or to imprisonment for a period not exceeding two years or both such fine and imprisonment.

Impersonating authorized officer or inducing any such officer not to perform his duty

10.—(1) No person shall, by word, conduct or demeanour, impersonate an authorized officer.

(2) No person shall connive with or induce or attempt to induce any authorized officer to omit to carry out his duty or to commit an act inconsistent with his duty.

(3) Any person convicted of an offence under subsection (1) or (2) shall be liable to a fine not exceeding K5,000 or to imprisonment for a period not exceeding two years or both such fine and imprisonment.

PART III

Registration and Licensing of Motor Vehicles

Registration and licensing of motor vehicles

11.—(1) The Minister shall, by regulations published in the *Gazette*, prescribe the registration and licensing system of motor vehicles, including the structure and manner of implementing that system.

(2) No person shall operate on a public road any motor vehicle which is not registered and licensed under this Part.

Previous registration deemed to be registration under this Act

12. Notwithstanding anything contained in section 11, any motor vehicle registered under the Act now repealed shall be deemed to be registered under this Act, and the registration mark assigned to such motor vehicle under the Act now repealed shall be deemed to have been assigned under this Act.

PART IV

Registration and Licensing of Manufacturers, Builders and Importers

Application for registration and registration of manufacturer, builder and importer

13.—(1) Every manufacturer, builder or importer shall apply in the prescribed manner to the Director for registration as a manufacturer, builder or importer.

(2) If the Director is satisfied that an applicant referred to in subsection (1) complies with the qualifications for competency as prescribed for the specific category in respect of which the application is made, the Director shall register such applicant on the conditions and in the manner prescribed.

(3) The Director may alter the conditions referred to in subsection (2).

Suspension and cancellation of registration of manufacturer, builder or importer

14. The Director may, upon giving reasons in writing, suspend for a stated period or cancel the registration of a manufacturer, builder or importer.

Manufacturer, builder or importer to register motor vehicles

15. Every manufacturer, builder or importer of motor vehicles shall register in the prescribed manner every motor vehicle manufactured, built or imported by him before he distributes or sells such vehicle.

Right of appeal to Minister

16.—(1) Any person who is aggrieved by the refusal of the Director to register him as a manufacturer, builder or importer or at the suspension or cancellation of his registration as a manufacturer, builder or importer or at the conditions on which he is so registered may, within twenty-one days after such refusal, suspension or cancellation, or notification of the

conditions on which he is so registered, appeal to the Minister against such refusal, suspension, cancellation or conditions in accordance with such procedure and upon payment of such fees as may be prescribed, and such person shall at the same time serve a copy of the appeal on the Director.

(2) After receipt of the copy of the appeal referred to in subsection (1), the Director shall forthwith furnish the Minister with his reasons for the refusal, suspension, cancellation or conditions to which such appeal refers.

(3) The Minister may after considering the appeal give such decision as he may deem fit.

Appointment of inspector of manufacturers, builders and importers

17.—(1) The Minister shall designate a person, an authority or an organization as an inspector of manufacturers, builders and importers.

(2) The powers and duties of the inspector referred to in subsection (1) in relation to the registration and inspection of manufacturers, builders or importers and any motor vehicles manufactured, built or imported shall be as prescribed.

PART V

Licensing of Drivers, Issuing Professional Driving Permits And Hours of Driving

Driver of motor vehicle to be licensed

18.—(1) No person shall drive a motor vehicle, teach for gain the driving of motor vehicles or accompany a holder of a learner's licence on a public road except under the authority and in accordance with the conditions of a driver's licence issued to him under this Part or of any document deemed to be a licence for the purposes of this Part and unless he keeps such driver's licence or document or any other prescribed authorization with him in the vehicle.

(2) Subject to section 20, no person shall drive a motor vehicle on a public road under the authority of a learner's licence unless such person is accompanied by and is under the direct personal supervision of a person who is in possession of a driver's licence authorizing him to drive that class of vehicle and occupying the seat next to such holder of a learner's licence.

Licence to drive

19.—(1) A licence authorizing the driving of a motor vehicle shall be issued by the Director in accordance with the provisions of this Part and shall be either—

(*a*) a learner's licence; or

(*b*) a licence, to be known as a driver's licence,

and, except as otherwise provided in this Part, no person shall be examined or tested for the purpose of the issue to him of a driver's licence unless he is the holder of a learner's licence.

(2) A learner's licence, a driver's licence and a professional driving permit issued by the Director shall remain the property of the Government.

Prescribing, classification and extent of learner's or driver's licence

20. Subject to the provisions of this Part—

(*a*) the category of a learner's or driver's licence;

(*b*) the class of motor vehicle to which each category of such licence relates;

(*c*) the authority conveyed by such licence;

(*d*) the period of validity of such licence;

(*e*) the limitations to which the authority conveyed by such licence shall be subject; and

(*f*) the form and content of such licence,

shall be as prescribed.

Disqualification from obtaining or holding learner's or driver's licence

21.—(1) A person shall be disqualified from obtaining or holding a learner's or driver's licence—

(*a*) if he—

(i) in the case of any licence for a motor cycle without a side-car having an engine with a cylinder capacity not exceeding 125 cubic centimetres or which is propelled by electrical power or which is a vehicle as contemplated in paragraph (*b*) of the definition of "motor vehicle" is under the age of sixteen years;

(ii) in the case of any licence for a motor vehicle, being a motor vehicle not of a class as referred to in subparagraph (i) and the gross vehicle mass of which does not exceed 3,500 kilograms or, where such motor vehicle is—

(A) a goods vehicle, the gross vehicle mass of which does not exceed 3,500 kilograms; or

(B) a combination of motor vehicles, the gross combination mass of which does not exceed 3,500 kilograms,

is under the age of eighteen years; or

(iii) in the case of any other licence, is under the age of twenty-one years;

(*b*) during any period in respect of which he has been declared by a competent authority to be disqualified from obtaining or holding a licence to drive a motor vehicle, while such disqualification remains in force;

(*c*) where a licence to drive a motor vehicle held by him has been suspended by a competent authority, while such suspension remains in force;

(*d*) where a licence to drive a motor vehicle held by him has been cancelled by a competent authority, while such cancellation remains in force;

(*e*) if such licence relates to a class of motor vehicle which he may already have driven under a licence held by him unless the applicant is obtaining a renewal of such licence;

(*f*) if he is suffering from one or other of the following diseases or disabilities—

(i) epilepsy;

(ii) sudden attacks of disabling giddiness or fainting due to hypertension or any other causes;

(iii) any form of mental illness to such an extent that it is necessary that he be detained, supervised, controlled and treated as a patient under the Mental Treatment Act;

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(iv) any condition causing muscular incoordination;

(v) uncontrolled diabetes mellitus;

(vi) defective vision ascertained in accordance with a prescribed standard;

(vii) any other disease or physical defect which is likely to render him incapable of effectively driving and controlling a motor vehicle of the class to which such licence relates without endangering the safety of the public:

Provided that deafness shall not of itself be deemed to be such a defect;

(*g*) if, on the basis of expert medical evidence, he is addicted to the use of any drug having a narcotic effect or the excessive use of intoxicating liquor; or

(*h*) in such other circumstance as may be prescribed, either generally or in respect of a particular class of a learner's or driver's licence.

(2) The Director shall, before issuing a driver's or learner's licence, ensure that the person is not disqualified under paragraphs (*f*) and (*g*) of subsection (1), and for that purpose, the Director may administer a test in such a manner as he may deem fit.

(3) The Director may, if he deems it expedient and on such conditions as he may deem fit, declare that any person shall no longer be subject to any disqualification, suspension or cancellation referred to in subsection (1) (*b*), (*c*) or (*d*), respectively.

Failure to disclose disqualification in respect of licence authorizing driving of motor vehicle

22.—(1) No person shall, when applying for a learner's or driver's licence, wilfully fail to disclose any disqualification to which he is subject under section 21.

(2) Any person who—

(*a*) is the holder of a licence authorizing the driving of a motor vehicle under this Part; and

(*b*) becomes aware thereof that he is disqualified from holding such licence,

shall, within a period of seven days after having so become aware of the disqualification, surrender the licence to the Director.

(3) When a licence is surrendered under subsection (2) the Director shall cancel it:

Provided that the licence shall not be cancelled if the Director is satisfied that the holder thereof is competent to drive the class of motor vehicle concerned with the aid of corrective lenses, an artificial limb or any other physical aid, in which case the Director shall—

(*a*) endorse the licence accordingly and such endorsement shall be a condition subject to which the licence is held; and

(*b*) return the licence.

Application for and issue of learner's licence

23.—(1) A person desiring to obtain a learner's licence shall in person apply therefore in the prescribed manner to a designated driver's licence testing centre.

(2) An application made under subsection (1) shall be accompanied by the prescribed fees.

(3) Upon receipt of an application under subsection (1), the driver's licence testing centre concerned shall, if it is satisfied from the information furnished in the application or from such further information as such centre may reasonably request, that the applicant is not disqualified from obtaining a learner's licence, examine and test the applicant for a learner's licence and in respect of the matters as prescribed.

(4) If the examiner is satisfied that the applicant has sufficient knowledge of the matters as prescribed in respect of the class of vehicle concerned, and is not disqualified under section 21 from obtaining a learner's licence, such examiner shall upon payment by the applicant of the prescribed fees issue or authorize the issue of a learner's licence to such applicant in respect of the appropriate class of motor vehicle.

(5) A person who wilfully or negligently issues or authorizes the issue of a learner's licence contrary to the provisions of this Part commits an offence.

(6) Any person convicted of an offence under subsection (5) shall be liable to a fine not exceeding K5,000 or to imprisonment for a period not exceeding two years or both such fine and such imprisonment.

Application for and issue or renewal of driver's licence

24.—(1) The holder of a—

(*a*) learner's licence who desires to obtain a driver's licence; or

(*b*) valid driver's licence who desires to obtain a renewal of a valid driver's licence,

shall apply in the prescribed manner to a designated driver's licence testing centre for a licence to drive a motor vehicle of a class the driving of which is authorized by his learner's licence or valid driver's licence as the case may be.

(2) An application under subsection (1) shall be accompanied by the prescribed fees.

(3) Upon receipt of an application under subsection (1), the driver's licence testing centre concerned shall, if it is satisfied from the information furnished in the application or from such further information as such centre may reasonably request, that the applicant is not disqualified from obtaining a driver's licence, determine a day on and time at which the applicant shall present himself to be examined by an examiner in the manner and on the matters as prescribed and for such purpose the applicant shall supply a motor vehicle of the class to which his application relates.

(4) An examiner shall test an applicant for a driver's licence in the manner and in respect of the matters as prescribed.

(5) If an examiner has satisfied himself under subsection (4) that an applicant for a driver's licence is competent to drive a motor vehicle of the class to which such applicant's application relates, such examiner shall upon payment by the applicant of the prescribed fees issue or authorize the issue of the driver's licence to such applicant in respect of such class of motor vehicle, and the examiner or the person authorized by him shall—

(*a*) in the case where the applicant has under subsection (3) provided a motor vehicle equipped with an automatic or semi-automatic transmission, endorse the driver's licence to the effect that authorization is granted only for the driving of a motor vehicle equipped with the automatic or semi-automatic transmission; and

(*b*) in the case where the applicant is found to be competent to drive with the aid of corrective lenses, an artificial limb or other physical aid, endorse the licence accordingly.

(6) A person who wilfully or negligently—

(*a*) issues a driver's licence;

(*b*) authorizes the issue of a driver's licence; or

(*c*) renews a driver's licence,

contrary to the provisions of this section, commits an offence.

(7) Any person convicted of an offence under subsection (6) shall be liable to a fine not exceeding K5,000 or to imprisonment for a period not exceeding two years or both such fine and imprisonment.

25. Notwithstanding anything to the contrary contained in this Act, the Director may, whenever he deems it expedient, direct where by which examiner an applicant for a learner's or driver's licence shall be examined and tested and at which driver's licence testing centre such applicant may apply for a learner's or driver's licence.

Power of Director in respect of examination and testing of applicant for learner's or driver's licence

26. When the holder of a motor vehicle driver's licence which was issued under this Part has changed his place of residence permanently or his name he shall, within fourteen days after such change, notify the Director of his new residential and postal address or his new name as the case may be.

Holders of licence to drive motor vehicle shall give notice of change of particulars

27.—(1) Any person who is aggrieved by the refusal of an examiner to issue or authorize the issue to him of a learner's or driver's licence may, within twenty-one days after such refusal, appeal to the Director in accordance with such procedure and upon payment of such fees as may be prescribed and such person shall at the same time serve a copy of the appeal on the examiner for drivers' licences concerned.

Right of appeal to Director

(2) After receipt of the copy of the appeal referred to in subsection (1), the examiner shall forthwith furnish the Director with his reasons for the refusal to which such appeal refers.

(3) For the purpose of deciding an appeal under subsection (1), the Director may appoint any person to examine and test the appellant as to his competency to drive the class of motor vehicle concerned and may, in addition, require each party to the appeal to furnish such information and evidence as he may deem expedient.

(4) The Director may after considering the appeal give such decisions as he may deem fit.

28.—(1) Subject to the provisions of subsection (2)—

When licence not issued in terms of this Act deemed to be driver's licence

(*a*) a licence authorizing the driving of a motor vehicle issued in a prescribed territory; and

(*b*) an international driving permit issued while the holder thereof was not permanently or ordinarily resident in Malaŵi,

shall, in respect of the class of motor vehicle to which that licence or permit relates and subject to the conditions thereof, be deemed to be a licence for the purposes of this Part:

Provided that if that licence is a provisional licence of any kind or an international driving permit, it shall not authorize the driving of a motor vehicle carrying passengers and for which a professional driving permit is required.

(2)—(*a*) The period for which a licence referred to in subsection (1) (*a*) or an international driving permit referred

to in subsection (1) (*b*) shall be deemed to be a licence for the purposes of this Part shall be as prescribed.

(*b*) The holder of a licence referred to in subsection (1) (*a*) or an international driving permit referred to in subsection (1) (*b*) may apply for a driver's licence to take the place of such licence or permit.

(3) An application under subsection (2) (*b*) shall be made in the prescribed manner to a designated driver's licence testing centre and shall be accompanied by the prescribed fee.

(4) On receipt of an application under subsection (2) (*b*), the driver's licence testing centre concerned shall issue to the applicant a driver's licence.

Suspension or cancellation by Director of learner's or driver's licence

29.—(1) Where the Director is of the opinion that the holder—

(*a*) of a learner's or driver's licence issued under this Part or the repealed Act is disqualified under section 21 from holding the licence, he shall cancel such licence; or

(*b*) of a licence referred to in paragraph (*a*) would constitute a source of danger to the public by driving a motor vehicle on a public road, he may cancel or suspend such licence.

(2) For the purposes of subsection (1) the Director may request the holder of the licence concerned to submit himself within such period as the Director may determine—

(*a*) to an examination and a test by one or more examiners nominated by the Director to determine his competency to drive a motor vehicle of the class to which his licence relates and for the purpose of such examination and test the holder of the licence concerned shall provide a motor vehicle of the class concerned:

Provided that the holder of the licence concerned may request that he be submitted to such examination and test to determine his competency to drive a motor vehicle—

(i) of any other class of which the driving is authorized by his licence; or

(ii) of a specific prescribed class,

and for the purpose of such examination and test he shall provide a motor vehicle of the class concerned;

(*b*) to an examination by a medical practitioner nominated by the Director to determine his physical and mental fitness to drive a motor vehicle; or

(*c*) to an examination and test referred to in paragraph (*a*) and an examination referred to in paragraph (*b*).

(3) Where the holder of the licence concerned is after the examination and test under subsection (2) (*a*) found to be competent to drive a motor vehicle of the class provided by him

and is not disqualified under section 21, the Director may direct—

(*a*) that every licence authorizing the driving of a motor vehicle and of which he is the holder shall be cancelled; and

(*b*) that a driver's licence in respect of a motor vehicle of the class provided by him shall be issued to him free of charge and for the purpose the provisions of section 24 (5) (*a*) and (*b*) shall apply *mutatis mutandis*.

(4) The cost of any examination referred to in subsection (2) (*b*) shall be a charge against the holder of the licence concerned.

(5) Where a person fails to comply with a request under subsection (2), the Director may forthwith suspend or cancel, as the case may be, the licence concerned unless such person is able to satisfy the Director within a period determined by the Director that such failure was due to a reason beyond his control and that such licence should not be so suspended or cancelled.

(6) The suspension or cancellation of a licence under this section shall apply to any other learner's or driver's licence held by the holder of such suspended or cancelled licence and recognized under this Part as a valid licence, as the Director may determine.

(7) When a licence is cancelled or suspended under subsection (1) or is cancelled under subsection (3) (*a*), the holder thereof shall forthwith surrender the licence to the Director who shall effect an appropriate endorsement thereon and, in the case where the licence has been suspended—

(*a*) retain the licence for the period of suspension; and

(*b*) return the licence to the holder thereof upon the expiry of the period of suspension.

(8) The Director may, where he deems it expedient and on such conditions as he may deem fit, reinstate a licence suspended under this section.

(9) The Director may, where he deems it expedient and on such conditions as he may deem fit, authorize a person whose licence has been cancelled under this section to apply for a learner's and a driver's licence.

(10) A person whose learner's or driver's licence has been cancelled by any competent authority, shall be deemed to be unlicensed.

(11) Where any circumstance arises in relation to the holder of a motor vehicle driver's licence issued in a prescribed territory, which, would have disqualified such person as under section 21 from obtaining a driver's licence, or if such holder would, constitute a source of danger to the public by driving a

motor vehicle on a public road, he may inform such person that such licence is of no force and effect within Malaŵi and from the date on which such person is so informed the licence shall cease to be in force within Malaŵi.

Lapsing of endorsement on licence

30.—(1) An endorsement pursuant to any order of a court effected upon any motor vehicle driver's licence under this Part shall lapse after the expiry of a period of three years from the date upon which such endorsement was made:

Provided that no other period of suspension of such licence shall be included in the calculation of the period of three years.

(2) Where, in relation to a driver's licence, all endorsements have lapsed under subsection (1), the Director may, upon application by the holder thereof in the prescribed manner and upon payment of the fees referred to in section 24 (2), issue to such holder a driver's licence free from any endorsements.

Cancellation or amendment of endorsement on licence

31.—(1) Where the holder of a licence—

(*a*) authorizing the driving of a motor vehicle in Malaŵi; and

(*b*) on which an endorsement has been effected, is of the opinion that there are circumstances justifying the cancellation or amendment of such endorsement, he may apply to the Director for the cancellation or amendment of such endorsement.

(2) An application under subsection (1) shall be accompanied by—

(*a*) the licence concerned;

(*b*) a statement by the applicant setting forth the reasons for the application; and

(*c*) the prescribed fees.

(3) Upon receipt of an application under subsection (1), the Director may, for the purpose of the consideration thereof—

(*a*) require the applicant to submit such further statement or document; or

(*b*) take such other steps,

as the Director may deem expedient.

(4) Where an application under subsection (1)—

(*a*) is refused by the Director, he shall notify the applicant accordingly and return the licence concerned to him; or

(*b*) is granted by the Director, he shall cancel the licence and issue or authorize the issue of a new licence without endorsement or reflecting the amended endorsement, as the case may be.

Driving instructor to be licensed

32.—(1) No person shall act as a driving instructor and teach for gain the driving of motor vehicles unless he is licensed under section 34.

(2) No person shall employ any other person as a driving instructor or make use of his services as a driving instructor unless such person is licensed as an instructor in terms of section 34.

Application for driving instructor's licence

33.—(1) A person desiring to be licensed as a driving instructor shall apply to the Director in the prescribed manner.

(2) An application referred to in subsection (1) shall be accompanied by the prescribed fees.

Licence and classification of driving instructor

34. Where the Director is satisfied that an applicant referred to in section 33 fulfills the competency and classification qualifications pertaining to the specific category of the application, he shall license and classify such applicant.

Suspension and cancellation of driving instructor's licence

35. The Director may suspend for such period as he may deem fit, or cancel, the licence of a driving instructor if such instructor—

(*a*) is guilty of misconduct in the exercise of his powers or the performance of his duties; or

(*b*) failed without reasonable cause to attend an appropriate refresher course at a training centre approved by the Minister within a prescribed period.

Right of appeal to Minister

36.—(1) Any person who is aggrieved by the refusal of the Director to licence him as a driving instructor or with the suspension or cancellation of his licence as a driving instructor may, within twenty-one days after such refusal, suspension or cancellation, appeal to the Minister against such refusal, suspension or cancellation in accordance with such procedure and upon payment of such fees as may be prescribed and such person shall at the same time serve a copy of the appeal on the Director.

(2) After receipt of the copy of the appeal referred to in subsection (1), the Director shall forthwith furnish the Minister with his reasons for the refusal, suspension or cancellation to which such appeal refers.

(3) The Minister may after considering the appeal give such decision as he may deem fit.

Driving School to be licensed

37. No person or organization shall act as a driving school unless he or it is licensed under section 39.

Application for driving school licence

38.—(1) A person or organization desiring to be licensed as a driving school shall apply to the Director.

(2) An application referred to in subsection (1) shall be accompanied by the prescribed fees.

Licence and classification of driving schools

39. Where the Director is satisfied that an applicant referred to in section 38 fulfils the competency and classification qualifications as prescribed pertaining to the specific category of the application, he shall licence and classify such applicant.

Suspension and cancellation of driving school licence

40. The Director may, upon giving reasons in writing, suspend for a stated period or cancel, the license of a driving school if such driving school—

(*a*) is guilty of misconduct in the exercise of its powers or the performance of its duties; or

(*b*) employs any person not licensed and classified under section 34 for the purpose of teaching for gain the driving of motor vehicles.

Right of appeal to Minister

41.—(1) Any person or organization aggrieved by the refusal of the Director to license him or it as a driving school or with the suspension or cancellation of his or its licence as a driving school may, within twenty-one days after such refusal, suspension or cancellation, appeal to the Minister against such refusal, suspension or cancellation in accordance with such procedure and upon payment of such fees as may be prescribed and such person or organization shall at the same time serve a copy of the appeal on the Director.

(2) After receipt of the copy of the appeal referred to in subsection (1), the Director shall forthwith furnish the Minister with his reasons for the refusal, suspension or cancellation to which such appeal refers.

(3) The Minister may, make such decision on the appeal as he may deem fit.

Learner's or driver's licence issued contrary to provisions of this part to be void

42. A learner's or driver's licence issued contrary to the provisions of this Part shall be void and upon the request of the Director, or a traffic police officer, as the case may be, the holder of such licence shall forthwith submit it to the Director, or such traffic police officer, as the case may be, who shall cancel the licence:

Provided that the traffic police officer may cancel such licence only with the prior approval of the Director.

Use of learner's or drivers licence by another person prohibited

43. No person who is the holder of a learner's or driver's licence shall allow such licence to be used by any other person.

Unlicensed driver not to be employed or permitted to drive motor vehicle

44. No person who is the owner or operator or is in charge or control of a motor vehicle shall employ or permit any other person to drive such vehicle on a public road unless such other person is licensed under this Part to drive the vehicle.

Permit required by professional driver

45.—(1) No person shall drive on a public road a motor vehicle in respect of which an operator is registered except in accordance with the conditions of a permit, to be known as a professional driving permit, issued to him under this

Part and unless he keeps such permit with him in the vehicle:

Provided that the provisions of this subsection shall not apply to the holder of a learner's licence who drives such vehicle while he is accompanied by a person registered as a professional driver for such category of vehicle.

(2) Any document issued by a competent authority in any prescribed territory and serving in such territory a purpose similar to that of a professional driving permit shall, subject to the conditions thereof and to such conditions as may be prescribed, be deemed to be a professional driving permit for the purpose of subsection (1).

Prescribing of classification and extent of professional driving permit

46. Subject to the provisions of this Part—

(*a*) the categories of professional driving permits;

(*b*) the authority conveyed by such permits;

(*c*) the period of validity of such permits; and

(*d*) the form and contents of such permits,

shall be as prescribed.

Application for professional driving permit

47.—(1) Any person desiring to obtain a professional driving permit shall, subject to the provisions of this Part, apply in the prescribed manner to a driving licence testing centre.

(2) An application referred to in subsection (1) shall be accompanied by the prescribed fees.

Registration of professional driver

48. If the Director is satisfied that the applicant referred to in section 47 fulfils the prescribed requirements for the issue to him of a professional driving permit, he shall register such applicant as a professional driver.

Issue of professional driving permit

49. After the Director has registered an applicant as a professional driver under section 48, the Director shall issue in the prescribed manner a professional driving permit to the applicant.

Suspension or cancellation of professional driving permit by Director

50.—(1) Where any circumstance arises in relation to the holder of a professional driving permit issued in Malaŵi which, in the opinion of the Director, would entitle him to refuse to issue a professional driving permit to such holder, or if such holder has been convicted of a second or subsequent offence which, in the opinion of the Director, relates to the driving of a motor vehicle or a failure to stop after or report an accident, the Director may, upon giving reasons in writing, suspend or cancel the professional driving permit held by such person and in such event the Director shall notify that person accordingly.

(2) If a suspension or cancellation is effected under subsection (1), the person concerned shall forthwith surrender the professional driving permit to the Director.

(3) After the expire of any period of suspension the Director shall upon request restore to the person entitled thereto the professional driving permit surrendered to him under subsection (2), if the validity thereof has not expired.

(4) Where any circumstance arises in relation to the holder of a professional driving permit or like document issued outside Malaŵi which, in the opinion of the Director, would have entitled him to refuse to issue a professional driving permit to such holder or if such holder has been convicted of a second or subsequent offence which, in the opinion of the Director, relates to the driving of a motor vehicle or a failure to stop after or report an accident, the Director may inform such person that such permit is of no force and effect within Malaŵi and from the date on which such person is so informed the permit shall cease to be in force within Malaŵi.

Right of appeal to Minister

51.—(1) Any person who is aggrieved by the refusal of the Director to issue him with a professional driving permit or the conditions subject to which a professional driving permit has been issued to him may, within twenty-one days after such refusal or such issuance, as the case may be, appeal to the Minister against any such refusal or conditions in accordance with such procedure and upon payment of such fees as may be prescribed and such person shall at the same time serve a copy of the appeal on the Director.

(2) On receipt of the copy of the appeal referred to in subsection (1), the Director shall forthwith furnish the Minister with his reasons for the refusal or the conditions of issuance to which such appeal relates.

(3) The Minister may, make such decision on the appeal as he may deem fit.

Driver of motor vehicle in respect of which operator is registered to hold professional driving permit

52. No person who—

(*a*) is the owner or operator of or is in charge or control of a motor vehicle in respect of which an operator is registered shall employ or permit any driver to drive such vehicle on a public road unless such driver is the holder of a professional driving permit where such permit is required under this Part for that purpose; or

(*b*) is the holder of a professional driving permit under this Part shall allow such permit to be used by any other person.

Professional driving permit issued contrary to provisions of this Part to be void

53. Any professional driving permit issued contrary to the provisions of this Part shall be void, and the holder thereof shall, on demand by the Director or by a traffic police officer, surrender forthwith such permit to the Director or such traffic police officer.

Drivers to comply with driving hours

54.—(1) No driver of a motor vehicle for a class prescribed for the purposes of this subsection shall drive such motor vehicle on a public road for a period or periods of time exceeding the prescribed period or periods.

(2) No operator or person exercising control over a professional driver shall permit, induce, force or in any other way influence such driver to contravene the provisions of subsection (1).

Certain classes of motor vehicles to contain recording device to measure time

55.—(1) No person shall operate on a public road a motor vehicle of a class referred to in section 54 (1) unless such vehicle is fitted with a prescribed automatic, electronic, electrical or mechanical device for the purpose of recording the period of time for which such vehicle is being driven.

(2) The driver of a motor vehicle of class referred to in section 54 (1) shall, when driving such motor vehicle on a public road, use the recording device referred to in subsection (1).

Duties of operator and driver of certain class of motor vehicle with regard to records

56. The duties of an operator and a driver of a motor vehicle of a class referred to in section 54 (1), in relation to the maintenance and preservation of records of driving hours produced by the recording device referred to in section 55 (1) shall be as prescribed.

Records produced by recording device may be removed and analyzed

57.—(1) In the event of a motor vehicle being involved in an accident, a traffic police officer may remove and analyze or cause to be removed and analyzed the records produced by a recording device referred to in section 55 (1) pertaining to that vehicle.

(2) A record produced by means of a recording device, shall *prima facie* be regarded as referring to the motor vehicle to which that recording device is attached and the information recorded by or in such recording device shall *prima facie* be deemed to be correct.

Production of licence and permit to court

58.—(1) Where any person is charged with any offence under this Act relating to the driving of a motor vehicle or a failure to stop after or report an accident, he shall produce every licence and permit of which he is the holder, or a duplicate thereof if he is not in possession of the original, to the court at the time of the hearing of the charge.

(2) For the purposes of this Part—

(*a*) "licence" means a learner's or driver's licence; and

(*b*) "permit" means a professional driving permit.

(3) No person referred to in subsection (1) shall fail, without reasonable excuse, to produce under that subsection every licence and permit of which he is the holder.

Court may issue order for endorsement, suspension or cancellation of licence or permit disqualify person from obtaining licence or permit

59.—(1) A court convicting a person of an offence under this Act relating to the driving of a motor vehicle or a failure to stop after or report an accident may, in addition to imposing a sentence, issue an order if the person convicted is—

(*a*) the holder of a licence, that particulars of the conviction, sentence and any other order of the court consequent thereupon be endorsed on such licence and the registrar or clerk of such court shall endorse such licence accordingly;

(*b*) the holder of a driver's licence or of a learner's licence and a permit that such driver's licence or learner's licence and permit be suspended for such period as the court may deem fit or that such licence or licence and permit be cancelled and any such order shall be endorsed on such licence as provided for in paragraph (*a*);

(*c*) the holder of a driver's licence or of a learner's licence and permit that such driver's licence or learner's licence and permit be cancelled and that the person convicted be disqualified from obtaining a driver's licence or a learner's licence and permit for any class of motor vehicle for such period as the court may deem fit and such order shall be endorsed on the licence as provided in paragraph (*a*); or

(*d*) not the holder of a driver's licence or of a learner's licence and permit declaring him to be disqualified from obtaining a driver's licence or a learner's licence and permit either indefinitely or for such period as the court may deem fit.

(2) The making of an endorsement under subsection (1) may be postponed by the court issuing the order until any appeal against the conviction or sentence or both has been disposed of.

On conviction of certain offences licence and permit shall be suspended for minimum period and learner's or driver's licence cannot be obtained

60.—(1) The driver's licence or the learner's licence and permit of any person convicted of an offence referred to in—

(*a*) section 124 (1) (*a*), (*b*) or (*c*), in the case of injury to a person;

(*b*) section 126 (1), if the court found that the offence was committed by driving recklessly; or

(*c*) section 128 (1) or (2), shall be suspended in the case of—

(i) a first offence, for a period of at least six months;

(ii) a second offence, for a period of at least one year; or

(iii) a third or subsequent offence, for a period of at least five years.

(2) A court convicting any person of an offence referred to in subsection (1) shall bring the provisions of subsection (1) to the notice of such person.

(3) The provisions of section 61 shall apply *mutatis mutandis* to the suspension of a driver's licence or a learner's licence and permit under this section.

Procedure subsequent to endorsement, suspension or cancellation of licence or permit

61.—(1) Where a court has issued an order that a licence be endorsed or that such licence or any permit be suspended or cancelled the court shall advice the Director of the conviction and sentence of the person concerned.

(2) Where the court has issued an order that a licence, or a permit be cancelled the court shall transmit such licence or permit to the Director.

(3) A licence or a permit which has been suspended as a result of an order of the court shall, after it has been endorsed accordingly by the court concerned, be transmitted to the Director who shall return such licence to the person entitled thereto after the period of suspension has lapsed.

(4) Whenever a licence is endorsed, or a licence and permit are suspended or cancelled under a court order, the endorsement, suspension or cancellation shall apply to every other licence and permit, as the case may be, held by the person concerned and every such other licence or permit shall be endorsed accordingly by the court and thereafter returned to the person entitled thereto:

Provided that if such other licence or permit—

(*a*) is suspended, that licence or permit shall be transmitted to the Director who shall return such licence to the person entitled thereto after the period of suspension has lapsed; or

(*b*) is cancelled, that licence and permit shall be transmitted by the court to the Director.

PART VI

Fitness of Vehicles

Motor vehicle inspection station to be registered

62.—(1) No person or organization shall operate a motor vehicle inspection station after a date to be determined by the Minister by notice in the *Gazette*, unless such station is registered and classified under this Part.

(2) Any person who contravenes subsection (1) shall be guilty of an offence and upon conviction shall be liable to a fine not exceeding K5,000 or to imprisonment for a period not exceeding two years or both such fine and imprisonment.

Application for registration of motor vehicle inspection station

63.—(1) Any person or organization desiring to operate a motor vehicle inspection station shall apply to the Director for the registration and classification of such station.

(2) An application made under subsection (1) shall be accompanied by the prescribed fees.

Registration and classification of motor vehicle inspection station

64. Where upon receipt of an application referred to in section 63 the Director is satisfied that with regard to the motor vehicle inspection station concerned the prescribed requirements for registration of such a motor vehicle inspection station have been met, the Director shall register and classify the station upon the conditions and in the manner as may be prescribed and shall give notice of such registration and classification in the *Gazette*.

Persons empowered to examine vehicles exempted from liability for damage

65. No person who is empowered under this Act to examine, inspect or to order the examination or inspection of or to issue any other directions concerning any vehicle under this Act shall be liable for the loss of any such vehicle or the contents thereof or for any damage caused to any such vehicles or the contents thereof resulting from any action taken by such person in good faith and without negligence and in the intended exercise of any such powers.

Suspension or cancellation of registration of motor vehicle inspection station

66. The Director may, if in his opinion a registered motor vehicle inspection station no longer complies with the requirements referred to in section 64, suspend for such period as he may deem fit or cancel the registration of a motor vehicle inspection station.

Right of appeal to Minister

67.—(1) A person or organization who or which is aggrieved by the refusal of the Director to register him or it as a motor vehicle inspection station or at the suspension or cancellation of his or its registration as a motor vehicle inspection station may, within twenty-one days after such refusal, suspension or cancellation, appeal to the Minister against such refusal, suspension or cancellation in accordance with such procedure and upon payment of such fees as may be prescribed and such appellant shall at the same time serve a copy of the appeal on the Director.

(2) After receipt of the copy of the appeal referred to in subsection (1), the Director shall forthwith furnish the Minister with his reasons for the refusal, suspension or cancellation to which such appeal refers.

(3) The Minister may, make such decision on the appeal as he may deem fit.

Appointment of inspector of motor vehicle inspection stations

68.—(1) The Minister shall designate a person or organization as an inspector of motor vehicle inspection stations.

(2) The powers and duties of the inspector of motor vehicle inspection stations in relation to the inspection and the control of standards, classification and functioning of motor vehicle inspection stations shall be as prescribed.

(3) The Minister may, in order to defray the expenditure incurred by or on behalf of the inspector for the purposes of

performing its functions, prescribe fees to be paid in respect of every vehicle inspection conducted or test carried out under section 71.

Certificate of fitness required in respect of motor vehicle

69.—(1) No person shall on a public road operate a motor vehicle which is not in a roadworthy condition.

(2) No person shall operate a motor vehicle on a public road unless the requirements in respect of the certificate of fitness referred to in subsection (3) pertaining to such motor vehicle are complied with and except in accordance with the conditions of such a certificate of fitness.

(3) Subject to the provisions of this Part—

(*a*) the categories of certificates of fitness;

(*b*) the classes in which motor vehicles are classified for the purposes of prescribing the requirements relating to roadworthiness and the requirements for the certificate of fitness applicable to each class of motor vehicle; and

(*c*) the period of validity of certificate of fitness, shall be as prescribed.

(4) Any document issued by a competent authority in a prescribed territory and serving a similar purpose to that of a certificate of fitness under this Act shall be deemed to be a certificate of fitness for the purposes of subsection (2).

Application for certificate of fitness

70.—(1) Any person desiring to obtain a certificate of fitness as referred to in section 69 shall present the motor vehicle to a registered motor vehicle inspection station authorized to inspect the class of motor vehicle presented.

(2) The presentation of the motor vehicle made under subsection (1) shall be accompanied by the prescribed fees.

Examination of motor vehicle and issue of certificate of fitness

71.—(1) Upon presentation of the motor vehicle referred to in section 70, a motor vehicle examiner or a licensed motor vehicle inspector shall test and examine the motor vehicle concerned in the manner and in respect of the features as prescribed.

(2) If the motor vehicle examiner or licensed motor vehicle inspector, after the examination and testing of such motor vehicle—

(*a*) is satisfied that the vehicle is roadworthy, he shall, upon payment by the applicant of the prescribed fees, affix to such motor vehicle a certificate of fitness and the issuer of such certificate shall submit a copy thereof to the Director; or

(*b*) is not so satisfied, he shall affix to such motor vehicle in the prescribed manner a rejection notice indicating the number of days, after the date of such examination and testing, the applicant has to remedy any defect in such vehicle, and if the motor vehicle examiner or motor vehicle inspector is thereafter so satisfied, he shall act under paragraph (*a*).

(3) Notwithstanding the provisions of subsection (1), a motor vehicle examiner or a licensed motor vehicle inspector authorized in writing by a motor vehicle inspection station may, at any time before the motor vehicle which is being or has been examined and tested with a view to the issue of a certificate of fitness in respect thereof under the subsection, is returned to the applicant, re-examine that motor vehicle and for that purpose—

(*a*) he shall be deemed to be the motor vehicle examiner or motor vehicle inspector referred to in subsection (1); and

(*b*) any prior action taken in respect of that vehicle under subsections (1) and (2) shall be of no force and effect.

(4) No person shall wilfully or negligently issue or authorize the issue of a certificate of fitness which is materially incorrect, or issue or authorize the issue of such certificate of fitness in respect of a motor vehicle which does not comply with the prescribed requirements.

(5) No person shall remove or replace the components of a vehicle in respect of which a certificate of fitness was issued, except in the normal course of maintenance or use of such vehicle.

(6) Any person who contravenes subsections (4) and (5) shall be guilty of an offence and upon conviction shall be liable to a fine not exceeding K10,000 or to imprisonment for a period not exceeding two years or to both such fine and imprisonment.

Prohibition against licensing of unroadworthy vehicle

72. A motor vehicle which does not comply with the requirements referred to in section 69 (3) (*b*) shall not be licensed or relicensed.

Prohibition against holding of more than one certificate of fitness in respect of the same motor vehicle

73. No person shall in respect of the same motor vehicle hold more than one valid certificate of fitness at any one time.

Certificate of fitness to be affixed to motor vehicle

74.—(1) Subject to the provisions of subsections (2) and (3), no person shall operate or permit to be operated on a public road a motor vehicle of a prescribed class—

(*a*) unless a certificate of fitness is affixed thereto; or

(*b*) if a certificate of fitness—

(i) the period of validity of which has expired; or

(ii) which does not relate to such vehicle is affixed thereto.

(2) A certificate of fitness issued by a competent authority in a prescribed territory and the purpose of which is similar to that

of a certificate of fitness shall, for the purposes of subsection (1), be deemed to be a certificate of fitness.

(3) Where a document the purpose of which is similar to that of a certificate of fitness has been issued by a competent authority in any prescribed territory in respect of a motor vehicle, but no certificate of fitness is required to be affixed to such vehicle in terms of a law of the territory concerned, the provisions of subsection (1) (*a*) shall not apply to such motor vehicle during the period of validity of such document.

(4) A document referred to in subsection (3) shall, during the period of validity thereof, at all times be in or on the motor vehicle concerned while it is operated on a public road in Malaŵi.

Authority conveyed by certificate of fitness subject to provisions of this Act

75. The conditions of a certificate of fitness relating to a motor vehicle and the authority conveyed thereby shall not be construed as derogating from any provisions of this Act and in the event of any inconsistence between the conditions of such certificate of fitness and any provisions of this Act, the latter shall prevail.

Effect of alteration of motor vehicle on certificate of fitness

76.—(1) A certificate of fitness in respect of a motor vehicle shall become void where such motor vehicle is altered in such a manner that—

(*a*) the certificate no longer correctly describes the motor vehicle; or

(*b*) such alteration affects the conditions of that certificate of fitness.

(2) Within seven days after a certificate of fitness became void in terms of subsection (1), the holder of such certificate of fitness shall present the motor vehicle to which such certificate of fitness is affixed for examination and testing under section 70.

Right of appeal to Director

77.—(1) Any person who is aggrieved at the refusal of a motor vehicle examiner or a motor vehicle inspection station to issue a certificate of fitness in respect of a motor vehicle or at the conditions subject to which such certificate was issued to him may, within twenty-one days after such refusal or after the issue of the certificate subject to the conditions concerned, appeal against any such refusal or conditions concerned to the Director in accordance with such procedure and upon payment of such fees as may be prescribed and such person shall at the same time serve a copy of the appeal on the motor vehicle examiner or the motor vehicle inspection station concerned.

(2) After receipt of the copy of the appeal referred to in subsection (1), the motor vehicle examiner or motor vehicle inspection station concerned shall forthwith furnish the Director with his or its reasons for the decision to which such appeal relates.

(3) For the purpose of deciding an appeal under subsection (1), the Director may—

(*a*) where the appeal concerns a certificate of fitness, cause the motor vehicle concerned to be examined and tested by a motor vehicle examiner or motor vehicle inspection station nominated by him; and

(*b*) require each party to the appeal to furnish such information and evidence as the Director may deem necessary.

(4) The Director may, make such decision as he may deem fit.

Voidness of certificate of fitness issued contrary to provisions of this Part

78. Any certificate of fitness issued contrary to the provisions of this Part shall be void and the holder thereof shall, on demand by the motor vehicle inspection station which issued such certificate of fitness, an examiner or by a traffic police officer, forthwith surrender such certificate of fitness to such motor vehicle inspection station, examiner or traffic police officer.

Suspension or cancellation of certificate of fitness by Director

79.—(1) Where the holder of a certificate of fitness issued in Malaŵi is convicted of a second or subsequent offence which, relates to the roadworthiness of a motor vehicle or to such certificate of fitness the Director may suspend, for such period as he may determine, or cancel such certificate of fitness.

(2) Where the Director suspends or cancels a certificate of fitness under subsection (1), he shall detain the motor vehicle and make arrangements with a reputable garage to have the faults repaired and the garage shall make an undertaking not to release the motor vehicle until the Director has inspected it and is satisfied that it is fit. All the expenses in respect of the vehicle shall be borne by the owner of the motor vehicle.

(3) The Director shall notify the motor vehicle inspection station concerned of every certificate of fitness suspended or cancelled under subsection (1).

(4) Upon the expire of the period of suspension referred to in subsection (1), the Director shall, upon request, authorize a new examination for a certificate of fitness by a motor vehicle examiner or a motor vehicle inspection station.

(5) No person shall, without the consent of the Director obtain a certificate of fitness for a motor vehicle during the period in which a certificate of fitness of which he was the holder is suspended or has been cancelled under subsection (1).

(6) Where the holder of—

(*a*) a document serving a similar purpose to that of a certificate of fitness; or

(*b*) a certificate affixed to a motor vehicle with a similar purpose to that of a certificate of fitness, issued in a prescribed territory,

is convicted of a second or subsequent offence which, in the opinion of the Director, relates to the roadworthiness of a motor vehicle or to such a document or certificate, the Director may inform that person that every such document or certificate held by him is no longer in force within Malaŵi, and from the date on which that person is so informed, every such document or certificate shall cease to be in force within Malaŵi.

Notice to discontinue operation of motor vehicle

80.—(1) Where a motor vehicle is not roadworthy, a traffic police officer or a motor vehicle examiner may, by notice in the prescribed form served on the driver, owner or operator of such vehicle, direct that such vehicle shall not be operated on a public road or that such motor vehicle shall only be operated under specified conditions.

(2) The manner in which and circumstances under which such traffic police officer or motor vehicle examiner may issue a notice referred to in subsection (1) and the further steps which shall or may be taken in respect of the vehicle concerned, shall be as prescribed.

PART VII

Operator Fitness

Registration of operator

81.—(1) The owner of a motor vehicle of a class which is prescribed for the purposes of the application of this Part shall be the operator of such motor vehicle and shall be registered as such under subsection (4).

(2) The owner of a motor vehicle referred to in subsection (1) shall, upon payment of the prescribed fees—

(*a*) upon the licensing of such motor vehicle under Part III make known; or

(*b*) within twenty-one days—

(i) after the conclusion or amendment of an agreement; or

(ii) after the vehicle became a vehicle of a class referred to in subsection (1), notify the Director,

which person, hereinafter referred to as the designated person, is to be registered as the operator of such motor vehicle.

(3) The owner of any motor vehicle registered in a foreign state shall, unless he is deemed to be the holder of a road service permit under section 82 (3), before entering Malaŵi with such vehicle, upon payment of the prescribed fee, notify the Director which designated person shall be registered as the operator of such vehicle.

(4) The Director shall, if satisfied that the designated person should be registered as the operator, register such person as the operator of the motor vehicle concerned.

Issue of road service permit

82.—(1) The Director shall provide and issue, in respect of each motor vehicle referred to in section 81 (1) a road service permit upon payment of the prescribed fee, to the operator concerned.

(2) The categories, period of validity, form and contents of a road service permit shall be as prescribed.

(3) Any document issued by a competent authority in a prescribed territory and serving in such territory a purpose similar to that of a road service permit shall, subject to the conditions thereof and to such conditions as may be prescribed, be deemed to be a road service permit for the purposes of subsection (1).

(4) Where any circumstance arises in relation to the holder of a road service permit referred to in subsection (3), which in the opinion of the Director would have entitled him to act under section 86 if such permit was issued in Malaŵi, the Director may inform such holder that such permit is of no force and effect within Malaŵi, and from the date on which such person is so informed such permit shall cease to be in force within Malaŵi.

Road service permit to be displayed on motor vehicle

83. No person shall operate a motor vehicle of any class referred to in section 81 (1) on a public road unless a valid road service permit is displayed on such motor vehicle.

Proof of certain facts

84.—(1) If in any prosecution the question arises as to who is the operator of a motor vehicle, an imprint or copy of or an extract from a road service permit certified by a road traffic examiner or a traffic police officer to be true shall upon production thereof be *prima facie* proof that the person whose name appears as operator on such permit was the operator of such vehicle at the time when the offence was committed.

(2) No person shall under subsection (1) certify any imprint, copy or extract to be true, knowing that it is not a true imprint, copy or extract.

(3) Any person who contravenes subsection (2) shall be guilty of an offence and upon conviction shall be liable to a fine not exceeding K10,000 or to imprisonment for a period not exceeding three years or to both such fine and imprisonment.

Duties of operator

85. The operator of a motor vehicle shall—

(*a*) notify, within seven days—

(i) the owner, if applicable, of such motor vehicle; and

(ii) the Director,

of any change in the circumstances pertaining to his registration as the operator of such motor vehicle and return the road service permit in respect of that motor vehicle to the Director;

(*b*) keep safe and protect from theft a road service permit issued to him and if any such permit is lost, stolen or

destroyed he shall notify the nearest police station within twenty-four hours and the Director within seven days after having become aware of such loss that he should have been aware of such loss, theft or destruction or after it could reasonably be expected that he should have been aware of such loss, theft or destruction, whichever event occurred first;

(*c*) exercise proper control over the driver of such motor vehicle to ensure the compliance by such driver with all the provisions of this Act, in particular the provisions regarding—

(i) the driving hours referred to in section 54;

(ii) the requirements in respect of the professional driving permit referred to in section 45; and

(iii) the loading of vehicles;

(*d*) ensure that such motor vehicle complies with fitness requirements;

(*e*) conduct his operations with due care to the safety of the public;

(*f*) if hazardous substances are conveyed, ensure that all requirements for the conveyance of such substances are complied with; and

(*g*) take all reasonable measures to ensure that such motor vehicle is used on a public road in compliance with the provisions for the loading and transportation of passengers and goods.

Power of Director in respect of motor vehicle, drivers and activities of operators

86.—(1) The Director may, on account of any evidence as to the state of fitness of a motor vehicle in respect of which an operator is produced to him under subsection (4), by written notice—

(*a*) notify such operator that such motor vehicle is suspected of being unroadworthy and that the operator should forthwith take adequate steps to ensure its continued roadworthiness;

(*b*) demand from such operator to indicate in writing what precautions he has taken to ensure the continued roadworthiness of his motor vehicle;

(*c*) direct such operator to produce such motor vehicle for inspection, examination or testing at a time and place to be specified in such notice; and

(*d*) suspend the road service permit issued in respect of the motor vehicle, if such motor vehicle has been examined or tested under paragraph (*c*) and found to be unroadworthy for such period as such motor vehicle is so unroadworthy.

(2) The Director may, on account of the record of a driver of a motor vehicle for which an operator is registered, by written notice—

(*a*) inform such operator if the Director has reasonable grounds to believe that he does not exercise proper control over the drivers under his authority as required under section 85;

(*b*) demand from such operator to indicate in writing what precautions he has taken in order to ensure proper control over drivers under his authority;

(*c*) demand such operator to produce for examination the records relating to drivers which an operator is required to keep under this Act; and

(*d*) direct that the driver concerned be retested under section 29 (2).

(3) The Director may, if the record of an operator indicates that such operator does not comply with the provisions of this Act, by written notice—

(*a*) direct such operator to fulfil the duties conferred on him under section 85;

(*b*) appoint a person whom he deems fit, to investigate the activities or specific activities of such operator and direct the person so appointed to make a written recommendation to him as to what measures should be taken in respect of such operator;

(*c*) direct such operator to appear before him or before any other person appointed by him, in order to furnish reasons for his failure to fulfil the duties conferred on him under section 85; and

(*d*) notify such operator—

(i) that a road service permit shall only be issued to him on such conditions as the Director may deem fit;

(ii) that no further road service permit shall be issued to him for such period as the Director may specify in the notice; or

(iii) that the road service permit or permits pertaining to such motor vehicle or motor vehicles as the Director may determine in respect of which he is registered as the operator is or are suspended until the Director is satisfied that the grounds for such suspension no longer exist:

Provided that—

(A) the period of any suspension under subparagraph (iii) shall not exceed twelve months;

(B) any decision by the Director under this paragraph shall only be taken on the basis of a recommendation by a person appointed under paragraph (*b*); and

(C) the Director shall within twenty-one days after the date of the notice, in writing furnish such operator with the reasons for his decision.

(4) The Director may, in the exercise of his powers under this section—

(*a*) demand from any operator to make discovery of documents by way of affidavit or by answering interrogatories on oath and to produce such documents for inspection;

(*b*) demand from any operator to allow inspection of any records and documents related to any vehicle required to be kept by an operator under this Act;

(*c*) at any time require that an inquiry be instituted into the operational activities of an operator by a person appointed by him for that purpose and, if such operator is a company, also into any other company in a group of companies of which the operator is the controlling company.

(5) The Director may, if he has reasonable grounds to believe that any person registered as the operator of a motor vehicle is not the *bona fide* operator of such vehicle, demand proof from the owner of the vehicle.

Appeal to Minister

87.—(1) Any person who feels aggrieved by the refusal of the Director to register him as an operator or by a decision of the Director under section 86 (3) (*d*) may, within twenty-one days after having received notice of such refusal or decision, appeal against such refusal or decision, as the case may be, to the Minister in accordance with such procedure and upon payment of such fees as may be prescribed, and such person shall at the same time serve a copy of the appeal on the Director.

(2) After receipt of the copy of the appeal referred to in subsection (1), the Director shall forthwith furnish the Minister with his reasons for the refusal or decision, as the case may be, to which the appeal refers.

(3) The Minister may, make such decision on the appeal as he may deem fit.

Act or omission of manager, agent or employee of operator

88.—(1) Whenever any manager, agent or employee of an operator commits an act or omission and it would have constituted an offence under this Act if an operator had committed the act or failed to commit the act then such operator, unless he proves—

(*a*) that he did not connive at or permit such act or omission;

(*b*) that he took all reasonable measures to prevent an act or omission of the nature in question; and

(*c*) that an act or omission of the nature of the act or omission charged did not under any circumstances fall within the scope of the authority of the employment of such manager, agent or employee,

shall be deemed himself to have committed or failed to commit such act and be liable to be convicted and sentenced in respect

thereof, and for the purposes of paragraph (*b*) the fact that the operator forbade an act or omission of the nature in question, shall not by itself be regarded as sufficient proof that he took all reasonable measures to prevent such act or omission.

(2) Whenever any manager, agent or employee of an operator commits an act or omission which would constitute an offence under this Act if such operator had committed the act or omission, such manager, agent or employee shall be liable to be convicted and sentenced in respect thereof as if he were such operator.

PART VIII

Road Traffic Signs, General Speed Limit and Parking Fees

Minister to prescribe road traffic signs

89.—(1) The Minister may, subject to the provisions of this Act and for the purpose of prohibiting, limiting, regulating or controlling traffic in general or any particular class of traffic on a public road or a section of such road or for the purpose of designating any public road or section thereof as a public road of a particular class, prescribe such signs, signals, markings or other devices, to be known as road traffic signs, as he may deem expedient, as well as their significance and the conditions and circumstances under which any road traffic sign may be displayed on a public road.

(2) The Minister may, subject to such conditions as he may deem expedient, authorize any person or body to display on a public road any sign, signal, marking or other device for the purpose of ascertaining the suitability of such sign, signal or device as a road traffic sign.

Authority to display road traffic sign

90.—(1) The Minister may, in respect of any public road, cause or permit to be displayed such road traffic signs as he may deem expedient.

(2) Subject to and in conformity with such general or other directions as may be given by the Minister, a highway authority, or any person authorized by it either generally or specifically, may in respect of any public road, cause or permit to be displayed in the prescribed manner such road traffic signs as it or he may deem expedient.

(3) A local authority may, in respect of any public road within the area of jurisdiction of that local authority, display or cause to be displayed such road traffic signs as such local authority may deem expedient.

(4) Subject to such conditions as may be determined by the National Road Safety Council of Malaŵi established under the National Road Safety Council of Malaŵi Act, scholars or students may be organized into patrols, to be known as scholars' patrols, for the purpose of displaying an appropriate road traffic

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sign so as to ensure the safety of scholars or students crossing a public road.

(5) The highway authority may authorize any association or club to display such road traffic signs, subject to such conditions as the highway authority may deem expedient, and any such association or club may thereupon display a badge or other token of the association or club in conjunction with any such road traffic sign.

(6) A railway administration may in respect of any railway level crossing on any public road for which the railway administration is responsible, cause or permit to be displayed, such road traffic signs as the railway administration may deem expedient.

(7) Notwithstanding the provisions of subsections (3) and (6), the highway authority may direct that any road traffic sign be displayed or removed by a local authority on or along any public road in the area of such local authority, or by the railway administration on or along any railway level crossing over a public road for which the railway administration is responsible and if the local authority or the railway administration fails to comply with the direction, the highway authority may cause such sign to be displayed or removed, as the case may be, and the highway authority shall recover the cost of such display or removal from the local authority or from the railway administration, as the case may be.

(8) Any road traffic sign displayed under the repealed Act and which complies with a road traffic sign referred to in section 89, shall be deemed to be displayed under this Act.

(9) No person shall display any road traffic sign on a public road without having been authorized under this Act.

(10) The highway authority or a local authority may, by notice in writing, direct the owner or occupier of any land on which any road traffic sign or other object resembling a road traffic sign is displayed, or on which any object is displayed which obscures or interferes with the effectiveness of any road traffic sign, to remove such sign or object within a period stated in the notice, and if the owner or occupier concerned fails to comply with the notice the highway authority or local authority may cause such sign or other object to be removed.

(11) Any person who wilfully or negligently removes or damages any road traffic sign or alters the position thereof or the inscription, lettering, colour or design thereof or thereon shall be guilty of an offence and upon conviction shall be liable to a fine not exceeding K5,000 or to imprisonment not exceeding one year; for a second offence shall be liable to a fine not exceeding K10,000 or to imprisonment not exceeding two years and for subsequent offence shall be liable to four years imprisonment without an option of a fine.

Failure to obey road traffic sign

91.—(1) Subject to the provisions of subsection (3), any person who shall, unless otherwise directed by a traffic police officer, fail to comply with any direction conveyed by a road traffic sign commits an offence.

(2) In any prosecution for a contravention of or a failure to comply with the provisions of subsection (1), it shall be presumed, until the contrary is proved, that the road traffic sign concerned was displayed by the proper authority pursuant to the powers granted by this Act.

(3) The driver of a vehicle belonging to—

(*a*) the Director's Department;

(*b*) a fire-fighting organization;

(*c*) a rescue organization or a hospital; or

(*d*) a traffic police department,

who drives a vehicle in the execution of his duties, may disregard the directions of a road traffic sign:

Provided that—

(*a*) he shall drive the vehicle with due regard to the safety of other traffic; and

(*b*) in the case of a vehicle belonging to the Director's Department, a fire-fighting vehicle, a rescue vehicle, an ambulance, a police vehicle or a vehicle driven by a person while he is engaged in civil protection such vehicle shall be fitted with a device capable of emitting a sound or with a bell and with an identification lamp and such device or bell shall be constantly sounded and such lamp shall be in operation while the vehicle is driven in disregard of the road traffic sign.

Speed limit

92.—(1) The general speed limit—

(*a*) in respect of every public road or section thereof situated within an urban area;

(*b*) in respect of every public road or section thereof situated outside an urban area; and

(*c*) in respect of every freeway, shall be as prescribed.

(2) An appropriate road traffic sign may be displayed on any public road indicating a speed limit other than the general speed limit which under subsection (1) applies in respect of that road:

Provided that such other speed limit shall not be higher than the speed limit prescribed under subsection (1) (*c*).

(3) The Minister may, after consultation with the Director, in respect of any particular class of vehicle prescribe a speed limit which is lower or higher than the general speed limit prescribed under subsection (1) (*b*) or (*c*).

(4) No person shall drive a vehicle on a public road at a speed in excess of—

(*a*) the general speed limit which under subsection (1) applies in respect of that road;

(*b*) the speed limit indicated under subsection (2) by an appropriate road traffic sign in respect of that road; or

(*c*) the speed limit prescribed by the Minister under subsection (3) in respect of that class of vehicle concerned.

Certain drivers may exceed general speed limit

93. Notwithstanding the provisions of section 92, the driver of a vehicle belonging to—

(*a*) the Director's Department;

(*b*) a fire-fighting organization;

(*c*) a rescue organization or hospital; or

(*d*) a traffic police department,

who drives a vehicle in the execution of his duties may exceed the applicable general speed limit:

Provided that—

(*a*) he shall drive the vehicle concerned with due regard to the safety of other traffic; and

(*b*) in the case of a vehicle belonging to—

(i) the Director's Department;

(ii) a fire-fighting organization;

(iii) a rescue organization or hospital;

(iv) a traffic police department, or a vehicle driven by a person while he is engaged in civil protection,

such vehicle shall be fitted with a device capable of emitting a sound or with a bell and with an identification lamp, as prescribed, and such device or bell shall be constantly sounded and such lamp shall be in operation while the vehicle is driven in excess of the applicable general speed limit.

Certain classes of motor vehicles to contain recording device to measure speed

94.—(1) No person shall operate on a public road a motor vehicle of a prescribed class unless such vehicle is fitted with a prescribed automatic, electronic, electric or mechanical recording device to record the speed at which such motor vehicle is being driven.

(2) The driver of a motor vehicle of a class referred to in subsection (1) shall, when driving such motor vehicle on a public road, use the recording device referred to in subsection (1).

Power of local authority to collect parking fees

95.—(1) A local authority may charge fees in respect of the parking of vehicles on any public road or section thereof within its area of jurisdiction.

(2) The fees referred to in section (1) may differ in respect of different public roads or different sections of the same public road.

(3)—(*a*) If a parking meter is installed for the purpose of collecting fees referred to in subsection (1), it shall be installed in conjunction with a demarcated parking bay or bays and shall bear thereon a legend indicating the days and hours when payment shall be made for parking and the amount payable for a specific period of parking.

(*b*) If any method other than a parking meter is used to collect the fees referred to in subsection (1), provision shall be made for a sign to be displayed at the parking area concerned indicating the days and hours when payment shall be made for parking, the amount payable for a specific period of parking and the manner of payment for a specific period of parking.

(4)—(*a*) The period of time for which a vehicle may be lawfully parked in a parking bay referred to in subsection (3) (*a*), shall, unless the contrary is proved, be as measured by the parking meter for such bay.

(*b*) If any method other than a parking meter is used to collect the fees referred to in subsection (1), the period of time for which a vehicle may be lawfully parked in a parking area referred to in subsection (3) (*b*), shall, unless the contrary is proved, be as measured by means of the method concerned in respect of the vehicle concerned.

(5) Any local authority may established upon a public road within the area of its jurisdiction ranks or stands, to be known as special parking places, for the parking of passenger-carrying motor vehicles or any class of such vehicles and may make by-laws for the regulation and control of the use of those special parking places—

(*a*) to provide for the issue of permits allocating particular special parking places or subdivisions thereof to particular persons or vehicles for their exclusive use;

(*b*) to prohibit the use of any special parking place or subdivision so allocated by any other person or vehicle;

(*c*) to charge fees in respect of the use of special parking places; and

(*d*) to provide for matters incidental thereto:

Provided that provision may be made in any permit or in any renewal thereof for the limitation of the hours during which the holder shall have the exclusive use of a particular special parking place and during which the use thereof by any other person or vehicle is prohibited.

(6) By-laws made under subsection (5) shall provide for the annual renewal, subject to the good conduct of the applicant, of the right to use any such special parking place or subdivision thereof.

(7) All fees collected by a local authority by means of a parking meter, or in respect of any parking area or special parking place as contemplated in this section, shall, as far as possible, be used to defray the cost of, and incidental to, any scheme, work or undertaking for the improvement or regulation of traffic conditions within the area of such local authority, including the costs of installing and maintaining any such parking meter, parking area or special parking place.

(8) The exercise by a local authority of its powers under this section shall not render the local authority subject to any liability in respect of the loss of or damage to any vehicle or the contents or fittings of any such vehicle while such vehicle is in a parking area or special parking place.

PART IX

Rules of the Road

Vehicle to be driven on left side of roadway

96.—(1) Any person driving a vehicle on a public road shall do so by driving on the left side of the roadway and, where such roadway is of sufficient width, in such manner as not to encroach on that half of the roadway to his right:

Provided that such encroachment shall be permissible—

(*a*) where it can be done without obstructing or endangering other traffic or property which is or may be on such half and for a period and distance not longer than is necessary and prudent and provided that it is not prohibited by a road traffic sign;

(*b*) in compliance with a direction of a traffic police officer or a road traffic sign; or

(*c*) when overtaking.

(2) The provisions of subsection (1) shall not apply in the case of a public road which is restricted to traffic moving thereon in one direction only.

Driving on divided public road

97.—(1) Whenever any public road has been divided into two or more roadways by means of an intervening space or by a physical barrier or dividing section so constructed as to impede vehicular traffic, no person shall drive a vehicle upon such public road except upon the left-hand roadway unless directed or permitted by an appropriate road traffic sign or a traffic police officer to use another roadway.

(2) No person shall drive a vehicle on, over, across or within any dividing space, barrier or section referred to in subsection (1), except through an opening in such space, barrier or section or at a cross-over or intersection:

Provided that no person shall so drive through any such opening or at any such cross-over or intersection where such

driving is prohibited by an appropriate road traffic sign or by a traffic police officer:

Provided further that the provisions of this subsection shall not apply to a traffic police officer in the performance of his duties.

Passing of vehicle

98.—(1) Subject to the provisions of subsections (2) and (4) and section 96, the driver of a vehicle intending to pass any other vehicle proceeding in the same direction on a public road shall pass to the right thereof at a safe distance and shall not again drive on the left side of the roadway until safely clear of the vehicle so passed:

Provided that, in the circumstances as aforesaid, passing on the left of such vehicle shall be permissible if the person driving the passing vehicle can do so with safety to himself and other traffic or property which is or may be on such road and—

(*a*) the vehicle being passed is turning to its right or the driver thereof has signalled his intention of turning to his right;

(*b*) such road is a public road in an urban area and—

(i) is restricted to vehicles moving in one direction; and

(ii) the roadway is of sufficient width for two or more lines of moving vehicles;

(*c*) such road is a public road in an urban area and the roadway is of sufficient width for two or more lines of moving vehicles moving in each direction;

(*d*) the roadway of such road is restricted to vehicles moving in one direction and is divided into traffic lanes by appropriate road traffic signs; or

(*e*) he is driving in compliance with the directions of a traffic police officer or is driving in traffic which is under the general direction of such officer, and in accordance with such direction.

(2) The driver of a vehicle shall not pass other traffic proceeding in the same direction on a public road when approaching—

(*a*) the summit of a rise;

(*b*) a curve; or

(*c*) any other place where his view is so restricted that any such passing could create a hazard in relation to other traffic which might approach from the opposite direction, unless—

(i) he can do so without encroaching on the right-hand side of the roadway; or

(ii) the roadway of such road is restricted to vehicles moving in one direction.

(3) The driver of a vehicle on a public road shall, except in the circumstances referred to in the first proviso to subsection (1), upon becoming aware of other traffic proceeding in the same direction and wishing to pass his vehicle, cause his vehicle to travel as near to the left edge of the roadway as is possible, without endangering himself or other traffic or property on the roadway, and shall not accelerate the speed of his vehicle until the other vehicle has passed.

(4) When about to pass oncoming traffic, the driver of a vehicle on a public road shall ensure that the vehicle driven by him does not encroach on the roadway to his right in such manner as may obstruct or endanger oncoming traffic.

(5) The driver of a vehicle intending to pass a stationary bus on a public road shall do so with due care for the safety to persons who are approaching or leaving or may approach or leave such bus.

(6) Any person who contravenes subsection (2) shall be guilty of an offence and upon conviction shall be liable to a fine not exceeding K10,000 or to imprisonment for a period not exceeding three years or both such fine and imprisonment.

Crossing or entering public road or traffic lane

99.—(1) The driver of a vehicle shall not cross a public road unless the road is clear of moving traffic for a sufficient distance to allow him to cross the road without obstructing or endangering any such traffic.

(2) The driver of a vehicle shall not enter a public road unless he can do so with safety to himself and other traffic.

(3) The driver of a vehicle on a public road divided into traffic lanes by appropriate road traffic signs shall not turn from one lane into or across another lane unless he can do so without obstructing or endangering other traffic.

Driving signals

100. The driver of a vehicle on a public road who intends to stop such vehicle or suddenly reduce speed thereof or to turn such vehicle to the left or to the right or to move such vehicle to the left or right on the roadway shall give a conspicuous signal of his intention, visible to any person approaching him from the front or from the rear or from the side and of a duration sufficient to warn any such person of his intention.

Right of way at certain road junctions

101. The driver of a vehicle on a public road shall, when he intends to enter any portion of a public road which constitutes a junction of two or more public roads where vehicular traffic is required to move around a traffic island within such junction, yield the right of way to all vehicular traffic approaching from his right within such junction, unless his entry into such junction is controlled by an instruction given by a traffic police officer or a direction conveyed by a road traffic sign requiring him to act differently.

Procedure when turning

102.—(1) The driver of a vehicle on a public road who desires to turn to the left shall, having due regard to the provisions of section 101, before reaching the point at which he intends to turn, indicate his intention to turn and shall steer his vehicle as near to the left side of the roadway on which he is travelling as circumstances may permit and shall make such turn with due care and merge into the public road into which he desires to turn.

(2) The driver of a vehicle on a public road who desires to turn to the right shall, having due regard to the provisions of section 101, before reaching the point at which he desires to turn, indicate his intention to turn and shall not effect such turning unless he can do so without obstructing or endangering other traffic and—

(*a*) if he is driving a vehicle on the roadway of a public road which roadway is intended for traffic in both directions—

(i) he shall steer such vehicle as near as circumstances may permit to the immediate left of the middle of the roadway on which he is travelling; and

(ii) where the turn is at an intersection, he shall not encroach on the right half of the roadway into or out of which he intends to turn, except in the intersection itself, but shall in any event pass to the left of any traffic island in such intersection or comply with the direction conveyed by any appropriate road traffic sign; or

(*b*) if he is driving a vehicle on a roadway of a public road where such roadway is intended for traffic in only one direction—

(i) he shall steer such vehicle as near as circumstances permit to the right side of such roadway; and

(ii) where the turn is at an intersection, he shall not encroach on the right half of the roadway into which he intends to turn, except in the intersection itself but shall in any event pass to the left of any traffic island in such intersection or comply with the direction conveyed by an appropriate road traffic sign:

Provided that where such turn is to be made into a roadway intended for traffic only in one direction, he may encroach on the right half of that roadway.

Towing of vehicles

103. No person may operate any vehicle on a public road while towing or drawing another vehicle save in the manner prescribed for the towing or drawing of any vehicle by another vehicle on a public road.

Stopping of vehicles

104. Except in order to avoid an accident or in compliance with a road traffic sign or with a direction given by a traffic

police officer or for any cause beyond the control of the driver, no person shall stop a vehicle on the roadway of a public road—

(*a*) alongside or opposite an excavation or obstruction on the public road if other traffic would be obstructed or endangered by such stopping;

(*b*) within any tunnel or subway or on any bridge or within six metres of any tunnel, subway or bridge;

(*c*) on, or within six metres from the beginning or end of, any part of such roadway where the normal width thereof has for any reason been constricted;

(*d*) in contravention of any road traffic sign;

(*e*) on the right-hand side of such roadway facing oncoming traffic;

(*f*) alongside or opposite any other vehicle on such roadway, where such roadway is less than nine metres wide;

(*g*) within the railway reserve at a level crossing;

(*h*) within nine metres of his approaching site of a pedestrian crossing demarcated by appropriate road traffic signs; or

(*i*) in any other place where the stopping of a vehicle would or would be likely to constitute a danger on an obstruction to other traffic.

Parking of vehicles

105.—(1) No person shall park a vehicle on a public road—

(*a*) in contravention of any road traffic sign;

(*b*) in any place referred to in section 104;

(*c*) on the same side as a fire hydrant within an area bounded by the centre line of the roadway and lines at right angles to such centre line one and a half metre on either side of the hydrant, if such hydrant is clearly visible to and recognizable as such by drivers of moving vehicles or if it is indicated by an appropriate road traffic sign;

(*d*) in any place where the vehicle would obscure any road traffic sign;

(*e*) in such manner as to encroach upon the sidewalk, if any; or

(*f*) in such manner as to obstruct any private or public vehicular entrance to such road.

(2) No person shall park a vehicle on any portion of the roadway, excluding the shoulders, of a public road outside an urban area or with any part of such vehicle within one metre of the edge of such roadway except in a parking place demarcated by an appropriate road traffic sign.

(3) No person shall park a vehicle on the roadway of a public road within an urban area—

(*a*) within nine metres of the side from which he approaches a pedestrian crossing demarcated by appropriate road traffic signs, unless such parking is permitted by appropriate road traffic signs;

(*b*) within five metres of any intersection unless such parking is permitted by a road traffic sign;

(*c*) upon or over the actuating mechanism of a traffic signal;

(*d*) (i) with the outside of any left-hand wheel thereof more than 450 millimetres within the roadway; or

(ii) where the public road concerned is restricted to vehicles moving in one direction and the vehicle is parked on the right-hand side of the roadway, with the outside of any right-hand wheel thereof more than four hundred and fifty millimetres within the roadway, unless such parking is permitted by appropriate road traffic sign; or

(*e*) which is less than five and a half metres wide unless the public road concerned is restricted to vehicles moving in one direction and such parking is permitted by appropriate road traffic signs.

(4) No person shall park a motor vehicle on a traffic island or in a pedestrian mall or a pedestrian lane.

(5) Whenever a vehicle has been parked in contravention of any provisions of this Act or in contravention of or in disregard of the directions of any road traffic sign or notice board such vehicle may be removed or caused to be removed and impounded by a traffic police officer or authorized officer, and unless the vehicle has been so parked in the course of a theft thereof, the owner shall bear the costs of such removal and impoundment.

Certain vehicles may be stopped and parked at any place where necessary

106.—(1) Notwithstanding the provisions of sections 104 and 105, the driver—

(*a*) of a car belonging to—

(i) fire-fighting organization;

(ii) a rescue organization or hospital;

(iii) a traffic police department or in the execution of its duties; or

(*b*) who drives a vehicle while it is used in construction or maintenance of a public road or is rendering essential public service,

may stop or park the vehicle concerned at any place where it may be necessary to do so.

(2) A vehicle stopped or parked under subsection (1) shall, while such vehicle is so stopped or parked, display prescribed identification lamps.

Compulsory stop

107. The driver of a vehicle on a public road shall stop such vehicle in compliance with any direction conveyed by a road traffic sign or given by a police officer in uniform.

General duties of driver of vehicle or passenger on public road

108.—(1) No person driving or having a vehicle on a public road shall—

(*a*) cause such vehicle to travel backwards for a distance or time longer than may be necessary for the safety or reasonable convenience of any occupant of that vehicle or of other traffic on such road;

(*b*) follow another vehicle more closely than is reasonable and prudent having regard to the speed of such other vehicle and the traffic on and the condition of the roadway, or more closely than is permitted;

(*c*) permit any person, animal or object to occupy any position in or on such vehicle which may prevent the driver thereof from exercising complete control over the movements of the vehicle or signalling his intention of stopping, slowing down or changing direction;

(*d*) when driving such vehicle, permit any person to take hold of or interfere with the steering or operating mechanism of the vehicle;

(*e*) when driving such vehicle, occupy such position that he does not have complete control over the vehicle or does not have a full view of the roadway and the traffic ahead of such vehicle;

(*f*) allow such vehicle to remain unattended on such road without so setting its brake or adopting such other method as will effectively prevent the vehicle from moving from the position in which it is left;

(*g*) if such vehicle is parked or is stationary at the side of such road, drive the vehicle from that position unless he is able to do so without interfering with moving traffic approaching from any direction and with safety to himself or others;

(*h*) fail to give an immediate and absolute right of way to a vehicle sounding a device or bell referred to in section 91 (3) or 93;

(*i*) fail to give way to any railway locomotive or rolling stock which is approaching or crossing such road;

(*j*) allow any portion of his body to protrude beyond such vehicle while it is in motion on such road except for the purpose of giving any hand signals which he is required or authorized to give under this Act or unless he is engaged in examining or testing or parking such vehicle;

(*k*) permit any person or animal to occupy the roof, any step or running board or any other place on top of a vehicle while such vehicle is in motion;

(*l*) cause or allow the engine thereof to run in such manner that it emits smoke or fumes which would not be emitted if the engine were in good condition or ran in an efficient manner;

(*m*) cause or allow the engine thereof to run while the motor vehicle is stationary and unattended;

(*n*) negligently or wilfully deposit or cause or permit to be deposited any petrol or other liquid fuel or any oil or other flammable or offensive matter, or other refuse, of whatever nature, from such vehicle upon or alongside such road;

(*o*) cause or allow the engine thereof to run while petrol or other flammable fuel is being delivered into the fuel tank of such vehicle, or cause or allow such engine to be started up before the delivery of the petrol or other flammable fuel into the fuel tank of such vehicle has been completed and the cover of such fuel tank has been replaced; or

(*p*) speak on a cellular phone unless the cellular phone is attached to the vehicle or the person pulls off the road.

(2) No person, other than the driver, shall take hold of or interfere with the steering or operating mechanism of a vehicle while it is in motion on a public road, unless it may reasonably be inferred that the driver is no longer capable of steering or controlling such vehicle.

(3) No passenger in a vehicle on a public road shall permit any part of his body to protrude beyond such vehicle.

(4) No person shall enter or alight from any vehicle on a public road unless such vehicle is stationary and unless he can do so with safety to himself and other users of the road.

(5) No person shall drive, pull or push a vehicle upon a sidewalk:

Provided that the provisions of this subsection shall not apply to a perambulator, invalid chair, baby cart or child's play vehicle.

Duties relating to motor cycle, motor tricycle or motor quadrucycle

109.—(1) No person shall drive a motor cycle, motor tricycle or motor quadrucycle on a public road unless his feet are resting on the motor front foot-rests suitable for the purpose and where the design of such motor cycle, motor tricycle or motor quadrucycle makes it possible to do so, he is seated astride on the saddle of such motor cycle, motor tricycle or motor quadrucycle.

(2) No person shall on a public road carry a passenger on a motor cycle unless such cycle has an engine with a cylinder capacity exceeding fifty cubic centimetres and unless such passenger is seated in a side-car or astride on a pillion attached to such cycle and, in such latter event, the feet of the passenger are resting on foot-rests suitable for that purpose.

(3) No person shall ride on a motor cycle or in a side car attached to a motor cycle, motor tricycle or motor quadrucycle on a public road unless such person at all times wears a protective helmet of the pattern and standard as prescribed.

(4) Subject to the provisions of subsection (2), not more than two persons shall ride upon a motor cycle on a public road, excluding a person riding in a side-car attached to such motor cycle.

(5) Not more than two persons shall be carried in a side-car attached to a motor cycle on a public road.

(6) No person or animal or object shall be carried on a motor cycle, motor tricycle or motor quadrucycle on a public road in front of the driver thereof:

Provided that an object of a non-bulky nature may be so carried if securely attached to the motor cycle, motor tricycle or motor quadrucycle or placed in a suitable carrier fitted thereon for that purpose and carried in such a way as not to obstruct the driver's view or prevent his exercising complete control over such motor cycle, motor tricycle or motor quadrucycle.

(7)—(*a*) Persons, other than traffic police officers in the performance of their duties, driving motor cycles on a public road, shall drive in single file except in the course of overtaking another motor cycle, and two or more persons driving motor cycles shall not overtake another vehicle at the same time:

Provided that where a public road is divided into traffic lanes, each such lane shall, for the purposes of this paragraph, be regarded as a public road; and

(*b*) For the purposes of paragraph (*a*), a motor cycle shall include a motor tricycle or motor quadrucycle.

(8) No person driving a motor cycle, motor tricycle or motor quadrucycle on a public road or seated on such motor cycle, motor tricycle or motor quadrucycle shall take hold of any other vehicle in motion.

(9) Any person driving a motor cycle, motor tricycle or motor quadrucycle on a public road shall do so with at least one hand on the handle-bars of such motor cycle, motor tricycle or motor quadrucycle.

(10) Any person driving a motor cycle, motor tricycle or motor quadrucycle on a public road shall do so with the headlight of such motor cycle, motor tricycle or motor quadrucycle illuminated at all times.

(11) Any person driving a motor cycle, motor tricycle or motor quadrucycle on a public road shall do so in such manner that all the wheels of such motor cycle, motor tricycle or motor quadrucycle are in contact with the surface of the road at all times.

Vehicle causing excessive noise

110. No person shall operate or permit to be operated on a public road a vehicle causing noise—

(*a*) in excess of the prescribed noise level; or

(*b*) resulting from the use of methods, accessories or appliances the use of which is prohibited by regulation.

Use of hooter

111. No person shall on a public road use the audible warning device or hooter of a vehicle except when such use is necessary in order to comply with the provisions of this Act or on the grounds of safety.

Riding on pedal cycles

112.—(1) No person shall ride a pedal cycle on a public road unless he is seated astride on the saddle of such pedal cycle.

(2) Persons riding pedal cycles on a public road shall ride in single file except in the course of overtaking another pedal cycle, and two or more persons riding pedal cycles shall not overtake another vehicle at the same time.

(3) No person riding or seated on a pedal cycle on a public road shall take hold of any other vehicle in motion.

(4) No person riding a pedal cycle on a public road shall deliberately cause such pedal cycle to swerve from side to side.

(5) No person riding a pedal cycle on a public road shall carry thereon any person, animal or object which obstructs his view or which prevents him from exercising complete control over the movements of such pedal cycle.

(6) A person riding a pedal cycle on a public road shall do so with at least one hand on the handle-bars of such pedal cycle.

(7) Whenever a portion of a public road has been set aside for use by persons riding pedal cycles, no person shall ride a pedal cycle on any other portion of such road.

(8) A person riding a pedal cycle on a public road or a portion of a public road set aside for use by persons riding pedal cycles shall do so in such manner that all the wheels of such pedal cycle are in contact with the surface of the road at all times.

Device running on rails

113.—(1) Whenever rails laid across any public road are used for the purposes of any locomotive or other device running on rails, whether such device is drawn or propelled, no person driving or being in charge of such locomotive or device shall cause or allow such locomotive or device to cross such public road unless he has given sufficient warning to users of such roadway of the intention to drive, draw or propel the locomotive or device across such road.

(2) No person driving or being in charge of any locomotive or device mentioned in subsection (1) shall cause or allow it to be stopped on a public road in such manner as to obstruct or hinder traffic on such road:

Provided that the provisions of this subsection shall not apply to a locomotive or device mentioned in subsection (1) which is temporarily stopped on a public road—

(*a*) in compliance with an order or instruction, whether in writing or otherwise, or a hand signal or any other signal in relation to the use of such locomotive or device;

(*b*) for the purpose of loading or off-loading goods or allowing persons to board or alight at any place; or

(*c*) for shunting purposes.

Animal on public road

114.—(1) Subject to the provisions of subsection (3), no person shall leave or allow any animal to be on any section of a public road and no person shall leave such animal in a place from where it may stray onto such section of a public road.

(2) The owner of any animal left or allowed to be on any section of the public road under subsection (1) shall be vicariously liable for the acts of the person actually in charge of the animal.

(3) The provisions of subsection (1) shall not apply—

(*a*) to any animal which is being ridden or is being used to draw a vehicle along a public road; or

(*b*) to any animal which is being driven from one place to another in such manner as not to constitute a source of danger or injury to any person or vehicle using such road.

(4) In any prosecution for a contravention of subsection (1), it shall be presumed, until the contrary is proved, that any animal referred to in subsection (1) was left or allowed to be on the public road.

(5) No person shall drive an animal referred to in subsection (1)—

(*a*) along a public road during the period from sunset to sunrise, unless a person carrying a red light visible in clear weather for a distance of at least one hundred and fifty metres tends such an animal or, in the case of a flock or herd of more than ten animals, a person tending such animals and carrying a light as aforesaid precedes and another such person carrying a light as aforesaid follows such animals; or

(*b*) along a public road during any other period, unless a person displaying in a conspicuous manner a red cloth of not less than three hundred millimetres by three hundred millimetres, tends such animal or, in the case of a flock or herd of more than ten animals, a person tending such animals and displaying a cloth as aforesaid precedes and another such person displaying a cloth as aforesaid follows such animals.

(6) A person in charge of an animal on a public road shall tend the animal in such a manner so as not to constitute an obstruction or danger to other traffic.

(7) A traffic police officer may take charge of any animal referred to in subsection (1) on a public road or take such steps in respect of the animals as may be prescribed.

Animal-drawn vehicles

115.—(1) No person shall operate an animal-drawn vehicle on a public road unless the name and address of the owner thereof is affixed or painted in a conspicuous position on the left side of such vehicle in letters not less than twenty-five millimetres high.

(2) No person shall operate an animal-drawn vehicle on a public road unless the vehicle and the harness and other equipment thereof are in an efficient and safe condition.

(3) The owner of an animal-drawn vehicle shall not cause or permit such vehicle to be used on a public road by any person who is not competent whether by reason of his age or otherwise to drive and control such vehicle.

(4) The driver of an animal-drawn vehicle on a public road shall at all times give his undivided attention to the driving of the vehicle under his control and if the vehicle is standing on a public road, the driver shall not cease to retain control over every animal which is still harnessed to the vehicle, unless some other person competent to do so takes charge of every such animal or every such animal is so fastened that it cannot move from the place where it has been left.

(5) No person shall operate on a public road a vehicle drawn by a team of animals not controlled by reins unless there is a person leading the team and exercising control over such team.

(6) The driver or other person in charge of a vehicle drawn by any animal shall not, on a public road outside an urban area, permit such vehicle to follow any other vehicle similarly drawn at a distance of less than one hundred and fifty metres reckoned from the foremost animal of such first-mentioned vehicle, except for the purpose of overtaking a vehicle travelling at a slower speed or when a vehicle travelling at a greater speed, having overtaken such vehicle, is drawing away from it.

Pedestrian's right of way in pedestrian crossing

116.—(1) Where a pedestrian crossing is situated in conjunction with a traffic signal, a pedestrian shall not enter such crossing except in accordance with the indications of such traffic signal.

(2) In circumstances not referred to in subsection (1), the driver of a vehicle shall yield the right of way slowing down or stopping if need be to so yield to a pedestrian crossing the roadway within a pedestrian crossing when the pedestrian is upon that half of the roadway upon which the vehicle is travelling, or when the pedestrian is approaching so closely from the opposite half of the roadway as to be in danger.

(3) No pedestrian shall suddenly enter a pedestrian crossing and walk or run into the path of a vehicle which is so close

that it is impossible for the driver to yield as referred to in subsection (2).

(4) Whenever any vehicle is stopped at a pedestrian crossing to permit pedestrians to cross the roadway, the driver of any other vehicle approaching from the rear shall not pass such stopped vehicle.

Duties of pedestrians

117.—(1) Whenever a sidewalk or footpath abuts on the roadway of a public road, a pedestrian shall not walk on such roadway except for the purpose of crossing from one side of such roadway to the other or for some other sufficient reason.

(2) A pedestrian on a public road which has no sidewalk or footpath abutting on the roadway shall walk as near as is practicable to the edge of the roadway on his right-hand side so as to face oncoming traffic on such roadway, except where the presence of pedestrians on the roadway is prohibited by a road traffic sign.

(3) No pedestrian shall cross a public road without satisfying himself that the roadway is sufficiently free from oncoming traffic to permit him to cross the road in safety.

(4) A pedestrian, when crossing a public road by means of a pedestrian crossing or in any other manner, shall not linger on such road but shall proceed with due despatch.

(5) No pedestrian on a public road shall conduct himself in such a manner as to or as is likely to constitute a source of danger to himself or to other traffic which is or may be on such road.

(6) A pedestrian may cross a public road only at a pedestrian crossing or an intersection or at a distance further than fifty metres from such pedestrian crossing or intersection.

(7) A pedestrian on or along a public road shall comply with traffic directions given to the pedestrian by a traffic police officer or a road traffic sign.

Racing and sport on a public road

118.—(1) For the purposes of this section the expression "race or sport" includes—

(*a*) any race, speed trial, reliability trial; hill climbing competition or sports meeting;

(*b*) any other activity whatsoever—

(i) which may constitute a source of danger to traffic; or

(ii) which may hamper, impede or disrupt the normal flow of traffic.

(2) No person shall organize or take part in any race or sport on a public road, unless the prior written consent of the Director has been obtained or, where the race or sport will take place wholly within the area of jurisdiction of a local authority, the prior written consent of such local authority has been obtained.

(3) In granting consent under subsection (2), the Director or the local authority may—

(*a*) in addition to any requirement, impose such further conditions as he or it may deem expedient;

(*b*) exempt any person concerned with the race or sport for the duration thereof—

(i) from any provision of this Act regarding any speed limit or determine another speed limit for the road concerned;

(ii) from any other provision of this Act or from any by-law;

(*c*) levy fees for defraying the expenses incurred by the Director or local authority in connexion with the race or sport.

(4) Any consent granted under subsection (2) may be withdrawn at any time.

Hindering or obstructing traffic on a public road

119.—(1) No person shall wilfully or unnecessarily prevent, hinder or interrupt the free and proper passage of traffic on a public road.

(2) Subject to the provisions of this Act or any other law, no person shall place or abandon or cause to be placed or abandoned on a public road any object that may endanger or cause damage to traffic on such road.

Vehicle left or abandoned on a public road

120.—(1) Any vehicle standing on a public road in a position or in circumstances which in the opinion of a traffic police officer or authorized person are likely to cause danger or an obstruction to other traffic on such road may be removed forthwith to a safer place by any such traffic police officer or authorized person or any authority instructed by such officer or authorized person to remove such vehicle:

Provided that such traffic police officer or person or authority shall, in removing such vehicle, use such device or devices as may be necessary having regard to the public safety.

(2) Any vehicle—

(*a*) parked in a place where—

(i) the stopping of a vehicle is prohibited under section 104; or

(ii) a vehicle of a class to which such vehicle belongs may not be parked;

(*b*) left for a continuous period of more than—

(i) forty-eight hours in the same place on a public road outside an urban area;

(ii) seventy-two hours in the same place on a public road within an urban area; or

(*c*) found on a public road and to which—

(i) no registration number is affixed or, a false registration number is affixed; or

(ii) no other number or anything else is affixed which may, serve to identify the owner,

shall be deemed to have been abandoned by the owner and such vehicle may be removed by or on behalf of the Director or local authority having jurisdiction over the place or road concerned and the Director or such local authority shall take all reasonable steps to trace the owner and the owner shall, be liable to the Director or such local authority for the expenses incurred—

(A) in the removal of such vehicle;

(B) in keeping the vehicle in custody for a period not exceeding four months; and

(C) in connexion with the endeavour to trace him, and the Director or such local authority may, subject to the provisions of subsection (3), retain possession of such vehicle until such expenses have been paid.

(3) If—

(*a*) such owner is traced by the Director or local authority referred to in subsection (2) and fails to recover the vehicle concerned and pay the expenses referred to in that subsection within one month after being requested to do so; or

(*b*) after a lapse of three months from the date of removal contemplated in subsection (2), the owner cannot be traced,

such vehicle or anything contained therein may be sold by auction by the Director or local authority and in the case of sale by a local authority, such local authority shall notify the Director of the sale.

(4) The proceeds of any sale referred to in subsection (3) shall be applied firstly to the costs of the removal, custody and sale of the vehicle concerned and all the endeavours made to trace the owner of such vehicle and any balance shall be paid to the owner thereof upon his establishing his claim thereto:

Provided that if no claim can be established within one year from the date of such sale, such balance shall be forfeited to the Director or the local authority concerned.

(5) The Director or any local authority referred to in subsection (2) may delegate, either generally or specifically, any power conferred upon the Director or local authority under that subsection to any organization or person.

(6) The reasonable exercise by the Director or any local authority of the powers conferred by this section shall not render the Director or local authority subject to any liability in respect of the loss or theft of or damage to any vehicle or part thereof or of anything therein or thereon.

(7) Subject to the provisions of any other law, no person shall leave

a vehicle in the same place on a public road for a continuous period of more than seventy-two hours.

Damage to public road

121. No person shall on a public road—

(*a*) cause any wheel of any vehicle to drag or spin upon the surface of the roadway, except in the case of an emergency;

(*b*) make use of chocks or shoes between any wheel of any vehicle moving along the roadway and the surface of such roadway; or

(*c*) use any vehicle or thing or move any vehicle or thing on the roadway in a manner causing or likely to cause damage thereto.

Trading on public road

122. Except—

(*a*) on or in premises zoned or demarcated for that purpose by a competent authority under any written law; or

(*b*) in such circumstances and in accordance with such requirements as may be prescribed or determined by by-law, no person shall sell, display, offer for sale or deliver pursuant to a sale, any goods—

(i) on or alongside a public road inside an urban area, within one hundred and eighty metres of a railway level crossing or any road traffic sign denoting a blind corner or rise thereon or within five metres from any intersection thereon; or

(ii) on or alongside any public road:

Provided that where the public road is inside an urban area, the competent authority of such urban area shall not so zone or demarcate premises in such urban area situated alongside such a road, without the prior written approval of the Director.

Requirement on vehicles to stop for President

123.—(1) When a vehicle in which the President is travelling is in motion on any road and is accompanied by an escort, the driver of every other vehicle on that road shall, as soon as the leading vehicle of the escort is within such a distance as to be easily recognizable, draw his vehicle as is reasonably practicable to the side of the carriageway and shall stop such vehicle until the vehicle in which the President is travelling and its escort have passed.

(2) No person driving a vehicle shall overtake or attempt to overtake any vehicle in which the President is travelling with an escort or any vehicle in such escort.

(3) When the vehicle in which the President is travelling and the escort are stationary on the carriageway every person driving a vehicle shall conform to any traffic directions given by a police officer.

(4) In this section "escort" means the vehicle or vehicles in which the President and his staff are travelling and includes a police car immediately preceding and following the same.

(5) For the purposes of this section the two sides of a dual carriageway shall together be deemed to constitute one road.

PART X

Accidents and Accident Reports

Duty of driver in event of accident

124.—(1) The driver of a vehicle on a public road at the time when such vehicle is involved in or contributes to any accident in which any other person is killed or injured or suffers damage in respect of any property—

(*a*) shall immediately stop the vehicle;

(*b*) shall ascertain the nature and extent of any injury sustained by any person;

(*c*) shall, if a person is injured, render such assistance to the injured person as he may be capable of rendering;

(*d*) shall ascertain the nature and extent of any damage sustained;

(*e*) shall, if required to do so by any person having reasonable grounds for so requiring, give his name and address, the name and address of the owner of the vehicle driven by him and, in the case of a motor vehicle, the registration or similar mark thereof;

(*f*) shall, if he has not already furnished the information referred to in paragraph (*e*) to a traffic police officer at the scene of the accident, and unless he is incapable of doing so by reason of injuries sustained by him in the accident, as soon as is reasonably practicable, and in any case within twenty-four hours after the occurrence of such accident, report the accident to any police officer at a police station or at any office set aside by a competent authority for use by a traffic police officer, and there produce his driver's licence and such information as is referred to in that paragraph; and

(*g*) shall not, except on the instructions of or when administered by a medical practitioner in the case of injury or shock, take any intoxicating liquor or drug having narcotic effect unless he has complied with the provisions of paragraph (*f*), where it is his duty to do so, and has been examined by a medical practitioner if such examination is required by a traffic police officer:

Provided that for the purposes of subsection (1) (*a*) and (*b*), where the driver is genuinely apprehensive of his safety he shall not be required to stop but shall drive straight to a police station and report the accident.

(2) No person shall in an urban area remove any vehicle involved in an accident in which another person is killed or injured from the position in which it came to rest, until such removal has been authorized by a traffic police officer, except when such accident causes complete obstruction of the roadway of a public road, in which event the vehicle involved, may without such authority and after its position has been clearly marked on the surface of the roadway by the person moving it, be moved sufficiently to allow the passage of traffic.

(3) Subject to subsection (2), no person shall remove a vehicle involved in an accident from the scene of such accident, other than for the purpose of sufficiently allowing the passage of traffic, without the permission of the owner, driver or operator of such vehicle or a person who may lawfully take possession of such vehicle.

(4) In any prosecution for a contravention of any provision of this section it shall be presumed, until the contrary is proved, that the accused was aware of the fact that the accident had occurred, and that he did not report the accident or furnish the information as required by subsection (1) (*f*).

(5) Any person who contravenes subsection (1) shall be guilty of an offence and upon conviction shall be liable—

(*a*) in the case of the death of or injury to a person where it is proved that the person convicted has failed to comply with paragraphs (*a*), (*b*), (*c*) or (*f*) of subsection (1), to a fine not exceeding K20,000 or to imprisonment for a period not exceeding five years or to both such fine and imprisonment;

(*b*) in the case of damage in respect of any property of another person where it is proved that the person convicted has failed to comply with paragraphs (*a*), (*d*) or (*f*) of subsection (1), to a fine not exceeding K10,000 or to imprisonment for a period not exceeding two years or to both such fine and imprisonment; or

(*c*) where it is proved that he has failed to comply with paragraph (*e*) or (*g*) of subsection (1), to a fine not exceeding K5,000 or to imprisonment for a period not exceeding one year or to both such fine and imprisonment; or

(*d*) in the case of damage in respect of an animal of another person where it is proved that the person convicted has failed to comply with paragraphs (*a*), (*b*) or (*f*) of subsection (1) to a fine not exceeding K5,000 or to imprisonment for a period not exceeding six months but not both.

(6) Any person who contravenes subsection (2) shall be guilty of an offence and upon conviction shall be liable to a fine not exceeding K10,000 or to imprisonment for a period not exceeding two years or to both such fine and imprisonment.

Garage to keep record of motor vehicle involved in accidents

125.—(1) Any person in charge of a garage or other place where motor vehicles are repaired, and to which any motor vehicle showing signs or marks of having been involved in an accident is brought for the purpose of the repair of such signs or marks, shall keep a record specifying the nature of such signs or marks, the engine number, chassis number and the registration or similar mark and number, and if known, the name and address of the owner and driver of such vehicle.

(2) A person required to keep a record under subsection (1) shall retain such record for a period of three years from the date on which it was made and any such record shall, on demand, be produced to a traffic police officer.

PART XI

Reckless or Negligent Driving, Inconsiderate Driving, Driving While Under the Influence of Intoxicating Liquor or a Drug Having a Narcotic Effect and Miscellaneous Offences

Reckless or negligent driving

126.—(1) No person shall drive a vehicle on a public road recklessly or negligently.

(2) Without restricting the ordinary meaning of the word "reckless" any person who drives a vehicle in wilful or wanton disregard for the safety of persons or property shall be deemed to drive that vehicle recklessly.

(3) In considering whether an offence has been committed under subsection (1), the court shall have regard to all circumstances of the case, including, but without prejudice to the generality of the foregoing provisions of this section, the nature, condition and use of the public road upon which the offence is alleged to have been committed, the amount of traffic which at the time actually was or which could reasonably have been expected to be upon that road and the speed at and manner in which the vehicle was driven.

(4) Any person who contravenes subsection (1) shall be guilty of an offence and upon conviction shall be liable—

(*a*) in the case where the court finds that the offence was committed by driving recklessly, to a fine not exceeding K10,000 or to imprisonment for a period not exceeding three years or to both such fine and imprisonment;

(*b*) in the case where the court finds that the offence was committed by driving negligently, to a fine not exceeding K5,000 or to imprisonment for a period not exceeding two years or to both such fine and imprisonment; or

(*c*) in the case where death results from reckless or negligent driving, to a fine not exceeding K30,000 or to imprisonment for a period not exceeding three years or to

both such fine and imprisonment and for subsequent offence to imprisonment for three years with no option of a fine and permanent revocation of a driver's licence.

Inconsiderate driving

127.—(1) No person shall drive a vehicle on a public road without reasonable consideration for any other person using the road.

(2) Any person who contravenes subsection (1) shall be guilty of an offence and upon conviction shall be liable to a fine not exceeding K2,000 or to imprisonment for a period not exceeding six months or to both such fine and imprisonment.

Driving while under the influence of intoxicating liquor or drug having narcotic effect or with excessive amount of alcohol in blood

128.—(1) No person shall on a public road—

(*a*) drive a vehicle;

(*b*) occupy the driver's seat of motor vehicle the engine of which is running; or

(*c*) being the holder of a driver's licence, occupy the seat in a motor vehicle next to a holder of a learner's licence while the holder of the learner's licence is or was driving the vehicle on a public road,

while under the influence of intoxicating liquor or a drug having a narcotic effect.

(2) No person shall on a public road—

(*a*) drive a vehicle;

(*b*) occupy the driver's seat of a motor vehicle the engine of which is running; or

(*c*) being the holder of a driver's licence, occupy the seat in a motor vehicle next to a holder of a learner's licence while the holder of the learner's licence is or was driving the vehicle on a public road,

while any specimen of breath, blood or urine taken from his body indicates an alcohol concentration of not less than either 0.08 grams of alcohol per one hundred millilitres of blood or 0.08 grams of alcohol per two hundred and ten litres of breath.

(3) Where a traffic police officer has reason to believe that any person—

(*a*) is or was driving a vehicle upon a public road;

(*b*) is or was occupying the driver's seat of a motor vehicle the engine of which is running;

(*c*) being the holder of a driver's licence, is or was occupying the seat in a motor vehicle next to a holder of a learner's licence while the holder of the learner's licence is or was driving the vehicle on a public road,

then such traffic police officer may require that person to undergo a breath test in accordance with the directions given by such traffic police officer or provide a sample of blood or urine.

(4) A traffic police officer may arrest any person without warrant—

(*a*) when the result of the breath test specified in subsection (3) exceeds the limit of alcohol concentration expressed in subsection (2); or

(*b*) when the person refuses or fails to—

(i) undergo a breath test as specified in subsection (3); or

(ii) provide a sample of blood or urine as directed in subsection (3) by a traffic police officer.

(5) No person shall, who when required by a traffic police officer under subsection (3) to—

(*a*) submit to a breath test—

(i) refuse or fail to submit to the test; or

(ii) willfully do anything to alter the concentration of the alcohol in his blood; or

(*b*) provide a sample of blood or urine, refuse or fail to do so.

(6) If, in any prosecution for a contravention of the provisions of subsection (2), it is proved that the concentration of alcohol in any specimen taken from the body of the person concerned was not less than 0.08 grams of alcohol per one hundred millilitres of blood or 0.08 grams of alcohol per two hundred and ten litres of breath at any time within two hours after the alleged offence, it shall be presumed, until the contrary is proved, that such concentration was not less than 0.08 grams of alcohol per one hundred millilitres of blood or two hundred and ten litres of breath at the time of the alleged offence.

(7) In any civil or criminal action or proceedings for a contravention of the provisions of subsection (1) or (2) evidence of the concentration of alcohol or other drugs in a person's blood or breath at the time of the contravention as determined by analysis of the person's blood, urine, breath or other bodily substance shall be admissible.

(8) Where in any prosecution under this Act, evidence is tendered of the analysis of a specimen of breath, blood or urine of any person, it shall be presumed, until the contrary is proved, that any device used for obtaining such specimen and the receptacle in which such specimen was placed for despatch to an analyst if required, were free from any substance or contamination which could have affected the result of such analysis.

(9) Any person convicted of an offence under subsection (1) or (2) shall be liable—

(*a*) to a fine not exceeding K10,000 or to imprisonment for a period not exceeding three years or to both such fine and imprisonment; or

(*b*) in the case of the death of or injury to a person, to a fine not exceeding K50,000 or to imprisonment for a period not exceeding five years or to both such fine and imprisonment, for a second or subsequent offence no option of a fine but to imprisonment of five years and permanent revocation of a driver's licence.

Unauthorized acts in relation to vehicle

129.—(1) No person shall, without reasonable cause or without the consent of the owner, operator or person in lawful charge of a vehicle—

(*a*) set the machinery thereof in motion;

(*b*) place such vehicle in gear;

(*c*) in any way tamper with the machinery, accessories or parts of such vehicle; or

(*d*) enter or climb upon such a vehicle.

(2) No person shall ride in or drive a vehicle without the consent of the owner, operator or person in lawful charge thereof.

(3) No person shall without lawful excuse tamper with a vehicle or with any part of the equipment or the accessories of any vehicle or wilfully damage the vehicle or throw any object at any such vehicle.

(4) No person shall, without the written consent of the Director alter, obliterate or mutilate the engine number or chassis number of a motor vehicle or allow it to be altered, obliterated or multilated.

(5) Any person convicted of an offence under this section shall be liable to a fine not exceeding K10,000 or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

Furnishing false information

130. Without derogating from any other provision of this Act, no person shall—

(*a*) in connexion with any application under this Act; or

(*b*) in connexion with the furnishing of any information which, to his knowledge, is to be or may be used for any purpose under this Act,

make a declaration or furnish information which to his knowledge is false or in any material respect misleading.

Unlawful acts in relation to registration number, registration mark or certain documents

131.—(1) No person shall—

(*a*) falsify or counterfeit or, with intent to deceive, substitute, alter, deface or mutilate or add anything to a registration number or a registration mark or a similar number or mark issued by a competent authority outside Malaŵi; or

(*b*) be in possession of such number or mark which has been

falsified or counterfeited or so substituted, altered, defaced or mutilated or to which anything has been so added.

(2) No person shall—

(*a*) falsify or counterfeit or, with intent to deceive, substitute, alter, deface or mutilate or add anything to a certificate, licence or other document issued or recognized under this Act; or

(*b*) be in possession of such certificate, licence or other document which has been falsified or counterfeited or so substituted, altered, defaced or mutilated or to which anything has been so added.

(3) No person shall—

(*a*) use a certificate, licence or other document issued or recognized under this Act and of which he is not the holder; or

(*b*) permit such certificate, licence or other document of which he is the holder to be used by any other person.

(4) Where in a prosecution for a contravention of subsection (1) (*b*) or (2) (*b*) it is proved that a person was found in possession of a registration number or a registration mark or a similar number or mark or a document which has been falsified or counterfeited or substituted, altered, defaced or mutilated or to which anything has been added, it shall until the contrary is proved, be presumed that such person knew that—

(*a*) such number, mark or document was—

(i) falsified or counterfeited; or

(ii) substituted, altered, defaced or mutilated with intent to deceive; or

(*b*) whatever was added to such number, mark or document was added thereto with intent to deceive.

(5) No person shall—

(*a*) with intent to deceive, tamper with the engine or chassis number of a motor vehicle; or

(*b*) without lawful cause be in possession of a motor vehicle of which the engine or chassis number has been tampered with.

(6) Where in prosecution for a contravention of subsection (5) it is proved that a person was found in possession of a motor vehicle the engine or chassis number of which has been tampered with, it shall, until the contrary is proved, be presumed that such person knew that such number had been tampered with intent to deceive.

(7) Any person convicted of an offence under subsections (1), (2), (3), or (5) shall be liable to a fine not exceeding K10,000 or to imprisonment for a period not exceeding two years or to both such

fine and imprisonment.

PART XII

Presumptions and Legal Procedure

Presumption in regard to public road, freeway and public road in urban areas

132.—(1) Where in any prosecution under this Act it is alleged that an offence was committed on a public road, the road concerned shall, until the contrary is proved, be presumed to be a public road.

(2) Where in any prosecution under this Act it is alleged that an offence was committed on a freeway, the road concerned shall, until the contrary is proved, be deemed to be a freeway.

(3) Where in any prosecution under this Act it is alleged that an offence was committed on a public road in an urban area, the road concerned shall, until the contrary is proved, be presumed to be a public road in an urban area.

Presumption in regard to mass ascertained by a mass-measuring bridge or other mass-measuring instrument

133. Where in any criminal proceedings arising out of an alleged contravention of this Act, evidence to prove such contravention is given of any mass as ascertained by means of a mass-measuring bridge or other mass-measuring instrument, such mass shall be deemed to be correct until the contrary is proved.

Presumption in regard to gross vehicle mass of motor vehicle

134. Where in any prosecution under this Act it is alleged that an offence was committed in relation to the gross vehicle mass of a motor vehicle, the mass so alleged shall, in the absence of evidence as contemplated in section 133, be presumed, until the contrary is proved, to be the gross vehicle mass of such vehicle.

Proof of gross vehicle mass of motor vehicle

135. Any document purporting to have been issued by a manufacturer and stating the gross vehicle mass of any particular model of motor vehicle manufactured by him, shall be *prima facie* evidence as to the gross vehicle mass of such model.

Presumption that owner drove or parked vehicle

136.—(1) Where in any prosecution relating to the driving of a vehicle on a public road, it is immaterial to prove who was the driver of a vehicle, it shall be presumed, until the contrary is proved, that such vehicle was driven by the owner thereof.

(2) Whenever a vehicle is parked in contravention of any provision of this Act, it shall be presumed, until the contrary is proved, that such vehicle was parked by the owner thereof.

(3) For the purposes of subsections (1) and (2) it shall be presumed until the contrary is proved, that, where the owner of the vehicle concerned is a corporate body, such vehicle was driven or parked, as contemplated in those subsections, by a director or servant of the corporate body in the exercise of his

powers or in the performance of his duties as such director or servant or in furthering or endeavouring to further the interests of the corporate body.

Presumption in regard to officers

137. In any prosecution under this Act, the fact that any person purports to act or has purported to act as a traffic police officer or an examiner, or any other authorized person, shall be *prima facie* evidence of his appointment and authority so to act:

Provided that the provisions of this section shall not apply with regard to a prosecution on a charge relating to impersonation.

PART XIII

Registers and Records

Register of records to be kept

138.—(1) The registers or records as may be prescribed shall be kept by—

(*a*) the Director;

(*b*) a motor vehicle inspection station;

(*c*) an enforcement agency;

(*d*) any court convicting a person of an offence under this Act;

(*e*) any local authority; and

(*f*) any other person determined by the Minister by notice published in the *Gazette*.

(2) The prescribed particulars shall be recorded in the prescribed manner in the registers and records referred to in subsection (1).

(3) Any authority referred to in subsection (1) shall, in the manner and at such intervals, furnish the Minister or any person or body designated by the Minister with information recorded in a register or record of such authority and the Minister shall from the information so furnished compile or cause to be compiled such register as he may deem fit.

(4) The Minister may prescribe that any person or organization shall keep such additional registers or records as he may deem expedient.

Copy of entry in register or record to be evidence

139.—(1) A document purporting to be an extract from or copy of any register or record kept in terms of this Act and purporting to be certified as such shall in any court and upon all occasions whatsoever be admissible as evidence and shall be *prima facie* evidence of the truth of the matters stated in such document without the production of the original register or record or any certificate, licence, other document, microfiche, microfilm or computerized record from or of which such extract or copy was made.

(2) The information contained in a register or record kept for the purposes of this Act shall be furnished to—

(*a*) a traffic police officer or an examiner who requires it for the performance of his duties;

(*b*) any person authorized thereto by the Minister or the Director to demand such furnishing;

(*c*) a competent authority in a foreign state; or

(*d*) a local authority:

Provided that the consent of the Minister or any person authorized thereto by him shall be obtained before such information is furnished to an authority referred to in paragraph (*c*).

(3) Any authority keeping a register or record under section 138 shall, upon payment of the prescribed fees, confirm whether or not certain information corresponds to the information contained in such register or record, to any person who, in the opinion of such authority, on reasonable grounds requires confirmation of such information.

Cognizance may be taken of information contained in register or record

140. The Minister or the Director may, in exercising a discretion or taking a decision under this Act, take cognizance of the information contained in a register or record contemplated in section 138.

PART XIV

Compulsory Third Party Insurance

Users of motor vehicle to be insured against third party risks

141.—(1) Subject to this Act, it shall not be lawful for any person to use or cause or permit any other person to use a motor vehicle on a public road unless there is in force in relation to the use of such motor vehicle by that person or that other person, as the case may be, such a policy of insurance or such a security in respect of third party risks as complies with the requirement of this Part.

(2) Any person who contravenes subsection (1), shall be guilty of an offence and upon conviction shall be liable to a fine not exceeding K10,000 or to imprisonment for a period not exceeding two years or to both fine and such imprisonment.

(3) Where any person is convicted of an offence under subsection (1), the court convicting him shall, in addition to any other penalty, disqualify him from holding or obtaining a driving licence, for a first offence, for a period of not less than six months, and for a second offence a period of not less than one year and for a third and subsequent offence for a period of not less than 5 years.

Saving in respect of liability

142. A person charged with using a motor vehicle in contravention of section 144 shall not be convicted if he proves that such motor vehicle did not belong to him and was not in his

possession under a contract of hire or of loan, that he was using the motor vehicle in the course of his employment and that he neither knew nor had reason to believe that there was not in force in relation to such motor vehicle a policy of insurance or security as compiled with the requirements of this Part.

Requirements in respect of policies of insurance

143. In order to comply with the requirements of this Part a policy of insurance must be a policy which—

(*a*) is issued by an insurer approved by the Director; and

(*b*) insures such persons or classes of persons as may be specified in the policy in respect of any liability which may be incurred by him or them in respect of—

(i) the death of or bodily injury to any person; or

(ii) damage to property,

caused by or arising out of the use of the motor vehicle on a public road.

Restriction of liability

144. A policy of insurance shall not be required to cover—

(*a*) any liability in respect of the death of or bodily injury to a person in the employment of a person insured by the policy if such death or bodily injury arises out of and in the course of his employment;

(*b*) except in the case of a motor vehicle in which passengers are carried for hire or reward or by reason of or in pursuance of a contract of employment, liability in respect of the death of or bodily injury to persons being carried in or upon entering or getting on to or alighting from such motor vehicle at the time of the occurrence of the event out of which the claims arose;

(*c*) liability under section 143 (*b*) (i)—

(i) in respect of a total sum in excess of the prescribed amount or the policy limits whichever is the larger arising out of the claims for any one person in respect of the death of or bodily injury to any person;

(*d*) liability under section 143 (*b*) (ii)—

(i) in respect of a total sum in excess of the prescribed amount or the policy limits whichever is the larger arising out of the claims for any one accident in respect of each motor vehicle or combination of motor vehicles concerned;

(ii) for damage to property of or in the possession, custody or control of the person insured, his agent, driver or representative;

(iii) for damage to property in or on the motor vehicle of the person insured; or

(iv) for damage to any bridge, weighbridge, road, ramp, ferry, railway line, or anything in or below the surface of a road; or

(*e*) any contractual liability.

Requirements in respect of securities

145. In order to comply with the requirements of this Part a security must—

(*a*) consist of an undertaking by the giver of the security to make good, subject to any conditions specified therein and up to an amount approved by the Minister, any failure by the owner of the motor vehicle or such other persons or classes of persons as may be specified in the security duly to discharge any such liability as is required to be covered by a policy of insurance under section 143 which may be incurred by him or them; and

(*b*) be approved by the Minister and deposited with the Minister.

Certificate of security

146.—(1) Whenever such a security as is mentioned in the preceding section is approved by the Minister and deposited with him the Minister shall give to the owner of the motor vehicle concerned a certificate of security in the form prescribed for certificates of insurance issued under section 151 and the said section 151 shall apply to certificates of security in all respects as they apply to certificates of insurance.

(2) References in the remainder of this Part to a policy, an insurer or an insured shall be deemed to include references to a security, a giver of a security or a person secured as the case may be.

Certain conditions in policies of insurance to be of no effect

147.—(1) Save as in this Act expressly provided any condition in a policy under this Part providing that in the event of some specified thing being done or omitted to be done after the happening of the event giving rise to a claim no liability shall arise under the policy or that in any such event any liability so arising shall cease to be of no effect in connexion with any claim in respect of which the policy holder is required to be insured by virtue of this Part:

Provided that nothing in this section shall be taken to render void any provision in a policy requiring the person insured to repay to the insurer any sums which the latter may have become liable to pay under the policy and which have been applied to the satisfaction of the claims of third parties.

(2) Where a certificate of insurance has been issued under this Part in favour of the person by whom a policy has been effected, so much of a policy as purports to restrict the insurance of the person insured thereby reference to—

(*a*) the age or physical or mental conditions of the person driving the vehicle;

(*b*) the condition of the vehicle;

(*c*) the number of persons that the vehicle carried;

(*d*) the weight or physical characteristics of the goods that the vehicle carries;

(*e*) the times at which or the areas within which the vehicle is used;

(*f*) the horse power or value of the vehicle;

(*g*) the carrying on the vehicle of any particular apparatus; or

(*h*) the carrying on the vehicle of any particular means of identification other than any means of identification required to be carried by or under the laws for the time being in force relating to motor vehicles,

shall as respects such liabilities as are required to be covered by this Part be of no effect:

Provided that nothing in this subsection shall require an insurer to pay any sum in respect of the liability of any person otherwise than in or towards the discharge of that liability, and any sum paid by an insurer in or towards the discharge of any liability of any person which is covered by the policy by virtue only of this subsection shall be recoverable by the insurer from that person.

Right of injured party to proceed against insurer

148.—(1) Any person having a claim against a person insured in respect of any liability in regard to which a policy of insurance has been issued for the purposes of this Part shall be entitled in his own name to recover directly from the insurer any amount, not exceeding the amount covered by the policy, for which the person insured is liable to the person having the claim:

Provided that—

(*a*) the rights of any such person claiming directly against the insurer shall, except as provided in subsection (2), be not greater than the rights of the person insured against such insurer;

(*b*) the right to recover directly from the insurer shall terminate upon the expiration of a period of two years from the date upon which the claimant's cause of action against the person insured arose; or

(*c*) the expiration of such period as is mentioned in paragraph (*b*) of this proviso shall not affect the validity of any legal proceedings commenced during such period for the purpose of enforcing a right given under this section.

(2) In respect of the claim of any person claiming directly against the insurer by virtue of subsection (1), any condition in a policy purporting to restrict the insurance of the person insured thereby shall be of no effect:

Provided that nothing in this section shall require an insurer to pay any sum in respect of the liability of any person otherwise than in or towards the discharge of that liability, and any sum paid by an insurer in or towards the discharge of any liability of any person which is covered by the policy by virtue only of the

operation of this subsection may be recovered by the insurer from that person.

Restriction of liability in respect of passengers in public service vehicles to be void

149. So far as any contract for the conveyance of a passenger in a public service vehicle purports to negative or to restrict the liability of any person in respect of any claim which may be made against that person in respect of the death of or bodily injury to the passenger while being carried in, entering or alighting from the vehicle or purports to impose any conditions with respect to the enforcement of any such liability, it shall be void.

Hospital expenses

150. Where an insurer makes any payment under the provisions of this Part in respect of the death of or bodily injury to any person who has received treatment in a hospital in respect of the fatal or other bodily injury so arising the insurer shall also pay to such hospital the expenses reasonably incurred by the hospital in affording such treatment to an amount as prescribed for each person so treated as either an in-patient or as an out-patient.

Certificate of insurance

151.—(1) Upon the issue of a policy of insurance in accordance with the requirements of this Part the insurer shall issue to the insured in respect of each vehicle and trailer insured a certificate (in this Part referred to as "a certificate of insurance") in the prescribed form and containing such particulars of any conditions subject to which the policy is issued and different forms and different particulars may be prescribed in relation to different circumstances.

(2) A certificate of insurance referred to in subsection (1), shall at all times be in the motor vehicle concerned while it is operated on a public road.

(3) A certificate of insurance may be inspected by a police officer or by any person so authorized in writing by the Director.

(4) Any person who shall manufacture or be in possession of any false policy or certificate of insurance or who shall alter any policy or certificate of insurance shall be guilty of an offence and upon conviction shall be liable—

(*a*) in case of a first offence to a fine not exceeding K5,000 and to imprisonment for one year or to both such fine and such imprisonment; and

(*b*) in the case of a second or subsequent offence to a fine not exceeding K10,000 and to imprisonment for two years or to both such fine and such imprisonment.

Driver to give name and address

152.—(1) Any person driving a motor vehicle on a public road or any person whom a police officer or any other authorized person has reasonable cause to believe to have been the driver of a motor vehicle at a time when an accident occurred owing to its presence on a public road or any person whom a police officer has reasonable cause to believe to have

committed an offence in relation to the use of a motor vehicle on a public road shall on being so required by a police officer give his name and address and the name and address of the owner of the vehicle.

(2) It shall be the duty of the owner of a motor vehicle to give such information as he may be required by a police officer or any other authorized person to give for the purpose of determining whether the vehicle was or was not being driven in contravention of section 141, and to produce the policy or certificate of insurance relating to the motor vehicle if required to do so by a police officer or any other authorized person.

Making false statements

153.—(1) No person shall for the purpose of obtaining a policy of insurance as required by section 141 make any false statement knowing it to be false, in consequence whereof the policy is liable to be avoided, or wilfully commit any act which disentitles him to claim under the policy.

(2) Any person who contravenes subsection (1), shall be guilty of an offence and upon conviction shall be liable—

(*a*) in case of a first offence to a fine not exceeding K2,000 and to imprisonment for one year or to both such fine and imprisonment; and

(*b*) in the case of a second or subsequent offence to a fine not exceeding K5,000 and to imprisonment for two years or to both such fine and imprisonment.

Duty of insurer when policy is cancelled

154.—(1) Where, to the knowledge of an insurer, a policy issued for the purposes of this Part ceases to be effective without the consent of the person to whom it was issued otherwise than by the effluxion of time or by reason of his death the insurer shall forthwith notify the Director and the Commissioner of Police of the date on which the policy ceased to be effective.

(2) Where in the circumstances mentioned in subsection (1), any policy of insurance ceases to be effective the person insured shall forthwith surrender any certificate of insurance held by him to the insurer.

Duplicate certificate of insurance

155. No insurer shall issue a replacement certificate of insurance until he has made such enquiries as to satisfy him beyond reasonable doubt that the original certificate of insurance has been lost or destroyed or otherwise rendered unusable.

PART XV

General Provisions

Exemption from previous relating to packing

156. Notwithstanding anything to the contrary contained in any law, a local authority may, in such circumstances and subject to such conditions as it may deem expedient, exempt—

(*a*) a medical practitioner;

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(*b*) a nurse or midwife registered under the Nurses and Midwives Act; or

(*c*) any person who, in the opinion of such local authority, by reason of a permanent disability has substantial difficulty in walking or is unable to walk,

from the provisions of any law relating to the parking of a motor vehicle in force within its area of jurisdication.

Doubt concerning use or classification of motor vehicle

157. If, for the purposes of this Act, doubt arises as to the use to which any vehicle is put or the classification of any vehicle, such matter shall be referred to the Director.

Vehicle and load may be exempted from provisions of this Act

158. The Director may, subject to such conditions and upon payment of such fees or charges as he may determine, authorize in writing, either generally or specifically, the use on a public road of a vehicle which does not comply with the provisions of this Act or the conveyance on a public road of passengers or any load otherwise than in accordance with the provisions of this Act.

Director may authorize certain refunds

159.—(1) The Director may, if he is satisfied that any amount paid by a person was in excess of the amount properly chargeable under this Act, authorize a refund of such amount or of any part thereof to such person.

(2) The Director shall not authorize any refund under this section unless the claim therefore is received within twelve months after the date of the payment concerned.

Inspection for ensuring that provisions of this Act are being given effect to

160.—(1) The Minister may authorize any person, organization, or authority to carry out any inspection which the Minister deems necessary in order to ensure that the provisions of this Act are being complied with.

(2) If the Minister delegates the power conferred upon him by subsection (1) to the Director, the Director may authorize any person, organization, or authority to carry out the inspection concerned.

(3) No person shall obstruct or hinder any person in the carrying out of any inspection referred to in subsection (1).

Variation of prescribed form

161. The Minister may, in such circumstances as he may deem expedient, authorize any authority to use, in substitution for a form prescribed for a particular purpose, a form which varies from such prescribed form, and in respect of such authority such varied form shall be deemed to be the prescribed form for that purpose.

Duplicate of document or token

162.—(1) Subject to the provisions of subsection (3), the Director if satisfied that a certificate, licence or other document or token issued by the Director in terms of this Act has been

lost, destroyed or defaced or that the figures or particulars thereon have become illegible shall, upon receipt of an application on the prescribed form and upon payment of the prescribed fees, issue a duplicate of such certificate, licence or other document or token to the person who, in the opinion of the Director, is entitled thereto, with either the word "DUPLICATE" written thereon or the issue number printed thereon:

Provided that a duplicate of a learner's licence, a driver's licence, or a professional driving permit, shall only be issued to the person to whom the original licence or permit was issued.

(2) An application for a duplicate of a licence or permit referred to in the proviso to subsection (1), shall be made as prescribed and the Director shall issue the duplicate as prescribed.

(3) If, after the issue of a duplicate under subsection (1), the original certificate, licence or other document or token is found, the person to whom the duplicate was issued shall take all reasonable steps to obtain possession thereof and surrender it forthwith to the Director.

Signature upon documents

163. Any person who is unable to sign his name shall, whenever his signature is required upon any document under this Act, impress in place thereof his left thumb print upon the space within which he would otherwise have been required to sign his name, and if his left thumb print is not available, he shall substitute therefore another of his fingerprints, and in such latter event the document so marked shall then be endorsed by the officer in whose presence the print was made, identifying the finger used.

Service of notices

164.—(1) Whenever under this Act any notice is authorized or required to be served upon or issued to any person, such notice shall either be served personally upon the person to whom it is addressed or be sent to him by registered post to his last known address:

Provided that the address furnished by the holder of a driver's licence at the time of his application for such licence or recorded against his name in a register of drivers' licences, or the address recorded against the registration of a vehicle in a register of motor vehicles as the address of the owner of such vehicle, shall serve as his domicile of summons and execution for all purposes arising from or for the purposes of the Act, for the service of notices, post or processes on such person.

(2) Service by registered post in terms of subsection (1), shall be deemed to have been effected on the seventh day after the date stamped upon the receipt for registration issued by the post office which accepted the notice.

(3) A certificate by the officer who issued the notice referred to in subsection (1), or by a person subordinate to such officer,

stating the time, place and manner of issuing such notice, shall be evidence that such notice was duly issued, unless and until the contrary is proved.

Application to the Government

165.—(1) The provisions of Part XIV shall apply to vehicles owned by the Government other than such vehicles as are allocated for use by the Malaŵi Army.

(2) Any officer in the public service or any employee, servant or agent of the Government who, in the course of his duties as such drives, uses, exercises control over or is in-charge of any vehicle owned by the Government, shall be personally subject to all of the provisions of this Act, and shall personally be liable for any offence committed by him against any of the said provisions of this Act while so driving, using, exercising control over or being in-charge of such vehicle.

Seizure of vehicles

166.—(1) Subject to subsection (2), a traffic police officer, an examiner, or an authorized officer may seize a vehicle or a vehicle with its load which is used in or is on reasonable grounds believed to be used in the commission or suspected commission of an offence under this Act.

(2) The manner and conditions in respect of the seizure, storage and disposal of a vehicle or a vehicle with its load referred to in subsection (1), shall be as prescribed.

Offences and penalties

167.—(1) Any person who contravenes or fails to comply with any provision of this Act shall be guilty of an offence.

(2) Any person convicted of an offence under any provision of this Act for which no special penalty is provided by this Act shall be liable to a fine not exceeding K20,000 or to imprisonment for a period not exceeding one year or both such fine and imprisonment.

Forfeiture

168. The court convicting any person of an offence under section 167 (1) as read with section 83, or a regulation made under section 181 (1) (*d*), (*l*), (*n*) or (*q*), may, without notice to any person, declare a vehicle or its load or both which was or were used in the commission of the offence and which was or were seized under the provisions of this Act, or the convicted person's rights in such vehicle or load or both, to be forfeited to the Government:

Provided that such declaration shall not affect any right which any person other than the convicted person may have to the vehicle or load or both, if it is proved that that other person did not know that that vehicle or its load or both was or were being used or would be used in the commission of the offence concerned, or that he could not prevent such use.

Delegation

169.—(1) The Minister may—

(*a*) delegate to any other person any power conferred upon him by this Act, other than the power conferred by section 181; and

(*b*) authorize any other person to perform any duty assigned to the Minister by this Act, and may effect such delegation or grant such authorization subject to such conditions as he may deem fit.

(2) The Director may—

(*a*) delegate to any other person any power conferred upon him by or under this Act; and

(*b*) authorize any other person to perform any duty assigned to the Director by or under this Act,

and may effect such delegation or grant such authorization subject to such conditions as he may deem fit.

(3) Any delegation effected or authorization granted under subsection (1) or (2), may at any time be withdrawn by the Minister or by the Director, as the case may be.

PART XVI

Traffic Court

Minister may prescribe offences

170. Notwithstanding anything in this Act or any other written law the Minister may prescribe a schedule of traffic offences (hereinafter referred to as prescribe offences) which may be dealt with and prosecuted in any area in which a Traffic Court exercises jurisdiction in accordance with this section or any rules made hereunder; and the Minister may for the purposes of this section prescribe statutory maximum penalties for such offences, which shall not exceed the penalties prescribed for such offences elsewhere in or under this Act.

Statutory maximum penalty to have effect

171. A statutory maximum penalty prescribed for a prescribed offence shall, notwithstanding any other penalty prescribed for such offence by or under this Act, have effect where the person charged with such offence submits a written plea of guilty which is accepted in accordance with this section.

Notification of a prescribed offence by an authorized officer

172. Notwithstanding anything elsewhere in this Act or any other written law, an authorized officer may, if it is under his authority to do so and he considers it appropriate, serve either personally or by affixing the same prominently to the vehicle concerned, upon the owner, driver or person in charge of control of any motor vehicle who the authorized officer reasonably believes to have committed any of the prescribed offences, a notification of a traffic offence (hereinafter referred to as a notification) in the prescribed form charging such person with having committed the offence or offences indicated in the notification and requiring such person to attend the Traffic Court specified in the notification to answer such charge or charges at such date and time (being not sooner than twenty-one days after the date of such service) as is specified in such notification.

Person served with notification may send a written plea of guilty to Traffic Court

173. Subject to section 176 a person served with a notification under this section shall not be obliged to attend the Traffic Court concerned in answer to such notification if he has pleaded guilty unequivocally in writing and sent the notification, together with the prescribed proof of payment for the amount of the statutory maximum penalty or penalties for the offence or offences to which he has pleaded guilty, by prepaid registered post or by hand, to that Traffic Court so as to reach the Court not later than the day and time indicated in the notification for his attendance:

Provided that where an authorized officer considers that in all the circumstances a plea of guilty in writing should not be accepted he may; by notice in the prescribed form under his hand, served on the accused and on the Traffic Court concerned at least seven clear days before the date indicated in the notification, require the accused to attend the Traffic Court in person on the day and at the time indicated in the notification.

Notification to be placed before the Traffic Court

174. A copy of the notification shall be placed before the Traffic Court concerned at the time fixed for the attendance of the accused to answer the charge or charges and unless that Court otherwise directs, such copy shall be used as a charge sheet.

Procedure after a plea of guilty

175. A Traffic Court may, on receipt of a plea of guilty, either in writing, or by the accused in person, proceed to conviction and may, after considering any mitigating circumstances stated in writing or personally by the accused, pass sentence, which in the case of a written plea of guilty shall be the statutory maximum penalty unless the Traffic Court for special reasons decides to remit the penalty in whole or in part, in which case it shall direct that the penalty or part thereof be refunded to the accused.

Where a Traffic Court is not satisfied that a written plea of guilty is unequivocal

176. Where a Traffic Court is not satisfied that a written plea of guilty is unequivocal or where, for good reason shown, the Court decides not to accept a written plea of guilty, it shall issue a summons requiring the accused to attend before it or any other court to answer the charge or charges indicated in the notification, on such date and at such time as shall be specified in the summons.

Where accused pleads not guilty

177. Where an accused appears before a Traffic Court and pleads not guilty to the charge or charges indicated on the notification, the Traffic Court may hear and determine the charge or charges forthwith or may adjourn the proceedings to another date either before itself or any other court.

Where a person fails to attend Traffic Court after notification

178. Where any person, having been served with a notification issued in accordance with this section, fails to attend the Traffic Court concerned on the day and at the time specified in such notification and has not pleaded guilty in writing and paid the statutory maximum penalty in the prescribed manner

indicated before such day and time (and a person on whom has been served a notice in the prescribed form under the proviso to section 173 shall be deemed not to have pleaded guilty in writing for the purposes of this subsection) he may be brought before the Traffic Court, either by summons or by warrant of arrest, and, unless he shows good cause why he has failed to attend in accordance with such notification he shall be guilty of an offence and shall be liable forthwith, by order of the court, to a fine of K5,000 and to imprisonment for three months, and the court may thereupon proceed to deal with the charge or charges indicated in the notification, or may adjourn the hearing of such charge or charges to another date before itself or any other court.

Registered owner of vehicle to be liable where there is failure to comply with notification

179. Where any person served with a notification under this section fails to comply with such notification then the registered owner of the vehicle concerned shall be liable for the offence:

Provided that such owner shall not be liable for the offence if he satisfies the court that he was not driving or in charge or control of the vehicle at the relevant time, and that he has, upon being so requested by an authorized officer or the court, given to the authorized officer or to the court all the information at his disposal, or which should reasonably be at his disposal, to enable the person who was driving or in charge or control, of the vehicle at the relevant time to be brought before the court.

Unauthorized person not to remove notification affixed to a vehicle

180. No person other than the person to whom it is addressed, or a person authorized by such person in that behalf, shall remove from a vehicle a notification which has been affixed thereto by an authorized officer under this section, or any portion of such notification, or willfully tear, deface or destroy any such notification.

PART XVII

Regulations and By-Laws

Power of Minister to make regulations

181. (1) The Minister may, make regulations in respect of any matter contemplated, required or permitted to be prescribed under this Act and generally as to the use of any vehicle on a public road, its construction and equipment and the conditions under which it may be used and in any other respect for the better carrying out of the provisions or objects of this Act, and in particular, but without prejudice to the generality of the foregoing provisions, with respect to—

(*a*) the safety of traffic on a public road, including the restriction of the use of any such road or part thereof by such traffic and the duties of the users of any such road;

(*b*) the identification of vehicles and, in relation to a motor vehicle, the size, shape, colour and character of the registration mark to be displayed under this Act and the means to be applied to render any such mark easily distinguishable, whether by night or day, when any such vehicle is operated on a public road;

(*c*) the width, height and length of any vehicle, and the diameter of the wheels and the width, nature and condition of the tyres of any vehicle when operated on a public road;

(*d*) the maximum mass, laden or unladen, of any vehicle, the height and the width of any load which may be carried by any vehicle, the manner in which any vehicle may be loaded, the extent to which any load may project in any direction and the maximum mass of any vehicle or any part thereof supported by the road or by any specified area thereof, when any vehicle referred to in this paragraph is operated on a public road;

(*e*) the emission of exhaust gas, smoke, fuel, oil, visible vapours, sparks, ash or grit from any vehicle operated on a public road;

(*f*) excessive noise owing to the design or condition of any vehicle or the loading thereof, or to the design, condition or misuse of a silencer, or of a hooter, bell or other audible warning device, when any such vehicle is operated on a public road;

(*g*) the particulars to be marked on any vehicle;

(*h*) the towing, pushing or drawing of any vehicle by another vehicle on a public road;

(*i*) the conditions under which any motor vehicle fitted with steering apparatus on the left side may be operated on a public road;

(*j*) the number, nature and kind of lamps, including retro-reflectors, to be carried by any vehicle operated on a public road, the position in which they shall be carried, the manner, conditions and times of their use and the use of any lamp or lighting device which may endanger public safety and, for the purposes of this paragraph, a retro-reflector may be defined as meaning a reflector which bears a standardization mark or which bears such other identification mark as may be prescribed;

(*k*) the number and nature of brakes and for ensuring that brakes, silencers and steering gear shall be efficient and in proper working order, in respect of any vehicle operated on a public road;

(*l*) the regulation of the use and control of any vehicle on a public road, its construction, equipment; width of tracks, dimensions, mass and use in respect of either chassis and body or chassis, body and load and the conditions under which it may be used;

(*m*) in relation to a vehicle operated on a public road, the devices to be fitted for signalling the approach thereof, for enabling the driver thereof to become aware of the approach of another vehicle from the rear, and for intimating any intended movement thereof and the use of any such devices and for securing that they shall be efficient and kept in proper working order;

(*n*) the protection of any public road, the mass, tyres and load of any vehicle in relation to any specified bridge or ferry, the time when and speed at which any vehicle of a specified mass may be allowed to cross any bridge or ferry, and furnishing of security by any person against damage to any public road by reason of heavy traffic, and making good the cost of repairing such damage;

(*o*) the stopping with and parking of vehicles on public roads or parking places;

(*p*) the furnishing of accident reports and statistics of any nature whatsoever;

(*q*) the determination of the number of passengers for the transport of which a certain class of motor vehicle is adapted and the number which may be transported, the general safety, comfort and convenience of passengers carried on or by such a motor vehicle and the conduct of the driver, conductor and passengers on such a vehicle;

(*r*) the specification for the examination of any vehicle;

(*s*) any light which, in the opinion of the Minister, is likely to interfere with the proper view of any road traffic sign or be confused with any such sign;

(*t*) the method of determining any fact which is required for the purposes of this Act;

(*u*) any form, process or token which the Minister may deem expedient for the purposes of this Act and the nature and extent of any information to be furnished for the purpose of any such form;

(v) the uniform to be used by officers appointed under this Act;

(*w*) the fees to be charged for any purpose under this Act, including administrative fees for overload offences;

(*x*) not withstanding the provisions of the General Interpretation Act, the maximum penalty and fine for different offences for the violations of regulations; Cap. 1:01

(*y*) the application of fines as spot fines according to fixed rates;

(*z*) the carriage of persons as passengers on any vehicle which has been constructed or designed solely or chiefly for the carriage of goods and not for the carriage of passengers and their effects;

(*aa*) the additional duties for operators of specific classes of motor vehicles or operators engaged in activities which require additional safety measures for the protection of the public;

(*bb*) the preparation of a Code to be known as the Highway Code containing such directions as appear to the Minister to be proper for the guidance of persons using public roads;

(*cc*) devices and procedures to be used in detecting and measuring the speed of a vehicle moving on a public road;

(*dd*) devices and procedures to be used in administering a breath test; and

(*ee*) to do all such things as may be necessary for the proper carrying out of this Act.

(2) Regulations made by the Minister under subsection (1) with regard to—

(*a*) specific categories:

(i) of road transport undertakings;

(ii) of industries or trades or occupants concerned with road transport;

(iii) of persons by whom any undertaking or occupation referred to in subparagraphs (i) and (ii) is carried on or exercised; or

(iv) of operators of vehicles concerned with, or new entrants to, any undertaking or occupation referred to in subparagraph (iii);

(*b*) specific circumstances in which any undertaking or occupation referred to in paragraph (*a*) (iii) is carried on or exercised;

(*c*) specific areas in which any undertaking or occupation referred to in paragraph (*a*) (iii) is carried on or exercised,

shall be so made by the Minister with due regard to the specific requirements of the category, circumstance or area concerned.

(3) The power to make regulations for any purpose referred to in subsection (1), shall include the power to restrict or prohibit any matter or thing in relation to that purpose either absolutely or conditionally.

(4) Any regulation under this section may be made to apply generally throughout Malaŵi or within any specified part thereof or to any specified category of vehicles or persons.

(5) A regulation made under subsection (1) may provide for penalties for a contravention thereof and also for different penalties in the case of successive or continuous contraventions.

Power of local authority to make by-laws

182.—(1) Subject to the provisions of any law in relation to the procedure to be followed in the making, approval and promulgation of any by-law by a local authority, a local

authority may, in consultation with the Director, make by-laws not inconsistent with the provisions of this Act in respect of—

(*a*) the safety of traffic on any public road, the duty of any user of such road and the use of any such road by any vehicle;

(*b*) subject to the provisions of any law and any regulation or by-law made thereunder in relation to the restriction, regulation or control of the carrying on of the business of street vendor, peddlar or hawker, the stopping with and parking of any vehicle on any public road or portion thereof, including by-laws relating to the installation, regulation, supervision, maintenance and control of parking meters and parking places;

(*c*) the appointment and licensing of private parking attendants and the withdrawal of any such licence;

(*d*) the appointment of traffic wardens;

(*e*) subject to the provisions of any law and any regulation or by-law made thereunder in relation to the restriction, regulation or control of the carrying on of the business of street vendor, peddlar or hawker, any public road which is not to be used by any vehicle, either generally or at specific times;

(*f*) the relative position on a public road of traffic of differing speeds and classes;

(*g*) the place where and time when a vehicle may not turn so as to face in the opposite direction to that in which it was proceeding or where it may only so turn under specified conditions;

(*h*) the loading and off-loading of any vehicle on a public road;

(*i*) the rules as to priority of entry of certain motor vehicles into a main thoroughfare;

(*j*) the use of hooter, bell or other audible warning device and the conditions under which any such audible warning device may be used within any specified area, whether at all times or during specified periods;

(*k*) the appointment of an advisory traffic control board consisting of not fewer than three members to advise the local authority on all questions of traffic control;

(*l*) the use of any public road by traffic in general;

(*m*) the limitation of the age of drivers of vehicles drawn by animals;

(*n*) any form or token which a local authority may deem expedient for the purposes of any by-law, and the nature and extent of any information to be furnished for the purpose of any such form;

(*o*) the mass of any goods which or the number of passengers who or animals which may be conveyed on a pedal cycle;

(*p*) the regulation, restriction, prohibition or control of the parking upon public roads of vehicles owned, kept or used by motor traders or which have been placed in their custody or under their control in the course of any motor trader's business carried on by them; and

(*q*) any other matter in regard to which a local authority may make by-laws under this Act.

(2) The power to make by-laws for any purpose referred to in subsection (1), shall include the power to restrict or prohibit any matter or thing in relation to that purpose, either absolutely or conditionally.

(3) Any by-law under subsection (1), may be made to apply generally throughout the area of the local authority or within any specified part thereof or to any specified category of vehicles or persons.

(4) Any by-law made under this section may provide for penalties for a contravention thereof, and may also provide for different penalties in case of successive or continuous breaches, but no penalty shall exceed a fine of K7,500 or imprisonment for a period of six months or both such fine and imprisonment.

Local authority may determine fees

183. A local authority may determine the fees to be charged for any purpose contemplated in section 18**2.**

PART XVIII

Repeal and Savings

Repeal and savings

184.—(1) The Road Traffic Act is hereby repealed.

(2) Any subsidiary legislation made under the Act repealed by subsection (1), in force immediately before the commencement of this Act—

(*a*) shall remain in force unless inconsistent with this Act and be deemed to be subsidiary legislation made under this Act; and

(*b*) may be replaced, amended or repealed by subsidiary legislation made under this Act.

SUBSIDIARY LEGISLATION

ROAD TRAFFIC (MISCELLANEOUS FEES) REGULATIONS

under s. 81

G.N. 26/1998
28/1999
3/2002
10/2003
25/2010
30/2014
17/2015
55/2017

Citation

1. These Regulations may be cited as the Road Traffic (Miscellaneous Fees) Regulations.

Fees
Schedule

2. The fees specified in the Second Column of the Schedule are hereby prescribed and shall be charged in respect of the matters set out in the First Column of the Schedule.

SCHEDULE

G.N. 26/1995
28/1999
3/2002
10/2003
25/2010
30/2014
17/2015
55/2017

First Column	*Second Column* K	t
A.—Road Service Permits (Application and Issue)		
1. Road Service Permit, per year of validity or part thereof—		
(*a*) operator registration fee (only for new entrants)	30,000	00
(*b*) duplicate operator certificate	30,000	00
(*c*) short-term road service permit (3 months or less)	10,000	00
(*d*) permit for goods vehicles of 3.5 tonnes GVM or below	15,000	00
(*e*) permit for goods vehicles above 3.5 GVM	20,000	00
(*f*) permit for passenger service vehicles of 3.5 tonnes GVM or below	15,000	00
(*g*) permit for passenger service vehicles above 3.5 tonnes GVM	20,000	00
(*h*) trailer for carriage of goods for hire or reward of 3.5 tonnes GVM or below.	15,000	00
(*i*) trailer for carriage of goods for hire or reward above 3.5 tonnes GVM	20,000	00
2. Duplicate of Road Service Permit listed in paragraph 1—		
(*a*) permit for goods vehicles of 3.5 tonnes GVM or below	25,000	00
(*b*) permit for goods vehicles above 3.5 GVM . .	25,000	00

First Column	*Second Column* K	t
(*c*) permit for passenger service vehicles of 3.5 tonnes GVM or below	25,000	00
(*d*) permit for passenger service vehicles above 3.5 tonnes GVM	25,000	00
(*e*) trailer for carriage of goods for hire or reward of 3.5 tonnes GVM or below.	25,000	00
(*f*) trailer for carriage of goods for hire or reward above 3.5 tonnes GVM	25,000	00
3. Endorsement of Road Service Permit A or B or variation of terms thereof	15,000	00
4. Special Journey Road Service Permit in respect of vehicles registered in Malaŵi—		
(*a*) seven days	5,000	00
(*b*) fourteen days	8,000	00
(*c*) twenty-eight days	10,000	00
(*d*) more than twenty-eight days but not exceeding three months	15,000	00
5. Short-term Road Service Permit issued in respect of foreign registered vehicles, per month or part thereof	USD300	
6. Application for a Road Service Permit by foreign operators from countries which are not members of COMESA	USD450	
7. Renewal for a Road Service Permit by foreign operators from countries which are not members of COMESA	USD450	
8. International Crossborder Road Service Permit, per annum or part thereof	30,000	00
9. Renewal of International Crossborder Service Permit or part thereof	30,000	00
10. Duplicate Crossborder Permit	30,000	00
11. Special Exemption Permit application for awkward, abnormal or dangerous load*	50,000	00
**When vehicle load has exceeded the GVM, the excess load schedule fees shall apply*		
12. Malaŵi registered vehicles holding valid International Road Service Permit under paragraph 8 shall automatically be entitled to a local permit or part thereof while trailers shall have Road Service Permit class B		

First Column	*Second Column* K	t
13. Weighing certificate	3,000	00
14. Uplifting operator certificate after suspension	30,000	00
B.—Valuation of Motor Vehicles		
1. Commercial valuation	15,000	00
2. Valuation for purposes of acquiring a Government loan	5,000	00
C.—Driving Schools and Instructors Licensing		
1. Instructors registration (new applicants only)	25,000	00
2. Instructor's licence renewal, per annum	20,000	00
3. Instructor learner licence	10,000	00
4. Aptitude test for an instructor	10,000	00
5. Duplicate instructor's licence	20,000	00
6. Driving school registration (new applicants only)	50,000	00
7. Duplicate driving school registration certificate	50,000	00
8. Inspection/re-inspection fees	20,000	00
9. Driving school licence renewal, per annum	50,000	00
10. Amendment/endorsement fees	25,000	00
11. Appeal to the Minister	20,000	00
D.—Driving Licences		
1. Application for driving licence for five years	20,000	00
2. Duplicate driving licence	30,000	00
3. Learner's licence	10,000	00
4. Learner's aptitude test	5,000	00
5. Extension of driving licence by endorsement	20,000	00
6. Professional driving permit for two years	15,000	00
7. Duplicate professional driving permit	30,000	00
8. Aptitude test for professional driving permit	10,000	00
9. Driving test	10,000	00
10. Special driving test	15,000	00
11. Renewal of driving licence for—		
(*a*) five years	20,000	00
(*b*) late renewal of driving licence test	10,000	00
(*c*) renewal of PrDP (2 years)	15,000	00
12. Renewal of driving licence for holders aged sixty-five years and above	3,000	00
13. Conversion of foreign driving licence for five years	80,000	00

First Column	*Second Column*	
	K	*t*
14. Appeal to the Minister	20,000	00
15. Uplifting driving licence after suspension	40,000	00
E.—International Circulation		
1. Application for, and issuance of, international driving permit.	25,000	00
2. Renewal of international driving permit	20,000	00
3. Short-term permit for foreign registered vehicle	50,000	00
F.—Public Service Vehicle Driver Identity		
1. Public service vehicle driver or crew identity card	10,000	00
2. Duplicate public service vehicle driver or crew identity card	10,000	00
G.—Vehicle Registration		
1. First registration of motor vehicles	30,000	00
2. Duplicate registration certificate	25,000	00
3. Duplicate of any licence or token	10,000	00
4. Duplicate authority to purchase registration plates	10,000	00
5. Temporary vehicle registration card or special permit	15,000	00
6. Registration of change of—		
(*a*) title holder	20,000	00
(*b*) ownership	20,000	00
7. Removal of endorsement	20,000	00
8. Vanity (personalized) registration for motor vehicle	600,000	00
9. Appeal to the Director	10,000	00
10. Appeal to the Minister	20,000	00
11. Change of address of owner for any registration	15,000	00
12. Change of motor vehicle particulars or colour	15,000	00
13. Special selection of registration number	100,000	00
14. Booking or reservation of a special registration number	20,000	00
15. Re-registration of motor vehicle after de-registration—		
(*a*) re-institution after recovery by police	30,000	00
(*b*) rebuilt after being written off	30,000	00
(*c*) State authorized	–	
16. De-registration of motor vehicle for—		
(*a*) export purposes	10,000	00
(*b*) permanent destruction/breaking-up	2,000	00

First Column	*Second Column*	
	K	*t*
17. Re-allocation of number	100,000	00
18. Booking for registration number reservation	20,000	00

H.—Annual Licensing of Vehicles

Collection and amount shall be as determined by the Minister*.

**Currently the collection of fees is being administered by Malawi Energy Regulatory Authority.*

I.—Examination of Motor Vehicles

1. Examination of a motor vehicle of—		
(*a*) 3.5 tonnes gross weight or less (private motor vehicle)	18,000	00
(*b*) 3.5 tonnes gross weight or less (public service vehicle)	18,000	00
(*c*) more than 3.5 tonnes gross weight (private motor vehicle)	23,000	00
(*d*) more than 3.5 tonnes gross weight (public motor vehicle)	23,000	00
(*e*) motorcycle	10,000	00
(*f*) tricycle or with a side car	10,000	00
2. Examination of a trailer—		
(*a*) 3.5 tonnes gross weight or less (private vehicle)	18,000	00
(*b*) 3.5 tonnes gross weight or less (public service vehicle)	18,000	00
(*c*) more than 3.5 tonnes gross weight (private vehicle)	23,000	00
(*d*) more than 3.5 tonnes gross weight (public service vehicle)	23,000	00
3. Re-examination of a motor vehicle—		
(*a*) 3.5 tonnes gross weight or less (private motor vehicle)	18,000	00
(*b*) 3.5 tonnes gross weight or less (public motor vehicle)	18,000	00
(*c*) more than 3.5 tonnes gross weight (private motor vehicle)	23,000	00
(*d*) more than 3.5 tonnes gross weight (public motor vehicle)	23,000	00
(*c*) motorcycle	10,000	00
(*d*) tricycle or with side car	10,000	00

First Column	*Second Column* K	t
4. Re-examination of a trailer—		
(*a*) 3.5 tonnes GVM or less (private vehicle)	18,000	00
(*b*) 3.5 tonnes GVM or less (public service vehicle)	18,000	00
(*c*) more than 3.5 tonnes GVM (private vehicle)	23,000	00
(*d*) more than 3.5 tonnes GVM (public service vehicle)	23,000	00
5. Certificate of fitness token	3,000	00
6. Duplicate of any copy of token	15,000	00
7. Annual licensing, per—		
(*a*) inspection or re-inspection of a station	25,000	00
(*b*) registration of inspection station	500,000	00
(*c*) renewal of licence for inspection station per annum	500,000	00
(*d*) examination fees for an inspector	10,000	00
(*e*) registration of an inspector	30,000	00
(*f*) inspector license renewal per annum	25,000	00
8. Duplicate rejection notice	2,000	00
9. Duplicate vehicle inspector registration card	25,000	00
10. Duplicate vehicle inspection station registration certificate	25,000	00
11. A private passenger motor vehicle shall be eligible for certificate of fitness		
12. A public service vehicle shall be subject to inspection for COF every six months		
Note: *The Director shall collect a levy of 18% for every vehicle inspected by a VIS excluding VAT.*		
J.—Traffic Information		
1. Searching and release of any information	5,000	00
2. Release of any traffic data information, per page	2,000	00
3. Highway Code, per copy	3,000	00
4. Learner Driving Training Handbook, per copy	10,000	00
5. Driver's Instructors Manual, per copy	5,000	00
6. Motor Vehicle Inspection Manual, per copy	10,000	00
7. Motor Vehicle Inspection Station Administration Hand book, per copy	10,000	00
K.—Car Hire Operator's Licence		
1. Car hire inspection or re-inspection	25,000	00
2. Car hire registration	100,000	00
3. Renewal of licence, per annum	100,000	00

First Column	*Second Column* K	t
L.—Taxi Operator's Licence		
1. Taxi operator's registration certificate, per annum . .	15,000	00
M.—Vehicle Manufactures, Builders, Importers Registration Fee, Per Annum		
1. Certification of registration or approval—		
(*a*) inspection or re-inspection fees.	30,000	00
(*b*) motor vehicles manufactures and builders. . . .	500,000	00
(*c*) importers of new motor vehicles	500,000	00
(*d*) importers for own use (individual)	10,000	00
(*e*) importers for own use (organization).	50,000	00
(*f*) importers of second hand motor vehicles (indigenous business persons)	100,000	00
(*g*) foreign importers of second hand motor vehicles	300,000	00
(*h*) exporters of second hand motor vehicles (indigenous business persons)	100,000	00
(*i*) foreign exporters of second-hand motor vehicles	300,000	00
2. Renewal of certification of registration or approval—		
(*a*) builder or manufacturer	500,000	00
(*b*) new vehicle importer	500,000	00
(*c*) importers of second-hand vehicles (indigenous Malaŵian business persons)	100,000	00
(*d*) foreign importers of second-hand vehicles . .	300,000	00
3. Duplicate certificates for builder, manufacturer, importer or exporter	50,000	00
4. Uplifting of certificates for builder, manufacturer, importer or exporter after suspension	30,000	00
N.—Number Plates Importers and Embossers		
Importers		
1. Inspection or re-inspection	25,000	00
2. Registration	100,000	00
3. Renewal, per annum	100,000	00
Embosser		
1. Inspection or re-inspection	25,000	00
2. Registration	80,000	00
3. Renewal, per annum	80,000	00
Note: *Each number plate embossed by the Embosser shall be levied at 10% of the retail price excluding VAT.*		

First Column	*Second Column* K t
O.—Motor Trade Number	
1. Inspection or re-inspection	25,000 00
2. Registration	80,000 00
3. Renewal of registration certificate	80,000 00
P.—Entity Registration	
1. Traffic register card	10,000 00
2. Duplicate register card	10,000 00
3. Change of particulars on register card	10,000 00
4. Traffic register certificate	10,000 00
5. Duplicate register certificate	10,000 00
Q.—Training	
1. Driver instructor's training, per participant	40,000 00
2. Defensive Driving course—	
(*a*) for organizations, per participant	25,000 00
(*b*) for individuals, per participants	15,000 00
3. Motor vehicle inspectors training	10,000 00

G.N. 22/1999
26/2010
31/2014
56/2017

ROAD TRAFFIC (PRESCRIBED OFFENCES AND PENALTIES) REGULATIONS

under s. 170

Citation

1. These Regulations may be cited as the Road Traffic (Prescribed Offences and Penalties) Regulations.

Prescribed offences and penalties

2. The penalty for the offences specified in the *First Column* of the Schedule shall be as specified in the *Second Column* of the Schedule.

SCHEDULE

G.N. 26/2010
31/2014
56/2017

First Column Prescribed Offences	*Second Column Prescribed Fines* K	t
1. Failing to produce vehicle for inspection contrary to section 7 (1) (*a*) of the Act	15,000	00
2. Failing to furnish documents in respect of motor vehicle, name and address, professional driving permit, licence or information regarding identification of driver contrary to section 7 (1) or 8 of the Act . .	5,000	00
3. Failing to furnish evidence of registration as an instructor or to produce any document required by law within seven days contrary to section 7 (1) or 9 (2) of the Act	20,000	00
4. Failing to stop a vehicle or comply with directions required by a traffic law enforcement officer contrary to section 8 or 9 (1) of the Act	50,000	00
5. Driving a vehicle after being forbidden by a traffic law enforcement officer to do so contrary to section 8 (*f*) of the Act	30,000	00
6. Failing to remove a motor vehicle from a road or to follow another route as directed by a traffic law enforcement officer contrary to section 8 (g) of the Act	50,000	00
7. Failing to take a motor vehicle to a police station contrary to section 8 (*g*) of the Act	50,000	00
8. Threatening or suggesting the use of violence against an authorized officer contrary to section 9 (1) (*b*) of the Act	200,000	00
9. Using a motor vehicle which is not registered contrary to section 11 (2) of the Act	50,000	00
10. Failing to carry driver's licence or learner's licence or professional driving permit while driving a motor vehicle or an instructor's licence while acting as an instructor contrary to section 18 (1) or 45 (1) of the Act	15,000	00
11. Driving a motor vehicle without a licence or professional driving permit contrary to section 18 (1) or 45 (1) of the Act	100,000	00
12. Willfully failing to disclose a disqualification contrary to section 22 (1) of the Act	100,000	00

First Column Prescribed Offences	*Second Column Prescribed Fines* K	t
13. Failing upon disqualification to submit a driver's licence to the Director within seven days contrary to section 22 (2) (*a*) of the Act	120,000	00
14. Failing to give notice of change of address to the Director within fourteen days contrary to section 26 of the Act	5,000	00
15. Failing to forthwith submit learner's or driver's licence or a professional driving permit to the Director contrary to section 29 (7) or 50 (2) of the Act	120,000	00
16. Acting or employing unregistered person as an instructor contrary to section 32 (1) or 32 (2) of the Act	100,000	00
17. Acting as a driving school while not registered contrary to section 37 of the Act	200,000	00
18. Failing to submit void learner's or driver's licence or professional driving permit contrary to section 42 or 52 of the Act	120,000	00
19. Allowing another person to use learner's or driver's licence or professional driving permit contrary to section 43 or 52 of the Act	100,000	00
20. Permitting or employing an unlicensed person to drive a motor vehicle without a driver's licence or professional driving permit contrary to section 44 or 52 (*a*) of the Act	100,000	00
21. Driving a motor vehicle for a period exceeding the prescribed period contrary to section 54 (1) of the Act	50,000	00
22. Allowing a professional driver to drive for a period in excess of the limits contrary to section 54 (2) of the Act	100,000	00
23. Using a motor vehicle without the prescribed recording device contrary to section 55 (1) (*a*) of the Act	50,000	00
24. Failing to use a recording device in the prescribed manner contrary to section 55 (2) of the Act	100,000	00
25. Failing to produce a driving licence to the court at the hearing contrary to section 58 (3) of the Act	100,000	00
26. Operating an unroadworthy motor vehicle contrary to section 69 (1) or 69 (2) of the Act	50,000	00

First Column Prescribed Offences	*Second Column Prescribed Fines* K	t
27. Holding more than one certificate of fitness for the same vehicle contrary to section 73 of the Act	30,000	00
28. Using a motor vehicle without a certificate of fitness or with expired certificate of fitness contrary to section 69 (1), 69 (2), 74 (1) or 74 (2) of the Act . .	30,000	00
29. Using a certificate of fitness not relating to the vehicle contrary to section 74 (4) (*b*) (ii) of the Act	100,000	00
30. Failing to have roadworthy document in or on a motor vehicle contrary to section 74 (4) of the Act	10,000	00
31. Failing to present a motor vehicle for inspection within seven days after certificate of fitness becomes void contrary to section 76 (2) of the Act	20,000	00
32. Failing to deliver a false or void certificate of fitness to a motor vehicle inspection station or authorized officer at the request of the motor vehicle inspection station or authorized officer contrary to section 78 of the Act	30,000	00
33. Failing to deliver a certificate of fitness to the Director after suspension or cancellation contrary to section 79 (2) of the Act	50,000	00
34. Illegally obtaining a new certificate of fitness after the first one has been suspended or cancelled contrary to section 79 (5) of the Act	100,000	00
35. Failing to properly affix a certificate of fitness in accordance with regulation 20 (5) of the Certificate of Fitness Regulations	5,000	00
36. Owner failing to register as operator contrary to section 81 (1) of the Act	50,000	00
37. Owner failing to notify the Director as to which person should be registered as operator contrary to section 81 (2) of the Act	50,000	00
38. Using a motor vehicle without a road service permit contrary to section 83 of the Act	30,000	00
39. Failing to notify the Director and return a road service permit when circumstances change contrary to section 85 (*a*) of the Act	5,000	00
40. Failing to report loss of a road service permit contrary to section 85 (*b*) of the Act	5,000	00

First Column Prescribed Offences	*Second Column Prescribed Fines* K	t
41. Failure by an operator to exercise control of a driver regarding driving hours or professional driving permit or loading of a vehicle contrary to section 85 of the Act—		
(*a*) regarding driving hours	100,000	00
(*b*) regarding professional driving permit	100,000	00
(*c*) regarding passenger	20,000 per passenger	00
(*d*) regarding goods	100,000	00
42. Failure by an operator to ensure that motor vehicle complies with fitness requirements or to care for the safety of the public or to comply with the requirements for conveyance of hazardous substances contrary to section 85 of the Act	50,000	00
43. Failure by an operator to take steps to ensure roadworthiness of motor vehicle or to indicate the precautions taken to ensure roadworthiness of a motor vehicle or to indicate to the Director what precautions he had taken to control drivers under his authority contrary to section 86 of the Act	50,000	00
44. Failure by an operator to produce records relating to drivers contrary to section 86 (2) (*c*) of the Act	50,000	00
45. Failure by an operator to appear before the Director or other authorized officer contrary to section 86 (3) (*c*) of the Act	100,000	00
46. Failure by an operator to make discovery of documents as demanded contrary to section 86 (4) (*a*) of the Act	30,000	00
47. Failure by an operator to allow inspection of records contrary to section 86 (4) (*b*) of the Act	20,000	00
48. Displaying a road traffic sign on a road without authorization contrary to section 90 (10) of the Act	20,000	00
49. Failure to obey a road traffic sign contrary to section 91 (1) of the Act	30,000	00
50. Driving a motor vehicle without instrument to record speed contrary to section 94 (1) of the Act	30,000	00
51. Failing to use speed-recording device contrary to section 94 (2) of the Act	30,000	00

First Column Prescribed Offences	*Second Column Prescribed Fines* K	t
52. Failing to drive on the left side of the roadway or on the left-hand roadway of a divided road contrary to section 96 (1) or 97 (1) of the Act	50,000	00
53. Driving a vehicle on, over, across, or within a dividing space contrary to section 97 (2) of the Act . .	50,000	00
54. Failing to pass a vehicle on the right thereof or passing a vehicle on the shoulder or verge of road contrary to section 98 (1) of the Act	50,000	00
55. Failing to travel as near as possible to the left edge of the roadway contrary to section 98 (3) of the Act . .	30,000	00
56. Accelerating speed of a vehicle when another vehicle passes his vehicle contrary to section 98 (3) of the Act	30,000	00
57. Endangering on-coming traffic or passing a stationary bus without regard for safety contrary to section 98 (4) or 98 (5) of the Act	30,000	00
58. Crossing or entering a public road or driving unsafely from one lane to another lane contrary to section 99 (1), 99 (2) or 99 (3) of the Act	50,000	00
59. Failing to give a signal to move left or right or to signal an intention to reduce speed or stop contrary to section 100 or 102 of the Act	20,000	00
60. Failing to yield right of way to traffic on right contrary to section 101 of the Act	30,000	00
61. Failing to indicate intention to turn right or turning unsafely, contrary to section 102 of the Act	20,000	00
62. Failing to drive on immediate left of middle line before right turn contrary to section 102 (2) (*a*) (i) of the Act	20,000	00
63. Driving on right half of roadway before entering intersection contrary to section 102 (2) (*a*) (ii) of the Act	20,000	00
64. Failing to pass on left of traffic island or to comply with traffic sign turning right from one roadway contrary to section 102 (2) (*b*) (ii) of the Act	30,000	00
65. Failing to drive on right side of roadway when desiring to turn right from one way roadway contrary to section 102 (2) (*b*) (ii) of the Act	20,000	00

First Column Prescribed Offences	*Second Column Prescribed Fines* K	t
66. Driving on right half of roadway before entering intersection when turning right from one way roadway contrary to section 102 (2) (*b*) (ii) of the Act	20,000	00
67. Towing a vehicle not in the prescribed manner contrary to section 103 of the Act	20,000	00
68. Stopping or parking a vehicle in contravention of road traffic sign or where it constitutes a danger or obstruction to other traffic contrary to sections 104 and 105 of the Act	100,000	00
69. Parking a vehicle on the same side as a fire hydrant or obscuring a road traffic sign contrary to section 105 (1) of the Act	20,000	00
70. Parking a vehicle on sidewalk or obstructing an entrance or on a roadway outside an urban area contrary to section 105 (1) of the Act	30,000	00
71. Parking or stopping a vehicle within 9 metres of a pedestrian crossing contrary to section 105 (3) (*b*) of the Act	30,000	00
72. Parking a vehicle within 5 metres of an intersection in urban area contrary to section 105 (3) (*b*) of the Act . .	20,000	00
73. Parking a vehicle upon the actuating mechanism of traffic light contrary to section 105 (3) (*c*) of the Act . .	10,000	00
74. Parking a vehicle or a vehicle with right hand wheel more than 450 millimeters within roadway in urban area or on a one way street contrary to section 105 (3) (*d*) of the Act	10,000	00
75. Parking a vehicle on a roadway where the road is less than five and a half metres wide contrary to section 105 (3) (*e*) of the Act	10,000	00
76. Parking a vehicle on traffic island or pedestrian mall contrary to section 105 (4) of the Act	30,000	00
77. Failing to stop a vehicle at traffic sign or when asked to stop by a traffic officer contrary to section 107 of the Act	50,000	00
78. Causing a vehicle to travel backwards unsafely or longer than necessary for safety contrary to section 108 (1) (*a*) of the Act	20,000	00
79. Following a vehicle too close contrary to section 108 (1) (*b*) of the Act	10,000	00

First Column Prescribed Offences	*Second Column Prescribed Fines* K	t
80. As a driver, allowing to be disturbed while driving or someone to interfere with the steering or operating mechanism or failing to have complete control over the vehicle or failing to set brake or to drive with safety out of a parked position contrary to section 108 (1) (*d*) of the Act	30,000	00
81. Failing to give right of way to certain vehicles or locomotive contrary to section 108 (1) (*i*) of the Act . .	30,000	00
82. Driver or passenger allowing or permitting a portion of his body to protrude from or beyond vehicle or allowing a person or animal on top of a vehicle contrary to section 108 (1) (*j*), 108 (1) (*k*) or 108 (3) of the Act	20,000	00
83. Allowing engine to emit smoke or fumes or to run while vehicle is stationary and unattended or to run while taking in fuel contrary to section 108 (1) (*l*) of the Act	30,000	00
84. Depositing something out of a vehicle upon or along side of the road contrary to section 108 (1) (*n*) of the Act	10,000	00
85. Speaking or texting on cellular phone while driving contrary to section 108 (1) (*p*) of the Act	30,000	00
86. Entering or alighting from a vehicle in motion contrary to section 108 (4) of the Act	10,000	00
87. Driving a vehicle upon a sidewalk contrary to section 108 (5) of the Act	50,000	00
88. Riding a motor cycle, motor tricycle or motor quadrucycle or carrying a passenger not as prescribed or too many persons riding a motor cycle or more than two persons in a sidecar or carrying an object, person or animal in front of a motor cycle contrary to section 109 of the Act	20,000 per passenger	00
89. Riding a motor cycle, motor tricycle or motor quadrucycle without helmet or being a passenger or failing to ensure that a passenger on a motor cycle wore a helmet contrary to section 109 (3) of the Act . .	50,000	00
90. Riding a motor cycle, motor tricycle or motor quadrucycle between vehicles or abreast a vehicle in the same lane contrary to section 109 (7) of the Act . .	20,000	00

First Column Prescribed Offences	*Second Column Prescribed Fines* K	t
91. A motor cycle, motor tricycle or motor quadrucycle overtaking a vehicle in same lane of traffic with the motor cycle, motor tricycle or motor quadrucycle or overtaking a vehicle at the same time as another motor cycle is also doing so contrary to section 109 (7) of the Act	20,000	00
92. Holding a moving vehicle while riding a motor cycle, motor tricycle or motor quadrucycle contrary to section 109 (8) of the Act	20,000	00
93. Failing to have at least one hand on the handlebars of a motor cycle or to keep all wheels of a motor cycle, motor tricycle or motor quadrucycle in contact with road surface contrary to section 109 (9) of the Act . .	10,000	00
94. Operating a motor cycle, motor cycle, motor tricycle or motor quadrucycle with a sidecar, motor tricycle or motor quadrucycle with the headlights not illuminated contrary to section 109 (10) of the Act	20,000	00
95. Hooting unnecessarily contrary to section 111 of the Act	10,000	00
96. Failing to ride astride on saddle of pedal cycle or to ride in a single file on pedal cycle contrary to section 112 (1) or 112 (2) of the Act	20,000	00
97. A pedal cyclist holding a vehicle in motion contrary to section 112 (3) of the Act	10,000	00
98. Causing a pedal cycle to swerve from side to side contrary to section 112 (4) of the Act	3,000	00
99. Carrying an object or person on a pedal cycle that prevents complete control contrary to section 112 (5) of the Act	3,000	00
100. Failing to have at least one hand on handlebars of pedal cycle contrary to section 112 (6) of the Act . .	3,000	00
101. Failing to ride on portion of the road set aside for pedal cyclist contrary to section 112 (7) of the Act . .	3,000	00
102. Failing to keep all wheels of a pedal cycle in contact with road surface contrary to section 112 (8) of the Act	3,000	00
103. Causing a locomotive to cross road without warning or stopping locomotive or device on railway crossing contrary to section 113 of the Act	100,000	00

First Column Prescribed Offences	*Second Column Prescribed Fines* K	t
104. Leaving or allowing an animal on railway crossing contrary to section 114 (1) of the Act	3,000	00
105. Driving animal without a red cloth during day time or without a red light after sunset contrary to section 114 (5) of the Act	3,000	00
106. Allowing an animal to constitute a danger to traffic contrary to section 114 (6) of the Act	3,000	00
107. Operating an animal-driven vehicle without name and address of owner contrary to section 115 (1) of the Act	2,000	00
108. Not keeping animal-driven vehicle, harness and equipment in efficient and safe condition contrary to section 115 (2) of the Act	2,000	00
109. Permitting an incompetent person to use an animal-driven vehicle or failing to give undivided attention to animal-driven vehicle contrary to section 115 (3) of the Act	2,000	00
110. Having no leader or controller of team of animal contrary to section 115 (5) of the Act	2,000	00
111. Following another animal-driven vehicle outside urban area within too short a distance with animal-driven vehicle contrary to section 115 (6) of the Act	2,000	00
112. A pedestrian entering pedestrian crossing contrary to indications of traffic signal contrary to section 116 (1) of the Act	2,000	00
113. A driver failing to yield right of way to pedestrian contrary to section 116 (2) of the Act	50,000	00
114. A pedestrian suddenly entering in front of a vehicle contrary to section 116 (3) of the Act	2,000	00
115. Passing a vehicle stopped for pedestrian contrary to section 116 (4) of the Act	50,000	00
116. Walking on a roadway where sidewalk abutted contrary to section 117 (1) of the Act	5,000	00
117. Failing to walk on right hand side of road where there is no sidewalk contrary to section 117 (2) of the Act . .	1,000	00
118. Being a source of danger on the roadway or crossing a road when it is not safe or lingering on the road when crossing it contrary to section 117 (5) of the Act . .	1,000	00

First Column Prescribed Offences	*Second Column Prescribed Fines* K	t
119. Crossing a road not at pedestrian crossing or intersection or further than 50 metres therefrom contrary to section 117 (6) of the Act	2,000	00
120. After a traffic police officer has signaled a pedestrian to stop, proceeding before the officer signals to do so contrary to section 117 (7) of the Act	2,000	00
121. Organizing or taking part in a race on a public road without prior written consent of the Director contrary to section 118 (2) of the Act	100,000	00
122. Hindering passage of traffic or placing or abandoning object endangering traffic on road contrary to section 119 of the Act	50,000	00
123. Leaving a vehicle in the same place on a road for more than 72 hours contrary to section 120 (7) of the Act . .	50,000	00
124. Damaging road surface by vehicle or any other thing or causing a wheel to drag or spin on roadway or using chocks or shoes between wheel and road contrary to section 121 of the Act	100,000	00
125. Trading in prohibited urban place or alongside public road outside urban area contrary to section 122 (*a*) of the Act	5,000	00
126. Failing, as a person in charge or owner of a garage or other place repairing vehicles, to keep records of marks, etc., or of vehicle involved in an accident for three years and to produce it on request contrary to section 125 of the Act	100,000	00
127. Furnishing false information for purposes of the Act contrary to section 130 of the Act	50,000	00
128. Not keeping prescribed registers or not recording particulars in registers or failing to furnish information from registers as prescribed contrary to section 138 of the Act	50,000	00
129. Failing to issue or issuing an incorrect certificate of insurance contrary to section 151 (1) of the Act . .	100,000	00
130. Failing to have a certificate of insurance in motor vehicle concerned or failing to produce policy or certificate of insurance contrary to section 151 (2) of the Act—		
(*a*) PSV up to 16 passengers	200,000	00
(*b*) PSV above 16 and not more than 32 passengers . .	500,000	00

First Column Prescribed Offences	*Second Column Prescribed Fines* K	t
(*c*) PSV more than 32 passengers	1,000,000	00
(*d*) Any other vehicle	50,000	00
131. Failing to give required information contrary to section 152 (1) of the Act	10,000	00
132. Failing to notify the Director that insurance policy has been cancelled contrary to section 154 (1) of the Act. .	20,000	00
133. Failing to surrender forthwith any certificate of insurance for a cancelled policy contrary to section 154 (2) of the Act	20,000	00
134. Wrongfully issuing a replacement certificate of insurance contrary to section 155 of the Act	100,000	00
135. Obstructing or hindering the carrying out of any inspection contrary to section 160 (3) of the Act . .	100,000	00
136. Willfully failing to comply with restriction prescribed in Road Traffic Conventions (Conventions of 1926, 1949 and 1968).	15,000	00
137. Contravening requirements of road traffic international and regional agreements	US$ 1,000	
138. Willfully avoiding having a vehicle weighed on a weighbridge contrary to regulation 29 of the Road Traffic (Construction, Equipment and Use) Regulations	US$ 2,000	
139. Driving a vehicle while under the influence of intoxicating liquor or drugs contrary to section 128 (1) of the Act—		
(*a*) Driver found drunk between 0.08-0.1g/210ml (breath)	30,000	00
(*b*) Driver found drunk between 0.11-0.13g/210ml (breath)	60,000	00
(*c*) Driver found drunk between 0.14-0.16g/210ml (breath)	80,000	00
(*d*) Driver found drunk between 0.17-0.2g/210ml (breath)	100,000	00

First Column Prescribed Offences	*Second Column Prescribed Fines* K t
(*e*) Above 0.2g/210ml (breath)	a fine of K200,000 or a term of three years imprisonment, and suspension from driving for a period of 1 year.
140. Driving a vehicle exceeding speed limits (SL) or contrary to prevailing conditions contrary to section 92 (4) of the Act—	
(*a*) Combination/goods vehicle—	
(i) Operate comb./goods VEH 91-95 km/h in excess of 80km/h SL	20,000 00
(ii) Operate comb./goods VEH 96-100 km/h in excess of 80km/h SL	30,000 00
(iii) Operate comb./goods VEH 101-105 km/h in excess of 80km/h SL	40,000 00
(iv) Operate comb./goods VEH 106-110 km/h in excess of 80km/h SL	50,000 00
(v) Operate comb./goods VEH 111-115 km/h in excess of 80km/h SL	80,000 00
(vi) Operate comb./goods VEH 116-120 km/h in excess of 80km/h SL	100,000 00
(vii) Operate comb./goods VEH 120+ km/h in excess of 80km/h SL	150,000 00
(viii) For three subsequent violations within a period of six months	a fine of K150,000 and suspension from driving for 1 year.
(*b*) Buses and minibuses with capacity greater than 16 seating capacity—	
(i) Operate bus, minibus >16 seats 91-95km/h in excess of 80km/h SL	20,000 00
(ii) Operate bus, minibus >16 seats 96-100km/h in excess of 80km/h SL	30,000 00

First Column Prescribed Offences	*Second Column Prescribed Fines* K	t
(iiii) Operate bus, minibus >16 seats 101-105km/h in excess of 80km/h SL . .	40,000	00
(iv) Operate bus, minibus >16 seats 106-110km/h in excess of 80km/h SL . .	50,000	00
(v) Operate bus, minibus >16 seats 111-115km/h in excess of 80km/h SL . .	80,000	00
(vi) Operate bus, minibus >16 seats 116-120km/h in excess of 80km/h SL . .	100,000	00
(vii) Operate bus, minibus >16 seats 120+ km/h in excess of 80km/h SL	150,000	00
(viii) For three subsequent violations within a period of six months	150,000 and suspension from driving for 1 year.	
(*c*) Road section with legal speed limit of 100km/h—		
(i) Driving 111-115 km/h in excess of the 100 km/h SL	20,000	00
(ii) Driving 116-120 km/h in excess of the 100 km/h SL	30,000	00
(iii) Driving 121-125 km/h in excess of the 100 km/h SL	40,000	00
(iv) Driving 126-130 km/h in excess of the 100 km/h SL	50,000	00
(v) Driving 131-135 km/h in excess of the 100 km/h SL	80,000	00
(vi) Driving 136-140 km/h in excess of the 100 km/h SL	100,000	00
(vii) Driving 140+ km/h in excess of the 100 km/h SL	150,000	00
(viii) For three subsequent violations within a period of six months	150,000 and suspension from driving for 1 year.	
(*d*) Vehicles with seating capacity less than or equal to 16 seats—		
(i) Driving vehicle <16 seats 101-105 km/h in excess of 90 km/h SL	20,000	00

	First Column Prescribed Offences	*Second Column Prescribed Fines* K	t
(ii)	Driving vehicle <16 seats 106-110 km/h in excess of 90 km/h SL	30,000	00
(iii)	Driving vehicle <16 seats 111-115 km/h in excess of 90 km/h SL	40,000	00
(iv)	Driving vehicle <16 seats 116-120 km/h in excess of 90 km/h SL	50,000	00
(v)	Driving vehicle <16 seats 121-125 km/h in excess of 90 km/h SL	80,000	00
(vi)	Driving vehicle <16 seats 126-130 km/h in excess of 90 km/h SL	100,000	00
(vii)	Driving vehicle <16 seats 130+ km/h in excess of the 90 km/h SL	150,000	00
(viii)	For three subsequent violations within a period of six months	150,000 and suspension from driving for 1 year.	
(*e*)	Road section with legal speed limit of 80 km/h—		
(i)	Driving 91-95 km/h in excess of the 80 km/h SL	20,000	00
(ii)	Driving 96-100 km/h in excess of the 80 km/h SL	30,000	00
(iii)	Driving 101-105 km/h in excess of the 80 km/h SL	40,000	00
(iv)	Driving 106-110 km/h in excess of the 80 km/h SL	50,000	00
(v)	Driving 111-115 km/h in excess of the 80 km/h SL	80,000	00
(vi)	Driving 116-120 km/h in excess of the 80 km/h SL	100,000	00
(vii)	Driving 120+ km/h in excess of the 80 km/h SL	150,000	00
(viii)	For three subsequent violations within a period of six months	150,000 and suspension from driving for 1 year.	

First Column Prescribed Offences	*Second Column Prescribed Fines*	
	K	*t*
(*f*) Road section with legal speed limit of 50km/h—		
(i) Driving 61-65 km/h in excess of the 50 km/h SL	20,000	00
(ii) Driving 66-70 km/h in excess of the 50 km/h SL	30,000	00
(iii) Driving 71-75 km/h in excess of the 50 km/h SL	40,000	00
(iv) Driving 76-80 km/h in excess of the 50 km/h SL	50,000	00
(v) Driving 81-85 km/h in excess of the 50 km/h SL	80,000	00
(vi) Driving 86-90 km/h in excess of the 50 km/h SL	100,000	00
(vii) Driving 90+ km/h in excess of the 50 km/h SL	150,000	00
(viii) For three subsequent violations within a period of six months	150,000 and suspension from driving for 1 year.	
(*g*) Road section with temporary designated legal speed limits the following fines will apply for exceeding any posted speed limit not indicated above—		
(i) Exceeding by 10km/h-15km/h	20,000	00
(ii) Exceeding by 15km/h-20km/h	30,000	00
(iii) Exceeding by 20km/h-25km/h	40,000	00
(iv) Exceeding by 25km/h-30km/h	50,000	00
(v) Exceeding by 30km/h-35km/h	80,000	00
(vi) Exceeding by 35km/h-40km/h	100,000	00
(vii) Exceeding beyond 40km/h	150,000	00
(viii) For three subsequent violations within a period of six months	150,000 and suspension from driving for 1 year.	

First Column Prescribed Offences	*Second Column Prescribed Fines* K	t
141. Impersonating a traffic law enforcement officer contrary to section 10 (1) of the Act	100,000	00
142. Failure to manage a broken down vehicle on a public road by failing to place warning devices contrary to regulation 102 of the Road Traffic (Construction, Equipment and Use) Regulations	50,000	00
143. Carrying unauthorized passengers for reward in a goods vehicle contrary to regulation 110 of the Road Traffic (Construction, Equipment and Use) Regulations . . .	100,000	00
144. Failing to fasten seatbelt contrary to regulation 101 (4) of Road Traffic (Construction, Equipment and Use) Regulations (per vehicle occupant)	10,000	00
145. Inducing a traffic enforcement officer contrary to section 10 (2) of the Act	100,000	00
146. Failing to carry required equipment in a vehicle (triangle plates, spare tyre for all vehicles, fire extinguisher for public service vehicles and dangerous goods vehicles) contrary to Road Traffic Regulations 102 and 120 of the Road Traffic (Construction, Equipment and Use) Regulations	5,000 per item	00
147. Failing to display identification on a motor vehicle as prescribed by regulation 33 of the Road Traffic (Vehicle Registration and Licensing) Regulations . .	5,000	00
148. Fitting identification lamps on a vehicle contrary to regulation 64 of the Road Traffic Regulations (Construction, Equipment and Use) Regulations . .	50,000	00

ROAD TRAFFIC (REGISTRATION AND LICENSING) REGULATIONS

G.N. 12/2000
24/2010

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FIRST SCHEDULE

SECOND SCHEDULE

PART I

PRELIMINARY

1. These Regulations may be cited as the Road Traffic (Registration and Licensing) Regulations. Citation

2. In these Regulations, unless the context otherwise requires— Interpretation

"acceptable identification" means—

(*a*) a Malaŵi driver's licence or passport;

(*b*) in the case of a person not permanently resident in Malaŵi, an identity document issued by a foreign country; or

(*c*) in the case of a person or body of persons carrying on a business, a certified copy of the business licence;

"body of persons" in relation to the title holder or owner of a motor vehicle means, a body of persons whether a body corporate or not, and includes two or more persons who are joint title holders or owners of such motor vehicle, but excluding joint title holders or owners who are husband and wife married in community of property;

"convention" means the International Convention relative to Motor Traffic (Paris, 1926), the United Nations Convention on Road Traffic (Geneva, 1949) or the United Nations Convention on Road Traffic (Vienna, 1968), and any subsequent related Convention ratified by the Republic of Malaŵi, whichever Convention is applicable to Malaŵi, and any amendment thereof;

"goods vehicle" means a motor vehicle constructed or adapted for use primarily for the carriage or haulage of goods;

"motor trade number" means a motor trade number referred to in regulation 33;

"motor trade number registration certificate" means the certificate referred to in regulation 35;

"motor trade number licence" means the licence referred to in regulation 39;

"motor transport contractor" means a person who carries on a business of delivering motor vehicles of which he is not the owner;

"motor vehicle licence" means a licence referred to in regulation 27;

"registration certificate" means a certificate issued to the title holder of a motor vehicle under regulation 16;

"registration number" means a number or a combination of a letter or letter and a number referred to in regulation 17 and includes a vanity registration number;

"special permit" means a permit referred to in regulation 47 (1) (*b*);

"temporary permit" means a permit referred to in regulation 47 (1) (*a*); and

"vanity registration number" means a particular combination of letters or letters and numbers requested by the title holder referred to in regulation 17 (*b*).

PART II
Forms

Forms

3. The forms set forth in the First Schedule shall be used in all cases to which they are respectively applicable in carrying out the Act and these Regulations.

Particulars in application, etc.

4. The particulars to be entered on or contained in any application, registration certificate, vehicle licence and any other licences and certificates to which these Regulations apply shall, unless otherwise set forth in these Regulations, be such as are necessary from the respective form of such application, registration certificate, vehicle licence and other licences and certificates as approved by the Minister.

PART III
Registration of Motor Vehicles

Motor vehicle to be registered

5.—(1) Subject to the provisions of regulations 6 and 7, every motor vehicle in Malaŵi shall, whether or not it is operated on a public road, be registered by the title holder thereof, in accordance with the provisions of this Part.

(2) No person shall operate on a public road any motor vehicle which is not registered by the title holder thereof, in accordance with the provisions of this Part.

Motor vehicle deemed to be registered

6.—(1) Subject to the provisions of subregulation (3), a motor vehicle which is registered and licensed in terms of any law of a prescribed territory and which was not permanently or ordinarily kept in Malaŵi when it was registered and licensed in terms of such law, shall be deemed to be registered in terms of this Part while being operated in Malaŵi by or on behalf of the person in whose name such vehicle is registered and licensed.

(2) Subject to the provisions of subregulation (3), a motor vehicle which is registered in accordance with a law of a contracting State to the Convention and in accordance with the terms of the Convention, shall be deemed to be registered in terms of this Part while in Malaŵi—

(*a*) during a continuous period of twelve months calculated from the date on which such motor vehicle is brought into Malaŵi; or

(*b*) until the registration ceases to be of force and effect in terms of the Convention:

Provided whichever event is the earlier, and which such may, notwithstanding anything to the contrary contained in this Part, be operated on a public road while it complies with the provisions of the Convention.

(3) A motor vehicle referred to in subregulation (1) or (2) shall no longer be deemed to be registered—

(*a*) if such vehicle does not comply with the provisions of subregulation (1) or (2) while in Malaŵi;

(*b*) in the case of a motor vehicle brought into Malaŵi by a person resident in Malaŵi, after a period of thirty days from the date of entry of such motor vehicle into Malaŵi; or

(*c*) in the case of a motor vehicle brought into Malaŵi by a person who obtains permission in terms of any law for residence in Malaŵi for a total consecutive period longer than one hundred eighty days after thirty days from the date of receiving such permission.

Motor vehicle exempt from registration

7.—(1) A motor vehicle—

(*a*) which has crawler tracks;

(*b*) which is not operated on a public road;

(*c*) which by reason of its dimensions or the mass thereof or the mass of a part thereof may not be operated on a public road in terms of the Act; and which is not so operated; and

(*d*) which is designed exclusively for racing, if such motor vehicle is not operated on a public road,

shall not be required to be registered in accordance with the provisions of this Part.

(2) For the purpose of subregulation (1) (*b*), the words "operated on a public road" shall not be so construed to include the presence of such motor vehicle on a public road for the purpose of—

(*a*) being driven to the premises of the owner in order to take delivery thereof;

(*b*) crossing a public road from the premises of the owner to another over a distance of not more than one kilometre; or

(*c*) proceeding to or from a place where repairs are to be or have been effected to such motor vehicle.

(3) If a motor vehicle exempted in terms of subregulation (1) (*b*) is operated on a public road contrary to the provisions of subregulation (2), the title holder of such motor vehicle shall be liable for the registration thereof on the date referred to in regulation 9 (*a*) (vii).

Date on which registration of motor vehicle becomes null and void

8. The registration of a motor vehicle becomes null and void on the date—

(*a*) of change of title holder or of owner of such motor vehicle to a partnership and a change of title holder or owner of such motor vehicle occurs by reason of one of the partners dying or ceasing to be a partner of such partnership or a new partner being admitted thereto, the Director may, upon written application to him by or on behalf of such partnership, determine that no change of title holder or owner shall be deemed to have occurred in respect of such motor vehicle and such determination shall be final;

(*b*) on which a deregistration certificate in respect of the motor vehicle concerned is issued in terms of regulation 29 (6) (*b*);

(*c*) on which a deregistration certificate in respect of the motor vehicle concerned is issued in terms of regulation 63 (3) (*d*);

(*d*) if the motor vehicle is subject to an instalment sale transaction, or leasing transaction, twenty-eight days from the date of repossession of the motor vehicle concerned by the title holder;

(*e*) on which a deregistration certificate in respect of the motor vehicle concerned is issued in terms of regulation 62 (4) (*c*);

(*f*) on which the motor vehicle is acquired or the estate is settled, whichever date is the earlier, if the motor vehicle is acquired from the estate of a deceased person; or

(*g*) determined by the Director in any circumstances not contemplated in this regulation.

Date and conditions on which motor vehicle is to be registered

9.—(1) Subject to the provisions of subregulation (2), liability for the regulation of a motor vehicle shall arise—

(*a*) in the case of a motor vehicle to be registered for the first time in Malaŵi—

(i) if the motor vehicle was manufactured in Malaŵi, on the date of completion of manufacture of such motor vehicle;

(ii) if the motor vehicle was built by a builder in Malaŵi, on the date of completion of the building of such motor vehicle;

(iii) if the motor vehicle was built up from parts by a person other than a builder, on the date of completion of the building of such motor vehicle;

(iv) if the motor vehicle was imported by an importer, on the date of arrival of such vehicle in Malaŵi or on the date on which a customs clearance certificate for such motor vehicle is issued by or on behalf of the Controller of Customs, if applicable;

(v) subject to the provisions of regulation 6, if the motor vehicle was acquired outside Malaŵi, on the date such motor vehicle is brought into Malaŵi or on the date on which a customs clearance certificate for such motor vehicle is issued by or on behalf of the Controller of Customs, if applicable;

(vi) if it is a motor vehicle which is deemed to be registered in terms of regulation 6, on the date it ceases to be so deemed; or

(vii) if it is a motor vehicle which is exempt from registration in terms of regulation 7, and such exemption is withdrawn or is no longer applicable, on the date of such withdrawal or when such exemption no longer applies;

(*b*) in the case of a motor vehicle previously registered in Malaŵi—

(i) on the date the registration of such vehicle becomes null and void, in terms of regulation 8 (*a*), (*b*), (*d*) or (*f*) or, if applicable, 8 (*g*); or

(ii) which was stolen and deregistered in terms of regulation 62 (4) and is recovered, on the date of release of such motor vehicle by the Malaŵi Police Service; or

(*c*) in the circumstances not contemplated in the forgoing provisions of this subregulation, on the date determined by the Director.

(2) Notwithstanding anything to the contrary contained in this Part, a motor vehicle referred to in subregulation (1) (*b*) may be operated on a public road for a period of fourteen days after the date of liability referred to in this regulation in order to register such vehicle while the registration number allocated thereto is displayed in the manner contemplated in regulation 19.

(3) If it is in issue in any civil or criminal proceedings whether an alleged date is the date referred to in subregulation (1), the date alleged to be the date referred to in subregulation (1) shall, until the contrary is proved, be deemed to be the date referred to in the said subregulation.

Application for registration of motor vehicle

10.—(1) An application for the registration of a motor vehicle shall be made by the title holder, within fourteen days after the date of liability referred to in regulation 9, to the Director on Form MVRA in the First Schedule.

(2) An application referred to in subregulation (1) shall be accompanied by—

(*a*) the acceptable identification of the title holder of the motor vehicle and, in the case of a body of persons, that of his proxy and representative and a letter of proxy;

(*b*) the acceptable identification of the owner of the motor vehicle and, in the case of a body of persons, that of his proxy and representative and a letter of proxy;

(*c*) the appropriate prescribed registration fees;

(*d*) if the motor vehicle is registered, the registration certificate concerned;

(*e*) in the case of a motor vehicle which is being registered for the first time—

(i) a completed Form MVRA;

(ii) if it is a new motor vehicle, a certificate from the manufacturer, builder or importer of such motor vehicle containing—

(*aa*) the chassis number expressed in not more than 17 alpha-numerical characters;

(*bb*) if applicable, the engine number expressed in not more than 20 alpha-numerical characters;

(*cc*) the make expressed in not more than 30 alpha-numerical characters;

(*dd*) the model name expressed in not more than 20 alpha-numerical characters and the model-derivative expressed in not more than 20 alpha-numerical characters, neither of which, for the purpose of this subregulation shall include the year of manufacture;

(*ee*) other than in the case of a motorcycle, the tare in kilograms expressed in not more than five figures;

(*ff*) if applicable, the engine capacity in cubic centimetres expressed in not more than five figures;

(*gg*) other than in the case of a motorcycle, the gross vehicle mass in kilograms expressed in not more than six figures;

(*hh*) if applicable, the net engine power to the nearest kilowatt expressed in not more than three figures; and

(ii) the main colour of the motor vehicle concerned.

(*f*) if the tare has changed due to any reason, a certificate referred to in regulation 73;

(*g*) if applicable, a Malaŵi Police Service clearance of the motor vehicle; and

(*h*) if required by the Director—

(i) proof of the right to be registered as the title holder of the motor vehicle concerned;

(ii) a customs clearance certificate for the motor vehicle concerned or other proof of compliance with the provisions of the customs and excise legislation;

(iii) where doubt exists regarding the tare of the motor vehicle concerned, a certificate referred to in regulation 74; or

(iv) any other documentation required by the Director.

(3) If liability for the registration of a motor vehicle arises due to the sale of such motor vehicle by a motor dealer, the motor dealer concerned shall submit the application referred to in subregulation (1) to the Director.

(4) An application for the vanity registration of a motor vehicle shall be made—

(*a*) in the case of a motor vehicle subject to regulations 8 and 9 in accordance with regulations 10 (1) to (3) inclusive;

(*b*) in the case of a motor vehicle currently registered in Malaŵi and not subject to regulation 9 for which the title holder seeks a new registration number on Form MVRA and shall be accompanied by—

(i) the current registration certificate; and

(ii) the prescribed re-registration fee;

(*c*) on the condition that any application referred to in paragraph (*b*) shall be subject to an investigation of the current vehicle registration followed by a mandatory waiting period of twenty-eight days.

Requirements for registration of a motor vehicle of Malaŵi origin

11.—(1) An application for the registration of a motor vehicle of Malaŵi origin shall, in addition to the requirements and documents referred to in regulation 10, be accompanied by—

(*a*) in the case of a motor vehicle contemplated in regulation 9 (1) (*a*) (i), (ii) and (iii) a customs clearance certificate for such motor vehicle issued by or on behalf of the Controller of Customs indicating that the origin of such motor vehicle is Malaŵi; and

(*b*) in the case of a motor vehicle contemplated in regulation 9 (1) (*a*) (iii)—

(i) an affidavit stating the parts used, the person from whom such parts were acquired and, attached to such form, the receipts of the purchase or donation of such parts;

(ii) if such motor vehicle has been built up from a motor vehicle which has become permanently unfit for use as a motor vehicle and has been deregistered in terms of regulation 63 (3), the deregistration certificate in respect of such motor vehicle; and

(iii) if required by the Director, a Malaŵi Police Service clearance of the motor vehicle concerned.

Requirement for deregistered motor vehicle

12. An application for the registration of a motor vehicle referred to in regulation 8 (*b*) shall, in addition to the requirements and documents referred to in regulation 10, be accompanied by the deregistration certificate issued in respect of such vehicle.

Requirements for registration of motor vehicle acquired from the estate of deceased person

13. An application for the registration of a motor vehicle referred to in regulation 8 (*f*) shall, in addition to the requirements and documents referred to in regulation 10, be accompanied by a document substantiating the acquisition of such motor vehicle.

Requirements for registration of motor vehicle acquired as a result of repossession by title holder

14. An application for the registration of a motor vehicle referred to in regulation 8 (*d*) shall, in addition to the requirements and documents referred to in regulation 10, be accompanied by a certified copy of—

(*a*) the court order; or

(*b*) the voluntary surrender documentation:

Provided that an affidavit made by the title holder of that motor vehicle explaining the circumstances under which the vehicle was repossessed may be submitted in the case where the voluntary surrender documentation cannot be obtained, as proof as the right of the title holder to repossess such motor vehicle.

Requirements for registration of motor vehicle which has previously been registered outside Malaŵi

15. An application for the registration of a motor vehicle referred to in regulation 9 (1) (*a*), (v) or (vi) shall, in addition to the requirements and documents referred to in regulation 10, be accompanied by—

(*a*) a customs clearance certificate for such motor vehicle issued by or on behalf of the Controller of Customs;

(*b*) if such motor vehicle is registered outside Malaŵi, the documents relating to the registration and licensing of the motor vehicle concerned issued in the country where such motor vehicle is registered; and

(*c*) a Malaŵi Police Service clearance of the motor vehicle.

Manner of registration

16.—(1) On the receipt of the application referred to in regulation 10, the Director may, and if the applicant so requires, shall issue an assessment showing the penalties and fees referred to in regulation 10 (2) (*c*), for the registration of the motor vehicle concerned.

(2) The Director shall, subject to the provisions of subregulation (3) and regulation 67 (2) on payment of the amount referred to in subregulation (1), and if satisfied that the application is in order—

(*a*) register the motor vehicle concerned;

(*b*) if applicable, allocate a registration number to the motor vehicle concerned in the form referred to in regulation 17;

(*c*) record the particulars in relation to the—

(i) motor vehicle concerned; and

(ii) title holder and owner of such motor vehicle, in the register of motor vehicles; and

(*d*) issue a motor vehicle registration certificate.

(3) The Director shall not issue a vanity registration number for any motor vehicle currently registered unless the title holder of such motor vehicle—

(*a*) surrenders to the Director in respect of such motor vehicle—

(i) the current valid registration certificate;

(ii) the current valid motor vehicle licence; and

(iii) the registration plates bearing the current registration number; and

(*b*) produces in respect of such vehicle an official receipt for payment of—

(i) the vanity registration fee;

(ii) the vanity motor vehicle licence fee in terms of regulation 26 (2) (*b*).

(4) The title holder shall upon registration of the motor vehicle concerned, forthwith notify the owner of such registration.

Registration number of motor vehicle

17. Every motor vehicle registered shall be allocated a registration number in the form of—

(*a*) those set forth in the Second Schedule; or

(*b*) a particular combination of letters and numbers requested by the title holder to be referred to as a vanity registration number: G.N. 24/2010

Provided that such vanity registration number—

(i) conforms to "MBS 639"; and

(ii) is not already allocated or otherwise prohibited.

Director may change allocated registration number

18. The Director may, upon such conditions as he determines, change the registration number allocated to a motor vehicle.

Display of registration number

19.—(1) The registration number of a motor vehicle shall be displayed on a plate bearing—

(*a*) directional positive identification images "MW" and "MBS 639"; G.N. 24/2010

(*b*) two sinusoidal virtual security threads that are visibly distinct from an approximate distance of 0 to 6 metres viewed at an angle not greater that 45 degrees from the head-on viewing position and—

(i) each thread shall appear to float above the other thread; and

(ii) one thread shall appear to float below the warranty marks of the retro-reflective sheeting;

(*c*) 27 mm high and 36 mm wide Malaŵi Flag printed on the left hand up corner of the registration plate viewed from the head-on viewing position;

(*d*) square hologram marked 'ok'; and

(*e*) serial numbers and date of expiry of reflective material.

(2) The registration plate referred to in subregulation (1) shall be rectangular in shape and subject to subregulations (3), (4), (5), (6) and (7), the base colour of registration plate shall be black covered with yellow retro-reflective sheeting and the letters and figures thereon shall be black. G.N. 24/2010

(3) The base colour of a registration plate bearing a registration number of a public service vehicle shall be red covered with white retro-reflective sheeting and the letters and figures thereon shall be red. G.N. 24/2010

(4) The base colour of a registration plate bearing a registration number on a motor vehicle used under the authority of a motor trade licence number shall be black covered with red retro-reflective sheeting and the letters and figures thereon shall be black. G.N. 24/2010

G.N. 24/2010 (5) The base colour of a registration plate bearing a registration number on a motor vehicle belonging to or registered in the name of statutory corporation shall be blue covered with white retro-reflective sheeting and the letters and figures thereon shall be blue.

G.N. 24/2010 (6) The base colour of a registration plate bearing a registration number on motor vehicle belonging to—

(*a*) or registered, in the name of a diplomatic mission in Malaŵi, or a member of such a mission, with the status of diplomatic agent; or

(*b*) the Government and assigned as an official vehicle to a Minister or a Deputy Minister,

shall be black covered with white retro-reflective sheeting and the letters and figures thereon shall be black.

G.N. 24/2010 (7) The base colour of a registration plate bearing a registration number on motor vehicle belonging to or registered in the name of a consulate established in Malaŵi, or of a consular representative, shall be green covered with white retro-reflective sheeting and the letters and figures thereon shall be green.

(8) The letters and figures on a registration plate shall be arranged—

(*a*) with all the letters and figures in one line; or

(*b*) with the letters preceding the figures in one line and immediately thereunder, the figures in one line.

(9) All letters and figures on every registration plate shall be in a straight block form and not less than 75 millimetres high. All letters shall be in upper case and every part of every letter and figure shall be at least 11 millimetres wide and the total width of the space taken by every letter or figure except in the case of the figure "1" shall be at least 35 millimetres:

Provided that in the case of a motorcycle, motor tricycle or motor quadrucycle the letters and figures shall not be less than half of the above dimensions.

(10) The space between adjoining letters and adjoining figures on the registration plate shall be 12 millimetres and there shall be a margin between the nearest part of any letter or figure and the top and bottom of the registration plate at least 12 millimetres and a margin between the nearest part of any letter or figures and the sides of the registration plate of at least 25 millimetres. The space between the letter or letters and the figure shall be 40 millimetres and if applicable the space between an upper and lower line shall be 19 millimetres.

(11) The owner of a motor vehicle shall cause the registration plate of such motor vehicle to be affixed thereto, from the date of licensing of such motor vehicle, in the manner referred to in subregulation (13), whether or not such motor vehicle is operated on a public road:

Provided that the provisions of this subregulation shall not apply in respect of a registration plate which is removed from such motor vehicle for the purpose of effecting repairs to such motor vehicle or registration plate, and while such motor vehicle is not operated on a public road.

(12) No person shall operate on a public road a motor vehicle—

(*a*) on which a registration number or anything purporting to be a registration number, which is not applicable to such vehicle, is displayed;

(*b*) on which the registration number is in any way obscured or has become illegible, except, if such registration number is temporarily obscured or illegible by reason of a cause beyond the control of the driver of such motor vehicle;

(*c*) on which any design appears on the registration plate or if such plate is fitted to a registration plate holder, on such holder; and

(*d*) on which there appears within 150 millimetres of the registration number applicable to such motor vehicle, a design, ornamentation, figure or letter which is not a component part of the standard equipment or construction of that motor vehicle:

Provided that the provisions of this paragraph shall not apply to a distinguishing sign of the country of registration affixed in terms of the Convention;

(*e*) which, if such a motor vehicle is deemed to be registered and licensed by reason of it being registered or licensed in a prescribed territory, does not comply with the legislation of that prescribed territory relating to the registration and licensing of motor vehicles and matters in connexion therewith;

(*f*) which is registered in a prescribed territory, without displaying the distinguishing sign of the country of registration allocated in terms of the Convention;

(*g*) if such vehicle is registered in Malaŵi and displays thereon a distinguishing sign other than the distinguishing sign allocated to Malaŵi in terms of the Convention; G.N. 24/2010

(*h*) in which a plate is carried on which a registration number appears which is not applicable to such motor vehicle or anything purporting to be a registration number, unless he can prove that such plate was not carried with criminal intent; G.N. 24/2010

G.N. 24/2010 (*i*) on which a registration plate has no self-destructive certification mark; and

G.N. 24/2010 (*j*) on which a registration plate has a reflective material that has expired.

(13) A registration plate shall be affixed—

G.N. 24/2010 (*a*) to motor vehicle within 20mm from the edges of the registration plate by means of 4mm rivets or 4mm one way self-taping screws;

(*b*) to both the front and rear of a motor vehicle:

Provided that a motorcycle, motor tricycle, motor quadrucycle or trailer may be equipped with only one registration plate on the back of such motorcycle, motor tricycle, motor quadrucycle or trailer;

(*c*) in an upright position or within 15 degrees of such position;

(*d*) in such a manner that each letter and figure thereon is clearly legible; and

(*e*) in such a manner that the whole registration late is clearly visible.

(14) A registration plate shall, in the case of—

(*a*) a double-deck bus of which the engine is at the rear, be affixed not higher than 1,900 millimetres from ground level; or

(*b*) any other motor vehicle, be affixed not higher than 1,500 millimetres from ground level.

(15) The provisions of subregulation (13) in relation to legibility and visibility of a registration plate which is affixed to the back of a motor vehicle, shall not apply to a motor vehicle which is towing another vehicle.

G.N. 24/2010 (15A) The reflective material on a registration plate shall be valid for seven years from the date the reflective material is stuck on the registration plate.

(16) No person shall, fourteen days after the entry into force of these Regulations, operate on a public road a motor vehicle whose registration number is not displayed on a registration plate in accordance with subregulation (1).

(17) Any person who contravenes this regulation shall be guilty of an offence.

Deregistration of registered motor vehicle which becomes exempt from registration

20.—(1) If a registered motor vehicle becomes exempt from registration under regulation 8, the title holder of such motor vehicle shall apply to the Director for the deregistration of such motor vehicle on Form MVRA.

(2) The application referred to in subregulation (1) shall be accompanied by—

(*a*) the acceptable identification of the title holder and, if the title holder is a body of persons, that of his proxy and representative and a letter of proxy; and

(*b*) the registration certificate of the motor vehicle concerned.

(3) On receipt of the application referred to in subregulation (1), the Director shall—

(*a*) satisfy himself that the application is in order; and

(*b*) update the particulars pertaining to the motor vehicle concerned in the register of motor vehicles.

PART IV

Licensing of Motor Vehicles

Motor vehicle to be licensed

21.—(1) Subject to the provisions of regulations 22 and 23, every motor vehicle in Malaŵi shall, whether or not it is operated on a public road, be licensed by the owner of such motor vehicle, in accordance with the provisions of this Part.

(2) No person shall operate on a public road any motor vehicle which is not licensed by the owner thereof, in accordance with the provisions of this Part.

Motor vehicle deemed to be licensed

22.—(1) A motor vehicle which is deemed to be registered under regulation 6 shall be deemed, notwithstanding anything to the contrary contained in this Part to be licensed in terms of this Part.

(2) A motor vehicle owned by a motor dealer for the purposes of sale or exchange in the course of his business as a motor dealer and if such motor vehicle is not operated on a public road, except under a motor trade number, shall be deemed, notwithstanding anything to the contrary in this Part, to be licensed in terms of this Part.

(3) A motor vehicle referred to in subregulation (1), shall no longer be deemed to be licensed, with effect from the date referred to in regulation 6 (3), and the owner of such motor vehicle shall be liable to licence such motor vehicle in terms of this Part.

Motor vehicle exempt from licensing

23.—(1) A motor vehicle which is exempt from registration in terms of regulation 7 shall not be required to be licensed in terms of this Part.

(2) A motor vehicle—

(*a*) which is a Government vehicle allocated for use by the President;

(*b*) which is an ambulance owned by the Government of Malaŵi;

(*c*) which is used solely for charitable purposes;

(*d*) which is designed or adapted solely or primarily for fighting fires;

(*e*) which is self-propelled and is a tractor, water boring machine, threshing machine, harvester, harrow, mower, baler, scraper, leveler, spraying machine, crane plough or a similar vehicle;

(*f*) which is not designed principally for the conveyance of goods or persons or both on a public road and which incorporates permanently machinery for the purpose of—

(i) road-making;

(ii) road-sweeping;

(iii) earthmoving;

(iv) excavation;

(v) pipe-laying;

(vi) construction;

(vii) water-boring;

(viii) loading;

(ix) lifting;

(x) internal handling;

(xi) drilling; or

(xii) any like purpose determined by the Director;

(*g*) which is commonly known as a racing car or a racing motorcycle, which is used solely for racing purposes and such motor vehicle is not operated on a public road; or

(*h*) which may only be operated on a public road under an exemption in terms of the Act,

shall not be required to be licensed under this Part.

(2) For the purposes of this regulation, the words "operated on a public road" shall not be construed to include the presence of such motor vehicle on a public road for the purpose of—

(*a*) being driven to the premises of the owner in order to take delivery thereof;

(*b*) crossing a public road from the premises of the owner to another over a distance of not more than one kilometre; or

(*c*) proceeding to or from a place where repairs are to be or have been effected to such motor vehicle.

Date on which motor vehicle licence becomes null and void

24. The motor vehicle licence shall become null and void on the date—

(*a*) referred to in regulation 30 (1);

(*b*) on which a new registration number is allocated as referred to in regulation 18;

(*c*) of issue of an acknowledgment of receipt in terms of regulation 62 (4) (*d*) or 63 (3) (*c*) in respect of the motor vehicle concerned.

(*d*) of deregistration in terms of this Chapter;

(*e*) referred to in regulation 8 (*a*);

(*f*) on which the motor vehicle is acquired or the estate is settled, whichever date is the earlier, if the motor vehicle concerned is acquired from the estate of a deceased person;

(*g*) if the motor vehicle is subject to an instalment sale transaction or leasing transaction, twenty-eight days from the date of repossession by the title holder; or

(*h*) determined by the Director in any circumstances not contemplated in this regulation.

Date on which motor vehicle is to be licensed

25.—(1) Subject to the provisions of subregulation (3), liability for the licensing of a motor vehicle shall arise on the date—

(*a*) on which liability for the registration of such motor vehicle arises in terms of regulation 9;

(*b*) on which a vanity registration number is allocated in terms of regulation 16;

(*c*) on which a new registration number is allocated in terms of regulation 18;

(*d*) referred to in regulation 30 (1);

(*e*) of expiry of the licence of such motor vehicle in terms of regulation 28;

(*f*) of release by the Malaŵi Police Service, if it is a motor vehicle which has been stolen and has not been deregistered under regulation 62 (4), and has been recovered; or

(*g*) determined by the Director in any circumstances not contemplated in the forgoing provisions.

(2) The date of liability referred to in subregulation (1) (*e*) shall be construed to arise on the first day of the month following the date of expiry of the existing licence.

(3) Notwithstanding anything to the contrary contained in this Part, a motor vehicle referred to in subregulation (1) may, during a period of seven days after the date referred to in that subregulation, be operated on a public road while the registration number allocated to such motor vehicle prior to the date on which the motor vehicle licence became null and void is displayed in the manner contemplated in regulation 20.

(4) If it is in issue in any civil or criminal proceedings whether an alleged date is the date referred to in subregulation (1), the date alleged to be the date referred to in subregulation (1) shall, until the contrary is proven, be deemed to be the date referred to in the said subregulation.

Application for licensing of motor vehicle

26.—(1) An application for the licensing of a motor vehicle, shall be made by the owner of such motor vehicle to the Director, in such manner as approved by the Minister, within seven days after the date of liability referred to in regulation 25:

Provided that the seven day grace period contained in this subregulation shall not apply to any motor vehicle contemplated in regulation 25 (1) (*b*).

(2) An application referred to in subregulation (1) shall be accompanied by—

(*a*) acceptable identification of the owner of the motor vehicle and, if the owner is a body of persons, acceptable identification of his proxy and representative and a letter of proxy;

(*b*) the appropriate motor vehicle licence fees referred to in the First Schedule;

(*c*) if applicable, for penalties and arrear licence fees referred to in regulations 65 and 67;

(*d*) a certificate of insurance valid for twelve months;

(*e*) a valid registration certificate; and

(*f*) if applicable, proof of a valid certificate of fitness.

(3) If an application is made in terms of subregulation (1) and the owner of the motor vehicle submits a motor vehicle licence of which the period of validity has not yet expired, the fees payable for the licence, so applied for shall be reduced by one-twelfth per month or part thereof for every month such licence is still valid:

Provided that the motor vehicle licence fees payable for the licence in respect of a motor vehicle referred to in regulations 20, 62 (1) (*c*) and 63 (1) (*b*), shall not be so reduced.

Manner of licensing of motor vehicle

27.—(1) On receipt of the application referred to in regulation 26, the Director may, and if the application so requires, shall issue an assessment showing the fees and penalties referred to in regulation 26 (2) (*b*) and (*c*), for the licensing of the motor vehicle concerned.

(2) The Director shall, subject to the provisions of regulation 67 (2), on submission of the amount referred to in subregulation (1), and if satisfied that the application is in order—

(*a*) licence the motor vehicle concerned;

(*b*) update the particulars pertaining to such motor vehicle in the register of motor vehicles;

(*c*) issue a motor vehicle licence of the type approved by the Minister to the owner of such motor vehicle.

Period of validity of motor vehicle licence

28.—(1) A motor vehicle licence shall be valid for a period of twelve months from the first day of the month in which such licence was issued and the date of expiry of such licence shall be shown on the motor vehicle licence:

Provided that if the owner applies for the renewal of the current licence under regulation 29 (2) before the expiry date of such licence, the period of validity of the new licence shall be calculated from the first day of the month which follows on the expiry date of the current licence.

(2) A motor vehicle licence shall not be transferred to the new title holder or owner of the motor vehicle upon transfer of title or change of ownership of such motor vehicle.

Annual renewal of motor vehicle licence

29.—(1) The Director may, if he deems it expedient, forward a motor vehicle licence renewal to the postal address of the owner of the motor vehicle, on such form as approved by the Minister, for the renewal of the licence of such motor vehicle.

(2) For the purpose of the renewal referred to in subregulation (1), the owner shall submit the assessment referred to in that subregulation to the Director, and such submission shall serve as application for the renewal referred to in subregulation (1).

(3) The application referred to in subregulation (2) shall be accompanied by—

(*a*) the appropriate motor vehicle licence fees;

(*b*) if applicable, the penalties and arrear licence fees referred to in regulations 65 and 67; or

(*c*) if applicable, proof of a valid certificate of fitness.

(4) If the owner did not receive a motor vehicle licence assessment referred to in subregulation (1), such owner shall apply for the licensing of the motor vehicle in the manner referred to in regulation 26.

(5) On receipt of an application referred to in subregulation (2), the Director shall licence the motor vehicle as contemplated in regulation 27 (2).

(6) If a motor vehicle is required to be licensed in terms of this Part, and an application for the renewal of the licence of the motor vehicle is not received—

(*a*) the Director may, within three months from the date of liability referred to in regulation 25, forward a notice of the failure to apply for the licensing of such motor vehicle, on such form as approved by the Minister, to the owner of such motor vehicle and a copy thereof to the title holder of such motor vehicle, and such notice may again be forwarded within six months after the first notice; or

(*b*) the Director shall, within twelve months from the date of liability referred to in regulation 25—

(i) deregister the motor vehicle concerned; and

(ii) notify the title holder of such action on Form MVRA.

(7) The deregistration of a motor vehicle in terms of subregulation (6) (*b*) shall not exempt the owner of such motor vehicle from liability for the renewal of the motor vehicle licence in terms of this Part or from penalties and arrear licence fees in terms of regulations 66 and 68.

Requirements for application for licensing in the case of alteration or reconstruction of registered motor vehicle

30.—(1) When a motor vehicle is altered or reconstructed in such a manner and to such an extent that the motor vehicle licence issued in respect of such motor vehicle no longer correctly describes such vehicle, such licence shall become null and void on the date of the completion of such alteration or reconstruction and liability for the licensing of such motor vehicle shall arise on that date.

(2) An application for the licensing of a motor vehicle referred to in subregulation (1) shall be made in terms of regulation 26, and in addition to the requirements and documents referred to in that regulation, be accompanied by—

(*a*) a certificate referred to in regulation 73; and

(*b*) if applicable, proof of a valid certificate of fitness.

(3) The provisions of subregulation (1) shall not apply in respect of a motor vehicle where only the colour is changed or the engine is replaced, on condition that the owner of such motor vehicle shall notify the Director of such change or replacement within fourteen days after such change or replacement on Form MVRA:

Provided that the Director may require a Malaŵi Police Service clearance of the motor vehicle concerned.

(4) On receipt of a notice referred to in subregulation (3), the Director shall update the particulars pertaining to the motor vehicle concerned in the register of motor vehicles.

(5) For the purposes of this regulation, "colour" means the main colour of the body of a motor vehicle, viewed from the outside.

(6) In any prosecution in terms of subregulation (3) the onus of proving that the Director was notified, shall be on the accused.

Display of motor vehicle licence

31.—(1) The owner of a motor vehicle shall display a motor vehicle licence issued in respect of such motor vehicle, in the manner referred to in subregulation (2)—

(*a*) if the motor vehicle is fitted with a transparent windscreen, be displayed by affixing it by means of the adhesive thereon, in an upright position on the outside of the windscreen in such manner that the print on the face of the licence is clearly legible from the outside to a person standing in front or to the left front of such vehicle;

(*b*) if the motor vehicle is not fitted with a transparent windscreen, be affixed in a conspicuous position on the left side of such motor vehicle in such a manner that the print on the face of such licence is clearly legible from that side; or

(*c*) if such licence is required to be displayed on a motor vehicle in a position where it is exposed to the weather, be protected by affixing such licence by means of the adhesive thereon on the inside of the transparent front of a durable watertight holder.

(3) No person shall operate on a public road a motor vehicle on which a motor vehicle licence—

(*a*) or anything purporting to be a motor vehicle licence which is not applicable to such motor vehicle; or

(*b*) which is in any way obscured or has become illegible, except if such licence is temporarily obscured or illegible by reasons of a cause beyond the control of the driver of such motor vehicle,

is displayed.

Procedure for refund of motor vehicle licence fees

32.—(1) The title holder or owner of a motor vehicle which has—

(*a*) had the title of such motor vehicle transferred to a new title holder;

(*b*) been reported stolen as referred to in regulation 62 (1) (*c*);

(*c*) reported permanently unfit for use as a motor vehicle as referred to in regulation 63 (1) (*b*); or

(*d*) been deregistered in terms of regulation 20,

may apply for a refund of an amount calculated at one-twelfth of the motor vehicle licence fees paid in respect of such motor vehicle in terms of regulation 27 (2) for every month for which the motor vehicle licence remains valid, on the day immediately preceding the day from which the owner is exempt from liability for licensing of the motor vehicle concerned in terms of regulations 20, 62 (5) or 63 (4).

(2) The owner of the motor vehicle referred to in subregulation (1) may, within a period not exceeding sixty days apply to the Director for a refund of the motor vehicle lincence fees in such manner as approved by the Minister.

(3) On receipt of the application referred to in subregulation (2), the Director may refund to the owner of the motor vehicle referred to in subregulation (1), the amount referred to in that subregulation:

Provided that—

(*a*) an amount of less than two hundred kwacha; or

(*b*) any amount in respect of a vanity motor vehicle licence,

shall not be refunded.

PART V

Motor Trade Number

Operation of motor vehcile under motor trade number

33.—(1) Notwithstanding any provisions to the contrary contained in these Regulations, a manufacturer, builder, importer, motor transport contractor or motor trader may operate a motor vehicle which may not otherwise be operated on a public road, under a motor trade number issued in terms of this Part for the purposes of—

(*a*) delivery of such motor vehicle by a motor transport contractor, in the course of his business;

(*b*) delivery, sale, exchange, demonstration, repair or building of a permanent structure on such motor vehicle by a motor dealer;

(*c*) delivery or testing by the manufacturer or building of such motor vehicle; or

(*d*) delivery of such motor vehicle by an importer.

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(2) A person who is a deposit taking institution as defined in the Banking Act, and who is a credit grantor in respect of a motor vehicle which— (*a*) is subject to an instalment sale transaction, or a leasing transaction; and

(*b*) he desires to operate on a public road for a purpose of repossessing such motor vehicle, may, if such motor vehicle may not otherwise be so operated, operate such motor vehicle on a public road under a motor trade number issued in terms of this Part.

(3) No person shall operate a motor vehicle under a motor trade number, except for the purposes referred to in this regulation.

Application for motor trade number

34.—(1) An application for a motor trade number shall be made to the Director on Form MTNL in the First Schedule and shall be accompanied by—

(*a*) acceptable identification of the applicant and, if the applicant is a body of persons, that of his proxy and representative and a letter of proxy; and

(*b*) the prescribed fees and if applicable, the penalties and arrear fees referred to in regulations 65 and 67.

(2) The applicant referred to in subregulation (1), shall indicate the quantity of motor trade numbers he desires to be issued with, and the purpose for which he desires to be issued with such numbers.

Issue of motor trade number

35.—(1) On receipt of the application referred to in regulation 34, the Director—

(*a*) shall satisfy himself that the applicant is entitled to be issued with a motor trade number; and

(*b*) may, and if the applicant so requires, shall issue an assessment showing the penalties and fees referred to in regulation 34(1) (*b*), for the issue of a motor trade number.

(2) On submission of the amount referred to in subregulation (1), the Director shall, subject to the provisions of regulation 67 (2), and if satisfied that the application is in order—

(*a*) record the particulars in relation to the applicant in the register of motor trade numbers;

(*b*) issue a motor trade number and authorize, on such conditions and in such quantities as the Director may deem expedient, the use;

(*c*) issue a motor trade number registration certificate; or

(*d*) if the application is refused, notify the applicant accordingly.

Motor trade number to be licensed

36. Every motor trade number issued in terms of regulation 35, shall be licensed by the holder of such motor trade number in accordance with the provisions of this Part.

Date on motor trade number to be licensed

37.—(1) Liability for the licensing of a motor trade number referred to in regulation 36, shall arise on—

(*a*) the date of issue of the motor trade number registration certificate referred to in regulation 35; or

(*b*) the first day of the month following the date of expiry of the licence of the motor trade number in terms of regulation 40.

(2) If it is in issue in any civil or criminal proceedings whether an alleged date is the date referred to in subregulation (1), the date alleged to be the date referred to in subregulation (1) shall, until the contrary is proved, be deemed to be the date referred to in the said subregulation.

Application for licensing of motor trade number

38.—(1) An application for the licensing of a motor trade number shall be made by the holder of such motor trade number, simultaneously with and on the same form referred to in regulation 34 (1).

(2) The application referred to in subregulation (1) shall be accompanied by the appropriate fees and, if applicable, the penalties and arrear fees referred to in regulations 65 and 67.

Period of validity of a motor trade number licence

39.—(1) On receipt of the application referred to in regulation 38, the Director may, and if the applicant so requires, shall, issue an assessment showing the penalties and fees referred to in regulation 38 (2) for the licensing of the motor trade number concerned.

(2) The Director shall, subject to the provisions of regulation 67 (2), on submission of the amount referred to in subregulation (1), and if satisfied that the application is in order—

(*a*) licence the motor trade number;

(*b*) update the particulars in relation to the motor trade number concerned in the register of motor trade numbers;

(*c*) issue a motor trade number licence, for each authorized motor trade number plate, on Form MTNL; and

(*d*) record each such licence issued for a motor trade number plate.

Annual renewal of motor trade number licence

40. A motor trade number licence shall be valid for a period of twelve months from the first day of the month in which such licence was issued and the date of expiry of such motor trade number licence shall be shown on the motor trade number licence:

Provided that if the holder of such motor trade number applies for the renewal of the current motor trade number licence in terms of regulation 41 (2) before the expiry date of such licence, the period of validity of the new licence shall be calculated from the first day of the month which follows on the expiry date of the current licence.

Procedure of change of particulars of holder of motor trade number

41.—(1) The Director may, if he deems it expedient, forward a motor trade number licence renewal to the postal address of the holder of a motor trade number, on such form as approved by the Minister, for the renewal of the licence of such motor trade number.

(2) For the purpose of the renewal referred to in subregulation (1), the holder shall submit such form together with the penalties and fees referred to in regulation 39 (2), to the Director and such submission shall serve as an application for the renewal of the motor trade number licence.

(3) The Director shall, on submission of the fees referred to in subregulation (2), if the application is in order, licence the motor trade number as contemplated in regulation 39 (2).

(4) If the holder did not receive the motor trade number licence renewal referred to in subregulation (1), such holder shall apply for the licensing of the motor trade number in the manner referred to in regulation 38.

(5) If a motor trade number is required to be licensed in terms of the provisions of this Part and an application for the renewal of the licence of such motor trade number is not received within three months from the date of expiry referred to in regulation 40, the Director shall cancel such motor trade number.

(6) The cancellation of a motor trade number in terms of subregulation (5), shall not exempt the holder of such number from the liability for the payment of the penalties and arrear licence fees referred to in regulations 65 and 67.

Procedure of change of particulars of holder of motor trade number

42.—(1) If the postal or physical address, the proxy or the representative of the holder of a motor trade number changes, such holder shall, within a period of fourteen days after such change, notify the Director of such change.

(2) If the name as reflected in the acceptable identification of the holder of a motor trade number changes, such holder shall within fourteen days from such change—

(*a*) notify the Director of such change on Form MTNA;

(*b*) submit the new acceptable identification; and

(*c*) submit to the Director every motor trade number registration certificate issued to him.

(3) Where the proxy or representative of the holder of a motor trade number changes, the notice referred to in subregulation (1), shall be accompanied by the acceptable identification of the new proxy or representative and a new letter of proxy.

(4) On receipt of the notification referred to in subregulation (1) or (2), the Director shall—

(*a*) ensure that such notification is in order;

(*b*) update the particulars in relation to the persons or body of persons concerned in the register of motor trade numbers; and

(*c*) in the case of a notification under subregulation (2), issue a new motor trade number registration certificate to the holder upon payment of the appropriate fees for the issue of a duplicate document.

(5) If a motor trade number is held by a partnership and one of the partners dies or ceases to be a partner of such partnership or a new partner is admitted thereto or if a person obtains the business of a—

(*a*)motor transport contractor;

(*b*) manufacturer;

(*c*) builder;

(*d*) importer;

(*e*) motor dealer; or

(*f*) deposit taking institution referred to in regulation 33 (2),

from the estate of a deceased spouse and a motor trade number is in force in respect of such business, every such number shall, notwithstanding any provisions to the contrary contained in this Part, remain in force for the unexpired period of the motor trade number licence concerned, in respect of such business and the new owner of the business shall be deemed to be the holder of the motor trade number.

Cancellation of motor trade number

43.—(1) Whenever the holder of a motor trade number has, in the opinion of the Director, contravened a provision of these Regulations in the course of carrying on the business of a motor transport contractor, manufacturer, builder, importer, motor trade or deposit taking institution referred to in regulation 33 (2), as the case may be, the Director may cancel such motor trade number.

(2) If a motor trade number referred to in subregulation (1) has been cancelled, the holder of such number shall forthwith surrender the motor trade number registration certificate, all motor trade number licences and all the motor trade number plates referred to in regulation 45 to the Director.

(3) If—

(*a*) the holder of a motor trade number no longer requires such number; or

(*b*) the holder of a motor trade number ceases to carry on the business referred to in subregulation (1), such holder shall forthwith apply to the Director for the cancellation of such motor trade number and such application shall be accompanied by the relevant motor trade number registration certificate, all motor trade number licences and all the motor trade number plates, referred to in regulation 45.

(4) On receipt of the application referred to in subregulation (3), the Director shall—

(*a*) cancel the motor trade number;

(*b*) destroy the motor trade number registration certificate, all motor trade number licences and all the motor trade number plates; and

(*c*) update the particulars pertaining to the motor trade number in the register of motor trade numbers accordingly.

Number issued in prescribed territory

44. A number which has a similar purpose to that of a motor trade number, and which is issued in a prescribed territory in accordance with the laws of such territory, shall be deemed to be a motor trade number for the purposes of this Part when such number is displayed on a motor vehicle which is operated on a public road in Malaŵi.

Display of motor trade number and motor trade number licence

45.—(1) A motor trade number shall be displayed on a plate referred to in regulation 19 and in accordance with the provisions of that regulation:

Provided that in the case of a motor vehicle other than a motorcycle, motor tricycle, motor quadrucycle or trailer, such plate shall, if such motor vehicle has a rear window, be displayed inside such vehicle in an upright position and in such a manner that each letter and figure of such plate shall be clearly legible when viewed from the rear of the motor vehicle.

(2) A motor trade number licence issued in terms of regulation 40 shall be affixed by means of the adhesive thereon, to the inside of the transparent front of a durable watertight holder.

(3) The watertight holder referred to in subregulation (2), shall be attached to the motor trade number plate so that the print on the face of the motor trade number licence is clearly legible as contemplated in subregulation (1).

(4) No motor trade number shall be permanently affixed to any motor vehicle.

Right of appeal to the Minister

46.—(1) Any person who is aggrieved at the refusal of the Director to issue a motor trade number to him, under regulation 35, may, within twenty-one days after the date of such refusal, appeal against such refusal to the Minister in accordance with the Road Traffic (Appeals) Regulations.

(2) For the purpose of deciding an appeal referred to in subregulation (1), the Minister may require any party to the appeal, to furnish such information and evidence as he may deem necessary.

(3) The Minister may, after considering the appeal, give such decision as he may deem fit.

PART VI

Temporary and Special Permits

Motor vehicle may be operated on a public road under a temporary or special permit

47.—(1) A person who desires to operate on a public road a motor vehicle which has not been registered and licensed, and may not otherwise be so operate, may—

(*a*) if he is the owner of such motor vehicle, obtain a temporary permit in respect of such motor vehicle in order to operate such motor vehicle if such motor vehicle is to be registered and

licensed in terms of these Regulations, but only during the period permitted for such registration and licensing; or

(*b*) obtain a special permit in respect of such motor vehicle in order to operate such motor vehicle on a public road as if it is registered and licensed for the purpose of—

(i) testing such motor vehicle;

(ii) proceeding to or returning from a place where repairs are to be or have been effected to such motor vehicle;

(iii) reaching a motor vehicle inspection station or mass measuring apparatus; or

(iv) repossessing such motor vehicle, as contemplated in regulation 33 (2).

(2) A temporary permit—

(*a*) shall not be issued in respect of a motor vehicle, of which the owner changes, unless the new owner of such motor vehicle submits an application for the licensing thereof in terms of regulation 26; or

(*b*) shall not be issued in respect of a motor vehicle unless a certificate of insurance in respect of such motor vehicle valid for the period referred to in regulation 50 is submitted.

(3) The owner of a motor vehicle which is licensed and who cannot comply forthwith with the provisions of regulation 19 or 31, may obtain a temporary permit in order to operate the motor vehicle on a public road.

(4) A temporary or special permit shall not authorize the holder of such permit to convey persons or goods in the motor vehicle concerned.

Application for temporary or special permit

48.—(1) If a temporary or special permit is required for a motor vehicle, the application for such permit shall be made to the Director on Form MVRA.

(2) An application referred to in subregulation (1), shall be accompanied by—

(*a*) the acceptable identification of the applicant, and, if the applicant is a body of persons, that of his proxy and representative and a letter of proxy;

(*b*) the appropriate fees;

(*c*) subject to regulation 47 (2) (*b*), a valid certificate of insurance; and

(*d*) subject to regulation 47 (2) (*c*), proof of a valid certificate of fitness.

Issue of temporary or special permit

49.—(1) On receipt of the application referred to in regulation 48 (1) or (2), the Director may, and if the applicant so requires, shall issue an assessment showing the penalties and fees referred to in regulation 48 (3).

(2) On submission of the assessment and amounts referred to in subregulation (1), the Director shall, subject to the provisions of regulation 67 (2), and if satisfied that the application is in order—

(*a*) record the particulars pertaining to—

(i) the applicant; and

(ii) the issuing company, expiry date and certificate number of the certificate of insurance,

in the register of motor vehicles; and

(*b*) issue a duly completed temporary or special permit, as the case may be.

(3) A permit issued in respect of a motor vehicle in a prescribed territory in terms of any law relating to motor vehicles in force in that territory and serving the same purpose as a temporary or special permit shall, if the provisions of the law of such prescribed territory relating to the operation of a motor vehicle on a public road under such permit, is complied with, for the purposes of this Part, be deemed to be such temporary or special permit.

Period of validity of temporary and special permit

50.—(1) The date of commencement and the date of expiry of a permit issued in terms of regulation 49 (2) (*b*) shall be recorded on such permit and such permit shall be valid—

(*a*) in the case of a temporary permit, for a period of twenty-eight days, calculated—

(i) in respect of a motor vehicle referred to in regulation 47 (3), from the date of issue of such temporary permit; or

(ii) for any other motor vehicle, from the date on which liability for the licensing of such motor vehicle arises; or

(*b*) in the case of a special permit, for a period of seven days calculated from the date specified by the applicant in the application form including the day of issue, provided that such date shall not be more than fourteen days after the date on which the application is made.

Display of temporary or special permit

51.—(1) A permit issued in respect of a motor vehicle in terms of regulation 49 (2) (*b*) shall be displayed—

(*a*) if such motor vehicle has a rear window, on the inside of such window in the lower left-hand corner when viewed from the rear of the motor vehicle, so that the inscription thereon is legible through the glass; or

(*c*) if such motor vehicle does not have a rear window, on the rear of the motor vehicle in a conspicuous place.

(2) No person shall operate on a public road a motor vehicle on which is displayed a temporary or special permit or anything purporting to be such a permit which is not applicable to such motor vehicle.

(3) No person shall operate on a public road a motor vehicle on which a temporary or special permit is displaced which is in any way obscured or has become illegible, except if such permit is temporarily obscured or illegible by reason of a cause beyond the control of the driver of such motor vehicle.

PART VII

Registration of Manufacturers, Builders and Importers

Appointment of inspectorate of manufacturers, builders and importers

52. Pursuant to section 17 of the Act, the Road Traffic Department is hereby appointed to act as the Inspectorate of Manufacturers, Builders and Importers.

Application for registration

53.—(1) An application under section 13 (1) of the Act shall be made on Form MBIRA in the First Schedule.

(2) An application referred to in subregulation (1) shall be made and accompanied by—

(*a*) the acceptable identification of the applicant and, if such applicant is a body of persons or corporation, that of his proxy and representative and a letter of proxy;

(*b*) the appropriate fees, if any;

(*c*) any other additional information or documents as may be required by the Director.

Registration of manufacturer, builder or importer

54.—(1) On receipt of an application referred to in regulation 53, the Director shall—

(*a*) ensure that such application is in order;

(*b*) require the inspectorate of manufacturers, builders and importers to—

(i) evaluate the applicant in respect of the compliance of the vehicles manufactured, built or imported by such applicant, with the relevant legislation, standards and specifications of motor vehicles in force in Malaŵi; and

(ii) submit a recommendation in respect of the registration of the applicant;

(*c*) require the responsible officer-in-charge at the Malaŵi Police Service to submit a report, in respect of the applicant, and such report may contain any prior convictions recorded against the applicant and the nature of such convictions, and any such official is hereby authorized to report accordingly; and

(*d*) with due regard to the evaluation and recommendations of the inspectorate of manufacturers, builders and importers and the Malaŵi Police Service, satisfy himself that the applicant is suitable to be registered.

(2) If the Director is satisfied in terms of subregulation (1) (*d*), he shall—

(*a*) register the applicant on the conditions referred to in regulation 55;

(*b*) record the particulars pertaining to such applicant on the register of manufacturers, builders and importers; and

(*c*) issue to such applicant a certificate of registration which shall reflect the conditions referred to in paragraph (*a*).

(3) If the Director is not satisfied in terms of subregulation (1) (*d*), he shall notify such applicant accordingly.

(4) A registered manufacturer, builder or importer of motor vehicle shall, at any time, be subject to an evaluation by the inspectorate referred to in subregulation (1) (*b*).

Conditions of registration

55. The Director to which a manufacturer, builder or importer applies for registration—

(*a*) shall require as a condition of registration that notice be given by the manufacturer, builder or importer concerned on Form MBIRA to the inspectorate of manufacturers, builders and importers of any motor vehicle being manufactured, built or imported; and

(*b*) may require as a condition of registration—

(i) that a motor vehicle manufactured, built or imported by a manufacturer, builder or importer, shall be presented to the Director for clearance of such motor vehicle;

(ii) that a motor vehicle of any model shall be deemed not to be roadworthy until a certificate of fitness has been issued in respect of such motor vehicle; or

(iii) that both the conditions referred to in subparagraphs (i) and (ii) be complied with.

Suspension or cancellation of registration

56.—(1) If the Director suspends or cancels the registration of a manufacturer, builder or importer in terms of section 14 of the Act, he shall notify such manufacturer, builder or importer of such suspension or cancellation and, the reason therefore and, in the case of suspension, the period thereof.

(2) The manufacturer, builder or importer referred to in subregulation (1), may, within twenty-one days after receipt of the notification referred to in that subregulation, appeal against such suspension or cancellation to the Minister in accordance with the Road Traffic (Appeals) Regulations.

(3) The Minister shall consider any appeal made in terms of subregulation (2), if any.

(4) The manufacturer, builder or importer, of which the registration has been cancelled, shall within fourteen days after having been notified of such cancellation, submit to the Director, the certificate of registration.

Powers and duties of the inspectorate

57.—(1) The inspectorate of manufacturers, builders and importers—

(*a*) shall, in terms of regulation 54 (1) (*b*), evaluate a manufacturer, builder or importer and make a recommendation to the Director regarding—

(i) the suitability of such manufacturer, builder or importer to be registered; and

(ii) the conditions upon which such manufacturer, builder or importer should be registered;

(*b*) shall, in respect of every manufacturer, builder or importer, conduct at least one inspection one year to monitor the standards applied by every manufacturer, builder or importer;

(*c*) may advise any manufacturer, builder or importer in writing on the improvement and maintenance of standards applied by the manufacturer, builder or importer concerned and submit a copy of such written advice to the Director; and

(*d*) shall, when necessary, recommend to the Director the suspension, cancellation or charge in conditions of the registration of a manufacturer, builder or importer.

(2) A person employed by, or who acts on behalf of, the inspectorate or manufacturers, builders or importers may at any reasonable time—

(*a*) for the purposes of regulation 54 (1) (*b*) (i) inspect, examine or test any motor vehicle which is being manufactured, built or imported by a manufacturer, builder or importer; and

(*b*) without prior notice—

(i) enter the premises of any manufacturer, builder or importer;

(ii) inspect any records of the manufacturer, builder or importer referred to in subparagraph (i); and

(iii) question any person with regard to any matter relating to the operation of the manufacturer, builder or importer referred to in subparagraph (i).

Change of particulars of manufacturer, builder or importer

58.—(1) If there is any change of name, street or postal address, proxy, representative or acceptable identification of the manufacturer, builder or importer referred to in regulation 55 (2), such manufacturer, builder or importer shall, within twenty-one days after the date of such change, notify the Director of such change, on Form MBIRA.

(2) On receipt of the notification referred to in subregulation (1), the Director shall update the particulars pertaining to such manufacturer, builder or importer in the register of manufacturers, builders and importers.

Change of conditions of registration

59.—(1) The Director shall notify a manufacturer, builder or importer of any intention to change the conditions on which such manufacturer, builder or importer is registered, and of the extent of such change.

(2) The manufacturer, builder or importer referred to in subregulation (1), may, within twenty-one days after receipt of the notification referred to in that subregulation, appeal against any change of conditions to the Minister in accordance with the Road Traffic (Appeals) Regulations.

(3) The Minister shall consider any appeal made in terms of subregulation (2), if any.

(4) When the conditions referred to in regulation 55, change—

(*a*) the Director shall notify the manufacturer, builder or importer concerned of such change; and

(*b*) the manufacturer, builder or importer concerned shall within fourteen days after such change submit to the Director the certificate of registration referred to in regulation 54 (2) (*c*).

(5) On receipt of the certificate referred to in subregulation (4), the Director shall issue to the manufacturer, builder or importer concerned a new certificate of registration which shall reflect the new conditions.

G.N. 24/2010

PART VIIA
Registration of Importers and Embossers of Registration Plates

Appointment of Inspectorate of Importers and Embossers of Registration Plates G.N. 24/2010

59A. Pursuant to section 17 of the Act, the Road Traffic Department is hereby appointed to act as the Inspectorate of Importers and Embossers of Registration Plates.

Application for registration G.N. 24/2010

59B.—(1) Any person desiring to be registered, or to renew registration, as an importer or embosser of registration plates shall apply to the Director for registration or renewal of registration, as the case may be.

(2) An application under subregulation (1) shall be made on Form IRPRA or Form ERPRA in the First Schedule.

(3) An application under subregulation (1) shall be accompanied by—

(*a*) the acceptable identification of the applicant and, if such applicant is a body of persons or corporation, that of his proxy and representative and a letter of proxy;

(*b*) the appropriate fees, if any; and

(*c*) any other additional information or documents as may be required by the Director.

Registration of importers and embossers of number plates G.N. 24/2010

59C.—(1) On receipt of an application referred to in regulation 59B, the Director shall—

(*a*) ensure that such application is in order;

(*b*) require the Inspectorate of Importers and Embossers of Registration Plates to—

(i) evaluate the applicant in respect of the compliance of the registration plate imported or embossed by such applicant, with the relevant legislation, standards and specifications of registration plate in force in Malaŵi; and

(ii) submit a recommendation in respect of the registration of the applicant;

(*c*) require the responsible officer-in-charge at the Malaŵi Police Service to submit a report, in respect of the applicant, and such report

may contain any prior convictions recorded against the applicant and the nature of such convictions, and any such official is hereby authorized to report accordingly; and

(*d*) with due regard to the evaluation and recommendations of the Inspectorate of Importers and Embossers of Registration Plates and the Malaŵi Police Service, satisfy himself that the applicant is suitable to be registered.

(2) If the Director is satisfied in terms of subregulation (1) (*d*), he shall—

(*a*) register the applicant on the conditions referred to in regulation 59D;

(*b*) record the particulars pertaining to such applicant on the register of importers and embossers of registration plates; and

(*c*) issue to such applicant a certificate of registration in Form IRPCR or Form ERPCR, which shall effect the conditions referred to in paragraph (*a*).

(3) If the Director is not satisfied in terms of subregulation (1) (*d*), he shall notify such applicant accordingly.

(4) Registration under these Regulations as a registered importer of motor vehicle registration number plates shall be authority for the registered importer to—

(*a*) import motor vehicle registration number plate blanks from certified suppliers; and

(*b*) distribute motor vehicle registration number plate blanks and reprinted identification stickers to registered embossers.

(5) Registration under these Regulations as a registered embosser of registration plates shall be authority for the registered embosser to—

(*a*) order serialized registration plate blanks from registered importer of registration plates;

(*b*) emboss registration plates;

(*c*) put a sticker on an embossed registration plate;

(*d*) detach perforated part of the sticker, and have it stuck in a register belonging to the embosser; and

(*e*) release the embossed registration plate to the owner of the vehicle.

(6) A registered importer or embosser of motor vehicle registration number plates shall, at any time, be subject to an evaluation by the Inspectorate referred to in subregulation (1) (*b*).

(7) Subject to regulation 59E, a registration certificate shall be valid for two years.

Conditions of registration G.N. 24/2010

59D.—(1) The Director—

(*a*) shall require, as a condition of registration, that notice be given by the importer concerned on Form RIRPB to the Inspectorate of Importers and Embossers of Registration Plates of any requisition to import registration plates; and

(*b*) may require as a condition of registration—

(i) that a registration plate blank imported by an importer be presented to the Director for clearance;

(ii) that a registration plate shall not be used on any motor vehicle until a clearance certificate has been issued in respect of the registration plate; or

(iii) that both the conditions referred to in subparagraphs (i) and (ii) be complied with.

(2) A registered importer of registration plates shall not import registration plates unless he has been granted authority by the Director to do so, which authority shall be in Form AIRPB.

(3) A registered importer of registration plates shall make monthly returns to the Director, which return shall be in Form MRIRP.

(4) A registered embosser of registration plates shall only produce a registration plate to the owner of a motor vehicle, who has presented an authority to purchase a registration plate, which authority shall be in Form APRP.

(5) A registered embosser of registration plates shall establish and maintain a register, which shall be in Form RERP.

Suspension or cancellation of registration G.N. 24/2010

59E.—(1) If the Director suspends or cancels the registration of an importer or embosser of registration plate, he shall notify the importer or embosser of the suspension or cancellation and the reason therefor and, in the case of suspension, the period thereof.

(2) The importer or embosser of registration plate referred to in subregulation (1), may, within twenty-one days after receipt of the notification, appeal against such suspension or cancellation to the Minister in accordance with the Road Traffic (Appeals) Regulations.

(3) The Minister shall consider any appeal made in terms of subregulation (2), if any.

(4) The importer or embosser, of which the registration has been cancelled, shall, within fourteen days after having been notified of the cancellation, submit to the Director the certificate of registration.

Powers and duties of Inspectorate of Importers and Embossers of Number Plates G.N. 24/2010

59F.—(1) The Inspectorate of Importers and Embossers of Registration Plates—

(*a*) shall, in terms of regulation 59C (1) (*b*), evaluate an importer or embosser and make a recommendation to the Director regarding—

(i) the suitability of that importer or embosser to be registered; and

(ii) the conditions upon which that importer or embosser should be registered;

(*b*) shall, in respect of every importer or embosser, conduct at least one inspection per year to monitor the standards applied by every importer or embosser;

(*c*) may advise any importer or embosser in writing on the improvement and maintenance of standards applied by the importer or embosser concerned and submit a copy of such written advice to the Director; and

(*d*) shall, when necessary, recommend to the Director the suspension, cancellation or change in conditions of the registration of an importer or embosser.

(2) A person employed by, or who acts on behalf of the Inspectorate of Importers and Embossers of Registration Plates may at any reasonable time—

(*a*) pursuant to regulation 59C (1) (*b*) (i), inspect, examine or test any registration number plate which is being imported or embossed; and

(*b*) without prior notice—

(i) enter the premises of any importer or embosser of registration plates;

(ii) inspect any records of the importer or embosser referred to in subparagraph (i); and

(iii) question any person with regard to any matter relating to the business of the importer or embosser.

PART VIII
General

Procedure for change of particulars of title holder or owner of registered motor vehicle

60.—(1) If the postal or street address, proxy or representative of the title holder or owner of a motor vehicle which is registered in terms of these regulations changes, such title holder or owner shall, within a period of fourteen days after such change, notify the Director of such change on Form MVRA.

(2) If the name as reflected in the acceptable identification of the title holder or owner of a motor vehicle registered in terms of these regulations, changes, such title holder or owner shall within a period of fourteen days after such change—

(*a*) notify the Director of such change on Form MVRA; and

(*b*) submit the new acceptable identification.

(3) Where a change referred to in subregulation (2) occurs in respect of a title holder, such title holder shall submit every registration certificate issued to him, together with the notification referred to in that subregulation, to the Director.

(4) In the case of a change referred to in subregulation (1) in respect of the proxy or representative of a body of persons, the notification referred to in that subregulation shall be accompanied by the acceptable identification of the new proxy or representative, as the case may be and, if applicable, a letter of proxy.

(5) On receipt of the notification referred to in subregulation (1) or (2), the Director shall—

(*a*) ensure that such notification is in order;

(*b*) update the particulars pertaining to the person or body of persons concerned in the register of motor vehicles; and

(*c*) in the case of a notification referred to in subregulation (2), issue to the title holder concerned, a new motor vehicle registration certificate upon payment of the prescribed fees.

(6) The owner of a motor vehicle shall notify the title holder of such motor vehicle, or any change of address or particulars of the owner as referred to in subregulations (1) and (2).

Duty of title holder and owner of motor vehicle where such title holder or owner changes

61.—(1) No person shall, either for himself or on behalf of another person—

(*a*) voluntarily dispose of or deliver a motor vehicle in terms of an instalment sale transaction or leasing transaction unless such motor vehicle, if required to be registered and licensed in terms of Part III and IV of these Regulations, is so registered and licensed; and

(*b*) voluntarily acquire or take delivery of a motor vehicle if the motor vehicle may not be disposed of or delivered in terms of paragraph (*a*).

(2) If there is a change of title holder of a motor vehicle—

(*a*) the current title holder of such motor vehicle shall—

(i) complete the relevant portion of Form MVRA as approved by the Minister;

(ii) ensure that the new title holder completes the relevant portion of Form MVRA; and

(iii) sign and hand over the registration certificate concerned to the new title holder.

(3) If there is a change of ownership of a motor vehicle, the current title holder of such motor vehicle shall notify the Director of such change, on Form MVRA.

(4) On receipt of a notification referred to in subregulation (2) or (3), the Director—

(*a*) shall ensure that such notification is in order;

(*b*) if applicable, issue a motor vehicle registration certificate; and

(*c*) shall update the particulars pertaining to the motor vehicle concerned in the register of motor vehicles.

Procedure if motor vehicle is stolen

62.—(1) If a motor vehicle is stolen, the owner of such motor vehicle shall—

(*a*) report the theft to the Malaŵi Police Service, within twenty hours after he has become aware of such theft;

(*b*) notify the title holder forthwith of the theft; and

(*c*) within seven days after the date he has become aware of the theft, if the motor vehicle concerned has not been recovered during such period, notify the Director of such theft by forwarding Form MVRA.

(2) No change of title holder or ownership of a motor vehicle reported stolen shall be effected unless such change results from—

(*a*) an agreement of indemnity against the theft of such motor vehicle; and

(*b*) an agreement between the ownership and the title holder of such motor vehicle.

(3) The title holder of the motor vehicle referred to in subregulation (1) shall—

(*a*) within ninety days after the date on which he was notified of the theft, notify the Director of such theft on Form MVRA; and

(*b*) submit the registration certificate of such motor vehicle and the notification referred to in paragraph (*a*), to the Director.

(4) On receipt of the notification referred to in subregulation (1) (*c*) or (3) (*a*), the Director shall—

(*a*) ensure that such notification is in order; and

(*b*) update the particulars pertaining to the motor vehicle concerned in the register of motor vehicles.

(5) The owner of the motor vehicle concerned shall be exempt from liability for the licensing of such motor vehicle, with effect from the first day of the month following the month in which such theft was reported:

Provided that a period during which the title holder of such motor vehicle was unable to notify the Director due to circumstances beyond his control, shall be disregarded.

(6) If the motor vehicle referred to in subregulation (1) is recovered, the owner of such motor vehicle shall—

(*a*) within twenty hours after such recovery, notify the Malaŵi Police Service thereof;

(*b*) notify the title holder and the Director forthwith of such recovery; and

(*c*) apply for the licensing of such motor vehicle as referred to in regulation 26, and such application shall be accompanied by a Malaŵi Police Service clearance of the motor vehicle.

Procedure if motor vehicle becomes permanently unfit for use

63.—(1) If a motor vehicle becomes permanently unfit for use as a motor vehicle, the title holder of such motor vehicle shall—

(*a*) within ninety days after the date on which such motor vehicle has become permanently unfit, notify the Director, on Form MVRA, that such motor vehicle is permanently unfit; and

(*b*) submit the registration certificate and registration number plates of such motor vehicle with the notification referred to in paragraph (*a*) to the Director.

(2) On receipt of a notification referred to in subregulation (1) (*a*) the Director shall—

(*a*) ensure that the notification is in order; and

(*b*) update the particulars pertaining to the motor vehicle in the register of motor vehicles.

(3) The owner of the motor vehicle concerned shall be exempt from liability for the licensing of such motor vehicle, with effect from the first day of the month following the month in which such notification was made:

Provided that a period during which the title holder of such motor vehicle was unable to notify the Director due to the circumstances beyond his control, shall be disregarded.

Number to be affixed to motor vehicle

64.—(1) Every motor vehicle shall have a chassis number of not more than seventeen alpha-numerical characters which shall be cut, stamped, embossed on or permanently affixed to such motor vehicle and, if applicable, an engine number of not more than twenty alpha-numerical characters which shall be cut, stamped, embossed on or permanently affixed to the engine of such vehicle.

(2) The title holder of a motor vehicle—

(*a*) which does not bear a chassis number;

(*b*) which, if it is self-propelled, does not bear an engine number;

(*c*) which does not bear both the numbers referred to in paragraphs (*a*) and (*b*);

(*d*) of which the number referred to in paragraph (*a*) or (*b*), appears on another motor vehicle; or

(*e*) of which the number referred to in paragraph (*a*) or (*b*) is altered, defaced or obliterated,

shall tender such motor vehicle to the Director.

(3) The Director shall, upon payment of the prescribed fees, issue a new number referred to in subregulation (2) (*a*) or (*b*) in respect of the motor vehicle referred to in that subregulation.

(4) The title holder of a motor vehicle referred to in subregulation (2) shall cause the number issued by the Director as contemplated in subregulation (3) to be cut, stamped, embossed on or permanently affixed to such motor vehicle.

(5) The number referred to in subregulation (4) shall be the chassis or engine number, as the case may be, of the motor vehicle concerned.

Penalties for late registration or licensing

65.—(1) If an application, for the registration or licensing of a motor vehicle or licensing of a motor trade number is not made within the period determined for in these Regulations, the title holder, owner or holder, as the case may be, shall pay

penalty to the Director calculated at one tenth of the appropriate fees for every month or part of a month during which the fees remain unpaid:

Provided that such penalty shall not exceed the total amount of the appropriate fees.

(2) The payment by the title holder or owner of a motor vehicle or holder of a motor trade number, of the registration or licence fees, or motor trade number licence fees, as the case may be, as well as the penalty referred to in subregulation (1), shall not relieve such title holder, owner or holder from prosecution for his failure to register or license such motor vehicle or motor trade number as required nor shall such a prosecution of such title holder, owner or holder for his failure to register or licence the motor vehicle or motor trade number concerned as required, as the case may be, relieve him of the liability to pay the appropriate fees for registration or licensing, as well as the penalty referred to in subregulation (1).

(3) The title holder or owner of a motor vehicle or the holder of a motor trade number who submits an application on the appropriate form to the Director for the registration or licensing of a motor vehicle or motor trade number, as the case may be, together with the appropriate fees within the time allowed, but fails to furnish any relevant document of particulars which may be required by the Director, shall, notwithstanding anything to the contrary contained in this regulation, not be liable for any penalty if the Director is satisfied that such failure was due to circumstances beyond the control of such title holder, owner or holder.

(4) If the Director is satisfied that payment of registration or licence fees or motor trade number licence fees was delayed by a cause beyond the control of or were not due to any fault on the part of the title holder or owner of a motor vehicle or holder of a motor trade number, he may direct that a penalty paid in respect of the registration or licensing, or so much thereof as the circumstances appear to him to justify, shall be refunded as the case may be.

Vehicles excluded from payment of registration and licence fees

66. A motor vehicle of which the owner is a foreign government, a diplomat representing a foreign country, an international or intergovernmental organization or any person or class of persons as the Minister of Foreign Affairs and International Cooperation may detemine, is excluded from the payment of registration and licence fees.

Arrear fees for licensing a motor vehicle or motor trade number

67.—(1) If an application is made for the licensing of a motor vehicle or motor trade number in a month following the month in which liability for the licensing for such motor vehicle or motor trade number arose, arrear licence fees, calculated at one twelfth per

month of the annual licence fees from the first day of the month in which liability for such licensing arose until the last day of the month preceding the month in which application is made, shall be payable.

(2) If a person who owes any penalties or fees in terms of the provisions of these Regulations to the Director, applies for any transaction, the Director may refuse to effect the transaction applied for, until such penalties and fees have been paid, and may apply any amount tendered in settlement of such penalties and fees due.

Period of grace

68. Where, in terms of these Regulations, provision is made for a period within which an application shall be made, such period shall be construed as a period of grace allowed to the applicant, during which he may make such application without being liable for a penalty referred to in regulation 65 or prosecution for not making such application as required.

Duty to furnish information

69.—(1) Any person requested by the Director, an authorized officer or a traffic police officer to furnish information regarding a motor vehicle or a motor vehicle body which is or may have been at any time in his possession, shall furnish such information.

(2) A person shall furnish such information as may be required by the Director, an authorized officer or a traffic police officer regarding any matter in respect of which such person has responsibility in terms of the Act.

Duty of Director in respect of records

70.—(1) The Director shall keep a file for every motor vehicle he registers or licences, and for every motor trade number he issues and licences.

(2) The Director shall record all transactions processed in the applicable register and keep a record of such transactions.

Furnishing of information in respect of motor vehicle

71.—(1) Any person may apply to the Director for information in respect of a motor vehicle.

(2) The application referred to in subregulation (1) shall be accompanied by—

(*a*) the acceptable identification of the applicant and, in the case of a body of persons, that of his proxy and representative and a letter of proxy; and

(*b*) the appropriate fees, if any.

(3) On receipt of the application referred to in subregulation (1), the Director shall, if satisfied that the application is in order, issue the information to the applicant in such form as is required.

Exporting of motor vehicle

72.—(1) If the title holder of a motor vehicle, other than a manufacturer or a builder of a new motor vehicle, intends to export such motor vehicle, such title holder shall notify the Director thereof on Form MVRA.

(2) On receipt of a notification referred to in subregulation (1), the Director shall update the particulars pertaining to such vehicle in the register of motor vehicles.

Manner in which mass measuring certificate to be obtained

73.—(1) A mass measuring certificate on which the tare and particulars of the motor vehicle concerned are reflected, shall be obtained by the applicant therefore at his own expense from a person in charge of a mass measuring apparatus approved by the Director.

(2) The tare of a motor vehicle referred to in subregulation (1), shall be determined in the presence of a person nominated by the Director.

Procedure when cheque is dishonoured

74.—(1) If any penalties and fees for a transaction in terms of these Regulations, are paid by cheque and such cheque is dishonoured on presentation, the Director may notify the person concerned thereof in writing and, unless the person concerned honours such cheque within the period allowed by the Director, such transaction shall be null and void and the Director shall—

(*a*) notify the person concerned thereof, by certified post;

(*b*) cancel all documents issued in respect of that transaction; and

(*c*) update the particulars pertaining to the person concerned and, if applicable, the motor vehicle concerned in the registers.

(2) On receipt of the notice referred to in subregulation (1), the person concerned shall, within fourteen days after the date of issue of such notice—

(*a*) if applicable, return any documents, licences or certificates issued in respect of the transaction referred to in subregulation (1) and

(*b*) reapply for the transaction concerned.—

(3) If the payment of any penalties and fees due in terms of these Regulations is late by reason of a cheque tendered for such payment being dishonoured, penalties and arrear fees referred to in regulations 66 and 68 may be levied.

(4) No person shall pay for any penalty, fee or any transaction by any cheque which is dishonoured upon presentation for payment.

FIRST SCHEDULE

MALAŴI GOVERNMENT FORM MVRA

ROAD TRAFFIC ACT

THE ROAD TRAFFIC (REGISTRATION AND LICENSING) REGULATIONS

(REGULATION 3)

APPLICATION FOR REGISTRATION OF A MOTOR VEHCLE OR TRAILER

1. To be completed by applicant in block capitals (see notes below)

(*a*) Full Name of Owner: .....

(*b*) Postal Address: .....

(*c*) Residential Address: .....

(*d*) Type of Motor Vehicle or Trailer (Note 1): .....

(*e*) Make: .....

(*f*) Year of Make: .....

(*g*) Colour: .....

(*h*) Type of Body (Note 2) .....

(*i*) Seating Capacity (including driver) .....

(*j*) Chassis No. (Note 3) .....

(*k*) Engine No. .....

(*l*) CC .....

(*m*) Propelled By: .....

(*n*) Tare (Kg) .....

(*o*) Manufacturer's permitted gross vehicle mass (Note 4) .....
Pay Load .....

(*p*) Country of Origin: .....

(*q*) Previous Registration Mark (if any): .....

(*r*) Number of Axles: .....

(*s*) Identity of Applicant: .....

Date: ....

Signature of Applicant

2. To be completed by Licensing Officer

(*a*) Registration Mark Assigned: .....

(*b*) Number of Registration Certificate Issued: .....

(*c*) Number of Customs Clearance Certificate: .....

(*d*) Name and Address of Absolute Owner (to be inserted at request of absolute owner) .....

.....
Authorized Licensing Officer

Date: .....

Station: .....

NOTES

1. For example: "autocycle", "bus", "caravan", "excavator", "grader", "independent trailer", "low bed", "mechanical horse", "motor car", "motorcycle (two wheeled)", "motorcycle (three wheeled)", "panel van", "pole trailer", "road roller", "semi-trailer", "straight frame", "tanker", "tipper", "trailer", "truck", "vanette", "works truck".
2. For example: "drop side", "flat", "sedan", "stake sided", "station wagon", "tourer", "van".
3. In the case of trailer that has no chassis number, insert some other distinguished mark.
4. Manufacturer's permitted gross vehicle mass is required in respect of all "heavy vehicles" and "heavy trailers", i.e. those motor vehicles whatever their weight. It is the weight that the manufacturer or his representative of a motor vehicle or trailer certifies that such vehicle or trailer has been built to carry, including its own weight.

MALAŴI GOVERNMENT

ROAD TRAFFIC ACT FORM MBIRA

ROAD TRAFFIC (REGISTRATION AND LICENSING) REGULATIONS

(REGULATION 3)

APPLICATION FOR REGISTRATION AS A MANUFACTURE, BUILDER OR IMPORTER OF MOTOR VEHICLES

Applicant information:

The applicant is a: Corporation ..... Partnership ..... Single Owner ..... Other (explain) .....

Name of Applicant: .....

Postal Address: .....

Physical address and telephone number of each business location.

1. ..... Tel. No. .....
2. ..... Tel. No. .....
3. ..... Tel. No. .....
4. ..... Tel. No. .....

Applicant's Business Licence No. ..... Previous MBI Registration No. (if any) .....

If the applicant is a body of persons please provide the following for his proxy or representative.

Name of Representative: .....

Registration category requested:

Please put an X in all boxes for which registration is requested.

Registration category:

Manufacturer ☐

Builder ☐

Importer (new) ☐

Importer (used) ☐

For Manufacturer and Importer (new) category indicate vehicle makes represented.

Indicate vehicle makes for which you, a franchise or otherwise represent.

Make of vehicle	Make of vehicle
1.	5. .....
2.	6. .....
3.	7. .....
4.	8. .....

Applicant's certification:

I hereby apply for registration as a manufacturer, builder or importer of motor vehicles. I certify that the particulars given above are true.

Date: ....

Signature of Applicant's Representative

MALAŴI GOVERNMENT

ROAD TRAFFIC ACT FORM MTNL

ROAD TRAFFIC (REGISTRATION AND LICENSING) REGULATIONS

(REGULATION 3)

MOTOR TRADE NUMBER LICENCE

No. .....

Fee Paid: .....

Number of motor trade number plate:

.....

Name of holder of motor trade number: .....

Date of expiry of this licence: .....

.....

Signature and date stamp of Issuing Officer

Original: The dealer.

Duplicate: Remains in book.

NOTE: The above licence token should be printed in the form of a disk.

MALAŴI GOVERNMENT

ROAD TRAFFIC ACT

(CAP. 69:01)

ROAD TRAFFIC (REGISTRATION AND LICENSING) REGULATIONS

(REGULATION 59B (2))

FORM IRPRA

APPLICATION FOR REGISTRATION AS AN IMPORTER OF REGISTRATION PLATES

Applicant information:

The applicant is a Corporation ..... Partnership ..... Single Owner .....

Other:

(explain) .....

Date of Registration/Incorporation: .....

Name of Applicant: .....

Postal Address: .....

Physical address, E-mail address and Telephone numbers of each business location:

1. Address: .....

   .....

   Tel. No. ..... Cell No. ..... E-mail: .....

2. Address: .....

   .....

   Tel. No. ..... Cell No. ..... E-mail: .....

3. Address: .....

   .....

   Tel. No. ..... Cell No. ..... E-mail: .....

4. Address: .....

   .....

   Tel. No. ..... Cell No. ..... E-mail: .....

Applicant's Business Licence No. ..... Previous Registration No. (if any) .....

If the applicant is a body of persons please provide the following for his proxy or representative:

Name of representative: .....

Registration category requested: .....

Capacity requirements:

Authorization from Malaŵi Bureau of Standards on sample of number plate blanks. Test certificate from Malaŵi Bureau of Standards on sample of number plates.

[Statement of accounts for the last two years].

Management:

Name of person to manage the business: .....

Name of person legally responsible for ensuring compliance with the Road Traffic Act at the business: .....

State if any civil judgment has been rendered against the business or any of its owners: YES or NO? If YES, state particulars: .....

State whether or not—

(*a*) the applicant is an undischarged bankrupt;

(*b*) a receiving order in bankruptcy has been made against the applicant within the last two years preceding his application;

(*c*) the applicant has been convicted of a bankruptcy offence within the last three years preceding his application;

Has the owner(s) or manager(s) ever been evicted from a business location? Yes or No? If YES, who ..... When? ..... Where? .....

Has the owner(s) or manager(s) ever been convicted of a criminal offence? Yes or No? If YES, list particulars:

Who?.....When?.....Charges?.....

Tax compliance certificate:

Office of the Director of Public Procurement certificate:

Applicant s certification:

I hereby apply for registration as embosser of registration plates and I certify that the particulars given in this application are true.

Date ....

Signature of Applicant /Applicant's Representative

MALAŴI GOVERNMENT

ROAD TRAFFIC ACT

(CAP. 69:01)

ROAD TRAFFIC (REGISTRATION AND LICENSING) REGULATIONS

(REGULATION 59B (2))

FORM ERPRA

APPLICATION FOR REGISTRATION AS AN EMBOSSER OF REGISTRATION PLATES

Applicant information:

The applicant is a Corporation ..... Partnership ..... Single Owner .....

Other:

(explain): .....

Date of Registration/Incorporation: .....

Name of Applicant: .....

Postal Address: .....

Physical address, e-mail address and telephone numbers of each business location:

1. Address: .....

   .....

   Tel. No. ..... Cell No. ..... E-mail: .....

2. Address: .....

   .....

   Tel. No. ..... Cell No. ..... E-mail: .....

3. Address: .....

   .....

   Tel. No. ..... Cell No. ..... E-mail: .....

4. Address: .....

   .....

   Tel. No. ..... Cell No. ..... E-mail: .....

Applicant's Business Licence No. ..... Previous Registration No. (if any) .....

If the applicant is a body of persons please provide the following for his proxy or representative:

Name of representative: .....

Facilities and equipment:

Do you have embossing machinery that meets the requirements under the Road Traffic Act? YES or NO. If YES, attach letter from Malaŵi Bureau of Standards certifying the type of embossing machine. If NO, attach a letter confirming ordering embossing machine from distributor or supplier.

Test certificate from Malaŵi Bureau of Standards on sample of number plates.

[Statement of accounts for the last two years].

Management:

Name of person to manage the business: .....

Name of person legally responsible for ensuring compliance with the Road Traffic Act at the business .....

State if any civil judgment has been rendered against the business or any of its owners: YES or NO? If YES, state particulars: .....

.....

State whether or not—

(*a*) the applicant is an undischarged bankrupt;

(*b*) a receiving order in bankruptcy has been made against the applicant within the last two years preceding his application;

(*c*) the applicant has been convicted of a bankruptcy offence within the last three years preceding his application.

Has the owner(s) or manager(s) ever been evicted from a business location? Yes or No?

If YES, who ..... When? ..... Where? .....

Has the owner(s) or manager(s) ever been convicted of a criminal offence? Yes or No?

If YES, list particulars:

Who?.....When?.....Charges?.....

Tax compliance certificate:

Office of the Director of Public Procurement certificate:

Applicant's certification:

I hereby apply for registration as embosser of registration plates and I certify that the particulars given in this application are true.

Date ....

Signature of Applicant /Applicant's Representative

MALAŴI GOVERNMENT

ROAD TRAFFIC ACT

(CAP. 69:01)

ROAD TRAFFIC (REGISTRATION AND LICENSING) REGULATIONS

(REGULATION 59C (2) (*c*))

FORM IRPCR

CERTIFICATE OF REGISTRATION OF IMPORTER OF REGISTRATION PLATES

Certification No.: .....

Name: .....

Postal Address: .....

Physical address of the premises: .....

.....

is registered as importer of registration plates and is authorized to import and distribute registration plate blanks in accordance with the provisions of the Road Traffic Act.

Registration plate blanks shall be ordered from: .....

Date of issue: ..... Date of expiry: .....

.....

Director of Road Traffic

MALAŴI GOVERNMENT
ROAD TRAFFIC ACT
(CAP. 69:01)
ROAD TRAFFIC (REGISTRATION AND LICENSING) REGULATIONS
(REGULATION 59C (2) (*c*))

FORM ERPCR

CERTIFICATE OF REGISTRATION OF EMBOSSER OF REGISTRATION PLATES

Certification No.: .....

Name: .....

Postal Address: .....

Physical address of the premises: .....

.....

is registered as embosser of registration plates and is authorized to emboss registration plate blanks and to put stickers on embossed registration plates in accordance with the provisions of the Road Traffic Act.

Registration plate blanks shall be ordered from: .....

Date of issue: ..... Date of expiry: .....

.....

Director of Road Traffic

MALAŴI GOVERNMENT
ROAD TRAFFIC ACT
(CAP. 69:01)
ROAD TRAFFIC (REGISTRATION AND LICENSING) REGULATIONS
(REGULATION 59D (4))

FORM APRP

AUTHORITY TO PURCHASE REGISTRATION PLATES

Particulars of the motor vehicle:

Registration No.: .....

Make/type: .....

Chassis No.: .....

Engine No.: .....

Date and place first registered: .....

Particulars of first registered owner of the motor vehicle:

Name: .....

Postal Address: .....

.....

Particulars of current owner of the motor vehicle:

Name in full: .....

Form of identity: .....

Official Address: .....

.....

Residential Address: .....

.....

Signature: .....

THIS IS TO CERTIFY that ..... is authorized to purchase registration plates in respect of the above-mentioned motor vehicle.

FOR OFFICIAL USE ONLY

Signature of authorized officer: .....

Date: .....

Location: .....

OFFICIAL STAMP

FOR NUMBER PLATE MANUFACTURER/ENDORSER

Name: .....

Registration Code—Malaŵi Bureau of Standards: .....

Registration Number Processed: .....

Quantity of motor vehicle registration plates: .....

OFFICIAL STAMP

FOR OFFICIAL USE ONLY

Approval number: .....

Quantity approved: .....

Serial Numbers from: ..... to .....

Verified by: .....

Approved by: .....

OFFICIAL STAMP

MALAŴI GOVERNMENT

ROAD TRAFFIC ACT

(CAP. 69:01)

ROAD TRAFFIC (REGISTRATION AND LICENSING) REGULATIONS

(REGULATION 59D (1) (*a*))

FORM RIRPB

REQUISITION TO IMPORT REGISTRATION PLATE BLANKS

1. Name of distributor: .....
2. Postal Address: .....

   .....
3. Distributor's Licence No.: ..... Permit No.: .....
4. Status of Licence: .....
5. Previous Serial Number Ordered: From ..... to ..... Total .....
6. Date ordered: .....

   Name of Supplier: .....
7. Serial Numbers:

   Used: From: ..... to ..... Total: .....

   Not used: From: ..... to ..... Total: .....
8. Total quantity of motor vehicle registration number plate blanks to be ordered: .....
9. Name of Supplier: .....
10. Name of representative of distributor: .....

Signature: .....

MALAŴI GOVERNMENT

ROAD TRAFFIC ACT

(CAP. 69:01)

ROAD TRAFFIC (REGISTRATION AND LICENSING) REGULATIONS

(REGULATION 59D (2))

FORM AIRPB

AUTHORITY TO IMPORT REGISTRATION PLATE BLANKS

The Manager:

.....

.....

Dear Sir/Madam,

AUTHORITY TO IMPORT REGISTRATION PLATE BLANKS FROM ..... (Name of Supplier).

Serial Nos. From ..... to .....

I am pleased to inform you that you are authorized to import registration plate blanks from ..... (Name of Supplier) the following serial numbers:

From: .....

To: .....

Total number ordered: .....

Yours faithfully

.....

Director of Road Traffic

MALAŴI GOVERNMENT

ROAD TRAFFIC ACT

(CAP. 69:01)

ROAD TRAFFIC (REGISTRATION AND LICENSING) REGULATIONS

(REGULATION 59D (3))

FORM MRIRP

MONTHLY RETURN BY THE IMPORTER OF REGISTRATION PLATES

Month: ..... Year: .....

Item	Date	No. of Embosser	Quantity	Serial No. From/To

MALAŴI GOVERNMENT

ROAD TRAFFIC ACT

(CAP. 69:01)

ROAD TRAFFIC (REGISTRATION AND LICENSING) REGULATIONS

(REGULATION 59D (5))

FORM RERP

REGISTER OF EMBOSSERS OF REGISTRATION PLATES

Item	Motor Vehicle Registration Number	Authorization Number	Registration Plate Blanks Serial No.	Folio of Identity Sticker	Remarks

G.N. 24/2010

SECOND SCHEDULE reg. 17

PART I

Name of Area	*Registration Letters*
1. Regional Registration Letters—	
(*a*) Southern Region	B series
(*b*) Central Region	CA
(*c*) Northern Region	NA
2. District Registration Letters—	
(*a*) Chitipa	CP
(*b*) Karonga	KA
(*c*) Rumphi	RU
(*d*) Mzimba	MZ
(*e*) Nkhata Bay	NB
(*f*) Likoma	LA
(*g*) Kasungu	KU
(*h*) Nkhotakota	KK
(*i*) Ntchisi	NS
(*j*) Dowa	DA
(*k*) Mchinji	MC
(*l*) Lilongwe	LL
(*m*) Salima	SA
(*n*) Dedza	DZ
(*o*) Ntcheu	NU
(*p*) Mangochi	MH
(*q*) Machinga	MHG
(*r*) Zomba	ZA
(*s*) Mwanza	MN
(*t*) Blantyre	BT
(*u*) Chiradzulu	CZ
(*v*) Mulanje	MJ
(*w*) Chikhwawa	CK
(*x*) Thyolo	TO
(*y*) Nsanje	NE
(*z*) Phalombe	PE
(*aa*) Balaka	BLK
(*bb*) Neno	NN

3. Vanity registration: a particular combination of letters and numbers requested by the title holder.

PART II

Vehicles and Trailers	*Registration Letters or Insignia*
1. Owned by the Government, and—	
(*a*) allocated for use by the Defence Force of Malaŵi	MDF
(*b*) allocated for the official use of the President in connexion with his duties	Malaŵi Coat of Arms
(*c*) allocated for official use of a Minister or a Deputy Minister	Malaŵi Coat of Arms plus MG
(*d*) allocated for use by the Malaŵi Police Service	MP
(*e*) allocated for use by the Judiciary . .	JUD
(*f*) allocated for use by Parliament	PAR
(*g*) allocated for use by the Malaŵi Prison Service	PS
(*h*) not otherwise allocated	MG
2. Owned by the President for use connexion with his official duties	Malaŵi Coat of Arms
3. Owned by Statutory Bodies	SC

PART III

1. Owned by a diplomatic mission or a member thereof	CD
2. Owned by a consular representative	CC

PART IV

Trade number plates	MT (proceeded by a unique number identifying the motor trade number holder)

PART V

Temporary registration number . .	TR

ROAD TRAFFIC (APPEALS) REGULATIONS

G.N. 13/2000

ARRANGEMENT OF REGULATIONS

REGULATION

1. Citation and application
2. Interpretation
3. Appeals Secretary
4. Serial identification number
5. Size and format
6. Language
7. Commencement of appeal
8. Date of hearing

REGULATION

9. Contents of notice of appeal
10. Requests for persons to attend an appeal and notice of hearing
11. Contents and service of notice of hearing
12. Failure of a person to attend after service of notice of hearing
13. Failure of appellant or respondent to appear at hearing
14. Record of hearing
15. Adjournment
16. Appeal to be called on date of hearing
17. Procedure at hearing
18. Affidavits
19. Legal practitioners
20. Rules of evidence not to apply
21. Decisions
22. Fees
SCHEDULE

Citation and application

1.—(1) These Regulations may be cited as the Road Traffic (Appeals) Regulations.

(2) These Regulations shall apply in all appeals to the Minister under the Act and under any regulations made under the Act.

Interpretation

2. In these Regulations, unless the context otherwise requires—

"Appeals Secretary" means the person designated by the Minister as the Appeals Secretary;

"party" means any appellant or respondent.

Appeals Secretary

3.—(1) The Minister shall designate a person as Appeals Secretary. Notice of such designation shall be published in the *Gazette*.

(2) The Appeals Secretary shall keep a register of all appeals under the Act or under any regulations made thereunder.

(3) All documents required under these Regulations shall be filed with the Appeals Secretary at the location referred to in the Schedule.

Serial identification number

4.—(1) Every appeal shall be given a serial number by the Appeals Secretary.

(2) All documents in an appeal and any correspondence relating thereto shall bear the serial number of that appeal on the first page of any such document or correspondence.

Size and format

5. Every document used in an appeal other than original documents produced for the inspection and consideration of the Minister shall, unless the nature of the document renders it impracticable, be written, typewritten or printed, or partly written, typewritten or printed on A4 size paper of good quality and shall have adequate margins.

Language

6. Except where the minister otherwise directs, every document shall, if not in the English language, be accompanied by a certified translation thereof and shall not otherwise be received, filed or used in any appeal.

Commencement of appeal

7.—(1) An appeal shall be commenced by filing a preliminary notice of appeal with and paying the required fee to the Appeals Secretary within the prescribed period or in the absence of a prescribed period within thirty days of the decision against which the appeal is taken; and a preliminary notice of appeal shall contain the information required in a notice of appeal by regulation 9, save only that it shall have neither the serial number nor the date of hearing included therein.

(2) The Secretary shall complete the preliminary notice of appeal by entering both the appropriate serial number and, after consultation with the Minister as contemplated in regulation 8 if so required by the Minister, the date fixed for the hearing; and a preliminary notice of appeal, when so completed, shall then be a notice of appeal and shall be deemed to have been filed with the Appeals Secretary on the date on which he first received it.

(3) The Appeals Secretary shall return two copies of a notice of appeal to the appellant, who shall be responsible for serving one of those copies on the respondent

(4) Where any preliminary notice of appeal is incomplete or otherwise *prima facie* ineffective, it shall be immediately returned by the Appeals Secretary to the appellant:

Provided that where a returned notice is corrected by the appellant within seven days of the date of which it is returned, it shall be deemed for all purposes to have been filed effectively on the date of its first submission.

Date of hearing

8.—(1) As soon as possible after an appeal has been entered in the appeals register, the Appeals Secretary shall apply to the Minister to fix the date of hearing if the Minister considers that a hearing is required.

(2) In fixing a date of hearing, the Minister shall bear in mind the necessity for service of the notice of appeal to be effected on the respondent not less than fourteen days before the date of hearing and of the places of residence of any persons required to give information of which the Minister is informed.

Contents of notice of appeal

9.—(1) Every notice of appeal shall be prepared in triplicate and shall be signed and sworn to by the applicant before a magistrate or commissioner for oaths; and every notice of appeal shall be served on the respondent not less than fourteen days before the date of the hearing.

(2) Every notice of appeal shall state briefly and clearly the substance of the appellant's claim and shall specify the relief request.

Requests for persons to attend an appeal and notice of hearig

10.—(1) If either the appellant or respondent wishes to request the attendance of any person to give information at the appeal he shall apply to the Appeals Secretary for a notice of hearing to be served on such person.

(2) Every such notice of hearing shall be served not less than seven days before the date of the hearing:

Provided that the Appeals Secretary may in any case where in his opinion seven days are not sufficient to permit the person notified to attend the hearing, require the notice of hearing to be served further in advance of the date of the hearing than the said seven days.

Contents and service of notice of hearing

11.—(1) A notice of hearing served on any person shall contain the serial number of the appeal, the names of the parties thereto, a brief description of the information that is desired from the person on whom the notice of hearing is served and a list of all documents to be produced at the hearing by the person so served.

(2) Every notice of hearing issued under these Regulations shall require the person named in it to appear before the Minister on the date of hearing and shall if reasonably practicable be served personally on him by an authorized officer by delivering one copy to him.

(3) If the person named in the notice of hearing cannot be found after a reasonable search the notice of hearing may be served by delivering one copy to the husband or wife of the person named therein living with him or by leaving a copy with a person of suitable age and discretion at the place where the person named in the notice of hearing is employed.

(4) The person serving the notice of hearing shall write on the back of the other copy the place, date and time when he served it and the name of the person on whom it was served and such notice shall be signed by the person receiving such notice.

Failure of a person to attend after service of notice of hearing

12.—(1) Where any person not being an authorized officer fails to attend a hearing after having been served with a notice of such hearing, the Minister may, if satisfied that there is reasonable cause for such failure to attend, consider an affidavit submitted by such person.

(2) Where any authorized officer fails to attend a hearing after having been served with a notice of such hearing the Minister may, if the request was initially made by any person other than the Director and shall, where the request was initially made by the Director, allow the appeal.

Failure of appellant or respondent to appear at hearing

13. Where either party without reasonable excuse—

(*a*) fails to attend before the Minister at the time and place fixed for the hearing;

(*b*) having attended, leaves without first having obtained the permission of the Minister; or

(*c*) fails to attend after an adjournment of any hearing after having been told to do so,

the Minister may summarily dismiss or allow the appeal.

Record of hearing

14. In every hearing, the information shall be recorded in writing by the Appeals Secretary under the directions of the Minister.

Adjournment

15.—(1) The Minister may from time to time adjourn the hearing of any appeal for a suitable period—

(*a*) if the appellant or respondent or any person essential to the hearing is absent or is otherwise unable or unfit to take part in the proceedings;

(*b*) if the hearing continues for more than one day;

(*c*) if the appeal cannot be reached due to lack of time; or

(*d*) for any other sufficient reason to be recorded on the record of the appeal.

(2) Before adjourning any appeal the Minister shall inform all the parties and other persons present of the date to which the appeal is to be adjourned.

Appeal to be called on date of hearing

16. Every appeal shall be called for mention or hearing on the date fixed for the hearing and shall be either disposed of or adjourned.

Procedure at hearing

17.—(1) The Minister may regulate the procedure at a hearing in such manner as seems to him just and proper.

(2) Without prejudice to subregulation (1), the Minister shall generally provide that the party required to satisfy him as to any proposition shall be called first to substantiate that proposition.

(3) Where a person has been called by a party to give information the other party shall have the right to question that person with regard to any matter arising out of or reasonably related to the information given.

(4) The Minister may, at any time, question any person or party.

Affidavits

18.—(1) An affidavit to be used in any appeal may be sworn—

(*a*) if in Malaŵi, before any magistrate or commissioner for oaths; and

(*b*) in any other place, in such manner as may be prescribed in the Subordinate Court Rules.

(2) An affidavit shall—

(*a*) bear the serial number of the appeal in which it is sworn, shall be expressed in the first person and shall be drawn up in paragraphs numbered consecutively;

(*b*) state the full name or names of the deponent, his age, his description or occupation, his place of residence and, if any facts therein are deposed to otherwise than of his personal knowledge, the sources of his information; and

(*c*) be signed by the deponent,

and the jural shall show the place and date of swearing and shall be signed by the person administering the oath who shall add the title of the office by virtue of which he acts.

(3) The Minister may in his discretion permit an affidavit to be used although not in proper form if otherwise satisfied that the deponent understood its contents and effect.

(4) Every exhibit to an affidavit shall be marked clearly by the person administering the oath, and the serial number of every appeal shall be included in any such marking.

(5) The Minister may in his discretion reject any affidavit which by reason of its form or content cannot be easily read and understood, or in which there is any interlineation, alteration or erasure or other defect of form.

(6) Any party desiring to contest the truth of facts deposed to in an affidavit may serve on the party who filed the same notice of intention to question the deponent and thereupon if the deponent is not produced for questioning the Minister shall, except in special circumstances, reject or disregard the affidavit; and the Minister may at any time require the attendance of any deponent for examination on his affidavit and, in default of such attendance, may reject or disregard the affidavit.

(7) Where any party intends to submit for the consideration of the Minister any affidavit or other document, such affidavit or other document and a copy of the notice required by subregulation (8) shall be filed with the Appeals Secretary not less than seven days before the day on which the appeal is scheduled to be heard:

Provided that the Minister may waive this subregulation where he is satisfied that failure to comply with its provisions has not prejudiced the interests of any party to the appeal.

(8) The notice referred to in regulation (7) shall be a notice by the party filing the affidavit or other document to every other party to the appeal advising that an affidavit or other document is being filed and briefly describing it.

Legal practitioner

19. When a legal practitioner appears before the Minister on behalf of any party he shall appear robed.

Rules of evidence not to apply

20. The Minister in hearing an appeal—

(*a*) shall not be bound by the formal rules of evidence;

(*b*) may consider any information from any source that he deems necessary or relevant to come to his decision; and

(*c*) shall decide all appeals according to substantial justice and without undue regard to technicalities.

Decisions

21.—(1) Every decision on an appeal shall be in writing and signed by the Minister.

(2) A Signed copy of every decision shall be sent by registered post to every party to the appeal.

(3) The Minister may from time to time and for the benefit of the public cause his decision to be published in such manner as he shall deem fit.

Fees

22.—(1) Fees shall be payable at the time a notice of appeal is filed with the Appeals Secretary, and the Appeals Secretary shall not accept the filing of any preliminary notice of appeal unless the fee for such appeal accompanies the notice of appeal.

(2) The fee to be paid to the Appeals Secretary on filing the preliminary notice of appeal shall be the fee specified in the Road Traffic (Miscellaneous Fees) Regulations.

SCHEDULE reg. 3

PLACE FOR FILING DOCUMENTS

It is notified that all documents required to be filed shall be lodged with—

The Appeals Secretary
Ministry of Transport and Public Works
Private Bag 322
Lilongwe 3.

ROAD TRAFFIC (CARRIAGE OF HAZARDOUS CARGO) REGULATIONS

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G.N. 14/2000

ROAD TRAFFIC (CARRIAGE OF HAZARDOUS CARGO) REGULATIONS

PART I
PRELIMINARY

Short title and application

1.—(1) These Regulations may be cited as the Road Traffic (Carriage of Hazardous Cargo) Regulations.

(2) These Regulations shall apply to the carriage or conveyance of hazardous cargo in or on a vehicle on or along a public road and to the loading and unloading of hazardous cargo on or from a vehicle.

Interpretation

2. In these Regulations, unless the context otherwise requires—

"acid" means concentrated sulphuric acid, concentrated hydrochloric acid and concentrated nitric acid;

"hazardous cargo" means—

(*a*) explosive;

(*b*) motor spirit;

(*c*) acid;

(*d*) any gas which is—

(i) under pressure in cylinders and liable to explode if exposed to heat; or

(ii) poisonous,

carried in quantities greater than those reasonably required for ordinary domestic use or for the propulsion of the vehicle on which they are carried;

"explosive" means dynamic, nitro-glycerine, gun-cotton, gun-powder, detonators, cartridges, other ammunition and every other explosive substances;

"motor spirit" includes alcohol, benzene, benzoline, naphtha, gasoline, petrol, aviation spirit and mixture of those substances intended for use in an internal combustion engine but does not include solvent naphtha;

"tanker" means a motor vehicle constructed for the bulk carriage of motor spirit or a similar constructed trailer or semi-trailer;

"tank truck" means a goods vehicle fitted with a detachable container for the carriage of motor spirit in bulk and includes any similar trailer drawn thereby.

Precautions against fire, etc.

3. Every person engaged in the conveyance, loading and unloading of a hazardous cargo on to or from a vehicle shall observe every reasonable precaution necessary for preventing fire, explosion or other damage to persons or property.

Escape of acid and motor spirit not to be allowed

4. Every person engaged in the conveyance and the loading and unloading of acid or motor spirit from a goods vehicle shall ensure in so far as it is possible that no part of such cargo be allowed to escape into any sewer or drain.

Attendant and no protrusion

5.—(1) Every vehicle upon which is loaded a hazardous cargo shall be constantly attended by the driver thereof or by some other competent person, being not less than 18 years of age, authorized in that behalf by the owner of such vehicle.

(2) Subregulation (1) shall apply to every tanker and tank truck used for the conveyance of motor spirit irrespective of whether such a cargo be actually loaded on such vehicle or not.

(3) Subregulation (1) shall not apply to any vehicle whilst it is kept in securely locked premises.

(4) No part of any load of hazardous cargo shall be allowed to project beyond the side or back of the vehicle on which it is carried.

(5) For the purpose of this Regulation—

(*a*) a person shall be regarded as being in attendance on the vehicle if he is in close proximity thereto;

(*b*) a trailer or semi-trailer whilst attached to a goods vehicle shall be regarded as forming a part of the vehicle to which it is attached.

Restrictions on trailers

6. A trailer or semi-trailer upon which is loaded a hazardous cargo, consisting of motor spirit or explosives, shall not be attached to any vehicle other than a goods vehicle used exclusively either for the conveyance of the same type of hazardous cargo or for drawing a trailer or semi-trailer upon which such cargo is loaded.

Fuel tank to be kept secure

7. The fuel tank of every goods vehicle upon which hazardous cargo is loaded or which is used for the purpose of drawing a trailer or semi-trailer upon which such a cargo is loaded, shall at all times be kept securely locked or sealed except at such time as such a tank is actually being filled or replenished.

PART II

Motor Spirit

No smoking or carrying of matches, etc.

8.—(1) No person traveling in or assisting in the loading or unloading of any vehicle conveying motor spirit shall smoke, etc., or carry any matches or cigarette lighters within a distance of 15 metres of such vehicle.

(2) There shall be prominently displayed in the cab of every vehicle used in the conveyance of motor spirit a notice sufficiently drawing the attention of the driver and any other person traveling in the vehicle to the dangers of the exposure of naked lights.

No fire, etc., and no explosive

9. No fire or artificial light capable of lighting motor spirit or any vapours thereby given off shall be ignited on any vehicle on which motor espirit is loaded, and no explosive or article capable of causing fire or explosion shall be carried on any such vehicle.

Fire-extingiushers to be carried

10.—(1) Every vehicle used regularly or occasionally for the carriage of hazardous cargo shall be equipped with two fire-extinguishers.

(2) Each fire-extinguisher shall be of a size and type approved by the Director as suitable for the hazardous cargo carried and shall be maintained in proper order and condition and carried in a bracket or other suitable holder in a position on the vehicle as approved by the Director so as to be readily available for use at any time.

Fuel tank of vehicle not to be filled direct from cargo

11. The fuel tank of a motor vehicle shall not be filled or replenished with motor spirit direct from a vehicle conveying motor spirit as a cargo.

PART III

Tankers and Tank Trucks

Construction and maintainance

12. Every tanker and tank truck upon which is loaded motor spirit as a cargo shall comply with Parts I and II of the Schedule

and, together with every connexion and fitting affixed thereto, be maintained in a serviceable condition.

Filling

13.—(1) The filling pipe of every tanker and tank truck the carrying tank of which is designed to be filled through such pipe, shall at all times except when such tank is actually being filled, be kept securely closed so as to prevent leakage and, unless the filling pipe is provided with either a liquid seal or a device to form an efficient flame trap of a design approved by the Director, the filling pipe cover shall be kept closed and sealed.

(2) The cap of the filling opening on every tank truck or tank trailer, the carrying tank of which is designed to be filled through an opening in a manhole and without a filling pipe shall, at all times, except when the tank is actually being filled, be kept securely closed so as to prevent leakage and shall be sealed.

Draw-off

14. Where the draw-off taps fitted to the carrying tank of any tanker or tank truck are enclosed in a box, such box shall, at all times, except when cargo is being extracted from the tank, be kept closed and locked or sealed, and where a draw-off tap is not so enclosed, it shall at all times, except when motor spirit is being extracted through it, be kept closed and locked or sealed.

Dipping pipe

15. The dipping pipe of every tanker and tank truck shall at all times be kept securely closed except—

(*a*) when the carrying tank is being filled or emptied; and

(*b*) for the purpose of testing, on premises licensed under the Petroleum Act, the petroleum spirit contained in such tank by a person specially authorized in that behalf by the owner of the tanker or tank truck.

Cap. 50:03

Attendant and precautions while filling and emptying

16. Whilst the carrying tank of a tanker or tank truck is being filled or emptied it shall be constantly attended by the driver or by some other competent person of not less than 18 years of age authorized in that behalf by the owner thereof, and the person so attending shall ensure that the following precautions are observed, that is to say—

(*a*) the engine shall be stopped the whole time that the operation of filling or emptying the carrying tank, and any storage tank into which the cargo is being delivered or from which it is being taken shall have been securely closed:

Provided that this paragraph shall not apply to any tanker or tank truck the motive power of which is supplied by diesel fuel

where the engine is used for the purpose of operating pumps for the purpose of loading or unloading its carrying tank;

(*b*) adequate provision shall be made to prevent the accumulation of a dangerous static charge of electricity and, except where motor spirit is loaded by means of a loading arm which, together with a flexible hose connected thereto is electrically continuous, connected to the vehicle by screwing and effectively connected electrically to earth, the loading arm and the vehicle shall be earthed independently; and

(*c*) motor spirit shall be delivered to or from the vehicle only through metal piping or sound and suitable hose, and in the case of a vehicle being loaded with motor spirit through a filling opening in a manhole and without a filling pipe, the drop pipe of the loading arm shall be so placed as to reach as nearly as is practicable to the bottom of the carrying tank without touching any part of such tank.

Space to be kept clear

17. No equipment or other article other than fire-extinguishing equipment, shall be placed in the space required by paragraph 6 of the Schedule to be between the carrying tank of a tanker and the rear of the driver's cab.

Limit to trailer

18. No trailer of a capacity exceeding 9,000 litres shall be attached to a tanker:

Provided that nothing in this regulation contained shall apply to a flat trailer used for the carriage of packed goods, oil and petroleum products having a flash point of more than 24 degrees Celsius.

Where motor spirit may be carried

19. No motor spirit shall be carried on any tanker or tank spirit wagon except in the fuel tank or carrying tank of the vehicle.

PART IV

Motor Spirit Loaded in Vehicles other than Tankers and Tank Trucks

Interpretation

20. In this Part the expression "goods vehicle" does not include a tanker or a tank truck.

Construction

21.—(1) Subject to this regulation a goods vehicle upon which is loaded motor spirit as a cargo shall comply with Part I of the Schedule and the sides and back thereof shall be of strong construction and maintained in good condition.

(2) If a goods vehicle breaks down whilst it is conveying motor spirit and a goods vehicle complying with subregulation (1) is not available within a reasonable time for the purpose of taking the

cargo to its destination a goods vehicle may be used for that purpose notwithstanding that it does not comply with paragraph 1 of the Schedule.

(3) A goods vehicle may be used for the conveyance of motor spirit as a cargo notwithstanding that the vehicle does not comply with paragraph 1 or 2 of the Schedule if the cargo conveyed consists of not more than 4,500 litres and the following provisions are complied with—

(*a*) if any part of the load projects above the level of the back or sides of the vehicle, the load shall be securely fastened to the vehicle and every vessel containing motor spirit of a capacity of five litres or less shall be packed in outer packages or crates; and

(*b*) the vehicle shall proceed from the start of its journey to destination without delay except for such periods of rest as may from time to time be required by law in respect of the driver.

Containers for motor spirit

22.—(1) No motor spirit shall be loaded on to or conveyed by a goods vehicle as a cargo unless it is contained in a vessel which is so closed as to prevent leakage through the opening and which is of metal and is in good condition and does not exceed 4,500 litres in capacity.

(2) No vessel other than the fuel tank of the goods vehicle shall be filled or replenished with motor spirit and no motor spirit shall be extracted from any vessel loaded on a goods vehicle during conveyance.

(3) Every empty vessel which shall have contained motor spirit shall be securely closed whilst being conveyed on a goods vehicle.

PART V

Acid

How acid may be loaded or carried

23.—(1) No acid shall be loaded on to or carried or conveyed by a goods vehicle unless it is contained in a vessel which is so closed as to prevent leakage and which is of glass, earthware or other material of such nature that it will not permit leakage and is otherwise suitable for the purpose, and, in such a case, each vessel shall—

(*a*) contain not more than twenty-five litres of acid; and

(*b*) be placed in sawdust, wood chippings or other suitable material, in such quality as to prevent movement or breakage, inside an outer container or metal, wood fibre or cardboard which is capable of withstanding the ordinary risks of handling and transport and is securely closed during conveyance.

(2) Any outer container in which any vessel containing acid is packed shall contain in the aggregate not more than twenty-five litres of acid.

PART VI

Carriage of Explosives

Detonators not to be carried with other explosives

24.—(1) No person shall convey or allow any subordinate to convey detonators in the same vehicle with other explosives:

Provided that this regulation shall not apply to the conveyance of detonators in the same vehicle with other explosives if the total number of detonators does not exceed 2,000 in all and the following conditions as to packing are complied with—

(*a*) the detonators shall be packed in inner packages with sawdust and felt in a strong case which shall be packed in a strong case with sawdust, straw or other similar material and so secured that a distance of not less than 25 millimetres is maintained between the outside of the inner case and the inside of the outer case:

Provided that if the detonators do not exceed 1,000 in number such distance may be not less than 13 millimetres.

(2) For the purposes of this regulation, the expression "explosive" shall not include any safety fuse, igniter cord or fuse igniter.

Fire precautions

25.—(1) Explosives conveyed by road shall be completely covered with a tarpaulin or other suitable protective material securely roped or shall be placed in the interior of a vehicle which is enclosed on all sides with wood or metal, so as effectively to protect the explosives from accident by fire or from displacement while the vehicle is in motion.

(2) The provisions of regulation 10 relating to fire-extinguishers shall apply to a vehicle carrying explosives.

Separate conveyance

26. No explosive shall be conveyed on any public service vehicle or on the same vehicle with mails or any other goods except with the written permission of the Director.

Warning flag to be affixed

27. Every vehicle used for the transport of explosives shall have flag affixed to it at each side, so as to be distinctly visible from the front and rear, a red flag at least 455 millimetres square.

Metal portions of vehicle

28. All iron and steel portions of a vehicle which are liable to come in contact with the packages of explosives shall be covered with wood, leather, cloth or other suitable material.

Maximum load

29. In no case may a vehicle carry explosives which exceed nine tones in gross weight inclusive of packing material.

No fire within 30 metres while loading or unloading

30. No person shall load or unload explosives or cause or permit them to be loaded or unloaded within 30 metres of a fire, naked light or flame, nor shall any person light a fire or bring a naked light or flame within that distance of a vehicle which is loaded with explosives or from which explosives are being unloaded.

Engine to be stopped

31. No vehicle carrying explosives shall be loaded or unloaded while its engine is running.

Permit required for carriage on trailer

32. No person shall without the permission in writing of the Director carry or cause or permit to be carried any explosives on a trailer.

PART VII

General

Responsibilities of owner of vehicle

33. The owner of the goods vehicle used for the purpose of conveying any hazardous cargo who employs any person in such conveyance shall furnish a copy of these Regulations to or affix a copy thereof in some place where it can be conveniently read by that person, and shall take all other measures to ensure that that person is acquainted with and carries out these Regulations.

Offences

34.—(1) No person shall—

(*a*) contravene any of the provisions of these Regulations;

(*b*) for the purpose of the carriage of any hazardous cargo, drive or operate a vehicle which does not comply with any of the provisions of these Regulations; or

(*c*) drive or operate a vehicle carrying any hazardous cargo without ensuring that these Regulations are complied with.

(2) The owner and the operator of a vehicle which is used for the conveyance of any hazardous cargo shall ensure that these Regulations are complied with and if any failure in complying with these Regulations shall occur both the owner and the operator of the vehicle in relation to which the failure occurs shall be guilty of an offence unless he satisfies the court that he took all reasonable and proper steps to ensure compliance.

(3) In this regulation the word "operator" used in relation to a vehicle includes the holder of any permit relating to such vehicle and every person who takes part in the organization of or receives any pecuniary benefit from the carriage of the cargo.

Exemption

35.—(1) Nothing in these Regulations contained shall apply to any vehicle used by the Defence Force of Malaŵi.

(2) Subject to such conditions as he may deem fit to impose for the safety of members of the public or for any other reasons, the Director may grant exemptions in writing either generally or particularly from any of the provisions of these Regulations.

(3) An application for exemption from these Regulations shall be made to the Director in writing and shall state—

(*a*) the full name and address of the applicant;

(*b*) a full description of the vehicle in respect of which exemption is requested;

(*c*) the period for which exemptions from which exemption is requested; and

(*d*) the specific regulations from which exemption is requested.

(4) Any written exemption provided for in this regulation shall at all times be carried on the vehicle concerned and shall be produced for inspection on demand being made by the Director or any authorized officer.

Penalties

36. Any person guilty of an offence against these Regulations shall be liable to a fine of K15,000 and to imprisonment for three years.

SCHEDULE regs. 12, 17 and 21

CONSTRUCTION OF VEHICLES

PART I

GENERAL

1. In the case of a motor vehicle—

(*a*) the engine shall be of an internal combustion type;

(*b*) a quick action cut-off valve shall be fitted to the fuel feed pipe in an easily accessible and clearly marked position:

Provided that subparagraph (*b*) shall not apply to a vehicle in which no gravity fuel tank is incorporated in the fuel feed system and the fuel feed pump is driven directly from the engine of the vehicle or electrically with a cut-off switch, if the ignition switch or, as the case may be, the cut-off switch is in an easily accessible and clearly marked position;

(*c*) in any case where the fuel used to propel a vehicle gives off an inflammable vapour at a temperature of less than 150°F (66°C) the fuel tank shall not be behind the back of the cab unless the following requirements are complied with, that is to say—

(i) the fuel tank is protected from blows by stout steel guards or by the frame of the vehicle;

(ii) the cover of the filling hole of the fuel tank is provided with a lock; and

(iii) the fuel feed apparatus placed in front of the cab is used to lift the contents of the fuel tank;

(*d*) the exhaust silencer and outlet pipe shall be in front of the engine.

2. The following requirements shall be complied with in connexion with the lighting of any vehicle, that is to say that—

(*a*) the voltage shall not exceed 24 volts;

(*b*) the circuit shall be heavily insulated and be independent of the chassis;

(*c*) the wiring shall be so fixed and protected as to reduce as far as possible any risk of damage;

(*d*) the battery shall be in an easily accessible position; and

(*e*) means of cutting off the current close to the battery by a double pole switch or other suitable method shall be provided in an easily accessible position.

3. A trailer with only one axle shall not carry a load in excess of 2,300 litres.

PART II

Tankers and Tank Trucks

4. The body of the vehicle and its fittings and the carrying tank shall be constructed strongly of fire resisting materials.

5.—The capacity of a tanker shall not exceed 6,800 litres unless—

(*a*) in the case of an articulated vehicle the load unit and the tractor unit are constructed in accordance with a design approved by the Director as being suitable, when the said two units are used together for the conveyance of quantities of motor spirit exceeding 6,800 litres; and

(*b*) in the case of any other tanker, the vehicle is constructed in accordance with the design approved by the Director as suitable for the conveyance of the said quantities of motor spirit.

(2) The capacity of a tank truck shall not exceed 9,100 litres.

6.—(1) In the case of a tanker there shall be a space of not less than 150 millimetres between the carrying tank and the rear of the driver's cab which shall be kept clear except for fire-extinguishers equipment and any part of the farm work or valances used to screen the sides of the carrying tank.

(2) Where any such valances are used as aforesaid, their ends shall be insulated from the cab by a layer of heat resisting material and the valances shall not be so constructed that, by reason of their being turned inwards, the aforesaid space is enclosed at the top or bottom.

7.—(1) The carrying tank shall either be a component part of the form of the vehicle or be securely attached thereto.

(2) A carrying tank of more than 3,600 litres capacity shall be divided into self-contained compartments none of which shall be of more than 3,600 litres capacity.

8.—(1) In the case of a vehicle provided with filling pipes either—

(*a*) each filling pipe shall—

(i) be carried down as nearly as possible to the bottom of the carrying tank and terminated so as to provide at all times a liquid seal at the bottom of the pipe which shall be of a depth, while the vehicle is on level ground, of not less than 125 millimetres; or

(ii) be fitted with a device forming an efficient flame trap of a design approved by the Director; or

(*b*) the covers over the filling pipes shall be provided with locks or seals.

(2) In the case of such a vehicle as aforesaid, any opening in the barrel of the filling pipes other than the orifices at the top or bottom thereof shall be constructed in such a manner as to form an efficient flame trap and shall be covered with a fine wire gauze of not less than twenty-eight noshes per 25 millimetres.

9. In the case of a vehicle designed to be filled through a filling opening in a manhole without the use of filling pipes—

(*a*) the cover of the manhole shall be of a design approved by the Director and shall be securely attached to the tank and if eye-bolts are used for this purpose there shall be not less than six fitted with self-locking nuts; and

(*b*) between the cover of the manhole and the body of the carrying tank, if it is not welded thereto, and between the cap of the filling opening and the said cover there shall be a gasket of such material and so designed as effectively to prevent the escape of motor spirit.

10.—(1) Every dipping pipe shall reach as nearly as is practicable to the bottom of the carrying tank, and any opening in a dipping pipe, other than the upper orifice thereof, shall be constructed in such a manner as to form an efficient flame trap and shall be covered with a fine wire gauze of not less than 28 meshes per 25 millimetres.

(2) In the case of a vehicle the carrying tank of which is designed to be filled through a filling opening in a manhole without the use of filling pipes any dipping pipes shall be separate from and outside of, the cover over the filling opening.

11. Ventilation openings if separate from the dipping pipe, shall be constructed in such a manner as to form an efficient flame trap and shall be covered with fine wire gauze of not less than twenty-eight meshes per 25 millimetres and shall be 25 millimetres and shall be protected by covers when not in use.

12.—(1) Draw-off pipes shall be fitted with strong and secure taps, screwcaps and internal valves.

(2) Draw-off taps situated at the side of a vehicle shall be either—

(*a*) enclosed in a strong box of hard wood or other suitable durable material and shall be provided with a lock or seal; or

(*b*) provided with locks or seals and protected against blows by a stout steel guard or by the frame of the vehicle.

(3) Draw-off taps situated at the rear of a vehicle shall be protected against blows by the rear cross member of the frame of the vehicle and shall be either enclosed in such a box as aforesaid or be provided with locks or seals.

13. The lower part of the rear of a carrying tank shall be protected against blows by stout steel guards or by the frame of the vehicle.

ROAD TRAFFIC (CERTIFICATE OF FITNESS) REGULATIONS

ARRANGEMENT OF REGULATIONS

REGULATION

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PRELIMINARY

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SCHEDULE

ROAD TRAFFIC (CERTIFICATE OF FITNESS) REGULATIONS

G.N. 15/2000

PART I

Preliminary

Citation

1. These Regulations may be cited as the Road Traffic (Certificate of Fitness) Regulations.

Interpretation

2. In these Regulations, unless the context otherwise requires—

"Inspectorate of Motor Vehicle Inspection Stations" means the Inspectorate of Motor Vehicle Inspection Stations referred to in regulation 5;

"Motor Vehicle Inspector" means a motor vehicle inspector certified under regulation 32;

"Manual of Motor Vehicle Inspection Standards" means the Manual of Motor Vehicle Inspection Standards provided to a motor vehicle inspection station and motor vehicle inspector by the Inspectorate of Motor Vehicle Inspection Stations.

PART II

Forms

Forms

3. The forms set forth in the Schedule shall be used in all cases to which they are respectively applicable in carrying out the Act and these Regulations, subject to such variations as may be necessary.

Particulars in applications, etc.

4. The particulars to be entered on or contained in any application, permit and certificate to which these Regulations apply shall, unless otherwise set forth in these Regulations, be such as are necessary from the respective form of such application, permit and certificate as approved by the Minister.

PART III

Motor Vehicle Inspection Stations and Certificates of Fitness

Appointment of inspectorate of motor vehicle inspection stations

5. The Minister hereby appoints the Road Traffic Department as the Inspectorate of Motor Vehicle Inspection Stations.

Powers and duties of the inspectorate of motor vehicle inspection stations

6.—(1) The inspectorate of motor vehicle inspection stations—

(*a*) shall, under regulation 10, evaluate all applicants for registration as a motor vehicle inspection station in accordance with the requirements referred to in regulation 8, and recommend to the Director—

(i) the suitability of any applicant for registration as a motor vehicle inspection station; and

(ii) the classification of such applicant as a motor vehicle inspection station;

(*b*) shall, in respect of every motor vehicle inspection station, conduct at least one inspection per year to monitor the standards applied at every motor vehicle inspection station;

(*c*) may advise any motor vehicle inspection station on the improvement and maintenance of motor vehicle inspection station facilities and procedures;

(*d*) shall, when necessary, recommend to the Director the suspension or cancellation of the registration of a motor vehicle inspection station; and

(*e*) shall, under regulation 32, evaluate all applicants for certification as a motor vehicle inspector in accordance with regulation 30 and recommend to the Director—

(i) the suitability of any applicant for certification as a motor vehicle inspector; and

(ii) the classification of such applicant as a motor vehicle inspector.

(2) A person employed by, or who acts on behalf of, the inspectorate of motor vehicle inspection stations, may at any reasonable time, having regard to the provisions of regulation 8—

(*a*) inspect, examine or test any motor vehicle; and

(*b*) without prior notice—

(i) enter the premises of any motor vehicle inspection station;

(ii) inspect any records of the motor vehicle inspection station referred to in subparagraph (i); and

(iii) question any person with regard to any matter relating to the operation of the motor vehicle inspection station referred to in subparagraph (i).

Fee to defray administrative expenses of the inspectorate of motor vehicle inspection station

7.—(1) A motor vehicle inspection station referred to in regulation 11 (6) (*a*) shall pay to the inspectorate of motor vehicle inspection stations a fee for every examination and test carried out for a certificate of fitness in terms of the Act by such motor vehicle inspection station.

(2) The fee collected under subregulation (1) shall be retained at such motor vehicle inspection station and paid to the inspectorate of motor vehicle inspection stations on 1 July and 1 January of each year in respect of the examinations and tests performed during the preceding six months.

Requirements for the registration of a motor vehicle inspection station

8. The requirements to be met to register a motor vehicle inspection station, are—

(*a*) the management and all personnel who will be associated with and carry out motor vehicle inspections, at each business establishment, must be of good reputation;

(*b*) the character, attitude, knowledge of safety inspection requirements, mechanical ability and experience of each individual who will perform or supervise safety inspections must be satisfactory;

(*c*) the applicant and all staff supervising or performing motor vehicle inspections shall be certified under regulation 32 and be familiar with and agree to comply with all rules and regulations of the Inspectorate of Motor Vehicle Inspection Stations;

(*d*) the business establishment must be financially stable and its future existence should not be dependent upon appointment as a motor vehicle inspection station;

(*e*) regular mechanical work must have been performed at the applicant's premises for at least two years prior to application:

Provided that this stipulation will not apply to—

(i) a change in location of a previously appointed applicant or a change in ownership which will not affect the routine motor vehicle inspections carried out by the motor vehicle inspection station;

(ii) a repair garage which is an established business and is expanding its mechanical convenience to the general public by the addition of other repair locations; or

(iii) a business licensed as a franchised dealer on new vehicles;

(*f*) one inspection lane, meeting approved requirements, must be available for motor vehicle inspections at all times during a normal business day;

(*g*) each premises, to be approved, shall meet the standards concerning facilities and equipment set forth by the Director relative to one of the classifications for motor vehicle inspection stations as referred to in regulation 11;

(*h*) each premises shall have at least one full time certified motor vehicle inspector who must be available to perform motor vehicle inspections and repair work relative to motor vehicle inspections during each normal business day;

(*i*) every motor vehicle presented for inspection must be examined and tested by a certified motor vehicle inspector in strict compliance with the statutory requirements of the Act and the Manual of Motor Vehicle Inspection Standards.

Application for registration of motor vehicle inspection station

9.—(1) An application in terms of section 63 of the Act shall be made on Form MVI. 100 set out in the Schedule and a management representative shall be identified in respect of the motor vehicle inspection station concerned.

(2) An application as referred to in subregulation (1) shall be accompanied by—

(*a*) acceptable identification of the applicant and, if the applicant is a body of persons, that of his proxy and representative and a letter of proxy;

(*b*) a certified copy of the applicant's business licence; and

(*c*) the appropriate prescribed fee.

Registration of motor vehicle inspection station

10.—(1) The Director upon receipt of an application made under regulation 9 to—

(*a*) register as a motor vehicle inspection station, shall submit such application; or

(*b*) renew the registration of a motor vehicle inspection station, may submit such application,

to the Malaŵi Police Service for a report as to whether any conviction has been recorded against the applicant, owners, stockholders or directors as the case may be as well as in respect of any other matter which, in the opinion of the Malaŵi Police Service, is relevant to the application, and the Malaŵi Police Service is hereby authorized to report accordingly.

(2) A member of the Malaŵi Police Service may take the finger and palm prints of the applicant to enable him to report in terms of subregulation (1).

(3) If the Director, having regard to the report referred to in subregulation (1) and any relevant facts known to him or ascertained by him, is satisfied that the applicant is not of good character he shall refuse the application and notify the applicant accordingly.

(4) Where the Director does not refuse the application under subregulation (3), the Director shall cause the applicant and his proposed premises for the motor vehicle inspection station to be examined by the Inspectorate of Motor Vehicle Inspection Stations,

in order to obtain a report on the competence of the applicant to act as a motor vehicle inspection station and a recommendation of the appropriate class thereof under regulation 11:

Provided that if the applicant applies to renew a registration for a motor vehicle inspection station, the Director may dispense with such examination and report.

(5) The Director, with due regard to the evaluation and recommendations of the inspectorate of motor vehicle inspection stations, shall satisfy himself—

(*a*) that the applicant concerned complied with the requirements referred to in regulation 8; and

(*b*) that the registration of the applicant concerned has not been cancelled permanently or suspended for a reason that still pertains.

(6) If the Director is satisfied as to the suitability of the applicant under subregulation (5), he shall—

(*a*) register and, under regulation 11, classify such applicant as a motor vehicle inspection station;

(*b*) record the particulars of such motor vehicle inspection station on the register of motor vehicle inspection stations;

(*c*) issue a certificate of registration in Form MVI. 200 set but in the Schedule to such motor vehicle inspection station; and

(*d*) provide as many certificate of fitness forms as requested by a motor vehicle inspection station.

(7) If the Director is not satisfied as to the suitability of the applicant under subregulation (5), he shall refuse to register such applicant and notify the applicant accordingly.

(8) A certificate of registration issued under subregulation (6) shall be displayed in a conspicuous place where members of the public who make use of the motor vehicle inspection station can see such certificate.

(9) The management representative identified under regulation 10 shall, upon the change of any of the particulars submitted under that regulation notify the Director of such change within 14 days after such change on Form MVI. 100 set out in the Schedule.

(10) The Director shall, upon receipt of a notification referred to in subregulation (9), update the register of motor vehicle inspection stations accordingly.

(11) A certificate of registration issued under subregulation (6) shall be valid for 24 months from the date of issue subject to suspension or cancellation by the Director under regulation 12.

Classification of motor vehicle inspection station

11. The Director shall, with due regard to the evaluation and recommendations of the inspectorate of motor vehicle inspection stations and if he is satisfied that the appropriate requirements have been met, classify a motor vehicle inspection station in one or more of the following classifications of motor vehicle inspection stations—

(*a*) class A which shall be authorized to examine and test any class of motor vehicle;

(*b*) class B which shall be authorized to examine and test any motor vehicle with a gross vehicle mass greater than or equal to 3,500 kilograms, except motorcycles, motor tricycles and motor quadrucycles;

(*c*) class C which shall be authorized to examine and test any motor vehicle with a gross vehicle mass less than 3,500 kilograms, except motorcycle, motor tricycles and motor quadrucycles;

(*d*) class D which shall be authorized to examine and test any motorcycle, motorcycle with sidecar, motor tricycle and motor quadrucycle with a tare not exceeding 550 kilograms; or

(*e*) class E which shall be authorized to examine and test any semi-trailer or trailer with a gross vehicle mass greater than or equal to 3,500 kilograms:

Provided that any motor vehicle inspection station may be restricted by the Director to examine and test only—

(i) vehicles owned and operated by certain persons;

(ii) vehicles of certain makes;

(iii) vehicles of certain models;

(iv) vehicles of certain classes; or

(v) vehicles with certain dimensions.

Manner of suspension or cancellation of registration of a motor vehicle inspection station

12.—(1) The Director shall, in considering the suspension or cancellation of the registration of a motor vehicle inspection station—

(*a*) notify the management representative identified under regulation 9, of the failure of such motor vehicle inspection station to comply with the requirements of regulation 8; and

(*b*) demand from such management representative to indicate in writing—

(i) the reason for such failure; and

(ii) the details of the measures that have been taken to rectify and prevent such failure.

(2) If the Director is not satisfied with the reason or measures referred to in subregulation (1) (*b*), he may—

(*a*) suspend; or

(*b*) cancel,

the registration of such motor vehicle inspection station.

(3) If the Director suspends or cancels the registration of a motor vehicle inspection station, he shall—

(*a*) notify such motor vehicle inspection station of such suspension or cancellation and the reason therefor and, in the case of suspension, the period thereof; and

(*b*) give notice in the *Gazette* of the suspension or cancellation referred to in paragraph (*a*).

(4) The management representative of a motor vehicle inspection station, the registration of which has been suspended or cancelled, shall within 14 days after having been notified of such suspension or cancellation, submit to the Director—

(*a*) the certificate of registration referred to in regulation 11 (6) (*c*) issued in respect of such motor vehicle inspection station;

(*b*) any blank certificates of fitness, held but not issued by such motor vehicle inspection station; and

(*c*) a reconciliation of forms held and issued, and blank forms submitted to the Director.

(5) Subject to regulation 13, any cancellation of registration as a motor vehicle inspection station shall be permanent.

Appeal to the Minister

13.—(1) Any person or organization who is aggrieved at the refusal of the Director to register and classify him or it as a motor vehicle inspection station or at the suspension or cancellation of the registration of a motor vehicle inspection station may, within 21 days of any refusal, suspension or cancellation appeal against such refusal, suspension or cancellation to the Minister in accordance with the Road Traffic (Appeals) Regulations and shall at the same time submit a copy of such appeal to the Director.

(2) The Director shall forthwith after receipt of the copy of the appeal referred to in subregulation (1) furnish the Minister with his reasons for the decision to which such notice refers.

(3) For the purpose of deciding an appeal under subregulation (1), the Minister may require any party to such an appeal to furnish such information and evidence as he may deem expedient.

(4) The Minister after considering the appeal referred to in subregulation (1) may give such decision as he may deem fit.

Certificate of fitness required in respect of motor vehicles

14.—(1) Except as otherwise provided for in subregulation (2) or regulation 28, no person shall operate on a public road—

(*a*) a goods vehicle, the gross vehicle mass of which exceeds 3,500 kilograms;

(*b*) a breakdown vehicle;

(*c*) a bus—

(i) the gross vehicle mass of which exceeds 3,500 kilograms; or

(ii) which is designed or adapted for the conveyance of ten or more persons including the driver;

(*d*) any other motor vehicle used for the conveyance of persons for reward or for the teaching of driving motor vehicles for gain; or

(*e*) any other motor vehicle,

unless there is in force in respect of such vehicle a certificate of fitness and except in accordance with the terms and conditions of such certificate.

(2) The provisions of subregulation (1) shall not apply to a motor vehicle—

(*a*) which is self-propelled and is a water boring machine, threshing machine, harvester, harrow, mower, baler, scraper, leveler, spraying machine, crane, plough or similar vehicles;

(*b*) which is not designed principally for the conveyance of goods or persons or both on a public road and which incorporates permanently machinery for the purposes of—

(i) road-making;

(ii) road-sweeping;

(iii) earthmoving;

(iv) excavation;

(v) pipe-laying;

(vi) construction;

(vii) water-boring;

(viii) loading;

(ix) lifting;

(x) internal handling;

(xi) drilling; or

(xii) any like purpose determined by the Director;

(*c*) which is commonly known as a racing car or a racing motorcycle, which is used solely for racing purposes and which is not operated on a public road;

(*d*) which is designed or adapted solely or principally for fighting fires and which is registered as a fire-fighting vehicle;

(*e*) which may only be operated on a public road under an exemption under the Act;

(*f*) which is operated under the authority of a motor trade number or a temporary or a special permit; or

(*g*) which is owned or allocated for use by the Defence Force of Malaŵi.

(3) Any document issued by a competent authority in a prescribed territory and serving a similar purpose to that of a certificate of fitness shall, in accordance with the terms and conditions thereof, but subject to the provisions of these Regulations, be deemed to be a certificate of fitness for the purpose of subregulation (1).

(4) No person shall operate on a public road a motor vehicle which is not in a roadworthy condition.

Inspection of motor vehicle for certificate of fitness

15. A person who desires to obtain a certificate of fitness for a motor vehicle shall present such vehicle during normal working hours to any appropriately classified motor vehicle inspection station, for an examination and test as referred to in regulation 16 and such motor vehicle shall be accompanied by the registration certificate of the motor vehicle concerned.

Examination of motor vehicle

16.—(1) The inspection procedure under these Regulations shall be done—

(*a*) around the vehicle;

(*b*) in the cab or driver's compartment;

(*c*) by using a pit, ramp or overhead lift; and

(*d*) for wheel alignment and braking, dimensions, lighting and safety design.

(2) Inspection of vehicles under these Regulations shall be carried out in facilities and with the use of appropriate equipment approved by the Director.

(3) The vehicle shall be presented for inspection in a clean state allowing clear examination of all the parts to be inspected, and failure to comply with this requirement may result in the rejection of the vehicle.

(4) The motor vehicle inspector shall satisfy himself that the vehicle presented to him for examination is the vehicle described in the accompanying registration certificate.

(5) Subject to these Regulations, every motor vehicle to which these Regulations apply submitted for inspection in accordance with these Regulations, shall be inspected for the purpose of ascertaining whether the prescribed statutory requirements are at the date of the inspection complied with in relation to that vehicle as contained in the Manual of Motor Vehicle Inspection Standards and the motor vehicle inspector shall record his findings on an inspection record.

(6) The items that are to be recorded on the inspection record by the motor vehicle inspector are given on the prescribed form and where the vehicle does not comply with the relevant provisions such motor vehicle inspector shall state on the rejection notice which items require attention.

(7) For the purposes of this regulation "inspection" shall not include repairs and adjustments.

(8) Repairs and adjustments refer to those repairs and adjustments which are necessary to being the motor vehicle into conformity with the provisions of the Act and such repairs and adjustments may be undertaken by either a motor vehicle inspection station or by any other means suitable to the owner or operator of the motor vehicle concerned.

(9) Where the repairs and adjustments referred to in subregulation (8) are made by any means other than the motor vehicle inspection station conducting the inspection, the motor vehicle concerned shall be subjected to reinspection by a motor vehicle inspection station.

Issue of certificate of fitness

17.—(1) If the motor vehicle inspector, after the examination and testing of the motor vehicle concerned—

(*a*) is satisfied that such vehicle complies with all statutory requirements and is further satisfied in respect of such other matters as may be required for the purpose of the certificate of

fitness, upon payment to the motor vehicle inspection station of the appropriate fee for the inspection undertaken, if any, is required, he shall—

(i) issue a certificate of fitness in such form as may be prescribed;

(ii) affix such certificate to the vehicle concerned in the manner referred to in regulation 20; and

(iii) hand to the owner or person presenting the vehicle for inspection a copy of the inspection record; or

(*b*) is not so satisfied, he shall—

(i) issue a rejection notice in such form as may be prescribed;

(ii) affix such notice to the motor vehicle concerned in the prescribed manner; and

(iii) hand to the owner or person presenting the vehicle for inspection a copy of the rejection notice.

(2) Upon issue of a rejection notice the motor vehicle inspection station shall notify the owner or person presenting the motor vehicle for inspection that—

(*a*) the validity of the rejection notice is thirty days and any reinspection of the motor vehicle concerned must be performed within such period of validity;

(*b*) any defects specified on the rejection notice shall be corrected before using the motor vehicle concerned on a public road; and

(*c*) any operation of the motor vehicle concerned whilst it is displaying a rejection notice is at the owner's or operator's risk.

(3) Any motor vehicle, for which a rejection notice was issued, which is presented for inspection within the period of validity of such rejection notice to the motor vehicle inspection station which issued the rejection notice for the motor vehicle concerned shall, upon payment of the appropriate reinspection fee be reinspected and—

(*a*) if a motor vehicle inspector is thereafter so satisfied, he shall act under subregulation (1) (*a*); or

(*b*) if a motor vehicle inspector is thereafter not so satisfied, he shall—

(i) not issue a certificate of fitness; and

(ii) not remove the existing rejection notice from the motor vehicle concerned.

(4) A rejection notice shall not be issued to any motor vehicle presented for inspection—

(*a*) already bearing such notice; or

(*b*) which does not bear a valid or expired certificate of fitness unless such motor vehicle is being presented for inspection for the first time under regulation 30.

(5) Notwithstanding the provisions of subregulation (1), a motor vehicle inspector authorized thereto in writing by the Director may, at any time before the motor vehicle which is being or has been examined and tested under that subregulation is issued a certificate of fitness, examine or re-examine that motor vehicle, and for that purpose—

(*a*) he shall be deemed to be the motor vehicle inspector contemplated in subregulation (1); and

(*b*) any prior action taken in respect of that motor vehicle under subregulation (1), including the issue of a certificate of fitness shall be of no force and effect.

(6) No person shall willfully or negligently issue or authorize the issue of a certificate of fitness which is materially incorrect.

(7) No person shall remove or replace the components of a vehicle in respect of which a certificate of fitness was issued, except in the normal course of maintenance or use of such vehicle.

Period of validity of certificate of fitness

18. A certificate of fitness in respect of a motor vehicle shall be valid from the date of coming into force of such certificate—

(*a*) for six months in the case of any motor vehicle conveying persons for reward or used for the teaching of driving motor vehicles for gain; and

(*b*) for twelve months in the case of all other motor vehicles.

No person shall hold more than one certificate of fitness in respect of any particular motor vehicle

19. No person shall hold more than one certificate of fitness in respect of any particular motor vehicle where the periods of one validity of such certificates coincide or overlap.

Certificate of fitness to be affixed to motor vehicle

20.—(1) Subject to the provisions of subregulations (2) and (3), no person shall operate on a public road a motor vehicle referred to in regulation 14 (1)—

(*a*) unless a certificate of fitness is affixed thereto in the manner referred to in subregulation (5); or

(*b*) if a certificate of fitness—

(i) the period of validity of which has expired; or

(ii) which does not relate to such motor vehicle,

is affixed thereto.

(2) A certificate of fitness issued by a competent authority in any prescribed territory serving a similar purpose to that of a certificate of fitness shall, for the purpose of subregulation (1), be deemed to be a certificate of fitness.

(3) Where a document serving a similar purpose to that of a certificate of fitness has been issued by a competent authority in any prescribed territory in respect of a motor vehicle referred to in regulation 14 (1), but a certificate serving similar purpose to that of a certificate of fitness is not required to be affixed to such vehicle under a law of the territory concerned, the provisions of subregulation (1) (*a*) shall not apply to such vehicle during the period of validity of such document.

(4) A document contemplated in subregulation (3) shall, during the period of validity thereof, at all times be in or on the vehicle concerned while the vehicle is operated on a public road.

(5) The certificates of fitness issued in respect of a motor vehicle referred to in regulation 14 (1) shall—

(*a*) if such vehicle is fitted with a transparent windscreen, be so affixed in an upright position on the inside lower left of the windscreen such that the particulars on the certificate of fitness are clearly legible to a person standing in front or to the left front of such vehicle; or

(*b*) if such vehicle is not fitted with a transparent windscreen, be so affixed in a conspicuous place on the left side of such vehicle such that the particulars on the certificate of fitness are clearly legible to a person standing on that side.

(6) If a certificate of fitness is affixed to a motor vehicle in a position where it is exposed to the weather it shall be protected by means of a waterproof holder with a durable transparent cover:

Provided that such certificate of fitness is not produced of a durable and waterproof material and not designed to be affixed without further protection.

(7) A motor vehicle inspector who performs the inspection of a motor vehicle and finds no cause for rejection shall himself affix the certificate of fitness to the motor vehicle concerned.

Authority conveyed by certificate of fitness subject to provisions of these Regulations

21. The terms and conditions of a certificate of fitness relating to a motor vehicle and the authority conveyed thereby shall not be construed as derogating from any provision of these Regulations to which such motor vehicle may be subject and, in the event of any conflict between the terms and conditions of such certificate and any such provision, the latter shall prevail.

Effect of alteration of motor vehcile on certificate of fitness

22.—(1) Subject to the provisions of subregulation (3), a certificate of fitness in respect of a motor vehicle shall become null and void where such motor vehicle is altered in such manner that—

(*a*) the certificate of fitness no longer correctly describes such motor vehicle; or

(*b*) such alteration affects the terms and conditions of such certificate.

(2) Within seven days of a certificate of fitness becoming null and void under subregulation (1), the vehicle concerned shall be presented for the examination and testing referred to in regulation 15 (1).

(3) The provision of subregulations (1) and (2) shall not apply in respect of a motor vehicle of which the only engine is replaced.

Right of appeal to Director

23.—(1) An owner or operator of a motor vehicle who is aggrieved at the refusal of a motor vehicle inspection station to issue a certificate of fitness for such motor vehicle may, within 21 days of any such refusal, appeal against such refusal to the Director in accordance with the Road Traffic (Appeals) Regulations and shall at the same time submit a copy of such appeal to the motor vehicle inspection station.

(2) The motor vehicle inspection station shall forthwith after receipt of the copy of the appeal referred to in subregulation (1) furnish the Director with its reasons for the decision to which such notice refers.

(3) For the purpose of deciding an appeal under subregulation (1), the Director may—

(*a*) where such appeal concerns a certificate of fitness, cause the motor vehicle concerned to be examined and tested by a motor vehicle inspector nominated by him; and

(*b*) require either party to such an appeal to furnish such information and evidence as he may deem expedient.

(4) The Director after considering the appeal referred to in subregulation (1) may give such decision as he may deem fit.

Register of certificates of fitness to be kept

24. The Director shall cause a suitable register or record of all certificates of fitness issued to be kept by all motor vehicle inspection stations in a form approved by him.

Certificate of fitness issued contrary to provisions of this Part to be void

25. Any certificate of fitness issued contrary to the provisions of the Part, shall be void and the holder thereof shall, on demand by the Director or the motor vehicle inspection station which issued such certificate, forthwith present the motor vehicle concerned to a place designated by the Director or to the motor vehicle inspection station which issued such certificate, as the case may be.

Conditions for operating vehicles

26.—(1) A notice contemplated in section 80 of the Act shall be made on a form prescribed and may contain conditions to the effect that the vehicle may not be operated on a public road or may continue to be operated for a given period or under limitations with regard to speed, route or otherwise and state that the motor vehicle concerned shall be presented within seven days from the date of issue of such notice to a designated motor vehicle inspection station registered by the Director for examination and testing by a motor vehicle inspector.

(2) No person shall fail to comply with any notice contemplated in subregulation (1).

Manner and circumstances whereupon a certificate of fitness may be removed and re-issued

27.—(1) A traffic police officer or a motor vehicle examiner who intends to serve a notice as contemplated in regulation 26, may where appropriate remove the certificate of fitness from the motor vehicle concerned.

(2) A copy of the notice contemplated in regulation 26 shall be forwarded by the traffic police officer or motor vehicle examiner concerned to the designated motor vehicle inspection station referred to in regulation 26 and shall be accompanied by the certificate of fitness if removed under subregulation (1).

(3) Where a motor vehicle has been examined in accordance with a notice contemplated in regulation 26 and the motor vehicle inspector is satisfied that the defects reported on the notice contemplated in regulation 26 have been rectified and the motor vehicle concerned is found to comply with all statutory requirements concerning the issue of a certificate of fitness, the motor vehicle inspection station concerned shall—

(*a*) endorse the notice accordingly and forward it to the issuing traffic police officer or motor vehicle examiner as the case may be; and

(*b*) if the certificate of fitness has been removed under subregulation (1), issue a new certificate of fitness in respect of such motor vehicle in accordance with the provisions of these Regulations.

(4) The examination of a motor vehicle in accordance with a notice contemplated in regulation 26 shall be done at the expense of the owner of operator.

Application of these regulations

28. These Regulations shall apply to all motor vehicles except those referred to in regulation 14 (2) and those subject to phased applications as specified in regulation 29.

Date of coming into force

29. Regulation 14 (*e*) shall come into force with effect from the date these regulations will be published in the *Gazette*.

PART IV

Certified Motor Vehicle Inspectors

Requirements for certification as motor vehicle inspector

30.—(1) The requirements to be met to become a certified motor vehicle inspector are—

(*a*) the applicant must be of reasonable character and reputation;

(*b*) the applicant must demonstrate three years experience as an automotive mechanic or possess a certificate issued in his name from an approved automotive mechanic training program;

(*c*) the applicant must possess a certificate issued in his name from an approved training course for motor vehicle inspectors;

(*d*) the applicant must satisfactorily complete an examination to demonstrate adequate understanding of motor vehicle inspection requirements and the ability to perform motor vehicle inspections and operate required testing equipment;

(*e*) the applicant must possess a valid Malaŵi driver's licence;

(*f*) the applicant must be eighteen years of age or older;

(*g*) the applicant must be familiar with and agree to comply with the rules and regulations of the Inspectorate of Motor Vehicle Inspection Stations; and

(*h*) the applicant must examine and test every motor vehicle presented for inspection in strict compliance with the statutory requirements of the Act and the Manual of Motor Vehicle Inspection Standards.

(2) Subject to such conditions as he may deem fit to impose for the safety of members of the public or for any other reasons, the Director may grant to any applicant exemptions in writing either generally or specifically from any of the provisions of this regulation.

Application for certification as motor vehicle inspector

31.—(1) An application to become a certified motor vehicle inspector shall be made on Form MVI. 100B in the Schedule.

(2) The application referred to in subregulation (1) shall be accompanied by—

(*a*) a photocopy of the applicant's driver's licence; and

(*b*) a photocopy of the certificate referred to in—

(i) regulation 30 (*b*) if applicable; and

(ii) regulation 30 (*c*).

Certification of motor vehicle inspector

32.—(1) The Director, upon receipt of an application made under regulation 31 to—

(*a*) become certified as a motor vehicle inspector, shall submit such application; or

(*b*) renew a certification as a motor vehicle inspector, may submit such application,

to the Malaŵi Police Service for a report as to whether any conviction has been recorded against the applicant, as well as in respect of any other matter which, in the opinion of the Malaŵi Police Service, is relevant to the application, and the Malaŵi Police Service is hereby authorized to report accordingly.

(2) A member of the Malaŵi Police Service may take the finger and palm prints of the applicant to enable him to report under subregulation (1).

(3) If the Director, having regard to the report referred to in subregulation (1) and any relevant facts known to him or ascertained by him, is satisfied that the applicant is not of good character he shall refuse the application and notify the applicant accordingly.

(4) Where the Director does not refuse the application under subregulation (3), the Director shall cause the applicant to be examined by the Inspectorate of Motor Vehicle Inspection Stations, in order to obtain a report on the competence of the applicant to act as a certified motor vehicle inspector and a recommendation of the appropriate class thereof under regulation 33:

Provided that if the applicant applies to renew a certification as a motor vehicle inspector, the Director may dispense with such examination and report.

(5) The Director, with due regard to evaluation and recommendations of the Inspectorate of Motor Vehicle Inspection Stations, shall satisfy himself—

(*a*) that the applicant concerned complies with the requirements referred to in regulation 30; and

(*b*) that the certification of the applicant concerned has not been suspended or cancelled for a reason that still pertains.

(6) If the Director is satisfied as to the suitability of the applicant under subregulation (5), he shall—

(*a*) certify and, under regulation 33, classify such applicant as a motor vehicle inspector;

(*b*) record the particulars of such motor vehicle inspector in the register of certified motor vehicle inspectors; and

(*c*) issue a certificate in Form MVI. 200B in the Schedule, to such motor vehicle inspector.

(7) If the Director is not satisfied as to the suitability of the applicant to be certified as a motor vehicle inspector under subregulation (5), he shall refuse to certify such applicant and notify the applicant accordingly.

(8) A certified motor vehicle inspector shall, upon the change of any of the particulars submitted under regulation 31, notify the Director of such change within 14 days after such change on Form MVI. 100B in the Schedule.

(9) The Director shall, upon receipt of a notification referred to in subregulation (8), update the register for certified motor vehicle inspectors accordingly.

(10) A certification of a motor vehicle inspector issued under subregulation (6) shall be valid for 24 months from the date of issue subject to suspension or cancellation by the Director under regulation 34.

Classification of certified motor vehicle inspector

33. The Director shall, with due regard to the evaluation and recommendations of the inspectorate of motor vehicle inspection stations and if he is satisfied that the appropriate requirements have been met, classify a certified motor vehicle inspector in one or more of the following classifications—

(*a*) class A which shall be authorized to examine and test any class of motor vehicle;

(*b*) class B which shall be authorized to examine and test any motor vehicle with a gross vehicle mass greater than or equal to 3,500 kilograms, except motorcycles, motor tricycles and motor quadrucycles;

(*c*) class C which shall be authorized to examine and test any motor vehicle with a gross vehicle mass less than 3,500 kilograms, except motorcycles, motor tricycles and motor quadrucycles; or

(*d*) class D which shall be authorized to examine and test only a motorcycle, motorcycle with sidecar, motor tricycle and motor quadrucycle with a tare not exceeding 550 kilograms.

Manner of suspension or cancellation of certificate of a motor vehicle inspector

34.—(1) The Director shall, in considering the suspension or cancellation of the certificate of a motor vehicle inspector—

(*a*) notify the inspector of his failure to comply with the requirements of regulation 30; and

(*b*) demand from such inspector to indicate in writing—

(i) the reason for such failure; and

(ii) the details of the measures that have been taken to rectify and prevent such failure.

(2) If the Director is not satisfied with the reason or measures referred to in subregulation (1) (*b*), he may—

(*a*) suspend; or

(*b*) cancel,

the certificate of such motor vehicle inspector.

(3) If the Director suspends or cancels the certification of a motor vehicle inspector, he shall—

(*a*) notify such motor vehicle inspector of such suspension or cancellation and the reason therefor and, in the case of suspension, the period thereof; and

(*b*) give notice in the *Gazette* of the suspension or cancellation referred to in paragraph (*a*).

(4) A motor vehicle inspector who has had his certification suspended or cancelled, shall within 14 days after having been notified of such suspension or cancellation, submit to the Director the certificate of certification referred to in regulation 32 (6) issued in respect of such motor vehicle inspector.

(5) Subject to regulation 35, any cancellation of certification as a motor vehicle inspector shall be permanent.

Appeal to the Minister

35.—(1) Any person who is aggrieved at the refusal of the Director to certify and classify him as a motor vehicle inspector or at the suspension or cancellation of such certification may, within 21 days of any refusal, suspension or cancellation appeal against such refusal, suspension or cancellation to the Minister in accordance with Road Traffic (Appeals) Regulations and shall at the same time submit a copy of such appeal to the Director.

(2) The Director shall forthwith after receipt of the copy of the appeal referred to in subregulation (1) furnish the Minister with his reasons for the decision to which such notice refers.

(3) For the purpose of deciding an appeal under subregulation (1), the Minister may require any party to such appeal to furnish such information and evidence as he may deem expedient.

(4) The Minister after considering the appeal referred to in subregulation (1) may give such decision as he may deem fit.

SCHEDULE Form MVL. 100

ROAD TRAFFIC ACT

ROAD TRAFFIC (CERTIFICATE OF FITNESS) REGULATIONS reg. 9

Application for Appointment as an Official Inspection Station

Any business intending to make an application to represent the Road Traffic Department as a Motor Vehicle Inspection Station must complete the following application in duplicate and return it to the Motor Vehicle Inspection Division, Private Bag 257, Lilongwe.

Business name .....

Street address .....

Town/Village ..... Region .....

Mailing address .....

Business telephone number .....

A. General

1. Under which of the inspection station classifications are you applying for appointment?
2. Is this business a: Corporation?..... Partnership?.....

   Single owner?..... Government Agency?.....

   Other? (explain) .....
3. Who owns this business? (List all owners or corporate officers)

	Owner/Officer	Owner/Officer	Owner/Officer
Name			
Title			
Address			
Telephone			
Driver's Licence Number			

NOTE: If there are more than three owners or corporate officers submit the information in the same form on a separate sheet.

4. Have you ever had an Inspection Station Appointment? .....
5. Under what name?..... Town/Village.....
6. Have you ever been refused an appointment?..... When?.....
7. Have you ever been suspended as an Inspection Station? ..... When? .....
8. Under what name? ..... Town/Village .....
9. Has this location ever been an Inspection Station? .....
10. If so, what name? .....

B. *Business*

1. Type of business (check one or more if applicable):

..... Vehicle Repair Shop

..... Motor Dealer—Motorcycle

..... Motor Dealer—Automobiles

..... Motor Dealer—Trucks

..... Motor Dear—Trailers

2. Length of time in business ..... years. At present location ..... years.

3. Do you have personnel doing full-time automotive repair work? Yes ..... No .....

4. What per cent of your business income is derived from automotive repair work? .....%.

5. Are automotive repairs made in a location established for this purpose only? Yes ..... No .....

C. *Management*

1. Who will manage this business? .....

2. Who will be legally responsible for compliance with Inspection Rules and Regulations as set forth by the Road Traffic Act and the Road Traffic Department at this business? .....

3. Has this business and/or anyone involved in ownership had any civil judgments rendered against them? Yes ..... No .....

4. If yes, who? ..... When? .....
In what town or village? .....

5. Has the business, owner(*s*) or management ever taken bankruptcy? Yes ..... No .....? If yes, have the judgments been paid? .....

6. Has the owner(*s*) or management ever been evicted from a business location? Yes ..... No ..... If yes, who? .....
When? ..... Where? .....

7. Has the owner(*s*) or manager(*s*) ever been convicted of a criminal offence? Yes ..... No ..... If yes, list for each owner and/or manager.

Who?.....	Where?	Charges? .....
.....	.....	.....
.....	.....	.....
.....	.....	.....

8. Has the owner(*s*) or manager(*s*) ever been convicted of a traffic violation? Yes ..... No ..... If yes, list for each owner and or manager.

Who?.....	Where?	Charges? .....
.....	.....	.....
.....	.....	.....
.....	.....	.....

D. *Inspection*

1. Who will supervise inspection activities and inspectors?
2. Is the supervisor to be a certified inspector? Yes? ..... No.....
3. Will a certified inspector be available to perform inspections during normal business hours Monday through Friday, each week? Yes ..... No .....
4. Mechanics ..... Total Number ..... Number to be qualified as inspectors .....

Mechanic's Name	*Driver's Licence Number*	*Year of Experience*
.....	.....	.....
.....	.....	.....
.....	.....	.....

(If any additional mechanics are to be certified, submit the additional information in the same form on a separate sheet.)

E. *Facilities*

1. What are the inside dimensions of your shop? Width ..... Length .....
2. What are the dimensions of the lane to be used for inspections? Width ..... Length .....
3. What type of floor surface do you have? .....
   Is it level or on the same plane? Yes ..... No.....
   Do you have an outside ramp? Yes ..... No .....
   Is the outside a part of the inspection lane? Yes ..... No.....
   What is the length of the ramp? .....
   Is it on the same plane as the inspection lane? Yes ..... No .....
4. Is floor area for headlight testing on the same plane for its entire length? Yes ..... No .....
5. How many entrances do you have to your shop? Front ..... Rear .....

   How high are the entrances? Front ..... Rear .....
   How wide are the entrances? Front ..... Rear .....
6. Do you have adequate facilities to perform inspections full time in addition to your other business? Yes ..... No .....
7. Do you have sufficient parking space to accommodate vehicles awaiting inspection without normally using the public streets and roads for parking? Yes ..... No .....

F. *Trailer Certification Only*

1. Will all trailers be attached to a motor vehicle during inspection? Yes ..... No .....
2. If not, what equipment will be used to check the adequacy of the lights and brakes? .....

G. *Equipment* (Not applicable for trailer. #Not applicable for motorcycle stations) Please answer yes or no.

1. *#Are you willing to secure a decelerometer for brake testing?.....
2. *#Are you willing to secure a floor jack with a rating of 4 tonnes?..
3. *#Are you willing to secure a machine for headlight testing? .....
4. *#Are you willing to secure instruments for the measurement of brake related parts such as drums, rotors, disc pads and shoes? .....
5. Are you equipped with the proper tools and equipment necessary to making all repairs and adjustments required in making motor vehicle inspections? .....

H. *Contract*

I (We) do hereby agree to provide the necessary space equipment and personnel to conduct inspections as required by the Road Traffic Department. Facilities and equipment will be maintained in a manner satisfactory to the Road Traffic Department. All safety inspectors will read and be thoroughly familiar with the instructions furnished for Motor Vehicle Inspection Stations, and I (we) agree to abide by these instructions, and to carefully inspect every motor vehicle, motorcycle, trailer and semi-trailer presented for inspection as required by the Rules and Regulations contained in the Official Inspection Manual. I (We) also agree to operate this station in strict accord with the Road Traffic Department and the Rules and Regulations furnished by the Road Traffic Department. I (We) understand that the appointment of our station, if made, may be cancelled at any time by the Road Traffic Department and will be automatically cancelled if any change in address, name or ownership is made.

This certifies that I have read and agree to abide by the requirements for appointment as a Motor Vehicle Inspection Station as set form above.

Signed: ..... Date: .....
Name: .....
Date of Birth: ..... Malaŵi driver's licence number.....
Title: .....
(*Owner, Partner, Corporation Officer*)
Address: .....
Telephone Number: .....
Signed: ..... Date: .....
Name: .....
Date of Birth: ..... Malaŵi driver's licence number .....
Title: .....
(*Owner, Partner, Corporation Officer*)
Address: .....
Telephone Number .....

ROAD TRAFFIC ACT MVI. 200 reg. 10

ROAD TRAFFIC (CERTIFICATE OF FITNESS) REGULATIONS

CERTIFICATE OF REGISTRATION

Motor Vehicle Inspection Station Registration NO. .....

Name: .....

Postal address: .....

.....

is hereby authorized to operate an official motor vehicle inspection station in accordance with the following conditions:

Physical address of station premises .....

.....

Classification of motor vehicle inspection station granted is indicated below by an X.

Classification
Class A
Class B
Class C
Class D
Class E

Expiry date: .....

Issue date: ....
Director of Road Traffic

ROAD TRAFFIC ACT FORM MVI. 100B

ROAD TRAFFIC (CERTIFICATE OF FITNESS) REGULATIONS

APPLICATION FOR CERTIFICATION AS MOTOR VEHICLE INSPECTOR

APPLICANT MUST COMPLETE SECTION I AND SECTION II
(AUTHORIZATION FOR RELEASE OF INFORMATION)

SECTION I

Full name: .....
(*last*) (*first*) (*middle*)

Address: ..... City/Village: .....

Date of birth: ..... Work Tel. No. ..... Home Tel. No. .....

Years of experience as automotive mechanic: .....

Malaŵi driver's licence number: .....

Presently employed by: ..... Station: .....

Employer's address: ..... City/Village: .....

Have you ever been certified as a vehicle inspector in Malaŵi:

Yes ..... No .....

Have you ever been suspended as a motor vehicle inspector?

Yes ..... No .....

Where were you employed when you were suspended? .....

Name and address of former garages where you were employed as a mechanic: .....
.....

Have you ever been charged with any violations of the law or traffic infractions? Yes ..... No .....

If yes, where, and what were the offences charged? .....

Has your driver's licence ever been revoked or suspended? Yes .....No .....
If yes, for what charges? .....
.....
Police files check .....
.....

(*Name of investigator*)

.....

(*Results of investigation*)

Character and reputation:	*satisfactory*	*unsatisfactory* .....
Mechanical ability:	*satisfactory*	*unsatisfactory* .....
Attitude toward inspection and supervision:	*satisfactory*	*unsatisfactory* .....
Knowledge of inspection requirements:	*satisfactory*	*unsatisfactory* .....

Grade on written examination ..... grade on practical examination .....

Does applicant now understand the questions missed and proper inspection procedure? .....

Type of headlight aimer used: optical .....
make *model*
mechanical ....
make *model*

Remarks: (*explain any item checked unsatisfactory and provide any other pertinent information*).

Section II

Authorization for Release of Information

Any past or present Employer, Credit Bureau, Bank, Financial Institution or any other Credit Extending Agency, or any other Government Agency.

....
(*Applicant's name*) (*Address*)

I requested that the Road Traffic Department appoint me as a Motor Vehicle Inspector. I am aware that a complete investigation will be conducted relative to this matter. I hereby authorize and request the release of any and all information you may have concerning me to the Road Traffic Department or its agent upon presentation of this release or copy hereof.

....
(*Signature*) (*Date*)

.....

Return to: Motor Vehicle Inspection Division
Road Traffic Department
P.O. Box 101
Lilongwe

Attention: Mechanic Files

.....

Do not write below this line—for Road Traffic Department use only

.....

Employed by: ..... Station: .....

Address: City/Village: ..... Certified: Yes ..... No .....

MVE/Name: ..... Inspector classification: .....

Signature: .....

Date: ..... Region: .....

Motor vehicle inspection division file check

Date: ..... Current Status: .....

.....

ROAD TRAFFIC DEPARTMENT FORM MVI. 200B

ROAD TRAFFIC (CERTIFICATE OF FITNESS) REGULATIONS

MOTOR VEHICLE INSPECTOR CERTIFICATION NO. .....

Name: .....

Postal address: .....

Residential address: .....

.....

Holder of driver's licence No. .....

Is authorized as a motor vehicle inspector to examine and test the class of vehicle indicated below by an X.

PHOTOGRAPH

Class of vehicle

Class A

Class B

Class C

Class D

Signature of Motor Vehicle Inspector .....

Date of expiry: .....

Date of issue: .....

.....

Director of Road Traffic

AUTHORIZATION FOR RELEASE OF INFORMATION

To: Any past or present Employer, Credit Bureau, Bank, Financial Institution or any other Credit Extending Agency, or any other Government Agency.

I .....

(*Applicant's name*)

have requested that the Road Traffic Department appoint

.....

(*Name of facility*) (*Address of facility*)

as a Motor Vehicle Inspection Station. I am aware that a complete investigation will be conducted relative to this matter. I hereby authorize and request the release of any and all information you may have concerning me or the above-mentioned business establishment to the Road Traffic Department or its agent upon presentation of this release or copy hereof.

Given under my hand this ..... day of ....., ...

.....

Signature

ROAD TRAFFIC ACT FORM MV1. 100R

ROAD TRAFFIC (CERTIFICATE OF FITNESS) REGULATIONS

MOTOR VEHICLE INSPECTION STATION REPORT

Name: ..... Station Number: .....

Address: .....

S—Satisfactory
U—Unsatisfactory

		S	U			S	U
1.	Certificate displayed	.....	.....	11.	Receipts to MVID	.....	.....
2.	Procedure sheet displayed	.....	.....	12.	2-meter straight edge and 8-meter tape	.....	.....
3.	Appearance outside	.....	.....	13.	Rule	.....	.....
4.	Appearance inside	.....	.....	14.	Tread depth gauge	.....	.....
5.	Space for inspection	.....	.....	15.	Receipts on file	.....	.....
6.	Current inventory filed	.....	.....	16.	Ticket punch	.....	.....
7.	Shop tools	.....	.....	17.	Protection of stickers	.....	.....
8.	Jack or lift	.....	.....	18.	Manual updated	.....	.....
9.	Decelerometer or brake machine	.....	.....	19.	Posters displayed	.....	.....
10.	Head light machine	.....	.....	20.	Other (explain below)	.....	.....

Remarks: If the answer to any of the questions above were no or unsatisfactory, these deficiencies must be explained here in details. They must also be discussed with the owner or manager of the station, and the name and title of the person contacted must be included.

Recommendation: .....
.....
.....
.....
MVE: Name .....
MVE: Signature .....
Date .....
Region: .....

Action taken: .....
.....
.....
Approved:
SUPR: Name .....
SUPR: Signature .....
Date .....

ROAD TRAFFIC (CONSTRUCTION, EQUIPMENT AND USE) REGULATIONS

ARRANGEMENT OF REGULATIONS

REGULATION

PART I

PRELIMINARY

1. Citation
2. Interpretation

REGULATION

PART II

Dimension of Vehicles

3. Overall length of vehicle
4. Restriction on combination of motor vehicles
5. Overall width of vehicle
6. Overall height of vehicle and load
7. Turning radius and wheelbase
8. Overhang of vehicle
9. Projections in case of vehicle other than a motorcycle, motor tricycle, motor quadrucycle or pedal cycle
10. Projections in case of motorcycle, motor tricycle, motor quadrucycle or pedal cycle
11. Warning in respect of projecting load

PART III

Loads on Vehicles

12. Manner in which children are to be counted for the purpose of these regulations
13. Mass of person and luggage for determining mass of load
14. Number of persons that may be carried on motor vehicle in relation to seating capacity
15. Permissible maximum axle massload of a motor vehicle
16. Permissible maximum axle unit massload of a motor vehicle
17. Permissible maximum vehicle mass
18. Permissible maximum combination mass
19. Load on tyres
20. Gross mass limits in respect of motor vehicles not to be exceeded
21. Massload carrying capacity of the road
22. Massload carrying capacity of the bridges
23. Distribution of axle massload and wheel massload on vehicle fitted with pneumatic tyres
24. Axle massloads of vehicles fitted with tyres other than pneumatic tyres
25. Contravention of motor vehicle mass limits
26. Calculation of overload
27. Calculation of penalties
28. Imposition of penalties and procedures
29. Weighing of vehicles
30. Weighing procedures
31. Authority of certain officers
32. Appeals to the minister
33. Information to be displayed on certain motor vehicles
34. Information plates on certain vehicles

REGULATION

35. Manner in which goods shall be carried
36. Circumstances under which persons may be carried on goods vehicle

PART IV

EQUIPMENT ON OR IN RESPECT OF VEHICLES

37. Brakes on certain motor vehicles
38. Brakes on motorcycle, motor tricycle or motor quadrucycle
39. Brakes on trailers
40. Brakes on pedal cycles
41. Brakes on unspecified vehicles
42. Braking performance of service, emergency and parking brakes
43. Conditions and operation of brakes
44. Vehicles to be equipped with certain lamps and times when certain lamps must be lighted
45. Visibility distance of lights
46. Head lamps
47. Main-beam
48. Dipped beam
49. Lights to be displayed on stationery or parked motor vehicle
50. Fog lamps
51. Parking lamps
52. When parking lamps are to be kept lighted
53. Front position lamps
54. End-outline-maker lamps
55. Real lamps
56. Stop lamp
57. Registration-plate lamps
58. Side maker lamps
59. Interior lamps
60. Lamp illuminating a notice on motor vehicle
61. Decorating lamps
62. Reversing lamp
63. Inspection lamps
64. Identification lamps
65. Use of spot lamp
66. Lamps on pedal cycle
67. Lamps on animal drawn vehicles
68. Lamps on unspecified vehicles
69. Colour of lights
70. Lamps, with exception to emit diffused lights
71. Lamps to emit steady light
72. Manner in which lamps are to be fitted and maintained
73. Lamps not prescribed or authorized, prohibited
74. White retro-reflectors to be fitted on front of certain vehicles
74A. Standard ECE 104 retro-reflective materials to be fitted on vehicles

REGULATION

75. Red retro-reflectors to be fitted on rear of certain vehicles
76. Yellow retro-reflector to be fitted on sides of certain motor vehicles
77. General requirements for retro-reflectors
78. Rear retro-reflectors on vehicles with certain bodies
79. Warning sign on rear of certain motor vehicles (chevrons)
80. Unlawful use of reflector or reflective material
81. Motor vehicle to be equipped with direction indicators
82. Direction indicators of flasher type
83. Direction indicators of illuminated window type
84. Combination of different types of direction indicators
85. Direction indicators on motor vehicles with an overall length in excess of 7.6 metres
86. General requirements for direction indicators
87. Prohibition against use of direction indicator not complying with the provisions of these regulations
88. Steering gear
89. Warning devices
90. Glass of windscreen, etc., of motor vehicle
91. Windscreen wiper and washer
92. Driver's view to be unobstructed
93. Fuel tank, electrical wiring and battery
94. Engine of motor vehicle to be covered
95. Compulsory wearing of protective helmet in respect of motorcycle
96. Manner in which side-car to be attached to motorcycle
97. Exhaust silencers and exhaust pipes
98. Entrances and exits
99. Motor vehicle to be capable of travelling backwards and forwards
100. Tyres
101. Certain motor vehicles to be fitted with safety belts
102. Emergency warning sign (Triangle)
103. Speedometer
104. Motorcycle crash bars
105. Wings
106. Towing of vehicles
107. Conditions for the use of construction vehicles
108. Conditions for the use of farm implement
109. Mobile telephones

PART V

EQUIPMENT OF OR IN RESPECT OF PUBLIC SERVICE VEHICLES

110. Persons not to be carried in goods compartment
111. Sides and roof
112. Entrances, exits and emergency exits of minibuses and buses

REGULATION
113. Entrances and exits to be fitted with doors
114. Stairs
115. Passageways
116. Seats
117. Goods carried on minibus or bus conveying persons for reward
118. Windows and windscreen
119. Fuel receptacles and pipes
120. Fire-Extinguisher
121. Rearview mirrors
122. Tilt angle
123. Standing persons
124. Destination indicator
125. Special exemption permit
126. Fee for special exemption permit
Schedules

ROAD TRAFFIC (CONSTRUCTION, EQUIPMENT AND USE) REGULATIONS

G.N. 16/2000
38/2004

under s. 181

PART I
Preliminary

Citation

1. These Regulations may be cited as the Road Traffic (Construction, Equipment and Use) Regulations.

Interpretation

2. In these regulations, unless the context otherwise requires—

"adapter dolly" means a semi-trailer with one or more axles, designed or adapted—

(*a*) to be attached between a truck-trailer and semi-trailer; and

(*b*) not to carry any load other than that imposed by a semi-trailer;

"articulated bus" means a bus which—

(*a*) consists of two sections connected to form a unit;

(*b*) can swivel in a horizontal plan at the connexion between such sections;

(*c*) is designated or adapted solely or principally for the conveyance of the driver and at least 100 other persons; and

(*d*) has a continuous passageway over the length thereof;

"articulated passenger vehicle" means an articulated motor vehicle constructed or adapted for use primarily for the carriage of passengers;

"axle", in relation to a vehicle, means a device or set of devices, whether continuous across the width of the vehicle or not, about which the wheels of the vehicle rotate and which is so placed that when the vehicle is travelling straight ahead, the vertical centre-lines of such wheels would be in one vertical plane at right angles to the longitudinal centre-line of such vehicle;

"axle massload" means the sum of the wheel massload of all wheels on any axle;

"axle unit", in relation to a vehicle, means—

(*a*) a set of two or more parallel axles of such vehicle which are so interconnected as to form a unit; or

(*b*) for the purpose of the definition of "wheelbase" and, in the case of a trailer, two or more axles, whether interconnected or not, where the distance between adjacent axles is less than 1.2 metres;

"bus" means a motor vehicle designed or adapted for the conveyance of ten or more persons including the driver and includes a minibus;

"centre-line of an axle unit", or any like expression, means a line midway between centre-lines of the extreme axles of an axle unit;

"construction vehicle" means any vehicle which is—

(*a*) a drilling machine, mobile crane or a forklift or straddle truck;

(*b*) a roadmaking, earthmoving, excavation, construction or loading machine; or

(*c*) determined by the Director to be a construction vehicle;

"converter dolly", means a trailer which has one more axles and, when used in combination with a semi-trailer, converts the semi-trailer into a trailer;

"direction indicator" means a device fitted to a motor vehicle for the purpose of enabling the driver of such motor vehicle to signal his intention to change the direction of travel of such motor vehicle to the right or to the left;

"double-deck bus" means a bus having two decks one of which is wholly or partly above the other and each deck of which is provided with a gang-way serving seats on that deck alone;

"emergency brake" means a brake, other than a service brake, which can stop a vehicle;

"farm implement" means any implement or machinery used in connexion with agriculture, grass cutting, forestry, land levelling, dredging or similar operations that is not constructed or adapted for the conveyance of goods or burden of any description;

"front end", in relation to—

(*a*) a vehicle, other than a semi-trailer, means that the part of the vehicle which projects furthest forward; or

(*b*) a semi-trailer, means a line running parallel with the centre-line of the king-pin and connecting the sides of the semi-trailer at the widest and furthest point in front of the king-pin;

"front overhang", in relation to a vehicle, means that portion of the vehicle, excluding any drawbar or coupling, which projects in front of the centre-line of the front axle or the foremost axle of the front axle unit or, if such vehicle has only one axle, which projects in front of the centre-line of that axle, or in the case of a semi-trailer, which projects in front of the centre-line of the king-pin:

Provided that any portion of a semi-trailer which projects in front of its front end of anything attached to a semi-trailer in front of its front end and which is within an area formed by drawing, with the king-pin as centre, an arc connecting the extreme points of the front end of the semi-trailer, shall not be deemed to be part of the front overhang of such semi-trailer;

"goods vehicle" means a motor vehicle other than a motorcycle, motor tricycle, motor quadrucycle, motor car, minibus or bus, designed or adapted for the conveyance of goods on a public road and includes a truck-tractor, adaptor dolly, converter dully and breakdown vehicle;

"gross axle massload", in relation to a motor vehicle, means the maximum massload of a particular axle of such vehicle as specified by the manufacturer thereof or, in the absence of such specification, as determined by the Director;

"gross axle unit massload", in relation to a motor vehicle, means a maximum massload of a particular axle unit of such vehicle as specified by the manufacturer thereof or, in the absence of such specification, as determined by the Director;

"hazardous cargo", means any hazardous substance contemplated in the Road Traffic (Carriage of Hazardous Cargo) Regulations;

"longitudinal centre-line", in relation to a vehicle, means a line midway between the center-lines of the extreme outer wheels fitted to the axles of such vehicle;

"minibus", means a motor vehicle, designed or adapted solely or principally for the conveyance of more than ten, but not more than twenty-seven persons, including the driver;

"motor car" means a motor vehicle, other than motorcycle, motor tricycle, or motor quadrucycle designed or adapted solely or principally for the conveyance of not more than nine persons including a driver;

"motorcycle" means a motor vehicle which has two wheels and includes any such vehicle having a side-car attached;

"motor quadrucycle", means a motor vehicle, other than a tractor, with four wheels, which is designed to be driven by the type of controls usually fitted to a motorcycle;

"motor tricycle" means a motor vehicle, other than a motorcycle or a tractor, which has three wheels and which is designed to be driven by the type of controls usually fitted to a motorcycle;

"overall length", in relation to a vehicle, means the distance between the front end and the rear end of the vehicle and, in relation to a combination of vehicles, the distance between the front end of the leading vehicle and the rear end of the rearmost vehicle;

"overall height", in relation to a vehicle, means the distance measured from ground level to the highest part of—

(*a*) any part of such vehicle; or

(*b*) any load thereon,

which part is the highest:

Provided that, in the case of a vehicle driven by electrical power, the overall height should not include any overhead electrical contacting gear or catwalk protruding above such vehicle;

"overall width", in relation to a vehicle, means the width measured between two planes parallel to the longitudinal center-line of the vehicle and passing through the extreme project points on either side of such vehicle, exclusive of any side mirror or direction indicator;

"overrun brake", in relation to a trailer means a braking system actuated by a device fitted to the drawbar of the trailer when a force is exerted on such device by reason of the inertia of the trailer;

"parking brake", means a break, normally a hand brake, used in the ordinary course of events to keep a vehicle stationary;

"public service vehicle" means any vehicle carrying passengers for hire or reward;

"rear end", in relation to a road, means a road which does not exceed a plut or minum one per cent grade;

"rear overhang", in relation to a vehicle, means that portion of the vehicle which projects to the rear of the centre-line of the rear axle or the rear-most axle of the rear axle unit or, if such vehicle has only one axle, which projects to the rear of the centre-line of that axle;

"retro-reflector" means a reflector which bears—

(*a*) the approval mark of—

(i) the European Union denoted by the mark E;

(ii) the European Economic Committee denoted by the mark E; or

(iii) the Society of Automotive Engineers denoted by the mark SAE;

(*b*) any other approval mark referred to in a specification, code of practice or any directive having standardization of vehicle retro-reflectors as its aim and issued by a national institution or organization outside Malaŵi for a purpose similar to that for which a standardization mark has been established;

"rescue vehicle" means a motor vehicle designed or adapted for the sole purpose of rescuing persons, and which is owned or controlled by a department of the Government of Malaŵi or by a body of persons approved by the Director;

"safety glass" means transparent glass or other transparent material so constructed or treated that, when fractured, the possibility of large flying fragments or sharp splinters is minimized;

"service brake" means a brake, normally a footbrake, ordinarily used to reduce the speed of a vehicle or to stop the vehicle, and which consists of—

(*a*) a single braking system which brakes the front and rear wheels of the vehicle simultaneously, or in the case of—

(i) a trailer, brakes the wheels thereof simultaneously; or

(ii) a trailer, which is not a semi-trailer, brakes the front or rear wheels or all wheels thereof simultaneously; or

(iii) a tractor, brakes the wheels of the rear axle or rear axle unit of the tractor simultaneously; or

(*b*) two braking systems which—

(i) jointly brake the front and rear wheels of the vehicle simultaneously; and

(ii) independently brake at least two wheels of the vehicle simultaneously;

"single-deck bus" means a bus upon which no part of a deck or gangway is vertically above another deck or gangway;

"stop lamp" means a device fitted to a vehicle for the purpose of signalling, by means of a light, the intention of the driver of such vehicle to stop or reduce the speed of such vehicle;

"tractor" means a farm tractor of the type commonly used for agricultural purposes;

"turning radius", in relation to a vehicle, means the radius of the circle described by the outer steerable wheel of a vehicle when such wheel is deflected as far as possible from the straight, either to the left or to the right, and, where the radii so obtained are not the same, the larger of the two shall be taken as the turning radius of the vehicle, the radius being measured to the outer edge of the track described by such outer steerable wheel;

"wheelbase"—

(*a*) in relation to a semi-trailer, means the distance measured at ground level, between parallel planes at right-angles to the longitudinal centre-line of the vehicle passing through the centre-line of its king-pin and the centre-line of its axle or axle unit, as the case may be;

(*b*) in relation to a trailer with only one axle or one axle unit, other than a semi-trailer, means the distance, measured at ground level, between parallel planes at right angles to the longitudinal centre-line of the vehicle passing through the centre-line of the coupling pin or knuckle and the centre-line of such axle or axle unit, as the case may be; and

(*c*) in relation to any other vehicle, means the distance measured at ground level between parallel planes at right angles to the longitudinal centre-line of the vehicle passing through the centre-line of the front axle or front axle unit and the centre-line of the rear axle or rear axle unit, as the case may be; and

"wheel massload", in relation to any wheel of a vehicle, means the total mass supported by the contact area between the tyre of such wheel and the road surface.

PART II

Dimension of Vehicles

Overall length of vehicle

3. No person shall operate on a public road—

(*a*) a trailer which is coupled to a drawing vehicle in such a manner that the trailer and the drawing vehicle cannot swivel in a horizontal plane at the coupling, if the overall length including any drawbar or coupling exceeds 1.8 metres;

(*b*) a trailer with one axle or one axle unit, other than a semitrailer—

(i) the gross vehicle mass of which exceeds 12,000 kilograms, if the overall length of such trailer, excluding any drawbar or coupling, exceeds 11.3 metres; or

(ii) the gross vehicle mass of which does not exceed 12,000 kilograms, if the overall length of such trailer, excluding any drawbar or coupling, exceeds 8 metres;

(*c*) any articulated motor vehicle or any other combination of motor vehicles consisting of a drawing vehicle and a semi-trailer, if the overall length of such motor vehicle or combination of motor vehicles, including any drawbar or coupling, exceeds 17 metres;

(*d*) an articulated bus, if the overall length exceeds 20 metres;

(*e*) a trailer not referred to in paragraph (*b*), excluding a semi-trailer the gross vehicle mass of which exceeds 12,000 kilograms, if the overall length of such trailer, excluding any drawbar or coupling exceeds 12.5 metres;

(*f*) any other motor vehicle, excluding a construction vehicle or a semi-trailer, if the overall length, including any drawbar or coupling, exceeds 12.5 metres; or

(*g*) any other combination of motor vehicles, if the overall length thereof, including any drawbar or coupling, exceeds 22 metres:

Provided that the provision of this paragraph shall not apply to a breakdown vehicle while towing any other motor vehicle.

Restriction on combination of motor vehicles

4.—(1) No person shall operate on a public road any combination of motor vehicles—

(*a*) other than a drawing vehicle and one or two trailers;

(*b*) other than a motor vehicle drawing one other motor vehicle which is not a trailer:

Provided that in the case of an emergency or a breakdown, a trailer and one other vehicle may be drawn;

(*c*) consisting of a trailer attached to a drawing vehicle in such a manner that the combination of trailer and drawing vehicle cannot bend in a horizontal plane, if the combined length of such trailer, including any drawbar or coupling and the rear overhand of the drawing vehicle exceeds 3.1 metres; or

(*d*) if the length of the drawbar of any trailer in such combination where such trailer has more than one axle, exceeds two metres:

Provided that in the case of an underslug coupling, the drawbar may exceed two metres, provided the distance between the two vehicles does not exceed 2.5 metres:

Provided further that any combination of vehicles may be towed by a breakdown vehicle if the brake system of the towed combination, excluding the drawing vehicle of such combination, is functional and coordinated with the working of the brakes of the breakdown vehicle.

(2) For the purpose of subregulation (1) (*a*), a converter dolly shall, when used in combination with a semi-trailer, be deemed not to be a trailer.

Overall width of vehicle

5. No person shall operate on a public road—

(*a*) a bus if the overall width thereof exceeds 2.6 metres;

(*b*) a goods vehicle the gross vehicle mass of which is 12,000 kilograms or greater, if the overall width thereof exceeds 2.6 metres; or

(*c*) any other vehicle, excluding a construction vehicle or a farm implement, if the overall width thereof exceeds 2.5 metres.

Overall height of vehicle and load

6. No person shall operate on a public road a motor vehicle unless—

(*a*) in the case of a single-deck bus the height excluding any structure for carrying luggage does not exceed 3.2 metres; or

(*b*) in the case of any other vehicle together with any load thereon, on the overall height does not exceed 4.6 metres.

Turning radius and wheelbase

7. No person shall operate on a public road a vehicle—

(*a*) the turning radius of which exceeds 13.1 metres; and

(*b*) the wheelbase of which exceeds, in the case of—

(i) a semi-trailer, 9 metres;

(ii) an articulated bus, 15 metres; or

(iii) any other vehicle, 8.5 metres.

Overhang of vehicle

8.—(1) No person shall operate on a public road—

(*a*) a semi-trailer, the front overhang of which exceeds 1.8 metres; or

(*b*) a vehicle, not being a semi-trailer or not being a trailer with one axle or one axle unit, the front overhang of which exceeds—

(i) 60 per cent of the wheelbase; or

(ii) 6.2 metres in the case of a vehicle having the front surface of the back rest of the driver's seat at seat level not more than 1.7 metres from the front end of the vehicle when such seat, if adjustable, is in the rearmost position, less half the wheelbase:

Provided that the wheelbase of an articulated bus shall be the distance measured from the centre of the front axle to the centre of the middle axle; or

(iii) 5.8 metres in the case of any other vehicle less half the wheelbase.

(2) No person shall operate on a public road—

(*a*) a vehicle designed or adapted for use in connexion with street cleaning or the disposal of refuse or sewage, or a construction vehicle, any bus or self-propelled caravan, the rear overhang of which exceeds 70 per cent of its wheelbase;

(*b*) a trailer other than a semi-trailer, which is equipped with—

(i) one axle;

(ii) one axle unit; or

(iii) two axles and the distance between the centre-lines of the axles is less than 1.2 metres,

if the rear overhang exceeds 50 per cent of the length of the body of such trailer; or

(*c*) any vehicle, not referred to in subregulation (2) (*a*) or (*b*) the rear overhang of which exceeds 50 per cent of its wheelbase.

Projections in case of vehicle other than a motorcycle, motor tricycle, motor quadrucycle or pedal cycle

9.—(1) No person shall operate on a public road a vehicle, other than a motorcycle, motor tricycle, motor quadrucycle or cycle—

(*a*) carrying any goods or fittings which project—

(i) either side of the longitudinal centre-line of the vehicle by more than—

(*aa*) in the case of a bus contemplated in regulation 5 (*a*) or a goods vehicle contemplated in regulation 5 (*b*), 1.3 metres; or

(*bb*) in the case of any other vehicle, 1.25 metres:

Provided that any side mirror or direction indicator on the vehicle shall not be taken into account;

(ii) more than 300 millimetres beyond the front end of the vehicle; or

(iii) more than 1.8 metres beyond the rear end of the vehicle; or

(*b*) of which—

(i) the front overhang, together with any projection, exceeds the front overhang as provided in regulation 8 (1) (*b*); or

(ii) any bracket projects more than 150 millimetres beyond the widest part of the vehicle.

(2) No person shall operate on a public road a motor vehicle or combination of motor vehicles where the combined length of such motor vehicle or combination of motor vehicles and any projection exceeds the overall length prescribed in regulation 3 for such motor vehicle or combination of motor vehicles.

Projections in case of motorcycle, motor tricycle, motor quadrucycle or pedal cycle

10. No person shall operate on a public road a motorcycle, motor tricycle, motor quadrucycle or pedal cycle if any goods carried thereon, or on any portion or side-car of such cycles, project more than 600 millimetres to the front of the axle centre of the front wheel or more than 900 millimetres on either side of the wheels of such cycles, or more than 300 millimetres to the outside of the wheel of any side-car:

Provided that the provisions of this regulation shall not apply to any side mirror or crashbar.

Warning in respect of projecting load

11.—(1) No person shall operate a vehicle on a public if the load on such vehicle projects more than 150 millimetres beyond the side thereof, unless—

(*a*) during the period referred to in regulation 44 (1) (*b*), the extent of such projection is indicated—

(i) by means of either a white retro-reflector or a lamp emitting a white light, fitted at the outer edge of the front of such load; and

(ii) by means of either red retro-reflector or a lamp emitting a red light, fitted at the outer edge of the rear of such load; and

(*b*) during any other period, the extent of such projection is indicated by means of flags of red cloth, not less than 300 millimetres by 300 millimetres, suspended by two adjacent corners thereof transversely to the direction of travel of the vehicle from the front and rear of such projection.

(2) No person shall operate a vehicle on a public road if the load on such vehicle projects more than 300 millimetres beyond the rear thereof, unless—

(*a*) during the period referred to in regulation 44 (1) (*b*)—

(i) the width of such projection is indicated by means of red retro-reflectors or lamps emitting a red light fitted on the end of such projection:

Provided that where the width of any such projection is less than 600 millimetres it shall be sufficient for the purpose of indicating such width to fit one retro-reflector or lamp on the end thereof; and

(ii) the length of such projection is indicated by means of yellow retro-reflectors or lamps emitting a yellow light fitted on both sides of such projection at the end thereof; and

(*b*) during any other period, the length of such projection is indicated by means of a red flag or red cloth, not less than 300 millimetres by 300 millimetres, suspended by two adjacent corners thereof transversely to the direction of travel of the vehicle, from the end of such projection and the width of such projection is indicated by means of such flags suspended by two adjacent corners thereof parallel to the direction of travel of the vehicle, from both sides of such projection at the end thereof:

Provided that where the width of such projection is less than 600 millimetres it shall be sufficient for the purposes of indicating such projection to suspend one such flag from the end thereof.

(3) For the purposes of this regulation, the light of any lamp shall comply with the provisions of regulation 45 (2).

PART III

Loads on Vehicles

Manner in which children are to be counted for the purpose of these Regulations

12. For the purposes of establishing the number of persons that may in terms of these Regulations, other than regulation 123, be carried on any vehicle, other than a motorcycle, motor tricycle, motor quadrucycle or pedal cycle—

(*a*) any child under the age of three years shall not be counted;

(*b*) two children of three years or over but under the age of six years shall be counted as one person; and

(*c*) three children of six years or over but under the age of 13 years shall be counted as two persons and fractions shall be disregarded.

Mass of person and luggage for determining mass of load

13. For the purpose of establishing the maximum mass of person and luggage which may be conveyed on a motor vehicle—

(*a*) the mass of a person together with his personal effects shall, subject to the provisions of regulation 12 be taken as 80 kilograms; and

(*b*) in the case of a motor vehicle which is fitted with—

(i) a luggage compartment the mass of luggage shall be calculated at the rate of 150 kilograms per cubic metre; or

(ii) a roof rack, the mass of luggage shall be calculated at the rate of 75 kilograms per square metre of area of the roof rack.

Number of persons that may be carried on motor vehicle in relation to seating capacity

14.—(1) Subject to the provisions of regulation 12, no person shall operate on a public road a motor vehicle, other than a minibus or a bus which is used for hire or reward, motorcycle, motor tricycle, motor quadrucycle or pedal cycle if—

(*a*) the number of persons on any seat of such vehicle exceeds the number of persons for whom seating accommodation is provided on such seat at the rate of 380 millimetres per person measured at the widest part of the seat with the doors closed; and

(*b*) the total number of persons carried on such vehicle, excluding persons carried in the goods compartment of the vehicle, exceeds the number of persons for whom seating accommodation, determined in the manner referred to in paragraph (*a*), is available in such vehicle:

Provided that, one child over the age of three years but under the age of six years may be carried on each transverse seat in excess of the number of persons for whom seating accommodation determined in the manner referred to in paragraph (*a*) is available on such seat.

(2) Subject to the provisions of regulation 12, no person shall operate a minibus or a bus on a public road if the number of persons on any seat exceeds the number of persons for whom seating accommodation is provided on such seat at the rate of 400 millimetres per person measured at the widest part of the seat with the doors closed.

(3) For the purposes of the proviso to subregulation (1) (*b*), a row of seats shall be regarded as one seat.

(4) Where in this regulation a reference is made to a maximum or minimum dimension, a tolerance of 10 millimetres above any such maximum and below any such minimum shall be permissible.

Permissible maximum axle massload of a motor vehicle

15.—(1) No person shall operate on a public road a minibus, tractor, construction vehicle or goods vehicle if the permissible maximum axle massload of such vehicle is exceeded.

(2) The permissible maximum axle massload of a motor vehicle shall be the least of the mass limits determined by—

(*a*) regulation 19 (1) in respect of a motor vehicle fitted with pneumatic tyres or regulations 19 (2) and 24 in respect of a motor vehicle fitted with tyres other than pneumatic tyres;

(*b*) regulation 20 (1) (*a*) (ii); and

(*c*) regulation 21 (*b*).

Permissible maximum axle unit massload of a motor vehicle

16.—(1) No person shall operate on a public road a minibus, tractor construction vehicle or goods vehicle if the massload permissible maximum axle unit massload of such motor vehicle is exceeded.

(2) The permissible maximum axle unit massload of a motor vehicle shall be the least of the mass limits determined by—

(*a*) regulation 19 (1) in respect of a motor vehicle fitted with pneumatic tyres or regulations 19 (2) and 24 in respect of a motor vehicle fitted with tyres other than pneumatic tyres;

(*b*) regulation 20 (1) (*a*) (iii); and

(*c*) regulation 21 (*b*).

Permissible maximum vehicle mass

17.—(1) No person shall operate on a public road a minibus, tractor, construction vehicle or goods vehicle if the permissible maximum vehicle mass of such motor vehicle is exceeded.

(2) The permissible maximum vehicle mass of a motor vehicle shall be the least of the mass limits determined by—

(*a*) the sum of all the permissible maximum axle massloads and axle unit massloads of the motor vehicle as contemplated in regulations 15 and 16;

(*b*) regulation 20 (1) (*a*) (i);

(*c*) regulation 20 (2); and

(*d*) regulation 22.

Permissible maximum combination mass

18.—(1) No person shall operate on a public road a combination of vehicles where the drawing vehicle is a minibus, bus, tractor, construction vehicle or goods vehicle, if the permissible maximum combination mass of such combination is exceeded.

(2) The permissible maximum combination mass of a combination of motor vehicles shall be the least of the mass limits determined by—

(*a*) the sum of all permissible maximum axle massloads and axle unit massloads of the combination of motor vehicles as contemplated in regulations 15 and 16;

(*b*) regulation 20 (1) (*b*);

(*c*) regulation 20 (2); and

(*d*) regulation 22.

Load on tyres

19.—(1) No person shall operate on a public road a minibus, tractor, construction vehicle or goods vehicle which is fitted with pneumatic tyres, where any wheel massload is in excess of the wheel massload approved by the tyre manufacturer or that specified in regulation 21, whichever is the lesser.

(2) No person shall operate on a public road any vehicle fitted with tyres, other than pneumatic tyres, if the wheel massload exceeds eight kilograms per one millimetre width of any such tyre.

Gross mass limit in respect of motor vehicles not to be exceeded

20.—(1) No person shall operate on a public road a minibus, tractor, construction vehicle or goods vehicle—

(*a*) if—

(i) the gross vehicle mass;

(ii) any gross axle massload; or

(iii) any gross axle unit massload,

is exceeded; or

(*b*) drawing any other motor vehicle if the gross combination mass is exceeded.

(2) No person shall operate on a public road a motor vehicle which is a minibus, bus, tractor or goods vehicle if the mass in kilograms of such motor vehicle or of a combination of motor vehicles of which such first-mentioned motor vehicle forms a part, whether laden or unladen, exceeds five times the total axle massload of the driving axle or axles of such vehicle.

Massload carrying capacity of the road

21. No person shall operate on a public road a motor vehicle or combination of motor vehicles, the wheels of which are fitted with pneumatic tyres, if—

(*a*) (i) any wheel massload exceeds 4,000 kilograms; or

(ii) any axle massload exceeds—

(*aa*) in the case of an axle fitted with two or three wheels, 8,000 kilograms; or

(*bb*) in the case of an axle fitted with four or more wheels, 10,000 kilograms;

(*b*) the massload of an axle unit consisting of—

(i) two axles with two wheels on each axle, exceeds 16,000 kilograms;

(ii) two axles with four wheels on each axle exceeds 18,000 kilograms:

Provided that in the case of a vehicle designed to compact refuse and which is carrying such refuse or a breakdown vehicle, such axles shall not exceed 20,000 kilograms; or

(iii) three axles with four wheels on each axle exceeds 24,000 kilograms:

Provided that a three axle unit, where adjacent axles are more than 2.5 metres apart, shall be deemed to be three single axles for the purposes of this regulation.

Massload carrying capacity of bridges

22.—(1) No person shall subject to subregulation (4) operate on a public road a motor vehicle or combination of motor vehicles the wheels of which are fitted with pneumatic tyres, if the total axle massload of any group of axles of such motor vehicle or combination of motor vehicles exceeds the mass in kilograms determined by multiplying the dimension of such group measured as referred to in subregulation (3) by 2,100 and adding 18,000.

(2) A group of axles referred to in subregulation (1) may comprise any series of axles, but shall not consist of one axle unit referred to in regulation 21 (*b*) alone.

(3)—(*a*) the dimension referred to in subregulation (1) shall be measured in metres and tenths of metres from the centre of the first axle of any group of axles to the centre of the last axle of such group.

(*b*) if the dimension so measured is not a definite figure in metres and tenths of a metre, the next highest number of tenths of a metre with which the dimension so measured is exceeded shall be used for the calculation referred to in subregulation (1); or

(*c*) where a group of axles of a combination of vehicles is measured, the vehicles of such combination shall be positioned in line and both sides of such combination of vehicles shall be measured, and if the dimensions of the two sides differ, the longer dimension shall be used for the calculation referred to in subregulation (1).

(4) No person shall operate on a public road a motor vehicle or combination of motor vehicles, the wheels of which are fitted with pneumatic tyres, if the total axle massload of such motor vehicle or combination of motor vehicles exceeds 56,000 kilograms.

Distribution of axle massload and wheel massload on vehicle fitted with pneumatic tyres

23. Notwithstanding the provisions of regulation 21 no person shall operate on a public road a motor vehicle which is fitted with pneumatic tyres if—

(*a*) on any axle with—

(i) two tyres, the wheel massload on one tyre exceeds the wheel massload on the other tyre by more than ten per cent; or

(ii) four tyres, the wheel massload on two tyres nearest to each other exceeds the wheel massload on the other two tyres by more than ten per cent;

(*b*) in the case of an articulated motor vehicle the axle massload of any steering axle or the sum of the axle massloads of any steering axle unit is less than eleven per cent of the sum of all axle massloads of such vehicle;

(*c*) in the case of a motor vehicle, not being an articulated motor vehicle, with a steering axle unit, the sum of the axle massloads of such steering axle unit is less than thirty per cent of the sum of all axle massloads of such vehicle; or

(*d*) in the case of any other vehicle the axle massload of a steering axle is less than twenty per cent of the sum of all axle massloads of such vehicle, except in the case of a tractor when the axle massload of the steering axle shall not be less than twelve per cent of the sum of all the axle massloads of such tractor.

Axle mass load of vehicles fitted with other than pneumatic tyre

24. No person shall operate on a public road a vehicle fitted—

(*a*) with metal tyres, if any axle massload of such vehicle exceeds 2,700 kilograms; or

(*b*) with tyres, other than pneumatic or metal tyres, if any axle massload or the sum of all axle massloads of such vehicle exceeds fifty per cent of that permitted for vehicles fitted with pneumatic tyres in terms of regulation 21 or, if the axle massload of any steering axle of such vehicle does not comply with the requirements of regulation 23 (*b*), (*c*) or (*d*).

Contravention of motor vehicle mass limits

25.—(1) A vehicle shall be presumed overloaded when used on a public road in contravention of mass and permissible axle mass regulations made under the Act and by prohibitory signs and special notices.

(2) Any person who contravenes subregulation (1) shall be presumed to have damaged the public road by reason of such overloading.

(3) Subject to the provisions of the Act and any regulations made thereunder, a contravention of mass limits under these regulations shall not be deemed to constitute a criminal offence, but shall be dealt with as provided for in these regulations.

Calculation of overload

26.—(1) For purposes of calculating an axle overload—

(*a*) for each axle five per cent of the legal limit specified in regulation 21 shall be subtracted from the recorded massload, and the result shall be rounded down to the nearest 100 kilograms to serve as the calculated massload;

(*b*) for each axle an additional five per cent of the limit specified in regulation 21 shall be allowed to be carried further:

Provided that where such overload is not off loaded, the surcharge for carrying it further will be four times the corresponding penalty for that overload;

(*c*) where a special exemption permit as contemplated in regulation 125 has been issued for the vehicle in question, overload shall be calculated accordingly.

(2) For the purposes of calculating a gross vehicle mass overload the total recorded axle massload of a motor vehicle or combination of motor vehicles shall be subtracted from the amount specified in regulation 17 or 18 as the case may be; and—

(*a*) an additional five per cent of the amount so specified in regulation 17 or 18 shall be allowed to be carried further with no penalty;

(*b*) an additional ten per cent of the amount so specified in regulation 17 or 18 shall be allowed to be carried further:

Provided that where such gross mass overload is not offloaded, the surcharge for carrying it further will be four times the corresponding penalty for such overload; and

(*c*) where a special exemption permit has been issued for such motor vehicle or combination of motor vehicles the gross mass overload shall be calculated accordingly.

(3) Subject to subregulations (1) and (2), all overload except hazardous cargo, indivisible cargo, perishable cargo and cargo for which a special exemption permit is produced shall be either redistributed or off-loaded on to another vehicle before the overloaded vehicle is permitted to continue using the public road.

(4) All cargo exempt from off loading under subregulation (3), except cargo for which a special exemption permit has been issued, shall be assessed a surcharge of four times the corresponding overload penalty for the further movement on the public road of any vehicle having such an overload.

Calculation of penalties

27.—(1) For the mass of each axle deemed to be overload, of the penalty shall be calculated separately for each axle as specified in the First Schedule.

(2) The maximum penalty to be paid per each overloaded axle shall be as specified in the First Schedule.

(3) For the mass deemed to be gross vehicle mass overloaded, the penalty shall be calculated as specified in the Second Schedule.

Imposition of penalties and procedures

28.—(1) The penalties for overloading shall be imposed by the Director or any authorized officer.

(2) Where a vehicle is found overloaded, in terms of both axle overload and gross vehicle mass overload the penalty for overloading shall be the larger of such penalties as contemplated in regulation 27 (1) and (3).

(3) Any penalty for overloading shall be paid by the owner or operator of the vehicle at such place as the Director may designate by notice published in the *Gazette*.

Weighing of vehicles

29. The Director and any authorized officer may require the person in charge of any vehicle to allow the vehicle to be weighed either laden or unladen and the weight transmitted to the surface of the road by any part of the vehicle in contact with the road to be tested and for that purpose to proceed to a weighbridge.

Weighing procedures

30.—(1) Penalties shall be calculated as far as possible on the basis of weighing individual axles.

(2) The massloads of all the individual axles of—

(*a*) an axle unit may be added to obtain the total massload of such axle unit;

(*b*) a group of axles may be added to obtain the total massload of such group of axles;

(*c*) a vehicle may be added to obtain the total massload of such vehicle; or

(*d*) a combination of vehicles may be added to obtain the total massload of such combination of vehicles.

(3) When using single axle weighbridges the total mass of the vehicle shall be calculated on the basis of the combined recorded massload of the individual axles.

(4) Scales authorized by the Director shall be used in weighing vehicles.

(5) Any receipt issued by any authorized officer shall be signed by the driver of the vehicle.

(6) The driver of any motor vehicle attempting entry into Malaŵi, which is found not to be in compliance with these regulations shall at his option—

(*a*) elect to enter Malaŵi and accept the provisions of these regulations; or

(*b*) refuse to enter Malaŵi and upon payment of the weighbridge processing fee referred to in the Fourth Schedule return such motor vehicle to the country from which entry into Malaŵi was attempted thereby exempting such motor vehicle from any further application of these regulations.

(7) If, upon being weighed, a vehicle is found to be not overloaded there shall be given to the person in charge thereof a certificate of weight in such form as approved by the Director:

Provided that the holding of such a certificate of weight for the vehicle concerned shall not exempt the person in charge of such vehicle from the requirements of regulation 29.

Authority of certain officers

31.—(1) The Director or any authorized officer shall have the power to control overload, and any driver of the vehicle found overloaded shall follow the instructions given to him for the proper overload control.

(2) Any authorized officer who, upon weighing a vehicle, determines that the weight does not conform to these regulations shall, subject to regulation 26, detain such vehicle and require the driver to stop the vehicle on a suitable place in order to either redistribute

or to off-load on to another vehicle whatever portion of the load as may be required to reduce the gross mass or axle mass such that the vehicle complies with the provisions of these regulations and any load so redistributed or off-loaded shall be the sole responsibility of the owner, operator or driver of the vehicle concerned.

(3) Any authorized officer shall detain and prohibit any further use of any overload vehicle upon a public road until—

(*a*) such vehicle if required has been reweighed and complies with the provisions of these regulations; and

(*b*) proof of payment for any overload penalty imposed on such vehicle has been produced.

Appeals to the Minister

32.—(1) Any person aggrieved at the action of any authorized officer in respect of the procedures of weighing motor vehicles and the decision of imposing overload penalties may within twenty-one days of the action of such authorized officer appeal against such action to the Minister in accordance with the Road Traffic (Appeals) Regulations.

(2) For the purpose of deciding an appeal in terms of subregulation (1), the Minister may require any party to such appeal to furnish such information and evidence as he may deem expedient.

(3) The Minister after considering the appeal referred to in subregulation (1) may give such decision as he may deem fit.

Information to be displayed on certain motor vehicles

33. No person shall operate on a public road a minibus, bus or goods vehicle of which the gross vehicle mass does not exceed 3,500 kilograms, unless there is displayed in a conspicuous position on the left side thereof in letters and figures of not less than 40 millimetres in height and which shall be clearly legible at all times—

(*a*) the tare of such vehicle in kilograms (denoted as T);

(*b*) the permissible maximum vehicle mass referred to in regulation 17 in kilograms (denoted as PVM);

(*c*) if the vehicle is used to draw any other vehicle, the permissible maximum drawing vehicle mass which shall be the least of the masses determined in terms of regulation 20 (1) (*b*) or (2) in kilograms (denoted as PDVM);

(*d*) in the case of a minibus or a bus subject to the provisions of regulation 14, the number of seated passengers that may be carried; and

(*e*) in the case of a bus subject to the provisions of regulation 123, the number of standing passengers that may be carried.

Information plates on certain vehicles

34.—(1) No person shall operate on a public road a minibus, bus or goods vehicle which, according to the registration certificate thereof was registered for the first time on or after 1st January, 1998, and of which the gross vehicle mass exceeds 3,500 kilograms unless the following particulars in respect of such minibus, bus or goods vehicle are clearly imprinted or stamped on a metal plate or plates affixed in an accessible place on a door post, under the bonnet or on the dash board of the vehicle concerned or, in the case of a trailer, on the left side thereof in any conspicuous place—

(*a*) the tare in kilograms (denoted as T);

(*b*) the gross vehicle mass in kilograms (denoted as GVM);

(*c*) the gross axle massload or gross axle unit massload of each axle or axle unit in kilograms (denoted as GA or GAU, respectively);

(*d*) in the case of a semi-trailer the gross king-pin massload as specified by the manufacturer (denoted as GKM);

(*e*) the gross combination mass in kilograms where the vehicle is used to draw any other vehicle (denoted as GCM);

(*f*) the permissible maximum vehicle mass referred to in regulation 17 in kilograms (denoted as PVM):

Provided that this subparagraph is not applicable to a semi-trailer;

(*g*) the permissible maximum axle massload referred to in regulation 15 or axle unit massload referred to in regulation 16 of each axle or axle unit in kilograms (denoted as A or AU respectively; and

(*h*) the permissible maximum drawing vehicle mass referred to in regulation 33 (*c*) (denoted as PDVM).

(2) No person shall operate on a public road a tractor which according to the registration certificate thereof was registered for the first time on or after January, 1998, unless it is fitted with a metal plate on which is clearly imprinted or stamped—

(*a*) the gross combination mass in kilograms (denoted as GCM); and

(*b*) the permissible maximum drawing vehicle mass referred to in regulation 33 (*c*) (denoted as PDVM).

Manner in which goods shall be carried

35. No person shall operate on a public road a motor vehicle carrying any goods—

(*a*) in such a manner as to come into contact with the surface of the public road on which the vehicle is being operated:

Provided that a chain, known as a "static chain", may be carried in contact with the surface of such road;

(*b*) in such manner as to obscure the driver's view of traffic to the front or on either side or his view in the rear view mirror or mirrors of traffic to the rear;

(*c*) which are not—

(i) safely contained within the body of such vehicle; or

(ii) securely fastened to such vehicle, and properly protected from being dislodged or spilled from such vehicle;

(*d*) on the roof thereof, in the case where such vehicle is a motor car, if the height of such goods measured from the highest point of such roof exceeds one-half of the height of the motor car, measured from ground level;

(*e*) in any container, which has provision for fastening by means of "twist locks", unless such container is securely fastened by at least four "twist locks" and the provisions of this paragraph are also applicable to empty containers carried on a vehicle; or

(*f*) on the roof thereof, in the case where such vehicle is a double-deck bus.

Circumstances under which persons may be carried on goods vehicle

36. No person shall operate on a public road a goods vehicle conveying persons unless that portion of the vehicle in which such persons are being conveyed is enclosed to a height of—

(*a*) at least 350 millimetres above the surface upon which such person is seated; or

(*b*) at least 900 millimetres above the surface on which such person is standing, in a manner and with a material of sufficient strength to prevent such person from falling from such vehicle when it is in motion:

Provided that this regulation shall not apply in the case of employees being carried in the course of their employment.

PART IV

Equipment on or in Respect of Vehicles

Brakes on certain motor vehicles

37.—(1) Subject to the provisions of regulations 38 to 43 inclusive, no person shall operate on a public road a motor vehicle, other than a motorcycle, motor tricycle, motor quadrucycle or trailer, which is not equipped with a service brake, a parking brake and an emergency brake:

Provided that—

(*a*) the emergency brake and parking brake may be one and the same brake; and

(*b*) in the case of—

(i) a motor vehicle which is equipped with a service brake consisting of two braking systems, such brake shall, when the systems brake the wheels independently, be deemed to be an emergency brake;

(ii) a steam, electric or other uniquely driven motor vehicle of which the engine or motor can be reversed, the reversing mechanism may be used instead of an emergency brake; and

(iii) a tractor, the brakes may be so constructed that the service brake may be used as a parking brake.

(2) No person shall operate on a public road a motor vehicle to which is fitted an anti-theft device which is connected to or in anyway interferes with the braking system of such vehicle.

Brakes on motorcycle, motor tricycle or motor quadrucycle

38. Subject to the provisions of regulations 37 and 39 to 43 inclusive, no person shall operate on a public road a motorcycle, motor tricycle or motor quadrucycle which is not equipped with two independent braking systems one of which shall act on the front wheel or wheels and the other which shall act on the rear wheel or wheels and each such system shall have an efficiency at least equivalent to that specified for an emergency brake and when the two systems are applied simultaneously, the combined efficiency shall be at least equivalent to that specified for a service brake.

Brakes on trailers

39.—(1) Subject to the provisions of subregulation (4) no person shall operate on a public road a trailer, if—

(*a*) the mass of such trailer and any load thereon is 750 kilograms or less and—

(i) does not exceed half of the tare of the drawing vehicle, unless such trailer is equipped with at least a parking brake or other device for keeping such trailer stationary; or

(ii) exceeds half of the tare of the drawing vehicle, unless such trailer is equipped with a parking brake and either an overrun brake or a service brake;

(*b*) the gross vehicle mass of such trailer exceeds 750 kilograms but does not exceeds 3,500 kilograms and does not exceed the tare of the drawing vehicle, unless such trailer is equipped with a parking brake and either an overrun brake or a service brake; or

(*c*) the gross vehicle mass of such trailer exceeds the tare of the drawing vehicle or 3,500 kilograms, as the case may be, unless such trailer is equipped with a parking brake and a service brake, and where more than one trailer is drawn by a drawing vehicle, the foregoing requirements shall apply in respect of each such trailer, and in such event the gross vehicle mass shall be construed as the total of the gross vehicle masses of all trailers so drawn.

(2) The service brake of the trailer shall be capable of being operated by the driver of the drawing vehicle while such vehicle and drawing vehicle are in motion.

(3) If the service or overrun brake of a trailer is capable of being used as a parking brake, a separate parking brake need not be fitted to such trailer.

(4) In the case where a trailer referred to in subregulation 1 (*a*) (ii), 1 (*b*) or 1 (*c*) is drawn by a tractor—

(*a*) and such tractor is not designed for or capable of operation at a speed exceeding 35 kilometres per hour on a reasonably level road, such trailer may be equipped with an overrun brake in lieu of a service brake referred to in subregulation (1); or

(*b*) and is operated at a speed not exceeding 15 kilometres per hour, such trailer may be equipped with a parking brake or other device for keeping such trailer stationary, in lieu of an overrun brake or service brake referred to in subregulation (1).

Brakes on pedal cycles

40. No person shall operate on a public road any pedal cycle unless it is equipped with at least one brake which shall operate on the rear wheel or wheels.

Brakes on unspecified vehicles

41. No person shall operate on a public road any vehicle for which brakes are not specified elsewhere in regulations 37 to 43 inclusive, unless it is equipped with a parking brake or other device for keeping such vehicle stationary.

Braking performance of service, emergency and parking brakes

42.—(1) No person shall operate on a public road a motor vehicle or a combination of motor vehicles which, in terms of these Regulations—

(*a*) shall be equipped with a service brake, unless such brake at all times—

(i) in the case of a motor vehicle or a combination of motor vehicles which is capable of exceeding a speed of 35 kilometres per hour when it is applied from an initial speed of 35 kilometres per hour, complies with the requirements for braking performance set out in Table A hereunder; or

(ii) in the case of a motor vehicle or a combination of motor vehicles which is not capable of exceeding a speed of 35 kilometres per hour, when it is applied from the maximum speed which such vehicle or combination of vehicles is capable of attaining, complies with the requirements for braking performance set out in Table B hereunder;

(*b*) shall be equipped with an emergency brake, unless such brake at all times—

(i) in the case of a motor vehicle or a combination of motor vehicles which is capable of exceeding a speed of 35 kilometres per hour, when it is applied from an initial speed of 35 kilometres per hour, complies with the requirements from braking performance set out in Table C hereunder; or

(ii) in the case of a motor vehicle or a combination of motor vehicles which is not capable of exceeding a speed of 35 kilometres per hour when it is applied from the maximum speed which such vehicle or combination of vehicles is capable of attaining, complies with the requirements for braking performance set out in Table D hereunder; or

(*c*) shall be equipped with a parking brake, unless such brake, at all times, is capable of keeping such vehicle or combination stationary for an indefinite period with the engine disengaged or a gradient of not more than 1 in 8.33.

REQUIREMENTS FOR BRAKING PERFORMANCE

TABLE A

SERVICE BRAKE OF MOTOR VEHICLE OR COMBINATION OF MOTOR VEHICLES CAPABLE OF EXCEEDING SPEED OF 35 KM/H

	Initial speed in km/h	Maximum stopping distance in m	Minimum deceleration in m/s2	Minimum equivalent braking force in N/kg
Light motor vehicle	35	14	4.4	4.4
Heavy motor vehicle	35	16	4.4	4.4

TABLE B

SERVICE BRAKE OF MOTOR VEHICLE OR COMBINATION OF MOTOR VEHICLES NOT CAPABLE OF EXCEEDING SPEED OF 35 KM/H

Minimum initial speed in km/h	Maximum stopping distance in m	Minimum deceleration in m/s^2	Minimum equivalent braking force in N/kg
15	7	1.9	1.9
20	11	1.9	1.9
25	16	1.9	1.9
30	23	1.9	1.9
35	30	1.9	1.9

TABLE C

EMERGENCY BRAKE OF MOTOR VEHICLE OR COMBINATION OF MOTOR VEHICLES CAPABLE OF EXCEEDING SPEED OF 35 KM/H

	Initial speed in km/h	Maximum stopping distance in m	Minimum deceleration in m/s2	Minimum equivalent braking force in N/kg
Light or heavy motor vehicle	35	30	1.9	1.9

TABLE D

EMERGENCY BRAKE OF MOTOR VEHICLE OR COMBINATION OF MOTOR VEHICLES CAPABLE OF EXCEEDING SPEED OF 35 KM/H

Minimum initial speed in km/h	Maximum stopping distance in m	Minimum deceleration in m/s^2	Maximum equivalent braking force in N/kg
15	12	0.95	0.95
20	20	0.95	0.95
25	29	0.95	0.95
30	41	0.95	0.95
35	55	0.97	0.95

(2) Compliance with the requirements contemplated in subregulation (1) (*a*) and (*b*) shall be determined by—

(*a*) actual road tests conducted on a road with a reasonable level, dry, smooth and hard surface which is free from loose material and with the stopping distance measured from the moment the particular brake is applied with the engine disengaged until vehicle comes to rest; or

(*b*) a suitable mechanical test; or

(*c*) both tests contemplated in paragraphs (*a*) and (*b*).

(3) When testing a brake on a combination of motor vehicles, the brakes of the drawn vehicle or vehicles shall be applied at the same moment as the brakes of the drawing vehicle.

(4) Where in any prosecution for a contravention of subregulation (1) the question arises whether a motor vehicle or a combination of motor vehicles travelled at a particular speed, the speed indicated by the speedometer of such vehicle or combination of vehicles shall, until the contrary is proved, be deemed to be correct.

(5) For the purposes of this regulation—

(*a*) "light motor vehicle" means—

(i) a motor car;

(ii) a motor vehicle with a gross vehicle mass not exceeding 3,500 kilograms; or

(iii) any other motor vehicle with a tare not exceeding 3,500 kilograms, but does not include a bus, minibus or goods vehicle; and

(*b*) "heavy motor vehicle" means a motor vehicle which is not a light motor vehicle.

Conditions and operation of brakes

43.—(1) A brake required in terms of these regulations, shall—

(*a*) be in good working order and condition whenever the vehicle to which it is fitted is operated on a public road; and

(*b*) when tested in terms of regulation 42, except in the case of a motorcycle with side-car, act with approximately equal intensity on the wheels symmetrically placed in relation to the longitudinal center-line of the vehicle.

(2) No person shall operate on a public road a motor vehicle equipped with a service brake which is operated solely by air or vacuum pressure unless there is fitted in the driving compartment of such vehicle a device (other than a gauge indicating pressure) whereby the driver of the vehicle is given visible or audible warning when the air or vacuum pressure is incorrect but before the pressure becomes such that the brake is incapable of stopping the vehicle as contemplated in regulation 42.

(3) If a drawn vehicle is equipped with a service brake operated solely by air or vacuum pressure, the device referred to in subregulation (2) shall be fitted in the driving compartment of the drawing vehicle.

Vehicles to be equipped with certain lamps and times when certain lamps must be lighted

44.—(1) No person shall operate on a public road a motor vehicle other than a tractor or a construction vehicle unless—

(*a*) all lamps fitted to a motor vehicle as contemplated in regulations 45 to 72 inclusive, and undamaged, properly secured and capable of being lighted at all times; and

(*b*) the head lamps, rear lamps and registration plate lamps are kept lighted during the period between sunset and sunrise and at any other time when, due to insufficient light or unfavourable weather conditions, persons and vehicles upon the public road would not be clearly discernible at a distance of 150 metres:

Provided that the provisions of this paragraph shall not apply to a motor vehicle parked off the roadway of a public road or in a parking place demarcated by appropriate road traffic signs or within a distance of 12 metres from a lighted street lamp illuminating the public road of which such vehicle is parked.

(2) No person shall operate on a public road a motorcycle, motor tricycle or motor quadrucycle, unless the headlamp of such vehicle is lighted at all times.

(3) A person operating a motor vehicle on a public road shall extinguish the main beam of the light emitted by the head lamp of such vehicle if such main beam could cause a dangerous glare to oncoming traffic.

Visibility distance of lights

45.—(1) Where provision is made in regulations 44 to 72 inclusive, as to the distance from which certain lights and devices shall render objects visible or the distance within which such lights or devices shall be visible, such provision shall apply during the times stated in regulation 44 (1) (*b*) in respect of a vehicle when upon a straight, reasonably level, unlighted public road in clear weather unless a different time or condition is expressly stated.

(2) Every lamp required to be fitted or to be used in connexion with any vehicle in terms of these regulations shall emit a light of sufficient brilliance to be visible from a distance of at least 150 metres to a person of normal eyesight.

Head lamps

46.—(1) No person shall operate on a public road—

(*a*) a motor vehicle, other than a motorcycle, a motor tricycle with one wheel in front or trailer unless it is equipped in front on each side of its longitudinal center-line with—

(i) one head lamp capable of emitting a main-beam and a dipped-beam;

(ii) one head lamp capable of emitting a main-beam and one head lamp capable of emitting a dipped-beam; or

(iii) one head lamp contemplated in subparagraph (i) or head lamps contemplated in subparagraph (ii) and an additional head lamp capable of emitting a main-beam;

(*b*) a motorcycle without a side-car, or a motor tricycle with one wheel in front, unless it is equipped in front with—

(i) one head lamp capable of emitting a main-beam and a dipped-beam;

(ii) one head lamp capable of emitting a main-beam and one head lamp capable of emitting a dipped-beam, both of which are fitted in the same vertical plane; or

(iii) two head lamps each capable of emitting a main-beam and a dipped-beam both of which are fitted in the same horizontal plane; or

(*c*) a motorcycle with a side-car, unless—

(i) the motorcycle is equipped in front with one head lamp contemplated in subregulation (1) (*b*) (i) or head lamps contemplated in subregulation (1) (*b*) (ii) or (iii); and

(ii) the side-car equipped in front with one parking lamp complying with the provisions of regulation 51 or with one head lamp contemplated in subregulation (1) (*b*) (i), but subject to the proviso to regulation 48 (4) (*a*).

(2) At least one head lamp contemplated in subregulation (1) (*a*) capable of emitting a dipped-beam or a parking lamp complying with the provisions of regulation 51 shall be so fitted on each side of the longitudinal center-line of a motor vehicle concerned that the portion of the illuminating surface thereof furthest from the longitudinal center-line of the motor vehicle is not more than 400 millimetres from the outer edge of the front of the motor vehicle.

47. Every head lamp emitting a main-beam of light shall be so adjusted and maintained that— Main-beam

(*a*) it shall be capable of adequately illuminating an area ahead of the motor vehicle concerned enabling the driver to see any person, vehicle or substantial object at a distance of at least 100 metres ahead; and

(*b*) it can be extinguished by the use of a device which simultaneously shall cause or allowed to dipped-beam of light to be emitted or continue to be emitted from the head lamp.

48.—(1) Every head lamp emitting a dipped-beam of light which, when projected onto a vertical screen, shows a beam pattern with a sharp, clearly defined cut-off line— Dipped-beam

(*a*) diagonal to the left (hereinafter referred to as the "diagonal cut-off-line"); and

(*b*) horizontal to the right (hereinafter referred to as the "horizontal cut-off line"),

shall be so adjusted and maintained that, when the motor vehicle concerned is on a reasonably level road, such beam at the horizontal cut-off line shall—

(i) slant downwards at a percentage inclination of at least 0.5 per cent which percentage inclination shall be calculated in accordance with the formula—

$$h^1\text{-}h^2$$

$$L \times 100; \text{ and}$$

(ii) strike the road surface ahead of the motor vehicle within a distance in metres calculated in accordance with the formula—

$$200 \times h$$

(2) In formulae referred to in subregulation (1)—

(*a*) "h^1" represents the height in metres of the lamp measured to the center of the head lamp vertically from ground level;

(*b*) "h^2" represents the height in metres of the horizontal cut-off line measured vertically from ground level at the screen contemplated in subregulation (1); and

(*c*) "L" represents the distance in metres of the screen contemplated in subregulation (1) measured horizontally from the head lamp as illustrated hereunder—

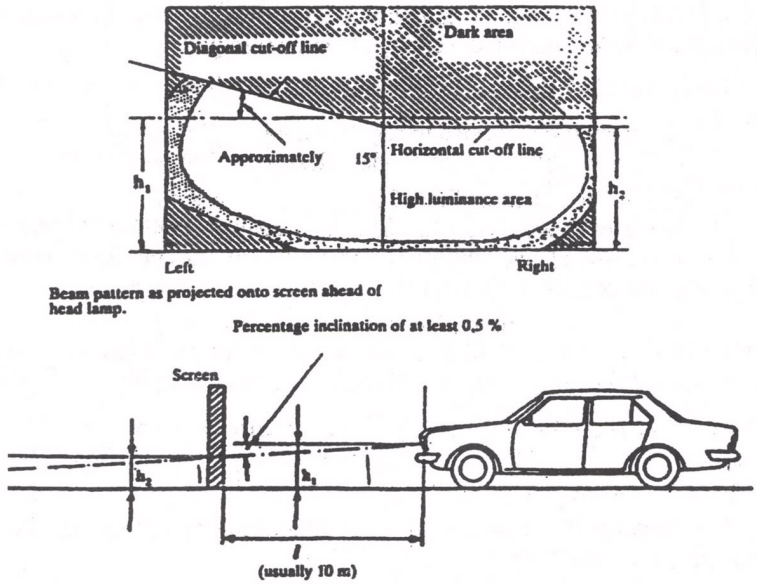

(3) Every head lamp emitting a dipped-beam of light which, when projected onto a vertical screen, shows a symmetrical light-pattern or does not have a diagonal and horizontal cut-off line, shall be so adjusted and maintained that when the motor vehicle concerned is on a reasonable level road, the center of the intense part of such beam shall slant downwards to strike the road surface ahead of the motor vehicle within a distance not exceeding 45 metres.

(4) Every head lamp emitting a dipped-beam of light shall be so adjusted and maintained that—

(*a*) it shall be capable of adequately illuminating an area ahead of the motor vehicle concerned enabling the driver to see any person, vehicle or substantial object at a distance of at least 45 metres ahead of the motor vehicle:

Provided that the provisions of this paragraph shall not apply to a head lamp emitting a dipped-beam of light fitted to the side-car of a motorcycle;

(*b*) it does not cause a dangerous glare to oncoming traffic on a reasonably level road; and

(*c*) in the case where—

(i) a dipped-beam shows a light-pattern as contemplated in subregulation (1), the intersection of the diagonal and horizontal cut-off lines; or

(ii) a dipped-beam shows a light-pattern as contemplated in subregulation (3), the center of the intense part of such beam,

shall not deflect to the right.

Lights to be displayed on stationery or packed motor vehicle

49. Subject to the proviso to regulation 44 (1) (*b*), no person shall on a public road stop or park a motor vehicle unless—

(*a*) the head lamps thereof emit a dipped-beam of light complying with the provisions of regulation 48 or a beam of light complying with the provisions of regulation 51 is emitted from parking lamps incorporated in such head lamps; or

(*b*) if the head lamps thereof are extinguished, light is emitted from two fog lamps or parking lamps complying with the provisions of regulations 50 and 51, respectively.

Fog lamps

50.—(1) A motor vehicle may be equipped at the front or at the rear with—

(*a*) one fog lamp; or

(*b*) two fog lamps, one on each side of the longitudinal centerline of the motor vehicle.

(2) No person shall operate on a public road a motor vehicle which, in terms of subregulation (1) is equipped with a fog lamp or fog lamps, unless—

(*a*) every fog lamp at front is so adjusted and maintained that it shall only be capable of emitting a dipped-beam of light complying with the provisions of regulation 48 (3) and (4); or

(*b*) the fog lamp or lamps at the rear can only be brought into operation when any fog lamp at the front or any head lamp of such vehicle is brought into operation.

(3) No fog lamp contemplated in subregulation (1) shall be fitted—

(*a*) at the front of a motor vehicle with the highest point of its illuminating surface above the highest point of the illuminating surface of a head lamp emitting a dipped-beam of light; or

(*b*) at the rear of a motor vehicle with the lowest point of its illuminating surface less than 250 millimetres and the highest point thereof mote than 1,000 millimetres from ground level.

(4) if—

(*a*) a motor vehicle, other than a motorcycle, motor tricycle with one wheel in front, is, in terms of subregulation (1) (*a*), equipped with one fog lamp at the front, a parking lamp or

parking lamps complying with the provisions of regulation 51 shall be fitted to the motor vehicle concerned in such a manner that every parking lamp shall be brought into operation simultaneously with a fog lamp; or

(*b*) a motor vehicle is, in terms of subregulation (1) (*b*), equipped with two fog lamps at the front and any such lamp is so placed that the portion of its illuminating surface which is furthest from the longitudinal centre-line of the motor vehicle is further than 400 millimetres from the outer edge of the front of such vehicle, a parking lamp or parking lamps complying with the provisions of regulation 51 shall be fitted to the motor vehicle and in such a manner that every parking lamp shall be brought into operation simultaneously with the fog lamps.

(5) No fog lamp shall be fitted to the side-car of a motorcycle at the front, unless the motorcycle concerned is equipped with a fog lamp complying with the provisions of this regulation or with a parking lamp complying with the provisions of regulation 51 and which can be brought into operation simultaneously with the fog lamp on the side-car:

Provided that if a fog lamp is only fitted to the motorcycle at the front, the side-car shall be equipped with one parking lamp referred to in regulation 46 (1) (*c*) (ii) and such parking lamp shall be capable of being brought into operation simultaneously with such fog lamps.

(6) No person shall operate on a public road, a motor vehicle, while any fog lamp fitted to such vehicle is lit, except in conditions of poor visibility caused by fog, mist, dust or smoke.

Parking lamps

51.—(1) A motor vehicle may be equipped—

(*a*) in front with one or two parking lamps which shall be visible directly from the front;

(*b*) at the rear with one or two parking lamps which shall be visible directly from the rear; or

(*c*) at each side with one parking lamp which shall be visible directly from the rear.

(2) Any parking lamp—

(*a*) completed in subregulation (1) (*a*), may form part of a head lamp contemplated in regulation 46, a fog lamp contemplated in regulation 50 or a front position lamp contemplated in regulation 53; or

(*b*) contemplated in subregulation (1) (*b*), may form part of a fog lamp contemplated in regulation 50, a rear lamp contemplated in regulation 55 or a stop lamp contemplated in regulation 56.

(3) If a motor vehicle is, in terms of subregulation (1), equipped at the front or at the rear with—

(*a*) one parking lamp, such lamp shall be fitted on the right side of the motor vehicle; or

(*b*) two parking lamps, one parking lamp shall be fitted on each side of the longitudinal center-line of the motor vehicle, so that the portion of the illuminating surface thereof furthest from the longitudinal center-line of the motor vehicle is not further than 400 millimetres from the outer-edge of the front or rear of the motor vehicle, as the case may be.

When parking lamps are to be kept lighted

52. No person shall operate on a public road a motor vehicle on any side of the longitudinal center-line thereof if no head lamp in use is so placed that the portion of its illuminating surface furthest from such center-line is within 400 millimetres from the outer-edge of the front of the vehicle, unless a parking lamp fitted to that side of the vehicle and complying with regulation 51 is kept lighted.

Front position lamps

53.—(1) No person shall operate on a public road a motor vehicle or a combination of motor vehicles, other than a motorcycle, if any of the outer edges of the widest part of such vehicle or combination or any load thereon projects more than 400 millimetres beyond the illuminating surface of any outermost lamp to the front of such vehicle or combination of motor vehicles which is nearest to such edge, unless there is fitted on each side of such widest part one front position lamp which shall be visible directly from the front.

(2) The front position lamps contemplated in subregulation (1)—

(*a*) shall be fitted as near as possible to, but not more than 400 millimetres, from the outer-edges of the widest part of the motor vehicle or combination of motor vehicles concerned or any load thereon, and shall not be less than 350 millimetres or more than 2,100 millimetres above the ground level; and

(*b*) shall emit a white light.

End-outline-marker lamps

54.—(1) A motor vehicle may be equipped—

(*a*) in front of each side of its longitudinal center-line with one end-outline-maker lamp which shall be visible directly from the front; and

(*b*) at the rear on each side of its longitudinal center-line with one end-outline-maker lamp which shall be visible directly from the rear.

(2) The end-outline-maker lamps contemplated in subregulation (i)—

(*a*) shall be fitted as near as possible to the outer-edges of the front and rear of the motor vehicle concerned and as high as possible; and

(*b*) shall emit a white light to the front and a red light to the rear.

Rear lamps

55.—(1) No person shall operate on a public road a motor vehicle unless it is fitted with at least one lamp on each side at the rear, emitting a red light to the rear, of maximum intensity of two candles and positioned not more than 400 millimetres from the outer edges of the widest part of such motor vehicle and not less than 350 millimetres or more than 1,500 millimetres above ground level:

Provided that if due to the structure of the vehicle it is impossible or impractical to position such lamps within 1,500 millimetres above ground level the lamps may be positioned as near as possible but not more than 2,100 millimetres above ground level:

Provided further that—

(*a*) a motorcycle or a motor tricycle; or

(*b*) a motor vehicle first registered prior to 1st April, 1984,

shall be fitted with at least one such lamp at the rear position in the center or to the right of the longitudinal center-line of such vehicle at a height above the ground of not less than 300 millimetres and not more than 2,100 millimetres.

(2) Rear lamps in addition to those referred to in subregulation (1), may be fitted above 100 millimetres.

(3) A motor vehicle which is being towed by a breakdown vehicle shall be fitted with a separate temporary set of rear lamps while such motor vehicle is so towed.

Stop lamp

56.—(1) No person shall operate a motor vehicle, other than a trailer drawn by a tractor, or a tractor, on a public road unless it is fitted with at least one stop lamp on each side at the rear of the motor vehicle which shall—

(*a*) be visible from the rear and shall be unobscured with angles of—

(i) 45 degrees measured across the width of the motor vehicle on either side of a line parallel to the longitudinal center-line of the motor vehicle and passing through the center-line of each stop lamp; and

(ii) 15 degrees measured vertically on either side of a horizontal line parallel to the longitudinal center-line of the motor vehicle and passing through the center-line of each stop lamp:

Provided that if the height of the stop lamp above ground level is less than 750 millimetres such angles, measured below such horizontal line, may be reduced to five degrees;

(*b*) be fitted at a height of not less than 300 millimetres and not more than 2,100 millimetres above ground level, measured to the centre of the lamp:

Provided that additional stop lamps may be fitted above 2,100 millimetres;

(*c*) be fitted equidistant from, and on each side of, the centre-line of such motor vehicle;

(*d*) when in use, emit light the colour of which shall be red and the intensity of which shall be greater than that of the light emitted by the rear lamp on the motor vehicle and shall be visible in normal sunlight at a distance of not less than 30 metres to a person of normal eyesight;

(*e*) be so connected that, if the motor vehicle is in motion, such lamp shall come into operation as soon as the operating device of the service brake or similar brake of the motor vehicle or, in the case of a combination of motor vehicles, of the drawing vehicle is activated; and

(*f*) be maintained in a clean condition and in good working order:

Provided that a motorcycle may be fitted with only one such lamp.

(2) A motor vehicle which is being towed by a breakdown vehicle shall be fitted with a separate temporary set of stop lamps which is coordinated with the working of the stop lamps of the breakdown vehicle while such motor vehicle is towed.

(3) A stop lamp complying with the provisions of subregulation (1) may be incorporated in a rear lamp fitted to a motor vehicle in terms of regulation 55.

Registration plate lamps

57.—(1) No person shall operate on a public road a motor vehicle, other than a tractor, unless it is fitted with at least one registration-plate lamp at the rear, illuminating the registration plate or identification card by means of a white light which shall make every letter and figure of such plate or card plainly distinguishable from a distance of at least 20 metres by a person of normal eyesight.

(2) The beam of light of a registration-plate lamp shall not be directed to the rear.

Side-marker lamps

58.—(1) A motor vehicle or combination of motor vehicles may, but a breakdown vehicle shall, be fitted with side-marker lamps along each side which, when in operation, shall emit a diffused yellow light:

Provided that the side-marker lamp furthest forward on the motor vehicle, combination of motor vehicles or breakdown vehicle, when in operation, may emit a diffused white or amber light:

Provided further that the rearmost side-marker lamp on a motor vehicle or combination of motor vehicles or breakdown vehicle, when in operation, may emit a diffused red or amber light.

(2) Such side-marker lamps shall be so placed that—

(*a*) there is a lamp within 400 millimetres of each end of the body of each vehicle;

(*b*) the distance between successive lamps on any motor vehicle or combination of motor vehicles is not more than 3,600 millimetres;

(*c*) they are not less than 300 millimetres from the ground; and

(*d*) they face directly outward from the side to which they are fitted in a direction at right angles to the longitudinal center-line of the vehicle to which they are fitted.

Interior lamps

59. A lamp emitting a diffused light may be provided on any motor vehicle for the purpose of illuminating the interior, including the instrument panel thereof, or any entrance thereto.

Lamp illuminating a notice on motor vehicle

60.—(1) A lamp illuminating a notice relating to—

(*a*) the destination of a motor vehicle as contemplated in regulation 125; or

(*b*) the availability of a taxi for hire,

shall be fitted to any such motor vehicle or tax as the case may be.

(2) A lamp illuminating a notice or token indicating the use of a motor vehicle as an ambulance, fire-fighting, police, traffic-control vehicle or such other uses as may be approved by the Director, may be fitted to such vehicle.

Decorating lamps

61. A lamp, other than a spot lamp and approved by the Director, may be fitted to a motor vehicle taking part in a procession for the purpose of decorating it.

Reversing lamp

62.—(1) A motor vehicle may be fitted with a reversing lamp emitting a white light, which illuminates the road to the rear of or under the vehicle.

(2) Such a lamp shall be under the direct control of the driver and shall be either so fitted as to operate only when the motor vehicle is placed in reverse gear or be connected with a device by which the driver shall be made aware that the lamp is in operation.

(3) Not more than two such lamps shall be fitted to a vehicle and no light shall be emitted therefrom except when the vehicle is reversing or about to reverse.

Inspection lamps

63. An inspection lamp may be carried on or fitted to a vehicle, but shall only emit a light when actually in use for the purpose of carrying out repairs or inspections.

Identification lamps

64.—(1) A motor vehicle, the gross vehicle mass of which exceeds 3,500 kilograms, and which is not a motor vehicle referred to in subregulations (2), (3), (4) or (5), may be fitted above the windscreen with two or more identification lamps and each such lamp shall—

(*a*) not exceed a capacity of 21 watts;

(*b*) be visible from directly in front of the motor vehicle to which it is fitted; and

(*c*) in the case of a bus or a goods vehicle emit a green light.

(2) An ambulance, fire-fighting or rescue vehicle may be fitted with a lamp or lamps emitting an intermittently-flashing red light in any direction.

(3) A police or traffic-control vehicle may be fitted with a lamp or lamps emitting an intermittently-flashing blue light in any direction and which may, at the will of the driver, display the word "stop".

(4) A motor vehicle which is a vehicle employed in connexion with the maintenance of public roads or the supply of electricity or other essential services, may, but a breakdown vehicle shall, be fitted with a lamp or lamps capable of emitting an intermittently flashing amber light in any direction:

Provided that such light shall only be used at the place where the breakdown occurred, where the maintenance or other work or an inspection is being carried out or when such breakdown vehicle is towing a motor vehicle or if a condition imposed by the Director requires such amber light.

(5) A motor vehicle used by a medical practitioner and approved by the Director may be fitted above the windscreen with one lamp emitting an intermittently-flashing red light in any direction:

Provided that such light may only be used by such medical practitioner in the *bona fide* exercise of his profession.

Use of spot lamp

65. No person shall operate on a public road a motor vehicle if it is fitted with a spot lamp, which can be so adjusted as to enable a beam of light emitted therefrom to be deflected in any direction:

Provided that a spot lamp which is adjustable—

(*a*) may be fitted and used for official purposes on any ambulance, rescue, fire-fighting, police or traffic-control vehicle;

(*b*) may be fitted to a vehicle owned by a medical practitioner or veterinarian; or

(*c*) may be fitted to a breakdown vehicle or a vehicle employed in connexion with the supply of electricity or other essential services:

Provided that it is used solely at the scene of an accident or breakdown or for the examination of overhead telephone, telegraph or power lines.

Lamps on pedal cycle

66.—(1) No person shall operate on a public road a pedal cycle during the period contemplated in regulation 44 (1) (*b*) unless it is fitted in front with a lamp emitting a white light, the intense part of the beam of which shall, when such pedal cycle is on a reasonably level road, strike the surface ahead of such pedal cycle at a distance of not less than three metres and not more than 30 metres.

(2) A pedal cycle may be fitted with one or more lamps emitting a red light directly to the rear.

Lamps on animal drawn vehicle

67. No person shall operate on a public road an animal drawn vehicle during the period contemplated in regulation 44 (1) (*b*) unless it is fitted in front, on both sides of the body thereof, with lamps emitting a white light forward, and at the rear on both sides of the body thereof with lamps emitting a red light to the rear:

Provided that in the case of a vehicle drawn by animals not controlled by reins, there shall be a person leading the animals carrying a lamp emitting a white light forward at the head of the foremost animal, in lieu of the lamps aforesaid.

Lamps on unspecified vehicle

68.—(1) No person shall operate on a public road a vehicle which is not elsewhere provided for in regulations 44 to 73, and at a time contemplated in regulation 44 (1) (*b*)—

(*a*) unless it is fitted in front, on both sides of the body thereof, with lamps emitting a white light forward; and

(*b*) unless it is fitted at the rear on the extreme right sides of the body thereof, with a lamp emitting a red light to the rear.

(2) A lamp contemplated in subregulation (1) (*a*) shall emit a beam of light of sufficient power to illuminate the roadway immediately ahead of such vehicle but shall not be of power or design or so fitted as to dazzle other persons using the public road.

Colour of lights

69.—(1) Subject to the provisions of regulations 57 (1), 62 or 64, no person shall operate on a public road a motor vehicle which is fitted with or carries on it a lamp which—

(*a*) except in the case of a brake anti-lock warning light to the front of a trailer, emits a light which is not white, amber or yellow in colour towards the front;

(*b*) emits a light which is not yellow or amber in colour towards either side of the motor vehicle; or

(*c*) except in the case of a direction indicator or reversing lamp complying with the provisions of these regulations, emits a light which is not red in colour towards the rear.

(2) When two or more lamps of the same class emitting light in the same direction are fitted to a vehicle, they shall emit light of the same colour.

Lamps, with exception to emit diffused lights

70. Every lamp fitted to a vehicle, other than the head lamps of a motor vehicle, the front lamp of a pedal cycle, spot lamp, inspection lamp and fog lamp, shall emit diffused light when in operation on a public road.

Lamps to emit steady light

71. Except where otherwise provided, a lamp fitted to or used in connexion with any vehicle shall emit a steady light when in operation.

Manner in which lamps are to be fitted and maintained

72.—(1) The head lamps of a motor vehicle shall be fitted at a height of not less than 450 millimetres and not more than 1,400 millimetres above ground level, measured to the centre of the lamp.

(2) The head lamps and fog lamps of a motor vehicle shall, unless the design of the lamps incorporate some other means of preventing dazzle, not be fitted with lenses of clear glass or other like material.

(3) When two or more of the same lamps are fitted to a vehicle they shall—

(*a*) be placed symmetrically in relation to the longitudinal centre-line of the vehicle; and

(*b*) except in the case of side-marker lamps and direction-indicator lamps, be so placed that any lamp on the side of the vehicle concerned shall have a corresponding lamp at the same height on the other side of such vehicle.

(4) Every lamp required to be fitted to a vehicle shall be securely fixed.

(5) The lens and reflector of every lamp required to be fitted to or used in connexion with any vehicle shall be maintained in an effective and reasonably clean condition.

(6) No lamp required to be fitted to or displayed in connexion with a vehicle shall be totally or partially obscured by any fitting or object on the vehicle.

Lamps not prescribed or authorized, prohibited

73. No lamp other than a lamp prescribed or authorized in terms of these Regulations shall at any time be fitted to any vehicle operated on a public road.

White retro-reflectors to be fitted on front of certain vehicles

74.—(1) No person shall operate on a public road—

(*a*) a motor tricycle;

(*b*) a motor quadrucycle;

(*c*) a construction vehicle;

(*d*) a farm implement;

(*e*) a trailer;

(*f*) any other motor vehicle with a gross vehicle weight of less than 3,500 kilograms; or

(*g*) an animal-drawn vehicle,

unless there are fitted on the front of such vehicle at the same height two white retro-reflectors, one on each side of the longitudinal centre-line thereof and equidistant therefrom and each such retro-reflector shall be so placed that the portion of its reflective surface furthest from the longitudinal centre-line of the vehicle is not further than 400 millimetres from the outer edge of the widest portion of the vehicle and otherwise complying with the provisions of these regulations:

Provided that where by reason of the structure of any vehicle a retro-reflector cannot be placed in accordance with the foregoing provisions of this subregulation, such retro-reflector shall be placed as near as possible to the outer edge concerned.

(2) No person shall operate on a public road a motor vehicle with a gross vehicle weight of 3,500 kilograms, excluding a construction vehicle or a farm implement unless such motor vehicle is fitted at the front with a white retro-reflector comprising a continuous strip of white reflective material not less than 50 millimetres wide facing in a forward direction and extending horizontally for such distance as is necessary to indicate the overall width of such vehicle to within 400 millimetres on either side thereof.

(3) No person shall operate a pedal cycle on a public road unless there is fitted on the front of such cycle a white retro-reflector complying with the provisions of regulations 77 and 80.

Standard ECE 104 retro-reflective materials to be fitted on vehicles G.N. 38/2004

74A. No person shall operate on a public road any vehicle of Gross Vehicle Mass (GVM) 3,500 kg and above unless that vehicle is fitted on the rear and both sides with retro-reflective materials of standard ECE 104.

Red retro-reflector to be fitted on rear of certain vehicles

75.—(1) No person shall operate—

(*a*) a motor vehicle other than a motorcycle without car or motor tricycle with one wheel at the rear; or

(*b*) an animal-drawn vehicle,

on a public road unless there are fitted on the rear of such vehicle at the same height two red retro-reflectors, one on each side of the longitudinal centre-line thereof and equidistant therefrom and otherwise complying with the provisions of these regulations:

Provided that in the case of a combination of motor vehicles, both the drawing vehicle and the rearmost vehicle shall be fitted with such retro-reflectors.

(2) Each retro-reflector referred to in subregulation (1) shall be so place that the portion of its reflective surface furthest from the longitudinal centre-line of the vehicle is not further than 400 millimetres from the outer edge of the widest portion of the vehicle:

Provided that where by reason of the structure of any vehicle a retro-reflector cannot be placed in accordance with the foregoing provisions of this subregulation, such retro-reflector shall be placed as near as possible to the outer edge concerned.

(3) No person shall operate any motorcycle without side-car or motor tricycle with one wheel at the rear on a public road unless there is fitted on the rear of such vehicle a red retro-reflector complying with the provisions of these regulations.

(4) No person shall operate a pedal cycle on a public road unless there is fitted on the rear of such cycle a red retro-reflector complying with the provisions of regulations 77 and 80.

Yellow retro-reflector to be fitted on sides of certain vehicles

76. No person shall operate on a public road a motor vehicle or a combination of motor vehicles other than a tractor or construction vehicle if the overall length of such vehicle or motor combination of vehicles exceeds seven metres unless there are fitted on each side of such vehicle or on each side of every motor vehicle in such combination of vehicles, as the case may be—

(*a*) one yellow retro-reflector—

(i) within 3,000 millimetres of the front of such vehicle or combination of vehicles;

(ii) within 1,000 millimetres of the back of such vehicle or combination of vehicles; and

(iii) in the case of a combination of motor vehicles of which a trailer, other than a semi-trailer, forms a part, within 3,000 millimetres of the front of the trailer; and

(*b*) so many additional yellow retro-reflectors as may be necessary to ensure that no two successive yellow retro-reflectors on any side are more than 3,600 millimetres apart, complying with the provisions of regulations 77 and 80:

Provided that—

(i) yellow retro-reflector need not be fitted to a bus or minibus, including such a bus or minibus which forms part of a combination of motor vehicles;

(ii) in the case of a combination of motor vehicles where the drawing vehicle is a motor car, yellow retro-reflectors need not be fitted to the drawing vehicle; and

(iii) in the case of a combination of motor vehicles where the drawing vehicle is a motor car, or bus, the front of such combination shall, subject to the provisions of paragraph (i), be deemed to be the front of the vehicle immediately following such drawing vehicle.

General requirements for retro-reflector

77. Every retro-reflector required to be fitted to a vehicle or load in terms of these regulations shall—

(*a*) not be lower than 300 millimetres and not higher than 1,200 millimetres from ground level, measured to the centre of the retro-reflector:

Provided that if, owing to the structure of the vehicle, it is impossible to fit retro-reflectors on the sides of the body of such vehicle as the prescribed height, the retro-reflectors shall be fitted as near as possible to such height;

(*b*) if it is a—

(i) white retro-reflector, be in a vertical position and face squarely to the front;

(ii) red retro-reflector, be in a vertical position and face squarely to the back; and

(iii) yellow retro-reflector, be in a vertical position and face squarely to the side;

(*c*) be clean and in good condition and not be obscured to the extent that it will be rendered ineffective; and

(*d*) not be fitted to any movable part of the vehicle:

Provided that this provision shall not apply to a warning sign contemplated in regulation 79 (2) (*a*) (ii) (*aa*) and (*bb*).

Rear retro-reflectors on vehicle with certain bodies

78. If it is impossible to fit retro-reflectors on the body of a vehicle to comply with the requirements of both regulations 75 (2) and 77 (*a*), two red retro-reflectors shall be fitted to the rear of such vehicle in the manner contemplated in regulation 75 (2) as low as possible on the body of such vehicle and two additional red retro-reflectors shall be fitted on the rear of the vehicle on the under frame thereof at the height contemplated in regulation 77 (*a*) as far apart as such under frame will permit.

Warning signs on rear of certain vehicles (chevrons)

79.—(1) For the purpose of this regulation "reflective sign on material" means reflective material which under all circumstances is capable of reflecting light.

(2) No person shall operate on a public road, subject to subregulation (3), a goods vehicle unless there is fitted at the rear of such vehicle—

(*a*) a warning sign consisting of alternate diagonal strips of red reflective material and yellow non-reflective material in the form of a chevron pattern, which—

(i) warning sign shall have a vertical dimension of not less than 200 millimetres or more than 460 millimetres;

(ii) strips of red reflective material shall have a width of not less than 50 millimetres and not more than 75 millimetres;

(iii) strips of yellow non-reflective material shall have a width of not less than 100 millimetres and not more than 130 millimetres as illustrated in Diagram A hereunder; and

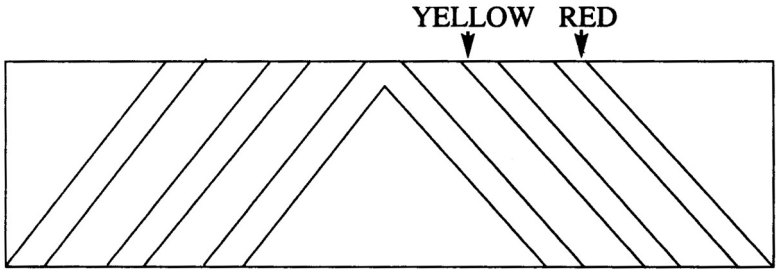

(*b*) a warning sign consisting of as many retro-reflectors as may be necessary to comply with subregulation (3) in the pattern and in accordance with the dimensions as illustrated in Diagram B hereunder or in an inversion of such pattern and such sign may include the retro-reflectors contemplated in regulation 75.

(3) A goods vehicle having a gross vehicle mass of less than 3,500 kilograms shall be fitted at the rear of such vehicle with either a warning device of the type contemplated in subregulation (2) or a red reflex reflector comprising a continuous strip of red reflective material not less than 50 millimetres wide extending horizontally for such distance as is necessary to indicate the overall width of such vehicle to within 400 millimetres on either side thereof. Such reflex reflector shall be maintained in a reasonably clean condition and shall be so placed that the lower edge thereof is not less than 300 millimetres and the upper edge not more than 1,500 millimetres above ground level:

Provided that if the structure of the vehicle is such that it is not possible to comply with this subparagraph, red reflective material shall be so fitted as to comply therewith as far as reasonably possible.

(4) Every warning sign required to be displayed on a goods vehicle in terms of subregulation (2) shall—

(*a*) be in an upright position or within 15 degrees of such position and face squarely to the rear;

(*b*) be so placed that the lower edge thereof is not less than 600 millimetres and the upper edge not more than 1,500 millimetres above ground level:

Provided that if, owing to the structure of the vehicle, it is impossible to fit the warning sign at the prescribed height, it shall be fitted as near as possible to such height;

(*c*) extend horizontally for such distance as is necessary to indicate the overall width of the vehicle to which it is fitted to within 400 millimetres of either side:

Provided that these provisions shall not be applied to any chevron fitted in addition to the requirements of this regulation; and

(*d*) be clean and in good condition and not be obscured to the extent that it will be rendered ineffective.

Unlawful use of reflector or reflective material

80.—(1) No person shall operate on a public road a motor vehicle whilst a reflector or reflective material fitted to such vehicle does not reflect—

(*a*) a white colour to the front of such motor vehicle;

(*b*) a red colour to the rear of such motor vehicle; and

(*c*) a yellow colour to the side of such motor vehicle.

(2) The provisions of subregulation (1) shall not apply to—

(*a*) an ambulance, rescue vehicle, police vehicle, a vehicle driven by a traffic officer in the execution of his duties and a fire-fighting vehicle;

(*b*) a registration plate referred to in regulation 20 of the Registration and Licensing Regulations; and

(*c*) a warning sign referred to in regulation 79:

Provided that, the pedals or pedal arms of a pedal cycle may be equipped with yellow retro-reflectors.

Motor vehicle to be equipped with direction indicators

81.—(1) No person shall operate on a public road any motor vehicle not being a tractor, construction vehicle or a trailer, unless it is equipped on both sides with direction Indicators of one of types referred to in regulation 82 or 83 and otherwise complying with the provisions thereof:

Provided that where a motor vehicle forms part of a combination of motor vehicles and a direction indicator with which such motor vehicle is required to be equipped is obscured by any trailer forming part of such combination, the trailer shall, subject to the provisions of regulation 85 be deemed to be part of such motor vehicle.

(2) The provisions of subregulation (1) shall not apply to—

(*a*) a motorcycle which, according to the registration certificate thereof, was registered for the first time before 1st April, 1979; or

(*b*) any motor vehicle which, according to the registration certificate thereof, was first registered before 1955.

Direction indicators of flasher type

82. Direction indicators of the flasher type shall comply with the following requirements—

(*a*) each indicator shall incorporate a lamp or lamps;

(*b*) when in use such lamp shall show an intermittently-flashing light of such intensity that it is clearly visible in normal daylight at a distance of not less than 30 metres to a person of normal eye-sight;

(*c*) the indicators shall be equidistant from the longitudinal centre-line of the motor vehicle and as near as possible to, but not more than 500 millimetres from, the outer edge of the front or rear of the motor vehicle;

(*d*) subject to the provisions of paragraph (*e*), the indicators shall be so mounted that they are visible from the—

(i) rear, anywhere within an angle of 15 degrees inside and 45 degrees outside; and

(ii) front, anywhere within an angle of 45 degrees outside, of a line which is parallel to the longitudinal centre-line of the vehicle and which passes through the centre of the illuminated area of the indicator;

(*e*) where it is not possible to comply with the provisions of paragraph (*d*) in the case of a single indicator on any one side, one indicator shall be mounted towards the front and one towards the rear so that one shall be visible from the front and the other from the rear of the vehicle to which it is fitted within the limits prescribed by that paragraph;

(*f*) where any indicator is combined with or mounted within 150 millimetres of any lamp, the intensity of the light emitted from the indicator shall be greater than that from such lamp; and

(*g*) the indicator lamps when in use shall emit white, yellow, amber or red light to the rear and any one indicator may emit light towards the front and the rear simultaneously or emit light only to the front or only to the rear according to its position on the vehicle.

Direction indicators of illuminated window type

83. Direction indicators of the illuminated window type shall comply with the following requirements—

(*a*) each indicator shall incorporate a lamp which, when in window type operation, shall emit a red, yellow or amber light to the rear and of such intensity that it is clearly visible in normal daylight at a distance of not less than 30 metres to a person of normal eye-sight;

(*b*) the indicator shall be at least 150 millimetres long, 25 millimetres wide and arrow-shaped; and

(*c*) the indicator shall be fitted to the rear of the vehicle.

Combination of different types of direction indicators

84. Notwithstanding anything contained in these regulations the fitting of two direction indicators of one of the types referred to in the preceding regulations on the front half of a vehicle and two direction indicators of another type referred to in the said regulations on the rear half of such vehicle shall be permitted.

Direction indicators on motor vehicles with an overall length in excess of 7.6 meters

85.—(1) No person shall operate on a public road any motor vehicle or combination of motor vehicles of an overall length in excess of **7.**6 metres unless it is equipped on both sides on the half front and the rear half with direction indicators of any of the types referred to in these regulations and otherwise complying with the provisions thereof.

(2) The direction indicators on the rear referred to in subregulation (1) shall, unless they are indicators of the type referred to in regulation 82, be—

(*a*) within 600 millimetres of the rear end of the vehicle; or

(*b*) in the case of combination of motor vehicles, within 600 millimeters of the rear end of the last vehicle of such combination.

(3) The provisions of this regulation shall not apply in respect of a tractor, construction vehicle or a combination of motor vehicles the drawing vehicle of which is a tractor or a construction vehicle.

General requirements for direction indicators

86.—(1) Direction indicators shall be fitted at a height of not less than 450 millimetres and not more than 2,100 millimetres above ground level and shall be unobscured when in use—

(*a*) in respect of any direction indicator contemplated in regulation 82 no minimum height shall apply; and

(*b*) a direction indicator contemplated in regulation 82 fitted on the side of a motor vehicle shall not be more than 2,300 millimetres above ground level.

(2) If lamps are incorporated in direction indicators, the lamps showing to the front shall be located on the same level and the lamps showing to the rear shall be located on the same level.

(3) Unless the direction indicators are so fitted that they are visible to the driver of the vehicle to which they are fitted directly or by reflection when he is in the driving position, a device shall be provided whereby he shall be given visible or audible warning when the indicators are in operation.

(4) The direction indicators shall be so fitted that the indicators on one side can be operated separately from those on the other side.

(5)—(*a*) no person shall operate on a public road a motor vehicle, unless it is fitted with a separate switch to operate all the direction indicators simultaneously;

(*b*) the provisions of paragraph (*a*) shall not apply to—

(i) a tractor;

(ii) a trailer;

(iii) a motorcycle;

(iv) a motor tricycle;

(v) a motor quadrucycle;

(vi) a construction vehicle; or

(vii) any motor vehicle which according to the registration certificate thereof, was registered for the first time before 1st January, 1980.

(6)—(*a*) the driver of a motor vehicle fitted with a separate switch to operate all the direction indicators simultaneously, shall put into operation simultaneously all the direction indicators fitted to such vehicle, when the vehicle is—

(i) stationary in a hazardous position; or

(ii) in motion in an emergency situation;

(*b*) the driver of a motor vehicle shall not put into operation simultaneously all the direction indictors fitted to such motor vehicle in a circumstance other than those referred to in paragraph (*a*).

(7) If more than one direction indicator is fitted to indicate any one turning movement all such indicators shall be inter-connected so as to operate simultaneously.

(8) Direction indicators shall be maintained in good working order.

(9) All lamps of direction indicators shall, when in use, emit diffused light.

(10) A motor vehicle which is being towed by a breakdown vehicle shall be fitted with a separate temporary set of direction indicators which is coordinated with the working of the direction indicators of the breakdown vehicle while such motor vehicle is so towed.

Prohibition against use of direction indicator not complying with the provisions of these Regulations

87. The driver of a motor vehicle on a public road shall not make use of any direction indicator not complying with the provisions of these Regulations.

Steering gear

88.—(1) No person shall operate on a public road a motor vehicle—

(*a*) unless all parts of the steering mechanism thereof are in sound safe mechanical condition; and

(*b*) unless, in addition to the requirements of paragraph (*a*), all parts of the steering mechanism thereof are so adjusted that, unless otherwise designed by the manufacturer, the amount of movement which the steering wheels make before the steering gear becomes effective in changing the direction of the steerable wheels from a position where such wheels are parallel to the longitudinal centre-line of the vehicle to the right or left is no more than 12.5 per cent of the outside circumference of the steering wheel (that is to say, 45 degrees).

(2) No person shall operate on a public road a motorcycle—

(*a*) unless the landlubbers thereof are symmetrically placed in relation to the longitudinal centre-line of the cycle;

(*b*) unless the distance between the outside edges of the handlebars is at least 600 millimetres in respect of a motorcycle with an engine with a cylinder capacity of 200 cubic centimetres or more and at least 500 millimetres in respect of all other motor cycles; or

(*c*) of which the outer ends of the handgrips on the handlebars are—

(i) higher than 500 millimetres above the seat height; or

(ii) lower than the seat height, and more than 800 millimetres apart.

Warning devices

89.—(1) Subject to the provisions of sections 91 (3) and 93 of the Act, no person shall operate on a public road a—

(*a*) self-propelled motor vehicle, unless it is equipped with an efficient warning device, is in good working order and, when used, capable of emitting a sound which, under normal conditions, is clearly audible by a person of normal hearing from a distance of at least 90 metres;

(*b*) pedal cycles, unless it is equipped with an efficient warning device which is in good working order and, when used, capable of giving adequate warning of its approach;

(*c*) vehicle to which a siren is fitted; or

(*d*) vehicle to which a device is fitted which emits a sound of which the tone of pitch varies:

Provided that the provisions of paragraphs (*c*) and (*d*) shall not apply to a motor vehicle to which an anti-theft device which emits a sound of which incorporates a siren, is fitted.

(2) The device which may be fitted to a vehicle referred to in sections 91 (3) (*b*) and 93 (*b*) of the Act shall be capable of emitting a sound of which the tones of pitch shall—

(*a*) be similar to that sound commonly known as the Klaxon;

(*b*) sweep rapidly between 400 and 1,500 Hertz at a rate of between 120 and 180 cycles per minute (commonly known as the "yelp"); and

(*c*) sweep slowly between 400 and 1,500 Hertz at a rate of between 6 and 9 cycles per minute (commonly known as the "wail").

Glass of windscreen, etc., of motor vehicle

90.—(1) No person shall operate on a public road any motor vehicle having a windscreen, window or partition fitted with transparent material—

(*a*) unless such transparent material affords the driver a sufficient view for safe driving of such vehicle;

(*b*) unless in the case of a windscreen, other than a windscreen fitted to a motorcycle or motor tricycle, such transparent material—

(i) is glass; and

(ii) in respect of a motor vehicle which, according to the registration certificate thereof, was registered for the first time after 1st January, 1966, complies with the provisions of paragraph (*a*) even when shattered; and

(*c*) unless, in respect of a motor vehicle which, according to the registration certificate thereof, was registered for the first time after 1st January, 1966, such transparent material is safety glass and every pane thereof is permanently marked with the name or trade mark of the manufacturer thereof or the trade name of the glass and is clearly identifiable as safety glass by a permanent mark describing it as such.

(2) Notwithstanding the provisions of paragraphs (*b*) and (*c*) of subregulation (1), the transparent material—

(*a*) with which—

(i) a window in the roof of a motor vehicle;

(ii) a window or portion of a bus or a minibus; or

(iii) a window or portion of a semi-trailer designed or adapted for the conveyance of passengers,

is fitted, may consist of ultrahigh impact acrylic or polycarbonate plastic material where each pane therefor is permanently marked with the name or trademark of the manufacturer thereof or the trade name of the material and such material is clearly identifiable as ultrahigh impact acrylic or polycarbonate plastic material by a permanent mark describing it as such;

(*b*) with which a window or partition or a removeable or collapsible hood or canopy of a motor vehicle is fitted, may consist of a flexible plastic material; and

(*c*) with which a window or partition of a trailer not designed or adapted for the conveyance of passengers is fitted, may in the case where such trailer, according to the registration certificate thereof—

(i) was registered for the first time before 1st January, 1987, consist of acrylic or polycarbonate plastic material or of glass; or

(ii) was registered for the first time on or after 1st January, 1987, consist of acrylic or polycarbonate plastic material.

(3) No person shall operate on public road any motor vehicle, unless—

(*a*) the visible light transmitted through—

(i) the windscreen is at least 70 per cent; and

(ii) any other window is at least 35 per cent, when measured in accordance with approved devices; and

(*b*) any film or tinting material applied to any windscreen, window or portion is free from bubbles, tears or scratches.

(4) The provision of subregulation (3) (*a*) (ii) shall not apply to an ambulance or a hearse.

Windscreen wiper and washer

91. No person shall operate on a public road a motor vehicle with a windscreen which is not fitted with—

(*a*) at least one windscreen wiper which shall be capable of operation by other than manual means and shall, when in operation, wipe the outside of the windscreen directly in front of the driver, continuously, evenly and adequately; and

(*b*) except in the case of a motor vehicle first registered before January, 1972, an efficient windscreen washer capable of being operated from the driver's seat and spraying water or washing fluid onto the windscreen wiper's arc of operation on the driver's side when the control is used:

Provided that the provisions of this regulation shall not apply to a motorcycle, a motor tricycle or a motor quadrucyle without a fixed hood.

Driver's view to be unobstructed

92.—(1) No person shall operate on a public road a motor vehicle—

(*a*) which is not so constructed and maintained as to afford the driver thereof a full and clear view of the road way ahead and to his right and left when the vehicle is in use.

(*b*) which is not fitted with a rearview mirror or mirrors enabling the driver of such vehicle when he is in the driving position to see in clear weather a clear reflection of traffic to the rear:

Provided that the provisions of this paragraph shall not apply in respect of a tractor.

(*c*) which is a motorcar, minibus, bus or goods vehicle, the gross vehicle mass of which does not exceed 3,500 kilograms and which, according to the registration certificate thereof, was registered for the first time on or after 1st January, 1987, unless it is fitted with an exterior rearview mirror on the driver's side and an interior rearview mirror:

Provided that where the interior rearview mirror does not enable the driver, when he is in the driving position, to see in clear weather, a clear reflection of traffic to the rear, an additional exterior rearview mirror shall be fitted on the side opposite to the driver's seat and in such a case it shall not be necessary to fit an interior rearview mirror;

(*d*) which is a minibus, bus or goods vehicle, the gross vehicle mass which exceeds 3,500 kilograms and which, according to the registration certificate thereof, was registered for the first time on or after 1st January, 1987, unless it is fitted with an exterior rearview mirror on the side opposite to the driver's seat; and

(*e*) which is a motorcycle, a motor tricycle or motor quadrucycle unless it is fitted with a rearview mirror on the right side of the handlebars thereof, and from 31st December, 1990, such cycle shall also be fitted with a rearview mirror on the left side of the handlebars thereof.

(2) Every rearview mirror of a motor vehicle—

(*a*) which—

(i) is a motorcar, minibus, bus or goods vehicle, the gross vehicle mass of which does not exceed 3,500 kilograms and which, according to the registration certificate thereof, was registered for the first time after 1976; or

(ii) is a minibus, bus or goods vehicle, the gross vehicle mass of which exceeds 3,500 kilograms and which, according to the registration certificate thereof, was registered for the first time during the period 1st January, 1976 to 31st December, 1986, shall be either flat or spherically convex and have an average radius of curvature of not less than 1,200 millimetres; or

(*b*) contemplated in subregulation (1) (*d*) shall be either flat or spherical convex and have an average radius or curvature of not less than 1,800 millimetres.

Fuel tank electrical wiring and battery

93. No person shall operate on a public road a motor vehicle—

(*a*) if the fuel tank, carburetor, fuel receptacle or fuel pipe thereof is defective or so exposed that it constitutes a source of danger;

(*b*) if the filling orifice of the fuel tank is not fitted with an effective cap; or

(*c*) unless the electrical wiring and battery are properly installed, insulated and maintained so that such wiring and battery do not constitute a source of danger.

Engine of motor vehicle to be covered

94. No person shall operate on a public road a motor vehicle, other than a tractor, construction vehicle, motorcycle or other bicycle, unless the engine thereof is so covered as not to be a source of danger.

Compulsory wearing of protective helmet in respect of motorcycle

95.—(1) No person shall drive or be a passenger on a motorcycle, motor tricycle or a motor quadrucycle, or be a passenger in the side-car attached to a motorcycle, on a public road unless he is wearing a protective helmet—

(*a*) which is especially designed for use in connexion with such cycle; and

(*b*) which fits him properly and of which the chin strap is properly fastened under his chin.

(2) The driver of a motorcycle, motor tricycle or motor quadrucycle shall ensure that any passenger in or on such cycle who is younger than 16 years, complies with the provisions of subregulation (1).

Manner in which side-car to be attached to motor cycle

96. No person shall operate on a public road a motorcycle with side-car, unless such side-car is attached to the left side of the motor cycle in such a manner that the centre-line of the axle of the side-car is within the wheel-base of the motorcycle:

Provided that no side-car is within the wheelbase of the motor cycle:

Provided further that no side-car shall be attached to a motor cycle having an engine with a cylinder capacity of less than 50 cubic centimetres.

Exhaust silencers and exhaust pipe

97. No person shall operate on a public road a motor vehicle—

(*a*) unless an efficient exhaust silencer or muffling device is affixed thereto in such a manner that the exhaust gas from the engine projected through such silencer or muffling device, which shall be so constructed as to reduce and muffle in an effective manner the sound produced by such exhaust;

(*b*) if any mechanism or device is attached thereto enabling the exhaust gas from the engine of such motor vehicle to be projected otherwise than through the silencer or muffling device referred to in paragraph (*a*);

(*c*) if the exhaust gas or smoke from the engine is directed to the left side of such vehicle or discharged other than parallel to or up and away from the road or in such a manner as is likely to raise dust on a public road or is so dense as to cause a nuisance to, or obstruct the vision of other users of such public road:

Provided that the exhaust gas or smoke of a motor vehicle with a gross vehicle mass not exceeding 3,500 kilograms or a motorcar may be discharged by means of an exhaust pipe with a downward bend not exceeding 45 degrees or a bend to the left of the vehicle not exceeding 45 degrees;

(*d*) if the exhaust pipe or silencer is in such a position that oil or other flammable liquid or material can drip or fall onto it, or is not in efficient working order, or is so placed and maintained that exhaust gas or smoke leaks into the driver's cab or passengers' compartment of the vehicle; or

(*e*) which if tested in accordance with approved procedures and using approved devices exceeds any noise limits laid down in such procedures.

Entrances and exits

98.—(1) No person shall operate on a public road a motor vehicle with a fixed hood and a tare in excess of 570 kilograms unless such vehicle has at least—

(*a*) a convenient means of entrance and exit on both the left side and the right side; or

(*b*) such means of entrance and exit on either the left side or the right side and a ready means of escape on the side opposite to such means of entrance and exit or at the rear, for the occupants thereof, and where such vehicle is so operated whilst conveying passengers in a separate compartment which does not—

(i) comply with the provisions of paragraph (*a*) or (*b*); or

(ii) afford such passengers unobstructed access to the driving compartment, such vehicle shall have at least a convenient means of entrance and exit at the rear for such passengers.

(2) A means of entrance and exit and a means of escape referred to in subregulation (1) shall be equipped with a door or other effective barrier:

Provided that a means of entrance and exit at the rear of a motor vehicle need not be so equipped.

(3) A door or barrier contemplated in subregulation (2) or a door or other barrier with which a means of entrance and exit at the rear of a motor vehicle is equipped, shall be—

(*a*) capable of being opened and closed from both the outside and the inside; and

(*b*) closed and clear of any obstruction when the vehicle is in motion:

Provided that the provisions of paragraph (*a*) shall not apply to a means of escape which has a barrier which is capable of being opened by being knocked out.

(4) The provisions of this regulation shall not apply to a minibus, bus or the separate compartment of a motor vehicle in which prisoners are conveyed.

Motor vehicle to be capable of travelling backwards and forwards

99. No person shall operate on a public road a motor vehicle, other than a motorcycle, motor tricycle or motor quadrucycle, if the tare thereof exceeds 570 kilograms, unless it can be driven backwards and forwards.

Tyres

100. No person shall operate on a public road—

(*a*) a motor vehicle, other than a tractor or trailer, which is equipped with a metal tyre;

(*b*) a tractor or trailer which is equipped with a metal tyre less than 130 millimetres in width;

(*c*) an animal-drawn vehicle which is equipped with a metal tyre less than 40 millimetres in width;

(*d*) a vehicle which is equipped with a metal tyre unless such tyre is so fitted and adjusted that the whole of the tread width of such tyre will at all times be in direct contact with a flat surface if the vehicle is moved on such surface;

(*e*) a vehicle which is equipped with a tyre which is in such a state of disrepair or in such a condition that it may cause or is likely to cause damage to the road surface or may be or is likely to be a danger;

(*f*) a motor vehicle which is equipped with a pneumatic tyre of which the rubber covering is so worn or damaged that the fabric or cord used in the construction of such tyre is exposed;

(*g*) a motor vehicle of which a tyre is so constructed and fitted that the metal part of the wheel to which such tyre is fitted may come into contact with the road surface;

(*h*) a motorcycle which is equipped with a retreaded tyre;

(*i*) a motor vehicle which is equipped with a regrooved tyre having a bead diameter of 430 millimetres or less;

(*j*) a motor vehicle, excluding a motorcycle with an engine having a cylinder capacity not exceeding 50 cubic centimeters, which is fitted with a pneumatic tyre, unless the tread of the tyre displays throughout its breadth and around its centre circumference a pattern, the tread of which is clearly visible and is at least one millimeter in depth.

(*k*) a motorcycle with an engine having a cylinder capacity not exceeding 50 cubic centimeters, which is fitted with a pneumatic tyre which does not at any position on the tread thereof have a visible tread pattern over at least 80 per cent of the full width of the tread;

(*l*) a motor vehicle which is equipped with a pneumatic tyre which has a break in its fabric or which has a cut, measured in any direction on the outside of the tyre and of such depth that it reaches the cords used in the construction of such tyre, in excess of 25 millimetres or 10 per cent of the maximum width of the tyre, whichever is the greater;

(*m*) a motor vehicle which is equipped with a pneumatic tyre which has a lump or bulge caused by the separation of or a partial break in its structure; or

(*n*) a motor vehicle other than a tractor, construction vehicle, motorcycle or other cycle which is equipped with pneumatic tyres unless there is carried on such vehicle at least one spare inflated tyre in good serviceable condition affixed to a rim, spare wheel or other device capable of being fitted quickly to a wheel or axle together with the apparatus in good working order for so fitting it.

Certain motor vehicle to be fitted with safety belts

101.—(1) For the purposes of this regulation—

(*a*) "approval mark" means—

(i) the approval mark of the European Union, denoted as E;

(ii) the approval mark of the European Economic Community, denoted as e;

(iii) the Society of Automotive Engineers denoted as SAE; and

(iv) any other approval mark referred to in a specification, code of practice or any directive having standardization of motor vehicle safety belts as its aim an issued by national institution or organization outside Malaŵi for a purpose similar to that for which a standardization mark has been established;

(*b*) "harness belt", "safety belt" and "three point belt" shall have the meaning assigned thereto in any applicable standard.

(2) No person shall operate on a public road—

(*a*) a motorcar which—

(i) according to the registration certificate thereof, was registered for the first time after the year 1964 but before 1st July, 1978, unless the front seat thereof is equipped for the driver and, if such seat has seating accommodation for other persons, for at least one such person with—

(*aa*) a safety belt; or

(*bb*) any other belt bearing a standardization mark, which is firmly anchored to bodywork or to the bodywork and seat frame of such motorcar; or

(ii) according to the registration certificate thereof, was registered for the first time on or after 1st July, 1978, unless the front seat thereof is equipped for the driver and for at least one other person—

(*aa*) in the case where the roof of that motor car forms an integral part of the body work, with a harness belt or a three-point belt which is firmly anchored to the motorcar; or

(*bb*) in the case where the roof of that motor car does not form an integral part of the bodywork, with a safety belt which is firmly anchored to the bodywork or to the bodywork and seat frame of that motorcar; or

(*b*) a minibus, bus or goods vehicle—

(i) the gross vehicle mass of which does not exceed 2,500 kilograms and which according to the registration certificate thereof was registered for the first time on or after 1st January, 1979, but before 1st January, 1985, unless the front seat thereof is equipped for the driver and, if such seat has seating accommodation for other persons, for at least one such person with a harness belt or three-point belt which is firmly anchored to the bodywork or bodywork and seat frame of such vehicle; or

(ii) the gross vehicle mass of which does not exceed—

(*aa*) 2,500 kilograms and which according to the registration certificate thereof was registered for the first time on or after 1st January, 1985, but before 1st January, 1987, unless the front seat thereof is equipped with a harness belt or a three-point belt in the circumstances specified in subparagraph (i); or

(*bb*) 3,500 kilograms and which according to the registration certificate thereof was registered for the first time on or after—

(*aaa*) 1st January, 1987, unless the front seat thereof is equipped with a harness belt or a three-point belt in the circumstances specified in subparagraph (i); and

(*bbb*) 1st July, 1992, unless the front seat thereof is equipped with a safety belt if there is seating accommodation according to the provisions of regulation 14 (1) (*a*) for any other person than the persons referred to in subparagraph (1).

(3) No person shall operate on a public road a motor vehicle, unless every safety belt with which such motor vehicle has to be equipped in terms of subregulation (2) complies with the requirements of the Standard Specifications and bears a standardization mark or an approval mark.

(4) The driver of any motor vehicle contemplated in subregulation (2) and any other person who occupies a seat in that motor vehicle which, in terms of the provisions of that subregulation, has to be equipped with a safety belt or other belt shall, subject to the provisions of subregulation (7) and while that motor vehicle is being driven on a public road, wear the belt with which the seat concerned is equipped and that belt shall be properly adjusted and securely fastened:

Provided that the provisions of this subregulation shall not apply to such driver while reversing such motor vehicle or causing it to move in or out of a parking bay.

(5) No person, other than a person exempted in terms of the provisions of subregulation (7), shall occupy a seat on the front seat of any motor vehicle contemplated in subregulation (2) while such vehicle is being driven on a public road, unless all other seats on such front seat which have to be so equipped with safety belts or other belts are occupied.

(6) The driver of a motor vehicle contemplated in subregulation (2) shall ensure that any person who is younger than 14 years complies with the provisions of subregulation (4) or (5).

(7)—(*a*) the Director may, on written application, exempt a person from the provisions of subregulation (4) on such medical grounds as he may deem sufficient and subject to such conditions as he may deem expedient.

(*b*) for the purpose of considering an application as contemplated in paragraph (*a*), the Director may direct that such information be furnished and such evidence be submitted as he may deem expedient; or

(*c*) a person who has, in terms of any law of a prescribed territory, been exempted from the provisions relating to the compulsory wearing of safety equipment in a motor vehicle shall, during the period of validity of such exemption be deemed to have been exempted in accordance with the provisions of paragraph (*a*).

Emergency warning sign (Triangle)

102.—(1) For the purposes of this regulation—

(*a*) the expression "motor vehicle" excludes a motorcycle, motor tricycle or motor quadrucycle;

(*b*) "reflective material" means reflective material which under all circumstances is capable of reflecting light.

(2) No person shall operate on a public road a motor vehicle unless there is carried on such vehicle at least two emergency warning signs which—

(*a*) is a double-sided sign having the shape, design, minimum dimensions and colours as illustrated hereunder, and of which the red portion on each side—

(i) shall consist of red reflective material; or

(ii) shall be painted red and have retro-reflectors at each corner; and

(*b*) is so constructed that when it is put into position as contemplated in subregulation (5), it will not be dislodged by the wind:

Provided that in the case of a combination of motor vehicles, the emergency warning signs for every motor vehicle of such combination may be carried on the drawing vehicle.

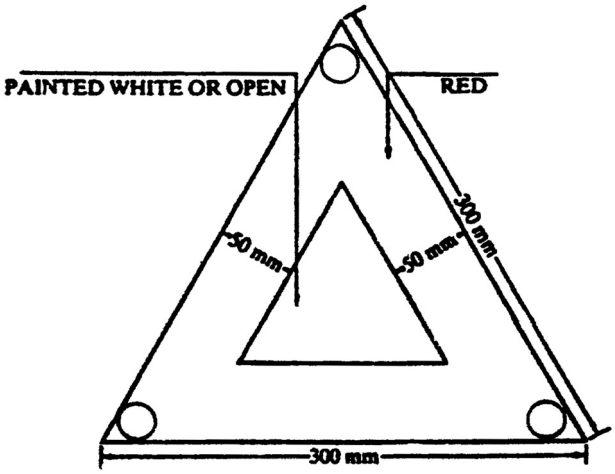

(3) Where a motor vehicle is for any reason stationary on the roadway of a public road for a period longer than ten minutes, the driver of such vehicle shall display or cause to be displayed at least two emergency warning signs in the manner contemplated in subregulation (5).

(4) No person shall, without lawful cause, remove or tamper with any emergency warning sign which is being displayed in accordance with the provisions of this regulation.

(5) At least two emergency warning signs shall be displayed in the following manner—

(*a*) one sign shall be placed on the surface of the roadway of the public road—

(i) to the front of such motor vehicle at a distance of not less than 30 metres or more than 45 metres from such motor vehicle;

(ii) to the rear of such motor vehicle at a distance of not less than 30 metres or more than 45 metres from such motor vehicle;

(*b*) the signs shall be placed on the surface of the roadway to the immediate left of the roadway center-line on the same side of the public road on which such motor vehicle is stationary; and

(*c*) the reflective side of the signs shall face in the direction from which any traffic will approach.

(6) The provisions of subregulation (3) shall not apply where a motor vehicle is stationary—

(*a*) in a place where a road traffic sign authorizes the loading or unloading of a vehicle;

(*b*) in compliance with any direction conveyed by a road traffic sign or given by an authorized officer;

(*c*) on account of other traffic on the public road concerned and while the driver occupies the driver's seat of such motor vehicle; or

(*d*) in the course of events accompanying the carrying out of a State or municipal function.

Speedometer

103.—(1) No person shall operate on a public road a motor vehicle which is designed for or capable of reaching a speed of 60 kilometres per hour or more on a reasonably level road, unless such vehicle is equipped with a speedometer which is in a good working order.

(2) The provisions of subregulation (1) shall apply to—

(*a*) a trailer; or

(*b*) a motor vehicle while being operated by a motor dealer in the course of his business for the repair of the speedometer of such vehicle.

Motorcycle crash bar

104.—(1) Every motorcycle having an engine capacity of 350 cubic centimetres or more shall be equipped with a bar or tube on each side of the forward part of the frame at approximately right angles to it of sufficient strength to support the weight of the motor cycle should it fall on its side.

(2) Each such bar or tube shall sufficiently project laterally from the forward part of the frame to which it is attached to give adequate protection to the rider's legs against the weight of the motorcycle should it fall on its side when being ridden.

Wings

105.—(1) Every motor vehicle other than a construction vehicle or a farm tractor shall be equipped with wings or other similar fittings to catch, so far as practicable, water thrown up by the rotation of the wheels unless the body of the vehicle performs such functions:

Provided that this subregulation shall not apply in the case of a motor vehicle in an unfinished condition proceeding to a works for completion.

(2) For the purpose of this regulation, wings shall cover at least half the circumference of the wheel concerned, and shall extend to the level of the hub of the wheel at both ends.

Towing of vehicles

106. No person shall operate a motor vehicle on a public road towing another vehicle—

(*a*) if the length of the tow-rope, chain or tow-bar between the two vehicles exceeds 3.7 metres;

(*b*) if the towed vehicle is connected to the towing vehicle in such a manner that both vehicles are not under control;

(*c*) except, in the case of a towed vehicle fitted with steering gear contemplated in regulation 88 (1), if such steering gear is controlled by a person holding a driver's licence authorizing him to drive the class of vehicle being towed:

Provided that the provision of this paragraph shall not apply in the case where—

(i) the steerable wheels of the towed vehicle are being carried clear off the ground; or

(ii) the device connecting the towing vehicle to the towed vehicle is such that the steerable wheels of the towed vehicle are controlled by such device;

(*d*) if the brakes of the towed vehicle are defective in terms of regulation 42, unless the towing vehicle is connected to the towed vehicle by means of a drawbar or tow-bar;

(*e*) at a speed in excess of 30 kilometres per hour, unless the towing vehicle is connected to the towed vehicle by means of a drawbar or a tow-bar;

(*f*) if the towed vehicle is conveying persons at a speed in excess of 30 kilometres per hour, unless the towed vehicle is a semi-trailer; or

(*g*) if the towing vehicle is a motorcycle, motor tricycle, motor quadrucycle or pedal cycle unless the towed vehicle is designed to be towed by such cycle as the case may be.

Conditions for the use of construction vehicles

107. No person shall operate on a public road a construction vehicle except under the conditions that—

(*a*) no such vehicle shall be operated on the roadway of a public road during the period when lights must be lighted in terms of regulation 44 (1) (*b*);

(*b*) the overall width of any such vehicle shall not exceed 3.5 metres;

(*c*) the driver of any such vehicle on the roadway of a public road shall stop such vehicle, and where possible, drive it off the roadway if it be necessary in order to allow other vehicular traffic to pass;

(*d*) any such vehicle exceeding the overall length prescribed in regulation 3 or the overall width prescribed in regulation 5 shall display two flags or red cloth not less than 600 millimetres by 600 millimetres, in such manner as to indicate its abnormal length or width and such flags shall be suspended from the vehicle transversely to the direction of travel; and

(*e*) any such vehicle exceeding the overall length prescribed in regulation 3 or which is more than 2.6 metres wide shall not overtake any other vehicle:

Provided that this prohibition shall not apply to the overtaking of a pedal cycle or animal drawn vehicle.

Conditions for the use of farm implement

108. No person shall operate on a public road any farm implement, which including a tractor, which is not a goods vehicle and which is used solely for *bona fide* agricultural, horticultural or pastoral pursuits except under the conditions that—

(*a*) no such vehicle shall be operated on the roadway of a public road during the period when lights must be lighted in terms of regulation 44 (1) (*b*);

(*b*) the driver of any such vehicle on the roadway of a public road shall stop such vehicle and, where possible, drive it off the roadway if it be necessary in order to allow other vehicular traffic to pass;

(*c*) any such vehicle—

(i) exceeding the overall length prescribed in regulation 3;

(ii) encroaching beyond half the width of the roadway except when crossing bridges; or

(iii) which is more than 2.6 metres but less than 3.5 metres wide, shall display two flags of red cloth not less than 600 millimetres by 600 millimetres in such manner as to indicate its abnormal length or width and such flags shall be suspended from the vehicle transversely to the direction of travel:

Provided that the vehicle may be fitted with amber flashing lights *in lieu* of such flags; and

(*d*) the overall width of any such vehicle shall not exceed 4.5 metres:

Provided that when the overall width exceeds 3.5 metres—

(i) such vehicle shall not normally encroach beyond half the width of the roadway except when crossing bridges; and

(ii) if such vehicle does encroach beyond half the width of the roadway, two escort vehicles with the headlamps switched on and displaying red flags of the size prescribed in paragraph (*c*) or amber flashing lights shall be provided, one traveling in front and one to the rear of such vehicle; and

(*e*) such vehicle shall not be operated on any public road for a distance exceeding eight kilometres unless such vehicle is proceeding directly to or returning from a workshop for the purpose of maintenance or repairs, or directly to or returning from a base depot.

Mobile telephones

109. No person, who is the driver of a motor vehicle, shall hold in either hand any part of a mobile telephone whether such telephone is in operation or not while—

(*a*) the engine of such motor vehicle is in operation; and

(*b*) such motor vehicle is on a public road.

PART V

Equipment of or in Respect of Public Service Vehicle

Persons not to be carried in goods compartment

110. No person shall on a public road carry any persons for reward in the goods compartment of a motor vehicle.

Sides and roof

111. No person shall operate on a public road a minibus or a bus unless—

(*a*) the sides of the passenger compartment are enclosed to the height of at least 600 millimetres from the floor with material which is durable and weatherproof; and

(*b*) such minibus or bus is provided with a weatherproof roof.

Entrances, exits and emergency exits of minibuses and buses

112.—(1) A minibus or bus shall be equipped with at least one passenger entrance leading from the left hand side of such minibus or bus to the passenger compartment, in addition to any doors provided for the driver and front seat passenger;

(2) A minibus shall have at least one emergency exit on the right hand side or in the rear thereof:

Provided that a door fitted for use by the driver of such minibus which is accessible to persons in the passenger compartment thereof may be deemed to be such an emergency exit.

(3) A bus or the lower deck of a double-deck bus, shall have at least one emergency exit—

(*a*) in the rear; or

(*b*) on each side towards, the rear:

Provided that a door fitted for use by the driver of such minibus which is accessible to persons in the passenger compartment thereof may be deemed to be such an emergency exit.

(4) The upper deck of a double-deck bus shall have at least one emergency exit—

(*a*) in the rear; or

(*b*) on each side and in the roof, of such deck.

(5) Each emergency exit shall have dimensions of at least 900 by 450 millimetres and shall be able to be opened from inside and outside and shall not open inward.

(6) An emergency exit shall not be so positioned that the passengers have to pass through a goods compartment of a minibus or bus or via the stairs of a double-deck bus to reach such emergency exit.

(7) Escape hatches, knock-out windows or knock-out panels may be used as emergency exits and if a minibus or bus is operated for reward such hatches, windows or panels shall be marked with the words "emergency exit" on the inside and outside in letters of at least 50 millimetres in height.

(8) A door of the size and operating characteristics referred to in subregulation (5) may be used as an emergency exit.

(9) No entrance for persons, other than the driver, shall be provided on the right hand side of the longitudinal centre-line of a minibus or bus operating for reward.

(10) In the case of a minibus or bus that has been covered from a goods vehicle, the requirements of subregulations (1), (2), (3), (4), (6), (7) and (8) shall be deemed to be satisfied if openings complying with the requirements of subregulation (5) are provided in place of the entrances and exits referred to in such subregulation.

Entrances and exits to be fitted with doors

113. No person shall operate a minibus or bus on public road, unless—

(*a*) every entrance to or exit from the minibus or bus is fitted with a door or other effective barrier; and

(*b*) such door or barrier is properly closed when the minibus or bus is in motion with persons thereon.

Stairs

114. The stairs to the top deck of a double-deck bus shall be provided with a hand rail on each side as well as a partition or screen at each side of the stairs of sufficient strength to prevent any person from slipping off the side of any steps.

Passageways

115. No person shall operate on a public road a bus, unless the passenger compartment of such bus has an unimpeded longitudinal passageway with a cross passageway from each entrance of the bus to the longitudinal passageway, and such passageways are at least—

(*a*) 300 millimetres wide from floor to seat level; and

(*b*) 350 millimetres wide above seat level.

Seats

116.—(1) No person shall operate on a public road a bus, unless the driver's seat of such bus is adjustable and has a partition immediately behind it and is so placed as to afford the driver ample space for controlling the bus.

(2) Subject to subregulation (3) no person shall operate a minibus or a bus on a public road unless the seats provided for passengers in such minibus or bus have—

(*a*) a backrest of which the—

(i) top shall be at least 350 millimetres from seat level;

(ii) bottom shall be not more than 200 millimetres from seat level; and

(iii) the width, including the frame shall be at least 340 millimetres, for every passenger for whom seating accommodation is provided on the seat;

(*b*) a seat height from the floor or foot rest of such seat to seat level of at least 250 millimetres, except where a seat is positioned over a wheel arch where no limit shall apply;

(*c*) a seat depth from the front of the seat to the front of the backrest of at least 340 millimetres;

(*d*) a seat width as referred to in regulation 14 (2);

(*e*) in the case where a seat faces a partition or similar obstruction, a horizontal distance between the front of the backrest of such seat at seat level to such partition or obstruction of at least 750 millimetres;

(*f*) in the case where seats face each other, a horizontal distance between the front of the backrest of such seat at seat level of at least 1,200 millimetres; and

(*g*) in the case where seats face in the same direction, a horizontal distance between the front of the backrest of any such seat, at seat level, and the back of the backrest of the seat in front, of at least 570 millimetres.

(3) Where in subregulation (2) a reference is made to a maximum or minimum dimension, a tolerance of 10 millimetres above any such maximum and below any such minimum shall be permissible.

(4) No seat in a bus shall face an entrance or have a side of such seat opposite an entrance, unless a rail or partition is provided between such seat and entrance:

Provided that a rail may be fixed to the seat if the side of such seat faces an entrance.

(5) Every seat in a minibus or bus shall be securely fixed to such minibus or bus.

Goods carried on minibus or bus conveying persons for reward

117. No person shall carry goods on or in a minibus or bus conveying persons for reward unless such goods—

(*a*) are placed in a suitable goods compartment or container;

(*b*) are so placed that it does not constitute a danger to such persons; and

(*c*) does not obstruct any entrance, exit or passageway of such minibus or bus.

Windows and windscreen

118.—(1) A minibus or bus operating for reward—

(*a*) shall have a continuous row of windows on the left and right hand sides of the passenger compartment and such windows, other than the windows of entrance and exit doors and the first and the last side window, shall each have a frame, in the case of—

(i) a minibus of not less than 345 millimetres by 450 millimetres; and

(ii) a bus, of not less than 450 millimetres by 450 millimetres;

(*b*) shall have an overall window area of not less than 25 per cent of the floor area of the passenger compartment;

(*c*) other than a bus having a system of force ventilation induced by mechanical means whether such bus is stationary or in motion, shall have windows which can be opened to the same extent so that the total area of the open spaces shall be not less than five per cent of the floor area of the passenger compartment; and

(*d*) may have other windows in addition to those referred to in subregulation (1) (*a*), (*b*) or (*c*)

(2) At least every alternate window in each side of a minibus or a bus operating or reward, other than a bus having a system of forced ventilation induced by mechanical means whether such bus is stationary or in motion, shall be capable of being opened.

(3) No window in a bus operating for reward shall be capable of being opened in such a manner that a person seated in a normal position is able to put his elbow out of the window.

(4) Every window-pane, windscreen and transparent partition of a minibus or bus operating for reward shall be maintained in sound, unbroken and clear condition.

Fuel receptacles and pipes

119.—(1) A minibus or bus operating for reward—

(*a*) shall have furl tanks, fuel receptacles and furl pipes which are free of leaks and which are not placed inside the body or steering cabin; and

(*b*) shall have the filling orifice of a fuel tank placed outside the body or steering cabin.

(2) No main furl tank shall be placed close to the engine of a bus operating for reward.

Fire-extinguisher

120.—(1) Every public service vehicle, other than a bus, and any vehicle used for the teaching of driving for gain shall carry in a readily accessible position at least one fire-extinguisher which shall be of—

(*a*) the dry powder type with a capacity of at least one kilogram; or

(*b*) the halogenated hydrocarbon type (BCF) with a capacity of at least one kilogram,

and which shall be in good working order.

(2) Every bus operating for reward shall carry in a readily accessible position at least one fire-extinguisher which shall be of—

(*a*) the dry powder type with a capacity of at least two and a half kilograms; or

(*b*) the halogenated hydrocarbon type (BCF) with a capacity of at least one kilogram, and which shall be in a good working order.

Rearview mirrors

121. In addition to the rearview mirror prescribed for motor vehicle in regulation 92, every bus operating for reward shall be fitted with a rearview mirror which shall enable the driver of the bus, when he is in the driving position to see a reflection of every entrance and exit of the bus.

Tilt angle

122.—(1) No person shall operate a double-deck bus on a public road unless such bus is capable of being tilted sideways to an angle of at least 23 degrees in either direction from the upright position without overturning while—

(*a*) every seat on the upper deck of the bus carries a mass of 63 kilograms;

(*b*) an additional mass of 63 kilograms is placed on the upper deck of the bus to represent a conductor;

(*c*) the goods compartment on the upper deck of the bus, if any, is loaded to capacity;

(*d*) except for a mass of 63 kilograms on the driver's seat, the lower deck of the bus is empty; and

(*e*) except that the fuel tank is empty, the bus is in all other respect s ready for the road.

(2) For the purposes of issuing a certificate of fitness in respect of a double-deck bus, an examiner or a motor vehicle inspector may demand the production of a manufacturer's certificate or other like certificate which certifies that such bus complies with the provisions of subregulation (1).

Standing persons

123.—(1) No person shall operate on a public road a bus in which a person is permitted to stand—

(*a*) on any upper deck, steps, stairs or open platform;

(*b*) in the cross passageway referred to in regulation 392; or

(*c*) in any area with a roof height of less than 1.7 metres, except when entering or leaving such bus.

(2) The maximum number of standing persons which may be carried in a bus shall be calculated in accordance with the formula—

$$\frac{A-B}{C}$$

in which formula—

(*a*) "A" represents the total clear floor space in square metres of the bus;

(*b*) "B" represents the total clear floor space in square metres of the places referred to in subregulation (1); and

(*c*) "C" represents the figure 0.125 being the clear floor space in square metres which shall be available for each standing person.

(3) A bus carrying standing persons shall be equipped with sufficient handstraps, handrails or grab handles for all standing persons.

(4) No persons shall on a public road operate a minibus for reward in which a person is permitted to stand except if such minibus complies with the requirements of subregulations (1), (2) and (3).

Destination indicator

124.—(1) Every minibus operating for reward shall be equipped at the front and rear with a device whereon the destination of the said minibus or bus may be displayed. The letters of any destination indicator shall be black in colour and at least 100 millimetres high and thick in proportion and the background shall be white in colour.

(2) No lettering in black and white colours, other than the lettering required for a destination indicator, shall be placed on the front or rear of any vehicle to which this regulation applies, and no writing or lettering in any colour shall be placed on such minibus or bus in which a manner it is likely to interfere with the easy and instantaneous legibility of a destination indicator.

Special exemption permit

125.—(1) Subject to such conditions as he may deem fit to impose for the safety of members of the public or for any other reasons, the Director upon application and goods cause being shown thereof may grant a special exemption permit in writing authorizing the applicant to operate on a public road a motor vehicle or combination of motor vehicles otherwise not in conformity either generally or specifically with the provisions of these regulations.

(2) An application for the issue of a special exemption permit shall be made to the Director in writing and shall contain the information specified in the Third Schedule.

(3) A special exemption permit contemplated in subregulation (1) shall, during the period of validity thereof—

(*a*) be carried in or on the vehicle concerned at all times while such vehicle is operated on a public road; and

(*b*) be produced for inspection on demand being made by the Director, any authorized officer, or any other person duly authorized by the Director in writing.

Fee for special exemption permit

126.—(1) The fees specified in the second column of the Fourth Schedule shall be charged in respect of matters pertaining to the application for a special exemption permit set out in the first column of the said Schedule.

(2) In the case of an application contemplated in regulation 125 for an exemption to regulations 14 to 24 inclusive, the fee to be charged for the issue of a special exemption permit for a motor vehicle or combination of motor vehicle shall be equal to the penalty that would be calculated and imposed on such vehicle or vehicle in terms of regulations 27 and 28:

Provided that any overload exceeding the amount specified by the special exemption permit shall be treated in accordance with these regulations.

"FIRST SCHEDULE

PENALTY FOR OVERLOADING PER AXLE (reg. 27)

Single axle fitted with two wheels

Legal load per axle at 8.0 tonnes

Overload per axle in kgs	*Penalty per axle in US$*	*Overload per axle in kgs*	*Penalty per axle in US$*
100	10	4,100	822
200	20	4,200	856
300	31	4,300	891
400	42	4,400	927
500	53	4,500	964
600	65	4,600	1,001
700	77	4,700	1,040
800	90	4,800	1,079
900	103	4,900	1,119
1,000	117	5,000	1,160
1,100	131	5,100	1,203
1,200	146	5,200	1,246
1,300	161	5,300	1,290
1,400	176	5,400	1,335
1,500	192	5,500	1,381
1,600	209	5,600	1,428
1,700	226	5,700	1,477
1,800	243	5,800	1,526
1,900	261	5,900	1,576
2,000	280	6,000	1,628
2,100	299	6,100	1,680
2,200	319	6,200	1,734
2,300	340	6,300	1,789
2,400	361	6,400	1,845
2,500	382	6,500	1,902
2,600	405	6,600	1,961
2,700	427	6,700	2,021
2,800	451	6,800	2,081
2,900	475	6,900	2,144
3,000	500	7,000	2,207
3,100	526	7,100	2,272
3,200	552	7,200	2,338
3,300	579	7,300	2,405
3,400	607	7,400	2,473
3,500	635	7,500	2,543
3,600	665	7,600	2,615
3,700	695	7,700	2,688
3,800	725	7,800	2,762
3,900	757	7,900	2,837
4,000	789	8,000	2,914

Overload per axle in kgs	*Penalty per axle in US$*	*Overload per axle in kgs*	*Penalty per axle in US$*
8,100	2,993	9,100	3,861
8,200	3,073	9,200	3,957
8,300	3,154	9,300	4,054
8,400	3,237	9,400	4,153
8,500	3,321	9,500	4,254
8,600	3,407	9,600	4,357
8,700	3,495	9,700	4,461
8,800	3,584	9,800	4,567
8,900	3,675	9,900	4,675
9,000	3,767	10,000	4,785

45 MK = 1 USD

Multiple axle combinations fitted with four wheels

Overload per axle in kgs	*Penalty per axle in US$*	*Overload per axle in kgs*	*Penalty per axle in US$*
100	12	3,100	800
200	25	3,200	856
300	38	3,300	916
400	52	3,400	979
500	66	3,500	1,048
600	81	3,600	1,122
700	96	3,700	1,202
800	112	3,800	1,287
900	129	3,900	1,380
1,000	146	4,000	1,480
1,100	165	4,100	1,589
1,200	184	4,200	1,707
1,300	203	4,300	1,834
1,400	224	4,400	1,973
1,500	246	4,500	2,125
1,600	268	4,600	2,290
1,700	292	4,700	2,469
1,800	317	4,800	2,666
1,900	343	4,900	2,880
2,000	370	5,000	3,115
2,100	399	5,100	3,372
2,200	430	5,200	3,653
2,300	462	5,300	3,962
2,400	496	5,400	4,301
2,500	532	5,500	4,673
2,600	570	5,600	5,082
2,700	611	5,700	5,531
2,800	654	5,800	6,026
2,900	699	5,900	6,570
3,000	748	6,000	7,170

Overload per axle in kgs	*Penalty per axle in US$*	*Overload per axle in kgs*	*Penalty per axle in US$*
6,100	7,831	8,100	35,000
6,200	8,559	8,200	35,000
6,300	9,363	8,300	35,000
6,400	10,249	8,400	35,000
6,500	11,227	8,500	35,000
6,600	12,306	8,600	35,000
6,700	13,499	8,700	35,000
6,800	14,816	8,800	35,000
6,900	16,271	8,900	35,000
7,000	17,880	9,000	35,000
7,100	19,658	9,100	35,000
7,200	21,623	9,200	35,000
7,300	23,797	9,300	35,000
7,400	26,202	9,400	35,000
7,500	28,862	9,500	35,000
7,600	31,806	9,600	35,000
7,700	35,000	9,700	35,000
7,800	35,000	9,800	35,000
7,900	35,000	9,900	35,000
8,000	35,000	10,000	35,000

45 MK = 1 USD

Single axle fitted with four wheels

Legal load per axle 10.0 tonnes

Overload per axle in kgs	*Penalty per axle in US$*	*Overload per axle in kgs*	*Penalty per axle in US$*
100	8	2,100	228
200	16	2,200	242
300	25	2,300	257
400	34	2,400	272
500	43	2,500	287
600	52	2,600	303
700	62	2,700	319
800	72	2,800	335
900	82	2,900	352
1,000	92	3,000	369
1,100	103	3,100	387
1,200	114	3,200	405
1,300	126	3,300	424
1,400	137	3,400	443
1,500	149	3,500	462
1,600	161	3,600	482
1,700	174	3,700	502
1,800	187	3,800	523
1,900	200	3,900	544
2,000	214	4,000	566

Overload per axle in kgs	*Penalty per axle in US$*	*Overload per axle in kgs*	*Penalty per axle in US$*
4,100	588	7,100	1,503
4,200	610	7,200	1,543
4,300	633	7,300	1,584
4,400	657	7,400	1,626
4,500	681	7,500	1,688
4,600	705	7,600	1,711
4,700	730	7,700	1,755
4,800	756	7,800	1,799
4,900	782	7,900	1,845
5,000	809	8,000	1,891
5,100	836	8,100	1,937
5,200	864	8,200	1,985
5,300	892	8,300	2,033
5,400	921	8,400	2,083
5,500	950	8,500	2,133
5,600	980	8,600	2,183
5,700	1,010	8,700	2,235
5,800	1,041	8,800	2,288
5,900	1,073	8,900	2,341
6,000	1,106	9,000	2,395
6,100	1,138	9,100	2,450
6,200	1,172	9,200	2,506
6,300	1,206	9,300	2,563
6,400	1,241	9,400	2,621
6,500	1,276	9,500	2,679
6,600	1,312	9,600	2,739
6,700	1,349	9,700	2,799
6,800	1,387	9,800	2,860
6,900	1,425	9,900	2,923
7,000	1,464	10,000	2,986

45 MK = 1 USD

SECOND SCHEDULE (r. 27)

Penalty for Gross Vehicle Mass Overloading

GVM Overload in kgs	*Overload Penalty in US$*	*GVM Overload in kgs*	*Overload Penalty in US$*
100	4	1,100	50
200	9	1,200	55
300	13	1,300	60
400	18	1,400	65
500	22	1,500	70
600	27	1,600	75
700	31	1,700	80
800	36	1,800	85
900	41	1,900	90
1,000	45	2,000	95

GVM Overload in kgs	*Overload Penalty in US$*	*GVM Overload in kgs*	*Overload Penalty in US$*
2,100	100	6,800	423
2,200	106	6,900	432
2,300	111	7,000	441
2,400	116	7,100	451
2,500	122	7,200	460
2,600	127	7,300	469
2,700	133	7,400	479
2,800	139	7,500	489
2,900	144	7,600	498
3,000	150	7,700	508
3,100	156	7,800	519
3,200	162	7,900	529
3,300	168	8,000	539
3,400	174	8,100	550
3,500	180	8,200	560
3,600	186	8,300	571
3,700	192	8,400	582
3,800	198	8,500	593
3,900	205	8,600	604
4,000	211	8,700	615
4,100	217	8,800	627
4,200	224	8,900	639
4,300	231	9,000	651
4,400	237	9,100	663
4,500	244	9,200	675
4,600	251	9,300	687
4,700	258	9,400	700
4,800	265	9,500	712
4,900	272	9,600	725
5,000	279	9,700	738
5,100	286	9,800	751
5,200	294	9,900	765
5,300	301	10,000	779
5,400	309	10,100	792
5,500	316	10,200	806
5,600	324	10,300	821
5,700	332	10,400	835
5,800	339	10,500	850
5,900	347	10,600	865
6,000	355	10,700	880
6,100	364	10,800	895
6,200	372	10,900	911
6,300	380	11,000	926
6,400	389	11,100	942
6,500	397	11,200	959
6,600	406	11,300	975
6,700	414	11,400	992

GVM Overload in kgs	*Overload Penalty in US$*	*GVM Overload in kgs*	*Overload Penalty in US$*
11,500	1,009	16,300	2,254
11,600	1,026	16,400	2,292
11,700	1,044	16,500	2,331
11,800	1,062	16,600	2,370
11,900	1,080	16,700	2,411
12,000	1,098	16,800	2,452
12,100	1,117	16,900	2,493
12,200	1,136	17,000	2,536
12,300	1,155	17,100	2,579
12,400	1,175	17,200	2,623
12,500	1,195	17,300	2,668
12,600	1,215	17,400	2,714
12,700	1,235	17,500	2,760
12,800	1,256	17,600	2,808
12,900	1,277	17,700	2,856
13,000	1,299	17,800	2,905
13,100	1,321	17,900	2,955
13,200	1,343	18,000	3,006
13,300	1,366	18,100	3,058
13,400	1,389	18,200	3,110
13,500	1,412	18,300	3,164
13,600	1,436	18,400	3,219
13,700	1,460	18,500	3,275
13,800	1,484	18,600	3,331
13,900	1,509	18,700	3,389
14,000	1,535	18,800	3,448
14,100	1,560	18,900	3,508
14,200	1,587	19,000	3,569
14,300	1,613	19,100	3,632
14,400	1,640	19,200	3,695
14,500	1,668	19,300	3,760
14,600	1,696	19,400	3,826
14,700	1,724	19,500	3,893
14,800	1,753	19,600	3,961
14,900	1,783	19,700	4,031
15,000	1,813	19,800	4,102
15,100	1,843	19,900	4,174
15,200	1,874	20,000	4,248
15,300	1,906	20,100	4,323
15,400	1,938	20,200	4,399
15,500	1,971	20,300	4,477
15,600	2,004	20,400	4,557
15,700	2,038	20,500	4,638
15,800	2,072	20,600	4,720
15,900	2,107	20,700	4,804
16,000	2,143	20,800	4,890
16,100	2,179	20,900	4,978
16,200	2,216	21,000	5,067

GVM Overload in kgs	*Overload Penalty in US$*	*GVM Overload in kgs*	*Overload Penalty in US$*
21,100	5,157	25,600	11,737
21,200	5,250	25,700	11,959
21,300	5,344	25,800	12,186
21,400	5,440	25,900	12,417
21,500	5,538	26,000	12,653
21,600	5,638	26,100	12,894
21,700	5,740	26,200	13,139
21,800	5,843	26,300	13,390
21,900	5,949	26,400	13,646
22,000	6,057	26,500	13,906
22,100	6,167	26,600	14,172
22,200	6,279	26,700	14,444
22,300	6,393	26,800	14,720
22,400	6,510	26,900	15,003
22,500	6,628	27,000	15,291
22,600	6,749	27,100	15,585
22,700	6,873	27,200	15,884
22,800	6,999	27,300	16,190
22,900	7,127	27,400	16,502
23,000	7,258	27,500	16,821
23,100	7,391	27,600	17,145
23,200	7,527	27,700	17,477
23,300	7,666	27,800	17,815
23,400	7,807	27,900	18,160
23,500	7,952	28,000	18,512
23,600	8,099	28,100	18,871
23,700	8,249	28,200	19,237
23,800	8,401	28,300	19,611
23,900	8,557	28,400	19,992
24,000	8,716	28,500	20,381
24,100	8,879	28,600	20,778
24,200	9,044	28,700	21,183
24,300	9,213	28,800	21,596
24,400	9,385	28,900	22,018
24,500	9,560	29,000	22,448
24,600	9,739	29,100	22,887
24,700	9,921	29,200	23,335
24,800	10,108	29,300	23,792
24,900	10,297	29,400	24,259
25,000	10,491	29,500	24,735
25,100	10,688	29,600	25,220
25,200	10,890	29,700	25,716
25,300	11,095	29,800	26,222
25,400	11,305	29,900	26,737
25,500	11,519	30,000	27,264

45 MK = 1 USD

THIRD SCHEDULE (r. 125)

APPLICATION FOR EXEMPTION FROM REGULATIONS

1. An application for an exemption from any regulation shall contain the following basic information—

   (*a*) full name and address of applicant;

   (*b*) full description of vehicle in respect of which exemption is requested;

   (*c*) period for which exemption is requested; and

   (*d*) the specific regulations from which exemption is requested.

2. An application for exemption from regulations 14 to 24 inclusive shall also contain a complete description of the cargo including dimensions and weight.

FOURTH SCHEDULE (r. 126)

	K	t
1. Issue of an exemption of any regulations except regulations 14 to 24	2,500	00

ROAD TRAFFIC (INTERNATIONAL CIRCULATION) REGULATIONS

ARRANGEMENT OF REGULATIONS

REGULATION

PART I

PRELIMINARY

1. Citation
2. Interpretation
3. Fees

PART II

THE 1926 AND 1949 CONVENTION COUNTRIES

4. International distinguishing mark for Malaŵi

PART III

THE 1926 CONVENTION COUNTRIES

5. International certificates for vehicles being taken outside Malaŵi under the 1926 Convention
6. Period of validity of international certificates

PART IV

REQUIREMENTS FOR VISITING DRIVERS AND MOTOR VEHICLE

7. Visitors holding international driving permits
8. Provisions of the Act to apply to international driving permits
9. Visiting motor vehicles

REGULATION

10. Conditions to be fulfilled by visiting motor vehicles under the 1926 Convention
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First Schedule
Second Schedule
Third Schedule
Fourth Schedule
Fifth Schedule
Sixth Schedule

ROAD TRAFFIC (INTERNATIONAL CIRCULATION) REGULATIONS

G.N. 17/2000

under s. 170

PART I
Preliminary

Citation

1. These Regulations may be cited as the Road Traffic (International Circulation) Regulations.

Interpretation

2. In these Regulations, unless the context otherwise requires—

"the 1926 Convention" means the International Convention Relative to Motor Traffic concluded at Paris on the 24th day of April, 1926;

"the 1949 Convention" means the International Convention on Road Traffic concluded at Geneva on the 19th day of September, 1949;

"1926 Convention country" means any country which ratified or acceded to the 1926 Convention;

"1949 Convention country" means any country set forth in the Fifth Schedule;

"international certificate" means a certificate in Form A in the First Schedule;

"registration certificate" means a certificate that complies with Article 18 of the 1949 Convention.

Fees

3. The fees specified in the second column of the Sixth Schedule are prescribed for and shall be charged in respect of the matter set out in the first column of the said Schedule.

PART II
The 1926 and 1949 Convention Countries

International distinguished mark for Malaŵi

4. In addition to the vehicle's registration mark required to be fixed and maintained in accordance with the Road Traffic (Registration and Licensing) Regulations, every motor vehicle registered and licensed in Malaŵi proceeding from Malaŵi shall display at the back inscribed on a plate or on the motor vehicle itself the international distinguishing mark for Malaŵi consisting of the letters "MW". Every such plate shall be oval in shape, 240 millimetres wide by 140 millimetres high and shall bear the letters "MW" in black on a white background. The letters shall be formed of capital Latin characters of a height of at least 80 millimetres and their strokes of a width of at least 10 millimetres. In the case of any such motor vehicle drawing a trailer, the international distinguishing mark shall also be displayed at the back of the trailer.

PART III
The 1926 Convention Countries

International certificate for vehicles being taken outside Malaŵi under the 1926 Convention

5.—(1) The Director may issue for use in any 1926 Convention country an international certificate in Form A in the First Schedule for any motor vehicle registered under the Act.

(2) An application for an international certificate shall be made in Form E in the First Schedule.

(3) The Director may if he deems it necessary before issuing an international certificate cause the vehicle in respect of which such certificate is applied for to be examined by a motor vehicle examiner to ascertain that it is suitable for use on roads of a foreign country and particularly that it complies with Article 3 of the 1926 Convention set forth in the Second Schedule.

(4) Upon being satisfied that the vehicle complies with the requirements of the preceding subregulation, the Director shall, upon payment of the fee specified in the Sixth Schedule, issue an international certificate in respect thereof.

Period of validity of international certificates

6. International certificates shall be valid for 12 months from the date of issue.

PART IV
Requirements for Visiting Drivers and Motor Vehicles

Visitors holding international driving permits

7. An international driving permit issued elsewhere than in Malaŵi to a person not resident in Malaŵi shall, during the holding of such permit, be deemed to have effect within Malaŵi as though it were a driving licence issued under section 24 of the Act:

Provided that such permit shall have effect within Malaŵi only in respect of those classes of motor vehicles the driving of which is authorized by such permit.

Provisions of the Act to apply to international driving permits

8. An international driving permit shall be produced for inspection in like manner as if it were a driving licence issued under the Act and the provisions of the Act relating to driving licences shall apply *mutatis mutandis* to international driving permits.

Visiting motor vehicles

9.—(1) Any motor vehicle, not being a public service vehicle, brought into Malaŵi under the authority of an international certificate issued elsewhere than in Malaŵi or of a registration certificate and vehicle licence issued elsewhere than in Malaŵi may be used in Malaŵi—

(*a*) in the case of a motor vehicle brought into Malaŵi by a person resident in Malaŵi for a period not in excess of 30 days; and

(*b*) in the case of a motor vehicle brought into Malaŵi by a person not resident in Malaŵi for a period not in excess of 365 days or until the expiry of its international certificate or registration certificate or vehicle licence, as the case may be, or until 30 days after the date when such person becomes resident in Malaŵi, whichever is the shortest, without the need to be registered or licensed subject to the vehicle's compliance regarding construction and equipment with the requirements of regulation 10 or 11 as the case may be and subject to its compliance in other respects with the Act and any regulations made thereunder:

Provided that the exemption conferred by paragraph (*b*) shall not cease prior to the expiry of 14 days from the date when such non-resident brought such motor vehicle into Malaŵi.

(2) No motor vehicle may be used in Malaŵi under the authority of an international certificate or registration certificate and vehicle licence unless and until there shall be affixed to such motor vehicle, in addition to the identification marks required in the country in which the international certificate or registration certificate was issued, a distinctive plate displaying the appropriate letter or letters prescribed in the Fourth Schedule for such country which conforms with the provisions of Annex IV to the 1949 Convention or Annex C to the 1926 Convention as the case may be. In the case of a motor vehicle drawing a trailer the distinctive plate shall be displayed at the back of the trailer.

(3) The holder of an international certificate or registration certificate and vehicle licence shall produce such certificate or licence at any time on demand made by any police officer in uniform or who, if not in uniform, produces his identity card.

(4) All the requirements of the Act and of the Regulations made thereunder in connexion with the visibility of the registration marks of motor vehicles or trailers shall, during such time as the motor vehicle or trailer is in Malaŵi, apply in all respects to the identification marks and distinctive plate required by subregulation (2).

(5) Any public service vehicle or private passenger vehicle registered and licensed in Malaŵi or any prescribed territory; and used for the carrying of tourists booked and carried from and on the same tour returning or going to places outside Malaŵi may, for a period not exceeding 60 days calculated from the date on which such vehicle enters Malaŵi, be used on the roads of Malaŵi although no road service permit has been issued in respect of such use, subject to the condition that no goods shall be carried on such vehicle other than the personal luggage of the tourists travelling therein.

Conditions to be fulfilled by visiting motor vehicles under the 1926 Convention

10. Any motor vehicle brought into Malaŵi under the 1926 Convention shall comply with regard to construction and equipment with the requirements of Article 3 thereof as set forth in the Second Schedule.

Conditions to be fulfilled by visiting motor vehicles under the 1949 Convention

11. Any motor vehicle brought into Malaŵi under the 1949 Convention shall comply with regard to construction and equipment with the requirements of Articles 21 and 22 thereof as set forth in the Third Schedule.

FIRST SCHEDULE

ROAD TRAFFIC ACT — FORM A

ROAD TRAFFIC (INTERNATIONAL CIRCULATION) REGULATIONS

FORM OF INTERNATIONAL CERTIFICATE FOR MOTOR VEHICLES UNDER CONVENTION OF 1926

PAGE 1

MALAŴI

INTERNATIONAL MOTOR TRAFFIC

INTERNATIONAL CERTIFICATE FOR MOTOR VEHICLES
(INTERNATIONAL CONVENTION ON 24TH APRIL, 1926)

ISSUE OF CERTIFICATE

Place .....

Date ....

Signature of Authority

Seal of Authority

PAGE 2

This certificate is valid, in the territory of all the undermentioned contracting States, for the period of one year from the date of issue.

Here insert list of contracting States

Owner Surname		1
or		
Holder:	Other Address	2
	Home Address	3
	Class of Vehicle	4
	Name and Maker of Chassis	5
	Type of Chassis	6
	Serial number of type or maker's number of chassis	7
Engine:	Number of Cylinders	8
	Engine Number	9
	Stroke	10
	Bore	11
	Horsepower	12
Body:	Shape	13
	Colour	14
	Number of Seats	15
Weight of car unladen (in kilos)		16
Weight of car fully laden (in kilos) exceeding 3,500 kilos		17
Identification mark on the plates		18

Additional pages should repeat the particulars on page 3 translated into as many languages as may be necessary to enable the certificate to be used in all States mentioned on page 2 and followed by pages for entrance and exit visas.

FORM B

ROAD TRAFFIC ACT

ROAD TRAFFIC (INTERNATIONAL CIRCULATION) REGULATIONS

APPLICATION FOR AN INTERNATIONAL CERTIFICATE FOR A MOTOR VEHICLE

I,* .....

of .....

being the registered owner of motor vehicle + ...

enclose the registration book issued for the said motor vehicle and hereby apply for an international certificate in respect of the said motor vehicle.

The particulars of the motor vehicle stated on the registration book are correct.

The motor vehicle is registered in .....

The motor vehicle is ordinarily used and/or kept in .....

..... and not elsewhere.

Date ....

Signature of Applicant

For official use only.

Number of International Certificate .....

Issuing Office .....

Date of Issue .....

Date of Expiry .....

.....

for Director of Road Traffic

Original—To Director of Road Traffic.

*Name and postal and residential address in full.

+Registration mark.

SECOND SCHEDULE

ROAD TRAFFIC ACT

ROAD TRAFFIC (INTERNATIONAL CIRCULATION) REGULATIONS

(Regulation 5 and 10)

Article 3 of the 1926 Convention

Article 3

Every motor vehicle, in order to receive international authorization to travel on any road to which the public have access, must either have been recognized as suitable for use on any road to which the public have access after an examination by the competent authority or by an association authorized by that authority, or must conform to a type approved in the same manner. The vehicle must, in any case, fulfil the following conditions—

I. The motor vehicle must be equipped with the following—

(*a*) a strong steering apparatus which will allow the vehicle to be turned easily and with certainty;

(*b*) either two systems of brakes, independent of each other, or one system of brakes with two independent means of operation, of which one means of operation will function, even if the other fails to function:

Provided that in all cases the system used is really effective and rapid in action;

(*c*) if the weight of the motor vehicle when empty exceeds 350 kilos, a mechanism by means of which the vehicle can from the driver's seat be made to move backwards under its own power; and

(*d*) when the combined weight of the empty motor vehicle and the weight of the maximum load which it is officially declared to be capable of carrying exceeds 3,500 kilos, a special mechanism, such as can prevent, in all circumstances, the vehicle from running backwards, in addition to a reflecting mirror.

The controls and steering apparatus must be so placed that the driver can manage them with certainty and at the same time have a clear view of the road.

The machinery must be such as to work with certainty and disposed in such a way as to avoid, as far as possible, all danger of fire or explosion; as not to constitute any sort of danger to traffic and so as not to frighten or seriously inconvenience by noise, smoke or smell. The vehicle must be equipped with a silencer.

The wheels of motor vehicles and trailers drawn by them must be fitted with rubber tyres or with some other tyres of equivalent elasticity.

The distance between the ends of the hub-caps must not exceed the maximum width of the remainder of the vehicle.

II. The motor vehicle must carry—

(1) At the front and back, marked on plates on the vehicle itself, the registration number which has been allocated to it by the competent authority. The registration number placed at the back as well as the distinctive mark referred to in Article 5 must be lit up as soon as they cease to be visible by the light of day.

In the case of a vehicle followed by a trailer the registration number and the distinctive mark referred to in Article 5 are repeated behind the trailer, and the regulation regarding the lighting of these marks applies to the trailer.

(2) In an easily accessible position and in a form easily legible, the following particulars:

Name of maker of chassis;

Maker's chassis number;

Maker's engine number.

III. Every motor vehicle travelling without a trailer must, during the night and from sunset, be fitted in front with at least two white lights placed one on the right and the other on the left, and, at the back, with a red light. For motor bicycles unaccompanied by a side-car, the number of lights in front may be reduced to one.

IV. Every motor vehicle must also be equipped with one or more devices capable of effectively illuminating the road for a sufficient distance ahead unless the two white lights prescribed above already fulfil this condition.

V. If the vehicle is capable of proceeding at a speed greater than 30 kilometres an hour, this distance must not be less than 100 metres.

VI. Lamps which may produce a dazzling effect must be provided with means for eliminating the dazzle when other users of the road are met, or on any occasion when such elimination would be useful. The elimination of the dazzling effect must, however, leave sufficient light to illuminate the road clearly for at least 25 metres.

VII. Motor vehicles drawing trailers are subject to the same regulation as separate motor vehicles in so far as forward lighting is concerned, the rear red light is to be carried on the back of the trailers.

VIII. In so far as the limits regarding weight and dimensions are concerned, motor vehicles and trailers must satisfy the general regulation in force in the countries in which they travel.

THIRD SCHEDULE

ROAD TRAFFIC ACT

ROAD TRAFFIC (INTERNATIONAL CIRCULATION) REGULATIONS

(Regulation 11)

Articles 21 and 22 of the 1949 convention

Conditions to be Fulfilled by Motor Vehicle Brought into Malaŵi by Visitors

Article 21

Every motor vehicle and trailer shall carry the identification marks set out in Annex 5.

Article 22

1. Every motor vehicle and trailer shall be in good working order and in such safe mechanical condition as not to endanger the driver, other occupants of the vehicle or any person upon the road, or cause damage to public or private property.
2. In addition, every motor vehicle, or trailer, and its equipment shall conform to the provisions of Annex 6 and the driver of every motor vehicle shall observe the rules set out therein.

Annex 5

Identification Marks of Vehicles in International Traffic

1. The identification marks shall comprise—
   (*a*) in the case of a motor vehicle:
      (i) the name or the trade mark of the maker of the vehicle;

(ii) on the chassis, or in the absence of a chassis on the body, the maker's identification or serial number;

(iii) on the engine, the maker's engine number if such a number is placed thereon by the maker;

(*b*) in the case of a trailer, either the information referred to in (i) and (ii) above or an identification mark issued for the trailer by the competent authority.

2. The marks mentioned above shall be placed in accessible positions and shall be in a form easily legible and not capable of being easily removed or altered.

Annex 6

Technical Conditions concerning the Equipment of Motor Vehicles and Trailers in International Traffic

I. Braking—

(*a*) Braking of motor vehicles other than motorcycles with or without side-cars. Every motor vehicle shall be equipped with brakes capable of controlling the movement of and of stopping the vehicle in an efficient, safe and rapid way under any conditions of loading on any up or down gradient on which the vehicle is operated.

The braking shall be operated by means of two devices so constructed that, in the event of failure of one of the braking devices, the other shall be capable of stopping the vehicle within a reasonable distance.

For the purpose of this Annex, one of these braking devices will be called the "service brake" and the other one the "parking brake".

The parking brake shall be capable of being secured, even in the absence of the driver, by direct mechanical action.

Either means of operation shall be capable of applying braking force to the wheels symmetrically placed on each side of the longitudinal axis of the vehicle.

The braking surfaces shall always be connected with the wheels of the vehicle in such a way that it is not possible to disconnect them otherwise than momentarily by means of a clutch, gear box of free wheel.

One at least of the braking devices shall be capable of acting on braking surfaces directly attached to the wheels of the vehicle or attached through parts not liable to failure.

(*b*) Braking of trailers:

Every trailer having a permissible maximum weight exceeding 750 kilos (1,650 lb) shall be equipped with at least one braking device acting on wheels placed symmetrically on each side of the longitudinal axis of the vehicle and acting on at last half the number of wheels.

The provisions of the proceeding paragraph shall not be required, however, in respect of trailers if the permissible maximum weight does not exceed 750 kilos (1,650 lb.) but exceeds one-half of the unladen weight of the drawing vehicles.

The braking device of trailers with a permissible maximum weight exceeding 3,500 kilos (7,700 lb.) shall be capable of being operated by applying the service brake from the drawing vehicle. When the permissible maximum weight of the trailer does not exceed 3,500 kilos (7,700 lb.) its braking device may be brought into action merely by the trailer moving upon the drawing vehicle (overrun braking).

The braking device of the trailer shall be capable of preventing the rotation of the wheels when the trailer is uncoupled.

Any trailer equipped with a brake shall be fitted with a device capable of automatically stopping the trailer if it becomes detached whilst in motion. This provision shall not apply to two-wheeled camping trailers or light luggage trailers whose weight exceeds 750 kilos (1,650 lb.) provided that they are equipped in addition to the main attachment with a secondary attachment which may be a chain or wire rope.

(*c*) Braking of articulated vehicles and combinations of motor vehicles and trailers—

(i) Articulated vehicles

Paragraph (*a*) of this Part shall apply to every articulated vehicle. A semi-trailer having a permissible maximum weight exceeding 750 kilos (1,650 lb.) shall be equipped with at least one braking device capable of being operated by applying the service brake from the drawing vehicle.

The braking device of the semi-trailer shall, in addition, be capable of preventing the rotation of the wheels when the semi-trailer is uncoupled.

When required by domestic regulations a semi-trailer equipped with a brake shall be fitted with a device capable of stopping automatically the semi-trailer if it becomes detached whilst in motion.

(ii) Combinations of motor vehicles and trailers

Every combination of a motor vehicle and one or more trailers shall be equipped with brakes capable of controlling the movement of and of stopping the combination in an efficient, safe and rapid way under any conditions of loading on any up or down gradient on which it is operated.

(*d*) Braking of motorcycle with or without side-cars

Every motorcycle shall be equipped with two braking devices which may be operated by hand or foot, capable of controlling the movement of and of stopping the motorcycle in an efficient, safe and rapid way.

II. Lighting—

(*a*) Every motor vehicle other than a motorcycle with or without side-car and capable of exceeding 20 km (12 miles) per hour on the level shall be equipped with at least two white or yellow driving lights fitted in front capable of adequately illuminating the road for a distance of 100 m (325 feet) in front of the vehicle at night-time in clear weather.

(*b*) Every motor vehicle other than a motorcycle with or without side-car and capable of exceeding 20 km (12 miles) per hour on the level shall be equipped with two white or yellow passing lights fitted at the front of the vehicle and capable when necessary of adequately illuminating the road at night in clear weather in front of the vehicle for a distance of 30 m (100 feet) without causing glare or dazzle to other road users whatever the direction of the traffic may be.

Passing lights shall be used instead of driving lights in all cases when the use of lights causing no dazzle or glare is necessary or compulsory.

(*c*) Every motorcycle with or without side-car shall have at least one driving light and one passing light conforming to paragraphs (*a*) and (*b*) of this Part. However, motorcycles with an engine of a maximum cylinder capacity of 50 cm (3.05 cu. in.) may be excluded from this obligation.

(*d*) Every motor vehicle other than a motorcycle without a side-car shall be equipped with two white position (side) lights at the front. These lights shall be clearly visible at night-time in clear weather at a distance of 150 m (500 feet) from the front of the vehicle without causing any glare or dazzle to other road users.

The part of the illuminating surface of these lights furthest from the longitudinal axis of the vehicle shall be as near as possible to and in no case further than 400 mm (16 in.) from the extreme outer edges of the vehicle.

Position (side) lights shall be shown at night-time in all cases when the use of such lights is compulsory and at the time as the passing lights if no part of the illuminating surface of the lamps of the passing lights is within 400 mm (16 in) of the extreme outer edges of the vehicle.

(*e*) Every motor vehicle and every trailer at the end of a motor vehicle or a trailer shall be equipped at the rear with at least one red light visible at night-time in clear weather at a distance of 150 m (500 feet) from the rear.

(*f*) The registration number displayed at the rear of a motor vehicle or a trailer shall be capable of illuminating at night-time in such a manner that it can be read in clear weather at a distance of 20 m (65 feet) from the rear of the vehicle.

(*g*) The read light or lights and the light for the rear registration number shall be shown at the same time as any of the following position (side) lights, passing lights or driving lights.

(*h*) Every motor vehicle other than a motorcycle without a side-car shall be equipped with two red reflex reflectors, preferably of other than triangular form, fitted symmetrically at the rear and on opposite sides of the vehicles. The outer edge of each of these reflectors must be as near as possible to and in no case further than 400 m (16 in.) from the outer edges of the vehicle. These reflectors may be incorporated in the rear red lamps of these lamps comply with the above requirements. These reflectors shall be visible at night-time in clear weather from a distance of at least 100 m (325 feet) when illuminated by means of two driving lights.

(*i*) Every motor vehicle without side-car shall be equipped with a red reflex reflector preferably of other than triangular form, fitted at the rear of the vehicle, either incorporated in, or separate from, the rear lamp and shall comply with the conditions of visibility mentioned under paragraph (*h*) of this Part.

(*j*) Every trailer and every articulated vehicle shall be equipped with two red reflex reflectors, preferably triangular in shape, fitted symmetrically at the rear and on opposite sides of the vehicle. These reflectors shall be visible at night-time in clear weather from a distance of at least 100 m (325 feet) when illuminated by means of two driving lights.

(*k*) With the exception of motorcycle, every motor vehicle and every trailer at the end of a combination of vehicles shall be equipped with at least one stop-light at the rear, showing a red or amber light. This light shall be actuated upon application of the service brake of the motor vehicle. If the stoplight is red in colour and is either incorporated in or associated with the rear red light, its intensity shall be greater than that of the rear light. The stoplight shall not be required on trailers and semi-trailers when their dimensions are such that the stoplight of the drawing vehicle remains visible from the rear.

(*l*) When a motor vehicle is equipped with direction indicators, such indicators shall be one of the following—

(i) a moveable arm protruding beyond each side of the vehicle and illuminated by a steady amber light when the arm is in a horizontal position;

(ii) a constantly blinking or flashing amber light affixed to each side of the vehicle; and

(iii) a constantly blinking or flashing light placed at each side of the front and rear of the vehicle. The colour of such lights shall be white or orange towards the front and red orange towards the rear.

(*m*) No lights, with the exception of direction indicators, shall be flashing or blinking lights.

(*n*) If a vehicle is equipped with several lights of the same kind, they shall be of the same colour and, except in the case of motorcycles with side-cars two of these lights shall be placed symmetrically to the longitudinal axis of the vehicle.

(*o*) Several lights may be incorporated by the same lighting device provided each of these lights complies with the appropriate provision of this Part.

III. Other Conditions—

(*a*) Steering Apparatus: Every motor vehicle shall be equipped with at least steering apparatus which will allow the vehicle to be turned easily, quickly and with certainty.

(*b*) Driving Mirror: Every motor vehicle shall be equipped with at least one driving mirror of adequate dimensions, so placed as to enable the driver to view from his seat the road to the rear of the vehicle. However, this provision shall not be compulsory for motorcycles with or without side-car.

(*c*) Warning Devices: Every motor vehicle shall be equipped with at least one audible warning device of sufficient strength which shall not be a bell, gong, siren or other strident-toned device.

(*d*) Windscreen Wiper: Every motor vehicle fitted with a wind screen shall have at least one efficient wind screen wiper functioning without requiring constant control by the driver. However, this provision shall not be compulsory for motorcycles with or without side-cars.

(*e*) Windscreen: Windscreen shall be made of a stable substance, transparent and not likely to produce sharp splinters if broken. The objects seen through this substance shall not appear distorted.

(*f*) Reversing Device: Every motor vehicle shall be equipped with a reversing device controlled from the driver's seat if the weight of the motor vehicle when empty exceeds 400 kilos (900 lb.).

(*g*) Exhaust Silencer: Every motor vehicle shall have an exhaust silencer in constant operation to prevent excessive or unusual noise, the working of which cannot be interrupted by the driver while on the road.

(*h*) Tyres: The wheels of motor vehicles and their trailers shall be fitted with pneumatic tyres, or with some other tyres of equivalent elasticity.

(*i*) Device to prevent a vehicle from running down a gradient. When traveling in a mountainous region of a country where it is required by domestic regulations, any motor vehicle of which the permissible maximum weight exceeds 3,500 kilos (7,700 lbs.), shall carry a device such as a scotch or clod which can prevent the vehicle from running backwards or forwards.

(*j*) General provisions—

(i) in so far as possible the machinery or accessory equipment of any motor vehicle shall not entail a risk of fire or explosion, nor cause the emission of noxious gases or offensive odours or produce disturbing noises, nor be a source of danger in case of collision;

(ii) every motor vehicle shall be so constructed that the driver shall be able to see ahead, to the right and to the left, clearly enough to enable him to drive safely; and

(iii) The provisions relating to braking and lighting shall not apply to invalid carriages which comply with the domestic regulations in the country of registration as regards brakes. Lights and reflectors. For the purpose of this paragraph "invalid carriage" shall mean a motor vehicle whose unladen weight does not exceed 300 kilos (700 lb.), whose speed does not exceed 30 km (19 miles) per hour, and which is specially designed and constructed (and not merely adapted) for the use of a person suffering from some physical defect or disability and it is normally used by such person.

IV. Combination of vehicles—

(*a*) A "combination of vehicles" may be composed of a drawing vehicle and one or two trailers. An articulated vehicle may draw a trailer, but if such articulated vehicle is used for the carriage of passengers the trailer shall have not more than one axle and shall not carry passengers.

(*b*) Any contracting State may, however, indicate that it will only permit that one trailer be drawn by a vehicle and that it will not permit an articulated vehicle to draw a trailer. It may also indicate that it will not permit articulated vehicles for the transport of passengers.

For the purpose of this Schedule—

"articulated vehicle" means a motor vehicle with a trailer having no front axle and so attached that part of the trailer is superimposed upon the motor vehicle and a substantial part of the weight of the trailer and of its load is borne by the motor vehicle. Such a trailer shall be called a "semi-trailer".

FOURTH SCHEDULE

ROAD TRAFFIC (INTERNATIONAL CIRCULATION) REGULATIONS

Distinctive Letters for the Different States and Territories

Distinctive letters for the different states and territories are as follows, as established by the Conventions of 1926 and 1949—

A	Austria	CH	Switzerland
ADN	Aden State	CI	Ivory Coast
AL	Albania	CL	Ceylon
AND	Andorra	CNB	North Borneo (now Sabah Malaysia)
Aus	Australia, Norfolk Island	CO	Colombia
B	Belgium	CR	Costa Rica
BDS	Barbados	CS	Czechoslovakia
BG	Bulgaria	CY	Cyprus
BH	British Honduras	D	Germany (Federal Republic)
BL	Lesotho	DK	Denmark, Faroe Islands
BP	Botswana	DOM	Dominican Republic
BR	Brazil	DY	Dahomey
BRG	British Guiana (now Guyana)	DZ	Algeria
BRN	Bahrain	E	Spain, Balearic Islands, Canary Islands, Spanish Guinea, Spanish Sahara
BRU	Brunei		
BS	Bahamas	EAK	Kenya
BUR	Burma	EAT	Tanganyika (Tanzania)
C	Cuba	EAU	Uganda
CDN	Canada	NZ	New Zealand

CGO	Congo (Leopoldville)
EAZ	Zanzibar (Tanzania)
EC	Ecuador
ET	Egypt (United Arab Republic)
F	France and French overseas Department
FL	Liechtenstein
GB	Great Britain and Northern Island
GBA	Alderney
GBG	Guernsey
GBJ	Jersey
GBM	Isle of Man
GBZ	Gibraltar
GCA	Guatemala
GH	Ghana
GR	Greece, Crete Dodecanese Islands
H	Hungary
HK	Hong Kong
I	Italy, Sardinia, Sicily
IL	Israel
IND	India
IR	Iran
IRL	Republic of Ireland
IRQ	Iraq
IS	Iceland
JA	Jamaica, Cayman Islands Turks and Caricos Islands
JOR	Jordan
K	Cambodia
L	Luxembourg
LAO	Laos
LY	Libya
M	Malta, Gozo
MA	Morocco
MC	Monaco
MEX	Mexico
MS	Mauritius
MW	Malaŵi
N	Norway
NA	Netherlands Antilles
P	Portugal, Azores Cape Verde Islands Madeira Mozambique Portugal Timor Portuguese West Africa (Angola) Sao Joao Baptist de Agate Sao Tome and Principe Islands
PA	Panama
PAK	Pakistan
PE	Peru
PI	Phillippine Island
PL	Poland
PTM	Malaya (Malaysia)
PY	Paraguay
R	Rumania
RA	Argentina
RC	Formosa (Tai-Wan)
RCA	Central African Republic
RCB	Republic of the Congo (Brazaville)
RCH	Chile
RH	Haiti
RIM	Islamic Republic of Mauritania
RL	Lebanon
RM	Malagasy Republic
RMM	Mali
RSM	San Marino
RSR	Southern Rhodesia
RU	Burundi
RWA	Republic of Ruanda and Kingdom of Burundi
S	Sweden
SD	Swaziland
SF	Finland
SAP	Singapore
S	Serac (Malaysia)
SAME	Surinam
S	Republic of Senegal
S	Union of Soviet Socialist Republics
SAD	Sudan
SAW	South West Africa
S	Seychelles

NIC	Nicaragua	SIR	Syria
NIG	Niger	T	Thailand (Siam)
NL	Netherlands (Holland)	T	Tog
USA	United States of America	T	Tunisia
V	Vatican City	T	Turkey
VN	Viet Nam	T	Trinidad and Tobago
WAG	Gambia	U	Urugay
WAL	Sierra Leone	WL	St. Lucia (Windward Islands)
WAN	Nigeria	WS	Western Samoa
WD	Dominica (Windward Island)	WV	St. Vincent (Windward Islands)
WG	Grenada (Windward Island)	YV	Venezuela
		YU	Yugoslavia
		Z	Zambia
		ZA	Republic of South Africa

FIFTH SCHEDULE

ROAD TRAFFIC ACT
ROAD TRAFFIC (INTERNATIONAL CIRCULATION) REGULATIONS
Countries which Ratified or Acceded to the 1949 Convention

Algeria
Argentina
Australia
Austria
Belgium
Botswana
Bulgeria
Cambodia
Canada
Central African Republic
Ceylon
Chile
China
Congo (Democratic Republic of)
Cuba
Cyprus
Czechoslovakia
Dahomey
Denmark
Dominican Republic
Ecuador
Finland
France
Ghana
Greece
Ivory Coast
Jamaica
Jordan
Laos
Lebanon
Luxembourg
Madagascar
Malaŵi
Malaysia
Mali
Malta
Monaco
Morocco
Netherlands
New Zealand
NigerNorway
Paraguay
Peru
Philippines
Poland
Portugal
Republic of Viet Nam
Romania
Ruanda
San Marino

Guatemala
Haiti
Holy See
Hungary
India
Ireland
Israel
Italy
Thailand
Tog
Trinidad and Tobago
Tunisia
Uganda
Union of Soviet Socialist Republics
United Arab Republic
United Kingdom
United States of America
Venezuela
Yugoslavia
Senegal
Sierra Leone
South Africa
Spain
Sweden
Switzerland
Sylia

SIXTH SCHEDULE

ROAD TRAFFIC ACT r. 3

ROAD TRAFFIC (INTERNATIONAL CIRCULATION) REGULATIONS

		K	t
1.	Issue of any international certificate	600	00

ROAD TRAFFIC (PUBLIC SERVICE VEHICLES) (OPERATIONS) REGULATIONS

ARRANGEMENT OF REGULATIONS

REGULATION

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PRELIMINARY

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2. Interpretation

PART II

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4. Duties of driver or conductor

REGULATION

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MISCELLANEOUS

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G.N. 18/2000
40/2004

ROAD TRAFFIC (PUBLIC SERVICE VEHICLES) (OPERATIONS) REGULATIONS

under s. 181

PART I
Preliminary

Citation

1. These Regulations may be cited as the Road Traffic (Public Service Vehicles) (Operations) Regulations.

Interpretation

2. In these Regulations, unless the context otherwise requires—

"bus" means a motor vehicle designed or adapted for the conveyance of ten or more persons including the driver;

"contract car" means a public service vehicle having seating accommodation for not more than nine persons in addition to the driver which is let out on hire for a period which is not less than twenty-four hours to a hirer who drives the vehicle himself or who provides the driver;

"double deck bus" means a bus having two decks one of which is wholly or partly above the other and each deck of which is provided with a gangway serving seats on that deck alone;

"hire car" means a public service vehicle having seating accommodation for not more than nine persons in addition to the driver which is let out on hire with a driver under contract for a period which is not less than twenty-four hours for the carriage of passengers otherwise than at separate fares;

"public service vehicles" means any vehicle carrying passengers for hire or reward and includes—

(*a*) a bus;

(*b*) a contract car;

(*c*) a hire car;

(*d*) a taxi; and

(*e*) a goods vehicle adapted for the carriage of passengers;

"single deck bus" means a bus upon which no part of a deck or gangway is vertically above another deck or gangway;

"specially adapted foods vehicle" means a goods vehicle authorized to carry passengers for hire or reward under a road service permit or short-term;

"taxi" means a public service vehicle having seating accommodation for not more than nine persons in addition to the driver which is let with a driver over a period less than twenty-four hours for the carriage of passengers otherwise than at separate fares.

PART II
Operation of Public Service Vehicles

Trailers and passengers vehicles

3. No person shall operate on a public road any public service vehicle while towing a trailer if passengers are actually being carried in such vehicle without the permission of the Director.

Duties of driver or conductor

4. No conductor or, where there is no conductor, no driver of any public service vehicle shall—

(*a*) in the case of a bus, taxi or hire car, allow passengers to sit in or on any place other than upon the seats provided for the passengers or, in the case of a specially adapted goods vehicle, allow passengers to sit in or on any place other than upon any seats provided for, where no seats are provided, on the floor of the passenger section;

(*b*) except in the case of a bus where standing passengers are allowed, permit any passenger to stand in or on any public service vehicle when it is in motion;

(*c*) allow any luggage or any other article to be placed in or near an entrance or exit for passengers in such a position as to cause any obstruction or danger to persons entering or leaving the public service vehicle or, in the case of a double deck bus, on the stairs of such bus;

(*d*) allow the total height of any luggage or other loads placed on the roof of the vehicle to exceed a height equal to one fourth of the maximum overall height of the public service vehicle measured from the ground to the highest point of the roof:

Provided that in no case shall any portion of the luggage or other load be more than 3.8 metres off the ground; or

(*e*) in the case of a double deck bus allow any luggage or other loads to be placed on the roof of the bus; or

(*f*) fail to take all reasonable precautions to ensure the safety of passengers in or on entering or alighting from the public service vehicle; or

(*g*) willfully deceive or refuse to inform any passenger or intending passenger as to the destination or route of the public service vehicle or as to the fare for any journey.

Interior of vehicle to be clean

5. No person shall cause or permit a public service vehicle, if passengers are actually being carried in such vehicle, to be used on a public road when the interior of such vehicle is not in a clean and sanitary condition at all reasonable times.

Luggage

6.—(1) A public service vehicle may carry luggage belonging to passengers:

Provided that only light hand luggage shall be carried inside the vehicle and that heavy or awkward luggage shall be carried in a separate luggage compartment or if an approved guard rail is provided on the vehicle roof.

(2) In a bus only light luggage and parcels may be carried in the passenger compartment.

(3) Nothing contained in this regulation shall be deemed to permit the carrying of any goods or luggage of any kind on the roof of a double deck bus.

Tickets and fares

7.—(1) Any person authorized to receive fares from passengers or intending passengers in a bus or specially adapted goods vehicle shall forthwith issue to each passenger who has paid his fare a ticket showing the amount of such fare.

(2) No passenger in a bus or specially adapted goods vehicle shall—

(*a*) immediately upon demand, fail to declare the journey he intends to take or has taken and to pay the fare for the whole of such journey or produce a valid ticket for the same;

(*b*) leave or attempt to leave a bus or specially adapted goods vehicle without paying the fare for any journey that he has made in such bus or specially adapted goods vehicle and with the intent to avoid payment thereof;

(*c*) fail to produce his ticket on demand by a police officer or by conductor, driver or other duly authorized agent of the owner of the bus or specially adapted goods vehicle;

(*d*) use any ticket which has been altered or defaced with intent to avoid payment of the fare;

(*e*) use or attempt to use any ticket which has been issued to another person if such ticket bears thereon an indication that it is not transferable; or

(*f*) refuse upon request to leave the bus or specially adapted goods vehicle upon completion of the journey the fare for which he has paid.

(3) Subregulation (2) (*b*) shall apply *mutatis mutandis* to passengers in taxi and in hire cars.

Unlawful behavior by passengers

8.—(1) No person while travelling in or upon a public service vehicle shall—

(*a*) spit in or upon or from the vehicle or any part thereof;

(*b*) use obscene, indecent, offensive or quarrelsome language or gestures;

(*c*) behave in an obscene, indecent, offensive or quarrelsome manner;

(*d*) willfully interfere in any way with the comfort of any passenger;

(*e*) willfully obstruct or impede the driver or conductor in the exercise of his duties;

(*f*) willfully damage any public service vehicle;

(*g*) enter or remain in or on a public service vehicle when requested not to do so by a driver or conductor on the ground that the public service vehicle is carrying its full complement of passengers or that the operator is debarred from picking up passengers at the place in question by reason of the terms of the conditions attached to his road service permit or short-term road service permit;

(*h*) where seats are provided for passengers, sit in any place in or on any public service vehicle other than upon the seats so provided;

(*i*) except in buses where standing passengers are allowed, stand in or on a public service vehicle when it is in motion; or

(*j*) place any luggage or any other article in or near an entrance or exit for passengers in such a position as to cause any obstruction or danger to persons entering or leaving the public service vehicle, or in the case of a double deck bus, on the stairs of such bus.

(2) No person in a state of intoxication shall enter or remain in or on any bus or specially adapted goods vehicle and no driver or conductor of any bus or specially adapted goods vehicle shall willfully allow any such person to enter or remain in or on any bus or specially adapted goods vehicle on which he is on duty as the driver or conductor.

Unauthorized person prohibited on a public service vehicle G.N. 40/2004

8A. Any person who is not a member of the crew or a passenger shall not get onto or into a public service vehicle.

Touting prohibited G.N. 40/2004

8B. No owner, member of the crew or any person acting on behalf of the owner, member of the crew or on his own behalf on a public service vehicle shall make any noise or sound any instrument in order to attract the attention of the public or of a possible passenger, or by troublesome or frequent demands, or by persistent following, hold out the vehicle for hire to the public, or attempt to induce any person to become a passenger therein.

Harassment prohibited G.N. 40/2004

8C. No person shall harass a passenger or a member of the crew of a public service vehicle.

Offence G.N. 40/2004

8D. Any person who contravenes any of these regulations commits an offence.

Inflammable liquids in public service vehicle

9. No person shall cause or permit a public service vehicle while passengers are actually being carried to be used on a public road while such vehicle is carrying any inflammable or explosive substance:

Provided that nothing in this Regulation shall prohibit the carriage of petrol or other inflammable liquid—

(*a*) in the fuel tank of such vehicle; or

(*b*) as a reserve supply of fuel for the vehicle in a container or containers properly constructed to prevent leakage in such a position on the vehicle and not exceeding such amount as may be approved by a motor vehicle examiner.

Matters to be displayed or inscribed

10.—(1) No person shall cause or permit a taxi to be used on a road be displayed unless there is displayed in a conspicuous place in such taxi only the following and nothing else, that is to say—

(*a*) a notice showing the fares authorized to be charged for conveyance in such taxi;

(*b*) a list of extra payments in respect of additional passengers, luggage, waiting time, etc.; and

(*c*) the public service vehicle driving licence and identity card of the driver.

(2) No person shall cause or permit a bus to be used on a road unless the conductor or where there is no conductor the driver has available both a time-table and fare-table for the route on which such bus is operating. Such time-table and fare-table shall be

produced on request to any person reasonably requiring to examine such time-table or fare-table. For the purposes of this subregulation a person reasonably requiring such time-table or fare-table shall be deemed to include a passenger or an intending passenger in a bus.

Use of taxi meter

11.—(1) A taxi meter shall be used on any journey within a radius of 16 kilometres of the taxi ranks at the markets in Blantyre, Lilongwe, Limbe, Mzuzu and Zomba.

(2) Where a taxi meter is required, no person who conveys any passenger in a taxi shall—

(*a*) fail to operate the taxi meter; or

(*b*) charge a fare other than that indicated by the taxi meter:

Provided that this provision shall not apply to journeys for which the charging of an agreed fare is authorized by the Director.

(3) No person who conveys any passenger in a taxi shall—

(*a*) with intent to deceive travel by a devious route; and

(*b*) make any journey in such taxi by other than the shortest and most direct route except where otherwise specifically requested to do so by the passenger.

Driver's identification

12.—(1) The identity card to be displayed while on duty by the driver of a taxi in accordance with regulation 10 (1) (*c*) shall be enclosed in a container of clear plastic or other similar material and shall bear the words, "Malaŵi PSV Driver Identity Card", a distinguishing number and a photograph of the person to whom it was issued.

(2) In the case of an identity card the person applying for such identity card shall provide two photographs not less than 50 millimetres by 50 millimetres and not more than 60 millimetres by 60 millimetres.

(3) In the case of the loss or destruction of an identity card a new identity card shall be issued by the Director upon payment of the prescribed fee.

(4) An identity card shall remain the property of the Government of Malaŵi and shall be returned to the Director when the person to whom it was issued has ceased to be licensed to drive a public service vehicle:

Provided that where the driving licence of any person to whom an identity card has been issued is revoked or suspended, that person shall surrender his identity card to the person suspending or revoking the licence.

(5) No driver of a taxi who when on duty shall fail to display his identity card in a conspicuous position so that the distinguishing number and photograph are clearly legible.

Crew to wear uniform G.N. 40/2004

12A.—(1) Every member of the crew of a public service vehicle shall wear a uniform at all times the member is on duty.

(2) The Director shall determine the type of uniforms for different categories of public service vehicles.

(3) Every member of the crew shall wear an identity card on his uniform, bearing his photograph and names, on a place that the identity card is clearly visible and can be easily read.

(4) For the purposes of these Regulations "member of the crew" includes the driver, conductor, inspector and "katundu boy".

(5) Any person who contravenes this regulation commits an offence.

Lost property

13.—(1) The conductor or driver of a public service vehicle shall, after the completion of the journey, carefully search for any property left by passengers in the vehicle and shall, without undue delay, take any property found, if not claimed by the owner, to the nearest police station:

Provided that where ten or more public service vehicles are owned or operated within the same region by one person, that person shall establish in that region a "lost property office", and any property found in any public service vehicle owned or operated in that region by that person shall be taken to the lost property office for that region.

(2) Any property deposited in a police station under this regulation shall be dealt with by the police in accordance with the Police Act.

Cap. 13:01

(3) Any property deposited in a lost property office under this regulation shall be held in that office for a period of not less than one month, and, if claimed, shall be delivered to the owner. If at the end of one month the property has not been so claimed and delivered, it shall be sold by public auction in accordance with the directions of the Director, and the net proceeds, after deducting all expenses, including such reward for the finder as the Director may think fit, shall be paid into the Consolidated Fund.

Special destination indicators

14. Every bus shall while being used on a road under charter carry a board marked "SPECIAL" fixed above each of the destination indicators referred to in regulation 124 of the Road Traffic (Construction, Equipment and Use) Regulations, and the letters and background of any such board shall be of the same nature and colours and dimensions as those of the said destination indications.

Stopping

15. A bus shall be stopped to take up or set down passengers as near to the left or near side of the public road as possible.

Stopping places

16.—(1) Where in the area of any local authority notices are exhibited by the Director indicating stopping places for buses, a bus shall not be stopped for the purpose of taking up or setting down passengers except at a place so indicated.

(2) Where no such stopping places have been indicated the driver shall at the request of any passenger immediately stop the bus in order to enable such passenger to alight.

Overtaking

17. A bus shall not be driven alongside of or overlapping or so as to overtake another bus proceeding in the same direction unless such other bus is stationery or has signalled the overtaking bus to pass.

Smoking by driver or conductor

18. The driver or conductor of a bus, a specially adapted goods vehicle or a taxi shall not smoke while the vehicle is in motion.

Bus to proceed direct to destination

19. Every person driving a bus on a public road shall after quitting any stand or garage with passengers proceed direct to the place or places included in the route for such bus and shall not delay in so doing and shall not return to the place of departure after leaving it except on the return journey or where necessary to complete the original journey.

Bus conductors

20. A conductor on duty on a bus shall have the word "Conductor" legibly marked on some conspicuous part of his clothing or shall wear in a conspicuous position a badge having the word "Conductor" legibly marked thereon.

Taxi plying for hire

21. No driver of a taxi shall ply or stand for hire on a public road except—

(*a*) when the taxi is on a public stand approved by the Director;

(*b*) if hailed by an intending passenger while proceeding after the conclusion of a hiring to a public stand or to the place where the taxi is kept; or

(*c*) if hailed by an intending passenger while proceeding to or from a public stand from or to the place where the taxi is kept.

Taxis on public stands

22.—(1) The driver of each of the first two taxis on a public stand must stay beside his taxi and must be ready to be hired at once by any person.

(2) All taxis on the stand must move up as vacancies occur.

(3) In the cases where the taxis stand side by side subregulation (1) shall be deemed to apply to the two taxis on the right of the line.

(4) If a person wishes to engage a taxi of a particular seating capacity and if such taxi is not the first one on the stand but such a taxi is behind other taxis of less capacity the driver of the first taxi of the required seating capacity on the stand shall accept the hire and it shall be unlawful for any other driver to do so.

Stopping

23. The driver of a taxi while hired shall unless requested by the hirer stop his taxi for a longer time than is reasonably necessary and if he is not engaged for hire he shall not stop his taxi except on a public stand.

Refusing hire, etc.

24. The driver of a taxi shall not without reasonable excuse—

(*a*) refuse to be hired when the taxi is standing on a public stand;

(*b*) refuse or neglect to drive the taxi to any accessible place indicated by the hirer:

Provided that the whole journey out and return does not exceed fifty kilometres;

(*c*) refuse or neglect to carry such number of passengers not exceeding the number specified in the road service permit in respect of such taxi as he may be required to carry by the hirer; or

(*d*) refuse or neglect to accept with the hirer a reasonable amount of luggage.

Use of abusive language

25. The driver of a taxi shall not make use of any abusive or insulting language or be guilty of other rude behaviour to or towards any person whatsoever.

Persons to be seated

26. Every person when travelling on a goods vehicle shall be in a sitting position while the vehicle is in motion.

PART III
Miscellaneous

Power of exemption

27. The Director may if he thinks fit and subject to such conditions as he may deem expedient exempt the owner of any public service vehicle from complying with all or any of the provisions of these Regulations and may where he thinks necessary direct that the exemption order be carried on the vehicle concerned.

Appeal to the Minister

28. Any person aggrieved by a decision of the Director may appeal to the Minister in accordance with the Road Traffic (Appeals) Regulations.

Offence and penalty

29. Any person guilty of an offence against these Regulations for which no special penalty is provided by these Regulations shall be liable in the case of a first offence to a fine of K3,000 and in the case of a second or subsequent offence to a fine of K 10,000 or to imprisonment for three years.

Application

30. These Regulations shall not apply to or in respect of any contract car.

Allocation of routes
G.N. 40/2004

31.—(1) The Director shall allocate routes to public service vehicles depending on the—

(*a*) nature of service the public service vehicle is engaged in; or

(*b*) category of the public service vehicle.

(2) Any person who operates a public service vehicle on a route other than the one allocated by the Director for that particular public service vehicle commits an offence.

Restriction of movement of some public service vehicles
G.N. 40/2004

32.—(1) A public service vehicle which has less than four tyres at the rear shall only operate within the radius of 50 km.

(2) Any person who operates or drives a public service vehicle which has less than four tyres at the rear beyond the 50 km radius commits an offence.

Use of log book
G.N. 40/2004

33.—(1) Every owner of a public service vehicle shall have a log book for each public service vehicle which shall be kept in the public service vehicle at all times.

(2) A driver of every public service vehicle shall record all the details of every trip that driver is undertaking including-

(*a*) the origin of the trip and destination;

(*b*) number of passengers in the public service vehicle at the point of origin;

(*c*) the time of departure; and

(*d*) the expected time of arrival at the destination.

(3) The driver shall, on demand, produce the log book to enforcement officers for inspection.

(4) Any person who contravenes this regulation commits an offence.

ROAD TRAFFIC (INSURANCE) REGULATIONS

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ROAD TRAFFIC (INSURANCE) REGULATIONS

G.N. 19/2000
G.N. 26-27/2003

under s. 181

PART I
PRELIMINARY

Citation

1. These Regulations may be cited as the Road Traffic (Insurance) Regulations.

Interpretation

2. In these Regulations, unless the context otherwise requires—

"certificate of insurance" means a certificate issued by an insurer in accordance with these Regulations;

"visitor to Malaŵi" means any person not ordinarily resident in Malaŵi but who is in Malaŵi for a period not exceeding two months.

Approved insurers
Cap. 47:01

3. Subject to regulation 15, every insurance company which is from time to time registered under the Insurance Act for the transaction of non-life insurance business in Malaŵi, shall be an insurance company approved by the Minister for the issue of policies of insurance for the purposes of Part XIV of the Act.

PART II
CERTIFICATES OF INSURANCE

Number of certificates of insurance

4. Where a policy of insurance does not relate to any specified vehicle or vehicles, the insurer shall cause such number of certificates of insurance to be issued as may be necessary to comply with the requirements of the Act.

Additional certificates of insurance

5. Where the terms of a policy of insurance provide that the insured may drive any vehicle other than that specified therein, the insurer may, and shall on request by the insured, issue to such insured a further certificate of insurance.

Particulars of certificates of insurance

6. Every certificate of insurance shall be signed by or on behalf of the insurer by whom it is issued, and such certificate shall not come into operation on a date earlier than the date on which it is issued:

Provided that a replacement certificate of insurance may be issued in a retrospective manner, and shall be clearly marked with the word "REPLACEMENT".

Certificate of insurance to be in English and without advertisement

7. Every certificate of insurance shall be printed in English in a legible manner and shall be completed with black ink, and such certificate shall not contain any advertising matter either on the face or on the back thereof, so, however, that the name and the address of an insurer by whom a certificate of insurance is issued, or a reproduction of his seal, monogram or similar device, or the name and address of an insurance broker, shall not be deemed to be advertising matter for the purposes of these Regulations if it be printed or stamped at the foot or on the back of such certificate of insurance.

Records to be kept by insurers of certificates of insurance

8. An insurer shall keep a record of the particulars of every certificate of insurance issued pursuant to a policy of insurance, and such record shall contain the following—

(*a*) the full name and address of the person to whom the insurance policy is issued;

(*b*) in the case of a policy relating to specified vehicles, the registration marks of such vehicles;

(*c*) the date on which the policy of insurance comes into force and the date on which it expires; and

(*d*) the conditions subject to which the person or class of persons specified in the policy of insurance shall be indemnified,

the record of every certificate shall be kept for a period of one year from the date of expiry of the certificate of insurance.

Insurers to furnish particulars

9. An insurer shall furnish without charge any particulars of certificates of insurance which the Commissioner may request in writing.

Policy to be returned to insurer in certain circumstances

10. Where a policy of insurance is issued to any person and the said policy is transferred or suspended or ceases to be effective otherwise than by effluxion of time at the instance of such person, he shall cause the relative certificate to be returned to the insurer forthwith. The return of the aforesaid certificate shall be a condition precedent to the issue of a new policy to the person requesting the transfer or suspension or cancellation of the policy of insurance, except where the insurer is satisfied beyond reasonable doubt that the certificate of insurance has been lost or inadvertently destroyed.

Replacement certificates

11. Where an insurer by whom a certificate of insurance has been issued is satisfied beyond reasonable doubt that the certificate has become defaced or has been lost or inadvertently destroyed he shall, on request by the insured, issue a replacement certificate:

Provided that where the certificate is defaced a replacement certificate shall not be issued unless the defaced certificate is returned to the insurer.

Insurer may demand proof before issuance of replacement certificate

12. An insurer shall be entitled to request and receive a declaration on oath before he is satisfied beyond reasonable doubt that a certificate of insurance has been lost or inadvertently destroyed.

PART III
Visitors

Interpretation

13. In this Part of these Regulations—

"motor vehicle" means a motor vehicle brought into Malaŵi by a visitor.

Visitors' certificates of insurance

14.—(1) A visitor who is the holder of a policy of insurance or a security issued in any place outside Malaŵi in respect of third party risks arising out of the use by him, his servants or agents of a motor vehicle must, upon entering Malaŵi, present to a Police Officer at a Police Station at or near the frontier either—

(*a*) a certificate in English to the effect that such policy or security is valid in Malaŵi; or

(*b*) a certificate which has been issued by an insurer approved by the Minister.

(2) Upon being presented with the certificate referred to above the Police Officer shall satisfy himself that it is in order and that it is issued by an insurer approved by the Minister and, in the case of

a certificate referred to in subregulation (1) (*a*), the Police Officer shall stamp the certificate as complying with the requirements of the Act.

(3) The vehicle of a visitor who is without a certificate or whose certificate is not valid will not be allowed to pass the first Police Post after the Malaŵi frontier unless the visitor takes out an insurance against third party risks with an insurer approved by the Minister.

Foreign insurers

15.—(1) The Minister, having made such enquiries as he deems appropriate as to their standing, may by notice published in the *Gazette* signify his approval of such foreign insurers as may be named therein as insurers whose declaration may be accepted in Malaŵi.

(2) The Minister may from time to time by notice published in the *Gazette* make deletions from or additions and amendments to any list of insurers previously published under this regulation.

PART IV
Miscellaneous

Failure to produce certificate of insurance

16. No person operating a motor vehicle on a public road shall fail to produce a certificate of insurance when required for inspection by a Police Officer or by any person authorized to inspect certificates of insurance by the Director in accordance with section 151 (3) of the Act.

Possession of unlawful certificate of insurance

17.—(1) No person shall exhibit any certificate of insurance which is defaced, mutilated or rendered illegible.

(2) No person shall knowingly retain or have in his possession both an original and a replacement certificate of insurance.

(3) No person shall attempt to or alter, amend, deface, mutilate or render illegible any certificate of insurance or certificate of foreign insurance:

Provided that this regulation shall not apply to an insurer who may cancel a certificate of insurance.

Hospital expenses

18. The maximum amount of payment made by the insurer as required under section 150 of the Act shall be specified in the hospital bill.

19.—(1) The maximum limits of liability required in respect of third party insurance cover shall be as set out in the Schedule.

(2) The Minister may, by notice published in the *Gazette*, amend the Schedule.

Maximum limits of liability for third party insurance cover G.N. 26-27/2003

20.—(1) Any person who contravenes or fails to comply with any provision of these Regulations commits an offence.

Offences and penalty

(2) Any person guilty of an offence under these Regulations shall be liable—

(*a*) in the case of a first offender, to a fine of K2,000 or to imprisonment for one year; and

(*b*) in the case of a second offender, to a fine of K5,000 or to imprisonment for three years.

SCHEDULE reg. 19

G.N. 19/2000 26–27/2003

Maximum limits of liability for third party insurance cover shall be as follows—

		K	t
(*a*)	in respect of death or bodily injury for any one claim or a series of claims arising out of one event . .	5,000,000	00
(*b*)	in respect of damage to property for any one claim or series of claims arising out of one event	250,000	00

ROAD TRAFFIC (DRIVING LICENCES) REGULATIONS

ARRANGEMENT OF REGULATIONS

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ROAD TRAFFIC (DRIVING LICENCES) REGULATIONS

G.N. 20/2000
17/2006

under s. 181

PART I
PRELIMINARY

1. These Regulations may be cited as the Road Traffic (Driving Licences) Regulations. Citation

2. For the purposes of these Regulations, unless the context otherwise requires— Interpretation

"acceptable identification" means—

(*a*) a Malaŵi driver's licence or passport;

(*b*) in the case of a person not permanently resident in Malaŵi, an identity document issued by a foreign country; or

(*c*) in the case of a person or body carrying on a business, a certified copy of the business licence;

"approved" means approved by the Director;

"Convention" means the International Convention relative to Motor Traffic (Paris, 1926), the United Nations Convention on Road Traffic (Geneva, 1949) or the United Nations Convention on Road Traffic (Vienna, 1968), and any subsequent related convention ratified by Malaŵi, whichever convention is applicable to Malaŵi, and any amendment thereof;

"corrective lenses" means eye glasses or contact lenses;

"farm tractor" means a tractor of the type commonly used for agricultural purposes;

"goods vehicle" means a motor vehicle other than a motorcycle, motor tricycle, motor quadrucycle; motor car or bus designed or adapted for the conveyance of goods on a public road and includes a trucktractor, adaptor dolly, converter dolly and breakdown vehicle;

"international driving permit" means an international driving permit issued in terms of a Convention or recognized thereunder;

"professional driving permit" means a professional driving permit referred to in regulation 24;

PART II
Forms

Forms

3. The forms set forth in the First Schedule are hereby prescribed as the forms to be used in all cases to which they are respectively applicable for the purposes of the Act.

Particulars in application, etc.

4. The particulars to be entered on or contained in any application, learner's licence, driver's licence, professional driving permit and any other licences and certificates to which these Regulations apply shall, unless otherwise set forth in these Regulations, be such as are necessary from the respective form of such application, learner's licence, driver's licence and other licences and certificates as approved by the Minister.

PART III
Licensing

Categories of learner's and driver's licences and authority conveyed by such licences G.N. 17/2006

5.—(1) The categories of learner's and driver's licences and, the classes of motor vehicles pertaining to each category of learner's or driver's licence shall be as follows—

(*a*) Category A1: a motorcycle which has an engine with a cylinder capacity not exceeding 125 cubic centimetres or which is propelled by electrical power or which is a vehicle as contemplated in paragraph (*b*) of the definition of "motor vehicle" contained in section 2 of the Act;

(*b*) Category A: a motorcycle which has an engine with a cylinder capacity exceeding 125 cubic centimetres or a motor tricycle or motor quadrucycle with a tare not exceeding 550 kilograms:

Provided that the tare of electrically propelled motor tricycles of motor quadrucyles shall not include the battery mass;

(*c*) Category B includes—

(i) a motor vehicle with a gross vehicle mass not exceeding 3,500 kilograms and having not more than sixteen seats in addition to the driver's seat, such motor vehicle may be combined with a trailer having a gross vehicle mass which does not exceed 750 kilograms;

(ii) any combination of a drawing vehicle referred to in paragraph (*c*) (i) and a trailer where the gross combination mass of the combination does not exceed 3,500 kilograms and the gross vehicle mass of the trailer does not exceed the tare of the drawing vehicle;

(iii) a farm tractor;

(*d*) Category BE: any combination of vehicles consisting of a drawing vehicle in Category B and a trailer, where the combination does not come within Category B;

(*e*) Category C includes—

(i) a motor vehicle whose gross vehicle mass is over 3,500 kilograms, a motor vehicle in this category may be combined with a trailer having a gross vehicle mass which does not exceed 750 kilograms;

(ii) a motor vehicle used for the carriage of persons and having more than twenty-six seats in addition to the driver's seat, a motor vehicle in this category may be combined with a trailer having a gross vehicle mass which does not exceed 750 kilograms;

(*f*) Category CE: a combination of vehicles where the drawing vehicle is in Category C and its trailer has a gross vehicle mass of over 750 kilograms.

(*g*) Category CI includes—

(i) a motor vehicle whose gross vehicle mass is over 3,500 kilograms but not more than 16,000 kilograms, a motor vehicle in this category may be combined with a trailer having a gross vehicle mass which does exceed 750 kilograms; and

(ii) a motor vehicle used for the carriage of persons and having not more than twenty-six seats in addition to the driver's seat, a motor vehicle in this category may be combined with a trailer having a gross vehicle mass which does not exceed 750 kilograms;

(*h*) Category CIE: any combination of vehicles where the drawing vehicle is in category CI and its trailer has a gross vehicle mass of over 750 kilograms:

Provided that the gross combination mass of the combination thus formed does not exceed 20,000 kilograms, and that the gross vehicle mass of the trailer does not exceed the tare of the tractor vehicle;

(*i*) Category DI: a motor vehicle used for the carriage of persons and which has more than eight (8) seats but not more than thirty-two (32) seats in addition to the driver's seat, a motor vehicle in this category may be combined with a trailer which has a gross vehicle mass which does not exceed 750 kilograms;

(*j*) Category D: a motor vehicle used for the carriage of persons and which has more than eight (8) seats in addition to the driver's seat, a vehicle in this category may be combined with a trailer which has a gross vehicle mass which does not exceed 750 kilograms;

(*k*) Category DIE: a motor vehicle in Category DI combined with a trailer which has a gross vehicle mass not exceeding 750 kilograms:

Provided that the gross combination mass thus formed does not exceed 3,000 kilograms, and that the gross vehicle mass of the trailer does not exceed the unloaded mass of the tractor vehicle and the trailer shall not be used for the transport of persons;

(*l*) Category DE: a combination of motor vehicles consisting of a tractor vehicle in category D and its trailer has a gross vehicle mass which does not exceed 750 kilograms;

(*m*) Category T: construction or agricultural vehicles; and

(*n*) Category TI: tractor.

(2) A licence as contemplated in subregulation (1) shall authorize the holder thereof to drive the class of motor vehicle in respect of which it is issued and—

(*a*) a category A licence shall authorize the driving of a motor vehicle for which a category A1 licence is required;

(*b*) a category BE licence shall authorize the driving of a motor vehicle for which a category B licence is required;

(*c*) a category CI licence shall authorize the driving of a motor vehicle for which a category B licence is required;

(*d*) a category CIE licence shall authorize the driving of a motor vehicle for which a category CI, BE and B licence is required;

(*e*) a category C licence shall authorize the driving of a motor vehicle for which a category CI and B licence is required; and

(*f*) a category CE licence shall authorize the driving of a motor vehicle for which a category C, CIE, CI, BE and B licence is required;

(3) The authority to drive a motor vehicle conveyed by a learner's licence shall be subject to the following conditions—

(*a*) the holder of a learner's licence shall, except where such licence relates to a motorcycle, when driving a motor vehicle, be accompanied in that vehicle by, and under the direct personal supervision of a person seated next to him or immediately behind him, where such person cannot be seated next to him, and who is in possession of a licence, other than a learner's or similar licence, authorizing him to drive that class of motor vehicle;

(*b*) any person driving a motor vehicle under the authority of a learner's licence shall cause to be clearly displayed in a conspicuous position on the front and rear elevations of such motor vehicle a plate showing the letter "L" in red on a white background and complying with the requirements set forth in paragraph (*c*). If a trailer is being drawn the rear "L" plate shall be displayed on the rear elevation of the trailer;

(*c*) the dimensions of the plate bearing the letter "L" shall be at least 150 millimetres by 150 millimetres and the letter "L" shall be of the following dimensions—

Length of perpendicular side:	100 millimetres;
Length of horizontal side:	90 millimetres;
Width of each side:	40 millimetres;

(*d*) a learner's licence, in respect of a motorcycle, shall not authorize the holder thereof to drive such motorcycle on a public road while carrying another person; and

(*e*) a learner's licence shall not authorize the driving of a motor vehicle while carrying persons for reward, other than a person accompanying the holder of a learner's licence in terms of paragraph (*a*).

(4) No person shall drive a motor vehicle, teach for gain the driving of motor vehicles or accompany a holder of a learner's licence on a public road except under the authority and in accordance with the conditions of a driver's licence issued to him under this Part or of any document deemed to be a licence for the purposes of this Part and unless he keeps such driver's licence or document or any other prescribed authorization with him in the vehicle.

(5) No person who is the holder of a learner's or driver's licence shall allow such licence to be used by any other person.

Period of validity of learner's or driver's licence

6.—(1) The period of validity of a learner's licence or deemed to be issued in terms of section 23 of the Act shall be six months from the date of issue thereof.

(2) The period of validity of a driver's licence issued or deemed to be issued in terms of section 24 of the Act shall be five years:

Provided that—

(*a*) in the case of a person who has attained the age of sixty years this regulation shall have effect as if the period mentioned herein were a period not exceeding such number of years as will elapse before the end of the year in which that person will attain the age of sixty-five years; or

(*b*) in the case of a person who has attained the age of sixty-five years the period of validity of any driver's licence issued or deemed to be issued shall be one year,

unless such licence has been suspended or cancelled under the Act.

(3) Notwithstanding anything contained in subregulations (1) and (2), any learner's licence or driver's licence issued under the Act now repealed shall remain valid until the expiry date indicated on such learner's or driver's licence unless such licence has been suspended or cancelled under the Act.

Defective vision disqualifying a person from obtaining or holding a driver's licence G.N. 17/2006

7.—(1) A person shall be disqualified from obtaining or holding a learner's or driver's licence unless—

(*a*) in the case of learner's or driver's licence of the categories A1, A, B and BE such person has—

(i) according to the Snellen Rating a minimum visual acuity, with or without corrective lenses, of 6/12 for each eye or, where the visual acuity of one eye is less than 6/12 or where one eye of the person concerned is blind or not used as in the case of diplopia, a minimum visual acuity for the other eye of 6/9; and

(ii) a minimum visual field, in the case of a person with two eyes, of 30 degrees nasal and 55 degrees temporal in respect of each eye and, in the case of a person with one eye, of 50 degrees nasal and 70 degrees temporal, with or without corrective lenses; or

(*b*) in the case of a learner's or driver's licence of the categories CI, CIE, C and EC such person has—

(i) a normal binocular field of vision and according to the Snellen Rating a minimum visual acuity, with or without corrective lenses, of at least 6/8 in the better eye and at least 6/12 in the worst eye; and

(ii) a minimum visual field of 50 degrees nasal and 70 degrees temporal in respect of each eye with or without corrective lenses.

(2) A person who is disqualified under subregulation (1) shall be referred to a registered optometrist or ophthalmologist, who shall, at such person's expense, test such person's eyes in relation to the standards contemplated in subregulation (1) and the results of such test shall be accepted by the Director.

(3) Applicants requiring corrective lenses to pass the vision test, shall be restricted from driving a motor vehicle when not wearing such corrective lenses.

(4) Applicants that require glasses with telescopic lenses to pass the vision test shall not be issued a learner's or driver's licence.

(5) No person shall, when applying for a learner's or driver's licence, willfully fail to disclose any disqualification under section 21 of the Act.

(6) Any person who—

(*a*) is the holder of a licence authorizing the driving of a motor vehicle in terms of this Part; and

(*b*) becomes aware thereof that he is disqualified from holding such licence,

shall, within a period of seven days after having so become aware of the disqualification, submit the licence to the Director.

Application for learner's licence G.N. 17/2006

8. An application under section 23 (1) of the Act shall be made on Form DL 1 in the First Schedule and shall be accompanied—

(*a*) by two identical black and white or colour photographs of the applicant which shall—

(i) have been recently taken;

(ii) be clear cut and without shadows;

(iii) be of a size not more than 65 millimetres in height by 50 millimetres in width and not less than 50 millimetres in height by 35 millimetres in width;

(iv) depict only the head and shoulders of the applicant; and

(v) show the applicant's full face without headgear;

(*b*) by acceptable identification;

(*c*) by a certificate issued in the name of the applicant indicating successful completion of an approved basic first aid course;

(*d*) in the case of an applicant who is applying for a category CI or C learner's licence, a valid category B driver's licence;

(*e*) in the case of an applicant who is applying for a category BE, CIE or CE learner's licence, a valid category B, CI or C driver's licence as the case may be;

(*f*) in the case of an applicant who—

(i) is applying for a category C or CI learner's licence;

(ii) is 65 years of age or older; or

(iii) is so required by the Director,

a medical certificate in Form DL 3 in the First Schedule signed and dated by a medical practitioner within 30 days preceding the date of application for a learner's licence, certifying that the applicant is not disqualified in terms of section 21 (*f*) or (*g*) of the Act from obtaining a learner's or driver's licence; and

(*g*) a receipt for the payment of the appropriate learner's licence fee and knowledge test fee.

Examination of an applicant learner's licence G.N. 17/2006

9. —(1) An applicant for a learner's licence shall be examined and tested by an examiner.

(2) The examiner shall satisfy himself that the applicant—

(*a*) knows and understands—

(i) the rules of the road;

(ii) the road traffic signs; and

(iii) the controls of a motor vehicle of the class to which the application relates;

(*b*) is not disqualified under section 21 of the Act or regulation 7, before issuing a learner's licence; and

(*c*) if applying for a category BE, CIE or CE learner's licence is the holder of a valid category B, CI, C, DI, D or DE driver's licence as the case may be.

(3) The procedure to be followed by the examiner in complying with subregulation (2) shall include the satisfactory completion by the applicant of a knowledge test in either written or oral form.

(4) For the purposes of subregulation (3), the words "satisfactory completion" mean correctly answering eighty-five per cent or more of the questions contained in the knowledge test.

(5) An examiner shall issue to every applicant for a learner's licence who has passed the examination and successfully completed the knowledge test, a pass certificate giving the results thereof and such applicant shall sign or affix his thumb print on the pass certificate in the presence of the examiner.

(6) For every applicant who is issued a pass certificate, the examiner shall on the reverse side of one of the two required photographs sign and date such photograph with an endorsement that it represents a true likeness of the applicant.

Issue of learner's licence

10. —(1) A learner's licence shall be issued in such form as approved by the Minister, and upon presentation of the duplicate copy of the pass certificate and two photographs one of which is endorsed as referred to in regulation 9 (6), the examiner or a person authorized thereto shall—

(*a*) complete the learner's licence including any restrictions on the driver relative to corrective lenses and artificial limbs;

(*b*) ensure that the applicant signs the learner's licence;

(*c*) issue the learner's licence; and

(*d*) record the particulars pertaining to the holder of such learner's licence in the register of learner's licences.

(2) The Director shall not issue more than two learner's licence in respect of any one category referred to in regulation 5 (1) to any applicant within a consecutive twenty-four-month period commencing from the date of issue of the first such learner's licence.

Manners of application for a driver's licence

11.—(1) An application under section 24 (1) (i) of the Act, shall be made on Form DL 1 in the First Schedule of driving licences and shall be accompanied by—

(*a*) acceptable identification of the applicant;

(*b*) every licence which authorizes the applicant to drive a motor vehicle;

(*c*) two photographs of the applicant, referred to in regulation 8 (*a*); and

(*d*) a receipt for the payment of the appropriate driver's licence testing fee.

(2) If the applicant, on the day determined under section 24 (3) of the Act, is not examined and tested for any reason whatsoever, and is unable to satisfy the driver's licence testing centre concerned that the reason for his not having been examined and tested was due to circumstances beyond his control, he shall again pay the approved fee for the driver's licence testing centre to determine another day and time on which he shall present himself to be examined and tested.

Examination of an applicant for a driver's licence
G.N. 17/2006

12.—(1) An applicant for a driver's licence shall be examined and tested by an examiner.

(2) The examiner shall by, observation, inquiry and a practical test, satisfy himself that the applicant—

(*a*) holds a learner's licence which authorizes him to drive the class of motor vehicle to which his application relates and, if applicable, a valid driver's licence required to hold such learner's licence;

(*b*) knows and understands the road traffic signs;

(*c*) has a sound knowledge of the rules of the road and the different signals which a driver of a motor vehicle is required to give when driving on a public road;

(*d*) is not subject to any disqualification contemplated in section 21 of the Act and regulation 7; and

(*e*) is generally capable of driving a motor vehicle of a class to which the application relates.

(3) Where a person applies for a driver's licence which authorizes him to drive a motor vehicle referred to in regulation 5 (1) (*a*), (*b*), (*c*), (*e*) or (*g*), the practical test referred to in subregulation(2), shall be conducted with the motor vehicle referred to in that regulation as follows—

(*a*) for category A1, a motorcycle without a side-car which has an engine with a cylinder capacity of up to 125 cubic centimetres;

(*b*) for category A, a motorcycle without a side-car which has an engine with a cylinder capacity of over 125 cubic centimetres, capable of a speed of at least 100 km/h;

(*c*) for category B, a category B vehicle capable of a speed of at least 100 km/h;

(*d*) for category CI, a category CI vehicle with a gross vehicle mass rating of at least 6,000 kilograms and capable of a speed of at least 80 km/h;

(*e*) for category C, a category C vehicle with a gross vehicle mass rating of at least 10,000 kilograms having a length of at least 7 metres and capable of a speed of at least 80 km/h.

(4) Where a person applies for a driver's licence which authorizes him to drive a combination of motor vehicles referred to in regulation 5 (1) (*d*), (*f*) or (*h*), the practical test referred to in subregulation (2), shall be conducted with the combination of motor vehicles referred to in that regulation as follows—

(*a*) for category BE a combination of motor vehicles, made up of a category B drawing vehicle and a trailer with a gross vehicle weight rating of at least 1,000 kilograms, capable of a speed of at least 100 km/h and which does not fall within category B;

(*b*) for category CIE a combination of motor vehicles, made up of a category CI drawing vehicle and a trailer having a gross vehicle mass rating of at least 2,000 kilograms, with a combined length of at least 8 metres and capable of a speed of at least 80 km/h; and

(*c*) for category CE either an articulate motor vehicle with a gross combination mass rating of at least 18,000 kilograms having a length of at least 12 metres and capable of a speed of at least 80 km/h; or a combination of motor vehicles, made up of a category C drawing vehicle and a trailer at least 4 metres in length, having a gross combination mass rating of at least 18,000 kilograms with a combined length of at least 12 metres and capable of a speed of at least 80 km/h.

(5) For the purpose of subregulation (2) an applicant, shall not be required to undergo a written knowledge test.

(6) An examiner shall in compliance with the provisions of paragraph (*e*) of subregulation (2) test an applicant according to minimum requirements contained in the Southern African Development Community Directive defining the authority and issue of a national driving licence.

(7) An examiner shall issue to every applicant for a driver's licence who has passed the examination and successfully completed the knowledge test, a pass certificate giving the results thereof and such applicant shall sign or affix his thumb print on the pass certificate in the presence of the examiner.

(8) For every applicant who is issued a pass certificate, the examiner shall on the reverse side of one of the two required photographs sign and date such photograph with an endorsement that it represents a true likeness of the applicant.

Issue of a driver's licence

13. The examiner or a person authorized thereto, upon presentation of the duplicate copy of the pass certificate and two photographs one of which is endorsed as referred to in regulation 12 (8) and payment of the appropriate driver's licence fee shall issue a driver's licence and shall—

(*a*) complete the driver's licence card and, where applicable, include any driver and vehicle restrictions;

(*b*) ensure that the applicant signs the driver's licence card;

(*c*) record the issue for the driver's licence card in the register of driver's licences issued;

(*d*) cancel every licence replaced by the driver's licence issued and in the case where the licence which is cancelled was not issued by the Director, notify the authority which issued such licence accordingly; and

(*e*) issue the driver's licence card.

Application for renewal of a driver's licence

14.—(1) An application under section 24 (1) (*b*) of the Act. shall be made on Form DL 1 in the First Schedule and shall be accompanied by—

(*a*) every licence which authorizes the applicant to drive a motor vehicle;

(*b*) two photographs of the applicant, referred to in regulation 8 (*a*);

(*c*) by a certificate issued in the name of the applicant indicating successful completion of an approved basic first aid course;

(*d*) in the case of an applicant who—

(i) is applying for a category C or C1 driver's licence;

(ii) is 65 years of age or older; or

(iii) is so required by the Director,

a medical certificate on Form DL 3 in the First Schedule signed and dated by a medical practitioner within 30 days preceding the date of application for a renewal of a driver's licence, certifying that the applicant is not disqualified under section 21 (*f*) or (*g*) of the Act from obtaining a learner's or driver's licence.

Examination of an applicant for renewal of a driver's licence

15.—(1) An applicant for the renewal of a valid driver's licence shall be examined and tested by an examiner.

(2) The examiner shall by the use of a standard knowledge test, observation and inquiry satisfy himself that the applicant—

(*a*) holds a valid driver's licence which authorizes him to drive the class of motor vehicle to which his application for renewal relates;

(*b*) knows and understands the road traffic signs;

(*c*) has a sound knowledge of the rules of the road and the different signals which a driver of a motor vehicle is required to give when driving on a public road;

(*d*) is not subject to any disqualification contemplated in section 21 of the Act and regulation 7; and

(*e*) is generally capable of driving a motor vehicle of a class to which the application relates.

(3) The procedure to be followed by the examiner in complying with subregulation (2) shall include the satisfactory completion by the applicant of a knowledge test in either written or oral form.

(4) For the purposes of subregulation (3), the words "satisfactory completion" means correctly answering eighty-five per cent or more of the questions contained in the knowledge test.

(5) For the purpose of subregulation (2) an applicant holding avalid driver's licence which authorizes him to drive the class of motor vehicle to which his application for renewal relates, shall not be required to undergo a practical test.

(6) An examiner shall issue to every applicant for renewal of a driver's licence who has passed the examination and successfully completed the knowledge test a pass certificate giving in Form DL 2 in the First Schedule the results thereof and such applicant shall sign or affix his thumb print on the pass certificate in the presence of the examiner.

(7) For every applicant who is issued a pass certificate, the examiner shall on the reverse side of one of the two required photographs sign and date such photograph with an endorsement that it represents a true likeness of the applicant.

Issue of renewal of a driver's licence

16. The Director or a person authorized thereto shall, upon presentation of the duplicate copy of the pass certificate and two photographs one of which is endorsed as referred to in regulation 15 (7) and payment of the appropriate driver's licence fee issue a driver's licence in such form as approved by the Minister, and shall—

(*a*) complete the driver's licence card and where applicable include any driver or vehicle restrictions;

(*b*) ensure that the applicant signs the driver's licence card;

(*c*) record the issue of a renewal of driver's licence card in the register of driver's licences issued;

(*d*) cancel every licence replaced by the driver's licence issued and in the case where the licence which is cancelled was not issued by the Director, notify the authority which issued such licence accordingly; and

(*e*) issue the driver's licence card.

Application and issue of a duplicate licence

17.—(1) An application under section 162 (2) of the Act for a duplicate of a learner's licence or a duplicate of a driver's licence shall be made on Form DL 1 in the First Schedule and shall be accompanied by—

(*a*) the original licence or, where the original licence is lost or destroyed, a declaration to that effect on Form DL 1 in the First Schedule;

(*b*) two photographs of the applicant, referred to in regulation 8 (*a*);

(*c*) acceptable identification; and

(*d*) a receipt for the payment of the appropriate duplicate driver's or learner's licence fee.

(2) Upon receipt of an application referred to in subregulation (1), the Director shall—

(*a*) ensure that the licence is not subject to a suspension or cancellation; and

(*b*) issue the duplicate of a learner's or driver's licence in accordance with regulation 10 or 13, as the case may be, with the inscription "DUPLICATE" stamped thereon.

Conditions for acknowledgement and exchange of a driver's licence not issued in terms of the Act, and an international driving permit

18.—(1) Subject to the provisions of subregulation (2), a licence referred to in section 28 (1) (*a*) of the Act, issued while the holder thereof was permanently or ordinarily resident in a prescribed territory, shall during the period of validity thereof in such territory, be deemed to be a valid licence for the purposes of PART IV of the Act, if—

(*a*)—(i) such licence has been issued in the English language; or

(ii) a certificate of authenticity or validity relating to such licence was issued in the English language by a competent authority, or a translation of such licence in the English language, is attached thereto; and

(*b*) such licence contains or has attached thereto a photograph and the signature of the holder thereof.

(2) When the holder of a licence referred to in subregulation (1) or the holder of an international driving permit referred to in section 28 (1) (*b*) of the Act—

(*a*) returns to Malaŵi to resume permanent residence such licence or permit shall no longer be deemed to be a valid licence for the purposes of PART IV of the Act, after six months from the date of return; or

(*b*) obtains permission under any law for permanent residence in Malaŵi, such licence or permit shall no longer be deemed to be a valid licence for the purposes of PART IV of the Act, after six months from the date on which such person has taken up permanent residence.

(3) A licence as referred to in subregulation (1) or any international driving permit as referred to in section 28 (1) (*b*) of the Act may, at any time during the period of validity thereof in the country of issue, be exchanged for a Malaŵi driver's licence.

(4) An application in terms of section 28 (3) of the Act shall be made as referred to in regulation 14 (1), and an application for the exchange of an international driving permit for a driver's licence shall be accompanied by the driver's licence on the authority of which such permit was issued.

(5)—(*a*) Subject to the provisions of paragraph (*b*), the Director, shall, upon receipt of an application referred to in subregulation (4), issue or authorize the issue of a driver's licence of the category or categories of motor vehicles referred to in regulation 5 (1) to which such licence relates.

(*b*) The Director shall issue the licence referred to in paragraph (*a*) in the manner referred to in regulation 16 if he is satisfied that—

(i) the applicant is the holder of the licence referred to in subregulation (1); and

(ii) such licence is still valid in the territory of issue.

(6) If there is a dispute as to the category in respect of which a driver's licence has been issued in terms of subregulation (5) (*a*), the Director shall determine the category of such licence.

Notification of new residential and postal address

19.—(1) A notice under section 26 of the Act shall be given on the Form DL 1 in the First Schedule.

(2) No person shall fail to submit to the Director within fourteen days any notice contemplated in subregulation (1).

Notification of change of name of driver's licence holder

20. When the name of the holder of a driving licence is changed (whether by marriage or any other means), the holder, if in Malaŵi at the time shall within fourteen days of the change, notify the Director on Form DL 1 in the First Schedule and submit his licence for amendment or issue. If the holder is not in Malaŵi at the time, he shall forthwith notify the Director of the change in writing and submit Form DL 1 in the First Schedule and his licence for amendment or reissue within thirty days of his return thereto.

Application for licence free of endorsement

21. An application under section 31 (2) of the Act shall for a licence be made on a Form DL 1 in the First Schedule and shall be accompanied by two photographs of the applicant complying with the provisions of regulation 9 (*a*).

Military driving licence

22. For the purpose of driving a motor vehicle belonging to the Defence Force of Malaŵi, a valid learner's licence or driver's licence or the equivalent of such licence duly issued for use by members of the Defence Force and valid for the said vehicle is hereby deemed to have effect as though it were a learner's licence or driver's licence issued under sections 23 and 24 of the Act, as the case may be.

Instructors to obtain instructor's licence

23.—(1) No person shall—

(*a*) act as an instructor and teach for gain the driving of motor vehicles, unless he is the holder of an instructor's licence and employed by a driving school as referred to in regulation 24; and

(*b*) employ any other person as an instructor or make use of his services as an instructor, unless such other person is the holder of an instructor's licence.

(2) No person shall be eligible to hold an instructor's licence unless he shall—

(*a*) be at least eighteen years of age and less than sixty-one year's of age;

(*b*) have attained the minimum education level of a junior certificate;

(*c*) have continuously held for a minimum of three years a valid driver's licence in respect of the class or classes to which the instructor's licence relates and not have been convicted of any offence under the Act within the previous twelve months;

(*d*) be mentally and physically fit and free of any disease, condition or other disability which could render him incapable of performing the duties of such instructor;

(*e*) have completed a driving instructor training programme approved by the Director; and

(*f*) have passed an examination to judge his competency to act as a driving instructor.

(3) Any person desiring to obtain or renew an instructor's licence shall, apply to the Director on Form DSR 1 in the First Schedule in respect of one or more of the categories of drivers' licences referred to in regulation 5 (1) and such application shall be accompanied by—

(*a*) the applicant's driver's licence;

(*b*) two photographs of the applicant referred to in regulation 8 (*a*);

(*c*) a medical certificate on Form DL 3 in the First Schedule signed and dated by a medical practitioner within 30 days preceding the date of application to obtain or renew an instructor's licence, certifying that the applicant is not disqualified under section 21 (*f*) or (*g*) of the Act from obtaining a learner's or driver's licence;

(*d*) a certificate issued in the name of the applicant, indicating the successful completion of education at or above the level of junior certificate;

(*e*) a certificate issued in the name of the applicant, indicating the successful completion of a driving instructor training programme approved by the Director; and

(*f*) the appropriate prescribed fee.

(4) Upon receipt of an application under subregulation (3) to—

(*a*) obtain an instructor's licence; or

(*b*) renew an instructor's licence,

the Director may submit such application, to the Malaŵi Police Service for a report as to whether any conviction has been recorded against the applicant as well as in respect of any other matter which, in the opinion of the Malaŵi Police Service, is relevant to the application, and the Malaŵi Police Service is hereby authorized to report accordingly.

(5) A member of the Malaŵi Police Service may take finger and palm prints of the applicant to enable him to report in terms of subsection (4).

(6) If the Director, having regard to the reports referred to in subregulations (3) and (4) and any relevant facts known to him or ascertained by him, is satisfied that the applicant—

(*a*) is not of good character; or

(*b*) is not physically or mentally fit to act as an instructor,

he shall refuse the application and notify the applicant accordingly.

(7) Where the Director does not refuse the application under subregulation (6), the Director shall cause the applicant to be examined and tested at a place and by a competent person designated by the Director, in order to obtain a report on the competence of the applicant to act as an instructor:

Provided that if the applicant applies to renew an instructor's licence, the Director may dispense with such examination and test.

(8) The Director shall consider the application with due regard to the reports referred to in subregulations (4) and (7) and any relevant facts known to him or ascertained by him, and if he is satisfied that the applicant—

(*a*) is of good character;

(*b*) is physically and mentally fit and is competent to act as an instructor; and

(*c*) complies with such further requirements as the Director may determine, he shall, subject to conditions as he may determine, grant the application in respect of one or more of the categories of drivers' licences referred to in regulation (5) (1).

(9) Where the Director grants an application, he shall forward a written authority in such form as he may determine, to the applicant for the issue of an instructor's licence and in which all categories of instructor's licence and all conditions subject to which the application has been granted, are specified.

(10) Upon receipt from the applicant of—

(*a*) the written authority contemplated in subregulation (9);

(*b*) two identical copies of a black and white or colour photograph of the applicant complying with the provisions of regulation 9 (*a*); and

(*c*) the fee for an instructor's licence,

the Director is satisfied, shall issue to the applicant an instructor's licence in Form DSR 2 in the First Schedule on which the categories and conditions contemplated in subregulation (9) have been endorsed.

(11) The applicant shall sign the instructor's licence in the presence of the Director or the person acting on behalf of the Director.

(12) An instructor's licence shall be valid for 24 months from the date of issue thereof, but the Director may at any time suspend such licence for such period as he may determine or cancel it if he is of the opinion that—

(*a*) it is in the public interest, whether by reason of any offence committed by such instructor or for any other reason; or

(*b*) any condition of the instructor's licence is not complied with,

and in such a case the Director shall notify the holder of such licence accordingly.

(13) The holder of an instructor's licence which has been suspended or cancelled in terms of subregulation (12) shall deliver such licence forthwith to the Director.

(14) After the expiry of the period of suspension contemplated in subregulation (12), the Director shall return to the person entitled thereto the instructor's licence delivered to him in terms of subregulation (13), if the validity thereof has not yet expired.

(15) Subject to subregulation (18) any cancellation of an instructor's licence shall be permanent.

(16) Where the holder of an instructor's licence applies, prior to the expiry thereof, for the renewal of such instructor's licence or for a new instructor's licence, the existing licence shall after the expiry thereof, remain in force until such holder is notified by the Director of the result of his application.

(17) Where the holder of an instructor's licence desires that such licence shall apply in respect of a further category of driver's licence referred to in regulation 6 (1) or that any condition thereof shall be altered, substituted or deleted, he shall apply in terms of subregulation (3) for a new instructor's licence and in such a case—

(*a*) the Director may dispense with the furnishing of the reports referred to in subregulations (4) and (7); and

(*b*) if the application is granted—

(i) the new licence shall not be issued before the existing licence has been delivered to the Director for cancellation; and

(ii) the new licence shall be valid for the unexpired period of the existing licence plus an additional 12 months.

(18)—(*a*) any person who is aggrieved, at the refusal of instructor's licence may, within 21 days of the refusal, suspension or cancellation appeal against such refusal, suspension or cancellation to the Minister in accordance with the Road Traffic (Appeals) Regulations and shall at the same time submit a copy of such appeal to the Director;

(*b*) the Director shall forthwith after receipt of the copy of the appeal referred to in subparagraph (*a*) furnish the Minister with his reasons for the decision to which such notice refers;

(*c*) for the purpose of deciding an appeal in terms of subparagraph (*a*), the Minister may require any party to such appeal to furnish such information and evidence as he may deem expedient; and

(*d*) the Minister after considering the appeal referred to in subparagraph (*a*) may give such decision as he may deem fit

(19) The holder of an instructor's licence, shall at all times carry such licence with him when acting as an instructor.

(20) The holder of an instructor's licence shall keep or cause to be kept a record of instructional activity on Form DSR 5 in the First Schedule and submit such form to the Director quarterly.

(21) This regulation shall not apply to any person—

(*a*) who is in the employ of any other person and who act as an instructor of fellow employees, but received no reward, other than a salary from his employer, for his services as instructor;

(*b*) who acts as an instructor, but receives no reward or gain of any kind; or

(*c*) not referred to in paragraph (*a*) or (*b*) who has been exempted therefrom by the Director, either generally or specifically.

(22) Where in any prosecution for a contravention of subregulation (1) it is proved that any person has—

(*a*) instructed any other person in the driving of a motor vehicle;

(*b*) taught any other person the rules of the road or road traffic signs; or

(*c*) supervised any other person in the driving of a motor vehicle,

it shall be presumed, until the contrary is proved, that he so instructed, or taught such other person for gain or reward.

(23) Notwithstanding anything contained in subregulation (12), any instructor's licence issued under the Act now repealed shall remain valid until the expiry date indicated on such licence unless such licence has been suspended or cancelled in terms of the Act.

Driving schools to be licensed

24.—(1) No person or organization shall—

(*a*) act or hold himself or itself out as a driving school unless such person or organization is the holder of a driving school licence; and

(*b*) employ any other person as an instructor or make use of his services as an instructor, unless such other person is the holder of an instructor's licence.

(2) No person or organization shall be eligible to hold a driving school licence unless he or it shall satisfy the following minimum requirements—

(*a*) a school premises suitable for the purpose and provided with the necessary sanitation facilities and the required instructional and safety equipment,

(*b*) any portion of a school premises used for theoretical instruction to accommodate 5 or more students with a floor area of at least two square metres for each intended student;

(*c*) all persons acting as instructors to hold valid instructor's licences;

(*d*) all vehicles used for instruction to be insured and the insurance cover carried by the driving school either on the vehicle or by separate policy to include death, bodily injury and medical expenses for all drivers under instruction;

(*e*) all vehicles used for instruction to—

(i) have the name of the driving school and a warning triangle prominently displayed on a plate affixed to the roof of the vehicle;

(ii) be not more than ten years old;

(iii) have valid Malaŵi registration and licence;

(iv) have a valid certificate of fitness; and

(v) be road worth at all times;

(*f*) all vehicles used for instruction to be equipped with—

(i) dual brake controls;

(ii) dual clutch controls if applicable;

(iii) an additional rear view mirror providing the instructor with an unobstructed view to the rear of the vehicle;

(iv) adjustable driver's seat; and

(v) approved safety belts and fire extinguisher;

(*g*) have available at all times at least two vehicles of a type corresponding to each category of driving licence referred to in regulation 5 (1) for which instruction is offered;

(*h*) limit the maximum number of students per vehicle per day who receive behind the wheel instruction in accordance with the curriculum approved by the Director for each category of driving licence referred to in regulation 5 (1);

(*i*) all instruction offered in respect of each category of driving licence referred to in regulation 5 (1) shall be in accordance with the approved curriculum for that category of driving licence; and

(*j*) the operator of the driving school holds a valid instructor's licence for the highest category of driver's licence referred to in regulation 5 (1) for which instruction is offered by such driving school.

(3) Any person or organization desiring to obtain or renew a driving school licence shall, apply to the Director on Form DSR 3 in the First Schedule in respect of one or more of the categories of driver's licence referred to in regulation 5 (1) and such application shall be accompanied by—

(*a*) acceptable identification of the applicant and, if the applicant is a body of person, that of his proxy and representative and a letter of proxy;

(*b*) the applicant's instructor's licence;

(*c*) the applicant's business licence;

(*d*) the mailing address and physical address of the driving school premises;

(*e*) the name, mailing address and physical address of all owners stock holders and or directors as the case may be;

(*f*) the name, mailing address, physical address and instructor's licence number of all proposed instructors; and

(*g*) the appropriate prescribed fee.

(4) Upon receipt of an application in terms of subregulation (3) to—

(*a*) obtain a driving school licence, the Director shall submit such application; or

(*b*) renew a driving school licence, the Director may submit such application,

to the Malaŵi Police Service for a report as to whether any conviction has been recorded against the applicant, owners, stock holders or directors as the case may be as well as in respect of any other matter which, in the opinion of the Malaŵi Police Service, is relevant to the application, and the Malaŵi Police Service is hereby authorized to report accordingly.

(5) A member of the Malaŵi Police Service may take the finger and palm prints of the applicant to enable him to report in terms of subregulation (4).

(6) If the Director, having regard to the report referred to in subregulation (4) and any relevant facts known to him or ascertained by him, is satisfied that the applicant is not of good character he shall refuse the application and notify the applicant accordingly.

(7) Where the Director does not refuse the application in terms of subregulation (6), the Director shall cause the proposed premises for the driving school, the instructional and safety equipment and the vehicles to be used for instruction to be examined and tested as the case may be by a competent person or persons designated by the Director, in order to obtain a report on the competence of the applicant to act as a driving school:

Provided that if the applicant applies to renew a driving school licence, the Director may dispense with such examination and test.

(8) The Director shall consider the application with due regard to the reports referred to in subregulations (4) and (7) and any relevant facts known to him or ascertained by him, and if he is satisfied that the applicant—

(*a*) is of good character; and

(*b*) complies with such further requirements as the Director may determine, he shall, subject to conditions as he may determine, grant the application in respect of one or more of the categories of drivers' licences referred to in regulation 5 (1).

(9) Where the Director grants an application, he shall forward a written authority in such form as he may determine, to the applicant for the issue of a driving school licence and in which all categories of driving licence instruction and all conditions subject to which the application has been granted, are specified.

(10) Upon receipt from the applicant of—

(*a*) the written authority contemplated in subregulation (9);

(*b*) the registration documents of all vehicles to be used for instruction;

(*c*) the insurance policies providing cover carried by the driving school either on the vehicle or by separate policy to include death, bodily injury and medical expenses for all drivers under instruction; and

(*d*) the fee for a driving school licence,

the Director is satisfied, shall issue to the applicant a driving school licence on Form DSR 4 in the First Schedule on which the categories and conditions contemplated in subregulation (9) have been endorsed.

(11) The applicant shall sign the driving school licence in the presence of the Director or the person acting on behalf of the Director.

(12) A driving school licence shall be valid for 24 months from the date of issue thereof, but the Director may at any time suspend such licence for such period as he may determine or cancel it if he is of the opinion that—

(*a*) it is in the public interest, whether by reason of any offence committed by such driving school or any of its employees or for any other reason; or

(*b*) any condition of the driving school licence is not complied with,

and in such a case the Director shall notify the holder of such licence accordingly.

(13) The holder of a driving school licence which has been suspended or cancelled in terms of subregulation (12) shall deliver such licence forthwith to the Director.

(14) After the expiry of the period of suspension contemplated in subregulation (12), the Director shall return to the person or organization entitled thereto the licence delivered to him in terms of subregulation (13), if the validity thereof has not yet expired.

(15) Subject to subregulation (18) any cancellation of a driving school licence shall be permanent.

(16) Where the holder of a driving school licence applies, prior to the expiry thereof, for the renewal of such driving school licence or for a new driving school licence, the existing licence shall after the expiry thereof, remain in force until such holder is notified by the Director of the result of his application.

(17) Where the holder of a driving school licence desires that such licence shall apply in respect of a further category of driver's licence referred to in regulation 5 (1) or that any condition thereof shall be altered, substituted or deleted, he shall apply in terms of subregulation (3) for a new driving school licence, and in such a case—

(*a*) the Director may dispense with the furnishing of the reports referred to in subregulations (4) and (7); and

(*b*) if the application is granted—

(i) the new licence shall not be issued before the existing licence has been delivered to the Director for cancellation; and

(ii) the new licence shall be valid for the unexpired period of the existing licence plus an additional twenty-four months.

(18)—(*a*) Any person who is aggrieved, at the refusal of the Director to issue, renew or alter a driving school licence or at the suspension or cancellation of a valid driving school licence may, within 21 days of any refusal, suspension or cancellation appeal against such refusal to the Minister in accordance with the Road Traffic (Appeals) Regulations and shall at the same time submit a copy of such appeal to the Director;

(*b*) The Director shall forthwith after receipt of the copy of the appeal referred to in subparagraph (*a*) furnish the Minister with his reasons for the decision to which such notice refers;

(*c*) for the purpose of deciding an appeal in terms of subparagraph (*a*), the Minister may require any party to such appeal to furnish such information and evidence as he may deem expedient; and

(*d*) the Minister after considering the appeal referred to in subparagraph (*a*) may give such decision as he may deem fit.

(19) The holder of a driving school licence shall keep or cause to be kept a record of instructional activity on Form DSR 6 in the First Schedule and submit such form to the Director quarterly.

(20) Any examiner in uniform or who produces his identity card may, during normal hours of instruction, inspect any premises, vehicles, equipment, records or any other place or thing used in connexion with teaching for gain the driving of motor vehicles.

(21) Notwithstanding anything contained in subregulation (12), any driving school licence issued under the Act now repealed shall remain valid until the expiry date indicated on such licence unless such licence has been suspended or cancelled in terms of the Act.

PART IV

Professional Driving Permit

Permit required by driver of motor vehicle conveying persons or goods for reward

25.—(1) No person shall drive on a public road a—

(*a*) motor vehicle conveying persons or goods for reward;

(*b*) a motor vehicle drawing a motor vehicle referred to in goods for paragraph (*a*); or

(*c*) a breakdown vehicle, except in accordance with the terms and conditions of a professional driving permit issued to him under this Part and unless he has such permit with him in such vehicle.

(2) The provisions of subregulation (1) shall not apply—

(*a*) to any person driving, otherwise than for hire or reward, a motor vehicle normally used for the conveyance of persons or goods for reward on a public road where such vehicle has been hired out to such person without a driver;

(*b*) to an examiner or traffic police officer performing his duties as contemplated in section 7 (1) or section 8 (*e*) of the Act;

(*c*) to a person driving a motor vehicle on a public road for the purpose of testing such a motor vehicle in the performance of his duties;

(*d*) to a person driving a hearse;

(*e*) to a person driving an ambulance; and

(*f*) to a person driving a goods vehicle except for a breakdown vehicle, the gross vehicle mass rating of which does not exceed 3,500 kilograms.

(3) Any document issued by a competent authority in a prescribed territory and serving a similar purpose to that of a professional driving permit shall, subject to the terms and conditions thereof, be deemed to be a professional driving permit for the purposes of subregulation (1).

Classification of and authority conveyed by professional driving permit

26. A professional driving permit shall, subject to the provisions of this Part and Part II authorize the driving of a motor vehicle conveying—

(*a*) persons or persons and goods for reward; or

(*b*) goods only for reward,

and shall be classified accordingly:

Provided that a professional driving permit of the class referred to in paragraph (*a*) shall authorize the driving of a motor vehicle of the class referred to in paragraph (*b*).

Application for professional driving permit

27.—(1) A person desiring to obtain a professional driving permit shall, subject to the provisions of this Part, apply therefor on Form DL 1 in the First Schedule to the Director.

(2) An application referred to in subregulation (1) shall—

(*a*) be accompanied by the fee provided for a professional driving permit;

(*b*) be accompanied by a licence authorizing the applicant to drive the motor vehicle concerned in terms of the Act;

(*c*) be accompanied by any professional driving permit already held by the applicant;

(*d*) be accompanied by two copies of a photograph of the applicant complying with the provisions of regulation 8 (*a*);

(*e*) contain a declaration in such form as approved by the Minister as to whether or not the applicant is a person who would be disqualified in terms of section 21 of the Act and regulation 7 and, in the case of a professional driving permit for the conveyance of passengers or passengers and goods for reward, a medical certificate on Form DL 3 in the First Schedule signed and dated by a medical practitioner within 30 days preceding the date of application stating that, in the opinion of such practitioner, the applicant would not be disqualified; and

(*f*) contain details of any professional driving permit already held by the applicant.

Conditions governing issue of professional driving permit

28.—(1) A professional driving permit shall not be issued or renewed by the Director—

(*a*) unless, the applicant therefor is over eighteen and under sixty-one years of age, and is in possession of a licence authorizing the driving of the motor vehicle concerned in terms of the Act;

(*b*) unless he is satisfied that the applicant—

(i) is competent to drive such vehicle;

(ii) having regard to any convictions recorded against him, is of good character; and

(iii) is not a person who would be disqualified in terms of section 21 of the Act and regulation 7; and

(*c*) where the applicant therefor has been convicted of driving a motor vehicle while under the influence of intoxicating liquor or a drug having a narcotic effect, or of driving a motor vehicle while the concentration of alcohol in his blood exceeded a statutory limitation or of reckless driving.

(2) For the purposes of subregulation (1) (*b*) (iii), the applicant shall furnish, at his own expense, such medical evidence as the Director may require, whether or not medical evidence has been furnished in terms of regulation 27 (2) (*e*).

(3)—(*a*) The Director shall submit every application for a professional driving permit, other than for a renewal of such permit, and may submit any application for the renewal of a professional driving permit to the Malaŵi Police Service for a report as to whether the applicant has any convictions recorded against him and any member of the Malaŵi Police Service is hereby authorized to report accordingly.

(*b*) for the purpose of identifying any applicant referred to in paragraph (*a*), any member of the Malaŵi Police Service shall be entitled to take the finger and palm prints of such applicant.

(4) No person shall be entitled to obtain a professional driving permit—

(*a*) during any period in which a professional driving permit of which he is the holder, is suspended in terms of this Part; or

(*b*) if any professional driving permit of which he was the holder has been cancelled under this Part.

(5) Where the Director issues a professional driving permit authorizing the conveyance of persons or persons and goods for reward, to a person who is the holder of a professional driving permit authorizing the conveyance of goods only, such person shall forthwith surrender such latter permit to the Director for cancellation.

(6) A professional driving permit shall, subject to the provisions of this Part, be valid for a period of twenty-four months from the date of issue thereof or, if the applicant therefore holds an unexpired professional driving permit of the same class, for a period of twenty-four months from the date following upon the date of expiry of such unexpired professional driving permit:

Provided that any professional driving permit issued or deemed to be issued under the Act shall cease to be valid in Malaŵi upon the day the holder of such permit attains the age of sixty-one years.

(7) Where the holder of a professional driving permit applies, before the expiry thereof, for a new professional driving permit, such first-mentioned permit shall, notwithstanding anything to the contrary contained in subregulation (6), remain in force and effect until such holder is notified of the result of his application for such new professional driving permit by the Director or, in the event of an appeal in terms of regulation 29 (3), by the Minister.

Issue of professional driving permit

29.—(1) The Director, upon being satisfied that an applicant referred to in regulation 27 is entitled to be issued with a professional driving permit of the class applied for, shall upon payment of the fee provided for, issue a professional driving permit on such form as approved by the Minister to the applicant.

(2) One copy of the photograph referred to in regulation 27 (2) (*d*) shall be affixed to the professional driving permit and the other copy shall be affixed to the register or record referred to in regulation 33.

(3)—(*a*) Any person who is aggrieved at the refusal of the Director to issue to him a professional driving permit may, within 21 days of any refusal, appeal against such refusal to the Minister in accordance with the Road Traffic (Appeals) Regulations and shall at the same time submit a copy of such appeal to the Director.

(*b*) The Director shall forthwith after receipt of the copy of the appeal referred to in subparagraph (*a*) furnish the Minister with his reasons for the decision to which such notice refers.

(*c*) For the purpose of deciding an appeal in terms of subparagraph (*a*), the Minister may require any party to such appeal to furnish such information and evidence as he may deem expedient.

(*d*) The Minister after considering the appeal referred to in subparagraph (*a*) may give such decision as he may deem fit.

Suspension or cancellation of professional driving permit by the Director

30.—(1) Where any circumstance arises in relation to the holder of a professional driving permit issued in terms of regulation 30 which, in the opinion of the Director, would have justified him in refusing to issue a professional driving permit to such holder or such holder has been convicted of a second or subsequent offence which, in the opinion of the Director, relates to the driving of a motor vehicle or a failure to stop after or report an accident, the Director may suspend or cancel the professional driving permit held by such person and in such event the Director shall notify that person accordingly.

(2) If a suspension or cancellation is effected in terms of subregulation (1), the person concerned shall forthwith surrender the professional driving permit to the Director.

(3) Upon the expiry of any period of suspension referred to in subregulation (1), the Director shall restore to the person entitled, the professional driving permit surrendered to him in terms of subregulation (2), if the validity thereof has not expired.

(4) Subject to regulation 31 any cancellation of a professional driving permit shall be permanent.

(5) Where any circumstance arises in relation to the holder of a professional driving permit issued outside Malaŵi which, in the opinion of the Director, would have justified the Director in refusing to issue a professional driving permit to such holder or such holder has been convicted of a second or subsequent offence which, in the opinion of the Director, relates to the driving of a motor vehicle or a failure to stop after or report an accident, the Director may, inform such person that such permit is not longer in force and effect within Malaŵi and from the date such person is so informed such permit shall cease to be in force and effect within Malaŵi.

Appeal to the Minister

31.—(1) Any person who is aggrieved, at the refusal of the Director to issue to him or renew or alter a professional driving permit or at the suspension or cancellation of a valid permit may, within 21 days of any refusal, suspension or cancellation appeal against such refusal, suspension or cancellation to the Minister in accordance with the Road Traffic (Appeals) Regulations and shall at the same time submit a copy of such appeal to the Director.

(2) The Director shall forthwith after receipt of the copy of the appeal referred to in subregulation (1) furnish the Minister with his reasons for the decision to which such notice refers.

(3) For the purpose of deciding an appeal in terms of subregulation (1), the Minister may require any part to such appeal to furnish such information and evidence as he may deem expedient.

(4) The Minister after considering the appeal referred to in subregulation (1) may give such decision as he may deem fit.

Permitting or assisting person not being the holder of a professional permit to drive motor vehicle, conveying persons or goods for reward

32. No person who—

(*a*) is the owner of or is in charge or control of a motor vehicle shall employ or permit any other person to drive such vehicle on a public road conveying persons or goods for reward, unless such other person is the holder of a professional driving permit where such permit is required in terms of this Part for that purpose; or

(*b*) is the holder of a professional driving permit under, this Part, shall allow such permit to be used by any other person.

Circumstances in which motor vehicle presumed to be a motor vehicle conveying persons or goods for reward

33. If in any prosecution under the Act it is proved that a person has conveyed persons or goods in a motor vehicle on a public road, it shall be presumed, until the contrary is proved that he so conveyed such passengers or goods for hire or reward.

Director to keep register of professional driving permits

34.—(1) The Director shall keep a suitable register or record of all persons to whom he has issued a professional driving permit.

(2) The Director shall record or keep record in the register in terms of subregulation (1), particulars of all convictions by and orders of any court affecting any professional driving permit issued by him and of any suspension, cancellation or endorsement of any such permit.

Professional permit issued contrary to provisions of this part to be void

35. A professional driving permit issued contrary to the driving provisions of these regulations shall be void and the holder thereof shall, on demand by the Director or by a traffic police officer, deliver forthwith such permit to the Director or such traffic police officer.

PART V

International Driving Permits

International driving permits for use outside

36.—(1) The Director may issue for use outside Malaŵi an international driving permit to a person who satisfies the Malaŵi Director—

(*a*) that he holds and has held for at least one year a valid Malaŵi driver's licence for the categories of motor vehicles for which the permit is to be issued; and

(*b*) that he is resident in Malaŵi.

(2) Applications for an international driving permit shall be made to the Director on Form DL 1 in the First Schedule and shall be accompanied by—

(*a*) a valid Malaŵi driving licence held by the applicant;

(*b*) two photographs of the applicant complying with the provisions of regulation 8 (*a*); and

(*c*) by the prescribed fee for an international driving permit.

(3) Before issuing an international driving permit one copy of the photograph shall be affixed in the space provided and the Director or the person acting on behalf of the Director shall apply an official stamp in such a manner as to cover part of the photograph and part of the page of the permit to which the photograph is affixed.

Validity of International driving permits

37. International driving permit shall, unless suspended by court, remain in effect for, 12 months from the date of issue.

Form of International driving permit under the 1926 Convention

38. International driving permits issued for use in a 1926 Convention country shall be in Form B in the Second Schedule.

Age limit for obtaining international driving permit under the 1926 convention

39.—(1) No person shall obtain or attempt to obtain an international driving permit on Form B in the Second Schedule unless he has attained the age of eighteen years.

(2) Any person who acts in contravention of this regulation shall be guilty of an offence.

Form of international driving permit under the 1949 Convention

40. International driving permits issued for use in a 1949 Convention country shall be in Form A in the Second Schedule.

Age limit for obtaining international driving permit under the 1949 Convention

41. No person shall obtain or attempt to obtain a driving permit in Form A in the Second Schedule—

(*a*) to drive an autocycle or invalid carriage unless he has attained the age of sixteen years;

(*b*) to drive a motorcycle unless he has attained the age of seventeen years; and

(*c*) to drive any other motor vehicle specified in the said Form A unless he has attained the age of eighteen years.

FIRST SCHEDULE

MALAŴI GOVERNMENT

ROAD TRAFFIC ACT FORM DL 1

ROAD TRAFFIC (DRIVING LICENCES) REGULATIONS

(REGULATION 3)

APPLICATION FOR LEARNER'S OR DRIVER'S LICENCE, INTERNATIONAL DRIVING PERMIT AND PROFESSIONAL DRIVING PERMIT

1. *Applicant information*

Surname .....

Other names .....

Date of birth .....

Present residential address .....

.....

Permanent residential address .....

.....

Mailing address .....

.....

2. *Type of application, please put an X in the box that applies:*

New ☐

Renewal ☐

Duplicate: My original licence has been lost/destroyed/defaced in the following circumstances

.....

.....

.....

Category and class of licence or permit requested, please put an X in the box or boxes that apply:

Learner's licence	☐	International permit	☐
Driver's licence	☐	Professional permit	☐

3. *Number of previous Malaŵi driving licence or permit held (if any)* .....

4. *Applicant certificate*

I certify that—

(*a*) I am not disqualified from obtaining or holding any learner's licence, driver's licence, international driving permit or professional driving permit requested by this application under sections 21, 29 and 50 of the Act and regulation 30; and

(*b*) no learner's licence, driver's licence, international driving permit or professional driving permit held by me within the past three years has been cancelled.

Date..... .....

Signature/thumbprint of Applicant

5. *Notification of change of name, residential or postal address of learner's or driver's licence holder*

Note: for name or address change only please complete paragraph 5 only

Original surname .....

Other names .....

Date of birth .....

New surname (*if applicable*) .....

Original residential address .....

Original postal address .....

New postal address (*if applicable*) .....

Learner's or driver's licence number .....

Date ....

Signature/thumbprint or licence holder

FOR USE BY ROAD TRAFFIC DEPARTMENT ONLY

Learner's Licence No. ..... issued

Driver's Licence No. ..... issued

International Driving Permit No. ..... issued

Professional Driving Permit No. ..... issued

Fee paid .....

PHOTOGRAPH

(*To be pinned to and not permanently affixed to this form*)

Date of issue .....

Issuing office .....

Issued by .....

for Director of Road Traffic

MALAŴI GOVERNMENT

ROAD TRAFFIC ACT FORM DL 2

ROAD TRAFFIC (DRIVING LICENCES) No. .....

REGULATIONS

(REGULATION 3)

EXAMINATION PASS CERTIFICATE

1. Applicant information

Surname .....

Other names .....

Date of birth .....

Present residential address .....

Permanent residential address .....

Mailing address .....

The above-named, whose signature/thumbprint has been placed below in my presence, has been tested and passed the examination indicated in section 2, subject to the special conditions noted below:

Special conditions .....

.....

.....

.....

I have endorsed a photograph of the applicant with my opinion that it is a true likeness.

2. Category and class of licence for which examination was passed

Learner's licence	Driver's licence
Class A1	Class A1
Class A	Class A
Class B	Class B
Class EB	Class EB
Class C1	Class C1
Class EC1	Class EC1
Class C	Class C
Class EC	Class EC

Date ....

Signature/thumbprint of Applicant

Issuing office ....

Signature of Road Traffic Examiner

Original—To applicant.

Duplicate—To Director of Road Traffic with Form DL 1 Application for Learner's or Driver's Licence.

Triplicate—To remain in book.

MALAŴI GOVERNMENT

ROAD TRAFFIC ACT FORM DL 3

ROAD TRAFFIC (DRIVING LICENCES) REGULATIONS

(REGULATION 3)

MEDICAL CERTIFICATE

For person requesting a Class C, EC, E1 and EC1 Learner's or Driver's Licence

For person 65 years of age requesting any class of Learner's or Driver's Licence

For person requesting a Driving instructor's licence

I certify that .....

of (*address*) .....

a registered medical practitioner entitled to practice medicine in Malaŵi have today personally examined .....

of (*address*) .....

an applicant for Class C, EC, C1 or EC1 learner's or driver's licence ☐

an applicant over sixty-five years of age ☐

an applicant for a driving instructor's licence ☐

I further certify that I have explained the contents of the subjoined "Declaration by Applicant" to the applicant and that his signature/thumbprint has been fixed thereto in my presence.

(*a*) Apparent age: .....

(*b*) Vision without glasses: can applicant read a car number plate at a distance of 23 metres? Yes ☐ No ☐

Vision without glasses R ..... L .....

Vision with glasses R ..... L .....

(*c*) Colour perception:

(i) Normal by ishihara preudoisochromatic plate test?

Yes ☐ No ☐

(ii) If not, test for signal red, signal green and amber by a suitable lantern.

(1) .....

(2) .....

(*d*) Hearing: Normal ☐ Satisfactory ☐ Insufficient ☐

(*e*) Limbs: Has applicant unrestricted use of all limbs?

Yes ☐ No ☐

If not, specify limitations: .....

.....

(*f*) Use of alcohol or drugs: Is applicant free from suspicions of being intemperate or addicted to drugs?

Yes ☐ No ☐

(*g*) General health: Are reactions normal?

Yes ☐ No ☐

Is applicant free from any disease temporary or otherwise, which would induce fatigue or faintness when driving long distances?

Yes ☐ No ☐

As a result of my examination, I am satisfied Not satisfied

(1) that the applicant is medically fit to drive a motor vehicle of Class C, EC, C1 or EC1 ☐

(2) that the applicant who is a person of 65 years of age or over, is medically fit to drive a motor vehicle of the classes permitted ☐

(3) that the applicant is medically fit to perform the duties of a driving instructor ☐

Date of examination: .....

Signed: .....

(*Registered Medical Practitioner*)

DECLARATION BY APPLICANT

I declare that I am not subject to epilepsy, and do not suffer from fits; and that my physique, vision, hearing and bodily and mental fitness are such as to warrant the issue to me of an instructor's licence.

I further declare that the answers to the questions put to me by the medical examiner are true and complete and I understand that if any statement made by me is to my knowledge false or in any material respect misleading, I am liable to the suspension or cancellation of any licence or permit granted as a result of this examination.

....

Date *Signature of applicant*

NOTE: A registered medical practitioner may alter the certificate to meet special circumstances. Please place an X in each box as applicable.

MALAŴI GOVERNMENT

ROAD TRAFFIC ACT FORM DL 4

ROAD TRAFFIC (DRIVING LICENCES) REGULATIONS

(REGULATION 3)

DRIVING LICENCE

PAGE 1

Driving Licence No. .....

Name .....

Address (permanent) .....

.....

Address (present) .....

.....

is hereby licensed to drive motor vehicles of the class(es) marked with an X under "Classes of Motor Vehicles", including those in the column headed "Other classes covered"

.....

Signature/thumbprint of holder

Date and place of issue .....

..... *Director of Road Traffic*

.....

THIS LICENCE IS THE PROPERTY OF THE MALAŴI GOVERNMENT

PAGE 2

Driving Licence No. .....

Photograph of Holder

No. of Professional Driving Permit .....

PAGE 3

Cancellation or Endorsement
(*by Court Order*)

PAGE 4

CLASSES OF MOTOR VEHICLES
(*Delete particular classes as necessary*)

Learner's licence	Driver's licence	Other classes covered
Class A1	Class A1	Nil
Class A	Class A	A1
Class B	Class B	Nil
Class EB	Class EB	B
Class C1	Class C1	B
Class EC1	Class EC1	C1, EB and B
Class C	Class C	C1 and B
Class EC	Class EC	C, EC1, C1, EB and B

PAGE 5—Blank

PAGE 6

Original Licence Expires

MALAŴI GOVERNMENT

ROAD TRAFFIC ACT FORM DL 5

ROAD TRAFFIC (DRIVING LICENCES) REGULATIONS
(REGULATION3)

DUPLICATE DRIVING LICENCE

PAGE 1

Duplicate Driving Licence No. .....

Name .....

Address (*permanent*) .....

.....

Address (*present*) .....

.....

is hereby licensed to drive motor vehicles of the class(es) marked with an X under "Classes of Motor Vehicles", including those in the column headed "Other classes covered".

.....
Signature/thumbprint of holder

Date and place of issue

....
..... *Director of Road Traffic*

THIS LICENCE IS THE PROPERTY OF THE MALAŴI GOVERNMENT

PAGE 2

Duplicate Driving Licence No. .....
Photograph of Holder

No. of Professional Driving Permit .....

PAGE 3

Cancellation or Endorsement
(*by Court Order*)

PAGE 4

CLASSES OF MOTOR VEHICLES

(*Delete particular classes as necessary*)

Learner's licence	Driver's licence	Other classes covered
Class A1	Class A1	Nil
Class A	Class A	A1
Class B	Class B	Nil
Class EB	Class EB	B
Class C1	Class C1	B
Class EC1	Class EC1	C1, EB and B
Class C	Class C	C1 and B
Class EC	Class EC	C, EC1, C1, EB and B

PAGE 5—Blank

PAGE 6

Original Licence Expires

MALAŴI GOVERNMENT

ROAD TRAFFIC ACT DSR 1

ROAD TRAFFIC (DRIVING LICENCES) REGULATIONS

(REGULATION 3)

APPLICATION OF AN INSTRUCTOR'S LICENCE

I hereby apply for an instructor's licence. I certify that the particulars given below are true, that I am not addicted to the use of narcotic drugs or to the excessive use of intoxicating liquor, and that I am not disqualified from holding a driving licence.

Name .....

Postal address .....

.....

Residential address .....

Date of birth .....

Number of current driver's licence held .....

Number of previous instructor's licence held (if any) .....

Languages spoken .....

Give particulars of experience as a licensed driver .....

.....

.....

Give details of any convictions in connexion with the driving of a motor vehicle .....

.....

Class(es) of driver's licence for which instructor's licence is requested

Driver's licence

Class A1
Class A
Class B
Class EB
Class C1
Class EC1
Class C
Class EC

I enclose the following in support of this application:

1. My current Malaŵi driver's licence.
2. Two identical copies of a photograph of myself taken within the last 30 days.
3. A medical certificate in the prescribed form DL. 3 completed by registered medical practitioner within the last 30 days.
4. A certificate issued in my name indicating successful completion of education at or above the level of junior certificate.
5. A certificate issued in my name indicating successful completion of a driving instructor training programme approved by the Director.

Date ....

Signature of applicant

MALAŴI GOVERNMENT

ROAD TRAFFIC ACT DSR. 2

ROAD TRAFFIC (DRIVING LICENCES) REGULATIONS

(Regulation 3)

INSTRUCTOR'S LICENCE No. .....

Name .....

Postal address .....

.....

Residential address .....

.....

Holder of driver's Licence No. .....

is hereby authorized to act as an instructor of learner drivers holding the class or classes of learner's licence indicated below by an X.

Photograph

Learner's licence

Class A1

Class A

Class B

Class EB

Class C1

Class EC1

Class C

Class EC

Signature of Instructor .....

Date of expiry .....

Date of issue .....

.....

Director of Road Traffic

MALAŴI GOVERNMENT

ROAD TRAFFIC ACT DSR. 3

ROAD TRAFFIC (DRIVING LICENCES) REGULATIONS

(Regulation 3)

APPLICATION FOR DRIVING SCHOOL LICENCE

Applicant information

The applicant is a: Corporation ..... Partnership ..... Single owner ..... Other (explain) .....

.....

Name of applicant .....

Postal address .....

.....

Physical address of school premises .....

.....

Applicant's business Licence No. ..... Previous driving school

Licence No. (if any) .....

If any applicant is a body of persons please provide the following for his proxy or representative

Name of representative .....

Licence class requested

Please put an X in all boxes for which the driving school licence is requested.

Driver's licence

Class A1

Class A

Class B

Class EB

Class C1

Class EC1

Class C

Class EC

Instructor information

Give details of instructors who will be employed together with the number of their instructor's licences

No. of Instructor's Licence	Name of Instructor
1.	.....
2.	.....
3.	.....
4.	.....

Details of vehicles to be used for instruction

Year manufactured	Make	Model	Registration No.
.....	.....	.....	.....
.....	.....	.....	.....
.....	.....	.....	.....
.....	.....	.....	.....

Details of any insurance policy that covers the use of a vehicle as a driving school vehicle

Name of Company	No. of Policy	Type of Policy	Expiration Date
.....	.....	.....	.....
.....	.....	.....	.....
.....	.....	.....	.....
.....	.....	.....	.....
.....	.....	.....	.....
.....	.....	.....	.....

Applicant's certificate

I hereby apply for a driving school licence. I certify that the particulars given above are true.

Date ....

Signature of Applicant or
Applicant's Representative

MALAŴI GOVERNMENT

ROAD TRAFFIC ACT DSR. 4

ROAD TRAFFIC (DRIVING SCHOOL LICENCES) REGULATIONS

(Regulation 3)

DRIVING SCHOOL LICENCE No. .....

Name .....

Postal address .....

is hereby authorized to establish/maintain a driving school in accordance with the following conditions:

Physical address of school premises .....

Maximum number of students: .....

Class of driver's licence for which instruction may be given is indicated below by an X

Driver's licence

Class A1

Class A

Class B

Class EB

Class C1

Class EC1

Class C

Class EC

Expiration Date .....

Issue Date .....

.....

Director of Road Traffic

MALAŴI GOVERNMENT

ROAD TRAFFIC ACT DRS 5

ROAD TRAFFIC (DRIVING LICENCES) REGULATIONS

(Regulation 3)

Record to be kept by Holder of Instructor's Licence

Name of instructor .....

Number of instructor's licence .....

		Period of instruction	
Date	Name of person instructed	From	To

Date: ....

Signature of Instructor

Note: This form to be submitted quarterly to the Director of Road Traffic

DRS 6

MALAŴI GOVERNMENT

ROAD TRAFFIC ACT

ROAD TRAFFIC (DRIVING LICENCES) REGULATIONS

(REGULATION 3)

RECORD TO BE KEPT BY HOLDER OF DRIVING SCHOOL LICENCE

Name of holder of driving school licence .....

No. of Driving School licence .....

Driving School located at .....

Name of student	Date of arrival	Class of driver's licence for which instruction given	Period of instruction	Class of driver's licence for which official test taken	Result of test	Date of departure	Fees paid	Remarks

Date ....

Signature of Licence Holder or Authorized Representative

NOTE: This form to be submitted quarterly to the Director of Road Traffic.

FORM 4

MALAŴI GOVERNMENT

ROAD TRAFFIC ACT

ROAD TRAFFIC (DRIVING LICENCES) REGULATIONS

(Regulation 3)

Page 1

Malaŵi

International Motor Traffic

International Driving Permit

(Convention of International Road Traffic of 1949)

Issued at .....

Date .....

Seal or stamp of authority

Signature or seal of issuing authority

Page 2

This permit is valid in the territory of all the contracting States, with the exemption of the territory of the contracting State where issued, for the period of one year from the date of issue, for the driving of vehicles included in the category or categories mentioned on the last page of this permit.

List of contracting States (optional)

It is understood that this permit shall in no way affect the obligations of the holder to conform strictly to the laws and regulations relating to residence or to the exercise of a profession which are in force in each country through which he travels.

Form of International Driving Permit Under Convention of 1949

PART I

Page 3

.....

Particulars concerning the driver: Surname 1
Other names 2
Place of birth 3
Date of birth 4
Permanent place of residence 5

Vehicles for which the permit is valid

.....

Motorcycles, with or without side-car, invalid carriages and three-wheeled motor vehicles with an unladen weight not exceeding 400 kilos (900 lbs) .....A

.....

Motor vehicles used for the transportation of passengers and comprising in addition to the driver's seat, at most eight seats, or those used for the transport of goods and having a permissible maximum weight not exceeding 3,500 kilos (7,700 lbs). Vehicles in this category may be coupled with a light trailer .....B

.....

Motor vehicles used for the transportation of goods and of which the permissible weight exceeds 3,500 kilos (7,700 lbs). Vehicles in this category may be coupled with a light trailer C

.....

Motor vehicles used for the transportation of passengers and comprising, in addition to the driver's seat, more than eight seats. Vehicles in this category may be coupled with a light trailer .....D

.....

More vehicles of categories B, C or D, as authorized above, with other than a light trailer .....E

.....

"Permissible maximum weight" of a vehicle means the weight of the vehicle and its maximum load when the vehicle is ready for the road.

"Maximum load" means the weight of the load declared permissible by the competent authority of the country of registration of the vehicle.

"Light trailers" shall be those of a permissible maximum weight not exceeding 750 kilos (1,650 lbs)

Holder of this permit is deprived of the right to drive in (*country*) .....

.....

by reason of .....

Seal or stamp of authority: Place .....

Date .....

Signature .....

Should the above space be already filled, use any other space provided for "Exclusion" .....

The entire last page (Parts 1 and 11) shall be drawn up in French. Additional pages shall repeat in other languages the text of Part 1 of the last page. They shall be drawn up in English, Russian, Chinese and Spanish, and other languages may be added.

PART II

1. .....
2. .....
3. .....
4. .....
5. .....

A. Seal or stamp of authority .....

..... Photograph

B. Seal or stamp of authority

.....

C. Seal or stamp of authority

.....

D. Seal or stamp of authority

.....

E. Seal or stamp of authority

....

F. Seal or stamp of authority *Signature of holder**

.....

EXCLUSIONS

(*Countries*)

I ..... V .....

II ..... VI .....

III ..... VII .....

IV ..... VIII .....

*Or thumb impression

MALAŴI GOVERNMENT

ROAD TRAFFIC ACT

ROAD TRAFFIC (DRIVING LICENCES) REGULATIONS

(Regulation 3)

Page 1 Form

Form of International Driving Permit under Convention of 1926

Malaŵi

International Motor Traffic

International Driving Permit

(International Convention of 24th April, 1926)

Issue of Permit

Issued at .....

Date .....

Seal of authority

.....

(*Signature of issuing authority*)

Page 2

The present permit is valid in the territory of all the under mentioned contracting States for the period of one year from the date of issue, for the driving of vehicles included in the category or categories mentioned in page. *Here insert list of contracting states.

It is understood that this permit in no way diminishes the obligation of the holder to conform strictly to the laws and regulations relating to residence or to the exercise of a profession which are in force in each country through which he travels.

Page 3

Particulars Concerning the Driver

.....

Photograph

Seal of
authority

.....

Surname: .....(1)

Other names: .....(2)

Place of birth: .....(3)

Date of birth: .....(4)

Home address: .....(5)

N.B.—The above particulars concerning the driver, except the photograph, should be repeated in as many languages as may be necessary to enable the international permit to be used in all contracting States mentioned above.

PAGE 4

(*Name of Country*)
exclusion

M. (*Surname and other names*) .....
.....

authorized as above by the authority of (*country*) .....
is deprived of the right to drive in (*country*).....

by reason of .....

Seal of authority: Place: .....

Date: .....

Signature: .....

Page 5 and following pages should repeat the particulars given on page 3 translated into as many languages as may be necessary to enable the international permit to be used in all the contracting States mentioned on page 2.

Here began last page.

A (1)	B (2)	C (3)
Seal of authority	Seal of authority	Seal of authority

(1) A. Motor vehicles of which the laden weight does not exceed 3,500 kilos (*in all languages*).

(2) B. Motor vehicles of which the laden weight exceeds 3,500 kilos (*in all languages*).

(3) C. Motorcycles, with or without side-car (*in all languages*).

1. .....
2. .....

3. .....
4. .....
5. .....

ROAD TRAFFIC (SPEED LIMITS) REGULATIONS

ARRANGEMENT OF REGULATIONS

REGULATION

PART I

PRELIMINARY

1. Citation
2. Interpretation

PART II

SPEED LIMITS

3. Prohibition of exceeding speed limit
4. General speed limit
5. Speed limit for particular class of vehicle
6. Speed limit in relation to tyres
7. Speed limit in relation to braking capability
8. Offences and penalties

G.N. 21/2000

ROAD TRAFFIC (SPEED LIMITS) REGULATIONS

under s. 181

PART I

PRELIMINARY

Citation

1. These Regulations may be cited as the Road Traffic (Speed Limits) Regulations.

Interpretation

2. In these Regulations, unless the context otherwise requires—

"agricultural vehicle" means a vehicle designed or adapted solely for agricultural activities and includes a farm tractor but does not include a goods vehicle;

"articulated motor vehicle" means a combination of motor vehicles consisting of a truck-tractor and semi-trailer;

"articulated passenger vehicle" means an articulated vehicle constructed or adapted for use primarily for the carriage of passengers;

"construction trailer" means a trailer incorporating water-boring machinery or construction machinery of the nature of a crane, grader, shovel, scraper, pipelayer, cablelayer, compressor or a trailer incorporating plant or equipment of the following nature—

bitumen or tar heater, bitumen, tar or water sprayers or distributors, crushers, extending towers or ladders, rippers or rooters, road sweepers or power brooms, rollers, sand and stone driers, soil, concrete, tar or bitumen mixers, stone, spreaders or distributors, water pumps, water tanks, welding units:

"construction vehicle" means any vehicle which is—

(*a*) a drilling machine, mobile crane or a fork lift or straddle truck;

(*b*) a roadmaking, earthmoving, excavation, construction or loading machine; or

(*c*) determined by the Director to be a construction vehicle;

"highway" means a road having a paved and tarred surface of a width not less than 5.5 metres;

"light trailer" means a trailer fitted with pneumatic tyres, the gross weight of which does not exceed one thousand kilograms;

"public service vehicle" means any vehicle carrying passengers for hire or reward and includes—

(*a*) a bus;

(*b*) a contract car;

(*c*) a hire car;

(*d*) a taxi; and

(*e*) a goods vehicle adapted for the carriage of passengers;

"tractor" means a farm tractor of the type commonly used for agricultural purposes.

PART II
Speed Limits

Prohibition of exceeding speed limit

3. No person shall operate on a public road any motor vehicle at a speed exceeding—

(*a*) the speed limit indicated by appropriate road traffic signs in respect of such public road;

(*b*) the general speed limit which in terms of regulation 4 applies in respect of such public road; or

(*c*) the speed limit which in terms of regulation 5 applies in respect of the class of motor vehicle concerned.

General speed limit

4. A general speed limit of—

(*a*) 50 kilometres per hour shall apply in respect of every public road or section thereof, situated within an urban or built up area;

(*b*) 80 kilometres per hour shall apply in respect of every public road or section thereof, other than a highway, situated outside an urban or built up area; and

(*c*) 100 kilometres per hour shall apply in respect of any highway situated outside an urban or built up area.

Speed limit for particular class of vehicle

5.—(1) Under section 92 of the Act, a speed limit of—

(*a*) 80 kilometres per hour shall apply in respect of—

(i) a goods vehicle the gross vehicle mass of which exceeds 9,000 kilograms;

(ii) a combination of motor vehicles consisting of a goods vehicle, being the drawing vehicle, and one or two trailers of which the sum of the gross vehicle mass of the goods vehicle and of the trailer or trailers exceeds 9,000 kilograms;

(iii) an articulated motor vehicle, of which the gross combination mass of the truck-tractor exceeds 9,000 kilograms;

(iv) an articulated passenger vehicle; and

(v) a bus with seating capacity for 27 or more passengers excluding the driver;

(*b*) 40 kilometres per hour shall apply in respect of—

(i) a construction vehicle;

(ii) a motor vehicle drawing a construction trailer;

(iii) an agricultural vehicle whether drawing a trailer or not;

(*c*) 90 kilometres per hour shall apply in respect of—

(i) a minibus; or

(ii) any motor vehicle not described in paragraphs (*a*) and (*b*) when drawing a light trailer.

(2) There may be displayed on the rear of a motor vehicle contemplated in subregulation (1), a sign denoting that such goods vehicle is subject to a speed limit of 80 kilometres per hour, and such sign shall comply with the requirements of the Standard

Specification of the Malaŵi Bureau of Standards, "Retro-reflective and fluorescent warning sign for road vehicles" Part III "Signs other than triangles, chevron signs and abnormal load vehicle signs".

Speed limit in relation to tyres

6. Notwithstanding the provisions of regulations 4 and 5, no person shall operate on a public road a public service vehicle or goods vehicle, and which is fitted with pneumatic tyres, at a speed in excess of the speed referred to in the Standard Specification of the Malaŵi Bureau of Standards, "Motor Vehicle Tyres and Rims: Dimensions and Loads", Part I-1992 or as approved by the manufacturer of the tyre concerned.

Speed limit in relation to braking capability

7.—(1) No person shall operate on a public road a combination of vehicles including a tractor drawing any capability trailer not equipped with either service brakes or an over run brake—

(*a*) at a speed in excess of 15 kilometres per hour; and

(*b*) unless there is displayed on the rear most vehicle of such combination, a sign denoting that such trailer or combination is limited to a speed of 15 kilometres per hour.

(2) A sign referred to in subregulation (1) shall comply with the requirements of the Standard Specification of the Malaŵi Bureau of Standards, "Retro-reflective and fluorescent warning sign for road vehicles", Part III "Signs other than triangles, chevrons signs and abnormal load vehicles signs".

Offences and penalties

8.—(1) Any person who contravenes or fails to comply with any provision of these Regulations shall be guilty of an offence.

(2) Any person convicted of an offence under any provision of these Regulations shall be liable to a fine not exceeding K10,000 or to a period of imprisonment not exceeding three years or both such fine and imprisonment.

ROAD TRAFFIC (OPERATOR AND ROAD SERVICE PERMIT) REGULATIONS

ARRANGEMENT OF REGULATIONS

REGULATION

PART I

PRELIMINARY

1. Citation
2. Interpretation

REGULATION

PART II

FORMS AND FEES

3. Forms
4. Fees
5. Particulars in applications, etc.

PART III

REGISTRATION OF OPERATOR AND ROAD SERVICE PERMITS

6. Classes of motor vehicles in respect of which an operator shall be registered
7. Category of road service permit
8. Application for registration as an operator
9. Manner of registration of an operator and issue of road service permit
10. Short-term and special journey road service permit
11. Period of validity of road service permit
12. Suspension of road service permit
13. Application for and issue of duplicate road service permit
14. Procedure of change of particulars of registered operator
15. Road service permit issued in prescribed territory
16. Manner in which road service permit is to be displayed on motor vehicle
16A. Manner in which operator permit registration number is to be displayed on motor vehicle
17. Appeal to the Minister

G.N. 22/2000
39/2004

ROAD TRAFFIC (OPERATOR AND ROAD SERVICE PERMIT) REGULATIONS

under s. 181

PART I

PRELIMINARY

Citation

1. These Regulations may be cited as the Road Traffic (Operator and Road Service Permit) Regulations.

Interpretation

2. "Contract car" means a public service vehicle having seating accommodation for not more than nine persons in addition to the

driver which is let out on hire for a period which is not less than twenty-four hours to a hirer who drives the vehicle himself or who provides the driver;

"hire car" means a public service vehicle having seating accommodation for not more than nine persons in addition to the driver which is let out on hire with a driver under contract for a period which is not less than twenty-four hours for the carriage of passengers otherwise than at separate fares;

"public service vehicle" means any vehicle carrying passengers for hire or reward and includes—

(*a*) a bus;

(*b*) a contract car;

(*c*) a hire car;

(*d*) a taxi; and

(*e*) a goods vehicle adapted for the carriage of passengers;

"registered operator" means an operator registered in terms of regulation 9;

"road service permit" means a permit referred to in regulation 7 which has been issued to a registered operator,

"short-term road service permit" means a permit referred to in regulation 10;

"special journey road service permit" means a permit referred to in regulation 10;

"taxi" means a public service vehicle having seating accommodation for not more than nine persons in addition to the driver which is let with a driver over a period less than twenty-four hours for the carriage of passengers otherwise than at separate fares.

PART II

Forms and Fees

Forms

3. The forms as approved by the Minister shall be used in all cases to which they are respectively applicable in carrying out the Act and these regulations.

Fees

4. The fees specified in the second column of the Schedule to the (Miscellaneous Fees) Regulations shall be charged in respect of the matters set out in the first column of the said Schedule.

Particulars in applications, etc.

5. The particulars to be entered on or contained in any application, permit and any other documents to which these regulations apply shall, unless otherwise set forth in these Regulations, be such as are necessary from the respective form of such application, permit or document as approved by the Minister.

PART III

Registration of Operator and Road Service Permit

Classes of motor vehicles in respect of which an operator shall be registered

6.—(1) An operator shall be registered in respect of—

(*a*) any goods vehicle registered in Malaŵi, the owner or operator of which intends to use such motor vehicle for the carriage of goods for hire or reward;

(*b*) any breakdown vehicle registered in Malaŵi; and

(*c*) any motor vehicle registered in Malaŵi, the owner or operator of which intends to use such motor vehicle for the carriage of passengers for hire or reward.

(2) The provisions of subregulation (1) shall not apply to a motor vehicle referred to in subregulation (1) that is—

(*a*) owned by the Government of Malaŵi;

(*b*) operated on a public road under the authority of a temporary or special permit or a motor trade number;

(*c*) not operated on a public road and for the purpose of this paragraph, the words "operated on a public road" shall not be construed to include the presence of such motor vehicle on a public road for the purpose of—

(i) being driven to the premises of the owner in order to take delivery thereof;

(ii) crossing a public road from one premises of the owner to another, over a distance of not more than one kilometre; or

(iii) proceeding to or from a place where repairs are to be or have been effected to such motor vehicle.

Category of road service permit

7.—(1) A road service permit shall be issued for—

(*a*) the public service vehicle category and such permit shall be marked with the letter "A" whereas, a contract car shall be endorsed with letter "H" and a hire car shall be endorsed with letter "T"; and

(*b*) the goods vehicle for hire category and such permit shall be marked with the letter "B".

(2) A road service permit as referred to in subregulation (1) shall authorize the holder thereof to operate the applicable vehicle for hire or reward on a public road.

Application for registration as an operator

8.—(1) An application for registration as an operator of a motor vehicle referred to in regulation 6, shall be made, subject to subregulation (4), in duplicate by the owner of such motor vehicle on Form RSP as approved by the Minister, to the Director, and such form shall be signed by such owner and the operator applicant, or in the case of the owner or operator applicant being a body of persons by the proxy of such body of persons.

(2) In the case where details relating to the operator applicant and the owner are the same in respect of more than one motor vehicle—

(*a*) Form RSP as approved by the Minister may be completed once only and the full details in respect of each additional vehicle for which such operator is applying for at the same time, shall be appended to such form; and

(*b*) the documentation referred to in subregulation (3) (*a*) need only be submitted once by the operator applicant.

(3) The application in respect of registration as an operator referred to in subregulation (1) shall be accompanied by—

(*a*) acceptable identification of the operator applicant, proxy, representative and signers of such document, and a form of proxy in the case of the owner or operator applicant being a person or body of persons, as well as copies of such identification and form of proxy; and

(*b*) the valid registration certificate of each motor vehicle for which in respect of such motor vehicle an application is made for a road service permit; or

(*c*) the appropriate fee for a road service permit applicable to each motor vehicle as shown in the Schedule.

(4) No person shall make application for registration as an operator of a motor vehicle contemplated in regulation 6 (1) (*c*) which is a—

(*a*) hire car or contract car unless such motor vehicle is less than six years old; or

(*b*) goods vehicle adapted for the carriage of passengers unless such goods vehicle is presented for inspection to a motor vehicle examiner at the time application is made for a road service permit.

Manner of registration of an operator and issue of road service permit

9.—(1) The Director shall, upon receipt of the application for registration as an operator made in terms of regulation 8, satisfy himself that—

(*a*) the information provided in terms of regulation 8 is complete and correct;

(*b*) no road service permit issued to the operator applicant, is suspended in terms of regulation 12 and section 86 of the Act.

(2)—(*a*) If the Director is satisfied in terms of subregulation (1), he shall register the applicant as the operator of the motor vehicle concerned by recording the particulars of such person in the register of operators;

(*b*) if the Director is not satisfied in terms of subregulation (1), he shall refuse the application and notify the applicant accordingly.

(3) Subject to the provisions of section 81 (4) of the Act, the Director shall, if satisfied in terms of subregulation (1) issue a road service permit on Form A or B as the case may be, in respect of each motor vehicle included in the application submitted by the operator registered in terms of subregulation (2) (*a*).

(4) Subject to regulation 14 (5) a road service permit shall not be transferred or assigned.

(5) The counterfoil of the road service permit shall be kept at the business address of the operator.

(6) No person shall operate a motor vehicle of any class contemplated in regulation (6) on a public road unless a valid road service permit is displayed on such motor vehicle.

Short-term and special journey road service permit

10.—(1) The Director may issue to any applicant—

(*a*) a short-term road service permit for the carriage of goods; or

(*b*) a special journey road service permit for the carriage of passengers, for any vehicle registered in Malaŵi, subject to such conditions as may be specified in the permit.

(2) No permit contemplated in subregulation (1) shall be issued in respect of any motor vehicle unless such motor vehicle complies with all regulations concerning such vehicle and its carriage of goods or passengers:

Provided that in special circumstances the Minister may authorize the Director to waive or modify such regulations.

(3) The Director shall not issue to any one applicant within a twelve-month period more than—

(*a*) one short-term road service permit; and

(*b*) four special journey road service permits.

Period of validity of road service permit

11.—(1) The period of validity of—

(*a*) a public service vehicle category road service permit shall be six months unless such permit has been suspended in terms of the Act;

(*b*) a goods vehicle for hire category road service permit shall be twelve months unless such permit has been suspended in terms of the Act;

(*c*) a short-term road service permit shall be as indicated on the permit for any period not exceeding three months unless such permit has been suspended in terms of the Act; or

(*d*) a special journey road service permit shall be as indicated on the permit for any period not exceeding seven days unless such permit has been suspended in terms of the Act.

(2) Notwithstanding anything contained in subregulation (1), any road service permit, short-term road service or special journey road service permit issued under the Act now repealed shall remain valid until the expiry date of such permit unless such permit has been suspended in terms of the Act.

Suspension of road service permit

12.—(1) The Director may, if the record of an operator indicates that such operator does not comply with the provisions of this Act, by written notice notify such operator—

(*a*) that a road service permit shall only be issued to him on such conditions as the Director may deem fit;

(*b*) that no further road service permit shall be issued to him for such period as the Director may specify in the notice; or

(*c*) that the road service permit or permits pertaining to such motor vehicle or motor vehicles as the Director may determine in respect of which he is registered as the operator is or are suspended until the Director is satisfied that the grounds for such suspension have fallen away:

Provided that—

(i) the period of any suspension under paragraph (*c*) shall not exceed the period in respect of such road service permit contemplated in regulation 11; and

(ii) the Director shall include in any written notice to an operator his reasons for serving such notice.

(2) The operator shall, upon receipt of a notice of suspension in terms of section 86 of the Act, immediately return the road service permit and the counterfoil of such permit to the Director.

(3) The Director shall after receipt of the permit and counterfoil referred to in subregulation (2), keep such permit and counterfoil in the manner and for the period required.

(4) Upon the expiry of any period of suspension referred to in subregulation (1), the Director shall restore to the person entitled thereto, the road service permit and counterfoil surrendered to him in terms of subregulation (2), if the validity thereof has not expired.

Application for and issue of duplicate road service permit

13.—(1) An application for a duplicate road service permit shall be made to the Director, on Form RSP as approved by the Minister, and shall be accompanied by—

(*a*) the appropriate fee for a duplicate road service permit as shown in the Schedule;

(*b*) acceptable identification of the signer thereof; and

(*c*) the counterfoil of the original road permit or a declaration in respect of the original road service permit in such form as approved by the Minister.

(2) Upon receipt of the application referred to in subregulation (1) the Director shall satisfy itself that the applicant is the registered operator in respect of the vehicle concerned and shall issue a duplicate road service permit to the applicant.

(3) No person shall fail to notify the Director within seven days of any loss of a valid road service permit and to apply for a duplicate thereof.

Procedure of change of particulars of registered operator

14.—(1) If the postal or physical address of the proxy or the representative of a registered operator changes, such operator shall, within a period of fourteen days after such change, notify the Director of such change on Form RSP as approved by the Minister.

(2) If the name as reflected in the acceptable identification of the registered operator changes, such registered operator shall within fourteen days from such change—

(*a*) notify the Director of such change on Form RSP as approved by the Minister;

(*b*) submit the new acceptable identification; and

(*c*) submit to the Director the counterfoil of every original road service permit issued to him.

(3) Where the proxy or representative of the registered operator changes, the notice referred to in subregulation (1), shall be accompanied by the acceptable identification of the new proxy or representative and a new letter of proxy.

(4) On receipt of the notification referred to in subregulation (1) or (2), the Director shall—

(*a*) ensure that such notification is in order;

(*b*) update the particulars in relations to the persons or body of persons concerned in the register of operators; and

(*c*) in the case of a notification in terms of subregulation (2), issue a new road service permit to the holder upon payment of the appropriate fees for the issue of a duplicate document as shown in the Schedule.

(5) If a road service permit is held by a partnership and one of the partners dies or ceases to be a partner of such partnership or a new partner is admitted thereto or if a person obtains a business from the estate of a deceased spouse and a road service permit is in force in

respect of such business, every such permit shall, notwithstanding any provisions to the contrary contained in this Part, remain in force for the unexpired period of the road service permit concerned, in respect of such business and the new owner of the business shall be deemed to be the holder of the road service permit.

Road service permit issued in prescribed territory

15. A permit which has a similar purpose to that of a road service permit, and which is issued in a prescribed territory in accordance with the laws of such territory, shall be deemed to be a road service permit for the purposes of this Part when such permit is displayed on or carried in a motor vehicle which is operated on a public road in Malaŵi.

Manner in which road service permit is to be displayed on motor vehicle

16. A road service permit issued in terms of regulation 9 in respect of a motor vehicle shall be displayed—

(*a*) if such motor vehicle is fitted with a transparent windscreen in front, by affixing such road service permit by means of the gum thereon in an upright position on the inside of the windscreen in such manner that the print on the face of the permit is clearly legible from the outside to a person standing in front or to the left front of such motor vehicle; or

(*b*) if the motor vehicle is not fitted with a transparent windscreen in front, by affixing such road service permit—

(i) in a conspicuous position on the front side of the vehicle in such manner that the print of the face of such road service permit is clearly legible from that side; and

(ii) if such road service permit is exposed to the weather be protected by affixing such road service permit by means of the gum thereon on the inside of the transparent front of a durable watertight holder; and

(*c*) if such motor vehicle is a trailer or semi-trailer on such trailer or semi-trailer or on or in the motor vehicle drawing such trailer or semi-trailer at the time.

Manner in which operator permit registration number is to be displayed on motor vehicle
G.N. 39/2004

16A. An operator permit registration number issued in terms of section 81 of the Act in respect of a motor vehicle shall be displayed in conspicuous positions on both the front side and rear side of the motor vehicle in such a manner that the print of such operator permit registration number is legible from that side.

Appeal to the Minister

17.—(1) Any person who is aggrieved at the refusal of the Director to register him as an operator or at the suspension or cancellation of his registration or the conditions on which a road service permit is issued or at the suspension of any road service

permit may, within twenty-one days after such action is taken by the Director, appeal against such refusal, suspension, cancellation or conditions to the Minister in accordance with and upon payment of the appropriate fees for such appeal as set forth in the Road Traffic (Appeals) Regulations and shall at the same time submit a copy of such appeal to the Director.

(2) After receipt of the copy of appeal referred to in subsection (1), the Director shall forthwith furnish the Minister with his reasons for the refusal, suspension, cancellation or conditions to which such repeal refers.

(3) The Minister may after considering the appeal give such decision as he may deem fit.

G.N. 4/2002

ROAD TRAFFIC (SADC DRIVING LICENCE) REGULATIONS

under s. 181

Citation

1. These Regulations may be cited as the Road Traffic (SADC Driving Licence) Regulations.

Valid and recognized driving licence

2. The valid and recognized driving licences in the Republic of Malaŵi shall be the SADC model type licence and every driver licensed in Malaŵi shall use the SADC model type licence.

Offence

3. Any person who fails to comply with regulation 2 commits an offence and shall be liable to a fine of K2,000, payable on the spot.

G.N. 12/2003

ROAD TRAFFIC (VEHICLE AGE LIMIT FOR CERTIFICATE OF FITNESS INSPECTION) REGULATIONS

under s. 181

Citation

1. These Regulations may be cited as the Road Traffic (Vehicle Age Limit for Certificate of Fitness Inspection) Regulations.

Interpretation

2. In these regulations, unless the context otherwise requires—

"date of manufacture" means the date of manufacture stipulated in the manufacturer's vehicle data sheet or registration certificate.

Age limit of vehicles for certificate of fitness inspection

3. Every vehicle whose age is more than five years from the date of manufacture shall be subject to a certificate of fitness inspection.

ROAD TRAFFIC (HONORARY TRAFFIC ASSESSORS) REGULATIONS

G.N. 2/2004

under s. 181

Citation

1. These Regulations may be cited as the Road Traffic (Honorary Traffic Assessors) Regulations.

Appointment of honorary traffic assessors

2.—(1) The Director may, by notice published in the *Gazette*, appoint honorary traffic assessors to assist in carrying into effect the provisions of the Act.

(2) The appointment of an honorary traffic assessor shall be—

(*a*) made for a period of four years but shall be renewable; and

(*b*) subject to such conditions as the Director shall impose in the instrument of appointment.

Qualifications

3.—(1) No person shall be appointed as an honorary traffic assessor unless he is of good standing in society, willing and committed to assist in carrying out into effect the provisions of the Act.

(2) Notwithstanding subregulation (1), no person shall be qualified to be appointed as an honorary traffic assessor who—

(*a*) owes allegiance to a foreign country;

(*b*) is, under any law in force in the Republic, adjudged or otherwise declared to be mentally incompetent;

(*c*) has, within the past seven years, been convicted by a competent court of a crime—

(i) under the Act; or

(ii) involving dishonesty or moral turpitude, or

(*d*) is undischarged bankrupt under any law in force in the Republic.

Application for appointment

4.—(1) Any person who wishes to be appointed as an honorary traffic assessor shall make an application to the Director through the Office of the District Commissioner for the area in which he resides.

(2) An application referred to under subregulation (1) shall contain the following particulars of the applicant—

(*a*) name;

(*b*) date and place of birth;

(*c*) contact address;

(*d*) occupation;

(*e*) nationality; and

(*f*) conviction, if any, of a crime.

(3) The application referred to under subregulation (1) shall be in the form set out in the Schedule.

Duties of an honorary traffic assessor

5.—(1) The duties of honorary traffic assessor shall be to assist in carrying into effect the provisions of the Act.

(2) Without prejudice to the generality of subregulation (1), the duties of an honorary traffic assessor shall be to—

(*a*) protect road infrastructure;

(*b*) check and prevent vandalism of road furniture;

(*c*) report any contravention of the Act;

(*d*) sensitize the general public on traffic safety; and

(*c*) advise relevant authorities on traffic management and control matters.

Identity cards for honorary traffic assessors

6.—(1) The Director shall cause each honorary traffic assessor to be issued with an identity card in a form approved by the Director.

(2) Where a person in possession of an identity card issued to him under subregulation (1) ceases to be honorary traffic assessor, he shall forthwith surrender the identity card to the Director.

(3) An honorary traffic assessor shall, when practicable and if so requested, produce his identity card when exercising his duties under these Regulations or the Act, as the case may be.

SCHEDULE

reg. 4 (3)

ROAD TRAFFIC ACT

(Cap. 69:01)

ROAD TRAFFIC (HONORARY TRAFFIC ASSESSORS) REGULATIONS

APPLICATION FOR APPOINTMENT AS AN HONORARY TRAFFIC ASSESSOR

Section A

1. Name of Applicant (in Full, Surname First): .....
2. Date and Place of birth: ..... Gender: Female/Male: .....
3. Nationality: ..... ID No. (if any): .....

4. Residential address: .....
5. Contact telephone: .....
6. Occupation: .....
7. Have you ever been convicted of any crime .....

SECTION B

8. FOR DISTRICT COMMISSIONER

   I, ..., District Commissioner for .....

   District, hereby confirm that the applicant is of Malaŵian origin and resides in/at (Area) .....
9. Eligible/Not eligible for appointment

   Name: .....

   Signed: .....

   Official Stamp: .....

SECTION C

FOR OFFICIAL USE BY ROAD TRAFFIC DIRECTORATE

Reference Number: .....

Date Registered: ..... and

ID No. allocated: .....

Name of Authorizing Officer: ..... Signature .....

NOTE: (1) This position is on voluntary basis and, therefore, there is no remuneration whatsoever for the duties performed once appointed.

(2) Completed application should be forwarded through the District Commissioner to the Director of Road Traffic, Private Bag 257, Lilongwe, with two passport size photographs of the applicant duly certified by the District Commissioner for Oaths.

ROAD TRAFFIC (REGISTRATION AND CLASSIFICATION OF MOTOR VEHICLE INSPECTION STATIONS) NOTICE

G.N. 36/2004

under s. 64

1. This Notice may be cited as the Road Traffic (Registration and Classification of Motor Vehicle Inspection Stations) Notice. Citation

2. The motor vehicle inspection stations specified in the Schedule have been registered and classified in accordance with the provisions of section 63 and section 64 of the Act. Registration and classification

SCHEDULE para. 2

Region	*Centre*	*Id Code*	*Classification*
Southern Region	Balaka/Liwonde-P.V.H.O.	V15-BLK	A
	Zomba-P.VH.O.	V15-ZA	A
	Mangochi-P.V.H.O.	V15-MH	A
	Mwanza-DRIMP	V15-MN	A
	Luchenza-P.V.H.O.	V15-TO	A
	Mulanje-P.V.H.O.	V15-MJ	A
	Ngabu-P.V.H.O.	V15-CK	A
	Nsanje-P.V.H.O.	V15-NE	A
Central Region	Mchinji-P.VH.O.	V15-MC	A
	Kasungu-P.VH.O.	V15-KU	A
	Salima-P.V.H.O.	V15-SA	A
	Nkhotakota-P.VH.O.	V15-KK	A
	Dedza-P.V.H.O.	V15-DZ	A
Northern Region	Chitipa-P.VH.O.	V15-CP	B
	Karonga-P.VH.O.	V15-KA	A
	Rumphi-P.VH.O.	V15-RU	A
	Mzimba-P.V.H.O.	V15-MZ	A

G.N. 37/2004

ROAD TRAFFIC (CERTIFICATION AND CLASSIFICATION OF MOTOR VEHICLE INSPECTORS) NOTICE

under s. 32

Citation

1. This Notice may be cited as the Road Traffic (Certification and Classification of Motor Vehicle Inspectors) Notice.

Certification and Classification G.N. 26/2000

2. The motor vehicle inspectors specified in the Schedule have been certified and classified in accordance with the provisions of regulation 32 of the Road Traffic (Certificate of Fitness) Regulations.

SCHEDULE para. 2

Number	*Name*	*Id Code*	*Classification*
1.	Chagoma M. H.	V15/MVI 11-04	A
2.	Chasweka E. N.	V15/MVI 12-04	A
3.	Chilumba K. H.	V15/MVI 13-04	A
4	Chiumia C. K.	V15/MVI 14-04	A
5.	Chirwa A. L. M.	V15/MVI 15-04	A
6.	Chawayula N. W.	V15/MVI 16-04	A
7.	Dambule M. K. R	V15/MVI 17-04	A
8.	Kachala V. F.	V15/MVI 18-04	A
9.	Kamanga L.E.	V15/MVI 19-04	A
10.	Katunau M.	V15/MVI 20-04	A
11.	Kawelama H. B.	V15/MVI 21-04	A
12.	Khomba S. B.	V15/MVI 22-04	A
13.	Kwacha H. F.	V15/MVI 23-04	A
14.	Makowa F. E.	V15/MVI 24-04	A
15.	Miss Mkandawire	V15/MVI 25-04	B
16.	Mkwapatira W. F.	V15/MVI 26-04	A
17.	Mliuli A.	V15/MVI 27-04	A
18.	Mlozi A. A.	V15/MVI 28-04	A
19.	Mtambo A. B.	V15/MVI 29-04	A
20.	Mtameni F.	V15/MVI 30-04	A
21.	Mtumodzi J. M..	V15/MVI 31-04	A
22.	Mulambya S. T. D.	V15/MVI 32-04	A
23.	Nkhoma G A	V15/MVI 33-04	A
24.	Nyika A. L. W.	V15/MVI 34-04	A
25.	Nyirongo G. F.	V15/MVI 35-04	A
26.	Pemba E. N.	V15/MVI 36-04	A
27.	Sakala A. R.	V15/MVI 37-04	A
28.	Sawala R .D. M.	V15/MVI 38-04	A

PUBLIC ROADS

CHAPTER 69:02

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CHAPTER 69:02

PUBLIC ROADS

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CHAPTER 69:02

PUBLIC ROADS

An Act to Consolidate and Amend the Law relating to Public Roads and matters connected therewith

[1st September, 1962]

Short title

1. This Act may be cited as the Public Roads Act.

Interpretation
6 of 1989
8 of 2017

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

"agricultural officer" means the senior officer of the Government responsible for agricultural advisory services in any District, and includes any other person declared by the Minister for

the time being responsible for agriculture by notice published in the *Gazette* to be an agricultural officer;

"alternative land" in relation to customary land means land which, in accordance with customary law, can be made available to an occupier who suffers disturbance;

"bicycle" shall include a tricycle;

"carriageway" means that part of a road designed and constructed to be used for vehicular traffic or used or reasonably usable for the time being for that purpose, but shall not include a cycle track;

"compensation board" means a compensation board constituted under section 47;

"Controller of Roads" includes any person to whom the Controller of Roads may delegate his powers under this Act, or a person who is acting with the authority of the Controller of Roads; 6 of 1989

"customary estate" bears the same meaning ascribed to it in the Land Act; 8 of 2017 Cap. 57:01

"customary land committee" bears the meaning ascribed to it in the Customary Land Act; 8 of 2017 Act 19 of 2016

"Deeds Registrar" means the Deeds Registrar appointed under the Deeds Registration Act; Cap. 58:02

"existing road" means a road over which the public exercised a right of way prior to the coming into force of this Act whether or not such road had been declared a public road under the Public Roads Ordinance, 1950 (now repealed) and includes all land declared to be a public road under such Ordinance;

"footpath" means a portion of a road exclusive of the carriageway set aside for use solely by pedestrians;

"highway authority" means the authority responsible for the construction, care and maintenance of any road or class of road in accordance with this Act;

"improved land" means land whereon there is any improvement;

"improvement" means any work on land which has increased the value of such land in comparison with land in a similar area covered with natural vegetation and includes clearing land for agricultural purposes, the erection, alteration or enlargement of buildings, the installation of electricity supply, the construction or improvement of a wall, road, bridge or permanent fence, planting a live hedge, contouring of land, land drainage and works of reclamation and irrigation, the making and improvement of water courses, the provision of water supply for agricultural or domestic purposes, the installation of fixed machinery, laying out and cultivating

gardens, nurseries and orchards and the application to land of purchased manure (including artificial manure) to the extent to which such work has so increased the value of the land;

8 of 2017
Cap. 22:01

"local government authority" bears the meaning ascribed to in the Local Government Act;

"occupier" in relation to land means any person lawfully occupying such land;

"owner" in relation to private land means a person (other than a mortgagee not in possession) entitled, with or without the consent of any other person to dispose of an interest in the land, and in relation to public or customary land means the Minister responsible for Land;

"public road" means any road of a class described in section 3;

"road" means a highway and includes any bridge, causeway, culvert, dam, ditch, drain, embankment, fence, ferry, ford, pontoon, guide post, mile post or other works in the line of such road, and includes an existing road and works in a road reserve constructed or maintained under section 18, but does not include any such works outside the limits of a road reserve;

"road reserve" means any land reserved for use as a road under sections 10, 11, 17 or 28;

"storm water" means all flow of water directly due to rainfall, before such water joins a stream;

"stream" means a watercourse of natural origin wherein water flows either continuously or intermittently, whether or not such watercourse is dry during any period of the year and whether or not its conformation has been changed by artificial means, and includes swamps or marshes, whether forming the source or found upon the course of, or feeding such watercourse;

"structure" includes—

(*a*) any building, pole, powerline, petrol pump, machinery, wall, plantation, fence or hedge and any other object which could in like manner cause an obstruction;

(*b*) any external alteration or addition to a structure;

8 of 2017

"surface rights", in relation to land in respect of which compensation is claimed, means the rights of the claimant to any interest in the crops, structures and other improvements on the land;

"undertaker" means the authority, body or person by whom a statutory power to execute undertakers' works is exercisable in the capacity in which that power is vested in them;

"undertakers' works" means works (including works executed or to be executed on behalf of the Government) for any purposes other than road purposes, being works of any of the following kinds, that is to say—

(*a*) placing apparatus, inspecting, maintaining, adjusting, repairing, altering or renewing apparatus, or changing the position of apparatus or removing it;

(*b*) breaking up or opening a road, for the purposes of works mentioned in paragraph (*a*), and tunnelling or boring under a road for those purposes, breaking up or opening a sewer, drain or tunnel for those purposes, and other works requisite for or incidental to those purposes, and shall include laying any pipeline, wire or cable on, over or under any road;

"valuation date" in relation to the assessment of compensation for any property or interest therein means the date at which the value of the property or interest therein is to be assessed;

"works" includes any pipe, tube, tunnel, permanent excavation, quarry, irrigation works, borehole or well, and any addition or alteration to such works.

PART I

Roads and Road Reserves

Classification and vesting of roads
6 of 1989
8 of 2017

3.—(1) The public roads of Malaŵi shall be classified as follows—

(*a*) main roads, being the inter-territorial roads defined as such under any law for the time being in force in Malaŵi, and the territorial main roads defined in section 4;

(*b*) secondary roads, as defined in section 5;

(*c*) tertiary roads as defined in section 5A; 6 of 1989

(*d*) district roads, as defined in section 6;

(*e*) branch roads, as defined in section 7; and

(*f*) estate roads, as defined in section 8.

(2) The Minister may, by declaration published in the *Gazette*, designate any road to be a public road in accordance with the provisions and classifications of this Act. Upon designation as a public road, such road shall vest in the Republic as public land. 8 of 2017

(3) All public roads shall be subject to such restrictions of user as may be prescribed.

Main roads
6 of 1989
8 of 2017

4.—(1) Main roads shall be the roads so designated by the Minister by notice published in the *Gazette*.

6 of 1989
8 of 2017

(2) In respect of all designated main roads in any area, including any local government authority, the Controller of Roads shall be the highway authority, and all expenses incurred in the planning, designing, construction, care and maintenance of such roads shall be borne by the Government except as provided by the terms of any agreement entered into by the Government with any other government or organization.

6 of 1989
8 of 2017

(3) Subject to section 9, in respect of designated main roads or portions thereof in any local government authority, the highway authority shall be the Controller of Roads:

8 of 2017

Provided that any new construction, major improvements and maintenance activities affecting these roads shall be communicated to the local government authority concerned.

Secondary roads
6 of 1989
8 of 2017

5.—(1) Secondary roads shall be those so designated by the Minister by notice published in the *Gazette*.

6 of 1989
8 of 2017

(2) The highway authority in respect of all designated secondary roads in any area, including any local government authority, shall be the Controller of Roads, or such other person as the Minister may, by notice published in the *Gazette*, appoint, and all expenses incurred in planning, designing, construction, care and maintenance of such secondary roads shall be borne by the Government.

6 of 1989
8 of 2017

(3) Subject to section 9, in respect of designated secondary roads or portions thereof in any local government authority, the highway authority shall be the Controller of Roads:

8 of 2017

Provided that any new construction, major improvements and maintenance activities affecting these roads shall be communicated to the local government authority concerned.

Tertiary roads
6 of 1989
8 of 2017

5A.—(1) Tertiary roads shall be those designated by the Minister by notice published in the *Gazette*.

8 of 2017

(2) The highway authority in respect of all designated tertiary roads in any area, including any local government authority, shall be the Controller of Roads or such other person as the Minister may, by notice published in the *Gazette*, appoint, and all expenses incurred in planning, designing, construction, care and maintenance of such tertiary roads shall be borne by the Government.

(3) Subject to section 9, in respect of designated tertiary roads or portions thereof in any local government authority, the highway authority shall be the Controller of Roads: 8 of 2017

Provided that any new construction, major improvements and maintenance activities affecting these roads shall be communicated to the local government authority concerned. 8 of 2017

6.—(1) District roads shall be those roads in any area including any City, Municipal or Township so designated by the Minister, by notice published in the *Gazette*, after consultation with the District Council concerned. District roads 6 of 1989

(2) In respect of district roads the highway authority shall be the District Council of the District in which the road is situated or such other person as the Minister may appoint by notice published in the *Gazette*.

(3) The expenses of planning, designing, construction, care and maintenance of district roads shall be borne by the highway authority.

(4) A highway authority shall be eligible to receive from the Government such grant towards the cost of construction, care and maintenance of district roads for which it is the highway authority, as the Minister may from time to time determine.

7.—(1) Branch roads shall be those roads in any area including any City, Municipality or Township so designated by the Minister by notice published in the *Gazette*. Branch roads 6 of 1989

(2) The Minister shall have power to designate branch roads on his own motion or after application duly made under section 13.

(3) The Minister shall have power by notice published in the *Gazette* to appoint a highway authority in respect of all or any branch roads.

(4) It shall be competent for the Minister in designating any branch road to order whether and in what proportion the cost of construction, care and maintenance of the road shall be borne by the owners of property served by the road or persons who obtain benefit from the existence of the road or how otherwise such cost shall be borne. Where such costs or any part of them are ordered to be borne by any person other than the highway authority concerned the costs shall be paid by such person to the highway authority in accordance with such regulations as may be made by the Minister and may be recovered by the highway authority as a civil debt.

(5) Any order made under subsection (4) may be varied by the Minister by a subsequent order.

Estate roads
6 of 1989
26 of 1988

8.—(1) Estate roads shall be roads in any area including any City, Municipality or Township area provided for the purpose of internal access in any area being developed, whether by Government or otherwise, for building plots, farms, or other purposes, which are designated by the Minister as such by notice published in the *Gazette*.

(2) The Minister may at any time, by notice published in the *Gazette*, appoint a highway authority in respect of an estate road subject to such regulations, if any ,as may be made under subsection (3).

26 of 1988

(3) The Minister may, after consulting the Minister for the time being responsible for Town and Country Planning, make regulations for the designation, provision, planning, designing, construction, care and maintenance of estate roads in any area which is in course of development other than a Planning Area declared under the Town and Country Planning Act.

Cap. 23:03

(4) The cost of construction, care and maintenance of estate roads shall be borne by the person responsible for the development:

Provided that the Minister may order that, in any case, such costs or any part thereof shall be borne by the owners or occupiers of the land in the area being developed in such proportions as may be specified in the order and any such costs or proportion thereof shall be recoverable by the highway authority from the person or persons liable as a civil debt.

Highway authorities in urban areas
6 of 1989

9.—(1) In respect of any public road other than a designated road in any City, Municipality or Township, the City Council or Municipal Council or Town Council shall be the highway authority and shall be responsible for the planning, designing, construction, care and maintenance of the road—

(*a*) in respect of main roads, the cost of construction, care and maintenance shall be borne in accordance with section 4 (3);

(*b*) in respect of secondary roads, the Municipal Council or Town Council shall be eligible to receive from the Government such grant towards the costs of construction, care and maintenance thereof as the Minister may from time to time determine.

(2) A City Council, Municipal Council or Town Council shall not exercise any of the powers conferred on a highway authority by section 11 (1) (*a*) or (*c*), section 17 (2), section 18, section 30 or section 33 (2).

(3) Nothing in this Act shall be construed as taking away any powers conferred by any other law on a City Council, Municipal Council, Town Council or District Council in respect of the construction, care and maintenance of roads within its area of jurisdiction.

Width of road reserves and effect of reservation
G.N. 18/1982
6 of 1989
8 of 2017

10.—(1) A local government authority shall have power to declare by notice published in the *Gazette*, the width, not exceeding sixty metres, of any road reserve or class or classes of road reserve in its area.

(2) The centre line of the reserve width for a road shall in every case lie down the centre line of the carriageway of the road unless the Minister shall in any case otherwise direct by notice published in the *Gazette*.

(3) Where any existing road is designated as a public road under section 3 the land included within the boundaries of the width described in the preceding subsections of this section which was not previously a road shall be reserved for use as a road and become a road reserve but no compensation shall be payable in respect of such reservation. Subject to subsection (4) a highway authority may at any time enter upon land comprised in any road reserve for the purpose of exercising any powers conferred on it by this Act.

(4) If a highway authority shall desire to carry out any works on land in a road reserve in a manner likely to cause damage to any structure on such land it shall give one month's prior notice to the owner or occupier thereof of its intention:

Provided that in any case in which the structure consists of a building the length of notice required shall be three months.

(5) The owner or occupier of land in a road reserve who suffers damage as a result of works carried out on such land by a highway authority shall be entitled to compensation in respect of such damage in accordance with Part II. The time for making a claim to the highway authority under this subsection shall be within three months after suffering the damage, or such extended time as the highway authority may allow.

(6) No person shall do any of the following acts or things on land in a road reserve without the consent in writing of the highway authority—

(*a*) erect or alter any structure;

(*b*) plant any tree or bush; or

(*c*) prepare for cultivation any land which was not, when the land became road reserve, prepared for cultivation:

Provided that notwithstanding such consent, neither the person doing such act or thing nor any person who may acquire any interest in the land in question shall be entitled to compensation for the value of what has been done if later the land is required for road use:

26 of 1988
8 of 2017

Provided further that in respect of paragraph (*a*) the highway authority shall consult with and have regard to the views of the Commissioner for Physical planning before granting such consent.

Care, maintenance and construction of roads
8 of 2017

11.—(1) Subject to section 9, a highway authority shall have power—

(*a*) for the purposes and subject to this Act, to enter upon any land and there to carry out any works and exercise any powers in relation to any public road for which it is responsible or proposed public road to be concerned therewith;

(*b*) to restrict the use of any public road or part thereof for which it is responsible and to use for such purpose traffic signs or other notices in accordance with this Act, or any other law. Without prejudice to the generality of the foregoing, such restrictions may prohibit the entry of a vehicle on a cycle track or footpath, control the use of bicycles or the movement of animals on any carriageway or footpath or forbid any person to proceed on foot along any part of any road;

(*c*) subject to the special or general directions of the Minister and subject to payment of compensation in accordance with Part II, to widen or divert any public road within the limits of a road reserve and to require the removal of any tree or structure on a road reserve and, if the owner of any such tree or structure fails to remove the same after being required to do so, power to remove the obstruction.

(2) Every highway authority shall have jurisdiction to the extent provided in this Act over those public roads for which it is appointed to be the highway authority and shall be liable to undertake the construction, alteration, care and maintenance of such roads:

Provided that if any highway authority shall fail to maintain any part of any public road for the maintenance of which it is responsible the Minister may, after giving reasonable notice to such highway authority, arrange for the works which he considers necessary for making good such failure, to be carried out in such manner as he shall direct.

(3) Except as otherwise provided in this Act, liability to undertake the construction, alteration, care and maintenance of a public road includes liability to pay all the costs incurred in such construction, alteration, care and maintenance.

(4) If any road is widened or diverted under subsection (1) (*c*) the land occupied by the widened or diverted road shall vest in the Republic as public land and shall be deemed to have been declared public land; and thereupon the land bordering the road on each side within a distance from the centre line of the portion of the road which has a new alignment of half the designated width of the road reserve, shall become road reserve without declaration or other formality. The highway authority shall prepare and register such plans, if any, relating to the widening or deviation as may be prescribed in rules made under section 25 (4). 8 of 2017

(5) Land which ceases to be part of a public road as a result of work effected in accordance with subsection 1 (*c*) shall vest in the owner of the adjoining land upon the terms and conditions upon which he holds such land without formal transfer, unless such land was, immediately before becoming a public road, customary land.

Control points of access, structures, etc. 26 of 1988 8 of 2017

12.—(1) The Minister shall have power to make regulations to control the number, location and design of points of access to all main and secondary roads, and to require the owners of buildings and property to provide service roads to give access to such buildings or property, and to prohibit the erection of any buildings with direct frontage on to any road or road reserve.

(2) Any powers conferred on the Controller of Roads or on any other person by regulations made under subsection (1) may only be exercised after consultation with the Commissioner for Physical planning. 8 of 2017

Opening of branch roads

13.—(1) Occupiers of land adjoining or served by or contributing to the cost of construction, care and maintenance of any road or proposed road outside a Municipality or Township may apply to the Minister, through a highway authority responsible for the public road referred to

in subsection (1) (*a*) (i) to have such road designated a branch road. In such case the following provisions shall be observed and shall be applicable—

(*a*) every application must be in writing and shall specify—

(i) the point on a public road from which the branch road is required;

(ii) the land through or over which it is proposed that a road shall be designated and the names of the owners or occupiers thereof;

(iii) the proposed terminal point of the road;

(iv) how the expenses of construction, care and maintenance are proposed to be defrayed;

(*b*) notice shall be given by the applicants in one newspaper published or circulating in the District in which the road in question is situate or proposed.

(2) The notice prescribed in subsection (1) shall contain adequate details of the application and call upon any person objecting thereto to lodge at the office of the highway authority within three months after the date of the publication of such notice his objections thereto in writing.

Report and recommendations to be submitted to Minister

14.—(1) The highway authority, on receiving any such application, may require the applicants to deposit such sum of money as may appear to be necessary for the purpose of defraying the expenses of causing the road or proposed road to be inspected by a competent person or persons and a report thereon made for submission to the Minister.

(2) After considering any such application and any objection thereto under section 13, and on making such further inquiries as it may deem fit, the highway authority shall make a report and recommendations on the matter to the Minister.

(3) If upon the consideration of any such report and recommendations it shall appear to the Minister that the application is one which shall be approved, he may, by notice published in the *Gazette*, designate such a road to be a branch road and he may, in any event, determine whether the whole or any part of the expense incurred in connexion with the application, including obtaining the report and, if the application is ap-

proved, causing the road to be designated, should be paid and borne by the applicants, and how the deposit shall be disposed of.

Branch roads may be designated secondary or district roads

15.—(1) The occupiers of any land which abuts upon a branch road outside a Municipality or Township or persons who contribute to the cost of maintenance of such a branch road may apply in writing to the Minister, through the highway authority concerned, to have such branch road designated a secondary or district road.

(2) Notice shall be given by the applicants, in one newspaper published or circulating in the District through which such road runs, that such application has been or will be made.

(3) Such notice shall describe the proposal and shall call upon any person objecting thereto to lodge at the office of the highway authority concerned, within three months after the date of the publication of such notice, his objections thereto in writing.

Consideration and determination of application

16.—(1) The highway authority, on receiving any such application, may require the applicants to deposit such sum of money as may be necessary for the purpose of defraying the expense of causing the proposed road to be inspected by a competent person or persons and a report thereon made for submission to the Minister, and of the designation of the road if approved.

(2) After considering any such application and any objection thereto made under section 15, and after making such further inquiries as it may deem fit, the highway authority shall make a report and recommendations on the matter to the Minister.

(3) If after consideration of any such report and recommendations it shall appear to the Minister that the application is one which should be approved, he may, by notice published in the *Gazette*, designate such road a secondary or district road, and may, in any event, determine whether the whole or any part of the expenses incurred in connexion with the application including obtaining the report and, if the application is approved, in causing the road to be designated, should be borne by the applicants, and how the deposit shall be disposed of.

Alterations to roads

17.—(1) The Minister may at any time, by notice published in the *Gazette*, alter the classification of any public road or any part thereof and the width of any road reserve and sections 4, 5, 6, 7, 8 and 10 shall thereupon apply to such road or part thereof or road reserve according to the terms of such notice.

(2) In any case in which a highway authority proposes to divert the permanent alignment of a road beyond the limits of a road reserve, sections 22 to 28 inclusive shall, subject to section 9, apply to such proposal.

(3) In any case in which a highway authority desires to cease to be responsible for the construction, care and maintenance of any road or any part thereof, or in which, as a result of the deviation of the permanent alignment of any road, a highway authority desires to close any road for which it is responsible or any part thereof, or in any other case whatsoever in which it appears to the Minister desirable, for any reason, that any road shall cease to be a public road, the highway authority responsible for such road may cause an advertisement to be published in the *Gazette* and in one newspaper, circulating in the area concerned, giving particulars of the proposal and clearly describing the road sought to be affected.

(4) The notice prescribed in subsection (3) shall call upon any person objecting to the proposal to lodge at the office of the highway authority concerned, within one month after the date of publication of such notice, his objections thereto in writing. A copy of the notice shall also be posted, for general information, at some conspicuous place outside the office of the District Council of the District in which the road is situated.

(5) The highway authority shall consider and notify the Minister of any such objections and shall make recommendations to him.

(6) After considering any such objections and the recommendations of the highway authority the Minister may, after registration of such plans, if any, as are required under section 25 (4) to be registered, by notice published in the same manner, declare that the proposal, of which notice has been so given, is to be carried out.

(7) In any case in which the proposal is that after the publication of the notice referred to in subsection (6) the road or part thereof may continue to be used as a private road, the Minister may by such notice declare that such road or part thereof shall cease to be a public road and thereupon the road or part thereof, unless immediately prior to becoming a public road it was customary land, shall vest as a private road in the owners (who may, if the Minister thinks fit, be described in such notice) of the land adjoining the road or part thereof and, if it was customary land, shall be dealt with in accordance with the Land Act and, in either case, the highway authority shall cease to be responsible for the construction, care and maintenance thereof. Cap. 57:01

(8) In any case in which the proposal is that the public shall cease, after the publication of the notice referred to in subsection

(6), to have the right to use the road or part thereof the Minister may, by such notice, declare that the road or part thereof shall be closed to use by the public, and thereupon the road or part thereof shall cease to be a public road and the land on which it was constructed may be disposed of or dealt with in any manner in which public land may properly be disposed of or dealt with.

Storm water from roads

18.—(1) A highway authority may construct and keep open and clean ditches, drains, culverts and other works for the draining, protection, preservation, improvement, repair, construction or diversion of any road in, through, under or over land adjoining or near a road or road reserve and compensation shall be paid by the highway authority to the owner or occupier of improved land in respect of destruction of or damage to surface rights thereof by such works in accordance with Part II. The valuation date shall be the date of entry on to the land and any claim for compensation shall be made within three months after the act, matter or thing has been done in respect of which compensation is claimed.

(2) Storm water flowing from any road or from any such ditch, drain, culvert or other work as is mentioned in subsection (1) may, subject to subsections (3) and (4), be discharged by the highway authority on to any land adjoining or near a road or road reserve.

(3) Prior to carrying out any work which is liable to discharge storm water on to land adjoining or near a road or road reserve the highway authority responsible for the construction shall consult the owner of the land likely to be affected and, so far as possible, agree a suitable place for the discharge of the water. If no agreement can be reached the matter shall be referred to an agricultural officer who shall advise on a suitable place, and the highway authority shall act according to that advice.

(4) If the storm water is not caused to discharge into a stream or other proper outlet the highway authority shall pay to the owner or occupier of the land on to which the water is discharged, compensation in respect of the cost of the works reasonably necessary to be done by such owner or occupier to prevent any damage likely to be caused by such storm water. The highway authority shall not be liable otherwise in respect of the consequences of such discharge. If no agreement can be reached as to what works are reasonably necessary to be done by the owner or occupier the matter shall be referred to an agricultural officer for advice and the owner and occupier of the land and the highway authority shall act according to that advice.

Storm water from land adjoining

19.—(1) If any owner or occupier of land adjoining or near any public road has constructed drains or contour ridges for the purpose of improving or protecting his property, he shall not

cause or permit storm water to discharge from such drains or contour ridges on to any public road or into any existing road drain beside or under any public road without the permission of the highway authority concerned.

(2) In the event of any application for a permit under subsection (1), the highway authority concerned shall not grant permission unless the applicant agrees to pay the expenses of any additional drain or enlargement or alteration of any existing road drain which is considered necessary by such highway authority.

(3) In the event of the permission being refused or of any dispute as to the necessity for such additional drain or enlargement or alteration of drains arising, the matter shall be referred to the Minister for decision after consultation with the Minister charged with responsibility for Agriculture.

(4) Any person failing to comply with this section shall be guilty of an offence.

Powers of highway authority to control traffic

20.—(1) Subject to this section, where a highway authority is satisfied that, by reason of works of repair or construction being required or being in progress on or near a public road for the maintenance of which it is responsible, such public road should be prohibited to traffic or to traffic of a particular classification or description, or the use of such road should be restricted in any way, such highway authority may, by order, prohibit or restrict the use of such road, or any part thereof in such manner as may be specified in the order, and shall in such order direct the attention of such traffic as may be affected by such order to any alternative route which may be available.

(2) A highway authority shall, not less than fourteen days before making an order under subsection (1), cause notice of its intention to make such order to be published in the *Gazette* and shall also, at least seven days before the date upon which such order comes into force, cause it to be published in like manner. Every such notice shall contain a statement of the effects of the order and a description of the alternative route or routes, if any, available for traffic:

Provided that in any case where the highway authority concerned is satisfied that, owing to the likelihood of danger to the public or serious damage to the road, it is necessary to prohibit or restrict the use of such road forthwith, it may make any order under subsection (1) without publication under this subsection.

(3) So long as any order made under this section is in force all reasonable steps shall be taken by the highway authority to keep posted, in a conspicuous manner, at each end of the part of the road to which the order relates and at the points at which it is necessary for vehicles to diverge from such road, a notice stating

the effect of the order and describing the alternative route or routes, if any, available for traffic and the diversion shall so far as reasonably possible, at all times be clearly indicated to traffic using it by means of suitable traffic signs.

(4) In addition to the powers conferred upon it by subsections (1) and (2), a highway authority may at any time by means of suitable barriers close or restrict the use of all or any part of any road within its jurisdiction for the purposes of repair or reconstruction:

Provided that—

(*a*) subject to section 23, wherever possible a deviation for the passage of traffic shall be provided within or adjacent to the road reserve concerned;

Cap. 69:01

(*b*) all reasonable steps shall be taken to display adequate traffic signs in accordance with the Road Traffic Act giving reasonable warning to traffic using the road of any such closure or restriction.

(5) Any person who uses or permits the movement or use of any animal or vehicle on any part of any road in contravention of any order issued by a highway authority under this section shall be guilty of an offence.

Liability of highway authorities and their staff

21.—(1) No matter or thing done or omitted to be done and no contract entered into by a highway authority and no matter or thing done or omitted to be done by any officer or servant or other person acting under the direction of such authority shall, if the matter or thing was done or omitted to be done or the contract was entered into *bona fide* in pursuance of the duties of the authority in respect of any road, subject any servant or agent of the highway authority to any action, liability, claim or demand whatsoever and any expense incurred by any such servant or agent shall, in connexion with any such action, claim or demand, be paid by the authority out of its funds.

(2) Nothing in subsection (1) shall be deemed to debar a suit where any act or omission has been occasioned by such negligence on the part of the authority, its officers or servants as would create liability under any other law:

Provided that the liability of a highway authority under any law in respect of any injury, damage or loss which may accrue to any person or property through the failure of any public road to sustain any vehicle shall be limited to liability for physical damage to such person or property caused by such failure.

(*a*) for a main road, 60 metres;

(*b*) for a secondary road, 36 metres; 6 of 1989

(*c*) for a tertiary road, 36 metres;

(*d*) for a district road, 36 metres; and

(*e*) for branch roads and estate roads, 18 metres.

(2) The centre line of the reserve width for a road shall in every case lie down the centre line of the carriageway of the road unless the Minister shall in any case otherwise direct by notice published in the *Gazette*.

Power of highway authority to enter upon land for investigation

22.—(1) For the purpose of carrying out investigations in connexion with surveying or setting out the line or course of any proposed road a highway authority shall have power to authorize in writing any member or officer of the authority or other person to enter upon any land with such assistants, workmen, apparatus, instruments, vehicles and tools as may be considered necessary by the person so authorized.

(2) No entry shall be made upon any land in accordance with subsection (1) unless prior notice has been given to the owner or occupier of the land concerned, nor during the hours of darkness.

(3) Compensation shall be paid by the highway authority to the owner and occupier of the land for any damage to or destruction of surface rights on the land caused by the persons entering on such land in pursuance of the powers conferred by this section. Such compensation shall be assessed in accordance with Part II. No other compensation shall be payable in respect of any entry made pursuant to this section. The valuation date shall be the date when notice of intention to enter was given. The time for making any such claim shall be within three months from the date when the damage or destruction was caused.

Temporary deviations

23.—(1) For the purpose of facilitating the construction, repair or maintenance of any public road a highway authority may, after giving prior notice of its intention to the owner or occupier of the land, enter upon any land and construct and maintain thereon temporary deviations of the road:

Provided that—

(*a*) no such deviation shall be constructed on improved land without the approval of the Minister or the concurrence of the owner or occupier of the land;

(*b*) compensation shall be paid by the highway authority to the owner and occupier of improved land affected for any damage to or destruction of surface rights on such land caused

by any entry and acts authorized under the provisions of this section. Such compensation shall be assessed in accordance with Part II; but no other compensation shall be payable in respect of such entry or acts. The valuation date shall be the date when notice of intention to enter was given. The time for making a claim for such compensation shall be within three months from the date when the damage or destruction was caused.

(2) Where a highway authority has exercised any power under this section, it shall, when the deviation is no longer required for the purpose for which it was constructed make good the land affected thereby to the extent necessary to prevent soil erosion.

Power to control land for proposed roads
26 of 1988
8 of 2017

24.—(1) If, during any investigation which is being made by a highway authority for the purpose of determining the line or course of any proposed road, the Minister has reason to believe that any person is doing or intending to do any act or thing likely or calculated to interfere with the proposed road, he may, in writing, request such person to cease or refrain from doing such act or thing.

(2) If any such person fails or refuses to comply with a request made under subsection (1), the Minister may, by notice published in the *Gazette*, declare such land as he considers proper in relation to the proposed road to be controlled for road purposes. Such notice shall specify the owners or occupiers of the land and shall describe the area or areas so controlled.

8 of 2017

(3) Publication of a notice in accordance with subsection (2) shall have the effect of prohibiting any activity whatsoever on the land controlled other than activity which the Minister or the highway authority may, after consulting the Minister for the time being responsible for the administration of the Physical Planning Act, authorize in writing. In giving such authority the Minister or highway authority may impose any conditions.

Act 17 of 2016

(4) A control effected under the provisions of this section shall lapse after the expiration of twelve months except to the extent that it is continued as to any part of the land affected by a reservation effected under section 25.

8 of 2017

(5) As soon as possible after publication of a notice under subsection (2) the highway authority carrying out the investigation shall lodge with the Land Registrar two copies of a plan or plans showing the boundaries of the land affected by the notice.

(6) No person shall be entitled as of right to any compensation in respect of any loss or damage suffered by reason of the exercise by the Minister of any of the powers conferred upon him by this section.

Reservation of a steep of land not exceeding 60 m wide G.N. 18/1982 8 of 2017

25.—(1) As soon as the course of any proposed road has been demarcated, the Minister may, by notice published in the *Gazette* and in a newspaper circulating in the District concerned, reserve a strip of land not exceeding 60 metres wide along such course and shall notify such reservation in writing by registered post or by delivery to the individual owners or occupiers of the land so reserved. Every such notice shall include a list of the properties affected by the reservation and shall specify the office at which plans showing the reserved strip of land may be inspected.

(2) Publication of a notice under this section shall have the effect of—

(*a*) reserving the strip of land described in such notice for road purposes and authorizing the construction of a road thereon;

(*b*) prohibiting upon the land so reserved any activity which would, if the land were road reserve, be contrary to section 10, 19 or 36:

Provided that the Minister may permit such limited use of the land as he may determine, subject to such conditions as he may impose in granting that permission;

(*c*) cancelling any control effected under section 24 of land not included in such notice.

8 of 2017

(3) As soon as possible after any land has been reserved under this section, the highway authority shall, subject to subsection (4), lodge with the Surveyor General and the Land Registrar one copy of plans showing the course of the proposed road.

(4) The Minister, after consultation with the Minister responsible for Lands and Surveys, may make rules regarding the scale and nature of such plans and any other plans referred to in this Act and the registration and inspection thereof. Such rules may include provisions dispensing with the necessity for plans in approved cases relating to the widening or deviation of a road under section 11, to the deviation of the permanent alignment of a road under section 17, or to the variations mentioned in subsection (6).

(5) The registration of such reservation shall not debar the owner of any land affected from transferring or otherwise dealing with such land, but the assessment of compensation shall not be affected or influenced in any way by such dealing.

(6) In any case in which, during construction of the proposed road, any variation in the position of the road is found necessary or desirable fresh plans shall, before designation of the road under section 28, be prepared and lodged in accordance with subsection (3) showing the true position of the road as completed, and compensation shall be adjusted according to the loss or damage actually suffered.

Withdrawal or modification of control or reservation
8 of 2017

26. The Minister may at any time withdraw or modify any control or reservation made under section 24 or section 25 by giving notice in the *Gazette* and by notifying the Land Registrar and, if plans have been lodged with him, the Surveyor General and any owner or occupier of land affected of such withdrawal or modification.

Unauthorized acts on controlled or reserved land

27. Where on any land controlled or reserved under section 10, 24, 25 or 26, any person does any act calculated to impede the purposes for which the land has been controlled or reserved or which he has not been authorized by the Minister or highway authority to do, the Minister or highway authority may, by notice in writing, direct such person, at his own expense and within such period as shall be specified in such notice, to restore such land to the condition in which it was immediately before such unauthorized act, and if such person fails to comply with such direction within the period specified, he shall be guilty of an offence, and the Minister or the highway authority may cause to be carried out such work as may be necessary to restore the land and may recover from such person as a civil debt any expense incurred in such work.

Designation of new road and compensation
G.N. 18/1982
8 of 2017

28.—(1) After completion of the construction of a road and registration of plans under sections 22 to 26 inclusive, the Minister shall, by notice published in the *Gazette*, designate such road as a public road in accordance with the classification specified in section 3 and thereupon the road shall vest in the Republic as public land and the land on each side of the road to the extent specified in such notice, not exceeding a total width of 60 metres, shall be road reserve.

(2) Compensation shall be payable to the owner and occupier of the land affected which shall be assessed in accordance with Part II. The valuation date shall be the date of the notice published under section 25.

(3) Each owner and occupier desiring compensation shall, within three months after publication of a notice under section 25, lodge with the highway authority notice of his intention to make a claim for compensation in respect of the loss or damage which he anticipates will result to him therefrom. Compensation shall be assessed according to the loss or damage actually sustained by the claimant and shall be

payable as soon after the loss or damage is sustained as the amount of compensation can be assessed.

(4) In assessing compensation under this section account shall be taken of any compensation paid under section 22.

Power to take materials for roadworks 1 of 1981

29.—(1) A highway authority, or any person duly authorized by it, shall at all times have the power to enter upon any land (except within the boundaries of the area of a City, Municipality or Township or of the area of land comprised in any Mineral Right, non-exclusive prospecting licence, claim, permit, or other authority, subsisting under the Mines and Minerals Act) and to take therefrom any material (including water, other than water from an artificial dam, well or borehole save with the consent of the owner) necessary for the construction, maintenance or repair of roads or proposed roads for which the highway authority is responsible and for providing in connexion therewith labour camps, access roads and space for stock-piling, and no compensation shall be payable except as provided in this section.

Cap. 61:01

(2) Whenever a highway authority considers it necessary to exercise the powers conferred by subsection (1) it shall be lawful, after prior consultation with the owner or occupier, for it to select any place or places which it may deem suitable from which to take material:

Provided that the owner or occupier of the land shall, if he so desires, be entitled to select another place or other places on his land for the said purpose, and if such other place or places shall be found by the highway authority to be reasonably accessible and suitable as regards quantity and quality of materials the materials shall be taken from the place or places selected by the owner or occupier.

(3) A highway authority shall not be entitled to take possession of materials on which any person other than its servants has expended any labour, or to take the stones or other material from any house, wall or other structure.

(4) The rights conferred on a highway authority by this section shall be exercisable from time to time and the compensation provided for in this section shall be payable from time to time in respect of each occasion on which such rights are exercised, to the extent of any fresh loss or damage suffered by the owner or occupier on each occasion.

8 of 2017

(5) Whenever land is entered for any purpose in accordance with the powers conferred by this section, compensation shall be paid by the highway authority to the owner and occupier of the land in respect of surface rights in accordance with Part II; the valuation date in any such

case shall be the date when the owner or occupier of the land suffered the loss or damage which gave rise to the claim. The time for making a claim for such compensation shall be within six months after any loss or damage is suffered.

(6) A highway authority shall have the right when constructing access roads to the sites of quarries, excavations or other places from which material is to be obtained of making openings in fences where necessary:

Provided that such openings shall be effectively closed by the highway authority against the straying of livestock during the operations and the fences properly restored on the completion of the work.

(7) Any quarry or other excavation made in exercise of the powers conferred by this section which may be a source of danger shall on the completion of the work be securely fenced off, filled in or otherwise made safe against danger to life and limb of persons or animals.

(8) It shall be incumbent on any highway authority, making any quarry or other excavation in accordance with the powers conferred by this section, to ensure that in any case where such quarry or other excavation, if left unfilled, is likely to be a source of danger to health by becoming a breeding ground for mosquitoes or other water-borne parasites, such quarry or other excavation is filled in to the extent necessary to prevent such danger.

(9) Any owner aggrieved by the decision of a highway authority under this section may appeal to the Minister. The Minister may make rules regulating the procedure on such appeals:

Provided that if the circumstances are such that in the opinion of the highway authority any delay in exercising any right under this section would be unreasonable the highway authority concerned may take the materials forthwith, and the Minister may make such subsequent order in the matter as he deems fit.

Highway authorities and employees may park vehicles, erect huts, etc., on private land G.N. 18/1982

30. A highway authority and persons employed by it in the construction or repair of any road or proposed road shall have the right, provided that before exercising such right under this section it or they shall have given reasonable notice to and have consulted with the owner or occupier of any land which will be affected—

(*a*) to park vehicles and to erect tents, huts or other temporary buildings on any site convenient to it or them, subject to the following conditions—

(i) no tents, huts or other temporary buildings shall be erected within 180 metres of any dwelling house without the consent of the occupier of the dwelling house; and

(ii) if the owner or occupier of such land objects to any site chosen for the erection of tents, huts or other temporary buildings, the matter shall be referred to the Minister who may make such order thereon as he may deem just and reasonable;

(*b*) to place and store plant and equipment on land outside the road reserve where there is insufficient room on the road reserve;

(*c*) to take and otherwise make provision for water necessary for the proper execution of the work and for animals and labourers:

Provided that it shall not be taken from any artificial dam, furrow or well or borehole save with the consent of the owner;

(*d*) to cut down and remove trees or bushes on land forming part of a road reserve where necessary in the construction or repair of public roads, provided that such trees when cut down shall belong to the owner of the land upon which the said trees were cut.

Contractors may exercise rights granted to highway authority

31. The rights granted to and the obligations of a highway authority under sections 18, 23, 29 and 30 may be exercised by a contractor under the supervision or direction of the highway authority engaged in the construction or repair of public roads or proposed roads and on behalf of any highway authority:

Provided that in the case of any damage done by a contractor any compensation payable under this Act shall be paid by the highway authority concerned.

Power to undertake ancillary works 6 of 1989

32.—(1) A highway authority may, for the purpose of protecting traffic on any road from danger or of making the crossing of any road less dangerous to pedestrians, erect, light, maintain, alter and remove places of refuge in such road, and construct, light, maintain, alter, remove and close subways or overbridges for the use of foot passengers.

(2) A highway authority shall have power to construct and maintain works in the carriageway—

(*a*) along any length of road for separating a part of the road which is to be used by traffic moving in one direction from a part of the road which is to be used (whether at all time or at particular times only) by traffic moving in another direction;

(*b*) at cross roads or other road junctions for regulating the movement of traffic; and

(*c*) for providing places of refuge for the protection of pedestrians crossing the road.

(3) The powers conferred by subsection (2) shall include power to light any such works as aforesaid, to pave, grass or otherwise cover them or any part of them, to erect pillars, walls, rails or other fences on, around or across them or any part of them and to plant on them trees, shrubs and other vegetation either for ornament or in the interests of safety.

(4) The power conferred by this section to construct any works shall include power to alter or remove them.

Provision of footpaths, cycle tracks, etc.
6 of 1989

33.—(1) A highway authority shall have the power to provide on public land, wherever it shall deem it necessary or desirable for the safety or accommodation of pedestrians, proper and sufficient footpaths by the side of roads under its control and to provide on public land, wherever it shall deem necessary for the safety or accommodation of ridden horses, driven livestock, agricultural machinery, pedal cyclists or other special types of traffic, grass or other margins or tracks by the side of roads under its control, and to control the manner of user of such paths, margins and tracks by different classes of the public.

(2) If there is a proposal that any footpath, margin or track is to be provided under subsection (1) on land which is not public land, then section 11 (1) (*c*) and section 11 (4) shall apply to such proposal as though the road was being widened.

Ferries and pontoons

34.—(1) A highway authority shall have power to construct and operate any ferry or pontoon to facilitate the crossing of any river or stream.

(2) Any ferry or pontoon operated under subsection (1) shall be operated in accordance with any other law for the time being in force.

(3) A highway authority shall have power to construct bridges over rivers and streams and over or under any railway line or inland waterway:

Provided that nothing in this subsection shall detract from the rights, powers, duties and responsibilities conferred upon any railway company by the Railways Act.

Cap. 69:03

Provision of cattle grids

35. The Minister shall have power to make regulations controlling the construction of cattle grids on any road and providing for the recovery by the highway authority of the cost incurred in constructing and maintaining any cattle grid.

Prevention of damage, etc, to roads

36.—(1) Except in so far as may be necessary in any emergency in order to enable him to use the road in a lawful manner, no person shall, otherwise than in accordance with this Act—

(*a*) encroach on any public road or road reserve by making, erecting or altering any structure, ditch or other obstacle or by planting trees or therwise:

Provided that nothing in this paragraph shall be construed to apply to a barrier of a pattern and in a position approved by the highway authority and duly erected in accordance with any law in force for the control of traffic for the purposes of examination in connexion with immigration or customs or for the control of human, animal or plant pests or diseases;

(*b*) leave or place or negligently allow to fall on any public road any timber, stones or other material so as to obstruct the same or endanger persons using the road, or deposit rubbish, debris or other material on any public road;

(*c*) intentionally or negligently damage in any way any part of any public road or gather, heap up or take away any gravel, crushed stone, sand, soil or other material from any public road;

(*d*) fill in or obstruct any ditch or drain made to carry water off a public road, whether on the road, the road reserve or elsewhere, or, by making dams, ditches drains or other works, cause the flooding of or damage to any public road;

(*e*) cause or allow any timber, sledge, plough or other heavy material or thing, not being wholly raised above the ground on wheels, to be moved along or across a public road;

(*f*) obstruct the free passage on a public road by exposing goods or merchandise of any description thereon;

(*g*) cause or permit or suffer to be caused any damage to any public road as a result of failure to comply with any law limiting the type, weight or dimensions of vehicles or the load carried thereon:

Provided that the highway authority may authorize under such conditions as it may impose the doing of an act otherwise prohibited under this section.

(2) Any person contravening any of the provisions of subsection (1) shall be guilty of an offence.

(3) Any cost of repair or other work incurred by a highway authority as a result of anything done or omitted in contravention of section 10 (1) or (6) may be recovered by the highway

authority as a civil debt from the person who did or omitted such thing or caused it to be done or omitted.

(4) A highway authority may, by notice in writing, direct any person who encroaches on any road or road reserve by making, erecting or planting any structure, ditch, tree or other obstacle contrary to subsection (1) to remove or fill in the same within the time to be stated in such notice.

(5) If any person fails to comply with a direction given under subsection (4) the highway authority may cause the obstacle specified in the notice to be removed or filled in.

(6) The cost of removing or filling in any obstacle under subsection (5) may be recovered by the highway authority as a civil debt from the person failing to comply with the notice.

Regulation of under-takers' works 6 of 1989

37.—(1) In respect of any public road or road reserve an undertaker shall not execute any undertakers' works except in accordance with such regulations as may be made in accordance with the next succeeding subsection.

(2) The Minister may make regulations—

(*a*) requiring the prior submission of sufficient details of proposed undertakers' works to the highway authorities concerned for consideration;

(*b*) requiring a highway authority to signify to the undertakers its approval or disapproval of the proposals within a specified time and to give reasons for any such disapproval:

Provided that in any case where the undertakers and the highway authority are unable to agree the details of the proposed works the undertakers may refer the matter to the Minister for decision;

(*c*) requiring undertakers to give notice of their intention to commence works approved or the subject of a decision of the Minister and prescribing the form and manner in which such notice shall be served and the effect thereof;

(*d*) governing the execution by undertakers of works being emergency works as defined in such regulations.

(3) If any undertaker executes any works in contravention of this section he shall be liable to a fine of K1,000.

6 of 1989

(4) If any highway authority concerned objects to any works carried out or alleged or proposed to be carried out by any undertaker in respect of any road or road reserve specified under this section or to any emergency works and is unable to reach agreement with the undertakers to meet the objections the highway authority may refer the matter to the Minister for decision.

Execution of undertakers' works 6 of 1989

38.—(1) An undertaker shall execute works within roads or road reserves in accordance with such proposals and details thereof as may have been agreed under the preceding section or in accordance with any decision of the Minister made thereunder, and with all such despatch as is reasonably practicable.

(2) An undertaker shall execute any items of works of an incidental nature and restore the road to a proper state of repair with all reasonable despatch after completion of any part of the works to the reasonable satisfaction of the highway authority:

Provided that the highway authority by agreement with the undertaker may itself undertake the reinstatement of the upper levels of the road at the undertaker's expense.

(3) If an undertaker fails to carry out reinstatement in accordance with his obligations under this section he shall be liable to a fine of K100 in respect of each day of such failure. 6 of 1989

(4) The undertaker shall be liable to pay to the highway authority the cost of remedying any subsidence or deterioration of reinstatement work carried out by the undertaker if such subsidence or deterioration takes place within six months of the completion of such reinstatement and if such deterioration is shown to have been attributable to defective workmanship or the use of defective materials:

Provided that the highway authority concerned shall have given reasonable notice to the undertaker before remedying the subsidence or deterioration.

Undertakers to provide warning and safety precautions 6 of 1989

39.—(1) An undertaker or a contractor employed by an undertaker who is executing works shall secure at his expense that the following requirements are observed during and in connexion with the execution of the works and of any restoration or other repair to any road occasioned thereby—

(*a*) that, so long as the road or road reserve is open or broken up (except in a place to which the public have no right of access and are not permitted to have access), such works are adequately fenced and guarded and all reasonable steps are taken to keep the works lighted in such a manner as to give adequate warning to the public during the hours of darkness;

(*b*) that traffic signs (within the meaning of the Road Traffic Act) are so placed, and where so directed, operated and lighted in accordance with any directions in that behalf which may be given by the Minister;

(*c*) that no greater width or length of road than is reasonably necessary is open or broken up at any one time;

(*d*) that there is no greater obstruction to traffic on any road or interference with the normal use of such road than is reasonably necessary;

(*e*) that any spoil or other material not required for the execution of the works or of any consequent restoration or repair to the road is carried away as soon as it is reasonably practicable; and

(*f*) that any other requirement imposed in accordance with any regulations made by the Minister is complied with.

(2) If any undertaker or any contractor employed by an undertaker fails to satisfy an obligation to which he is subject by virtue of subsection (1) he shall be liable to a fine of K100 for each day of such failure.

6 of 1989

(3) If an undertaker fails to satisfy an obligation to which he is subject by virtue of subsection (1) as regards any requirement mentioned in paragraph (*a*), (*b*) or (*e*) thereof, the highway authority may do anything necessary for securing observance of that requirement and the undertaker shall pay to the authority an amount equal to any cost reasonably incurred by it in so doing.

Works at railway crossings

40.—(1) An undertaker executing works on a road at any railway level crossing shall comply with any reasonable requirements as to the arrangements for executing the works, as to hours of work, or as to any other such matters which are imposed upon him by the authority having the management of the railway, for securing the safety of persons employed in connexion with the works and for ensuring that interference with traffic on the railway caused by the execution of such works is reduced so far as is practicable.

(2) If any undertaker fails to comply with an obligation to which he is subject by virtue of the preceding subsection he shall be guilty of an offence.

Removal of apparatus

41. Where there is placed in or on a road or road reserve apparatus required only in connexion with building operations or other work on land adjacent to such road, if the apparatus is not removed on completion of such building or other work, the highway authority may give the undertaker notice requiring him to remove it and if it is not removed within eight days from the giving of such a notice, the authority may remove it and the undertaker shall pay to the authority an amount equal to the cost reasonably incurred in such removal and in any restoration or repair to the road occasioned by the presence or removal of the apparatus concerned.

Powers enjoyed by electricity undertakings

42. The powers conferred by any other law upon any authorized electricity undertaking in relation to roads or streets which require to be exercised with the consent or approval, or subject to the requirements or superintendence of the authority responsible for the road or street shall in so far as they relate to the doing of work in or over any road, street, road reserve or street margin be exercised in accordance with the preceding sections of this Act.

Limitation of time in which works may be executed

43.—(1) Subject to this section, a statutory power of undertakers to break up or open a road, being a power conferred for any purposes other than road purposes or purposes of a railway undertaking, shall not be exercisable on or under any road during the twelve months following either—

(*a*) the end of any period during which the use by vehicles of the carriageway of such road has been prohibited or the width thereof available for vehicular traffic has been reduced to less than two-thirds of its normal width for the purposes of execution of works for road purposes; or

(*b*) the completion of a resurfacing extending to one-third or more of the width of the carriageway of such road.

(2) Subsection (1) shall not apply unless the following conditions are satisfied—

(*a*) the highway authority has given to the undertaker concerned at least three months before the date on which the works for road purposes or resurfacing, as the case may be, were substantially begun, a notice stating that the works for such purposes were intended to be carried out and specifying the date of their commencement; and

(*b*) the works for road purposes or resurfacing, as the case may be, were substantially begun on, or within one month from the date so specified or, if any undertakers' works were in progress in the road on that date, within one month from the completion of such undertakers works or in either case within such extended period as may have been agreed between the highway authority and the undertaker concerned.

(3) Nothing in this section shall apply to any breaking up or opening of a road in any of the following cases—

(*a*) for the carrying out of any emergency works;

(*b*) in relation to any part of a road other than a carriageway, in the case of works relating only to the installation, maintenance, repair or removal of a service pipe or service line or overhead telegraph line or overhead electric cable;

(*c*) in the case of any works carried out by an undertaker, where the execution of such works is in fulfilment of an obligation imposed upon the undertaker by provisions of this Act and could not reasonably be effected without breaking up or opening the road as the case may be; and

(*d*) in the case of any breaking up or opening of a road executed with the consent of the highway authority concerned.

(4) If any undertaker or any contractor employed by an undertaker breaks up or opens a road in contravention of this section—

(*a*) he shall pay to the highway authority concerned an amount equal to any cost reasonably incurred by such highway authority in restoring or repairing the road concerned;

(*b*) without prejudice to his liability under the preceding paragraph he shall be guilty of an offence.

PART II

Compensation

Assessment of compensation generally and for surface rights
6 of 1989
8 of 2017

44.—(1) Where, the owner or occupier of land or both of them shall be entitled to compensation in respect of the exercise of powers conferred by this Act in relation to land or surface rights thereon, then all persons having any interest in the land or surface rights affected by the exercise of the powers shall be entitled to such compensation as is provided for in this Act according to the extent and mature of their respective interests.

8 of 2017

(2) In any case in which such compensation is limited to compensation in respect of surface rights, if the land on which such surface right exists, is private land, the amount of compensation shall be based on the loss or damage suffered by the claimant arising from the damage to or destruction of, his interest in the surface rights on such land valued at the valuation date and shall include—

(*a*) the damage, if any, sustained by the person interested at the valuation date by reason of the severance of such land from his other land or other injurious matter affecting his other property, movable or immovable, by reason of the exercise of the powers conferred by this Act; and

(*b*) if, in consequence of the matters giving rise to the claim, the claimant is compelled to change his residence or place of business, the reasonable expenses, if any, incidental to such change, but shall

not include any sum in respect of improvements on land in a road reserve effected since the land became a road reserve.

Compensation for land which becomes public land
8 of 2017

45.—(1) Wherever it is provided in this Act that the owner or occupier of land or both of them shall be entitled to compensation in respect of land which becomes public land, the following provisions shall apply—

8 of 2017

(*a*) in the case of customary estate, subject to subsection (2), the occupier shall be entitled to reasonable compensation in respect of disturbance and the amount of such compensation shall be assessed using open market value based on the loss suffered by the claimant arising from damage to or destruction of his interest in the land, and surface rights on such land may include compensation for other disturbance—

(i) where he has to move his residence or place of business;

(ii) where alternative land cannot be made available to him and the land remaining to him for any purposes is not an economic unit; or

(iii) where alternative land is made available to him, and where the making of the alternative land equally as fit for use as the land of which he has been deprived of, is likely to involve a loss in terms of money, materials or work, however, in assessing compensation under this paragraph, the total compensation for disturbance shall not in any case exceed the total of—

A. what would have been the value of the land in its improved condition at the valuation date less its value at such date in an unimproved condition;

B. the damage, if any, sustained by the occupier by reason of severing such land from other land occupied by him; or

C. the reasonable expenses, if any, incidental to a change of residence or place of business if, in consequence of the matters giving rise to the claim, he is compelled to effect such change;

(*b*) in the case of private land, the persons interested in such land shall, according to their respective interests therein, be entitled to compensation which shall, subject to subsection (2) be assessed in accordance with section 46.

(2) In the case of land which before it became public land was road reserve subsection (1) shall apply with the following variations—

(*a*) no compensation shall be paid in respect of improvements effected since the land became road reserve;

8 of 2017

(*b*) compensation shall be limited to compensation in respect of damage to or destruction of surface rights and to interest in the land itself and shall be payable only when such damage or destruction takes place. In such case the valuation date shall in the absence of other express provision in this Act, be the date when the damage or destruction takes place.

Matters to be taken into consideration in assessing compensation for alienated land
G.N. 18/1982
8 of 2017

46.—(1) In assessing the amount of compensation under section 45 (1) (*b*) the following matters shall be taken into consideration—

(*a*) the market value of the land or interest therein of the claimant at the valuation date;

(*b*) the damage, if any, sustained by the person interested, at the valuation date, by reason of the severance of such land from his other land or other injurious affecting of his other property moveable or immoveable by reason of the exercise of the powers conferred by this Act;

8 of 2017

(*c*) if, in consequence of the matters giving rise to the claim, the claimant is compelled to change his residence or place of business the reasonable expenses, if any, incidental to such change and good-will thereof;

(*d*) any increase in the value of the other land or other benefit of the person interested at the valuation date likely to accrue from the construction of the road;

(*e*) the relief obtained by the claimant as a result of the taking of the land from the necessity of carrying out in whole or in part any order or direction against the land taken made under any law for the time being in force relating to the use and protection of land when the work required by the order or direction has not been commenced or completed at the valuation date.

(2) For the purpose of subsection (1) (*a*)—

8 of 2017

(*a*) if the market value has been increased by means of any improvement made by the claimant or his predecessor in interest, after the notice to acquire, such increase shall be disregarded unless it be proved that the improvement was made in good faith and not in contemplation of the construction of the road;

(*b*) the following matters shall be disregarded—

(i) any enhancement of the market value due to the proposal to construct or extend the road;

(ii) any increased value thereof due to use of the land or any premises thereon which is contrary to law or could be restrained by a court;

(iii) any damage sustained by the claimant which, if caused by a private person, would not be a good cause of action;

(iv) the special suitability or adaptability of the land for road purposes;

(v) the degree of urgency which has led to the taking of the land; and

(vi) any disinclination of the claimant to part with his interest in the land.

(3) For the purpose of subsection (1) (*d*) the increase in value of the other land and the other benefit likely to accrue shall, where the land forms part of an estate—

(*a*) not less than 160 hectares and not more than 400 hectares in extent, be deemed equal in value to two per centum of the total area of the estate;

(*b*) exceeding 400 hectares in extent, be deemed equal in value to four per centum of the total area of the estate:

Provided that—

(i) where the land taken is improved land this subsection shall not operate to deprive the person interested of compensation in respect of damage to or destruction of surface rights existing at the valuation date on the land taken; and

(ii) where the land taken forms part of an estate less than 160 hectares in extent it shall not, in the absence of evidence, be assumed that there is any increase in the value or other benefit to be taken into consideration.

Claims for compensation
6 of 1989
8 of 2017

47.—(1) Any person desiring to claim compensation shall make a claim in writing to the highway authority liable to pay such compensation within the time prescribed for making claims and shall give particulars of the amount claimed and the basis of the claim:

6 of 1989

Provided that—

8 of 2017

(*a*) in the case of customary estate, the claim may be made orally to a customary land committee which shall be required to record the claim in writing through the assistance of the land clerk who shall forward the claim to the officer responsible for land matters within the local government area and such officer shall in turn forward the claim to the relevant highway authority;

8 of 2017

(*b*) a Land Tribunal may in any proper case extend the time for making a claim even though no claim is made before the prescribed time for making it has expired.

(2) On receipt of a claim the highway authority responsible shall agree to pay the claim or forthwith make a written offer to the claimant in settlement thereof.

8 of 2017

(3) In every case, if compensation is not agreed within two months after the date of the claim the assessment of compensation may be referred by the highway authority or the claimant to a Land Tribunal.

6 of 1989
8 of 2017

(4) A Land Tribunal shall consist of a Resident Magistrate and two assessors appointed by the Judicial Service Commission, on the recommendation of the Ministry responsible for land matters, and the Tribunal shall determine the amount of compensation by a majority decision.

6 of 1989
8 of 2017

(5) The Land Tribunal under subsection (4) shall have jurisdiction in respect of all claims for compensation under this Act, irrespective of the amount thereof, and shall, in case the compensation relates to disturbance of the occupier of any customary land, consult the customary land committee of such area and the board shall proceed to assess the amount of compensation after giving the claimant and the highway authority an opportunity of being heard, and the Land Tribunal may award a reasonable amount of compensation and costs as may be necessary in the circumstances of the claim.

Procedure before Land Tribunals
8 of 2017

48. The Chief Justice may make rules to regulate the procedure to be followed before a Land Tribunal and for constituting the Land Tribunal.

Appeal to High Court
6 of 1989
8 of 2017

49. Where the claimant or the highway authority is not satisfied with the amount of compensation awarded, he may apply to the High Court for judicial review within one month from the date of the award by the Land Tribunal in accordance with the rules made by the Chief Justice under the Court's Act.

Cap. 3:02

50. [*Repealed by* 8 *of* 2017]

PART III

Supplementary and Transitional

How notices to be served
8 of 2017

51.—(1) Whenever under any of the provisions of this Act, any notice is required to be served upon or given to the owner or occupier of land then, in respect of a customary estate, such requirement shall be

deemed to have been satisfied by service of the notice on a customary land committee for the area in which the land concerned is situate.

(2) Whenever a notice is served upon a Chief under subsection (1) that Chief shall inform the occupier of the land concerned of the purport and effect of the notice.

(3) Whenever under any of the provisions of this Act any notice is required to be served upon or given to the owner or occupier of private land, service of the notice shall, where practicable, be made on the person therein named.

(4) When such person cannot, after reasonable inquiry, be found the service may be made on any adult member of his family residing with him and if no such adult member can be found the notice may be served by fixing a copy on the outer door of the house in which the person therein named ordinarily dwells or carries on business or by fixing a copy on the notice board of the local government authority of the District in which the land in question is situate and on some conspicuous part of such land. 8 of 2017

(5) When it is uncertain who is the owner of any land notice shall be given to every person who claims to be interested in such land.

(6)—(*a*) Every occupier of private land who is served with a notice under this Act relating to land of which he is not the owner, shall, forthwith after receipt of the notice, inform the owner of the land of the purport and effect of the notice or shall give a copy of the notice to such owner.

(*b*) The duty of the occupier of land under paragraph (*a*) shall also apply in respect of every notice affixed on a conspicuous part of such land under subsection (4).

(7) In any case in which the name of the owner or occupier of any land is not known, and cannot after reasonable inquiry be ascertained, it shall be sufficient to address any notice to the owner or occupier by that description giving also an adequate description of the land in question.

(8) Where the owner of any land is not in Malaŵi a notice sent by post to such person at his last known address shall be deemed to have been duly served on such person on the date when it would ordinarily be delivered in due course of post:

Provided that where prior notice to the owner of land is required to be given before a power of entry under this Act is exercised, such requirement shall be deemed to be satisfied by giving notice to the occupier of the land.

(9) Wherever in this Act it is provided that the owner or occupier of land shall be consulted and such person cannot be found, it shall be sufficient to serve a notice on such person informing him of the matter in respect of which consultation is required.

Obstruction of officers

52. Any person who wilfully resists, obstructs, hinders or molests, and any person who incites, assists or procures another person to resist, obstruct, hinder or molest any person acting in the discharge of any duty or the performance of any act which he is authorized or required to perform by this Act shall be guilty of an offence.

General penalty for offences
6 of 1989
8 of 2017

53. Any person guilty of an offence against this Act or any regulation or rule made thereunder for which no special penalty is provided by this Act or by any regulation or rule made thereunder shall be liable to a fine of K50,000 and to imprisonment for three months.

Rules

54.—(1) The Minister may by order made rules generally for carrying into effect any of the purposes or provisions of this Act, except where express provision is made that such rules be made by some other person.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may authorize any highway authority to demand and receive tolls from any person using any bridge, ferry, or pontoon maintained by such highway authority and may provide for exemptions from payment of such tolls.

(3) In particular and without prejudice to the generality of the foregoing power the Minister may make rules providing for the division of all public roads into classes, other than those provided for in section 3, and for restricting the use of each such class of road, including prescribing maximum gross weights for vehicles and trailers using each such class of road.

Transitional
25 of 1950

55. All roads declared to be public roads under the Public Roads Ordinance, 1950 (now repealed) shall, until designated under this Act, be under the control of the Chief Roads Controller who may make such arrangements regarding the care and maintenance thereof as, subject to any special or general directions of the Minister, he shall think proper.

Saving
25 of 1950

56. All proclamations, directions and rules made or issued under the Public Roads Ordinance, 1950 (now repealed) shall be deemed, in so far as they are not inconsistent with this Act, to have been made or issued under this Act and remain if force until other provision shall be made under this Act, or any other Act.

SUBSIDIARY LEGISLATION

G.N. 17/1963
131/1963
132/1963
161/1963
162/1963
163/1963
106/1964(N)
107/1964(N)
142/1964(N)
143/1964(N)
162/1964(M)
120/1965
142/1965
26/1966
81/1966
82/1966
148/1966
149/1966
199/1970
268/1970
88/1971
43/1982

DECLARATION OF PUBLIC ROADS AND HIGHWAY AUTHORITIES

under ss. 3 *to* 8 *and* 17

1. The Minister has designated the roads in the Schedule to be public roads as follows—

(*a*) the roads in Part I to be main roads in accordance with section 4 of the Act;

(*b*) the roads in Part II to be secondary roads in accordance with section 5 of the Act;

(*c*) the roads in Part III to be district roads in accordance with section 6 of the Act;

(*d*) the roads in Part IV to be branch roads in accordance with section 7 of the Act;

(*e*) the roads in Part V to be estate roads in accordance with section 8 of the Act.

Full descriptions of the roads may be obtained from the Chief Roads Controller, Ministry of Works and Supplies, Private Bag 316, Lilongwe 3.

2. The Minister has, in respect of the branch roads set out in Part IV of the Schedule, appointed the respective highway authorities listed in the third column of that Part.

3. The Minister has appointed the Chief Roads Controller as highway authority in respect of the estate roads set out in Part V of the Schedule.

SCHEDULE

G.N. 43/1982

Part I

Main Roads Serial No.	*Particulars*	*Region*	*Approximate length (kilometres)*
M1	Mozambique Border at Muloza River–Mulanje–Thyolo–Limbe–Zomba–Lilongwe–Mzimba–Kacheche–Chiweta Karonga–Chitipa–Zambian Border near Chitipa but excluding sections in Zambia	Southern, Central and Northern	1168
M2	Road M1 at Limbe–Blantyre–Mwanza–Mozambique Border . .	Southern	109
M3	Road M1 at Liwonde–Mangochi–Namwera–Mozambique Border . .	Southern	132
M4	Road M1 at Lilongwe–Mchinji–Zambian Border	Central	117
M5	Road M1 at Alimaunde–Salima	Central	93
M6	Road M2 at Chileka–Matope–Road M1 at a point approx. 8 km north-west of Balaka	Southern	111
M7	Road M1 at Limbe–Road M1 at Fundis Cross	Southern	48
M8	Road M2 at Blantyre–Chikwawa–Bangula thence in a South Easterly direction to Nembe where it crosses the railway line thence in a South South Easterly direction between the Shire River and the railway line to Nsanje–Mozambique Border . .	Southern	220
M9	Road M1 at Thyolo–Chiromo—Road M8 near Bangula	Southern	89
M10	Road M1 near Lumbadzi–Ntchisi–Nkhotakota	Central	138
M12	Road M1 near Mzimba–Mzuzu–Nkhata Bay	Northern	145
M13	Road M1 near Mzimba–Loudon–Zambian Border	Northern	53
M14	Road M1 at Engutwini–Ekwendeni–Mzuzu	Northern	47
M15	Road M3 at Mangochi–Monkey Bay	Southern	63
M16	Road M1 at Limbe—Road M2 at Queen's Corner	Southern	1
M17	Road M1 at Balaka–Mua—Road M5 at Salima	Central	145
M18	Road M17 at Mua—Road M15 at Monkey Bay	Central	58

Part II

Secondary Roads Serial No.	*Particulars*	*District*	*Approximate length (kilometres)*
S2	Karonga–Songwe River	Karonga	31
S3	Road S2–Kambwe	Karonga	0.3
S5	Road S85–Chinunka	Chitipa	13
S7	Road M1–Mwamkumba	Chitipa	21
S8	Road M1 at Thumbi–Mzumara . .	Mzimba, Rumphi	37
S9	Road S86–Livingstonia	Rumphi	3
S10	Road S85–Nyika Plateau Road . .	Rumphi	116
S11	Road M1 at Alimaunde–Road M4 at Chitedze	Lilongwe	24
S13	Road M1–Nathenje–Road M1 . .	Lilongwe	1.6
S14	Road M1–Lilongwe Quarry	Lilongwe	3
S15	Road M1 at Lumbadzi–Road M5 . .	Lilongwe	8
S16	Road M4–Kasiya–Road S34 at Dangaliro	Lilongwe, Dowa	111
S17	Road S34 near Dangaliro–Road S11 near Dzenza	Lilongwe	27
S19	Road M4–Nthema–Road M1	Mchinji, Kasungu	113
S20	Road M4–Mkanda–Road S19 . .	Mchinji	64
S21	Road M1–Dedza–Road M1	Dedza	5
S22	Road M1–Road M17 near Golomoti . .	Dedza, Ntcheu	34
S23	Road M1 at Linthipe–Lobi–Road S27 at Mphunzi	Dedza	40
S25	Road M1 at Linthipe–Mpata Milonde–Road S21 at Dedza	Dedza	42
S27	Road M1 near Dedza–Road M1 near Kachenzi (Linthipe Valley Road) . .	Dedza	32
S28	Road S25–Dedza School	Dedza	10
S29	Road M5–Grand Beach	Salima	21
S30	Road S29–Lake Circuit–Road S29 . .	Salima	26
S31	Road M10–Dowa–Road M5	Dowa	26
S32	Road M1 near Majiga–Road M10 . .	Dowa	8
S33	Road M5 at Kanyanyeva Quarry–Benga–Road M10 at Nkhotakota	Dowa, Salima, Nkhotakota	108
S34	Road M1–Dangaliro–Nambuma . .	Dowa	19
S35	Road M1 at Chitakali–Road S40 at Chambe Cross	Mulanje	13
S36	Road M6–Road M1 at Nsipe . .	Ntcheu	23
S37	Road M1–Bilila	Ntcheu	13
S38	Road M8–Road M9 near Muona (East Bank Road)	Chikwawa, Nsanje	61
S39	Road M15 near Lalwe Hill–Cape Maclear	Mangochi	19
S40	Road M7–Chambe Cross–Phalombe . .	Mulanje	32
S41	Road M1 near Zomba–Jali–Road S40 at Phalombe	Zomba, Mulanje	72
S42	Road M1–Magomero–Road S41 . .	Zomba, Chiradzulu, Mulanje	50

Secondary Roads Serial No.	*Particulars*	*District*	*Approximate length (kilometres)*
S43	Road S40 at Phalombe–Fort Lister Gap–Nkhulambe	Mulanje	14
S44	Road M1–Road M12 at Mtangatanga . .	Mzimba	23
S45	Road M14 near Dunduzi–Chikwina–Road M12 at Timbiri	Nkhata Bay, Mzimba	53
S46	Road M12 at Mzuzu–Road S45 . .	Mzimba	11
S47	Road M1 near Phazi–Mabulabo–Chisemphere–Road M1	Kasungu, Mzimba	35
S49	Road M1 at Jenda–M13–Edingeni–Euthini–Lake Kazuni–Road S85 at Chikwawa . .	Kasungu, Mzimba Rumphi	193
S50	Road M1 at Eswazini–Road S49 at Kamcoco	Mzimba	32
S51	Road M1 north of Kafukule–Road S49	Mzimba	14
S52	Road M1 at Ezondweni–Road M14 near Ekwendeni	Mzimba	18
S53	Road M12 at Nkhata Bay–Bandawe–Dwangwa River–Road M10 at Nkhotakota	Nkhata Bay, Nkhotakota	192
S54	Road M1 at Kasungu–Road M10 at Mbobo	Kasungu, Nkhotakota	74
S55	Road M1 at Balaka–Road M3 at Mwai	Machinga	29
S56	Road M1–Nyenyesi–Road M3 at Chiponde	Mangochi, Machinga, Zomba	122
S57	Road M1–Matambi–Road M1	Mulanje	19
S58	Road M3 at Chingo–Lungwena River . .	Mangochi	27
S59	Road M1 at Conforzi Blanket Factory–Miss Glover's turn–off	Thyolo	13
S60	Road M1 at Conforzi Blanket Factory–Khonjeni siding	Thyolo	23
S61	Road S60 at Manganiza–Lujenda turn–off	Thyolo	6
S62	Road M1–Chiradzulu–Road M1 . .	Chiradzulu	26
S63	Road M7–Mikolongwe	Chiradzulu	5
S65	Road M1 at Zomba–Zomba Plateau via Mlunguzi Dam, and onwards–Road S65 . .	Zomba	15
S66	Road M1 at Mtanta–Road S49 at Euthini	Mzimba	26
S67	Road M1 at Kasungu–Road S19 at Kamphuru	Kasungu	24
S68	Road M8 at Blantyre–Michiru East–Road M2 near Chileka	Blantyre	14

Secondary Roads Serial No.	*Particulars*	*District*	*Approximate length (kilometres)*
S69	Road S41–Mpyupyu–Kachulu	Zomba	23
S70	Road M2 near Chileka–Chilangoma–Walker's Ferry	Mwanza	24
S71	Road M1–Road S27	Dedza	5
S73	Road M1 at K.A.R. Memorial, Zomba–Road M1 at a point approximately 13 kilometres from Zomba	Zomba	14
S74	Road M1–Balaka Trading Centre–Road M1	Machinga	1.6
S75	Road M1–Road D187 near Kasungu	Kasungu	3
S76	Road M1–Chilumba Jetty	Karonga	6
S77	Road S10–Road D5 near Nthalire . .	Rumphi, Chitipa	43
S78	Road M1–Bua–Road M1	Kasungu	3
S79	Road S20–Chisasa	Mchinji	31
S80	Road M8–Tomali	Chikwawa	11
S81	Road M8–Ngabu–Road M8	Chikwawa	13
S82	Road M8–Road S81 at Ngabu . .	Chikwawa	2.4
S83	Road M8–Mbobo–Sande–Nguluwe–Nanthana–Road M8	Nsanje	14
S84	Road M1–Kasungu–Road M1	Kasungu	5
S85	Road M1 at Kacheche–Rumphi–Katumbi–Chisenga–Road M1 at Chitipa	Rumphi, Chitipa	150
S86	Road S85 near Njakwa–Nchenachena–Livingstonia–Road M1 at Chitumba . .	Rumphi	87
S87	Road M1 at Kapoka–Road S85 at Chenda	Chitipa	13
S88	Road M1 near Njakwa–Road S85 . .	Rumphi	1.6
S89	Road S49–Vuvumwe River Bridge–Mbalachanda–Walika	Mzimba	51

Part III

District Roads Serial No.	*Particulars*	*District*	*Approximate length (kilometres)*
D1	Road S2 at Kasiyata–Kyunga River	Karonga	11
D3	Road M1 at Kapoka–Misuku Court–D3 at Sokolo	Chitipa	53
D4	Road S7 at Mphalula–Ipenza . .	Chitipa	19
D5	Road S85 at Chisenga–Nthalire–Road S85 at Mpolomombo but excluding section in Zambia	Chitipa	79
D6	Road M1 at Hara–Njalayankhunda–Road M1 at Wovwe	Karonga	29

District Roads Serial No.	*Particulars*	*District*	*Approximate length (kilometres)*
D7	Road S85–Machiwanda	Rumphi	5
D8	Road S86–Nchenachena	Rumphi	1.6
D9	Road S86–Chiwerewere–Road M1 at Chiguliro	Rumphi	16
D10	Road S86–Phwampwa–Road M1 at Chivungula	Rumphi	6
D11	Road S85 at Chitanga Market–Road D15 at Janakazi	Rumphi	14
D13	Road S85–Maonga	Rumphi	11
D14	Road S85–Chimatate	Rumphi	10
D15	Road S85 at Chikwawa–Road S49 at Bowe	Rumphi, Mzimba	31
D16	Road S8–Jintajembe Area	Rumphi	10
D17	Road S86 at Phoka–Chakaka	Rumphi	10
D18	Road S85–Katumbi Market	Rumphi	0.3
D19	Road S85–Vwaza Marsh–Zambian Border	Rumphi	23
D20	Road M5–Chiwamba	Lilongwe	19
D21	Road M1–Nkhoma–Road M1 at Linthipe	Lilongwe, Dedza	31
D22	Road M1–Bunda Loop–Road M1 . .	Lilongwe	71
D23	Road S13–Chadza Watershed–Road D22 at One Penny	Lilongwe	19
D24	Road S11 at Chitukula–Road M1 near Lumbadzi	Lilongwe	23
D25	Road S16 at Nsaru–Nambuma–Road S16 at Mpampanya	Lilongwe, Dowa	34
D26	Road S16 at Kasiya–Malembo–Road S16	Lilongwe	27
D27	Road S16 at Kabudula–Road S16 near Mdzonga	Lilongwe	14
D28	Road M4 at Kaphiri–Road S16 at Fiveways	Lilongwe	24
D29	Road D22–T.A. Chadza–Road D23 near Chizinga	Lilongwe	23
D30	Road D22–Kamphini	Lilongwe	3
D31	From Lilongwe City Boundary–Dzalanyama	Lilongwe	34
D32	Road M4–Road D31 at Likuni	Lilongwe	5
D33	Road M4 at Silombe–Cholansanu but excluding section in Mozambique . .	Mchinji	19
D34	Road M4 at Chimutu–Zulu–Road M4 at Che Yadi	Mchinji	3
D35	Road M4 at Namazina–Msitu–Mavwere . .	Mchinji	15
D36	Road M4 at Silombe–Msitu–Road M4 . .	Mchinji	21

District Roads Serial No.	*Particulars*	*District*	*Approximate length (kilometres)*
D37	Road M4 at Che Yadi–Kalumbe–Road M4	Mchinji	13
D38	Road M4–Mchekeni Market	Mchinji	5
D39	Road M4–Mbachundu	Mchinji	11
D40	Road M4–Chioko–Chiwosya	Mchinji	18
D41	Road M4–Ludzi Mission	Mchinji	6
D42	Road S20 at Mchinji–Road S19 at Matutu	Mchinji	21
D43	Road D31–Road M4 via Likuni Mission . .	Lilongwe	10
D44	Road S19 at Matutu–Kalambwe . .	Mchinji	34
D45	Road S23 at Maonde–Mphati but excluding section in Mozambique	Dedza	14
D46	Road M4 at Chileka–Malingunde–Road D22 at Mitundu	Lilongwe	53
D47	Road S21 at Dedza–Mkweza Court–Chikusi	Dedza	29
D48	Road M1–Ngonoonda–Road D50 near Mua	Dedza	26
D49	Road S23 at Mwenje–Road D55 at Kameme	Dedza	14
D50	Road M5 at Chipoka–Mtakataka–Road S22	Salima, Dedza, Ntcheu	50
D51	Road S22 at Golomoti–Road D50 at Mtakataka.	Dedza	16
D52	Road S23 at Tete–Road D22 near Chiam	Dedza	32
D53	Road S27 at Macheneka Mission–Road D45 at Kaliosi	Dedza	13
D54	Road S23 at Tete–Road M1 at Nthulu . .	Dedza, Lilongwe	13
D55	Road D22 at Katalala–Road D52 near Katewe Court–Road S23 at Lobi	Dedza, Lilongwe	14
D56	Road D59 near Chinku–Road D52 . .	Dedza	5
D57	Road D55 at Chidawere–Kanyezi . .	Dedza	5
D58	Road D59 at Livinza–Kapiriuta–Kafere but excluding sections in Mozambique . .	Dedza	42
D59	Road S23 Lobi–Road D52 near Themuka . .	Dedza	11
D60	Road D21 at Mkhola–Kulongwe . .	Dedza	23
D61	Road D60 at Chauma–Kalulu	Dedza	11
D62	Road S25 at Mpata Milonde–Tambala . .	Dedza	16
D63	Road D60 at Mayani–Maganga	Dedza	5
D64	Road D60 at Mayani–Gwengwe . .	Dedza	11
D65	Road D21–Kasina	Dedza	3
D66	Road S25 near Kakola–Kaphuka . .	Dedza	3

District Roads Serial No.	*Particulars*	*District*	*Approximate length (kilometres)*
D68	Road S25 at Milonde School–Road D47 at Mkomeko	Dedza	10
D69	Road D47 at Mkheza Court–Kanyenda Lengwe	Dedza	21
D70	Road D69 at Kumpotola–Kapesi . .	Dedza	3
D71	Road D48 at Makungwa–Chinkombelo–Nadzikale	Dedza	13
D72	Road D50 at Chabwera–Chinseu . .	Dedza	10
D73	Road M1 at Mwalawamkhonde–Kalilombwe–Nkhanganya	Dedza	5
D76	Road D58 at Mikondo–Lifidzi River . .	Dedza	6
D77	Road D55 at Chinku–Kafotokoza. . .	Dedza	6
D78	Road D77 at Mchenga–Chafumbwa–Mathumba	Dedza	13
D79	Road D58 at Njonja–Njati	Dedza	5
D80	Road D58 at Mikondo–Kambadza . .	Dedza	1.6
D81	Road S22 at Golomoti–Ndendingoni . .	Dedza	19
D82	Road M1 at Mponela–Road M1 at Bua Bridge	Dowa	42
D83	Road D82 at Kasese Estate–Ngara . .	Dowa	5
D84	Road S30 at Fish Eagle Inn–Kambiri Point–Road S29	Salima	11
D85	Road M1 at Madisi–Mpali Estate Road D82	Dowa	13
D86	Road S30–Road D84 near Airfield . .	Salima	1.6
D87	Road D82 near Mponela–Road M10 at Mbonokero	Dowa, Ntchisi	21
D89	Road D87–Kanyangala	Dowa	6
D90	Road M1–Pemba–Road M10 at Makanjila	Dowa	24
D91	Road M10–Kongwe Mountain–Road S31	Dowa	16
D92	Road M10–Chadza	Dowa	8
D93	Road S31 at Dowa–Kongwe Mission	Dowa	3
D94	Road D93–Kambi	Dowa	13
D95	Road M5 at Mvera Mission–Mujere Road	Dowa	10
D96	Road S33 near Chitala–Makanjila Court	Salima	16
D97	Road S33 at Chesalino–Kalambe Market	Dowa, Salima	3
D98	Road S33–Mpanje–Chikombwe Estate	Salima	18
D99	Road S33 at Kaniche–Makiyoni . .	Salima	10
D100	Road S33 at Kaniche–Kasache . .	Salima	16
D101	Road S33 near Chirua Bridge–Mamuona Market	Salima	3
D102	Road S29–Mikuti–Road S29 at Ndalankhwanda	Salima	5

District Roads Serial No.	*Particulars*	*District*	*Approximate length (kilometres)*
D103	Road S30 near Maganga–T.A. Maganga	Salima	3
D104	Road S16 at Kayembe–Kasuntha . .	Dowa	16
D105	Road S16 at Chitanga–Road S16 at Chisepo Bridge	Dowa	15
D106	Road S16–Chisepo	Dowa	3
D107	Road S16 at Kayembe Cimcira–Road D112 at Mlengwe	Dowa	5
D108	Mangochi Town Boundary–M15 near Malikalios Fisheries	Mangochi	14
D109	MDC Fisheries, Michisi–M15 near Nkudzi	Mangochi	40
D110	Road S39 Cape Maclear Road–Road M15 near Monkey Bay	Mangochi	3
D111	Road M1 near Dzoole–Road D112 at Mlengwe	Dowa	23
D112	Road M1–Msimbe–Road S16 at Mkwinde	Dowa	14
D113	Road M1–Nkonde Estate–Nauci–Road M1	Dowa	16
D116	Road M1 at Mphata–Kansapato–Kasinje–Sospla–Road M15 near Chungwe Hill . .	Ntcheu, Mangochi	124
D117	Road S37 at Bilila–Banda–Katema Road M3 at Mangochi	Ntcheu, Mangochi	89
D118	Road D1 16 at Mphepozinai–Gowa . .	Ntcheu	11
D119	Road D116 at Kasapato–Road S37 . .	Ntcheu	21
D122	Road D116 at Bonongwe–Mitongwe–Road M17	Ntcheu	10
D123	Road M1 at Biriwiri–Billiate–Ngoche–Neno Road M2	Ntcheu, Mwanza	151
D124	Road M6 at Manjawila Road D123 at Billiate	Ntcheu	40
D125	Road M6 at Senzani Road D124 at Matale	Ntcheu	11
D126	Road M1 at Bemvu–Road D124 at Matale	Ntcheu	19
D127	Road E16 at Ntcheu–Mpira School . .	Ntcheu	5
D129	Road M9 at Mkanga–Sankulani Road M9	Nsanje	29
D130	Road M8 Mbeu	Nsanje	21
D131	Road M8 at Nsanje–Nyamadzere . .	Nsanje	5
D132	Road M8 at Marka–Lulwe–Mission . .	Nsanje	14
D133	Road M8 at Sorjin–Mbenje	Nsanje	6
D134	Road E19 at Chikwawa–Chapananga–Mozambique Border	Chikwawa	87
D135	Road E19 at Chikwawa–Livingstone Falls	Chikwawa	24

District Roads Serial No.	*Particulars*	*District*	*Approximate length (kilometres)*
D136	Road M8 at Ngabu–Nchalo . .	Chikwawa	24
D137	Road M8–Road D135 at Ntchalo . .	Chikwawa	3
D138	Road M8–Sande	Chikwawa	6
D139	Road M8 at Goma–Road D136 at Nsomo	Chikwawa	6
D140	Road M8 at Lundu–Therere–Road M8 at Goma	Chikwawa	55
D141	Road D134–Moses	Chikwawa	3
D142	Road M8 at Nkhwangwa–Dolo–Road M8 at Thudzu	Chikwawa	24
D143	Road M8–Masseah	Chikwawa	3
D144	Road S40 at Phalombe–Kalinde . .	Mulanje	23
D145	Road S40–Road M7 (Mlomba Road) . .	Mulanje	43
D147	Road M1 at Malosa Customs Post–Ndala–Mkhulambe–Road D114 at Kambona . .	Mulanje	50
D148	Road M1 at Chinakanaka–Chinyama . .	Mulanje	26
D150	Road M1 near Kafukele–Njuyu . .	Mzimba	10
D151	Road M1 near Hora–Emoneni	Mzimba	1.6
D152	Road S44–Bulukutu	Mzimba	5
D153	Road M1–Luwawa Dam	Mzimba	8
D154	Road M1–Hoho	Mzimba	6
D155	Road M1–Katete Mission	Mzimba	1.6
D156	Road M1–Ekhohlo	Mzimba	5
D157	Road D269–Kapopo	Mzimba	6
D158	Road M1–Ehlehleni	Mzimba	8
D159	Road M13–Emchakachakeni	Mzimba	6
D160	Road E6 at Mzimba–Chimutu Hara Road S49 near Mbawa	Mzimba	42
D164	Road S47 at Mabulabo–Chiwandauka . .	Mzimba	11
D165	Road M13 Road S49 (Mbawa access) . .	Mzimba	2
D166	Road S49–Malidade Jere–Road S49 at Kazuni	Mzimba	39
D167	Road M1 at Champira–Kamando Road S47 at Mabulabo	Mzimba	58
D168	Road S49–Mzambazi Mission–Road S66	Mzimba	3
D169	Road S49–Tom Makwakwa . .	Mzimba	6
D170	Road M1–Mzalangwe	Mzimba	5
D172	Road S52–Zombwe	Mzimba	3
D173	Road M14 at Lazaro Jere–Road M1 near John Mzumara	Mzimba	24
D174	Road M13–Road S49 at Edingeni . .	Mzimba	26
D175	Road M12 at Timbiri–Luweya River(Kavuzi River Road)	Nkhata Bay	29
D177	Road D175 at Chinyakula–Road B1 at Chombe Tea Estate	Nkhata Bay	13
D178	Road M1–Semlemba	Kasungu	29

[Subsidiary] *Declaration of Public Roads and Highway Authorities*

District Roads Serial No.	*Particulars*	*District*	*Approximate length (kilometres)*
D179	Road M1–Kaluluma–Road S47 . .	Kasungu	3
D180	Road M1 near Msusu River–Kachinda–Road D190 at Kamtuwale Manze . .	Kasungu	31
D181	Road D178–Offesi	Kasungu	10
D182	Road S54–Road D183 at Chamama . .	Kasungu	34
D183	Road S54 near Bua Drift–Chamama–Kapelula	Kasungu, Ntchisi	35
D184	Road S54–Kadifula–Bua River at Chobwe	Kasungu	13
D185	Road M1 at Mayani–Road S19 at Lisandwa	Kasungu	16
D187	Road M1 at Kasungu–Lifupa Game Camp	Kasungu	53
D188	Road D187 at Linga–Mthunduwala . .	Kasungu	53
D189	Road M1 at Katema–Kaphaizi	Kasungu	13
D190	Road M1 at Mphowa–Chulu–Dwangwa River	Kasungu	31
D191	Road M1–Kanyinji–Road D180 . .	Kasungu	26
D192	Road M1 at Bwanali–Road S54 near Chipaso	Kasungu	10
D193	Road S19 at Katondo Estate–Bua Drift . .	Kasungu	6
D194	Road S19 at Lisandwa–Road D188 at Changaluwa	Kasungu	23
D197	Road S54 at Malomo–Maluza	Ntchisi	14
D199	Road D290 at Ngambe–Road D197 at Malambo	Ntchisi	32
D200	Road S54–Malomo–Road M10 at Katalao	Ntchisi	14
D201	Road D87–Road D290 at Chipokosa . .	Ntchisi	8
D203	Road S53–Kaombe River	Nkhotakota	5
D205	Road M10 near Onze–Chanika	Nkhotakota	8
D206	Road S33–Benga–S33 (Loop Road) . .	Nkhotakota	6
D207	Road S53–Likowa River	Nkhotakota	19
D208	Road S53–Sani	Nkhotakota	5
D209	Road M10 at Ntchisi–Nthondo, near Benga	Ntchisi	18
D210	Road M10 at Mbonekera–Chimbundu–Tanga–Road S33	Nkhotakota, Ntchisi	43
D211	Road D210 at Ntchisi–Zambara . .	Ntchisi	13
D212	Road D210 near Chimbundu–Mwansambo–Road D210 near Tanga	Ntchisi, Nkhotakota	16
D214	Road D210 at Chitembwe–Mzandu . .	Ntchisi	13
D215	Road S33–Mwadzama–Road D206 at Benga	Nkhotakota	13
D217	Road M1 at Liwawadzi–Phimbi . .	Machinga	34
D218	Road S56–Mpita–Mposa	Machinga	21

District Roads Serial No.	*Particulars*	*District*	*Approximate length (kilometres)*
D219	Road D218–Lingoni	Machinga	1.6
D220	Road S56 at Mselema–Road D223 near Mpiri Mission	Machinga	8
D221	Road M1 at Liwonde–Road S56 near Mlomba	Machinga	24
D222	Road S56 at Ntaja–Kawinga	Machinga	6
D223	Road S56 at Nyenje–Chiuta . .	Machinga	34
D224	Road M3 at Ulongwe–Chiyaka . .	Machinga	8
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D226	Road S56 at Mbela–Chilipa–Road D117 . .	Machinga, Mangochi	31
D227	Road M3 at Stephen–Bar	Mangochi	6
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D229	Road M3 at Kilembe–Liponda Estate Road D232	Mangochi	14
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D231	Road D116 at Malembo Mission–Road S39	Mangochi	23
D232	Road M3 at Namwera–Katuli	Mangochi	27
D234	Road M2 at Chileka–Kombwe–Michiru Estate–Blantyre City Boundary . .	Blantyre	26
D235	Blantyre City Boundary–Mitsidi Mission	Blantyre	3
D236	Road M1 at Mtawira–Road M2 at Blantyre City Boundary	Blantyre	13
D237	Salisbury/Blantyre Road through Mozambique–Thambani but excluding section in Mozambique	Mwanza	3
D238	Road M6 north of Matope–Simon . .	Mwanza	19
D239	Road M2 at Humbole–Beacon 33 on Mozambique Border–Road D123 at Beacon 28 but excluding section in Mozambique . .	Mwanza	48
D240	Road M6 at Lirangwe–Road S73 near Namadidi	Blantyre, Zomba	50
D241	Road M1 at Bvumbwe–Chawi	Thyolo	10
D242	Road D244 at about 3 kilometres from Mwanayamula–northwest to railway crossing	Zomba	3
D243	Road S59 at Sambadzukulu–Muonekera–Mikolongwe	Thyolo	18

District Roads Serial No.	*Particulars*	*District*	*Approximate length (kilometres)*
D244	Road D240 near Mwanayamula–Phimbe	Zomba	18
D245	Road D243 near Sambadzukulu–Road M1 near Luchenza	Thyolo	11
D246	Road S61–Railway line near Makapwa Mission	Thyolo	10
D247	Road M1–Bvumbwe Court	Thyolo	8
D248	Road M1 at Thunga–Amalika Forestry Station	Thyolo	6
D249	Road M7–Road S62 at Mombezi . .	Chiradzulu	19
D250	Road M7 near Thuchila Agricultural Station–Thuchila Court	Chiradzulu	8
D251	Road S62–Ndunde	Chiradzulu	6
D252	Road M1–Domasi Mission	Zomba	10
D253	Road M1–Domasi–Road M1	Zomba	5
D254	Road D253 at Domasi–Mtwice	Zomba	3
D255	Road M8 at Bangula–Chikao–Nsanje(former M8)	Nsanje	45
D256	Road M1–Amika–Road S73	Zomba	8
D257	Road M1–Namiwawa–Road S41 . .	Zomba	14
D258	Road S41–Mikuyu	Zomba	5
D259	Road S41–Kimu	Zomba	6
D260	Road D240 near Ndawali–Road D244 near, and North of, Masaula . .	Zomba	13
D261	Road S69–Khanda	Zomba	8
D262	Road S41–Mayaka–Road D277 . .	Zomba	24
D264	Road D240–Chinkwezule–Namitambo . .	Zomba, Machinga	24
D265	Road D240–Nankhunda	Zomba	1.6
D266	Road B2 at Naminkhwenya–Chingadzi–Mikolongwe	Thyolo	18
D267	Road M1 near Bvumbwe–Road D266	Thyolo	6
D268	Road M1 near Luchenza–Road S60 at Chimombo	Thyolo	11
D269	Road S49–Chafisi–Road M13 on Zambian Border at Mqoca	Mzimba	35
D270	Road S2 at Mwenitete–Ngerenge . .	Karonga	3
D271	Road D238–Lisungwe Bridge–Road D123 near Kundembo	Mwanza	48
D272	Road M1 near Suza–Gogodi . .	Kasungu	10
D273	Road M1–Kakware	Kasungu	5
D274	Road S47 at Chisemphere–Road D178	Kasungu	8
D275	Road S19–Santhe	Kasungu	5
D276	Road S29–Bibi Kuluunda	Salima	19
D277	Road M1 at Thondwe–Road S42 at Nasawa	Zomba	16
D281	Road M2 at Mwanza–Thambani . .	Mwanza	26
D282	Road M1–Road D82 at Nyongo . .	Dowa	14

District Roads Serial No.	*Particulars*	*District*	*Approximate length (kilometres)*
D283	Road S49, 6.5 kilometres North of Kamteteka–Road D160 near Mphonda School	Mzimba	39
D284	Road M1 near Chitedze–Road D31 near Malingunde	Lilongwe	34
D285	Road S16 at Mbabzi–Lingadzi	Lilongwe	5
D286	Road M1 at Ntcheu–Chiole Mission . .	Ntcheu	5
D287	Road M2–Road D239	Mwanza	8
D288	Road S19 at Chipumi–Kalulu	Mchinji	6
D290	Road D82 near Mponela–Road M10 at Mbonekera	Dowa	27
D291	Road D116 at Sosola–Road D117 near Chilipa	Mangochi	45
D292	Salima–Domira Bay	Salima	19
D293	Road S85 at Cholozi–Road D294 at Zidawiro	Rumphi	10
D294	Road S85 at Bolero Court–Road D295 at Chakoma	Rumphi	8
D295	Road S85 at Chikulamasinda–Road D294 at Bangula	Rumphi	14
D296	Road M1–Chirimba	Karonga	5
D297	Road M8–Mpamba School	Blantyre	5
D298	Road M7–Namitambo Court	Chiradzulu	8
D299	Road D249 at Tawani–Nakuwa	Chiradzulu	19
D300	Road M1–Chitera	Chiradzulu	5
D301	Road M1 at Njuli–Road S62 at Thomasi	Chiradzulu	6
D302	Road D160 near Manyamula School–Road S49 near Engalaweni	Mzimba	11
D303	Road D229–Nsondoli	Mangochi	47
D304	Road M4–Sinde–Road D36	Mchinji	17
D305	Road M4–Tembwe–Masungwa–Chilinga–Road D38	Mchinji	16
D306	Road D44–Mukundi	Mchinji	7

Part IV

Branch Roads Serial No.	*Particulars*	*Highway Authority*	*District*	*Approximate length (kilometres)*
B1	Road S53 at Limphasa–Chombe Tea Estate	Brokers (Malaŵi) Limited	Nkhata Bay	5
B2	Road M1 at Thunga–Road S59 at Miss Glover's Turn off	Chiefs Roads Controller	Thyolo	13
B3	Road M9 near Chinzama Stores–Zoa Estate– Sandama	Zoa Tea Estate Limited	Thyolo	21

Branch Roads Serial No.	*Particulars*	*Highway Authority*	*District*	*Approximate length (kilometres)*
B4	Road S73 at Maw's building–Portland Company boundary at Changalume	Chief Roads Controller	Zomba	3.4
B5	Road S45 at Choma turn–off–Malaŵi Army field range	Chiefs Roads Controller	Nkhata Bay	34
B6	Road M15–Mtumbuka Fisheries (Malachias Brothers)	Chief Roads Controller	Mangochi	1
B7	Road M15–Fisheries Research Laboratory and Nielsen Brothers (Yiannakis)	Chief Roads Controller	Mangochi	1.6
B8	Road B10–Yiannakis Fisheries	Chief Roads Controller	Mangochi	1
B9	Blantyre City Boundary–Matenje	Chief Roads Controller	Blantyre	1.6
B10	Road M15–Palm Beach	Chief Roads Controller	Mangochi	3
B11	Road M1–Lilongwe City Boundary (Malvern Road extension)	Chief Roads Controller	Lilongwe	3
B13	Road M12 near Mbowe–Mazamba	Department of Forestry	Nkhata Bay	29
B14	Road M2–Mwanza Hotel	Chief Roads Controller	Mwanza	1.6
B15	Road D248 near Thunga–Chisunga Estate Boundary	Central Africa Company Limited	Thyolo	8
B16	Road M8–Phocera (ADMARC)	Chief Roads Controller	Nsanje	0.6
B17	Road M8–Ntonde	Chief Roads Controller	Nsanje	1.2
B18	Road M8–Tengani	Chief Roads Controller	Nsanje	3
B19	Road M8–Tengani	Chief Roads Controller	Nsanje	2.2
B20	Road M8–Nyamula School	Chief Roads Controller	Nsanje	0.8
B21	Road M8–Lundu	Chief Roads Controller	Nsanje	0.6

PART V

Estate Roads Serial No.	*Particulars*	*District*	*Approximate length (kilometres)*
E1	Karonga Settlement Area	Karonga	11
E2	Rumphi Settlement Area	Rumphi	8
E3	Mchinji Settlement Area	Mchinji	8
E4	Dedza Township	Dedza	6
E5	Mulanje Settlement Area	Mulanje	3
E6	Mzimba Settlement Area	Mzimba	5
E7	Mzuzu Municipality	Mzimba	23
E8	Nkhata Bay Settlement Area	Nkhata Bay	5
E9	Kasungu Township	Kasungu	2
E10	Nkhotakota Settlement Area	Nkhotakota	3
E11	Ntchisi Settlement Area	Ntchisi	2
E12	Mangochi Township	Mangochi	6
E13	Thyolo Settlement Area	Thyolo	2
E14	Dowa Settlement Area	Dowa	6
E15	Mponela Settlement Area	Dowa	2
E16	Ntcheu Settlement Area	Ntcheu	3
E17	Nsanje Settlement Area	Nsanje	2
E18	Chiromo Settlement Area	Nsanje	2
E19	Chikwawa Settlement Area	Chikwawa	3
E20	Machinga Settlement Area	Machinga	2
E21	Chiradzulu Settlement Area	Chiradzulu	2
E22	Ndirande Settlement Area	Blantyre Urban	3
E23	Lojwa Settlement Area	Kasungu	2
E24	Madisi Settlement Area	Kasungu	2
E25	Chipoka Settlement Area	Salima	2
E26	Ekwendeni Settlement Area	Mzimba	1

PUBLIC ROADS (ACCESS) REGULATIONS

G.N. 297/1965

under s. 12

Citation

1. These Regulations may be cited as the Public Roads (Access) Regulations.

Construction of point of access

2.—(1) No point of access to a main or secondary road may be constructed or made without the prior consent in writing of the Chief Roads Controller.

(2) Application for such consent shall be made in such form and manner as may from time to time be prescribed by the Chief Roads Controller.

(3) In granting any consent the Chief Roads Controller may impose such conditions or requirements as to the location and design of a point of access as he may think fit, having regard to the safety and convenience of the users of the main or secondary road to which the proposed access point will be constructed or made.

Closing of point of access

3. The Chief Roads Controller may for the safety or convenience of traffic close any existing point of access to a main or secondary road.

Provision of service road

4.—(1) The Chief Roads Controller may at any time require the owner of any building or property to provide a service road to an approved point of access in such manner and in accordance with such scheme as the Chief Roads Controller may decide.

(2) Any such scheme may contain a provision that the cost of the scheme shall be borne by the owners of any buildings or property to which the point gives access in such proportions as the Chief Roads Controller may decide.

Appeal

5.—(1) A person aggrieved by any decision of the Chief Roads Controller made under these Regulations may appeal to the Minister by lodging with the Minister written grounds of appeal within 30 days of the notification of such decision to such person.

(2) The Minister shall make such enquiry into the grounds of the appeal as he may think fit.

(3) The Minister may refuse the appeal, or allow the appeal with or without such conditions or requirements or directions to the Chief Roads Controller as he may think fit.

(4) The Minister's decision made upon the appeal shall be final and binding and no further right of appeal shall lie.

Offences

6. Any person contravening any of the provisions of these Regulations or of any conditions or requirements made thereunder shall be guilty of an offence.

Damage

7.—(1) If any person constructs or makes a point of access to a main or secondary road without the consent required by these Regulations or in contravention of any conditions or requirements imposed by virtue of these Regulations, the Chief Roads Controller may by notice in writing direct such person to make good any damage caused thereby to the main or secondary road or road reserve.

(2) If any person fails to comply with a direction given under the preceding subregulation the Chief Roads Controller may cause to be made good any damage to the main or secondary road or road reserve.

(3) The cost of making good any such damage may be recovered by the Chief Roads Controller as a civil debt from the person failing to comply with the notice.

RESERVATION OF LAND

G.N. 129/1964(N) 268/1970 41/1982

under s. 25

The Minister has reserved a strip of land 200 feet (60.96 metres) wide along the course of the following road realignments of the Zomba—Limbe road.

A list of the properties affected by the reservation is set out in the Schedule hereto.

Drawing Nos. 220/3, 4, 5, 6, 7, 8 and 10 showing the reserved strip of land may be inspected at the following offices: Chief Roads Controller, Ministry of Works and Supplies, Private Bag 316, Lilongwe 3.

SCHEDULE

Property	*Owner or Occupier*
Realignment No. 2, "Betty's Bar", Dwg. Nos. 3 and 4	Customary Land, Chief Chikowi and Chief Mlumbe
Realignment No. 3, Naiwale, Dwg. No. 5	Major J. D. N. C. Henderson, Mpalanganga Estate, Thondwe
Realignment No. 4, Makoka, Dwg. No. 6	Mr. John Foot, Triamba Farm, Private Bag 209A, Salisbury Mr. Costas Theologas, P.O. Namadzi
Realignment No. 5, Ntonda, Dwg. Nos. 7 and 8	Public Land
Realignment No. 6, Njuli, Dwg. No. 10	Mrs. M. M. Sibbald, P.O. Thondwe Rev. J. D. Sangaya and Mr. D. D. Mkwaila, P.O. Box 413, Blantyre

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PUBLIC ROADS (REGULATION OF BICYCLE TRAFFIC) RULES

G.N. 32/1939 195/1961

under s. 9

1. These Rules may be cited as the Public Roads (Regulation of Bicycle Traffic) Rules. Citation

Prohibition of bicycles on public roads

2. It shall be lawful for the Chief Roads Controller in the interests of public safety to prohibit by notification in the *Gazette* the riding of bicycles upon any specified section of a public road, such section being defined by notice-boards erected by the roadside at either end thereof.

Penalty

3. Any person riding a bicycle between notice-boards so erected shall be liable to a fine of one Kwacha and, in default of payment, to imprisonment for fourteen days:

Provided that it shall not be a contravention of this rule to propel with the hands an unmounted bicycle upon any section of a public road to which it is applied.

RAILWAYS

CHAPTER 69:03

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RAILWAYS

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81. Apprehension of offenders
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SCHEDULE

CHAPTER 69:03

RAILWAYS

7 of 1907
36 of 1952
20 of 1954(F)
1 of 1957
6 of 1970
21 of 1970
s.6 and 2nd Sch.
G.N. 200/1963
219/1964(N)
166/1967

An Act to regulate the construction, control, management and operation of railways in Malaŵi and for matters incidental thereto.

[1st October, 1907]

Short title and application

1. This Act may be cited as the Railways Act. It shall apply to all railways in Malaŵi whether already completed or in the course of construction or hereafter to be constructed.

Interpretation

2.—(1) In this Act and in any Rules made hereunder unless the context otherwise requires—

"Manager" means the person appointed by the Minister or by a Railway Company as the case may be to act as Manager of a railway;

"assistant manager" means an assistant manager of a Railway Company;

"railway" means a railway or any portion of a railway for the public carriage of passengers, animals or goods and includes—

(*a*) all land within the fences or other boundary marks indicating the limits of the land appurtenant to a railway;

(*b*) all lines of rails, sidings, or branches worked over for the purposes of or in connexion with a railway;

(*c*) all stations, offices, warehouses, wharves, workshops, manufactories, fixed plant and machinery and other works constructed for the purposes of or in connexion with a railway; and

(*d*) all ferries, ships, boats and crafts which are used for the traffic of a railway and belong to or are hired or worked by the authority administering the railway;

"the railway administration" in the case of a railway administered by the Government means the Manager and includes the Government and also, so long as the railway is in course of construction, the Resident Engineer and in the case of a railway administered by a Railway Company means the Railway Company;

"Railway Company" includes any person or persons whether incorporated or not who are owners or lessees of a railway or parties to an agreement for working a railway but shall not include the Government;

"railway official" or "railway servant" includes the Manager, the assistant managers and all such officers, servants, agents and other persons as shall be from time to time employed to do any act upon a railway.

Powers of assistant managers

(2) All duties and powers hereinafter required to be performed and exercised by the Manager shall and may be performed and exercised by an assistant manager.

Sanction by Minister of railway construction 21 of 1970

3. If any Company is desirous of constructing a railway within Malaŵi, it shall deposit in the Ministry of Transport and Communications a scheme for such railway stating the general direction and terminal points of the proposed railway accompanied by a map and thereupon the Minister, with and subject to the approval of the Minister responsible for Land after making such inquiries as he thinks fit may reject or provisionally approve the scheme.

Deposit and approval of plans, sections, etc.

4.—(1) After any railway has been provisionally approved under section 3 or after Government has decided to construct any railway the Government or the Railway Company as the case may be shall deposit for public inspection in Malaŵi in such public offices or elsewhere as the Minister may order—

(*a*) plans and sections on such a scale and showing such particulars as the Minister may direct or as may be required by any Rules made hereunder; and

(*b*) a Book of Reference containing the names of the owners and lessees or reputed owners and lessees of the lands required or which may be taken for the purposes of this Act in respect of such plan.

(2) Notice shall be given of the deposit of such plans and Books of Reference by advertisement in the *Gazette* calling on all persons having any objection to the said plans and Books of Reference to send in a statement of their objections in writing to the Ministry of Transport and Communications within three months from the date of such notice.

(3) At the expiration of the said period of three months the said plans and sections together with the objections thereto shall be considered and approved or amended by the Minister.

(4) The said plans and sections if approved or amended by the Minister shall be deemed to be the deposited plans referred to in this Act.

Railway to be made according to plans

5.—(1) Any railway constructed under this Act shall be made and maintained in the lines and according to the levels shown on the deposited plans and sections with all proper bridges, viaducts, stations, sidings, approaches, junctions, roads, buildings, yards, works and conveniences connected therewith and incidental thereto.

Deviation

(2) It shall be lawful for the railway administration to deviate from the line of railway shown on the deposited plans, provided that no such deviation shall extend beyond the limits of deviation shown on the said plans.

6. [*Repealed by* 21 *of* 1970.]

PART I

Construction and Works

Author-ity of railway administration to execute all necessary work

7.—(1) Subject to this Act and subject also as regards the parties thereto to any contract entered into between a railway administration and the owners or occupiers of or any other parties interested in any lands taken or used for the purposes of a railway and subject also in the case of a company to any contract between the Government and the company the railway administration may for the purpose of constructing the railway or the accommodation or other works connected therewith and notwithstanding anything in any other Act for the time being in force—

(*a*) make or construct in, upon, across, under or over any lands or any streets, hills, valleys, roads, railways or tramways on any rivers, canals, brooks, streams or other waters or any drains, water-pipes, gas-pipes, electric wires or posts such temporary or permanent inclined planes, arches, tunnels, culverts, embankments, aqueducts, bridges, roads, lines of railway, ways, passages, conduits, drains, piers, abutments, cuttings and fences as the railway administration thinks proper;

(*b*) alter the course of any rivers, brooks, streams or watercourses for the purpose of constructing and maintaining tunnels, bridges, passages or other works over or under them; and divert or alter as well temporarily as permanently the course of any rivers, brooks, streams or watercourses or any roads, streets, or ways; or raise or sink the level thereof in order the more conveniently to carry them over or under or by the side of the railway as the railway administration thinks proper;

(*c*) make drains or conduits into, through or under any lands adjoining the railway for the purpose of conveying water from or to the railway;

(*d*) erect and construct such houses, warehouses, offices and other buildings and such yards, stations, wharves, engines, machinery, apparatus and other works and conveniences as the railway administration thinks proper;

(*e*) alter, repair or discontinue such buildings, works and conveniences as aforesaid or any of them and substitute others in their stead; and

(*f*) do all other acts necessary for making, maintaining, altering or repairing and using the railway.

The exercise of the powers conferred on the railway administration by this section shall be subject to the control of the Minister.

Alteration of pipes, wires, and drain

(2) A railway administration may for the purpose of exercising the powers conferred upon it by this Act alter the position of any pipe for the supply of gas, water or compressed air or the position of any electric wire or of any drain not being a main drain:

Provided that—

(*a*) when the railway administration desires to alter the position of any such pipe, wire or drain it shall give reasonable notice of its intention to do so and of the time at which it will begin to do so to the local authority or company having control over the pipe, wire or drain, or when the pipe, wire or drain is not under the control of a local authority or company to the person under whose control the pipe, wire or drain is; and

(*b*) a local authority, company or person receiving notice under proviso (*a*) may send a person to superintend the work and the railway administration shall execute the work to the reasonable satisfaction of the person so sent and shall make arrangements for continuing during the execution of the work the supply of gas, water, compressed air or electricity or the maintenance of the drainage as the case may be.

Temporary entry upon land for repairing or preventing accident

8.—(1) The Minister may authorize a railway administration in the case of any slip or other accident happening or being apprehended to any cutting, embankment or other work under the control of the railway administration to enter upon any lands adjoining its railway for the purpose of repairing or preventing the accident and to do all such works as may be necessary for the purpose.

(2) In the case of necessity a railway administration may enter upon the lands and do the works aforesaid without the previous sanction of the Minister but in such a case shall within seventy-two hours after such entry make a report to the Minister specifying the nature of the accident or apprehended accident and of the works necessary to be done and the power conferred on the railway administration by this subsection shall cease and determine if the Minister after considering the report considers that the exercise of the power is not necessary for the public safety.

Compensation to be made for lands taken or injuriously affected
21 of 1970

9.—(1) A railway administration shall do as little damage as possible in the exercise of the powers conferred by sections 7 and 8 and compensation shall be paid for any damage caused by the exercise thereof as soon as may be after such exercise.

(2) An action shall not lie to recover such compensation but in case of dispute the amount thereof shall be determined by the High Court and paid in accordance, as far as may be, with the

procedure prescribed by sections 9 and 10 of the Lands Acquisition Act, and section 11 of that Act shall apply to the award of compensation. Cap. 58:04

10. Nothing in this Act shall prevent the acquisition of lands for the purpose of a railway by agreement between the Government or the company as the case may be and the owners of such land or the settling by agreement of the amount of compensation to be paid in respect of lands injuriously affected by the exercise of the powers conferred by this Act. Purchase of land and compensation by agreement

11.—(1) Every railway administration shall make and maintain such works for the accommodation of the owners and occupiers of lands adjoining the railway as the Minister may deem necessary. Accommodation works

(2) Subject to the other provisions of this Act the works deemed necessary under the preceding subsection shall be made during or immediately after the laying out or formation of the railway over the lands traversed thereby and in such manner as to cause as little damage or inconvenience as possible to persons interested in the lands or affected by the works.

(3) The foregoing provisions of this section are subject to the following provisos—

(*a*) A railway administration shall not be required to make any accommodation works in such a manner as would prevent or obstruct the working or using of the railway or to make any accommodation works with respect to which the owners and occupiers of the land have agreed to receive and have been paid compensation in consideration of their not requiring the works to be made.

(*b*) Save as hereinafter in this Act provided a railway administration shall not be compelled to defray the cost of executing any further or additional accommodation works for the use of the owners or occupiers of the lands after the expiration of ten years from the date on which the railway passing through the lands was first opened for public traffic.

(*c*) Where a railway administration has provided suitable accommodation for the crossing of a road or stream and the road or stream is afterwards diverted by the act or neglect of the person having the control thereof the railway administration shall not be compelled to provide other accommodation for the crossing of the road or stream.

(4) The Minister may appoint a time for the commencement of any work to be executed under subsection (1) and if for fourteen days next after that time the railway administration fails to commence the work or having commenced it fails to proceed

diligently to execute it in a sufficient manner the Minister may cause it to be executed and recover from the railway administration the cost incurred by him in the execution thereof.

Power for owner, occupier or local authority to cause additional accommodation works to be made

12. If any owner or occupier of any land affected by any railway considers the works made under the last foregoing section to be insufficient for the commodious use of the land or if a local authority desires to construct a public road or other work across, under or over the railway he or it as the case may be may at any time require the railway administration to make at his or its expense such further accommodation works as he or it thinks necessary and are agreed to by the railway administration or as in case of difference of opinion may be authorized by the Minister.

Fences, screens, gates and bars

13. The Minister may require that within a time to be specified in the requisition or within such further time as he may appoint in this behalf—

(*a*) boundary marks or fences be provided or renewed by the railway administration for the railway or any part thereof and for roads constructed in connexion therewith;

(*b*) any works in the nature of a screen near to or adjoining the side of any public road constructed before the making of the railway be provided or renewed by the railway administration for the purpose of preventing danger to passengers on the road by reason of horses or other animals being frightened by the sight or noise of the rolling stock moving on the railway;

(*c*) suitable gates, chains, bars, stiles or handrails be erected or renewed by the railway administration at places where the railway crosses a public road on the level;

(*d*) persons be employed by the railway administration to open and shut such gates, chains or bars; and

(*e*) such other works be constructed or renewed by the railway administration as the Minister may from time to time deem necessary for the public safety and convenience.

If a Railway Company fails to comply with any requisition made under this section it shall forfeit K20 for every day after the first during which such default continues.

Removal of trees dangerous to or obstructing the working of a railway

14.—(1) In either of the following cases—

(*a*) where there is danger that a tree standing near a railway may fall on the railway so as to obstruct traffic; or

(*b*) when a tree obstructs the view of any fixed signal,

the railway administration may with the permission of any magistrate for the District fell the tree or deal with it in such other manner as will in the opinion of the railway administration avert the danger or remove the obstruction as the case may be.

(2) In case of emergency the power mentioned in subsection (1) may be exercised by the railway administration without the permission of a magistrate.

(3) Compensation may be awarded by a magistrate on the application of the persons interested for loss of or damage to such tree.

(4) Such an award, subject to revision by the High Court, shall be final.

(5) A civil court shall not entertain a suit to recover compensation for any tree felled or otherwise dealt with under this section.

PART II

Opening of the Railway

Right to use locomotives

15.—(1) A railway administration may with the previous sanction of the Minister use upon a railway locomotive engines or other motive power and rolling stock to be drawn or propelled thereby.

(2) But rolling stock shall not be moved upon a railway by steam or other motive power until such General Rules for the railway as may be deemed to be necessary have been made, sanctioned and published under this Act.

Notice of intended opening of a railway

16.—(1) Subject to subsection (2) a railway administration shall one month at least before it intends to open any railway for the public carriage of passengers give to the Minister notice in writing of its intention.

(2) The Minister may in any case if he thinks fit reduce the period or dispense with notice mentioned in subsection (1).

Sanction of Minister to opening of railway

17.—(1) No railway shall be opened for the public carriage of passengers until the Minister has by order sanctioned the opening thereof for that purpose.

(2) The sanction of the Minister shall not be given until an engineer to be appointed by the Government has after inspection of the railway reported in writing to the Minister—

(*a*) that he has made a careful inspection of the railway and rolling stock;

(*b*) that the weight of rails, strength of bridges, general structural character of the works and the size of and maximum gross load upon the axles of any rolling stock are such as have been prescribed by the Minister;

(*c*) that the railway is sufficiently supplied with rolling stock; and

(*d*) that in his opinion the railway can be opened for the public carriage of passengers without danger to the public using it.

(3) The Minister shall nevertheless have power to sanction the temporary opening of the line for the carriage of passengers upon such terms and conditions as he shall deem fit:

Provided always that such temporary opening shall not be sanctioned save upon the certificate of an engineer appointed by Government to the effect that the reasonable safety of passengers is secured under the terms and conditions aforementioned.

(4) This section shall extend to the opening of any additional works forming part of or directly connected with the railway which have been constructed after the inspection which preceded the first opening of the railway and also to any alteration or reconstruction materially affecting the structural character of any work to which this section applies.

(5) The Minister may make Rules defining the cases in which and in those cases the extent to which the procedure prescribed in this section may be dispensed with in regard to the classes of work specified in subsection (4).

Reopening line after temporary suspension of traffic

18. When an accident has occurred resulting in a temporary suspension of traffic and either the original line and works have been rapidly restored to their original standard or a temporary diversion has been laid for the purpose of restoring communication the original line and works so restored or the temporary diversion as the case may be may be opened for the public carriage of passengers subject to the following conditions—

(*a*) that the railway servant in charge of the works undertaken by reason of the accident has certified in writing that the opening of the restored line and works or of the temporary diversion will not in his opinion be attended with danger to the public using the line and works or the diversion; and

(*b*) that notice by telegraph of the opening of the line and works or the diversion shall be sent as soon as may be to the Minister.

Inspection

19. After any railway has been opened the railway and the rolling stock used thereon shall be inspected by an engineer to be appointed by the Minister at such intervals as the Minister shall from time to time direct.

Power to close railway when opened

20.—(1) If at any time after inspecting a railway or any rolling stock used thereon the engineer is of opinion that the use of the railway or of any specified stock will be attended with danger to the public using it he shall state that opinion together with the grounds thereof to the Minister; and the Minister may thereupon order that the railway be closed for the public carriage of passengers or that the use of the rolling stock so specified be discontinued or that the railway or the rolling stock so specified be used for the public carriage of passengers on such conditions only as the Minister may consider necessary for the public safety.

(2) An order under subsection (1) must set forth the grounds on which it is founded.

Reopening railway when closed

21.—(1) When at any time a railway has been closed under the last foregoing section it shall not be reopened for the public carriage of passengers until it has been inspected and its reopening sanctioned under this Act.

(2) When the Minister has ordered under the last foregoing section that the use of any specified rolling stock be discontinued that rolling stock shall not be used until the engineer has reported that it is fit for use and the Minister has sanctioned its use.

Penalty for contravention of Part II

22. If a Railway Company acts in contravention of any of the provisions of this Part it shall forfeit to Government the sum of £10 for every day during which such contravention continues.

PART III

Traffic

Duty of railway administration as to traffic facilities

23. A railway administration shall according to its powers afford all reasonable facilities for the receiving, forwarding and delivering of traffic upon and from the several railways belonging to or worked by it.

Facilities to be given for forwarding traffic by connected railways

24. A railway administration having or working railways which form a continuous line of railway communication or having its terminus or stations within one mile of the terminus or stations of another railway administration shall afford all due and reasonable facilities for receiving and forwarding by one of such railways all the traffic arriving by the others at such terminus or stations without any unreasonable delay and without any preference or advantage or prejudice or disadvantage and so that no obstruction may be offered to the public desirous of using such railways as a continuous line of communication and so that all reasonable accommodation may by means of such railway be at all times afforded to the public in that behalf.

No undue preference to be given

25.—(1) A railway administration shall not make or give any undue or unreasonable preference or advantage to or in favour of any particular person or any particular description of traffic in any respect whatsoever or subject any particular person or any particular description of traffic to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

Terminals

(2) A railway administration may charge reasonable terminals.

(3) The expression "terminals" includes charges in respect of stations, sidings, wharves, depots, warehouses, cranes and other similar matters and of any services rendered thereat.

Proceedings when complaint is made of breach of last two sections

26.—(1) Where complaint is made to the Minister of anything done by a railway administration in contravention of either of the two last preceding sections the Minister may if he thinks fit refer the case to the High Court for decision.

(2) The case shall be heard by a Judge of the High Court.

(3) In hearing any such case such judge shall have all the powers which may be exercised by a judge in the hearing of an ordinary civil suit and may permit any party to appear before him either personally or by a legal practitioner.

(4) Any decree or order made on such hearing may be enforced in the same way as a decree or order granted by the High Court in its ordinary jurisdiction.

(5) Any person aggrieved by such decree or order may appeal therefrom to the Supreme Court of Appeal.

Proof of undue preference

27.—(1) Whenever it is shown that a railway administration charges one trader or class of traders or the traders of any local area lower rates for the same or similar animals or goods or lower rates for the same or similar service than it charges to other traders or classes of traders or to the traders of another local area the burden of proving that such lower charge does not amount to undue preference shall lie on the railway administration.

(2) In deciding whether a lower charge does or does not amount to an undue preference the Court may so far as it thinks reasonable in addition to any other conditions affecting the case take into consideration whether such lower charge is necessary for the purpose of securing in the interests of the public the traffic in respect of which it is made.

28. [*Repealed by* 6 *of* 1970.]

29. Every Railway Company shall in forms to be approved by the Minister prepare half-yearly or at such intervals as the Minister may prescribe such returns of its capital and revenue transactions and its traffic as the Minister may require and shall forward a copy of such returns to the Minister at such times as he may direct. Returns

If a Railway Company fails to comply with the provisions of this section it shall forfeit the sum of £5 for every day during which the default continues after the fourteenth day from the date prescribed for the submission of the return.

30. It shall be lawful for a railway administration to carry letters on railway service or letters containing invoices or railway receipts for traders. Provision for letters

PART VI

Rates

31. The following rules shall regulate the levy of rates in respect of the railway and from the railway administration in aid of the funds of local authorities— Taxation of railway by local authorities

(*a*) The rates payable by the railway administration to any local authority shall not exceed such amount (if any) as may from time to time be fixed by the order of the Minister on the application of any local authority or of the railway administration.

(*b*) Nothing in this section is to be construed as debarring the railway administration from entering into a contract with any local authority for the supply of water or light or for the scavenging of railway premises or for any other service which the local authority may be rendering or be prepared to render within any part of the local area under its control.

PART V

Legal Proceedings

32. All actions and suits by and against a railway administration may be brought by and against the Manager and for the purpose of all such actions and suits the lands, buildings, rolling stock and other property appertaining to the said railway shall be deemed to be the property of the Manager. Actions by and against railway administration

33.—(1) None of the rolling stock, machinery, plant, tools, fittings, materials or effects used or provided by a railway administration for the purpose of the traffic on its railway or of its stations or workshops shall be liable to be taken in execution of any decree or order of any court or of any local authority or person having by law power to attach or distrain property or otherwise to cause property to be taken in execution. Restriction on execution against railway property

(2) Nothing in subsection (1) is to be construed as affecting the authority of any court to attach the earnings of a railway in execution of a judgment or order.

Service of summonses, notices, etc.

34. Any summons, notice, order or other document required to be served upon the Manager or upon the Company as the case may be may be served by leaving the same or sending it through the post by a registered letter addressed to the said Manager or to the Company at the principal office in Malaŵi of the railway administration.

PART VI

Responsibility of a Railway Administration as Carriers

Liability for loss or injury in respect of goods

35. The railway administration shall in no case be liable for loss or injury to any articles or goods to be carried by the railway unless such loss or injury shall have been caused by negligence or misconduct on the part of its agents or servants and unless the articles or goods in respect of which compensation is claimed shall have been booked and paid for or delivery thereof accepted in conformity with this Act or the Rules and Regulations made hereunder.

Provisions as to liability in respect of carriage of certain animals

36.—(1) The responsibility of a railway administration for the loss, destruction or deterioration of animals delivered to the administration to be carried on the railway shall not in any case exceed in the case of horses £35 a head or in the case of mules, donkeys or horned cattle £20 or in the case of sheep, goats, dogs or other animals £2 a head unless the person sending or delivering them to the administration caused them to be declared or declared them at the time of their delivery for carriage by railway to be respectively of higher value.

(2) When such higher value has been declared the railway administration may charge in respect of the increased risk a percentage upon the excess of the value so declared over the respective sums aforesaid.

Liability as to passengers' luggage

37. A railway administration shall not be responsible for the loss, destruction or deterioration of any passenger's luggage unless it has been delivered into the custody of a railway official.

Liability as to articles of special value

38.—(1) When any articles mentioned in the Schedule to this Act are contained in any parcel or package delivered to a railway administration for carriage by railway and the value of such articles in the parcel or package exceeds £10 the railway administration shall not be responsible beyond that sum unless the person sending or delivering the parcel or package to the railway administration caused its value and contents to be declared or declared them at the time of the delivery of the parcel or package for carriage on the railway and if so required by the railway administration paid or engaged to pay a percentage on the value so declared by way of compensation for increased risk.

(2) When any parcel or package of which the value has been declared under subsection (1) has been lost or destroyed or has deteriorated the compensation recoverable in respect of such loss, destruction or deterioration shall not exceed the value so declared and the burden of proving the value so declared to have been the true value shall notwithstanding anything in the declaration, lie on the person claiming compensation.

(3) A railway administration may make it a condition of carrying a parcel declared to contain any article mentioned in the Schedule that the railway servant authorized in this behalf has been satisfied by examination or otherwise that the parcel actually contains the article declared to be therein.

(4) The foregoing provisions of this section shall not apply to any parcel carried by the railway for any postal authority.

Burden of proof in respect of loss of animals or goods

39. In any suit against a railway administration for compensation for loss, destruction or deterioration of animals or goods delivered to the railway administration for carriage by railway it shall not be necessary for the plaintiff to prove how the loss, destruction or deterioration was caused. In every such proceeding the burden of proving the value of the animals or goods and, where the same have been injured, the extent of the injury shall lie upon the person claiming the compensation.

Notification of claims for compensation for loss, etc., and for refund of overcharges

40.—(1) A person shall not be entitled to compensation for the loss, destruction or deterioration of, or damage to, animals or goods carried by a railway unless his claim to compensation has been preferred in writing by him or on his behalf to the railway administration—

(*a*) in the case of a claim to compensation for deterioration or damage, within one month from the date of the delivery of the animals or goods to the consignee;

(*b*) in the case of a claim to compensation for loss or destruction, within six months from the date of the delivery of the animals or goods for carriage by the railway.

(2) A person shall not be entitled to a refund of an overcharge in respect of animals or goods carried by a railway unless his claim to the refund has been preferred in writing by him or on his behalf to the railway administration within one month of the date of the delivery of the animals or goods to the consignee or, within one month of the date upon which the claimant is notified of the amount of the charge in respect of which the claim to a refund is made, whichever event shall last occur.

Exoneration from responsibility in case of goods falsely described

41. Notwithstanding anything in the foregoing provisions of this Part a railway administration shall not be responsible for the loss, destruction or deterioration of any goods with respect to the description of which an account materially false has been given to the railway administration by the owner or person having charge thereof if the loss, destruction or deterioration is in any way brought about by the false account and the railway administration shall not be responsible in any case for an amount exceeding the value of the goods if such value were calculated in accordance with the description contained in the false account.

PART VII
Accidents

Report of accidents

42. When any of the following accidents occur in the working or construction of a railway—

(*a*) any accident attended with loss of human life or with grievous bodily harm or with serious injury to property;

(*b*) any collision between trains, one of which is a train carrying passengers;

(*c*) the derailment of any train carrying passengers or any part of such train; or

(*d*) any accident of any other description which the Minister may notify in this behalf in the *Gazette*:

the railway administration working or constructing the railway and, if the accident happens to a train belonging to any other railway administration, the other railway administration also shall without unnecessary delay send notice of the accident to the Minister and the station master nearest to the place where the accident occurred or, where there is no station master, the railway servant in charge of that part of the railway on which the accident occurred shall give notice of the accident to the nearest magistrate.

Power to make Rules regarding notices

43. The Minister may make Rules consistent with this Act for all or any of the following purposes—

(*a*) prescribing the forms of the notices mentioned in the last foregoing section and the particulars of the accident which those notices are to contain;

(*b*) prescribing the class of accidents of which notice is to be sent by telegraph immediately after the accident has occurred;

(*c*) prescribing the duties of railway servants or magistrates on the occurrence of the accident;

(*d*) holding inquiries into accidents.

Submission of return of accidents

44. Every railway administration shall send to the Minister a return of accidents occurring upon its railway, whether attended with personal injury or not, in such form and manner and at such intervals of time as the Minister may direct.

Penalties for failure to comply with sections 42 and 43

45. If any Railway Company fails to give such notice of an accident as is required by section 42 and the Rules for the time being in force under section 43 it shall forfeit £10 for every day during which the omission continues and if any station master or railway servant omits to give such notice of an accident as is required by the aforesaid section and Rules he shall be punished with a fine not exceeding £5.

Penalty for failure to comply with section 44

46. If any Railway Company fails to comply with the provisions of section 44 with respect to the submission of any return it shall forfeit the sum of £5 for every day during which the default continues after the fourteenth day from the date prescribed for the submission of the returns.

Provision for compulsory medical examination of person injured in railway accident

47. Whenever any person injured by an accident on a railway claims compensation on account of the injury any court or person having by law or consent of the parties authority to determine the claim may order that the person injured be examined by some medical practitioner or practitioners named in the order and not being a witness on either side and may make such order with respect to the costs of the examination as it or he thinks fit.

PART VIII

Management

General Rules

48.—(1) The railway administration subject to the approval of the Minister shall make General Rules consistent with this Act for the following purposes—

(*a*) for regulating the mode in which and the speed at which the rolling stock used on any railway is to be moved or propelled;

(*b*) for providing for the accommodation and convenience of passengers and regulating the carriage of their luggage;

(*c*) for declaring what shall be deemed to be for the purposes of this Act dangerous or offensive goods and for regulating the carriage of such goods;

(*d*) for regulating the classification of goods and specifying the goods that are to be charged for at special rates;

(*e*) for regulating the conduct of railway servants;

(*f*) for fixing the charges to be made for the conveyance of passengers and goods by the railway;

(*g*) for regulating the conditions on which the railway administration will carry persons suffering from infectious or contagious diseases and providing for the disinfection of carriages which have been used by such passengers;

(*h*) for regulating the terms and conditions on which the railway administration will warehouse or retain goods at any station on behalf of the consignee or owner.

(*i*) generally, for regulating the travelling upon and the use, working and management of the railway.

(2) The Rules may provide that any person committing a breach of any of them shall be liable to a fine of £5.

(3) The railway administration shall keep at each station on its railway a copy of the General Rules for the time being in force under this section and shall allow any person to inspect it at all reasonable times.

(4) If a railway company omits to make General Rules in accordance with this section it shall forfeit the sum of £2 for every day during which such omission continues.

Disposal of differences between railways regarding conduct of joint traffic

49. Where two or more railway administrations whose railways have a common terminus or a portion of the same line of railway communication are not able to agree upon arrangements for conducting at such common terminus or at the point of junction between them their joint traffic with safety to the public the Minister upon the application of either or of any of such

administrations may decide the matter in dispute between them so far as those matters relate to the safety of the public and may determine whether the whole or what portion of the expenses attending on such arrangements shall be borne by either or any of the administrations respectively.

Maximum load for wagons

50.—(1) The railway administration shall determine the maximum load for every wagon or truck in its possession and shall exhibit the load so determined in a conspicuous manner on the outside of every such wagon or truck.

(2) Every person owning a wagon or truck which passes over the railway shall similarly determine and exhibit the maximum load for the wagon or truck.

(3) The gross weight for any such wagon or truck bearing upon the axles when the wagon or truck is loaded to such maximum load shall not exceed such limit as may be approved by an engineer appointed by the Minister for the class of axle under the wagon or truck.

(4) If a railway company or person fails to comply with this section it or he shall forfeit the sum of £2 for every day during which this section is contravened.

Maximum number of passengers

51. Every railway administration shall fix, subject to the approval of the Minister, the maximum number of passengers which may be carried in each compartment of every description of carriage and shall exhibit the number so fixed in a conspicuous manner, inside or outside each compartment.

If a railway company contravenes the provisions of this section it shall forfeit the sum of £2 for every day during which this section is contravened.

Powers of Manager over railway officials

52. In the case of a railway administered by Government the Manager may, subject to the approval of the Minister and to such Rules as the Minister may from time to time make and publish in this behalf, suspend, dismiss or fine any railway official and may publish Rules regulating the conduct of railway officials and impose penalties for breach of such Rules:

Provided always that this section shall not apply to any railway official in receipt of a salary of £100 a year or upwards.

Fares to be prepaid

53. No person shall enter any carriage used on a railway or any steamer belonging to a railway administration for the purpose of travelling therein without having first paid his fare and obtained a ticket. Every person desirous of travelling on the railway shall upon payment of his fare be furnished with a ticket specifying the class of carriage for and the station from and the

station to which the fare has been paid and shall when required show his ticket to any railway officials duly authorized to examine the same and shall deliver up such ticket upon demand to any of the railway officials duly authorized to collect tickets. Any person not producing or delivering up his ticket as aforesaid shall be liable to pay the fare from the place whence the train or steamer originally started unless he can prove that he has travelled a less distance only, in which case he shall be liable to pay the fare only from the place whence he started.

Passenger tickets to be given up on demand

Fare and freight to be accepted conditionally

54. The fare or freight paid for the conveyance of passengers or goods respectively shall be deemed to be accepted only upon condition that there is room in the train. In case there shall not be room for all the passengers or goods those passengers who shall have obtained tickets for the longest distance shall have the preference and those who shall have obtained tickets for the same distance shall have the preference according to the order in which they shall have received their tickets; and the like order shall be observed as to goods:

Provided that all officers and troops on duty and all other persons travelling on the business of the Government shall be entitled to be conveyed on the railway in preference to or in priority over the public without reference to the distance for which or the order in which they shall have received their tickets.

Penalty for fraud

55. Any person who shall defraud or attempt to defraud a railway administration by travelling or attempting to travel upon the railway without having previously paid his fare or by riding in or upon a carriage of a higher class than that for which he shall have paid his fare or by continuing his journey in or upon any of the carriages beyond the station for which he shall have paid his fare without having previously either paid his fare for the additional distance or obtained the sanction of the station master or guard of the train or who shall knowingly and wilfully refuse or neglect on arriving at the station to which he shall have paid his fare to quit such carriage and railway premises or who shall transfer or profit by the transfer of the return half of any ticket obtained by him, or who shall in any other manner whatever attempt to evade the payment of his fare shall be liable to a fine of £2 for each offence.

Fine for entering or leaving carriage in motion or riding on steps

56. Any passenger who shall get into or upon or attempt to get into or upon or shall quit or attempt to quit any carriage upon a railway while such carriage is in motion or who shall ride or attempt to ride upon the railway on the steps or any other part of a carriage except on those parts which are intended for the accommodation of passengers shall be liable to a fine of £1 for each offence.

Fine for riding on engine, tender or luggage van

57. Any person other than the engineman and fireman who without the special licence of the Manager or executive officer in charge of the line shall ride or attempt to ride upon any locomotive engine or tender upon a railway and any person other than the guard or brakesman who without special permission of the Manager or traffic superintendent shall ride or attempt to ride upon the railway in or upon any luggage van or goods wagon or other vehicle not appropriated to the carriage of passengers shall be liable to a fine of £2 for each offence.

Where smoking and chewing of betel, etc., prohibited

58. If any person shall smoke or shall chew betel, bhang, tobacco, opium or other like substance either inside a waiting room or in or upon any of the carriages belonging to a railway which may be specially provided for females or non-smokers or shall expectorate in any waiting room or in or upon any railway carriage he shall be liable to a fine of £1 for each offence and if any person persists in infringing this section after being warned to desist by any railway official or passenger such person in addition to incurring the liability above-mentioned may be removed by any such official from any such carriage and from the premises appertaining to the railway and shall forfeit his fare.

Penalty for intoxication or nuisance

59. Any person who shall be in a state of intoxication or be insufficiently or indecently clad or who shall commit any nuisance or act of indecency in any railway carriage or upon any part of the premises appertaining to a railway or who shall wilfully and without lawful excuse interfere with the comfort of any passenger on the railway shall be liable to a fine of £2 and to imprisonment for three months; and in addition to such liability the offender may be removed by any railway official from any such carriage and also from the premises appertaining to the railway and shall forfeit his fare.

Passengers may be directed as to the carriage or compartment in which they shall travel

60. Any passenger may be directed by a station master, guard or other railway official to enter and travel in any carriage or compartment which such railway official may indicate not being of a lower class than that for which he has paid his fare and any passenger refusing or neglecting to conform to such direction may be removed by any railway official from the premises appertaining to the railway and shall forfeit his fare.

Penalty for entering private room or carriage

61. If any special carriage or any portion of a carriage or any private room or apartment shall be provided for the exclusive use of females any male person who without lawful excuse shall enter such carriage or portion of a carriage or any such room or apartment knowing the same to be appropriated as aforesaid or shall remain therein after being informed of its exclusive appropriation or if any special carriage or compartment has been reserved for the private use of any person or persons and anyone

without lawful excuse shall enter such carriage or compartment knowing the same to be so reserved or remain therein after being requested to leave or if any person who has obtained a ticket of one class shall knowingly and wilfully refuse or neglect to leave any room or place set apart for passengers of a higher class such person may be forthwith removed therefrom and also from the premises appertaining to the railway by any railway official and shall be liable to a fine of £5 and shall forfeit his fare.

Remedy for non-payment of the carriage of goods

62. If any person shall fail to pay on demand any sum due for the conveyance of any goods on a railway it shall be lawful for the Manager to detain all or any part of such goods or if the same shall have been removed from the premises appertaining to the railway any other goods of such person which shall then be on the railway or shall thereafter come into the possession of the railway administration and also after reasonable notice to such person to sell by public auction a sufficient quantity of such goods to realize the sum payable as aforesaid and all charges and expenses of such detention and sale; and out of the proceeds of the sale to retain the sum so payable together with the charges and expenses aforesaid rendering the surplus (if any) of the money arising from such sale and such of the goods as shall remain unsold to the person entitled thereto or the Manager may recover any such sum by action at law. The goods of passengers may also be detained and sold and the proceeds disposed of as above provided for non-payment of the fare due by them.

Remedy for non-payment of fare

Written account of goods to be given on demand

63. The owner or persons having care of any goods which shall have been carried upon a railway or shall be brought to the premises appertaining to a railway for the purpose of being carried on the railway shall on demand by any railway official deliver to such official an exact account in writing signed by him of the number or quantity and description of such goods. This provision shall not apply to passenger's luggage.

Penalty for giving no account or false account

64. If any such owner or person as aforesaid shall on demand by any railway official fail to give such account to such railway official or if he shall wilfully give a false account he shall for every such offence be liable to a fine of £2 for every ton of goods and to a fine of £1 for any quantity of goods less than a ton.

Carriage of goods of a dangerous nature

65. No person shall carry upon a railway any dangerous article or be entitled to require any railway official to carry upon the railway any article which in the judgment of any railway official shall be of a dangerous nature or so bulky that it would be unsafe for the railway to convey the same; and if any person shall carry upon the railway any dangerous article or shall deliver for carriage any such article without distinctly declaring the

nature of the same he shall be liable to a fine of £10 for each such offence; and it shall be lawful for any railway official to refuse to carry any luggage or parcel that may be suspected to contain articles of a dangerous nature and to require the same to be opened and in case any such luggage or parcel shall have been received by any railway official for the purpose of being carried on the railway it shall be lawful for any railway official to stop the transit thereof until he shall be satisfied as to the nature of the contents of the luggage or parcel.

Persons suffering from leprosy, etc., not allowed to travel

66. If any person knowingly suffering from leprosy, smallpox or other contagious or infectious desease shall travel by a railway except in accordance with any Rules made in that behalf under this Act he shall be liable to a fine of £25 and if any person whilst travelling be discovered to be so suffering it shall be lawful for every railway official to remove him from the carriage and from the railway premises at the first opportunity and such person may in addition to any fine be ordered to pay the amount of any expenses incurred in the disinfection of any carriage or portion of a carriage occupied by him while so travelling. Any such carriage or portion of a carriage shall be properly disinfected as soon as practicable and shall not be used for the conveyance of passengers until it has been so disinfected.

If a railway company fails to cause any such carriage to be disinfected in accordance with the provisions of this section it shall forfeit the sum of £2 for every day during which such default continues.

Penalty for trespass

67. Any person who shall trespass upon a railway or upon any of the lands, stations or other premises appertaining thereto shall be liable to a fine of £1 and if any such person shall refuse to leave the railway or premises on being requested to do so by any railway official he shall be liable to a fine of £2 and may be immediately removed therefrom.

Penalty for driving an animal upon or across a railway

68. Any person who shall wilfully ride, lead or drive upon or across a railway any animal except in directly crossing the railway at any road or place appointed for that purpose at a time at which he may lawfully do so shall be liable to a fine of £2 for each offence.

Penalty for defacing pass or ticket

69. If any person wilfully alters or defaces his pass or ticket so as to render the date, number or any material portion thereof illegible he shall be liable to a fine of £5.

Penalty for obstructing railway servant

70. If any person wilfully obstructs or impedes any railway servant in the discharge of his duty he shall be liable to a fine of £10.

Occupation crossings

71. It shall be lawful for the Minister from time to time to declare by publication in the *Gazette* any road or path which a railway may cross to be an "occupation crossing". All occupation crossings shall be used subject to such Rules as the Minister may make and publish in that behalf.

Liability of owner of animal trespassing

72. The owner of any animal which shall trespass or stray upon a railway or upon any lands appertaining to a railway (such railway or lands being provided with suitable fences for excluding cattle) shall be liable to a fine of 10s. for each animal and it shall be lawful for any railway official to take or drive every animal which shall be found so trespassing to the nearest Government station there to be detained until the amount of fine incurred by such trespass and the expense of feeding and keeping the animal be paid or until a magistrate shall otherwise order. Should the animal prove unmanageable it shall be lawful for any railway official to kill it and the owner will be liable to prosecution and fine if the trespass be proved. A magistrate may upon proof of the trespass cause such animal to be sold by public auction and the proceeds of the sale after deducting therefrom such fine and costs as the magistrate shall impose and such further sum as the magistrate shall order to be paid for the expenses of detaining, feeding and selling such animal shall be returned to the owner of the animal on demand.

Penalty for injury to carriage, etc.

73. Any person who shall unlawfully and wilfully remove or deface any number-plate or remove or extinguish any lamp on any carriage or signal-post belonging to a railway or shall wilfully imitate any railway signal or shall wilfully or negligently damage or injure any carriage, engine, wagon, truck, station, warehouse, bridge, building, machine, rail-points, fence or any other matter or thing belonging to the railway shall be liable to a fine of £10 and to imprisonment for two months.

Penalty for opening or not properly shutting gates or chains

74. If any person for whose use or accommodation any gate or chain shall have been set up by any railway official on either side of a railway or any other person shall open such gate or chain or pass or attempt to pass or drive or attempt to drive any carriage, cattle or other animal or thing across the railway at a time when any engine or train approaching along the same shall be in sight or shall at any time omit to shut and fasten such gate or chain as soon as he and any carriage, cattle or other animal or thing under his charge shall have passed through the same, he shall be liable to a fine of £5.

Obstructing engine or carriages or endangering safety of passengers

75. If any person shall wilfully and maliciously put, place, cast or throw upon or across a railway any wood, stone, matter or thing or take up, remove or displace any rail, sleeper, matter or thing belonging to a railway, or turn, move or divert any points or other machinery belonging to a railway, or make, show, hide

or remove any signal or light upon or near a railway or do or cause to be done any act with intent in any of the cases aforesaid to upset, obstruct, overthrow, injure or destroy any engine, tender, carriage or truck used upon a railway or to endanger the safety of any person travelling or being upon a railway or cast, throw or cause to fall or strike against, into or upon any engine, tender, carriage or truck used upon a railway any wood, stone or other matter or thing with intent to endanger the safety of any person being in or upon such engine, tender, carriage or truck every such offender shall be liable to imprisonment for twenty years.

Penalty for wilful act or omission endangering passengers

76. Whoever shall wilfully do any act or shall wilfully omit to do what he is legally bound to do intending by such act or omission to cause or knowing that he is thereby likely to cause the safety of any person travelling or being upon a railway to be endangered shall be liable to imprisonment for two years.

Penalty for drunkenness or breach of duty by railway official

77. Any railway official who shall be in a state of intoxication whilst actually employed upon a railway or any of the works connected therewith in the discharge of any duty and any railway official who negligently shall omit to perform his duty or shall perform the same in an improper manner shall be liable on summary conviction to a fine of £10 and to imprisonment for two months and if the duty be such that the omission or negligent performance thereof would be likely to endanger the safety of any person travelling or being upon the railway such official shall be liable to imprisonment for two years.

Penalty for an act not wilful

78. If any person shall rashly or negligently and without lawful excuse do any act which shall be likely to endanger his own safety or that of any person travelling or being upon a railway he shall be liable to a fine of £50 and to imprisonment for six months.

Unauthorized stopping of trains

79. Any person who without authority stops or attempts to stop any engine, tender, carriage or truck in motion by means of a flag or signal or any other means shall be liable to a fine of £5.

Breach of Rules

80. Any person who wilfully does any act which is forbidden or neglects to do any act which is required by any Rules framed under this Act and for which no penalty is specially provided by such Rules shall be liable to a fine of £1.

Apprehension of offenders

81. Every person who shall be guilty of any offence under this Act may be lawfully apprehended without any warrant or written authority by any railway official or by any other person whom such railway official shall call to his aid or by any police officer

and every person so apprehended shall with all convenient despatch be carried and conveyed before a magistrate to be dealt with according to law.

Provisions where it is necessary to arrest railway official

82.—(1) Where it is the duty of a police officer either with or without warrant to arrest a railway servant, and where in the opinion of such police officer the immediate arrest of such railway servant would be likely to endanger the safety of any person travelling or being upon a railway or to cause serious inconvenience to a railway administration, he shall at once apply to the Head of the Department to which such railway servant belongs or to the railway official in charge at the place where such railway servant is to relieve such railway servant and on such railway servant being relieved he shall be handed over to such police officer who shall arrest him and proceed according to law.

(2) The relief and handing over of such railway servant shall be effected with the least possible delay.

(3) If such railway servant be not relieved and handed over in accordance with the provisions of this section the railway administration shall be liable to a fine of £100.

Construction of the Act

83. In the construction of this Act every railway official shall be legally bound to do everything necessary for or conducive to the safety of the public and every such official shall be legally prohibited from doing every act which shall be likely to cause danger.

Liability of offenders to pay costs of conviction

84. In case of any conviction under this Act the magistrate may order the offender to pay the costs of such conviction in addition to any penalty or expenses to which he may be liable. Such costs may be assessed by the magistrate and may be levied and recovered in the same manner as any penalty under this Act.

Recovery of money due; damages and expenses

85. In every case in which any person shall be liable under this Act to pay any sum of money, damages or expenses the same may be levied and recovered in the same manner as any penalties under this Act and if necessary the amount thereof may be fixed and assessed by the magistrate before whom the case shall be tried.

Limitation of time for commencement of actions and prosecutions

86. All actions and prosecutions which may be lawfully brought against any person for anything done or intended to be done or omitted to be done under this Act shall be commenced within three months after the occurrence of the matter complained of and not otherwise.

87. The payment of any fare for which any passenger not producing or delivering up his ticket is liable may be enforced in the same manner as any fine imposed by this Act.

Enforcing payment of fare by passenger not producing ticket

88. A copy of this Act and of the Rules, time tables and tariff of charges in respect of any railway which shall from time to time be duly made and published shall be exhibited in some conspicuous place at each station of the railway so that they may be easily seen and read and all such documents shall be so exhibited in English and in such other languages as the Minister may direct. There shall also be exhibited in like manner within and also without each station of the railway a schedule of all offences punishable under this Act or any Rules made hereunder and of the penalties attaching to each offence respectively.

A copy of this Act to be shown at railway stations

If any Railway Company fails to comply with any of the provisions of this section it shall forfeit a sum of £2 for every day during which such default continues.

89. Any person who shall wilfully or maliciously remove, deface or in any way injure any document exhibited by the railway authorities as required by the last preceding section or any notice or document posted by them at the station or anywhere upon the railway shall be liable to a fine of £2 and to imprisonment for one month.

Penalty for removing documents or notices

SCHEDULE

s. 38

Articles to be Declared and Insured

(*a*) Gold and silver, coined or uncoined, manufactured or unmanufactured.

(*b*) Coin made of any one metal or mixed metal.

(*c*) Plated articles.

(*d*) Cloths and tissue and lace of which gold or silver forms part, not being the uniform or part of the uniform of an officer, soldier, sailor, or of any public officer entitled to wear uniform.

(*e*) Pearls, precious stones, jewellery and trinkets.

(*f*) Watches, clocks and timepieces of any description.

(*g*) Government securities.

(*h*) Government stamps.

(*i*) Bills of exchange, promissory notes, bank notes and orders or other securities for payment of money.

(*j*) Maps, writings and title-deeds.

(*k*) Paintings, engravings, lithographs, photographs, carvings, sculpture and other works of art.

(*l*) Art pottery and all articles made of glass, china or marble.

(*m*) Silks in manufactured or unmanufactured state and whether wrought up or not wrought up with other materials.

(*n*) Shawls; but not shawls for African trade.

(*o*) Lace and furs.

(*p*) Opium.

(*q*) Ivory.

(*r*) Musical and scientific instruments.

(*s*) Any article of special value which the Minister may by notice published in the *Gazette* add to this Schedule.

SUBSIDIARY LEGISLATION

RAILWAY ACCIDENTS RULES

under s. 43

G.N. 181/1912
13/1946
200/1963
166/1967

Citation

1. These Rules may be cited as the Railway Accidents Rules.

Particulars to be furnished

2. The notice referred to in section 42 of the Act shall contain the following particulars—mileage or station, or both, at which the accident occurred; time and date of the accident; number and description of the train or trains; nature of the accident, number of people killed or injured as far as known; cause of the accident as far as known; probable detention to traffic.

Accidents of which telegraphic notice is required

3. In the case of the following accidents—

(*a*) accidents attended with loss of human life, or with grievous hurt or with serious injury to property; or

(*b*) collisions between trains, one of which is a train carrying passengers; or

(*c*) derailment of any train carrying passengers, or of any part of such a train,

such notice shall be sent, by telegraph, immediately after the accident has occurred by the station master of one or other of the stations between, or of the station at, or where there is no station master, by the railway servant in charge of the section of the railway on which the accident has occurred.

Duties of Railway Servants

Railway servants to report accidents coming to their notice

4. Every railway servant shall report, with as little delay as possible, every accident occurring in the course of working the railway on which he is employed which may come to his notice. Such reports shall be made to the nearest station master, or, where there is no station master, to the railway servant in charge of the section of railway on which the accident has occurred.

General Manager to cause inquiry to be held

5.—(1) Whenever an accident such as is described in section 42 of the Act has occurred in the course of working a railway the General Manager shall cause an inquiry to be promptly made by a Committee of Railway Officers (to be called a Joint Inquiry) for the thorough investigation of the causes which led to the accident:

Provided that such inquiry may be dispensed with—

(*a*) if the accident has not been attended with loss of human life or with serious injury to person or property; or

(*b*) if there is no reasonable doubt as to the cause of the accident.

(2) Where such inquiry is dispensed with it shall be the duty of the Head of the Department of the railway responsible for the accident to make such inquiry (to be called a Departmental Inquiry) as he may consider necessary, and if his staff or the system of working is at fault to adopt or suggest such measures as he may consider expedient for preventing a recurrence of similar accidents.

Notice of inquiry to be given to magistrate

6.—(1) Whenever a Joint Inquiry is to be made, the General Manager shall cause notice of the date and hour at which the inquiry will commence to be given to the District Commissioner having jurisdiction over that section of the line in which the accident occurred, or to such other magistrate as may be appointed by the Chief Justice in that behalf.

(2) The date and hour at which the inquiry will commence shall be fixed so as to allow the officer referred to in subrule (1) sufficient time to reach the place where the inquiry is to be held.

General Manager to receive report of Joint or Departmental Inquiry and to transmit same to magistrate

7.—(1) As soon as the Joint or Departmental Inquiry has been completed, the Chairman of the Committee or the Head of the Department, as the case may be, shall send to the General Manager a report which in the case of all accidents of the nature described in rule 16 shall be submitted in the form prescribed by that rule.

(2) The General Manager shall forward, with his remarks as to the action it is intended to take in regard to the staff responsible for the accident, or for the revision of the rules or system of working, a copy of such report to the District Commissioner having jurisdiction over that section of the line in which the accident occurred or to such other magistrate as may be appointed by the Chief Justice in that behalf.

(3) Such copy shall be accompanied by a statement of the person, if any, whom the General Manager desires to prosecute, and a copy of the evidence taken at the inquiry.

General Manager to give reasonable aid to authorities

8.—(1) Whenever any accident has occurred in the course of working a railway, the General Manager shall give all reasonable aid to the District Commissioner or to the magistrate appointed by the Chief Justice in that behalf and to the medical officer and others concerned, and shall assist those authorities in making

inquiries and in obtaining evidence as to the cause of the accident.

(2) When any magisterial inquiry under rule 10 is being made the General Manager shall arrange for the attendance, for as long as may be necessary, at the office or place of inquiry of all railway servants whose evidence is likely to be required.

Duty of General Manager to summon medical aid

9. Whenever any accident occurring in the course of working a railway has been attended with serious personal injury, it shall be the duty of the General Manager to afford prompt medical aid to the sufferers and to see that they are properly and carefully attended to, until they are removed to their homes or handed over to the care of their relatives or friends. In any case involving loss of human life or serious personal injury the nearest medical officer shall be summoned.

Duties of Magistrates

Steps to be taken by magistrate on occurrence of accident

10. Whenever an accident, such as is described in section 42 of the Act has occurred in the course of working a railway, the District Commissioner having jurisdiction in the District in which the accident occurred, or any other magistrate appointed by the Chief Justice in that behalf may either—

(*a*) himself make an inquiry into the causes which led to the accident; or

(*b*) may accept a report on the accident from the General Manager:

Provided always that action shall not be taken by a magistrate under clause (*a*) of this rule until the Joint Inquiry referred to in rule 5 has been held, unless for reasons, to be specially recorded by him, which reasons shall be at once communicated by him to the General Manager, he considers it necessary to take such action in the interest of justice.

Place of inquiry

11.—(1) A magisterial inquiry held under the provisions of rule 10 of these Rules shall be held at such place as the District Commissioner or other magistrate appointed to hold the inquiry shall decide.

(2) The General Manager shall be informed of the date and place of the inquiry.

Scene to be visited

(3) The magistrate holding the inquiry shall, before the inquiry is completed, visit the scene of the accident.

Conduct of magisterial inquiry

12. A magistrate holding an inquiry under rule 10 may summon any railway servant and any other person whose presence he may think necessary, and after taking evidence and completing the inquiry shall, if he considers that there are sufficient grounds for a judicial inquiry, take the requisite steps for bringing to trial any person whom he may consider to be criminally liable for the accident. Whenever technical points are involved the magistrate should be careful to call for, and take, the opinions of professional persons.

General Manager to be notified of result

13. The result of every magisterial inquiry held under rule 10 shall be communicated by the magistrate to the General Manager.

Assistance of General Manager and attendances of railway servant at judicial inquiry

14. If in the course of any judicial inquiry into an accident occurring in the course of working a railway the magistrate desires the assistance of the General Manager or the attendance of any railway servant to explain any matter relating to railway supervision, management or working, he shall issue a requisition to such railway servant through the Head of his Department to attend the court stating at the time the nature of the assistance required. In summoning railway servants the magistrate shall take care not to summon so large a number of the railway servants, especially of one class, on the same day, as to cause inconvenience to the working of the railway. In the case of very serious accidents it will generally be advisable for the magistrate to receive either the evidence of or a report from the General Manager before concluding the judicial inquiry.

Magistrate to send General Manager copy of decision and to report result to Minister

15. On the conclusion of any such judicial inquiry the magistrate shall send a copy of his decision to the General Manager and shall report the result of the inquiry to the Minister.

Particulars to be contained in report referred to in rule 7

16. In the case of all accidents to a train (whether carrying passengers or not) which is attended with loss of human life or serious injury to person or property, the report referred to in rule 7 shall contain—

(1) a brief description of the accident;

(2) a description of the locality of the accident;

(3) a detailed statement of the evidence taken;

(4) the conclusions reached at the Joint or Department Inquiry;

(5) a statement of the damage done; and

(6) a sketch illustrative of the accident.

NOTE

Rules and Regulations made by the railway administration under the Railway Act that relate solely to the internal management of the railway, or to the discipline of railway servants and charges and tariffs are not published here.

OPENING OF RAILWAY (CHIPOKA) ORDER

Gen.N. 330/1956(F)

under s. 17 (1)

The Minister has by order sanctioned the opening of the new railway line between Chipoka and a point 1.65 miles north-west thereof for the public carriage of passengers.

OPENING OF NKHATA BAY PORT ORDER

G.N. 284/1958(F)

under s. 17 (1)

The Minister has by order sanctioned the opening for the public carriage of passengers of the works now constructed at the port of Nkhata Bay which fall within the definition of railway in section 2 (1) of the Act, and which are described generally in the Schedule.

Cap. 69:03

SCHEDULE

1. Landing stage and moorings.
2. Bridge connecting landing stage with land.
3. Fenced area adjacent to bridge.
4. All buildings in the fenced area.

MALAWI RAILWAY HOLDINGS COMPANY

CHAPTER 69:04

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CHAPTER 69:04

MALAŴI RAILWAY HOLDINGS COMPANY

ARRANGEMENT OF SECTIONS

SECTION

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An Act to Provide for the Incorporation of the Malaŵi Railway Holdings Company and for purposes connected therewith and incidental thereto

34 of 1966
8 of 1980
9 of 1985

[29TH AUGUST, 1966]

PART I

PRELIMINARY

1. This Act may be cited as the Malaŵi Railway Holdings Company Act. Short title

Interpretation

2. In this Act, unless the context otherwise requires—"Agricultural Development and Marketing Corporation" means the Agricultural Development and Marketing Corporation incorporated under the Agricultural Development and Marketing Act;

Cap. 67:03

"Board" means the Board of Directors referred to in section 8;

"Chairman" includes any director acting as Chairman under section 8;

"the Company" means the Malaŵi Railway Holdings Company incorporated by this Act;

"Lonrho Limited" means the company of that name incorporated under the United Kingdom Companies Acts;

"Malaŵi Railways Limited" means the company of that name incorporated under the United Kingdom Companies Acts;

"securities" in relation to a body corporate includes shares, stock, debentures, debentures stock, and any other security of a like nature, of the body corporate.

PART II

Incorporation and Management of Company

Incorporation, limitation of liability, offices, agents and seal

3.—(1) There is hereby incorporated a company to be known as Malaŵi Railway Holdings Company which shall be a body corporate with perpetual succession and a common seal capable of suing and being sued in its corporate name, and which, subject to this Act, may acquire, hold and dispose of movable and immovable property.

(2) The liability of the members of the Company shall be limited to the amount, if any, unpaid or not credited as paid on the shares of which they are the holders.

(3) The Company shall have its head office in Malaŵi and may open branches in or outside Malaŵi and appoint agents in accordance with the decisions of the Board.

(4) The common seal of the Company may be affixed to any documents under such condition as may from time to time be determined by the Board, and shall not be affixed otherwise.

Objects and powers

4.—(1) The principal objects of the Company are—

(*a*) to purchase or otherwise acquire, hold, manage and dispose of securities of or any interest in any corporation or other enterprise carrying on railway or other transportation operations or business in Malaŵi or elsewhere including any such securities or other interest held by the Government;

(*b*) to exercise the rights attached to such securities or interest.

(2) The Company may borrow moneys and do all such other lawful acts and things as may be incidental or conducive to or connected with the principal objects specified in subsection (1).

(3) The Minister may, by order under his hand, which shall be published in the *Gazette*, extend or vary the objects and powers of the Company.

Transfer of certain shares to the Company

5. Government shall cause to be transferred to the Company, for the consideration specified in section 6, the beneficial interest in all the shares in Malaŵi Railways Limited which it has at the date of coming into operation of this Act and which it may thereafter acquire.

Capital
9 of 1985

6.—(1) The authorized capital of the Company shall be three million two hundred thousand Kwacha (K3,200,000) divided into one million six hundred thousand (1,600,000) shares of two Kwacha (K2) each.

(2) The capital of the Company may from time to time be increased by such amount as the Board, with the consent of the Minister, may resolve.

(3) The Board shall issue shares in the Company as follows—

(*a*) to the Government, in consideration for the transfer to the Company of its beneficial interest in sixty-one thousand (61,000) Ordinary shares of two Kwacha (K2) each and one million and eighty-one thousand, six hundred and twenty-five (1,081,625) "A" Ordinary shares of ten tambala (10t) each in Malaŵi Railways Limited, one million, one hundred and forty-two thousand, six hundred and twenty-five (1,142,625) shares in the Company credited as fully paid;

(*b*) to the Agricultural Development and Marketing Corporation in consideration for services rendered in the financing of the Company one hundred (100) shares in the Company credited as fully paid up;

(*c*) to the Government, in the event of the Government acquiring two hundred and fifty-seven thousand, eight hundred and forty-six (257,846) Ordinary shares of two Kwacha (K2) each and ten (10) "A" Ordinary shares of ten tambala (10t) each in Malaŵi Railways Limited by arrangement with Lonrho Limited, in consideration for the transfer to the Company of such shares, two hundred and fifty-seven thousand, eight hundred and fifty-six (257,856) shares in the Company credited as fully paid-up.

(4) The Board may issue the remaining shares in the Company in consideration of the payment in cash of the nominal value thereof, or in exchange for securities.

(5) A certificate shall be issued by the Board to the holder of shares in the Company certifying the number of shares held by him.

Profits

7.—(1) The profits of the Company for each financial year of the Company shall be determined by the Board after meeting all current expenditure for that year and making such provision as the Board may think fit for future development, depreciation of assets and other matters usually provided for by companies of a like character.

(2) The net profits of the Company shall be available for payment of a dividend to shareholders.

Directors
8 of 1980

8.—(1) The Company shall be managed by a Board of Directors.

(2) There shall be not less than three nor more than five Directors of the Company who shall be appointed by the Minister as follows—

(*a*) one director shall be a person representing the Ministry of Finance of the Government;

(*b*) one director shall be a person representing the Malaŵi Development Corporation;

(*c*) one director shall be a person representing the Agricultural Development and Marketing Corporation.

(*d*) a director appointed in addition to those specified in paragraphs (*a*), (*b*) and (*c*) shall be appointed by the Minister from persons who appear to the Minister to have had experience of and to have shown capacity in transport, financial matters or administration.

(3) The Minister shall appoint one of the Directors to be Chairman and may at any time appoint any other director to act as Chairman when the Chairman is unable to fulfil any of the functions of his office.

(4) A director may be appointed by name or by office and shall hold office for two years and in accordance with the terms of his appointment and shall, on ceasing to be a director, be eligible for re-appointment:

Provided that the Minister may at any time terminate the period of office of a director and, subject to subsection (2), appoint another person to be a director in his place.

(5) Subject to this Act, the Board shall in the performance of its functions, be subject to the special or general directions of the Minister.

(6) The Board may act notwithstanding any vacancy among the Directors.

Meetings of the Board

9.—(1) Meetings of the Board shall be called by the Chairman and shall be conducted in such manner as the Board may from time to time determine.

(2) The Chairman and one other Director shall form a quorum at any meeting of the Board, and, unless otherwise provided or determined by the Board, the decision of the majority of the Directors present and voting at any meeting shall constitute a decision of the Board.

(3) The Chairman shall have a deliberative vote, and, in addition, in the event of an equality of votes, a casting vote.

(4) All bona fide acts of the Chairman or a Director shall be valid notwithstanding any defect that may afterwards be discovered in his appointment.

Borrowing powers

10. The Board shall not exercise the borrowing powers of the Company without the prior consent in writing of the Minister.

Officers

11.—(1) The Board may appoint such officers and servants as it considers to be necessary for the efficient conduct of the business of the Company.

(2) Officers and servants of the Company shall hold office for such period or periods, receive such salaries and allowances, if any, and be subject to such other terms and conditions of service as may be determined by the Board.

PART III

Accounts

Annual accounts and report

12.—(1) The Board shall cause proper records of the financial transactions of the Company to be maintained and shall, as soon as may be after the close of each year, transmit to the Minister—

(*a*) a copy of the annual accounts of the Company certified by the auditors; and

(*b*) a report on the operations of the Company during that year.

(2) The Minister shall, as soon as may be, cause a copy of the annual accounts and the report to be laid before the National Assembly.

Audit

13. The accounts of the Company shall be audited by auditors appointed annually by the Board with the approval of the Minister.

PART IV

Miscellaneous

Share transfers and register

14.—(1) The Board shall cause to be maintained a register of all the shares in the Company which have been issued, and of all transfers of such shares.

(2) An issued share in the Company shall be capable of being transferred by an instrument of transfer in the common form and by registration of the transfer in the register.

(3) The instrument of transfer, together with the certificate issued pursuant to section 6, shall be presented to the Board, who may refuse to register any transfer without assigning any reason for such refusal. The Board shall refuse to register a transfer of shares if the effect thereof would be to reduce the number of members of the Company to less than two.

(4) If a transfer of shares in the Company is registered the Board shall cause a fresh share certificate to be issued to the transferee showing the number of shares of which he is the holder.

Taxation, etc.

15. Notwithstanding any other law—

(*a*) the profits of the Company shall not be liable to income tax or other taxes in Malaŵi;

(*b*) the Company shall not be liable in Malaŵi to pay stamp duty or any duty or fee of any other description which would, but for this section, be payable to the Government or any officer of the Government.

Authentication of documents and decisions

16.—(1) All documents made by the Company other than those required by law to be under seal and all decisions of the Board may be signified under the hand of the Chairman, the Vice-Chairman, the Secretary or any director authorized in that behalf.

(2) Every document purporting to be made by the Company and to be sealed in accordance with section 3 or to be signified in accordance with subsection (1) shall be received in evidence and be deemed such a document without proof unless the contrary is shown.

Regulations

17. The Minister, after consulting with the Board, may make Regulations for the better carrying out of the objects and purposes of this Act, or to give force or effect to its provisions, or for its better administration.

MALAŴI ROAD TRANSPORTERS AUTHORITY

CHAPTER 69:05

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CHAPTER 69:05

MALAŴI ROAD TRANSPORTERS AUTHORITY

ARRANGEMENT OF SECTIONS

SECTION

1. Short title
2. Interpretation
3. Establishment of the Authority
4. Constitution and proceedings of Authority
5. Appointment, etc., of staff
6. Legal proceedings
7. Funds of the Authority
8. Functions of the Authority
9. Transfer of assets, etc., of Malaŵi African Road Transporters Association Ltd.
10. Regulations
11. Saving

An Act to provide for the establishment of the Malaŵi Road Transporters Authority; to vest in the Authority certain assets and liabilities; to confer or impose powers and duties on the Authority; and to provide for matters incidental to or connected with the foregoing 5 of 1970 8 of 1980

[1st April, 1970]

1. This Act may be cited as the Malaŵi Road Transporters Authority Act. Short title

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

"approved transporter" means a Malaŵi African road transport operator, approved by the Authority for the purposes of this Act, and registered in the books of the Authority as an approved transporter;

"Authority" means the Malaŵi Road Transporters Authority established under section 3.

3.—(1) There is hereby established a body to be known as the Malaŵi Road Transporters Authority, which shall be a body corporate with perpetual succession and a common seal, capable of suing and being sued in its corporate name, and, subject to this Act, of purchasing, holding, acquiring and disposing of movable and immovable property and doing all such acts and things as corporate bodies may by law do and perform. Establishment of the Authority

(2) In the exercise of its powers or the performance of its functions under this Act the Authority shall be subject to any special or general directions of the Minister.

Constitution and proceedings of Authority 8 of 1980

4.—(1) The Authority shall consist of the following members who shall be appointed by the Minister for a term of two years and be eligible for reappointment—

(*a*) a Chairman;

(*b*) a Deputy Chairman;

(*c*) two members appointed by the Minister in his discretion;

(*d*) a representative of the Malaŵi Development Corporation;

(*e*) a representative of the Agricultural Development and Marketing Corporation;

(*f*) a representative of the Ministry; and

(*g*) two members to represent approved transporters.

(2) At any meeting of the Authority the Chairman shall preside, but if at any meeting the Chairman is not present, the Deputy Chairman shall act as Chairman, or if the Deputy Chairman is also not present the members present and forming a quorum shall elect one of their number to act as Chairman for that meeting.

(3) The Authority shall meet at such times and at such places as may be necessary or expedient for the transaction of business.

(4) At any meeting of the Board any five members thereof shall form a quorum.

(5) Decisions of the Authority shall be decided by a majority of the members present and voting on the matter in question, and in the event of an equality of votes the Chairman at that meeting shall have a casting vote in addition to his deliberative vote.

(6) Minutes in proper form of each meeting of the Authority shall be kept and shall be confirmed by the Authority at the next meeting and signed by the Chairman of such next meeting.

(7) The Authority may in its discretion invite any person to attend a meeting of the Authority, and such person may, with the consent of the Chairman of that meeting, speak but shall have no power to vote.

(8) Any member of the Authority may at any time resign by giving notice in writing to the Minister, and from the date specified in the notice, or from the expiration of seven days after receipt of the notice by the Minister, whichever is the later, he shall cease to be a member of the Authority.

(9) Subject to this section and any special or general directions given by the Minister the Authority may regulate its own procedure.

(10) No member of the Authority, in his capacity as such, shall be personally liable for anything done, or omitted to be done, by him in good faith under this Act.

Appointment etc. of staff

5. (1) The Authority shall, with the approval of the Minister, appoint a General Manager who shall be responsible for the day to day running of the business of the Authority, and appoint or employ such other persons as may be necessary for the proper conduct of the Authority's business.

(2) The General Manager and other persons appointed or employed under this section shall be paid from the funds of the Authority such remuneration and allowances, and shall be subject to such conditions of employment, as the Authority, with the approval of the Minister, shall determine.

(3) The power to dismiss or discipline the General Manager and other persons appointed or employed under this section shall vest in the Minister, but the Minister may delegate such power to the Authority or the General Manager subject to such general or specific limitations or directions as the Minister may, from time to time, specify.

(4) The Authority may appoint from among its members a committee or committees, of such composition and with such powers as the Board may determine, for the purpose of assisting or advising the General Manager in his day to day running of the business of the Authority.

Legal proceeding

6. In any action, suit or prosecution by or against the Authority, the Authority may appear by its General Manager, or by any other person appointed or employed by the Authority and authorized by the General Manager in writing in that behalf.

Funds of the Authority

7.—(1) The funds and resources of the Authority shall consist of—

(*a*) such assets as may be transferred to the Authority by virtue of section 9;

(*b*) such sums as may be provided by Parliament for the purposes of this Act;

(*c*) any sums levied in respect of services or facilities rendered or offered by the Authority;

(*d*) any sums or property which may in any manner become payable to or vested in the Authority in respect of any matter incidental to the carrying out of its functions.

(2) The funds and resources of the Authority however derived shall be applied solely towards the promotion of the purposes of the Authority.

Purposes and functions of the Authority

8.—(1) The purposes and functions of the Authority shall be—

(*a*) to promote, foster and protect the interests of approved transporters and of the road transport industry in Malaŵi;

(*b*) to collect and disseminate information of a technical or non-technical nature among approved transporters; to establish a place or places of meeting for the use of approved transporters for business or leisure purposes; to be a medium of communication between approved transporters and provide for discussion between them with a view to promoting the interests of both the road transport industry and such approved transporters;

(*c*) to encourage the growth and development of the road transport industry by advertising and by organizing or participating in shows or displays, rallies, meetings, demonstrations and exhibitions open to the public or otherwise;

(*d*) to improve the standard of road transport by organizing lectures, courses or classes for approved transporters or their staffs and establish funds, bursaries and scholarships for further education in Malaŵi or abroad of persons employed or intending to be employed in the industry;

(*e*) to negotiate with and make representations to Government and local authorities for the improvement and maintenance in good condition of roads, bridges and ferries;

(*f*) to assist individual approved transporters to establish or improve their business and for this purpose to make loans to approved transporters and to guarantee payments for the performance of contracts by them;

(*g*) with a view to providing improved facilities for approved transporters, to act as agent or dealer in all types of plant, equipment, vehicles, tyres, spare parts, accessores, fuels, lubricants and materials and establish and maintain workshops and garages for the sale thereof and for repair or maintenance of approved transporters' vehicles, plant and equipment;

(*h*) to carry on the business of road transporters and carriers and of warehousemen;

(*i*) to carry on any trade, business or agency which can be conveniently carried on in connexion with the purposes of the Authority or calculated directly or indirectly to promote or assist such purposes or enhance the value of or render profitable any of the Authority's property or rights;

(*j*) to acquire and carry on the whole or any part of the business, property, assets and liabilities of any person, company or association carrying on any business or undertaking which the Authority is authorized to carry on, or possessed of property suitable for the purpose of the Authority, and to co-operate, collaborate or affiliate with any body or bodies having objects similar to those of the Authority;

(*k*) to apply for, purchase, take on lease or exchange, hire or otherwise acquire any movable and immovable property and any rights or privileges which the Authority may think right or necessary or convenient for the purpose of its business or businesses, and in particular any land, buildings, easements, water rights, machinery, vehicles, vessels, plant, equipment and stock in trade and any patents, patent rights, inventions and concessions and to take or otherwise acquire and hold any shares, stock, debentures or obligation in any company;

(*l*) to borrow and secure the payment of money in such manner and on such terms as the Authority may deem expedient and to mortgage or charge all or any part of the property and rights of the Authority, present or future;

(*m*) to make, draw, endorse, negotiate, discount, buy, sell and deal in bills, notes and other negotiable or transferable instruments;

(*n*) sell, improve, manage, exchange, let, develop, dispose of, turn to account or otherwise deal with all or any part of the property and rights of the Authority;

(*o*) to remunerate or make donations to any person or persons whether members, officers or agents of the Authority or not, for services rendered or to be rendered in or about the conduct of the Authority's business;

(*p*) to establish and support funds or institutions calculated to benefit employees or ex-employees of the Authority or the dependants of such persons and to grant pensions and allowances and subscribe or guarantee money for similar charitable objects;

(*q*) to invest and deal with the moneys of the Authority not immediately required upon such securities and in such a manner as may from time to time be determined by the Minister, with the approval of the Minister for the time being responsible for finance.

(2) In carrying out its purposes and functions under this Act the Authority shall comply with the provisions of any other relevant written law.

Transfer of assets, etc., of Malaŵi African Road Transporters Association Ltd. Cap. 46:03

9.—(1) The assets, rights, liabilities and obligations which, immediately before the date of the coming into operation of this Act, were vested in or incurred by the Malaŵi African Road Transporters Association Ltd., a company established and registered under the Companies Act, are hereby transferred to and vested in the Authority.

(2) All bonds, charges, agreements, contracts, instruments and working arrangements creating or giving rise or relating to or connected with the assets, rights, liabilities and obligations referred to in subsection (1), which were subsisting immediately before the date of the coming into operation of this Act, shall on that date become of as full force and effect against or in favour of the Authority and enforceable as fully and effectively as if, instead of the said Association, the Authority had been named therein and had been a party thereto.

(3) All proceedings or causes of action relating to or connected with any asset, right, liability or obligation referred to in subsection (1) or arising out of a bond, charge, agreement, contract, instrument or working arrangement referred to in subsection (2), which were pending or existing immediately before the date of the coming into operation of this Act by or against the said Association, may be continued or enforced by or against the Authority as they might have been by or against the said Association if this Act had not come into operation.

(4) In respect of any immovable property which immediately before the coming into operation of this Act, was vested in the said Association, the Deeds Registrar may make the necessary amendments in the register kept by him under the Deeds Registration Act to record the vesting in the Authority effected by this section.

Cap. 58:02

(5) The Minister may by order provide for any other matters which appear to him to be necessary or expedient for the purpose of securing the effective transfer of any assets or liabilities vesting or to be vested in the Authority by virtue of this Act.

Regulations

10. The Minister may make regulations for the better carrying out of the purposes of this Act.

Saving

11. The provisional Authority appointed before the coming into force of this Act to take over the affairs and the running of the Malaŵi African Road Transporters Association Ltd., shall, until the appointment of the Authority under this Act, be deemed to be the Authority appointed under this Act, and any act or thing done or performed by such provisional Authority shall, in so far as it is not inconsistent, be deemed to have been done or performed under the powers conferred under this Act, even though done or performed before the coming into operation of this Act.

NATIONAL ROAD SAFETY COUNCIL OF MALAŴI

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NATIONAL ROAD SAFETY COUNCIL OF MALAŴI

ARRANGEMENT OF SECTIONS

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An Act to provide for the establishment and incorporation of the National Road Safety Council of Malaŵi, for the composition of such Council, for its powers and objects; and for matters connected therewith and incidental thereto

[15TH SEPTEMBER, 1978]

PART I

PRELIMINARY

1. This Act may be cited as the National Road Safety Council of Malaŵi Act. Short title

Interpretation

2. In this Act unless the context otherwise requires—

"Council" means the National Road Safety Council of Malaŵi established under section 3;

"financial year" means the period commencing on the date of commencement of this Act and ending on the 31st March, 1979, and thereafter the period of twelve months ending on the 31st March each year.

PART II

THE COUNCIL

Establishment of Council

3.—(1) There is hereby established a body to be known as the National Road Safety Council of Malaŵi (hereinafter referred to as "the Council") which shall be a body corporate with perpetual succession and a common seal, with power to alter or change the same from time to time, and shall, under the said name be capable of suing and being sued and, subject to the provisions of this Act, of purchasing or otherwise acquiring, holding or alienating property, real or personal, and of doing all such acts and things as bodies corporate may by law do or perform.

(2) The common seal of the Council shall be authenticated by the signatures of the Chairman, or of the person for the time being performing the functions of Chairman, and of the Secretary of the Council, and any document purporting to be sealed with the said seal and so authenticated shall be admissible in evidence of the particulars stated in that document.

(3) The Council may use a wafer or rubber stamp in lieu of an embossed seal until such time as an embossed seal is procured by the siad Council.

Composition of the Council

4.—(1) The Council shall consist of—

(*a*) one member designated as Chairman appointed by the Minister;

(*b*) one member designated as Vice-Chairman appointed by the Minister;

(*c*) the Secretary for Health or his representative;

(*d*) the Secretary for Education and Culture or his representative;

(*e*) the Road Traffic Commissioner or his representative;

(*f*) the Inspector General or his representative;

(*g*) the Secretary for Justice or his representative;

(*h*) one member representing the Ministry of Works nominated by the Secretary for Works.

(*i*) the Secretary for Transport and Communications or his representative;

(*j*) one member representing the Department of Information nominated by the Secretary to the President and Cabinet;

(*k*) the Chairman of each Regional Committee, established by the Council under section 12 (*n*);

(*l*) one member representing the Insurance Companies Association appointed by the Minister from a panel of three persons submitted by the said Association;

(*m*) one member representing transport organizations appointed by the Minister from a panel of three persons submitted by the Secretary for Transport and Communications;

(*n*) one member representing the Malaŵi Broadcasting Corporation appointed by the Minister from a panel of three persons submitted by the Secretary to the President and Cabinet.

(2) The Minister may appoint to the Council such additional members as he deems essential to the Council in the exercise of its powers and objects.

(3) Members of the Council shall not, by virtue only of their appointments to the Council, be deemed to be officers in the Public Service.

(4) The names of all members of the Council as first constituted and every change in membership thereof shall be published in the *Gazette*.

Council may co-opt advisers

5. The Council may, with the consent of the Minister, co-opt any one or more persons as advisers to attend any particular meeting or series of meetings.

Tenure of office of Council members 8 of 1980

6.—(1) Members of the Council shall, subject to this section, hold office for two years from the date of their respective appointments.

(2) Upon the expiry of the period for which a member of the Council, who is not a member appointed pursuant to paragraph (*c*), (*d*), (*e*) (*f*), (*g*), (*h*), (*i*), (*j*), or (*k*) of section 4 (1), is appointed pursuant to this section, such member shall continue to hold office until his successor has been appointed, but in no case shall such further period exceed three months.

(3) A retiring appointed member shall be eligible for re-appointment if not disqualified under section 8.

Remuneration of members of the Council 16 of 1983

7. Members of the Council shall be paid by the Council such remuneration and allowances, if any, as the Council may in each case fix.

Disqualifications

8. The office of a member, other than those appointed pursuant to paragraph (*c*), (*d*), (*e*), (*f*), (*g*), (*h*), (*i*), or (*k*) of section 4, shall be vacated—

(*a*) upon the expiry of the period specified in his instrument of appointment;

(*b*) upon his death;

(*c*) if he is adjudged a bankrupt;

(*d*) if he is sentenced for an offence against any written law to a term of imprisonment of, or exceeding, six months, otherwise than as an alternative to, or in default of, the payment of a fine;

(*e*) if he is convicted of an offence involving fraud or dishonesty;

(*f*) in the case of a member other than the Chairman, if he is absent, without the permission of the Chairman, from three successive meetings of the Council of which he has notice;

(*g*) upon the expiry of one month's notice in writing of his intention to resign his said office given by him to the Minister;

(*h*) upon his being given notice by the Minister of the termination of his appointment;

(*i*) if in the opinion of the Minister, he becomes, by person of mental or physical infirmity, incapable of performing his duties as a member of the Council;

(*j*) if the Minister, or the authority by which he is nominated, is satisfied that the private interests of the member conflict or are liable to conflict with his duties as a member and that consequently it is inexpedient for him to continue to hold office as a member.

Meetings of the Council

9.—(1) The Council may meet at such places and times as the Chairman may determine or as he may be directed by the Minister, and shall meet at least four times in every business year.

(2) Meetings of the Council shall be convened by at least fourteen days' notice thereof in writing being given to the members by the Chairman. The Chairman may, at his discretion, and shall at the written request of four or more members of the Council and within fourteen days of such request, cause a special meeting to be summoned at such place and time as he may appoint.

(3) The Chairman shall preside at meetings of the Council or, in his absence from any meeting, the Vice-Chairman, who, for the purposes of that meeting, shall exercise all the powers and perform all of the duties of the Chairman.

(4) The Chairman, or, in his absence, the Vice-Chairman, together with four other members, shall form a quorum.

(5) Meetings of the Council shall be conducted in such manner as may be directed by the Minister or, in the absence of such direction, in such manner as the Council deems meet.

(6) Minutes of each meeting shall be kept by the Secretary and shall be confirmed at the succeeding ordinary meeting by the Chairman, or, in his absence, by the Vice-Chairman.

(7) Decisions of the Council shall be made by a majority of the members present at a meeting of the Council; at all such meetings the person presiding shall have, in the event of an equality of votes, a casting vote.

Committees of the Council

10.—(1) Subject to subsection (2), the Council may appoint an Executive Committee, and such other committees of the Council, as it may deem fit. The Executive Committee shall consist of not less than five members of whom any three shall form a quorum. The Council may, with the consent of the Minister, delegate to the Executive Committee such of its powers as it may, from time to time, determine.

(2) The Chairman of the Council shall, by virtue of his office as such, be a member of each committee appointed under subsection (1), in addition to the members thereof appointed under the said subsection.

(3) The Chairman of the Council shall also be Chairman of the Executive Committee.

Secretary

11.—(1) There shall be a Secretary to the Council who shall be appointed by the Council and shall be an employee thereof and directly answerable thereto.

(2) The Secretary shall be the principal executive officer of the Council and as such shall be responsible to the Council for the administration and management of its affairs, and shall be in charge of all administrative, executive and other staff of the Council, and, in all such matters, shall, at all times, be subject to the direction and control of the Council.

(3) The Secretary shall exercise such powers and perform such duties as the Council may, after consultation with the Minister, delegate to him in writing from time to time and in any such delegation the Council may impose such conditions as to the exercise of such powers or the performance of such duties as the Council deems fit.

(4) The Secretary may, with the approval of the Council, employ such temporary or part-time staff as he deems necessary for the time being to effect the objects of the Council.

(5) The Council shall be liable for all salaries and other expenses incurred in relation to persons employed under subsection (4).

PART III

Powers and Objects of the Council

Powers of the Council

12. Subject to the general and specific directions of the Minister, the powers of the Council shall be—

(*a*) to employ, with the approval of the Minister, such professional, technical and administrative officers, clerks and other servants as it may deem requisite and to lay down conditions of service for such employees;

(*b*) to pay any person in its employ such salary, wages or other remuneration as it may deem fit, and to grant him such leave as it may deem fit;

(*c*) to provide for persons in its employ or their dependants, by means of insurance with an insurance company or a pension or provident fund or in any other manner whatsoever, pecuniary benefits upon retirement, death or termination of service or in the event of sickness or injury;

Cap. 37:01

(*d*) subject to the Finance and Audit Act to raise moneys by way of loan or bank overdraft; (*e*) to purchase, take on lease or in exchange, hire, or otherwise acquire any real or personal property, which it considers necessary for the purpose of performing its functions or for the purpose of use as dwelling houses for persons in its employ;

(*f*) to sell or lease dwelling-houses and land for residential purposes to persons in its employ;

(*g*) to construct, maintain, alter or improve any buildings, works, machinery and plant necessary or expedient for the performance of its functions;

(*h*) to work or otherwise beneficially use, to exchange, let, sell or mortgage any property, rights or privileges acquired under subsection (*e*) or (*g*);

(*i*) to invest and deal with any of its moneys not immediately required in such securities and in such manner as it may think fit and to vary or realize such investments;

(*j*) to invite and receive donations from any person towards its expenses and to award bursaries and to make grants towards road safety research or to any other such project as it deems conducive towards the promotion of road safety;

(*k*) for the better performance of its functions, to cooperate with Government departments, universities, technical colleges, persons engaged in road safety research and such other associations, organizations or persons as may desire to avail themselves of its facilities inside and outside Malaŵi;

(*l*) publish from time to time, such technical or other information as it deems necessary or expedient for the promotion of road safety;

(*m*) to advise the Minister on road safety legislation;

(*n*) to establish in each region a Regional Committee and to appoint the members thereof; each such Regional Committee to be presided over by a Chairman nominated as such by the Council from amongst the members of such Regional Committee; and

(*o*) to do all things incidental or conducive to the furtherance of its objects under this Act.

Objects and duties

13. The objects and duties of the Council shall be—

(*a*) to promote road safety in the Republic of Malaŵi in all its aspects;

(*b*) to undertake or assist in the dissemination of road safety propaganda and education for the benefit of all road users in Malaŵi and, to this end, may enlist the cooperation of the press and broadcasting authorities and may utilize any other publicity medium;

(*c*) to promote and give financial support for research in the field of road safety, and independently, or in cooperation with appropriate authorities and any other interested persons, take such steps as it deems advisable for the implementation of any decision reached as a result of any such research.

PART IV

Funds of the Council

Funds of the Council

14.—(1) The funds of the Council shall consist of—

(*a*) such sums as may be payable to the Council from moneys appropriated by Parliament for the purpose;

(*b*) such moneys or assets as may accrue to or vest in the Council whether in the course of the exercise of its functions or powers, or otherwise;

(*c*) such moneys or other assets as may accrue to or vest in the Council by way of grants, subsidies, bequests, donations, gifts, subscriptions, rents, interest or royalties, from the Government or any other person;

(*d*) such sums as are derived from the sale of any property, real or personal, by or on behalf of the Council ;

(*e*) such sums as are received by the Council by way of voluntary contributions; and

(*f*) such moneys or other assets as may be donated to the Council by any foreign government, international agency or other external body of persons corporate or unincorporate.

(2) For the purposes of this section an "external body of persons" mean any body of persons, corporate or unincorporate, formed under or by virtue of the laws of any country other than Malaŵi.

Road safety levy
27 of 1990
12 of 1992

15. The Minister may, by order published in the *Gazette*, impose a levy on any class or classes of road users, or any class or classes of insurers, which shall be payable to the Council towards its funds required for the discharge of its functions under this Act.

Annual budget

16. The Council shall draw up, in respect of each financial year, an annual budget showing the estimated expenditure on capital and revenue account, respectively, and shall submit the said budget for the approval of the Minister.

Books, accounts, audit and reports

17.—(1) The Council shall cause to be kept proper books of account and other books in relation thereto.

(2) The accounts of the Council shall be audited annually by professional auditors appointed by the Council with the approval of the Minister. The expenses of the audit and incidental thereto shall be paid from the funds of the Council.

(3) The Council shall, as soon as practicable, but not later than six months after the end of each financial year, submit to the Minister an annual report upon its work and operations.

(4) Such report shall include a balance sheet, an income and expenditure account and the annual report of auditors, and shall be laid by the Minister before the National Assembly pursuant to section 32F of the Finance and Audit Act.

Cap. 37:01

(5) The Council shall at all times comply with the provisions of Part VA of the Finance and Audit Act.

Cap. 37:01

PART V

Miscellaneous

Regulations

18. The Minister may, by notice published in the *Gazette*, make regulations for the better carrying into effect of this Act.

SUBSIDIARY LEGISLATION

NATIONAL ROAD SAFETY COUNCIL OF MALAŴI (ROAD SAFETY LEVY) ORDER

G.N. 57/1991
1/2001
13/2006

under s. 15

1. This Order may be cited as the National Road Safety Council of Malaŵi (Road Safety Levy) Order. Citation

2. In this Order— Interpretation

"insurer" means any company registered and authorized to underwrite motor vehicle insurance in accordance with the provisions of the Insurance Act. Cap. 47:01

3.—(1) There is hereby imposed on every insurer a levy, to be known as road safety levy, payable quarterly by the insurer to the Council at the rate of one per cent (1%) of the total premiums received quarterly by the insurer in respect of motor vehicle insurance as shown in the insurer's audited accounts. Imposition of road safety levy on insurers

(2) The Council shall have access to insurers' books for inspection, verification and audit and shall receive quarterly returns or statements of motor vehicle premiums clearly showing date insured, categories and exact amounts.

(3) The amount of road safety levy imposed under subparagraph (1) may be paid in lump sum or in instalments but in either case the total amount shall be payable not later than fifteen days after the end of the insurer's financial year.

(4) An insurer who fails to pay the full amount of road safety levy in respect of any financial year within the period allowed in subparagraph (2) shall, in addition to any amount of levy outstanding, be liable to a penalty equal to twenty per cent (20%) of the total amount outstanding in any month or part of any month after that period.

(5) An insurer who fails to submit quarterly returns or statements as required under subparagraph (2) commits an offence and shall be liable, upon conviction, to a fine of K30,000.

4. The amount of road safety levy and the penalty payable under paragraph 3 shall constitute a debt owing by the insurer to the Council and shall be recoverable by civil proceedings. Recovery of road safety levy

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28 of 1998
3 of 2006
G.N. 32/2006

An Act to make provision for the establishment of the Roads Authority for the construction, maintenance and rehabilitation of public roads; and for connected purposes

[1ST JANUARY 2007]

PART I

Preliminary

1. This Act may be cited as the Roads Authority Act. Short title

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

"Administration" means the Roads Fund Administration established under section 3 of the Roads Fund Administration Act; Cap. 69:08

"Authority" means the Roads Authority established under section 3;

"appointed date" means the date appointed by the Minister under section 1;

"Board" means the Board referred to in section 5;

"Minister" means the Minister responsible for public roads;

"procedures agreement" means a procedures agreement referred to in section 26;

"public road" has the same meaning ascribed to it in the Public Roads Act; Cap. 69:02

"road" has the same meaning ascribed to it in the Public Roads Act; Cap. 69:02

"road agency" means any institution or body, whether or not incorporated, charged under any written law with the responsibility of constructing, maintaining or rehabilitating public roads, and includes any institution or body designated as a roads authority by the Minister by notice published in the *Gazette*;

"Roads Fund" means the Roads Fund established under section 18 of the Roads Fund Administration Act. Cap. 69:08

PART II

Establishment of the Roads Authority

3.—(1) There is hereby established a body to be known as the Roads Authority (in this Act otherwise referred to as the "Authority") which shall— Establishment of the Authority

(*a*) be a body corporate with perpetual succession;

(*b*) have a common seal;

(*c*) be capable of—

(i) acquiring, holding and disposing of real and personal property;

(ii) suing and being sued in its corporate name; and

(iii) doing or performing all such acts and things as bodies corporate may by law do or perform.

(2) There shall be established within the Authority such Agencies as the Board may, in consultation with the Minister, determine.

Purpose of the Authority

4. The purpose of the Authority shall be to—

(*a*) ensure that public roads are constructed, maintained or rehabilitated at all times;

(*b*) advise the Minister and, where appropriate, the Minister responsible for Local Government on the preparation and the efficient and effective implementation of the annual national roads programme referred to in section 22.

PART III

Board of the Authority

Composition of the Board

5.—(1) The operations of the Authority shall be managed and controlled by a Board which shall consist of—

(*a*) the following members to be appointed by the Minister—

(i) one member nominated by and representing the Road Transport Operators Association;

(ii) one member nominated by and representing the Bus and Taxi Operators Association;

(iii) one member nominated by and representing the Malaŵi Local Government Association;

(iv) one member nominated by and representing the road traffic and road safety authorities;

(v) two members, including a civil engineer, nominated by and representing the National Construction Industry Council of Malaŵi established under the National Construction Industry Act:

Cap. 53:05

(vi) two members of the public representing the general interest of the public;

(*b*) the following members *ex officio*—

(i) the Secretary for Transport and Public Works, or his designated representative; and

(ii) the Secretary for Local Government, or his designated representative.

(2) The Board shall elect the Chairman and Vice-Chairman from amongst their number.

(3) A member *ex officio* of the Board or any person employed in the public service shall not be eligible to be elected Chairman or Vice-Chairman of the Board but shall have the right to vote on any matter at the meetings of the Board.

(4) Members of the Board shall not, by virtue only of their appointments to the Board, be deemed to be officers in the public service.

(5) The names of all members of the Board, as first constituted and every change in the membership thereof shall be published in the *Gazette*.

(6) A member of the Board, other than a member *ex officio*, shall hold office for a period of three years from the date of his appointment and shall be eligible for re-appointment at the expiry of that period.

Disclosure of interest

6. If a member of the Board acquires any pecuniary interest, direct or indirect, in any contract, proposed contract or other matter and is present at a meeting of the Board at which the contract, proposed contract or other matter is the subject of consideration by the Board, he shall at the meeting, as soon as practicable after the commencement of the meeting, disclose the fact to the Board, and shall not take part in the consideration or discussion of or vote on any question with respect to, the contract or other matter.

Board may establish committees

7.—(1) For the better carrying into effect of the purposes for which the Administration is established, the Board, may establish such number of committees as the Board shall deem appropriate to perform such functions and responsibilities as the Board shall determine subject to the directions of the Board.

(2) The provisions of this Act relating to the meetings of the Board shall apply *mutatis mutandis* to the meetings of the committees.

(3) The Board shall appoint the chairman of each committee from amongst the members of the Board.

Board may co-opt advisors

8. The Board may, in its discretion, at any time and for any length of period, co-opt any person to attend any deliberations of the Board, but such person shall not be entitled to vote on any matter at any meeting of the Board.

Vacation, etc., of members from office

9.—(1) The office of a member, other than a member *ex officio*, shall be vacated—

(*a*) upon the expiry of the period of his appointment;

(*b*) upon his death;

(*c*) if he is adjudged a bankrupt;

(*d*) if he is sentenced for an offence against any written law to a term of imprisonment of, or exceeding, six months, otherwise than as an alternative to, or in default of, the payment of a fine;

(*e*) if he is convicted of an offence involving fraud or dishonesty;

(*f*) if he is absent, without the permission of the Board, from three successive meetings of the Board of which he has had notice;

(*g*) upon the member giving notice in writing of his intention to resign his office;

(*h*) if, in the opinion of the Board, he becomes, by reason of mental or physical infirmity, incapable of performing his duties as a member of the Board;

(*i*) upon the commission of the offence referred to in section 27;

(*j*) if the member is removed under section 16 (4) (*b*); and

(*k*) if he ceases to be a representative of the organization that nominated him.

(2) Whenever there is a vacancy in the office of a member of the Board, the Minister shall, by notice published in the *Gazette*, appoint—

(*a*) in the case of a member referred to in section 5 (1) (i) to (v), another person, nominated by the institution which nominated the original member, to fill the vacancy; and

(*b*) in the case of a member referred to in section 5 (1) (*a*) (vi), appoint another person to fill the vacancy.

(3) Subject to section 10 (3), the Board may act notwithstanding any vacancy in the membership of the Board.

Meetings of the Board

10.—(1) The Board shall meet at such place or places, and at such time or times as the Chairman may determine and shall meet at least once in every two months.

(2) Ordinary meetings of the Board shall be convened by at least fourteen days written notice to the members by the Chairman, and the Chairman may, at his discretion, and shall at the written request of four or more members of the Board and within seven days of such request, cause an extraordinary meeting of the Board to be summoned at such place and time as he may appoint.

(3) The Chairman, or in his absence, the Vice-Chairman shall preside at meetings of the Board, and the quorum at any meeting of the Board shall be at least five members of the Board.

(4) In the absence of both the Chairman and Vice-Chairman, the members present and forming a quorum shall elect one of their number to preside over the meetings of the Board, and the member so elected shall exercise all the powers and perform all the duties of the Chairman.

(5) Subject to the provisions of this Act, the Board may make standing orders for the regulation of its proceeding and business or the proceedings and business of any of its committees and may vary, suspend or revoke any such standing orders.

(6) Minutes of each meeting of the Board or a committee of the Board shall be kept by the secretary and shall be confirmed at the succeeding ordinary meeting.

(7) At any meeting the decision of the Board on any matter shall be that of the majority of the members present and voting, and at all such meetings the person presiding shall have, in the event of an equality of votes, a casting vote in addition to his deliberate vote.

(8) The Board shall designate any person in the employ of the Authority to be the secretary to the Board or at the meetings of any of its committees.

Remuneration and expenses of members of the Board

11. Members of the Board shall be paid from the funds of the Authority such allowances as the Board may, subject to the approval of the Minister, determine and the Board may make provision for the reimbursement of any reasonable expenses incurred by a member of the Board or of a committee of the Board in connexion with the business of the Board or the committee.

PART IV

Functions and Powers of The Board

Functions of the Board

12. In order to achieve the purpose referred to in section 4, the Board shall—

(*a*) advise the Minister on the construction, maintenance and rehabilitation of public roads, and the prohibition of any act that may lead to damage to public roads;

(*b*) monitor the operations or activities undertaken by any road agency in the construction, maintenance and rehabilitation of public roads;

(*c*) advise the Minister on research and studies necessary for promoting the construction, maintenance and rehabilitation of public roads;

(*d*) ensure that all tenders for the construction, maintenance and rehabilitation of public roads are conducted through open and competitive bidding, in a transparent and fair manner;

(*e*) advise the Minister on the specifications, design standards and classification of public roads;

(*f*) advise the Minister on the development and training of human resources required for the construction, maintenance and rehabilitation of public roads;

(*g*) advise the roads agencies on the construction, maintenance and rehabilitation of the different classes of public roads under their responsibility;

(*h*) liaise with the road traffic and road safety authorities on matters relating to safety of persons and animals on public roads;

(*i*) advise the Minister on appropriate road signs;

(*j*) recommend to the Minister and the Minister responsible for land matters the reservation of land for public roads and for diversions and detours of public roads under construction, maintenance or rehabilitation;

(*k*) prescribe measures for preventing damage however caused by any person to any public road or any part thereof and for recovering, in full or in part, the cost of repairing the damage from such person or his insurers;

(*l*) advise the road traffic and road safety authorities and road agencies, as the case may be, on appropriate and effective methods of enforcing road traffic legislation for the purposes of preventing damage to public roads and promoting road safety;

(*m*) ensure that roads agencies carry out effective monitoring of the condition of the public roads for the purposes of timely implementation of road construction, maintenance and rehabilitation programmes;

(*n*) publish periodic reports of the activities and achievements of the Authority and make the reports available to the general public; and

(*o*) do all such things as are necessary for achieving the purposes for which the Authority is established.

Powers of the Board

13. For the better performance of its functions, the Board shall, subject to the provision of this Act and any other written law, have power—

(*a*) to authorize any employee or agent of the Authority to enter upon any land and bring thereon vehicles equipment or other property of the Authority, and erect structures and do such other things as are necessary for achieving the purposes for which the Authority is established; and

(*b*) to publish, from time to time, such technical or other information as it deems necessary or expedient for the

promotion of the construction, maintenance and rehabilitation, or generally on the condition of public roads.

Board to be accountable to Minister

14.—(1) The Board shall be responsible and accountable to the Minister for ensuring efficiency, transparency and propriety in—

(*a*) the allocation and utilization of public funds under this Act;

(*b*) the conduct of its business; and

(*c*) the operations and activities of the Authority.

(2) The Board shall not authorize the payment of any money to any contractor engaged by a road agency to construct, maintain or rehabilitate any public road unless it has been certified in writing by the relevant road agency that the work in respect of which the contractor is engaged to perform has been carried out to the required standard.

Board to report to Minister

15. The Board shall, at such intervals as the Minister may in writing require, submit to the Minister reports and financial statements, in such form as the Minister may determine, regarding the operations and activities of the Authority and the Board.

Inquiries by the Minister

16.—(1) If the Minister has reasonable cause to suspect that—

(*a*) the Board has failed to observe or perform any of the duties or obligations conferred or imposed upon it by this Act or any other written law;

(*b*) the Board has done or performed any act, matter or thing without due authority,

he may, in his discretion, appoint a person or persons (hereinafter referred to as the "Board of Inquiry") to inquire into such matter.

(2) The Board of Inquiry shall determine its own procedure but the Minister may, if he deems it fit, define the terms of reference for the Board of Inquiry.

(3) If, upon an inquiry under this section, the Minister is satisfied that the Board has done or suffered any of the acts, matters or thing referred to in subsection (1), he may by order in writing, require the Board to remedy the same within such time as he may appoint.

(4) If the Board fails to comply with an order of the Minister made under subsection (3), the Minister may, in addition to any other powers conferred on him by this Act—

(*a*) suspend the exercise by the Board of any of the powers conferred upon it by this Act or any other written law for such period as he may think fit;

(*b*) remove from office all or any of the members and, in his discretion, appoint new members pursuant to section 5,

and during such period, or as the case may be, pending the appointment of new members, confer upon any person the exercise of any powers so suspended or of the members.

(5) The expenses incidental to—

(*a*) any inquiry under this section; and

(*b*) the exercise of any of the powers of the Board under subsection (4),

shall be paid by such person as the Minister may direct, and if the Minister directs payment by the Board, such expenses shall be charged upon the annual revenue of the Administration.

PART V

Financial Provisions

Funds of the Authority

17.—(1) The funds of the Authority shall consist of such moneys as may, with the approval of the Minister, be allocated to the Authority by the Administration from the Roads Fund.

(2) There shall be paid from the funds of the Authority—

(*a*) salaries, allowances, loans, gratuities and pensions of staff of the Authority and other payments for the recruitment and retention of staff;

(*b*) such reasonable travelling and subsistence allowances for members of the Board and members of any committee of the Board when engaged in the business of the Authority and at such rates as the Administration may, with the approval of the Minister, determine; and

Cap. 69:08

(*c*) subject to the Roads Fund Administration Act, any other expenses incurred by the Authority in the performance of its functions.

Cap. 37:01
Cap. 37:02
Cap. 37:03

(3) The Authority shall at all times comply with the provisions of the Public Audit Act, the Public Finance Management Act and the Public Procurement Act.

Books and other records of accounts and audit

18.—(1) The Board shall cause to be kept proper book, books and other records of account in respect of receipts and expenditures of the Authority in accordance with acceptable principles of accounting.

(2) The accounts of the Authority shall be audited annually by the Auditor General or by independent professional auditors appointed by the Board with the approval of the Auditor General, and the expenses of the audit shall be paid out of the funds of the Administration.

(3) The Board shall, as soon as practicable, but not later than three months after the end of the financial year of the Authority submit to the Minister and publish in the *Gazette* and in at least two newspapers published and in circulation, in Malaŵi an annual report on all the financial transactions on the work, activities and operations of the Authority.

(4) The report referred to in subsection (3) shall include—

(*a*) a balance sheet and an income and expenditure account; and

(*b*) a statement of objectives, strategies and principles used by the Authority in carrying out its activities under this Act,

and shall be laid by the Minister before the National Assembly.

Holdings of the Funds of the Authority

19. All sums received for the purposes of the Authority shall be paid into one or more banking accounts at such bank or banks as the Board may determine, and no amount shall be withdrawn except under the authority of the Board and by means of cheques signed by such persons as are authorized in that behalf by the Board.

Financial year

20. The financial year of the Authority shall be the period of twelve months commencing on the 1st July of each year and ending on the 30th June of the following year:

Provided that the first financial year may be a period shorter or longer than twelve months as the Board shall determine, but in any case not longer than eighteen months.

PART VI

Management

Appointment of staff of the Authority

21.—(1) The Board shall appoint management staff of the Authority on such terms and conditions as the Board shall, in its discretion, determine.

(2) The management staff shall be responsible to the Board for the general performance of the functions and the exercise of the powers of the Authority.

(3) The Board shall appoint such other professional, technical and administrative officers as the Board may deem necessary, subject to such terms and conditions as the Board shall determine.

(4) The Authority shall, subject to the approval of the Minister, pay to every person in its employ such remuneration and allowances and grant to every such person such fringe benefits as it may deem appropriate.

(5) The Authority may provide for persons in its employ or their dependants, by means of insurance with an insurance company or a pension or provident fund or in any other manner, pecuniary benefits upon retirement, death or termination of service or in the event of illness or injury.

PART VII

Annual Roads Programmes

Annual roads programmes

22. The Authority shall, at least six months before the commencement of every financial year, submit to the Board an annual roads programme in such form and containing such details as the Board shall specify, outlining a comprehensive plan of action for the construction, maintenance and rehabilitation of public roads, tracks and trails under the charge of the road agency, and the estimated costs of every activity required to implement the plan of action.

Review of annual roads programmes

23.—(1) The Board shall review, individually, the annual roads programmes submitted to it by the Authority under section 22 and shall thereafter consolidate the annual roads programmes into one annual national roads programme which shall—

(*a*) specify the amounts to be allocated for the construction, maintenance and rehabilitation of each class of roads;

(*b*) match the cost of implementing the annual national roads programme with revenues to be allocated to the Authority by the Administration for the purpose of this Act;

(*c*) identify roads requiring construction, maintenance or rehabilitation in order of priority, taking into account the social and economic requirements of the country or any part thereof in which the roads are located; and

(*d*) include data to be provided to the Minister in such form as the Minister may require.

Annual national roads programmes to be submitted to the Minister

24.—(1) The Board shall, after consultation with the Administration, submit to the Minister the annual national roads programme for approval.

(2) The annual national roads programme, once approved by the Minister, shall be submitted to the Administration for funding.

(3) The Administration shall fund the annual national roads programme in accordance with the financing agreement to be signed between the Authority and the Administration.

PART VIII

Management of Road Networks

Management of road network

25.—(1) Notwithstanding anything to the contrary contained in any other written law, but subject to this Act and with due regard to the funds at its disposal, the Authority shall undertake the management of the national road network, including—

(*a*) the planning, designing, construction and maintenance and rehabilitation of roads which are part of the national road network;

(*b*) the quality control of materials required for the proper construction, maintenance and rehabilitation of roads;

(*c*) the supervision of work contracted cut under subsection (2);

(*d*) the operation of road management systems; and

(*e*) the performance of any other function assigned to it by or under any other written law, or by the Minister by notice published in the *Gazette*, which is necessary in order to achieve the objectives of this Act.

(2) Subject to subsection (3), the Authority may—

(*a*) enter into an agreement with any person to perform any act or provide any service for or on behalf of the Authority in, respect of any matter related to the functions of the Authority; and

(*b*) in writing, delegate any of its powers, including any delegated power, to the person, referred to in paragraph (*a*) if the Authority considers it necessary for the efficient performance of any such act or the provision of any such service.

(3) The Authority shall not itself undertake any work for the construction, maintenance or rehabilitation of any road but shall cause such work to be done by any outside contractor with whom the Authority has entered into a contract for the purpose.

(4) The Minister may prescribe minimum standards and measures for the management of the roads comprising the national road network, and minimum standards for the maintenance of such road network which are reasonably required to—

(*a*) achieve a safe road system;

(*b*) ensure compliance with the international obligations of Malaŵi; or

(*c*) cause the least possible disruption of the environment, but subject to the provisions of any other written law.

Procedures agreement

26.—(1) Within two months after the appointed date, or such longer period as the Authority may determine, the Authority shall, in accordance with such procedures as the Authority may stipulate, submit to the Administration a draft procedures agreement containing such particulars as are necessary to enable the Administration assess whether funds accruing to the Authority shall be efficiently utilized by it for the performance of its functions, including—

(*a*) the management and financial systems to be used by the Authority, and measures to be introduced by it to ensure the efficient utilization of funds allocated to it in respect of projects and programmes included in the business plan of the Authority;

(*b*) the principles to be applied in budgeting for administrative expenditure, including the cost of acquiring immovable property for administrative purposes;

(*c*) the procedures to be followed by the Authority in the calling for, and the evaluation and awarding of, tenders and in the negotiation of agreement with any person referred to in section 24 (2); and

(*d*) any other matter relating to the performance of the Authority's functions under this Act which the Administration may require.

(2) The Administration shall approve a draft procedures agreement either without amendments or with such amendments as may be effected in consultation with the Authority.

(3) Upon approval of the draft procedures agreement by the Administration, it shall be signed by the Chairperson of the Board of the Administration and the Chairperson of the Board of the Authority.

(4) The Administration and the Authority shall review the procedures agreement from time to time, but at least once every three years.

(5) Before finalizing a draft procedures agreement or an amendment to it, the Administration and the Authority shall consult with such interested parties as the Minister may, in consultation with the Minister responsible for finance, determine.

(6) The Authority shall—

(*a*) make a copy of a procedures agreement and every amendment thereof available for public inspection at its office; and

(*b*) cause it to be published, in such form as the Minister may determine, in at least two daily newspapers circulating nationwide.

PART IX

Offences and Penalties

Offences and penalties

27.—(1) Any person who appropriates or applies or causes any other person to appropriate or apply, any proceeds or assets of the Authority otherwise than in accordance with this Act shall be guilty of an offence and shall, upon conviction, be liable to a fine of K500,000 and to imprisonment for two years.

(2) Any person who contravenes section 6 shall be guilty of an offence and shall, upon conviction, be liable to a fine not exceeding the value or price of the proposed contract or other matter in respect of which he fails to disclose his interest, and to imprisonment for twelve months but the fact of a person having so voted shall not invalidate any resolution or proceeding of the Board.

(3) Any person who contravenes section 18 (1) shall be guilty of an offence and shall, upon conviction, be liable to a fine of K2,000,000 and to imprisonment for five years.

Failure of the Authority to comply with certain provisions

28.—(1) Any person who is of the opinion that the Authority has failed to comply with any provision of this Act, or a financing agreement or a procedures agreement, may lodge with the Minister a written complaint, which shall—

(*a*) set out the grounds of the complaint;

(*b*) state the full names, the address and the interest of the complainant in the matter; and

(*c*) if appropriate, be accompanied by any proof of the alleged failure which is in the possession of the complainant.

(2) On receiving a complaint under subsection (1), the Minister shall send a copy thereof to the Authority.

(3) The Authority shall, within fourteen days after receipt of a copy of the complaint under subsection (2), furnish the Minister with a written reply.

(4) After receipt of the Authority's reply under subsection (3), and subject to subsection (5) the Minister may—

(*a*) dismiss the complaint; or

(*b*) if the Minister is satisfied that the Authority has failed to comply with the provision referred to in subsection (1), by written notice direct the Authority to comply with such provision within such period as may be determined and specified by the Minister in the notice.

(5) Where the Minister considers it necessary or desirable for the purpose of making a decision under subsection (4), the Minister may appoint a committee, on such terms and conditions as he may

determine, to investigate the complaint, to hear any representations made by the complainant and the Authority and to report to the Minister.

(6) The procedure for an investigation under subsection (5) shall be as prescribed, and a committee referred to in that subsection shall, for the purpose of such investigation, have the prescribed powers with regard to the summoning and examination of witness and the production of books or objects.

(7) The costs incidental to the appointment of a committee and the conducting of an investigation under subsection (5) shall be paid from moneys made available to the Authority by the Administration.

(8) Any person who willfully—

(*a*) interrupts the proceedings of a committee referred to in subsection (5);

(*b*) hinders or obstructs such committee in the performance of its functions; or

(*c*) contravenes or fails to comply with any regulation referred to in subsection (6) relating to the duties or conduct of persons summoned to appear before a committee referred to in subsection (5) to give evidence or produce any book or object,

shall be guilty of an offence and shall, upon conviction, be liable to a fine not exceeding K100,000 or to imprisonment for a period not exceeding twelve months or to both such fine and such imprisonment.

PART X

Miscellaneous

Inconsistency with other written laws

29. Where any provision of any written law relating to public roads, road traffic or road safety is inconsistent with any provision of this Act, the provision of that written law shall be invalid to the extent of such inconsistency.

Regulations

30.—(1) The Minister may, in consultation with the Board, by notice published in the *Gazette*, make regulations for the better carrying into effect the provisions of this Act.

(2) Without prejudice to the generality of subsection (1), such regulations may provide for—

(*a*) any matter which under this Act is required or permitted to be prescribed;

(*b*) the financial management and control of the affairs of the Authority;

(*c*) the manner in which the Authority may exercise any power or perform any duty or function under this Act; or

(*d*) any other matter which the Minister considers necessary or expedient to give effect to the objects of this Act.

PART XI

Transitional Provisions

Vesting of assets of the National Roads Authority

31.—(1) On or after the appointed date, there shall be transferred to, and vested in, or subsisted against, the Authority by virtue of this Act and without further assurance—

(*a*) the affairs of the National Roads Authority;

(*b*) subject to this Act, all property, rights and obligations which immediately before the appointed date were the property, rights and obligations of the National Roads Authority.

(2) Except as provided in this Act, every deed, bond and agreement (other than an agreement for personal service) to which the National Roads Authority was a party immediately before the appointed date, whether in writing or not, and whether or not of such nature that rights, liabilities and obligations thereunder could be assigned, shall, unless its subject matter or terms make it impossible that it should have effect as modified in the manner provided by this subsection, have effect from the date of the assignment thereof, as if—

(*a*) the Authority had been a party thereto;

(*b*) for any reference to the National Roads Authority there were substituted, as regards anything falling to be done on or after the appointed date, a reference to the Authority; and

(*c*) for any reference to any officer of the National Roads Authority not being a party thereto and beneficially interested therein there were substituted, as regards anything falling to be done on or after the appointed date, or reference to such officer of the Authority as the Authority shall designate.

(3) Subject to the provisions of subsection (2), documents, other than those referred to therein, which refer specifically or generally to the National Roads Authority shall be construed in accordance with subsection (2) as far as applicable.

Registration of property to be transferred by the National Roads Authority

32.—(1) Where under this Act, any property, rights, liabilities and obligations of the National Roads Authority are deemed to have been transferred to the Authority in respect of which transfer a written law provides for registration, the Authority shall make an application in writing to the appropriate authority for registration of such transfer.

(2) The registration authority referred to in subsection (1) shall make such entries in the appropriate register as shall give effect to such transfer and, where applicable, issue to the transferee concerned a certificate of title in respect of the property or make necessary amendments to the register, as the case may be, and shall make endorsement on the deeds relating to the title, right or obligation concerned, and no registration fees, stamp duty or other duties shall be payable in respect thereof.

Legal proceedings

33.—(1) Without prejudice to the other provisions of this Act, where any right, liability or obligation vests in the Authority by virtue of this Act, the Authority and all other persons shall, as from the appointed date, have the same rights, powers and remedies (and in particular the same rights as to the instituting or defending of legal proceedings or the making or resisting of applications to any authority) for ascertaining, perfecting that right, liability or obligation as they would have had if it had at all times been a right, liability or obligation of the Authority.

(2) Any legal proceedings or application of any authority pending immediately before the appointed date by or against the National Roads Authority may be instituted by or against the Authority.

(3) After the appointed date, proceedings in respect of any right, liability or obligation which was vested in, held, enjoyed, incurred or suffered by the National Roads Authority may be instituted by or against the Authority.

Terms of service of employees of the National Roads Authority

34.—(1) On or after the appointed date, the Authority shall, on such terms and conditions as it may with the approval of the Minister, appoint as staff of the Authority such employees from the National Roads Authority as may be necessary for the performance of the functions of the Authority.

(2) Where an employee of the National Roads Authority is appointed to the service of the Authority, his contract of employment or service in the National Roads Authority shall be deemed to have automatically transferred to the Authority under no less favourable terms and conditions than those the employee enjoyed in the National Roads Authority.

(3) On or after the appointed date, any employee of the National Roads Authority who is not appointed to the service of the Authority under subsection (2), may—

(*a*) be retired in accordance with his contract of employment with the National Roads Authority; or

(*b*) be re-deployed in the public service on terms and conditions applicable in that service.

Repeal and savings Cap. 69:07

35.—(1) Subject to subsection (2), the National Roads Authority Act is hereby repealed.

(2) Anything done in accordance with the National Roads Authority Act repealed by subsection (1), prior to the commencement of this Act and which may be done in accordance with the provisions on this Act, shall be deemed to have been done in accordance with this Act.

(3) Any subsidiary legislation made or deemed to have been made under the National Roads Authority Act, repealed by subsection (1) in force immediately before the commencement of this Act—

(*a*) shall remain in force, unless in conflict with this Act, and shall be deemed to be subsidiary legislation made under this Act;

(*b*) may be replaced, amended or repealed by subsidiary legislation made under this Act.

(4) All contracts awarded by the National Roads Authority in accordance with National Roads Authority Act repealed by subsection (1), prior to the commencement of this Act, shall be deemed to be contracts awarded by the Authority in accordance with this Act.

ROADS FUND ADMINISTRATION

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CHAPTER 69:08

ROADS FUND ADMINISTRATION

ARRANGEMENT OF SECTIONS

SECTION

PART I

PRELIMINARY

1. Short title
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4 of 2006
G.N. 26/2006

An Act to establish a fund to be known as the Roads Fund to finance the maintenance and rehabilitation of public roads; to establish the Roads Fund Administration as the body responsible for the management of the Roads Fund; and for connected purposes

[1ST DECEMBER, 2006]

PART I

Preliminary

1. This Act may be cited as the Roads Fund Administration Act. Short title

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

"Administration" means the Roads Fund Administration established under section 3;

"Authority" means the Roads Authority established by section 3 of the Roads Authority Act; Cap. 69:07

"appointed date" means the date appointed by the Minister under section 1;

"Board" means the Board referred to in section 5;

"Minister" means the Minister responsible for finance;

"public road" has the same meaning ascribed to it in the Public Roads Act; Cap. 69:02

"road" has the same meaning ascribed to it in the Public Roads Act; Cap. 69:02

"Roads Fund" means the Roads Fund established under section 18;

"road agency" has the meaning ascribed thereto under the Roads Authority Act. Cap. 69:07

PART II

Establishment of the Roads Fund Administration

3. There is hereby established a body to be known as the Roads Fund Administration (in this Act otherwise referred to as the "Administration") which shall— Establishment of the Administration

(*a*) be a body corporate with perpetual succession;

(*b*) have a common seal;

(*c*) be capable of—

(i) acquiring, holding and disposing of real and personal property;

(ii) suing and being sued in its corporate name; and

(iii) doing or performing all such acts and things as bodies corporate may by law do or perform.

4. The purpose of the Administration shall be to raise, administer and account for funds for construction, maintenance and rehabilitation of public roads. Purpose of the Administration

PART III

Board of the Administration

Composition of the Board

5.—(1) The operations of the Administration shall be managed and controlled by a Board which shall consist of—

(*a*) the following members to be appointed by the Minister—

(i) one member nominated by and representing the financial institutions in Malaŵi;

(ii) one member nominated by and representing the Malaŵi Confederation Chamber of Commerce and Industry;

(iii) one member nominated by and representing the National Local Government Finance Committee;

(iv) one member nominated by and representing the fuel pricing authority; and

(v) one member of the public representing the general interest of the public;

(*b*) the following members *ex officio*—

(i) the Secretary to the Treasury or his designated representative; and

(ii) Secretary for Economic Planning and Development or his designated representative.

(2) The Board shall elect the Chairman and Vice-Chairman of the Board from amongst their number.

(3) A member *ex officio* of the Board or any person employed in the public service shall not be eligible to be elected Chairman or Vice-Chairman of the Board but shall have the right to vote on any matter at the meetings of the Board.

(4) Members of the Board shall not, by virtue only of their appointments to the Board, be deemed to be officers in the public service.

(5) The names of all members of the Board, as first constituted and every change in the membership thereof shall be published in the *Gazette*.

(6) A member of the Board, other than a member *ex officio*, shall hold office for a period of three years from the date of his appointment and shall be eligible for re-appointment at the expiry of that period.

Disclosure of interest

6. If a member of the Board acquires any pecuniary interest, direct or indirect, in any contract, proposed contract or other matter and is present at a meeting of the Board at which the contract, proposed contract or other matter is the subject of consideration by the Board, he shall at the meeting, as soon as

practicable after the commencement of the meeting, disclose the fact to the Board, and shall not take part in the consideration or discussion of or vote on any question with respect to, the contract or other matter.

Board may establish committees

7.—(1) For the better carrying into effect of the purposes for which the Administration and the Roads Fund are established, the Board may establish such number of committees as the Board shall deem appropriate to perform such functions and responsibilities as the Board shall determine subject to the directions of the Board.

(2) The provisions of this Act relating to the meetings of the Board shall apply *mutatis mutandis* to the meetings of any committee.

(3) The Board shall appoint the chairman of each committee from amongst the members of the Board.

Board may co-opt advisors

8. The Board may, in its discretion, at any time and for any length of period, co-opt any person to attend any deliberations of the Board, but such person shall not be entitled to vote on any matter at any meeting of the Board.

Vacation, etc., of members from office

9.—(1) The office of a member, other than a member *ex officio*, shall be vacated—

(*a*) upon the expiry of the period of his appointment;

(*b*) upon his death;

(*c*) if he is adjudged a bankrupt;

(*d*) if he is sentenced for an offence against any written law to a term of imprisonment of, or exceeding, six months, otherwise than as an alternative to, or in default of, the payment of a fine;

(*e*) if he is convicted of an offence involving fraud or dishonesty;

(*f*) if he is absent, without the permission of the Board, from three successive meetings of the Board of which he has had notice;

(*g*) upon the member giving notice in writing of his intention to resign his office;

(*h*) if, in the opinion of the Board, he becomes, by reason of mental or physical infirmity, incapable of performing his duties as a member of the Board;

(*i*) upon the commission of the offence referred to in section 28 (2);

(*j*) if a member is removed under section 17 (4) (*b*); and

(*k*) if he ceases to be a representative of the organization that nominated him.

(2) Whenever there is a vacancy in the office of a member of the Board, the Minister shall, by notice published in the *Gazette*, appoint—

(*a*) in the case of a member referred to in section 5 (1) (*a*) (i) to (iv), another person, nominated by the authority or institution which nominated the original member, to fill the vacancy; and

(*b*) in the case of a member referred to in section 5 (1) (*a*) (v), appoint another person to fill the vacancy.

(3) Subject to section 10 (3), the Board may act notwithstanding any vacancy in the membership of the Board.

Meetings of the Board

10.—(1) The Board shall meet at such place or places, and at such time or times as the Chairman may determine and shall meet at least once in every two months.

(2) Ordinary meetings of the Board shall be convened by at least fourteen days written notice to the members by the Chairman, and the Chairman may, at his discretion, and shall at the written request of four or more members of the Board and within seven days of such request, cause an extraordinary meeting of the Board to be summoned at such place and time as he may appoint.

(3) The Chairman, or in his absence, the Vice-Chairman shall preside at meetings of the Board, and the quorum at any meeting of the Board shall be four members of the Board.

(4) In the absence of both the Chairman and Vice-Chairman, the members present and forming a quorum shall elect one of their number to preside over the meetings of the Board, and the member so elected shall exercise all the powers and perform all the duties of the Chairman.

(5) Subject to the provisions of this Act, the Board may make standing orders for the regulation of its proceedings and business or the proceedings and business of any of its committees and may vary, suspend or revoke any such standing orders.

(6) Minutes of each meeting of the Board or a committee of the Board shall be kept by the secretary and shall be confirmed at the succeeding ordinary meeting.

(7) At any meeting the decision of the Board on any matter shall be that of the majority of the members present and voting, and at all such meetings the person presiding shall have, in the event of an equality of votes, a casting vote in addition to his deliberate vote.

(8) The Board shall designate any person in the employ of the Administration to be the secretary to the Board or at the meetings of any of its committees.

Remuneration and expenses of members of the Board

11. Members of the Board shall be paid from the Fund such allowances as the Board may, subject to the approval of the Minister, determine and the Board may make provision for the reimbursement of any reasonable expenses incurred by a member of the Board or of a committee of the Board in connexion with the business of the Board or the committee.

PART IV

Functions and Powers of the Board

Functions of the Board

12. The functions of the Board shall be to—

(*a*) administer and manage the Roads Fund;

(*b*) prepare and publish audited annual accounts of the Roads Fund;

(*c*) recommend to the Minister fuel levy and other road user charges and tariffs as required;

(*d*) allocate financial resources—

(i) for the construction, maintenance and rehabilitation of roads based on a percentage of the approved annual work programmes of the Authority; and

(ii) for traffic and road safety management;

(*e*) arrange for the collection of monies assigned to the Roads Fund;

(*f*) identify other sources of funding;

(*g*) co-ordinate and ensure total and timely accountability of the Roads Fund;

(*h*) arrange for the collection of road user charges by agents assigned for the purpose;

(*i*) prepare and publish procedures for the disbursements from the Roads Fund;

(*j*) specify the requirements for certification of direct payment for works;

(*k*) review the annual expenditure programmes of the Administration;

(*l*) monitor through financial and technical audits the use of funds disbursed to the Authority for maintenance and rehabilitation of roads; and

(*m*) do all such things as are necessary for achieving the purposes for which the Administration and the Roads Fund are established.

Powers of the Board

13. For the better performance of its functions, the Board shall, subject to the provision of this Act and any other written law, have power—

(*a*) to raise money in the form of road user charges;

(*b*) to publish, from time to time, such technical or other information as it deems necessary or expedient for the promotion of the funding of the construction, maintenance and rehabilitation of public roads; and

(*c*) to enter into financing agreements with the Authority for the funding of approved road programmes.

Borrowing Powers Cap. 37:02

14. Subject to the Public Finance Management Act, the Board may raise on behalf of the Administration, moneys by way of loans or bank overdrafts on such reasonable terms and conditions as the Board may, in writing, agree with the lender.

Board to be accountable to the Minister

15.—(1) The Board shall be responsible and accountable to the Minister for ensuring efficiency, transparency and propriety in—

(*a*) the allocation and utilization of public funds under this Act;

(*b*) the conduct of its business; and

(*c*) the operations and activities of the Administration.

(2) The Board shall not disburse any money or authorize the payment of any money to any contractor engaged by the Authority to construct, maintain or rehabilitate any public road unless it has been certified in writing by the Authority that the work in respect of which the contractor is engaged to perform has been carried out to the required standard.

Board to report to the Minister

16. The Board shall, at such intervals as the Minister may in writing require, submit to the Minister reports and financial statements, in such form as the Minister may determine, regarding the operations and activities of the Administration, the Board and the Roads Fund.

Inquiries by the Minister

17.—(1) If the Minister has reasonable cause to suspect that—

(*a*) the Board has failed to observe or perform any of the duties or obligations conferred or imposed upon it by this Act or any other written law;

(*b*) the Board has done or performed any act, matter or thing without due authority.

he may, in his discretion, appoint a person or persons (hereinafter referred to as the "Board of Inquiry") to inquire into such matter.

(2) The Board of Inquiry shall determine its own procedure but the Minister may, if he deems it fit, define the terms of reference for the Board of Inquiry.

(3) If, upon an inquiry under this section, the Minister is satisfied that the Board has done or suffered any of the acts, matters or thing referred to in subsection (1), he may by order in writing, require the Board to remedy the same within such time as he may appoint.

(4) If the Board fails to comply with an order of the Minister made under subsection (3), the Minister may, in addition to any other powers conferred on him by this Act—

(*a*) suspend the exercise by the Board of any of the powers conferred upon it by this Act or any other written law for such period as he may think fit;

(*b*) remove from office all or any of the members and, in his discretion, appoint new members pursuant to section 5,

and during such period, or as the case may be, pending the appointment of new members, confer upon any person the exercise of any powers so suspended or of the members.

(5) The expenses incidental to—

(*a*) any inquiry under this section; and

(*b*) the exercise of any of the powers of the Board under subsection (4),

shall be paid by such person as the Minister may direct, and if the Minister directs payment by the Board, such expenses shall be charged upon the annual revenue of the Administration.

PART V

Establishment of the Roads Fund

Establishment of the Roads Fund

18.—(1) There is hereby established a Fund to be known as the Roads Fund which shall consist of—

(*a*) such moneys as may be appropriated by Parliament for the purposes of the Roads Fund;

(*b*) all Roads Fund fuel levy collected, less the cost of collection;

(*c*) such percentage of international transit fees payable under the Road Traffic Act, as the Minister may determine; Cap. 69:01

(*d*) such percentage of road user levies including tariffs, taxes and tolls as may be determined by the Minister on the recommendation of the Board; and

(*e*) such monies as may be paid to the Roads Fund by way of loans, grants or donations.

Purpose of the Roads Fund

19. The purpose of the Roads Fund shall be—

(*a*) to finance—

(i) the maintenance and rehabilitation of public roads and surveys and monitoring related to such maintenance and rehabilitation of public roads;

(ii) on a cost sharing basis, routine and periodic maintenance of roads, tracks and trails under the responsibility of a City, Town, Municipal or District Council, as the case may be, for the purposes of this Act; and

(iii) emergency works on public roads a provision for which shall be made in the annual budget of the Administration.

(*b*) to administer any monetary contribution which shall be made by the Government for the implementation and execution of a donor-funded project for the construction, maintenance and rehabilitation of any public road.

Advances to the Roads Fund

20.—(1) The Board shall ensure that in any financial year, expenditures and commitments from the Roads Fund shall not exceed the annual income of the Roads Fund.

(2) If, in exceptional circumstances, the income of the Roads Fund together with any surplus income brought forward from a previous year, is insufficient to meet the actual or estimated liabilities of the Administration, the Minister may make advances to the Roads Fund in order to meet the deficiency or any part thereof and such advances shall be made on such terms and conditions, whether as to repayment or otherwise, as the Minister may determine:

Provided that any such advance shall be repaid from the income of the Roads Fund in the next financial year.

PART VI

Financial Provisions

Funds of the Administration

21.—(1) The funds of the Administration shall consist of such moneys as may—

(*a*) be appropriated to the Administration by the National Assembly for the purposes of the Administration;

(*b*) with the approval of the Minister, be allocated to the Administration from the Roads Fund;

(*c*) be paid to the Administration by way of loans, grants or donations; and

(*d*) vest in or accrue to the Administration.

(2) The Administration may—

(*a*) accept moneys by way of grants or donations from any source in Malaŵi and, subject to the approval of the Minister, from any source outside Malaŵi; and

(*b*) subject to the approval of the Minister, raise by way of loans or otherwise, such moneys as it may require for the discharge of its functions.

(3) There shall be paid from the funds of the Administration—

(*a*) salaries, allowances, loans, gratuities and pensions of staff of the Administration and other payments for the recruitment and retention of staff;

(*b*) such reasonable traveling and subsistence allowances for members of the Board and members of any committee of the Administration when engaged in the business of the Administration and at such rates as the Administration may with the approval of the Minister, determine;

(*c*) any other expenses incurred by the Administration in the performance of its functions; and

(*d*) administrative expenses associated with the execution of the duties and responsibilities of the Authority.

(4) The Administration shall at all times comply with the provisions of the Public Audit Act, the Public Finance Management Act and the Public Procurement Act. Cap. 37:01 Cap. 37:02 Cap. 37:03

Holdings of the Roads Fund

22.—(1) All sums received for the purposes of the Administration and the Roads Fund shall be paid into one or more banking accounts at such bank or banks as the Board may determine, and no amount shall be withdrawn except under the authority of the Board and by means of cheques signed by such persons as are authorized in that behalf by the Board.

(2) Any part of the Roads Fund not immediately required for the purposes of the Administration may be invested in such manner as the Board may, in its discretion, determine.

Financial year

23. The Financial Year of the Administration and the Roads Fund shall be the period of twelve months commencing on the 1st July of each year and ending on the 30th June of the following year:

Provided that the first financial year may be a period shorter or longer than twelve months as the Board shall determine, but in any case not longer than eighteen months.

Charges on the Roads Fund

24. The charges on the Roads Fund shall be for—

(*a*) maintenance and rehabilitation of public roads; and selected road safety projects; and

(*b*) such other relevant matters as may be determined by the Board.

Annual Road Programme and Annual Expenditure Programme

25.—(1) The Authority shall annually submit, at least three months before the end of each financial year, for allocation of funding by the Board, the approved Annual Road Programme and the Annual Expenditure Programme in respect of the next financial year.

(2) The Annual Road Programme shall be in such form and contain such particulars as the Board shall determine but shall include—

(*a*) the relevant Annual Expenditure Programme of the road agencies for the next financial year;

(*b*) grounds for the expenditure in respect of each public road programme; and

(*c*) the revenue projections for the financial year of the road agencies for the Roads Fund.

(3) Allocation from the Roads Fund to the road agencies shall be based among others on the conditions of the road network maintenance requirements, the length of the road network, traffic, national development priorities and social priorities.

(4) The Board shall prepare the total Annual Expenditure Programme to be financed from the Roads Fund in consultation with the Minister and shall consider—

(*a*) the affordability of the overall programme; and

(*b*) the appropriateness of the amount allocated for each class of road.

(5) The Board shall submit a report of the prepared total Annual Expenditure Programme to the Minister responsible for public roads, transport and public works.

Disbursements of the Roads Fund

26.—(1) Money from the Roads Fund shall only be disbursed for works, goods and services that form part of the approved Annual Expenditure Programme.

(2) The disbursements of money from the Roads Fund shall be in accordance with financing agreements entered into between the Administration and the Authority.

PART VII

Management

Appointment of staff of the Administration

27.—(1) The Board shall appoint a General Manager who shall be the chief executive officer of the Administration upon such terms and conditions as the Board shall, subject to approval by the Minister, determine.

(2) The General Manager shall be responsible to the Board for the general performance of the functions and the exercise of the powers of the Administration and shall appoint such other professional technical and administrative officers as the Board may deem necessary, subject to such terms and conditions as the Board shall determine.

(3) The Administration shall pay to every person in its employ such remuneration and allowances and grant to every such person such fringe benefits as it may deem appropriate.

(4) The Administration may provide for persons in its employ or their dependants, by means of insurance with an insurance company or a pension or provident fund or in any other manner whatsoever, pecuniary benefits upon retirement, death or termination of service or in the event of illness or injury.

PART VIII

Offences and Penalties

Offences and penalties

28.—(1) Any person who appropriates or applies or causes any other person to appropriate or apply, any proceeds or assets of the Administration or the Roads Fund otherwise than in accordance with this Act shall be guilty of an offence and shall, upon conviction, be liable to a fine of K500,000 and to imprisonment for two years.

(2) Any person who contravenes section 6 shall be guilty of an offence and shall, upon conviction, be liable to a fine not exceeding the value or price of the proposed contract or other matter in respect of which he fails to disclose his interest, and to imprisonment for twelve months but the fact of a person having so voted shall not invalidate any resolution or proceeding of the Board.

(3) Any person who contravenes section 22 (1) shall be guilty of an offence and shall, upon conviction, be liable to a fine of K2,000,000 and to imprisonment for five years.

(4) It shall not be a defence to an offence under this Act that the proceeds of the Roads Fund have been appropriated or applied for the benefit of the public.

PART IX

Miscellaneous

Inconsistency with other written laws

29. Where any provision of any written law relating to public roads, road traffic or road safety is inconsistent with any provision of this Act, the provision of that written law shall be invalid to the extent of such inconsistency.

Regulations

30.—(1) The Minister may, after consultations with the Board, by notice published in the *Gazette*, make regulations for the better carrying into effect of this Act.

(2) Without prejudice to the generality of subsection (1), such regulations may provide for—

(*a*) any matter which under this Act is required or permitted to be prescribed;

(*b*) the principles to be applied by the Administration in the calculation and imposition of road user charges;

(*c*) the collection of road user charges;

(*d*) the manner in which the Administration may perform any function under this Act;

(*e*) the management and control of the Roads Fund;

(*f*) the procedures to be followed in connexion with the lodging of complaints against the Administration; and

(*g*) any other matter which the Minister considers necessary to give effect to the provisions of this Act.

PART X

Transitional Provisions

Discharge of liabilities and obligations of the National Roads Authority

31. On or after the appointed date, the Administration shall allocate adequate funds to the Authority to enable the Authority discharge any liabilities or obligations of the National Roads Authority which are deemed transferred to the Authority.

Terms of service of employees of the National Roads Authority

32.—(1) On or after the appointed date, the Administration shall, on such terms and conditions as it may determine, with the approval of the Minister, appoint as staff of the Administration such employees from the National Roads Authority as may be necessary for the performance of the functions of the Administration.

(2) Where an employee of the National Roads Authority is appointed to the service of the Administration, his contract of employment or service in the National Roads Authority shall be deemed to have automatically transferred to the Administration

under no less favourable terms and conditions than those the employee enjoyed in the National Roads Authority.

Savings Cap. 69:07

33.—(1) Anything done in accordance with the National Roads Authority Act repealed by the Roads Authority Act, prior to the commencement of this Act and which may be done in accordance with the provisions of this Act, shall be deemed to have been done in accordance with this Act.

Cap. 69:07

(2) Any subsidiary legislation made or deemed to have been made under the National Roads Authority Act, repealed by the Roads Authority Act, in force immediately before the commencement of this Act—

(*a*) shall remain in force, unless in conflict with this Act, and shall be deemed to be subsidiary legislation made under this Act;

(*b*) may be replaced, amended or repealed by subsidiary legislation made under this Act.

Cap. 69:07

(3) All contracts awarded by the National Roads Authority in accordance with National Roads Authority Act repealed by the Roads Authority Act, prior to the commencement of this Act, shall be deemed to be contracts awarded by the Authority in accordance with this Act.

LAWS OF MALAŴI

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CHAPTER 70:01

AVIATION

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An Act to make provision for the control, regulation and orderly development of aviation and air services within Malaŵi and for matters incidental thereto or connected therewith

7 of 1970
19 of 1972
13 of 1974
9 of 1977

[1st February, 1971]

Short title

1. This Act may be cited as the Aviation Act.

Interpretation

2. In this Act, except when the context otherwise requires—

"aerodrome" means any area of land or water designed, equipped, set apart or commonly used for affording facilities for the landing and departure of aircraft;

"aircraft" means any machine that can derive support in the atmosphere from the reactions of the air, other than the reactions of the air against the surface of the earth;

"air transport service" means a service for the carriage by air of passengers, mails or other freight;

"Chicago Convention" means the Convention on International Civil Aviation concluded at Chicago on the 7th day of December, 1944, and to which Malaŵi has adhered by notification dated the 11th of September, 1964;

"foreign aircraft" means any aircraft other than a Malaŵi aircraft;

"land" includes any estate or interest in land or an easement;

"Malaŵi aircraft" means an aircraft registered in Malaŵi in pursuance of regulations made under this Act;

"state aircraft" means aircraft used exclusively for military, customs or police services in Malaŵi.

Responsibility for administration of Act

3. The Minister shall be responsible for the administration of this Act and shall be charged with the general duty of organizing, carrying out and encouraging measures for the development of aviation, for the designing, development and production of aircraft, for the promotion of safety and efficiency in the use thereof and for research into questions relating to air navigation.

Powers of Minister

4.—(1) For the purposes of this Act the Minister may—

(*a*) establish and maintain aerodromes;

(*b*) provide and maintain, in connexion with aerodromes established by him, roads, approaches, apparatus, equipment and buildings and other accommodation;

(*c*) provide and maintain facilities and equipment for the purpose of promoting the safety of air navigation including, but without prejudice to the generality of the foregoing, visual and non-visual navigation aids, visual and non-visual approach and landing aids, communications services, meteorological services and air traffic control services;

(*d*) alter, abolish, remove or add to any aerodrome, road, approach, apparatus, equipment, building, accommodation or facilities established or provided by him;

(*e*) vary the character of any facilities provided by him for the purpose of promoting the safety of air navigation, or of the signals or assistance given thereby;

(*f*) determine the conditions of use of any aerodrome and determine whether any such aerodrome shall be open to public use;

(*g*) determine the conditions of use of any facilities or equipment provided by him for the purpose of promoting the safety of air navigation;

(*h*) consult with the Minister responsible for land matters on the grant of leases, subleases or licences in respect of land or buildings within an aerodrome established by him.

Declaration of land subject to control

5.—(1) The Minister may, if he is satisfied that it is necessary so to do in the interests of safety and the efficient operation of aviation, by order declare any area of land specified in the order to be subject to control for the purposes of this Act.

(2) Where the Minister makes an order under subsection (1) he may in the same or a subsequent order make such provisions as he considers necessary or expedient for the purposes of the order, and without prejudice to the generality of the foregoing, such provisions may include provisions for the following—

(*a*) for prohibiting or restricting building in such area;

(*b*) for restricting the height of buildings or structures or for requiring the total or partial demolition of any building or structure within such area;

(*c*) for restricting the height of trees and other vegetation upon any land within the area, or for requiring any trees or other vegetation upon any such land to be cut down or reduced in height;

(*d*) for extinguishing any private right of way over land within the area;

(*e*) for restricting the installation of cables, mains, pipes, wires or other apparatus over, on or under any land within the area;

(*f*) for extinguishing, at the expiration of such period as may be specified, any subsisting right of installing or maintaining any such apparatus as aforesaid over, on or under any land within the area;

(*g*) for requiring that, before the expiration of such period as may be specified, any such apparatus shall be removed from land within the area;

(*h*) for restricting or preventing the discharge of storm or other water from any drain, pipe or contour ridge constructed on any land within the area;

(*i*) the giving of directions by the Minister in any special case;

(*j*) the uses to which land in such area may or may not be put; and

(*k*) the prescribing of offences and penalties, not exceeding a fine of K1,000 and imprisonment for six months, in respect of the contravention of any of the provisions of such order.

(3) An order under this section may contain provision for empowering any person authorized in that behalf by the Minister to move or alter, so as to bring it into conformity with the requirements of the order or any directions given thereunder, any building, structure, vegetation or apparatus which contravenes those requirements, and for the recovery of the expenses thereof.

(4) Where the Minister makes or has under consideration the making of an order under this section in respect of any land, any person authorized in that behalf in writing by the Minister may at all reasonable times, on producing evidence of his authority, if demanded, enter upon any of the land in order to make any survey which the Minister requires to be made for the purposes of any steps to be taken in consequence of the order or, as the case may be, for the purpose of determining whether the order should be made:

Provided that admission shall not, by virtue of this subsection, be demanded as of right to any land which is occupied unless twenty-four hours notice in writing of the intended entry has been served on the occupier.

(5) Any person who obstructs any other person in the exercise of any powers conferred upon that other person by virtue of subsection (3) or subsection (4) shall be guilty of an offence and liable to a fine of K300 and to imprisonment for six months.

(6) Any person who incurs expense or suffers damage by reason of the operation of this section shall be entitled to receive from the Minister adequate compensation in respect of the expense or damage, the amount thereof to be fixed, in default of agreement, by an arbitrator in accordance with the Arbitration Act:

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Provided that no compensation shall be payable in respect of any building or structure erected in contravention of a prohibition or restriction on such erection.

(7) The powers of the Minister under this section shall not be construed as prejudicing his power to acquire land for the purpose of securing the observation of any requirement which might have been imposed under this section in relation to the land.

Emergency powers

6.—(1) In time of actual or imminent war or of national emergency, the Minister may by order regulate or prohibit, either absolutely or subject to such conditions as may be contained in the order, the navigation of all or any descriptions of aircraft over Malaŵi or any portion thereof; and may by order provide for taking possession of and using for the purposes of the military forces of Malaŵi any aerodrome, or any aircraft, machinery, plant, material or things found therein or thereon, and for regulating or prohibiting the use, erection, building, maintenance or establishment of any aerodrome, or flying school of any class or description.

(2) If any person contravenes or fails to comply with any provision of an order made under this section, he shall be guilty of an offence and liable to a fine of K1,000 and to imprisonment for twelve months.

(3) Any person who suffers direct injury or loss owing to the operation of an order made under this section, shall be entitled to receive adequate compensation from the Minister, the amount thereof to be fixed, in default of agreement, by an arbitrator in accordance with the Arbitration Act:

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Provided that no compensation shall be payable by reason of the operation of a general order under this section prohibiting flying in Malaŵi or any part thereof.

Dangerous flying, etc.

7.—(1) Where an aircraft is flown in such a manner as to cause danger to any person or property on land or water, or in contravention of any regulations made under this Act, the pilot or other person in charge of the aircraft and the owner of the aircraft shall be guilty of an offence and liable for a first offence to a fine of K1,000 and to imprisonment for six months, and for a second or subsequent offence to a fine of K10,000 and to imprisonment for two years.

(2) In any proceedings against the owner of an aircraft in respect of an alleged offence under this section, it shall be a defence to prove that the act alleged to constitute the offence was done without the knowledge or consent of the owner.

(3) In this section "owner", in relation to an aircraft and an alleged offence, includes any person by whom the aircraft is hired at the time of the alleged offence.

General control of buildings

8.—(1) Subject to the provisions of the preceding sections, any person who proposes to erect any building or other structure of an overall height which exceeds by more than 50 feet the height of any obstacle including land within a radius of five miles of it, shall notify the Minister in writing of such intention and such notice shall contain the precise position and height of such proposed building or other structure, and if any person to whom this subsection applies fails to give such notice as aforesaid, or wilfully makes any false statement therein, shall be guilty of an offence and shall be liable to a fine of K1,000.

(2) Within three months of receipt of a notice under subsection (1) the Minister may, in writing, require the owner or other person responsible for the erection of such building or other structure to light or otherwise mark the same in such manner as the Minister may direct.

Control of buildings near aerodromes

9.—(1) If the Minister is satisfied with respect to any building, structure or erection in the vicinity of an aerodrome to which this section applies, that in order to avoid danger to aircraft flying in that vicinity in darkness or conditions of poor visibility provision ought to be made (whether by lighting or otherwise) for giving to such aircraft warning of the presence of that building, structure or erection, he may direct (subject to any conditions specified) the proprietor of the aerodrome, and any person acting under the proprietor's instructions—

(*a*) to execute, instal, maintain, operate, and as occasion requires to repair and alter, such works and apparatus as may be necessary for enabling such warning to be given in the manner specified; and

(*b*) so far as may be necessary to enter upon and pass over (with or without vehicles) any such land as may be specified:

Provided that no such direction shall be given in relation to any building, structure or erection if it appears to the Minister that there have been made, and are being carried out, satisfactory arrangements for the giving of such warning as aforesaid of the presence of the building, structure or erection.

(2) The Minister shall, before giving any such direction as aforesaid, cause to be published, in such manner as he thinks best for informing persons concerned, notice of the proposal to give the direction and of the place where copies of the proposed direction may be obtained free

of charge, and take into consideration any representations with respect to the direction which may, within such period not being less than two months after the publication of the notice as may be specified therein, be made to him by any person appearing to him to have an interest in any land which would be affected by the direction; and at the end of that period the direction may, subject to the provisions of this section, be made with such modifications (if any) of the original proposal as the Minister thinks proper.

(3) Every such direction as aforesaid shall provide—

(*a*) that, except in a case of emergency, no works shall be executed on any land in pursuance of the direction unless, at least fourteen days previously, the proprietor of the aerodrome to which the direction relates has served in the manner prescribed by the direction on the occupier of that land, and on every person known by the proprietor to have an interest therein, a written notice containing such particulars of the nature of the proposed works, and the manner in which and the time at which it is proposed to execute them, as may be prescribed by or in accordance with the direction; and

(*b*) that if, within fourteen days after service of the said notice on any person having such an interest, the proprietor of the aerodrome receives a written intimation of objection on the part of that person to the proposals contained in the notice, being an intimation which specifies the grounds of objection then, unless and except in so far as the objection is withdrawn, no steps shall be taken in pursuance of the notice without the specific sanction of the Minister,

and shall also provide for requiring the proprietor of the aerodrome to which the order relates to pay to any person having an interest in any land affected by the direction such compensation for any loss or damage which that person may suffer in consequence of the direction as may, in default of agreement, be determined by an arbitrator in accordance with the Arbitration Act, and, for the purposes of this subsection, any expense reasonably incurred in connexion with the lawful removal of any apparatus installed in pursuance of such a direction, and so much of any expense incurred in connexion with the repair, alteration, demolition or removal of any building, structure or erection to which such a direction relates as is attributable to the operation of the direction, shall be deemed to be loss or damage suffered in consequence of the direction.

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(4) The ownership of anything shall not be taken to be affected by reason only that it is placed in, or affixed to, any land in pursuance of such a direction as aforesaid; and (subject to the provisions of subsection (5)) so long as any such direction in respect of an aerodrome is in force, no person shall, except with the consent of the proprietor of the aerodrome, wilfully interfere with any works or things which, to the knowledge of that person, are works or things executed or placed in, on or over any land

in pursuance of the direction. If any person contravenes the foregoing provisions of this subsection, he shall be guilty of an offence and be liable to a fine of K300 and to imprisonment for six months; and every person who wilfully obstructs a person in the exercise of any of the powers conferred by such a direction as aforesaid shall be liable to a fine of K150.

(5) Nothing in this section shall operate, in relation to any building, structure or erection, so as to restrict the doing of any work for the purpose of repairing, altering, demolishing or removing the building, structure or erection:

Provided that—

(i) notice of the doing of that work is given as soon as may be to the proprietor of the aerodrome; and

(ii) the giving of warning of the presence of the building, under this section in force in relation thereto is not interrupted.

(6) In this section—

(*a*) the expression "aerodrome to which this section applies" means a Government aerodrome or any premises which, by virtue of any regulations made under section 19, are for the time being licensed as an aerodrome for the public use; and

(*b*) the expression "proprietor of the aerodrome" means, in relation to any premises used or appropriated for use as an aerodrome, the person carrying on or entitled to carry on the business of an aerodrome in those premises, or, in the case of a Government aerodrome, the officer in charge of the aerodrome.

Closure of highways, etc.

10.—(1) The Minister may, if he is satisfied that it is necessary so to do in order to secure the safe and efficient use for purposes of aviation of any aerodrome or any premises approved by the Minister used for the testing of aircraft, by order authorize the stopping up or diversion of any highway.

(2) An order under subsection (1) may provide for all or any of the following matters, that is to say—

(*a*) for securing the provision or improvement of any highway so far as the Minister thinks such provision or improvement necessary or desirable in consequence of any such stopping up or diversion as aforesaid;

(*b*) for the retention or removal of any cables, mains, pipes, wires, or similar apparatus placed along, across, over or under any highway stopped up or diverted under the order, and for the extinguishment, modification or preservation of any rights as to the use or maintenance of that apparatus;

(*c*) if any highway is to be provided or improved under the order, for authorizing or requiring the provision of any such apparatus as

aforesaid along, across, over or under that highway, *in lieu* of any apparatus removed from a highway in pursuance of the order, and for conferring rights as to the use or maintenance of apparatus so provided.

(3) An order under subsection (1) may contain such consequential, incidental and supplemental provisions as appear to the Minister to be necessary or expedient for the purposes of the order.

(4) Notice of any order made under subsection (1) shall be—

(*a*) displayed in a prominent position at the ends of so much of any highway as is proposed to be stopped up or diverted under the order;

(*b*) sent to every local authority in whose area any highway to be stopped up or diverted under the order or any highway to be provided or improved under the order is situate; and

(*c*) served upon any water or electricity undertakers having any cables, mains, pipes or wires laid along, across, over or under any highway to be stopped up or diverted under the order.

Trespass by aircraft

11.—(1) No action shall lie in respect of trespass or nuisance by reason only of, or of the ordinary incidents of, the flight of an aircraft over any property at a height above the ground which is reasonable having regard to wind, weather and all the circumstances of the case.

(2) Where loss or damage is caused to any person or property on land or water by, or by a person in or an article or person falling from, an aircraft while in flight, taking-off or landing, then, without prejudice to the law relating to contributory negligence, damages in respect of the loss or damage shall be recoverable without proof of negligence or intention or other cause of action, as if the loss or damage had been caused by the wilful act, neglect or default of the owner of the aircraft:

Provided that where loss or damage is caused as aforesaid in circumstances in which—

(i) damages are recoverable from the owner in respect of the loss or damage by virtue only of the foregoing provisions of this subsection; and

(ii) a legal liability is created in some person other than the owner to pay damages in respect of the loss or damage,

the owner shall be entitled to be indemnified by that other person against any claim in respect of the loss or damage.

(3) Where an aircraft has been genuinely demised or hired out for any period exceeding fourteen days to any other person by the owner of the aircraft and no pilot, commander, navigator or operative member of the crew of the aircraft is in the employ of owner, subsection (2) shall have effect as if for references to the owner there were substituted references to the person to whom the aircraft has been demised or hired out.

Trespass on aerodromes

12. If any person trespasses on any land forming part of a Government aerodrome or a licensed aerodrome he shall be guilty of an offence and liable to a fine of K10.

Action for nuisance

13. No action for nuisance shall lie by reason only of the noise and vibration caused by aircraft on an aerodrome so long as the provisions of regulations made under this Act in force in respect of that aerodrome are complied with.

Aircraft and spares not liable to seizure

14.—(1) No aircraft to which this subsection applies, making any lawful entry into Malaŵi or any lawful transit across Malaŵi, with or without landings, shall be seized or detained, nor shall any proceedings be taken against the owner or operator of such aircraft, nor shall the aircraft be otherwise interfered with by or on behalf of any person in Malaŵi, on the ground that the construction, mechanism, parts, accessories or operations of the aircraft is or are an infringement of any patent, design or model.

(2) The importation into and storage in Malaŵi of spare parts and spare equipment for an aircraft to which this subsection applies and the use and installation thereof in the repair of such an aircraft shall not entitle any seizure or detention of aircraft or of the spare parts or spare equipment or any proceedings against the owner or operator of the aircraft or the owner of the spare parts or spare equipment or any other interference with the aircraft by or on behalf of any person in Malaŵi on the ground that the spare parts or spare equipment or their installation are or is an infringement of any patent, design or model.

(3) Subsections (1) and (2) shall apply—

(*a*) to any aircraft (other than state aircraft) registered in a country or territory which is a party to the Chicago Convention; and

(*b*) to such other aircraft as the Minister may, by notice published in the *Gazette*, specify:

Provided that subsection (2) shall not apply in relation to any spare parts or spare equipment which are sold or distributed in Malaŵi.

(4) Where it is alleged by any person interested that a foreign aircraft which is not an aircraft to which subsection (1) applies and which is making a passage through or over Malaŵi infringes in itself or part of it any invention, design or model which is entitled to protection in Malaŵi, it shall be lawful, subject to and in accordance with rules of court, to detain the aircraft until the owner of it deposits or secures in respect of the alleged infringement a sum (hereafter in this section referred to as "the deposited sum") and thereupon the aircraft shall not, during the continuance of the passage, by subject to any lien, arrest, detention or prohibition, whether by order of a court or otherwise, on account of the alleged infringement.

(5) The deposited sum shall be such sum as may be agreed between the parties interested or, in default of agreement, as may be fixed by the Minister; and the payment of the deposited sum shall be made or secured to the Minister in such manner as may be approved by him.

(6) The deposited sum shall be dealt with by such tribunal and in accordance with such procedure as may be prescribed by rules of court and such rules may provide generally for carrying the provisions of subsections (4) and (5) into effect.

(7) For the purposes of subsection (4), the expression "owner" shall include the actual owner of the aircraft and any person claiming through or under him, and the expression "passage" shall include all reasonable landings and stoppages in the course of the passage.

Carriage of mail in aircraft

15.—(1) Mail shall not be carried by any aircraft without the consent in writing of the Postmaster-General, and any written law relating to the dispatching, conveying and delivering of mails and all incidental services relating thereto shall with such modifications, adaptations and such consequential and supplementary provisions as may by the Minister be declared by notice published in the *Gazette* to be expedient and necessary, apply to the dispatching, conveying, and delivering of mail by aircraft.

(2) No radio-telegraphic or other system of telegraphic or telephonic communication shall be installed, maintained, or operated in any aircraft or at any aerodrome or landing ground except by the Postmaster-General or under and in accordance with licences or other authorizations in respect of either or both personnel and apparatus granted or recognized by the Postmaster-General.

16. [Repealed by 19 of 1972.]

Service of notices or orders

17.—(1) Any notice or order required to be served on any person for the purpose of this Act, or of any of the regulations made thereunder, may be served on him either by delivering it to him, or by leaving it at his last known address, or by registered post addressed to his last known address.

(2) Any such notice or order required to be served upon a company shall be duly served if it is served on the secretary or an officer of the company or left at its registered office.

State aircraft

18. This Act shall not apply to state aircraft:

Provided that the Minister may, by order, apply any of the provisions of the Act or of regulations made under the Act, with or without modification, to any state aircraft.

Regulations

19.—(1) The Minister may make regulations for the better carrying out of any of the purposes of this Act.

(2) Without prejudice to the generality of subsection (1) the powers of the Minister shall in particular include power to make regulations for the following purposes—

(*a*) for giving effect to and carrying out the provisions of the Chicago Convention, any Annex thereto relating to international standards and recommended practices (being an Annex adopted in accordance with the Convention) and any amendment of the Convention or any such Annex made in accordance with the Convention;

(*b*) for the registration of aircraft in Malaŵi;

(*c*) for prohibiting aircraft from flying unless certificates of airworthiness issued or validated under the regulations are in force with respect to them and except under compliance with such conditions as to maintenance and repair as may be prescribed;

(*d*) for the licensing, inspection and regulation of aerodromes, for access to aerodromes and places where aircraft have landed, for the inspection of aircraft factories and for prohibiting or regulating the use of aerodromes which are not licensed;

(*e*) for prohibiting persons from engaging in, or being employed in or in connexion with, air navigation in such capacities as may be prescribed unless they satisfy the prescribed requirements, and for the licensing of persons employed at aerodromes or elsewhere in the inspection, testing and supervision of aircraft;

(*f*) as to the conditions under which, and in particular the aerodromes to or from which, aircraft entering or leaving Malaŵi may fly, and as to the conditions under which aircraft may fly from one part of Malaŵi to another;

(*g*) as to the conditions under which passengers or goods may be carried by air and under which aircraft may be used for other gainful purposes and for prohibiting the carriage by air of goods of such classes as may be prescribed;

(*h*) for minimizing or preventing interference with the use or effectiveness of apparatus used in connexion with air navigation, and for prohibiting or regulating the use of such apparatus and the display of signs and lights liable to endanger aircraft;

(*i*) for authorizing persons to extinguish or screen any sign or light liable to endanger aircraft and to enter upon any land for that purpose, and for recovering the expenses of so doing from the owner or occupier of the place where the sign or light is exhibited or from the person having charge of the sign or light;

(*j*) generally for securing the safety, efficiency or regularity of air navigation and the safety of aircraft and of persons and property

carried in aircraft, and for preventing aircraft endangering other persons and property;

(*k*) for requiring persons engaged in, or employed in or in connexion with, air navigation to supply meteorological information for the purposes of air navigation;

(*l*) for regulating the making of signals and other communications by or to aircraft and persons carried in aircraft;

(*m*) for regulating the use of any ensign established by the President for purposes connected with air navigation;

(*n*) for prohibiting aircraft from flying over such areas in Malaŵi as may be specified;

(*o*) as to the manner and conditions of the issue, validation, renewal, extension or variation of any certificate, licence or other document required under this Act (including the examination and tests to be undergone), and as to the form, custody, production, cancellation, revocation, suspension, endorsement and surrender of any such document and the conditions that may be attached thereto;

(*p*) for securing that aircraft shall not be used in Malaŵi by any person—

(i) while carrying passengers or goods for reward, on such journeys or classes of journeys—whether beginning and ending at the same point or different points—as may be prescribed; or

(ii) for such flying undertaken for the purpose of any trade or business as may be prescribed,

except under the authority of and in accordance with a licence or permit granted to him by the Minister;

(*q*) for requiring any person who carries on the business of carrying passengers or goods in aircraft for reward, on such journeys or classes of journeys—whether beginning and ending at the same point or at different points—as may be prescribed, to furnish to the prescribed authorities such information relating to the use of aircraft for the purpose of the business, and to the persons employed in connexion with that use, as may be prescribed, and specifying the time at which, and the form and manner in which, any information required under the regulations is to be furnished;

(*r*) for prohibiting, restricting or regulating the carrying on of any trade or business within any aerodrome which is under the control or in the occupation of the Minister or any Department;

(*s*) for the granting by the Minister, on such terms and conditions and subject to the payment of such consideration as he thinks fit,

of authorities to carry on any trade or business within any such aerodrome as aforesaid;

(*t*) for establishing and regulating the conditions of use, including the charges to be made for use, of any aerodrome; 13 of 1974

(*u*) for the investigation of accidents arising out of or in the course of air navigation and either occurring in or over Malaŵi or occurring to Malaŵi aircraft wherever they may be, and in particular—

(i) requiring notice to be given of any such accident as aforesaid in such manner and by such persons as may be prescribed;

(ii) applying, with or without modifications, for the purpose of investigations held with respect to any such accidents, any of the provisions of any written law relating to the investigation of deaths or accidents;

(iii) prohibiting, pending investigations, of access to or interference with aircraft to which an accident has occurred and authorizing any person, so far as may be necessary for the purposes of an investigation, to have access to, examine, remove, take measures for the preservation of, or otherwise deal with, any such aircraft;

(iv) authorizing or requiring the cancellation, suspension, endorsement or surrender of any licence or certificate granted in Malaŵi in pursuance of this Act or the withdrawal or suspension of any validation conferred in Malaŵi of a licence granted by a competent authority elsewhere, where it appears on investigation that the licence, certificate or validation ought to be so dealt with, and requiring the production accordingly of any such licence or certificate;

(*v*) as to the conditions under which noise and vibration may be caused by aircraft on or over aerodromes or any specified aerodrome;

(*w*) for the payment of fees for any matter required or provided for under this Act, and any other matters in respect of which it appears to the Minister expedient or desirable to charge fees;

(*x*) as to appeals (if any) to the Minister or references to tribunals or boards of inquiry in respect of any matters provided for under this Act;

(*y*) for prohibiting or regulating the emission or causing of smoke in the vicinity of any aerodrome, and for this purpose "smoke" includes soot, ash, grit, gritty particles, dust and any other substance whatsoever which obscures visibility;

(*z*) for exempting from any of the provisions of this Act or of any regulations made thereunder any aircraft or persons or classes of aircraft or persons.

(2) Different regulations may be made for different classes of aircraft, for different aerodromes or for different parts of Malaŵi, but shall as far as is practicable be so framed as not to discriminate in like circumstances between aircraft registered in Malaŵi and operated for hire or reward.

(3) Regulations under this section may provide for the imposition of penalties for offences against the regulations, not exceeding in the case of any particular offence a fine of K1,000 and imprisonment for twelve months, and may provide for such steps as may be necessary for securing compliance with the regulations, including the seizure and detention of aircraft, and the firing at or shooting down of aircraft flying over areas of Malaŵi over which flying is prohibited.

(4) No information with respect to any particular undertaking which has been obtained by virtue of regulations under this section shall, without the consent of the person carrying on that undertaking, be disclosed otherwise than in connexion with the execution of the regulations; and if any person discloses any such information in contravention of this subsection he shall be liable to a fine of K400 and to imprisonment for one year.

(5) Nothing in subsection (4) shall apply to the disclosure of any information for the purposes of any legal proceedings which may be taken by virtue of that subsection or of regulations made under this section or for the purposes of any report of such proceedings; but save as aforesaid that subsection shall, in relation to any legal proceedings, including arbitration, preclude any person who is in possession of any information obtained by virtue of such regulations from disclosing, and from being required by any court or arbitrator to disclose, that information without the consent of the person carrying on the undertaking to which the information relates.

SUBSIDIARY LEGISLATION

AVIATION (AIR NAVIGATION CHARGES) REGULATIONS

under s. 19

G.N. 133/1987
94/1992
97/1993
89/1996
43/2011

1. These Regulations may be cited as the Aviation (Air Navigation Charges) Regulations. Citation

2. In these regulations, unless the context otherwise requires— Interpretation

"Flight Information Region" means the airspace under the jurisdiction of the Flight Information Centre at Lilongwe;

"Journey in Malaŵi" means flight conducted, wholly or partly, in the Flight Information Region;

"all up weight" means the maximum total weight authorized in the certificate of airworthiness in force in respect of the aircraft or, if no such certificate is in force, in the certificate of airworthiness last in force in respect of that aircraft or, in any other cases the maximum total weight authorized of the prototype or modification thereof to which the aircraft, in the opinion of the Chief Civil Aviation Officer, conforms;

"owner" in relation to an aircraft, means any person having a legal beneficial interest in such aircraft or a share therein, or any person in whose name the aircraft is registered and includes any person who is or has been acting as an agent in Malaŵi for a foreign owner;

"operator", in relation to an aircraft, means any person who at any relevant point in time has the management of that aircraft.

3. There shall be payable to the Government by the owner or operator of an aircraft making a journey in Malaŵi the air navigation charges in respect of air navigation facilities or services as specified in the Schedule hereto. Charges for use of air navigation facilities, etc.

4.—(1) The Chief Civil Aviation Officer, or any person authorized by him may detain any aircraft the owner or operator of which has refused or neglected to pay the air navigation charges payable under these Regulations. Detention of aircraft for non-payment

(2) Any aircraft which has been detained under paragraph (1) shall be released only upon payment in full of the air navigation charges owed by the owner or operator.

(3) The Chief Civil Aviation Officer or any person authorized by him under paragraph (1) shall not be liable to any suit or other proceedings on account of any act lawfully performed by him pursuant to that paragraph.

Exemption from payment of charges

5. No air navigation charge shall be payable in respect of any journey in Malaŵi for any of the following purposes—

(*a*) the testing of an aircraft or its engines, instruments, radio or other equipment, provided that prior notice is given to the person in charge of the aerodrome that the flight is for that purpose and that the aircraft returns to the point of departure without making any intermediate landing;

(*b*) the search for, or relief or rescue of persons or aircraft in distress;

(*c*) the use of an aircraft owned or operated by any flying club approved by the Chief Civil Aviation Officer if the flight is not for hire or reward or any purpose other than club flying;

(*d*) a flight which has departed from an aerodrome and has returned to the same aerodrome because of any hazard caused by weather or any other circumstances without making any intermediate landing;

(*e*) the use of an aircraft belonging to an owner or operator who has a place of business in Malaŵi for the sole purpose of giving instructional training or practice in the flying of that type of aircraft or in the operation of let down facilities in Malaŵi to aircraft employed by the owner or operator:

Provided that—

(i) no freight (except as ballast) or any fare-paying passenger is carried;

(ii) the journey in Malaŵi begins and ends at the same aerodrome with no intermediate landing at any other place, other than for an emergency landing;

(iii) prior notice of the journey in Malaŵi is given to the person in charge of the aerodrome;

(*f*) the use of an aircraft within Malaŵi to and from an aerodrome solely for customs, immigration or health clearance provided that the aircraft is proceeding to, or has arrived from, an aerodrome in Malaŵi where such facilities are not available; and

(*g*) the use of an aircraft solely for diplomatic purposes.

reg. 3

SCHEDULE

Air Navigation Charges

G.N. 133/1987
94/1992
97/1993
89/1996
43/2011

1. Where an aircraft in the course of a flight originates at a place outside Malaŵi and terminates at a place outside Malaŵi without landing in Malaŵi, the journey from the time it enters such airspace to the time it leaves the Flight Information Region—

All aircraft and weight . . . . . US$75 00

2. Where an aircraft makes a flight which originates at a place inside Malaŵi and terminates at any other place inside Malaŵi, the journey from the time it leaves the first place of departure to the time it returns to the first place of departure, provided that the aircraft returns to the first place of departure on the same day—

Aircraft weight	*Charge in respect of each journey in Malaŵi*
	US$
Up to 5,000 kg	15 00
5,001 to 20,000 kg	20 00
20,001 to 70,000 kg	25 00
70,001 to 180,000 kg	30 00
Over 180,000 kg	45 00

3. Where an aircraft in the course of a flight originates at a place outside Malaŵi and terminates at a place outside Malaŵi, enters and lands in the Flight Information Region in the course of such flight, the journey from the time it enters such airspace, to the time it leaves it, provided that it leaves the airspace the same day—

Aircraft weight	*Charge in respect of each journey in Malaŵi*
	US$
Up to 5,000 kg	40 00
5,001 to 20,000 kg	55 00
20,001 to 70,000 kg	60 00
70,001 to 180,000 kg	75 00
Over 180,000 kg	80 00

4. Where an aircraft in the course of a flight originates at a place inside Malaŵi leaves the Flight Information Region, the journey from the time it leaves the place of departure and leaves the Flight Information Region to the time it enters such airspace, lands and terminates the flight at a place inside Malaŵi, provided that it lands and terminates the flight at a place inside Malaŵi the same day—

Aircraft weight	*Charge in respect of each journey in Malaŵi*
	US$
Up to 5,000 kg	40 00
5,001 to 20,000 kg	55 00
20,001 to 70,000 kg	60 00
70,001 to 180,000 kg	75 00
Over 180,000 kg	80 00

AVIATION (FEES) REGULATIONS

ARRANGEMENT OF REGULATIONS

REGULATION

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Third Schedule
Fourth Schedule

AVIATION (FEES) REGULATIONS

under s. 19

G.N. 18/1971
130/1971
205/1974
188/1975
129/1976
21/1977
153/1977
12/1978
61/1980
144/1980
104/1981
66/1982
116/1987
95/1992
98/1993
82/1996
29/2000
45/2011

1. These Regulations may be cited as the Aviation (Fees) Regulations. Citation

2.—(1) In these Regulations, unless the context otherwise requires— Interpretation

"the Air Navigation Regulations" means the Aviation (Air Navigation) Regulations;

"all-up weight" means the maximum total weight authorized in the certificate of airworthiness in force in respect of the aircraft, or if no such certificate is in force in the certificate of airworthiness last in force in respect of that aircraft, or in any other case the maximum total weight authorized of the prototype or modification thereof to which the aircraft in the opinion of the Chief Civil Aviation Officer conforms.

"landing" means a landing at a Government aerodrome in Malaŵi;

"private aircraft" means an aircraft with a certificate of airworthiness which has been issued subject to the condition that the aircraft shall be flown only for purposes other than public transport or aerial work;

"scheduled aerodrome" means an aerodrome listed in the First Schedule.

(2) Subject to subregulation (1) expressions used in these Regulations shall, unless the context otherwise requires, have the same respective meanings as in the Air Navigation Regulations.

PART II

3.—(1) No fee shall be paid in respect of a landing at any Government aerodrome in Malaŵi other than a scheduled aerodrome. Landing fees

(2) Subject to the provisions of these Regulations the fee payable in respect of a landing by an aircraft at a scheduled aerodrome shall be the landing fee specified in relation to that aircraft in the Second Schedule:

Provided that in respect of a landing at a scheduled aerodrome by an aircraft engaged on a scheduled journey between another aerodrome in Malaŵi and that aerodrome the fee payable shall be 70 *per cent* of the landing fee specified in relation to that aircraft in the Second Schedule.

Fees for operation of a scheduled aerodrome beyond notified hours
G.N. 66/1982
116/1987

3A. Whenever a scheduled aerodrome has—

(*a*) at the request of any aircraft owner or his agent; or

(*b*) at the direction of the Chief Civil Aviation Officer or other officer authorized by him, given in the interest of safety,

been operated beyond the notified hours of operation, such aircraft owner or his agent or the owner of any aircraft who uses the facilities of such aerodrome during the extended period shall pay a fee as specified in the Second Schedule for every hour or part thereof during which such aerodrome has been requested or directed to be kept open or has been used beyond such notified hours.

Monthly rate

4.—(1) In respect of landings at any scheduled aerodrome or aerodromes within the period of any named month an operator may apply to be charged landing fees at a monthly rate instead of at the rate prescribed in the Second Schedule.

(2) The provisions of subregulation (1) shall not apply to any aircraft the all-up weight of which exceeds 2,000 kilograms.

(3) The application referred to in subregulation (1) shall be addressed to the Chief Civil Aviation Officer and sent so as to reach him at least 21 days before the first day of the named month for which the application is made.

(4) On receipt of an application made under this regulation the Chief Civil Aviation Officer shall, if he is entirely satisfied with the application, grant the same and the monthly rate charged shall be such sum as the Chief Civil Aviation Officer in his absolute discretion deems proper in all the circumstances of the case.

Annual landing permit
G.N. 98/1993
82/1996

5.—(1) The Chief Civil Aviation Officer may, on application made by the owner of a private Malaŵi aircraft of an all-up weight not exceeding 2,000 kilograms, and on payment of a fee of US$150, issue to the owner in respect of such aircraft as aforesaid an annual landing permit relating to such scheduled aerodromes as may be specified in the permit.

(2) An annual landing permit so issued shall remain in force for a period of one year from the date of its issue.

(3) An aircraft in respect of which an annual landing permit has been so issued and is in force may land at the scheduled aerodromes specified in the permit without payment of any further landing fee if, but only if,

the aircraft is being used at the time of landing for a purpose other than public transport or aerial work.

(4) Any application referred to in subregulation (1) shall be made to the Chief Civil Aviation Officer in respect of an annual period commencing on the first day of the month following the date of application and shall be sent so as to reach him at least 21 days before the date of commencement. The application shall include full details of the registration marks and type of the aircraft in respect of which the application relates.

(5) On receipt of an application made under this regulation the Chief Civil Aviation Officer shall, if he is entirely satisfied with the application, grant the same.

Exemption from landing fees G.N. 21/1977

6.—(1) No landing fee shall be charged or become payable in respect of any landing at a scheduled aerodrome—

(*a*) by any aircraft owned by the Government which has been exempted by the Chief Civil Aviation Officer;

(*b*) by any aircraft owned and operated by any flying club approved for the purpose of this regulation by the Chief Civil Aviation Officer if the flight preceding the landing has not been for hire or reward or for any purpose other than club flying;

(*c*) by any aircraft used solely for diplomatic purposes;

(*d*) by any aircraft at the end of a flight in respect of which all the following conditions were satisfied—

(i) the flight began and finished at the aerodrome with no intermediate landing at any other place;

(ii) the flight was undertaken solely for the purpose of testing the aircraft or its engines, instruments, radio or other equipment; and

(iii) notice was given to the person in charge of the aerodrome before the beginning of the flight that the flight was to be a test flight for the purpose of this regulation;

(*e*) by an aircraft which has departed from a scheduled aerodrome and has returned to the same aerodrome because of any hazard caused by weather or any other circumstances without making any intermediate landing;

(*f*) by any aircraft landing at a scheduled aerodrome solely for the purposes of any customs, immigration or health clearance, provided that the aircraft has arrived from or is proceeding to an aerodrome within Malaŵi where such clearance facilities are not available and that no persons, mail or cargo are embarked or disembarked, and that no fuel or oil is supplied to the aircraft, and that the aircraft takes off within one hour of the completion of such clearances;

(*g*) by any aircraft belonging to an aircraft operator who has a place of business in Malaŵi or to any scheduled airline licensed to operate in or through Malaŵi which is being used by such operator or airline on local flights for the sole purpose of giving instructional training or practice in the flying of that type of aircraft, or in the operation of let-down facilities in Malaŵi, to aircrew employed by that operator or airline so long as—

(i) neither freight (except as ballast) nor any fare-paying passenger is carried;

(ii) the flight begins and ends at the aerodrome with no intermediate landing at any other place, other than an emergency landing; and

(iii) prior notice of the intended flight is given to the person in charge at the aerodrome;

(*h*) by any aircraft which after landing takes off again immediately without coming to rest on, or turning off from the runway on which it has landed.

(2) On the first introduction into Malaŵi of a type of aircraft for sales demonstration purposes by a manufacturer, operator or scheduled airline, the Chief Civil Aviation Officer may, after a landing fee has been paid in respect of a landing by that aircraft at a scheduled aerodrome, grant such exemption as the Chief Civil Aviation Officer in his absolute discretion deems fit in all the circumstances of the case in respect of the payment of further fees for landings by that aircraft at that aerodrome.

No reduction in landing fees

7. Notwithstanding anything contained in these Regulations to the contrary no reduction of landing fees shall be made by reason of the unavailability of any aerodrome, air route facility, airway facility, or other facility whatsoever.

Housing fees G.N. 21/1978

8.—(1) At scheduled aerodromes where housing facilities are available, fees for the housing of aircraft shall be charged and payable for the use of such facilities at the rates prescribed in the Third Schedule in accordance with the all-up weight of the aircraft and the length of the period of housing:

Provided that the housing of each aircraft owned and operated by any flying club approved for the purpose of this regulation by the Chief Civil Aviation Officer shall be charged and paid for at the rate of K2 per month irrespective of the all-up weight of the aircraft.

(2) An application may be made to the Chief Civil Aviation Officer for the charging of housing fees at the monthly rate prescribed in the said Third Schedule. Any such application shall be addressed to the Chief

Civil Aviation Officer and sent so as to reach him at least 21 days before the first day of the month upon which it is desired the period of monthly rates to commence and shall include full details of the registration marks and type of the aircraft to which the application relates and a reference to all-up weight, the scheduled aerodrome at which it is proposed to house the aircraft and the period of time during which it is proposed to house the aircraft at monthly rates.

(3) On receipt of an application under this regulation the Chief Civil Aviation Officer shall, if he is entirely satisfied with application, grant the same.

(4) No housing fees shall be charged or payable in respect of aircraft owned by the Government.

(5) The Chief Civil Aviation Officer, or any officer authorized by him for the purpose, may, for reasons of safety or any other reason, which he in his sole discretion considers good and sufficient, order an aircraft parked in the open to be removed to a suitable hangar, in which case housing fees shall be charged from the time of such order.

Parking fees G.N. 66/1982

9.—(1) Subject to subregulations (2) and (3) a parking fee equivalent to 30 per cent of the prescribed housing fee shall be charged and payable in respect of any aircraft which has landed at a scheduled aerodrome.

(2) No parking fee shall be charged or payable—

(*a*) in respect of an aircraft which makes a single landing at an aerodrome and remains there for a continuous period of less than 6 hours;

(*b*) in respect of an aircraft which makes more than one landing at an aerodrome within any period of 24 hours and remains there for periods that in the aggregate amount to less than 6 hours;

(*c*) in respect of an aircraft mentioned in regulation 5 (3);

(*d*) in respect of an aircraft parked on a parking site at an aerodrome by an operator to whom such site has been leased;

(*e*) in respect of aircraft mentioned in paragraphs (*a*), (*b*) and (*c*) of regulation 6 (1).

(3) The provisions of regulation 6 (2) shall, *mutatis mutandis*, apply to this regulation.

Payment of fees

10.—(1) Subject to the provisions of subregulations (2) and (3) all fees charged under this Part shall be paid in cash to the person in charge of the aerodrome at which the fee is charged.

(2) An application for the granting of credit facilities for the payment of fees charged may be made to the Chief Civil Aviation Officer and the granting of such facilities shall be at the Chief Civil Aviation Officer's absolute discretion and subject to such conditions that he may deem fit to impose in all the circumstances of the case.

(3) Any fee chargeable at monthly or annual rates shall be payable to the Chief Civil Aviation Officer in advance.

PART III

Exemptions by the Minister

11.—(1) The Minister may in his discretion and subject to such conditions or limitations as he thinks fit exempt from payment of any or all fees payable under this Part any of the following classes of aircraft or any aircraft of any such class—

(*a*) aircraft owned by the Government;

(*b*) visiting military aircraft of any other state;

(*c*) aircraft belonging to or employed in the service of any other state; and

(*d*) aircraft belonging to or employed in the service of any person or body entitled to diplomatic privileges.

(2) The Minister may be writing under his hand delegate any of his powers and functions under this regulation (except this power of delegation) to the Chief Civil Aviation Officer so that the delegated powers and functions may be exercised by the Chief Civil Aviation Officer with respect to the matter specified in the instrument of delegation as fully and effectually as by the Minister.

Fourth Schedule

12. The provisions of the Fourth Schedule shall have effect with respect to the fees to be paid in connexion with the certificates, licences, and other documents, and with examinations, tests, inspections, investigations, permissions and approvals, required by or for the purposes of the Air Navigation Regulations.

G.N. 61/1980
104/1981
116/1987
45/2011

FIRST SCHEDULE reg. 2

SCHEDULED AERODROMES

Kamuzu International (Lilongwe)

Chileka (Blantyre)

Mzuzu

Karonga

Likoma

SECOND SCHEDULE (regs. 3 and 3A)

G.N. 116/1987
95/1992
98/1993
82/1996
45/2011

PART I
Landing Fees

(*a*) Lilongwe International

Portion of the all-up weight of aircraft	US$	*Fees per single landing*
(i) for the first 2,000 kg . .	4.00	per 1,000 kg or part thereof
(ii) for the next 18,000 kg . .	5.00	per 1,000 kg or part thereof
(iii) for the next 60,000 kg . .	5.50	per 1,000 kg or part thereof
(iv) for the next 80,000 kg . .	6.50	per 1,000 kg or part thereof
(v) for the remainder . .	7.00	per 1,000 kg or part thereof

(*b*) Chileka

Portion of the all-up weight of aircraft	US$	*Fees per single landing*
(i) for the first 2,000 kg . .	4.00	per 1,000 kg or part thereof
(ii) for the next 18,000 kg . .	5.00	per 1,000 kg or part thereof
(iii) for the next 60,000 kg . .	5.50	per 1,000 kg or part thereof
(iv) for the next 80,000 kg . .	6.50	per 1,000 kg or part thereof
(v) for the remainder . .	7.00	per 1,000 kg or part thereof

(*c*) Mzuzu, Karonga and Likoma

Portion of the all-up weight of aircraft	US$	*Fees per single landing*
(i) for the first 2,000 kg . .	3.00	per 1,000 kg or part thereof
(ii) for the next 18,000 kg . .	3.50	per 1,000 kg or part thereof
(iii) for the next 60,000 kg . .	4.00	per 1,000 kg or part thereof
(iv) for the next 80,000 kg . .	4.50	per 1,000 kg or part thereof
(v) for the remainder . .	5.00	per 1,000 kg or part thereof

PART II
Extended Hour Charges

Airport	*Charge per hour or part thereof* US$
Lilongwe International	250.00
Chileka	250.00
Mzuzu	100.00
Karonga	100.00

G.N. 66/1982
98/1993
82/1996
45/2011

THIRD SCHEDULE reg. 8

Housing Fees

Aircraft all-up weight	*Daily rate*	*Weekly rate*	*Monthly rate*
	US$	US$	US$
Up to and including 5,000 kg	15	80	300
5,001–20,000 kg . .	20	100	375
20,001–150,000 kg . .	30	150	450
150,001–400,000 kg . .	40	200	600
Over 400,000 kg . .	50	250	800

For the purpose of this Schedule—

"daily rate" means the housing fee chargeable for a period of 24 consecutive hours or part thereof;

"weekly rate" means the housing fee chargeable for a period of 7 consecutive days; and

"monthly rate" means the housing fee chargeable for any calendar month or part thereof.

G.N. 66/1982
116/1987
95/1992
82/1996
29/2000
45/2011

FOURTH SCHEDULE reg. 13

Certificate of Registration

1. The fee to be paid for issue of a certificate of registration in respect of an aircraft pursuant to regulation 4 of the Air Navigation Regulations, shall be in accordance with the following scale—

Where the maximum total weight—

	K	t
(*a*) does not exceed 2,730 kg	10,000	00
(*b*) exceeds 2,730 kg but does not exceed 5,700 kg	12,000	00
(*c*) exceeds 5,700 kg but does not exceed 13,500 kg	15,000	00
(*d*) exceeds 13,500 kg but does not exceed 14,000 kg	17,000	00
(*e*) exceeds 45,000 kg	19,000	00
(*f*) issue of duplicate	10,000	00

For the purpose of this paragraph "maximum total weight" means the maximum total weight authorized in the certificate of airworthiness in force in respect of the aircraft or if no such certificate is in force, in the certificate of airworthiness last in force in respect of that aircraft. In any other case "maximum total weight" means maximum total weight authorized of the prototype or modification thereof to which the aircraft in the opinion of the Chief Civil Aviation Officer conforms.

PERMIT FOR AIRCRAFT TO FLY WITHOUT A CERTIFICATE OF AIRWORTHINESS

2. The fees to be paid in respect of an application for a permit to fly in pursuance of proviso (v) to regulation 6 (1) of the Air Navigation Regulations shall be as follows—

(*a*) for any investigation required by the Chief Civil Aviation Officer in connexion with an application, a fee of an amount equivalent to the cost of making the investigations but not exceeding K2,000 per kilogram of the maximum total weight of the aircraft for any year, or part of a year, of the period required for carrying out the investigation;

		K	t
(*b*)	for any aircraft:		
(i)	not exceeding 2,730 kg maximum total weight	10,000	00
(ii)	exceeding 2,730 kg but not exceeding 5,700 kg maximum total weight	15,000	00
(iii)	exceeding 5,700 kg maximum total weight	25,000	00

For the purpose of this paragraph "maximum total weight" means the maximum total weight specified in the application for the permit.

FIRST ISSUE OF CERTIFICATE OF AIRWORTHINESS

3. Where an application is made for the first issue of a certificate of airworthiness in respect of an aircraft there shall be paid for the investigations required by the Director of Civil Aviation in pursuance of regulation 7 (1) of the Air Navigation Regulations (not including the investigation of any aircraft engine) a fee of an amount equal to the cost of making the investigations but not exceeding K2,000 per kilogram of the maximum total weight of the aircraft for any year, or part of a year of the period required for carrying out the investigations:

Provided that—

(*a*) in the case of aircraft which in the opinion of the Director of Civil Aviation conforms to a prototype aircraft or to a modification of prototype aircraft, the fee shall be—

		K	t
(i)	in the case of a glider or balloon	10,000	00
(ii)	in the case of any other aircraft:		
	(A) when the maximum total weight does not exceed 2,730 kg in respect of each 500 kg or part thereof	10,000	00
	(B) when the maximum total weight exceeds 2,730 kg in respect of 500 kg or part thereof	10,000	00

(*b*) where investigations are required for the purpose of paragraph (*a*) of this proviso there shall be paid for such investigations, in addition to the relevant fee specified under that paragraph—

(i) if the investigations are requested by the aircraft owner, a fee of an amount equal to 50 per cent of such fee, whichever is the greater;

(ii) in any other case, a fee of an amount equal to 50 per cent of such fee.

For the purpose of this paragraph "maximum total weight" means the maximum total weight specified in the application for the certificate.

Approval of Engine

4. The fees to be paid in respect of an application for the approval of an engine whether in connexion with an application for the issue or renewal of a certificate of airworthiness or for any other of the purposes of the Air Navigation Regulations (including any investigations required for the purpose) shall be in accordance with the following scale—

(*a*) when the power output of the engine as determined by the Director of Civil Aviation.

		K	t
(i)	does not exceed 200 B.H.P. or 500 lb thrust . .	20,000	00
(ii)	exceeds 200 B.H.P. or 500 lb thrust but does not exceed 500 B.H.P. or 1,250 lb thrust . .	40,000	00
(iii)	exceeds 500 B.H.P. or 1,250 lb thrust but does not exceed 1,000 B.H.P. or 2,500 lb thrust . .	50,000	00
(iv)	exceeds 1,000 B.H.P. or 2,500 lb thrust but does not exceed 2,000 B.H.P. or 5,000 lb thrust . .	75,000	00

(*b*) when the power output as so determined exceeds 2,000 B.H.P. or 5,000 lb thrust—

		K	t
(i)	in respect of the first 2,000 B.H.P. or 5,000 lb thrust	75,000	00
(ii)	in respect of each additional 100 B.H.P. or 250 lb thrust	10,000	00

Second or Subsequent Issue or Renewal of Certificate of Airworthiness

5. When an application is made for the second or subsequent issue or the renewal of a certificate of airworthiness in pursuance of regulation 7 (6) of the Air Navigation Regulations the fee to be paid in respect thereof shall be K 6,000 in the case of a glider or balloon where the maximum total weight

authorized for the glider or the balloon does not exceed 1,000 kilograms and in any other case shall be in accordance with the following subparagraphs—

	K	t
(*a*) when the maximum total weight authorized for the aircraft does not exceed 2,730 kg, in respect of each 500 kg or part thereof	10,000	00
(*b*) when the maximum total weight authorized exceeds 2,730 kg but does not exceed 5,700 kg, in respect of each 500 kg or part thereof	7,000	00
(*c*) when the maximum total weight authorized exceeds 5,700 kg, in respect of each 500 kg or part thereof	8,000	00

VALIDATION OF CERTIFICATE OF AIRWORTHINESS

6. The fee to be paid in respect of an application for—

(*a*) the first issue of a certificate of validation of a certificate of airworthiness in respect of any aircraft in pursuance of regulation 7 (5) of the Air Navigation Regulations shall be the same as the fee which would be paid under paragraph 3 in respect of an application for the first issue of a certificate of airworthiness in respect of that aircraft, assuming it to be an aircraft which, in the opinion of the Director of Civil Aviation was a modification of a prototype aircraft;

(*b*) the second or subsequent issue or renewal of such certificate of validation in pursuance of regulation 7 (6) of the Air Navigation Regulations shall be the same as the fee which would be paid under paragraph 5 in respect of the second or subsequent issue or renewal of a certificate of airworthiness in respect of that aircraft.

APPROVAL OF PERSONS OR ORGANIZATIONS

7. The fee to be paid by a person for the making of inspections of his organization for the purpose of regulations 7 (8) and 9 (4) (*c*) of the Air Navigation Regulations shall be—

(*a*) for the grant or renewal of an approval, a fee of US$ 1,500 per annum for each branch of the organization which is inspected separately as deemed necessary by the Director of Civil Aviation;

(*b*) for the extension of an existing approval when an organization requires to be inspected as deemed necessary by the Director of Civil Aviation, on a separate occasion to those inspections defined in subparagraph (*a*), the cost of making the inspection together with a fee of US$ 500 per day or part thereof for the duration of the inspections; and

(*c*) for the extension of an existing approval when an inspection is not deemed necessary by the Director of Civil Aviation, a fee of US$ 1,500.

Approval in Respect of Aircraft and Equipment Including Modification, Repair, Etc., (Excluding Engines and Radio Apparatus)

8. The fee to be paid in respect of an application for approval pursuant to any requirement of regulations 7 (7), 9 (3) or 11 (2) of the Air Navigation Regulations (other than for approval of an engine) shall be an amount equivalent to the cost of making the investigations which the Director of Civil Aviation deems necessary for the purpose.

Approval of Type, Etc., of Radio Apparatus

9. The fee to be paid in respect of an application for the approval by the Director of Civil Aviation of radio apparatus or the manner of its installation or of any modification of the apparatus or the manner of its installation for the purpose of regulation 12 (5) of the Air Navigation Regulations shall be an amount equivalent to the cost of making the investigation which the Director of Civil Aviation deems necessary for the purpose.

Licences for Aircraft Maintenance Engineers and Aircraft Radio Maintenance Engineers and Certificates of Competence

10.—(1) The fees to be paid in respect of a licence as an aircraft maintenance engineer or aircraft radio maintenance engineer or in respect of a certificate of competence in pursuance of regulation 10 of the Aviation (Air Navigation) Regulations shall be as follows—

	K	t
(*a*) in respect of an application for the issue of a licence	10,000	00
(*b*) for each without type rating category:		
(i) without examination	6,000	00
(ii) with examination	15,000	00
(iii) for each additional partial written or oral examination	5,000	00
(*c*) for each type rated category or group rating:		
(i) without examination	6,000	00
(ii) with examination	15,000	00
(iii) for each additional partial oral examination . .	5,000	00
(2) In respect of an application for the extension of a licence, for each with type rating or without type rating category:		
(*a*) without examination	6,000	00
(*b*) with examination	15,000	00
(*c*) for each additional partial written or oral examination	5,000	00

	K	t
(3) In respect of an application for the renewal of a licence	6,000	00
(4) In respect of an application for a certificate of validation of a licence, per annum	10,000	00
(5) In respect of an application for the issue of a certificate of dispensation, for each type rated category	10,000	00

LICENCES FOR FLIGHT CREW AND RATINGS THEREIN

11.—(1) The following fees shall be paid for the grant of a licence to act as—

	K	t
(*a*) a professional pilot	12,000	00
(*b*) a flight navigator, or flight radiotelegraphy operator	10,000	00
(*c*) a flight radiotelephony operator, whether the licence is general or restricted (except where the applicant is the holder of a licence to act as a pilot, flight navigator, flight engineer or flight radiotelegraphy operator)	10,000	00
(*d*) a private pilot or student pilot	5,000	00
(*e*) a flight radiotelegraphy operator's temporary licence	5,000	00

(2) The fee payable in respect of the renewal of a licence detailed in subparagraph (1) shall be one half of that prescribed for the issue thereof.

(3) The following fees shall be paid on application for the inclusion of a rating in a professional pilot's licence or in a flight engineer's licence—

	K	t
(*a*) for the inclusion of a second or subsequent class or type of aircraft in the aircraft rating after passing the appropriate examinations and test	6,000	00
(*b*) for the inclusion of a second or subsequent class or type of aircraft rating after successfully undertaking an approved type conversion course, where the maximum total weight authorized of the aircraft:		
(i) does not exceed 5,700 kg	13,000	00
(ii) exceeds 5,700 kg but does not exceed 34,000kg	15,000	00
(iii) exceeds 34,000 kg but does not exceed 91,000 kg	18,000	00

(iv) exceeds 91,000 kg 20,000 00

	K	t
(*c*) for the inclusion of a flying instructor's rating or an assistant flying instructor's rating	5,000	00
(*d*) for the inclusion of an instrument rating . .	6,000	00

(4) The fee payable in respect of a renewal of the ratings detailed in subparagraphs (3) (*c*) and (*d*) shall be one half of that prescribed for the inclusion of the rating thereof.

(5) The following fees shall be paid on application for the inclusion of a rating in a private pilot's licence—

	K	t
(*a*) for the inclusion of a second or subsequent class or type of aircraft or group	5,000	00
(*b*) for the inclusion of a flying instructor's rating or an instrument rating	5,000	00

(6) The fee payable in respect of the renewal of the ratings detailed in subparagraph (5) (*b*) shall be one half of that prescribed for the inclusion of the rating thereof.

(7) The following fees shall be paid on application for the grant or renewal of a licence to act as a flight crew member or for the inclusion, extension or renewal of a rating therein, in respect of the following examinations as may be required—

	K	t
(*a*) for an examination on the performance of aircraft . .	20,000	00
(*b*) for the aircraft (General) and aircraft type examination for the inclusion of an aircraft where the maximum total weight authorized:		
(i) does not exceed 5,700 kg	13,000	00
(ii) exceeds 5,700 kg but does not exceed 34,000 kg	25,000	00
(iii) exceeds 34,000 kg but does not exceed 91,000kg	28,000	00
(iv) exceeds 91,000 kg	30,000	00
(*c*) for the re-sitting of Aircraft General of the examinations specified in subparagraph (7) (*b*)	13,000	00
(*d*) for the Aircraft General examination and Aircraft Type examination for the extension of an aircraft rating in a licence to include any additional type of aircraft in a licence, or for the re-sitting of Aircraft Type, where the maximum total weight authorized of aircraft:		

	(i) does not exceed 5,700 kg	13,000 00
		K t
	(ii) exceeds 5,700 kg but does not exceed 34,000kg	22,000 00
	(iii) exceeds 34,000 kg but does not exceed 91,000kg	25,000 00
	(iv) exceeds 91,000 kg	35,000 00
(*e*)	for the re-sitting of Part I (General) of the examinations specified in paragraph (7) (*d*)	5,000 00
(*f*)	for a written examination in radiotelephony	6,000 00
(*g*)	for a practical examination in radiotelephony . .	6,000 00
(*h*)	for an examination on signals	30,000 00
(*i*)	for an examination for a Commercial Pilot Licence (Helicopters and Gyroplanes) or an Airline Transport Pilot Licence (Helicopters and Gyroplanes) on flight planning and monitoring; navigation; instruments; radio aids; meteorology (theory); meteorology (practical); human performance and limitations—	
	for each subject on each occasion when that subject is taken	13,000 00
(*j*)	for a Flight Navigator's Licence, or an Airline Transport Pilot Licence (Aeroplanes) on Navigation; flight planning and monitoring; radio aids; instruments; meteorology (practical); meteorology (theory); human performance and limitations for each subject on each occasion when that subject is take	14,000 00
(*k*)	for an examination for a Commercial Pilot Licence, and Airline Transport Pilot Licence or a Flight Navigator's Licence on aviation law, flight rules and procedures (Paper 1) and (Paper 2) when taken together; aviation law, flight rules and procedures (Paper 1) when taken separately; aviation law, flight rules and procedures (Paper 2) when taken separately;	
	Seamanship—	
	for each subject on each occasion when that subject is taken	6,000 00
(*l*)	for the private pilot technical examination, for each subject on each occasion when that subject is taken	6,000 00
(*m*)	for the student pilot technical examination on each occasion when the examination is taken	5,000 00

	K t
(*n*) for an examination for the inclusion of an instrument rating in a Private Pilot Licence on flight rules and procedures; flight instrument and radio aids; meteorology—	
for each subject on each occasion when that subject is taken	10,000 00
(*o*) for any flying test conducted by an official Department of Civil Aviation examiner in respect of—	
(i) Private Pilot Licence	13,000 00
(ii) any other licence	20,000 00

(8) For the purpose of this paragraph—

"a licence to act as a professional pilot" means a licence of one of the following categories:

Commercial Pilot Licence (Aeroplanes)
Airline Transport Pilot Licence (Aeroplanes)
Commercial Pilot Licence (Helicopters and Gyroplanes)
Airline Transport Pilot Licence (Helicopters and Gyroplanes)
Commercial Pilot Licence (Balloons)
Commercial Pilot Licence (Airships)
Commercial Pilot Licence (Gliders)

"a licence to act as a private pilot" means a licence of one of the following categories—

Private Pilot Licence (Aeroplanes)
Private Pilot Licence (Helicopters and Gyroplanes)
Private Pilot Licence (Balloons and Airships)

Validation of a Licence

12. Where an application is made for the issue of a certificate of validation of a licence under the Aviation (Air Navigation) Regulations the following fees will be paid—

(*a*) for a technical examination (if required)	in each case the fee appropriate to the issue of a licence equivalent
(*b*) for an official flying (if required)	to that for which validation test is sought

(*c*) for a certificate for:

	K t
(i) Private Pilot Licence	10,000 00
(ii) for any other certificate	15,000 00

Type Rating of New Aircraft

13. The fee to be paid by a person upon making an application for the inclusion in a Pilot's Licence of an aircraft rating in respect of an aircraft type where no application for an aircraft rating in respect of that type has previously been granted by the Director of Civil Aviation, shall be, in addition to any other fee payable by virtue of any other regulation to the application, a charge of an amount decided by the Director of Civil Aviation having regard to the cost of—

(*a*) training a person appointed by the Director of Civil Aviation to act as a Pilot in command of that type of aircraft; and

(*b*) training a person appointed by the Director of Civil Aviation to a standard of technical knowledge of that type of aircraft which in the opinion of the Director of Civil Aviation will enable that person to examine the applicant for the purposes of his application, but not exceeding US$25,000.

Approvals of Flight Simulators

14. The fees to be paid by a person for the approval or renewal of approval of a flight simulator for the purposes of regulation 18 and Part B of the Eleventh Schedule of the Air Navigation Regulations shall be an amount equivalent to the cost of making inspections deemed necessary for the purpose by the Director of Civil Aviation but not exceeding US$50,000 for any year or part of the year, of the period required for carrying out the inspections.

Approval of Flying Training Courses

15. The fee to be paid by a person for the approval of a flying training school shall be an amount equivalent to the cost of making inspections deemed necessary for the purpose by the Director of Civil Aviation but not exceeding US$50,000 for any year, or part of year, of the period required for carrying out the inspection.

Additional Charge Where Functions Are Performed Abroad

16. The charge payable when an application is made for the Director of Civil Aviation to perform a function in respect of which a fee is specified under these Regulations as a result of which the Director of Civil Aviation deems necessary for his representative to travel outside Malaŵi shall be, in addition to the appropriate fee specified in these Regulations a charge equivalent to the additional costs thereby incurred but not exceeding US$5,000 per week, or part thereof, during which such representative is necessarily absent from Malaŵi.

OFFICIAL MEDICAL EXAMINATION

17. The fees to be paid for an official medical examination, when required, shall be as follows—

		K t
(*a*)	for the grant of a licence	15,000 00
(*b*)	for the renewal of a licence	10,000 00
(*c*)	for any other purpose of the Regulations . .	15,000 00

AERODROMES LICENCES

18. The fees to be paid in respect of the inspection of aerodromes, registration certificates and licences of aerodromes shall be as follows—

		K t
(*a*)	for the initial official inspection of an aerodrome as defined in the Act	30,000 00
	In addition, the licencee shall pay the cost of transportation and other incidential costs associated with the inspection	
(*b*)	for the issue of Aerodrome Registration Certificate	10,000 00
(*c*)	for the issue of a licence of an aerodrome in the private category	10,000 00
(*d*)	for the issue of a licence of an aerodrome in the public category	20,000 00
(*e*)	for a renewal of a licence in the private category	10,000 00
(*f*)	for a renewal of a licence in the public category	15,000 00
(*g*)	for each annual official inspection of an aerodrome	20,000 00

COPIES OF DOCUMENTS

19. The fee to be paid for issue of a copy or replacement of a document issued under the Aviation (Air Navigation) Regulations shall be K10,000.00:

Provided that for a copy or replacement of a flight manual or performance schedule relating to a certificate of airworthiness, the fee shall be an amount equal to the cost of preparing the copy or replacement as the case may be.

FEES

20. The fee to be paid for any document or report, not being a document referred to in paragraph 19 above, issued on the authority of the Director of Civil Aviation, shall be an amount equal to the cost of preparing the copy.

AVIATION (AIR TRANSPORT LICENSING) REGULATIONS

ARRANGEMENT OF REGULATIONS

REGULATION

PART I

1. Citation
2. Interpretation
3. Exemptions

PART II

4. Application of Part II
5. Restriction on operation without a licence
6. Grant of licence by Minister
7. Applications for licences
8. Publication of applications
9. Objections or representations
10. Minister may appoint a tribunal
11. Composition, powers, rights and privileges of a tribunal
12. Hearings by a tribunal
13. Notice of hearing
14. Grant of short-term special licences
15. Period of licence
16. Grant of provisional licences
17. Publication of the Minister's decisions
18. Revocation or suspension of licences
19. Surrender of licences
20. Fees for licences
21. Returns by holders of licences

PART III

22. Application of Part III
23. Restriction on operation without a permit
24. Grant of permits
25. Applications for permits
26. Powers of Chief Civil Aviation Officer
27. Revocation or suspension of permits
28. Fees for permits

PART IV

29. Offences and penalties
30. Licences and permits not transferable
31. Non-disclosure of information
32. Reference to licence to include provisional licence
33. No rights of continuance
34. Proceeding in the case of an offence
35. Immunities

Schedule and Appendix

[Subsidiary] *Aviation (Air Transport Licensing) Regulations*

G.N. 23/1971
22/1977
2/1980
63/1980
67/1982
99/1993
87/1996
28/2000
42/2011

AVIATION (AIR TRANSPORT LICENSING) REGULATIONS

under s. 19

PART I

Citation

1. These Regulations may be cited as the Aviation (Air Transport Licensing) Regulations.

Interpretation

2. In these Regulations, unless the context otherwise requires—

"air service" means any service performed by any aircraft for hire or reward.

"the convention" means the convention on International Civil Aviation concluded at Chicago on the 7th day of December, 1944;

"licence" means a licence granted under regulation 6 in respect of scheduled journeys;

"permit" means a permit granted under regulation 24 in respect of non-scheduled journeys;

"scheduled journey" means one of a series of journeys which are undertaken between the same two places and which together amount to a systematic service operated in such a manner that the benefits thereof are available to members of the public from time to time seeking to take advantage of it.

Exemptions

3. Nothing in these Regulations shall apply to any flight—

(*a*) by a civil aircraft operating on a scheduled journey as a result of and under the terms of an air services agreement entered into by the Government;

(*b*) by a civil aircraft engaged in the operation of a journey other than a scheduled journey and registered in a state (other than Malaŵi) which is for the time being a party to the Convention for the sole purpose of the carriage of passengers, none of whom are taken on or discharged from the aircraft in Malaŵi, or the carriage of cargo or mail none of which is taken on or discharged in Malaŵi:

Provided that the person in command of such aircraft gives notice to the Director of Civil Aviation of his intention to land in Malaŵi before the aircraft enters Malaŵi airspace and that the aircraft shall follow such route in Malaŵi airspace as the Director of Civil Aviation may prescribe;

(*c*) solely for the purpose of the training or testing of persons in the performance of duties in connexion with aircraft;

(*d*) solely for the purpose of providing ambulance or rescue facilities;

(*e*) solely for the purpose of the carriage of emergency food or emergency medical supplies;

(*f*) solely for the purpose of testing or demonstrating any aircraft or of any apparatus or equipment whether or not that apparatus or equipment is carried in the aircraft.

PART II

Licences for Scheduled Journeys

Application of Part II

4. This Part shall not apply to the carriage of passengers, mail or cargo by air for hire or reward upon journeys other than scheduled journeys.

Restriction on operation without a licence

5. Subject to the provisions of these Regulations, it shall not be lawful for any person to use any aircraft in Malaŵi for the carriage of passengers, mail or cargo for hire or reward upon any scheduled journey between two places of which at least one is in Malaŵi except under, and in accordance with the provisions of, a licence or provisional licence granted by the Minister.

Grant of licence by Minister

6.—(1) The Minister may grant to any person applying therefor a licence to carry passengers, mail or cargo by air for hire or reward on such scheduled journeys, and subject to such conditions, as may be specified in the licence.

(2) The Minister may attach such conditions to any licence as he may think fit, having regard to the nature and circumstances of the application therefor.

(3) It shall be a condition of every licence—

(*a*) that the holder of the licence and any person having a financial interest in the business of the holder of the licence shall refrain from stipulating that any other person shall—

(i) refuse booking facilities to any other holder of a licence;

(ii) grant such facilities to such holder only on onerous terms;

(*b*) that the holder of the licence shall perform all such reasonable services as the Postmaster General may from time to time require in regard to the conveyance of mails and of any persons who may be in charge thereof upon journeys made under the licence. The remuneration for any such service shall be such as may from time to time be determined by agreement between the Postmaster General and the holder of the licence;

(*c*) that any dispute, difference or question which may arise as to the remuneration to be paid to the holder of the licence in respect of such services, or as to the rights, duties or liabilities of the holder of the licence or the Postmaster General hereunder, or otherwise in relation to any of the matters aforesaid, shall in default of agreement be referred to a single arbitrator in pursuance of the provisions of the Arbitration Act.

Cap. 6:03

Applications for licences

7.—(1) Applications for licences shall be made in the form and manner and shall contain the particulars prescribed in the Schedule.

(2) Every applicant shall furnish to the Minister such further information as the Minister may reasonably require for the discharge of his duties in relation to the application.

Publication of applications G.N. 2/1980

8. The Minister shall cause to be published, in the manner prescribed in the Schedule, such particulars of any applications for licences received by him as are prescribed in the Schedule, and the cost of any such publication shall be borne by the applicant.

Objections or representations

9. Any Government officer acting on the instructions of the Minister, or any person providing transport by air for passengers or cargo, or any owner of an aerodrome, may in the form and manner and within the time prescribed in the Schedule, make objections or representations with regard to the applications for a licence.

Minister may appoint a tribunal

10. As soon as may be after the expiration of the period prescribed in the Schedule the Minister may, whether or not an objection or representation has been made to him, refer the application to be dealt with by a tribunal.

Composition, powers, rights and privileges of a tribunal

11.—(1) A tribunal shall consist of an officer in the public service of Malaŵi and such assessors as the Minister shall appoint.

(2) Any such tribunal may be appointed generally for any period or periods, or specifically for the purpose of dealing with a particular application.

(3) The powers, rights and privileges of a tribunal in any inquiry shall be the same as those conferred on a commission of inquiry by the Commissions of Inquiry Act.

Cap. 18:01

(4) Assessors shall be entitled to such remuneration and allowance as the Minister may determine.

Hearings by a tribunal

12. Every hearing by a tribunal shall be held in public unless the Minister shall otherwise decide in relation to the whole or part of a particular case.

Notice of hearing

13. Before hearing any application for a licence or objections or representations with regard to the application the Minister shall give to the applicant and to any person who has made such objections or representations such notice in such form as is prescribed in the Schedule, and shall give the applicant and any such person an opportunity of being heard at the hearing of the application.

Grant of short term special licences

14. Where an application is made to the Minister for a licence to remain in force for a period not exceeding thirty days and he is satisfied that it is in the public interest that the application should be determined with expedition, he may determine the application and grant a licence accordingly; and the provisions of this Part as to the publication of particulars of applications, the making of objections and representations, and the holding of enquiries at the instance of the applicant or an objector shall not in that case apply.

Period of licence

15. The Minister may grant licences to remain in force for such period not exceeding five years, as he may in each case determine, commencing on the date on which the licence is expressed to take effect:

Provided that if, on the date of the expiration of a licence, an application to the Minister is pending for the grant of a new licence in substitution for an existing licence held by the applicant, the existing licence shall continue in force until the application is granted or refused.

Grant of provisional licences

16. The Minister may, if he thinks fit, pending the determination of an application for a licence, grant to the applicant a provisional licence which shall remain in force until the application is determined.

Publication of the Minister's decisions G.N. 2/1980

17. The Minister shall cause to be published in the manner prescribed in the Schedule such particulars of his decisions on applications for licences and of his decisions to revoke or suspend licenses as are prescribed in the Schedule, and the cost of any such publication shall be borne by the applicant or the holder of the licence, as the case may be.

Revocation or suspension of licences

18.—(1) Subject to the provisions of subregulation (2), the Minister may revoke or suspend a licence—

(*a*) if the holder of the licence has, since the licence was granted, committed an offence under any written law relating to air navigation or carriage by air;

(*b*) where the holder of the licence is a body corporate, if any officer of that body corporate has, since the licence was granted, in his capacity as such officer, committed an offence under any written law relating to air navigation or carriage by air;

(*c*) if the holder of the licence fails to operate the services to which the licence refers with sufficient regularity to satisfy the Minister; or

(*d*) if the holder of the licence, or any person acting on his behalf, shall have made any false statement, whether wilfully or otherwise; either in the application for a licence or at any hearing of such application by a tribunal appointed by the Minister under regulation 10.

(2) The Minister shall not revoke or suspend the licence unless he is satisfied that in all the circumstances the licence should be revoked or suspended, and before revoking or suspending any licence under subregulation (1) (*c*) the Minister—

(*a*) shall give to the holder of the licence such notice as is prescribed in the Schedule, specifying the grounds upon which it is proposed to revoke or suspend the licence; and

(*b*) may, if he thinks fit, hold a private enquiry.

(3) The expression "officer" in subregulation (1) (*b*) means a Director, General Manager, Secretary or other similar officer and includes any person who, with the authority of the body corporate acts as such officer.

Surrender of licences

19. A licence may at any time be surrendered by the holder to the Minister for cancellation. If, during the currency of a licence, the holder applies to the Minister for a new licence in substitution for the current licence, he shall, if a new licence is granted, surrender the current licence for cancellation on the date from which the new licence is expressed to take effect.

Fees for licences
G.N. 22/1977
63/1980
67/1982
99/1993
87/1996
28/2000
42/2011

20.—(1) There shall be paid to the Government—

(*a*) in respect of every licence, a fee of US$5,000 in respect of each year, or part of a year, of the term for which the licence is expressed to remain in force; or

(*b*) in respect of every provisional licence granted under regulation 16, a fee of US$2,500.

(2) No refund of any fee paid in respect of the grant of a licence shall be made, whether on the surrender of the licence or otherwise, save where a licence is surrendered before the normal date of expiry upon the grant of a new licence authorizing a service over the same route, in which case there shall be refunded the sum of US$2,000 for each full year of the unexpired period of the licence.

Returns by holders of licences

21. Every holder of a licence shall, from time to time, provide such information relating to the operation of the air services which are the subject of the licence as the Minister may require.

PART III

Permits for Journeys Other Than Scheduled Journeys

Application of Part III

22. This Part shall not apply to the carriage of passengers, mail or cargo by air for hire or reward on scheduled journeys.

Restriction on operating without a permit

23. Subject to the provisions of these Regulations, it shall not be lawful for any person to use any aircraft for the provision in Malaŵi of any air services except under, and in accordance with, the conditions of a permit granted by the Director of Civil Aviation.

Grant of permits

24.—(1) The Director of Civil Aviation may grant to any person applying therefor a permit to use aircraft for the provision in Malaŵi of such air services (other than such a service as is referred to in regulation 5) for such period and on such conditions as may be specified in the permit.

(2) The Director of Civil Aviation may attach such conditions to any permit as he may think fit having regard to the nature and circumstances of the application therefor.

Applications for permits

25. Applications for permits shall be made in such form, and shall contain such information as the Director of Civil Aviation may from time to time require.

Powers of Director of Civil Aviation G.N. 2/1980

26.—(1) In respect of an application for a permit for a period in excess of thirty days the Director of Civil Aviation shall cause such particulars of such application as he deems necessary to be published in at least one issue of a newspaper circulating in Malaŵi and once in the *Gazette*, the cost of any such publication shall be borne by the applicant.

(2) In addition to the provisions contained in this Part the provisions of regulations 9, 10, 11, 12, 13, 16, 17 and 21 shall, *mutatis mutandis*, apply to any application to which this regulation refers as if such application were an application for a licence.

Revocation or suspension of permits

27.—(1) The Director of Civil Aviation may revoke or suspend any permit—

(*a*) if the holder of the permit has, since the permit was granted, committed an offence under any written law relating to air navigation or carriage by air;

(*b*) where the holder of the permit is a body corporate, if any officer of the body corporate has, since the permit was granted, in his capacity as such officer, committed an offence under any written law relating to air navigation or carriage by air.

(2) The expression "officer" in subregulation (1) (*b*) means a Director, General Manager, Secretary or other similar officer and includes any person who, with the authority of the body corporate, acts as such officer.

Fees for permits
G.N. 22/1977
63/1980
67/1982
99/1993
87/1996
28/2000
42/2011

28.—(1) There shall be paid to the Government—

(*a*) in respect of a permit to operate a single flight the following fees—

	US$
(i) when using aircraft of all-up weight of less than 30,000 kg	50 00
(ii) when using aircraft of all-up weight of 30,000 kg and over	100 00

(*b*) in respect of a permit to operate flights for a period of thirty days or less, not being a single flight operation, the following fees—

	US$
(i) when using aircraft of all-up weight of less than 30,000 kg	500 00
(ii) when using aircraft of all-up weight of 30,000 kg and over	1,000 00

(*c*) in respect of a permit to operate flights for a period in excess of thirty days but not exceeding twelve months, the following fees—

	US$
(i) when using aircraft of all-up weight of less than 30,000 kg	1,000 00
(ii) when using aircraft of all-up weight of 30,000 kg and over	5,000 00

(*d*) in respect of every provisional permit granted pursuant to regulation 16, a fee equivalent to half that specified in paragraph (*c*).

PART IV

General Provisions

Offences and penalties

29. Any person who contravenes regulation 5 or regulation 23 shall be guilty of an offence and shall be liable to a fine of K1,000 and to imprisonment for one year.

Licences and permit not transferable

30. A licence or permit shall not be capable of being transferred or assigned:

Provided that in the event of the death, incapacity, bankruptcy, sequestration of liquidation of the holder of a licence or permit, or the appointment of a receiver or manager or trustee in relation to the business of the holder of a licence or permit, the person for the time being lawfully carrying on that business shall, if within fourteen days of his commencing so to do, make application to the Minister or the

Director of Civil Aviation, as the case may be, for a new licence or permit, be entitled to provide the air services authorized by the existing licence or permit subject to the conditions thereof, until the application is determined.

Non-disclosure of information

31. Nothing in these Regulations shall require the disclosure by any applicant for a licence or permit to any person other than the Minister or the Director of Civil Aviation, as the case may be, of information as to the financial resources of the applicant, and any such information shall be treated as confidential.

References to licences to include provisional licences

32. Any reference to a licence in regulations 6 (2) and (3), 21, 30 and 33 shall be construed as including reference to a provisional licence.

No rights of continuance

33. Nothing in these Regulations shall confer upon the holder of a licence or permit or upon any other person any right to the continuance of any benefits arising from the provisions of these Regulations or from any licence or permit granted thereunder or from any conditions attached to any such licence or permit.

Proceedings in the case of an offence

34.—(1) No proceedings for an offence against these Regulations shall be instituted except with the consent of the Director of Public Prosecutions.

(2) Where an offence against these Regulations has been committed by a body corporate, every person who, at the time of the commission of the offence was a Director, General Manager, Secretary or other similar officer of the body corporate, or was purporting to act in such capacity, shall be deemed to be guilty of that offence, unless he proves that he exercised all diligence to prevent the commission of the offence as he ought to have exercised having regard to the nature of his functions in that capacity and to all the circumstances.

Immunities

35. No action shall lie on behalf of any person in respect of any act or omission by the Minister or the Director of Civil Aviation or any member of a tribunal appointed by the Minister under regulation 10 whilst acting in their official capacity.

SCHEDULE

1. Every application for a licence shall be made (through the Director of Civil Aviation) to the Minister in the form as set out in Form No. 1 in the Appendix.

2. The Minister shall, within fourteen days of the receipt of an application for a licence, cause to be published in the manner prescribed in paragraph 9, a notice containing particulars of the application as set out in Form No. 2 in the Appendix and shall in such notice specify a period being not less than fourteen days nor more than twenty-eight days after the date of the first publication of the notice by which any representations or objections with regard to the application must be made to the Minister.

3. Any representations or objections with regard to an application for a licence shall be made in duplicate to the Minister on or before the day specified for such purpose in the notice published with regard to that application in accordance with the provisions of paragraph 2 in the form as set out in Form No. 3 in the Appendix and shall contain the specific grounds upon which it is based and any special conditions which it may be desired should be attached to the licence, if granted.

4. Forthwith upon the receipt of any representations or objections the Minister shall cause the duplicate copy thereof to be delivered to the applicant in respect of whose application such representations or objections have been made.

5. In cases where for the purposes of determining an application for a licence a hearing in public or in private is to be held by a tribunal appointed by the Minister under regulation 10, the notice to be given by the Minister to the applicant and to any person who has duly made representations or objections with regard to the application shall be not less than seven days' notice in writing in the form as set out in Form No. 4 in the Appendix.

6. In any case in which it is proposed to revoke or suspend a licence, notice of such intention shall be sent to the holder of the licence in the form as set out in Form No. 5 in the Appendix.

7. Particulars of the decisions of the Minister—

(*a*) on applications for licences; and

(*b*) to revoke or suspend a licence,

shall be published by notice in the form as set out in Form No. 6 in the Appendix and in the manner prescribed in paragraph 9:

Provided that no reasons for any decisions shall be published unless the Minister shall otherwise direct.

8. Publication under this Schedule shall be by notice published in the *Gazette*.

APPENDIX

GOVERNMENT OF MALAŴI

MINISTRY OF TRANSPORT AND COMMUNICATIONS

FORM NO. 1

Aviation (Air Transport Licensing) Regulations

APPLICATION FOR A LICENCE TO OPERATE A SCHEDULED SERVICE

1. Full name of applicant .....
2. Registered business address
   (*a*) Head office .....
   .....
   (*b*) in Malaŵi .....
3. Nationality of applicant (if an individual) .....
4. The names of the partners (if a partnership) and their nationalities:

Name	*Nationality*
.....	.....
.....	.....
.....	.....
.....	.....

5. If the applicant is a company or statutory corporation—
   (i) state the names and nationalities of the directors, or board members:

Name	*Nationality*
.....	.....
.....	.....
.....	.....
.....	.....

   (ii) state country of incorporation (if applicable):
   .....
   (iii) state the names and countries of incorporation of any subsidiary companies holding shares in the applicant's business:
   .....
   .....
   .....

(iv) state the names and countries of incorporation of any subsidiary companies of the applicant:

.....

.....

.....

6. Give details of applicant's previous experience, if any, in the operation of commercial air services:

.....

.....

.....

.....

7. Give details of other air services operated by the applicant at the time of this application:

.....

.....

.....

8. Particulars of route it is desired to operate including points at which traffic rights are required .....

.....

9. Types and classes of traffic to be conveyed .....

.....

10. Date(s) on which services) is planned to commence .....

.....

11. Period for which licence is required .....

.....

12. Type and number of aircraft to be operated .....

.....

13. Annexures:

(*a*) Copy of Memorandum and Articles of Association, or Deed of Partnership, Vendors', Founders' or Promoters' Agreement, as applicable.

(*b*) Proposed schedule of frequencies, with details of intended timetables.

(*c*) Passenger rates (through and intermediate).

(*d*) Freight rates (through and intermediate).

(*e*) Free baggage allowance and excess baggage rates.

(*f*) Total number of aircraft owned and/or operated by applicant (individual types and seating capacities).

(*g*) Total aircrew personnel on payroll (e.g. pilots, co-pilots, navigators, radio operators, cabin crew, etc.).

(*h*) Details of the insurance of the aircraft for the proposed route.

(*i*) Evidence of the demand for such a service.

I hereby declare that the particulars contained in this form, and in any annexures thereto, are true in every respect.

Date ..... *Signature of applicant* .....

CONDITIONS

NOTE: Before the application overleaf is considered by the Minister, the applicant must first satisfy the Chief Civil Aviation Officer as regards operational procedures to be followed.

NOTES:

A. Should there be insufficient space in any paragraph of this form to enable the required particulars to be completed, the relevant information may be given on separate sheets of paper with appropriate cross references to the paragraph(s) concerned.

B. This form, when completed, should be forwarded to:

Chief Civil Aviation Officer,
Private Bag 322,
Lilongwe 3,
Malaŵi.

C. If any applicant has previously completed Form No. 1 in respect of some previous application for a licence, he is not required to complete paragraphs 4 to 7, nor submit Annexures (*a*), (*g*), (*h*) unless there has been some material alteration since such previous application was made.

FORM NO. 2

Publication by the Minister of Transport and Communications of application to operate Scheduled Air Service

AVIATION (AIR TRANSPORT LICENSING) REGULATIONS NOTICE

In accordance with the provisions of regulation 8 of the Aviation (Air Transport Licensing) Regulations, the Minister of Transport and Communications hereby publishes the prescribed particulars of the under-mentioned application to operate a scheduled air service in, to and from Malaŵi.

Any representation regarding this application or objections thereto, must be made in duplicate to the Secretary for Transport and Communications on or before the .....

Particulars of Application to operate Scheduled Air Service

1. Applicant .....
2. Route applied for .....
3. Purposes of services (passenger, freight, mails) .....
   .....
4. Points of departure, final destination and intermediate points of call
   .....
   .....
5. Date on which the service is to commence .....
6. Period for which the licence is applied for .....
7. Frequency of flights .....
8. Provisional time-table .....
9. Type of aircraft .....

Signed .....
Secretary for Transport and Communications

Date .....

FORM NO. 3

Representation or Objections regarding proposed Scheduled Air Service (to be made in duplicate)

The Secretary for Transport and Communications,

With reference to the published notice dated ..... regarding the under-mentioned application to operate a scheduled air service and in accordance with regulation 9 of the Aviation (Air Transport Licensing) Regulations, I beg to submit representations/ objections relating thereto.

2. The application referred to is that from Applicant .... to operate a service from ..... to .....
3. Representations/Objections are as follows:
   .....
   .....
   .....
   .....

Dated ..... Signed .....

FORM NO. 4

Notification of Enquiry before determining Application to operate Scheduled Air Service

From: The Secretary for Transport and Communications

To: .....

Address .....

Date .....

Sir,

I am directed to notify you in accordance with regulation 13 of the Aviation (Air Transport Licensing) Regulations, that the Minister will hold a private/public hearing to consider the application by ..... for a licence to operate the route ..... and invites you to attend this hearing for the purposes of being heard with regard to the said application.

(2) The hearing will be held on (date) .....at the hour of ..... at the place of meeting .....

Signed .....
Secretary for Transport and Communications

FORM NO. 5

Notice of Intention to consider the Revocation or Suspension of a licence to operate a Scheduled Air Service

From: The Secretary for Transport and Communications

To: .....

Date .....

Sir,

I am directed to notify you in accordance with regulation 18 (2) of the Aviation (Air Transport Licensing) Regulations, that the Minister proposes to consider the revocation/suspension of the Licence No .... which you hold to operate the route ..... at a hearing to be held at (place) ..... on (date) ..... at the hour of .....

2. You are entitled to be present or to be represented at this hearing.

3. The grounds on which it is proposed to revoke/suspend your licence are as follows:

.....
Secretary for Transport and Communications

FORM NO. 6

Publication of Decision of the Minister of Transport and Communications re grant/refusal/suspension/revocation of a Licence

In accordance with the provisions of regulation 17 of the Aviation (Air Transport Licensing) Regulations, the Minister of Transport and Communications hereby publishes the following particulars of this decision regarding the grant/refusal/suspension/revocation of a licence to operate the under-mentioned service.

Applicant/Licence Holder .....
Licence No. (if any) .....
Date of application/licence .....
Route(s) .....
Frequency of flights .....
Type of aircraft .....

DECISION

Licence granted .....
Application refused .....
Licence No. .....
Revoked
Licence No. .....
suspended
Reasons—

Signed .....
Secretary for Transport and Communications

AVIATION (AERODROME CHARGES) REGULATIONS

ARRANGEMENT OF REGULATIONS

REGULATION

1. Citation
2. Interpretation
3. Passenger service charges
4. Entrance charges
5. Payment of charges
6. Exemption from payment of charges
7. Offences and penalties

FIRST SCHEDULE
Scheduled Aerodromes

SECOND SCHEDULE
Passenger service charges

THIRD SCHEDULE
Entrance charges

AVIATION (AERODROME CHARGES) REGULATIONS

under s. 19

G.N. 182/1974
96/1978
112/1978
62/1980
103/1981
149/1981
38/1982
34/1984
96/1987
63/1988
96/1988
93/1992
58/1995
84/1996
68/1997
18/1998
30/2000
24/2003
44/2011

Citation

1. These Regulations may be cited as the Aviation (Aerodrome Charges) Regulations.

Interpretation

2. In these Regulations, unless the context otherwise requires—

"entrance charge" means the charge payable in accordance with regulation 4;

"passenger service charge" means the charge payable in accordance with regulation 3;

"scheduled aerodrome" means any aerodrome listed in the First Schedule to these Regulations;

G.N. 34/1984

"transit passenger" means a person holding a valid air ticket who, after arriving on a flight from a specified place outside Malaŵi, makes a stop-over in Malaŵi of not more than 24 hours before departing from a scheduled aerodrome in Malaŵi on a flight to a specified destination outside Malaŵi other than the specified place from which he arrived.

Passenger service charge

3. Any passenger departing from a scheduled aerodrome shall pay such passenger service charge as is specified in the Second Schedule in respect of such aerodrome:

Provided that no such charge shall be payable in respect of—

(a) any transit passenger; and

(b) any child under two years of age.

Security charges

3A. Any passenger departing from a scheduled aerodrome for any destination shall pay such security charges as is specified in the Fifth Schedule in respect of this aerodrome:

Provided that no charge shall be payable in respect of transit passengers, who, during the time he is waiting his outward flight does not leave that portion of the scheduled aerodrome set aside for transit passenger save with the approval of the Director of Civil Aviation or such other person as the Director may designate for that purpose.

Entrance charge

4. Any person shall, upon entering any, or portion of any, scheduled aerodrome described in the Third Schedule hereto, pay such entrance charge as is specified in the said Third Schedule in respect thereof:

Provided that this regulation shall not apply to—

(*a*) any passenger who is awaiting departure on any flight from such scheduled aerodrome and who is in possession of a current embarkation card;

(*b*) any person whose normal place of employment is at such scheduled aerodrome;

(*c*) any person who is required to enter any, or portion of any, such scheduled aerodrome in the course of his normal official duties; and

(*d*) any child under two years of age.

Car parking charges
G.N. 68/1997

4A. Any person shall upon parking a car in an area set aside for that purpose, pay such car parking charge as is specified in respect thereof.

Payment of charges

5.—(1) All charges payable under these Regulations shall be paid in cash to the Revenue Collector at the said scheduled aerodrome at any time prior to departure.

(2) Upon payment by any person of any charge under these Regulations a receipt for the amount paid shall be issued:

Provided that any right or licence conferred on any person by reason of the issue of such receipt may be revoked at any time by any officer of the Revenue Collecting Authority on duty for the time being at the said scheduled aerodrome.

Exemption from payment of charges

6. The Minister may in his discretion and subject to such conditions or limitations as he thinks fit exempt from payment of any or all charges under these Regulations any person or classes of persons.

Offences and penalties
G.N. 96/1987
93/1992

7. A person to whom regulation 3 or 4 applies who contravenes, or fails to comply with, that regulation shall be guilty of an offence and be liable—

(*a*) in the case of a person to whom regulation 3 applies, to a fine of K50; and

(*b*) in the case of a person to whom regulation 4, applies, to a fine of K100.

G.N.
103/1981
93/1992
84/1996
30/2000
44/2011

FIRST SCHEDULE reg. 2

SCHEDULED AERODROMES

Lilongwe International Airport
Chileka Airport
Karonga Airport
Mzuzu Airport
Likoma Airport

SECOND SCHEDULE

reg. 3 G.N. 149/1981 96/1987 63/1988 96/1988 93/1992 58/1995 84/1996 18/1998 30/2000 24/2003 44/2011

PASSENGER SERVICE CHARGES

A. INTERNATIONAL PASSENGERS

	US$
1. For passengers travelling on a Malaŵi Passport . .	30
2. For a passenger travelling on a foreign passport but who, for the time being is a resident of Malaŵi under a Permanent Residence Permit issued under the Immigration Act . .	30

B. DOMESTIC PASSENGERS

For a passenger travelling on a wholly internal flight in Malaŵi	5

THIRD SCHEDULE

reg. 4 G.N. 103/1981 96/1987 93/1992 58/1995 84/1996 30/2000 44/2011

Entrance Charges

Chileka Airport

Lilongwe International Airport

Such rooms or parts of annexes to the terminal building as are for the time being, used for the purposes of a—

(*a*) public restaurant;

(*b*) public balcony; and

(*c*) public bar:

per person K100 00

FOURTH SCHEDULE

G.N. 68/1997 30/2000 44/2011

Car Parking Charges

	K t
1. Single parking, per vehicle	100 00
2. Parking a car for a day	200 00

FIFTH SCHEDULE

reg. 3A

Security Charges

G.N. 44/2011

	US$
1. For a passenger on an international flight	5
2. For a passenger on a domestic flight	2

AVIATION (AIRPORT SECURITY) REGULATIONS

ARRANGEMENT OF REGULATIONS

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7. Airport security committees
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9. Operator security programme
10. Tenant security programme
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12. Restricted area permits
13. Control of access
14. Search of persons, baggage and cargo
15. Refused search
16. Powers of arrest and detention
17. Carriage of firearms
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19. Offences and penalties

G.N. 20/1998

AVIATION (AIRPORT SECURITY) REGULATIONS

under s. 19

PART I

PRELIMINARY

Citation

1. These Regulations may be cited as the Aviation (Airport Security) Regulations.

Interpretation

2. In these Regulations, unless the context otherwise requires—

"appropriate authority for aviation security" means the Director of Civil Aviation;

"acts of unlawful interference" means an act of—

(*a*) violence against a person on board an aircraft in flight if that act is likely to endanger the safety of that aircraft;

(*b*) destroying an aircraft in service or causing damage to such an aircraft which renders it incapable of flight or which is likely to endanger its safety in flight;

(*c*) placing or causing to be placed on an aircraft in service, by any means whatsoever, a devise or substance which is likely to destroy that aircraft, or causing damage to it which renders it incapable of flight, or causing damage to it which is likely to endanger its safety in flight;

(*d*) destroying or damaging air navigation facilities or interfering with their operation, if any such act is likely to endanger the safety of aircraft in flight;

(*e*) communicating information which is known to be false, thereby endangering the safety of an aircraft in flight; or

(*f*) unlawfully and intentionally using any device, substance or weapon—

(i) in performing an act of violence against a person at an airport serving international civil aviation which causes or is likely to cause serious injury or death;

(ii) in destroying or seriously damaging the facilities of an airport serving international civil aviation or aircraft not in service located thereon or disrupting the services of the airport,

if any such act endangers or is likely to endanger safety at that airport;

"air side" means the movement area of an airport, adjacent terrain and buildings or portions thereof, access to which is controlled;

"baggage" means property of passengers or crew carried on an aircraft by agreement with the airline operator;

"cargo" means any property carried on an aircraft other than mail, stores and accompanied or mishandled baggage;

"check-in" means the process of reporting to an aircraft operator for acceptance on a particular flight;

"crew member" means a person assigned by an operator to duty on an aircraft during flight time;

"dangerous goods" means articles or substances which are capable of posing significant risk to health, safety or property when transported by air;

"inadmissible person" means a person who is or will be refused admission to a State by its authorities;

"land side" means that area of an airport and buildings to which the non-travelling public has free access;

"operator" means a person, organization or enterprise engaged in or offering to engage in an aircraft operation;

"permits" means cards or other documents issued to individual persons employed on airports or who otherwise have need for authorized access to airports or to any restricted part thereof, for the purposes of facilitating access and identifying the individual and includes vehicle documentation issued for similar purposes;

"screening" means the application of technical or other means which are intended to detect weapons, explosives or other dangerous devices which may be used to commit an act of unlawful interference;

"security control" means a way by which the introduction of weapons, explosives or articles likely to be utilized to commit an act of unlawful interference can be prevented;

"security equipment" means devices of a specialized nature for use, individually or as part of system, in the prevention or detection of acts of unlawful interference with civil aviation and its facilities;

"security programme" means measures adopted to safeguard international civil aviation against acts of unlawful interference;

"security restricted area" means those areas of an airport, building or facility into which access is restricted or controlled for security and safety purposes;

"sterile area" means that area between any passenger inspection or screening station and aircraft into which access is strictly controlled;

"transit passengers" means passengers departing from an airport on the same flight as that on which they arrived.

PART II

Authority for Aviation Security

Designation of authority

3.—(1) The appropriate authority for aviation security in Malaŵi shall be the Director of Civil Aviation.

(2) Notwithstanding subregulation (1), it shall not be construed as preventing any officer to properly perform duties relating to aviation security when so appointed by the Director of Civil Aviation.

Powers

4. The Director of Civil Aviation shall have powers for the better carrying out of the national aviation security programme which shall include powers to—

(*a*) develop, implement and maintain the national security programme;

(*b*) define and allocate responsibilities for the implementation of the various aspects of the national aviation security programme;

(*c*) establish the means of coordinating activities between organizations concerned with the various aspects of the national aviation security programme;

(*d*) issue written versions of the appropriate parts of the national aviation security programme to airport administrations, operators and other concerned organizations;

(*e*) review and maintain the effectiveness of the national aviation security programme, including re-evaluating security measures, and procedures following an act of unlawful interference;

(*f*) review and approve operator and airport security programme;

(*g*) ensure that airport security services are provided with necessary supporting facilities and training;

(*h*) develop and revise broad national policies relating to civil aviation security;

(*i*) develop and issue comprehensive regulations relating to civil aviation security;

(*j*) ensure that architectural and infrastructure related requirements for the implementation of aviation security measures are integrated in the design and construction of facilities including alterations to existing facilities; and

(*k*) develop and implement a national aviation security training programme and to coordinate and approve aviation security training programmes by individual agencies and organizations.

PART III

National Aviation Security Programme

Responsibilities

5. The Director of Civil Aviation, airport administrators, tenants and operators shall be responsible for the implementation of the National Civil Aviation Security Programme.

National Aviation Security Committee

6.—(1) There shall be established a National Aviation Security Committee to advise the Government on security policy, recommend and review the effectiveness of security measures and procedures and coordinate the implementation of the National Civil Aviation Security Programme.

(2) The National Aviation Security Committee shall consist of the Director of Civil Aviation, the Commander of Malaŵi Army, the Inspector General of Police, the Chief Immigration Officer, the Controller of Customs and Excise, the Postmaster General, the Secretary for Foreign Affairs, the Chairman of the

Board of Airline Representatives and the General Manager of Airport Developments Limited.

Airport Security Committees

7.—(1) Each scheduled aerodrome shall have an airport security committee to advise on the development and coordinate the implementation of security measures and procedures between various organizations at the aerodrome.

(2) The airport security committee shall consist of the Airport Commandant or Officer-in-Charge of the Airport, the officers-in-charge of Airport Police Security, Customs, Immigration, Postal Services, Air Traffic Services, Health, Aerodrome Fire and Rescue Services, airline representatives, refuelling agents and freight forwarders and catering companies.

Airport Security Programme

8.—(1) Each scheduled aerodrome shall have an airport security programme defining responsibilities for aviation security and detailing measures and procedures in force to safeguard aviation security at the aerodrome.

(2) The airport administrations shall develop the necessary parts of the airport security programme in consultation with relevant organizations and interested parties.

(3) Each airport security programme shall be approved by the Director of Civil Aviation.

Operator Security Programme

9.—(1) Each operator providing air services from Malaŵi shall adopt a security programme consistent with the requirements of the National Aviation Security Programme.

(2) The operators security programme shall cover all aspects of securing the aircraft when it is flying or not in service.

(3) The operator shall submit his security programme to the Director of Civil Aviation for approval and the Director of Civil Aviation may approve the operator's security programme after satisfying himself that it meets the requirements of the National Civil Aviation Security Programme.

Tenant Security Programme

10.—(1) Each airport tenant whose concession or facility forms part of the land side or air side of the airport shall cause to be submitted to the Director of Civil Aviation a security programme consistent with the National Civil Aviation Security Programme.

(2) Where access can be gained from the land side to the air side through such concession or facility, the tenant shall control access in accordance with the relevant airport security programme.

Restricted areas

11.—(1) There shall be established at each airport a restricted area where operations vital to the continued safe operation of civil aviation shall be carried out.

(2) The restricted areas shall be delineated and its boundaries clearly marked.

(3) The Director of Civil Aviation and the airport management shall designate the restricted area and its use.

Restricted area permits

12.—(1) Any person working in the restricted area shall be required to have a restricted area permit issued in accordance with subregulations 3 of this regulation.

(2) The restricted area permit shall be displayed in a visible manner on the outer garment.

(3) The Airport Police Security Branch shall issue and administer restricted area permits for proper implementation of the National Civil Aviation Security Programme.

(4) The restricted area permit shall be retained by the holder during its validity and surrendered to the Airport Police Security Branch when no longer required and where such permit is lost, it shall be incumbent upon the holder to report the loss to the Police.

Control of access

13.—(1) Access to a restricted area shall be controlled by the Airport Police Security Branch or any appointed security agent.

(2) The access to all restricted areas shall be limited to—

(*a*) *bona fide* passengers in possession of valid travel documents;

(*b*) staff in possession of an approved restricted area permit;

(*c*) persons in possession of an approved temporary permit for a particular restricted area; and

(*d*) other security approved visitors.

Search of persons, baggage and cargo

14.—(1) Any person going through the sterile area with the intention of boarding an aircraft or otherwise and any baggage or cargo intended to be transported by air shall be searched for any weapons, explosives and other dangerous devices which may be used to commit an act of unlawful interference.

(2) The Airport Police Security Branch or any employee or agent authorized by the operator for this purpose may, with the consent of the person, search that person and his baggage before he is allowed to proceed.

(3) The searching may be done manually or by electronic means:

Provided that no search shall be done on—

(*a*) the State President;

(*b*) visiting Heads of State and Heads of Government; and

(*c*) Vice Presidents.

Refused search

15.—(1) Any person who refuses search for the purpose of these Regulations shall not be allowed to proceed into the sterile area, and if a passenger, he shall be denied boarding together with his checked or carry-on baggage.

(2) Notwithstanding subregulation (1), where a passenger is refused boarding the aircraft, the operator shall be absolved of his responsibility under the contract of carriage.

Powers of arrest and detention

16.—(1) The Airport Police Security Branch shall arrest and detain any person found and believed to be acting in a manner prejudicial to these Regulations.

(2) Where a suspected person is armed, all reasonable measures shall be taken to disarm him with minimum delay.

Carriage of firearms

17.—(1) Firearms may be carried on board aircraft provided—

(*a*) written approval is obtained from the Registrar of Firearms;

(*b*) the Airport Police Security Branch are informed;

(*c*) the operator consents to the carriage of firearms; and

(*d*) the operator or his representative ensures that the firearm is in the passenger checked baggage and is not loaded, nor stored in an area accessible to any person during flight.

(2) Where armed individuals are required to travel in the course of their duties, notwithstanding the provisions of subregulation (1) the operator shall ensure that—

(*a*) armed individuals are thoroughly briefed on the rules and regulations regarding the carriage of firearms prior to boarding;

(*b*) no alcohol is served to the armed individuals; and

(*c*) the pilot in command and all crew members are notified of the number of armed individuals on board the aircraft and their seat numbers.

Person in custody

18.—(1) Where a person is travelling and is subject to administrative or judicial proceedings, the Airport Police Security Branch and the operator shall be informed.

(2) Where such person is inadmissible or the subject of a deportation order, the Malaŵi immigration authorities shall notify the relevant authorities in transit and destination states of the identity of the person, reason for deportation and the threat if any, posed by that person.

(3) Airline operators shall implement appropriate security measures and procedures to ensure the safety on board the aircraft when a person is obliged to travel because that person is subject of administrative or judicial proceedings.

PART IV

MISCELLANEOUS

19.—(1) Any person who contravenes any provisions of these Regulations, not being a provision referred to in subregulation (2), shall be guilty of an offence and shall, upon conviction, be liable to a fine of K5,000 and in default to imprisonment for a term of three years. Offences and penalties

(2) Any person who contravenes any provisions of regulations 12, 13, 14, 15, 16 and 17 shall be guilty of an offence and liable, upon conviction, to a fine of K10,000 and to imprisonment for a term of five years.

AVIATION (GENERAL POLICIES, PROCEDURES AND DEFINITIONS) REGULATIONS

G.N. 27/2013

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AVIATION (GENERAL POLICIES, PROCEDURES AND DEFINITIONS) REGULATIONS

under s. 19

PART I
Preliminary

Citation and application

1.—(1) These Regulations may be cited as the Aviation (General Policies, Procedures and Definitions) Regulations and, shall apply to all persons operating or maintaining the following—

(*a*) Malaŵi registered aircraft;

(*b*) aircraft registered in another Contracting State that is operated by a person licensed by Malaŵi, and maintained in accordance with the standards of the aircraft State of Registry, wherever that maintenance is performed; and

(*c*) aircraft of other Contracting States operating in Malaŵi.

(2) Regulations addressing persons certified under any Aviation Regulations apply also to any person who engages in an operation governed by any Regulations without the appropriate certificate, licence, operations specification, or similar document required as part of the certification.

(3) Regulations addressing general matters establish minimum standards for all aircraft operated in Malaŵi. Specific Regulations applicable to the holder of a certificate shall apply if they conflict with a more general Regulation.

(4) Foreign air operators who conduct commercial air transport into, from or within Malaŵi, shall be governed by the provisions of the Operations Specification issued by the Authority, and by those provisions in the Aviation (Instruments and Equipment) Regulations, Aviation (Operations) Regulations and Aviation (Commercial Air Transport by Foreign Air Operations in Malaŵi) Regulations, that specifically address commercial air transport.

(5) Regulations that address AOC holders apply only to operators certified by Malaŵi.

Interpretation

2. In these Regulations, unless the context otherwise requires—

"Accelerate-Stop Distance Available (ASDA)" means the length of the take-off run available plus the length of stopway, if provided;

"acceptable" means the Authority has reviewed the method, procedure, or policy and has neither objected to nor approved its proposed use or implementation;

"acceptance checklist" means a document used to assist in carrying out a check on the external appearance of packages of dangerous goods

and their associated documents to determine that all appropriate requirements have been met;

"accountable manager" means the person acceptable to the Authority who has corporate authority for ensuring that all operations and maintenance activities can be financed and carried out to the standard required by the Authority, and any additional requirements defined by the operator;

"accredited representative" means as relating to an aircraft accident, a person designated by a State, on the basis of his or her qualifications, for the purpose of participating in an investigation conducted by another party (ICAO Annex 13);

"acrobatic flight" means manoeuvres intentionally performed by an aircraft involving an abrupt change in its attitude, an abnormal attitude, or an abnormal variation in speed;

"acts of unlawful interference" means acts or attempted acts such as to jeopardize the safety of civil aviation and transport, i.e.—

(*a*) unlawful seizure of aircraft in flight;

(*b*) unlawful seizure of aircraft on the ground;

(*c*) hostage-taking on board an aircraft or on aerodromes;

(*d*) forcible intrusion on board an aircraft, at an airport or on the premises of an aeronautical facility;

(*e*) introduction on board an aircraft or at an airport of a weapon or hazardous device or material intended for criminal purposes; and

(*f*) communication of false information as to jeopardize the safety of an aircraft in flight or on the ground, of passengers, crew, ground personnel or the general public, at an airport or on the premises of a civil aviation facility;

"ADS agreement" means an ADS reporting plan that establishes the conditions of ADS data reporting (i.e., data required by the air traffic services or control unit and frequency of ADS reports that have to be agreed to prior to the provision of the ADS services);

"ADS contract" means a means by which the terms of an ADS agreement will be exchanged between the ground system and the aircraft, specifying under what conditions ADS reports would be initiated, and what data would be contained in the reports;

"advisor" means as relating to an aircraft accident, a person appointed by a State on the basis of his or her qualifications, for the purpose of assisting its accredited representative in an investigation;

"advisory airspace" means an airspace of defined dimensions, or designated route, within which air traffic advisory service is available;

"advisory route" means a designated route along which air traffic advisory service is available;

"aerial work" means an aircraft operation in which an aircraft is used for specialized services such as agriculture, construction, photography, surveying, observation and patrol, search and rescue, aerial advertisement, etc;

"aerodrome" means a defined area on land or water (including any buildings, installations and equipment) intended to be used either wholly or in part for the arrival, departure and surface movement of aircraft;

"aerodrome control service" means air traffic control service for aerodrome traffic;

"aerodrome control tower" means a unit established to provide air traffic control service to aerodrome traffic;

"aerodrome operating minima" means the limits of usability of an aerodrome for—

(*a*) take-off, expressed in terms of runway visual range and/or visibility and, if necessary, cloud conditions;

(*b*) landing in precision approach and landing operations, expressed in terms of visibility and/or runway visual range and decision altitude/height (DA/H) as appropriate to the category of the operation;

(*c*) landing in approach and landing operations with vertical guidance, expressed in terms of visibility and/or runway visual range and decision altitude/height (DA/H); and

(*d*) landing in non-precision approach and landing operations, expressed in terms of visibility and/or runway visual range, minimum descent altitude/height (MDA/H) and, if necessary, cloud conditions;

"aerodrome traffic zone" means an airspace of defined dimensions established around an aerodrome for the protection of aerodrome traffic;

"aeronautical experience" means pilot time obtained in an aircraft, approved flight simulation training device for meeting the training and flight time requirements of these Regulations;

"aeronautical product" means any aircraft, aircraft engine, propeller, or subassembly, appliance, material, part, or component to be installed thereon;

"aeroplane" means power-driven heavier-than-air aircraft, deriving its lift in flight chiefly from aerodynamic reactions on surfaces which remain fixed under given conditions of flight;

"aeroplane flight manual" means a manual, associated with the certificate of airworthiness, containing limitations within which the aeroplane is to be considered airworthy, and instructions and information necessary to the flight crew members of the safe operation of the aeroplane;

"agricultural aircraft operation" means the operation of an aircraft for the purpose of—

(*a*) dispensing any economic poison;

(*b*) dispensing any other substance intended for plant nourishment, soil treatment, propagation of plant life, or pest control; or

(*c*) engaging in dispensing activities directly affecting agriculture, horticulture, or forest preservation, but not including the dispensing of live insects;

"air navigation facility" means any facility used in, available for use in, or designed for use in aid of air navigation, including aerodromes, landing areas, lights, any apparatus or equipment for disseminating weather information, for signalling, for radio directional finding, or for radio or other electrical communication, and any other structure or mechanism having a similar purpose for guiding or controlling flight in the air or the landing and take-off of aircraft;

"air operator" means any organization which undertakes to engage in domestic commercial air transport or international commercial air transport, whether directly or indirectly or by a lease or any other arrangement;

"Air Operator Certificate (AOC)" means a certificate authorizing an operator to carry out specified commercial air transport operations;

"air traffic" means all aircraft in flight or operating on the manoeuvring area of an aerodrome;

"air traffic control clearance" means authorization for an aircraft to proceed under conditions specified by an air traffic control unit;

"Air Traffic Control (ATC) facility" means a building holding the persons and equipment responsible for providing ATC services (e.g., airport tower, approach control centre), may also be called air traffic control unit;

"air traffic control service" means a service provided within advisory airspace that promotes the safe, orderly, and expeditious flow and separation of air traffic at aerodromes and during the approach, departure, and en route environments including aircraft that are operating on IFR flight plans; also can be called Air Traffic Advisory Service (ATAS) or Air Traffic Service (ATS);

"Air Traffic Service (ATS)" means see Air traffic control service;

"air traffic services airspaces" means airspaces of defined dimensions, alphabetically designated, within which specific types of flights may operate and for which air traffic services and rules of operation are specified;

"air traffic services reporting office" means a unit established for the purpose of receiving reports concerning air traffic services and flight plans submitted before departure;

"aircraft" means any machine that can derive support in the atmosphere from the reactions of the air other than the reactions of the air against the earth's surface;

"aircraft accident" means an occurrence associated with the operation of an aircraft which takes place between the time any person boards the aircraft with the intention of flight until such time as all such persons have disembarked, in which—

(*a*) a person is fatally or seriously injured as a result of—

(i) being in the aircraft;

(ii) direct contact with any part of the aircraft, including parts which have become detached from the aircraft; or

(iii) direct exposure to jet blast, except when the injuries are from natural causes, self-inflicted or inflicted by other persons, or when the injuries are to stowaways hiding outside the areas normally available to the passengers and crew;

(*b*) the aircraft sustains damage or structural failure which adversely affects the structural strength, performance or flight characteristics of the aircraft, and would normally require major repair or replacement of the affected component, except for engine failure or damage, when the damage is limited to the engine, its cowlings or accessories; or for damage limited to propellers, wing tips, antennas, tires, brakes, fairings, small dents or puncture holes in the aircraft skin; or the aircraft is missing or is completely inaccessible;

"aircraft avionics" means a term designating any electronic device; including its electrical part—for use in an aircraft, including radio, automatic flight control and instrument systems;

"aircraft category" means classification of aircraft according to specified basic characteristics, e.g. aeroplane, helicopter, glider, free balloon, airship, powered-lift;

"aircraft certificated for single-pilot operation" means a type of aircraft which the State of Registry has determined, during the certification process, can be operated safely with a minimum crew of one pilot;

"aircraft certificated for multi-pilot operation" means a type of aircraft which the State of Registry has determined, during the certification process, can be operated safely with a minimum crew of two pilots;

"aircraft component" means any component part of an aircraft up to and including a complete power-plant and/or any operational/emergency equipment;

"aircraft engine" means any engine used, or intended to be used, for propulsion of aircraft and includes all parts, appurtenances, and accessories thereof other than propellers;

"aircraft operating manual" means a manual, acceptable to the State of the Operator, containing normal, abnormal and emergency procedures, checklists, limitations, performance information, details of the aircraft systems, and other material relevant to the operation of the aircraft;

"aircraft piracy" means any actual or attempted seizure or exercise of control, by force or violence, or by any other form of intimidation, with wrongful intent, of an aircraft within the jurisdiction of Malaŵi;

"aircraft required to be operated with a co-pilot" means a type of aircraft that is required to be operated with a co-pilot as specified in the flight manual or by the air operator certificate;

"aircraft technical log" means documentation for an aircraft that includes the maintenance record for the aircraft and a record for each flight made by the aircraft; the aircraft technical log is comprised of a journey records section and a maintenance section;

"aircraft-type" means all aircraft of the same basic design including all modifications thereto except those modifications which result in a change in handling or flight characteristics;

"airframe" means the fuselage, booms, nacelles, cowlings, fairings, airfoil surfaces (including rotors but excluding propellers and rotating airfoils of a power-plant), and landing gear of an aircraft and their accessories and controls;

"airman" means—

(*a*) any individual who engages, as the person in command or as pilot, mechanic, or member of the crew, or who navigates an aircraft while the aircraft is underway;

(*b*) any individual in charge of the inspection, maintenance, overhauling, or repair of aircraft, and any individual in charge of the inspection, maintenance, overhauling, or repair of aircraft, aircraft engines, propellers, or appliances; or

(*c*) any individual who serves in the capacity of flight operations officer;

"airmanship" means the consistent use of good judgement and well-developed knowledge, skills and attitudes to accomplish flight objectives;

"airship" means a power-driven lighter than air aircraft;

"airway" means a control area or portion thereof established in the form of a corridor;

"airworthiness approval tag (CAA form)" means a tag that may be attached to a part: the tag must include the part number, serial number, and current life status of the part: each time the part is removed from a type certificated product, a new tag must be created or the existing tag must be updated with the current life status: the DCA Form AAT has two distinct purposes—

(*a*) as a certification of release to service of a part, component or assembly after maintenance, preventive maintenance, overhaul or rebuilding; and

(*b*) for shipping of a newly manufactured part;

"airworthiness data" means any information necessary to ensure that an aircraft or aircraft component can be maintained in a condition such that airworthiness of the aircraft, or serviceability of operational and emergency equipment, as appropriate, is assured;

"airworthiness directive" means continuing airworthiness information that applies to the following products: aircraft, aircraft engines, propellers, and appliances: an airworthiness directive is mandatory if issued by the State of Design;

"airworthiness release" means the air operator's aircraft are released for service following maintenance by a person specifically authorized by the air operator rather than by an individual or maintenance organization on their own behalf;

"airworthy" means the status of an aircraft, engine, propeller or part when it conforms to its approved design and is in a condition for safe operation;

"alteration" means the alteration of an aircraft/aeronautical product in conformity with an approved standard;

"alerting service" means a service provided to notify appropriate organizations regarding aircraft in need of search and rescue aid, and assist such organizations as required;

"alternate aerodrome" means an aerodrome to which an aircraft may proceed when it becomes either impossible or inadvisable to proceed to or land at the aerodrome of intended landing: alternate aerodromes include the following—

(*a*) take-off alternate—an alternate aerodrome at which an aircraft can land should this become necessary shortly after take-off and it is not possible to use the aerodrome of departure;

(*b*) en route alternate—an aerodrome at which an aircraft would be able to land after experiencing an abnormal or emergency condition en route;

(*c*) ETOPS en route alternate—a suitable and appropriate alternate aerodrome at which an aeroplane would be able to land after experiencing an engine shut-down or other abnormal or emergency condition while en route in an ETOPS operation;

(*d*) destination alternate—an alternate aerodrome to which an aircraft may proceed should it become either impossible or inadvisable to land at the aerodrome of intended landing; the aerodrome from which a flight departs may also be an en route or a destination alternate aerodrome for that flight;

"alternate means of compliance" means a pre-approved manner of achieving regulatory compliance that has been determined to be an acceptable substitute to the regulatory requirements; an example of alternate means of compliance would be the CAA's acceptance of reduced training time for personnel undergoing a specific air operator's approved aircraft type-rating training programme from those training time requirements traditionally prescribed for approved programmes of a more generic nature leading towards the same aircraft type-rating;

"alternative means of compliance" means an approved alternative from those prescribed approaches that has been demonstrated to consistently achieve or exceed the desired outcomes as intended through regulation;

"Altimetry System Error (ASE)" means the difference between the altitude indicated by the altimeter display, assuming a correct altimeter barometric setting, and the pressure altitude corresponding to the undisturbed ambient pressure;

"altitude" means the vertical distance of a level, a point or an object considered as a point, measured from mean sea level (MSL);

"annexes to the Chicago Convention" means the documents issued by the International Civil Aviation Organization (ICAO) containing the Standards and Recommended Practices applicable to civil aviation;

"anticipated operating conditions'' means those conditions which are envisaged to occur during the operation life of the aircraft taking into account the operations for which the aircraft is made eligible, the conditions so considered being relative to the meteorological state of the atmosphere, to the configuration of terrain, to the functioning of the aircraft, to the efficiency of personnel and to all the factors affecting safety in flight; anticipated operating conditions do not include—

(*a*) those extremes which can be effectively avoided by means of operating procedures; and

(*b*) those extremes which occur so infrequently that to require the Standards to be met in such extremes would give a higher level

of airworthiness that experience has shown to be necessary and practical;

"appliances" means instruments, equipment, apparatus, parts, appurtenances, or accessories, of whatever description, which are used, or are capable of being or intended to be used, in the navigation, operation, or control of aircraft in flight (including parachutes and including communication equipment and any other mechanism or mechanisms installed in or attached to aircraft during flight), and which are not part or parts of aircraft, aircraft engines, or propellers;

"approach and landing operations using instrument approach procedures" means instrument approach and landing operations are classified as follows—

(*a*) non-precision approach and landing operations: an instrument approach and landing which utilized lateral guidance but does not utilize vertical guidance;

(*b*) approach and landing operations with vertical guidance: an instrument approach and landing which uses lateral and vertical guidance but does not meet the requirements established for precision approach and landing operations;

(*c*) precision approach and landing operations: an instrument approach and landing using precision lateral and vertical guidance with minima as determined by the category of operation—lateral and vertical guidance refers to the guidance provided either by: a ground-based navigation aid, or computer generated navigation data;

(*d*) Category I (CAT I) operation—A precision instrument approach and landing with—

(i) a decision height not lower than 60 m (200 feet); and

(ii) with either a visibility not less than 800 m or a runway visual range not less than 550 m;

(*e*) Category II (CAT II) operation—a precision instrument approach and landing with—

(i) a decision height lower than 60 m (200 feet), but not lower than 30 m (100 feet); and

(ii) a runway visual range not less than 300 m;

(*f*) Category IIIA (CAT IIIA) operation—a precision instrument approach and landing with—

(i) a decision height lower than 30 m (100 feet) or no decision height; and

(ii) a runway visual range not less than 175 m;

(*g*) Category IIIB (CAT IIIB) operation—a precision instrument approach and landing with—

(i) a decision height lower than 15 m (50 feet) or no decision height; and

(ii) a runway visual range less than 175 m but not less than 50 m;

(*h*) Category IIIC (CAT IIIC) operation—a precision instrument approach and landing with no decision height and no runway visual range limitations—where decision height (DH) and runway visual range (RVR) fall into different categories of operation, the instrument approach and landing operation would be conducted in accordance with the requirements of the most demanding category (e.g. an operation with a DH in the range of CAT IIIA but with an RVR in the range of CAT IIIB would be considered a CAT IIIB operation or an operation with a DH in the range of CAT II but with an RVR in the range of CAT I would be considered a CAT II operation);

"approach control service" means air traffic control service for arriving or departing controlled flights;

"approach control unit" means a unit established to provide air traffic control service to controlled flights arriving at, or departing from, one or more aerodromes;

"appropriate ATS or ATC authority" means the relevant authority designated by Malaŵi responsible for providing air traffic services in the airspace concerned;

"appropriate airworthiness requirements" means the comprehensive and detailed airworthiness codes established, adopted or accepted by a Contracting State for the class of aircraft, engine or propeller under consideration;

"appropriate authority" means—

(*a*) regarding flight over the high seas: the relevant authority of the State of Registry;

(*b*) regarding flight other than over the high seas: the relevant authority of the State having sovereignty over the territory being overflown;

"approval for return to service" see maintenance release;

"approved" means the Authority has reviewed the method, procedure, or policy in question and issued a formal written approval;

"approved by the Authority" means approved by the Authority directly or in accordance with a procedure approved by the Authority;

"approved continuous maintenance programme" means a maintenance programme approved by the State of Registry;

"approved curriculum" means a set of special training courses in an area of specialization offered by an ATO which is approved by the Authority;

"approved data" means technical information approved by the Authority;

"Approved Maintenance Organization (AMO)" means an organization approved by the Authority, in accordance with the Aviation (Approved Maintenance Organization) Regulations, to perform specific aircraft maintenance activities by the Authority; these activities may include the inspection, overhaul, maintenance, repair and/or modification and release to service of aircraft or aeronautical products;

"approved standard" means a manufacturing, design, maintenance, or quality standard approved by the Authority;

"approved training" means training carried out under special curricula and supervision approved by the Authority;

"Approved Training Organization (ATO)" means an organization approved by the Authority, in accordance with the (Approved Training Organization Regulations, to perform flight crew training and other training approved by the Authority;

"apron" means a defined area, on a land aerodrome, intended to accommodate aircraft for purposes of loading or unloading passengers, mail or cargo, fueling, parking or maintenance;

"area control centre" means a unit established to provide air traffic control service to controlled flights in control areas under its jurisdiction;

"area control service" means air traffic control service for controlled flights in control areas;

"area navigation (RNAV)" means a method of navigation that permits aircraft operations on any desired flight path within the coverage of station-referenced navigation aids or within the limits of the capability of self-contained aids, or a combination of these—area navigation includes performance-based navigation as well as other operations that do not meet the definitions of performance-based navigation;

"article" means any item, including but not limited to, an aircraft, airframe, aircraft engine, propeller, appliance, accessory, assembly, subassembly, system, subsystem, component, unit, product, or part;

"ATS or ATC route" means a specified route designed for channelling the flow of air traffic as necessary for the provision of air traffic services, defined by route specifications that include an ATS or ATC route designator, the track to or from significant points (way points), distance between significant points, reporting requirements, and as determined by the appropriate ATS or ATC authority, the lowest safe altitude—the term "ATS" or "ATC"

route is used to mean variously, airway, advisory route, controlled or uncontrolled route, arrival or departure route;

"authorized instructor" means a person who—

(*a*) holds a valid ground instructor certificate issued under the Aviation (Personnel Licensing) Regulations, when conducting ground training;

(*b*) holds a current flight instructor certificate issued under the Aviation (Personnel Licensing) Regulations when conducting ground training or flight training; or

(*c*) is authorized by the Authority to provide ground training or flight training under the Aviation (Personnel Licensing) Regulations and Aviation (Approved Training Organization) Regulations;

"Authority" means the civil aviation authority responsible for the oversight of civil aviation in Malaŵi;

"Automatic Dependent Surveillance (ADS)" means a surveillance technique in which aircraft automatically provide, via a data link, data derived from on-board navigation and position-fixing systems, including aircraft identification, four-dimensional position and additional data as appropriate;

"balloon" means a non-power-driven lighter-than-air aircraft;

"banner" means an advertising medium supported by a temporary framework attached externally to the aircraft and towed behind the aircraft;

"cabin crew member" means a crew member who performs, in the interest of safety of passengers, duties assigned by the operator or the pilot-in-command of the aircraft, but who shall not act as a flight crew member;

"calendar day" means the period of elapsed time, using Coordinated Universal Time or local time, that begins at midnight and ends 24 hours later in the next midnight;

"calendar month" means a period of a month beginning and ending with the dates that are conventionally accepted as marking the beginning and end of a numbered month (as January 1 to January 31 in the Gregorian calendar);

"calendar year" means a period of a year beginning and ending with the dates that are conventionally accepted as marking the beginning and end of a numbered year (as January 1 to December 31 in the Gregorian calendar);

"calibration" means a set of operations, performed in accordance with a definite documented procedure that compares the measurement performed by a measurement device or working standard with a recognized bureau of standards for the purpose of detecting and

reporting or eliminating adjustment errors in the measurement device, working standard, or aeronautical product tested;

"cargo aircraft" means any aircraft carrying goods or property but not passengers: in this context the following are not considered to be passengers—

(*a*) a crew member;

(*b*) an operator's employee permitted by, and carried in accordance with, the instructions contained in the Operations Manual;

(*c*) an authorized representative of an Authority; and

(*d*) a person with duties in respect of a particular shipment on board;

"Category A" with respect to helicopters, means a multi-engine helicopter designed with engine and system isolation features specified in the Aviation (Aircraft Registration and Marking) Regulations, and capable of operations using take-off and landing data scheduled under a critical engine failure concept which assures adequate designated surface area and adequate performance capability for continued safe flight or safe rejected take-off;

"Category' B" with respect to helicopters, means a single-engine or multi-engine helicopter which does not meet Category A standards. Category B helicopters have no guaranteed capability to continue safe flight in the event of an engine failure, and a forced landing is assumed;

"Category one operation (CAT I)" means a precision instrument approach and landing with a decision height not lower than 60 m (200 ft) and with either a visibility not less than 800 m or a runway visual range not less than 550 m;

"Category two operation (CAT II)" means a precision instrument approach and landing with a decision height lower than 60 m (200 ft) but no lower than 30 m (100 ft) and a visual range not less 300 m;

"Category three A (CAT IIIA) operation" means a precision approach and landing with: a decision height lower than 30 m (100 ft) or no decision height; and a runway visual range not less than 175 m;

"Category three B (CAT IIIB) operation" means a precision approach and landing with: a decision height lower than 15 m (50 ft) or no decision height; and a runway visual range less than 175 m but not less than 50 m;

"Category three C (CAT IIIC) operation" means a precision instrument approach and landing with no decision height and no runway visual range limitations;

"causes" means as relating to an aircraft accident or incident, actions, omissions, events, conditions, or a combination thereof which led to the accident or incident;

"ceiling" means the height above the ground or water of the base of the lowest layer of cloud below 6,000 metres (20,000 feet) covering more than half the sky;

"certify as airworthy" means the act of completing a maintenance release by a properly authorized person after the modification, overhaul, repair or inspection of an aircraft or aeronautical product by which the aircraft or aeronautical part is cleared for use in flight as meeting the requirements of the airworthiness certificate of Malaŵi;

"certifying staff" means those personnel who are authorized by the Approved Maintenance Organization in accordance with a procedure acceptable to the Authority to certify aircraft or aircraft components for release to service;

"change-over-point" means the point at which an aircraft navigating on an ATC route segment defined by reference to very high frequency omnidirectional radio ranges is expected to transfer its primary navigational references from the facility behind the aircraft to the next facility ahead of the aircraft—change-over-points are established to provide the optimum balance in respect of signal strength and quality between facilities at all levels to be used and to ensure a common source of azimuth guidance for all aircraft operating along the same portion of a route segment;

"check airman (aeroplane)" means a person who is qualified, and permitted, to conduct an evaluation in an aeroplane, in a flight simulation training device for a particular type aeroplane, for a particular AOC holder;

"check airman (simulator)" means a person who is qualified to conduct an evaluation, but only in a flight simulation training device for a particular type aircraft, for a particular AOC holder;

"Chicago Convention" means the Convention on International Civil Aviation concluded in Chicago, U.S.A. in 1944, in effect, 1947: the Articles of the Chicago Convention govern the actions of the contracting States in matters of international civil aviation safety directly and through the Annexes to the Convention, which set forth ICAO Standards and Recommended Practices;

"citizen of Malaŵi" means one of the following—

(*a*) an individual who is a citizen of Malaŵi;

(*b*) a partnership of which each member is a citizen of Malaŵi; or

(*c*) a corporation or association created or organized and authorized under the laws of Malaŵi;

"civil aircraft" means any aircraft other than a state or public aircraft;

"civil aviation" means the operation of any civil aircraft for the purpose of general aviation operations, aerial work or commercial air transport operations;

"clearance limit" means the point to which an aircraft is granted an air traffic control clearance;

"commercial air transport operation" means an aircraft operation involving the transport of passengers, cargo or mail for remuneration or hire;

"commercial air transport" means an aircraft operation involving the public transport of passengers, cargo, or mail for remuneration or hire;

"common mark" means a mark assigned by the International Civil Aviation Organization to the common mark registering authority registering aircraft of an international operating agency on other than a national basis;

"common mark registering authority" means the authority maintaining the non-national register or, where appropriate, the part thereof, in which aircraft of an international operating agency are registered;

"competency" means a combination of skills, knowledge and attitudes required to perform a task to the prescribed standard;

"competency element" means an action that constitutes a task that has a triggering event and a terminating event that clearly defines its limits, and an observable outcome;

"competency unit" means a discrete function consisting of a number of competency elements;

"complex aeroplane" means an aeroplane that has retractable landing gear, flaps, and a controllable pitch propeller; or in the case of a seaplane, flaps and a controllable pitch propeller;

"composite" means structural materials made of substances, including, but not limited to, wood, metal, ceramic, plastic, fiber-reinforced materials, graphite, boron, or epoxy, with built-in strengthening agents that may be in the form of filaments, foils, powders, or flakes, of a different material;

"computer system" means any electronic or automated system capable of receiving, storing, and processing external data, and transmitting and presenting such data in a usable form for the accomplishment of a specific function;

"configuration" (as applied to the aeroplane) means a particular combination of the positions of the moveable elements, such as wing flaps and landing gear, etc., that affect the aerodynamic characteristics of the aeroplane;

"Configuration Deviation List (CDL)" means a list established by the organization responsible for the type design with the approval of the State of Design which identifies any external parts of an aircraft type which may be missing at the commencement of a flight, and which contains, where necessary, any information on associated operating limitations and performance correction;

"congested area" means a city, town or settlement, or open air assembly of people;

"congested hostile environment" means a hostile environment within a congested area;

"consignment" means one or more packages of dangerous goods accepted by an operator from one shipper at one time and at one address, receipted for in one lot and moving to one consignee at one destination address;

"Contracting States" means all States that are signatories to the Convention on International Civil Aviation (Chicago Convention);

"continuing airworthiness" means the set of processes by which an aircraft, engine, propeller or part complies with the applicable airworthiness requirements and remains in a condition for safe operation throughout its operating life;

"control area" means a controlled airspace extending upwards from a specified limit above the earth;

"controlled aerodrome" means an aerodrome at which air traffic control service is provided to aerodrome traffic;

"controlled airspace" means an airspace of defined dimensions within which air traffic control service is provided in accordance with the airspace classification—controlled airspace is a generic term that covers ATC or ATS airspace Classes A, B, C, D, and E as described in ICAO Annex 11:2.6;

"controlled flight" means any flight which is subject to an air traffic control clearance;

"controlled flight into terrain" means an occurrence when an airworthy aircraft is flown, under the control of a qualified pilot, into terrain (water or obstacles) with inadequate awareness on the part of the pilot of the impending collision;

"Controller-Pilot Data Link Communications (CPDLC)" means a means of communication between controller and pilot, using data link for ATC communications;

"control zone" means a controlled airspace extending upwards from the surface of the earth to a specified upper limit;

"conversion" means the action taken by Malaŵi in issuing its own licence on the basis of a licence issued by another Contracting State for use on aircraft registered in Malaŵi;

"co-pilot" means a licensed pilot serving in any piloting capacity other than as pilot-in-command but excluding a pilot who is on board the aircraft for the sole purpose of receiving flight instruction—co-pilot as here defined is synonymous with the term "second-in-command" or "SIC";

"corporate aviation operation" means the non-commercial operation or use of aircraft by a company for the carriage of passengers or goods as an aid to the conduct of company business, flown by a professional pilot(s) employed to fly the aircraft;

"course" means a programme of instruction to obtain an airman licence, rating, qualification, authorization, or currency;

"courseware" means instructional material developed for each course or curriculum, including lesson plans, flight event descriptions, computer software programmes, audio-visual programmes, workbooks, and handouts;

"credit" means recognition of alternative means or prior qualifications;

"crew member" means a person assigned by an operator to duty on an aircraft during a flight duty period;

"crew resource management" means a programme designed to improve the safety of flight operations by optimizing the safe, efficient, and effective use of human resources, hardware, and information through improved crew communication and coordination;

"critical engine" means the engine whose failure would most adversely affect the performance or handling qualities of an aircraft;

"critical phases of flight" means those portions of operations involving taxiing, take-off and landing, and all flight operations below 10,000 feet, except cruise flight;

"critical power-unit(s)" means the power-unit(s) failure of which gives the most adverse effect on the aircraft characteristics relative to the case under consideration; on some aircraft there may be more than one equally critical power-unit, in this case, the expression "the critical power-unit" means one of those critical power-units;

"cross country" means a flight between a point of departure and a point of arrival following a pre-planned route using standard navigation procedures;

"cross-country time" means that time a pilot spends in flight in an aircraft which includes a landing at a point other than the point of departure and, for the purpose of meeting the cross-country time requirements for a private pilot licence (except with a rotorcraft rating), commercial pilot licence, or an instrument rating, includes a landing at an aerodrome which must be a straight-line distance of more than 50 nautical miles from the original point of departure;

"cruise climb" means an aeroplane cruising technique resulting in a net increase in altitude as the aeroplane mass decreases;

"cruise relief pilot" means a flight crew member who is assigned to perform pilot tasks during cruise flight to allow the PIC or co-pilot to obtain planned rest;

"cruising level" means a level maintained during a significant portion of a flight;

"current flight plan" means the flight plan, including changes, if any, brought about by subsequent clearances;

"danger area" means an airspace of defined dimensions within which activities dangerous to the flight of the aircraft may exist at specified times;

"dangerous goods" means articles or substances which are capable of posing a risk to health, safety, property or the environment and which are shown in the list of dangerous goods in the ICAO Technical Instructions (see definition below) or which are classified according to those Instructions;

"dangerous goods accident" means an occurrence associated with and related to the transport of dangerous goods which results in fatal or serious injury to a person or major property damage;

"dangerous goods incident" means an occurrence, other than a dangerous goods accident, associated with and related to the transport of dangerous goods, not necessarily occurring on board an aircraft, which results in injury to a person, property damage, fire, breakage, spillage, leakage of fluid or radiation or other evidence that the integrity of the packaging has not been maintained: any occurrence relating to the transport of dangerous goods which seriously jeopardizes an aircraft or its occupants is deemed to constitute a dangerous goods incident;

"dangerous goods transport document" means a document specified by the ICAO Technical Instructions for the Safe Transportation of Dangerous Goods by Air: it is completed by the person who offers dangerous goods for air transport and contains information about those dangerous goods: the document bears a signed declaration indicating that the dangerous goods are fully and accurately described by their proper shipping names and UN numbers (if assigned) and that they are correctly classified, packed, marked, labelled and in a proper condition for transport;

"data link communications" means a form of communication intended for the exchange of messages via a data link;

"deadhead transportation" means time spent in transportation on aircraft (at the insistence of the AOC holder) to or from a crew member's home station;

"Decision Altitude (DA) or Decision Height (DH)" means a specified altitude or height in the precision approach or approach with vertical guidance at which a missed approach must be initiated if the required visual reference to continue the approach has not been established;

Note 1—Decision altitude (DA) is referenced to mean sea level and decision height (DH) is referenced to the threshold elevation;

Note 2—The required visual reference means that section of the visual aids or of the approach area which should have been in view for sufficient time for the pilot to have made an assessment of the aircraft position and rate of change of position, in relation to the desired flight path. In Category III operations with a decision height that required visual reference is that specified for the particular procedure and operation;

Note 3—For convenience where both expressions are used they may be written in the form "decision altitude/height" and abbreviated "DA/H";

"Defined Point After Take-Off (DPATO)" means the point, within the take-off and initial climb phase, before which the Class 2 helicopter's ability to continue the flight safely, with one engine inoperative, is not assured and a forced landing may be required;

"Defined Point Before Landing (DPBL)" means the point, within the approach and landing phase, after which the Class 2 helicopter's ability to continue the flight safely, with one engine inoperative, is not assured and a forced landing may be required;

"design landing mass" means the maximum mass of the aircraft at which, for structural design purposes, it is assumed that it will be planned to land;

"design take-off mass" means the maximum mass at which the aircraft, for structural design purposes, is assumed to be planned to be at the start of the take-off;

"design taxing mass" means the maximum mass of the aircraft at which structural provision is made for load liable to occur during use of the aircraft on the ground prior to the start of take-off;

"directly in charge" as applied to an Approved Maintenance Organization means an appropriately licensed person(s) having the responsibility for the work of an approved maintenance organization that performs maintenance, preventive maintenance, alterations, or other functions affecting aircraft airworthiness: a person directly in charge does not need to physically observe and direct each worker constantly but must be available for consultation on matters requiring instruction or decision from higher authority;

"Director" means the Director of Civil Aviation delegated the responsibility for oversight of Civil Aviation activities in Malaŵi;

"discrete source damage" means structural damage of the aeroplane that is likely to result from: impact with a bird, uncontained fan blade failure, uncontained engine failure, uncontained high-energy rotating machinery failure or similar causes;

"dry lease" means the lease of an aircraft without the crew;

"dual instruction time" means flight time during which a person is receiving flight instruction from a properly authorized pilot on board the aircraft;

"duty" means any task that flight or cabin crew members are required by the operator to perform, including for example, flight duty, administrative work, training, positioning and standby when it is likely to induce fatigue;

"duty period" means as related to an air operator, a period which starts when flight or cabin crew personnel are required by an operator to report for or to commence a duty and ends when that person is free from all duties;

"duty time" means the total time from the moment a person identified in these Regulations begins, immediately after a rest period, any work on behalf of the certificate holder until that person is free from all restraint associated with that work;

"economic poison" means any substance or mixture of substances intended for—

(*a*) preventing, destroying, repelling, or mitigating any insects, rodents, nematodes, fungi, weeds, and other forms of plant or animal life or viruses, except viruses on or in living human beings or other animals, which Malaŵi may declare to be a pest; and

(*b*) use as a plant regulator, defoliant or desiccant;

"effective length of the runway" means the distance for landing from the point at which the obstruction clearance plane associated with the approach end of the runway intersects the centreline of the runway to the far end;

"elevated heliport" means a heliport located on a raised structure on land;

"Enhanced Vision System (EVS)" means a system to display electronic real-time images of the external scene achieved through the use of image sensors;

"Emergency Locator Transmitter (ELT)" means a generic term describing equipment which broadcast distinctive signals on designated frequencies and, depending on application, may be automatically activated by impact or be manually activated; an ELT may be any of the following—

(*a*) automatic fixed ELT—an automatically activated ELT which is permanently attached to an aircraft;

(*b*) automatic portable ELT—an automatically activated ELT which is rigidly attached to an aircraft but readily removable from the aircraft;

(*c*) automatic deployable ELT (ELT(AD))—an ELT which is rigidly attached to an aircraft and which is automatically deployed and activated by impact, and in some cases, also be hydrostatic sensors. Manual deployment is also provided;

(*d*) survival ELT—an ELT which is removable from an aircraft, stowed so as to facilitate its ready use in an emergency, and manually activated by survivors;

(*e*) ELT battery useful life—the length of time after its date of manufacture or recharge that the battery or battery pack may be stored under normal environmental conditions without losing its ability to allow the ELT to meet the applicable performance standards;

(*f*) ELT battery expiration date—the date of battery manufacture or recharge plus one half of its useful life;

(*g*) engine—a unit used or intended to be used for aircraft propulsion; it consists of at least those components and equipment necessary for function and control, but excludes the propeller (if applicable);

"Enhanced Ground Proximity Warning (EGPWS)" means a forward looking warning system that uses the terrain data base for terrain avoidance;

"equivalent system of maintenance"—an AOC holder may conduct maintenance activities through an arrangement with an AMO or may conduct its own maintenance, preventive maintenance, or alterations, so long as the AOC holder's maintenance system is approved by the Authority and is equivalent to that of an AMO, except that the approval for return to service of an aircraft/aeronautical product shall be made by an appropriately licensed aircraft maintenance engineer or aviation repair specialists in accordance with the Aviation (Personnel Licensing) Regulations, as appropriate;

"error" means as relates to the flight crew, an action or inaction by the flight crew that leads to deviations from organizational or flight crew intentions or expectations;

"error management" means the process of detecting and responding to errors with counter-measures that reduce or eliminate the consequences of errors, and mitigate the probability of errors or undesired aircraft state;

"estimated off-block time" means the estimated time at which the aircraft will commence movement associated with departure;

"estimated time of arrival" means for IFR flights, the time at which it is estimated that the aircraft will arrive over that designated point, defined by reference to navigation aids, from which it is intended

that approach procedure will be commenced, or if no navigation aid is associated with the aerodrome, the time at which the aircraft will arrive over the aerodrome: for VFR flights, the time at which it is estimated that the aircraft will arrive over the aerodrome;

"extended flight over water" means a flight operated over water at a distance of more than 93 km (50 NM), or 30 minutes at normal crossing speed, whichever is the lesser, away from land suitable for making an emergency landing;

"examiner" means any person designated by the Authority to act as a representative of the Authority in examining, inspecting, and testing persons and aircraft for the purpose of issuing licences, ratings and certificates;

"exception" means as it related to dangerous goods in the Aviation (Air Operator Certification and Administration) Regulations—a provision in ICAO Annex 18 which excludes a specific item of dangerous goods from the requirements normally applicable to that item;

"expected approach time" means the time at which ATC expects that an arriving aircraft, following a delay, will leave the holding point to complete its approach for a landing;

NOTE—The actual time of leaving the holding point will depend upon the approach clearance;

"extended overwater operation" means with respect to aircraft other than helicopters, an operation over water at a horizontal distance of more than 50 nm from the nearest shoreline; and to helicopters, an operation over water at a horizontal distance of more than 50 nm from the nearest shoreline and more than 50 nm from an offshore heliport structure;

"facility" means as used in the Aviation (Approved Maintenance Organizations) Regulations—a physical plant, including land, buildings, and equipment, which provide the means for the performance of maintenance, preventive maintenance, or modifications of any article;

"factor of safety" means a design factor used to provide for the possibility of loads greater than those assumed, and for uncertainties in design and fabrication;

"fatal injury" means as relates to an aircraft accident, any injury which results in death within 30 days of the accident;

"fatigue" means a physiological state of reduced mental or physical performance capability resulting from sleep loss or extended wakefulness, Circadian phase, or workload (mental and/or physical activity) that can impair a crew member's alertness and ability to safely operate an aircraft or perform safety related duties;

"Fatigue Risk Management System (FRMS)" means a data-driven means of continuously monitoring and managing fatigue-related safety risks, based upon scientific principles and knowledge as well as operational experience that aims to ensure relevant personnel are performing at adequate levels of alertness;

"Final Approach and Take-Off area (FATO)" means a defined area over which the final phase of the approach manoeuvre to hover or landing is completed and from which the take-off manoeuvre is commenced: where the FATO is to be used by performance class helicopters, the defined area includes the rejected take-off area available;

"fire resistant" means the capability to withstand the application of heat by a flame for a period of 5 minutes;

"fireproof' means the capability to withstand the application of heat by a flame for a period of 15 minutes;

"fireproof material" means a material capable of withstanding heat as well as or better than steel when the dimensions in both cases are appropriate for the specific purpose;

"flight(s)" means the period from take-off to landing;

"flight crew member" means a licensed crew member charged with duties essential to the operation of an aircraft during flight time;

"flight data analysis" means a process of analysing recorded flight data in order to improve the safety of flight operations;

"flight duty period" means a period which commences when a flight or cabin crew member is required to report for duty that includes a flight or a series of flights and which finishes when the aeroplane finally comes to rest and the engines are shut down at the end of the last flight on which he/she is a crew member;

"flight information centre" means a unit established to provide flight information service and alerting service;

"flight information region" means an airspace of defined dimensions within which flight information service and alerting service are provided;

"flight information service" means a service provided for the purpose of giving advice and information useful for the safe and efficient conduct of flights;

"flight level" means a surface of constant atmospheric pressure which is related to a specific pressure datum, 1,013.2 hectopascals (hPa), and is separated from other surfaces by specific pressure intervals;

"flight manual" means a manual, associated with the certificate of airworthiness, containing limitations within which the aircraft is to be considered airworthy, and instructions information necessary to the flight crew members for the safe operation of the aircraft;

"flight operations officer/flight dispatcher" means a person designated by the operator to engage in the control and supervision of flight operations, whether licensed or not, suitably qualified in accordance with Annex 1, who supports, briefs and/or assists the pilot-in-command in the safe conduct of the flight;

"flight plan" means specified information provided to air traffic services units, relative to an intended flight or portion of a flight of an aircraft;

"filed flight plan"—the flight plan as filed with an air traffic service unit by the pilot or designated representative, without any subsequent changes;

"flight recorder" means any type of recorder installed in the aircraft for the purpose of complementing accident/incident investigation;

NOTE—This could include the Cockpit Voice Recorder (CVR) or Flight Data Recorder (FDR);

"flight safety document system" means a set of inter-related documentation established by the operator, compiling and organizing information necessary for flight and ground operations, and comprizing, as a minimum, the operations manual and the operator's maintenance control manual;

"flight simulation training device" means any one of the following three types of apparatus in which flight conditions are simulated on the ground—

(*a*) a flight simulator, which provides an accurate representation of the flight deck of a particular aircraft type to the extent that the mechanical, electrical, electronic, etc. aircraft systems control functions, the normal environment of flight crew members, and the performance and flight characteristics of that type of aircraft are realistically simulated;

(*b*) a flight procedures trainer, which provides a realistic flight deck environment, and which simulates instrument responses, simple control functions of mechanical, electrical, electronic, etc., aircraft systems, and the performance and flight characteristics of aircraft of a particular class;

(*c*) a basic instrument flight trainer, which is equipped with appropriate instruments and which simulates the flight deck environment of an aircraft in flight in instrument flight conditions;

"flight status" means an indication of whether a given aircraft requires special handling by air traffic services units or not;

"flight time" means the period of time that the aircraft moves under its own power for the purpose of flight and ends when the aircraft comes to rest after it is parked, with engine(s) shut down if applicable;

NOTE—Flight time as here defined is synonymous with the term "block-to-block" time or "chock-to-chock" time in general usage, which is measured from the time an aircraft moves from the loading point until it stops at the unloading point;

"flight time—aeroplane" means the total time from the moment an aeroplane first moves for the purpose of taking-off until the moment it finally comes to rest at the end of the flight;

"flight time—helicopter" means the total time from the moment a helicopter's rotor blades start turning until the moment the helicopter finally comes to rest at the end of the flight, and the rotor blades are stopped;

"flight time—glider" means the total time occupied in flight, whether being towed or not, from the moment the glider first moves for the purpose of taking-off until the moment it comes to rest at the end of the flight;

"flight training" means training, other than ground training, received from an authorized instructor in flight in an aircraft;

"flight visibility" means the visibility forward from the cockpit of an aircraft in flight;

"foreign air operator" means any operator, not being a Malaŵi air operator, which undertakes, whether directly or indirectly or by lease or any other arrangement, to engage in commercial air transport operations within borders or airspace of Malaŵi, whether on a scheduled or charter basis;

"Foreign Authority" means the civil aviation authority that issues and oversees the Air Operator Certificate of the foreign operator;

"freight container" means see unit load device;

"freight container in the case of radioactive material transport" means an article of transport equipment designed to facilitate the transport of packaged goods, by one or more modes of transport without intermediate reloading; it must be of a permanent enclosed character, rigid and strong enough for repeated use, and must be fitted with devices facilitating its handling, particularly in transfer between aircraft and from one mode of transport to another: a small freight container is that which has either an overall outer dimension less than 1.5 m, or an internal volume of not more than $3m^3$: any other freight container is considered to be a large freight container;

"general aviation operation" means an aircraft operation other than a commercial air transport operation or aerial work operation;

"glider" means a non-power-driven heavier-than-air aircraft, deriving its lift in flight chiefly from aerodynamic reactions on surfaces, which remain, fixed under given conditions of flight;

"ground handling" means services necessary for an aircraft's arrival at, and departure from, an airport, other than air traffic services;

"Ground Proximity Warning System (GPWS)" means a warning system that uses radar altimeters to alert the pilots of hazardous flight conditions;

"ground visibility" means the visibility at an aerodrome, as reported by an accredited observer;

"gyroplane" means a heavier-than-air aircraft supported in flight by the reactions of the air on one or more rotors which rotate freely on substantially vertical axes;

"handling agent" means an agency which performs on behalf of the operator some or all of the latter's functions including receiving, loading, unloading, transferring or other processing of passengers or cargo;

"hazard" means a condition or an object with the potential to cause injuries to personnel, damage to equipment or structures, loss of material, or reduction of ability to perform a prescribed function;

"heading" means the direction in which the longitudinal axis of an aircraft is pointed, usually expressed in degrees from North (true, magnetic, compass or grid);

"Head-Up Display (HUD)" means a display system that presents flight information into the pilot's forward external field of view;

"heavier-than-air aircraft" means any aircraft deriving its lift in flight chiefly from aerodynamic forces;

"height" means the vertical distance of a level, a point or an object considered a point, measured from a specified datum;

"helicopter" means a heavier-than-air aircraft supported in flight chiefly by the reactions of the air on one or more power-driven rotors on substantially vertical axis—

(*a*) Class 1 helicopter—a helicopter with performance such that, in case of critical engine failure, it is able to land on the rejected take-off area or safely continue the flight to an appropriate landing area, depending on when the failure occurs;

(*b*) Class 2 helicopter—a helicopter with performance such that, in case of critical engine failure, it is able to safely continue the flight, except when the failure occurs prior to a defined point after take-off or after a defined point before landing, in which case a forced landing may be required; and

(*c*) Class 3 helicopter—a helicopter with performance such that, in case of engine failure at any point in the flight profile, a forced landing must be performed;

"helideck" means a heliport located on a floating or fixed off-shore structure;

"heliport" means an aerodrome or defined area on a structure intended to be used wholly or in part for the arrival, departure, and surface movement of helicopters;

"high speed aural warning" means a speed warning that is required for turbine-engined airplanes and airplanes with a Vmo/Mmo greater than 0.80 Vdf/Mdf or Vd/Md;

"holdover time" means the estimated time de-icing/anti-icing fluid will prevent the formation of frost or ice and the accumulation of snow on the protected surfaces of an aircraft: holdover time begins when the final application of de-icing or anti-icing fluid commences and expires when the de-icing or anti-icing fluid applied to the aircraft loses its effectiveness;

"housing" means as it relates to the Aviation (Approved Maintenance Organizations) Regulations—Buildings, hangers, and other structures to accommodate the necessary equipment and materials of a maintenance organization that—

(*a*) provide working space for the performance of maintenance, preventive maintenance, or modifications for which the maintenance organization is approved and rated;

(*b*) provide structures for the proper protection of aircraft, airframes, aircraft engines, propellers, appliances, components, parts, and subassemblies thereof during disassembly, cleaning, inspection, repair, modification, assembly, and testing; and

(*c*) provide for the proper storage, segregation, and protection of materials, parts, and supplies;

"human factors principles" means principles which apply to aeronautical design, certification, training, operations and maintenance and which seek safe interface between the human and other system components by proper consideration to human performance;

"human performance" means human capabilities and limitations which have an impact on the safety and efficiency of aeronautical operations;

"ICAO" means where used in this Act, these Regulations for the International Civil Aviation Organization;

"IFR" means the symbol used to designate the instrument flight rules;

"IFR flight" means a flight conducted in accordance with the instrument flight rules;

"IMC" means the symbol used to designate instrument meteorological conditions;

"incident" means an occurrence other than an accident, associated with the operation of an aircraft, which affects or could affect the safety of operations;

"includes" means "includes but is not limited to;"

"incompatible" means describing dangerous goods, which if mixed, would be liable to cause a dangerous evolution of heat or gas or produce a corrosive substance;

"industry codes of practice" means guidance material developed by an industry body, for a particular sector of the aviation industry to comply with the requirements of the International Civil Aviation Organization's Standards and Recommended Practices, other aviation safety requirements and the best practices deemed appropriate;

NOTE—Some States accept and reference industry codes of practice in the development of regulation to meet the requirements of Annex 6 Part II, and make available, for the industry codes of practice, their sources and how they may be obtained;

"inspection" means the examination of an aircraft or aeronautical product to establish conformity with a standard approved by the Authority;

"instrument approach procedure" means a series of predetermined manoeuvres by reference to flight instruments with specified protection from obstacles from the initial approach fix, or where applicable, from the beginning of a defined arrival route to a point from which a landing can be completed and thereafter, if a landing is not completed, to a position at which holding or en route obstacle clearance criteria apply;

"instrument flight time" means time during which a pilot is piloting an aircraft solely by reference to instruments and without external reference points;

"instrument ground time" means time during which a pilot is practising, on the ground, simulated instrument flight in a flight simulation training device approved by the Licensing Authority;

"Instrument Meteorological Conditions (IMC)" means meteorological conditions expressed in terms of visibility, distance from cloud, and ceiling, less than the minima specified for visual meteorological conditions;

"instrument time" means time in which cockpit instruments are used as the sole means for navigation and control, which may be instrument flight time or instrument ground time;

"instrument training" means training which is received from an authorized instructor under actual or simulated instrument meteorological conditions;

"interchange agreement" means a leasing agreement which permits an air carrier to dry lease and take or relinquish operational control of an aircraft at an airport;

"international commercial air transport" means the carriage by aircraft of persons or property for remuneration or hire or the carriage of mail between any two or more countries;

"international operating agency" means an agency of the kind contemplated in Article 77 of the Convention on International Civil Aviation;

"investigation" means as relates to an aircraft accident or incident, a process conducted for the purpose of accident prevention which includes the gathering and analysis of information, the drawing of conclusions, including the determination of causes and, when appropriate, the making of safety recommendations;

"investigator-in-charge" means as relates to an aircraft accident or incident, a person charged, on the basis of his or her qualifications, with the responsibility for the organization, conduct and control of an investigation;

"journey log" means a form signed by the PIC of each flight that records the aeroplane's registration, crew member names and duty assignments, the type of flight, and the date, place, and time of arrival and departure;

"knowledge test" means a test on the aeronautical knowledge areas required for an airman licence or rating that can be administered in written form or by a computer;

"landing area" means that part of a movement area intended for the landing or take-off of an aircraft;

"Land Distance Available (LDA)" means the length of runway which is declared available and suitable for the ground run of an aeroplane landing;

"landing decision point" means the point used in determining landing performance from which, an engine failure occurring at this point, the landing may be safely continued or a balked landing initiated;

"landing surface" means that part of the surface of an aerodrome which the aerodrome authority has declared available for the normal ground or water run of aircraft landing in a particular direction;

"large aeroplane" means an aeroplane having a maximum certified take-off mass of 5,700 kg. (12,500 lbs.), or more;

"level" means a generic term relating to the vertical position of an aircraft in flight and meaning variously, height, altitude or flight level;

"Licensing Authority" means the Authority designated by the Contracting State as responsible for the licensing of personnel;

"life-limited part" means any part for which a mandatory replacement limit is specified in the type design, the Instructions for Continued Airworthiness, or the maintenance manual;

"lighter-than-air aircraft" means any aircraft supported chiefly by its buoyancy in the air;

"likely"—in the context of the medical provisions for licensing in the Aviation (Personnel Licensing) Regulations means with a probability of occurring that is unacceptable to the medical assessor;

"limit loads" means the maximum loads assumed to occur in the anticipated operating conditions;

"line maintenance" means any unscheduled maintenance resulting from unforeseen events, or scheduled checks that contain servicing and/or inspections that do not require specialized training, equipment or facilities;

"line operating flight time" means flight time recorded by the PIC or Co-Pilot while in revenue service for an AOC holder;

"load factor" means the ratio of a specified load to the weight of the aircraft, the former being expressed in terms of aerodynamic forces, or ground reactions;

"long range overwater flights" means routes on which an aeroplane may be over water and at more than a distance corresponding to 120 minutes at cruising speed or 740 km (400 NM), whichever is the lesser, away from land suitable for making an emergency landing;

"low altitude wind shear warning and guidance system" means a system that will issue a warning of low altitude wind shear and in some cases provide the pilot with guidance information of the escape manoeuvre;

"mach number indicator" means an indicator that shows airspeed as a function of the Mach number;

"maintenance" means the performance of tasks required to ensure the continuing airworthiness of an aircraft, including any one or combination of overhaul, inspection, replacement, defect rectification, and the embodiment of a modification or repair;

"maintenance control manual" means a document that describes the operator's procedures necessary to ensure that all scheduled and unscheduled maintenance is performed on the operator's aircraft on time and in a controlled and satisfactory manner;

"maintenance organization's procedures manual" means a document endorsed by the head of the maintenance organization which details the maintenance organization's structure and management responsibilities, scope of work, description of facilities, maintenance procedures and quality assurance or inspection systems;

"maintenance programme" means a document which describes the specific scheduled maintenance tasks and their frequency of completion and related procedures, such as a reliability programme, necessary for the safe operation of those aircraft to which it applies;

"maintenance release" means a document which contains a certification confirming that the maintenance work to which it relates has been completed in a satisfactory manner, either in accordance with the approved data and the procedures described in the maintenance organization's procedures manual or under an equivalent system;

"major alteration" means an alteration not listed in the aircraft, aircraft engine, or propeller specifications—

(*a*) that might appreciably affect weight, balance, structural strength, performance, power-plant, operations, flight characteristics, or other qualities affecting airworthiness; or

(*b*) that can not be done by elementary operations;

"major repair" means a repair—

(*a*) that if improperly done might appreciably affect weight, balance, structural strength, performance, power-plant, operations, flight characteristics, or other qualities affecting airworthiness; or

(*b*) that is not done according to accepted practices or cannot be done by elementary operations;

"manoeuvring area" means that part of an aerodrome to be used for the take-off, landing and taxiing of aircraft, excluding aprons;

"Master Minimum Equipment List (MMEL)" means a list established for a particular aircraft type by the organization responsible for the type design with the approval of the State of Design containing items, one or more of which is permitted to be unserviceable at the commencement of a flight—The MMEL may be associated with special operating conditions, limitations or procedures—The MMEL provides the basis for development, review, and approval by the Authority of an individual operator's MEL;

"maximum mass" means maximum certificated take-off-mass;

"may" means that discretion can be used when performing an act described in a regulation;

"medical assessor" means a physician, appointed by the Licensing Authority, qualified and experienced in the practice of aviation medicine and competent in evaluating and assessing medical conditions of flight safety significance;

"medical certificate" means the evidence issued by the Authority that the licence holder meets specific requirements of medical fitness.

It is issued following an evaluation by the Licensing Authority of the report submitted by the medical examiner;

"medical examiner" means a physician with training in aviation medicine and practical knowledge and experience of the aviation environment, who is designated by the Licensing Authority to conduct medical examinations of fitness of applicants for licences or ratings for which medical requirements are prescribed—called Aviation Medical Examiners (AME) in these Regulations when non-CAA physicians are designated to perform medical examinations;

"meteorological information" means meteorological reports, analysis, forecast, and any other statement relating to existing or expected meteorological conditions;

"Minimum Descent Altitude (MDA) or Minimum Descent Height (MDH)" means a specified altitude or height in a non-precision approach or circling approach below which descent must not be made without the required visual reference;

NOTE 1—Minimum Descent Altitude (MDA) is referenced to mean sea level and Minimum Descent Height (MDH) is referenced to the aerodrome elevation or to the threshold elevation if that is more than 2 m (7 ft) below the aerodrome elevation—A minimum descent height for a circling approach is referenced to the aerodrome elevation;

NOTE 2—The required visual reference means that section of the visual aids or of the approach area which should have been in view for sufficient time for the pilot to have made an assessment of the aircraft position and rate of change of position, in relation to the desired flight path—In the case of a circling approach the required visual reference is the runway environment;

NOTE 3—For convenience when both expressions are used they may be written in the form "minimum descent altitude/height" and abbreviated "MDA/H";

"Minimum Equipment List (MEL)" means a list approved by the Authority which provides for the operation of aircraft, subject to specified conditions, with particular equipment inoperative, prepared by an operator in conformity with, or more restrictive than, the Master Minimum Equipment List established for the aircraft type;

"Minister" means the Minister responsible for civil aviation;

"modification" means the alteration of an aircraft/aeronautical product in conformity with an approved standard;

"movement area" means that part of an aerodrome to be used for take-off, landing and taxiing of aircraft, consisting of the manoeuvring area and the apron(s);

"navigable airspace" means the airspace above the minimum altitudes of flight prescribed in the Aviation (Operations) Regulations and includes airspace needed to ensure safety in the take-off and landing of aircraft;

"navigation of aircraft" means a function which includes the piloting of aircraft;

"navigation specification" means a set of aircraft and flight crew requirements needed to support performance-based navigation operations within a defined airspace: there are two kinds of navigation specifications—

(*a*) Required Navigation Performance (RNP) specification—a navigation specification based on area navigation that includes the requirement for performance monitoring and alerting, designated by the prefix RNP, e.g. RNP 4, RNP APCH; and

(*b*) Area Navigational (RNAV) specification—a navigation specification based on area navigation that does not include the requirement for performance monitoring and alerting, designated by the prefix RNAV, e.g. RNAV 5, RNAV 1;

"night" means the hours between the end of evening civil twilight and the beginning of morning civil twilight or such other period between sunset and sunrise: civil twilight ends in the evening when the centre of the sun's disc is 6 degrees below the horizon and begins in the morning when the centre of the sun's disc is 6 degrees below the horizon;

"no person may . . ." or "a person may not . . ." mean that no person is required, authorized, or permitted to do an act described in a regulation;

"Obstacle Clearance Altitude (OCA) or Obstacle Clearance Height (OCH)" means the lowest altitude or the lowest height above the elevation of the relevant runway threshold or the aerodrome elevation as applicable, using in establishing compliance with appropriate obstacle clearance criteria;

NOTE 1—Obstacle clearance altitude is referenced to mean sea level and obstacle clearance height is referenced to the threshold elevation or in the case of non-precision approaches to the aerodrome elevation or the threshold elevation if that is more than 2 m (7 ft) below the aerodrome elevation. An obstacle clearance height for a circling approach is referenced to the aerodrome elevation;

NOTE 2—For convenience when both expressions are used they may be written in the form "obstacle clearance altitude/height" and abbreviated "OCA/H";

"obstruction clearance plane" means a plane sloping upward from the runway at a slope of 1:20 to the horizontal, and tangent to or clearing all obstructions within a specified area surrounding the runway as shown in a profile view of that area: in the plane view, the centreline of the specified area coincides with the centreline of the runway, beginning at the point where the obstruction clearance plane intersects the centreline of the runway and proceeding to a point at least 1,500 feet from the beginning point: thereafter, the centreline coincides with the take-off path over the ground for the runway (in the case of take-offs) or with the instrument approach counterpart (for landings), or where the applicable one of these paths has not been established, it proceeds consistent with turns of at least 4,000 foot radius until a point is reached beyond which the obstruction clearance plane clears all obstructions: this area extends laterally 200 feet on each side of the centreline at the point where the obstruction clearance plane intersects the runway and continues at this width to the end of the runway; then it increases uniformly to 500 feet on each side of the centre line at a point 1,500 feet from the intersection of the obstruction clearance plane with the runway; thereafter, it extends laterally 500 feet on each side of the centreline;

"ornithopter" means a heavier-than-air aircraft supported in flight chiefly by the reactions of the air on planes to which a flapping motion is imparted;

"operating base" means the location from which operational control is exercised;

NOTE—An operating base is normally the location where personnel involved in the operation of the aeroplane work and the records associated with the operation are located. An operating base has a degree of permanency beyond that of a regular point of call;

"operational control" means the exercise of authority over the initiation, continuation, diversion or termination of a flight in the interest of the safety of the aircraft and the regularity and efficiency of the flight;

"operational flight plan" means the operator's plan for the safe conduct of the flight based on considerations of aircraft performance, other operating limitations, and relevant expected conditions on the route to be followed and at the aerodromes or heliports concerned;

"operations manual" means a manual containing procedures, instructions and guidance for use by operational personnel in the execution of their duties;

"operations specifications" means the authorizations, conditions and limitations associated with the air operator certificate and subject to the conditions in the operations manual;

NOTE 1—The operations specifications are part of an operator's certificate (air operator certificate, approved training organization certificate, approved maintenance organization certificate, etc.) that is used to administer safety standards and define the provisions and limitations within which the operator may conduct business operations: operations specifications are issued by the Authority and considered a legal, contractual agreement between the Authority and the operator;

"operator" means a person, organization or enterprise engaged in or offering to engage in an aircraft operation (ICAO). Any person who causes or authorizes the operation of an aircraft, such as the owner, lessee, or bailee of an aircraft;

"operator's maintenance control manual" means a document which describes the operator's procedures necessary to ensure that all scheduled and unscheduled maintenance is performed on the operator's aircraft on time and in a controlled and satisfactory manner;

"overhaul" means the restoration of an aircraft/aeronautical product using methods, techniques, and practices acceptable to the Authority, including disassembly, cleaning, and inspection as permitted, repair as necessary, and reassembly; and tested in accordance with approved standards and technical data, or in accordance with current standards and technical data acceptable to the Authority, which have been developed and documented by the State of Design, holder of the type certificate, supplemental type certificate, or a material, part, process, or appliance approval under Parts Manufacturing Authorization (PMA) or Technical Standard Order (TSO);

"overpack" means an enclosure used by a single shipper to contain one or more packages and to form one handling unit for convenience of handling and stowage;

"package" means the complete product of the packing operation consisting of the packaging and its contents prepared for transport;

"packaging" means receptacles and any other components or materials necessary for the receptacle to perform its containment;

"passenger aircraft" means an aircraft that carries any person other than a crew member, an operator's employee in an official capacity, an authorized representative of an appropriate national authority or a person accompanying a consignment or other cargo;

"passenger exit seats" means those seats having direct access to an exit, and those seats in a row of seats through which passengers would have to pass to gain access to an exit, from the first seat inboard of the exit to the first aisle inboard of the exit; a passenger seat having "direct access" means a seat from which a passenger can proceed directly to the exit without entering an aisle or passing around an obstruction;

"Performance-Based Navigation (PEN)" means area navigation based on performance requirements for aircraft operating along an ATS route, on an instrument approach procedure or in a designated airspace;

NOTE 1—Performance requirements are expressed in navigation specifications (RNAV specification, RNP specification) in terms of accuracy, integrity, continuity, availability and functionality needed for the proposed operation in the context of a particular airspace concept;

"performance Class 1 helicopter" means a helicopter with performance such that, in case of engine failure it is able to land on the rejected take-off area or safely continue the flight to an appropriate landing area;

"performance Class 2 helicopter" means a helicopter with performance such that, in case of engine failure, it is able to safely continue the flight, except when the failure occurs prior to a defined point after take-off or after a defined point before landing, in which case a forced landing may be required;

"performance Class 3 helicopter" means a helicopter with performance such that, in case of engine failure at any point in the flight profile, a forced landing must be performed;

"performance criteria" means a simple, evaluative statement on the required outcome of the competency element and a description of the criteria used to judge if the required level of performance has been achieved;

"person" means any individual, firm, partnership, corporation, company, association, joint stock association, or body politic, and includes any trustee, receiver, assignee, or other similar representative of these entities;

"pilot in command" means the pilot responsible for the operation and safety of the aircraft during flight time: the pilot designated by the operator, or in the case of general aviation, the owner, as being in command and charged with the safe conduct of the flight;

"pilot time" means that time a person—

(*a*) serves as a required pilot;

(*b*) receives training from an authorized instructor in an aircraft, or an approved flight simulation training device; or

(*c*) gives training as an authorized instructor in an aircraft, or an approved flight simulation training device;

"pilot (to)" means to manipulate the flight controls of an aircraft during flight time;

"pressure altitude" means an atmospheric pressure expressed in terms of altitude which corresponds to that pressure in the Standard Atmosphere (as defined in Annex 8);

"primary standard" means a standard defined and maintained by a State Authority and used to calibrate secondary standards;

"powered-lift" means a heavier-than-air aircraft capable of vertical take-off, vertical landing, and low speed flight that depends principally on engine-driven lift devices or engine thrust for lift during these flight regimes and on non-rotating airfoil(s) for lift during horizontal flight;

"power-plant" means an engine that is used or intended to be used for propelling aircraft. It includes turbo superchargers, appurtenances, and accessories necessary for its functioning, but does not include propellers;

"power-unit" means a system of one or more engines and ancillary parts which are together necessary to provide thrust, independently of the continued operation of any other powered-unit(*s*), but not including short period thrust-producing devices;

"practical test" means skill test;

"pre-flight inspection" means the inspection carried out before flight to ensure that the aircraft is fit for the intended flight;

"prescribed" means the Authority has issued written policy or methodology which imposes either a mandatory requirement, if the written policy or methodology states "shall," or a discretionary requirement if the written policy or methodology states "may;"

"pressure-altitude" means an atmospheric pressure expressed in terms of altitude which corresponds to that pressure in the Standard Atmosphere;

"pressurized aircraft" for airman-licensing purposes, means an aircraft that has a service ceiling or maximum operating altitude, whichever is lower, above 25,000 feet MSL;

"preventive maintenance" means simple or minor preservation operations and the replacement of small standard parts not involving complex assembly operations;

"problematic use of substances" means the use of one or more psychoactive substances by aviation personnel in a way that—

(*a*) constitutes a direct hazard to the user or endangers the lives, health or welfare of others; and/or

(*b*) causes or worsens an occupational, social, mental or physical problem or disorder;

"prohibited area" means an airspace of defined dimensions, above the land areas or territorial waters of a State, within which the flight of aircraft is prohibited;

"propeller" means a device for propelling an aircraft that has blades on a power-plant driven shaft and that, when rotated, produces by its

action on the air, a thrust approximately perpendicular to its plane of rotation: it includes control components normally supplied by its manufacturer, but does not include main and auxiliary rotors or rotating airfoils of power-plants;

"proper shipping name" means the name to be used to describe a particular article or substance in all shipping documents and notifications and, where appropriate, on packaging;

"psychoactive substances" means alcohol, opiods, canabinoids, sedatives and hypnotics, cocaine, other psychostimulants, hallucinogens, and volatile solvents, whereas coffee and tobacco are excluded;

"public aircraft" means an aircraft used exclusively in the service of any government or of any political jurisdiction thereof, including the Government of Malaŵi, but not including any government owned aircraft engaged in operations which meet the definition of commercial air transport operations;

"quality" means the totality of features and characteristics of a product or service that bear on its ability to satisfy stated or implied needs;

"quality assurance" means quality assurance, as distinguished from quality control, involves activities in the business, systems, and technical audit areas: a set of predetermined, systematic actions which are required to provide adequate confidence that a product or service satisfies quality requirements;

"quality assurance as related to ATO" means all the planned and systematic actions necessary to provide adequate confidence that all training activities satisfy given standards and requirements, including the ones specified by the approved training organization in relevant manuals;

"quality audit" means a systematic and independent examination to determine whether quality activities and related results comply with planned arrangements and whether these arrangements are implemented effectively and are suitable to achieve objectives;

"quality control" means the regulatory inspection process through which actual performance is compared with standards, such as the maintenance of standards of manufactured aeronautical products, and any difference is acted upon;

"quality inspection" means that part of quality management involving quality control. In other words, inspections accomplished to observe events/actions/documents, etc., in order to verify whether established operational procedures and requirements are fulfilled during the accomplishment of the event or action, and whether the required standard is achieved: student stage checks and skill tests are quality inspections, and they are also quality control functions;

"quality management" means a management approach focused on the means to achieve product or service quality objectives through the

use of its four key components: quality planning; quality control; quality assurance; and quality improvement;

"quality manager" means the manager responsible for the monitoring function and for requesting remedial action: in an ATO, the Quality Manager is responsible directly to the Head of Training;

"quality manual" means the document containing the relevant information pertaining to the approved training organization's quality assurance system;

"quality of training" means the outcome of the training that meets stated or implied needs within the framework of set standards;

"quality system" means documented organizational procedures and policies; internal audit of those policies procedures; management review and recommendation for quality improvements;

"radiotelephony" means a form of radiocommunication primarily intended for the exchange of information in the form of speech;

"rated air traffic controller" means an air traffic controller holding a licence and valid ratings appropriate to the privileges to be exercised;

"rating" means an authorization entered on or associated with a licence or certificate and forming part thereof, stating special conditions, privileges or limitations pertaining to such licence or certificate;

"rebuild" means the restoration of an aircraft/aeronautical product by using methods, techniques, and practices acceptable to the Authority, when it has been disassembled, cleaned, inspected as permitted, repaired as necessary, reassembled, and tested to the same tolerances and limits as a new item, using either new parts or used parts that conform to new part tolerances and limits;

"rendering (a certificate of airworthiness) valid" means the action taken by a Contracting State, as an alternative to issuing its own Certificate of Airworthiness, in accepting a Certificate of Airworthiness issued by any other Contracting State as the equivalent of its own Certificate of Airworthiness;

"reference standard" means a standard that is used to maintain working standards;

"re-issue of a licence, rating, authorization or certificate" means the administrative action taken after a licence, rating, authorization or certificate has lapsed that re-issues the privileges of the licence, rating, authorization or certificate for a further specified period consequent upon the fulfilment of specified requirements;

"renewal of licence, rating, authorization or certificate" means the administrative action taken within the period of validity of a licence, rating, authorization or certificate that allows the holder to continue to exercise the privileges of a licence, rating, authorization

or certificate for a further specified period consequent upon the fulfilment of specified requirements;

"repair" means—

(*a*) the restoration of an aeronautical product to an airworthy condition as defined by the appropriate airworthiness requirements; and

(*b*) the restoration of an aeronautical product to an airworthy condition to ensure that the aircraft continues to comply with the design aspects of the appropriate airworthiness requirements used for the issuance of the type certificate for the respective aircraft type, after it has been damaged or subjected to wear;

"Repetitive Flight Plan (RPL)" means a flight plan related to a series of frequently recurring, regularly operated individual flights with identical basic features, submitted by an operator for retention and repetitive use by ATC units;

"reporting point" means a specified geographical location in relation to which the position of the aircraft can be reported;

"Required Communication Performance (RCP)" means a statement of the performance requirements for operational communication in support of specific ATM functions;

"Required Communication Performance type (RCP type)" means a label (e.g. RCP 240) that represents the values assigned to RCP parameters for communication transaction time, continuity, availability and integrity;

"required inspection items" means as used in the Aviation (Airworthiness) Regulations, maintenance items and/or alterations that must be inspected by a person other than the one performing the work, and include at least those that could result in a failure, malfunction, or defect endangering the safe operation of the aircraft, if not properly performed or if improper parts or materials are used;

"Required Navigation Performance (RNP)" means a statement of the navigation performance necessary for operations with a defined airspace;

"rest period" means a continuous and defined period of time, subsequent to and/or prior to duty, during which flight or cabin crew members are free of all duties;

"restricted area" means an airspace of defined dimensions, above the land areas or territorial waters of a State, within which the flight of aircraft is restricted in accordance with certain specified conditions;

"rotorcraft" means a power-driven heavier-than-air aircraft supported in flight by the reactions of the air on one or more rotors;

"rotorcraft flight manual" means a manual, associated with the certificate of airworthiness, containing limitations within which the rotorcraft is to be considered airworthy, and instructions and information necessary to the flight crew members of the safe operation of the rotorcraft;

"rotorcraft load combinations" means configurations for external loads carried by rotorcraft—

(*a*) Class A—external load fixed to the rotorcraft, cannot be jettisoned, and does not extend below the landing gear, used to transport cargo;

(*b*) Class B—external load suspended from the rotorcraft, which can be jettisoned, and is transported free of land or water during rotorcraft operations;

(*c*) Class C—external load suspended from the rotorcraft, which can be jettisoned, but remains in contact with land or water during rotorcraft operation; and

(*d*) Class D—external load suspended from the rotorcraft for the carriage of persons;

"route sector" means a flight comprising take-off, departure, cruise of not less than 15 minutes, arrival, approach and landing phases;

"runway" means a defined rectangular area on a land aerodrome prepared for the landing and take-off of aircraft;

"runway-holding position" means a designated position intended to protect a runway, an obstacle limitation surface, or an ILS/MLS critical/sensitive area at which taxiing aircraft and vehicles shall stop and hold, unless otherwise authorized by the aerodrome control tower;

"Runway Visual Range (RVR)" means the range over which the pilot of an aircraft on the centre line of a runway can see the runway surface markings or the lights delineating the runway or identifying its centre line;

"safe forced landing" means unavoidable landing or ditching with a reasonable expectancy of no injuries to persons in the aircraft or on the surface;

"safety-sensitive personnel" means persons who might endanger aviation safety if they perform their duties and functions improperly including, but not limited to, crew members, aircraft maintenance personnel and air traffic controllers;

"Safety Management System (SMS)" means a systematic approach to managing safety, including the necessary organizational structures, accountabilities, policies and procedures;

"safety programme" means an integrated set of regulations and activities aimed at improving safety;

"safety recommendation" means a proposal of the accident investigation authority of the State conducting the investigation, based on information derived from the investigation made with the intention of preventing accidents or incidents;

"satisfactory evidence" means a set of documents or activities that a Contracting State accepts as sufficient to show compliance with an airworthiness requirement;

"secondary standards" means a standard maintained by comparison with a primary standard;

"serious incident" means an incident involving circumstances indicating that an accident nearly occurred;

"serious injury" means an injury which is sustained by a person in an accident and which—

(*a*) requires hospitalization for more than 48 hours, commencing within seven days from the date the injury was received;

(*b*) results in a fracture of any bone (except simple fractures of fingers, toes or nose); or

(*c*) involves lacerations which cause severe haemorrhage, nerve, muscle or tendon damage; or

(*d*) involves injury to any internal organ; or

(*e*) involves second or third degree burns, or any burns affecting more than 5% of the body surface; or

(*f*) involves verified exposure to infectious substances or injurious radiation;

"shall" means a mandatory requirement;

"signal area" means an area on an aerodrome used for the display of ground signals;

"signature" means an individual's unique identification used as a means of authenticating a record entry or record: a signature may be hand-written, electronic, or any other form acceptable to the Authority;

"signed maintenance release" means to certify that maintenance work has been completed satisfactorily in accordance with the applicable Standards of airworthiness, by issuing the maintenance release referred to in these Regulations;

"significant" in the context of the medical provisions in Part XI of the Aviation (Personnel Licensing) Regulations, means a degree or of a nature that is likely to jeopardize flight safety;

"skill test" means a competency test on the areas of operations for a licence, certificate, rating, or authorization that is conducted by having the applicant respond to questions and demonstrate manoeuvres in flight, or in an approved flight simulation training device, or in a combination of these;

"small aeroplane" means an aeroplane having a maximum certified take-off mass of less than 5,700 kg. (12,500 lbs.);

"solo flight" means flight time during which a student pilot is the sole occupant of the aircraft, or that flight time during which the student acts as a PIC of a gas balloon or an airship requiring more than one flight crew member;

"spare parts" means any parts, appurtenances, and accessories of aircraft (other than aircraft engines and propellers), of aircraft engines (other than propellers), of propellers, and of appliances, maintained for installation or use in an aircraft, aircraft engine, propeller, or appliance, but which at the time are not installed therein or attached thereto;

"special aircraft jurisdiction of Malaŵi" means—

(*a*) civil aircraft of Malaŵi; and

(*b*) any other aircraft within the jurisdiction of Malaŵi, while the aircraft is in flight, which is from the moment when all external doors are closed following embarkation until the moment when one such door is opened for disembarkation or, in case of a forced landing, until the competent authorities take over the responsibility of the aircraft and the persons and property aboard;

"Special Curricula" means a closely supervised, systematic and continuous course of training, conforming to a planned syllabus or curriculum, and conducted in an approved training organization;

"special VFR flight" means a VFR flight cleared by air traffic control to operate within a control zone in meteorological conditions below VMC;

"specialized maintenance" means any maintenance not normally performed by an AMO (e.g., tire retreating, plating, etc.);

"specific operating provisions" means the Specific Operating Provisions describe the ratings (Class and/or Limited) in detail and will contain or reference material and process specifications used in performing repair work, along with any limitations applied to the maintenance organization: the accountable manager and the Authority sign this document;

"standard" means an object, artifact, tool, test equipment, system, or experiment that stores, embodies, or otherwise provides a physical quantity, which serves as the basis for measurement of

the quantity: it also includes a document describing the operations and process that must be performed in order for a particular end to be achieved;

"State of Design" means the State having jurisdiction over the organization responsible for the type design;

"State of Manufacture" means the State having jurisdiction over the organization responsible for the final assembly of the aircraft;

"State of Occurrence" means the State in the territory of which an accident or incident occurs;

"State of the Operator" means the State in which the operator's principal place of business is located, or, if there is no such place of business, the operator's permanent residence;

"State of Origin" means as relating to dangerous goods, the State in which dangerous goods were first loaded on an aircraft;

"State of Registry" means the State on whose register an aircraft is entered;

NOTE—In the case of the registration of aircraft of an international operating agency on other than a national basis the States constituting the agency are jointly and severally bound to assume the obligations which, under the Chicago Convention, attached to a State of Registry. See, in this regard the Council Resolution of 14 December, 1967 on Nationality and Registration of Aircraft Operated by International Operating Agencies which can be found in Policy and Guidance Material on the Economic Regulation of International Air Transport (Doc 9587);

"state safety programme" means an integrated set of regulations and activities aimed at improving safety;

"substantial damage" means damage or failure which adversely affects the structural strength, performance, or flight characteristics of the aircraft, and which would normally require major repair or replacement of the affected component: engine failure or damage limited to an engine if only one engine fails or is damaged, bent fairings or cowling, dented skin, small punctured holes in the skin or fabric, ground damage to rotor or propeller blades, and damage to landing gear, wheels, tires, flaps, engine accessories, brakes, or wingtips are not considered "substantial damage" for the purpose of this substantial damage relating to an aircraft accident;

"synthetic flight trainer" means Flight simulation training device;

"Target Level of Safety (TLS)" means a generic term representing the level of risk which is considered acceptable in particular circumstances;

"taxiing" means movement of an aircraft on the surface of an aerodrome under its own power, excluding take-off and landing;

"taxiway" means a defined path on a land aerodrome established for the taxiing of aircraft and intended to provide a link between one part of the aerodrome and another, including—

(*a*) aircraft stand taxilane—a portion of an apron designated as a taxiway and intended to provide access to aircraft stands only;

(*b*) apron taxiway—a portion of a taxiway system located on an apron and intended to provide a through taxi route across the apron;

(*c*) rapid exit taxiway—a taxiway connected to a runway at an acute angle and designed to allow landing aeroplanes to turn off at higher speeds than are achieved on other exit taxiways thereby minimizing runway occupancy times;

"technical log" means a document carried on an aircraft that contains information to meet ICAO requirements; a technical log contains two independent sections: a journey record section and an aircraft maintenance record section;

"take-off decision point" means the point used in determining take-off performance of a Class 1 helicopter from which, an engine failure occurring at this point, either a rejected take-off may be made or a take-off safely continued;

"take-off surface" means the part of the surface of an aerodrome which the aerodrome authority has declared available for the Norman ground or water run of aircraft taking-off in a particular direction;

"technical instructions" means the latest effective edition of the Technical Instructions for the Safe Transport of Dangerous Goods by Air (Doc. 9284-AN/905), including the supplement and any addendum, approved and published by decision of the Council of the ICAO: the term "Technical Instructions" is used in these Regulations;

"terminal control area" means a control area normally established at the confluence of ATC routes in the vicinity of one or more major aerodromes;

"terrain awareness warning system" means a system that provides the flight crew with sufficient information and alerting to detect a potentially hazardous terrain situation and so the flight crew may take effective action to prevent a controlled flight into terrain (CFIT) event;

"threat" means as relating to flight, events or errors that occur beyond the influence of the flight crew, increase operational complexity and which must be managed to maintain the margin of safety;

"threat management" means the process of detecting and responding to the threats with counter-measures that reduce or eliminate the consequences of threats, and mitigate the probability of errors or undesired aircraft state;

"total estimated elapsed time" means for IFR flights, the estimated time required from take-off to arrive over that designated point, defined by reference to navigation aids, from which it is intended that an instrument approach procedure will be commenced, or, if no navigation aid is associated with the destination aerodrome, to arrive over the destination aerodrome. For VFR flights, the estimated time required from take-off to arrive over the destination aerodrome;

"Total Vertical Error (TVE)" means the vertical geometric difference between the actual pressure altitude flown by an aircraft and its assigned pressure altitude (flight level);

"traceability" means a characteristic of a calibration, analogous to a pedigree: a traceable calibration is achieved when each Measurement Device and Working Standard, in a hierarchy stretching back to the National Standard, was itself properly calibrated, and the results properly documented: the documentation provides the information needed to show that all calibrations in the chain of calibrations were properly performed;

"track" means the projection on the earth's surface of the path of an aircraft, the direction of which path at any point is usually expressed in degrees from North (true, magnetic or grid);

"traffic avoidance advice" means advice provided by an air traffic services unit specifying manoeuvres to assist a pilot to avoid a collision;

"traffic information" means information issued by an air traffic services unit to alert a pilot to other known or observed air traffic which may be in proximity to the position or intended route of flight and to help the pilot avoid a collision;

"training manual" means a manual containing the training goals, objectives, standards syllabi, and curriculum for each phase of the approved training course;

"training procedures manual" means a manual containing procedures, instructions and guidance for use by personnel of an Approved Training Organization in the execution of their duties in meeting the requirements of the certificate;

"training specifications" means a document issued to an Aviation Training Organization certificate holder by the Authority that specifies training programme requirements and authorizes the conduct of training, checking, and testing with any limitations thereof;

"training programme" means a programme that consists of courses, courseware, facilities, flight training equipment, and personnel necessary to accomplish a specific training objective: it may include a core curriculum and a specialty curriculum;

"transfer standard" means any standard that is used to compare a measurement process, system, or device at one location or level with another measurement process, system or device at another location or level;

"transition altitude" means the altitude at or below which the vertical position of an aircraft is controlled by reference to altitudes;

"training time" means the time spent receiving from an authorized instructor flight training, ground training, or simulated flight training in an approved flight simulation training device;

"training to proficiency" means the process of the check airman administering each prescribed manoeuvre and procedure to a pilot as necessary until it is performed successfully during the training period;

"type certificate" means a document issued by a Contracting State to define the design of an aircraft type and to certify that this design meets the appropriate airworthiness requirements of that State;

"ultimate load" means the limit load multiplied by the appropriate factor of safety;

"undesired aircraft state" occurs when the flight crew places the aircraft in a situation of unnecessary risk;

"UN number" means the four-digit number assigned by the United Nations Committee of Experts on the Transport of Dangerous Goods to identify a substance or a particular group of substances;

"unit load device" means any type of freight container, aircraft container, aircraft pallet with a net, or aircraft pallet with a net over an igloo;

"unmanned free balloon" means a non-power-driven, unmanned, lighter-than-air aircraft in free flight;

"validation" means the action taken by Malaŵi as an alternative to issuing its own licence, in accepting a licence issued by another Contracting State as the equivalent of its own licence for use on aircraft registered in Malaŵi;

"validation of a certificate of airworthiness" means the action taken by a Contracting State, as an alternative to issuing its own Certificate of Airworthiness, in accepting a Certificate of Airworthiness issued by any other Contracting State as the equivalent of its own Certificate of Airworthiness;

"VFR" means the symbol used to designate the visual flight rules;

"VFR flight" means a flight conducted in accordance with the visual flight rules;

"visibility" means visibility for aeronautical purposes is the greater of—

(*a*) the greatest distance at which a black object of suitable dimensions, situated near the ground, can be seen and recognized when observed against a bright background; and

(*b*) the greatest distance at which lights in the vicinity of 1,000 candelas can be seen and identified against an unlit background;

"visual meteorological conditions" means meteorological conditions expressed in terms of visibility, distance from cloud, and ceiling, equal to or better than specified minima;

"VMC" means the symbol used to designate visual meteorological conditions;

"wet lease" means the lease of an aircraft with crew and other back-up; and

"will" means an action incumbent upon the Authority.

PART II

General Administrative Rules Governing Testing, Licences, and Certificates

Display and inspection of licences and certificates

3.—(1) Pilot licence—

(*a*) to act as a pilot of a civil aircraft of Malaŵi registry, a pilot shall have in his or her physical possession or readily accessible in the aircraft a valid pilot licence or special purpose authorization issued under these Regulations; and

(*b*) to act as a pilot of a civil aircraft of foreign registry within Malaŵi, a pilot shall be the holder of a valid pilot licence, and have the pilot licence in his or her physical possession or readily accessible in the aircraft.

(2) Flight instructor licence—A person who holds a flight instructor licence shall have that licence, or other documentation acceptable to the Authority, in that person's physical possession or readily accessible in the aircraft when exercising the privileges of that licence.

(3) Other airman licence—A person required by any part of these Regulations to have an airman's licence shall have it in his or her physical possession or readily accessible in the aircraft or at the work site when exercising the privileges of that licence.

(4) Medical certificate—A person required by any part of these Regulations to have a current medical certificate shall have it in his or her physical possession or readily accessible in the aircraft or at the work site when exercising the privileges of that certificate.

(5) Approved Training Organization (ATO) certificate—Each holder of a certificate shall display that certificate in a place in the school that is normally accessible to the public and that is not obscured.

(6) Aircraft Certificate of Registration—Each owner or operator of an aircraft shall carry the aircraft certificate of registration on the aircraft and have it available for inspection.

(7) Aircraft Certificate of Airworthiness—Each owner or operator of an aircraft shall display that certificate in the cabin of the aircraft or at the entrance to the aircraft flight deck.

(8) Approved Maintenance Organization (AMO) Certificate—Each holder of an AMO certificate shall prominently display that certificate in a place accessible to the public in the principal business office of the AMO.

(9) Aerial work certificate—Each owner or operator of an aircraft engaged in aerial work shall carry that certificate or a certified true copy of that certificate on the aircraft and have it available for inspection.

(10) Air operator certificate—Each owner or operator of an aircraft engaged in commercial air transport shall carry the air operator certificate or a certified true copy of that certificate on the aircraft and have it available for inspection.

(11) Inspection of licence—Each person who holds an airman or crew member licence, medical certificate, or authorization required by these Regulations shall present it for inspection upon a request from—

(*a*) the Authority; or

(*b*) any local law enforcement officer.

Change of name

4.—(1) A holder of a licence or certificate issued under these Regulations may apply to change the name on a licence or certificate. The holder shall include with any such request—

(*a*) the current licence or certificate; and

(*b*) a copy of the marriage licence, court order, or other document verifying the name change.

(2) The Authority will return to the airman the documents specified in subregulation (1) of this Regulation.

Change of address

5.—(1) The holder of an airman licence or certificate, or approved training organization certificate who has made a change in permanent mailing address may not, after 30 days from that date, exercise the privileges of the licence or certificate unless the holder has notified the Authority in writing of the new permanent mailing address, or current residential address if the permanent mailing address includes a post office box number.

Replacement of a lost or destroyed airman licence or medical certificate or knowledge test report

6.—(1) An applicant who has lost or destroyed one of the following documents issued under these Regulations shall request a replacement in writing from the office designated by the Authority—

(*a*) an airman licence;

(*b*) a medical certificate; or

(*c*) a knowledge test report.

(2) The airman or applicant shall state in the request letter—

(*a*) the name of the airman or applicant;

(*b*) the permanent mailing address, or if the permanent mailing address includes a post office box number, the person's current residential address;

(*c*) the social security number or equivalent national identification number;

(*d*) the date and place of birth of the airman or applicant; and

(*e*) any available information regarding the—

(i) grade, number, and date of issuance of the licence, and the ratings, if applicable;

(ii) date of the medical examination, if applicable; and

(iii) date the knowledge test was taken, if applicable;

(*f*) after receiving a facsimile from the Authority confirming that the lost or destroyed document was issued, an airman may carry the facsimile *in lieu* of the lost or destroyed document for up to 60 days pending the airman's receipt of a duplicate document.

Falsification, reproduction, or alteration of applications, licences, certificates, logbooks, reports, or records

7.—(1) No person may make or cause to be made concerning any licence, certificate, rating, qualification, or authorization, application for or duplicate thereof, issued under these Regulations—

(*a*) any fraudulent or intentionally false statement;

(*b*) any fraudulent or intentionally false entry in any logbook, record, or report that these Regulations require, or used to show compliance with any requirement of these Regulations;

(*c*) any reproduction for fraudulent purpose; or

(*d*) any alteration.

(2) Any person who commits any act prohibited under regulation 9 (1) of these Regulations may have his or her airman licence, rating, certificate, qualification, or authorization revoked or suspended.

Voluntary surrender or exchange of licence

8.—(1) The holder of a licence or certificate issued under these Regulations may voluntarily surrender it for—

(*a*) cancellation;

(*b*) issuance of a lower grade licence; or

(*c*) another licence with specific ratings deleted.

(2) An applicant requesting voluntary surrender of a licence shall include the following signed statement or its equivalent: "This request is made for my own reasons, with full knowledge that my (insert name

of licence or rating, as appropriate) may not be re-issued to me unless I again pass the tests prescribed for its issuance."

Prohibition on performance during medical deficiency

9. A person who holds a current medical certificate issued under these Regulations shall not act in a capacity for which that medical certificate is required while that person—

(*a*) knows or has reason to know of any medical condition that would make the person unable to meet the requirements for the required medical certificate; or

(*b*) is taking medication or receiving other treatment for a medical condition that results in the person being unable to meet the requirements for the required medical certificate.

Psychoactive substance testing and report

10.—(1) Any person who performs any function requiring a licence, rating, qualification, or authorization prescribed by these Regulations directly or by contract for a certificate holder under the provisions of these Regulations may be tested for usage of psychoactive substances.

(2) Chemicals considered psychoactive substances are listed in IS 1:12 contained in the Schedule hereto.

(3) Any person subject to these Regulations who refuses to submit to a test to indicate the percentage by weight of alcohol in the blood, when requested by a law enforcement officer or the Authority, or refuses to furnish or to authorize the release of the test results requested by the Authority may—

(*a*) be denied any licence, certificate, rating, qualification, or authorization issued under these Regulations for a period of up to 1 year after the date of that refusal; or

(*b*) have his or her licence, certificate, rating, qualification, or authorization issued under these Regulations suspended or revoked.

(4) Any person subject to these Regulations who refuses to submit to a test to indicate the presence of narcotic drugs, marijuana, or depressant or stimulant drugs or substances in the body, when requested by a law enforcement officer or the Authority, or refuses to furnish or to authorize the release of the test results requested by the Authority may—

(*a*) be denied any licence, certificate, rating, qualification, or authorization issued under these Regulations for a period of up to 1 year after the date of that refusal; or

(*b*) have his or her licence, certificate, rating, qualification, or authorization issued under these regulations suspended or revoked.

(5) Any person subject to these Regulations who is convicted for the violation of any local or national statute relating to the growing, processing, manufacture, sale, disposition, possession, transportation,

or importation of narcotic drugs, marijuana, or depressant or stimulant drags or substances, may—

(*a*) be denied any licence, certificate, rating, qualification, or authorization issued under these Regulations for a period of up to 1 year after the date of final conviction; or

(*b*) have his or her licence, certificate, rating, qualification, or authorization issued under these Regulations suspended or revoked.

PART III

Investigative and Enforcement Procedures

Investigative procedures on reports of violations

11.—(1) Any person who knows of a violation of the Act or these Regulations or orders thereunder should report it to the Authority.

(2) Each report made under this regulation together with any other information the Authority may have that is relevant to the matter reported will be reviewed by the Authority to determine the nature and type of any additional investigation or enforcement action the Authority will take.

General investigations

12. The Director of Civil Aviation may conduct investigations, hold hearings, issue subpoenas, require the production of relevant document, records, and property, and take evidence and depositions.

Formal complaints

13. Complaints submitted to the Authority under this Regulation shall be in a form and manner prescribed by the Authority.

Administrative action

14.—(1) If it is determined that a violation or an alleged violation of the Act, or an Order or Regulation issued under it, is appropriate for administrative action, the Authority may take administrative action by one of the following—

(*a*) a "Warning Notice" that shall recite available facts and information about the incident or condition and indicate that it may have been a violation; or

(*b*) a "Letter of Correction" which confirms the Authority's decision in the matter and states the necessary corrective action the alleged violator has taken or agreed to take: if the agreed corrective action is not fully completed, formal certificate action may be taken in accordance with regulation 20 of these Regulations.

(2) An administrative action under this section does not constitute a formal adjudication of the matter.

Legal enforcement actions

15. IS 1:17 in the Schedule hereto contains a sample of sanctions that will be imposed by the Authority to enforce other aviation regulations and the Act.

Civil penalties

16.—(1) Any person, other than a person conducting an operation in commercial air transport or international commercial air transport, who violates any provision of the Act, these other aviation safety regulations, or any order issued thereunder, is subject to a civil penalty imposed by the Authority in accordance with the Act.

(2) Any person conducting an operation in commercial air transport or international commercial air transport, who violates any provision of the Act, these other aviation safety regulations, or any order issued thereunder, is subject to a civil penalty imposed by the Authority in accordance with section 19 (3) of the Act.

(3) Civil penalties may be assessed instead of or in addition to any licence or certificate action described in regulation 20 of these Regulations.

(4) Guidelines for civil penalties and certificate actions are listed in IS 1:17 contained in the Schedule hereto.

Criminal penalties

17.—(1) The Act establishes criminal penalties for any person who knowingly and willfully violates specified provisions of the Act, or any regulation or order issued thereunder.

(2) If the Authority becomes aware of a possible violation of any criminal provision of the Act that is under the jurisdiction of another Malaŵi government agency, the Authority shall immediately report it to the appropriate Malaŵi government agency in a manner prescribed by both government agencies.

(3) Guidelines for criminal penalties and certificate actions are listed in IS 1:17 contained in the Schedule hereto.

Certificate action

18.—(1) Suspension or revocation of a licence or certificate for violation of the regulations—

(*a*) the holder of any licence or certificate issued under these Regulations who violates any provision of the Act, as amended, or any regulation or order issued thereunder, is subject to suspension or revocation of the licence or certificate, in accordance with the provisions of the Act;

(*b*) any licence or certificate issued under these Regulations ceases to be effective, if it is surrendered, suspended, or revoked; and

(*c*) the holder of any licence or certificate issued under these Regulations that has been suspended or revoked shall return that licence to the Authority when requested to do so by the Authority.

(2) Re-examination or re-inspection of a certificate or licence for lack of qualification—

(*a*) under the Act, the Authority may re-inspect any civil aircraft, aircraft engine, propeller, appliance, air operator, school, or approved

maintenance organization, or any civil airman holding a certificate or licence issued under the Act;

(*b*) if, as a result of that re-inspection or re-examination, or any other investigation made by the Authority, the Authority determines that a lack of qualification exists, and that safety in air transport and the public interest requires it, the Authority may issue an order to amend, modify, suspend, or revoke the licence or certificate in whole or in part;

(*c*) procedures for the re-examination of personnel licences, ratings, authorizations, or certificates are set forth in the Aviation (Personnel Licensing) Regulations.

(3) Notice and opportunity to be heard—Unless safety in air transport requires immediate action, prior to a final determination under regulation 17, the Authority shall provide the person with an opportunity to be heard as to why such certificate or licence should not be amended, modified, suspended, or revoked.

(4) Reapplication after revocation—Unless otherwise authorized by the Authority, a person whose licence, certificate, rating, or authorization has been revoked may not apply for any licence, certificate, rating, or authorization for 1 year after the date of revocation.

(5) Reapplication after suspension—Unless otherwise authorized by the Authority, a person whose licence has been suspended may not apply for any licence, rating, or authorization during the period of suspension.

Seizure of aircraft and prevention of flight

19.—(1) As provided by the Act, an aircraft that is involved in a violation for which a civil penalty has been imposed or may be imposed on its owner or operator may be subject to seizure by the Authority in accordance with enforcement procedures set forth by the Authority.

Power to prevent flight

20.—(1) The Authority is authorized to direct the operator or prevent airman of a civil aircraft that the aircraft is not to be operated in situations where—

(*a*) the aircraft shall not be airworthy;

(*b*) the airman may not be qualified or physically or mentally capable for the flight; or

(*c*) the operation would cause imminent danger to persons or property on the ground.

(2) The Authority may take such steps as are necessary to detain such aircraft or airmen.

Obstruction of persons

21. No person shall willfully obstruct or impede any person acting in the exercise of his powers or performance of his duties under these Regulations.

Enforcement of directions

22. Any person who fails to comply with any direction given either generally or specially by the Authority or by any authorized person under any provision of these Regulations shall be deemed for the purposes of these Regulations to have contravened that provision.

Exemptions from liability

23. The Government and the servants or agents of the Government shall not be liable for loss or damage by any cause to aircraft, or for loss or damage from whatever cause arising to goods, mail or other articles, or for loss or injury from whatever cause arising to passengers or other persons (including pilots, engineers or other personnel of aircraft) landing at, departing from, accommodated in or at any Government aerodrome or flying in Malaŵi airspace even if such loss or damage or injury is caused by or arises from negligence on the part of any servants or agents of Government.

PART IV

Exemptions

Application

24. This Part prescribes procedures for the request, review, and denial or issuance of exemptions from all other aviation regulations.

General procedure for test

25.—(1) Any interested person may apply to the Authority for an exemption from these Regulations.

(2) Only the Authority may issue exemptions, and no person may take or cause to be taken any action not in compliance with these Regulations unless the Authority has issued an applicable exemption to the person.

(3) Exemptions will only be granted in extraordinary circumstances.

Requirements for application for exemption

26.—(1) Applications for an exemption should be submitted at least 60 days in advance of the proposed effective date, to obtain timely review.

(2) The request must contain the applicant's—

(*a*) name;

(*b*) street address and mailing address, if different;

(*c*) telephone number;

(*d*) fax number if available;

(*e*) email address if available; and

(*f*) agent for all purposes related to the application.

(3) If the applicant is not a citizen or legal resident of Malaŵi, the application must specify a Malaŵi agent for service.

Substance of the request for exemption

27.—(1) Applications must contain the following—

(*a*) a citation of the specific requirement from which the applicant seeks relief;

(*b*) description of the type of operations to be conducted under the proposed exemption;

(*c*) the proposed duration of the exemption;

(*d*) an explanation of how the exemption would be in the public interest, that is, benefit the public as a whole;

(*e*) a detailed description of the alternative means by which the applicant will ensure a level of safety equivalent to that established by the Regulation in question;

(*f*) a review and discussion of any known safety concerns with the requirement, including information about any relevant accidents or incidents of which the applicant is aware; and

(*g*) if the applicant seeks to operate under the proposed exemption outside of Malaŵi airspace, the application must also indicate whether the exemption would contravene any provision of the Standards and Recommended Practices of the International Civil Aviation Organization (ICAO).

(2) If the applicant seeks emergency processing, the application must contain supporting facts and reasons that the application was not timely filed, and the reasons it is an emergency. The Authority may deny an application if the Authority finds that the applicant has not justified the failure to apply in a timely fashion.

Review, publication and issue or denial of the exemption—initial review by the authority

28.—(1) The Authority will review the application for accuracy and compliance with the requirements of this regulation and regulation 29 hereunder.

(2) If the application appears on its face to satisfy the provisions of this regulation and regulation 29, the Authority determines that a review of its merits is justified, the Authority will publish a detailed summary of the application for comment and specify the date by which comments shall be received by the Authority for consideration.

(3) If the filing requirements of this regulation and regulation 29 hereunder have not been met, the Authority will notify the applicant and take no further action until the applicant complies with the requirements of this regulation and regulation 29 hereunder.

Evaluation of the request

29.—(1) After initial review, if the filing requirements have been satisfied, the Authority shall conduct an evaluation of the request to include—

(*a*) a determination of whether an exemption would be in the public interest;

(*b*) a determination, after a technical evaluation, of whether the applicant's proposal would provide a level of safety equivalent to that established by this Regulation—if it appears to the Authority that a technical evaluation of the request would impose a significant burden on the Authority's technical resources, the Authority may deny the exemption on that basis;

(*c*) a determination, if the applicant seeks to operate under the exemption outside of Malaŵi airspace, of whether a grant of the exemption would contravene the applicable ICAO Standards and Recommended Practices;

(*d*) an evaluation of comments received from interested parties concerning the proposed exemption; and

(*e*) a recommendation, based on the preceding elements, of whether the request should be granted or denied, and of any conditions or limitations that should be part of the exemption.

Notification of determination

30.—(1) The Authority shall notify the applicant by letter and publish a detailed summary of its evaluation and decision to grant or deny the request. The summary shall specify the duration of the exemption and any conditions or limitations to the exemption.

(2) If the request is for emergency relief, the Authority will publish the application and/or the Authority's decision as soon as possible after processing the application.

(3) If the exemption affects a significant population of the aviation community of Malaŵi the Authority shall also publish the summary in its aeronautical information publications.

Extension of the exemption to other interested parties

31.—(1) If the Authority determines that an exemption should be granted, other persons or organizations may apply to the Authority to be included in the relief granted.

(2) Such applications shall be in accordance with the requirements of regulations 28 and 29 of these Regulations.

(3) If the Authority determines that the request merits extension of the exemption to the applicant, it shall notify the applicant by letter, specifying the duration of the exemption, and listing any additional conditions that may pertain to the applicant that are not addressed in the underlying exemption.

PART V

Safety Management

Safety management

32.—(1) The AOC, ATO, and AMO shall implement a safety management system acceptable to the Authority that as a minimum—

(*a*) identifies safety hazards;

(*b*) ensures the implementation of remedial action necessary to maintain agreed safety performance;

(*c*) provides for continuous monitoring and regular assessment of the safety performance; and

(*d*) aims at a continuous improvement of the overall performance of the safety management system.

(2) The safety management system shall clearly define lines of safety accountability throughout the approved training organization, including a direct accountability for safety on the part of senior management.

(3) An AOC holder that operates aircraft with a maximum certificated take-off mass more than 27,000 kg shall include a flight data analysis programme as part of its safety management system.

(4) The AOC's holder flight data analysis (FDA) programme shall be non-punitive and contain adequate safeguards to protect the source(*s*) of the data.

(5) The AOC holder's safety management system shall include a flight safety documents system for the use and guidance of its operational personnel.

(6) The AOC holder's fatigue risk management programme shall be incorporated within the framework of its safety management system.

(7) The safety management system shall contain the components and elements listed in IS 1:34 contained in the Schedule hereto.

PART VI

Control of Air Traffic

Prohibition of flying

33.—(1) The Authority may, where it deems necessary in the public interest to restrict or prohibit flying temporarily over any area of Malaŵi or along any route therein by reason of—

(*a*) the intended gathering or movement of a large number of persons;

(*b*) the intended holding of an aircraft race or contest or of an exhibition of flying; or

(*c*) national defence or any other reason affecting the public interest.

(2) The Authority may give directions prohibiting, restricting or imposing conditions on flight, either generally or in relation to any class or type of aircraft, over any such area or along any such route, and an aircraft shall not fly in contravention of such directions.

Designation of airways

34.—(1) The Director shall develop, plan for, and formulate air routes and policy with respect to the use of the navigable airspace of Malaŵi.

The Director shall assign the use of the navigable airspace under such terms, conditions, and limitations as the Director shall find necessary to ensure the safety of aircraft and the efficient utilization of such airspace.

(2) The authority of the Director under subregulation (1) shall be exercised only in that airspace for which air traffic control responsibility has not been assigned to a foreign country by international agreement or other arrangement.

(3) The Authority may designate as an air route a defined airspace identified to the extent necessary for the application of flight rules and forming a route between two points.

(4) The Authority may designate as an airway a defined air space which consists of or is within a control area, forms a path identified by an area of specified width on the surface of the earth and is equipped with radio navigation aids.

(5) The Authority may determine the conditions of use of any air route or air way designated by the Director.

(6) The Authority shall cause to be notified any such designation or determination as is mentioned in this regulation.

(7) The Director may, within the limits of available appropriations—

(*a*) acquire, establish, and improve air navigation facilities wherever necessary; and

(*b*) operate and maintain such air navigation facilities.

Balloons, kites

35.—(1) Except with a written permission of the Authority and in accordance with any conditions subject to which the permission may be granted within Malaŵi—

(*a*) a captive balloon or kite shall not be flown at a height of more than 200 feet above the ground level or within the 60 meters of any vessel, vehicle or structure;

(*b*) captive balloon shall not be thrown within 3 miles of an aerodrome;

(*c*) balloon exceeding 2 meters in any linear dimension at any stage of its flight, including any basket or other equipment attached to the balloon, shall not be flown in controlled airspace;

(*d*) a kite shall not be flown within 3 miles of any aerodrome; and

(*e*) an airship shall not be moored.

(2) A captive balloon when in flight shall be securely moored, and shall not be left unattended unless it is fitted with a device which ensures its automatic deflation if it breaks free of its moorings.

PART VII

Delegation of Powers and Statistical Returns

Delegation of powers

36.—(1) The Minister may, by writing under his hand, delegate any of his powers and functions under these Regulations (except this power of delegation), in relation to any matter or class or matters, to the Director of Civil Aviation so that the delegated powers and functions shall be exercised by the Director with respect to the matter specified in the instrument of delegation as fully and effectually as by the Minister.

(2) The Director may, by writing under his hand delegate any of his powers and functions under these Regulations (except this power of delegation), in relation to any matter or class or matters or in relation to any part of Malaŵi so that the delegated powers or functions shall be exercised by the delegate with respect to the matter or class of matters, or the part of Malaŵi specified in the instrument of delegation as fully and effectually as by the Director.

(3) The Director is authorized to delegate any assigned powers and duties to any properly qualified private person, subject to such regulation, supervision, and review as may be prescribed. However, the Director shall ensure that such functions are not delegated in such a way that air operators, aerial work or general aviation operators and maintenance facilities, in effect, regulate themselves.

Statistical returns

37. All operators shall render monthly returns or such other returns or information as and when required for statistical purposes to the Authority.

PART VIII

Certification, Licensing and Registration of Aerodromes

Certification of aerodromes

38. The Authority may certify any aerodrome in Malaŵi serving international scheduled flights subject to the operator of the aerodrome taking the necessary safety and security measures at the aerodrome.

Licensing of aerodromes

39. The Authority may license any aerodrome in Malaŵi subject to such conditions as he thinks fit, for the take-off and landing of aircraft engaged in flights for the public transport of passengers, or for the purpose of instruction in flying, or any other purposes by any classes of such aircraft.

SCHEDULE

Implementing Standards

(General Policies, Procedures and Definitions)

Implementing Standards

IS 1:12 List of Psychoactive Substances

The following are deemed to be psychoactive substances—

(1) Alcohol

(2) Apioids

(3) Cannabinoids

(4) Sedatives and hypnotics

(5) Cocaine and other stimulants (except caffeine)

(6) Hallucinogens

(7) Volatile solvents

IS 1:17 Legal Enforcement Actions

(1) These sanction guidance tables provide a recommended approach to assessment of sanctions by the authority for violations of the Aviation Regulations.

(2) These tables describe civil penalties as minimum, moderate, or maximum for a single violation of a particular regulation.

TABLE 1—RANGE OF CIVIL PENALTIES

Party committing violation	*Amount of Penalties in US$*	
Air Carriers	Maximum . .	50,000
	Moderate . .	20,000
	Minimum . .	5,000
Airport Operators	Maximum . .	25,000
	Moderate . .	10,000
	Minimum . .	2,500
Air Carrier Personnel	Maximum . .	5,000
	Moderate . .	2,000
	Minimum . .	500
General Aviation Owners, Operators, Mechanics, and non-licensed persons	Maximum . .	3,000
	Moderate . .	2,000
	Minimum . .	400

Party committing violation		*Amount of Penalties in US$*
Approved Maintenance Organizations	Maximum . .	20,000
	Moderate . .	10,000
	Minimum . .	2,500
Approved Training Organizations	Maximum . .	20,000
	Moderate . .	10,000
	Minimum . .	2,500

1. Air Operators and Airport Operators

Violation	*Recommended Sanction per Violation*	*Certificate Action*
(1) Maintenance manual—		
(*a*) failure to maintain current manual	Minimum civil penalty . .	Up to 7 day suspension
(*b*) failure to provide adequate instructions and procedures in manual . .	Moderate to maximum civil penalty	
(*c*) failure to distribute manual to appropriate personnel	Minimum to moderate civil penalty	
(*d*) release of aircraft without required equipment	Moderate to maximum civil penalty	Up to 7 day suspension
(2) Failure to comply with airworthiness directives	Moderate to maximum civil penalty	
(3) Operations specifications—		
(*a*) failure to comply with inspection and overhaul time limitations . .	Moderate civil penalty . .	Up to 7 day suspension
(*b*) operations contrary to operations specifications—technical non-compliance	Minimum civil penalty	
(*c*) operations contrary to operations specifications—likely potential or actual adverse effect on safe operations	Moderate to maximum civil penalty	
(4) Failure to provide adequately for proper servicing, maintenance, repair, and inspection of facilities and equipment	Maximum civil penalty . .	Indefinite suspension until proper servicing, maintenance, repair, and inspection of facilities and equipment is provided to revocation.
(5) Failure to provide or maintain a maintenance and inspection organization	Maximum civil penalty . .	Indefinite suspension until appropriate maintenance and inspection organization is provided to revocation.

Violation	*Recommended Sanction per Violation*	*Certificate Action*
(6) Training programme—		
(*a*) failure to have or maintain an effective training programme	Maximum civil penalty . .	Indefinite suspension until compliance is demonstrated to revocation
(*b*) failure to maintain training programme	Moderate to maximum civil penalty	
(*c*) failure to train personnel adequately	Moderate to maximum civil penalty	
(7) Maintenance or Aircraft Paperwork . .	Moderate to maximum civil penalty	
(*a*) incomplete or unsigned release . .	Minimum to maximum civil penalty	
(*b*) failure to revise aircraft data after repair	Moderate to maximum civil penalty	
(8) Performance of maintenance—		
(*a*) by unauthorized person	Maximum civil penalty	
(*b*) failure to perform or improper maintenance	Moderate to maximum civil penalty	
(9) failure to revise aircraft data after repair	Moderate to maximum civil penalty	
(10) Records and reports—		
(*a*) failure to make accurate mechanical interruption summary report . .	Moderate to maximum civil penalty	
(*b*) failure to make available reports of major alterations or repairs . .	Moderate to maximum civil penalty	Indefinite suspension to revocation
(*c*) failure to make accurate mechanical reliability reports	Moderate to maximum civil penalty	
(*d*) failure to keep maintenance records	Maximum civil penalty to 7-day suspension and thereafter until aircraft is in airworthy conditions	
(*e*) failure to make required entry in aircraft log	Moderate to maximum civil penalty	
(*f*) failure to make available pilot records	Moderate to maximum civil penalty	Indefinite suspension to revocation
(*g*) failure to make available load manifests	Moderate to maximum civil penalty	Indefinite suspension to revocation
(*h*) failure to monitor and record en route radio communications	Moderate to maximum civil penalty	

Violation	*Recommended Sanction per Violation*	*Certificate Action*
(*i*) deliberate violation—intentional false or fraudulent entry; reproduction, or alteration in record or report		Revocation
(*j*) deliberate violation—other		180 day suspension to revocation
(11) Operation of an unairworthy aircraft—		
(*a*) technical non-conformity to type certificate, but no likely effect (potential or actual) on safe operation	Minimum civil penalty	
(*b*) non-conformity which may have, or has, an adverse effect on safety of operation	Moderate to maximum civil penalty	
(*c*) release of aircraft without required equipment	Moderate to maximum civil penalty	Up to 7 day suspension
(12) Provisions specific to passenger-carrying—		
(*a*) boarding or serving alcoholic beverages to a person who appears to be intoxicated	Maximum civil penalty	
(*b*) failure to brief passengers . .	Moderate to maximum civil penalty	
(*c*) failure to ensure seat and belt for each passenger	Maximum civil penalty	
(*d*) operation without operable public address system	Maximum civil penalty	
(*e*) failure to store baggage properly	Moderate civil penalty	
(13) Failure to make available a seat on the flight deck for Authority inspectors conducting an en route inspection . .	Maximum civil penalty	
(14) Provisions specific to flight deck crew—		
(*a*) using an unqualified crew member	Maximum civil penalty	
(*b*) using a crew member with an expired medical certificate . .	Minimum to moderate civil penalty	
(*c*) flight and duty time violations . .	Moderate civil penalty	
(15) Violation of flight dispatch and release	Moderate to maximum civil penalty	
(16) Other provisions—		
(*a*) improperly returning an aircraft to service	Maximum civil penalty	
(*b*) illegal carriage of controlled substance with knowledge of carrier, i.e., knowledge of management personnel		Revocation.
(*c*) use of unqualified personnel other than flight deck crew member . .	Maximum civil penalty	

Violation	*Recommended Sanction per Violation*	*Certificate Action*
(17) Security violations—		
(*a*) failure to properly screen baggage or each passenger	Maximum civil penalty	
(*b*) unauthorized access to airport operations area	Maximum civil penalty	
(*c*) failure to comply with air carrier security programme, including failure to detect weapons, incendiary and other dangerous devices . .	Maximum civil penalty	
(*d*) management personnel coerce, condone, or encourage falsification of records/reports	Revocation	
(*e*) deliberate failure to maintain employee records	Maximum civil penalty	
(*f*) failure to challenge	Moderate civil penalty	
(*g*) failure to test screeners or test equipment	Moderate civil penalty	
(*h*) failure to properly train	Moderate civil penalty	
(*i*) unintentional failure to maintain screener test records	Minimum to moderate civil penalty	
(*j*) improper use of dosimeters . .	Minimum civil penalty	
(*k*) failure to display identification . .	Minimum to moderate civil penalty	
(*l*) failure to manage/control identification system	Maximum civil penalty	
(*m*) failure to conduct background check	Minimum to moderate civil penalty	
(*n*) failure to detect test objects . .	Maximum civil penalty	
(*o*) failure to comply with approved or current security programme . .	Maximum civil penalty	
(*p*) failure of the law enforcement officer to respond in a timely manner	Maximum civil penalty	
2. Personnel of Air Carriers		
(1) Maintenance, including inspections—		
(*a*) performing maintenance without a licence, rating or authorization . .	Maximum civil penalty	
(*b*) performing maintenance that exceeds limitations		30 to 45 day suspension
(*c*) failure to perform maintenance properly		30 to 120 day suspension

Violation	*Recommended Sanction per Violation*	*Certificate Action*
(2) Inspection personnel—		
(*a*) failure to make required inspection		30 to 60 day suspension
(b) making improper inspection . .		30 to 120 day suspension
(*c*) improperly releasing an aircraft to service		30 to 60 day suspension
(*d*) releasing aircraft for service without required equipment		30 to 60 day suspension
(3) Records and reports—		
(*a*) failure to make entries in aircraft log		15 to 60 day suspension
(*b*) failure to make entries in worksheets		15 to 30 day suspension
(*c*) failure to make entries in other maintenance record	.	15 to 30 day suspension
(*d*) failure to sign off work or inspection performed		15 to 30 day suspension
(*e*) failure to complete and sign maintenance release		15 to 30 day suspension
(*f*) intentional falsification of records or reports		Revocation
(4) Pre-flight—		
(*a*) failure to use pre-flight cockpit checklist		30 to 60 day suspension
(*b*) failure to check aircraft logs, flight manifests, weather, etc.		30 to 90 day suspension
(*c*) failure to make the required inspection		30 to 60 day suspension
(*d*) failure to inspect, or improper inspection of, aircraft		15 to 30 day suspension
(*e*) Failure to ensure seat and belt available for each passenger . .		30 to 60 day suspension
(5) Taxiing—		
(*a*) failure to adhere to taxi clearance or instruction		30 to 60 day suspension
(*b*) collision while taxiing		30 to 180 day suspension
(*c*) jet blast		30 to 120 day suspension
(*d*) taxiing with passenger standing		30 to 60 day suspension
(*e*) taxiing off runway, taxiway or ramp		30 to 90 day suspension
(6) Take-off—		
(*a*) take-off against instruction or clearance		60 to 120 day suspension
(*b*) take-off below weather minima		60 to 120 day suspension
(*c*) take-off in overloaded aircraft (in excess of maximum gross weight)		60 to 120 day suspension

Violation	*Recommended Sanction per Violation*	*Certificate Action*
(7) En route—		
(*a*) deviation from clearance or instruction		30 to 90 day suspension
(*b*) operating VFR within clouds . .		90 day suspension to revocation
(*c*) operation of unairworthy aircraft . .		30 to 180 day suspension
(*d*) unauthorized departure from flight desk		15 to 30 day suspension
(*e*) operating within restricted or prohibited area, or within positive control area with clearance . .		30 to 90 day suspension
(*f*) operating without required equipment		15 to 120 day suspension
(*g*) fuel mismanagement/exhaustion		30 to 150 day suspension
(*h*) operating contrary to NOTAM . .		30 to 90 day suspension
(*i*) unauthorized manipulation of controls		30 to 90 day suspension
(8) Approach to landing—		
(*a*) deviation from clearance or instruction in terminal area . .		30 to 90 day suspension
(*b*) Approach below weather minima		60 to 120 day suspension
(*c*) Exceeding speed limitation in airport traffic areas		30 to 60 day suspension
(9) Landing—		
(*a*) landing at wrong airport		90 to 180 day suspension
(*b*) deviation from instrument approach procedure		30 to 90 day suspension
(*c*) overweight landing		30 to 90 day suspension
(*d*) hard landing		15 to 60 day suspension
(*e*) short or long landing		30 to 180 day suspension
(*f*) wheels up landing		15 to 90 day suspension
(*g*) failure to comply with preferential runway system		15 day suspension
(*h*) deviating from clearance or instruction		30 to 90 day suspension
(10) Unauthorized admission to flight deck		30 to 90 day suspension
(11) Failure to close and lock cockpit door	Maximum civil penalty	to 30 day suspension
(12) Acting as flight crew member while under the influence of liquor or other psychoactive substances, or alcoholic beverage consumption within 8 hours		Emergency revocation
(13) Denial of authorized entry to flight deck		30 to 60 day suspension
(14) Flight and duty time limitations		15 to 90 day suspension

Violation	*Recommended Sanction per Violation*	*Certificate Action*
(15) Operation without required licence, certificate or rating—		
(*a*) medical certificate		15 to 60 day suspension
(*b*) lack of type rating		180 day suspension to revocation
(*c*) missed proficiency check . .		30 to 90 day suspension
(*d*) lack of current experience . .		30 to 90 day suspension
(*e*) failure to have current certificate or licence in possession	Moderate civil penalty	to 7-day suspension
(*f*) operation with known disqualifying physical disability		Revocation
(*g*) operating without valid medical certificate when not medically qualified or application for medical certificate deferred		Revocation
(16) Failure to keep manual current . .	Minimum civil penalty	30 to 90 day suspension

3. Individuals and General Aviation—Owners, Pilots, Maintenance Personnel, Approved Maintenance Organizations, Approved Training Organizations

(1) Owners and operators other than required crew members—		
(*a*) failure to comply with airworthiness directives	Moderate to maximum civil penalty	
(*b*) failure to perform or improper performance of	Moderate to maximum civil penalty	
(*c*) failure to make proper entries in aircraft logs	Minimum to moderate civil penalty	
(*d*) operation of aircraft beyond annual, 100-hour, or progressive inspection	Minimum to moderate civil penalty	
(*e*) operation of unairworthy aircraft	Moderate to maximum civil penalty	
(*f*) intentional falsification of any entry, reproduction, or alternation in any record or report	Maximum civil penalty	Revocation
(2) Aviation maintenance organizations—		
(*a*) failure to provide adequately for proper servicing, maintenance repairs, and inspection	Moderate to maximum civil penalty	Indefinite suspension until compliance to revocation
(*b*) failure to provide adequate personnel who can perform, supervise, and inspect work for which the station is rated	Maximum civil penalty to 7-day suspension and thereafter until adequate personnel are provided	Indefinite suspension until compliance to revocation
(*c*) failure to have enough qualified personnel to keep up with the volume of work	Maximum civil penalty to 7-day suspension and thereafter until certificate holder has enough qualified personnel	to 7-day suspension and thereafter until certificate holder has enough qualified personnel

Violation	*Recommended Sanction per Violation*	*Certificate Action*
(*d*) failure to maintain records of supervisory and inspection personnel	Moderate to maximum civil penalty	
(*e*) failure to maintain performance records and reports	Moderate to maximum civil penalty	
(*f*) failure to ensure correct calibration of all inspection and test equipment is accomplished at prescribed intervals	Minimum to maximum civil penalty	
(*g*) failure to set forth adequate description of work performed . .	Minimum to maximum civil penalty	
(*h*) failure of mechanic to make log entries, records, or reports . .	Moderate to maximum civil penalty	
(*i*) failure to sign or complete maintenance release	Minimum to moderate civil penalty	
(*j*) inspection of work performed and approval for return to service by other than a qualified inspector . .	Maximum civil penalty to 30-day suspension	Up to 30-day suspension
(*k*) failure to have an adequate inspection system that produces satisfactory quality control	Moderate civil penalty to 30 day suspension and thereafter until an adequate inspection system is attained	Up to 30-day suspension and thereafter until an adequate inspection system is attained
(*l*) maintaining or altering an article for which it is rated, without using required technical data, equipment, or facilities	Maximum civil penalty to 30-day suspension	Up to 30-day suspension
(*m*) failure to perform or properly perform maintenance, repairs, alterations, and required inspections	Moderate to maximum civil penalty	Up to 30-day suspension
(*n*) maintaining or altering an airframe, power-plant, propeller, instrument, radio, or accessory for which it is not rated	Maximum civil penalty to revocation	Suspension or revocation
(*o*) failure to report defects or unairworthy conditions to the Authority in a timely manner . .	Moderate to maximum civil penalty	
(*p*) failure to satisfy housing and facility requirements	Moderate civil penalty to suspension until housing and facility requirements are satisfied	
(*q*) change of location, housing, or facilities without advance written approval	Moderate civil penalty to suspension until approval is given	
(*r*) operating as a certificated repair station without a repair station certificate	Maximum civil penalty	

Violation	*Recommended Sanction per Violation*	*Certificate Action*
(*s*) failure to permit Authority to inspect	Maximum civil penalty to suspension until Authority is permitted to inspect	Indefinite suspension until Authority is permitted to inspect
(3) General aviation maintenance personnel—		
(*a*) failure to revise aircraft data after major repairs or alterations . .		30 to 60-day suspension
(*b*) failure to perform or improper performance of maintenance . .		30 to 120-day suspension
(*c*) failure of mechanic to properly accomplish inspection		30 to 60-day suspension
(*d*) failure of mechanic to record inspection		15 to 30-day suspension
(*e*) failure of inspection authorization holder to properly accomplish inspection		60-day suspension to revocation
(*f*) failure of inspection authorization holder to record inspection . .		15 to 30-day suspension
(*g*) maintenance performed by person without a certificate	Moderate to maximum civil penalty	
(*h*) maintenance performed by person who exceeded certificate limitations		15 to 60-day suspension
(*i*) improper approval for return to service		30 to 120-day suspension
(*j*) failure to make maintenance record entries		30 to 60-day suspension
(*k*) failure to set forth adequate description of work performed . .		15 to 30 day suspension
(*l*) falsification of maintenance records		Revocation
(4) Student operations—		
(*a*) carrying passengers		Revocation
(*b*) solo flight without endorsement . .		45 to 90-day suspension
(*c*) operation on international flight . .		60 to 90-day suspension
(*d*) use of aircraft in business . .		30 to 120-day suspension
(*e*) operation for compensation or hire.		Revocation
(5) Instructors for licences, ratings, authorizations and endorsement—		
(*a*) false endorsement of a student licence, rating, authorization, or record		Revocation
(*b*) exceeding flight time limitations or other training time limitations . .		30 to 90-day suspension
(*c*) instruction in aircraft, and/or course for which he/she is not rated . .		30 to 180-day suspension

Violation	*Recommended Sanction per Violation*	*Certificate Action*
(6) Operational violations—		
(*a*) operation without valid airworthiness or registration certificate . .	30 to 90 day suspension	
(*b*) failure to close flight plan or file arrival notice	Administrative action to minimum civil penalty	
(*c*) operation without valid pilot certificate (no certificate). . . .	Maximum civil penalty	
(*d*) operation while pilot certificate is suspended		Emergency revocation
(*e*) operation without pilot or medical certificate in personal possession	Minimum civil penalty	
(*f*) operation without valid medical certificate (no medical certificate issued)		Revocation
(*g*) operation for compensation or hire without commercial pilot certificate		90 day suspension to revocation
(*h*) operation without type or class rating		60 to 120-day suspension
(*i*) failure to comply with special conditions of medical certificate		90-day suspension to revocation
(*j*) operation with known physical deficiency		90-day suspension to revocation
(*k*) failure to obtain preflight information		30 to 90-day suspension
(*l*) deviation from ATC instruction or clearance		30 to 90-day suspension
(*m*) taxiing, take-off, or landing without a clearance where ATC tower is in open		30 to 90-day suspension
(*n*) failure to maintain radio communications in airport traffic area	30 to 60 day suspension	
(*o*) failure to comply with airport traffic pattern		30 to 60-day suspension
(*p*) operation in terminal control area without or contrary to a clearance		60 to 90-day suspension
(*q*) failure to maintain altitude in airport traffic area		30 to 60-day suspension
(*r*) exceeding speed limitations in traffic area		30 to 60-day suspension
(*s*) operation of unairworthy aircraft		30 to 180-day suspension

Violation	*Recommended Sanction per Violation*	*Certificate Action*
(*t*) failure to comply with airworthiness directives		30 to 180-day suspension
(*u*) operation without required instruments and/or equipment . .		30 to 90-day suspension
(*v*) exceeding operating limitations . .		30 to 90-day suspension
(*w*) operation within prohibited or restricted area, or within positive control area		30 to 90-day suspension
(*x*) failure to adhere to right of way rules		30 to 90-day suspension
(*y*) failure to comply with VFR cruising altitudes		30 to 90-day suspension
(*z*) failure to maintain required minimum altitudes over structures, persons, or vehicles over—		
(i) congested area		60 to 180-day suspension
(ii) sparsely populated area . .		30 to 120-day suspension
(*aa*) failure to maintain radio watch while under IFR		30 to 60-day suspension
(*bb*) failure to report compulsory reporting points		30 to 60-day suspension
(*cc*) failure to display position lights		30 to 60-day suspension
(*dd*) failure to maintain proper altimeter settings		30 to 60-day suspension
(*ee*) weather operations—		
(i) failure to comply with visibility minima in controlled airspace		60 to 180-day suspension
(ii) failure to comply with visibility minima outside controlled airspace		30 to 120-day suspension
(iii) failure to comply with distance from clouds requirements in controlled airspace		60 to 180-day suspension
(iv) failure to comply with distance from clouds requirements outside of controlled airspace		30 to 120-day suspension
(*ff*) failure to comply with IFR landing minima		45 to 180-day suspension
(*gg*) failure to comply with instrument approach procedures		45 to 180-day suspension
(*hh*) careless or reckless operations—		
(i) fuel mismanagement/exhaustion		30 to 150-day suspension

Violation	*Recommended Sanction per Violation*	*Certificate Action*
(ii) wheels up landing		30 to 60-day suspension
(iii) short or long landing		30 to 90-day suspension
(iv) landing on or taking-off from closed runway		30 to 60-day suspension
(v) landing or taking-off from ramps or other improper areas		30 to 120-day suspension
(vi) taxiing collision		
(vii) leaving aircraft unattended with motor running		30 to 90-day suspension
(viii) propping aircraft without a qualified person at controls . .		30 to 90-day suspension
(*ii*) passenger operations—		
(i) operation without approved seat belts		30 to 60-day suspension
(ii) carrying passengers who are under the influence of drugs or alcohol		60 to 120-day suspension
(iii) performing acrobatics when all passengers are not equipped with approved parachutes . .		60 to 90-day suspension
(7) ID plate violations—		
(*a*) Aircraft Registration Marking—Improper removal, changing or placing of identification information on a product—		
(i) inadvertent	Minimum civil penalty	
(ii) intentional misrepresenting identity of product	Maximum civil penalty	
(*b*) Aircraft Registration Marking—Improper removal or installation of identification place—		
(i) inadvertent	Minimum civil penalty	
(ii) intentional misrepresenting identity of product	Maximum civil penalty	
(8) Approved training organizations—		
(*a*) knowingly permitting school aircraft to be used for unlawful carriage of controlled substances or other illegal activities		Revocation
(*b*) refusal to permit inspection of facilities, equipment, personnel, records, or certificate	Maximum civil penalty	
(*c*) false advertising	Maximum civil penalty	

Violation	*Recommended Sanction per Violation*	*Certificate Action*
(*d*) improper crediting to or graduation of student—		
(i) inadvertent	Moderate to maximum civil penalty	
(ii) intentional		Revocation
(*e*) refusal to permit CAA test, check or examination of student	Maximum civil penalty	Indefinite suspension until compliance to revocation
(*f*) unqualified or unauthorized instruction	Moderate to maximum civil penalty	
(*g*) failure to establish or maintain training record	Moderate to maximum civil penalty	
4. Security and Safety Violations by Individuals		
(1) Checked baggage—		
(*a*) failure to declare unloaded firearm	Minimum civil penalty	
(*b*) loaded firearm	Moderate to maximum civil penalty	
(*c*) incendiary/explosive	Up to maximum civil penalty and/or criminal referral	
(2) Non-passengers—No intent to board—		
(*a*) possession of firearm (unloaded, unloaded with ammunition accessible, or loaded) or other dangerous or deadly weapon (including stun guns)—		
(i) at screening point with no aggravating circumstances	Minimum civil penalty	
(ii) at screening point with aggravating circumstances	Moderate to maximum civil penalty	
(iii) in sterile area with no aggravating circumstances	Minimum to moderate civil penalty	
(iv) in sterile area with aggravating circumstance	Moderate to maximum civil penalty	
(*b*) possession of incendiary/explosive at screening point or in sterile area with no intent to board a flight	Moderate to maximum civil penalty and/or criminal referral	
(*c*) artful concealment of firearm, (loaded or unloaded) other dangerous or deadly weapon (including stun guns), or incendiary/explosive at screening point or in sterile area	Maximum civil penalty and/or criminal referral	

Violation	*Recommended Sanction per Violation*	*Certificate Action*
(3) Passengers: Intent to board—		
(*a*) possession of dangerous or deadly weapon (including stun guns, mace, etc., but excluding firearms and incendiary/explosives) that would be accessible in flight in air transportation—		
(i) at screening point with no aggravating circumstances . .	Minimum civil penalty	
(ii) at screening point with aggravating circumstances . .	Moderate to maximum civil penalty	
(iii) in sterile area or aboard aircraft with no aggravating circumstances	Minimum to moderate civil penalty	
(iv) in sterile area or aboard aircraft with aggravating circumstances	Moderate to maximum civil penalty	
(*b*) possession of firearm that would be accessible in flight in air transportation with firearm unloaded, without accessible ammunition—		
(i) at screening point with no aggravating circumstances . .	Minimum to moderate civil penalty	
(ii) at screening point with aggravating circumstances . .	Maximum civil penalty	
(iii) in sterile area or aboard aircraft with no aggravating circumstances	Moderate civil penalty	
(iv) in sterile area or aboard aircraft with aggravating circumstances	Maximum civil penalty	
(*c*) possession of firearm that would be accessible in flight in air transportation with firearm loaded, or with accessible ammunition—		
(i) at screening point with no aggravating circumstances . .	Moderate to maximum civil penalty	
(ii) at screening point with aggravating circumstances . .	Maximum civil penalty	

Violation	*Recommended Sanction per Violation*	*Certificate Action*
(iii) in sterile area or aboard aircraft with no aggravating circumstances	Moderate to maximum civil penalty	
(iv) in sterile area or aboard aircraft with aggravating circumstances	Maximum civil penalty	
(*d*) artful concealment of dangerous or deadly weapon (including stun guns, but excluding firearms and incendiary/explosives) at screen point, in sterile area, or aboard aircraft	Maximum civil penalty and/or criminal referral	
(*e*) possession of incendiary/explosive at screening point, in sterile area, or aboard aircraft that would be accessible in flight in air transportation	Maximum civil penalty and/or criminal referral	
(*f*) artful concealment of firearm or incendiary/explosive at screening point, in sterile area, or aboard aircraft	Maximum civil penalty and/or criminal referral	
(4) Other acts—		
(*a*) entering sterile area after failing to submit to screening—non-aggravated	Minimum civil penalty	
(*b*) entering sterile area after failing to submit to screening—aggravated	Moderate to maximum civil penalty	
(*c*) imparting or conveying false information concerning an attempt to do an act that would be a crime prohibited by the Act	Maximum civil penalty	
(*d*) threatening overt act or other intent to use or dangerously display firearm, incendiary/explosive, or other deadly or dangerous weapon (including stun guns)	Maximum civil penalty and/or criminal referral	
(*e*) violation of the Act	Criminal referral	
(5) Unruly passengers—		
(*a*) interference with crew member	Maximum civil penalty	
(*b*) physical assault or threat to physically assault a flight or cabin crew member	$1,100–$8,000 USDw	

(*c*) physical assault or threat to physically assault an individual other than a crew member . .	$500–$5,000 USD	
(*d*) acts in a manner that poses imminent threat to safety of aircraft or other individuals on aircraft . .	$5,000–$27,500 USD	
(*e*) smoking while "No Smoking" sign is lighted	Maximum civil penalty	
(*f*) smoking in aircraft lavatory . .	Maximum civil penalty	
(*g*) Tampering with smoke detector	$1,800–$2,200 USD	
(*h*) failure to fasten seat belt while seat belt sign is lighted	Minimum to moderate civil penalty	
(*i*) failure to occupy an approved seat or berth with a safety belt, and, if installed, shoulder harness properly secured during movement on the surface take-off, or landing. .	Minimum to moderate civil penalty	
(*j*) operating a portable electronic device	Maximum civil penalty	
(*k*) drinking alcoholic beverages not served by operator	Maximum civil penalty	

IS 1:34 Safety Management System

The following specifies the framework for the implementation and maintenance of a Safety Management System (SMS) by an AOC, ATO or AMO.

(1) Safety policy and objectives—

(*a*) management commitment and responsibility—

(i) the AOC, ATO or AMO shall define the organization's safety policy which shall be—

(A) in accordance with international and national requirements; and

(B) signed by the accountable executive of the organization;

(ii) the safety policy shall—

(A) reflect organizational commitments regarding safety;

(B) include a clear statement about the provision of the necessary resources for the implementation of the safety policy;

(C) be communicated with visible endorsement throughout the organization;

(D) include the safety reporting procedures;

(E) dearly indicate which types of operational behaviours are unacceptable;

(F) include the conditions under which disciplinary action would not apply; and

(G) be periodically reviewed to ensure it remains relevant and appropriate to the organization;

(*b*) safety accountabilities—

(i) the AOC, ATO or AMO shall identify, with respect to the safety performance of the SMS—

(A) the accountable executive who, irrespective of other functions, shall have ultimate responsibility and accountability, on behalf of the AOC, ATO or AMO, for the implementation and maintenance of the SMS;

(B) the accountabilities of all members of the management, irrespective of other functions; and

(C) the employees;

(ii) the AOC, ATO or AMO shall—

(A) document safety responsibilities, accountabilities and authorities;

(B) communicate these throughout the organization, and

(C) include a definition of the levels of management authority to make decisions regarding safety risk tolerability;

(*c*) appointment of key safety personnel—the AOC, ATO or AMO shall identify a safety manager to be the responsible individual and focal point of the implementation and maintenance of an effective SMS;

(*d*) coordination of emergency response planning—the AOC, ATO or AMO shall ensure that an emergency response plan that provides for the orderly and efficient transition from normal to emergency operations and the return to normal operations is properly coordinated with the emergency response plans of those organizations it must interface with during the provision of its services;

(*e*) SMS documentation—

(i) the AOC, ATO or AMO shall develop and maintain—

(A) an SMS implementation plan—

(*a*) endorsed by senior management of the organization; and

(*b*) that defines the organization's approach to the management of safety in a manner that meets the organization's safety objectives.

(B) SMS documentation describing—

(*a*) the safety policy and objectives;

(*b*) the SMS requirements;

(*c*) the SMS processes and procedures;

(*d*) the accountabilities, responsibilities and authorities for processes and procedures and the SMS outputs;

(C) a safety management systems manual (SMSM) to communicate its approach to the management of safety throughout the organization.

(2) Safety risk management—

(*a*) hazard identification—

(i) the AOC, ATO or AMO shall develop and maintain a formal process that ensures that hazards in operations are identified; and

(ii) the AOC, ATO or AMO shall base its hazard identification on a combination of reactive, proactive and predictive methods of safety data collection;

(*b*) safety risk assessment and mitigation—the AOC, ATO or AMO shall develop and maintain a formal process that ensures analysis, assessment and control of the safety risks in training operations.

(3) Safety assurance—

(*a*) safety performance monitoring and measurement—

(i) the AOC, ATO or AMO shall develop and maintain the means to—

(A) verify the safety performance of the organization; and

(B) validate the effectiveness of safety risk controls;

(ii) the AOC, ATO or AMO shall verify the safety performance of the organization in reference to the safety performance indicators and safety performance targets of the SMS;

(*b*) the management of change—the AOC, ATO or AMO shall develop and maintain a formal process to—

(i) identify changes within the organization which may affect established processes and services;

(ii) describe the arrangements to ensure safety performance before implementing changes; and

(iii) eliminate or modify safety risk controls that are no longer needed or effective due to changes in the operational environment;

(*c*) continuous improvement of the SMS—the AOC, ATO or AMO shall develop and maintain a formal process to—

(i) identify the causes of substandard performance of the SMS;

(ii) determine the implications of substandard performance of the SMS in operations; and

(iii) eliminate or mitigate such causes.

(4) Safety promotion—

(*a*) training and education—of the AOC, ATO or AMO shall develop and maintain a safety training programme that—

(i) ensures that all personnel are trained and competent to perform the SMS duties; and

(ii) is appropriate to each individual's involvement in the SMS;

(*b*) safety communication—the AOC, ATO or AMO shall develop and maintain formal means for safety communication that:

(i) ensures all personnel are fully aware of the SMS;

(ii) conveys safety-critical information;

(iii) explains why particular safety actions are taken; and

(iv) explains why safety procedures are introduced or changed.

AVIATION (PERSONNEL LICENSING) REGULATIONS

G.N. 28/2013

Arrangement of Regulations

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AVIATION (PERSONNEL LICENSING) REGULATIONS

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PART I

GENERAL REQUIREMENTS FOR LICENCES, RATINGS, AUTHORIZATIONS, CERTIFICATES, ENDORSEMENT AND DESIGNATIONS

Division I—Application, Interpretation and Acronyms

Citation and application

1. These Regulations may be cited as the Aviation (Personnel Licensing) Regulations.

These Regulations prescribe—

(*a*) the requirements for issuing, renewal and re-issue of aviation personnel licences, ratings, authorizations and certificates;

(*b*) the conditions under which those licences, ratings, authorizations and certificates are necessary; and

(*c*) the privileges and limitations granted to the holders of those licences, ratings, authorizations and certificates.

2. For the purpose of these Regulations, unless the context otherwise requires— Interpretation

"accredited medical conclusion" means the conclusion reached by one or more medical experts acceptable to the Licensing Authority for the purposes of the case concerned, in consultation with flight operations or other experts as necessary;

"aeroplane" means a power-driven heavier-than-air aircraft, deriving its lift in flight chiefly aerodynamic reactions on surfaces which remain fixed under given conditions of flight;

"aircraft" means any machine that can derive support in the atmosphere from the reactions of the air other than the reactions of the air against the earth's surface;

"aircraft avionics" means a term designating any electronic device, including its electrical part, for use in an aircraft, including radio, automatic flight control and instrument systems;

"aircraft certificated for single-pilot operation" means a type of aircraft which the State of Registry has determined, during the certification process, can be operated safely with a minimum crew of one pilot;

"aircraft certificated for multi-pilot operation" means a type of aircraft which the State of Registry has determined, during the certification process, can be operated safely with a minimum crew of two pilots;

"aircraft required to be operated with a co-pilot" means a type of aircraft that is required to be operated with a co-pilot as specified in the flight manual or by the air operator certificate;

"airmanship" means the consistent use of good judgment and well-developed knowledge, skills and attitudes to accomplish flight objectives;

"airship" means a power-driven lighter than air aircraft;

"calendar month" means a period of a month beginning and ending with the dates that are conventionally accepted as marking the beginning and end of a numbered month (as January 1 to January 31 in the Gregorian calendar);

"calendar year" means a period of a year beginning and ending with the dates that are conventionally accepted as marking the beginning

and end of a numbered year (as January 1 to December 31 in the Gregorian calendar);

"commercial air transport operation" means an aircraft operation involving the transport of passengers, cargo or mail for remuneration or hire;

"competency" means a combination of skills, knowledge and attitudes required to perform a task to the prescribed standard;

"competency element" means an action that constitutes a task that has a triggering event and a terminating event that clearly defines its limits, and an observable outcome;

"competency unit" means a discrete function consisting of a number of competency elements;

"complex aeroplane" means an aeroplane that has retractable landing gear, flaps, and a controllable pitch propeller; or in the case of a seaplane, flaps and a controllable pitch propeller;

"conversion" means conversion is the action taken by the Authority in issuing its own licence on the basis of a licence issued by another Contracting State for use on aircraft registered in Malaŵi;

"credit" means recognition of alternative means or prior qualifications;

"cross country" means a flight between a point of departure and a point of arrival following a pre-planned route using standard navigation procedures;

"error" means an action or inaction by an operational person that leads to deviations from organizational or the operational person's intentions or expectations;

"error management" means the process of detecting and responding to errors with countermeasures that reduce or eliminate the consequences of errors, and mitigate the probability of errors or undesired aircraft state;

"examiner" means any person designated by the Authority to act as a representative of the Authority in examining, inspecting, and testing persons and aircraft for the purpose of issuing licences, ratings and certificates;

"flight plan" means specified information provided to air traffic services units, relative to an intended flight or portion of a flight of an aircraft;

"flight simulation training device formerly referenced as synthetic flight trainer" means any one of the following three types of apparatus in which flight conditions are simulated on the ground—

(*a*) flight simulator provides an accurate representation of the flight deck of a particular aircraft type to the extent that the mechanical, electrical, electronic, etc. aircraft systems control

functions, the normal environment of flight crew members, and the performance and flight characteristics of that type of aircraft are realistically simulated;

(*b*) flight procedures trainer provides a realistic flight deck environment, and simulates instrument responses, simple control functions of mechanical, electrical, electronic, etc. aircraft systems, and the performance and flight characteristics of aircraft of a particular class;

(*c*) basic instrument flight trainer: equipped with appropriate instruments and simulates the flight deck environment of an aircraft in flight in instrument flight conditions;

"human performance" means human capabilities and limitations which have an impact on the safety and efficiency of aeronautical operations;

"instrument flight time" means time during which a pilot is piloting an aircraft solely by reference to instruments and without external reference points;

"instrument ground time" means time during which a pilot is practising, on the ground, simulated instrument flight in a flight simulation training device approved by the Licensing Authority;

"instrument time" means instrument flight time or instrument ground time;

"Licensing Authority" means the Authority designated by the Contracting State as responsible for the licensing of personnel. The Licensing Authority has the following responsibilities—

(*a*) assessment of an applicant's qualifications to hold a licence or rating;

(*b*) issue and endorsement of licences and ratings;

(*c*) designation and authorization of approved persons;

(*d*) approval of training courses;

(*e*) approval of the use of flight simulation training devices and authorization for their use in gaining the experience or in demonstrating the skill required for the issue of a licence or rating; and

(*f*) validation of licences issued by other Contracting States;

"medical assessment" means the evidence issued by a Contracting State that the licence holder meets specific requirements of medical fitness;

"medical assessor" means a physician, appointed by the Licensing Authority, qualified and experienced in the practice of aviation medicine and competent in evaluating and assessing medical condition of flight safety significance;

"medical examiner" means a physician with training in aviation medicine and practical knowledge and experience of the aviation environment, who is designated by the Licensing Authority to conduct medical examinations of fitness of applicants for licences or ratings for which medical requirements are prescribed; called Aviation Medical Examiners (AME) in these Regulations when non-CAA physicians are designated to perform medical examinations;

"medical certificate" means the equivalent of a medical assessment;

"performance criteria" means a simple, evaluative statement on the required outcome of the competency element and a description of the criteria used to judge if the required level of performance has been achieved;

"pilot (to)" means to manipulate the flight controls of an aircraft during flight time;

"PIC under supervision" means co-pilot performing, under the supervision of the PIC, the duties and functions of a PIC, provided that the method of supervision employed is acceptable to the Licensing Authority;

"powered-lift" means a heavier than air aircraft capable of vertical take-off, vertical landing, and low speed flight that depends principally on engine driven lift devices or engine thrust for the lift during these regimes and on non-rotating aerofoil(*s*) for lift during horizontal flight;

"problematic use of substances" means the use of one or more psychoactive substances by aviation personnel in a way that—

(*a*) constitutes a direct hazard to the user or endangers the lives, health or welfare of others; and/or

(*b*) causes or worsens an occupational, social, mental or physical problem or disorder;

"psychoactive substances" means alcohol, opioids, cannabinoids, sedatives and hypnotics, cocaine, other psychostimulants, hallucinogens, and volatile solvents, whereas coffee and tobacco are excluded;

"quality system" means documented organizational procedures and policies; internal audit of those policies procedures; management review and recommendation for quality improvements;

"rated air traffic controller" means an air traffic controller holding a licence and valid ratings appropriate to the privileges to be exercised;

"rating" means an authorization entered on or associated with a licence and forming part thereof, stating special conditions, privileges or limitations pertaining to such licence;

"re-issue of a licence, rating, authorization or certificate" means the administrative action taken after a licence, rating, authorization or certificate has lapsed that re-issues the privileges of the licence, rating, authorization or certificate for a further specified period consequent upon the fulfilment of specified requirements;

"rendering (a licence) valid" means the action taken by a Contracting State, as an alternative to issuing its own licence, in accepting a licence issued by any other Contracting State as the equivalent of its own licence;

"renewal of licence, rating, authorization or certificate" means the administrative action taken within the period of validity of a licence, rating, authorization or certificate that allows the holder to continue to exercise the privileges of a licence, rating, authorization or certificate for a further specified period consequent upon the fulfilment of specified requirements;

"route sector" means a flight comprising take-off, departure, cruise of not less than 15 minutes, arrival, approach and landing phases;

"safety management system" means a systematic approach to managing safety, including the necessary organizational structures, accountabilities, policies and procedures;

"significant" means in the context of the medical provisions in these Regulations, to a degree or of a nature that is likely to jeopardize flight safety;

"state safety programme" means an integrated set of regulation and activities aimed at improving safety;

"synthetic flight trainer" means flight simulation training device;

"threat" means events or errors that occur beyond the influence of the operational person, increase operational complexity and which must be managed to maintain the margin of safety;

"threat management" means the process of detecting and responding to the threats with counter-measures that reduce or eliminate the consequences of threats, and mitigate the probability of errors or undesired aircraft;

"validation" means the action taken by the Authority as an alternative to issuing its own licence, in accepting a licence issued by another Contracting State as the equivalent of its own licence for use on aircraft registered in Malaŵi.

Acronyms

3. The following acronyms are used in these Regulations—

(1) A—Aeroplane.

(2) ATP—Aeronautical Information Publication.

(3) AME—Aviation Medical Examiner.

(4) AME—Aircraft Maintenance Engineer.
(5) ATCO—Air Traffic.
(6) AS—Airship.
(7) ATPL Airline Transport Pilot Licence.
(8) B—Balloon.
(9) CAT II—Category II.
(10) CAT III—Category III.
(11) CPL—Commercial Pilot Licence.
(12) CRM—Crew Resource Management.
(13) DFEE—Designated Flight Engineer Examiner.
(14) DFNE—Designated Flight Navigator Examiner.
(15) DFOOE—Designated Flight Operations Officer Examiner.
(16) DME—Designated Mechanic Examiner.
(17) DPE—Designated Pilot Examiner.
(18) DPRE—Designated Parachute Rigger Examiner.
(19) FE—Flight Engineer.
(20) FI—Flight Instructor.
(21) FOO—Flight Operations Officer.
(22) G—Glider.
(23) IA—Inspection Authorization.
(24) IFR—Instrument Flight Rules.
(25) ILS—Instrument Landing System.
(26) H—Helicopter.
(27) ICAO—International Civil Aviation Organization.
(28) MPA—Multi-pilot Aeroplane.
(29) MPH—Multi-pilot Helicopter.
(30) MPL—Multi-crew Pilot Licence.
(31) NOTAM—Notice to airmen.
(32) PIC—pilot-in-command.
(33) PL—Powered-lift.
(34) PPL—Private Pilot Licence.
(35) RT—Radiotelephony.
(36) SPA— Single-pilot Aeroplane.
(37) SPH—Single-pilot Helicopter.
(38) VFR—Visual Flight Rules.

Division II—Issue, Renewal and Re-Issue of Licences, Ratings, Authorizations, Designation and Certificates

4.—(1) The Authority may issue the following licences under these Regulations to an applicant who satisfactorily accomplishes the requirements in these Regulations for the licence sought— Licences

(*a*) pilot licences—

(i) private pilot licence—aeroplane, helicopter, airship, powered-lift, balloon or glider categories;

(ii) commercial pilot licence—aeroplane, helicopter, airship, powered-lift, balloon or glider categories;

(iii) Airline Transport Pilot Licence (ATPL)—aeroplane, helicopter or powered-lift categories;

(*b*) flight engineer licence;

(*c*) flight navigator licence;

(*d*) flight operations officer licence;

(*e*) flight instructor licence;

(*f*) ground instructor licence;

(*g*) aircraft maintenance engineer licence;

(*h*) aviation repairman specialist licence;

(*i*) parachute rigger licence;

(*j*) air traffic controller licence;

(*k*) aeronautical station operator licence;

(*l*) flight radiotelephone operator.

(2) Regarding the Flight radiotelephone operator licence—

(*a*) where the knowledge and skill of an applicant have been established as satisfactory in respect of the certification requirements for the radiotelephone operator's restricted certificate specified in the general radio regulations annexed to the International Telecommunication Convention and the applicant has met the requirements that are pertinent to the operation of the radiotelephone on board an aircraft, a Contracting State may endorse a licence already held by the applicant or issue a separate licence as appropriate;

(*b*) the testing and authorization of radiotelephone licence may rest with another Government Agency other than the Authority;

(*c*) skill and knowledge requirements on radiotelephony procedures and phraseology have been developed as an integral part of all pilot aeroplane and helicopter licences.

Ratings

5.—(1) The Authority may issue the following ratings to place on a pilot licence or flight instructor licence when an applicant satisfactorily accomplishes the requirements in these Regulations for the rating sought—

(*a*) category ratings in the following aircraft—

(i) aeroplane;

(ii) helicopter;

(iii) glider;

(iv) free Balloon;

(v) airship;

(vi) powered-lift;

(*b*) class ratings in the following aircraft—

(i) single-engine land—aeroplane;

(ii) single-engine sea—aeroplane;

(iii) multi-engine land—aeroplane;

(iv) multi-engine sea—aeroplane;

(v) a class rating may be issued for those helicopters certificated for single-pilot operations and which have comparable handling, performance and other characteristics;

(vi) hot air—balloon;

(vii) gas—balloon; and

(viii) any rating considered necessary by the Authority.

(2) A class rating or endorsement for High Performance Aeroplanes (HPA) requires additional knowledge, if the applicant has not completed the ATPL (A) knowledge requirements—

(*a*) type ratings in the following aircraft—

(i) each type of aircraft certificated for operation with a minimum crew of at least two pilots;

(ii) each type of helicopter certificated for single-pilot except where a class rating has been established under subregulation (1) (*b*) (v);

(iii) any aircraft considered necessary by the Authority;

(*b*) instrument ratings in the following aircraft—

(i) instrument—aeroplane;

(ii) instrument—helicopter;

(iii) instrument—powered-lift;

(*c*) flight instructor ratings—the appropriate aircraft category, class, instrument and/or type rating according to the instruction to be taught;

(*d*) the Authority may issue the following ratings to place on a ground instructor's licence when an applicant satisfactorily accomplished the requirements of these Regulations for the rating sought—

(i) basic;

(ii) advanced;

(iii) instrument.

(3) The Authority may issue the following ratings to place on a flight engineer's licence when an applicant satisfactorily accomplishes the requirements in these Regulation for the rating sought—

(*a*) reciprocating engine powered.

(*b*) turbopropeller powered.

(*c*) turbojet powered.

(4) The Authority may issue the following ratings to place on an air traffic controller licence when an applicant satisfactorily accomplishes the requirements in these Regulations for the rating sought—

(*a*) aerodrome control rating;

(*b*) approach control rating;

(*c*) approach radar control rating;

(*d*) approach precision radar control rating;

(*e*) area control rating; and

(f) area radar control rating.

(5) The Authority may issue the following ratings to place on an aircraft maintenance engineer licence when an applicant satisfactorily accomplishes the requirements in these Regulations for the rating sought—

(*a*) airframe;

(*b*) power-plant; and

(*c*) avionics.

(6) The Authority may issue ratings as appropriate to place on an aviation repairman specialist licence.

(7) The Authority may issue the following ratings to place on a parachute rigger's licence when an applicant satisfactorily accomplished the requirements of these Regulations for the rating sought—

(*a*) seat;

(*b*) back;

(*c*) chest; and

(*d*) lap.

Authorization

6.—(1) The Authority may issue the following authorizations when an applicant satisfactorily accomplishes the requirements in these Regulations for the authorization sought—

(*a*) special purpose pilot authorization; and

(*b*) instructor authorization for training in a flight simulation training device.

(2) The Authority may issue the following authorizations to place on a pilot licence when an applicant satisfactorily accomplishes the requirements in these Regulations for the authorization sought—

(*a*) category II pilot authorization; and

(*b*) category III pilot authorization.

(3) The Authority may issue the following authorization to place on an AME licence when an applicant satisfactorily accomplished the requirements in these Regulations for the authorization sought—inspection authorization.

Endorsements

7. A pilot may receive the following endorsements from an authorized instructor when he/she satisfactorily accomplished the required training in this Regulation—

(*a*) complex aeroplane endorsement;

(*b*) high performance aeroplane endorsement; and

(*c*) high altitude aircraft endorsement.

Certificates

8.—(1) The Authority may issue the following medical certificates when an applicant satisfactorily accomplishes the requirements in these Regulations for the medical certificate sought—

(*a*) medical certificate Class 1 for CPL and ATPL licences; flight instructor licences and DPEs;

(*b*) medical certificate Class 2 for student pilot authorization, PPL, Flight Engineer, and Flight Navigator licences; and

(*c*) medical certificate Class 3 for Air traffic controller licence.

(2) The Authority may issue the following certificates to pilots and flight engineers holding a licence from another ICAO Contracting State—validation certificates.

(3) The Authority may issue certificates of designation to representatives of the Director of Civil Aviation as identified in regulation 9.

Designation of representatives of the Director of Civil Aviation

9. The Authority may issue the following designations to private persons to act on behalf of the Director of Civil Aviation, as specified in these Regulations—

(1) DPE;

(2) DFEE;

(3) DFNE;

(4) DFOOE;

(5) DME;

(6) DPRE;

(7) AME; or

(8) other designees as may be determined by the Authority.

Temporary licence or rating

10.—(1) The Authority may issue a temporary licence or rating for up to 90 days, at which time Authority will issue a proper licence to a person whom the Authority finds qualified under these Regulations.

(2) A temporary licence expires—

(*a*) on the expiry date shown on the licence;

(*b*) upon receipt of the permanent licence; or

(*c*) upon receipt of a notice that the licence or rating sought is denied or revoked.

Validity of licences, ratings, authorizations and certificates

11.—(1) The Authority will issue, renew or re-issue a licence, rating, authorization, designation and/or certificate when the applicant complies with the requirements of these Regulations and the procedures in IS 2:4 contained in the Schedule hereto.

(2) Privileges—The holder of a licence, certificate, authorization or designation shall not exercise privileges other than those granted by the licence, certificate, authorization or designation.

(3) The privileges granted by a licence, or by related ratings, may not be exercised unless the holder maintains competency and meets the requirements for recent experience of this part.

(4) Maintenance of competency shall be indicated in the airman's personal licence or record (e.g. logbook).

(5) The maintenance of competency of flight crew members, engaged in commercial air transport operations, may be satisfactorily established by demonstration of skill during proficiency flight checks completed in accordance with these Regulations.

(6) Unless specified otherwise in subparts of these Regulations the validity period of a licence is 5 years.

(7) Renewal of a licence will take place within the 5 years validity period after initial issue of a rating provided the ratings related to the licence and the medical certificate are valid.

(8) The validity period of the ratings, authorizations, certificates of validation and medical certificates and the renewal/re-issue conditions are indicated in the relevant subparts of these Regulations.

(9) Medical fitness—Applicants for the following licences and authorizations shall hold a current and appropriate medical certificate issued under this part in order for their licence or authorization to be valid—

(*a*) student pilot licence/authorization;

(*b*) pilot licence;

(*c*) flight engineer licence;

(*d*) flight navigator licence;

(*e*) flight instructor licence;

(*f*) designated pilot examiner (DPE);

(*g*) designated flight engineer examiner;

(*h*) designated flight navigator examiner; and

(*i*) air traffic controller licence.

Language proficiency

12.—(1) Pilots, flight engineers, flight navigators, air traffic controllers and aeronautical station operators shall demonstrate the ability to speak and understand the English language used for radio telephony communications means in Malaŵi.

(2) The airmen identified in subregulations above shall demonstrate the ability to speak and understand the English language used for radiotelephony communications in Malaŵi to least the Operational Level (Level 4) with the aim to speak at the Expert Level (Level 6) as specified in the language proficiency requirements in IS 2:12.

(3) The language proficiency of airmen identified in subregulation 1 shall be formally evaluated at intervals in accordance with an individual's demonstrated proficiency level as follows—

(*a*) those demonstrating language proficiency at the Operational Level (Level 4) shall be evaluated at intervals not more than 3 years;

(*b*) those demonstrating language proficiency at the Extended Level (Level 5) shall be evaluated at intervals not more than 6 years; and

(*c*) those demonstrating language proficiency at the Expert Level (Level 6) shall be exempt from further language evaluation.

(4) Implementing Standard IS 2:12 contains the detailed requirements for language proficiency.

Division III—Credit for Military Competency

Credit for military pilots

13.—(1) Pilot licences—Except for a rated military pilot or former military pilot who has been removed from flying status for lack of proficiency, or because of disciplinary action involving aircraft operations, a rated military pilot or former rated military pilot who

meets the requirements of IS 2:13 may apply, on the basis of his or her military training, for—

(*a*) a CPL;

(*b*) a rating in the category and class of aircraft for which that military pilot is qualified;

(*c*) an instrument rating with the appropriate category rating for which that military pilot is qualified; and

(*d*) a type rating, if appropriate.

(2) The testing required by a military pilot seeking a licence or rating is as follows—

(*a*) if the applicant has been on active flight status within the past 12 months of application, pass a knowledge test on—

(i) air law;

(ii) aeronautical weather codes;

(iii) flight performance and planning;

(iv) human performance;

(*b*) if the applicant has not been on active flight status within the past 12 months of application, pass both a knowledge and skill test.

Credit for military parachute riggers

14. The Authority shall grant to an applicant for a senior parachute rigger licence that licence if he or she passes a knowledge test on the regulations of Part X of these Regulations and presents satisfactory documentary evidence that he or she—

(*a*) is a member or civilian employee of an armed force of Malaŵi, is a civilian employee of a regular armed force of a foreign country, or has, within the 12 months before he applies, been honourably discharged or released from any status covered by this paragraph;

(*b*) is serving, or has served within the 12 months before application, as a parachute rigger for such an armed force; and

(*c*) has the experience required by regulation 166 of these Regulations.

Division IV—Validation and Conversion of Foreign Licences, Ratings, Authorizations and Certificates

Validation of flight crew licences

15.—(1) General requirements for validation—

(*a*) a person who holds a current and valid pilot licence issued by another Contracting State in accordance with ICAO Annex 1 may apply for a validation of such licence for use on aircraft registered in Malaŵi;

(*b*) the applicant for the validation certificate shall present to the Authority the foreign licence and evidence of the experience required by presenting the record (e.g. logbook);

(*c*) the applicant for the validation certificate shall present to the Authority evidence that he/she holds either a current medical certificate issued under these Regulations or a current medical certificate issued by the Contracting State that issued the applicant's licence—the Authority may allow the applicant to use his/her foreign medical certificate with the validation certificate provided that the medical certification requirements on which the foreign medical certificate was issued meet the requirements of these Regulations, relevant to the licence held;

(*d*) the applicant for the validation certificate shall present to the Authority evidence of language proficiency in the English language as specified in regulation 12 or shall demonstrate to the Authority the language proficiency skills as specified in regulation 12—the validation shall be limited for use on Malaŵi registered aircraft for use within Malaŵi if the pilot is not proficient in the English language, as required by regulation 12;

(*e*) authority will verify the authenticity of the licence, ratings authorizations and the medical certificate with the state of licence issue prior to issuing the validation;

(*f*) the Authority will only validate ratings or authorizations on the foreign licence together with the validation of a licence; and

(*g*) the Authority may issue a validation certificate which will be valid for one year, provided the foreign licence, ratings or authorizations and the medical certificate remains valid.

(2) Validation certificate with PPL privileges—in addition to the requirements in subregulation (1) above, the applicant for the validation certificate with PPL privileges shall have a foreign licence with at least PPL privileges.

(3) Validation certificate with PPL/IR, CPL, CPL/IR, MPL, ATPL or FE privileges. In addition to the requirements in regulation 1 above, the applicant for a validation certificate for either a PPL/IR, CPL, CPL/IR, MPL, ATPL or FE privileges, shall have the relevant foreign licence and meet the following requirements—

(*a*) the applicant for the validation certificate shall demonstrate, to the satisfaction of the Authority and relevant to the licence to be validated, knowledge of Malaŵi's—

(i) air law;

(ii) meteorology;

(iii) operational procedures; and

(iv) radiotelephony;

(*b*) the applicant for the validation certificate shall complete a skill test for the relevant licence and ratings that he or she wants to be validated relevant to the privileges of the licence held; and

(*c*) comply with the experience requirements set out in the table below—

Licence	*Experience*	*Validation Privileges*
ATPL(A)	>1,500 hours as PIC in multi-pilot *certificated aeroplanes	Commercial air transport in multi-pilot aeroplanes as PIC
ATPL(PL)	>1,500 hours as PIC in multi-pilot certificated powered-lift or 1,500 hours in multi-pilot operations in a combination of powered-lift; aeroplane and helicopter aircraft as acceptable to the Authority	Commercial air transport in multi-pilot powered-lift as PIC
ATPL(H)	>1,000 hours as PIC on multi-pilot helicopters	Commercial air transport in multi-pilot helicopters as PIC
ATPL(A) or CPL(A)/IR	>500 hours as PIC or co-pilot on multi-pilot aeroplanes	Commercial air transport in multi-pilot aeroplanes as co-pilot
ATPL(PL) or CPL(PL)/IR	>500 hours as PIC or co-pilot on multi-pilot powered-lift	Commercial air transport in multi-pilot powered-lift as co-pilot
ATPL(H) or CPL(H)/IR	>500 hours as PIC or co-pilot on multi-pilot helicopters	Commercial air transport in multi-pilot helicopters as co-pilot
CPL(A)/IR	>1,000 hours as PIC in commercial air transport since gaining an IR	Commercial air transport in single-pilot aeroplanes as PIC
CPL(H)/IR	>1,000 hours as PIC in commercial air transport since gaining an IR	Commercial air transport in single-pilot helicopters as PIC

Licence	*Experience*	*Validation Privileges*
CPL(A)	>700 hours in aeroplanes other than gliders, including 200 hours in the activity role for which validation is sought, and 50 hours in that role in the last 12 months	Activities in aeroplanes other than commercial air transport
CPL(H)	>700 hours in helicopters including 200 hours in the activity role for which validation is sought, and 50 hours in that role in the last 12 months	Activities in helicopters other than commercial air transport
CPL(PL)	>700 hours in powered-lift (or combination of powered-lift, aeroplane and helicopter as acceptable to the Authority) including 200 hours in the activity role for which validation is sought, and 50 hours in that role in the last 12 months	Activities in powered-lift other than commercial air transport
CPL(AS)	>250 hours as PIC in commercial air transport including 50 hours in AS within the last 12 months	Commercial air transport in airships as PIC under IR and VFR conditions
CPL(B)	>50 hours as PIC in commercial air transport of which 35 hours in B within the last 12 months	Commercial air transport in balloons as PIC
CPL(G)	>250 hours as PIC in commercial air transport, including of which 50 must be in G within the past 12 months	Commercial air transport in gliders as PIC
MPL(A)	>250 as co-pilot of turbine-powered air transport aeroplanes certificated for operations with a minimum crew of at least two pilots operated in commercial air transport within the past 12 months	Commercial air transport in turbine-powered air transport aeroplanes certificated for operations with a minimum crew of at least two pilots as co-pilot

Licence	*Experience*	*Validation Privileges*
PPL(A)/IR	>100 hours PIC instrument flight time	Private flights under IFR
PPL(H)/IR	>100 hours PIC instrument flight time	Private flights under IFR
PPL(PL)/IR	>100 hours PIC instrument flight time	Private flights under IFR
Flight engineer	>1,500 hours as flight engineer on aeroplanes in commercial air transport	Commercial air transport in aeroplanes as flight engineer
Flight engineer	>1,000 hours as flight engineer on aeroplanes in other than commercial air transport	Other than commercial air transport in aeroplanes as flight engineer

Conversion of flight crew licences

16.—(1) Conversion of a foreign pilot licence for issuance of a PPL by Malaŵi. A person who holds a current and valid pilot licence with at least PPL privileges, issued by another Contracting State in accordance with ICAO Annex 1, may apply for a conversion and be issued with a PPL for use on aircraft registered in Malaŵi provided the following requirements are met—

(*a*) the holder shall—

(i) present to the Authority the foreign licence, evidence of experience required by presenting the record (e.g. logbook) and current medical certificate;

(ii) present to the Authority evidence of language proficiency in the language of Malaŵi and in English as specified in regulation 12 or shall demonstrate to the Authority the language proficiency skills as specified in regulation 12;

(iii) obtain a Class 2 medical certificate issued under these Regulations;

(iv) demonstrate, to the satisfaction of the Authority and relevant to the licence to be converted, knowledge of Malaŵi's—

(A) air law;

(B) meteorology;

(C) operational Procedures; and

(D) radiotelephony;

(v) complete a PPL skill test;

(*b*) the Authority will verify the authenticity of the licence, ratings,

authorizations and the medical certificate with the state of licence issue prior to converting the licence.

(2) Conversion of PPL/IR, CPL, CPL/IR, MPL, ATPL and Flight Engineer licences, which have been validated in accordance with regulation 15—

(*a*) the holder of a current and valid foreign CPL, CPL/IR, MPL, ATPL or Flight Engineer licence issued by another Contracting State in accordance with ICAO Annex 1, and appropriate medical certificate, may apply for conversion to the appropriate licence and ratings issued by Malaŵi provided the following requirements are met—

(i) the applicant is the holder of a current validation certificate issued under regulation 15;

(ii) the applicant has completed 200 flight hours in a Malaŵi registered aircraft which are operated by an operator established in Malaŵi exercising the privileges granted by the validation certificate;

(iii) the applicant for the conversion shall present to the Authority the foreign licence and evidence of the 200 flight hours by presenting the record (e.g. logbook); and

(iv) the applicant shall hold or obtain a medical certificate issued under these Regulations, appropriate to the level of licence to be converted;

(v) ratings listed on a person's foreign pilot licence that have been validated in accordance with regulation 15, may be placed on that person's converted licence.

(*b*) the holder of a current and valid foreign PPL/IR issued by another Contracting State in accordance with ICAO Annex 1, and appropriate medical certificate, may apply for conversion to the appropriate licence and ratings issued by Malaŵi provided the following requirements are met—

(i) the applicant is the holder of a current validation certificate issued under regulation 15;

(ii) the applicant has completed 75 flight hours in a Malaŵi registered aircraft in Malaŵi exercising the privileges granted by the validation certificate;

(iii) the applicant for the conversion shall present to the Authority the foreign licence and evidence of the 75 flight hours by presenting the record (e.g. logbook); and

(iv) the applicant shall hold or obtain a medical certificate issued under these Regulations, appropriate to the level of licence to be converted;

(v) ratings listed on a person's foreign pilot licence that have been validated in accordance with regulation 15, may be placed on that person's converted licence.

Validation of flight crew licences by reliance upon the licensing system of another Contracting State

17.—(1) Notwithstanding regulations 15 and 16, the Authority may issue a validation certificate with the applicable ratings to the holder of a current and valid foreign licence and current medical certificate, provided—

(*a*) the licence is issued by another ICAO Contracting State;

(*b*) the Authority is convinced that the licence has been issued on the basis of these Regulations;

(*c*) there is an agreement between the Authority and the other Contracting State about recognition of licences and, if applicable, keeping the licences and ratings current and valid; and

(*d*) the applicant for the validation certificate shall demonstrate, to the satisfaction of the Authority and relevant to the licence, knowledge of Malaŵi's—

(i) air law;

(ii) meteorology;

(iii) operational procedures; and

(iv) radiotelephony.

(2) The applicant for the validation certificate shall present to the Authority the—

(*a*) foreign licence and evidence of the currency of the licence by presenting the record (e.g. logbook).

(*b*) medical certificate relevant to the licence to be validated, provided that the foreign medical certificate meets the requirements of these Regulations.

(*c*) evidence of language proficiency in English as specified in regulation 12 or shall demonstrate to the Authority the language skills as specified in regulation 12.

(3) The authority will verify the authenticity of the licence, ratings, authorizations and the medical certificate with the State of Licence issue prior to issuing the validation.

(4) The Authority may issue a validation certificate which will be valid for one year, provided the foreign licence, ratings, authorizations and medical certificate remains valid.

(5) The IS 2:17 contained in the second schedule hereto contains procedures for validation of flight crew licences by reliance upon the licensing system of another ICAO Contracting State.

Conversion of flight crew licences by reliance upon the licensing system of another Contracting State

18.—(1) Notwithstanding regulations 15 and 16, the Authority may issue a licence with the applicable ratings to the holder of a current and valid foreign licence, provided—

(*a*) the licence is issued by another ICAO Contracting State;

(*b*) the Authority is convinced that the licence has been issued on the basis of these Regulations; and

(*c*) there is an agreement between the Authority and the other Contracting State about recognition of licences.

(2) The applicant for the conversion shall present to the Authority the—

(*a*) foreign licence and evidence of the currency of the licence by presenting the record (e.g. logbook);

(*b*) medical certificate relevant to the licence if the medical certificate is to be converted or medical certificate issued under these Regulations relevant to the licence sought; and

(*c*) evidence of language proficiency in English as specified in regulation 12 or shall demonstrate to the Authority the language skills as specified in regulation 12.

(3) The applicant shall demonstrate, to the satisfaction of the Authority and relevant to the licence to be converted, the knowledge of Malaŵi's—

(*a*) air law;

(*b*) meteorology;

(*c*) operational procedures;

(*d*) radiotelephony.

(4) The authority will verify the authenticity of the licence, ratings, authorizations and the medical certificate with the State of Licence issue prior to issuing the licence.

(5) IS 2:18 contained in the Schedule hereto contains procedures for conversion of flight crew licences by reliance upon the licensing system of another ICAO Contracting State.

Validation in case of leased, chartered or interchanged aircraft

19.—(1) The requirements stated in regulation 15 shall not apply where aircraft, registered in Malaŵi are leased to, chartered by or interchanged by an operator of another Contracting State, provided that during the term of the lease the State of the Operator has accepted the responsibility for the technical and/or operational supervision in accordance with Art. 83 bis of the ICAO Convention.

(2) The licences of the flight crew of the other Contracting State may be validated, provided that the privileges of the flight crew licence

validation are restricted for use during the lease, charter or interchange period only on nominated aircraft in specified operations not involving a Malaŵi operator, directly or indirectly through a wet lease or other commercial arrangement.

(3) The Authority will verify the authenticity of the licence, ratings, authorizations, including the English language proficiency endorsement of at least Level 4, and the medical certificate, with the State of Licence issue prior to issuing the validation.

Temporary validation of non-Malaŵi pilot licences held by manufacturer pilots

20.—(1) In circumstances where validation of a non-Malaŵi pilot licence is needed to fulfill specific tasks of finite duration, the Authority may issue a temporary validation of such a licence for those tasks as described in this regulation.

(2) Notwithstanding the requirements contained in regulations 15, 16, 17 or 18, the Authority may temporarily validate a licence issued by another ICAO Contracting State in accordance with the provisions of ICAO Annex 1, including an instructor rating or examiner authorization issued by that State, provided that the holder of the licence shall—

(*a*) possess an appropriate licence, medical certificate, type ratings and qualifications, to include instructor or examiner qualifications, valid in the State of licence issue for the duties proposed;

(*b*) demonstrate, to the satisfaction of the Authority and relevant to the licence to be validated, knowledge of Malaŵi's—

(i) air law;

(ii) meteorology;

(iii) operational Procedures; and

(iv) radiotelephony;

(*c*) provide evidence of language proficiency in English as specified in regulation 12 or shall demonstrate to the Authority the language skills as specified in regulation 12;

(*d*) be employed by an aircraft manufacturer or Approved Training Organization located outside Malaŵi performing training on behalf of an aircraft manufacturer; and

(*e*) be limited to performing flight instruction and testing for initial issue of type ratings, the supervision of initial line flying by the pilots of an operator in Malaŵi, delivery or ferry flights, initial line flying, flight demonstrations or test flights.

(3) Whenever conducting or supervising line flying, the pilot shall also be required to meet the relevant requirements of the Aviation (Operations) Regulations.

(4) The Authority will verify the authenticity of the licence, ratings, authorizations and medical certificate with the State of Licence issue prior to issuing the temporary validation.

(5) The duration of the temporary validation shall be for one year.

Validation of aircraft maintenance engineers licences

21.—(1) General requirements for validation—

(*a*) a person who holds a current and valid AME licence issued by another Contracting State, in accordance with ICAO Annex 1, may apply for a validation of such licence for use on aircraft registered in Malaŵi;

(*b*) the applicant for the validation certificate shall present to the Authority the foreign licence and evidence of the experience required by presenting the personal record;

(*c*) the applicant for the validation certificate shall demonstrate to the Authority evidence of language proficiency in English;

(*d*) the Authority will verify the authenticity of the licence, ratings, authorizations with the state of licence issue prior to issuing the validation;

(*e*) the Authority will only validate ratings or authorizations on the foreign licence together with the validation of a licence; and

(*f*) the Authority may issue a validation certificate which will be valid for one year, provided the foreign licence, ratings or authorizations remains valid.

(2) The applicant for the validation certificate shall demonstrate to the satisfaction of the Authority the knowledge relevant to the licence to be validated of—

(*a*) air law;

(*b*) applicable Airworthiness requirements governing certification and continuing airworthiness; and

(*c*) approved maintenance organizations and procedures.

(3) The applicant for the validation certificate shall complete a skill test for the relevant licence and ratings that he or she wants to be validated relevant to the privileges of the licence held; and

(4) Have a minimum of four years AME experience.

Conversion of aircraft maintenance engineer licences

22.—(1) General requirements for conversion—a person who holds a current and valid AME licence issued by another Contracting State, in accordance with ICAO Annex 1, may apply for conversion of such

licence for use on aircraft registered in Malaŵi provided the following requirements are met—

(*a*) the applicant for the conversion shall present to the Authority the foreign licence and evidence of the experience required by presenting the personal record;

(*b*) the applicant for the conversion shall demonstrate to the Authority evidence of language proficiency in English;

(*c*) demonstrate, to the satisfaction of the Authority and relevant to the licence to be validated, knowledge of Malaŵi's—

(i) air law;

(ii) applicable airworthiness requirements governing certification and continuing airworthiness;

(iii) approved maintenance organizations and procedures;

(*d*) the applicant for the validation certificate shall complete a skill test for the relevant licence and ratings that he or she wants to be validated relevant to the privileges of the licence held; and

(*e*) have a minimum of four years AME experience—

(i) the Authority will verify the authenticity of the licence, ratings and authorizations with the state of licence issue prior to issuing the converted licence;

(ii) the Authority will only convert ratings or authorizations on the foreign licence together with the conversion of a licence.

(2) Conversion of AME licences that have been validated in accordance with regulation 21. The holder of a current and valid AME licence issued by another Contracting State in accordance with ICAO Annex 1 who has a validation in accordance with regulation 21 and can show evidence of 12 months performing maintenance on aircraft registered in Malaŵi may convert his/her AME licence with no further formality.

Validation of AME licences by reliance upon the licensing system of another Contracting State

23.—(1) Notwithstanding regulations 21 and 22, the Authority may issue a validation certificate with the applicable ratings to the holder of a current and valid foreign AMT, provided—

(*a*) the licence is issued by another ICAO Contracting State;

(*b*) the Authority had determined that the licence has been issued on the basis of these Regulations;

(*c*) there is an agreement between the Authority and the other Contracting State about recognition of licences and, if applicable, keeping the licences and ratings current and valid; and

(*d*) the applicant for the validation certificate demonstrates, to the satisfaction of the Authority and relevant to the licence to be validated, knowledge of Malaŵi's—

(i) air law;

(ii) applicable airworthiness requirements governing certification and continuing airworthiness; and

(iii) approved maintenance organizations and procedures;

(*e*) the applicant for the validation certificate shall present to the Authority the foreign licence and evidence of the currency of the licence by presenting the personal record;

(*f*) the applicant for the conversion shall demonstrate to the Authority evidence of language proficiency in English.

(2) The authority will verify the authenticity of the licence, ratings, with the State of Licence issue prior to issuing the validation.

(3) The Authority may issue a validation certificate which will be valid for one year, provided the foreign licence, ratings, and authorizations remain valid.

(4) The IS 2:23 in the Schedule hereto contains procedures for validation of flight crew licences by reliance upon the licensing system of another ICAO Contracting State.

Conversion of AME licences by reliance upon the licensing system of another Contracting State

24.—(1) Notwithstanding regulations 21 and 22, the Authority may issue a licence with the applicable ratings to the holder of a current and valid foreign licence, provided—

(*a*) the licence is issued by another ICAO Contracting State;

(*b*) the Authority is convinced that the licence has been issued on the basis of these Regulations; and

(*c*) there is an agreement between the Authority and the other Contracting State about recognition of licences.

(2) The applicant for the conversion shall present to the Authority the—

(*a*) foreign licence; and

(*b*) evidence of the currency of the licence by presenting the personnel record (e.g. logbook).

(3) The applicant for the conversion shall demonstrate to the Authority evidence of language proficiency in English.

(4) The applicant shall demonstrate, to the satisfaction of the Authority and relevant to the licence to be validated, knowledge of Malaŵi's—

(*a*) air law;

(*b*) applicable airworthiness requirements governing certification and continuing airworthiness; and;

(*c*) approved maintenance organizations and procedures.

(5) The authority will verify the authenticity of the licence, ratings, authorizations and the medical certificate with the State of Licence issue prior to issuing the validation.

(6) IS 2:24 contained in the Schedule hereto contains procedures for conversion of AME licences by reliance upon the licensing system of another ICAO Contracting State.

Division V—Training and Testing Requirements

Documentation of training and aeronautical experience

25.—(1) Each person shall document and record the following in a manner acceptable to the Authority—

(*a*) training and/or experience used to meet the requirements for a licence, rating, endorsement and/or authorization of these Regulations;

(*b*) the experience required to show the maintaining of recency of aeronautical experience according to the requirements of this Regulations.

Training conducted in an approved training organization

26.—(1) Approved training for aviation personnel licences shall be conducted within an approved training organization.

(2) The Authority may approve a training programme for a licence, rating, authorization or endorsement that allows an alternative means of compliance with the experience requirements prescribed in this Chapter when training is conducted within an Approved Training Organization under special curricula approved by the Authority under the Aviation (Approved Training Organizations) Regulations.

(3) Prior to authorizing an alternative means of compliance that permits an Approved Training Organization to conduct training, which does not meet the normal prescribed experience requirements, the Authority shall ensure that the approved training programme provides a level of competency at least equal to that provided by the minimum experience requirements for personnel not receiving such approved special curricula.

(4) The Aviation (Approved Training) Regulations, prescribe the requirements for certifying and administering Approved Training Organizations for conducting approved training.

(5) Competency-based approved training for aircraft maintenance personnel shall be conducted within an approved training organization.

Use of flight simulation training devices

27.—(1) Except as specified in subregulation 2 of this regulation, no airman may receive credit for use of any flight simulation training device for satisfying any training, testing, or checking requirement of this part unless that flight simulator or flight training device is approved by the Authority for—

(*a*) the training, testing, and checking for which it is used;

(*b*) each particular manoeuvre, procedure, or crew member function performed; and

(*c*) the representation of the specific category and class of aircraft, type of aircraft, particular variation within the type of aircraft, or set of aircraft for certain flight training devices.

(2) The flight simulation training device shall have the same technology for the basic flight instruments (attitude indicator, airspeed, altimeter, and heading reference) as those of the aircraft used by the operator.

(3) Operators that have electronic/glass displays shall use simulators that have electronic/glass displays.

(4) Operators that have standard instruments shall use simulators that have standard instruments.

(5) Operators shall not conduct differences training on variant training on aircraft, that have electronic glass displays with aircraft that have standard instruments.

(6) The Authority may approve a device other than a flight simulation training device for specific purposes.

(7) The use of a flight simulation training device for performing training, testing and checking for which a flight crew member is to receive credit, shall be approved by the Authority, which shall ensure that the flight simulation training device is appropriate to the task.

Knowledge and skill tests and checks: time, place, designated persons and format

28.—(1) Knowledge and Skill Tests and Checks prescribed by or under these Regulations are given at times, places, and by persons authorized and designated by the Authority.

(2) The knowledge test will be performed in written or computer format, except for the knowledge test for an instructor licence or an additional instructor rating within the same aircraft category, which may be performed orally.

(3) In addition to the written knowledge test, candidates may be questioned orally during the skill test, as appropriate.

Knowledge and skill tests and checks: prerequisites, passing grades and retesting after failure

29.—(1) An applicant for a knowledge test or a skill test shall have received any required endorsement as specified in these Regulations for the applicable licence, rating or authorization to show that the applicant has met the training and/or experience requirements to take the knowledge or skill test.

(2) An applicant for a knowledge or skill test shall receive written authorization from the Authority to take, or retake, the test.

(3) An applicant shall show proper identification in the form of a Government issued identification document at the time of application that contains the applicant's—

(*a*) photograph;

(*b*) signature;

(*c*) date of birth, which shows the applicant meets or will meet the age requirements of these Regulations for the licence sought before the expiration date of the airman knowledge test report; and

(4) Actual residential address, if different from the applicant's mailing address.

(5) An applicant shall, before attempting the skill test for a licence or rating—

(*a*) have passed the required knowledge test within the 24 calendar-month period preceding the month the applicant successfully completes the skill test; or

(*b*) if an applicant for an ATPL has passed the ATP knowledge test within a period of 7 years before successfully completing the ATP skill test, provided that the applicant is, and has been continuously, employed as a flight crew member by a certificate holder under the Aviation (Air Operator Certification and Administration) Regulations, at the time of the ATP skill test;

(6) When an applicant is required to provide an aircraft for a skill test, it must be—

(*a*) airworthy and certificated;

(*b*) have operating limitations that do not prohibit the tasks required for the skill test;

(*c*) be of national, foreign or military registry of the same category, class, and type if applicable, for the licence and/or rating for which the applicant is applying;

(*d*) have fully functioning dual controls, except as provided for in these Regulations; and

(*e*) be capable of performing all areas of operation appropriate to the rating sought and have no operating limitations, which prohibit its use in any of the areas of operation, required for the skill test.

(7) If the applicant is required to take a segmented skill test using a flight simulation training device and an aircraft, the flight simulation training device must be approved by the authority—

(*a*) retesting after failure of a test;

(*b*) an applicant for a knowledge or skill test who fails that test may reapply to retake the test only after the applicant has received;

(*c*) the necessary training from an authorized instructor who has determined that the applicant is proficient to pass the test;

(*d*) an endorsement from an authorized instructor who gave the applicant the additional training; and

(*e*) an applicant for a flight instructor licence with an aeroplane category rating or, for a flight instructor licence with a glider category rating, who has failed the skill test due to deficiencies in instructional proficiency on stall awareness, spin entry, spins, or spin recovery shall—

(i) comply with the requirements of subregulation 6 (*a*) of these Regulations before being retested;

(ii) bring an aircraft to the retest that is of the appropriate aircraft category for the rating sought and is certified for spins; and

(iii) demonstrate satisfactory instructional proficiency on stall awareness, spin entry, spins, and spin recovery to an examiner during the retest.

Reliance on training and testing in another Contracting State

30.—(1) The Authority may rely on the training and/or testing system administered by another Contracting State as the basis for its own approved training curriculum, including the administration of written and/or skill test requirements for airman licences provided that the Authority has an agreement with the other Contracting State whose training and/or testing system is used.

(2) The applicant shall apply for and receive written approval from the Authority prior to receiving training and/or testing in a system administered by another Contracting State.

Instructor requirements—general

31.—(1) All applicants for instructor licences and ratings or authorizations shall, in addition to specific requirements contained in have received and logged training from an authorized instructor on the

fundamentals of instructing and have passed a knowledge test on the following areas of instructing—

(*a*) techniques of applied instruction;

(*b*) assessment of student performance in those subjects in which ground instruction is given;

(*c*) the learning process;

(*d*) elements of effective teaching;

(*e*) student evaluation and testing, training philosophies;

(*f*) training programme development;

(*g*) lesson planning;

(*h*) classroom instructional techniques;

(*i*) use of training aids, including flight simulation training devices as appropriate;

(*j*) analysis and correction of student errors;

(*k*) human performance relevant to flight instruction;

(*l*) hazards involved in simulating system failures and malfunctions in the aircraft; and

(*m*) principles of threat and error management.

(2) The following applicants do not need to comply with subregulation 1 of this regulation—

(*a*) the holder of an instructor licence or authorization issued under these Regulations who has already passed the knowledge test in the areas of instructing;

(*b*) the holder of a current teacher's certificate issued by a national or local authority that authorizes the person to teach at a secondary educational level or higher; or

(*c*) a person who provides evidence of an equivalent level of experience acceptable to the Authority.

Designated examiners

32.—(1) The Authority may designate private individuals to act as representatives of the Director of Civil Aviation in examining, inspecting, and testing persons and aircraft for the purpose of issuing airmen and aircraft licences, ratings and certificates.

(2) The specific requirements for each type of designated examiner are contained in the appropriate licensing section of these Regulations related to the licensing requirements of the persons to be examined.

(3) The Authority will issue each designated examiner a certificate of designated authority and a designee identification card specifying

the kinds of designation for which the individual is qualified and the duration of the designation.

Specifications and format of the licence

33.—(1) The licence shall be made of a suitable material as listed in ICAO Annex 1: 5.1.2.

(2) The licence format shall be in a form and manner prescribed by the Authority.

(3) The items required on the licence are indicated in IS 2:33 contained in the Schedule hereto.

(4) The licence shall contain the expiration date of the licence and ratings.

(5) The licence shall be issued in the English language.

Division III—Suspension or Revocation of a Licence, Rating, Authorization or Certificate

Action to suspend or revoke a licence

34. Action to suspend or revoke a licence will be taken by the Authority in accordance with the enforcement regulations contained in Part III of Aviation (General Policies, Procedures and Definitions) Regulations.

Suspension of a licence, rating, authorization or validation certificate

35.—(1) If, in accordance with the Aviation Act the Authority determines that the interests of safety require that a licence, rating, authorization or certificate must be suspended, the Authority may act as follows—

(*a*) if the Authority discovers facts indicating either a lack of competency or lack of qualification, the Authority may, require an applicant for or the holder of any licence, rating, authorization, or validation certificate to retake all or part of the knowledge or practical tests required for any licence, rating, authorization, or validation certificate at issue, renewal or re-issue. The Authority may suspend the validity of any such licence, rating, authorization and/or validation certificate pending the results of such re-testing;

(*b*) a person whose licence, rating, authorization, or certificate has been amended, modified, suspended, or revoked shall be provided with notice and an opportunity to be heard in accordance with subregulation 1(3) of the Aviation (General Policies, Procedures and Definitions) Regulations;

(*c*) after notifying the person involved, in writing, stating the reasons for such action, the Authority may also suspend the validity of any licence, rating, authorization and/or validation certificate in the following cases—

(i) during the investigation of an aircraft disaster or incident;

(ii) in cases of proven misconduct, recklessness or excessive carelessness;

(iii) if the holder has acted in contradiction to his or her privileges; and/or

(iv) pending the investigation of a suspected violation of these Regulations or the aviation law under which these Regulations are affected.

(*d*) once the suspension is effective, the person involved shall immediately cease exercising the privileges of the affected licence, certificate, rating, or authorization. The person involved shall surrender to the Authority all licences or validation certificates in his or her possession that are subject to the suspension within 8 days of receiving the notification of the order. If the person fails to surrender the documents under suspension, the Authority may revoke all such certificate(s) held by that person;

(*e*) when a suspension is limited to one or more ratings mentioned on the licence or validation certificate, the Authority shall provide the person involved with a new licence or validation certificate omitting all ratings which are subject to the suspension;

(*f*) the Authority may cancel a suspension in the following cases—

(i) if person under suspension has taken and passed the knowledge or practical tests required for any licence, rating, or authorization at issue indicated in (*a*);

(ii) if the person involved has gained the required additional experience; or

(iii) by revocation of the licence, rating, authorization and/or validation certificate.

(*g*) once the suspension has been cancelled, other than by revocation, the Authority shall issue the person involved a new licence or validation certificate.

Suspension of a medical certificate

36.—(1) In case of doubt concerning the medical fitness of the holder of a medical certificate the Authority may determine that the person involved shall again repeat a complete or partial medical examination, and may suspend the validity of that medical certificate until the repeat examination is completed with favourable results.

(2) The validity of a medical certificate may also be suspended in case of a temporary rejection on medical grounds.

(3) The person holding the medical certificate will be notified in writing of a suspension stating the reasons for that suspension.

(4) The person holding the suspended medical certificate shall surrender the medical certificate in his or her possession to the Authority within 8 days after the date of receiving the notification.

(5) In cases in which the medical fitness of the person involved allows it, the Authority may provide the person with a suspended medical certificate of a particular class with a new medical certificate of a lower class.

(6) A suspension may be lifted if the medical examination intended in subregulation (1) has been passed satisfactorily. If a suspension is lifted, the person involved shall receive a new medical certificate unless the medical certificate was revoked.

Revocation of licences, ratings, authorization or certificates

37.—(1) A licence, rating, authorization or certificate shall be revoked if the holder has lost the skills for exercising the privileges mentioned in the document or fails to meet the appropriate medical standards as shown by the results of a medical examination or a test.

(2) A licence, rating, authorization and/or certificate may be revoked if the holder has made a statement contrary to the truth in obtaining or maintaining that licence, rating authorization or certificate, or has provided incorrect data at a medical examination and/or test required for the issue, maintenance or renewal of the licence, rating, authorization and certificate.

(3) A licence, rating, authorization or certificate shall be revoked in case of proven misconduct, recklessness or excessive carelessness. The holder of the licence will be notified in writing of the revocation with the reasons therefore.

(4) A person who has had a licence or certificate revoked shall be obliged to hand over to the Authority all the licences or certificates in his or her possession applicable to the revocation within 8 days after the date of receiving notification from the Authority.

(5) The person who has been denied the privilege to manipulate the controls of an aircraft by judgment of a court, shall be equally obliged to hand over to the Authority all licences and certificates in his or her possession within 8 days after he or she has taken cognizance of the judgment or after it can be reasonably assumed that he or she has taken cognizance thereof.

PART II

Pilot Licences, Categories, Ratings, Authorizations, Endorsements, Instructors for Pilot Licensing, and Designated Pilot Examiners

Division I—General

Application

38.—(1) This Part prescribes the requirements for the issue, renewal and re-issue, if applicable, of pilot licences, ratings and authorizations.

General rule concerning licences, ratings and authorization or designation

39.—(1) An applicant shall, before being issued with any pilot licence, rating, authorization or designation, meet such requirements in respect of age, knowledge, experience, flight instruction, skill, medical fitness and language proficiency as are specified for that licence, rating or authorization.

(2) A person shall not act either as PIC or as co-pilot of an aircraft in any of the categories unless that person is the holder of a pilot licence issued in accordance with the provisions of these Regulations.

(3) An applicant shall for renewal or re-issue of a licence, rating, authorization or designation, meet the requirements as are specified for that licence, rating, authorization or designation.

Authority to act as a flight crew member

40.—(1) A person shall not act as a pilot flight crew member of an aircraft registered in Malaŵi unless a valid licence or a validation certificate is held showing compliance with the specifications of these Regulations and appropriate to the duties to be performed by that person.

(2) No person may act as the PIC or co-pilot of an aircraft unless that person holds the appropriate category, class and type rating for the aircraft to be flown.

(3) During a skill test, the applicant acts as PIC but the safety pilot will intervene in safety situations.

Crediting of flight time

41.—(1) A student pilot or the holder of a pilot licence shall be entitled to be credited in full with all solo, dual instruction and PIC flight time towards the total flight time required for the initial issue of a pilot licence or the issue of a higher grade of pilot licence.

(2) The holder of a pilot licence, when acting as co-pilot at a pilot station of an aircraft certificated for operation by a single pilot but required by Malaŵi to be operated with a co-pilot shall be entitled to be credited with not more than 50 per cent of the co-pilot flight time towards the total flight time required for a higher grade of pilot licence. The Authority may authorize that flight time be credited in full towards the total flight time required if the aircraft is equipped to be operated by a co-pilot and the aircraft is operated in a multi-crew operation.

(3) The holder of a pilot licence, when acting as co-pilot at a pilot station of an aircraft certificated to be operated with a co-pilot, shall be entitled to be credited in full with this flight time towards the total flight time required for a higher grade of pilot licence.

(4) The holder of a pilot licence, when acting as PIC under supervision, shall be entitled to be credited in full with this flight time towards the total flight time required for a higher grade of pilot licence.

Limitation of privileges of pilots who attained their 60th birthday and birthday curtailment of privileges of pilots who have attained their 65th birthday

42.—(1) No person who holds a pilot licence issued under this Part shall serve as a PIC in single pilot operations on a civil aircraft of Malaŵi registry engaged in commercial air transport operations if the person has reached his or her 60th birthday.

(2) For commercial air transport operations on a civil aircraft of Malaŵi registry requiring more than one pilot, one pilot may be up to 65 years of age provided the other pilot is less than 60 years of age.

Recent experience and currency requirements

43.—(1) A pilot shall not operate an aircraft carrying passengers as PIC or co-pilot unless he or she has carried out at least three take-offs and three landings as pilot flying in an aircraft of the same type/class or variant of a type or a flight simulator of the aircraft type/class to be used, in the preceding 90 days.

(2) The holder of a licence that does not include an instrument rating shall not act as PIC of an aircraft carrying passengers at night unless he or she has earned out at least three take-offs and three landings at night during the previous 90 days.

(3) A pilot shall not operate an aircraft under IFR or in weather conditions less than the minima prescribed for VFR flight unless within the preceding six months—

(*a*) the pilot had an instrument proficiency check on the manoeuvres in IS 2:57 contained in the Schedule hereto or (IR Skill Test); or

(*b*) has logged six hours instrument flight time including at least three hours in flight in the category of aircraft and has carried out six instrument approaches in either actual or simulated conditions.

(4) Each person shall document and record the experience required to show recent flight experience.

(5) Each pilot shall also meet the currency requirements in Part IV of the Aviation (Operations) Regulations before operating an aircraft in Malaŵi.

Recording of flight time

44.—(1) Each person shall document and record the following time in a manner acceptable to the Authority as outlined in IS 2:43 contained in the Schedule hereto.

(2) Training and experience used to meet the requirements for a licence, rating and authorization of this Regulation; and

(3) The experience required to show recent flight experience according to the requirements of this Regulation.

Division II—Category, Class and Type Ratings, Category II/III Authorizations and Endorsements

General

45.—(1) The holder of a pilot licence shall not be permitted to act as PIC or as co-pilot of an aircraft unless the holder has received the applicable ratings, authorizations and/or endorsements as follows—

(*a*) the appropriate aircraft category rating specified in this Regulation;

(*b*) The appropriate class rating when required in accordance within these Regulations;

(*c*) a type rating when required in accordance with these Regulations;

(*d*) an authorization when required in accordance with these Regulations; or

(*e*) an endorsement when required in accordance with this Regulation.

(2) The applicant shall meet the appropriate requirements of this Regulation for the aircraft rating, authorization or endorsement sought.

(3) When an applicant demonstrates skill and knowledge for the initial issue or re-issue of a pilot licence, the category and ratings appropriate to the class or type of aircraft used in the demonstration will be entered on the licence.

(4) For the purpose of training, testing or specific special purpose non-revenue, non-passenger carrying flights, special authorization may be provided in writing to the licence holder by the Authority in place of issuing the class or type rating in accordance with subregulation (1). This authorization shall be limited in validity to the time needed to complete the specific flight.

Category ratings

46.—(1) The category of aircraft shall be endorsed on the licence as a rating.

(2) Initial category rating—an applicant for a pilot's licence, after successfully meeting all requirements for the issuance of the licence as contained in these Regulations, shall receive the appropriate licence with the aircraft category, and if applicable, class or type rating endorsed on the licence.

(3) Additional category ratings—

(*a*) any additional category rating endorsed on a pilot licence shall indicate the level of licensing privileges at which the category rating is granted.

(*b*) the holder of a pilot licence seeking an additional category rating shall—

(i) meet the requirements of these Regulations appropriate to the privileges for which the category rating is sought;

(ii) have an endorsement is his/her logbook or training record from an authorized instructor that the applicant has been found competent in the required aeronautical knowledge and flight instruction areas;

(iii) pass the required knowledge test; and

(iv) pass the required skill test for the aircraft category, and if applicable, class rating being sought.

(4) Privileges. Subject to compliance with the requirements specified in these Regulations, the privileges of the holder of a class rating are to act as a pilot on the class of aircraft specified in the rating.

(5) The validity, renewal or reissue of the category rating will coincide with the requirements for validity, renewal or reissue of the licence, and if applicable class or type rating contained in these Regulations.

Class ratings

47.—(1) The class of aircraft, if applicable, shall be endorsed on the licence as a rating.

(2) Initial class rating—an applicant for a pilot's licence, after successfully meeting all requirements for the issuance of the licence as contained in these Regulations, shall receive the appropriate licence with the aircraft category, class, and if applicable, type rating endorsed on the licence.

(3) Additional class ratings—

(*a*) any additional class rating endorsed on a pilot licence shall indicate the level of licensing privileges at which the class rating is granted.

(*b*) the holder of a pilot licence seeking an additional class rating shall—

(i) meet the requirements of these Regulations appropriate to the privileges for which the class rating is sought;

(ii) have an endorsement is his/her logbook or training record from an authorized instructor that the applicant has been found competent in the required aeronautical knowledge and flight instruction areas;

(iii) pass the required knowledge test unless the applicant holds a class rating within the same category of aircraft, at the same level of pilot licence at either the private or commercial levels; and

(iv) pass the required skill test for the aircraft class rating being sought.

(4) Privileges. Subject to compliance with the requirements specified in these Regulations, the privileges of the holder of a class rating are to act as a pilot on the class of aircraft specified in the rating.

(5) Validity—Subject to compliance with the requirements specified in these Regulations, the validity period of—

(*a*) a multi-engine class rating is 1 calendar year;

(*b*) a single-engine class rating; balloon gas or balloon hot air rating is 2 calendar years.

(6) Renewal Timeframe—

(*a*) for the renewal of a single-engine class rating, a balloon gas rating or a balloon hot air rating, the pilot shall—

(i) within the preceding 24 calendar months, complete a proficiency check on areas of operation listed in the skill test that is applicable to the level of licence, category and class rating; and

(ii) have completed 12 hours flight time within the 12 months preceding the expiry date;

(*b*) for the renewal of a multi-engine class rating the pilot shall—

(i) within the preceding 12 calendar months, complete a proficiency check on the subjects listed in the skill test that is applicable to the level of licence, category and class rating; and

(ii) have completed 10 route sectors within the 3 months preceding the expiry date;

(*c*) where applicable the proficiency check shall include instrument procedures, including instrument approach and landing procedures under normal, abnormal and emergency conditions, including simulated engine failure;

(*d*) if a pilot takes the proficiency check required in this section in the calendar month before or the calendar month after the month in which it is due, the pilot is considered to have taken it in the month in which it was due for the purpose of computing when the next proficiency check is due.

(7) Re-issue—If the class rating has expired the applicant shall—

(*a*) have received refresher training from an authorized instructor with an endorsement that the person is prepared for the required skill test; and

(*b*) pass the required skill test for the applicable aircraft category and/or class;

(*c*) where applicable the skill test shall include instrument procedures, including instrument approach and landing procedures under normal, abnormal and emergency conditions, including simulated engine failure.

Type ratings

48.—(1) The type rating shall be endorsed on the licence as a rating, including any limitations.

(2) A pilot seeking an aircraft type rating to be added on a pilot licence shall—

(*a*) hold or concurrently obtain an instrument rating that is appropriate to the aircraft category, class or type rating sought;

(*b*) have an endorsement in his or her logbook or training record from an authorized instructor that the applicant has been found competent in the required aeronautical knowledge and flight instruction areas;

(*c*) pass the required skill test at the ATPL level, applying crew resource management concepts, applicable to the aircraft category, class and type rating being sought—applicants seeking a private or commercial licence in an aircraft that requires a type rating shall also complete the applicable portions of either the PPL or CPL skill test in; conjunction with the ATPL skill test;

(*d*) perform the skill test under instrument flight rules unless the aircraft used for the skill test is not capable of the instrument manoeuvres and procedures required for the skill test in which case the applicant may—

(i) obtain a type rating limited to "VFR only,"; and

(ii) remove the "VFR only" limitation for each aircraft type in which the applicant demonstrates compliance with the ATPL skill test under instrument conditions.

(3) Privileges. Subject to compliance with the requirements specified in this Regulation, the privileges of the holder of a type rating are to act as a pilot on the type of aircraft specified in the rating. When a type rating is issued limiting the privileges to act as co-pilot or limiting the privileges to act as pilot only during the cruise phase of flight, such limitation shall be endorsed on the rating.

(4) Validity. Subject to compliance with the requirements in this Regulation, the validity period of a type rating is 1-calendar year.

(5) Renewal. For the renewal of a type rating the pilot shall—

(*a*) within the preceding 12-calendar months, complete a proficiency check: in the areas of operation listed in the skill test for the appropriate category, type and if applicable class of aircraft;

(*b*) have completed 10-route sectors within the 3 months preceding the expiry date;

(*c*) if a pilot takes the proficiency check required in this section in the calendar month before or the calendar month after the month in which it is due, the pilot is considered to have taken it in the month in which it was due for the purpose of computing when the next proficiency check is due.

(6) Re-issue. If the type rating has been expired the applicant shall—

(*a*) have received refresher training from an authorized instructor with an endorsement that the person is prepared for the required skill test; and

(*b*) pass the required skill test for the appropriate category, type and if applicable class of aircraft.

Category II and III authorization

49.—(1) The Authority will issue a Category II or III pilot authorization by letter, to accompany the pilot's licence, when the pilot meets the requirements contained in this regulation and IS 2:49 contained in the Schedule to these Regulations.

(2) General—

(*a*) a person, not flying for an AOC holder under the Aviation (Air Operator Certification and Administration) Regulations, may not act as pilot of an aircraft during Category II or III operations unless that person holds a Category II or III pilot authorization for that category, class or type of aircraft;

(*b*) the applicant for a Category II or III pilot authorization shall—

(i) hold a pilot licence with an instrument rating or an ATPL; and

(ii) hold a category and class or type rating for the aircraft for which the authorization is sought.

(3) Knowledge—The applicant for a Category II or III pilot authorization shall have completed the theoretical knowledge instruction on the subjects as listed in IS 2:49 in the Schedule hereto.

(4) Experience—The applicant for a Category II or III pilot authorization shall have at least—

(*a*) 50 hours of night flight time as PIC;

(*b*) 75 hours of instrument time under actual or simulated instrument conditions; and

(*c*) 250 hours of cross-country flight time as PIC.

(5) Flight instruction—The applicant for a Category II or III pilot authorization shall have completed the flight instruction on the areas of operation listed in IS 2:49 in the Schedule hereto.

(6) Skill—The applicant for a Category II or III pilot authorization shall pass a skill test including the areas of operation listed in IS: 2:49 in the Schedule hereto.

(7) Validity—Subject to compliance with the requirements specified in this Part, the validity period of a Category II and III authorization is 6 months.

(8) Renewal—For the renewal of a Category II or III pilot authorization the pilot shall have completed a proficiency check including the areas of operation listed in IS 2:49 in the Schedule hereto.

(9) Re-issue—If the Category II or the Category III have been expired the applicant shall—

(*a*) have received refresher training from an authorized instructor with an endorsement that the person is prepared for the required skill test; and

(*b*) pass the required skill test on the subjects listed in the IS 2:49.

Complex aeroplane endorsement

50.—(1) No person shall act as pilot in command of a complex aeroplane, including a seaplane, unless the person has—

(*a*) received and logged ground and flight training from an authorized instructor in a complex aeroplane or flight simulation training device that is representative of a complex aeroplane and has been found proficient in the operation and systems of the aeroplane; and

(*b*) received a one-time endorsement in the pilot's logbook from an authorized instructor who certifies that person is proficient to operate a complex aeroplane.

High performance aeroplane endorsement

51.—(1) No person shall act as pilot in command of a high performance aeroplane unless the person has—

(*a*) received and logged ground and flight training from an authorized instructor in a high performance aeroplane or flight simulation training device that is representative of a high performance aeroplane and has been found proficient in the operation and systems of the aeroplane; and

(*b*) received a one-time endorsement in the pilot's logbook from an authorized instructor who certifies that person is proficient to operate a high performance aeroplane.

High altitude aircraft endorsement

52.—(1) No person shall act as pilot in command of a pressurized aircraft capable of operating at high altitudes (an aircraft that has a

service ceiling or maximum operating altitude, whichever is lower, above 25,000 feet MSL) unless the person has—

(*a*) received and logged ground training from an authorized instructor and received an endorsement in the logbook from the instructor certifying the person has satisfactorily accomplished ground training in at least in the following subjects—

(i) high-altitude aerodynamics and meteorology;

(ii) respiration;

(iii) effects, symptoms, and causes of hypoxia and any other high-altitude sickness;

(iv) duration of consciousness without supplemental oxygen;

(v) effects of prolonged usage of supplemental oxygen;

(vi) causes and effects of gas expansion and gas bubble formation;

(vii) physical phenomena and incidents of decompression; and any other physiological aspects of high-altitude flight.

(*b*) received and logged flight training from an authorized instructor and received an endorsement in the logbook from the instructor certifying the person has satisfactorily accomplished flight training in an aircraft or in a flight simulation training device that is representative of a pressurized aircraft, in at least the following subjects—

(i) normal cruise flight operations while operating above 25,000 feet MSL;

(ii) proper emergency procedures for simulated rapid decompression without actually depressurizing the aircraft; and

(iii) emergency descent procedures.

Division III—Student Pilots

General requirements

53.—(1) Age—The applicant for a student pilot authorization shall be not less than 16 years of age.

(2) Knowledge—The applicant for a student pilot authorization shall receive and log ground training from an authorized instructor on the following subjects—

(*a*) applicable regulations of these Regulations for the category of aircraft to be flown and under the Aviation (Operations) Regulations;

(*b*) airspace rules and procedures for the aerodrome where the student will perform solo flight; and

(*c*) flight characteristics and operation limitations for the make and model of aircraft to be flown.

(3) Pre-solo flight instruction. Prior to conducting a solo flight, a student pilot shall have—

(*a*) received and logged flight training for the manoeuvres and procedures applicable to the aircraft category including flight training in those manoeuvres and procedures at night, if the solo flight is to be conducted at night.

(*b*) demonstrated satisfactory proficiency and safety, as judged by an authorized instructor, on the manoeuvres and procedures for the appropriate category, and class if applicable, of aircraft.

(4) Solo flight requirements: A student pilot shall not fly solo—

(*a*) unless holding at least a Class 2 Medical Certificate; and

(*b*) unless under the supervision of, or with the authority of, a licensed flight instructor; and

(*c*) in international flight unless there is a special or general arrangement between Malaŵi and the intended State of flight.

Student pilot manoeuvers and procedures for pre-solo flight training—aeroplane category

54. An applicant for a student pilot authorization in the aeroplane category shall receive training in the manoeuvres and procedures contained in IS 2:54 contained in the Schedule hereto.

Student pilot manoeuvers and procedures for pre-solo flight training—helicopter category

55. An applicant for a student pilot authorization in the helicopter category shall receive training in the manoeuvres and procedures contained in IS 2:55 contained in the Schedule hereto.

Student pilot manoeuvers and procedures for pre-solo flight training—powered-lift category

56. An applicant for a student pilot authorization in the powered-lift category shall receive training in the manoeuvres and procedures contained in IS 2:56 contained in the Schedule hereto.

Student pilot manoeuvers and procedures for pre-solo flight training—airship category

57. An applicant for a student pilot authorization in the airship category shall receive training in the manoeuvres and procedures contained in IS 2:57 contained in the Schedule hereto.

Student pilot manoeuvers and procedures for pre-solo flight training—balloon category

58. An applicant for a student pilot authorization in the balloon category shall receive training in the manoeuvres and procedures contained in IS 2:58 contained in the Schedule hereto.

Student pilot manoeuvers and procedures for pre-solo flight training—glider category

59. An applicant for a student pilot authorization in the glider category shall receive training in the manoeuvres and procedures contained in IS 2:59 contained in the Schedule hereto.

Division IV—Private Pilot Licence

General requirements

60.—(1) Age—

(*a*) the applicant for a PPL in all categories other than balloon and glider shall be not less than 17 years of age;

(*b*) the applicant for a PPL in the balloon or glider category shall be not less than 16 years of age.

(2) Medical fitness: The applicant for a PPL shall hold a current Class 2 Medical Certificate as issued under these Regulations.

(3) Knowledge areas: The applicant for a PPL shall receive and log ground training from an authorized instructor on the following subjects appropriate to the privileges granted to the holder of a private pilot licence and appropriate to the category of aircraft to be included on the licence—

(*a*) air law—rules and regulations relevant to the holder of a PPL; rules of the air; appropriate air traffic services practices and procedures.

(*b*) aircraft general knowledge—

(i) principles of operation and functioning of power-plants, systems and instruments;

(ii) operating limitations of aeroplanes and the relevant category of aircraft and power-plants; relevant operational information from the flight manual or other appropriate document;

(iii) for helicopter and powered-lift, transmission (powertrains) where applicable; and

(iv) for airship and balloon, physical properties of gases;

(*c*) flight performance and planning—

(i) effects of loading and mass distribution on flight characteristics; mass and balance calculations;

(ii) use and practical application of take-off or launching, landing and other performance data; and

(iii) pre-flight and en route flight planning appropriate to private operations under VFR; preparation and filing of air traffic services flight plans; appropriate air traffic services procedures; position reporting procedures; altimeter setting procedures; operations in areas of high-density traffic;

(*d*) human performance—

(i) human performance relevant to the appropriate category of aircraft;

(ii) principles of threat and error management;

(*e*) meteorology—application of elementary aeronautical meteorology; use of, and procedures for obtaining, meteorological information; altimetry; hazardous weather conditions;

(*f*) navigation—practical aspects of air navigation and dead-reckoning techniques; use of aeronautical charts;

(*g*) operational procedures—

(i) application of threat and error management to operational procedures;

(ii) altimeter setting procedures;

(iii) use of aeronautical documentation such as AIP, NOTAM, aeronautical codes and abbreviations;

(iv) appropriate precautionary and emergency procedures, including action to be taken to avoid hazardous weather, wake turbulence and other operating hazards;

(v) in the case of the helicopter, and if applicable, powered-lift, settling with power; ground resonance; retreating blade stall; dynamic roll-over and other operation hazards; safety procedures, associated with flight under visual meteorological conditions (VMC);

(*h*) principles of flight—principles of flight relating to the appropriate category of aircraft;

(*i*) radiotelephony—communications procedures and phraseology as applied to VFR operations; action to be taken in case of communication failure.

(4) Knowledge testing—The applicant for a PPL shall—

(*a*) have received an endorsement for the knowledge test from an authorized instructor who—

(i) conducted the training on the knowledge subjects; and

(ii) certifies that the person is prepared for the required knowledge test.

(*b*) Pass the required written knowledge test on the knowledge areas listed in subregulation 3.

(5) Experience and flight instruction. An applicant for a PPL shall have completed the experience and flight instruction requirements appropriate to the aircraft category as specified in these Regulations.

(6) Skill. The applicant for a PPL shall——

(*a*) have received an endorsement from an authorized instructor who certifies that the person is prepared for the required skill test.

(*b*) have demonstrated by passing a skill test the ability to perform as PIC of an aircraft, within the appropriate category areas of operation described in the appropriate IS listed in these Regulations, with a degree of competency appropriate to the privileges granted to the holder of a PPL.

(*c*) have demonstrated the ability to—

(i) recognize and manage threats;

(ii) operate the aircraft within its limitations;

(iii) complete all manoeuvres with smoothness and accuracy;

(iv) exercise good judgment and airmanship;

(v) apply aeronautical knowledge; and

(vi) maintain control of the aircraft at all times in a manner such that the successful outcome of a procedure or manoeuvre is assured.

(7) Privileges. Subject to compliance with the requirements specified in these Regulations, the privileges of the holder of a PPL shall be to act, but not for remuneration, as PIC or co-pilot of an aeroplane aircraft within the appropriate aircraft category engaged in non-revenue flights.

(8) Validity. Subject to compliance with the requirements specified in these Regulations, the validity period of the licence is 5 years. For renewal or reissue, see regulation 11 under these Regulations.

Experience, flight instruction and skill test for the PPL—aeroplane category

61.—(1) Experience—

(*a*) The applicant for a PPL (A) shall have completed not less than 40 hours of flight time, or 35 hours if completed during a course of approved training, as pilot of aeroplanes, appropriate to the class rating sought, the Authority shall determine whether experience as a pilot under instruction in a flight simulation training device is acceptable as part of the total flight time of 40 or 35 hours, as the case may be: credit for such experience shall be limited to a total of

5 hours if completed under instruction in flight simulation training device approved by the Authority;

(*b*) the applicant shall have completed in aeroplanes not less than 10 hours of solo flight time under the supervision of an authorized flight instructor, including 5 hours of solo cross-country flight time with at least one cross-country flight totaling not less than 270 km (150 NM) in the course of which full-stop landings at two difference aerodromes shall be made;

(*c*) the holder of pilot licences in other categories may be credited with 10 hours of the total flight time as PIC towards a PPL (A).

(2) Flight Instruction—

(*a*) the applicant for a PPL (A) shall receive and log not less than 20 hours of dual instruction from an authorized instructor on the subjects listed in IS 2:61 contained in the Second Schedule hereto. These 20 hours may include 5 hours completed in a flight simulation training device. The 20 hours of dual instruction shall include at least 5 hours of solo cross-country flight time with at least one cross-country flight totaling not less than 270 km (150 NM) in the course of which full-stop landings at two different aerodromes shall be made;

(*b*) the instructor shall ensure that the applicant has operational experience in at least the following areas to the level of performance required for the private pilot—

(i) pre-flight operations, including mass and balance determination, aeroplane inspection and servicing;

(ii) aerodrome and traffic pattern operations, collision avoidance precautions and procedures;

(iii) control of the aeroplane by external visual reference;

(iv) flight at critically slow airspeeds; recognition of, and recovery from, incipient and full stalls;

(v) flight at critically high airspeeds; recognition of, and recovery from, spiral dives;

(vi) normal and cross-wind take-offs and landings;

(vii) maximum performance (short field and obstacle clearance take-offs, short-field landings);

(viii) flight by reference solely to instruments, including the completion of a level 180 degrees turn;

(ix) cross-country flying using visual reference, dead-reckoning and, where available, radio navigation aids;

(x) emergency operations, including simulated aeroplane equipment malfunctions; and

(xi) operations to, from and transmitting controlled aerodromes, compliance with air traffic services procedures, radiotelephony procedures and phraseology;

(xii) as further specified in IS 2:61 contained in the Schedule hereto.

(*c*) if the privileges of the PPL (A) are to be exercised at night, the applicant shall have received 4 hours dual instruction in aeroplanes in night flying, including take-offs, landings and 1 hour of navigation.

(3) The requirements for the skill test for the PPL (A) are included in IS 2:61 contained in the Schedule hereto.

Experience, flight instruction and skill test for the PPL—helicopter category

62.—(1) Experience—

(*a*) the applicant for a PPL (H) shall have completed not less than 40 hours of flight time, or 35 hours if completed during a course of approved training, as a pilot of helicopters: the Authority shall determine whether experience as a pilot under instruction in a flight simulation training device is acceptable as part of the total flight time of 40 or 35 hours, as the case may be: credit for such experience shall be limited to a total of 5 hours if completed under instruction in a flight simulation training device approved by the Authority;

(*b*) the applicant shall have completed in helicopter not less than 10 hours of solo flight time under the supervision of an authorized flight instructor, including 5 hours of solo cross-country flight time with at least one cross-country flight totaling not less than 180 km (100 NM) in the course of which landings at two different points shall be made;

(*c*) the holder of pilot licences in other powered aircraft categories may be credited with 10 hours of the total flight time as PIC towards a PPL (H).

(2) Flight Instruction—

(*a*) the applicant for a PPL (*H*) shall receive and log not less than 20 hours of dual instruction from an authorized instructor on the subjects listed in IS 2:62 contained in the Schedule hereto: these 20 hours may include 5 hours completed in a flight simulation training device. The 20 hours of dual instruction shall include at least 5 hours of solo cross-country flight time with at least one cross-country flight totaling not less than 180 km (100 NM) in the course of which landings at two different points shall be made;

(*b*) the instructor shall ensure that the applicant has operational experience in at least the following areas to the level of performance required for the private pilot—

(i) recognize and manage threats and errors;

(ii) pre-flight operations, including mass and balance determination, helicopter inspection and servicing;

(iii) aerodrome and traffic pattern operations, collision avoidance precautions and procedures;

(iv) control of the helicopter by external visual reference;

(v) recovery at the incipient stage from settling with power; recovery techniques from low-rotor rpm within the normal range of engine rpm;

(vi) ground manoeuvring and run-ups; hovering; take-offs and landings—normal, out of wind and sloping ground;

(vii) take-offs and landings with minimum necessary power; maximum performance take-off and landing techniques; restricted site operations; quick stops;

(viii) cross-country flying using visual reference, dead-reckoning and, where available, radio navigation aids including a flight of at least one hour;

(ix) emergency operations, including simulated helicopter equipment malfunctions; autorotative approach and landing; and

(x) operations to, from and transmitting controlled aerodromes, compliance with air traffic services procedures, radiotelephony procedures and phraseology;

(xi) if the privileges of the PPL (H) are to be exercised at night, the applicant shall have received 4 hours dual instruction in helicopters in night flying, including take-offs, landings and 1 hour of navigation.

(3) The requirements for the skill test for the PPL (H) are included in IS 2:62 contained in the Schedule hereto.

Experience, flight instruction and skill test for the PPL—powered-lift category

63.—(1) Experience—

(*a*) the applicant for a PPL—Powered-Lift shall have completed not less than 40 hours of flight time as pilot of powered-lift. The Authority should determine whether such experience as a pilot under instruction in a flight simulation training device is acceptable as part of the total flight time of 40 hours;

(*b*) when the applicant has flight time as a pilot of aircraft in other categories, the Authority should determine whether such

experience is acceptable and if so, the extent to which the flight time in subregulation (1) (*a*) may be reduced;

(*c*) the applicant shall have completed in a powered-lift aircraft not less than 10 hours of solo flight time under the supervision of an authorized flight instructor, including five hours of solo cross-country flight time with at least one cross-country flight totaling not less than 270 km (150 NM) in the course of which full-stop landings at two different aerodromes shall be made.

(2) Flight Instruction—The applicant shall have received not less than 20 hours dual instruction from an authorized instructor in at least the following areas—

(*a*) recognize threat and error management;

(*b*) pre-flight operations, including mass and balance determination, powered-lift inspection and servicing;

(*c*) aerodrome and traffic operations, collision avoidance precautions and procedures;

(*d*) control of the powered-lift by external visual reference;

(*e*) ground manoeuvring and run-ups; hover and rolling take-offs and climb out; hover and rolling approach and landings—normal, out of wind and slopping ground;

(*f*) take-offs and landings with minimum necessary power; maximum performance take-off and landing techniques; restricted site operations; quick stops;

(*g*) cross-country flying using visual reference, dead-reckoning and, where available, radio navigation aids, including a flight of at least one hour;

(*h*) emergency operations, including simulated powered-lift equipment malfunctions; power of reconversion to autorotation and autorotative approach, where applicable; transmission and interconnect driveshaft failure, where applicable; and

(*i*) operations to, from and transiting controlled aerodromes, compliance with air traffic services procedures, radiotelephony procedures and phraseology.

(3) The requirements for the skill test for the PPL—powered-lift category are included in IS 2:63 contained in the Schedule hereto.

Experience, flight instruction and skill test for the PPL—airship category

64.—(1) Experience—The applicant for a PPL—Airship shall have completed not less than 25 hours of flight time as pilot of airships including at least—

(*a*) three hours of cross-country flight training in an airship with a cross-country flight totaling not less than 45 kilometres (25 NM);

(*b*) five take-offs and five landings to a full stop at an aerodrome with each landing involving a flight in the traffic pattern of an aerodrome;

(*c*) three hours of instrument time; and

(*d*) five hours as pilot assuming the duties of the PIC under the supervision of the PIC.

(2) Flight Instruction—The applicant shall have received dual instruction from an authorized instructor in at least the following areas—

(*a*) pre-flight operations, including mass and balance determination, airships inspections and servicing;

(*b*) ground reference manoeuvres;

(*c*) aerodrome and traffic pattern operations, collision avoidance precautions and procedures;

(*d*) techniques and procedures for the take-off, including appropriate limitations, emergency procedures and signals used;

(*e*) control of the airships by external visual reference;

(*f*) take-offs and landings and go-around;

(*g*) maximum performance (obstacle clearance) take-offs;

(*h*) flight by reference solely to instruments, including the completion of a level 180 degree turn;

(*i*) navigation, cross-country flying using visual reference, deadreckoning and radio navigation aids;

(*j*) emergency operations (recognition of leaks), including simulated airship equipment malfunctions; and

(*k*) radiotelephony procedures and phraseology.

(3) The requirements for the skill test for the PPL-Airship are included in IS 2:64 contained in the Schedule hereto.

Experience, flight instruction and skill test for the PPL—balloon category

65.—(1) Experience—The applicant for a PPL-balloon shall have completed not less than 16 hours of flight time as pilot of balloons including at least 8 launches and accents, at least one of which must be solo.

(2) Flight Instruction—The applicant shall have received dual instruction in free balloons from an authorized instructor in at least the following areas—

(*a*) pre-flight operations, including balloon assembly, rigging, inflation, mooring, and inspection;

(*b*) aerodrome operations, transiting controlled aerodromes, compliance with air traffic services procedures, radiotelephony procedures and phraseology;

(*c*) techniques and procedures for the launching and ascent, including appropriate limitations, emergency procedures and signals used;

(*d*) collision avoidance precautions;

(*e*) control of a free balloon by external visual references;

(*f*) recognition of and recovery from rapid descents;

(*g*) cross-country flying using visual reference and dead reckoning;

(*h*) approaches and landings, including ground handling; and

(*i*) emergency procedures.

(3) The requirements for the skill test for the PPL-Balloon category are included in IS 2:65 contained in the Schedule hereto.

Experience, flight instruction and skill test for the PPL—glider category

66.—(1) Experience—The applicant shall have completed not less than 6 hours of flight time as a pilot of gliders including 2 hours' solo flight time during which not less than 20 launches and landings have been performed.

(2) Flight instruction—The applicant shall have received dual instruction in gliders from an authorized instructor in at least the following areas—

(*a*) pre-flight operations, including glider assembly and inspection;

(*b*) techniques and procedures for the launching method used, including appropriate airspeed limitations, emergency procedures and signals used;

(*c*) traffic pattern operations, collision avoidance precautions and procedures;

(*d*) control of the glider by external visual reference;

(*e*) flight throughout the flight envelope;

(*f*) recognition of, and recovery from, incipient and full stalls and spiral dives;

(*g*) normal and cross-wind launches, approaches and landings;

(*h*) cross-country flying using visual reference and dead-reckoning; and

(*i*) emergency procedures.

(3) Crediting of time in other aircraft categories. The holder of a pilot licence in the aeroplane category may be credited with 3 hours towards the 6 hours of flight time required for the glider licence.

(4) The requirements for the skill test for the PPL—glider category are included in the IS 2:66 contained in the Schedule hereto.

Division V—Commercial Pilot Licence

General requirements

67.—(1) Age—The applicant for a CPL shall be not less than 18 years of age.

(2) Medical fitness—The applicant for a CPL shall hold a current Class 1 Medical Certificate issued under these Regulations.

(3) Knowledge areas—The applicant for a CPL shall receive and log ground training from an authorized instructor on the following subjects appropriate to the privileges granted to the holder of a commercial pilot licence and appropriate to the category of aircraft to be included on the licence—

(*a*) air law—

(i) rules and regulations relevant to the holder of a CPL;

(ii) rules of the air; appropriate air traffic services practices and procedures;

(iii) aircraft general knowledge;

(iv) principles of operation and functioning of power-plants, systems and instruments;

(v) operating limitations of the appropriate category of aircraft and power-plants; relevant operational information from the flight manual or other appropriate document;

(vi) use and serviceability checks of equipment and systems of appropriate aircraft;

(vii) maintenance procedures for airframes, systems and power-plants of appropriate aircraft;

(viii) for helicopters and powered-lift, transmission (power-trains) where applicable; and

(ix) for airships and balloons, physical properties and practical application of gases;

(*b*) flight performance, planning and loading—

(i) effects of loading and mass distribution on aircraft handling, flight characteristics and performance; mass and balance calculations;

(ii) use and practical application of take-off or launching, landing and other performance data;

(iii) pre-flight and en route flight planning appropriate to commercial operations under VFR; preparation and filing of air traffic services flight plans; appropriate air traffic services procedures; and

(iv) in the case of helicopter and powered-lift, effects of external loading;

(*c*) human performance—

(i) human performance relevant to the appropriate aircraft type; and

(ii) principles of threat and error management;

(*d*) meteorology—

(i) interpretation and application of aeronautical meteorological reports, charts and forecasts; use of, and procedures for obtaining, meteorological information, pre-flight and in-flight; altimetry;

(ii) aeronautical meteorology; climatology of relevant areas in respect of the elements having an effect upon aviation; the moment of pressure systems, the structure of fronts, and the origin and characteristics of significant weather phenomena which affect take-off, en route and landing conditions; and

(iii) causes, recognition and effects of icing; frontal zone penetration procedures; hazardous weather avoidance;

(*e*) navigation—

(i) air navigation, including the use of aeronautical charts, instruments and navigation aids;

(ii) understanding of the principles and characteristics of appropriate navigation systems;

(iii) operation of air borne equipment; and

(iv) in the case of airships—

(A) use, limitation and serviceability of avionics and instruments necessary for the control and navigation;

(B) use, accuracy and reliability of navigation systems used in departure, en route, approach and landing phases of flight, identification of radio navigation aids; and

(C) principles and characteristics of self-contained and external referenced navigation systems, operations of airborne equipment;

(*f*) operation procedures—

(i) application of threat and error management to operational performance;

(ii) use of aeronautical documentation such as AIP, NOTAM, aeronautical codes and abbreviations;

(iii) altimeter setting procedures;

(iv) appropriate precautionary and emergency procedures;

(v) operational procedures for carriage of freight; potential hazards associated with dangerous goods;

(vi) requirements and practices for safety briefing to passengers, including precautions to be observed when embarking and disembarking from aircraft; and

(vii) in the case of the helicopter, and if applicable powered-lift, settling with power, ground resonance; retreating blade stall; dynamic roll-over and other operational hazards; safety procedures, associated with flight under VFR.

(*g*) principles of flight—principles of flight relating to the appropriate category of aircraft;

(*h*) radiotelephony—

(i) communication procedures and phraseology as applied to VFR operations; action to be taken in case of communication failure; and

(ii) as further specified in IS 2:67 contained in the Schedule hereto.

(4) Knowledge testing. The applicant for the CPL shall—

(*a*) have received an endorsement for the knowledge test from an authorized instructor who—

(i) conducted the training on the knowledge subjects; and

(ii) certifies that the person is prepared for the required knowledge test;

(*b*) pass the required knowledge test on the knowledge subjects listed in IS 2:67 contained in the Schedule hereto.

(5) Experience and flight instruction—An applicant for a CPL shall have completed the experience and flight instruction requirements appropriate to the aircraft category as specified in these Regulations.

(6) Skill—The applicant for a CPL shall—

(*a*) have received an endorsement from an authorized instructor who certifies that the person is prepared for the required skill test;

(*b*) have demonstrated by passing a skill test the ability to perform as PIC of an aeroplane, the areas of operation described in IS 2:67 contained in the Schedule hereto with a degree of competency appropriate to the privileges granted to the holder of a CPL, and to—

(i) operate the aeroplane within its limitations;

(ii) complete all manoeuvres with smoothness and accuracy;

(iii) exercise good judgment and airmanship;

(iv) apply aeronautical knowledge; and

(v) maintain control of the aeroplane at all times in a manner such that the successful outcome of a procedure or manoeuvre is never seriously in doubt.

(7) Privileges—Subject to compliance with the requirements specified in the these Regulations, the privileges of the holder of a CPL shall be—

(*a*) to exercise all the privileges of the holder of a PPL in an aircraft within the appropriate aircraft category;

(*b*) to act as PIC in an aircraft within the appropriate aircraft category engaged in operations other than commercial air transportation;

(*c*) to act as PIC in commercial air transportation in an aircraft within the appropriate aircraft category certificated for single-pilot operation;

(*d*) to act as co-pilot in aircraft within the appropriate aircraft category required to be operated with a co-pilot; and

(*e*) for the airship category, to pilot an airship under IFR.

(8) Validity— Subject to compliance with the requirements specified in this Part, the validity period of the licence is 5 years. For renewal or reissue, see regulation 11 under these Regulations.

Experience, flight instruction and skill test for the CPL—aeroplane category

68.—(1) Experience—

(*a*) the applicant for a CPL (A) shall have completed not less than 200 hours of flight time, or 150 hours if completed during a CAA approved training course provided for in an Aviation (Approved Training Organization) Regulations as a pilot of aeroplanes, of which 10 hours may have been completed in a flight simulation training device;

(*b*) the applicant shall have completed in aeroplanes not less than—

(i) 100 hours as PIC or, in the case of a course of approved training, 70 hours as PIC;

(ii) 20 hours of cross-country flight time as PIC including a cross-country flight totaling not less than 540 km (300 NM) in the course of which full-stop landings at two different aerodromes shall be made;

(iii) 10 hours of instrument instruction time of which not more than 5 hours may be instrument ground time;

(iv) if the privileges of the licence are to be exercised at night, 5 hours of night flight time including 5 take-offs and 5 landings as PIC.

(*c*) the holder of a pilot licence in another category may be credited towards the 200 hours of flight time as follows—

(i) 10 hours as PIC in a category other than helicopters; or

(ii) 30 hours as PIC holding a PPL (H) on helicopters; or

(iii) 100 hours as PIC holding a CPL (H) on helicopters;

(*d*) the applicant for a CPL (A) shall hold a PPL (A) issued under this Chapter.

(2) Flight instruction—

(*a*) the applicant for a CPL (A) shall receive and log not less than 25 hours of dual instruction from an authorized instructor. These 25 hours may include 5 hours completed in a flight simulation training device.

(*b*) the instructor shall ensure that the applicant has operational experience in at least the following areas to the level of performance required for the commercial pilot—

(i) recognize and manage threats and errors;

(ii) pre-flight operations, including mass and balance determination, aeroplane inspection and servicing;

(iii) aerodrome and traffic pattern operations, collision avoidance precautions and procedures;

(iv) control of the aeroplane by external visual reference;

(v) flight at critically slow airspeeds; recognition of, and recovery from, incipient and full stalls;

(vi) flight with asymmetrical power for multi-engine class or type ratings;

(vii) flight at critically high airspeeds; recognition of, and recovery from, spiral dives;

(viii) normal and cross-wind take-offs and landings,

(ix) maximum performance (short field and obstacle clearance take-offs, short-field landings;

(x) basic flight manoeuvres and recovery from unusual attitudes by reference solely to basic flight instruments;

(xi) cross-country flying using visual reference, dead reckoning and radio navigation aids; diversion procedures;

(xii) Abnormal and emergency procedures and manoeuvres including simulated aeroplane equipment malfunctions;

(xiii) operations to, from and transmitting controlled aerodromes, compliance with air traffic services procedures; and

(xiv) communication procedures and phraseology.

(*c*) if the privileges of the CPL (A) are to be exercised at night, the applicant shall have received 4 hours dual instruction in aeroplanes in night flying, including take-offs, landings and 1 hour of navigation.

(3) Skill test. The requirement for the skill test for the commercial pilot licence-aeroplane category are included in IS 2:68 contained in the Second Schedule hereto.

Experience, flight instruction and skill test for the CPL—helicopter category

69.—(1) Experience—

(*a*) the applicant for a CPL (H) licence shall have completed not less than 150 hours of flight time, or 100 hours if completed during an integrated course of approved training provided for in an Approved Training Organization Regulations, as a pilot of helicopters, of which 10 hours may have been completed in a flight simulation training device.

(*b*) the applicant shall have completed in helicopters not less than—

(i) 35 hours as PIC;

(ii) 10 hours of cross-country flight time as PIC including a cross-country flight in the course of which full-stop landings at two different points shall be made;

(iii) 10 hours of instrument instruction time of which not more than 5 hours may be instrument ground time;

(iv) if the privileges of the licence are to be exercised at night, 5 hours of night flight time including 5 take-offs and 5 landings as PIC;

(*c*) the holder of a pilot licence in another category may be credited towards the 150 hours of flight time as follows—

(i) 20 hours as PIC holding a PPL (A) in aeroplanes; or

(ii) 50 hours as PIC holding a CPL (A) in aeroplanes;

(*d*) the applicant for a CPL (H) shall hold a PPL (H) under these Regulations.

(2) Flight instruction—

(*a*) the applicant for a CPL (H) shall have received and logged not less than 30 hours of dual instruction in helicopters from an authorized flight instructor on the subjects listed in IS 2:71 contained in the Schedule hereto.

(*b*) the instructor shall ensure that the applicant has operational experience in at least the following areas to the level of performance required for the commercial pilot—

(i) recognize and manage threats and errors;

(ii) pre-flight operations, including mass and balance determination, helicopter inspection and servicing;

(iii) aerodrome and traffic pattern operations, collision avoidance precautions and procedures;

(iv) control of the helicopter by external visual reference;

(v) recovery at the incipient stage from settling with power; recovery techniques from low-rotor rpm within the normal range of engine rpm;

(vi) ground manoeuvring and run-ups; hovering; take-offs and landings—normal, out of wind and sloping ground; steep approaches;

(vii) take-offs and landings with minimum necessary power; maximum performance take-off and landing techniques; restricted site operations; quick stops;

(viii) hovering out of ground effect; operations with external load, if applicable; flight at high altitude;

(ix) basic flight manoeuvres and recovery from unusual attitudes by reference solely to basic flight instruments;

(x) cross-country flying using visual reference, dead-reckoning and radio navigation aids; diversion procedures;

(xi) abnormal and emergency procedures, including simulated helicopter equipment malfunctions, autorotative approach and landing; and

(xii) operations to, from and transmitting controlled aerodromes, compliance with air traffic services procedures, radiotelephony procedures and phraseology;

(xiii) as further specified in IS 2:71 contained in the Second Schedule hereto.

(*c*) if the privileges of the licence are to be exercised at night, the applicant shall have received dual instruction in helicopters in night flying, including take-offs, landings and navigation.

(3) Skill test— The requirement for the skill test for the commercial pilot licence—helicopter category are included in IS 2:69 contained in the Schedule hereto.

Experience, flight instruction and skill test for the CPL—powered-lift category

70.—(1) Experience—

(*a*) the applicant for a CPL powered-lift category shall have completed not less than 200 hours of flight time, or 150 hours if completed during a course of approved training provided for in an Aviation Training Organization under Regulations, as a pilot of aircraft: the Licensing Authority may determine whether experience as a pilot under instruction in a flight simulation training device is

acceptable as part of the total flight time of 200 hours or 150 hours, as the case may be.

(*b*) the applicant shall have completed in a powered-lift aircraft not less than—

(i) 50 hours as pilot-in-command;

(ii) 10 hours in cross-country flying as pilot-in-command including a cross-country flight totaling not less than 540 km (300 NM) in the course of which full-stop landing at two different aerodromes shall be made;

(iii) 10 hours of instrument instruction of which not more than 5 hours may be instrument ground time; and

(iv) if the privileges are to be exercised at night, 5 hours of night flight including 5 take-offs and landings as PIC;

(*c*) when the applicant has flight time as pilot of aircraft in other categories, the Authority may determine whether such experience is acceptable and if so, the extent to which the flight time requirements in subregulation (1) may be reduced.

(2) Flight instruction—The applicant shall have received dual instruction in powered-lift from an authorized instructor in at least the following areas to the level of performance required for the commercial pilot—

(*a*) recognize and manage threats and errors to minimize their negative effects;

(*b*) pre-flight operations, including mass and balance determination, powered-lift inspection and servicing;

(*c*) aerodrome and traffic pattern operations, collision avoidance precautions and procedures;

(*d*) control of the powered-lift by external visual reference;

(*e*) ground manoeuvring and run-ups; hover and rolling take-offs and climb out; hover and rolling approach and landings–normal, out of wind and slopping ground; steep approaches;

(*f*) take-offs and landings with minimum necessary power; maximum performance take-off and landing techniques; restricted site operations; quick stops;

(*g*) hovering out of ground effect; operations with external load, if applicable; flight at high altitude;

(*h*) basic flight manoeuvres and recovery from unusual attitudes by reference solely to basic flight instruments;

(*i*) cross-country flying using visual reference, dead-reckoning and, where available, radio navigation aids, including a flight of at least one hour;

(*j*) emergency operations, including simulated powered-lift equipment malfunctions, where applicable; power of reconversion to autorotation; autorotative approach; transmission and interconnect driveshaft failure; and

(*k*) operations to, from and transiting controlled aerodromes, compliance with air traffic services procedures, radiotelephony procedures and phraseology.

(3) Skill test— The requirement for the skill test for the commercial pilot licence-powered-lift category are included in IS 2:70 contained in the Schedule hereto.

Experience, flight instruction and skill test for the CPL—airship category

71.—(1) Experience—

(*a*) the applicant shall have completed not less than 200 hours of flight time as a pilot;

(*b*) the applicant shall have completed not less than—

(i) 50 hours as a pilot in airships;

(ii) 30 hours as PIC or PIC under supervision in airships, to include not less than—

(A) 10 hours of cross-country flight time; and

(B) 10 hours of night flight;

(iii) 40 hours of instrument time, of which 20 hours shall be in flight and 10 hours in flight in airships; and

(iv) 20 hours of flight training in airships on the areas of operation listed in subregulation (2).

(2) Flight instruction—The applicant shall have received dual instruction in airships from an authorized instructor in at least the following areas to the level of performance required for the commercial pilot—

(*a*) recognize and manage threats and errors;

(*b*) pre-flight operations, including mass and balance determination, airships inspection and servicing;

(*c*) aerodrome and traffic pattern operations, collision avoidance precautions and procedures;

(*d*) techniques and procedures for the take-off, including appropriate limitations, emergency procedures and signals used;

(*e*) control of the airships by external visual reference;

(*f*) recognition of leak;

(*g*) normal take-offs and landings;

(*h*) maximum performance (short field and obstacle clearance) take-offs; short-field landings;

(*i*) flight under IFR;

(*j*) cross-country flying using visual reference, dead-reckoning and, where applicable, radio navigation aids;

(*k*) emergency operations, including simulated airship equipment malfunctions;

(*l*) operations to, from and transiting controlled aerodromes, compliance with air traffic services procedures; and

(*m*) communications procedures and phraseology.

(3) Skill test—The requirement for the skill test for the commercial pilot licence-airship category are included in IS 2:71 contained in the Schedule hereto.

Experience, flight instruction and skill test for the CPL—balloon category

72.—(1) Experience—The applicant shall have completed at least—

(*a*) 35 hours flight time as a pilot, including at least—

(i) 20 hours as a pilot of free balloons;

(ii) 10 flights in a free balloon; and

(iii) 2 flights in a free balloon as the pilot in command;

(*b*) 10 hours of flight training that includes at least 10 training flights in a free balloon on the areas of operation listed in subregulation (2) below, including at least—

(i) for a gas balloon rating—

(A) 2 training flights of 2 hours each in a gas balloon on the areas of operations appropriate to a gas balloon within 60 days prior to application for the rating;

(B) 2 flights performing the functions of PIC in a gas balloon on the appropriate areas of operation; and

(C) 1 flight involving a controlled ascent to 5,000 feet above the launch site;

(ii) for a hot air balloon rating—

(A) 3 training flights of 1 hour each in a balloon with an airborne heater on the areas of operation appropriate to a balloon with an airborne heater within 60 days prior to application for the rating;

(B) 2 solo flights in a balloon with an airborne heater on the appropriate areas of operations; and

(C) 1 flight involving a controlled ascent to 3,000 feet above the launch site.

(2) Flight instruction—The applicant shall have received dual instruction in balloons from an authorized instructor in at least the following areas to the level of performance required for the commercial pilot—

(*a*) recognize and manage threats and errors;

(*b*) technical subjects;

(*c*) pre-flight operations, including balloon assembly, rigging, inflation, mooring, and inspection;

(*d*) pre-flight lesson on a manoeuvre to be performed in flight;

(*e*) aerodrome operations, transiting controlled aerodromes, compliance with air traffic services procedures, radiotelephony procedures and phraseology;

(*f*) techniques and procedures for the launching and ascent, including appropriate limitations, emergency procedures and signals used;

(*g*) collision avoidance precautions;

(*h*) control of a free balloon by external visual references;

(*i*) recognition of and recovery from rapid descents;

(*j*) navigation and cross-country flying using visual reference and dead-reckoning;

(*k*) approaches and landings, including ground handling;

(*l*) emergency procedures; and

(*m*) post-flight procedures.

(3) Skill test. The requirement for the skill test for the commercial pilot licence-balloon category are included in IS 2:72 contained in the Schedule hereto.

Experience, flight instruction and skill test for the CPL—glider category

73.—(1) Experience—The applicant shall have completed at least—

(*a*) 25 hours flight time as a pilot in a glider and that flight time must include at least 100 flights in a glider as pilot in command, including at least—

(i) 3 hours of flight training or 10 training flight in gliders on the areas of operation listed in subregulation (2), and

(ii) 2 hours of solo flight that includes not less than 10 solo flights in gliders on the areas of operations listed in subregulation (2); or

(*b*) 200 hours of flight time as a pilot in either aeroplane, helicopter or powered-lift aircraft, and 20 flights in gliders as pilot in command, including at least—

(i) 3 hours of flight training or 10 training flights in gliders on the areas of operation listed in subregulation (2), and

(ii) 5 solo flights to a glider on the areas of operation listed in subregulation (2).

(2) Flight instruction—The applicant shall have received dual instruction in a glider from an authorized instructor in at least the following areas of operation to the level of performance required for a commercial pilot—

(*a*) recognize and manage threats and errors;

(*b*) pre-flight preparation;

(*c*) pre-flight procedures;

(*d*) aerodrome and gliderport operations;

(*e*) launches and landings;

(*f*) performance speeds;

(*g*) soaring techniques;

(*h*) performance manoeuvres;

(*i*) navigation;

(*j*) slow flight and stalls;

(*k*) emergency procedures; and

(*l*) post-flight procedures.

(3) Skill test—The requirement for the skill test for the commercial pilot licence-glider category are included in IS 2:73 contained in the Schedule hereto.

Division VI—Multi-crew Pilot Licence-Aeroplane

General requirements

74.—(1) Age—The applicant for the MPL shall be not less than 18 years of age.

(2) Medical fitness—The applicant for the MPL shall hold a current Class 1 Medical Certificate issued under this Part.

(3) Knowledge—The applicant for the MPL shall meet the requirements specified in subregulation 76 (3) for the ATPL appropriate to the aeroplane category.

(4) Knowledge testing—The applicant for an MPL shall—

(*a*) have received an endorsement for the knowledge test from an authorized instructor who—

(i) conducted the training on the knowledge subjects; and

(ii) certifies that the person is prepared for the required knowledge test.

(*b*) pass the required written knowledge test on the knowledge areas specified in subregulation 76 (3).

(5) Experience and flight instruction—The applicant shall have completed the experience and flight instruction requirements appropriate to the aircraft category as specified in these Regulations.

(6) Skill—The applicant for an MPL shall demonstrate the skills required for fulfilling all the required competency units in IS: 2:74 contained in the Schedule hereto as pilot flying and pilot not flying, to the level required to perform as a co-pilot of turbine-powered aeroplanes certificated for operation with a minimum crew of at least two pilots under VFR and IFR, and have been continuously assessed in the training progress of acquiring the following skills—

(*a*) recognize and manage threats and errors;

(*b*) smoothly and accurately, manually control the aeroplane within its limitations at all times, such that the successful outcome of a procedure or manoeuvre is assured;

(*c*) operate the aeroplane in the mode of automation appropriate to the phase of flight and to maintain awareness of the active mode of automation;

(*d*) perform, in an accurate manner, normal, abnormal and emergency procedures in all phases of flight; and

(*e*) communicate effectively with other flight crew members and demonstrate the ability to effectively perform procedures for crew incapacitation, crew coordination, including allocation of pilot tasks, crew cooperation, adherence to standard operating procedures (SOPs) and use of checklists.

(7) Privileges—The privileges of the holder of a multi-crew pilot licence shall be as follows—

(*a*) subject to compliance with the requirements specified in these Regulations, the privileges of the holder of a multi-crew pilot licence shall be—

(i) to exercise all the privileges of the holder of a private pilot licence in the aeroplane category provided the private pilot experience requirements of regulation 61 have been met;

(ii) to exercise the privileges of the instrument rating in a multi-crew operation; and

(iii) to act as co-pilot of an aeroplane required to be operated with a co-pilot.

(*b*) before exercising the privileges of the instrument rating in a single-pilot operation in aeroplanes, the licence holder shall have demonstrated an ability to act as pilot-in-command in a single-pilot operation exercised by reference solely to instruments and shall have met the instrument rating skill requirement specified in regulation 81 appropriate to the aeroplane category.

(*c*) before exercising the privileges of a commercial pilot licence in a single-pilot operation in aeroplanes, the licence holder shall have—

(i) completed in aeroplanes 70 hours, either as pilot-in-command, or made up of not less than 10 hours as pilot-in-command and the necessary additional flight time as pilot-in-command under supervision;

(ii) completed 20 hours of cross-country flight time as pilot-in-command, or made up of not less than 10 hours as pilot-in-command and 10 hours as pilot-in-command under supervision, including a cross-country flight totaling not less than 540 km (300 NM) in the course of which full-stop landings at two different aerodromes shall be made; and

(iii) met the requirements for the commercial pilot licence specified in subregulation 67 (3), 67 (6), 68 (1) (*b*) (with the exception of subregulation (*c*) (i) of this Regulation and regulation 68 (2) (*c*) appropriate to the aeroplane category.

(8) Validity. Subject to compliance with the requirements specified in these Regulations, the validity period of the licence is 5 years—For renewal or reissue, see regulation 11 under these Regulations.

Experience, flight instruction and skill test for the Multi-crew Pilot Licence—aeroplane category

75.—(1) Experience—The applicant shall have completed in an approved training course not less than 240 hours as pilot flying and pilot not flying of actual and simulated flight—

(*a*) the flight experience in actual flight shall include at least the experience for a PPL(A) in regulation 61, upset recovery training, night flying and flight by reference solely to instruments;

(*b*) in addition to meeting the provisions of subregulation (1) (*a*), the applicant shall have gained, in a turbine-powered aeroplane certificated for operations with a minimum crew of at least two pilots, or in a flight simulation training device approved for that purpose by the Authority, the experience necessary to achieve the advance level of competency defined in IS: 2:75 contained in the Schedule hereto.

(2) Flight instruction—The applicant shall have received dual flight instruction in all the competency units specified in IS: 2:75 to the level

required for the issue of the multi-crew pilot licence, to include the competency units required to pilot under instrument flight rules.

(3) Skill test—The requirement for the skill test for the multi-crew pilot licence-aeroplane category are included in IS 2:75 contained in the Second Schedule hereto.

Division VII—Airline Transport Pilot Licence

General requirements

76.—(1) Age—The applicant for an ATPL shall be not less than 21 years of age.

(2) Medical fitness—The applicant for an ATPL shall hold a current Class I Medical Certificate issued under these Regulations.

(3) Knowledge—The applicant for an ATPL shall receive and log ground training from an authorized instructor on the following subjects appropriate to the privileges of the ATPL and to the category of aircraft intended to be included on the licence—

(*a*) air law—rules and regulations relevant to the holder of an ATPL; rules of the air; appropriate air traffic services practices and procedures;

(*b*) aircraft general knowledge—

(i) general characteristics and limitations of electrical, hydraulic, pressurization and other aircraft systems; flight control systems, including autopilot and stability augmentation;

(ii) principles of operation, handling procedures and operating limitations of aircraft power-plants; effects of atmospheric conditions on engine performance; relevant operational information from the flight manual or other appropriate document;

(iii) operating procedures and limitations of appropriate aircraft; effects of atmospheric conditions on aircraft performance in accordance to the relevant operational information from the flight manual;

(iv) use and serviceability checks of equipment and systems of the relevant category of aircraft;

(v) flight instruments; compasses, turning and acceleration errors; gyroscopic instruments, operational limits and precession effects; practices and procedures in the event of malfunctions of various flight instruments and electronic display units;

(vi) maintenance procedures for airframes, systems and power-plants of appropriate aircraft;

(vii) for helicopter, and if applicable, powered-lift transmission (power-trains);

(*c*) flight performance, planning and loading—

(i) effects of loading and mass distribution on aircraft handling, flight characteristics and performance; mass and balance calculations;

(ii) use and practical application of take-off, landing and other performance data, including procedures for cruise control;

(iii) pre-flight and en route operational flight planning; preparation and filing of air traffic services flight plans; appropriate air traffic services procedures; altimeter setting procedures;

(iv) in the case of helicopter or powered-lift, effects of external loading on handling;

(*d*) human performance—human performance including principles of threat and error management;

(*e*) meteorology—

(i) interpretation and application of aeronautical meteorological reports, charts and forecasts; codes and abbreviations; use of, and procedures for obtaining, meteorological information, pre-flight and in-flight; altimetry;

(ii) aeronautical meteorology; climatology of relevant areas in respect of the elements having an effect upon aviation; the moment of pressure systems; the structure of fronts, and the origin and characteristics of significant weather phenomena which affect take-off, en route and landing conditions;

(iii) causes, recognition and effects of icing; frontal zone penetration procedures; hazardous weather avoidance;

(iv) in the case of aeroplane and powered-lift, practical high altitude meteorology, including interpretation and use of weather reports, charts and forecasts; jetstreams;

(*f*) navigation—

(i) air navigation, including the use of aeronautical charts, radio navigation aids and area navigation systems; specific navigation requirements for long-range flights;

(ii) use, limitation and serviceability of avionics and instruments necessary for the control and navigation of aircraft;

(iii) use, accuracy and reliability of navigation systems used in departure, en route, approach and landing phases of flight; identification of radio navigation aids;

(iv) principles and characteristics of self-contained and external-referenced navigation systems; operation of airborne equipment;

(*g*) operational procedures—

(i) application of threat and error management to operational performance;

(ii) interpretation and use of aeronautical documentation such as AIP, NOTAM, aeronautical codes and abbreviations;

(iii) precautionary and emergency procedures; safety practices;

(iv) operational procedures for carriage of freight and dangerous goods;

(v) requirements and practices for safety briefing to passengers, including precautions to be observed when embarking and disembarking from aircraft;

(vi) in the case of helicopter, and if applicable, powered-lift, settling with power; ground resonance; retreating blade stall; dynamic roll-over and other operational hazards; safety procedures, associated with flight under VFR;

(*h*) principles of flight—principles of flight relating to the appropriate aircraft category;

(*i*) radiotelephony—communication procedures and phraseology; action to be taken in case of communication failure;

(4) Knowledge testing—The applicant for the ATPL shall—

(*a*) have received an endorsement for the knowledge test from an authorized instructor who—

(i) conducted the training on the knowledge subjects; and

(ii) certifies that the person is prepared for the required knowledge test; and

(*b*) pass the required written knowledge test on the knowledge subjects listed in subregulation (3) (*b*) of these Regulations.

(5) Experience and flight instruction. An applicant for an ATPL shall have completed the experience and flight instruction requirements appropriate to the aircraft category as specified in these Regulations.

(6) Skill—The applicant for an ATPL shall—

(*a*) have received an endorsement from an authorized instructor who certifies that the person is prepared for the required skill test; and

(*b*) have demonstrated by passing a skill test the ability to perform as PIC of an aircraft of the appropriate category required to be operated with a co-pilot, the following procedures and manoeuvres—

(i) pre-flight procedures, including the preparation of the operational flight plan and filing of the air traffic services flight plan;

(ii) normal flight procedures and manoeuvres during all phases of flight;

(iii) abnormal and emergency procedures and manoeuvres related to failures and malfunctions of equipment, such as power-plant, systems and airframe;

(iv) procedures for crew incapacitation and crew coordination, including allocation of pilot tasks, crew cooperation and use of checklists; and

(v) in the case of the aeroplane and powered-lift, procedures and manoeuvres for instrument flight as described in this Division, including simulated engine failure;

(vi) in the case of aeroplane, the applicant shall have demonstrated the ability to perform the procedures and manoeuvres described in this paragraph as PIC in a multi-engine aircraft;

(*c*) have demonstrated by passing a skill test, the ability to perform the areas of operation described in IS 2:77, IS 2:78, or IS 2:79 contained in the Schedule hereto, with a degree of competency appropriate to the privileges granted to the holder of an ATPL, and to—

(i) operate the aeroplane within its limitations recognize and manage threats and errors;

(ii) complete all manoeuvres with smoothness and accuracy smoothly and accurately manually control the aircraft within its limitations at all times, such that the successful outcome of a procedure or manoeuvre is assured;

(iii) operate the aircraft in the mode of automation appropriate to the phase of flight and to maintain awareness of the active mode of automation;

(iv) perform, in an accurate manner, normal, abnormal and emergency procedures in all phases of flight;

(v) exercise good judgment and airmanship, to include structured decision making and the maintenance of situational awareness; and

(vi) communicate effectively with the other flight crew members and demonstrate the ability to effectively perform procedures for crew incapacitation, crew coordination, including allocation of pilot tasks, crew cooperation, adherence to standard operating procedures and use of checklists.

(7) Privileges: Subject to compliance with the requirements specified in this Regulation, the privileges of the holder of an ATPL shall be—

(*a*) to exercise all the privileges of the holder of a PPL and CPL of an aircraft within the appropriate aircraft category and class, if applicable;

(*b*) In the case of the aeroplane and powered-lift categories, to exercise the privileges of the holder of an IR; and

(*c*) to act as PIC and co-pilot in commercial air transportation in an aircraft of the appropriate category, and class if applicable.

(8) Validity: Subject to compliance with the requirements specified in this Regulations, the validity period of the licence is 5 years. For renewal or reissue, see regulation 11 under these Regulations.

Experience, flight instruction and skill test for the ATPL—aeroplane category

77.—(1) Experience—

(*a*) the applicant for an ATPL (A) shall have completed not less than 1500 hours of flight time as a pilot of aeroplanes of which a maximum of 100 hours may have been completed in a flight simulation training device. The applicant shall have completed in aeroplanes not less than—

(i) 250 hours, either as PIC, or made up by not less than 100 hours as PIC and the necessary additional flight time as co-pilot performing, under the supervision of the PIC, the duties and functions of a PIC; provided that the method of supervision employed is acceptable to the Authority;

(ii) 200 hours of cross-country flight time, of which not less than 100 hours shall be as PIC or as co-pilot performing, under the supervision of the PIC, the duties and functions of a PIC, provided that the method of supervision employed is acceptable to the Authority;

(iii) 75 hours of instrument time, of which not more than 30 hours may be instrument ground time; and

(iv) 100 hours of night flight as PIC or as co-pilot;

(*b*) holders of a CPL (*H*) will be credited with 50% of their helicopter flight time as PIC towards the flight time required in (1);

(*c*) the applicant shall have completed a CRM course on the subjects listed in IS 2:75; and

(*d*) the applicant for an ATPL (A) shall be the holder of a CPL (A) with instrument and multi-engine rating issued under these Regulations.

(2) Flight instruction: The applicant for an ATPL (A) shall have received the dual flight instruction required for the issue of the CPL and the IR.

(3) Skill test: The requirement for the skill test for the ATPL—aeroplane category are included in IS 2:77 contained in the Schedule hereto.

Experience, flight instruction and skill test for the ATPL—helicopter category

78.—(1) Experience—

(*a*) the applicant for an ATPL (H) shall have completed not less than 1,000 hours of flight time as a pilot of helicopters of which a maximum of 100 hours may have been completed in a flight simulator. The applicant shall have completed in helicopters not less than—

(i) 250 hours, either as PIC, or made up by not less than 100 hours as PIC and the necessary additional flight time as co-pilot performing, under the supervision of the PIC, the duties and functions of a PIC; provided that the method of supervision employed is acceptable to the Authority;

(ii) 200 hours of cross-country flight time, of which not less than 100 hours shall be as PIC or as co-pilot performing, under the supervision of the PIC, the duties and functions of a PIC, provided that the method of supervision employed is acceptable to the Authority;

(iii) 30 hours of instrument time, of which not more than 10 hours may be instrument ground time; and

(iv) 50 hours of night flight as PIC or as co-pilot;

(*b*) holders of a CPL (A) will be credited with 50 percent of their aeroplane flight time as PIC towards the flight time required in (1);

(*c*) the applicant shall have completed a CRM course on the subjects listed in IS 2:78; and

(*d*) the applicant for an ATPL (H) shall be the holder of a CPL (H) issued under this Regulation.

(2) Flight instruction—The applicant for an ATPL (H) shall have received the dual flight instruction required for the issue of the CPL.

(3) Skill test—The requirement for the skill test for the ATPL—helicopter category are included in IS 2:78 contained in the Schedule hereto.

Experience, flight instruction and skill test for the ATPL—powered-lift category

79.—(1) Experience—

(*a*) the applicant for an ATPL—powered-lift category shall have completed not less than 1,500 hours of flight time as a pilot of powered-lift. The Authority may determine whether experience completed under instruction in a flight simulator is acceptable as part

of the total time of 1,500 hours. The applicant shall have completed in powered-lift not less than—

(i) 250 hours, either as PIC, or made up by not less than 100 hours as PIC and the necessary additional flight time as co-pilot performing, under the supervision of the PIC, the duties and functions of PIC, in a method acceptable to the Authority;

(ii) 100 hours of cross-country flight time, of which not less than 50 hours shall be as PIC or as co-pilot performing under supervision of the PIC in a method acceptable to the Authority;

(iii) 75 hours of instrument time, of which not more than 30 hours may be instrument ground time;

(iv) 25 hours of night time as PIC or co-pilot;

(*b*) the Authority may determine if pilot flight time in other aircraft categories may be credited toward meeting the 1,500-hour flight time in subregulation (1) (*a*); and

(*c*) the applicant for an ATPL powered-lift shall be the holder of a CPL powered-lift issued under these Regulations.

(2) Flight instruction—The applicant for an ATPL powered-lift category shall have received the dual flight instruction required for the issue of the CPL powered-lift category and for the issue of the instrument rating.

(3) Skill test—The requirements for the skill test for the ATPL—powered-lift category are included in IS 2:79 contained in the Schedule hereto.

Division VIII—Instrument Rating

General requirements

80.—(1) Age—The applicant for an IR shall be not less than 17 year of age.

(2) Medical fitness: The applicant for an IR shall hold either a Class 1 or 2 medical certificate issued under this Regulation as appropriate to the level of licence held. The applicant for an IR holding a PPL shall have established his/her hearing acuity on the basis of compliance with the hearing requirements for the issue of a Class 1 Medical Certificate.

(3) Knowledge: The applicant for an IR shall receive and log ground training from an authorized instructor on the following subjects—

(*a*) air law—rules and regulations relevant to flight under IFR; related air traffic services practices and procedures;

(*b*) aircraft general knowledge for the aircraft category being sought—

(i) use, limitation and serviceability of avionics, electronic devices and instruments necessary for the control and navigation

of aeroplanes under IFR and in instrument meteorological conditions; use and limitations of autopilot;

(ii) compasses, turning and acceleration errors; gyroscopic instruments, operational limits and precession effects; practices and procedures in the event of malfunctions of various flight instruments;

(*c*) flight performance and planning for the aircraft category being sought—

(i) pre-flight preparations and checks appropriate to flight under IFR;

(ii) operational flight planning; preparation and filing of air traffic services flight plans under IFR; altimeter setting procedures;

(*d*) human performance for the aircraft category being sought—

(i) human performance relevant to instrument flight in aircraft;

(ii) principles of threat and error management;

(*e*) meteorology for the aircraft category being sought—

(i) application of aeronautical meteorology; interpretation and use of reports, charts and forecasts; codes and abbreviations; use of, and procedures for obtaining, meteorological information; altimetry;

(ii) causes, recognition and effects of icing; frontal zone penetration procedures; hazardous weather avoidance;

(iii) in the case of helicopter and powered-lift, effects of rotor icing;

(*f*) navigation for the aircraft category being sought—

(i) practical air navigation using radio navigation aids;

(ii) use, accuracy and reliability of navigation systems used in departure, en route, approach and landing phases of flight; identification of radio navigation aids;

(*g*) operational procedures for the aircraft category being sought—

(i) application of threat and error management to operational principles;

(ii) interpretation and use of aeronautical documentation such as AIP, NOTAM, aeronautical codes and abbreviations, and instrument procedure charts for departure, en route, descent and approach;

(iii) precautionary and emergency procedures; safety practices associated with flight under IFR; obstacle clearance criteria;

(*h*) radiotelephony—communication procedures and phraseology as applied to aircraft operations under IFR; action to be taken in case of communication failure.

(4) Knowledge testing:—An applicant for an IR shall—

(*a*) have received an endorsement for the knowledge test from an authorized instructor who—

(i) conducted the training on the knowledge subjects;

(ii) certifies that the person is prepared for the required knowledge test;

(*b*) pass the required knowledge test on the knowledge subjects listed in subregulation 80 (3) above.

(5) Experience and flight instruction: An applicant for an IR shall have completed the experience and flight instruction requirements appropriate to the aircraft category as specified in this Regulation.

(6) Privileges: Subject to compliance with the requirements specified in this Regulation, the privileges of the holder of an IR shall be to pilot an aircraft of the appropriate category under IFR. Before exercising the privileges on multi-engine aircraft, the holder of the rating shall have complied with the requirements of subregulation (8) (*c*) of this Regulation.

(7) Validity: Subject to compliance with the requirements specified in this Regulation, the validity period of an IR is 1 year.

(8) Renewal—

(*a*) for the renewal of a single-engine instrument rating the applicant shall within the preceding 12-calendar months, complete a proficiency check on the subjects listed in IS 2:81 in the Schedule hereto;

(*b*) for the renewal of a multi-engine instrument rating the applicant shall within the preceding 12-calendar months, complete a proficiency check on the subjects listed in IS 2:81 in the Schedule hereto.

(*c*) if a pilot takes the proficiency check required in this section in the calendar month before or the calendar month after the month in which it is due, the pilot is considered to have taken it in the month in which it was due for the purpose of computing when the next proficiency check is due.

(9) Re-issue: If the instrument rating has been expired, the applicant shall—

(*a*) have received refresher training from an authorized instructor with an endorsement that the person is prepared for the required skill test; and

(*b*) pass the required skill test on the subjects listed in IS 2:81 as contained in the Schedule hereto.

Experience, flight instruction, skill test and proficiency check for the IR

81.—(1) Experience—

(*a*) the applicant for an IR shall hold a pilot licence with an aircraft category, and class rating if applicable, for the instrument rating sought.

(*b*) the applicant shall have completed not less than—

(i) 50 hours of cross-country flight time as PIC of aircraft in categories acceptable to the Authority, of which not less than 10 hours shall be in the aircraft category being sought; and

(ii) 40 hours of instrument time in aircraft of which not more than 20 hours, or 30 hours where a flight simulator is used, may be instrument ground time. The ground time shall be under the supervision of an authorized instructor.

(2) Flight instruction—

(*a*) the applicant for an IR shall have not less than 10 hours of the instrument flight time required in subregulation (1) (*b*) (ii) while receiving and logging dual instruction in aircraft from an authorized flight instructor.

(*b*) the instructor shall ensure that the applicant has operational experience in at least the following areas to the level of performance required for the holder of an instrument rating—

(i) pre-flight procedures, including the use of the flight manual or equivalent document, and appropriate air traffic services documents in the preparation of an IFR flight plan;

(ii) pre-flight inspection, use of checklists, taxiing and pre-take-off checks;

(iii) procedures and manoeuvres for IFR operation under normal, abnormal and emergency conditions covering at least—

(A) transition to instrument flight on take-off;

(B) standard instrument departures and arrivals;

(C) en route IFR procedures and navigation;

(D) holding procedures;

(E) instrument approaches to specified minima;

(F) missed approach procedures; and

(G) landings from instrument approaches;

(iv) in flight manoeuvres and particular flight characteristics;

(*c*) if the privileges of the instrument rating are to be exercised on multi-engine aircraft, the applicant shall have received dual instrument flight instruction in such an aircraft from an authorized flight instructor. The instructor shall ensure that the applicant has operational experience in the operation of the aircraft solely by reference to instruments with one engine inoperative or simulated inoperative.

(3) Skill:—The applicant for an IR shall—

(*a*) have received an endorsement from an authorized instructor who certifies that the person is prepared for the required skill test.

(*b*) have demonstrated by passing a skill test the ability to perform the areas of operation described in IS 2:81 contained in the Schedule hereto with a degree of competency appropriate to the privileges granted to the holder of an IR, and to—

(i) recognize and manage threats and errors;

(ii) operate the aircraft within its limitations;

(iii) complete all manoeuvres with smoothness and accuracy;

(iv) exercise good judgment and airmanship;

(v) apply aeronautical knowledge;

(vi) maintain control of the aircraft at all times in a manner such that the successful outcome of a procedure or manoeuvre is assured;

(vii) understand and apply crew coordination and incapacitation procedures; and

(viii) communicate effectively with the other flight crew members;

(*c*) have demonstrated by passing a skill test the ability to operate multi-engine aircraft solely by reference to instruments with one engine inoperative, or simulated inoperative, described in IS 2:81 contained in the Schedule hereto, if the privileges of the instrument rating are to be exercised on such aircraft.

(4) The skill test and proficiency check for the instrument rating is included in IS 2:81 contained in the Schedule hereto.

Division IX—Instructions for Pilot Licensing

General requirements

82.—(1) Application—

(*a*) this Regulation prescribes the requirements for the issuance of instructor licences, ratings or authorizations, the conditions under which those ratings and authorizations are necessary, and the

privileges and limitations on those ratings and authorizations. The following instructor licences, ratings and authorizations are issued under this Regulation:

(*b*) flight Instructor licence—

(i) ground Instructor licence, with basic or advanced ratings; and

(ii) instructor Authorization for Flight Simulation Training.

Flight instructor licence requirements, skill test and proficiency check

83.—(1) Age: The applicant for a flight instructor licence shall be of the appropriate age for the underlying licence to be held.

(2) Medical fitness: The applicant for a flight instructor licence shall have a Class 1 medical certificate.

(3) Knowledge—

(*a*) receive and log training from an authorized instructor and pass a flight instructor knowledge test on—

(i) the aeronautical knowledge areas for a student, private, commercial and airline transport pilot licences applicable to the aircraft category for which flight instructor privileges are sought; and

(ii) the aeronautical knowledge areas for the instrument rating applicable to the category for which instrument flight instructor privileges are sought.

(*b*) meet the requirements for fundamentals of knowledge instruction as listed in regulation 31.

(4) Experience: The applicant shall hold a licence with the aircraft category, and if applicable class and/or type rating, that is appropriate to the flight instructor rating sought as follows—

(*a*) for an instructor licence in the aeroplane category–hold either a CPL or ATPL aeroplane category with instrument rating and appropriate class and/or type ratings;

(*b*) for an instructor licence in the powered-lift category–hold either a CPL or ATPL powered-lift category with instrument rating and as applicable, class or type rating;

(*c*) for an instructor licence in the helicopter category–hold either a CPL or ATPL helicopter category and any applicable class or type rating;

(*d*) for an instructor licence in the balloon category–hold a CPL balloon category with applicable class rating;

(*e*) for an instructor licence in the airship category–hold a CPL airship category and any applicable ratings;

(*f*) for an instructor licence in the glider category–hold a CPL glider category and any applicable ratings; and

(*g*) for an instructor instrument rating licence–hold an IR in the appropriate category of aircraft.

(5) Flight instruction: Receive flight instruction from an authorized instructor in the areas of—

(*a*) flight instructional techniques including demonstration, student practices, recognition and correction of common student errors; and

(*b*) have practised instructional techniques in those flight manoeuvres and procedures in which it is intended to provide flight instruction.

(6) Skill—

(*a*) receive a logbook endorsement from an authorized instructor to indicate that the applicant is proficient on the areas of operation listed in subregulation (*b*), appropriate to the flight instructor rating sought;

(*b*) pass the required skill test that is appropriate to the flight instructor licence sought on the areas of operation in IS 2:83 in an—

(i) aircraft that is representative of the category of aircraft, and if applicable class and/or type, for the aircraft rating sought; or

(ii) approved flight simulation training device that is representative of the category, and if applicable class and/or type of aircraft for the licence and rating sought, and used in accordance with an approved course at an ATO certified under the Aviation (Approved Training Organization) Regulation.

(7) Privileges, limitations and qualifications—

(*a*) a flight instructor is authorized within the limitations of that person's flight instructor licence, and pilot licence and ratings, to give training and endorsements that are required for, and relate to—

(i) a student pilot authorization;

(ii) a pilot licence;

(iii) a flight instructor licence;

(iv) a ground instructor licence;

(v) an aircraft category rating;

(vi) an aircraft class rating;

(vii) an instrument rating;

(viii) a proficiency check or recency of experience requirement;

(ix) a knowledge test; and

(x) a skill test.

(8) Validity: Subject to compliance with the requirements specified in this Regulation, the validity period of instructor licence is 2 years.

(9) Renewal: A flight instructor licence that has not expired may be renewed for an additional 24-calendar months if the holder—

(*a*) passes a skill test for—

(i) renewal of the flight instructor licence; or

(ii) an additional flight instructor rating; or

(*b*) presents to an Authority inspector—

(i) a record of training students that shows during the preceding 24-calendar months the flight instructor has endorsed at least five students for a skill test for a licence or rating, and at least 80 per cent of those students passed that test on the first attempt;

(ii) a record that shows that within the preceding 24-calendar months, services as a company check pilot, chief flight instructor, company check airman, or flight instructor in a the Aviation (Operations) Regulations, or in a position involving the regular evaluation of pilots; or

(iii) a graduation certificate showing that the pilot has successfully completed an approved flight instructor refresher course consisting of ground training or flight training, or both, within the 90 days preceding the expiration month of his or her flight instructor licence.

(*c*) if a flight instructor accomplishes the renewal requirements within the 90 days preceding the expiration month of his or her flight instructor licence—

(i) the Authority shall consider that the flight instructor accomplished the renewal requirement in the month due; and

(ii) the Authority shall renew the current flight instructor rating for an additional 24-calendar months from its expiration date.

(*d*) a flight instructor may accomplish the skill test required by this subsection in an approved course conducted by an ATO certified under the Aviation (Approved Training Organization) Regulations.

(10) Re-issue: If the instructor licence has expired, the applicant shall—

(*a*) have received refresher training from an authorized instructor with an endorsement that the person is prepared for the required skill test; and

(*b*) pass the prescribed skill test.

(11) Additional flight instructor licences: An applicant for an additional flight instructor licence shall meet the requirements listed in this regulation that apply to the flight instructor rating sought.

(12) Flight instructor records: A flight instructor shall—

(*a*) sign the logbook of each person to whom that instructor has given flight training or ground training;

(*b*) maintain a record in a logbook or separate document that contains the following—

(i) the name of each person whose logbook or student pilot licence that instructor has endorsed for solo flight privileges, and the date of the endorsement; and

(ii) the name of each person that instructor has endorsed for a knowledge test or skill test, and a record of the kind of test, the date, and the results;

(*c*) retain the records required by this subsection for at least 3 years.

(13) Flight instructor limitations and qualifications. The holder of a flight instructor licence shall observe the following limitations and qualifications—

(*a*) hours of training: in any 24-consecutive-hour period, a flight instructor may not conduct more than 8 hours of flight training:

(*b*) required licence and ratings: a flight instructor may not conduct flight training in any aircraft for which the flight instructor does not hold a pilot licence and flight instructor licence with the applicable category and if applicable class or type rating;

(*c*) for instrument flight training or for training for a type rating not limited to VFR, an appropriate instrument rating on his or her flight instructor rating and pilot licence;

(*d*) limitations on endorsements: a flight instructor may not endorse the following—

(i) student pilot's licence or logbook for solo flight privileges, unless that flight instructor has—

(A) given that student the flight training required for solo flight privileges required by this Division;

(B) determined that the student is prepared to conduct the flight safely under known circumstances, subject to any limitations listed in the student's logbook that the instructor considers necessary for the safety of the flight;

(C) given that student pilot training in the make and model of aircraft or a similar make and model of aircraft in which the solo flight is to be flown; and

(D) endorsed the student pilot's logbook for the specific make and model aircraft to be flown;

(ii) student pilot's licence and logbook for a solo cross country flight, unless that flight instructor has determined that—

(A) the student's flight preparation, planning, equipment, and proposed procedures are adequate for the proposed flight under the existing conditions and within any limitations listed in the logbook that the instructor considers necessary for the safety of the flight; and

(B) the student has the appropriate solo cross country endorsement for the make and model of aircraft to be flown;

(iii) student pilot's licence and logbook for solo flight in a Class B airspace area or at an airport within Class B airspace unless that flight instructor has—

(A) given that student ground and flight training in that Class B airspace or at that airport; and

(B) determined that the student is proficient to operate the aircraft safely;

(iv) logbook of a pilot for a flight review, unless that instructor has conducted a review of that pilot in accordance with the requirements in regulation 3 (1) (*c*) of the Aviation (Operations) Regulations; or

(v) logbook of a pilot for an instrument proficiency check, unless that instructor has tested that pilot in accordance with the requirements of regulation 33 (2) of the Aviation (Operations) Regulations.

(*e*) training in a multi-engine aeroplane or a helicopter: a flight instructor may not give training required for the issuance of a licence or rating in a multi-engine aeroplane or a helicopter, unless that flight instructor has at least 5 flight hours of PIC time in the specific make and model of multi-engine aeroplane or helicopter, as appropriate.

(*f*) qualifications of the flight instructor for training first-time flight instructor applicants—

(i) no flight instructor may provide instruction to another pilot who has never held a flight instructor licence unless that flight instructor holds a current ground or flight instructor licence with the appropriate rating, has held that licence for at least 24 months, and has given at least 40 hours of ground training; or

(ii) holds a current ground or flight instructor licence with the appropriate rating, and has given at least 100 hours of ground training in a course which has been approved by the Authority;

(iii) meets the eligibility requirements prescribed in regulation 31 under these Regulations;

(iv) for training in preparation for an aeroplane or helicopter rating, has given at least 200 hours of flight training as a flight instructor;

(v) for training in preparation for a glider rating, has given at least 80 hours of flight training as a flight instructor;

(*g*) prohibition against self endorsements: A flight instructor may not make any self-endorsement for a licence, rating, flight review, authorization, operating privilege, skill test, or knowledge test that is required by the Aviation (Personnel Licensing) Regulations;

(*h*) Category II and Category III instructions: A flight instructor may not give training in Category II or Category III operations unless the flight instructor has been trained and tested in Category II or Category III operations as applicable.

(14) The skill test and proficiency check for flight instructor ratings in the categories of aeroplane, helicopter, powered-lift, airship, balloon, and glider, as well as instrument ratings (aeroplane, helicopter, and powered-lift) and additional type ratings are included in IS 2:83 contained in the Schedule hereto.

Instructor authorization for flight simulation training

84.—(1) Current and former holders of professional pilot licences, having instructional experience can apply for an authorization to provide flight instruction in a flight simulation training device, provided the applicant has at least 1 year experience as instructor in flight simulation training devices—

(*a*) skill: the applicant shall have demonstrated in a skill test, in the category and in the class or type of aircraft for which instructor authorization privileges are sought, the ability to instruct in those areas in which ground instruction is to be given;

(*b*) privileges: subject to compliance with the requirements specified in this Regulation, the privileges of the holder of an authorization are to carry out instruction in a flight simulation training device for the issue of a class or type rating in the appropriate category of aircraft;

(*c*) validity: subject to compliance with the requirements specified in this Regulation, the validity period of an instructor authorization for flight simulation training is 1 year;

(*d*) renewal: renewal of the authorization requires the successful completion of a proficiency check;

(*e*) re-issue: if the authorization has expired, the applicant must complete refresher training and successfully pass a skill test in the category and class or type of aircraft for which instructor authorization privileges are sought.

Ground instructor authorization

85.—(1) Age: the applicant for a ground instructor licence shall be at least 18 years of age.

(2) Knowledge—

(*a*) receive and log training from an authorized instructor and pass a knowledge test on the aeronautical knowledge areas appropriate to the aircraft category, for the licence and ratings below as applicable—

(i) for a basic rating, the knowledge for a student and private pilot licence as listed in these Regulations;

(ii) for an advanced rating, the student, private, commercial and airline transport pilot knowledge areas as listed in these Regulations;

(iii) for an instrument rating, the knowledge for the instrument rating as listed in these.

(*b*) meet the requirements for fundamentals of knowledge instructing as listed in regulation 31 under these Regulations.

(3) Privileges: The holder of a ground instructor licence may exercise the privileges appropriate to the licence and rating held—

(*a*) a person who holds a ground instructor licence with a basic rating is authorized to provide—

(i) ground training in the aeronautical knowledge areas required for the issuance of a student pilot authorization or private pilot licence or associated ratings;

(ii) ground training required for a private pilot flight review; and

(iii) a recommendation for a knowledge test required for the issuance of a private pilot licence.

(*b*) a person who holds a ground instructor licence with an advanced rating is authorized to provide—

(i) ground training in the aeronautical knowledge areas required for the issuance of any licence or rating;

(ii) ground training required for any flight review; and

(iii) a recommendation for a knowledge test required for the issuance of any licence.

(*c*) a person who holds an instrument ground instructor rating is authorized to provide—

(i) ground training in the aeronautical knowledge areas required for the issuance of an instrument rating;

(ii) ground training required for an instrument proficiency check; and

(iii) a recommendation for a knowledge test required for the issuance of an instrument rating;

(*d*) a person who holds a ground instructor licence is authorized, within the limitations of the licence and ratings on the ground instructor licence, to endorse the logbook or other training record of a person to whom the holder has provided the training or recommendation specified in subregulation (*a*) to (*c*) of this Regulation.

(4) Currency requirements: The validity period for a ground instructor licence is 5 years—

(*a*) The holder of a ground instructor licence may not perform the duties of a ground instructor unless, within the preceding 12 months—

(i) the person has served for at least 3 months as a ground instructor; or

(ii) the person has received an endorsement from an authorized ground or flight instructor certifying that the person has demonstrated satisfactory proficiency with the standards prescribed in this part for the authorization and rating.

Division X—Designated Pilot Examiners

Requirements and skill test

86.—(1) Age: An applicant for a designated pilot examiner shall be at least 21 years of age.

(2) Medical: An applicant for a designated pilot examiner shall have a Class 1 medical certificate.

(3) General eligibility: An applicant for a designated pilot examiner shall—

(*a*) hold at least the licence and/or class/type ratings as applicable for which examining authority is sought;

(*b*) hold at least the flight instructor ratings for which examining authority is sought or be serving in a comparable position as an air operator check airman or check pilot or comparable position in an Approved Training Organization;

(*c*) have a reputation for integrity and dependability in the industry and the community;

(*d*) have a good record as a pilot and flight instructor in regard to accidents, incidents, and violations; and

(*e*) have pilot and instructor licence/ratings that have never been revoked for falsification or forgery.

(4) Knowledge: The applicant for a designated pilot examiner shall pass a pre-designation knowledge test in the areas appropriate to the category of aircraft for which designation is sought.

(5) Skill test. The applicant for a designated pilot examiner shall pass a skill test conducted by an inspector of the Authority who holds a current and valid licence with appropriate category, and if applicable class and type ratings, in the areas of operation described in IS 2:86 contained in the Schedule hereto.

(6) Maintaining currency. After designation, a designated pilot examiner shall maintain currency by—

(*a*) attending initial and recurrent training provided by the Authority, and

(*b*) maintain a current and valid—

(i) pilot licence, and if applicable, class/type ratings appropriate to the designation;

(ii) flight instructor licence and ratings applicable to the designation; and

(iii) class 1 medical certificate.

(7) Privileges: Subject to compliance with the requirements specified in this Regulation, the privileges of the examiner's designation are to conduct skill tests and proficiency checks for a licence and rating(s) as listed on the designated pilot examiner's certificate of designation and identification card.

(8) Validity: Subject to compliance with the requirements specified in this Regulation, the validity period of an examiner's designation is 3 years.

(9) Renewal—

(*a*) Renewal will be at the discretion of the Authority;

(*b*) An applicant for renewal shall pass the appropriate skill test on the areas of operation listed in IS 2:86 in the Schedule hereto.

(10) Additional designations: When the Authority deems it necessary for a designated pilot examiner to receive additional designations, the designated pilot examiner—

(*a*) shall meet all the requirements in these Regulations for the designation;

(*b*) need not take an additional knowledge test provided the designation is within the same aircraft category.

(11) The requirements for the designation of a pilot examiner are included in IS 2:86 contained in the Schedule hereto.

Experience requirements for Private Pilot Examiner (PPE)

87.—(1) Experience: PPE-Aeroplane Category. The applicant shall have at least—

(*a*) A CPL(A), appropriate class rating(s) and in IR(A);

(*b*) a valid flight instructor licence with an aeroplane category and appropriate class rating(s);

(*c*) 2,000 hours as PIC which includes at least—

(i) 1,000 hours in aeroplanes, of which 300 hours were accrued within the past year;

(ii) 300 hours in the class of airplane for which the designation is sought; and

(iii) 100 hours in aeroplanes at night;

(*d*) 500 hours as a flight instructor in aeroplane which includes at least 100 hours of flight instruction given in the class of aeroplane appropriate to the designation sought.

(2) Experience: PPE-Helicopter Category. The applicant shall have at least—

(*a*) a CPL(H), appropriate class rating(s);

(*b*) a valid flight instructor licence with a helicopter category and appropriate class rating(s);

(*c*) 1,000 hours as PIC which includes at least—

(i) 500 hours in helicopters, of which 100 hours were accrued within the past year; and

(ii) 250 hours in helicopters as appropriate for the designation sought;

(*d*) 200 hours as a flight instructor in helicopters, as appropriate for the designation sought.

(3) Experience: PPE-Powered-Lift Category. The applicant shall have at least—

(*a*) A CPL powered-lift category with an instrument powered-lift rating;

(*b*) A valid flight instructor licence with a powered-lift category;

(*c*) 2,000 hours as PIC which includes at least—

(i) 1,000 hours in powered-lift, of which 300 hours were accrued within the past year; and

(ii) 100 hours in powered-lift at night;

(*d*) 500 hours as a flight instructor in powered-lift.

(4) Experience: PPE-Airship Category. The applicant shall have at least—

(*a*) a CPL airship category and any applicable class rating(s).

(*b*) a valid flight instructor licence with an airship category and any applicable class rating(s).

(*c*) 1,000 hours as PIC which includes at least—

(i) 500 hours in airships, of which 200 hours were accrued within the past year; and

(ii) 50 hours in airships at night;

(*d*) 100 hours as a flight instructor in airships.

(5) Experience: PPE-Balloon Category. The applicant shall have at least—

(*a*) a CPL balloon category and applicable class rating(s);

(*b*) a valid flight instructor licence with a balloon category and appropriate class rating(s);

(*c*) 200 hours as PIC which includes at least—

(i) 100 hours in balloons; and

(ii) 20 hours in balloons in the class for which the designation is sought within the past year, including 10 flights in balloons of at least 30 minutes duration each;

(*d*) 50 hours as a flight instructor in balloons in the class for which the designation is sought, of which 10 hours were accrued within the past year.

(6) Experience: PPE-Glider Category. The applicant shall have at least—

(*a*) a CPL glider category rating;

(*b*) a valid flight instructor licence with a glider category rating;

(*c*) 500 hours as PIC which includes at least—

(i) 200 hours in gliders; and

(ii) 10 hours in gliders within the past year that includes at least 10 flights in gliders;

(*d*) 100 hours as a flight instructor in gliders.

Experience requirements for Commercial and Instrument Rating Pilot Examiner (CIRE)

88.—(1) Experience: CIRE-Aeroplane Category. The examiner applicant shall have at least—

(*a*) a commercial pilot licence with an aeroplane category rating, appropriate class rating(s) and an Instrument-Aeroplane rating;

(*b*) a valid flight instructor certificate with an aeroplane category rating, the appropriate class rating(s) and an Instrument-Aeroplane rating;

(*c*) 2,000 hours as PIC, which includes at least—

(i) 1,000 hours in aeroplanes, of which 300 hours were accrued within the past year;

(ii) 500 hours in the class of aeroplane for which the designation is sought;

(iii) 100 hours at night in aeroplanes;

(iv) 100 hours of instrument flight time in actual or simulated conditions; and

(v) for authority to conduct skill tests in large or turbine- powered aeroplanes—

(A) 300 hours in large or turbine-powered aeroplanes, of which 50 hours are in the type of aeroplane for which designation is sought; and

(B) 25 hours for each additional type of large aeroplane for which designation is sought;

(*d*) 500 hours as a flight instructor in aeroplanes which include at least—

(i) 100 hours of flight instruction given in the class of aeroplane applicable to the designation sought; and

(ii) 250 hours of instrument flight instruction, of which 200 hours were given in aeroplanes.

(2) Experience: CIRE-Helicopter Category. The examiner applicant shall have at least—

(*a*) a commercial pilot licence with a helicopter category rating, appropriate class rating(s) and an Instrument-Helicopter rating;

(*b*) a valid flight instructor certificate with a helicopter category rating, the appropriate class rating(s) and an Instrument-Helicopter rating;

(*c*) 2,000 hours as PIC, which includes at least—

(i) 500 hours in helicopters, of which 100 hours were accrued within the past year;

(ii) 100 hours of instrument flight time in actual or simulated conditions;

(iii) for authority to conduct skill tests in large or turbine-powered aeroplanes—

(A) 100 hours in large helicopters, of which 50 hours are in the type of helicopter for which designation is sought; and

(B) 25 hours for each additional type of large helicopter for which designation is sought;

(*d*) 250 hours as a flight instructor in helicopters, which include at least—

(i) 100 hours of flight instruction given in the helicopters; and

(ii) 50 hours of instrument flight instruction in helicopters.

(3) Experience: CIRE-Powered-Lift Category. The examiner applicant shall have at least—

(*a*) a commercial pilot licence with a powered-lift category rating, any applicable class rating(s) and an Instrument-Powered-lift rating.

(*b*) a valid flight instructor certificate with a powered-lift category rating, any applicable class rating(s) and an Instrument-Powered-lift rating;

(*c*) 2,000 hours as PIC, which includes at least—

(i) 1,000 hours in powered-lifts, of which 300 hours were accrued within the past year;

(ii) 100 hours at night in powered-lifts;

(iii) 100 hours of instrument flight time in actual or simulated conditions; and

(iv) for authority to conduct skill tests in large or turbine-engine powered-lifts—

(A) 300 hours in large or turbine-engine powered-lifts, of which 50 hours are in the type of powered-lift for which designation is sought, and

(B) 25 hours for each additional type of large aeroplane for which designation is sought.

(*d*) 500 hours as a flight instructor in powered-lifts, which include at least—

(i) 250 hours of instrument flight instruction, of which 200 hours were given in powered-lifts.

Experience requirements Commercial Pilot Examiner (CPE)

89.—(1) Experience: CE-Helicopter Category. The examiner applicant for commercial pilot—

(*a*) a commercial pilot licence with a helicopter category rating;

(*b*) a valid flight instructor certificate with a helicopter category rating;

(*c*) 2,000 hours as PIC, which includes at least—

(i) 500 hours in helicopters, of which 100 hours were accrued within the past year;

(ii) for authority to conduct skill tests in large helicopters;

(iii) 100 hours in large helicopters, of which 50 hours are in the type of helicopter for which designation is sought; and

(iv) 25 hours for each additional type of large helicopter for which designation is sought;

(*d*) 250 hours as a flight instructor in helicopters, which include at least 50 hours of instrument flight instruction in helicopters.

(2) Experience: CE-Airship Category. The applicant shall have at least—

(*a*) a CPL with airship category rating and any applicable class rating(s);

(*b*) a valid flight instructor licence with an airship category and any applicable class rating(s).

(*c*) 1,000 hours as PIC which includes at least—

(i) 500 hours in airships, of which 200 hours were accrued within the past year; and

(ii) 50 hours in airships at night;

(*d*) 100 hours as a flight instructor in airships.

(3) Experience: CE-Balloon Category. The applicant shall have at least—

(*a*) a CPL balloon category and applicable class rating(s);

(*b*) a valid flight instructor licence with a balloon category and applicable class rating(s);

(*c*) 200 hours as PIC which includes at least—

(i) 100 hours in balloons; and

(ii) 20 hours in balloons in the class for which the designation is sought within the past year, including 10 flights in balloons of at least 30 minutes duration each;

(*d*) held a commercial pilot licence with balloon category rating and applicable class rating for at least 1 year prior to designation;

(*e*) 50 hours as a flight instructor in balloons in the class for which the designation is sought, of which 10 hours were accrued within the past year.

(4) Experience: CE-Glider Category. The applicant shall have at least—

(*a*) a CPL with glider category rating;

(*b*) a valid flight instructor licence with a glider category rating;

(*c*) 500 hours as PIC which includes at least—

(i) 250 hours in gliders; and

(ii) 20 hours in gliders within the past year that includes at least 50 flights in gliders;

(*d*) 200 hours as a flight instructor, including 100 hours of flight instruction given in gliders.

Experience requirements for Airline Transport Pilot (ATPL) examiner (ATPE)

90.—(1) Experience: ATPE-Aeroplane Category. The examiner applicant shall have at least—

(*a*) an ATPL with an aeroplane category rating, appropriate class rating(s) and an Instrument-Aeroplane rating;

(*b*) a valid flight instructor certificate with an aeroplane category rating, the appropriate class rating(s) and an Instrument Aeroplane rating;

(*c*) 2,000 hours as PIC, which includes at least—

(i) 1,500 hours in aeroplanes, of which 300 hours were accrued within the past year;

(ii) 500 hours in the class of aeroplane for which the designation is sought;

(iii) 100 hours at night in aeroplanes;

(iv) 200 hours in complex aeroplanes;

(v) 100 hours of instrument flight time in actual or simulated conditions;

(vi) for authority to conduct skill tests in large or turbine-powered aeroplanes—

(A) 300 hours in large or turbine-powered aeroplanes, of which 50 hours are in the type of aeroplane for which designation is sought; and

(B) 25 hours for each additional type of large aeroplane for which designation is sought;

(*d*) 500 hours as a flight instructor in aeroplanes which include at least—

(i) 100 hours of flight instruction given in the class of aeroplane applicable to the designation sought;

(ii) 250 hours of instrument flight instruction, of which 200 hours were given in aeroplanes; and

(iii) 150 hours flight instruction given for either a CPL(A) or ATPL(A) or an IR(A).

(2) Experience: ATPE-Helicopter Category. The examiner applicant shall have at least—

(*a*) an ATPL with a helicopter category rating, appropriate class rating(s) and an Instrument Helicopter rating;

(*b*) a valid flight instructor certificate with a helicopter category rating, the appropriate class rating(s) and an Instrument-Helicopter rating;

(*c*) 2,000 hours as PIC, which includes at least—

(i) 1,200 hours in helicopters, of which 100 hours were accrued within the past year;

(ii) 100 hours of instrument flight time in actual or simulated conditions; and

(iii) for authority to conduct skill tests in large helicopters—

(A) 100 hours in large helicopters, of which 50 hours are in the type of helicopter for which designation is sought; and

(B) 25 hours for each additional type of large helicopter for which designation is sought;

(*d*) 250 hours as a flight instructor in helicopters, which include at least—

(i) 100 hours of flight instruction given in the helicopters; and

(ii) 50 hours of instrument flight instruction in helicopters.

(3) Experience: ATPE-Powered-Lift Category. The examiner applicant shall have at least—

(*a*) an ATPL with a powered-lift category rating, any applicable class rating(s) and an Instrument-Powered-lift rating;

(*b*) a valid flight instructor certificate with a powered-lift category rating, any applicable class rating(s) and an Instrument-Powered-lift rating;

(*c*) 2,000 hours as PIC, which includes at least—

(i) 1,500 hours in powered-lifts, of which 300 hours were accrued within the past year;

(ii) 100 hours at night in powered-lifts;

(iii) 100 hours of instrument flight time in actual or simulated conditions; and

(iv) for authority to conduct skill tests in large or turbine-engine powered-lifts—

(A) 300 hours in large or turbine-engine powered-lifts, of which 50 hours are in the type of powered-lift for which designation is sought; and

(B) 25 hours for each additional type of large aeroplane for which designation is sought.

(*d*) 500 hours as a flight instructor in powered-lifts, which include at least—

(i) 250 hours of instrument flight instruction, of which 200 hours were given in powered-lifts; and

(ii) 150 hours flight instruction given for either a CPL-powered-lift, ATPL-powered-lift or IR-powered-lift.

Experience requirements for Instructor Examiner (FIE)

91.—(1) The examiner applicant shall have at least—

(*a*) the requirements for a commercial examiner or a commercial instrument rating examiner designation, as appropriate for the category and class of aircraft pertinent to the FIE designation sought; and

(*b*) have held a Commercial Examiner or Commercial and Instrument Rating Examiner designation for at least a year prior to designation as a FIE.

PART III

Flight Engineer Licence, Ratings, Instructors and Designated Flight Engineer Examiners

Division I—General

Application

92.—(1) This part prescribes the requirements for the issue, renewal and re-issue of a flight engineers licence and ratings and for designated flight engineer examiners.

General rule concerning flight engineer licences and ratings

93.—(1) A person shall not act as a flight engineer of an aircraft registered in Malaŵi unless a valid licence or a validation certificate is held showing compliance with the specifications of this Regulation and appropriate to the duties to be performed by that person.

(2) For the purpose of training, testing or specific special purpose non-revenue, non-passenger carrying flights, special authorization may be provided in writing to the licence holder by the Authority in place of issuing the class or type rating in accordance with this Regulation. This authorization will be limited in validity to the time needed to complete the specific flight.

(3) An applicant shall, before being issued with a flight engineer licence and class rating, meet such requirements in respect of age, knowledge, experience, skill, medical fitness and language proficiency as are specified for that licence or rating.

(4) An applicant for renewal or re-issue of an FE licence and class rating shall meet the requirements as are specified for the licence and rating in this Regulation.

Authority to act as a flight crew member

94.—(1) A person shall not act as a flight crew member of an aircraft registered in Malaŵi unless a valid licence or validation certificate is held showing compliance with the specifications of these Regulations and appropriate to the duties to be performed by that person.

(2) No person may act as a FE of an aircraft unless that person holds the appropriate FE licence and class rating for the aircraft to be flown.

Division II—Flight Engineer Licence, Class Rating and Experience Requirements

Flight engineer licence

95.—(1) Age: The applicant for a flight engineer licence and class rating shall be not less than 18 years of age.

(2) Medical: The applicant for a flight engineer licence and class rating shall have a Class 2 medical certificate.

(3) Knowledge: The applicant for a flight engineer licence and class rating shall receive and log ground training from an authorized instructor on the following subjects—

(*a*) air law—rules and regulations relevant to the holder of a flight engineer licence; rules and regulations governing the operations of civil aircraft pertinent to the duties of a flight engineer;

(*b*) aircraft general knowledge—

(i) basic principles of power-plants, gas turbines and/or piston engines, characteristics of fuels, fuel systems including fuel control, lubricants and lubrication systems, afterburners and injection systems, function and operation of engine ignition and starter systems;

(ii) principles of operation, handling procedures and operating limitations of aircraft power-plants effects of atmospheric conditions on engine performance;

(iii) airframes, flight controls, structures, wheel assemblies, brakes and anti-skid units, corrosion and fatigue life and identification of structural damage and defects;

(iv) ice and rain protection systems;

(v) pressurization and air-conditioning systems, oxygen systems;

(vi) hydraulic and pneumatic systems;

(vii) basic electrical theory, electric systems (AC and DC), aircraft wiring systems, bonding and screening;

(viii) principles of operation of instruments, compasses, autopilots, radio communication equipment, radio and radar navigation aids, flight management systems, displays and avionics;

(ix) limitations of appropriate aircraft;

(x) fire protection, detection suppression and extinguishing systems;

(xi) use and serviceability checks of equipment and systems of appropriate aircraft.

(*c*) flight performance and planning—

(i) effects of loading and mass distribution on aircraft handling, flight characteristics and performance; mass and balance calculations; and

(ii) use and practical application of performance data including procedures for cruise control;

(*d*) human performance—human performance and CRM relevant to the flight engineer, including principles of threat and error management.

(*e*) operational procedures—

(i) principles of maintenance procedures for the maintenance of airworthiness, defect reporting, pre-flight inspections, precautionary procedures for fuelling and use of external power; installed equipment and cabin systems;

(ii) normal, abnormal and emergency procedures; and

(iii) operational procedures for carriage of freight and dangerous goods;

(*f*) principles of flight—fundamentals of aerodynamics;

(*g*) radiotelephony—radiotelephony procedures and phraseology;

(*h*) navigation—

(i) fundamentals of navigation;

(ii) principles and operation of self-contained systems;

(*i*) meteorology—operational aspects of meteorology.

(4) Knowledge testing: The applicant for a FE shall—

(*a*) have received an endorsement for the knowledge test from an authorized instructor who—

(i) conducted the training on the knowledge subjects; and

(ii) certifies that the person is prepared for the required knowledge test;

(*b*) pass the required knowledge test.

(5) Experience—

(*a*) the applicant for a flight engineer licence and class rating shall have completed under the supervision of a person accepted by the Authority for that purpose, not less than 100 hours of flight time in the performance of the duties of a flight engineer, of which 50 hours may have been completed in a flight simulation training device approved by the Authority. This experience shall have been obtained—

(i) on an aeroplane for which a flight engineer is required; and

(ii) on an aeroplane that has at least three engines that are rated at least 800 horsepower each or the equivalent in turbine engine powered aircraft.

(*b*) the holder of a CPL/IR(A) or ATPL(A) may be credited with 30 hours towards the 100 hours of flight time;

(*c*) the applicant shall have operational experience in the performance of the duties of a flight engineer, under the supervision of a flight engineer accepted by the Authority for that purpose, in at least the following areas—

(i) normal procedures—

(A) pre-flight inspections;

(B) fuelling procedures, fuel management;

(C) inspection of maintenance documents;

(D) normal flight deck procedures during all phases of flight;

(E) crew coordination and procedures in case of crew incapacitation; and

(F) defect reporting;

(ii) abnormal and alternate (standby) procedures—

(A) recognition of abnormal functioning of aircraft systems; and

(B) use of abnormal and alternate (standby) procedures;

(iii) emergency procedures—

(A) recognition of emergency conditions; and

(B) use of appropriate emergency procedures.

(6) Skill: The applicant for a flight engineer licence and class rating shall—

(*a*) have received an endorsement from an authorized instructor who certifies that the person is prepared for the required skill test; and

(*b*) have demonstrated by passing the required skill test, the ability to perform as flight engineer of an aircraft, the duties and procedures described in subregulation (3) with a degree of competency appropriate to the privileges granted to the holder of a flight engineer licence, and to—

(i) use aircraft systems within the aircraft's capabilities and limitations;

(ii) exercise good judgment and airmanship;

(iii) apply aeronautical knowledge;

(iv) perform all the duties as part of an integrated crew with the successful outcome never in doubt; and

(v) communicate effectively with the other flight crew members;

(*c*) requirements for the skill test are given at IS 2:98 contained in the Schedule hereto.

(*d*) the use of a flight simulation training device for training or testing any of the required manoeuvres shall be appropriate to the task and approved by the Authority.

(7) Privileges: Subject to compliance with the requirements specified in this Regulation, the privileges of the holder of a flight engineer licence and class rating shall be to act as flight engineer of any type of aircraft on which the holder has demonstrated a level of knowledge and skill.

(8) Validity: Subject to compliance with the requirements specified in this Regulation, the validity period of the flight engineer licence and class rating is 5 years.

(9) Renewal: The Flight Engineer Licence may be renewed by presenting to the authority evidence of successfully passing a proficiency check on the areas of operation listed in IS: 2:98 contained in the Schedule hereto.

(10) Re-issue: If the Flight Engineer Licence has expired, the applicant shall have received refresher training acceptable to the Authority.

Flight engineer class ratings

96.—(1) The Authority may issue the following class ratings to be placed on a flight engineer's licence when the applicant completes the requirements in this Regulation for the rating sought—

(*a*) reciprocating engine powered;

(*b*) turbopropeller powered; and

(*c*) turbojet powered.

(2) Additional ratings: To be eligible for an additional class rating, an applicant shall—

(*a*) successfully complete an approved flight engineer training course that is appropriate to the additional class rating sought;

(*b*) pass the knowledge test that is appropriate to the class for which an additional rating is sought; and

(*c*) pass the skill test that is appropriate to the class for which an additional rating is sought.

Recent experience requirements

97.—(1) No person holding a flight engineer licence and class rating shall exercise the privileges of the flight engineer licence unless he/she has completed within the past 6 calendar months—

(*a*) at least 50 hours of flight time as a flight engineer; or

(*b*) completed a proficiency check.

Flight engineer: skill test and proficiency check

98.—(1) The requirements for the skill test and proficiency check for the flight engineer licence are included in IS 2:98 contained in the Schedule hereto.

Division III—Instructors for Flight Engineer Licences

Requirements for flight engineer instructor licence and class rating

99.—(1) Age: An applicant for a flight engineer instructor licence and class rating shall be at least 18 years of age.

(2) Medical: An applicant for a flight engineer instructor licence shall hold a Class 2 medical certificate.

(3) Knowledge—

(*a*) an applicant for a flight engineer instructor licence shall have met the instructor requirements in regulation 31 of these Regulations; and

(*b*) any additional requirements as may be specified by the Authority.

(4) Experience: The applicant for a flight engineer instructor licence and class rating shall hold at least a current and valid flight engineer licence and class rating for which the instructor licence is sought and have a minimum of 1,500 hours flight time as a flight engineer.

(5) Flight instruction: Received flight instruction from an authorized instructor in the areas of—

(*a*) flight instructional techniques including demonstration, student performance, student practices, recognition and correction of common student errors; and

(*b*) have practised instructional techniques in those flight manoeuvres and procedures in which it is intended to provide flight instruction.

(6) Privileges: The privileges of a flight engineer instructor licence and class rating are to give flight and ground instruction to flight engineer licence applicants and to endorse those applicants for a knowledge or skill test as applicable.

(7) Validity: Subject to compliance with the requirements specified in this Regulation, the validity period of the flight engineer instructor licence is 2 years.

(8) Renewal : A flight engineer instructor licence that has not expired may be renewed for an additional 24 calendar months if the holder presents to the Authority evidence that he/she has within the past 12 months preceding the expiry date—

(*a*) received refresher training acceptable to the Authority; or

(*b*) conducted at least one of the following parts of an approved course for a flight engineer licence or class rating;

(*c*) one simulator session of at least 3 hours; or

(*d*) one flight exercise of at least 1 hour including at least 2 take-offs and landings.

(9) Re-issue: If the flight engineer instructor licence has expired, the applicant shall—

(*a*) have received refresher training acceptable to the Authority; and

(*b*) pass a skill test on the areas of operation listed in IS 2:98 contained in the Schedule hereto.

Instructor authorization for flight simulation training

100.—(1) Current or former holders of flight engineer licences, having instructional experience may apply for an authorization to provide flight instruction in a flight simulation training device, provided the applicant has at least 1 year experience as instructor in flight simulation training devices—

(*a*) skill: the applicant shall have demonstrated in a skill test, in the category and in the class or type of aircraft for which instructor authorization privileges are sought, the ability to instruct in those areas in which ground instruction is to be given;

(*b*) privileges: subject to compliance with the requirements specified in this Regulation, the privileges of the holder of an authorization are to carry out instruction in a flight simulation training device for the issue of a class or type rating in the appropriate category of aircraft;

(*c*) validity: Subject to compliance with the requirements specified in this Regulation, the validity period of an instructor authorization for flight simulation training is 1 year;

(*d*) renewal: Renewal of the authorization requires the successful completion of a proficiency check;

(*e*) reissue: If the authorization has expired, the applicant must complete refresher training and successfully pass a skill test in the category and class or type of aircraft for which instructor authorization privileges are sought.

Division IV—Designated Flight Engineer Examiners

Requirements

101.—(1) Age: An applicant for a designated flight engineer examiner shall be at least 21 years of age.

(2) Medical: An applicant for a designated flight engineer examiner shall hold a Class 2 medical certificate.

(3) Eligibility: An applicant for a designated flight engineer examiner shall—

(*a*) hold at least the flight engineer licence and class rating for which examining authority is sought;

(*b*) have a minimum of 1,500 hours flight time as a flight engineer;

(*c*) have held a flight engineer instructor licence or company flight engineer check airman authorization for preferably at least 1 year;

(*d*) have a reputation for integrity and dependability in the industry and the community;

(*e*) have a good record as a flight engineer in regard to accidents, incidents, and violations;

(*f*) have flight engineer licence/class ratings and flight engineer instructor licence or check airman authorization that have never been revoked for falsification or forgery.

(4) Knowledge: The applicant for a designated flight engineer examiner shall pass a pre-designation knowledge test in the areas appropriate to the licence/class rating for which designation is sought.

(5) Skill test: The applicant for a designated flight engineer examiner shall pass a skill test on the items in IS 2:102 conducted by an inspector of the Authority who holds a current and valid flight engineer licence with appropriate class rating.

(6) Maintaining currency: After designation, a designated flight engineer examiner shall maintain currency by—

(*a*) attending initial and recurrent training provided by the Authority; and

(*b*) maintain a current and valid—

(i) flight engineer licence and applicable class rating; and

(ii) Class 1 medical certificate.

(7) Privileges: Subject to compliance with the requirements specified in this Regulation, the privileges of the flight engineer examiner's designation are to conduct skill tests and proficiency checks for a flight engineer licence and applicable class rating as listed on the designated flight examiner's certificate of designation and identification card.

(8) Validity: Subject to compliance with the requirements specified in this Regulation, the validity period of the designated flight engineer examiner's designation is 3 years.

(9) Renewal—

(*a*) renewal will be at the discretion of the Authority;

(*b*) an applicant for renewal shall pass the appropriate skill test on the areas of operation listed in IS 2:102 contained in the Schedule hereto.

(10) Additional designations: When the Authority deems it necessary for a designated flight engineer examiner to receive additional class rating designations, the designated flight engineer examiner shall meet all the requirements in this Regulations for the designation.

Skill test for designated flight engineer examiners

102.—(1) The requirements for the skill test for designated flight engineer examiners is included in IS 2:102 contained in the Schedule hereto.

PART IV

Flight Navigator Licence

Division I—Flight Navigator Licence, Instructors and Designated Examiners

Applicability

103.—(1) This Part prescribes the requirements for the issue, renewal and re-issue of a flight navigator licence.

General rule concerning flight navigator licence

104.—(1) A person shall not act as a flight navigator of an aircraft registered in Malaŵi unless a valid licence is held showing compliance with the specifications of these Regulations and appropriate to the duties to be performed by that person.

(2) An applicant shall, before being issued with a flight navigator licence, meet such requirements in respect of age, knowledge, experience, skill, medical fitness and language proficiency as are specified for that licence.

(3) An applicant shall for renewal or re-issue of a flight navigator licence, meet the requirements as are specified for that licence in these Regulations.

Authority to act as a flight crew member

105.—(1) A person shall not act as a flight crew member of an aircraft registered in Malaŵi unless a valid licence is held showing compliance with the specifications of this Regulation and appropriate to the duties to be performed by that person.

(2) No person may act as the flight navigator of an aircraft unless that person holds the appropriate flight navigator licence.

Division II—Flight Navigator Licence

General requirements

106.—(1) Age: The applicant for a flight navigator licence shall be not less than 18 years of age.

(2) Medical: The applicant for a flight navigator licence shall have a Class 2 medical certificate.

(3) Knowledge: The applicant for a flight navigator licence shall receive and log ground training from an authorized instructor on the following subjects to the level of knowledge appropriate for the privileges of a flight navigator—

(*a*) air law—rules and regulations relevant to the holder of a flight navigator licence; appropriate air traffic services practices and procedures;

(*b*) flight performance and planning—

(i) effects of loading and mass distribution on aircraft performance;

(ii) use of take-off, landing and other performance data including procedures for cruise control; and

(iii) pre-flight and en route operational flight planning; preparation and filing of air traffic services flight plans; appropriate air traffic services procedures; altimeter setting procedures.

(*c*) human performance—human performance relevant to the flight navigator, including principles of threat and error management;

(*d*) meteorology—

(i) interpretation and practical application of aeronautical meteorological reports, charts and forecasts; codes and abbreviations; use of, and procedures for obtaining, meteorological information, pre-flight and in-flight; altimetry; and

(ii) aeronautical meteorology; climatology of relevant areas in respect of the elements having an effect upon aviation; the movement of pressure systems; the structure of fronts, and the origin and characteristics of significant weather phenomena which affect take-off, en route and landing conditions.

(*e*) navigation—

(i) dead-reckoning, pressure-pattern and celestial navigation procedures; the use of aeronautical charts, radio navigation aids and area navigation systems; specific navigation requirements for long-range flights;

(ii) use, limitation and serviceability of avionics and instruments necessary for the navigation of the aircraft;

(iii) use, accuracy and reliability of navigation systems used in departure, en route and approach phases of flight; identification of radio navigation aids;

(iv) principles, characteristics and use of self-contained and external-referenced navigation systems; operation of airborne equipment;

(v) the celestial sphere including the movement of heavenly bodies and their selection and identification for the purpose of observation and reduction of sights; calibration of sextants; the completion of navigation documentation; and

(vi) definitions, units and formulae used in air navigation.

(*f*) operational procedures—

(i) interpretation and use of aeronautical documentation such as AIP, NOTAM, aeronautical codes, abbreviations, and instrument procedure charts for departure, en route, descent and approach;

(*g*) principles of flight: principles of flight;

(*h*) radiotelephony: radiotelephony procedures and phraseology.

(4) Knowledge testing—

(*a*) an applicant for a flight navigator licence shall have received an endorsement for the knowledge test from an authorized instructor who—

(i) conducted the training on the knowledge subjects;

(ii) certifies that the person is prepared for the required knowledge test;

(*b*) pass the required knowledge test on the subjects listed in subregulation (3).

(5) Experience: The applicant for a flight navigator licence—

(*a*) shall present satisfactory evidence, such as a logbook, of the following experience—

(i) the applicant shall have completed in the performance of the duties of a flight navigator, not less than 200 hours of flight time acceptable to the Authority, in aircraft engaged in cross-country flights, using celestial and radio navigation and dead reckoning, including not less than 30 hours by night; and

(ii) the applicant shall produce evidence of having satisfactorily determined the aircraft's position in flight, and used that information to navigate the aircraft, as follows—

(A) by night-not less than 25 times by celestial observations; and

(B) by day-not less than 25 times by celestial observations in conjunction with self-contained or external-referenced navigation systems.

(*b*) may be credited with 30 hours of flight time as the holder of a pilot licence towards the 200 hours of flight time required in subregulation (5) (1).

(6) Skill: The applicant shall have demonstrated by passing the required skill test on the items in IS 2:107 the ability to perform as flight navigator of an aircraft with a degree of competency appropriate to the privileges granted to the holder of a flight navigator licence, and to—

(*a*) recognize and manage threats and errors;

(*b*) exercise good judgment and airmanship;

(*c*) apply aeronautical knowledge;

(*d*) perform all duties as part of an integrated crew; and

(*e*) communicate effectively with the other flight crew members.

(7) Privileges: Subject to compliance with the requirements specified in this Regulation, the privileges of the holder of a flight navigator licence shall be to act as flight navigator of any aircraft.

(8) Validity: Subject to compliance with the requirements specified in this Regulation, the validity period of the licence is 5 years.

(9) Recent experience requirements: No person holding a flight navigator licence shall exercise the privileges of the flight navigator licence unless he/she has completed within the past 6 calendar months—

(*a*) at least 30 hours of flight time as a flight navigator; or

(*b*) completed a proficiency check.

(10) Renewal of the flight navigator licence: For renewal of the licence, the applicant shall pass a proficiency check on the areas of operation in IS 2:107 contained in the Schedule hereto.

(11) Re-issue: If the Flight Navigator Licence has expired, the applicant shall have received refresher training acceptable to the Authority.

Flight navigator licence: skill test and proficiency check

107.—(1) The areas of operation for the skill test and proficiency check, are included in IS 2:107 contained in Schedule hereto.

Division III—Instructor Requirements for Flight Navigators

Requirements for Flight Navigator Instructor Licence

108.—(1) Age: An applicant for a flight navigator instructor licence shall be at least 18 years of age.

(2) Medical: An applicant for a flight navigator instructor licence shall hold a Class 2 medical certificate.

(3) Knowledge—

(*a*) an applicant for a flight navigator instructor licence shall have met the instructor knowledge requirements in regulation 31 of this Regulation; and

(*b*) meet any additional requirements as may be specified by the Authority.

(4) Experience: The applicant for a flight navigator instructor licence shall hold at least a current and valid flight navigator licence for which the instructor licence is sought and have a minimum of 1,500 hours flight time as a flight navigator.

(5) Flight instruction: Received flight instruction from an authorized instructor in the areas of—

(*a*) flight instructional techniques including demonstration, student performance, student practices, recognition and correction of common student errors; and

(*b*) have practised instructional techniques in those procedures in which it is intended to provide flight instruction.

(6) Privileges: The privileges of a flight navigator instructor licence are to give flight and ground instruction to flight navigator licence applicants and to endorse those applicants for a knowledge or skill test as applicable.

(7) Validity: Subject to compliance with the requirements specified in this Regulation, the validity period of the flight navigator instructor licence is 2 years.

(8) Renewal: A flight navigator instructor licence that has not expired may be renewed for an additional 24-calendar months if the holder presents to the Authority evidence that he/she has within the past 12 months preceding the expiry date—

(*a*) conducted at least two flight exercises in an approved course for a flight navigator licence or class rating in which the aircraft position was determined by use of celestial, ground based and electronic navigational systems; or

(*b*) received refresher training acceptable to the Authority.

(9) Re-issue: If the flight navigation instructor licence has expired, the applicant shall—

(*a*) have received refresher training acceptable to the Authority; and

(*b*) passed a skill test on the areas of operation listed in IS: 2:107 contained in the Schedule hereto.

Division IV—Designated Flight Navigator Examiners

Requirements

109.—(1) Age: An applicant for a designated flight navigator examiner shall be at least 21 years of age.

(2) Medical: An applicant for a designated flight navigator examiner shall hold a Class 1 medical certificate.

(3) Eligibility: An applicant for a designated flight navigator examiner shall—

(*a*) hold the flight navigator licence for which examining authority is sought;

(*b*) have a reputation for integrity and dependability in the industry and the community;

(*c*) have a good record as a flight navigator in regard to accidents, incidents, and violations; and

(*d*) have a flight navigator licence that has never been revoked for falsification or forgery.

(4) Knowledge: The applicant for a designated flight navigator examiner shall pass a pre-designation knowledge test in the areas appropriate to the licence rating for which designation is sought.

(5) Skill test: The applicant for a designated flight navigator examiner shall pass a skill test on the areas of operation listed in IS 2:110 conducted by an inspector of the Authority who holds a current and valid flight navigator licence.

(6) Maintaining currency: After designation, a designated flight navigator examiner shall maintain currency by—

(*a*) attending initial and recurrent training provided by the Authority; and

(*b*) maintain a current and valid—

(i) flight navigator licence; and

(ii) class 2 medical certificate.

(7) Privileges: Subject to compliance with the requirements specified in this Regulation, the privileges of the flight navigator examiner's designation are to conduct skill tests and proficiency checks for a flight navigator licence as listed on the designated flight navigator examiner's certificate of designation and identification card.

(8) Validity: Subject to compliance with the requirements specified in this Regulation, the validity period of the designated flight navigator examiner's designation is 3 years.

(9) Renewal—

(*a*) renewal will be at the discretion of the Authority;

(*b*) an applicant for renewal shall pass the appropriate skill test on the areas of operation listed in IS 2:110.

Skill test for designated Flight Navigator Examiner

110.—(1) The requirements for a skill test for designated flight navigator examiners are included in IS 2:110 in the Schedule hereto.

PART V

Aircraft Maintenance Licencing, Instructors and Designated Examiners

Division I—General

Application

111.—(1) This Part prescribes the requirements for issuing the following licences and associated ratings and/or authorizations for—

(*a*) Aircraft Maintenance Engineers;

(*b*) Inspection Authorizations;

(*c*) Aviation Repairman.

Division II—Aircraft Maintenance Engineers (AME)

Applicability

112. The term "Aviation Maintenance Engineer" is used in this section, but under ICAO Annex 1, 4.2, the terms "Aircraft Maintenance Technicians" and "Aircraft Maintenance Mechanic" are accepted with equal validity. The term "Licensed Mechanic" is used by other states where the maintenance function is performed by individuals not working for an Approved Maintenance Organization (AMO).

Issuance of licence

113. This Division prescribes the requirements for issuance of an AME licence and associated ratings.

Eligibility requirements: general

114.—(1) An applicant for an AME licence and any associated rating shall—

(*a*) be at least 18 years of age;

(*b*) demonstrate the ability to read, write, speak, the Malaŵi English language, by reading and explaining appropriate maintenance publications and by writing defect and repair statements;

(*c*) comply with the knowledge, experience, and competency requirements prescribed for the licence and rating sought;

(*d*) pass all of the prescribed tests for the licence and rating sought, within a period of 24 months.

(2) A licensed AME who applies for an additional rating must meet the requirements of regulation 118 and, within a period of 24 months,

pass the tests prescribed by regulation 117 and regulation 119 for the additional rating sought.

Rating

115.—(1) The following ratings are issued under this subpart—

(*a*) airframe;

(*b*) power-plant;

(*c*) avionics;

(*d*) other ratings as may be determined by the Authority.

Knowledge for the AME licence

116.—(1) The applicant for an aircraft maintenance engineer/mechanic licence shall have passed a general knowledge test covering at least the following areas—

(*a*) air law and airworthiness requirements: rules and regulations relevant to an aircraft maintenance technician licence holder including—

(i) applicable airworthiness requirements governing certification and continuing airworthiness of aircraft; and

(ii) approved aircraft maintenance organization procedures.

(*b*) natural science and aircraft general knowledge—

(i) basic mathematics;

(ii) units of measurement; and

(iii) fundamental principles and theory of physics and chemistry applicable to aircraft maintenance.

(*c*) aircraft engineering: characteristics and applications of the materials of aircraft construction including—

(i) principles of construction and functioning of aircraft structures;

(ii) fastening techniques;

(iii) power-plants and their associated systems;

(iv) mechanical, fluid, electrical and electronic power sources;

(v) aircraft instrument and display systems;

(vi) aircraft control systems; and

(vii) airborne navigation and communication systems.

(*d*) aircraft maintenance: tasks required to ensure the continuing airworthiness of an aircraft including—methods and procedures for the overhaul, repair, inspection, replacement, modification or defect rectification of aircraft structures, components and systems in accordance with the methods prescribed in the relevant Maintenance Manuals and the applicable requirements of airworthiness.

(*e*) human performance—human performance, including principles of threat and error management, relevant to the duties of an aircraft maintenance licence holder.

Knowledge requirements for the ratings

117.—(1) The applicant for an airframe rating shall pass a knowledge test covering at least the following areas—

(*a*) wood structures;

(*b*) aircraft covering;

(*c*) aircraft finishes;

(*d*) sheet metal and non-metallic structures;

(*e*) welding;

(*f*) assembly and rigging;

(*g*) airframe inspection;

(*h*) fuel systems;

(*i*) aircraft landing gear systems;

(*j*) hydraulic and pneumatic power systems;

(*k*) cabin atmosphere control systems;

(*l*) aircraft instrument systems;

(*m*) communication and navigation systems;

(*n*) aircraft fuel systems;

(*o*) aircraft electrical systems;

(*p*) position and warning systems;

(*q*) ice and rain control systems;

(*r*) fire protection systems.

(2) The applicant for a power-plant rating shall pass a knowledge test covering at least the following areas—

(*a*) reciprocating systems;

(*b*) turbine engines;

(*c*) engine inspection;

(*d*) engine instrument systems;

(*e*) engine fire protection systems;

(*f*) engine electrical systems;

(*g*) lubrication systems;

(*h*) ignition and starting systems;

(*i*) fuel metering;

(*j*) engine fuel systems;

(*k*) induction and engine airflow systems;

(*l*) engine cooling systems;

(*m*) engine exhaust and reverser systems;

(*n*) propellers; and

(*o*) auxiliary power units.

(3) The applicant for an avionics rating shall pass a knowledge test covering at least the following areas—

(*a*) aircraft electrical systems;

(*b*) aircraft instrument systems;

(*c*) automatic flight control systems;

(*d*) aircraft radio and radio navigation systems;

(*e*) aircraft navigation systems; and

(*f*) aircraft systems/components - avionics.

(4) The applicant shall pass each section of the test before applying for the skill tests prescribed by regulation 119.

Experience requirements

118.—(1) An applicant for an AME licence and associated ratings may qualify by either practical experience or through completion of approved training in an ATO.

(2) Practical experience: Each applicant for an AME licence and rating(s) relying on practical experience shall provide documentary evidence, acceptable to the Authority, of the following experience in the inspection, servicing and maintenance of aircraft or its components—

(*a*) airframe rating–30 months;

(*b*) power plant rating–30 months;

(*c*) airframe and power-plant ratings–48 months;

(*d*) avionics rating–36 months;

(*e*) airframe, power-plant and Avionics ratings–60 months.

(3) Approved training: Each applicant for an AME licence relying on completion of training in an Approved Training Organization shall provide documentary evidence, acceptable to the Authority, of the following training—

(*a*) airframe rating–24 months;

(*b*) power-plant rating–24 months;

(*c*) airframe and power-plant ratings–30 months;

(*d*) avionics rating–18 months in an ATO and 12 months practical work experience;

(*e*) airframe, Powerplant and Avionics ratings–42 months in an ATO and 12 months practical work experience.

Skill requirement

119.—(1) Each applicant for an AME licence or rating must pass a skill test on the licence or rating that he/she seeks. The tests cover the applicant's basic skill in performing practical projects on the subjects covered by the knowledge test for the licence or rating, and shall contain at least the subjects in the Implementing Standard 2:119 contained in the Schedule appropriate to the licence or rating sought.

Privileges and limitations

120.—(1) Except as specified in subregulations (5) and (6) of this Regulation, a licensed AME may perform or supervise the maintenance, preventive maintenance, or modification of, or after inspection, approve for return to service, any aircraft, airframe, aircraft engine, propeller, appliance, component, or part thereof, for which he or she is rated, provided the licensed AME has—

(*a*) satisfactorily performed the work at an earlier date;

(*b*) demonstrated the ability to perform the work to the satisfaction of the Authority;

(*c*) received training acceptable to the Authority on the tasks to be performed; or

(*d*) performed the work while working under the direct supervision of a licensed AME or a licensed aviation repairman who is appropriately rated and has—

(i) had previous experience in the specific operation concerned; or

(ii) received training acceptable to the Authority on the task to be performed.

(2) Except as specified in subregulations (5) and (6) of this Regulation, a licensed AME with an airframe rating may after he/she has performed the 100-hour inspection required by the Aviation (Operations) Regulations, on an airframe, or any related part or appliance, and approve and return it to service.

(3) Except as specified in subregulations (5) and (6), a licensed AME with a power-plant rating may perform the 100-hour inspection required by the Aviation (Operations) Regulation, on a power-plant or propeller or any related part or appliance, and approve and return it to service.

(4) Except as specified in subregulation (5) of this regulation, an licensed AME with an Avionics rating may inspect, repair, maintain, function test and return to service aircraft avionics systems and components.

(5) An AME with an airframe or power-plant or avionics rating may not—

(*a*) supervise the maintenance, preventive maintenance, or modification of, or approve and return to service, any aircraft, airframe, aircraft engine, propeller, appliance, component, or part thereof, for which he/she is rated unless he/she has satisfactorily performed the work concerned at an earlier date;

(*b*) exercise the privileges of the licence unless the licensed AME understands the current instructions for continued airworthiness and the maintenance instructions for the specific operation concerned;

(*c*) perform a major repair or major modification of a propeller;

(6) An AME with an Airframe or Powerplant rating may not—

(*a*) perform or supervise (unless under the direct supervision and control of an AOC holder that is authorized to perform maintenance, preventative maintenance, or modifications under an equivalent system in accordance with subregulation 60 (i) in the Aviation (Air Operator Certification and Administration) Regulations, any repair or alteration of instruments.

(*b*) approve for return to service—

(i) any aircraft, airframe, aircraft engine, propeller, appliance, component, or part thereof after completion of a major alteration or major repair; or

(ii) any instrument after completion of any repair or alteration.

Duration of AME licence

121.—(1) Validity: The duration of the AME licence is five years.

(2) Renewal: An AME licence that has not expired may be renewed for an additional 5 years if the holder presents evidence to the Authority that he/she has within the past 24 months exercised the privileges of the licence.

(3) Re-issue: If the AME licence has expired, the applicant shall have received refresher training acceptable to the Authority.

Recent experience requirements

122. A licensed AME may not exercise the privileges of his/her licence or rating unless, within the preceding 24 months—

(*a*) the Authority has found that he/she is able to do that work; or

(*b*) for at least 6 months within the preceding 24 months—

(i) served as an AME under his/her licence and rating;

(ii) technically supervised other AMEs;

(iii) provided aviation maintenance instruction or served as the direct supervisor of persons providing aviation maintenance instruction for an AME course or programme acceptable to the Authority;

(iv) supervised the maintenance, preventive maintenance, or alteration of any aircraft, airframe, aircraft engine, propeller, appliance, component, or part thereof; or

(v) been engaged in any combination of subregulation 122 (1) (*a*) (i) to 122 (1) (*a*) (iv) of this Regulation.

Display of licence

123. Each person who holds an AME licence shall keep it within the immediate area where he/she normally exercises the privileges of the licence and shall present it for inspection upon the request of the Authority or an authorized representative of the Director of Civil Aviation, or local law enforcement officer.

Division III—Inspection Authorizations

Application

124. This Division prescribes the requirements for issuance of inspection authorizations, and the conditions under which these authorizations are necessary.

Eligibility requirements: general

125.—(1) An applicant for an Inspection Authorization shall—

(*a*) hold a currently effective and valid AME licence with both an airframe and power-plant rating, each of which is currently effective and has been in effect for a total of at least 5 years;

(*b*) have been actively engaged, for at least the 2-year period before the date of application, in the maintenance of certificated aircraft and maintained in accordance with these Regulations;

(*c*) have a fixed base of operations at which the applicant may be located in person or by telephone during a normal working week but which need not be the place where the applicant will exercise inspection authority;

(*d*) have available the equipment, facilities, and inspection data necessary to properly inspect airframes, aircraft engines, propellers, or any related component, part, or appliance;

(*e*) pass a knowledge test that demonstrates the applicant's ability to inspect according to safety standards for approving aircraft for

return to service after major and minor repairs, major and minor modifications, annual inspections, and progressive inspections, which are performed under the Aviation (Airworthiness) Regulations.

(2) An applicant who fails the knowledge test prescribed in subregulation (1) (*e*) of this Regulation may not apply for retesting until at least 90 days after the date he/she failed the test.

Knowledge requirements for the IA

126.—(1) The applicant for the IA shall pass a knowledge test covering at least the following areas—

(*a*) certification procedures for products and parts;

(*b*) airworthiness standards–aircraft;

(*c*) airworthiness standards–rotorcraft;

(*d*) airworthiness directives;

(*e*) maintenance, preventive maintenance, rebuilding, and alteration;

(*f*) identification and registration marking;

(*g*) certification–maintenance licensing;

(*h*) general operating and flight rules;

(*i*) aircraft weight and balance.

Inspection authorization: duration

127.—(1) Each inspection authorization expires on June 31 of each year.

(2) An inspection authorization ceases to be effective whenever any of the following occurs—

(*a*) the authorization is surrendered, suspended, or revoked;

(*b*) the holder no longer has a fixed base of operation;

(*c*) the holder no longer has the equipment, facilities, and inspection data required by subregulation 125 (1) (*c*) and 125 (1) (*d*) for issuance of his/her authorization.

(3) The holder of an inspection authorization that is suspended or revoked shall return it to the Authority.

Renewal of authorization

128.—(1) To be eligible for renewal of an Inspection Authorization for a 1-year period, an applicant shall, within 90 days prior to the expiration of the authorization, present evidence to the Authority that the applicant still meets the requirements of regulation 125 and show that, during the current period of authorization, the applicant has—

(*a*) performed at least one annual inspection during each 3 month period the applicant held the authorization;

(*b*) performed inspections of at least two major repairs or major modifications for each 3 month period the applicant held the authorization;

(*c*) performed or supervised and approved at least one progressive inspection in accordance with standards prescribed by the Authority for each 12 month period the applicant held the authorization;

(*d*) performed any combination of subregulation (1) (*a*) to (1) (*c*);

(*e*) successfully completed an Inspection Authorization refresher course or series of courses acceptable to the Authority, of not less than 16 hours of instruction during the 12-month period preceding the application for renewal; or

(*f*) passed a knowledge test administered by the Authority to determine that the applicant's knowledge of applicable regulations and standards is current.

(2) The holder of an inspection authorization that has been in effect for less than 3 months before the expiration date need not comply with subregulation (1) (*a*) to (1) (*c*).

Privileges and limitations

129.—(1) When exercising the privileges of an IA, the holder shall keep it available for inspection by the aircraft owner and the AME submitting the aircraft, repair, or alteration for approval (if any), and shall present it at the request of the Authority or an authorized representative of the Director, or at the request of any national, or local law enforcement officer.

(2) The holder of an Inspection Authorization (IA) with a current and valid AME licence may—

(*a*) inspect and approve for return to service any aircraft, airframe, aircraft engine, propeller appliance, component, or part thereof on any aircraft with a 5,700 kg maximum take-off weight or less, after completion of a major repair or major alteration performed in accordance with the Aviation (Airworthiness) Regulation, and done in accordance with technical data approved by the Authority;

(*b*) perform an annual inspection, or perform or supervise a progressive inspection, according to the Aviation (Airworthiness) Regulations on any aircraft with a 5,700 kg maximum take-off weight or less, except those aircraft on a continuous maintenance programme, and approve the aircraft for return to service;

(*c*) the holder of an IA with a current and valid AME licence may not—

(i) exercise the privileges of the authorization unless he or she holds a current and valid AME licence with airframe and power-plant ratings;

(ii) inspect and approve for return to service any aircraft over 5,700 kg maximum take-off weight;

(iii) inspect and approve any airframe, aircraft engine, propeller, appliance, component, or part thereof, which is subject to a maintenance programme under the Aviation (Airworthiness) Regulations;

(iv) inspect and approve for return to service any aircraft maintained in accordance with a continuous maintenance programme approved under the Aviation (Air Operator Certification and Administration) Regulations;

(v) exercise any privilege of an Inspection Authorization whenever that person no longer—

(i) has a fixed base of operation; and

(ii) has access to the equipment, facilities, or inspection data required by regulation 125 (1) (*c*) and 125 (1) (*d*).

(vi) exercise the privileges of the authorization until he or she has notified the Authority in writing of any changes in the fixed base of operation and equipment, facilities or inspection data and received approval in writing from the Authority for the proposed change.

Division IV—Aviation Repairman

Applicability

130.—(1) This Division prescribes the requirements for issuance of Aviation Repairman (AR) licences and ratings, and the conditions under which those licences and ratings are necessary.

(2) When employed by an air operator with the authorization to perform and approve for return to service maintenance under an equivalent system in the Aviation (Air Operator Certification and Administration) Regulations, an aviation repairman licence should correspond to the speciality shop or group in which they perform, supervise, or approve for return to service an aeronautical product or aircraft. For example, Hydraulic component overhaul, landing gear overhaul, special inspections, non-destructive testing, turbine disc overhaul, etc.

Aviation repairman licences: eligibility

131.—(1) An applicant for an aviation repair specialist licence shall—

(*a*) be at least 18 years of age;

(*b*) demonstrate the ability to read, write, speak, and understand the English language by reading and explaining appropriate maintenance publications and by writing defect and repair statements;

(*c*) demonstrate a level of knowledge relevant to the privileges to be granted and appropriate to the duties to be performed;

(*d*) by specially qualified to perform maintenance on aircraft or components thereof, appropriate to the job for which he/she was employed;

(*e*) be employed for a specific job requiring those special qualifications by an approved maintenance organization certificated under the Aviation (Approved Maintenance Organization) Regulations or an air operator certificated under the Aviation (Air Operator Certification and Administration) Regulations that is required by its operating certificate or approved specific operating provisions to provide maintenance, preventive maintenance, or modifications to aircraft approved with a continuous maintenance programme according to its maintenance control manual;

(*f*) be recommended for certification by his employer, to the satisfaction of the Authority, as able to satisfactorily maintain aircraft or components, appropriate to the job for which he is employed;

(*g*) have either of the following—

(i) at least 24 months of practical experience in the procedures, practices, inspection methods, materials, tools, machine tools, and equipment generally used in the maintenance duties of the specific job for which the person is to be employed and certificated; or

(ii) completed formal training that is acceptable to the Authority and is specifically designed to qualify the applicant for the job on which the applicant is to be employed.

Ratings

132.—(1) The following ratings may be issued under this subpart—

(*a*) propeller;

(*b*) computer;

(*c*) instrument;

(*d*) accessory;

(*e*) components;

(*f*) welding;

(*g*) non-destructive testing (NDT); and

(*h*) other as may be designated by the Authority.

(2) At no instance shall an aviation repairman licence be issued with an airframe and/or power-plant or avionics rating to circumvent the process of obtaining an AME licence.

(3) Ratings for an applicant employed by an approved maintenance organization shall coincide with the rating(s) issued at the approved maintenance organization limited to the specific job for which the person is employed to perform, supervise, or approve for return to service.

(4) At no instance shall an aviation repairman licence be issued a rating in which the AMO has not been issued.

(5) Ratings for an applicant employed by an air operator shall coincide with the approved specific operating provisions and the approved maintenance control manual that identifies the air operator's authorizations limited to the specific job for which the person is employed to perform, supervise, or approve for return to service.

Aviation repairman licences: privileges and limitations

133.—(1) An aviation repairman specialist may perform or supervise the maintenance, preventive maintenance, or alteration of aircraft, airframes, aircraft engines, propellers, appliances, components, and parts appropriate to the designated speciality area for which the aviation repair specialist is licensed and rated, but only in connexion with employment by an AMO approved under the Approved Maintenance Organization Regulations or an AOC holder that is authorized to perform maintenance, preventive maintenance, or modifications under an equivalent system in accordance with subregulation (60) (i) of the Aviation (Air Operator Certification and Administration) Regulations.

(2) An aviation repair specialist may not perform or supervise duties unless the aviation repair specialist understands the current instructions of the employing certificate holder and the instructions for continued airworthiness, which relate to the specific operations concerned.

(3) An aviation repair specialist licence must be surrendered to the Authority at the time the licence holder leaves the employ of the AMO or AOC holder.

Display of licence

134. Each person who holds an aviation repairman licence shall keep it within the immediate area where he/she normally exercises the privileges of the licence and shall present it for inspection upon the request of the Authority or an authorized representative of the Director of Civil Aviation or local law enforcement officer.

Division V—Instructors for Aircraft Maintenance Engineers Licence

Requirement for aircraft maintenance engineers instructor licence and rating

135.—(1) Age: An applicant for aircraft maintenance engineer licence and rating shall be at least 21 years of age.

(2) Knowledge—

(*a*) an applicant for aircraft maintenance engineer instructor licence shall have met the instructor requirements in regulation 31 of these Regulations; and

(*b*) any additional requirements as may be specified by the Authority.

(3) Experience: The applicant for an aviation mechanic instructor licence and rating shall hold at least a current and valid aircraft maintenance engineer licence and rating for which the instructor licence is sought and have a minimum of three years experience as an aircraft mechanic.

(4) Privileges: The privileges of aircraft maintenance engineer instructor licence are to give instruction to aircraft maintenance engineer licence applicants and to endorse those applicants for a knowledge or skill test as applicable.

(5) Validity: Subject to compliance with the requirements specified in this Regulation, the validity period of the aircraft maintenance engineer instructor licence is 2 years.

(6) Renewal: An aircraft maintenance engineer instructor licence that has not expired may be renewed for an additional 24-calendar months if the holder presents to the Authority evidence that he/she has within the past 12 months preceding the expiry date—

(*a*) conducted at least six exercises in an approved course for aircraft maintenance engineer licence or rating; or

(*b*) received refresher training acceptable to the Authority.

(7) Re-issue: If the aircraft maintenance engineer instructor licence has expired, the applicant shall have received refresher training acceptable to the Authority.

Division VI—Designated Maintenance Engineers Examiners

General requirements

136.—(1) Age: An applicant for a designated aircraft maintenance engineer examiner shall be at least 23 years of age.

(2) Medical: There are no medical requirements for an aircraft maintenance engineer examiner.

(3) General eligibility—

(*a*) show evidence of a high level of aeronautical knowledge in the subject areas for AME certification in both reciprocating and turbine engine aircraft;

(*b*) have held a valid AME with the ratings for which a designation is to issue for five years;

(*c*) have been actively exercising the privileges of that AME certificate in the previous three years;

(*d*) have a good record as an AME and a person engaged in the industry and community with a reputation for honesty and dependability;

(*e*) the applicant must have for test conducted using the skill test standard (STS) a fixed base of operation adequately equipped to test at least 25 percent of all level 1, level 2, level 3 skill elements listed in Objective 3 of each subject area in the STS for the General, Airframe and Powerplant. Additionally, be equipped to perform all of the core competencies elements identified in Objective 2 of each subject area in the STS for General, Airframe and Powerplant ratings;

(*f*) the applicant must have a fixed base of operation; equipment and materials must be adequate for an applicant to demonstrate the basic skills of the rating sought;

(*g*) the applicant must have an airworthy aircraft, other aircraft, aircraft subassemblies, operational mock-ups, and other aids that may be used for testing;

(*h*) the applicant must have tools, equipment, material, current publications, and necessary apparatus required to complete a project assignment must be the type recommended by the aircraft manufactures or accepted in the aviation industry.

Knowledge

137.—(1) The applicant shall pass a pre-designation test on the following—

(*a*) air law and regulations for AME personnel;

(*b*) current practices for the fleet of aircraft to be utilized;

(*c*) best industry practices; and

(*d*) recent improvement in technology, testing and tooling.

Skill

138.—(1) The applicant shall be observed conducting a complete, actual skill test using the approved STS in a satisfactory manner.

(2) The applicant shall be observed completing the required documentation required by the Authority in a satisfactory manner.

Currency

139. After designation, a Maintenance Engineer examiner shall maintain currency by—

(*a*) attending initial and recurrent training conducted by the Authority; and

(*b*) maintaining a current and valid AME licence and applicable ratings;

(*c*) the AME examiner shall conduct at least 6 skill tests during any 12 calendar month period in order to the designation remain current;

(*d*) the AME examiner shall be observed by the Authority in the conduct of skill test at least once each 12-calendar months.

Privileges

140. The AME examiner may conduct skill test in accordance with the STS standards.

Validity

141. The AME examiner designation shall be valid for one year.

Renewal

142. The AME examiner designation may be renewed by Authority if—

(*a*) the need for the designation remains valid;

(*b*) the performance of the AME examiner has been satisfactory;

(*c*) The AME examiner has attended the AME examiner training conducted by the Authority in the previous 12-calendar months.

PART VI

Air Traffic Controller Licences, Categories and Ratings

Application

143. This Part prescribes the requirements for the issue, renewal and re-issue of an air traffic controller licence and ratings.

General

144.—(1) An applicant shall, before being issued with an air traffic controllers licence, meet such requirements in respect of age, knowledge, experience, skill, medical fitness and language proficiency as are specified for that licence or rating.

(2) An applicant shall for renewal or re-issue of a licence, rating or authorization meet the requirements as are specified for that licence, rating or authorization.

AIR TRAFFIC CONTROLLER LICENCE AND RATINGS

Student air traffic controller

145.—(1) The Authority shall take the appropriate measures to ensure that student air traffic controllers do not constitute a hazard to air navigation.

(2) Medical fitness: Authority shall not permit a student air traffic controller to receive instruction in an operational environment unless that student air traffic controller holds a current Class 3 Medical Certificate.

Air traffic controller licence

146.—(1) Age: The applicant for an air traffic controller licence shall be not less than 21 years of age.

(2) Medical: The applicant for an air traffic controller licence shall hold a Class 3 medical certificate issued under these Regulations.

(3) Knowledge: The applicant for an air traffic controller licence shall receive knowledge instruction through an approved training course on the knowledge areas appropriate to the holder of an air traffic controller licence—

(*a*) air law—rules and regulations relevant to the air traffic controller;

(*b*) air traffic control equipment— principles, use and limitations of equipment used in air traffic control;

(*c*) general knowledge—principles of flight; principles of operation and functioning of aircraft, power-plants and systems; aircraft performances relevant to air traffic control operations;

(*d*) human performance: including principles of threat and error management;

(*e*) meteorology— aeronautical meteorology; use and appreciation of meteorological documentation and information; origin and characteristics of weather phenomena affecting flight operations and safety; altimetry;

(*f*) navigation— principles of air navigation; principle, limitation and accuracy of navigation systems and visual aids;

(*g*) operational procedures—air traffic control, communication, radiotelephony and phraseology procedures (routine, non-routine and emergency); use of the relevant aeronautical documentation; safety practices associated with flight.

(4) Knowledge testing: An applicant for an air traffic controller licence shall—

(*a*) have received an endorsement for the knowledge test from an authorized instructor who—

(i) conducted the training on the knowledge areas; and

(ii) certifies that the person is prepared for the required knowledge test.

(*b*) pass the required knowledge test.

(5) Experience: The applicant shall have completed an approved training course and not less than three months' satisfactory service engaged in the actual control of air traffic under the supervision of an appropriately rated air traffic controller. The experience requirements specified for air traffic controller ratings in regulation 146 will be credited as part of the experience specified in this paragraph.

(6) Validity: Subject to compliance with the requirement specified in this Regulation, the validity period of the licence is 5 years. For renewal of the licence, see regulations under Division 4 of Part 1, of these Regulations.

Air traffic controller ratings

147.—(1) Air traffic controller ratings shall comprise the following categories—

(*a*) aerodrome control rating;

(*b*) approach control procedural rating;

(*c*) approach control surveillance rating;

(*d*) approach precision radar control rating;

(*e*) area control procedural rating; and

(*f*) area surveillance control rating.

(2) Knowledge: The applicant for an air traffic controller rating shall receive knowledge instruction through an approved training course on the knowledge areas appropriate to the holder of an air traffic controller rating on the subjects as specified below for each rating sought—

(*a*) aerodrome control rating—

(i) aerodrome layout, physical characteristics and visual aids;

(ii) airspace structure;

(iii) applicable rules, procedures and source of information;

(iv) air navigation facilities;

(v) air traffic control equipment and its use;

(vi) terrain and prominent landmarks;

(vii) characteristics of air traffic;

(viii) weather phenomena; and

(ix) emergency and search and rescue plans.

(*b*) approach control procedural and area control procedural ratings—

(i) airspace structure;

(ii) applicable rules, procedures and source of information;

(iii) air navigation facilities;

(iv) air traffic control equipment and its use;

(v) terrain and prominent landmarks;

(vi) characteristics of air traffic and traffic flow;

(vii) weather phenomena;

(viii) emergency and search and rescue plans.

(*c*) approach control surveillance, approach precision radar control and area control surveillance ratings. The applicant shall meet the requirements specified in (*b*) in so far as they affect the area of responsibility, and shall have demonstrated a level of knowledge appropriate to the privileges granted, in at least the following additional subjects—

(i) principles, use and limitations of applicable ATS surveillance systems and associated equipment; and

(ii) procedures for the provision of ATS surveillance services, as appropriate, including procedures to ensure appropriate terrain clearance.

(3) Knowledge testing: An applicant for an air traffic controller rating shall—

(*a*) have received an endorsement for the knowledge test from an authorized instructor who—

(i) conducted the training on the knowledge areas; and

(ii) certifies that the person is prepared for the required knowledge test; and

(*b*) pass the required knowledge test.

(4) Experience: The applicant for an air traffic controller licence shall have—

(*a*) satisfactorily completed an approved training course;

(*b*) provided, satisfactorily, under the supervision of an appropriately rated air traffic controller—

(i) aerodrome control rating: an aerodrome control service, for a period of not less than 90 hours or one month, whichever is greater, at the unit for which the rating is sought;

(ii) approach control procedural, approach control surveillance, area control procedural or area control surveillance rating: the control service for which the rating is sought, for a period of not less than 180 hours or three months, whichever is greater, at the unit for which the rating is sought;

(iii) approach precision radar control rating: not less than 200 precision approaches of which not more than 100 shall have been carried out on a radar simulator approved for that purpose by the Authority. Not less than 50 of those precision approaches shall have been carried out at the unit and on the equipment for which the rating is sought.

(*c*) if the privileges of the approach control surveillance rating include surveillance radar approach duties, the experience shall include not less than 25 plan position indicator approaches on the surveillance equipment of the type in use at the unit for which the rating is sought and under the supervision of an appropriately rated approach radar controller;

(*d*) the experience specified under subregulation (*b*) (ii) shall have been completed within the 6-month period immediately preceding application.

(5) Skill: The applicant shall have demonstrated by passing the required skill test, at a level appropriate to the privileges being granted, the skill, judgment and performance required to provide a safe, orderly and expeditious control service, including the recognition and management of threats and errors.

(6) Privileges and limitations—

(*a*) subject to compliance with the requirements specified in these Regulations, the privileges of the holder of an air traffic controller licence with the following applicable rating(s) shall be—

(i) aerodrome control rating: to provide or to supervise the provision of aerodrome control service for the aerodrome for which the licence holder is rated;

(ii) approach control procedural rating: to provide or to supervise the provision of approach control service for the aerodrome or aerodromes for which the licence holder is rated,

within the airspace or portion thereof, under the jurisdiction of the unit providing approach control service;

(iii) approach control surveillance rating: to provide and/or supervise the provision of approach control service with the use of applicable ATS surveillance systems for the aerodrome or aerodromes for which the licence holder is rated, within the airspace or portion thereof, under the jurisdiction of the unit providing approach control service;

(iv) approach precision radar control rating: to provide and/or supervise the provision of precision approach radar service at the aerodrome for which the licence holder is rated;

(v) area control procedural rating: to provide and/or supervise the provision of area control service within the control area or portion thereof, for which the licence holder is rated;

(vi) area radar control surveillance rating: to provide and/or supervise the provision of area control service with the use of an ATS surveillance system, within the control area or portion thereof, for which the licence holder is rated;

(*b*) before exercising the privileges indicated in subregulation 147 (4), the licence holder shall be familiar with all pertinent and current information;

(*c*) a holder of an air traffic controller licence and ratings(s) shall not provide instruction in an operational environment unless the licence holder has received proper authorization from the Authority.

(7) Validity of ratings: A rating shall become invalid when an air traffic controller has ceased to exercise the privileges of the rating for a period of 6 months. A rating shall remain invalid until the controller's ability to exercise the privileges of the rating has been re-established.

PART VII

Flight Operations Officer Licence, Instructors, and Designated Examiners

Division I—General

Application

148. This Part prescribes the requirements for the issue, renewal and re-issue of a flight operations officer licence, instructors for flight operations officer licences and designation of flight operations officer examiner.

General

149.—(1) An applicant shall, before being issued with a flight operations officer licence, meet such requirements in respect of age, knowledge, experience, skill, medical fitness and language proficiency as are specified for that licence.

(2) An applicant shall for renewal or re-issue of a licence meet the requirements as are specified for that licence.

Division II—Flight Operations Officer Licence

General requirements

150.—(1) Age: The applicant for a flight operations officer licence shall be not less than 21 years of age.

(2) Knowledge: The applicant for a flight operations officer licence shall receive and log training from an authorized instructor on following subjects appropriate to the privileges of the flight operations officer—

(*a*) air law—

(i) rules and regulations relevant to the holder of a flight operations officer licence; and

(ii) appropriate air traffic services practices and procedures.

(*b*) aircraft general knowledge—

(i) principles of operation of aeroplane power-plants, systems and instruments;

(ii) operating limitations of aeroplanes and power-plants; and

(iii) minimum equipment list.

(*c*) flight performance calculation, planning procedures and loading—

(i) effects of loading and mass distribution on aircraft performance and flight characteristics; mass and balance calculations;

(ii) operational flight planning; fuel consumption and endurance calculations; alternate airport selection procedures; en route cruise control; extended range operation;

(iii) preparation and filing of air traffic services flight plans; and

(iv) basic principles of computer-assisted planning systems.

(*d*) human performance—human performance relevant to dispatch duties, including principles of threat and error management.

(*e*) meteorology—

(i) Aeronautical meteorology; the moment of pressure systems; the structure of fronts, and the origin and characteristics

of significant weather phenomena which affect take-off, en route and landing conditions.

(ii) interpretation and application of aeronautical meteorological reports, charts and forecasts, codes and abbreviations; use of, and procedures for obtaining, meteorological information.

(*f*) navigation—principles of air navigation with particular reference to instrument flight.

(*g*) operational procedures—

(i) use of aeronautical documentation;

(ii) operational procedures for the carriage of freight and dangerous goods;

(iii) procedures relating to aircraft accidents and incidents; emergency flight procedures;

(iv) procedures relating to unlawful interference and sabotage of aircraft;

(*h*) principles of flight—principles of flight relating to the appropriate category of aircraft.

(*i*) radio communication—procedures for communicating with aircraft and relevant ground stations.

(3) The applicant for the Flight Operations Officer licence shall—

(*a*) have received an endorsement for the knowledge test from an authorized instructor who—

(i) conducted the training on the knowledge areas; and

(ii) certifies that the person is prepared for the required knowledge test;

(*b*) pass the required knowledge test.

(4) Experience—

(*a*) the applicant for a flight operations officer licence shall have gained the following experience—

(i) a total of 2 years' service in any one or in any combination of the capacities specified in (A) to (C) inclusive, provided that in any combination of experience the period serviced in any capacity shall be at least one year—

(A) a flight crew member in air transportation; or

(B) a meteorologist in an organization dispatching aircraft in air transportation; or

(C) an air traffic controller; or a technical supervisor of flight operations officers or air transportation flight operations systems;

(ii) at least one year as an assistant in the dispatching of air transport;

(iii) have satisfactorily completed a course of approved training;

(*b*) the applicant shall have served under the supervision of a flight operations officer for at least 90 working days within the 6 months immediately preceding the application.

(5) Skill: The applicant shall have demonstrated the ability, by passing a skill test on the subjects listed in IS 2:151 contained in the Schedule hereto—

(*a*) make an accurate and operationally acceptable weather analysis from a series of daily weather maps and weather reports; provide an operationally valid briefing on weather conditions prevailing in the general neighbourhood of a specific air route; forecast weather trends pertinent to air transportation with particular reference to destination and alternates;

(*b*) determine the optimum flight path for a given segment, and create accurate manual and/or computer generated flight plans;

(*c*) provide operating supervision and all other assistance to a flight in actual or simulated adverse weather conditions as appropriate to the duties of the holder of a flight operations officer licence;

(*d*) recognize and manage threats and errors.

(6) Privileges: Subject to compliance with the requirements specified in this Regulation, the privileges of the holder of a flight operations officer licence shall be to serve in that capacity with responsibility for each area for which the applicant meets the requirements in ICAO Annex 6, as contained in the Aviation (Operations) Regulations and Aviation (Air Operator Certification and Administration) Regulations.

(7) Validity: The validity period of the licence is 5 years. A licence shall become invalid when a flight operations officer has ceased to exercise the privileges of the licence for a period of 6 months. A licence shall remain invalid until the flight operations officer's ability to exercise the privileges of the licence has been re-established.

(8) Renewal: The Flight Operations Officer Licence may be renewed by presenting to the authority evidence of successfully passing a

competency check on the areas of operation listed in IS 2:151 in the Schedule hereto.

(9) Re-issue: If the Flight Operations Officer Licence has expired, the applicant shall have received refresher training acceptable to the Authority.

Skill test for the flight operations officer licence

151.—(1) Implementing Standard (IS) 2:151 contained in the Schedule hereto contains the list of operations included in the flight operations officer licence skill test.

Requirements for flight operations officer instructor licence

152.—(1) Age: An applicant for Flight Operations Officer instructor licence and rating shall be at least 21 years of age.

(2) Knowledge—

(*a*) an applicant for a Flight Operations Officer instructor licence shall have met the instructor requirements in regulation 31 of these Regulations; and

(*b*) any additional requirements as may be specified by the Authority.

(3) Experience: The applicant for a Flight Operations Officer instructor licence shall hold at least a current and valid Flight Operations Officer licence and have a minimum of three years experience as a Flight Operations Officer.

(4) Privileges: The privileges of a Flight Operations Officer instructor licence are to give instruction to Flight Operations Officer licence applicants and to endorse those applicants for a knowledge or skill test as applicable.

(5) Validity: Subject to compliance with the requirements specified in this Regulation, the validity period of the Flight Operations Officer instructor licence is 2 years.

(6) Renewal: A Flight Operations Officer instructor licence that has not expired may be renewed for an additional 24-calendar months if the holder presents to the Authority evidence that he/she has within the past 12 months preceding the expiry date—

(*a*) conducted at least six exercises in an approved course for a Flight Operations Officer licence; or

(*b*) received refresher training acceptable to the Authority.

(7) Re-issue: If the Flight Operations Officer instructor licence has expired, the applicant shall have received refresher training acceptable to the Authority.

Division III—Designated Examiners for Flight Operation Officers

General requirements

153.—(1) Age: An applicant for a flight operations officer examiner licence shall be at least 23 years of age.

(2) General eligibility—

(*a*) show evidence of a high level of aeronautical knowledge in the subject areas for the Flight Operations Officer (FOO) certification;

(*b*) have held a FOO licence for at least five years prior to the designation;

(*c*) have been actively exercising the privileges of the FOO licence in commercial air transport in the previous three years;

(*d*) have a good record as a FOO and a person engaged in the industry and community with a reputation for honestly and dependability;

(*e*) have satisfactorily completed the FOO examiner orientation programme with the Authority;

(*f*) the applicant must have available a test site that is fully capable of doing all items required for the proper dispatch of a commercial flight in accordance with the regulatory requirements: this may be the Flight Operations Office of an active commercial airline.

Knowledge

154.—(1) The applicant shall have passed a pre-designation test on the following—

(*a*) air law and regulations for FOO personnel;

(*b*) aircraft knowledge on the aircraft used for testing;

(*c*) flight performance calculation and planning procedures;

(*d*) human performance;

(*e*) meteorology;

(*f*) navigation;

(*g*) radio communication; and

(*h*) recent changes in technology to include fly by wire aircraft systems, GPS navigation, required navigation performance (RNP) requirements, TCAS, ADS-B, as well and Enhanced Wind Shear Systems.

Skill

155.—(1) The Authority shall observe the applicant conducting a complete actual FOO certification using the approved STS in a satisfactory manner.

(2) The applicant shall complete all required paper work for the certification as required by the Authority.

Currency

156.—(1) After designation, an FOO examiner shall maintain currency by—

(*a*) attending initial and recurrent training conducted by the Authority; and

(*b*) maintaining a current and valid FOO licence.

(2) The FOO examiner shall conduct at least 6 skill tests during any 12-calendar month period in order for the designation to remain current.

(3) The FOO examiner shall be observed by the Authority in the conduct of a skill test at least once each 12-calendar months.

Privileges

157.—(1) The FOO examiner may conduct skill test for the Flight Operation Officer licence in accordance with approved STS standard.

(2) The FOO examiner may conduct or monitor any portion of a computerized knowledge test.

Validity

158. The FOO examiner licence shall be valid for one year.

Renewal

159. The FOO examiner designation may be renewed by the Authority if—

(*a*) the need for the designation remains valid;

(*b*) the performance of the examiner has been satisfactory.

PART IX

Aeronautical Station Operator and Meteorological Personnel

Application

160.—(1) This Part prescribes the requirements for the issue, renewal or re-issue of an aeronautical station operator licence.

General

161.—(1) An applicant shall, before being issued with an aeronautical station operator licence, meet such requirements in respect of age, knowledge, experience, skill, medical fitness and language proficiency as are specified for that licence.

(2) An applicant shall for renewal or re-issue of a licence, rating or authorization meet the requirements as are specified for that licence.

(3) Aeronautical meteorological personnel shall be trained and qualified in accordance with the requirements of the World Meteorological Organization respecting the working arrangements between ICAO and WMO.

Aeronautical station operator licence

162.—(1) Age: The applicant for an aeronautical station operator licence shall be not less than 18 years of age.

(2) Knowledge: The applicant for an aeronautical station operator licence shall receive and log ground training from an authorized instructor on the following subjects appropriate to the privileges of an aeronautical station operator—

(*a*) general knowledge: air traffic services provided within Malaŵi;

(*b*) operational procedures: radiotelephony procedures; phraseology; telecommunication network;

(*c*) rules and regulations: rules and regulations applicable to the aeronautical station operator;

(*d*) telecommunication equipment: principles, use and limitations of telecommunication equipment in an aeronautical station.

(3) Knowledge testing: An applicant for an aeronautical station operator licence shall—

(*a*) have received an endorsement for the knowledge test from an authorized instructor who—

(i) conducted the training on the knowledge areas; and

(ii) certifies that the person is prepared for the required knowledge test.

(*b*) pass the required knowledge test.

(4) Experience: The applicant for an aeronautical station operator licence shall nave—

(*a*) satisfactorily completed an approved training course within the 12-month period immediately preceding application, and have served satisfactorily under a qualified aeronautical station operator for not less than 2 months; or

(*b*) satisfactorily served under a qualified aeronautical station operator for not less than 6 months during the 12-month period immediately preceding application.

(5) Skill: The applicant for an aeronautical station operator licence shall demonstrate, or have demonstrated, competency in—

(*a*) operating the telecommunication equipment in use; and

(*b*) transmitting and receiving radiotelephony messages with efficiency and accuracy.

(6) Privileges: Subject to compliance with the requirements specified in this Regulation, the privileges of the holder of an aeronautical station operator licence shall be to act as an operator in an aeronautical station. Before exercising the privileges of the licence, the holder shall be familiar with all pertinent and current information regarding the types of equipment and operating procedures used at that aeronautical station.

(7) Validity: The validity period of the licence is 5 years. A licence shall become invalid when an aeronautical station operator has ceased to exercise the privileges of the licence for a period of 6 months. A licence shall remain invalid until the aeronautical station operator's ability to exercise the privileges of the licence has been re-established.

(8) Renewal: An aeronautical station operator licence that has not expired may be renewed for an additional five years if the holder presents to the Authority evidence that he/she has within the past 6 months preceding the expiry date—

(*a*) be actively engaged in the duties of an aeronautical station operator; or

(*b*) received refresher training acceptable to the Authority.

(9) Re-issue: If the Aeronautical Station Operator licence has expired, the applicant shall have received refresher training acceptable to the Authority.

PART X

Parachute Rigger Licences, Instructors and Designated Parachute Rigger Examiners

Application

163.—(1) This Part prescribes the requirements for issuance of a parachute rigger licences and ratings, and the conditions under which those licences and ratings are necessary.

Eligibility requirements: general

164. To be eligible for a parachute rigger licence, a person shall be—

(*a*) at least 18 years of age;

(*b*) able to read, speak, write, and understand English language, as required by the Authority;

(*c*) comply with the sections of this subpart that apply to the licence and type rating he or she seeks.

Licence required

165.—(1) No person may pack, maintain, or alter any personnel-carrying parachute intended for emergency use in connexion with civil aircraft of Malaŵi unless he or she holds an appropriate current licence and type rating issued under this Part and complies with this Part.

(2) Except as allowed by subregulation (3) of this Regulation, no person may pack, maintain, or alter any main parachute of a dual parachute pack to be used for intentional jumping from a civil aircraft of Malaŵi unless he or she has an appropriate valid licence issued under this Part.

(3) A person who does not hold a licence may pack the main parachute of a dual parachute pack that is to be used by him or her for intentional jumping.

(4) Each person who holds a parachute rigger licence shall present it for inspection upon the request of the Authority or an authorized representative of the Director of Civil Aviation.

(5) The following parachute rigger licences are issued under this part—

(*a*) senior parachute rigger;

(*b*) master parachute rigger.

(6) Regulations 171 to 174 do not apply to parachutes packed, maintained, or altered for the use of the armed forces.

Senior parachute rigger licence-experience, knowledge and skill requirements

166.—(1) An applicant for a senior parachute rigger licence shall—

(2) Present evidence satisfactory to the Authority that he or she has packed at least 20 parachutes of each type for which he or she seeks a rating, in accordance with the manufacturer's instructions and under the supervision of a licensed parachute rigger holding a rating for that type or a person holding an appropriate military rating.

(3) Pass a knowledge test, with respect to a parachute applicable to at least one type parachute appropriate to the type rating sought, on—

(*a*) construction, packing, and maintenance;

(*b*) the manufacturer's instructions; and

(*c*) the regulations of this Part.

(4) Pass skill test showing the ability to pack and maintain at least one type of parachute appropriate to the type rating sought. Requirements for the skill test are contained in IS 2:166 contained in the Schedule hereto.

Master parachute rigger licence-experience, knowledge and skill requirements

167.—(1) An applicant for a master parachute rigger licence shall meet the following requirements—

(*a*) present evidence satisfactory to the Authority of at least 3 years of experience as a parachute rigger and having satisfactorily packed at least 100 parachutes of each of two types appropriate to type ratings held, in accordance with the manufacturer's instructions—

(i) while a licensed and appropriately rated senior parachute rigger; or

(ii) while under the supervision of a licensed and appropriately rated parachute rigger or a person holding appropriate military ratings;

(iii) an applicant may combine experience specified in subregulation (1) (*a*) and (1) (*b*) to meet the requirements of this Regulation;

(*b*) if the applicant is not the holder of a senior parachute rigger licence, pass a knowledge test, with respect to parachutes appropriate to the type rating sought, on—

(i) their construction, packing, and maintenance;

(ii) the manufacturer's instructions; and

(iii) the regulations of this part.

(*c*) pass skill test showing the ability to pack and maintain two types of parachutes appropriate to the type ratings sought: requirements for the skill test are contained in IS 2:167 contained in the Schedule hereto.

Type ratings

168.—(1) The following type ratings are issued under this subpart—

(*a*) seat;

(*b*) back;

(*c*) chest; and

(*d*) lap.

(2) The skill test requirements for a type rating are contained in IS 2:168 contained in the Schedule hereto.

(3) The holder of a senior parachute rigger licence who qualifies for a master parachute rigger licence is entitled to have placed on the senior parachute rigger licence the ratings that were on the parachute rigger licence.

Additional type ratings: requirements

169.—(1) A licensed parachute rigger who applies for an additional type rating shall—

(*a*) present evidence satisfactory to the Authority of having packed at least 20 parachutes of the type rating sought, in accordance with the manufacturer's instructions and under the supervision of a licensed parachute rigger holding a rating for that type or a person holding an appropriate military rating; and

(*b*) pass a skill test, to the satisfaction of the Authority, showing the ability to pack and maintain the type of parachute for which the applicant seeks a rating.

Privileges

170.—(1) A licensed senior parachute rigger may—

(*a*) pack or maintain (except for major repair) any type of parachute for which he or she is rated; and

(*b*) supervise other persons in packing any type of parachute for which he or she is rated.

(2) A licensed master parachute rigger may—

(*a*) pack, maintain, or alter any type of parachute for which he or she is rated; and

(*b*) supervise other persons in packing, maintaining, or altering any type of parachute for which he or she is rated.

(3) A licensed parachute rigger need not comply with regulations 171 to 173 (related to facilities, equipment, performance standards, records, recent experience, and seal) in packing, maintaining, or altering (if authorized) the main parachute of a dual parachute pack to be used for intentional jumping.

Facilities and equipment

171.—(1) No licensed parachute rigger shall exercise the privileges of his licence unless he or she has at least the following facilities and equipment available—

(*a*) a smooth top table at least three feet wide by 40 feet long;

(*b*) suitable housing that is adequately heated, lighted, and ventilated for drying and airing parachutes;

(*c*) enough packing tools and other equipment to pack and maintain the types of parachutes serviced; and

(*d*) adequate housing facilities to perform applicable duties and to protect tools and equipment.

Performance standards and recency requirements

172.—(1) No licensed parachute rigger may—

(*a*) pack, maintain, or alter any parachute unless he or she is rated for that type;

(*b*) pack a parachute that is not safe for emergency use;

(*c*) pack a parachute that has not been thoroughly dried and aired;

(*d*) alter a parachute in a manner that is not specifically authorized by the Authority or the manufacturer;

(*e*) pack, maintain, or alter a parachute in any manner that deviates from procedures approved by the Authority or the manufacturer of the parachute; or

(*f*) exercise the privileges of the licence and type rating unless he or she understands the current manufacturer's instructions for the operation involved and has—

(i) performed duties under the licence for at least 90 days within the preceding 12 months; or

(ii) shown to the Authority the ability to perform those duties.

Records

173.—(1) Each licensed parachute rigger shall keep a record of the packing, maintenance, and alteration of parachutes performed or supervision of those activities.

(2) Each licensed parachute rigger who packs a parachute shall enter on the parachute packing record attached to the parachute, the date and place of the packing, a notation of any defects found during any inspection, and shall sign that record with his or her name and licence number.

(3) Each parachute rigger shall sign the record required by subregulation (2) with the name and the number of his or her licence.

(4) The record required by subregulation (1) shall contain, with respect to each parachute worked on, a statement of—

(*a*) its type and make;

(*b*) its serial number;

(*c*) the name and address of its owner or user;

(*d*) the kind and extent of the work performed;

(*e*) the date when and place where the work was performed; and

(*f*) the results of any drop tests made with it.

(5) Each person who makes a record under subregulation (4) (*a*) of this Regulation shall keep it for at least 2 years after the date it is made.

Seal

174.—(1) Each licensed parachute rigger shall have a seal with an identifying mark prescribed by the Authority, and a seal press.

(2) After packing a parachute, the parachute rigger shall seal the pack with his or her seal in accordance with the manufacturer's recommendation for that type of parachute.

Duration of parachute rigger licence

175.—(1) Validity: The validity period of the licence is 5 years. A licence shall become invalid when a parachute rigger has ceased to exercise the privileges of the licence for a period of 6 months. A licence shall remain invalid until the parachute rigger's ability to exercise the privileges of the licence has been re-established.

(2) Renewal: An parachute rigger licence that has not expired may be renewed for an additional five years if the holder presents to the Authority evidence that he/she has within the past 6 months preceding the expiry date—

(*a*) be actively engaged in the duties of a parachute rigger; or

(*b*) received refresher training acceptable to the Authority.

(3) Re-issue: If the parachute rigger licence has expired, the applicant shall have received refresher training acceptable to the Authority.

Display of licence

176.—(1) Each person who holds a parachute rigger licence shall keep it within the immediate area where he/she normally exercises the privileges of the licence and shall present it for inspection upon the request of the Authority or an authorized representative of the Director of Civil Aviation.

PARACHUTE RIGGER INSTRUCTOR REQUIREMENTS

Requirements for a parachute rigger instructor licence

177.—(1) Age: An applicant for parachute rigger instructor licence and rating shall be at least 21 years of age.

(2) Knowledge—

(*a*) an applicant for a parachute rigger instructor licence shall have met the instructor requirements in regulation 31 of these Regulations; and

(*b*) any additional requirements as may be specified by the Authority.

(3) Experience: The applicant for a parachute rigger instructor licence shall hold at least a current and valid parachute rigger licence and ratings applicable to the instructor licence sought, and have a minimum of three years experience as a parachute rigger.

(4) Privileges: The privileges of a parachute rigger instructor licence and rating are to give instruction to parachute rigger licence applicants and to endorse those applicants for a knowledge or skill test as applicable.

(5) Validity: Subject to compliance with the requirements specified in this Part, the validity period of the parachute rigger instructor licence is 2 years.

(6) Renewal: A parachute rigger instructor licence that has not expired may be renewed for an additional 24-calendar months if the holder presents to the Authority evidence that he/she has within the past 12 months preceding the expiry date—

(*a*) conducted at least six exercises in an approved course for a parachute rigger licence; or

(*b*) received refresher training acceptable to the Authority.

(7) Re-issue: If the parachute rigger instructor licence has expired, the applicant shall have received refresher training acceptable to the Authority.

Designated Parachute Rigger Examiner Requirement

General requirements for a parachute rigger examiner

178.—(1) Age: An applicant for a Designated Parachute Rigger Examiner (DPRE) licence shall be at least 23 years of age.

(2) General eligibility—

(*a*) show evidence of a high level of aeronautical knowledge in the subject areas for the DPRE certification;

(*b*) have held a DPR licence for at least five years prior to the designation;

(*c*) have been actively exercising the privileges of the DPR for the previous three years;

(*d*) have a good record as a DPR and a person engaged in the industry and community with a reputation for honestly and dependability;

(*e*) have satisfactorily completed the DPRE orientation programme with the Authority;

(*f*) the applicant must have fixed base of operations adequately equipped to all practical Subject Areas to return to service condition;

(*g*) the applicant shall have at the fixed base of operation adequate equipment to test the tasks in each area of operation listed in the PTS;

(*h*) the applicant shall have tools, equipment, current publications, and materials required to complete a project assignment as recommended by the parachute manufacture or industry standards.

Knowledge

179.—(1) The applicant shall have passed a pre-designation test on the following—

(*a*) air law and regulations for DPR personnel;

(*b*) packing and maintaining a wide variety of parachutes;

(*c*) alterations of parachutes in accordance with manufactures and industry standards;

(*d*) proper use of Seals for identification purposes;

(*e*) proper record keeping requirements.

Skill

180.—(1) The Authority shall observe the applicant conducting a complete actual Senior Parachute or Master Parachute Rigger certification using the approved PTS in a satisfactory manner.

(2) The applicant shall complete all required paper work for the certification as required by the Authority.

Currency

181.—(1) After designation, a DPRE shall maintain currency by—

(*a*) attending initial and recurrent training conducted by the Authority; and

(*b*) maintaining a current and valid parachute rigger licence and applicable ratings;

(*c*) the DPRE shall conduct at least 6 skill test during any 12-calendar month period in order for the designation to remain current;

(*d*) the DPRE shall be observed by the Authority in the conduct of a skill test at least once each 12-calendar months.

Privileges

182.—(1) The DPRE may conduct skill test for the Senior Parachute Rigger and Master Parachute Rigger licence in accordance with approved PTS standard.

(2) The DPRE may conduct or monitor any portion of a computerized knowledge test.

Validity

183. The DPRE examiner designation shall be valid for one year.

184. The DPRE examiner designation may be renewed by the Authority if— Renewal

(*a*) the need for the designation remains valid;

(*b*) the performance of the examiner has been satisfactory;

(*c*) the DPRE examiner has attended the DPRE examiner seminar conducted by the Authority in the previous 12-month period.

PART XI

Medical Provisions for Licensing

Division I—General

185.—(1) The Authority shall apply, as part of its State safety programme, basic safety management principles to the medical assessment process of licence holders that as a minimum include— Safety management principles

(2) Routine analysis of in-flight incapacitation events and medical findings during medical assessments to identify areas of increased medical risk; and

(3) Continuous re-evaluation of the medical assessment process to concentrate on identified areas of increased medical risk.

186. This Section prescribes the requirements and procedures for issuing, renewing and reissuing Class 1, Class 2 and Class 3 medical certificates. Applicability

187.—(1) The applicants for a flight crew licence and air traffic controller licence shall hold a medical certificate issued in accordance with this Part. Medical fitness

(2) The flight crew members or air traffic controllers shall not exercise the privileges of their licence unless they hold a current medical certificate appropriate to the licence.

188.—(1) Subject to compliance with the requirements specified in this Part, the Authority may designate qualified and licensed physicians in the practice of medicine, to be authorized as an AMEX and conduct medical examinations of fitness of applicants for the issue, renewal or re-issue of the licences or ratings specified in this Part. AMEXs may be designated outside of Malaŵi. Aviation medical examiners (AMEX)

(2) AMEXs shall have had, or shall receive initial and recurrent training in aviation medicine. Initial training shall include—

(*a*) basic training in aviation medicine for Class 2 and 3 medical examinations on the subjects listed in IS 2:188 (*a*); and

(*b*) advanced training in aviation medicine for Class 1 medical examinations on the subjects listed in IS 2:188 (*b*).

(3) AMEXs should acquire knowledge and experience of the conditions in which the holders of licences and ratings carry out their duties—examples of practical knowledge and experience are flight experience, simulator experience, on-site observation or any other hands-on experience deemed by the appropriate Licensing Authority to meet this requirement.

(4) The AMEX shall be required to submit sufficient information to the Licensing Authority to enable that Authority to undertake Medical Assessments audits—the purpose of such auditing is to ensure that medical examiners meet applicable standards for good medical practice and aeromedical risk assessment.

(5) The authorization of an AMEX is valid for 3 years. The AMEX shall have completed at least 10 examinations for a medical certificate per year. Renewal of the AMEX designation will be at the discretion of the Authority.

(6) Having completed the medical examination of an applicant in accordance with this regulation, the AMEX shall submit a signed report to the Authority, detailing the results of the examination.

(7) If the medical examination is carried out by a constituted group of AMEXs, the head of the group will be appointed by the Authority, who will be responsible for coordinating the results of the examination and signing the report—if the medical report is submitted to the Authority in electronic format, adequate identification of the examiner shall be established.

(8) The Authority retains the right to reconsider any action of an AMEX.

(9) The AMEX shall respect medical confidentiality at all times.

(10) The AMEX shall securely hold all medical reports and records with accessibility restricted to authorized personnel.

Aviation medical examinations

189.—(1) Applicants for licences or ratings for which medical fitness is prescribed shall sign and furnish to the medical examiner a declaration

stating whether they have previously undergone such an examination and, if so, the date, place and results of last examination.

(2) The applicant shall indicate to the medical examiner whether a medical certificate has previously been refused, revoked or suspended and, if so, the reason for such refusal, revocation or suspension.

(3) Each applicant for a medical certificate shall provide the medical examiner with a personally certified statement of medical facts concerning personal, familial and hereditary history.

(4) Each applicant for a medical certificate shall produce proof of identification as specified in regulation 29 (3).

(5) Any false declaration to a medical examiner made by an applicant for a licence or rating shall be reported to the Authority for such action as may be considered appropriate.

(6) The applicant shall complete the appropriate application form as prescribed by the Authority.

Special circumstances

190.—(1) If the medical requirements prescribed in these Regulations for a particular licence are not met, the appropriate medical certificate will not be issued, renewed or re-issued unless the following conditions are fulfilled—

(*a*) accredited medical conclusion indicates that in special circumstances the applicant's failure to meet any requirement, whether numerical or otherwise, is such that exercise of the privileges of the licence applied for is not likely to jeopardize flight safety;

(*b*) relevant ability, skill and experience of the applicant and operational conditions have been given due consideration; and

(*c*) the licence is endorsed by the Authority with any special limitation or limitations when the safe performance of the licence holder's duties is dependent on compliance with such limitation or limitations.

(2) The AMEX shall report to the Authority any individual case where, in the AMEX's judgment, an applicant's failure to meet any requirement, whether numerical or otherwise, is such that exercise of the privileges of the licence being applied for, or held, is not likely to jeopardize flight safety.

Decrease of medical fitness

191. Holders of licences provided for in these Regulations shall not exercise the privileges of their licences and related ratings at any time when they are aware of any decrease in their medical fitness

which might render them unable to safely and properly exercise these privileges.

Use of psychoactive substances

192.—(1) Holders of licences provided for in these Regulations shall not exercise the privileges of their licences and related ratings while under the influence of any psychoactive substance which might render them unable to safely and properly exercise these privileges.

(2) Holders of licences provided for in these Regulations shall not engage in any problematic use of substances.

Medical certificate

193.—(1) The medical certificate shall be in a form and manner prescribed by the Authority. The items required on the licence are indicated in IS 2:193 contained in the Schedule hereto.

(2) Issue of medical certificates—

(*a*) a medical certificate will be issued to any person who meets the medical requirements prescribed in this subpart, based on medical examination and evaluation of the applicant's history and condition—

(i) the issue of the Class 1 medical certificate may be specifically delegated to an AMEX.

(ii) the issue of Class 2 and 3 medical certificates may be delegated to any authorized AMEX.

(*b*) each person to be issued a medical certificate shall undergo a medical examination based on the physical and mental requirements contained in this subpart.

(*c*) any person who does not meet the medical requirements of this subpart may apply for the discretionary issuance of a certificate under regulation 190.

(3) Validity—

(*a*) the validity period of the medical certificate shall be—

(i) 12 months for the Class 1 for the CPL and ATPL licences;

(ii) 12 months for the Class 2 for the FE and FN licences;

(iii) 60 months for the Class 2 for the PPL licences;

(iv) 48 months for the Class 3 for the air traffic controller licence;

(*b*) the exceptions for the validity period of the medical certificate are—

(i) when the holders have passed their 40th birthday—

(A) the 60 month interval specified for the PPL and the 48 month interval specified for air traffic controller licence shall be reduced to 24 months; and

(B) the 12-month interval specified for the CPL and ATPL who are carrying passengers in single-pilot operations shall be reduced to 6 months;

(ii) when holders have passed their 50th birthday—the 24-month interval specified for the PPL and air traffic controller licence shall be reduced to 12 months.

(*c*) for initial issuance of the medical certificate, the period of validity shall begin on the date the medical examination is performed. The period of validity shall for the last month counted, include the day that has the same calendar number as the date of the medical examination or, if that month has no day with that number, the last day of that month.

(*d*) the period of validity of a Medical Certificate may be extended at the discretion of the Licensing Authority, up to 45 days—the Authority may let the calendar day on which the Medical Certificate expires remain constant year after year by allowing the expiry date of the current Medical Certificate to be the beginning of the new validity period under the proviso that the medical examination takes place during the period of validity of the current Medical Certificate but no more than 45 days before it expires.

(*e*) the period of validity of a medical certificate may be reduced when clinically indicated.

(4) Renewal or re-issue of a medical certificate—

(*a*) the requirements to be met for the renewal or re-issue of a medical certificate are the same as those for the initial certificate except where otherwise specifically stated;

(*b*) the renewal of the Class 1, 2 and 3 medical certificates may be delegated to the AME;

(*c*) re-issue of the Class I medical certificate will either be done by the Authority or specifically delegated to an AME;

(*d*) re-issue of the Class 2 and 3 medical certificates may be delegated to an AME.

(5) Limitation or denial—the Authority may, for medical reasons justified and notified to the applicant, limit or deny a medical certificate.

(6) Suspension or revocation of a medical certificate—the Authority may in accordance with regulations 35, 36 and 37 suspend or revoke a medical certificate issued, if it is established that an applicant or a certificate holder has not met, or no longer meets the requirements of Part 2.

Medical assessor

194.—(1) The CAA medical assessor will periodically evaluate the competence of each AMEX.

(2) The Authority will use the services of physicians experienced in the practice of aviation medicine when it is necessary to evaluate reports submitted to the Authority by medical examiners.

Division II— Medical Requirements

General

195.—(1) An applicant for a Medical Certificate issued in accordance with these Regulations, shall undergo a medical examination based on the following requirements—

(*a*) physical and mental;

(*b*) visual and colour perception; and

(*c*) hearing.

Physical and mental requirements

196.—(1) An applicant for any class of Medical Assessment shall be required to be free from—

(*a*) any abnormality, congenital or acquired; or

(*b*) any active, latent, acute or chronic disability; or

(*c*) any wound, injury or sequelae from operation; or

(*d*) any effect or side-effect of any prescribed or non-prescribed therapeutic medication taken; such as would entail a degree of functional incapacity which is likely to interfere with the safe operation of an aircraft or with the safe performance of duties.

(2) An applicant with depression, being treated with antidepressant medication, shall be assessed as unfit unless the medical assessor, having access to the details of the case concerned, considers the applicant's condition as unlikely to interfere with the safe exercise of the applicant's licence and rating privileges; mental and behavioural disorders are defined in accordance with the clinical descriptions and diagnostic guidelines of the World Health Organization as given in the

International Statistical Classification of Diseases and Related Health Problems, 10th Edition–Classification of Mental and Behavioural Disorders, WHO 1992. This document contains detailed descriptions of the diagnostic requirements, which may be useful for their application to medical assessment.

Visual acuity test requirements

197.—(1) Visual acuity tests must be conducted in an environment with a level of illumination that corresponds to ordinary office illumination (30–60cd/m^2).

(2) Visual acuity must be measured by means of a series of Landolt rings or similar optotypes, placed at a distance from the applicant appropriate to the method of testing adopted.

Colour perception requirements

198.—(1) The applicant shall be required to demonstrate the ability to perceive readily those colours the perception of which is necessary for the safe performance of duties.

(2) The applicant shall be tested for the ability to correctly identify a series of pseudoisochromatic plates in daylight or in artificial light of the same colour temperature such as that provided by CIE standard illuminants C or D65 as specified by the International Commission of Illumination (CIE).

(3) An applicant obtaining a satisfactory result as prescribed by the Authority shall be assessed as fit. An applicant failing to obtain a satisfactory result in such a test shall be assessed as unfit unless able to readily distinguish the colours used in air navigation and correctly identify aviation coloured lights. Applicants who fail to meet these criteria shall be assessed as unfit except for Class 2 assessment with the following restriction: valid daytime only.

Hearing test requirements

199.—(1) Applicants shall be required to demonstrate hearing performance sufficient for the safe exercise of their licence and rating privileges.

(2) The hearing test may be conducted using a pure tone audiometer or alternate method that will provide equivalent results. This test shall be performed at the first medical examination and then at specified intervals according to the class of medical examination and age of the applicant.

(3) If a pure tone audiometer is used, the reference zero for calibration is that of the International Organization for Standardization (ISO) Recommendation R389, 1964.

(4) For hearing tests where audiometry is not performed, applicants shall be tested in a quiet room by whispered and spoken voice tests under the following conditions—

(*a*) a quiet room is a room in which the intensity of the background noise is less than 35 dB(A) when measured on "slow" response of an "A"-weighted sound level meter;

(*b*) the sound level of an average conversational voice at 1 m from the point of output is 60dB(A) and that of a whispered voice is 45dB(A). At 2 m from the speaker, the sound is 6 dB(A) lower.

(5) The holder of a PPL with an instrument rating shall meet the hearing requirements for the Class 1 medical certificate.

Class 1 medical certificate

200.—(1) Certificate issue and renewal—

(*a*) the level of medical fitness to be met for the renewal of a medical certificate shall be the same as that for the initial assessment except where otherwise specifically stated;

(*b*) an applicant for a CPL or ATPL shall undergo an initial medical examination for the issue of a Class 1 Medical Certificate;

(*c*) except where otherwise stated in this subpart, holders of CPL or ATPL shall have their Class 1 medical certificate renewed at intervals not exceeding those specified below;

(*d*) in alternate years, for Class 1 applicants under 40 years of age, the AUTHORITY may, at its discretion, allow medical examiners to omit certain routine examination items related to the assessment of physical fitness, while increasing the emphasis on health education and prevention of ill health;

(*e*) a Class 1 medical certificate will be issued when the applicant complies with the requirements of this Part.

(2) Physical and mental requirements—

(*a*) the applicant shall not suffer from any disease or disability which could render that applicant likely to become suddenly unable either to operate an aircraft safely or to perform assigned duties safely;

(*b*) the applicant shall have no established medical history or clinical diagnosis of any of the following such as might render the applicant unable to safely exercise the privileges of the licence applied for or held—

(i) an organic mental disorder;

(ii) a mental or behavioural disorder due to use of psychoactive substances; this induces dependence syndrome induced by alcohol or other psychoactive substances;

(iii) schizophrenia or a schizotypal or delusional disorder;

(iv) a mood (affective) disorder;

(v) a neurotic, stress-related or somatoform disorder;

(vi) a disorder of adult personality or behaviour, particularly if manifested by repeated overt acts;

(vii) mental retardation;

(viii) a disorder of psychological development;

(ix) a behavioural or emotional disorder, with onset in childhood or adolescence; or

(x) a mental disorder not otherwise specified;

(*c*) the applicant shall have no established medical history or clinical diagnosis of any of the following—

(i) a progressive or non-progressive disease of the nervous system, the effects of which, according to accredited medical conclusion, are likely to interfere with the safe exercise of the applicant's licence and rating privileges;

(ii) epilepsy; or

(iii) any disturbance of consciousness without satisfactory medical explanation of cause;

(*d*) the applicant shall not have suffered any head injury, the effects of which, according to accredited medical conclusion, are likely to interfere with the safe exercise of the applicant's licence and rating privileges shall be assessed as unfit;

(*e*) the applicant shall not possess any abnormality of the heart, congenital or acquired, which is likely to interfere with the safe exercise of the applicant's licence and rating privileges. A history of proven myocardial infarction shall be disqualifying;

(*f*) an applicant who has undergone coronary by-pass grafting or angioplasty (with or without stenting) or other cardiac intervention or who has a history of myocardial infarction or who suffers from any other potentially incapacitating cardiac condition shall be assessed as unfit unless the applicant's cardiac condition has been investigated and evaluated in accordance with best medical practice

and is assessed not likely to interfere with the safe exercise of the applicant's licence or rating privileges;

(*g*) an applicant with an abnormal cardiac rhythm shall be assessed as unfit unless the cardiac arrhythmia has been investigated and evaluated in accordance with the safe exercise of the applicant's licence or rating privileges;

(*h*) electrocardiography shall form part of the heart examination for the first issue of a medical certificate;

(*i*) electrocardiography shall be included in re-examination of applicants over the age of 50 at least annually; the purpose of routine electrocardiography is case finding. It does not provide sufficient evidence to justify disqualification without further thorough cardiovascular investigation;

(*j*) the systolic and diastolic blood pressures shall be within normal limits;

(*k*) the use of drugs for control of high blood pressure is disqualifying except for those drugs, the use of which, according to accredited medical conclusion is compatible with the safe exercise of the applicant's licence and rating privileges;

(*l*) there shall be no significant functional or structural abnormality of the circulatory system;

(*m*) there shall be no acute disability of the lungs or any active disease of the structures of the lungs, mediastinum or pleura likely to result in incapacitating symptoms during normal or emergency operations;

(*n*) radiography should form a part of the initial chest examination; periodic chest radiography is usually not necessary but may be a necessity in situations where asymptomatic pulmonary disease can be expected;

(*o*) applicant's with chronic obstructive pulmonary disease shall be assessed as unfit unless the applicant's condition has been investigated and evaluated in accordance with best medical practice and is assessed not likely to interfere with the safe exercise of the applicant's licence or rating privileges;

(*p*) applicant's with asthma causing significant symptoms or likely to cause incapacitating symptoms during normal or emergency operations shall be assessed as unfit;

(*q*) the use of drugs for control of asthma shall be disqualifying except for those drugs, the use of which is compatible with the safe exercise of the applicant's licence and rating privileges;

(*r*) applicants with active pulmonary tuberculosis shall be assessed as unfit;

(*s*) applicants with quiescent or healed lesions which are known to be tuberculous, or are presumably tuberculous in origin, may be assessed as fit;

(*t*) applicants with significant impairment of the function of the gastrointestinal tract or its adnexa shall be assessed as unfit;

(*u*) the applicant shall be completely free from those hernias that might give rise to incapacitating symptoms;

(*v*) applicants with sequela of disease of, or surgical intervention on any part of the digestive tract or its adnexa, likely to cause incapacity in flight, in particular any obstructions due to structure or compression shall be assessed as unfit;

(*w*) an applicant who has undergone a major surgical operation on the biliary passages or the digestive tract or its adnexa, with a total or partial excision or a diversion of any of these organs should be assessed as unfit until such time as the medical Authority designated for the purpose by Malaŵi and having access to the details of the operation concerned considers that the effects of the operation are not likely to cause incapacity in flight;

(*x*) applicants with metabolic, nutritional or endocrine disorders that are likely to interfere with the safe exercise of the applicant's licence and rating privileges shall be assessed as unfit;

(*y*) applicants with insulin-treated diabetes mellitus shall be assessed as unfit;

(*z*) applicants with non-insulin-treated diabetes mellitus shall be assessed as unfit unless the condition is shown to be satisfactorily controlled by diet alone or by diet combined with oral anti-diabetic medication, the use of which is compatible with the safe exercise of the applicant's licence and rating privileges;

(*aa*) applicants with disease of the blood and/or the lymphatic system shall be assessed as unfit unless adequately investigated and their condition found unlikely to interfere with the safe exercise of the applicant's licence and rating privileges—sickle cell trait or other haemoglobinopathic traits are usually compatible with a fit assessment;

(*bb*) applicants with renal or genitourinary disease shall be assessed as unfit, unless adequately investigated and their condition found unlikely to interfere with the safe exercise of the applicant's licence and rating privileges;

(*cc*) urine examination shall form part of the medical examination and abnormalities shall be adequately investigated;

(*dd*) applicants with sequelae of disease or surgical procedures on the kidneys or the genitourinary tract, in particular any obstructions due to stricture or compression, shall be assessed as unfit unless the applicant's condition has been investigated and evaluated in accordance with the best medical practice and is assessed not likely to interfere with the safe exercise of the applicant's licence or rating privileges;

(*ee*) applicants who have undergone nephrectomy shall be assessed as unfit unless the condition is well compensated;

(*ff*) applicants who are seropositive for human immunodeficiency virus (HIV) shall be assessed as unfit unless the applicant's condition has been investigated and evaluated in accordance with best medical practice and is assessed as not likely to interfere with the safe exercise of the applicant's licence or rating privileges—early diagnosis and active management of HIV disease with antiretroviral therapy reduces morbidity and improves prognosis and thus increases the likelihood of a fit assessment;

(*gg*) applicants who are pregnant shall be assessed as unfit unless obstetrical evaluation and continued medical supervision indicate a low-risk, uncomplicated pregnancy. The fit assessment period may be limited from the end of the 12th week until the end of the 26th week of gestation;

(*hh*) following confinement or termination of pregnancy, the applicant shall not be permitted to exercise the privileges of her licence until she has undergone re-evaluation in accordance with best medical practice and has been assessed as fit to safely exercise the privileges of her licence and ratings;

(*ii*) the applicant shall not possess any abnormality of the bones, joints, muscles, tendons or related structures which is likely to interfere with the safe exercise of the applicant's licence and rating privileges; any sequelae after lesions affecting the bones, joints, muscles or tendons, and certain anatomical defects will normally require functional assessment to determine fitness;

(*jj*) the applicant shall not possess any abnormality or disease of the ear or related structures which is likely to interfere with the safe exercise of the applicant's licence and rating privileges;

(*kk*) there shall be—

(i) no disturbance of vestibular function;

(ii) no significant dysfunction of the Eustachian tubes; and

(iii) no unhealed perforation of the tympanic membranes;

(*ll*) a single dry perforation of the tympanic membrane need not render the applicant unfit;

(*mm*) there shall no nasal obstruction and no malformation nor disease of the buccal cavity or upper respiratory tract which is likely to interfere with the safe exercise of the applicant's licence and rating privileges;

(*nn*) applicants with stuttering or other speech defects sufficiently severe to cause impairment of speech communication shall be assessed as unfit.

(3) Visual requirements—

(*a*) the function of the eyes and their adnexae shall be normal; there shall be no active pathological condition, acute or chronic, or any sequelae of surgery or trauma of the eyes or their adnexae likely to reduce proper visual function to an extent that would interfere with the safe exercise of the applicant's licence and rating privileges;

(*b*) distant visual acuity with or without correction shall be 6/9 or better in each eye separately, and binocular visual acuity shall be 6/6 or better. No limits apply to uncorrected visual acuity. Where this standard of visual acuity can be obtained only with correcting lenses, the applicant may be assessed as fit provided that—

(i) such correcting lenses are worn during the exercise of the privileges of the licence or rating applied for or held; and

(ii) in addition, a pair of suitable correcting spectacles is kept readily available during the exercise of the privileges of the applicant's licence;

(iii) an applicant accepted as meeting these provisions is deemed to continue to do so unless there is reason to suspect otherwise, in which case an ophthalmic report is required at

the discretion of the Authority: both uncorrected and correct visual acuity are normally measured and recorded at each re-examination. Conditions which indicate a need to obtain an ophthalmic report include: a substantial decrease in the uncorrected visual acuity; any decrease in best-corrected visual acuity, and the occurrence of eye disease, eye injury or eye surgery;

(*c*) applicants may use contact lenses to meet the requirement of (*b*) provided that—

(i) the lenses are monofocal and non-tinted;

(ii) the lenses are well tolerated; and

(iii) a pair of suitable correcting spectacles is kept readily available during the exercise of the licence privileges;

(iv) applicants who use contact lenses may not need to have their uncorrected visual acuity measured at each re-examination provided the history of their contact lens prescription is known;

(*d*) applicants with a large refractive error shall use contact lenses or high-index spectacle lenses;

(*e*) applicants whose uncorrected distant visual acuity in either eye is worse than 6/60 shall be required to provide a full ophthalmic report prior to initial medical certificate and every five years thereafter; the purpose of the required ophthalmic examination is (1) to ascertain normal visual performance and (2) to identify any significant pathology;

(*f*) applicants who have undergone surgery affecting the refractive status of the eye shall be assessed as unfit unless they are free from those sequelae which are likely to interfere with the safe exercise of their licence and rating privileges;

(*g*) the applicant shall have the ability to read, while wearing the correcting lenses, if any, the N5 chart or its equivalent at a distance selected by that applicant in the range of 30 to 50 cm and the ability to read the N14 chart or its equivalent at a distance of 100 cm. If this requirement is met only by the use of near correction, the applicant may be assessed as fit provided that this near correction is added to the spectacle correcting already prescribed in accordance with this paragraph; if no such correction is prescribed, a pair of spectacles for near use shall

be kept readily available during the exercise of the privileges of the licence. When near correction is required, the applicant shall demonstrate that one pair of spectacles is sufficient to meet both distant and near visual requirements—

(i) N5 and N14 refer to the size of typeface used. As detailed in the Manual of Civil Aviation Medicine (Doc 8984);

(ii) any applicant who needs near correction to meet this requirement will require "look-over", bifocal or perhaps multifocal lenses in order to read the instruments and a chart or manual, held in the hand, and also to make use of distant vision, through the windscreen, without removing the lenses. Single-vision near correction (full lenses of one power only, appropriate for reading) significantly reduces distant visual acuity and is therefore not acceptable;

(iii) whenever there is a requirement to obtain or renew correcting lenses, an applicant is expected to advise the refractionist of reading distances for the visual flight deck tasks relevant to the types of aircraft in which the applicant is likely to function;

(*h*) when near correction is required in accordance with this paragraph, a second pair of near-correction spectacles shall be kept available for immediate use;

(*i*) the applicant shall be required to have normal fields of vision;

(*j*) the applicant shall be required to have normal binocular function;

(*k*) reduced stereopsis, abnormal convergence not interfering with near vision, and ocular misalignment where the fusional reserves are sufficient to prevent asthenopia and diplopia may not be disqualifying.

(4) Hearing requirements—

(*a*) the applicant shall be tested by pure-tone audiometry—

(i) at the initial medical examination;

(ii) at least once every five years up to the age of 40 years;

(iii) at least once every three years after the age of 40 years.

(*b*) the applicant shall not have a hearing loss in either ear separately, of more than 35 dB at any of the frequencies 500, 1,000 or 2,000 Hz, or more than 50 dB at 3,000 Hz. However, an applicant

with a hearing loss greater than the above may be declared fit provided that—

(i) the applicant has a hearing performance in each ear separately equivalent to that of a normal person, against a background noise that will simulate the masking properties of flight deck noise upon speech and beacon signals; and

(ii) the applicant has the ability to hear an average conversational voice in a quiet room, using both ears, at a distance of 2 m from the examiner, with the back turned to the examiner;

(*c*) alternatively, a practical hearing test conducted in flight in the cockpit of an aircraft of the type for which the applicant's licence and ratings are valid may be used.

Class 2 medical certificate

201.—(1) Certificate issue and renewal—

(*a*) an applicant for a PPL, a FE or FN licence shall undergo an initial medical examination for the issue of a Class 2 Medical Certificate;

(*b*) except where otherwise stated in this subpart, holders of a PPL, a FE or a FN licence shall have their Class 2 Medical Certificate renewed at intervals not exceeding those specified in this Part; and

(*c*) a Class 2 Medical Certificate will be issued, when the applicant complies with the requirements of this Part.

(2) Physical and mental requirements—

(*a*) the applicant shall not suffer from any disease or disability which could render that applicant likely to become suddenly unable either to operate an aircraft safely or to perform assigned duties safely;

(*b*) the applicant shall have no established medical history or clinical diagnosis of any of the following such as might render the applicant unable to safely exercise the privileges of the licence applied for or held—

(i) an organic mental disorder;

(ii) a mental or behavioural disorder due to use of psychoactive substances; this induces dependence syndrome induced by alcohol or other psychoactive substances;

(iii) schizophrenia or a schizotypal or delusional disorder;

(iv) a mood (affective) disorder;

(v) a neurotic, stress-related or somatoform disorder;

(vi) a disorder of adult personality or behaviour, particularly if manifested by repeated overt acts;

(vii) mental retardation;

(viii) a disorder of psychological development;

(ix) a behavioural or emotional disorder, with onset in childhood or adolescence; or

(x) a mental disorder not otherwise specified;

(*c*) an applicant with depression, being treated with antidepressant medication, should be assessed as unfit unless the medical assessor, have access to the details of the case concerned, considers the applicants, condition as unlikely to interfere with the safe exercise of the applicant's licence and rating privileges;

(*d*) the applicant shall have no established medical history or clinical diagnosis of any of the following—

(i) a progressive or non-progressive disease of the nervous system, the effects of which, according to accredited medical conclusion, are likely to interfere with the safe exercise of the applicant's licence and rating privileges;

(ii) epilepsy; or

(iii) any disturbance of consciousness without satisfactory medical explanation of cause;

(*e*) the applicant shall not have suffered any head injury, the effects of which, according to accredited medical conclusion, are likely to interfere with the safe exercise of the applicant's licence and rating privileges shall be assessed as unfit;

(*f*) the applicant shall not possess any abnormality of the heart, congenital or acquired, which is likely to interfere with the safe exercise of the applicant's licence and rating privileges; a history of proven myocardial infarction shall be disqualifying;

(*g*) an applicant who has undergone coronary by-pass grafting or angioplasty (with or without stenting) or other cardiac intervention or who has a history of myocardial infarction or who suffers from any other potentially incapacitating cardiac condition shall be assessed as unfit unless the applicant's cardiac condition has been investigated and evaluated in accordance with best medical practice and is assessed not likely to interfere with the safe exercise of the applicant's licence or rating privileges;

(*h*) an applicant with an abnormal cardiac rhythm shall be assessed as unfit unless the cardiac arrhythmia has been investigated and evaluated in accordance with best medical practice and is assessed not likely to interfere with the safe exercise of the applicant's licence or rating privileges;

(*i*) electrocardiography shall form part of the heart examination for the first issue of a medical certificate—

(i) after the age of 40; and

(ii) in re-examinations every two years after the age of 50;

(iii) the purpose of routine electrocardiography is case finding; it does not provide sufficient evidence to justify disqualification without further thorough cardiovascular investigation;

(*j*) the systolic and diastolic blood pressures shall be within normal limits;

(*k*) the use of drugs for control of high blood pressure is disqualifying except for those drugs, the use of which, according to accredited medical conclusion is compatible with the safe exercise of the applicant's licence and rating privileges;

(*l*) there shall be no significant functional or structural abnormality of the circulatory system;

(*m*) there shall be no acute disability of the lungs or any active disease of the structures of the lungs, mediastinum or pleura likely to result in incapacitating symptoms during normal or emergency operations;

(i) radiography should form a part of the initial chest examination;

(ii) periodic chest radiography is usually not necessary but may be a necessity in situations where asymptomatic pulmonary disease can be expected;

(*n*) applicant's with chronic obstructive pulmonary disease shall be assessed as unfit unless the applicant's condition has been investigated and evaluated in accordance with best medical practice and is assessed not likely to interfere with the safe exercise of the applicant's licence or rating privileges;

(*o*) applicant's with asthma causing significant symptoms or likely to cause incapacitating symptoms during normal or emergency operations shall be assessed as unfit;

(*p*) the use of drugs for control of asthma shall be disqualifying except for those drugs, the use of which is compatible with the safe exercise of the applicant's licence and rating privileges;

(*q*) applicants with active pulmonary tuberculosis shall be assessed as unfit;

(*r*) applicants with quiescent or healed lesions which are known to be tuberculous, or are presumably tuberculous in origin, may be assessed as fit;

(*s*) applicants with significant impairment of the function of the gastrointestinal tract or its adnexae shall be assessed as unfit;

(*t*) the applicant shall be completely free from those hernias that might give rise to incapacitating symptoms;

(*u*) applicants with sequelae of disease of, or surgical intervention on any part of the digestive tract or its adnexae, likely to cause incapacity in flight, in particular any obstructions due to structure or compression shall be assessed as unfit;

(*v*) an applicant who has undergone a major surgical operation on the biliary passages or the digestive tract or its adnexae, with a total or partial excision or a diversion of any of these organs should be assessed as unfit until such time as the medical Authority designated for the purpose by Malaŵi and having access to the details of the operation concerned considers that the effects of the operation are not likely to cause incapacity in flight;

(*w*) applicants with metabolic, nutritional or endocrine disorders that are likely to interfere with the safe exercise of the applicant's licence and rating privileges shall be assessed as unfit;

(*x*) applicants with insulin-treated diabetes mellitus shall be assessed as unfit;

(*y*) applicants with non-insulin-treated diabetes mellitus shall be assessed as unfit unless the condition is shown to be satisfactorily controlled by diet alone or by diet combined with oral anti-diabetic medication, the use of which is compatible with the safe exercise of the applicant's licence and rating privileges;

(*z*) applicants with disease of the blood and/or the lymphatic system shall be assessed as unfit unless adequately investigated and their condition found unlikely to interfere with the safe exercise of the applicant's licence and rating privileges; Sickle cell trait or other haemoglobinopathic traits are usually compatible with a fit assessment;

(*aa*) applicants with renal or genitor-urinary disease shall be assessed as unfit, unless adequately investigated and their condition found unlikely to interfere with the safe exercise of the applicant's licence and rating privileges;

(*bb*) urine examination shall form part of the medical examination and abnormalities shall be adequately investigated;

(*cc*) applicants with sequelae of disease or surgical procedures on the kidneys or the genitourinary tract, in particular any obstructions due to stricture or compression, shall be assessed as unfit unless the applicant's condition has been investigated and evaluated in accordance with the best medical practice and is assessed not likely to interfere with the safe exercise of the applicant's licence or rating privileges;

(*dd*) applicants who have undergone nephrectomy shall be assessed as unfit unless the condition is well compensated;

(*ee*) applicants who are seropositve for human immunodeficiency virus (HIV) shall be assessed as unfit unless the applicant's condition has been investigated and evaluated in accordance with best medical practice and is assessed as not likely to interfere with the safe exercise of the applicant's licence or rating privileges; early diagnosis and active management of HIV disease with antiretroviral therapy reduces morbidity and improves prognosis and thus increases the likelihood of a fit assessment;

(*ff*) applicants who are pregnant shall be assessed as unfit unless obstetrical evaluation and continued medical supervision indicate a low-risk, uncomplicated pregnancy;

(*gg*) for applicants with a low-risk uncomplicated pregnancy, evaluated and supervised in accordance with item (*ff*) above, the fit assessment should be limited to the period from the end of the 12th week until the end of the 26th week of gestation;

(*hh*) following confinement or termination of pregnancy, the applicant shall not be permitted to exercise the privileges of her licence until she has undergone re-evaluation in accordance with best medical practice and has been assessed as fit to safely exercise the privileges of her licence and ratings;

(*ii*) the applicant shall not possess any abnormality of the bones, joints, muscles, tendons or related structures which is likely to interfere with the safe exercise of the applicant's licence and rating privileges—any sequelae after lesions affecting the bones, joints,

muscles or tendons, and certain anatomical defects will normally require functional assessment to determine fitness;

(*jj*) the applicant shall not possess any abnormality or disease of the ear or related structures which is likely to interfere with the safe exercise of the applicant's licence and rating privileges;

(*kk*) there shall be—

(i) no disturbance of vestibular function;

(ii) no significant dysfunction of the Eustachian tubes; and

(iii) no unhealed perforation of the tympanic membranes;

(*ll*) a single dry perforation of the tympanic membrane need not render the applicant unfit;

(*mm*) there shall be no nasal obstruction and no malformation nor disease of the buccal cavity or upper respiratory tract which is likely to interfere with the safe exercise of the applicant's licence and rating privileges;

(*nn*) applicants with stuttering or other speech defects sufficiently severe to cause impairment of speech communication shall be assessed as unfit.

(3) Visual requirements—

(*a*) the function of the eyes and their adnexae shall be normal; there shall be no active pathological condition, acute or chronic, or any sequelae of surgery or trauma of the eyes or their adnexae likely to reduce proper visual function to an extent that would interfere with the safe exercise of the applicant's licence and rating privileges;

(*b*) distant visual acuity with or without correction shall be 6/12 or better in each eye separately, and binocular visual acuity shall be 6/9 or better; no limits apply to uncorrected visual acuity; where this standard of visual acuity can be obtained only with correcting lenses, the applicant may be assessed as fit provided that—

(i) such correcting lenses are worn during the exercise of the privileges of the licence or rating applied for or held; and

(ii) in addition, a pair of suitable correcting spectacles is kept readily available during the exercise of the privileges of the applicant's licence;

(iii) an applicant accepted as meeting these provisions is deemed to continue to do so unless there is reason to suspect

otherwise, in which case an ophthalmic report is required at the discretion of the Authority: both uncorrected and correct visual acuity are normally measured and recorded at each re-examination. Conditions which indicate a need to obtain an ophthalmic report include: a substantial decrease in the uncorrected visual acuity; any decrease in best-corrected visual acuity, and the occurrence of eye disease, eye injury or eye surgery;

(*c*) applicants may use contact lenses to meet the requirement of (*b*) provided that—

(i) the lenses are monofocal and non-tinted;

(ii) the lenses are well tolerated; and

(iii) a pair of suitable correcting spectacles is kept readily available during the exercise of the licence privileges;

(iv) applicants who use contact lenses may not need to have their uncorrected visual acuity measured at each re-examination provided the history of their contact lens prescription is known;

(*d*) applicants with a large refractive error shall use contact lenses or high-index spectacle lenses; if spectacles are used, high-index lenses are needed to minimize peripheral field distortion;

(*e*) applicants whose uncorrected distant visual acuity in either eye is worse than 6/60 shall be required to provide a full ophthalmic report prior to initial medical certificate and every five years thereafter; the purpose of the required ophthalmic examination is (1) to ascertain normal visual performance and (2) to identify any significant pathology;

(*f*) applicants who have undergone surgery affecting the refractive status of the eye shall be assessed as unfit unless they are free from those sequelae which are likely to interfere with the safe exercise of their licence and rating privileges;

(*g*) the applicant shall have the ability to read, while wearing the correcting lenses, if any, the N5 chart or its equivalent at a distance selected by that applicant in the range of 30 to 50 cm: if this requirement is met only by the use of near correction, the applicant may be assessed as fit provided that this near correction is added to the spectacle correcting already prescribed in accordance with this paragraph; if no such correction is prescribed, a pair of spectacles for near use shall be kept readily available during the exercise of the privileges of the licence: when near correction is required, the

applicant shall demonstrate that one pair of spectacles is sufficient to meet both distant and near visual requirements—

(i) N5 refers to the size of typeface used as detailed in the Manual of Civil Aviation Medicine (Doc 8984);

(ii) any applicant who needs near correction to meet this requirement will require "look-over", bifocal or perhaps multifocal lenses in order to read the instruments and a chart or manual held in the hand, and also to make use of distant vision, through the windscreen, without removing the lenses; single-vision near correction (full lenses of one power only, appropriate for reading) significantly reduces distant visual acuity and is therefore not acceptable;

(iii) whenever there is a requirement to obtain or renew correcting lenses, an applicant is expected to advise the refractionist of reading distances for the visual flight deck tasks relevant to the types of aircraft in which the applicant is likely to function;

(*h*) when near correction is required in accordance with this paragraph, a second pair of near-correction spectacles shall be kept available for immediate use;

(*i*) the applicant shall be required to have normal fields of vision;

(*j*) the applicant shall be required to have normal binocular function;

(*k*) reduced stereopsis, abnormal convergence not interfering with near vision, and ocular misalignment where the fusional reserves are sufficient to prevent asthenopia and diplopia may not be disqualifying.

(4) Hearing requirements—

(*a*) the applicant shall be tested by pure-tone audiometry;

(i) at the initial medical examination;

(ii) at least once every two years after the age of 50 years;

(*b*) when tested by pure-tone audiometry, an applicant with a hearing loss, in either ear separately, of more than 35 dB at any of the frequencies 500, 1,000 or 2,000 Hz, or more than 50 dB at 3,000 Hz, shall be assessed as unfit;

(*c*) the applicant shall have the ability to hear an average conversational voice in a quiet room, using both ears, at a distance of 2 m from the examiner, with the back turned to the examiner or be assessed as unfit;

(*d*) the applicant who holds a PPL with an IR shall meet the hearing requirements for a Class 1 medical certificate.

Class 3 medical certificate

202.—(1) Certificate issue and renewal—

(*a*) an applicant for an Air Traffic Controller licence shall undergo an initial medical examination for the issue of a Class 3 Medical Certificate;

(*b*) except where otherwise stated in this subpart, holders of an Air Traffic Controller licence shall have their Class 3 Medical Certificate renewed at intervals not exceeding those specified in this subpart;

(*c*) a Class 3 Medical Certificate will be issued when the applicant complies with the requirements of this Regulation.

(2) Physical and mental requirements—

(*a*) the applicant shall not suffer from any disease or disability which could render that applicant likely to become suddenly unable either to operate an aircraft safely or to perform assigned duties safely;

(*b*) the applicant shall have no established medical history or clinical diagnosis of any of the following such as might render the applicant unable to safely exercise the privileges of the licence applied for or held—

(i) an organic mental disorder;

(ii) a mental or behavioural disorder due to use of psychoactive substances; this induces dependence syndrome induced by alcohol or other psychoactive substances;

(iii) schizophrenia or a schizotypal or delusional disorder;

(iv) a mood (affective) disorder;

(v) a neurotic, stress-related or somatoform disorder;

(vi) a disorder of adult personality or behaviour, particularly if manifested by repeated overt acts;

(vii) mental retardation;

(viii) a disorder of psychological development;

(ix) a behavioural or emotional disorder, with onset in childhood or adolescence; or

(x) a mental disorder not otherwise specified;

(*c*) an applicant with depression, being treated with antidepressant medication, should be assessed as unfit unless the medical assessor, has access to the details of the case concerned, considers the applicant's condition as unlikely to interfere with the safe exercise of the applicant's licence and rating privileges— mental and behavioural disorders are defined in accordance with the clinical descriptions and diagnostic guidelines of the World Health Organization as given in the International Statistical Classification of Diseases and Related Health Problems 10th Edition-Classification of Mental and Behavioural Disorders, WHO 1992;

(*d*) the applicant shall have no established medical history or clinical diagnosis of any of the following—

(i) a progressive or non-progressive disease of the nervous system, the effects of which, according to accredited medical conclusion, are likely to interfere with the safe exercise of the applicant's licence and rating privileges;

(ii) epilepsy; or

(iii) any disturbance of consciousness without satisfactory medical explanation of cause;

(*e*) the applicant shall not have suffered any head injury, the effects of which, according to accredited medical conclusion, are likely to interfere with the safe exercise of the applicant's licence and rating privileges shall be assessed as unfit;

(*f*) the applicant shall not possess any abnormality of the heart, congenital or acquired, which is likely to interfere with the safe exercise of the applicant's licence and rating privileges; a history of proven myocardial infarction shall be disqualifying;

(*g*) an applicant who has undergone coronary by-pass grafting or angioplasty (with or without stenting) or other cardiac intervention or who has a history of myocardial infarction or who suffers from any other potentially incapacitating cardiac condition shall be assessed as unfit unless the applicant's cardiac condition has been investigated and evaluated in accordance with best medical practice and is assessed not likely to interfere with the safe exercise of the applicant's licence or rating privileges;

(*h*) an applicant with an abnormal cardiac rhythm shall be assessed as unfit unless the cardiac arrhythmia has been investigated and evaluated in accordance with best medical practice and is assessed not likely to interfere with the safe exercise of the applicant's licence or rating privileges;

(*i*) electrocardiography shall form part of the heart examination for the first issue of a medical certificate and in re-examinations every two years after the age of 50—the purpose of routine electrocardiography is case finding. It does not provide sufficient evidence to justify disqualification without further thorough cardiovascular investigation;

(*j*) the systolic and diastolic blood pressures shall be within normal limits;

(*k*) the use of drugs for control of high blood pressure is disqualifying except for those drugs, the use of which, according to accredited medical conclusion is compatible with the safe exercise of the applicant's licence and rating privileges;

(*l*) there shall be no significant functional or structural abnormality of the circulatory system;

(*m*) there shall be no acute disability of the lungs or any active disease of the structures of the lungs, mediastinum or pleura likely to result in incapacitating symptoms during normal or emergency operations: radiography should form a part of the initial chest examination; periodic chest radiography is usually not necessary but may be a necessity in situations where asymptomatic pulmonary disease can be expected;

(*n*) applicant's with chronic obstructive pulmonary disease shall be assessed as unfit unless the applicant's condition has been investigated and evaluated in accordance with best medical practice and is assessed not likely to interfere with the safe exercise of the applicant's licence or rating privileges;

(*o*) applicant's with asthma causing significant symptoms or likely to cause incapacitating symptoms during normal or emergency operations shall be assessed as unfit;

(*p*) the use of drugs for control of asthma shall be disqualifying except for those drugs, the use of which is compatible with the safe exercise of the applicant's licence and rating privileges;

(*q*) applicants with active pulmonary tuberculosis shall be assessed as unfit;

(*r*) applicants with quiescent or healed lesions which are known to be tuberculous, or are presumably tuberculous in origin, may be assessed as fit;

(*s*) applicants with significant impairment of the function of the gastrointestinal tract or its adnexae shall be assessed as unfit;

(*t*) applicants with sequelae of disease of, or surgical intervention on any part of the digestive tract or its adnexae, likely to cause incapacity in flight, in particular any obstructions due to structure or compression shall be assessed as unfit;

(*u*) an applicant who has undergone a major surgical operation on the biliary passages or the digestive tract or its adnexae, with a total or partial excision or a diversion of any of these organs should be assessed as unfit until such time as the medical Authority designated for the purpose by Malaŵi and having access to the details of the operation concerned considers that the effects of the operation are not likely to cause incapacity in flight;

(v) applicants with metabolic, nutritional or endocrine disorders that are likely to interfere with the safe exercise of the applicant's licence and rating privileges shall be assessed as unfit;

(*w*) applicants with insulin-treated diabetes mellitus shall be assessed as unfit;

(*x*) applicants with non-insulin-treated diabetes mellitus shall be assessed as unfit unless the condition is shown to be satisfactorily controlled by diet alone or by diet combined with oral anti-diabetic medication, the use of which is compatible with the safe exercise of the applicant's licence and rating privileges;

(*y*) applicants with disease of the blood and/or the lymphatic system shall be assessed as unfit unless adequately investigated and their condition found unlikely to interfere with the safe exercise of the applicant's licence and rating privileges; sickle cell trait or other haemoglobinopathic traits are usually compatible with a fit assessment;

(*z*) applicants with renal or genitor-urinary disease shall be assessed as unfit, unless adequately investigated and their condition found unlikely to interfere with the safe exercise of the applicant's licence and rating privileges;

(*aa*) urine examination shall form part of the medical examination and abnormalities shall be adequately investigated;

(*bb*) applicants with sequelae of disease or surgical procedures on the kidneys or the genito-urinary tract, in particular any obstructions due to stricture or compression, shall be assessed as unfit unless the applicant's condition has been investigated and evaluated in accordance with the best medical practice and is assessed not likely to interfere with the safe exercise of the applicant's licence or rating privileges;

(*cc*) applicants who have undergone nephrectomy shall be assessed as unfit unless the condition is well compensated;

(*dd*) applicants who are seropositve for human immunodeficiency virus (HIV) shall be assessed as unfit unless the applicant's condition has been investigated and evaluated in accordance with best medical practice and is assessed as not likely to interfere with the safe exercise of the applicant's licence or rating privileges: early diagnosis and active management of HIV disease with antiretroviral therapy reduces morbidity and improves prognosis and thus increases the likelihood of a fit assessment;

(*ee*) applicants who are pregnant shall be assessed as unfit unless obstetrical evaluation and continued medical supervision indicate a low-risk, uncomplicated pregnancy;

(*ff*) during the gestational period, precautions should be taken for the timely relief of an air traffic controller in the event of early onset of labour or other complications;

(*gg*) for applicants with a low-risk uncomplicated pregnancy, evaluated and supervised in accordance with (*ee*) the fit assessment should be limited to the period until the end of the 34th week of gestation;

(*hh*) following confinement or termination of pregnancy, the applicant shall not be permitted to exercise the privileges of her licence until she has undergone re-evaluation in accordance with best medical practice and has been assessed as fit to safely exercise the privileges of her licence and ratings;

(*ii*) the applicant shall not possess any abnormality of the bones, joints, muscles, tendons or related structures which is likely to interfere with the safe exercise of the applicant's licence and rating privileges; any sequelae after lesions affecting the bones, joints, muscles or tendons, and certain anatomical defects will normally require functional assessment to determine fitness;

(*jj*) the applicant shall not possess any abnormality or disease of the ear or related structures which is likely to interfere with the safe exercise of the applicant's licence and rating privileges;

(*kk*) there shall no malformation or any disease of the nose, buccal cavity or upper respiratory tract which is likely to interfere with the safe exercise of the applicant's licence and rating privileges;

(*ll*) applicants with stuttering or other speech defects sufficiently severe to cause impairment of speech communication shall be assessed as unfit.

(3) Visual requirements—

(*a*) the function of the eyes and their adnexa shall be normal: there shall be no active pathological condition, acute or chronic, or any sequelae of surgery or trauma of the eyes or their adnexa likely to reduce proper visual function to an extent that would interfere with the safe exercise of the applicant's licence and rating privileges;

(*b*) distant visual acuity with or without correction shall be 6/9 or better in each eye separately, and binocular visual acuity shall be 6/6 or better: no limits apply to uncorrected visual acuity; where this standard of visual acuity can be obtained only with correcting lenses, the applicant may be assessed as fit provided that—

(i) such correcting lenses are worn during the exercise of the privileges of the licence or rating applied for or held; and

(ii) in addition, a pair of suitable correcting spectacles is kept readily available during the exercise of the privileges of the applicant's licence;

(iii) an applicant accepted as meeting these provisions is deemed to continue to do so unless there is reason to suspect otherwise, in which case an ophthalmic report is required at the discretion of the Authority: both uncorrected and correct visual acuity are normally measured and recorded at each re-examination. Conditions which indicate a need to obtain an ophthalmic report include: a substantial decrease in the uncorrected visual acuity; any decrease in best-corrected visual acuity, and the occurrence of eye disease, eye injury or eye surgery;

(*c*) Applicants may use contact lenses to meet the requirement of (*b*) provided that—

(i) the lenses are monofocal and non-tinted;

(ii) the lenses are well tolerated; and

(iii) a pair of suitable correcting spectacles is kept readily available during the exercise of the licence privileges;

(iv) applicants who use contact lenses may not need to have their uncorrected visual acuity measured at each re-examination provided the history of their contact lens prescription is known;

(*d*) applicants with a large refractive error shall use contact lenses or high-index spectacle lenses; if spectacles are used, high-index lenses are needed to minimize peripheral field distortion;

(*e*) applicants whose uncorrected distant visual acuity in either eye is worse than 6/60 should be required to provide a full ophthalmic report prior to initial Medical Certificate and every five years thereafter; the purpose of the required ophthalmic examination is (1) to ascertain normal visual performance and (2) to identify any significant pathology;

(*f*) applicants who have undergone surgery affecting the refractive status of the eye shall be assessed as unfit unless they are free from those sequelae which are likely to interfere with the safe exercise of their licence and rating privileges;

(*g*) the applicant shall have the ability to read, while wearing the correcting lenses, if any, required by (*b*), the N5 chart or its equivalent at a distance selected by that applicant in the range of 30 to 50 cm and the ability to read the N14 chart or its equivalent at a distance of 100 cm. If this requirement is met only by the use of near correction, the applicant may be assessed as fit provided that this near correction is added to the spectacle correcting already prescribed in accordance with (*b*); if no such correction is prescribed, a pair of spectacles for near use shall be kept readily available during the exercise of the privileges of the licence. When near correction is required, the applicant shall demonstrate that one pair of spectacles is sufficient to meet both distant and near visual requirements—

(i) N5 and N14 refer to the size of typeface used as detailed in the Manual of Civil Aviation Medicine (Doc 8984);

(ii) any applicant who needs near correction to meet this requirement will require "look-over", bifocal or perhaps multi-focal lenses in order to read the instruments and a chart or manual held in the hand, and also to make use of distant vision, through the windscreen, without removing the lenses. Single-vision near correction (full lenses of one power only, appropriate for reading) significantly reduces distant visual acuity and is therefore not acceptable;

(iii) whenever there is a requirement to obtain or renew correcting lenses, an applicant is expected to advise the refractionist of reading distances for the visual flight deck tasks relevant to the types of aircraft in which the applicant is likely to function;

(*h*) when near correction is required in accordance with this paragraph, a second pair of near-correction spectacles shall be kept available for immediate use;

(*i*) the applicant shall be required to have normal fields of vision;

(*j*) the applicant shall be required to have normal binocular function: defective stereopsis, abnormal convergence not interfering with near vision, and ocular misalignment where the fusional reserves are sufficient to prevent asthenopia and diplopia may not be disqualifying.

(4) Hearing requirements—

(*a*) the applicant shall be tested by pure-tone audiometry—

(i) at the initial medical examination;

(ii) at least once every four years up to the age of 40 years;

(iii) at least once every two years after the age of 40 years;

(*b*) the applicant, when tested on a pure-tone audiometer, shall not have a hearing loss in either ear separately, of more than 35 dB at any of the frequencies 500, 1,000 or 2,000 Hz, or more than 50 dB at 3,000 Hz;

(*c*) an applicant with a hearing loss greater than the above may be declared fit provided that the applicant has normal hearing performance against a background noise that will reproduces or simulates that experience in a normal air traffic control working environment;

(*d*) alternatively, a practical hearing test conducted in an air traffic control environment representative of the one for which the applicant's licence and ratings are valid may be used.

SCHEDULE

Implementing Standards for (Personnel Licensing)

IS 2:4 Issue, Renewal and Re-Issue of Licences, Ratings, Authorizations Designations, Designations, and Certificate

1. Issue, renewal and re-issue of licences, ratings, authorizations, designations and certificates will take place when the applicant meets the requirements of the Regulations for issue, renewal and re-issue for these licences, ratings authorizations and certificates.

2. Issue, renewal and re-issue of licences, ratings, authorizations, designations and certificates will be performed by the Authority.

3. Notwithstanding 2, renewal of ratings and category II/III pilot authorizations may be performed by the Examiner, when delegated by the Authority.

4. Notwithstanding 2, renewal of medical certificates may be performed by the AME, when delegated by the Authority.

5. Application for the issue, renewal and re-issue of licences, ratings, authorizations, designations or certificates by the Authority shall be done by submitting to the Authority a properly filled out form, which can be obtained from the Authority. This form must be submitted to the Authority at least 14 days before the expiry date.

IS 2:12 LANGUAGE PROFICIENCY

1. General

   To meet the language proficiency requirements contained in regulation 12 an applicant for a licence or a licence holder shall demonstrate, in a manner acceptable to the Authority, compliance with the holistic descriptors in paragraph (*b*) below and with the Operational Level (Level 4) of the Language Proficiency Rating Scale as mentioned in paragraph 2 (3) below.

2. Holistic descriptors: Proficient speakers shall:

   (1) Communicate effectively in voice-only (telephone/radiotelephone) and in face-to-face situations.

   (2) Communicate on common, concrete and work-related topics with accuracy and clarity.

   (3) Use appropriate communicative strategies to exchange messages and to recognize and resolve misunderstandings (e.g. to check, confirm, or clarify information) in a general or work-related context.

   (4) Handle successfully and with relative ease the linguistic challenges presented by a complication or unexpected turn of events that occurs within the context of a routine work situation or communicative task with which they are otherwise familiar.

   (5) Use a dialect or accent which is intelligible to the aeronautical community.

3. Rating scale—

   (1) Pre-elementary Level (Level 1)—

      (*a*) pronunciation: performs at a level below the Elementary Level;

(*b*) structure: performs at a level below the Elementary Level;

(*c*) vocabulary: performs at a level below the Elementary Level;

(*d*) fluency: performs at a level below the Elementary Level;

(*e*) comprehension: performs at a level below the Elementary Level;

(*f*) interactions: performs at a level below the Elementary Level.

(2) Elementary Level (Level 2)—

(*a*) pronunciation: pronunciation, stress, rhythm, and intonation are heavily influenced by the first language or regional variation and usually interfere with ease of understanding;

(*b*) structure: shows only limited control of a few simple memorized grammatical structures and sentence patterns;

(*c*) vocabulary: limited vocabulary range consisting only of isolated words and memorized phrases;

(*d*) fluency: can produce very short, isolated, memorized utterances with frequent pausing and a distracting use of fillers to search for expressions and to articulate less familiar words;

(*e*) comprehension: comprehension is limited to isolated, memorized phrases when they are carefully and slowly articulated;

(*f*) interactions: response time is slow and often inappropriate. Interaction is limited to simple routine exchanges.

(3) Pre-operational Level (Level 3)—

(*a*) pronunciation: pronunciation, stress, rhythm, and intonation are influenced by the first language or regional variation and frequently interfere with ease of understanding;

(*b*) structure: basic grammatical structures and sentence patterns associated with predictable situations are not always well controlled. Errors frequently interfere with meaning;

(*c*) vocabulary: vocabulary range and accuracy are often sufficient to communicate on common, concrete, or work-related topics, but range is limited and the word choice often inappropriate. Is often unable to paraphrase successfully when lacking vocabulary;

(*d*) fluency: produces stretches of language, but phrasing and pausing are often inappropriate; hesitations or slowness in language processing may prevent effective communication; fillers are sometimes distracting;

(*f*) comprehension: comprehension is often accurate on common, concrete, and work-related topics when the accent or variety used is sufficiently intelligible for an international community of users. May fail to understand a linguistic or situational complication or an unexpected turn of events;

(*g*) interaction: responses are sometimes immediate, appropriate, and informative; can initiate and maintain exchanges with reasonable ease on familiar topics and in predictable situations; generally inadequate when dealing with an unexpected turn of events.

(4) Operational Level (Level 4)—

(*a*) pronunciation: pronunciation, stress, rhythm and intonation are influenced by the first language or regional variation but only sometimes interfere with understanding;

(*b*) structure: basic grammatical structures and sentence patterns are used creatively and are usually well controlled; errors may occur, particularly in unusual or unexpected circumstances, but rarely interfere with meaning;

(*c*) vocabulary: vocabulary range and accuracy are usually sufficient to communicate effectively on common, concrete, and work related topics; can often paraphrase successfully when lacking vocabulary in unusual or unexpected circumstances;

(*d*) fluency: produces stretches of language at an appropriate tempo. There may be occasional loss of fluency on transition from rehearsed or formulaic speech to spontaneous interaction, but this does not prevent effective communication; can make limited use of discourse markers or connectors; fillers are not distracting;

(*e*) comprehension: comprehension is mostly accurate on common, concrete, and work related topics when the accent or variety used is sufficiently intelligible for an international community of users. When the speaker is confronted with a linguistic or situational complication or an unexpected turn of events, comprehension may be slower or require clarification strategies;

(*f*) interactions: responses are usually immediate, appropriate and informative;

Initiates and maintains exchanges even when dealing with an unexpected turn of events. Deals adequately with apparent misunderstandings by checking, confirming or clarifying.

(5) Extended Level (Level 5)—

(*a*) pronunciation: pronunciation, stress, rhythm, and intonation, though influenced by the first language or regional variation, rarely interfere with ease of understanding;

(*b*) structure: basic grammatical structures and sentence patterns are consistently well controlled; complex structures are attempted but with errors which sometimes interfere with meaning;

(*c*) vocabulary: vocabulary range and accuracy are sufficient to communicate effectively on common, concrete, and work related topics, paraphrases consistently and successfully; vocabulary is sometimes idiomatic;

(*d*) fluency: able to speak at length with relative ease on familiar topics, but may not vary speech flow as a stylistic device; can make use of appropriate discourse markers or connectors;

(*e*) comprehension: comprehension is accurate on common, concrete, and work related topics and mostly accurate when the speaker is confronted with a linguistic or situational complication or an unexpected turn of events. Is able to comprehend a range of speech varieties (dialect and/or accent) or registers;

(*f*) interactions: responses are immediate, appropriate, and informative; managers the speaker/listener relationship effectively.

(6) Expert Level (Level 6)—

(*a*) pronunciation: pronunciation, stress, rhythm, and intonation, thought possibly influenced by the first language or regional variation, almost never interfere with ease of understanding;

(*b*) structure: both basic and complex grammatical structures and sentence patterns are consistently well controlled;

(*c*) vocabulary: vocabulary range and accuracy are sufficient to communicate effectively on a wide variety of familiar and unfamiliar topics, vocabulary is idiomatic, nuanced, and sensitive to register;

(*d*) fluency: able to speak at length with a natural, effortless flow. Varies speech flow for stylistic effect, e.g. to emphasize a point. Uses appropriate discourse markers and connectors spontaneously;

(*e*) comprehension: comprehension is consistently accurate in nearly all contexts and includes comprehension of linguistic and cultural subtleties;

(*f*) interactions: interacts with ease in nearly all situations; is sensitive to verbal and non-verbal cues, and responds to them appropriately.

IS 2:13 Credit for Military Pilots

1. Requirements for a military pilot to meet the requirements of regulation 13.

2. Military pilots on active flying status within the past 12 months. The holder of a military pilot licence (or certificate) who has been on active flying status within the 12 months before applying shall—

(1) Pass a knowledge test on the appropriate parts of these Regulations that apply to pilot privileges and limitations, air traffic and general operating rules, and accident reporting rules;

(2) Present documentation showing compliance with the requirements of paragraph (*c*) of this subsection for at least one aircraft category rating; and

(3) Present documentation showing that the applicant is or was, at any time during the 12-calendar months before the month of application the holder of a military pilot licence (or certificate) on active flying status in an armed force of Malaŵi.

3. Aircraft category, class and type ratings. The Authority may issue to the holder of a military pilot licence (or certificate) an aircraft category, class or type rating to a commercial pilot licence if the pilot present documentary evidence that shows satisfactory accomplishment of—

   (1) A military pilot check and instrument proficiency check of Malaŵi in that aircraft category, class or type, if applicable, as PIC during the 12-calendar months before the month of application; and

   (2) At least 10 hours of PIC time in that aircraft category, class or type, if applicable, during the 12-calendar months before the month of application.

4. Instrument rating: The holder of a military pilot licence (or certificate) may apply for an aeroplane or helicopter instrument rating to be added to his or her commercial pilot licence if the pilot has, within the 12-calendar months preceding the month of application—

   (1) Passed an instrument proficiency check by Defence Force of Malaŵi in the aircraft category for the instrument rating sought; and

   (2) Received authorization from Defence Force of Malaŵi to conduct IFR flights on airways in that aircraft category and class for the instrument rating sought.

5. Aircraft type rating. The Authority will issue an aircraft type rating only for aircraft types that the Authority has certified for civil operations.

6. Aircraft type rating placed on an airline transport pilot licence. The Authority may issue to the holder of a military pilot licence (or certificate) who holds an airline transport pilot licence an aircraft type rating provided that the pilot—

   (1) Holds a category and type rating for that type of aircraft at the airline transport pilot licence level.

   (2) Passed an official military pilot of Malaŵi check and instrument proficiency check in that type of aircraft as PIC during the 12 calendar months before the month of application.

7. Evidentiary documents: The Authority may accept the following documents as satisfactory evidence of military pilot status—

   (1) an official identification card issued to the pilot by an armed force to demonstrate membership in the armed forces.

(2) an original or a copy of a certificate of discharge or release from an armed force of Malaŵi.

(3) at least one of the following—

(*a*) an order of defence force of Malaŵi to flight status as a military pilot;

(*b*) defence force form or logbook showing military pilot status; or

(*c*) an order showing that the applicant graduated from a military pilot school of Malaŵi and received a rating as a military pilot.

(4) a certified defence force logbook or an appropriate official defence force form or summary to demonstrate flight time in military aircraft as a member of an armed force of Malaŵi.

(5) an official defence force of Malaŵi record of a military designation as PIC.

(6) an official record of satisfactory accomplishment of an instrument proficiency check during the 12-calendar months preceding the month of application.

IS 2:17 PROCEDURES FOR VALIDATION OF FLIGHT CREW LICENCES BY RELIANCE UPON THE LICENSING SYSTEM OF ANOTHER CONTRACTING STATE

1. The Authority should, before making the agreement mentioned in regulation 17(*a*) and (*c*) be convinced, that the other Contracting State issues licences in conformity with this paragraph by conducting a regulatory comparison of the licensing systems and requirements.

2. An inspector, legal counsel and/or licensing subject matter experts from Malaŵi, or from another Contracting State delegated by the Authority of Malaŵi, must visit the other Contracting State to be convinced that the licensing system in the other Contracting State is in conformity with this paragraph. A report describing the bases for the decision shall be made to the Authority of Malaŵi. The report, and the regulatory comparison noted in paragraph 2 shall serve the basis for a government-to-government agreement between the involved States regarding use or reliance of the licensing system.

3. An Air Law test must be arranged if the air law system of Malaŵi is different from the Air Law system from the other Contracting State. Other areas that may require knowledge testing are meteorology, operational procedures and radiotelephony if those areas are different between Malaŵi and the other Contracting State.

4. Application for the validation certificate shall be done by submitting to the Authority a properly filled out form, which form can be obtained from the Authority.

IS 2:18 PROCEDURES FOR CONVERSION OF FLIGHT CREW LICENCES BY RELIANCE UPON THE LICENSING SYSTEM OF ANOTHER CONTRACTING STATE

1. The Authority that issues a converted licence based on a licence from another Contracting State remains responsible for the converted licence.
2. The Authority should, before making the agreement mentioned in regulation 18 (1) (*c*) be convinced, that the other Contracting State issues licences in conformity with the regulation by conducting a regulatory comparison of the licensing systems and requirements.
3. An inspector, legal counsel and/or licensing subject matter experts from Malaŵi, or from another Contracting State delegated by the Authority of Malaŵi, must visit the other Contracting State to be convinced that the licensing system in the other Contracting State is in conformity with the Regulations. A report describing the bases for the decision shall be made to the Authority of Malaŵi. The report, and the regulatory comparison noted in paragraph 2 of IS 2:17 shall serve the basis for a government-to-government agreement between the involved States regarding use or reliance of the licensing system: an Air Law test must be arranged if the air law system of Malaŵi is different from the air law system from the other Contracting State. Other areas that may require knowledge testing are meteorology, operational procedures and radiotelephony if those areas are different between Malaŵi and the other Contracting State.
4. Renewal and re-issue of converted licences and ratings—
   (1) When examiners are available in Malaŵi to perform proficiency checks for the renewal of rating(s) or skill tests for the re-issue of the licence or rating(s), these tests/checks will be performed by the authorized examiners of Malaŵi.
   (2) When examiners are not available in Malaŵi to perform proficiency checks for the renewal of the rating(s) or skill test for the re-issue of the licence or rating(s), the availability of examiners for these tests/checks from the other Contracting State can be arranged in the agreement mentioned in regulation 18 (1) (*c*).
5. Application for the conversion of a licence from another Contracting State shall be done by submitting to the Authority a properly filled out form, which form can be obtained from the Authority.

6. The conversion of medical certificates, and/or reliance on medical examinations conducted in the other State, may also be addressed in the government-to-government agreement between the States.

IS 2:22 PROCEDURES FOR VALIDATION OF AMT LICENCES BY RELIANCE UPON THE LICENSING SYSTEM OF ANOTHER CONTRACTING STATE

1. The Authority should, before making the agreement mentioned in regulation 22 (1) (*c*) be convinced, that the other Contracting State issues licences in conformity with this Regulation by conducting a regulatory comparison of the licensing systems and requirements.
2. An inspector, legal counsel and/or licensing subject matter experts from Malaŵi, or from another Contracting State delegated by the Authority of Malaŵi, must visit the other Contracting State to be convinced that the licensing system in the other Contracting State is in conformity with this Regulation. A report describing the bases for the decision shall be made to the Authority of Malaŵi. The report, and the regulatory comparison noted in paragraph 2 of IS 2:17 shall serve the basis for a government-to-government agreement between the involved States regarding use or reliance of the licensing system.
3. An Air Law test must be arranged if the Air Law system of Malaŵi is different from the Air Law system from the other Contracting State. The knowledge test may also include Malaŵi airworthiness requirements governing certification and continuing airworthiness, and approved maintenance organizations and procedures if those regulations are different from the Contracting State.
4. Application for the validation certificate shall be done by submitting to the Authority a properly filled out form, which form can be obtained from the Authority.

IS 2:23 PROCEDURES FOR CONVERSION OF AMT LICENCES BY RELIANCE UPON THE LICENSING SYSTEM OF ANOTHER CONTRACTING STATE

1. The Authority that issues a converted licence based on a licence from another Contracting State remains responsible for the converted licence.
2. The Authority should, before making the agreement mentioned in regulation 23 (1) (*c*) be convinced, that the other Contracting State issues licences in conformity with this Regulation by conducting a regulatory comparison of the licensing systems and requirements.
3. An inspector, legal counsel and/or licensing subject matter experts from Malaŵi, or from another Contracting State delegated by the Authority of Malaŵi, must visit the other Contracting State to be convinced that the licensing system in the other Contracting

State is in conformity with this Regulation. A report describing the bases for the decision shall be made to the Authority of Malaŵi. The report, and the regulatory comparison noted in paragraph 2 of IS 2:17 shall serve the basis for a government-to-government agreement between the involved States regarding use or reliance of the licensing system. An Air Law test must be arranged if the Air Law system of Malaŵi is different from the Air Law system from the other Contracting State. The knowledge test may also include Malaŵi airworthiness requirements governing certification and continuing airworthiness, and approved maintenance organizations and procedures if those regulations are different from the Contracting State.

4. Renewal and re-issue of converted licences and ratings—

(1) When examiners are available in Malaŵi to perform proficiency checks for the renewal of rating(s) or skill tests for the re-issue of the licence or rating(s), these tests/checks will be performed by the authorized examiners of Malaŵi.

(2) When examiners are not available in Malaŵi to perform proficiency checks for the renewal of the rating(s) or skill test for the re-issue of the licence or rating(s), the availability of examiners for these tests/checks from the other Contracting State can be arranged in the agreement mentioned in regulation 18 (1) (*c*).

5. Application for the conversion of a licence from another Contracting State shall be done by submitting to the Authority a properly filled out form, which form can be obtained from the Authority.

IS 2:33 Specifications and Format of the Licence

1. The following details shall appear on the licence and the numbering scheme shall be in Roman numerals—

(1) name of Malaŵi (in bold type);

(2) title of licence (in very bold type);

(3) serial number of the licence, in Arabic numerals, given by the authority issuing the licence;

(4) name of holder in full;

(5) date of birth;

(6) address of holder;

(7) nationality of holder;

(8) signature of holder;

(9) authority and, where necessary, conditions under which the licence is issued;

(10) certification concerning validity and authorization for holder to exercise privileges appropriate to the licence;

(11) signature of officer issuing the licence and the date of such issue;

(12) seal or stamp of authority issuing the licence;

(13) ratings, (e.g. Category, class, type of aircraft, airframe, aerodrome control, etc.);

(14) remarks, (i.e. special endorsements relating to limitations and endorsements for privileges, including from 5 March 2008 an endorsement of language proficiency, and other information required in pursuance to Article 39 of the Chicago Convention);

(15) any other details desired by the State issuing the licence.

2. The privileges and ratings shall be clearly identified on the licence in paragraphs (IX) and (XII).

IS 2:43 Recording of Flight Time

1. The details in the records of flights flown as pilot shall contain the items in (2) and (3) below.

2. For the purpose of meeting the requirements of regulation 43 each person shall enter the following information for each flight or lesson logged—

(1) personal details—

(*a*) name of the holder; and

(*b*) address of the holder.

(2) for each flight—

(*a*) name of PIC;

(*b*) date of flight;

(*c*) place and time of departure and arrival; and

(*d*) type of aircraft and registration.

(3) for each session in a flight simulation training device—

(*a*) type and qualification number of flight simulation training device;

(*b*) flight simulation training device instruction;

(*c*) date; and

(*d*) total time of session.

(4) pilot function—

(*a*) solo;

(*b*) PIC;

(*c*) co-pilot;

(*d*) dual; and

(*e*) flight instructor.

3. Logging of flight time—

(1) Logging of solo flight time—A student pilot may log as solo flight time only that flight time when the pilot is the sole occupant of the aircraft.

(2) Logging of PIC flight time—

(*a*) the applicant or the holder of a pilot licence may log as PIC time all that flight time during which that person is—

(i) the sole manipulator of the controls of an aircraft for which the pilot is rated; and

(iii) acting as PIC of an aircraft on which more than one pilot is required under the type certification of the aircraft or the regulations under which the flight is conducted.

(*b*) an authorized instructor may log as PIC time all of the flight time while acting as an authorized instructor.

(*c*) a student pilot may log as PIC time all solo flight time and flight time as student pilot-in-command provided that such tune is countersigned by the instructor.

(3) Logging of co-pilot time—A person may log co-pilot time only when occupying a pilot seat as co-pilot in an aircraft on which more than one pilot is required under the type certification of the aircraft or the regulations under which the flight is conducted.

(4) Logging of instrument flight time: A person may log instrument flight time only for that flight when the person operates the aircraft solely by reference to instruments under actual or simulated instrument flight conditions.

(5) Instruction time—

(*a*) a person may log instruction time when that person receives training from an authorized instructor in an aircraft or flight simulation training device;

(*b*) the instruction time shall be logged in a record (e.g. logbook) and shall be endorsed by the authorized instructor.

IS 2:48 CATEGORY II AND III AUTHORIZATION

1. The Authority will issue a Category II or Category III pilot authorization by letter, as a part of an applicant's instrument rating or airline transport pilot certificate;

2. Upon original issue the authorization will contain the following limitations—

   (1) For Category II operations, 1,600 feet RVR and a 150-foot decision height; and

   (2) For Category III operations, as specified in the authorization document.

3. To remove the limitations on a Category II or Category III pilot authorization—

   (1) A Category II limitation holder may remove the limitation by showing that, since the beginning of the sixth preceding month, the holder has made three Category II ILS approaches with a 150-foot decision height to a landing under actual or simulated instrument conditions; or

   (2) A Category III limitation holder may remove the limitation by showing experience as specified in the authorization.

4. An authorization holder or an applicant for an authorization may use a flight simulator or flight training device if it is approved by the Authority for such use, to meet the experience requirement of paragraph (*e*) of this subsection, or for the practical test required by the Regulations for a Category II or a Category III pilot authorization, as applicable.

5. Category II: skill test requirements—

   (1) An applicant for the following authorizations shall pass a skill test—

      (*a*) issuance or renewal of a Category II pilot authorization.

      (*b*) the addition of another type aircraft to a Category II pilot authorization.

   (2) To be eligible for the skill test for an authorization under this subsection, an applicant shall—

      (*a*) meet the requirements of regulation 24; and

      (*b*) if the applicant has not passed a skill test for this authorization during the 12-calendar months preceding the month of the test—

      (*c*) meet the requirements of regulation 33; and

      (*d*) have performed at least six ILS approaches during the 6 calendar months preceding the month of the

test, of which at least three of the approaches shall have been conducted without the use of an approach coupler.

(3) An applicant shall accomplish the approaches specified in paragraph 5 (2) (*b*) of this subsection—

(*a*) under actual or simulated instrument flight conditions;

(*b*) to the minimum decision height for the ILS approach in the type aircraft in which the practical test is to be conducted, except that the approaches need not be conducted to the decision height authorized for Category II operations;

(*c*) to the decision height authorized for Category II operations only if conducted in an approved flight simulator or an approved flight training device; and

(*d*) in an aircraft of the same category and class, and type, as applicable, as the aircraft in which the practical test is to be conducted or in an approved flight simulator that—

(i) represents an aircraft of the same category and class, and type, as applicable, as the aircraft in which the authorization is sought; and

(ii) is used in accordance with an approved course conducted by an ATO certified under the Aviation (Approved Training Organization) Regulations.

(4) The flight time acquired in meeting the requirements of paragraph 5 (2) (*b*) of this subsection may be used to meet the requirements of paragraph 5 (2) (*b*) of this subsection.

6. Category II: skill test procedures. The skill test consists of an oral increment and a flight increment—

(1) Oral increment: In the oral increment of the practical test an applicant shall demonstrate knowledge of the following—

(*a*) required landing distance;

(*b*) recognition of the decision height;

(*c*) missed approach procedures and techniques using computed or fixed attitude guidance displays;

(*d*) use and limitations of RVR;

(*e*) use of visual clues, their availability or limitations, and altitude at which they are normally discernible at reduced RVR readings;

(*f*) procedures and techniques related to transition from nonvisual to visual flight during a final approach under reduced RVR;

(*g*) effects of vertical and horizontal windshear;

(*h*) characteristics and limitations of the ILS and runway lighting system;

(*i*) characteristics and limitations of the flight director system, auto approach coupler (including split axis type if equipped), auto throttle system (if equipped), and other required Category II equipment;

(*j*) assigned duties of the SIC during Category II approaches, unless the aircraft for which authorization is sought does not require an SIC; and

(*k*) instrument and equipment failure warning systems.

(2) Flight increment: The following requirements apply to the flight increment of the practical test—

(*a*) the flight increment shall be conducted in an aircraft of the same category, class, and type, as applicable, as the aircraft in which the authorization is sought or in an approved flight simulator that—

(i) represents an aircraft of the same category and class, and type, as applicable, as the aircraft in which the authorization is sought; and

(ii) is used in accordance with an approved course conducted by an ATO certified under the Aviation (Approved Training Organization), Regulations.

(*b*) the flight increment shall consist of at least two ILS approaches to 100 feet AGL including at least one landing and one missed approach;

(*c*) all approaches performed during the flight increment shall be made with the use of an approved flight control guidance system, except if an approved auto approach coupler is installed, at least one approach shall be hand flown using flight director commands;

(*d*) if a multiengine aeroplane with the performance capability to execute a missed approach with one engine inoperative is used for the practical test, the flight increment shall include the performance of one missed approach with an engine, which shall be the most critical engine, if applicable, set at idle or zero thrust before reaching the middle marker;

(*e*) if an approved multiengine flight simulator or approved multiengine flight training device is used for the practical test, the applicant shall execute a missed approach with the most critical engine, if applicable, failed;

(*f*) for an authorization for an aircraft that requires a type rating, the applicant shall pass a practical test in coordination with a SIC who holds a type rating in the aircraft in which the authorization is sought;

(*g*) an inspector or evaluator may conduct oral questioning at any time during a practical test.

7. Category III: skill test requirements—

(1) The Authority will require that an applicant pass a skill test for—

(*a*) issuance or renewal of a Category III pilot authorization;

(*b*) the addition of another type of aircraft to a Category III pilot authorization.

(2) To be eligible for the skill test an applicant shall—

(*a*) meet the requirements of regulation 9; and

(*b*) if the applicant has not passed a practical test for this authorization during the 12-calendar months preceding the month of the test—

(i) meet the requirements of regulation 33; regulation 224 and regulation 236 of the Aviation (Operations) Regulations; and

(ii) have performed at least six ILS approaches during the 6 calendar months preceding the month of the test, of which at least three of the approaches shall have been conducted without the use of an approach coupler.

(3) An applicant shall conduct the approaches specified in paragraph (2) (*b*) (ii) of this subsection—

(*a*) under actual or simulated instrument flight conditions;

(*b*) to the alert height or decision height for the ILS approach in the type aircraft in which the practical test is to be conducted;

(*c*) not necessarily to the decision height authorized for Category III operations;

(*d*) to the alert height or decision height, as applicable, authorized for Category III operations only if conducted in an approved flight simulator or approved flight training device; and

(*e*) in an aircraft of the same category and class, and type, as applicable, as the aircraft in which the practical test is to be conducted or in an approved flight simulator that—

(i) represents an aircraft of the same category and class, and type, as applicable, as the aircraft for which the authorization is sought; and

(ii) is used in accordance with an approved course conducted by an ATO certified under chapter 3, Part III.

(4) Knowledge requirements: An applicant shall demonstrate knowledge of the following—

(*a*) required landing distance;

(*b*) determination and recognition of the alert height or decision height, as applicable, including use of a radar altimeter;

(*c*) recognition of and proper reaction to significant failures encountered prior to and after reaching the alert height or decision height, as applicable;

(*d*) missed approach procedures and techniques using computed or fixed attitude guidance displays and expected height loss as they relate to manual go around or automatic go around, and initiation altitude, as applicable;

(*e*) use and limitations of RVR, including determination of controlling 7 RVR and required transmissometers;

(*f*) use, availability, or limitations of visual cues and the altitude at which they are normally discernible at reduced RVR readings including—

(i) unexpected deterioration of conditions to less than minimum RVR during approach, flare, and rollout;

(ii) demonstration of expected visual references with weather at minimum conditions;

(iii) the expected sequence of visual cues during an approach in which visibility is at or above landing minima; and

(iv) procedures and techniques for making a transition from instrument reference flight to visual flight during a final approach under reduced RVR.

(*g*) effects of vertical and horizontal windshear;

(*h*) characteristics and limitations of the ILS and runway lighting system;

(*i*) characteristics and limitations of the flight director system auto approach coupler (including split axis type if equipped), auto throttle system (if equipped), and other Category III equipment;

(*j*) assigned duties of the SIC during Category III operations, unless the aircraft for which authorization is sought does not require a SIC;

(*k*) recognition of the limits of acceptable aircraft position and flight path tracking during approach, flare, and, if applicable, rollout;

(*l*) recognition of, and reaction to, airborne or ground system faults or abnormalities, particularly after passing alert height or decision height, as applicable;

(5) Flight skill requirements—

(*a*) an applicant may conduct the practical test in an aircraft of the same category and class, and type, as applicable, as the aircraft for which the authorization is sought, or in an approved flight simulator that—

(i) represents an aircraft of the same category and class, and type, as applicable, as the aircraft in which the authorization is sought; and

(ii) is used in accordance with an approved course conducted by an ATO certified under the Aviation (Approved Training Organization) Regulations.

(*b*) the practical test shall consist of at least two ILS approaches to 100 feet AGL, including one landing and one missed approach initiated from a very low altitude that may result in a touchdown during the go around manoeuvre;

(*c*) the applicant shall perform all approaches during the practical test with the approved automatic landing system or an equivalent landing system approved by the Authority;

(*d*) if a multiengine aircraft with the performance capability to execute a missed approach with one engine inoperative is used for the practical test, the practical test shall include the performance of one missed approach with the most critical engine, if applicable, set at idle or zero thrust before reaching the middle or outer marker;

(*e*) if an approved multiengine flight simulator or approved multiengine flight training device is used, the applicant shall execute a missed approach with an engine, which shall be the most critical engine, if applicable, failed;

(*f*) for an authorization for an aircraft that requires a type rating, the applicant shall pass a practical test in coordination with a SIC who holds a type rating in the aircraft in which the authorization is sought; and

(*g*) subject to the limitations of this paragraph, for Category III operations predicated on the use of a fail passive rollout control system, the applicant shall execute at least one manual rollout using visual reference or a combination of visual and instrument references. The applicant shall initiate this manoeuvre by a fail passive disconnect of the rollout control system—

(i) after main gear touchdown;

(ii) prior to nose gear touchdown;

(iii) in conditions representative of the most adverse lateral touchdown displacement allowing a safe landing on the runway; and

(iv) in weather conditions anticipated in Category IIIb operations;

(*h*) An inspector or evaluator may conduct oral questioning at any time during the practical test.

IS 2:53 Student Pilots

A student pilot who is receiving training for solo flight shall receive and log flight training for the following manoeuvres and procedures, as applicable for each category and class rating as specified in the applicable subsection to this IS.

Note: When (SE) is indicated, the item is only for single engine aircraft. When (ME) is indicated, the item is only for multi-engine aircraft.

IS 2:54 STUDENT PILOTS: MANOUVRES AND PROCEDURES FOR PRE-SOLO FLIGHT TRAINING—AEROPLANE CATEGORY

A student pilot who is receiving training for solo flight in an aeroplane shall receive and log flight training for the following manoeuvres and procedures—

(1) Proper flight preparation procedures, including preflight planning and preparation, power-plant operation and aircraft systems.

(2) Taxiing, or surface operations, including runups.

(3) Take-offs and landings, including normal and crosswind.

(4) Straight and level flight and turns in both directions.

(5) Climbs and climbing turns.

(6) Aerodrome traffic patterns including entry and departure procedures.

(7) Collision avoidance, windshear avoidance and wake turbulence avoidance.

(8) Descents, with and without turns, using high and low drag configurations.

(9) Flight at various airspeeds from cruise to slow flight.

(10) Stall entries from various flight attitudes and power combinations with recovery initiated at the first indication of a stall and recovery from a full stall.

(11) Emergency procedures and equipment malfunctions.

(12) Ground reference manoeuvres.

(13) Approaches to a landing area with simulated engine malfunctions.

(14) Slips to a landing (SE only).

(15) Go-arounds.

IS 2:55 STUDENT PILOTS: MANOEUVRES AND PROCEDURES FOR PRE-SOLO FLIGHT TRAINING—HELICOPTER CATEGORY

A student pilot who is receiving training for solo flight in a helicopter shall receive and log flight training for the following manoeuvres and procedures—

(1) Proper flight preparation procedures, including preflight planning and preparation, power plant operation and aircraft systems.

(2) Taxiing, or surface operations, including runups.

(3) Take-offs and landings, including normal and crosswind.

(4) Straight and level flight and turns in both directions.

(5) Climbs and climbing turns.

(6) Aerodrome traffic patterns including entry and departure procedures.

(7) Collision avoidance, windshear avoidance and wake turbulence avoidance.

(8) Descents, with and without turns, using high and low drag configurations.

(9) Flight at various airspeeds.

(10) Emergency procedures and equipment malfunctions.

(11) Ground reference manoeuvres.

(12) Approaches to the landing area.

(13) Hovering and hovering turns.

(14) Go-arounds.

(15) Simulated emergency procedures, including autorotational descents with a power recovery and power recovery to hover.

(16) Rapid declarations.

(17) Simulated one-engine-inoperative approaches and landings for multi-engine helicopters (ME).

IS 2:56 STUDENT PILOTS: MANOEUVRES AND PROCEDURES FOR PRE-SOLO FLIGHT TRAINING—POWERED-LIFT CATEGORY

A student pilot who is receiving training for solo flight in a powered-lift shall receive and log flight training for the following manoeuvres and procedures—

(1) Proper flight preparation procedures, including preflight planning and preparation, power-plant operation and aircraft systems.

(2) Taxiing, or surface operations, including runups.

(3) Take-offs and landings, including normal and crosswind.

(4) Straight and level flight and turns in both directions.

(5) Climbs and climbing turns.

(6) Aerodrome traffic patterns including entry and departure procedures.

(7) Collision avoidance, windshear avoidance and wake turbulence avoidance.

(8) Descents, with and without turn.

(9) Flight at various airspeeds from cruise to slow flight.

(10) Stall entries from various flight attitudes and power combinations with recovery initiated at the first indication of a stall, and recovery from a full stall.

(11) Emergency procedures and equipment malfunctions.

(12) Ground reference manoeuvres.

(13) Approaches to a landing area with simulated engine failure.

(14) Go-arounds.

(15) Approaches to the landing area.

(16) Hovering and hovering turns.

(17) Simulated one-engine-inoperative approaches and landings for multi- engine powered-lift (ME).

IS 2:57 STUDENT PILOTS: MANOEUVRES AND PROCEDURES FOR PRE-SOLO FLIGHT TRAINING—AIRSHIP CATEGORY

A student pilot who is receiving training for solo flight in an airship shall receive and log flight training for the following manoeuvres and procedures—

(1) Proper flight preparation procedures, including preflight planning and preparation, power-plant operation and aircraft systems.

(2) Taxiing, or surface operations, including runups.

(3) Take-offs and landings, including normal and crosswind.

(4) Straight and level flight and turns in both directions.

(5) Climbs and climbing turns.

(6) Aerodrome traffic patterns including entry and departure procedures.

(7) Collision avoidance, windshear avoidance and wake turbulence avoidance.

(8) Descents, with and without turn.

(9) Flight at various airspeeds from cruise to slow flight.

(10) Emergency procedures and equipment malfunctions.

(11) Ground reference manoeuvres.

(12) Rigging, ballasting, and controlling pressure in the ballonets, and superheating.

(13) Landings with positive and with negative static trim.

IS 2:58 STUDENT PILOTS: MANOEUVRES AND PROCEDURES FOR PRE-SOLO FLIGHT TRAINING—BALLOON CATEGORY

A student pilot who is receiving training for solo flight in a balloon shall receive and log flight training for the following manoeuvres and procedures—

(1) Layout and assembly procedures.

(2) Proper flight preparation procedures, including preflight planning and preparation, and aircraft systems.

(3) Ascents and descents.

(4) Landing and recovery procedures.

(5) Emergency procedures and equipment malfunctions.

(6) Operation of hot air or gas source, ballast, valves, vents, and rip panels as appropriate.

(7) Use of deflation valves or rip panels for simulating an emergency.

(8) The effects of wind on climb and approach angles.

(9) Obstruction detection and avoidance techniques.

IS 2:59 STUDENT PILOTS: MANOEUVRES AND PROCEDURES FOR PRE-SOLO FLIGHT TRAINING—GLIDER CATEGORY

A student pilot who is receiving training for solo flight in a glider shall receive and log flight training for the following manoeuvres and procedures—

(1) Proper flight preparation procedures, including preflight planning and preparation, aircraft systems, and is applicable, power-plant operations.

(2) Taxiing or surface operations, including runups, if applicable.

(3) Launches, including normal and crosswind.

(4) Straight and level flight, and turns in both directions, if applicable.

(5) Aerodrome traffic patterns, including entry procedures.

(6) Collision avoidance, windshear avoidance, and wake turbulence avoidance.

(7) Descents with and without turns using high and low drag configurations.

(8) Flight at various airspeeds.

(9) Emergency procedures and equipment malfunctions.

(10) Ground reference manoeuvres.

(11) Inspection of towline rigging and review of signals and release procedures, if applicable.

(12) Aerotow, ground tow, or self-launch procedures.

(13) Procedures for disassembly and assembly of the glider.

(14) Stall entry, stall, and stall recovery

(15) Straight glides, turns, and spirals.

(16) Landings, including normal and crosswind.

(17) Slips to a landing.

(18) Procedures and techniques for thermalling.

(19) Emergency operations, including towline break procedures.

IS 2:60 Private Pilot Licence

IS 2:61 PPL Skill Test—Aeroplane Category

The skill test for the single-engine and multi-engine private pilot licence–aeroplane shall include at least the following areas of operation with CRM competencies applied and evident in all tasks—

Note 1: When (SE) is indicated, the item or paragraph is only for single-engine, when (ME) is indicated the Item or paragraph is only for multi-engine. When nothing is indicated, the item or paragraph is for single-engine and multi-engine.

Note 2: When (S) is indicated, the item is only for seaplanes, when (*L*) is indicated, the item is only for landplanes. When nothing is indicated, the item is for land and seaplanes.

1. Preflight preparation; including the applicant's knowledge and performance of the following tasks—

(1) Licences and documents.

(2) Airworthiness requirements.

(3) Weather information.

(4) Cross-country flight planning.

(5) National airspace system.

(6) Performance and limitations.

(7) Operation of system.

(8) Principles of flight.

(9) Water and Seaplane Characteristics (S).

(10) Seaplane bases, maritime rules and aids to marine navigation (S).

(11) Aeromedical factors.

2. Preflight procedures; including the applicant's knowledge and performance of the following tasks—
   (1) Preflight inspection.
   (2) Cockpit management.
   (3) Engine Starting.
   (4) Taxiing (L).
   (5) Taxiing and Sailing (S).
   (6) Before take-off check.
3. Aerodrome and seaplane operations; including the applicant's knowledge and performance of the following tasks—
   (1) Radio communications and ATC light signals;
   (2) Traffic patterns;
   (3) Aerodrome/Seaplane Base, runway and taxiway signs, markings and lighting.
4. Take-offs, landings and go-arounds; including the applicant's knowledge and performance of the following tasks—
   (1) Normal and crosswind take-off and climb.
   (2) Normal and crosswind approach and landing.
   (3) Soft-field take-off and climb (SE) (L).
   (4) Soft-field approach and landing (SE) (L).
   (5) Short-field (Confined area (S)) take-off and maximum performance climb.
   (6) Short-field approach (Confined area (S)) and landing.
   (7) Glassy water take-off and climb (S).
   (8) Glassy water approach and landing (S).
   (9) Rough water take-off and climb (S).
   (10) Rough water approach and landing (S).
   (11) Forward slip to a landing (SE).
   (12) Go-around /rejected landing.
5. Performance manoeuvre; including the applicant's knowledge and performance of the following tasks—steep turns.
6. Ground reference manoeuvres; including the applicant's knowledge and performance of the following tasks—
   (1) Rectangular course;
   (2) S-turns;
   (3) Turns around a point.

7. Navigation; including the applicant's knowledge and performance of the following tasks—
   (1) Pilotage and dead reckoning.
   (2) Navigation systems and radar services.
   (3) Diversion.
   (4) Lost procedures.
8. Slow flight and stalls; including the applicant knowledge and performance of the following tasks—
   (1) Manoeuvring during slow flight.
   (2) Power-off stalls.
   (3) Power-on stalls.
   (4) Spin awareness.
9. Basic instrument manoeuvres; including the applicant's knowledge and performance of the following tasks—
   (1) Straight-and-level flight.
   (2) Constant airspeed climbs.
   (3) Constant airspeed descents.
   (4) Turns to headings.
   (5) Recovery from unusual flight.
   (6) Radio Communications, navigation systems/facilities and radar services; including the applicant's knowledge and performance of the following tasks—
10. Emergency operations; including the applicant's knowledge and performance of the following tasks—
   (1) Emergency approach and landing.
   (2) Emergency descent (ME).
   (3) Engine failure during take-off before minimum controllable airspeed (VMC) (simulated) (ME).
   (4) Engine failure after lift-off (simulated) (ME).
   (5) Approach and landing with an inoperative engine (simulated) (ME).
   (6) Systems and equipment malfunctions.
   (7) Emergency equipment and survival gear.
11. Multi-engine operations (ME); including the applicant's knowledge and performance of the following tasks—
   (1) Manoeuvring with one engine inoperative.
   (2) VMC demonstration.
   (3) Engine failure during flight (by reference to instruments).
   (4) Instrument approach–one engine inoperative (by reference to instruments).

12. Night operation; including the applicant's knowledge and performance of the following tasks—night preparation.
13. Post-flight procedures; including the applicant's knowledge and performance of the following tasks—
    (1) After landing, parking and securing.
    (2) Anchoring (S).
    (3) Docking and mooring (S).
    (4) Ramping/beaching (S).

IS 2:62 PPL Skill Test—Helicopter Category

The skill test for the private pilot licence–helicopter shall include at least the following areas of operation with CRM competencies applied and evident in all tasks—

1. Preflight preparation; including the applicant's knowledge and performance of the following tasks—
    (1) Licences and documents.
    (2) Weather information.
    (3) Cross-country flight planning.
    (4) National airspace system.
    (5) Performance and limitations.
    (6) Operation of system.
    (7) Minimum equipment list.
    (8) Aeromedical factors.
2. Preflight procedures; including the applicant's knowledge and performance of the following tasks—
    (1) Preflight inspection.
    (2) Cockpit management.
    (3) Engine Starting and rotor engagement.
    (4) Before take-off check.
3. Aerodrome and heliport operations; including the applicant's knowledge and performance of the following tasks—
    (1) Radio communications and ATC light signals.
    (2) Traffic patterns.
    (3) Aerodrome and heliport markings and lighting.
4. Hovering manoeuvres; including the applicant's knowledge and performance of the following tasks—
    (1) Vertical take-off and landing.
    (2) Slope operations.

(3) Surface taxi.

(4) Hover taxi.

(5) Air taxi.

5. Take-offs, landings and go-arounds; including the applicant's knowledge and performance of the following tasks.

6. Normal and crosswind take-off and climb.

7. Normal and crosswind approach.

8. Maximum performance take-off and climb—

(1) Steep approach.

(2) Rolling take-off.

(3) Shallow approach and running/roll-on landing.

(4) Go-around.

9. Performance manoeuvre; including the applicant's knowledge and performance of the following tasks—

(1) Rapid deceleration.

(2) Straight in autorotation.

10. Navigation; including the applicant's knowledge and performance of the following tasks—

(1) Pilotage and dead reckoning.

(2) Radio navigation and radar services.

(3) Diversion.

(4) Lost procedures.

11. Emergency operations; including the applicant's knowledge and performance of the following tasks—

(1) Power failure at a hover.

(2) Power failure at altitude.

(3) Systems and equipment malfunctions.

(4) Settling-with-power.

(5) Low rotor RPM recovery.

(6) Dynamic rollover.

(7) Ground resonance.

(8) Low G conditions.

(9) Emergency equipment and survival gear.

12. Night operation; including the applicant's knowledge and performance of the following tasks—

(1) Physiological aspects of night flying.

(2) Lighting and equipment for night flying.

13. Post-flight procedures; including the applicant's knowledge and performance of the following tasks—after landing and securing.

IS 2:63 PPL Skill Test—Powered-Lift Category

Reserved.

IS 2:64 PPL Skill Test—Airship Category

The skill test for the private pilot licence—airship category shall include at least the following areas of operation with CRM competencies applied and evident in all tasks—

1. Preflight preparation, including the applicant's knowledge and performance of the following tasks—
   (1) Certificates and documents.
   (2) Weather information.
   (3) Cross-country flight planning.
   (4) National airspace system.
   (5) Performance and limitations.
   (6) Operation of systems.
   (7) Aeromedical factors.
2. Preflight procedures, including the applicant's knowledge and performance of the following tasks—
   (1) Preflight inspection.
   (2) Cockpit management.
   (3) Engine starting.
   (4) Unmasting and positioning for take-off.
   (5) Ground handling.
   (6) Before take-off check.
3. Aerodrome operations, including the applicant's knowledge and performance of the following tasks—
   (1) Radio communications and ATC light signals.
   (2) Traffic patterns.
   (3) Airport and runway markings and lighting.
4. Take-offs, landings and go-arounds, including the applicant's knowledge and performance of the following tasks—
   (1) Ground weigh-off.
   (2) Up-ship take-off.
   (3) Wheel take-off.

(4) Approach and landing.

(5) Go-around.

5. Performance manoeuvres, including the applicant's knowledge and performance of the following tasks—

(1) Straight-and-level flight.

(2) Ascents and descents.

(3) Level turns.

(4) In-flight weigh-off.

(5) Manual pressure control.

(6) Static and dynamic trim.

6. Ground reference manoeuvres, including the applicant's knowledge and performance of the following tasks—

(1) Rectangular course.

(2) Turns around a point.

7. Navigation, including the applicant's knowledge and performance of the following tasks—

8. Pilotage and dead-reckoning.

(1) Navigation systems and radar services.

(2) Diversion.

(3) Lost procedures.

9. Emergency operations, including the applicant's knowledge and performance of the following tasks—

(1) Engine fire during flight.

(2) Envelope emergencies.

(3) Free ballooning.

(4) Ditching and emergency landing.

(5) Systems and equipment malfunctions.

10. Post-flight procedures, including the applicant's knowledge and performance of the following tasks—

(1) Masting.

(2) Post-masting.

IS 2:65 PPL Skill Test—Balloon Category

The skill test for the private pilot licence—balloon category shall include at least the following areas of operation with CRM competencies applied and evident in all tasks—

1. Preflight preparation, including the applicant's knowledge and performance of the following tasks—

(1) Certificates and documents.

(2) Weather information.

(3) Flight planning.

(4) National airspace system.

(5) Performance and limitations.

(6) Operation of systems.

(7) Aeromedical factors.

2. Preflight procedures, including the applicant's knowledge and performance of the following tasks—

(1) Launch site selection.

(2) Crew briefing and preparation.

(3) Layout and assembly.

(4) Preflight inspection.

(5) Inflation.

(6) Basket/gondola management.

(7) Pre-launch check.

3. Aerodrome operations, including the applicant's knowledge and performance of the following tasks—radio communications and ATC light signals.

4. Launches and landing, including the applicant's knowledge and performance of the following tasks—

(1) Normal launch.

(2) Launch over obstacle.

(3) Approach to landing.

(4) Normal landing.

(5) High-wind landing.

5. Performance manoeuvres, including the applicant's knowledge and performance of the following tasks—

(1) Ascents.

(2) Altitude control (level flight).

(3) Descents, to include recognition of, and recovery from, rapid descents.

(4) Contour flying.

(5) Obstacle clearance.

(6) Tethering.

(7) Winter flying.

(8) Collision and avoidance precautions.

(9) Mountain flying.

6. Navigation, including the applicant's knowledge and performance of the following tasks of navigation, to include cross country flying and dead reckoning, etc.

7. Emergency operations, including the applicant's knowledge and performance of the following tasks—

(1) Systems and equipment malfunctions.

(2) Emergency equipment and survival gear.

(3) Water landing.

(4) Thermal flight.

8. Post-flight procedures, including the applicant's knowledge and performance of the following tasks—

(1) Recovery.

(2) Deflation and packing.

(3) Refuelling.

FAA Practical Test Standard: FAA-S-8081-17

IS 2:66 PPL Skill Test—Glider Category

The skill test for the private pilot licence—glider category shall include at least the following areas of operation with CRM competencies applied and evident in all tasks—

(1) Preflight preparation, including the applicant's knowledge and performance of the following tasks—

(*a*) licences and documents;

(*b*) weather information;

(*c*) operation of systems;

(*d*) performance and limitations;

(*e*) aeromedical factors.

(2) Preflight procedures, including the applicant's knowledge and performance of the following tasks—

(*a*) assembly;

(*b*) ground handling;

(*c*) preflight inspection;

(*d*) cockpit management;

(*e*) visual signals.

(3) Aerodrome and gliderport operations, including the applicant's knowledge and performance of the following tasks—

(*a*) radio communications;

(*b*) traffic patterns;

(*c*) aerodrome, runway, and taxiway signs, markings, and lighting.

(4) Launches—aero tow, including the applicant's knowledge and performance of the following tasks—

(*a*) before take-off checks;

(*b*) normal and crosswind take-off;

(*c*) maintaining tow positions;

(*d*) slack line;

(*e*) boxing the wake;

(*f*) tow release; and

(*g*) abnormal occurrences.

(5) Launches—ground tow, including the applicant's knowledge and performance of the following tasks—

(*a*) before take-off check;

(*b*) normal and crosswind take-off;

(*c*) abnormal occurrences.

(6) Launches—self-launch, including the applicant's knowledge and performance of the following tasks—

(*a*) engine starting.

(*b*) taxiing.

(*c*) before take-off check.

(*d*) normal and crosswind take-off and climb.

(*e*) engine shutdown in flight.

(*f*) abnormal occurrences.

(7) Landings, including the applicant's knowledge and performance of the following tasks—

(*a*) normal and crosswind landing;

(*b*) slips to landing;

(*c*) downwind landing.

(8) Performance airspeeds, including the applicant's knowledge and performance of the following tasks—

(*a*) minimum sink airspeed;

(*b*) speed-to-fly.

(9) Soaring techniques, including the applicant's knowledge and performance of the following tasks—

(*a*) thermal soaring;

(*b*) ridge and slope soaring;

(*c*) wave soaring.

(10) Performance manoeuvres, including the applicant's knowledge and performance of the following tasks—

(*a*) straight glides;

(*b*) turns to headings; and

(*c*) steep turns.

(11) Navigation, including the applicant's knowledge and performance of the following tasks—

(*a*) flight preparation and planning; and

(*b*) national airspace system.

(12) Slow flight and stalls, including the applicant's knowledge and performance of the following tasks—

(*a*) manoeuvring at minimum control airspeed; and

(*b*) stall recognition and recovery.

(13) Emergency operations, including the applicant's knowledge and performance of the following tasks—

(*a*) simulated off-airport landing; and

(*b*) emergency equipment and survival gear.

(14) Post-flight procedures, including the applicant's knowledge and performance of the following tasks of after-landing and securing.

IS 2:68 CPL Skill Test—Aeroplane Category

The skill test for the single-engine and multi-engine commercial pilot licence-aeroplane shall include at least the following areas of operation with CRM competencies applied and evident in all tasks—

Note 1: When (SE) is indicated, the item or paragraph is only for single-engine; when (ME) is indicated, the item or paragraph is only for multi-engine. When nothing is indicated, the item or paragraph is for single-engine and multi-engine.

Note 2: When (S) is indicated, the item is only for seaplanes, when (L) is indicated, the item is only for landplanes. When nothing is indicated, the item is for land and seaplanes.

(1) Preflight preparation; including the applicant's knowledge and performance of the following tasks—

(*a*) licences and documents;

(*b*) airworthiness requirements;

(*c*) weather information;

(*d*) cross-country flight planning;

(*e*) national airspace system;

(*f*) performance and limitations;

(*g*) operation of system;

(*h*) principles of flight (ME);

(*i*) water and seaplane characteristics (S);

(*j*) seaplane bases, maritime rules and aids to marine navigation (S);

(*k*) aeromedical factors.

(2) Preflight procedures; including the applicant's knowledge and performance of the following tasks—

(*a*) preflight inspection;

(*b*) cockpit management;

(*c*) engine starting;

(*d*) taxiing (L);

(*e*) taxiing and sailing (S); and

(*f*) before take-off check.

(3) Aerodrome and seaplane base operations; including the applicant's knowledge and performance of the following tasks—

(*a*) radio communications and ATC light signals;

(*b*) traffic patterns; and

(*c*) aerodrome/seaplane base, runway and taxiway signs, markings and lighting.

(4) Take-offs, landings and go-arounds; including the applicant's knowledge and performance of the following tasks—

(*a*) normal and crosswind take-off and climb;

(*b*) normal and crosswind approach and landing;

(*c*) soft-field take-off and climb (SE);

(*d*) soft-field approach and landing (SE);

(*e*) short-field (Confined area (S)) take-off and maximum performance climb;

(*f*) short-field (Confined area (S)) approach and landing;

(*g*) glassy water take-off and climb (S);

(*h*) glassy water approach and landing (S);

(*i*) rough water take-off and climb (S);

(*j*) rough water approach and landing (S);

(*k*) power-off 180 degrees accuracy approach and landing (SE);

(*l*) go-around /rejected landing.

(5) Performance manoeuvres; including the applicant's knowledge and performance of the following tasks—

(*a*) steep turns;

(*b*) steep spiral (SE);

(*c*) chandelles (SE); and

(*d*) lazy eights (SE).

(6) Ground reference manoeuvres; including the applicant's knowledge and performance of the tasks of eights on pylons (SE).

(7) Navigation; including the applicant's knowledge and performance of the following tasks—

(*a*) pilotage and dead reckoning;

(*b*) navigation systems and radar services;

(*c*) diversion; and

(*d*) lost procedures.

(8) Slow flight and stalls; including the applicant's knowledge and performance of the following tasks—

(*a*) manoeuvring during slow flight;

(*b*) power-off stalls;

(*c*) power-on stalls; and

(*d*) spin awareness.

(9) Emergency operations, including the applicant's knowledge and performance of the following tasks—

(*a*) emergency approach and landing;

(*b*) emergency descent (ME);

(*c*) engine failure during take-off before VMC (simulated) (ME);

(*d*) engine failure after lift-off (simulated) (ME);

(*e*) approach and landing with an inoperative engine (simulated) (ME);

(*f*) systems and equipment malfunctions; and

(*g*) emergency equipment and survival gear.

(10) High altitude operations; including the applicant's knowledge and performance of the following tasks—

(*a*) supplemental oxygen; and

(*b*) pressurization.

(11) Multi-engine operations (ME); including the applicant's knowledge and performance of the following tasks—

(*a*) manoeuvring with one engine inoperative;

(*b*) VMC demonstration;

(*c*) engine failure during flight (by reference to instruments);

(*d*) instrument approach—one engine inoperative (by reference to instruments).

(12) Post-flight procedures; including the applicant's knowledge and performance of the following tasks—

(*a*) after landing, parking and securing;

(*b*) anchoring (S);

(*c*) docking and mooring (S); and

(*d*) ramping/beaching (S).

IS 2:69 CPL Skill Test—Helicopter Category

The skill test for the commercial pilot licence—helicopter shall include at least the following areas of operation with CRM competencies applied and evident in all tasks—

(1) Preflight preparation; including the applicant's knowledge and performance of the following tasks—

(*a*) licences and documents;

(*b*) weather information;

(*c*) cross-country flight planning;

(*d*) national airspace system;

(*e*) performance and limitations;

(*f*) operation of system;

(*g*) minimum equipment list;

(*h*) aeromedical factors;

(*i*) physiological aspects of night flying; and

(*j*) lighting and equipment for night flying.

(2) Preflight procedures; including the applicant's knowledge and performance of the following tasks—

(*a*) preflight inspection;

(*b*) cockpit management;

(*c*) engine starting and rotor engagement; and

(*d*) before take-off check.

(3) Aerodrome and heliport operations; including the applicant's knowledge and performance of the following tasks—

(*a*) radio communications and ATC light signals;

(*b*) traffic patterns; and

(*c*) aerodrome and heliport markings and lighting.

(4) Hovering manoeuvres; including the applicant's knowledge and performance of the following tasks—

(*a*) vertical take-off and landing;

(*b*) slope operations;

(*c*) surface taxi;

(*d*) hover taxi; and

(*e*) air taxi.

(5) Take-offs, landings and go-arounds; including the applicant's knowledge and performance of the following tasks—

(*a*) normal and crosswind take-off and climb;

(*b*) normal and crosswind approach and landing;

(*c*) maximum performance take-off and climb;

(*d*) steep approach;

(*e*) rolling take-off;

(*f*) shallow approach and running/roll-on landing; and

(*g*) go-around.

(6) Performance manoeuvre; including the applicant's knowledge and performance of the following tasks—

(*a*) rapid deceleration; and

(*b*) 180 degrees autorotation.

(7) Navigation; including the applicant's knowledge and performance of the following tasks—

(*a*) pilotage and dead reckoning;

(*b*) radio navigation and radar services;

(*c*) diversion; and

(*d*) lost procedures.

(8) Emergency operations; including the applicant's knowledge and performance of the following tasks—

(*a*) power failure at a hover;

(*b*) power failure at altitude;

(*c*) systems and equipment malfunctions;

(*d*) settling-with-power;

(*e*) low rotor RPM recovery;

(*f*) dynamic rollover;

(*g*) ground resonance;

(*h*) low G conditions; and

(*i*) emergency equipment and survival gear.

(9) Special operations; including the applicant's knowledge and performance of the following tasks—

(*a*) confined area operation; and

(*b*) pinnacle/platform operations.

(10) Post-flight procedures; including the applicant's knowledge and performance of the tasks after landing, parking and securing.

IS 2:70 CPL Skill Test—Power-Lift Category

Reserved.

IS 2:71 CPL Skill Test—Airship Category

The skill test for the commercial pilot licence—airship shall include at least the following areas of operation with CRM competencies applied and evident in all tasks—

(1) Technical subjects, including the applicant's knowledge and performance of the following tasks—

(*a*) aeromedical factors.

(*b*) visual scanning and collision avoidance.

(*c*) use of distractions during flight training.

(*d*) principles of flight.

(*e*) airship weight-off, ballast, and trim.

(*f*) night operations.

(*g*) regulations and publications.

(*h*) national airspace system.

(*i*) logbook entries and licence endorsement.

(2) Preflight preparation, including the applicant's knowledge and performance of the following tasks—

(*a*) licences and documents;

(*b*) weather information;

(*c*) cross-country flight planning;

(*d*) performance and limitations; and

(*e*) operations of systems.

(3) Preflight lesson on a manoeuvre to be performed in flight, including the applicant's knowledge and performance of the tasks of manoeuvre lesson.

(4) Preflight procedures, including the applicant's knowledge and performance of the following tasks—

(*a*) preflight inspection;

(*b*) cockpit management;

(*c*) engine starting;

(*d*) unmasting and positioning for take-off;

(*e*) ground handling; and

(*f*) before take-off check.

(5) Aerodrome operations, including the applicant's knowledge and performance of the following tasks—

(*a*) radio communications;

(*b*) traffic pattern operations; and

(*c*) aerodrome, runway, and taxiway markings and lighting.

(6) Performance manoeuvres, including the applicant's knowledge and performance of the following tasks—

(*a*) flight to, from, and at pressure height;

(*b*) in-flight weigh-off;

(*c*) manual pressure control;

(*d*) static and dynamic trim.

(7) Navigation, including the applicant's knowledge and performance of the following tasks—

(*a*) pilotage and dead reckoning;

(*b*) diversion;

(*c*) lost procedures;

(*d*) navigation systems and air traffic control radar services.

(8) Emergency operations, including the applicant's knowledge and performance of the following tasks—

(*a*) aborted take-off;

(*b*) engine failure during take-off;

(*c*) engine failure during flight;

(*d*) engine fire during flight;

(*e*) envelope emergencies;

(*f*) free ballooning;

(*g*) ditching and emergency landing; and

(*h*) systems and equipment malfunctions.

(9) Post-flight procedures, including the applicant's knowledge and performance of the following tasks—

(*a*) masting;

(*b*) post-masting.

IS 2:72 CPL Skill Test—Balloon Category

The skill test for the commercial pilot licence—balloon shall include at least the following areas of operation with CRM competencies applied and evident in all tasks—

Note: When (BH) is indicated, the item is for hot air balloons only. When (BG) is indicated, the item is for gas balloons.

(1) Technical subjects, including the applicant's knowledge and performance of the following tasks—

(*a*) aeromedical factors;

(*b*) visual scanning and collision avoidance;

(*c*) principles of flight;

(*d*) regulations and publications;

(*e*) national airspace system;

(*f*) logbook entries and licence endorsement.

(2) Preflight preparation, including the applicant's knowledge and performance of the following tasks—

(*a*) licences and documents;

(*b*) weather information;

(*c*) flight planning;

(*d*) performance and limitations;

(*e*) operations of systems.

(3) Preflight lesson on a manoeuvre to be performed in flight, including the applicant's knowledge and performance of the task of manoeuvre lesson.

(4) Preflight procedures, including the applicant's knowledge and performance of the following tasks—

(*a*) launch site selection;

(*b*) crew briefing and preparation;

(*c*) layout and assembly;

(*d*) preflight inspection;

(*e*) inflation;

(*f*) basket/gondola management; and

(*g*) pre-launch check.

(5) Aerodrome operations, including the applicant's knowledge and performance of the following task of radio communications.

(6) Launches and landings, including the applicant's knowledge and performance of the following tasks—

(*a*) normal launch;

(*b*) launch over obstacle;

(*c*) approach to landing;

(*d*) steep approach to landing;

(*e*) normal landing;

(*f*) high-wind landing.

(7) Performance manoeuvres, including the applicant's knowledge and performance of the following tasks—

(*a*) ascents;

(*b*) altitude control (level flight);

(*c*) descents;

(*d*) rapid ascent and descent;

(*e*) contour flying (BH);

(*f*) high altitude flight (BG);

(*g*) obstacle avoidance (BH);

(*h*) tethering (BH);

(*i*) winter flying; and

(*j*) mountain flying.

(8) Navigation, including the applicant's knowledge and performance of the tasks of navigation.

(9) Emergency operations, including the applicant's knowledge and performance of the following tasks—

(*a*) systems and equipment malfunctions;

(*b*) emergency equipment and survival gear;

(*c*) water landing;

(*d*) thermal flight.

(10) Post-flight procedures, including the applicant's knowledge and performance of the following tasks—

(*a*) recovery;

(*b*) deflation and pack-up;

(*c*) refueling (BH).

IS 2:73 CPL Skill Test—Glider Category

The skill test for the commercial pilot licence—glider category shall include at least the following areas of operation with CRM competencies applied and evident in all tasks—

(1) Preflight preparation, including the applicant's knowledge and performance of the following tasks—

(*a*) licences and documents;

(*b*) weather information;

(*c*) operation of systems;

(*d*) performance and limitations; and

(*e*) aeromedical factors.

(2) Preflight procedures, including the applicant's knowledge and performance of the following tasks—

(*a*) assembly;

(*b*) ground handling;

(*c*) preflight inspection;

(*d*) cockpit management; and

(*e*) visual signals.

(3) Aerodrome and gliderport operations, including the applicant's knowledge and performance of the following tasks—

(*a*) radio communications;

(*b*) traffic patterns;

(*c*) aerodrome, runway, and taxiway signs, markings, and lighting.

(4) Launches– aero tow, including the applicant's knowledge and performance of the following tasks—

(*a*) before take-off checks;

(*b*) normal and crosswind take-off;

(*c*) maintaining tow positions;

(*d*) slack line;

(*e*) boxing the wake;

(*f*) tow release; and

(*g*) abnormal occurrences.

(5) Launches—ground tow, including the applicant's knowledge and performance of the following tasks—

(*a*) before take-off check;

(*b*) normal and crosswind take-off; and

(*c*) abnormal occurrences.

(6) Launches—self-launch, including the applicant's knowledge and performance of the following tasks—

(*a*) engine starting;

(*b*) taxiing;

(*c*) before take-off check;

(*d*) normal and crosswind take-off and climb;

(*e*) engine shutdown in flight; and

(*f*) abnormal occurrences.

(7) Landings, including the applicant's knowledge and performance of the following tasks—

(*a*) normal and crosswind landing;

(*b*) slips to landing; and

(*c*) downwind landing.

(8) Performance airspeeds, including the applicant's knowledge and performance of the following tasks—

(*a*) minimum sink airspeed; and

(*b*) speed-to-fly.

(9) Soaring techniques, including the applicant's knowledge and performance of the following tasks—

(*a*) thermal soaring;

(*b*) ridge and slope soaring; and

(*c*) wave soaring.

(10) Performance manoeuvres, including the applicant's knowledge and performance of the following tasks—

(*a*) straight glides;

(*b*) turns to headings;

(*c*) steep turns.

(11) Navigation, including the applicant's knowledge and performance of the following tasks—

(*a*) flight preparation and planning.

(*b*) national airspace system.

(12) Slow flight and stalls, including the applicant's knowledge and performance of the following tasks—

(*a*) manoeuvring at minimum control airspeed;

(*b*) stall recognition and recovery.

(13) Emergency operations, including the applicant's knowledge and performance of the following tasks—

(*a*) simulated off-aerodrome landing;

(*b*) emergency equipment and survival gear.

(14) Post-flight procedures, including the applicant's knowledge and performance of the task of after-landing and securing.

IS 2:75 Multi-Crew Pilot Licence Skill Test—Aeroplane Category

The skill test for the multicrew pilot licence shall determine that the applicant, as pilot flying and pilot not flying, possesses the required skills in the following competency areas to perform as a co-pilot of turbine-powered aeroplanes certificated for operation with at least two pilots under VFR and IFR—

(1) Apply threat and error management principles.

(2) Perform aeroplane ground operations.

(3) Perform take-off.

(4) Perform climb.

(5) Perform cruise.

(6) Perform descent.

(7) Perform approach.

(8) Perform landing; and perform after-landing and aeroplane post-flight operations.

IS 2:77 ATPL AND AIRCRAFT TYPE RATING SKILL TEST—AEROPLANE CATEGORY

The skill test for the airline transport pilot licence—aeroplanes shall include at least the following areas of operation with CRM competencies applied and evident in all tasks—

(1) Preflight preparation; including the applicant's knowledge and performance of the following tasks—

(*a*) equipment examination; and

(*b*) performance and limitations.

(2) Preflight procedures; including the applicant's knowledge and performance of the following tasks—

(*a*) preflight inspection;

(*b*) power-plant start;

(*c*) taxiing; and

(*d*) before take-off checks.

(3) Take-offs and departure phase; including the applicant's knowledge and performance of the following tasks—

(*a*) normal take-offs with different flap settings, including expedited take-off;

(*b*) instrument take-off;

(*c*) power-plant failure during take-off;

(*d*) rejected take-off; and

(*e*) departure procedures.

(4) In-flight manoeuvres; including the applicant's knowledge and performance of the following tasks—

(*a*) steep turns;

(*b*) approach to stalls;

(*c*) power-plant failure;

(*d*) specific flight characteristics; and

(*e*) recovery from unusual altitudes.

(5) Instrument procedures; including the applicant's knowledge and performance of the following tasks—

(*a*) standard terminal arrival/flight management system procedures;

(*b*) holding procedures;

(*c*) precision instrument approaches;

(*d*) non-precision instrument approaches;

(*e*) circling approach; and

(*f*) missed approach.

(6) Landings and approaches to landings; including the applicant's knowledge and performance of the following tasks—

(*a*) normal and crosswind approaches and landings;

(*b*) landing from a precision approach;

(*c*) approach and landing with (simulated) power-plant failure;

(*d*) landing from a circling approach;

(*e*) rejected landing;

(*f*) landing from a no-flap or a non-standard flap approach;

(*g*) normal and abnormal procedures; and

(*h*) emergency procedures.

(7) Post-flight procedures; including the applicant's knowledge and performance of the following tasks—

(*a*) after landing procedures; and

(*b*) parking and securing.

IS 2:78 ATPL and Aircraft Type Rating Skill Test—Helicopter Category

The skill test for the airline transport pilot licence for helicopters shall include at least the following areas of operation with CRM competencies applied and evident in all tasks—

(1) Preflight preparations and checks; including the applicant's knowledge and performance of the following tasks—

(*a*) equipment examination; and

(*b*) performance and limitations.

(2) Preflight procedures; including the applicant's knowledge and performance of the following tasks—

(*a*) preflight inspection;

(*b*) power-plant start;

(*c*) taxiing; and

(*d*) pre-take-off checks.

(3) Take-off and departure phase; including the applicant's knowledge and performance of the following tasks—

(*a*) Normal and crosswind take-off;

(*b*) Instrument take-off;

(*c*) Powerplant failure during take-off;

(*d*) Rejected take-off; and

(*e*) Instrument departure.

(4) In-flight manoeuvres; including the applicant's knowledge and performance of the following tasks—

(*a*) steep turns;

(*b*) power-plant failure-multi-engine helicopter;

(*c*) power-plant failure-single-engine helicopter;

(*d*) recovery from unusual altitudes; and

(*e*) settling with power.

(5) Instrument procedures; including the applicant's knowledge and performance of the following tasks—

(*a*) instrument arrival;

(*b*) holding;

(*c*) precision instrument approaches;

(*d*) non-precision instrument approaches; and

(*e*) missed approach.

(6) Landings and approaches to landings; including the applicant's knowledge and performance of the following tasks—

(*a*) normal and crosswind approaches and landings;

(*b*) approach and landing with simulated power-plant failure-multiengine helicopter; and

(*c*) rejected landing.

(7) Normal and abnormal procedures; including the applicant's knowledge and performance of the tasks;

(8) Emergency procedures; including the applicant's knowledge and performance;

(9) Postflight procedures; including the applicant's knowledge and performance of the following tasks—

(*a*) after landing procedures; and

(*b*) parking and securing.

IS 2:79 ATPL AND AIRCRAFT TYPE RATING SKILL TEST—POWERED-LIFT CATEGORY

Reserved.

IS 2:81 INSTRUMENT RATING SKILL TEST AND PROFICIENCY CHECK

The skill test and proficiency check for the instrument rating shall include at least the following areas of operation with CRM

competencies applied and evident in all tasks appropriate to the category of aircraft—

NOTE: When (SE) is indicated, the item or paragraph is only for single-engine, when (ME) is indicated the item or paragraphs is only for multi-engine. When nothing is indicated, the item or paragraph is for single-engine and multi-engine.

(1) Preflight preparation; including the applicant's knowledge and performance of the following tasks—

(*a*) weather information; and

(*b*) cross-country flight planning.

(2) Preflight procedures; including the applicant's knowledge and performance of the following tasks—

(*a*) aircraft systems related to IFR operations;

(*b*) aircraft flight instruments and navigation equipment; and

(*c*) instrument cockpit check.

(3) Air traffic control clearances and procedures; including the applicant's knowledge and performance of the following tasks—

(*a*) air traffic control clearances;

(*b*) compliance with departure, en route and arrival procedures and clearances;

(*c*) holding procedures.

(4) Flight by reference to instruments; including the applicant's knowledge and performance of the following tasks—

(*a*) straight-and-level flight;

(*b*) change of airspeed;

(*c*) constant airspeed climbs and descents;

(*d*) rate climbs and descents;

(*e*) timed turns to magnetic compass headings;

(*f*) steep turns; and

(*g*) recovery from unusual flight attitudes.

(5) Navigation systems; including the applicant's knowledge and performance of the following tasks—

(*a*) intercepting and tracking navigational systems and DME Arcs.

(*b*) instrument approach procedures; including the applicant's knowledge and performance of the following tasks—

(i) non-precision instrument approach;

(ii) precision ILS instrument approach;

(iii) missed approach;

(iv) circling approach; and

(v) landing from a straight-in or circling approach.

(6) emergency operations; including the applicant's knowledge and performance of the following tasks—

(*a*) loss of communications;

(*b*) one engine inoperative during straight-and-level flight and turns (ME) (iii) One engine inoperative–instrument approach (ME);

(*c*) loss of gyro attitude and/or heading indicators.

(7) post-flight procedures; including the applicant's knowledge and performance of the following tasks—Checking instruments and equipment.

IS 2:83 Flight Instructor Skill Test and Proficiency Check

1. Aeroplane Category. The skill test and proficiency check for the flight instructor rating–aeroplane shall include at least the following areas of operation with CRM competencies applied and evident in all tasks appropriate to the category and class of aircraft—

Note 1: When (SE) is indicated the item or paragraph is only for single-engine, when (ME) is indicated the item or paragraphs is only for multi-engine. When nothing is indicated, the item or paragraph is for single-engine and multi-engine.

Note 2: When (S) is indicated, the item is only for seaplanes, when (L) is indicated, the item is only for landplanes. When nothing is indicated, the item is for land and seaplanes.

(1) Fundamentals of instruction; including the applicant's knowledge and performance of the following tasks—

(*a*) the learning process;

(*b*) the teaching process;

(*c*) teaching methods;

(*d*) evaluation;

(*e*) flight instructor characteristics and responsibilities;

(*g*) human factors; and

(*h*) planning instructional activity.

(2) Technical subject areas; including the applicant's knowledge and performance of the following tasks—

(*a*) aeromedical factors;

(*b*) visual scanning and collision avoidance;

(*c*) principles of flight;

(*d*) aeroplane flight controls;

(*e*) aeroplane weight and balance;

(*f*) navigation and flight planning;

(*g*) night operations;

(*h*) high altitude operations;

(*i*) regulations and publications;

(*j*) use of minimum equipment list;

(*k*) national airspace system;

(*l*) navigation aids and radar services;

(*m*) logbook entries and licence endorsements;

(*n*) water and seaplane characteristics (S); and

(*p*) seaplane bases, rules and aids to marine navigation (S).

(3) Preflight preparation; including the applicant's knowledge and performance of the following tasks—

(*a*) licences and documents;

(*b*) weather information;

(*c*) operation of systems (SE);

(*d*) performance and limitations (SE); and

(*e*) airworthiness requirements.

(4) Preflight lesson on a manoeuvre to be performed in flight; including the applicant's knowledge and performance of the following task—manoeuvre lesson;

(5) Preflight procedures; including the applicant's knowledge and performance of the following tasks—

(*a*) preflight inspection;

(*b*) cockpit management;

(*c*) engine starting;

(*d*) taxiing (L);

(*e*) taxiing (S);

(*f*) sailing (S); and

(*g*) before take-off check.

(6) Aerodrome and seaplane base operations; including the applicant's knowledge and performance of the following tasks—

(*a*) radio communications and ATC light signals;

(*b*) traffic patterns; and

(*c*) aerodrome and runway markings and lighting.

(7) take-offs, landings and go-arounds; including the applicant's knowledge and performance of the following tasks—

(*a*) normal and crosswind take-off and climb;

(*b*) short field (Confined area (S)) take-off and maximum performance climb;

(*c*) soft field take-off and climb (SE);

(*d*) glossy water take-off and climb (*S*);

(*e*) rough water take-off and climb (*S*);

(*f*) normal and crosswind approach and landing;

(*g*) slip to a landing (SE);

(*h*) go-around/rejected landing;

(*i*) short field (Confined area (*S*)) approach and landing;

(*j*) soft field approach and landing (SEL);

(*k*) power-off 180 degrees accuracy approach and landing (SEL);

(*l*) glassy water approach and landing (*S*); and

(*m*) rough water approach and landing (S).

(8) Fundamentals of flight; including the applicant's knowledge and performance of the following tasks—

(*a*) straight-and-level flight;

(*b*) level turns;

(*c*) straight climbs and climbing turns; and

(*d*) straight descents and descending turns.

(9) Performance manoeuvres; including the applicant's knowledge and performance of the following tasks—

(*a*) steep turns;

(*b*) steep spirals (SE);

(*c*) chandelles (SE);

(*d*) lazy eights (SE).

(10) Ground reference manoeuvres; including the applicant's knowledge and performance of the following tasks—

(*a*) rectangular course;

(*b*) S-turns across a road;

(*c*) turns around a point; and

(*d*) eights on pylons (SE).

(11) Slow flight, stalls and spins; including the applicant's knowledge and performance of the following tasks—

(*a*) manoeuvring during slow flight;

(*b*) power-on stalls (proficiency);

(*c*) power-off stalls (proficiency);

(*d*) crossed-control stalls (demonstration) (SE);

(*e*) elevator trim stalls (demonstration) (SE);

(*f*) secondary stalls (demonstration) (SE); and

(*g*) spins (SEL).

(12) Basic instrument manoeuvres; including the applicant's knowledge and performance of the following tasks—

(*a*) straight-and-level flight;

(*b*) constant airspeed climbs;

(*c*) constant airspeed descents;

(*d*) turns to headings; and

(*e*) recovery from unusual flight attitudes.

(13) emergency operations (SE); including the applicant's knowledge and performance of the following tasks—

(*a*) emergency approach and landing (simulated);

(*b*) systems and equipment malfunctions; and

(*c*) emergency equipment and survival gear.

(14) emergency operations (ME); including the applicant's knowledge and performance of the following tasks—

(*a*) systems and equipment malfunctions;

(*b*) engine failure during take-off before VMC;

(*c*) engine failure after lift-off;

(*d*) approach and landing with an inoperative engine;

(*e*) emergency descent; and

(*f*) emergency equipment and survival gear.

(15) Multi-engine operations (ME); including the applicant's knowledge and performance of the following tasks—

(*a*) operation of systems;

(*b*) performance and limitations;

(*c*) flight principles—engine inoperative;

(*d*) manoeuvring with one engine inoperative;

(*e*) VMC demonstration; and

(*f*) demonstrating the effects of various airspeeds and configurations during engine inoperative performance.

(16) Post-flight procedures; including the applicant's knowledge and performance of the following tasks—

(*a*) post-flight procedures;

(*b*) anchoring (S);

(*c*) docking and mooring (S);

(*d*) beaching (S); and

(*e*) ramping (S).

2. Helicopter Category. The skill test and proficiency check for the flight instructor rating—helicopter shall include at least the following areas of operation with CRM competencies applied and evident in all tasks appropriate to the category, and if applicable, class or type, of aircraft—

(1) Fundamentals of instruction; including the applicant's knowledge and performance of the following tasks—

(*a*) the learning process;

(*b*) the teaching process;

(*c*) teaching methods;

(*d*) evaluation;

(*e*) flight instructor characteristics and responsibilities;

(*f*) human factors; and

(*g*) planning instructional activity.

(2) Technical subject areas; including the applicant's knowledge and performance of the following tasks—

(*a*) aeromedical factors;

(*b*) visual scanning and collision avoidance;

(*c*) use of distractions during flight training;

(*d*) principles of flight;

(*e*) helicopter flight controls;

(*f*) helicopter weight and balance;

(*g*) navigation and flight planning;

(*h*) night operations;

(*i*) regulations and publications;

(*j*) use of minimum equipment list;

(*k*) national airspace system; and

(*l*) logbook entries and licence endorsements.

(3) Preflight preparation including the applicant's knowledge and performance of the following tasks—

(*a*) licences and documents;

(*b*) weather information;

(*c*) operation of systems;

(*d*) performance and limitations; and

(*e*) airworthiness requirements.

(4) Preflight lesson on a manoeuvre to be performed in flight, including the applicant's knowledge and performance of the task of manoeuvre lesson.

(5) Preflight procedures, including the applicant's knowledge and performance of the following tasks—

(*a*) preflight inspection;

(*b*) cockpit management;

(*c*) engine starting and rotor engagement; and

(*d*) before take-off check.

(6) Aerodrome operations and Heliport operations; including the applicant's knowledge and performance of the following tasks—

(*a*) radio communications and ATC light signals;

(*b*) traffic patterns;

(*c*) aerodrome and Heliport Markings and lighting.

(7) Hovering Manoeuvres; including the applicant's knowledge and performance of the following tasks—

(*a*) vertical take-off and landing;

(*b*) surface taxi;

(*c*) hover taxi;

(*d*) air taxi; and

(*e*) slope operation.

(8) Take-offs, landings and go-arounds, including the applicant's knowledge and performance of the following tasks—

(*a*) normal and crosswind take-off and climb;

(*b*) maximum performance take-off and climb;

(*c*) rolling take-off;

(*d*) normal and crosswind approach;

(*e*) steep approach;

(*f*) shallow approach and running/roll-on landing; and

(*g*) go-around.

(9) Fundamentals of flight; including the applicant's knowledge and performance of the following tasks—

(*a*) straight-and-level flight;

(*b*) level turns;

(*c*) straight climbs and climbing turns; and

(*d*) straight descents and descending turns.

(10) Performance manoeuvres; including the applicant's knowledge and performance of the following tasks—

(*a*) rapid deceleration;

(*b*) straight-in autorotation; and

(*c*) 180 degrees autorotation.

(11) Emergency operations; including the applicant's knowledge and performance of the following tasks—

(*a*) power failure at a hover;

(*b*) power failure at altitude;

(*c*) settling-with-power;

(*d*) low rotor RPM recovery;

(*e*) antitorque system failure;

(*f*) dynamic rollover;

(*g*) ground resonance;

(*h*) low "G" conditions;

(*i*) systems and equipment malfunctions; and

(*j*) emergency equipment and survival gear.

(12) Special operations; including the applicant's knowledge and performance of the following tasks—

(*a*) confined area operation; and

(*b*) pinnacle/platform operation.

(13) Post-flight procedures; including the applicant's knowledge and performance of the tasks of after-landing and securing.

3. Powered-lift Category—

Reserved.

4. Airship Category. The skill test and proficiency check for the flight instructor rating—airship shall include at least the following areas

of operation with CRM competencies applied and evident in all tasks appropriate to the category of aircraft—

(1) Fundamentals of instruction; including the applicant's knowledge and performance of the following tasks—

(*a*) the learning process;

(*b*) the teaching process;

(*c*) teaching methods;

(*d*) evaluation;

(*e*) flight instructor characteristics and responsibilities;

(*f*) human factors; and

(*g*) planning instructional activity.

(2) Technical subject areas; including the applicant's knowledge and performance of the following tasks—

(*a*) aeromedical factors;

(*b*) visual scanning and collision avoidance;

(*c*) use of distractions during flight training;

(*d*) principles of flight;

(*e*) airship weight-off, ballast, and trim;

(*f*) night operations;

(*g*) regulations and publications;

(*h*) national airspace system; and

(*i*) logbook entries and licence endorsement.

(3) Preflight preparation, including the applicant's knowledge and performance of the following tasks—

(*a*) licences and documents;

(*b*) weather information;

(*c*) cross-country flight planning;

(*d*) performance and limitations; and

(*e*) operations of systems.

(4) Preflight lesson on a manoeuvre to be performed in flight, including the applicant's and performance of the following tasks of manoeuvre lesson.

(5) Preflight procedures, including the applicant's knowledge and performance of the following tasks—

(*a*) preflight inspection;

(*b*) cockpit management;

(*c*) engine starting;

(*d*) unmasting and positioning for take-off;

(*e*) ground handling; and

(*f*) before take-off check.

(6) Aerodrome operations, including the applicant's knowledge and performance of the following tasks—

(*a*) radio communications;

(*b*) traffic pattern operations; and

(*c*) aerodrome, runway and taxiway markings and lighting.

(7) Performance manoeuvres, including the applicant's knowledge and performance of the following tasks—

(*a*) flight to, from, and at pressure height;

(*b*) in-flight weigh-off;

(*c*) manual pressure control; and

(*d*) static and dynamic trim.

(8) Navigation, including the applicant's knowledge and performance of the following tasks—

(*a*) pilotage and dead reckoning;

(*b*) diversion;

(*c*) lost procedures; and

(*d*) navigation systems and air traffic control radar services.

(9) Basic instrument manoeuvres, including the applicant's knowledge and performance of the following tasks—

(*a*) straight-and level flight;

(*b*) constant airspeed climbs;

(*c*) constant airspeed descents;

(*d*) turns to headings; and

(*e*) recovery from unusual flight attitudes.

(10) Emergency operations, including the applicant's knowledge and performance of the following tasks—

(*a*) aborted take-off;

(*b*) engine failure during take-off;

(*c*) engine failure during flight;

(*d*) engine fire during flight;

(*e*) envelope emergencies;

(*f*) free ballooning;

(*g*) ditching and emergency landing;

(*h*) systems and equipment malfunctions.

(11) Post-flight procedures, including the applicant's knowledge and performance of the following tasks—

(*a*) masting; and

(*b*) post-masting.

5. Balloon Category. The skill test and proficiency check for the flight instructor licence with balloon instructor rating shall include at least the following areas of operation with CRM competencies applied and evident in all tasks appropriate to the category and class of aircraft—

NOTE: When (BH) is indicated, the item is for hot air balloons only. When (BG) is indicated, the item is for gas balloons.

(1) Fundamentals of instruction; including the applicant's knowledge and performance of the following tasks—

(*a*) the learning process;

(*b*) the teaching process;

(*c*) teaching methods;

(*d*) evaluation;

(*e*) flight instructor characteristics and responsibilities;

(*f*) human factors; and

(*g*) planning instructional activity.

(2) Technical subject areas; including the applicant's knowledge and performance of the following tasks—

(*a*) aeromedical factors;

(*b*) visual scanning and collision avoidance;

(*c*) use of distractions during flight training;

(*d*) principles of flight;

(*e*) regulations and publications;

(*f*) national airspace system; and

(*g*) logbook entries and licence endorsement.

(3) Preflight preparation, including the applicant's knowledge and performance of the following tasks—

(*a*) licences and documents;

(*b*) weather information;

(*c*) cross-country flight planning;

(*d*) performance and limitations; and

(*e*) operations of systems.

(4) Preflight lesson on a manoeuvre to be performed in flight, including the applicant's and performance of the task of manoeuvre lesson.

(5) Preflight procedures, including the applicant's knowledge and performance of the following tasks—

(*a*) launch site selection;

(*b*) crew briefing and preparation;

(*c*) layout and assembly;

(*d*) preflight inspection;

(*e*) inflation;

(*f*) basket/gondola management;

(*g*) pre-launch check.

(6) Aerodrome operations, including the applicant's knowledge and performance of the following tasks—Radio communications.

(7) Launches and landings, including the applicant's knowledge and performance of the following tasks—

(*a*) normal launch;

(*b*) launch over obstacle;

(*c*) approach to landing;

(*d*) steep approach to landing;

(*e*) normal landing; and

(*f*) high-wind landing.

(8) Performance manoeuvers, including the applicant's knowledge and performance of the following tasks—

(*a*) ascents;

(*b*) altitude control (level flight);

(*c*) descents;

(*d*) rapid ascent and descent;

(*e*) contour flying (BH);

(*f*) high altitude flight (BG);

(*g*) obstacle avoidance (BH);

(*h*) tethering (BH);

(*i*) winter flying;

(*j*) mountain flying; and

(*k*) navigation, including the applicant's knowledge and performance of the task of navigation.

(9) Emergency operations, including the applicant's knowledge and performance of the following tasks—

(*a*) systems and equipment malfunctions;

(*b*) emergency equipment and survival gear;

(*c*) water landing;

(*d*) thermal flight.

(10) Post-flight procedures, including the applicant's knowledge and performance of the following tasks—Recovery.

(11) Deflation and pack-up—refueling (BH).

6. Glider Category: The skill test and proficiency check for the flight instructor rating—glider shall include at least the following areas of operation with CRM competencies applied and evident in all tasks appropriate to the category of aircraft:

(1) Fundamentals of instruction; including the applicant's knowledge and performance of the following tasks—

(*a*) the learning process;

(*b*) the teaching process;

(*c*) teaching methods;

(*d*) evaluation;

(*e*) flight instructor characteristics and responsibilities;

(*f*) human factors; and

(*g*) planning instructional activity.

(2) Technical subject areas; including the applicant's knowledge and performance of the following tasks—

(*a*) aeromedical factors;

(*b*) visual scanning and collision avoidance;

(*c*) use of distractions during flight training;

(*d*) principles of flight;

(*e*) elevators, ailerons, and rudder;

(*f*) trim, lift and drag devices;

(*g*) glider weight and balance;

(*h*) navigation and flight planning;

(*i*) regulations and publications;

(*j*) national airspace system; and

(*k*) logbook entries and licence endorsements.

(3) Preflight preparation; including the applicant's knowledge and performance of the following tasks—

(*a*) licences and documents;

(*b*) weather information;

(*c*) operation of systems; and

(*d*) performance and limitations.

(4) Preflight lesson on a manoeuvre to be performed in flight; including the applicant's knowledge and performance of the task of manoeuvre lesson.

(5) Preflight procedures; including the applicant's knowledge and performance of the following tasks—

(*a*) assembly;

(*b*) ground handling;

(*c*) preflight inspection;

(*d*) cockpit management; and

(*e*) visual signals.

(6) Aerodrome operations and gliderport operations; including the applicant's knowledge and performance of the following tasks—

(*a*) radio communications;

(*b*) traffic patterns; and

(*c*) aerodrome, runway, and taxiway signs, markings and lighting.

(7) Launches—aero tow, including the applicant's knowledge and performance of the following tasks—

(*a*) before take-off checks;

(*b*) normal and crosswind take-off;

(*c*) maintaining tow positions;

(*d*) slack line;

(*e*) boxing the wake;

(*f*) tow release; and

(*g*) abnormal occurrences.

(8) Launches— ground tow (auto or winch), including the applicant's knowledge and performance of the following tasks—

(*a*) before take-off check;

(*b*) normal and crosswind take-off; and

(*c*) abnormal occurrences;

(9) Launches—self-launch, including the applicant's knowledge and performance of the following tasks—

(*a*) engine starting;

(*b*) taxiing;

(*c*) before take-off check;

(*d*) normal and crosswind take-off and climb;

(*e*) engine shutdown in flight; and

(*f*) abnormal occurrences.

(10) Landings, including the applicant's knowledge and performance of the following tasks—

(*a*) normal and cross wind landing;

(*b*) slips to landing; and

(*c*) downwind landing.

(11) Fundamentals of flight, including the applicant's knowledge and performance of the following tasks—

(*a*) straight glides; and

(*b*) turns to headings.

(12) Performance airspeeds, including the applicant's knowledge and performance of the following tasks—

(*a*) minimum sink airspeed; and

(*b*) speed-to-fly.

(13) Soaring techniques, including the applicant's knowledge and performance of the following tasks—

(*a*) thermal soaring;

(*b*) ridge and slope soaring; and

(*c*) wave soaring.

(14) Performance manoeuvres, including the applicant's knowledge and performance of the following tasks—

(*a*) steep turns; and

(*b*) recovery from a spiral dive.

(15) Slow flight and stalls, including the applicant's knowledge and performance of the following tasks—

(*a*) manoeuvring at minimum control airspeed;

(*b*) stall recognition and recovery; and

(*c*) spins.

(16) Emergency operations, including the applicant's knowledge and performance of the following tasks—

(*a*) simulated off-aerodrome landing; and

(*b*) emergency equipment and survival gear.

(17) Post-flight procedures, including the applicant's knowledge and performance of the task of after-landing and securing.

7. Flight Instructor for instrument Ratings (A, H, and PL). The skill test and proficiency for the flight instructor for instrument ratings—aeroplane, helicopter and powered-lift shall include at least the following areas of operation with CRM competencies applied and evident in all tasks appropriate to the category, and if applicable class, of aircraft—

NOTE 1: When (SE) is indicated, the item or paragraph is only for single-engine, when (ME) is indicated the item or paragraphs is only for multi-engine. When nothing is indicated, the item and paragraph are for single-engine and multi-engine.

NOTE 2: When (A) is indicated, the item or paragraph is only for Aeroplane. When (H) is indicated, the item or paragraph is only for Helicopter. When nothing is indicated, the item and the paragraph are for all categories.

(1) Fundamentals of instructing; including the applicant's knowledge and performance of the following tasks—

(*a*) the learning process;

(*b*) human behaviour and effective communication;

(*c*) the teaching process;

(*d*) teaching methods;

(*e*) critique and evaluation;

(*f*) flight instructor characteristics and responsibilities; and

(*g*) planning instructional activity.

(2) Technical subject areas; including the applicant's knowledge and performance of the following tasks—

(*a*) aircraft flight instruments and navigation equipment;

(*b*) aeromedical factors;

(*c*) regulations and publications related to IFR operations; and

(*d*) logbook entries related to instrument instruction.

(3) Preflight preparation; including the applicant's knowledge and performance of the following tasks—

(*a*) weather information;

(*b*) cross-country flight planning; and

(*c*) instrument cockpit check.

(4) Preflight lesson on a manoeuvre to be performed in flight; including the applicant's knowledge and performance of the task of Manoeuvre lesson.

(5) Air traffic control clearances and procedures; including the applicant's knowledge and performance of the following tasks—

(*a*) air traffic control clearances; and

(*b*) compliance with departure, en route and arrival procedures and clearances.

(6) Flight by reference to instruments; including the applicant's knowledge and performance of the following tasks—

(*a*) straight-and-level flight;

(*b*) turns;

(*c*) change of airspeed in straight-and-level and turning flight;

(*d*) constant airspeed climbs and descents;

(*e*) constant rate climbs and descents;

(*f*) timed turns to magnetic compass headings;

(*g*) steep turns; and

(*h*) recovery from unusual flight altitudes.

(7) Navigation systems; including the applicant's knowledge and performance of the following tasks—

(*a*) intercepting and tracking navigational systems and DME Arcs;

(*b*) holding procedures.

(8) Instrument approach procedures; including the applicant's knowledge and performance of the following tasks—

(*a*) non-precision instrument approach;

(*b*) precision instrument approach;

(*c*) missed approach;

(*d*) circling approach (A); and

(*e*) landing from a straight-in approach.

(9) Emergency operations; including the applicant's knowledge and performance of the following tasks—

(*a*) loss of communications;

(*b*) loss of gyro attitude and heading indicators;

(*c*) engine failure during straight-and-level flight and turns; and

(*d*) instrument approach—one engine inoperative.

(10) Post-flight procedures; including the applicant's knowledge and performance of the task of checking instruments and equipment.

8. Flight Instructor for Additional Type Ratings. The skill test and proficiency checks for instructors for additional type ratings—aeroplane and helicopter shall include at least the following areas of operation:

Technical subject areas—

(1) The content of the technical subject areas shall cover the areas as applicable to the aircraft class or type.

(2) Flight simulator; including the applicant's knowledge and performance of the following tasks—

(*a*) use of checklist, setting of radios/navigation aids;

(*b*) starting engines;

(*c*) take-off checks;

(*d*) instrument take-off, transition to instruments after lift off;

(*e*) engine failure during take-off between VI and V2 (Aeroplane);

(*f*) aborted take-off prior to reaching VI (A);

(*g*) high mach buffeting, specific flight characteristics (if necessary) (A);

(*h*) take-off with engine failure prior to TDP or DPATO or shortly after TDP or DPATO (Helicopter);

(*i*) steep turns;

(*j*) recovery from approach to stall/take-off, clean landing configuration (Aeroplane);

(*k*) instrument approach to required minimum decision height or minimum descent height/altitude, manual one engine simulated inoperative during approach and landing or go-around (Aeroplane);

(*l*) instrument approach to required minimum decision height or minimum descent height/altitude, autopilot one engine simulated inoperative during approach and landing or go-around (Helicopter);

(*m*) rejected landing and go-around, and

(*n*) crosswind landing.

NOTE: When (A) is indicated, the item or paragraph is only for Aeroplane. When (H) is indicated, the item or paragraph is only for Helicopter. When nothing is indicated, the item and the paragraph are for A and H.

(3) Category II and III operations, if applicable; including the applicant's knowledge and performance of the following tasks—

(*a*) precision approaches, automatic with auto-throttle and flight director go-around caused by aircraft or ground equipment deficiencies;

(*b*) go-around caused by weather conditions;

(*c*) go-around at DH caused by offset position from centreline;

(*d*) one of the CAT II/CAT III approaches must lead to a landing.

(4) Aircraft; including the applicants knowledge and performance of the following tasks—

(*a*) familiarization with controls during outside checks;

(*b*) use of checklist, setting of radios and navigation aids, starting engines;

(*c*) taxiing;

(*d*) take-off;

(*e*) engine failure during take-off short after V2, after reaching climb out attitude (Aeroplane);

(*f*) engine failure during take-off short after TDP or DPATO after reaching climb out attitude (Helicopter);

(*g*) other emergency procedures (if necessary);

(*h*) instrument approaches to required minimum decision height, manual one engine out during approach and landing or go-around;

(*i*) one engine simulated inoperative go-around from required minimum decision height; and

(*j*) one engine (critical) simulated inoperative landing.

IS 2:86 Skill Test for Designated Pilot Examiners

1. The skill test for initial designation of a pilot examiner, issuance of additional designations, and renewal of examiner designations shall contain both the appropriate oral questioning and aircraft or flight simulation training device performance in accordance with the applicable skill test for the aircraft category, and or class/type ratings as applicable.

2. Methods of skill testing. The Authority inspector will choose one of the following methods to test an examiner pilot applicant. The methods are listed in order of preference but scheduling difficulties may preclude use of the preferred method of testing.

   Authority inspector evaluates the pilot examiner applicant testing an actual pilot applicant for a licence or rating—

   (1) The Authority will arrange for the pilot examiner applicant to conduct a skill test for an actual pilot applicant for a licence or rating appropriate to the examiner designation sought, and the Authority inspector will observe the test from within the aircraft;

   (2) The Authority inspector will evaluate the pilot examiner applicant's performance while the pilot examiner applicant evaluates the pilot applicant;

   (3) Any discussion between the pilot examiner applicant and the Authority inspector concerning the pilot examiner applicant's performance with the pilot applicant will be held in private;

   (4) At the conclusion of the skill test for the actual pilot licence or rating—

      (*a*) if the applicant has passed the skill test, the pilot examiner applicant will fill out the appropriate documentation for the pilot applicant while the Authority inspector observes. The Authority inspector will sign any documentation needed.

      (*b*) if the pilot applicant does not pass the skill test, the Authority inspector will complete and sign the appropriate document needed.

3. Authority inspector playing the role of pilot applicant for a skill test—

   (1) The Authority inspector will play the role of a pilot applicant for a skill test appropriate to the type of designation the pilot examiner applicant is seeking.

   (2) If the Authority inspector answers a question incorrectly to test whether the pilot examiner applicant recognizes an incorrect answer, the incorrect response must be obviously wrong.

4. Authority inspector gives a flight skill test to the pilot examiner applicant—

(1) The Authority inspector will test the pilot examiner applicant on selected manoeuvres in order to assess the pilot examiner applicant's flight proficiency and ability to evaluate a pilot applicant in accordance with the appropriate skill test.

(2) The Authority inspector will evaluate the pilot examiner applicant's plan of action for completeness and efficiency.

IS 2:98 Flight Engineer: Skill Test and Proficiency Check

The skill test and proficiency check for the flight engineer licence shall include at least the following areas of operation with CRM competencies applied and evident in all tasks appropriate to the category of aircraft—

(1) Preflight preparation; including the applicant's knowledge and performance of the following tasks—

(*a*) equipment examination-systems knowledge;

(*b*) aircraft handbooks, manuals, minimum equipment list (MEL), configuration deviation list (CDL) and operations specifications; and

(*c*) performance and limitations.

(2) Preflight procedures; including the applicant's knowledge and performance of the following tasks—

(*a*) preflight inspection and cockpit setup; and

(*b*) preflight inspection-exterior.

(3) Ground operations; including the applicant's knowledge and performance of the following tasks—

(*a*) power-plant start; and

(*b*) taxi and pre-take-off checks.

(4) Normal procedures; including the applicant's knowledge and performance of the following tasks—

(*a*) take-off;

(*b*) in-flight;

(*c*) during approach and landing; and

(*d*) engine systems monitoring.

(5) Abnormal and emergency procedures; including the applicant's knowledge and performance of the following tasks—

(*a*) take-off;

(*b*) in-flight;

(*c*) during approach and landing;

(*d*) engine systems monitoring;

(*e*) postflight procedures;

(*f*) after landing; and

(*g*) parking and securing.

IS 2:102 Skill Test For Designated Flight Engineer Examiners

1. The skill test for initial designation of a flight engineer examiner, issuance of additional class rating designations, and renewal of examiner designations shall contain both the appropriate oral questioning and aircraft or flight simulation training device performance in accordance with the applicable skill test for the aircraft and class ratings.

2. Methods of skill testing: The Authority inspector will choose one of the following methods to test a flight engineer examiner applicant. The methods are listed in order of preference but scheduling difficulties may preclude use of the preferred, method of testing—

(1) Authority inspector evaluates the flight engineer examiner applicant testing an actual flight engineer applicant for a licence and class rating or proficiency check—

(*a*) the Authority will arrange for the flight engineer examiner applicant to conduct a skill test for an actual flight engineer applicant for a licence or added rating or proficiency check appropriate to the examiner designation sought, and the Authority inspector will observe the test from within the aircraft or flight simulation training device as applicable.

(*b*) the Authority inspector will evaluate the flight engineer examiner applicant's performance while the flight engineer examiner applicant evaluates the flight engineer applicant.

(*c*) any discussion between the flight engineer examiner applicant and the Authority inspector concerning the flight engineer examiner applicant's performance with the flight engineer applicant will be held in private—

(i) at the conclusion of the skill test for the actual flight engineer licence or added class rating or proficiency check;

(ii) if the applicant has passed the skill test or proficiency check, the pilot examiner applicant will fill out the appropriate documentation for the flight engineer applicant while the Authority inspector observes. The Authority inspector will sign any documentation needed.

(2) If the flight engineer applicant does not pass the skill test or proficiency check, the Authority inspector will complete and sign the appropriate document needed—

(*a*) authority inspector playing the role of flight engineer applicant for a skill test;

(*b*) the Authority inspector will play the role of a flight engineer applicant for a skill test appropriate to the class of designation the flight engineer examiner applicant is seeking;

(*c*) if the Authority inspector answers a question incorrectly to test whether the flight engineer examiner applicant recognizes an incorrect answer, the incorrect response must be obviously wrong.

(3) Authority inspector gives a flight skill test to the flight engineer examiner applicant—

(*a*) the Authority inspector will test the flight engineer examiner applicant on selected manoeuvres in order to assess the flight engineer examiner applicant's flight proficiency and ability to evaluate a flight engineer applicant in accordance with the appropriate skill test;

(*b*) the Authority inspector will evaluate the flight engineer examiner applicant's plan of action for completeness and efficiency.

IS 2:107 Flight Navigator Licence: Skill Test and Proficiency Check

1. The skill test and proficiency check for the flight navigator licence shall include at least the following areas of operation with CRM competencies applied and evident in all tasks appropriate to the category of aircraft—

(1) Star identification (pointer system).

(2) Use of star finder.

(3) Shots against pre-computed curve.

(4) 3-star fix or LOP of sun.

(5) Compensation and swinging of compass.

(6) Alignment of drift meter.

(7) Alignment of astro-compass or periscopic sextant.

(8) Interpretation of weather data.

(9) Preparation of flight plan.

(10) Computation of fuel load.

(11) Determination of PNR and equitime point.

(12) Preparation of cruise control chart.

(13) Use and interpretation of cruise control chart.

(14) Equipment check.

(15) Location of emergency equipment.

(16) Knowledge of emergency equipment.

(17) Use of flux-gate and gyrosyn compasses.

(18) Setting and altering course.

(19) Chart knowledge—sectional or WAC chart.

(20) Pilotage.

(21) Computer computation ability.

(22) Determine of track, ground speed, and wind by double drift.

(23) Determine of ground speed and wind by drift meter timing.

(24) Air plots.

(25) ETA's.

(26) Knowledge and use of radio facilities.

(27) Care in turning.

(28) Station identification.

(29) Use of manual loop;

(30) Evaluation of radio bearings.

(31) Correction and plotting of radio bearings.

(32) Diversion to alternate—computer compass heading, ETA, fuel remaining.

(33) Basic adjustments of Loran Receiver.

(34) Knowledge and use of Loran.

(35) Knowledge and use of consol method.

(36) Use of absolute altimeter.

(37) Determination of "D" factor.

(38) Determination of drift by altimetry.

(39) Interpretation and application of altimeter data.

(40) Single LOP interpretation (radio, press).

(41) Single LOP approach.

(42) Use of astro-compass.

(43) Determination of compass deviation.

(44) Accuracy of celestial fixes.

(45) Selection of bodies for observation.

(46) Handling of routine reports.

(47) Log entries.

(48) Weather observations and interpretation in flight.

(49) Determination of wind from fixes.

(50) Estimates for letdown.

(51) Over-all speed.

(52) Over-all accuracy.

(53) Alertness.

(54) Coordination of navigation methods.

(55) Coordination of duties with time.

2. The areas of operation may be accomplished as follows—

(1) Items 1 through 7 above may be accomplished on the ground;

(2) Items 8 through 54 may be accomplished in flight; and

(3) Items 17, 22, 23, 33, 34, 35, 36, 37, 38, 39 may be completed by oral questioning when a lack of ground facilities or navigation equipment makes such procedures necessary.

IS 2:110 Skill Test For Designated Flight Navigator Examiner

1. The skill test for initial designation and renewal of a flight navigator examiner shall contain both the appropriate oral questioning and aircraft or flight simulation training device performance in accordance with the applicable skill test for the aircraft and class ratings.

2. Methods of skill testing: The Authority inspector will choose one of the following methods to test a flight navigator examiner applicant. The methods are listed in order of preference but scheduling difficulties may preclude use of the preferred method of testing—

(1) Authority inspector evaluates the flight navigator examiner applicant testing an actual flight navigator applicant for a licence or proficiency check—

(*a*) the Authority will arrange for the flight navigator examiner applicant to conduct a skill test for an actual flight navigator applicant for a licence or proficiency check, and the Authority inspector will observe the test from within the aircraft or flight simulation training device as applicable;

(*b*) the Authority inspector will evaluate the flight navigator examiner applicant's performance while

the flight navigator examiner applicant evaluates the flight navigator licence or proficiency check applicant;

(*c*) any discussion between the flight navigation examiner applicant and the Authority inspector concerning the flight navigator examiner applicant's performance with the flight navigator applicant will be held in private; and

(*d*) at the conclusion of the skill test for the actual flight navigator licence or proficiency check—

(i) if the applicant has passed the skill test or proficiency check, the pilot examiner applicant will fill out the appropriate documentation for the pilot applicant while the Authority inspector observes. The Authority inspector will sign any documentation needed; and

(ii) if the pilot applicant does not pass the skill test or proficiency check, the Authority inspector will complete and sign the appropriate document needed.

(2) Authority inspector playing the role of flight navigator applicant for a skill test—

(*a*) the Authority inspector will play the role of a flight navigator applicant for a skill test appropriate to the designation the flight navigator examiner applicant is seeking; and

(*b*) if the Authority inspector answers a question incorrectly to test whether the flight navigator examiner applicant recognizes an incorrect answer, the incorrect response must be obviously wrong;

(3) Authority inspector gives a flight skill test to the flight navigator examiner applicant—

(*a*) the Authority inspector will test the flight navigator examiner applicant on selected manoeuvres in order to assess the flight navigator examiner applicant's flight proficiency and ability to evaluate a flight navigator applicant in accordance with the appropriate skill test or proficiency check;

(*b*) the Authority inspector will evaluate the flight navigator examiner applicant's plan of action for completeness and efficiency.

IS 2:119 Aircraft Maintenance Engineer Skill Requirements

1. Each applicant for an Aircraft Maintenance Engineer (AME) licence or rating shall pass a skill test containing both oral questioning and practical application of skill appropriate to the rating(*s*) sought. The tests cover the applicant's skill in performing the practical projects on the subjects covered by the written test for that rating. The applicant will be provided with appropriate facilities, tools, materials and airworthiness data.

2. AME General. The skill test for the AME Licence shall test the applicant's knowledge and performance in at least the following areas of operation—

   (1) Basic electricity.

   (2) Aircraft drawings.

   (3) Weight and balance.

   (4) Fluid line and fittings.

   (5) Materials and processes.

   (6) Ground operation and servicing.

   (7) Cleaning and corrosion control.

   (8) Mathematics.

   (9) Maintenance forms and records.

   (10) Basic physics.

   (11) Maintenance publications.

   (12) Aircraft mechanic technician privileges and limitations.

3. AME Airframe Rating. The skill test for the airfraoperation—

   (1) Wood structures.

   (2) Aircraft covering.

   (3) Aircraft finishes.

   (4) Sheet metal and non-metallic structures.

   (5) Welding.

   (6) Assembly and rigging.

   (7) Airframe inspection.

   (8) Fuel systems.

   (9) Aircraft landing gear systems.

   (10) Hydraulic and pneumatic power systems.

   (11) Cabin atmosphere control systems.

(12) Aircraft instrument systems.

(13) Communication and navigation systems.

(14) Aircraft fuel systems.

(15) Aircraft electrical systems.

(16) Position and warning systems.

(17) Ice and rain control systems.

(18) Fire protection systems.

4. AME Powerplant Rating. The skill test for the power-plant rating shall test the applicant's knowledge and performance in at least the following areas of operation—

(1) Reciprocating systems.

(2) Turbine engines.

(3) Engine inspection.

(4) Engine instrument systems.

(5) Engine fire protection systems.

(6) Engine electrical systems.

(7) Lubrication systems.

(8) Ignition and starting systems.

(9) Fuel metering.

(10) Engine fuel systems.

(11) Induction and engine airflow systems.

(12) Engine cooling systems.

(13) Engine exhaust and reverser systems.

(14) Propellers.

(15) Auxiliary power units.

5. AME Avionics Rating—The skill test for the avionics rating shall test the applicant's knowledge and performance in the basic workshop and maintenance practices in at least the following areas of operation—

(1) Avionics—electrical.

(2) Avionics—instrument.

(3) Avionics—autoflight.

(4) Avionics—radio.

(5) Avionics—navigation systems.

(6) Repair, maintenance and function testing of aircraft systems/components—avionics.

(7) Job/task documentation and control practices.

IS 2:151 Skill Test for the Flight Operations Officer Licence

The skill test for the flight operations officer licence shall test the applicant's knowledge and performance in at least the following areas of operation—

(1) Flight planning/dispatch release, including the applicants' knowledge and performance of the following tasks—

(*a*) regulatory requirements;

(*b*) meteorology;

(*c*) weather observations, analysis, and forecasts;

(*d*) weather related hazards;

(*e*) aircraft systems, performance, and limitations;

(*f*) navigation and aircraft navigation systems;

(*g*) practical dispatch applications; and

(*h*) manuals, handbooks and other written guidance.

(2) Preflight, take-off, and departure, including the applicants' knowledge and performance of the following tasks—

(*a*) air traffic control procedures; and

(*b*) aerodrome, crew, and company procedures.

(3) In-flight procedures, including the applicants' knowledge and performance of the following tasks—

(*a*) routing, re-routing, and flight plan filing; and

(*b*) en route communication procedures and requirements.

(4) Arrival, approach, and landing procedures, including the applicants' knowledge and performance of the task of air traffic control and air navigation procedures.

(5) Post flight procedures, including the applicants' knowledge and performance of the following tasks—

(*a*) communication procedures and requirements; and

(*b*) trip records.

(6) Abnormal and emergency procedures, including the applicants' knowledge and performance of the task of abnormal and emergency procedures.

IS 2:166 Senior Parachute Rigger Licence Skill Test

The skill test for the senior parachute rigger licence shall test the applicant's knowledge and performance in at least the following areas of operation—

(1) certification, including the applicants' knowledge and performance of the following tasks—

(*a*) senior parachute rigger experience requirements;

(*b*) senior parachute rigger test requirements.

(2) privileges, limitations and operating rules, including the applicants' knowledge and performance of the following tasks—

(*a*) senior parachute rigger privileges;

(*b*) required facilities and equipment;

(*c*) performance standards;

(*d*) recordation;

(*e*) manufacturer's packing instructions;

(*f*) repair classifications;

(*g*) alterations;

(*h*) equipment requirements for intentional parachute jumping; and

(*i*) TSO 23c requirements.

(3) Packing parachutes, including the applicants' knowledge and performance of the following tasks—

(*a*) packing round parachute;

(*b*) packing ram-air parachute; and

(*c*) packing piggy-back container parachute.

(4) Parachute operation and care, including the applicant's knowledge and performance of the following tasks—

(*a*) parachute storage;

(*b*) parachute drying and airing;

(*c*) parachute assembly inspection;

(*d*) cleaning parachute canopies;

(*e*) parachute harness adjustment;

(*f*) pin-type static line requirements;

(*g*) break cord static line requirements; and

(*h*) cleaning parachute harness/container.

(5) Parachute construction details, including the applicant's knowledge and performance of the following tasks—

(*a*) seam construction defects;

(*b*) webbing joint construction;

(*c*) parachute construction knots;

(*d*) fabric construction;

(*e*) french fell seam construction;

(*f*) technical standard order TSO-C23c;

(*g*) technical standard order TSO-C23d;

(*h*) fastener tapes;

(*i*) finger loop construction; and

(*j*) radial seam construction.

(6) Parachute repair, including the applicants' knowledge and performance of the following tasks—

(*a*) single canopy repair;

(*b*) replacement of lower control line (ram-air canopy);

(*c*) application of non-destructive test method TS-108;

(*d*) line attachment loop replacement;

(*e*) removal and installation of grommets;

(*g*) sewing machine operation;

(*h*) cascade line replacement;

(*i*) nicopress sleeve installation;

(*j*) replacement of V-tab (butterfly tab);

(*k*) replacement of continuous suspension line;

(*l*) suspension line replacement in ram-air canopy;

(*m*) container patching;

(*n*) ram-air canopy repair limitations; and

(*o*) ram-air canopy repair adjacent to a seam.

IS 2:167 Master Parachute Rigger Licence Skill Test

The skill test for the master parachute rigger licence shall test the applicant's knowledge and performance in at least the following areas of operation—

(1) Certification, including the applicants' knowledge and performance of the following tasks—

(*a*) master parachute rigger experience requirements; and

(*b*) master parachute rigger test requirements.

(2) Privileges, limitations and operating rules, including the applicants' knowledge and performance of the following tasks—

(*a*) master parachute rigger privileges;

(*b*) required facilities and equipment;

(*c*) performance standards;

(*d*) recordation;

(*e*) manufacturer's packing instructions;

(*f*) repair classifications;

(*g*) alterations;

(*h*) equipment requirements for intentional parachute jumping; and

(*i*) TSO 23c requirements.

(3) Packing parachutes, including the applicants' knowledge and performance of the following tasks—

(*a*) packing round parachute;

(*b*) packing ram-air parachute; and

(*c*) packing piggy-back container parachute.

(4) Parachute operation and care, including the applicants' knowledge and performance of the following tasks—

(*a*) parachute storage;

(*b*) parachute drying and airing;

(*c*) parachute assembly inspection;

(*d*) cleaning parachute canopies;

(*e*) parachute harness adjustment;

(*f*) pin-type static line requirements;

(*g*) break cord static line requirements; and

(*h*) cleaning parachute harness/container.

(5) Parachute construction details, including the applicants' knowledge and performance of the following tasks—

(*a*) seam construction defects;

(*b*) webbing joint construction;

(*c*) parachute construction knots;

(*d*) fabric construction;

(*e*) french fell seam, construction;

(*f*) technical standard order TSO-C23c;

(*g*) technical standard order TSO-C23d;

(*h*) fastener tapes;

(*i*) finger loop construction; and

(*j*) radial seam construction.

(6) Parachute repair, including the applicants' knowledge and performance of the following tasks—

(*a*) single canopy repair;

(*b*) replacement of lower control line (ram-air canopy);

(*c*) application of non-destructive test method TS-108;

(*d*) line attachment loop replacement;

(*e*) removal and installation of grommets;

(*f*) sewing machine operation;

(*g*) cascade line replacement;

(*h*) nicopress sleeve installation;

(*i*) replacement of V-tab (butterfly tab);

(*j*) replacement of continuous suspension line;

(*k*) suspension line replacement in ram-air canopy;

(*l*) container patching;

(*m*) ram-air canopy repair limitations; and

(*n*) ram-air canopy repair adjacent to a seam.

(7) Parachute alterations, including the applicants' knowledge and performance of the following tasks—

(*a*) alteration data approval;

(*b*) install an automatic activation device;

(*c*) fabrication binding corners;

(*d*) altering riser connexions;

(*e*) bridle cord alteration;

(*f*) threading friction adapter;

(*g*) D- or V-ring alteration;

(*h*) conversion of ripcord deployment to hand deployed pilot chute;

(*i*) fabricate a canopy deployment bag; and

(*j*) convert throw-out pilot chute from rear of leg position to the bottom of container position.

IS 2:168 Type Rating—Parachute Rigger Licence Skill Test

The skill test for ratings or added ratings to a parachute rigger licence shall test the applicant's knowledge and performance in

at least the following areas of operation applicable to the rating sought, including the applicant's knowledge and performance of the following—

(1) Additional rating requirements.

(2) Packing seat-type parachute.

(3) Packing back-type parachute (excluding piggy-back).

(4) Packing chest-type parachute.

(5) Packing lap-type parachute.

IS 2:188 Aviation Medical Examiners

1. Basic training in aviation medicine for AMEs shall include at least the following—

(1) Basic training in aviation medicine.

(2) Physics of atmosphere and space.

(3) Basic aeronautical knowledge.

(4) Aviation Physiology.

(5) Opthalmology.

(6) Otorinolaryngology.

(7) Cardiology and general medicine.

(8) Neurology.

(9) Psychiatry in aviation medicine.

(10) Psychology.

(11) Dentistry.

(12) Accidents, escape and survival.

(13) Legislation, rules and regulations.

(14) Air evacuation.

(15) Medicine and flying.

2. Advanced training in aviation medicine for AMEs shall include the following—

(1) Pilot working environment.

(2) Aerospace physiology.

(3) Opthalmology.

(4) Otorinolaryngology.

(5) Cardiology and general medicine.

(6) Neurology/psychiatry.

(7) Human factors in aviation.

(8) Tropical medicine.

(9) Hygiene.

(10) Space medicine.

IS 2:193 MEDICAL CERTIFICATE

The following details shall appear on the medical certificate in the Roman alphabet—

(1) Name of state.

(2) Licence no.

(3) Name of holder in full.

(4) Date of birth.

(5) Address of holder.

(6) Nationality of holder.

(7) Signature of holder.

(8) Medical certificate class 1, 2, or 3.

(9) Issuing Authority.

(10) Validity.

(11) Limitations.

(12) Date of issue and signature of issuing officer.

Initial Medical Examination

Date State	Last	Next
Date (YDM) of:		
Extended Medical Examination		
Medical (General) Examination		
Electrocardiogram		
Audiogram		

AVIATION (APPROVED TRAINING ORGANIZATIONS) REGULATIONS

G.N. 29/2013

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AVIATION (APPROVED TRAINING ORGANIZATIONS) REGULATIONS

under s. 19

PART I
General

Citation and application

1.—(1) These Regulations may be cited as the Aviation (Approved Training Organizations) Regulations.

(2) These Regulations prescribe the requirements for issuing approvals to organizations for the training of aviation personnel, and prescribes the operating rules for the holders of an Approved Training Organization (ATO) certificate.

Interpretation

2. For the purposes of these Regulations, unless the context otherwise requires—

"accountable" means the manager who has corporate authority for ensuring that all training commitments can be financed and carried out to the standard required by the AUTHORITY and any additional requirements defined by the ATO: the accountable manager may delegate in writing to another person within the organization, the day to day management but not the overall approval management responsibility: the accountable manager may also be called accountable executive;

"alternate means of compliance" means as it relates to training a pre-approved manner of achieving regulatory compliance that has been determined by the authority to be an acceptable substitute to the experience requirements for a licence in the Personnel Licensing Regulations;

"alternative means of compliance" means an approved alternative to prescribed approaches, which has been demonstrated consistently to achieve or exceed the desired outcomes as intended through regulation;

"approved training" means training conducted under curricula and supervision approved by the Authority that, in the case of aviation personnel, is conducted in an approved training organization;

"approved training organization" means an organization approved by and operating under the supervision of a civil aviation authority in accordance with the requirements of these Regulations to perform approved training;

"competency based training and assessment" means training and assessment that are characterized by a performance orientation, emphasis on standards of performance and their measurement, and the development of training to the specified performance standards;

"course" means a programme of instruction to obtain personnel licensing, qualification, authorizations, or currency. It is a unit of teaching that typically lasts for a fixed term, is led by one or more instructors, has a fixed roster of students, and gives each student a grade or credit;

"curriculum" means a set of courses in an area of specialization offered by an ATO;

"examiner" means any person designated by the Authority to act as a representative of the Authority in examining, inspecting, and testing persons and aircraft for the purpose of issuing licences, ratings and certificates;

"finding" means a conclusion by the operator's audit personnel that demonstrates non-conformity with a specific standard;

"policy" means a document containing the organization's position or stance regarding a specific issue;

"procedure" means a way of documenting a process;

"process" means a set of interrelated or interacted activities which transform inputs into outputs;

"qualification based training" means training designed to ensure that graduates demonstrate the necessary minimum skill, knowledge and experience levels to meet the qualification requirements of the licence, rating or privilege;

"quality" means the totality of features and characteristics of product or service that bear on its ability to satisfy stated or implied needs;

"quality assurance" means all the planned and systematic actions necessary to provide adequate confidence that all training activities satisfy given standards and requirements, including the ones specified by the approved training organization in relevant manuals;

"quality audit" means a systematic and independent examination to determine whether quality activities and related results comply with planned arrangements and whether these arrangements are implemented effectively and are suitable to achieve objectives;

"quality inspection" means that part of quality management involving quality control. In other words, inspections accomplished to observe events/actions/documents, etc., in order to verify whether established operational procedures and requirements are fulfilled during the accomplishment of the event or action, and whether the required standard is achieved: student stage checks and skill tests are quality inspections, and they are also quality control functions;

"quality management for an ATO" means a management approach focused on the means to achieve product or service quality objectives through the use of its four key components: quality planning, quality control, quality assurance, and quality improvement;

"quality manager" means the manager responsible for the monitoring function and for requesting remedial action; in an ATO, the Quality Manager is responsible directly to the Head of Training;

"quality manual" means the document containing the relevant information pertaining to the approved training organization's quality assurance system;

"quality of training" means the outcome of the training that meets stated or implied needs within the framework of set standards;

"quality system (QS) for an ATO" means the aggregate of all the organization's activities, plans, policies, processes, procedures, resources, incentives and infrastructure working in unison towards a total quality management approach; it requires an organizational construct complete with documented policies, processes, procedures and resources that underpins a commitment by all employees to achieve excellence in product and service delivery through the implementation of best practices in quality management;

"satellite aviation training organization" means an aviation training organization at a location other than the aviation training organization's principal place of business;

"safety management system" means a systematic approach to managing safety, including the necessary organizational structures, accountabilities, policies and procedures;

"special curricula" means a closely supervised, systematic and continuous course of training, conforming to a planned syllabus or curriculum, and conducted in an approved training organization;

"state safety programme" means an integrated set of regulations and activities aimed at improving safety;

"syllabus (Training)" means the detailed summary or outline describing the main points of a course;

"training and procedures manual" means a manual that describes how the ATO conducts its activities: it may be a combined manual or separated into a Training Manual and a Procedures Manual—

(i) "training manual" means a manual containing the training goals, objectives, standards, syllabi, and curriculum for each phase of the approved training course;

(ii) "procedures manual" means a manual containing procedures, instructions and guidance for use by personnel of the ATO in the execution of their duties in meeting the requirements of the certificate;

"training programme" means the courses, courseware, facilities, training equipment, personnel necessary to accomplish a specific training objective;

"training specifications" means a document issued to an ATO certificate holder by the Authority that specifies training programme requirements and authorizes the conduct of training, checking, and testing with any limitations thereof.

Abbreviations

3. The following abbreviations are used in these Regulations—

(1) A—Aeroplane

(2) AME—Aircraft Maintenance Engineer

(3) ATCO—Air Traffic Controller

(4) ATO—Aviation Training Organization

(5) ATPL—Airline Transport Pilot Licence

(6) CFI—Chief Flight Instructor

(7) CGI—Chief Ground Instructor

(8) CPL—Commercial Pilot Licence

(9) CRM—Crew Resource Management

(10) FE—Flight Engineer

(11) H—Helicopter

(12) IFR—Instrument Flight Rules

(13) ICAO—International Civil Aviation Organization

(14) MMEL—Master Minimum Equipment List

(15) MPL—Multi-crew Pilot Licence

(16) PIC—Pilot-in-Command

(17) PPL—Private Pilot Licence

(18) QA—Quality Assurance

(19) RT—Radiotelephony

(20) VFR—Visual Flight Rules

PART II
Certification of a Training Organization and Continued Validity

Application

4. This Part prescribes the requirements for the certification of a training organization and continued validity of the certificate.

General

5.—(1) The Authority may approve an ATO to provide the following—

(*a*) any training activity that leads toward the issuance of a licence, rating, authorization or approval;

(*b*) provision of training services necessary for an operator to meet the requirements of the Aviation (Air Operator Certification and Administration) Regulations;

(*c*) special curricula training designed to meet—

(i) qualification-based training requirements, including those deemed acceptable through the approval of an "alternate" means of "compliance" mechanism; or

(ii) competency based training and assessment requirements, or

(iii) those training requirements deemed acceptable through the approval of an 'alternative means of compliance' mechanism.

(2) No person may operate as a certificated ATO without, or in violation of, an approved training organization certificate, ratings or training specifications issued under these Regulations.

(3) The ATO shall display the ATO certificate in a place accessible to the public in the principal place of business of the training center.

(4) The certificate and training specifications issued to an approved training organization shall be available on the premises for inspection by the public and the Authority.

(5) The approval of a training organization by a State shall be dependent upon the applicant demonstrating compliance with the requirements of these Regulations.

Approved Training Organization Certificate

6.—(1) The ATO certificate will consist of two documents—

(*a*) a one page certificate signed by the Authority; and

(*b*) a multi-page training specifications signed by the Accountable Manager and the Authority containing the terms, conditions, and authorizations.

(2) An ATO shall perform training, checking and testing, or part thereof, only for which it is rated and within the terms, conditions, and authorizations placed in its training specifications.

(3) The ATO certificate will contain the following items and be in a format as shown in IS: 3:6 contained in the Schedule hereto:

(*a*) the certificate number specifically assigned to the ATO;

(*b*) the name and location (principal place of business) of the ATO;

(*c*) the date of issue and period of validity;

(*d*) terms of approval relating to the courses to be taught; and

(*e*) authority signature.

(4) The training specifications will contain the following—

(*a*) the certificate number specifically assigned to the ATO;

(*b*) the type of training authorized, including approved courses;

(*c*) authorizations for the ATO; including special approvals and limitations;

(*d*) the name and address of any satellite training centers, and the approved training offered at each location;

(*e*) the facilities and equipment required to conduct the training authorized;

(*f*) the staff required to perform the applicable duties under these Regulations;

(*g*) accountable manager and Authority signatures;

(*h*) the date issued or revised; and

(*i*) other items the Authority may require or allow.

Advertising

7.—(1) No training organization may advertise as a certificated approved training organization until an approved training organization certificate has been issued to that facility.

(2) No certificated approved training organization may make any statement, either in writing or orally, about itself that is false or is designed to mislead any person.

(3) Whenever the advertising of an approved training organization indicates that it is certificated, the advertisement must clearly state the approved training organization's certificate number.

Application for an ATO certificate

8.—(1) The application for approval of a training organization shall be made in a form and in a manner acceptable to the Authority.

(2) Each application must be made at least 120 calendar days before the beginning of any proposed training or 90 days before effecting an amendment to any approved training, unless a short filing period is approved by the Authority.

(3) Each applicant shall provide—

(*a*) a statement showing that the minimum qualification requirements for each management position are met or exceeded;

(*b*) a statement acknowledging that the applicant shall notify the Authority within 10 working days of any change made in the assignment of persons in the required management positions;

(*c*) the proposed training authorizations and training specifications requested by the applicant;

(*d*) the proposed location of each training facility and any satellite facility location, the proposed courses to be taught at each location, and the equipment at each location including FSTDs, training aircraft and any aerodromes or sites to be used;

(*e*) two copies of its proposed Training and Procedures manual;

(*f*) two copies of each proposed training course curriculum, including syllabi, outlines, courseware, procedures, and documentation to support the curriculum for which approval is sought;

(*g*) documentation of the training organization's quality assurance and quality system;

(*h*) a statement of the maximum number of students it expects to teach at any one time;

(*i*) documentation of the training organization's Safety Management System;

(*j*) a statement of compliance to all applicable Civil Aviation Regulations for the proposed training, including pertinent parts and each relevant regulation, which should be identified and accompanied by a brief description.

(*k*) any additional information the Authority requires the applicant to submit.

Issuance of an ATO certificate

9.—(1) An applicant may be issued an ATO certificate if, after investigation, the Authority finds that the applicant—

(*a*) meets the applicable regulations and standards for an ATO certificate, and

(*b*) is properly and adequately equipped for the performance of the training for which it seeks approval.

(2) The applicant will be required to pay any charge prescribed by the Authority.

Duration and renewal of ATO certificate

10.—(1) A certificate issued to an ATO, located either inside or outside Malaŵi shall, be effective from the date of issue until—

(*a*) the 12th month after the date on which it was initially issued, subject to satisfactory compliance with the requirements of this Chapter; or

(*b*) the 24th month after the date on which it was renewed, subject to satisfactory compliance with the requirements of this Chapter; or

(*c*) the ATO surrenders the certificate; or

(*d*) the Authority suspends or revokes the certificate.

(2) The holder of a certificate that expires or is surrendered, suspended, or revoked by the Authority must return the certificate and training specifications to the Authority within 5 working days of expiration, surrender or receipt from the Authority of notice of suspension or revocation.

(3) A certificated ATO that applies for a renewal of its certificate must submit its request for renewal no later than 90 days before the current certificate expires. If a request for renewal is not made within this period, the ATO must follow the application procedures for initial issuance as prescribed by the Authority.

Continued validity of approval

11. Unless the approval has previously been surrendered, superseded, suspended, revoked or expired by virtue of exceeding any expiration date that may be specified in the approval certificate, the continued validity of approval is dependent upon—

(*a*) the ATO remaining in compliance with these Regulations;

(*b*) the Authority being granted access to the organization's facilities to determine continued compliance with this regulation; and

(*c*) the payment of any charges prescribed by the Authority.

Inspection

12.—(1) The Authority may, at any time, inspect an ATO holder on the ATO holder's premises to determine the ATO's compliance with these Regulations.

(2) Inspections will be conducted at least annually.

(3) After an inspection is made, the certificate holder will be notified, in writing, of any deficiencies found during the inspection.

(4) Inspection will also be performed on the applicant for, or the holder of, an ATO certificate held outside the authorizing Malaŵi. This inspection may be delegated to the Authority of the State where the ATO is located, provided an arrangement exists.

Suspension or revocation

13. The Authority may suspend or revoke an ATO certificate if it is established that a certificate holder has not met, or no longer meets the requirements of these Regulations.

Changes to the ATO and certificate amendments

14.—(1) To enable the Authority to determine continued compliance with these Regulations, the ATO shall provide written notification to the Authority for approval at least 90 days prior to any of the following changes—

(*a*) the name of the organization;

(*b*) the location of the organization;

(*c*) the facilities, equipment or staff that could affect the ATO certification or ratings;

(*d*) any ratings held by the ATO, whether granted by the Authority or held through an ATO certification issued by another contracting State;

(*e*) an additional locations of the organization;

(*f*) items in the Training and Procedures Manual, including the syllabi and curricula;

(*g*) the accountable manager; or

(*h*) the list of management personnel identified as described in the Training and Procedures Manual.

(2) The Authority will amend the ATO certificate if the ATO notifies the Authority of a change in—

(*a*) location or facilities or equipment;

(*b*) additional locations of the organization;

(*c*) rating, including deletions;

(*d*) items in the Training and Procedures Manual, including the syllabi and curricula;

(*e*) name of the organization with same ownership; or

(*f*) ownership.

(3) The Authority may amend the ATO certificate if the ATO notifies the Authority of a change in—

(*a*) the accountable manager;

(*b*) the list of management personnel identified as described in the Training and Procedures Manual; or

(*c*) items in the Training and Procedures Manual, including the syllabi and curricula.

(4) When the Authority issues an amendment to an ATO certificate because of new ownership of the ATO, the Authority will assign a new certificate number to the amended ATO certificate.

(5) The Authority may—

(*a*) prescribe, in writing, the conditions under which the ATO may continue to operate during any period of implementation of the changes noted in subregulation (1) under this Regulation; and

(*b*) hold the ATO certificate in abeyance if the Authority determines that approval of the ATO certificate should be delayed; the Authority

will notify the ATO certificate holder, in writing, of the reasons for any such delay.

(6) If changes are made by the ATO to the items listed in subregulation 14 (1) without notification to the Authority and amendment of the ATO certificate by the Authority, the ATO certificate may be suspended, or revoked, by the Authority.

Location of the ATO

15.—(1) Principal place of business: An applicant for, or holder of, a certificated ATO under these Regulations shall establish and maintain a principal place of business office that is physically located at the address shown on its certificate.

(2) Satellite ATOs: The holder of an ATO certificate may conduct training in accordance with a training programme approved by the Authority at a satellite ATO if—

(*a*) the facilities, equipment, personnel and course content of the satellite ATO meet the applicable requirements; and

(*b*) the instructors at the satellite ATO are under the direct supervision of management personnel of the principal ATO; and

(*c*) the Authority has issued training specifications to the ATO that reflect the name and address of the satellite ATO and the approved courses offered at the satellite ATO.

(3) Foreign locations of ATOs: An ATO or a satellite of an ATO approved by Malaŵi may be located in a country outside Malaŵi and is subject to all the applicable requirements of these Regulations.

Facilities, equipment and material—general requirements

16.—(1) The facilities and working environment of the ATO shall be appropriate for the task to be performed and acceptable to the Authority.

(2) The ATO shall have the necessary information, technical data, equipment, training devices and material to conduct the courses for which it is approved.

(3) Any training devices used by the ATO shall be qualified according to requirements established by the Authority and their use shall be approved by the Authority to ensure they are appropriate to the task.

(4) A certificate holder shall not make a substantial change in facilities, equipment or material that have been approved for a particular training programme, unless that change is approved in advance by the Authority.

(5) The facility that is the ATO principal place of business—

(*a*) shall not be shared with, or used by, another ATO, and

(*b*) shall be adequate to maintain the files and records required to operate the business of the ATO.

Personnel—general requirements

17.—(1) The ATO shall nominate a person responsible for ensuring that it is in compliance with the requirements for an approved organization.

(2) The ATO shall employ the necessary personnel to plan, perform and supervise the training to be conducted.

(3) The competence of instructional personnel shall be in accordance with procedures and to a level acceptable to the Authority.

(4) The ATO shall ensure that all instructional personnel receive initial and recurrent training appropriate to their assigned tasks and responsibilities. The training programme established by the ATO shall include training in knowledge and skills related to human performance.

The training programme for ATO employees shall be contained in the ATO Training and Procedures Manual.

Record keeping—general requirements

18. Student records—

(*a*) the ATO shall retain detailed student records to show that all requirements of the training course have been met as approved by the Authority;

(*b*) these records shall be kept for a minimum period of two years after completion of the training.

(2) ATO staff records—

(*a*) the ATO shall maintain a system for recording the qualifications and training of instructional and examining staff, where appropriate;

(*b*) these records shall be kept for a minimum period of two years after the instructor or examiner ceases to perform a function for the ATO.

ATO approved for testing

19.—(1) The Authority may approve an ATO to conduct the testing required for the issuance of a licence or rating.

(2) The ATO personnel authorized to conduct the testing shall be approved by the Authority.

Quality assurance and quality system

20.—(1) Quality assurance system. The ATO shall establish a quality assurance system, acceptable to the Authority, which ensures that training and instructional practices comply with all relevant requirements.

(2) The ATO shall establish a quality system, acceptable to the Authority, to ensure that training and instructional practices comply with all relevant requirements.

(3) The ATO quality assurance and quality system shall be established in accordance with the instruction and information contained in IS: 3:20 contained in the Schedule hereto.

ATO training and procedures manual—general requirements

21.—(1) The ATO shall provide a training and procedures manual, approved by the Authority, for the use and guidance of personnel concerned. This manual may be issued in separate parts and shall contain at least the following information—

(*a*) a general description of the scope of training authorized under the ATO's terms of approval;

(*b*) the content of the training programmes offered including the courseware and equipment to be used;

(*c*) a description of the organization's quality assurance system;

(*d*) a description of the organization's facilities;

(*e*) the name, duties and qualification of the person designated as the accountable manager;

(*f*) a description of the duties and qualification of the personnel responsible for planning, performing and supervising the training;

(*g*) a description of the procedures used to establish and maintain the competence of instructional personnel;

(*h*) a description of the method used for the completion and retention of the training records;

(*i*) a description, when applicable, of additional training needed to comply with an operator's procedures and requirements; and

(*j*) a description of the selection, role and duties of authorized persons approved to conduct testing for a licence or rating, when an ATO has been approved by the Authority to conduct such testing.

(2) The ATO shall ensure that the training and procedures manual is amended as necessary to keep the information contained therein up to date.

(3) The ATO shall promptly furnish copies of all amendments to the training and procedures manual to the Authority and other personnel and organizations to which the manual has been issued.

Duty period limitations

22.—(1) A person who holds a flight instructor certificate shall not conduct more than 8 hours of flight training in any 24-consecutive-hour period.

(2) A flight simulation training device instructor, excluding briefing and debriefing, shall not conduct more than 8 hours of instruction in any 24-consecutive-hour period.

(3) A student in a certificated Aircraft Maintenance Engineer school may not be required to attend classes of instruction more than 8 hours in any day or more than 6 days or 40 hours in any 7-day period.

ATO safety management system

23. An ATO that is exposed to safety risks during the provision of its services shall implement a safety management system acceptable to the Authority as outlined in regulation 34 of these Regulations.

PART III
Additional Requirements for Instruction for Flights Crew Licence

Division I—General

Application

24.—(1) In addition to the requirements of Part II, this Part prescribes additional requirements for ATOs teaching flight crew curricula.

Division 2—Curriculum Approval

Flight crew training courses

25. The Authority may approve, as provided in the training specifications, to conduct the following courses of instruction to an applicant for, or holder of an ATO certificate, provided the applicant meets the requirements of the Aviation (Personnel Licensing) Regulations, and these Regulations—

(*a*) private pilot licence course;

(*b*) commercial pilot licence course;

(*c*) instrument rating course;

(*d*) commercial pilot licence/instrument rating-multi-engine/CRM integrated course;

(*e*) multi-crew pilot licence course;

(*f*) airline transport pilot licence course;

(*g*) flight engineer licence course;

(*h*) flight navigator licence course;

(*i*) class rating course;

(*j*) type rating course;

(*k*) crew resource management course;

(*l*) flight instructor course;

(*m*) instructor course for additional type or class ratings;

(*n*) instructor course for flight simulation training;

(*o*) refresher courses; and

(*p*) other courses as the Authority may approve.

Training course approval—qualification based and alternate means of compliance

26.—(1) The applicant for, or holder of, an ATO certificate shall apply to the Authority for approval for each course to be offered or amended—

(*a*) the applicant or ATO shall submit a copy of the training course or amendment to the Authority as part of the application when applying for new or amended training course approval;

(*b*) the applicant or ATO shall submit the application to the Authority at least 30 days before any training under the course is scheduled to begin.

(2) Except as provided in regulation 27, each training course for which approval is requested must meet the minimum ground and flight training time requirements specified in the Aviation (Personnel Licensing) Regulations for the licence, rating or authorization sought.

(3) Each training course for which approval is requested must contain—

(*a*) a description of each room used for ground training, including the room size and the maximum number of students that may be trained in the room at one time;

(*b*) a description of each type of audiovisual aid, projector, tape recorder, mockup, chart, aircraft component, and other special training aids used for ground training;

(*c*) a description of each flight simulation training device used for training;

(*d*) a listing of the aerodromes at which training flights originate and a description of the facilities, including pilot briefing areas that are available for use by the ATO's students and personnel at each of those aerodromes;

(*e*) a description of the type of aircraft including any special equipment used for each phase of training;

(*f*) the minimum qualifications and ratings for each instructor assigned to ground or flight training; and

(*g*) a training syllabus that includes the following information—

(i) The prerequisites for enrolling in the ground and flight portion of the course that include the pilot certificate and rating (if required by this part), training, pilot experience, and pilot knowledge;

(ii) a detailed description of each lesson, including the lesson's objectives, standards, and planned time for completion;

(iii) a description of what the course is expected to accomplish with regard to student learning;

(iv) the expected accomplishments and the standards for each stage of training; and

(v) a description of the checks and tests to be used to measure a student's accomplishments for each stage of training.

Training course approval—alternative means of compliance and competency based training and assessment

27.—(1) An ATO may request and receive initial approval for a period of not more than 24 calendar months for any training course under this part that does not meet the minimum ground and/or flight training time experience requirements, provided that—

(*a*) the ATO show that the training will provide an equivalent level of competency at least equal to the minimum experience requirements for personnel not receiving such training, and

(*b*) the following provisions are met—

(i) the ATO holds an ATO certificate issued under this part and has held that certificate for a period of at least 24 consecutive calendar months preceding the month of the request;

(ii) in addition to the information required by subregulation 26 (*c*) the training course specifies planned ground and flight training time requirements for the course;

(iii) the school does not request the training course to be approved for examining authority, nor may that school hold examining authority for that course; and

(iv) the knowledge test and/or skill test for the course is to be given by—

(A) A CAA inspector; or

(B) An examiner who is not an employee of the school.

(2) An ATO may request and receive final approval for any training course under this part that does not meet the minimum ground and flight training time requirements, provided the following conditions are met—

(*a*) the ATO has held initial approval for that training course for at least 24 calendar months;

(*b*) the ATO has—

(i) trained at least 10 students in that training course within the preceding 24 calendar months and recommended those students for a pilot, flight instructor, or ground instructor certificate or rating; and

(ii) at least 80 per cent of those students passed the skill or knowledge test, as appropriate, on the first attempt, and that test was given by—

(A) A CAA inspector; or

(B) An examiner who is not an employee of the school;

(*c*) in addition to the information required by subregulation 26 (3) of these Regulations, the training course specifies planned ground and flight training time requirements for the course;

(*d*) the ATO does not request that the training course be approved for examining authority nor may that school hold examining authority for that course.

Division 3—Personnel

Personnel

28.—(1) The applicant for an ATO certificate or a current certificate holder teaching flight crew curricula shall have on the staff the following—

(*a*) an Accountable Manager;

(*b*) a Quality Manager;

(*c*) a Head of Training;

(*d*) a Chief Flight Instructor, as applicable;

(*e*) a Chief Ground Instructor, as applicable; and

(*f*) an adequate number of ground and flight instructors relevant to the courses provided.

(2) Each instructor to be used for training shall have received the appropriate training and hold the appropriate licences and/or ratings as required by the Aviation (Personnel Licensing) Regulations.

(3) The duties and qualifications of the personnel listed in this paragraph are contained in IS: 3:28 in the Schedule hereto.

Division 4—Facilities Required for Flight Crew Training

Training facilities

29. An applicant for, and holder of an ATO certificate teaching flight crew curricula shall have facilities, as determined by the Authority, appropriate for the maximum number of students expected to be taught at any time, as follows—

(*a*) flight operations facilities—

(i) an operations room;

(ii) a flight planning room;

(iii) adequate briefing rooms;

(iv) offices for the instructors.

(*b*) knowledge instruction facilities, including—

(i) classroom accommodation;

(ii) suitable demonstration equipment;

(iii) an RT training and testing facility;

(iv) a library;

(v) offices for instructors.

Training aircraft

30. An applicant for, or holder of, an ATO certificate must ensure that each aircraft used for flight instruction and solo flights meets the following requirements—

(*a*) except for flight instruction and solo flights in a curriculum for agricultural aircraft operations, external load operations, and similar aerial work operations, the aircraft must have a Malaŵi standard airworthiness certificate or a foreign equivalent of a Malaŵi standard airworthiness certificate acceptable to the Authority;

(*b*) the aircraft must be maintained and inspected in accordance with the Aviation (Operations) Regulations, and an approved maintenance programme;

(*c*) the aircraft must be equipped as provided in the training specifications for the approved course for which it is used;

(*d*) except as provided in subregulation (1) (*e*) below, each aircraft used in flight training must have at least two pilot stations with engine-power controls that can be easily reached and operated in a normal manner from both pilot stations;

(*e*) airplanes with controls such as nose-wheel steering, switches, fuel selectors, and engine air flow controls that are not easily reached and operated in a conventional manner by both pilots may be used for flight instruction if the certificate holder determines that the flight instruction can be conducted in a safe manner considering the location of controls and their non-conventional operation, or both;

(*f*) each aircraft used in a course involving instrument flight rule en route operations and instrument approaches must be equipped and maintained for instrument flight rule operations: for maneuvering of an aircraft by reference to instruments, the aircraft may be equipped as provided in the approved course of training.

Flight simulation training devices

31.—(1) An applicant for, or holder of an ATO certificate, approved to use flight simulation training devices, shall show that each flight simulation training device used for training and checking will be or is specifically qualified and approved by the Authority for—

(*a*) each manoeuvre and procedures for the make, model and series of aircraft, set of aircraft, or aircraft type simulated, as applicable; and

(*b*) each training programme or training course in which the flight simulation training device is used.

(2) Each qualified and approved flight simulation training devices used by an ATO must—

(*a*) be maintained to ensure the reliability of the performances, functions, and all other characteristics that were required for their qualification;

(*b*) be modified to conform with any modification to the aircraft being simulated if the modification results in changes to performance, functions, or other characteristics required for qualification;

(*c*) be given a functional preflight check each day before being used; and

(*d*) have a discrepancy log in which the instructor or evaluator, at the end of each training session, enters each discrepancy.

Aerodromes and sites

32.—(1) Each applicant for, and holder of, an ATO certificate shall show that it has continuous use of each aerodrome and site (for helicopter training) at which training flights originate, and that the aerodrome has an adequate runway and the necessary equipment.

(2) The base aerodrome, and any alternative base aerodrome, at which flying training is being conducted shall have at least one runway or take-off area that allows training aircraft to make a normal take-off or landing at the maximum certificated take-off or maximum certificated landing mass, under the following conditions—

(*a*) under calm wind (not more than four knots) conditions;

(*b*) at temperatures equal to the mean high temperature for the hottest month of the year in the operating area;

(*c*) if applicable, with the power-plant operation, and landing gear and flap operation recommended by the manufacturer; and

(*d*) in the case of a take-off—

(i) clearing all obstacles in the take-off flight path by at least 50 feet;

(ii) with a smooth transition from lift-off to the best rate of climb speed without exceptional piloting skills or techniques.

(3) Each airport must have a wind direction indicator that is visible at ground level from the ends of each runway—

(*a*) have adequate runway electrical lighting if used for night training; and

(*b*) have a traffic direction indicator when—

(i) the airport does not have an operating control tower; and

(ii) traffic and wind advisories are not available.

(4) Except as specified in subregulation (5) of this Regulation, each airport used for night training flights must have permanent runway lights.

(5) An airport or seaplane base used for night training flights in seaplanes may be approved by the Authority to use adequate, non-permanent lighting or shoreline lighting.

(6) Sites shall be available for—

(*a*) confined area operation training;

(*b*) simulated engine off autorotation;

(*c*) sloping ground operation.

Division 5—Additional, Specific Operating Rules for Flight Crew Training

Training and procedures manual

33.—(1) Each applicant for, or holder of an ATO certificate shall prepare and maintain a Training Manual and a Procedures Manual containing information and instructions to enable staff to perform their duties and to give guidance to students on how to comply with course requirements.

(2) The Training Manual and Procedures Manual may be combined.

(3) The ATO shall ensure that the Training Manual and the Procedures Manual are amended as necessary to keep the information contained therein up to date.

(4) Copies of all amendments to the Training Manual and the Procedures Manual shall be furnished promptly by the ATO to all organizations or persons to whom the manual has been issued.

(5) See IS 3:33 contained in the Schedule for detailed requirements for the Training Manual and the Procedures Manual and format for each manual.

Record keeping for flight crew training

34.—(1) Students: An ATO that is approved to conduct flight crew training shall maintain a record for each trainee that contains—

(*a*) the name of the trainee

(*b*) a copy of the trainee's airman certificate, if any, and any medical certificate;

(*c*) the name of the course and the make and model of flight training equipment used;

(*d*) the trainee's prerequisite experience and course time completed;

(*e*) the trainee's performance on each lesson and the name of the instructor providing instruction;

(*f*) the date and result of each end-of-course skill test and the name of the examiner conducting the test; and

(*g*) the number of hours of additional training that was accomplished after any unsatisfactory skill test.

(2) ATO staff: An ATO that is approved to conduct flight crew training shall maintain a record for each instructor approved to instruct a course approval in accordance with this subpart, that indicates the instructor has complied with all applicable instructor requirements of these Regulations.

(3) Record retention: An ATO shall keep all records for a minimum period of two years—

(*a*) for students, from the date of completion of training, testing or checking;

(*b*) for ATO staff, from the date of the last employment.

(4) The ATO shall make the records available to the Authority upon request and at a reasonable time and shall keep the records—

(*a*) for students, at the ATO or satellite ATO where the training, testing, or checking occurred, and

(*b*) for ATO staff, at the ATO or satellite ATO where the person is employed.

(5) The ATO shall provide to a trainee, upon request, and at a reasonable time, a copy of his or her training records.

Graduation certificate

35.—(1) An ATO shall issue a graduation certificate to each student who completes its approved course of training.

(2) The graduation certificate must be issued to the student upon completion of the course of training and contain at least the following information—

(*a*) the name and certificate number of the ATO;

(*b*) the name of the graduate whom it was issued;

(*c*) the course of training for which it was issued;

(*d*) the date of graduation;

(*e*) a statement that the student has satisfactorily completed each required stage of the approved course of training including the tests for those stages;

(*f*) a certification of the information contained on the graduation certificate by the chief instructor for that course of training; and a statement showing the cross-country training that the student received in the course of training.

Examining authority for ATO's teaching flight crew curriculum

36.—(1) An ATO shall meet the following prerequisites to receive initial approval for examining authority—

(*a*) the ATO must complete the application for examining authority on a form and in a manner prescribed by the Authority;

(*b*) the ATO must hold an ATO certificate and rating issued under this Regulation;

(*c*) the ATO must have held the rating in which examining authority is sought for at least 24 consecutive calendar months preceding the month of application for examining authority;

(*d*) the training course for which examining authority is requested may not be a course that is approved without meeting the minimum ground and flight training time requirements of this part; and

(*e*) within 24 calendar months before the date of application for examining authority, at least 90 per cent of the students in the ATO must have passed the required skill or knowledge test, or any combination thereof, for the licence or rating for which examining authority is sought, on the first attempt, and that test was given by—

(i) a CAA inspector; or

(ii) a designated examiner who is not an employee of the ATO.

(2) The examining authority of the ATO is valid for 24 months, unless suspended or .revoked by the Authority, and may be renewed upon request to the Authority by the ATO.

(3) An ATO that holds examining authority may recommend a person who graduated from its course for the appropriate knowledge or skill test.

(4) The ATO that holds examining authority will administer the tests or checks as required by the Aviation (Personnel Licensing) or the Aviation (Operations) Regulations, as appropriate to the licence or rating sought.

(5) A pilot school that holds examining authority must maintain—

(*a*) a record of all temporary airman licences or ratings it issues, which consist of the following information in chronological order—

(i) the date the temporary airman licence was issued;

(ii) the student to whom the temporary airman certificate was issued, and that student's permanent mailing address and telephone number;

(iii) the training course from which the student graduated;

(iv) the name of person who conducted the knowledge or practical test;

(v) the type of temporary airman licence or rating issued to the student; and

(vi) the date the student's airman application file was sent to the Authority for processing for a permanent airman licence.

(6) A copy of the record containing each student's graduation certificate, airman application, temporary airman licence, superseded airman licence (if applicable), and knowledge test or skill test results; and

(7) Retain these records for 2 years and make them available to the Authority upon request. These records must be surrendered to the Authority when the ATO ceases to have examining authority.

Student transfer of Credit between ATOs' teaching flight crew curriculum

37.—(1) A person who transfers from one ATO to another ATO may receive credit for that previous flight crew training, provided the following requirements are met—

(*a*) the maximum credited training time does not exceed one-half of the receiving ATO's curriculum requirements;

(*b*) the person completes a knowledge and proficiency test conducted by the receiving ATO for the purpose of determining the amount of experience and knowledge to be credited;

(*c*) the receiving ATO determines, based on the person's performance on the knowledge and proficiency test required by subregulation (1) (*b*), the amount of credit to be awarded, and records that credit in the person's training record;

(*d*) the person who requests credit for previous experience and knowledge obtained the experience and knowledge from another ATO approved training course; and

(*e*) the receiving ATO retains a copy of the person's training record from the previous ATO.

Inspections of the ATO teaching flight crew curricula

38. Each ATO shall allow the Authority to inspect the ATO facilities, equipment and records at any reasonable time and in any reasonable place in order to determine compliance with these Regulations and the ATO's certificate and training specifications.

PART IV
Additional Requirements for Instruction for Maintenance Licences and Training

Division 1—General

Application

39. In addition to the requirements of the Aviation (Personnel Licensing) Regulations, this subpart prescribes additional requirements for ATO's teaching maintenance curricula.

Division 2—Curriculum Approval

Maintenance training courses

40. The Authority may approve, as provided in the training specifications, the ATO to conduct the following courses of instruction to an applicant or, holder of an ATO certificate, provided the applicant meets the requirements of the Aviation (Personnel Licensing) Regulations, and these Regulations—

(*a*) Aircraft Maintenance Engineer licence course;

(*b*) airframe rating course;

(*c*) power-plant rating course;

(*d*) airframe and power-plant combined ratings course;

(*e*) avionics rating course; and

(*f*) other courses as the Authority may approve.

Training course approval—qualification based and alternate means of compliance

41.—(1) An applicant for an ATO certificate shall apply to the Authority for approval for each course to be offered or amended—

(*a*) the applicant or ATO shall submit a copy of the training course or amendment to the Authority as part of the application when applying for new or amended training course approval;

(*b*) the applicant or ATO shall submit the application to the Authority at least 30 days before any training under the course is scheduled to begin.

(2) Except as provided in regulation 42 of this part, each training course for which approval is requested must meet the minimum training time requirements specified in the Aviation (Personnel Licensing) Regulations, for the licence, rating or authorization sought.

(3) Each training course for which approval is requested must contain—

(*a*) a description of each room used for training, including the room size and the maximum number of students that may be trained in the room at one time;

(*b*) a description of each type of audiovisual aid, projector, tape recorder, mockup, chart, aircraft component, and other special training aids used for training;

(*c*) a description of the minimum equipment to be used in each course;

(*d*) the minimum qualifications and ratings for each instructor assigned to training, including initial and continuing training; and

(*e*) a training syllabus that includes the following information—

(i) the prerequisites for enrolling in the course;

(ii) a detailed description of each lesson, including the lesson's objectives, standards, and planned time for completion;

(iii) the subjects and items to be covered and the level of proficiency to meet;

(iv) for each subject, the proportions of theory and other instruction to be given;

(v) a description of what the course is expected to accomplish with regard to student learning;

(vi) the expected accomplishments and the standards for each stage of training, including the required practical projects to be completed; and

(vii) a description of the checks and tests to be used to measure a student's accomplishments for each stage of training.

Training course approval—alternative means of compliance and competency based training and assessment

42.—(1) An ATO may request and receive initial approval for a period of not more than 24 calendar months for any training course under this part that does not meet the minimum ground and/or training time experience requirements, provided that—

(*a*) the ATO show that the training will provide an equivalent level of competency at least equal to the minimum experience requirements for personnel not receiving such training; and

(*b*) the following provisions are met—

(i) the ATO holds an ATO certificate issued under this part and has held that certificate for a period of at least 24 consecutive calendar months preceding the month of the request;

(ii) in addition to the information required by regulation 41 (3) of these Regulation, the training course specifies planned training time requirements for the course;

(iii) the school does not request the training course to be approved for examining authority, nor may that school hold examining authority for that course; and

(iv) the knowledge test and/or skill test for the course is to be given by—

(A) a CAA inspector; or

(B) an examiner who is not an employee of the school.

(2) An ATO may request and receive final approval for any training course under this Part that does not meet the minimum ground and flight training time requirements, provided the following conditions are met—

(*a*) the ATO has held initial approval for that training course for at least 24 calendar months.

(*b*) the ATO has—

(i) trained at least 10 students in that training course within the preceding 24 calendar months and recommended those students for an AME certificate or rating; and

(ii) at least 80 percent of those students passed the skill or knowledge test, as appropriate, on the first attempt, and that test was given by—

(A) a CAA inspector; or

(B) an examiner who is not an employee of the school;

(*c*) in addition to the information required by subregulation 41 (3) of these Regulation, the training course specifies planned ground and flight training time requirements for the course;

(*d*) the ATO does not request that the training course be approved for examining authority nor may that school hold examining authority for that course.

Division 3—ATO Personnel and Facilities

Personnel

43.—(1) The applicant for an ATO certificate or current certificate holder teaching maintenance curricula shall have on the staff the following—

(*a*) an Accountable Manager;

(*b*) a Quality Manager;

(*c*) a Head of Training;

(2) An adequate number of instructors relevant to the courses provided.

(3) Each instructor to be used for training shall have received the appropriate training and hold the appropriate licence and/or rating as required by the Aviation (Personnel Licensing) Regulations.

(4) The duties and qualifications of training and instruction staff as follows—

(*a*) Head of Training: the Head of Training shall have overall responsibility for ensuring satisfactory integration of theoretical knowledge instruction and practical training and for supervising the progress of individual students; the Head of Training shall have had extensive experience in training as an instructor for AME licensing and possess a sound managerial capability;

(*b*) Instructors—

(i) each ATO shall provide the number of instructors holding appropriate licences and ratings, issued under the Aviation (Personnel Licensing) Regulations, that the Authority determines is necessary to provide adequate instruction and supervision of the students.

(ii) an ATO may provide specialized instructors, who are not licensed but who are approved in accordance with the Aviation (Personnel Licensing) Regulations to teach mathematics, physics, basic electricity, basic hydraulics, drawing, and similar subjects.

Facilities required for maintenance training

44.—(1) An applicant for, and holder of, an ATO certificate shall have facilities, as determined by the Authority, appropriate for the maximum number of students expected to be taught at any time, as follows—

(*a*) an enclosed classroom;

(*b*) suitable facilities arranged to assure proper separation from the working space, for parts, tools, materials and similar articles;

(*c*) suitable area for application of finishing materials, including paint spraying;

(*d*) suitable areas equipped with washtank and degreasing equipment with air pressure or other adequate cleaning equipment;

(*e*) suitable facilities for running engines;

(*f*) suitable area with adequate equipment, including benches, tables, and test equipment, to disassemble, service and inspect;

(i) ignition systems, electrical equipment and appliances;

(ii) carburettors and fuel systems; and

(iii) hydraulic and vacuum systems for aircraft, aircraft engines, and their appliances;

(*g*) suitable space with adequate equipment, including tables, benches, stands and jacks for disassembling, inspecting and rigging aircraft;

(*h*) suitable space with adequate equipment for disassembling, inspecting, assembling, troubleshooting and timing engines.

(2) An applicant for, or holder of an ATO certificate with approved AME courses shall have and maintain the following instructional equipment as is appropriate to the rating sought—

(*a*) various kinds of airframe structures, airframe systems and components, power-plants and power-plant system and components (including propellers) of a quantity and type suitable to complete the practical projects required by its approved training programme;

(*b*) at least one aircraft of a type acceptable to the Authority.

(3) An applicant for, or holder of an ATO certificate with an AME rating shall have airframes, power-plants, propellers, appliances and components thereof, to be used for instruction and from which students will gain practical working experience and shall insure that the airframes, power-plants, propellers, appliances and components thereof be sufficiently diversified as to show the different methods of construction, assembly, inspection and operation when installed in an aircraft for use.

(4) An applicant for an ATO certificate with an AME rating, or an applicant seeking an additional AME rating, shall have at least the facilities, equipment and materials appropriate to the rating sought.

(5) An applicant for, or holder of, an ATO certificate with an AME rating shall maintain, on the premises and under the full control of the ATO, an adequate supply of material, special tools and shop equipment used in constructing and maintaining aircraft as is appropriate to the approved training programme of the ATO, in order to assure that each student will be properly instructed.

(6) A certificate holder may not make a substantial change in facilities, equipment or material that have been approved for a particular training programme, unless that change is approved by the Authority in advance.

Division 4—Addition, Specific Operating Rules for Maintenance Training

Training and procedures manual

45.—(1) Each applicant for, or holder of an ATO certificate shall prepare and maintain a Training Manual and a Procedures Manual containing information and instructions to enable staff to perform their duties and to give guidance to students on how to comply with course requirements.

(2) The Training Manual and Procedures Manual may be combined.

(3) The ATO shall ensure that the Training Manual and the Procedures Manual is amended as necessary to keep the information contained therein up to date.

(4) Copies of all amendments to the Training Manual and the Procedures Manual shall be furnished promptly by the ATO to all organizations or persons to whom the manual has been issued.

(5) See IS: 3:45 contained in the Schedule hereto for detailed requirements for the Training Manual and the Procedures Manual and the format for each manual.

Record keeping

46.—(1) Students: An ATO that is approved to conduct maintenance training shall maintain a record for each trainee that contains—

(*a*) the name of the trainee;

(*b*) a copy of the trainee's airman certificate, if any;

(*c*) the name of the course and the instruction credited;

(*d*) the trainee's prerequisite experience and course time completed;

(*e*) the trainee's performance on each lesson and the name of the instructor providing instruction;

(*f*) the date and result of each end-of-course test and the name of the examiner conducting the test; and

(*g*) the number of hours of additional training that was accomplished after any unsatisfactory test;

(*h*) a current progress chart or individual progress record for each student, showing the practical projects or laboratory work completed, or to be completed, in each subject.

(2) ATO staff: An ATO that is approved to conduct maintenance training shall maintain a record for each instructor approved to instruct a course approval in accordance with this subpart, that indicates the instructor has complied with all applicable instructor requirements of these Regulations.

(3) Record retention: An ATO shall keep all records for a minimum period of two years—

(*a*) for students, from the date of completion of training or testing;

(*b*) for ATO staff, from the date of the last employment.

(4) The ATO shall make the records available to the Authority upon request and at a reasonable time and shall keep the records—

(*a*) for students, at the ATO or satellite ATO where the training, testing, or checking occurred; and

(*b*) for ATO staff, at the ATO or satellite ATO where the person is employed.

(5) The ATO shall provide to a trainee, upon request, and at a reasonable time, a copy of his or her training records.

Graduation certificate

47.—(1) An ATO shall issue a graduation certificate to each student who completes its approved course of training.

(2) The graduation certificate must be issued to the student upon completion of the course of training and contain at least the following information—

(*a*) the name and certificate number of the ATO;

(*b*) the name of the graduate to whom it was issued;

(*c*) the course of training for which it was issued;

(*d*) the date of graduation;

(*e*) a statement that the student has satisfactorily completed each required stage of the approved course of training including the tests for those stages;

(*f*) a certification of the information contained on the graduation certificate by the Head of Training for that course of training.

Examining authority for ATO's teaching maintenance curricula

48.—(1) An ATO shall meet the following prerequisites to receive initial approval for examining authority—

(*a*) the ATO must complete the application for examining authority on a form and in a manner prescribed by the Authority;

(*b*) the ATO must hold an ATO certificate and rating issued under these Regulations;

(*c*) the ATO must have held the rating in which examining authority is sought for at least 24 consecutive calendar months preceding the month of application for examining authority;

(*d*) within 24 calendar months before the date of application for examining authority, at least 90 percent of the students in the ATO must have passed the required skill or knowledge test, or any combination thereof, for the licence or rating for which examining authority is sought, on the first attempt, and that test was given by—

(i) a CAA inspector; or

(ii) a designated examiner who is not an employee of the ATO.

(2) The examining authority of the ATO is valid for 24 months, unless suspended or revoked by the Authority, and may be renewed upon request to the Authority by the ATO.

(3) An ATO that holds examining authority may recommend a person who graduated from its course for the appropriate knowledge or skill test.

(4) The ATO that holds examining authority will administer the tests as required by the Aviation (Personnel Licensing) Regulations, as appropriate to the licence or rating sought.

(5) An ATO that holds examining authority may conduct knowledge and skill tests on a progressive schedule if approved by the Authority. This may be necessary due to the length and complexity of an inclusive maintenance training programme.

(6) An ATO that holds examining authority must maintain—

(*a*) a record of all temporary airman licences or ratings it issues, which consist of the following information in chronological order—

(i) the date the temporary airman licence was issued;

(ii) the student to whom the temporary airman certificate was issued, and that student's permanent mailing address and telephone number;

(iii) the training course from which the student graduated;

(iv) the name of person who conducted the knowledge or skill test;

(v) the type of temporary airman licence or rating issued to the student; and

(vi) the date the student's airman application file was sent to the Authority for processing for a permanent airman licence.

(*b*) a copy of the record containing each student's graduation certificate, airman application, temporary airman licence, superseded airman licence (if applicable), and knowledge test or skill test results; and

(*c*) retain these records for 2 years and make them available to the Authority upon request: these records must be surrendered to the Authority when the ATO ceases to have examining authority.

Student transfer of credit between ATO's teaching a maintenance curriculum

49.—(1) A person who transfers from one ATO to another ATO may receive credit for that previous maintenance training, provided the following requirements are met—

(*a*) the maximum credited training time does not exceed one-half of the receiving ATO's curriculum requirements for the licence or rating;

(*b*) the person completes a knowledge and practical test conducted by the receiving ATO for the purpose of determining the amount of experience and knowledge to be credited;

(*c*) the receiving ATO determines, based on the person's performance on the knowledge and practical test required by subregulation 49 (1) (*b*) of this section, the amount of credit to be awarded, and records that credit in the person's training record; and

(*d*) the receiving ATO retains a copy of the person's training record from the previous ATO.

Inspection of the ATO teaching maintenance curricula

50. Each ATO shall allow the Authority to inspect the ATO facilities, equipment and records at any reasonable time and in any reasonable place in order to determine compliance with these Regulations and the ATO's certificate and training specifications.

SCHEDULE
IMPLEMENTING STANDARDS

APPROVED TRAINING ORGANIZATIONS REGULATIONS

IS 3:6 APPROVED TRAINING ORGANIZATION CERTIFICATE

REPUBLIC OF MALAŴI

DEPARTMENT OF CIVIL AVIATION

APPROVED TRAINING ORGANIZATION CERTIFICATE

This certificate is issued to: Whose principle business address is:

Number:

Upon finding that its organization complies in all respects with the regulations of Malaŵi relating to the establishment of an Approved Training Organization and is empowered to operate an Approved Training Organization in accordance with the Training Specifications issued herewith, and may conduct the following courses:

This certificate shall continue in effect, unless surrendered, superseded, suspended, revoked or expired.

Date of Issue: ..... Signature: .....

Printed Name: .....

Title: .....

IS 3:20 QUALITY ASSURANCE AND QUALITY SYSTEM

(*a*) In order to show compliance with regulation 20, an ATO should establish its quality assurance and quality system in accordance with the instruction and information contained in the following paragraphs.

1.0 Quality policy and strategy

1.1 The ATO shall describe how the organization formulates, deploys and reviews its policy and strategy and turns them into plans and actions applicable to all levels of the organization. A formal written quality policy statement should be prepared, establishing a commitment by the accountable executive of the training organization to achieving and maintaining the highest possible standards in quality. The quality policy should reflect the achievement and continued compliance with relevant parts of Appendix 2 to Annex 1, together with all applicable national regulations and any additional standards specified by the ATO.

1.2 The accountable executive of the training organization will have the overall responsibility for the standard in quality including the frequency, format and structure of the internal management review and analysis activities and may delegate the responsibility for the tasks defined under paragraph 2 of this Appendix to a quality manager. Depending on the size and scope of the organization and the requirements of the Licensing Authority, the accountable executive and quality manager may interact in different ways as illustrated in the organizational charts in ICAO Doc 9841, Appendix C.

2.0 Quality manager

2.1 The primary role of the quality manager is to verify, by monitoring activities in the field of training, that the standards as established by the ATO and any additional requirements of the Licensing Authority are being carried out properly.

2.2 The quality manager should be responsible for ensuring that the quality system is properly documented, implemented, maintained and continuously reviewed and improved (*see* paragraph 17 of this Appendix).

2.3 The quality manager should—

(*a*) report directly to the head of training (*see* Note); and

(*b*) have unencumbered access to all parts of the ATO.

Note: When the head of training is not the accountable executive, reporting mechanisms should be instituted to ensure that the accountable executive is aware of all issues impacting the quality of the training services being provided by the affected ATO (see example 2 in ICAO Doc 9841, Appendix C).

2.4 The quality manager should be responsible for ensuring that personnel training related to the quality system is conducted.

3.0 Quality assurance

3.1 The term quality assurance is frequently misunderstood to mean the testing and checking of products and services. Organizations that only do checking and testing activities are merely applying 'quality control' measures, which are designed to catch product and service defects, but not necessarily prevent them. For example, an ATO that administers exams at the end of the training syllabus, only to discover that a large proportion of the students have failed to meet the required standard has only identified a deficiency in expected results. The implication would be that there could be a problem with the training programme, or the instructor, or even the student selection criteria. In this instance the ATO has no idea

what the real problem is or what to do about it. Quality control, by itself, provides limited value without the suite of complementary activities that comprise QA.

3.2 QA, on the other hand, attempts to improve and stabilize the training process to identify and avoid, or at least minimize, issues that lead to problems in the first place. It continuously verifies that audits to ensure that documented policies, processes, and procedures are consistently followed. It is the 'assurance' part of quality management.

A QA plan for an ATO should encompass well-designed and documented policies, processes and procedures for at least the following activities—

(*a*) monitor training services and process controls;

(*b*) monitoring assessment and testing methods;

(*c*) monitor personnel qualifications and training;

(*d*) monitor training devices and equipment qualification, calibration and functionality, as applicable;

(*e*) conduct internal and external audits;

(*f*) develop, implement, and monitor corrective and preventive actions and associated reporting systems (*see* paragraph 8 of this Manual below); and

(*g*) utilize appropriate statistical analysis to identify and respond appropriately to trends.

3.4 An effective QA plan will aid significantly in the ATO's compliance with requirements, its conformity with the standards and the adequacy of its training activities. To take the ATO's performance to a higher level requires a structure that ensures that the combined QA effort of the employees reaches its full potential.

Note: *Annex 1 only requires ATOs to establish and implement QA policies, processes, and procedures acceptable to the Licensing Authority granting the approval, which ensures that training and instructional practices comply with all relevant requirements.*

3.5 QA plans by themselves are subject to breakdowns in human performance and therefore are in need of robust organizational structures that underpin the QA efforts of individuals. It is for this reason that ATOs and States should embrace the quality system governance model described in this Appendix.

4 Quality system for the ATO

4.1 A quality system is the aggregate of all the organization's activities, plans, policies, processes, procedures, resources, incentives,

and infrastructure working in unison towards a total quality management approach. It requires an organizational construct complete with policies, processes, procedures, and resources that underpins a commitment to achieve excellence in product and service delivery through the implementation of best practices in quality management.

4.2 An ATO that supports its QA plan with a well-designed, implemented and maintained quality system structure should be able to easily and repeatedly achieve results that exceed both the requirements of the applicable national regulations and the expectations of the ATO's clients.

4.3 The basic attributes of an effective quality system should include, but are not necessarily limited to—

(*a*) a managerial structure that facilitates and encourages clear and unencumbered access to the decision makers;

(*b*) an overarching company commitment to achieve excellence in training service delivery rather than meeting minimum requirements;

(*c*) quality policies, processes, and procedures that are well-designed, consistently applied and subject to formalized review and refinement processes;

(*d*) an employee training plan that instils and promotes best practices in quality management efforts;

(*e*) an organizational risk profile and corresponding risk management plan, which together provide a comprehensive list of hazards that are tied to the ATO's activities and establish mitigating measures to effectively manage those risks, which threaten the achievement of desired standards of performance; and

(*f*) a strategic review of policies and procedures, which measures the organization's current assumptions, objectives and plans by applying a relevance test matched to evolving trends in the industry or changes occurring within the ATO.

5. Organizational risk profile

5.1 An organizational risk profile is an inventory of identified hazards and threats that present risks, which are likely to prevent conformity with the required standards of performance. This 'threat to quality' list is normally derived at by first establishing a directory of those activities that routinely take place in order to deliver and administer a training programme. Once complete, the activity directory is then expanded to identify the hazards and threats associated with each individual activity. Some examples

of routine activities that should be examined during this process are—

(*a*) selection and training of staff;

(*b*) training programme development, validation, and review;

(*c*) development and maintenance of training courseware;

(*d*) administrative staff duties in support of the training programme; instructors and evaluators, and students;

(*e*) delivery of training;

(*f*) record keeping;

(*g*) assessment and examination processes; and

(*h*) client and Authority feedback.

5.2 The risks identified through this exercise should not be limited to just those which currently exist, but should also include those potential risks that could arise from a change to existing circumstances or conditions.

6. Risk management plan

6.1 A risk management plan is designed to mitigate the identified risks, real or potential, which were derived from the organizational risk profile exercise. The plan's objective is not to eliminate risk so much as it is to effectively manage risk by putting in place risk controlling measures.

6.2 A well developed and implemented risk management plan will substantially aid in accurately scoping out the depth and frequency of planned QA related activities.

6.3 The plan should be subject to the management review process outlined in paragraph 4.3 (*f*) of this Appendix.

6.4 The current risk management plan should be readily accessible to all employees so that it can be accurately followed and open to comment for improvement.

7. Coherence matrix

7.1 A coherence matrix, sometimes known as a correspondence matrix, is a very powerful addition to the ATO's compliance efforts. It is a detailed tabulated document that lists all the applicable regulatory requirements imposed on the ATO. Beside each listed provision there should be at least two descriptive elements that identify—

(*a*) the existing process(es) that is (are) designed to ensure continuous compliance with that specific regulatory rule or standard; and

(*b*) the individual managerial position responsible for the effective implementation of each process.

7.2 The coherence matrix should indicate the next intended and most recently completed audits designed to validate the functionality of each of the identified process. Any recent audit findings should be listed in the matrix or referred to as being documented in a separate 'register of findings'.

The coherence matrix is developed and managed by the quality manager and is subject to the management review process.

7.4 The current coherence matrix should be readily accessible to all employees so that it can be accurately followed and open to comment for improvement.

8. Corrective and preventive action reports

8.1 Quality assurance plans should include a well-structured reporting system to ensure that suggestions by ATO personnel for both corrective and preventive actions are recorded and promptly addressed. Paragraph 3.3 (*f*) of this Appendix identifies this as a necessary component of QA.

8.2 After an analysis of the reports submitted, the reporting system should specify who is required to rectify a discrepancy and/or non conformity in each particular case and the procedure to be followed if corrective action is not completed within an appropriate timescale. Just as important, the reporting system should identify who is required to investigate and act upon any report identifying measures that could prevent a non-conformity from occurring.

8.3 Corrective and preventive action reports should be able to be submitted anonymously, if individuals so choose, to maximize the opportunity for open and effective reporting.

NOTE—Since corrective and preventive action reports, in this instance, represent suggestions for improvement in conformity levels and deal with quality issues, this reporting system and its processes should be managed by the quality manager.

9. Quality-related documentation

9.1 Relevant documentation includes part(s) of the Training and Procedures Manual, which may be included in a separate Quality Manual.

9.2 In addition, the relevant documentation should include the following—

(*a*) quality policy and strategy;

(*b*) glossary;

(*c*) organizational risk profile;

(*d*) risk management plan;

(*e*) coherence matrix;

(*f*) corrective and preventive action procedures and reporting system;

(*g*) specified training standards;

(*h*) description of the organization;

(*i*) assignment of duties and responsibilities, and

(*j*) training procedures related to the quality system to ensure regulatory compliance.

9.3 The QA audit programme documentation should reflect—

(*a*) the schedule of the monitoring process;

(*b*) audit procedures;

(*c*) reporting procedures;

(*d*) follow-up and corrective action procedures;

(*e*) the recording system; and

(*f*) document control.

10. Quality assurance audit programme

The QA audit programme should include all planned and systematic actions necessary to provide confidence that every training activity is conducted in accordance with all applicable requirements, standards and procedures.

11. Quality inspection

11.1 The primary purpose of a quality inspection is to review a document or observe a particular event, action, etc., in order to verify whether established training procedures and requirements are followed during the conduct of the inspection and whether the required.

11.2 Examples of typical subject areas for quality inspections are—

(*a*) actual training sessions;

(*b*) maintenance, if applicable;

(*c*) technical standards; and

(*d*) training standards.

12. Quality audits

12.1 An audit is a systematic and independent comparison between the way in which training is being conducted and the way in which it should be conducted according to the published training procedures.

12.2 Audits should include at least the following quality procedures and processes—

(*a*) a description of the scope of the audit, which should be explained to the audited personnel;

(*b*) planning and preparation;

(*c*) gathering and recording evidence; and

(*d*) analysis of the evidence.

12.3 The various techniques that make up an effective audit are—

(*a*) a review of published documents;

(*b*) interviews or discussions with personnel;

(*c*) the examination of an adequate sample of records;

(*d*) the witnessing of the activities which make up the training; and

(*e*) the preservation of documents and the recording of observations.

13. Auditors

13.1 The ATO should decide, depending on the complexity of the organization and the training being conducted, whether to make use of a dedicated audit team or a single auditor. In any event, the auditor or audit team should have relevant training and/or operational experience.

13.2 The responsibilities of the auditors should be clearly defined in the relevant documentation.

14. Auditor's independence

14.1 Auditors should not have any day-to-day involvement in the area of the operation or maintenance activity that is to be audited.

14.2 An ATO may, in addition to using the services of full time dedicated personnel belonging to a separate quality department, undertake the monitoring of specific areas or activities through the use of part-time auditors. An ATO whose structure and size does not justify the establishment of full-time auditors may undertake the audit function using part-time personnel from within its own organization or from an external source under the terms of an agreement acceptable to the Licensing Authority.

14.3 In all cases the ATO should develop suitable procedures to ensure that persons directly responsible for the activities to be audited are not selected as part of the auditing team. Where external auditors are used, it is essential that any external specialist has some familiarity with the type of activity conducted by the ATO.

14.4 The QA audit programme of the ATO should identify the persons within the organization who have the experience, responsibility and authority to—

(*a*) identify and record concerns or findings, and the evidence necessary to substantiate such concerns or findings;

(*b*) initiate or recommend solutions to concerns or findings through designated reporting channels;

(*c*) verify the implementation of solutions within specific and reasonable timescales; and

(*d*) report directly to the quality manager.

15. Audit scheduling

15.1 A QA audit programme should include a defined audit schedule and a periodic review cycle. The schedule should be flexible and allow unscheduled audits when negative trends are identified. The quality manager should schedule follow-up audits when necessary to verify that a corrective action resulting from a finding was carried out and that it is effective.

15.2 An ATO should establish a schedule of audits to be completed during a specific calendar period. This schedule should be influenced by the organizational risk profile and be reflected in both the risk management plan and the coherence matrix documents. As a minimum, all aspects of the training should be reviewed with a period of twelve months in accordance with the audit programme.

15.3 When an ATO defines the audit schedule, it should take into account significant changes to the management, organization, training or technologies, as well as changes to the standards and requirements.

16. Monitoring and corrective action

16.1 The aim of monitoring within the quality system is primarily to investigate and judge its effectiveness and thereby ensure that defined policy and training standards are continuously complied with. Monitoring and corrective action functions fall under the responsibilities of the quality manager. Monitoring activity is based upon—

(*a*) quality inspections;

(*b*) quality audits; and

(*c*) corrective and preventive action reports, and subsequent follow-up.

16.2 Any non-conformity identified as a result of monitoring should be communicated by the quality manager to the manager responsible for taking corrective action or, if appropriate, to the head of training or, when circumstances warrant, to the accountable executive.

Such non-conformity should be recorded, for the purpose of further investigation, in order to determine the cause and to enable the recommendation of an appropriate corrective action.

16.3 The QA audit programme should include procedures to ensure that corrective and preventive actions are developed in response to findings. Personnel implementing these procedures should monitor such actions to ensure that they have been completed and verify their effectiveness. Organizational responsibility and accountability for the implementation of a corrective action resides with the department where the finding was identified. The accountable executive will have the ultimate responsibility for ensuring, through the quality manager that the corrective action has re-established conformity with the standard required by the ATO and any additional requirements established by the Licensing Authority or the ATO.

16.4 As part of its quality system, the ATO should identify internal and external customers and monitor their satisfaction by measurement and analysis of feedback.

17. Continuous improvement process

17.1 As stated in paragraph 2.2 of this Appendix, the quality manager should be responsible for the review and continuous improvement of the established quality system's policies, processes and procedures. The following tools, on which the quality manager relies, are essential to the on-going continuous improvement process—

(*a*) organizational risk profile;

(*b*) risk management plan;

(*c*) coherence matrix;

(*d*) corrective and preventive action reports; and

(*e*) inspection and audit reports.

17.2 These tools and processes are interrelated and help define the continuous improvement efforts of the organization. For example, any corrective or preventive action report could identify a deficiency or an opportunity for improvement. As outlined in paragraph 8.2 of this Appendix, the quality manager would then be able to ensure the identified issue was addressed and effectively implemented. The same would be true, if the discovery of an issue was identified during an inspection or audit.

17.3 The effective implementation of change and the subsequent validation that the change did indeed result in the desired outcome is critical to the continuous improvement process. Simply introducing a well-meaning suggestion for improvement into the

organization without carefully managing that change could have undesirable consequences. It is therefore incumbent upon the quality manager to responsibly introduce, monitor, and validate improvement efforts.

17.4 A simplistic but effective process to use in managing continuous improvement is known as the plan-do-check-act, or PDCA, approach. The following illustration depicts this continuous improvement process cycle—

(*a*) plan: map out the implementation of the recommended change, identifying at least—

(i) those people who will be affected by the change;

(ii) the required quality control measures necessary to mitigate risk; and

(iii) the desired outcome and its intended consequences.

(*b*) do: execute the implementation plan once all affected groups have accepted the proposal and understand their role in ensuring its success;

(*c*) check: apply sufficient quality control "stage" checks throughout the implementation phase to ensure any unintended deviations in the execution are identified and addressed without delay; and

(*d*) act: analyse the results and take appropriate action as necessary.

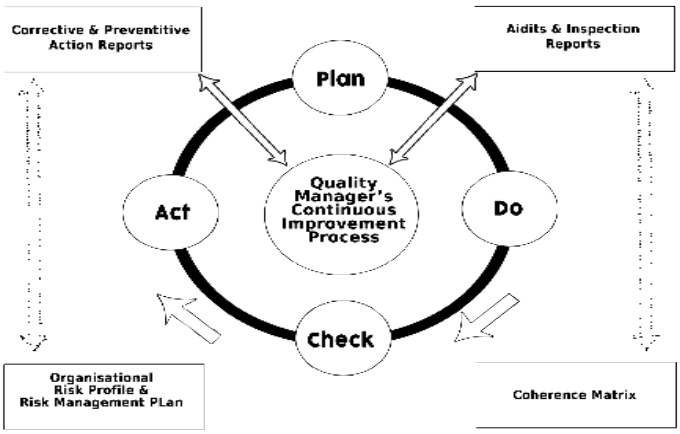

18. Management review and analysis

18.1 Management should accomplish a comprehensive, systematic and documented review and analysis of the quality system, training policies and procedures, and should consider—

(*a*) the results of quality inspections, audits and any other indicators;

(*b*) the overall effectiveness of the management organization in achieving stated objectives; and

(*c*) the correction of trends, and prevention, where applicable, of future non conformities.

NOTE: Paragraph 4.3 to this Appendix identifies

18.2 Conclusions and recommendations made as a result of the review and analysis should be submitted in writing to the responsible manager for action. The responsible manager should be an individual who has the authority to resolve relevant issues and take action. The head of training should decide upon the frequency, format and structure of meetings for internal review and analysis, in coordination with the accountable executive, if different, as the accountable executive has the overall responsibility for the quality system, including the frequency, format and structure of the internal management review and analysis activities (see paragraph 1.2 of this Appendix).

19. Recording

19.1 Accurate, complete and readily accessible records documenting the result of the QA audit programme should be maintained by the ATO. Records are essential data to enable an ATO to analyse and determine the root causes of non-conformity so that areas of non-compliance can be identified and subsequently addressed.

19.2 Records should be retained at least for the period that may be mandated by national requirements. In the absence of such requirements, a period of three years is recommended. The relevant records include—

(*a*) audit schedules;

(*b*) quality inspection and audit reports;

(*c*) responses to findings;

(*d*) corrective and preventive action reports;

(*e*) follow-up and closure reports; and

(*f*) management review and analysis reports.

20. QA responsibility for satellite ATOs

20.1 An ATO may decide to subcontract certain activities to external organizations subject to the approval of the Licensing Authority.

20.2 The ultimate responsibility for the training provided by the satellite ATO always remains with the ATO. A written agreement should exist between the ATO and the satellite ATO clearly defining the training services to be provided and the level of quality to be assured. The satellite ATO's activities relevant to the agreement should be included in the ATO's QA audit programme.

20.3 The ATO should ensure that the satellite ATO has the necessary authorization/approval when required and commands the resources and competence to undertake the task.

21. QA training

21.1 Appropriate and thorough training is essential to optimize quality in every organization. In order to achieve the appropriate outcomes of such training, the ATO should ensure that all staff members understand the objectives as laid out in the quality manual to a level relevant to their duties, including the—

(*a*) concept of QA and associated systems;

(*b*) quality management;

(*c*) quality manual;

(*d*) inspections and audit techniques; and

(*e*) reporting and recording.

21.2 Time and resources should be allocated to provide appropriate levels of QA training to every employee.

21.3 QA courses are available from the various national or international standards institutions, and an ATO should consider whether to offer such courses to those likely to be involved in the management or supervision of QA processes. Organizations with sufficient appropriately, qualified staff should consider the possibility of providing in-house training.

IS: 3:28 Personnel for Flight Crew Training in the ATO

(*a*) the Head of Training shall have overall responsibility for ensuring satisfactory integration of flying training, flight simulation training and theoretical knowledge instruction and for supervising the progress of individual students. The Head of Training shall have had extensive experience in training as a flight instructor for professional pilot licences and possess a sound managerial capability;

(*b*) the CFI shall be responsible for the supervision of flight and synthetic flight instructors and for the standardization of all

flight instruction and synthetic flight instruction. The CFI shall—

(i) hold the highest professional pilot licence related to the flying training courses conducted;

(ii) hold the rating(*s*) related to the flying training courses conducted;

(iii) hold a flight instructor rating for at least one of the types of aircraft used on the course; and

(iv) have completed 1,000 hours pilot-in-command flight time of which a minimum of 500 hours shall be on flying instructional duties related to the flying courses conducted, of which 200 hours may be instrument ground time;

(*c*) flight instructors shall hold—

(i) a pilot licence and rating(*s*) in accordance with the Aviation (Personnel Licensing) Regulations related to the flying training courses they are approved to conduct; and

(ii) an instructor rating or authorization in accordance with the Aviation (Personnel Licensing) Regulations, relevant to the part of the course being conducted e.g. flight instructor, flight instrument rating instructor for additional class or type rating(*s*), instructor for flight simulation training, as appropriate;

(iii) instructors for flight simulation training shall hold the authorization in accordance with the Aviation (Personnel Licensing) Regulations related to the flight simulation training courses they are appointed to conduct;

(*d*) instructors for flight engineer licences and rating training shall hold—

(i) the licence and the rating(*s*) in accordance with the Aviation (Personnel Licensing) Regulations related to the flight engineer licence and/or rating training courses they are appointed to conduct; and

(ii) an instructor rating in accordance with the Aviation (Personnel Licensing) Regulations, relevant to the part of the course being conducted;

(*e*) the Chief Ground Instructor shall—

(i) be responsible for the supervision of all ground instructors and for the standardization of all theoretical knowledge instruction; and

(ii) shall have a practical background in aviation and have the appropriate ground instructor licence in accordance with the Aviation (Personnel Licensing) Regulations;

(iii) ground instructors shall be responsible for conducting ground training in subject areas required for a licence or rating. Ground instructors may have either a licence or be approved by the Authority in accordance with the Aviation (Personnel Licensing) Regulations, depending upon the subject matter to be taught;

(iv) ground instructors, who are approved by the Authority but not licensed, who teach knowledge subjects for licences sand ratings shall have appropriate experience in aviation and shall, before appointment, give proof of their competency by giving a lecture based on material they have developed for the subjects they are to teach.

IS: 3:33 TRAINING MANUAL AND PROCEDURES MANUAL FOR ATO CONDUCTING FLIGHT CREW TRAINING

The Training and Procedures Manual for use at an ATO conducting approved training courses should include the following:

PART I

1. GENERAL

1.1 Preamble relating to the use and applicability of the manual.

1.2 Table of contents.

1.3 Amendment, revision and distribution of the manual—

(*a*) procedures for amendment;

(*b*) amendment record page;

(*c*) distribution list; and

(*d*) list of effective pages.

1.4 Glossary of definitions and significant terms, including a list of acronyms and/or abbreviations.

1.5 Description of the structure and layout of the manual, including—

(*a*) the various parts, sections, as well as their contents and use; and

(*b*) the paragraph numbering system.

1.6 Description of the scope of training authorized under the organization's terms of approval.

1.7 Organization (chart of the ATO's management organization—*see* examples in Appendix C), and the name of the post holders.

1.8 Qualifications, responsibilities and succession of command of management and key operational personnel, including but not limited to—

(*a*) accountable executive;

(*b*) head of training;

(*c*) instructional services manager;

(*d*) quality manager;

(*e*) maintenance manager, if applicable;

(*f*) safety manager, if applicable;

(*g*) instructors; and

(*h*) examiners, evaluators, and auditors.

1.9 Policies dealing with—

(*a*) the training organization's objectives, including ethics and values;

(*b*) the selection of ATO personnel and the maintenance of their qualifications;

(*c*) the training programme design and development, including the need for programme validation and review in accordance with paragraphs 3.6 and 3.8 of this manual, as well as the outsourcing of training programme development to third-party providers in accordance with paragraph 8 of this manual;

(*d*) the evaluation, selection, and maintenance of training material and devices;

(*e*) the maintenance of the training facilities and equipment:

(*f*) developing and maintaining a quality system governance model; and

(*g*) developing and maintaining a culture focused on safety in the workplace, including, when applicable, implementing a safety management system governance model.

1.10 Description of the facilities and equipment available, including—

(*a*) general use facilities, including offices, stores and archives, library or reference areas;

(*b*) the number and size of classrooms, including installed equipment; and

(*c*) the type and number of training devices, including their location if other than at the main training site.

2. Staff training

2.1 Identification of persons or positions responsible for the maintenance of performance standards and for ensuring the competency of personnel.

2.2 Details of the procedures to validate the qualifications and determine the competency of instructional personnel as required by paragraph 7.3 of Appendix 2 to Annex 1.

2.3 Details of the initial and recurrent training programmes for all personnel as required by paragraph 7.4 of Appendix 2 to Annex 1, including awareness training with respect to their responsibilities within the ATO's system governance processes (see Appendices B and D for details on QS and SMS respectively).

2.4 Procedures for proficiency checks and upgrade training.

3.0 Client training programmes

The client training programmes cover each individual training programme conducted by the training organization for its customers. The training programmes consist of a training plan, a practical training syllabus and a theoretical knowledge syllabus, if applicable, as described in paragraphs 3.1, 3.2 and 3.3 below.

3.1 Training plan

3.1.1 The aim of the course in the form of a statement of what the student is expected to be able to do as a result of the training, the level of performance, and the training constraints to be observed.

3.1.2 Pre-entry requirements, including—

(*a*) minimum age;

(*b*) education or qualification requirements;

(*c*) medical requirements; and

(*d*) linguistic requirements.

3.1.3 Credits for previous knowledge, experience or other qualifications, which should be obtained from the Licensing Authority before the training commences.

3.1.4 Training curricula, including the—

(*a*) theoretical training (knowledge);

(*b*) practical training (skills);

(*c*) training in the domain of human factors (attitudes);

(*d*) assessment and examinations; and

(*e*) monitoring of the training process, including the assessment and examination activities.

3.1.5 Training policies in terms of—

(*a*) restrictions regarding the duration of training periods for students and instructors; and

(*b*) if applicable, minimum rest periods.

3.1.6 Policy for the conduct of student evaluation, including the—

(*a*) procedures for authorization for tests;

(*b*) procedures for remediation training before retest and knowledge test re-write procedures;

(*c*) test reports and records;

(*d*) procedures for skill progress checks and skill tests;

(*e*) procedures for knowledge progress tests and knowledge tests, including procedures for knowledge test preparation, type of questions and assessments, and standards required for a pass; and

(*f*) procedures for question analysis and review and for issuing replacement exams (applicable to knowledge tests).

3.1.7 Policy regarding training effectiveness, including—

(*a*) liaison procedures between training departments;

(*b*) requirements for reporting and documentation;

(*c*) internal feedback system for detecting training deficiencies;

(*d*) completion standards at various stages of training to ensure standardization;

(*e*) individual student responsibilities;

(*f*) procedures to correct unsatisfactory progress;

(*g*) procedures for changing instructors;

(*h*) maximum number of instructor changes per student; and

(*i*) procedures for suspending a student from training.

3.2 Syllabi for non-competency-based training programmes

3.2.1 Practical training syllabus—

3.2.1.1 A statement of how the course will be divided into phases, indicating how the phases will be arranged to ensure completion in the most suitable learning sequence and that exercises are repeated at the proper frequency.

3.2.1.2 The syllabus hours for each phase and for groups of lessons within each phase and when progress tests are to be conducted.

3.2.1.3 A statement of the standard of proficiency required before progressing from one phase of training to the next. It includes minimum experience requirements and satisfactory exercise completion before undertaking the next phase.

3.2.1.4 Requirements for instructional methods, particularly with respect to adherence to syllabi and training specifications.

3.2.1.5 Instruction for the conduct and documentation of all progress checks.

3.2.1.6 Instruction, where applicable, given to all examining staff regarding the conduct of examinations and tests.

3.2.2 Theoretical knowledge syllabus

The syllabus for theoretical knowledge instruction should be structured generally as in paragraph 3.2 above but with a training specification and objective for each subject.

3.3. Syllabus for competency-based training programmes

3.3.1 Training programmes focused on achieving desired standards of performance for specific jobs or tasks should be competency-based.

3.3.2 Competency-based training programmes are based upon a job and task analysis to define the knowledge, skills and attitudes required to perform a job or a task. Such programmes use an integrated approach in which the training of the underlying knowledge to perform a task is followed by practice of the task so that the trainee acquires the underlying knowledge, skills and attitudes related to the task in a more effective way.

3.3.3 As a result, the syllabus is structured as a single document that is subdivided in modules containing a training objective and the same information as in 3.2.1, but applied to both the theoretical knowledge and practical training delivered by the module.

4. Tests and checks conducted by the ATO for the issuance of a licence or a rating

4.1 When a State has authorized an ATO to conduct the testing required for the issuance of a licence or rating in accordance with the Training and Procedures Manual, the manual should include—

(*a*) the name(s) of the personnel with testing authority and the scope of the authority;

(*b*) the role and duties of the authorized personnel;

(*c*) if the school has been given authority to appoint personnel to conduct the testing required for the issuance of a licence or rating, the minimum requirements for appointment as well as the selection and appointment procedure; and

(*d*) the applicable requirements established by the Licensing Authority, such as—

(1) the procedures to be followed in the conduct of checks and tests; and

(2) the methods for completion and retention of testing records as required by the Authority.

5. Records

5.1 Policy and procedures regarding—

(*a*) attendance records;

(*b*) student training records;

(*c*) staff training and qualification records;

(*d*) person responsible for checking records and student personal logs;

(*e*) nature and frequency of record checks;

(*f*) standardization of record entries;

(*g*) personal log entries; and

(*h*) security of records and documents.

6. Safety management system (if applicable)

6.1 The requirement to adopt SMS practices is intended to be restricted to only those training entities whose activities directly impact upon the safe operation of aircraft. Should that requirement apply to the ATO, the Training and Procedures Manual, as stated in paragraph 1.9 above, must address the ATO's SMS with reference to a separate manual or include the SMS practices within the Training and Procedures Manual.

7. Quality assurance

7.1 Provide a brief description of the quality assurance practices, as required by paragraph 5 of Appendix 2 to Annex 1, with reference to a separate quality manual or include the QA practices within the Training and Procedures Manual (refer to Appendix B, paragraph 9).

8. Appendices

8.1 As required—

(*a*) sample progress test forms;

(*b*) sample logs, test reports and records; and

(*c*) a copy of the approved training organization's approval document.

PART II

Additional Content for Flight Training Organizations (Utilizing Aircraft)

9. Flight training—General

9.1 Qualifications, responsibilities and succession of command of management and key operational personnel (in addition to paragraph 1.8 above), including but not limited to—

(*a*) Chief Flight Instructor; and

(*b*) Chief Ground Instructor.

9.2 Policies and procedures (in addition to paragraph 1.9 above) dealing with—

(*a*) approval of flights;

(*b*) responsibilities of the pilot-in-command;

(*c*) flight planning procedures—general;

(*d*) carriage of passengers;

(*e*) operational control system;

(*f*) reporting of safety hazards, incidents and accidents (*see* Appendix D for more details);

(*g*) duty periods and flight time limitations for flying staff members and students; and

(*h*) minimum rest periods for flying staff members and students.

9.3 Description of the facilities and equipment available (in addition to paragraph 1.10 of this Appendix), including—

(*a*) flight simulation training devices and training aircraft;

(*b*) maintenance facilities and apron parking areas for training aircraft;

(*c*) computer-based classroom(s); and

(*d*) dispatch control and briefing areas.

10. Aircraft operating information

10.1 Certification and operating limitations.

10.2 Aircraft handling, including—

(*a*) performance limitations;

(*b*) use of checklists;

(*c*) standard operating procedures; and

(*d*) aircraft maintenance procedures.

10.3 Instructions for aircraft loading and securing of load.

10.4 Fuelling procedures.

10.5 Emergency procedures.

11. Routes

11.1 Performance criteria, e.g. take-off, en route, landing, etc.

11.2 Flight planning procedures including—

(*a*) fuel and oil requirements;

(*b*) minimum safe altitudes;

(*c*) planning for contingencies (e.g. emergency or diversion scenarios); and

(*d*) navigation equipment.

11.3 Weather minima for all instructional training flights during day, night, VFR and IFR operations.

11.4 Weather minima for all student training flights at various stages of training.

11.5 Training routes and practice areas.

12. Flight training plan

12.1 Training curricula (in addition to paragraph 3.1.4 above), including, as applicable, the—

(*a*) flying curriculum (single-engine);

(*b*) flying curriculum (multi-engine);

(*c*) theoretical knowledge curriculum; and

(*d*) flight simulation training curriculum.

12.2 The general arrangements of daily and weekly programmes for flying training, ground training and flight simulation training.

12.3 Training policies (in addition to paragraph 3.1.5 above) in terms of—

(*a*) weather constraints;

(*b*) maximum student training times for flight, theoretical knowledge and flight simulation training, per day/week/month;

(*c*) restrictions in respect of training periods for students;

(*d*) duration of training flights at various stages;

(*e*) maximum individual student flying hours in any day or night period;

(*f*) maximum number of individual student training flights in any day or night period; and

(*g*) minimum rest periods between training periods.

IS: 3.45 Training and Procedures Manual for ATO Conducting Maintenance Training

The Training and Procedures Manual for use at an ATO conducting approved training courses should include the following:

PART I

1. General

1.1 Preamble relating to the use and applicability of the manual.

1.2 Table of contents.

1.3 Amendment, revision and distribution of the manual—

(*a*) procedures for amendment;

(*b*) amendment record page;

(*c*) distribution list; and

(*d*) list of effective pages.

1.4 Glossary of definitions and significant terms, including a list of acronyms and/or abbreviations.

1.5 Description of the structure and layout of the manual, including—

(*a*) the various parts, sections, as well as their contents and use; and

(*b*) the paragraph numbering system.

1.6 Description of the scope of training authorized under the organization terms of approval.

1.7 Organization (chart of the ATO's management organization), and the name of the post holders.

1.8 Qualifications, responsibilities and succession of command of management and key operational personnel, including but not limited to—

(*a*) accountable executive;

(*b*) head of training;

(*c*) instructional services manager;

(*d*) quality manager;

(*e*) maintenance manager, if applicable;

(*f*) safety manager, if applicable;

(*g*) instructors; and

(*h*) examiners, evaluators, and auditors.

1.9 Policies dealing with—

(*a*) the training organization's objectives, including ethics and values;

(*b*) the selection of ATO personnel and the maintenance of their qualifications;

(*c*) the training programme design and development, including the need for programme validation and review as well as the outsourcing of training programme development to third-party providers in accordance with paragraph 8 of this manual;

(*d*) the evaluation, selection, and maintenance of training material and devices;

(*e*) the maintenance of the training facilities and equipment;

(*f*) developing and maintaining a quality system governance model; and

(*g*) developing and maintaining a culture focused on safety in the workplace, including, when applicable, implementing a safety management system governance model.

1.10 Description of the facilities and equipment available, including—

(*a*) general use facilities, including offices, stores and archives, library or reference areas);

(*b*) the number and size of classrooms, including installed equipment; and

(*c*) the type and number of training devices, including their location if other than at the main training site.

2. Staff training

2.1 Identification of persons or positions responsible for the maintenance of performance standards and for ensuring the competency of personnel.

2.2 Details of the procedures to validate the qualifications and determine the competency of instructional personnel as required by paragraph 7.3 above.

2.3 Details of the initial and recurrent training programmes for all personnel, including awareness training with respect to their responsibilities within the ATO's system governance processes.

2.4 Procedures for proficiency checks and upgrade training.

3.0 Client training programmes

The client training programmes cover each individual training programme conducted by the training organization for its customers. The training programmes consist of a training plan, a practical training syllabus and a theoretical knowledge syllabus, if applicable, as described in paragraphs 3.1, 3.2 and 3.3 below.

3.1 Training plan

3.1.1 The aim of the course in the form of a statement of what the student is expected to be able to do as a result of the training, the level of performance, and the training constraints to be observed—

3.1.2 Pre-entry requirements, including—

(*a*) minimum age;

(*b*) education or qualification requirements;

(*c*) medical requirements; and

(*d*) linguistic requirements.

3.1.3 Credits for previous knowledge, experience or other qualifications, which should be obtained from the Licensing Authority before the training commences.

3.1.4 Training curricula, including the—

(*a*) theoretical training (knowledge);

(*b*) practical training (skills);

(*c*) training in the domain of human factors (attitudes);

(*d*) assessment and examinations; and

(*e*) monitoring of the training process, including the assessment and examination activities.

3.1.5 Training policies in terms of—

(*a*) restrictions regarding the duration of training periods for students and instructors; and

(*b*) if applicable, minimum rest periods.

3.1.6 Policy for the conduct of student evaluation, including the—

(*a*) procedures for authorization for tests;

(*b*) procedures for remediation training before retest and knowledge test re-write procedures;

(*c*) test reports and records;

(*d*) procedures for skill progress checks and skill tests;

(*e*) procedures for knowledge progress tests and knowledge tests, including procedures for knowledge test preparation, type of questions and assessments, and standards required for a pass; and

(*f*) procedures for question analysis and review and for issuing replacement exams (applicable to knowledge tests).

3.1.7 Policy regarding training effectiveness, including—

(*a*) liaison procedures between training departments;

(*b*) requirements for reporting and documentation;

(*c*) internal feedback system for detecting training deficiencies;

(*d*) completion standards at various stages of training to ensure standardization;

(*e*) individual student responsibilities;

(*f*) procedures to correct unsatisfactory progress;

(*g*) procedures for changing instructors;

(*h*) maximum number of instructor changes per student; and

(*i*) procedures for suspending a student from training.

3.2 Syllabi for non-competency-based training programmes

3.2.1 Practical training syllabus

3.2.1.1 A statement of how the course will be divided into phases, indicating how the phases will be arranged to ensure completion in the most suitable learning sequence and that exercises are repeated at the proper frequency.

3.2.1.2 The syllabus hours for each phase and for groups of lessons within each phase and when progress tests are to be conducted.

3.2.1.3 A statement of the standard of proficiency required before progressing from one phase of training to the next. It includes minimum experience requirements and satisfactory exercise completion before undertaking the next phase.

3.2.1.4 Requirements for instructional methods, particularly with respect to adherence to syllabi and training specifications.

3.2.1.5 Instruction for the conduct and documentation of all progress checks.

3.2.1.6 Instruction, where applicable, given to all examining staff regarding the conduct of examinations and tests.

3.2.2 Theoretical knowledge syllabus

The syllabus for theoretical knowledge instruction should be structured generally as in paragraph 3.2 above but with a training specification and objective for each subject.

3.3 Syllabus for competency-based training programmes

3.3.1 Training programmes focused on achieving desired standards of performance for specific jobs or tasks should be competency-based.

3.3.2 Competency-based training programmes are based upon a job and task analysis to define the knowledge, skills and attitudes required to perform a job or a task. Such programmes use an integrated approach in which the training of the underlying knowledge to perform a task is followed by practice of the task so that the trainee acquires the underlying knowledge, skills and attitudes related to the task in a more effective way.

3.3.3 As a result, the syllabus is structured as a single document that is subdivided in modules containing a training objective and the same information as in 3.2.1, but applied to both the theoretical knowledge and practical training delivered by the module.

4. Tests and checks conducted by the ATO for the issuance of a licence or a rating

4.1 When a State has authorized an ATO to conduct the testing required for the issuance of a licence or rating in accordance with the Training and Procedures Manual, the manual should include—

(*a*) the name(s) of the personnel with testing authority and the scope of the authority;

(*b*) the role and duties of the authorized personnel;

(*c*) if the school has been given authority to appoint personnel to conduct the testing required for the issuance of a licence or rating, the minimum requirements for appointment as well as the selection and appointment procedure; and

(*d*) the applicable requirements established by the Licensing Authority, such as—

(i) the procedures to be followed in the conduct of checks and tests; and

(ii) the methods for completion and retention of testing records as required by the Authority.

5. Records

5.1 Policy and procedures regarding—

(*a*) Attendance records;

(*b*) Student training records;

(*c*) Staff training and qualification records;

(*d*) Person responsible for checking records and student personal logs;

(*e*) Nature and frequency of record checks;

(*f*) Standardization of record entries;

(*g*) Personal log entries; and

(*h*) Security of records and documents.

6. Safety management system (if applicable)

6.1 The requirement to adopt SMS practices is intended to be restricted to only those training entities whose activities directly impact upon the safe operation of aircraft. Should that

requirement apply to the ATO, the Training and Procedures Manual, as stated in paragraph 1.9 above, must address the ATO's SMS with reference to a separate manual or include the SMS practices within the Training and Procedures Manual.

7. Quality assurance

7.1 Provide a brief description of the quality assurance practices with reference to a separate quality manual or include the QA practices within the Training and Procedures Manual.

8. Appendices

8.1 As required—

(*a*) sample progress test forms;

(*b*) sample logs, test reports and records; and

(*c*) a copy of the approved training organization's approval document.

[Subsidiary] *Aviation (Aircraft Registration and Marking) Regulations*

G.N. 30/2013

AVIATION (AIRCRAFT REGISTRATION AND MARKING) REGULATIONS

ARRANGEMENT OF REGULATIONS

REGULATION

PART I
General

1. Citation and application
2. Definition

PART II
Registration Requirements

3. General
4. Registration eligibility
5. Application for registration and deregistration
6. Aircraft registry

PART III
Nationality and Registration Marks

7. Application
8. General
9. Display of Marks—General
10. Size of marks
11. Location of marks on heavier—than air aircraft
12. Location of marks on lighter—than air aircraft
13. Special cases for seize and locations of marks
14. Sales of aircraft removal of marks
15. Identification plate required

AVIATION (AIRCRAFT REGISTRATION AND MARKING) REGULATIONS

under s. 19

PART I
General

Citation and application

1.—(1) These Regulations may be cited as the Aviation (Aircraft Registration and Marking) Regulations.

(2) These Regulations prescribe the requirements for registration and marking of civil aircraft under the provisions of the Act.

(3) The Regulations do not apply to meteorological pilot balloons used exclusively for meteorological purposes or to unmanned free balloons without a payload.

Definitions

2.—(1) For the purpose of these Regulations, unless the context otherwise requires—

"aeroplane" means a power-driven heavier-than-air aircraft, deriving its lift in flight chiefly from aerodynamic reactions on surfaces which remain fixed under given conditions of flight;

"aircraft" means any machine that can derive support in the atmosphere from the reactions of the air other than the reactions of the air against the earth's surface; the term "aircraft," when used under the Act or regulation shall refer to civil aircraft only, and will not include State or public aircraft;

"airship" means a power-driven lighter-than-air aircraft;

"balloon" means a non-power-driven lighter-than-air aircraft;

"class in relation to aircraft" means class in accordance with the table of aircraft classification contained in IS 4:2 (1) (*e*);

"common mark" means a mark assigned by the International Civil Aviation Organization to the common mark registering authority registering aircraft of an international operating agency on other than a national basis;

"common mark registering authority" means the authority maintaining the non-national register or, where appropriate, the part thereof, in which aircraft of an international operating agency are registered;

"fireproof material" means a material capable of withstanding heat as well as or better than steel when the dimensions in both cases are appropriate for the specific purpose;

"glider" means a non-power-driven heavier-than-air aircraft, deriving its lift in flight chiefly from aerodynamic reactions on surfaces which remain fixed under given conditions of flight;

"gyroplane" means a heavier-than-air aircraft supported in flight by the reactions of the air on one or more rotors which rotate freely on substantially vertical axes;

"heavier-than-air aircraft" means any aircraft deriving its lift in flight chiefly from aerodynamic forces;

"helicopter" means a heavier-than-air aircraft supported in flight chiefly by the reactions of the air on one or more power-driven rotors on substantially vertical axes;

"international operating agency" means an agency of the kind contemplated in Article 77 of the Convention on International Civil Aviation;

"lighter-than-air aircraft" means any aircraft supported chiefly by its buoyancy in the air;

"ornithopter" means a heavier-than-air aircraft supported in flight chiefly by the reactions of the air on planes to which a flapping motion is imparted;

"powered-lift" means a heavier-than-air aircraft capable of vertical take-off, vertical landing, and low speed flight that depends principally on engine-driven lift devices or engine thrust for lift during these flight regimes and on non-rotating airfoil(s) for lift during horizontal flight;

"rotorcraft" means a power-driven heavier-than-air aircraft supported in flight by the reactions of the air on one or more rotors;

"State of Registry" means the State on whose register the aircraft is entered.

PART II
Registration Requirements

General

3.—(1) No person may operate a civil aircraft that is eligible for registration under the laws of Malaŵi unless it has been registered by its owner or operator under the provisions of the laws of Malaŵi and the Authority has issued a certificate of registration for that aircraft which shall be carried aboard that aircraft for all operations.

(2) The certificate of aircraft registration shall be in the English language.

(3) When certificates of registration are issued in a language other than English, they shall include an English translation.

(4) The certificate of aircraft registration will be issued by the Director of Civil Aviation in the form as contained in IS 4:3 contained in the Schedule hereto and will be of a size determined by the Authority.

Registration eligibility

4. An aircraft is eligible for registration if it is—

(*a*) owned by—

(i) a citizen of Malaŵi;

(ii) an individual citizen of another State who is lawfully admitted for permanent residence in Malaŵi;

(iii) a corporation lawfully organized and doing business under the laws of Malaŵi and the aircraft is based and primarily used in Malaŵi; or

(iv) a government entity of Malaŵi or political subdivision thereof; and

(*b*) not registered under the laws of any other State.

Application for registration and deregistration

5.—(1) A person who wishes to register an aircraft in Malaŵi must submit an application for aircraft registration to the Authority in a form and manner acceptable to the Authority. Each application shall—

(*a*) certify as to compliance with regulation 4;

(*b*) show evidence identifying ownership; and

(*c*) be signed in ink.

(2) Upon an applicant meeting all requirements for registration, a certificate of registration will be issued by the Authority.

(3) A person who wishes to de-register an aircraft from the National Register of Civil Aircraft of Malaŵi must submit the following application to the Authority in a form and manner acceptable to the Authority—

(*a*) application for aircraft deregistration; and

(*b*) application for issuance of an Export certificate of airworthiness, if required.

Aircraft registry

6.—(1) As required by the Act, the Authority shall maintain an aircraft registry showing for each aircraft registered by Malaŵi the information recorded on the certificate of aircraft registration and any other information required by the Authority.

(2) Upon request, Malaŵi will provide information to another ICAO Contracting State or to ICAO as to aircraft registration and/or ownership of any particular aircraft registered in Malaŵi.

PART III
Nationality and Registration Marks

Application

7.—(1) This Part prescribes the requirements for the identification and marking of civil aircraft registered in Malaŵi.

General

8.—(1) No person may operate a civil aircraft registered in Malaŵi unless it displays nationality and registration marks in accordance with the requirements of this part. The letter or letters used to identify the aircraft nationality as of Malaŵi shall conform to the requirements outlined in Annex 7 to the Convention on International Civil Aviation. This is to be followed by a series of numbers or letters assigned by the Authority.

(2) Unless otherwise authorized by the Authority, no person may place on any aircraft a design, mark, or symbol that modifies or confuses the nationality and registration marks. Marks shall not be used which might be confused with the International Five Letter Code of Signals, Part II, the three-letter combinations beginning with Q used in the Q Code or Distress Codes or other similar, urgent codes.

(3) Permanent marking of aircraft nationality and registration shall—

(*a*) be painted on the aircraft or affixed by other means insuring a similar degree of permanence;

(*b*) have no ornamentation;

(*c*) contrast in color with the background;

(*d*) be legible; and

(*e*) be kept clean and visible at all times.

(4) The classification of aircraft is contained in IS 4:8 (4).

Display of marks—general

9.—(1) Each owner shall display on that aircraft marks consisting of the number 7 and Roman capital letter Q denoting nationality of Malaŵi, followed by hyphen, then a series of three letters in Roman capital letters assigned by the Authority denoting the registration mark of the aircraft.

Size of marks

10.—(1) Each owner of an aircraft shall display marks on the aircraft meeting the size requirements of this section.

(2) Height: The character marks shall be of equal height and on—

(*a*) heavier-than-air aircraft shall be at least—

(i) 50 centimeters high if on the wings, and

(ii) 30 centimeters high if on the fuselage (or equivalent structure) and vertical tail surfaces;

(iii) lighter-than-air aircraft other than unmanned free balloons shall be at least 50 centimeters high;

(iv) unmanned free balloons shall be determined by the Authority, taking into account the size of the payload to which the identification plate is affixed.

(3) Width: Characters shall be two-thirds as wide as they are high, except the number "1" and the letter "I", which shall be one-sixth as wide as it is high.

(4) Thickness: Characters shall be formed by solid lines one-sixth as thick as the character is high.

(5) Spacing: The space between each character may not be less than one-fourth of a character width.

(6) Uniformity: The marks required by this Part for fixed-wing aircraft must have the same height, width, thickness, and spacing on both sides of the aircraft.

Location of marks on heavier-than-air aircraft

11.—(1) The owner of a fixed-wing aircraft shall display the marks once on the lower surface of the wing structure as follows—

(*a*) they shall be located on the left half of the lower surface of the wing structure unless they extend across the whole of the lower surface of the wing structure;

(*b*) so far as is possible, the marks shall be located equidistant from the leading and trailing edge of the wings;

(*c*) the tops of the letters and numbers shall be toward the leading edge of the wing.

(2) On a heavier-than-air aircraft with a fuselage (or equivalent structure) and/or a vertical tail surface, the marks shall appear on either the vertical tail surfaces or the sides of the fuselage as follows—

(*a*) if displayed on the vertical tail surfaces, horizontally on both surfaces of a single vertical tail or on the outer surfaces of a multi-vertical tail;

(*b*) if displayed on the fuselage surfaces, horizontally on both sides of the fuselage between the trailing edge of the wing and the leading edge of the horizontal stabilizer;

(*c*) if engine pods or other appurtenances are located in the area described in subregulation (*b*) and are an integral part of the aircraft, the marks may appear on those pods or appurtenances.

Location of mark on lighter-than-air aircraft

12.—(1) Airships: The owner shall place marks on an airship to appear on—

(*a*) the hull, located lengthwise on each side of the hull and on its upper surface on the line of symmetry; or

(*b*) the horizontal and vertical stabilizers surfaces—

(i) for the horizontal stabilizer, located on the right half of the upper surface and on the left half of the lower surface, with the tops of the letters and numbers toward the leading edge; and

(ii) for the vertical stabilizer, located on each side of the bottom half stabilizer, with the letters and numbers placed horizontally.

(2) Spherical balloons (other than unmanned free balloons). The owner shall apply marks in two places diametrically opposite each other and located near the maximum horizontal circumference of the balloon.

(3) Non-spherical balloons (other than unmanned free balloons). The owner shall apply marks on each side, located near the maximum cross-section of the balloon immediately above either the rigging band or the points of attachment of the basket suspension cables.

(4) Lighter-than-air aircraft (other than unmanned free balloons). The owner shall apply side marks to be visible both from the sides and from the ground.

(5) Unmanned free balloons. The owner shall apply marks to appear on the identification plate.

Special cases for seize and locations of marks

13.—(1) If either one of the surfaces authorized for displaying required marks is large enough for display of marks meeting the size requirements of this section and the other is not, the full-size marks shall be placed on the larger surface.

(2) If neither surface is large enough for full-size marks, the Authority may approve marks as large as practicable for display on the larger of the two surfaces.

(3) If, because of the aircraft configuration, it is not possible to mark the aircraft in accordance with t his Part, the owner may apply to the Authority for a different procedure.

Sales of aircraft: removal of marks

14. When an aircraft that is registered in Malaŵi is sold, the holder of the certificate of registration shall remove, before its delivery to the purchaser, all nationality and registration marks of Malaŵi unless the purchaser is a citizen or other legal entity as prescribed in regulation 4 (*a*).

Identification plate required

15.—(1) The owner shall affix to each aircraft registered under the laws of Malaŵi an identification plate—

(*a*) containing the aircraft type, model, serial number, marks of nationality and registration mark; and

(*b*) made of fireproof metal or other fireproof material of suitable physical properties; and

(*c*) secured to the aircraft in a prominent position, near the main entrance, or, in the case of an unmanned free balloon, affixed conspicuously to the exterior of the payload.

(2) The registration mark (number) on the identification plate shall to be changed each time the aircraft registration changes.

SCHEDULE

IMPLEMENTING STANDARDS

AIRCRAFT REGISTRATION AND MARKING REGULATIONS

IS:4.2 (1) (*e*) Classification of Aircraft

Aircraft are classified in accordance with the following table.

Classification of Aircraft

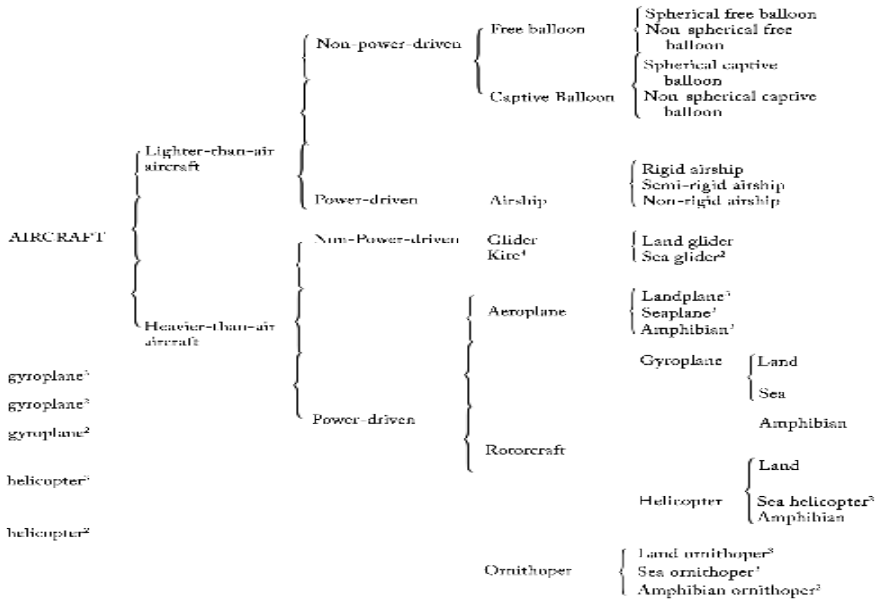

1. Generally designated "kite-balloon".
2. "Float" or "boat" may be added as appropriate.
3. Includes aircraft equipped with ski-type landing gear (substitute "ski" for "land").
4. For the purpose of completeness only.

IS 4:3 Certificate of Aircraft Registration

The certificate of aircraft registration issued by the Authority shall be as follows—

For CAA Use Only REPUBLIC OF MALAŴI For CAA Use Only

DEPARTMENT OF CIVIL AVIATION

Certificate of Aircraft Registration

1. Nationality and registration mark	2. Manufacturer and Manufacture's designation of aircraft	3. Aircraft Serial Number:
.....	.....	.....
.....	.....	.....

4. Name of owner: .....

5. Address of owner: .....

.....

6. It is hereby certified that the above described aircraft has been duly entered on the National Civil Aircraft Registry in accordance with the Convention on International Civil Aviation dated 7 December 1944 and with the Regulations of Malaŵi.

Signature .....

Date of issue: .....

For CAA Use Only

AVIATION (AIRWORTHINESS) REGULATIONS

G.N. 31/2013

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AVIATION (AIRWORTHINESS) REGULATIONS

under s. 19

PART I
GENERAL

Citation and application

1.—(1) These Regulations may be cited as the Aviation (Airworthiness) Regulations.

(2) These Regulations prescribe the requirements for—

(*a*) original certification of aircraft and aeronautical products;

(*b*) supplemental type certificates;

(*c*) issuance of a Certificate of Airworthiness;

(*d*) continued airworthiness of aircraft and aeronautical components;

(*e*) Aircraft maintenance and inspection requirements; and

(*f*) Maintenance records and entries.

2. For the purpose of these Regulations, unless the context otherwise requires— Definitions

"aeronautical product" means any aircraft, aircraft engine, propeller, or subassembly, appliance, material, part or component to be installed thereon;

"airworthiness approval tag (CAA form)" means a tag (a DCA AAT Form) that may be attached to a part; the tag must include the part number, serial number, and current life status of the part; each time the part is removed from a type certificated product, a new tag must be created or the existing tag must be updated with the current life status. The DCA AAT Form has two distinct purposes—

(*a*) is as a certification of release to service of a part, component or assembly after maintenance, preventive maintenance, overhaul or rebuilding; and

(*b*) the other is as shipping of a newly manufactured part;

"airworthiness directive" means continuing airworthiness information that applies to the following products: aircraft, aircraft engines, propellers, and appliances. An airworthiness directive is mandatory if issued by the State of Design;

"appropriate airworthiness requirements" means the comprehensive and detailed airworthiness codes established, adopted or accepted by a Contracting State for the class of aircraft, engine or propeller under consideration;

"continuing airworthiness" means the set of processes by which an aircraft, engine, propeller or part complies with the applicable airworthiness requirements and remains in a condition for safe operation throughout its operating life;

"life-limited part" means any part for which a mandatory replacement limit is specified in the type design, the Instructions for Continued Airworthiness, or the maintenance manual;

"maintenance" means the performance of tasks required to ensure the continuing airworthiness of an aircraft, including any one or combination of overhaul, inspection, replacement, defect rectification, and the embodiment of a modification or repair;

"major modification" means in respect of an aeronautical product for which a Type certificate has been issued, a change in the Type Design that has an appreciable effect, or other than a negligible effect, on the mass and balance limits, structural strength, power-plant operation, flight characteristics, reliability, operational characteristics, or other characteristics or qualities affecting the airworthiness or environmental characteristics of an aeronautical product: major modification is described in IS: 5:2.1 (9);

"major repair" means major repair—

(*a*) that if improperly done might appreciably affect weight, balance, structural strength, performance, power-plant, operations, flight characteristics, or other qualities affecting airworthiness; or

(*b*) that is not done according to accepted practices or cannot be done by elementary operations. Major repair is described in IS: 5:2.1 (10);

"minor modification" means a modification other than a major modification;

"modification" means the modification of an aircraft/aeronautical product in conformity with an approved standard;

"overhaul" means the restoration of an aircraft/aeronautical product using methods, techniques, and practices acceptable to the Authority, including disassembly, cleaning, and inspection as permitted, repair as necessary, and reassembly; and tested in accordance with approved standards and technical data, or in accordance with current standards and technical data acceptable to the Authority, which have been developed and documented by the State of Design, holder of the type certificate, supplemental type certificate, or a material, part, process, or appliance approval under a Technical Standard Order (TSO);

"preventive maintenance" means simple or minor preservation operations and the replacement of small standard parts not involving complex assembly operations: preventive maintenance is described in IS: 5:2.1 (13);

"rebuild" means the restoration of an aircraft/aeronautical product by using methods, techniques, and practices acceptable to the Authority, when it has been disassembled, cleaned, inspected as permitted, repaired as necessary, reassembled, and tested to the same tolerances and limits as a new item, using either new parts or used parts that conform to new part tolerances and limits;

"repair" means the restoration of an aeronautical product to an airworthy condition as defined by the appropriate airworthiness requirements. The restoration of an aeronautical product to an airworthy condition to ensure that the aircraft continues to comply with the design aspects of the appropriate airworthiness requirements used for the issuance of the type certificate for the respective aircraft type, after it has been damaged or subjected to wear;

"required inspection items" means maintenance items and/or modifications that must be inspected by a qualified and authorized person other than the one performing the work, and include at least those that could result in a failure, malfunction, or defect endangering the safe operation of the aircraft, if not properly performed or if improper parts or materials are used;

"State of Design" means the State having jurisdiction over the organization responsible for the type design;

"State of Manufacture" means the State having jurisdiction over the organization responsible for the final assembly of the aircraft;

"State of Registry" means the State on whose register the aircraft is entered;

"type certificate" means a document issued by a Contracting State to define the design of an aircraft type and to certify that this design meets the appropriate airworthiness requirements of that State;

"validation of a certificate of airworthiness" means the action taken by a Contracting State, as an alternative to issuing its own Certificate of Airworthiness, in accepting a Certificate of Airworthiness issued by any other Contracting State as the equivalent of its own Certificate of Airworthiness.

Abbreviations

3. The following acronyms are used in these Regulations—

(1) AOC—Air Operator Certificate

(2) AMO—Approved Maintenance Organization

(3) AME—Aircraft Maintenance Engineer

(4) IA—Inspection Authorization

(5) MEL—Minimum Equipment List

(6) PIC—Pilot In Command

(7) STC—Supplemental Type Certificate

(8) TSO—Technical Standard Order

Application, original certification of aircraft and aeronautical products and code of airworthiness

4.—(1) This Regulation describes the procedures and designation of applicable rules for original type certification of aircraft and related aeronautical.

(2) These Regulations presume that Malaŵi does not presently have the capabilities or demand to issue its own original type certification and will therefore not be the State of Design or State of Manufacture.

(3) Malaŵi will either issue its own Certificate of Airworthiness or validate the Certificate of Airworthiness issued by another State in accordance with these Regulations.

(4) Malaŵi is responsible for the continuing airworthiness of aircraft on its registry and for ensuring that non-Malaŵi registered aircraft operated within Malaŵi are maintained in accordance with continuing airworthiness requirements of the State of Registry.

(5) Malaŵi accepts the United States Airworthiness Standard and associated requirements (FAR) and the Joint Airworthiness Requirements (JAR) code of airworthiness.

(6) See IS 5:4 for more details about the code of airworthiness accepted by the Authority.

PART II
Supplemental Type Certificates

Application

5. This Part prescribes procedural requirements for the issue of supplemental type certificates.

Issuance of certificates of airworthiness

6.—(1) Any person who proposes modification to a product by introducing a major change in type design, not great enough to require a new application for a type certificate, shall apply for a Supplemental Type Certificate to the regulatory agency of the State of Design that approved the type certificate for that product, or to the State of Registry of the aircraft provided that the State of Registry has the technical expertise to evaluate the proposed change in accordance math the type design. The applicant shall apply in accordance with the procedures prescribed by that State.

(2) The Authority, upon receiving a request for a supplemental type certificate for an aircraft registered in Malaŵi shall forward the request to the State of Design.

PART III
Issuance of Certificate of Airworthiness

Application

7.—(1) This Part prescribes procedures required for the issue of airworthiness certificates and other certifications for aeronautical products registered in Malaŵi.

(2) The Authority shall issue a certificate of airworthiness for aircraft registered in Malaŵi based on satisfactory evidence that the aircraft complies with the design aspects of the appropriate airworthiness requirements (type certificate).

Eligibility

8.—(1) Any registered owner of Malaŵi registered aircraft, or agent of the owner, may apply for an airworthiness certificate for that aircraft.

(2) Each applicant for an airworthiness certificate shall apply in a form and manner acceptable to the Authority.

Aircraft identification

9. Each applicant for a certificate of airworthiness shall show that the aircraft has the proper identification plates.

Classifications of airworthiness certificates

10.—(1) A Standard Certificate of Airworthiness will be issued for aircraft in the specific category and model designated by the State of Design in the type certificate. The types of standard certificates of airworthiness include—

(*a*) Normal;

(*b*) Utility;

(*c*) Acrobatic;

(*d*) Transport;

(*e*) Commuter;

(*f*) Balloon;

(*g*) Other.

(2) A Special Airworthiness Certificate will be issued for aircraft that do not meet the requirements of the State of Design for a standard airworthiness certificate. The types of special airworthiness certificates include—

(*a*) Primary;

(*b*) Restricted;

(*c*) Limited;

(*d*) Provisional;

(*e*) Experimental;

(*f*) Special flight permits;

(*g*) Other.

(3) See IS 5:10 contained in the Schedule for definition pertaining to the different types of standard and special airworthiness certificates.

Issuance or validation of a standard airworthiness certificate

11. The Authority will issue a standard certificate of airworthiness if—

(*a*) the applicant presents evidence to the Authority that the aircraft conforms to a type design approved under a type certificate or a supplemental type certificate and to the applicable Airworthiness Directives of the State of Manufacture;

(*b*) the aircraft has been inspected in accordance with the performance rules of Part V of these Regulations for inspections and found airworthy by persons authorized by the Authority to make such determinations within the last 30 calendar days; and

(*c*) the Authority finds after an inspection that the aircraft conforms to type design and is in condition for safe operation.

(2) The Authority may validate a certificate of airworthiness issued by another Contracting State upon registration of the aircraft in Malaŵi for the period specified in that validation certificate. The validation certificate shall be carried with the Certificate of Airworthiness and, together, shall be considered as the equivalent of a Certificate of Airworthiness issued by Malaŵi. The validity of the validation certificate shall not extend beyond the period of validity of the Certificate of Airworthiness or one year, whichever is less.

(3) The Standard Airworthiness Certificate shall contain the information in IS: 5:11.

(4) The Standard Airworthiness Certificate or Validation Certificate shall be issued in English language.

Issuance of special airworthiness certificate

12.—(1) The Authority may issue a Special Airworthiness Certificate to the aircraft that does not qualify for a Standard Certificate of Airworthiness.

(2) Aircraft holding Special Airworthiness Certificates shall be subject to operating limitations within Malaŵi and may not make international flights. The Authority shall issue specific operating limitations for each Special Airworthiness Certificate.

Issuance of special flight permits

13.—(1) The Authority may issue a Special Flight Permit to an aircraft that is capable of safe flight, but unable to meet applicable airworthiness requirements, for the purpose of—

(*a*) flying to a base where repairs, modifications, maintenance, or inspections are to be performed, or to a point of storage;

(*b*) testing after repairs, modifications, or maintenance have been performed;

(*c*) delivering or exporting the aircraft;

(*d*) evacuating aircraft from areas of impending danger; and

(*e*) operating at weight in excess of the aircraft's maximum Certified take-off Weight for flight beyond normal range over water or land areas where adequate landing facilities or appropriate fuel is not available. The excess weight is limited to additional fuel, fuel-carrying facilities, and navigation equipment necessary for the flight.

(2) The Authority may issue a special flight permit with continuing authorization issued to an aircraft that may not meet applicable airworthiness requirements but are capable of safe flight, for the purpose of flying aircraft to a base where maintenance or modifications are to be performed. The permit issued under this subregulation is an authorization, including conditions and limitations for flight, which is set forth in the AOC Holder's specific operating provisions. This permit under this subregulation may be issued to an AOC Holder certificated under the Aviation (Air Operator Certification and Administration) Regulations.

(3) In the case of Special Flight Permits, the Authority shall require a properly executed maintenance endorsement in the aircraft permanent record by a person or organization, authorized in accordance with these

Regulations, stating that the subject aircraft has been inspected and found to be safe for the intended flight.

(4) The operator shall obtain all required over flight authorizations from countries to be overflown on flights outside Malaŵi.

Duration of certification of airworthiness

14.—(1) A certificate of airworthiness or special airworthiness certificate is effective as follows unless sooner surrendered, suspended or revoked, or a special termination date is otherwise established by the Authority—

(*a*) a Certificate of Airworthiness shall be renewed or shall remain in effect, subject to the Act and these Regulations;

(*b*) the validity of a validation certificate issued by the Authority shall not extend beyond the period of validity of the Certificate of Airworthiness issued by the State of Registry, or one year, whichever is less;

(*c*) a special airworthiness certificate, such as a special flight permit, is valid for the period of time specified in the permit.

(2) The continuing airworthiness of the aircraft shall be determined by a periodical inspection at appropriate intervals having regard to lapse of time and type of service.

(3) Failure to maintain an aircraft in an airworthy condition as defined by the appropriate airworthiness requirements of the State of Registry, shall render the aircraft ineligible for operations until the aircraft is restored to an airworthy condition.

Cooperation among States for continuing airworthiness information, including airworthiness directives

15.—(1) Upon registration of an aircraft in Malaŵi, the Authority will notify the State of Design of the aircraft of the registration in Malaŵi, and request that the Authority receives any and all airworthiness directives addressing that aircraft, airframe, aircraft engine, propeller, appliance, or component part and any requirements for the establishment of specific continuing airworthiness programs.

(2) Whenever the State of Design considers that a condition in an aircraft, airframe, aircraft engine, propeller, appliance, or component part is unsafe as shown by the issuance of an airworthiness directive by that State, the Authority will make requirements of such directives apply to Malaŵi registered civil aircraft of the type identified in that airworthiness directive.

(3) The Authority may identify manufacturer's service bulletins and other sources of data, or develop and prescribe inspections, procedures and limitations, for mandatory compliance pertaining to affected aircraft in Malaŵi.

(4) No person may operate any Malaŵi registered civil aircraft to which the measures of this subsection apply, except in accordance with the applicable airworthiness directives and service bulletins.

Amendment of airworthiness certificate

16.—(1) The Authority may amend or modify a Certificate of Airworthiness or a special airworthiness certificate—

(*a*) upon application from an owner or operator;

(*b*) on its own initiative;

(2) Amendment may be made under the following conditions—

(*a*) modification; (STC or amended TC);

(*b*) a change to the authority and basis for issue;

(*c*) a change in the aircraft model;

(*d*) a change in the operating limitations for an aircraft with a special airworthiness certificate.

Transfer or surrender of a certificate of airworthiness

17.—(1) The owner shall transfer a certificate of airworthiness—

(*a*) to the lessee upon lease of an aircraft within or outside Malaŵi;

(*b*) to the buyer upon sale of the aircraft within Malaŵi.

(2) The owner shall surrender the certificate of airworthiness for the aircraft to the issuing Authority upon sale of that aircraft outside of Malaŵi.

Commercial air transport

18. The Authority will consider an airworthiness certificate valid for commercial air transport only when accompanied by operations specifications issued by the Authority which identifies the specific types of commercial air transport authorized.

PART IV
Continued Airworthiness of Aircraft and Components

Application

19. This Part prescribes rules governing the continued airworthiness of civil aircraft registered in Malaŵi whether operating inside or outside the borders of Malaŵi.

General

20.—(1) No person may perform maintenance, prevents maintenance, or modifications on an aircraft other than as prescribed in this regulation.

(2) No person may operate an aircraft for which a manufacture's maintenance manual or instructions for continued airworthiness has been issued that contains an airworthiness limitation section unless the mandatory replacement tunes, inspection intervals, and related

procedures specified in that section or alternative inspection intervals and related procedures set forth in the operations specifications approved under the Aviation (Air Operator Certification and Administration) Regulations, or in accordance with the inspection program approved under the Aviation (Operations) Regulations have been complied with.

(3) No person may operate an aircraft, aeronautical product, or accessory to which an Airworthiness Directive applies, issued either by the State of Design, or State of Manufacture and adopted for Malaŵi-registered aircraft by the Authority, or by the State of Registry for aircraft operated within Malaŵi, except in accordance with the requirements of that Airworthiness Directive.

(4) When the Authority determines that an airframe or aeronautical product has exhibited an unsafe condition and that condition is likely to exist or to develop in other products of the same type design, the Authority may issue an Airworthiness Directive prescribing inspections and the conditions and limitations, if any, under which those products may continue to be operated.

(5) The Authority shall report any airworthiness directives or continuing additional airworthiness requirements that it issues or any malfunction or defect reports to the State of Design.

(6) See IS 5:20 for determination of damage to aircraft that may lead to temporary loss of airworthiness.

Responsibility

21.—(1) The owner of an aircraft or, in the case of a leased aircraft, the lessee, shall be responsible for maintaining the aircraft in an airworthy condition by ensuring that—

(*a*) All maintenance, overhaul, modifications and repairs which affect airworthiness are performed as prescribed by the State of Registry;

(*b*) Maintenance personnel make appropriate entries in the aircraft maintenance records certifying that the aircraft is airworthy;

(*c*) The approval for return to service (maintenance release) is completed to the effect that the maintenance work performed has been completed satisfactorily and in accordance with the prescribed methods; and

(*d*) In the event there are open discrepancies, the maintenance release includes a list of the uncorrected maintenance items for which temporary relief is provided in the MEL and these items are made a part of the aircraft permanent record.

(2) The owner or operator of an aeroplane over 5,700 kg maximum certificated take-off mass shall obtain and assess continuing airworthiness

information and recommendations available from the organization responsible for the type design and shall implement resulting actions considered necessary in accordance with a procedure acceptable to the Authority.

Maintenance and operational experience

22.—(1) The owner or operator of an aeroplane over 5,700 kg maximum certificated take-off mass shall monitor and assess maintenance and operational experience with respect to continuing airworthiness and have a system whereby information on faults, malfunctions, defects and other occurrences that cause or might cause adverse effects on the continuing airworthiness of the aircraft is transmitted to the organization responsible for the type design of the aircraft.

(2) The owner or operator and maintenance organizations shall report to the Authority in respect of aeroplanes over 5,700 kg and helicopters over 3,175 kg maximum certificated take-off mass the service information required by the authority according to the procedure, established by the Authority.

(3) The owner or operator and maintenance organizations shall transmit to the organization responsible for the type design of aircraft in respect of aeroplanes over 5,700 kg and helicopters over 3,175 kg maximum certificated take-off mass information on faults, malfunction, defects and other occurrences that cause or might cause adverse effect on the continuing airworthiness of the aircraft.

Reporting of failures, malfunctions, and defects

23.—(1) Owners or operators of aircraft over 5,700 kg maximum take-off weight shall report to the Authority any failures, malfunctions, or defects that result in at least the following—

(*a*) fires during flight and whether the related fire-warning system properly operated;

(*b*) fires during flight not protected by a related fire-warning system;

(*c*) false fire warning during flight;

(*d*) an engine exhaust system that causes damage during flight to the engine, adjacent structure, equipment, or components;

(*e*) an aircraft component that causes accumulation or circulation of smoke, vapour, or toxic or noxious fumes in the crew compartment or passenger cabin during flight;

(*f*) engine shutdown during flight because of flameout;

(*g*) engine shutdown during flight when external damage to the engine or aircraft structure occurs;

(*h*) engine shutdown during flight due to foreign object ingestion or icing;

(*i*) shutdown during flight of more than one engine;

(*j*) a propeller feathering malfunction or inability of the system to control overspeed during flight;

(*k*) a fuel or fuel-dumping system failure that affects fuel flow or causes hazardous leakage during flight;

(*l*) an unintended landing gear extension or retraction, or opening or closing of landing gear doors during flight;

(*m*) brake system components failure that result in loss of brake actuating force when the aircraft is in motion on the ground;

(*n*) aircraft structure that requires major repair;

(*o*) cracks, permanent deformation, or corrosion of aircraft structure, if more than the maximum acceptable to the manufacturer or the Authority;

(*p*) aircraft components or systems malfunctions that result in taking emergency actions during flight (except action to shut down an engine);

(*q*) each interruption to a flight, unscheduled change of aircraft en route, or unscheduled stop or diversion from a route, caused by known or suspected technical difficulties or malfunctions;

(*r*) any abnormal vibration or buffeting caused by a structural or system malfunction, defect, or failure; and

(*s*) a failure or malfunction of more than one attitude, airspeed, or altitude instrument during a given operation of the aircraft.

(2) Owners or operators of aircraft over 5,700 kg maximum take-off weight shall report to the Authority—

(*a*) the number of engines removed prematurely because of malfunction, failure or defect, listed by make and model and the aircraft type in which it was installed; and

(*b*) the number of propeller featherings in flight, listed by type of propeller and engine and aircraft on which it was installed—

(i) each report required by this regulation shall;

(ii) be made within 3 days after determining that the failure, malfunction, or defect required to be reported has occurred; and

(iii) include as much of the following information as is available and applicable—

(iv) aircraft serial number;

(v) when the failure, malfunction, or defect is associated with an article approved under a TSO authorization, the article serial number and model designation, as appropriate;

(vi) when the failure, malfunction or defect is associated with an engine or propeller, the engine or propeller serial number, as appropriate;

(vii) product model;

(viii) identification of the part, component, or system involved, including the part number; and

(ix) nature of the failure, malfunction, or defect.

(3) The Authority, if it is the Authority of the State of Registry of the aircraft, will submit all such reports upon receipt to the State of Design.

(4) The Authority, if it is not the Authority of the State of Registry of the aircraft, will submit all such reports upon receipt to the State of Registry.

PART V
Aircraft Maintenance and Inspection Requirements

Application

24. This Part prescribes rules governing the maintenance and inspection of any aircraft having a Certificate of Airworthiness issued by Malaŵi or associated aeronautical products.

General requirements for maintenance and inspections

25.—(1) No person may operate an aircraft unless the aircraft and its components are maintained in accordance with a maintenance programme and the aircraft is inspected according to an inspection programme approved by the Authority.

(2) The maintenance program shall include a description of the aircraft and components and recommended methods for the accomplishment of maintenance tasks. Such information shall include guidance on defect diagnosis.

(3) The maintenance programme shall include the maintenance tasks and the recommended intervals at which these tasks are to be performed.

(4) Maintenance tasks and frequencies that have been specified as mandatory by the State of Design in approval of the type design shall be identified in the maintenance programme.

(5) The maintenance programme shall have a maintenance release process, including signed documentation, in a manner satisfactory to the Authority, indicating that the maintenance performed has

been completed satisfactorily. A maintenance release shall contain a certification including—

(*a*) basic details of the maintenance carried out;

(*b*) date such maintenance was completed;

(*c*) when applicable, the identity of the approved maintenance organization, AME, or AOC holder; and

(*d*) the identity of the person or persons signing the release.

(6) The owner or operator shall use one of the following inspection programmes as appropriate for the aircraft and the type operation—

(*a*) annual inspection;

(*b*) annual/100 hour inspections;

(*c*) progressive; or

(*d*) continuous airworthiness maintenance programme.

Persons authorized to perform maintenance, preventative maintenance, rebuilding and modifications

26. No person may perform any task defined as maintenance on an aircraft or aeronautical products, except as provided in the following—

(*a*) a pilot licensed by the Authority may perform preventive maintenance on any aircraft owned or operated by that pilot so long as the aircraft is not listed for use by an AOC holder;

(*b*) a person working under the supervision of an aviation maintenance engineer, may perform the maintenance, preventive maintenance, rebuilding and modifications that the supervisory aviation maintenance engineer is authorized to perform—

(i) if the supervisor personally observes the work being done to the extent necessary to ensure that it is being done properly, and

(ii) if the supervisor is readily available, in person, for consultation;

(*c*) a licensed aviation maintenance Engineer may perform or supervise the maintenance or modification of an aircraft or aeronautical product for which he or she is rated subject to the limitation of the Personnel Licensing Regulations;

(*d*) an AMO may perform aircraft maintenance within the limits specified by the Authority;

(*e*) the AOC holder may perform aircraft maintenance as specified by the Authority;

(*f*) a manufacturer holding an AMO may—

(i) rebuild or modify any aeronautical product manufactured by that manufacturer under a type or production certificate;

(ii) rebuild or modify any aeronautical product manufactured by that manufacturer under a TSO Authorization, a Parts Manufacturer Approval by the State of Design, or Product and Process Specification issued by the State of Design; and

(iii) perform any inspection required by the Operations Regulations on aircraft it manufacturers, while currently operating under a production certificate or under a currently approved production inspection system for such aircraft.

Authorized personnel to approve for returns to service

27. No person or entity, other than the Authority, may approve an aircraft, airframe, aircraft engine, propeller, appliance, or component part for return to service after it has undergone maintenance, preventive maintenance, rebuilding, or modification, except as provided in the following—

(*a*) a pilot licensed by the Authority may return his or her aircraft to service after performing authorized preventive maintenance;

(*b*) a licensed aviation maintenance engineer may approve aircraft and aeronautical products for return to service after he or she has performed, supervised, or inspected its maintenance subject to the limitation of the Aviation (Personnel Licensing) Regulations;

(*c*) an AMO may approve aircraft and aeronautical products for return to service as provided in the operations specifications approved by the Authority;

(*d*) an AOC holder may approve aircraft and aeronautical products for return to service as specified by the Authority.

Persons authorized to perform inspections

28. No person, other than the Authority, may perform the inspections required by regulation 10 of the Aviation (Operations) Regulations for aircraft and aeronautical products prior to or after it has undergone maintenance, preventive maintenance, rebuilding, or modification, except as provided in the following—

(*a*) an aviation maintenance engineer may conduct the required inspections of aircraft and aeronautical products for which he or she is rated and current.

(*b*) an AMO may perform the required inspections of aircraft and aeronautical products as provided in the operations specifications approved by the Authority.

(*c*) an AOC holder may perform the required inspections of aircraft and aeronautical products in accordance with specifications issued by the Authority.

Performance rules: Maintenance

29.—(1) Each person performing maintenance, preventive maintenance, or modification on an aeronautical product shall use the methods, techniques, and practices prescribed in—

(*a*) the current manufacturer's maintenance manual or instructions for Continued Airworthiness prepared by its manufacturer; and

(*b*) additional methods, techniques and practices required by the Authority, or methods, techniques and practices designated by the Authority where the manufacturer's documents were not available.

(2) Each person shall use the tools, equipment, and test apparatus necessary to assure completion of the work in accordance with accepted industry practices. If the manufacturer involved recommends special equipment or test apparatus, the person performing maintenance shall use that equipment or apparatus or its equivalent acceptable to the Authority.

(3) Each person performing maintenance, preventive maintenance, rebuilding or modification on an aeronautical product shall do that work in such a manner, and use materials of such a quality, that the condition of the aeronautical product worked on will be at least equal to its original or properly modified condition with regard to aerodynamic function, structural strength, resistance to vibration and deterioration, and other qualities affecting airworthiness.

(4) The methods, techniques, and practices contained in an AOC holder's maintenance control manual and continuous maintenance programme, as approved by the Authority, will constitute an acceptable means of compliance with the requirements of this subregulation.

Performance rules: Inspections

30.—(1) General: Each person performing an inspection required by the Authority shall perform the inspection so as to determine whether the aircraft, or portion(s) thereof under inspection, meets all applicable airworthiness requirements; and

(2) Rotorcraft: Each person performing an inspection required on a rotorcraft shall inspect the following systems in accordance with the maintenance manual or Instructions for Continued Airworthiness of the manufacturer concerned—

(*a*) the drive shafts or similar systems;

(*b*) the main rotor transmission gear box for obvious defects;

(*c*) the main rotor and centre section (or the equivalent area); and

(*d*) the auxiliary rotor on helicopters.

(3) Annual and 100-hour inspections—

(*a*) each person performing an annual or 100-hour inspection shall use a checklist while performing the inspection; the checklist may be of the person's own design, one provided by the manufacturer of the equipment being inspected, or one obtained from another source; this checklist shall include the scope and detail of the items prescribed by the Authority. See IS: 5:30 for components to be included in an annual or 100-hour inspection;

(*b*) each person approving a piston-engine aircraft for return to service after an annual or 100-hour inspection shall, before that approval, run the aircraft engine or engines to determine satisfactory performance in accordance with the current manufacturer's recommendations of—

(i) power output (static and idle rpm);

(ii) magnetos;

(iii) fuel and oil pressure; and

(iv) cylinder and oil temperature;

(*c*) each person approving a turbine-engine aircraft for return to service after an annual or 100-hour inspection shall, before that approval, run the aircraft engine or engines to determine satisfactory performance in accordance with the current manufacturer's recommendations.

(4) Progressive inspections—

(*a*) each person performing a progressive inspection shall, at the start of a progressive inspection system, inspect the aircraft completely. After this initial inspection, routine and detailed inspections must be conducted as prescribed in the progressive inspection schedule; routine inspections consist of visual examination or check of the appliances the aircraft and its components and systems, insofar as practicable without disassembly; detailed inspections consist of a thorough examination of the appliances, the aircraft, and its components and systems, with such disassembly as is necessary; for the purposes of this subparagraph, the overhaul of a component or system is considered to be a detailed inspection;

(*b*) if the aircraft is away from the station where inspections are normally conducted, an appropriately rated AME, an AMO or the manufacturer of the aircraft may perform inspections in accordance with the procedures and using the forms of the person who would otherwise perform the inspection.

(5) Continuous airworthiness maintenance program inspections: each person performing the inspection program required for an AOC holder's aircraft or aircraft maintained under a continuous airworthiness maintenance program, shall perform the inspection in accordance with the instructions and procedures set forth in the inspection programme.

Performance rules: Airworthiness limitations

31. Each person performing an inspection or other maintenance specified in an airworthiness limitations section of a current manufacturer's maintenance manual, or Instructions for Continued Airworthiness, shall perform the inspection or other maintenance in accordance with that section, or in accordance with specifications approved by the Authority.

PART VI
Maintenance and Inspection Records and Entries

Content, form, and disposition of records for maintenance, preventive maintenance, rebuilding, and modification of aircraft and life limited parts

32.—(1) Each person who maintains, performs preventive maintenance, rebuilds, or modify an aircraft or life limited parts shall, when the work is performed satisfactorily, make an entry in the maintenance record of that equipment as follows—

(*a*) a description (or reference to data acceptable to the Authority) of work performed, including—

(i) the total time in services (hours, calendar time and cycles, as appropriate) of the aircraft and all life-limited components;

(ii) the current status of compliance with all mandatory continuing airworthiness information;

(iii) appropriate details of modifications and repairs;

(iv) time in service (hours, calendar time and cycles, as appropriate) since last overhaul of the aircraft or its components subject to a mandatory overhaul life;

(v) the current status of the aircraft's compliance with the maintenance programme; and the detailed maintenance records to show that all requirements for signing of a maintenance release have been met;

(*b*) completion date of the work performed;

(*c*) name, signature, certificate number, and kind of licence held by the person approving the work.

(2) In addition to the entry required by subregulation (1), major repairs and modifications shall be entered on a form, and the form

disposed of, in the manner prescribed in IS: 5:32 contained in the Schedule hereto, by the person performing the work.

Content, form and disposition of records for maintenance, preventive maintenance, overhaul, modification and rebuilding of a product

33.—(1) No person shall approve for return to service any aeronautical product that has undergone maintenance, preventive maintenance, overhaul modification or rebuilding of a product unless—

(*a*) the appropriate maintenance record entry has been made;

(*b*) the repair or modification form authorized by or furnished by the Authority has been executed in a manner prescribed by the Authority;

(*c*) if a repair or modification results in any change in the aircraft operating limitations or flight data contained in the approved aircraft flight manual, those operating limitations or flight data are appropriately revised and set forth as prescribed.

(2) Additional entries for overhaul and rebuilding—

(*a*) no person shall describe in any required maintenance entry or form, an aeronautical product as being overhauled or rebuilt unless—

(i) it has been disassembled, cleaned, inspected as permitted, repaired as necessary, and reassembled using methods, techniques, and practices acceptable to the Authority; and

(ii) it has been tested in accordance with approved standards and technical data, or in accordance with current standards and technical data acceptable to the Authority, which have been developed and documented by the holder of the type certificate, supplemental type certificate, or a material, part, process, or appliance manufacturing approval.

(*b*) no person shall describe in any required maintenance entry or form an aircraft or other aeronautical product as being rebuilt unless it has been disassembled, cleaned, inspected as permitted, repaired as necessary, reassembled, and tested to the same tolerances and limits as a new item using either new parts or used parts that conform to new part tolerances and limits.

(3) If the maintenance, preventive maintenance, overhaul, modification or rebuilding of a product is performed by an AMO, the AMO shall complete an airworthiness approval tag (DCA AAT Form) as prescribed in the Aviation (Approved Maintenance Organization) Regulations.

Content, form, and disposition of records of inspections for return to service

34.—(1) Inspection record entries. The person approving or disapproving the return to service of an aeronautical product after any inspection performed in accordance with the Aviation (Operations) Regulations, shall make an entry in the maintenance record of that equipment containing the following information—

(*a*) type of inspection and a brief description of the extent of the inspection;

(*b*) date of the inspection and aircraft or component total time in service;

(*c*) signature, the licence number, and kind of licence held by the person approving or disapproving for return to service the aeronautical product;

(*d*) if the aircraft or component is found to be airworthy and approved for return to service, the following or a similarly worded statement— "I certify that this aircraft/component has been inspected in accordance with (insert type) inspection and was determined to be in airworthy condition";

(*e*) if the aircraft or component is not approved for return to service because of needed maintenance, non-compliance with the applicable specifications, airworthiness directives, or other approved data, the following or a similarly worded statement—I certify that this aircraft/component has been inspected in accordance with (insert type) inspection and a list of discrepancies and unairworthy items dated (date) has been provided for the aircraft owner or operator; and

(*f*) if an inspection is conducted under an inspection programme provided for in the Aviation (Operations) Regulations, the person performing the inspection shall make an entry identifying the inspection programme accomplished, and containing a statement that the inspection was performed in accordance with the inspections and procedures for that particular programme.

(2) Listing of discrepancies. The person performing any inspection required in the Aviation (Operations) Regulations, who finds that the aircraft is not airworthy or does not meet the applicable type certificate data sheet, airworthiness directives or other approved data upon which its airworthiness depends, shall give the owner/operator a signed and dated list of those discrepancies.

Right of access for inspection

35.—(1) The Director shall have access to any civil aircraft without restriction wherever it is operated within Malaŵi for the purposes of ensuring that the aircraft is airworthy and being operated in accordance with these Regulations and applicable ICAO Annexes.

(2) The Director shall have access to any civil aircraft registered in Malaŵi without restriction wherever it is are operated in the world for the purposes of ensuring that the aircraft is airworthy and is being operated in accordance with these Regulations and directives.

(3) The Director shall have access by Malaŵi air operators any place any time to conduct any tests or inspections in order to determine that those operations are conducted in accordance with these Regulations and directives.

SCHEDULE

Implementing Standards

Airworthiness Implementing Standards

IS 5:2 Modification, Repairs and Preventive Maintenance

IS 5:2.1 (9) Major Modifications

1. Airframe Major Modifications. Major modifications include modifications to the listed aircraft parts, or the listed types of modifications (when not included in the applicable manufacturer specifications or type certificate data sheet (TCDS)—

(1) Wings.

(2) Tail surfaces.

(3) Fuselage.

(4) Engine mounts.

(5) Control system.

(6) Landing gear.

(7) Hull or floats.

(8) Elements of an airframe including spars, ribs, fittings, shock absorbers, bracing, cowlings, fairings, and balance weights.

(9) Hydraulic and electrical actuating system of components.

(10) Rotor blades.

(11) Changes to the empty weight or empty balance which result in an increase in the maximum certified weight or centre of gravity limits of the aircraft.

(12) Changes to the basic design of the fuel, oil, cooling, heating, cabin pressurization, electrical, hydraulic, de-icing, or exhaust systems.

(13) Changes to the wing or to fixed or movable control surfaces which affect flutter and vibration characteristics.

2. Powerplant Major Modifications: Major power plant modifications, even when not listed in the applicable engine specifications, include—

   (1) Conversion of an aircraft engine from one approved model to another, involving any changes in compression ratio, propeller reduction gear, impeller gear ratios or the substitution of major engine parts which requires extensive rework and testing of the engine.

   (2) Changes to the engine by replacing aircraft engine structural parts with parts not supplied by the original manufacturer or parts not specifically approved by the Authority.

   (3) Installation of an accessory which is not approved for the engine.

   (4) Removal of accessories that are listed as required equipment on the aircraft or engine specification.

   (5) Installation of structural parts other than the type of parts approved for the installation.

   (6) Conversions of any sort for the purpose of using fuel of a rating or grade other than that listed in the engine specifications.

3. Propeller Major Modifications: Major propeller modifications, when not authorized in the applicable propeller specifications, include—

   (1) Changes in blade design.

   (2) Changes in hub design.

   (3) Changes in the governor or control design.

   (4) Installation of a propeller governor or feathering system.

   (5) Installation of propeller de-icing system.

   (6) Installation of parts not approved for the propeller.

4. Appliance Major Modifications: Modifications of the basic design not made in accordance with recommendations of the appliance manufacturer or in accordance with applicable Airworthiness Directives are appliance major modifications. In addition, changes in the basic design of radio communication and navigation equipment approved under type certification or other authorization that have an effect on frequency stability, noise level, sensitivity, selectivity, distortion, spurious radiation, automatic volume control (AVC) characteristics, or ability to meet environmental test conditions and other changes that have an effect on the performance of the equipment are also major modifications.

IS 5:2.1 (10) MAJOR REPAIRS

5. Airframe Major Repairs: Repairs to the following parts of an airframe and repairs of the following types, involving the strengthening, reinforcing, splicing, and manufacturing of primary structural members or their replacement, when replacement is by fabrication such as riveting or welding, are airframe major repairs—

(1) Box beams.

(2) Monocoque or semi-monocoque wings or control surfaces.

(3) Wing stringers or chord members.

(4) Spars.

(5) Spar flanges.

(6) Members of truss-type beams.

(7) Thin sheet webs of beams.

(8) Keel and chine members of boat hulls or floats.

(9) Corrugated sheet compression members which act as flange material of wings or tail surfaces.

(10) Wing main ribs and compression members.

(11) Wing or tail surface brace struts.

(12) Engine mounts.

(13) Fuselage longerons.

(14) Members of the side truss, horizontal truss, or bulkheads.

(15) Wain seat support braces and brackets.

(16) Landing gear brace struts.

(17) Axles.

(18) Wheels.

(19) Parts of the control system such as control columns, pedals, shafts, brackets, or horns.

(20) Repairs involving the substitution of material.

(21) The repair of damaged areas in metal or plywood stressed covering exceeding six inches in any direction.

(22) The repair of portions of skin sheets by making additional seams.

(23) The splicing of skin sheets.

(24) The repair of three or more adjacent wing or control surface ribs or the leading edge of wings and control surfaces, between such adjacent ribs.

(25) Repair of fabric covering involving an area greater than that required to repair two adjacent ribs.

(26) Replacement of fabric on fabric covered parts such as wings, fuselages, stabilizers, and control surfaces.

(27) Repairing, including rebottoming, of removable or integral fuel tanks and oil tanks.

6. Powerplant Major Repairs: Repairs of the following parts of an engine and repairs of the following types, are power-plant major repairs—

(1) Separation or disassembly of a crankcase or crankshaft of a piston engine equipped with an integral supercharger.

(2) Separation or disassembly of a crankcase or crankshaft of a piston engine equipped with other than spur-type propeller reduction gearing.

(3) Special repairs to structural engine parts by welding, plating, metalizing, or other methods.

(4) Propeller Major Repairs: Repairs of the following types to a propeller are propeller major repairs—

(*a*) any repairs to or straightening of steel blades;

(*b*) repairing or machining of steel hubs;

(*c*) shortening of blades;

(*d*) retipping of wood propellers;

(*e*) replacement of outer laminations on fixed pitch wood propellers;

(*f*) repairing elongated bolt holes in the hub of fixed pitch wood propellers;

(*g*) inlay work on wood blades;

(*h*) repairs to composition blades;

(i) replacement of tip fabric;

(*j*) replacement of plastic covering;

(*k*) repair of propeller governors;

(*l*) overhaul of controllable pitch propellers;

(*m*) repairs to deep dents, cuts, scars, nicks, etc., and straightening of aluminum blades;

(*n*) the repair or replacement of internal elements of blades.

7. Appliance Major Repairs. Repairs of the following types to appliances are appliance major repairs—

(1) Calibration and repair of instruments.

(2) Calibration of avionics or computer equipment.

(3) Rewinding the field coil of an electrical accessory.

(4) Complete disassembly of complex hydraulic power valves.

(5) Overhaul of pressure type carburetors, and pressure type fuel, oil, and hydraulic pumps.

IS 5:2.1 (13) PREVENTIVE MAINTENANCE

Preventive Maintenance. Preventive maintenance is limited to the following work, provided it does not involve complex assembly operations—

(1) Removal, installation and repair of landing gear tires.

(2) Replacing elastic shock absorber cords on landing gear.

(3) Servicing landing gear shock struts by adding oil, air, or both.

(4) Servicing landing gear wheel bearings, such as cleaning and greasing.

(5) Replacing defective safety wiring or cotter keys.

(6) Lubrication not requiring disassembly other than removal of non-structural items such as cover plates, cowlings, and fairings.

(7) Making simple fabric patches not requiring rib stitching or the removal of structural parts or control surfaces.

(8) Replenishing hydraulic fluid in the hydraulic reservoir.

(9) Refinishing decorative coating of fuselage, wings, tail group surfaces (excluding balanced control surfaces), fairings, cowling, landing gear, cabin, or cockpit interior when removal or disassembly of any primary structure or operating system is not required.

(10) Applying preservative or protective material to components where no disassembly of any primary structure or operating system is involved and where such coating is not prohibited or is not contrary to good practices.

(11) Repairing upholstery and decorative furnishings of the cabin or cockpit when the repairing does not require disassembly of any primary structure or operating system or interfere

with an operating system or affect primary structure of the aircraft.

(12) Making small simple repairs to fairings, non-structural cover plates, cowlings, and small patches and reinforcements not changing the contour so as to interfere with proper airflow.

(13) Replacing side windows where that work does not interfere with the structure of any operating system such as controls, electrical equipment, etc.

(14) Replacing safety belts.

(15) Replacing seats or seat parts with replacement parts approved for the aircraft, not involving disassembly of any primary structure or operating system.

(16) Troubleshooting and repairing broken circuits in landing light wiring circuits.

(17) Replacing bulbs, reflectors, and lenses of position and landing lights.

(18) Replacing wheels and skis where no weight and balance computation is involved.

(19) Replacing any cowling not requiring removal of the propeller or disconnexion of flight controls.

(20) Replacing or cleaning spark plugs and setting of spark plug gap clearance.

(21) Replacing any hose connexion except hydraulic connexions.

(22) Replacing prefabricated fuel lines.

(23) Cleaning fuel and oil strainers.

(24) Replacing and servicing batteries.

(25) Replacement or adjustment of non-structural fasteners incidental to operations.

(26) The installation of anti-misfueling devices to reduce the diameter of fuel tank filler openings provided the specific device has been made a part of the aircraft type certificate data by the aircraft manufacturer, the manufacturer has provided appropriately approved instructions acceptable to the Authority for the installation of the specific device, and installation does not involve the disassembly of the existing filler opening.

IS 5:11 Issuance or Validation of a Standard Certificate of Airworthiness

The standard Certificate of Airworthiness issued by the Authority shall be as follows—

* *

....

REPUBLIC OF MALAŴI

DEPARTMENT OF CIVIL AVIATION

Certificate of Airworthiness

1. Nationality and registration mark	2. Manufacturer and manufacturer's designation of aircraft	3. Aircraft serial number:
.....	.....	.....
.....	.....	.....

4. Categories and/or operation***.....

.....

5. This Certificate of Airworthiness is issued pursuant to the Convention on International Civil Aviation dated 7 December 1944 and † The Aviation Act in respect of the above-mentioned aircraft which is considered to be airworthy when maintained and operated in accordance with the foregoing and the pertinent operating limitations.

Date of issue: ..... Signature: .....

6.***

* For use of the State of Registry.

** Manufacturer's designation of aircraft should contain the aircraft type and model.

*** This space is normally used to indicate the certification basis, i.e., certification code, with which the particular aircraft complies and/or its permitted operational category, e.g., commercial air transportation, aerial work, or private.

**** This space shall be used either for periodic endorsement (giving date of expiry) or for a statement that the aircraft is being maintained under a system of continuous inspection.

IS 5:30 Performance Rules: Inspection

1. Each person performing an annual or 100-hour inspection shall, before that inspection, thoroughly clean the aircraft and aircraft engine and remove or open all necessary inspection plates, access doors, fairings, and cowlings.

2. Each person performing an annual or 100-hour inspection shall inspect, where applicable, the following components—

(1) fuselage and hull group—

(*a*) fabric and skin—for deterioration, distortion, other evidence of failure, and defective or insecure attachment of fittings;

(*b*) systems and components—for improper installation, apparent defects, and unsatisfactory operation;

(*c*) the cabin and cockpit group;

(*d*) generally—for uncleanness and loose equipment that might foul the controls;

(*e*) seats and safety belts—for poor condition and apparent defects;

(*f*) windows and windshields—for deterioration and breakage;

(*g*) instruments—for poor condition, mounting, marking, and (where practicable) for improper operation;

(*h*) flight and engine controls—for improper installation and improper operation;

(*i*) batteries—for improper installation and improper charge;

(*j*) all systems—for improper installation, poor general condition, apparent and obvious defects, and insecurity of attachment;

(2) engine and nacelle group—

(*a*) engine section—for visual evidence of excessive oil, fuel, or hydraulic leaks, and sources of such leaks;

(*b*) studs and nuts—for improper torquing and obvious defects;

(*c*) internal engine—for cylinder compression and for metal particles or foreign matter on screens and sump drain plugs. If there is weak cylinder compression, for improper internal condition and improper internal tolerances;

(*d*) engine mount—for cracks, looseness of mounting, and looseness of engine to mount;

(*e*) flexible vibration dampeners—for poor condition and deterioration;

(*f*) engine controls—for defects, improper travel, and improper safetying;

(*g*) lines, hoses, and clamps—for leaks, improper condition, and looseness;

(*h*) exhaust stacks—for cracks, defects, and improper attachment;

(*i*) accessories—for apparent defects in security of mounting;

(*j*) all systems—for improper installation, poor general condition, defects, and insecure attachment;

(*k*) cowling—for cracks and defects;

(3) landing gear group—

(*a*) all units—for poor condition and insecurity of attachment;

(*b*) shock absorbing devices—for improper oleo fluid level;

(*c*) linkage, trusses, and members—for undue or excessive wear, fatigue, and distortion;

(*d*) retracting and locking mechanism—for improper operation;

(*e*) hydraulic lines—for leakage;

(*f*) electrical system—for chafing and improper operation of switches;

(*g*) wheels—for cracks, defects, and condition of bearings;

(*h*) tires—for wear and cuts;

(*i*) brakes for improper adjustment;

(*j*) floats and skis—for insecure attachment and obvious or apparent defects;

(4) wing and centre section assembly for—

(*a*) poor general condition;

(*b*) fabric or skin deterioration;

(*c*) distortion;

(*d*) evidence of failure; and

(*e*) insecurity of attachment;

(5) complete empennage assembly for—

(*a*) poor general condition;

(*b*) fabric or skin deterioration;

(*c*) distortion;

(*d*) evidence of failure;

(*e*) insecure attachment;

(*f*) improper component installation; and

(*g*) improper component operation;

(6) propeller group—

(*a*) propeller assembly—for cracks, nicks, binds, and oil leakage;

(*b*) bolts—for improper torquing and lack of safety;

(*c*) anti-icing devices—for improper operations and obvious defects; and

(*d*) control mechanisms—for improper operation, insecure mounting, and restricted travel;

(7) avionics/instrument group—

(*a*) avionics/instruments equipment—for improper installation and insecure mounting;

(*b*) wiring and conduits—for improper routing, insecure mounting, and obvious defects;

(*c*) bonding and shielding—for improper installation and poor condition;

(*d*) antenna including trailing antenna—for poor condition, insecure, mounting, and improper operation;

(8) Electronic/electrical group—

(*a*) wiring and conduits—for improper routing, insecure mounting, and obvious defects;

(*b*) bonding and shielding—for improper installation and poor condition;

(*c*) each installed miscellaneous item that is not otherwise covered by this listing and/or has instructions for continued airworthiness—for improper installation and improper operation.

IS 5:32 Content, form and Disposition of Records for Maintenance, Preventive Maintenance, Rebuilding and Modification of Aircraft and Life Limited Parts

IS 5:32(2) Recording of Major Repairs and Modification

1. Each person performing a major repair or major modification shall—

(1) Execute the appropriate form prescribed by the Authority at least in duplicate.

(2) Give a signed copy of that form to the aircraft owner/operator.

(3) Forward a copy of that form to the Authority, in accordance with Authority instructions, within 48 hours after the aeronautical product is approved for return to service.

NOTE: *Some CAA's have an electronic system for recording major repairs and modifications. This IS is written presuming the Authority will continue to use a hard copy form in duplicate. If an electronic system is used, the items here are recommended for inclusion in the system.*

2. In place of the requirements of paragraph (1), major repairs made in accordance with a manual or specifications acceptable to the Authority, an AMO may—

(1) Use the customer's work order upon which the repair is recorded.

(2) Give the aircraft owner a signed copy of the work order and retain a duplicate copy for at least one year from the date of approval for return to service of the aeronautical product.

(3) Give the aircraft owner a maintenance release signed by an authorized representative of the AMO and incorporating the following information—

(*a*) identity of the aeronautical product;

(*b*) if an aircraft, the make, model, serial number, nationality and registration marks, and location of the repaired area;

(*c*) if an aeronautical product, give the manufacturer's name, name of the part, model, and serial numbers (if any); and

(4) include the following or a similarly worded statement—

The aeronautical product identified above was repaired, overhauled and inspected in accordance with currently effective, applicable instructions of the State of Design and regulators requirements of the Authority, and is approved for return to service.

Pertinent details of the repair are on file at this maintenance organization.

Order No.: ..... Date: .....

Signed: .....

(*Signature of authorized representative*)

....

(*Facility Name*) (*AMO Certificate Number*)

.....

(*Address*)

3. The following sample form may be used to record major modifications and repairs.

MAJOR REPAIR AND MODIFICATION Malaŵi

For CAA Use Only

(Airframe, Powerplant, Propeller, or Appliance) Office Identification

INSTRUCTIONS: Print or type all entries. *See* Regulation 32 (2) and IS: 5:32 for instructions and disposition of this form.

1. Aircraft	Make Serial Number	Model Nationality and Registration Mark
2. Owner	Name (As shown on certificate of registration)	Address (As shown on registration certificate)

3. For Authority Use Only

4. Unit Identification				5. Type	
Unit	Make	Model	Serial Number	Repair	Modification
Airframe	(As described in item 1 above)				
Power plant					
Propeller					
Appliance	Type				
	Manufacture				

6. Conformity Statement

A. Organization Name and Address	B. Kind of Licence/Organization	C. Certificate/ Licence Number (For an AMO include the appropriate ratings issued for the major repair or modification)
	□ Licensed (AME) □ A □ P or □ A/P	
	□ Approved Maintenance Organization	
	□ Manufacturer AMO	

D. I certify that the repair and/or modification made to the unit(s) identified in item 4 above and described on the reverse or attachments hereto have been made in accordance with the requirements of these Regulations and that the information furnished herein is true and correct to the best of my knowledge.

Date	Signature of Authorized Individual

7. Approval for Return to Service

Pursuant to the authority given persons specified below, the unit(s) identified in item 4 was inspected in the manner prescribed by the Director of the Civil Aviation and is .... □ APPROVED □ REJECTED

BY	□ CAA Inspector	□ Inspection Authorization	Other (Specify)
	□ Maintenance Organization	□ Other	
Date of Approval or Rejection		Certificate or Designation Number	Signature or Authorized Individual

NOTICE

Weight and balance or operating limitation changes shall be entered in the appropriate aircraft record. A modification must be compatible with all previous modifications to assure continued conformity with the applicable airworthiness requirements.

8. Description of Work Accomplished

(If more space is required, attach additional sheets. Identify each page with aircraft nationality and registration mark and date work completed.)

INSTRUCTIONS FOR COMPLETION OF MAJOR REPAIR AND MODIFICATION FORM

Item 1—Aircraft. Information to complete the "make," "model," and "serial number" blocks will be found on the aircraft manufacturer's identification plate. The "Nationality and Registration Mark" is the same as shown on Certificate of Aircraft Registration.

Item 2—Owner. Enter the aircraft owner's complete name and address as show on the Certificate of Aircraft Registration.

NOTE: *When a major repair or modification is made to a spare part or appliance, items 1 and 2 will be left blank, and the original and duplicate copy of the form will remain with the part until such time as it is installed on an aircraft. The person installing the part will then enter the required information in blocks 1 and 2, give the original of the form to the aircraft owner/operator, and forward the duplicate copy to the Authority within 48 hours after the work is inspected.*

Item 3—For Authority Use Only: Approval may be indicated in Item 3 when the Authority determines that data to be used in performing a major modification or a major repair complies with accepted industry practices and all applicable Malaŵi regulations. Approval is indicated in one of the following methods—

(1) Approval by examination of data only one aircraft only: "The data identified herein complies with the applicable airworthiness requirements and is approved for the above

described aircraft, subject to conformity inspection by a person authorized in regulation 27 of these Regulations.

(2) Approval by physical inspection, demonstration, testing, etc. of the data and aircraft—one aircraft only. "The modification or repair identified herein complies with the applicable airworthiness requirements and is approved for the above described aircraft, subject to conformity inspections by a person in these Regulations."

(3) Approval by examination of data only—duplication on identical aircraft. "The modification identified herein complies with the applicable airworthiness requirements and is approved for duplication on identical aircraft make, model, and modified configuration by the original modifier."

(4) A signature in item 3, "For Authority Use Only," indicates approval of the data described in that section for use in accomplishing the work described under item 8, "Description of the Work Accomplished."

This signature does not indicate CAA approval of the work described under item 8 for return to service.

Item 4—Unit Identification: The information blocks under item 4 are used to identify the airframe, power-plant, propeller, or appliance repaired or modified. It is only necessary to complete the blocks for the unit repaired or modified.

Item 5—Type: Enter a check mark in the appropriate column to indicate if the unit was repaired or modified.

Item 6—Conformity Statement—

"A"—Agency's Name and Address. Enter name of the AME, AMO or manufacturer accomplishing the repair or modification. AMEs should enter their name and permanent mailing address. Manufacturers and AMOs should enter the name and address under which they do business.

"B"—Kind of Licence/Organization. Check the appropriate box to indicate the type of person or organization who performed the work.

"C"—Certificate/Licence Number. AME's should enter their AME licence number in this block. AMO's should enter their AMO certificate number and the rating or ratings under which the work was performed. Manufacturers should enter their type production or Supplemental Type Certificate (STC) number. Manufacturers of Technical Standard Orders (TSO) appliances modifying these appliances should enter the TSO number of the appliance modified.

"D"—Compliance Statement. This space is used to certify that the repair or modification was made in accordance with these Regulations. When work was performed or supervised by licensed AMT's not employed by a manufacturer or AMO, they should enter the date the repair or modification was completed and sign their full name. AMO's are permitted to authorize persons in their employ to date and sign this conformity statement.

A signature in item 6, "Conformity Statement," is a certification by the person performing the work that it was accomplished in accordance with applicable CAA and CAA-approved data. The certification is only applicable to that work described under item 8, "Description of Work Accomplished." This signature does not indicate CAA approval of the work described under item 8 for return to service.

Item 7—Approval for Return to Service: The Regulations establish the conditions under which major repairs and modifications to airframes, power-plants, propellers, and/or appliances may be approved for return to service. This portion of the form is used to indicate approval or rejection of the repair or modification of the unit involved and to identify the person or agency making the airworthiness inspection. Check the "approved" or "rejected" box to indicate the finding. Additionally, check the appropriate box to indicate who made the finding. Use the box labeled "other" to indicate a finding by a person other than those listed. Enter the date the finding was made. The authorized person who made the finding should sign the form and enter the appropriate certificate or designation number.

1. Previously Approved Data: The forms will be completed as instructed ensuring that Item 7 is completed as noted above.

2. Non-previously Approved Data: The form will be completed as instructed, leaving item 7, "Approval for Return to Service" blank and both copies of the form will be sent to the Authority with supporting data. When the CAA determines that the major repair or modification data complies with the applicable regulations and is in conformity with accepted industry practices, data approval will be recorded by entering an appropriate statement in item 3, "for CAA use only." Both forms and supporting data will be returned to the applicant who will complete item 7 "Approval for Return to Service." The applicant will give the original of the form, with its supporting data to the aircraft owner or operator and return the duplicate copy to the Authority for inclusion in the aircraft records at its Aircraft Registry.

A signature in item 7, "Approval for Return to Service," does not signify CAA approval unless the box to the left of "CAA Inspector" has been checked. The other persons listed in item 7 are authorized to "approve for return to service" if the repair or modification is accomplished using CAA-approved data, performed in accordance with these Regulations and found to conform with the requirement.

Item 8—Description of Work Accomplished: A clear, concise, and legible statement describing the work accomplished should be entered in the item 8 on the reverse side of the form. It is important that the location of the repair or modification, relative to the aircraft or component, be described. The approved data used as the basis for approving the major repair or modification for the return to service should be identified and described in this area—

(1) For example, if a repair was made to a buckled spar, the description and entered in this part might begin by stating, "Removed wing from aircraft and removed skin from outer 6 feet. Repaired buckled spar 49 inches from the tip in accordance with ..."and continue with a description of the repair. The description should refer to applicable regulations and approved data used to substantiate the airworthiness of the repair or modification. If the repair or modification is subject to being covered by skin or other structures, statement should be made certifying that a recover inspection was made and that covered areas were found satisfactory.

(2) Data used as a basis for the approving major repairs or modifications for return to service shall be approved prior to its use for that purpose and includes: Airworthiness Directives, Advisory Circulars under certain circumstances, TSO parts manufacturing approval, Approved Manufacturer's instructions, kits and service handbooks, type certificates data sheets, and aircraft specifications. Supporting data such as stress analyses, test reports, sketches or photographs should be submitted on the form. These supporting data will be returned to the applicant by the Authority.

(3) If additional space is needed to describe the repair or modification, attach sheets bearing the aircraft nationality and registration mark and the date work was completed.

(4) Showing weight and balance computations under this item is not required; however, it may be done. In all cases where weight and balance of the aircraft are affected, the changes

should be entered in the aircraft weight and balance records with the date, signature, and reference to the work performed on the [CAA MR&A Form] that required the changes.

NOTE: *CAA MR&M Form is not authorized for use on other than Malaŵi-registered aircraft. If a foreign civil Aviation authority requests the form, as a record of work performed, it may be provided.*

G.N. 32/2013

AVIATION (APPROVED MAINTENANCE ORGANIZATION) REGULATIONS

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AVIATION (APPROVED MAINTENANCE ORGANIZATION) REGULATIONS

under s. 19

PART I
GENERAL

Citation and application

1.—(1) These Regulations may be cited as the Aviation (Approved Application Maintenance Organization) Regulations.

(2) These Regulations prescribe the requirements for issuing approvals to organizations for the maintenance, preventive maintenance, and alterations of aircraft and aeronautical products and prescribes the general operating rules for an Approved Maintenance Organization (AMO).

Definitions

2.—(1) For the purpose of these Regulations, unless the context otherwise requires—

"accountable manager" means the person acceptable to the Authority who has corporate authority for ensuring that all operations and maintenance activities can be financed and carried out to the standard required by the Authority, and any additional requirements defined by the operator;

"approval for return to service" means see maintenance release;

"approved data" means technical information approved by the Authority;

"Approved Maintenance Organization (AMO)" means an organization approved to perform specific aircraft maintenance activities by the Authority. These activities may include the inspection, overhaul, maintenance, repair and/or modification and release to service of aircraft or aeronautical products;

"article" means any item, including but not limited to, an aircraft, airframe, aircraft engine, propeller, appliance, accessory, assembly, subassembly, system, subsystem, component, unit, product, or part;

"calibration" means a set of operations, performed in accordance with a definite documented procedure that compares the measurement performed by a measurement device or working standard with a recognized Bureau of Standards for the purpose of detecting and reporting or eliminating adjustment errors in the measurement device, working standard, or aeronautical product tested;

"composite" means structural materials made of substances, including, but not limited to, wood, metal, ceramic, plastic, fiber-reinforced materials, graphite, boron, or epoxy, with built-in strengthening agents that may be in the form of filaments, foils, powders, or flakes, of a different material;

"computer system" means any electronic or automated system capable of receiving, storing, and processing external data, and transmitting and presenting such data in a usable form for the accomplishment of a specific function;

"directly in charge" means an appropriately licensed person having the responsibility for the work of an approved maintenance organization that performs maintenance, preventive maintenance, alterations, or other functions affecting aircraft airworthiness; a person directly in charge does not need to physically observe and direct each worker constantly but must be available for consultation on matters requiring instruction or decision from higher authority;

"facility" means a physical plant, including land, buildings, and equipment, which provide the means for the performance of maintenance, preventive maintenance, or alterations of any article;

"housing" means buildings, hangers, and other structures to accommodate the necessary equipment and materials of a maintenance organization that—

(*a*) provide working space for the performance of maintenance, preventive maintenance, or alterations for which the maintenance organization is approved and rated; and

(*b*) provide structures for the proper protection of aircraft, airframes, aircraft engines, propellers, appliances, components, parts, and subassemblies thereof during disassembly, cleaning, inspection, repair, modification, assembly, and testing; and

(*c*) provide for the proper storage, segregation, and protection of materials, parts, and supplies;

"line maintenance" means any unscheduled maintenance resulting from unforeseen events, or scheduled checks that contain servicing and/or inspections that do not require specialized training, equipment, or facilities;

"maintenance Organization's Procedures Manual" means a document endorsed by the head of the maintenance organization which details the maintenance organization's structure and management responsibilities, scope of work, description of facilities, maintenance procedures and quality assurance or inspection systems. Also referred to as the "AMO procedures manual";

"maintenance release" means a document which contains a certification confirming that the maintenance work to which it relates has been completed in a satisfactory manner, either in accordance with the approved data and the procedures described in the maintenance organization's procedures manual or under an equivalent system;

"primary standard" means a standard defined and maintained by a State Authority and used to calibrate secondary standards;

"reference standard" means a standard that is used to maintain working standards;

"safety management system" means a systematic approach to managing safety, including the necessary organizational structures, accountabilities, policies and procedures;

"state safety programme" means an integrated set of regulations and activities aimed at improving safety;

"secondary standards" means a standard maintained by comparison with a primary standard;

"specialized maintenance" means any maintenance not normally performed by an AMO (e.g., tire retreading, plating, etc.);

"standard" means an object, artifact, tool, test equipment, system, or experiment that stores, embodies, or otherwise provides a physical quantity, which serves as the basis for measurement of the quantity. It also includes a document describing the operations and process that must be performed in order for a particular end to be achieved;

"traceability" means a characteristic of a calibration, analogous to a pedigree. A traceable calibration is achieved when each Measurement Device and Working Standard, in a hierarchy stretching back to the National Standard, was itself properly calibrated, and the results properly documented. The documentation provides the information needed to show that all calibrations in the chain of calibrations were properly performed;

"transfer standard" means any standard that is used to compare a measurement process, system, or device at one location or level with another measurement process, system or device at another location or level.

Abbreviations

3. The following abbreviations are used in these Regulations—

(1) AAT—Approved Airworthiness Tag.

(2) AMO—Approved Maintenance Organization.

(3) AME—Aircraft Maintenance Engineer.

(4) AMT—Aircraft Maintenance Technician.

(5) ARS—Aviation Repairman Specialist.

(6) NDT—Non-Destructive Testing.

(7) PAH—Production Approval Holder.

(8) TSO—Technical Standard Order.

Exemption authority

4.—(1) The Authority may, upon consideration of the circumstances of a particular maintenance organization, issue an exemption providing relief from specified regulations of these Regulations, provided that the Authority finds that the circumstances presented warrant the exemption and that a level of safety will be maintained equal to that provided by the rule from which the exemption is sought.

(2) An exemption may be terminated or amended at any time by the Authority.

(3) A request for exemption must be made in accordance with the requirements in the Aviation (General Policies, Procedures and Definitions) Regulations.

(4) Each approved maintenance organization that receives an exemption must have a means of notifying the appropriate management, certifying staff, and personnel of the exemption.

PART II
Certification of Maintenance Organization and Continued Validity

Application

5. This part prescribes the requirements for the certification of a maintenance organization and continued validity of the certificate.

General

6.—(1) No person may operate as a certificated approved maintenance organization without, or in Violation of, an approved maintenance organization certificate, ratings or operations specifications issued under this Part.

(2) The certificate and operations specifications issued to an approved maintenance organization must be available on the premises for inspection by the public and the Authority.

(3) The approval of a AMO by a State shall be dependent upon the applicant demonstrating compliance with the requirements of these Regulations.

Approved maintenance organization certificate

7.—(1) The AMO certificate will consist of two documents—

(*a*) a one page certificate signed by the Authority; and

(*b*) a multi-page operations specifications signed by the Accountable Manager and the Authority containing the terms, conditions, and authorizations.

(2) No person may operate as an approved maintenance organization without, or in violation of, an approved maintenance organization certificate issued under these Regulations.

(3) An approved maintenance organization may perform maintenance, preventive maintenance, or alterations on an aircraft, airframe, aircraft engine, propeller, appliance, component, or part thereof only for which it is rated and within the terms, conditions, and authorizations placed in its operations specifications.

(4) The AMO certificate will contain the following items and be in a format as shown in IS: 6:7 contained in the Schedule hereto—

(*a*) the certificate number specifically assigned to the AMO;

(*b*) the name and location (main place of business) of the AMO;

(*c*) the date of issue and period of validity;

(*d*) the ratings issued to the AMO; and

(*e*) authority signature.

(5) The AMO operations specifications will contain—

(*a*) the certificate number specifically assigned to the AMO;

(*b*) the class or limited ratings issued in detail, including special approvals and limitations issued;

(*c*) the date issued or revised;

(*d*) accountable manager and Authority signatures; and

(*e*) the certificate issued to each certificated maintenance organization must be available in the premises for inspection by the public and the Authority.

Advertising

8.—(1) No approved maintenance organization may advertise as a certificated approved maintenance organization until an approved maintenance organization certificate has been issued to that facility.

(2) No certificated approved maintenance organization may make any statement, either in writing or orally, about itself that is false or is designed to mislead any person.

(3) Whenever the advertising of an approved maintenance organization indicates that it is certificated, the advertisement must clearly state the approved maintenance organization's certificate number.

Application for an AMO certificate

9.—(1) The Authority will require an applicant for approval of a maintenance organization to submit the following—

(*a*) an application in a form and a manner prescribed by the Authority, as contained in IS: 6:9 contained in the Schedule hereto;

(*b*) its Maintenance Procedures Manual in duplicate;

(*c*) a list of the maintenance functions to be performed for it, under contract, by another AMO;

(*d*) a list of all AMO certificates and ratings pertinent to those certificates issued by any Contracting State other than Malaŵi;

(*e*) documentation of the maintenance organization's Quality System; and

(*f*) any additional information the Authority requires the applicant to submit.

(2) An application for the amendment of an existing AMO certificate shall be made on a form and in a manner prescribed by the Authority. If applicable, the AMO shall submit the required amendment to the Maintenance Procedures Manual to the Authority for approval.

(3) "In a form" and "in a manner" mean that a form issued by the Authority should be completed by the accountable manager, or the manager's nominee designated in accordance with regulation 9 (1).

(4) It is accepted practice to permit AMOs to subcontract work to non-approved maintenance organizations if the contracting AMO—

(*a*) is approved for the work to be subcontracted and has the ability to assess the competency of the subcontractor;

(*b*) retains the responsibility for the quality control and release of subcontracted activities; and

(*c*) there exist procedures to control subcontracted activities together with terms of reference for the personnel responsible for their management.

(5) The contents of the maintenance procedures manual is contained in regulation 28 of these Regulations.

Issuance of an AMO certificate

10. An applicant may be issued an AMO certificate if, after investigation, the Authority finds that the applicant—

(*a*) meets the applicable regulations and standards for an AMO certificate;

(*b*) is properly and adequately equipped for the performance of maintenance of aircraft or aeronautical product for which it seeks approval; and

(*c*) has paid the appropriate charges prescribed by the Authority for the AMO application process.

Duration and renewal of AMO certificate

11.—(1) A certificate or rating issued to an approved maintenance organization located either inside or outside Malaŵi is effective from the date of issue until—

(*a*) the 12th month after the date on which it was initially issued, subject to satisfactory compliance with the requirements of these Regulations; or

(*b*) the 24th month after the date on which it was renewed, subject to satisfactory compliance with the requirements of these Regulations; or

(*d*) the approved maintenance organization surrenders the certificate, or

(*e*) the Authority suspends or revokes the certificate.

(2) The holder of a certificate that expires or is surrendered, suspended, or revoked by the Authority must return the certificate and operations specifications to the Authority within 5 working days of expiration, surrender or receipt from the Authority of notice of suspension or revocation.

(3) A certificated approved maintenance organization that applies for a renewal of its approved maintenance organization certificate for aircraft registered in Malaŵi must submit its request for renewal no later than 90 days before the approved maintenance organization's current certificate expires. If a request for renewal is not made within this period, the approved maintenance organization must follow the application procedures for initial issuance as prescribed by the Authority.

Continued validity of approval

12. Unless the approval has previously been surrendered, superseded, suspended, revoked or expired by virtue of exceeding any expiration date that may be specified in the approval certificate, the continued validity of approval is dependent upon—

(*a*) the AMO remaining in compliance with these Regulations;

(*b*) the Authority being granted access to the organization's facilities to determine continued compliance with this regulation; and

(*c*) the payment of any charges prescribed by the Authority.

Inspection

13.—(1) The Authority may, at any time, inspect an AMO holder on the AMO holder's premises to determine the AMO compliance with these Regulations.

(2) Inspections will be conducted at least annually.

(3) After an inspection is made, the certificate holder will be notified, in writing, of any deficiencies found during the inspection.

(4) Inspection will also be performed on the applicant for, or the holder of an AMO certificate held outside the authorizing Malaŵi. This inspection may be delegated to the Authority of the State where the AMO is located, provided an arrangement exists.

Suspension or revocation

14. The Authority may suspend or revoke an AMO certificate if it is established that a certificate holder has not met, or no longer meets the requirements of these Regulations.

Changes to the AMO and certificate amendments

15.—(1) To enable the Authority to determine continued compliance with this Chapter, the AMO shall provide written notification to the Authority either prior to, or within a time period determined by the Authority to be as soon as practicable after, any of the following changes—

(*a*) the name of the organization;

(*b*) the location of the organization;

(*c*) the housing, facilities, equipment, tools, material, procedures, work scope and certifying staff that could affect the AMO rating or ratings;

(*d*) the ratings held by the AMO, whether granted by the Authority or held through an AMO certification issued by another contracting State (*See* regulation 9 (1));

(*e*) additional locations of the organization;

(*f*) items in the Maintenance Procedures Manual;

(*g*) the accountable manager; or

(*h*) the list of management personnel identified as described in the Maintenance Procedures Manual.

(2) The Authority will amend the AMO certificate if the AMO notifies the Authority of a change in—

(*a*) location or housing and facilities;

(*b*) additional locations of the organization;

(*c*) rating, including deletions;

(*d*) items in the Maintenance Procedures Manual;

(*e*) name of the organization with same ownership; or

(*f*) ownership.

(3) The Authority may amend the AMO certificate if the AMO notifies the Authority of a change in—

(*a*) the accountable manager; or

(*b*) the list of management personnel identified as described in the Maintenance Procedure Manual;

(*c*) items in the Maintenance Procedures Manual.

(4) When the Authority issues an amendment to an AMO certificate because of new ownership of the AMO, the Authority will assign a new certificate number to the amended AMO certificate.

(5) The Authority may—

(*a*) prescribe, in writing, the conditions under which the AMO may continue to operate during any period of implementation of the changes noted in subregulation (1); and

(*b*) hold the AMO certificate in abeyance if the Authority determines that approval of the AMO certificate should be delayed; the Authority will notify the AMO certificate holder, in writing, of the reasons for any such delay.

(6) If changes are made by the AMO to the items listed in subregulation 15 (1) without notification to the Authority and amendment of the AMO certificate by the Authority, the AMO certificate may be suspended, or revoked, by the Authority.

Rating of the AMO

16. The following ratings are issued under this part—

(*a*) airframe ratings—

(i) class 1: Composite construction of small aircraft;

(ii) class 2: Composite construction of large aircraft;

(iii) class 3: All-metal construction of small aircraft;

(iv) class 4: All-metal construction of large aircraft;

(*b*) power-plant ratings—

(i) class 1: Piston engines of 400 horsepower or less;

(ii) class 2: Piston engines of more than 400 horsepower;

(iii) class 3: Turbine engines;

(*c*) propeller ratings

(i) class 1: Fixed-pitch and ground-adjustable propellers of wood, metal or composite construction;

(ii) class 2: Other propellers, by make;

(*d*) avionics/radio ratings—

(i) class 1: communication equipment: radio transmitting equipment or receiving equipment, or both, used in aircraft to send or receive communications, regardless of carrier frequency or type of modulation used; including auxiliary and related aircraft inter-phone systems, amplifier systems, electrical or electronic inter-crew signaling devices, and similar equipment; but not including equipment used for navigation of the aircraft or as an aid to navigation, equipment for measuring altitude or terrain clearance, other measuring equipment operated on radio or radar principles, or mechanical, electrical, gyroscopic, or electronic instruments that are a part of communications radio equipment;

(ii) class 2: navigational equipment: a radio system used in aircraft for en route, approach navigation, to include the flight director system, except equipment operated on radar or pulsed radio frequency principles, but not including equipment for measuring altitude or terrain clearance or other distance measuring equipment operated on pulsed radio frequency principles;

(iii) class 3: pulsed equipment: any aircraft electronic system operated on pulsed radio frequency principles;

(*e*) instrument ratings—

(i) class 1: mechanical: any diaphragm, bourdon tube, aneroid, optical, or mechanically driven centrifugal instrument that is used on aircraft or to operate aircraft, including tachometers, airspeed indicators, pressure gauges, drift sights, magnetic compasses, altimeters, or similar mechanical instruments;

(ii) class 2: electrical: any self-synchronous and electrical indicating instruments and systems, including remote indicating instruments, cylinder head temperature gauges, or similar electrical instruments;

(iii) class 3: gyroscopic: any instrument or system using gyroscopic principles and motivated by air pressure or electrical

energy, including automatic pilot control units, turn and bank indicators, directional gyros, and their parts, and flux gate and gyrosyn compasses;

(iv) class 4: electronic: any instruments whose operation depends on electron tubes, transistors, electronic displays, or similar devices including capacitance type quantity gauges, system amplifiers, and engine analysers;

(*f*) accessory ratings—

(i) class 1: mechanical: the accessories that depend on friction, hydraulics, mechanical linkage, or pneumatic pressure for operation, including aircraft brakes, mechanically driven pumps, carburetors, aircraft wheel assemblies, shock absorber struts and hydraulic servo units;

(ii) class 2: electrical: the accessories that depend on electrical energy for operation, and generators, including starters, voltage regulators, electric motors, electrically driven fuel pumps, magnetos, or similar electrical accessories;

(iii) class 3: electronic: the accessories that depend on the use of an electron tube transistors, or similar device, including super-charger, temperature, air conditioning controls, or similar electronic controls.

AMO limited ratings

17.—(1) Whenever the Authority finds it appropriate, it may issue a limited rating to an AMO that maintains or alters only a particular type of airframe, power-plant, propeller, radio, instrument, or accessory, or parts thereof, or performs only specialized maintenance requiring equipment and skills not ordinarily found in an AMO. Such a rating may be limited to a specific model aircraft, engine, or constituent part, or to any number of parts made by a particular manufacturer.

(2) Limited ratings are issued for—

(*a*) airframes of a particular make and model;

(*b*) power-plants of a particular make and model;

(*c*) propellers of a particular make and model;

(*d*) radio equipment of a particular make and model;

(*e*) instruments of a particular make and model;

(*f*) accessories of a particular make and model;

(*g*) landing gear components;

(*h*) floats, by make;

(*i*) nondestructive inspection, testing, and processing;

(*j*) emergency equipment;

(*k*) rotor blades, by make and model;

(*l*) aircraft fabric work; and

(*m*) any other purpose for which the Authority finds the applicant's request appropriate.

(3) Specialized service ratings: A specialized service rating may be issued to a maintenance organization to perform specific maintenance or processes. The operating specifications of the approved maintenance organization must identify the specification used in performing that specialized service. The specification may be—

(*a*) a civil or military specification that is currently used by industry and approved by the Authority; or

(*b*) a specification developed by the approved maintenance organization and approved by the Authority.

Quality system

18.—(1) The AMO shall establish a quality system and designate a quality manager to monitor compliance with, and adequacy of, procedures required to ensure safe maintenance practices and airworthy aircraft. Compliance monitoring shall include a feedback system to the accountable manager to ensure corrective action as necessary.

(2) The quality system, and the quality manager, shall be acceptable to the Authority.

(3) Each AMO shall ensure that the quality system includes a quality assurance programme that contains procedures designed to monitor compliance with required aircraft and aircraft component standards and adequacy of the procedures to ensure that such procedures invoke good maintenance practices and airworthy aircraft and aircraft components.

(4) The quality assurance system shall include a procedure to initially qualify and periodically perform audits on persons performing work on behalf of the AMO.

(5) The quality system shall include a feedback system to the designated management person or group of persons directly responsible for the quality system and ultimately to the accountable manager that ensures, as necessary, proper and timely corrective action is taken in response to reports resulting from, the independent audits.

(6) The AMO's quality system shall be sufficient to review all maintenance procedures, as described in the Maintenance Control Manual and the Maintenance Procedures Manual, in accordance with an approved programme once a year.

(7) The AMO's quality system shall indicate when audits are due, when completed, and establish a system of audit reports, which can be seen by visiting Authority staff on request. The audit system shall clearly establish a means by which audit reports containing observations about non-compliance or poor standards are communicated to the accountable manager.

(8) If the AMO is a small organization, the independent audit part of the quality system may be contracted to another organization approved under this part or a person with appropriate technical knowledge and proven satisfactory audit experience such as ISO 9000 qualification.

(9) Where the AMO is part of an AOC under the Air Operator Certification and Administration Regulations, the AOC holder's quality management system may be combined with the requirements of an AMO and submitted for acceptance to the Authority.

(10) Each AMO shall describe the quality system in relevant documentation as outlined in IS: 6:18 contained in the Schedule hereto.

PART III
Housing, Facilities, Equipment, Materials and Data

General

19. A certificated approved maintenance organization must provide housing, facilities, equipment, materials, and data in quantity and quality that meet the standards required for the issuance of the certificate and ratings that the approved maintenance organization holds.

Housing and facility requirements

20.—(1) Housing for the facilities, equipment, materials, and personnel shall be provided appropriate for all planned work ensuring, in particular, protection from weather.

(2) All work environments shall be appropriate for the task carried out and shall not impair the effectiveness of personnel.

(3) Office accommodation shall be appropriate for the management of planned work including, in particular, the management of quality, planning, and technical records.

(4) Specialized workshops and bays shall be segregated, as appropriate, to insure that environmental and work area contamination is unlikely to occur.

(5) Storage facilities shall be provided for parts, equipment, tools, and material.

(6) Storage conditions shall provide security for serviceable parts, segregation of serviceable from unserviceable parts, and prevent deterioration of and damage to stored items.

(7) An AMO with an airframe rating shall provide suitable permanent housing to enclose the largest type and model of aircraft listed on its operations specifications.

(8) An AMO may perform maintenance, preventive maintenance, or alterations on articles outside of its housing if it provides suitable facilities that are acceptable to the Authority.

(9) *See* IS: 6:20 contained in the Schedule for detailed requirements pertaining to housing and facilities.

Equipment, tools and material

21.—(1) The AMO shall have available the necessary equipment, tools, and material to perform the approved scope of work and these items shall be under full control of the AMO. The availability of equipment and tools means permanent availability except in the case of any tool or equipment that is so rarely needed that its permanent availability is not necessary.

(2) The Authority may exempt an AMO from possessing specific tools and equipment for maintenance or repair of an aircraft or aeronautical product specified in the AMO's approval, if these items can be acquired temporarily, by prior arrangement, and be under full control of the AMO when needed to perform required maintenance or repairs.

(3) The AMO shall use the equipment, tools, and material that are recommended by the manufacturer of the article or must be at least equivalent to those recommended by the manufacturer and acceptable to the Authority.

(4) The AMO shall control all applicable tools, equipment, and test equipment used for product acceptance and/or for making a finding of airworthiness.

(5) The AMO shall ensure that all applicable tools, equipment, and test equipment used for product acceptance and/or for making a finding of airworthiness are calibrated to ensure correct calibration to a standard acceptable to the Authority and traceable to the Malaŵi Bureau of Standards if appropriate.

(6) The AMO shall keep all records of calibrations and the standards used for calibration.

(7) IS: 6:21 in the Schedule hereto contains detailed requirements pertaining to tools, equipment, and test equipment.

PART IV
Administration

Personnel requirements

22.—(1) A management person or group of persons acceptable to the Authority, whose responsibilities include ensuring that the AMO is in compliance with these Regulations, shall be nominated.

(2) The person or persons nominated as manager shall represent the maintenance management structure of the AMO, and be responsible for all functions specified in these Regulations.

(3) Nominated managers shall be directly responsible to an accountable manager who shall be acceptable to the Authority.

(4) The AMO shall employ sufficient personnel to plan, perform, supervise and inspect and release the work in accordance with the approval.

(5) The competence of personnel involved in maintenance shall be established in accordance with a procedure and to a standard acceptable to the Authority.

(6) Each supervisor in the AMO shall hold an AME licence issued in accordance with the Aviation (Personnel Licensing) Regulations.

(7) The person signing maintenance release or an approval for return to service shall be qualified in accordance with the Aviation (Personnel Licensing) Regulations, as appropriate to the work performed and shall be acceptable to the Authority.

(8) An AMO that uses Aviation Repairman Specialists (ARS) shall ensure that each ARS is employed by the AMO and is licensed in accordance with the Aviation (Personnel Licensing) Regulations.

(9) The maintenance personnel and the certifying staff shall meet the qualification requirements and receive initial, recurrent, and specialized training to their assigned tasks and responsibilities in accordance with a programme acceptable to the Authority. The training programme established by the AMO shall include training in knowledge and skills related to human performance, including coordination with other maintenance personnel and flight crew.

(10) *See* IS: 6:22 contained in the Schedule hereto for detailed personnel requirements.

Indoctrination, initial, recurrent, specialized and remedial training

23.—(1) An AMO shall have an employee training programme approved by the Authority that consists of indoctrination, initial, recurrent training, specialized and remedial training.

(2) An AMO shall develop and update its training programme based on the job tasks associated with its scope of operating authority and capabilities.

(3) The training programme shall ensure that each employee assigned to perform maintenance, preventive maintenance, or alterations, and inspection functions is capable of performing the assigned task.

(4) An AMO shall submit revisions of its training programme to the Authority for approval.

(5) An AMO shall document, in a form and manner acceptable to the Authority, the individual employee training required under this section. These training records must be retained for a minimum of two years.

(6) An AMO training programme shall meet the detailed requirements contained in IS: 6:23 contained in the Schedule hereto.

Dangerous goods training programme

24. An AMO shall have a dangerous goods training programme for its employees, whether full time, part time, or temporary or contracted, who are engaged in the following activities—

(*a*) loading, unloading or handling of dangerous goods;

(*b*) design, manufacture, fabrication, inspection, marking, maintenance, reconditions, repairs or tests of a package, container or packaging component that is represented, marked, certified, or sold as qualified for use in transporting dangerous goods;

(*c*) preparation of hazardous materials for transport;

(*d*) responsibility for the safety of transportation of dangerous goods;

(*e*) operation of a vehicle used to transport dangerous goods; or

(*f*) supervision of any of the above listed items.

(2) An AMO employee shall not perform or directly supervise a job function listed in subregulation (1) unless he or she has received the approved dangerous goods training.

(3) The AMO training shall ensure that its dangerous goods training—

(*a*) ensures that each employee performing or directly supervising any of the job functions specified in subregulation (1) is trained to comply with all applicable procedures; and

(*b*) enables the trained, person to recognize items that contain, or may contain, dangerous goods regulated under these Regulations.

(4) The dangerous goods training of the AMO shall be approved by the Authority and shall contain the items in IS: 6:24 contained in the Schedule hereto.

(5) An AMO shall, document, in a form and manner acceptable to the Authority, the individual employee training required under this section. These training records shall be retained for a minimum of two years.

Rest and duty limitations for persons performing maintenance functions of an AMO

25.—(1) No person may assign, nor shall any person perform maintenance functions for aircraft, unless that person has had a minimum rest period of 8 hours prior to the beginning of duty.

(2) No person may schedule a person performing maintenance functions for aircraft for more than 12 consecutive hours of duty.

(3) In situations involving unscheduled aircraft unserviceability, persons performing maintenance functions for aircraft may be continued on duty for—

(*a*) up to 16 consecutive hours; or

(*b*) 20 hours in 24 consecutive hours.

(4) Following unscheduled duty periods, the person performing maintenance functions for aircraft shall have a mandatory rest period of 10 hours.

(5) The AMO shall relieve the person performing maintenance functions from all duties for 24 consecutive hours during any 7 consecutive day's period.

Records of management, supervisory, inspection and certifying staff

26.—(1) The AMO shall maintain a roster of all management, supervisory, inspection and certifying staff, which includes details of the scope of their authorization.

(2) Certifying staff shall be notified in writing of the scope of their authorization—

(*a*) the authorization document shall be in a style that makes its scope clear to certifying staff and any authorized person that may be required to examine the document: where codes are used to define scope, an interpretation document shall be readily available;

(*b*) certifying staff are not required to carry the authorization document at all times but shall produce it within a reasonable time of a request from an authorized person.

(3) *See* IS: 6:26 contained in the Schedule hereto for detailed requirements pertaining to records of management, supervisory, inspection and certifying staff.

Safety management

27.—(1) An AMO shall implement a safety management system acceptable to the Authority as outlined in the Aviation (General Policies, Procedures and Definitions) Regulations.

PART V
AMO Operating Rules

AMO procedures manual

28.—(1) Each AMO shall have an AMO Procedures Manual.

(2) The AMO Procedures Manual shall—

(*a*) provide clear guidance to personnel on how the activities included in the airworthiness authority approval are managed, on their personal responsibilities and on how compliance with the appropriate continuing airworthiness requirements is achieved;

(*b*) include a statement of the organization's policies and objectives.

(3) If AMO is also the AOC, the AMO's procedures manual and the AOC's maintenance control manual may be combined.

(4) The AMO Procedures Manual and any subsequent amendments shall be approved by the Authority prior to use.

(5) The AMO Procedures Manual and any other manual it identifies must—

(*a*) include instructions and information necessary to allow the personnel concerned to perform their duties and responsibilities with a high degree of safety;

(*b*) be in a form that is easy to revise and contain a system which allows personnel to determine current revision status;

(*c*) have the date of the last revision printed on each page containing the revision;

(*d*) not be contrary to any applicable Malaŵi regulation or the AMO's specific operating provisions; and

(*e*) include a reference to appropriate civil aviation regulations.

Maintenance inspection procedures and quality assurance system

29.—(1) The AMO shall establish procedures, acceptable to the Authority, which ensure good maintenance practices and compliance with all relevant requirements of these Regulations.

(2) The AMO shall ensure compliance with this paragraph by either—

(*a*) establishing an independent quality assurance system to monitor compliance with and adequacy of the procedures; or

(*b*) establishing a system of inspection to ensure that all maintenance is properly performed.

(3) AMO's using an independent quality assurance system shall include the audit procedures listed in the AMO Procedures Manual at IS 6:28 contained in the Schedule hereto.

Capability list

30.—(1) Each approved maintenance organization must prepare and retain a current capability list approved by the Authority. The approved maintenance organization may not perform maintenance, preventive maintenance, or alterations, on an article until the article has been listed on the capability list in accordance with these Regulations.

(2) The capability list must identify each article by make and model, part number, or other nomenclature designated by the article's manufacturer.

(3) An article may be listed on the capability list only if the article is within the scope of the ratings and classes of the approved maintenance organization's certificate, and only after the approved maintenance organization has performed a self-evaluation. The approved maintenance organization must perform the self-evaluation described in this subregulation to determine that the maintenance organization has all of the facilities, equipment, material, technical data, processes, housing, and trained personnel in place to perform the work on the article as required by these Regulations. If the approved maintenance organization makes that determination, it may list the article on the capability list.

(4) The document of the evaluation described in subregulation (3) must be signed by the accountable manager and must be retained on file by the approved maintenance organization.

(5) Upon listing an additional article on its capability list, the maintenance organization must send a copy of the list to the Authority having jurisdiction over the approved maintenance organization.

(6) The capability list(s) must be available in the premises for inspection by the public and the Authority.

(7) The self-evaluations must be available in the premises for inspection by the Authority.

(8) The AMO shall retain the capability list(s) and self-evaluation(s) for two years from the date accepted by the accountable manager.

Contract maintenance

31.—(1) The AMO must be approved for the work which is to be Contract subcontracted and have the capability to assess the competence of the maintenance subcontractor.

(2) An AMO may contract a maintenance function pertaining to an article to an outside source provided—

(*a*) the Authority approved the maintenance function to be contracted to the outside source; and

(*b*) the AMO maintains and makes available to the Authority in a format acceptable to the Authority, the following information—

(i) the maintenance functions contracted to each outside facility; and

(ii) the name of each outside facility to whom the AMO contracts maintenance functions and the type of certificate and ratings, if any, held by each facility.

(3) An AMO may contract a maintenance function pertaining to an article to a unlicensed person provided—

(*a*) the unlicensed person follows a quality control system equivalent to the system followed by the AMO;

(*b*) the AMO remains directly in charge of the work performed by the unlicensed person; and

(*c*) the AMO verifies, by test and/or inspection, that the work has been performed satisfactorily by the unlicensed person and that the article is airworthy before approving it for return to service.

(4) The AMO, before approval for return to service, shall verify by test or inspection that the work has been performed satisfactorily following contract maintenance, preventive maintenance, or alterations in accordance with approved methods.

(5) An AMO that carries out maintenance for another AMO within its own approval scope is not considered to be subcontracting for the purpose of this paragraph.

(6) A list of contractors used by the AMO requires approval by the Authority through the AMO Procedures Manual.

Privileges of the approved maintenance organization

32.—(1) The AMO shall carry out the following tasks as permitted by and in accordance with the AMO Procedures Manual—

(*a*) maintain or alter any aircraft or aeronautical product for which it is rated at the location identified in the approval certificate;

(*b*) maintain any aircraft for which it is rated at any location subject to the need for such maintenance arising from unserviceability of the aircraft;

(*c*) perform the activities in support of a specific AOC holder where that AOC has requested the services of the AMO at locations other than the location identified on the AMO certificate and the AMO has been rated to maintain the aircraft of that specific AOC holder at the requested location in the AMO operating provisions approved by the Authority; and

(*d*) issue an approval for return to service or a maintenance release in respect of subregulation (1) (*a*), (*b*) and (*c*) upon completion of maintenance in accordance with limitations applicable to the AMO.

(2) The AMO may maintain or alter any article for which it is rated at a place other than the AMO, if—

(*a*) the function would be performed in the same manner as when performed at the AMO and in accordance with this part;

(*b*) all necessary personnel, equipment material, and technical and/or approved standards are available at the place where the work is to be done; and

(*c*) the AMO Procedures Manual sets forth approved procedures governing work to be performed at a place other than the AMO.

(3) The AMO may contract out maintenance, preventative maintenance, or alteration, other than a complete type certificated product, in accordance with regulation 31.

Limitations on the AMO

33.—(1) The AMO shall maintain an aircraft or aeronautical product for which it is approved only when all necessary housing, facilities, equipment, tools, material, approved technical data and certifying staff are available.

(2) An AMO may not contract out the maintenance, preventive maintenance, or alteration of a complete type-certificated product.

(3) An AMO may not provide approval for return to service of a product following contract maintenance, preventive maintenance, or alterations without verifying by test or inspection that the work has been performed satisfactorily in accordance with approved methods.

Certification of release to service of an aircraft, part, component or assembly

34.—(1) A certification of release to service shall be issued by appropriately authorized certifying staff when satisfied that all required maintenance of the aircraft has been properly carried out by the AMO in accordance with the AMO Procedures Manual.

(2) A certification of release is required at the completion of any maintenance on an aircraft part, component or assembly when off the aircraft.

(3) The release to service to be used for release of an aircraft or aeronautical part, component or assembly shall adhere to the following items.

(4) The certification of release to service shall contain the following statement: Certifies that the work specified was carried out in accordance with current regulations and in respect to that work the aircraft/aircraft component is considered approved for release to service.

(5) The certification of release to service shall reference the data specified in the manufacturer's maintenance instructions or instructions for continued airworthiness.

(6) Where instructions include a requirement to insure that a dimension or test figure is within a specific tolerance as opposed to a general tolerance, the dimension or test figure shall be recorded unless the instruction permits the use of GO/NO gauges. It is not normally sufficient to state that the dimension or the test figure is within tolerance.

(7) The date such maintenance was carried out shall include when the maintenance took place relative to any life or overhaul limitation in terms of date/flying hours/cycles/landings etc., as appropriate.

(8) When extensive maintenance has been carried out, it is acceptable for the certification of release to service to summarize the maintenance

as long as there is a cross-reference to the work package containing full details of maintenance carried out. Dimensional information shall be retained in the work package record.

(9) The person issuing the release to service shall use a full signature and preferably a certification stamp except in the case where a computer release to service system is used. In this latter case, the Authority will need to be satisfied that only the particular person can electronically issue the release to service.

(10) When a part of component is released to service, the AMO shall complete DCA AAT Form as contained in IS: 6:34 contained in the Schedule hereto.

(11) One such method of compliance with subregulation (9) is the use of a magnetic or optical personal card in conjunction with a personal identity number (PIN) which is keyed into the computer and known only to the individual.

(12) An aeronautical product which has been maintained off the aircraft requires the issue of a certification of release to service (DCA AAT Form) for such maintenance and another certification of release to service of the aircraft in regard to maintenance being properly accomplished on the aircraft. The release to service of the aircraft will typically be made by the AMO in the aircraft technical log maintenance records section.

Maintenance records

35.—(1) The AMO shall record, in a form acceptable to the Authority, all details for maintenance work performed.

(2) The AMO shall provide a copy of each certification of release to service to the aircraft operator, together with a copy of any specific airworthiness data used for repairs/alterations performed.

(3) The AMO shall retain a copy of all detailed maintenance records and any associated airworthiness data for two years from the date the aircraft or aeronautical product to which the work relates was released from the AMO.

(4) Each person who maintains, performs preventive maintenance, rebuilds, or modifies an aircraft/aeronautical product shall make an entry in the maintenance record of that equipment—

(*a*) a description and reference to data acceptable to the Authority of work performed;

(*b*) the date of completion of the work performed;

(*c*) the name of the person performing the work if other than the person specified in this subsection;

(*d*) if the work performed on the aircraft/aeronautical product has been performed satisfactorily, the signature, certificate number, and kind of certificate held by the person approving the work;

(*e*) the authorized signature, the AMO certificate number, and kind of licence held by the person approving or disapproving for return to service the aircraft, airframe, aircraft engine, propeller, appliance, component part, or portions thereof;

(*f*) the signature constitutes the approval for return to service only for the work performed;

(*g*) in addition to the entry required by this regulation, major repairs and major alterations shall be entered on a form, and the form disposed of by the person performing the work, in the manner prescribed by the Authority in the Airworthiness Regulations.

(5) No person shall describe in any required maintenance entry or form an aircraft or aeronautical component as being overhauled unless—

(*a*) using methods, techniques, and practices acceptable to the Authority, it has been disassembled, cleaned, inspected as permitted, repaired as necessary, and reassembled; and

(*b*) it has been tested in accordance with approved standards and technical data, or in accordance with current standards and technical data acceptable to the Authority, which have been developed and documented by the holder of the type certificate, supplemental type certificate, or a material, part, process, or appliance approval under a TSO.

(6) No person may describe in any required maintenance entry or form, an aircraft or other aeronautical product as being rebuilt unless it has been—

(*a*) disassembled, cleaned, inspected as permitted;

(*b*) repaired as necessary; and

(*c*) reassembled and tested to the same tolerances and limits as a new item, using either new parts or used parts that either conforms to new part tolerances and limits, or to approved oversized or undersized dimensions.

(7) No person may approve for return to service any aircraft or aeronautical product that has undergone maintenance, preventive maintenance, rebuilding, or alteration unless—

(*a*) the appropriate maintenance record entry has been made; and

(*b*) the repair or alteration form authorized by or furnished by the Authority has been executed in a manner prescribed by the Authority.

(8) If a repair or alteration results in any change in the aircraft operating limitations or flight data contained in the approved aircraft flight manual, those operating limitations or flight data shall be appropriately revised and set forth as prescribed by the Authority.

(9) Maintenance record entries for inspections. The person approving or disapproving for return to service an aircraft/aeronautical product, after any inspection performed in accordance with this regulation, shall make an entry in the maintenance record of that equipment containing the following information—

(*a*) the type of inspection and a brief description of the extent of the inspection;

(*b*) the date of the inspection and aircraft total time in service;

(*c*) the authorized signature, the AMO certificate number, and kind of licence held by the person approving or disapproving for return to service the aircraft, airframe, aircraft engine, propeller, appliance, component part, or portions thereof;

(*d*) if the aircraft is found to be airworthy and approved for return to service, the following or a similarly worded statement— "I certify that this aircraft has been inspected in accordance with (insert type) inspection and was determined to be in airworthy condition";

(*e*) If the aircraft is not approved for return to service because of needed maintenance, non-compliance with the applicable specifications, airworthiness directives, or other approved data, the following or a similarly worded, statement— "I certify that this aircraft has been inspected in accordance with (insert type) inspection and a list of discrepancies and unairworthy items dated (date) has been provided for the aircraft owner or operator"; and

(*f*) If an inspection is conducted under an inspection programme provided for in this regulation, the entry shall identify the inspection programme accomplished, and contains a statement that the inspection was performed in accordance with the inspections and procedures for that particular programme.

(10) Listing of discrepancies. If the person performing any inspection required by this regulation finds that the aircraft is not airworthy or does not meet the applicable type certificate data sheet, airworthiness directives, or other approved data upon which its airworthiness depends, that person shall give the owner or lessee a signed and dated list of those discrepancies.

Airworthiness data

36.—(1) The AMO shall be in receipt of all airworthiness data appropriate to support the work performed from the Authority, the aircraft/aeronautical product design organization, and any other

approved design organization in the State of Manufacture or State of Design, as appropriate the Authority may classify data from another authority or organization as mandatory and may require the AMO to hold such data.

(2) Where the AMO modifies airworthiness data specified in subregulation (1) to a format or presentation more useful for its maintenance activities, the AMO shall submit to the Authority an amendment to the AMO Procedures Manual for any such proposed alterations for acceptance.

(3) All airworthiness data used by the AMO shall be kept current and made available to all personnel who require access to that data to perform their duties.

(4) IS: 6:36 in the Schedule hereto contains detailed requirements concerning airworthiness data.

Reporting of airworthy conditions

37.—(1) The AMO shall report to the Authority and the aircraft design organization of the State of Design any identified condition that could present a serious hazard to the aircraft.

(2) Reports shall be made on a form and in a manner prescribed by the Authority and contain all pertinent information about the condition known to the AMO. The report shall contain at least the following items—

(*a*) aircraft registration number;

(*b*) type, make and model of the article;

(*c*) date of the discovery of the failure, malfunction, or defect;

(*d*) time since last overhaul, if applicable;

(*e*) apparent cause of the failure, malfunction, or defect;

(*f*) other pertinent information that is necessary for more complete identification, determination of seriousness, or corrective action.

(3) Where the AMO is contracted by an AOC holder to carry out maintenance, that AMO shall report to the AOC holder any condition affecting the aircraft or aeronautical product.

(4) Reports shall be made as soon as practicable, but in any case within three days of the AMO identifying the condition to which the report relates.

Authority to conduct inspections

38. Each certificated approved maintenance organization must allow the Authority to inspect that approved maintenance organization and any of its contract maintenance facilities at any time to determine compliance with these Regulations. Arrangements for maintenance, preventive maintenance, or alterations by a contractor must include provisions for inspections of the contractor by the Authority.

AMO performance standards

39.—(1) Each certificated approved maintenance organization that performs any maintenance, preventive maintenance, or modifications for an air operator certificated under the Aviation (Operator Certification and Administration) Regulations, having an approved maintenance programme under regulation 67 of the Aviation (Operator Certification and Administration) Regulations and approved continuous maintenance programme under regulation 68 of the Aviation (Operator Certification and Administration) Regulations shall perform that work in accordance with the AOC holder's manuals.

(2) Except as provided in subregulation (1), each certificated approved maintenance organization shall perform its maintenance and modification operations in accordance with the applicable standards in the Air Airworthiness Regulations. It shall maintain, in current condition, all manufacturer's service manuals, instructions, and service bulletins that relate to the articles that it maintains or modifies.

(3) In addition, each certificated approved maintenance organization with an avionics rating shall comply with those regulations in the Aviation (Air Airworthiness) Regulations, that apply to electronic systems, and shall use materials that conform to approved specifications for equipment appropriate to its rating. It shall use test apparatus, shop equipment, performance standards, test methods, alterations, and calibrations that conform to the manufacturer's specifications or instructions, approved specification, and if not otherwise specified, to accepted good practices of the aircraft avionics industry.

SCHEDULE

IMPLEMENTING STANDARDS

APPROVED MAINTENANCE ORGANIZATION

IS 6:7 APPROVED MAINTENANCE ORGANIZATION CERTIFICATE

The following is an AMO certificate—

REPUBLIC OF MALAŴI

DEPARTMENT OF CIVIL AVIATION

APPROVED MAINTENANCE ORGANIZATION CERTIFICATE

Number .....

This certificate is issued to: .....

Whose business address is: .....

.....

Upon finding that its organization complies in all respects with the requirements of the Regulations relating to the establishment of an Approved Maintenance Organization and is empowered to operate an Approved Maintenance Organization.

With the following ratings:

This certificate shall continue in effect until [DATE] unless cancelled, suspended, or revoked

Date Issued ..... CAA Office .....

By Direction of the Authority

This certificate is not transferable

IS 6:9 Application for an AMO Certificate

The following application may be used for an AMO certificate—

[MALAŴI] Department of Civil Aviation			Application for Approved Maintenance Organization Certificate and/or Ratings	
1. Approved Maintenance Organization Name, Number, Location and Address			2. Reasons for Submission	
(*a*) Official Name of Approved Maintenance Organization:	Number:		☐ Original Application for Certificate and Rating ☐ Change in Rating ☐ Change in Location or Housing and Facilities ☐ Change in Ownership ☐ Other (Specify)	
(*b*) Location where business is conducted:				
(*c*) Official Mailing Address of Approved Maintenance Organization (Number, Street, City, State, and Postal Code)				
(*d*) Doing Business As:				
3. Ratings Applied for:				
☐ Airframe ☐ Class 1 ☐ Class 2 ☐ Class 3 ☐ Class 4	☐ Powerplant ☐ Class 1 ☐ Class 2 ☐ Class 3	☐ Propeller ☐ Class 1 ☐ Class 2	☐ Avionics/radio ☐ Class 1 ☐ Class 2 ☐ Class 3	☐ Instrument ☐ Class 1 ☐ Class 2 ☐ Class 3 ☐ Class 4
☐ Accessories ☐ Class 1 ☐ Class 2 ☐ Class 3	☐ Limited ☐ Airframe ☐ Power plant ☐ Propeller ☐ Instruments	☐ Accessories ☐ Landing Gear ☐ Floats ☐ Avionics/radio	☐ Rotor Blades ☐ Fabric ☐ Emergency Equip. ☐ Non Dest. Test ☐ Other	☐ Specialized Service ☐ (List Process Specification (s))

4. List of Maintenance Functions contracted to an outside Maintenance Organization:

5. Applicants Certification

Name of Owner (include name(s) of individual Owner, all partners, or corporation name given the state, province, or country and date of incorporation)

I hereby certify that I have been authorized by the Approved Maintenance Organization identified in Item 1 above to make this application and that statements attached hereto are true and correct to the best of my knowledge.

Date: ..... Authorized Signature: .....

For CAA Use Only	Record of Action Approved Maintenance Organization Inspection	For CAA Use Only
6. Remarks (Identify by item number. Include deficiencies found and ratings denied)		

7. Findings—Recommendations			8. Date of Inspection
☐ A. AMD was found to comply with requirements of the Regulations ☐ B. AMO was found to comply with requirements of the Regulations, except for deficiencies listed in Item 6. ☐ C. Recommend Certificate with rating applied for on application be issued. ☐ D. Recommend Certificate with rating applied for on application (EXCEPT those listed in Item 6) be issued.			
9. CAA Office	Signature(s) of Inspector(s)		Printed Names of Inspectors
10. Supervising or Assigned Inspector			
ACTION TAKEN	CERTIFICATE ISSUED		Inspector's Signature
☐ APPROVED As shown on certificate issued on date shown	Number		
☐ DISAPPROVED	Date	Inspector's Printed Name	Title

IS 6: 18 Quality System

In order to show compliance with IS 9:15, an AMO should establish its quality system in accordance with the instruction and information contained in the following paragraphs—

1.0 General.

1.1 Terminology:

The terms used in the context of the requirement for an AMO's quality system have the following meaning—

(1) Accountable Manager. The person acceptable to the Authority who has corporate authority for ensuring that all maintenance activities can be financed and carried out to the standard required by the Authority, and any additional requirements defined by the AMO.

(2) Quality assurance. Quality assurance, as distinguished from quality control, involves activities in the business, systems, and technical audit areas. A set of predetermined, systemic actions which are required to provide adequate confidence that a product or service satisfies quality requirements.

1.2 Quality Policy.

1.2.1 An AMO shall establish a formal, written quality policy statement that is a commitment by the accountable manager as to what the quality system is intended to achieve. The quality policy should reflect the achievement and continued compliance with the [Model Regulations] together with any additional standards specified by the AMO.

1.2.2 The accountable manager is an essential part of the AMO management organization. The term "accountable manager" is intended to mean the Chief Executive/President/Managing Director/General Manager, etc. of the AMO, who by virtue of his or her position has overall responsibility (including financial) for managing the organization.

1.2.3 The accountable manager will have overall responsibility for the AMO quality system, including the frequency, format and structure of the internal management evaluation activities as prescribed in paragraph 3.9 below.

1.3 Purpose of the Quality System.

1.3.1 The quality system should enable the AMO to monitor compliance with these [Model Regulations], the AMO's manual system, and any other standards specified by the AMO, or the Authority, to ensure safe operations and airworthy aircraft.

1.4 Quality Manager.

1.4.1 The function of the quality manager is to monitor compliance with, and the adequacy of, procedures required to ensure safe operational practices and airworthy aircraft as required by these [Model Regulations] may be carried out by more than one person by means of different, but complementary, quality assurance programmes.

1.4.2 The primary role of the quality manager is to verify, by monitoring activity in the field of maintenance, that the standards required by the Authority, and any additional requirements defined by the AMO, are being carried out under the supervision of the relevant required management personnel.

1.4.3 The quality manager should be responsible for ensuring that the quality assurance programme is properly established, implemented and maintained.

1.4.4 The quality manager should—

(1) Report to the accountable manager.

(2) Not be one of the required management personnel.

(3) Have access to all parts of the AMO's, and as necessary, any sub-contractor's organization.

1.4.5 In the case of small/very small AMO, the posts of the Accountable Manager and quality manager may be combined.

2.0 Quality System.

2.1 Introduction.

2.1.1 The AMO's quality system should ensure compliance with and adequacy of operational and maintenance activities requirements, standards, and procedures.

2.1.2 The AMO should specify the basic structure of the quality system applicable to the operation.

2.1.3 The quality system should be structured according to the size and complexity of the organization to be monitored.

2.2 Scope.

2.2.1 As a minimum, the quality system should address the following—

(1) The provisions of these [Model Regulations].

(2) The AMO's additional standards and operating practices.

(3) The AMO's quality policy.

(4) The AMO's organizational structure.

(5) Responsibility for the development, establishment and management of the quality system.

(6) Documentation, including manuals, reports and records.

(7) Quality procedures.

(8) Quality assurance.

(9) The required financial, material and human resources.

(10) Training requirements.

2.2.2 The quality system should include a feedback system to the accountable manager to ensure that corrective actions are both identified and promptly addressed. The feedback system should also specify who is required to rectify discrepancies and non-compliance in each particular case, and the procedure to be followed if corrective action is not completed within an appropriate timescale.

2.3 Relevant Documentation.

2.3.1 Relevant documentation includes the relevant part of the operator's manual system.

2.3.2 In addition, relevant document should include the following—

(1) Quality policy.

(2) Terminology.

(3) Specified maintenance standards.

(4) A description of the organization.

(5) The allocation of duties and responsibilities.

(6) Operational procedures to ensure regulatory compliance.

(7) Accident prevention and flight safety programme.

(8) The quality assurance programme, reflecting—

(1) Schedule of the monitoring process.

(2) Audit procedures.

(3) Reporting procedures.

(4) Follow-up and corrective action procedures.

(5) Recording system.

(6) The training syllabus.

(7) Document control.

3.0 Quality assurance programme.

3.1 Introduction.

3.1.1 The quality assurance programme should include all planned and systematic actions necessary to provide confidence that all maintenance is conducted in accordance with all applicable requirements, standards and procedures.

3.1.2 When establishing a quality assurance programme, consideration should be given to at least the following—

(1) Quality inspection.

(2) Audit.

(3) Auditors.

(4) Auditor's independence.

(5) Audit scope.

(6) Audit scheduling.

(7) Monitoring and corrective action.

(8) Management evaluation.

3.2 Quality Inspection.

3.2.1 The primary purpose of a quality inspection is to observe a particular event/action/document, etc. in order to verify whether established procedures and requirements are followed during the accomplishment of that event and whether the required standard is achieved.

3.2.2 Typical subject areas for quality inspections are—

(1) Facilities size and segregation.

(2) Office accommodation.

(3) Work environment.

(4) Storage.

(5) Management changes.

(6) Staff numbers and man-hour plan.

(7) Competence process.

(8) Qualifying certifying staff.

(9) Records of certifying staff.

(10) Issue of authorizations.

(11) Adequate equipment.

(12) Equipment control and calibration.

(13) Approved data held.

(14) Modified maintenance data.

(15) Data availability.

(16) Data up to date.

(17) Aircraft release.

(18) Release document contents.

(19) Release control.

(20) Details on work documents.

(21) Operator's copy of release.

(22) Record retention.

(23) Reporting unairworthy findings.

(24) Clear work orders.

(25) Procedures per AMO Procedures Manual.

(26) Suppliers and subcontractors.

(27) Acceptance of parts.

(28) Parts control in stores.

(29) Use of tools.

(30) Cleanliness standards.

(31) Control of repairs.

(32) Aircraft Maintenance Programme completion.

(33) Airworthiness directive control.

(34) Control of alterations.

(35) Control of working documents.

(36) Base maintenance defects.

(37) Defective parts to stores.

(38) Parts to outside contractors.

(39) Computer maintenance systems.

(40) Engine running.

(41) Aircraft procedures.

(42) Line maintenance control parts.

(43) Line servicing control.

(44) Line defect control.

(45) Aircraft Technical Log—Maintenance Records section completion.

(46) Pool and loan parts.

(47) Return defective parts to base.

(48) Product maintenance exemption control.

(49) Procedures deviation control.

(50) Special services control (NDI).

(51) Contractors working teams.

(52) Product audit.

(53) Privileges and locations control.

(54) Limitation control

(55) Control of changes.

3.2.3 Typical methods for quality inspections for maintenance include—

(1) Product sampling—the part inspection of a representative sample of the aircraft fleet.

(2) Defect sampling—the monitoring of defect rectification performance.

(3) Concession sampling—the monitoring of any concession to not carry out maintenance on time.

3.3 Audit.

3.3.1 An audit is a systematic, and independent comparison of the way in which an operation is being conducted against the way in which the published operational procedures say it should be conducted.

3.3.2 Audits should include at least the following quality procedures and processes—

(1) A statement explaining the scope of the audit.

(2) Planning and preparation.

(3) Gathering and recording evidence.

(4) Analysis of the evidence.

3.3.3 Techniques that contribute to an effective audit are—

(1) Interviews or discussions with personnel.

(2) A review of published documents.

(3) The examination of an adequate sample of records.

(4) The witnessing of the activities that make up the operation.

(5) The preservation of documents and the recording of observations.

3.4. Auditors.

3.4.1 An AMO should decide, depending upon the complexity of the organization, whether to make use of a dedicated audit team or a single auditor. In any event, the auditor or audit team should have relevant maintenance experience.

3.4.2 The responsibilities of the auditors should be clearly defined in the relevant documentation.

3.5 Auditor's Independence.

3.5.1 Auditors should not have any day-to-day involvement in the area of the maintenance activity that is to be audited. An AMO may, in addition to using the services of fulltime dedicated personnel

belonging to a separate quality department, undertake the monitoring of specific areas or activities by the use of part-time auditors. An AMO whose structure and size does not justify the establishment of full-time auditors, may undertake the audit function by the use of part-time personnel from within its own organization or from an external source under the terms of an agreement acceptable to the Authority. In all cases the AMO should develop suitable procedures to ensure that persons directly responsible for the activities to be audited are not selected as part of the auditing team. Where external auditors are used, it is essential that any external specialist is familiar with the type of operation and/or maintenance conducted by the operator.

3.5.2 The AMO's quality assurance programme should identify the persons within the company who have the experience, responsibility and authority to—

(1) Perform quality inspections and audits as part of ongoing quality assurance.

(2) Identify and record any concerns or findings, and the evidence necessary to substantiate such concerns or findings.

(3) Initiate or recommend solutions to concerns or findings through designated reporting channels.

(4) Verify the implementation of solutions within specific timescales.

(5) Report directly to the quality manager.

3.6 Audit Scope.

3.6.1 AMOs are required to monitor compliance with the operational and maintenance procedures they have designed to ensure safe operations, airworthy aircraft and the serviceability of both operational and safety equipment. In doing so they should as a minimum, and where appropriate, monitor—

(1) Organization.

(2) Plans and company objectives.

(3) AMO certification (AMO/Operations specifications).

(4) Supervision.

(5) Manuals, logs, and records.

(6) Duty time limitations, rest requirements, and scheduling.

(7) Maintenance programmes and continued airworthiness.

(8) Airworthiness directives management.

(9) Maintenance accomplishment.

(10) Defect deferral.

(11) Dangerous goods.

(12) Security.

(13) Training.

3.7 Audit Scheduling.

3.7.1 A quality assurance programme should include a defined audit schedule and a periodic review cycle area by area. The schedule should be flexible, and allow unscheduled audits when trends are identified. Follow-up audits should be scheduled when necessary to verify that corrective action was carried out and that it was effective.

3.7.2 An AMO should establish a schedule of audits to be completed during a specified calendar period. All aspects of the operation should be reviewed within every 12 month period in accordance with the programme unless an extension to the audit period is accepted as explained below. An AMO may increase the frequency of audits at its discretion but should not decrease the frequency without the agreement of the Authority. Audit frequency should not be decreased beyond a 24 month period interval.

3.7.3 When an AMO defines the audit schedule, significant changes to the management, organization, operation, or technologies should be considered as well as changes to the regulatory requirements.

3.8 Monitoring and Corrective Action.

3.8.1 The aim of monitoring within the quality system is primarily to investigate and judge its effectiveness and thereby to ensure that defined policy and maintenance standards are continuously complied with. Monitoring activity is based upon quality inspections, audits, corrective action and follow-up. The AMO should establish and publish a quality procedure to monitor regulatory compliance on a continuing basis. This monitoring activity should be aimed at eliminating the causes of unsatisfactory performance.

3.8.2. Any non-compliance identified as a result of monitoring should be communicated to the manager responsible for taking corrective action or, if appropriate, the accountable manager. Such non-compliance should be recorded, for the purpose of further investigation, in order to determine the cause and to enable the recommendation of appropriate corrective action.

3.8.3 The quality assurance programme should include procedures to ensure that corrective actions are taken in response to findings. These quality procedures should monitor such actions to verify their effectiveness and that they have been completed. Organizational responsibility and accountability for the implementation of corrective action resides with the department cited in the report

identifying the finding. The accountable manager will have the ultimate responsibility for resourcing the corrective active action and ensuring, through the quality manager, that the corrective action has re-established compliance with the standard required by the Authority, and any additional requirements defined by the operator.

3.8.4 Corrective action. Subsequent to the quality inspection/audit, the AMO should establish—

(1) The seriousness of any findings and any need for immediate corrective action.

(2) The origin of the finding.

(3) What corrective actions are required to ensure that the non-compliance does not recur.

(4) A schedule for corrective action.

(5) The identification of individuals or departments responsible for implementing corrective action.

(6) Allocation of resources by the accountable manager, where appropriate.

3.8.5 The quality manager should—

(1) Verify that corrective action is taken by the manager responsible in response to any finding of non-compliance.

(2) Verify the corrective action includes the elements outlined in paragraph 3.8.4 above.

(3) Monitor the implementation and completion of corrective action.

(4) Provide management with an independent assessment of corrective action; implementation and completion.

(5) Evaluate the effectiveness of corrective action through follow-up process.

3.9 Management Evaluation.

3.9.1 A management evaluation is a comprehensive, systematic, documented review by the management of the quality system, policies and procedures, and should consider—

(1) The results of quality inspections, audits and any other indicators.

(2) The overall effectiveness of the management organization in achieving stated objectives.

3.9.2 A management should identify and correct trends, and prevent, where possible, future non-conformities. Conclusions and recommendations made as a result of an evaluation should be

submitted in writing to the responsible manager for action. The responsible manager should be an individual who has the authority to resolve issues and take action.

3.9.3 The accountable manager should decide upon the frequency, format and structure of internal management evaluation activities.

3.10 Recording.

3.10.1 Accurate, complete and readily accessible records documenting the results of the quality assurance programme should be maintained by the AMO. Records are essential data to enable an operator to analyse and determine the root causes of non-conformity, so that areas of non-compliance can be identified and addressed.

3.10.2 The following records should be retained for a period of 5 years—

(1) Audit schedules.

(2) Quality inspection and audit reports.

(3) Responses to findings.

(4) Corrective action reports.

(5) Follow-up and closure reports.

(6) Management evaluation reports.

4. Quality Assurance Responsibility for Sub-Contractors.

4.1 Sub-Contractors.

4.1.1 AMOs may decide to sub-contract out certain activities to external agencies for the provision of services related to areas such as—

(1) Maintenance.

(2) Training.

(3) Manual preparation.

4.1.2 The ultimate responsibility for the product or service provided by the sub-contractor always remains with the AMO. A written agreement should exist between the AMO and the sub-contractor clearly defining the safety related services and quality to be provided. The sub-contractor's safety related activities relevant to the agreement should be included in the AMO's quality assurance programme.

4.1.3 The AMO should ensure that the sub-contractor has the necessary authorization/approval when required and commands the resources and competence to undertake the task.

5.0. Quality System Training.

5.1 General.

5.1.1 An AMO should establish effective, well planned and resourced quality related briefing for all personnel.

5.1.2 Those responsible for managing the quality system should receive training covering—

(1) An introduction to the concept of the quality system.

(2) Quality management.

(3) The concept of quality assurance.

(4) Quality manuals.

(5) Audit techniques,

(6) Reporting and recording.

(7) The way in which the quality system will function in the company.

5.1.3 Time should be provided to train every individual involved in quality management and for briefing the remainder of the employees. The allocation of time and resources should be governed by the size and complexity of the AMO.

5.2 Sources of Training.

5.2.1 Quality management courses are available from the various [National] or International Standards Institutions, and an AMO should consider whether to offer such courses to those likely to be involved in the management of quality systems. AMO's with sufficient appropriately qualified staff should consider whether to carry out in-house training.

6.0 Organizations with 20 or Less Full-Time Employees.

6.1 Introduction.

6.1.1 The requirement to establish and document a quality system and to employ a quality manager applies to all AMOs. References to large and small operators elsewhere in these [Model Regulations] are governed by aircraft capacity (i.e. more or less than 20 seats) and by mass (i.e. greater or less than 10 tonnes maximum take-off mass). Such terminology is not relevant when considering the scale of an operation and the quality system required. In the context of quality systems therefore, operators should be categorized according to the number of full time staff employees.

6.2 Scale of Operation.

6.2.1 AMOs who employ 5 or less full time staff are considered to be "very small" while those employing between 6 and 20 full time employees are regarded as "small" operators as far as quality systems are concerned. Full-time in this context means employed for not less than 35 hours per week excluding vacation periods.

6.2.2 Complex quality systems could be inappropriate for small or very small operators and the clerical effort required to draw up

manuals and quality procedures for a complex system may stretch their resources. It is therefore accepted that such operators should tailor their quality systems to suit the size and complexity of their operation and allocate resources accordingly.

6.3 Quality System for Small/Very Small AMOs.

6.3.1 For small and very small AMOs it may be appropriate to develop a quality assurance programme that employs a checklist. The checklist should have a supporting schedule that requires completion of all checklist items within a specified timescale, together with a statement acknowledging completion of a periodic review by top management. An occasional independent overview of the checklist content and achievement of the quality assurance should be undertaken.

6.3.2 The "small" AMO may decide to use internal or external auditors or a combination of the two. In these circumstances it would be acceptable for external specialists and or qualified organizations to perform the quality audits on behalf of the quality manager.

6.3.3 If the independent quality audit function is being conducted by external auditors, the audit schedule should be shown in the relevant documentation.

6.3.4 Whatever arrangements are made, the operator retains the ultimate responsibility for the quality system and especially the completion and follow-up of corrective actions.

Quality System—Organization Examples

The following diagrams illustrate two typical examples of AMO Quality organizations.

(1) A typical large AMO.

(2) A typical small AMO.

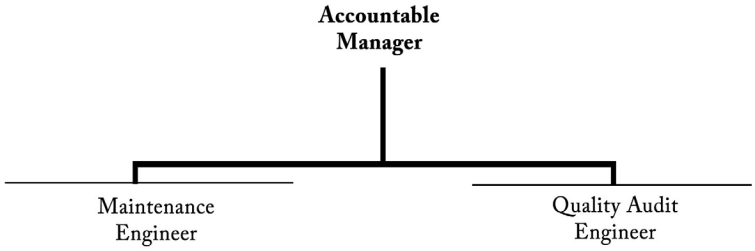

IS 6:20 Housing and Facility Requirements

1. For ongoing maintenance of aircraft, aircraft hangars shall be available and large enough to accommodate aircraft during maintenance activities.

2. Where the hangar is not owned by the AMO, it is recommended to—

   (1) establish proof of authorization to use hangar.

   (2) demonstrate sufficiency of hangar space to carry out planned base maintenance by preparing a projected aircraft hangar visit plan relative to the maintenance programme.

   (3) update the aircraft hangar visit plan on a regular basis.

   (4) ensure, for aircraft component maintenance, aircraft component workshops are large enough to accommodate the components on planned maintenance.

   (5) ensure aircraft hangar and aircraft component workshop structures prevent the ingress of rain, hail, ice, snow, wind and dust, etc.

   (6) ensure workshop floors are sealed to minimize dust generation.

   (7) demonstrate access to hangar accommodation for usage during inclement weather for minor scheduled work and/or lengthy defect rectification.

3. Aircraft maintenance staff shall be provided with an area where they may study maintenance instructions and complete maintenance records in a proper manner.

   Note: It is acceptable to combine any or all of the above requirements into one office subject to the staff having sufficient room to carry out assigned tasks.

4. Hangars used to house aircraft together with office accommodation shall be such as to insure a clean, effective and conformable working environment—

   (1) temperatures should be maintained at a comfortable level.

   (2) dust and any other airborne contamination should be kept to a minimum and not permitted to reach a level in the work task area where visible aircraft/component surface contamination is evident.

   (3) lighting should be such as to insure each inspection and maintenance task can be carried out.

   (4) noise levels should not be permitted to rise to the point of distracting personnel from carrying out inspection tasks. Where it is impractical to control the noise source, such personnel should be provided with the necessary personal equipment to stop excessive noise causing distraction during inspection tasks.

5. Where a particular maintenance task requires the application of specific environmental conditions different to the foregoing,

then such conditions shall be observed. (Specific conditions are identified in the approved maintenance instructions).

6. Where the working environment for line maintenance deteriorates to an unacceptable level with respect to temperature, moisture, hail, ice, snow, wind, light, dust/other airborne contamination; the particular maintenance or inspection tasks shall be suspended until satisfactory conditions are re-established.

7. For both base and line maintenance where dust or other airborne contamination results in visible surface contamination, all susceptible systems shall be sealed until acceptable conditions are re-established.

8. Storage facilities for serviceable aircraft components shall be clean, well ventilated and maintained at an even dry temperature to minimize the effects of condensation.

9. Manufacturer and standards recommendations shall be followed for specific aircraft components.

10. Storage racks shall provide sufficient support for large aircraft components such that the component is not distorted.

11. All aircraft components, wherever practicable, shall remain packaged in protective material to minimize damage and corrosion during storage.

IS 6: 21 Equipment, Tools, and Material

1. All applicable tools, equipment, and test equipment used for product acceptance and/or for making a finding of airworthiness shall be traceable to the Malaŵi Bureau of Standards or other acceptable standards.

2. Except as provided in paragraph (1), in the case of foreign manufactured tools, equipment, and test equipment, the standard provided by the county of manufacture may be used if approved by the Authority.

3. Where the manufacturer specifies a particular tool, equipment, or test equipment then that tool, equipment, or test equipment shall be used unless the manufacturer has identified the use of an equivalent.

4. Except as provided in paragraph (3), tools, equipment, or test equipment other than that recommended by the manufacturer will be acceptable based on at least the following—

   (1) The AMO shall have a procedure in the Maintenance Procedures Manual if it intends to use equivalent tools, equipment, or test equipment other than that recommended by the manufacturer.

(2) The AMO shall have a programme to include—

(*a*) a description of the procedures used to establish the competence of personnel that make the determination of equivalency to tools, equipment, or test equipment;

(*b*) conducting and documenting the comparison made between the specification of the tool, equipment or test equipment recommended by the manufacturer and the equivalent tool, equipment, or test equipment proposed;

(*c*) ensuring that the limitations, parameters, and reliability of the proposed tool, equipment, or test equipment are equivalent to the manufacturer's recommended tools, equipment, or test equipment;

(*d*) ensuring that the equivalent tool, equipment, or test equipment is capable of performing the appropriate maintenance function, all normal tests, or calibrations, and checking all parameters of the aircraft or aeronautical product undergoing maintenance or calibration.

5. The AMO shall have full control of the equivalent tool, equipment, or test equipment (i.e. ownership, lease, etc.).

6. An AMO approved for base maintenance shall have sufficient aircraft access equipment and inspection platforms/docking such that the aircraft may be properly inspected.

7. The AMO shall have a procedure to inspect/service and, where appropriate, calibrate tools, equipment, and test equipment on a regular basis and indicate to users that an item is within any inspection or service or calibration time limit.

8. The AMO shall have a procedure if it uses a standard (primary, secondary or transfer standards) for performing calibration, to ensure that standard cannot be used to perform maintenance,

9. A clear system of labeling all tooling, equipment and test equipment shall be used to give information on when the next inspection or service or calibration is due, and give status information if the item is unserviceable for any other reason where it may not be obvious.

10. A clear system of labeling all tooling, equipment, and test equipment shall be used to give information on when such tooling, equipment, and test equipment is not used for product acceptance and/or for making a finding of airworthiness.

11. A register shall be maintained for all calibrated tools, equipment and test equipment together with a record of calibrations and standards used.

12. Inspection, service, or calibration on a regular basis shall be in accordance with the equipment manufacturers' instructions except where the AMO can show by results that a different time period is appropriate in a particular case and is acceptable to the Authority.

IS 6:22 PERSONNEL REQUIREMENTS

1. The AMO functions shall be subdivided under individual managers or combined in any number of ways, dependent upon the size of the AMO.
2. The AMO shall have, dependent upon the extent of approval, the following—
   (1) A base maintenance manager.
   (2) A line maintenance manager.
   (3) A workshop manager and a quality manager, all of whom should report to the accountable manager.

   NOTE: In small AMOs, one or more of the above positions may be combined subject to approval by the Authority.
3. The Accountable Manager shall be responsible for ensuring that all necessary resources are available to accomplish maintenance required to support the AMO's approval.
4. The Base Maintenance Manager shall be responsible for—
   (1) ensuring that all maintenance required to be carried out in the hangar, plus any defect rectification carried out during base maintenance, is carried out to specified design and quality standards.
   (2) any corrective action resulting from quality compliance monitoring.
5. The Line Maintenance Manager shall be responsible for—
   (1) Ensuring that all maintenance required to be carried out on the line, including line defect rectification, is performed to the required standards.
   (2) Any corrective action resulting from quality compliance monitoring.
6. The Workshop Manager shall be responsible for—
   (1) Ensuring that all work on aircraft components is performed to required standards.
   (2) Any corrective action resulting from quality compliance monitoring.
7. The Quality Manager shall be responsible for—
   (1) Monitoring the AMO's compliance with Part 6; and

(2) Requesting remedial action as necessary by the base maintenance manager/line maintenance manager/workshop manager or the accountable manager, as appropriate.

8. The AMO may adopt any title for managerial positions, but shall identify to the Authority the titles and persons chosen to carry out these functions.

9. Where an AMO chooses to appoint managers for all or any combination of the identified functions because of the size of the undertaking, these managers shall report ultimately through either the Base Maintenance Manager or Line Maintenance Manager or Workshop Manager or Quality Manager, as appropriate, to the Accountable Manager.

10. The managers specified in this subsection shall be identified and their credentials submitted to the Authority. To be accepted, such managers shall have relevant knowledge and satisfactory experience related to aircraft/aircraft component maintenance as appropriate in accordance with these Regulations.

Note: Certifying staff may report to any of the managers specified depending upon which type of control the AMO uses (*for example, licensed engineers, independent inspection/dual function supervisors, etc.*) *so long as the quality compliance monitoring staff remain independent.*

11. The AMO shall have a production man-hours plan showing that it has sufficient man-hours for the intended work.

12. If an AMO is approved for base maintenance, the plan shall relate to the aircraft hangar visit plan.

13. Man-hour plans shall regularly be updated.

Note: Work performed on any aircraft registered outside [*Malaŵi*] *should be taken into account where it impacts upon the production man-hours plan.*

14. Quality monitoring compliance function man-hours shall be sufficient to meet the requirement of Regulation 16.

15. Planners, mechanics, supervisors and certifying staff shall be assessed for competence by "on the job" evaluation or by examination relevant to their particular role within the AMO before unsupervised work is permitted.

16. To assist in the assessment of competence, job descriptions are recommended for each position.

The assessment shall establish that—

(1) Planners are able to interpret maintenance requirements into maintenance tasks, and have an appreciation that they

have no authority to deviate from the aircraft maintenance programme.

(2) Mechanics are able to carry out maintenance tasks to any standard specified in the maintenance instructions and will notify supervisors of mistakes requiring rectification to re-establish required maintenance standards.

(3) Supervisors are able to ensure that all required maintenance tasks are carried out and where not done or where it is evident that a particular maintenance task cannot be carried out to the maintenance instructions, then such problems will be reported to and agreed by the quality organization.

(4) Certifying staff are able to determine when the aircraft or aircraft component is and is not ready for release to service.

17. In the case of planners, supervisors, and certifying staff, knowledge of AMO procedures relevant to their particular role shall be demonstrated.

18. Training of certifying staff shall be performed by the AMO or by an institute selected by the AMO. In either case, the AMO shall establish the curriculum and standards for training, as well as pre-qualification standards for the personnel intended for training. Pre-qualification standards are intended to insure that the trainee has a reasonable chance of successfully completing any course.

19. Examinations shall be set at the end of each training course.

20. Initial training shall cover—

(1) Basic engineering theory relevant to the airframe structure and systems fitted to the class of aircraft the AMO intends to maintain.

(2) Specific information on the actual aircraft type on which the person is intended to become a certifying person including the impact of repairs and system/structural defects.

(3) Company procedures relevant to the certifying staff's tasks.

21. Continuation training should cover changes in AMO procedures and changes in the standard of aircraft and/or aeronautical products maintained.

22. The training programme shall include details of the number of personnel who will receive initial training to qualify as certifying staff over specified time periods.

23. The training programme established for maintenance personnel and certifying staff by the AMO shall include training in knowledge and skills related to human performance including coordination with other maintenance personnel and flight crew.

IS 6:23 INDOCTRINATION, INITIAL, RECURRENT, SPECIALIZED AND REMEDIAL TRAINING

1. Each AMO shall provide indoctrination training for employees that includes at least 40 hours of instruction in at least the following subjects—

   (1) regulations of Malaŵi—particularly those associated with AMO maintenance functions and authority as reflected on the certificate and operations specifications.

   (2) company manuals, policies, procedures and practices, including quality control processes, particularly those associated with ensuring compliance with maintenance (including inspection), preventive maintenance, and alteration procedures established to show compliance with the Regulations.

   (3) dangerous goods requirements of regulation 24 of the Regulations, including other local Malaŵi, and national laws requiring training for different categories of employees.

   (4) human performance, including coordination with other maintenance personnel and flight crew.

   (5) maintenance human factors—the elements should focus on aviation maintenance and safety related issues.

   (6) computer systems and software—as applicable to the repair station's maintenance (including inspection, preventive maintenance and alteration systems and procedures.

   (7) facility security—which shall include company security objectives, specific security procedures, employee responsibilities, actions to take in the event of a security breach, and the organizational security structure.

   NOTE: *Guidance material to design training programmes to develop knowledge and skills in human performance can be found in the Human Factors Training Manual* (*Doc 9683*).

2. Initial training. Each AMO shall provide initial training for employees that includes at least 80 hours of instruction in at least the following subjects consistent with the specific employee position and assigned job activities—

   (1) General review.

   (2) Specific job or task training.

   (3) Shop safety.

   (4) Records and recordkeeping.

   (5) Materials and parts.

   (6) Test equipment, including ground support equipment.

(7) Tools.

(8) Maintenance human factors.

(9) Any other items as required by the Authority.

3. Recurrent training. Each AMO shall provide recurrent training for employees that include at least 8 hours of instruction in the subjects below—

(1) refresher of subjects covered in initial training.

(2) new items introduced in the AMO since completion of initial training.

(3) any other items required by the Authority.

4. Specialized training. Each AMO shall provide specialized training, including initial and recurrent, for employees whose duties require a specific skill. Examples of specialized skills include: flame and/or plasma spray operations, special inspection or test techniques, special machining operations, complex welding operations, aircraft inspection techniques or complex assembly operations.

5. Remedial training. Each AMO shall provide remedial training to rectify an employee's demonstrated lack of knowledge or skill by providing information as soon as possible. In some instances, remedial training may consist of an appropriately knowledgeable person reviewing procedures with an employee through on-the-job training. Remedial training should be designed to fix an immediate knowledge or skill deficiency and may focus on one individual. Successful remedial training should show an individual what occurred, why it occurred, and in a positive manner, how to prevent it from occurring again.

6. Each AMO, in developing training for employees, shall take into account the various training, experience, and skill levels of its employees as follows—

(1) Employees that hold an AME licence.

(2) Employees with experience performing similar tasks at another AMO.

(3) Employees with applicable military aviation maintenance experience.

(4) Employees with no prior skills, experience, or knowledge.

7. Each AMO shall have procedures to determine the frequency of recurrent training and the need for specialized and remedial training.

8. Each AMO shall assess the competency of its employees for performing his or her assigned duties after completion of initial,

recurrent, specialized and remedial training. This assessment of competency shall be appropriately documented in the employee's training records and shall be done by any of the following methods, depending upon the size of the AMO, its capabilities and experience of its employees—

(1) Written test.

(2) Completion of a training course.

(3) Skill test.

(4) Group exercise.

(5) On the job assessment.

(6) Oral examination in the working environment.

IS 6:24 Dangerous Goods Training Programme

1. Dangerous goods training, at a minimum, shall include at least 8 hours instruction in at least the following—

(1) General awareness/familiarization training—designed to provide familiarity with the requirements of this Regulation and the dangerous goods regulations in the Aviation (Air Operator Certification and Administration) Regulations and to enable the employee to recognize and identify dangerous goods.

(2) Function-specific training—concerning the specific requirements of this Regulation and the dangerous goods regulations in the Aviation (Air Operator Certification and Administration) Regulations, or exemptions or special permits issued, relating to the specific functions the employee performs—

(1) Safety training concerning.

(2) Emergency response.

(3) Measures to protect the employee from the hazards associated with the dangerous goods to which they may be exposed in the work place, including specific measures the employer has implemented to protect employees from exposure.

(4) Methods and procedures for avoiding accidents, such as the proper procedures for handling packages containing dangerous goods.

3. Security; awareness training—addressing the security risks associated with dangerous goods transportation and methods designed to enhance transportation security. This training must also include a component covering how to recognize and respond to possible security threats.

4. In-depth security training—must include company security objectives, specific security procedures, employee responsibilities, actions to take in the event of a security breach, and the organizational security structure.

5. Any other training required by the Authority.

IS: 6:26 RECORDS OF MANAGEMENT, SUPERVISORY, INSPECTION AND CERTIFYING STAFF

1. The following minimum information shall be kept on record in respect of each management, supervisory, inspection, and certifying person—
   (1) Name.
   (2) Date of birth.
   (3) Basic training.
   (4) Type training.
   (5) Continuation training.
   (6) Experience.
   (7) Qualifications relevant to the approval
   (8) Scope of the authorization.
   (9) Date of first issue of the authorization.
   (10) Expiration date of the authorization (if appropriate) and
   (11) Identification number of the authorization.
2. Records of these individuals shall be controlled.
3. The number of persons authorized to access the system shall be limited to minimize the possibility of records being altered in an unauthorized manner and to limit confidential records from becoming accessible to unauthorized persons.
4. A certifying person shall be given reasonable access on request to his or her records.
5. The Authority is authorized to and may investigate the records system for initial and continued approval, or when the Authority has cause to doubt the competence of a particular certifying person.
6. The AMO shall keep the record of these individuals for at least two years after that person has ceased employment with the AMO or after withdrawal of his or her authorization. Upon request, the certifying staff shall be furnished with a copy of their record on leaving the AMO.

NOTE: Authorized persons, apart from the AMO's quality department or maintenance supervisors/managers, include the Authority.

IS 6:28 AMO PROCEDURES MANUAL

(*a*) The AMO procedures manual shall contain the following content.

1.0 General.

1.1 A general description of the scope of work authorized under the organization's terms of approval.

1.2 A description of the organization's procedures and quality or inspection system.

1.3 A general description of the organization's facilities.

1.4 The names, tasks, duties and responsibilities of the person or persons are required to ensure the maintenance organization is in compliance with the regulations of Malaŵi.

1.5 A description of the procedures used to establish the competence of maintenance personnel as required by regulation 23 and 24.

1.6 A description of the method used for the completion and retention of the maintenance records required by Regulation 35. The records shall show that all requirements for signing of the maintenance release have been met. The records shall be kept for a minimum period of one year after signing of the maintenance release.

1.7 A description of the procedure for preparing the maintenance release and the circumstances under which the release is to be signed.

1.8 The personnel authorized to sign the maintenance release and the scope of their authorization. The person signing the maintenance release shall be qualified in accordance with the Aviation (Personnel Licensing) Regulations.

1.9 A description, when applicable, of the additional procedures for complying with an operator's maintenance procedures and requirements.

1.10 A description of the procedures in respect of aeroplanes of over 5,700 kg maximum certificated take-off mass and helicopters of over 3,175 kg maximum certificated take-off mass, whereby information on faults, malfunctions, defects and other occurrences which cause or might cause adverse effects on the continuing airworthiness of the aircraft is transmitted to the organization responsible for the type design of that aircraft and to the operator's airworthiness authority.

NOTE: *Guidance on "interpretation of the organization responsible for the type design" is contained in ICAO Doc 9760, Part III, Chapter 4—Section 4.2.*

1.11 A description of the procedure for receiving, amending and distributing within the AMO all necessary airworthiness data from the Type Certificate holder or type design organization.

1.12 If the manual is also used to comply with the requirements of the maintenance programme for an aircraft, the maintenance programme should be included.

2.0 Management

2.1 A statement signed by the CEO confirming that the manual defines the organization's procedures and associated personnel responsibilities and will be complied with at all times.

2.2 An organization chart showing the associated chains of responsibility of the persons nominated responsible for the AMO safety management system.

2.3 Notification procedures to the airworthiness authority regarding changes to the organization's activities/approval/location/personnel.

2.4 Oval.

2.5 Amendment procedures for the manual.

3.0 Maintenance procedures.

3.1 Supplier evaluation procedure.

3.2 Acceptance/inspection of aircraft components and material from outside contractors.

3.3 Storage, labelling/tagging and release of aircraft components and material to aircraft maintenance.

3.4 Acceptance of tools and equipment.

3.5 Calibration of tools and equipment.

3.6 Use of tools and equipment by staff (including alternate tools).

3.7 Cleanliness standards of maintenance facilities.

3.8 Maintenance instructions and relationship to aircraft/aircraft component manufacturers' service information including updating and availability to staff.

3.9 Repair procedure.

3.10 Procedures for compliance with an operator's aircraft maintenance programme.

3.11 Airworthiness directives procedure.

3.12 Optional modification procedure.

3.13 Maintenance documentation in use and completion of same.

3.14 Technical record control.

3.15 Procedures for handling of defects arising during maintenance.

3.16 Issue of the maintenance release required by regulation 34.

3.17 Records for the operator (if the organization is not an operator itself).

3.18 Reporting of defects and other occurrences as required by the Authority.

3.19 Return of defective aircraft components to store.

3.20 Control of defective components sent to outside contractors for overhaul, etc.

3.21 Control of computer maintenance record systems.

3.22 Reference to specific maintenance procedures such as engine running procedures, aircraft pressure run procedures, aircraft towing procedures; and aircraft taxiing procedures.

3.23 Sub-contract procedures.

3.24 Human factors.

3.25 Manpower resources.

3.26 Line maintenance procedures (when applicable).

3.27 Line maintenance control of aircraft components tools, equipment, etc.

3.28 Line maintenance procedures related to servicing/ fuelling/ de-icing, etc.

3.29 Line maintenance control of defects and repetitive defects.

3.30 Line procedure for pooled parts and loan parts.

3.31 Line procedure for return of defective parts removed from aircraft.

4.0 Quality system procedures.

4.1 Quality audit of organization procedures.

4.2 Quality audit of aircraft.

4.3 Quality audit findings remedial action procedure.

4.4 The qualification and training procedures for personnel issuing a maintenance release ("certifying staff").

4.5 Records of certifying staff.

4.6 The qualification and training procedures for quality audit personnel.

4.7 The qualification and training procedures for mechanics.

4.8 Exemption process control.

4.9 Concession control for deviation from organization's procedures.

4.10 Qualification procedure for specialized activities such as non-destructive testing (NDT), welding, etc.

4.11 Control of manufacturer's working teams based at the premises of the organization, engaged in tasks which interface with activities included in the approval.

4.12 Quality audit of sub-contractors (or acceptance of accreditation by third parties, e.g. use of NDT organizations approved by a State regulatory body other than the airworthiness authority).

5.0 Examples of Standard Documents.

Examples of standard documents used by the AMO which are associated with activities undertaken under the terms and conditions of the approval, such as: (1) technical record control; or (2) rectification of defects.

6.0 Quality Assurance Audit Procedures.

The lists which follows is not exhaustive, but includes the principal audit checks which need to be considered.

6.1. Checks on aircraft, while undergoing scheduled maintenance, for—

6.1.1 Compliance with maintenance programme and mandatory continuing airworthiness requirements and ensuring that only work instructions reflecting the latest amendment standards are used.

6.1.2 Completion of work instructions including the transfer of defects to additional worksheets, their control, and final collation. Action taken in respect of items carried forward, not completed during the particular inspection or maintenance task.

6.1.3 Compliance with manufacturers' and the organization's standard specifications and procedures.

6.1.4 Standards of inspection and workmanship.

6.1.5 Condition of corrosion prevention and control treatments and other protective processes.

6.1.6 Aircraft maintenance which is not limited to the normal working day; procedures adopted during shift changeover of personnel to ensure continuity of inspection and responses.

6.1.7 Precautions taken to ensure that, on completion of any work or maintenance, all aircraft are checked for loose tools and miscellaneous small items such as split pins, wire, rivets, nuts, bolts and other debris, and for general cleanliness and housekeeping.

6.2 Checks on airworthiness data for—

6.2.1 Adequacy of aircraft manuals and other technical information appropriate to each aircraft type, including engines, propellers and other equipment, and the continuing receipt of revisions and amendments, availability of continuing airworthiness data,e.g., airworthiness directives, life limits, etc.;

6.2.2 Assessment of manufacturer's service information, determining its application to aircraft types maintained and the recording of compliance or embodiment.

6.2.3 Maintenance of a register of manuals and technical literature held within the organization, their locations and current amendment status.

6.2.4 Assurance that all the organization's manuals and documents, both technical and procedural, are kept up to date.

6.3 Checks on stores and storage procedures for—

6.3.1 The adequacy of stores and storage conditions for rotatable components, small parts, perishable items, flammable fluids, engines and bulky assemblies in accordance with the specifications adopted by the organization.

6.3.2 The procedure for examining incoming components, materials and items for conformity with order, release documentation and procurement from sources approved by the organization.

6.3.3 The "batch recording" of goods received and identification of raw materials, the acceptance of part life items into stores, requisition procedures for issue of items from stores.

6.3.4 Labelling procedures, including the use of serviceable/unserviceable/repairable labels and their certification and final disposal after installation, and labelling procedures for components which are serviceable but "part life" only.

6.3.5 The internal release procedure to be used when components are to be forwarded to other locations within the AMO.

6.3.6 The procedure to be adopted for the release of goods or overhauled items to other organizations (this procedure should also cover items being sent away for rectification or calibration).

6.3.7 the procedure for the requisitioning of tools together with the system for ensuring that the location of tools, and their calibration and maintenance status, is known at all times.

6.3.8 Control of shelf life and storage conditions in the stores; control of the free-issue dispensing of standard parts, identification and segregation.

6.4 Checks on maintenance facilities for—

6.4.1 Cleanliness, state of repair and correct functioning of hangars, hangar facilities and special equipment and the maintenance of mobile equipment.

6.4.2 Adequacy and functioning of special services and techniques including welding, non-destructive inspection (NDI), weighing, painting.

6.4.3 Viewer/printer equipment provided for use with microfiche, microfilm and compact disk, ensuring that regular maintenance takes place and an acceptable standard of screen reproduction and printed copy is achieved.

6.4.4 The adequacy of special tools and equipment appropriate to each type of aircraft, including engines, propellers and other equipment.

6.4.5 The calibration and maintenance of tools and measuring equipment; and environmental controls.

6.5 Checks on the AMO's general airworthiness control procedures for—

6.5.1 Monitoring the practices of the organization in respect of scheduling or pre-planning maintenance tasks to be carried out in the open air and adequacy of the facilities provided.

6.5.2 Operation of the system for service difficulty reporting required by the Authority.

6.5.3 Authorization of personnel to issue maintenance releases in respect of inspections and maintenance tasks; the effectiveness and adequacy of training, including continuation training and the recording of personnel experience, training and qualifications for grant of authorization.

6.5.4 The effectiveness of technical instructions issued to maintenance personnel.

6.5.5 The adequacy of personnel in terms of qualifications, numbers and ability in all areas required to support the activities included in the approval granted by the airworthiness authority.

6.5.6 The efficacy and completeness of the quality audit programme.

6.5.7 Maintaining log books and other required records and ensuring that these documents are assessed in accordance with the requirements of Malaŵi.

6.5.8 Ensuring that repairs are only carried out in accordance with approved repair schemes and practices.

6.5.9 Control of sub-contractors.

6.5.10 Control of activities sub-contracted to it, such as management of the operator's maintenance programme.

6.5.11 Monitoring "Exemption process control" and monitoring "Concession control for deviation from the AMO's procedures".

6.5.12 Follow-up internal reporting/occurrences.

IS: 6:34 CERTIFICATION OF RELEASE TO SERVICE OF AN AIRCRAFT, PART, COMPONENT OR ASSEMBLY

1. [State]	2. DCA FORM AAT Authorized Release Certificate/Airworthiness Approval Tag (AAT) Department of Civil Aviation					3. System Tracking Ref. No.
4. Organization Name and Address:						5. Work Order, Contract or
6. Item	7. Description	8. Part Number	9. Eligibility (Installer must check eligibility with applicable technical data	10. Quantity	11. Serial/ Batch Number	12. Status/ Work

13. Remarks

14. Certifies that the items identified above were manufactured in conformity to: Approved design data and are in condition for safe operation Non-approved design data specified in block 13		19. Airworthiness, regulation 33 Release to Service Other regulation specified in Block 13 Certifies that unless otherwise specified in block 13 (or attached), the work identified in Block 12 and described in block 13, above was accomplished in accordance with CAA airworthiness regulations and in respect to that work, the item(s) is (are) approved for return to service.	
15. Authorized Signature:	16. Approval/ Authorization Number	20. Authorized Signature	21. Approval/Certificate Number:
17. Name (Typed or Printed):	18. Date (m/d/y):	17. Name (Typed or Printed):	23. Date (m/d/y):

Line-By-Line Instructions for Completion of AMO DCA Form AAT

1. Block 1. Malaŵi (Pre-printed).
2. Block 2. DCA, Airworthiness Approval Tag, and Department of Civil Aviation Administration (Pre-Printed).
3. Block 3. System Tracking Reference Number.
   (1) Fill in the unique number established by the CAA-approved numbering system.
   (2) If the form is computer-generated, it may be produced as programmed by the computer.

NOTE: Shippers must establish a numbering system for traceability in order to fill out block 3 of the form. This system must also provide a means of cross-referencing the number(s) and product(s) being shipped.

4. Block 4. Organization.

(1) Fill in the full name and address of the AMO or individual shipping the product(s)/part(s) as applicable—

(*a*) Company name and address;

(*b*) Production Approval Holder (PAH) approval or certificate numbers as issued by the Authority of the State of Manufacturer, when applicable (e.g., production certificate number, approved maintenance organization certificate numbers, air operator certificate number).

NOTE: Production certificates are issued to manufacturing companies by an Authority. The Civil Aviation Regulation presume that Malaŵi will not be a State of Manufacturer or Design. However, aircraft registered in Malaŵi will likely be repaired, altered or rebuilt using parts and components exported from the State of Manufacturer. Companies performing the repair, alteration, rebuild and export will be certificated by the State of Manufacturer as a production approval holder The PAH is required by the State of Manufacturer to use the airworthiness approval tag and certify their work in blocks 14-18 as described in this chapter. Consequently States which will not be filling out block 14-18 will need to be familiar with all the uses of this form in order to properly accept parts and components. Production certificates are described in 14 CFR: 21, Subpart G.

(2) When a supplier has direct ship authorization from a PAH, the following information should be entered—

(*a*) PAH name and address.

(*b*) PAH approval or certificate number.

(*c*) C/o Supplier name and address.

NOTE: If an individual product/part is produced as a spare by a supplier, the supplier must have either direct ship authority or hold a production approval (TSO authorization) for all products/parts shipped. If the supplier holds its own production approval, and the products/parts were manufactured and are being shipped under that approval, the information required, in paragraph (I) above should be listed.

5. Block 5. Work Order, Contract, or Invoice Number.

   (1) Fill in the contract, work order, or invoice number related to the shipment list, or maintenance release, and state the number of pages attached to the form, including dates, if applicable. If the shipment list contains the information required in Blocks 6 through 12, the respective blocks may be left blank if an original, or true copy, of the list is attached to the form. In this case, the following statement should be entered in Block 13: "This is the certification statement for the products/parts listed on the attached document dated ....., containing pages ..... to ....."

   (2) In addition, the shipment list must cross-reference the number located in Block 3. The shipment list may contain more than one item; but it is the responsibility of the shipper to determine if the CAA of the importing jurisdiction will accept bulk shipments under a single DCA Form [AAT]. If the CAA does not permit bulk shipments under a single form, Blocks 6 through 12 of each form must be filled in for each product shipped.

6. Block 6. Item. When DCA Form AAT is issued a single item number or multiple item numbers may be used for the same part number. Multiple items should be numbered in sequence. If a separate listing is used, enter "List Attached."

   NOTE: *The blank form can be computer-generated. However, the format cannot be changed, nor can any words be added or deleted. Pre-printing of some information is permissible, i.e.; the information in blocks 1, 2, 3, 4, and 19. The size of blocks may be varied slightly, but the form must remain readily recognisable. The form may also be reduced in overall size to facilitate placement of the wording on the back of the form onto the face of the document.*

7. Block 7. Description. Enter the name or description of the product/part as shown on the design data. For products/parts that do not have design data available, the name as referenced in a part catalog, overhaul manual, etc., can be used.

8. Block 8. Part Number. Enter each part number of the product.

9. Block 9. Eligibility. State the aircraft, aircraft engine, or propeller make and model on which the parts manufacture approval is eligible for installation. If a part is eligible for installation on more than one model enter the words "to be verified by installer or TBV by installer." Where parts are TSO articles, state "TSO Article N/A" since eligibility for installation for TSO articles is determined at the tune of installation.

Note: For TSO articles DCA Form AAT does not constitute authority to install a product on a particular aircraft, aircraft engine, or propeller. The user or installer is responsible for confirming that the product is eligible for installation by reference to overhaul manuals, sendee bulletins, etc., as applicable. While the information in Block 9 is optional, it should be filled out whenever possible.

10. Block 10. Quantity. State the quantity of each product/part shipped.

11. Block 11. Serial/Batch Number. State the serial number or equivalent (identified on the part) on the form for each product/part shipped. If a serial number or equivalent is not required on the part, enter "N/A."

12. Block 12. Status/work. Enter "Newly Overhauled" for those products that have not been operated or placed in service since overhaul. Enter "PROTOTYPE" for products/parts submitted to support type certification programmes. Other permissible/appropriate terms to describe the status of the product/part include: "INSPECTED", "REPAIRED," "REBUILT," or "ALTERED".

13. Block 13. Remarks. Enter any information or references to support documentation necessary for the user or installer to make a final determination of airworthiness of the products/parts listed in Block 7. Each statement must specify which item identified in Block 6 is related. Examples of information to be supplied are as follows—

(1) Any restrictions (e.g., prototype only).

(2) Alternative approved part number.

(3) Compliance or non-compliance with airworthiness directives or service bulletins.

(4) Information on life-limited parts.

(5) Manufacturing, cure, or shelf-life data.

(6) Drawing and revision level.

(7) When used for conformity the word "CONFORMITY" must be entered in capital letters. In addition, an explanation of the products/parts use, e.g., pending approved data, type certificate pending, for test only, etc., should be provided.

Information concerning a conformity inspection such as design data, revision level, date, project number.

(8) When used for spare parts identify whether the parts are from the original manufacturer or another approved source and are made to the TSO. In addition, if the Airworthiness Approval Tag [AAT] is for spare parts or subcomponents of a CAA approved replacement part, the TSO authorization should be listed in Block 13.

(9) When used for return to service this block should contain the data required by regulation 33.

14. Blocks 14,: Must not be used for maintenance tasks by Approved Maintenance Organizations. These blocks are specifically reserved for release/certification of newly manufactured items in accordance with certification procedures of products and parts of the State of Design or State of Manufacture (e.g. 14 CFR chapter 21).

15. Block 19. Return to Service. The information is already pre-printed in the block.

16. Block 20. Signature. Signature of the individual authorized by the air agency, air carrier, or the manufacturer in accordance with Airworthiness Regulations. The approval signature shall be manually applied at the time and place of issuance.

17. Block 21. Certificate number. Enter the AMO or air operator operating certificate number. For manufacturers returning to service after rebuilding products/parts the production approval number should be entered.

18. Block 22. Name. The typed or printed name of the individual identified in Block 20.

19. Block 23. Date. The date the DCA Form AAT is signed and the product is returned to service. This does not need to be the same as the shipping date, which may occur at a later date.

IS 6:36 Airworthiness Data

1. The AMO shall be in receipt of all airworthiness data appropriate to support the work performed from the Authority, the aircraft/aeronautical product design organization, and any other approved design organization in the State of Manufacture or State of Design, as appropriate. Some examples of maintenance-related documents are—

(1) Civil Aviation Regulations.

(2) Associated advisory material.

(3) Airworthiness directives.

(4) Manufacturers' maintenance manuals.

(5) Repair manuals.

(6) Supplementary structural inspection documents.

(7) Service bulletins.

(8) Service letters.

(9) Service instructions.

(10) Modification leaflets.

(11) Aircraft maintenance programme,

(12) NDT Manual, etc.

Note 1: Paragraph (a) primarily refers to maintenance data that has been transcribed from the Authority and all Type Certificate holders into the AMO's format, such as customized maintenance cards or computer based data.

Note 2: To obtain acceptance from the Authority, it is important that accuracy of transcription is assured.

2. A procedure shall be established, to monitor the amendment status of all data and maintain a check that all amendments are being received by being a subscriber to any document amendment scheme.

3. Airworthiness data shall be made available in the work area in close proximity to the aircraft or aeronautical product being maintained and for supervisors, mechanics, and certifying staff to study.

4. Where computer systems are used to maintain airworthiness data, the number of computer terminals shall be sufficient in relation to the size of the work programme to enable easy access, unless the computer system can produce paper copies. Where microfilm or microfiche readers/printers are used, a similar requirement is applicable.

AVIATION (INSTRUMENTS AND EQUIPMENT) REGULATIONS

G.N. 33/2013

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AVIATION (INSTRUMENTS AND EQUIPMENT) REGULATIONS

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PART I
General

Citation and application

1.—(1) These Regulations may be cited as the Aviation (Instruments and Equipment) Regulations.

(2) These Regulations prescribe the minimum instrument and equipment requirements for all aircraft in all operations.

(3) These Regulations requirements use the following key designators—

(*a*) AAC: all aircraft—non-AOC Holders and AOC Holders appropriate to the subject of the regulations, e.g., an all aircraft regulation may only refer to seaplanes, but will include seaplanes operated by non-AOC Holders and AOC seaplanes;

(*b*) AOC: AOC Holders are operators engaged in commercial air transport; where AOC requirements are more detailed, the AOC requirements will be followed.

(4) These Regulations provide for approvals to AOC holder through operations specifications and approvals to non-AOC holders, such as general aviation, are done through letters of authorization.

Definitions

2. For the purpose of these Regulations, unless the context otherwise requires—

"Airborne Image Recorder (AIR)" means a device that uses a combination of cameras to collect and record information that reflects the status of various parts of the aircraft (internal and external);

"Aircraft Data Recording System" means a device or devices that use a combination of data providers to collect and record parameters that reflect the state and performance of an aircraft;

"airworthy" means the status of an aircraft, engine, propeller or part when it conforms to its approved design and is in a condition for safe operation;

"area navigation (RNAV)" means a method of navigation which permits aircraft operation on any desired flight path within the coverage of ground or space-based navigation aids or within the limits of the capability of self-contained aids, or a combination of these; area navigation includes performance-based navigation as well as other operations that do not meet the definition of performance-based navigation;

"category I (CAT I) operation" means a precision instrument approach and landing with—

(i) a decision height not lower than 60 m (200 ft); and

(ii) with either a visibility not less than 800 m or a runway visual range not less than 550 m;

"category II (CAT II) operation" means a precision instrument approach and landing with—

(i) a decision height lower than 60 m (200 ft), but not lower than 30 m (100 ft); and

(ii) a runway visual range not less than 300 m;

"category III A (CAT IIIA) operation" means a precision approach and landing with—

(i) a decision height lower than 30 m (100 ft) or no decision height; and

(ii) a runway visual range not less than 175m;

"category III B (CAT IIIB) operation" means a precision approach and landing with—

(i) a decision height lower than 15m (50 ft), or no decision height; and

(ii) a runway visual range less than 175m but not less than 50 m;

"Category III C (CAT IIIC) operation" means a precision instrument approach and landing with no decision height and no runway visual range limitations;

"Cockpit Audio Recording System" means a device that uses a combination of microphones and other audio and digital inputs to collect and record the aural environment of the cockpit and communications to, from and between the pilots;

"continuing airworthiness" means the set of processes by which all aircraft comply with the applicable airworthiness requirements and remain in a condition for safe operation throughout their operating life;

"Controlled Flight Into Terrain" occurs when an airworthy aircraft is flown, under the control of a qualified pilot, into terrain (water or obstacles) with inadequate awareness on the part of the pilot of the impending collision;

"Datalink Recording System" means a device that records those messages whereby the flight path of the aircraft is authorized, controlled directly or indirectly, and which are relayed over a digital data-link rather than by voice communication;

"Emergency Locator Transmitter (ELT)" means a generic term describing equipment which broadcast distinctive signals on

designated frequencies and, depending on application, may be automatically activated by impact or be manually activated. An ELT may be any of the following—

(i) automatic fixed ELT: an automatically activated ELT which is permanently attached to an aircraft;

(ii) automatic portable ELT: an automatically activated ELT which is rigidly attached to an aircraft but readily removable from the aircraft;

(iii) automatic deployable ELT (ELT(AD)): an ELT which is rigidly attached to an aircraft and which is automatically deployed and activated by impact, and in some cases, also be hydrostatic sensors. Manual deployment is also provided;

(iv) survival ELT: an ELT which is removable from an aircraft, stowed so as to facilitate its ready use in an emergency, and manually activated by survivors.

(v) ELT battery useful life: the length of time after its date of manufacture or recharge that the battery or battery pack may be stored under normal environmental conditions without losing its ability to allow the ELT to meet the applicable performance standards;

(vi) ELT battery expiration date: the date of battery manufacture or recharge plus one half of its useful life;

"engine" means a unit used or intended to be used for aircraft propulsion. It consists of at least those components and equipment necessary for functioning and control, but excludes the propeller/rotors (if applicable);

"Enhanced Ground Proximity Warning (EGPWS)" means a forward looking warning system that uses the terrain data base for terrain avoidance;

"Enhanced Vision System (EVS)" means a system to display electronic real-time images of the external scene achieved through the use of image sensors:

"flight manual" means a manual, associated with the certificate of airworthiness, containing limitations within which the aircraft is to be considered airworthy, and instructions information accessary to the flight crew members for the safe operation of the aircraft;

"flight recorder" means any type of recorder installed in the aircraft for the purpose of complementing accident/incident investigation. This could include the Cockpit Voice Recorder (CVR) or Flight Data Recorder (FDR);

"Ground Proximity Warning System (GPWS)" means a warning system that uses radar altimeters to alert the pilots of hazardous flight conditions;

"Head-Up Display (HUD)" means a display system that presents flight information into the pilot's forward external field of view;

"high speed aural warning" means a speed warning that is required for turbine-engined airplanes and airplanes with a Vmo/Mmo greater than 0.80 Vdf/Mdf or Vd/Md;

"long range overwater flights" means routes on which an aeroplane may be over water and at more than a distance corresponding to 120 minutes at cruising speed or 740 km (400NM), whichever is the lesser, away from land suitable for making an emergency landing;

"low altitude wind shear warning and guidance system" means a system that will issue a warning of low altitude wind shear and in some cases provide the pilot with guidance information of the escape manoeuvre;

"mach number indicator" means an indicator that shows airspeed as a function of the Mach number;

"maintenance programme" means a document which describes the specific scheduled maintenance tasks and their frequency of completion and related procedures, such as a reliability programme, necessary for the safe operation of those aircraft to which it applies;

"navigation specification" means a set of aircraft and flight crew requirements needed to support performance-based navigation operations within a defined;

"Required Navigation Performance (RNP) specification" means a navigation specification based on area navigation that includes the requirement for performance monitoring and alerting, designated by the prefix RNP, e.g. RNP 4, RNP APCH;

"area navigational (RNAV) specification'' means a navigation specification based on area navigation that does not include the requirement for performance monitoring and alerting, designated by the prefix RNAV, e.g. RNAV 5, RNAV 1;

"Performance-Based Navigation (PBN)" means area navigation based on performance requirements for aircraft operating along an ATS route, on an instrument approach procedure or in a designated airspace; performance requirements are expressed in navigation specifications (RNAV specification, RNP specification) in terms of accuracy, integrity, continuity, availability and functionality needed for the proposed operation in the context of a particular airspace concept;

"terrain awareness warning system" means a system that provides the flight crew with sufficient information and alerting to detect a potentially hazardous terrain situation and so the flight crew may take effective action to prevent a controlled flight into terrain (CFIT) event.

Abbreviations

3. The following acronyms are used in these Regulations—

(1) AAC—All Aircraft
(2) ADF—Automatic Direction Finder
(3) ADRS—Aircraft Data Recording Systems (ADRS)
(4) AFM—Aeroplane Flight Manual
(5) AIR—Airborne Image Recorder
(6) AOC—Air Operator Certificate
(7) CARS—Cockpit Audio Recording System
(8) DLR—Data-link Recorder
(9) DLRS—Data-link Recording Systems
(10) ELT (AD)—Automatically Deployable ELT
(11) ELT (AF)—Automatic Fixed ELT
(12) ELT (AP)—Automatic Portable ELT
(13) ELT(*S*)—Survival ELT
(14) CAT —Commercial Air Transport
(15) CAT I—Category One
(16) CAT II—Category Two
(17) CAT IIIA—Category Three A
(18) CAT IIIB—Category Three B
(19) CAT IIIC—Category Three C
(20) CFIT—Controlled Flight Into Terrain
(21) CVR—Cockpit Voice Recorder
(22) DH—Decision Height
(23) DME—Distance Measuring Equipment
(24) ELT—Emergency Locator Transmitter
(25) EVS—Enhanced Vision Systems
(26) FDR—Flight Data Recorder
(27) GPS—Global Positioning System
(28) GPWS—Ground Proximity Warning System
(29) HUD—Head Up Display
(30) ILS—Instrument Landing System
(31) IFR—Instrument Flight Rules
(32) IMC—Instrument Meteorological Conditions
(33) LRNS—Long Range Navigation Systems

(34) MACH—Mach Number Indicator

(35) MEL—Minimum Equipment List

(36) MHz—Megahertz

(37) MLS—Microwave Landing System

(38) MNPS—Minimum Navigation Performance Specifications

(39) NDB—Nondirectional Beacon

(40) PBE—Protective Breathing Equipment

(41) RNAV—Area Navigation

(42) RNP—Required Navigation Performance

(43) RVR—Runway Visual Range

(44) RVSM —Reduced Vertical Separation Minimum

(45) SSR—Secondary Surveillance Radar

(46) TAWS—Terrain Awareness Warning System

(47) VFR—Visual Flight Rules

(48) VMC—Visual Meteorological Conditions

(49) VOR—VHF Omnidirectional Radiorange

(50) VSM—Vertical Separation Minimum

General instrument and equipment requirements

4.—(1) [AAC] In addition to the minimum equipment necessary for the issuance of a certificate of airworthiness, the instruments, equipment and flight documents prescribed in these Regulations shall be installed or carried, as appropriate, in aircraft according to the aircraft used and to the circumstances under which the flight is to be conducted.

(2) [AAC] All required instruments and equipment shall be approved and installed in accordance with applicable airworthiness requirements.

(3) [AAC] Prior to operation in Malaŵi of any aircraft not registered in Malaŵi that uses an airworthiness inspection programme approved or accepted by the State of Registry, the owner/operator shall ensure that instruments and equipment required by Malaŵi but not installed in the aircraft are properly installed and inspected in accordance with the requirements of the State of Registry.

(4) [AOC] No person shall commence a flight in commercial air transport operations unless the required equipment—

(*a*) meets the minimum performance standard, all operational and airworthiness requirements and the relevant provisions of ICAO Annex 10, Volume IV;

(*b*) is installed such that the failure of any single unit required for either communication or navigation purposes, or both, will not result

in the inability to communicate and/or navigate safely on the route being flown;

(*c*) is in operable condition for the kind of operation being conducted, except as provided in the MEL.

(5) [AAC] If equipment is to be used by one flight crew member at his or her station during flight, it shall be installed so as to be readily operable form that flight crew member's station.

(6) [AAC] When a single item of equipment is required to be operated by more than one flight crew member, it shall be installed so that the equipment is readily operable from any station at which the equipment is required to be operated.

PART II
Flight Instruments

General requirements

5.—(1) [AAC] All aircraft shall be equipped with flight instruments which will enable the flight crew to—

(*a*) control the flight path of the aircraft;

(*b*) carry out any required procedural manoeuvres; and

(*c*) observe the operating limitations of the aircraft in the expected operating conditions.

(2) [AAC] When a means is provided for transferring an instrument from its primary operating system to an alternative system, the means shall include a positive positioning control and shall be marked to indicate clearly which system is being used.

(3) [AAC] Those instruments that are used by any one pilot shall be so arranged as to permit the pilot to see the indications readily from his or her station, with the minimum practicable deviation from the position and line of vision which he normally assumes when looking forward along the flight path.

Minimum flight instruments

6.—(1) [AAC] No person may operate any powered aircraft unless it is equipped with the following flight instruments—

(*a*) an airspeed indicating system calibrated in knots, miles per hour or kilometers per hour;

(*b*) sensitive pressure altimeter calibrated in feet with a sub-scale setting calibrated in hectopascals/millibars, adjustable for any barometric pressure likely to be set during flight;

(*c*) an accurate timepiece indicating the time in hours, minutes, and seconds;

(*d*) a magnetic compass;

(*e*) any other equipment as prescribed by the Authority;

(*f*) this applies to both VFR and IFR operation in addition to the additional requirements for IFR elsewhere in these Regulations.

(2) [AAC] No person may operate an aeroplane in VFR flight as a controlled flight unless it is equipped in with the instruments in regulation 8 of these Regulations.

Instruments for operations requiring two pilots in day VFR

7.—(1) [AOC] Whenever two pilots are required, each pilot's station shall have separate flight instruments as follows—

(*a*) an airspeed indicator calibrated in knots, miles per hour or kilometers per hour;

(*b*) a sensitive pressure altimeter calibrated in feet with a sub-scale setting calibrated in hectopascals/millibars, adjustable for any barometric pressure likely to be set during flight;

(*c*) a vertical speed indicator;

(*d*) a turn and slip indicator, or a turn co-coordinator incorporating a slip indicator;

(*e*) an attitude indicator—

(i) a stabilized direction indicator, and

(ii) any other equipment as required by the Authority.

Instruments required for IFR operations

8.—(1) [AAC] All aeroplanes when operated in IFR, or when the aircraft maintained in a desired altitude without reference to one or more flight instruments, shall be equipped with—

(*a*) a means of measuring and displaying—

(i) magnetic heading (standby compass);

(ii) the time in hours, minutes and seconds;

(iii) pressure altitude;

(iv) indicated airspeed, with a means of preventing malfunctioning due to either condensation or icing;

(v) turn and slip;

(vi) aircraft attitude; and

(vii) stabilized aircraft heading;

(viii) the requirements of (v), (vi) and (vii) may be met by combinations of instruments or by integrated flight director systems, provided that the safeguards against total failure, inherent in the three separate instruments, are retained;

(ix) whether the supply of power to the gyroscopic instruments is adequate;

(x) the outside air temperature;

(xi) rate-of-climb and descent; and

(*b*) in addition, for aeroplanes with a maximum certificated take-off mass exceeding 5,700kg or equipped with one or more turbojet engines—

(i) an emergency power supply for electrically operated attitude indicating instruments;

(*a*) independent of the main electrical generating system for the purpose of operating and illuminating, for a minimum period of 30 minutes, an attitude indicating instrument (artificial horizon), clearly visible to the pilot-in-command, and

(*b*) automatically operative after the total failure of the main electrical generating system and clear indication given on the instrument panel that the attitude indicator(s) is being operated by emergency power; and

(ii) for aeroplanes with advanced cockpit automation systems (glass cockpits), system redundancy that provides the flight crew with attitude, heading, airspeed and altitude indications in case of failure of the primary system or display; and

(*c*) such additional instruments or equipment as may be prescribed by the appropriate authority.

(2) [AOC] All aeroplanes when operated in IFR, or when the aircraft cannot be maintained in a desired attitude without reference to one or more flight instruments, shall be equipped with—

(*a*) for all aeroplanes—

(i) a magnetic compass;

(ii) an accurate timepiece indicating the time in hours, minutes and seconds;

(iii) two sensitive pressure altimeters with counter drum-pointer or equivalent presentation;

(*b*) neither three-pointer nor drum-pointer altimeters satisfy this requirement—

(iv) an airspeed indicating system with a means of preventing malfunctioning due to either condensation or icing;

(v) a turn and slip indicator for aeroplanes or a slip indicator for helicopters;

(vi) attitude indicator (artificial horizon);

(vii) a heading indicator (directional gyroscope);

(viii) the requirements of items (v), (vi) and (vii) may be met by combinations of instruments or by integrated flight director systems provided that the safeguards against total failure, inherent in the separate instruments are retained;

(ix) a means of indicating whether the supply of power to the gyroscopic instruments is adequate;

(x) a means of indicating in the flight crew compartment the outside air temperature;

(xi) a rate-of-climb and descent indicator;

(*c*) In addition, for aeroplanes with a maximum certificated take-off mass exceeding 5700 kg—

(i) an emergency power supply for electrically operated attitude indicating instruments;

(ii) independent of the main electrical generating system for the purpose of operating and illuminating, for a minimum period of 30 minutes, an attitude indicating instrument (artificial horizon), clearly visible to the pilot-in-command; and

(iii) automatically operative after the total failure of the main electrical generating system and clear indication given on the instrument panel that the attitude indicator(s) is being operated by emergency power; and

(*d*) such additional instruments or equipment as may be prescribed by the Authority.

(3) [AOC] No person may operate an aeroplane under IFR, or under VFR over routes that cannot be navigated by reference to visual landmarks, unless the aeroplane is equipped with navigation equipment in accordance with the requirements of air traffic services in the area(s) of operation—

(*a*) [AOC] no person may conduct single pilot IFR operations unless the aeroplane is equipped with an autopilot with at least altitude hold and heading mode;

(*b*) [AAC] no person may operate an aeroplane under IFR unless it is equipped with an audio selector panel accessible to each required flight crew member;

(*c*) [AOC] no person may conduct single pilot IFR or night operations in commercial air transport operations unless the aeroplane is equipped with a headset with boom microphone or equivalent and a transmit button on the control wheel.

(4) [AAC] All helicopters, unless otherwise indicated, when operated in IFR, or when the aircraft cannot be maintained in a desired attitude without reference to one or more flight instruments, shall be equipped with—

(*a*) all helicopters—

(i) a magnetic compass;

(ii) an accurate timepiece indicating the time in hours, minutes and seconds;

(iii) pressure altimeter;

(*b*) [AAC] a sensitive pressure altimeter;

(*c*) [AOC] two sensitive pressure altimeters;

(*d*) due to the long history of misreadings, the use of drum-pointer altimeters is not recommended—

(iv) an airspeed indicating system with a means of preventing malfunctioning due to either condensation or icing;

(v) a slip indicator;

(vi) attitude indicator (artificial horizon) for each required pilot and one additional attitude indicator;

(vii) a heading indicator (directional gyroscope);

(viii) a means of indicating whether the supply of power to the gyroscopic instruments is adequate;

(ix) a means of indicating in the flight crew compartment the outside air temperature;

(x) a rate-of-climb and descent indicator;

(xi) a stabilization system, unless it has been demonstrated to the satisfaction of the certifying Authority that the helicopter possesses, by nature of its design, adequate stability without such a system;

(*b*) [AOC] an emergency power supply for electrically operated attitude indicating instruments—

(i) independent of the main electrical generating system for the purpose of operating and illuminating, for a minimum period of 30 minutes, an attitude indicating instrument (artificial horizon), clearly visible to the pilot-in-command; and

(ii) automatically operative after the total failure of the main electrical generating system and clear indication given on the instrument panel that the attitude indicator(s) is being operated by emergency power; and

(*c*) such additional instruments or equipment as may be prescribed by the Authority.

Instruments for operation at night

9.—(1) [AAC] No person may operate an aeroplane at night unless it is equipped with the following—

(*a*) the instruments in regulation 8 of these Regulations appropriate to the aircraft and operation;

(*b*) the lights specified in Part V of these Regulations.

(2) [AOC] No person may operate an aeroplane at night unless it is equipped with the following—

(*a*) the instruments in regulation 8 of these Regulations appropriate to the aircraft and operation;

(*b*) the lights in Part V of these Regulations.

(3) [AAC] No person may operate a helicopter at night unless it is equipped with the following—

(*a*) the instruments in regulation 8 of these Regulations appropriate to the aircraft and operation;

(*b*) an attitude indicator (artificial horizon) for each required pilot;

(*c*) a slip indicator;

(*d*) a heading indicator (directional gyroscope);

(*e*) a rate of climb and descent indicator;

(*f*) the lights in Part V of these Regulations;

(*g*) such additional instruments or equipment as may be prescribed by the Authority.

Standby attitude indicator

10.—(1) [AAC] No person may operate an aeroplane with a maximum certified take-off mass exceeding 5,700kg or a performance Class 1 or 2 helicopter unless it is equipped with a single standby attitude indicator (artificial horizon) that—

(*a*) operates independently of any other attitude indicating system;

(*b*) is powered continuously during normal operation; and

(*c*) after a total failure of the normal electrical generating system, is automatically powered for a minimum of 30 minutes from a source independent of the normal electrical generating system.

(2) [AAC] When the standby attitude indicator is being operated by emergency power, it shall be clearly operating and illuminated to the flight crew.

(3) [AAC] Where the standby attitude indicator has its own dedicated power supply there shall be an associated indication, either on the instrument or on the instrument panel when this supply is in use.

(4) [AAC] If the standby attitude instrument system is installed and usable through flight attitudes of 360° of pitch and roll, the turn and slip indicators may be replaced by slip indicators.

Instruments and equipment for category II operations

11.—(1) The instruments and equipment listed in this regulation shall be installed, approved and maintained in accordance with IS: 7:11 contained in the Schedule hereto for each aircraft operated in a Category II operation—

(*a*) group I is comprized of the following equipment and this equipment must be inspected both within three calendar months of the previous inspection and must also have a bench inspection within 12 months of the previous bench inspection using procedures contained in the approved maintenance programme—

(i) two localizer and glide slope receiving systems:

each system shall provide a basic ILS display and each side of the instrument panel must have a basic ILS display; however, a single localizer antenna and a single glide slope antenna may be used;

(ii) a communications system that does not affect the operation of at least one of the ILS systems;

(iii) a marker beacon receiver that provides distinctive aural and visual indications of the outer and the middle markers;

(iv) two gyroscopic pitch and bank indicating systems;

(v) two gyroscopic direction indicating systems;

(vi) two airspeed indicators;

(vii) two sensitive altimeters adjustable for barometric pressure, having markings at 20 foot intervals and each having a placarded correction for altimeter scale error and for the wheel height of the aircraft;

(viii) one self-monitoring radio altimeter with dual display;

(ix) two vertical speed indicators;

(x) a flight control guidance system that consists of either an automatic approach coupler or a flight director system;

(*a*) a flight director system must display computed information as steering command in relation to an ILS localizer and, on the same instrument, either computed information as pitch command in relation to an ILS glide slope or basic ILS glide slope information: an automatic approach coupler must provide at least automatic steering in relation to an ILS localizer: the flight control guidance system may be operated from one of the receiving systems required by subregulation (1) (*a*) (i);

(xi) for Category II operations with decision heights below 150 feet a radio altimeter is required;

(*b*) group II is comprized of the following equipment and this equipment which, with the exception of the static system, does not require special, maintenance procedures other than those necessary to retain the original approval condition; group II equipment must be inspected within 12 months of the previous inspection using procedures contained in the approved maintenance programme—

(i) warning systems for immediate detection by the pilot of system faults in items (1)(*a*)(i), (1)(*a*)(iv), (1)(*a*)(iv) and (1)(*a*)(ix), of Group I;

(ii) dual controls;

(iii) an externally vented static pressure system with an alternate static pressure source;

(iv) a windshield wiper or equivalent means of providing adequate cockpit visibility for a safe visual transition by either pilot to touchdown and rollout;

(v) a heat source for each airspeed system pitot tube installed or an equivalent means of preventing malfunctioning due to icing of the pitot system;

Instruments and equipment for category III operations

12.—(1) The instruments and equipment listed in this subregulation shall be installed, approved and maintained in accordance with international acceptable criteria and the AFM in each aircraft operated in a Category III operation—

(2) Airborne systems for CAT IIIA minima not less than RVR 200 m (600 ft). The following equipment in addition to the instrument and navigation equipment required by these Regulations for IFR flight and CAT II operations is the minimum aircraft equipment required for CAT IIIA—

(*a*) a redundant flight control or guidance system demonstrated in accordance with international acceptable criteria; acceptable flight guidance or control systems include the following—

(i) a Fail Operational or Fail Passive automatic landing system at least to touchdown;

(ii) a Fail Operational or Fail Passive manual flight guidance system providing suitable head-up or head-down command guidance, and suitable monitoring capability at least to touchdown;

(iii) a hybrid system, using automatic landing capability as the primary means of landing at least to touchdown; or

(iv) other system that can provide an equivalent level of performance and safety;

(*b*) an automatic throttle or automatic thrust control system that meets approved criteria as specified in the AFM. However, for operations with a 15 m (50 ft) DH, or other operations that have been specifically evaluated such as for engine inoperative landing capability, automatic throttles may not be required if it has been demonstrated that operations can be safely conducted, with an acceptable work load, without their use;

(*c*) at least two independent navigation receivers/sensors providing lateral and vertical position or displacement information, typically with the first pilot's station receiving the information from one and the second pilot's station receiving the information from the other, the navigation receivers/sensors shall meet the criteria specified for CAT IIIA operations;

(*d*) at least two approved radio altimeter systems that meet the performance requirements criteria as specified in the AFM, typically with the first pilot's station receiving information from one and the second pilot's station receiving information from the other;

(*e*) failure detection, annunciation, and warning capability, as determined acceptable by criteria in the AFM;

(*f*) missed approach guidance provided by one or more of the following means—

(i) attitude displays that include suitable pitch attitude markings, or a pre-established computed pitch command display;

(ii) an approved flight path angle display; or

(iii) an automatic or flight guidance go-around capability;

(*g*) suitable forward and side flight deck visibility for each pilot as specified in the AFM;

(*h*) suitable windshield rain removal, ice protection, or defog capability as specified in the AFM.

(3) Airborne systems for CAT IIIB minima less than RVR 200 m (600 ft) but not less than RVR 125 m (400 ft). The following equipment in addition to the instrument and navigation equipment required by these Regulations for IFR flight and CAT II and CAT IIIA operations is the

minimum aircraft equipment required for CAT IIIB plus the following extra equipment requirements—

(*a*) a redundant flight control or guidance system demonstrated in accordance with international acceptable criteria, acceptable flight guidance or control systems include the following—

(i) a fail operational landing system with a Fail Operational or Fail Passive automatic rollout system; or

(ii) a fail passive landing system, limited to touchdown zone RVR not less than RVR 200 m (600 ft), with Fail Passive rollout provided automatically or by a flight guidance system providing suitable head-up or head-down guidance, and suitable monitoring capability; or

(iii) a fail operational hybrid automatic landing and rollout system with comparable manual flight guidance system, using automatic landing capability as the primary means of landing; or

(iv) other system that can provide an equivalent level of performance and safety;

(*b*) an automatic throttle or automatic thrust control that meets the appropriate criteria as specified in the AFM, however for operations with a 15 m (50 ft) DH, automatic throttles may not be required if it has been demonstrated that operations can safely be conducted, with an acceptable work load, without their use;

(*c*) at least two independent navigation receivers/sensors providing lateral and vertical position or displacement information, typically with the first pilot's station receiving information from one and the second pilot's station receiving information from the other, the navigation receivers/sensors shall meet the criteria specified in the AFM;

(*d*) at least two approved radio altimeter systems that need the performance criteria outlined in the AFM, typically with the first pilot's station receiving information from one and the second pilot's station receiving information from the other;

(*e*) failure detection, annunciation and warning capability as specified in the AFM;

(*f*) missed approach guidance provided by one or more of the following means—

(i) attitude displays that include calibrated pitch attitude markings, or a pre-established computed pitch command display; or

(ii) an approved flight path angle display; or

(iii) an automatic or flight guidance go-around capability;

(*g*) suitable forward and side flight deck visibility for each pilot, as specified in the AFM;

(*h*) suitable windshield rain removal, ice protection, or defog capability as specified in the AFM;

(4) Airborne systems for CAT IIIC minima less than RVR 75 m (300 ft). The following equipment in addition to the instrument and navigation equipment required by these Regulations for IFR flight and CAT II, CAT IIIA and CAT IIIB operations is the minimum aircraft equipment required for CAT IIIC—

(*a*) a Fail Operational Automatic Flight Control System, or manual flight guidance system designed to meet fail operational system criteria, or a hybrid system in which both the fail-passive automatic system and the monitored manual flight guidance components provide approach and flare guidance to touchdown, and in combination provide full fail operational capability; and

(*b*) a fail operational automatic, manual, or hybrid rollout control system.

Aeroplanes equipped with head-up displays (HUD) and/or enhanced vision systems (EVS)

13. Where aircraft are equipped with HUD and/or EVS, the use of such systems to gain operational benefit shall be approved by the State of the Operator.

PART III
Communications Equipment

Radio equipment

14.—(1) [AAC] No person may operate an aircraft unless it is equipped with radio communication equipment required for the kind of operation being conducted.

(2) [AAC] All aircraft operated in VFR as a controlled flight, in IFR, at night, extended flight over water, or over land designated by the Authority as especially difficult for search and rescue, shall be equipped with radio communication equipment—

(*a*) capable of conducting two-way communication at any time with air traffic services or aeronautical stations;

(*b*) capable of conducting communications on those frequencies prescribed by the Authority;

(*c*) capable of receiving meteorological information at any time during the flight;

(*d*) capable of conducting communications on the aeronautical emergency frequency 121.5 MHz;

(*e*) approved and installed in accordance with the requirements applicable to them, including the minimum performance requirements;

(*f*) installed such that the failure of any single unit required for communication equipment, will not result in the failure of another unit required for communications purposes; and

(*g*) meeting any other requirements as prescribed by the Authority;

(*h*) the requirements in subregulations from (*a*) to (*c*) of this subregulation are considered fulfilled if the ability to conduct the communications specified therein is established during radio propagation conditions which are normal for the route.

(3) [AAC] For flights in defined portions of airspace or on routes where a Required Communications Performance (RCP) type has been prescribed, the aeroplane shall, in addition to the requirements in subregulations (1) and (2) of this Regulation—

(*a*) be provided with communication equipment which will enable it to operate in accordance with the prescribe RCP type(s); and

(*b*) be authorized by the Authority for operations in such airspace.

(4) [AOC] No person may operate an aircraft in commercial air transport operations, or as otherwise specified by the Authority, unless it is equipped with two independent radio communications systems, appropriate to the route and airspace used.

(5) [AAC] When more than one communications equipment unit is required, each shall be independent of the other or others to the extent that a failure in any one will not result in failure of any other.

Flight crew and crew member interphone system for aeroplanes

15.—(1) [CAT] No person may operate an aeroplane in commercial air transport operations on which a flight crew of more than one is required unless it is equipped with a flight crew interphone system, including headsets and microphones, not of a handheld type, for use by all members of the flight crew.

(2) [CAT] No person may operate an aeroplane in commercial air transport operations with a maximum certified take-off mass exceeding 15,000 kg, or having an approved passenger seating capacity of 19 or more, or having a flight crew compartment door, unless it is equipped with a crew member interphone system that—

(*a*) operates independently of the public address system except for handsets, headsets, microphones, selector switches and signalling devices;

(*b*) provides a means of two-way communication between the flight-crew compartment and each—

(i) passenger compartment;

(ii) galley located other than on a passenger deck level; and

(iii) remote crew compartment that is not on the passenger deck and is not easily accessible from a passenger compartment;

(*c*) is readily accessible for use—

(i) from each of the required flight crew stations in the flight crew compartment; and

(ii) at required cabin crew member stations close to each separate or pair of floor level emergency exits;

(*d*) has an alerting system incorporating aural or visual signals for use by flight crew members to alert the cabin crew, and for use by cabin crew members to alert the flight crew in the event of suspicious activity or security breaches in the cabin;

(*e*) has a means for the recipient of a call to determine whether it is a normal call or an emergency call;

(*f*) provides on the ground a means of two-way communication between ground personnel and at least two flight crew members.

Public address system—AOC holders

16.—(1) [AOC] No AOC holder may operate a passenger carrying aeroplane with a maximum approved passenger seating configuration of more than 19 unless a public address system is installed that—

(*a*) operates independently of the interphone systems except for handsets, headsets, microphones, selector switches and signalling devices;

(*b*) be readily accessible for immediate use from each required flight crew member station;

(*c*) for each required floor level passenger emergency exit which has an adjacent cabin crew seat, has a microphone which is readily accessible to the seated cabin crew member, except that one microphone may serve more than one exit, provided the proximity of the exits allows unassisted verbal communication between seated cabin crew members;

(*d*) is capable of operation within 10 seconds by a cabin crew member at each of those stations in the compartment from which its use is accessible;

(*e*) is audible and intelligible at all passenger seats, toilets, and cabin crew seats and workstations.

(2) [AOC] No AOC holder may operate a passenger carrying helicopter with a maximum approved passenger seating configuration of more than 19 unless a public address system is installed that—

(*a*) operates independently of the interphone systems except for handsets, headsets, microphones, selector switches and signalling devices;

(*b*) be readily accessible for immediate use from each required flight crew member station;

(*c*) for each required floor level passenger emergency exit which has an adjacent cabin crew seat, has a microphone which is readily accessible to the seated cabin crew member, except that one microphone may serve more than one exit, provided the proximity of the exits allows unassisted verbal communication between seated cabin crew members.

(*d*) is capable of operation within 10 seconds by a cabin crew member at each of those stations in the compartment from which its use is accessible;

(*e*) is audible and intelligible at all passenger seats, toilets, and cabin crew seats and workstations;

(*f*) following a total failure of the normal electrical generating system, provide reliable operation for a minimum of 10 minutes.

(3) [AOC] No AOC holder may operate a passenger carrying helicopter with a maximum approved passenger seating configuration of more than 9 but less than 19 without a public address system installed unless—

(*a*) the helicopter is designed without a bulkhead between pilot and passengers; and

(*b*) the operator is able to demonstrate in a manner acceptable to the Authority that when in flight, the pilot's voice is audible and intelligible at all passenger seats.

Microphones

17.—(1) Equippage: no person may operate the following aircraft or in the following conditions unless the aircraft is equipped with a boom or throat microphone available at each required flight crew member flight duty station—

(*a*) [AAC—Aeroplane] any aeroplane in IFR conditions;

(*b*) [AOC—Aeroplane] any aeroplane in commercial air transport operations;

(*c*) [AAC—Helicopter] any helicopter.

(2) Usage: All flight crew members required to be on flight deck duty shall communicate through boom or throat microphones under the following operations or conditions—

(*a*) [AAC—Aeroplane] During IFR operations;

(*b*) [AOC—Aeroplane] Below the transition level/altitude;

(*c*) [AAC—Helicopter] At all times.

PART IV
Navigation Equipment

General

18.—(1) [AAC] No person may operate an aircraft unless it is equipped with navigation equipment that will enable it to proceed in accordance with—

(*a*) its operational flight plan; and

(*b*) the requirements of air traffic services.

(2) No person may operate flights in defined portions of airspace, including MNPS, RVSM, or any other routes where a navigation specification for performance-based navigation (PBN) has been prescribed unless it—

(*a*) has received authorization by the Authority for such operations; and

(*b*) is equipped with the navigation equipment to enable it to operate in accordance with the prescribed navigation specification(s); and

(*c*) is equipped with navigation equipment that continuously provides information to the flight crew of adherence to or departure from track with respect to the required degree of accuracy at any point along that track.

(3) No person may operate an aircraft unless it has sufficient navigation equipment that will enable the aircraft to navigate in accordance with subregulations (1) and (2), such that—

(*a*) in the event of the failure of any piece of navigation equipment at any stage of flight, the remaining equipment will enable the aircraft to continue to navigate; and

(*b*) the failure of any single unit required for either communications or navigation purposes or both will not result in the failure of another unit required for communications or navigation purposes.

(4) The equipment requirements in subregulation (1) do not apply in instances where the Authority has authorized VFR by visual reference to landmarks.

(5) [AAC] No person may operate an aeroplane under IFR, or under VFR over routes that cannot be navigated by reference to visual landmarks, unless the aeroplane is equipped with navigation equipment in accordance with the requirements of air traffic services in the area(s) of operation.

(6) [AAC] All aircraft intended to land in IMC or at night shall be provided with radio navigation equipment capable of receiving signals providing guidance to—

(*a*) a point from which a visual landing can be effected;

(*b*) each aerodrome at which it is intended to land in IMC; and

(*c*) any designated alternate aerodromes.

MNPS

19.—(1) [AAC] No person may operate an aeroplane in MNPS airspace unless it is equipped with navigation equipment that—

(*a*) continuously provides indications to the flight crew of adherence to or departure from track to the required degree of accuracy at any point along that track; and

(*b*) has been authorized by the Authority for MNPS operations concerned through either operations specifications for AOC holders or letter of authorization for general aviation;

(*c*) equipment shall comply with minimum navigation performance specifications prescribed in ICAO Doc 7030 in the form of Regional Supplementary Procedures.

(2) [AAC] The navigation equipment required for operations in MNPS airspace shall be visible and usable by either pilot seated at his duty station.

(3) [AAC] For unrestricted operation in MNPS airspace, an aeroplane shall be equipped with two independent Long-Range Navigation Systems (LRNS).

(4) [AAC] For operation in MNPS airspace along notified special routes, an aeroplane shall be equipped with one LRNS, unless otherwise specified.

Reduced vertical separation minimum

20.—(1) [AAC] For flights in defined portions of airspace where, based on Regional Air Navigation Agreement, a reduced vertical separation minimum (RVSM) of 300 m (1,000 ft) is applied between FL 290 and FL 410 inclusive, an aeroplane—

(*a*) shall be provided with equipment that is capable of—

(i) indicating to the flight crew the flight level being flown;

(ii) automatically maintaining a selected flight level;

(iii) providing an alert to the flight crew when a deviation occurs from the selected flight level; the threshold for the alert shall not exceed + or – 90 m (300 ft); and

(iv) automatically reporting pressure-altitude; and

(*b*) shall be authorized for operations in the airspace concerned by—

(i) the State of Operator for AOC holders through operations specifications; or

(ii) the State of Registry for non-AOC holders through letter of authorization;

(*c*) shall satisfy the demonstration requirements specified in IS 7:20 contained in the Schedule hereto as to the altimetry system performance requirements for vertical navigation performance capability.

(2) Prior to granting an RVSM approval required by subregulation (1) (*b*), the Authority shall be satisfied that—

(*a*) the vertical navigation, performance capability of the aeroplane satisfies the requirements specified in IS 7:20 contained in the Seventh Schedule hereto;

(*b*) the operator has instituted appropriate procedures in respect of continued airworthiness (maintenance and repair) practices and programmes; and

(*c*) the operator has instituted appropriate flight crew procedures for operations in RVSM airspace;

(*d*) an RVSM approval is valid globally on the understanding that any operating procedures specific to a given region will be stated in the operations manual or appropriate crew guidance.

(3) RVSM. The Authority in consultation with the State of Registry, if appropriate, shall ensure that, in respect of those aeroplanes mentioned in subregulation (1) (*b*) of this Regulation, adequate provisions exist for—

(*a*) receiving the reports of height-keeping performance issued by the monitoring agencies established in accordance with ICAO Annex 11, 3.3.4.1; and

(*b*) taking immediate corrective action for individual aircraft, or aircraft type groups, identified in such reports as not complying with the height-keeping requirements for operations in airspace where RVSM is applied.

(4) An operator with RVSM approval shall ensure that a minimum of two aeroplanes of each aircraft type grouping of the operator have their height-keeping performance monitored, at least once every two years or within intervals of 1,000 flight hours per aeroplane, whichever period is longer. If an operator aircraft type grouping consists of a single aeroplane, monitoring of that aeroplane shall be accomplished within the specified period.

(5) An operator shall ensure that each aeroplane shall be sufficiently provided with navigation equipment to ensure that, in the event of the failure of one item of equipment at any stage of the flight, the remaining equipment will enable the aeroplane to navigate in accordance with subregulations 20 (1), (2) and 20 (3) of this Regulation.

(6) RVSM: The Authority shall take appropriate action in respect of aircraft and operators found to be operating in RVSM airspace in Malaŵi without a valid RVSM approval.

(7) The Authority shall take appropriate action in respect of an operator for which it has regulatory oversight responsibility is found to be operating without the required approval in the airspace of another state.

Electronic navigation data management

21.—(1) Electronic navigation data management. [AAC] No person shall employ electronic navigation data products that have been processed for application in the air and on the ground unless the Authority has approved—

(*a*) the operator's procedures for ensuring that the process applied and the products delivered have acceptable standards of integrity and that the products are compatible with the intended function of the equipment that will use them;

(*b*) the operator's programme for continual monitoring of both process and products; and

(*c*) the operator's procedures to ensure the timely distribution and insertion of current and unaltered electronic navigation data to all aircraft that require it.

Altitude reporting transponder

22.—(1) [AAC] No person may operate an aeroplane or helicopter unless it is equipped with an operative pressure-altitude reporting transponder that operates in accordance with the requirements of Malaŵi air traffic services and the relevant provisions of ICAO Annex 10, Volume 4.

(2) [AAC] No person may operate an aircraft in airspace that requires a pressure reporting transponder unless that equipment is operative.

(3) [AOC] No person may operate an aeroplane unless it is equipped with a data source that provides pressure-altitude information with a resolution of 7.62 m (25 ft) or better.

(4) [AOC] No person may operate an aeroplane that is equipped with an automatic means of detecting airborne/on-the-ground status unless it is equipped with a Mode S transponder.

PART V
Aircraft Lights and Instrument Illumination

Required aircraft lights and instrument illumination

23.—(1) [AAC] All aircraft operated at night shall be equipped with—

(*a*) a landing light;

(*b*) navigation/position lights;

(*c*) illumination for all flight instruments and equipment that are essential for the safe operation of the aircraft;

(*d*) lights in all passenger compartments; and

(*e*) a flashlight for each crew member station (approval not required).

(2) All aircraft type certificated with aviation red or aviation white anti-collision system shall have the anti-collision system operative in both day and night. In the event of the failure of any light of the anti-collision light system, operation of the aircraft may continue to a location where repairs or replacement can be made.

Required aircraft lights and instrument illumination for commercial air transport operations

24.—(1) [AOC] No person may operate an aircraft in commercial air transport operations unless it is equipped with—

(*a*) two landing lights or a single light having two separately energized filaments;

(*b*) an anti-collision light system;

(*c*) illumination for all flight instruments and equipment that are essential for the safe operation of the aircraft;

(*d*) lights in all passenger compartments;

(*e*) a flashlight for each crew member station; and

(*f*) navigation/position lights.

(2) Lights to conform to the International regulations for preventing collisions at sea if the aircraft is a seaplane or an amphibian aircraft.

(3) For helicopters—a landing light that is trainable, at least in the vertical plane.

PART VI
Engine Instruments

Engine instruments

25.—(1) [AAC] Unless the Authority allows or requires different instrumentation for turbine engine powered aeroplanes to provide equivalent safety, no person may operate any powered aircraft without the following engine instruments—

(*a*) a means for indicating fuel quantity in each fuel tank to be used;

(*b*) an oil pressure indicator for each engine;

(*c*) an oil temperature indicator for each engine;

(*d*) a manifold pressure indicator for each altitude engine;

(*e*) a tachometer for each engine.

(2) [AOC] Unless the Authority allows or requires different instrumentation for turbine engine powered aeroplanes to provide equivalent safety, in addition to the listed equipment requirements in subregulation 21 (1), no person may operate any powered aircraft without the following engine instruments—

(*a*) a carburettor air temperature indicator for each piston engine;

(*b*) a cylinder head temperature indicator for each air-cooled piston engine;

(*c*) a fuel pressure indicator for each engine;

(*d*) a fuel flowmeter or fuel mixture indicator for each engine not equipped with an automatic altitude mixture control;

(*e*) an oil quantity indicator for each oil-tank when a transfer or separate oil reserve supply is used;

(*f*) an independent fuel pressure warning device for each engine or a master warning device for all engines with a means for isolating the individual warning circuits from the master warning device;

(*g*) a device for each reversible propeller, to indicate to the pilot when the propeller is in reverse pitch, which complies with the following—

(i) the device may be actuated at any point in the reversing cycle between the normal low pitch stop position and full reverse pitch, but it may not give an indication at or above the normal low pitch stop position;

(ii) the source of indication shall be actuated by the propeller blade angle or be directly responsive to it.

PART VII
Warning Instrument and Systems

Mach number indicator

26.—(1) [AAC] All aeroplanes with speed limitations expressed in terms of Mach number shall be equipped with a Mach number indicator.

Loss of pressurization indicator

27. [AAC] All pressurized aircraft intended to be operated at flight altitudes above 25,000 feet shall be equipped with a device to provide positive warning to the flight crew of any dangerous loss of pressurization.

Landing gear indicator position and aural warning device

28.—(1) [AAC] Each powered civil aircraft with retractable landing gear shall have a landing gear position indicator.

(2) [AOC] Each aeroplane with retractable landing gear shall have an aural warning device that functions continuously under the following conditions—

(*a*) for aeroplanes with an established approach wing-flap position, whenever the wing flaps are extended beyond the maximum certified approach climb configuration position in the Aeroplane Flight Manual and the landing gear is not fully extended and locked;

(*b*) for aeroplanes without an established approach climb wing-flap position, whenever the wing flaps are extended beyond the position at which landing gear extension is normally performed and the landing gear is not fully extended and locked.

(3) [AOC] The warning system required by subregulation (2) of this Part—

(*a*) may not have a manual shut-off;

(*b*) shall be in addition to the throttle-actuated device installed under the type certification airworthiness requirements; and

(*c*) may utilize any part of the throttle-actuated system including the aural warning device.

(4) [AOC] The flap position-sensing unit required in subregulation (2) of this Part may be installed at any suitable place in the aeroplane.

Altitude alerting system

29.—(1) [AAC] No person may operate a turbine powered aeroplane with a maximum certified take-off mass in excess of 5,700 kg or having a maximum approved passenger seating configuration of more than 9 seats, or a turbojet powered aeroplane, unless it is equipped with an altitude alerting system capable of—

(*a*) alerting the flight crew upon approaching preselected altitude in either ascent or descent; and

(*b*) alerting the flight crew by at least an aural signal, when deviating above or below a preselected altitude.

(2) [AAC] For operations in defined portions of airspace where, based on Regional Air Navigation Agreement, a VSM of 300 m (1,000 ft) is applied above FL 290, an aircraft shall be provided with equipment which is capable of providing an alert to the flight crew when a deviation occurs from the selected flight level. The threshold for the alert may not exceed ±90 m (300 ft).

Ground proximity warning system

30.—(1) [AAC] No operator may operate a turbine-powered aeroplane, or piston-engine aeroplane of a maximum certificated take-off mass in excess of 5,700kg or authorized to carry more than nine passengers, unless it is equipped with a ground proximity warning system that has a forward looking terrain avoidance function.

(2) [AAC] Each ground proximity warning system shall automatically provide, by means of aural signals which may be supplemented by visual signals, timely and distinctive warning to the flight crew of the following circumstances—

(*a*) excessive descent rate;

(*b*) excessive terrain closure rate;

(*c*) excessive altitude loss after take-off or go-around;

(*d*) unsafe terrain clearance while not in landing configuration—

(i) gear not locked down;

(ii) flaps not in a landing position; and

(*e*) excessive descent below the instrument glide path.

Weather radar

31.—(1) [AOC] No person may operate an aeroplane in commercial air transport in an area where thunderstorms or other potentially hazardous weather conditions may be expected unless it is equipped with a weather radar.

(2) [AOC] No person may operate a helicopter in commercial air transport when carrying passengers in an area where thunderstorms or other potentially hazardous weather conditions may be expected unless it is equipped with a weather radar.

Airborne collision avoidance system (ACAS)

32.—(1) [AAC] Any airborne collision avoidance system installed on an aircraft in Malaŵi shall be approved by the Authority.

(2) [AAC] Each person operating an aircraft equipped with an airborne collision avoidance system shall have that system on and operating.

(3) [AAC] No person may operate a turbine engine aeroplane for which the individual airworthiness certificate was first issued after 24 November 2005 with a maximum certificated take-off mass in excess of 15,000 kg or authorized to carry more than 30 passengers, unless it is equipped with an ACAS II.

(4) [AAC] No person may operate a turbine engine aeroplane for which the individual airworthiness certificate was first issued after 1 January 2007 with a maximum certificated take-off mass in excess of 5,700 kg but not exceeding 15,000 kg or authorized to carry more than 19 passengers, unless it is equipped with an ACAS II.

(5) [AAC] An airborne collision avoidance system shall operate in accordance with the relevant provisions of ICAO Annex 10, Volume IV.

(6) [AOC] No person may operate a turbine powered aeroplane with a maximum certificated take-off mass in excess of 5700 kg or authorized to carry more that 19 passengers, unless it is equipped with an AC AS II.

Forward looking wind shear warning system-turbojet aeroplanes

33.—(1) [AOC] All turbojet aeroplanes of a maximum certificated take-off mass in excess of 5700 kg or authorized to carry more than nine passengers should be equipped with a forward-looking wind shear warning system.

(2) [AOC] The system should be capable of providing the pilot with a timely aural and visual warning of wind shear ahead of the aircraft and the information required to permit the pilot to safely commence and continue a missed approach or go-around or to execute an escape manoeuvre if necessary.

(3) [AOC] The system should also provide an indication to the pilot when the limits specified for the certification of automatic landing equipment are being approached, when such equipment is in use.

PART VIII
Flight Recorders

Division 1—General

Flight recorders systems

34.—(1) Crash protected flight recorders, for both aeroplanes and helicopters, comprise four systems—

(*a*) a Flight Data Recorder (FDR);

(*b*) a Cockpit Voice Recorder (CVR);

(*c*) an Airborne Image Recorder (AIR); and

(*d*) a Data-Link Recorder (DLR).

(i) Image and data link information may be recorded on either the CVR or the FDR.

(2) Lightweight flight recorders for aeroplanes comprise four systems—

(*a*) an Aircraft Data Recording System (ADRS);

(*b*) a Cockpit Audio Recording System (CARS);

(*c*) an Airborne Image Recording System (AIRS); and

(*d*) a Data Link Recording System (DLRS);

(i) Image and data link information may be recorded on either the CARS or the ADRS.

(3) Combination recorders (FDR/CVR) may be used to meet the equipage requirements for helicopters.

Construction and installation

35.—(1) Flight recorders systems shall be constructed, located and installed so as to provide maximum practical protection for the recordings in order that the recorded information may be preserved, recovered and transcribed—

(*a*) the flight recorder systems containers shall—

(i) be painted a distinctive orange or yellow colour;

(ii) carry reflective material to facilitate their location; and

(iii) have securely attached an automatically activated underwater locating device.

(2) Flight recorder systems shall be installed so that—

(*a*) the probability of damage to the recordings is minimized;

(*b*) they receive electrical power from a bus that provides the maximum reliability for operation of the flight recorder systems without jeopardizing service to essential or emergency loads;

(*c*) there is an aural or visual means for pre-flight checking that the flight recorder systems are operating properly;

(*d*) if the flight recorder systems have a bulk erasure device, the installation shall be designed to prevent operation of the device during flight time or crash impact; and

(*e*) they meet the prescribed crashworthiness and fire protection specifications.

(3) The flight recorder systems, when tested by methods approved by the appropriate certificating authority, shall be demonstrated to be suitable for the environmental extremes over which they are designed to operate.

(4) Means shall be provided for an accurate time correlation between the flight recorder systems recordings.

(5) The manufacturer shall provide the appropriate certificating authority with the following information in respect of the flight recording systems—

(*a*) manufacturer's operating instructions, equipment limitations and installation procedures;

(*b*) manufacturer's test reports; and

(*c*) for aeroplane flight recording systems, parameter origin or source and equations which relate counts to units of measurement; and

(6) The term "appropriate certificating authority" refers to the State of Design.

Operation

36.—(1) Flight recorder systems shall not be switched off during flight time.

(2) To preserve flight recorder records, flight recorders shall be deactivated upon completion of flight time following an accident or incident. The flight recorders shall not be reactivated before their disposition as determined in accordance with the accident/incident regulations of Malaŵi.

(3) The removal of the flight recorder records from the aircraft will be determined by the investigation authority in the State conducting the investigation with due regard to the seriousness of an occurrence and the circumstances, including the impact on the operation.

Continued serviceability and inspection of flight recorder systems

37.—(1) The operator shall conduct operational checks and evaluations of recordings from the flight recorder systems to ensure the continued serviceability of the recorders.

(2) The procedures for the inspections of the flight recorder systems are given in IS 7:37 contained in the Schedule hereto.

Flight recorder electronic documentation

38. Operators shall provide to accident investigation authorities the documentation of flight recording systems parameters in electronic format and in accordance with industry specifications.

Combination recorders

39.—(1) [AAC] No person may operate an aeroplane of a maximum certificated take-off mass over 5,700kg required to be equipped with an FDR and a CVR unless it is equipped with—

(*a*) an FDR and a CVR; or

(*b*) two combination recorders (FDR/CVR).

(2) [AOC] No person may operate an aeroplane of a maximum certificated take-off mass of over 5,700 kg and which is required to be equipped with both a FDR and CVR unless—

(*a*) the aeroplane is equipped with an FDR and a CVR or alternatively equipped with two combination recorders (FDR/CVR):

(*b*) the aeroplane is equipped with two combination recorders (FDR/CVR) for aeroplanes type certificated on or after 1 January 2016.

(3) [AOC] No person may operate an aeroplane of a maximum certificated take-off mass of over 15000 kg which is required to be equipped with both a CVR and an FDR and type certificated on or after 1 January 2016, unless—

(*a*) the aeroplane is equipped with two combination recorders (FDR/CVR); and

(*b*) one recorder is located as close to the cockpit as practicable and the other recorder located as far aft as practicable.

(4) [AOC] No person may operate a multi-engined turbine-powered aeroplane of a maximum certificated take-off mass of 5,700 kg or less, unless—

(*a*) the aeroplane is equipped with an FDR and/or a CVR; or

(*b*) the aeroplane is equipped with one combination recorder (FDR/CVR).

Division 2—Flight Data Recorders (FDR) and Aircraft Data Recording Systems (ADRS)

Types and parameters

40.—(1) Aeroplane: Aeroplane FDR shall record the parameters as listed in IS 7:40 (1) contained in the Schedule hereto for the following FDR types—

(*a*) types I and IA FDR shall record the parameters required to determine accurately the aeroplane flight path, speed, attitude, engine power, configuration and operation;

(*b*) types II and IIA FDRs shall record the parameters required to determine accurately the aeroplane flight path, speed, attitude, engine power and configuration of lift and drag devices.

(2) Helicopter: Helicopter FDR shall record the parameters as listed in IS 7:40 (2) contained in the Schedule hereto for the following FDR types—

(*a*) type IV FDRs shall record the parameters required to determine accurately the helicopter flight path, speed, attitude, engine power and operation;

(*b*) type IVA FDRs shall record the parameters required to determine accurately the helicopter flight path, speed, attitude, engine power, operations and configuration;

(*c*) type V FDRs shall record the parameters required to determine accurately the helicopter flight path, speed, attitude and engine power.

Aircraft equippage for operation

41. No person may operate the following aeroplane unless it is equipped with a flight data recorder capable of recording the aural environment of the flight deck during flight time—

(*a*) [AAC] all turbine-engined aeroplanes of a maximum certificated take-off mass of 5,700kg or less for which a type certificate is first issued on or after 1 January 2016 shall be equipped with—

(i) a type II FDR; or

(ii) a class C AIR capable of recording flight path and speed parameters displayed to the pilot(*s*); or

(iii) an ADRS capable of recording the essential parameters defined in the Table in IS 7:41;

(iv) type certificate first issued refers to the date of issuance of the original "Type Certificate" for the aeroplane type, not the date of certification of particular aeroplane variants or derivative models;

(*b*) [AOC] all turbine-engined aeroplanes of a maximum certificated take-off mass of 5,700kg or less for winch the individual certificate of airworthiness is first issued on or after 1 January 2016 shall be equipped with—

(i) a type II FDR; or

(ii) a class C AIR capable of recording flight path and speed parameters displayed to the pilot(*s*); or

(iii) an ADRS capable of recording the essential parameters defined in the Table in IS: 7:41 contained in the Schedule hereto.

(*c*) [AAC] all aeroplanes of a maximum certificated take-off mass of over 27,000 kg for which the individual certificate of airworthiness is first issued on or after 1 January 1989 shall be equipped with a Type I FDR;

(*d*) [AAC] all aeroplanes of a maximum certificated take-off mass of over 5,700 kg, up to and including 27,000 kg, for which the individual certificate of airworthiness is first issued on or after 1 January 1989, shall be equipped with a Type II FDR;

(*e*) [AOC] all multi-engined turbine-engined aeroplanes of a maximum certificated take-off mass of 5,700kg or less for which the individual certificate of airworthiness is first issued on or after 1 January 1990 should be equipped with a Type IIA FDR;

(*f*) [AOC] all turbine-engined aeroplanes, for which the individual certificate of airworthiness was first issued on or after 1 January 1987 but before 1 January 1989, with a maximum certificated take-off mass of over 5,700 kg, except those in regulation 35, shall be equipped with an FDR which shall record time, altitude, airspeed, normal acceleration and heading;

(*g*) [AOC] all turbine-engined aeroplanes, for which the individual certificate of airworthiness was first issued on or after 1 January 1987 but before 1 January 1989, with a maximum certificated take-off mass of over 5,700kg, except those in regulation 35, should be equipped with an FDR which shall record time, altitude, airspeed, normal acceleration, heading and such additional parameters as are necessary to determine pitch attitude, roll attitude, radio transmission keying and power on each engine;

(*h*) [AOC] all turbine-engined aeroplanes, for which the individual certificate of airworthiness was first issued on or after 1 January 1987 but before 1 January, 1989, with a maximum certificated take-off mass of over 27,000kg that are of types of which the prototype was certificated by the appropriate national authority after 30 September 1969 shall be equipped with a Type II FDR;

(*i*) [AOC] all turbine-engined aeroplanes, for which the individual certificate of airworthiness was first issued before 1 January 1987, with a maximum certificated take-off mass of over 5,700kg shall be equipped with an FDR which shall record time, altitude, airspeed, normal acceleration and heading;

(*j*) [AOC] all turbine-engined aeroplanes, for which the individual certificate of airworthiness was first issued before 1 January 1987, with a maximum certificated take-off mass of over 27,000kg that are of types of which the prototype was certificated by the appropriate national authority after 30 September 1969 should be equipped with an FDR which should record, in addition to time, altitude, airspeed, normal acceleration, and heading, such additional parameters as are necessary to meet the objectives of determining—

(i) the attitude of the aeroplane in achieving its flight path; and

(ii) the basic forces acting upon the aeroplane resulting in the achieved flight path and the origin of such basic forces.

(*k*) [AAC] all aeroplanes of a maximum certificated take-off mass of over 5,700kg for which the individual certificate of airworthiness is first issued after 1 January 2005 shall be equipped with a Type IA FDR;

(*l*) [AOC] all aeroplanes which are required to record normal acceleration, lateral acceleration and longitudinal acceleration for which a type certificate is first issued on or after 1 January 2016 and which are required to be fitted with an FDR shall record those parameters at a maximum sampling and recording interval of 0.0625 seconds;

(*m*) [AAC] all aeroplanes which are required to record pilot input and/or control surface position of primary controls (pitch, roll, yaw) for which a type certificate is first issued on or after 1 January 2016 and which are required to be fitted with an FDR shall record those parameters at a maximum sampling and recording interval of 0.125 seconds;

(2) No person may operate the following helicopter unless it is equipped with a flight data recorder capable of recording the aural environment of the flight deck during flight time—

(*a*) [AAC] all helicopters with a maximum certificated take-off mass of over 3,180kg for which the individual certificate of airworthiness is first issued on or after 1 January 2016 shall be equipped with a Type IVA FDR;

(*b*) [AAC] all helicopter with a certificated take-off mass of over 7,000kg, or having a passenger seating configuration of more than nineteen, for which the individual certificate of airworthiness is first issued on or after 1, January 1989 shall be equipped with a Type IV FDR;

(*c*) [AAC] all helicopters with a maximum certificated take-off mass of over 3,180kb, up to and including 7,000kg, for which the individual certificate of airworthiness is first issued on or after 1 January 1989 shall be equipped with a Type V FDR.

Discontinuation

42. Flight data recorder media not acceptable for use in aircraft registered in Malaŵi or operated in commercial air transport operations in Malaŵi, are—

(*a*) engraving metal foil;

(*b*) photographic film;

(*c*) analogue data using frequency modulation (FM);

(*d*) magnetic tape.

Duration

43. FDRs shall be capable of retaining the information recorded during the last—

(*a*) Type I and II—25 hours of operation.

(*b*) Type IIA—30 minutes of operation.

(*c*) Type IV, IVA and V—10 hours of operation.

Division 3—Cockpit Voice Recorders (CVR) and Cockpit Audio Recording Systems (CARS)

Signals to be recorded—CVR and CARS

44.—(1) The CVR, and CARS as applicable to aeroplanes, shall start to record prior to the aircraft moving under its own power and record continuously until the termination of the flight when the aircraft is no longer capable of moving under its own power.

(2) In addition to subregulation 44 (1) above, the CVR and CARS shall start to record as early as possible during the cockpit checks prior to engine start at the beginning of the flight until the cockpit checks immediately following engine shutdown at the end of the flight.

(3) The CVR shall record on four separate channels, or more, at least the following—

(*a*) voice communication transmitted from or received in the aircraft by radio;

(*b*) aural environment on the flight deck;

(*c*) voice communication of flight crew members on the flight deck using the aircraft's interphone system, if installed;

(*d*) digital communications with ATS, unless recorded by the FDR.

(4) The CARS shall record on two separate channels, or more, at least the following—

(*a*) voice communication transmitted from or received in the aeroplane by radio;

(*b*) aural environment on the flight deck; and

(*c*) voice communication of flight crew members on the flight deck using the aeroplane's interphone, if installed.

(5) The recorder shall be capable of recording on at least four channels simultaneously, except for the recorder in subregulation 41 (1) (*d*) in the preferred channel allocation as follows—

(*a*) channel 1—co-pilot headphones and live boom microphone;

(*b*) channel 2—pilot headphones and live boom microphone;

(*c*) channel 3—area microphone;

(*d*) channel 4—time reference plus the third and fourth crew members.

(6) On a tape-based CVR, to ensure accurate time correlation between channels, the recorder shall record in an in-line format. If a bi-directional configuration is used, the in-line format and channel allocation shall be retained in both directions.

Aircraft equipage for operation

45.—(1) No person may operate an aeroplane unless it is equipped with a cockpit voice recorder as listed below—

(*a*) [AAC] all turbine-engined aeroplanes for which a type certificate is first issued on or after 1 January 2016 and required to be operated by more than one pilot shall be equipped with either a CVR or a CARS;

(*b*) [AAC] all turbine-engined aeroplanes for which the individual certificate of airworthiness is first issued on or after 1 January 2016 and required to be operated by more than one pilot should be equipped with either a CVR or a CARS;

(*c*) [AAC] all aeroplanes of a maximum certificated take-off mass of over 27,000kg for which the individual certificate of airworthiness is first issued on or after 1 January 1987 shall be equipped with a CVR;

(*d*) [AAC] all aeroplanes of a maximum, certificated take-off mass of over 5,700kg, up to and including 27,000kg, for which the individual certificate of airworthiness is first issued on or after 1 January 1987, should be equipped with a CVR;

(*e*) [AOC] all aeroplanes of a maximum certificated take-off mass of over 5,700kg for which the individual certificate of airworthiness is first issued on or after 1 January 2003, shall be equipped with a CVR capable of retaining the information recorded during at least the last two hours of its operation;

(*f*) [AOC] all aeroplanes of a maximum certificated take-off mass of over 5,700kg for which the individual certificate of airworthiness is first issued on or after 1 January 1987 shall be equipped with a CVR;

(*g*) [AOC] all turbine-engined aeroplanes, for which the individual certificate of airworthiness was first issued before 1 January 1987, with a maximum certificated take-off mass of over 27,000kg that are of types of which the prototype was certificated by the appropriate national authority after 30 September 1969 shall be equipped with a CVR;

(*h*) [AOC] all turbine-engined aeroplanes, for which the individual certificate of airworthiness was first issued before 1 January 1987, with a maximum certificated take-off mass of over 5,700kg up to

and including 27,000kg that are of types of which the prototype was certificated by the appropriate national authority after 30 September 1969 should be equipped with a CVR.

(2) No person may operate a helicopter unless it is equipped with a cockpit voice recorder as listed below—

(*a*) [AAC] all helicopters of a maximum certificated take-off mass of over 7,000kg for which the individual certificate of airworthiness is first issued on or after 1 January 1987 shall be equipped with a CVR; for helicopters not equipped with an FDR, at least main rotor speed shall be recorded on the CVR;

(*b*) [AAC] all helicopters of a maximum certificated take-off mass of over 3,180kg for which the individual certificate of airworthiness is first issued on or after 1 January 1987 should be equipped with a CVR; for helicopters not equipped with an FDR, at least main rotor speed shall be recorded on the CVR;

(*c*) [AAC] all helicopters of a maximum certificated take-off mass of over 7,000kg for which the individual certificate of airworthiness is first issued on or after 1 January 1987 should be equipped with a CVR; for helicopters not equipped with an FDR, at least main rotor speed shall be recorded on the CVR;

Discontinuation

46. CVS media not acceptable for use in aircraft registered in Malaŵi or operated in commercial air transport operations in Malaŵi, are magnetic tape and wire.

Duration

47. A CVR shall be capable of retaining the information recorded during at least the last—

(*a*) 30 minutes of its operation; or

(*b*) 2 hours, beginning no later than 1 January 2016.

Division 4—Data Link Recorders (DLR) and Data Link Recording Systems (DLRS)

Application

48.—(1) No person may operate an aeroplane or helicopter for which the individual certificate of airworthiness is first issued on or after 1 January 2016, which utilize any of the data link communications applications listed in IS 7:48 and are required to carry a CVR, unless the aircraft records on a flight recorder the data link communications messages.

(2) No person may operate an aeroplane or helicopter modified on or after 1 January 2016, which utilize any of the data link communications applications listed in IS 7:48 contained in the Schedule hereto and are required to carry a CVR, unless the aircraft records on a flight recorder the data link communications messages.

(3) No person may operate an aeroplane or helicopter where the aircraft flight path is authorized or controlled through the use of data link messages, unless all data link messages, both uplinks (to the aircraft) and downlinks from the aircraft) are recorded on the aircraft. As far as practicable, the time the messages were displayed to the flight crew and the time of the responses shall be recorded.

Duration

49. The minimum recording duration shall be equal to the duration of the CVR.

Correlation

50. Data link recording shall be correlated to the recorded cockpit audio.

Airborne image recorder (AIR) and airborne image recording system (AIRS)

51.—(1) Airborne image recorders are classified as follows—

(*a*) a class A AIR captures the general cockpit area in order to provide data supplemental to conventional flight recorders;

(*b*) a class B AIR captures data link message displays;

(*c*) a class C AIR captures instruments and control panels;

(*d*) to respect crew privacy, the cockpit area view may be designed as far as practical to exclude the head and shoulders of crew members whilst seated in their normal operating position;

(*e*) a Class C AIR may be considered as a means for recording flight data where it is not practical or is prohibitively expensive to record on an FDR, or where an FDR is not required.

(2) When AIRs are used, the AIR must start to record prior to the aircraft moving under its own power and record continuously until the termination of the flight when the aircraft is no longer capable of moving under its own power. In addition, depending on the availability of electrical power, the AIR must start to record as early as possible during the cockpit checks prior to engine start at the beginning of the flight until the cockpit checks immediately following engine shutdown at the end of the flight.

PART IX
Emergency, Rescue and Survival Equipment

Emergency equipment—all aircraft

52.—(1) [AAC] Each item of emergency and flotation equipment shall be—

(*a*) readily accessible to the crew and, with regard to equipment located in the passenger compartment, to passengers without appreciable time for preparatory procedures;

(*b*) clearly identified and clearly marked to indicate its method of operation;

(*c*) marked as to date of last inspection; and

(*d*) marked as to contents when carried in a compartment or container.

Emergency exit equipment—passengers

53.—(1) No person shall operate an aeroplane without the following emergency exit equipment—

(*a*) [AAC] each passenger-carrying land plane emergency exit (other than over-the-wing) that is more than 6 feet from the ground with the aeroplane on the ground and the landing gear extended, shall have an approved means to assist the occupants in descending to the ground;

(*b*) [AAC] each passenger emergency exit, its means of access, and its means of opening shall be conspicuously marked by a sign visible to occupants approaching along the main passenger aisle;

(*c*) [AAC] each passenger-carrying aeroplane shall have an emergency lighting system, independent of the main lighting system that—

(i) illuminates each passenger exit marking and locating sign;

(ii) provides enough general lighting in the passenger cabin; and

(iii) [AOC] includes floor proximity emergency escape path marking;

(*d*) [AAC] each passenger emergency exit and the means of opening that exit from the outside shall be marked on the outside of the aeroplane;

(*e*) [AAC] each passenger-carrying aeroplane shall be equipped with a slip-resistant escape route that meets the requirements under which that aeroplane was type certified;

(*f*) each passenger carrying aeroplane shall meet the detailed requirements contained in IS: 7:53 contained in the Schedule hereto.

(2) No person shall operate a helicopter certificated with a maximum take-off mass of 7,000 pounds or less and nine or less passenger seats without the following emergency exit equipment—

(*a*) number and location—

(i) there must be at least one emergency exit on each side of the cabin readily accessible to each passenger; one of these exits must be usable in any probable attitude that may result from a crash;

(ii) doors intended for normal use may also serve as emergency exits, provided that they meet the requirements of this Regulation;

(iii) if emergency flotation devices are installed, there must be an emergency exit accessible to each passenger on each side of the cabin that is shown by test, demonstration, or analysis to—

(A) be above the waterline; and

(B) be open without interference from flotation devices, whether stowed or deployed;

(*b*) type and operation; each emergency exit prescribed by subregulation (1) of this Regulation—

(i) consists of a movable window or panel, or additional external door, providing an unobstructed opening that will admit a 19-by 26-inch ellipse;

(ii) have simple and obvious methods of opening, from the inside and from the outside, which do not require exceptional effort;

(iii) be arranged and marked so as to be readily located and opened even in darkness; and

(iv) be reasonably protected from jamming by fuselage deformation;

(*c*) ditching emergency exits for passengers; if certification with ditching provisions is requested, the markings required by subregulation (2) (*a*) (iii) must be designed to remain visible if the rotorcraft is capsized and the cabin is submerged.

(3) No person shall operate a helicopter certificated with a maximum take-off mass of more than 20,000 pounds and ten or more passenger seats without the following emergency exit equipment—

(*a*) passenger emergency exits and openings; openings with dimensions larger than those specified below may be used, regardless of shape, if the base of the opening has a flat surface of not less than the specified width. For the purpose of this part, the types of passenger emergency exit shall be as follows—

(i) Type: this type shall have a rectangular opening of not less than 24 inches wide by 48 inches high, with corner radii not greater than one-third the width of the exit, in the passenger area in the side of the fuselage at floor level and as far away as practicable from areas that might become potential fire hazards in a crash;

(ii) Type II: this type is the same as Type I, except that the opening shall be at least 20 inches wide by 44 inches high;

(iii) Type III: this type is the same as Type I, except that—

(A) the opening shall be at least 20 inches wide by 36 inches high; and

(B) the exits need not be at floor level.

(iv) Type IV: this type shall have a rectangular opening of not less than 19 inches wide by 26 inches high, with corner radii not greater than one-third the width of the exit, in the side of the fuselage with a step-up inside the rotorcraft of not more than 29 inches;

(*b*) passenger emergency exits; side-of-fuselage; emergency exits shall be accessible to the passengers and, except as provided in (3) (*d*) of this subregulation, must be provided in accordance with the following table: Emergency exits for each side of the fuselage:

Passenger seating capacity	Emergency exits for each side of the fuselage			
	Type I	Type II	Type III	Type IV
1 through 10				1
11 through 19			1 or	2
20 through 39		1		1
40 through 59	1			1
60 through 79	1		1 or	2

(*c*) passenger emergency exits; other than side-of-fuselage: in addition to the requirements of subregulation (3) (*b*) of this Regulation;

(i) there shall be enough openings in the top, bottom, or ends of the fuselage to allow evacuation with the rotorcraft on its side; or

(ii) the probability of the rotorcraft coming to rest on its side in a crash landing must be extremely remote;

(*d*) ditching emergency exits for passengers: if the helicopter was certificated with ditching provisions, ditching emergency exits shall be provided in accordance with the following—

(i) for rotorcraft that have a passenger seating configuration, excluding pilots seats, of nine seats or less, one exit above the waterline in each side of the rotorcraft, meeting at least the dimensions of a Type IV exit;

(ii) for rotorcraft that have a passenger seating configuration, excluding pilots seats, of 10 seats or more, one exit above the waterline in a side of the rotorcraft meeting at least the dimensions of a Type III exit, for each unit (or part of a unit) of 35 passenger seats, but no less than two such exits in the passenger cabin, with one on each side of the rotorcraft; however, where it has been shown through analysis, ditching demonstrations, or any other tests found necessary, that the evacuation capability of the rotorcraft during ditching is improved by the use of larger exits, or by other means, the passenger seat to exit ratio may be increased;

(iii) flotation devices, whether stowed or deployed, may not interfere with or obstruct the exits;

(*e*) ramp exits: one Type I exit only, or one Type II exit only, that is required in the side of the fuselage under subregulation (2) of this Regulation, may be installed instead in the ramp of floor ramp rotorcraft if—

(i) its installation in the side of the fuselage is impractical; and

(ii) its installation in the ramp meets emergency exit access requirements in subregulation (7) of this Regulation.

(4) Emergency exit arrangement—

(*a*) each emergency exit shall consist of a movable door or hatch in the external walls of the fuselage and must provide an unobstructed opening to the outside;

(*b*) each emergency exit shall be openable from the inside and from the outside;

(*c*) the means of opening each emergency exit shall be simple and obvious and may not require exceptional effort;

(*d*) there shall be means for locking each emergency exit and for preventing opening in flight inadvertently or as a result of mechanical failure;

(*e*) there shall be means to minimize the probability of the jamming of any emergency exit in a minor crash landing as a result of fuselage deformation under the ultimate inertial forces—

(i) upward—1.5g;

(ii) forward—4.0g;

(iii) sideward—2.0g;

(iv) downward—4.0g.

(*f*) except as provided in subregulation (*h*), of this Regulation each land-based rotorcraft emergency exit must have an approved slide as stated in this subregulation, or its equivalent, to assist occupants in descending to the ground from each floor level exit and an approved rope, or its equivalent, for all other exits, if the exit threshold is more that 6 feet above the ground—

(i) with the rotorcraft on the ground and with the landing gear extended;

(ii) with one or more legs or part of the landing gear collapsed, broken, or not extended; and

(iii) with the rotorcraft resting on its side, provided this was accomplished during the emergency evacuation test during type certification of the helicopter;

(*g*) the slide for each passenger emergency exit shall be a self-supporting slide or equivalent, and shall be designed to meet the following requirements—

(i) it shall be automatically deployed, and deployment shall begin during the interval between the time the exit opening means is actuated from inside the rotorcraft and the time the exit is fully opened, however, each passenger emergency exit which is also a passenger entrance door or a service door shall be provided with means to prevent deployment of the slide when the exit is opened from either the inside or the outside under non-emergency or normal use;

(ii) it shall be automatically erected within 10 seconds after deployment is begun;

(iii) it shall be of such length after full deployment that the lower end is self-supporting on the ground and provides safe evacuation of occupants to the ground after collapse of one or more legs or part of the landing gear;

(iv) it shall have the capability, in 25-knot winds directed from the most critical angle, to deploy and, with the assistance of only one person, to remain usable after full deployment to evacuate occupants safely to the ground;

(v) for helicopters having 30 or fewer passenger seats and having an exit threshold more than 6 feet above the ground, a rope or other assist means may be used in place of the slide specified in subregulation (*f*) of this Regulation, provided this was accomplished during the emergency evacuation test during type certification of the helicopter;

(*h*) if a rope, with its attachment, is used for compliance with subregulations (*f*), (*g*) or (*h*) of this Regulation, it shall—

(i) withstand a 400-pound static load; and

(ii) attach to the fuselage structure at or above the top of the emergency exit opening, or at another approved location if the Stowed rope would reduce the pilot's view in flight.

(5) Emergency exit marking—

(*a*) each passenger emergency exit, its means of access, and its means of opening shall be conspicuously marked for the guidance of occupants using the exits in daylight or in the dark: such markings shall be designed to remain visible for rotorcraft equipped for overwater flights if the rotorcraft is capsized and the cabin is submerged;

(*b*) the identity and location of each passenger emergency exit shall be recognizable from a distance equal to the width of the cabin;

(*c*) the location of each passenger emergency exit shall be indicated by a sign visible to occupants approaching along the main passenger aisle: there shall be a locating sign—

(i) next to or above the aisle near each floor emergency exit, except that one sign may serve two exits if both exists can be seen readily from that sign; and

(ii) on each bulkhead or divider that prevents fore and aft vision along the passenger cabin, to indicate emergency exits beyond and obscured by it, except that if this is not possible the sign may be placed at another appropriate location;

(*d*) each passenger emergency exit marking and each locating sign shall have white letters 1 inch high on a red background 2 inches high, be self or electrically illuminated, and have a minimum luminescence (brightness) of at least 160 micro lamberts: the colors may be reversed if this will increase the emergency illumination of the passenger compartment;

(*e*) the location of each passenger emergency exit operating handle and instructions for opening shall be shown—

(i) for each emergency exit, by a marking on or near the exit that is readable from a distance of 30 inches; and

(ii) for each Type I or Type II emergency exit with a locking mechanism released by rotary motion of the handle, by—

(A) a red arrow, with a shaft at least three-fourths inch wide and a head twice the width of the shaft, extending along

at least 70 degrees of arc at a radius approximately equal to three-fourths of the handle length; and

(B) the word "open" in red letters 1 inch high, placed horizontally near the head of the arrow;

(*f*) each emergency exit, and its means of opening, shall be marked on the outside of the rotorcraft: in addition, the following apply—

(i) there shall be a 2-inch colored band outlining each passenger emergency exit, except small rotorcraft with a maximum weight of 12,500 pounds or less may have a 2-inch colored band outlining each exit release lever or device of passenger emergency exits which are normally used doors;

(ii) each outside marking, including the band, shall have color contrast to be readily distinguishable from the surrounding fuselage surface: the contrast shall be such that, if the reflectance of the darker color is 15 percent or less, the reflectance of the lighter color must be at least 45 percent. "Reflectance" is the ratio of the luminous flux eflected by a body to the luminous flux it receives; when the reflectance of the darker color is greater than 15 percent, at least a 30 percent difference between its reflectance and the reflectance of the lighter color must be provided.

(6) Emergency lighting: the following apply—

(*a*) a source of light with its power supply independent of the main lighting system shall be installed to—

(i) illuminate each passenger emergency exit marking and locating sign; and

(ii) provide enough general lighting in the passenger cabin so that the average illumination, when measured at 40-inch intervals at seat armrest height on the center line of the main passenger aisle, is at least 0.05 foot-candle;

(*b*) exterior emergency lighting shall be provided at each emergency exit: the illumination may not be less than 0.05 foot-candle (measured normal to the direction of incident light) for minimum width on the ground surface, with landing gear extended, equal to the width of the emergency exit where an evacuee is likely to make first contact with the ground outside the cabin: the exterior emergency lighting may be provided by either interior or exterior sources with light intensity measurements made with the emergency exits open;

(*c*) each light required by subregulation (6) (*a*) or (*b*) of this Regulation shall be operable manually from the cockpit station and from a point in the passenger compartment that is readily accessible; the cockpit control device must have an "on," "off," and "armed" position so that when turned on at the cockpit or passenger compartment station or when armed at the cockpit station, the emergency lights will either illuminate or remain illuminated upon interruption of the rotorcraft's normal electric power;

(*d*) any means required to assist the occupants in descending to the ground shall be illuminated so that the erected assist means is visible from the rotorcraft—

(i) the assist means must be provided with an illumination of not less than 0.03 foot-candle (measured normal to the direction of the incident light) at the ground end of the erected assist means where an evacuee using the established escape route would normally make first contact with the ground, with the rotorcraft in each of the attitudes corresponding to the collapse of one or more legs of the landing gear;

(ii) if the emergency lighting subsystem illuminating the assist means is independent of the rotorcraft's main emergency lighting system, it—

(*a*) will automatically be activated when the assist means is erected;

(*b*) will provide the illumination required by subregulation 53 (6)(*d*)(*i*) of this Regulation; and

(*c*) will not be adversely affected by stowage;

(*e*) the energy supply to each emergency lighting unit shall provide the required level of illumination for at least 10 minutes at the critical ambient conditions after an emergency landing;

(*f*) if storage batteries are used as the energy supply for the emergency lighting system, they may be recharged from the rotorcraft's main electrical power system provided the charging circuit is designed to preclude inadvertent battery discharge into charging circuit faults.

(7) Emergency exit access—

(*a*) each passageway between passenger compartments, and each passageway leading to Type 1 and Type II emergency exits, shall be—

(i) unobstructed; and

(ii) at least 20 inches wide.

(*b*) for each emergency exit covered by subregulation (4) (*f*) of this Regulation, there shall be enough space adjacent to that exit to allow a crew member to assist in the evacuation of passengers without reducing the unobstructed width of the passageway below that required for that exit;

(*c*) there shall be access from each aisle to each Type III and Type IV exit, and

(i) for rotorcraft that have a passenger seating configuration, excluding pilot seats, of 20 or more, the projected opening of the exit provided shall not be obstructed by seats, berths, or other protrusions (including seatbacks in any position) for a distance from that exit of not less than the width of the narrowest passenger seat installed on the rotorcraft;

(ii) for rotorcraft that have a passenger seating configuration, excluding pilot seats, of 19 or less, there may be minor obstructions in the region described in subregulation (7) (*c*) (i) of this Regulation, if there are compensating factors to maintain the effectiveness of the exit.

(8) Main aisle width: the main passenger aisle width between seats must equal or exceed the values in the following table:

	Minimum main passenger aisle width	
Passenger seating capacity	Less than 25 inches from floor (inches)	25 Inches and more from floor (inches)
10 or less	12	15
11 through 19	12	20
20 or more	15	20

Visual signalling devices

54. [AAC] No person may operate an aircraft over water or across land areas which have been designated by the Authority as areas in which search and rescue would be especially difficult, unless equipped with such signaling devices as may be appropriate to the area overflown, to include—

(*a*) at least one pyrotechnic signaling device for each life raft required for overwater operations; and

(*b*) any other requirements specified by the Authority.

Survival kits

55. [AAC] No person may operate an aircraft across land areas which have been designated by Malaŵi as areas in which search and rescue would be especially difficult, unless equipped with enough survival kits

for the number of occupants of the aeroplane appropriate for the route to be flown.

Emergency locator transmitter

56. (1) No person shall operate an aeroplane without the following emergency locator equipment—

(*a*) [AAC] all aeroplanes on all flights shall be equipped with an automatically activated ELT that transmits simultaneously on both 406 MHz and 121.5 MHz, and meets the technical standards specified by the Authority and the relevant portions of ICAO Annex 10, Volume 3;

(*b*) (AAC) all aeroplanes authorized to carry more than 19 passengers shall be equipped with at least one automatic ELT or two ELTs of any type;

(*c*) (AAC) all aeroplanes authorized to carry more than 19 passengers for which the individual certificate of airworthiness is first issued after 1 July, 2008 shall be equipped with at least two ELTs, one of which shall be automatic;

(*d*) [AOC] no person may operate an aeroplane in long-range overwater operations or over designated land areas where search and rescue would be especially difficult, without having on the aeroplane at least two ELTs, one of which shall be automatic;

(*e*) [AOC] at least one survival type ELT shall be located with each life-raft carried. See regulation 69.

(2) No person shall operate a helicopter without the following emergency locator equipment—

(*a*) [AAC] all helicopters on all flights shall be equipped with an automatically activated ELT that transmit simultaneously on both 406 MHz and 121.5, and meet the technical standards specified by the Authority and the relevant portions of ICAO Annex 10, Volume 3;

(*b*) [AAC] all helicopters operating on flights over water or a hostile environment, designated as a land area where search and rescue would be especially difficult shall be equipped with at least one automatic ELT and one ELT(s) in each life raft carried on board. *See* regulation 69.

(3) [AAC] batteries used in ELTs shall be replaced (or recharged if the battery is rechargeable) and marked when—

(*a*) the transmitter has been in use for more than one cumulative hour; or

(*b*) 50 percent of their useful life (or for rechargeable batteries, 50 percent of their useful life of charge) has expired;

(*c*) the date for a replacement of the battery in the ELT shall be legibly marked on the outside of the transmitter;

(*d*) the battery useful life (or useful life of charge) requirements do not apply to batteries (such as water-activated batteries) that are essentially unaffected during probable storage intervals.

Portable fire extinguishers

57.—(1) [AAC] No person may operate an aircraft unless it is equipped with portable fire extinguishers of a type which, when discharged, will not cause dangerous contamination of the air within the aircraft: at least one shall be located in—

(*a*) the pilot's compartment; and

(*b*) each passenger compartment that is separate from the pilot's compartment and not readily accessible to the flight crew.

(2) [AOC] No person may operate an aircraft unless it is equipped with portable fire extinguishers accessible for use in crew, passenger, and cargo compartments as follows—

(*a*) the type and quantity of extinguishing agent shall be suitable for the kinds of fires likely to occur in the compartment where the extinguisher is intended to be used;

(*b*) at least one portable fire extinguisher shall be provided and conveniently located for use in each Class E cargo compartment which is accessible to crew members during flight, and at least one shall be located in each upper and lower lobe galley;

(*c*) at least one portable fire extinguisher shall be conveniently located on the flight deck for use by the flight crew;

(*d*) at least one portable fire extinguisher shall be conveniently located in the passenger compartment if the passenger compartment is separate from the flight deck and not readily accessible to the flight crew;

(*e*) for each aeroplane having a passenger seating capacity of more than 30, there shall be at least the following number of portable fire extinguishers conveniently located and uniformly distributed throughout the compartment.

Minimum Number of Hand Fire Extinguishers Passenger Seating Capacity

7 through 29	1
30 through 60	2
61 through 200	3
201 through 300	4

301 through 400	5
401 through 500	6
501 through 600	7
601 or more	8

(3) [AAC] Any agent used in a portable fire extinguisher in an aircraft for which the individual certificate of airworthiness is first issued on or after 31 December 2010 shall—

(*a*) meet the applicable minimum performance requirements of the Authority; and

(*b*) not contain Halon 1211, Halon 1301, nor Halon 2402.

Lavatory fire extinguisher

58.—(1) [AAC] No person may operate an aircraft unless each lavatory in the aircraft is equipped with a built-in fire extinguisher for each disposal receptacle for towels, paper, or waste located within the lavatory.

(2) [AAC] Built-in lavatory fire extinguishers shall be designed to discharge automatically into each disposal receptacle upon occurrence of a fire in the receptacle.

(3) [AAC] Any agent used in a built-in fire extinguisher for each lavatory disposal receptacle for towels, or waste in an aircraft for which the individual certificate of airworthiness is first issued on or after 31 December, 2011 shall—

(*a*) meet the applicable minimum performance requirements of the Authority; and

(*b*) not contain Halon 1211, Halon 1301, nor Halon 2402.

Lavatory smoke detector

59. [AOC] No person may operate a passenger-carrying transport category aeroplane unless each lavatory in the aeroplane is equipped with a smoke detector system or equivalent that provides—

(*a*) a warning light in the cockpit; or

(*b*) a warning light or audio warning in the passenger cabin which would be readily detected by a cabin crew member, taking into consideration the positioning of cabin crew members throughout the passenger compartment during various phases of flight.

Crash axe

60. [AAC] No person shall operate an aeroplane certificated with a take-off mass of 5,700kg or more unless it is equipped with a crash axe appropriate for effective use in that type of aeroplane, stored in a place not visible to passengers on the aeroplane.

Marking of break-in points

61.—(1) [AAC] If areas of the fuselage suitable for break-in by rescue crews in an emergency are marked on an aeroplane, such areas shall be marked as shown below, and the colour of the markings shall be red or yellow and, if necessary, they shall be outlined in white to contrast with the background.

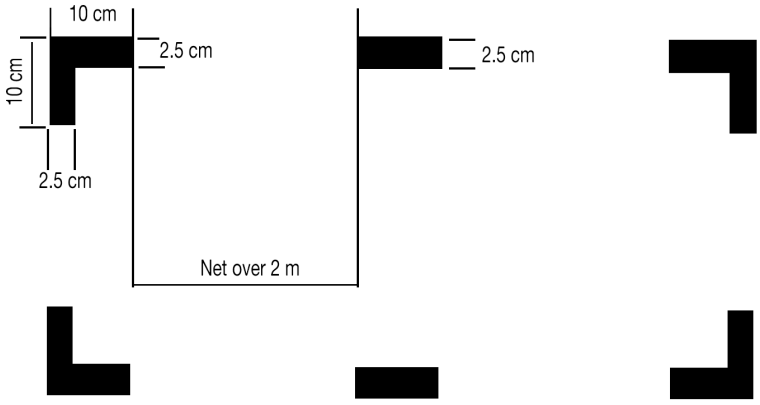

(2) If the corner markings are more than 2 m apart, intermediate lines 9 cm × 3 cm shall be inserted so that there is no more than 2 m between adjacent markings.

First-aid kit and universal precaution kit

62.—(1) First Aid Kits—

(*a*) no person may operate the following aircraft unless it is equipped with an accessible, approved first-aid kit(s)—

(i) [AAC—aeroplane] aeroplanes with a maximum certificated take-off weight of over 5,700kg;

(ii) [AOC]—all AOC holders.

(*b*) the contents of first-aid kits to be carried shall comply with Implementing Standard: IS 7:62 in the Schedule;

(*c*) each aircraft shall carry first-aid kits in accordance with at least the following table—

Number of Passenger Seats	Number of First-Aid Kits
0–100	1
101–200	2
201–300	3
301–400	4
401–500	5
More than 500	6

(*d*) the location of first aid kits should be—

(i) distributed evenly throughout the aircraft;

(ii) readily accessible to cabin crew members, if cabin crew members are required for flight; and

(iii) located near the aircraft exits should their use be required outside the aircraft in an emergency situation.

(2) Universal Precaution Kit—

(*a*) no person shall operate an aircraft that requires a cabin crew member unless it is equipped with at least one universal precaution kit;

(*b*) the contents of universal precaution kits to be carried shall comply with Implementing Standard: IS: 7:62 contained in the Schedule hereto;

(*c*) each aircraft shall carry universal precaution kits in accordance with the following—

(i) two kits; and

(ii) additional kits, as determined by the Authority, at times of increased public health risk, such as during an outbreak of a serious communicable disease having pandemic potential.

Emergency medical kit-aeroplanes

63.—(1) [AOC] No person may operate a passenger flight in an aeroplane with 30 seats or more unless the aeroplane is equipped with an approved emergency medical kit for treatment of injuries or medical emergencies that might occur during flight time or in minor accidents.

(2) [AOC] The contents of emergency medical kits to be carried shall comply with Implementing Standard: IS: 7:63 contained in the Schedule hereto.

(3) [AOC] The medical kit shall be stored in a secure location.

Oxygen storage and dispensing apparatus

64.—(1) [AAC] All aircraft intended to be operated at altitudes requiring the use of supplemental oxygen shall be equipped with adequate oxygen storage and dispensing apparatus.

(2) [AAC] The oxygen apparatus, the minimum rate of oxygen flow, and the supply of oxygen shall meet applicable airworthiness standards for type certification in the transport category as specified by the Authority.

(3) [AAC] No person may operate an aircraft at altitudes above 10,000 feet unless it is equipped with oxygen masks, located so as to be within the immediate reach of flight crew members while at their assigned duty station.

(4) [AAC] No person may operate a pressurized aeroplane at altitudes above 25,000 feet unless—

(*a*) flight crew member oxygen masks are available at the flight duty station and are of a quick donning type;

(*b*) sufficient spare outlets and masks and/or sufficient portable oxygen units with masks are distributed evenly throughout the cabin to ensure immediate availability of oxygen to each required cabin crew member regardless of his location at the time of cabin pressurization failure.

(5) [AAC] An oxygen-dispensing unit connected to oxygen supply terminals is installed so as to be immediately available to each occupant, wherever seated. The total number of dispensing units and outlets shall exceed the number of seats by at least 10%. The extra units are to be evenly distributed throughout the cabin.

(6) [AAC] The amount of supplemental oxygen for sustenance required for a particular operation shall be determined on the basis of flight altitudes and flight duration, consistent with the operating procedures established for each operation in the Operations Manual and with the routes to be flown, and with the emergency procedures specified in the Operations Manual. *See* Implementing Standard: IS: 7:64 contained in the Schedule hereto to determine the amount of supplemental oxygen needed for non-pressurized and pressurized aircraft.

Protective breathing equipment

65.—(1) [AOC] No AOC holder may operate an aeroplane with a maximum certified take-off mass exceeding 5,700kg or having a maximum approved seating configuration of more than 19 seats unless—

(*a*) it has PBE to protect the eyes, nose and mouth of each flight crew member while on flight deck duty and to provide oxygen for a period of not less than 15 minutes; and

(*b*) it has sufficient portable PBE to protect the eyes, nose and mouth of all required cabin crew members and to provide breathing gas, for a period of not less than 15 minutes.

(2) [AOC] The oxygen supply for PBE may be provided by the required supplemental oxygen system.

(3) [AOC] The PBE intended for flight crew use shall be conveniently located on the flight deck and be easily accessible for immediate use by each required flight crew member at their assigned duty station.

(4) [AOC] The PBE intended for cabin crew use shall be installed adjacent to each required cabin crew member duty station.

(5) [AOC] Easily accessible portable PBE shall be provided and located at or adjacent to the required hand fire extinguishers except

that, where the fire extinguisher is located inside a cargo compartment, the PBE shall be stowed outside but adjacent to the entrance to that compartment.

(6) [AOC] The PBE while in use shall not prevent required communication.

First aid oxygen dispensing units

66.—(1) [AOC] No AOC holder may conduct a passenger carrying operation in a pressurized aeroplane at altitudes above 25,000 feet, when a cabin crew member is required to be carried, unless it is equipped with—

(*a*) undiluted first-aid oxygen for passengers who, for physiological reasons, may require oxygen following a cabin depressurization; and

(*b*) a sufficient number of dispensing units, but in no case less than two, with a means for cabin crew to use the supply.

(2) [AOC] The amount of first-aid oxygen required in subregulation (1) of this Regulation for a particular operation and route shall be determined on the basis of—

(*a*) flight duration after cabin depressurization at cabin altitudes of more than 8,000 feet;

(*b*) an average flow rate of at least 3 litres Standard Temperature Pressure Dry (STPD)/minute/person; and

(*c*) at least 2% of the passengers carried, but in no case for less than one person.

(3) The amount of first-aid oxygen required for a particular operation shall be determined on the basis of cabin pressure altitudes and flight duration, consistent with the operating procedures established for each operation and route.

(4) The oxygen equipment provided shall be capable of generating a mass flow to each user of at least four litres per minute, STPD. Means may be provided to decrease the flow to not less than two litres per minutes, STPD, at any altitude.

Megaphones

67.—(1) [AOC] Each person operating a passenger-carrying aeroplane shall have a portable battery-powered megaphone or megaphones readily accessible to the crew members assigned to direct emergency evacuation.

(2) [AOC] The number and location of megaphones required in subregulation (1) of this Regulation shall be determined as follows—

(*a*) on aeroplanes with a seating capacity of more than 60 and less than 100 passengers, one megaphone shall be located at the most

rearward location in the passenger cabin where it would be readily accessible to a normal cabin crew member seat; and

(*b*) on aeroplanes with a seating capacity of more than 99 passengers, two megaphones in the passenger cabin on each aeroplane one installed at the forward end and the other at the most rearward location where it would be readily accessible to a normal cabin crew member seat;

(*c*) for aeroplanes with more than one passenger deck, in all cases when the total passenger seating configuration of a deck is more than 60, at least one megaphone is required on the deck.

(3) The Authority may grant an exemption from the requirements of subregulation (2) if the Authority finds that a different location would be more useful for evacuation of persons during an emergency.

Individual flotation devices

68.—(1) Landplanes

(*a*) [AAC] Landplanes shall carry the equipment prescribed in subregulation (1)(*b*) of this Regulation—

(i) when flying en route over water beyond gliding distance from the shore;

(ii) when flying over water at a distance of more than 93 km (50 NM) away from the shore for aircraft capable of maintaining safe altitude after the failure of one engine for two-engine aircraft and the failure of two engines for three or four- engine aircraft; or

(iii) when taking-off or landing at an aerodrome where the Authority has determined the take-off or approach path is so disposed over water that in the event of a mishap there would be the likelihood of a ditching;

(*b*) [AAC] one life-jacket or equivalent flotation device equipped with a means of electric illumination shall be carried for each person on board, stowed in a position easily accessible from the seat or berth of the person for whose use it is provided.

(2) Seaplanes—

[AAC] for all flights, seaplanes shall be equipped with the equipment prescribed in subregulation (1) (*b*) of this Regulation.

Life rafts

69.—(1) [AAC] In addition to the equipment prescribed in regulations 58 and 70 of these Regulations, life saving rafts in sufficient numbers to carry all persons on board shall be installed in—

(*a*) aeroplanes operated on long range over-water flights;

(*b*) all other aeroplanes when they are operated over water away from land suitable for making an emergency landing at a distance of

more than 185 km (100 NM) in the case of single-engine aeroplanes, and more than 370 km (200 NM) in the case of multi-engine aeroplanes capable of continuing flight with one engine inoperative;

(*c*) class 1 and 2 helicopters when they are operated over water at a distance from land corresponding to more than 10 minutes at normal cruise speed; and

(*d*) class 3 helicopters when they are operated over water beyond autorotational or safe forced landing distance from land.

(2) [AOC] An aircraft shall have life saving rafts with a sufficient capacity to carry all persons on board in the event of the loss of one raft of the largest capacity.

(3) All life saving rafts shall be stowed so as to facilitate their ready use in an emergency.

(4) Life rafts shall be equipped with the following life sustaining equipment—

(*a*) a electric survivor locator light;

(*b*) a survival kit;

(*c*) a pyrotechnic signaling device; and

(*d*) an ELT as described in regulation 56 of these Regulations.

(5) [AOC] In helicopters, life rafts which are not deployable by remote control and which have a mass of more than 40 kg shall be equipped with a means of mechanically assisted deployment.

Flotation device for helicopter ditching

70. [AAC] All helicopters flying over water at a distance from land corresponding to more than 10 minutes at normal cruise speed in the case of performance Class 1 or 2 helicopters, or flying over water beyond autorotational or safe forced landing distance from land in the case of performance Class 3 helicopters, shall be fitted with a permanent or rapidly deployable means of floatation so as to ensure a safe ditching of the helicopter.

PART X
Miscellaneous Systems and Equipment

Seats, safety belts, and shoulder harness

71.—(1) [AAC] Each aircraft used in passenger carrying operations shall be equipped with the following seats, safety belts, and shoulder harnesses that meet the airworthiness requirements for type certification of that aircraft—

(*a*) a seat with safety belt for each person on board over an age to be determined by the Authority; and a restraining belt for each berth on board the aircraft;

(*b*) a safety harness for each flight crew member seat;

(i) the safety harness for each pilot seat shall incorporate a device, which will automatically restrain the occupant's torso in the event of rapid deceleration;

(ii) the safety harness for each pilot seat, which includes shoulder straps and a seat belt, should incorporate a restraining device to prevent a suddenly incapacitated pilot from interfering with the flight controls;

(*c*) a forward or rearward facing (within 15 degrees of the longitudinal axis of the aeroplane) seat equipped with a safety harness for each cabin crew member station in the passenger compartment;

(*d*) the cabin crew member's seats shall be located near floor level and other emergency exits as required by the Authority for emergency evacuation.

Passenger and pilot compartment doors—aeroplanes

72.—(1) [AOC] Pilot compartment door—

(*a*) no person may operate a passenger carrying aeroplane of a maximum certificated take-off mass in excess of 45,500 kg or with a passenger seating capacity greater than 60 unless that aircraft is equipped with an approved flight crew compartment door that is designed to resist penetration by small arms fire and grenade shrapnel, and to resist forcible intrusions by unauthorized persons;

(*b*) no person may operate a passenger carrying aeroplane having a certificated take-off mass of less than 45,500kg or with a passenger seating capacity of less than 60 unless that aircraft is equipped with an approved flight crew compartment door, where practicable, that is designed to resist penetration by small arms fire and grenade shrapnel, and to resist forcible intrusions by unauthorized persons;

(*c*) each pilot compartment door shall be capable of being locked and unlocked from either pilot's station;

(*d*) a means shall be provided for monitoring from either pilot station the entire door area outside the pilot compartment to identify persons requesting entry and to detect suspicious behaviour or potential threat.

(2) [AOC] Passenger compartment doors—

(*a*) each passenger compartment door shall have—

(i) a means for the crew, in an emergency, to unlock each door that leads to a compartment that is normally accessible to passengers and that can be locked by passengers;

(ii) a placard on each door used to access a required passenger emergency exit, indicating that such door shall be open during take-off and landing; and

(iii) a means readily available for each crew member to unlock any door that separates a passenger compartment from another compartment that has emergency exit provisions.

Passenger information signs

73.—(1) [AOC] No person shall operate a passenger carrying aeroplane with a maximum certificated take-off weight of 5,700 kg (12,500 lbs) or more unless it is equipped with—

(*a*) at least one passenger information sign (using either letters or symbols) notifying when smoking is prohibited and one sign (using either letters or symbols) notifying when safety belts should be fastened, which shall, when illuminated, be legible to each person seated in the passenger cabin under all probable conditions of cabin illumination;

(*b*) signs which notify when safety belts should be fastened and when smoking is prohibited shall be so constructed that the crew can turn them on and off;

(*c*) a sign or placard affixed to each forward bulkhead and each passenger seat back that reads "Fasten Seat Belt While Seated".

(2) [AAC] Notwithstanding subregulation (1) of this Regulation, no person shall operate an aircraft in which all passenger seats are not visible from the flight deck, unless it is equipped with a means of indicating to all passengers and cabin crew when seat belts shall be fastened and when smoking is not allowed.

Materials for cabin interiors

74.—(1) No person shall operate an aircraft unless each compartment used by the crew or passengers meet the following requirements of the State of Design—

(*a*) materials must be at least flash resistant;

(*b*) the wall and ceiling linings and the covering of upholstering, floors and furnishings must be flame resistant;

(*c*) each compartment where smoking is to be allowed must be equipped with self-contained ash trays that are completely removable and other compartments must be placarded against smoking; and

(*d*) each receptacle for used towels, papers and wastes must be of fire-resistant material and must have a cover or other means of containing possible fires started in the receptacles.

(2) For aircraft for which the State of Design has developed new airworthiness requirements for cabin interiors since original type

certification, the owner of the aircraft shall ensure that all materials that do not meet current State of Design requirement shall have them replaced upon the first major overhaul of the aircraft cabin or refurbishing of the cabin interior with materials that meet the new requirements.

Materials for cargo and baggage compartments

75. [AAC] Each cargo compartment shall have ceiling and sidewall liner panels which are constructed of materials which meet the test requirements for flame resistance of cargo compartment liners as prescribed for type certification.

Power supply, distribution, and indication system

76.—(1) [AOC] No AOC holder may operate an aeroplane unless it is equipped with—

(*a*) a power supply and distribution system that meets the airworthiness requirements for certification of an aeroplane in the transport category, as specified by the Authority; or

(*b*) a power supply and distribution system that is able to produce and distribute the load for the required instruments and equipment, with use of an auxiliary power supply if any one power source or component of the power distribution system fails;

(*c*) a means for indicating the adequacy of the power being supplied to required flight instruments.

(2) [AOC] Engine-driven sources of energy, when used, shall be redundant.

Protective circuit fuses

77. [AOC] No person may operate an aeroplane in which protective fuses are installed unless there are spare fuses available of appropriate ratings for replacement of those accessible in flight.

Icing protection equipment

78.—(1) [AAC] No person may operate an aircraft in expected or actual icing conditions unless it is equipped for the prevention or removal of ice on windshields, wings, control surfaces, empennage, propellers, rotor blades, or other parts of the aircraft where ice formation will adversely affect the safety of the aircraft.

(2) [AAC] No person may operate an aircraft in expected or actual icing conditions at night unless it is equipped with a means to illuminate or detect the formation of ice. Any illumination that is used shall be of a type that will not cause glare or reflection that would handicap crew members in the performance of their duties.

Pitot heat and indication systems

79.—(1) [AAC] No person may operate an aircraft in instrument flight conditions unless it is equipped with a pitot heat system.

(2) [AOC] No AOC holder may operate an aeroplane equipped with a flight instrument pitot heating system unless the aeroplane is also

equipped with an operable pitot heat indication system that complies with the following requirements—

(*a*) the indication provided shall incorporate an amber light that is in clear view of a flight crew member; the indication provided shall be designed to alert the flight crew if either—

(i) the pitot heating system is switched "off"; and

(ii) the pitot heating system is switched "on" and any pitot tube heating element is inoperative; or

(*b*) an integrated flight crew alerting system that will notify the crew if the pitot system is malfunctioning.

Static pressure system

80.—(1) [AAC] No person may operate an aircraft unless it is equipped with a static pressure system vented to the outside atmospheric pressure so that they will be least affected by airflow variation or moisture or other foreign matter, and installed so as to be airtight except for the vent.

(2) [AAC] No person may operate an aircraft in IFR or VFR at night unless it is equipped with a static pressure system vented to the outside atmospheric pressure so that they will be least affected by airflow variation or moisture or other foreign matter, and installed so as to be airtight except for the vent and a means of selecting an alternative source of static pressure.

(3) [AOC] No person may operate an aircraft unless it is equipped with two independent static pressure systems, vented to the outside atmospheric pressure so that they will be least affected by airflow variation or moisture or other foreign matter, and installed so as to be airtight except for the vent.

Wind shield wipers

81. [AOC] No AOC holder may operate an aeroplane with a maximum certified take-off mass of more than 5,700 kg unless it is equipped at each pilot station with a windshield wiper or equivalent means to maintain a clear portion of the windshield during precipitation.

Chart holder

82. [AOC] No person may operate an aeroplane in commercial air transport operations under single pilot IFR or at night unless a chart holder is installed in an easily readable position that can be illuminated for night operations.

Cosmic radiation detection equipment

83. [AAC] No person shall operate an aeroplane intended to be operated above 15,000 m (49,000 ft) unless it is equipped with—

(*a*) an instrument to measure and indicate continuously the dose rate of total cosmic radiation being received (i.e., the total of ionizing

and neutron radiation of galactic and solar origin) and the cumulative dose on each flight; or

(*b*) a system of on-board quarterly radiation sampling acceptable to the Authority as described in IS 7:83 contained in the Schedule hereto;

(*c*) a display unit readily visible to a flight crew member.

(2) The operator shall have the equipment in subregulation (1) of this Regulation calibrated on the basis of assumptions acceptable to the Authority.

Maritime sound signalling device

84. [AAC] All seaplanes for all flights shall be equipped with equipment for making the sound signals prescribed in the International Regulations for Preventing Collisions at Sea, where applicable.

Anchors

85.—(1) [AAC]. No person shall operate a seaplane unless it is equipped with—

(*a*) one anchor; and

(*b*) one sea anchor (drogue).

(2) "Seaplanes" includes amphibians operated as seaplanes.

SCHEDULE

Implementing Standards

Instruments and Equipment

IS 7:11 Category II: Instruments and Equipment Approval and Maintenance Requirements

1. *General*. The instruments and equipment required by regulation 11 of the Regulations shall be approved as provided in this implementing standard before being used in Category II operations. Before presenting an aircraft for approval of the instruments and equipment, it must be shown that since the beginning of the 12th calendar month before the date of submission—

(1) The ILS localizer and glide slope equipment were bench checked according to the manufacturer's instructions and found to meet those standards specified in RTCA Paper 23-63/DO-177 dated March 14, 1963, "Standards Adjustment Criteria for Airborne Localizer and Glideslope Receivers."

(2) The altimeters and the static pressure systems were tested and inspected.

(3) All other instruments and items of equipment specified in regulation 11 under the Regulations that are listed in the proposed maintenance programme were bench checked and found to meet the manufacturer's specifications.

2. *Flight control guidance system*. All components of the flight control guidance system shall be approved as installed by the evaluation programme specified in paragraph 5 if they have not been approved for Category III operations under applicable type or supplemental type certification procedures. In addition, subsequent changes to make, model, or design of the components must be approved under this paragraph. Related systems or devices, such as the auto-throttle and computed missed approach guidance system, shall be approved in the same manner if they are to be used for Category II operations.

3. *Radio altimeter*. A radio altimeter must meet the performance criteria of this paragraph for original approval and after each subsequent alteration.

   (1) It shall display to the flight crew clearly and positively the wheel height of the main landing gear above the terrain.

   (2) It shall display wheel height above the terrain to an accuracy of ±5 feet or 5 percent, whichever is greater, under the following conditions—

      (*a*) pitch angles of zero to ±5° about the mean approach attitude;

      (*b*) roll angles of zero to 20° in either direction;

      (*c*) forward velocities from minimum approach speed up to 200 knots;

      (*d*) sink rates from zero to 15 feet per second at altitudes from 100 to 200 feet.

   (3) Over level ground, it must track the actual altitude of the aircraft without significant lag or oscillation.

   (4) With the aircraft at an altitude of 200 feet or less, any abrupt change in terrain representing no more than 10 percent of the aircraft's altitude must not cause the altimeter to unlock, and indicator response to such changes must not exceed 0.1 seconds and, in addition, if the system unlocks for greater changes, it must reacquire the signal in less than 1 second.

   (5) Systems that contain a push to test feature must test the entire system (with or without an antenna) at a simulated altitude of less than 500 feet.

   (6) The system must provide to the flight crew a positive failure warning display any time there is a loss of power or an absence of ground return signals within the designed range of operating altitudes.

4. *Other instruments and equipment*. All other instruments and items of equipment required by regulation 11 under the Regulation shall

be capable of performing as necessary for Category II operations. Approval is also required after each subsequent alteration to these instruments and items of equipment.

5. *Evaluation programme*.

(1) *Application.* Approval by evaluation is requested as a part of the application for approval of the Category II manual.

(2) *Demonstrations.* Unless otherwise authorized by the Authority, the evaluation programme for each aircraft requires the demonstrations specified in this paragraph. At least 50 ILS approaches shall be flown with at least five approaches on each of three different ILS facilities and no more than one half of the total approaches on any one ILS facility. All approaches shall be flown under simulated instrument conditions to a 30 m (100 foot) decision height and 90 percent of the total approaches made shall be successful. A successful approach is one in which—

(*a*) at the 30m (100 foot) decision height, the indicated airspeed and heading are satisfactory for a normal flare and landing (speed must be ±5 knots of programmed airspeed, but may not be less than computed threshold speed if autothrottles are used);

(*b*) the aircraft at the 30m (100 foot) decision height, is positioned so that the cockpit is within, and tracking so as to remain within, the lateral confines of the runway extended;

(*c*) deviation from glide slope after leaving the outer marker does not exceed 50 percent of full-scale deflection as displayed on the ILS indicator;

(*d*) no unusual roughness or excessive attitude changes occur after leaving the middle marker; and

(*e*) in the case of an aircraft equipped with an approach coupler, the aircraft is sufficiently in trim when the approach coupler is disconnected at the decision height to allow for the continuation of a normal approach and landing.

(3) *Records.* During the evaluation programme the following information shall be maintained by the applicant for the aircraft with respect to each approach and made available to the Authority upon request—

(*a*) each deficiency in airborne instruments and equipment that prevented the initiation of an approach;

(*b*) the reasons for discontinuing an approach, including the altitude above the runway at which it was discontinued;

(*c*) speed control at the 30 m (100 foot) DH if auto throttles are used;

(*d*) trim condition of the aircraft upon disconnecting the auto coupler with respect to continuation to flare and landing;

(*e*) position of the aircraft at the middle marker and at the decision height indicated both on a diagram of the basic ILS display and a diagram of the runway extended to the middle marker. Estimated touchdown point shall be indicated on the runway diagram;

(*f*) compatibility of flight director with the auto coupler, if applicable;

(*g*) quality of overall system performance.

(4) *Evaluation.* A final evaluation of the flight control guidance system is made upon successful completion of the demonstrations; if no hazardous tendencies have been displayed or are otherwise known to exist, the system is approved as installed.

6. Each maintenance programme for Category II instruments and equipment shall contain the following—

(1) A list of each instrument and item of equipment specified in regulation 11 of the Regulation that is installed in the aircraft and approved for Category II operations, including the make and model of those specified in subregulation 11 (1) (*a*) of the Regulation.

(2) A schedule that provides for the performance of inspections under subparagraph (5) of this paragraph within 3 calendar months after the date of the previous inspection. The inspection shall be performed by a person authorized by the Aviation (Airworthiness) Regulations, except that each alternate inspection may be replaced by a functional flight check. This functional flight check shall be performed by a pilot holding a Category II pilot authorization for the type aircraft checked.

(3) A schedule that provides for the performance of bench checks for each listed instrument and item of equipment that is specified in subregulation 11 (1) (*a*) of the Regulations within 12 calendar months after the date of the previous bench check.

(4) A schedule that provides for the performance of a test and inspection of each static pressure system within 12 calendar months after the date of the previous test and inspection.

(5) The procedures for the performance of the periodic inspections and functional flight checks to determine the ability of each listed instrument and item of equipment specified in subregulation 11(1)(*a*) of the Regulations to perform as approved for Category II operations including a procedure for recording functional flight checks.

(6) A procedure for assuring that the pilot is informed of all defects in listed instruments and items of equipment.

(7) A procedure for assuring that the condition of each listed instrument and item of equipment upon which maintenance is performed is at least equal to its Category II approval condition before it is returned to service for Category II operations.

(8) A procedure for an entry in the maintenance records that shows the date, airport, and reasons for each discontinued Category II operation because of a malfunction of a listed instrument or item of equipment.

7. *Bench check.* A bench check required shall comply with this paragraph—

(1) Except as specified in paragraph (2) of this subparagraph, it shall be performed by a certificated repair station holding one of the following ratings as appropriate to the equipment checked—

(*a*) an instrument rating;

(*b*) an avionics rating.

(2) It shall be performed by a certificated air operator on aircraft identified in its approved specific operating provisions with the approved authorizations to perform maintenance and approve for return to service its own aircraft maintained under a continuous maintenance programme under an equivalent system identified in the Aviation (Air Operator Certification and Administration) Regulations.

(3) It shall consist of removal of an instrument or item of equipment and performance of the following—

(*a*) a visual inspection for cleanliness, impending failure, and the need for lubrication, repair, or replacement of parts;

(*b*) correction of items found by that visual inspection; and

(*c*) calibration to at least the manufacturer's specifications unless otherwise specified in the approved Category II manual for the aircraft in which the instrument or item of equipment is installed.

8. *Extensions.* After the completion of one maintenance cycle of 12 calendar months, a request to extend the period for checks, tests, and inspections is approved if it is shown that the performance of particular equipment justifies the requested extension.

IS 7:20 Reduced Vertical Separation Minimum–Altemetry System Performance Requirements for Operations in RVSM Airspace

1. In respect of groups of aeroplanes that are nominally of identical design and build with respect to all details that could influence the accuracy of height-keeping performance, the height-keeping performance capability shall be such that the total vertical error (TVE) for the group of aeroplanes shall have a mean no greater than 25 m (80 ft) in magnitude and shall have a standard deviation no greater than 28 - 0.013z2 for 0° z° 25 when z is the magnitude of the mean TVE in metres, or 92 - 0.004z2 for 0° z° 80 where z is in feet. In addition, the components of TVE shall have the following characteristics—

(1) The mean altimetry system error (ASE) of the group shall not exceed 25 m (80 ft) in magnitude.

(2) The sum of the absolute value of the mean ASE and of three standard deviations of ASE shall not exceed 75 m (245 ft).

(3) The differences between cleared flight level and the indicated pressure altitude actually flown shall be symmetric about a mean of 0 m, with a standard deviation no greater than 13.3 m (43.7 ft), and in addition, the decrease in the frequency of differences with increasing difference magnitude shall be at least exponential.

2. In respect of aeroplanes for which the characteristics of the airframe and altimetry system fit are unique and so cannot be classified as belonging to a group of aeroplanes encompassed by paragraph 1, the height-keeping performance capability shall be such that the components of the TVE of the aeroplane have the following characteristics—

(1) The ASE of the aeroplane shall not exceed 60 m (200 ft) in magnitude under all flight conditions.

(2) The differences between the cleared flight level and the indicated pressure altitude actually flown shall be symmetric about a mean of 0 m, with a standard deviation no greater than

13.3 m (43.7 ft), and in addition, the decrease in the frequency of differences with increasing difference magnitude shall be at least exponential.

IS 7:37 CONTINUED SERVICEABILITY AND INSPECTION OF FLIGHT RECORDER SYSTEM

1. The operator shall, prior to the first flight of the day, monitor the built-in test features for the flight recorders and flight data acquisition unit (FDAU), when installed, by manual and/or automatic checks.

2. The operator shall carry out annual inspections as follows—

   (1) An analysis of the recorded data from the flight recorders shall ensure that the recorder operates correctly for the nominal duration of the recording;

   (2) The analysis of the FDR shall evaluate the quality of the recorded data to determine if the bit error rate (including those errors introduced by recorder, the acquisition unit, the source of the data on the aeroplane and by the tools used to extract the data from the recorder) is within acceptable limits and to determine the nature and distribution of the errors;

   (3) A complete flight from the FDR shall be examined in engineering units to evaluate the validity of all recorded parameters. Particular attention shall be given to parameters from sensors dedicated to the FDR. Parameters taken from the aircraft's electrical bus system need not be checked if their serviceability can be detected by other aircraft systems;

   (4) The readout facility shall have the necessary software to accurately convert the recorded values to engineering units and to determine the status of discrete signals;

   (5) An annual examination of the recorded signal on the CVR shall be carried out by replay of the CVR recording. While installed in the aircraft, the CVR shall record test signals from each aircraft source and from relevant external sources to ensure that all required signals meet intelligibility standards;

   (6) Where practicable, during the annual examination, a sample of in-flight recordings of the CVR shall be examined for evidence that the intelligibility of the signal is acceptable.

   (7) An annual examination of the recorded images on the AIR shall be carried out by replay of the AIR recording. While installed in the aircraft, the AIR shall record test images from each aircraft source and from relevant external sources to ensure that all required images meet recording quality standards.

3. Flight recorder systems shall be considered unserviceable if there is a significant period of poor quality data, unintelligible signals, or if one or more of the mandatory parameters is not recorded correctly.

4. The operator shall make available a report of the annual inspection on request to the regulatory authorities for monitoring purposes—

   (1) Calibration of the FDR system: for those parameters which have sensors dedicated only to the FDR and are not checked by other means, recalibration shall be carried out at least every five years or in accordance with the recommendations of the sensor manufacturer to determine any discrepancies in the engineering conversion routines for the mandatory parameters and to ensure that parameters are being recorded within the calibration tolerances.

   (2) When the parameters of altitude and airspeed are provided by sensors that are dedicated to the FDR system, there shall be a recalibration performed as recommended by the sensor manufacturer, or at least every two years.

IS 7: 40 (1) FLIGHT DATA RECORDERS-TYPE AND PARAMETERS-AEROPLANE

1. Flight data recorders shall be classified as Type I, Type IA, Type II and Type IIA depending upon the number of parameters to be recorded and the duration required for retention of the recorded information—

   (1) Type IA FDR. This FDR shall be capable of recording, as appropriate to the aeroplane, at least the 78 parameters in Table A.

   (2) Type I FDR. This FDR shall be capable of recording, as appropriate to the aeroplane, at least the first 32 parameters in Table A.

   (3) Types II and IIA FDRs. These FDRs shall be capable of recording, as appropriate to the aeroplane, at least the first 16 parameters in Table A.

NOTE: This (the number 16) is from ICAO Annex I, Part 6, Appendix 8: 2.2.2.8. ICAO Annex 6, Part II, Appendix 3.1: 2.2.2.8 says a Type II FDR shall be capable of recording at least the first 15 parameters.

2. *Parameters—General*.

   (1) The parameters that satisfy the requirements for FDRs are listed in the paragraphs below.

   (2) The number of parameters to be recorded shall depend on aeroplane complexity.

(3) The parameters without an asterisk (*) are mandatory parameters which shall be recorded regardless of aeroplane complexity.

(4) In addition, the parameters designated by an asterisk (*) shall be recorded if an information data source for the parameter is used by aeroplane systems or the flight crew to operate the aeroplane.

(5) However, other parameters may be substituted with due regard to the aeroplane type and the characteristics of the recording equipment.

3. *Parameter—Flight Path and Speed*. The following parameters satisfy the requirements for flight path and speed—

(1) Pressure altitude.

(2) Indicated or calibrated airspeed.

(3) Air-ground status and each landing gear air-ground sensor when practicable.

(4) Total or outside air temperature.

(5) Heading (primary flight crew reference).

(6) Normal acceleration.

(7) Lateral acceleration.

(8) Longitudinal acceleration (body axis).

(9) Time or relative time count.

(10) Navigation data*: drift angle, wind speed, wind direction, latitude/longitude.

(11) Groundspeed*.

(12) Radio altitude*.

4. *Parameters—Engine Power*. The following parameters satisfy the requirements for engine power—

(1) Engine thrust power: propulsive thrust/power on each engine, cockpit thrust/power lever position.

(2) Thrust reverse status*.

(3) Engine thrust command*.

(4) Engine thrust target*.

(5) Engine bleed valve position*.

(6) Additional engine parameters*: EPR, Nl, indicated vibration level, N2, EGT, TLA, fuel flow, fuel cut-off lever position, N3.

5. *Parameters—Configuration*. The following parameters satisfy the requirements for configuration—

(1) Pitch trim surface position.

(2) Flaps*: trailing edge flap position, cockpit control selection.

(3) Slats*: leading edge flap (slat) position, cockpit control selection,

(4) Landing Gear*: landing gear, gear selector position;

(5) Yaw trim surface position*.

(6) Roll trim surface position*.

(7) Cockpit trim control input position pitch*.

(8) Cockpit trim control input position roll*.

(9) Cockpit trim control input position yaw*.

(10) Ground spoiler and speed brake*: Ground spoiler position, ground spoiler selection, speed brake position, speed brake selection.

(11) De-icing and/or anti-icing systems selection*.

(12) Hydraulic pressure (each system)*.

(13) Fuel quantity*.

(14) AC electrical bus status*.

(15) DC electrical bus status*.

(16) APU bleed valve position*.

(17) Computed centre of gravity*.

6. *Parameters—Operation*. The following parameters satisfy the requirements for operation—

(1) Warnings.

(2) Primary flight control surface and primary flight control pilot input: pitch axis, roll axis, yaw axis.

(3) Marker beacon passage.

(4) Each navigation receiver frequency selection.

(5) Manual radio transmission keying and CVR/FDR synchronization reference.

(6) Autopilot/autothrottle/AFCS mode and engagement status*.

(7) Selected barometric setting*: pilot first officer (co-pilot).

(8) Selected altitude (all pilot selectable modes of operation)*.

(9) Selected speed (all pilot selectable modes of operation)*.

(10) Selected MACH (all pilot selectable modes of operation)*.

(11) Selected vertical speed (all pilot selectable modes of operation)*.

(12) Selected heading (all pilot selectable modes of operation)*.

(13) Selected flight path (all pilot selectable modes of operation)*; course/DSTRK, path angle.

(14) Selected decision height*.

(15) EFIS display format*: pilot, first officer (co-pilot).

(16) Multi-function/engine/alerts display format*.

(17) GPWS/TAWS/GCAS status*: selection of terrain display mode including pop-up display status, terrain alerts, both cautions and warning, and advisories, on/off switch position.

(18) Low pressure warning*: hydraulic pressure, pneumatic pressure.

(19) Computer failure*.

(20) Loss of cabin pressure*.

(21) TC AS/A CAS (traffic alert and collision avoidance system/ airborne collision avoidance system)*.

(22) Ice detection*.

(23) Engine warning each engine vibration*.

(24) Engine warning each engine over temperature*.

(25) Engine warning each engine oil pressure low*.

(26) Engine warning each engine over speed*.

(27) Wind shear warning*.

(28) Operational stall protection, stick shaker and pusher activation*.

7. All cockpit flight control forces*: control wheel, control column, rudder pedal cockpit input forces.

8. Vertical deviation*: ILS glide path, MLS elevation, GNSS approach path.

9. Horizontal deviation*: ILS localizer, MLS azimuth, GNSS approach path.

10. DME 1 and 2 distances*

11. Primary navigation system reference*: GNSS, INS, VOR/DME, MLS, Loran C, ILS.

12. Prakes*: left and right brake pressure, left and right brake pedal position.

13. Date*.

14. Event marker*.

15. Head up display in use*.

16. Para visual display on*.

Note 1: Parameter guidance for range, sampling, accuracy and resolution are as contained in the EUROCAE ED-112, Minimum Operational Performance Specification (MOPS) for Crash Protected Airborne Recorder Systems, or equivalent documents.

Note 2: It is not intended that aeroplanes issued with an individual certificate of airworthiness before 1st January, 2016 be modified to meet the range, sampling, accuracy or resolution guidance detailed in this Appendix.

17. *Parameters—Flight Path and Speed as Displayed to the Pilot.* The parameters that satisfy the requirements for flight path and speed as displayed to the pilot(s) are listed below. The parameters without an (*) are mandatory parameters which shall be recorded. In addition, the parameters designed by an (*) shall be recorded if an information source for the parameter is displayed to the pilot and is practicable to record—

(1) Pressure altitude.

(2) Indicated airspeed or calibrated airspeed.

(3) Heading (primary flight crew reference).

(4) Pitch attitude.

(5) Roll attitude.

(6) Engine thrust/power.

(7) Landing-gear status*.

(8) Total or outside air temperature*.

(9) Time*.

(10) Navigation data*: drift angle, wind speed, wind direction, latitude/longitude.

(11) Radio altitude*.

Table—Parameter Guidance for Crash Protected Flight Data Recorders—Aeroplanes

The first 16 (or 15) parameters satisfy the requirements for a Type II and Type IIA FDR. The first 32 parameters satisfy the requirements for a Type I FDR. The total 78 parameters satisfy the requirements for a Type IA FDR.

Serial Number	*Parameter*	*Measurement Range*	*Maximum Sampling and Recording Interval (Seconds)*	*Accuracy Limits (Sensor Input Compared to FDR Read-out)*	*Recording Resolution*
1	Time (UTC when available, otherwise relative time count or GPS sync)	24 hours	4	±0.125% per hour	1 second
2	Pressure-altitude	300 m (-1,000 ft) to maximum certificated altitude of aircraft 1,500 m (5,000 ft)	1	±30 m to ±200 m (±100 ft to ±700 ft)	1.5 m (5 ft)
3	Indicated airspeed or calibrated airspeed	95 km/h (50 kt) to max VSo (Note 1) VSo to 1.2 VD (Note 2)	1	±5% ±3%	1 kt (0.5 kt recommended)
4	Heading (primary flight crew reference)	360 degrees	1	±2°	0.5°
5	Normal acceleration (Note 3)-	- 3 g to +6 g	0.125	±1% of maximum range excluding datum error of ±5%	0.004 g
6	Pitch attitude	±75° or usable range whichever is greater	±0.25	±2°	0.5
7	Roll attitude	±180°	±0.25	±2°	0.5°
8	Radio transmission keying	On-off one discrete)	1	±2%	0.2% of full range or the resolution required to operate the aircraft

Serial Number	*Parameter*	*Measurement Range*	*Maximum Sampling and Recording Interval (Seconds)*	*Accuracy Limits (Sensor Input Compared to FDR Read-out)*	*Recording Resolution*
9	Power on each engine (Note 4)	Full range	1 (per engine)	±5% or as pilot's indicator	0.5% of full range or the resolution required to operate the aircraft
10*	Trailing edge flap and cockpit control selection	Full range or each discrete position	2	±5% or as pilot's indicator	0.5% of full range or the resolution required to operate the aircraft
11*	Leading edge flap and cockpit control selection	Full range or each discrete position	2	±2% unless higher accuracy uniquely required	0.2% of full range
12*	Thrust reverser position	Stowed, in transit, and reverse	1 (per engine)	±2°	0.3°C
13*	Ground spoiler/ speed brake selection (selection and position)	Full range or each discrete position	1		
14	Outside air temperature	Sensor range	2		
15*	Autopilot/auto	A suitable combination of discretes	1		
16	Longitudinal acceleration (Note 3)	+/–1 g	0.25	±0.015 g excluding a datum error of ±0.05g	0.004 g
17	Lateral acceleration (Note 3)	±l g	0.25	±0.015 g excluding a datum error of±0.05 g	0.004 g

Serial Number	*Parameter*	*Measurement Range*	*Maximum Sampling and Recording Interval (Seconds)*	*Accuracy Limits (Sensor Input Compared to FDR Read-out)*	*Recording Resolution*
18	Pilot input and/ or control surface position-primary controls (pitch, roll, yaw) (Note 5) (Note 6)	Full range	±0.25	±2° unless higher accuracy uniquely required	0.2% of full range or as installed
19	Pitch trim position	Full range		±3% unless higher accuracy uniquely required	0.3% of full range or as installed
20*	Radio altitude-	-6 m to 750 m (-20 ft to 2,500 ft)	1	±0.6 m (±2 ft) or ±3% whichever is greater below 150 m (500 ft) and ±5% above 150 m (500 ft)	0.3 m (1 ft) below 150 m (500 ft); 0.3 m (1 ft) ± 0.5% of full range above 150 m (500 ft)
21*	Vertical beam deviation (ILS/ GPS/G LS glide path, MLS elevation, IRNAV/ IAN vertical deviation)	Signal range	1	±3%	0.3% of full range
22*	Horizontal beam deviation (ILS/GPS/GLS localizer, MLS azimuth, IRNAV/ IAN lateral deviation)	Signal range	1	±3%	0.3% of full range
23	Marker beacon passage	Discrete	1		
24	Master warning	Discrete	1		
25	NAV receiver frequency selection (Note 7)	Full range	4	As installed	

Serial Number	*Parameter*	*Measurement Range*	*Maximum Sampling and Recording Interval (Seconds)*	*Accuracy Limits (Sensor Input Compared to FDR Read-out)*	*Recording Resolution*
26*	DME 1 and 2 distance (includes Distance to runway threshold (GLS) and Distance to missed approach point (IRNAV/ IAN) (Notes 7 and 8)	0–370 km (0–200 NM)	4	As installed	1852 m (1 NM)
27	Air/ground status	Discrete	1		
28*	GPWS/TAW S/ GCAS status (selection of terrain display mode including pop-up display status) and (Terrain alerts, both cautions and warnings, and advisories) and (on/off switch position)	Discrete	1		
29*	Angle of attack	Full range	0.5	As installed	0.3% of full range
30*	Hydraulics, each system (low pressure)	Discrete	2		
31*	Navigation data (latitude/ longitude, ground speed and drift angle) (Note 9)	As installed	1		0.5% of full range
32*	Landing gear and gear selector position	Discrete	4	As installed	
33*	Groundspeed	As installed	1	Data should be obtained from the most accurate system	1 kt

Serial Number	*Parameter*	*Measurement Range*	*Maximum Sampling and Recording Interval (Seconds)*	*Accuracy Limits (Sensor Input Compared to FDR Read-out)*	*Recording Resolution*
34	Brakes (left and right brake pressure, left and right brake pedal position)	(Maximum metered brake range, discretes or full range)	1	1±5%	2% of full range
35*	Additional engine parameters (EPR, N1, indicated vibration level, N2; EGT, fuel flow, fuel cut-off lever position, N3)	As installed	Each engine each second	As installed	2% of full range
36*	TCAQS/AC AS (traffic alert and collision avoidance system)	Discretes	1	As installed	
37*	Windshear warning	Discrete	1	As installed	
38*	Selected barometric setting (pilot, co-pilot)	As installed	64	As installed	0.1 mh (0.01 in-Hg)
39*	Selected altitude (all pilot selectable modes of operation)	As installed	1	As installed	Sufficient to determine crew selection
40*	Selected speed (all pilot selectable modes of operations)	As installed	1	As installed	Sufficient to determine crew selection
41*	Selected Mach (all pilot selectable modes of operation)	As installed	1	As installed	Sufficient to determine crew selection
42*	Selected vertical speed (all pilot selectable modes of operation)	As installed	1	As installed	Sufficient to determine crew selection

Serial Number	*Parameter*	*Measurement Range*	*Maximum Sampling and Recording Interval (Seconds)*	*Accuracy Limits (Sensor Input Compared to FDR Read-out)*	*Recording Resolution*
43*	Selected heading (all pilot selectable modes of operation)	As installed	1	As installed	Sufficient to determine crew selection
44*	Selected flight path (all pilot selectable modes of operation) (course/DST RK, path angle; final approach path(IRNAV/ IAN))		1	As installed	
45*	Selected Decision Height	As installed	64	As installed	Sufficient to determine crew
46*	EFIS display format (pilot, co-pilot)	Discrete(s)	4	As installed	
47*	Multifunction/ engine/alerts display format	Discrete(s)	4	As installed	
48*	AC electrical bus status	Discrete(s)	4	As installed	
49*	DC electrical bus status	Discrete(s)	4	As installed	
50*	Engine bleed valve position	Discrete(s)	4	As installed	
51*	APU bleed valve position	Discrete(s)	4	As installed	
52*	Computer failure	Discrete(s)	4	As installed	
53*	Engine thrust command	As installed	2	As installed	
54*	Engine thrust target	As installed	4	As installed	2% of full range
55*	Computed centre of gravity	As installed	64	As installed	1% of full range

Serial Number	*Parameter*	*Measurement Range*	*Maximum Sampling and Recording Interval (Seconds)*	*Accuracy Limits (Sensor Input Compared to FDR Read-out)*	*Recording Resolution*
56*	Fuel quantity in CG trim tank	As installed	64	As installed	1% of full range
57*	Head up display in use	As installed	4	As installed	
58*	Para visual display on/off	As installed	1	As installed	
59*	Operational stall protection, stick shaker and pusher activation	As installed	1	As installed	
60*	Primary navigation system reference (GNSS, INS, VOR/DME, MLS, Loran C, localizer glideslope)	As installed	4	As installed	
61 *	Ice detection	As installed	4	As installed	
62*	Engine warning each engine vibration	As installed	1	As installed	
63*	Engine warning each engine over temperature	As installed	1	As installed	
64*	Engine warning each engine oil pressure low	As installed	1	As installed	
65*	Engine warning each engine over speed	Full range	1	As installed	
66*	Yaw Trim Surface Position		2	±3% unless higher accuracy uniquely	0.3% of full range
67*	Roll Trim Surface Position	Full range	2	±3% unless higher accuracy uniquely required	0.3% of full range
68*	Yaw or sideslip angle	Full range	1	±5%	0.5%

Serial Number	*Parameter*	*Measurement Range*	*Maximum Sampling and Recording Interval (Seconds)*	*Accuracy Limits (Sensor Input Compared to FDR Read-out)*	*Recording Resolution*
69*	De-icing and/or anti-icing systems selection	Descrete(s)	4		
70*	Hydraulic pressure (each system)	Full range	2	±5%	100 psi
71*	Loss of cabin pressure	Discrete	1		
72*	Cockpit trim control input position Pitch	Full range	1	±5%	0.2% of full range or as installed
73*	Cockpit trim control input position Roll	Full range	1	±5%	0.2% of full range or as installed
74*	Cockpit trim control input position Yaw	Full range	1	±5%	0.2% of full range or as installed
75*	All cockpit flight control input forces (control wheel, control column, rudder pedal)	Full range (±311 N (±70 Ibf), ±378 N (±85 Ibf), ±734 N (±165 Ibf)	1 1	±5%	0.2% of full range or as installed
76*	Event marker	Discrete			
77*	Date	365 days	64		
78*	ANP or EPE or EPU	As installed	4	As installed	

Note 1: VSO stalling speed or minimum steady flight speed in the landing configuration.

Note 2: VD design diving speed.

Note 3: Refer to REGULATION 41(1) (L) for increased recording requirements.

Note 4: Record sufficient inputs to determine power.

Note 5: For aeroplanes with control systems in which movement of a control surface will back drive the pilot's control, "or" applies. For aeroplanes with control systems in which movement of a control surface will not back drive the pilot's control "and" applies. In aeroplanes with split surfaces, a suitable combination of inputs is acceptable in lieu of recording each surface separately.

Note 6: Refer to regulation 41(1)(m) for increased recording requirements.

Note 7: If signal available in digital form.

Note 8: Recording of latitude and longitude from INS or other navigation system is a preferred alternative.

Note 9: If signals readily available.

If further recording capacity is available, recording of the following additional information should be considered—

1. Operational information from electronic display systems, such as electronic flight instrument systems (EFIS), electronic centralized aircraft monitor (ECAM) and engine indication and crew alerting system (EICAS). Use the following order of priority—
   (1) parameters selected by the flight crew relating to the desired flight path, e.g. barometric pressure setting, selected altitude, selected airspeed, decision height, and autoflight system engagement and mode indications if not recorded from another source.
   (2) display system selection/status, e.g. SECTOR, PLAN, ROSE, NAV, WXR, COMPOSITE, COPY, ETC.
   (3) warnings and alerts.
   (4) the identity of displayed pages for emergency procedures and checklists.
2. Retardation information including brake application for use in the investigation of landing overruns and rejected take-offs.

IS 7:40 (2) Flight Data Records-Type and Parameters—Helicopters

1. Flight data records shall be classified as Type IV, Type IVA, and Type V depending upon the number of parameters to be recorded—
   (1) Type IV FDRs shall be capable of recording, as appropriate to the helicopter, at least the first 30 parameters in Table B.
   (2) Type IVA FDRs shall be capable or recording, as appropriate to the helicopter, at least the first 48 parameters in Table B.
   (3) Type V FDRs shall be capable of recording, as appropriate to the helicopter, at least the first 15 parameters in Table B.
   (4) For all FDR types, if further recording capability is available, recording of the following additional information shall be considered.
   (5) Additional operational information from electronic displays, such as electronic flight instrument systems (EFIS), electronic centralized aircraft monitor (ECAM) and engine indication and crew alerting system (EICAS).
   (6) Additional engine parameters (EPR, N1, fuel flow, etc.).

2. The parameters that satisfy the requirements for a Type IV; Type IVA, and Type V FDRs are listed below. The number of parameters to be recorded shall depend on helicopter complexity. The parameters without an asterisk (*) are mandatory parameters that shall be recorded. The parameters designated by an asterisk (*) shall also be recorded if an information data source for an asterisked parameter is used by helicopter systems or the flight crew to operate the helicopter. However, other parameters may be substituted with due regard to the helicopter type and the characteristics of the recording equipment.

3. The following parameters satisfy the requirements for flight path and speed—
   (1) Pressure altitude.
   (2) Indicated airspeed.
   (3) Total or outside air temperature.
   (4) Heading (primary flight crew reference).
   (5) Normal acceleration.
   (6) Lateral acceleration.
   (7) Longitudinal acceleration (body axis).
   (8) Time or relative time count.
   (9) Navigation data*: drift angle, wind speed, wind direction, latitude/longitude.
   (10) Radio altitude*.

4. The following parameters satisfy the requirements for attitude—
   (1) Pitch attitude.
   (2) Roll attitude.
   (3) Yaw rate.

5. The following parameters satisfy the requirements for engine power—
   (1) Power on each engine: free power turbine speed (Nf), engine torque, engine gas generator speed (Ng), cockpit power control position.
   (2) Rotor: main rotor speed, rotor brake.
   (3) Main gearbox oil pressure*.
   (4) Gearbox oil temperature*, main gearbox oil temperature, tail rotor gearbox oil temperature.
   (5) Engine exhaust gas temperature (T4)*.
   (6) Turbine inlet temperature (TIT)*.

6. The following parameters satisfy the requirements for configuration—
   (1) Landing gear or gear selector position*.
   (2) Fuel quality*.
   (3) Ice detector liquid water content*.

7. The following parameters satisfy the requirements for operation—

(1) Hydraulics low pressure.

(2) Warnings.

(3) Primary flight controls-pilot input and/or control output position: collective pitch, longitudinal cyclic pitch, lateral cyclic pitch, tail rotor petal, controllable stabilator, hydraulic selection.

(4) Marker beacon passage.

(5) Each navigation receiver frequency selection.

(6) AFCS mode and engagement status*.

(7) Stability augmentation system engagement*.

(8) Indicated sling load force*.

(9) Vertical deviation*: ILS glide path, GNSS approach path.

(10) Horizontal deviation*: ILS localizer, GNSS approach path.

(11) DME 1 and 2 distances*.

(12) Altitude rate*.

(13) Ice detector liquid water content*.

(14) Helicopter health and usage monitor system (HUMUS)* engine data, chip detectors, track timing, exceedance discretes, broadband average engine vibration.

NOTE: *Parameter requirements, including range, sampling, accuracy and resolution are as contained in the Minimum Operational Performance Specification (MOPS) for Crash Protected Airborne Recorder Systems, or equivalent documents.*

Serial Number	*Parameter*	*Measurement Range*	*Maximum Sampling and Recording Interval (Seconds)*	*Accuracy Limits (Sensor Input Compared to FDR Read-out)*	*Recording Resolution*
1	Time (UTC when available, otherwise relative time count or GPS time sync)ANP or EPE or EPU	24 hours	4	±0.125% per hour	1s
2	Pressure-altitude-	-300 m (-1,000 ft) to maximum certificated altitude of aircraft +1,500 m (+5,000 ft)	1	±30 m to ±200 m (±100 ft to ±700 ft)	1.5 m (5 ft)

Serial Number	*Parameter*	*Measurement Range*	*Maximum Sampling and Recording Interval (Seconds)*	*Accuracy Limits (Sensor Input Compared to FDR Read-out)*	*Recording Resolution*
3	Indicated airspeed	As the installed measuring system	1	±3%	1 kt
4	Heading	360 degrees	0.125	±2°	±5°
5	Normal acceleration	-3 g to +6 g		±0–.9 g excluding a datum error of±g	0.004 g
6	Pitch attitude	±75° or 100% of usable range whichever is greater	0.5	±2°	±5°
7	Roll attitude	±180°	0.5	±2°	±5°
8	Radio transmission keying	On-off (one discrete)	1	—	—
9	Power on each engine	Full range	1 (per engine)	±2%	0.1% of full range
10	Main rotor:	50-130%	0.51	±2%	0.3% of full range
	Main rotor speed	Discrete		—	—
11	Pilot input and/or control surface position-primary controls (Collective pitch, longitudinal cyclic pitch, lateral cyclic pitch, tail rotor pedal)	Full range	0.5 (0.25 recommended)	±2% unless higher accuracy uniquely required	0.5% of operating range
12	Hydraulics, each system (low pressure and selection)	Discrete	1	—	—

Serial Number	*Parameter*	*Measurement Range*	*Maximum Sampling and Recording Interval (Seconds)*	*Accuracy Limits (Sensor Input Compared to FDR Read-out)*	*Recording Resolution*
13	Outside air temperature	Sensor range	2	±2°C	±3°C
14*	Autopilot/ auto throttle/ AFCS mode and engagement status	A suitable combination of discretes	1	—	—
15*	Stability augmentation system engagement	Discrete	1	As installed	—
16*	Main gearbox oil pressure	As installed	1	As installed	6.895 kN/m^2 (1 psi)
17*	Main gearbox oil temperature	As installed	2	±1.5% max range excluding datum error of ±5%	±1^{oC}
18	Yaw acceleration (or yaw rate)	±400°/second	0.25		±2os
19*	Sling load force	-200% of certified load	0.5	±3% of max range	0.5% for maximum certified load
20	Longitudinal acceleration	±1 g	0.25	±0.015 g excluding datum error of ± 0.05 g	0.0004 g
21	Lateral acceleration	±1 g	0.25	±0.015 g excluding datum error of ± 0.05 g	0.0004 g
22*	Radio altitude	-6 m to 750 m (-20 ft to 2,500 ft)	1	±0.6 m (±2 ft) or ±3% whichever is greater below 150 m (500 ft) and ±5% above 150 m (500 ft)	0.3 m (1ft) below 150 m (500 ft), 0.3 m (1 ft) = 0.5% of full range above 150 m (500 ft)

Serial Number	*Parameter*	*Measurement Range*	*Maximum Sampling and Recording Interval (Seconds)*	*Accuracy Limits (Sensor Input Compared to FDR Read-out)*	*Recording Resolution*
23*	Vertical beam deviation	Signal range	1	±3%	0.3% of full range
24*	Horizontal beam deviation	Signal range	1	±3%	0.3% of full range
25	Marker beacon passage	Discrete	1	—	—
26	Warnings	Discrete(s)	1	As installed	—
27	Each navigation receiver frequency selection	Sufficient to determine selected frequency	4		
28*	DME 1 and 2 distance	0-370 km (0-200 NM)	4	As installed	1.852 m (1 NM)
29*	Navigation data (latitude/ longitude, ground speed, drift angle, wind speed, wind direction)	As installed	2	As installed	As installed
30*	Landing gear or gear selector position	Discrete	4	—	—
31*	Engine exhaust gas temperature (T4)	As installed	1	As installed	—
32*	Turbine inlet temperature (ITI/ITT)	As installed	1	As installed	—
33*	Fuel contents	As installed	4		—
34*	Altitude rate	As installed	1	As installed	—
35*	Ice detection	As installed	4	As installed	—
36*	Helicopter health and usage monitor system	As installed	1	As installed	
37	Engine control modes	Discrete	1	—	—

Serial Number	*Parameter*	*Measurement Range*	*Maximum Sampling and Recording Interval (Seconds)*	*Accuracy Limits (Sensor Input Compared to FDR Read-out)*	*Recording Resolution*
38*	Selected barometric setting (pilot and co-pilot)	As installed	64	As installed	0.1 mb (0.01 in Hg)39*
39	Selected altitude (all pilot selectable modes of	As installed	1	As installed	Sufficient to determine crew selection
40*	Selected speed (all pilot selectable modes of operation)	As installed	1	As installed	Sufficient to determine crew selection
41*	Selected Mach (all pilot selectable modes of operation)	As installed	1	As installed	Sufficient to determine crew selection
42*	Selected vertical speed (all pilot selectable modes of operation)	As installed	1	As installed	Sufficient to determine crew selection
43*	Selected heading (all pilot selectable modes of operation)	As installed	1	As installed	Sufficient to determine crew selection
44*	Selected flight path (all pilot selectable modes of operation)	As installed	1	As installed	Sufficient to determine crew selection
45*	Selected decision height	As installed	4	As installed	Sufficient to determine crew selection

Serial Number	*Parameter*	*Measurement Range*	*Maximum Sampling and Recording Interval (Seconds)*	*Accuracy Limits (Sensor Input Compared to FDR Read-out)*	*Recording Resolution*
46*	EFIS display format (pilot and co-pilot)	Discrete(s)	4	—	—
47*	Multi-function/ engine/ alerts display format	Discrete(s)	4	—	—
48*	Event marker	Discrete	1	—	—

IS 7:41 Aircraft Equippage for Operations—Aircraft Data Recording System (ADRS)

1. ADRS shall be capable of recording, as appropriate to the aircraft, at least the essential (E) parameters in the Table below.
2. The measurement range, recording interval and accuracy of parameters on installed equipment is usually verified by methods approved by the appropriate certificating Authority.
3. Documentation concerning parameter allocation, conversion equations, periodic calibration and other serviceability/ maintenance information shall be maintained by the operator. The documentation shall be sufficient to ensure that accident investigation authorities have the necessary information to read out the data in engineering units.

Table-Parameter Guidance for Aircraft Data Recording Systems

No.	*Parameter Name*	*Parameter Category*	*Minimum Recording range*	*Maximum Recording Interval in Seconds*	*Minimum Recording Accuracy*	*Minimum Recording Resolution*	*Remarks*
1	Heading	R*	±180° (Magnetic or True)	1	±2°	0.5°	*If not available, record rates
2	Pitch attitude	E*	±90°	0.25	±2°	0.5°	*If not available, record rates
3	Roll attitude	E*	±180°	0.25	±2°	0.5°	*If not available, record rates
4.	Yaw rate	E*	±300°	0.25	±1% + drift of 360°/hr	2°	*Essential if no heading available

No.	*Parameter Name*	*Parameter Category*	*Minimum Recording range*	*Maximum Recording Interval in Seconds*	*Minimum Recording Accuracy*	*Minimum Recording Resolution*	*Remarks*
5	Pitch rate	E*	±300°	0.25	±1% + drift of 360°/hr	2°	* Essential if no pitch attitude available
6	Roll rate	E*	±300°	0.25	± 1 % + drift of 360°/hr	2°	* Essential if no roll rate available
7	Positioning system: latitude/ longitude	E	Latitude: ±90° Longitude: ±180	2 (1 if available)	As installed 0.00005° recommended	0.00015°	—
8	Positioning system: estimated error	E*	Available range	2 (1 if available)	As installed	As installed	*lf available
9	Positioning system: altitude	E	-300 m (-1,000 ft) to maximum certificated altitude of aeroplane +1 500 m (5,000 ft)	2 (1 if available)	As installed (±15 m (±50 ft) recommended)	1.5 m (5 ft)	—
10	Positioning system: time	E	24 hours	1	±0.5 second	0.1 second	*UTC time preferred where available
11	Positioning system: ground speed	E	0-1 000 kt	2 (1 if available)	As installed (±5 kt recommended)	1 kt	—
12	Positioning system: channel	E	0-360°	2 (1 if available)	As installed (±2 kt recommended)	0.5°	—
13	Normal acceleration	E	-3 g to + 6 g(*)	0.25 (0.125 if available)	As installed (±0.09 g excluding a datum error of ±45 g recommended)	0.004 g	—

No.	*Parameter Name*	*Parameter Category*	*Minimum Recording range*	*Maximum Recording Interval in Seconds*	*Minimum Recording Accuracy*	*Minimum Recording Resolution*	*Remarks*
14	Longitudinal acceleration	E	±1 g(*)	0.25 (0.125 if available)	As installed (±0.015 g excluding a datum error of ±0.05 g recommended)	0.004 g	—
15	Lateral acceleration	E	±1 g(*)	0.25 (0.125 if available)	As installed (±0.015 g excluding a datum error of ±0.05 g recommended)	0.004 g	—
16	External static pressure (or pressure altitude)	R	34.4 mb (3.44 in-Hg) to 310.2 mb (31.03 in- Hg) or available sensor range	1	As installed (±1 mb (0.1 in-Hg) or ±30 m (±100 ft) to ±210 m (±700 ft) recommended)	0.1 mb (0.01 in- Hg) or 1.5 m (5 ft)	—
17	Outside air temperature (or total air temperature)	R	-50° to +90°C or available sensor range	2	As installed (±2°C recommended)	1°C	—
18	Indicated air speed	R	As the installed pilot display measuring system or available sensor range	1	As installed (±3% recommended)	1 kt (0.5 kt recommended)	—
19	Engine RPM	R	Full range including overspeed condition	Each engine each second	As installed	0.2% of - full range	—
20	Engine oil pressure	R	Full range	Each engine each second	As installed (5% of full range)	2% of full range	

No.	*Parameter Name*	*Parameter Category*	*Minimum Recording range*	*Maximum Recording Interval in Seconds*	*Minimum Recording Accuracy*	*Minimum Recording Resolution*	*Remarks*
21	Engine oil temperature	R	Full range	Each engine each second	As installed (5% of full range)	2% of full range	
22	Fuel flow or pressure	R	Full range	Each engine each second	As installed	2% of full range	
23	Manifold pressure	R	Full range	Each engine each second	As installed	0.2% of full range	
24	Engine thrust/ power/torque parameters required to determine propulsive thrust/power*	R	Full range	Each engine each second	As installed	0.1% of full range	*Sufficient parameters e.g. EPRN/ N1 or torque/Np as appropriate to the particular engine shall be recorded to determine power in both normal and reverse thrust. A margin for possible overspeed should be provided.
25	Engine gas generator speed (Ng)	R	0–150%	Each engine each second	As installed	0.2% of full range	—
26	Free power turbine speed (Nf)	R	0–150%	Each engine each second	As installed	0.2% of full range	—
27	Coolant temperature	R	Full range	1	As installed (±5°C recommended)	1°C	—
28	Main voltage	R	Full range	Each engine each second	As installed	1 Volt	—
29	Cylinder head temperature	R	Full range	Each cylinder each second	As installed	2% of full range	—

No.	*Parameter Name*	*Parameter Category*	*Minimum Recording range*	*Maximum Recording Interval in Seconds*	*Minimum Recording Accuracy*	*Minimum Recording Resolution*	*Remarks*
30	Flaps position	R	Full range or each discrete position	2	As installed	0.5°	—
31	Primary flight control surface position	R	Full range	0.25	As installed	0.2% of full range	—
32	Fuel quantity	R	Full range	4	As installed	1% of full range	—
33	Exhaust gas temperature	R	Full range	Each engine each second	As installed	2% of full range	—
34	Emergency voltage	R	Full range	Each engine each second	As installed	1 Volt	
35	Trim surface position.	R	Full range or each discrete position	1	As installed	0.3% of full range	
36	Landing gear position	R	Each discrete position*	Each gear every 2 seconds	As installed		* Where available, record up-and- locked and down-and-locked position
37	Novel/ unique aircraft features	R	As required	As required	As required	As required	

Key:
E Essential parameters
R Recorded parameters

IS 7:48 Data Link Recorder Applicability

1. Messages applying to the applications listed below shall be recorded. Applications without the asterisk (*) are mandatory applications which shall be recorded regardless of the system complexity. Applications with an (*) shall be recorded only as far as is practicable given the architecture of the system—
   (1) Data link initiation capability.
   (2) Controller-pilot data link: communications.

(3) Data link-flight information services.
(4) Automatic dependent surveillance-contract.
(5) Automatic dependent surveillance-broadcast*.
(6) Aeronautical operational control*.

2. Descriptions of the applications for data link recorders are contained in the table below—

Table—Description of Applications for Data Link Recorders

Item No.	*Application Type*	*Application Description*	*Recording Content*
1	Data link Initiation	This includes any applications used to log on to or initiate data link service. In FANS-1/A and ATN, these are ATS Facilities Notification (AFN) and Context Management (CM) respectively.	C
2	Controller/Pilot Communication	This includes any application used to exchange requests, clearances, instructions and reports between the flight crew and controllers on the ground. In FANS-1/A and ATN, this includes the CPDLC application. It also includes applications used for the exchange of oceanic (OCL) and departure clearances (DCL) as well as data link delivery of taxi clearances.	C
3	Addressed Surveillance	This includes any surveillance application in which the ground sets up contracts for delivery of surveillance data. In FANS-1/A and ATN, this includes the Automatic Dependent Surveillance (ADS-C) application. Where parametric data are reported within the message they shall be recorded within the message they shall be recorded unless data from the same source are recorded on the FDR.	C
4	Flight Information	This includes any service used for delivery of flight, information to specific aircraft. This includes, for example, D-METAR, D-ATIS, D-NOTAM and other textual data link services.	C
5	Aircraft Broadcast Surveillance	This includes Elementary and Enhanced Surveillance Systems, as well as ADS-B output data. Where parametric data sent by the aircraft are reported within the message they shall be recorded unless data from the same sources are recorded on the FDR.	M*
6	Aeronautical Operational Control Data	This includes any application transmitting or receiving data used for AOC purposes.	M*

Key:
C Complete contents recorded.

M Information that enables correlation to any associated records stored separately from the aircraft.

* Applications to be recorded only as far as is practicable given the architecture of the system.

IS 7:53 EMERGENCY EXIT EQUIPMENT—PASSENGERS

1. The emergency exit equipment for aeroplanes in subregulation 53 (1) of the Regulations shall meet the following requirements—

(1) The assisting means for a floor level emergency exit shall meet the requirements under which the aeroplane was type certified.

(2) The location of each passenger emergency exit shall be—

(*a*) recognizable from a distance equal to the width of the cabin;

(*b*) indicated by a sign visible to occupants approaching along the main passenger aisle.

(3) There shall be an emergency exit locating sign—

(*a*) above the aisle near each over-the-wing passenger emergency exit, or at another ceiling location if it is more practical because of low headroom;

(*b*) next to each floor level passenger emergency exit, except that one sign may serve two such exits if they both can be seen readily from that sign; and

(*c*) on each bulkhead or divider that prevents fore and aft vision along the passenger cabin, to indicate emergency exits beyond and obscured by it, except that if this is not possible, the sign may be placed at another appropriate location.

(4) Each passenger emergency exit marking and each locating sign shall be manufactured to meet the interior emergency exit marking requirements under which the aeroplane was type certified, unless the Authority cites different requirements for compliance with this paragraph.

NOTE: *No sign may continue to be used if its luminescence (brightness) decreases to below 250 micro lamberts.*

(5) Sources of general cabin illumination may be common to both the emergency and the main lighting systems if the power supply to the emergency light system is independent of the power supply to the main lighting system.

(6) The emergency lighting system shall provide enough general lighting in the passenger cabin so that the average illumination,

when measured at 40-inch intervals at seat armrest height, on the centerline of the main passenger aisle, is at least 0.05 foot-candles.

(7) Each emergency light shall—

(*a*) be operable manually both from the flight crew station and from a point in the passenger compartment that is readily accessible to a normal cabin crew member seat;

(*b*) have a means to prevent inadvertent operation of the manual controls; and

(*c*) when armed or turned on at either station, remain lighted or become lighted upon interruption of the aeroplane's normal electric power;

(*d*) provide the required level of illumination for at least 10 minutes at the critical ambient conditions after emergency landing;

(*e*) have a cockpit control device that has an "on", "off" and "armed" position.

(8) The location of each passenger emergency exit operating handle and instructions for opening the exit shall be shown in accordance with the requirements under which the aeroplane was type certified, unless the Authority cites different requirements for compliance with this paragraph.

(9) No operating handle or operating handle cover may continue to be used if its luminescence (brightness) decreases to below 100 micro lamberts.

(10) Access to emergency exits shall be provided as follows for each passenger carrying aeroplane—

(*a*) each passageway between individual passenger areas, or leading to a Type I or Type II emergency exit, shall be unobstructed and at least 20 inches wide;

(*b*) there shall be enough space next to each Type I or Type II emergency exit to allow a crew member to assist in the evacuation of passengers without reducing the unobstructed width of the passageway below that are required in this paragraph (10);

(*c*) there shall be access from the main aisle to each Type III and Type IV exit. The access from the aisle to these exits shall not be obstructed by seats, berths, or other protrusions in a manner that would reduce the effectiveness of the exit. In addition, the access shall meet the emergency exit access requirements under

which the aeroplane was type certificated, unless the Authority cites different requirements for compliance with this paragraph;

(*d*) if it is necessary to pass through a passageway between passenger compartments to reach any required emergency exit from any seat in the passenger cabin, the passageway shall not be obstructed. However, curtains may be used if they allow free entry through the passageway;

(*e*) no door may be installed in any partition between passenger compartments;

(*f*) if it is necessary to pass through a doorway separating the passenger cabin from other areas to reach any required emergency exit from any passenger seat, the door shall have a means to latch it in open position, and the door shall be latched open during each take-off and landing. The latching means shall be able to withstand the loads imposed upon it when the door is subjected to the ultimate inertia forces, relative to the surrounding structure, prescribed in the airworthiness standards for type certification in the transport category as cited by the Authority;

(11) Each passenger emergency exit and the means of opening that exit from the outside shall be marked on the outside of the aeroplane with a 2-inch coloured band outlining the exit on the side of the fuselage.

(12) Each passenger emergency exit marking, including the band, shall be readily distinguishable from the surrounding fuselage area by contrast in colour and shall comply with the following—

(*a*) if the reflectance of the darker colour is 15 percent or less, the reflectance of the lighter colour shall be at least 45 percent;

(*b*) if the reflectance of the darker colour is greater than 15 percent, at least a 30 percent difference between its reflectance and the reflectance of the lighter colour shall be provided;

NOTE: *"Reflectance" is the ratio of the luminous flux reflected by a body to the luminous flux it receives.*

(*c*) exits that are not in the side of the fuselage shall have external means of opening and applicable instructions

marked conspicuously in red or, if red is inconspicuous against the background colour, in bright chrome yellow and, when the opening means for such an exit is located on only one side of the fuselage, a conspicuous marking to that effect shall be provided on the other.

(13) Each passenger-carrying aeroplane shall be equipped with exterior lighting that meets the requirements under which that aeroplane was type certificated, unless the Authority cites different requirement for compliance with this paragraph.

(14) Each passenger-carrying aeroplane shall be equipped with a slip-resistant escape route that meets the requirements under which that aeroplane was type certificated, unless the Authority cites different requirements for compliance with this paragraph.

(15) Each floor level door or exit in the side of the fuselage (other than those leading into a cargo or baggage compartment that is not accessible from the passenger cabin) that is 44 or more inches high and 20 or more inches wide, but not wider than 46 inches, each passenger ventral exit and each tail cone exit, shall meet the requirements of this section for floor level emergency exits.

NOTE: *The Authority may grant a deviation from this paragraph if he finds that circumstances make full compliance impractical and that an acceptable level of safety has been achieved.*

(16) Approved emergency exits in the passenger compartments that are in excess of the minimum number of required emergency exits shall meet all of the applicable provisions of this subsection and shall be readily accessible.

(17) On each large passenger-carrying aeroplane with a ventral exit and tail cone exit shall be—

(*a*) designed and constructed so that it cannot be opened during flight; and

(*b*) marked with a placard readable from a distance of 30 inches and installed at a conspicuous location near the means of opening the exit, stating that the exit has been designed and constructed so that it cannot be opened during flight.

(18) Portable lights. No person may operate a passenger carrying aeroplane unless it is equipped with flight stowage provisions accessible from each cabin crew member seat.

IS 7:62 FIRST-AID KITS AND UNIVERSAL PRECAUTION KITS

1. The required first-aid kits shall include at least the following—
   (1) Antiseptic swabs (10/pack).
   (2) Bandage: adhesive strips.
   (3) Bandage: gauze 7.5 cm × 4.5 m.
   (4) Bandage: triangular; safety pins.
   (5) Dressing: burn 10 cm × 10 cm.
   (6) Dressing: compress, sterile 7.5 cm × 12 cm.
   (7) Dressing: gauze, sterile 10.4 cm × 10.4 cm.
   (8) Tape: adhesive 2.5 cm (roll).
   (9) Steri-strips (or equivalent adhesive strip).
   (10) Hand cleanser or cleansing towelettes.
   (11) Pad with shield, or tape, for eye.
   (12) Scissors: 10 cm [as allowed by national regulations].
   (13) Tape: Adhesive, surgical 1.2 cm × 4.6 m.
   (14) Tweezers: splinter.
   (15) Disposable gloves (multiple pairs).
   (16) Thermometers (non-mercury).
   (17) Mouth-to-mouth resuscitation mask with one-way valve.
   (18) First-aid manual, current edition.
   (19) Incident record form.
   (20) Mild to moderate analgesic [as allowed by national regulations].
   (21) Antiemetic [as allowed by national regulations].
   (22) Nasal decongestant [as allowed by national regulations].
   (23) Antacid [as allowed by national regulations].
   (24) Antihistamine [as allowed by national regulations].
2. The required universal precaution kits shall include at least the following—
   (1) Dry powder that can convert small liquid spill into a sterile granulated gel.
   (2) Germicidal disinfectant for surface cleaning.
   (3) Skin wipes.
   (4) Face/eye mask (separate or combined).
   (5) Gloves (disposable).
   (6) Protective apron.
   (7) Large absorbent towel.

(8) Pick-up scoop with scraper.

(9) Bio-hazard disposal waste bag.

(10) Instructions.

NOTE: *The carriage of automated external defibrillators (AED) should be determined by operators or the Authority on the basis of a risk assessment taking into account the particular needs of the operation.*

IS 7:63 EMERGENCY MEDICAL KIT—AEROPLANES

1. The required medical kit shall include the following equipment—

(1) Stethoscope.

(2) Sphygmomanometer (electronic preferred).

(3) Airways, oropharyngeal (three sizes).

(4) Syringes (appropriate range of sizes).

(5) Needles (appropriate range of sizes).

(6) Intravenous catheters (appropriate range of sizes).

(7) Antiseptic wipes.

(8) Gloves (disposable).

(9) Needle disposal box.

(10) Urinary catheter.

(11) System for delivering intravenous fluids.

(12) Venous tourniquet.

(13) Sponge gauze.

(14) Tape-adhesive.

(15) Surgical mask.

(16) Emergency tracheal catheter (or large gauge intravenous cannula).

(17) Umbilical cord clamp.

(18) Thermometers (non-mercury).

(19) Basic life support cards.

(20) Bag-valve mask.

(21) Flashlight and batteries.

NOTE: *If a cardiac monitor is available (with or without an AED) add to the above list.*

2. [AOC] The required medical kit shall include the following medication—

(1) Epinephrine 1:1 000.

(2) Antihistamine—injectable.

(3) Dextrose 50% (or equivalent)—injectable: 50 ml.

(4) Nitroglycerin tablets, or spray.

(5) Major analgesic.

(6) Sedative anticonvulsant—injectable.

(7) Antiemetic—injectable.

(8) Bronchial dilator—inhaler.

(9) Atropine—injectable.

(10) Adrenocortical steroid—injectable.

(11) Diuretic—injectable.

(12) Medication for postpartum bleeding.

(13) Sodium chloride 0.9% (minimum 250 ml).

(14) Acetyl salicylic acid (aspirin) for oral use.

(15) Oral beta blocker.

Note 1: Epinephrine 1:10 000 (can be a dilution of epinephrine 1:1 000).

Note 2: The United Nations Conference for the Adoption of a Single Convention on Narcotic Drugs in March 1961 adopted such a Convention, article 32 of which contains special provisions concerning the carriage of drugs in medical kits of aircraft engaged in international flight.

IS 7:64 Oxygen Storage and Dispensing Apparatus

1. The supplemental oxygen supply requirements for non-pressurized aeroplanes are as follows—

(1) An operator shall not operate a non-pressurrized aeroplane at pressure altitudes above 10,000 ft unless supplemental oxygen equipment, capable of storing and dispensing the oxygen supplies required, is provided.

(2) The amount of supplemental oxygen for sustenance required for a particular operation shall be determined on the basis of flight altitudes and flight duration, consistent with the operating procedures, established for each operation in the Operations Manual and with the routes to be flown, and with the emergency procedures specified in the Operations Manual.

(3) An aeroplane intended to be operated above 10,000 ft pressure altitude shall be provided with equipment capable of storing and dispensing the oxygen supplies required.

(4) Oxygen supply requirements—

(*a*) flight crew members: each member of the flight crew on flight deck duty shall be supplied with supplemental oxygen in accordance with Table 1. If all occupants

of flight deck seats are supplied from the flight crew source of oxygen supply then they shall be considered as flight crew members on flight deck duty for the purpose of oxygen supply.

(*b*) cabin crew members, additional crew members and passengers. Cabin crew members and passengers shall be supplied with oxygen in accordance with Table 1. Cabin crew members carried in addition to the minimum number of cabin crew members required, and additional crew members, shall be considered as passengers for the purpose of oxygen supply.

TABLE 1—SUPPLEMENTAL OXYGEN FOR NON-PRESSURIZED AEROPLANES

(*a*)	(*b*)
Supply For:	Duration and Pressure Altitude
1. All occupants of flight deck seats on flight deck duty	Entire flight time at pressure altitudes above 10,000 feet
2. All required cabin crew members	Entire flight time at pressure altitudes above 13,000 ft and for any period exceeding 30 minutes at pressure altitudes above 10,000 ft but not exceeding 13,000 ft
3. 100% of passengers (see note)	Entire flight time at pressure altitudes above 13,000 ft
4. 10% of passengers (see note)	Entire flight time after 30 minutes at pressure altitudes greater than 10,000 ft but not exceeding 13,000 ft

NOTE: *For the purpose of this table "passengers" means passengers actually carried and includes infants.*

2. The supplemental oxygen supply requirements for pressurized aeroplanes are as follows—

(1) An operator shall not operate a pressurized aeroplane at pressure altitudes above 10,000 ft unless supplemental oxygen equipment, capable of storing and dispensing the oxygen supplies required by this paragraph, is provided.

(2) The amount of supplemental oxygen required shall be determined on the basis of cabin pressure altitude, flight duration and the assumption that a cabin pressurization failure will occur at the altitude or point of flight that is most critical from the standpoint of oxygen need, and that, after the failure, the aeroplane will descend in accordance with emergency procedures specified in the Aeroplane Flight Manual to a safe altitude for the route to be flown that will allow continued safe flight and landing.

(3) Following a cabin pressurization failure, the cabin pressure altitude shall be considered the same as the aeroplane pressure altitude, unless it is demonstrated to the Authority that no probable failure of the cabin or pressurization system will result in a cabin pressure altitude equal to the aeroplane pressure altitude. Under these circumstances, the demonstrated maximum cabin pressure altitude may be used as a basis for determination of oxygen supply.

(4) Oxygen equipment and supply requirements—

(*a*) Flight crew members—

(i) each member of the flight crew on flight deck duty shall be supplied with supplemental oxygen in accordance with Table 2. If all occupants of flight deck seats are supplied from the flight crew source of oxygen supply then they shall be considered as flight crew members on flight deck duty for the purpose of oxygen supply;

(ii) flight deck seat occupants, not supplied by the flight crew source, are to be considered as passengers for the purpose of oxygen supply;

(iii) oxygen masks shall be located so as to be within the immediate reach of flight crew members whilst at their assigned duty station;

(iv) oxygen masks for use by flight crew members in pressurized aeroplanes operating at pressure altitudes above 25,000 ft, shall be a quick donning type mask.

(*b*) Cabin crew members, additional crew members, and passengers—

(i) cabin crew members and passengers shall be supplied with supplemental oxygen in accordance with Table 2. Cabin crew members carried in addition to the minimum number of cabin crew members required, and additional crew members, shall be considered as passengers for the purpose of oxygen supply;

(ii) aeroplanes intended to be operated at pressure altitudes above 25,000 ft shall be provided sufficient spare outlets and masks and/or sufficient portable oxygen units with masks for use by all required cabin crew members. The spare outlets and/or portable oxygen units are to be distributed

evenly throughout the cabin to ensure immediate availability of oxygen to each required cabin crew member regardless of his location at the time of cabin pressurization failure;

(iii) aeroplanes intended to be operated at pressure altitudes above 25,000 ft shall be provided an oxygen dispensing unit connected to oxygen supply terminals immediately available to each occupant, whenever seated. The total number of dispensing units and outlets shall exceed the number of seats by at least 10 percent. The extra units shall be evenly distributed throughout the cabin;

(iv) aeroplanes intended to be operated at pressure altitudes above 25,000 ft or which, if operated at or below 25,000 ft, cannot descend safely within four minutes to 13,000 ft, and for which the individual certificate of airworthiness was first issued on or after 9 November 1998, shall be provided with automatically deployable oxygen equipment immediately available to each occupant, wherever seated. The total number dispensing units and outlets shall exceed the number of seats by at least 10 percent. The extra units shall be evenly distributed throughout the cabin;

(v) the oxygen supply requirements, as specified in Table 2, for aeroplanes not certificated to fly at altitudes above 25,000 ft, may be reduced to the entire flight time between 10,000 ft and 13,000 ft cabin pressure altitudes for all required cabin crew members and for at least 10% of the passengers if, at all points along the route to be flown, the aeroplane is able to descend safely within 4 minutes to a cabin pressure altitude of 13,000 ft.

TABLE 2—REQUIREMENTS FOR SUPPLEMENTAL OXYGEN—PRESSURIZED AEROPLANE DURING AND FOLLOWING EMERGENCY DESCENT (NOTE)

Supply for:	*Duration and Cabin Pressure Altitude*
1. All occupants of flight deck seats on flight deck duty flight	Entire flight time when the cabin pressure altitude exceeds 13,000 ft and entire time when the cabin pressure altitude exceeds 10,000 ft but does not exceed 13,000 ft after the first 30 minutes at those altitudes, but in no case less than— (i) 30 minutes for aeroplanes certificated to fly at altitudes not exceeding 25,000 ft (Note 2) (ii) 2 hours for aeroplanes certificated to fly at altitudes more than 25,000 ft (Note 3).
2. All required cabin crew members	Entire flight time when cabin pressure altitude exceeds 13,000 ft but not less than 30 minutes (Note 2), and entire flight time when cabin pressure altitude is greater than 10,000 ft but does not exceed 13,000 ft after the first 30 minutes at these altitudes.
3. 100% of passengers	10 minutes or the entire flight time when the cabin pressure altitude exceeds 13,000 ft whichever is the greater (Note 4).
4. 10% of passengers	Entire flight time when the cabin pressure altitude exceeds 10,000 ft but does not exceed 13,000 ft after the first 30 minutes at these altitudes.

NOTE 1: The supply provided shall take account of the cabin pressure altitude and descent profile for the routes concerned.

NOTE 2: The required minimum supply is that quantity of oxygen necessary for a constant rate of descent from the aeroplane's maximum certificated operating altitude to 10,000 ft in 10 minutes and followed by 20 minutes at 10,000 ft.

NOTE 3: The required minimum supply is that quantity of oxygen necessary for a constant rate of descent from the aeroplane's maximum certificated operating altitude to 10,000 ft in 10 minutes and followed by 110 minutes at 10,000 ft. The oxygen required to meet the Crew Protective Breathing Equipment provisions of this Part may be included in determining the supply required.

NOTE 4: The required minimum supply is that quantity of oxygen necessary for a constant rate of descent from the aeroplane's maximum certificated operating altitude to 15,000 ft.

Note 5: For the purpose of this table "passengers " means passengers actually carried and includes infants.

3. The supplemental oxygen supply requirements for non-pressurized helicopters are as follows—

(1) An operator shall not operate a non-pressurized helicopter at pressure altitudes above 10,000 ft unless supplemental oxygen equipment, capable of storing and dispensing the oxygen supplies required, is provided.

(2) The amount of supplemental oxygen for sustenance required for a particular operation shall be determined on the basis of flight altitudes and flight duration, consistent with the operating procedures, established for each operation in the Operations Manual and with the routes to be flown, and with the emergency procedures specified in the Operations Manual.

(3) A helicopter intended to be operated above 10,000 ft pressure altitude shall be provided with equipment capable of storing and dispensing the oxygen supplies required.

(4) Oxygen supply requirements—

(*a*) flight crew members. Each member of the flight crew on flight deck duty shall be supplied with supplemental oxygen in accordance with Table 3. If all occupants of flight deck seats are supplied from the flight crew source of oxygen supply then they shall be considered as flight crew members on flight deck duty for the purpose of oxygen supply;

(*b*) cabin crew members, additional crew members and passengers. Cabin crew members and passengers shall be supplied with oxygen in accordance with Table 3. Cabin crew members carried in addition to the minimum number of cabin crew members required, and additional crew members, shall be considered as passengers for the purpose of oxygen supply.

Table 3—Supplemental Oxygen for Non-Pressurized Helicopters

(*a*)	(*b*)
Supply for:	Duration and Pressure Altitude
1. All occupants of flight deck seats on flight deck duty	Entire flight time at pressure altitudes above 10,000 feet
2. All required cabin crew members	Entire flight time at pressure altitudes above 13,000 ft and for any period exceeding 30 minutes at pressure altitudes above 10,000 ft but not exceeding 13,000 ft
3. 100% of passengers (see note)	Entire flight time at pressure altitudes above 13,000 ft
4. 10% of passengers (see note)	Entire flight time after 30 minutes at pressure altitudes greater than 10,000 ft but not exceeding 13,000 ft

Note: For the purpose of this table "passengers" means passengers actually carried and includes infants.

IS 7:83 Cosmic Radiation Detection Equipment

1. Compliance with the sampling requirements regulation 83 (1) (*b*) the Regulations may be accomplished as follows—

   (1) The sampling shall be carried out in conjunction with a Radiological Agency or similar organization acceptable to the Authority.

   (2) Sixteen route sectors, which include flight above 15,000 m (49,000 ft), shall be sampled every quarter (three months). Where less than sixteen route sectors which include flight above 15,000 m (49,000 ft) are achieved each quarter, then all sectors above 15,000 m (49,000 ft) shall be sampled.

   (3) The cosmic radiation recorded should include both the neutron and non-neutron components of the radiation field.

   (4) The results of the sampling, including a cumulative summary quarter on quarter, should be reported to the Authority under arrangements acceptable to the Authority.

AVIATION (OPERATIONS) REGULATIONS

G.N. 34/2013

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AVIATION (OPERATIONS) REGULATIONS

under s. 19

PART I
GENERAL

Citation and application

1.—(1) These Regulations may be cited as the Aviation (Operations) Regulations.

(2) These Regulations prescribes the requirements for—

(*a*) operations conducted by a flight crew member certified in Malaŵi while operating aircraft registered in Malaŵi.

(*b*) operations of foreign aircraft registered in another State by Malaŵi AOC holders.

(*c*) operations of aircraft within Malaŵi by flight crew or AOC holders of another State.

(2) For operations outside Malaŵi, all Malaŵi pilots and operators shall comply with these requirements unless compliance would result in a violation of the laws of the State in which the operation is conducted.

(3) Where a particular requirement is applicable only to a particular segment of aviation operations, it will be identified by a reference to those particular operations, such as "commercial air transport" or "small non-turbojet or turbofan aeroplanes".

(4) Those specific subsections not applicable to operators of other States will include the phrase "This requirement is not applicable to operators of other States".

Definitions

2. For the purpose of these Regulations, unless the content otherwise requires—

"acrobatic flight" means maneuvers intentionally performed by an aircraft involving an abrupt change in its attitude, an abnormal attitude, or an abnormal variation in speed;

"ADS-C agreement" means a reporting plan which establishes the conditions of ADS-C data reporting (i.e., data required by the air traffic services unit and frequency of ADS-C reports which have to be agreed to prior to using ADS-C in the provision of air traffic services);

"advisory airspace" means an airspace of defined dimensions, or designated route, within which air traffic advisory service is available;

"Aeroplane" means—

(*a*) *Complex Aeroplane, [land]* means an aeroplane that has all the following characteristics: a retractable landing gear, flaps, and a controllable pitch propeller;

(*b*) *Complex Aeroplane [sea]* means an aeroplane that has all the following characteristics: flaps, and controllable pitch propeller;

"aerial work" means an aircraft operation in which an aircraft is used for specialized services such as agriculture, construction, photography, surveying, observation and patrol, search and rescue, aerial advertisement, etc;

"air navigation facility" means any facility used in, available for use in, or designed for use in aid of air navigation, including aerodromes, landing areas, lights, any apparatus or equipment for disseminating weather information, for signaling, for radio directional finding, or for radio or other electrical communication, and any other structure or mechanism having a similar purpose for guiding or controlling flight in the air or the landing and take-off of aircraft;

"automatic Dependent Surveillance - Broadcast (ADS-B)" means by which aircraft, aerodrome vehicles and other objects can

automatically transmit and/or receive data such as identification, position and additional data, as appropriate, in a broadcast mode via a data link;

"calendar day" means the period of elapsed time, using Coordinated, Universal Time or local time, which begins at midnight and ends 24 hours later in the next midnight;

"check airman, (aeroplane)" means a person who is qualified, and permitted, to conduct an evaluation in an aeroplane, in a flight simulator training device for a particular type of aeroplane, for a particular AOC holder;

"check airman (simulator)" means a person who is qualified to conduct an evaluation, but only in a flight simulation training device for a particular type of aircraft, for a particular AOC holder;

"controlled flight" means any flight which is subject to an ATC clearance;

"critical engine" means the engine whose failure would most adversely affect the performance or handling qualities of an aircraft;

"critical phases of flight" means those portions of operations involving taxiing, take-off and landing, and all flight operations below 10,000 ft, except cruise flight;

"cruise relief pilot" means a flight crew member who is assigned to perform pilot tasks during cruise flight to allow the PIC or co-pilot to obtain planned rest;

"cruising level" means a level maintained during a significant portion of a flight;

"dangerous goods" means articles or substances which are capable of posing a risk to health, safety, property or the environment and which, are shown in the list of dangerous goods in the ICAO Technical Instructions (see definition below) or which are classified according to those Instructions;

"deadhead transportation" means time spent in transportation on aircraft (at the insistence of the AOC holder) to or from a crew member's home station;

"defined point after take-off" means the point, within the take-off and initial climb phase, before which the Class 2 helicopter's ability to continue the flight safely with one engine inoperative, is not assured and a forced landing may be required;

"defined point before landing" means the point, within the approach and landing phase, after which the Class 2 helicopter's ability to continue the flight safely, with one engine inoperative, is not assured and a forced landing may be required;

"duty period as it related to an air operator," means a period which starts when flight or cabin crew personnel are required by an operator to report for or to commence a duty and ends when that person is free from all duties;

"effective length of the runway" means the distance for landing from the point at which the obstruction clearance plane associated with the approach end of the runway intersects the centreline of the runway to the far end;

"extended overwater operation" means with respect to aircraft other than helicopters, an operation over water at a horizontal distance of more than 50 nm from the nearest shoreline; and to helicopters, an operation over water at a horizontal distance of more than 50 nm from the nearest shoreline and more than 50 nm from an off-shore heliport structure;

"fatigue" means a physiological state of reduced mental or physical performance capability resulting from sleep loss or extended wakefulness. Circadian phase, or workload (mental and/or physical activity) that can impair a crew member's alertness and ability to safely operate an aircraft or perform safety related duties;

"flight(s)" means the period from take-off to landing;

"flight manual" means a manual, associated with the certificate of airworthiness, containing limitations within which the aircraft is to be considered airworthy, and instructions information necessary to the flight crew members for the safe operation of the aircraft;

"flight operations officer/flight dispatcher" means a person designated by the operator to engage in the control and supervision of flight operations, whether licensed or not, suitably qualified in accordance with Annex 1, who supports, briefs and/or assists the pilot-in-command in the safe conduct of the flight;

"flight duty period" means the total time from the moment a flight crew member commences duty, immediately subsequent to a rest period and before making a flight or a series of flights, to the moment the flight crew member is relieved of all duties having completed such flight or series of flights;

"flight plan" means specified information provided to air traffic services units, relative to an intended flight or portion of a flight of an aircraft, the term "flight plan" is used to mean variously, full information on all items comprised in the flight plan description, covering the whole route of a flight, or limited information required when the purpose is to obtain a clearance for a minor portion of a flight such as to cross an airway, to take-off from, or to land at a controlled aerodrome;

"flight time" means the period of time that the aircraft moves under its own power for the purpose of flight and ends when the aircraft comes to rest after it is parked at the end of the flight;

"general aviation operation" means an aircraft operation other than a commercial air transport operation or an aerial work operation;

"Instrument Meteorological Conditions (IMC)" means meteorological conditions expressed in terms of visibility, distance from cloud, and

ceiling, less than the minima specified for visual meteorological conditions;

"helideck" means a heliport located on a floating or fixed off-shore structure;

"heliport" means an aerodrome or defined area on a structure intended to be used wholly or in part for the arrival, departure, and surface movement of helicopters;

"journey log" means a form signed by the PIC of each flight that records the aeroplane's registration, crew member names and duty assignments, the type of flight, and the date, place, and time of arrival and departure;

"landing decision point" mean the point used in determining landing performance from which, an engine failure occurring at this point, the landing may be safely continued or a balked landing initiated;

"line operating flight time" means flight time recorded by the PIC or Co-Pilot while in revenue service for an AOC holder;

"Master Minimum Equipment List (MMEL)" means a list established for a particular aircraft type by the manufacturer with the approval of the State of Design containing items, one or more of which is permitted to be unserviceable at the commencement of a flight. The MMEL may be associated with special operating conditions, limitations, or procedures. The MMEL provides the basis for development, review, and approval by the Authority of an individual operator's MEL;

"Minimum Descent Altitude (MDA) or Minimum Descent Height (MDH)" means a specified altitude or height in a non-precision approach or circling approach below which descent must not be made without the required visual reference;

"obstruction clearance plane" means a plane sloping upward from the runway at a slope of 1:20 to the horizontal, and tangent to or clearing all obstructions within a specified area surrounding the runway as shown in a profile view of that area. In the plane view, the centreline of the specified, area coincides with the centreline of the runway, beginning at the point where the obstruction clearance plane intersects the centreline of the runway and proceeding to a point at least 1,500 ft from the beginning point: thereafter, the centreline coincides with the take-off path over the ground for the runway (in the case of take-offs) or with the instrument approach counterpart (for landings), or where the applicable one of these paths has not been established, it proceeds consistent with turns of at least 4,000 foot radius until a point is reached beyond which the obstruction clearance plane clears all obstructions: this area extends laterally 200 ft on each side of the centreline at the point where the obstruction clearance plane intersects the runway and continues at this width to the end of the runway; then it increases uniformly to 500 ft on each side of the centreline at a point 1,500 ft

from the intersection of the obstruction clearance plane with the runway; thereafter, it extends laterally 500 ft on each side of the centreline;

"operational flight plan" means the operator's plan for the safe conduct of the flight based on considerations of aircraft performance, other operating limitations, and relevant expected conditions on the route to be followed and at the aerodromes or heliports concerned;

"passenger exit seats" means those seats having direct access to an exit, and those seats in a row of seats through which passengers would have to pass to gain access to an exit, from, the first seat inboard of the exit to the first aisle inboard of the exit; a passenger seat having "direct access" means a seat from which a passenger can proceed directly to the exit without entering an aisle or passing around, an obstruction;

"rest period" means a continuous and defined period of time, subsequent to and/or prior to duty, during which flight or cabin crew members are free of all duties; and

"take-off decision point" means the point used in determining take-off performance of a Class 1 helicopter from which, an engine failure occurring at this point, either a rejected take-off may be made or a take-off safely continued.

Abbreviations

3. The following abbreviations are used in these Regulations—

(1) AFM—Aeroplane Flight Manual.

(2) AGL—Above Ground Level.

(3) AME—Aircraft Maintenance Engineer.

(4) AOC—Air Operator Certificate.

(5) AOM—Aircraft Operating Manual.

(6) APU—Auxiliary Power Unit.

(7) ATC—Air Traffic Control.

(8) CAT—Category.

(9) CDL—Configuration Deviation List.

(10) CP—Copilot.

(11) CRM—Crew Resource Management.

(12) DH—Decision Height.

(13) ETA—Estimated Time of Arrival.

(14) ETOPS—Extended Range Operations by Twin-Engined Aeroplanes.

(15) FE—Flight Engineer.

(16) FL—Flight Level.

(17) FN—Flight Navigator.
(18) FRMS—Fatigue Risk Management System.
(19) GPS—Global Positioning System.
(20) IA—Inspection Authorization.
(21) IFR—Instrument Flight Rules.
(22) IMC—Instrument Meteorological Conditions.
(23) INS—Inertial Navigation System.
(24) LDA—Localizer-type Directional Aid.
(25) LOC—Localizer.
(26) LORAN—Long-range Navigation.
(27) LVTO—Low Visibility Take-off.
(28) MDA—Minimum Decent Altitude.
(29) MEA—Minimum En Route Altitude.
(30) MEL—Minimum Equipment List.
(31) MMEL—Master Minimum Equipment List.
(32) MNPS—Minimum Navigation Performance Specifications.
(33) MOCA—Minimum Obstruction Clearance Altitude.
(34) MSL—Mean Sea Level.
(35) NOTAM—Notice to Airmen.
(36) REM—Rotorcraft Flight Manual.
(37) RFFS—Rescue and Fire Fighting Service.
(38) RVR—Runway Visibility Range.
(39) RVSM—Reduced Vertical Separation Minimum.
(40) PBE—Protective Breathing Equipment.
(41) PIC—Pilot in Command.
(42) SCA—Senior Cabin Crew Member.
(43) SM—Statute Miles.
(44) TACAN—Tactical Air Navigation System.
(45) VFR—Visual Flight Rules.
(46) VMC—Visual Meteorological Conditions.
(47) VSM—Vertical Separation Minimum.
(48) VI—Take-off decision speed.
(49) Vmo—Maximum operating speed.
(50) Vso—Stalling speed or the minimum steady flight speed in the landing configuration.

PART II
General Operations: Aircraft Requirements

Registration markings

4. No person may operate a Malaŵi registered aircraft unless it displays the proper markings prescribed in the Aviation (Aircraft Registration and Marking) Regulations.

Civil aircraft airworthiness

5.—(1) No person may operate a civil aircraft unless it is in an airworthy condition.

(2) Each PIC shall determine whether an aircraft is in a condition for safe flight.

(3) The PIC shall discontinue a flight as soon as practicable when an unairworthy mechanical, electrical, or structural condition occurs.

Special airworthiness certificate operational restrictions

6. No person may operate an aircraft with a special airworthiness certificate except as provided in the limitations issued with that certificate.

Aircraft instruments and equipment

7. No person may operate an aircraft unless it is equipped with the required instruments and navigation equipment appropriate to type of flight operation conducted and the route being flown.

Inoperative instruments and equipment

8.—(1) No person may take-off in an aircraft with inoperative instruments or equipment installed, except as authorized by the Authority.

(2) An AOC Holder shall not operate a multi-engine aircraft with inoperative instruments and equipment installed unless the following conditions are met—

(*a*) an approved MEL exists for that aircraft.

(*b*) the Authority has issued the AOC Holder operations specifications authorizing operations in accordance with an approved MEL; the flight crew shall have direct access at all times before flight to all of the information contained in the approved MEL through printed or other means approved by the Authority in the AOC Holder specific operating provisions; an approved MEL, as authorized by the specific operating provisions, constitutes an approved change to the type design without requiring recertification.

(*c*) the approved MEL must—

(i) be prepared in accordance with the limitations specified in subregulation 8 (3) of this Part.

(ii) provide for the operation of the aircraft with certain instruments and equipment in an inoperative condition.

(*d*) records identifying the inoperative instruments and equipment and the information required by subregulation 2 (*c*) (ii) of this part must be available to the pilot.

(*e*) the aircraft is operated under all applicable conditions and limitations contained in the MEL and the specific operating provisions authorizing use of the MEL.

(3) The following instruments and equipment may not be included in the MEL—

(*a*) instruments and equipment that are either specifically or otherwise required by the airworthiness requirements under which the aircraft is type certificated and which are essential for safe operations under all operating conditions;

(*b*) instruments and equipment required by an airworthiness directive to be in operatable condition unless the airworthiness directive provides otherwise;

(*c*) instruments and equipment required for specific operations under the Aviation (Instruments and Equipment), Aviation (Operations) and/or Aviation (Air Operator Certification and Administration) Regulations.

(4) Notwithstanding paragraphs (*a*) and (*c*) of subregulation 8 (3) of this Part, an aircraft with inoperative instruments or equipment may be operated under a special flight permit under regulation 13 of the Aviation (Environmental Protection) Regulations.

(5) See IS 8:1 for specific limitation on inoperative instruments and equipment.

Civil aircraft flight manual, marking and placard requirements

9.—(1) No person may operate a Malaŵi-registered civil aircraft unless there is available in the aircraft—

(*a*) a current, approved AFM or RFM; or

(*b*) an AOM approved by the Authority for the AOC holder;

(*c*) if no AFM or RFM exists, approved manual material, markings and placards, or any combination thereof, which provide the PIC with, the necessary limitations for safe operation.

(2) No person may operate a civil aircraft within or over Malaŵi without complying with the operating limitations specified in the approved AFM or RFM, markings and placards, or as otherwise prescribed by the certifying authority for the aircraft's State of Registry.

(3) Each AFM or RFM shall be updated, by implementing changes made mandatory by the State of Registry.

(4) Each operator shall display in the aircraft all placards, listings, instrument markings or combination thereof, containing those operating limitations prescribed by the certifying authority for the aircraft's State of Registry for visual presentation.

Required aircraft and equipment inspections

10. Unless otherwise authorized, by the Authority, no person may operate a Malaŵi civil aircraft unless it has had the appropriate inspections required by Part III of these Regulations.

Documents to be carried on aircraft: all operations

11.—(1) Except as provided in regulation 9 of these Regulations no person may operate a civil aircraft in commercial air transport operations unless it has within it the following current and approved documents—

(*a*) certificate of Aircraft Registration issued to the owner;

(*b*) certificate of Airworthiness;

(*c*) aircraft Journey Log;

(*d*) aircraft Radio Licence;

(*e*) list of passenger names and points of embarkation and destination if applicable;

(*f*) cargo manifest including special loads information;

(*g*) Aircraft Technical Log;

(*h*) a certificated true copy of the AOC, if required;

(*i*) noise certificate, if required;

(*j*) AFM or RJFM, for aeroplanes or helicopters;

(*k*) part(s) of the Operations Manual relevant to operation(s) conducted;

(*l*) MEL;

(*m*) category II or III Manual, as applicable;

(*n*) operational Flight Plan, for all international flights;

(*o*) filed ATC flight plan;

(*p*) NOTAMS briefing documentation;

(*q*) meteorological information;

(*r*) mass and balance documentation;

(*s*) roster of special situation, passengers;

(*t*) maps and charts for routes of proposed flight or possibly diverted flights;

(*u*) forms for complying with the reporting requirements of the Authority and the AOC holder;

(*v*) for international flights, a general declaration for customs;

(*w*) any documentation that may be required by the Authority or States concerned with a proposed flight;

(*x*) the appropriate licences for each member of the flight crew;

(*y*) copy of the release to service, if any, in force With respect to the aircraft;

(*z*) search and rescue information, for international flights;

(*aa*) a certified true copy of certificate of the agreement signed between the states concerning transfer of duties and functions from the State of Registry to the state of operator in accordance with Article 83 bis to the Chicago Convention.

(2) Except as provided in regulation 9 of these Regulations no person may operate a civil, aircraft in general aviation operations or aerial work operations unless it has within it the following current and approved documents—

(*a*) certificate of aircraft registration issued to the owner;

(*b*) certificate of airworthiness;

(*c*) aircraft journey log;

(*d*) aircraft radio licence, for international flights;

(*e*) list of passenger names and points of embarkation and destination, if applicable;

(*f*) cargo manifest including special loads information;

(*g*) the appropriate licences for each member of the flight crew;

(*h*) copy of the release to service, if any, in force with respect to the aircraft, or technical log, as applicable;

(*i*) noise certificate, if required;

(*j*) AFM or RFM, for aeroplanes or helicopters;

(*k*) category II or III Manual, as applicable;

(*l*) operational flight plan, for all international flights;

(*m*) NOTAMS briefing documentation;

(*n*) maps and charts for routes of proposed flight or possibly diverted flights;

(*o*) forms for complying with the reporting requirements of the Authority;

(*p*) for international flights, a general declaration for customs;

(*q*) aerial work certificate for aerial work operators;

(*r*) search and rescue information, for international flights;

(*s*) any documentation that may be required by the Authority or States concerned with a proposed flight;

(3) "Special situation passengers" includes armed security personnel, deportees, persons in custody, and persons with special medical needs.

(4) The noise certificate shall state the standards in ICAO Annex 16, Volume 1. The statement may be contained in any document, carried on board, approved by the State of Registry.

Mass and balance report

12.—(1) The mass and balance of each aircraft shall be determined prior to the initial issue of the Certificate of Airworthiness.

(2) Further determination of mass and balance shall be made at the intervals prescribed by the Organization responsible for the type design.

Preservation of documents and records

13.—(1) A person required by Aviation regulations to preserve any document or record by reason of being the operator of an aircraft shall, if he/she ceases to be the operator of the aircraft, continue to present the document and record as if he or she has not ceased to be the operator, and in the event of his or her death the duty to preserve the document or record shall fall upon his personal representative:

Provided that if—

(i) another person becomes the operator of the aircraft and it remains registered in Malaŵi he or she or his or her personal representative, shall deliver to the other person upon demand the documents or records which are in force or required to be presented in respect of the aircraft;

(ii) an engine or variable pitch propeller is removed from the aircraft operated by another person and registered in Malaŵi he or she or his or her personal representative shall deliver to the other person upon demand the logbook relating to that engine or propeller;

(iii) any person in respect of whom a record of flight crew member of a public transport aircraft registered in Malaŵi and operated by another person, he or she or his or her personal representative, shall deliver those records to the person to deal with the documents delivered to him or her as if he or she were the first mentioned, operator.

PART III

Aircraft Maintenance and Inspection Requirements

Application

14.—(1) This Part prescribes the rules governing the maintenance and inspection of Malaŵi registered civil aircraft operating within or outside Malaŵi.

(2) Where any aircraft, not registered in Malaŵi and operating under an inspection programme approved or accepted by the State of Registry,

does not have the equipment required by Malaŵi, for operations within Malaŵi, the owner/operator shall ensure that such equipment is installed and inspected in accordance with the requirements of the State of Registry, acceptable to the Authority before operation of that aircraft in Malaŵi.

(3) Annual inspections in and Annual Inspections plus 100 hour inspections in regulation 17 of these Regulations do not apply to—

(*a*) an aircraft that carries a special flight permit, a current experimental certificate, or a provisional airworthiness certificate;

(*b*) an aircraft subject to the requirements of progressive inspections in regulation 18 of these Regulations;

(*c*) an aircraft subject to the requirements of a continuous airworthiness maintenance inspections in regulation 19 of these Regulations; and

(*d*) a large aeroplane, a turbine-powered multi-engine aeroplane and a turbine-powered rotorcraft when the operator elects to inspect that rotorcraft in accordance with Continuous airworthiness maintenance inspections in regulation 19 of these Regulations.

General

15.—(1) The registered owner or operator of an aircraft is responsible for maintaining that aircraft in an airworthy condition, including compliance with all airworthiness directives.

(2) No person may perform maintenance, preventive maintenance, or alterations on an aircraft other than as prescribed in this Part and other applicable regulations, including the Airworthiness Regulations.

(3) No person may operate an aircraft for which a manufacturer's maintenance manual or instructions for continued airworthiness has been issued that contains an airworthiness limitations section unless the mandatory replacement times, inspection intervals and related procedures set forth in operations specifications approved by the Authority under Air Operator Certificate and Administration holders, or in accordance with an inspection programme approved under this regulation are complied with.

(4) The owner or operator shall use one of the following inspection programmes as appropriate for the aircraft and the type operation—

(*a*) annual inspection;

(*b*) annual/100 hour inspection;

(*c*) progressive; or

(*d*) continuous airworthiness maintenance programme

(5) No aircraft shall be approved for return to service after inspection unless the replacement times for life-limited parts specified in the aircraft

specification-type data sheets are complied with and the aeroplane, including airframe, engines, propellers, rotors, appliances, and survival and emergency equipment, is inspected in accordance with the selected inspection programme.

(6) Each person wishing to establish or change an approved inspection programme shall submit the programme for approval by the Authority and shall include in writing—

(*a*) instructions and procedures for the conduct of inspection for the particular make and model aircraft, including necessary tests and checks. The instructions shall set forth in detail the parts and areas of the aeronautical products, including survival and emergency equipment required to be inspected; and

(*b*) a schedule for the inspections that shall be performed expressed in terms of time in service, calendar time, number of system operations or any combination of these.

(7) When an operator changes from one inspection programme to another, the operator shall apply the time in service, calendar times, or cycles of operation, accumulated under the previous programme.

Annual inspections

16.—(1) An annual inspection programme may be used for non-complex aircraft with a maximum certificated take-off mass of less than 5,700 kg that are not used for compensation or hire.

(2) An annual inspection under this regulation may be performed by an AME holding an IA in accordance with the Aviation (Personnel Licensing) Regulations, or an AMO.

(3) No person may operate an aircraft unless, within the preceding 12 calendar-months, the aircraft has had—

(*a*) an annual inspection in accordance with Aviation (Airworthiness) Regulations, and has been approved for return to service by an AME with an IA or an AMO;

(*b*) an inspection for the issuance of an airworthiness certificate completed by the Authority in accordance with the Aviation (Airworthiness) Regulations.

Annual/100 hour inspections

17.—(1) No person may operate a non-complex aircraft with a certificated maximum take-off mass less than 5,700 kg carrying any person (other than a crew member) for compensation or hire, and no person may give flight instruction for compensation or hire in an aircraft which that person provides, unless—

(*a*) within the preceding 100 hours of time in service the aircraft has received an annual or a 100-hour inspection; and

(*b*) been, approved for return to service in accordance with, the Aviation (Airworthiness) Regulations.

(2) The 100-hour limitation may be exceeded by not more than 10 hours while en route to reach a place where the inspection can be done. The excess time used to reach a place where the inspection can be done must be included in computing the next 100 hours of time in service.

(3) An annual inspection under this regulation may be performed and released to service by an AME holding an IA in accordance with the Aviation (Personnel Licensing) Regulations, or an AMO.

(4) A 100-hour inspection under this regulation may be performed and released to service by an AME, an AME holding an IA in accordance with the Aviation (Personnel Licensing) Regulations, or an AMO.

Progressive inspections

18.—(1) A progressive inspection programme may be used for aircraft with a maximum certificated take-off mass of less than 5,700 kg.

(2) Aircraft inspected under a progressive inspection programme may be used for aircraft engaged in compensation or hire.

(3) Progressive inspection each registered owner or operator of an aircraft desiring to use a progressive inspection programme shall submit a written request to the Authority, and shall provide—

(*a*) an AME holding an IA in accordance with Part II, an AMO appropriately rated in accordance with Part VI, or the manufacturer of the aircraft to supervise or conduct the progressive inspection;

(*b*) a current inspection procedures manual available and readily understandable to pilot and maintenance personnel containing, in detail—

(i) an explanation of the progressive inspection, including the continuity of inspection responsibility, the making of reports, and the keeping of records and technical reference material;

(ii) an inspection schedule, specifying the intervals in hours or days when routine and detailed inspections will be performed and including instructions for exceeding an inspection interval by not more than 10 hours while en route and for changing an inspection interval because of service experience;

(iii) sample routine and detailed inspection forms and instructions for their use; and

(iv) sample reports and records and instructions for their use;

(*c*) enough housing and equipment for necessary disassembly and proper inspection of the aircraft; and

(*d*) appropriate current technical information for the aircraft.

(4) The frequency and detail of the progressive inspection shall provide for the complete inspection of the aircraft within each 12 calendar-months and be consistent with the current manufacturer's recommendations, field service experience, and the kind of operation in which the aircraft is engaged.

(5) The progressive inspection schedule shall ensure that the aircraft, at all times, will be airworthy and will conform to all applicable aircraft specifications, type certificate data sheets, airworthiness directives, and other approved data acceptable to the Authority.

(6) Each owner/operator shall include in the inspection programme the name and address of the person responsible for the scheduling of the inspections required by the programme and provide a copy of the programme to the person performing inspection on the aircraft.

(7) If the progressive inspection is discontinued, the owner or operator shall immediately notify the Authority, in writing, of the discontinuance—

(*a*) after the discontinuance, the first annual inspection under the Operations Regulations is due within 12 calendar-months after the last, complete inspection of the aircraft under the progressive inspection;

(*b*) the 100-hour inspection is due within 100 hours after that complete inspection;

(*c*) a complete inspection of the aircraft, for the purpose of determining when the annual and 100 hour inspections are due, requires a detailed inspection of the aircraft and all its components in accordance with the progressive inspection;

(*d*) a routine inspection of the aircraft and a detailed inspection of several components are not considered to be a complete inspection.

Continuous airworthiness maintenance inspection

19.—(1) The registered owner or operator of each large aeroplane certificated with a maximum take-off mass of over 5,700 kg, turbine-powered multi-engine aeroplane, and turbine-powered rotorcraft shall select, identify in the aircraft maintenance records, and use one of the following continuous airworthiness maintenance inspection programmes for the inspection of the aircraft—

(*a*) a current inspection programme recommended by the manufacturer;

(*b*) a continuous airworthiness maintenance programme for that make and model of aircraft currently approved by the Authority for use by an AOC holder; or

(*c*) any other inspection programme established by the registered owner or operator of that aircraft and approved by the Authority.

(2) Each owner/operator shall include in the selected inspection programme the name and address of the person responsible for the scheduling of the inspections required by the programme and provide a copy of the programme to the person performing inspection on the aircraft.

(3) The aircraft manufacturer's inspection programme and any other inspection programme approved by the Authority, will specify who can perform aircraft, maintenance, inspections and return of the aircraft to service.

Changes to aircraft maintenance inspection programme

20.—(1) Whenever the Authority finds that revisions to an approved inspection programme are necessary for the continued adequacy of the programme, the owner or operator shall, after notification by the Authority, make any changes in the programme found to be necessary.

(2) The owner or operator may petition the Authority to reconsider the notice, within 30 days after receiving that notice.

(3) Except in the case of an emergency requiring immediate action in the interest of safety, the filing of the petition stays the notice pending a decision by the Authority.

Required maintenance

21.—(1) Each owner or operator of an aircraft shall—

(*a*) have that aircraft inspected as prescribed in this Part and discrepancies repaired as prescribed in the Performance Rules of Airworthiness;

(*b*) repair, replace, remove, or inspect any inoperative instruments or items of equipment at the next required inspection, except when permitted to be deferred under the provisions of a Minimum Equipment List (MEL);

(*c*) ensure that a placard has been installed on the aircraft when, listed discrepancies include inoperative instruments or equipment; and

(*d*) ensure that maintenance personnel make appropriate entries in the aircraft maintenance records indicating the aircraft has been approved for return to service.

Maintenance and inspection records retention

22.—(1) Except for records maintained by an AOC holder, each registered owner or operator shall retain the following records until the work is repeated or superseded by other work of equivalent scope and detail—

(*a*) records of the maintenance, preventive maintenance, minor modifications, and records of the 100-hour, annual, and other required

or approved inspections, as appropriate, for each aircraft (including the airframe) and each engine, propeller, rotor, and appliance of an aircraft to include—

(i) a description (or reference to data acceptable to the Authority) of the work performed;

(ii) the date of completion of the work performed; and

(iii) the signature and certificate number of the person approving the aircraft for return to service;

(*b*) records containing the following information—

(i) the total time-in-service of the airframe, each engine, each propeller, and each rotor;

(ii) the current status of all life-limited aeronautical products;

(iii) the time since last overhaul of all items installed on the aircraft which are required to be overhauled on a specified time basis;

(iv) the current inspection status of the aircraft, including the time since the last inspection required by the inspection programme under which the aircraft and its appliances are maintained;

(v) the current status of applicable Airworthiness Directives including, for each, the method of compliance, the Airworthiness Directive number, and revision date: if the Airworthiness Directive involves a recurring action, include the time and date when the next action is required;

(vi) copies of the forms prescribed by this chapter for each major modification to the airframe and currently installed engines, rotors, propellers, and appliances.

(2) The records specified in subregulation (1) of this regulation shall be retained and transferred with the aircraft at the time the aircraft is sold or leased.

(3) A list of defects shall be retained until the defects are repaired and the aircraft is approved for return to service.

(4) The owner or operator shall make all maintenance records required by this regulation available for inspection by the Authority.

Lease or sale of aircraft: transfer of maintenance records

23. Any owner or operator who sells or leases a Malaŵi-registered aircraft shall transfer to the purchaser/lessor, at the time of sale or lease, the records identified in regulation 22 of that aircraft, in plain language form or in coded form at the election of the purchaser/lessor if the coded form provides for the preservation and retrieval of information in a manner acceptable to the Authority.

PART IV
Flight crew Requirements

Composition of flight crew

24.—(1) The number and composition of the flight crew may not be less than that specified in the flight manual or other documents associated with the airworthiness certificate.

(2) Where radio equipment is installed in the aircraft, the flight crew shall include at least one member who holds a valid radio licence authorizing operation of the type of radio transmitting equipment to be used.

(3) When navigation necessary for the safe operation of the aeroplane cannot be accomplished from the pilot's station the flight crew shall include a member who holds a flight navigator licence.

(4) A co-pilot (CP) is required for IFR commercial air transport operations, unless the Authority has issued an exemption in accordance with the exemption process in the Aviation (General Policies, Procedures and Definitions) Regulations, for the use of an autopilot in lieu of a co-pilot. This exemption shall be for domestic operations only and aeroplanes weighting less than 5,700 kg or helicopters weighting less than 3,175 kg.

(5) When a separate flight engineer's station is incorporated in the design of an aeroplane and the flight engineer function cannot be accomplished from the pilot's station by a pilot who holds a flight engineer licence without interference with regular duties, the flight crew shall include at least one crew member who holds a flight engineer licence especially assigned to that station.

Flight crew qualifications

25.—(1) The PIC shall ensure that the licences of each flight crew member have been issued or rendered valid by the State of Registry, contain the proper ratings, and all flight crew members have maintained recency of experience.

(2) No person may operate a civil aircraft in commercial air transport or aerial work unless that person is qualified for the specific operation and in the specific type of aircraft used.

(3) The owner or operator of an aircraft shall ensure that the flight crew members demonstrate the ability to speak and understand the English language used for radiotelephony communications.

Authorization *in lieu* of a type rating

26. The Authority may authorize a pilot to operate an aircraft requiring a type rating without a type rating for up to 60 days, provided—

(*a*) the Authority has determined that an equivalent level of safety can be achieved through the operating limitations on the authorization;

(*b*) the applicant shows that compliance with this regulation is impracticable for the flight or series of flights;

(*c*) the operations—

(i) involve only a ferry flight, training flight, test flight, or skill, test for a pilot licence or rating;

(ii) are within Malaŵi, unless, by previous agreement with the Authority of the other State, the aircraft is flown to an adjacent contracting State for maintenance;

(iii) are not for compensation or hire unless the compensation or hire involves payment for the use of the aircraft for training or taking a skill test; and

(iv) involve only the carriage of crew members considered essential for the flight;

(*d*) If the purpose of the authorization provided by this regulation cannot be accomplished within the time limit of the authorization, the Authority may authorize an additional period of up to 60 days.

Licences required

27. Except as provided for in regulation 26 of this Regulation no person may act as PIC or in any other capacity as a required flight crew member of a civil aircraft of—

(*a*) Malaŵi registry, unless he or she carries in his or her personal possession the appropriate and current licence for that flight crew position for that type of aircraft and a valid medical certificate;

(*b*) foreign registry unless he or she carries in his or her personal possession a valid and current licence for that type of aircraft issued or validated by the State in which the aircraft is registered.

Flight crew: limitations on use of services for commercial air transport

28.—(1) No person may serve as a flight crew member, nor may any AOC holder use a flight crew member in commercial air transport unless that person is otherwise qualified for the operations for which he or she is to be used.

(2) The qualifications for flight crew members engaged in commercial air transport are provided in Part X of these Regulations.

Rating required for IFR operations

29. No person may act as pilot of a civil aircraft under IFR or in weather conditions less than the minima prescribed for VFR flight unless—

(*a*) the pilot holds an instrument rating or an ATP licence with an appropriate aircraft category, class, and type (if required) rating for the aircraft being flown;

(*b*) in the case of helicopter, the pilot holds a helicopter instrument rating.

Special authorization required for category II/III operations

30.—(1) Except as shown in subregulation (2), no person may act as a pilot crew member of a civil aircraft in a Category II/III operation unless—

(*a*) in the case of a PIC, he or she holds a current Category II and III Pilot authorization for the type of aircraft.

(2) An authorization is not required for individual pilots of an AOC holder that has operations specifications approving Category II or III operations.

Pilot logbooks

31.—(1) Each pilot shall show the aeronautical training and experience used to meet the requirements for a licence or rating, or recency of experience, by a reliable record.

(2) Each PIC shall carry his or her logbook on all general aviation international flights.

(3) A student pilot shall carry his or her logbook, including the proper flight instructor endorsements, on all solo cross-country flights.

Pilot currency: take-off and landings and cruise relief

32.—(1) No person may act as PIC or co-pilot of an aircraft unless, within the preceding 90 days that pilot has—

(*a*) made 3 take-offs and landings as the sole manipulator of the flight controls in an aircraft of the same category and class and if a type rating is required, of the same type or in a flight simulation training device approved for the purpose;

(*b*) for a tailwheel aeroplane, made the 3 take-offs and landings in a tail wheel aeroplane with each landing to a full stop;

(*c*) for night operations, made the 3 take-offs and landings required by subregulation (1) (*a*) at night.

(2) A pilot who has not met the recency of experience for take-offs and landings shall satisfactorily complete a requalification curriculum acceptable to the Authority.

(3) Requirements of subregulations (1) and (2) of this Regulation may be satisfied in a flight simulator approved by the Authority.

(4) No person may act as a cruise relief pilot in commercial air transport unless within the preceding 90 days, that pilot has either—

(*a*) operated as pilot-in-command, co-pilot or cruise relief pilot on the same type of aircraft; or

(*b*) carried out flying skill refresher training including normal, abnormal and emergency procedures specific to cruise flight on the same type of aircraft or in a flight simulator approved for the purpose, and has practised, approach and landing procedures, where the approach and landing procedure practice may be performed as the pilot who is not flying the aircraft.

Pilot currency: IFR operations

33.—(1) No person may act as a pilot under IFR, nor in IMC, unless he or she has, within the past 6 calendar-months—

(*a*) logged at least 6 hours of instrument flight time including at least 3 hours in flight in the category of aircraft; and

(*b*) completed at least 6 instrument approaches.

(2) A pilot who has completed an instrument competency check with an authorized representative of the Authority retains currency for IFR operations for 6 calendar-months following that check.

Pilot currency: general aviation operations

34.—(1) In addition to the requirements in regulations 32 and 33 of these Regulations—

(*a*) no person may act as PIC of an aircraft type certified for more than one pilot or a turbojet aircraft unless, since the beginning of the past 12 calendar-months, he or she has passed a proficiency check in an aircraft with an authorized representative of the Authority;

(*b*) no person may act as PIC of an aircraft type certified for more than one pilot or a turbojet aircraft unless, since the beginning of the past 24 calendar-months, he or she has passed a proficiency check in the type of aircraft to be operated;

(*c*) no person may act as PIC of an aircraft type certified for a single pilot unless, since the beginning of the 24 calendar-months, he or she has passed a proficiency check with an authorized representative of the Authority;

(*d*) No person may act as co-pilot of an aircraft type certified for more than one pilot unless, since the beginning of the past 12 calendar-months, he or she has logged 3 take-off and landings as the sole manipulator of the controls in the aircraft of the same type.

(2) The person conducting the proficiency checks shall ensure that each check duplicates the manoeuvres of the type rating skill test.

Pilot privileges and limitations

35. A pilot may conduct operations only within the general privileges and limitations of each licence as specified in the Personnel Licensing Regulations.

PART V
Crew Members Duties and Responsibilities

Authority and responsibility of the PIC

36.—(1) The PIC shall be responsible for the operations and safety of the aircraft and for the safety of all persons on board, during flight.

(2) The PIC of an aircraft shall have final authority as to the operation of the aircraft while he or she is in command.

(3) The PIC of an aircraft shall, whether manipulating the controls or not, be responsible for the operation of the aircraft in accordance

with the rules of the air, except that the PIC may depart from these rules in emergency circumstances that render such departure absolutely necessary in the interests of safety.

(4) The PIC shall have the authority to disembark any person or cargo, which in his or her opinion, represents a potential danger to the safety of the aircraft, persons or property.

Compliance with local regulations

37.—(1) The PIC shall comply with the relevant laws, regulations and procedures of the States in which the aircraft is operated.

(2) If an emergency situation which endangers the safety of the aircraft or persons necessitates the taking of action which involves a violation of local regulations or procedures, the PIC shall—

(*a*) submit a report of the circumstances, if required by the State in which the incident occurs; and

(*b*) submit a copy of this report to the State of Operator if an AOC or State of Register if in general aviation;

(*c*) each PIC shall submit reports specified in this subregulation (2) to the Authority within 10 days in the form prescribed.

Negligent or reckless operations of the aircraft

38. No person may operate an aircraft in a negligent or reckless manner so as to endanger life or property of others.

Fitness of flight crew members

39.—(1) No person may act as PIC or in any other capacity as a required flight crew member when he or she is aware of any decrease in his or her medical fitness which might render the crew member unable to safely exercise the privileges of his or her licence.

(2) The PIC shall be responsible for ensuring that a flight is not—

(*a*) commenced if any flight crew member is incapacitated from performing duties by any cause such as injury, sickness, fatigue, the effects of alcohol or drugs; or

(*b*) continued beyond the nearest suitable aerodrome if a flight crew member's capacity to perform functions is significantly reduced by impairment of faculties from causes such as fatigue, sickness or lack of oxygen.

Prohibition on use of psychoactive substances, including narcotics drug or alcohol

40.—(1) No person may act or attempt to act as a crew member of a civil aircraft—

(*a*) within 8 hours after the consumption of any alcoholic beverage;

(*b*) while under the influence of alcohol; or

(*c*) while using any psychoactive substance that affects the person's faculties in any way contrary to safety.

(2) A crew member shall, up to 8 hours before or immediately after acting or attempting to act as a crew member, on the request of a law enforcement officer or the Authority, submit to a test to indicate the presence of alcohol or other psychoactive substances in the blood.

(3) Whenever there is a reasonable basis to believe that a person may not be in compliance with this regulation and upon the request of the Authority, that person shall furnish the Authority or authorize any clinic, doctor, or other person to release to the Authority, the results of each blood test taken for presence of alcohol or narcotic substances up to 8 hours before or immediately after acting or attempting to act as a crew members.

(4) Any test information provided to the Authority under the provisions of this regulation may be used as evidence in any legal proceeding.

Flight crew member use of seat belts and shoulder harness

41.—(1) Each flight crew member shall have his or her seat belts fastened during take-off and landing and all other times when seated at his or her station.

(2) Each flight crew member occupying a station equipped with a shoulder harness shall fasten that harness during take-off and landing, except that the shoulder harness may be unfastened if the crew member cannot perform the required duties with the shoulder harness fastened.

(3) Each occupant of a seat equipped with a combined safety belt and shoulder harness shall have the combined safety belt and shoulder harness properly secured about that occupant during take-off and landing and be able to properly perform assigned duties.

(4) At each unoccupied seat, the safety belt and shoulder harness, if installed, shall be secured so as not to interfere with crew members in the performance of their duties or with the rapid egress of occupants in an emergency.

Flight crew members at duty stations

42.—(1) Each required flight crew member shall remain at the assigned duty station during take-off and landing and critical phases of flight.

(2) Each flight crew member shall remain at his or her station during all phases of flight unless—

(*a*) absence is necessary for the performance of his or her duties in connexion with the operation;

(*b*) absence is necessary for physiological needs, provided one qualified pilot remains at the controls at all times; or

(*c*) the crew member is taking a rest period and a qualified relief crew member replaces him or her at the duty station—

(i) for the assigned PIC during the en route cruise portion of the flight by a pilot who holds an airline transport pilot licence and an appropriate type rating, and who is currently qualified as PIC or CP, and is qualified as PIC of that aircraft during the en route cruise portion of the flight; and

(ii) in the case of the assigned CP, by a pilot qualified to act as PIC or Co-Pilot of that aircraft during en route operations.

Required crew member equipment

43.—(1) Each crew member involved in night operations shall have a flashlight at his or her station.

(2) Each pilot crew member shall have at his or her station an aircraft checklist containing at least the pre-take-off, after take-off, before landing and emergency procedures.

(3) Each pilot crew member shall have at his or her station current and suitable charts to cover the route of the proposed flight and any route along which it is reasonable to expect that the flight may be diverted.

(4) Each flight crew member assessed as fit to exercise the privileges of a licence subject to the use of suitable correcting lenses, shall have a spare set of the correcting lenses readily available when performing as a required crew member in commercial air transport.

Compliance with checklist

44. The PIC shall ensure that the flight crew follows the approved checklist procedures when operating the aircraft.

Search and rescue information

45. For all international flights, the PIC shall have on board the aircraft essential information concerning the search and rescue services in the areas over which he or she intends to operate the aircraft.

Production of aircraft and flight documentation

46. The PIC shall, within a reasonable time of being requested to do so by a person authorized by the Authority, produce to that person the documentation required to be carried, on the aircraft.

Locking of flight deck compartment door: commercial air transport

47.—(1) The PIC shall ensure that the flight deck compartment door (if installed) is locked at all times during passenger-carrying commercial air transport operations, except as necessary to accomplish approved operations or to provide for emergency evacuation.

(2) No person may operate a passenger carrying aeroplane having a maximum certificated take-off mass in excess of 45,000 kg or with a passenger capacity greater than 60 unless the flight crew compartment door is closed and locked—

(*a*) from the time all external doors are closed following embarkation; until

(*b*) any such door is opened for disembarkation; except

(*c*) when necessary to permit access and egress by authorized persons.

Admission to the flight deck: commercial air transport

48.—(1) No person may admit any person to the flight deck of an aircraft engaged in commercial air transport operations unless the person being admitted is—

(*a*) an operating crew member;

(*b*) a representative of the Authority responsible for certification, licensing or inspection, if this is required for the performance of his or her official duties; or

(*c*) permitted by and carried out in accordance with instructions contained in the Operations Manual.

(2) The PIC shall ensure that—

(*a*) in the interest of safety, admission on the flight deck does not cause distraction and/or interference with the flight's operations; and

(*b*) all persons carried on the flight deck are made familiar with the relevant safety procedures.

Admission of inspector to the flight deck

49. Whenever, in performing the duties of conducting an inspection, an inspector from the Authority presents Inspector's Credential to the PIC, the PIC shall give the inspector free and uninterrupted access to the flight deck of the aircraft.

Duties during critical phases of flight: commercial air transport

50.—(1) No flight crew member may perform any duties during a critical phase of flight except those required for the safe operation of the aircraft.

(2) No PIC may permit a flight crew member to engage in any activity during a critical phase of flight which could distract or interfere with the performance of his or her assigned duties.

Manipulation of the controls: commercial air transport

51.—(1) No PIC may allow an unqualified person to manipulate the controls of an aircraft during commercial air transport operations.

(2) No person may manipulate the controls of an aircraft during commercial air transport operations unless he or she is qualified to perform the applicable crew member functions and is authorized by the AOC holder.

Simulated abnormal situations in flight: commercial air transport

52. No person may cause or engage in simulated abnormal or emergency situations or the simulation of IMC by artificial means during commercial air transport operations.

Completion of the technical logbook: commercial air transport aerial work

53. The PIC shall ensure that all portions of the technical log are completed at the appropriate points before, during and after flight operations, including—

(*a*) the journey logbook; and

(*b*) the aircraft maintenance records section.

Reporting mechanical irregularities

54. The PIC shall ensure that all mechanical irregularities occurring during flight time are—

(*a*) for general aviation operations, entered in the aircraft logbook and disposed of in accordance with the MEL or other approved or prescribed procedure;

(*b*) for commercial air transport operations and aerial work operations, entered in the aircraft maintenance records section of the technical log for the aircraft at the appropriate points before, during and at the end of that flight time.

Reporting of facility and navigation aid inadequacies

55.—(1) Each crew member shall report, without delay, any inadequacy or irregularity of a facility or navigational aid observed in the course of operations to the person responsible for that facility or navigational aid.

Reporting of hazardous conditions

56. The PIC shall report to the appropriate ATC facility, without delay and with enough detail to be pertinent to the safety of other aircraft, any hazardous flight conditions encountered en route, including those associated with meteorological conditions.

Reporting of incidents

57.—(1) Air traffic incident report: The PIC shall submit, without delay, an air traffic incident report whenever an aircraft in flight has been endangered by—

(*a*) a near collision with another aircraft or object;

(*b*) faulty air traffic procedures or lack of compliance with applicable procedures by ATC or by the flight crew; or

(*c*) a failure of ATC facilities.

(2) Birds: In the event a bird constitutes an in-flight hazard or an actual bird strike occurs, the PIC shall, without delay—

(*a*) inform the appropriate ground station whenever a potential bird hazard is observed; and

(*b*) submit a written bird strike report after landing.

(3) Dangerous Goods: The PIC shall inform the appropriate ATC facility, if the situation permits, when an in-flight emergency occurs involving dangerous goods on board.

(4) Unlawful Interference: The PIC shall submit a report to the local authorities and to the Authority, without delay, following an act of unlawful interference with the crew members on board an aircraft.

Accident notification

58.—(1) The PIC shall notify the nearest appropriate authority, by the quickest available means, of any accident involving his or her aircraft that results in serious injury or death of any person, or substantial damage to the aircraft or property.

(2) The PIC shall submit a report to the Authority of any accident which occurred while he or she was responsible for the flight.

Operation of cockpit voice and flight data recorders

59.—(1) The PIC shall ensure that whenever an aircraft has flight recorders installed, those recorders are operationally checked and operated continuously from the instant—

(*a*) for a flight data recorder, the aircraft begins its take-off roll until it has completed the landing roll, and

(*b*) for a cockpit voice recorder, the initiation of the pre-start checklist until the end of the securing aircraft checklist.

(2) The PIC may not permit a flight data recorder or cockpit voice recorder to be disabled, switched off or erased during flight, unless necessary to preserve the data for an accident or incident investigation.

(3) In event of an accident or incident, the PIC shall act to preserve the recorded data for subsequent investigation upon completion of flight.

Crew member oxygen: minimum supply and use

60.—(1) The PIC shall ensure that breathing oxygen and masks are available to crew members in sufficient quantities for all flights at such altitudes where a lack of oxygen might result in impairment of the faculties of crew members.

(2) In no case shall the minimum supply of oxygen on board the aircraft be less than that prescribed by the Authority.

(3) The requirements for oxygen supply and use are prescribed in the Aviation (Instruments and Equipment) Regulations.

(4) The PIC shall ensure that all flight crew members, when engaged in performing duties, essential to the safe operation of an aircraft in flight, use breathing oxygen, continuously at cabin altitudes exceeding 10,000 ft for a period, in excess of 30 minutes and whenever the cabin altitude exceeds 13,000 ft.

(5) One pilot at the controls of a pressurized aircraft in flight shall wear and use an oxygen mask—

(*a*) for general aviation operations, at flight levels above 350, if there is no other pilot at a pilot duty station; and

(*b*) for commercial air transport operations, at flight levels above 250, if there is no other pilot at a pilot duty station.

Portable electronic devices

61.—(1) No PIC or SCA may permit any person to use, nor may any person use a portable electronic device on board an aircraft that may adversely affect the performance of aircraft systems and equipment unless—

(*a*) for IFR operations other than commercial air transport, the PIC allows such a device before its use; or

(*b*) for commercial air transport operations, the AOC holder makes a determination of acceptable devices and publishes that information in the Operations Manual for the crew members use; and

(*c*) the PIC informs passengers of the permitted use.

Carriage of dangerous goods

62. No person shall carry dangerous goods in an aircraft registered in Malaŵi or operated in Malaŵi except—

(*a*) with the written permission of the Authority and subject to any condition the Authority may impose in granting such permission; and

(*b*) in accordance with the Technical Instructions for the Safe Transport of Dangerous Goods by Air issued by the Council of International Civil Aviation Organization and with any variations to those instructions that the Authority may from time to time mandate and provide notification of dangerous goods to ICAO.

Microphones

63.—(1) For AOC holders operating aircraft, a required flight crew member shall use a boom or throat microphone to communicate with another flight crew member and air traffic service below the transition level or altitude.

(2) For general aviation operations in an aeroplane, helicopter or powered-lift aircraft, a required flight crew member should use a boom or throat microphone to communicate with another flight crew member and air traffic service below the transition level or altitude.

(3) For aerial work operations, a required flight crew member should use a boom or throat microphone to communicate with another flight crew member and air traffic service below the transition level or altitude, as applicable to the mission.

PART VI
Flight Planning and Supervision

Division 1—Flight Plans

Submission of a flight plan

64.—(1) Before operating one of the following, a pilot shall file a VFR or IFR flight plan, as applicable, for—

(*a*) any flight (or portion thereof) to be provided with ATC service;

(*b*) any IFR flight within advisory airspace;

(*c*) any flight within or into designated areas, or along designated routes, when so required by the appropriate ATC authority to facilitate the provision, of flight information, alerting and search and rescue services;

(*d*) any flight within or into designated areas, or along designated routes, when so required by the appropriate ATC authority to facilitate coordination with appropriate military units or with ATC facilities in adjacent states in order to avoid the possible need for interception for the purpose of identification; and

(*e*) any flight across international borders.

(2) The PIC shall submit a flight plan before departure or during flight, to the appropriate ATC facility, unless arrangements have been made for submission of repetitive flight plans.

(3) Unless otherwise prescribed by the appropriate ATC authority, a pilot should submit a flight plan to the appropriate ATC facility—

(*a*) at least sixty minutes before departure; or

(*b*) if submitted during flight, at a time which will ensure its receipt by the appropriate ATC facility at least ten minutes before the aircraft is estimated to reach—

(i) the intended point of entry into a control area or advisory area; or

(ii) the point of crossing an airway or advisory route.

Air traffic control flight plan: commercial air transport

65.—(1) No person may take-off an aircraft in commercial air transport if an ATC flight plan has not been filed, except as authorized by the Authority.

Contents of a flight plan

66.—(1) Each person filing an IFR or VFR flight plan shall include in it the following information—

(*a*) aircraft identification;

(*b*) flight rules and type of flight;

(*c*) number and type(s) of aircraft and wake turbulence category;

(*d*) equipment;

(*e*) departure aerodrome and alternate (if required);

(*f*) estimated off-block time;

(*g*) cruising speed(s);

(*h*) cruising level(s);

(*i*) route to be followed;

(*j*) destination aerodrome and alternate (if required);

(*k*) fuel endurance;

(*l*) total number of persons on board;

(*m*) emergency and survival equipment; and

(*n*) other information,

Planned re-clearance

67. If during flight planning a person determines that there is a possibility depending on fuel endurance, that a flight may be able to change destinations and still comply with minimum fuel supply planning requirements, that person shall notify the appropriate ATC facility of this possibility when the flight plan is submitted.

Changes to a flight plan

68.—(1) When a change occurs to a flight plan submitted for an IFR flight or a VFR flight operated as a controlled flight, the pilot shall report that change as soon as practicable to the appropriate ATC facility.

(2) For VFR flights other than those operated as controlled flight, the PIC shall report significant changes to a flight plan as soon as practicable to the appropriate ATC facility.

(3) Information submitted before departure regarding fuel endurance or total number of persons carried on board, if incorrect at time of departure, constitutes a significant change and shall be reported.

Closing a flight plan

69.—(1) The PIC shall make a report of arrival either in person or by radio to the appropriate ATC facility at the earliest possible moment after landing at the destination aerodrome, unless ATC automatically closes a flight plan.

(2) When a flight plan has been submitted for a portion of a flight, but not the arrival at destination, the pilot shall close that flight plan en route with the appropriate ATC facility.

(3) When no ATC facility exists at the arrival aerodrome, the pilot shall contact the nearest ATC facility to close the flight plan as soon as practicable after landing and by the quickest means available.

(4) Pilots shall include the following elements of information in their arrival reports—

(*a*) aircraft identification;

(*b*) departure aerodrome;

(*c*) destination aerodrome (only in the case of a diversionary landing);

(*d*) arrival aerodrome; and

(*e*) time of arrival.

PART VI
Flight Planning and Preparation

Division 2—Flight Plans

Aircraft airworthiness and safety precautions

70.—(1) The PIC may not operate a civil aircraft in flight until satisfied that—

(*a*) the aircraft is airworthy, duly registered and that appropriate certificates are aboard the aircraft;

(*b*) the instruments and equipment installed in the aircraft are appropriate, taking into account the expected flight conditions; and

(*c*) any necessary maintenance has been performed and a maintenance release, if applicable, has been issued in respect to the aircraft.

(2) For commercial air transport operations, the PIC shall certify by signing the aircraft technical log that he or she is satisfied that the requirements of subregulation (1) of this Regulation have been met for a particular flight.

Adequacy of operating facilities

71.—(1) No person may commence a flight unless it has been determined by every reasonable means available that the ground and/or water areas and facilities available and directly required for such flight and for the safe operation of the aircraft, are adequate, including communication facilities and navigation aids.

(2) An operator shall ensure that any inadequacy of facilities observed in the course of operations is reported to the authority responsible for them, without undue delay.

(3) Subject to their published conditions of use, aerodromes and their facilities shall be kept continuously available for flight operations during their published hours of operations, irrespective of weather conditions.

(4) An operator shall, as part of its safety management system, assess the level of rescue and fire fighting service (RFFS) protection available at any aerodrome intended to be specified in the operational flight plan in order to ensure that an acceptable level of protection is available for the aeroplane intended to be used.

(5) Information related to the level of RFFS protection that is deemed acceptable by the operator shall be contained in the operations manual.

(6) Reasonable means denotes use, at the point of departure, of information available to the PIC either through official information published by the aeronautical information services or readily obtainable in other sources.

Weather reports and forecasts

72.—(1) Before commencing a flight, the PIC shall be familiar with all available meteorological information appropriate to the intended flight.

(2) The PIC shall include, during preparation for a flight away from the vicinity of the place of departure, and for every flight under the instrument flight rules—

(*a*) a study of available current weather reports and forecasts; and

(*b*) the planning of an alternative course of action to provide for the eventuality that the flight cannot be completed as planned, because of weather conditions.

Weather limitations for VFR flights

73. No person will commence a flight to be conducted in accordance with VFR unless available current meteorological reports, or a combination of current reports and forecasts, indicate that the meteorological conditions along the route, or that part of the route to be flown under VFR, will, at the appropriate time, allow VFR operations.

IFR destination aerodromes

74.—(1) For IFR flight planning purposes, no person may commence an IFR flight unless the available information indicates that the weather conditions at the aerodrome of intended landing and, if required, at least one suitable alternate at the ETA, will be at or above the—

(*a*) minimum ceiling and visibility values for the standard instrument approach procedure to be used; or

(*b*) minimum operating altitude, if no instrument approach procedure is to be used, which, would allow a VMC decent to the aerodrome.

(2) Without prejudice to subregulation (1) of this Regulation a partial exception is granted for commercial air transport IFR flight planning, to the effect that the weather at the destination does not have to be at or above the approach minima to release and commence a flight, as long as the designated alternate aerodrome meets the IFR weather selection criteria.

IFR destination alternate requirement

75.—(1) No person may commence an IFR flight in an aeroplane without at least one destination alternate aerodrome listed in the flight plan unless—

(*a*) there is a standard instrument approach procedure prescribed for the aerodrome of intended landing by the jurisdictional authorities; and

(*b*) available current meteorological information indicates that the following meteorological conditions will exist from two hours before to two hours after the ETA—

(i) a cloud base of at least 300 m (1,000 ft) above the minimum associated with the instrument approach procedure; and

(ii) visibility of at least 6 km or of 4 km more than the minimum associated with the procedure.

(2) The ceiling and visibility requirements of subregulation (1) of this Regulation may be reduced upon approval of the Authority for—

(*a*) helicopters, powered-lift, and airships;

(*b*) commercial air transport where no suitable destination alternate exists.

(3) No person may commence an IFR flight in a helicopter where no alternate aerodrome is required unless—

(*a*) the operation is conducted as general aviation, and

(*b*) available current meteorological information indicates that the following meteorological conditions will exist from two hours before to two hours after the ETA—

(i) a cloud base of at least 300 m (1,000 ft) above the minimum associated with the instrument approach procedure; and

(ii) visibility of at least 6 km or of 4 km more than the minimum associated with the procedure.

(4) If the heliport of intended landing is isolated and no suitable alternate is available, a point of no return shall be determined.

IFR alternate aerodrome selection criteria

76.—(1) If alternate minimums are published, no PIC may designate an alternate aerodrome in an IFR flight plan unless the current available forecast indicates that the meteorological conditions at that alternate at the ETA will be at or above those published alternate minima.

(2) If alternate minima are not published, and if there is no prohibition against using the aerodrome as an IFR planning alternate, each PIC shall ensure that the meteorological conditions at that alternate at the ETA will be at or above—

(*a*) for a precision approach procedure, a ceiling of at least 180 m (600 ft.) and visibility of not less than 3 km; or

(*b*) for a non-precision approach procedure, a ceiling of at least 240 m (800 ft) and visibility of not less than 5 km.

Off-shore alternates for helicopter operations

77.—(1) No person may designate an offshore alternate landing site when it is possible to carry enough fuel to have an on-shore alternate landing site.

(2) The selection of offshore alternates should be exceptional cases, the details of which have been approved by the Authority, and should not include payload, enhancement in IMC.

(3) Each person selecting an off-shore alternate landing site shall consider the following—

(*a*) until the point of no return, using an on-shore alternate. The offshore alternate may be used only after a point of no return;

(*b*) attaining one engine inoperative performance capability before arrival at the alternate;

(*c*) guaranteeing helideck availability;

(*d*) the weather information at the helideck shall be available from a source approved by the Authority;

(*e*) for IFR operations, an instrument approach procedure shall be prescribed and available;

(*f*) attaining mechanical reliability of critical control systems and critical components when determining the suitability of the alternate.

(4) The landing technique specified in the flight manual following control system failure may preclude the selection of certain helidecks as alternate aerodromes. The mechanical reliability of critical control systems shall be taken into account when determining the suitability and necessity for an offshore alternate.

Take-off alternate aerodromes: commercial air transport operations

78.—(1) No person may release or take-off an aeroplane without a suitable take-off alternate specified in the flight plan if it would not be possible to return to the aerodrome of departure.

(2) Each operator shall ensure that each take-off alternate specified shall be located within—

(*a*) for two-engine aeroplane, one hour flight time at single-engine cruise speed; or

(*b*) for three or four-engine aeroplane, two hours flight time at single-engine cruise speed.

(3) All calculations are based on the one-engine-inoperative cruising speed according to the AFM in still air conditions based on the actual take-off mass.

Maximum distance from an adequate aerodrome for twin engine aeroplanes without an ETOPS approval

79.—(1) Unless specifically approved by the Authority (ETOPS Approval), an AOC holder shall not operate a twin engined aeroplane over a route which contains a point further from an adequate aerodrome than, in the case of—

(*a*) large, turbine-powered aeroplanes the distance flown in 60 minutes at the one-engine-inoperative cruise speed determined in accordance with subregulation (2) with either—

(i) a maximum approved passenger seating configuration of 20 or more; or

(ii) a maximum take-off mass of 45,360 kg or more,

(*b*) piston-engined aeroplanes—

(i) the distance flown in 120 minutes at the one-engine- inoperative cruise speed determined in accordance with subregulation (2); or

(ii) 300 nautical miles, whichever is less.

(2) An AOC holder shall determine a speed for the calculation of the maximum distance to an adequate aerodrome for each twin engined aeroplane type or variant operated, not exceeding VMO based upon the true airspeed that the aeroplane can maintain with one engine inoperative under the following conditions—

(*a*) International Standard Atmosphere;

(*b*) level flight—

(i) for turbine-powered aeroplanes at—

(A) FL 170; or

(B) at the maximum flight level to which the aeroplane, with one engine inoperative, can climb, and maintain, using the gross rate of climb specified in the AFM, whichever is less.

(ii) for piston-powered aeroplanes—

(A) FL 80; or

(B) at the maximum flight level to which the aeroplane, with one engine inoperative, can climb, and maintain, using the gross rate of climb specified in the AFM, whichever is less.

(*c*) maximum continuous thrust or power on the remaining operating engine;

(*d*) an aeroplane mass not less than that resulting from—

(i) take-off at sea level at maximum take-off mass until the time elapsed since take-off is equal to the applicable threshold prescribed in subregulation (1);

(ii) all engines climb to the optimum long range cruise altitude until the time elapsed since take-off is equal to the applicable threshold prescribed in subregulation (1);

(iii) all engines cruise at the long range cruise speed at this altitude until the time elapsed since take-off is equal to the applicable threshold prescribed in subregulation (1).

(3) An AOC holder shall ensure that the following data, specific to each type or variant, is included in the Operations Manual—

(*a*) the one-engine-inoperative cruise speed determined in accordance with subregulations (1) and (2) of this Regulation;

(*b*) the maximum distance from an adequate aerodrome determined in accordance with subregulations (1) and (2) of this Regulation.

Extended range operations with twin-engined aeroplanes

80.—(1) An AOC holder shall not conduct operations beyond the threshold distance determined in accordance with regulation 79 unless approved to do so by the Authority.

(2) In requesting ETOPS approval, each AOC holder shall show to the satisfaction of the Authority that—

(*a*) the airworthiness certification of the aeroplane type;

(*b*) the reliability of the propulsion system;

(*c*) the AOC holder's maintenance procedures, operating practices, flight dispatch procedures; and

(*d*) crew training programmes; for twin engined aeroplanes are consistent with the level of safety required for current extended range operations with three and four engined turbine- powered aeroplanes.

(3) Before conducting an ETOPS flight, an AOC holder shall ensure that a suitable ETOPS en route alternate is available, within either the approved diversion time or a diversion time based on MEL generated serviceability status of the aeroplane whichever is shorter.

(4) No AOC holder shall commence a flight unless, during the possible period, of arrival, the required en route alternate aerodrome will be available and the available information indicates that conditions at the aerodrome will be at or above the aerodrome operating minima approved for the operation.

En route alternate aerodromes: ETOPS operations

81.—(1) The PIC shall ensure that the required en route alternates for ETOPS are selected and specified in ATC flight plans in accordance with the ETOPS diversion time approved by the Authority.

(2) No person shall select an aerodrome as an ETOPS en route alternate aerodrome unless the appropriate weather reports or forecasts, or any combination thereof, indicate that during a period commencing 1 hour before and ending 1 hour after the expected time of arrival at the aerodrome, the weather conditions will be at or above the planning minima prescribed in the table below, and in accordance with the operator's ETOPS approval.

(3) The forecast weather criteria used in the selection of alternate aerodromes for IFR flight will also be used for the selection of ETOPS alternates.

Planning Minima *(RVR/visibility required & ceiling, if applicable)*		
Type of Approach	Aerodrome with—	
	at least 2 separate approach procedures based on 2 separate aids serving 2 separate runways (See subregulation 81 (3))	at least 2 separate approach procedures based on 2 separate aids serving 1 runway or, at least 1 approach procedure based on 1 aid serving 1 runway
Precision Approach CAT I, III (ILS, MLS)	Precision Approach CAT I Minima	Non-Precision Approach Minima
Precision Approach CAT I (ILS, MLS)	Non-Precision Approach Minima	Circling minima or, if not available, non-precision approach minima plus 60 m (200 ft)/1,000m
Non-precision Approach	The lower of non-precision approach minima plus 60 m (200 ft)/1,000 m or circling minima	The higher of non-precision approach minima plus 60 m (200 ft)/1,000 m or circling minima
Circling approach	Circling minima	Circling minima

(4) Runways on the same aerodrome are considered to be separate runways when they are separate landing surfaces which may overlay or cross such that if one of the runways is blocked, it will not prevent the planned type of operations on the other runway and each of the landing surfaces has a separate approach based on a separate aid.

Fuel, oil, and oxygen planning and contingency factors

82.—(1) No person may commence a flight unless he or she takes into account the fuel, oil, and oxygen needed to ensure the safe completion of the flight, including any reserves to be carried for contingencies.

(2) Each person computing the required minimum fuel supply shall ensure that additional fuel, oil, and oxygen are carried to provide for the increased consumption that would result from any of the following contingencies—

(*a*) expected winds or other meteorological conditions;

(*b*) possible variations in ATC routings;

(*c*) anticipated traffic delays;

(*d*) a complete instrument approach procedure and possible missed approach at destination;

(*e*) loss of pressurization en route;

(*f*) loss of one power-unit en route; and

(*g*) any other conditions that may delay landing of the aircraft or increase fuel and oil consumption.

(3) Each person computing the required minimum fuel supply shall ensure that, for flights of more than 2,000 nm, the minimum fuel supply calculation includes an additional amount of fuel equal to that necessary to fly 10% of the total time for the flight from take-off to destination.

(4) No PIC may commence a flight to an aerodrome where no suitable alternate aerodrome is available because the destination aerodrome is isolated, without enough reserve fuel for two additional hour's flight at normal cruise consumption, at 1,500 fit above the aerodrome.

(5) The Authority may grant specific approval for commercial air transport operations to isolated aerodromes without regard to consumption requirement of subregulation (4) of this Regulation.

(6) The Authority may require fuel, in addition to any other requirement herein, if necessary on a particular route or flight operation in the interest of safety. This additional fuel will be included in the minimum fuel supply for that route.

Minimum fuel supply for VFR flights

83.—(1) No person may commence a flight in an aeroplane under VFR unless, considering the wind and forecast weather conditions, there is enough fuel to fly to the first point of intended landing and, assuming normal cruising speed—

(*a*) for flights during the day or night, for at least 45 minutes thereafter; and

(*b*) for international flights, for at least an additional 15% of the total flight time calculated for cruise flight.

(2) No person may commence a flight in a helicopter under VFR unless (considering the wind and forecast weather conditions) there is enough fuel to fly to the first point of intended landing and, assuming normal cruising speed—

(*a*) for 20 minutes thereafter; and

(*b*) for international flights, for at least an additional 10% of the total flight time calculated.

Minimum fuel supply for IFR flights

84.—(1) No person may commence a flight under IFR unless there is enough fuel supply, considering weather reports and forecasts, to—

(*a*) fly to the first point of intended landing and execute an instrument approach;

(*b*) execute a missed approach and fly from that aerodrome to the most critical (in terms of fuel consumption) alternate aerodrome, if required; and

(*c*) fly thereafter at normal cruising speed;

(*d*) in a piston-powered aeroplane, for 45 minutes;

(*e*) in a rotorcraft, turbojet or turbofan aeroplane, for 30 minutes at a holding speed at 450 m (1,500 fit) above the aerodrome, plus a reserve for contingencies specified by the operator and approved by the Authority.

(2) For IFR flights to isolated aerodromes, the 2-hour minimum reserve specified in regulation 82 applies, except subregulation (5) of this regulation does not apply to commercial air transport operations unless specifically approved by the Authority.

Flight planning document distribution and retention: commercial air transport

85.—(1) For commercial air transport operations, the PIC shall complete and sign the following flight preparation documents before departure—

(*a*) an operational flight plan, including NOTAMs and weather pertinent to the flight planning decisions regarding minimum fuel supply, en route performance, and destination and alternate aerodromes;

(*b*) a load manifest, showing the distribution of the load, centre of gravity, take-off and landing mass and compliance with maximum operating mass limitations, and performance analysis;

(*c*) an applicable technical log page, if mechanical irregularities were entered after a previous flight, maintenance or inspection functions were performed or a maintenance release was issued at the departure aerodrome.

(2) No person may take-off an aircraft in commercial air transport unless all flight release documents, signed by the PIC, are retained and available at the point of departure.

(3) The PIC shall carry a copy of the documents specified in subregulation (1) of this regulation on the aircraft to the destination aerodrome.

(4) Completed flight preparation documents shall be kept by the AOC holder for a period of three months.

(5) The Authority may approve a different retention location where all documents can be available for subsequent review.

Aircraft loading, mass and balance

86.—(1) No person may operate an aircraft unless all loads carried are properly distributed and safely secured.

(2) No person may operate an aircraft unless the calculations for the mass of the aeroplane and centre of gravity location indicate that the flight can be conducted safely, taking into account the flight conditions expected.

(3) When load masters, load planners or other qualified personnel are provided by the AOC holder in a commercial air transport operation, the PIC may delegate these responsibilities, but shall ascertain that proper loading procedures are followed.

(4) For commercial air transport operations, no PIC may commence a flight unless the PIC is satisfied that the loading and mass and balance calculations contained in the load manifest are accurate and comply with the aircraft limitations.

Maximum allowable mass to be considered on all load manifests

87. The PIC shall ensure that the maximum allowable mass for a flight does not exceed the maximum allowable take-off mass—

(*a*) for the specific runway and conditions existing at the take-off time; and

(*b*) considering anticipated fuel and oil consumption that allows compliance with applicable en route performance, landing mass, and landing distance limitations for destination and alternate aerodromes.

Flight release required: commercial air transport

88.—(1) No person may start a flight under a flight following system without specific authority from the person authorized by the AOC holder to exercise operational control over the flight.

(2) No person may commence a passenger-carrying flight in commercial air transport unless a qualified person authorized by the AOC holder to perform operational control functions has issued a flight release for that specific operation or series of operations.

Operational flight plan: commercial air transport

89.—(1) No person may commence a flight unless the operational flight plan has been signed by the PIC.

(2) A PIC may sign the operational flight plan only when the PIC and the person authorized by the operator to exercise operational control have determined that the flight can be safely completed.

(3) The operational flight plan shall include the routing and fuel calculations, with respect to the meteorological and other factors expected, to complete the flight to the destination and all required alternates.

(4) The PIC signing the operational flight plan shall have access to the applicable flight planning information for fuel supply, alternate

aerodromes, weather reports and forecasts and NOTAMs for the routing and aerodrome.

(5) No person may continue a flight from an intermediate aerodrome without a new operational flight plan if the aircraft has been on the ground more than 6 hours.

PART VII
Aircraft Operating and Performance Limitations

Division 1—All Aircraft

Application

90. This Division prescribes the operating and performance limitations for all civil aircraft.

General

91. No person may operate an aircraft that—

(*a*) exceeds its designed performance limitations for any operation, as established, by the State of Registry;

(*b*) exceeds the operating limitations contained in the aircraft flight manual, or its equivalent;

(*c*) exceeds the terms of its certificate of airworthiness; or

(*d*) exceeds the mass limitations, if applicable, imposed by the terms of its noise certification standards, as contained in the applicable part of ICAO Annex 16, Volume I, unless otherwise approved by the Authority.

Aircraft performance calculations

92.—(1) Each operator shall ensure that the performance data contained in the AFM, RFM, or other authorized source is used to determine compliance with the appropriate requirements of Part VII.

(2) When applying performance data, each person performing calculations shall account for all factors that significantly affect the performance of the aircraft configuration, including, but not limited to: mass of the aeroplane, the operating procedures, the pressure-altitude appropriate to the elevation of the aerodrome, the ambient temperature, the wind, the runway slope, and surface conditions of the runway i.e., environmental conditions, snow, slush, water, ice, for landplanes, water surface condition for seaplanes, and the operation of any system, or systems that may have an adverse effect on performance.

(3) The factors described in subregulation (2) of this regulation the aircraft performance calculations shall be taken into account directly as operations parameters or indirectly by means of allowances or margins, which may be provided in the design performance limits or in the terms of the AOC in accordance with which the aeroplane is being operated.

General mass and obstruction clearance limitations

93.—(1) No person may take-off an aircraft without ensuring that the maximum allowable mass for a flight does not exceed the maximum allowable take-off or landing mass, or any applicable en route performance or landing distance limitations considering the—

(*a*) condition of the take-off and landing areas to be used;

(*b*) gradient of runway to be used (landplanes only);

(*c*) pressure altitude;

(*d*) ambient temperature;

(*e*) current and forecast winds; and

(*f*) any known conditions (e.g., atmospheric and aircraft configuration) which may adversely affect aircraft performance, or compliance with noise certification standards if required.

(2) No person may take-off an aircraft at a mass that, assuming normal engine operation, cannot safely clear all obstacles during all phases of flight, including all points along the intended en route path or any planned diversions.

Division II—Aircraft Used in Commercial Air Transport

Application

94. This division prescribes aircraft performance and operating limitations for aircraft used in commercial air transport operations, except those aircraft holding a special authority or waiver by the Authority which exempt them, from specific operating and performance limitations.

General

95.—(1) Each person operating an aircraft engaged in commercial air transport shall, comply with the provisions of Division Eight of these Regulations.

(2) Each person, operating a rotorcraft identified as Class 1, 2, or 3 in international commercial air transport shall comply with the code of performance in. IS: 8:95.

(3) The Authority may grant exemptions in accordance with the Aviation (General Policies, Procedures and Definitions) Regulations from the requirements of Section 8:95 if special circumstances make a literal observance of a requirement unnecessary for safety.

(4) Where full compliance with the requirements of Division Two of these Regulations cannot be shown due to specific design characteristics (e.g., seaplanes, airships, or supersonic aircraft), the operator shall apply approved performance standards that ensure a level of safety not less restrictive than those of relevant requirements of this Division.

(5) No person may operate a single-engine aircraft or an aircraft type certificated for operation by a single-pilot used for revenue passenger

carrying operations unless that aircraft is continually operated in daylight, VFR, excluding over the top, and over routes and diversions there that do not permit a safe forced landing to be executed in the event of an engine failure—

(*a*) notwithstanding subregulation (4) of this Regulation, the Authority may approve single-pilot operations in propeller driven, turbine powered aircraft under IFR, at night, or under IMC for aircraft certificated for a maximum take-off weight of 5,700 kg or less and a maximum approved passenger seating configuration of 9 or less, provided it meets the equipment requirements of the Aviation (Instruments and Equipment) Regulations;

(*b*) notwithstanding subregulation (4), the Authority may approve single-pilot operations in propeller driven, turbine powered aircraft under IFR at night, or under IMC for aircraft certificated maximum take-off weight of 5,700 kg or less with a passenger seating configuration of more than 9 passengers if the aircraft is type certificated for operations by a single pilot, provided it meets the equipment requirements of the Aviation (Instruments and Equipment) Regulations, and the Authority has authorized an exemption from subregulation (4) in the operators operations specifications. If such operations are to be conducted outside Malaŵi, Malaŵi shall have an arrangement with the States where operations will be conducted.

(6) No person may operate a multi-engine aircraft used for revenue passengers carrying operations that is unable to comply with any of the performance limitations of subregulations 98 to 102 unless that aircraft is continually operated—

(*a*) in daylight;

(*b*) in VFR, excluding over the top operations; and

(*c*) at a mass that will allow it to climb, with the critical engine inoperative, at least 50 ft a minute when operating at the MEAs of the intended route or any planned diversion, or at 5,000 if MSL, whichever is higher.

(7) Multi-engine aircraft that are unable to comply with subregulations (5) and (6) are, for the purpose of this regulation to be a single engine aircraft and shall comply with the requirements of subregulation (4).

Single and multi-engine aeroplane operations

96.—(1) No person may operate a single-engine aircraft in revenue passenger carrying operations unless that aircraft is continually operated in daylight, VFR over such routes and diversions there from that permit a safe forced landing to be executed in the event of an engine failure.

(*a*) notwithstanding subregulation (1), the AUTHORITY may approve single-engine operations in propeller driven, turbine powered aircraft under IFR, at night, or under IMC for aircraft certificated for a maximum take-off weight of 5,700 kg or less and a maximum approved passenger seating configuration of 9 or less, provided it meets the equipment requirements of the Aviation (Instruments and Equipment) Regulations;

(*b*) notwithstanding subregulation (1) (*a*) the AUTHORITY may approve single-engine operations in propeller driven, turbine powered aircraft under IFR at night, or under IMC for aircraft certificated maximum, take-off weight of 5,700 kg or less with a passenger seating configuration of more than 9 passengers if the aircraft is type certificated for operations by a single pilot, provided it meets the equipment requirements of the Instruments and Equipment Regulations and the AUTHORITY has authorized, an exemption from subregulation (1) (*a*) in the operators operations specifications. If such operations are to be conducted outside Malaŵi, the Authority shall have an arrangement with the States where operations will be conducted.

(2) No person shall operate single-engine turbine-powered, aeroplanes at night and/or in IMC unless the airworthiness certification of the aeroplane is appropriate and acceptable to the AUTHORITY and that the overall safety of the operation is consistent with commercial air transportation operations as provided by—

(*a*) the reliability of the turbine engine;

(*b*) the operator's maintenance procedures, operating practices, flight dispatch procedures;

(*c*) crew training programmes; and

(*d*) equipment and additional requirements provided in accordance with subregulation (4) of this regulation.

(3) No person shall operate a single-engine turbine-powered aeroplane at night and/or in IMC unless the aeroplane has an engine trend monitoring system, and those aeroplanes for which the individual, certificate of airworthiness is first issued on or after 1 January, 2005 shall have an automatic trend monitoring system.

(4) See IS: 8:96 for additional airworthiness and operational requirements applicable to the operation of single-engine turbine-powered aeroplanes at night and/or in IMC with respect to—

(*a*) turbine engine reliability;

(*b*) systems and equipment;

(*c*) minimum, equipment list;

(*d*) flight manual information;

(*e*) event reporting;

(*f*) operator planning;

(*g*) flight crew experience, training and checking;

(*h*) route limitations over water;

(*i*) operator certification or validation.

(5) No person may operate a multiengine aircraft used for revenue passengers carrying operations that is unable to comply with any of the performance limitations of regulations 97 to 101 unless that aircraft is continually operated—

(*a*) in daylight;

(*b*) in VFR, excluding over the top operations; and

(*c*) at a mass that will allow it to climb, with the critical engine inoperative, at least 50 ft a minute when operating at the MEAs of the intended route or any planned diversion, or at 5,000 fit MSL, whichever is higher.

(6) Multiengine aircraft that are unable to comply with subregulation 96 (5) (*c*) are, for the purpose of this regulation, considered to be a single engine aircraft and shall comply with the requirements of subregulation 96 (1).

Aircraft performance calculations

97.—(1) No person may take-off an aircraft used in commercial air transport without ensuring that the applicable operating and performance limitations required, for this regulation can be accurately computed based on the AFM, RFM, or other data source approved by the Authority.

(2) Each person calculating performance and operating limitations for aircraft used in commercial air transport shall ensure that performance data used to determine compliance with this regulation can, during any phase of flight, accurately account for—

(*a*) any reasonably expected adverse operating conditions that may affect aircraft performance;

(*b*) one engine failure for aircraft having two engines, if applicable; and

(*c*) two engine failure for aircraft having three or more engines, if applicable.

(3) When calculating the performance and limitation requirements of regulations 98 to 102 each person performing the calculation shall,

for all engines operating and for inoperative engines, accurately account for—

(*a*) in all phases of flight—

(i) the effect of fuel and oil consumption on aircraft mass;

(ii) the effect of fuel consumption on fuel reserves resulting from changes in flight paths, winds, and aircraft configuration;

(iii) the effect of fuel, jettisoning on aircraft mass and fuel reserves, if applicable and approved;

(iv) the effect of any ice protection system, if applicable and weather conditions require its use;

(v) ambient temperatures and winds along intended route and any planned diversion;

(vi) flight paths and minimum altitudes required to remain clear of obstacles.

(*b*) during take-off and landing.

(4) The condition of the take-off runway or area to be used, including any contaminates (e.g. water, slush, snow, ice)—

(*a*) the gradient of runway to be used;

(*b*) the runway length including clearways and stop ways, if applicable;

(*c*) pressure altitudes at take-off and landing sites;

(*d*) current ambient temperatures and winds at take-off;

(*e*) forecast ambient temperatures and winds at each destination and planned alternate landing site;

(*f*) the ground handling characteristics (e.g., braking action) of the type of aircraft; and

(*g*) landing aids and terrain that may affect the take-off path, landing path, and landing roll.

(5) Where conditions are different from those on which the performance is based, compliance may be determined by interpolation or by computing the effects of changes in the specific variables, if the results of the interpolation or computations are substantially as accurate as the results of direct tests.

(6) To allow for wind effect, take-off and landing data based on still air may be corrected by taking into account not more than 50 percent of any reported headwind component and not less than 150 percent of any reported tailwind component.

Take-off limitations

98.—(1) Aeroplanes: No person may take-off an aeroplane used in commercial air transport unless the following requirements are met when determining the maximum permitted take-off mass—

(*a*) the take-off run shall not be greater than the length of the runway;

(*b*) for turbine-powered aeroplanes—

(i) the take-off distance shall not exceed the length of the runway plus the length of any clearway, except that the length of any clearway included in the calculation shall not be greater than 1/2 the length of the runway; and

(ii) the accelerate-stop distance shall not exceed the length of the runway, plus the length of any stop way, at any time during take-off until reaching VI;

(*c*) for piston-engined aeroplanes—the accelerate-stop distance shall not exceed the length of the runway at any time during take-off until reaching V1;

(*d*) if the critical engine fails at any time after the aeroplane reaches VI, to continue the take-off flight path and clear all obstacles either—

(i) by a height of at least 9.1 m (35 fit) vertically for turbine-powered aeroplanes or 15.2 m (50 fit) for piston-engined aeroplanes; and

(ii) by at least 60 m (200 fit) horizontally within the aerodrome boundaries and by at least 90 m (300 fit) horizontally after passing the boundaries, without banking more than 15 degrees at any point on the take-off flight path.

(2) Helicopters: No person may take-off a helicopter used in commercial air transport that, in the event of a critical engine failure, cannot—

(*a*) for Class 1 helicopters—

(i) at or before the take-off decision point, discontinue the take-off and stop within the rejected take-off area; or

(ii) after the take-off decision point, continue the take-off and then climb, clearing all obstacles along the flight path, until a suitable landing site is found;

(*b*) For Class 2 helicopters—

(i) before reaching a defined point after take-off, safely execute a forced landing within the rejected take-off area; or

(ii) at any point after reaching a defined point after take-off, continue the take-off and then climb, clearing all obstacles along the flight path, until a suitable landing site is found;

(*c*) for Class 3 helicopters—

(i) clear the obstacles along its flight path by an adequate margin; or

(ii) maintain minimum flight altitude; or

(iii) at engine failure permit a safe, forced landing.

En route limitations: aeroplane all engines operating

99. No person may take-off a piston-engined aeroplane used in commercial air transport at a mass that does not allow a rate of climb of at least 6.9 Vso, (that is, the number of feet per minute obtained by multiplying the aeroplanes minimum steady flight speed by 6.9) with all engines operating, at an altitude of at least 300 m (1,000 fit) above all terrain and obstructions within ten miles of each side of the intended track.

En route limitations: one engine inoperative

100.—(1) Aeroplane: No person may take-off an aeroplane used in commercial air transport having two engines unless that aeroplane can, in the event of a power failure at the most critical point en route, continue the flight to a suitable aerodrome where a landing can be made while allowing—

(*a*) for piston-engined aeroplanes—

(i) at least a rate of climb of 0.079 - (0.106/number of engines installed) Vso2 (when Vso is expressed in knots) at an altitude of 300 m (1,000 ft) above all terrain and obstructions within 9.3 km (5 nm), on each side of the intended track; and

(ii) a positive slope at an altitude of at least 450 m (1,500 ft) above the aerodrome where the aeroplane is assumed to land;

(*b*) for turbine-powered transport category aeroplanes—

(i) a positive slope at an altitude of at least 300 m (1,000 ft) above all terrain and obstructions within 9.3 km (5 nm), on each side of the intended track;

(ii) a net flight path from cruising altitude to the intended landing aerodrome that allows at least 600 m (2,000 fit) clearance above all terrain and obstructions within 9.3 km (5 nm), on each side of the intended track; and

(iii) a positive slope at an altitude of at least 450 m (1,500 ft) above the aerodrome where the aeroplane is assumed to land;

(*c*) the climb rate specified in subregulation 100 (1) (*a*) (i) may be amended to 0.026 Vso2 for large transport category aircraft issued a type certificate before 1953;

(*d*) the 9.3 km (5 nm) clearance margin stated in subregulation 100(1) shall be increased to 18.5 km (10 nm) if navigational accuracy does not meet the 95% containment level.

(2) Helicopter: No person shall take-off a helicopter used in commercial air transport having two engines unless that helicopter can, in the event of the critical engine failing at any point in the en route phase, continue the flight to the destination or alternate landing site without flying below the minimum flight altitude at any point and clearing all obstacles in the approach path by a safe margin.

En route limitations: two engines inoperative

101.—(1) Aeroplane: No person may take-off an aeroplane used in commercial air transport having three or more engines at such a mass where there is no suitable landing aerodrome within 90 minutes at any point along the intended route (with all engines operating at cruising power), unless that aeroplane can, in the event of simultaneous power failure of two critical engines at the most critical point along that route, continue to a suitable landing aerodrome while allowing—

(*a*) for turbine-powered aeroplanes—

(i) a net flight path (considering the ambient temperatures anticipated along the track) clearing vertically by at least 600 m (2,000 ft) all terrain and obstructions within 9.3 km (five nautical miles) on each side of the intended track;

(ii) a positive slope at 450 m (1,500 ft) above the aerodrome of intended landing; and

(iii) enough fuel to continue to the aerodrome of intended landing, to arrive at an altitude of at least 450 m (1,500 ft) directly over the aerodrome, and thereafter to fly for 15 minutes at cruise power;

(iv) the consumption of fuel and oil after the engine failure is the same as the consumption that is allowed for in the net flight path data in the AFM;

(*b*) for piston-engined aeroplanes—

(i) a rate of climb at 0.013 Vso2 feet per minute (that is, the number of feet per minute is obtained by multiplying the number of knots squared by 0.013) at an altitude of 300m (1,000 ft) above the highest ground or obstruction within 18.6 km (10 nautical miles) on each side of the intended track, or at an altitude of 1,500m (5,000 ft), whichever is higher; and

(ii) enough fuel to continue to the aerodrome of intended landing and to arrive at an altitude of at least 300 m (1,000 ft) directly over that aerodrome;

(iii) when the two engines of the piston-engined aeroplane are predicted to fail at an altitude above the prescribed minimum altitude, compliance with the prescribed rate of climb need not be shown during the descent from the cruising altitude to the

prescribed minimum altitude, if those requirements can be met once the prescribed minimum altitude is reached, and assuming descent to be along a net flight path and the rate of descent to be 0.013 Vso2 greater than the rate in the approved performance data;

(iv) if fuel jettisoning is authorized (or planned), the aeroplane's mass at the point where the two engines fail is considered to be not less than that which would include enough fuel to proceed to an aerodrome and to arrive at an altitude of at least 300 m (1,000 ft) directly over that aerodrome.

(2) Helicopters: No person shall take-off a Class 1 or Class 2 helicopter used in commercial air transport having three or more engines unless that helicopter can, in the event of two critical engines failing simultaneously at any point in the en route phase, continue the flight to a suitable landing site.

Landing limitations

102.—(1) Aeroplane: No person may take-off an aeroplane used in commercial operations unless its mass on arrival at either the intended destination aerodrome or any planned alternate aerodrome would allow a full stop landing from a point 50 ft above the intersection of the obstruction clearance plane and the runway, and within—

(*a*) for turbine-powered aeroplanes, 60 percent of the effective length of each runway; and

(*b*) for piston-engined aeroplanes, 70 percent of the effective length of each runway,

(2) For the purpose of determining the allowable landing mass at the destination aerodrome, each person determining the landing limit shall ensure that—

(*a*) the aeroplane is landed on the most favourable runway and in the most favourable direction, in still air; or

(*b*) the aeroplane is landed on the most suitable runway considering the probable wind velocity and direction, runway conditions, the ground handling characteristics of the aeroplane, and considering other conditions such as landing aids and terrain;

(*c*) if the runway at the landing destination is reported or forecast to be wet or slippery, the landing distance available shall be at least 115 percent of the required landing distance unless, based on a showing of actual operating landing techniques on wet or slippery runways, a shorter landing distance (but not less than that required by subregulation (1) has been approved for a specific type and model aeroplane and this information is included in the AFM.

(3) A turbine-powered transport category aeroplane that would be prohibited from taking-off because it could not meet the requirements of subregulation (1) (*a*), may take-off if an alternate aerodrome is specified that meets all the requirements of subregulation (1).

(4) Helicopters: No person may take-off a helicopter used in commercial air transport unless, with all engines operating on arrival at the intended destination landing site or any planned alternate landing, it can clear all obstacles on the approach path and can land and stop within the landing distance available.

(5) Helicopters: No person may take-off a helicopter used in commercial air transport unless, in the event of any engine becoming inoperative in the approach and landing phase on arrival at the intended destination landing site or any planned alternate landing, it can—

(*a*) for Class 1 helicopters—

(i) before the landing decision point, clear all obstacles on the approach path and be able to land and stop within the landing distance available or to perform a balked landing and clear all obstacles in the flight path by an adequate margin; or

(ii) after the landing decision point, land and stop within the landing distance available;

(*b*) for Class 2 helicopters— before reaching a defined point before landing, safely execute a forced landing within the landing distance available.

(*c*) for Class 3 helicopters— safely execute a forced landing within the landing distance available.

Additional requirements for class 3 helicopters operating in IMC

103.—(1) Except for special VFR flights, no person may operate a performance Class 3 helicopter in IMC unless—

(*a*) the surface environment over which the operation is to be performed is acceptable to the AUTHORITY;

(*b*) the helicopter is certified for flight under IFR;

(*c*) the operation is approved by the AUTHORITY taking into consideration the overall level of safety provided by—

(i) the reliability of the engines;

(ii) the operator's maintenance procedures, operating practices and crew training programmes; and equipment including the operator's vibration health monitoring practices for the tail-rotor drive system.

(2) Except for special VFR flights, no person may operate a performance Class 3 helicopter in IMC unless the operator has an engine trend monitoring system and uses the instruments, systems and

operational/maintenance procedures to monitor the engines that are recommended by the helicopter manufacture.

PART VIII
Flight Rules

Division 1—All Operations

Operation of aircraft on the ground

104.—(1) No person may taxi an aircraft on the movement area of an aerodrome unless the person at the controls—

(*a*) has been authorized by the owner, the lessee, or a designated agent;

(*b*) is fully competent to taxi the aircraft;

(*c*) is qualified to use the radio if radio communications are required; and

(*d*) has received instruction from a competent person in respect of aerodrome layout, and where appropriate, information on routes, signs, marking, lights, ATC signals and instructions, phraseology and procedures, and is able to conform to the operational standards required for safe aircraft movement at the aerodrome.

(2) No person shall cause a helicopter rotor to be turned under power unless there is a qualified pilot at the controls.

Take-off conditions

105. Before commencing take-off, a PIC shall ensure that—

(*a*) according to the available information, the weather at the aerodrome and the condition, of the runway intended to be used will allow for a safe take-off and departure; and

(*b*) the RVR or visibility in the take-off direction of the aircraft is equal to or better than the applicable minimum.

Flight into known or expected icing

106.—(1) No person may take-off an aircraft or continue to operate an aircraft en route when, icing conditions are expected or encountered, without ensuring that the aircraft is certified for icing operations and has sufficient operational de-icing or anti-icing equipment.

(2) No person may take-off an aircraft when, frost, ice or snow is adhering to the wings, control surfaces, propellers, engine inlets or other critical surfaces of the aircraft which might adversely affect the performance or controllability of the aircraft.

(3) For commercial air transport operations, no person may take-off an aircraft, when conditions are such that frost, ice or snow may reasonably be expected to adhere to the aircraft, unless the aircraft has been inspected for icing, and the procedures approved for the AOC

holder by the Authority are followed to ensure ground de-icing and anti-icing is accomplished.

Altimeter settings

107.—(1) Each person operating an aircraft, except a balloon or glider, shall maintain the cruising altitude or flight level by reference to an altimeter setting.

(2) The lowest usable flight level is determined by the atmospheric pressure in the area of operation.

(3) The flight crew shall use the altimeter settings provided by the ATC service of Malaŵi.

(4) Wing and centre section assembly for—

(*a*) poor general condition;

(*b*) fabric or skin deterioration;

(*c*) distortion;

(*d*) evidence of failure; and

(*e*) insecurity of attachment.

(5) Complete empennage assembly for—

(*a*) poor general condition;

(*b*) fabric or skin deterioration;

(*c*) distortion;

(*d*) evidence of failure;

(*e*) insecure attachment;

(*f*) improper component installation; and

(*g*) improper component operation.

Minimum safe altitudes: general

108.—(1) Except when necessary for take-off or landing, no person may operate an aircraft below the following altitudes—

(*a*) anywhere: an altitude allowing, if a power unit fails, continuation of flight or an emergency landing without undue hazard to persons or property on the surface;

(*b*) over congested areas: over any congested area of a city, town, or settlement, or over any open-air assembly of persons, an altitude of 300 m (1,000 ft) above the highest obstacle within a horizontal radius of 600 m (2,000 ft) of the aircraft;

(*c*) over other than congested areas: an altitude of 150 m (500 fit) above the surface, except over open water or sparsely populated areas where the aircraft may not be operated closer than 150 m (500 fit) to any person, vessel, vehicle, or structure;

(*d*) helicopters: pilots of helicopters are not subject to the proximity restrictions provided they are operated in a manner that is

not hazardous to persons and property on the surface: the PIC of a helicopter shall comply with any routes or altitudes for the area that are prescribed for helicopters by the Authority; and

(*e*) altitudes prescribed by ICAO Annex 2: 3.1.2, 4.6; 5.1.2.

(2) The minimum heights specified in subregulation (1) (*b*) shall not apply to—

(*a*) any aircraft engaged on a flight or series of flights in relation to which the Authority has given special permission in writing and in accordance with conditions therein specified;

(*b*) a glider while it is mil soaring.

(3) Nothing in this regulation shall prohibit any aircraft from—

(i) practising approaches to landing provided such practising is confined to the airspace customarily used by aircraft when landing or taking-off in accordance with normal aviation practice at the aerodrome concerned;

(ii) flying for the purpose of checking navigation aids or procedures in accordance with normal aviation practice at an aerodrome; or

(iii) flying in such a manner as shall be necessary for the purpose of saving life.

Minimum safe VFR altitudes

109.—(1) Except when necessary for take-off or landing, no person may operate an aircraft below the following altitudes—

(*a*) no person may operate an aeroplane during the day, under VFR, at an altitude less than 300 m (1,000 fit) above the surface or within 300 m (1,000 ft) of any mountain, hill, or other obstruction to flight;

(*b*) no person may operate an aeroplane at night, under VFR, at an altitude less than 300 m (1,000 fit) above the highest obstacle within a horizontal distance of eight km (five statute miles) from the centre of the intended course, or, in designated mountainous areas, less than 600 m (2,000 fit) above the highest obstacle within a horizontal distance of 8 km (5 statute miles) from the centre of the intended course.

Instrument approach operating minima

110. No person may operate to or from an aerodrome using operating minima lower than those which may be established for that aerodrome by the State in which it is located, unless that State specifically approves that operation in accordance with the provisions of Implementing Standard: IS: 8:110—

(*a*) no person may conduct instrument approach and landing operations below 800 m visibility unless RVR information is provided;

(*b*) see IS 8:110 contained in the Schedule hereto for requirements for Instrument Approach Operating Minima.

Category II and III operations: general operating rules

111.—(1) No person may operate a civil aircraft in a Category II or III operation unless—

(*a*) the PIC and CP of the aircraft, hold the appropriate authorizations and ratings prescribed in the Aviation (Personnel Licensing) Regulations;

(*b*) each flight crew member has adequate knowledge of, and familiarity with, the aircraft and the procedures to be used; and

(*c*) the instrument panel in front of the pilot who is controlling the aircraft has appropriate instrumentation for the type of flight control guidance system that is being used.

(2) Unless otherwise authorized by the Authority, no person may operate a civil aircraft in a Category II or Category III operation unless each ground component required for that operation and the related airborne equipment is installed and operating.

(3) When the approach procedure being used provides for and requires the use of a DH, the authorized DH is the highest of the following—

(*a*) the DH prescribed by the approach procedure;

(*b*) the DH prescribed for the PIC;

(*c*) the DH for which the aircraft is equipped.

(4) Unless otherwise authorized by the Authority, no pilot operating an aircraft in a Category II or Category III approach that provides and requires use of a DH may continue the approach below the authorized decision height unless the following conditions are met—

(*a*) the aircraft is in a position from which a descent to a landing on the intended runway can be made at a normal rate of descent using normal manoeuvres, and where that descent rate will allow touchdown to occur within the touchdown zone of the runway of intended landing;

(*b*) at least one of the following visual references for the intended runway is distinctly visible and identifiable to the pilot—

(i) the approach light system, except that the pilot may not descend below 100 ft above the touchdown zone elevation using the approach lights as a reference unless the red terminating bars or the red side row bars are also distinctly visible and identifiable;

(ii) the threshold;

(iii) the threshold markings;

(iv) the threshold lights;

(v) the touchdown zone or touchdown zone markings; and

(vi) the touchdown zone lights.

(5) Unless otherwise authorized, by the Authority, each pilot operating an aircraft shall immediately execute an appropriate missed approach whenever, before touchdown, the requirements of subregulation (4) of this Regulation are not met.

(6) No person operating an aircraft using a Category III approach without DH may land that aircraft except in accordance with the provisions of the letter of authorization issued by the Authority.

(7) No person may conduct Category II or III instrument approaches and landing operations below 800 m visibility unless RVR information is provided.

(8) Subregulations (1) to (7) of this regulation do not apply to operations conducted by AOC holders issued a certificate under the Aviation (Air Operator Certification and Administration) Regulations. No person may operate a civil aircraft in a CAT II or CAT III operation conducted by an AOC holder unless the operation is conducted in accordance with that AOC holder's approved training programme and operations specifications.

Category II and III manual

112.—(1) Except as provided in subregulation 3 of this regulation, no person may operate a civil aircraft in a Category II or a Category III operation unless—

(*a*) there is available in the aircraft a current and approved Category II or Category III manual, as, appropriate, for that aircraft;

(*b*) the operation is conducted in accordance with the procedures, instructions, and limitations in the appropriate manual; and

(*c*) the instruments and equipment listed in the manual that are required for a particular Category II or Category III operation have been inspected and maintained in accordance with the maintenance programme contained in the manual.

(2) Each operator must keep a current copy of each approved manual at its principal base of operations and must make each manual available for inspection upon request by the Authority.

(3) Subregulations (1) and (2) of this Regulation do not apply to operations conducted by an AOC holder issued a certificate under Part 9, which will have approved Category II or III operations included as a part of its operations manual.

(4) See IS: 8:112 contained in the Schedule hereto for specific Category II and III manual requirements.

Exemption from certain category II operations

113.—(1) The Authority may grant an exemption from the requirements of regulations 111 and 112 for the operation of small aircraft Category II operations if the operator can demonstrate to the Authority that the proposed operation can be safely conducted.

(2) The authorization in subregulation (1) of this Regulation does not permit operation of the aircraft carrying persons or property for compensation or hire.

Diversion decision: engine inoperative

114.—(1) Except as provided in subregulation (2), of this Regulation the PIC shall land the aircraft at the nearest suitable aerodrome at which a safe landing can be made whenever an engine of an aircraft fails or is shut down to prevent possible damage.

(2) If not more than one engine of an aeroplane having three or more engines fails, or its rotation is stopped, the PIC may proceed to an aerodrome if he or she decides that proceeding to that aerodrome is as safe as landing at the nearest suitable aerodrome after considering the—

(*a*) nature of the malfunction and the possible mechanical difficulties that may occur if flight is continued;

(*b*) altitude, mass, and usable fuel at the time of engine stoppage;

(*c*) weather conditions en route and at possible landing points;

(*d*) air traffic congestion;

(*e*) kind of terrain; and

(*f*) familiarity with the aerodrome to be used.

Operating near other aircraft: including formation flights

115.—(1) No person may operate an aircraft so close to another aircraft as to create a collision hazard.

(2) No person may operate an aircraft in formation flight except—

(*a*) by arrangement with the PIC of each aircraft in the formation; and

(*b*) if in controlled airspace, in accordance with conditions prescribed by the appropriate air traffic authority, which includes that—

(i) the formation operates as a single aircraft with regard to navigation and position reporting;

(ii) separation between aircraft in the flight shall be the responsibility of the flight leader and the pilots in command of the other aircraft in flight;

(iii) separation between aircraft shall include periods of transition when aircraft are manoeuvring to attain their own separation within the formation and during join-up and break-away; and

(iv) a distance not exceeding 1 km (0.5 NM) laterally and longitudinally and 30 m (100 ft) vertically from the flight leader shall be maintained by each aircraft.

(3) No person may operate an aircraft, carrying passengers for hire, in formation flight.

Right of way rules: except water operations

116.—(1) General—

(*a*) each pilot shall maintain vigilance so as to see and avoid other aircraft; and

(*b*) when a rule of this regulation gives another aircraft the right-of-way, the pilot shall give way to that aircraft and may not pass over, under, or ahead of it unless well clear and taking into account the effect of aircraft wake turbulence.

(*c*) each pilot who has the right-of-way shall maintain his or her heading and speed but is still responsible for taking such action, including collision avoidance manoeuvres based on resolution advisories provided by ACAS equipment, as will best avert collision.

(2) In distress: An aircraft in distress has the right-of-way over all other air traffic.

(3) Converging—

(*a*) when aircraft of the same category are converging at approximately the same altitude (except head-on, or nearly so), the aircraft to the other's right has the right-of-way.

(*b*) if the converging aircraft are of different categories—

(i) a balloon has the right-of-way over any other category of aircraft;

(ii) a glider has the right-of-way over an airship, and power driven heavier than air aircraft; and

(iii) an airship has the right-of-way over a power driven heavier than air aircraft.

(4) Towing or refueling: An aircraft towing or refueling other aircraft has the right-of- way over all other engine-driven aircraft, except aircraft in distress.

(5) Approaching head-on: When aircraft are approaching each other head-on, or nearly so, each pilot of each aircraft shall alter course to the right.

(6) Overtaking: Each aircraft that is being overtaken has the right-of-way and each pilot of an overtaking aircraft, whether climbing, descending or in horizontal flight, shall alter course to the right to pass well clear.

(7) Landing: Aircraft, while on final approach to land or while landing, have the right-of-way over other aircraft in flight or operating on the surface.

(8) More than one landing aircraft: When two or more aircraft are approaching an aerodrome for the purpose of landing, the aircraft at the lower altitude has the right-of-way.

(9) The PIC shall not take advantage of the right of way landing rules in subregulations (7) and (8) of this regulation to cut in front of another aircraft that is on final approach to land or to overtake that aircraft.

(10) Emergency landing: Aircraft that are compelled to land have the right-of-way over other aircraft.

(11) Taking-off: Aircraft taking-off have the right-of-way over aircraft taxiing on the manoeuvring area of an aerodrome.

(12) Surface movement of aircraft—

(*a*) approaching head-on: when aircraft are approaching each other head-on, or approximately so, each pilot of each aircraft shall stop, or wherever practicable alter course to the right so as to keep well clear;

(*b*) converging: when aircraft are converging on a course, the aircraft to the other's right has the right-of-way;

(*c*) overtaking, each aircraft that is being overtaken has the right-of-way and each pilot of an overtaking aircraft shall keep well clear.

(13) Aircraft taxiing on the manoeuvring area of an aerodrome—

(*a*) an aircraft taxiing on the manoeuvring area shall stop and hold at all runway-holding positions unless otherwise authorized by the aerodrome control tower;

(*b*) an aircraft taxiing on the manoeuvring area shall stop and hold at all lighted stop bars and may proceed further when the lights are switched off.

Right of way rules: water operations

117.—(1) General: Each person operating an aircraft on the water shall, insofar as possible, keep clear of all vessels and avoid impeding their navigation, and shall give way to any vessel or other aircraft that is given the right-of-way by any rule of this regulation.

(2) Converging or Crossing: When aircraft, or an aircraft and a vessel, are on crossing courses, the aircraft or vessel to the other's right has the right-of-way.

(3) Approaching head-on: When aircraft, or an aircraft and a vessel, are approaching head-on, or nearly so, each shall alter its course to the right to keep well clear.

(4) Overtaking: Each aircraft or vessel that is being overtaken has the right-of-way, and the one overtaking shall alter course to keep well clear.

(5) Special circumstances: When aircraft, or an aircraft and a vessel, approach so as to involve risk of collision, each aircraft or vessel shall proceed with careful regard to existing circumstances, including the limitations of the respective craft.

(6) Landing and taking-off: When aircraft, on landing or taking-off from, the water, shall keep well clear of all vessels and avoid impeding their navigation.

Right hand traffic rule

118. An aircraft which is flying in Malaŵi below 3000 feet above Mean sea level or 1000 feet above ground level whichever is higher, in sight of the ground and following a road, power line, railway line, river or a coastline or any other line of landmarks within 1 NM of such line feature shall keep such line of landmarks on its left at such a distance as will ensure avoidance of collision with any aircraft following the same line feature in the reverse direction, except when the aircraft is instructed to do otherwise by an ATC unit.

Use of aircraft lights

119.—(1) If an aircraft has red rotating beacon lights, or other lights installed to show that the engine is running, the pilot shall switch those lights on before starting engines and display those lights at all times the engines are running.

(2) No person may operate an aircraft between the period from sunset to sunrise unless—

(*a*) it has lighted navigation lights; and

(*b*) if anti-collision lights are installed, those lights are lighted.

(3) No person may park, or move an aircraft between the period, from sunset to sunrise in, or in a dangerous proximity to, a movement area of an aerodrome, unless the aircraft—

(*a*) is clearly illuminated;

(*b*) has lighted navigation lights; or

(*c*) is in an area that is marked by obstruction lights; or

(*d*) has lights to indicate when the engine is running.

(4) No person may anchor an aircraft unless that aircraft—

(*a*) has lighted anchor lights; or

(*b*) is in an area where anchor lights are not required on vessels.

(5) No person may operate an aircraft on water during the period from sunset to sunrise unless—

(*a*) it displays lights as required by the International Regulations for Preventing Collisions at Sea (most recent edition); or

(*b*) it shall display lights as similar as possible in characteristics and position to those required by the International Regulations for Preventing Collisions at Sea if it is not practical to display the lights exactly as required.

(6) A pilot is permitted to switch off or reduce the intensity of any flashing lights fitted to meet the requirements of this paragraph if they do or are likely to—

(*a*) adversely affect the satisfactory performance of duties; or

(*b*) subject an outside observer to harmful dazzle.

Simulated instrument flight

120.—(1) No person may operate an aircraft in simulated instrument flight unless—

(*a*) that aircraft, has fully functioning dual controls, except—

(i) in the case of airships; or

(ii) in a single engine airplane equipped with a throwover control wheel in place of fixed, dual controls of the elevator and ailerons.

(*b*) the other control seat is occupied by a safety pilot who holds at least a private pilot licence with category and class ratings appropriate to the aircraft being flown;

(*c*) the safety pilot has adequate vision forward and to each side of the aircraft, or a competent observer in the aircraft adequately supplements the vision of the safety pilot.

(2) No person may engage in simulated instrument flight conditions during commercial air transport operations.

In flight simulation of abnormal situations

121. No person may simulate an abnormal or emergency situation during commercial air transport operations.

Dropping, spraying and towing

122.—(1) Except under conditions prescribed by the Authority, no pilot may take the following actions—

(*a*) dropping, dusting or spraying from an aircraft;

(*b*) towing of aircraft or other objects; or

(*c*) allowing parachute descents.

(2) This regulation shall not apply to the descent of persons by parachute from an aircraft in an emergency, or to the dropping of articles by, or with the authority of, the commander of the aircraft in the following circumstances—

(*a*) the dropping of articles for the purpose of saving life;

(*b*) the jettisoning, in case of emergency, of fuel or other articles in the aircraft;

(*c*) the dropping of ballast in the form of fine sand or water;

(*d*) the dropping of articles solely for the purpose of navigating the aircraft in accordance with ordinary practice;

(*e*) the dropping at an aerodrome, in accordance with any regulations made under the Act, of ropes, banners or similar articles towed by aircraft;

(*f*) the dropping at an aerodrome, in accordance with any regulations made under the Act, of ropes, banners or similar articles towed by aircraft.

(3) Provided that no such articles shall be dropped from an aeroplanes except with the prior permission of the Authority and in accordance with any conditions subject to which that permission shall be granted.

(4) For the purposes of this regulation "dropping" includes projecting and lowering.

(5) Nothing in this regulation shall prohibit the towing of any person, animal or article from a helicopter to the surface, if the certificate of airworthiness issued or rendered valid in respect of the helicopter under law of the country in which it is registered includes an express provision that it shall be used for that purpose.

(6) Nothing in this regulation shall prohibit the dropping of any person attached to a parachute with the written permission of the Authority, and subject to such conditions including the place of such dropping as the Authority shall impose.

Aerobatic flight

123.—(1) No person may operate an aircraft in aerobatic flight—

(*a*) over any city, town or settlement;

(*b*) over an open air assembly of persons;

(*c*) within the lateral boundaries of the surface areas of Class B, C, D or E airspace designated for an aerodrome;

(*d*) below an altitude of 1,500 ft above the surface;

(*e*) when the flight visibility is less than 3 statute miles; and

(*f*) unless in compliance with any other conditions prescribed by the Authority.

(2) No person may operate an aircraft in manoeuvres exceeding a bank of 60 degrees or pitch of 30 degrees from level flight attitude unless all occupants of the aircraft are wearing parachutes packed by a qualified parachute rigger, licensed in accordance with the Aviation (Personnel Licensing) Regulations in the past 12 calendar-months.

Flight test areas

124. No person may flight-test an aircraft except over open water, or sparsely populated areas having light traffic.

Prohibited areas or restricted areas

125. No person may operate an aircraft in a prohibited area, or in restricted areas, the particulars of which have been duly published, except in accordance with the conditions of the restrictions or by permission of the State over whose territory the areas are established.

Operations in MNPS or RVSM airspace

126.—(1) No person may operate a civil aircraft of Malaŵi registry in the North Atlantic airspace designated as MNPS airspace or in airspace designated as RVSM without a written authorization issued by the Authority.

(2) No person may operate an aircraft in MNPS or RVSM airspace, except in accordance with the conditions of the procedures and restrictions required for this airspace.

(3) ICAO Doc 9574, Manual on the Implementation of a 300m Vertical Separation between FL 290 and FL410 Inclusive.

Operations on or in the vicinity of a controlled or an uncontrolled aerodrome

127.—(1) When approaching to land at an aerodrome, each pilot of—

(*a*) an aeroplane shall make all turns of that aeroplane to the left; or to the right, if appropriately indicated by the authorities having jurisdiction over that aerodrome;

(*b*) a helicopter shall avoid the flow of aeroplanes.

(2) When departing an aerodrome, each pilot of an aircraft shall comply with any traffic patterns established by the authorities having jurisdiction over that aerodrome.

(3) Each pilot of an aircraft shall land and take-off into the wind unless safety, the runway configurations, or traffic considerations determine that a different direction is preferable.

(4) Each pilot operating an aircraft either on or in the vicinity of an aerodrome shall—

(*a*) observe other aerodrome traffic for the purpose of avoiding collision; and

(*b*) conform with or avoid the pattern of traffic formed by other aircraft in operation.

(5) Each pilot of an aircraft when operating to, from, or through an aerodrome having an operational control tower shall also comply with the requirements in regulation 144 under these Regulations.

(6) See IS: 8.147 for the appropriate displays of light signals or visual signs.

Aerodrome traffic pattern altitudes: turbojet, turbofan, or large aircraft

128.—(1) When arriving at an aerodrome, the PIC of a turbojet, turbofan, or large aircraft shall enter the traffic pattern at least 1,500 ft AGL until further descent is required for landing.

(2) When departing, the PIC of a turbojet, turbofan, or large aircraft shall climb to 1,500 AGL as rapidly as practicable.

Compliance with visual and electronic glide slopes

129.—(1) The PIC of an aeroplane approaching to land on a runway served by a visual approach slope indicator shall maintain an altitude at or above the glide slope until a lower altitude is necessary for a safe landing.

(2) The PIC of a turbojet, turbofan, or large aeroplane approaching to land on a runway served by an ILS shall fly that aeroplane at or above the glide slope from the point of interception to the middle marker.

Restriction or suspension of operations: commercial air transport

130.—(1) If a PIC or an AOC holder knows of conditions, including aerodrome and runway conditions, that are a hazard to safe operations, that person shall restrict or suspend all commercial air transport operations to such aerodromes and runways as necessary until those conditions are corrected.

Continuation of flight when destination aerodrome is temporarily restricted: commercial air transport

131.—(1) No PIC may allow a flight to continue toward any aerodrome of intended landing where commercial air transport operations have been restricted or suspended, unless—

(*a*) in the opinion of the PIC, the conditions that are a hazard to safe operations may reasonably be expected to be corrected by the ETA; or

(*b*) there is no safer procedure.

Interception

132.—(1) When intercepted by a military or government aircraft, each PIC shall comply with the international standards when interpreting and responding to visual signals and communication as specified in IS:8:132 contained in the Schedule hereto.

(2) No pilot may conduct an international flight unless the procedures and signals relating to interception of aircraft, as specified in IS: 8:132, are readily available on the flight deck.

Noise abatement procedures

133.—(1) Each AOC holder shall operate its aircraft in accordance with the noise abatement procedures approved by the Authority.

(2) Unless otherwise directed by the Authority, the noise abatement procedures specified by an AOC holder for any one aeroplane type shall be the same for all aerodromes.

Single pilot operations

134.—(1) An aeroplane shall not be operated under the IFR or night by a single pilot unless approved by the State of the Operator.

(2) An aeroplane shall not be operated under IFR or at night by a single pilot unless—

(*a*) the flight manual does not require a flight crew of more than one;

(*b*) the aeroplane is propeller driven;

(*c*) the maximum approved passenger seating configuration is not more than nine;

(*d*) the maximum certificated take-off mass does not exceed 5,700 kg;

(*e*) the aeroplane is equipped as described in the Approved Maintenance Organization Regulations;

(*f*) the pilot-in-command has satisfied the requirements of experience, training, checking, and recency described in the Aviation (Air Operator Certification and Administration) Regulations.

Single-engine aeroplane operations

135.—(1) Except as provided in subregulation (3), single-engine aeroplanes, shall only be operated in conditions of weather and light, and over such routes and diversions therefrom, that permit a safe forced landing to be executed in the event of engine failure.

(2) In approving operations by single-engine turbine-powered aeroplanes, at night and/or in IMC, the State of the Operator shall ensure that the airworthiness certification of the aeroplane is appropriate and that the overall level of safety intended by the provisions of the Aviation (Airworthiness and Operations) Regulations is provided by—

(*a*) the reliability of the turbine engine;

(*b*) the operator's maintenance procedures, operating practices, flight dispatch procedures and crew training programmes; and

(*c*) equipment, and other requirements provided in accordance with IS: 8:135.

(3) All single-engine turbine-powered aeroplanes operated at night and/or in IMC shall have an engine trend monitoring system, and those aeroplanes for which the individual certificate of airworthiness is first issued on or after 1 January, 2005 shall have an automatic trend monitoring system.

Aeroplane operating procedures for rates of climb and descent

136. Unless otherwise specified in an air traffic control instruction, to avoid unnecessary airborne collision avoidance system (ACAS II) resolution advisories in aircraft at or approaching adjacent altitudes or flight levels, operators should specify procedures by which an aeroplane

climbing or descending to an assigned altitude or flight level, especially with an autopilot engaged, may do so at a rate less than 8 m/sec or 1,500 ft/min (depending on the instrumentation available throughout the last 300 m (1,000 ft) of climb or descent to the assigned level when the pilot is made aware of another aircraft at or approaching an adjacent altitude or flight level.

Division II—Control of Air Traffic

ATC clearances

137.—(1) Each PIC shall obtain an ATC clearance before operating a controlled flight, or a portion of a flight as a controlled flight.

(2) Each PIC shall request an ATC clearance through the submission of a flight plan to an ATC facility, including potential re-clearance in flight.

(3) Whenever an aircraft has requested a clearance involving priority, each PIC shall submit a report explaining the necessity for such priority, if requested by the appropriate ATC facility.

(4) No person operating an aircraft on a controlled aerodrome may taxi on the manoeuvring area or any runway without clearance from the aerodrome control tower.

Adherence to ATC clearances

138.—(1) When an ATC clearance has been obtained, no PIC may deviate from the clearance, except in an emergency, unless he or she obtains an amended clearance.

(2) When operating in airspace requiring controlled flight, no PIC may operate contrary to ATC instructions, except in an emergency.

(3) Each PIC who deviates from an ATC clearance or instructions in an emergency, shall notify ATC of that deviation as soon as possible.

Communications

139.—(1) Each person operating an aircraft on a controlled flight shall maintain a continuous listening watch on the appropriate radio frequency of, and establish two-way communication as required with, the appropriate ATC facility.

(2) Each person operating an aircraft on a controlled flight shall, except when landing at a controlled aerodrome, advise the appropriate ATC facility as soon as it ceases to be subject to ATC service.

(3) More specific procedures may be prescribed by the appropriate ATC authority in respect of aircraft forming part of aerodrome traffic at a controlled aerodrome.

(4) Automatic signaling devices may be used to satisfy the requirement to maintain a continuous listening watch, if authorized by the Authority.

Route to be flown

140.—(1) Unless otherwise authorized or directed by the appropriate ATC facility, the PIC of a controlled flight shall, in so far as practicable—

(*a*) when on an established ATC route, operate along the defined centre line of that route; or

(*b*) when on any other route, operate directly between the navigation facilities and/or points defining that route.

(2) The PIC of a controlled flight operating along an ATC route defined by reference to VORs shall change over for primary navigation guidance from the facility behind the aircraft to that ahead of it at, or as close as operationally feasible to, the change-over point, where established.

Inadvertent changes

141.—(1) A PIC shall take the following action in the event that a controlled flight inadvertently deviates from its current flight plan—

(*a*) deviation from track: if the aircraft is off track, the PIC shall adjust the heading of the aircraft to regain track as soon as practicable.

(*b*) variation in true airspeed: each PIC shall inform the appropriate ATC facility if the average true airspeed at cruising level between reporting points varies from, that given in the flight plan or is expected to vary by plus or minus 5 per cent of the true airspeed.

(*c*) change in time estimate: each PIC shall notify the appropriate ATC facility and give a revised estimated time as soon as possible if the time estimate for a reporting point, flight information region boundary, or destination aerodrome, whichever comes first, is found to be in excess of three minutes from that notified to ATC, or such other period of time as is prescribed by the appropriate ATC authority or on the basis of air navigation regional agreements.

(2) When an ADS agreement is in place, the air traffic services unit shall be informed automatically via data link whenever changes occur beyond the threshold values stipulated by the ADS event contract.

ATC clearance: intended changes

142.—(1) Requests for flight plan changes shall include the following information—

(*a*) change of cruising level: aircraft identification, requested new cruising level and cruising speed at this level, and revised time estimates, when applicable, at subsequent flight information region boundaries.

(*b*) change of route—

(i) destination unchanged: aircraft identification, flight rules; description of new route of flight including related flight plan data beginning with the position from which requested change

of route is to commence; revised time estimates, and any other pertinent information.

(ii) destination change: aircraft identification; flight rules; description of revised route of flight to revised destination aerodrome including related flight plan data, beginning with the position from which requested change of route is to commence; revised time estimates; alternate aerodrome(s); any other pertinent information.

Position reports

143.—(1) Each pilot of a controlled flight shall report to the appropriate ATC facility, as soon as possible, the time and level of passing each designated compulsory reporting point, together with any other required information, unless exempted from, this requirement by the appropriate ATC authority.

(2) Each pilot of a controlled flight shall make position reports in relation to additional points or intervals when requested by the appropriate ATC facility.

(3) When operating via data link communications providing position information to the appropriate air traffic services unit, each pilot of a controlled flight shall only provide voice position reports when requested by the appropriate ATC facility.

Operations on or in the vicinity of a controlled aerodrome

144.—(1) No person may operate an aircraft to, from, thorough, or on an aerodrome having an operational control tower unless two-way communications are maintained between that aircraft and the control tower.

(2) On arrival, each PIC shall establish communications required by subregulation 144 (1) prior to 4 nautical miles from the aerodrome when operating from the surface up to and including 2,500 ft.

(3) On departure, each PIC shall establish communications with the control tower before taxi.

(4) Take-off, landing, taxi clearance. No person may, at any aerodrome with an operating control tower, operate an aircraft on a runway or taxiway or take-off or land an aircraft, unless an appropriate clearance has been issued by ATC.

(5) Communications failure. If the radio fails or two-way communication is lost, a PIC may continue a VFR flight operation and land if—

(*a*) the weather conditions are at or above basic VFR minima; and

(*b*) clearance to land from the ATC tower is given in accordance with the universal light signals and acknowledged by the PIC as contained in IS: 8:147 for light signals and acknowledgement.

Unlawful interference

145.—(1) A PIC shall, when and if possible, notify the appropriate ATC facility when an aircraft is being subjected to unlawful interference, including—

(*a*) any significant circumstances associated with the unlawful interference, and

(*b*) any deviation from the current flight plan necessitated by the circumstances.

(2) A PIC shall attempt to land as soon as practicable when an aircraft is subjected to unlawful interference at—

(*a*) the nearest suitable aerodrome; or

(*b*) a dedicated aerodrome assigned by the appropriate authority unless considerations aboard the aircraft dictate otherwise.

Time checks

146.—(1) Each PIC shall use Co-ordinated Universal Time (UTC), expressed in hours and minutes of the 24-hour day beginning at midnight, in flight operations.

(2) Each PIC shall obtain a time check before operating a controlled flight and at such other times during the flight as may be necessary.

(3) Whenever time is used in the application of data link communications, it shall be accurate to within one second of UTC.

Universal signals

147.—(1) Upon observing or receiving any of the designated universal aviation signals as contained in IS: 8:147 and IS: 8:132, each person operating an aircraft shall take such action as may be required by the interpretation of the signal.

(2) The universal aviation signals shall have only the meaning indicated in the Implementing Standard.

(3) Each person using universal signals in the movement of aircraft shall only use them for the purpose indicated.

(4) No person may use signals likely to cause confusion with universal aviation signals.

Division III—VFR Flight Rules

Visual meteorological conditions

148. No person may operate an aircraft under VFR when the flight visibility is less than, or at a distance from the clouds that is less than that prescribed, or the corresponding altitude and class of airspace in the following table.

	Airspace and VMC Minima*		
Airspace Class	A***B C D E	F G	
		Above 900m (3,000 ft) AMSL or above 300m (1,000 ft) above terrain, whichever is the higher	At and below 900m (3,000 ft) AMSL or 300m (1,000 ft) above terrain, whichever is the higher
Distance from cloud	1,500 m horizontally 300m (1,000 ft) vertically		Clear of cloud and in sight of the surface
Flight visibility	8 km at and above 3,050 m (10,000 ft) AMSL 5 km below 3,050m (10,000 ft) AMSL		5 km**

*When the height of the transition altitude is lower than 3,050 m (10,000 fit) AMSL, FL 100 should be used *in lieu* of 10,000 ft.

**When so prescribed by the appropriate ATC authority—

lower flight visibilities to 1,500 m may be permitted for flights operating—

at speeds that, in the prevailing visibility, will give adequate opportunity to observe other traffic or any obstacles in time to avoid collision; or in circumstances in which the probability of encounters with other traffic would normally be low, e.g. in areas of low volume traffic and for aerial work at low levels.

Helicopters may be permitted to operate in less than 1,500 m flight visibility, if manoeuvred at a speed that will give adequate opportunity to observe other traffic or any obstacles in time to avoid collision.

***The VMC minima in Class A airspace are included for guidance to pilots and do not imply acceptance of VFR flights in Class A airspace.

VFR weather minima for take-off and landing

149.—(1) No person may land or take-off an aircraft under VFR from an aerodrome located within a control zone, or enter the aerodrome traffic zone or traffic pattern airspace unless the—

(*a*) reported ceiling is at least 450 m (1,500 ft); and

(*b*) reported ground visibility is at least 5 km; or, except when a clearance is obtained from ATC; or

(*c*) if the ground visibility is not reported the pilot shall maintain 8 km flight visibility.

(2) No person may land or take-off an aircraft or enter the traffic pattern under VFR from an aerodrome located outside a control zone,

unless VMC conditions are at or above those indicated in regulation 148 under these Regulations.

(3) The only exception to the required weather minima of this subsection is during a Special VFR operation.

Special VFR operations

150.—(1) No person may conduct a Special VFR flight operation to enter the traffic pattern, land or take-off an aircraft under Special VFR from an aerodrome located in Class B, Class C, Class D or Class E airspace unless—

(*a*) authorized by an ATC clearance;

(b) the aircraft remains clear of clouds; and

(*c*) the flight visibility is at least 1.5 km (1 statute mile).

(2) No person may conduct a Special VFR flight operation in an aircraft between sunset and sunrise unless—

(*a*) the PIC is current and qualified for IFR operations; and

(*b*) the aircraft is qualified to be operated for IFR flight.

VFR cruising altitudes

151.—(1) Each person operating an aircraft in level cruising flight under VFR at altitudes above 900 m (3,000 ft) from the ground or water, shall maintain a flight level appropriate to the track as specified in the table of cruising levels in IS: 8:151 contained in the Schedule hereto.

(2) Subregulation (1) of this Regulation does not apply when otherwise authorized by ATC, when operating in a holding pattern, or during maneuvering in turns.

ATC clearance for VFR flights

152.—(1) Each pilot of a VFR flight shall obtain and comply with ATC clearances and maintain a listening watch before and during operations—

(*a*) within Classes B, C and D airspace;

(*b*) as part of aerodrome traffic at controlled aerodromes; and

(*c*) under Special VFR.

VFR flights requiring ATC authorization

153.—(1) Unless authorized by the appropriate ATC authority, no pilot may operate in VFR flight—

(*a*) above FL 200; or

(*b*) at transonic and supersonic speeds.

(2) ATC authorization for VFR flights may not be granted in areas where a VSM of only 300m (1,000 ft) is applied above FL 290.

(3) No person may operate in VFR flight between sunset and sunrise unless—

(*a*) authorized by the appropriate ATC authority, and

(*b*) operating in accordance with any conditions prescribed by the Authority.

Weather deterioration below VMC

154.—(1) Each pilot of a VFR flight operated as a controlled flight shall, when he or she finds it is not practical or possible to maintain flight in VMC in accordance with the ATC flight plan—

(*a*) request an amended clearance enabling the aircraft to continue in VMC to its destination or to an alternative aerodrome, or to leave the airspace within which an ATC clearance is required;

(*b*) if no clearance can be obtained, continue to operate in VMC and notify the appropriate ATC facility of the action being taken either to leave the airspace concerned or to land at the nearest suitable aerodrome;

(*c*) operating within a control zone, request authorization to operate as a special VFR flight; or

(*d*) request clearance to operate in IFR, if currently rated for IFR operations.

Changing from VFR to IFR

155. Each pilot operating in VFR who wishes to change to IFR shall—

(*a*) if a flight plan was submitted, communicate the necessary changes to be effected to its current flight plan; or

(*b*) submit a flight plan to the appropriate ATC facility and obtain a clearance before proceeding IFR when in controlled airspace.

Two-way radio communication failure in VFR

156. If radio failure occurs in VFR while under ATC control, or if VFR conditions are encountered after the failure, each pilot shall—

(*a*) continue the flight under VFR;

(*b*) land at the nearest suitable aerodrome; and

(*c*) report arrival to ATC by the most expeditious means possible.

Division IV—IFR Flight Rules

Application

157. All aircraft operated in accordance with instrument flight procedures shall comply with the instrument flight rules, and the aerodrome instrument approach procedures approved by the State where the operation will take place.

IFR in controlled airspace

158. No person may operate an aircraft in controlled airspace under IFR unless that person has—

(*a*) filed an IFR flight plan; and

(*b*) received an appropriate AFC clearance.

IFR flights outside controlled airspace

159.—(1) Each PIC of an IFR flight operating outside controlled airspace but within or into areas, or along routes, designated by the appropriate ATC authority, shall maintain a listening watch on the appropriate radio frequency and establish two-way communication, as necessary, with the ATC facility providing flight information service.

(2) Each PIC of an IFR flight operating outside controlled airspace for which the appropriate ATC authority requires a flight plan, a listening watch on the appropriate radio frequency and establishment of two-way communication, as necessary, with the ATC facility providing flight information service, shall report position as specified for controlled flights.

IFR take-off minima for commercial air transport

160. Unless otherwise authorized by the Authority, no pilot operating an aircraft in commercial air transport operations may accept a clearance to take-off from a civil aerodrome under IFR unless weather conditions are at or above—

(*a*) for aircraft, other than helicopters, having two engines or less—1,500 m (1 statute mile) visibility;

(*b*) for aircraft having more than two engines—800 m (1/2 statute mile) visibility;

(*c*) for helicopters—800 m (1/2 statute mile) visibility.

Minimum altitudes for IFR operations

161.—(1) Operation of aircraft at minimum altitudes. Except when necessary for take-off or landing, no person may operate an aircraft under IFR below—

(*a*) the applicable minimum altitudes prescribed by the authorities having jurisdiction over the airspace being overflown; or

(*b*) if no applicable minimum altitude is prescribed by the authorities—

(i) over high terrain or in mountainous areas, at a level which is at least 600 m (2,000 ft) above the highest obstacle located within 8 km of the estimated position of the aircraft; and

(ii) elsewhere than as specified in subregulation (1) (*b*) (i) of this Regulation, at a level which is at least 300 m (1,000 fit) above the highest obstacle located within 8 km of the estimated position of the aircraft.

(*c*) if an MEA and a MOCA are prescribed for a particular route or route segment, a person may operate an aircraft below the MEA down to, but not below, the MOCA, when within 40.7 km (22 nautical miles) of the VOR concerned.

(2) Climb for obstacle clearance—

(*a*) if unable to communicate with ATC, each pilot shall climb to a higher minimum. IFR altitude immediately after passing the point beyond which that minimum altitude applies;

(*b*) if ground obstructions intervene, each pilot shall climb to a point beyond which that higher minimum altitude applies, at or above the applicable Minimum Crossing Altitude.

Minimum altitudes for use of an autopilot

162.—(1) For en route operations, no person may use an autopilot at an altitude above the terrain that is less than 500 ft.

(2) If the maximum altitude loss specified in the AFM for a malfunction under cruise conditions when multiplied by two is more than 500 fit, then it becomes the controlling minimum altitude for use of the autopilot.

(3) For instrument approach operations, no person may use an autopilot at an altitude above the terrain that is less than 50 ft below the MDA or DH.

(4) If the maximum altitude loss specified in the AFM for a malfunction under approach conditions when multiplied by two is more than 50 ft, then it becomes the controlling minimum altitude for use of the autopilot.

(5) For CAT III approaches, the Authority may approve the use of a flight control guidance system with automatic capability to touchdown.

IFR cruising altitude or flight level in controlled airspace

163.—(1) Each person operating an aircraft under IFR in level cruising flight in controlled airspace shall maintain the altitude or flight level assigned to that aircraft by ATC.

(2) Each person operating an aircraft in level cruising flight under IFR, or if authorized to employ cruise climb techniques between two levels, shall maintain a flight level appropriate to the track as specified in the table of cruising levels in IS: 8:151 or according to a modified table of cruising levels when so prescribed in accordance with IS: 8:151 for flight above FL 410.

(3) Subregulation (2) does not apply when otherwise authorized by ATC or specified by the appropriate ATC authority in Aeronautical Information Publications.

IFR cruising altitude or flight level in uncontrolled airspace

164.—(1) Each person operating an aircraft in level cruising flight under IFR, outside of controlled airspace, shall maintain a flight level appropriate to the track as specified in the table of cruising levels in IS: 8:151 or according to a modified table of cruising levels when so prescribed in accordance with IS: 8:151 for flight above FL 410.

(2) A person may deviate from the cruising altitudes specified in subregulation (1) only when—

(*a*) authorized by ATC for flight at or below 900 m (3,000 ft) above MSL; or

(*b*) when otherwise authorized by ATC.

IFR radio communications

165. Each PIC of an aircraft operated under IFR in controlled airspace shall have a continuous watch maintained on the appropriate frequency and shall report by radio as soon as possible—

(*a*) the time and altitude of passing each designated reporting point, or the reporting points specified by ATC, except that while the aircraft is under radar control, only the passing of those reporting points specifically requested by ATC need be reported;

(*b*) any unforecast weather conditions encountered; and

(*c*) any other information relating to the safety of flight, such as hazardous weather or abnormal radio station indications.

Operation under IFR in controlled airspace: malfunction reports

166.—(1) The PIC of each aircraft operated in controlled airspace under IFR shall report as soon as practical to ATC any malfunctions of navigational, approach, or communication equipment occurring in flight.

(2) In each report specified in subregulation (1), the PIC shall include the—

(*a*) aircraft identification;

(*b*) equipment affected;

(*c*) degree to which the capability of the pilot to operate under IFR in the ATC system is impaired; and

(*d*) nature and extent of assistance desired from ATC.

Continuation of IFR flight toward a destination

167. No pilot may continue an IFR flight toward an aerodrome or heliport of intended landing, unless the latest available meteorological information indicates that the conditions at that aerodrome, or at least one destination alternate aerodrome will, at the expected time of arrival, be at or above the specified instrument approach minima.

Instrument approach procedures and IFR landing minima

168.—(1) No person may make an instrument approach at an aerodrome except in accordance with IFR weather minima and instrument approach procedures established for that aerodrome as set forth by the Authority.

(2) No AOC holder may make an instrument approach at an aerodrome except as set forth in the AOC holder's operations specifications.

Commencing an instrument approach: commercial air transport

169.—(1) In commercial air transport operations, no pilot may continue an approach past the final approach fix, or where a final approach fix is not used, begin the final approach segment of an instrument approach procedure, at any aerodrome unless—

(*a*) a source approved by the Authority issues a weather report for that aerodrome; and

(*b*) the latest weather report for that aerodrome reports the visibility or controlling RVR to be equal to or more than the minima prescribed for that procedure.

(2) If a pilot begins the final approach segment of an instrument approach procedure and subsequently receives a weather report indicating below minimum conditions, the pilot may continue the approach to DH or MDA.

(3) For the purpose of this regulation, the final approach segment begins at the final approach fix or facility prescribed in the instrument approach procedure. When a final approach fix is not prescribed for a procedure that includes a procedure turn, the final approach segment begins at the point where the procedure turn is completed and the aircraft is established inbound toward the aerodrome on the final approach course within the distance prescribed in the procedure.

Instrument approaches to civil aerodromes

170.—(1) Each person operating a civil aircraft shall use a standard instrument approach procedure prescribed by the authorities having jurisdiction over the aerodrome, unless otherwise authorized by the Authority.

(2) Authorized DH or MDA. For the purpose of this regulation, when the approach procedure being used provides for and requires the use of a DH or MDA, the authorized DH or MDA is the highest of the following—

(*a*) the DH or MDA prescribed by the approach procedure;

(*b*) the DH or MDA prescribed for the PIC;

(*c*) the DH or MDA for which the aircraft is equipped.

Operation below DH or MDA

171.—(1) Where a DH or MDA is applicable, no pilot may operate a civil aircraft at any aerodrome or heliport below the authorized MDA, or continue an approach below the authorized DH unless—

(*a*) the aircraft is continuously in a position from which a descent to a landing on the intended runway can be made at a normal rate of descent using normal manoeuvres;

(*b*) for commercial air transport operations, a descent rate will allow touchdown to occur within the touchdown zone of the runway of intended landing;

(*c*) the reported flight visibility is not less than the visibility prescribed in the standard instrument approach being used or the controlling RVR is above the specified minimum; and

(*d*) at least one of the following visual references for the intended runway is distinctly visible and identifiable to the pilot—

(i) the approach light system, except that the pilot may not descend below 100 ft above the touchdown zone elevation using the approach lights as a reference unless the red terminating bars or the red side row bars are also distinctly visible and identifiable.

(ii) the threshold;

(iii) the threshold markings;

(iv) threshold lights;

(v) the runway end identifier lights;

(vi) the visual approach slope indicator;

(vii) the touchdown zone or touchdown zone markings;

(viii) the touchdown zone lights;

(ix) the runway or runway markings; or

(x) the runway lights.

(2) Controlling RVR means the reported values of one or more RVR reporting locations (touchdown, mid-point and stop-end) used to determine whether operating minima are or are not met. Where RVR is used, the, controlling RVR is the touchdown RVR, unless otherwise specified by authority criteria.

(3) The visual references above do not apply to Category II and III operations. The required visual references under Category II and III operations are stated in the AOC holder's approved operations specifications or in a special authorization prescribed by the Authority.

Landing during instrument meteorological conditions

172. No pilot operating a civil aircraft may land that aircraft when the flight visibility is less than the visibility prescribed in the standard instrument approach procedure being used.

Execution of a missed approach procedure

173. Each pilot operating a civil aircraft shall immediately execute an appropriate missed approach procedure when either of the following conditions exists—

(*a*) whenever the required visual reference criteria is not met in the following situations—

(i) when the aircraft is being operated below MDA; or

(ii) upon arrival at the missed approach point, including a DH where a DH is specified and its use is required, and at any time after that until touchdown;

(*b*) whenever an identifiable part of the aerodrome is not distinctly visible to the pilot during a circling manoeuvre at or above MDA, unless the inability to see an identifiable part of the aerodrome results only from a normal bank of the aircraft during the circling approach.

Change from IFR flight to VFR flight

174.—(1) An pilot electing to change from IFR flight to VFR flight shall notify the appropriate ATC facility specifically that the IFR flight is cancelled and then communicate the changes to be made to his or her current flight plan.

(2) When a pilot operating under IFR encounters VMC, he or she may not cancel the IFR flight unless it is anticipated, and intended, that the flight will be continued for a reasonable period of time in uninterrupted VMC.

Two-way radio communications failure in IFR

175.—(1) If two-way radio communication failure occurs in IFR conditions, or if continued flight in VFR is judged not feasible, each pilot shall continue the flight according to the following—

(*a*) route—

(i) by the route assigned in the last ATC clearance received;

(ii) if being radar vectored, by the direct route from the point of radio failure to the fix, route, or airway specified in the vector clearance;

(iii) in the absence of an assigned route, by the route that ATC has advised may be expected in a further clearance; or

(iv) in the absence of an assigned route or a route that ATC has advised may be expected in a further clearance, by the route filed in the flight plan.

(*b*) altitude: At the highest of the following altitudes or flight levels for the route segment being flown—

(i) the altitude or flight level assigned in the last ATC clearance received;

(ii) the minimum altitude (converted, if appropriate, to minimum flight level for IFR operations); or

(iii) the altitude or flight level ATC advised may be expected in a further clearance.

(*c*) leave clearance limit.

(2) When the clearance limit is at a fix from which an approach begins, commence descent or descent and approach—

(*a*) as close as possible to the expect-further-clearance time if one has been received, or

(*b*) if one has not been received, as close as possible to the ETA as calculated from the filed or amended (with ATC) estimated time en route.

(3) If the clearance limit is not a fix from which an approach begins—

(*a*) leave the clearance limit at the expect-further-clearance time if one has been received, or if none has been received, upon arrival over the clearance limit;

(*b*) proceed to a fix from which an approach begins; and

(*c*) commence descent or descent and approach as close as possible to the ETA as calculated from the filed or amended with ATC estimated time en route,

Threshold crossing height for precision approaches

176. An operator shall establish operational procedures designed to ensure that an aeroplane being used to conduct precision approaches crosses the threshold by a safe margin with the aeroplane in the landing configuration and attitude.

PART IX
Passengers and Passenger Handling

Division I—All Passenger Carrying Operations

Unacceptable conduct

177.—(1) No person on board may interfere with a crew member in the performance of his or her duties.

(2) Each passenger shall fasten his or her seat belt and keep it fastened while the seat belt sign is lighted.

(3) No person on board an aircraft shall recklessly or negligently act or omit to act in such a manner as to endanger the aircraft or persons and property therein.

(4) No person may secrete himself or herself nor secrete cargo on board an aircraft.

(5) No person may smoke while the no-smoking sign is lighted.

(6) No person may smoke in any aeroplane lavatory.

(7) No person may tamper with, disable or destroy any smoke detector installed in any aeroplane lavatory.

Refuelling with passengers onboard

178.—(1) No PIC may allow an aeroplane to be refuelled when passengers are embarking, on board or disembarking unless—

(*a*) the aeroplane is manned by qualified personnel ready to initiate and direct an evacuation; and

(*b*) two-way communication is maintained between the qualified personnel in the aeroplane and the ground crew supervising the refuelling.

(2) Helicopters: No PIC may allow a helicopter to be refuelled when passengers are embarking, on board, or disembarking; or the rotors are turning unless—

(*a*) the helicopter is manned by qualified personnel ready to initiate and direct an evacuation;

(*b*) two-way communication is maintained between the qualified personnel in the helicopter and the ground crew supervising the refuelling.

Passenger seats, safety belts, and shoulder harnesses

179.—(1) The PIC shall ensure that each person on onboard occupies an approved seat or berth with their own individual safety belt and shoulder harness (if installed) properly secured about them during take-off and landing.

(2) Each passenger shall have his or her seat belt securely fastened at any other time the PIC determines it is necessary for safety.

(3) A safety belt provided for the occupant of a seat may not be used during take-off and landing by more than one person who has reached his or her second birthday.

(4) When cabin crew members are required in a commercial air transport operation, the PIC may delegate this responsibility, but shall ascertain that the proper briefing has been conducted before take-off.

Passenger briefing

180.—(1) The PIC shall ensure that crew members and passengers are made familiar, by means of an oral briefing or by other means, with the location and use of the following items, if appropriate—

(*a*) seat belts;

(*b*) emergency exits;

(*c*) life jackets;

(*d*) oxygen dispensing equipment; and

(*e*) other emergency equipment provided for individual use, including passenger emergency briefing cards.

(2) The PIC shall ensure that all persons on board are aware of the locations and general manner of use of the principal emergency equipment carried for collective use.

(3) For commercial air transport operations, the briefing shall contain all subjects approved by the Authority for the specific operations conducted as included in the pertinent Operations Manual.

(4) When cabin crew members are required in a commercial air transport operation, the PIC may delegate this responsibility, but shall ascertain that the proper briefing has been conducted before take-off.

(5) During take-off and landing, and whenever by reason of turbulence or any emergency occurring during flight the precaution is considered necessary, cabin crew members shall ensure that all passengers aboard the aircraft fasten their seat belts so as to be secured in their seats.

Inflight emergency instruction

181.—(1) In an emergency during flight, the PIC shall ensure that all persons on board are instructed in such emergency action as may be appropriate to the circumstances.

(2) When cabin crew members are required in a commercial air transport operation, the PIC may delegate this responsibility, but shall ascertain that the proper briefing has been conducted.

Passenger oxygen: minimum supply and use

182.—(1) The PIC shall ensure that breathing oxygen and masks are available to passengers in sufficient quantities for all flights at such altitudes where a lack of oxygen might harmfully affect passengers.

(2) The PIC shall ensure that the minimum supply of oxygen prescribed by the Authority is on board the aircraft.

(3) The requirements for oxygen storage and dispensing apparatus are prescribed in the Instruments and Equipment Regulations.

(4) The PIC shall require all passengers to use oxygen continuously at cabin pressure altitudes above 13,000 ft.

Alcohol or drugs

183. No person may permit the boarding or serving of any person who appears to be intoxicated or who demonstrates, by manner or physical indications, that that person is under the influence of drugs (except a medical patient under proper care).

Division II—Commercial Air Transport Passenger Carrying Operations

Passenger compliance with instructions

184. Each passenger on a commercial air transport flight shall comply with instructions given by a crew member in compliance with this Division.

Denial of transportation

185. An AOC holder may deny transportation because a passenger—

(*a*) refuses to comply with the instructions regarding exit seating restrictions prescribed by the Authority; or

(*b*) has a handicap that can be physically accommodated only by an exit row seat.

Carriage of persons without compliance with these passenger-carrying requirements

186.—(1) The passenger-carrying requirements of subregulation (2) of the regulation do not apply when carrying—

(*a*) a crew member not required for the flight;

(*b*) a representative of the Authority on official duty;

(*c*) a person necessary to the safety or security of cargo or animals; or

(*d*) any person authorized by the AOC holder's Operations Manual procedures, as approved by the Authority.

(2) No person may be carried without compliance to the passenger carrying requirements unless—

(*a*) there is an approved seat with an approved seat belt for that person;

(*b*) that seat is located so that the occupant is not in any position to interfere with the flight crew members performing their duties;

(*c*) there is unobstructed access from their seat to the flight deck or a regular or emergency exit;

(*d*) there is a means for notifying that person when smoking is prohibited and when seat belts shall be fastened; and

(*e*) that person has been orally briefed by a crew member on the use of emergency equipment and exits.

Cabin crew at duty stations

187.—(1) During taxi, cabin crew members shall remain at their duty stations with safety belts and shoulder harness fastened except to perform duties related to the safety of the aircraft and its occupants.

(2) During take-off and landing, cabin crew members shall be located as near as practicable to required floor level exits and shall be uniformly distributed throughout the aircraft to provide the most effective egress of passengers in event of an emergency evacuation.

(3) When passengers are on board a parked aircraft, cabin crew members (or another person qualified in emergency evacuation procedures for the aircraft) will be placed in the following manner—

(*a*) if only one qualified person is required, that person shall be located in accordance with the AOC holder's Operations Manual procedures;

(*b*) if more than one qualified person is required, those persons shall be spaced throughout the cabin to provide the most effective assistance for the evacuation in case of an emergency.

Evacuation capability

188. The PIC, SCA and other person assigned by the AOC holder shall ensure that, when passengers are on board the aircraft before

movement on the surface, at least one floor-level exit provides for egress of passengers through normal or emergency means.

Arming of automatic emergency exits

189. No person may cause an aeroplane carrying passengers to be moved on the surface, take-off or land unless each automatically deployable emergency evacuation assisting means installed on the aircraft is ready for evacuation.

Accessibility of emergency exits and equipment

190. No person may allow carry-on baggage or other items to block access to the emergency exits when the aircraft is moving on the surface, during take-off or landing, or while passengers remain on board on the ground.

Stops where passengers remain on board

191.—(1) At stops where passengers remain on board the aircraft, the PIC, the co-pilot, or both shall ensure that—

(*a*) all engines are shut down;

(*b*) at least one floor level exit remains open to provide for the deplaning of passengers; and

(*c*) there is at least one person immediately available who is qualified in the emergency evacuation of the aircraft and who has been identified to the passengers on board as responsible for the passenger safety.

(2) If refueling with passengers on board, the PIC or a designated company representative shall ensure that the AOC holder's Operations Manual procedures are followed.

Passenger loading and unloading: AOC

192. No person shall allow passenger loading or unloading of a propeller driven aircraft unless all engines are shut down unless the aircraft is using a passenger jet way to load and unload.

Carriage of persons with reduced mobility

193. No person may allow a person of reduced mobility to occupy seats where their presence could—

(*a*) impede the crew in their duties;

(*b*) obstruct access to emergency equipment; or

(*c*) impede the emergency evacuation of the aircraft.

Exit row seating

194.—(1) No AOC holder shall allow a passenger to sit in an emergency exit row if the PIC or SCA determine that it is likely that the passenger would be unable to understand and perform the functions necessary to open an exit and to exit rapidly.

(2) No cabin crew member may seat a person in a passenger exit seat if it is likely that the person would be unable to perform one or more of the applicable functions listed below—

(*a*) the person lacks sufficient mobility, strength, or dexterity in both arms and hands, and both legs—

(i) to reach upward, sideways, and downward to the location of emergency exit and exit-slide operating mechanisms;

(ii) to grasp and push, pull, turn, or otherwise manipulate those mechanisms;

(iii) to push, shove, pull, or otherwise open emergency exits;

(iv) to lift out, hold, deposit on nearby seats, or manoeuvre over the seatbacks to the next row objects the size and mass of over-wing window exit doors;

(v) to remove obstructions of size and mass similar to over-wing exit doors;

(vi) to reach the emergency exit expeditiously;

(vii) to maintain balance while removing obstructions;

(viii) to exit expeditiously;

(ix) to stabilise an escape slide after deployment; or

(x) to assist others in getting off an escape slide.

(*b*) the person is less than 15 years of age or lacks the capacity to perform one or more of the applicable functions listed above without the assistance of an adult companion, parent, or other relative;

(*c*) the person lacks the ability to read and understand instructions required by this section and related to emergency evacuation provided by the AOC holder in printed or graphic form or the ability to understand oral crew commands;

(*d*) the person lacks sufficient visual capacity to perform one or more of the above functions without the assistance of visual aids beyond contact lenses or eyeglasses;

(*e*) the person lacks sufficient aural capacity to hear and understand instructions shouted by cabin crew members, without assistance beyond a hearing aid;

(*f*) the person lacks the ability to adequately impart information orally to other passengers;

(*g*) the person has a condition or responsibilities, such as caring for small children, that might prevent the person from performing one or more of the functions listed above; or a condition that might cause the person harm if he or she performs one or more of the functions listed above.

(3) Determinations as to the suitability of each person permitted to occupy an exit seat shall be made by the cabin crew members or other persons designated in the AOC holder's Operations Manual.

(4) In the event a cabin crew member determines that a passenger assigned, to an exit seat would, be unable to perform the emergency exit functions, or if a passenger requests a non-exit seat, the cabin crew member shall expeditiously relocate the passenger to a non-exit seat.

(5) In the event of full booking in the non-exit seats, and if necessary to accommodate a passenger being relocated from an exit seat, the cabin crew member shall move a passenger who is willing and able to assume the evacuation functions, to an exit seat.

(6) Each AOC ticket agent shall, before boarding, assign seats consistent with the passenger selection criteria and the emergency exit functions, to the maximum extent feasible.

(7) Each AOC ticket agent shall make available for inspection by the public at all passenger loading gates and ticket counters at each aerodrome where the AOC holder conducts passenger operations, written procedures established for making determinations in regard to exit row seating.

(8) Each cabin crew member shall include in his or her passenger briefings a request that a passenger identify himself or herself to allow reseating if he or she—

(*a*) cannot meet the selection criteria;

(*b*) has a non discernible condition that will prevent him or her from performing the evacuation functions;

(*c*) may suffer bodily harm as the result of performing one or more of those functions; or

(*d*) does not wish to perform emergency exit functions.

(9) Each cabin crew member shall include in his or her passenger briefings a reference to the passenger information cards and the functions to be performed in an emergency exit.

(10) Each passenger shall comply with instructions given by a crew member or other authorized employee of the AOC holder implementing exit seating restrictions.

(11) No PIC may allow taxi or pushback unless at least one required crew member has verified that all exit rows and escape paths are unobstructed and that no exit seat is occupied by a person the crew member determines is likely to be unable to perform the applicable evacuation functions.

(12) The procedures required by this standard will not become effective until final approval is granted by the Authority. Approval will be based solely upon the safety aspects of the AOC holder's procedures. In order to comply with this standard AOC holders shall—

(*a*) establish procedures that address the requirements of this standard; and

(*b*) submit their procedures for preliminary review and approval to the Authority.

Prohibition against carriage of weapons

195.—(1) No person may, while on board an aircraft being operated in commercial air transport, carry on or about their person a deadly or dangerous weapon, either concealed or unconcealed. An. AOC holder may permit a person to transport a weapon, in accordance with the AOC holders approved security programme—

(*a*) if the weapon is unloaded; and

(*b*) both the weapon and ammunition are securely stowed in a place inaccessible to any person during the flight.

(2) Officials or employees of the State, or crew members who are authorized to carry weapons on board the aircraft in domestic flights, shall do so in accordance with the AOC holders approved security programme. The PIC shall be notified by the AOC as to the number of armed persons and the location of their seats.

(3) The persons identified in subregulation (2) of this Regulation may not carry weapons aboard an international flight unless there is prior agreement between Malaŵi and all States in which the operation will be either conducted or overflown.

Oxygen for medical use by passengers

196.—(1) An AOC holder may allow a passenger to carry and operate equipment for the storage, generation or dispensing of medical oxygen only as prescribed by the Authority.

(2) No person may smoke, and no crew member may allow any person to smoke within 10 ft of oxygen storage and dispensing equipment earned for the medical use of a passenger.

(3) No crew member may allow any person to connect or disconnect oxygen dispensing equipment to or from an oxygen, cylinder while any there passenger is aboard the aircraft.

Carry-on baggage

197.—(1) No person may allow the boarding of carry-on baggage unless it can be adequately and securely stowed in accordance with the AOC holder's approved Operations Manual procedures.

(2) No person may allow aircraft passenger entry doors to be closed in preparation for taxi or pushback unless at least one required crew

member has verified that each, article of baggage has been properly stowed in overhead racks with approved restraining devices or doors, or in approved locations.

(3) No person may allow carry-on baggage to be stowed in a location that would cause that location to be loaded beyond its maximum placard mass limitation.

(4) The stowage locations shall be capable of restraining the articles in crash impacts severe enough to induce the ultimate inertia forces specified in the emergency landing conditions under which the aircraft was type-certified.

Carriage of cargo in passenger compartments

198.—(1) No person may allow the carriage of cargo in the passenger compartment of an aircraft except as prescribed by the Authority below.

(2) Cargo may be carried anywhere in the passenger compartment if it is carried in an approved cargo bin that meets the following requirements—

(*a*) the bin must withstand, the load factors and emergency landing conditions applicable to the passenger seats of the aeroplane in which the bin is installed, multiplied by a factor of 1.15, using the combined mass of the bin and the maximum mass of cargo that may be carried in the bin;

(*b*) the maximum mass of cargo that the bin is approved to carry and any instructions necessary to insure proper mass distribution within the bin must be conspicuously marked on the bin;

(*c*) the bin may not impose any load on the floor or other structure of the aeroplane that exceeds the load limitations of that structure;

(*d*) the bin must be attached to the seat tracks or to the floor structure of the aeroplane, and its attachment must withstand the load factors and emergency landing conditions applicable to the passenger seats of the aeroplane in which the bin is installed, multiplied, by either the factor 1.15 or the seat attachment factor specified for the aeroplane, whichever is greater, using the combined mass of the bin and the maximum mass of cargo that may be carried in the bin;

(*e*) the bin may not be installed in a position that restricts access to or use of any required emergency exit, or of the aisle in the passenger compartment;

(*f*) the bin must be fully enclosed and made of material that is at least flame resistant;

(*g*) suitable safeguards must be provided within, the bin to prevent the cargo from shifting under emergency landing conditions;

(*h*) the bin may not be installed in a position that obscures any passenger's view of the "seat belt" sign, "no smoking" sign, or any required exit sign, unless an auxiliary sign or other approved means for proper notification of the passenger is provided.

(3) Cargo, including carry-on baggage, must not be stowed in toilets.

(4) Cargo, including carry-on baggage must not be stowed against bulkheads or dividers in passenger compartments that are incapable of restraining articles against movement forwards, sideways or upwards and unless the bulkheads or dividers carry a placard specifying the greatest mass that may be placed, there, provided that—

(*a*) it is properly secured by a safety belt or other tie-down having enough strength to eliminate the possibility of shifting under all normally anticipated flight and ground conditions;

(*b*) it is packaged or covered to avoid possible injury to occupants;

(*c*) it does not impose any load, on seats or in the floor structure that exceeds the load limitation for those components;

(*d*) it is not located in a position that obstructs the access to, or use of, any required emergency or regular exit, or the use of the aisle between the crew and the passenger compartment, or is located in a position that obscures any passenger's view of the "seat belt" sign, "no smoking" sign or placard, or any required exit sign, unless an auxiliary sign or other approved means for proper notification of the passengers is provided.

(5) Cargo, including carry-on baggage, may be carried anywhere in the passenger compartment of a small aircraft if it is carried in an approved cargo rack, bin, or compartment installed in or on the aircraft, if it is secured by an approved means, or if it is carried in accordance with each of the following—

(*a*) for cargo, it is properly secured by a safety belt or other tie-down having enough strength to eliminate the possibility of shifting under all normally anticipated flight and ground conditions, or for carry-on baggage, it is restrained so as to prevent its movement during air turbulence;

(*b*) it is packaged or covered to avoid possible injury to occupants;

(*c*) it does not impose any load on seats or in the floor structure that exceeds the load limitation for those components;

(*d*) it is not located in a position that obstructs the access to, or use of, any required emergency or regular exit, or the use of the aisle between the crew and the passenger compartment, or is located, in a position that obscures any passenger's view of the "seat belt" sign, "no smoking" sign or placard, or any required exit sign., unless an auxiliary sign, or other approved means for proper notification of the passengers is provided;

(*e*) it is not carried directly above seated occupants;

(*f*) it is stowed in compliance with these restrictions during take-off and landing;

(*g*) for cargo-only operations, if the cargo is loaded so that at least one emergency or regular exit is available to provide all occupants of the aircraft a means of unobstructed exit from the aeroplane if an emergency occurs.

Passenger information signs

199. The PIC shall turn on required passenger information signs during any movement on the surface, for each take-off and each landing, and when otherwise considered to be necessary.

Required passenger briefings

200.—(1) No person may commence a take-off unless the passengers are briefed before take-off in accordance with the AOC holder's Operations Manual procedures on—

(*a*) smoking limitations and prohibitions;

(*b*) emergency exit location and use;

(*c*) use of safety belts;

(*d*) emergency floatation means location and use;

(*e*) fire extinguisher location and operation;

(*f*) placement of seat backs;

(*g*) if flight is above 10,000 ft MSL, the normal and emergency use of oxygen; and

(*h*) the passenger briefing card.

(2) immediately before or immediately after turning the seat belt sign off, the PIC or co-pilot shall ensure that the passengers are briefed to keep their seat belts fastened while seated, even when the seat belt sign is off.

(3) Before each take-off, the PIC or co-pilot shall ensure that any persons of reduced mobility are personally briefed on—

(*a*) the route to the most appropriate exit; and

(*b*) the time to begin moving to the exit in event of an emergency.

Passenger briefing: extended over-water operations

201. No person may commence extended overwater operations unless all passengers have been orally briefed on the location and operations of life preservers, liferafts and other flotation means, including a demonstration of the method of donning and inflating a life preserver.

Passenger seat belts

202.—(1) Each passenger occupying a seat or berth shall fasten his or her safety belt and keep it fastened while the "Fasten Seat Belt" sign is lighted or, in aircraft not equipped with such a sign, whenever instructed by the PIC.

(2) No passenger safety belt may be used by more than one occupant during take-off and landing.

(3) At each unoccupied seat, the safety belt and shoulder harness, if installed, shall be secured so as not to interfere with crew members in the performance of their duties or with the rapid egress of occupants in an emergency.

(4) A person who has not reached his or her second birthday may be held by an adult who is occupying a seat or berth.

(5) A berth, such as a multiple lounge or divan seat, may be occupied by two persons provided it is equipped with an approved safety belt for each person and is used during en route flight only.

Passenger seat backs

203. No PIC or co-pilot may allow the take-off or landing of an aircraft unless each passenger seat back is in the upright position except in accordance with procedures in the AOC holder's Operations Manual provided the seat back does not obstruct any passenger's access to the aisle or to any emergency exit.

Stowage of food, beverage and passenger service

204.—(1) No PIC, co-pilot or SCA may allow the movement of an aircraft on the surface, take-off or land—

(*a*) when any food, beverage or tableware furnished by the AOC holder is located at any passenger seat; and

(*b*) unless each food and beverage tray and seat back tray table is in the stowed position.

Securing of items of mass in passenger compartment

205.—(1) No person may allow the take-off or landing of an aircraft unless each item of mass in the passenger cabin is properly secured to prevent it from becoming a hazard during taxi, take-off and landing and during turbulent weather conditions.

(2) No person may allow an aircraft to move on the surface, take-off or land unless each passenger serving cart is secured in its stowed position.

PART X
Crew Member and Flight Operations Officer Qualifications: Commercial Air Transport

Limitation of privileges of pilots who have attained their 60th birthday and curtailment of privileges of pilots who have attained their 65th birthday

206.—(1) No person may serve nor may any AOC holder use a person as a required PIC in single pilot operations on aircraft engaged in commercial air transport operations if that person has reached his or her 60th birthday.

(2) For aircraft engaged in commercial air transport operations requiring more than one pilot as flight crew members, the AOC holder may use one pilot up to the age of 65 provided that the other pilot is less than the age of 60.

(3) Check airmen who have reached their 65th birthday or who do not hold an appropriate medical certificate may continue their check airman functions, but may not serve as or occupy the position of a required pilot flight crew member on an aeroplane engaged in international commercial air transport operations unless the other pilot is less than the age of 60.

Use of flight simulation training devices

207.—(1) Each flight simulation training device that is used for flight crew member qualification shall—

(*a*) be specifically approved by the Authority for—

(i) the AOC holder;

(ii) the type aircraft, including type variations, for which the training or check is being conducted; and

(iii) the particular manoeuvre, procedure, or crew member function involved.

(*b*) maintain the performance, functional, and other characteristics that are required for approval;

(*c*) be modified to conform with any modification to the aeroplane being simulated that results in changes to performance, functional, or other characteristics required for approval;

(*d*) be given a daily functional pre-flight check before use;

(*e*) have a daily discrepancy log completed by the appropriate instructor or check airman at the end of each training or check flight.

(2) The simulation device shall have the same technology for the basic flight instruments (attitude indicator, airspeed, altimeter, heading reference) as those of the aircraft used by the operator—

(*a*) operators that have electronic/glass displays shall use simulators that have electronic/glass displays;

(*b*) operators that have standard instruments shall use simulators that have standard instruments.

Approval of a flight simulation training device for credit in training and checking

208.—(1) No AOC holder may use a flight simulation training device for training or checking unless that simulator has been specifically approved for the AOC holder in writing by the Authority.

(2) No AOC holder may use a simulator for credit in training, recency and checking other than that specified in the Authority's approval.

Licence requirements for PIC

209.—(1) No pilot may act as PIC of an aircraft, certificated for operation with more than one pilot, in commercial air transportation operations unless he or she holds an Airline Transport Pilot Licence with applicable category, class and type rating for that aircraft.

(2) No pilot may act as PIC of an aircraft, certificated for operation for one pilot, in commercial air transportation operations unless he or she holds a Commercial Pilot Licence or an Airline Transport Pilot Licence with applicable category, class and type rating for that aircraft.

(3) If instrument privileges are to be exercised, the PIC shall hold an Instrument Rating.

Licence requirements for co-pilot and cruise relief pilot

210.—(1) No pilot may act as co-pilot of an aircraft in commercial air transport operations unless he or she holds either a Commercial Pilot Licence/IR or an Airline Transport Pilot Licence, each with category, class and type ratings, as applicable, for the aircraft operated.

(2) No pilot may act as a cruise relief pilot in commercial air transport operations unless he or she holds an Airline Transport Pilot Licence with category, and if applicable, class and type ratings, and has completed all training to serve as PIC with the exception of initial operating experience.

Flight engineer licence requirements

211. No person may act as the flight engineer of an aircraft unless he or she holds a flight engineer licence with the appropriate class rating.

One pilot qualified to perform flight engineer functions

212. The AOC holder shall ensure that, on a flights requiring a FE, there is assigned at least one other flight crew member qualified to perform the flight engineer duties in the event the flight engineer becomes incapacitated.

Persons qualified to flight release

213. No person may act as a flight operations officer in releasing a scheduled passenger-carrying commercial air transport operation unless that person—

(*a*) holds a flight operations officer licence or an Airline Transport Pilot license; and

(*b*) is currently qualified with the AOC holder for the operation and type of aircraft used.

Company procedures indoctrination

214.—(1) No person may serve nor may any AOC holder use a person as a crew member or flight operations officer/flight dispatcher unless that person has completed the company procedures indoctrination curriculum approved by the Authority, which shall include a complete review of the applicable regulations and Operations Manual procedures pertinent to the crew member or flight operation officer's duties and responsibilities.

(2) The AOC holder shall provide a minimum of 40 programmed hours of instruction, for company procedures indoctrination training unless a reduction is determined appropriate by the Authority.

(3) The knowledge area topics to be covered are contained in IS: 8:214 in the Schedule hereto.

Initial dangerous goods training

215.—(1) No person may serve nor may any AOC holder use operational personnel unless he or she has completed the appropriate initial dangerous goods curriculum approved, by the Authority.

(2) Specific course curriculum requirements are contained in IS: 8:215 in the Schedule hereto.

Initial security training

216. No person may serve nor may any AOC holder use operational personnel unless they have completed the initial security curriculum approved by the Authority.

Initial crew resource management

217.—(1) No person may serve nor may any AOC holder use a person as a flight operations officer or crew member unless that person has completed the initial CRM curriculum approved by the Authority.

(2) Course curriculum topics are contained in IS: 8:217 in the Schedule hereto.

Initial emergency equipment drills

218.—(1) No person, may serve nor may any AOC holder use a person as a crew member unless that person has completed the appropriate initial emergency equipment curriculum and drills for the crew member position approved by the Authority for the emergency equipment available on the aircraft to be operated.

(2) Course curriculum requirements are contained in IS: 8:218 in the Schedule hereto.

Initial aircraft ground training

219.—(1) No person may serve nor may any AOC holder use a person as a crew member or flight operations officer unless he or she has completed the initial ground training approved by the Authority for the aircraft type.

(2) Initial aircraft ground training for flight crew members shall include the pertinent portions of the Operations Manual relating to aircraft-specific performance, mass and balance, operational policies, systems, limitations, normal, abnormal and emergency procedures on the aircraft type to be used.

(3) Specific course curriculum requirements for flight crew members are contained in IS: 8:219 (2) contained in the Schedule hereto.

(4) The AOC holder may have separate initial aircraft ground training curricula of varying lengths and subject emphasis, which recognize the experience levels of flight crew members, approved by the Authority.

(5) For cabin crew members, initial aircraft ground training shall include the pertinent portions of the Operations Manual relating to aircraft-specific configuration, equipment, normal and emergency procedures for the aircraft types within the fleet.

(6) Specific course curriculum requirements for cabin crew members are contained in IS: 8:219 (6) in the Schedule. For flight operations officers, aircraft initial ground training shall include the pertinent portions of the Operations Manual relating to aircraft-specific flight preparation procedures, performance, mass and balance, systems, limitations for the aircraft types within the fleet.

(7) Specific course curriculum requirements for flight operations officers are contained in IS: 8:219 (7) in the Schedule hereto.

Initial aircraft flight training

220.—(1) No person may serve nor may any AOC holder use a person as a flight crew member unless he or she has completed the initial flight training approved by the Authority for the aircraft type.

(2) Initial flight training shall focus on the manoeuvring and safe operation of the aircraft in accordance with AOC holder's normal, abnormal and emergency procedures.

(3) An AOC holder may have separate initial flight training curricula, which, recognize the experience levels of flight crew members, approved by the Authority.

(4) Specific flight curriculum requirements are contained in IS 8:220 in the Schedule hereto.

Initial specialized operations training

221.—(1) No person may serve nor may any AOC holder use a person as a flight crew member unless he or she has completed the appropriate initial specialized operations training curriculum approved by the Authority.

(2) Specialized operations for which initial training curricula shall be developed include—

(i) low minima operations, including low visibility take-offs and Category II and III operations;

(ii) extended range operations;

(iii) specialized navigation;

(iv) PIC right seat qualification;

(v) RVSM:; and

(vi) RNP.

(3) See IS: 8:221 contained in the Schedule hereto for specific initial specialized operations training curriculum.

Aircraft differences

222.—(1) No person may serve nor may any AOC holder use a person as a flight operations officer or crew member on an aircraft of a type for which a differences curriculum is included in the AOC holder's approved training programme, unless that person has satisfactorily completed that curriculum, with respect to both the crew member position and the particular variant of that aircraft.

(2) See IS: 8:222 contained in the Schedule hereto for a general listing of subjects to be covered in aircraft differences training.

Introduction of new equipment or procedures

223. No person may serve nor may any AOC holder use a person as a flight crew member when that service would require expertise in the use of new equipment or procedures for which a curriculum is included in the AOC holder's approved training programme, unless that person has satisfactorily completed that curriculum, with respect to both the crew member position and the particular variant of that aircraft.

Aircraft and instrument proficiency checks

224.—(1) No person may serve nor may any AOC holder use a person as a pilot flight crew member unless, since the beginning of the 12th calendar month before that service, that person has passed the proficiency check prescribed by Authority in the make, and model aircraft on which their services are required.

(2) No person may serve nor may any AOC holder use a person as a pilot in IFR operations unless, since the beginning of the 6th calendar month before that service, that pilot has passed the instrument competency check prescribed by the Authority.

(3) A pilot may complete the requirements of subregulations (1) and (2) of this Regulation simultaneously in a specific aircraft type.

(4) See IS: 8:224 contained in the Schedule hereto for specific operation and procedures pertaining to the proficiency checks.

Re-establishing recency of experience: flight crew

225.—(1) Pilots—

(*a*) in addition to meeting all applicable training and checking requirements, a required pilot flight crew member who, in the preceding 90 days has not made at least three take-offs and landings in the aircraft in which that person is to serve, shall, under the supervision of a check airman, re-establish recency of experience as follows—

(i) make at least three take-offs and landings in the aircraft in which that person is to serve or in a qualified simulator;

(ii) make at least one take-off with a simulated failure of the most critical power-plant, one landing from the minimum ILS authorized for the AOC holder, and one landing to a full stop.

(*b*) when using a simulator to accomplish any of the take-off and landing training requirements necessary to re-establish recency of experience, each required flight crew member position shall be occupied by an appropriately qualified person and the simulator shall be operated as if in a normal in-flight environment without use of the repositioning features of the simulator;

(*c*) a check airman who observes the take-offs and landings of a pilot flight crew member shall certify that the person being observed is proficient and qualified to perform flight duty in operations and may require any additional manoeuvres that are determined necessary to make this certifying statement.

(2) Flight Engineer: A flight engineer who in the preceding 6 months has not flown 50 hours flight time with an AOC holder as flight engineer in the appropriate class of aeroplane shall re-establish recency by taking a proficiency check.

Pairing of low experience crew members

226.—(1) If a CP has fewer than 100 hours of flight time in the type aeroplane being flown in commercial air transport, and the PIC is not an appropriately qualified check airman, the PIC shall make all take-offs and landings in situations designated as critical by the Authority in IS: 8:226 contained in the Schedule hereto.

(2) No PIC or CP may conduct operations for a type aeroplane in commercial air transport unless either pilot has at least 75 hours of line operating flight time, either as PIC or CP.

(3) The Authority may, upon application by the AOC holder, authorize an exemption for the reduction of the number of hours from subregulation (2) by an appropriate amendment to the operations specifications in any of the circumstances identified in IS: 8:226 in the Schedule hereto.

Flight engineer and flight navigator proficiency checks

227. No person may serve nor may any AOC holder use a person as a flight engineer or a flight navigator on an aeroplane unless within the preceding 12 calendar-months he or she has a proficiency check in accordance with the requirements prescribed by the Authority for the skill test in the Aviation (Personnel Licencing) Regulations.

Competence checks: cabin crew members

228. No person may serve nor may any AOC holder use a person as a cabin crew member unless, since the beginning of the 12th calendar month before that service, that person has passed the competency check prescribed by the Authority in IS: 8:220 contained in the Schedule performing the emergency and other duties appropriate to that person's assignment.

Competence checks: flight operations officers

229. No person may serve nor may any AOC holder use a person as a flight operations officer unless, since the beginning of the 12th calendar month before that service, that person has passed the competency check, prescribed by the Authority for the skill test in the Aviation (Personnel Licencing) Regulations, performing the flight preparation and subsequent duties appropriate to that person's assignment.

Supervised line flying: pilots

230.—(1) Each pilot initially qualifying as PIC shall complete a minimum of 10 flights performing the duties of a PIC under the supervision of a check airman.

(2) Each PIC transitioning to a new aircraft type shall complete a minimum of 5 flights performing the duties of a PIC under the supervision of a check airman.

(3) Each pilot qualifying for duties other than PIC shall complete a minimum of 5 flights performing those duties under the supervision of a check airman.

(4) During the time that a qualifying PIC is acquiring operating experience, a check airman who is also serving as the PIC shall occupy a pilot station.

(5) In the case of a transitioning PIC, the check airman serving as PIC may occupy the observer's seat if the transitioning pilot has made at least two take-offs and landings in the type aeroplane used, and has satisfactorily demonstrated to the check pilot that he or she is qualified to perform the duties of a PIC for that type of aeroplane.

Supervised line flying: flight engineers

231. Each person qualifying as a flight engineer for each aircraft class piston-engined; turbo propeller powered, or turbojet powered shall perform those functions for a minimum of five (5) flights under the supervision of a designated Flight Engineer Examiner/Check Examiner.

Supervised line experience: cabin crew members

232. Each person qualifying as a cabin crew member shall perform those functions on the following aircraft under the supervision of a senior cabin crew member before qualifying as a required crew member—

(*a*) piston-engined or turbo propeller powered aircraft—for a minimum of two flights that must include at least five hours flown.

(*b*) turbojet powered aircraft for a minimum of two flights.

Line observations: flight operations officers

233. No person may serve nor may any AOC holder use a person as a flight operations officer unless, since the beginning of the 12th calendar month before that service, that person has observed, on the flight deck, the conduct of two complete flights, comprising at least five total hours, over routes representative of those for which that person is assigned duties.

Route and area checks: pilot qualification

234.—(1) No person may serve nor may any AOC holder use a person as a pilot unless, within, the preceding 12 calendar-months, that person has passed a route check in which he or she satisfactorily performed his or her assigned duties in one of the types of aeroplanes he or she is to fly.

(2) No person may perform PIC duties over a designated special operational area that requires a special navigation system or procedures or in ETOPS operations unless his or her competency with the system and procedures has been demonstrated to the AOC holder within the past 12 calendar-months.

(3) Each PIC shall demonstrate operational competency by navigation over the route or area to be flown and the aerodromes to be used as PIC under the supervision of a check airman and, on a continuing basis, by flights performing PIC duties. This, at a minimum, shall include a PIC demonstration of knowledge in the following—

(*a*) the terrain and minimum safe altitudes;

(*b*) the seasonal meteorological conditions;

(*c*) the search and rescue procedures;

(*d*) the navigational facilities and procedures, including any long-range navigation procedures, associated with the route along which the flight is to take place;

(*e*) procedures applicable to—

(i) flight paths over heavily populated areas or high air traffic density;

(ii) obstructions;

(iii) physical layout;

(iv) lighting, approach aids;

(v) arrival, departure, holding and instrument approach procedures; and

(vi) applicable operating minima.

(4) Notices to airman.

PIC low minima authorization

235.—(1) Until a PIC has 15 flights performing PIC duties in the aircraft type (which included 5 approaches to landing using Category I or II procedures), he or she may not plan for or initiate an instrument approach when the DH or MDA is less than 100 m (300 fit) and the visibility less than 1.5km (1 statute mile).

(2) Until a PIC has 20 flights performing PIC duties in the aircraft type (which included 5 approach and landing using Category III procedures), he or she may not plan for or initiate an approach when the DH or MDA is less than 30 m (100 fit) or the visibility is less than 350 m RVR (1200 fit),

Designated special aerodromes and heliports: PIC qualification

236.—(1) The Authority may determine that certain airports, due to items such as surrounding terrain, obstructions, or complex approach or departure procedures, are special aerodromes requiring special aerodrome qualifications and that certain areas or routes, or both, require a special type of navigation qualifications.

(2) No person may serve nor may any AOC holder use a person as PIC for operations at designated special aerodromes and heliports unless within the preceding 12 calendar-months—

(3) The PIC has been qualified by the AOC holder through a pictorial means acceptable to the AUTHORITY for that aerodrome; or

(*a*) the PIC or the assigned CP has made a take-off and landing at that aerodrome while serving as a flight crew member for the AOC holder;

(*b*) if the 12 months qualification period required in subregulation (2) has expired, the PIC must re-qualify in accordance with the requirements in subregulation (2) of this Regulation.

(4) Designated special aerodrome and heliport limitations are not applicable if the operation will occur—

(*a*) during daylight hours;

(*b*) when the visibility is at least 5 km (3 miles); and

(*c*) when the ceiling at that aerodrome is at least 300 m (1000 ft) above the lowest initial approach altitude prescribed for an instrument approach procedure.

Recurrent training: flight crew members

237.—(1) No person may serve nor may any AOC holder use a person as a flight crew member unless within the preceding 12 calendar-months that person has completed the recurrent ground and flight training curricula approved by with the Authority.

(2) The recurrent ground training shall include training on—

(*a*) aircraft systems and limitations and normal, abnormal and emergency procedures;

(*b*) emergency equipment and drills;

(*c*) crew resource management;

(*d*) recognition or transportation of dangerous goods: and

(*e*) security training.

(3) The recurrent flight training curriculum shall include—

(*a*) manoeuvring and safe operation of the aircraft in accordance with AOC holder's normal, abnormal and emergency procedures;

(*b*) manoeuvres and procedures necessary for avoidance of in-flight hazards; and

(*c*) for authorized pilots, at least one low visibility take-off to the lowest applicable minimum LVTO and two approaches to the lowest approved minima for the AOC holder, one of which is to be a missed approach.

(3) Satisfactory completion of a proficiency check with the AOC holder for the type aircraft and operation to be conducted may be used *in lieu* of recurrent flight training.

(4) Detailed recurrent training requirements are contained in IS: 8:237 in the Schedule hereto.

Recurrent training and re-establishment of qualifications: cabin crew members

238.—(1) No person may serve nor may any AOC holder use a person as a cabin crew member unless within the preceding 12 calendar-months that person has completed the recurrent ground curricula approved by the Authority relevant to the type(s) and/or variant(s) of aircraft and operations to which he or she is assigned.

(2) The recurrent ground training shall include training on—

(*a*) aircraft-specific configuration, equipment and procedures;

(*b*) emergency and first aid equipment and drills;

(*c*) crew resource management;

(*d*) recognition or transportation of dangerous goods; and

(*e*) security training.

(3) Specific normal and emergency programme training requirements for cabin crew members are in IS: 8.238 contained in the Schedule hereto.

(4) A required cabin crew member who, due to a period of inactivity, has not met the recurrent training requirements in subregulations (1) to (3) shall complete the initial AOC training programme and competency check.

Recurrent training and re- establishment of qualifications: flight operations officers

239.—(1) No person may serve nor may any AOC holder use a person as a flight operations officer unless within the preceding 12 calendar-months that person has completed the recurrent ground curricula approved by the Authority relevant to the type(s) and/or variant(s) of aircraft and positions to which he or she is assigned.

(2) Specific requirements for flight operations officers recurrent training are in IS:8.239 contained in the Schedule hereto.

(3) A required flight operations officer who, due to a period of inactivity, has not met the recurrent training requirements in subregulations (1) and (2) shall complete the initial AOC training programme and competency check.

Flight instructor qualifications

240.—(1) No AOC holder may use a person nor may any person serve as a flight instructor in an established training programme unless, with respect to the aeroplane type involved, that person—

(*a*) holds the airman licences and rating required to serve as a PIC, a flight engineer, or a flight navigator, as applicable;

(*b*) has satisfactorily completed the appropriate training phases for the aeroplane, including recurrent training and differences training, that are required to serve as a PIC, flight engineer, or flight navigator, as applicable;

(*c*) has satisfactorily completed the appropriate proficiency, competency and recency of experience checks that are required to serve as a PIC, flight engineer, or flight navigator, as applicable;

(*d*) has satisfactorily completed the applicable initial or transitional training requirements and the Authority-observed in-flight competency check; and

(*e*) holds the appropriate medical certificate for service as a required crew member.

(2) Flight Instructor - Flight Simulation Training Device. Additional requirements. No person may serve nor may any AOC holder use a person as a Flight Instructor-Flight Simulation Training Device, unless,

since the beginning of the 12th calendar month before that service, that person has—

(*a*) flown at least 5 flights as a required crew member for the type of aircraft involved; or

(*b*) observed, on the flight deck, the conduct of 2 complete flights in the aircraft type to which the person is assigned.

Flight instructor training

241.—(1) No person may serve nor may any AOC holder use a person as an instructor unless he or she has completed the curricula approved by the Authority for those functions for which they are to serve.

(2) See IS: 8.241 contained in the Schedule hereto for specific training programme requirements for instructor.

Check airman designation

242.—(1) No person may serve nor may any AOC holder use a person as a check airman for any flight check under the AOC holder's crew member checking and standardization programme in regulation 40 of the Aviation (Air Operator Certification and Administration) Regulations, unless that person has been designated by name and approved function by the Authority and has completed the AOC holders curricula approved by the Authority for those functions for which he or she is to serve.

(2) Once designated, no person may serve nor may any AOC holder use a person as a check airman for any flight check unless that person has demonstrated, initially and at least biennially to an Authority inspector, the ability to conduct a check for which he or she is designated.

Check airman qualifications

243.—(1) No AOC holder may use a person, nor may any person serve as a check airman in an established training programme unless, with respect to the aircraft type involved, that person—

(*a*) holds the airman licences and ratings required to serve as a PIC, a flight engineer, or a flight navigator, as applicable;

(*b*) has satisfactorily completed the appropriate training phases for the aircraft, including recurrent training and differences training, that are required to serve as a PIC, flight engineer, or flight navigator, as applicable;

(*c*) has satisfactorily completed the appropriate proficiency, competency and recency of experience checks that are required to serve as a PIC, flight engineer, or flight navigator, as applicable;

(*d*) has satisfactorily completed the applicable initial or transitional training requirements and the Authority-observed in-flight competency check;

(*e*) holds the appropriate medical certificate if serving as a required flight crew member; and

(*f*) has been approved by the Authority for the check airman duties involved.

(2) Check Airman - Flight Simulation Training Device. Additional requirements. No person may serve nor may any AOC holder use a person as a check airman - Flight Simulation training Device, unless, since the beginning of the 12th calendar month before that service, that person has—

(*a*) flown at least 5 flights as a required crew member for the type of aircraft involved; or

(*b*) observed, on the flight deck, the conduct of 2 complete flights in the aircraft type to which the person is assigned.

Check airman training

244.—(1) No operator may use a person nor may any person serve as a check airman (aircraft) or check airman (flight simulation) training in a training programme unless, with respect to the aircraft type involved, that person has satisfactorily completed the appropriate training phases for the aircraft, including recurrent training and differences training, that are required to serve as a PIC or fight engineer, as applicable.

(2) For detailed training programme requirements for check airman, see IS 8:244 contained in the Schedule hereto.

Single: pilot operations under IFR or at night

245.—(1) No person may conduct single-pilot-operations under IFR or at night in commercial air transportation unless the operation is approved by the Authority and the pilot has at least 50 hours flight time in the aeroplane class in which he or she is to serve and of those 50 hours, not less than 10 hours shall be as pilot in command,

(2) For single-pilot-operations conducted under IFR—

(*a*) the pilot shall have at least 25 hours flight time under IFR in the class of aeroplane in which he or she is to serve;

(*b*) the 25 hours flight time under IFR referenced in subregulation (2) (*a*) may form part of the required 50 hours flight time in aeroplane class;

(*c*) the pilot shall have performed in single-pilot-operations, at least 5 IFR flights including 3 instrument approaches in the class of aeroplane in which he or she is to serve within 90 days preceding the flight; or

(*d*) within 90 days preceding the flight, the pilot has satisfactorily completed the single-pilot-operation instrument competency check, as prescribed by the Authority, in the class of aeroplane in which he or she is to serve.

(3) For single-pilot-operations conducted at night—

(*a*) the pilot shall have performed in single-pilot-operations at least 3 take-offs and landings at night in the class of aeroplane in which he or she is to serve within 90 days preceding the flight; and

(*b*) have successfully completed the approved single-pilot-operation training programme prescribed by the AUTHORITY.

(4) No pilot may serve nor may any AOC holder assign a person to operate an aeroplane in single-pilot-operations in commercial air transport unless—

(*a*) the aeroplane is type certificated for operation by a single-pilot;

(*b*) the aeroplane is propeller-driven;

(*c*) the maximum approved passenger seating configuration is not more than 9 passengers; and

(*d*) the maximum certificated take-off mass does not exceed 5,700 kg.

(5) Notwithstanding subregulation (4) the AUTHORITY may approve single pilot operations in commercial air transport when the aeroplane is—

(*a*) type certificated for operation by a single pilot;

(*b*) propeller driven;

(*c*) has a maximum approved passenger seating configuration of more than 9 passengers;

(*d*) the maximum certificated take-off mass does not exceed 5,700 kg, provided—

(i) the aeroplane is turbine-powered;

(ii) is operated in compliance with regulation 95 of these Regulations;

(iii) the pilot has met the flight crew member training and checking requirements of operators; and

(iv) the Authority has authorized an exemption from subregulation (4) in the operator's operations specifications.

(6) If such operations are to be conducted outside Malaŵi, Malaŵi shall have an arrangement with the States where the operations will be conducted.

(7) In addition to successfully completing the relevant training requirements of this Part applicable to flight crew members engaged in commercial air transport, additional training for pilots conducting single-pilot-operations at night shall include passenger briefings with

respect to emergency evacuation, autopilot management and the use of simplified in-flight documentation.

Monitoring of training and checking activities

246.—(1) To enable adequate supervision of its training and checking activities, the AOC holder shall forward to the Authority at least 24 hours before the scheduled activity the dates, report times and report location of all—

(*a*) training for which a curriculum is approved in the AOC holder's training programme; and

(*b*) proficiency, competence and line checks.

(2) Failure to provide the information required by subregulation (1) may invalidate the training or check and the Authority may require that it be repeated for observation purposes.

Termination of a proficiency, competence or line check

247. If it is necessary to terminate a check for any reason, the AOC holder may not use the crew member or flight operations officer in commercial air transport operations until the completion of a satisfactory recheck.

Recording of crew member qualifications

248.—(1) The AOC holder shall record in its records maintained for each crew member and flight operations officer, the completion of each of the qualifications required by these Regulations.

(2) A pilot may complete the curricula required by these Regulations concurrently or intermixed with other required curricula, but completion of each of these curricula shall be recorded separately.

Eligibility period

249. Crew members who are required to take a proficiency check, a test or competency check, or recurrent training to maintain qualification for commercial air transport operations may complete those requirements at any time during the eligibility period.

(2) The eligibility period is defined as the three calendar month period including the month-prior, the month-due, and the month-after any due date specified by this subregulation.

(3) Completion of the requirement at any time during the period shall be considered as completed, in the month-due for calculation of the next due date.

Reductions in requirements

250.—(1) The Authority may authorize reductions in, or waive, certain portions of the training requirements of this part, taking into account the previous experience of the crew members.

(2) Any AOC holder request for reduction or waiver shall be made in writing and outline the basis under which the request is made.

(3) If the request was for a specific crew member, the correspondence from the Authority authorizing the reduction and the basis for it shall be filed in the record the AOC holder maintains for that crew member.

(4) A person who progresses successfully through flight training, is recommended by their instructor or a check airman, and successfully completes the appropriate flight check for a check airman, or is permitted by the Authority, to complete a course in less than programmed time, need not complete the programmed hours of flight training for the particular aircraft.

(5) Whenever the Authority finds that 20 percent, of the flight checks given at a particular training base during the previous 6 months are unsuccessful, this method of approval will not be used by the AOC holder at that base until the Authority finds that the effectiveness of the flight training there has improved.

Records of cosmic radiation

251. For each, flight of an aeroplane above 15,000 m (49,000 ft.), each AOC holder shall maintain records so that the total cosmic radiation dose received by each crew member over a period of 12 consecutive months can be determined.

PART XI
Fatigue Management

Application

252. This Part is applicable to the management of fatigue-related safety risks of crew members and flight operations officers/flight dispatchers engaged in commercial air transport flight operations.

Managing fatigue: related safety risks

253.—(1) For the purpose of managing fatigue-related safety risks, an AOC holder shall establish either—

(*a*) flight time, flight duty period, duty period and rest period limitations that are within the prescriptive fatigue management regulations in Part XII or

(*b*) a Fatigue Risk Management System (FKMS) in compliance with subregulation (5); or

(*c*) an FRMS in compliance with subregulation (5) for part of its operations and the requirements of 8.12 for the remainder of its operations.

(2) Where the operator adopts prescriptive fatigue management regulations for part or all of its operations, the Authority may approve, in exceptional circumstances, variations to these Regulations on the basis of a risk assessment provided by the operator. Approved variations shall provide a level of safety equivalent to, or better than that achieved through the prescriptive fatigue management regulations.

(3) The Authority shall approve an operator's FRMS before it may take the place of any or all of the prescriptive fatigue management regulations. An approved FRMS shall provide a level of safety equivalent to, or better than, the prescriptive fatigue management regulations.

(4) Operators using an FRMS must adhere to the following provisions of the FRMS approval process that allows the Authority to ensure that the approved FRMS meets the requirements of subregulation (3)—

(*a*) establish maximum, values for flight times and/or flight duty period(s) and duty period(s), and minimum values for rest periods that shall be based upon scientific principles and knowledge, subject to safety assurance processes, (as defined in Fatigue Risk Management Systems Manual Document 9966);

(*b*) adhere to Authority mandates to decrease maximum values and increase in minimum values in the event that the operator's data indicates these values are too high to too low, respectively; and

(*c*) provide justification to the Authority for any increase in maximum values or decrease in minimum values based on accumulated FRMS experience and fatigue-related data before such changes will be approved by the Authority.

(5) Operators implementing an FRMS to manage fatigue-related safety risks shall, as a minimum—

(*a*) incorporate scientific principles and knowledge within the FRMS;

(*b*) identify fatigue-related safety hazards and the resulting risks on an on-going basis;

(*c*) ensure that the remedial actions, necessary to effectively mitigate the risks associated with the hazards, are implemented promptly;

(*d*) provide for continuous monitoring and regular assessment of the mitigation of fatigue risks achieved by such actions; and

(*e*) provide for continuous improvement to the overall performance of the FRMS.

PART XII
Flight Time, Flight Duty Periods, Duty Periods, and Rest Periods for Fatigue Management

Application

254. This Part is applicable to the rest, duty and flight time limitations of crew members and flight operations officers/flight dispatchers engaged in commercial air transport flight operations.

Duty and rest periods

255.—(1) With respect to duty periods—

(*a*) persons are considered to be on duty if they are performing any tasks on behalf of the AOC holder, whether scheduled, requested or self initiated;

(*b*) if an AOC holder requires a flight crew member to engage in deadhead transportation for more than 4 hours, one half of that time shall be treated as duty time, unless they are given 10 hours of rest on the ground before being assigned to flight duty;

(*c*) no AOC holder may schedule—

(i) a flight crew member for more than 14 hours of duty, except as prescribed by the Authority;

(ii) a cabin crew member for more than 14 consecutive hours of duty, except as prescribed by the Authority;

(iii) a flight operations officer/aircraft dispatcher for more than 10 consecutive hours of duty within a 24 consecutive hour period, unless that person is given, an intervening rest period of at least 8 hours at or before the end of the 10 hours duty, except in cases where circumstances or emergency conditions beyond the control of the AOC holder require otherwise—

(A) each AOC holder shall establish the daily duty period, for a flight operations officer/aircraft dispatcher so that, it begins at a time that allows him or her to become thoroughly familiar with existing and anticipated weather conditions along the route before he or she dispatches any aircraft;

(B) he or she shall remain on duty until each aircraft dispatched by him or her has completed its flight or has gone beyond his or her jurisdiction or until he or she is relieved by another qualified dispatcher.

(2) With respect to rest periods—

(*a*) the minimum rest period is considered to be 8 consecutive hours;

(*b*) the minimum rest period for flight crew members shall be 9 consecutive hours, unless otherwise prescribed by the Authority;

(*c*) the AOC holder may exercise the option to reduce a crew member's rest period within the limitations prescribed under IS 8:255 contained in the Schedule;

(*d*) the AOC holder shall relieve the flight crew member, flight operations officer/flight dispatcher, or cabin crew member from all duties for 24 consecutive hours during any 7 consecutive day period;

(*e*) time spent in transportation, not local in character, which is required by the AOC holder to position crew members to or from flights is not considered part of a rest period;

(*f*) time spent in transportation on aircraft (at the insistence of the AOC holder) to or from a crew member's home station is not considered part of a rest period;

(*g*) no AOC holder may assign, nor may any person—

(i) perform duties is commercial air transportation unless that person has had at least the minimum rest period applicable to those duties as prescribed by the Authority; or

(ii) accept an assignment to any duty with the AOC holder during any required rest period.

Duty aloft

256.—(1) The Authority will consider all time spent on an aircraft as an assigned flight crew member or relief flight crew member, whether resting or performing tasks, to be duty aloft.

(2) The Authority will consider a flight crew member to be on continuous duty aloft unless the flight crew member receives a rest period of 8 consecutive hours on the ground.

(3) Each AOC holder shall provide adequate sleeping quarters, including a berth on the aircraft whenever a flight crew member is scheduled to be aloft for more than 12 hours during any 24 consecutive hours.

Maximum number of flight time hours

257.—(1) No person may schedule any flight crew member and no flight crew member may accept an assignment for flight time in commercial air transportation, if that flight crew member's total flight time will exceed 8 hours in any 24 consecutive hours.

(2) No person may schedule any flight crew member and no flight crew member may accept an assignment as a required crew member for more than 7 flights in commercial air transportation during any period of 18 consecutive hours, whichever comes first.

(3) No person may schedule any flight crew member and no flight crew member may accept an assignment for flight time in commercial air transportation, if that flight crew members total flight time will exceed 30 hours in any 7-day period.

(4) No person may schedule any flight crew member and no flight crew member may accept an assignment for flight time in commercial air transportation, if that flight crew member's total flight time will exceed 100 hours in any 30-day period.

(5) No person may schedule any flight crew member and no flight crew member may accept an assignment for flight time in commercial

air transportation, if that flight crew member's total flight time, total flights or duty aloft in commercial flying will exceed the limitations prescribed by the Authority.

(6) No person may schedule any flight crew member and no flight crew member may accept an assignment for flight time in commercial air transportation, if that flight crew member's total flight time will exceed 1000 hours in any 12-calendar month period.

Compliance with scheduling requirements

258.—(1) The Authority will consider a person in compliance with prescribed standards if that person exceeds flight/duty limitations when—

(*a*) the flight is scheduled and normally terminates within the prescribed limitations; but

(*b*) due to circumstances beyond the control of the AOC holder (such as adverse weather conditions) are not expected at the time of departure to reach the destination within the scheduled time.

(2) The Authority will consider a person in compliance with prescribed duty limitations, if that person exceeds applicable limitations during emergency or adverse situations beyond the control of the AOC holder.

Special flight duty schemes

259.—(1) The Authority may approve a special flight duty scheme for an AOC holder.

(2) An AOC holder may elect to apply the flight crew member flight duty and rest requirements to the cabin crew members.

Flight time, duty and rest period records

260. Each AOC holder shall maintain records for each crew member and flight operations officer/flight dispatcher of flight time, flight duty periods, duty periods, and rest periods for a period of 24 months.

PART XIII
Flight Release: Commercial Air Transport

Application

261. This Part is applicable to an AOC holder and the person designated by the AOC holder to issue a flight release.

Qualified persons required for operational control functions

262.—(1) A qualified person shall be designated by the AOC holder to exercise the functions and responsibilities for operational control of each flight in commercial air transport.

(2) For passenger-carrying flights conducted on a published schedule, a licensed and qualified flight operations officer shall be on-duty at an operations base to perform the operational control functions.

(3) For all other flights, the Director of Operations and the PIC are the qualified persons exercising operational control responsibilities,

and shall be available for consultation before, during and immediately following the flight operation.

(4) The Director of Operations may delegate the functions for initiating, continuation, diversion and termination of a flight to other employees. However, the Director of Operations shall retain full responsibility for these functions.

(5) For all flights, the PIC shares in the responsibility for operational control of the aircraft and has the situational authority to make decisions regarding operational control issues in-flight. Where a decision of the PIC differs from that recommended, the person making the recommendation shall make a record of the associated facts.

Functions associated with operational control

263.—(1) The person exercising responsibility for operational control for an AOC holder shall—

(*a*) authorize the specific flight operation;

(*b*) ensure that only those operations authorized by the AOC operations specifications are conducted;

(*c*) ensure that an airworthy aircraft properly equipped for the flight is available;

(*d*) Specify the conditions under which a flight may be dispatched or released (weather minima, flight planning, aircraft loading, and fuel requirements);

(*e*) ensure that qualified personnel and adequate facilities are available to support and conduct the flight;

(*f*) ensure that crew members are in compliance with the flight and duty time requirements when departing on a flight;

(*g*) provide the PIC and other personnel who perform operational control functions with access to the necessary information for the safe conduct of a flight (such as weather, NOTAMS and aerodrome analysis);

(*h*) ensure that proper flight planning and preparation is made;

(*i*) ensure that flight locating and flight following procedures are followed;

(*j*) ensure that each flight has complied with the conditions specified for release before it is allowed to depart;

(*k*) ensure that when the conditions specified for a release cannot be met, the flight is either cancelled, delayed, re-routed, or diverted; and

(*l*) for all flights, ensure the monitoring of the progress of the flight and the provision of information that may be necessary to safety.

Operational control duties

264.—(1) For all flights, the qualified person performing the duties of a flight operations officer shall—

(*a*) assist the PIC in flight preparation and provide the relevant information required;

(*b*) assist the PIC in preparing the operational and ATC flight plans;

(*c*) sign the dispatch copy of the flight release;

(*d*) furnish the PIC while in flight, by appropriate means, with information which may be necessary for the safe conduct of the flight; and

(*e*) in the event of an emergency situation which endangers the safety of the aeroplane or persons becomes known first to the flight operations officer/flight dispatcher, action by that persons shall be in accordance with such procedures as outlined in the AOC holder's operations manual: where necessary, immediately notify the appropriate authorities on the nature of the situation, and if required, a request for assistance.

(2) A qualified person performing the operational control duties shall avoid taking any action that would conflict with the procedures established by—

(*a*) ATC;

(*b*) the meteorological service;

(*c*) the communications service; or

(*d*) AOC holder.

Contents of a flight release or operational flight plan

265. The dispatch or flight release/operational flight plan shall contain or have attached at least the following information concerning each flight—

(*a*) company or organization name;

(*b*) make, model, and registration number of the aircraft being used;

(*c*) flight or trip number, and date of flight;

(*d*) name of each flight crew member, cabin crew member, and PIC;

(*e*) departure aerodrome, destination aerodromes, alternate aerodromes, and route;

(*f*) minimum fuel supply (in litres or kgs);

(*g*) a statement of the type of operation (e.g., IFR, VFR);

(*h*) the latest available weather reports and forecasts for the destination aerodrome and alternate aerodromes; and

(*i*) any additional available weather information that the PIC considers necessary.

Flight release: aircraft requirements

266.—(1) No person may issue a flight release for a commercial air transport operation, unless the aircraft is airworthy and properly equipped for the intended flight operation.

(2) No person may issue a flight release for a commercial air transport operation using an aircraft with inoperative instruments and equipment installed, except as specified in the MEL approved for the AOC holder for that type aircraft.

Flight release: facilities and NOTAM

267.—(1) No person may release an aircraft over any route or route segment unless there are adequate communications and navigational facilities in satisfactory operating condition as necessary to conduct the flight safely.

(2) The flight operations officer shall ensure that the PIC is provided all available current reports or information on aerodrome conditions and irregularities of navigation facilities that may affect the safety of the flight.

(3) For his or her review of the operational flight plan, the PIC will be provided with all available NOTAMs, AIP and AIRAC with respect to the routing, facilities and aerodromes.

Flight release: weather reports and forecasts

268.—(1) No person may release a flight unless he or she is thoroughly familiar with reported and forecast weather conditions on the route to be flown.

(2) No person may release a flight unless he or she has communicated all information and reservations they may have regarding weather reports and forecasts to the PIC.

Flight release in icing conditions

269.—(1) No person may release an aircraft, when in their opinion or that of the PIC, the icing conditions that may be expected or are met exceed that for which the aircraft is certified and has sufficient operational de-icing or anti-icing equipment.

(2) No person may release an aircraft any time conditions are such that frost, ice or snow may reasonably be expected to adhere to the aircraft, unless there is available to the PIC at the aerodrome of departure adequate facilities and equipment to accomplish the procedures approved for the AOC holder by the Authority for ground de-icing and anti-icing.

270. No person may release a flight under VFR or IFR unless the weather reports and forecasts indicated that the flight can reasonably be expected to be completed as specified in the release.

Flight release under VFR or IFR

271. No person may issue a flight release for a commercial air transport operation unless the fuel supply specified in the release is equivalent to or greater than the minimum flight planning requirements of these Regulations, including anticipated contingencies.

Flight release: minimum fuel supply

272. No person may issue a flight release unless he or she is familiar with the anticipated loading of the aircraft and is reasonably certain that the proposed operation will not exceed the—

Flight release: aircraft loading and performance

(*a*) centre of gravity limits;

(*b*) aircraft operating limitations; and

(*c*) minimum performance requirements.

273.—(1) Each person who amends a flight release while the flight is en route shall record that amendment.

Flight release: amendment or re-release en route

(2) No person may amend the original flight release to change the destination or alternate aerodrome while the aircraft is en route unless the flight preparation requirements for routing, aerodrome selection and minimum fuel supply are met at the time of amendment or re-release.

(3) No person may allow a flight to continue to an aerodrome to which it has been released if the weather reports and forecasts indicate changes that would render that aerodrome unsuitable for the original flight release.

274. No person may release a large aircraft carrying passengers under IFR or night VFR conditions when current weather reports indicate that thunderstorms, or other potentially hazardous weather conditions that can be detected with airborne weather radar, may reasonably be expected along the route to be flown, unless the airborne weather radar equipment is in satisfactory operating condition.

Flight release: with airborne weather radar equipment

275. The Aviation (Air Navigation) Regulations, the Aviation (Rules of the Air and Air Traffic Control) Regulations, and the Aviation (Aircraft Performance) Regulations are hereby revoked.

Revocation Cap. 70:01 sub. leg. p. 15, p. 128 and p. 184ab

SCHEDULE

Implementing Standards for Operations Regulations

IS 8:8 Inoperative Instruments and Equipment

(1) This implementing standard authorizes flight operations with inoperative instruments and equipment installed in situations

where no Master Minimum Equipment List (MMEL) is available and no MEL is required for the specific aircraft operation under these Regulations.

(2) The inoperative instruments and equipment may not be—

(*a*) part of the VFR-day instruments and equipment prescribed in Instruments and Equipment Regulations;

(*b*) required on the aircraft's equipment list or the operations equipment list for the kind of flight operation being conducted;

(*c*) required by Aviation (Instruments and Equipment) Regulations, for the specific kind of flight operation being conducted; or

(*d*) required to be operational by an airworthiness directive.

(3) To be eligible for these provisions, the inoperative instruments and equipment shall be—

(*a*) determined by the PIC not to be a hazard to safe operation;

(*b*) deactivated and placarded Inoperative; and

NOTE: If deactivation of the inoperative instrument or equipment involves maintenance, it must be accomplished and recorded in accordance with Airworthiness Regulations.

(*c*) removed from the aircraft, the flight deck control placarded and the maintenance recorded in accordance with Aviation (Airworthiness) Regulations.

IS 8:95 GENERAL—ROTORCRAFT CLASS 1, 2 AND 3 CODE OF PERFORMANCE

(1) The following guidance material is the basis of the code of helicopter performance referenced in these Regulations, Division 2 of Part VII - Aircraft Used In Commercial Air Transport.

(2) Definitions—

(*a*) Category A: With respect to helicopters, means a multi-engined helicopter designed with engine and system isolation features and capable of operations using take-off and landing data scheduled under a critical engine failure concept which assures adequate designated surface area and adequate performance capability for continued safe flight or safe rejected take-off;

(*b*) Category B: With respect to helicopters, means a single engine or multi-engined helicopter which does not meet Category A standards. Category B helicopters have no guaranteed capability to continue safe flight in the event of an engine failure, and a forced landing is assumed.

(3) General guidance—

(*a*) helicopters operating in performance Classes 1 and 2 should be certificated in Category A;

(*b*) helicopters operating in performance Class 3 should be certificated in either Category A or Category B (or equivalent):

(*c*) except as permitted by the appropriate AUTHORITY—

(i) take-off or landing from/to heliports in a congested hostile environment should only be conducted in performance Class 1;

(ii) operations in performance Class 2 should only be conducted with a safe forced landing capability during take-off and landing;

(iii) operations in performance Class 3 should only be conducted in a non-hostile environment.

(*d*) the AUTHORITY may grant a waiver from the provisions of (3) (*c*) (i), (ii) and (iii) upon receiving a commercial air transport operator's application for waiver and undertaking a risk assessment of the operational conditions proposed, including—

(i) the type of operation and the circumstances of the flight;

(ii) the area/terrain over which the flight is being conducted;

(iii) the probability of a critical power-unit failure and the consequence of such an event;

(iv) the procedures to maintain the reliability of the power-unit(s);

(v) the training and operational procedures to mitigate the consequences of the critical power-unit failure; and

(vi) installation and utilization of a usage monitoring system.

IS 8:96 Single and Multi-Engine Aeroplane Operations

(1) In addition to the requirements in outlined under IS 8: 96, an AOC holder seeking approval from the AUTHORITY to operate single-engine turbine-powered aeroplanes at night and/or in IMC shall comply with the additional requirements of this implementing standard.

(2) An AOC holder shall not operate single-engine, turbine-powered aeroplanes at night and/or in IMC unless the following airworthiness and operational requirements have been satisfied by the operator and approved by the AUTHORITY—

(*a*) turbine engine reliability;

(*b*) turbine engine reliability shall be shown to have a power loss rate of less than 1 per 100000 engine hours.

NOTE: Power loss in this context is defined as any loss of power, the cause of which may be traced to faulty engine or engine component design or installation, including design or installation of the fuel ancillary or engine control systems.

(3) The operator shall be responsible for engine trend monitoring.

(4) To minimize the probability of in-flight engine failure, the engine shall be equipped with—

(*a*) an ignition system that activates automatically, or is capable of being operated manually for take-off and landing, and during flight, in visible moisture;

(*b*) a magnetic particle detection or equivalent system that monitors the engine, accessories gearbox, and reduction gearbox, and which includes a flight deck caution indication; and

(*c*) an emergency engine power control device that permits continuing operation of the engine through a sufficient power range to safely complete the flight in the event of any reasonably probable failure of the fuel control unit.

(5) Systems and Equipment: Single-engine turbine-powered aeroplanes approved to operate at night and/or in IMC shall be equipped with the following systems and equipment intended to ensure continued safe flight and to assist in achieving a safe forced landing after an engine failure, under all allowable operating conditions—

(*a*) two separate electrical generating systems, each one capable of supplying all probable combinations of continuous in-flight electrical loads for instruments, equipment and systems required at night and/or in IMC;

(*b*) a radio altimeter;

(*c*) an emergency electrical supply system of sufficient capacity and endurance, following loss of all generated power, to as a minimum—

(i) maintain the operation of all essential flight instruments, communication;

(ii) navigation systems during a descent from the maximum certificated altitude in a glide configuration to the completion of a landing;

(iii) lower the flaps and landing gear, if applicable;

(iv) provide power to one pitot heater, which must serve an air speed indicator clearly visible to the pilot;

(v) provide for operation of the landing light specified in 2 (x);

(vi) provide for one engine restart, if applicable; and

(vii) provide for the operation of the radio altimeter.

(*d*) two attitude indicators, powered from independent sources;

(*e*) a means to provide for at least one attempt at engine re-start;

(*f*) airborne weather radar;

(*h*) a certified area navigation system capable of being programmed with the positions of aerodromes and safe forced landing areas, and providing instantly available track and distance information to those locations;

(*i*) for passenger operations, passenger seats and mounts which meet dynamically-tested performance standards and which are fitted with a shoulder harness or a safety belt with a diagonal shoulder strap for each passenger seat;

(*j*) in pressurized aeroplanes, sufficient supplemental oxygen for all occupants for descent following engine failure at the maximum, glide performance from the maximum certificated altitude to an altitude at which supplemental, oxygen is no longer required;

(*k*) a landing light that is independent of the landing gear and is capable of adequately—

(i) illuminating the touchdown area in a night forced landing; and

(ii) an engine fire warning system.

(6) Minimum Equipment List (MEL): An AOC holder shall develop an MEL approved by the AUTHORITY that is appropriate to the type of single-engine turbine-powered aeroplane operated specifying the operating equipment required for night and/or IMC operations, and for day/VMC operations.

(7) Aeroplane Flight Manual (AFM) Information: The AFM shall include limitations, procedures, approval status and other information relevant to operations by single-engine turbine-powered, aeroplanes at night and/or in IMC.

(8) Event Reporting: An AOC holder operating turbine-powered aeroplanes at night and/or in IMC shall report all significant failures, malfunctions or defects to the AUTHORITY who in turn will, notify the State of Design.

(9) Operator Planning: Each AOC holder operating single-engine turbine-powered aeroplanes at night and or in IMC shall take account of all relevant information in the assessment of intended routes or areas of operations, including the following—

(*a*) the nature of the terrain to be overflown, including the potential for carrying out a safe forced landing in the event of an engine failure or major malfunction;

(*b*) weather information, including seasonal and other adverse meteorological influences that may affect the flight; and

(*c*) other criteria and limitations as specified by the AUTHORITY.

(10) Each AOC holder shall identify aerodromes or safe forced landing areas available for use in the event of engine failure and the position of these shall be programmed into the area navigation system.

NOTE 1: A 'safe' forced landing in this context means a landing in an area at which it can reasonably be expected that it will not lead to serious injury or loss of life, even though the aeroplane may incur extensive damage.

NOTE 2: Operation over routes and in weather conditions that permit a safe forced landing in the event of an engine failure, as specified in regulation 134 of these Regulations is not required for aeroplanes approved in accordance with regulation 134 of these Regulations. The availability of forced landing areas at all points along a route is not specified for these aeroplanes because of the very high engine reliability, additional systems and operational equipment, procedures and training requirements specified in this implementing standard.

(11) Flight crew Experience, Training and Checking—

(*a*) no person may serve and no AOC holder shall use a flight crew member in single-engine turbine-powered aeroplanes engaged in commercial air transport unless he or she has completed the appropriate flight crew member training as specified in this Chapter and approved by the AUTHORITY;

(*b*) the AOC holder's approved flight crew training and checking shall be appropriate to night and/or IMC operations by single engine turbine- powered aeroplanes, covering normal, abnormal and emergency procedures and, in particular, engine failure, including descent to a forced landing in night and/or in IMC conditions.

(12) Route Limitations Over Water—

(*a*) an AOC holder shall not conduct over water operations using single-engine turbine-powered aeroplanes operating at night and/or in IMC except in areas of operation or over specific routes identified in the AOC holder's operation specifications;

(*b*) no AOC holder may conduct over water operations using single-engine turbine-powered aeroplanes operating at night and/or in IMC except in accordance with procedures approved by the AUTHORITY in the AOC holder's operations manual for over water operations covering flight beyond gliding

distance from an area suitable for a safe forced landing/ ditching having regard to the characteristics of the aeroplane, seasonal weather influences, including likely sea state and temperature, and the availability of search and rescue services.

(13) Operator Certification or Validation.

An AOC holder applying for operations specifications granting authorization to conduct single-engine turbine-powered aeroplane operations at night and/or in IMC shall demonstrate to the AUTHORITY consistent with Air Operator Certification and Administration Regulations, the ability to conduct operations by single-engine turbine-powered aeroplanes at night and/or in IMC through a certification and approval process specified by the AUTHORITY.

IS 8:110 Instrument Approach Operating Minima

(1) Each operator establishing aerodrome-operating minima shall have its method for determining such minima approved by the Authority.

(2) Each operator's method for determining aerodrome-operating minima shall accurately account for—

(*a*) the type, performance and handling characteristics of the aircraft;

(*b*) the composition and experience of the flight crew;

(*c*) the dimensions and characteristics of the runways selected for use;

(*d*) aircraft equipment used for navigation and aircraft control during the approach to landing and the missed approach;

(*e*) obstacles in the approach and missed approach areas and the obstacle clearance altitude/height for the intended instrument approach procedures;

(*f*) the means used to determine and report meteorological conditions;

(*g*) the obstacles in the climb out areas and the necessary clearance margins;

(*h*) the adequacy and performance of the available visual and non-visual ground aids; and

(*i*) the declared distances, for helicopters.

IS 8:112 Category II and III Manual

(1) Application for approval. An applicant for approval of a Category II or III manual or an amendment to an approved Category II manual

shall submit the proposed manual or amendment to the Authority. If the application requests an evaluation programme, it shall include the following—

(*a*) the location of the aircraft and the place where the demonstrations are to be conducted;

(*b*) the date the demonstrations are to commence (at least 10 days after filing the application).

(2) Contents Each Category II or III manual, must contain—

(*a*) the registration mark, make, and model of the aircraft to which it applies;

(*b*) a maintenance programme;

(*c*) the procedures and instructions related to recognition of DH, use of runway visual range (RVR) information, approach monitoring, the decision region (the region between the middle marker and the decision height), the maximum permissible deviations of the basic ILS indicator within the decision region, a missed approach, use of airborne low approach equipment, minimum altitude for the use of the autopilot, instrument and equipment failure warning systems, instrument failure, and other procedures, instructions, and limitations that may be found necessary by the Authority.

IS 8:132 Interception of Civil Aircraft

(1) Malaŵi shall observe the following principles regarding the interception of civil aircraft—

(*a*) interception of civil aircraft will be undertaken only as a last resort;

(*b*) if undertaken, an interception will be limited to determining the identity of the aircraft, unless it is necessary to return the aircraft to its planned track, direct it beyond the boundaries of national airspace, guide it away from a prohibited, restricted or danger area or instruct it to effect a landing at a designated aerodrome;

(*c*) practice interception of civil aircraft will not be undertaken;

(*d*) navigational guidance and related information will be given to an intercepted aircraft by radiotelephony, whenever radio contact can be established;

(*e*) in the case where an intercepted civil aircraft is required to land in the territory overflown, the aerodrome designated for the landing is to be suitable for the safe landing of the aircraft type concerned.

NOTE: In the unanimous adoption by the 25th Session (Extraordinary) of the ICAO Assembly on 10 May, 1984 of Article 3 bis to the Convention on International Civil Aviation, the Contracting States have recognized that "every State must refrain from resorting to the use of weapons against civil aircraft in flight."

(2) Malaŵi shall ensure that—

(*a*) a standard method has been established and made available to the public for the manoeuvring of aircraft intercepting a civil aircraft that is designed to avoid any hazard for the intercepted aircraft;

(*b*) provision is made for the use of secondary surveillance radar or ADS-B, where available, to identify civil aircraft in areas where they may be subject to interception.

(3) The PIC of an aircraft that is intercepted by another aircraft shall immediately—

(*a*) follow the instructions given by the intercepting aircraft, interpreting and responding to visual signals in accordance with the specifications in item (*e*) below;

(*b*) notify, if possible, the appropriate air traffic services unit;

(*c*) attempt to establish radio communication with the intercepting aircraft or with the appropriate intercept control unit. By making a general call on the emergency frequency 121.5 MHz, giving the identity of the intercepted aircraft and the nature of the flight; and if no contact has been established and if practicable, repeating this call on the emergency frequency 243 MHz;

(*d*) if equipped with SSR transponder, select Mode A, Code 7700, unless otherwise instructed by the appropriate air traffic services unit;

(*e*) if equipped with ADS-B or ADS-C, select the appropriate emergency functionality, if available, unless otherwise instructed by the appropriate air traffic services unit.

(4) If any instructions received by radio from any sources conflict with those given by the intercepting aircraft by visual signals, the PIC of the intercepted aircraft shall request immediate clarification while continuing to comply with the visual instructions given by the intercepting aircraft.

(5) If any instructions received by radio from any sources conflict with those given by the intercepting aircraft by radio, the PIC of the intercepted aircraft shall request immediate clarification while continuing to comply with the radio instructions given by the intercepting aircraft.

(6) Radio communication during interception. If radio contact is established during interception but communication in a common language is not possible, the PIC of each involved aircraft shall attempt to convey instructions, acknowledgement of instructions and essential at information by using the phrases and pronunciations in the table below and transmitting each phrase twice—

Phrases for use by INTERCEPTING aircraft			Phrases for use by INTERCEPTED aircraft		
Phrase	Pronunciation I	Meaning	Phrase	Pronunciation 1	Meaning
CALL SIGN	KOL SA-IN	What is your call sign?	CALL SIGN (call sign)2	KOL SA-IN (call sign)	My call sign is (call sign)
FOLLOW	FOL-LO	Follow me	WILCO	VILL-KO	Understood Will comply
DESCEND	DEE-SEND	Descend for landing	CAN NOT	KANN NOTT	Unable to comply
YOU LAND	YOU LAAND	Land at this aerodrome	REPEAT	REE-PEET	Repeat your instruction
PROCEED	PRO-SEED	You may proceed	AM LOST	AM LOSST	Position unknown
			MAYDAY	MAYDAY	I am in distress
			H1JACK3	HI-JACK	I have been hijacked
			LAND (place name)	LAAND (place name)	I request to land at (place name)
			DESCEND	DEE-SEND	I require descent

1. In the second column, syllables to be emphasized are underlined.
2. The call sign required to be given is that used in radiotelephone, communications with air traffic services units and corresponding to the aircraft identification in the flight plan.
3. Circumstances may not always permit, nor make desirable, the use of the phrase "HIJACK".

(7) The following signals shall, be used by the pilots of each involved aircraft in the event of interception. Signals initiated by intercepting aircraft and responses by intercepted aircraft.

Series	INTERCEPTING Aircraft Signals	Meaning	INTER CEPTED, Aircraft Responds	Meaning
1	DAY or NIGHT — Rocking aircraft and flashing navigational lights at irregular intervals (and landing lights in the case of a helicopter) from a position slightly above and ahead of, and normally to the left of, the intercepted aircraft (or to the right if the intercepted aircraft is a helicopter) and, after acknowledgement, a slow level turn, normally to the left, (or to the right in the case of a helicopter) on the desired heading.	You have been intercepted. Follow me.	DAY or NIGHT — Rocking aircraft, flashing navigational lights at irregular intervals and following.	Understood, will comply.
	NOTE: Meteorological conditions or terrain may require the intercepting aircraft to reverse the positions and direction of turn given above in Series 1. NOTE: If the intercepting aircraft is not able to keep pace with the intercepting aircraft, the latter is expected to fly a series of race-track patterns and to rock the aircraft each time it passes the intercepted aircraft.			
2	DAY or NIGHT — An abrupt break-away manoeuvre from the intercepted aircraft consisting of a climbing turn of 90 degrees or more without crossing the line of flight of the intercepted aircraft.	You may proceed.	DAY or NIGHT— Rocking the aircraft.	Understood, will comply.
3	DAY or NIGHT — Lowering landing gear (if fitted), showing steady landing lights and overflying runway in use or, if the intercepted aircraft is a helicopter, overflying the helicopter landing area, in the case of helicopters, the intercepting helicopter makes a landing approach, coming to hover gear to the landing area.	Land at this aerodrome.	DAY or NIGHT — Lowering landing gear (if fitted), showing steady landing lights and following the intercepting aircraft and, if, after overflying the runway in use or helicopter landing area, landing is considered safe, proceeding to land.	Understood, will comply.

Series	INTERCEPTING Aircraft Signals	Meaning	INTER CEPTED, Aircraft Responds	Meaning
4	DAY or NIGHT — Raising landing gear (if fitted) and flashing landing lights while passing over runway in use or helicopter landing area at a height exceeding 300 m (1,000 ft) but not exceeding 600 m (2,000 ft) (in the case of a helicopter, at a height exceeding 50 m (170 ft) but not exceeding 100 m (330 ft) above the aerodrome level, and continuing to circle runway in use or helicopter landing area. If unable to flash landing lights, flash any other lights available.	Aerodrome you have designated is inadequate.	DAY or NIGHT —If it is desired that the intercepted aircraft follow the intercepting aircraft to an alternate aerodrome, the intercepting aircraft raises its landing gear (if fitted) and uses the Series 1 signals prescribed for intercepting aircraft. If it is decided to release the intercepted aircraft, the intercepting aircraft uses the Series 2 signals prescribed for intercepting aircraft.	Understood, follow me. Understood, you may proceed.
5	DAY or NIGHT — Regular switching on and off of all available lights but in such a manner as to be distinct from flashing lights.	Cannot comply.	DAY or NIGHT —Use Series 2 signals prescribed for intercepting aircraft.	
6	DAY or NIGHT — Irregular flashing of all available lights.	In distress.	DAY or NIGHT — Use Series 2 signals prescribed for intercepting aircraft.	Understood

(8) Aircraft registered by the Authority shall when operating outside Malaŵi comply with interception orders from appropriate Authority in those stalls.

IS: 8:147 Universal Aviation Signal

(1) Distress signals. The following signals, used either together or separately, mean that grave and imminent danger threatens, and immediate assistance is requested.

Note 1: None of the provisions in this section shall prevent the use, by an aircraft in distress, of any means at its disposal to attract attention, make known its position and obtain help.

NOTE 2: For full details of telecommunication transmission procedures for the distress and urgency signals, see ICAO Annex 10 Volume II, of Airworthiness Regulations.

NOTE 3: For details of the search and rescue visual signals, see ICAO Annex 12.

(*a*) a signal made by radiotelegraphy or by any other signalling method consisting of the group SOS (• • • — — — •• • •• in the Morse Code);

(*b*) a signal sent by radiotelephony consisting of the spoken word MAYDAY;

(*c*) rockets or shells throwing red lights, fired one at a time at short intervals;

(*d*) a parachute flare showing a red light.

NOTE: Article 41 of the ITU Radio Regulations (Nos. 3268, 3270 and 3271 refer) provides information on the alarm signals for actuating radiotelegraph and radiotelephone auto-alarm systems: 3268 The radiotelegraph alarm signal consists of a series of twelve dashes sent in one minute, the duration of each dash being four seconds and the duration of the interval between consecutive dashes one second. It may be transmitted by hand but its transmission by means of an automatic instrument is recommended. 3270 The radiotelephone alarm signal consists of two substantially sinusoidal audio frequency tones transmitted alternately. One tone shall have a frequency of 2,200 Hz and the other a frequency of 1,300 Hz, the duration of each tone being 250 milliseconds. 3271 The radiotelephone alarm signal, when generated by automatic means, shall be sent continuously for a period of at least thirty seconds but not exceeding one minute; when generated by other means, the signal shall be sent as continuously as practicable over a period of approximately one minute.

(2) The following signals, used either together or separately, mean that an aircraft wishes to give notice of difficulties which compel it to land without requiring immediate assistance—

(*a*) the repeated switching on and off of the landing lights; or

(*b*) the repeated switching on and off of the navigation lights in such manner as to be distinct from flashing navigation lights.

(3) The following signals, used either together or separately, mean that an aircraft has a very urgent message to transmit concerning the safety of a ship, aircraft or other vehicle, or of some person on board or within sight—

(*a*) a signal made by radiotelegraphy or by any other signalling method consisting of the group XXX;

(*b*) a signal sent by radiotelephony consisting of the spoken words PAN, PAN.

(4) Visual signals used to warn an unauthorized aircraft. By day and by night, a series of projectiles discharged from the ground at intervals of 10 seconds, each showing, on bursting, red and green lights or stars will indicate to an unauthorized aircraft that it is flying in or about to enter a restricted, prohibited, or danger area, and that the aircraft is to take such remedial action as may be necessary.

(5) Signals for aerodrome traffic. Aerodrome controllers shall use and pilots shall obey the following light and pyrotechnic signals—

		From Aerodrome Control to—	
Light		Aircraft in flight	Aircraft on the ground
Directed towards aircraft concerned	Steady green.	Cleared to land.	Cleared for take-off
(See Figure 1.1)	Steady red.	Give way to other aircraft and continue circling.	Stop
	Series of green flashes.	Return for landing.*	Cleared to taxi.
	Series of red flashes.	Aerodrome unsafe, do not land.	Taxi clear of landing area in use.
	Series of white flashes	Land at this aerodrome and proceed to apron*.	Return to starting point on the aerodrome.
	Red pyrotechnic	Notwithstanding any previous instructions, do not land for the time being	

*Clearances to land and to taxi will be given in due course.

Figure 8.1

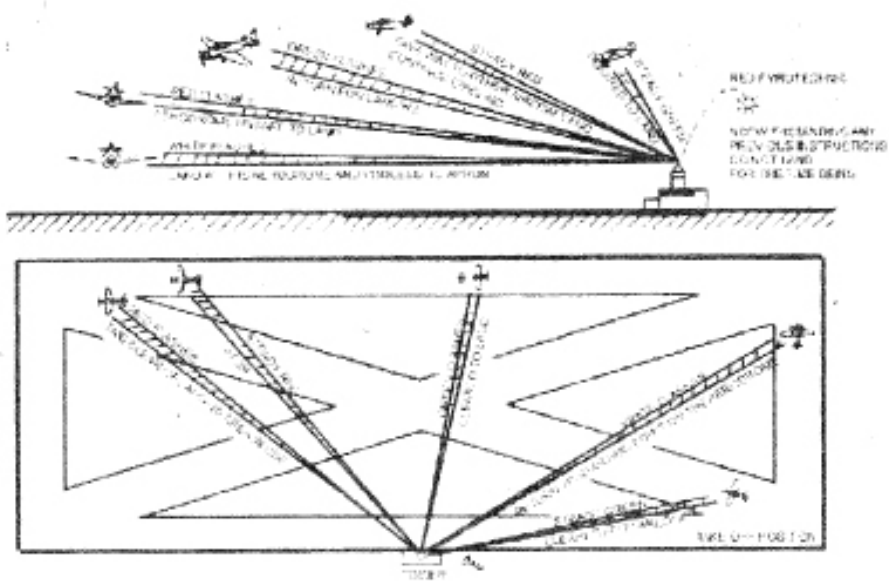

(6) Pilots shall acknowledge aerodrome controller signals as follows—

(*a*) When in flight—

(i) during the hours of daylight by rocking the aircraft's wings.

NOTE: This signal should not be expected on the base and final legs of the approach;

(ii) during the hours of darkness by flashing on and off twice the aircraft's landing lights or, if not so equipped, by switching on and off twice its navigation lights.

(*b*) When on the ground—

(i) during the hours of daylight by moving the aircraft's ailerons or rudder;

(ii) during the hours of darkness by flashing on and off twice the aircraft's landing lights or, if not so equipped, by switching on and off twice its navigation lights.

(7) Aerodrome authorities shall use the following visual ground signals during the following situations—

(*a*) Prohibition of landing. A horizontal red square panel with yellow diagonals (Figure 8.2) when displayed in a signal area indicates that landings are prohibited and that the prohibition is liable to be prolonged.

Figure 8.2

(*b*) Need for special precautions while approaching or landing. A horizontal red square panel with one yellow diagonal (Figure 8.3) when displayed in a signal area indicates that owing to the bad state of the manoeuvring area, or for any other reason, special precautions must be observed in approaching to land or in landing.

Figure 8.3

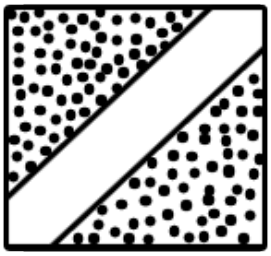

(*c*) Use of runways and taxiways.

(i) A horizontal white dumb-bell (Figure 8.4) when displayed in a signal area, indicates that aircraft are required to land, take-off and taxi on runways and taxiways only.

Figure 8.4

(ii) The same horizontal white dumb-bell as in Figure 8.4, but with a black bar placed perpendicular to the shaft across each circular portion of the dumb-bell (Figure 8.5) when displayed in a signal area, indicates that aircraft are required to land and take-off on runways only, but other manoeuvres need not be confined to runways and taxiways.

Figure 8.5

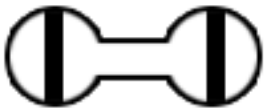

(*d*) Closed runways or taxiways. Crosses of a single contrasting colour, yellow or white (Figure 8.6), displayed horizontally on runways and taxiways or parts thereof indicate an area unfit for movement of aircraft.

Figure 8.6

(*e*) directions for landing or take-off

(i) a horizontal white or orange landing T (Figure 8.7) indicates the direction to be used by aircraft for landing and take-off, which shall be in a direction parallel to the shaft of the T towards the cross arm.

NOTE: When used at night, the landing T is either illuminated or outlined in white coloured lights.

Figure 8.7

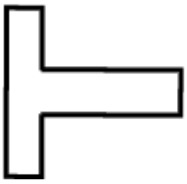

(ii) a set of two digits (Figure 8.8) displayed vertically at or near the aerodrome control tower indicates to aircraft on the manoeuvring area the direction for take-off, expressed in units of 10 degrees to the nearest 10 degrees of the magnetic compass.

Figure 8.8

(*f*) right-hand traffic: when displayed in a signal area, or horizontally at the end of the runway or strip in use, a right-hand arrow of conspicuous colour (Figure 8.9) indicates that turns are to be made to the right before landing and after take-off.

Figure 8.9

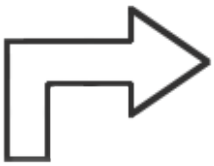

(*g*) air traffic services reporting office: the letter C displayed vertically in black against a yellow background (Figure 8.10) indicates the location of the air traffic services reporting office.

Figure 8.10

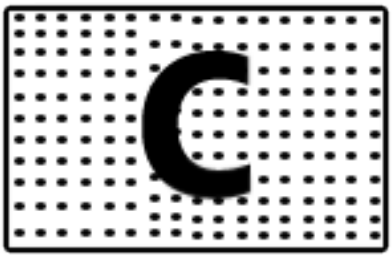

(*h*) Glider flights in operation; a double white cross displayed horizontally (Figure 8.11) in the signal area indicates that the aerodrome is being used by gliders and that glider flights are being performed.

Figure 8.11

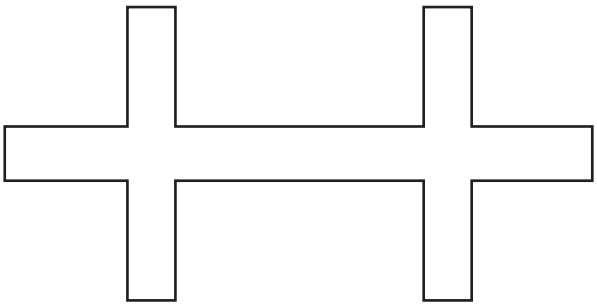

(8) The following marshalling signals shall be used from a signalman to an aircraft.

NOTE: These signals are designed for use by the signalman, with hands illuminated as necessary to facilitate observation by the pilot, and facing the aircraft in a position—

(*a*) for fixed-wing aircraft, the signalman shall be positioned forward of the left-wing tip within view of the pilot and, for helicopters, where the signalman can best be seen by the pilot;

NOTE 1: The meaning of the relevant signals remains the same if bats, illuminated wands or torchlights are held.

NOTE 2: The aircraft engines are numbered, for the signalman facing the aircraft, from right to left (i.e. No. I engine being the port outer engine).

NOTE 3: Signals marked with an asterisk are designed for use to hovering helicopters.

(*b*) prior to using the following signals, the signalman shall ascertain that the area within which an aircraft is to be guided is clear of objects which the aircraft might otherwise strike.

NOTE: The design of many aircraft is such that the path of the wing tips, engines and other extremities cannot always be monitored visually from the flight deck while the aircraft is being manoeuvred on the ground.

1. *Wingwalker/guide.*

Raise right hand above head level with wand pointing up; move left-hand wand pointing down toward body.

NOTE: This signal provides an indication by a person positioned at the aircraft wing tip to the pilot/ marshaller/ push-back operator that the aircraft movement on/off a parking position would be unobstructed.

2. *Identify gate*

Raise fully extended arms straight above head with wands pointing up.

3. *Proceed to next signalman or as directed by tower/ ground control*

Point both arms upward; move and extend arms outward to sides of body and point with wands to direction of next signalman or taxi area.

4. *Straight ahead*

Bend extended arms at elbows and move wands up and down from chest height to head.

5*a*. *Turn left (from pilots point of view)*

With right arm and wand extended at a 90-degree angle to body, make "come ahead" signal with left hand. The rate of signal motion, indicates to pilot the rate of aircraft turn.

5*b*. *Turn right (from pilot's point of view)*

With left arm and wand extended at a 90-degree angle to body, make "come ahead" signal with right hand. The rate of signal motion indicates to pilot the rate of aircraft turn.

6*a*. *Normal stop*

Fully extend arms and wands at a 90-degree angle to sides and slowly move to above head until wands cross.

6*b*. *Emergency stop*

Abruptly extend arms and wands to top of head, crossing wands.

7*a*. *Set brakes*

Raise hand just above shoulder height with open palm. Ensuring eye contact with flight crew, close hand into a fist. Do not move until receipt of "thumbs up" acknowledgement from flight crew.

7*b*. *Release brakes*

Raise hand just above shoulder height with hand closed in a fist. Ensuring eye contact with flight crew, open palm. Do not move until receipt of "thumbs up" acknowledgement from flight crew.

8*a*. *Chocks inserted*

With arms and wands fully extended above head, move wands inward in a "jabbing" motion until wands touch. Ensure acknowledgement is received from flight crew.

8*b*. *Chocks removed*

With arms and wands folly extended above head, move wands outward in a "jabbing" motion. Do not remove chocks until authorized by flight crew.

9. *Start engine(s)*

Raise right arm to head level with wand pointing up and start a circular motion with hand; at the same time, with left arm raised above head level, point to engine to be started.

10. *Cut engines*

Extend arm with wand forward of body at shoulder level; move hand and wand to top of left shoulder and draw wand to top of right shoulder in a slicing motion across throat.

11. *Slow down*

Move extended arms downwards in a "patting" gesture, moving wands up and down from waist to knees.

12. *Slow down engine(s) on indicated side*

With arms down and wands toward ground, wave either right or left wand up and down indicating engine(s) on left or right side respectively should be slowed down.

13. *Move back*

With arms in front of body at waist height, rotate arms in a forward motion. To stop rearward movement, use signal 6a or 6b.

14*a*. *Turns while backing (for tail to starboard)*

Point left arm with wand down and bring right arm from overhead vertical position to horizontal forward position, repeating right-arm movement.

14*b*. *Turns while backing (for tail to port)*

Point right arm with wand down and bring left arm from overhead vertical position to horizontal forward position, repeating left-arm movement.

15. *Affirmative/all clear*

Raise right arm to head level with wand pointing up or display hand with "thumbs up"; left arm remains at side by knee.

16. *Hover*

Fully extend arms and wands at a 90-degree angle to sides.

17. *Move upwards*

Fully extend arms and wands at a 90-degree angle-to sides and, with palms turned up, move hands upwards. Speed of movement indicates rate of ascent.

18. *Move downwards*

Fully extend arms and wands at a 90-degree angle to sides and, with palms turned down, move hands downwards. Speed of movement indicates rate of descent.

19*a*. *Move horizontally left (from pilot's point of view)*

Extend arm horizontally at a 90-degree angle to light side of body. Move other arm in same direction in a sweeping motion.

19*b*. *Move horizontally right (from pilot's point of view)*

Extend arm horizontally at a 90-degree angle to left side of body. Move other arm in same direction in a sweeping motion.

20. *Land*

Cross arms with wands downwards and in front of body.

21. *Fire*

Move right-hand wand in a "fanning" motion from shoulder to knee, while at the same time pointing with left-hand wand to area of fire.

22. *Hold position/stand by*

Fully extend arms and wands downwards at a 45-degree angle to sides. Hold position until aircraft is clear for next manoeuvre.

23. *Dispatch aircraft*

Perform a standard salute with right hand and/or wand to dispatch the aircraft. Maintain eye contact with flight crew until aircraft has begun to taxi.

24. *Do not touch controls (technical/servicing communication signal)*

Extend right arm fully above head and close fist or hold wand in horizontal position; left arm remains at side by knee.

25. *Connect ground power (technical/servicing communication signal)*

Hold arms fully extended above head; open left hand horizontally and move finger tips of right hand into and touch open palm of left hand (forming a "T"). At night, illuminated wands can also be used to form the "T" above head.

26. *Disconnect power (technical/servicing communication signal)*

Hold arms fully extended above head with finger tips of right hand touching open horizontal palm of left hand (forming a "T"); then move right hand away from the left. Do not disconnect power until authorized by flight crew. At night, illuminated wands can also be used to form the "T" above head.

27. *Negative (technical/servicing communication signal)*

Hold right arm straight out at 90 degrees from shoulder and point wand down to ground or display hand with "thumbs down"; left hand remains at side by knee.

28. *Establish communication via interphone (technical/servicing communication signal)*

Extend both arms at 90 degrees from body and move hands to cup both ears.

29. *Open/close stairs (technical/servicing communication signal)*

With right arm at side and left arm raised above head at a 45-degree angle, move right arm in a sweeping motion towards top of left shoulder.

NOTE: This signal is intended mainly for aircraft with the set of integral stairs at the front.

Signals from the pilot of an aircraft to a signalman.

(1) The PIC or CP shall use the following signals when communicating with a signalman—

NOTE 1: These signals are designed for use by a pilot in the cockpit with hands plainly visible to the signalman, and illuminated as necessary to facilitate observation by the signalman.

NOTE 2: The aircraft engines are numbered in relation to the signalman facing the aircraft, from right to left (i.e. No. I engine being the port outer engine).

(2) Brakes engaged: Raise arm and hand, with fingers extended, horizontally in front of face, then clench fist.

(3) Brakes released: Raise arm, with fist clenched, horizontally in front of face, then extend fingers.

NOTE: The moment the fist is clenched or the fingers are extended indicates, respectively, the moment of brake engagement or release.

(4) Insert chocks: Arms extended, palms outwards, move hands inwards to cross in front of face.

(5) Remove chocks: Hands crossed in front of face, palms outwards, move arms outwards.

(6) Ready to start engine(s): Raise the appropriate number of fingers on one hand indicating the number of the engine to be started.

IS 8:151 TABLE OF CRUISING LEVELS

(*a*) The cruising levels at which a flight or a portion of a flight is to be conducted shall be in terms of—

(i) flight levels, for flights at or above the lowest usable flight level or, where applicable, above the transition altitude;

(ii) altitudes, for flights below the lowest usable flight level or, where applicable, at or below the transition altitude;

(*b*) The PIC shall observe the following cruising levels in areas where, on the basis of regional air navigation agreement and in accordance with conditions specified therein, a vertical separation minimum (VSM) of 300 m (1,000 ft) is applied between FL 290 and FL 410 inclusive:*

TRACK**											
From 000 Degrees to 179 Degrees						*From 180 Degrees to 359 Degrees*					
IFR Flights			*VFR Flights*			*IFR Flights*			*VFR Flights*		
Altitude			*Altitude*			*Altitude*			*Altitude*		
FL	*Meters*	*Feet*	*FL*	*Meters*	*Feet*	*FL*	*Meters*	*Feet*	*FL*	*Meters*	*Feet*
-90	—	—	—	—	—	0	—	—	—	—	—
10	300	1000	—	—	—	20	600	2000	—	—	—
30	900	3000	35	1050	3500	40	1200	4000	45	1350	4500
50	1500	5000	55	1700	5500	60	1850	6000	65	2000	6500
70	2150	7000	75	2300	7500	80	2450	8000	85	2600	8500
90	2750	9000	95	2900	9500	100	3050	10000	105	3200	0500
110	3350	11000	115	3500	11500	120	3650	12000	125	3800	12500
130	3950	13000	135	4100	13500	140	4250	14000	145	4400	14500
150	4550	15000	155	4700	15500	160	4900	16000	165	5050	16500
170	5200	17000	175	5350	17500	180	5500	18000	185	5650	18500
190	5800	19000	195	5950	19500	200	6100	20000	205	6250	20500
210	6400	21000	215	6550	21500	220	6700	22000	225	6850	22500
230	7000	23000	235	7150	23500	240	7300	24000	245	7450	24500
250	7600	25000	255	7750	25500	260	7900	26000	265	8100	26500
270	8250	27000	275	8400	27500	280	8550	28000	285	8700	28500
290	8850	29000				300	9150	30000			
310	9450	31000				320	9750	32000			
330	10050	33000				340	10350	34000			
350	10650	35000				360	10950	36000			
370	11300	37000				380	11600	8000			
						400	12200	40000			
410	12500	41000				430	13100	43000			
450	13700	45000				470	14350	47000			
490	14950	49000				510	15550	51000			
etc.	etc.	etc.				etc.	etc.	etc.			

* Except when, on the basis of regional air navigation agreements, a modified table of cruising levels based on a nominal vertical separation minimum of 300 m (1,000 ft) is prescribed for use, under specified conditions, by aircraft operating above FL 410 within designated portions of the airspace.

** Magnetic track, or in polar areas at latitudes higher than 70 degrees and within such extensions to those areas as may be prescribed by the appropriate ATS authorities, grid tracks as determined by a network of lines parallel to the Greenwich Meridian superimposed on a polar stereographic chart in which the direction towards the North Pole is employed as the Grid North.

(*c*) The PIC shall observe the following cruising levels in other areas not specified in item (*a*) above.

TRACK**											
From 000 Degrees to 179 Degrees						*From 180 Degrees to 359 Degrees*					
IFR Flights			*VFR Flights*			*IFR Flights*			*VFR Flights*		
Altitude			*Altitude*			*Altitude*			*Altitude*		
FL	*Meters*	*Feet*	*FL*	*Meters*	*Feet*	*FL*	*Meters*	*Feet*	*FL*	*Meters*	*Feet*
-90	—	—	—	—	—	0	—	—	—	—	—
10	300	1000	—	—	—	20	600	2000	—	—	—
30	900	3000	35	1050	3500	40	1200	4000	45	1350	4500
50	1500	5000	55	1700	5500	60	1850	6000	65	2000	6500
70	2150	7000	75	2300	7500	50	2450	8000	85	2600	8500
90	2750	9000	95	2900	9500	100	3050	10000	105	3200	10500
110	3350	11000	115	3500	11500	120	3650	12000	125	3800	12500
130	3950	13000	135	4100	13500	140	4250	14000	145	4400	14500
150	4550	15000	155	4700	15500	160	4900	16000	165	5050	16500
170	5200	17000	175	5300	17500	180	5500	18000	185	5650	18500
190	5800	19000	195	950	19500	200	6100	20000	205	6250	20500
210	6400	21000	215	6550	21500	220	6700	22000	225	6850	22500
230	7000	23000	235	7150	23500	240	7300	24000	245	7450	24500
250	7600	25000	255	7750	25500	260	7900	26000	265	8100	26500
270	8250	27000	275	8100	27500	280	8550	28000	285	8700	28500
290	8850	29000	300	9150	30000	310	9450	31000	320	9750	32000
330	10050	33000	340	10350	34000	350	10650	35000	360	10950	36000
370	11300	37000	380	11600	38000	390	11900	39000	400	12200	40000
410	12500	41000	420	12500	42000	430	13100	43000	440	13400	44000
450	13700	45000	460	14000	46000	470	14350	47000	480	14650	48000
490	14950	49000	500	15250	50000	510	15550	51000	520	15850	52000
etc.	etc.	etc.	etc.	etc.	etc.	etc.	etc.	etc.	etc.	etc.	etc.

**Magnetic track, or in polar areas at latitudes higher than 70 degrees and within such extensions to those areas as may be prescribed by the appropriate ATS authorities, grid tracks as determined by a network of lines parallel to the Greenwich Meridian superimposed on a polar stereographic chart in which the direction towards the North Pole is employed as the Grid North.

IS 8:214 Company Procedures Indoctrination

(1) Each AOC holder shall ensure that all operations personnel are provided company indoctrination training that covers the following areas—

(*a*) AOC holder's organization, scope of operation, and administrative practices as applicable to their assignments and duties;

(*b*) appropriate provisions of these Regulations and other applicable regulations and guidance materials;

(*c*) contents of the AOC holder's certificate and operations specifications (not required for cabin crew);

(*d*) AOC holder policies and procedures;

(*e*) crew member and flight operations officer duties and responsibilities;

(*f*) AOC holder testing programme for alcohol and narcotic psychoactive substances;

(*g*) applicable crew member manuals;

(*h*) appropriate portions of the AOC holder's Operations Manual.

IS 8:215 Initial Dangerous Goods Training

(1) Each AOC holder shall establish, maintain, and have approved by the Authority, staff training programmes, as required by the Technical Instructions.

(2) Each AOC holder not holding a permanent approval to carry dangerous goods shall ensure that—

(*a*) staff who are engaged in general cargo handling have received training to carry out their duties in respect of dangerous goods which covers as a minimum, the areas identified in Column I of Table I to a depth sufficient to ensure that an awareness is gained of the hazards associated with dangerous goods and how to identify such goods;

(*b*) crew members, passenger handling staff, and security staff employed by the AOC holder who deal with the screening of a passengers and their baggage, have received training which covers as a minimum, the areas identified in Column 2 of Table I to a depth sufficient to ensure that an awareness is gained of the hazards associated with dangerous goods, how to identify them and what requirements apply to the carriage of such goods by passengers.

TABLE 1

Areas of dangerous goods training	1	2
General Philosophy	X	X
Limitations on dangerous goods in air transport	X	X
Package marking and labelling	X	X
Dangerous goods in passengers baggage		X
Emergency Procedures		X

NOTE: x indicates an area to be covered.

(3) Each AOC holder holding a permanent approval to carry dangerous goods shall ensure that—

(*a*) staff who are engaged in the acceptance of dangerous goods have received training and are qualified to carry out their duties which covers as a minimum, the areas identified in Column I of Table 2 to a depth sufficient to ensure the staff can take decisions on the acceptance or refusal of dangerous goods offered for carriage by air;

(*b*) staff who are engaged in ground handling, storage and loading of dangerous goods have received training to enable them to carry out their duties in respect of dangerous goods which covers as a minimum, the areas identified in Column 2 of Table 2 to a depth sufficient to ensure that an awareness is gained of the hazards associated with dangerous goods, how to identify such goods and how to handle and load them;

(*c*) staff who are engaged in general cargo handling have received training to enable them to carry out their duties in respect of dangerous goods which covers as a minimum, the areas identified in Column 3 of Table 2 to a depth sufficient to ensure that an awareness is gained of the hazards associated with dangerous goods, how to identify such goods and how to handle and load them;

(*d*) flight crew members have received training which covers as a minimum, the areas identified in Column 4 of Table 2 to a depth sufficient to ensure that an awareness is gained of the hazards associated with dangerous goods and how they should be carried on an aircraft; and

(*e*) passenger handling staff; security staff employed by the operator who deal with the screening of passengers and their baggage; and crew members other than flight crew members, have received training which covers as a minimum, the areas identified in Column 5 of Table 2 to a depth sufficient to ensure that an awareness is gained of the hazards associated

with dangerous goods and what requirements apply to the carriage of such goods by passengers or, more generally, their carriage on an aircraft.

(4) Each AOC holder shall ensure that all staff who requires dangerous goods training receives recurrent training at intervals of not longer than 2 years.

(5) Each AOC holder shall ensure that records of dangerous goods training are maintained for all staff trained in accordance with paragraph (*d*).

(6) Each AOC holder shall ensure that its handling agent's staff are trained in accordance with the applicable column of Table I or Table 2.

TABLE 1

Areas of Training	1	2	3	4	5
General Philosophy	X	X	X	X	X
Limitations on dangerous goods in the air transport	X	X	X	X	X
Classification and list of dangerous goods	X	X		X	
General packing requirements and packing Instructions	X				
Packaging specifications marking	X				
Package marking and labelling	X	X	X	X	X
Documentation from the Shipper	X				
Acceptance of dangerous good, including the use of a checklist	X				
Loading, restrictions on loading and segregation	X	X	X	X	
Inspections for damage or leakage and decontamination procedures	X	X			
Provision of information to commander	X	X		X	
Dangerous goods in passengers' baggage	X			X	X
Emergency procedures	X	X		X	X

Note: x indicates an area to be covered.

(7) An AOC holder shall provide dangerous goods training manuals which contain adequate procedures and information to assist personnel in identifying packages marked or labelled as containing hazardous materials including—

(8) Instructions on the acceptance, handling, and carriage of hazardous materials.

(9) Instructions governing the determination of proper shipping names and hazard classes.

(10) Packaging, labelling, and marking requirements.

(11) Requirements for shipping papers, compatibility requirements, loading, storage, and handling requirements.

(12) Restrictions.

IS 8:217 Initial Crew Resource Management Training

(1) Each AOC holder shall ensure that the flight operations officers and all aircraft crew members have CRM training as part of their initial and recurrent training requirements.

(2) A CRM training programme shall include—

(*a*) an initial indoctrination/awareness segment;

(*b*) a method to provide recurrent practice and feedback; and

(*c*) a method of providing continuing reinforcement.

(3) Curriculum topics to be contained in an initial CRM training course include—

(*a*) communications processes and decision behaviour;

(*b*) internal and external influences on interpersonal communications;

(*c*) barriers to communication;

(*d*) listening skills;

(*e*) decision-making skills;

(*f*) effective briefings;

(*g*) developing open communications;

(*h*) inquiry, advocacy, and assertion training;

(i) crew self-critique;

(*j*) conflict resolution;

(*k*) team building and maintenance;

(*l*) leadership and followship training;

(*m*) interpersonal relationships;

(*n*) workload management;

(*o*) situational awareness;

(*p*) how to prepare, plan and monitor task completions;

(*q*) workload distribution;

(*r*) distraction avoidance;

(*s*) individual factor; and

(*t*) stress reduction.

IS 8:217 Initial Emergency Equipment Drills

(1) Each aircraft crew member shall accomplish emergency training during the specified training periods, using those items of installed emergency equipment for each type of aircraft in which he or she is to serve.

(2) During initial training, each aircraft crew member shall perform the following onetime emergency drills—

(*a*) protective Breathing Equipment (PBE)/Firefighting Drill—

(i) locate source of fire or smoke (actual or simulated fire);

(ii) implement procedures for effective crew coordination and communication, including notification of flight crew members about fire situation;

(iii) done and activate installed PBE or approved PBE simulation device;

(iv) manoeuvre in limited space with reduced visibility;

(v) effectively use the aircraft's communication system;

(vi) identify class of fire;

(vii) select the appropriate extinguisher;

(viii) properly remove extinguisher from securing device;

(ix) prepare, operate and discharge extinguisher properly;

(x) utilize correct firefighting techniques for type of fire.

(*b*) Emergency Evacuation Drill—

(i) recognize and evaluate an emergency;

(ii) assume appropriate protective position;

(iii) command passengers to assume protective position;

(iv) implement crew coordination procedures;

(v) ensure activation of emergency lights;

(vi) assess aircraft conditions;

(vii) initiate evacuation (dependent on signal or decision);

(viii) command passengers to release seatbelts and evacuate;

(ix) assess exit and redirect, if necessary; to open exit, including deploying slides and commanding helpers to assist;

(x) command passengers to evacuate at exit and run away from aircraft;

(xi) assist special need passengers, such as handicapped, elderly, and persons in a state of panic; and

(xii) actually exit aircraft or training device using at least one of the installed emergency evacuation slides.

NOTE: The crew member may either observe the aeroplane exits being opened in the emergency mode and the associated exit slide/raft pack being deployed and inflated, or perform the tasks resulting in the accomplishment of these actions.

(3) Each aircraft crew member shall accomplish additional emergency drills during initial and recurrent training, including actual performance of the following emergency drills—

(*a*) Emergency Exit Drill—

(i) correctly preflight each type of emergency exit and evacuation slide or slide raft (if part of cabin crew member's assigned duties);

(ii) disarm and open each type of door exit in normal mode;

(iii) close each type of door exit in normal mode;

(iv) arm each type of door exit in emergency mode;

(v) open each type of door exit in emergency mode;

(vi) use manual slide inflation system to accomplish or ensure slide or slideraft inflation;

(vii) open each type of window exit;

(viii) remove escape rope and position for use.

(*b*) Hand Fire Extinguisher Drill—

(i) preflight each type of hand fire extinguisher;

(ii) locate source of fire or smoke and identify class of fire;

(iii) select appropriate extinguisher and remove from securing device;

(iv) prepare extinguisher for use;

(v) actually operate and discharge each type of installed hand fire extinguisher;

NOTE 1: Fighting an actual or a simulated fire is not necessary during this drill.

NOTE 2: The discharge of Halon extinguishing agents during firefighting drills in not appropriate, unless a training facility is used that is specifically designed to prevent harm to the environment from the discharged Halon. When such facilities are not used, other fire extinguishing agents that are not damaging to the environment should be used during the drills.

(vi) utilize correct firefighting techniques for type of fire;

(vii) implement procedures for effective crew coordination and communication, including notification of flight crew members about the type of fire situation.

(*c*) Emergency Oxygen System Drill—

(i) preflight and operation of portable oxygen devices;

(ii) actually operate portable oxygen bottles, including masks and tubing;

(iii) verbally demonstrate operation of chemical oxygen generators or installed oxygen supply system;

(iv) prepare for use and operate oxygen device properly, including donning and activation;

(v) administer oxygen to self, passengers, and to those persons with special oxygen needs;

(vi) utilize proper procedures for effective crew coordination and communication;

(vii) manually open each type of oxygen mask compartment and deploy oxygen masks;

(viii) identify compartments with extra oxygen masks;

(ix) implement immediate action decompression procedures;

(x) reset oxygen system, if applicable;

(xi) preflight and operation of PBE;

(xii) activate PBE.

NOTE: Several operators equip their aircraft with approved PBE units that have approved storage pouches fastened with two metal staples at one end. However, considerations of practicality and cost compel operators to use a less durable storage pouch that lacks the staple fasteners for training purposes. As a result, pilots and cabin crew members have been surprised that opening the pouch furnished on board requires more force than opening the training pouch. The Authority should require crew member training that includes the appropriate procedures for operating PBE. In those cases where pouches with staples are used for storage of the PBE unit, special emphasis in training should highlight the difference between the training pouch and the onboard pouch. The training pouch may be easy to open, but the approved, onboard pouch may require as much as 28 pounds of force to overcome the 2 staple fasteners.

(*d*) Flotation Device Drill—

(i) preflight flotation device, if appropriate;

(ii) don and inflate life vests;

(iii) remove and use flotation seat cushions, as installed;

(iv) demonstrate swimming techniques using a seat cushion, as installed.

(*e*) Ditching Drill, if applicable—

NOTE: During a ditching drill students shall perform the "prior to impact" and "after impact" procedures for a ditching, as appropriate to the specific operator's type of operation—

(i) implement crew coordination procedures, including briefing with captain to obtain pertinent ditching information and briefing cabin crew members;

(ii) co-ordinate time frame for cabin and passenger preparation;

(iii) adequately brief passengers on ditching procedures;

(iv) ensure cabin is prepared, including the securing of carry-on baggage, lavatories, and galleys;

(v) demonstrate how to properly deploy and inflate slideraft;

(vi) demonstrate how to properly deploy and inflate liferafts, if applicable;

(vii) remove, position, attach slide rafts to aircraft;

(viii) inflate rafts;

(ix) use escape ropes at overwing exits;

(x) command helpers to assist;

(xi) use slides and life vests or seat cushions as flotation devices;

(xii) remove appropriate emergency equipment from aircraft;

(xiii) board rafts properly;

(xiv) initiate raft management procedures (i.e., disconnecting rafts from aircraft, applying immediate first aid, rescuing persons in water, salvaging floating rations and equipment, deploying sea anchor, tying rafts together, activating or ensuring operation of emergency locator transmitter);

(xv) initiate basic survival procedures (i.e., removing and utilizing survival kit items, repairing and maintaining raft, ensuring protection from exposure, erecting canopy, communicating location, providing continued first aid, providing sustenance);

(xvi) use heaving line to rescue persons in water;

(xvii) tie sliderafts or rafts together;

(xviii) use life line on edge of slideraft or life raft as a handhold;

(xix) secure survival kit items.

(4) Each aircraft crew member shall accomplish additional emergency drill requirements during initial and recurrent training including observing the following emergency drills—

(*a*) liferaft removal and inflation drill, if applicable—

(i) removal of a liferaft from the aircraft or training device;

(ii) inflation of a liferaft.

(*b*) slideraft transfer drill—

(i) transfer of each type of slideraft pack from an unusable door to a usable door;

(ii) disconnect slideraft at unusable door;

(iii) redirect passengers to usable slideraft;

(iv) installation and deployment of slideraft at usable door;

(v) slide and Slideraft Deployment, Inflation, and Detachment Drill;

(vi) engage slide girt bar in floor brackets, if applicable;

(vii) arm slide for automatic inflation;

(viii) inflate slides with and without quick-release handle (manually and automatically);

(ix) disconnecting slide from the aircraft for use as a flotation device;

(x) arm sliderafts for automatic inflation;

(xi) disconnecting slideraft from the aircraft.

(*c*) emergency evacuation slide drill—

(i) open armed exit with slide or slideraft deployment and inflation;

(ii) egress from aircraft via the evacuation slide and run away to a safe distance.

IS 8:219 (2) Initial Aircraft Ground Training—Flight crew

(1) Each AOC holder shall have an initial aircraft ground training curriculum for the flight crew applicable to their duties, the type of operations conducted and aircraft flown. Instructions shall include at least the following general subjects—

(*a*) AOC holder's dispatch, flight release, or flight locating procedures;

(*b*) principles and methods for determining mass and balance, and runway limitations for take-off;

(*c*) AOC holder's operations specifications, authorizations and limitations;

(*d*) adverse weather recognition and avoidance, and flight procedures which shall be followed when operating in the following conditions—

(i) icing;

(ii) fog;

(iii) turbulence;

(iv) heavy precipitation;

(v) thunderstorms;

(vi) low-level windshear and microburst;

(vii) low visibility;

(viii) contaminated runways;

(*e*) normal and emergency communications procedures and navigation, equipment including the AOC holder's communications procedures and ATC clearance requirements;

(*f*) navigation procedures used in area departure, en route, area arrival, approach and landing phases, to include visual cues prior to and during descent below DH or MDA;

(*g*) approved crew resource management training;

(*h*) air traffic control systems, procedures, and phraseology;

(*i*) aircraft performance characteristics during all flight regimes, including—

(i) the use of charts, tables, tabulated data and other related manual information;

(ii) normal, abnormal, and emergency performance problems;

(iii) meteorological and mass limiting performance factors (such as temperature, pressure, contaminated runways, precipitation, climb/runway limits);

(iv) inoperative equipment performance limiting factors (such as MEL/CDL, inoperative antiskid);

(v) special operational conditions (such as unpaved runways, high altitude aerodromes and drift down requirements);

(*j*) normal, abnormal and emergency procedures on the aircraft type to be used.

(2) Each AOC holder shall have an initial aircraft ground training curriculum for the flight crew applicable to their duties, the type of operations conducted and aircraft flown, including at least the following aircraft systems (if applicable)—

(*a*) airframe—

(i) aircraft;

(ii) aircraft dimensions, turning radius, panel layouts, cockpit and cabin configurations;

(iii) other major systems and components or appliances of the aircraft;

(iv) operating limitations;

(v) approved aircraft flight manual;

(*b*) power-plants—

(i) basic engine description;

(ii) engine thrust ratings;

(iii) engine components such as accessory drives, ignition, oil, fuel control, hydraulic, and bleed air features;

(*c*) electrical—

(i) sources of aircraft electrical power (such as engine driven generators, APU generator, external power, etc.);

(ii) electrical buses;

(iii) circuit breakers;

(iv) aircraft battery;

(v) standby power systems;

(*d*) hydraulic—

(i) hydraulic reservoirs, pumps, accumulators; filters, check valves, interconnects and actuators;

(ii) other hydraulically operated components;

(*e*) fuel—

(i) fuel tanks (location and quantities);

(ii) engine driven pumps;

(iii) boost pumps;

(iv) system valves and crossfeeds;

(v) quantity indicators;

(vi) provisions for fuel jettisoning;

(*f*) pneumatic—

(i) bleed air sources (APU, engine or external ground air);

(ii) means of routing, venting and controlling bleed air via valves, ducts, chambers, and temperature and pressure limiting devices;

(*g*) air conditioning and pressurization—

(i) heaters, air conditioning packs, fans, and other environmental control devices;

(ii) pressurization system components such as outflow and negative pressure relief valves;

(iii) automatic, standby, and manual pressurization controls and annunciators;

(*h*) flight controls—

(i) primary controls (yaw, pitch, and roll devices);

(ii) secondary controls (leading/trailing edge devices, flaps, trim, and damping mechanisms);

(iii) means of actuation (direct/indirect or fly by wire);

(iv) redundancy devices;

(*i*) landing gear and brakes—

(i) landing gear extension and retraction mechanism including the operating sequence of struts, doors, and locking devices, and brake and antiskid systems, if applicable;

(ii) steering (nose or body steering gear);

(iii) bogie arrangements;

(iv) air/ground sensor relays;

(v) visual downlock indicators;

(*j*) ice and rain protection—

(i) rain removal systems;

(ii) anti-icing and/or de-icing system(s) affecting flight controls, engines, pilot static and other probes, fluid outlets, cockpit windows, and aircraft structures;

(*k*) equipment and furnishings—

(i) exits;

(ii) galleys;

(iii) water and waste systems;

(iv) lavatories;

(v) cargo areas;

(vi) crew member and passenger seats;

(vii) bulkheads;

(viii) seating and/or cargo configurations;

(ix) non-emergency equipment and furnishings;

(*l*) navigation equipment—

(i) flight directors;

(ii) horizontal situation indicator;

(iii) radio magnetic indicator;

(iv) navigation receivers (GPS, ADF, VOR, LORAN-C, RNAV, Marker Beacon, DME);

(v) inertial systems (INS, IRS);

(vi) functional displays;

(vii) fault indications and comparator systems;

(viii) aircraft transponders;

(ix) radio altimeters;

(x) weather radar;

(xi) cathode ray tube or computer generated displays of aircraft position and navigation information;

(*m*) auto flight system—

(i) autopilot;

(ii) autothrottles;

(iii) flight director and navigation systems;

(iv) automatic approach tracking;

(v) autoland;

(vi) automatic fuel and performance management systems;

(*n*) flight instruments—

(i) Panel arrangement;

(ii) Flight instruments (attitude indicator, directional gyro, magnetic compass, airspeed indicator, vertical speed indicator, altimeters, stand by instruments);

(iii) Instrument power sources, and instrument sensory sources (e.g., Pilot static pressure);

(*o*) display systems—

(i) weather radar;

(ii) other CRT displays (e.g., checklist, vertical navigation or longitudinal navigation displays);

(*p*) communication equipment—

(i) VHF/HF/SAT COM radios;

(ii) audio panels;

(ii) inflight interphone and passenger address systems;

(iv) voice recorder;

(v) air/ground passive communications systems (ACARS);

(*q*) warning systems—

(i) aural, visual, and tactile warning systems (including the character and degree of urgency related to each signal);

(ii) warning and caution annunciator systems (including airborne collision avoidance, ground proximity and take-off configuration warning systems);

(*r*) fire protection—

(i) fire and overheat sensors, loops, modules, or other means of providing visual and/or aural indications of fire or overheat detection;

(ii) procedures for the use of fire handles, automatic extinguishing systems and extinguishing agents;

(iii) power sources necessary to provide protection for fire and overheat conditions in engines, APU, cargo bay/wheel well, cockpit, cabin and lavatories;

(*s*) oxygen—

(i) passenger, crew, and portable oxygen supply systems;

(ii) sources of oxygen (gaseous or solid);

(iii) flow and distribution networks;

(iv) automatic deployment systems;

(v) regulators, pressure levels and gauges;

(vi) servicing requirements;

(*t*) lighting—

(i) cockpit, cabin, and external lighting systems;

(ii) power sources;

(iii) switch positions;

(iv) spare light bulb locations;

(*u*) emergency equipment—

(i) fire and oxygen bottles;

(ii) first aid and medical kits;

(iii) liferafts and life preservers;

(iv) crash axes;

(v) emergency exits and lights;

(vi) slides and sliderafts;

(vii) escape straps or handles;

(viii) hatches, ladders and movable stairs;

(*v*) Auxiliary Power Unit (APU)—

(i) electric and bleed air capabilities;

(ii) interfaces with electrical and pneumatic systems;

(iii) inlet doors and exhaust ducts;

(iv) fuel supply;

(*w*) performance.

(3) Each AOC holder shall have an initial aircraft ground training curriculum for the flight crew applicable to their duties, the type of operations conducted and aircraft flown, including at least the following aircraft systems integration items—

(*a*) use of checklist—

(i) safety checks;

(ii) cockpit preparation (switch position and checklist flows);

(iii) checklist callouts and responses;

(iv) checklist sequence;

(*b*) flight planning—

(i) preflight and in-flight planning;

(ii) performance limitations (meteorological, mass, and MEL/CDL items);

(iii) required fuel loads;

(iv) weather planning (lower than standard take-off minima, or alternate requirements);

(*c*) display systems—

(i) weather radar;

(ii) CRT displays (checklists, vertical navigation or longitudinal navigation displays);

(*d*) navigation and communications systems—

(i) preflight and operation of applicable receivers;

(ii) onboard navigation systems;

(iii) flight plan information input and retrieval;

(*e*) autoflight/flight directors—

(i) autopilot;

(ii) autothrust;

(iii) flight director systems, including the appropriate procedures, normal and abnormal indications, and annunciators;

(*f*) cockpit familiarization—

(i) activation of aircraft system controls and switches to include normal, abnormal and emergency switches;

(ii) control positions and relevant annunciators, lights, or other caution and warning systems.

(4) Each AOC holder shall ensure that initial ground training for flight crew consists of at least the following programmed hours of instruction based on the aircraft to be used, unless a reduction is determined appropriate by the Authority—

(*a*) for pilots and flight engineers—

(i) piston-engined aeroplane—64 hours;

(ii) turbropropeller-powered aeroplane—80 hours;

(iii) turbo-jet aeroplane—120 hours;

(iv) helicopter—64 hours;

(v) powered-lift—80 hours;

(vi) other aircraft—64 hours;

(*b*) for flight navigators—

(i) piston-engined aircraft—16 hours;

(ii) turbropropeller-powered aircraft—32 hours;

(iii) turbojet-aircraft—32 hours.

IS 8:219 (6) Initial Aircraft Ground Training—Cabin Crew Members

(1) Each AOC holder shall have an initial ground training curriculum for cabin crew members applicable to the type of operations conducted, and aircraft flown, including at least the following general subjects, if applicable—

(*a*) aircraft familiarization—

(i) aircraft characteristics and description;

(ii) flight deck configuration;

(iii) cabin configuration;

(iv) galleys;

(v) lavatories;

(vi) stowage areas;

(*b*) aircraft equipment and furnishings—

(i) cabin crew member stations;

(ii) cabin crew member panels;

(iii) passenger seats;

(iv) passenger service units and convenience panels;

(v) passenger information signs;

(vi) aircraft markings;

(vii) aircraft placards;

(viii) bassinets and bayonet tables;

(*c*) aircraft systems—

(i) air conditioning and pressurization system;

(ii) aircraft communication systems (call, interphone and passenger address);

(iii) lighting and electrical systems;

(iv) oxygen systems (flight crew, observer and passenger);

(v) water system;

(vi) entertainment and convenience systems.

(*d*) aircraft exits—

(i) general information;

(ii) exits with slides or slide rafts (preflight and normal operation);

(iii) exits without slides (preflight and normal operations);

(iv) window exits (preflight);

(*e*) crew member communication and coordination—

(i) authority of PIC;

(ii) routine communication signals and procedures;

(iii) crew member briefing;

(*f*) routine crew member duties and procedures—

(i) crew member general responsibilities;

(ii) reporting duties and procedures for specific aircraft;

(iii) pre-departure duties and procedures prior to passenger boarding;

(iv) passenger boarding duties and procedures;

(v) prior to movement on the surface duties and procedures;

(vi) prior to take-off duties and procedures applicable to specific aircraft;

(vii) inflight duties and procedures;

(viii) prior to landing duties and procedures;

(ix) movement on the surface and arrival duties and procedures;

(x) after arrival duties and procedures;

(xi) intermediate stops;

(*g*) passenger handling responsibilities—

(i) crew member general responsibilities;

(ii) infants, children, and unaccompanied minors;

(iii) passengers needing special assistance;

(iv) passengers needing special accommodation;

(v) carry-on stowage requirements;

(vi) passenger seating requirements;

(vii) smoking and no smoking requirements;

(*h*) approved Crew Resource Management (CRM) training for cabin crew members.

(2) Each AOC holder shall have an initial ground training curriculum for cabin crew members applicable to the type of operations conducted and aircraft flown, including at least the following aircraft specific emergency subjects, if applicable—

(*a*) emergency equipment—

(i) emergency communication and notification systems;

(ii) aircraft exits;

(iii) exits with slides or sliderafts (emergency operation);

(iv) slides and sliderafts in a ditching;

(v) exits without slides (emergency operation);

(vi) window exits (emergency operation);

(vii) exits with tailcones (emergency operation);

(viii) cockpit exits (emergency operation);

(ix) ground evacuation and ditching equipment;

(x) first aid equipment;

(xi) portable oxygen systems (oxygen bottles, chemical oxygen generators, protective breathing equipment (PBE));

(xii) firefighting equipment;

(xiii) emergency lighting systems;

(xiv) universal precaution kits;

(xv) automated external defibrillators;

(xvi) additional emergency equipment;

(*b*) emergency assignments and procedures—

(i) general types of emergencies specific to aircraft, including crew coordination and communication;

(ii) emergency communication signals and procedures;

(iii) rapid decompression;

(iv) insidious decompression and cracked window and pressure seal leaks;

(v) fires;

(vi) ditching;

(vii) ground evacuation;

(viii) unwarranted evacuation (i.e., passenger initiated);

(ix) illness or injury;

(x) abnormal situations involving passengers or crew members;

(xi) hijacking and acts of unlawful interference;

(xii) bomb threat;

(xiii) turbulence;

(xiv) other unusual situations including an awareness of other crew members' assignments and functions as they pertain to the cabin crew member's own duties;

(xv) previous aircraft accidents and incidents;

(*c*) aircraft specific emergency drills—

(i) emergency exit drill;

(ii) hand fire extinguisher drill;

(iii) emergency oxygen system drill;

(iv) flotation device drill;

(v) ditching drill, if applicable;

(vi) liferaft removal and inflation drill, if applicable;

(vii) slide raft pack transfer drill, if applicable;

(viii) slide or slide raft deployment, inflation, and detachment drill, if applicable;

(ix) emergency evacuation slide drill, if applicable.

(3) Each AOC holder shall ensure that initial ground training for a cabin crew member includes a competency check given by the appropriate supervisor or ground instructor to determine his or her ability to perform assigned duties and responsibilities.

(4) Each AOC holder shall ensure that initial ground training for cabin crew members consists of at least the following programmed hours of instruction based on the aircraft to be used, unless a reduction is determined appropriate by the Authority—

(*a*) piston-engined — 8 hours;

(*b*) turbo propeller-powered — 8 hours;

(*c*) turbo-jet — 16 hours;

(*d*) other aircraft — 8 hours.

IS 8:219 (7) INITIAL AIRCRAFT GROUND TRAINING—FLIGHT OPERATIONS OFFICER

(1) Each AOC holder shall provide initial aircraft ground training for flight operations officers that include instruction in at least the following subjects—

(*a*) general dispatch subjects—

(i) appropriate regulations;

(ii) operations manual of the AOC holder;

(iii) operations specifications of the AOC holder;

(iv) weather reports: interpretation, available sources, actual and prognostic, seasonal variations;

(v) communications, to include normal and emergency;

(vi) meteorology, to include effects on radio reception;

(vii) adverse weather;

(viii) notices to airmen;

(ix) navigational charts and publications;

(x) joint dispatcher/pilot responsibilities;

(xi) ATC coordination procedures;

(xii) familiarization with operations area, including classes of airspace and special areas of navigation;

(xiii) characteristics of special aerodromes;

(*b*) aircraft characteristics—

(i) aircraft specific flight preparation;

(ii) aircraft operating and performance characteristics;

(iii) navigation equipment, including peculiarities and limitations;

(iv) instrument approach and communication equipment;

(v) emergency equipment;

(vi) AFM or RFM provisions applicable to the aircraft duties;

(vii) MEL/CDL;

(viii) applicable equipment training;

(*c*) operations procedures—

(i) adverse weather phenomena (wind-shear, clear air turbulence and thunderstorms);

(ii) mass and balance computations and load control procedures;

(iii) aircraft performance computations, to include take-off weight limitations based on departure runway, arrival runway, and en route limitations, and also engine-out limitations;

(iv) flight planning procedures, to include route selection, flight time, and fuel requirements analysis;

(v) dispatch release preparation;

(vi) crew briefings;

(vi) flight monitoring procedures;

(viii) MEL and CDL procedures;

(ix) manual performance of all required procedures in case of the loss of automated capabilities;

(x) training in appropriate geographic areas;

(xi) ATC and instrument procedures, ground hold and central flow control procedures;

(xii) radio/telephone procedures;

(*d*) abnormal and emergency procedures—

(i) assisting flight crew in an emergency;

(ii) alerting of appropriate governmental, company and private agencies—

(*e*) crew resource management—

NOTE: IS 8.217 contains CRM training items.

(*f*) dangerous goods:

NOTE: IS 8.215 contains dangerous goods training items.

(*g*) security:

NOTE: See regulation 216 under chapter 8.

(*h*) differences training.

NOTE: IS 8.222 contains items on differences training.

(2) Each AOC holder shall ensure that initial ground training for flight operations officers includes a competency check given by

an appropriately qualified dispatch supervisor or ground instructor that demonstrates the required knowledge and abilities.

(3) Each AOC holder shall ensure that initial ground training for flight operations officers consists of at least the following programmed hours of instruction based on the aircraft to be used, unless a reduction is determined appropriate by the Authority—

(*a*) piston-engined aircraft — 30 hours;

(*b*) turbropropeller-powered aircraft — 40 hours;

(*c*) turbo-jet aircraft — 40 hours;

(d) other aircraft — 30 hours.

IS 8:220 INITIAL AIRCRAFT FLIGHT TRAINING

(1) Each AOC holder shall ensure that pilot initial flight training includes at least the following—

NOTE: Flight training may be conducted in an appropriate aircraft or adequate Flight Simulation Training.

Device. A = Aeroplane, H = Helicopter.

(*a*) preparation—

(i) visual inspection (for aircraft with a flight engineer, use of pictorial display authorized) A and H;

(ii) pre-taxi procedures, A and H;

(iii) performance limitations;

(iv) surface operation;

(v) pushback;

(vi) powerback taxi, if applicable to the type of operation to be conducted;

(vii) starting;

(viii) taxi;

(ix) pre-take-off checks.

(*b*) take-off—

(i) normal;

(ii) crosswind;

(iii) rejected;

(iv) power failure after V1;

(v) lower than standard minimum, if applicable to the type of operation to be conducted;

(*c*) climb—

(i) normal;

(ii) one-engine inoperative during climb to en route altitude;

(*d*) en route—

(i) steep turns;

(ii) approaches to stalls (take-off, en route, and landing configurations);

(iii) inflight power-plant shutdown;

(iv) inflight power-plant restart;

(v) high speed handling characteristics;

(*e*) descent—

(i) normal;

(ii) maximum rate;

(*f*) approaches—

(i) VFR procedures;

(ii) visual approach with 50% loss of power of available power-plants;

(iii) visual approach with slat/flap malfunction;

(iv) IFR precision approaches (ILS normal and ILS with one-engine inoperative);

(v) IFR non-precision approaches (NDB normal and VOR normal);

Non-precision approach with one engine inoperative (LOC backcourse procedures, SDF/LDA, GPS, TACAN and circling approach procedures);

(vi) Note: Simulator shall be qualified for training/checking on the circling manoeuvre;

(vii) missed approach from precision approach;

(viii) missed approach from non-precision approach;

(ix) missed approach with power-plant failure.

(*g*) landings—

(i) normal with a pitch mistrim (small aircraft only);

(ii) normal from precision instrument approach;

(iii) normal from precision instrument approach with most critical engine inoperative;

(iv) normal with 50% loss of power of available power-plants;

(v) normal with flap/slat malfunction;

(vi) rejected landings;

(vii) crosswind;

(viii) manual reversion/degraded control augmentation;

(ix) short/soft field (small aircraft only);

(x) glassy/rough water (seaplanes only);

(*h*) after landing—

(i) parking;

(ii) emergency evacuation;

(iii) docking, mooring, and ramping (seaplanes only);

(*i*) Other flight procedures during any airborne phase—

(i) airborne collision avoidance system; use and avoidance maneuvers;

(ii) holding;

(iii) ice accumulation on airframe;

(iv) air hazard avoidance;

(v) windshear/microburst;

(*j*) Normal, abnormal and alternate systems procedures during any phase—

(i) pneumatic/pressurization;

(ii) air conditioning;

(iii) fuel and oil;

(iv) electrical;

(v) hydraulic;

(vi) flight controls;

(vii) anti-icing and de-icing systems;

(viii) autopilot;

(ix) flight management guidance systems and/or automatic or other approach and landing aids;

(x) stall warning devices, stall avoidance devices, and stability augmentation systems;

(xi) airborne weather radar;

(xii) flight instrument system malfunction;

(xiii) communications equipment;

(xiv) navigation systems;

(*k*) emergency systems procedures during any phase—

(i) aircraft fires;

(ii) smoke control;

(v) power-plant malfunctions;

(iv) fuel jettison;

(vi) electrical, hydraulic, pneumatic systems;

(vi) flight control system malfunction;

(vii) landing gear and flap system malfunction.

(2) Each AOC holder shall ensure that flight engineer flight training includes at least the following training and practice in procedures related to the carrying out of flight engineer duties and functions. This training and practice may be accomplished either in flight or in a flight simulation training device—

(*a*) preparation—

Airplane preflight—

(i) logbook procedures.

(ii) safety checks.

(iii) cabin/interiors.

(iv) exterior walkaround.

(v) servicing/de-icing.

(vi) use of oxygen.

(*b*) ground operations—

(i) performance data—

(A) to/LND data;

(B) airport analysis;

(C) mass and balance;

(ii) use of checklist—

(A) panel setup.

(iii) starting—

(A) external power;

(B) external air;

(C) APU.

(iv) communications—

(A) station procedures;

(B) ACARS;

(v) taxi.

(*c*) take-off—

(i) power plant control;

(ii) flaps/landing gear;

(iii) fuel management;

(iv) other systems operation;

(v) aircraft performance;

(vi) checklist completion;

(*d*) climb—

(i) power-plant control;

(ii) fuel management;

(iii) pressurization;

(iv) electrical system;

(v) air conditioning;

(vi) flight controls;

(vii) other systems;

(*e*) en route—

(i) power-plant operation;

(ii) fuel management;

(iii) performance management;

(iv) high altitude performance;

(v) other systems operation.

(*f*) descent—

(i) power-plant operation;

(ii) other systems operation;

(iii) performance management.

(*g*) approach—

(i) landing data;

(ii) landing gear operation;

(iii) flat/slat/spoiler operation;

(iv) approach monitoring.

(*h*) landings—

(i) power plant operation;

(ii) aircraft configuration;

(iii) system operation;

(iv) emergency evacuation.

(*i*) procedures during any ground or airborne phase—

(i) cockpit equipment;

(ii) flap slats/gear;

(iii) power-plant;

(iv) pressurization;

(v) pneumatic;

(vi) air conditioning;

(vii) fuel and oil;

(viii) electrical;

(ix) hydraulic;

(x) flight controls;

(xi) anti-icing and de-icing;

(xii) other checklist procedures.

(3) Each AOC holder shall ensure that flight navigator training includes at least the following—

(*a*) initial flight training for flight navigators must include flight training and a flight check that is adequate to ensure the crew member's proficiency in the performance of his or her assigned duties;

(*b*) the flight training and check specified in paragraph (1) must be performed—

(i) in-flight or in an appropriate flight simulation training device; or

(ii) in commercial air transport operations, if performed under the supervision of a qualified flight navigator.

(4) Each AOC holder shall ensure that initial flight training for pilots and flight engineers consists of at least the following programmed hours of instruction based on the aircraft to be used, unless a reduction is determined appropriate by the Authority—

(*a*) for one trainee in either an aircraft or flight simulation training devices—

(i) piston-engined aircraft—PIC: 14 hours; CP: 14 hours; and FE: 12 hours;

(ii) turbropropeller-powered aircraft—PIC: 15 hours; CP: 15 hours and FE: 12 hours;

(iii) turbo-jet aircraft— PIC: 20 hours; CP: 16 hours; and FE: 12 hours;

(iv) other aircraft—PIC and CP: 14 hours.

(*b*) for two pilots in a flight simulation training device—

(i) piston-engined aircraft—PIC: 24 hours; CP: 24 hours; and FE: 20 hours;

(ii) turbropropeller-powered aircraft—PIC: 24 hours; CP: 24 hours; and FE: 20 hours;

(iii) turbo-jet aircraft—PIC: 28 hours; CP: 28 hours; and FE: 20 hours;

(iv) other aircraft—PIC and CP: 24 hours;

NOTE: Training times in item (*d*) are higher than in 14 CFR and are taken from the FAA national norms in FAA Order 8400.10.

IS 8:221 INITIAL SPECIALIZED OPERATIONS TRAINING

Each AOC holder shall provide initial specialized operations training to ensure that each pilot and flight operations officer is qualified in the type of operation in which he or she serves and in any specialized or new equipment, procedures, and techniques, such as—

(*a*) long-range navigation—

(i) knowledge of specialized navigation procedures, such as MNPS, NPAC;

(ii) knowledge of specialized equipment, such as INS, LORAN, GPS.

(*b*) CAT II and CAT III approaches;

(*c*) special equipment, procedures and practice;

(*d*) a demonstration of competency;

(*e*) low visibility take-off operations—

(i) runway and lighting requirements;

(ii) rejected take-offs at, or near, VI with a failure of the most critical engine;

(iii) taxi operations;

(iv) procedures to prevent runway incursions under low visibility conditions;

(*f*) extended range operations with two engine aeroplanes;

(*g*) approaches using an on-board radar;

(*h*) autopilot instead of co-pilot.

IS 8:222 AIRCRAFT DIFFERENCES

Each AOC holder shall provide aircraft differences training for flight operations officers when the operator has aircraft variances within the same type of aircraft, which includes at least the following—

(*a*) operations procedures—

(i) operations under adverse weather phenomena conditions, including clear air turbulence, windshear, and thunderstorms;

(ii) mass and balance computations and load control procedures;

(iii) aircraft performance computations, to include take-off mass limitations based on departure runway, arrival runway, and en route limitations, and also engine-out limitations;

(iv) flight planning procedures, to include route selection, flight time, and fuel requirements analysis;

(v) dispatch release preparation;

(vi) crew briefings;

(vii) flight monitoring procedures;

(viii) flight crew response to various emergency situations, including the assistance the aircraft flight operations officer can provide in each situation;

(ix) MEL and CDL procedures;

(x) manual performance of required procedures in case of the loss of automate capabilities;

(xi) training in appropriate geographic areas;

(xii) ATC and instrument procedures, to include ground hold and central flow control procedures;

(xiii) radio/telephone procedures;

(*b*) emergency procedures—

(i) actions taken to aid the flight crew;

(ii) AOC holder and Authority notification.

NOTE: The FAA Flight Standardization Board, the Transport Canada and JAA Joint Operations Evaluation Board have a harmonized process and their reports are a source for differences training.

IS 8:224 AIRCRAFT AND INSTRUMENT PROFICIENCY CHECK—PILOT

(1) Aircraft and instrument proficiency checks for PIC and CP must include the following operations and procedures listed in the appropriate skill test in Personnel Licensing Regulations, on each type or variant of type of aircraft.

(2) The oral and flight test phases of a proficiency check should not be conducted simultaneously.

(3) When the examiner determines that an applicant's performance is unsatisfactory, the examiner may terminate the flight test immediately or, with the consent of the applicant, continue with the flight test until the remaining events are completed.

(4) If the check must be terminated (for mechanical or other reasons) and there are events which still need to be repeated, the examiner shall issue a letter of discontinuance, valid for 60 days, listing the specific areas of operation that have been successfully completed.

(5) Satisfactory completion of a proficiency check following completion of an approved air carrier training programme for the particular type aircraft, satisfies the requirement for an aircraft type rating skill test if—

(*a*) that proficiency check includes all manoeuvres and procedures required for a type rating skill test;

(*b*) proficiency checks are to be conducted by an examiner approved by the Authority.

IS 8:226 Pairing of Low Experience Crew Members

(1) Situations designated as critical by the Authority at special aerodromes designated by the Authority or at special aerodromes designated by the AOC holder include—

(*a*) the prevailing visibility value in the latest weather report for the aerodrome is at or below 1200 m (3/4 statute mile);

(*b*) the runway visual range for the runway to be used is at or below 1200m (4,000 ft);

(*c*) the runway to be used has water, snow, slush or similar conditions that may adversely affect aeroplane performance;

(*d*) the braking action on the runway to be used is reported to be less than "good";

(*e*) the crosswind component for the runway to be used is in excess of 15 knots;

(*f*) windshear is reported in the vicinity of the aerodrome;

(*g*) any other condition in which the PIC determines it to be prudent to exercise the PIC's prerogative.

(2) Circumstances which would be routinely be considered for deviation from the required minimum line operating flight time include—

(*a*) a newly certified AOC holder does not employ any pilots who meet the minimum flight time requirements;

(*b*) an existing AOC holder adds to its fleet a type aeroplane not before proven for use in its operations; or

(*c*) an existing AOC holder establishes a new domicile to which it assigns pilots who will be required to become qualified on the aeroplanes operated from that domicile.

IS 8:228 Competence Checks Cabin Crew Members

Evaluators shall conduct competency checks for cabin crew members to demonstrate that each candidate's proficiency level is sufficient to successfully perform assigned duties and responsibilities—

(*a*) a qualified supervisor or inspector, approved by the Authority, shall observe and evaluate competency checks for cabin crew members;

(*b*) evaluators shall include during each cabin crew member competency check a demonstrated knowledge of;

(*c*) emergency equipment, if applicable—

(i) emergency communication and notification systems;

(ii) aircraft exits;

(iii) exits with slides or sliderafts (emergency operation);

(iv) slides and sliderafts in a ditching;

(v) exits without slides (emergency operation);

(vi) window exits (emergency operation);

(vi) exits with tailcones (emergency operation);

(viii) cockpit exits (emergency operation);

(ix) ground evacuation and ditching equipment;

(x) first aid equipment;

(xi) portable oxygen systems (oxygen bottles, chemical oxygen generators, protective breathing equipment (PBE));

(xii) firefighting equipment;

(xiii) emergency lighting systems;

(xiv) additional emergency equipment;

(*d*) emergency procedures—

(i) general types of emergencies specific to aircraft;

(ii) emergency communication signals and procedures;

(iii) rapid decompression;

(iv) insidious decompression and cracked window and pressure seal leaks;

(v) fires;

(vi) ditching;

(vii) ground evacuation;

(viii) unwarranted evacuation (i.e., passenger initiated);

(ix) illness or injury;

(x) abnormal situations involving passengers or crew members;

(xi) turbulence;

(xii) other unusual situations;

(*e*) emergency drills—

(i) location and use of all emergency and safety equipment carried on the aeroplane;

(ii) the location and use of all types of exits;

(iii) actual donning of a lifejacket where fitted;

(iv) actual donning of protective breathing equipment;

(v) actual handling of fire extinguishers.

(*f*) crew resource management—

(i) decision-making skills;

(ii) briefings and developing open communication;

(iii) inquiry, advocacy, and assertion training;

(iv) workload management;

(*g*) dangerous goods—

(i) recognition of and transportation of dangerous goods;

(ii) proper packaging, marking, and documentation;

(iii) instructions regarding compatibility, loading, storage and handling characteristics;

(*h*) security—

(i) hijacking;

(ii) disruptive passengers.

IS 8:237 Recurrent Training—Flight Crew

(1) Each AOC holder shall establish a recurrent training programme for all flight crew members in the AOC holder's Operations Manual and shall have it approved by the Authority.

(2) Each flight crew member shall undergo recurrent training relevant to the type or variant of aircraft on which he or she is certified to operate and for the crew member position involved.

(3) Each AOC holder shall have all recurrent training conducted by suitably qualified personnel.

(4) Each AOC holder shall ensure that flight crew member recurrent ground training includes at least the following—

(*a*) general subjects—

(i) flight locating procedures;

(ii) principles and method for determining mass/balance and runway limitations;

(iii) meteorology to ensure practical knowledge of weather phenomena including the principles of frontal system, icing, fog, thunderstorms, windshear, and high altitude weather situations;

(iv) ATC systems and phraseology;

(v) navigation and use of navigational aids;

(vi) normal and emergency communication procedures;

(vii) visual cues before descent to MDA;

(viii) accident/incident and occurrence review;

(ix) other instructions necessary to ensure the pilot's competence;

(*b*) aircraft systems and limitations—

(i) normal, abnormal, and emergency procedures;

(ii) aircraft performance characteristics;

(iii) engines and if applicable, propellers;

(iv) major aircraft components;

(v) major aircraft systems (i.e., flight controls, electric, hydraulic and other systems as appropriate);

(*c*) ground icing and de-icing procedures and requirements;

(*d*) emergency equipment and drills;

(*e*) every 12 months—

(i) location and use of all emergency and safety equipment carried on the aeroplane;

(ii) the location and use of all types of exits;

(iii) actual donning of a lifejacket where fitted;

(iv) actual donning of protective breathing equipment;

(v) actual handling of fire extinguishers;

(*f*) every 3 years—

(i) operation of all types of exits;

(ii) demonstration of the method used to operate a slide, where fitted;

(iii) fire-fighting using equipment representative of that carried in the aeroplane on an actual or simulated fire;

NOTE: With halon extinguishers, an alternative method acceptable to the authority may be used.

(iv) effects of smoke in an enclosed area and actual use of all relevant equipment in a simulated smoke-filled environment;

(iv) actual handling of pyrotechnics, real or simulated, where fitted;

(vi) demonstration in the use of the life-raft(s), where fitted;

(vii) an emergency evacuation drill;

(viii) a ditching drill, if applicable;

(ix) a rapid decompression drill, if applicable;

(*g*) crew resource management—

(i) decision-making skills;

(ii) briefings and developing open communication;

(iii) inquiry, advocacy, and assertion training;

(iv) workload management;

(v) situational awareness;

(*h*) dangerous goods—

(i) recognition of and transportation of dangerous goods;

(ii) proper packaging, marking, and documentation;

(iii) instructions regarding compatibility, loading, storage and handling characteristics;

(*i*) security—

(i) hijacking;

(ii) disruptive passengers.

(5) Each AOC holder shall verify knowledge of the recurrent ground training by an oral or written examination.

(6) Each AOC holder shall ensure that pilot recurrent flight training include at least the following:

NOTE: Flight training may be conducted in an appropriate aircraft or adequate flight simulation training device.

(*a*) preparation—

(i) visual inspection (use of pictorial display authorized);

(ii) pre-taxi procedures;

(*b*) ground operation—

(i) performance limitations;

(ii) cockpit management;

(iii) securing cargo;

(iv) pushback;

(v) powerback taxi, if applicable;

(vi) starting;

(vii) taxi;

(viii) pre-take-off checks;

(*c*) take-off—

(i) normal;

(ii) crosswind;

(iii) rejected;

(iv) power failure after VI;

(v) power plant failure during second segment;

(vi) low visibility take-off operations;

(*d*) climb—

(i) normal;

(ii) one-engine inoperative climb to en route altitude;

(*e*) en route—

(i) steep turns;

(ii) approaches to stalls (take-off, en route, and landing configurations);

(iii) inflight power plant shutdown;

(iv) inflight power plant restart;

(v) high speed handling characteristics;

(*f*) descent—

(i) normal;

(ii) maximum rate;

(*g*) approaches—

(i) VFR procedures;

(ii) visual approach with 50% loss of power of available power-plants;

(iii) visual approach with slat/flap malfunction;

(iv) IFR precision approaches (ILS normal and ILS with one-engine inoperative);

(v) IFR non-precision approaches (NDB normal and VOR normal);

(vi) non-precision approach with one engine inoperative (LOC backcourse, SDF/LDA, GPS, TACAN and circling approach procedures);

NOTE: Simulator shall be qualified for training/checking on the circling manoeuvre.

(vii) missed approach from precision approach;

(viii) missed approach from non-precision approach;

(ix) missed approach with power plant failure;

(*h*) landings—

(i) abnormal with a pitch mistrim (small aircraft only);

(ii) abnormal from precision instrument approach;

(iii) abnormal from precision instrument approach with most critical engine inoperative;

(iv) abnormal with 50% loss of power of available power-plants;

(v) abnormal with flap/slat malfunction;

(vi) rejected landings;

(vii) crosswind;

(viii) short/soft field (small aircraft only);

(ix) glassy/rough water (seaplanes only);

(*i*) after landing—

(i) parking;

(ii) emergency evacuation;

(iii) docking, mooring, and ramping (seaplanes only);

(*j*) other flight procedures during any airborne phase—

(i) Airborne Collision Avoidance System: use and avoidance maneuvers;

(ii) holding;

(iii) ice accumulation on airframe;

(iv) air hazard avoidance;

(v) windshear/microburst;

(*k*) normal, abnormal and alternate systems procedures during any phase—

(i) pneumatic/pressurization;

(ii) air conditioning;

(iii) fuel and oil;

(iv) electrical;

(v) hydraulic;

(vi) flight controls;

(vii) anti-icing and de-icing systems;

(viii) flight management guidance systems and/or automatic or other approach and landing aids;

(ix) stall warning devices, stall avoidance devices, and stability augmentation systems;

(x) airborne weather radar;

(xi) flight instrument system malfunction;

(xii) communications equipment;

(xii) navigation systems;

(xiv) autopilot;

(xv) approach and landing aids;

(xvi) flight instrument system malfunction;

(*l*) emergency systems procedures during any phase—

(i) aircraft fire;

(ii) smoke control;

(iii) power plant malfunctions;

(iv) fuel jettison;

(v) electrical, hydraulic, pneumatic systems;

(vi) flight control system malfunction;

(vii) landing gear and flap system malfunction.

(7) Each AOC holder shall ensure that flight engineer recurrent flight training includes at least the flight training specified in IS: 8.220.

(8) Each AOC holder shall ensure that flight navigator recurrent training includes enough training and an in-flight check to ensure competency with respect to operating procedures and navigation equipment to be used and familiarity with essential navigation information pertaining to the AOC holder's routes that require a flight navigator.

(9) The AOC holder may combine recurrent training with the AOC holder's proficiency check.

(10) Recurrent ground and flight training curricula may be accomplished concurrently or intermixed, but completion of each of these curricula shall be recorded separately.

IS 8:238 Recurrent Normal and Emergency Training—Cabin Crew Members

(1) Each AOC holder shall establish and have approved by the Authority a recurrent training programme for all cabin crew members.

(2) Each cabin crew member shall undergo recurrent training in evacuation and other appropriate normal and emergency procedures and drills relevant to his or her assigned positions and the type(s) and/or variant(s) of aircraft on which he or she operates.

(3) Each AOC holder shall have all recurrent training conducted by suitably qualified personnel.

(4) Each AOC holder shall ensure that, every 12 months, each cabin crew member receive recurrent training in at least, the following—

(*a*) emergency equipment, if applicable—

(i) emergency communication and notification systems;

(ii) aircraft exits;

(iii) exits with slides or sliderafts (emergency operation);

(iv) slides and sliderafts in a ditching;

(v) exits without slides (emergency operation);

(vi) window exits (emergency operation);

(vii) exits with tailcones (emergency operation);

(viii) cockpit exits (emergency operation);

(ix) ground evacuation and ditching equipment;

(x) first aid equipment;

(xi) portable oxygen systems (oxygen bottles, chemical oxygen generators, protective breathing equipment (PBE));

(xii) firefighting equipment;

(xiii) emergency lighting systems;

(xiv) additional emergency equipment;

(*b*) emergency procedures—

(i) general types of emergencies specific to aircraft;

(ii) emergency communication signals and procedures;

(iii) rapid decompression;

(iv) insidious decompression and cracked window and pressure seal leaks;

(v) fires;

(vi) ditching;

(vii) ground evacuation;

(viii) unwarranted evacuation (i.e., passenger initiated);

(ix) illness or injury;

(x) abnormal situations involving passengers or crew members;

(xi) turbulence;

(xii) other unusual situations;

(*c*) emergency drills;

(*d*) every 12 months—

(i) location and use of all emergency and safety equipment carried on the aeroplane;

(ii) the location and use of all types of exits;

(iii) actual donning of a lifejacket where fitted;

(iv) actual donning of protective breathing equipment;

(v) actual handling of fire extinguishers;

(*e*) every 3 years—

(i) operation of all types of exits;

(ii) demonstration of the method used to operate a slide, where fitted;

(iii) fire-fighting using equipment representative of that carried in the aeroplane on an actual or simulated fire;

NOTE: With Halon extinguishers, an alternative method acceptable to the Authority may be used.

(iv) effects of smoke in an enclosed area and actual use of all relevant equipment in a simulated smoke-filled environment;

(v) actual handling of pyrotechnics, real or simulated, where fitted;

(vi) demonstration in the use of the life-raft(s), where fitted;

(vii) an emergency evacuation drill;

(viii) a ditching drill, if applicable;

(ix) a rapid decompression drill, if applicable;

(*j*) crew resource management—

(i) decision-making skills;

(ii) briefings and developing open communication;

(iii) inquiry, advocacy, and assertion training;

(iv) workload management;

(*g*) dangerous goods—

(i) recognition of and transportation of dangerous goods;

(ii) proper packaging, marking, and documentation;

(iii) instructions regarding compatibility, loading, storage and handling characteristics;

(*h*) security—

(i) hijacking;

(ii) disruptive passengers.

(5) An AOC holder may administer each of the recurrent training curricula concurrently or intermixed, but shall record completion of each of these curricula separately.

IS 8:239 Recurrent Training—Flight Operations Officer

(1) Each AOC holder shall establish and maintain a recurrent training programme, approved by the Authority and established in the AOC holder's Operations Manual, to be completed annually by each flight operations officer.

(2) Each flight operations officer shall undergo recurrent training relevant to the type(s) and/or variant(s) of aeroplane and operations conducted by the AOC holder, and that training shall consist of at least the following hours of instruction—

(*a*) piston-engined aircraft — 8 hours;

(*b*) turbo propeller-powered aircraft — 10 hours;

(*c*) turbo-jet aircraft — 20 hours;

(*d*) other aircraft — 10 hours.

(3) Each AOC holder shall have all recurrent training conducted by an appropriately qualified dispatch supervisor or ground instructor.

(4) An AOC holder shall ensure that, every 12 months, each flight operations officer receives recurrent training in the subjects required for initial training listed in IS 8.219 (7) in sufficient detail to ensure proficiency in each specified area of training. Operators may choose to provide in-depth coverage of selected subjects on any one cycle of training. In such cases the operator's training programme must cover all the subjects to the detail required for initial qualification within three years.

(5) An AOC holder shall record completion of the required training.

IS 8:241 Flight Instructor Training

(1) No operator may use a person, nor may any person serve as flight instructor in a training programme unless—

(*a*) that person has satisfactorily completed initial or transition flight instructor training; and

(*b*) within the preceding 24 calendar months, that person satisfactorily conducts instruction under the observation of an inspector from the Authority or an AOC holder's check airman.

(2) An AOC holder may accomplish the observation check for a flight instructor, in part or in full, in an aeroplane or a flight simulation training device.

(3) Each AOC holder shall ensure that initial ground training for flight instructors includes the following—

(*a*) flight instructor duties, functions, and responsibilities;

(*b*) applicable regulations and the AOC holders policies and procedures;

(*c*) appropriate methods, procedures, and techniques for conducting the required checks;

(*d*) proper evaluation of student performance including the detection of—

(i) improper and insufficient training; and

(ii) personal characteristics of an applicant that could adversely affect safety;

(*e*) appropriate corrective action in the case of unsatisfactory checks;

(*f*) approved methods, procedures, and limitations for performing the required normal, abnormal, and emergency procedures in the aeroplane;

(*g*) except for holders of existing flight instructor licences—

(i) the fundamental principles of the teaching-learning process;

(ii) teaching methods and procedures; and

(iii) the instructor-student relationship.

(4) Each AOC holder shall ensure that the transition ground training for flight instructors includes the approved methods, procedures, and limitations for performing the required normal, abnormal, and emergency procedures applicable to the aeroplane to which the flight instructor is in transition.

(5) Each AOC holder shall ensure that the initial and transition flight training for flight instructors (aircraft), flight engineer instructors, and flight navigator instructors includes the following—

(*a*) the safety measures for emergency situations that are likely to develop during instruction;

(*b*) the potential results of improper, untimely, or non-execution of safety measures during instruction;

(*c*) for pilot flight instructor (aircraft)—

(i) in-flight training and practice in conducting flight instruction from the left and right pilot seats in the

required normal, abnormal, and emergency procedures to ensure competence as an instructor; and

(ii) the safety measures to be taken from either pilot seat for emergency situations that are likely to develop during instruction;

(*d*) for flight engineer instructors and flight navigator instructors, in-flight training to ensure competence to perform assigned duties;

(*e*) an AOC holder may accomplish the flight training requirements for flight instructors in full or in part in flight or in a flight simulation training device, as appropriate;

(*f*) an AOC holder shall ensure that the initial and transition flight training for flight instructors (flight simulation training device) includes the following—

(i) training and practice in the required normal, abnormal, and emergency procedures to ensure competence to conduct the flight instruction required by this part: this training and practice shall be accomplished in full or in part in a flight simulation training device;

(ii) training in the operation of flight simulation training devices, to ensure competence to conduct the flight instruction required by this Part.

IS 8:244 Check Airman Training

(1) No operator may use a person, nor may any person serve as a check airman (aircraft) or check airman (flight simulation training device) in a training programme unless, with respect to the aircraft type involved, that person has satisfactorily completed the appropriate training phases for the aircraft, including recurrent training and differences training, that are required to serve as PIC or flight engineer, as applicable.

(2) Each AOC holder shall ensure that initial ground training for check airmen includes—

(*a*) check airman duties, functions, and responsibilities;

(*b*) applicable regulations and the AOC holder's policies and procedures;

(*c*) appropriate methods, procedures, and techniques for conducting the required checks;

(*d*) proper evaluation of student performance including the detection of: improper and insufficient training.

(*e*) personal characteristics of an applicant that could adversely affect safety—

(i) appropriate corrective action, in the case of unsatisfactory checks;

(ii) approved methods, procedures, and limitations for performing the required normal, abnormal, and emergency procedures in the aircraft.

(3) Transition ground training for all check airmen shall include the approved methods, procedures, and limitations for performing the required normal, abnormal, and emergency procedures applicable to the aircraft to which, the check airman is in transition.

(4) For pilot check airmen, each AOC holder shall ensure that the initial and transition flight training includes—

(*a*) training and practice in conducting flight evaluations (from the left and right pilot seats for pilot check airmen) in the required normal, abnormal, and emergency procedures to ensure competence to conduct the flight checks;

(*b*) the potential results of improper, untimely or non-execution of safety measures during an evaluation;

(*c*) the safety measures (to be taken from either pilot seat for pilot check airmen) for emergency situations that are likely to develop during an evaluation.

(5) For FE check airmen and FN check airmen, each AOC holder shall, ensure training to ensure competence to perform assigned duties to include—

(*a*) the safety measures for emergency situations that are likely to develop during a check;

(*b*) the potential results of improper, untimely or non-execution of safety measures during a check.

(6) Each AOC holder shall ensure that the initial and transition flight training for check airmen (flight simulation training device) includes—

(*a*) training and practice in conducting flight checks in the required normal, abnormal, and emergency procedures to ensure competence to conduct the evaluations checks required by this part (this training and practice shall be accomplished in a flight simulation training device);

(*b*) training in the operation of flight simulation training devices, to ensure competence to conduct the evaluations required by this Part.

(7) An AOC holder may accomplish flight training for check airmen in full or in part in an aircraft or in a flight simulation training device, as appropriate.

(8) The AOC holder shall record the training in each individuals training record maintained by the AOC holder.

IS 8:255 Duty and Rest Periods

Each AOC holder, scheduling official and crew member shall use the following tables as appropriate, to consolidate all scheduling and actual event requirements with respect to crew member flight time, duty and rest periods for commercial air transport operations.

TABLE 1

Conditions Required for Flight Crew Member Rest Reduction

Flight deck duty period (hours)	*Normal rest period (hours)*	*Authorized reduced rest period (hours)*	*Next rest period, if reduction taken*
Less then 8	9	8	10
8–9	10	8	11
9 or more	11	9	12

TABLE 2

Conditions Required for Cabin Crew Member Rest Reduction

Scheduled duty period (hours)	*Extra cabin crew members required*	*Normal rest period (hours)*	*Authorized reduced rest period (hours)*	*Next rest period if reduction taken*
14 or less	0	9	8	10
14–16	1	12	10	14
16–18	2	12	10	14
18–20	3	12	10	14

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AVIATION (AIR OPERATOR CERTIFICATION AND ADMINISTRATION) REGULATIONS

under s. 19

PART I

Air Operator Certification

Citation and application

1.—(1) These Regulations may be cited as the Aviation (Air Operator Certification and Administration) Regulations.

(2) These Regulations apply to the carriage of passengers, cargo or mail for remuneration or hire by persons whose principal place of business or permanent residence is located in Malaŵi.

(3) The Regulations prescribe requirements for the original certification and continued validity of air operator certificates (AOC) issued by Malaŵi.

(4) Except where specifically noted, these Regulations apply to all commercial air transport operations by AOC holders for which Malaŵi is the State of the Operator under the definitions provided in Annex 6 to the Convention on International Civil Aviation.

Definition

2. For the purpose of these Regulations, unless the context otherwise requires—

"accountable manager" means the person acceptable to the Authority who has corporate authority for ensuring that all operations and maintenance activities can be financed and carried out to the standard required by the Authority, and any additional requirements defined by the operator;

"acceptance checklist" means a document used to assist in carrying out a check on the external appearance of packages of dangerous goods and their associated documents to determine that all appropriate requirements have been met;

"aircraft operating manual" means a manual, acceptable to the State of the Operator, containing normal, abnormal and emergency procedures, checklists, limitations, performance information, details of the aircraft systems, and other material relevant to the operation of the aircraft;

"aircraft technical log" means documentation for an aircraft that includes the maintenance record for the aircraft and a record for each flight made by the aircraft. The aircraft technical log is comprised of a journey records section and a maintenance section;

"Air Operator Certificate (AOC)" means a certificate authorizing an operator to carry out specified commercial air transport operations;

"airworthiness release" means the air operator's aircraft are released for service following maintenance by a person specifically authorized by the air operator rather than by an individual or maintenance

organization on their own behalf. An airworthiness release is not the same as a maintenance release or a maintenance return to service as described in the Airworthiness and Approved Maintenance Organization Regulations. Regarding the airworthiness release, in effect, the person signing the release acts in the capacity of an authorized agent for the operator and is certifying that the maintenance covered by the release was accomplished according to the air operator's continuous maintenance programme. Normally, a release is required following inspections prescribed by the air operator's operations specifications and maintenance activities involving inspections, and any other significant maintenance. A copy of the airworthiness release must be given to the pilot in command before the aircraft commences operations. In addition, the air operator should designate when an airworthiness release is required. The air operator is obligated to designate, by name or occupational title, each licensed AMT or maintenance organization authorized to execute the airworthiness release. In addition, the air operator should designate when an airworthiness release is required;

"cabin crew member" means crew member who performs, in the interest of safety of passengers, duties assigned by the operator or the pilot-in-command of the aircraft, but who shall not act as a flight crew member;

"cargo aircraft" means any aircraft carrying goods or property but not passengers. In this context the following are not considered to be passengers—

(i) a crew member;

(ii) an operator's employee permitted by, and carried in accordance with, the instructions contained in the Operations Manual;

(iii) an authorized representative of an Authority;

(iv) a person with duties in respect, of a particular shipment on board;

"commercial air transport operation" means an aircraft operation involving the public transport of passengers, cargo or mail for remuneration or hire;

"Configuration Deviation List (CDL)" means a list established by the organization responsible for the type design with the approval, of the State of Design which identifies any external parts of an aircraft type which may be missing at the commencement of a flight, and which contains, where necessary, any information on associated-operating limitations and performance correction;

"consignment" means one or more packages of dangerous goods accepted by an operator from one shipper at one time and at one address, receipted for in one lot and moving to one consignee at one destination address;

"crew member" means a person assigned by an operator to duty on an aircraft during a flight duty period;

"dangerous goods" articles or substances which are capable of posing a risk to health, safety, property or the environment and which are shown in the list of dangerous goods in the ICAO Technical Instructions or which are classified according to those Instructions;

"dangerous goods accident" means an occurrence associated with and related to the transport of dangerous goods which results in fatal or serious injury to a person or major property damage;

"dangerous goods incident" means an occurrence, other than a dangerous goods accident, associated with and related to the transport of dangerous goods, not necessarily occurring on board an aircraft, which results in injury to a person, property damage, fire, breakage, spillage, leakage of fluid or radiation or other evidence that the integrity of the packaging has not been maintained. Any occurrence relating to the transport of dangerous goods which seriously jeopardizes an aircraft or its occupants is deemed to constitute a dangerous goods incident;

"dangerous goods transport document" means a document specified by the ICAO Technical Instructions for the Safe Transportation of Dangerous Goods by Air. It is completed by the person who offers dangerous goods for air transport and contains information about those dangerous goods. The document bears a signed declaration indicating that the dangerous goods are fully and accurately described by their proper shipping names and UN numbers (if assigned) and that they are correctly classified, packed, marked, labelled and in a proper condition for transport, see definition of Technical Instructions herein;

"directly in charge" means a person assigned to a position in which he or she is responsible for the work of a shop or station that performed maintenance, preventive maintenance, or modifications, or other functions affecting aircraft airworthiness;

"Enhanced Vision System (EVS)" means a system to display electronic real-time images of the external scene achieved through the use of image sensors;

"equivalent system of maintenance" means an AOC holder may conduct its own maintenance, preventive maintenance, or modification, so long as the AOC holder's maintenance system is approved by the Authority and is equivalent to that of an AMO;

"exception" means a provision in ICAO Annex 18 which excludes a specific item of dangerous goods from the requirements normally applicable to that item;

"flight crew member" means a licensed crew member charged with duties essential to the operation of an aircraft on the flight deck during a flight duty period;

"flight operations officer/flight dispatcher" means a person designated by the operator to engage in the control and supervision of flight operations, whether licensed or not suitably qualified in accordance with Annex 1, who supports, briefs and/or assists the pilot-in-command in the safe conduct of the flight;

"freight container" see unit load device;

"freight container in the case of radioactive material transport" means an article of transport equipment designed to facilitate the transport of packaged goods, by one or more modes of transport without intermediate reloading. It must be of a permanent enclosed character, rigid and strong enough for repeated use, and must be fitted with devices facilitating its handling, particularly in transfer between aircraft and from one mode of transport to another. A small freight container is that which has either an overall outer dimension less than 1.5 m, or an internal volume of not more than $3m^3$. Any other freight container is considered to be a large freight container;

"ground handling" means services necessary for an aircraft's arrival at, and departure from, and airport, other than air traffic services;

"handling agent" means an agency which performs on behalf of the operator some or all of the latter's functions including receiving, loading, unloading, transferring or other processing of passengers or cargo;

"Head-Up Display (HUD)" means a display system that presents flight information into the pilot's forward external field of view;

"holdover time" means the estimated time de-icing/anti-icing fluid will prevent the formation of frost or ice and the accumulation of snow on the protected surfaces of an aircraft. Holdover time begins when the final application of de-icing or anti-icing fluid commences and expires when the de-icing or anti-icing fluid applied to the aircraft loses its effectiveness;

"human factors principles" means principles which apply to aeronautical design, certification, training, operations and maintenance and which seek safe interface between the human and other system components by proper consideration to human performance;

"incompatible" means describing dangerous goods, which if mixed, would be liable to cause a dangerous evolution of heat or gas or produce a corrosive substance;

"Instrument Meteorological Condition (IMC)" Meteorological conditions expressed in terms of visibility, distance from cloud, and ceiling, less than the minima specified for visual meteorological conditions;

"interchange agreement" means a leasing agreement which permits an air carrier to dry lease and take or relinquish operational control of an aircraft at an airport;

"maintenance control manual" means a document that describes the operator's procedures necessary to ensure that all scheduled and unscheduled maintenance is performed on the operator's aircraft on time and in a controlled and satisfactory manner;

"maintenance procedures manual" means a document endorsed by the head of the maintenance organization which details the maintenance organization's structure and management responsibilities, scope of work, description of facilities, maintenance procedures and quality assurance or inspection systems;

"maintenance release" means a document which contains a certification confirming that the maintenance work to which it relates has been completed in a satisfactory manner, either in accordance with the approved data and the procedures described in the maintenance organization's procedures manual or under an equivalent system;

"operational control" means the exercise of authority over the initiation, continuation, diversion or termination of a flight in the interest of safety of the aircraft and the regularity and efficiency of the flight;

"operational flight plan" means the operator's plan for the safe conduct of the flight based on consideration of aircraft performance, other operating limitations and relevant expected conditions on the route to be followed and at the aerodromes/heliports concerned;

"operations manual" means a manual containing procedures, instructions and guidance for use by operational, personnel in the execution of their duties;

"operator" means a person, organization or enterprise engaged in or offering to engage in an aircraft operation;

"overpack" means an enclosure used by a single shipper to contain one or more packages and to form one handling unit for convenience of handling and stowage;

"package" means the complete product of the packing operation consisting of the packaging and its contents prepared, for transport;

"packaging" means receptacles and any other components or materials necessary for the receptacle to perform its containment function;

"passenger aircraft" means an aircraft that carries any person other than a crew member, an operator's employee in an official capacity, an authorized representative of an appropriate national authority or a person accompanying a consignment or other cargo;

"proper shipping name" means the name to be used to describe a particular article or substance in all shipping documents and notifications and, where appropriate, on packaging;

"quality assurance" means quality assurance, as distinguished from quality control, involves activities in the business, systems, and technical audit areas, A set of predetermined, systematic actions

which are required to provide adequate confidence that a product or service satisfies quality requirements;

"quality control" means the regulatory inspection process through which actual performance is compared with standards, such as the maintenance of standards of manufactured aeronautical products, and any difference is acted upon;

"quality system" means the organizational structure, responsibilities, procedures, processes and resources for implementing quality management;

"Safety Management System (SMS)" means a systematic approach to managing safety, including the necessary organizational structures, accountabilities, policies and procedures;

"serious injury" means an injury which is sustained by a person in an accident and which—

(i) requires hospitalization for more than 48 hours, commencing within seven days from the date the injury was received;

(ii) results in a fracture of any bone (except simple fractures of fingers, toes or nose);

(iii) involves lacerations which cause severe haemorrhage, nerve, muscle or tendon damage;

(iv) involves injury to any internal organ;

(v) involves second or third degree burns, or any burns affecting more than 5% of the body surface; or

(vi) involves verified exposure to infectious substances or injurious radiation.

"state of origin" means the STATE in which dangerous goods were first loaded on an aircraft;

"Technical instructions" the latest effective edition of the Technical Instructions for the Safe Transport of Dangerous Goods by Air (Doc. 9284-AN/905), including the supplement and any addendum, approved and published by decision of the Council of the ICAO. The term "Technical Instructions" is used in these Regulations;

"training to proficiency" means the process of the check airman administering each prescribed manoeuvre and procedure to a pilot as necessary until it is performed successfully during the training period;

"UN number" means the four-digit number assigned by the United Nations Committee of Experts on the Transport of Dangerous Goods to identify a substance or a particular group of substances;

"unit load device" means any type of freight container, aircraft container, aircraft pallet with a net or aircraft pallet with a net over an igloo;

"visual meteorological conditions" means meteorological conditions expressed in terms of visibility, distance from cloud, and ceiling, equal to or better than specified minima.

Abbreviations

3. The following abbreviations are used in these Regulations—

(1) AOC — Air Operator Certificate

(2) AMO — Approved Maintenance Organization

(3) ATP — Air Transport Pilot

(4) CAT — Commercial Air Transport or Approach Category

(5) CDL — Configuration Deviation List

(6) FAA — Federal Aviation Administration (U.S.A.)

(7) IFR — Instrument Flight Rules

(8) IMC — Instrument Meteorological Conditions

(9) JAA — Joint Aviation Authorities

(10) MEL — Minimum Equipment List

(11) PIC — Pilot-In-Command

(12) SMS — Safety Management System

(13) UN — United Nations

(14) VFR—Visual Flight Rules

(15) VMC — Visual Meteorological Conditions

Compliance with an air operator certificate

4.—(1) No operator may operate an aircraft in commercial air transport unless that operator holds an AOC for the operations being conducted.

(2) No person may operate an aircraft in commercial air transport operations which are not authorized by the terms and conditions of its AOC.

(3) Each AOC holder shall carry a certified true copy of the air operator certificate and a copy of the operations specifications relevant to the aircraft type, issued in conjunction with the certificate on board its aircraft. When the certificate and the associated operations specifications are issued by the State of the Operator in a language other than English, an English translation shall be included.

(4) Each AOC holder shall, at all times, continue in compliance with the AOC terms, conditions of issuance, and maintenance requirements in order to hold that certificate.

(5) Failure to comply may result in the revocation or suspension of the AOC.

Application for an air operator certificate

5.—(1) An operator applying to the Authority for an AOC shall submit an application—

(*a*) in a form and manner prescribed by the Authority; and

(*b*) containing any information the Authority requires the applicant to submit.

(2) Each applicant shall make the application for an initial issue of an AOC at least 90 days before the date of intended operation.

(3) At the time of application, the applicant shall provide all information and manuals required under these Regulations.

Issuance or denial of air operator certificate

6.—(1) The Authority may issue an AOC if, after investigation, the Authority finds that the applicant—

(*a*) is a citizen of the Malaŵi;

(*b*) has its principle place of business and its registered office, if any, located in Malaŵi;

(*c*) meets the applicable regulations and standards for the holder of an AOC;

(*d*) is properly and adequately equipped for safe operations in commercial air transport and maintenance of the aircraft; and

(*e*) holds the economic authority issued by Malaŵi under the provisions of the (Air Transport Licensing) Regulations.

(2) The Authority may deny application for an AOC if the Authority finds that—

(*a*) the applicant is not properly or adequately equipped or is not able to conduct safe operations in commercial air transport;

(*b*) the applicant previously held an AOC which was revoked; or

(*c*) an individual that contributed to the circumstances causing the revocation process of an AOC obtains a substantial ownership or is employed in a position required by this regulation.

Contents of an air operator certificate

7.—(1) The AOC shall consist of two documents—

(*a*) a one-page certificate for public display signed by the Authority, and

(*b*) operations specifications containing the terms and conditions applicable to the AOC holder's certificate.

(2) The Authority will issue an AOC which will contain—

(*a*) the State of the Operator and the issuing authority;

(*b*) the Air Operator Certificate number and its expiration date;

(*c*) the operator name, trading name (if different) and address of the principal place of business;

(*d*) the date of issue and the name, signature and title of the Authority representative, and

(*e*) the location, in a controlled document earned on board, where the contact details of operational management can be found.

(3) For detailed requirements on the layout and content of the Air Operator Certificate, see IS 9:7 (3) contained in the Schedule hereto.

(4) The operations specifications associated with the Air Operator Certificate shall contain the authorizations, conditions, limitations and approvals issued by the authority in accordance with the standards which are applicable to operations and maintenance conducted by the AOC holder.

(5) For the layout and content of the Operations Specifications, see IS 9:7 (5).

(6) Air operator certificates and their associated operations specifications first issued from November 2008 shall follow the layouts of IS 9:7 (3) and 9:7 (5).

Duration of an air operator certificate

8.—(1) An AOC, or any portion of the AOC, issued by the Authority is effective for twelve months unless—

(*a*) the Authority amends, suspends, revokes or otherwise terminates the certificate;

(*b*) the AOC holder surrenders it to the Authority; or

(*c*) the AOC holder suspends operations for more than 60 days.

(2) An AOC holder shall make application for renewal of an AOC at least 30 days before the end of the existing period of validity.

Amendment of an air operator certificate

9.—(1) The Authority may amend any AOC if—

(*a*) the Authority determines that safety in commercial air transport and the public interest require the amendment; or

(*b*) the AOC holder applies for an amendment, and the Authority determines that safety in commercial air transport and the public interest allows the amendment.

(2) If the Authority stipulates in writing that an emergency exists requiring immediate amendment in the public interest with respect to safety in commercial air transportation, such an amendment is effective without stay on the date the AOC holder receives notice.

(3) An AOC holder may appeal the amendment, but shall operate in accordance with it, unless it is subsequently withdrawn.

(4) Amendments proposed by the Authority, other than emergency amendments, become effective 30 days after notice to the AOC holder, unless the AOC holder appeals the proposal in writing prior to the effective date. The filing of an appeal stays the effective date until the appeal process is completed.

(5) Amendments proposed by the AOC holder shall be made at least 30 days prior to the intended date of any operation under that amendment.

(6) No person may perform a commercial air transport operation for which an AOC amendment is required, unless it has received notice of the approval from the Authority.

Access for inspection

10.—(1) To determine continued compliance with the applicable regulations, the AOC holder shall—

(*a*) grant the Authority access to and co-operation with any of its organizations, facilities and aircraft;

(*b*) ensure that the Authority is granted access to and co-operation with any organization or facilities that it has contracted for services associated with commercial air transport operations and maintenance for services; and

(*c*) grant the Authority free and uninterrupted access to the flight deck of the aircraft during flight operations.

(2) Each AOC holder shall provide to the Authority a forward observer's seat on each of the AOC holder's aircraft from which the flight crew's actions and conversations may be easily observed.

(3) The suitability of the seat location and the ability to monitor crew member actions, conversations and radio communications is determined by the Authority.

Conducting tests and inspection

11.—(1) The Authority will conduct on-going validation of the AOC holder's continued eligibility to hold its AOC and associated approvals.

(2) The AOC holder shall allow the Authority to conduct tests and inspections, at any time or place, to determine whether an AOC holder is complying with the applicable laws, regulations and AOC terms and conditions.

(3) The AOC holder shall make available at its principal base of operations—

(*a*) all portions of its current Air Operator Certificate;

(*b*) all portions of its Operations and Maintenance Manuals; and

(*c*) a current listing that includes the location and individual positions responsible for each record, document and report required

to be kept by the AOC holder under the applicable aviation law, regulations or standards.

(4) Failure by any AOC holder to make available to the Authority upon request, all portions of the AOC, Operations and Maintenance Manuals and any required record, document or report is grounds for suspension of all or part of the AOC.

PART II
Air Operator Certification and Continuity Validity

Division I—Applicability

Application

12. Part II of these Regulations provide requirements applicable to the certification and continued validity of all AOC holders.

Division II—Administration

Base of operations

13.—(1) Each AOC holder that is not authorized to conduct maintenance under its AOC certificate shall maintain a principal base of operations.

(2) Each AOC holder that is authorized to conduct maintenance under its AOC certificate shall maintain a principal base of operations and maintenance.

(3) An AOC holder may establish a main operations base and a main maintenance base at the same location or at separate locations.

(4) Each AOC holder shall provide written notification of intent to the Authority at least 30 days before it proposes to establish or change the location of either base.

Management personnel required for commercial air transport operations

14.—(1) Each AOC holder shall have an accountable manager, acceptable to the Authority, who has corporate authority for ensuring that all flight operations and maintenance activities can be financed and carried out to the highest degree of safety standards required by the Authority.

(2) When conducting commercial air transport operations, the AOC holder shall have qualified personnel, with proven competency in civil aviation, available and serving full-time in the following positions or their equivalent—

(*a*) Director of Operations;

(*b*) Chief Pilot;

(*c*) Director of Safety;

(*d*) Director of Maintenance;

(*e*) Chief Inspector.

(3) "Competency in civil aviation" means that an individual shall have a technical qualification and management experience acceptable to the Authority for the position served.

(4) The Chief Inspector is responsible for quality control, as opposed to quality assurance and is not to be confused with the quality manager under the quality system.

(5) The Authority may approve positions or numbers of positions, other than those listed, if the AOC holder is able to show that it can perform the operation with the highest degree of safety under the direction of fewer or different categories of management personnel due to the—

(*a*) the kind of operations involved;

(*b*) the number of aircraft used; and

(*c*) the area of operation.

(6) For additional management personnel requirements, see IS 9:14 contained in the Schedule hereto.

(7) The individuals who serve in the positions required or approved under this section and anyone in a position to exercise control over operations conducted under the AOC must—

(*a*) be qualified through training, experience, and expertise;

(*b*) discharge their duties to meet applicable legal requirements and to maintain safe operations; and

(*c*) to the extent of their responsibilities, have a full understanding of the following materials with respect of the AOC holder's operation—

(i) aviation safety standards and safe operating practices;

(ii) these Regulations;

(iii) the AOC holder's operations specifications;

(iv) all appropriate maintenance and airworthiness requirements of these Regulations;

(v) the manuals requirements of these Regulations.

(8) Each AOC holder must—

(*a*) state in the general policy provisions of the operations manual the duties, responsibilities and authority of personnel required by this Regulation;

(*b*) list in the operations manual the names and business addresses of the individuals assigned to those positions; and

(*c*) notify the Authority within 10 days of any change in personnel or any vacancy in any position listed.

Quality system

15.—(1) Each AOC holder shall establish a quality system and designate a quality manager to monitor compliance with, and adequacy of, procedures required to ensure safe operational practices and airworthy aircraft. Compliance monitoring shall include a feedback system to the accountable manager to ensure corrective action as necessary.

(2) Each AOC holder shall ensure that the quality system includes a quality assurance programme that contains procedures designed to verify that all operations are being conducted in accordance with all applicable requirements, standards and procedures.

(3) The quality system, and the quality manager, shall be acceptable to the Authority.

(4) Each AOC holder shall describe the quality system in relevant documentation as outlined in IS: 9:15 contained in the Schedule hereto.

(5) Notwithstanding subregulation (1) of this Regulation the Authority may accept the nomination of two Quality Managers, one for operations and one for maintenance, provided that the operator has designated one Quality Management Unit to ensure that the Quality System is applied uniformly throughout the entire operation.

(6) Where the AOC holder is also an AMO, the AOC holder's quality management system may be combined with the requirements of an AMO and submitted for acceptance to the Authority, and State of Registry for aircraft not registered in Malaŵi.

Submission and revision of policy and procedure manual

16.—(1) Each manual required by this part must—

(*a*) include instructions and information necessary to allow the personnel concerned to perform their duties and responsibilities with a high degree of safety;

(*b*) be in a form that is easy to revise and contains a system which allows personnel to determine the current revision status of each manual;

(*c*) have a date of the last revision on each page concerned;

(*d*) not be contrary to any applicable Malaŵi regulation and the AOC holder's operations specifications; and

(*e*) each manual will include a reference to appropriate civil aviation regulations.

(2) No person may cause the use of any policy and procedure for flight operations or airworthiness function prior to coordination with the Authority.

(3) Each AOC holder shall submit the proposed policy or procedure to the Authority at least 30 days prior to the date of intended implementation.

Retention of records

17.—(1) Each AOC holder shall retain the following records for the period specified in IS: 9:17 contained in the Schedule hereto—

(*a*) flight and duty records;

(*b*) flight crew records;

(*c*) other AOC holder personnel for which a training programme is required;

(*d*) fuel and oil records;

(*e*) maintenance records of the aircraft;

(*f*) operational flight plan;

(*g*) flight Preparation forms listed below—

(i) completed load manifests;

(ii) mass and balance records;

(iii) dispatch releases;

(iv) flight plans;

(v) passenger manifests;

(vi) weather reports.

(*h*) aircraft technical logbook, including the following sections listed below—

(i) journey records section;

(ii) maintenance records section;

(iii) flight recorder records;

(iv) quality system records;

(v) dangerous goods transport document;

(vi) dangerous goods acceptance checklist;

(vii) records on cosmic and solar radiation dosage;

(viii) other records as may be required by the Authority.

(2) For the records identified in subregulation (1) (*a*), (*b*) and (*c*) this Regulation, the AOC holder shall maintain—

(*a*) current records which detail the qualifications and training of all its employees, and contract employees, involved in the operational control, flight operations, ground operations and maintenance of the air operator.

(*b*) records for those employees performing crew member or flight operations officer duties in sufficient detail to determine whether the employee meets the experience and qualification for duties in commercial air transport operations.

(3) Each AOC holder shall maintain records in a manner acceptable to the Authority.

Cockpit voice and flight data recorder records

18.—(1) Each AOC holder shall retain—

(*a*) the most recent flight data recorder calibration, including the recording medium from which this calibration is derived; and

(*b*) the flight data recorder correlation for one aircraft of any group of aircraft operated by the AOC holder—

(i) that are of the same type;

(ii) on which the model flight recorder and its installation are the same; and

(iii) on which there is no difference in type design with respect to the original installation of instruments associated with the recorder.

(2) The flight data recorder calibration and the flight data recorder correlation will be kept as part of the maintenance records for aircraft and its components.

(3) In the event of an accident or incident requiring immediate notification of the Authority, the AOC holder shall remove and keep recorded information from the cockpit voice recorder and flight data recorder for at least 60 days or, if requested by the Authority, for a longer period.

Aircraft operated by the AOC holder

19.—(1) The AOC holder shall list in its operations specifications the aircraft make, model and series with the following list of authorizations, conditions and limitations—

(*a*) issuing authority contact details;

(*b*) operator name and AOC number;

(*c*) date of issue and signature of the Authority representative;

(*d*) aircraft model;

(*e*) types and areas of operations; and

(*f*) special limitations and authorizations.

(2) Each AOC holder shall apply to the Authority for an amendment to its operations specification in advance of any intended change of aircraft.

(3) Aircraft of another certificate holder operated under an interchange agreement shall be incorporated to the operations specifications as required by subregulation (1) of this Regulation.

Aircraft technical log

20. Each AOC holder shall have an aircraft technical log that is carried on the aircraft that contains a journey records section and an aircraft maintenance record section. The journey records section is further described in Regulation 36 under these Regulations and the

aircraft maintenance record section is further described in regulation 64 under these Regulations.

Company procedures indoctrination

21.—(1) No person may serve nor may any AOC holder use a person in its employ unless that person has completed the company indoctrination curriculum approved by the Authority, appropriate to that person's duties and responsibilities.

(2) The indoctrination curriculum shall include training in knowledge and skills related to human performance, including co-ordination with other AOC personnel.

(3) Indoctrination, initial, recurrent, and other training required for crew members and flight operations officers/dispatchers is contained in the Operations Regulations.

Safety management system and state safety programme

22.—(1) An. AOC holder shall implement a safety management system acceptable to the Authority as outlined in regulation 34 of the General Policies Procedures and Definitions.

(2) The Authority shall establish a State safety programme in order to achieve an acceptable level safety in the operation of aircraft.

Flight safety document system

23.—(1) An AOC holder shall establish a flight safety document system, approved by the Authority, for the use and guidance of operational personnel.

(2) The development and organization of a flight safety document system shall contain the minimum elements of the outline provided in the IS: 9:23 contained in the Schedule hereto.

Division III—Aircraft

Authorized aircraft

24.—(1) No person may operate an aircraft in commercial air transport unless that aircraft has an appropriate current airworthiness certificate, is in an airworthy condition, and meets the applicable airworthiness requirements for these operations, including those related to identification and equipment.

(2) No person may operate any specific type of aircraft in commercial air transport until it has completed satisfactory initial certification, which includes the issuance of an AOC listing that type of aircraft.

(3) No person may operate additional or replacement aircraft of a type for which it is currently authorized unless it can show that each aircraft has completed an evaluation process for inclusion in the AOC holder's fleet.

Dry leasing of foreign registered aircraft

25.—(1) An AOC holder may dry-lease a foreign aircraft for commercial air transport as authorized by the Authority.

(2) No person may be authorized to operate a foreign registered aircraft unless—

(*a*) there is in existence a current agreement between the Authority and the State of Registry that, while the aircraft is operated by the Malaŵi AOC holder, the operations regulations of Malaŵi are applicable;

(*b*) there is in existence a current agreement between the Authority and the State of Registry that—

(i) while the aircraft is operated by the AOC holder, the airworthiness regulations of the State of Registry are applicable; or

(ii) if the State of Registry agrees to transfer some or all of the responsibility for airworthiness to the Authority under Article 83 of the Chicago Convention, the airworthiness regulations of Malaŵi shall apply to the extent agreed upon by the Authority and the State of Registry;

(iii) the agreement acknowledges that the Authority shall have free and uninterrupted access to the aircraft at any place and any time.

(3) For additional requirements for dry-leasing of foreign-registered aircraft: see IS 9:25 contained in the Schedule hereto.

(4) The Authority shall carry out an assessment of the capability of the State of Operators accepting the transfer of responsibility under the provisions of 83 bis.

Aircraft interchange

26.—(1) No person may interchange aircraft with another AOC holder without the approval of the Authority.

(2) See IS: 9:26 contained in the Schedule hereto for requirements pertaining to aircraft interchange agreements approved by the Authority.

Wet-leasing

27.—(1) No person may conduct wet-lease operations on behalf of another air operator except in accordance with the applicable laws and regulations of the country in which the operation occurs and the restrictions imposed by the Authority.

(2) No person may allow another entity or air operator to conduct wet-lease operations on its behalf unless—

(*a*) that air operator holds an AOC or its equivalent from a Contracting State that authorizes those operations; and

(*b*) the AOC holder advises the Authority of such operations and provides a copy of the AOC under which the operation was conducted.

(3) For additional requirements when wet leasing aircraft, see IS 9:27 contained in the Schedule hereto.

Emergency evacuation demonstration

28.—(1) No person may use an aircraft type and model in commercial air transport passenger-carrying operations unless it has first conducted, for the Authority, an actual full capacity emergency evacuation demonstration for the configuration in 90 seconds or less.

(2) The full capacity actual demonstration may not be required, if the AOC holder provides a written petition for deviation with evidence that—

(*a*) a satisfactory full capacity emergency evacuation for the aircraft to be operated was demonstrated during the aircraft type certification or during the certification of another air operator; and

(*b*) there is an engineering analysis, which shows that an evacuation is still possible within the 90-second standard, if the AOC holder's aircraft configuration differs with regard to number of exits or exit type or number of cabin crew members or location of the cabin crew members.

(3) If a full capacity demonstration is not required, no person may use an aircraft type and model in commercial air transport passenger-carrying operations unless it has first demonstrated to the Authority that its available personnel, procedures and equipment could provide sufficient open exits for evacuation in 15 seconds or less.

(4) No person may use a land plane in extended overwater operations unless it has first demonstrated to the Authority that it has the ability and equipment to efficiently carry out its ditching procedures.

(5) For additional requirements concerning emergency evacuation demonstrations, see IS 9:28 contained in the Schedule hereto.

Demonstration flights

29.—(1) No person may operate an aircraft type in commercial air transport unless it first conducts satisfactory demonstration flights for the Authority in that aircraft type.

(2) No person may operate an aircraft in a designated special area, or using a specialized navigation system, unless it conducts a satisfactory demonstration flight for the Authority.

(3) Demonstration flights required by subregulation (1) shall be conducted in accordance with the regulations applicable to the type of operation and aircraft type used.

(4) The Authority may authorize deviations from this section if the Authority finds that special circumstances make full compliance with this Regulation unnecessary.

(5) For additional requirements concerning demonstration flights, see IS 9:29 contained in the Schedule hereto.

Division IV—Facilities and Operations Schedules

Facilities

30.—(1) Each AOC holder shall maintain operational and airworthiness support facilities at the main operating base, appropriate for the area and type of operation.

(2) Each AOC holder shall arrange appropriate ground handling facilities at each airport used to ensure the safe servicing and loading of its flights.

Operations schedules

31. In establishing flight operations schedules, each AOC holder conducting scheduled operations shall allow enough time for the proper servicing of aircraft at intermediate stops, and shall consider the prevailing winds en route and cruising speed for the type of aircraft. This cruising speed may not be more than that resulting from the specified cruising output of the engines.

PART III

AOC Flight Operations Management

Application

32. Part III of these Regulations provide those certification requirements that apply to management of flight operations personnel and their functions.

Operations manual

33.—(1) Each AOC holder shall issue to the crew members and persons assigned operational control functions, an Operations Manual acceptable to the Authority.

(2) The Operations Manual shall contain the overall (general) company policies and procedures regarding the flight operations it conducts.

(3) Each AOC holder shall prepare and keep current an Operations Manual which contains the AOC procedures and policies for the use and guidance of its personnel.

(4) Each AOC holder shall issue the Operations Manual, or pertinent portions, together with all amendments and revisions to all personnel that are required to use it.

(5) No person may provide for use of its personnel in commercial air transport any Operations Manual or portion of this manual which has not been reviewed and approved for the AOC holder by the Authority.

(6) Each AOC holder shall ensure that the contents of the Operations Manual includes at least those subjects designated by the Authority that are applicable to the AOC holder's operations.

(7) Unless otherwise acceptable to the Authority, each AOC holder shall provide an Operations Manual containing information on operations administration and supervision, accident prevention and flight safety programmes, personnel training, flight crew and cabin crew member fatigue and flight and duty time limitations, flight operations including operational flight planning, aeroplane performance, routes, guides and charts, minimum flight altitudes, aerodrome operating minima, search and rescue, dangerous goods, navigation, communications, security, and human factors. The operations manual shall encompass the matters set forth above. The operations manual may be published in parts, as a single document, or as a series of volumes. Specific subjects are listed below. Subjects presented with reference to a specific section shall be addressed in accordance with the requirements of the referenced section—

(*a*) Aircraft Operating Manual, (regulation 35);

(*b*) Minimum Equipment List and Configuration Deviation List. (regulation 42);

(*c*) Training Programme, (regulation 34);

(*d*) Aircraft Performance Planning Manual, (regulation 43);

(*e*) Route Guide, (regulation 50);

(*f*) Dangerous Goods Procedures;

(*g*) Accident Reporting Procedures;

(*h*) Security Procedures;

(*i*) Aircraft Loading and Handling Manual, (regulation 45); and

(*j*) Cabin Crew Member Manual (if required), (regulation 47).

(8) The Operations Manual shall conform to the outline contained in IS: 9:33 contained in the Schedule hereto.

Training programme

34.—(1) Each AOC holder shall ensure that all operations personnel are programme properly instructed in their duties and responsibilities and the relationship of such duties to the operation as a whole.

(2) Each AOC holder shall have a training programme manual approved by the Authority containing the general training, checking, and record keeping policies.

(3) Each AOC holder shall have approval of the Authority prior to using a training curriculum for the purpose of qualifying a crew member, or person performing operational control functions, for duties in commercial air transport.

(4) Each AOC holder shall submit to the Authority any revision to an approved training programme, and shall receive written approval from the Authority before that revision can be used.

(5) The training programme manual shall conform to the outline in IS: 9:34 contained in the Schedule hereto.

Aircraft operating manual

35.—(1) Each AOC holder or applicant shall submit proposed aircraft operating manuals for each type and variant of aircraft operated, containing the normal, abnormal and emergency procedures relating to the operation of the aircraft for approval by the Authority.

(2) Each Aircraft Operating Manual shall be based upon the aircraft manufacturer's data for the specific aircraft type and variant operated by the AOC holder and shall include specific operating parameters, details of the aircraft systems, and of the check lists to be used applicable to the operations of the AOC that are approved by the Authority. The design of the manual shall observe human factors principles.

(3) The Aircraft Operating Manual shall be issued to the flight crew members and persons assigned operational control functions to each aircraft operated by the AOC.

(4) The Aircraft Operating Manual may conform to the outline contained in IS: 9:35 contained in the Schedule hereto.

Aircraft technical log entries -journey records section

36.—(1) Each AOC holder shall use an aircraft technical log containing a journey records section which includes the following information for each flight: (see regulation 44 under these Regulations for maintenance records section of the aircraft technical log)—

(*a*) aircraft nationality and registration;

(*b*) date;

(*c*) names of crew members;

(*d*) duty assignments of crew members;

(*e*) place of departure;

(*f*) place of arrival;

(*g*) time of departure;

(*h*) time of arrival;

(*i*) hours of flight;

(*j*) nature of flight (private, aerial work, scheduled, non-scheduled);

(*k*) incidents, observations, if any; and

(*l*) signature of person in charge.

(2) Entries in the journey logbook shall be made currently and in ink or indelible pencil.

(3) Completed journey log books shall be retained to provide a continuous record of the last 2 years operations.

Designation of PIC for commercial operations

37. The AOC holder shall, for each commercial air transport operation, designate in writing one pilot as the PIC.

Required cabin crew members

38.—(1) The AOC holder shall schedule, and the PIC shall ensure, that the number of required cabin crew members are on board passenger-carrying flights.

(2) The number of cabin crew members may not be less than the minimum prescribed by the Authority in the AOC holder's operations specifications or the following, whichever is greater—

(3) For a seating capacity of 20 to 50 passengers: 1 cabin crew member; and

(4) One additional cabin crew member for each unit, or part of a unit, of 50 passenger seat capacity.

(5) When passengers are on board a parked aircraft, the minimum number of flight attendants shall be one-half that required for the flight operation, but never less than one cabin crew member (or another person qualified in the emergency evacuation procedures for the aircraft).

(6) Where one-half would result in a fractional number, it is permissible to round down to the next whole number.

Carriage of special situation passengers

39.—(1) No AOC holder may allow the transportation of special situation passengers except—

(2) As provided in the AOC holder's Operations Manual procedures; and

(3) With the knowledge and concurrence of the PIC.

Crew member checking and standardization programme

40.—(1) Each AOC holder shall have a programme of checking and standardization of crew members approved by the Authority.

(2) An AOC holder shall check pilots' proficiency on those manoeuvres and procedures that are prescribed by the Authority for pilot proficiency checks, which shall include emergency procedures and, where applicable, instrument flight rules.

(3) A standardized process is defined to address the operator unique fleet differences and compliance methods.

Cockpit check procedure

41.—(1) Each AOC holder shall issue to the flight crews and make available on each aircraft, the checklist procedures approved by the Authority appropriate for the type and variant of aircraft.

(2) Each AOC holder shall ensure that approved procedures include each item necessary for flight crew members to check for safety before starting engines, taking-off, or landing, and for engine and systems abnormalities and emergencies.

(3) Each AOC holder shall ensure that the checklist procedures are designed so that a flight crew member will not need to rely upon his memory for items to be checked.

(4) Each AOC holder shall make the approved procedures readily useable in the cockpit of each aircraft and the flight crew shall be required to follow them when operating the aircraft.

(5) Checklists are part of the Aircraft Operating Manual, which is a part of the Operations Manual of the AOC and is approved by the Authority.

Minimum equipment list and configuration deviation list

42.—(1) Each AOC holder shall provide for the use of the flight crew members, maintenance personnel and persons assigned operational control functions during the performance of their duties, an MEL approved by the Authority.

(2) The MEL shall be specific to the aircraft type and variant which contains the circumstances, limitations and procedures for release or continuance of flight of the aircraft with inoperative components, equipment or instruments.

(3) Each AOC holder may provide for the use of flight crew members, maintenance personnel and persons assigned operational control functions during the performance of their duties a Configuration. Deviation List (CDL) specific to the aircraft type if one is provided and approved by the State of Design. An AOC Holder operations manual shall contain those procedures acceptable to the Authority for operations in accordance with the CDL requirements.

(4) The MEL shall be developed on the basis of the current MMEL.

Performance planning manual

43.—(1) Each AOC holder shall provide for the use of the flight crew members and persons assigned operational control functions during the performance of their duties, a performance planning manual acceptable to the Authority.

(2) The performance planning manual shall be specific to the aircraft type and variant and shall contain adequate performance information to accurately calculate the performance in all normal phases of flight operation.

Performance data control system

44.—(1) Each AOC holder shall have a system approved by the Authority for obtaining, maintaining and distributing to appropriate personnel current performance data for each aircraft, route and airport that it uses.

(2) The system approved by the Authority shall provide current obstacle data for departure and arrival performance calculations.

Aircraft loading and handling manual

45.—(1) Each AOC holder shall provide for the use of the flight crew members, ground handling personnel and persons assigned operational control functions during the performance of their duties, an aircraft handling and loading manual acceptable to the Authority.

(2) This manual shall be specific to the aircraft type and variant and shall contain the procedures and limitations for servicing and loading of the aircraft.

Mass and balance data system

46. Each AOC holder shall have a system approved by the Authority control obtaining, maintaining and distributing to appropriate personnel current information regarding the mass and balance of each aircraft operated.

Cabin crew member manual

47.—(1) The AOC holder shall issue to the cabin crew members and provide to passenger agents during the performance of their duties, a cabin crew member manual acceptable to the Authority.

(2) The cabin crew member manual shall contain those operational policies and procedures applicable to cabin crew members and the carriage of passengers.

(3) The AOC holder shall issue to the cabin crew members, a manual specific to the aircraft type and variant which contains the details of their normal, abnormal and emergency procedures and the location and operation of emergency equipment.

(4) These manuals may be combined into one manual for use by the cabin crew members.

Passenger briefing cards

48.—(1) Each AOC holder shall carry on each, passenger carrying aircraft, in convenient locations for the use of each passenger, printed cards supplementing the oral briefing and containing—

(*a*) diagrams and methods of operating the emergency exits;

(*b*) other instructions necessary for use of the emergency equipment; and

(*c*) information regarding the restrictions and requirements associated with sitting in an exit seat row.

(2) Each AOC holder shall ensure that each card contains information that is pertinent only to the type and variant of aircraft used for that flight.

(3) For specific information to be included on passenger information cards regarding exit row seating, see IS 9:48 contained in the Schedule hereto.

Aeronautical data control system

49.—(1) Each AOC holder shall have a system approved by the Authority for obtaining, maintaining and distributing to appropriate personnel current aeronautical data for each route and aerodrome that it uses.

(2) For the specific aerodrome information to be contained in the aeronautical data control system, see IS 9:49 contained in the Schedule hereto.

Route guide

50.—(1) Each AOC holder shall provide for the use of the flight crew members and persons assigned operational control functions during the performance of their duties, a route guide and aeronautical charts approved by the Authority.

(2) The AOC holder shall keep the route guide and aeronautical charts current and appropriate for the proposed types and areas of operations to be conducted by the AOC holder. The route guide is issued as part of the operations manual or maybe separate.

(3) Each route guide shall contain at least the information outlined in IS: 9:50 contained in the Schedule hereto.

Weather reporting sources

51.—(1) Each AOC holder shall use sources approved the Authority for the weather reports and forecasts used for decisions regarding flight preparation, routing and terminal operations.

(2) For passenger carrying operations, the AOC holder shall have an approved system for obtaining forecasts and reports of adverse weather phenomena that may affect safety of flight on each route to be flown and airport to be used.

(3) For sources of weather reports satisfactory for flight planning of controlling flight movement, see IS 9:51 contained in the Schedule hereto.

De-icing and anti-icing programme

52.—(1) Each AOC holder planning to operate an aircraft in conditions where frost, ice, or snow may reasonably be expected to adhere to the aircraft shall—

(*a*) use only aircraft adequately equipped for such conditions;

(*b*) ensure flight crew is adequately trained for such conditions; and

(*c*) have an approved ground de-icing and anti-icing programme.

(2) For detailed requirements pertaining to the AOC holder's de-icing programme, see IS 9:52 contained in the Schedule.

Flight supervision and monitoring system

53.—(1) Each AOC holder shall have an adequate system approved by the Authority for proper dispatch and monitoring of the progress of the flights.

(2) The dispatch and monitoring system, shall have enough dispatch, centres, adequate for the operations to be conducted, located at points necessary to ensure adequate flight preparation, dispatch and in-flight contact with, the flight operations.

(3) Each AOC holder shall provide enough qualified flight operations officers at each dispatch centre to ensure proper operational control of each flight.

(4) For detailed requirements pertaining to the AOC holder's flight monitoring system, see IS 9:53 contained in the Schedule hereto.

Managing fatigue related safety risks

54.—(1) For the purpose of managing fatigue-related safety risks, an AOC holder shall establish either—

(*a*) flight time, flight duty period, duty period and rest period limitations that are within the prescriptive fatigue management regulations in Part XII of the Operations Regulations; or

(*b*) a Fatigue Risk Management System (FRMS) in compliance regulation 253 (5) of the Operations Regulations; or

(*c*) an FRMS in compliance with regulation 253 (5) of the Operations Regulations for part of its operations and the requirements of Part XII of these Regulations for the remainder of its operations.

(2) Where the operator adopts prescriptive fatigue management regulations for part or all of its operations, the Authority may approve, in exceptional circumstances, variations to these Regulations on the basis of a risk assessment provided by the operator. Approved variations shall provide a level of safety equivalent to, or better than that achieved through the prescriptive fatigue management regulations.

(3) The Authority shall approve an operator's FRMS before it may take the place of any or all of the prescriptive fatigue management regulations. An approved FRMS shall provide a level of safety equivalent to, or better than, the prescriptive fatigue management regulations.

(4) Operators using an FRMS must adhere to the following provisions of the FRMS approval process that allows the Authority to ensure that the approved FRMS meets the requirements of regulation 253 (3) of the Operations Regulations—

(*a*) establish maximum values for flight times and/or flight duty period(s) and duty period(s), and minimum values for rest periods that shall be based upon scientific principles and knowledge, subject to safety assurance processes.

(*b*) adhere to Authority mandates to decrease maximum values and increase in minimum values in the event that the operator's data indicates these values are too high or too low, respectively; and

(*c*) provide justification to the Authority for any increase in maximum values or decrease in minimum values based on accumulated FRMS experience and fatigue-related data before such changes will be approved by the Authority.

(5) Operators implementing an FRMS to manage fatigue-related safety risks shall, as a minimum—

(*a*) incorporate scientific principles and knowledge within the FRMS;

(*b*) identify fatigue-related safety hazards and the resulting risks on an ongoing basis;

(*c*) ensure that the remedial actions, necessary to effectively mitigate the risks associated with the hazards, are implemented promptly;

(*d*) provide for continuous monitoring and regular assessment of the mitigation of fatigue risks achieved by such actions; and

(*e*) provide for continuous improvement to the overall performance of the FRMS.

(6) For detailed requirements pertaining to FRMS, see IS 9:54 contained in the Schedule hereto.

Communication facilities

55.—(1) Each AOC holder's flights shall be able to have two-way radio communications with all ATC facilities along the routes and alternate routes to be used.

(2) For passenger carrying operations, each AOC holder shall be able to have rapid and reliable radio communications with all flights over the AOC's entire route structure under normal operating conditions. This radio communication system shall be independent from the ATC system.

(3) Each AOC holder engaged in international air navigation shall at all times have available for immediate communication to rescue coordination centers, information on the emergency and survival equipment carried on board any of their aeroplanes including, as applicable—

(*a*) the number, colour and types of life rafts and pyrotechnics;

(*b*) details of emergency water and medical supplies; and

(*c*) the type and frequencies of the emergency portable radio equipment.

Routes and areas of operation

56.—(1) An AOC holder may conduct operations only along such routes and within such areas for which—

(*a*) ground facilities and services, including meteorological services, are provided which are adequate for the planned operation;

(*b*) the performance of the aircraft intended to be used is adequate to comply with minimum flight altitude requirements;

(*c*) the equipment of the aircraft intended to be used meets the minimum requirements for the planned operation;

(*d*) appropriate and current maps and charts are available;

(*e*) if two-engine aircraft are used, adequate airports are available within the time/distance limitations; and

(*f*) if single-engine aircraft are used, surfaces are available which permit a safe forced landing to be executed.

(2) No person may conduct commercial air transport operations on any route or area of operation unless those operations are in accordance with any restrictions imposed by the Authority.

Navigational accuracy

57.—(1) Each AOC holder shall ensure, for each proposed route or area, that the navigational systems and facilities it uses are capable of navigating the aircraft.

(2) Within the degree of accuracy required for ATC.

(3) To the airports in the operational flight plan within the degree of accuracy necessary for the operation involved.

(4) In situations without adequate navigation systems reference, the Authority may authorize day VFR operations that can be conducted safely by pilotage because of the characteristics of the terrain.

(5) Except for those navigational aids required for routes to alternate airports, the Authority will list in the AOC holder's operations specifications non-visual ground aids required for approval of routes outside of controlled airspace.

(6) Non-visual ground aids are not required for night VFR operations on routes that the certificate holder shows have reliably lighted landmarks adequate for safe operation.

(7) Operations on route segments where the use of celestial or other specialized means of navigation is required shall be approved by the Authority.

PART IV
AOC Maintenance Requirements

Application

58. This Part provides those certification and maintenance requirements that apply to an AOC holder utilizing an AMO or an equivalent system.

Maintenance responsibility

59.—(1) Each AOC holder shall ensure the airworthiness of the aircraft and the serviceability of both operational and emergency equipment by—

(*a*) assuring the accomplishment of preflight inspections;

(*b*) assuring the correction of any defect and/or damage affecting safe operation of an aircraft to an approved standard, taking into account the MEL and CDL if available for the aircraft type;

(*c*) assuring the accomplishment of all maintenance in accordance with the approved operator's aircraft maintenance programme;

(*d*) the analysis of the effectiveness of the AOC holder's approved aircraft maintenance programme;

(*e*) assuring the accomplishment of any operational directive, airworthiness directive and any other continued airworthiness requirement made mandatory by the Authority; and

(*f*) assuring the accomplishment of modifications in accordance with an approved standard, and, for non-mandatory modifications, the establishment of an embodiment policy.

(2) Each AOC holder shall ensure that the Certificate of Airworthiness for each aircraft operated remains valid in respect to—

(*a*) the requirements in subregulation (1) of this Regulation;

(*b*) the expiration date of the Certificate; and

(*c*) any other maintenance condition specified in the Certificate.

(3) Each AOC holder shall ensure that the requirements specified in subregulation (1) are performed in accordance with procedures approved by or acceptable to the Authority.

(4) Each AOC holder shall ensure that the maintenance, preventive maintenance, and modification of its aircraft/aeronautical products are performed in accordance with its maintenance control manual and/or current instructions for continued airworthiness, and applicable aviation regulations.

(5) Each AOC holder may make an arrangement with another person or entity for the performance of any maintenance, preventive maintenance, or modifications; but shall remain responsible of all work performed under such arrangement.

(6) Each AOC holder shall have its aircraft maintained and released to service by either an AMO certificated under the Approved Maintenance or by an equivalent system. If an equivalent system to an AMO is used, the AOC holder shall ensure that the person signing the maintenance release is licensed in accordance with Personnel Licensing Regulations.

Approval and acceptance of AOC maintenance systems and programmes

60.—(1) An AOC holder shall not operate an aircraft, except for pre-flight inspections, unless it is maintained and released to service by an AMO or equivalent system of maintenance that is approved by the State of Registry and is acceptable to the Authority.

(2) For aircraft registered in Malaŵi, an AMO or an equivalent system of maintenance shall be approved by the Authority.

(3) For aircraft not registered in Malaŵi, an AMO or an equivalent system of maintenance will be approved by the State of Registry of the aircraft, and such approval will be accepted by the Authority.

(4) When the Authority or the State of Registry accepts an equivalent system of maintenance, the persons designated to sign a maintenance release or airworthiness release shall be licensed in accordance with the Personnel Licensing Regulations, as appropriate.

(5) Under JAR-OPS an AOC holder performing its own maintenance is certified as an AMO, while under 14 CFR the current practice is that an AOC holder is authorized to perform its own maintenance under the AOC certificate without being designated separately as an AMO,

Maintenance control manual

61.—(1) Each Malaŵi AOC holder shall provide to the Authority, and to the State of Registry of the aircraft, if different from the Authority, an AOC holder's maintenance control manual and subsequent amendments, for the use and guidance of maintenance and operational personnel concerned, containing details of the organization's structure including—

(*a*) the accountable manager and designated person(s) responsible for the maintenance system as required by regulation 14 under these Regulations.

(*b*) procedures to be followed to satisfy the maintenance responsibility of regulation 59, except where the AOC holder is an AMO, and has the quality functions of regulation 15. Such procedures may be included in the AMO procedures manual.

(*c*) procedures for the reporting of failures, malfunctions, and defects in accordance with regulation 25 of the Airworthiness Regulations, to the Authority, State of Registry and the State of Design within 72 hours of discovery; in addition, items that warrant immediate notification to the Authority by telephone/telex/fax, with a written follow-on report as soon as possible but no later than within 72 hours of discovery, are—

(i) primary structural failure;

(ii) control system failure;

(iii) fire in the aircraft;

(iv) engine structure failure; or

(v) any other condition considered an imminent hazard to safety.

(2) The AOC holder's maintenance control manual shall contain the following information which may be issued in separate parts—

(*a*) a description of the administrative agreements between the AOC holder and the AMO, or a description of the maintenance procedures and the procedures for completing and signing a maintenance release when maintenance is based on a system other than that of an AMO;

(*b*) a description of the procedures to ensure each, aircraft they operate is in an airworthy condition;

(*c*) a description of the procedures to ensure the emergency equipment for each flight is serviceable;

(*d*) the names and duties of the person or persons required to ensure that all maintenance is carried out in accordance with the maintenance control manual;

(*e*) a reference to the maintenance programme required in regulation 67;

(*f*) a description of the methods for completion and retention of the operator's maintenance records required by regulation 63;

(*g*) a description of the procedures for monitoring, assessing and reporting maintenance and operational experience for all aircraft over 5,700 kg maximum certificated take-off mass;

(*h*) a description of the procedures for obtaining and assessing continued airworthiness information, and implementing any resulting actions considered necessary by the State of Registry for all aircraft over 5,700 kg maximum certificated take-off mass, from the organization responsible for the type design;

(*i*) a description of the procedures for implementing mandatory continuing airworthiness as required in regulation 59 (1) (*e*) of these Regulations;

(*j*) a description of the procedures establishing and maintaining a system of analysis and continued monitoring of the performance and efficiency of the maintenance programme in order to correct any deficiency in that programme;

(*k*) a description of aircraft types and models to which the manual applies;

(*l*) a description of the procedures for ensuring that unserviceabilities affecting airworthiness are recorded and rectified; and

(*m*) a description of the procedures for advising the State of Registry of significant in-service occurrences.

(3) No person may provide for use of its personnel in commercial air transport any Maintenance Control Manual or portion of this manual which has not been reviewed and approved for the AOC holder by the Authority.

(4) For an outline of specific subjects to be contained as appropriate in the AOC holder's maintenance control manual, see IS 9:61 contained in the Schedule hereto.

Maintenance management

62.—(1) The AOC holder, approved as an AMO, may carry out the requirements specified in subregulation 59 (1) (*b*), (*c*), (*e*) and (*f*).

(2) If the AOC holder is not an AMO, the AOC holder shall meet its responsibilities under in subregulation 59 (1) (*b*), (*c*), (*e*) and (*f*)—

(*a*) an equivalent system of maintenance approved or accepted by the Authority; or

(*b*) through an arrangement with an AMO with a written maintenance contract agreed between the AOC holder and the contracting AMO detailing the required maintenance functions and defining the support of the quality functions approved or accepted by the Authority.

(3) Each AOC holder shall employ a person or group of persons, acceptable to the Authority, to ensure that all maintenance is carried out to an approved standard such that the maintenance requirements of regulation 59 and requirements of the AOC holder's maintenance control manual are satisfied, and to ensure the functioning of the quality system.

(4) Each AOC holder shall provide suitable office accommodation at appropriate locations for the personnel specified in subregulation (3) of this Regulation.

(5) Each AOC holder shall establish a safety management system for the maintenance of aircraft that is accordance with the provisions of regulation 23 and that is acceptable to the authority.

Maintenance records

63.—(1) Each AOC holder shall ensure that a system has been established to keep, in a form acceptable to the Authority, the following records—

(*a*) the total time in service (hours, calendar time and cycles, as appropriate) of the aircraft and all life-limited components;

(*b*) the current status of compliance with all mandatory continuing airworthiness information;

(*c*) appropriate details of modifications and repairs to the aircraft and its major components;

(*d*) the time in service (hours, calendar time and cycles, as appropriate) since last overhaul of the aircraft or its components subject to mandatory overhaul life;

(*e*) the current aircraft status of compliance with the maintenance programme; and

(*f*) the detailed maintenance records to show that all requirements for signing of a maintenance release and airworthiness release have been met.

(2) Each AOC holder shall ensure that items in subregulation 63 (1) (*a*) to (*f*) shall be kept for a minimum of 90 days after the unit to which they refer has been permanently withdrawn from service, and the records in subregulation (1) shall be kept for a minimum of 1 year after the signing of the maintenance release and/or airworthiness release.

(3) Each AOC holder shall ensure that in the event of temporary change of operator, the records specified in subregulation (1) shall be made available to the new operator.

(4) Each AOC holder shall ensure that when an aircraft is permanently transferred from one operator to another operator, the records specified in subregulation (1) are also transferred.

Aircraft technical log entries: maintenance record section

64.—(1) Each AOC holder shall use an aircraft technical log which includes an aircraft maintenance record section containing the following information for each aircraft—

(*a*) information about each previous flight necessary to ensure continued flight safety;

(*b*) the current aircraft maintenance release and/or an airworthiness release;

(*c*) the current inspection status of the aircraft, to include inspections due to be performed on an established schedule and inspections that are due to be performed that are not on an established schedule, except that the Authority may agree to the maintenance statement being kept elsewhere;

(*d*) the current maintenance status of the aircraft, to include maintenance due to be performed on an established schedule and maintenance that is due to be performed that is not on an established schedule except that the Authority may agree to the maintenance statement being kept elsewhere;

(*e*) all deferred defects that affect the operation of the aircraft;

(*f*) defects which are not airworthiness items may be deferred to a later date for rectification. When this is done, there must be a method of recording such a deferral, and normally the aircraft technical log has a section solely for this purpose. Some operators have a system of classifying deferred defects so as to allow different lengths of time, either in hours flown, number of sectors, or on return to a maintenance base, until a defect must be rectified before further flight.

(2) The aircraft technical log and any subsequent amendment shall be approved by the Authority.

(3) Each person who takes action in the case of a reported or observed failure or malfunction of an aircraft/ aeronautical product, that is critical to the safety of flight shall make, or have made, a record of that action in the maintenance section of the aircraft technical log.

(4) Each AOC holder shall have a procedure for keeping adequate copies of required records to be carried aboard, in a place readily accessible to each flight crew member and shall put that procedure in the AOC holder's operations manual.

(5) For journey records section of the aircraft technical log, see IS 9:64 contained in the Schedule.

Release to service

65. No AOC holder shall operate an aircraft unless it has both a maintenance release, if maintenance has been performed prior to the flight, and a valid airworthiness release, as follows—

(*a*) Maintenance Release—

(i) an AOC holder shall not operate an aircraft unless it is maintained and released to service by an organization approved in accordance with the Approved Maintenance Organization Regulations, or under an equivalent system, either of which shall be acceptable to the State of Registry.

(ii) an AOC holder using an AMO shall not operate an aircraft after release under subregulation (1) (*a*) (i) unless a Certificate of Release to Service has been prepared in accordance with the AOC maintenance control manual procedures and a logbook entry in the maintenance records section of the aircraft technical log has been made.

(iii) an AOC holder using an equivalent system shall not operate an aircraft after release under subregulation (1) (*a*) (i) unless a logbook entry in the maintenance records section of the aircraft technical log is prepared or caused to be prepared by an appropriately licensed and rated individual in accordance

with the Personnel Licensing Regulations, as appropriate. This maintenance release shall be made in accordance with the AOC maintenance control manual procedures.

(iv) the AOC holder shall ensure that the PIC of the aircraft has reviewed the maintenance section of the aircraft technical log and determined that any maintenance performed has been appropriately documented.

(*b*) Airworthiness Release: An AOC holder shall not operate an aircraft unless the PIC is in possession of a valid airworthiness release to indicate that any maintenance, preventative maintenance or inspections performed on the aircraft have been satisfactorily performed and appropriately documented.

Modifications and repairs

66.—(1) All modifications and repairs shall comply with airworthiness requirements acceptable to the State of Registry. Procedures shall be established to ensure that the substantiating data supporting compliance with the airworthiness requirements are retained. However, in the case of a major repair or major modification, the work must have been done in accordance with technical data approved by the Authority.

(2) An AOC holder may be authorized to perform maintenance, preventive maintenance, and modifications of any aircraft, airframe, aircraft engine, propeller, appliance, component, or part thereof, under the AOC provided—

(*a*) it is performed under a maintenance system, acceptable to the State of Registry, that is equivalent to that of an Approved Maintenance Organization (AMO) established in accordance with the AMO Regulations, and

(*b*) it is performed in accordance with the approved AOC's operations specifications.

(3) An AOC holder using a maintenance system, acceptable to the State of Registry and equivalent to that of an AMO that wishes to approve for return to service major repairs or major modifications to an aircraft registered in Malaŵi shall use a current and valid licensed AME with an airframe and power-plant rating and shall be qualified in accordance with the Personnel Licensing Regulations.

(4) Each AOC holder shall, promptly upon its completion, prepare a report of each major modification or major repair of an airframe, aircraft engine, propeller, or appliance of an aircraft that it operates.

(5) The AOC holder shall submit a copy of each report of a major modification to the Authority, and shall, keep a copy of each report of a major repair available for inspection.

(6) The Authority issuing an approval for the design of a modification, of a repair or of a replacement part shall do so on the basis of satisfactory evidence that the aircraft is in compliance with airworthiness requirements used for the issuance of the Type Certificate, its amendments or later requirements when determined by the State.

Aircraft maintenance programme

67.—(1) Each AOC holder's aircraft maintenance programme and any subsequent amendment shall be submitted to the State of Registry for approval; acceptance by the Authority will be conditioned upon prior approval by the State of Registry, or where appropriate, upon the AOC holder complying with recommendations provided by the State of Registry.

(2) The Authority will require an operator to include a reliability programme when the Authority determines that such a reliability programme is necessary. When such a determination is made by the Authority the AOC holder shall provide such procedures and information in the AOC holder's maintenance control manual.

(3) Each AOC holder shall ensure that each aircraft is maintained in accordance with the AOC holder's approved maintenance programme as required by regulation 60 which shall include—

(*a*) maintenance tasks and the intervals in which these are to be performed, taking into account the anticipated utilization of the aircraft;

(*b*) when applicable, a continuing structural integrity programme;

(*c*) procedures for changing or deviating from subregulation (3) (*a*) and (3) (*b*); and

(*d*) when applicable, condition monitoring and reliability programme for aircraft systems, components, and power-plants.

(4) Repetitive maintenance tasks that are specified in mandatory intervals as a condition of approval of the type design shall be identified as such. The maintenance programme should be based on maintenance programme information made available by the State of Design or by the organization responsible for the type design, and any additional applicable experience.

(5) No person may provide for use of its personnel in commercial air transport a Maintenance Programme or portion thereof which has not been reviewed and approved for the AOC holder by the Authority.

(6) Approval by the Authority of an AOC holder's maintenance programme and any subsequent amendments shall be noted in the AOC certificate pursuant to subregulation 7 (*b*) (6) under this Regulation.

(7) Each AOC holder shall have an inspection programme and a programme covering other maintenance, preventive maintenance, and modifications to ensure that—

(*a*) maintenance, preventive maintenance, and modifications performed by it, or by other persons, are performed in accordance with the AOC holder's maintenance control manual; and

(*b*) each aircraft released to service is airworthy and has been properly maintained for operation.

(8) The Authority may amend any specifications issued to an AOC holder to permit deviation from those provisions of this Part that would prevent the return to service and use of airframe components, power-plants, appliances, and spare parts thereof because those items have been maintained, altered, or inspected by persons employed outside Malaŵi who do not hold a Malaŵi maintenance engineers licence. Each AOC holder who is granted authority under this deviation shall provide for surveillance of facilities and practices to assure that all work performed on these parts is accomplished in accordance with the AOC holder's maintenance control manual.

(9) Each AOC holder shall observe human factors principles in the design and application of maintenance programmes.

Reliability Programme

68.—(1) A maintenance programme for each aeroplane shall contain when applicable, condition monitoring and reliability programme descriptions for aircraft systems, components and power-plants.

(2) Reliability programmes should be developed for aircraft maintenance programmes based upon Maintenance Steering Groups (MSG) logic or those that include condition monitored components or that does not contain overhaul time periods for all significant system components.

(3) Reliability programmes need not be developed for aircraft not considered as large aircraft or that contain overhaul time periods for all significant aircraft system components.

(4) The purpose of a reliability programme is to ensure that the aircraft maintenance programme tasks are effective and their periodicity is adequate.

(5) The reliability programme may result in the escalation or deletion of maintenance tasks, as well as de-escalation or addition of maintenance tasks.

(6) A reliability programme provides an appropriate means of monitoring the effectiveness of the maintenance programme.

Authority to perform and approve maintenance, preventive maintenance and modifications

69.—(1) An AOC holder which is not approved as an AMO may perform, and approve maintenance, preventive maintenance, or modifications of any aircraft, airframe, aircraft engine, propeller, appliance, or component, or a part thereof and modifications for return to service, if approved in the operations specifications, as provided in its maintenance programme and maintenance control manual.

(2) An AOC holder may make arrangements with an AMO (appropriately rated) for the performance of maintenance, preventive maintenance, or modifications of any aircraft, airframe, aircraft engine, propeller, appliance, or component, or part thereof as provided in its maintenance programme and maintenance control, manual.

(3) An AOC holder which is not approved as an AMO shall use a appropriately licensed and rated individual in accordance with the Personnel Licensing Regulations, as appropriate, to approve maintenance, preventive maintenance, or modifications of any aircraft, airframe, aircraft engine, propeller, or appliance for return to service after performing or supervising in accordance with technical data approved by the Authority.

Licence requirements for an engineer—AOC holder using equivalent system

70.—(1) Each person who is directly in charge of maintenance, preventive maintenance, or modification, of any aircraft, airframe, aircraft engine, propeller, appliance, or component, or part thereof and each person performing required inspections and approving for return to service the maintenance performed shall be an appropriately licensed and rated technician or repair specialist in accordance with the Personnel Licensing Regulations, as appropriate, and acceptable to the Authority.

(2) A person who is directly in charge shall be on site but need not physically observe and direct each worker constantly, but shall be available for consultation and decision on matters requiring instruction or decision from higher authority than that of the persons performing the work.

(3) In this regulation a person "directly in charge" is each person assigned to a position in which he is responsible for the work of a shop or station that performs maintenance, preventive maintenance, modifications, or other functions affecting aircraft airworthiness.

Rest and duty limitations for persons performing maintenance functions on AOC holder aircraft

71.—(1) No person may assign, nor shall any person perform maintenance functions for aircraft certified for commercial air transport, unless that person has had a minimum rest period of 8 hours prior to the beginning of duty.

(2) No person may schedule a person performing maintenance functions for aircraft certified for commercial air transport for more than 12 consecutive hours of duty.

(3) In situations involving unscheduled aircraft unserviceability, persons performing maintenance functions for aircraft certified for commercial air transport may be continued on duty for—

(*a*) up to 16 consecutive hours; or

(*b*) 20 hours in 24 consecutive hours.

(4) Following unscheduled duty periods, the person performing maintenance functions for aircraft shall have a mandatory rest period of 10 hours.

(5) The AOC holder shall relieve the person performing maintenance functions from all duties for 24 consecutive hours during any 7 consecutive day period.

PART V
AOC Security Management

Application

72. Part V provides those certification requirements that apply to the AOC holder's protection of aircraft, facilities and personnel from unlawful interference.

Security requirements

73. Each AOC holder shall ensure that all appropriate personnel are familiar, and comply with, the relevant requirements of the national security programmes of the State of the operator.

Security training programmes

74.—(1) Each AOC holder shall establish, maintain and conduct approved training programmes which enable the operator's personnel to take appropriate action to prevent acts of unlawful interference such as sabotage or unlawful seizure of aircraft and to minimize the consequences of such events should they occur.

(2) As a minimum, the security training programme shall include—

(*a*) determination of the seriousness of any occurrence;

(*b*) crew communication and coordination;

(*c*) appropriate self-defence responses;

(*d*) use of non-lethal protective devices assigned to crew members whose use of is authorized by Malaŵi;

(*e*) live situational training exercises regarding various threat conditions;

(*f*) flight deck procedures to protect the aircraft;

(*g*) aircraft search procedures and guidance on least-risk bomb locations where practicable;

(*h*) understanding of behaviour of terrorists so as to facilitate the ability of crew members to cope with hijacker behaviour and passenger responses; and

(*i*) crew preventative measures and techniques in relation to passengers, baggage, cargo, mail, equipment, stores and supplies intended for carriage on an aircraft.

Reporting acts of unlawful interference

75. Following an act of unlawful interference on board an aircraft the PIC or, in his absence, the AOC holder shall submit, without delay, a report of such an act to the designated local authority' and the Authority in the State of the operator.

Aircraft search procedure checklist

76.—(1) Each AOC holder shall ensure that all aircraft carry a checklist of the procedures to be followed for that type aircraft in searching for concealed weapons, explosives, or other dangerous devices.

(2) The checklist shall be supported by guidance on the appropriate course of action to be taken should a bomb or suspicious object be found and information on the least-risk bomb location specific to the aeroplane.

Flight crew compartment door, if installed—security procedures

77.—(1) The flight crew compartment door on aircraft operated for the purpose of carrying passengers shall be capable of being locked from within the procedures order to prevent unauthorized access.

(2) Each AOC holder shall have an approved means by which the cabin crew can discreetly notify the flight crew in the event of suspicious activity or security breaches in the cabin.

(3) All passenger carrying aeroplanes should be equipped with an approved flight crew compartment door, where practicable, that is designed to resist penetration by small arms fire and grenade shrapnel, and to resist forcible intrusions by unauthorized persons. This door should be capable of being locked and unlocked from either pilot's station—

(*a*) the door should be closed and locked from the time all external doors are closed following embarkation until any such door is opened for disembarkation, except when necessary to permit access and egress by authorized persons; and

(*b*) means should be provided for monitoring from either pilot's station the entire door area outside the flight crew compartment to identify persons requesting entry and to detect suspicious behaviour or potential threat.

Flight crew compartment doors, large aeroplanes—security producers

78.—(1) All aeroplanes certificated with a maximum certificated take-off mass in excess of 45,500 kg or with a passenger seating capacity greater than 60 shall be equipped with an approved flight crew compartment door that is designed to resist penetration by small arms fire and grenade shrapnel, and to resist forcible intrusions by unauthorized

persons. This door should be capable of being locked and unlocked from either pilot's station—

(*a*) the door shall be closed and locked from the time all external doors are closed following embarkation until any such door is opened for disembarkation, except when necessary to permit access and egress by authorized persons; and

(*b*) means shall be provided for monitoring from either pilot's station the entire door area outside the flight crew compartment to identify persons requesting entry and to detect suspicious behaviour or potential threat.

Carriage of weapons

79. Where an operator accepts the carriage of weapons removed from passengers, the aeroplane should have provision for stowing such weapons in a place so that they are not accessible to any person during flight time.

PART VI
AOC Dangerous Goods Management

Application

80. This part provides those certification requirements that apply to management and transport of dangerous goods.

Approval to transport dangerous goods

81. No AOC holder may transport dangerous goods unless approved to do so by the Authority.

Scope

82.—(1) Each AOC holder shall comply with the provisions contained in the ICAO Technical Instructions for the Safe Transport of Dangerous Goods By Air, ICAO Doc. 9284 (Technical Instructions) on all occasions when dangerous goods are carried, irrespective of whether the flight is wholly or partly within or wholly outside the territory of Malaŵi, Where dangerous goods are to be transported outside the territory of Malaŵi, the AOC holder shall review and comply with the appropriate variations noted by Contracting States contained in Attachment 3 to the Technical Instructions.

(2) Articles and substances which would otherwise be classified as dangerous goods are excluded from the provisions of this part, to the extent specified in the Technical Instructions, provided they are—

(*a*) required to be aboard the aircraft for operating reasons;

(*b*) carried as catering or cabin service supplies;

(*c*) carried for use in flight as veterinary aid or as a humane killer for an animal; or

(*d*) carried for use in flight for medical aid for a patient, provided that—

(i) gas cylinders have been manufactured specifically for the purpose of containing and transporting that particular gas;

(ii) drugs, medicines and other medical matter are under the control of trained personnel during the time when they are in use in the aircraft;

(iii) equipment containing wet cell batteries is kept and, when necessary secured, in an upright position to prevent spillage of the electrolyte; and

(iv) proper provision is made to stow and secure all the equipment during take-off and landing and at all other times when deemed necessary by the PIC in the interests of safety; or

(v) they are carried by passengers or crew members.

(3) Articles and substances intended as replacements for those in subregulation (2) may be transported on an aircraft as specified in the Technical Instructions.

Limitation on the transport of dangerous goods

83.—(1) Each AOC holder shall take all reasonable measures to ensure that articles and substances that are specifically identified by name or generic description in the Technical Instructions as being forbidden for transport under any circumstances are not carried on any aircraft.

(2) Each AOC holder shall take all reasonable measures to ensure that articles and substances or other goods that are identified in the Technical Instructions as being forbidden for transport in normal circumstances or infected live animals are transported only when—

(*a*) they are exempted by the States concerned under the provisions of the Technical Instructions; or

(*b*) the Technical Instructions indicate they may be transported under an approval issued by the State of Origin.

Classification

84.—(1) Each AOC holder shall ensure that articles and substances are classified as dangerous goods as specified in the Technical Instructions.

Packing

85.—(1) Each AOC holder shall ensure that dangerous goods are packed as specified in the Technical Instructions.

(2) Packing used for the transport of dangerous goods shall—

(*a*) be of good quality and shall be constructed and securely closed so as to prevent leakage which might be caused in. normal conditions

of transport, by changes in temperature, humidity or pressure, or by vibration;

(*b*) be suitable for the contents. Packaging in direct contact with dangerous goods shall be resistant to any chemical or other action of such goods;

(*c*) meet the material and construction specifications in the Technical Instructions;

(*d*) be tested in accordance with the provisions of the Technical Instructions;

(*e*) for which retention of a liquid is a basic function, shall be capable of withstanding, without leaking, the pressure stated in the Technical Instructions;

(*f*) for inner packaging, shall be so packed, secured or cushioned as to prevent their breakage or leakage and to control their movement within the outer packaging(s) during normal conditions of air transport. Cushioning and absorbent materials shall not react dangerously with the contents of the packaging;

(*g*) not be reused until it has been inspected and found free from corrosion or other damage. Where packaging is re-used, all necessary measures shall be taken to prevent contamination of subsequent contents.

(3) If because of the nature of their former contents, uncleaned empty packaging may present a hazard, they shall be tightly closed and treated according to the hazard they constitute.

(4) No harmful quantity of a dangerous substance shall adhere to the outside of packages.

Labelling and marking

86.—(1) Each AOC holder shall ensure that packages, overpacks and freight containers are labeled as specified in the Technical Instructions.

(2) Each AOC holder shall ensure that packages, overpacks and freight containers are marked with—

(*a*) the proper shipping name of its contents;

(*b*) the UN number, when assigned; and

(*c*) other such markings as may be specified in the Technical Instructions.

(3) Each AOC holder shall ensure that packaging manufactured to a specification contained in the Technical Instructions shall be so marked in accordance with the Technical Instructions.

(4) Where dangerous goods are carried on a flight which takes place wholly or partly outside the territory of Malaŵi, the AOC holder shall ensure that labeling and marking are in the English language in addition to any other language requirements.

Dangerous goods transport document

87.—(1) Each AOC holder shall ensure that, except when otherwise specified in the Technical Instructions, dangerous goods are accompanied by a dangerous goods transport document.

(2) Where dangerous goods are carried on a flight which takes place wholly or partly outside the territory of Malaŵi, the AOC holder

shall ensure that the English language is used for the dangerous goods transport document in addition to any other language requirements.

Acceptance of dangerous goods

88.—(1) No AOC holder may accept dangerous goods for transport until the package, over pack or freight container has been inspected in accordance with the acceptance procedures in the Technical Instructions.

(2) Each AOC holder, or its handling agent, shall use an acceptance check list which—

(*a*) shall allow for all relevant details to be checked; and

(*b*) shall be in such form as will allow for the recording of the results of the acceptance check by manual, mechanical or computerized means.

Inspection for damage, leakage or contamination

89.—(1) Each AOC holder shall ensure that—

(*a*) packages, overpacks and freight containers are inspected for evidence of leakage or damage immediately prior to loading on an aircraft or into a unit load device, as specified in the Technical Instructions;

(*b*) a unit load device is not loaded on an aircraft unless it has been inspected as required by the Technical Instructions and found free from any evidence of leakage from, or damage to, the dangerous goods contained therein;

(*c*) leaking or damaged packages, overpacks or freight containers are not loaded on an aircraft;

(*d*) any package of dangerous goods found on an aircraft and which appears to be damaged or leaking is removed or arrangements made for its removal by an appropriate authority or organization;

(*e*) after removal of any leaking or damaged goods, the remainder of the consignment is inspected to ensure it is in a proper condition for transport and that no damage or contamination has occurred to the aircraft or its load;

(*f*) packages, overpacks and freight containers are inspected for signs of damage or leakage upon unloading from an aircraft or from a unit load device and, if there is evidence of damage or leakage, the area where the dangerous goods were stowed is inspected for damage or contamination.

Removal of contamination

90. Each AOC holder shall ensure that—

(*a*) any contamination found as a result of the leakage or damage of dangerous goods is removed without delay; and

(*b*) an aircraft which has been contaminated by radioactive materials is immediately taken out of service and not returned until the radiation level at any accessible surface and the non-fixed contamination are not more than the values specified in the Technical Instructions.

Loading restrictions and stowage of dangerous goods

91.—(1) Each AOC holder shall ensure that packages and overpacks containing dangerous goods and freight containers containing radioactive materials are loaded and stowed in accordance math the Technical Instructions—

(*a*) Passenger Cabin and Flight Deck. Each AOC holder shall ensure that dangerous goods are not carried in an aircraft cabin occupied by passengers or on the flight deck, unless otherwise specified in the Technical Instructions;

(*b*) Cargo Compartments. Each AOC holder shall ensure that dangerous goods are loaded, segregated, stowed and secured on an aircraft as specified in the Technical Instructions;

(*c*) Dangerous Goods Designated for Carriage Only on Cargo Aircraft. Each AOC holder shall ensure that packages of dangerous goods bearing the "Cargo Aircraft Only" label are carried on a cargo aircraft and loaded as specified in the Technical Instructions, and in a manner that a crew member or other authorized person can see, handle and, where size and weight permit, separate such packages from other cargo in flight.

(2) Packages containing dangerous goods shall be separated when stowing as follows—

(*a*) those packages that might react dangerously with other packages shall not be stowed next to each other or in a position that might allow interaction between them in the event of a leakage;

(*b*) those packages containing toxic and infectious substances shall be stowed in accordance with the Technical Instructions;

(*c*) those packages containing radioactive materials shall be stowed so that they are separated from persons, live animals and undeveloped film, and secured in flight in accordance with the Technical Instructions.

(3) The AOC holder shall protect and secure any dangerous goods in such a manner that will prevent any movement in flight that might change the orientation of the packages.

Provisions of information

92.—(1) Information to Ground Staff: Each AOC holder shall ensure that—

(*a*) information is provided to enable ground staff to carry out their duties with regard to the transport of dangerous goods, including the actions to be taken in the event of incidents and accidents involving dangerous goods; and

(*b*) where applicable, the information referred to in subregulation (1) (*a*) is also provided to the handling agent.

(2) Information to Passengers: Each AOC holder shall ensure that information is promulgated as required by the Technical Instructions so that passengers are warned as to the types of goods which they are forbidden from transporting aboard an aircraft.

(3) Information to Shippers: Each AOC holder shall ensure that information is promulgated as required by the Technical Instructions so that shippers of dangerous goods are provided with the information as required by the Technical Instructions to enable them to carry out their responsibilities with regard to the transport of dangerous goods and the action to be taken in the event of emergencies arising involving dangerous goods.

(4) Information to Acceptance Points Personnel: Each AOC holder and, where applicable, the handling agent shall ensure that notices are provided at acceptance points for cargo giving information about the transport of dangerous goods, including the actions to be taken in the event of emergencies arising involving dangerous goods.

(5) Information to Crew Members: Each AOC holder shall ensure that information is provided in the Operations Manual to enable crew members to carry out their responsibilities in regard to the transport of dangerous goods, including the actions to be taken in the event of emergencies arising involving dangerous goods.

(6) Information to the PIC: Each AOC holder shall ensure that the PIC is provided, as early as practicable before the departure of the flight, with written information, as specified in the Technical Instructions.

(7) Information in the Event of an In-Flight Emergency: If an in-flight emergency occurs, the PIC shall, as soon as the situation permits,

inform the appropriate air traffic services unit, for the information of the aerodrome authorities, of any dangerous goods on board the aircraft, as provided for in the Technical Instructions.

(8) Information in the Event of an Aircraft Incident or Accident: Each AOC holder which is involved in an aircraft accident or incident shall—

(*a*) as soon as possible, inform the appropriate authority of the State in which the aircraft accident or incident occurred of any dangerous goods carried; and

(*b*) on request, provide any information required to minimize the hazards created by any dangerous goods carried.

(9) Each AOC holder shall establish a procedure to ensure that a copy of the written notification, to the PIC referred to in subregulation (6) is retained on the ground and easily accessible to the aerodromes of east departure and next schedule arrival for each of its flights on which dangerous goods are carried.

Dangerous goods training programme and manual

93.—(1) Crew members, passenger handling staff, and security staff employed by the AOC holder who deal with the screening of a passengers and their baggage and cargo shall have received, training which covers as a minimum, the areas identified in Part 8 to a depth sufficient to ensure that an awareness is gained of the hazards associated with dangerous goods, how to identify them and what requirements apply to the carriage of such goods by passengers.

(2) An AOC holder shall provide dangerous goods training manuals which contain adequate procedures and information to assist personnel in identifying packages marked or labelled as containing hazardous materials including—

(*a*) instructions on the acceptance, handling, and carriage of hazardous materials;

(*b*) instructions governing the determination of proper shipping names and hazard classes;

(*c*) packaging, labelling, and marking requirements;

(*d*) requirements for shipping papers, compatibility requirements, loading, storage, and handling requirements;

(*e*) restrictions.

Dangerous goods incident and accident reports

94.—(1) Each AOC holder shall report dangerous goods incidents and accidents to the Authority within 72 hours of the event, unless exceptional circumstances prevent this.

(2) Each AOC holder shall report undeclared or misdeclared dangerous goods discovered in cargo or passenger's baggage to the Authority within 72 hours of the discovery, unless exceptional circumstances prevent this.

Shipper's responsibilities

95.—(1) No person shall offer a package, overpack or freight container containing dangerous goods for shipment by air unless that person has, in accordance with the Technical Instructions, ensured that the dangerous goods are properly—

(*a*) classified;

(*b*) packed;

(*c*) labelled; and

(*d*) accompanied by a properly executed dangerous goods transport document.

(2) In completing the dangerous goods transport document for the AOC holder, the shipper shall, in accordance with the Technical Instructions and any other regulations of Malaŵi—

(*a*) declare that the dangerous goods are fully and accurately described by their proper shipping names;

(*b*) declare that the dangerous goods are classified, packed, marked and labelled and in the proper condition for transport;

(*c*) complete the form in English language when the dangerous goods are to be carried either wholly or partly outside Malaŵi; and

(*d*) sign the form.

Dangerous goods security provisions

96.—(1) Each shipper, operator and other individuals engaged in the transport of dangerous goods by air shall establish security measures, consistent provisions with these Regulations, to minimize theft or misuse of dangerous goods that may endanger persons, property or the environment.

SCHEDULE

Implementing Standards for Air Operator Certification and Administration

IS 9:7(3) Contents of Air Operator Certificate

(*a*) the AOC and its associated operations specifications shall contain the minimum information required in paragraphs (*c*) and (*d*) respectively, in a standardized format;

(*b*) the air operator certificate and its associated operations specifications shall define the operations for which an operator is authorized;

(*c*) the AOC shall be based on the following template—

AIR OPERATOR CERTIFICATE

<table>
<tr><td>[1]</td><td>State of the Operator:[2]</td><td rowspan="2">[1]</td></tr>
<tr><td></td><td>Issuing Authority:[3]</td></tr>
<tr><td rowspan="3">AOC#:[4]
Expiry Date:[5]</td><td>Operator Name:[6]</td><td rowspan="6">Operational Points of Contact:[10]
Contact details, at which operational management can be contacted without undue delay, are listed in _____.[11]</td></tr>
<tr><td>DBA Trading Name:[7]</td></tr>
<tr><td>Operator address:[8]</td></tr>
<tr><td rowspan="3"></td><td>Telephone:[9]</td></tr>
<tr><td>Fax:</td></tr>
<tr><td>E-mail:</td></tr>
<tr><td colspan="3">This certificate certifies that _____[12] is authorized to perform commercial air operations, as defined in the attached operations specifications, in accordance with the Operations Manual and the_____.[13]</td></tr>
<tr><td colspan="3">Date of issue[14]: Name and Signature[15]:
Title:</td></tr>
</table>

NOTES:

1. For use of the State of the Operator.
2. Replace by the name of the State of the Operator.
3. Replace by the identification of the issuing authority of the State of the Operator.
4. Unique AOC number, as issued by the State of the Operator.
5. Date after which the AOC ceases to be valid (dd-mm-yyyy).
6. Replace by the operator's registered name.
7. Operator's trading name, if different. Insert "DBA" before the trading name (for "doing business as").
8. Operator's principal place of business address.
9. Operator's principal place of business telephone and fax details, including the country code. E-mail to be provided if available.
10. The contact details include the telephone and fax numbers, including the country code, and the e-mail address (if available) at which operational management can be contacted without undue delay for issues related to flight operations, airworthiness, flight and cabin crew competency, dangerous goods and other matters, as appropriate.
11. Insert the controlled document, carried on board, in which the contact details are listed, with the appropriate paragraph or page reference, e.g.: "Contact details are listed in the operations manual. Gen/Basic, Chapter 1, 1.1" or "... are listed in the operations

specifications, page 1" or "... are listed in an attachment to this document."

12. Operator's registered name.
13. Insertion of reference to the appropriate civil aviation regulations.
14. Issuance date of the AOC (dd-mm-yyyy).
15. Title, name and signature of the authority representative. In addition, an official stamp may be applied on the AOC (identification of the issuing Authority of the State of the Operator).

(*d*) for each aircraft model in the operator's fleet, identified by aircraft make, model and series, the following list of authorizations, conditions and limitations shall be included: issuing authority contact details, operator name and AOC number, date of issue and signature of the Authority representative, aircraft model, types and area of operations, special limitations and authorizations.

NOTE: If authorizations and limitations are identical for two or more models, these models may be grouped in a single list.

IS 9:7(5) CONTENTS OF OPERATIONS SPECIFICATIONS

(*a*) the operations specifications layout shall be as follows—

NOTE: The Minimum Equipment List (MEL) constitutes an integral part of the Operations Manual

OPERATIONS SPECIFICATIONS

(subject to the approved conditions in the Operations Manual)

Issuing Authority Contact Details[1]

Telephone:	Fax:		E-mail:	
AOC#[2]:	Operator Name[3]:		Date[4]:	Signature:
DBA Trading Name:				
Aircraft Model[5]:				
Types of Operation:	□ Passengers		□ Cargo	□ Other[6]:
Area of operation[7]:				
Special Limitations[8]:				
Special Authorizations:	Yes	No	Specific Approvals[9]	Remarks
Dangerous Goods	□	□		
Low Visibility Operations				
Approach and Landing	□	□	CAT[10]:_____ RVR: _____m DH: _____ft	
Take-off	□	□	RVR[11]: _____m	
RVSM[12] □N/A	□	□		
ETOPS[13] □N/A	□	□	Maximum Diversion Time[14]: _____Minutes	
Navigation Specifications for PBN Operations[15]	□	□		
Continuing Airworthiness[16]	X	X	[17]	[16]
Other[18]	□	□		

NOTES:

1. Telephone and fax contact details of the Authority, including the country code. E-mail to be provided if available.
2. Insertion of associated AOC number.
3. Insertion of the operator registered name and the operator trading name, if different. Insert "DBA" before the trading name (for "Doing business as").
4. Issuance date of the operations specifications (dd-mm-yyyy) and signature of the Authority representative.
5. Insertion of the Commercial Aviation Safety Team (CAST) ICAO designation of the aircraft make, model and series, or master series, if a series has been designated (e.g. Boeing-737-3K2 or Boeing-777-232). The CAST/ICAO taxonomy is available at: http://www.intlaviationstandards.org/.
6. Other type of transportation to be specified (e.g. emergency medical service).
7. Listing of geographical area(*s*) of authorized operation (by geographical coordinates or specific routes, flight information region or national or regional boundaries).
8. Listing of applicable special limitations (e.g. VFR only, Day only, etc.).
9. List in this column the most permissive criteria for each approval or the approval type (with appropriate criteria).
10. Insertion of applicable precision approach category: CAT I, II, IDA, IIIB, IIIC. Insertion of minimum RVR in meters and Decision Height in feet. One line is used per listed approach category.
11. Insertion of approved minimum take-off RVR in meters. One line per approval may be used if different approvals are granted.
12. Not Applicable (N/A) box may be checked only if the aircraft maximum ceiling is below FL290.
13. Extended range operations (ETOPS) currently applies only to twin-engined aircraft. Therefore the Not Applicable (N/A) box may be checked if the aircraft model has more than 2 engines. Should the concept be extended to 3 or 4-engine aircraft in the future, the Yes or No checkbox will be required to be checked.
14. The threshold distance may also be listed (in nm), as well as the engine type.
15. Performance-based Navigation (PBN): one line is used for each PBN specifications authorization (e.g. RNAV 1, RNP 4), with appropriate limitations or conditions listed in the "Specific Approvals" and/or "Remarks" columns.

16. Limitations, conditions and regulatory basis for operational approval associated with the Performance-based Navigation specifications (e.g. GNSS, DME/DME/IRU). Information on performance-based navigation, and guidance concerning the implementation and operational approval process, are contained in the Performance-based Navigation Manual (Doc9613).

17. Insert the name of the person/organization, responsible for ensuring that the continuing airworthiness of the aircraft is maintained and the regulations which require the work, i.e. within the AOC regulation or a specific approval (e.g. EC2042/2003, Part M, Subpart G).

18. Other authorizations or data can be entered here, using one line (or one multi-line block) per authorization (e.g. special approach authorizations, NMPS, approved navigation performance, etc.)

(*b*) in addition to the items in (*d*) and (*e*) operations specifications may include other specific authorization, such as—

(i) special aerodrome operations (e.g. short take-off and landing operations or land and hold short operations);

(ii) special approach procedures (e.g. steep gradient approach, instrument landing system precision runway monitor approach, localizer-type directional aid precision runway monitor approach, RNP approach, etc.);

(iii) single-engine passenger transport at night or in instrument meteorological (IMC) conditions;

(iv) operations in areas with special procedures (e.g. operations in areas using different altimetry units or altimeter setting procedures).

IS 9:14 MANAGEMENT PERSONNEL REQUIRED FOR COMMERCIAL AIR TRANSPORT OPERATIONS

(1) Each AOC holder shall make arrangements to ensure continuity of supervision if operations are conducted in the absence of any required management personnel.

(2) Required management personnel shall be contracted to work sufficient hours such that the management functions are fulfilled.

(3) A person serving in a required management position for an AOC holder may not serve in a similar position for any other AOC holder, unless an exemption is issued by the Authority.

(4) The minimum initial qualifications for a Director of Operations are—

(*a*) an ATP licence; and

(*b*) 3 years experience as PIC in commercial air transport operations—

(i) of large aircraft if the AOC holder operates large aircraft, or

(ii) of either large or small aircraft if the AOC holder operates only small aircraft.

(5) The minimum qualifications for a Chief Pilot are—

(*a*) an ATP licence with the appropriate ratings for at least one of the aircraft used in the AOC holder's operations; and

(*b*) 3 years experience as PIC in commercial air transport operations—

(i) in large aircraft if the AOC holder operates large aircraft; or

(ii) in either large or small aircraft if the AOC holder operates only small aircraft.

NOTE: The Authority may accept a commercial pilot licence with instrument rating *in lieu* of the ATP licence if the PIC requirements for the operations conducted require only a commercial certificate.

(6) The minimum entry qualifications for a Director of Maintenance are—

(*a*) an Aircraft Maintenance Engineer (AME) licence with airframe and power-plant ratings;

(*b*) 3 years experience in maintaining the same category and class of aircraft used by the AOC holder including 1 year in the capacity of returning aircraft to service; and

(*c*) 1 year supervisory experience maintaining the same category and class of aircraft used by the AOC holder.

(7) The minimum entry qualifications for a Chief Inspector are—

(*a*) an Aircraft Maintenance Engineer (AME) licence with airframe and power-plant ratings;

(*b*) 3 years experience in maintaining the same category and class of aircraft used by the AOC holder including 1 year in the capacity of returning aircraft to service.

(8) An AOC holder may employ a person who does not meet the appropriate airman qualification or experience if the Authority issues an exemption finding that that person has comparable experience and can effectively perform the required management functions.

IS 9:15 QUALITY SYSTEM

(*a*) in order to show compliance with regulation 15 of these Regulations, an AOC holder should establish its quality system in accordance with the instruction and information contained in the following paragraphs.

1.0 General.

1.1 Terminology.

(*a*) the terms used in the context of the requirement for an AOC's quality system have the following meaning—

(i) Accountable Manager. The person acceptable to the Authority who has corporate authority for ensuring that all operations and maintenance activities can be financed and carried out to the standard required by the Authority, and any additional requirements defined by the operator;

(ii) Quality assurance. Quality assurance, as distinguished from quality control, involves activities in the business, systems, and technical audit areas. A set of predetermined, systemic actions which are required to provide adequate confidence that a product or service satisfies quality requirements.

1.2 Quality Policy.

1.2.1 An operator shall establish a formal, written quality policy statement that is a commitment by the accountable manager as to what the quality system is intended to achieve. The quality policy should reflect the achievement and continued compliance with the Aviation Regulations together with any additional standards specified by the operator.

1.2.2 The accountable manager is an essential part of the operator's management organization. With regard to the text in regulation 14 (1) of these Regulations the term "accountable manager" is intended to mean the Chief Executive/President/Managing Director/General Manager, etc. of the operator's organization, who by virtue of his or her position has overall responsibility (including financial) for managing the organization.

1.2.3 The accountable manager will have overall responsibility for the operator's quality system, including the frequency, format and structure of the internal management evaluation activities as prescribed in paragraph 3.9 below.

1.3 Purpose of the Quality System.

1.3.1 The quality system should enable the operator to monitor compliance with these Aviation Regulations, the operator's manual system, and any other standards specified by the operator, or the Authority, to ensure safe operations and airworthy aircraft.

1.4 Quality Manager.

1.4.1. The function of the quality manager to monitor compliance with, and the adequacy of, procedures required to ensure safe operational practices and airworthy aircraft as required by these Aviation Regulations may be carried out by more than one person by means of different, but complementary, quality assurance programmes.

1.4.2. The primary role of the quality manager is to verify, by monitoring activity in the fields of flight operations, maintenance, crew training and ground operations, that the standards required by the Authority, and any additional requirements defined by the operator, are being carried out under the supervision of the relevant required management personnel.

1.4.3. The quality manager should be responsible for ensuring that the quality assurance programme is properly established, implemented and maintained.

1.4.4. The quality manager should—

(*a*) report to the accountable manager;

(*b*) not be one of the required management personnel; and

(*c*) have access to all parts of the operator's, and as necessary, any sub-contractor's organization.

1.4.5. In the case of small/very small operators, the posts of the Accountable Manager and quality manager may be combined.

2.0 Quality System.

2.1 Introduction.

2.1.1 The operator's quality system should ensure compliance with and adequacy of operational and maintenance activities requirements, standards, and operational procedures.

2.1.2 The operator should specify the basic structure of the quality system applicable to the operation.

2.1.3 The quality system, should be structured according to the size and complexity of the operation to be monitored.

2.2 Scope.

2.1.4 As a minimum, the quality system should address the following—

(*a*) the provisions of these Aviation Regulations;

(*b*) the operator's additional standards and operating practices;

(*c*) the operator's quality policy;

(*d*) the operator's organizational structure;

(*e*) responsibility for the development, establishment and management of the quality system;

(*f*) documentation, including manuals, reports and records;

(*g*) quality procedures;

(*h*) quality assurance programme;

(*i*) the required financial, material and human resources;

(*j*) training requirements.

2.2.2 The quality system should include a feedback system to the accountable manager to ensure that corrective actions are both identified and promptly addressed. The feedback system should also specify who is required to rectify discrepancies and non-compliance in each particular case, and the procedure to be followed if corrective action is not completed within an appropriate timescale.

2.3. Relevant Documentation.

2.3.1 Relevant documentation includes the relevant part of the operator's manual system.

2.3.2 In addition, relevant document should include the following—

(*a*) quality policy;

(*b*) terminology;

(*c*) specified operational standards;

(*d*) a description of the organization;

(*e*) the allocation of duties and responsibilities;

(*f*) operational procedures to ensure regulatory compliance;

(*g*) accident prevention and flight safety programme;

(*h*) the quality assurance programme, reflecting;

(*i*) schedule of the monitoring process;

(*j*) audit procedures;

(*k*) reporting procedures;

(*l*) follow-up and corrective action procedures;

(*m*) recording system;

(*n*) the training syllabus; and

(*o*) document control

3.0 Quality Assurance Programme.

3.1 Introduction.

3.1.1 The quality assurance programme should include all planned and systematic actions necessary to provide confidence that all

operations and maintenance are conducted in accordance with all applicable requirements, standards and operational procedures.

3.1.2 When establishing a quality assurance programme, consideration should be given to at least the following—

(*a*) quality inspection;

(*b*) audit;

(*c*) auditors;

(*d*) auditor's independence;

(*e*) audit scope;

(*f*) audit scheduling;

(*g*) monitoring and corrective action;

(*h*) management evaluation.

3.2 Quality Inspection.

3.2.1 The primary purpose of a quality inspection is to observe a particular event/action/document, etc. in order to verify whether established operational procedures and requirements are followed during the accomplishment of that event and whether the required standard is achieved.

3.2.2 Typical subject areas for quality inspections are—

(*a*) actual flight operations;

(*b*) ground de-icing/anti-icing;

(*c*) flight support services;

(*d*) load control;

(*e*) maintenance;

(*f*) technical standards; and

(*g*) training standards.

3.2.3 Typical methods for quality inspections for maintenance include—

(*a*) product sampling-the part inspection of a representative sample of the aircraft fleet;

(*b*) defect sampling-the monitoring of defect rectification performance;

(*c*) concession sampling-the monitoring of any concession to not carry out maintenances of time;

(*d*) on time maintenance sampling - the motoring of when (flying hours/calendar time/flight cycles, etc.) aircraft and their components are brought in for maintenance;

(*e*) sample reports of airworthy conditions and maintenance errors on aircraft components.

3.3 Audit.

3.3.1 An audit is a systematic, and independent comparison of the way in which an operation is being conducted against the way in which the published operational procedures say it should be conducted.

3.3.2 Audits should include at least the following quality procedures and processes—

(*a*) a statement explaining the scope of the audit;

(*b*) planning and preparation;

(*c*) gathering and recording evidence; and

(*d*) analysis of the evidence.

3.3.3 Techniques that contribute to an effective audit are—

(*a*) interviews or discussions with personnel;

(*b*) a review of published documents;

(*c*) the examination of an adequate sample of records;

(*d*) the witnessing of the activities that make up the operation; and

(*e*) the preservation of documents and the recording of observations.

3.4 Auditors.

3.4.1 An operator should decide, depending upon the complexity of the operations, whether to make use of a dedicated audit team or a single auditor. In any event, the auditor or audit team should have relevant operational and/or maintenance experience.

3.4.2 The responsibilities of the auditors should be clearly defined in the relevant documentation.

3.5 Auditor's Independence.

3.5.1 Auditors should not have any day-to-day involvement in the area of the operation and/or maintenance activity that is to be audited. An operator may, in addition to using the services of full-time dedicated personnel belonging to a separate quality department undertake the monitoring of specific areas or activities by the use of part-time auditors. An operator whose structure and size does not justify the establishment of full-time auditors, may undertake the audit function by the use of part-time personnel from within its own organization or from an external source under the terms of an agreement acceptable to the Authority. In all cases the operator should develop suitable procedures to ensure that persons directly responsible for the activities to be audited are not selected as part of the auditing team. Where external auditors are used, it is essential

that any external specialist is familiar with the type of operation and/or maintenance conducted by the operator.

3.5.2 The operator's quality assurance programme should identify the persons within the company who have the experience, responsibility and authority to—

(*a*) perform quality inspections and audits as part of ongoing quality assurance;

(*b*) identify and record any concerns or findings, and the evidence necessary to substantiate such concerns or findings;

(*c*) initiate or recommend solutions to concerns or findings through designated reporting channels;

(*d*) verify the implementation of solutions within specific timescales;

(*e*) report directly to the quality manager.

3.6 Audit Scope.

3.6.1 Operators are required to monitor compliance with the operational and maintenance procedures they have designed to ensure safe operations, airworthy aircraft and the serviceability of both operational and safety equipment. In doing so they should as a minimum, and where appropriate, monitor—

(*a*) organization;

(*b*) plans and company objectives;

(*c*) operational procedures;

(*d*) flight safety;

(*e*) operator certification (AOC/Operations specifications);

(*f*) supervision;

(*g*) aircraft performance;

(*h*) all weather operations;

(*i*) communications and navigational equipment and practices;

(*j*) mass, balance and aircraft loading;

(*k*) instruments and safety equipment;

(*l*) manuals, logs, and records;

(*m*) flight and duty time limitations, rest requirements, and scheduling;

(*n*) aircraft maintenance/operations interface;

(*o*) use of the MEL;

(*p*) maintenance programmes and continued airworthiness;

(*q*) airworthiness directives management;

(*r*) maintenance accomplishment;

(*s*) defect deferral;

(*t*) flight crew;

(*u*) cabin crew;

(*v*) dangerous goods;

(*w*) security;

(*x*) training.

3.7 Audit Scheduling.

3.7.1 A quality assurance programme should include a defined audit schedule and a periodic review cycle area by area. The schedule should, be flexible, and allow unscheduled audits when trends are identified. Follow-up audits should be scheduled when necessary to verify that corrective action was carried out and that it was effective.

3.7.2 An operator should establish a schedule of audits to be completed during a specified calendar period. All aspects of the operation should be reviewed within every 12 month period in accordance with the programme unless an extension to the audit period is accepted as explained below. An operator may increase the frequency of audits at its discretion but should not decrease the frequency without the agreement of the Authority. Audit frequency should not be decreased beyond a 24 month period interval.

3.7.3 When an operator defines the audit schedule, significant changes to the management, organization, operation, or technologies should be considered as well as changes to the regulatory requirements.

3.8 Monitoring and Corrective Action.

3.8.1 The aim of monitoring within the quality system is primarily to investigate and judge its effectiveness and thereby to ensure that defined, policy operational, and maintenance standards are continuously complied with. Monitoring activity is based upon quality inspections, audits, corrective action and follow-up. The operator should establish and publish a quality procedure to monitor regulatory compliance on a continuing basis. This monitoring activity should be aimed at eliminating the causes of unsatisfactory performance.

3.8.2 Any non-compliance identified as a result of monitoring should be communicated to the manager responsible for taking corrective action or, if appropriate, the accountable manager. Such non-compliance should be recorded, for the purpose of further investigation, in order to determine the cause and to enable the recommendation of appropriate corrective action.

3.8.3 The quality assurance programme should include procedures to ensure that corrective actions are taken in response to findings. These quality procedures should monitor such actions to verify their effectiveness and that they have been completed. Organizational responsibility and accountability for the implementation of corrective action resides with the department cited in the report identifying the finding. The accountable manager will have the ultimate responsibility for resourcing the corrective active action and ensuring, through the quality manager, that the corrective action has re-established compliance with the standard required by the Authority, and any additional requirements defined by the operator.

3.8.4 Corrective action. Subsequent to the quality inspection/audit, the operator should establish—

(*a*) the seriousness of any findings and any need for immediate corrective action;

(*b*) the origin of the finding;

(*c*) what corrective actions are required to ensure that the non-compliance does not recur;

(*d*) a schedule for corrective action;

(*e*) the identification of individuals or departments responsible for implementing corrective action;

(*f*) allocation of resources by the accountable manager, where appropriate.

3.8.5 The quality manager should—

(*a*) verify that corrective action is taken by the manager responsible in response to any finding of non-compliance;

(*b*) verify the corrective action includes the elements outlined in paragraph 3.8.4 above;

(*c*) monitor the implementation and completion of corrective action;

(*d*) provide management with an independent assessment of corrective action; implementation and completion;

(*e*) evaluate the effectiveness of corrective action, through follow-up process.

3.9 Management Evaluation.

3.9.1 A management evaluation is a comprehensive, systematic, documented review by the management of the quality system, operational policies and procedures, and should consider—

(*a*) the results of quality inspections, audits and any other indicators;

(*b*) the overall effectiveness of the management organization in achieving stated objectives.

3.9.2 A management should identify and correct trends, and prevent, where possible, future non-conformities. Conclusions and recommendations made as a result of an evaluation should be submitted in writing to the responsible manager for action. The responsible manager should be an individual who has the authority to resolve issues and take action.

3.9.3 The accountable manager should decide upon the frequency, format and structure of internal management evaluation activities.

3.10 Recording.

3.10.1 Accurate, complete and readily accessible records documenting the results of the quality assurance programme should be maintained by the operator. Records are essential data to enable an operator to analyse and determine the root causes of non-conformity, so that areas of non-compliance can be identified and addressed.

3.10.2 The following records should be retained for a period of 5 years—

(*a*) audit schedules;

(*b*) quality inspection and audit reports;

(*c*) responses to findings;

(*d*) corrective action reports;

(*e*) follow-up and closure reports; and

(*f*) management evaluation reports.

4.0 Quality Assurance Responsibility for Sub-Contractors.

4.1 Sub-Contractors.

4.1.1 Operators may decide to sub-contract out certain activities to external agencies for the provision of services related to areas such as—

(*a*) ground de-icing/anti-icing;

(*b*) maintenance;

(*c*) ground handling;

(*d*) flight support (including performance calculations, flight planning, navigation database and dispatch);

(*e*) training;

(*f*) manual preparation.

4.1.2 The ultimate responsibility for the product or service provided by the sub-contractor always remains with the operator. A written agreement should exist between the operator and the sub-contractor

clearly defining the safety related services and quality to be provided. The sub-contractor's safety related activities relevant to the agreement should be included in the operator's quality assurance programme.

4.1.3 The operator should ensure that the sub-contractor has the necessary authorization/approval when required and commands the resources and competence to undertake the task.

5.0 Quality System Training.

5.1 General.

5.1.1 An operator should establish effective, well planned and resourced quality related briefing for all personnel.

5.1.2 Those responsible for managing the quality system should receive training covering—

(*a*) an introduction to the concept of the quality system;

(*b*) quality management;

(*c*) the concept of quality assurance;

(*d*) quality manuals;

(*e*) audit techniques;

(*f*) reporting and recording; and

(*g*) the way in which the quality system will function in the company.

5.1.3 Time should be provided to train every individual involved in quality management and for briefing the remainder of the employees. The allocation of time and resources should be governed by the size and complexity of the operation concerned.

5.2 Sources of Training.

5.2.1 Quality management courses are available from the various [National] or International Standards Institutions, and an operator should consider whether to offer such courses to those likely to be involved in the management of quality systems. Operators with sufficient appropriately qualified staff should consider whether to carry out in-house training.

6.0 Organizations with 20 or Less Full-Time Employees.

6.1 Introduction.

6.1.1 The requirement to establish and document a quality system, and to employ a quality manager applies to all operators. References to large and small operators elsewhere in these [Model Regulations] are governed by aircraft capacity (i.e. more or less than 20 seats) and by mass (i.e. greater or less than 10 tonnes maximum take-off

mass). Such terminology is not relevant when considering the scale of an operation and the quality system required. In the context of quality systems therefore, operators should be categorized according to the number of full time staff employees.

6.2 Scale of Operation.

6.2.1 Operators who employ 5 or less full time staff are considered to be "very small" while those employing between 6 and 20 full time employees are regarded as "small" operators as far as quality systems are concerned. Full-time in this context means employed for not less than 35 hours per week excluding vacation periods.

6.2.2 Complex quality systems could be inappropriate for small or very small operators and the clerical effort required to draw up manuals and quality procedures for a complex system may stretch their resources. It is therefore accepted that such operators should tailor their quality systems to suit the size and complexity of their operation and allocate resources accordingly.

6.3 Quality System for Small/Very Small Operators.

6.3.1 For small and very small operators it may be appropriate to develop a quality assurance programme that employs a checklist. The checklist should have a supporting schedule that requires completion of all checklist items within a specified timescale, together with a statement acknowledging completion of a periodic review by top management. An occasional independent overview of the checklist content and achievement of the quality assurance should be undertaken.

6.3.2 The "small" operator may decide to use internal or external auditors or a combination of the two. In these circumstances it would be acceptable for external specialists and or qualified organizations to perform the quality audits on behalf of the quality manager.

6.3.3 If the independent quality audit function is being conducted by external auditors, the audit schedule should be shown in the relevant documentation.

6.3.4 Whatever arrangements are made, the operator retains the ultimate responsibility for the quality system and especially the completion and follow-up of corrective actions.

Quality System—Organization Examples

(1) The following diagrams illustrate two typical examples of Quality organizations.

(*a*) quality System within the AOC holder's organization when the AOC holder also holds an approval for maintenance.

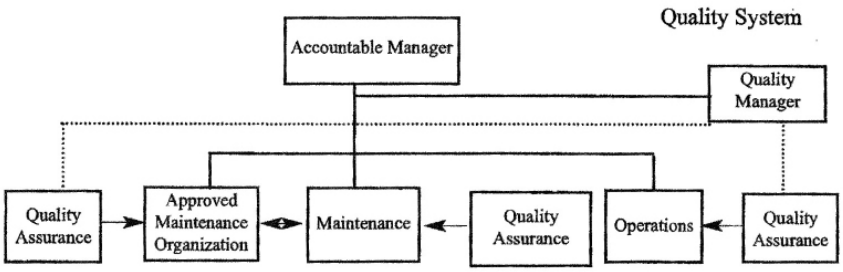

(*b*) quality Systems related to an AOC holder's organization where aircraft maintenance is contracted out to an approved organization which is not integrated with the AOC holder.

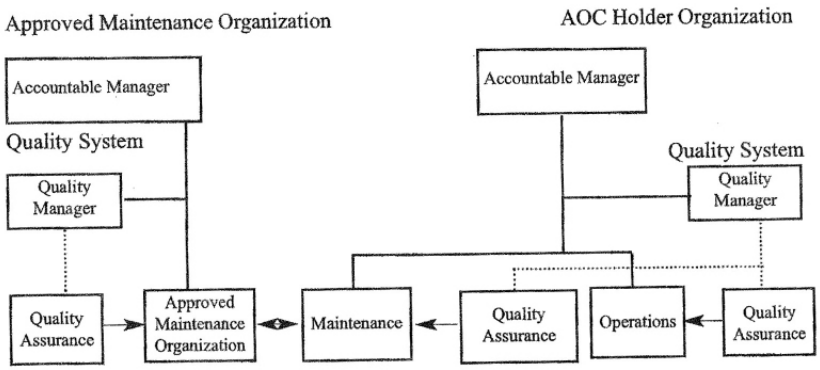

NOTE: The Quality System and Quality Audit Programme of the AOC holder should assure that the maintenance carried out by the approved organization is in accordance with requirements specified by the AOC holder.

IS 9:17 RETENTION OF RECORDS

(*a*) an operator shall ensure that the following information or documentation is retained for the periods shown in the table below.

Table of Record Retention

Flight crew Records	
Flight, duty and rest time	2 years
Licence and medical certificate	Until 12 months after the flight crew member has left the employ of the operator
Ground and flight training (all types)	Until 12 months after the flight crew member has left the employ of the operator

Route and aerodrome/heliport qualification training	Until 12 months after the flight crew member has left the employ of the operator
Dangerous good training	Until 12 months after the flight crew member has left the employ of the operator
Security training	Until 12 months after the flight crew member has left the employ of the operator
Proficiency and qualification checks (all types)	Until 12 months after the flight crew member has left the employ of the operator
Cabin Crew Records	
Flight, duty and rest time	2 years
Licence, if applicable	Until 12 months after the cabin crew member has left the employ of the operator
Ground and flight training (all types) and qualification checks	Until 12 months after the cabin crew member has left the employ of the operator
Dangerous good training	Until 12 months after the cabin crew member has left the employ of the operator
Security training	Until 12 months after the cabin crew member has left the employ of the operator
Competency checks	Until 12 months after the cabin crew member has left the employ of the operator
Records for other AOC Personnel	
Training/qualification of other personnel for whom an approved training programme is required in these Regulations	Until 12 months after the employee has left the employ of the operator
Licence, if required, and medical certificate if required	Until 12 months after the employee has left the employ of the operator
Proficiency or competency cheeks, if required	Until 12 months after the employee has left the employ of the operator
Flight Preparation Forms	
Completed load manifest	3 months after the completion of the flight
Mass and balance reports	3 months after the completion of the flight
Dispatch releases	3 months after the completion of the flight
Flight plans	3 months after the completion of the flight
Passenger manifests	3 months after the completion of the flight.
Weather reports	3 months after the completion of the flight
Flight Recorder Records	
Cockpit voice recordings	Preserved after an accident or incident for 60 days or longer if requested by the Authority

Flight data recordings	Preserved after an accident or incident for 60 days or longer if requested by the Authority
Aircraft Technical Logbook	
Journey records section	2 years
Maintenance records section	2 years
Maintenance Records of the Aircraft	
Total time in service (hours, calendar time and cycles, as appropriate) of the aircraft and all life-limited components	3 months after the unit to which they refer has been permanently withdrawn from service
Current status of compliance with all mandatory continuing airworthiness information	3 months after the unit to which they refer has been permanently withdrawn from service
Appropriate details of modifications and repairs aircraft and its components	3 months after the unit to which they refer has been to the permanently withdrawn from service
Total time in service (hours, calendar time and cycles, as appropriate) since the last overhaul of the aircraft or its components subject to a mandatory overhaul life	3 months after the unit to which they refer has been permanently withdrawn from service
The detailed maintenance records to show all requirements for a maintenance release have been met	1 year after signing of the maintenance release
Other Records	
Operational flight plan	3 months after the completion of the flight
Quality system records	5 years
Dangerous goods transport document	6 months after the completion of the flight
Dangerous goods acceptance checklist	6 months after the completion of the flight
Records on cosmic and solar radiation dosage, if AOC holder operates aircraft that fly above 15, 000 m (49, 000 ft)	Until 12 months after the crew member has left the employ of the AOC holder

NOTE: See regulation 36 of these Regulation for details of the journey records section and regulation 64 of these Regulations for details of the maintenance records section of the aircraft technical log.

IS: 9.64 Aircraft Technical Log

(*a*) The following are two examples of an aircraft technical log—

Name of the Operator[1] Address of the operator	Flight Log[2]	Name of Commander:	Registration:	Sheet No[3]:
	Commander's Signature[4]:	Name and duty of other Crew Member(s):	Aeroplane Type:	Date:

FLIGHT[5]				CHECK	BLOCK TIME		AIRBORNE TIME			LOAD		FUEL ON BOARD		
Nature of Flight:[6]	From:	To	No. of Ldg.:[7]	Flight Preparation:[8]	Time Off:	Time On:	Take-off:	Ldg:	Time:	No. of Pax/ Cargo (kg/ lbs):	Take-off mass (kg/ lbs):	Uplift	Take-off[9] (ltrs/kg/ lbs):	Ldg:

FLIGHT DATA BLOCK TIME REPORT			INCIDENTS/OCCURRENCES/OBSERVATIONS REPORT/DEFECTS NOTED[10]
	Block Time:	Landings:	Mark type of report: Operation/Technical/Other[11]. Also note any de-/anti-icing as instructed[12]
Total per Day:			
Total Previous Report:			
Total to Report:			

FLIGHT DATA FLIGHT TIME REPORT			CERTIFICATE OF RELEASE TO SERVICE	ACTIONS TAKEN[13]
	Flight Time:	Next Maintenance Due:	Name of certifying staff & JAR 145 approval reference (if applicable)	
Total this sheet:		Hours	Certifies that the work specified except as otherwise specified was carried out in accordance with JAR-145 and in respect to that work the aeroplane/aeroplane component is considered ready for release to service.	
Total from previous sheet:		Landings	Signature	
Total to Report:		Date		

1. Operator's name and address pre-printed or filled in by hand.
2. Must be filled for—
   - □ Each day; and
   - □ Each flight crew
3. Sheet number (e.g. yy-nn) must be pre-printed or printed by hand. All sheets must be identifiable and numbered according to a continuous system that offers the same security when hand printed as when pre-printed.
4. The commander's signature states that everything on this sheet is correct.
5. For flights from A to A, a summary entry may be made. All other flights such as A to B etc., for each flight an entry must be made.
6. Such as Private, Commercial, Technical, Training, Sailplane towing, etc.
7. Number of landings if summary entry
8. Flight Preparation according to the Operations Manual (commander's initials) state that—
   - (*a*) Weight and Balance is within Limit;
   - (*b*) pre-flight check is done;
   - (*c*) technical status is checked and aeroplane accepted by the commander;
   - (*d*) passengers manifest/documentation performed.
9. Total Fuel on board (state the units unless pre-printed)
10. Incidents/Occurrences/Observations Report (Operation, Technical, Others)—
    - □ If no report needs to be made state "-NIL-"
    - □ If a report must be made state (mark) the type of report
11. Number each observation sequentially for each log sheet
12. If de- or anti-icing has been applied, state time and amount and kind of fluid applied or other action take, e.g. mechanical removal of snow or ice, if oil has been filled, state the time and amount
13. Use the same number as the corresponding observation to link report and response.

Address of Operator	Date:	CREW	LOAD	OIL	GROUND DE-ICING	Sheet Number 00000001
	Aeroplane Type: Registration	Name of Commander: _____ Name and duty of crew member _____	No. of Pax:_____ Mass (Kg/lbs) Cargo:_____ Take-off:_____	Engine 1 Engine 2 Refilled _____/_____ Total _____/_____	Type of fluid:_____ Mixture:_____ Time of De-icing Commenced_____ Finished:_____	Last release:_____ Total Aeroplane Hours _____ Total aeroplane Landing: _____ Next Maintenances Due: In hours:_____ In handing:_____

FLIGHT				PRE-FLIGHT	BLOCK TIME		AIRBORNE TIME			FUEL ON BORD (LTRS/KG/LBS)				
Flight No.	From:	To:	No. of Ldg:	Name/Signature	Off:	On:	Time:	Take-off:	Ldg:	Time:	Uplift:	Take-off:	Ldg:	

Defects	Signature	Action Taken	amo Release to Service
00000000-1		PN Sn off: sn on:	Agreement number: Date: Place: Time: Name: Signature
00000001-2		PN Sn off: sn on:	Agreement number: Date: Place: Time: Name: Signature
		PN Sn off: sn on:	Agreement number: Date: Place: Time: Name: Signature
MEL DEFERRED DEFECT Item MEL Open Date Category Limit Date	Captions Acceptance	Daily Check/Maintenance	Agreement number: Date: Place: Time: Name:

IS 9:23 FLIGHT SAFETY DOCUMENTS SYSTEM

(*a*) the following outline addresses the major elements of an operator's flight safety documents system development process, with the aim of ensuring compliance with these Regulations.

1.0 Organization

1.1 A flight safety documents system shall be organized according to criteria, which ensure easy access to information, required for flight and ground operations contained in the various operational documents comprising the system and which facilitate management of the distribution and revision of operational documents.

1.2 Information contained in a flight safety documents system shall be grouped according to the importance and use of the information, as follows—

(*a*) time critical information, e.g., information that can jeopardize the safety of the operation if not immediately available;

(*b*) time sensitive information, e.g., information that can affect the level of safety or delay the operation if not available in a short time period;

(*c*) frequently used information;

(*d*) reference information, e.g., information that is required for the operation but does not fall under (*b*) or (*c*) above; and

(*e*) information that can be grouped based on the phase of operation in which it is used.

1.3 Time critical information shall be placed early and prominently in the flight safety documents system.

1.4 Time critical information, time sensitive information, and frequently used information shall be placed in cards and quick-reference guides.

2.0 Validation. A flight safety documents system shall be validated before deployment, under realistic conditions. Validation shall involve the critical aspects of the information use, in order to verify its effectiveness. Interactions among all groups that can occur during operations shall also be included in the validation process.

3.0 Design

3.1 A flight safety documents system shall maintain consistency in terminology and in. the use of standard terms for common items and actions.

3.2 Operational documents shall include a glossary of terms, acronyms and their standard definition, updated on a regular basis to ensure

access to the most recent terminology. All significant terms, acronyms and abbreviations included in the flight documents system shall be defined.

3.3 A flight safety documents system shall ensure standardization across document types, including writing style, terminology, use of graphics and symbols, and formatting across documents. This includes a consistent location of specific types of information, consistent use of units of measurement and consistent use of codes.

3.4 A flight safety documents system shall include a master index to locate, in a timely manner, information included in more than one operational document.

NOTE: The master index must be placed in the front of each document and consist of no more than three levels of indexing. Pages containing abnormal and emergency information must be tabbed for direct access.

3.5 A flight safety documents system shall comply with the requirements of the operator's quality system, if applicable.

4.0 Deployment. Operators shall monitor deployment of the flight safety documents system, to ensure appropriate and realistic use of the documents, based on the characteristics of the operational environment and in a way which is both operationally relevant and beneficial to operational personnel. This monitoring shall include a formal feedback system for obtaining input from operational personnel.

5.0 Amendment.

5.1 Operators shall develop an information gathering, review, distribution and revision control system to process information and data obtained from all sources relevant to the type of operation conducted, including, but not limited to, the State of the Operator, State of design, State of Registry, manufacturers and equipment vendors.

NOTE: Manufacturers provide information for the operation of specific aircraft that emphasizes the aircraft systems and procedures under conditions that may not fully match the requirements of operators. Operators shall ensure that such information meets their specific needs and those of the local authority.

5.2 Operators shall develop an information gathering, review and distribution system to process information resulting from changes that originate within the operator, including—

(*a*) changes resulting from the installation of new equipment;

(*b*) changes in response to operating experience;

(*c*) changes in an operator's policies and procedures;

(*d*) changes in an operator certificate; and

(*e*) changes for purposes of maintaining cross fleet standardization.

NOTE: Operators shall ensure that crew coordination philosophy, policies and procedures are specific to their operation.

5.3 A flight safety documents system shall be reviewed—

(*a*) on a regular basis (at least once a year);

(*b*) after major events (mergers, acquisitions, rapid growth, downsizing, etc.);

(*c*) after technology changes (introduction of new equipment); and

(*d*) after changes in safety regulations.

5.4 Operators shall develop methods of communicating new information. The specific methods shall be responsive to the degree of communication urgency.

NOTE: As frequent changes diminish the importance of new or modified procedures, it is desirable to minimize changes to the flight safety documents system.

5.5 New information shall be reviewed and validated considering its effects on the entire flight safety documents system.

5.6 The method of communicating new information shall be complemented by a tracking system to ensure currency by operational personnel. The tracking system shall include a procedure to verify that operational personnel have the most recent updates.

IS 9:25 DRY LEASING OF FOREIGN REGISTERED AIRCRAFT

1. An AOC holder may dry lease an aircraft for the purpose of commercial air transportation from any AOC holder of a State which is signatory to the Chicago Convention provided that the following conditions are met—

(*a*) the aircraft carries an appropriate airworthiness certificate issued, in accordance with ICAO Annex 8, by the State of Registry and meets the registration and identification requirements of that country.

(*b*) the aircraft is of a type design which complies with all of the requirements that would be applicable to that aircraft were it registered in Malaŵi, including the requirements which shall be met for issuance of a Malaŵi standard airworthiness

certificate (including type design conformity, condition for safe operation, and the noise, fuel venting, and engine emission requirements).

(*c*) the aircraft is maintained according to an approved maintenance programme.

(*d*) the aircraft is operated by Malaŵi-licensed airmen with additional licence authorization by the State of Registry, employed by the AOC holder.

2. Each AOC holder shall provide the Authority with a copy of the dry lease to be executed.

3. Operational control of any dry leased aircraft rests with the AOC holder operating that aircraft.

4. The Authority will list the dry leased aircraft on the lessor AOC holder's operations specifications.

5. AOC holder engaged in dry leasing aircraft shall make the dry lease agreement explicit concerning the maintenance programme and MEL to be followed during the term of the dry lease.

IS 9:26 Aircraft Interchange

1. Before operating under an interchange agreement, each AOC holder shall show that—

(*a*) the procedures for the interchange operation conform with safe operating practices;

(*b*) required crew members and flight operations officers meet approved training requirements for the aircraft and equipment to be used and are familiar with the communications and dispatch procedures to be used;

(*c*) maintenance personnel meet training requirements for the aircraft and equipment, and are familiar with the maintenance procedures to be used;

(*d*) flight crew members and flight operations officers meet appropriate route and airport qualifications;

(*e*) the aircraft to be operated are essentially similar to the aircraft of the AOC holder with whom the interchange is effected; and

(*f*) the arrangement of flight instruments and controls that are critical to safety are essentially similar, unless the Authority determines that the AOC holder has adequate training programmes to ensure that any potentially hazardous dissimilarities are safely overcome by flight crew familiarization.

2. Each AOC holder conducting an interchange agreement shall include the pertinent provisions and procedures of the agreement in its manuals.
3. The AOC holder shall amend their operations specifications to reflect an interchange agreement.
4. The AOC holder shall comply with the applicable regulations of the State of Registry of an aircraft involved in an interchange agreement while it has operational control of that aircraft.

IS 9: 27 WET-LEASING

1. Each AOC holder shall provide the Authority with a copy of the wet-lease to be executed.
2. The Authority will determine which party to a wet-lease agreement has operational control considering the extent and control of certain operational functions such as—
   (*a*) initiating and terminating flights;
   (*b*) maintenance and servicing of aircraft;
   (*c*) scheduling crew members;
   (*d*) paying crew members; and
   (*e*) training crew members.
3. Each AOC holder engaged in a wet leasing arrangement shall amend its operations specifications to contain the following information—
   (*a*) the names of the parties to the agreement and the duration of the agreement;
   (*b*) the make, model, and series of each aircraft involved in the agreement;
   (*c*) the kind of operation;
   (*d*) the expiration date of the lease agreement;
   (*e*) a statement specifying the party deemed to have operational control;
   (*f*) any other item, condition, or limitation the Authority determines necessary.

IS 9:28 EMERGENCY EVACUATION DEMONSTRATION

1. Each AOC holder shall conduct a partial emergency evacuation and ditching evacuation, observed by the Authority that demonstrates the effectiveness of its crew member emergency training and evacuation procedures.
2. Prior to conducting an emergency evacuation demonstration, the AOC holder shall apply for and obtain approval from the Authority.

3. Cabin crew members used in the emergency evacuation demonstrations shall—

   (*a*) be selected at random by the Authority;

   (*b*) have completed the AOC holder's Authority-approved training programme for the type and model of aircraft; and

   (*c*) have passed the drills and competence check on the emergency equipment and procedures.

4. To conduct the partial emergency evacuation demonstration, the AOC holder's assigned cabin crew members shall, using the AOC holder's line operating procedures—

   (*a*) demonstrate the opening of 50 percent of the required floor-level emergency exits and 50 percent of the required non-floor-level emergency exits (whose opening by a cabin crew member is defined as an emergency evacuation duty) and deployment of 50 percent of the exit slides, selected by the Authority; and

   (*b*) prepare for use those exits and slides within 15 seconds.

5. To conduct the ditching evacuation demonstration, the AOC holder's assigned cabin crew members shall—

   (*a*) demonstrate their knowledge and use of each item of required emergency equipment;

   (*b*) prepare the cabin for ditching within 6 minutes after the intention to ditch is announced;

   (*c*) remove each life raft from storage (one life raft, selected by the Authority, shall be launched and properly inflated or one slide life raft properly inflated); and

   (*d*) enter the raft (the raft shall include all required emergency equipment) and completely set it up for extended occupancy.

IS 9:29 Demonstration Flights

1. Each AOC holder shall conduct demonstration flights for each type of aircraft, including those aircraft materially altered in design, and for each kind of operation the AOC holder intends to conduct.

   Definition: "Materially altered aircraft" refers to aircraft having power-plants installed other than those for which it is certified; or alterations to the aircraft or its components that materially affect flight characteristics.

2. Each AOC holder shall conduct demonstration flights which contain at least—

   (*a*) one hundred total hours of flight time, unless the Authority determines that a satisfactory level of proficiency has been demonstrated in fewer hours;

(*b*) five hours of night time, if night flights are to be authorized;

(*c*) five instrument approach procedures under simulated or actual instrument weather conditions, if IFR flights are to be authorized; and

(*d*) entry into a representative number of en route airports, as determined by the Authority.

3. No person may carry passengers in an aircraft during demonstration flights, except for those needed to make the demonstration flight and those designated by the Authority.

4. For those AOC holders of aircraft of less than 5700 kg, the necessity and extent of demonstration shall be at the option of the Authority.

IS 9:33 Operations Manual

1. Each AOC holder shall ensure that the contents and structure of the operations manual are in accordance with rules and regulations of the Authority, and are relevant to the area(s) and type(s) of operation.

2. An operations manual, which may be issued in separate parts corresponding to specific aspects of operations shall be organized in accordance with the following structure—

(*a*) general (IS 9:33(*e*);

(*b*) aircraft operating information (IS 9:35);

(*c*) areas, routes and aerodromes (IS 9:50); and

(*d*) training (IS 9:34).

3. An AOC holder may design a manual to be more restrictive than the Authority's requirements.

4. Each AOC holder shall ensure that the operations manual presents the items of information listed below, to meet the requirements of subregulation 332 (7). The manual may consist of two or more parts containing together all such information in a format and manner based upon the outline presented in paragraph (*d*) herein. Each part of the operations manual must contain ail information required by each group of personnel addressed in that part—

(*a*) general policies;

(*b*) duties and responsibilities of each crew member, appropriate members of the ground organization, and management personnel;

(*c*) reference to appropriate Civil Aviation Regulations;

(*d*) flight dispatching and operational control, including procedures for co-ordinated dispatch or flight control or flight

following procedures and maintenance control procedures, as applicable;

(*e*) en route flight, navigation, and communication procedures, including procedures for the dispatch or release or continuance of flight if any item of equipment required for the particular type of operation becomes inoperative or unserviceable en route;

(*f*) appropriate information from the en route operations specifications, including for each approved route the types of aircraft authorized, the type of operation such as VFR, IFR, day, night, etc., and any other pertinent information.

(*g*) appropriate information from the airplane terminal instrument procedures and airport authorizations and limitations operations specifications, including for each airport—

(i) its location;

(ii) its designation;

(iii) the types of aircraft authorized;

(iv) instrument approach procedures;

(v) landing and take-off minima; and

(vi) any other pertinent information.

(*h*) procedures for familiarizing passengers with the use of emergency equipment, during flight;

(*i*) emergency equipment and procedures;

(*j*) the method of designating succession of command of flight crew members;

(*k*) procedures for determining the usability of landing and take-off areas, and for disseminating pertinent information thereon to operations personnel;

(*l*) procedures for operating in periods of ice, hail, thunderstorms, turbulence, or any potentially hazardous meteorological condition;

(*m*) airman training programmes, including appropriate ground, flight, and emergency phases;

(*n*) procedures for refueling aircraft, eliminating fuel contamination, protection from fire (including electrostatic protection), and supervising and protecting passengers during refueling;

(*o*) methods and procedures for maintaining the aircraft weight and centre of gravity within approved limits;

(*p*) where applicable, pilot and dispatcher route and airport qualification procedures;

(*q*) accident notification procedures;

(*r*) procedures and information to assist personnel to identify packages marked or labeled as containing hazardous materials and, if these materials are to be carried, stored, or handled, procedures and instructions relating to the carriage, storage, or handling of hazardous materials, including the following—

(i) procedures for determining the proper shipper certification and proper packaging, marking, labeling, shipping documents, compatibility of materials, and instructions on the loading, storage, and handling;

(ii) notification procedures for reporting hazardous material incidents;

(iii) instructions and procedures for the notification of the pilot in command when there are hazardous materials aboard.

(*s*) producers for flight crews to record and report on—

i. routine meteorological observation during en route and climb-out phases of the flight;

ii. special and other non-routine observations during any phase of the flight;

iii. volcanic activity

(*t*) procedures for the preparation and dissemination to flight crew and operators personnel of the information contained in—

i. the Aeronautical Information Publication (AIP);

ii. Aeronautical Information Circular (AIC);

(*u*) other information or instructions relating to safety.

5. The general part or section of the operations manual shall contain at least the following—

1.0 Administration and Control of Operations Manual.

1.1 Introduction—

(*a*) a statement that the manual complies with all applicable Authority regulations and requirements and with the terms and conditions of the applicable Air Operator Certificate;

(*b*) a statement that the manual contains operational instructions that are to be complied with by the relevant personnel in the performance of their duties;

(*c*) a list and brief description of the various operations manual parts, their contents, applicability and use;

(*d*) explanations and definitions of terms and words used in the manual.

1.2 System of Amendment and Revision—

(*a*) an operations manual shall describe who is responsible for the issuance and insertion of amendments and revisions;

(*b*) a record of amendments and revisions with insertion dates and effective dates is required;

(*c*) a statement that hand-written amendments and revisions are not permitted except in situations requiring immediate amendment or revision in the interest of safety;

(*d*) a description of the system for the annotation of pages and their effective dates;

(*e*) a list of effective pages and their effective dates;

(*f*) annotation of changes (on text pages and as practicable, on charts and diagrams);

(*g*) a system for recording temporary revisions;

(*h*) a description of the distribution system for the manuals, amendments and revisions;

(*i*) a statement of who is responsible for notifying the Authority of proposed changes and working with the Authority on changes requiring Authority approval;

2.0 Organization and Responsibilities.

2.1 Organizational Structure: A description of the organizational structure including the general company organization and operations department organization. The relationship between the operations department and the other departments of the company. In particular, the subordination and reporting lines of all divisions, departments etc., which pertain to the safety of flight operations shall be shown. Instructions outlining the responsibilities of operations personnel pertaining to the conduct of flight operations.

2.2 Responsible Manager: The name of each manager responsible for flight operations, the maintenance system, crew training and ground operations shall be listed. A description of their function and responsibilities shall be included.

2.3 Responsibilities and Duties of Operations Management Personnel: A description of the duties, responsibilities and authority of operations management personnel pertaining to the safety of flight operations and with compliance with applicable regulations shall be listed.

2.4 Authority, Duties and Responsibilities of a PIC: A statement defining the authority, duties and responsibilities of the PIC shall be listed.

2.5 Duties and Responsibilities of Crew Members Other Than the PIC: A statement defining the authority, duties, and responsibilities of all required aircraft crew members shall be listed.

3.0 Operational Control and Supervision.

3.1 Supervision of the Operation by the AOC Holder: A description of the system for supervision of the operation by the AOC holder shall be listed. This description shall show how the safety of flight operations and the qualifications of personnel involved in all such operations are supervised and monitored. In particular, the procedures related to the following items shall be described—

(*a*) specifications for the operational flight plan;

(*b*) competence of operations personnel; and

(*c*) control, analysis and storage of records, flight documents, additional information, and safety related data.

3.2 System of Promulgation of Additional Operational Instructions and Information: A description of any system for promulgating information which may be of an operational nature but is supplementary to that in the operations manual. The applicability of this information and the responsibilities for its promulgation shall be included.

3.3 Accident Prevention and Flight Safety Programme: A description of the main aspects of the flight safety programme including—

(*a*) programmes to achieve and maintain risk awareness by all persons involved in flight operations; and

(*b*) evaluation of accidents and incidents and the promulgation of related information.

3.4 Operational Control: A description of the objectives, procedures and responsibilities necessary to exercise operational control with respect to flight safety.

4.0 Quality System: A description of the quality system adopted.

5.0 Crew.

5.1 Crew Composition: An explanation of the method for determining crew compositions taking into account of the following—

(*a*) experience (total and on type), recency and qualification of the crew members; and

(*b*) the designation of the PIC and, if required by the duration of the flight, the procedures for the relief of the PIC or other members of the flight crew.

(*c*) the flight crew for each type of operation including the designation of the succession of command.

5.2 Designation of the PIC: The rules applicable to the designation of a PIC.

5.3 Flight crew Incapacitation: Instructions on the succession of command in the event of flight crew incapacitation.

6.0 Flight crew, Cabin crew, Flight Operations Officer, and Other Operations Personnel Qualifications

6.1 Qualifications: A description of the required licence rating(s), qualification/competency (e.g., for routes and airports) experience, training, checking and recency of experience for operations personnel to conduct their duties. Consideration shall be given to the aircraft type, kind of operation, and composition of the crew.

6.2 Flight crew—

(*a*) operation on more than one type or variant.

6.3 Cabin crew—

(*a*) senior cabin crew member;

(*b*) cabin crew member—

(i) required cabin crew member;

(ii) additional cabin crew member; and

(iii) cabin crew member during familiarization flights.

(*c*) operation on more than one type or variant.

6.4 Other Operations Personnel.

7.0 Flight and Duty Time.

7.1 Flight and Duty Time Limitations and Rest Schemes

(*a*) flight crew

(*b*) cabin crew

(*c*) flight operations officer/ flight dispatcher

8.0 Crew Health.

8.1 Crew Health Precautions: The relevant regulations and guidance for crew members concerning health including—

(*a*) alcohol and other intoxicating liquor;

(*b*) narcotics;

(*c*) drugs;

(*d*) sleeping tablets;

(*e*) pharmaceutical preparations;

(*f*) immunization;

(*g*) SCUBA diving;

(*h*) blood donation;

(*i*) meal precautions prior to and during flight;

(*j*) sleep and rest; and

(*k*) surgical operations.

9.0 Operating Procedures.

9.1 Flight Preparation Instructions: As applicable to the operation.

9.1.1 Criteria for Determining the Usability of Airports.

9.1.2 The method for determining minimum flight altitudes.

9.1.3 The method for determining aerodrome operating minima.

9.1.4 En route Operating Minima for VFR Flights: A description of en route operating minima for VFR flights or VFR portions of a flight and, where single-engine aircraft are used, instructions for route selection with respect to the availability of surfaces which permit a safe forced landing.

9.1.5 Presentation and Application of Airport and En route Operating Minima.

9.1.6 Interpretation of Meteorological Information: Explanatory material on the decoding of MET forecasts and MET reports relevant to the area of operations, including the interpretation, of conditional expressions.

9.1.7 Determination of the Quantities of Fuel, Oil and Water Methanol Carried: The specific instructions and methods by which the quantities of fuel, oil and water methanol to be carried are determined and monitored in flight. This section shall also include instructions on the measurement and distribution of the fluid carried on board. Such instructions shall take account of all circumstances likely to be encountered on the flight, including the possibility of in-flight replanning and of failure of one or more of the aircraft's power plants, and possible loss of pressurization. The system for maintaining fuel and oil records shall also be described.

9.1.8 Mass and Centre of Gravity.

The general principles of mass and centre of gravity including—

(*a*) the policy for using either standard and/or actual masses;

(*b*) the method for determining the applicable passenger, baggage and cargo mass;

(*c*) the applicable passenger and baggage masses for various types of operations and aircraft type;

(*d*) general instruction and information necessary for verification of the various types of mass and balance documentation in use;

(*e*) last minute changes procedures;

(*f*) seating policy/procedures; and

(*g*) list of documents, forms and additional information to be carried during a flight.

9.2 Ground Handling Arrangements and Procedures.

9.2.1 Fuelling Procedures.

A description of fuelling procedures, including—

(*a*) safety precautions during refuelling and defueling including when an APU is in operation or when a turbine engine is running and, if applicable, the propeller brakes are on;

(*b*) refuelling and defueling when passengers are embarking, on board or disembarking;

(*c*) precautions to be taken to avoid mixing fuels; and

(*d*) method to ensure the required amount of fuel is loaded.

9.2.2 Aircraft, Passengers And Cargo Handling Procedures Related To Safety.

A description of the handling procedures to be used when allocating seats and embarking and disembarking passengers and when loading and unloading the aircraft. Further procedures, aimed at achieving safety whilst the aircraft is on the ramp, shall also be given. Handling procedures shall include—

(*a*) sick passengers and persons with reduced mobility;

(*b*) permissible size and weight of hand baggage;

(*c*) loading and securing of items in the aircraft;

(*d*) special loads and classification of load compartments (i.e., dangerous goods, live animals, etc.);

(*e*) positioning of ground equipment;

(*f*) operation of aircraft doors;

(*g*) safety on the ramp, including fire prevention, blast and suction areas;

(*h*) start-up, ramp departure and arrival procedures;

(*i*) servicing of aircraft;

(*j*) documents and forms;

(*k*) multiple occupancy of aircraft seats.

9.2.3 Procedures for the Refusal of Embarkation.

Procedures to ensure that persons who appear to be intoxicated or who demonstrate by manner or physical indications that they are under the influence of alcohol or drugs, except medical patients under proper care, are refused embarkation.

9.2.4 De-icing and Anti-Icing on the Ground.

Instructions for the conduct and control of ground de-icing/anti-icing operations. A description of the de-icing and anti-icing policy and procedures for aircraft on the ground. These shall include descriptions of the types and effects of icing and other contaminants on aircraft while stationary, during ground movements and during take-off. In addition, a description of the fluid types used shall be given including—

(*a*) proprietary or commercial names;

(*b*) characteristics;

(*c*) effects on aircraft performance;

(*d*) precautions during usage.

9.3 Flight Procedures and Flight Navigation Equipment

A description of flight procedures, including—

(*a*) Standard Operating Procedures (SOP) for each phase of flight and associated crew briefings;

(*b*) instructions on the use of normal checklists and the timing of their use;

(*c*) departure contingency procedures;

(*d*) instructions on the maintenance of altitude awareness and the use of automated or flight crew altitude call-outs;

(*e*) instructions on the use of autopilots and auto-throttles in IMC;

(*f*) instructions on the clarification and acceptance of ATC clearances, particularly where terrain clearance is involved;

(*g*) departure and approach briefings;

(*h*) procedures for familiarization with areas, routes, and aerodromes;

(*i*) stabilized approach procedure;

(*j*) limitation on high rates of descent near the surface;

(*k*) conditions required to commence or to continue an instrument approach;

(*l*) instructions for the conduct of precision and non-precision instrument approach procedures;

(*m*) allocation of flight crew duties and procedures for the management of crew workload during night and IMC instrument approach and landing operations.

(*n*) the circumstances in which a radio listening watch is to be maintained;

(*o*) instructions and training requirements for the use of head-up-displays (HUD) and enhanced vision systems (EVS) equipment as applicable.

9.3.1 Navigation Equipment: A list of the navigational equipment to be carried including any requirements relating to operations where performance-based navigation is prescribed.

9.3.2 Navigation Procedures: A description of all navigation procedures relevant to the type(s) and area(s) of operation. Consideration shall be given to—

(*a*) standard navigational procedures including policy for carrying out independent cross-checks of keyboard entries where these affect the flight path to be followed by the aircraft;

(*b*) in-flight replanning;

(*c*) procedures in the event of system degradation;

(*d*) where relevant to the operations, the long range navigation procedures, engine failure procedure for ETOPS and the nomination and utilization of diversion aerodromes;

(*e*) instructions and training requirements for the avoidance of controlled flight into terrain (CFIT) and policy for the use of the ground proximity warning system (GPWS);

(*f*) policy, instructions, procedures and training requirements for the avoidance of collisions and the use of the airborne collision avoidance system (ACAS);

(*g*) information and instructions relating to the interception of civil aircraft including—

(i) procedures, as prescribed in the Aviation Operations Regulations, IS 8:132, for pilots-in-command of intercepted aircraft; and

(ii) visual signals for use by intercepting and intercepted aircraft, as contained in Aviation Operations Regulations, IS 8:132.

(*h*) For aeroplanes intended to be operated above 49,000 ft. (15,000 m)—

(i) information which will enable the pilot to determine the best course of action to take in the event of exposure to solar cosmic radiation; and

(ii) procedures in the event that a decision to descend is taken, covering—

(A) the necessity of giving the appropriate ATS unit prior warning of the situation and of obtaining a provisional descent clearance; and

(B) the action to be taken in the event that communication with ATS unit cannot be established or is interrupted.

9.3.3 Policy and Procedures for In-flight Fuel Management.

9.3.4 Adverse and Potentially Hazardous Atmospheric Conditions.

Procedures for operating in, and/or avoiding, potentially hazardous atmospheric conditions including—

(*a*) thunderstorms;

(*b*) icing conditions;

(*c*) turbulence;

(*d*) wind shear;

(*e*) jet stream;

(*f*) volcanic ash clouds;

(*g*) heavy precipitation;

(*h*) sand storms;

(*i*) mountain waves; and

(*j*) significant temperature inversions.

9.3.5 Operating Restrictions—

(*a*) cold weather operations;

(*b*) take-off and landing in turbulence;

(*c*) low-level wind shear operations;

(*d*) cross-wind operations (including tail wind components);

(*e*) high temperature operations;

(*f*) high altitude operations.

9.3.6 Incapacitation of Crew Members.

Procedures to be followed in the event of incapacitation of crew members in flight. Examples of the types of incapacitation and the means for recognizing them shall be included.

9.3.7 Cabin Safety Requirements. Procedures covering—

(*a*) cabin preparation for flight, in-flight requirements and preparation for landing including procedures for securing cabin and galleys;

(*b*) procedures to ensure that passengers are seated where, in the event that an emergency evacuation is required, they may best assist and not hinder evacuation from the aircraft;

(*c*) procedures to be followed during passenger embarkation and disembarkation;

(*d*) procedures for fuelling with passengers on board, embarking, or disembarking;

(*e*) smoking on board; and

(*f*) use of portable electronic equipment and cellular telephones.

9.3.8 Passenger Briefing Procedures.

The contents, means and timing of passenger briefing.

9.3.9 Procedures for Use of Cosmic or Solar Radiation Detection Equipment - Aeroplanes.

Procedures for the use of cosmic or solar radiation detection equipment and for recording its readings including actions to be taken in the event that limit values specified in the operations manual are exceeded. In addition, the procedures, including ATC procedures, to be followed in the event that a decision to descend or re-route is taken.

9.4 All Weather Operations.

9.5 Use of the Minimum Equipment and Configuration Deviation List(s).

9.6 Non Revenue Flights.

Procedures and limitations for—

(*a*) training flights;

(*b*) test flights;

(*c*) delivery flights,

(*d*) ferry flights;

(*e*) demonstration flights; and

(*f*) positioning flights, including the kind of persons who may be carried on such flights.

9.7 Oxygen Requirements.

An explanation of the conditions under which oxygen shall be provided and used.

10.0 Dangerous Goods and Weapons.

10.1 Transport of Dangerous Goods.

Information, instructions and general guidance on the transport of dangerous goods including—

(*a*) AOC holder's policy on the transport of dangerous goods;

(*b*) guidance on the requirements for acceptance, labelling, handling, stowage and segregation of dangerous goods;

(*c*) procedures and actions to be taken for responding to emergency situations involving dangerous goods;

(*d*) duties of all personnel involved; and

(*e*) instructions on the carriage of the AOC holder's employees.

10.2 Transport of Weapons.

The conditions under which weapons, munitions of war and sporting weapons may be carried.

11.0 Security.

11.1 Security Policies and Procedures.

A description of security policies and procedures for handling and reporting crime on board, such as unlawful interference, sabotage, bomb threats, and hijacking.

11.2 Security Instructions and Guidance.

Security instructions and guidance of a non-confidential nature which shall include the authority and responsibilities of operations personnel.

11.3 Preventative Security Measures and Training.

A description of preventative security measures and training. (Note: Parts of the security instructions and guidance may be kept confidential).

12.0 Handling of Accidents and Occurrences.

(*a*) procedures for the handling, notifying and reporting of accidents and occurrences. This section shall include:

(*b*) definitions of accidents and occurrences and the relevant responsibilities of all persons involved;

(*c*) the descriptions of which company departments, Authorities or other institutions have to be notified by which means and in which sequence in case of an accident;

(*d*) special notification requirements in the event of an accident or occurrence when dangerous goods are being earned;

(*e*) a description of the requirements to report specific occurrences and accidents;

(*f*) the forms used for reporting and the procedure for submitting them to the Authority shall also be included;

(*g*) if the AOC holder develops additional safety related reporting procedures for its own internal use, a description of the applicability and related forms to be used; and

(*h*) procedures for pilots-in-command observing an accident.

13.0 Rules of the Air.

Rules of the Air including—

(*a*) territorial application of the Rules of the Air;

(*b*) the circumstances during which a radio listening watch shall be maintained;

(*c*) ATC clearances, adherence to flight plan and position reports;

(*d*) the ground/air visual codes for use by survivors, description and use of signal aids; and

(*e*) distress and urgency signals.

14.0 Safety Management System (SMS).

Details of the Safety Management System.

IS 9:34 Training Programmes Manual

(*a*) Each AOC holder and AOC applicant may submit and maintain training programme manuals based on the following outline—

1.0 Training Syllabi and Checking Programmes.

1.1 General Requirements: Training syllabi and checking programmes for all operations personnel assigned to operational duties in connexion with the preparation and/or conduct of a flight shall be developed to meet the respective requirements of the Authority. An AOC holder may not use, nor may any person serve in a required crew member capacity or operational capacity unless that person meets the training and currency requirements established by the Authority for that respective position.

1.2 Flight crew.

The training syllabi and checking programmes for flight crew members shall include—

(*a*) a written training programme acceptable to the Authority that provides for basic indoctrination, initial, transition, difference, and recurrent training, as appropriate, for flight deck crew members for each type of aircraft flown by that crew member. This written training programme shall include both normal and emergency procedures training applicable for each type of aircraft flown by the crew member;

(*b*) adequate ground and flight training facilities and properly qualified instructors required to meet training objectives and needs;

(*c*) a current list of approved training materials, equipment, training devices, simulators, and other required training items needed to meet the training needs for each type and variation of aircraft flown by the AOC holder;

(*d*) adequate number of ground check personnel and flight check pilots to ensure adequate training and checking of flight crew members;

(*e*) a record system acceptable to the Authority to show compliance with appropriate training and currency requirements

1.3 Cabin crew

The training syllabi and checking programmes for cabin crew members shall include—

(*a*) basic initial ground training covering duties and responsibilities;

(*b*) appropriate Authority rules and regulations;

(*c*) appropriate portions of the AOC holder's operating manual;

(*d*) appropriate emergency training as required by the Authority and the AOC holder's operating manual;

(*e*) appropriate flight training;

(*f*) appropriate recurrent, upgrade, or difference training, as required, to maintain currency in any type and variance of aircraft the crew member may be required to work in;

(*g*) a current list of approved training materials, equipment, training devices, simulators, and other required training items needed to meet the training needs for each type and variation of aircraft flown by the AOC holder;

(*h*) Adequate number of ground check personnel and flight check personnel to ensure adequate training and checking of crew members; and

(*i*) maintain a training record system acceptable to the Authority to show compliance with all required training.

1.4 All Crew Members.

A written training programme shall be developed for all crew members in the emergency procedures appropriate to each make and model of aircraft flown in by the crew member. Areas shall include—

(*a*) instruction in emergency procedures, assignments, and crew co-ordination;

(*b*) individual instruction in the use of onboard emergency equipment such as fire extinguishers, emergency breathing equipment, first aid equipment and its proper use, emergency exits and evacuation slides, and the aircraft's oxygen system including the use of portable emergency oxygen bottles. Flight crew members shall also practice using their emergency equipment designed to protect them in case of a cockpit fire or smoke;

(*c*) training shall also include instruction in potential emergencies such as rapid decompression, ditching, firefighting, aircraft evacuation, medical emergencies, hijacking, and disruptive passengers;

(*d*) scheduled recurrent training to meet Authority requirements.

1.5 All Operations Personnel.

The training syllabi and checking programmes for all operations personnel shall include—

(*a*) training in the safe transportation and recognition of all dangerous goods permitted by the Authority to be shipped by air. Training shall include the proper packaging, marking, lablling, and documentation of dangerous articles and magnetized materials;

(*b*) all appropriate security training required by the Authority;

(*c*) a method of providing any required notification of an accident or incident involving dangerous goods.

1.6 Operations Personnel other than crew members.

For operations personnel other than crew members (e.g., flight operations officer, handling personnel etc.), a written training programme shall be developed that pertains to their respective duties. The training programme shall provide for initial, recurrent, and any required upgrade training.

2.0 Procedures for Training and Checking.

2.1 Proficiency Checking Procedures.

Procedures to be applied in the event that personnel do not achieve or maintain the required standards.

2.2 Procedures Involving the Simulation of Abnormal or Emergency Situations.

Procedures to ensure that abnormal or emergency situations requiring the application of part or all of abnormal or emergency procedures, and simulation of IMC by artificial means, are not simulated during commercial air transportation flights.

3.0 Document Retention.

3.1 Documentation to be Stored and Storage Periods.

An AOC holder shall retain all documentation required by the appropriate Authority, or the Authority of another State in which the AOC holder is operating for the time specified by the respective Authority, or for the time period needed to show compliance with appropriate regulations or this operations manual, whichever is longer.

IS 9:35 AIRCRAFT OPERATING MANUAL

Each AOC applicant and AOC holder should submit and maintain an aircraft operating manual containing at least the following—

1.0 General Information and Units of Measurement.

General Information (e.g., aircraft dimensions), including a description of the units of measurement used for the operation of the aircraft type concerned and conversion tables.

2.0 Limitations.

2.1 Certification and Operational Limitations.

A description of the certified limitations and the applicable operational limitations including—

(*a*) certification status;

(*b*) passenger seating configuration for each aircraft type including a pictorial presentation;

(*c*) types of operation that are approved (e.g. IFR/VFR, CAT II/III, flights in known icing conditions etc.);

(*d*) crew composition;

(*e*) operating within mass and centre of gravity limitations;

(*f*) speed limitations;

(*g*) flight envelopes;

(*h*) wind limits including operations on contaminated runways;

(*i*) performance limitations for applicable configurations;

(*j*) runway slope;

(*k*) limitations on wet or contaminated runways;

(*l*) airframe contamination; and

(*m*) post landing.

3.0 Normal Procedures.

The normal procedures and duties assigned to the crew, the appropriate checklists, the system for use of the checklists and a statement covering the necessary co-ordination procedures between flight and cabin crew. The following normal procedures and duties shall be included—

(*a*) pre-flight;

(*b*) pre-departure and loading;

(*c*) altimeter setting and checking;

(*d*) taxi, Take-off and Climb;

(*e*) noise abatement;

(*f*) cruise and descent;

(*g*) approach, landing preparation and briefing;

(*h*) VFR approach;

(*i*) instrument approach;

(*j*) visual approach and circling;

(*k*) missed approach;

(*l*) normal landing;

(*m*) post landing; and

(*n*) operation on wet and contaminated runways.

3.1 Specific Flight Deck Procedures—

(*a*) determining airworthiness of aircraft;

(*b*) obtaining flight release;

(*c*) initial cockpit preparation;

(*d*) standard operating procedures;

(*e*) cockpit discipline;

(*f*) standard call-outs;

(*g*) communications;

(*h*) flight safety;

(*i*) push-back and towing procedures;

(*j*) taxi guidelines and ramp signals;

(*k*) take-off and climb out procedures;

(*l*) choice of runway;

(*m*) take-off in limited visibility;

(*n*) take-off in adverse weather;

(*o*) use and limitations of weather radar;

(*p*) use of landing lights;

(*q*) monitoring of flight instruments;

(*r*) power settings for take-off;

(*s*) malfunctions during take-off;

(*t*) rejected take-off decision;

(*u*) climb, best angle, best rate;

(*v*) sterile cockpit procedures;

(*w*) en route and holding procedures;

(*x*) cruise control;

(*y*) navigation log book;

(*z*) descent, approach and landing procedures;

(*aa*) reporting maintenance problems;

(*bb*) how to obtain maintenance and service en route.

4.0 Abnormal And Emergency Procedures.

4.1 Abnormal and Emergency Procedures and Duties.

The manual shall contain a listing of abnormal and emergency procedures assigned to crew members with appropriate check-lists that include a system for use of the check-lists and a statement covering the necessary co-ordination procedures between flight and cabin crew. The following abnormal and emergency procedures and duties shall be included—

(*a*) crew incapacitation;

(*b*) fire and smoke drills;

(*c*) unpressurized and partially pressurized flight; as applicable;

(*d*) exceeding structural limits such as overweight landing;

(*e*) exceeding cosmic radiation limits; as applicable;

(*f*) lightning strikes;

(*g*) distress communications and alerting ATC to emergencies;

(*h*) engine failure;

(*i*) system failures;

(*j*) guidance for diversion in case of serious technical failure;

(*k*) ground proximity warning;

(*l*) ACAS warning;

(*m*) windshear; and

(*n*) emergency landing/ditching;

(*o*) aircraft evacuation

(*p*) fuel Jettisoning (as applicable) and Overweight Landing;

(*q*) general considerations and policy;

(*r*) fuel jettisoning procedures and precautions;

(*s*) emergency Procedures;

(*t*) emergency descent;

(*u*) low fuel;

(*v*) dangerous goods incident or accident;

(*w*) interception procedures;

(*x*) emergency signal for cabin crew members;

(*y*) Communication Procedures;

(*z*) Radio listening watch.

5.0 Performance Data.

Performance data shall be provided in a form in which it can be used without difficulty.

5.1 Performance Material.

Performance material which provides the necessary data to allow the flight crew to comply with the approved aircraft flight manual performance requirements shall be included to allow the determination of—

(*a*) take-off climb limits - Mass, Altitude, Temperature;

(*b*) take-off field length limits (dry, wet, contaminated);

(*c*) net flight path data for obstacle clearance calculation or, where applicable, take-off flight path;

(*d*) the gradient losses for banked climb outs;

(*e*) en route climb limits;

(*f*) approach climb limits;

(*g*) landing climb limits;

(*h*) landing field length limits (dry, wet, contaminated) including the effects of an in-flight failure of a system or device, if it affects the landing distance;

(*i*) brake energy limits; and

(*j*) Speeds applicable for the various flight stages (also considering wet or contaminated runways).

5.1.1. Supplementary Performance Data.

Supplementary data covering—

(*a*) flights in icing conditions;

(*b*) the maximum crosswind and tailwind components for each aeroplane type operated and the reductions to be applied to these values having regard to gust, low visibility, runway surface conditions, crew experience, use of autopilot, abnormal or emergency circumstances, or any other relevant operational, factors;

(*c*) any certified performance related to an allowable configuration, or configuration deviation, such as anti-skid inoperative, shall be included.

5.1.2. Other Acceptable Performance Data.

If performance data, as required for the appropriate performance class, is not available in the approved AFM, then other data acceptable to the Authority shall be included. Alternatively, the operations manual may contain cross-reference to the approved

data contained in the AFM where such data is not likely to be used often or in an emergency.

5.2 Additional Performance Data.

Additional performance data where applicable including—

(*a*) all engine climb gradients;

(*b*) drift-down data;

(*c*) effect of de-icing/anti-icing fluids;

(*d*) elight with landing gear down;

(*e*) for aircraft with 3 or more engines, one engine inoperative ferry flights; and

(*f*) flights conducted under the provisions of a configuration deviation list (CDL).

6.0 Flight Planning.

6.1 Flight Planning Data.

Specific data and instructions necessary for pre-flight and in-flight planning including factors such as speed schedules and power settings. Where applicable, procedures for engine(s) out operations, ETOPS and flights to isolated airports shall be included for the flight plan and the operational flight plan.

6.2 Fuel and Oil Calculations.

The method for calculating fuel needed for the various stages of flight.

7.0 Mass and balance.

7.1 Calculating mass and balance.

Instructions and data for the calculation of mass and balance including—

(*a*) calculation system (e.g. Index system);

(*b*) information and instructions for completion of mass and balance documentation, including manual and computer generated types;

(*c*) limiting mass and centre of gravity of the various versions;

(*d*) dry operating mass and corresponding centre of gravity or index.

8.0 Loading.

8.1 Loading Procedures.

Instructions for loading and securing the load in the aircraft;

(*a*) Use of aircraft systems and associated controls.

8.2 Loading Dangerous Goods.

The operations manual shall contain a method to notify the PIC when dangerous goods are loaded in the aircraft.

9.0 Survival And Emergency Equipment Including Oxygen.

9.1 List of Survival Equipment to be Carried.

A list of the survival equipment to be carried for the routes to be flown and the procedures for checking the serviceability of this equipment prior to take-off. Instructions regarding the location, accessibility and use of survival and emergency equipment and its associated check list(*s*) shall also be included.

9.2 Ground Air Visual Signal.

Instructions illustrating the ground-air visual signal code for use by survivors shall also be included.

9.3 Oxygen Usage.

The procedure for determining the amount of oxygen required and the quantity that is available. The flight profile, number of occupants and possible cabin decompression shall be considered. The information provided shall be in a form in which it can be used without difficulty.

9.4 Emergency Equipment Usage.

A description of the proper use of the following emergency equipment, if applicable—

(*a*) life jackets

(*b*) life rafts

(*c*) medical kits/first aid kits

(*d*) survival kits

(*e*) Emergency Locator Transmitter (ELT)

(*f*) visual signalling devices

(*g*) evacuation slides

(*h*) emergency lighting

10.0 Emergency Evacuation Procedures.

10.1 Instructions for Emergency Evacuation.

Instructions for preparation for emergency evacuation including crew co-ordination and emergency station assignment.

10.2 Emergency Evacuation Procedures.

A description of the duties of all members of the crew for the rapid evacuation of an aircraft and the handling of the passengers in the event of a forced landing, ditching or other emergency.

11.0 Aircraft Systems.

11.1 Aircraft Systems.

A description of the aircraft systems, related controls and indications and operating instructions.

12.0 Minimum Equipment List and Configuration Deviation List.

The minimum equipment list and configuration deviation list for the aeroplane types operated and specific operations authorized, including any requirements relating to operations where performance-based navigation is prescribed.

13.0 Route and Airport Instructions and Information (optional for this manual).

13.1 Instructions and. Information.

Instructions and information relating to communications, navigation and airports, including—

(*a*) minimum flight level/altitude for each route to be flown;

(*b*) operating minima for departure, destination and alternate airports;

(*c*) communication facilities and navigation aids;

(*d*) runway data and airport facilities;

(*e*) approach, missed approach and departure procedures including noise abatement procedures;

(*f*) communications-failure procedures;

(*g*) search and rescue facilities in the area over which the aircraft is to be flown;

(*h*) a description of the aeronautical charts that shall be carried on board in relation to the type of flight and the route to be flown, including the method to check their validity;

(*i*) availability of aeronautical information and MET services;

(*j*) en route COM/NAV procedures, including holding;

(*k*) airport categorization for flight crew competence qualification.

IS 9: 48 Passenger Briefing Cards

Each AOC holder shall, at each exit seat, provide passenger information cards that include the following information in the primary language in which emergency commands are given by the crew—

(*a*) functions required of a passenger in the event of an emergency in which a crew member is not available to assist, including how to—

(i) locate the emergency exit;

(ii) recognize the emergency exit opening mechanism;

(iii) comprehend the instructions for operating the emergency exit;

(iv) operate the emergency exit;

(v) assess whether opening the emergency exit will increase the hazards to which passengers may be exposed;

(vi) follow oral directions and hand signals given by a crew member;

(vii) stow or secure the emergency exit door so that it will not impede use of the exit;

(viii) assess the condition of an escape slide, activate the slide, and stabilize the slide after deployment to assist others in getting off the slide;

(ix) pass expeditiously through the emergency exit; and

(x) assess, select, and follow a safe path away from the emergency exit.

(*b*) A request that a passenger identify himself or herself to allow reseating if he or she—

(i) cannot perform the emergency functions stated in the information card;

(ii) has a nondiscernible condition that will prevent him or her from performing the functions;

(iii) may suffer bodily harm as the result of performing one or more of those functions;

(iv) does not wish to perform those functions; or

(v) lacks the ability to read, speak, or understand the language or the graphic form in which instructions are provided by the AOC holder.

IS 9: 49 Aeronautical Data Control System

Each AOC holder shall provide aeronautical data for each airport used by the AOC holder which includes the following—

(*a*) aerodromes/heliports—

(i) facilities;

(ii) public protection;

(iii) navigational and communications aids;

(iv) construction affecting take-off, landing, or ground operations; and

(v) air traffic facilities.

(*b*) runways, clearways, and stopways—

(i) dimensions;

(ii) surface;

(iii) marking and lighting systems; and

(iv) elevation and gradient.

(*c*) displaced thresholds—

(i) location;

(ii) dimensions; and

(iii) take-off or landing or both.

(*d*) obstacles—

(i) those affecting take-off and landing performance computations;

(ii) controlling obstacles.

(*e*) instrument flight procedures—

(i) departure procedure;

(ii) approach procedure;

(iii) missed approach procedure.

(*f*) special information—

(i) runway visual range measurement equipment;

(ii) prevailing winds under low visibility conditions.

IS 9:50 ROUTE GUIDE

1. The route guide will ensure that the flight crew will have for each flight, information relating to communication facilities, navigation aids, aerodromes, instrument approaches, instrument arrivals and instrument departures as applicable for the operation, and such other information as the operator may deem necessary in the proper conduct of flight operations.

2. Each route guide shall contain at least the following information—

(*a*) the minimum flight altitudes for each aircraft to be flown.

(*b*) aerodrome operating minima for each of the aerodromes that are likely to be used as aerodromes of intended landing or as alternate aerodromes.

(*c*) the increase of aerodrome operating minima in case of degradation of approach or aerodrome facilities.

(*d*) the necessary information for compliance with all flight profiles required by regulations, including but not limited to, the determination of—

(i) take-off runway length requirements for dry, wet and contaminated conditions, including those dictated by systems failures which affect the take-off distance;

(ii) take-off climb limitations;

(iii) en route climb limitations;

(iv) approach climb limitations and landing climb limitations;

(v) landing runway length requirements for dry, wet and contaminated conditions, including systems failures which affect the landing distance; and

(vi) supplementary information, such as tire speed limitations.

IS 9:51 WEATHER REPORTING SOURCES

1. The Authority approves and considers the following sources of weather reports satisfactory for flight planning or controlling flight movement—

(*a*) Malaŵi Department of METEOROLOGICAL Semus;

(*b*) Malaŵi-operated automated surface observation stations;

NOTE: Some automated systems cannot report all required items for a complete surface aviation weather report.

(*c*) Malaŵi-operated supplemental aviation weather reporting stations;

(*d*) observations taken by airport traffic control towers;

(*e*) Malaŵi-contracted weather observatories;

(*f*) any active meteorological office operated by a foreign state which subscribes to the standards and practices of ICAO conventions.

NOTE: These meteorological offices are normally listed in the MET tables located in ICAO Regional Air Navigation Plans.

(*g*) any military weather reporting sources approved by the Authority;

NOTE: Use of military sources is limited to control of those flight operations which use military airports as departure, destination, alternate, or diversionary airports.

(*h*) near real time reports such as pilot reports, radar reports, radar summary charts, and satellite imagery reports made by commercial weather sources or other sources specifically approved by the Authority;

(*i*) an AOC holder operated and maintained weather reporting system approved by the Authority.

IS 9:52 De-icing and Anti-Icing Programme

1. Contents of the AOC holder's ground de-icing and anti-icing programme shall include a detailed description of—

   (*a*) how the AOC holder determines that conditions are such that frost, ice, or snow may reasonably be expected to adhere to the aircraft and that ground de-icing and anti-icing operational procedures shall be in effect;

   (*b*) who is responsible for deciding that ground de-icing and anti-icing operational procedures shall be in effect;

   (*c*) the procedures for implementing ground de-icing and anti-icing operational procedures; and

   (*d*) the specific duties and responsibilities of each operational position or group responsible for getting the aircraft safely airborne while ground de-icing and anti-icing operational procedures are in effect.

2. Initial and annual recurrent ground training for flight crew and all other affected personnel (e.g. dispatchers/flight operations officers, ground crews, contract personnel) concerning the specific requirements of the approved programme and each person's responsibilities and duties under the approved programme specifically covering the following areas—

   (*a*) the use of holdover times;

   (*b*) aircraft de-icing/anti-icing procedures including inspection and check procedures and responsibilities;

   (*c*) communication procedures;

   (*d*) aircraft surface contamination (i.e., adherence of frost, ice or snow) and critical area identification, and how contamination adversely affects aircraft performance and flight characteristics;

   (*e*) types and characteristics of de-icing/anti-icing fluids;

   (*f*) cold weather pre-flight inspection procedures; and

   (*g*) techniques for recognizing contamination on the aircraft.

3. The AOC holder's programme shall include procedures for flight crew members to increase or decrease the determined holdover time in changing conditions. The holdover time shall be supported by data acceptable to the Authority. If the maximum holdover time is exceeded, take-off is prohibited unless at least one of the following conditions exists—

   (*a*) a pre-take-off contamination check is conducted outside the aircraft (within five minutes prior to beginning take-off) to

determine that the wings, control surfaces, and other critical surfaces, as defined in the AOC holder's programme, are free of frost, ice, or snow;

(*b*) it is otherwise determined by an alternate procedure, approved by the Authority and in accordance with the AOC holder's approved programme, that the wings, control surfaces, and other critical surfaces are free of frost, ice, or snow; or

(*c*) the wings, control surfaces, and other critical surfaces are de-iced again and a new holdover time is determined.

IS 9:53 Flight Monitoring System

1. Each AOC holder shall have an approved flight following system established and adequate for the proper monitoring of each flight, considering the operations to be conducted.

2. For AOC holders having flight following centers, these centers shall be located at those points necessary to ensure—

   (*a*) the proper monitoring of the progress of each flight with respect to its departure at the point of origin and arrival at its destination, including intermediate stops and diversions; and

   (*b*) that the PIC is provided with all information necessary for the safety of the flight.

3. An AOC holder conducting charter operations may arrange to have flight following facilities provided by persons other than its employees, but in such a case the AOC holder continues to be primarily responsible for operational control of each flight.

4. Each AOC holder conducting charter operations using a flight following system shall show that the system has adequate facilities and personnel to provide the information necessary for the initiation and safe conduct of each flight to—

   (*a*) the flight crew of each aircraft; and

   (*b*) the persons designated by the certificate holder to perform the function of operational control of the aircraft; and

5. Each AOC holder conducting charter operations shall show that the personnel required to perform the function of operational control are able to perform their duties.

IS 9:54 Fatigue Management System Requirements

1. A Fatigue Risk Management System (FRMS) shall contain as a minimum—

   (*a*) FRMS policy and documentation;

   (*b*) fatigue risk management processes;

(*c*) FRMS safety assurance process; and

(*d*) FRMS promotion processes.

2. The operator shall define its FRMS policy, with all elements of the FRMS clearly identified.

3. The policy shall require that the scope of FRMS operations be clearly defined in the Operations Manual.

4. The FRMS policy shall—

(*a*) reflect the shared responsibility of management, flight and cabin crews, and other involved personnel;

(*b*) clearly state the safety objectives of the FRMS;

(*c*) be signed by the accountable executive of the organizations;

(*d*) be communicated, with visible endorsement, to all the relevant areas and levels of the organization;

(*e*) declare management commitment to effective safety reporting;

(*f*) declare management commitment to the provision of adequate resources for the FRMS;

(*g*) declare management commitment to continuous improvement of the FRMS;

(*h*) require that clear lines of accountability for management, flight and cabin crews, and all other involved personnel are identified; and

(*i*) require periodic reviews to ensure it remains relevant and appropriate.

NOTE: Effective safety reporting is described in Doc 9859, Safety Management Manual (SMM)

5. FRMS documentation.

An operator shall develop and keep current FRMS documentation that describes and records—

(*a*) FRMS policy and objectives;

(*b*) FRMS processes and procedures;

(*c*) accountabilities, responsibilities and authorities for these processes and procedures;

(*d*) mechanisms for ongoing involvement of management, flight and cabin crew members, and all other involved personnel;

(*e*) FRMS training programmes, training requirements and attendance records;

(*f*) scheduled and actual flight times, duty periods and rest periods with significant deviations and reasons for deviations noted; and

NOTE: Significant deviations are described in the FRMS Manual (Doc 9966)

(vii) FRMS outputs including findings from collected data, recommendations, and actions taken.

6. Fatigue Risk Management Processes—Identification of hazards, an operator shall develop and maintain three fundamental and documented processes for fatigue hazard identification—

(*a*) predictive—the predictive process shall identify fatigue hazards by examining crew scheduling and taking into account factors known to affect sleep and fatigue and their effects on performance. Methods of examination may include but are not limited to—

(i) operator or industry operational experience and data collected on similar types of operations;

(ii) evidence-based scheduling practices; and

(iii) bio-mathematical models.

(*b*) proactive—the proactive process shall identify fatigue hazards within current flight operations. Methods of examination may include but are not limited to:

(i) self-reporting of fatigue risks;

(ii) crew fatigue surveys;

(iii) relevant flight and cabin crew performance data;

(iv) available safety databases and scientific studies; and

(v) analysis of planned versus actual time worked.

(*c*) reactive—the reactive process shall identify the contribution of fatigue hazards to reports and events associated with potential negative safety consequences in order to determine how the impact of fatigue could have been minimized. At a minimum, the process may be triggered by any of the following:

(i) fatigue reports;

(ii) confidential reports;

(iii) audit reports;

(iv) incidents; and

(v) flight data analysis events.

7. Risk assessment—

(*a*) An operator shall develop and implement risk assessment procedures that determine the probability and potential severity of fatigue-related events and identify when the

associated risks require mitigation. The risk assessments procedures shall review identified hazards and link them to—

(i) operational processes;

(ii) their probability;

(iii) possible consequences; and

(iv) the effectiveness of existing safety barriers and controls.

8. Risk mitigation—

An operator shall develop and implement risk mitigation procedures that—

(*a*) select the appropriate mitigation strategies;

(*b*) implement the mitigation strategies; and

(*c*) monitor the strategies implementation and effectiveness.

9. FRMS Safety Assurance Process – The operator shall develop and maintain FRMS safety assurance process to—

(*a*) Provide for continuous FRMS performance monitoring, analysis of trend, and measurement to validate the effectiveness of the fatigue safety risk controls. The sources of data may include, but are not limited to—

(i) hazard reporting and investigations;

(ii) audits and surveys; and

(iii) reviews and fatigue studies;

(*b*) provide a formal process for the management of change which shall include but is not limited to—

(i) identification of changes in the operational environment that may affect FRMS;

(ii) identification of changes within the organization that may affect FRMS; and

(iii) consideration of available tools which could be used to maintain or improve FRMS performance prior to implementing changes; and

(*c*) provide for the continuous improvement of the FRMS. This shall include but is not limited to—

(i) the elimination and/or modification of risk controls have had unintended consequences or that are no longer needed due to changes in the operational or organizational environment;

(ii) routine evaluations of facilities, equipment, documentation and procedures; and

(iii) The determination of the need to introduce new processes and procedures to mitigate emerging fatigue-related risks.

10. FRMS Promotion Process—support the ongoing development of the FRMS, the continuous improvement of its overall performance, and attainment of optimum safety levels. The following shall be established and implemented by the operators part of its—

(*a*) training programmes to ensure competency commensurate with the roles and responsibilities of management, flight and cabin crew, and all other involved personnel under the planned FRMS; and

(*b*) an effective FRMS communications plan that—

(i) explains FRMS policies, procedures and responsibilities to all relevant stakeholders; and

(ii) describes, communication channels used to gather and disseminate FRMS-related information.

IS 9: 61 MAINTENANCE CONTROL MANUAL

Each AOC applicant and AOC holder should submit and maintain a maintenance control manual containing at least the following—

NOTE: The manual may be put together in any subject order and subjects combined so long as all applicable subjects are covered in this manual.

1.0 Administration and Control of the Maintenance Control Manual

1.1 Introduction

(*a*) a statement that the manual complies with all applicable Authority regulations and requirements and with the terms and conditions of the applicable Air Operator Certificate;

(*b*) a statement that the manual contains maintenance and operational instructions that are to be complied with by the relevant personnel in the performance of their duties;

(*c*) a list and brief description of the various Maintenance Control Manual parts, their contents, applicability and use;

(*d*) explanations and definitions of terms and words used in the manual.

1.2 System of Amendment and Revision.

(*a*) a Maintenance Control Manual shall describe who is responsible for the issuance and insertion of amendments and revisions;

(*b*) a record of amendments and revisions with insertion dates and effective dates is required;

(*c*) a statement that hand-written amendments and revisions are not permitted except in situations requiring immediate amendment or revision in the interest of safety;

(*d*) a description of the system for the annotation of pages and their effective dates;

(*e*) a list of effective pages and their effective dates;

(*f*) annotation of changes (on text pages and as practicable, on charts and diagrams);

(*g*) a system for recording temporary revisions;

(*h*) a description of the distribution system for the manuals, amendments and revisions;

(*i*) a statement of who is responsible for notifying the Authority of proposed changes and working with the Authority on changes requiring Authority approval.

2.0 General Organization.

2.1 Corporate Commitment by the AOC.

2.2 General Information—

(*a*) brief description of organization;

(*b*) relationship with other organizations;

(*c*) fleet composition;

(*d*) type of operation;

(*e*) line station locations.

2.3 Maintenance Management Personnel—

(*a*) accountable manager;

(*b*) nominated post holder;

(*c*) maintenance co-ordination;

(*d*) duties and responsibilities;

(*e*) organization chart(s);

(*f*) manpower resources and training policy.

2.4 Notification Procedure to the Authority Regarding Changes to the Maintenance Arrangements Locations, Personnel, Activities, or Approval.

3.0 Maintenance Procedures.

3.1 Aircraft Logbook Utilization and MEL Application.

3.2 Aircraft Maintenance Programme Development and Amendment.

3.3 Time and Maintenance Records, Responsibilities, Retention.

3.4 Accomplishment and Control of Mandatory Continued Airworthiness Information (Airworthiness Directives).

3.5 Analysis of the Effectiveness of the Maintenance Programme.

3.6 Non-mandatory Modification Embodiment Policy.

3.7 Major Modification Standards.

3.8 Defect Reports—

(*a*) analysis;

(*b*) liaison with manufacturers and Regulatory Authorities

(*c*) deferred defect policy

3.9 Engineering Activity.

3.10 Reliability Programmes—

(*a*) airframe;

(*b*) propulsion; and

(*c*) components.

3.11 Pre Flight Inspection—

(*a*) preparation of aircraft for flight;

(*b*) subcontracted ground handling functions;

(*c*) security of cargo and baggage loading;

(*d*) control of refuelling, Quantity/Quality; and

(*e*) control of snow, ice, dust and sand contamination to an approved aviation standard.

3.12 Aircraft Weighing.

3.13 Flight Test Procedures.

3.14 Sample of Documents, Tags and Forms Used.

G.N. 36/2013

AVIATION (COMMERCIAL AIR TRANSPORT BY FOREIGN AIR OPERATORS) REGULATIONS

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AVIATION (COMMERCIAL AIR TRANSPORT BY FOREIGN AIR OPERATORS) REGULATIONS

under s. 19

PART I
GENERAL

Citation and application

1.—(1) These Regulations may be cited as the Aviation (Commercial Air Transport by Foreign Air Operators) Regulation.

(2) These Regulations prescribe requirements applicable to the operation of any civil aircraft, including aeroplane or helicopter, for—

(*a*) the purpose of commercial air transportation operations by any air operator whose Air Operator Certificate is issued and;

(*b*) controlled by a civil aviation authority other than Malaŵi.

(3) These Regulations do not apply to aircraft when used by military, customs, and police services, which are not used for compensation or hire.

Definitions

2.—(1) For the purpose of these Regulations, unless the context otherwise requires—

"aeroplane flight manual" means a manual, associated with the certificate of airworthiness, containing limitations within which the aeroplane is to be considered airworthy, and instructions and information necessary to the flight crew members of the safe operation of the aeroplane;

"air operator certificate" means a certificate authorizing an operator to carry out specified commercial air transport operations;

"aircraft operating manual" means a manual, acceptable to the State of the Operator, containing normal, abnormal and emergency procedures,' checklists, limitations, performance information, details of the aircraft systems and other material relevant to the operation of the aircraft;

"foreign air operator" means any operator, not being an air operator holding an Air Operator Certificate issued by Malaŵi under the provisions of ICAO Annex 6, Part I or Part III, which undertakes, whether directly or indirectly or by lease or any other arrangement, to engage in commercial air transport operations within borders or airspace of Malaŵi, whether on a scheduled or charter basis;

"foreign Authority" means the civil aviation authority that issues and oversees the Air Operator Certificate of the foreign operator;

"minimum equipment list" means a list which provides for the operation of aircraft, subject to specified conditions, with particular equipment inoperative, prepared by an operator in conformity with, or more restrictive than, the Master Minimum Equipment List (MMEL) established for the aircraft type;

"operations manual" means a manual containing procedures, instructions and guidance for use by operational personnel in the execution of their duties; and

"rotorcraft flight manual" means a manual, associated with the certificate of airworthiness, containing limitations within which the rotorcraft is to be considered airworthy, and instructions and information necessary to the flight crew members of the safe operation of the rotorcraft.

Abbreviation

3.—(1) The following abbreviations axe used in these Regulations—

(*a*) AFM — Aeroplane Flight Manual;

(*b*) AOC — Air Operator Certificate;

(*c*) AOM — Aeroplane Operating Manual;

(*d*) MEL — Minimum Equipment List;

(*e*) RFM — Rotorcraft Flight Manual.

Compliance

4.—(1) A foreign air operator may not operate an aircraft in commercial air transportation operations in Malaŵi contrary to the requirements of—

(*a*) these Regulations;

(*b*) applicable regulations of the Instruments and Equipment and Operations Regulations;

(*c*) applicable standards contained in the Annexes to the Convention on International Civil Aviation for the operation to be conducted; and

(*d*) any other requirements that the Authority may specify.

Authority to inspect

5.—(1) A foreign air operator shall ensure that any person authorized by the Authority, will be permitted at any time, without prior notice, to board any aircraft operated for commercial air transportation to Malaŵi—

(*a*) to inspect the documents and manuals required by this Part;

(*b*) to conduct an inspection of the aircraft;

(*c*) to take appropriate action when necessary to preserve safety.

(2) When a State identifies a case of non-compliance or suspected non-compliance by a original operator with laws, regulations and procedures applicable within that State's territory, or a similar serious safety issue with that operator, that State shall immediately notify the operator and, if the issue warrants it, the State of the Operator. Where the State of the Operator and the State of Registry are different, such notification shall also be made to the State of Registry, if the issue falls within the responsibilities of that State and warrants a notification.

(3) In the case of notification to States as Specified in subregulation 5 (2), if the issue and its resolution warrant it the State in which the operation is conducted shall engage in consultations with the State of the Operator and the State of Registry, as applicable, concerning the safety standards maintained by the operator.

(4) Detailed process for inspecting a foreign air operator is in IS 10:5 contained, in the Schedule hereto.

PART II
Approval to Operate in the Territory of Malaŵi

Requirements for application by foreign air operation for approval to operate into the territory of Malaŵi

6.—(1) A foreign air operator from the territory of another state shall not operate an aircraft in Malaŵi unless it is so authorized by the Authority and holds an associated Document of Authorizations, Conditions, and Limitations issued to it by the Authority.

(2) When an air operator wishes to apply to operate in Malaŵi it shall—

(*a*) make such application to the Authority in the form and manner prescribed;

(*b*) for the Foreign Operator's Application Form, see IS 10: 6 (1) contained in the Schedule hereto.

(3) An application for approval to operate into the territory of Malaŵi shall be accompanied by—

(*a*) a certified true copy of a valid AOC and associated operations specifications issued to the foreign air operator by the Foreign Authority;

(*b*) a copy of the approval page for a Minimum Equipment List for each aircraft type intended to be operated by the air operator in Malaŵi;

(*c*) a copy of the current aircraft Certificate of Registration and airworthiness certificate issued for the aircraft types proposed to be operated by the air operator in Malaŵi;

(*d*) a copy of the insurance certificate;

(*e*) a copy of the operational procedures and practices of the operator;

(*f*) a copy of a document identifying the maintenance checks that are required to be carried out for aircraft of the air operator while they are operated in Malaŵi;

(*g*) a copy of the maintenance contract between the air operator and the Approved Maintenance Organization, where the maintenance under, is carried out by an Approved Maintenance Organization approved by the Foreign Authority;

(*h*) a copy of the air service agreement, with safety clause, allowing the foreign air operator to operate in Malaŵi. See IS: 10: 6 (2) for an example of the referenced air service agreement safety clause;

(*i*) in the cases of wet-leased aircraft: a copy of the approval of the CAA of the State of the operator, with identification of the operator that exercises operational control of the aircraft;

(*j*) a proposed Aircraft Operator Security Programme for the foreign air operator who does not hold an Air Operator Certificate issued by the Authority which meets the requirements of the Civil Aviation Regulations, for the acceptance and subsequent approval of the Authority; and

(*k*) any other document the Authority considers necessary to ensure that the intended operations will be conducted safely.

(4) an applicant under these Regulations shall apply for the initial issue of a foreign air operator Operations Specifications at least ninety days before the date of commencement of intended operation.

Conditions for the issuance of Document of Authorization, Conditions, and Limitations

7.—(1) The Director may recommend that the Authority issue a Document of Authorizations, Conditions and Limitations to a foreign air operator to conduct commercial air operations in Malaŵi where the Director is satisfied and has confidence in—

(*a*) the validity of the certificates and licences associated with the operator;

(*b*) the operator's personnel and aircraft;

(*c*) the operational capabilities of the operator; and

(*d*) the level of certification and oversight applied to the activities of the foreign air operator by the Foreign Authority.

(2) For the process to be used for evaluating the conditions stipulated under subregulation (1) (*a*) to (*d*), see IS 10:7 contained in the Schedule hereto.

(3) No foreign air operator may commence commercial air transport operations in and to Malaŵi until the Operations Specifications have been issued.

Issuance of a Document of Authorization, Conditions, and Limitations

8.—(1) The authority may issue a Document of Authorization, Conditions and Limitations to a foreign air operator applicant—

(*a*) following approval of the foreign air operator's application form to operate into the territory of Malaŵi;

(*b*) upon a satisfactory administrative review of the documentation provided by the foreign air operator under regulation 6 (3) and (4); and

(*c*) when it has established bilateral or multilateral agreements with the State of the Operator that includes in the agreement the safety clause referenced under subregulation 6 (3) (*e*); or

(*d*) when it has not established bilateral or multilateral agreements with the State of the Operator, the Authority receives no significant safety findings or major deficiencies from available safety related information relevant to the foreign air operator.

Contents of a Document of Authorizations, Conditions, and Limitations

9.—(1) A Document of Authorization, Conditions and Limitations is issued to foreign air operators for elements not listed in the operator's AOC and associated operations specifications but considered necessary for compatible operations within Malaŵi.

(*a*) a Document of Authorizations, Conditions and Limitations issued under this section shall contain—

(i) the foreign air operator's full name;

(ii) the foreign air operator's principal business address and contact details for operational management;

(iii) the foreign air operator's business address and contact details in Malaŵi;

(iv) the date of issuance and expiry (if any) of the foreign air operator's AOC;

(v) a statement that: this Document authorizes [name of foreign air operator] to operate in the territory of Malaŵi;

(vi) a statement that: this Document is issued to [name of foreign air operator] on the basis of it holding a valid AOC. Any changes to the AOC made by the Foreign Authority that issued and oversees the AOC of [name of foreign air operator] shall be submitted by [name of foreign air operator] in writing to the Authority within 30 days of such change;

(vii) a statement that: this Document ceases to have effect upon expiry, suspension, revocation, cancellation or equivalent action in respect of the foreign air operator's AOC; and

(viii) any additional authorizations, conditions or limitations considered necessary by the Authority.

(2) Operations Specification issued to a foreign air operator by the Foreign Authority shall be supplementary to these Regulations.

Continued validity of a Document of Authorizations, conditions, and Limitations

10.—(1) A foreign air operator shall, when conducting operations in and to Malaŵi, ensure that it complies at all times with the requirements of—

(*a*) its Operations Specifications;

(*b*) its approved Aircraft Operator Security Programme; and

(*c*) the security requirements for aircraft operators operating in Malaŵi.

PART III
Documents

Foreign air operator's aircraft technical log

11.—(1) A foreign air operator shall use an aircraft technical log system containing the following information for each aircraft—

(*a*) information about each flight necessary to ensure continued flight safety;

(*b*) the current aircraft certificate of release to service;

(*c*) the current maintenance statement giving the aircraft maintenance status of what scheduled and out of phase maintenance is next due, unless the Authority agrees to the maintenance statement being kept elsewhere;

(*d*) all outstanding deferred defects that affect the operation of the aircraft; and

(*e*) any necessary guidance instructions on maintenance support.

Air operator manuals, documents and fightcrew licences to be carried

12.—(1) A foreign air operator shall ensure that the following manuals, documents and licences are carried on flights into Malaŵi—

(*a*) a certified true copy of the air operator certificate and associated operations specifications all of which shall be in the English language;

(*b*) a Copy of the Document of Authorizations, Conditions, and Limitations required under these Regulations;

(*c*) the current parts of the Operations Manual relevant to the duties of the crew are carried on each flight;

(*d*) those parts of the Operations Manual, which are required for the conduct of a flight and are easily accessible to the crew on board the aircraft on each flight, such as the MEL; and information and instructions relating to the interception of aircraft;

(*e*) the current AFM or RFM approved by the State of Registry, or AOM approved by the State of Operator is carried on the aircraft on each flight. The AFM or RFM shall be updated by implementing changes made mandatory by the State of Registry received from the State of Design;

(*f*) the current certificate of registration, and airworthiness certificate in force in respect of that aircraft;

(*g*) the appropriate licences of the members of the flight crew and cabin crew, if a cabin crew licence is required by the Foreign Authority;

(*h*) appropriate approval/licence of crew members for aircraft radio operation.

Additions information and forms to be carried

13.—(1) A foreign air operator shall ensure that, in addition to the documents and manuals prescribed in this regulation, the following information and forms, relevant to the type and area of operation, are carried on each flight—

(*a*) operational Flight Plan;

(*b*) aircraft Technical Log containing at least the information required in subregulation 11 (1) under these Regulations;

(*c*) appropriate NOTAM/AIS briefing documentation;

(*d*) appropriate meteorological information;

(*e*) passenger and Cargo manifests as appropriate for the intended flight;

(*f*) the mass and balance document for the aircraft certifying that the load carried is properly distributed and safely secured;

(*g*) notification of special loads including any dangerous goods; and

(*h*) current maps and charts for the area of operation,

(2) The Authority may authorize the information detailed in subregulation of this Regulation, or parts thereof, to be presented in a form other than on printed paper provided the information is accessible for inspection.

Production of documentation manuals, and records

14.—(1) A foreign air operator shall—

(*a*) give any person authorized by the Authority access to any documents, manuals and records which are related to flight operations and maintenance; and

(*b*) produce all such documents, manuals and records, when requested to do so by the Authority, within a reasonable period of time.

(2) The pilot in command shall, within a reasonable time of being requested to do so by a person authorized by the Authority, produce to that person the documentation, manuals and records required to be carried on board.

Preservation, production and use of flight recorder recording

15.—(1) Following an accident or incident, in Malaŵi involving an aircraft of a foreign operator, or when the Authority so directs, the foreign operator of an aircraft on which a fight recorder is carried shall preserve the original recorded data for a period of not less than 60 days unless otherwise directed by the authority.

PART IV
Operations and Performance

Computation of passenger and baggage weights

16.—(1) A foreign air operator shall compute the mass of passengers and checked baggage using—

(*a*) the actual weighed mass of each person and the actual weighed mass of baggage; or

(*b*) the standard mass values specified by the foreign Authority.

(2) The Authority may require a foreign air operator conducting operations in Malaŵi to produce evidence validating any standard mass values used.

Single-engine aeroplanes at night in IMC

17.—(1) A foreign air operator may not operate a single-engine, non-turbine aircraft—

(*a*) at night; or

(*b*) in Instrument Meteorological Conditions except under Special Visual Flight Rules.

(2) A foreign air operator may operate a single-engine turbine aircraft at night and in IMC provided the State of the Operator has ensured—

(*a*) the reliability of the turbine engine;

(*b*) the foreign operator's maintenance procedures, operating practices, flight dispatch procedures and crew training programmes are adequate;

(*c*) the aeroplane is appropriately equipped for flight at night and in IMC;

(*d*) for aeroplanes issued a certificate of airworthiness before 1 January 2005—an engine trend monitoring system; and

(*e*) for aeroplanes issued a certificate of airworthiness after 1 January 2005—an automatic trend monitoring system.

Single pilot operations under IFR or at night

18.—(1) A foreign air operator shall not operate an aeroplane under IFR or at night by a single pilot unless approved by the State of the Operator and the aeroplane meets the following conditions—

(*a*) the flight manual does not require a flight crew of more than one pilot;

(*b*) the aeroplane is propeller-driven;

(*c*) the maximum approved passenger seating configuration is not more than nine;

(*d*) the maximum certificated take-off mass does not exceed 5,700 kg;

(*e*) the aeroplane is equipped with—

(i) a serviceable autopilot that has at least altitude hold and heading select modes;

(ii) a headset with a boom microphone or equivalent; and

(iii) a means of displaying charts that enables them to be readable in all ambient light conditions.

(*f*) the PIC has satisfied the requirements of experience, training, checking and recency.

Flights rules within Malaŵi

19.—(1) Within the territorial boundaries of Malaŵi, foreign air operator shall comply with the flight rules and limitations contained in the Operations Regulations.

(2) Foreign air operators shall ensure that their flight crew have available and have become familiar with the flight rules in the Operations regulations.

PART V
Flight Crew member Qualifications

General

20.—(1) Foreign air operators shall ensure that their flight crews have the appropriate licences and ratings for the operations to be conducted in Malaŵi.

Age limitations

21.—(1) Foreign air operators shall ensure that the required PIC engaged in single pilot operations on aircraft operating in Malaŵi shall be less than 60 years of age.

(2) Foreign air operators shall ensure, for aircraft engaged in operations in Malaŵi requiring more than one pilot as flight crew members, that if one pilot is between the age of 60 and up to age 65, the other pilot shall be less than age 60.

Language proficiency

22.—(1) As of March 5, 2008, foreign air operators shall ensure that flight crew operating aircraft in Malaŵi meet the language proficiency requirement of at least the operational level 4 as contained in ICAO Annex 1 for the English language and that such proficiency is endorsed on the licence.

PART VI
Security

Aircraft security

23.—(1) A foreign air operator shall—

(*a*) ensure that all appropriate personnel are familiar, and comply, with the relevant requirements of the national security programmes of the State of the operator;

(*b*) establish, maintain and conduct approved training programmes which enable the operator's personnel to take appropriate action to prevent acts of unlawful interference such as sabotage or unlawful seizure of aircraft and to minimize the consequences of such events should they occur;

(*c*) following an act of unlawful interference on board an aircraft the commander or, in his absence the operator, shall submit, without delay, a report of such an act to the designated local authority and the Authority in the State of the operator;

(*d*) ensure that all aircraft carry a checklist of the procedures' to be followed for that type in searching for concealed weapons, explosives, or other dangerous devices; and

(*e*) if installed, the flight crew compartment door on all aircraft operated for the purpose of carrying passengers shall be capable of being locked from within the compartment in order to prevent unauthorized access.

Unauthorized carriage

24.—(1) A foreign air operator shall take measures to ensure that no persons conceal themselves or cargo on board an aircraft.

PART VII
Dangerous Goods

Offering dangerous goods for transport by air

25.—(1) No foreign air operator may accept dangerous goods for transport by air in Malaŵi unless the foreign air operator—

(*a*) has been authorized to do so by the Foreign Authority; and

(*b*) has conducted the required personnel training.

(2) The foreign air operator shall properly classify, document, certify, describe, package, mark, label and put in a fit condition for transport, dangerous goods as required by the operator's dangerous goods programme as approved by the foreign Authority.

(3) When the foreign operator has been granted authority to accept dangerous goods, and has an approved dangerous goods programme authorized by the foreign Authority, the foreign operator shall file a copy of its dangerous goods programme with the Authority.

Carriage of weapons of war and munitions of war

26.—(1) A foreign air operator conducting commercial air transportation operations to Malaŵi shall—

(*a*) not transport weapons of war and munitions of war by air unless an approval to do so has been granted by all States concerned;

(*b*) ensure that weapons of war and munitions of war are—

(i) stowed in the aircraft in a place which is inaccessible to passengers during flight; and

(ii) in the case of firearms, unloaded, unless, before the commencement of the flight, an approval has been granted by all States concerned that such weapons of war and munitions of war may be carried in circumstances that differ in part or in total from those indicated in this subregulation;

(*c*) ensure that the pilot in command is notified before the flight begins of the details and location on board the aircraft of any weapons of war and munitions of war that are intended to be carried.

Carriage of sporting weapons and ammunition

27.—(1) A foreign air operator conducting commercial air transportation operations to Malaŵi shall take all measures necessary to ensure that any sporting weapons intended to be carried by air are reported.

(2) A foreign air operator accepting the carriage of sporting weapons shall ensure that they are—

(*a*) stowed in a place on the aircraft which is inaccessible to passengers during flight unless the Authority has determined that compliance is impracticable and has approved other procedures; and

(*b*) in the case of firearms or other weapons that can contain ammunition, unloaded.

(3) A foreign air operator may allow a passenger to carry ammunition for sporting weapons in passenger's checked baggage, as approved by the Authority.

SCHEDULE

Implementing Standards for Commercial Air Training by Foreign Air Operators Within Malaŵi

IS 10: 5 Authority to Inspect

(1) Authorized Inspectors—

(*a*) authorized inspectors assigned to conduct inspections of foreign aircraft shall be experienced inspectors who understand the difference between ramp inspections conducted on their own (national) operators as part of their AOC management responsibilities and surveillance inspections conducted on aircraft of foreign (international) operators;

(*b*) these inspectors shall be specifically trained and authorized to conduct such inspections and possess appropriate credentials identifying them as authorized inspectors employed by the Authority of foreign air operator;

(*c*) ramp inspections of foreign, air operators should be carried out in a similar manner to the ramp inspections of national operators, with some important differences, as the standards applied to foreign operators would be based primarily on international standards and national regulations derived from international standards;

(*d*) authorized inspectors shall have demonstrated a language proficiency in English of ICAO operational level 4 or higher;

(*e*) authorized inspectors shall have in their personal training records evidence they have been trained and are knowledgeable in the following areas—

(i) ICAO Convention and its Annexes 1, 6, 7 and 8;

(ii) differences between ICAO standards and national regulations, which may be more detailed or restrictive;

(iii) diplomacy, including dealing with potential language difficulties and cultural differences;

(iv) sovereignty of foreign aircraft, which, means that inspector authority is limited to document, communicate and report findings, except as provided in (3) (*a*) of this IS;

(v) observing, recording and reporting procedures during inspections of foreign air operators; and

(vi) surveillance activities, which are not linked to the certification process of the operator.

(2) Pre-Inspection Planning—

(*a*) authorized inspectors shall prepare for inspections of foreign operators by updating themselves on recent changes to national regulations with respect to operations by operators from other States;

(*b*) Malaŵi and to operate the particular aircraft concerned, i.e. issuance of a Document of Authorizations, Conditions and Limitations by the Authority;

(*c*) the record of the foreign air operator's history in Malaŵi should be examined, including records of past aircraft inspections and, in particular, those of the specific aircraft concerned in the inspection to be conducted, to check for any outstanding actions or recurring trends that might warrant particular attention;

(*d*) ramp (or Apron) inspections involve the aircraft and its crew, line station operations, servicing and maintenance and the ramp and gate area condition and activity: time constraints may apply only to the inspection of the aircraft and crew: determination should be made of the number of authorized inspectors and the specializations to be involved, the distribution of tasks and the time to be allocated to each task;

(*e*) as the inspection plan includes comprehensive inspections, it will not be possible to cover all the desired elements in the time available for a particular inspection without causing unreasonable delay to the foreign air operator;

(*f*) as inspections on aircraft of any one operator may be conducted at different airports by different authorized inspectors, the overall inspection plan will need to take this into account: some elements should be covered at every inspection; others can be covered over a number of inspections: thus, comprehensive records shall be maintained of all inspections of aircraft of a particular operator in a central database, in either paper or electronic format that is accessible to, and updated by, the authorized inspectors concerned;

(*g*) from these records it is necessary to plan the content of inspections so that a complete inspection of the aircraft of any one operator is undertaken over a defined period;

(*h*) selection of a particular aircraft to inspect should normally be done at random, in a non-discriminatory manner: however, the principles of risk management to identify operations perceived to present a higher safety risk and, as a result, conduct additional inspection activities aimed at those operations, which can be linked to a specific—

(i) state of the Operator;

(ii) aircraft type;

(iii) nature of operations (scheduled, non-scheduled, cargo, air taxi, etc.);

(iv) foreign operator; or

(v) individual aircraft.

(3) Inspections—

Types—

Areas to be checked during a Ramp (Apron) Check are—

(i) Flight Deck;

(ii) Cabin/Safety;

(iii) Aircraft External Condition;

(iv) Cargo; and

(v) general.

(4) Scope of a foreign operator ramp (Apron) inspection—

(i) it is not possible to cover all items on the checklist at every ramp inspection: inspections should be planned to cover high risk items and to cover all other items over a series of inspections;

(ii) it is essential that adequate records are kept, and that there is complete coordination between all authorized inspectors involved in ramp inspections for any one operator.

Foreign Operator Ramp Inspection Checklist

MALAŴI CIVIL AVIATION FOREIGN OPERATOR RAMP INSPECTION – PAGE 1

Inspector Name:	AOC Name	State of the Operator:
Inspection Result: ☐ Satisfactory ☐ Unsatisfactory	Action Taken Under regulation 5 (1) (*c*) of these Regulations ☐ Yes ☐ No	Date:

I. Documents to be covered on any one inspection of a foreign operator include the following:

	Items	S/U
•	certificate of registration	
•	certificate of airworthiness	
•	certificates of competency, licences and medical assessment of the flight crew	
•	air operator certificate and associated operations specifications relevant to the aircraft type, which are required information to be carried on board until an international register of AOCs may eventually provide an alternative way to access this information	
•	flight manual or other document containing performance data	
•	radio station licence	
•	journey logbook or technical log or general declaration	
•	maintenance release	
•	fuel and oil records	
•	document attesting noise certification	
•	certificate of registration	
•	certificate of airworthiness	
•	certificates of competency, licences and medical assessment of the flight crew	
•	air operator certificate and associated operations specifications relevant to the aircraft type, which are required information to be carried on board until an international register of AOCs may eventually provide an alternative way to access this information	
•	flight manual or other document containing performance data	
•	radio station licence	
•	journey logbook or technical log or general declaration	
•	maintenance release	
•	fuel and oil records and	
•	document attesting noise certification.	

Remarks:

MALAŴI CIVIL AVIATION FOREIGN OPERATOR RAMP INSPECTION – PAGE 2

II. The overall condition of the aircraft should be covered at every inspection:

Items	S/U
• out-of-tolerance leakage of fuel, engine oil or hydraulic fluid	
• landing gear and wheel well areas	
• fuselage and pylons (as applicable)	
• wings and pylons (as applicable)	
• engines, their intakes, exhaust cones and reverser systems	
• propellers (as applicable) and	
• empennage or tail assembly.	

Remarks:

III. Documents that should be covered annually per/AOC include:

Items	S/U
• adequate oxygen supply for crew and passengers	
• passenger briefing cards and contents	
• portable fire extinguishers – flight crew compartment and cabin	
• life rafts and life jackets or individual flotation devices (as applicable)	
• pyrotechnical distress signalling devices (as applicable)	
• first-aid kits and medical kits (as applicable)	
• penetration resistant cockpit door (as applicable)	
• emergency exit signs and lighting.	

Remarks

MALAŴI CIVIL AVIATION FOREIGN OPERATOR RAMP INSPECTION – PAGE 3

IV. Aircraft equipment that should be covered over a defined number of inspections:

Items	S/U
• adequate oxygen supply for crew and passengers	
• passenger briefing cards and contents	
• portable fire extinguishers – flight crew compartment and cabin	
• life rate and life jackets or individual flotation devices (as applicable)	
• pyrotechnical distress signalling devices (as applicable)	

•	first-aid kits and medical kits (as applicable)
•	penetration resistant cockpit door (as applicable)
•	emergency exit signs and lighting.

Remarks:

V. The following additional aircraft equipment should also be covered annually per/AOC as applicable to the aircraft and the operation:

	Items	S/U
•	airborne	
•	emergency	
•	flight	
•	ground	

Remarks:

IS 10: 6 (1) Requirements for the Application by Foreign Air Operators for Approval to Operate into the Territory of State

(*a*) Foreign Operator's Application Form (Page 1 of 2)

Application Form for Commercial Air Transport Operations by a Foreign Operator

(*To be completed by a foreign air operator for an approval to conduct operations in Malaŵi*)

Section 1A. To be completed by all applicants

1. Company registered name and trading name if different. Address of company: mailing address; telephone; fax; and e- mail.	2. Address of the principal place of business including: telephone; fax; and e-mail.
3. Proposed start date of operations: (dd/mm/yy):	4. ICAO 3-letter designator for aircraft operating agency:

5. Operational management personnel

Name	Title	Telephone, fax and e-mail

Section 1B. Type of approval requested – To be completed by all applicants, checking applicable boxes

6. 1 ☐ Air operator intends to conduct commercial flights to and from aerodromes in Malaŵi

2 ☐ Air operator intends to only conduct, overflights and technical stops in Malaŵi

7. Air operator proposed types of operation:	8. Geographic areas of intended operations and proposed route structure:
☐ Passengers and cargo ☐ Cargo only ☐ Scheduled operations ☐ Charter flight operations ☐ Dangerous goods	

Section 1C on Page 2 – To be completed by the air operator

Signature:	Date (dd/mm/yy):	Name and title:

Evaluated by (name and office):	CAA decision: ☐ Approval granted ☐ Not approved

Remarks:

Signature of CAA representative:	Date (dd/mm/yy):

(*b*) Foreign Operator's Application Form (Page 2 of 2)

Section 1C. To be completed by air operator

8. Provide location on board or provide separate documentation where individual aircraft nationality and registration marks are listed as part of the aircraft fleet operated under the air operator certificate:

Provide following information—

Aircraft type (make, model and series, or master series)	RVSM[2] Approval	ETOPS[3]	Noise[3] certification (Annex 16 Ch.)	Remarks
[Aircraft type 1]	☐	☐		
[Aircraft type 2]	☐	☐		
[Aircraft type 3]	☐	☐		
[Aircraft type 4]	☐	☐		
etc.	☐	☐		

Attach copies of—

- Proof of Economic Authority;
- Air operator certificate and associated operations specifications;
- Insurance certificate;
- In case of wet-lease of aircraft: approval of CAA of the State of the Operator, with identification of the operator that exercises operational control on the aircraft; and
- Document authorizing the specific traffic rights, issued by Air Transport Licensing Division or resulting from a bilateral air transport agreement (if required by the State to which the operator is flying to).

IS 10: 6(2) SAFETY CLAUSE EXAMPLE

Example of Safety Clause (Extracted from ICAO Document 8335) that must be inserted into Air Service Agreements that allows operators to provide service to another State and vice versa.

(*a*) each party may request consultations at any time concerning the safety standards maintained by the other Party in areas relating to aeronautical facilities, flight crew, aircraft and the operation of aircraft: such consultations shall take place within, thirty days of that request;

(*b*) if, following such consultations, one Party finds that the other Party does not effectively maintain and administer safety standards in the areas referred to in paragraph 1 that meet the Standards established at that time pursuant to the Convention on International Civil Aviation (Doc 7300), hereinafter referred to as: the Convention, the other Party shall be informed of such findings and of the steps considered necessary to conform with the ICAO Standards: the other Party shall then take appropriate corrective action within an agreed time period;

(*c*) pursuant to Article 16 of the Convention, it is further agreed that any aircraft operated by, or on behalf of an airline of one Party, on service to or from the territory of another Party, may, while within the territory of the other Party be the subject of a search by the authorized representatives of the other Party, provided this does not cause unreasonable delay in the operation of the aircraft. Notwithstanding the obligations mentioned in Article 33 of the Convention, the purpose of this search is to verify the validity of the relevant aircraft documentation, the licensing of its crew, and that the aircraft equipment and the condition of the aircraft conform to the Standards established at that time pursuant to the Convention;

(*d*) when urgent action is essential to ensure the safety of an airline operation, each Party reserves the right to immediately suspend or vary the operating authorization of an airline or airlines of the other Party;

(*e*) any action by one Party in accordance with paragraph 4 above shall be discontinued once the basis for the taking of that action ceases to exist;

(*f*) with reference to paragraph 2 above, if it is determined that one Party remains in non-compliance with ICAO Standards when the agreed time period has lapsed, the Secretary General of ICAO should be advised thereof: the latter should also be advised of the subsequent satisfactory resolution of the situation.

IS 10: 7 CONDITIONS FOR THE ISSUANCE OF A DOCUMENT OF AUTHORIZATIONS, CONDITIONS AND LIMITATIONS

(1) The Authority shall, when evaluating an application by a foreign air operator to operate within the territory of Malaŵi—

(*a*) examine both the safety oversight capabilities and record of the Foreign Authority of the State of the Operator, and if different, the State of Registry; and

(*b*) the operational procedures and practices of the foreign air operator itself.

NOTE: This is necessary in to have confidence in the validity of the certificates and licences associated with the foreign air operator, its personnel and aircraft, the operational capabilities of the foreign air operator and in the level of certification and oversight applied to the activities of the foreign air operator by the Foreign Authority of the State of the Operator.

(2) The Authority shall obtain information on the safety oversight capabilities, and the level of compliance with ICAO Standards, of the Foreign Authority of the State of the Operator by accessing information from the ICAO Universal Safety Oversight Audit Programme (USOAP). This information is available—

(*a*) on the ICAO website http://www.icao.int and accessible through the Flight Safety Information Exchange (FSIX) – Safety Oversight Information – Audit Reports (1999-2004) or Audit Reports (Comprehensive Systems Approach);

(*b*) on the ICAO Safety Oversight Audit (SOA) Secure Site which is accessible, subject to a password available only to the Authority from ICAO, through the FSIX home page; and

(*c*) subject to a password available only to the Authority of from ICAO, by accessing audit summary reports from the USOAP audits available to the Authority on the ICAO-Net http://www.icao.int/icaonet/.

(3) The Authority shall obtain and evaluate information on the foreign air operator. This information is available—

(*a*) by applying to the Foreign Authority of the State of the Operator for reports of any inspections that may have been conducted; and

(*b*) by requesting access to reports of audits of a foreign air operator, conducted by independent aviation audit organizations and/or by other air operators, such as code- sharing partners: such non-regulatory audits should be used in conjunction with other information such as a report from the ICAO Universal Safety Oversight Audit Programme (USOAP) or other inspection, results to evaluate the application.

(4) Foreign Air Operator's Application Form Section 2 to be completed by the CAA—

(*a*) in the case of significant negative findings and/or major deficiencies relevant to its review of the safety oversight capabilities and the level of compliance with ICAO Standards of the Foreign Authority of the State of the Operator, the Authority will engage in discussions with the Foreign Authority of the State of the Operator seeking resolution of the deficiencies prior to deciding whether to approve or not to approve the Foreign Air Operator Application Form and whether to approve or not to approve a Document of Authorizations, Conditions and Limitations;

(*b*) in the case of significant negative findings and/or major deficiencies relevant to its evaluation of the foreign air operator, the Authority shall not approve the foreign air operator's Foreign Air Operator Application Form and shall not issue a Document of Authorizations, Conditions and Limitations to the foreign air operator.

[Subsidiary] *Aviation (Aerial Work) Regulations*

G.N. 37/2013

AVIATION (AERIAL WORK) REGULATIONS

ARRANGEMENT OF REGULATIONS

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under s. 19

PART I
GENERAL

Citation and application

1.—(1) These Regulations may be cited as the Aviation (Aerial Work) Regulations.

(2) These Regulations contain the requirements for those operators and operations that are considered to be aerial work in Malaŵi.

(3) All persons who conduct aerial work in Malaŵi must comply with certification requirements of these Regulations.

(4) All persons who conduct aerial work in Malaŵi must comply with the applicable airworthiness and operational requirements of these Regulations, except where these Regulations grants relief from those requirements or specifies additional requirements.

Definitions

2.—(1) For the purpose of these Regulations, unless the context otherwise requires—

"aerial work" means an aircraft operation in which an aircraft is used for specialized services such as agriculture, construction, fire fighting, photography, surveying, observation and patrol, search and rescue, aerial advertisement, etc.

"acrobatic flight" means manoeuvres intentionally performed by an aircraft involving an abrupt change in an aircraft's attitude, an abnormal attitude, or abnormal variation in speed.

(*c*) "agricultural aircraft operation" means the operation of an aircraft for the purpose of—

(i) dispensing any economic poison;

(ii) dispensing any other substance intended for plant nourishment, soil treatment, propagation of plant life, or pest control; or

(iii) engaging in dispensing activities directly affecting agriculture, horticulture, or forest preservation, but not including the dispensing of live insects.

(*d*) "banner" means an advertising medium supported by a temporary framework attached externally to the aircraft and towed behind the aircraft;

(*e*) "congested area" means a city, town or settlement, or open-air assembly of people;

(*f*) "economic poison" means any substance or mixture of substances intended for—

(i) preventing, destroying, repelling, or mitigating any insects, rodents, nematodes, fungi, weeds, and other forms of plant or animal life or viruses, except viruses on or in living human beings or other animals, which Malaŵi may declare to be a pest, and

(ii) use as a plant regulator, defoliant or desiccant.

(*g*) "rotorcraft load combinations" means configurations for external loads carried by rotorcraft—

(i) class A—external load fixed to the rotorcraft, cannot be jettisoned, and does not extend below the landing gear, used to transport cargo;

(ii) class B—external load suspended from the rotorcraft, which can be jettisoned, and is transported free of land or water during rotorcraft operations;

(iii) class C—external load suspended from the rotorcraft, which can be jettisoned, but remains in contact with land or water during rotorcraft operation;

(iv) class D—external load suspended from the rotorcraft for the carriage of persons.

Abbreviation

3.—(1) The following abbreviations are used in these Regulations—

(*a*) AGL—above ground level

(*b*) PIC—pilot in command

(*c*) IFR—instrument flight rules.

PART II
Agricultural Aircraft Operations

Division I—General

Application

4.—(1) These Regulations prescribe rates governing—

(*a*) agricultural aircraft operations within Malaŵi; and

(*b*) the issue of commercial and private agricultural aircraft operator certificates for those operations.

(2) In a public emergency, a person conducting agricultural aircraft operations under these Regulations may, to the extent necessary, deviate from the operating rules of these Regulations for relief and welfare activities approved by the Authority and other local authorities.

(3) Each person who, under the authority of these Regulations, deviates from a rule of these Regulations shall, within 10 days after the deviation send to the Authority a complete report of the aircraft operation involved, including a description of the operation and the reasons for it.

Division II—Certification Rules

Certificate required

5.—(1) Except as provided in subregulations (3) and (4) of this Regulation, no person may conduct agricultural aircraft operations without, or in violation of, an agricultural aircraft operator certificate issued under these Regulations.

(2) An operator may, if it complies with this Part, conduct agricultural aircraft operations with a rotorcraft with external dispensing equipment in place without a rotorcraft external-load operator certificate.

(3) A local or national government conducting agricultural aircraft operations with public aircraft need not comply with these Regulations provided the Authority has been informed of, and does not object to such operations.

(4) The holder of a rotorcraft external-load operator certificated under these Regulations may conduct agricultural aircraft operations, involving only the dispensing of water for forest fires by rotorcraft external load means, needs to comply with this Part.

Application for certificate

6. An applicant for an agricultural aircraft operator certificate shall apply on a form and in a manner prescribed by the Authority. See IS 11:5 contained in the Scheduled hereto for information to be included on the application form.

Amendment of certificate

7.—(1) An agricultural aircraft operator certificate may be amended—

(*a*) on the Authority's own initiative, under applicable laws and regulations, or

(*b*) upon application by the holder of that certificate.

(2) A certificate holder shall submit any application to amend an agricultural aircraft operator certificate on a form and in a manner prescribed by the Authority. The applicant shall file the application at least 15 days before the date that it proposes the amendment to become effective, unless the Authority approves a shorter filing period.

(3) The Authority will grant a request to amend a certificate if it determines that safety in air commerce and the public interest so allow.

(4) Within 30 days after receiving a refusal to amend, the holder may petition the Authority to reconsider the refusal,

Certification requirements

8.—(1) General: Except as provided by subregulation (1) (*c*) of this Regulation—

(*a*) the Authority will issue a private agricultural aircraft operator certificate to an applicant who meets the requirements of this Part for that certificate;

(*b*) the Authority will issue a commercial agricultural aircraft operator certificate to an applicant who meets the requirements of this Part for that certificate; and

(*c*) an applicant who applies for an agricultural aircraft operator certificate containing a prohibition against the dispensing of economic poisons is not required to demonstrate knowledge specific to economic poisons.

(2) Pilots—

(*a*) a private operator-pilot applicant shall hold a current Malaŵi private, commercial, or airline transport pilot licence and be properly rated for the aircraft to be used;

(*b*) a commercial operator-pilot applicant shall hold, or have available the services of at least one pilot who holds a current

commercial or airline transport pilot licence issued by the Authority and who is properly rated for the aircraft to be used.

(3) Aircraft. The applicant shall have at least one certified and airworthy aircraft, equipped for agricultural operation.

(4) Knowledge and skill tests. The applicant shall show that it has satisfactory knowledge and skill of the following agricultural aircraft operations—

(*a*) knowledge—

(i) steps to be taken before starting operations, including a survey of the area to be worked;

(ii) safe handling of economic poisons and the proper disposal of used containers for those poisons;

(iii) the general effects of economic poisons and agricultural chemicals on plants, animals, and persons, and the precautions to be observed in using poisons and chemicals;

(iv) primary symptoms of poisoning of persons from economic poisons, the appropriate emergency measures to be taken, and the location of poison control centres;

(v) performance capabilities and operating limitations of the aircraft to be used; and

(vi) safe flight and application procedures.

(*b*) skill in the following manoeuvres, demonstrated at the aircraft's maximum certified take-off weight, or the maximum weight established for the special purpose load, whichever is greater—

(i) short-field and soft-field take-offs (aeroplanes and gyroplanes only);

(ii) approaches to the working area;

(iii) flare-outs;

(iv) swath runs;

(v) pull-ups and turnarounds; and

(vi) rapid deceleration (quick stops) in helicopters only.

Duration of certificate

9. An agricultural aircraft operator certificate is effective until it is surrendered, suspended, or revoked.

Division III—Operation Rules

General rules

10.—(1) Except as provided in subregulation 9 (3) of these Regulations, this division prescribes rules that apply to persons and aircraft used in agricultural aircraft operations conducted under Aerial Work Regulations.

(2) The holder of an agricultural aircraft operator certificate may deviate from the provisions of Part 9 without a certificate of waiver when conducting aerial work operations related to agriculture, horticulture, or forest preservation in accordance with the operating rules of this Division.

(3) The operating rules of this part apply to Rotorcraft External load certificate holders conducting agricultural aircraft operations involving only the dispensing of water on forest fires by rotorcraft external-load means.

Carrying of certificate

11.—(1) No person may operate an aircraft unless a facsimile of the agricultural aircraft operator certificate is carried on that aircraft.

(2) The registration and airworthiness certificates issued for the aircraft need not be carried in the aircraft provided that those certificates not carried in the aircraft shall be kept available for inspection at the base from which the dispensing operation is conducted.

Limitations on private agricultural aircraft operator

12.—(1) No person may conduct an agricultural aircraft operation under the authority of a private agricultural aircraft operator certificate—

(*a*) for compensation or hire;

(*b*) over a congested area; or

(*c*) over any property unless he or she is the owner or lessee of the property, or has ownership or other property interest in the crop located on that property.

Manner of dispensing

13. No persons may dispense, or cause to be dispensed, any material or substance in a manner that creates a hazard to persons or property on the surface.

Economic poison dispensing

14.—(1) Except as provided in subregulation (2) of this regulation, no dispense or cause to be dispensed, any economic poison that is registered with Malaŵi—

(*a*) for a use other than that for which it is registered;

(*b*) contrary to any safety instructions or use limitations on its label; or

(*c*) in violation of any law or regulation of Malaŵi.

(2) This regulation does not apply to any person dispensing economic poisons for experimental purposes under—

(*a*) The supervision of these State agency authorized by law to conduct research in the field of economic poisons; or

(*b*) A permit from, the Authority.

Personnel

15.—(1) Information: The holder of an agricultural aircraft operator certificate shall ensure that each person used in the holder's agricultural aircraft operation is informed of that person's duties and responsibilities.

(2) Supervisors: No person may supervise an agricultural aircraft operation unless he or she has met the knowledge and skill requirements of this part,

(3) Pilot in command: No person may act as pilot in command of an aircraft operated under this part unless that pilot—

(*a*) holds a pilot licence and rating prescribed by this part as appropriate to the type of operation conducted; or

(*b*) has demonstrated to the holder of the Agricultural Aircraft Operator Certificate conducting the operation, or to a supervisor designated by that certificate holder, that he or she possesses the knowledge and skill requirements of this part.

Operations in controlled airspace designated for an airport

16.—(1) Except for flights to and from a dispensing area, no person may operate an aircraft within the lateral boundaries of the surface area of Class C airspace designated for an airport unless authorization for that operation has been obtained from the ATC facility having jurisdiction over that area.

(2) No person may operate an aircraft in weather conditions below VFR minima within the lateral boundaries of a Class C airspace area that extends upward from the surface unless authorization for that operation has been obtained from, the ATC facility having jurisdiction over that area.

(3) A certificate holder may operate an aircraft under special VFR weather minima without meeting the requirements prescribed in the Operations Regulations.

Operation over congested areas: general

17.—(1) A certificate holder may operate or cause the operation of an aircraft over a congested area at altitudes required if the operation is conducted with—

(*a*) the maximum safety to persons and property on the surface, consistent with the operation, and

(*b*) a plan for each operation, submitted and have been approved by the Authority, which includes—

(i) obstructions to flight;

(ii) emergency landing capabilities of the aircraft to be used; and

(iii) any necessary coordination with air traffic control.

(2) Each certificate holder shall ensure that all single engine aircraft while in a congested area operate—

(*a*) except for helicopters, not loaded, during take-offs and turnarounds.

(*b*) not below the altitudes prescribed in the Operations Regulations except during the actual dispensing operation, including the approaches and departures necessary for that operation.

(*c*) during the actual dispensing operation, including the approaches and departures for that operation, not below the altitudes prescribed in this Regulation unless it is in an area and at such an altitude that the aircraft can make an emergency landing without endangering persons or property on the surface.

(3) Each certificate holder shall ensure that all multi-engine aircraft while in a congested area operate—

(*a*) during take-off, under conditions that will allow the aeroplane to be brought to a safe stop within the effective length of the runway from, any point on take-off up to the time of attaining, with all engines operating at normal take-off power, 105 percent of the minimum control speed with the critical engine inoperative in the take-off configuration or 115 percent of the power-off stall speed in the take-off configuration, whichever is greater.

(*b*) at a weight greater than the weight that, with the critical engine inoperative, would permit a rate of climb of at least 50 feet per minute at an altitude of at least 1,000 feet above the elevation of the highest ground or obstruction within the area to be worked, or at an altitude of 5,000 feet, whichever is higher. Assume that the propeller of the inoperative engine is in the minimum drag position; that the wing flaps and landing gear are in the most favourable positions; and that the remaining engine or engines are operating at the maximum continuous power available.

(*c*) below the altitudes prescribed in Operations Regulations except during the actual dispensing operation, including the approaches, departures, and turnarounds necessary for that operation.

(4) Each certificate holder shall issue notice of the intended operation to the public as may be specified by the Authority.

Operation over congested areas: pilots and aircraft

18.—(1) Pilots: Each pilot in command must have at least—

(*a*) 25 hours of pilot-in-command flight time in the make and basic model of the aircraft, including at least 10 hours within the preceding 12 calendar months, and

(*b*) 100 hours of flight experience as pilot in command in dispensing agricultural materials or chemicals.

(2) Aircraft: Except for helicopters, each aircraft shall be capable of jettisoning at least one-half of the aircraft's maximum authorized load of agricultural material within 45 seconds. If the aircraft is equipped to release the tank or hopper as a unit, there shall be a means to prevent inadvertent release by the pilot or other crew member.

Availability of certificate

19. Each holder of an agricultural aircraft operator certificate shall keep certificate that certificate at its home base and shall present it for inspection on the request of the Authority or any government law enforcement officer.

Division IV—Records and Reports

Records: Commercial agricultural aircraft operator

20.—(1) Each holder of a commercial agricultural aircraft operator certificate shall maintain and keep current, at the home base designated in its application, the following records—

(*a*) the name and address of each person for whom agricultural, aircraft services were provided;

(*b*) the date of the service;

(*c*) the name and quantity of the material dispensed for each operation conducted; and

(*d*) the name, address, and licence number of each pilot used in agricultural aircraft operations and the date that pilot met the knowledge and skill requirements of this part.

(2) The records required by this section must be kept for at least 12 months.

Change of address

21. Each holder of an agricultural aircraft operator certificate shall notify address the Authority in writing in advance of any change in the address of its home base of operations.

Termination of operations

22. Whenever a certificate holder ceases operations under these Regulations, it shall surrender that certificate to the designated office of the Authority.

PART III
Rotorcraft External Loads

Division I—General Application

Application

23.—(1) This part prescribes—

(*a*) airworthiness certification rules for rotorcraft used in external-load operations; and

(*b*) operating and certification rules governing the conduct of rotorcraft external-load operations in Malaŵi.

(2) The certification rules of these Regulations do not apply to—

(*a*) rotorcraft manufacturers when developing external-load attaching means;

(*b*) operations conducted by a person demonstrating compliance for the issuance of a certificate or authorization under these Regulations;

(*c*) training flights conducted in preparation for the demonstration of compliance with these Regulations; or

(*d*) a local or national government conducting operations with public aircraft.

(3) For the purpose of these Regulations, a person other than a crew member or a person who is essential and directly connected with the external-load operation may be carried only in approved Class D rotorcraft-load combinations.

Division II—Certificate Rules

Certificate required

24. No person subject to these Regulations may conduct rotorcraft external-load operations without, or in violation of the terms of, a Rotorcraft External-Load Operator Certificate or equivalent authorization issued by the Authority.

Duration of certificate

25. Unless sooner surrendered, suspended, or revoked, a Rotorcraft External-Load Operator Certificate expires at the end of the twenty-fourth month after the month in which it is issued or renewed.

Application for certificate issuance or renewal

26. Application for an original certificate or renewal of a certificate issued under these Regulations is made on a form, and in a maimer, prescribed by the Authority.

Requirements for issuance of a rotorcraft external load operator certificate

27.—(1) If an applicant shows that it complies with this Part, the Authority will issue a Rotorcraft External-Load Operator Certificate to it.

(2) The Authority will issue authorization to operate specified rotorcraft with those classes of rotorcraft-load combinations for which the applicant or certificate holder qualifies under the applicable provisions of this Part.

Rotorcraft

28. An applicant must have the exclusive use of at least one rotorcraft that—

(*a*) was type certified under, and meets the requirements of, the several regulations which prescribe requirements for rotorcraft external-load operations;

(*b*) complies with the certification provisions in this Part that apply to the rotorcraft-load combinations for which authorization is requested; and

(*c*) has a valid standard or restricted category airworthiness certificate.

Personnel

29.—(1) An applicant shall hold, or have available the services of at least one person who holds a current commercial or airline transport pilot licence issued by the Authority with a rating appropriate for the rotorcraft to be used.

(2) An applicant shall designate one pilot, who may be the applicant, as chief pilot for rotorcraft external-load operations.

(3) An applicant may designate qualified pilots as assistant chief pilots to perform the functions of the chief pilot when the chief pilot is not readily available.

(4) The chief pilot and assistant chief pilots must be acceptable to the Authority and each must hold a current Commercial or Airline Transport Pilot Licence, with a rating appropriate for the rotorcraft to be used.

(5) The holder of a Rotorcraft External-Load Operator Certificate shall report any change in designation of chief pilot or assistant chief pilot immediately to the Authority.

(6) A newly designated chief pilot shall comply with the knowledge and skill requirements of this Division within 30 days or the operator may not conduct further operations under the Rotorcraft External-Load Operator Certificate, unless otherwise authorized by the Authority.

Amendment of certificate

30.—(1) The holder of a Rotorcraft External-Load Certificate may apply to the Authority for an amendment of its certificate, to add or delete a rotorcraft-load combination authorization.

(2) The holder of a rotorcraft external-load certificate may apply for an amendment to add or delete a rotorcraft authorization by submitting to the Authority a new list of rotorcraft, by registration number, with the classes of rotorcraft-load combinations for which authorization is requested.

Availability transfer and surrender of certificate

31.—(1) Each person conducting a rotorcraft external-load operation shall carry a facsimile of the Rotorcraft External-Load Operator Certificate in each rotorcraft used in the operation.

(2) A certificate holder shall return its certificate to the Authority—

(*a*) if the Authority suspends or revokes its Rotorcraft External-Load Operator Certificate; or

(*b*) if the certificate holder discontinues operations and does not resume operations within two years.

Division III—Operating Rules and Related Requirements

Operating rules

32.—(1) No person may conduct a rotorcraft external load operation without, or contrary to, the Rotorcraft/Load Combination Flight Manual prescribed in regulation 37 of these Regulations.

(2) No person may conduct a rotorcraft external load operation unless—

(*a*) the rotorcraft complies with regulation 26 of these Regulations; and

(*b*) the rotorcraft and rotorcraft/load combination is authorized under the Rotorcraft External Load Operator Certificate.

(3) Before a person may operate a rotorcraft with an external load configuration that differs substantially from any that person has previously carried with that type of rotorcraft (whether or not the rotorcraft/load combination is of the same class), that person shall conduct, in a manner that will not endanger persons or property on the surface, such of the following flight operational checks as the Authority determines are appropriate to the rotorcraft/load combination—

(*a*) a determination that the weight of the rotorcraft/load combination and the location of its centre of gravity are within approved limits, that the external load is securely fastened, and that the external load does not interfere with devices provided for its emergency release;

(*b*) make an initial liftoff and verify that controllability is satisfactory;

(*c*) while hovering, verify that directional control is adequate;

(*d*) accelerate into forward flight to verify that no attitude (whether of the rotorcraft or of the external load) is encountered in which the rotorcraft is uncontrollable or which is otherwise hazardous;

(*e*) in forward flight, check for hazardous oscillations of the external load, but if the external load is not visible to the pilot, other crew members or ground personnel may make this check and signal the pilot; and

(*f*) increase the forward airspeed and determine an operational airspeed at which no hazardous oscillation or hazardous aerodynamic turbulence is encountered.

(4) Notwithstanding the provisions of the Operations Regulations, the holder of a Rotorcraft External Load Operator Certificate may conduct rotorcraft external load operations over congested areas if those operations are conducted without hazard to persons or property on the surface and comply with the following—

(*a*) the operator shall develop a plan for each complete operation and obtain approval for the operation from the Authority;

(*b*) the plan must include an agreement with the appropriate authorities that local officials will exclude unauthorized persons from the area in which the operation will be conducted, coordination with air traffic control, if necessary, and a detailed chart depicting the flight routes and altitudes;

(*c*) each flight shall be conducted at an altitude, and on a route, that, will allow a jettisonable external load to be released, and the rotorcraft landed, in an emergency without hazard to persons or property on the surface.

(5) Notwithstanding the provisions of the Operations Regulations, and except as provided in subregulation 36 (1) (*d*), the holder of a Rotorcraft External Load Operator Certificate may conduct external load operations, including approaches, departures, and load positioning manoeuvres necessary for the operation, below 500 feet above the surface and closer than 500 feet to persons, vessels, vehicles, and structures, if the operations are conducted without creating a hazard to persons or property on the surface.

(6) No person may conduct rotorcraft external load operations under IFR unless specifically approved by the Authority.

Carriage of persons

33.—(1) No AOC holder may allow a person to be carried during rotorcraft external load operations unless that person—

(*a*) is a flight crew member;

(*b*) is a flight crew member trainee;

(*c*) performs an essential function in connexion with the external load operation; or

(*d*) is necessary to accomplish the work activity directly associated with that operation.

(2) The PIC shall ensure that all persons are briefed before take-off on all pertinent procedures to be followed (including normal, abnormal, and emergency procedures) and equipment to be used during the external load operation.

Crew member training, currency, and testing requirements

34.—(1) No certificate holder may use, nor may any person serve, as a pilot in rotorcraft external load operations unless that person—

(*a*) has successfully demonstrated to the Authority the knowledge arid skill with respect to the rotorcraft/load combination; and

(*b*) has in his or her personal possession a letter of competency or an appropriate logbook entry indicating compliance with subregulation 33 (1) (*a*).

(2) No AOC holder may use, nor may any person serve as, a crew member or other operations personnel in Class D operations unless, within the preceding 12 calendar months, that person has successfully completed either an approved initial or a recurrent training programme.

(3) Notwithstanding the provisions of subregulation 33 (2) of these Regulations a person who has' performed a rotorcraft external load operation of the same class and in an aircraft of the same type within the past 12 calendar months need not undergo recurrent training.

Division IV—Airworthiness Requirements

Flight characteristics requirements

35.—(1) The applicant must demonstrate to the Authority, by performing the following operational flight checks, that the rotorcraft-load combination has satisfactory flight characteristics, unless these operational flight checks have been demonstrated previously and the rotorcraft-load combination flight characteristics were satisfactory. For the purposes of this demonstration, the external-load weight (including the external-load attaching means) is the maximum weight for which authorization is requested.

(2) Class A rotorcraft-load combinations: The operational flight check must consist of at least the following manoeuvres—

(*a*) take-off and landing;

(*b*) demonstration of adequate directional control while hovering;

(*c*) acceleration from a hover;

(*d*) horizontal flight at airspeeds up to the maximum airspeed for which authorization is requested.

(3) Class B and D rotorcraft-load combinations: The operational flight check must consist of at least the following manoeuvres—

(*a*) pickup of the external load;

(*b*) demonstration of adequate directional control while hovering;

(*c*) acceleration from a hover;

(*d*) horizontal flight at airspeeds up to the maximum, airspeed for which authorization is requested;

(*e*) demonstrating appropriate lifting device operation;

(*f*) manoeuvring of the external load into release position and its release, under probable flight operation conditions, by means of each of the quick-release controls installed on the rotorcraft.

(4) Class C rotorcraft-load combinations: For Class C rotorcraft-load combinations used in wire-stringing, cable-laying, or similar operations, the operational flight check must consist of the manoeuvres, as applicable, prescribed in subregulation 34 (3) of under these Regulations.

Structures and design

36.—(1) External-load attaching means. Each external-load attaching means shall be approved by the Authority.

(2) Quick release devices: Each quick release device means shall be approved by the Authority.

(3) Weight and centre of gravity—

(*a*) weight: The total weight of the rotorcraft-load combination must not exceed the total weight approved for the rotorcraft during its type certification;

(*b*) centre of gravity: The location of the centre of gravity must, for all loading conditions, be within the range established for the rotorcraft during its type certification. For Class C rotorcraft-load combinations, the magnitude and direction of the loading force must be established at those values for which the effective location of the centre of gravity remains within its established range.

Operating limitations

37.—(1) In addition to the operating limitations set forth in the approved Rotorcraft Flight Manual, and to any other limitations the Authority may prescribe, the operator shall establish at least the following limitations and set them forth in the Rotorcraft-Load Combination Flight Manual for rotorcraft-load combination operations—

(*a*) the rotorcraft-load combination may be operated only within the weight and centre of gravity limitations established in accordance with this part;

(*b*) the rotorcraft-load combination may not be operated with an external load weight exceeding that used in showing compliance with this part;

(*c*) the rotorcraft-load combination may not be operated, at airspeeds greater than those established in accordance with this part;

(*d*) no person may conduct an external-load operation under these Regulations with a rotorcraft type certified in the restricted category

over a densely populated area, in a congested airway, or near a busy airport where passenger transport operations are conducted;

(*e*) the rotorcraft-load combination of Class D may be conducted only in accordance with the following.

(2) The rotorcraft to be used must have been type certified under transport Category A for the operating weight and provide hover capability with one engine inoperative at that operating weight and altitude—

(*a*) the rotorcraft must be equipped to allow direct radio intercommunication among required crew members;

(*b*) the personnel lifting device must be approved by the Authority;

(*c*) the lifting device must have an emergency release requiring two distinct actions.

Rotorcraft-load combination flight manual

38.—(1) The applicant shall prepare a Rotorcraft-Load Combination Flight Manual and submit it for approval by the Authority. The limiting height-speed envelope data need not be listed as operating limitations. The manual shall set forth—

(*a*) operating limitations, procedures (normal and emergency), performance, and other information established under this part;

(*b*) the class of rotorcraft-load combinations for which the airworthiness of the rotorcraft has been demonstrated in accordance with this part; and

(*c*) in the information section of the Rotorcraft-Load Combination Flight Manual—

(i) information on any peculiarities discovered when operating particular rotorcraft-load combinations;

(ii) precautionary advice regarding static electricity discharges for Class B, Class C, and Class D rotorcraft-load combinations; and

(iii) any other information essential for safe operation with external loads.

Markings and placards

39.—(1) The following markings and placards must be displayed conspicuously and must be such that they cannot be easily erased, disfigured, or obscured—

(*a*) a placard (displayed in the cockpit or cabin) stating the class of rotorcraft-load combination and the occupancy limitation for which the rotorcraft has been approved;

(*b*) a placard, marking, or instruction (displayed next to the external-load attaching means) stating the maximum external load approved.

Airworthiness certification

40.—(1) A Rotorcraft External-Load Operator Certificate is a current and valid airworthiness certificate for each rotorcraft type and listed by registration number on a list attached to the certificate, when the rotorcraft is being used in operations conducted under these Regulations.

PART IV
Glider Towing

Application

41. This Part applies to those operations involving towing gliders by aircraft.

Certificate or authorization required

42.—(1) The Authority will require each person conducting glider towing operations covered by this part to hold a certificate or equivalent authorization.

(2) The Authority will issue a certificate or authorization to each applicant who qualifies for it under the provisions of this Part.

Aircraft requirements

43.—(1) No person may operate an aircraft that is towing a glider unless—

(*a*) the aircraft is equipped with a tow hook and release control system that meet the applicable standards of airworthiness; and

(*b*) the towline used has a breaking strength not less than 80 percent of the maximum certificated operating weight of the glider and not more than twice the maximum certificated operating weight.

(2) However, the towline used may have a breaking strength more than twice the maximum certificated operating weight of the glider if—

(*a*) a safety link is installed at the point of attachment of the towline to the glider with a breaking strength not less than 80 percent of the maximum certificated operating weight of the glider and not greater than twice this operating weight; or

(*b*) a safety link is installed at the point of attachment of the towline to the towing aircraft with a breaking strength greater, but not more than 25 percent greater, than that of the safety link at the towed glider end of the towline and not greater than twice the maximum certificated operating weight of the glider.

Experience and training requirements

44.—(1) No person may act as a tow pilot for a glider unless that person has—

(*a*) at least a private pilot licence with a category rating for the tow aircraft;

(*b*) logged at least 100 hours of pilot in command time in same aircraft category, class, and type, if applicable, as the tow aircraft;

(*c*) received training in and instructor endorsement for—

(i) the techniques and procedures essential to the safe towing of gliders, including airspeed limitations;

(ii) emergency procedures;

(iii) signals used; and

(iv) maximum angles of bank.

(*d*) Except as provided in subregulation 43 (2) of this part, has completed at least three flights as the sole manipulator of the controls of an aircraft towing a glider or simulating glider-towing flight procedures while accompanied by a pilot who meets the requirements of this section;

(*e*) except as provided in subregulation 43 (2) of this part, has received a logbook endorsement from the pilot, described in subregulation 43 (1) (*d*) of this part, certifying that the person has accomplished at least 3 flights in an aircraft while towing a glider; and

(*f*) within the preceding 12 months has—

(i) made at least three actual glider tows while accompanied by a qualified pilot who meets the requirements of this section; or

(ii) made at least three flights as pilot in command of a glider towed by an aircraft.

(2) The pilot, described in subregulation 43 (1) (*d*) of this part, who endorses the logbook of a person seeking towing privileges must have—

(*a*) met the requirements of this section prior to endorsing the logbook of the person seeking glider-towing privileges; and

(*b*) logged at least 10 flights as pilot in command of an aircraft while towing a glider.

(3) if the pilot described in subregulation 43 (1) (*d*) of this part holds only a private pilot licence, then that pilot must have—

(*a*) logged at least 100 hours of pilot-in-command time in airplanes, or 200 hours of pilot in command time in a combination of powered and other than powered aircraft, and

(*b*) performed and logged at least three flights within the 12 calendar months preceding the month that pilot accompanies or endorses the logbook of a person seeking towing privileges—

(i) in an aircraft while towing a glider vehicle accompanied by another pilot who meets the requirements of this section; or

(ii) as pilot in command of a glider being towed by an aircraft.

Operating rules

45.—(1) No pilot may conduct any towing operation in controlled airspace until the pilot has received the appropriate clearance from the air traffic control service.

(2) No pilot may conduct any towing operation in uncontrolled airspace until the pilot has notified the appropriate Authority for such activity to be entered into the NOTAM service of Malaŵi.

(3) No pilots shall engage in towing operations, either as the pilot of the towing aircraft or as the pilot of the towed glider, until all pilots have agreed upon a general course of action, including take-off and release signals, airspeeds and emergency procedures for each pilot.

(4) No pilot of a civil aircraft may intentionally release a towline, after release of a glider, in a manner that endangers the life or property of another.

PART V
Banner Towing

Application

46. This part applies to those operations involving towing by aircraft banners or other signs, lit or unlit.

Certificate or authorization required

47.—(1) The Authority shall require each person conducting operations covered by this part to hold a certificate or equivalent authorization.

(2) The Authority shall issue a certificate or authorization to each applicant who qualifies for it under the provisions of this part.

(3) A helicopter operating under the provision of Part III of these Regulations may tow a banner using an external-load attaching means without a certificate only if the operator has at least a Class B authorization on the operating certificate.

Aircraft requirements

48.—(1) No person may operate an aircraft that is towing a banner unless the aircraft is equipped with a tow hook and release control system that meet the applicable standards of airworthiness.

(2) No person may operate a helicopter that is towing a banner unless the helicopter has a means to prevent the banner from becoming entangled in the helicopter's tail rotor during all phases of flight, including autorotations.

Experience and training requirements

49.—(1) For non-revenue flights, the pilot of the tow aircraft shall hold at least a valid private pilot licence and have a minimum of 200 hours PIC time.

(2) When banner tow operations are conducted for compensation or hire, the pilot shall have at least a commercial pilot licence (instrument rating not required) and at least a valid second class medical certificate.

(3) All pilots engaged in banner towing operations shall demonstrate competence to the Authority by performing at least one pickup and drop of the maximum number of letters (panels) to be used by the certificate holder.

(4) This demonstration should be observed from the ground to allow the inspector to evaluate the competence of any essential ground personnel as well as the flight operation.

Operating rules

50.—(1) All banner tow operations shall be conducted only—

(*a*) in VFR weather conditions; and

(*b*) between the hours of official sunrise and official sunset.

(2) No person may conduct banner towing operations—

(*a*) over congested areas or open air assemblies of persons lower than 1,000 feet; and

(*b*) elsewhere lower than the minimum safe altitude requirements of the Operations Regulations.

(3) Helicopters may be operated at less than the minima prescribed in subregulation 49 (2) if the operation is conducted without hazard to persons or property on the surface.

(4) The certificate holder shall obtain the airport manager's approval to conduct banner tow operations.

(5) If banner towing operations take place at an airport with a control tower, the certificate holder shall inform that control tower of the time of the banner tow operation.

(6) The certificate holder shall notify the appropriate airport officials in advance when banner tow operations will be in close proximity to an uncontrolled airport.

(7) Only essential crew members shall be carried when conducting banner tow operations.

(8) When banner tow operations are conducted around congested areas, the pilot shall exercise due care so that, in the event of emergency release of the banner and/or towrope, it will not cause undue hazard to persons or property on the surface.

(9) Each pilot shall drop the towrope in a predesignated area at least 500 feet from persons, buildings, parked automobiles, and aircraft. If the tow plane lands with the rope attached, due care will be exercised to avoid trailing the rope and endangering other aircraft in the air, or persons, property or aircraft on the surface.

(10) Each pilot conducting banner towing operations shall carry onboard the aircraft a current copy of the following certificate of Waiver of Authorization allowing banner towing operations.

PART VI
TV and Movie Operations

Application

51.—(1) This Part applies to those operations involving motion picture and television filming, appearance in flight in movies, and airborne direction or production of such filming when those operations are conducted as part of a business enterprise or for compensation or hire.

(2) For purposes of this part, "movie" shall include film, videos, and live broadcast in any format, and the preparation and rehearsal for those operations.

Certificate or authorization required

52.—(1) The Authority shall require each person conducting operations covered by this part to hold a certificate or equivalent authorization.

(2) The Authority will issue a certificate or authorization to each applicant who qualifies for it under the provisions of this subpart.

Aircraft requirements

53. In order to be used in motion picture and television filming operations, aircraft in the experimental category shall have an airworthiness certificate issued for the purpose of exhibition.

Experience and training requirements

54.—(1) No pilot may conduct television and movie operations unless he or she has—

(*a*) a commercial licence with ratings appropriate to the category, class and type of aircraft to be used under the terms of the authorization;

(*b*) at least 500 hours as PIC and at least 20 hours as PIC in the aircraft type;

(*c*) a minimum of 100 hours in the category and class of aircraft to be used;

(*d*) a minimum of 5 hours in the make and model aircraft to be used under the authorization;

(*e*) if the pilot intends to perform acrobatics below 1,500 AGL, the pilot must hold a Statement of Acrobatic Competency for the operations to be performed.

Operating rules and waiver requirements

55.—(1) Each operator shall conduct operations so as not to endanger persons or property on the surface nor aircraft in flight.

(2) Each operator shall obtain a waiver from the Authority if filming sequences require an aircraft to be flown—

(*a*) in acrobatic flight below 1,500 AGL;

(*b*) over a congested area;

(*c*) in controlled airspace; or

(*d*) in other instances where a departure from the requirements in Operations Regulations is needed.

(3) The holder of the authorization shall provide a schedule of events that lists the—

(*a*) identification of the aircraft; and

(*b*) performers in the sequence of their appearance.

(4) Any manoeuvres added or time changes to the schedule of events shall be approved by the Authority.

(5) The authorization holder shall develop, have approved by the Authority, and adhere to a Motion Picture and Television Flight Operations Manual.

(6) When conducting any filming operation requiring an authorization, the certificate holder shall ensure that all reasonable efforts are made to confine spectators to designated areas. If reasonable efforts have been taken and unauthorized persons or vehicles enter the airspace where manoeuvres are being performed during the filming production event, efforts must be made to remove them.

Contents of a motion picture and television flight operations manual

56.—(1) Each Motion Picture and Television Flight Operations Manual shall contain at least the following—

(*a*) company organization—

(i) business name, address, and telephone number of applicant;

(ii) list of pilots to be used during the filming, including their pilot licence numbers, grade, and class and date of medical;

(iii) list of aircraft by make and model.

(*b*) distribution and revision: procedures for revising the manual to ensure that all manuals are kept current;

(*c*) persons authorized: procedures to ensure that no persons, except those persons consenting to be involved and necessary for the filming production, are allowed within 500 feet of the filming production area;

(*d*) area of operations: the area that will be used during the term of the authorization;

(*e*) plan of activities: procedures for the submission, within three days of scheduled filming, a written plan of activities to the Authority containing at least the following—

(i) dates and times for all flights;

(ii) name and phone number of person responsible for the filming production event;

(iii) make and model of aircraft to be used and type of airworthiness certificate, including category;

(iv) name of pilots involved in the filming production event;

(v) a statement that permission has been obtained from property owners and/or local officials to conduct the filming production event;

(vi) signature of certificate holder or a designated representative;

(vii) a general outline, or summary, of the production schedule, to include maps or diagrams of the specific filming location, if necessary.

(*f*) permission to operate: requirements and procedures that the certificate holder will use to obtain permission from property owners and/or local officials (e.g., police, fire departments, etc.) as appropriate for the conduct of all filming operations when using the certificate/authorization;

(*g*) security: method of security that will be used to exclude all persons not directly involved with the operation from the location. This should also include the provision that will be used to stop activities when unauthorized persons, vehicles, or aircraft enter the operations area, or for any other reason, in the interest of safety;

(*h*) briefing of pilot/production personnel: procedures to brief personnel of the risks involved, emergency procedures, and safeguards to be followed during the filming production event;

(*i*) certification/airworthiness: procedures to ensure that required inspections will be conducted;

(*j*) communications: procedures to provide communications capability with all participants during the actual operation and filming. The applicant can use oral, visual, or radio communications as along as it keeps the participants continuously apprised of the current status of the operation; and

(*k*) accident notification: procedures for notification and reporting of accidents.

PART VII
Sight-Seeing Flights

Application

57.—(1) This part applies to those operations involving the carriage of persons for viewing natural formations, manmade objects or wildlife

viewing on the ground when those operations are conducted as part of a business enterprise or for compensation or hire.

(2) The flight is unquestionably advertised as "sight-seeing".

(3) The flight returns to the airport of departure without having landed at any other airport.

(4) The flight is conducted within 25 statute mile radius of the departure airport.

(5) The certificated passenger capacity of the aircraft does not exceed 9 passengers.

Certificate or authorization required

58.—(1) The Authority will require each person conducting operations Certificate or covered by this part to hold a certificate or equivalent authorization.

(2) Each operator under this part shall hold an operating certificate issued under the provisions of this part.

Experience and training requirements

59. No pilot may conduct sightseeing operations unless he or she has—

(*a*) at least a commercial licence with ratings appropriate to the requirements category, class and type of aircraft to be used under the terms of the waiver;

(*b*) at least 500 hours as PIC and at least 20 hours as PIC in the aircraft type;

(*c*) a minimum of 100 hours in the category and class of aircraft to be used; and

(*d*) a minimum of 5 hours in the make and model aircraft to be used under the authorization.

Operating rules

60.—(1) Each operator shall conduct operations so as not to endanger persons or property on the surface nor aircraft in flight.

(2) All sightseeing operations shall be conducted only—

(*a*) in VFR weather conditions; and

(*b*) between the hours of official sunrise and official sunset.

(3) No person may conduct sightseeing operations—

(*a*) over congested areas or open air assemblies of persons lower than 1,000 feet; and

(*b*) elsewhere lower than the minimum safe altitude requirements of the Operations Regulations.

(4) The requirements of the Operations Regulations apply to sightseeing operations described by this part.

PART VIII
Fish Spotting

Application

61. This part applies to those operations involving location, tracking, and reporting on the location of fish and fish schools, when those operations are conducted as part of a business enterprise or for compensation or hire.

Certificate or authorization required

62.—(1) The Authority will require each person conducting operations covered by this part to hold a certificate or equivalent authorization.

(2) The Authority may issue a certificate or authorization to each applicant who qualifies for it under the provisions of this part.

Operating rules

63.—(1) Each operator shall conduct operations so as not to endanger persons or property on the surface nor aircraft in flight.

(2) Minimum cloud clearance requirements and minimum altitude requirements of the Operations Regulations do not apply to those persons to whom the Authority has specifically approved different minima as a part of an authorization under this part.

Experience and training requirements

64.—(1) No pilot may conduct fish spotting operations unless he or she has—

(*a*) at least a commercial licence with ratings appropriate to the category and class aircraft to be used under the terms of the waiver;

(*b*) at least 500 hours as PIC; and

(*c*) a minimum of 100 hours in the category and class of aircraft to be used.

PART IX
News Media and Traffic Reporting

Application

65. This part applies to those operations involving the observation of, and reporting on, news media events and/or vehicular traffic conditions on the highways and streets when conducted by aircraft or airmen, or both, not designated as solely public use.

Certificate or authorization required

66.—(1) The Authority will require each person conducting operations covered by this part to hold a certificate or equivalent authorization.

(2) The Authority will issue a certificate or authorization to each applicant who qualifies for it under the provisions of this part.

Operating rules

67.—(1) Each operator shall conduct operations so as not to endanger persons or property on the surface nor aircraft in flight.

(2) Minimum cloud clearance requirements and minimum altitude requirements of Operations Regulations do not apply to those persons to whom the Authority has specifically approved different minima as a part of an authorization under this part.

Experience and training requirements

68.—(1) No pilot may conduct news media or traffic reporting operations unless he or she has—

(*a*) at least a commercial licence with ratings appropriate to the category, class and type aircraft to be used under the terms of the waiver;

(*b*) at least 500 hours as PIC and at least 20 hours as PIC in the aircraft type;

(*c*) a minimum of 100 hours in the category and class of aircraft to be used;

(*d*) a minimum of 5 hours in the make and model aircraft to be used under the authorization.

SCHEDULE

Implementing Standards for Aerial Works Regulations

IS 11:5 Sample of Information to be Included in an Application for Aerial Work (Agricultural Operations)

1	Particulars of applicant
1.1	Name of operator
1.2	Address
1.3	Tel. number
1.4	Fax
1.5	Email
2	Particulars of aircraft
2.1	Owner
2.2	Registration
2.3	Type
2.4	Certification for aerial work

3	Particulars of operation
3.1	Dates
3.2	Entry /exit from Malaŵi airspace
3.3	Description, of activities
3.4	Area
3.5	Attach maps
4	Particulars of client
4.1	Name
4.2	Address
4.3	Tel. number
4.4	E-mail
4.5	Purposes of assignment
5	Crew qualifications
5.1	Name of pilot(s)
5.1	General qualification
5.2	Type of licences/ratings held
5.3	Previous experience relating to aerial work
6	Local authorizations obtained
7	Safety safeguards
8	Insurance cover
9	Remarks

AVIATION (SEARCH AND RESCUE) REGULATIONS

G.N. 38/2013

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AVIATION (SEARCH AND RESCUE) REGULATIONS

under s. 19

PART I
General

Citation and application

1.—(1) These Regulations may be cited as the Aviation (Search and Citation and Rescue) Regulation.

(2) These Regulations are applicable to the establishment, maintenance and Operations of Search and Rescue Services in the territory of Malaŵi.

Interpretation

2. For the purpose of these Regulations, unless the context otherwise requires—

"alert phase" means a situation wherein apprehension exists as to the safety of an aircraft and its occupants;

"alerting post" means a unit designated to receive information from the general public regarding aircraft in emergency and to forward the information to the associated rescue coordination center;

"distress phase" means a situation wherein there is a reasonable certainty that an aircraft and its occupants are threatened by grave and imminent danger or require immediate assistance;

"ditching" means the forced landing of an aircraft on water;

"emergency phase" means a generic term meaning, as the case shall be, uncertainty phase, alert phase or distress phase;

"rescue coordination center" means a unit responsible for promoting efficient organization of search and rescue services and for coordinating the conduct of search and rescue operations within a search and rescue region;

"rescue subcenter" means a unit subordinate to a rescue coordination centre, established to complement the latter within a specified portion of a search and rescue region;

"rescue unit" means a unit composed of trained personnel and provided with suitable equipment for the expeditious conduct of search and rescue;

"search and rescue aircraft" means an aircraft provided with specialized equipment suitable for the efficient conduct of search and rescue missions;

"search and rescue region" means an area of defined dimensions within which search and rescue services are provided;

"search and rescue service unit" means a generic term meaning, as the case shall be, rescue coordination, centre, rescue subcentre or alerting post;

"uncertainty phase" means a situation wherein uncertainty exists as to the safety of an aircraft and its occupants.

Acronyms

3. The following acronyms are used in these Regulations—

(*a*) "RCC" means Rescue Coordination Centre;

(*b*) "SAR" means Search and Rescue;

(*c*) "SPOC" means Search and Rescue Point of Contact;

(*d*) "SMC" means Search and Rescue Mission Coordinator;

(*e*) "SRR" means Search and Rescue Region;

(*f*) "RSC" means Rescue Subcentre;

(*g*) "SRU" means Search and Rescue Unit.

PART II
SAR Organization and Facilities

Organization of search and rescue

4.—(1) The Authority may designate a unit as an RCC responsible for directing Search and Rescue operations for aircraft in distress and survivors of aircraft accidents.

(2) The Authority shall designate the territorial airspace of Malaŵi as the search and rescue region.

(3) The Authority may include portions of foreign airspace in the SRR if there is an agreement between the authority and the foreign state's authority to facilitate air search.

(4) The Authority may designate as rescue units elements of public or private services suitably located and equipped for search and rescue operations and shall define the relative functions of these elements and the respective RCC.

(5) The Authority may designate the RCC or any other unit a SPOC for receipt of satellite distress data.

(6) The Authority may designate units as RSCs wherever this would improve the efficiency of search and rescue services.

(7) In providing search and rescue services to aircraft the RCC and its associated SRUs shall do so regardless of the nationality of such aircraft or survivors.

Communication for SRU and RCC

5.—(1) The RCC shall have means of rapid and reliable communication with—

(*a*) the headquarters of rescue units;

(*b*) RCCs in adjacent regions;

(*c*) designated meteorological offices or meteorological watch office;

(*d*) rescue units when employed in search and rescue;

(*e*) alerting posts;

(*f*) the Mission control centre servicing the SRR.

(2) The RCC shall have means of immediate communication with—

(*a*) the associated air traffic services unit;

(*b*) associated RSC, when designated;

(*c*) marine radio stations capable of alerting and communicating with surface vessels in the SRR.

(3) Means of rapid and reliable communication in subregulation (1) include digital data interchange, telephone, facsimile and radiotelephone.

(4) Means of immediate communication are considered to be direct-line telephone or teletype, direct radiotelephone circuit, or, when these cannot be made available, telephone or teletype via a switchboard.

Co-operation agreements with other RCCs and services

6.—(1) The Authority shall be entitled to conclude agreements concerning the provision of assistance to aircraft in emergency with other local authorities and suitable agencies and persons.

(2) The Authority may negotiate the terms of, and enter into international agreements with the search and rescue organizations of other states.

(3) During search and rescue operations other government services shall collaborate with the RCC.

(4) All government services concerned shall take measures to facilitate as far as possible, the expeditious and temporary entry of personnel, and their equipment, from other states who, in agreement with the RCC established by the Authority are participating in SAR operations.

(5) Aircraft vessels and local services and facilities which do not form part of the SAR organization shall cooperate fully with the RCC in search and rescue and extend any possible assistance to the survivors of aircraft accidents.

(6) All persons and agencies involved in search and rescue services shall cooperate with the agencies responsible for investigating accidents and with those responsible for the care of the victims of the accident.

Search and rescue equipment

7. The Authority shall ensure that search and rescue units are provided with facilities and equipment for locating promptly, and for providing adequate assistance at the scene of an accident.

Costs of search and rescue

8. Questions of assignment of costs connected with the conduct of search and rescue operation shall not be allowed to interfere with its prompt and effective execution by the RCC.

PART III
Search and Rescue Plan

Search and rescue plan

9.—(1) The RCC shall prepare a detailed plan for the conduct of search and rescue operations within the SRR.

(2) The plan required by subregulation (1) shall specify arrangements for the servicing and refuelling, to the extent possible, of aircraft, vessels and vehicles employed in SAR.

(3) The RCC shall have available at all times up-to-date information concerning the following in respect of the SRR—

(*a*) rescue units, rescue subcentres and alerting posts;

(*b*) air traffic services units;

(*c*) means of communication that shall be used in SAR operations;

(*d*) cable addresses and telephone numbers of all operators or their designated representatives, engaged in operations in the region; and

(*e*) any other public and private resources including medical and transportation facilities that are likely to be useful in SAR.

(4) The plan of operation referred to in subregulation (1) shall contain details regarding all actions to be taken by those engaged in search and rescue including—

(*a*) the manner in which SAR is to be conducted;

(*b*) the use of available communication systems and facilities;

(*c*) the actions to be taken jointly with adjacent RCCs;

(*d*) the methods of alerting en route aircraft and ships at sea;

(*e*) the duties and prerogatives of personnel assigned to SAR;

(*f*) the possible redeployment of equipment that shall be necessitated by meteorological or other conditions;

(*g*) the methods of obtaining essential information relevant to SAR operations such as weather reports and forecasts, appropriate NOTAM, etc;

(*h*) the methods of obtaining from other RCCs, such assistance, including aircraft, vessels, personnel or equipment as shall be needed;

(*i*) the methods for assisting distressed aircraft being compelled to ditch to rendezvous with surface craft;

(*j*) the methods for assisting SAR or other aircraft to rendezvous with aircraft in distress; and

(*k*) the initial actions for assistance to an aircraft known or believed to be subject to unlawful interference.

(5) A large-scale map of the search and rescue region shall be available at the RCC for the purpose of displaying and plotting information of interest to search and rescue.

(6) Each rescue unit shall—

(*a*) be cognizant of all parts of the plan of operation that are necessary for the effective conduct of its duties;

(*b*) maintain in readiness the required number of rescue craft and vehicles;

(*c*) maintain supplies of various medical stores, signalling devices and other survival and rescue equipment; and

(*d*) keep the RCC currently informed of the quantity and preparedness of its equipment.

Removal of wreckage

10. The Authority shall ensure that wreckage resulting from aircraft accidents within the territory of Malaŵi or as far as practicable within the search and rescue region, is removed or obliterated following completion of the accident investigation, or charted, so as to prevent subsequent confusion.

PART IV
Search and Rescue Operating Procedures

Procedures for RCC

11.—(1) The RCC shall develop and publish SAR operating procedures relevant for each of the following emergency phases—

(*a*) uncertainty Phase;

(*b*) alert Phase; and

(*c*) distress Phase.

(2) The RCC shall develop and publish procedures for terminating each of the emergency phase in subregulation (1).

Procedures for persons in-charge of the rescue unit

12.—(1) The person assigned to be in charge of the rescue unit at the scene of an accident shall act as required by the rescue coordination centre and shall—

(*a*) ensure that no risk of setting fire to the aircraft is created by use of improper types of lights or by equipment likely to produce electric or friction sparks;

(*b*) give aid to survivors;

(*c*) except as necessary for paragraph (*b*), or when otherwise directed, ensure that the wreckage of the aircraft or marks made by it in landing are not disturbed until all information required for investigation of the causes of the accident has been obtained.

Procedures for pilots-in command at the scene of an accident

13.—(1) When a PIC observes that either another aircraft or a surface craft is in distress, he shall, unless he is unable, or in the circumstances of the case considers it unreasonable or unnecessary—

(*a*) keep in sight the craft in distress until such time as his presence is no longer required;

(*b*) if his position is not known with certainty, take such action as will facilitate the determination of it;

(*c*) report to the RCC or air traffic services unit as much of the following information as possible—

(i) type of craft in distress, its identification and condition;

(ii) its position expressed in geographical coordinates or in distance and true bearing from a distinctive landmark or from a radio navigation aid;

(iii) time of observation expressed in hours and minutes UTC;

(iv) number of persons observed;

(v) whether persons have been seen to abandon the craft in distress;

(vi) number of persons observed to be afloat;

(vii) apparent physical condition of survivors.

(2) If the first aircraft to reach the scene of an accident is not a search and rescue aircraft it shall take charge of on-scene activities of all other aircraft subsequently arriving until the first SAR aircraft reaches the scene of the accident. If, in the meantime, such aircraft is unable to establish communication with the appropriate RCC or air traffic services unit, it shall by mutual agreement, hand over to an aircraft capable of establishing and maintaining such communications until the arrival of the first SAR aircraft.

(3) When it is necessary for an aircraft to direct a surface craft to the place where an aircraft or surface craft is in distress, the aircraft shall do so by transmitting precise instructions by means at its disposal. If no radio communication can be established the aircraft shall use the appropriate signal in IS: 12:13.

(4) When it is necessary for an aircraft to convey information to survivors or surface rescue units, and two-way communication is not available, it shall, if practicable, drop communication equipment that would enable direct contact to be established, or convey the information by dropping the message.

(5) When a ground signal has been displayed the aircraft shall indicate whether the signal has been understood or not by the means described in subregulation (4) or, if this is not practicable, by use of the appropriate signal in IS: 12:13.

Procedures for pilots-in command intercepting a distress transmission

14.—(1) Whenever a distress signal and/or message or equivalent transmission is intercepted on radiotelegraphy or radiotelephony by PIC of an aircraft, the pilot-in-command shall—

(*a*) record the position of the craft in distress if given;

(*b*) if possible take a bearing on the transmission;

(*c*) inform the appropriate RCC or air traffic services unit of the distress transmission, giving all available information;

(*d*) at his discretion, while awaiting instructions proceed to the position given in the transmission.

Search and rescue signals

15.—(1) The signals in IS: 12:13 shall when used, have the meaning rescue indicated therein. They shall be used only for the purpose indicated and no other signals likely to be confused with them shall be used.

(2) Upon observing any of the signals given in IS 12:13, aircraft shall take such action as shall be required by the interpretation of the signal given in that IS.

SCHEDULE

Implementing Standards for Search and Rescue Regulations

IS 12: 13 Search and Rescue Signals

(1) The following manoeuvres performed in sequence by an aircraft mean that the aircraft wishes to direct surface craft towards an aircraft or a surface craft in distress—

(*a*) circling the surface craft at least once;

(*b*) crossing the projected course of the surface projected course of the surface craft close ahead at low altitude and—

(i) rocking the wings; or

(ii) opening and closing the throttle; or

(iii) changing the propeller pitch due to high noise level on board surface craft, the sound signals in (ii) may be less effective than the visual signal in (i) and are regarded as alternative means of attracting attention;

(*c*) heading in the direction in which the surface craft is to be directed;

(*d*) repetition of such manoeuvres has the same meaning.

(2) The following manoeuvres by an aircraft means that the assistance of the surface craft to which the signal is directed is no longer required—

(*a*) crossing the wake of the surface craft close astern at a low altitude and—

(i) rocking the wings; or

(ii) opening and closing the throttle; or

(iii) changing the propeller pitch.

(*b*) the following replies may be made by surface craft to the signal in (1)—

(i) for acknowledging receipt of signals—

A—the hosting of the "code pennant" (vertical red and which stripes) close up (meaning understood);

B—the flashing of a succession of "Ts" by signal lamp in the Morse code;

C—the changing of heading of the follow the aircraft.

(ii) For indicating inability to comply—

A—the hosting of the international flag "N" (a blue and white checkered square);

B—the flashing of succession of "Ns" in the Morse code.

(3) Ground air visual signal code for use by survivors—

No.	*Message*	*Code Symbol*
1	Require assistance	V
2	Require Medical Assistance	X
3	No or Negative	N
4	Yes or Affirmative	Y
5	Proceeding in this direction	↑

Table 1

(4) Ground-air visual signal code for use by rescue units

No.	*Message*	*Code Symbol*
1	Operation completed	LLL
2	We have found all personnel	LL
3	We have found only some personnel	++
4	We are not able to continue: Returning to base	XX
5	Have divided into two groups: Each proceeding in direction indicated	
6	Information received that aircraft in this direction	
7	Nothing found: We will continue to search	

Table 2

The signals in Table 1 and 2 shall be 2.5 meters long and shall be made as conspicuous as possible.

Symbols may be by formed by any means such as: - strips of fabric, parachutes material, pieces of wood, stones or such like material; marking the surface by tramping or straining with oil etc.

Attention to the signals may be attracted by other means such as radio, flares, smoke reflected flight, etc.

(5) To ground signals.

The following signals by aircraft mean that the ground signals have been understood—

(i) during the hours of daylight-by rocking the aircraft's wings;

(ii) flashing on and off twice the aircraft's landing lights or, if not so equipped, by twice its navigation lights.

Lack of the above signals indicates the ground signal is not understood.

G.N. 39/2013

AVIATION (INVESTIGATION OF AIR ACCIDENTS) REGULATIONS

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AVIATION (INVESTIGATION OF AIR ACCIDENTS) REGULATIONS

under s. 19

PART I

GENERAL

Citation and application

1.—(1) These Regulations may be cited as the Aviation (Investigation of Air Accidents) Regulations.

(2) The Regulations prescribe the requirements in relation only to Civil Aviation and shall apply—

(*a*) to accidents arising out of or in the course of air navigation which occur to civil aircraft in or over Malaŵi;

(*b*) to such accidents which occur elsewhere to civil aircraft registered in Malaŵi; and

(*c*) for the purpose of regulation 21 only, to such accidents which occur elsewhere to civil aircraft registered in a country or territory other than Malaŵi.

Interpretation

2.—(1) For the purposes of these Regulations, unless the context otherwise requires—

"accident" means an incident and a reportable accident;

"accredited representative" means a person designated by a State, on the basis of his or her qualifications, for the purpose of participating in an investigation conducted by another State;

"adviser" means a person appointed by a State, on the basis of his or her qualifications, for the purpose of assisting its accredited representative in an investigation;

"aerodrome authority" means, in relation to any aerodrome, the person by whom the aerodrome is managed;

"board" means the Air Accidents Investigation Board;

"the CAA" means the Civil Aviation Authority or Department responsible for Civil Aviation in Malaŵi;

"cause" means any action, omission, event, condition or combination thereof, which leads to an accident or incident; the identification of causes does not comply the assignment of fault or determination of administrative, civil or criminal liability;

"chairperson" means the member of the Air Accidents Investigation Board appointed under regulation 8 (1) as the Chairperson of the Board and includes any Deputy Chairperson;

"commander" means in relation to an aircraft means a member of the crew designated as commander of that aircraft by the operator thereof, or failing such a person, the person who is for the time being the pilot in command of the aircraft;

"crew" includes every person employed or engaged in an aircraft in flight on the business of the aircraft;

"field investigation" means an investigation which is not intended to be the subject of a report by the Board to the Minister;

"Flight recorder" means any type of recorder installed in the aircraft for the purpose of complementing accident/incident investigation;

"formal investigation" means an investigation which is intended to be the subject of a report by the Board to the Minister;

"incident" means any fortuitous or unexpected event, not being a reportable accident, by which the safety of an aircraft or any person is threatened:

"investigation" means any investigation carried out by the Board into an accident; it is conducted for the purpose of accident prevention which includes the gathering and analysis of information, the drawing of conclusions, including the determination of causes and, when appropriate, the making of safety recommendations;

"investigator-in-charge" means a person charged, on the basis of his or her qualifications, with the responsibility for the organization, conduct and control of an investigation;

"member" means a person appointed as a Member of the Air Accidents Investigation Board under regulation 8 (1);

"operator" in relation to an aircraft means the person for the time being having the management of that aircraft;

"owner" where an aircraft is registered, means the registered owner;

"pilot in command" in relation to an aircraft, means a person who for the time being is in charge of the piloting of the aircraft without being under the direction of any other pilot in the aircraft;

"Preliminary Report" means the communication used for the prompt dissemination of data obtained during the early stages of the investigation;

"reportable accident" means an occurrence associated with the operation of an aircraft which takes place between the time when any person boards the aircraft with the intention of flight until such time as all persons have disembarked there from, in which—

(*a*) any person suffers death or serious injury while in or upon the aircraft or by direct contact with any part of the aircraft (including any part which has become detached from the aircraft) or by direct exposure to jet blast, except when the death or serious injury is from natural causes, is self-inflicted or is inflicted by other persons or when the death or serious injury is suffered by a stowaway hiding outside the areas normally available in flight to the passengers and members of the crew of the aircraft;

(*b*) the aircraft incurs damage or structural failure, other than—

(i) engine failure or damage, when the damage is limited to the engine, its cowling or accessories; or

(ii) damage limited to propellers, wing tips, antennae, tyres, brakes, fairings, small dents or punctured holes in the aircraft skin, which adversely affects its structural strength, performance or flight characteristics and which would normally require major repair or replacement of the affected component; or

(*c*) the aircraft is missing or is completely inaccessible;

"safety recommendation" means a proposal of the accident investigation authority of the State conducting the investigation, based on information derived from the investigation, made with the intention of preventing accidents or incidents;

"serious incident" means an incident involving circumstances indicating that an accident nearly occurred;

"serious injury" means an injury which is sustained by a person in a reportable accident and which—

(*a*) requires his stay in hospital for more than 48 hours commencing within seven days from the date on which the injury was received;

(*b*) results in a fracture of any bone (except simple fractures of fingers, toes or nose);

(*c*) involves lacerations which cause nerve, muscle or tendon damage or severe hemorrhage;

(*d*) involves injury to any internal organ;

(*e*) involves second or third degree burns or any burns affecting more than five per cent of the body surface;

(*f*) involves verified exposure to infectious substances or injurious radiation; and 'seriously injured' is to be construed accordingly;

"State of Design" means the State having jurisdiction over the organization responsible for the type design;

"State of Manufacture" means the State having jurisdiction over the organization responsible for the final assembly of the aircraft;

"State of the Operator" means the State in which the operator's principal place of business is located or, if there is no such place of business, the operator's permanent residence;

"State of Registry" means the State on whose register the aircraft is entered.

Service of documents

3.—(1) Any notice or other document required or authorized by any provision of these Regulations to be served on or given to any person shall be served or given by—

(*a*) delivering it to that person;

(*b*) leaving it at his usual or last-known residence or place of business, whether in Malaŵi or elsewhere;

(*c*) sending it to him by post at that address; or

(*d*) sending it to him at that address by e-mail, facsimile, telex or other means which produce a document containing a text of the communication, in which event the document shall be regarded, as served when it is received.

Purpose of accident investigation and incident analysis

4.—(1) The fundamental purpose of investigating accidents and serious incidents under these Regulations shall be to determine the circumstances and causes of the accident or incidents with a view to the preservation of life and the avoidance of accidents in the future; it is not the purpose to apportion blame or liability.

(2) The Authority shall establish incidents reporting systems to promote accident prevention by analysis of accidents and incidents data and prompt exchange of information.

PART II
Accident Investigation

Duty to furnish information relating to accidents

5.—(1) Where a reportable accident occurs the commander of the aircraft involved at the time of the accident, or if he be killed or incapacitated then the operator of the aircraft, and, in the case of an accident occurring on or adjacent to an aerodrome, the aerodrome authority shall forthwith give notice thereof to the Board by the quickest means of communication available and in the case of a reportable accident occurring in or over Malaŵi shall also notify forthwith the local police authorities of the accident and of the place where it occurred.

(2) The notice to the Board referred to in subregulation (1) of this Regulation shall be given the identifying abbreviation "ACCID" for accidents and "INCID" for serious incidents and shall state as far as possible—

(*a*) the type, model and nationality and registration marks of the aircraft;

(*b*) the name of the owner, operator, and hirer, if any, of the aircraft;

(*c*) the name of the commander of the aircraft and nationality of crew and passengers;

(*d*) the date and Coordinated Universal Time of the accident or incidents;

(*e*) the last point of departure and the next point of intended landing of the aircraft;

(*f*) the position of the aircraft by reference to some easily defined geographical point and latitude and longitude;

(*g*) the number of crew on board the aircraft at the time of the accident or incident and the number of them killed or seriously injured as a result of the accident;

(*h*) the number of passengers on board the aircraft at the time of the accident or incident and the number of them killed or seriously injured as a result of the accident;

(*i*) the number of other persons killed or seriously injured as a result of the accident;

(*j*) the nature of the accident and the extent of the damage to the aircraft as far as is known.

(3) Where an accident or serious incident to which these Regulations applies occurs, whether in or over Malaŵi or elsewhere, the owner, operator, commander or hirer of the aircraft shall, if so required by

notice in writing given to him by the Board, send to the Board, within such time as shall be specified in the notice, such information as is in his possession or control with respect to the accident in such form as the Board shall require.

(4) See IS 13:5(4) for procedures for provision of accident and incident notification.

(5) The commander of the aircraft or operator or aerodrome shall report to the Board by quickest means of communication available of a serious incident.

Publication accident information

6. —(1) The Board shall at any time publish, or cause to be published, information relating to an accident whether or not such an accident is the subject of an information investigation by the Board, of a Review Board or of a Public Inquiry.

Removal damaged aircraft

7.—(1) Subject to regulation 9 of these Regulations, where a reportable accident occurs in or over Malaŵi, no person other than an authorized person shall have access to the aircraft involved in the accident and neither the aircraft nor its contents shall except under the authority of the Minister be removed or otherwise interfered with:

Cap. 42:01

Provided that, subject to the provisions of the Customs and Excise Act—

(*a*) the aircraft shall be removed or interfered with so far as shall be necessary for the purpose of extricating persons or animals, removing any mails, valuables and dangerous goods carried by the aircraft, preventing destruction by fire or other cause, or preventing any danger of obstruction to the public or to air navigation or to other transport, or under the supervision of a Member or, with the agreement of a Member or of a police officer, for the purpose of removing any other property from the aircraft;

(*b*) if an aircraft is wrecked on the water, the aircraft or any of its contents shall be removed to such extent as shall be necessary for bringing it or them to a place of safety.

(2) In this regulation the expression "authorized person" means any person authorized by the Minister either generally or specially to have access to any aircraft involved in an accident and includes any police officer or customs officer.

(3) Where an accident occurs within Malaŵi, the pilot in command of the aircraft involved in the accident, or if he or she is killed or incapacitated, a flight crew member, or if there are no surviving flight crew members, or if they are incapacitated, the operator or owner of such

aircraft or where the accident occurs on an aerodrome, the aerodrome manager, shall—

(*a*) pending the arrival of a police guard, take such steps which may be necessary to prevent interference with the aircraft, the wreck or wreckage and anything transported therein and any marks resulting from the accident which may be of assistance in an investigation;

(*b*) forthwith arrange with a member of the Malaŵi Police Service to guard the aircraft, the wreck or wreckage and anything transported therein and any marks resulting from the accident which may be of assistance in an investigation.

Air accidents investigation board

8.—(1) For the purpose of carrying out investigation into the circumstances and causes of accidents to which these Regulations apply, the Minister shall appoint persons as Members of an Air Accidents Investigation Board, one of whom shall be appointed by the Minister as Chairperson of the Board.

(2) The Chairperson shall determine whether or not an investigation shall, be carried out into any accident to which these Regulations apply and the form of the investigation. He shall himself carry out, or shall cause a Member to carry out, an investigation of any such accident.

(3) Without prejudice to the power of a Member to seek such advice or assistance as he shall deem necessary in making an investigation, the Minister shall at the request of the Board appoint persons to assist any Member in a particular investigation and such persons shall for the purpose of so doing have such of the powers of a Member under these Regulations as shall be specified in their appointment.

Powers of members of investigation

9.—(1) For the purpose of the investigation of any accident to which these Regulations apply, or any inquiries undertaken with a view to determining whether any such investigation should be held, a Member shall have power—

(*a*) by summons under his hand, to call before him and examine all such persons as he thinks fit, to require such persons to answer any question or furnish any information or produce any books, papers, documents and articles until the completion of the investigation or any inquiry held pursuant to regulation 18 herein, or as the case shall be, it is determined that an investigation shall not be carried out;

(*b*) to take statements from all such persons as he thinks fit and to require any such person to make and sign a declaration of the truth of the statement made by him;

(*c*) to have unhampered access to and examine any aircraft involved in any such accident and the place where the accident

occurred and to require any such aircraft or any part of equipment thereof to be preserved unaltered pending investigation;

(*d*) to examine, remove, test and take measures for the preservation of, or otherwise deal with—

(i) aircraft involved in the accident; or

(ii) where it appears to the Member requisite, for the purposes of such investigation or inquiries, any other aircraft, or any part of such aircraft or anything contained therein;

(*e*) on production, if required, of his credentials, to enter and inspect any place, building or aircraft the entry or inspection whereof appears to the Member to be requisite for the purposes of any such investigation or inquiries or any inquiry held pursuant to regulation 18 herein, except that a Member shall not have power to enter any premises under this subparagraph for the purpose of inquiries with a view to determining whether an investigation should be held if at the time of the proposed entry the premises are being used as a dwelling;

(*f*) to take such measures for the preservation of evidence as he considers appropriate; and

(*g*) to secure and place in safe keeping all ATS communication recordings and documents associated with the flight involved in an accident or serious incident.

Form and conduct of investigations

10.—(1) An investigation into any accident to which these Regulations apply shall be a formal investigation or a field investigation.

(2) Public notice that a formal investigation is taking place shall be given in such manner as the Board shall think fit and shall invite any persons who desire to make representations concerning the circumstances or causes of the accident to do so in writing within the time to be specified in the notice.

(3) All investigations shall be held in private.

(4) Where it appears to the Member in the course of any investigation that in order to resolve any conflict of evidence or that for any other reason it is expedient so to do, he shall permit any person to appear before him and to call evidence and examine witnesses.

(5) Every person summoned by the Member, as a witness in accordance with the Regulations shall be allowed such expenses as the Minister, with the approval of the Ministry of Finance, shall determine.

(6) Every witness shall, in respect of any evidence written by him or given to him before a Member, be entitled to the same privileges to which he would have been entitled if giving evidence before a court.

(7) The Board shall determine that any investigation being carried out into an accident shall be discontinued and in the event of a formal investigation being discontinued no report shall be made thereon to the Minister under regulation 11 (1) herein, but public notice shall be given, in such manner as the Board shall think fit, that the investigation has been discontinued.

(8) Following the discontinuance of any investigation, the Board shall submit to the Civil Aviation Authority such information as the Board considers desirable in the interest of the avoidance of accidents in the future.

(9) The Board shall take into consideration, to provision of ICAO Annex 13 in conducting the investigations.

(10) If, in the course of an investigation it becomes known, or it is suspected, that an act of unlawful interference was involved, the instigator in-charge shall immediately initiate action to ensure that the aviation security authorities of the State(s) concerned are so informed.

Board's report and submission of information to the Authority

11.—(1) Subject to the provisions of regulation 12 herein, upon completion of a formal investigation the Board shall submit to the Minister the report of the Member who carried out the investigation to the Authority.

(2) Upon completion of a field investigation the Board shall submit to the Authority such information as it considers desirable in the interest of the avoidance of accidents in the future.

(3) The report to the Minister upon completion of a formal investigation shall state the facts relating to the accident followed by an analysis of the facts and conclusions as to the causes of the accident, together with any recommendations which the Member thinks fit to make with a view to the preservation of life and the avoidance of accidents in the future.

(4) The format of the Final Report may be adapted to the circumstances of the accident or incident; see IS 13:11 in the Schedule hereto.

Notice of board report and representations thereon

12.—(1) No report shall be submitted to the Minister under regulation 11 (1) of these Regulations in respect of an accident until the Board, has—

(*a*) where it appears to the Board to be practicable so to do, served a notice under this regulation upon the operator and commander of the aircraft involved in the accident and on any person whose reputation is, in the Board's opinion, likely to be adversely affected by the report or, if any of the foregoing be a deceased individual,

upon such person or persons as appears to the Board, at the time the Board proposes to serve notice pursuant to this paragraph, to represent best the interest of the deceased in the matter; and

(*b*) considered any representations which shall be made to the Board in accordance with subregulation (3) herein by or on behalf of the persons served with such notice.

(2) The notice referred to in regulation (1) herein shall include particulars of any proposed analysis of facts and conclusions as to the cause or causes of the accident which shall affect the person on whom or in respect of whom the notice is served.

(3) Any representations made pursuant to paragraph subregulation (1) herein shall be in writing and shall be served on the Board within 28 days of service of the notice referred to in that paragraph or within such further period as shall be allowed under regulation 20 of these Regulations.

(4) A copy of the report submitted to the Minister under regulation 11(1) of these Regulations shall be served by the Board on any person who has been served with a notice pursuant to subregulation (1) herein.

(5) No person shall disclose or permit to be disclosed any information contained in a notice or report served on him pursuant to paragraph subregulations (2) or (4) of this Regulation to any other person without the prior consent, in writing, of the Board.

PART III
Review Board

Notice of review

13.—(1) Any person who has been served with a notice under regulation 12 (1) herein shall, at any time before the expiration of the period of 21 days from the date on which he has been served with a copy of the report under regulation 12 (4) (or within such further period as shall be allowed under regulation 22) serve on the Minister written notice (hereinafter called the 'notice of review') that he wishes those findings and conclusions in the report from which it appears that his reputation or, as the case shall be, the reputation of the person on whose behalf representations have been made under regulation 12 (3) of these Regulations, is likely to be adversely affected, to be reviewed by a Review Board.

(2) The notice of review shall specify the findings and conclusions that should be considered for review by the Review Board, shall state concisely the grounds on which the findings and conclusions in the report are challenged and the reasons why the reputation of the person

requesting the review is likely to be adversely affected by such findings and conclusions and there shall be appended to the notice a copy of any representations made under regulation 12 of these Regulations.

(3) A copy of the notice of review, together with a copy of any representations made under regulation 12 (3) shall, at the same time as the notice of review is served on the Minister, be served on the Attorney General, and the person requesting the review shall then or as soon as possible thereafter inform the Attorney General whether or not he proposes to be represented at the hearing of the review and of the name and address of the solicitor, if any, acting for him or of any other person who will be representing him at the review.

(4) A copy of the notice of review, together with a copy of any representations made under regulation 12 (3) of these Regulations shall also be served by the person requesting the review on all other persons on whom the Board has served a notice under regulation 12 (1) of these Regulations, and for this purpose the person requesting the review shall require the Board to furnish him with the names and addresses of those persons.

Appointment of review board and preliminary meeting

14.—(1) Where a notice of review in accordance with regulation 13 has been served the review shall be entrusted to a Review Board consisting of a chairperson to be appointed for the purpose by the Chief Justice and such technical assessors as shall be so appointed.

(2) Before the hearing of the review the Review Board shall hold a preliminary meeting at which any directions shall be given or any preliminary interlocutory order as to the procedure shall be made. Not less than 21 days' notice of the date, time and place of the preliminary meeting shall be given by the Attorney General to the person requesting the review and all persons on whom a copy of the notice of review has been served and any person intending to make any application to the Review Board at the meeting shall give notice thereof to the Attorney General.

(3) The preliminary meeting shall be in public unless the Review Board determines that it is to be held in private in the interests of justice or in the public interest.

(4) Where at any time during the preliminary meeting the Review Board is satisfied that any of the findings and conclusions in the Board's report do not adversely affect the reputation of the person requesting the review, the Review Board shall decide not to proceed with the review in respect of those findings and conclusions.

(5) The Review Board shall not reach a decision under subregulation (4) of this Regulation unless it has given the person requesting the review and all persons on whom a copy of the notice of review has been

served an opportunity to make representations as to whether the review should be proceeded with.

(6) The Attorney General shall serve on the person requesting the review and all other persons on whom the Board has served a notice under regulation 12 (1) of these Regulations, not less than 21 days' notice of the date, time and place of the hearing of the review.

(7) The hearing shall be in public unless the Review Board determines, in relation to the whole or part of the review, that it is to be held in private in the interests of justice or in the public interest:

Provided that a decision by the Review Board that the hearing, or part of it, be held in private shall not preclude the Member who made the report.

(8) The Review Board shall be assisted by the Attorney General, or by Counsel instructed by him, who shall present any evidence required by the Review Board and shall examine any witnesses giving evidence at the review; the Board shall render such assistance to the Review Board as is in its power.

Proceedings of review board

15.—(1) The person requesting the review shall be heard by the Review Board and shall have the right to give evidence, produce witnesses and examine any other witnesses giving evidence at the review.

(2) The Member who made the report shall be entitled to be heard by the Review Board.

(3) Any person who in the opinion of the Review Board may be directly affected by the review shall be granted leave to appear and to give evidence, produce witnesses and examine any other witnesses giving evidence at the review. Any application for such leave shall be made to the Review Board at the preliminary meeting.

(4) In any proceedings of the Review Board the person requesting the review and any other person appearing pursuant to leave granted under subregulation (3) of this Regulation shall appear in person or be represented by any other person whom he shall have authorized to represent him.

(5) The proceedings of the Review Board shall commence with the giving of evidence by the person requesting the review and the production and examination of witnesses on his behalf. When the examination of witnesses on behalf of such person has been concluded the Review Board shall proceed to hear the other persons appearing before it.

(6) The Review Board shall have all the powers of the Board under these Regulations and, in addition, shall administer an oath to or require a solemn affirmation from any witness.

(7)—(*a*) Where new and important evidence is given at the review, which was not given at the Member's investigation, the Review Board shall, on an application by the Board discontinue the review, and the Board shall thereupon cause the investigation to be re-opened;

(*b*) where at any time during the review, Review Board is satisfied that any of the findings and conclusions in the Member's report do not adversely affect the reputation of the person in respect of whom the notice of review was served, the Review Board shall discontinue the review in respect of those findings and conclusions;

(*c*) where a review is totally discontinued under this Regulation no report shall be made to the Minister under regulation 16 (1).

(8) Every person summoned by the Review Board as a witness shall be allowed such expenses as the Minister, with the approval of the Ministry of Finance, shall determine.

(9)—(*a*) The Review Board shall, if it thinks fit, order any person who appears or is represented as mentioned in subregulation (3) of this Regulation to pay in respect of the costs of the Review Board or of any other person who appears or is represented as mentioned in regulation (4) of this Regulation such sum as shall be specified in the order, or the taxed amount of those costs or such part thereof as shall be so specified upon such basis as shall be so specified; and

(*b*) without prejudice to the generality of the foregoing, the Review Board shall, in determining whether to make an order as to costs against any person, have regard to whether or not that person took advantage of such opportunities as were open to him to make representations under regulation 12 or, where that person gave new and important evidence at the review and the review was discontinued, whether or not that person could reasonably have given that evidence at the investigation by the Board.

(10) Any costs required by an order under subregulation (9) (*a*) to be taxed shall be taxed by the Supreme Court on the basis specified in the order.

(11) Any sum payable by virtue of an order under subregulation (9) (*a*) shall, if the local court so orders, be recoverable by execution issued from the local court or otherwise as if payable under an order of the court.

(12) Upon completion of the review the Review Board shall make a report to Minister containing a summary of the proceedings at the hearing and either confirming or rejecting in whole or in part those findings and conclusions of the Board which were the subject of the review, together with its reasons therefore, and the Minister shall serve

a copy of the report on all persons who appeared or were represented before the Review Board.

Publication of reports

16.—(1) The Minister shall, unless in his opinion there are good reasons to the contrary, cause the Board's report and, where a Review Board has been held, the report of the Review Board to be made public wholly or in part in such manner as he thinks fit:

Provided that—

(*a*) in any case where notice has been served under regulation 12, the Board's report shall not be published before the expiry of the time for service of a notice of review under regulation 13 (1); and

(*b*) save where a review is totally discontinued under regulation 15 (7) (*c*) above, in any case where a Review Board is held, the Board's report shall not be published until the Review Board has made a report to the Minister under regulation 15 (12).

Reopening of investigation or review

17.—(1) In the case of any formal investigation which has not been the subject of a review, the Board shall cause the investigation to be reopened, and in the case of a review, including a review which has been discontinued under regulation 15 (7) (*c*), the Minister shall direct the review to be reheard or, if a decision has been reached under regulation 14 (4) not to proceed with the review, shall direct the review to be proceeded with, in each case either generally or as to any part thereof, and the Board or the Minister, as the case may be, shall do so—

(*a*) if after the completion of the investigation or the completion or curtailment of the review evidence has been disclosed which is in his opinion both new and important; or

(*b*) if for any other reason there is in his opinion ground for suspecting that a miscarriage of justice has occurred.

(2) If the Minister directs any review to be reheard or proceeded with the Chief Justice shall direct that the review shall be heard or proceeded with either by the Review Board by whom, it was heard or to which it had been entrusted to in the first instance or by some other Review Board appointed by him to hold the rehearing.

(3) Any investigation reopened or review reheard or proceeded with shall be subject to and conducted in accordance with, the provisions of this Part relating to a formal investigation or review thereof as the case may be.

PART IV
Public Inquiries

Holding of public inquiries

18.—(1) Where it appears to the Minister that it is expedient in the public interest to hold a Public Inquiry into the circumstances and causes of an accident to which these Regulations apply or into any particular matter relating to the avoidance of such accidents in the future, he shall direct that a Public Inquiry be held by a Commissioner appointed by the Chief Justice. In any such case any investigation relating to the accident or to the particular matter, as the case shall be, shall be discontinued except for the purpose of rendering assistance as required by subregulation (3) of this Regulation.

(2) The Commissioner shall be a judge of not less than five years standing and shall be assisted by not fewer than two Assessors possessing aeronautical, engineering or other special skills or knowledge who shall be appointed by the Chief Justice in consultation with the Minister.

(3) Where the Minister has directed a Public Inquiry to be held, he shall remit the case to the Attorney General, and thereafter the preparation and presentation of the case shall be conducted by the Attorney General under the direction of the Attorney General, the Board shall render such assistance to the Commissioner and to the Attorney General as is in his power.

(4) When the Minister has directed a Public Inquiry to be held, the Attorney General shall cause a notice of the date, time and place and the nature of the Public Inquiry to be served upon the owner, operator, hirer and commander of any aircraft involved in the accident and on any other person who in his opinion ought to be served with such notice.

(5) The owner, the operator, the hirer, the commander and any other person upon whom a notice of inquiry has been served under subregulation (4) of this Regulation, shall be deemed to be parties to the proceedings,

(6) Any other person shall by leave of the Commissioner appear, and any person who obtains leave to appear shall thereupon become a party to the proceedings and any application for such leave shall be made to the Commissioner at a preliminary meeting.

(7) At any time before the date appointed for holding the inquiry, the Commissioner shall hold a preliminary meeting at which any directions shall be given or any preliminary or interlocutory order as to the procedure shall be made. Notice of the date, time and place of the preliminary meeting shall be given by the Attorney General to the parties to the proceedings and to any other person who has notified the Attorney

General that he intends to apply to the Commissioner for leave to appear. Any person intending to make an application to the Commissioner at the meeting shall give notice thereof to the Attorney General.

(8) The Commissioner shall have, for the purposes of the inquiry, all the powers of a Magistrate's Court, and without prejudice to those powers, the Commissioner shall—

(*a*) enter and inspect, or authorize any person to enter and inspect, any place, building or aircraft the entry or inspection whereof appears to the Commissioner to be requisite for the purposes of the inquiry;

(*b*) by summons require the attendance as witnesses of all such persons as the Commissioner thinks fit to call and examine, and require such persons to answer any question or furnish any information or produce any books, papers, documents and articles which the Commissioner shall consider relevant;

(*c*) administer an oath to or require a solemn affirmation from any such witness.

(9) The Assessors shall have the same power of entry and inspection as the Commissioner.

(10) Affidavits and statutory declarations shall, by permission of the Court, be used as evidence at the hearing.

(11) At the time and place appointed for holding the inquiry the Court shall proceed with the inquiry whether the parties, upon whom a notice of inquiry has been served or who have obtained leave to appear, or any of them, are present or not.

(12) The Court shall hold the inquiry in public Court save to the extent to which the Court directs, in relation to any part of the evidence or any argument relating thereto, that the inquiry be held in private in the interest of justice or in the public interest.

(13) The Member who carried out or, before its discontinuance under subregulation (1) of this Regulation, was carrying out an investigation into an accident to which the inquiry relates and a member of the Review Board shall be entitled to be present at any proceedings of the Commissioner held in private.

Proceedings of public inquiries

19.—(1) The proceedings on the inquiry shall commence with an opening speech by or on behalf of the other parties. The proceedings shall continue with the production and examination of witnesses on behalf of the Attorney General. These witnesses, after being examined on behalf of the Attorney General, shall be cross-examined by the parties in such order as the Commissioner shall direct, and shall then be re-examined on behalf of the Attorney General.

(2) When the examination of the witnesses produced on behalf of the Attorney General has been concluded, the Commissioner shall proceed to hear the other parties to the proceedings. Each party to the proceedings shall be entitled to address the Commissioner and the produce witnesses or recall any of the witnesses who have already been examined for further examination and generally adduce evidence. The parties shall be heard and their witnesses examined, cross-examined and re-examined in such order as the Commissioner shall direct. Further witnesses shall also be produced and examined on behalf of the Attorney General and shall be cross-examined by the parties and re-examined on behalf of the Attorney General.

(3) When the whole of the evidence has been concluded any of the parties who desire so to do shall address the Commissioner upon the evidence and the Commissioner shall be addressed in reply upon the whole case on behalf of the Attorney General.

(4) The Commissioner shall adjourn the inquiry from time to time and from place to place, and where an adjournment is asked for by any party to the inquiry the Commissioner shall impose such terms as to payment of costs or otherwise as he shall think just as a condition of granting the adjournment.

(5) Upon completion of the inquiry, the Commissioner shall make a report to the Minister stating the facts relating to the accident and the opinion of the Commissioner concerning the cause or causes of the accident or on the particular matter referred to the Commissioner and adding any recommendations which the Commissioner thinks fit to make with a view to the preservation of life and the avoidance of accidents in the future.

(6) Each Assessor shall either sign the report with or without reservations, or state in writing his dissent there from and his reasons for any such dissent, and such reservations or dissent and reasons shall be forwarded to the Minister with the report.

(7) The Minister shall, unless in his opinion there are good reasons to the contrary, cause any such report and reservations or dissent and reasons to be made public wholly or in part in such manner as he thinks fit.

(8) Every person attending as a witness before the Commissioner shall be allowed such expenses as would be allowed to a witness attending before the High Court, and in case of a dispute as to the amount to be allowed, the same shall be referred by the Commissioner to a master of the Supreme Court who on a request signed by the Commissioner shall ascertain and certify the proper amount of the expenses:

Provided that in the case of any party to the proceedings or of any person in the employment of such a party, any such expenses shall be disallowed if the Commissioner in his discretion so directs.

Rehearing of public inquiries

20.—(1) The Minister shall, in any case where a Public Inquiry has been held, direct the inquiry to be reheard either generally or as to any part thereof and shall do so—

(*a*) if after the completion of the inquiry evidence has been disclosed which is in his opinion both new and important; or

(*b*) if for any other reason there is in his opinion ground for suspecting that a miscarriage of justice has occurred.

(2) If the Minister directs any inquiry to be reheard, the Chief Justice shall direct that the inquiry shall be reheard either by the Commissioner by whom it was heard in the first instance or by some other person appointed by him to hold the rehearing.

(3) Any inquiry reheard shall be subject to and conducted in accordance with the provisions of these Regulations relating to the holding of Public Inquiries.

PART V
Miscellaneous

Accidents to aircraft registered in Malaŵi

21.—(1) Where an accident has occurred in or over Malaŵi to an aircraft registered in any country or territory other than Malaŵi, the Board shall authorize an outside investigator appointed by the duly competent authority of that other country or territory to carry out an investigation in Malaŵi and in that event the Minister shall so far as he is able facilitate inquiries by the investigator so appointed.

(2) In any formal investigation or any Public Inquiry an accredited representative of the country or territory in which the aircraft is registered, or of any country or territory in which the aircraft was designed or manufactured or which has, on request, furnished information in connexion with the accident, shall take part in the investigation or in the inquiry as the case shall be, that is to say, he shall be permitted to visit the scene of the accident, examine the wreckage, question witnesses, receive copies of all pertinent documents (saving all just exceptions), have access to all relevant evidence and make submissions; and he shall be accompanied by such technical and other advisers as shall be considered necessary by the authorities of the country or territory by which he is appointed.

(3) Where an accident has occurred elsewhere than in Malaŵi to an aircraft registered in any country or territory other than Malaŵi, the Board shall have power to take the measures described in

regulation 9 (1) of these Regulations for the purpose of obtaining any information relevant to the investigation of the accident by the duly competent authority of the country or territory conducting such investigation.

Extension of time

22. The Board, in the case of the period of 28 days prescribed in regulation 12 (3) of these Regulations, and the Minister, in the case of the period of 21 days prescribed in regulation 13 (1) shall have power to extend the said periods, and this power shall be exercisable notwithstanding that the period so prescribed has expired.

Obstruction investigation

23.—(1) A person shall not obstruct or impede the Commissioner or the Review Board or any Member or an Assessor or any person acting under the authority of the Minister in the exercise of any powers or duties under these Regulations.

(2) A person shall not without reasonable excuse fail, after having had the expenses (if any) to which he is entitled under these Regulations tendered to him, to comply with any summons or requisition of the Commissioner holding a Public Inquiry or of a Review Board or a Member holding an investigation or undertaking any inquiries with a view to determining whether any investigation should be held under these Regulations.

Participation of an expert from a state with special interest

24. The Board may with the consent of the Minister allow any State which has a special interest in an accident by virtue of fatalities or serious injury to its citizens to appoint an expert who shall be entitled to—

(*a*) visit the scene of the accident;

(*b*) have access in the relevant factual information which is approved for public release by the State by the Board and information on the progress of the investigation, and

(*c*) receive a copy of the Final Report.

Accident and incident prevention measures incident reporting systems

25.—(1) The Authority shall establish and implement a mandatory incident reporting system to facilitate the collection of information on actual or potential safety reporting systems.

(2) The Authority shall establish and implement a voluntary occurrence reporting system to facilitate the collection of information otherwise not captured by the mandatory incident reporting system in subregulation 26 (1).

(3) The Authority shall ensure that the voluntary occurrence reporting system is non-punitive and protects the sources of the information.

Offences and penalties

26.—(1) Any person who—

(*a*) willfully obstructs or impedes the Board, or the Review Board or a Commissioner or a Member or an assessor or any person acting under the authority of the Minister in exercise of any powers or duties under these Regulations;

(*b*) without any reasonable excuse (proof whereof shall lie on him) fails after having the expenses (if any) to which he is entitled rendered to him to comply with any summons or requisition of the Commissioner holding a public enquiry or the Review Board or a Member holding a Member's investigation under these Regulations; or

(*c*) without reasonable excuse (proof whereof shall lie on him) fails to comply with any of the provisions of regulation 5 or 7 of these Regulations, shall be guilty of an offence and shall be liable to a fine of K20,000 and to imprisonment for two months.

Effect of the aviation (investigation of accident) regulations

27.—(1) Any investigation commenced, or anything made or done under the provisions of the Aviation (Investigation of Accidents) Regulations, 2004 having effect immediately prior to the coming into operation of these Regulations, shall continue to have effect and shall be deemed for all purposes to have been commenced, made or done, under the provisions of these Regulations.

Revocation Cap. 70:01 Sub. leg. p. 203

28. The Aviation (Investigation of Accidents) Regulations are hereby revoked.

SCHEDULE

Implementing Standards for Investigation of Air Accidents

IS 13: 5(4) Notifications of Aircraft Accidents

The Authority and Accident Investigations Board shall be guided by these procedures for provision of accident and incident notifications.

1. Accidents or Serious incidents in the territory of Malaŵi to Aircraft of another Contracting State.

1.1 Responsibility of the Authority (State of Occurrence).

1.1.1 Forwarding

(*a*) Malaŵi shall forward a notification of an accident or serious incident with minimum of delay and by the most suitable and quickest means available to—

(i) the State of Registry;

(ii) the State of the Operator;

(iii) the State of Design;

(iv) the State of Manufacture;

(v) the International Civil Aviation Organization, when the aircraft involved is of a maximum mass of over 2, 250kg;

(*b*) however, when Malaŵi is not aware of a serious incident, the State of Registry or the State of the Operator, as appropriate, shall forward a notification of such an incident to the State of Design, the State of Manufacture and the State of Occurrence.

NOTE 1 Telephone, facsimile, e-mail or the Aeronautical Fixed Telecommunication Network (AFTN) will in most cases constitute "the most suitable and quickest means available". More than one means of communication may be appropriate.

1.1.2 Format and content

The notification shall, be in plain language and contain as much of the following information as is readily available, but its dispatch shall not be delayed due to the lack of complete information—

(*a*) for accident the identifying abbreviation ACCID, for serious incidents INCID;

(*b*) manufacturer, model, nationality and registration marks, and serial number of the aircraft;

(*c*) name of owner, operator and hirer, if any, of the aircraft;

(*d*) name of the pilot-in command, and nationality of crew and passengers;

(*e*) date and time (local time or UTC) of the accident or serious incident;

(*f*) last point of departure and point of intended landing of the aircraft;

(*g*) position of the aircraft with reference to some easily defined geographical point and latitude and longitude;

(*h*) number of crew and passengers: aboard, killed and seriously injured; others: killed and seriously injured;

(*i*) description of the accident or serious incident and. the extent of damage to the aircraft so far as is known;

(*j*) an indication to what extent the investigation will be conducted or is proposed to be delegated by Malaŵi;

(*k*) physical characteristics of the accident or serious incident are, as well as an indication of access difficulties or special requirements to reach the site;

(*l*) identification of the originating authority and means to contact the investigator-in-charge and the accident investigation authority of Malaŵi at any time; and

(*m*) presence and description of dangerous goods on board the aircraft.

NOTE 2 The Manual of Aircraft Accident and Incident Investigation, Part I – Organization and Planning (DOC 9756) contains guidance material concerning the preparation of notification messages and the arrangements to be made for their prompt delivery to the addressee.

1.1.3 Language

The notification shall be prepared in English, taking into account the language of the recipient(s), whenever it is possible to do so without causing undue delay.

1.1.4 Additional Information

As soon as it is possible to do so, Malaŵi shall dispatch the details omitted from the notification as well as other known relevant information.

1.2 Responsibility of the State of Registry, the State of the Operator, the State of Design and the State of Manufacture.

1.2.1 Information—Participation

(i) The State of Registry the State of the Operator, the State of Design and the State of Manufacture should acknowledge receipt of the notification of an accident or serious incident.

(ii) Upon receipt of notification, the State of Registry, the State of the Operator, the State of Design and the State of Manufacture shall, as soon as possible, provide Malaŵi with any relevant information available to them regarding the aircraft and fight crew involved in the accident or serious incident. Each State shall also inform Malaŵi whether it intends to appoint an accredited representative and if such an accredited representative is appointed, the name and contact details; as well as the expected date of arrival if the accredited representative will travel to Malaŵi.

2. Accidents or Serious incidents in the Territory of the State of Registry, in a Non-contracting State or outside the Territory of any State

2.1 Responsible of the State of the State of Registry

2.1.1 Forwarding

1.8 When the State of Registry institutes the investigation of an accident or serious incident that State shall forward a notification,

in accordance with regulation 2 of these Regulations with a minimum of delay and by the most suitable and quickest means available, to—

(*a*) the State of the Operator;

(*b*) the State of Design;

(*c*) the State of Manufacture; and

(*d*) the International Civil Aviation Organization, when the aircraft involved is of a maximum mass of over 2 250kg.

2.2 Responsibility of the State of the Operator, the State of design and the State of Manufacture

2.2.1 Information - Participation

(i) the State of the Operator, the State of Design and the State of Manufacture should acknowledge receipt of the notification of an accident or serious incident (1:1 refers);

(ii) upon receipt of the notification, the State of the Operator, the State of Design and the State of manufacture shall upon request, provide the State of Registry with any relevant information available to them regarding the flight crew and the aircraft involved in the accident or serious incident. Each State shall also inform the State of Registry whether it intends to appoint an accredited representative, and if such an accredited representative is appointed the name and contact details; as well as the expected date of arrival if the accredited representative will be present at the investigation;

(iii) upon receipt of the notification, the State of the Operator shall, with a minimum of delay and by the most suitable and quickest means available, provide the State of Registry with details of dangerous goods on board the aircraft.

IS 13:11 Format of the Final Report of an Accident or Incident Investigation

PURPOSE

The purpose of this format is to present the Final Report in a convenient and uniform manner.

Detailed guidance on completing each section of the Final Report is found in the Manual of Aircraft Accident Investigation.

FORMAT

Title: The Final Report begins with a title comprising: name of the operator; manufacturer, model, nationality and registration marks of the aircraft; place and date of the accident or incident.

Synopsis: Following the title is a synopsis describing briefly all relevant information regarding:

Notification of accident to national and foreign authorities; identification of the accident investigation authority and accredited representation; organization of the investigation; authority releasing the report and date of publication; and concluding with a brief résumé of the circumstances leading to the accident.

Body: The body of the Final Report comprises the following main headings—

(*a*) factual information;

(*b*) analysis;

(*c*) conclusions;

(*d*) safety recommendations.

Each heading consisting of a number of sub-headings as outlined in the following.

Appendices: Include as appropriate.

NOTE. In preparing a Final Report, using this format, ensure that—

(*a*) all information relevant to an understanding of the factual information, analysis and conclusions is included under each appropriate heading;

(*b*) where information in respect of any of the items in 1. — Factual information is not available, or is irrelevant to the circumstances leading to the accident, a note to this effect is included under the appropriate sub-headings.

1. Factual Information

1.1 History of the flight. A brief narrative giving the following information—

—Flight number, type of operation, last point of departure, time of departure (local time or UTC), point of intended landing.

—Location (latitude, longitude, elevation), time of the accident (local time or UTC), whether day or night.

1.2 Injuries to persons. Completion of the following (in numbers)—

Injuries	crew	Passengers	Other
Fatal			
Serious			
Minor/None			

NOTE. Fatal injuries include all deaths determined to be a direct result of injuries sustained in the accident. Serious injury is defined in chapter 1 of the Annex.

1.3 Damage to aircraft. Brief statement of the damage sustained by aircraft in the accident (destroyed, substantially damaged, slightly damaged, no damage).

1.4 Other damage. Brief description of damage sustained by objects other than the aircraft.

1.5 Personnel information—

(*a*) pertinent information concerning each of the flight crew members including: age, validity of licences, ratings;

(*b*) brief statement of qualifications and experience of other crew members;

(*c*) pertinent information regarding other personnel, such as air traffic services, maintenance, etc., when relevant.

1.6 Aircraft information—

(*a*) brief statement on airworthiness and maintenance of the aircraft (indication of deficiencies known prior to and during the flight to be included, if having any bearing on the accident);

(*b*) brief statement on performance, if relevant, and whether the mass and centre of gravity were within the prescribed limits during the phase of operation related to the accident, (if not and if of any bearing on the accident give details);

(*c*) type of fuel used.

1.7 Meteorological information—

(*a*) brief statement on the meteorological conditions appropriate to the circumstances including both forecast and actual conditions, and the availability of meteorological information to the crew;

(*b*) natural light conditions at the time of the accident (sunlight, moonlight, twilight, etc.).

1.8 Aids to navigation: Pertinent information on navigation aids available, including landing aids such as ILS, MLS, NDB, PAR, VOR, visual ground aids, etc., and their effectiveness at the time.

1.9 Communications: Pertinent information on aeronautical mobile and fixed service communications and their effectiveness.

1.10 Aerodrome information: Pertinent information associated with the aerodrome, its facilities and condition, or with the take-off or landing area if other than an aerodrome.

1.11 Flight recorders: Location of the flight recorder installations in the aircraft, their condition on recovery and pertinent data available therefrom.

1.12 Wreckage and impact information: General information on the site of the accident and the distribution pattern of the wreckage; detected material failures or component malfunctions. Details concerning the location and state of the different pieces of the wreckage are not normally required unless it is necessary to indicate a break-up of the aircraft prior to impact. Diagrams, charts and photographs may be included in this section or attached in the Appendices.

1.13 Medical and pathological information: Brief description of the results of the investigation undertaken and pertinent data available therefrom.

NOTE. Medical information related to flight crew licences should be included in 1.5 — Personnel information.

1.14 Fire: If fire occurred, information on the nature of the occurrence, and of the fire fighting equipment used and its effectiveness.

1.15 Survival aspects: Brief description of search, evacuation and rescue, location of crew and passengers in relation to injuries sustained, failure of structures such as seats and seat-belt attachments.

1.16 Tests and research: Brief statements regarding the results of tests and research.

1.17 Organizational and management information.

Pertinent information concerning the organizations and their management involved in influencing the operation of the aircraft. The organizations include, for example, the operator; the air traffic services, airway, aerodrome and weather service agencies; and the regulatory authority. The information could include, but not be limited to, organizational structure and functions, resources, economic status, management policies and practices, and regulatory framework.

1.18 Additional information: Relevant information not already included in 1.1 to 1.17.

1.19 Useful or effective investigation techniques: When useful or effective investigation techniques have been used during the investigation, briefly indicate the reason for using these techniques and refer here to the main features as well as describing the results under the appropriate sub-headings 1.1 to 1.18.

2. Analysis

Analyse, as appropriate, only the information documented in 1. — Factual information and which is relevant to the determination of conclusions and causes.

3. Conclusions

   List the findings and causes established in the investigation. The list of causes should include both the immediate and the deeper systemic causes.

4. Safety Recommendations

   As appropriate, briefly state any recommendations made for the purpose of accident prevention and any resultant corrective action.

5. Appendices

   Include, as appropriate, any other pertinent information considered necessary for the understanding of the report.

AVIATION (AERODROMES) REGULATIONS

G.N. 40/2013

ARRANGEMENT OF REGULATIONS

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AVIATION (AERODROMES) REGULATIONS

under s. 19

PART I

GENERAL

Citation and application

1.—(1) These Regulations may be cited as Aviation (Aerodromes) Regulations.

(2) These Regulations prescribe the requirements in relation to the design, establishment, certification and operation of aerodromes in accordance with the Act.

Interpretation

2. For the purposes of these Regulations, unless the context otherwise requires—

"aerodrome" means a defined area on land or water (including any buildings, installations, and equipment) intended to be used either wholly or in part for the arrival, departure and surface movement of aircraft;

"aerodrome certificate" means the certificate to operate an aerodrome issued by the Authority under these Regulations subsequent to the acceptance/approval of the aerodrome manual;

"aerodrome facilities and equipment" means facilities and equipment, inside or outside the boundaries of an aerodrome, that are constructed or installed and maintained for the arrival, departure and surface movement of aircraft;

"aerodrome manual" means the manual that forms part of the application of an aerodrome certificate pursuant to these Regulations, including any amendments thereto accepted/approved by the Authority;

"aerodrome operator" means in relation to a certificated aerodrome, means the aerodrome certificate holder;

"airport commandant" means the person appointed by the Director to be or to act as Commandant;

"apron" means a defined area, on a land aerodrome, intended to accommodate aircraft for purposes of loading or unloading of passengers, mail or cargo, fuelling, parking or maintenance;

"authorized person" in relation to an aerodrome, means a person duly authorized for the matter in question by the Minister, the Director, the Airport Commandant or the Officer-in-Charge, as the case shall be;

"certified aerodrome" means an aerodrome whose operator has been granted an aerodrome certificate;

"livestock" includes horses, cattle, mules, donkeys, sheep, goats, pigs, dogs and cats;

"manoeuvring area" means that part of an aerodrome to be used for the take-off, landing and taxiing of aircraft, excluding aprons;

"marker" means an object displayed above ground level in order to indicate an obstacle or delineate a boundary;

"marking" means a symbol or group of symbols displayed on the surface of the movement area in order to convey aeronautical information;

"maximum carrying capacity" means in relation to an aircraft, means the maximum passenger-seating, or the maximum payload, permitted under the aircraft's certificate of type approval;

"maximum passenger-seating capacity" means in relation to an aircraft, means the maximum number of seats for passengers permitted under the aircraft's certificate of type approval;

"movement area" means that part of the aerodrome to be used for take-off, landing and taxiing of aircraft, consisting of the manoeuvring area and the apron(s);

"obstacle" means all fixed (whether temporary or permanent) and mobile objects, or parts thereof, that are located on an intended for the surface movement of an aircraft or that extend above a defined surface intended to protect aircraft in flight;

"Obstacle Free Zone (OFZ)" means the airspace above the inner approach surface, inner transitional surfaces, and balked landing surface and that porting of the strip bounded by these surfaces, which is not penetrated by any fixed obstacle other than a low-mass and frangibly mounted one required for air navigation purposes;

"obstacle limitation surfaces" means a series of surfaces that define the volume of airspace at and around an aerodrome to be kept free of obstacles in order to permit the intended aeroplane operations to be conducted safely and to prevent the aerodrome from becoming unusable by the growth of obstacles around the aerodrome;

"officer-in-charge" means a person approved by the Director to be in charge of a Government aerodrome in respect of which an Airport Commandant has not been appointed, or in the case of a private aerodrome licensed for public use, the person appointed by the licensee to be in charge of the aerodrome;

"runway" means an area within a landing strip prepared for the takeoff and landing of aircraft along its length;

"runwaystrip" means a defined area including the runway and stopway, if provided, intended—

(*a*) to reduce the risk of damage to aircraft running off a runway; and

(*b*) to protect aircraft flyover it during take-off or landing operations.

"safety management system" means a system for the management of safety at aerodromes including the organizational structure, responsibilities, procedures, processes and provisions for the implementation of aerodrome safety policies by an aerodrome operator, which provides for the control of safety at, and the safe use of, the aerodrome;

"strip" means a rectangular portion of the landing area, specially prepared for the take-off and landing of aircraft in a particular direction, in some cases including a runway;

"take-off or climb area" means a specified portion of the surface of the ground or water beyond the end of a strip in the direction of take-off. It is an area within which it may be necessary to remove or mark objects constituting obstructions and to restrict the creation of new obstacles;

"taxiway strip" means an area including a taxiway intended to protect an aircraft operating on a taxiway and to reduce the risk of damage to an aircraft accidentally running off the taxiway;

"traffic sign" includes any speed limit sign, any mark on the surface of a roadway, any signal whether an automatic electric signal or otherwise, warning sign post, direction post or sign or any other device for the guidance and direction of persons using the roadways in an aerodrome which the Minister causes or permit to be placed or near any such roadway;

"unserviceable area" means a part of the movement area that is unfit and unavailable for use by aircraft;

"vehicle" does not include an aircraft;

"work area" means a part of an aerodrome in which maintenance or construction works are in progress.

PART II
Certification of Aerodromes

Application

3. A certificate shall only be issued to aerodrome serving international scheduled public transport operations.

Interpretation

4. For the purpose of this Part, unless the context otherwise requires—

"aerodrome" means any aerodrome licensed or certificated for public use or any Government aerodrome;

"certificate" means statement of the Authority that the operator of an aerodrome has taken all the necessary safety and security measures at an aerodrome with use of the safety management system and strives for a continuous improvement of safety and security;

"safety management system" means a system for the management of safety at aerodromes by the operator, which shall provide for the control of safety, and the safe use, of the aerodrome.

Application for an aerodrome certificate

5.—(1) The operator shall submit an application for the certificate aerodrome to the Director.

(2) The application shall include the aerodrome manual which shall include information on—

(*a*) particulars of the aerodrome site;

(*b*) operating procedures;

(*c*) the organization's equipment;

(*d*) safety measures; and

(*e*) a description of the safety management system of the aerodrome.

(3) See IS 14:5 (3) contained in the Schedule hereto for information to be included in an application for an aerodrome certificate.

Conditions on application for a certificate

6. The Authority may certify any aerodrome in Malaŵi serving international scheduled flights subject to the operator of the aerodrome taking the necessary safety and security measures at the aerodrome.

(2) To be considered for a certificate, the operator shall have an active safety management system.

(3) The safety management system, shall contain at least—

(*a*) safety policy;

(*b*) organizational structure or organogram;

(*c*) tasks, competencies and responsibilities of key-officials;

(*d*) relevant operations;

(*e*) risk inventory and the resulting improvement;

(*f*) capital equipment;

(*g*) education and training;

(*h*) reports of accidents and severe incidents;

(*i*) registration, analysis and settlement of accidents and incidents, defects and shortcomings, deviation and internal and external complaints with, regard to safety and security;

(*j*) agreements with contracting partners upon the safety and security at, and in the vicinity of the aerodrome;

(*k*) the aerodrome operating procedures;

(*l*) the inspection procedures for ensuring user compliance with subparagraph; especially with regard to order, safety and security of operations.

(2) The safety management system shall contain the relevant components and elements listed in IS 1:34 in the Schedule hereto.

Investigation prior to grant of the certificate

7.—(1) The Authority shall investigate whether the particulars of the prior to grant aerodrome site, operating procedure, the organization equipment, safety measures of the aerodromes are in agreement with the applicable rules for that purpose and whether this shall be guaranteed by the safety management system of the operator as well as whether the implementation and observance of the safety management system shall be guaranteed.

(2) In addition the Authority shall carry an investigation for the purpose of—

(*a*) extending the period of validity of the certificate;

(*b*) changing the operational use of the aerodrome;

(*c*) affecting a change in the safety management system.

(3) The Director shall draw up a report of each investigation.

Grant of a certificate

8.—(1) In case it appears from, the investigation mentioned in certificate procedures, the organization equipment, safety measures of the aerodrome are in accordance with the applicable rules and this shall be guaranteed by the safety management system of the operator and that its implementation and observance are also assured, the Authority shall approve the application and grant a certificate.

(2) Before granting an aerodrome certificate the Authority must be satisfied that—

(*a*) the applicant and his/her staff have the necessary competence and experience to operate and maintain the aerodrome properly;

(*b*) the aerodrome manual prepared for the applicant's aerodrome and submitted with the application contains all the relevant information;

(*c*) the aerodrome facilities, services and equipment are in accordance with the standards and practices specified by the State;

(*d*) the aerodrome operating procedures make satisfactory provision for the safety of aircraft; and

(*e*) an acceptable safety management system is in place at the aerodrome.

(3) The Authority may refuse to grant an aerodrome certificate to an applicant in such cases the Authority must notify the applicant, in writing, of its reasons no later than 14 days after making that decision.

(4) After successful completion of the processing of the application and inspection of the aerodrome, the Authority, when, granting the aerodrome certificate, shall endorse the conditions for the type of use of the aerodrome and other details see in IS 14:8 (4) contained in the Schedule hereto for a format of an aerodrome certificate.

Interim aerodrome certificate

9.—(1) The Authority may issue an interim aerodrome certificate to the applicant of aerodrome certificate or the proposed transferee of an aerodrome certificate authorizing to the applicant or transferee to operate an aerodrome if the Authority is satisfied that—

(*a*) an aerodrome certificate in respect of the aerodrome will be issued to the applicant or transferred to the transferee as soon as the application procedure for the grant or transfer of an aerodrome certificate has been completed;

(*b*) the grant of the interim certificate is in the public interest and is not detrimental to aviation safety.

(2) An interim aerodrome certificate issued pursuant to this regulation shall expire on—

(*a*) the date on which the aerodrome certificate is issued or transferred; or

(*b*) the expiry date specified in the interim aerodrome certificate; whichever is earlier.

(3) These Regulations apply to an interim aerodrome certificate in the same manner as they apply to an aerodrome certificate.

Surrender of an aerodrome certificate

10.—(1) An aerodrome certificate holder shall give the Authority not less than 60 days written notice of the date on which the certificate is to be surrendered in order that suitable promulgation action can be taken.

(2) The Authority shall cancel the certificate on date specified in the notice.

Transfer of an aerodrome certificate

11.—(1) The Authority may give its consent to and issue an instrument of transfer of an aerodrome certificate to a transferee when—

(*a*) the current holder of the aerodrome certificate notifies the Authority, in writing, at least 60 days before ceasing to operate the aerodrome, that the current holder will cease to operate the aerodrome as of the date specified in the notice;

(*b*) the current holder of the aerodrome certificate notifies the Authority, in writing, of the name of the transferee;

(*c*) the transferee applies to the Authority, in writing, within 30 days before the current holder of the aerodrome certificate ceases to operate the aerodrome for the aerodrome certificate to be transferred to the transferee; and

(*d*) the requirements set out in subregulation 8 (2) are met in respect of the transferee.

(2) if the Authority does not consent to the transfer of an aerodrome certificate, it shall notify the transferee, in writing, of its reasons no later than 14 days after making that decision.

Amendment of an aerodrome certificate

12.—(1) The Authority may, provided that the requirements of regulations 8 (2), 17 (4) and 17 (5) have been met, amend an aerodrome certificate when—

(*a*) there is change in the ownership or management of the aerodrome;

(*b*) there is a change in the use of the aerodrome;

(*c*) there is change in boundaries of the aerodrome; or

(*d*) the holder of the aerodrome certificate requests an amendment.

Cancellation of a certificate

13.—(1) The Director shall revoke or cancel the certificate if—

(*a*) the safety management system, does not function properly;

(*b*) the safety and security at the aerodrome can no longer be assured.

Obligations of the operator after issuance of the certificate

14.—(1) Monitoring of the safety management system:

(*a*) the operator shall inspect at least once a year whether the operation, of the safety management system is still effective and efficient;

(*b*) at aerodromes which have provision for landings with assistance of navigation instruments, the operator shall have an internal auditing programme which will be the basis for the yearly inspections of the safety management systems;

(*c*) if the results of the inspections referred to in subregulation (*a*) indicate shortfalls, the operator shall make the necessary changes in the safety management system;

(*d*) the operator shall have a monitoring system, to check the safety management system.

(2) The grant of an aerodrome certificate obliges the aerodrome operators to ensure the safety, regularity and efficiency of operations at the aerodrome, to allow Authority authorized personnel access to the aerodrome to carry out safety audits, inspections and testing and to be responsible for notifying and reporting as prescribed.

(3) See IS 14:14 (3) for full details of obligations of the aerodrome operator.

Observance of the regulations

15. The operator shall ascertain the observation of the regulation or rules set by him or her in order to manage safety and security at the aerodrome.

Management of the safety management system

16. The operator shall—

(*a*) undertake the recording of the data which is necessary for the operation of the safety management system;

(*b*) determine the procedures for the management of documents and registration of these data;

(*c*) have the latest publications of these documents on hand/available at those places/spots intended for that purpose;

(*d*) register the publication of the documents as well as the amendments of documents;

(*e*) ensure that the data referred to in subregulation (*a*) will be maintained for 5 years in such a manner that there will be no decline in quality;

(*f*) ensure that data and documents are accessible, for the benefit of the investigation by the Authority as mentioned in subregulation (*e*).

Management of the aerodromes manual

17.—(1) The operator shall ensure that the aerodrome manual contains an up to date description of the safety management system as well as construction and layout, the organization equipment and the safe employment use of the aerodrome.

(2) The operator shall ensure that the Authority, businesses and organizations established at the aerodrome, which practice their activities at the airside section, have at their disposal an up to date version of the aerodrome manual and the operator shall give immediate notice of amendments of the aerodrome manual.

(3) See IS 14:17 (3) for particulars to be included in an aerodrome manual.

(4) The operator must notify the Authority as soon as practicable of any changes that the operator wishes to make to the aerodrome manual.

(5) The Authority shall approve the aerodrome manual and any amendments thereto, in these Regulations.

PART III
Aerodrome Design and Operations

Division I—Licensing of Aerodromes

Application

18. This Division shall apply to all licensed aerodromes in Malaŵi.

Aerodrome licensing

19.—(1) The Authority shall license any aerodrome in Malaŵi, subject to such conditions as if thinks fit, for the take-off and landing of aircraft engaged in flights for the public transport of passengers, or for the purpose of instruction in flying, or of any classes of such aircraft.

(2) The licensee of an aerodrome licensed under this regulation shall not cause or permit any condition or restriction of the licence to be contravened, but the licence shall not cease to be valid by reason only of such a contravention.

(3) The licensee of an aerodrome licensed under this regulation shall not cause or permit the landing or manoeuvering area of the aerodrome to be reduced or in any manner altered without written permission of the Authority:

Provided the Authority shall waive the foregoing requirements in the case of an aerodrome licensed for private use only.

(4) The Authority shall give written notice to the licencee of an aerodrome licensed under this regulation specifying the charges, or maximum charges, which shall be made for use of the aerodrome (including the making of landings thereat) and for any services or facilities performed and provided to or for or in connexion with aircraft and such notice shall also specify the conditions to be observed in relation to this charges and the performance or provision of these services or facilities; and the licensee shall not cause or permit any charges to be made in contravention of any notice so given, to him and shall, cause any notice so given to him to be kept exhibited at the aerodrome in such a place and manner as to be readily available for the information of any person affected thereby.

Places authorized as aerodromes

20. Subject to the provisions of these Regulations, the Director may by as specific or general description, authorize the use of any place as an aerodrome for the purpose of the landing and taking-off of such classes or types of aircraft engaged in such classes of operations and subject to such conditions as the Director specifies in the instrument of authorization.

Use of aerodromes

21.—(1) Subject to the provisions of these Regulations, an aircraft shall not land at or take-off from any place in Malaŵi other than—

(*a*) a Government aerodrome notified as available for public use;

(*b*) a licensed aerodrome;

(*c*) a place authorized, by the Director for use as an aerodrome.

(2) Subject to the provisions of these Regulations, an aircraft shall not land at or take-off from any such aerodrome or place as is referred to in subregulation (1) except in accordance with the conditions and restrictions, if any which have been notified with respect to the use of that aerodrome or place.

(3) The prohibitions contained in subregulations (1) and (2) shall not apply in relation to a landing due to accident, stress of weather or other unavoidable cause, but the next subsequent departure from that place at which, the landing due to any such cause has been made shall not be made without the consent of the Director.

Director's power to give directions

22. The Director shall, in relation to any aerodrome or air route or air way or facility issue such directions as he considers necessary to ensure the safety of an aircraft or compliance with any standards or recommended practices or procedures adopted from time to time in pursuance of the Chicago Convention.

Rights of Government aircraft

23. All aircraft belonging to or employed in the service of the Government shall have access, at all times to any Government or licensed aerodrome.

Aerodromes of arrival in, or departure from Malaŵi

24. The aerodromes at the places named in IS 14:24 are designated arrival as aerodromes for the arrival or departure of aircraft directly from or to places outside Malaŵi, and no aircraft shall, expect in an emergency, or with the express authority of the Director, land at any other aerodrome after a flight directly from a place outside Malaŵi, or take-off from any other aerodrome on a flight which takes the aircraft directly across the Malaŵi border.

Use of aerodromes by aircraft of Contracting States

25. The person in charge of any aerodrome in Malaŵi which is open to public use by Malaŵi aircraft (whether or not the aerodrome is a licensed aerodrome) shall cause the aerodrome, and all air navigation facilities provided thereat or in connexion therewith, to be available for use by aircraft registered in other contracting states on the same terms and conditions for use by Malaŵi aircraft.

Restriction of trading within Government aerodromes

26.—(1) Subject to the provisions of this regulation a person shall not, within a Government aerodrome, either personally or by his servant or agent, or as the servant or agent of another person, and except under and in accordance with the terms of a lease of licence granted in respect thereof—

(*a*) sell for delivery within the aerodrome, or supply any goods or services; or

(*b*) carry on, or solicit for, any business; or

(*c*) erect, display or distribute, or communicate by sound, any advertisement or public notice.

(2) Subregulation (1) shall not apply to or in relation to—

(*a*) the making or performance, by an air transport operator, of contracts for the carriage of passengers or goods by air, or for the carriage by that operator between the aerodrome and any premises of that operator, of passengers or goods that have been, or are to be carried by that operator by air;

(*b*) the advertising, by an air transport operator, of the aforesaid services or other transport services or of tourist facilities at or on any premises of that operator;

(*c*) the sale or supply to an operator of aircraft of goods or services required for the maintenance or operation of such aircraft or use or consumption aboard, such aircraft;

(*d*) the doing of any act or thing in such parts of any Government aerodrome (not being an aerodrome which is under the control of the Director) as are not made available for aviation purposes.

Aeronautical lights and air route and airway facilities

27.—(1) A person shall not establish or maintain within Malaŵi any aeronautical light or air route or airway facility except with the permission of the Director and in accordance with any conditions subject to which the permission shall be granted.

(2) A person shall not alter the character of any aeronautical light or air route or airway facility within Malaŵi except with the permission of the Director and in accordance with any conditions subject to which the permission shall be granted.

(3) In the case of an aeronautical light, being a beacon, which is or shall be visible from any waters within an area of a lighthouse authority, the Director shall not give his permission for the purpose of this regulation except with the consent of the authority.

(4) A person shall not willfully or negligently injure or interfere with any aeronautical light or air route or airway facility established and maintained by or with permission of the Director.

Dangerous lights

28.—(1) A person shall not in Malaŵi exhibit at or in the neighbourhood of an aerodrome or in the neighborhood of an air route or airway facility any light which is liable to endanger the safety of aircraft whether by reason of glare or by causing confusion with or preventing clear reception of any aeronautical light or air route or airway facility established and maintained by or with the permission of the Director.

(2) If any light which appears to the Director to be such a light as aforesaid is exhibited the Director shall cause a notice to be served upon the owner or occupier of the place where the light is exhibited or upon the person having charge of the light directing such owner, occupier or person, within a reasonable time to be specified in the notice, to extinguish or to screen effectually the light and to refrain from exhibiting any similar light in the future.

(3) A notice under this regulation shall be served personally or shall be served by post.

(4) If any owner, occupier or person on whom a notice is serviced under this regulation fails, within the time specified in the notice, to extinguish or screen effectually the light mentioned in the notice, the Director may, without prejudice to the provisions of regulation 41, authorize an officer, with such assistance as he requires, to enter the place where the light is, and extinguish or screen the light, and shall recover the expenses incurred in doing so from the owner, occupier of the person on whom, the notice has been served.

(5) In the case of a light which is or shall be visible from any waters within the area of a lighthouse authority, the powers of the Director under this regulation shall not be exercised except with the consent of that authority.

Right of access to aerodromes and other places

29.—(1) The Director and any authorized person shall have the right of access at all reasonable times—

(*a*) to any aerodrome, for the purpose of inspecting the aerodrome;

(*b*) to any aerodrome for the purpose of inspecting any aircraft on the aerodrome or any document which he has power to demand under these Regulations, or for the purpose of detaining any aircraft under the provisions of these Regulations; or

(*c*) to any place where an aircraft has landed, for the purpose of inspecting the aircraft or any document which he has power to demand under these Regulations and for the purpose of detaining the aircraft under the provisions of these Regulations.

(2) Without prejudice to subregulation (1) the Director shall issue aerodrome permits, to such person or persons as he thinks fit; and the holder of such a permit shall at all times have free and unrestricted access to such part of any Government or licensed aerodrome or of any building erected thereof as is endorsed on the permit:

Provided that an aerodrome permit issued under this subregulation shall not entitle the holder thereof to enter any customs bonded warehouse.

Exemption from application for the regulations

30.—(1) The Minister may, by notice published in the *Gazette*, exempt from the application of any of these Regulations, any aircraft or person or classes of aircraft or persons, either absolutely or subject to such conditions as he deems fit.

(2) The Director shall, under his hand, exempt from the application of any of these Regulations, any aircraft or person of classes of aircraft or persons, either absolutely or subject to such conditions as he deems fit.

(3) Before the Authority decides to exempt the aerodrome operator from complying with regulations under Part II of these Regulations, it must take into account all safety related aspects.

(4) An exemption from regulations in Part II of these Regulations—

(*a*) is subject to the aerodrome operator complying with conditions and procedures specified by the Authority in the aerodrome certificate as being necessary in the interest of safety;

(*b*) when an aerodrome does not meet the requirement of a standard or practice specified in Annex 14 and these Regulations, the Authority

may determine, after carrying out aeronautical studies, only if and where permitted by the standards and practices, the conditions and procedures that are necessary to ensure a level of safety equivalent to that established by the relevant standard or practice;

(*c*) deviation from a standard or practice and the conditions and procedures referred to in regulation 8 (4) shall be set out in an endorsement on the aerodrome certificate.

Division II—Registration of Aerodromes

Registration of aerodromes

31.—(1) All aerodromes in Malaŵi shall be registered by the Authority and shall be open to inspection.

(2) An aerodrome which has either a licence or a certificate shall be registered automatically on issue of the licence in the certificate.

(3) The aerodrome shall have at least the following—

(*a*) a strip on each side of runways;

(*b*) clear approaches;

(*c*) both longitudinal and cross gradients shall not exceed 1:50;

(*d*) the minimum angle of a clear approach shall never be less than 1:40 for a distance of not less than 1600 meters from the end of the strip;

(*e*) a clearly defined landing area;

(*f*) windsock fixed at the tip of a pole which is at least 6 meters high.

PART IV
Aerodrome Procedures

Acts prohibited on aerodromes

32. Within an aerodrome the following acts are prohibited—

(*a*) obstructing or interfering with the proper use of the aerodrome;

(*b*) obstructing any person acting in the execution of his duty in relation to the aerodrome;

(*c*) remaining on the aerodrome after having been required by a police officer or an authorized person to leave it;

(*d*) allowing any vehicle or animal to be on the aerodrome after being required by a police officer or an authorized person to remove it or after its presence on the aerodrome has been forbidden by an authorized person;

(*e*) boarding or attempting to board any aircraft without the authority of the person in charge of it;

(*f*) tampering or interfering with any aircraft or anything used in connexion with an aircraft;

(*g*) smoking in or otherwise bringing or lighting any naked light into or in—

(i) any place where any such act is prohibited by notice; or

(ii) any place within 50 feet of any aircraft or a store of inflammable liquid or explosives;

(*h*) any act causing or tending to cause an outbreak of fire;

(*i*) throwing, leaving or dropping anything capable of causing injury to any person or property;

(*j*) climbing any wall, fence, barrier, railing or post;

(*k*) willfully giving a false fire or ambulance alarm;

(*l*) failing to place an aircraft in the place and position;

(*m*) failing properly to moor or otherwise secure any stationary aircraft which is not in a hangar;

(*n*) driving or placing a vehicle carelessly or dangerously or without due consideration for persons using the aerodrome;

(*o*) failure by the driver of a vehicle to stop when required by a police officer to do so;

(*p*) failure by the driver of a vehicle which is involved in an accident to give his name and address and the name and address of the owner of the vehicle to any person having reasonable grounds for requiring them;

(*q*) failure by the driver of a vehicle forthwith to report to a police officer or to the person in charge of the aerodrome any accident in which the vehicle is involved;

(*r*) failure by the driver of a vehicle to obey a traffic sign or to comply with any direction;

(*s*) parking a vehicle elsewhere than in a place provided for that purpose or otherwise than in the manner required by a police officer or an authorized person;

(*t*) failure by the person in charge of a vehicle to remove it from any place provided for the purpose of parking when required by a police officer or an authorized person to do so;

(*u*) loading a vehicle with passengers or goods, or unloading passengers or goods from a vehicle elsewhere than in a place provided for that purpose;

(*v*) driving a motor vehicle on any roadway in an aerodrome at a speed greater than 30 miles per hour or such other speed as shall be prescribed by a traffic sign;

(*w*) removing, picking or otherwise damaging any tree, shrub or plant or walking on any flower bed;

(*x*) failing to keep any animal under control;

(*y*) using obscene or indecent language;

(*z*) behaving in an indecent or disorderly manner;

(*aa*) dropping or leaving litter elsewhere than in a receptacle provided for the purpose;

(*bb*) failing to comply with directions given by the Director in relation to refueling aircraft;

(*cc*) disposing of garbage, sewage, waste oil, refuse or other material from aircraft or other sources except in the place and the receptacles provided for that purpose.

Acts prohibited on aerodromes without permission

33. Within an aerodrome the following acts are prohibited unless the permission of the Airport Commandant or Officer-In-Charge or an authorized person has first been obtained—

(*a*) entering or leaving the aerodrome otherwise than through a gate or entrance for the time being provided for that purpose;

(*b*) entering any part of the aerodrome to which members of the public are not for the time being admitted;

(*c*) damaging, defacing, removing, displacing or altering any building, structure, traffic sign, notice other thing, whether movable or immovable, forming part of, or provided for or in connexion with, the aerodrome;

(*d*) digging soil or cutting or removing turf;

(*e*) grazing animals;

(*f*) if selling or distributing anything, offering anything for sale or hire, or making any offer of services including specifically the offering of taxicab service or operating any hackney carriage or other vehicle carrying passengers for hire or reward;

(*g*) exhibiting any notice or advertisement except on premises which the person exhibiting it is authorized to occupy and in accordance with the terms of his occupation;

(*h*) leaving a vehicle on the aerodrome longer than twenty-four hours or such shorter time as it reasonably necessary for the

transaction of the business for the purpose of which it was brought there;

(*i*) a vehicle elsewhere than in a place provided for the passage or accommodation of such a vehicle;

(*j*) taking a motor vehicle into a hangar used for the maintenance or storage of aircraft;

(*k*) running an aircraft engine in a hangar;

(*l*) filling with liquid fuel or discharging liquid fuel from any container (including any part of a vehicle) elsewhere than in a place approved for that purpose by the person in charge of the aerodrome;

(*m*) lighting a fire elsewhere than in a place constructed for that purpose and approved by an authorized person;

(*n*) conducting flight or ground demonstrations;

(*o*) taking still, motion or sound pictures for commercial purposes;

(*p*) entering the following restricted areas—

(i) air traffic services rooms;

(ii) aeronautical radio stations;

(iii) radio transmitter and receiver rooms;

(iv) fuel company installations;

(v) storage buildings;

(vi) landing and manoeuvering areas;

(vii) aircraft hangars;

(viii) fire stations;

(ix) customs areas;

(*q*) repairing aircraft, engines or accessories and running engines for test purposes in any area of an aerodrome other than that designated by the Airport Commandant or Officer-In-Charge for the purpose.

Running engines on aerodromes

34.—(1) No person shall start or run any engine in any aircraft on an on aerodromes controls. Blocks equipped with ropes or other suitable means of pulling them shall always be placed in front of the wheels of the aircraft before starting the engine or engines unless the aircraft is provided with adequate parking brakes and use is made of such brakes.

(2) For the purpose of this regulation a competent person means a person holding a pilot's or aircraft maintenance engineer's licence.

Operation of radio equipment on aerodromes

35.—(1) No person shall operate any radio equipment when such aircraft is in a hangar on an aerodrome.

(2) No person shall operate on an aerodrome any device that shall cause interference to aircraft communications or ground communications services.

Safety of aircraft

36. No person shall enter upon or remain in an aerodrome in circumstances in which the safety of any aircraft or its passengers or crew is likely to be imperiled or the proper functioning of the aerodrome impeded.

Destruction of livestock

37.—(1) The Airport Commandant or Officer-In-Charge or a Police Officer shall, where in the opinion of the Airport Commandant or Officer-In-Charge or the police officer take such action as is necessary to ensure the safety of aircraft, to shoot or destroy any livestock found trespassing on an aerodrome.

(2) This regulation shall not apply in respect of any animal which has arrived by air or its intended for dispatch by air at an aerodrome and which is restrained by leash or confined in such other manner as to be under control or in respect of any animal which is on an aerodrome in accordance with permission granted by the Airport Commandant or Officer-In-Charge.

Removal of persons from aerodromes

38. Any person suspected of having contravened or of being about to contravene any of the provisions of these Regulations shall, upon being requested so to do by the Airport Commandant or Officer-In-Charge or a Police Officer or an authorized person, correctly state his name and address and purpose of his being at the aerodrome and upon his failure so to do and without prejudice to the provisions of regulation 39 shall be removed from the aerodrome or any part thereof by the Airport Commandant or Officer-In-Charge or a Police Officer or authorized person, as the case may be.

Cost of removal

39. Any person found contravening any of the provisions of these Regulations shall be removed from the area to which these Regulations apply by the Airport Commandant or Officer-In-Charge or Police Officer or an authorized person, and any vehicle, animal or thing found in an area in contravention of any provision of these Regulations shall be removed by the Airport Commandant or Officer-In-Charge or Police Officer or an authorized person and upon conviction for such contravention the owner or person in charge of such vehicle, animal or thing shall in addition to any other penalty be ordered by the court to pay the cost of such removal.

Duties of occupiers

40. All occupiers of premises in an aerodrome shall provide on the premises readily accessible first aid and fire fighting equipment of a type and in such quantity as the Authority shall require.

Failure to comply

41. Any person who fails to comply with direction given either generally or specifically by the Director or by any authorized person under any provision of these Regulations shall be deemed for the purposes of these Regulations to have contravened that provision.

Revocation
Cap 70:01
Sub. leg. p. 203

42. The Aviation (Aerodrome) Regulations are hereby revoked.

SCHEDULE

Implementing Standards for Aerodromes

IS 14: 17(3) Particulars to be Included in an Aerodrome Manual

PART I

General

1. General information, including the following—
   - (*a*) purpose and scope of the aerodrome manual;
   - (*b*) the legal requirement for an aerodrome certificate and an aerodrome manual as prescribed in the national regulations;
   - (*c*) conditions for use of the aerodrome — a statement to indicate that the aerodrome shall at all times, when it is available for the take-off and landing of aircraft, be so available to all persons on equal terms and conditions;
   - (*d*) the available aeronautical information system and procedures for its promulgation;
   - (*e*) the system for recording aircraft movements; and
   - (*f*) obligations of the aerodrome operator.

PART II

Particulars of the Aerodrome Site

2. General information including the following—
   - (*a*) a plan of the aerodrome showing the main aerodrome facilities for the operation of the aerodrome including, particularly, the location of each wind direction indicator;
   - (*b*) a plan of the aerodrome showing the aerodrome boundaries;
   - (*c*) a plan showing the distance of the aerodrome from the nearest city, town or other populous area, and the location of any aerodrome facilities and equipment outside the boundaries of the aerodrome; and

(*d*) particulars of the title of the aerodrome site. If the boundaries of the aerodrome are not defined in the title documents particulars of the title to, or interesting, the property on which the aerodrome is located and a plan showing the boundaries and position of the aerodrome.

PART III

PARTICULARS OF THE AERODROME REQUIRED TO BE REPORTED TO THE AERONAUTICAL INFORMATION SERVICE (AIS)

3.1 General Information—

(*a*) the name of the aerodrome;

(*b*) the location of the aerodrome;

(*c*) the geographical coordinates of the aerodrome reference point determined in terms of the World Geodetic System — 1984 (WGS-84) reference datum;

(*d*) the aerodrome elevation and geoid undulation;

(*e*) the elevation of each threshold and geoid undulation, the elevation of the runway end and any significant high and low points along the runway, and the highest elevation of the touchdown zone of a precision approach runway; Manual on Certification of Aerodromes;

(*f*) the aerodrome reference temperature;

(*g*) details of the aerodrome beacon; and

(*h*) the name of the aerodrome operator and the address and telephone numbers at which the aerodrome operator may be contacted at all times.

3.2 Aerodrome Dimensions and Related Information

General information, including the following:

(*a*) runway — true bearing, designation number, length, width, displaced threshold location, slope, surface type, type of runway and, for a precision approach runway, the existence of an obstacle free zone;

(*b*) length, width and surface type of strip, runway end safety areas, stop ways;

(*c*) length, width and surface type of taxiways;

(*d*) apron surface type and aircraft stands;

(*e*) clearway length and ground profile;

(*f*) visual aids for approach procedures, viz. approach lighting type and visual approach slope indicator system (PAPI/APAPI and T-VASIS/AT-VASIS); marking and lighting

of runways, taxiways, and aprons; other visual guidance and control aids on taxiways (including runway holding positions, intermediate holding positions and stop bars) and aprons, location and type of visual docking guidance system; availability of standby power for lighting;.

(*g*) the location and radio frequency of VOR aerodrome checkpoints;

(*h*) the location and designation of standard taxi routes;

(*i*) the geographical coordinates of each threshold;

(*j*) the geographical coordinates of appropriate taxiway centre line points;

(*k*) the geographical coordinates of each aircraft stand;

(*l*) the geographical coordinates and the top elevation of significant obstacles in the approach and take-off areas, in the circling area and in the vicinity of the aerodrome. (This information may best be shown in the form of charts such as those required for the preparation of aeronautical information publications, as specified in Annexes 4 and 15 to the Convention);

(*m*) pavement surface type and bearing strength using the Aircraft Classification Number Pavement Classification Number (ACN-PCN) method;

(*n*) one or more pre-flight altimeter check locations established on an apron and their elevation;

(*o*) declared distances: take-off run available (TORA), take-off distance available (TODA), accelerate-stop distance available (ASDA), landing distance available (LDA);

(*p*) disabled aircraft removal plan: the telephone/telex/ facsimile numbers and e-mail address of the aerodrome coordinator for the removal of a disabled aircraft on or adjacent to the movement area, information on the capability to remove a disabled aircraft, expressed in terms of the largest type of aircraft which the aerodrome is equipped to remove; and

(*q*) rescue and fire-fighting: the level of protection provided, expressed in terms of the category of the rescue and fire-fighting services, which should be in accordance with the longest aeroplane normally using the aerodrome and the type and amounts of extinguishing agents normally available at the aerodrome.

NOTE. The accuracy of the information in Part III is critical to aircraft safety. Information requiring engineering survey

and assessment should be gathered or verified by qualified technical persons.

PART IV
Particulars of the Aerodrome Operating Procedures and Safety Measures

4.1 Aerodrome Reporting—

Particulars of the procedures for reporting any changes to the aerodrome information set out in the AIP and procedures for requesting the issue of NOTAMs, including the following: Appendix 1. Schedule of the aerodrome certifications regulations—

(*a*) arrangements for reporting any changes to the Authority and recording the reporting of changes during and outside the normal hours of aerodrome operations;

(*b*) the names and roles of persons responsible for notifying the changes, and their telephone numbers during and outside the normal hours of aerodrome operations; and

(*c*) the address and telephone numbers, as provided by the Authority, of the place where changes are to be reported to the Authority.

4.2 Access to the Aerodrome Movement Area.

Particulars of the procedures that have been developed and are to be followed in coordination with the agency responsible for preventing unlawful interference in civil aviation at the aerodrome and for preventing unauthorized entry of persons, vehicles, equipment, animals or other things into the movement area, including the following—

(*a*) the role of the aerodrome operator, the aircraft operator, aerodrome fixed-base operators, the aerodrome security entity, the Authority and other government departments, as applicable; and

(*b*) the names and roles of the personnel responsible for controlling access to the aerodrome, and the telephone numbers for contacting them during and after working hours.

4.3 Aerodrome Emergency Plan.

Particulars of the aerodrome emergency plan, including the following—

(*a*) plans for dealing with emergencies occurring at the aerodrome or in its vicinity, including the malfunction of aircraft in flight; structural fires; sabotage, including bomb threats (aircraft or structure); unlawful seizure of aircraft; and incidents on

the airport covering "during the emergency" and "after the emergency" considerations;

(*b*) details of tests for aerodrome facilities and equipment to be used in emergencies, including the frequency of those tests;

(*c*) details of exercises to test emergency plans, including the frequency of those exercises;

(*d*) a list of organizations, agencies and persons of authority, both on- and off- airport, for site roles; their telephone and facsimile numbers, e-mail and SITA addresses and the radio frequencies of their offices;

(*e*) the establishment of an aerodrome emergency committee to organize training and other preparations for dealing with emergencies; and

(*f*) the appointment of an on-scene commander for the overall emergency operation.

4.4 Rescue and Fire-fighting.

Particulars of the facilities, equipment, personnel and procedures for meeting the rescue and fire-fighting requirements, including the names and roles of the persons responsible for dealing with the rescue and fire-fighting services at the aerodrome.

NOTE This subject should also be covered in appropriate detail in the aerodrome emergency plan.

4.5 Inspection of the Aerodrome Movement Area and Obstacle Limitation Surface by the Aerodrome Operator.

Particulars of the procedures for the inspection of the aerodrome movement area and obstacle limitation surfaces, including the following—

(*a*) arrangements for carrying out inspections, including runway friction and water-depth measurements on runways and taxiways, during and outside the normal hours of aerodrome operations;

(*b*) arrangements and means of communicating with air traffic control during an inspection;

(*c*) arrangements for keeping an inspection logbook, and the location of the logbook;

(*d*) details of inspection intervals and times;

(*e*) inspection checklist;

(*f*) arrangements for reporting the results of inspections and for taking prompt follow-up actions to ensure correction of unsafe conditions; and A1-4 Manual on Certification of Aerodromes;

(*g*) the names and roles of persons responsible for carrying out inspections, and their telephone numbers during and after working hours.

4.6 Visual Aids and Aerodrome Electrical Systems.

Particulars of the procedures for the inspection and maintenance of aeronautical lights (including obstacle lighting), signs, markers and aerodrome electrical systems, including the following—

(*a*) arrangements for carrying out inspections during and outside the normal hours of aerodrome operation, and the checklist for such inspections;

(*b*) arrangements for recording the result of inspections and for taking follow-up action, to correct deficiencies;

(*c*) arrangements for carrying out routine maintenance and emergency maintenance;

(*d*) arrangements for secondary power supplies, if any, and, if applicable, the particulars of any other method of dealing with partial or total system failure; and

(*e*) the names and roles of the persons responsible for the inspection and maintenance of the lighting, and the telephone numbers for contacting those persons during and after working hours.

4.7 Maintenance of the Movement Area.

Particulars of the facilities and procedures for the maintenance of the movement area, including—

(*a*) arrangements for maintaining the paved areas;

(*b*) arrangements for maintaining the unpaved runways and taxiways;

(*c*) arrangements for maintaining the runway and taxiway strips; and

(*d*) arrangements for the maintenance of aerodrome drainage.

4.8 Aerodrome Works — Safety.

Particulars of the procedures for planning and carrying out construction and maintenance work safely (including work that may have to be carried out at short notice) on or in the vicinity of the movement area which may extend above an obstacle limitation surface, including the following—

(*a*) arrangements for communicating with air traffic control during the progress of such work;

(*b*) the names, telephone numbers and roles of the persons and organizations responsible for planning and carrying out the

work, and arrangements for contacting those persons and organizations at all times;

(*c*) the names and telephone numbers, during and after working hours, of the aerodrome fixed-base operators, ground handling agents and aircraft operators who are to be notified of the work;

(*d*) a distribution list for work plans, if required.

4.9 Apron Management.

Particulars of the apron management procedures, including the following—

(*a*) arrangements between air traffic control and the apron management unit;

(*b*) arrangements for allocating aircraft parking positions;

(*c*) arrangements for initiating engine start and ensuring clearance of aircraft pushback;

(*d*) marshaling service; and

(*e*) leader (van) service.

4.10 Apron Safety Management.

Procedures to ensure apron safety, including—

(*a*) protection from jet blasts;

(*b*) Enforcement of safety precautions during aircraft refueling operations; Appendix 1. Schedule of the aerodrome certifications regulations;

(*c*) apron sweeping;

(*d*) apron cleaning;

(*e*) arrangements for reporting incidents and accidents on an apron; and

(*f*) arrangements for auditing the safety compliance of all personnel working on the apron.

4.11 Airside Vehicle Control.

Particulars of the procedure for the control of surface vehicles operating on or in the vicinity of the movement area, including the following—

(*a*) details of the applicable traffic rules (including speed limits and the means of enforcing the rules); and

(*b*) the method of issuing driving permits for operating vehicles in the movement area.

4.12 Wildlife Hazard Management.

Particulars of the procedures to deal with the danger posed to aircraft operations by the presence of birds or mammals in the aerodrome flight pattern or movement area, including the following—

(*a*) arrangements for assessing wildlife hazards;

(*b*) arrangements for implementing wildlife control programmes; and

(*c*) the names and roles of the persons responsible for dealing with wildlife hazards, and their telephone numbers during and after working hours.

4.13 Obstacle Control.

Particulars setting out the procedures for—

(*a*) monitoring the obstacle limitation surfaces and Type A Chart for obstacles in the take-off surface;

(*b*) controlling obstacles within the authority of the operator;

(*c*) monitoring the height of buildings or structures within the boundaries of the obstacle limitation surfaces;

(*d*) controlling new developments in the vicinity of aerodromes; and

(*e*) notifying the CAA of the nature and location of obstacles and any subsequent addition or removal of obstacles for action as necessary, including amendment of the AIS publications.

4.14 Removal of Disabled Aircraft.

Particulars of the procedures for removing a disabled aircraft on or adjacent to the movement area, including the following—

(*a*) the roles of the aerodrome operator and the holder of the aircraft certificate of registration;

(*b*) arrangements for notifying the holder of the certificate of registration;

(*c*) arrangements for liaising with the air traffic control unit;

(*d*) arrangements for obtaining equipment and personnel to remove the disabled aircraft; and

(*e*) the names, role and telephone numbers of persons responsible for arranging for the removal of disabled aircraft.

4.15 Handing of Hazardous Materials.

Particulars of the procedures for the safe handling and storage of hazardous materials on the aerodrome, including the following—

(*a*) Arrangements for special areas on the aerodrome to be set up for the storage of inflammable liquids (including aviation fuels) and any other hazardous materials; and

(*b*) The method to be followed for the delivery, storage, dispensing and handling of hazardous materials A1-6 Manual on Certification of Aerodromes

NOTE. Hazardous materials include inflammable liquids and solids, corrosive liquids, compressed gases and magnetized or radioactive materials. Arrangements for dealing with the accidental spillage of hazardous materials should be included in the aerodrome emergency plan.

4.16 Low-Visibility Operations.

Particulars of procedures to be introduced for low-visibility operations, including the measurement and reporting of runway visual range as and when required, and the names and telephone numbers, during and after working hours, of the persons responsible for measuring the runway visual range.

4.17 Protection of Sites for Radar and Navigation Aids.

Particulars of the procedures for the protection of sites for radar and radio navigational aids located on the aerodrome to ensure that their performance will not be degraded, including the following—

(*a*) arrangements for the control of activities in the vicinity of radar and navaids installations;

(*b*) arrangements for ground maintenance in the vicinity of these installations; and

(*c*) arrangements for the supply and installation of signs warning of hazardous microwave radiation.

NOTE 1. In writing the procedures for each category, clear and precise information should be included on—

(i) when, or in what circumstances, an operating procedure is to be activated;

(ii) how an operating procedure is to be activated;

(iii) actions to be taken;

(iv) the persons who are to carry out the actions; and

(v) the equipment necessary for carrying out the actions, and access to such equipment.

NOTE 2. If any of the procedures specified above are not relevant or applicable, the reason should be given.

PART V
AERODROME ADMINISTRATION AND SAFETY MANAGEMENT SYSTEM

Aerodrome administration Particulars of the aerodrome administration, including the following—

(*a*) an aerodrome organizational chart showing the names and positions of key personnel, including their responsibilities;

(*b*) the name, position and telephone number of the person who has overall responsibility for aerodrome safety; and

(*c*) airport committees. Safety management system (SMS).

Particulars of the safety management system established for ensuring compliance with all safety requirements and achieving continuous improvement in safety performance, the essential features being—

(*a*) the safety policy, insofar as applicable, on the safety management process and its relation to the operational and maintenance process;

(*b*) the structure or organization of the SMS, including staffing and the assignment of individual and group responsibilities for safety issues;

(*c*) SMS strategy and planning, such as setting safety performance targets, allocating priorities for implementing safety initiatives and providing a framework for controlling the risks to as low a level as is reasonably practicable keeping always in view the requirements of the Standards and Recommended Practices in Volume I of Annex 14 to the Convention on International Civil Aviation, and the national regulations, standards, rules or orders;

(*d*) SMS implementation, including facilities, methods and procedures for the effective communication of Safety messages and the enforcement of safety requirements;

(*e*) a system for the implementation of, and action on, critical safety areas which require a higher level of Safety management integrity (safety measures programme); Appendix 1. Schedule of the aerodrome certifications regulations A1-7

(*f*) measures for safety promotion and accident prevention and a system for risk control involving analysis and handling of accidents, incidents, complaints, defects, faults, discrepancies and failures, and continuing safety monitoring;

(*g*) the internal safety audit and review system detailing the systems and programmes for quality control of safety;

(*h*) the system for documenting all safety-related airport facilities as well as airport operational and maintenance records, including information on the design and construction of aircraft pavements and aerodrome lighting. The system should enable easy retrieval of records including charts;

(*i*) staff training and competency, including the review and evaluation of the adequacy of training provided to staff on safety-related duties and of the certification system for testing their competency; and

(*j*) the incorporation and enforcement of safety-related clauses in the contracts for construction work at the aerodrome.

IS 14:24 Aerodromes of Arrival or Departure from Malaŵi

The following aerodromes have been designated as aerodromes of arrival in or departure from Malaŵi—

1. Lilongwe International Airport
2. Chileka International Airport
3. Mzuzu Airport
4. Karonga Airport
5. Club Makokola

IS 14: 5(3) Application form for an Aerodrome Certificate

Appendix 2

1. Particulars of the Applicant

Full Name: .....

Address: .....

..... Postal Code: .....

Position: .....

Phone: ..... Facsimile: .....

2. Particulars of the Aerodrome Site

Aerodrome Name: .....

Real Property Description: .....

or

Geographical Coordinates of the ARP: .....

or

Bearing and Distance from Nearest Town or Populous Area: .....
.....

3. Is the applicant the Owner of the Aerodrome Site?

Yes ... ☐ No... ☐

If No, provide:

(*a*) Details of Rights Held in Relation to the Site; and

(*b*) Name and address of the owner of the site and written evidence to show that permission has been obtained for the site to be used by the applicant as an aerodrome.

4. Indicate the Largest Type of Aircraft Expected to Use the Aerodrome

….....

….....

….....

5. Is the Aerodrome to be used, for Regular Public Transport Operations?

Yes ☐ No ☐

6. Details to be shown on the Aerodrome Licence

Aerodrome Name: .....

Aerodrome Operator: .....

[On behalf of the aerodrome operator shown above*], I. hereby apply for a licence to operate the aerodrome.

**Delete if not applicable.*

Signed: .....

My authority to act on behalf of the applicant is—

….....

….....

….....

Name of person making the declaration: .....

Date: ……/…..../…..... A3-1

Information—

1. Two copies of the aerodrome manual, prepared in accordance with the regulations and commensurate with the aircraft activities expected at the aerodrome, are required as part of the application.
2. The application should be submitted to the Authority.
3. A quote will be provided for the cost of processing this application. The Authority will take no action to assess this application until payment is received.
4. Documentary evidence in support of all matters in this application may be requested.

S 14:8(4) SAMPLE AERODROME CERTIFICATE

CIVIL AVIATION AIRPORT CERTIFICATE

_____

Certificate No.

_____

Name of Airport

_____

Latitude/Longitude

This airport certificate is issued by the Director pursuant to the Malaŵi Aviation Regulations under authority of the Act and authorizes the operator named in the approved Airport Operations Manual to operate this airport.

The Director may suspend or cancel this airport certificate at any time where the airport operator fails to comply with the provisions set forth in the Act, the Regulations or for other grounds as set out in the Act.

This certificate is subject to any conditions established by the Director pursuant to these Regulations and set out in the approved Airport Operations Manual.

This airport certificate is not transferable and shall remain in effect until transferred, suspended or cancelled.

_____

Director of Civil Aviation

_____

Certificate Date of Issue

IS 14: 14(3) OBLIGATIONS OF THE AERODROME OPERATOR INTRODUCTORY NOTE

The grant of an aerodrome certificate obliges the aerodrome operator to ensure the safety, regularity and efficiency of operations at the aerodrome, to allow Authority - authorized personnel access to the aerodrome to carry out safety audits, inspections and testing and to be responsible for notifying and reporting as prescribed.

1. Compliance with standards and practices

1.1 The aerodrome operator shall comply with the standards and practices specified in these Regulations and ICAO Annex 14 and with any conditions endorsed in the certificate pursuant to regulations 8 (4) and 30 (4).

2. Competence of operational and maintenance personnel

2.1 The aerodrome operator shall employ an adequate number of qualified and skilled personnel to perform all critical activities for aerodrome operation and maintenance.

2.2. If the Authority or any other competent authority of the government requires competency certification for the personnel referred to in 2.1, the aerodrome operator shall employ only those persons possessing such certificates.

2.3 The aerodrome operator shall implement a programme to upgrade the competency of the personnel referred to in 2.1 above.

3. Aerodrome operation and maintenance

3.1 Subject to any directives that the Authority may issue, the aerodrome operator shall operate and maintain the aerodrome in accordance with the procedures set out in the aerodrome manual.

3.2 To ensure the safety of aircraft, the Authority may give written directives to an aerodrome operator to alter the procedures set out in the aerodrome manual.

3.3 The aerodrome operator should ensure proper and efficient maintenance of the aerodrome facilities.

3.4 The aerodrome certificate holder shall coordinate with the ATS provider in order to be satisfied that appropriate air traffic services are available to ensure the safety of aircraft in the airspace associated with the aerodrome. The coordination shall cover other areas related to safety such as aeronautical information service, air traffic services, designated meteorological authorities, and security.

4. Aerodrome operator's safety management system

4.1 The aerodrome operator shall establish a safety management system for the aerodrome describing the structure of the organization

and the duties, powers and responsibilities of the officials in the organizational structure, with a view to ensuring that operations are carried out in a demonstrably controlled way and are improved where necessary.

4.2 The aerodrome operator shall oblige all users of the aerodrome, including fixed-base operators, ground handling agencies and other organizations that perform activities independently at the aerodrome in relation to flight or aircraft handling, to comply with the requirements laid down by the aerodrome operator with regard to safety at the aerodrome. The aerodrome operator shall monitor such compliance.

4.3 The aerodrome operator shall require all users of the aerodrome, including fixed-base operators, ground handling agencies and other organizations referred to in 4.2, to cooperate in the programme to promote safety at, and the safe use of, the aerodrome by immediately informing it of any accidents, incidents, defects and faults which have a bearing on safety.

5. Aerodrome operator's internal safety audits and safety reporting

5.1 The aerodrome operator shall arrange for an audit of the safety management system, including an inspection of the aerodrome facilities and equipment. The audit shall cover the aerodrome operator's own functions. The aerodrome operator shall also arrange for an external audit and inspection programme for evaluating other users, including fixed-base operators, ground handling agencies and other organizations working at the aerodrome as referred to in 4.2.

5.2 The audits referred, to in 5.1 shall be carried out every 12 months, or less, as agreed with the Authority.

5.3 The aerodrome operator shall ensure that the audit reports, including the report on the aerodrome facilities, services and equipment, are prepared by suitably qualified safety experts.

5.4 The aerodrome operator shall retain a copy of the report(s) referred to in 5.3 for a period to be agreed with the Authority. The Authority may request a copy of the report(s) for its review and reference.

5.5 The report(s) referred to in 5.3 must be prepared and signed by the persons who carried out the audits and inspections.

6. Access to the aerodrome

6.1 Personnel so authorized by the Authority may inspect and carry out tests on the aerodrome facilities, services and equipment, inspect the aerodrome operator's documents and records and verify the

aerodrome operator's safety management system before the aerodrome certificate is granted or renewed and, subsequently, at any other time, for the purpose of ensuring safety at the aerodrome.

6.2 An aerodrome operator shall, at the request of the person referred to in 6.1, allow access to any part of the aerodrome or any aerodrome facility, including equipment, records, documents and operator personnel, for the purpose referred to in 6.1.

6.3 The aerodrome operator shall cooperate in conducting the activities referred to in 6.1.

7. Notifying and reporting

7.1 An aerodrome operator shall adhere to the requirement to notify and report to the Authority, air traffic control and pilots within the specified time limits required by these Regulations.

7.2 Notification of inaccuracies in Aeronautical Information Service (AIS) publications. An aerodrome operator shall review all Aeronautical Information Publications (AIPs), AIP Supplements, AIP Amendments, Notices to Airmen (NOTAMs), Pre-flight Information Bulletins and Aeronautical Information Circulars issued by AIS on receipt thereof and immediately after such reviews shall notify AIS of any inaccurate information contained therein that pertains to the aerodrome.

7.3 Notification of changes to the aerodrome facilities, equipment and level of service planned in advance. An aerodrome operator shall notify AIS and the Authority, in writing, at least 60 days before effecting any change to the aerodrome facility or equipment or the level of service at the aerodrome that has been planned in advance and which is likely to affect the accuracy of the information contained in any AIS publication referred to in regulation 7.2.

7.4 Issues requiring immediate notification. Subject to the requirements of 7.5, an aerodrome operator shall give AIS and shall arrange for air traffic control and the flight operations unit to receive immediate notice detailing any of the following circumstances of which the operator has knowledge—

(*a*) obstacles, obstructions and hazards—

(i) any projections by an object through an obstacle limitation surface relating to the aerodrome; and

(ii) the existence of any obstruction or hazardous condition affecting aviation safety at or near the aerodrome;

(*b*) level of service:

Reduction in the level of service at the aerodrome as set out in any of the AIS publications referred to in regulation 7.2;

(*c*) movement area:

closure of any part of the movement area of the aerodrome; and

(*d*) any other condition that could affect aviation safety at the aerodrome and against which precautions are warranted.

7.5 Immediate notification to pilots. When it is not feasible for an aerodrome operator to arrange for the air traffic control and the flight operations unit to receive notice of a circumstance referred to in 7.4 in accordance with that regulation, the operator must give immediate notice direct to the pilots who may be affected by that circumstance.

8. Special inspections

An aerodrome operator shall inspect an aerodrome, as circumstances require, ensuring aviation safety—

(*a*) as soon as practicable after any aircraft accident or incident within the meaning of these terms as defined in Annex 13 to the Convention on International Civil Aviation;

(*b*) during any period of construction or repair of the aerodrome facilities or equipment that is critical to the safety of aircraft operation; and

(*c*) at any other time when there are conditions at the aerodrome that could affect aviation safety.

9. Removal of obstructions from the aerodrome surface

An aerodrome operator shall remove from the aerodrome surface any vehicle or other obstruction that is likely to be hazardous.

10. Warning notices

When low flying aircraft, at or near an aerodrome, or taxiing aircraft are likely to be hazardous to people or vehicular traffic, the aerodrome operator shall—

(*a*) post hazard warning notices on any public way that is adjacent to the manoeuvring area; or

(*b*) if such a public way is not controlled by the aerodrome operator, inform the authority responsible for posting the notices on the public way that there is a hazard.

AVIATION (ENVIRONMENTAL PROTECTION) REGULATIONS

G.N. 41/2013

ARRANGEMENT OF REGULATIONS

REGULATION

PART I
General

1. Citation and application
2. Interpretation

PART II
Noise

3. Aircraft noise restriction
4. Noise certification
5. Noise abatement procedures

PART III
Smoke

6. Smoke and aircraft engine emissions restrictions
7. Emissions certification
8. Revocation

AVIATION (ENVIRONMENTAL PROTECTION) REGULATIONS

under s. 19

PART I
General

Citation and application

1.—(1) These Regulations may be cited as the Aviation (Environmental Protection) Regulations.

(2) These Regulations apply to all aircrafts within Malaŵi.

(3) These Regulations prescribe regulations of noise and aircraft engine emissions restrictions at aerodromes and other places designated as noise sensitive areas in Malaŵi.

Interpretation

2.—(1) For the purpose of these Regulations, unless the context otherwise requires—

"human performance" means human capabilities and limitations which have an impact on the safety and efficiency of aeronautical operations;

"rated output" for engine emissions purposes, means the maximum power or thrust available for take-off under normal operating conditions at ISA sea level static conditions without the use of water injection as approved by the Authority or other certificating authority. Thrust is expressed in kilonewtons;

"reference pressure ratio" means the ratio of the mean total pressure at the last compressor discharge plane of the compressor to the mean total pressure at the compressor entry plane when the engine is developing takeoff thrust rating in ISA sea level static conditions;

"smoke" means the carbonaceous materials in exhaust emissions which obscure the transmission of light. Smoke includes soot, ash, grit, gritty particles, dust and any other substances whatsoever which obscures or is likely to obscure visibility;

"smoke number" means the dimensionless term qualifying smoke emissions.

PART II
Noise

Aircraft noise restriction

3. —(1) The conditions under which noise and vibration shall be caused by aircraft on government aerodromes, licensed aerodromes or on aerodromes at which the manufacture, repair or maintenance of aircraft is carried out by persons carrying on business as manufacturers or repairers of aircraft, shall be as follows, that is to say that, whether in the course of the manufacture of the aircraft or otherwise—

(*a*) the aircraft is taking-off or landing;

(*b*) the aircraft is moving on the ground or water; or

(*c*) the engines are being operated in the aircraft—

(i) for the purpose of ensuring their satisfactory performance;

(ii) for the purpose of bringing them to a proper temperature in preparation for, or at the end of a flight; or

(iii) for the purposes of ensuring the instruments, accessories or other components of the aircraft are in a satisfactory condition.

(2) Except for the purpose of landing or taking-off or in an emergency no person shall fly any aircraft over a game reserve or national park at an altitude of less that 1500 feet above ground level except with the prior permission of the Chief Game Warden.

(3) No person shall fly an aircraft over an area with sensitive fauna at an altitude of less than 1500 feet above ground level except with the prior permission of the authority responsible for area's designation.

Noise certification

4.—(1) The Authority shall grant or validate Noise Certificate of an aircraft on the basis of satisfactory evidence that the aircraft complies with requirements which are at least equal to the applicable standards specified in Annex 16 to the Chicago Convention.

(2) When the Authority issue or validate a Noise Certificate for an aircraft, the certificate shall provide the following information—

(*a*) State of Registry, nationality and registration marks;

(*b*) manufacture's serial number;

(*c*) manufacture's type and model designation, engine type or model, propeller type or model (if applicable);

(*d*) statement of any additional modifications incorporated for the purpose of compliance with the applicable noise certified standards;

(*e*) the maximum mass at which compliance with the applicable noise certification standards has been demonstrated: only one maximum take-off and landing mass pair shall be certificated for each individual aircraft;

(*f*) for aeroplanes for which the application for certification of prototype is submitted on or after 6 October 1977, and for helicopters for which application for certification of the prototype is submitted on or after 1 January 1985, the average noise level(s) at the reference point(s) for compliance with the applicable standards has been demonstrated to the satisfaction of the Certificating Authority;

(*g*) the Chapter of Annex 16, Volume I, according to which the aircraft was certified; and

(*h*) the height above the runway at which thrust or power is reduced following full thrust or power take-off.

(3) The information required under subregulation (2) (*b*) to (2) (*h*) shall be included in the flight manual.

(4) The documents attesting noise certification for an aircraft shall provide at least the information contained in IS 15:4 (4) and shall be approved by the Authority and shall be carried on the aircraft.

(5) IS 15:4 (5) in the Schedule hereto contains descriptions of Annex 16, Volume I, according to which aircraft are noise certified.

Noise abatement procedures

5.—(1) No person shall introduce noise abatement procedures unless with the permission of the Authority.

(2) In granting permission required in subregulation (1) the Authority will consider if the following factors have been taken into account in the development of the noise abatement procedures—

(*a*) consultation with the operators which use the airport;

(*b*) the nature and extent of the noise;

(*c*) types of aircraft affected, including aircraft mass, aerodrome elevation, temperature consideration;

(*d*) types of procedures likely to be most effective;

(*e*) obstacle clearances; and

(*f*) human performance in the application of the operating procedures.

PART III
SMOKE

Smoke and aircraft engine emissions restrictions

6.—(1) Subject to subregulation (2), no person shall operate or aircraft engine cause to be operated within 8 miles from the boundary of any aerodrome, restrictions any machinery or plant used for industrial or trade purposes which emits or causes smoke or which shall emit or shall cause smoke unless the written authority of the Director has been first obtained for such operation and the machinery or plant is operated in compliance with any conditions the Director shall impose when granting such authority.

(2) Subregulation (1) shall not apply in relation to machinery or plant used for industrial or trade purposes which is installed, or an agreement for the purchase or installation of which has been entered into, before the date upon which the aerodrome in question is designated for the purpose of these Regulations.

(3) Any person who operates or causes to be operated any machinery or plant referred to in subregulation (2) shall use any practical means available for minimizing the smoke emitted or caused by such operation during any period when the Director notifies him that the emission or causing of smoke within the area in question is likely to affect visibility at or over the aerodrome or any approach or take-off area at that aerodrome; and for the purpose of this regulation 'practicable' means reasonably practicable having regard, *inter alia*, to—

(*a*) local conditions and circumstances;

(*b*) the financial implications;

(*c*) the current state of technical knowledge;

(*d*) the proper use of the machinery or plant;

(*e*) the type of fuel available.

(4) Any person who is engaged in construction, maintenance or repair work on an aerodrome or on any building thereon shall be exempt from the provisions of these Regulations.

Emissions certification

7.—(1) The Authority may grant emissions certification on the basis of satisfactory evidence that the engine complies with the requirements that are at least equal to the stringency of the provisions of Volume II of the Annex 8 to Chicago Convention.

(2) The document attesting emissions certification for each individual engine shall, when granted or validated, include at least the following information which is applicable to the engine type—

(*a*) the certifying authority;

(*b*) manufacturer's type and model designation;

(*c*) statement of any additional modifications incorporated for the purpose of compliance with the applicable emissions certification requirements;

(*d*) rated output;

(*e*) reference pressure ratio;

(*f*) a statement indicating compliance with smoke number requirements;

(*g*) a statement indicating compliance with gaseous pollutants requirements.

Revocation
Cap70:01
Sub. leg. p. 168d

8. The Aviation (Smoke) Regulations, are hereby revoked.

SCHEDULE

Implementing Standards for Environmental Protection

IS 15: 4(4) Documents Attesting Noise Certification

1. The documents attesting noise certification for an aircraft shall provide at least the following information—

Item 1. Name of State.

Item 2. Title of the noise document.

Item 3. Number of the document.

Item 4. Nationality or common mark and registration marks.

Item 5. Manufacturer and manufacturer's designation of aircraft.

Item 6. Aircraft serial number.

Item 7. Engine manufacture type and model.

Item 8. Propeller type and model for propeller-driven aeroplanes.

Item 9. Maximum take-off mass in kilograms.

Item 10. Maximum landing mass, in kilograms, for certificates issued under chapters 2, 3, 4, 5, and 12 of Annex 16.

Item 11. The chapter and section of Annex 16 according to which the aircraft was certificated.

Item 12. Addition modification incorporated for the purpose of compliance with the noise certification Standards.

Item 13. The lateral/full-power noise level in corresponding unit for documents issued under chapters 2, 3, 4, 5 and 12 of Annex 16.

Item 14. The approach noise level in the corresponding unit for documents issued under chapters 2, 3, 4, 5, 8 and 12 of Annex 16.

Item 15. The flyover noise level in the corresponding unit for documents issued under chapters 2, 3, 4, 5 and 12 of Annex 16.

Item 16. The over flight noise level in the correspondence unit for documents issued under chapters 6, 8 and 11 of Annex 16.

Item 17. The take-off noise level in the corresponding unit for documents issued under chapters 8 and 10 of Annex 16.

Item 18. Statement of compliancy, including a reference to Annex 16, Volume I.

Item 19. Date of issuance of the noise certification document.

Item 20. Signature of the officer issuing it.

2. Item headings on the noise certification documents shall be uniformly numbered in Arabic numerals as indicated in 1, so that on any noise certification document the number will, under any arrangement, refer to the same item heading, except where the information in items 1 and 6 and Items I through 6 and Items 18 through 20 is given in the certificate of airworthiness, in which case the numbering system of the certificate of airworthiness according to Annex 8 shall prevail.

3. An administrative system for implementation of noise certification documentation shall be developed by State of Registry.

4. The Authority shall recognize as valid a noise certification granted by another Contracting State provided that the requirements under which such certification was granted are at least equal to the applicable Standards specified in Annex 16.

5. The Authority shall suspend or revoke the noise certification of an aircraft on its register if the aircraft ceases to comply with

the applicable noise Standards. The State of Registry shall not remove the suspension of a noise certification or grant a new noise certification unless the aircraft is found, on reassessment, to comply with the applicable noise Standards.

IS 15:4(5) CHAPTERS FOR CERTIFYING AIRCRAFT WITH REGARD TO NOISE

1. Chapter 2 - Subsonic jet aeroplanes application for type certificate submitted before 6 October, 1977.

1.1 The Standards of these Regulations shall be applicable to all subsonic jet aeroplanes for which either the application for a Type Certificate was submitted, or another equivalent prescribed procedure was carried out by the certificating authority, before 6 October, 1977, expect those aeroplane—

(1) requiring a runway length of 610 m or less at maximum certificated mass for airworthiness; or

(2) powered by engines with a bypass ratio of 2 or more and for which a certificate of airworthiness for individual aeroplane was first issued before 1 March, 1972; or

(3) powered by engines with a bypass ratio of less than 2 and for which either the application for Type Certificate was submitted, or another equivalent prescribed procedure was carried out by the certificating authority, before 1 January, 1969, and for which a certificate of airworthiness for the individual aeroplanes was first issued before 1 January, 1976.

1.2 The Standards of these Regulations shall also be applicable to derived versions of all aeroplanes covered by 1.1 for which the application for certification of change in type design was accepted, or another equivalent procedure was carried out by the certificating authority, on or after 26 November, 1981.

1.3 Notwithstanding 1.1 and 1.2, it may be recognized by the authority that the following situations for jet aeroplanes and propeller-driven heavy aeroplanes on its registry do not require demonstration of compliance with the provisions of the Standards of Annex 16, Volume 1—

(1) Gear down flight with one or more retractable landing gear down during the entire flight;

(2) Spare engine and nacelle carriage external to the skin of the aeroplane (and return of the Pylon or other external mount); and

(3) Time-limited engine and/or nacelle changes, where the change in type design specifies that the aeroplane may not be operated for a period of more than 90 days unless compliance

with the provisions of Annex 16 Volume 1, is shown for that change in type design. This applies only to changes resulting from a required maintenance section.

2. CHAPTER 3

(1) Subsonic jet aeroplanes — Application for Type Certificate submitted on or after 6 October, 1977 and before 1 January, 2006.

(2) Propeller — driven aeroplanes over 5700 kg — Application for Type Certificate on or after 1 January, 1985 and before 17 November, 1988.

(3) Propeller driven aeroplanes over 8618 kg — Application for Type Certificate submitted on or after 17 November, 1988 and before 1 January, 2006.

2.1 The Standards of this Chapter shall be applicable to—

(1) All subsonic jet aeroplanes, including their derived versions, other than aeroplanes with require a runway length of 610 m or less at maximum, certificated mass for airworthiness, in respect of which either the application for a Type Certificate was submitted, or another equivalent prescribed procedure was carried out by the certificating authority, on or after 6 October, 1977 and before 1 January, 2006;

(2) All propeller-driven aeroplanes, including their derived versions, of over 5 700 kg maximum certification take-off mass for which either the application for a Type Certificate was submitted, or another equivalent prescribed procedure was carried out by the certificating authority, on or after 1 January, 1985 and before 17 November, 1988, except where the Standards of Chapter 10 apply;

(3) All propeller-driven aeroplanes, including their derived versions, of over 8618 kg maximum certificated take-off mass, for which either the application for a Type Certification was submitted, or another equivalent prescribed procedure was carried out by the certificating authority, on or after 17 November, 1988 and before 1 January, 2006.

2.2 Notwithstanding 2.1, it may be recognized by the Authority that the following situations for jet aeroplanes and propeller-driven heavy aeroplanes on its registry do not require demonstration of compliance with the provisions of the Standards of Annex 16, Volume I—

(1) Gear down flight with one or more retractable landing gear down during the entire flight.

(2) Spare engine and nacelle carriage external to the skin of the aeroplane (and return of the pylon or other external mount).

(3) Time-limited engine and/or nacelle changes, where the change in type design specifies that the aeroplane may not be operated for a period, of more than 90 days unless compliance with the provisions of Annex 16, Volume 1, is shown for the change in type design. This applies only to change resulting from a required, maintenance action.

CARRIAGE BY AIR

CHAPTER 70:02

Containing Pages 1–38

L.R.O. 1/1982

CHAPTER 70:02

CARRIAGE BY AIR

ARRANGEMENT OF SECTIONS

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L.R.O. 1/1982

CHAPTER 70:02

CARRIAGE BY AIR

36 of 1981

An Act to make provision with respect to carriage by air and to give effect to the Warsaw Convention, the Hague Protocol and the Convention supplementary to the Warsaw Convention for the unification of certain rules relating to international carriage by air performed by a person other than the contracting carrier, for the repeal of the Carriage by Air Act and for matters incidental to and connected with the foregoing

[23rd January, 1982]

PART I

Preliminary

Short title

1. This Act may be cited as the carriage by Air Act.

Interpretation

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

"the Guadalajara Convention" means the Convention supplemenary to the Warsaw Convention for the Unification of Certain Rules relating to International Carriage by Air performed by a Person other than the Contracting Carrier opened for signature at Guadalajara on the 18th September, 1961;

"the Hague Protocol" means the Protocol to amend the Warsaw Convention opened for signature at the Hague on the 28th September, 1955;

"the Warsaw Convention" means the Convention for the Unification of Certain Rules relating to International Carriage by Air opened for signature at Warsaw on the 12th October, 1929, including the Additional Protocol to that Convention with reference to Article 2 of that Convention.

Text of Conventions and Protocol

3.—(1) Subject to subsection (4), the text of the Warsaw Convention shall, for the purposes of this Act, be deemed to be the text in the English language set out in the First Schedule.

(2) Subject to subsection (4), the text of the Hague Protocol shall, for the purposes of this Act, be deemed to be the text in the English language set out in the Second Schedule.

(3) Subject to subsection (4), the text of the Guadalajara Convention shall, for the purposes of this Act, be deemed to be the text in the English language set out in the Third Schedule.

(4) If any inconsistence is shown between the text set out in the First Schedule or the Second Schedule or the Third Schedule and the authentic text in the French language of the Warsaw Convention or the Hague Protocol or the Guadalajara Convention the authentic text shall prevail.

(5) A certificate in writing under the hand of the Minister that a document to which the certificate is annexed is a true copy of the authentic text in the French language of the Warsaw Convention or the Hague Protocol or the Guadalajara Convention is conclusive evidence that the document is such a true copy.

Designation of High Contracting Parties

4.—(1) The Minister may from time to time—

(*a*) certify who are the High Contracting Parties to the Warsaw Convention or the Hague Protocol, the territory in respect of which any such party is bound by the Convention and to what extent they have availed themselves of the provisions of the Additional Protocol to the Convention;

(*b*) certify who are the States that have or have not taken any action referred to in Article II, III, XIV, XV or XVI of the Guadalajara Convention and as to the particulars of any action so taken.

(2) Any certificate issued under subsection (1) shall, except in so far as it has been superseded by a subsequent certificate, be conclusive evidence of the matters so certified.

PART II

Carriage to which the warsaw Convention and the Hague Protocol Apply

Meaning of "the Convention" in Part II

5. In this Part, "the Convention" means the Warsaw Convention and the Hague Protocol read and interpreted together as one single instrument in accordance with Article XIX of the Hague Protocol.

Convention to have the force of law

6. Subject to this Part the provisions of the Convention shall have the force of law in Malaŵi in relation to any carriage by air to which the Convention applies, irrespective of the nationality of the aircraft performing that carriage.

Conversion of damages into Malaŵi currency

7. Any sum in francs mentioned in Article 22 of the Convention shall, for the purposes of an action against a carrier, be converted into Malaŵi currency at the rate of exchange prevailing on the date on which the amount of any damages to be paid by the carrier is ascertained by the court.

Provisions relating to proceedings for damages in respect of death of passenger

8.—(1) The provisions of this section shall apply in relation to liability imposed by the Convention on a carrier in respect of the death of a passenger (including injury that resulted in death).

(2) Subject to section 10, the liability under the Convention shall be in substitution for any civil liability of the carrier under any other law in respect of the death of the passenger or in respect of the injury that resulted in such death.

(3) Subject to subsection (4), the liability shall be enforceable for the benefit of such of the members of the passenger's family as sustained damage by reason of the death.

(4) To the extent that the damages recoverable include loss of earnings or profits up to the date of death, or medical or hospital expenses paid or incurred by the passenger before his death or funeral expenses, the liability shall be enforceable for the benefit of the personal representative in his capacity as personal representative of the deceased.

(5) For the purposes of subsection (3), the members of the passenger's family may include the wife or husband, parents, step-parents, grandparents, brothers, sisters, half-brothers, half-sisters, children, step-children and grandchildren of the passenger and an adopted person shall be treated as being, or as having been, the legitimate child of his adopters.

(6) An action to enforce the liability may be brought by the personal representative of a deceased passenger or by a person for whose benefit the liability is, under the preceding provisions of this section, enforceable, but only one action shall be brought in Malaŵi in respect of the death of any one passenger, and the action, by whomsoever brought, shall be for the benefit of all persons for whose benefit the liability is enforceable.

(7) The damages recoverable in the action may include loss of earnings or profits up to the date of death and the reasonable expenses of the funeral of the passenger and medical and hospital expenses reasonably incurred in relation to the injury that resulted in the death of the passenger.

(8) In awarding damages, the court is not limited to the financial loss resulting from the death of the passenger.

(9) Subject to subsection (10), the amount recovered in the action, after deducting any costs not recoverable from the defendant, shall be divided amongst the persons entitled in such proportions as the court directs.

(10) The court may at any stage of the proceedings make such order as appears to it to be just and equitable having regard to the provisions of the Convention limiting the liability of the carrier and to any proceedings which have been, or are likely to be, commenced against the carrier, whether within or outside Malaŵi.

Liability of carrier for personal injuries to be exclusive of the other civil liability

9. Subject to section 10, the liability of a carrier under the Convention in respect of personal injury suffered by a passenger, not being injury that has resulted in the death of the passenger, shall be in substitution for any civil liability of the carrier under any other law in respect of the injury.

Liability of carrier to persons other than passengers

10. Nothing in the Convention or in this Part shall be deemed to exclude any liability of a carrier—

(*a*) to indemnify an employer of a passenger in respect of liability of that employer under any written law providing for

compensation to workmen or employees in respect of accidents arising out of or in the course of their employment; or

(*b*) to pay contribution to a tortfeasor who is liable in respect of the death of, or injury to, a passenger,

but this section does not operate to increase the limit of liability of a carrier in respect of a passenger beyond the amount fixed by or in accordance with the Convention.

Certain sums not to be taken into account in assessment of damages

11. In assessing damages in respect of liability under the Convention, there shall not be taken into account by way of reduction of the damages—

(*a*) a sum paid or payable on the death of, or personal injury to a passenger under contract of insurance;

(*b*) a sum paid or payable out of a superannuation, provident or like fund, or by way of benefit from a friendly society, benefit society or trade union;

(*c*) any sum in respect of a pension, social service benefit or repatriation benefit paid or payable, consequent upon the death or injury, by any government or person;

(*d*) in the case of death, any sum in respect of the acquisition consequent upon the death by a spouse or child of the deceased, of, or of an interest in, a dwelling at any time used as the home of that spouse or child, or of, or of an interest in, the household contents of any such dwelling; or

(*e*) in the case of death, a premium that would have become payable under a contract of insurance in respect of the life of the deceased passenger if he had lived after the time at which he died.

Contributory negligence

12.—(1) Effect shall be given to Article 21 of the Warsaw Convention in accordance with this section.

(2) If, in an action against a carrier under the Convention, the carrier proves that the damage was caused or contributed to by the negligence of the passenger or the consignor, the damages recoverable shall be assessed in accordance with this section.

(3) The Court shall first determine the damages that would have been recoverable if there were no limit on the amount of those damages fixed by or in accordance with the Convention and there had been no negligence on the part of the passenger or consignor.

(4) The Court shall then reduce the damages under subsection (3) as it thinks just and equitable having regard to the share of the passenger or the consignor in the responsibility for the damage.

(5) If the damages, reduced in accordance with subsection (4), exceed the amount of the maximum liability of the carrier fixed by or in accordance with the Convention, the Court shall further reduce the damages to that amount.

Jurisdiction in certain cases

13.—(1) A Party to the Convention which has not availed itself of the provisions of the Additional Protocol to the Warsaw Convention with reference to Article 2 of that Convention shall, for the purpose of an action under the Convention brought in a court in Malaŵi to enforce a claim in respect of carriage undertaken by that Party, be deemed to have submitted to the jurisdiction of that Court.

(2) Nothing in subsection (1) shall be deemed to authorize the issue of execution against the property of a Party to the Convention.

Power to exclude aircraft used for military purposes

14.—(1) The Convention shall not apply to carriage of persons, cargo or baggage for the military authorities of a State to which this section applies in aircraft registered in that State, if the entire carrying capacity of the aircraft has been reserved by or on behalf of those authorities.

(2) The Minister may, from time to time, by order published in the *Gazette*, direct that this section shall apply, or shall cease to apply, to Malaŵi or any other State specified in the notice.

PART III

Carriage to which the Warsaw Convention without the Hague Protocol Applies

Meaning of "the Convention" in Part III

15. In this Part, "the Convention" means the Warsaw Convention as unamended and unaffected by the Hague Protocol.

Warsaw Convention to have the force of law

16. Subject to this Part, the provisions of the Convention shall have the force of law in the Republic in relation to any carriage by air to which the Convention applies, irrespective of the nationality of the aircraft performing that carriage.

Provisions of Part II applicable to this Part

17. The provisions of sections 8 to 14 inclusive apply for the purpose of this Part.

PART IV

Carriage to which the Guadalajara Convention applies

Guadalajara Convention to have the force of law

18. The provisions of the Guadalajara Convention shall, subject to Parts II and III as modified and affected by section 19, have the force of law in Malaŵi in relation to any carriage by air to which that Convention applies, irrespective of the nationality of the aircraft performing that carriage.

Construction of Parts II and III for purposes of Guadalajara Convention

19. In relation to carriage to which the Guadalajara Convention applies, references in Part II (other than section 6) and Part III (other than section 16) to "the Convention" shall be read and construed as including references to those provisions of the Guadalajara Convention which have the force of law by virtue of this Part.

PART V

Other Carriage to which this Act applies

20. In this Part, "the amended Warsaw Convention" means the Warsaw and the Hague Protocol read and interpreted together as one single instrument in accordance with Article XIX of the Hague Protocol.

Meaning of "the amended Warsaw Convention" in Part V

21. Subject to the provisions of section 22, the provisions of the amended Warsaw Convention and of the Guadalajara Convention having the force of law in Malaŵi as adopted and modified in the Fourth and Fifth Schedules respectively shall apply to all carriage by air, not being international carriage as defined in Article 1 of the Second Schedule.

Modifications of Conventions for purposes of this Part

22. The Minister may, by order published in the *Gazette*, direct that the provisions of this Part shall not apply, or shall not apply to a specified class of carriage by air, and any such direction may be expressed to be, and if so expressed shall take effect, subject to any conditions or limitations which in the circumstances of the case appear to the Minister to be required.

Powers of Minister

PART VI

Miscellaneous

23.—(1) In an action for damages arising out of the death or bodily injury of a passenger by air occasioned by the negligence of any person other than the carrier, its servants or agents, the sum awarded shall not exceed K20,000 in addition to the costs of the action and, in making its award, the court shall take into consideration any sum paid by the carrier.

Liability of persons other than carrier

(2) The provisions of subsections (3), (4), (5), (6), (7) and (8) of section 8 apply for the purposes of this section.

24. The Minister may, by notice published in the *Gazette*, make regulations, not inconsistent with this Act, which are necessary or convenient to be prescribed for giving effect to this Act, the Warsaw Convention, the Warsaw Convention as amended and affected by the Hague Protocol or the Guadalajara Convention.

Regulations

25. This Act shall bind the Government.

Act to bind the Government

FIRST SCHEDULE

(SECTION 3 (1))

CONVENTION FOR THE UNIFICATION OF CERTAIN RULES RELATING TO INTERNATIONAL CARRIAGE BY AIR

Chapter I. Scope Definitions

Article 1

1. This Convention applies to all international carriage of persons, baggage or cargo performed by aircraft for reward. It applies equally to gratuitous carriage by aircraft performed by an air transport undertaking.

2. For the purposes of this Convention the expression "international carriage" means any carriage in which, according to the agreement between the parties, the place of departure and the place of destination, whether or not there be a break in the carriage or a transhipment, are situated either within the territories of two High Contracting Parties, or within the territory of a single High Contracting Party, if there is an agreed stopping place within a territory subject to the sovereignty, suzerainty, mandate or authority of another Power, even though that Power is not a party to this Convention. A carriage without such an agreed stopping place between territories subject to the sovereignty, suzerainty, mandate or authority of the same High Contracting Party is not deemed to be international for the purposes of this Convention.

3. Carriage to be performed by several successive air carriers is deemed, for the purposes of this Convention, to be one undivided carriage, if it has been regarded by the parties as a single operation, whether it had been agreed upon under the form of a single contract or of a series of contracts, and it does not lose its international character merely because one contract or a series of contracts is to be performed entirely within a territory subject to the sovereignty, suzerainty, mandate or authority of the same High Contracting Party.

Article 2

1. The Convention applies to carriage performed by the State or by legally constituted public bodies provided it falls within the conditions laid down in Article 1.

2. This Convention does not apply to carriage performed under the terms of any internationapostinacl v eltonon.

Chapter II. Documents of Carriage

Section 1. Passenger Ticket

Article 3

1. For the carriage of passengers the carrier must deliver a passenger ticket which shall contain the following particulars—

(*a*) the place and date of issue;

(*b*) the place of departure and of destination;

(*c*) the agreed stopping places, provided that the carrier may reserve the right to alter the stopping places in case of necessity, and that if he exercises that right, the alteration shall not have the effect of depriving the carriage of its international character;

(*d*) the name and address of the carrier or carriers;

(*e*) a statement that the carriage is subject to the rules relating to liability established by this Convention.

2. The absence, irregularity or loss of the passenger ticket does not affect the existence or the validity of the contract or carriage, which shall none the less be subject to the rules of this Convention. Nevertheless, if the carrier accepts a passenger without a passenger ticket having been delivered he shall not be entitled to avail himself of those provisions of this Convention which exclude or limit his liability.

Section 2. Baggage Check

Article 4

1. For the carriage of baggage, other than small personal objects of which the passenger takes charge himself, the carrier must deliver a baggage check.

2. The baggage check shall be made out in duplicate, one part for the passenger and the other part for the carrier.

3. The baggage check shall contain the following particulars—

(*a*) the place and date of issue;

(*b*) the place of departure and of destination;

(*c*) the name and address of the carrier or carriers;

(*d*) the number of the passenger ticket;

(*e*) a statement that delivery of the baggage will be made to the bearer of the baggage check;

(*f*) the number and weight of the packages;

(*g*) the amount of the value declared in accordance with Article 22 (2);

(*h*) a statement that the carriage is subject to the rules relating to liability estabished by this Convention.

4. The absence, irregularity or loss of the baggage check does not affect the existence or the validity of the contract of carriage, which shall none the less be subject to the rules of this Convention. Nevetheless if the carrier accepts baggage without a baggage check having been delivered, or if the baggage check does not contain the particular set out at (*d*), (*f*) and (*h*) above, the carrier shall not be entitled to avail himself of those provisions of the Convention which exclude or limit his liability.

Section 3. Air Waybill

Article 5

1. Every carrier of cargo has the right to require the consignor to make out and hand over to him a document called an "air waybill"; every consignor has the right to require the carrier to accept this document.

2. The absence, irregularity or loss of this document does not affect the existence or the validity of the contract of carriage which shall, subject to the provisions of Article 9, be none the less governed by the rules of this Convention.

Article 6

1. The air waybill shall be made out by the consignor in three original parts and be handed over with the cargo.

2. The first part shall be marked "for the carrier", and shall be signed by the consignor. The second part shall be marked "for the consignee"; it shall be signed by the carrier and shall accompany the cargo. The third part shall be signed by the carrier and handed by him to the consignor after the cargo has been accepted.

3. The carrier shall sign on acceptance of the cargo.

4. The signature of the carrier may be stamped; that of the consignor may be printed or stamped.

5. If, at the request of the consignor, the carrier makes out the air waybill, he shall be deemed, subject to proof to the contrary, to have done so on behalf of the consignor.

Article 7

The carrier of cargo has the right to require the consignor to make out separate air waybills when there is more than one package.

Article 8

The air waybill shall contain the following particulars—

(*a*) the place and date of its execution;

(*b*) the place of departure and of destination;

(*c*) the agreed stopping places, provided that the carrier may reserve the right to alter the stopping places in case of necessity, and that if he exercises that right the alteration shall not have the effect of depriving the carriage of its international character;

(*d*) the name and address of the consignor;

(*e*) the name and address of the first carrier;

(*f*) the name and address of the consignee, if the case so requires;

(*g*) the nature of cargo;

(*h*) the number of packages, the method of packing and the particular marks or numbers upon them;

(*i*) the weight, the quantity and the volume or dimensions of the cargo;

(*j*) the apparent condition of the cargo and of the packing;

(*k*) the freight, if it has been agreed upon, the date and place of payment and the person who is to pay it;

(*l*) if the cargo is sent for payment on delivery, the price of the cargo, and, if the case so requires, the amount of the expenses incurred;

(*m*) the amount of the value declared in accordance with Article 22 (2);

(*n*) the number of parts of the air waybill;

(*o*) the documents handed to the carrier to accompany the air waybill;

(*p*) the time fixed for the completion of the carriage and a brief note of the route to be followed, if these matters have been agreed upon;

(*q*) a statement that the carriage is subject to the rules relating to liability established by this Convention.

Article 9

If the carrier accepts cargo without an air waybill having been made out, or if the air waybill does not contain all the particulars set out in Article 8 (*a*) to (*i*) inclusive and (*q*), the carrier shall not be entitled to avail himself of the provisions of this Convention which exclude or limit his liability.

Article 10

1. The consignor is responsible for the correctness of the particulars and statements relating to the cargo which he inserts in the air waybill.

2. The consignor will be liable for all damage suffered by the carrier or any other person by reason of the irregularity, incorrectness or incompleteness of the said particulars and statements.

Article 11

1. The air waybill is *prima facie* evidence of the conclusion of the contract, of the receipt of the cargo and of the conditions of carriage.

2. The statements in the air waybill relating to the weight, dimensions and packing of the cargo, as well as those relating to the number of package, are *prima facie* evidence of the facts stated; those relating to the quantity, volume and condition of the cargo do not constitute evidence against the carrier except so far as they both have been, and are stated in the air waybill to have been, checked by him in the presence of the consignor, or relate to the apparent condition of the cargo.

Article 12

1. Subject to his liability to carry out all his obligations under the contract of carriage, the consignor has the right to dispose of the cargo by withdrawing it at the aerodrome of departure or destination, or by stopping it in the course of the journey on any landing, or by calling for it to be delivered at the place of destination or in the course of the journey to a person other than the consignee named in the air waybill, or by requiring it to be returned to the aerodrome of departure. He must not exercise this right of disposition in such a way as to prejudice the carrier or other consignors and he must repay any expenses occasioned by the exercise of this right.

2. If it is impossible to carry out the orders of the consignor, the carrier must so inform him forthwith.

3. If the carrier obeys the orders of the consignor for the disposition of the cargo without requiring the production of the part of the air waybill delivered to the latter, he will be liable, without prejudice to his right of recovery from the consignor, for any damage which may be caused thereby to any person who is lawfully in possession of that part of the air waybill.

4. The right conferred on the consignor ceases at the moment when that of the consignee begins in accordance with Article 13. Nevertheless, if the consignee declines to accept the air waybill or the cargo, or if he cannot be communicated with, the consignor resumes his right of disposition.

Article 13

1. Except in the circumstances set out in the preceding article, the consignee is entitled, on arrival of the cargo at the place of destination, to require the carrier to hand over to him the air waybill and to deliver the cargo to him, on payment of the charges due and on complying with the conditions of carriage set out in the air waybill.

2. Unless it is otherwise agreed, it is the duty of the carrier to give notice to the consignee as soon as the cargo arrives.

3. If the carrier admits the loss of the cargo, or if the cargo has not arrived at the expiration of seven days after the date on which it ought to have arrived, the consignee is entitled to put into force against the carrier the rights which flow from the contract of carriage.

Article 14

The consignor and the consignee can respectively enforce all the rights given them by Articles 12 and 13, each in his own name, whether he is acting in his own interest or that of another, provided that he carries out the obligations imposed by the contract.

Article 15

1. Articles 12, 13 and 14 do not affect either the relations of the consignor or the consignee with each other or the mutual relations of third parties whose rights are derived either from the consignor or from the consignee.

2. The provisions of Articles 12, 13 and 14 can only be varied by express provision in the air waybill.

Article 16

1. The consignor must furnish such information and attach to the air waybill such documents as are necessary to meet the formalities of customs control or police before the cargo can be delivered to the consignee. The consignor is liable to the carrier for any damage occasioned by the absence, insufficiency or irregularity of any such information or documents, unless the damage is due to the fault of the carrier or his servants or agents.

2. The carrier is under no obligation to inquire into the correctness or sufficiency of such information or documents.

Chapter III. Liability of the Carrier

Article 17

The carrier is liable for damage sustained in the event of the death or wounding of a passenger or any other bodily injury suffered by a passenger, if the accident which caused the damage so sustained took place on board the aircraft or in the course of any of the operations of embarking or disembarking.

Article 18

1. The carrier is liable for damage sustained in the event of the destruction or loss of, or of damage to, any registered baggage or any cargo, if the occurrence which caused the damage so sustained took place during the carriage by air.

2. The carriage by air within the meaning of the preceding paragraph comprises the period during which the baggage or cargo is in charge of the carrier, whether in an aerodrome or on board an aircraft, or, in the case of landing outside an aerodrome, in any place whatsoever.

3. The period of the carriage by air does not extend to any carriage by land, by sea or by river performed outside an aerodrome. If, however, such a carriage takes place in the performance of a contract for carriage by air, for the purpose of loading, delivery or transhipment, any damage is presumed, subject to proof to the contrary, to have been the result of an event which took place during the carriage by air.

Article 19

The carrier is liable for damage occasioned by delay in the carriage by air of passengers' baggage or cargo.

Article 20

1. The carrier is not liable if he proves that he and his servants and agents have taken all necessary measures to avoid the damage or that it was impossible for him or them to take such measures.

2. In the carriage of cargo and baggage the carrier is not liable if he proves that the damage was occasioned by negligent pilotage or negligence in the handling of the aircraft or in navigation and that, in all other respects, he and his agents have taken all necessary measures to avoid the damage.

Article 21

If the carrier proves that the damage was caused by or contributed to by the negligence of the injured person the Court may, in accordance with the provisions of its own law, exonerate the carrier wholly or partly from his liability.

Article 22

1. In the carriage of passengers the liability of the carrier for each passenger is limited to the sum of 125,000 francs. Where, in accordance with the law of the Court seized of the case, damages may be awarded in the form of periodical payments, the equivalent capital value of the said payments shall not exceed 125,000 francs. Nevertheless, by special contract, the carrier and the passenger may agree to a higher limit of liability.

2. In the carriage of registered baggage and of cargo, the liability of the carrier is limited to a sum of 250 francs per kilogramme, unless the consignor has made, at the time when the package was handed over to the carrier, a special declaration of the value at delivery and has paid a supplementary sum if the case so requires. In that case the carrier will be liable to pay a sum not exceeding the declared sum, unless he proves that that sum is greater than the actual value to the consignor at delivery.

3. As regards objects of which the passenger takes charge himself the liability of the carrier is limited to 5,000 francs per passenger.

4. The sums mentioned above shall be deemed to refer to the French franc consisting of sixty-five and a half milligrams gold of millesimal fineness nine hundred. These sums may be converted into any national currency in round figures.

Article 23

Any provision tending to relieve the carrier of liability or to fix a lower limit than that which is laid down in this Convention shall be null and void, but the nullity of any such provisions does not involve the nullity of the whole contract, which shall remain subject to the provisions of this Convention.

Article 24

1. In the cases covered by Articles 18 and 19 any action for damages, however founded, can only be brought subject to the conditions and limits set out in this Convention.

2. In the cases covered by Article 17 the provisions of the preceding paragraph also apply, without prejudice to the questions as to who are the persons who have the right to bring suit and what are their respective rights.

Article 25

1. The carrier shall not be entitled to avail himself of the provisions of this Convention which exclude or limit his liability, if the damage is caused by his wilful misconduct or by such default on his part as in accordance with the law of the Court seized of the case, is considered to be equivalent to wilful misconduct.

2. Similarly the carrier shall not be entitled to avail himself of the said provisions if the damage is caused as aforesaid by any servant or agent of the carrier acting within the scope of his employment.

Article 26

1. Receipt by the person entitled to delivery of baggage or cargo without complaint is *prima facie* evidence that the same has been delivered in good condition and in accordance with the document of carriage.

2. In the case of damage, the person entitled to delivery must complain to the carrier forthwith after the discovery of the damage, and, at the latest, within three days from the date of receipt in the case of baggage and seven days from the date of receipt in the case of cargo. In the case of delay the complaint must be made at the latest within fourteen days from the date on which the baggage or cargo has been placed at his disposal.

3. Every complaint must be made in writing upon the document of carriage or by separate notice in writing despatched within the times aforesaid.

4. Failing complaint within the times aforesaid, no action shall lie against the carrier, save in the case of fraud on his part.

Article 27

In the case of the death of the person liable, an action for damages lies in accordance with the terms of this Convention against those legally representing his estate.

Article 28

1. An action for damages must be brought, at the option of the plaintiff, in the territory of one of the High Contracting Parties, either before the Court having jurisdiction where the carrier is ordinarily resident, or has his principal place of business, or has an establishment by which the contract has been made or before the Court having jurisdiction at the place of destination.

2. Questions of procedure shall be governed by the law of the Court seized of the case.

Article 29

1. The right to damages shall be extinguished if an action is not brought within two years, reckoned from the date of arrival at the destination, or from the date on which the aircraft ought to have arrived, or from the date on which the carriage stopped.

2. The method of calculating the period of limitation shall be determined by the law of the Court seized of the case.

Article 30

1. In the case of carriage to be performed by various successive carriers and falling within the definition set out in the third paragraph of Article 1, each carrier who accepts passengers, baggage or cargo is subject to the rules set out in this Convention, and is deemed to be one of the contracting parties to the contract of carriage in so far as the contract deals with that part of the carriage which is performed under his supervision.

2. In the case of carriage of this nature, the passenger or his representative can take action only against the carrier who performed the carriage during which the accident or the delay occurred, save in the case where, by express agreement, the first carrier has assumed liability for the whole journey.

3. As regards baggage or cargo, the passenger or consignor will have a right of action against the first carrier, and the passenger or consignee who is entitled to delivery will have a right of action against the last carrier, and further, each may take action against the carrier who performed the carriage during which the destruction, loss, or damage or delay took place. These carriers will be jointly and severally liable to the passenger or to the consignor or consignee.

Chapter IV. Provisions Relating to Combined Carriage

Article 31

1. In the case of combined carriage performed partly by air and partly by any other mode of carriage, the provisions of this Convention apply only to the carriage by air, provided that the carriage by air falls within the terms of Article 1.

2. Nothing in this Convention shall prevent the parties in the case of combined carriage from inserting in the document of air carriage conditions relating to other modes of carriage, provided that the provisions of this Convention are observed as regards the carriage by air.

Chapter V. General and Final Provisions

Article 32

Any clause contained in the contract and all special agreements entered into before the damage occurred by which the parties purport to infringe the rules laid down by this Convention, whether by deciding the law to be applied, or by altering the rules as to jurisdiction, shall be null and void. Nevertheless for the carriage of cargo arbitration clauses are allowed, subject to this Convention, if the arbitration is to take place within one of the jurisdictions referred to in the first paragraph of Article 28.

Article 33

Nothing contained in this Convention shall prevent the carrier either from refusing to enter into any contract of carriage, or from making regulations which do not conflict with the provisions of this Convention.

Article 34

This Convention does not apply to international carriage by air performed by way of experimental trial by air navigation undertakings with the view to the establishment of a regular line of air nagivation, nor does it apply to carriage performed in extraordinary circumstances outside the normal scope of an air carrier's business.

Article 35

The expression "days" when used in this Convention means current days, not working days.

Article 36

This Convention is drawn up in French in a single copy which shall remain deposited in the archives of the Ministry for Foreign Affairs of Poland and of which one duly certified copy shall be sent by the Polish Government to the Government of each of the High Contracting Parties.

Article 37

1. This Convention shall be ratified. The instruments of ratification shall be deposited in the archives of the Ministry for Foreign Affairs of Poland, which will notify the deposit to the Government of each of the High Contracting Parties.

2. As soon as this Convention shall have been ratified by five of the High Contracting Parties it shall come into force as between them on the ninetieth day after the deposit of the fifth ratification. Thereafter it shall come into force, between the High Contracting Parties who shall have ratified and the High Contracting Party who deposits his instrument of ratification, on the ninetieth day after the deposit.

3. It shall be the duty of the Government of the Republic of Poland to notify to the Government of each of the High Contracting Parties the date on which this Convention comes into force as well as the date of the deposit of each ratification.

Article 38

1. This Convention shall, after it has come into force, remain open for accession by any State.

2. The accession shall be effected by a notification addressed to the Government of the Republic of Poland, which will inform the Government of each of the High Contracting Parties there.

3. The accession shall take effect as from the ninetieth day after the notification made to the Government of the Republic of Poland.

Article 39

1. Any one of the High Contracting Parties may denounce this Convention by a notification addressed to the Government of the Republic of Poland, which will at once inform the Government of each of the High Contracting Parties.

2. Denunciation shall take effect six months after the notification of denunciation, and shall operate only as regards the Party who shall have proceeded to denunciation.

Article 40

1. Any High Contracting Party may, at the time of signature or of deposit of ratification or of accession, declare that the acceptance which he gives to this Convention does not apply to all or any of his colonies, protectorates, territories under mandate, or any other territory subject to his sovereignty or his authority, or any territory under his suzerainty.

2. Accordingly any High Contracting Party may subsequently accede separately in the name of all or any of his colonies, protectorates, territories under mandate or any other territory subject to his sovereignty or to his authority or any territory under his suzerainty which has been thus excluded by his original declaration.

3. Any High Contracting Party may denounce this Convention, in accordance with its provisions, separately or for all or any of his colonies, protectorates, territories under mandate or any other territory subject to his sovereignty or to his authority, or any other territory under his suzerainty.

Article 41

Any High Contracting Party shall be entitled not earlier than two years after the coming into force of this Convention to call for the assembling of a new international conference in order to consider any improvements which may be made in this Convention. To this end, he will communicate with the Government of the French Republic which will take the necessary measures to make preparations for such conference.

This Convention done at Warsaw on the 12th October, 1929, shall remain open for signature until the 31st January, 1930.

(*Here follow the signatures of the Plenipotentiaries of the States on behalf of which the Convention was signed*.)

ADDITIONAL PROTOCOL

(*With reference to Article* 2)

The High Contracting Parties reserve to themselves the right to declare at the time of ratification or of accession that the first paragraph of Article 2 of this Convention shall not apply to international carriage by air performed directly by the State, its colonies, protectorates or mandated territories or by any other territory under its sovereignty, suzerainty or authority.

(*Here following the signatures of the Plenipotentiaries of the States on behalf of which the Additional Protocol was signed*.)

SECOND SCHEDULE

(section 3 (2))

PROTOCOL

to Amend the Convention for the Unification of Certain Rules Relating to International Carriage by Air signed at Warsaw on 12th October, 1929.

THE GOVERNMENTS UNDERSIGNED

Considering that it is desirable to amend the Convention for the Unification of Certain Rules Relating to International Carriage by Air signed at Warsaw on 12th October, 1929.

Have agreed as follows—

Chapter I. Amendments to the Convention

Article I

In Article 1 of the Convention—

(*a*) paragraph 2 shall be deleted and replaced by the following—

"2. For the purposes of this Convention, the expression *international carriage* means any carriage in which, according to the agreement between the parties, the place of departure and the place of destination, whether or not there be a break in the carriage or a transhipment, are situated either within the territories of two High Contracting Parties or within the territory of a single High Contracting Party if there is an agreed stopping place within the territory of another State, even if that State is not a High Contracting Party. Carriage between two points within the territory of a single High Contracting Party without an agreed stopping place within the territory of another State is not international carriage for the purposes of this Convention."

(*b*) paragraph 3 shall be deleted and replaced by the following—

"3. Carriage to be performed by several successive air carriers is deemed, for the purposes of this Convention, to be one undivided carriage, if it has been regarded by the parties as a single operation, whether it had been agreed upon under the form of a single contract or of a series of contracts, and it does not lose its international character merely because one contract or a series of contracts is to be performed entirely within the territory of the same State."

Article II

In Article 2 of the Convention, paragraph 2 shall be deleted and replaced by the following—

"2. This Convention shall not apply to carriage of mail and postal packages."

Article III

In Article 3 of the Convention—

(*a*) paragraph 1 shall be deleted and replaced by the following—

"1. In respect of the carriage of passengers a ticket shall be delivered containing—

(*a*) an indication of the places of departure and destination;

(*b*) if the places of departure and destination are within the territory of a single High Contracting Party, one or more agreed stopping places being within the territory of another State, an indication of at least one such stopping place;

(*c*) a notice to the effect that, if the passenger's journey involves an ultimate destination or stop in a country other than the country of departure, the Warsaw Convention may be applicable and that the Convention governs and in most cases limits the liability of carriers for death or personal injury and in respect of loss or of damage to baggage."

(*b*) paragraph 2 shall be deleted and replaced by the following—

"2. The passenger ticket shall constitute *prima facie* evidence of the conclusion and conditions of the contract of carriage. The absence, irregularity or loss of the passenger ticket does not affect the existence or the validity of the contract of carriage which shall, none the less, be subject to the rules of this Convention. Nevertheless, if, with the consent of the carrier, the passenger embarks without a passenger ticket having been delivered, or if the ticket does not include the notice required by paragraph 1 (*c*) of this Article, the carrier shall not be entitled to avail himself of the provisions of Article 22."

Article IV

In Article 4 of the Convention—

(*a*) paragraph 1, 2 and 3 shall be deleted and replaced by the following—

"1. In respect of the carriage of registered baggage, a baggage check shall be delivered, which, unless combined with or incorporated in a passenger ticket which complies with the provisions of Article 3, paragraph 1, shall contain—

(*a*) an indication of the places of departure and destination;

(*b*) if the places of departure and destination are within the territory of a single High Contracting Party, one or more agreed stopping places being within the territory of another State, an indication of at least one such stopping place;

(*c*) a notice to the consignor to the effect that if the carriage involves an ultimate destination or stop in a country other than the country of departure, the Warsaw Convention may be applicable and that the Convention governs and in most cases limits the liability of carriers in respect of loss of or damage to baggage."

(*b*) paragraph 4 shall be deleted and replaced by the following—

"2. The baggage check shall constitute *prima facie* evidence of the registration of the baggage and of the conditions of the contract of carriage. The absence, irregularity or loss of the baggage check does not affect the existence of the validity of the contract of carriage which shall, none the less, be subject to the rules of this Convention. Neverthless, if the carrier takes charge of the baggage without a baggage check having been delivered or if the baggage check (unless combined with or incorporated in the passenger ticket which complies with the provisions of Article 3, paragraph 1 (*c*)) does not include the notice required by paragraph 1 (*c*) of this Article, he shall not be entitled to avail himself of the provisions of Article 22, paragraph 2."

Article V

In Article 6 of the Convention paragraph 3 shall be deleted and replaced by the following—

"3. The carrier shall sign prior to the loading of the cargo on board the aircraft."

Article VI

Article 8 of the Convention shall be deleted and replaced by the following—

"The air waybill shall contain—

(*a*) an indication of the places of departure and destination;

(*b*) if the places of departure and destination are within the territory of a single High Contracting Party, one or more agreed stopping places being within the territory of another State, an indication of at least one such stopping place;

(*c*) a notice to the consignor to the effect that, if the carriage involves an ultimate destination or stop in a country other than the country of departure, the Warsaw Convention may be applicaable and that the Convention governs and in most cases limits the liability of carriers in respect of loss of or damage to cargo."

Article VII

Article 9 of the Convention shall be deleted and replaced by the following—

"If, with the consent of the carrier, cargo is loaded on board the aircraft without an air waybill having been made out, or if the air waybill does not include the notice required by Article 8, paragraph (*c*), the carrier shall not be entitled to vail himself of the provisions of Article 22, paragraph 2."

Article VIII

In Article 10 of the Convention paragraph 2 shall be deleted and replaced by the following—

"2. The consignor shall indemnify the carrier against all damage suffered by him, or by any other person to whom the carrier is liable, by reason of the irregularity, incorrectness or incompleteness of the particulars and statements furnished by the consignor."

Article IX

To Article 15 of the Convention the following paragraph shall be added—

"3. Nothing in this Convention prevents the issue of a negotiable air waybill."

Article X

Paragraph 2 of Article 20 of the Convention shall be deleted.

Article XI

Article 22 of the Convention shall be deleted and replaced by the following—

"*Article 22*

1. In the carriage of persons the liability of the carrier for each passenger is limited to the sum of two hundred and fifty thousand francs. Where, in accordance with the law of the Court seized of the case, damages may be awarded in the form of periodical payments, the equivalent capital value of the said payments shall not exceed two hundred and fifty thousand francs. Nevertheless, by special contract, the carrier and the passenger may agree to a higher limit of liability.

2.—(*a*) In the carriage of registered baggage and of cargo, the liability of the carrier is limited to a sum of two hundred and fifty francs per kilogramme, unless the passenger or consignor has made, at the time when the package was handed over to the carrier, a special declaration of interest in delivery at destination and has paid a supplementary sum if the case so requires. In that case the carrier will be liable to pay a sum not exceeding the declared sum, unless he proves that that sum is greater than the passenger's or consignor's actual interest in delivery at destination.

(*b*) In the case of loss, damage or delay of part of registered baggage or cargo, or of any object contained therein, the weight to be taken into consideration in determining the amount to which the carrier's liability is limited shall be only the total weight of the package or packages concerned. Nevertheless, when the loss, damage or delay of a part of the registered baggage or cargo, or of an object contained therein, affects the value of other packages covered by the same baggage check or the same air waybill, the total weight of such package or packages shall also be taken into consideration in determining the limit of liability.

3. As regards objects of which the passenger takes charge himself the liability of the carrier is limited to five thousand francs per passenger.

4. The limits prescribed in this Article shall not prevent the Court from awarding, in accordance with its own law, in addition, the whole or part of the court costs and of the other expenses of the litigation incurred by the plaintiff. The foregoing provision shall not apply if the amount of the damages awarded, excluding court costs and other expenses of the litigation, does not exceed the sum which the carrier has offered in writing to the plaintiff within a period of six months from the date of the occurrence causing the damage, or before the commencement of the action, if that is later.

5. The sums mentioned in francs in this Article shall be deemed to refer to a currency unit consisting of sixty-five and a half milligrams of gold of millesimal fineness nine hundred. These sums may be coverted into national currencies in round figures. Conversion of the sums into national currencies other than gold shall, in case of judicial proceedings, be made according to the gold value of such currencies at the date of judgment."

Article XII

In Article 23 of the Convention, the existing provision shall be renumbered as paragraph 1 and another paragraph shall be added as follows—

"2. Paragraph 1 of this Article shall not apply to provisions governing loss or damage resulting from the inherent defect, quality or vice of the cargo carried."

Article XIII

In Article 25 of the Convention, paragraphs 1 and 2 shall be deleted and replaced by the following—

"The limits of liability specified in Article 22 shall not apply if it is proved that the damage resulted from an act or omission of the carrier, his servants or agents, done with intent to cause damage or recklessly and with knowledge that damage would probably result; provided that, in the case of such act or omission of a servant or agent, it is also proved that be was acting within the scope of his employment."

Article XIV

After Article 25 of the Convention, the following Article shall be inserted—

"*Article 25A*

1. If an action is brought against a servant or agent of the carrier arising out of damage to which this Convention relates, such servant or agent, if he proves that he acted within the scope of his employment, shall be entitled to avail himself of the limits of liability which that carrier himself is entitled to invoke under Article 22.

2. The aggregate of the amounts recoverable from the carrier, his servants and agents, in that case, shall not exceed the said limits.

3. The provisions of paragraphs 1 and 2 of this Article shall not apply if it is proved that the damage resulted from an act or omission of the servant or agent done with intent to cause damage or recklessly and with knowledge that damage would probably result."

Article XV

In Article 26 of the Convention paragraph 2 shall be deleted and replaced by the following—

"2. In the case of damage, the person entitled to delivery must complain to the carrier forthwith after the discovery of the damage, and, at the latest, within seven days from the date of receipt in the case of baggage and fourteen days from the date of receipt in the case of cargo. In the case of delay the complaint must be made at the latest within twenty-one days from the date on which the baggage or cargo have been placed at his disposal."

Article XVI

Article 34 of the Convention shall be deleted and replaced by the following—

"The provisions of Articles 3 to 9 inclusive relating to documents of carriage shall not apply in the case of carriage performed in extraordinary circumstances outside the normal scope of an air carrier's business."

Article XVII

After Article 40 of the Convention, the following Article shall be inserted—

"*Article 40A*

1. In Article 37, paragraph 2, and Article 40, paragraph 1, the expression *High Contracting Party* shall mean State. In all other cases, the expression *High Contracting Party* shall mean a State whose ratification of or adherence to the Convention has become effective and whose denunciation thereof has not become effective.

2. For the purposes of the Convention the word *territory* means not only the metropolitan *territory* of a State but also all other territories for the foreign relation of which that State is responsible."

Chapter II. Scope of Application of the Convention as Amended

Article XVIII

The Convention as amended by this Protocol shall apply to international carriage as defined in Article 1 of the Convention, provided that the places of departure and destination referred to in that Article are situated either in the territories of two Parties to this Protocol or within the territory of a single Party to this Protocol with an agreed stopping place within the territory of another State.

Chapter III. Final Clauses

Article XIX

As between the Parties to this Protocol, the Convention and the Protocol shall be read and interpreted together as one single instrument and shall be known as the *Warsaw Convention as amended at The Hague, 1955.*

Article XX

Until the date on which this Protocol comes into force in accordance with the provisions of Article XXII, paragraph 1, it shall remain open for signature on behalf of any State which up to that date has ratified or adhered to the Convention or which has participated in the Conference at which this Protocol was adopted.

Article XXI

1. This Protocol shall be subject to ratification by the signatory States.

2. Ratification of this Protocol by any State which is not a Party to the Convention shall have the effect of adherence to the Convention as amended by this Protocol.

3. The instruments of ratification shall be deposited with the Government of the People's Republic of Poland.

Article XXII

1. As soon as thirty signatory States have deposited their instruments of ratification of this Protocol, it shall come into force between them on the ninetieth day after the deposit of the thirtieth instrument of ratification. It shall come into force for each State ratifying thereafter on the ninetieth day after the deposit of its instrument of ratification.

2. As soon as this Protocol comes into force it shall be registered with the United Nations by the Government of the People's Republic of Poland.

Article XXIII

1. This Protocol shall, after it has come into force, be open for adherence by any non-signatory State.

2. Adherence to this Protocol by any State which is not a Party to the Convention shall have the effect of adherence to the Convention as amended by this Protocol.

3. Adherence shall be effected by the deposit of an instrument of adherence with the Government of the People's Republic of Poland and shall take effect on the ninetieth day after the deposit.

Article XXIV

1. Any Party to this Protocol may denounce the Protocol by notification addressed to the Government of the People's Republic of Poland.

2. Denunciation shall take effect six months after the date of the receipt by the Government of the People's Republic of Poland of the notification of denunciation.

3. As between the Parties to this Protocol, denunciation by any of them of the Convention in accordance with Article 39 thereof shall not be construed in any way as a denunciation of the Convention as amended by this Protocol.

Article XXV

1. This Protocol shall apply to all territories for the foreign relations of which a State Party to this Protocol is responsible, with the exception of territories in respect of which a declaration has been made in accordance with paragraph 22 of this Article.

2. Any State may, at the time of deposit of its instrument of ratification or adherence, declare that its acceptance of this Protocol does not apply to any one or more of the territories for the foreign relations of which such State is responsible.

3. Any State may subsequently, by notification to the Government of the People's Republic of Poland extend the application of this Protocol to any or all of the territories regarding which it has made a declaration in accordance with paragraph 2 of this Article. The notification shall take effect on the ninetieth day after its receipt by that Government.

4. Any State Party to this Protocol may denounce it, in accordance with the provisions of Article XXIV, paragraph 1, separately for any or all of the territories for the foreign relations of which such State is responsible.

Article XXVI

No reservation may be made to this Protocol except that a State may at any time declare by a notification addressed to the Government of the People's Republic of Poland that the Convention as amended by the Protocol shall not apply to the carriage of persons, cargo and baggage for its military authorities on aircraft, registered in that State, the whole capacity of which has been reserved by or on behalf of such authorities.

Article XXVII

The Government of the People's Republic of Poland shall give immediate notice to the Government of all States signatories to the Convention or this Protocol, all States Parties to the Convention or

this Protocol, and all States Members of the International Civil Aviation Organization or of the United Nations and to the International Civil Aviation Organization—

(*a*) of any signature of this Protocol and the date thereof;

(*b*) of the deposit of any instrument of ratification of or adherence in respect of this Protocol and the date thereof;

(*c*) of the date on which this Protocol comes into force in accordance with Article XXII, paragraph 1;

(*d*) of the receipt of any notification of denunciation and the date thereof;

(*e*) of the receipt of any declaration or notification made under Article XXV and the date thereof; and

(*f*) of the receipt of any notification made under Article XXVI and the date thereof.

IN WITNESS WHEREOF the undersigned Plenipotentiaries, having been duly authorized, have signed this Protocol.

DONE at the Hague on the 28th day of the month of September, of the year one thousand, nine hundred and fifty-five, in three authentic texts in the English, French and Spanish languages. In the case of any inconsistency, the text in the French language, in which language the Convention was drawn up, shall prevail.

This Protocol shall be deposited with the Government of the People's Republic of Poland with which, in accordance with Article XX, it shall remain open for signature, and that Government shall send certified copies thereof to the Governments of all States signatories to the Convention or this Protocol, all States Parties to the Convention or this Protocol, and all States Members of the International Civil Aviation Organization or of the United Nations, and to the International Civil Aviation Organization.

(*Here follow the signatures of the Plenipotentiaries of which the Protocol was signed.*)

THIRD SCHEDULE

(Section 3 (3))

Convention

Supplementary to the Warsaw Convention, for the unification of Certain Rules relating to International Carriage by Air performed by a Person other than the Contracting Carrier.

The States Signatory to the Present Convention

NOTING that the Warsaw Convention does not contain particular rules relating to International Carriage by Air performed by a person who is not a party to the agreement for carriage.

CONSIDERING that it is therefore desirable to formulate rules to apply in such circumstances have agreed as follows—

Article I

In this Convention—

(*a*) "Warsaw Convention" means the Convention for the unification of Certain Rules relating to International Carriage by Air signed at Warsaw on 12th October, 1929, or the Warsaw Convention as amended at the Hague, 1955, according to whether the carriage under the agreement referred to in paragraph (*b*) is governed by the one or by the other;

(*b*) "contracting carrier" means a person who as a principal makes an agreement for carriage governed by the Warsaw Convention with a passenger or consignor or with a person acting on behalf of the passenger or consignor;

(*c*) "actual carrier" means a person, other than the contracting carrier, who, by virtue of authority from the contracting carrier, performs the whole or part of the carriage contemplated in paragraph (*b*) but who is not with respect to such part a successive carrier within the meaning of the Warsaw Convention. Such authority is presumed in the absence of proof to the contrary.

Article II

If an actual carrier performs the whole or part of carriage which, according to the agreement referred to in Article 1, paragraph (*b*), is governed by the Warsaw Convention, both the contracting carrier and the actual carrier shall, except as otherwise provided in this Convention, be subject to the rules of the Warsaw Convention, the former for the whole of the carriage contemplated in the agreement, the latter solely for the carriage which he performs.

Article III

1. The acts and omissions of the actual carrier and of his servants and agents acting within the scope of their employment shall, in relation to the carriage performed by the actual carrier, be deemed to be also those of the contracting carrier.

2. The acts and omissions of the contracting carrier and of his servants and agents acting within the scope of their employment shall, in relation to the carriage performed by the actual carrier be deemed to be also those of the actual carrier. Nevertheless, no such act or omission shall subject the actual carrier to liability exceeding the limits specified in Article 22 of the Warsaw Convention. Any special agreement under which the contracting carrier assumes obligations not imposed by the Warsaw Convention or any waiver of rights conferred by that Convention or any special declaration of interest in delivery at destination contemplated in Article 22 of the said Convention, shall not affect the actual carrier unless agreed to by him.

Article IV

Any complaint to be made or order to be given under the Warsaw Convention to the carrier shall have the same effect whether addressed to the contracting carrier or to the actual carrier. Nevertheless, orders referred to in Article 12 of the Warsaw Convention shall only be effective if addressed to the contracting carrier.

Article V

In relation to the carriage performed by the actual carrier, any servant or agent of that carrier or of the contracting carrier shall, if he proves that he acted within the scope of his employment, be entitled to avail himself of the limits of liability which are applicable under this Convention to the carrier whose servant or agent he is unless it is proved that he acted in a manner which, under the Warsaw Convention, prevents the limits of liability from being invoked.

Article VI

In relation to the carriage performed by the actual carrier, the aggregate of the amounts recoverable from that carrier and the contracting carrier, and from their servants and agents acting within the scope of their employment, shall not exceed the highest amount which could be awarded against either the contracting carrier or the actual carrier under this Convention, but none of the persons mentioned shall be liable for a sum in excess of the limit applicable to him.

Article VII

In relation to the carriage performed by the actual carrier, an action for damages may be brought, at the option of the plaintiff, against that carrier or the contracting carrier, or against both together or separately. If the action is brought against only one of those carriers, that carrier shall have the right to require the other carrier to be joined in the proceedings, the procedure and effects being governed by the law of the Court seized of the case.

Article VIII

Any action for damages contemplated in Article VII of this Convention must be brought, at the option of the plaintiff, either before a Court in which an action may be brought against the contracting carrier, as provided in Article 28 of the Warsaw Convention, or before the Court having jurisdiction at the place where the actual carrier is ordinarily resident or has his principal place of business.

Article IX

1. Any contractual provision tending to relieve the contracting carrier or the actual carrier of liability under this Convention or to fix a lower limit than that which is applicable according to this Convention shall be null and void, but the nullity of any such provision does not involve the nullity of the whole agreement, which shall remain subject to the provisions of this Convention.

2. In respect of the carriage performed by the actual carrier, the preceding paragraph shall not apply to contractual provisions governing loss or damage resulting from the inherent defect, quality or vice of the cargo carried.

3. Any clause contained in an agreement for carriage and all special agreements entered into before the damage occurred by which the Parties purport to infringe the rules laid down by this Convention, whether by deciding the law to be applied, or by altering the rules as to jurisdiction, shall be null and void. Nevertheless, for the carriage of

cargo arbitration clauses are allowed, subject to this Convention, if the arbitration is to take place in one of the jurisdictions referred to in Article VIII.

Article X

Except as provided in Article VII, nothing in this Convention shall affect the rights and obligations of the two carriers between themselves.

Article XI

Until the date on which this Convention comes into force in accordance with the provisions of Article VIII, it shall remain open for signature on behalf of any State which at that date is a Member of the United Nations or of any of the Specialized Agencies.

Article XII

1. This Convention shall be subject to ratification by the signatory States.

2. The instruments of ratification shall be deposited with the Government of the United States of Mexico.

Article XIII

1. As soon as five of the signatory States have deposited their instruments of ratification of this Convention, it shall come into force between them on the ninetieth day after the date of the deposit of the fifth instrument of ratification. It shall come into force for each State ratifying thereafter on the ninetieth day after the deposit of its instrument of ratification.

2. As soon as this Convention comes into force, it shall be registered with the United Nations and the International Civil Aviation Organization by the Government of the United States of Mexico.

Article XIV

1. This Convention shall, after it has come into force, be open for accession by any State Member of the United Nations of any of the Specialized Agencies.

2. The accession of a State shall be effected by the deposit of an instrument of accession with the Government of the United States of Mexico and shall take effect as from the ninetieth day after the date of such deposit.

Article XV

1. Any Contracting State may denounce this Convention by notification addressed to the Government of the United States of Mexico.

2. Denunciation shall take effect six months after the date of receipt by the Government of the United States of Mexico of the notification of denunciation.

Article XVI

1. Any Contracting State may at the time of its ratification of or accession to this Convention or at any time thereafter declare by notification to the Government of the United States of Mexico that the Convention shall extend to any of the territories for whose international relations it is responsible.

2. The Convention shall, ninety days after the date of the receipt of such notification by the Government of the United States of Mexico, extend to the territories named therein.

3. Any Contracting State may denounce this Convention, in accordance with the provisions of Article XV, separately for any or all of the territories for the international relations of which such State is responsible.

Article XVII

No reservation may be made to this Convention.

Article XVIII

The Government of the United States of Mexico shall give notice to the International Civil Aviation Organization and to all States Members of the United Nations or of any of the Specialized Agencies—

(*a*) of any signature of this Convention and the date thereof;

(*b*) of the deposit of any instrument of ratification or accession and the date thereof;

(*c*) of the date on which this Convention comes into force in accordance with Article XIII, paragraph 1;

(*d*) of the receipt of any notification of denunciation and the date thereof;

(*e*) of the receipt of any declaration of notification made under Article XVI and the date thereof.

In witness whereof the undersigned Plenipotentiaries, having been duly authorized, have signed this Convention.

Done at Guadalajara on the eighteenth day of September, one thousand, nine hundred and sixty-one, in three authentic texts drawn up in the English, French and Spanish languages. In case of any inconsistency, the text in the French language, in which language the Warsaw Convention of 12 October, 1929, was drawn up shall prevail. The Government of the United States of Mexico will establish an official translation of the text of the Convention in the Russian language.

This Convention shall be deposited with the Government of the United States of Mexico with which, in accordance with Article XI, it shall remain open for signature, and that Government shall send certified copies thereof to the International Civil Aviation Organization and to all States Members of the United Nations or of any Specialized Agency.

(*Here follow the signatures of the Plenipotentiaries of the States on behalf of which the Convention has been signed.*)

FOURTH SCHEDULE

(Section 21)

Chapter I. Scope

Article I

(1) This Schedule applies to all carriage of passengers, luggage or cargo performed by aircraft for reward. It applies equally to gratuitous carriage by aircraft performed by an air transport undertaking.

Article II

(2) This Schedule does not apply to the carriage of mail and postal packets.

Chapter II. Documents of Carriage

Section 3. Air Waybill

Article 5

(1) Every carrier of cargo has the right to require the consignor to make out and hand over to him an air waybill.

(2) The absence or loss of this document does not affect the existence or the validity of the contract of carriage which shall be nonetheless governed by the provisions of this Schedule.

Article 7

The carrier of cargo has the right to require the consignor to make out separate air waybills when there is more than one package.

Article 10

(1) The consignor is responsible for the correctness of the particulars and statements relating to the cargo which he inserts in the air waybill, if any.

(2) The consignor will be liable for all damage suffered by the carrier or any other person by reason of the incorrectness or incompleteness of the said particulars and statements.

Article 11

(1) The air waybill, if any, is *prima facie* evidence of the conclusion of the contract, of the receipt of the cargo and of the conditions of carriage.

(2) Any statements in an air waybill relating to the weight dimensions and packing of cargo, or relating to the number of packages, are *prima facie* evidence of the facts stated; any such statements relating to the quantity, volume and condition of the cargo do not constitute evidence against the carrier except so far as they both have been and, are stated in the air waybills to have been, checked by him in the presence of the consignor or relate to the apparent condition of the cargo.

Article 12

(1) Subject to his liability to carry out all the obligations under the contract of carriage, the consignor has the right to dispose of the cargo by withdrawing it at the aerodrome of departure or destination, or by stopping it in the course of the carriage on any landing, or by calling for it to be delivered at the place of destination or in the course of the carriage to a person other than the original consignee or by requiring it to be returned to the aerodrome of departure. He must not exercise this right of disposition in such a way as to prejudice the carrier or other consignors and he must repay any expenses occasioned by the exercise of this right.

(2) If it is not reasonably practicable to carry out the orders of the consignor the carrier must so inform him forthwith.

(3) The right conferred on the consignor ceases at the moment when that of the consignee begins in accordance with Article 13. Nevertheless, if the consignee declines to accept the air waybill, if any, or the cargo, or if he cannot be communicated with, the consignor resumes his right of disposition.

Article 13

(1) Except in the circumstances set out in the preceding Article, the consignee is entitled, on arrival of the cargo at the place of destination, to require the carrier to deliver the cargo to him on payment of the charges due and on complying with the conditions of the contract of carriage.

(2) Unless it is otherwise agreed, it is the duty of the carrier to give notice to the consignee as soon as the cargo arrives.

(3) If the carrier admits the loss of the cargo, or if the cargo has not arrived at the expiration of seven days after the date on which it ought to have arrived, the consignee is entitled to put into force against the carrier the rights which flow from the contract of carriage.

Article 14

The consignor and the consignee can respectively enforce all the rights given them by Article 12 and 13, each in his own name, whether he is acting in his own interest or in the interest of another, provided that he carries out the obligations imposed by the contract.

Article 15

(1) Articles 12, 13 and 14 do not affect either the relations of the consignor and the consignee with each other or the mutual relations of third parties whose rights are derived either from the consignor or from the consignee.

(2) The provisions of Articles 12, 13 and 14 can only be varied by special contract in writing between the parties.

Article 16

(1) The consignor must furnish such information and documents as are necessary to meet the formalities of customs control or police, before the cargo can be delivered to the consignee. The consignor is

liable to the carrier for any damage occasioned by the absence, insufficiency or irregularity of any such information or documents, unless the damage is due to the fault of the carrier or his servants or agents.

(2) The carrier is under no obligation to inquire into the correctness or sufficiency of such information or documents.

Chapter III. Liability of the Carrier

Article 17

The carrier is liable for damage sustained in the event of the death or wounding of a passenger or any other bodily injury suffered by a passenger, if the accident which caused the damage so sustained took place on board the aircraft or in the course of any of the operations of embarking or disembarking.

Article 18

(1) The carrier is liable for damage sustained in the event of the destruction or loss of, or of damage to, any luggage or cargo, if the occurrence which caused the damage so sustained took place during the carriage by air.

(2) The carriage by air within the meaning of the preceding paragraph comprises the period during which the luggage or cargo are in charge of the carrier, whether in an aerodrome or on board an aircraft, or, in case of a landing outside an aerodrome, in any place whatsoever.

(3) The period of the carriage by air does not extend to any carriage by land, by sea or by river performed outside an aerodrome. If, however, such carriage takes place in the performance of a contract for carriage by air, for the purpose of loading, delivery or transhipment, any damage is presumed, subject to proof to the contrary, to have been the result of an event which took place during the carriage by air.

Article 19

The carrier is liable for damage occasioned by delay in the carriage by air of passengers, luggage or cargo to the extent of the amount of any such damage which may be proved to have been sustained by reason of such delay or of an amount representing double the sum paid for the carriage, whichever amount may be the smaller:

Provided that—

(i) the carrier may by special contract in writing expressly exclude, increase or decrease the limit of his liability as above provided; and

(ii) nothing in this Article shall be deemed to affect any rule of law relating to remoteness of damage.

Article 20

The carrier is not liable if he proves that he and his servants or agents have taken all reasonable measures to avoid the damage or that it was not reasonably possible for him or them to take such measures.

Article 21

If the carrier proves that the damage was caused by or contributed to by the negligence of the injured person the court may, in accordance with the provisions of its own law, exonerate the carrier wholly or partly from his liability.

Article 22

(1) Subject to the provisions of paragraph (4) of this Article, in the carriage of passengers the liability of the carrier in respect of injury (including injury resulting in the death of) to any passenger is limited to the sum of 250,000 francs. In a case where damages are awarded in the form of periodical payments, the equivalent capital value of the said payments shall not exceed 250,000 francs.

(2) Subject to the provisions in paragraph (4) of this Article, in the carriage of luggage of which the carrier takes charge and of goods the liability of the carrier in respect of destruction, loss or damage is limited to a sum of 250 francs per kilogramme.

(3) Subject to the provisions of paragraph (4) of this Article, as regards objects of which the passenger takes charge himself the liability of the carrier in respect of destruction, loss or damage is limited to 5,000 francs per passenger.

(4) With respect to the carriage referred to in paragraphs (1), (2) and (3) of this Article the carrier and the passenger or the carrier and the consignor, as the case may be, may by special contract in writing agree to a limit of liability higher than specified in those paragraphs.

(5) The sums mentioned above shall be deemed to refer to the French franc consisting of 65 1/2 milligrams of gold of millesimal fineness 900. These sums may be converted into any national currency in round figures.

Article 23

Any provision in a contract of carriage tending to relieve the carrier of liability or to fix a lower limit than that which is laid down in this Schedule, otherwise than in accordance with the provisions of this Schedule, shall be null and void, but the nullity of any such provision does not involve the nullity of the whole contract, which shall remain subject to the provisions of this Schedule.

Article 24

(1) In the cases covered by Articles 18 and 19 any action for damages, however founded, can only be brought subject to the conditions and limits set out in this Schedule.

(2) In the case covered by Article 17 the provisions of the preceding paragraph also apply, without prejudice to any question as to who are the persons who have the right to bring such an action and what are their respective rights.

Article 25

(1) The carrier shall not be entitled to avail himself of the provisions of this Schedule which exclude or limit his liability, if the damage is caused by his wilful misconduct.

(2) Similarly, the carrier shall not be entitled to avail himself of the said provisions if the damage is caused as aforesaid by any servant or agent of the carrier acting within the scope of his employment, unless the carrier proves that the wilful misconduct of his servant or agent took place without his actual fault or privity.

Article 25A

(1) If an action is brought against a servant or agent of the carrier arising out of damage to which this Schedule relates, such servant or agent, if he proves that he acted within the scope of his employment, shall be entitled to avail himself of the limits of liability which that carrier himself is entitled to invoke under Article 22.

(2) The aggregate of the amounts recoverable from the carrier, his servants and agents, in that case, shall not exceed the said limits.

(3) The provisions of paragraphs (1) and (2) of this Article shall not apply if it is proved that the damage resulted from an act or omission of the servant or agent done with intent to cause damage or recklessly and with knowledge that damage would probably result.

Article 26

(1) Receipt by the person entitled to delivery of luggage or cargo without complaint is *prima facie* evidence that the same has been delivered in good condition and in accordance with the contract of carriage.

(2) In the case of damage, the person entitled to delivery must complain to the carrier forthwith after the discovery of the damage, and, at the latest, within three days from the date of receipt in the case of luggage and seven days from the date of receipt in the case of cargo. In the case of delay the complaint must be made at the latest within fourteen days from the date on which the luggage or cargo has been placed at his disposal.

(3) Every complaint must be made by notice in writing despatched within the times aforesaid.

(4) Failing complaint within the times aforesaid, no action shall lie against the carrier, save in the case of fraud on his part.

Article 27

In the case of the death of the person liable an action for damages lies, in accordance with the terms of this Schedule, against those legally representing his estate.

Article 29

(1) The right to damages shall be extinguished if an action is not brought within two years, reckoned from the date of arrival at the destination or from the date on which the aircraft ought to have arrived, or from the date on which the carriage stopped.

(2) The method of calculating the period of limitation shall be determined by the law of the Court seized of the case.

Article 30

(1) In the case of carriage to be performed by various successive carriers, each carrier who accepts passengers, luggage or cargo shall be bound by the provisions of this Schedule, and is deemed to be one of the contracting parties to the contract of carriage in so far as the contract deals with that part of the carriage which is performed under his supervision.

(2) In the case of carriage of this nature, the passenger or his representative can take action only against the carrier who performed the carriage during which the accident or delay occurred, save in the case where, by express agreement, the first carrier has assumed liability for the whole journey.

(3) As regards luggage or cargo, the passenger or consignor will have a right of action against the first carrier, and the passenger or consignee who is entitled to delivery will have a right of action against the last carrier who performed the carriage during which the destruction loss, damage or delay took place. These carriers will be jointly and severally liable to the passenger or to the consignor or consignee.

Chapter IV. Provisions Relating to combined Carriage

Article 31

(1) In the case of combined carriage performed partly by air and partly by any other mode of carriage the provisions of this Schedule apply only to the carriage by air.

(2) Nothing in this Schedule shall prevent the parties in the case of combined carriage from agreeing to special conditions relating to other modes of carriage, provided that the provisions of this Schedule are observed as regards the carriage by air.

Chapter V. General and final Provisions

Article 32

Any provisions contained in the contract and all special agreements entered into before the damage occurred by which the parties purport to infringe the rules laid down by this Schedule by deciding the law to be applied shall be null and void. Nevertheless, for the carriage of cargo arbitration clauses are allowed, subject to this Schedule.

Article 33

Nothing contained in this Schedule shall prevent the carrier either from refusing to enter into any contract of carriage, or from making stipulations which do not conflict with the provisions of this Schedule.

FIFTH SCHEDULE

(Section 21)

Article I

In this Schedule—

(*a*) "the Convention" means the Warsaw Convention and The Hague Protocol read and interpreted together as one single instrument in accordance with Article XIX of The Hague Protocol;

(*b*) "contracting carrier" means a person who as principal makes an agreement for carriage governed by the Convention with a passenger or consignor or with a person acting on behalf of the passenger or consignor;

(*c*) "actual carrier" means a person, other than the contracting carrier, who, by virtue of authority from the contracting carrier, performs the whole or part of the carriage contemplated in paragraph (*b*) but who is not with respect to such part a successive carrier within the meaning of the Convention. Such authority is presumed in the absence of proof to the contrary.

Article II

If an actual carrier performs the whole or part of carriage, which according to the agreement referred to in Article I, paragraph (*b*), is governed by the Convention, both the contracting carrier and the actual carrier shall, except as otherwise provided in this Schedule, be subject to the provisions of the Convention, the former for the whole of the carriage contemplated in the agreement, the later solely for the carriage which he performs.

Article III

(1) The acts and omissions of the actual carrier and of his servants and agents acting within the scope of their employment shall, in relation to the carriage performed by the actual carrier, be deemed to be also those of the contracting carrier.

(2) The acts and omissions of the contracting carrier and of his servants and agents acting within the scope of their employment shall, in relation to the carriage performed by the actual carrier, be deemed to be also those of the actual carrier. Nevertheless, no such act or omission shall subject the actual carrier to liability exceeding the limits specified in Article 22 of the Convention. Any special agreement under which the contracting carrier assumes obligations not imposed by the Convention or any waiver of rights conferred by the Convention or any special declaration of interest in delivery at destination contemplated in Article 22 of the Convention, shall not affect the actual carrier unless agreed by him.

Article IV

Any complaint to be made or order to be given under the Convention to the carrier shall have the same effect whether addressed to the contracting carrier or to the actual carrier. Nevertheless, orders referred to in Article 12 of the Convention shall only be effective if addressed to the contracting carrier.

Article V

In relation to the carriage performed by the actual carrier, any servant or agent of that carrier or of the contracting carrier shall, if he proves that he acted within the scope of his employment, be entitled to avail himself of the limits of liability which are applicable under this Schedule to the carrier whose servant or agent he is unless it is proved that he acted in a manner which, under the Convention, prevents the limits of liability from being invoked.

Article VI

In relation to the carriage performed by the actual carrier, the aggregate of the amounts recoverable from that carrier and the contracting carrier, and from their servants and agents acting within the scope of their employment, shall not exceed the highest amount which could be awarded against the contracting carrier or the actual carrier under this Schedule, but none of the persons mentioned shall be liable for a sum in excess of the limit applicable to him.

Article VII

In relation to the carriage performed by the actual carrier, an action for damages may be brought, at the option of the plaintiff, against that carrier or the contracting carrier, or against both together or separately. If the action is brought against only one of those carriers, that carrier shall have the right to require the other carrier to be joined in the proceedings.

Article IX

(1) Any contractual provision tending to relieve the contracting carrier or the actual carrier of liability under this Schedule or to fix a lower limit than that which is applicable according to this Schedule shall be null and void, but the nullity of any such provision does not involve the nullity of the whole agreement, which shall remain subject to the provisions of this Schedule.

(2) In respect of the carriage performed by the actual carrier, the preceding paragraph shall not apply to contractual provisions governing loss or damage resulting from the inherent defect, quality or vice of the cargo carried.

(3) Any clause contained in an agreement for carriage and all special agreements entered into before the damage occurred by which the parties purport to infringe the rules laid down by this Schedule, whether by deciding the law to be applied or by altering the rules as to jurisdiction, shall be null and void. Nevertheless, for the carriage of cargo arbitration clauses are allowed, subject to this Schedule.

Article X

Except as provided in Article VII, nothing in this Schedule shall affect the rights and obligations of the two carriers between themselves.

NATIONAL AIRLINE

CHAPTER 70:03

Containing Pages 1–4

CHAPTER 70:03

NATIONAL AIRLINE

ARRANGEMENT OF SECTIONS

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1. Short title
2. Interpretation
3. Operation of national airline of Malaŵi
4. Appointment of Commissioner
5. Regulations

An Act to provide for the Dissolution of the Central African Airways Corporation, the Replacement of the Higher Authority and the operation of Air Malaŵi as the National Airline of Malaŵi

23 of 1967
G.N. 66/1985

[9TH AUGUST, 1967]

1. This Act may be cited as the National Airline Act. Short title

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

"Air Malaŵi" means Air Malaŵi Limited, a company incorporated in Malaŵi under the Companies Act; Cap. 46:03

"the Corporation" means the Central African Airways Corporation established under Part IV of the Federation of Rhodesia and Nyasaland (Dissolution) Order in Council, 1963*. G.N. 273/1963

"the Higher Authority" means the Higher Authority for Civil Air Transport constituted by the said Order in Council.

3.—(1) The Minister shall take such steps, including the transfer to it of any assets and liabilities of the Corporation, as may be necessary to enable Air Malaŵi to operate as the national airline of Malaŵi independently of the Corporation. Operation of national airline of Malaŵi

(2) The Minister shall, by notice published in the *Gazette*, appoint a date on which Air Malaŵi shall commence to operate independently of the Corporation.

4.—(1) The Minister shall appoint a Commissioner, who shall hold office for such period and on such terms and conditions as the Minister thinks fit. Appointment of Commissioner

(2) The functions of the Commissioner shall be—

(*a*) to carry out the functions of the Minister as a member of the Higher Authority or such body as is agreed between Malaŵi, Zambia and Southern Rhodesia will replace the Higher Authority;

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*Part IV Federation of Rhodesia and Nyasaland (Dissolution) Order in Council, 1963 (G.N. 273/1963) has been revoked as respects Malaŵi. (*See* regulation 3 on page 3 and G.N. 66/85.)

(*b*) to represent the interest of Malaŵi at any meetings held in connexion with the dissolution of the Corporation; and

(*c*) such other functions as the Minister may from time to time direct.

(3) In carrying out his functions under this section the Commissioner shall be subject to any special or general directions of the Minister.

Regulations

5. The Minister may make regulations for the better carrying out of the purposes and provisions of this Act, and without prejudice to the generality of the foregoing such regulations may provide for—

35 of 1963
Cap. 70:02
G.N. 273/1963
66/1985

(*a*) the amendment of all or any of the provisions of the Central African Civil Air Transport Ordinance, the Air Services Act and the Federation of Rhodesia and Nyasaland (Dissolution) Order in Council, 1963;

(*b*) the use by Air Malaŵi of all or any of the assets of the Corporation in Malaŵi;

(*c*) the orderly transfer of the assets and liabilities of the Corporation to Air Malaŵi, and the corresponding authorities established in Zambia and Southern Rhodesia;

(*d*) in connexion with the transfer of assets and liabilities to Air Malaŵi—

(i) exemption from any stamp duty, fee of office or other charge;

(ii) endorsement by the Deeds Registrar on the title deeds of any immoveable property so transferred and in his register;

(iii) the substitution of Air Malaŵi for the Corporation in relation to any bond, charge, agreement, contract or other instrument;

(*e*) the enforcement against or in favour of Air Malaŵi of—

(i) any bond, charge, agreement, contract or other instrument against or in favour of the Corporation;

(ii) any right of action or proceedings by or against the Corporation;

(*f*) the transfer of any of the functions conferred on the Corporation or the Higher Authority by the laws referred to in paragraph (*a*), to any other person.

SUBSIDIARY LEGISLATION

NATIONAL AIRLINE (DISSOLUTION OF CENTRAL AFRICAN AIRWAYS CORPORATION) REGULATIONS

G.N. 66/1985

under s. 5

Citation

1. These Regulations may be cited as the National Airline (Dissolution of the Central African Airways Corporation) Regulations.

Interpretation

2. In these Regulations—

"Agreement" means the Agreement consisting of such instruments as were concluded between the Governments of the Republic of Malaŵi, Republic of Zambia and Republic of Zimbabwe on the 17th May, 1985, at Harare in the Republic of Zimbabwe for the dissolution of the Corporation;

"Air Malaŵi" means Air Malaŵi Limited, a company incorporated in Malaŵi under the Companies Act; Cap. 46:03

"Corporation" means the Central African Airways Corporation established under Part IV of the Federation of Rhodesia and Nyasaland (Dissolution) Order in Council, 1963.* G.N. 273/1963

Revocation of Part IV of G.N. 273/1963

3. Part IV of the Federation of Rhodesia and Nyasaland (Dissolution) Order in Council is hereby revoked as respects Malaŵi.

Transitional provisions

4.—(1) Subject to the provisions of the Agreement—

(*a*) all assets, liabilities, rights and obligations in, or appertaining to, the operations of the Corporation within Malaŵi which immediately before the date of commencement of these Regulations were vested in, owing to or incurred by the Corporation or any person on behalf of the Corporation are hereby vested in Air Malaŵi;

(*b*) all bonds, charges, agreements, contracts, instruments and working arrangements creating or giving rise to liabilities, rights or obligations in, or appertaining to the operations of, the Corporation within Malaŵi which immediately before the date of commencement of these Regulations were subsisting in favour of, or against, any person on behalf of the Corporation shall on that date become enforceable in favour of or against Air Malaŵi as if, instead of the Corporation or such person, Air Malaŵi had been named therein or had been party thereto;

(*c*) all proceedings, judgements or causes in action which were pending or existing immediately before the date of commencement of these Regulations—

*Part IV Federation of Rhodesia and Nyasaland (Dissolution) Order in Council, has been revoked as respects Malaŵi. (*See* regulation 3 above)

(i) relating to or connected with any asset, liability, right or obligation referred to in paragraph (*a*); or

(ii) arising out of any bond, charge, agreement, instrument or working arrangement referred to in paragraph (*b*);

shall be continued or enforced by or against Air Malaŵi as they might have been continued by or against the Corporation or any person on behalf of the Corporation had these Regulations not come into force.

(2) Where the transfer of any property transferred to or vested in Air Malaŵi under subregulation (1) is required by any written law to be registered, Air Malaŵi shall, within one year or within such other period as is prescribed by the written law, from the date of commencement of these Regulations, apply to the appropriate registering authority for the registration of the transfer and thereupon the registering authority shall, at no cost to Air Malaŵi or any person by way of registration fees stamp and other duties—

(*a*) make such entries in the appropriate register as shall give effect to the transfer;

(*b*) where appropriate, issue to Air Malaŵi a certificate of title or other statutory evidence of ownership of the property or make such amendment to the appropriate register as may be necessary; and

(*c*) make any necessary endorsement on such deeds or other documents as may be presented to such registering authority relating to the title, liability, right or obligation concerned.

LAWS OF MALAŴI

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12 of 1995
G.N. 39/1996

An Act to make provision for the survey, registration, licensing and safety of all vessels used on inland waters of Malaŵi; for the safety of passengers and cargo, for the competency of masters and crews and for matters incidental thereto and connected therewith

[1ST APRIL, 1996]

PART I

Preliminary

1. This Act may be cited as the Inland Waters Shipping Act. Short title

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

"authorized officer" means the Chief Surveyor or any person authorized to act as such;

"board of examiners" means board of examiners appointed under section 66;

"boat examiner" means a boat examiner appointed under Part VI;

"cargo vessel" means a vessel which is not a passenger vessel;

"carrier" means a person by or on behalf of whom a contract of carriage has been concluded, whether the carriage is actually performed by him or by a performing carrier;

"clearance" means permission for a vessel to set sail or leave port;

"certificate of competency" means a certificate issued to a certificated officer under Part VII;

"certificate of registration" in relation to a vessel, means the certificate of registration issued under section 14;

"certificated officer" means a member of the crew to whom a certificate of competency is issued under Part VII;

"Continuous Discharge Book" means a seaman's record book of service issued by the maritime authorities of Malaŵi or of any country bordering the inland waters;

"contracting country" means any foreign country to which any maritime convention mentioned herein applies;

"Court of investigation" means the court of investigation appointed under section 180;

"Crew" means any person employed to work on board a vessel on a voyage including an apprentice but excluding a fisherman or any person employed solely in a port or a pilot;

"delivery account" means an account of the personal effect and wages of a seaman who is left behind;

"dangerous goods" has the meaning assigned to it in section 145;

"distressed seaman" means a seaman or apprentice found in distress by reason of having been shipwrecked, discharged or left behind in a port other than his proper return port;

"existing vessel" means a vessel other than a new vessel;

"equipment" in relation to a vessel includes boats, tackle, pumps, apparel, furniture, life saving appliances of every description, spares, masts, rigging and sails, fog signals, lights, shapes and signals of distress, medicines and medical and surgical stores and appliances, charts, radio installations, appliances for preventing, detecting or extinguishing fires, buckets, compasses, axes, lanterns, loading and discharging gears and appliances belonging to or used in connexion with or necessary for the navigation and safety of the vessel;

"fishing vessel" means a vessel, irrespective of the method used, which is for the time-being employed in fishing for the purpose of sale or trade and which does not carry passengers or goods other than in connexion with such employment;

"grain" means wheat, oats, rye, barley, rice, pulses or seeds, maize, millet, sorghum;

"freeboard" means the distance measured vertically downwards, amidships, from the upper edge of the deck line to the upper edge of the related load line;

"GRT" means gross registered tonnage;

"harbour" means a place or area designated as harbour by the Minister under section 203;

"hire or reward" in relation to the use of any vessel, means the use of such vessel in inland waters in return for payment or material advantage on one or more occasions whether or not the vessel is used without the services of a master or crew;

"home port" means the port of registration of the vessel or the place at which a vessel is habitually kept when not on voyage;

"inland waters" means such waters as may be declared to be inland waters under section 42;

"inspection certificate" means an inspection certificate issued under section 59;

"liability" in relation to a vessel owner, includes liability of the vessel itself;

"licence" means a licence issued under section 30;

"load line certificate" means an international load line certificate or local load line certificate issued under section 86 or in the case of a foreign vessel, an international load line certificate issued by a contracting country;

"load line convention", where applicable, means the International Convention on Load Lines, 1966 and includes any amendments thereto;

"load line convention vessel" means a vessel belonging to a contracting country to the Load Line Convention;

"load line vessel" has the same meaning assigned to it under section 84;

"local safety certificate" means a certificate issued under section 60;

"Malaŵi vessel" means any vessel registered in Malaŵi under this Act;

"master" means the person having command or in charge of the vessel;

"navigation mark" means a lighthouse, beacon, busy traffic separation scheme mark, ships routing mark and any marks used for navigation;

"near shore limits" means the limits of the inland waters of Malaŵi, that is to say ten nautical miles from the nearest baseline from which the territorial waters of Malaŵi is established in accordance with the bilateral or multilateral agreement;

"new vessel" means a vessel the keel of which is laid, or is at an equivalent stage of production, after the commencement of this Act;

"official log-book" means the official log-book required to be kept under section 126;

"owner", in relation to a vessel, includes the owner's agent in the case of a vessel which is the subject of charter, hire-purchase agreement, the person in possession of the vessel in terms of that agreement;

"passenger", in relation to a vessel, means any other person other than the master and the crew, a person employed or engaged in any capacity on board the vessel on the business of the vessel, and a child under the age of one (1) year;

"passenger vessel" means a vessel carrying more than 12 passengers;

"proper return port", in relation to a seaman, means a port in Malaŵi or in the country to which he belongs; or the port at which he was embarked; or in the case of a discharged seaman, the port agreed upon at the time of his discharge;

"medical practitioner" has the meaning assigned thereto in the Medical Practitioners and Dentists Act; Cap. 36:01

"receiver" means the receiver of wrecks appointed under section 153;

"registrar of vessels" means the registrar of vessels appointed by the Minister under section 11;

"retention account" means the account of the expenses incurred by the owner or master of a vessel by reason of the absence without leave of a seaman from the vessel;

"safety convention", where applicable, means any International Convention relating to safety of life at sea to which Malaŵi is a party;

"safety convention certificate" means any certificate issued to a vessel which complies with any safety convention to which Malaŵi is a party;

"safety convention vessel" means a vessel registered in a country to which the Safety Convention applies;

"sailing vessel" means any description of vessel provided with sufficient sail area for navigation under sails alone, whether or not fitted with mechanical means of propulsion;

"seaman" includes an apprentice but excludes a person engaged solely for fishing purposes;

"Surveyor" means any person appointed under section 10 (2);

"surveyor's certificate" means a certificate issued by a surveyor under section 10;

"tanker" means a cargo vessel constructed or adopted for the carriage in bulk of liquid cargoes of an inflammable nature;

"ton" means the unit of measurement of the tonnage of a vessel ascertained in the manner prescribed;

"tropical storm" means a hurricane, typhoon, cyclone, tornado or other storm of similar nature;

"wages" include emoluments;

"wreck" includes goods which have been cast into inland waters and then sink and remain under water; goods which have been cast or fall into the inland waters and remain floating on the surface; goods which are sunk in inland waters, but are attached to a floating object in order that they may be found again; goods which are thrown away or abandoned; and, a vessel abandoned without hope or intention of recovery, when found in inland waters or in tidal water or on shores thereof;

"vessel" means a ship, drilling rig, production platform, sea plane and includes any vessel, lighter, tug, barge, structure or launch, however propelled, used or intended for use in navigation or mining;

Cap. 26:03 "young person" has the meaning assigned thereto in the Children and Young Persons Act.

3.—(1) Unless otherwise expressly provided, this Act shall apply to— Application of the Act

(*a*) Malaŵi vessels wherever they may be;

(*b*) all other vessels alike in a port on, or place in, or within the inland waters; and

(*c*) any structure, in or on inland waters and used for exploration or production operations under the Petroleum (Exploration and Production) Act, and to the person in charge of such structure. Cap. 61:02

(2) The provisions of Part II of this Act relating to the survey and registration of vessels shall also apply to vessels owned by the Government.

(3) Nothing in this Act shall be considered as exempting the master or owner or user of a vessel from compliance with the provision of the Fisheries Act or of any subsidiary legislation made thereunder. Cap. 66:05

PART II

Survey and Registration

4.—(1) Subject to the provision of subsection (2) the provisions of this Part shall apply to every vessel used on inland waters which is used for hire or reward or whose measurement exceeds such tonnage or measurement as may be prescribed by the Minister. Application of Part II

(2) There shall be exempted from the provisions of this Part—

(*a*) a dugout canoe;

(*b*) a vessel the home port of which is outside Malaŵi;

(*c*) any naval vessels of Malaŵi or of any foreign country;

(*d*) such other vessels or classes of vessels as may be prescribed by the Minister.

5. No person shall use or permit to be used on inland waters a vessel to which the provisions of this Part apply unless— Obligation to register

(*a*) such vessel has been surveyed and registered in accordance with the provisions of this Act; and

(*b*) there is in force in respect of such vessel a valid certificate of registration.

6.—(1) An application for the registration of a vessel shall be made to the Chief Surveyor— Application for registration

(*a*) where the vessel is owned by one or more physical persons by the person or any one of them owning the vessel as the case may be;

(*b*) where it is owned by a body corporate incorporated in Malaŵi, by the duly authorized agent of the body corporate.

(2) The application shall be accompanied by the fees prescribed for the registration of the vessel.

Declaration of ownership

7.—(1) No application for the registration of a vessel shall be entertained unless there is attached to the application a declaration by the person applying for the registration of the vessel stating—

(*a*) that the vessel is owned by—

(i) a citizen of Malaŵi; or

(ii) a body corporate incorporated in Malaŵi which is under effective control of citizens of Malaŵi;

(*b*) that the vessel is in a seaworthy condition;

(*c*) the names of the master and crew of the vessel and full particulars of their certificates of competency; and

(*d*) that any foreign marine document relating to the vessel has been surrendered to the Government which issued it or has been cancelled by the Government and that satisfactory proof of the surrender or cancellation has been attached to the declaration.

(2) A declaration under this section shall be made in the presence of the Chief Surveyor or an officer authorized by him.

First registration

8.—(1) Subject to the provisions of subsection (2), where a vessel is to be registered for the first time, the applicant for the registration of the vessel shall attach to the declaration required under section 7—

(*a*) a builder's certificate, signed by the builder of the vessel;

(*b*) a true account of the proper denomination of the tonnage of the vessel as estimated by him;

(*c*) the time and place where it was built; and

(*d*) the name of the person on whose account the vessel was built and if there has been any sale, the instrument under which the vessel has become vested in the applicant.

(2) Where the applicant declares that the time and place of the building of the vessel are unknown to him or that the builder's certificate cannot be procured, the applicant shall attach to the declaration the instrument by which ownership of the vessel has been acquired and a certificate from an approved surveyor at the last port of registration giving the estimated age and condition of seaworthiness of the vessel.

Marking of vessels

9.—(1) Every vessel shall, before registration, be marked permanently and conspicuously to the satisfaction of the Chief Surveyor as follows—

(*a*) the name of the vessel as approved by the surveyor shall be marked on each of the bows of the vessel and the name of the vessel and the port of registration shall be marked on the stern of the vessel on dark background in white or yellow letters or on a light background in black letters such letters to be of length of not less than 10 centimetres, and of proportionate breadth;

(*b*) the official number and the number denoting registered net tonnage of the vessel shall be cut in on the main beam of the vessel;

(*c*) a scale of 30 centimetres denoting the vessel's draught of water shall be marked on each side of its stern and its stern post in Roman capital letters or in figures of not less than 10 centimetres in length, the lower line of such letters or figures to coincide with the draught line denoted thereby, and those letters or figures shall be marked by being cut in or painted white or yellow on a dark background or in such other way as the Chief Surveyor may approve.

(2) Where the scale of 30 centimetres showing the vessels draught of water is misleading, the owner of the vessel shall commit an offence.

(3) The marks required under subsection (1) shall be permanently marked, and no alteration shall be made to them except where any of the particulars of the vessel are altered in the manner provided by this Act.

(4) Where a Surveyor certifies that a vessel is insufficiently or inaccurately marked, the vessel may be detained until the insufficiency or inaccuracy has been remedied.

(5) The Chief Surveyor may, where he thinks fit, allow the markings required under subsection (1) (*c*) to be in a system other than metric system.

(6) The name of the vessel shall not be changed except with the approval of the Chief Surveyor.

(7) Where an owner or master of a vessel neglects to cause the vessel to be marked as required by this section or to keep her so marked, or where any person conceals, removes, alters, defaces or obliterates or permits any person under his control to conceal, remove, alter, deface or obliterate any of the marks, except in accordance with this Act, or for the purpose of escaping capture by an enemy, that owner or master or that person shall commit an offence.

Survey of vessels

10.—(1) A vessel shall be surveyed in accordance with the provisions of this Act before an application for registration is made.

(2) For the purpose of this Act the Minister shall, by notice published in the *Gazette*, appoint a surveyor for each port of

registry and an application for the survey of a vessel shall be made by the owner of the vessel in the form and manner prescribed to a surveyor at a port of registry on the inland waters on which the home port of the vessel is situated.

(3) After receipt of an application under subsection (2) the surveyor concerned shall survey the vessel for the purpose of determining—

(*a*) whether the vessel is seaworthy;

(*b*) whether the vessel is equipped in accordance with the provisions of this Act;

(*c*) the description, tonnage, dimensions, name and method of propulsion;

(*d*) the geographical limits or areas of inland waters outside which the vessel may not be used having regard to her construction, suitability for navigation and safe operation;

(*e*) the maximum number of passengers and the maximum quantity of cargo to be carried therein;

(*f*) the crew to be carried therein and standards of competency to be attained by members of such crew; and

(*g*) such further matters as may be prescribed by the Chief Surveyor.

(4) On completion of his survey under subsection (3) the surveyor shall, if he is satisfied that the vessel is seaworthy and is equipped in accordance with the provisions of this Act, issue a certificate in such form as may be prescribed, setting out the information and his opinion relating to the matters referred to in subsection (3).

(5) Where a surveyor, in the course of a survey under subsection (3), finds a vessel to be unseaworthy or to lack equipment required under this Act, he shall make a full list in writing of all such defects and shall give a copy thereof to the owner of the vessel and shall notify him of the date by which the vessel may be produced for further examination, and after all such defects are subsequently remedied to the satisfaction of the surveyor concerned, he shall issue a certificate in accordance with the provisions of subsection (4).

(6) A surveyor's certificate shall be valid for such period as may be prescribed.

Register of vessels

11.—(1) The Minister shall appoint a registrar who shall keep a register in which shall be entered—

(*a*) the name of the vessel;

(*b*) the official number of the vessel;

(*c*) details of ownership of the vessel;

(*d*) particulars respecting the origin of the vessel as stated in the declaration required under section 7;

(*e*) the instruments of transfer of the vessel;

(*f*) mortgages, including where the vessel was previously registered in another country, mortgages inscribed in the register of that country;

(*g*) certificates of permanent and provisional registration; and

(*h*) where the vessel was previously registered in another country, evidence that any foreign certificate of the vessel's previous registration has been surrendered to or cancelled by the Government which issued it.

(2) On payment of the prescribed fee, any person who satisfies the registrar of his interest in a vessel may during hours of official business obtain certified copies of any entry in the register.

(3) The owner of a vessel shall inform the registrar of his address and that of his agent at the time of the registration of the vessel and shall notify him of any change in the address within seven days of the change.

(4) On registration the registrar shall retain in his possession—

(*a*) the declaration required under section 7;

(*b*) the surveyor's certificate required under section 10;

(*c*) any builder's certificate required under section 8; and

(*d*) the instrument required under section 11.

(5) The registrar shall not register a vessel which has been brought to inland waters from outside Malaŵi unless he is satisfied by such proof as he may require that the provisions of the Customs and Excise Act, applicable to the vessel, have been complied with. Cap. 42:01

Port of registration

12.—(1) For the purposes of this Act, the Minister shall, by notice published in the *Gazette*, designate ports of registry and shall appoint a registrar for each such port.

(2) Every registrar shall, in respect of the port of registry for which he is appointed, maintain in the form and manner prescribed a register of vessels registered in the port.

Liability of registered owners

13. Where two or more persons are registered as owners of a vessel, each of them shall be jointly and severally responsible for any liability incurred in respect of the vessel under this Act.

Issue of certificate of registration

14.—(1) Where the registrar is satisfied that, in relation to an application for the registration of a vessel, this Act has been complied with and that the fees prescribed for the registration of the vessel have been paid, he may grant to the applicant a certificate of registration.

(2) A certificate issued under subsection (1) shall be in such form as may be approved by the Chief Surveyor and shall contain all the particulars of the vessel entered in the Register.

(3) Any person who uses for navigation of a vessel a certificate issued otherwise than in accordance with this section, shall commit an offence.

Custody of certificate of registration

15.—(1) A certificate of registration shall be used only for the lawful navigation of the vessel for which it is granted and shall not be subject to detention by reason of any title, mortgage, charge or interest claimed in respect of the vessel.

(2) No person, who has in his possession or under his control the certificate of registration of a vessel, shall refuse to deliver the certificate on demand—

(*a*) to a person entitled to the custody thereof for the purpose of the lawful navigation of the vessel; and

(*b*) to the Chief Surveyor or to any authorized officer.

(3) Any person who, without reasonable cause, refuses to deliver the certificate as required by subsection (2) shall commit an offence.

Lost certificate of registration

16.—(1) Where a certificate of registration of a vessel is mislaid, lost or destroyed, or where the registrar is otherwise satisfied that a new certificate should be granted, the registrar may grant a new certificate.

(2) A declaration of loss of certificate of registration shall be made by the master of the vessel, or some other person who has actual knowledge of the loss, who shall state to the best of his knowledge and belief, the circumstances of the loss and the name and description of the registered owner of the vessel.

(3) Pending the issue of a new certificate of registration under subsection (1), an authorized officer may, on receiving a written declaration of loss of certificate under subsection (2), grant a provisional certificate, which shall contain a statement of the circumstances under which it was granted.

(4) A provisional certificate of registration granted under this section shall be valid for such period not exceeding sixty days or as may be specified in the certificate.

Surrender of certificate of registration

17.—(1) Where under this Act the certificate of registration of a vessel is cancelled or suspended, the registrar shall cause written notice of the cancellation or suspension to be served on the master of the vessel.

(2) On service of a notice under subsection (1) the master of the vessel shall within seven (7) days of the service of the notice deliver the certificate of registration of the vessel to an authorized officer.

(3) No master of a vessel, the certificate of registration of which has been cancelled or suspended, shall take the vessel out on inland waters.

(4) Any master of a vessel who contravenes this section shall commit an offence.

Duration and renewal of certificate of registration

18.—(1) Unless otherwise provided under this Act every certificate of registration shall remain in force and be deemed to be a valid certificate of registration for such period as may be prescribed.

(2) Application for renewal of a certificate of registration shall be made by the owner of the vessel in the form and manner prescribed at any time not earlier than one month before such certificate expires, and shall in all cases be accompanied by a valid surveyor's certificate.

(3) Where the owner of a vessel had made an application for renewal of a certificate of registration in accordance with the provisions of subsection (2), the certificate of registration shall be treated as remaining in force and be deemed to be a valid certificate of registration until the owner is notified in writing of the result of his application.

Wrecked and abandoned vessels

19.—(1) Where a vessel is wrecked, abandoned, taken by the enemy, burnt or broken up or ceases to be a vessel, the owner of the vessel shall, within seven days of obtaining knowledge of that event, give written notice thereof to the registrar.

(2) The registrar shall, on receiving any notice under subsection (1), make an entry thereof in the register, and the registration of the vessel in the registry shall be cancelled except in so far as it relates to any unsatisfied mortgage.

(3) Except where the certificate of registration is lost or destroyed, the owner or master of the vessel shall in any of the events referred to in subsection (1) deliver the certificate to the Chief Surveyor—

(*a*) where the event occurs in Malaŵi waters, within seven days of its occurrence;

(*b*) where the event occurs elsewhere, within seven days of his arrival in Malaŵi or any other port.

Amendments in certificate of registration and register

20.—(1) Subject to the provisions of subsection (2), where any particular concerning a vessel in respect of which a certificate of registration is in force is so altered as not to correspond with the particulars concerning such vessel contained in the register of vessels under section 11 (1), the owner shall, not later than twenty-one days after such alteration, submit the certificate of registration to the registrar by whom it was issued and notify him of the reasons for such submission and such registrar shall make all necessary amendments in the certificate and in the register of vessels. The registrar may, in his discretion, issue a

new certificate of registration instead of amending a certificate under this subsection and may cancel a certificate and delete relevant entries in the register when he is satisfied that a vessel is permanently removed from or is permanently incapacitated for use in inland waters.

(2) Where an amendment in a certificate of registration is required by reason of—

(*a*) an alteration in the dimensions, superstructure or tonnage of the vessel, or a permanent alteration in the method of propulsion of the vessel, or the addition of a superstructure to the vessel; or

(*b*) the use for hire or reward of a vessel which was not used for that purpose when the certificate of registration was last issued or renewed,

the registrar concerned shall not make any such amendment unless the certificate of registration submitted to him under subsection (1) is accompanied by a valid surveyor's certificate issued, as the case may be, after the completion of the alteration described before the use of the vessel for hire or reward.

(3) Where an owner fails to comply with the provisions of subsection (1) the certificate of registration in question shall, unless, the registrar concerned otherwise directs, be no longer deemed to be a valid certificate of registration.

(4) Subject to the provisions of this section, the registration of a vessel may be transferred from one port of registry to another on written application by the owner to the registrar at the existing port of registry. Every such application shall be accompanied by the certificate of registration for the vessel in question.

(5) Upon receiving an application under subsection (4) the registrar concerned shall transmit notice thereof to the registrar at the intended port of registry together with the certificate of registration and a copy of all particulars relating to the vessel as noted in the register under his control. On the receipt of such documents the registrar at the intended port of registry shall, subject to the provisions of subsection (6), enter in his register all the particulars relevant to the vessel in question and shall issue a new certificate of registration and thereafter the vessel shall be considered for the purposes of this Act as being registered at the new port of registry.

(6) Where, in the case of an application to transfer registration of a vessel under subsections (4) and (5), the intended port of registry is not on the same inland waters as the existing port of registry, the registrar at the intended port of registry may, before complying with the provisions of subsection (5), have regard to the suitability of the vessel for safe navigation on the inland waters on which the intended port of registry is

situated and may require a surveyor to survey the vessel and report to him as to such suitability.

If a surveyor so required reports that any alteration in the construction, condition or equipment of the vessel is necessary to make it safe for navigation on the inland waters in which the intended port of registry is situated, the registrar at such port shall not register the vessel under subsection (5) until a surveyor is satisfied that such alteration has been made.

(7) Where the registration of a vessel is transferred to a new port of registry under subsections (4) and (5), the new certificate of registration issued under subsection (5) shall, unless otherwise provided under this Act, remain in force and be deemed to be a valid certificate of registration until the date of expiry of the certificate which it replaces, so however, that if it has been issued after a survey required under subsection (6), its period of validity shall commence on the date on which it is issued.

Re-registration of wrecked or abandoned vessel

21. Where a vessel has been wrecked or abandoned, the registrar may, on application by the owner of the vessel, register the vessel if he is satisfied that the vessel has been surveyed by a surveyor and certified by him to be seaworthy.

Masters and crews of vessels

22. The Minister may prescribe classes of vessels described by tonnage, dimension or, either additionally or alternatively, the purpose for which they are used, which shall not be used upon inland waters unless under the command or in the charge of a competent master and may prescribe the numbers and standards of competency of persons to be carried as crew in a vessel of any such class.

PART III

Mortgages, Alterations and Transmissions

Transfer of vessels

23.—(1) Any transfer of a vessel shall be made in writing in such form as may be approved by the Chief Surveyor.

(2) The instrument witnessing the transfer shall—

(*a*) contain the same description of the vessel as is set out in her certificate of registration; and

(*b*) be executed by the transferee in the presence of, and be attested by, two witnesses.

(3) Notwithstanding any other written law, any transfer made otherwise than in accordance with this section shall be null and void.

Registration of transfer

24. Every instrument witnessing the transfer of a vessel shall, within twenty-one days of the transfer, be produced to the Chief Surveyor together with the declaration required under section 7 and the registrar—

(*a*) shall thereupon enter in the register the name of the transferee as owner of vessel; and

(*b*) shall endorse on the instrument of transfer the fact of that entry having been made and the date on which it was made.

Transmission of vessel

25.—(1) Where on the death or bankruptcy of the owner of the vessel, or on the distribution of his assets, the ownership of the vessel is vested in a person entitled to own the vessel, that person shall make a declaration in accordance with subsection (2), before a commissioner for oaths in the presence of, and attested by, two witnesses.

(2) A declaration under subsection (1) shall contain the same description of the vessel as is specified in a certificate of registration and shall be regarded for all purpose as an instrument of transfer of the vessel and be registered as required under section 24.

(3) Where on the death or bankruptcy of the owner of the vessel, or on the distribution of his assets, the ownership of the vessel is vested in a person who is not entitled to own the vessel, that person shall, within six months of the transmission of the ownership of the vessel to him, sell the vessel and if he fails to do so the ownership of the vessel shall vest in the Administrator General under the Administrator General Act.

Cap. 10:01

(4) Where the ownership of the vessel is vested in the Administrator General under subsection (3), the Administrator General shall sell the vessel and pay over to the person in whom the ownership of the vessel was originally transmitted, the price obtained on the sale after deduction of the expenses incurred on the sale.

Mortgage of vessel

26. A vessel may be given in mortgage as provided by the law for the time being governing mortgages and liens in Malaŵi.

Alterations to vessel

27.—(1) Where a vessel is so altered as not to correspond with the particulars relating to her tonnage or description in the register, the owner shall, within thirty days after the completion of the alteration, notify the registrar of the alteration and shall produce a certificate from a surveyor stating the particulars of the alteration.

(2) On receipt of the notice of alteration under subsection (1), the registrar shall cause the alteration to be registered or direct that the vessel be registered anew.

(3) Where the owner fails to comply with subsection (1), he shall commit an offence and the registrar may cancel or suspend the certificate of registration of the vessel and detain the vessel until these requirements are complied with.

Registration of alteration

28.—(1) For the purpose of registration of an alteration in a vessel, the certificate of registration of the vessel shall be produced to the registrar who shall—

(*a*) retain the certificate of registration and grant a new certificate of registration containing description of the vessel as altered; and

(*b*) endorse and sign on the existing certificate a memorandum of the alterations.

(2) The registrar shall enter in the register the particulars of the alteration.

Provisional endorsement of alterations

29.—(1) Where a vessel is so altered at any port or place outside Malaŵi as not to correspond with the particulars relating to her tonnage or description in the register the owner of the vessel shall make an application to an authorized officer for provisional endorsement of the particulars of the alterations on the certificate of registration of the vessel.

(2) On receipt of an application under subsection (1), the authorized officer may grant or refuse the application and where he grants the application the endorsement shall contain a statement that it is provisional.

PART IV

Licensing Arrangements

Licensing authority

30. A licensing authority for the purposes of this Act shall be such public officer or public officers as the Minister may, by notice published in the *Gazette*, appoint.

Licensing of vessels used for water transport

31.—(1) Subject to subsection (2), no person shall, except under and in accordance with the terms of a licence issued under this Act, use any vessel upon inland waters for the carriage of—

(*a*) any goods or any persons for hire or reward; or

(*b*) any goods for or in connexion with any trade or business:

Provided that fishing gear and fresh fish carried on board a fishing vessel shall not be considered to be goods for the purposes of this subsection.

(2) The Minister may, by notice published in the *Gazette*, exempt any vessel or class of vessels from the provisions of this section.

Using vessels in contravention of section 31

32. Any person who uses a vessel in contravention of section 31 shall be guilty of an offence and liable to a fine of K500.

Duration of licence

33.—(1) Every licence shall, unless revoked, continue to be in force for one year from the date on which it takes effect:

Provided that if on the date of the expiration of a licence proceedings are pending before the licensing authority on an application for the grant of a new licence in substitution for an

existing licence held by the applicant, the existing licence shall continue to be in force until such application is disposed of.

(2) With a view to enabling any vessel to be used temporarily—

(*a*) for the purpose of a seasonal business;

(*b*) for the purpose of the execution of a particular piece of work; or

(*c*) for any other purpose of limited duration,

a short-term licence may be granted for a period not exceeding three months.

Licence not transferable

34. No licence shall be transferable except with the written consent of the licensing authority endorsed on such licence.

Form of licence

35. A licence shall be in such form as may be prescribed and a separate licence shall be issued in respect of each vessel.

Procedure for application for licence

36. Every person applying for a licence to use any vessel for the carriage of passengers or goods shall submit in writing to the licensing authority indicating—

(*a*) the type of vessel to be used;

(*b*) the construction and motive power of such vessels;

(*c*) the total number of crew to be carried in such vessel;

(*d*) the number of passengers such vessel is intended to carry;

(*e*) the places between which such vessel is intended to be navigated including places, if any, outside Malaŵi and the services to be provided thereby;

(*f*) such other particulars as the licensing authority may require in relation to the application.

Objection to application for licence

37.—(1) A licensing authority shall publish in the *Gazette* notice of every application for a licence and such notice shall specify the time within which, and the manner in which, objections may be made to the grant of the application.

(2) When considering an application, the licensing authority shall have regard to any objections to the applications which may be made by persons who are already providing transport facilities for the carriage of goods or passengers between the same places which the applicant intends to serve.

Discretion of the licensing authority to grant or refuse licences

38.—(1) A licensing authority shall have full powers in its discretion either to grant or to refuse any application for a licence or to issue any licence subject to such conditions as the licensing authority may think fit to attach.

(2) In exercising its discretion as aforesaid, the licensing authority shall have regard to the following matters—

(*a*) the extent to which the proposed services is necessary or desirable in the public interest;

(*b*) the extent to which it is necessary in the public interest to prevent uneconomic competition with other transport services;

(*c*) the extent to which the route or routes in respect of which the application is made are already served;

(*d*) the desirability of encouraging the provision of adequate and efficient services;

(*e*) the desirability of eliminating and preventing the growth of unnecessary or unremunerative services;

(*f*) the coordination of all forms of passenger and goods transport;

(*g*) the interest or interests of those requiring as well as those providing facilities for transport;

(*h*) the applicant's reliability, financial stability and the facilities at his disposal for carrying out proposed services; and

(*i*) the condition of the vessel in respect of which the application is made and the fitness of such vessel for the purpose for which the applicant intends to use it.

Condition of licences

39.—(1) It shall be a condition of every licence issued under this Act—

(*a*) that the vessel in respect of which it is issued is maintained in a fit and serviceable condition;

(*b*) that the provisions of any law for the time being in force relating to prevention and control of pollution, limits of weight, laden and unladen, the loading of vessels and the number of passengers to be carried are complied with in relation to such vessel.

(2) Without prejudice to the generality of the provisions of section (1) a licensing authority may, in its discretion, attach to a licence all or any of the following conditions—

(*a*) a condition that the vessel in respect of which it is issued shall or shall not be used in a specified area or over specified routes;

(*b*) a condition that certain classes or descriptions of goods shall or shall not be carried;

(*c*) a condition specifying the charges or the maximum or minimum charges to be made for the carriage of goods and passengers;

(*d*) a condition specifying the maximum laden weight of such vessel;

(*e*) a condition that passengers may or may not be carried; and

(*f*) a condition specifying the maximum number of passengers which may be carried.

(3) If the applicant has stated in his application for a licence that the vessel to which the application relates is only to be used

within Malaŵi inland waters, it shall be a condition of the licence issued upon such application that the vessel shall not be used outside Malaŵi inland waters.

(4) The licensing authority may, from time to time, cancel or vary any of the conditions of a licence.

(5) Any person who fails to comply with any condition of the licence held by him shall be guilty of an offence and liable to a fine of K200.

Power to revoke or suspend licences

40.—(1) A licence may be revoked or suspended by the licensing authority on the ground that any of the conditions of the licence have not been complied with.

(2) In any case where a licence is revoked or suspended the licensing authority shall, if requested by the licence holder, state in writing the grounds for the revocation or suspension.

Provision for appeals in connexion with licences

41. Any person who—

(*a*) being an applicant for a licence, is aggrieved by the decision of the licensing authority on the application; or

(*b*) having duly made an objection to any such application as aforesaid, being an objection to which the licensing authority is bound to have regard, is aggrieved by the decision of the licensing authority thereon; or

(*c*) being the holder of a licence, is aggrieved by the revocation or suspension thereof, or by the variation of any of the conditions thereof,

may appeal to the Minister whose decision shall be final.

PART V

Bilateral and Multilateral Arrangements

Declaration of inland waters

42. The Minister may, by notice published in the *Gazette*—

(*a*) declare any lake or river or area of water or port thereof to be inland waters for the purposes of this Act;

(*b*) designate places or areas of inland waters or land as harbours;

(*c*) make regulations for the management, control and safety of any such inland waters and harbours and of vessels and persons and cargo within them, the powers of persons to effect such control and the payment of fees for services within such harbours; and

(*d*) after consultation with the Minister for the time being responsible for matters of the environment, make regulations for the prevention and control of pollution of the marine environment.

Agreements with other countries

43.—(1) The Minister may, under such conditions as he may deem necessary, conclude agreements with the government of any country which borders on any lake or river of which a part has been declared to be inland waters and in any such agreement may make arrangements—

(*a*) for the recognition and effect in such country of documents issued for the purposes of this Act, and for the recognition and effect in Malaŵi of documents issued in such country in relation to vessels, master and crew;

(*b*) for the use on inland waters of vessels registered in such country and the use on the inland waters of such vessels registered under this Act;

(*c*) for the recognition and effect of any bilateral or multilateral arrangements and treaties or agreements on regional cooperation entered into or to be entered into by the Government of Malaŵi;

(*d*) for the safety of passengers, crews and property abroad and the navigation of vessels used on inland waters and on the waters of such country;

(*e*) for access, by commercial vessels, to inland waters and ports of Malaŵi by vessels registered in such country and by Malaŵi vessels to inland waters and ports of such country; and

(*f*) for any other matters incidental to this Part.

(2) Every agreement or treaty or arrangement concluded under subsection (1) shall be published in the *Gazette*.

Existing treaty obligations paramount

44. Where the Minister is satisfied that the enforcement of any provision of this Act in regard to vessels of any country would be inconsistent with the obligations of the Government of Malaŵi under any treaty, convention or agreement entered into with that country, the Minister may, by order published in the *Gazette*, suspend the operation of that provision with regard to vessels of that country so far as he may deem necessary to enable the aforementioned obligations to be fulfilled.

PART VI

Surveys and Inspections

Division A—Surveys

Regulations to implement safety conventions

45. The Minister may make such regulations as he may think fit to give effect to any International Convention on Safety or Tonnage to which Malaŵi is a party.

Surveys and inspections

46.—(1) Surveyors, boat examiners and other authorized officers appointed under this Act may carry out surveys and inspections of vessels for the purposes of this Act.

(2) Any person referred to under subsection (1) may carry out other assignments as the Chief Surveyor may direct.

Purposes of surveys and inspections

47. A survey or inspection shall be in respect of any or all of the following matters—

(*a*) the boilers and machinery of motor vessels;

(*b*) the equipment of vessels including the tackles, furnishings and appurtenances;

(*d*) the life-saving, fire fighting and other safety installations and appliances of vessels;

(*e*) the radio-telegraphy and radio-telephony installations of vessels;

(*f*) the storage and manner of loading of cargoes and storage of dangerous goods;

(*g*) officer, crew and passenger accommodation and facilities; and

(*h*) any other matters incidental thereto.

Powers of surveyors and boat examiners

48.—(1) A surveyor, boat examiner and authorized officer may, in the performance of his duties, at all reasonable times, go on board any Malaŵian vessel or on any foreign vessel on inland waters or at a port in Malaŵi, and inspect it or any of its machinery or equipment or the certificate of competency of any certificated officer on board.

(2) Where—

(*a*) a surveyor, boat examiner or authorized officer considers a vessel unsafe or the machinery or equipment defective in such a way as to expose persons on board to danger or in the case of a passenger vessel, unfit to carry passengers; or

(*b*) a surveyor, boat examiner or authorized officer finds that the provisions of this Act have not been complied with in respect of the vessel and considers that the vessel should not sail for that reason,

the surveyor or boat examiner or authorized officer may request the Chief Surveyor to detain the vessel until he is satisfied that the vessel can safely sail.

(3) Where the surveyor or boat examiner or authorized officer visits a vessel, he may ask the owner or his agent, the master or engineer, or any other person on board and in charge or appearing to be in charge of the vessel, any question concerning any accident that has happened on the vessel, and every such person shall fully and truly answer every such question and any person who fails to do so or who gives an answer which is not true in any particular material shall commit an offence.

(4) A surveyor, boat examiner or an authorized officer may require that the machinery of a vessel be put in motion so as to satisfy himself on its condition.

49. A surveyor or boat examiner or authorized officer shall keep, in such form as the Chief Surveyor may direct, a record of every inspection he makes. Records of surveyors and boat examiners

50. Every passenger vessel shall be surveyed— Survey of passenger vessels

(*a*) before the vessel is put into service;

(*b*) at intervals of not more than one calendar year; and

(*c*) at such other times as may be required by the Chief Surveyor.

51.—(1) The survey made before a passenger vessel is put into service shall include a complete inspection of the hull, machinery and equipment. Initial survey

(2) The survey under subsection (1) shall ensure that the arrangements, materials and scantlings of—

(*a*) the hull;

(*b*) the boiler and other pressure systems;

(*c*) the main and auxiliary machinery;

(*d*) the electrical installations;

(*e*) the radio installations;

(*f*) the radio installations in motor life-boats;

(*g*) the portable radio apparatus of survival craft;

(*h*) the life-saving appliances;

(*i*) the fire detecting and extinguishing appliances;

(*j*) the pilot ladders; and

(*k*) other equipment, including navigation aids,

fully comply with the requirements of any International Safety Conventions to which Malaŵi is a party and with any regulations which the Minister may make under this Act.

(3) The survey under subsection (1) shall also ensure that—

(*a*) the workmanship of all parts of the hull and machinery and equipment is satisfactory; and

(*b*) the vessel is provided with such lights and sound signals as are required by any International Conventions to which Malaŵi is a party.

52.—(1) Any periodic survey under this section shall ensure that the equipment listed under section 51 are in satisfactory condition and fit for the service for which they are intended and comply with the requirements of any International Safety Conventions to which Malaŵi is party and any regulations made under this Act. Periodic survey

(2) Any periodic survey under this section shall also ensure that the light, sound and distress signals of the vessel are in working order.

Additional survey

53.—(1) The Chief Surveyor may require additional survey under this section every time—

(*a*) an accident occurs on or to the vessel;

(*b*) a defect is discovered that affects the safety of the vessel or the efficiency or completeness of the life-saving appliances;

(*c*) important repairs or renewals are made to the vessel.

(2) The survey shall ensure that—

(*a*) the necessary repairs or renewals have been effectively made;

(*b*) the material and workmanship of the repairs or renewals are in all respects satisfactory; and

(*c*) the vessel complies in all respects with any International Safety Conventions to which Malaŵi is party.

Cargo vessels and fishing vessels

54.—(1) The hull, machinery and equipment of a cargo vessel and a fishing vessel shall be surveyed before it is put into service and thereafter at intervals of not more than four years or, if the Chief Surveyor so directs, at lesser intervals.

(2) The survey shall ensure that the arrangements, materials and scantlings of—

(*a*) the hull;

(*b*) the boiler and other pressure systems;

(*c*) the main and auxiliary machinery;

(*d*) the electrical installations; and

(*e*) other equipment,

are in all respects satisfactory for the service for which the vessel is intended.

Life-saving and fire fighting appliances

55.—(1) The life-saving appliances and fire fighting equipment of every cargo vessel and every fishing vessel shall be surveyed before they are put into service and thereafter at intervals of not more than two years or, if the Chief Surveyor so directs, at lesser intervals.

(2) The life-saving appliances; fire fighting and fire control plans in every cargo vessel or every fishing vessel and the pilot ladders light and sound signals and distress signals in every new and existing cargo vessel or fishing vessel shall be surveyed to ensure that they comply fully with the requirements of any International Safety Conventions to which Malaŵi is a party and any regulations which the Minister may make under this Act.

Radio installation

56. The radio installation in a cargo vessel or fishing vessel and any radio-telegraph installation in a motor lifeboat or any portable radio apparatus for survival craft that are carried in compliance with the requirements of any International Safety Conventions to which Malaŵi is a party or regulations made under this Act shall be surveyed at intervals of not more than one year.

Passenger vessels, pleasure crafts and oil tankers

57.—(1) The provisions of this Act shall, unless otherwise stated, apply without exception to—

(*a*) passenger vessels;

(*b*) yachts and pleasure crafts; and

(*c*) oil tankers.

(2) The Minister may make special or additional regulations to apply to vessels in subsection (1).

Survey reports to the Chief Surveyor

58. After every survey, the surveyor or boat examiner or other authorized officer shall send, or cause to be sent, a report of the survey to the Chief Surveyor.

Division B—Inspection

Inspection certificate

59. Where, in relation to a vessel being—

(*a*) a passenger vessel intended to carry more than twelve passengers;

(*b*) a cargo vessel exceeding five hundred GRT intended to be employed on a voyage outside Malaŵi; and

(*c*) a fishing vessel of fifteen metres or more, the Chief Surveyor is satisfied, on receipt of the report of a survey that all the relevant provisions of any International Safety Conventions to which Malaŵi is a party and the regulations made under this Act have been complied with, he shall issue in respect of the vessel, an appropriate safety convention certificate and an inspection certificate.

Safety certificates

60. The Minister may make regulations prescribing safety requirements and providing for the issue of local safety certificates in respect of—

(*a*) any vessel or class of vessels to which any International Safety Conventions to which Malaŵi is a party does not apply;

(*b*) for matters for which any International Safety Conventions to which Malaŵi is a party does not make express safety provisions in respect of any vessel or class of vessels to which the convention applies.

Posting of certificate

61. On receipt of an inspection certificate or local certificate or convention certificate, the owner or master of the vessel in respect of which the certificate is issued shall cause the certificate to be posted up in some conspicuous place on board the vessel for the information of all on board.

Alteration to vessel

62. An owner or master of the vessel in respect of which an inspection certificate or a local safety certificate or a safety convention certificate, has been issued who, without reasonable cause does or suffers to be done anything to the vessel whereby the certificate becomes inapplicable to the vessel or to other matters to which the certificate relates shall commit an offence.

Foreign safety convention certificates

63.—(1) The Minister may request the government of a country to which any International Safety Conventions apply to issue in respect of a Malaŵian vessel any certificate provided for by the said International Safety Conventions to which Malaŵi is a party.

(2) A certificate issued in pursuance of a request under subsection (1) and containing a statement that it has been so issued shall have the same effect as if it has been issued under this Act.

Certification of foreign vessels

64. The Minister may, at the request of the government of a country to which any International Safety Conventions apply, cause any certificate provided for by the said International Safety Conventions to which Malaŵi is a party to be issued in respect of a vessel of that country, if he is satisfied that the certificate can properly be issued.

PART VII

Manning Levels

Regulations for grant of certificates of competency and certificated officers

65. The Minister may make regulations for—

(*a*) the provision of certificated officers;

(*b*) the classes of vessels to be provided with certificated officers;

(*c*) the grant of certificates of competency; and

(*d*) other matters incidental thereto, to be provided under this Act.

Board of examiners and foreign certificates

66.—(1) For the purpose of granting certificates of competency to certificated officers, the Chief Surveyor shall appoint a board of examiners which shall—

(*a*) cause examinations to be held at such time and place as he may determine; and

(*b*) cause to be delivered the appropriate certificate of competency to every candidate who passes the examinations and gives satisfactory evidence of his experience, ability and good character.

(2) Where the law of any other country provides for examinations for, and the issue of certificates to, persons intending to act as certificated officers on board vessels and—

(*a*) the Chief Surveyor is satisfied that all examinations are so conducted as to be equally effective as the examinations conducted for the same purpose in Malaŵi under subsection (1); and

(*b*) any certificate is granted on principles that show the like qualifications and competency as those granted under this Act,

the Chief Surveyor may approve the certificate as an equivalent for a certificate granted under subsection (1).

(3) Where any person holding a certificate under subsection (2) applies to serve on a Malaŵi vessel, the Chief Surveyor may direct that—

(*a*) where the person is a citizen of Malaŵi, he shall be granted a certificate of equivalent grade under this Act;

(*b*) where the person is not a citizen of Malaŵi, he shall be issued with a licence authorizing him to serve on a Malaŵi vessel.

(4) Any licence issued under subsection (3) (*b*) shall be subject to such conditions as the Chief Surveyor may impose.

(5) The Chief Surveyor may, with the approval of the Minister, regulate the issue of certificate of competency to engine room attendants.

Loss of certificates

67. Where the certificated officer satisfies the Chief Surveyor that he has lost a certificate of competency or a licence issued to him under this Act, the Chief Surveyor may, on payment of the prescribed fee, deliver a certified copy of the certificate or the licence to him.

Production of certificates

68.—(1) Any person serving or engaged to serve on any Malaŵi vessel who holds a certificate of competency or a licence shall, on demand, produce the certificate or licence to the Chief Surveyor or his representative.

(2) Any person who fails, without reasonable cause, to comply with subsection (1) shall commit an offence.

Records of certificates and licences

69. The Chief Surveyor shall keep the register in which shall be recorded all matters relating to certificates of competency and licence, including their issue, cancellation, suspension or amendment.

Notification of engagement

70.—(1) Where a certificated officer is engaged on board a Malaŵi registered vessel outside Malaŵi, the master of the vessel shall, within seven days of the engagement, submit such particulars of the officer to the Chief Surveyor.

(2) Where the certificated officer ceases to be employed on a Malaŵi registered vessel outside Malaŵi, the master of the vessel shall, within seven days of the termination, notify the Chief Surveyor of the termination of the employment.

Sailing undermanned

71.—(1) Where a Malaŵi vessel sails without carrying such officers as are required to be carried in accordance with regulations made under section 65, the owner and the master of the vessel shall each commit an offence.

(2) The Chief Surveyor may cancel or suspend the certificate of registration of a vessel or detain the vessel until

it is properly manned in accordance with regulations made under section 65.

Contracts of apprenticeship

72.—(1) Every contract of apprenticeship to be performed on any Malaŵi vessel shall be signed in the presence of the Chief Surveyor by the apprentice and the owner of the vessel or his authorized representative.

(2) The Chief Surveyor shall attest the signing of the contract of apprenticeship where he is satisfied that the apprentice—

(*a*) understands the contents and provisions of the contract;

(*b*) freely consents to be bound thereby;

(*c*) has attained the age of 18; and

(*d*) is in possession of a certificate of a medical practitioner to the effect that he is physically fit for sea service.

PART VIII

Safety Provisions

Division A—Safety

Manning to ensure safety

73. Every vessel shall be manned with a crew both sufficient and efficient to ensure safety of life for the purpose of any intended voyage and shall be kept so manned.

Vessel's stability

74.—(1) There shall be carried on board every vessel such information in writing about the vessel's stability as is necessary for the guidance of the master of the vessel in loading and ballasting the vessel.

(2) The information required under subsection (1) shall be in such form as may be approved by the Chief Surveyor.

(3) The master of a vessel referred to in subsection (1) which sails in contravention of this section shall commit an offence.

Signalling lamp

75.—(1) No vessel which is more than 50 GRT shall set sail on voyage outside Malaŵi inland waters unless the vessel is provided with an efficient signalling lamp.

(2) The master of the vessel which sails on such a voyage outside Malaŵi inland waters in contravention of this section shall commit an offence.

Hazards to navigation

76.—(1) The master of the vessel on meeting a dangerous derelict, a tropical storm or any other direct danger to navigation shall report it to a vessel or vessels in the vicinity and to the nearest appropriate station on shore.

(2) The person in charge of a transmission station in Malaŵi or on board a vessel shall, on receiving a signal indicating that a message is about to be sent relating to hazards to navigation, refrain from sending messages for a time sufficient to allow other stations to receive the message.

Assistance in distress

77.—(1) The master of a vessel sailing on receiving signal from any source that a vessel or aircraft or survival craft is in distress shall proceed with all speed to the assistance of the vessel and any person in distress informing them if possible that he is doing so.

(2) Where the master is unable, or considers it unreasonable or unnecessary to proceed to the assistance of a vessel or a person in distress he shall enter in the official logbook of the vessel the reasons therefor.

(3) The master of any vessel in distress may request the master of any vessel which answers his distress signal to render assistance.

(4) The master of a vessel to whom a request is made under subsection (3) shall comply with the request and proceed with all speed to the assistance of the vessel in distress.

Giving helm orders

78. No person in a vessel shall, when the vessel is going ahead—

(*a*) give a helm or steering signal containing the word "star-board" or "right" unless he intends that the head of the vessel moves to the right; or

(*b*) give a helm or steering signal containing the word "port" or "left" unless he intends that the head of the vessel moves to the left.

Collision regulations

79.—(1) The Minister may make regulations, in this Act referred to as "collision regulations"—

(*a*) for the prevention of collision on inland waters;

(*b*) respecting the lights to be carried and exhibited;

(*c*) respecting the signals to be used; and

(*d*) respecting the steering and sailing rules to be observed by a vessel.

(2) Every owner or master of a vessel, seaplane or other craft who does not comply with the collision regulations shall commit an offence.

Presumption of fault

80. Where any damage to property arises from the non-observance of the collision regulations, the damage shall be presumed to have been caused by the wilful default of the person in charge of the vessel, seaplane or other craft not observing the collision regulations.

Assistance in collision

81.—(1) Where there is a collision between vessels, the master or person in charge of each vessel, shall so far as he can do so without danger to his own vessel, crew and passengers—

(*a*) render to the other vessel, her crew and her passengers such assistance as is practicable and necessary in order to preserve them from any danger caused by the collision;

(*b*) stay by the other vessel until he has ascertained that she has no need of further assistance; and

(*c*) give to the master or person in charge of the other vessel, the name of his own vessel, her port of registration, and the names of the ports from which she comes and to which she is bound.

(2) A master or person in charge of the vessel who fails, without reasonable cause, to comply with this section shall commit an offence.

Reporting of accidents

82.—(1) Where a vessel has been involved in an accident occasioning—

(*a*) loss of life or serious injury to any person; or

(*b*) any damage affecting her seaworthiness or her efficiency,

the owner or master of the vessel shall, within twenty-four hours of the occurrence of the accident or as soon as possible thereafter, transmit to the Chief Surveyor a written report of the accident.

(2) Every report of accident or damage to a vessel under subsection (1) shall be signed by the owner or master of the vessel and shall state—

(*a*) the particulars of the vessel and her location;

(*b*) the circumstances in which the accident or damage occurred; and

(*c*) the probable cause of the accident or damage.

(3) Any owner or master of a vessel who fails, without reasonable cause, to comply with this section shall commit an offence.

Division B—Load Lines

Load line regulations

83. The Minister may, by regulations published in the *Gazette*, in this Act referred to as "Load Line Regulations", make such provision as he sees fit to give effect to the Load Line Convention and, in particular to provide for—

(*a*) survey and determination of load lines, including conditions of assignment of freeboards;

(*b*) the stability, loading and ballast of vessels;

(*c*) the issue of certificates and the forms of the certificates; and

(*d*) any other matter relating to load lines.

Load line vessels

84.—(1) Load line vessels are all vessels other than—

(*a*) existing vessels of under 150 GRT;

(*b*) new vessels of less than 24 metres in length;

(*c*) naval vessels or police patrol vessels or coast guard vessels;

(*d*) vessels solely engaged in fishing; and

(*e*) pleasure yachts not engaged in trade.

(2) For the purpose of this Part, load line vessels consist of—

(*a*) international load line vessels, where applicable, being load line vessels that carry cargo or passengers between Malaŵi and other countries; and

(*b*) local load line vessels that are not international load line vessels.

(3) For purposes of this Part, a vessel shall be deemed to be loaded beyond the limits specified in her load line certificate if she is so loaded as to submerge the appropriate load line on each side in water when she has no list.

Compliance with regulations

85. The master of a load line vessel shall not take the vessel on Malaŵi inland waters unless—

(*a*) she has been surveyed in accordance with the load line regulations;

(*b*) she complies with the conditions of assignment of free-boards as determined in the load line regulations;

(*c*) she is marked on each side with—

(i) a deck mark, being a mark indicating the position of the uppermost complete deck as defined in the load line regulations; and

(ii) load lines, being lines indicating the several maximum depths to which the vessel can be safely loaded in various circumstances prescribed by the load line regulations; and

(*d*) it has been issued with a load line certificate by the Chief Surveyor.

Load line certificate

86.—(1) The Chief Surveyor shall issue a load line certificate to every vessel that complies with the provision of this Act relating to the load line.

(2) The Minister may request the government of a contracting country to issue a load line certificate to a Malaŵian load line vessel and a certificate so issued shall have the same effect as a certificate issued under subsection (1).

Renewal of load line certificate

87.—(1) Subject to a vessel being surveyed in accordance with the load line regulations, the load line certificate of a vessel shall be renewed at such intervals as the Chief Surveyor may prescribe.

(2) A load line certificate in respect of a vessel shall cease to be valid on the transfer of the vessel to the flag of another state, unless the Minister makes an endorsement thereon respecting the validity of the certificate.

Cancellation or suspension of load line certificate

88.—(1) Any load line certificate issued under this Part may be cancelled or suspended by the Chief Surveyor, where he has a reason to believe that—

(*a*) any survey on the basis of which the certificate was issued has been made by fraud or error;

(*b*) the certificate has been issued on false or erroneous information;

(*c*) since the making of a survey, material alterations have taken place in the hull or superstructure of the vessel in contravention of this Act; and

(*d*) the fittings and appliances for the protection of openings, the guard-rails, the freeing ports or the means of access to the quarters of the crew have not been maintained on the vessel in as effective condition as they were in when the certificate was issued.

(2) Where the load line certificate is cancelled or suspended, the Chief Surveyor may require the owner or master of the vessel to have the vessel surveyed again before the re-issue of the certificate or the grant of a new certificate.

Surrender of load line certificate

89.—(1) Where a load line certificate has expired or has been cancelled or suspended the Chief Surveyor shall require the owner or master of the vessel to which the certificate relates to surrender the certificate at such time and place as he may direct.

(2) The owner or master of a vessel, who without reasonable cause, fails to comply with a requirement under subsection (1) shall commit an offence.

Vessel without load line certificate

90.—(1) A load line vessel shall not set sail unless her master produces to the Chief Surveyor, when requested, a valid load line certificate.

(2) The Chief Surveyor may detain a vessel until her load line certificate is produced as required under subsection (1).

Display of load line certificate and entries

91.—(1) On receipt of a load line certificate, the owner or master of the vessel in respect of which the certificate is issued shall—

(*a*) cause it to be posted up in some conspicuous place on board the vessel for the period of its validity; and

(*b*) immediately enter in the official log-book the particulars as to the position of the deck line and load line which are specified in the certificate.

(2) Before any vessel leaves any port or place for the purpose of setting sail, the master of the vessel shall—

(*a*) enter in the official log-book such particulars relating to the depth to which the vessel is for the time being loaded; and

(*b*) subject to subsection (3), cause a notice in such form and containing such particulars as may be specified in the load line regulations to be posted up in some conspicuous place on board the vessel.

(3) The Chief Surveyor may exempt any class of vessel from the requirements of subsection (2).

(4) Where the owner or master of a vessel fails to comply with any requirement imposed on him by subsection (1) or (2), he shall commit an offence.

Load line certificate of foreign vessel

92. The Minister may, at the request of the Government of a contracting country, cause an appropriate load line certificate to be issued in respect of a vessel registered in that country, where he is satisfied that the certificate may properly be issued.

Inspection of foreign vessel

93.—(1) A surveyor may go on board any vessel within any port or place in Malaŵi for the purpose of examining the load line certificate relating to the vessel.

(2) Where a valid load line certificate in respect of a foreign vessel is produced to the surveyor on demand, the surveyor's power of inspecting the ship shall be limited to seeing that—

(*a*) the vessel is not loaded beyond the limits allowed by the certificate;

(*b*) lines are marked on the vessel in the position of the load lines specified in the certificate;

(*c*) no material alterations have taken place in the hull or superstructures of the vessel which affect the position in which any of those lines ought to be marked;

(*d*) the fittings and appliances for the protection of openings, the guard-rails, the freeing ports and the means of access to the crew's quarters are as when the certificate was issued.

(3) Where a valid load line certificate in respect of a foreign vessel is not produced to the surveyor, the surveyor may inspect the vessel for the purpose of ensuring that the provisions of this Part and regulations made under this Act have been complied with, as if the vessel were a Malaŵi vessel.

PART IX

The Crew

Division A—Contents of Agreement

Crew agreement

94.—(1) Subject to subsection (3), the owner of every vessel when on inland waters, shall enter into an agreement in writing with every seaman whom he engages as one of his crew.

(2) A crew agreement shall be dated at the time it is first signed.

Contents of crew agreement

95.—(1) A crew agreement shall state—

(*a*) the place at which it is made;

(*b*) the full names of the seaman;

(*c*) the place of birth of the seaman;

(*d*) the age and date of birth of the seaman;

(*e*) the name of the vessel on which the seaman undertakes to serve;

(*f*) the nature of the engagement;

(*g*) the period of the engagement whether for a single voyage or for a series of voyages or permanent;

(*h*) the port at which it is intended to discharge the crew;

(*i*) any place or ports of Malaŵi or other countries to which the voyage or engagements is not to extend;

(*j*) the place and date at which the seaman is to be on board the vessel or to begin work;

(*k*) the capacity in which the seaman is to serve;

(*l*) the amount of wages that the seaman is to receive, including any payment in advance or any allotment during his absence as provided under sections 105 and 106;

(*m*) the scale of the provisions that are to be supplied to seamen;

(*n*) the leave to which the seaman is entitled;

(*o*) any regulations as to the conduct of seamen on board vessels; and

(*p*) any contributions to be made by the employer and any member of the crew towards a pension fund.

(2) A crew agreement may contain such other stipulations as are agreed upon by the owner of the vessel and the seaman.

Posting of specimen agreement

96. The master of a vessel shall, at the commencement of every voyage, post up a legible specimen of the crew agreement in some part of the ship that is accessible to the crew.

Employment of young persons

97. No young person shall—

(*a*) be engaged to work on board a vessel unless he has obtained the consent in writing of his parent or guardian;

(*b*) be employed to work in the engine room of a vessel unless he is an apprentice working under supervision.

Continuous Discharge Book

98.—(1) The Chief Surveyor shall issue to every seaman engaged on a vessel a book, to be known as a Continuous Discharge Book, which shall contain a record of service of the seaman.

(2) The master of a vessel shall, on the discharge of a seaman from his vessel, make an entry in the Continuous Discharge Book of the time and place of discharge and shall sign the entry.

(3) An entry under subsection (1) shall not contain any statement as to wages or the quality of work of the discharged seaman.

(4) The master of a vessel shall, on the discharge of every certificated officer whose certificate of competency has been

delivered to and retained by him, return the certificate to the officer.

Character report

99. Where a seaman is discharged from a vessel, the owner of the vessel may make, sign and deliver to the seaman a character report in which the master shall report on the conduct, character and qualifications of the seaman.

Time and manner of payment

100.—(1) The owner or master of a vessel shall pay to each seaman engaged on his vessel the wages of the seaman within two working days after the arrival of the vessel at the port where the crew is to be discharged or on the seaman's discharge whichever is the earlier.

(2) The final wages of a seaman, may, with his consent, be paid over for the account of the seaman, to the Chief Surveyor and the receipt of the Chief Surveyor shall constitute an absolute discharge to the owner of the wages paid over to the Chief Surveyor.

Account of wages

101.—(1) The owner of a vessel shall, before discharging a seaman, deliver to him a full and true account of the seaman's wages.

(2) The account shall be delivered to the seaman not less than twenty-four hours before his discharge.

Deductions

102.—(1) The master of a vessel shall, before discharging a seaman, deliver to him a full and true account of the seaman's wages.

(2) The master of a vessel shall, during the voyage enter the various matters in respect of which the deductions are made with the amount of the respective deductions as they occur in a book kept for that purpose.

(3) The owner of the vessel shall, if required, produce the book at the time of the payment of the wages and at any hearing of any complaint or question relating to that payment.

Settlement of wages

103.—(1) Subject to subsection (2) where the wages of the seaman are not paid or settled as provided in this Part, the wages of the seaman shall continue to run and be payable until the time of the final settlement thereof.

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

(*a*) the delay in the payment of the seaman's wages is attributable solely to the act or default of the seaman;

(*b*) a reasonable dispute as to the liability of the owner or master of the vessel arises; or

(*c*) the delay is due to any other cause outside the control of the seaman or owner of the vessel.

(3) Where a seaman is discharged from a vessel and the settlement of his wages is completed, he shall endorse his

discharge on a crew agreement and sign a release of all claims in respect of the voyage or engagement for which his wages have been settled.

(4) The master of the vessel shall deliver a copy of the release so signed and attested to the Chief Surveyor.

Rate of exchange

104. Where a seaman has agreed with the owner of a vessel for payment of his wages in a specific currency, any payment of or on account of his wages if made in any currency other than that stated in the agreement, shall be made at the official rate of exchange for the currency at the place where, and on the day on which, the payment is made.

Payment in advance

105. A crew agreement may contain a stipulation for payment in advance, to or on behalf of a seaman conditionally on his commencement of work in pursuance of the agreement, of a sum not exceeding the equivalent of two weeks' wages payable to the seaman under the agreement.

Allotment of wages

106.—(1) A crew agreement may contain a stipulation that part of the wages due to a seaman, during his absence from Malaŵi, be allotted to such person and at such times as may be specified in the crew agreement.

(2) The amount that may be specified under subsection (1) shall not exceed fifty percent of a seaman's monthly wages.

(3) Any person who becomes entitled to an allotment under this section may sue and recover the amount of the allotment as if it were a debt due to him.

Right to wages and provisions

107. A seaman's right to wages and provisions shall begin at—

(*a*) the time at which he commences work, or

(*b*) the time specified in the agreement for his commencement of work or presence on board, whichever is the earlier.

Abandonment of wages and salvage

108. Any agreement whereby a seaman—

(*a*) abandons any privilege he may have under any enactment on a vessel in respect of his wages;

(*b*) is deprived of any remedy for the recovery of his wages;

(*c*) abandons his right to wages in case of the vessel; or

(*d*) abandons any right that he may have or obtain in the nature of salvage,

shall be null and void.

Premature termination of service

109.—(1) Where the service of a seaman terminates before the date contemplated in the agreement and is left on shore by reason of his unfitness or inability to proceed on the voyage, he shall be entitled to wages for time serviced up to the time of that termination.

(2) Where the service of a seaman terminates before the date contemplated in his agreement by reason of the loss or foundering of the vessel on which he was employed, he shall be entitled to receive wages in respect of each day on which he is unemployed during a period of two months from the date of termination of his service at the rate stipulated in his agreement.

Wages during sickness

110.—(1) A seaman shall be entitled to his wages during sickness on board a vessel or on shore sick leave.

(2) Where a seaman is by reason of sickness incapable of performing his duty and it is proved that his sickness—

(*a*) has been caused by his own wilful act or default; or

(*b*) is a sickness or an infirmity wilfully concealed at the time of engagement,

he shall not be entitled to wages for the time during which he is, by reason of the sickness, incapable of performing his duty.

Wages on improper discharge

111. Where a seaman who has signed an agreement is discharged otherwise than in accordance with the terms of the agreement—

(*a*) before the commencement of the voyage; or

(*b*) before the month's wages are earned, without fault on his part justifying the discharge and without his request to be discharged,

he shall, without prejudice to any other remedy available to him under any other enactment, be entitled to receive from the owner or master of the vessel any wages he might have earned together with compensation equivalent to one month's wages for the damage caused to him.

Annual leave

112.—(1) Every person shall be entitled after twelve months' continuous service on a vessel, or with the same employer or consecutively with several employers, to an annual leave with pay, the duration of which shall be stipulated in the crew agreement.

(2) Where the continuous service of the seaman is less than twelve months he shall be entitled to leave proportionate to the period served.

Custody of property of deceased seaman

113.—(1) Where any seaman serving on a vessel dies during a voyage, the master of the vessel shall take charge of all personal effects, including money, on the vessel, belonging to the deceased seaman.

(2) The master of the vessel shall enter in the official log-book—

(*a*) a statement of the amount of the money including the currencies, where applicable, in which they are;

(*b*) a description of the personal effects of the seaman; and

(*c*) a full statement of the wages due to the deceased.

Delivery of property of deceased seaman

114.—(1) Subject to subsection (2), the property of a deceased seaman shall be delivered by the owner of the vessel to the Chief Surveyor.

(2) The owner of the vessel may deduct from the property of the deceased seaman any expenses properly incurred in complying with subsection (1).

(3) Any person who claims to be entitled to the property of a deceased seaman shall make a claim to the Chief Surveyor within five years of the death of the seaman and no claim made thereafter shall be entertained by the Chief Surveyor.

(4) Where no claim to the property of a deceased seaman is made within the time specified in subsection (3), the Chief Surveyor shall cause the property to be sold by public auction and credit the net proceeds of the sale to the Consolidated Fund.

Division B—Provisions

Complaints as to provisions

115.—(1) Where four or more members of the crew of a vessel consider that the provisions or water provided for the use of the crew at any time are substandard or deficient in quantity they may make a complaint to that effect—

(*a*) in the first instance, to the owner of the vessel; and

(*b*) if there is no improvement, to the Chief Surveyor or to any authorized officer who may either examine the provisions or water complained of or cause them to be examined.

(2) Where the person making an examination under this section finds that the provisions or water are substandard or deficient in quality, he shall so inform in writing the owner of the vessel, and if the owner does not thereupon provide proper provisions or water, he shall commit an offence.

(3) Any person other than the Chief Surveyor conducting an examination under subsection (1) (*b*) shall send a report thereon to the Chief Surveyor.

Allowance for provisions

116. Where during the voyage of a vessel the allowance for provisions supplied to a seaman is deficient in quantity or any of those provisions are substandard, the seaman shall receive by way of compensation for the deficiency for so long as it lasts, an amount of money to be determined by the Chief Surveyor.

Weights and measures

117. The master of a vessel in which provisions are supplied to the crew shall keep on board proper weights and measures for determining the quantities of the several provisions supplied.

Qualified cook

118. Every vessel of 50 GRT or more shall, where passengers and crew are provided with food, carry a qualified crew cook and a qualified passenger cook.

Medical requisities

119.—(1) The owner and the master of a vessel shall ensure that the vessel carries medicine, medical stores and appliances in accordance with scales provided by regulations made under this Act.

(2) Where an authorized officer is of the opinion that the medicines, medical stores and appliances on a vessel are deficient in quantity or quality or are placed in improper receptacles, he shall give notice thereof in writing to the owner or master of the vessel and shall report the matter to the Chief Surveyor.

(3) The Chief Surveyor may, on receiving a report under subsection (2), suspend the certificate of registration of the vessel and detain the vessel until he is satisfied that the default has been remedied.

Expenses for medical treatment or burial

120.—(1) Where a member of the crew of a vessel receives, outside Malaŵi, any surgical or medical treatment, or any dental or optical treatment, the reasonable expense thereof shall be borne by the owner of the vessel.

(2) Where a member of the crew of a vessel dies and is buried or cremated outside Malaŵi or his place of residence, the expenses of his burial or cremation shall be borne by the owner of the vessel.

Medical personnel

121.—(1) Every vessel which leaves a port with one hundred persons or more on board shall carry on board, as part of her complement, a medical practitioner.

(2) Subsection (1) shall not apply to vessels operating within coastal or inland water ports.

Facilities for complaints

122. Where a seaman while on board a vessel informs the master of the vessel that he wishes to make a complaint to an authorized person against the master of the vessel or any other member of the crew, the master shall, as soon as the service of the vessel permits, allow the complainant to go ashore to make his complaint.

Division C—Discipline

Disciplinary proceedings

123.—(1) Where the Chief Surveyor is of the opinion that a person to whom a certificate of competency or a licence has been issued under this Act—

(*a*) is unfit to discharge his duties;

(*b*) has been guilty of misconduct or negligence in the discharge of his duties;

he shall inform the person of the charge and require him, by written notice, to show cause within such time as may be specified in the notice, why his certificate of competency or licence should not be cancelled or suspended.

(2) Where the person referred to in subsection (1) does not make any reply to the notice under subsection (1), the Chief Surveyor shall—

(*a*) cancel the certificate of competency or licence held by that person; or

(*b*) suspend his certificate of competency or licence for such period as he thinks fit; or

(*c*) censure that person.

(3) Where the person referred to in subsection (1) makes a reply to the notice under subsection (1) and the Chief Surveyor is not satisfied with his explanations, the Chief Surveyor shall report the matter to the Minister who shall appoint a fit and proper person, being a legal practitioner of not less than ten years' standing, to inquire into the charge and to make a report thereon to the Chief Surveyor, indicating at the same time how the matter should be dealt with.

(4) On receipt of a report under subsection (3), the Chief Surveyor may—

(*a*) cancel the certificate of competency or licence held by that person; or

(*b*) suspend his certificate of competency or licence for such a period as he thinks fit; or

(*c*) censure that person; or

(*d*) absolve him of the charge.

(5) Where a certificate of competency or licence has been cancelled or suspended under this section, the holder thereof shall, within seven days of being notified of the cancellation or suspension, deliver the certificate of competency or licence to the Chief Surveyor and where he fails to do so, he shall commit an offence.

Review by Minister

124. Where a certificate of competency or licence has been cancelled or suspended under section 123 the Minister may, in a fit and proper case—

(*a*) authorize the re-issue of the certificate of competency or licence or reduce the period of the suspension; or

(*b*) authorize the issue of a new certificate of competency or licence of a low grade in place of that cancelled or suspended.

Misconduct endangering vessel or life

125. A member of the crew of a vessel, who, by wilful breach of duty or by reason of drunkenness—

(*a*) does act in a manner tending to cause the immediate loss, destruction or serious damage to, the vessel or tending to pose an immediate danger to the life or limb of any person on board the vessel or another vessel; or

(*b*) refuses or omits to do any lawful act proper and requisite to be done by him for preserving the vessel from

immediate loss, destruction or serious danger to the vessel or any immediate danger to life or limb,

shall commit an offence.

Official log-book to be kept and delivered

126.—(1) The master of every vessel shall, in addition to the vessel's log-book, keep an official log-book.

(2) An entry required to be made in an official log-book shall—

(*a*) be made as soon as possible after the occurrence to which it relates;

(*b*) where it is not made on the same day as the occurrence, be made and dated to show the date of the occurrence and the entry respecting it;

(*c*) where it is made in respect of an occurrence happening before the arrival of the vessel at her final port of discharge, be made not later than twenty-four hours after arrival.

(3) Every entry in the official log-book shall be signed by the master and by another member of the crew, and where it is an entry of illness, injury or death, it shall be signed by any medical practitioner on board.

(4) The master of a vessel shall, within forty-eight hours after the vessel's arrival at her final port of destination or on the discharge of the crew, whichever first happens, deliver the official log-book of the voyage to the Chief Surveyor or to an authorized officer if the crew is discharged outside Malaŵi.

(5) Where a vessel is lost or abandoned, the owner or master of the vessel shall, where practicable, and as soon as possible, deliver or transmit to the Chief Surveyor any official log-book duly made out up to the time of the loss or abandonment.

(6) Where, by reason of the transfer of the ownership of a Malaŵi vessel, the official log-book ceases to be required in respect of the vessel, the owner or master of the vessel shall—

(*a*) where the vessel is in Malaŵi, within fifteen days; or

(*b*) where the vessel is outside Malaŵi within six months, of the transfer, deliver or transmit to the Chief Surveyor the official log-book duly made out up to the time of the transfer.

Particulars of entry

127. The master of every vessel shall enter or cause to be entered in the official log-book particulars therein—

(*a*) every conviction by a court of a member of his crew and the punishment inflicted;

(*b*) every offence committed by a member of his crew for which it is intended to institute proceedings, or for which punishment has been inflicted on board and the punishment inflicted;

(*c*) every case of illness or injury happening to a member of the crew, with the nature thereof and any medical treatment given;

(*d*) every refusal to a member of the crew to take any medicine;

(*e*) every birth and death happening on board the vessel;

(*f*) the name of every seaman who ceases to be a member of the crew otherwise than by death, stating the place, time, manner and cause thereof;

(*g*) the wages due to any seaman who dies during the voyage, and the gross amount of all deductions to be made from those wages;

(*h*) the sale of the effects of any seaman with a statement of each article sold and the sum received for it;

(*i*) every collision with any other vessel and the circumstances in which it occurred;

(*j*) the date and time of posting up in the vessel of a notice containing particulars of the vessel draught and freeboard; and

(*k*) any other entry directed by this Act to be entered in the log-book.

Breaches respecting official log-book

128.—(1) Where an official log-book is not kept or delivered as required by section 126, or an entry required under section 127 is not made in accordance with that section the master of the vessel shall commit an offence.

(2) Any person who wilfully destroys or mutilates or renders illegible any entry in an official log-book or wilfully makes or procures to be made a false or fraudulent entry in an official log-book shall commit an offence.

Division D—Relief and Repatriation

Return on loss or abandonment of vessel

129. Where a vessel is lost or abandoned the owner or master of the vessel shall deliver to the Chief Surveyor the list of persons on board at the time of loss or abandonment.

Documents to be handed over

130.—(1) Where during a voyage the master of a vessel is removed or suspended or for any other reason relinquishes command and is succeeded in command by some other person, he shall deliver to his successor the certificate of registration and the various documents which relate to the navigation and to the crew of the vessel and which are in his custody.

(2) The person taking over command of a vessel in accordance with subsection (1) shall immediately on assuming command of the vessel enter in the official log-book a list of the documents delivered to him.

Birth and death on board Cap. 24:01

131.—(1) Where a birth or death takes place on board a vessel while the vessel is on inland waters, the master of the vessel shall make an entry to that effect in the official log-book and shall draw up a memorandum or declaration of the birth, or death in accordance with section 19 of the Births and Deaths Registration Act, as the case may be.

Application of sections 132 to 134

132. Sections 132 to 134 shall apply to every vessel which engages a seaman in Malaŵi.

Repatriation of seamen

133.—(1) Where the agreement of a seaman terminates at a port other than the port of engagement, the seaman shall be returned to a proper return port at the expense of the owner or master of the vessel.

(2) The responsibility of the owner and master under this section shall include an obligation—

(*a*) to pay the cost of maintenance and any medical treatment until the seaman's arrival at his proper return port; and

(*b*) to ensure that the seaman does not become a charge on the Government.

Defaulting seamen not entitled to be returned

134. A seaman who has been left behind or discharged from his vessel as a result of his—

(*a*) desertion; or

(*b*) imprisonment,

shall not be entitled to be returned under section 138 at the expense of the owner or master of the vessel.

Security by owner or master

135. Where a seaman is to be left behind or discharged from the vessel at a port other than his port of engagement, an authorized officer may demand from the owner of the vessel adequate security or guarantee for the repatriation of the seaman to a proper return port.

Effects and wages of seaman left behind

136.—(1) Where a seaman engaged on a vessel is left at a place other than a proper return port, the master of the vessel shall enter in the official log-book, a statement of the personal effects left on board by the seaman and an account of wages due to him at the time he was left behind.

(2) On the termination of the voyage during which the seaman was left behind, the master of the vessel shall furnish to an authorized officer, within forty-eight hours after the arrival of the vessel at the port at which the voyage terminates, a delivery account and a retention account relating to the seaman.

(3) The master of the vessel shall, where required by an authorized officer, furnish such vouchers as may be necessary to verify the delivery and retention accounts.

(4) The master of the vessel shall deliver to an authorized officer, the personal effects of a seaman as shown in a delivery account, and the authorized officer shall give to the master a receipt for any personal effect or amount so delivered.

(5) The master of the vessel shall be entitled to retain out of the wages of a seaman any sum shown in a retention account that appears to an authorized officer to be owing or payable to the master.

Exemption from liability

137. The master of a vessel shall not be liable for any loss or damage to the personal effects of a seaman left behind or discharged at a port other than his proper return port, where the loss or damage occurred without fault on his part.

Return from service

138.—(1) Where during the currency of his agreement the service of a seaman engaged on a vessel terminates otherwise than by the consent of the seaman, the master of the vessel shall—

(*a*) make an appropriate entry in the seaman's Continuous Discharge Book;

(*b*) pay to the seaman the wages to which he is entitled; and

(*c*) make adequate provision in accordance with this Act for the maintenance and return of the seaman to a proper return port.

(2) Where the master of a vessel fails without reasonable cause to comply with subsection (1), the expenses for the maintenance of the seaman and for his conveyance to a proper return port—

(*a*) if paid by the seaman, shall be recovered as wages due to him; and

(*b*) if paid by an authorized officer, shall be a charge on the vessel to which the seaman belonged.

(3) A charge on a vessel under subsection (2) (*b*) may be recovered—

(*a*) from the person who is the owner of the vessel;

(*b*) where the vessel has been lost, from the person who was the owner of the vessel at the time of the loss;

(*c*) where the vessel has been transferred, from either the former or new owner of the vessel.

Discharge on change of ownership

139.—(1) Where a vessel is sold, transferred or otherwise disposed of, any seaman belonging to that vessel may at his option be discharged or be employed to complete the voyage of the vessel on terms and conditions not less favourable than those stipulated in the agreement under which he was engaged to serve on the vessel.

(2) Where a seaman is discharged under this section the provisions of this part relating to the Continuous Discharge

Book and the return of the seaman to a proper return port shall apply as if his service had been terminated otherwise than by his consent to be discharged during the currency of the agreement.

Relief of distressed seamen

140.—(1) Where a seaman—

(*a*) is found in any place outside Malaŵi after having been shipwrecked from a Malaŵian vessel; and

(*b*) by reason of having been discharged or left behind from a vessel in any place outside Malaŵi is in distress in that place,

the authorized officer shall provide relief to the seaman.

(2) The relief under subsection (1) shall provide—

(*a*) for the return of the seaman at the expense of the Government to a proper return port and for his necessary clothing and maintenance until his departure for such a port;

(*b*) in case of death, for burial expenses;

(*c*) in the case of a shipwrecked seaman, for the repayment of any expenses incurred in his conveyance to a proper return port and his maintenance while being so conveyed.

Forcing ashore

141. Any master or member of the crew of a vessel who wrongfully forces a seaman ashore and leaves him behind, or otherwise causes a seaman to be wrongfully left behind at any place, shall commit an offence.

Return of seamen

142. Where any question arises as to what return port a seaman is to be returned, the question may be referred to an authorized officer and his decision thereon shall bind both the master of the vessel and the seaman.

PART X

Dangerous Goods and Unseaworth Vessels

Division A—Grain and Deck Cargo

Carriage of grain

143.—(1) Where grain is loaded on board a Malaŵi vessel or is loaded in Malaŵi on board any vessel all necessary and reasonable precautions shall be taken to prevent the grain from shifting.

(2) An inspector may go on board any vessel that is in any port in Malaŵi and inspect any grain loaded in the vessel and the manner in which it is stowed.

(3) Where the precautions required under subsection (1) are not taken, the owner or master of the vessel or any agent of the owner who was charged with the loading or with letting the vessel sail laden with the grain, shall commit an offence and the vessel shall be presumed to be unsafe by reason of improper loading.

(4) Where any vessel which has been loaded with grain outside Malaŵi without the taking of all necessary and reasonable precautions to prevent the grain from shifting enters Malaŵi so laden, the owner and the master of the vessel shall commit an offence.

Deck cargo

144. The Minister may make regulations prescribing the requirements to be complied with when cargo is carried in any uncovered space on the deck of a load line vessel.

Division B—Dangerous Goods

Meaning of "dangerous goods"

145. In this Part—

"dangerous goods", in respect of any vessel means—

(*a*) explosives, gases whether compressed, liquefied or dissolved under pressure, inflammable liquids, inflammable solids, or substances liable to spontaneous combustion, inflammable acids, or substances which when in contact with water emit inflammable gases, oxidizing substances, organic peroxides, poisonous toxic substances, infectious substances, radioactive substances, corrosives; and

(*b*) any other goods that may be classified as dangerous in the International Maritime Dangerous Goods Code (IMDG Code).

Carriage of dangerous goods

146.—(1) Any person who sends by any vessel, or not being the owner or master of the vessel carries on the vessel, any dangerous goods—

(*a*) without distinctly marking the nature on the outside of the package containing the goods; or

(*b*) without, at or before the time of sending the goods to be shipped or taking them on board the vessel giving written notice to the owner or master of the vessel of the nature of the goods and the name and address of the sender or carrier of the goods,

shall commit an offence.

(2) Any person who knowingly sends or carries in any vessel any dangerous goods under a false description, or falsely describes the sender or carrier of any such goods, shall commit an offence.

Inspection or refusal to take dangerous goods

147. The owner or master of any vessel may require any package or parcel intended to be shipped to be opened to ascertain it's nature or he may refuse to take on board any package or parcel which he suspects might contain any dangerous goods.

Disposal of dangerous goods

148.—(1) Where any dangerous goods, or any goods which, in the opinion of the owner or master of the vessel, are dangerous goods, have been sent on board any vessel without

the marking or the notice required under section 146 the owner or master of the vessel may cause the goods, together with the packaging or container of the goods, to be thrown overboard.

(2) Where goods are thrown overboard under subsection (1) the master of the vessel shall make an entry in the official log-book stating the reasons for his action.

Regulations on dangerous goods

149. The Minister may, by notice published in the *Gazette*, make regulations regarding the carriage of dangerous goods in vessels.

Division C—Seaworthiness

Sending unseaworthy vessel on inland waterways

150.—(1) Any person who sends a vessel on inland waterways in such an unseaworthy state that the life of any person is likely to be endangered thereby commits an offence.

(2) For the purposes of this Act, a vessel shall be deemed to be unseaworthy if a surveyor is satisfied that the vessel, by reason of—

(*a*) defective condition or equipment;

(*b*) lack of equipment;

(*c*) undermanning or incompetence of master or crew;

(*d*) overloading or improper loading,

is unfit to navigate upon that part of the inland waters where the vessel is found without danger to human life, regard being had to the nature of service for which the vessel is intended to be employed.

Duty to ensure seaworthiness

151. Notwithstanding any agreement to the contrary, it shall be an implied term of every contract of service between the owner of the vessel and any seaman thereof, and of every instrument of apprenticeship whereby any person is bound to serve as an apprentice on board any vessel, that—

(*a*) the owner or master of the vessel; and

(*b*) any agent charged with the loading of the vessel or with the preparation of the vessel for sailing or the sending of the vessel on inland waters,

shall take all reasonable measures to ensure the seaworthiness of the vessel for the voyage at the time when the voyage commences and to keep the vessel in a seaworthy condition for the duration of the voyage.

Detention of unseaworthy vessel

152.—(1) Where the Chief Surveyor believes that any vessel or any foreign vessel in Malaŵi is unfit to sail, he may detain the vessel until he is satisfied that the vessel is fit to sail.

(2) Where a foreign vessel has been detained under this section, the Minister shall forthwith notify the consular officer of the country to which the vessel belongs of the detention.

(3) The Chief Surveyor shall cause a vessel detained under this section to be inspected or surveyed to investigate any defects believed to exist and the inspector or surveyor shall submit a full written report on his findings to the Chief Surveyor.

(4) The owner or master of the vessel or a consular officer referred to in subsection (2) may require that a person of his choice accompany any person making an inspection or survey under subsection (3).

(5) Where a vessel is detained under this section, the owner of the vessel shall be liable to pay to the Government the cost of, and incidental to, the detention and survey of the vessel.

(6) The costs under subsection (5) shall, without prejudice to any other remedy, be recoverable in the same manner as salvage.

PART XI

Wrecks and Salvage

Division A—Wrecks

Appointment of Receiver

153.—(1) The Chief Surveyor shall be the Receiver of wrecks throughout Malaŵi.

(2) The Receiver shall exercise general supervision over all matters relating to wrecks and salvage.

(3) The Receiver may require any suitably qualified person to assist him in the performance of his duties as Receiver.

Duty to attend vessels in distress

154.—(1) Where any vessel is wrecked, stranded or in distress at any place on or near the shores or coast of inland waters, the Receiver shall immediately proceed to that place and shall on his arrival—

(*a*) take command of all persons present; and

(*b*) assign such duties and give such directions to each person as he thinks fit for the preservation of the vessel and of the lives of the persons belonging to the vessel and of her cargo and equipment.

(2) Any person who fails to comply with any directions of the Receiver under subsection (1) shall commit an offence.

Power to require assistance

155.—(1) The Receiver may, with a view to protecting vessel wrecked persons or any vessel which is wrecked, stranded, abandoned or in distress, or the cargo of the vessel of any wreck, require—

(*a*) such persons as he thinks fit to assist him;

(*b*) the master or other person having the charge of any vessel near at hand to give such assistance with his men or vessel as he can; and

(*c*) the use of any machinery, vehicle or equipment that is obtainable.

(2) The Receiver may, without warrant, arrest any person who plunders or does any damage to any vessel which is wrecked, stranded, abandoned or in distress and may require any person to assist him in the arrest.

(3) Any person who is required to give any assistance under subsection (1) or (2) and who without reasonable cause fails to do so shall commit an offence.

(4) Where any person resists the Receiver or any person giving him assistance under this section suffers any injury, the Receiver or the person assisting him shall not be liable to any criminal offence or to damages unless the force used to deal with the resistance shown by the injured person was manifestly unreasonable having regard to the circumstances prevailing at the time.

Power to pass over adjoining lands

156.—(1) Where any vessel is wrecked, stranded or in distress at any place in Malaŵi, any person may, for the purpose of rendering assistance to the vessel, saving the lives of vessel wrecked persons or saving the cargo or equipment of the vessel—

(*a*) pass or re-pass, either with or without vehicles or animals, over any adjoining lands without being subject to interruption by the owner or occupier; and

(*b*) deposit on such adjoining lands any cargo or other article recovered from the vessel,

without doing more damage than is unavoidable.

(2) Any damage sustained by an owner or occupier in consequence of the exercise of the rights given by subsection (1) shall be a charge on the vessel, cargo or article in respect of or by which the damage is occasioned.

(3) The amount payable in respect of the damage shall, in case of dispute be determined and shall, in default of payment, be recoverable in the same manner as salvage.

(4) Any owner or occupier of any land who—

(*a*) impedes any person in the exercise of the rights given by this section; or

(*b*) prevents any cargo or other article deposited on his land in exercise of such rights from remaining deposited on the land for a reasonable time until it can be removed to a safe place,

shall commit an offence.

Power to examine persons

157.—(1) Where any vessel is or has been in distress on inland waters, the Receiver shall examine on oath any person belonging

to the vessel or any person able to provide information as to the following matters—

(*a*) the name and description of the vessel;

(*b*) the names of the owner and master of the vessel;

(*c*) the names of the owners of the cargo;

(*d*) the ports from which the vessel came and to which she was bound;

(*e*) the occasion of the distress of the vessel;

(*f*) the services rendered; and

(*g*) such other matters relating to the vessel or to her cargo as the Receiver thinks fit.

(2) The Receiver shall—

(*a*) record the results of the examination;

(*b*) send a copy of the record to the Chief Surveyor; and

(*c*) post another copy in his office for the inspection of interested persons.

(3) The Receiver shall for the purpose of this section have the power to administer oaths.

Taking possession of wreck

158.—(1) Where any person takes possession of any wreck in Malaŵi he shall, whether or not he is the owner of the wreck, forthwith notify the Receiver of the place at which the wreck is kept.

(2) The Receiver shall, on being notified that a person has taken possession of a wreck, issue such directions as he thinks fit for the delivery of the wreck.

(3) Subsection (1) shall apply to any wreck found derelict on waterways outside Malaŵi and brought into Malaŵi.

(4) Any person who, having taken possession of any wreck, fails, without reasonable cause, to comply with subsection (1) shall commit an offence.

Concealing of wreck

159.—(1) Where the Receiver reasonably believes that any wreck—

(*a*) is in possession of some person who is not its owner; or

(*b*) is being improperly dealt with,

he may apply to a magistrate for a search warrant.

(2) The Receiver may by virtue of the warrant enter any premises or other place wherever situated, including any vessel and search for, seize and detain any wreck there found.

(3) Where any seizure of wreck is made in consequence of information given by any person to the Receiver, the informer shall be entitled by way of salvage to such sum as the Chief Surveyor thinks fit.

Notice of wreck

160.—(1) Where the receiver takes possession of any wreck, he shall within forty-eight hours of the taking of possession cause to be posted in his office a description of the wreck and the mark by which it is distinguished.

(2) The Receiver may give such publicity of the description of the wreck as he thinks fit.

Owner's right to wreck

161.—(1) The owner of any wreck in the possession of the Receiver shall on—

(*a*) establishing his claim to the wreck to the satisfaction of the Receiver within six months from the time at which the wreck came into the possession of the Receiver; and

(*b*) paying the salvage fees and expenses due, and any customs duty, be entitled to have the wreck or the proceeds of sale of the wreck delivered up to him.

(2) Where any wreck in the possession of the Receiver is shown to the satisfaction of the Receiver to belong to an owner in a foreign country, the Receiver may, in the absence of the owner, or his authorized agent, treat the consular officer of that country in Malaŵi to be the owner of the wreck.

Sale of wreck

162.—(1) The Receiver may at any time sell or cause to be sold any wreck in his custody where in his opinion—

(*a*) its value is less than K2,000;

(*b*) it is so damaged or of so dangerous or perishable a nature that it cannot with advantage be kept; or

(*c*) it is not of sufficient value to pay for warehousing.

(2) The Receiver shall, after payment of all expenses from the proceeds of sale of any wreck hold the remainder for the same purposes and subject to the sale claims, rights and abilities as if the wreck had remained unsold.

Unauthorized sale of wreck

163.—(1) No person shall, without authority from the Receiver, sell any wreck, cargo or equipment of any vessel which has been stranded, is derelict or in distress.

(2) Any person who contravenes subsection (1) shall commit an offence.

Boarding wrecked vessel

164.—(1) No person shall, without the leave of the master of the vessel, board or endeavour to board any vessel which is wrecked, stranded or in distress, unless the person is or acts under the authority of the Receiver.

(2) Any person who contravenes subsection (1) shall commit an offence.

Interference with wreck

165.—(1) No person shall—

(*a*) impede or hinder the saving of any vessel stranded or in danger of being stranded or in distress on inland waterways;

(*b*) impede or hinder the saving of any part of the equipment or cargo of the vessel or of the wreck;

(*c*) conceal any wreck, or deface or obliterate any mark on it;

(*d*) wrongfully carry away or remove any part of a vessel stranded or in danger of being stranded or in distress; or

(*e*) carry away or remove any part of the cargo or equipment of the vessel or any wreck.

(2) Any person who contravenes subsection (1) shall commit an offence.

Unclaimed wreck

166. Where no person establishes a claim as owner of any wreck in the possession of the Receiver within six months after it comes into the Receiver's possession, the Receiver shall sell or cause to be sold the wreck and pay the proceeds into the Consolidated Fund, after deducting—

(*a*) the expenses of the sale;

(*b*) his own fees;

(*c*) payment to the salvors of such amount of salvage as he shall determine; and

(*d*) any other reasonable expenses incurred in respect of the wreck.

Discharge of Receiver

167. On delivery of wreck or payment of the sale of wreck by the Receiver in pursuance of this Part, the Receiver shall be discharged from all liability in respect of the wreck.

Obstruction to navigation

168.—(1) Where the Receiver is of the opinion that a vessel sunk, stranded, abandoned or run aground in any place within inland waters limits of Malaŵi, is likely to become an obstruction or danger to navigation or is found in a dangerous or hazardous condition, he may—

(*a*) take possession of the vessel or part thereof until it is raised, removed or destroyed;

(*b*) light or buoy the vessel or part thereof until it is raised, removed or destroyed; and

(*c*) subject to subsection (3), in such manner as he thinks fit, sell or cause to be sold the vessel or part thereof when so raised or removed together with any other property recovered in the exercise of his powers under this section.

(2) Where the Receiver has exercised the powers conferred on him under subsection (1) (*c*) he shall—

(*a*) reimburse himself the expenses incurred by him in relation to the vessel and any property recovered from her; and

(*b*) hold any surplus of the proceeds from the sale on deposit to pay to any person who establishes a right to the proceeds or any part thereof.

(3) Except in the case of property which is of a perishable nature or which would deteriorate in value, the Receiver shall give seven clear days' notice in the *Gazette* before exercising his powers of sale under subsection (1) (*c*).

(4) At any time before any property is sold under this section, its owner shall be entitled to take delivery of it on payment to the Receiver of the fair market value of the property.

(5) For the purposes of subsection (4), the fair market value of any property shall be such amount as may be agreed upon in writing by the owner and the Receiver or failing agreement, such amount as may be determined by a valuer appointed for the purpose by the Chief Surveyor.

Obstruction in port

169.—(1) Where the harbour master is of the opinion that a vessel as is mentioned in section 168 is causing an obstruction or a danger to navigation in a harbour in Malaŵi, he may after consultation with the Receiver, exercise all the powers conferred by section 168 on the Receiver.

(2) Subject to subsection (1), the harbour master may, after the exercise of his powers under subsection (1), recover, all the expenses incurred by him in respect of the vessel in the same manner as the receiver would have recovered any similar expenses under this Part.

(3) The harbour master shall not sell or cause to be sold any vessel, its apparel, tackle or furniture except with the prior approval of the Receiver.

(4) Any balance remaining from the proceeds of any sale under this section shall, after deduction of all expenses incurred by the harbour master, be paid into the Consolidated Fund.

Division B—Salvage

Salvage of life

170.—(1) Where services are rendered in whole or in part—

(*a*) near inland waters limits of Malaŵi in saving life from any aircraft or vessel; or

(*b*) elsewhere in saving life from any Malaŵian vessel,

the salvor shall be entitled to a reasonable amount for salvage, as well as to a refund of all expenses properly incurred by him.

(2) Where aircraft, vessel or cargo and equipment thereof are destroyed or the value thereof is insufficient to pay any amount to which the salvor is entitled under subsection (1) in respect of preservation of life, the Chief Surveyor may approve payment to the salvor out of the Consolidated Fund of such sum as he thinks fit to meet the expenditure properly incurred by the salvor.

Salvage of cargo

171. Where any vessel is wrecked, stranded, run aground or in distress at any place in, or near the inland waters limits of Malaŵi and services are rendered—

(*a*) by any person in assisting the vessel or saving any cargo or equipment of the vessel; or

(*b*) by any person in saving any wreck,

the salvor shall be entitled to a reasonable amount for salvage as well as a refund of all expenses properly incurred by him.

Non-entitlement to salvage

172. Nothing in section 170 shall entitle any person to salvage or to a refund of expenses—

(*a*) in respect of services rendered contrary to an express and reasonable prohibition of such services on that part of the vessel to which such services are rendered;

(*b*) in respect of the services, rendered by a vessel which it is towing or the cargo thereof, except where such services are of an exceptional character such as are outside the scope of towage;

(*c*) where he has caused the distress giving rise to the entitlement, either intentionally or through negligence; or

(*d*) where he has concealed or unlawfully disposed of any property salvaged.

Salvage where vessels belong to same owner

173. Where services are rendered—

(*a*) by any person to two or more vessels under the same ownership; or

(*b*) by any person from one vessel to another both of which are under the same ownership,

salvage shall be paid as if the vessel belonged to different owners.

Determination of disputes and valuation

174.—(1) Where a dispute arises as to—

(*a*) the value of property salvaged;

(*b*) the amount of salvage payable; or

(*c*) the expenses properly incurred by a salvor,

the dispute shall be determined by the competent court unless the parties agree that it be determined by the Receiver or by arbitration under the Arbitration Act.

Cap. 6.03

(2) For the purpose of determining the value of property salvaged, the Receiver may, at the request of any party to a dispute, appoint a valuer to value the property.

Detention of salvaged property

175. Where a salvor is entitled to salvage or to a refund of expenses properly incurred by him, the Receiver may—

(*a*) where the entitlement is due in respect of services rendered in assisting any vessel, or saving life, cargo or equipment, detain the vessel, cargo or equipment; and

(*b*) where the entitlement is due in respect of the saving of any wreck and the wreck is not sold as unclaimed, detain the wreck, until the claim of the salvor is met.

176.—(1) The Receiver may sell or cause to be sold any property detained under section 175 where— Sale of detained property

(*a*) the owner of the property detained is aware or has been made aware of the detention; and

(*b*) the amount due to the salvor is not in dispute and has not been paid within twenty-one days after a claim for the payment has been made.

(2) The proceeds of a sale under subsection (1) shall, after payment of the sale, be applied by the receiver in the payment of any amount due to the salvor and all fees payable under this Act, and any balance shall be paid to the owner of the property.

177. Any claim by a salvor in respect of the salvage of life under section 170 shall be payable in priority to any other claim for salvage. Priority of claims

PART XII

Inquiries and Legal Process

Division A—Inquiries

178. For the purpose of an inquiry or investigation under this Part, a shipping casualty shall be deemed to occur— Shipping casualties

(*a*) when within near shore limits or in the course of a voyage any vessel is lost, abandoned, stranded or materially damaged or any loss or material damage is caused to the vessel by another vessel;

(*b*) when in any place any vessel has been lost, abandoned, stranded or materially damaged and any member of her crew or any other person who is a competent witness of the loss, abandonment, stranding or material damage is in Malaŵi waters or ports;

(*c*) when any loss of life occurs by reason of any casualty occurring to or on board any vessel within near shore limits or in the course of a voyage to Malaŵi; and

(*d*) when in any place, a Malaŵi vessel is lost, abandoned, stranded or materially damaged.

179.—(1) Where any shipping casualty occurs, the Chief Surveyor may hold a preliminary inquiry into the circumstances which have led to the casualty or may require an inspector to hold such an inquiry. Preliminary inquiries

(2) Where an inquiry is held under subsection (1) a report thereon shall be submitted to the Chief Surveyor within seven days of the completion of the inquiry.

180.—(1) Subject to subsection (2), the Chief Surveyor may appoint a court of investigation for the purpose of holding a Court of investigation

formal investigation into any case where a shipping casualty has occurred, whether or not a preliminary inquiry has been held under section 179.

(2) The Chief Surveyor shall not appoint a court of investigation into any shipping casualty in respect of a foreign vessel unless—

(*a*) the casualty occurs within near shore limits of Malaŵi waters; and

(*b*) the appointment of the court of investigation has been requested or consented to by the Government of the country of which the vessel is registered.

(3) A court of investigation shall be composed of—

(*a*) a chairman who shall be a person who holds or has held judicial office; and

(*b*) not less than two but not more than four other members.

(4) A court of investigation shall hold its meetings and conduct its proceedings in the same manner and shall have the same powers as a commission of inquiry appointed under the Commissions of Inquiry Act.

Cap. 18:01

(5) A court of investigation shall, after completion of the hearing of any investigation, submit to the Chief Surveyor a report together with a summary of the evidence adduced at the investigation.

Inquiry into deaths of crews

181.—(1) Where a death occurs on board a Malaŵi registered vessel or on board any foreign vessel whose crew is discharged in any port in Malaŵi the Chief Surveyor shall, on the arrival of the vessel at that port—

(*a*) inquire into the cause of the death; and

(*b*) make, in the official log book, a report of the result of the inquiry.

(2) Where in the course of an inquiry under subsection (1) it appears to the Chief Surveyor that the death has been caused by violence or in suspicious circumstances, he shall report the matter—

(*a*) to the Commissioner of Police; and

(*b*) where the vessel is a foreign vessel, to the appropriate body of the country in which the vessel is registered.

Inquiry into deaths of passengers

182. Where a death of a passenger occurs on board a Malaŵi registered vessel or on board any foreign vessel whose next port of call is in Malaŵi, the provisions of section 181 shall apply.

Loss of or damage to luggage

183. Where loss of or damage to luggage is deemed to have occurred, the owner of the luggage shall notify the carrier for compensation.

Division B—Offences and Penalties

Setting sail with officers

184. Where a vessel sets sail when any person empowered to detain the vessel, or an inspector, surveyor or police officer is on board the vessel in the execution of his duties, the owner and the master of the ship shall each commit an offence and shall, on conviction, be liable, in addition to any penalty provided under section 189 to a fine equivalent to the aggregate of the expenses of and incidental to the person, inspector, surveyor or police officer taken aboard, as the case may be, for his return.

Throwing of person overboard

185. Any person who throws or causes to be thrown overboard any other person shall commit an offence.

Marking of heavy package

186. No person shall, in Malaŵi, consign to be loaded on any vessel or no owner or master of any vessel shall, in Malaŵi cause or permit to be loaded on the vessel, any package or object the weight of which exceeds three thousand kilogrammes without causing its approximate weight to be clearly and durably marked on the outside of the package or object.

Unauthorized presence on board

187. Any person other than the Chief Surveyor, surveyor or any person authorized under this Act or any other written law who, without reasonable cause—

(*a*) goes on board any vessel in a port in Malaŵi without the consent of the master of the vessel or of any other person empowered to give such consent; or

(*b*) remains on board the vessel after being requested to leave by the master, a police officer, a customs officer or any person empowered to do so,

shall commit an offence.

Offences by seamen

188.—(1) Every seaman who—

(*a*) deserts from his vessel;

(*b*) neglects or refuses to join his vessel or to set sail in his vessel;

(*c*) is absent from his vessel, without leave;

(*d*) assaults the master or any member of the crew;

(*e*) combines with any member of the crew to neglect duty or to impede the navigation of the vessel or the progress of the voyage; or

(*f*) wilfully damages his vessel or misappropriates any of her stores or cargo,

shall commit an offence.

(2) Subsection (1) shall apply in relation to—

(*a*) a Malaŵi vessel; and

(*b*) a foreign vessel if the offence is committed—

(i) in a port in Malaŵi or within the near shore limits; or

(ii) outside Malaŵi and the offender is in Malaŵi and a representative of the country in which the vessel is registered requests that criminal proceedings be instituted against the offender.

(3) Where any seaman who is not a citizen of Malaŵi commits an offence under subsection (1) (*a*) or (*b*), the Court may in lieu of any sentence which may be inflicted on him require a police officer to convey him on board his vessel for the purposes of setting sail.

(4) Where any seaman who is not a citizen of Malaŵi commits an offence under subsection (1) and is sentenced to a term of imprisonment, the Court before which he was sentenced may, on the application of a police officer or of the owner or master of the vessel, cause him to be conveyed on board the vessel for the purpose of setting sail, notwithstanding that the term of imprisonment to which he was sentenced is not at an end.

Penalties

189.—(1) A person who commits an offence under sections 9, 14, 15, 17, 27, 48, 68, 71, 74, 89, 91, 115, 125, 128, 141, 143, 146, 150, 154, 155, 156, 158, 163, 164, 165, 184, 185, 187, 188 and 193 shall, on conviction, be liable to a fine not exceeding K600 or to imprisonment for a term not exceeding two years.

(2) A person who contravenes any provision of this Act, other than sections 9, 14, 15, 17, 27, 48, 68, 71, 74, 89, 91, 115, 125, 128, 141, 143, 146, 150, 154, 155, 156, 158, 163, 164, 165, 184, 185, 187, 188 and 193 shall, on conviction, be liable to a fine not exceeding K600 or to imprisonment for a term not exceeding twelve months.

Division C—Arrests and Trials

Depositions

190.—(1) Notwithstanding any other written law subject to subsection (2), where—

(*a*) in the course of any proceedings instituted for the purpose of this Act, the testimony of any witness is required; and

(*b*) it is shown that the witness cannot be found in Malaŵi, any deposition that the witness has previously made on oath or under solemn affirmation in relation to the same subject matter before any judge or magistrate in another country or an authorized officer shall be admissible in evidence.

(2) A deposition shall not be admissible—

(*a*) in any proceedings instituted in Malaŵi, where the deposition was not made in Malaŵi; or

(*b*) in criminal proceedings, unless the deposition was made in the presence of the accused or his legal practitioner.

(3) A deposition referred to in subsection (1) shall be deemed to be duly authenticated where it purports to be signed by the judge,

magistrate or authorized officer before whom it was made and where appropriate, certified by the signatory that the deposition was taken in the presence of the accused or his legal practitioner.

Admissibility of copies of documents

191.—(1) A copy of a document shall be admissible in evidence for the purposes of this Act if it purports to be signed and certified as a true copy of the officer in whose custody the original document was entrusted.

(2) Any person who, in Malaŵi, has custody of a document required as evidence in proceedings under or connected with this Act shall furnish a certified copy of the document to any interested person applying for it.

Detention of foreign vessels

192.—(1) Where—

(*a*) a foreign vessel has in or any part of the waters outside Malaŵi caused damage to property belonging to the Government or to any statutory or corporate body or to a citizen of Malaŵi; or

(*b*) a claim is made for damages by or on behalf of any person resident in Malaŵi in respect of personal injuries, including fatal injuries, against the owner of a foreign vessel,

a judge may, on it being shown to him by any person making an application that the damage or injury was probably caused by the misconduct or lack of skill of the master or crew of the vessel, issue an order to detain the vessel whenever the vessel comes within the jurisdiction of Malaŵi.

(2) Any order of detention of a vessel under this section may be revoked on adequate security being furnished to the satisfaction of the judge to meet any possible claim against the owner of the vessel.

Enforcement of detention

193.—(1) Where a vessel is, by order of a Judge, detained under this Act, the Judge shall cause an order to be served on the owner of the vessel and the Chief Surveyor shall be notified of the invocation of the order.

(2) Any order under subsection (1) may at any time be revoked and the Chief Surveyor shall be notified of the revocation of the order.

(3) On receipt of an order under subsection (1), or in any case in which the Chief Surveyor may detain a vessel under this Act, the Chief Surveyor may cause a notice to be served on the master of the vessel calling upon him not to set sail until the notice is revoked.

(4) The Chief Surveyor shall not issue a port clearance in respect of any vessel in relation to which a notice under subsection (3) is in force.

(5) The Chief Surveyor and the harbour master may take such steps as they think fit to prevent any vessel in relation to which a

notice under subsection (3) is in force, from setting sail and may for that purpose place a police officer on board the vessel.

(6) Any police officer who is placed on board a vessel under subsection (5) may take such steps as he thinks fit to prevent the vessel from setting sail, including the use of force.

(7) Any owner or master of a vessel which sets sail while a notice under subsection (3) is in force in respect of the vessel shall commit an offence.

Arrest without warrant

194.—(1) The Chief Surveyor, or a police officer may arrest, without warrant, any person committing an offence under this Act.

(2) Where any person is arrested under subsection (1), he shall, as soon as possible after his arrest, be taken to the nearest Police station.

Master's power of arrest

195.—(1) The master of any Malaŵi vessel which is sailing may arrest and detain any seaman who commits an offence on board the vessel where he has reasonable grounds to believe that the arrest is necessary to prevent serious disorder on board the vessel.

(2) Where a seaman is arrested and detained under subsection (1), the master shall make an entry to that effect in the official log-book as soon as convenient after the arrest.

Offence on board a vessel

196. Where any person—

(*a*) who is a Malaŵi citizen is charged with having committed an offence under any written law on board any vessel on the inland waterways or in any port or harbour; or

(*b*) other than a Malaŵi citizen is charged—

(i) with an offence to which section 192 applies;

(ii) with having committed an offence under any written law on board a Malaŵi vessel on the inland waterways or in any port or harbour in Malaŵi,

that person may be tried in Malaŵi.

Venue of trial and jurisdiction

197. Notwithstanding any other written law, where any person is charged with an offence which under this Act is triable in Malaŵi, the offender shall, unless the Director of Public Prosecutions directs otherwise, be tried in Magistrate's Court and the court may impose on the offender any penalty provided under this Act.

Recovery of fines and judgement debts

198. Without prejudice to any written law relating to the recovery of fines or of judgment debts—

(*a*) where the owner of a vessel who is convicted of an offence under this Act fails to pay any fine imposed on him, the amount due may be recovered in the manner a mortgage debt in favour of the Government in respect of the vessel would have been recovered;

(*b*) any judgment debt against the owner of a vessel may be recovered in the manner a mortgage debt in favour of the judgment creditor in respect of the vessel would have been recovered.

Service of documents Cap. 18:01

199. Where for the purpose of this Act any document is to be served on any person, the document may be served—

(*a*) in any case, by delivering a copy of the document personally to the person to be served, or by leaving the document at his last place of abode;

(*b*) where the document is to be served on the master of a vessel where there is one, or on a person belonging to a vessel by leaving the document for him on board that vessel with the person being or appearing to be in command or charge of the vessel;

(*c*) where the document is to be served on the master of a vessel, where there in no master, or the owner or agent of the owner of the vessel, and where the owner or the agent of the owner is not known or cannot be found, by affixing the document to the mast of the vessel;

(*d*) where the document is to be served on the owner of the vessel, and the owner is not known or cannot be found, on the agent of the owner and if the latter is not known or cannot be found by affixing a copy of the document to the mast of the vessel.

PART XIII

Miscellaneous

Protection of officers

200. Any person who acts in the performance of his duties under this Act shall be deemed to be—

(*a*) a public officer for the purposes of the Civil Procedure (Suits by or against the Government or Public Officers) Act; or Cap. 6:01

(*b*) a public servant as defined in section 4 of the Penal Code. Cap. 7:01

Return of seaman left behind

201. Where any foreign vessel sets sail and leaves behind a seaman who is not a Malaŵi citizen, the expenses incurred for the repatriation or deportation of the seaman shall be recovered from the owner of the vessel, or where the owner is not in Malaŵi from the agent of the owner of the vessel.

Port clearances

202.—(1) No vessel shall leave a port in Malaŵi unless the master of the vessel has obtained within one hour of the expected time of departure a port clearance from the harbour master on behalf of the Chief Surveyor.

(2) Where the master of any vessel obtains a port clearance and does not sail within forty-eight hours thereafter, he shall report to the Chief Surveyor his reasons for not sailing and shall obtain a fresh port clearance.

(3) The Chief Surveyor shall not issue a port clearance for any vessel—

(*a*) until the master of the vessel, if so required, produces the certificate of registration of the vessel;

(*b*) until the master of the vessel has declared to him the name of the country, where applicable, to which the vessel belongs;

(*c*) unless every seaman on board the vessel holds a Continuous Discharge Book; and

(*d*) where the vessel is to be detained or where an order for the detention of the vessel is in force.

(4) Where the Chief Surveyor is satisfied that—

(*a*) any person engaged on board a Malaŵi vessel;

(*b*) any Malaŵi citizen engaged on board a foreign vessel,

has not been paid any wages due to him the Chief Surveyor may refuse to issue a port clearance to the master of the vessel unless the wages are paid or the owner or master of the vessel furnishes adequate security, to the satisfaction of the Chief Surveyor for the payment of the wages claimed to be unpaid.

(5) Any master of a vessel which sets sail without a port clearance shall commit an offence and any owner of the vessel who is privy to the commission of the offence shall commit the like offence.

(6) This section shall not apply to any class of vessel which the Chief Surveyor may exempt from the operation of this section.

Regulations

203.—(1) The Minister may make regulations for giving effect to this Act and, in particular, but without prejudice to the generality of the foregoing power, such regulations may provide for—

(*a*) the implementation of international conventions and international regulations relating to shipping to which Malaŵi is a party;

(*b*) prescribing the forms required to be prescribed under this Act;

(*c*) prescribing the fees and other charges to be paid under this Act;

(*d*) the control of pollution of inland waters arising from the operation of vessels, mining and other matters therefor;

(*e*) designating places or areas of inland waters or land as harbours or ports;

(*f*) the management, control and safety of any such harbours and of vessels and persons and cargo within them;

(*g*) the powers of persons to effect such control; and

(*h*) anything which is required to be prescribed under the provisions of this Act.

Application of labour legislation Cap. 55:01 Cap. 55:02

204.—(1) The Regulation of Minimum Wages and Conditions of Employment Act and the Employment Act shall apply to a seaman.

(2) For the purposes of determining the daily wages of a seaman engaged on a Malaŵi vessel, the monthly wages of the seaman as stipulated in the crew agreement shall be divided by 30.

Arrest and seizure

205. A police officer having reasonable grounds for believing that any person has committed an offence against this Act and that such person will not attend the court in answer to any process which may be issued against him may arrest such person without a warrant, and may seize any vessel or object which may afford evidence of the commission of the offence.

Duty to give information

206.—(1) Where any surveyor, registrar, police officer or any other person or member of a class of persons generally or specially authorized by the Chief Surveyor to exercise the powers conferred by this section, has reason to suspect that an offence under this Act has been committed by any person on board a vessel, it shall be lawful for him or for any other surveyor, registrar, police officer or person so authorized to require the owner of the vessel to give all information in his possession as to the name, address, description and whereabouts of the master or any other person on board the vessel at the time of the alleged offence. Any owner failing to give such information shall be guilty of an offence unless he shows to the satisfaction of the court that—

(*a*) he did not have the information and could not with reasonable diligence have obtained it; or

(*b*) in the case of passengers carried for hire or reward, he did not have the information.

(2) It shall also be lawful for a surveyor, registrar of vessels, police officer or other person authorized under subsection (1) to require any other person to give such information as aforesaid or any other information which it is in his power to give and which may lead to the identification of the master of and any other person on board the vessel, and if the person required to give such information fails to do so he shall be guilty of an offence unless he shows to the satisfaction of the court that—

(*a*) he did not have the information and could not with reasonable diligence have obtained it; and

(*b*) in the case of passengers carried for hire or reward, he did not have the information.

Damage to navigation marks

207.—(1) No person shall wilfully or negligently—

(*a*) damage any navigation mark; or

(*b*) remove, alter or destroy any navigation mark; or

(*c*) ride by, make fast to or run foul of a navigation mark.

(2) The provisions of subsection (1) (*b*) and (*c*) shall not apply to any person authorized by the Chief Surveyor to maintain, repair or remove a navigation mark.

(3) The expenses incurred in repairing or replacing any navigation mark which has been injured, removed, altered or destroyed in contravention of subsection (1), shall be a debt due to Government and may be sued for and recovered by civil action in a competent court.

Certain provisions as to legal proceedings

208.—(1) In all proceedings for an offence against the provisions of this Act or for the recovery of damages for injury done by a vessel registered under such provisions, entries in a register of vessels relating to the vessel in question shall be conclusive evidence that any person registered at any date as the owner of such vessel was at that date the owner thereof:

Provided that—

(*a*) the provisions of this subsection shall not have effect so as to prevent any proceedings or action being taken or instituted against any person not registered as the owner of such vessel who is beneficially interested therein;

(*b*) the provisions of this subsection shall not affect the rights of any person registered under the provisions of this Act as the owner of a vessel against any person not so registered who is beneficially interested in such vessel; and

(*c*) the registration of any vessel shall not confer, take away or affect any title to or interest in such vessel.

(2) For the purposes of proceedings in any court or in any investigation conducted under this Act a copy or extract from any register or other record of which a registrar is in charge, duly certified as true by the registrar concerned, shall be receivable in evidence on its mere production by any person and shall be of like value and effect as the original in the register.

(3) A certificate purporting to have been signed by a person describing himself as a registrar stating any provision of this Act as to registration of a vessel or as to the competency of a master or member of a crew has or has not been complied with shall, on its mere production by any person in any court or in the course of any investigation conducted under this Act, be received as *prima facie* evidence of the facts therein stated.

(4) In any proceedings against any person for any contravention of any provision of this Act relating to the use of any vessel for hire or reward, or to the use thereof for carriage of goods or persons for hire or reward, the onus of providing that the use of such vessel, or the use thereof for the carriage of goods or persons, as the case may be, was not for hire or reward, or was otherwise lawful, shall be upon the party charged.

National colours and ensign

209.—(1) The flag of Malaŵi shall constitute the national colours of a Malaŵi vessel.

(2) A Malaŵi vessel shall hoist the national colours on entering or leaving any port in Malaŵi and on a signal being made to the vessel by any vessel in the service of Government.

(3) Where a person hoists a Malaŵi flag on a vessel which is not a Malaŵi vessel for the purpose of making the vessel appear to be a Malaŵi vessel, he shall commit an offence and the vessel shall be liable to forfeiture under a court order issued under this Act.

(4) Where the owner or master of a Malaŵi vessel does anything or permits anything to be done, or carries or permits to be carried any papers or documents with intent—

(*a*) to conceal the Malaŵi character of the vessel from any person entitled by any written law to inquire into such matters;

(*b*) to deceive any person so entitled; or

(*c*) to assume a foreign character,

he shall commit an offence and the vessel shall be liable to forfeiture under a court order issued under this Act.

(5) The Chief Surveyor may prescribe any other ensign of such colours and design as he may direct which may be worn, in addition to national colours, by such vessels, in such manner and for such purposes as may be prescribed.

Offences and penalties

210.—(1) A person who—

(*a*) for the purpose of obtaining, whether for himself or for any other person, the issue of a document under this Act makes a declaration or statement which he knows to be false in any material particular or does not know or believe to be true, or knowingly makes use of a declaration, statement or document containing the same;

(*b*) fraudulently imitates, alters, mutilates, destroys or uses, or fraudulently sells, supplies, lends or allows to be used by any other person any document issued for the purposes of this Act or deemed to have been issued hereunder;

(*c*) wilfully obstructs, hinders or resists any other person in the exercise of his powers or the carrying out of his duties under the provisions of this Act;

(*d*) on being required to do so fails or refuses to produce to a surveyor, registrar, police officer or other person authorized who demands it, any document issued under this Act;

(*e*) sends or, while in charge or command, takes, upon inland waters any vessel of a class prescribed under section 65 which is not provided with a competent crew, as prescribed under that section;

(*f*) sends or takes or is a party to sending or taking a vessel upon inland waters in such an unseaworthy state that the life of any person is likely thereby to be endangered;

(*g*) contravenes or fails to comply with any provision of this Act or any direction or instruction given under this Act,

shall commit an offence.

(2) Where the master or a member of the crew of a vessel which is registered or should be registered under this Act by wilful breach of duty or by neglect of duty or by reason of drunkenness—

(*a*) does any act tending to cause the immediate loss, destruction or serious damage of the vessel or tending immediately to endanger the life or limb of a person belonging to or on board the vessel; or

(*b*) refuses or omits to do any lawful act proper and requisite to be done by him for preserving the vessel from immediate loss, destruction or serious damage or for preserving any person belonging to or on board the vessel from immediate danger to life or limb,

he shall commit an offence.

(3) Any person found guilty of an offence under this Act not otherwise provided for shall be liable—

(*a*) for an offence under subsection (1) (*e*), (*f*), and subsection (2)—

(i) for a first offence to a fine of K400 and to imprisonment for one year; and

(ii) for a second or subsequent offence to a fine of K600 and to imprisonment for two years;

(*b*) for an offence not referred to in paragraph (*a*)—

(i) for a first offence, to a fine of K200 and to imprisonment for three months; and

(ii) for a second or subsequent offence to a fine of K400 and to imprisonment for six months.

PART XIV

Repeal and Savings

Repeal and savings

211.—(1) The Inland Waters Shipping Act is repealed.

(2) Any subsidiary legislation made under the Act repealed by subsection (1), in force immediately before the commencement of this Act—

(*a*) shall remain in force unless in conflict with this Act and be deemed to be subsidiary legislation made under this Act; and

(*b*) may be replaced, amended or repealed by subsidiary legislation made under this Act.

SUBSIDIARY LEGISLATION

DECLARATION OF INLAND WATERS

G.N. 121/1970

under s. 23

The Minister has declared the under-mentioned waters to be inland waters for the purposes of the Act—

Lake Malaŵi
Lake Malombe
Lake Chirwa
Upper and Lower Shire River

INLAND WATERS SHIPPING (MASTERS AND CREWS) REGULATIONS

G.N. 20/1970
279/1971
102/1976
127/1977
126/1983
45/1993
54/2000
30/2006

under s. 37

ARRANGEMENT OF REGULATIONS

REGULATION
1. Citation
2. Certain vessels to be under the command of a competent master
3. Masters and crews to hold certificates
4. Minister may issue certificates
5. Examinations for certificates
6. Cancellation of certificates
7. Notification of cancellation
Schedules

Citation

1. These Regulations may be cited as the inland Waters Shipping (Masters and Crews) Regulations.

Certain vessels to be under the command of a competent master

2. No vessel of five tonnes or more which is used for hire or reward, and is not one of those vessels referred to in section 3 (3) of the Act, shall be used upon inland waters except under the command or in the charge of a competent master:

Provided that a vessel of under ten tonnes shall only be required to carry a master if—

(i) the vessel is hired complete with crew; or

(ii) the vessel is used to carry twelve or more passengers.

Masters and crews to hold certificates

3.—(1) Subject to subregulation (3), the master of a vessel specified in Part I, II, III, IV or V of the First Schedule shall hold the certificate respectively specified in the second column of

that Part as proof of the attainment of the necessary standards of competency.

(2) Subject to the provisions of subregulation (3), a power driven vessel specified in Part I, II, III or IV of the First Schedule shall carry as crew members the persons specified in the first column of that Part and such members shall hold the certificates specified opposite thereto in the second column of that Part as proof of the attainment of the necessary standards of competency.

(3) A power-driven vessel—

(*a*) specified in Part V of the First Schedule which carries more than twelve passengers shall carry the master and crew prescribed for a vessel respectively specified in Part IV of that Schedule;

(*b*) specified in Part IV of that Schedule which carries more than twelve passengers shall carry the master and crew prescribed for a vessel respectively specified in Part III of that Schedule; and

(*c*) specified in Part III of that Schedule which carries more than twelve passengers shall carry the master and crew prescribed for a vessel respectively specified in Part II of the Schedule.

Minister may issue certificates

4. The Minister may issue a certificate specified in the Second Schedule to a person—

(*a*) who has passed the appropriate examination referred to in regulation 5; or

(*b*) as to whose competency the Minister is otherwise satisfied in accordance with section 10 (2) of the Act.

Examinations for certificates G.N. 127/1977

5.—(1) An examination for a Malaŵi Masters' Certificate Class I, II and III, a Malaŵi Launchmasters' Certificate, a Malaŵi Engineers' Certificate Class I, II and III or a Malaŵi Engine Attendants' Certificate shall be held by persons appointed as examiners by the Minister.

(2) An application to sit an examination referred to in subregulation (1) shall be made to the Ministry of Transport and communications, Lilongwe.

(3) The fee to sit an examination specified in the first column of the Third Schedule shall be the fee specified opposite thereto in the second column of that Schedule.

(4) An applicant for an examination shall have the appropriate qualifications set out in the Fourth Schedule.

(5) The syllabuses for the examinations shall be the syllabuses set out in the Fifth Schedule.

(6) When the applicant has been notified by the Ministry of Transport and Communications of the name and address of the examiner appointed by the Minister, the applicant shall—

(*a*) send the fee referred to in subregulation (3) to the examiner; and

(*b*) satisfy the examiner of his qualifications to sit the examination.

(7) The examiner shall, on receipt of such fee and on being satisfied of the qualifications of the applicant, notify the applicant of the time and place at which the examination shall be held.

(8) If the applicant passes the examination the examiner shall notify the Minister accordingly.

Cancellation of certificates

6.—(1) The Minister may cancel the certificate of a master or member of a crew if such master or member of a crew—

(*a*) has been convicted of an offence under section 36 (1) (*e*) or (*f*) or under section 36 (2) of the Act and his appeal, if any, has been abandoned or dismissed; or

(*b*) has been found to be incompetent or negligent by a formal inquiry held under section 30 of the Act.

(2) When the Minister cancels a certificate under subregulation (1) he may specify a period during which such master or member of a crew shall be disqualified from being granted a new certificate and such master or member of a crew shall not be issued with a new certificate until such period expires.

Notification of Cancellation

7. When the Minister cancels a certificate issued under regulation (4) (*b*) to a person who is the holder of a certificate of competency issued by an authority outside Malaŵi, the Minister shall notify such authority of the cancellation and the reasons therefor.

FIRST SCHEDULE reg. 3

Vessels, Masters and Crews

PART I

Vessels of 600 tonnes or more

Master or member of crew	*Certificates*
1. Master . .	. . Malaŵi Masters' Certificate Class I
2. Mate . .	. . Malaŵi Masters' Certificate Class II
3. Engineer . .	. . Malaŵi Engineers' Certificate Class I

PART II

(*a*) Passenger Vessels of under 600 tonnes but not under 200 tonnes

Master or member of crew	*Certificates*
1. Master	Malaŵi Masters' Certificate Class I
2. Mate	Malaŵi Masters' Certificate Class II
3. Engineer	Malaŵi Engineers' Certificate Class I

(*b*) Cargo Vessels of under 600 tonnes but not under 200 tonnes

Master or member of crew	*Certificates*
1. Master	Malaŵi Masters' Certificate Class II
2. Engineer	Malaŵi Engineers' Certificate Class II

PART III

(*a*) Passenger Vessels of under 200 tonnes but not under 50 tonnes

Master or member of crew	*Certificates*
1. Master	Malaŵi Masters' Certificate Class II
2. Mate	Malaŵi Launchmasters' Certificate
3. Engineer	Malaŵi Engineers' Certificate Class II

(*b*) Cargo Vessels of under 200 tonnes but not under 50 tonnes

Master or member of crew	*Certificates*
1. Master	Malaŵi Masters' Certificate Class III
2. Engineer	Malaŵi Engineers' Certificate Class II

PART IV

Vessels of under 50 tonnes but not under 10 tonnes

Master or member of crew	*Certificates*
1. Master	Malaŵi Launchmasters' Certificate
2. Engineer	Malaŵi Engine Attendants' Certificate

PART V

Vessel of under 10 tonnes but not under 5 tonnes

Master or member of crew	*Certificates*
Master	Malaŵi Launchmasters' Certificate

SECOND SCHEDULE

CERTIFICATES ISSUED BY THE MINISTER

1. Malaŵi Masters' Certificate Class I
2. Malaŵi Masters' Certificate Class II
3. Malaŵi Masters' Certificate Class III
4. Malaŵi Engineers' Certificate Class I
5. Malaŵi Engineers' Certificate Class II
6. Malaŵi Engineers' Certificate Class III
7. Malaŵi Launchmasters' Certificate
8. Malaŵi Engine Attendants' Certificate

THIRD SCHEDULE

reg. 2 G.N. 126/1983 45/1993 54/2000 30/2006

Fees for Examination and For Issue of Certificate

PART I

	Fees Payable K	t
For sitting an examination for—		
1. Malaŵi Master's Certificate Class I	15,000	00
2. Malaŵi Master's Certificate Class II	12,000	00
3. Malaŵi Master's Certificate Class III	10,000	00
4. Malaŵi Master's Certificate Class IV	8,000	00
5. Marine Engineer's Certificate Class I	15,000	00
6. Marine Engineer's Certificate Class II	12,000	00
7. Marine Engineer's Certificate Class III	10,000	00
8. Marine Engineer's Certificate Class IV	8,000	00

PART II

For the issue of Certificate for any of the examinations Specified in Part I—		
1. Original Certificate	2,000	00
2. Duplicate Certificate	5,000	00

PART III

For re-sitting examinations for any number of subjects—		
1. Master's and Engineer's Class I	7,000	00
2. Master's and Engineer's Class II	5,500	00
3. Master's and Engineer's Class III	4,500	00
4. Master's and Engineer's Class IV	3,500	00

PART IV

For the issue of Discharge Book—		
1. Original Discharge Book	5,000	00
2. Duplicate Discharge Book	6,000	00

FOURTH SCHEDULE reg. 5

QUALIFICATIONS

1. *Malaŵi Masters' Certificate Class II*

An applicant shall—

(*a*) be at least twenty-one years of age;

(*b*) be in possession of a Malaŵi Masters' Certificate Class III;

(*c*) have served for at least one year as master of a vessel specified in Part III (*b*) of the First Schedule or as a watchkeeping officer of a vessel specified in Part I or Part II of the First Schedule; and

(*d*) produce references from at least two masters under whom he has served as to his good conduct, sobriety and ability.

2. *Malaŵi Masters Certificate Class III*

An applicant shall—

(*a*) be at least twenty-one years of age;

(*b*) produce proof that he has attained Standard VIII education;

(*c*) be in possession of a Malaŵi Launchmasters' Certificate;

(*d*) have served a minimum of three years as a Launchmaster or; with this qualification, as a mate of a vessel specified in Part III of the First Schedule or watchkeeping officer of a vessel specified in Part I or II of that Schedule;

(*e*) hold a first-aid certificate approved by the examiner;

(*f*) produce a reference as to his good conduct and sobriety.

3. *Malaŵi Launchmasters' Certificate*

An applicant shall—

(*a*) produce proof that he has attained Standard VIII education or such lower standard as the examiner may approve;

(*b*) have served four years as an apprentice or deck hand in any capacity up to boatswain:

G.N. 102/1976

Provided that where an applicant has successfully completed one or more years of training in seamanship in a training course approved by the Minister, each such year shall, for the purpose of this sub-item, be deemed to be two years apprentice or deck-hand service, as the case may be.

4. *Malaŵi Engineers' Certificate Class II*

An applicant shall—

(*a*) be at least twenty-one years of age;

(*b*) be in possession of a Malaŵi Engineers' Certificate Class III;

(*c*) have served for at least two years on main engine watches of a vessel specified in Part I, II or III of the First Schedule, whilst in possession of a Malaŵi Engineers' Certificate Class III; and

(*d*) produce a reference as to his good conduct and sobriety.

5. *Malaŵi Engineers' Certificate Class III*

An applicant shall—

(*a*) be at least twenty-one years of age;

(*b*) be a diesel fitter in possession of a National Trade Test Certificate Grade I;

(*c*) have served for at least one year on main engine watches of a vessel specified in Part I, II or III of the First Schedule, as a diesel fitter in possession of a National Trade Test Certificate Grade I; and

(*d*) produce a reference as to his good conduct and sobriety.

6. *Malaŵi Engine Attendants' Certificate*

An applicant shall—

(*a*) produce proof that he has attained Standard VIII education or such lower standard as the examiner may approve;

(*b*) have—

(i) either served as an engineer apprentice or worked in a workshop where engines are made or repaired, for a period of two years; or

(ii) made up this time by service in a dock or ship's engine room, such time to count as two-thirds; or

(iii) served four years on main engines watches;

(*c*) produce a reference as to his good conduct and sobriety.

FIFTH SCHEDULE reg. 5

Syllabuses

1. *Malaŵi Masters' Certificate Class II*

An applicant shall—

(*a*) be able to read and write English;

(*b*) pass a sight test, colour test and an ophthalmic examination by a medical officer;

(*c*) know in detail the collision regulations as laid down in the Inland Waters Shipping (Navigation) Regulations;

(*d*) have knowledge of the compass, the principles on which it works and be able to construct deviation table;

(*e*) be able to navigate by chart and compile compass bearings and have a functional knowledge of and be able to apply all navigational instruments, including radio telephone, radar and echo sounders, in use on Lake Malaŵi;

(*f*) be able to read the marks on a lead-line and to use the lead on any particular area of inland water;

(*g*) have a sound knowledge of local signals and such knowledge of the International Code of Signals as may, in the opinion of the examiner, be necessary for him to know them;

(*h*) understand the general principles of cargo storage and handling;

(*i*) have a knowledge of wind and weather conditions expected on the lake;

(*j*) have a knowledge of ship stability and be able to plan the loading of a ship with respect to the safety of the vessel;

(*k*) have a general knowledge of the requirements laid down in the Inland Waters Shipping Act; and

(*l*) be able to answer oral questions on any of the above subjects and in particular on—

(i) theoretical and practical seamanship; and

(ii) fire fighting and life saving equipment.

2. *Malaŵi Masters' Certificate Class III*

An applicant shall—

(*a*) be able to read and write English;

(*b*) have a knowledge of the Rule of the Road, the compass and the principles on which the compass works;

(*c*) pass a sight and colour test;

(*d*) be able to take a bearing by compass and lay a position and course off on a chart;

(*e*) be able to read a chart;

(*f*) have a knowledge of the marks on a lead-line and the use of lead on any particular area of inland water;

(*g*) have a knowledge of the International Code of Signals in so far as, in the opinion of the examiner, it is necessary for him to know them, and of local signals;

(*h*) know how to moor and unmoor a vessel, keep clear anchor and how to carry out an anchor;

(*i*) be able to manage a small motor vessel in rough weather on alake;

(*j*) be able to describe the effect produced on the direction of the ship's head by going ahead or astern, with a right or left handed screw, when the rudder is ported or starboarded;
(*k*) be able to rig a sea anchor;
(*l*) be able to manage a ship's boat in rough sea;
(*m*) have a knowledge of dunnaging and stowing cargo;
(*n*) have a knowledge of the winds and weather generally on a lake;
(*o*) be able to answer questions also on—
(i) seamanship, both theoretical and practical;
(ii) such matters as fire fighting, accidents and life saving equipment.

3. *Malaŵi Launchmasters' Certificate*

An applicant shall—
(*a*) be able to read and write English;
(*b*) pass a sight and colour test;
(*c*) have a knowledge of first-aid;
(*d*) have a knowledge of the Rule of the Road;
(*e*) be able to handle launches and boats;
(*f*) answer questions in regard to seamanship and be able to knot and splice ropes and wires;
(*g*) answer questions on fire fighting, accidents and life saving;
(*h*) be able to read and understand the compass and answer questions on local pilotage;
(*i*) have a knowledge of the winds and weather generally on a lake;
(*j*) have a knowledge of dunnaging and stowing cargo;
(*k*) be able to read a chart and lay a position and course off on a chart.

4. *Malaŵi Engineers' Certificate Class II*

An applicant for a Motor Certificate shall—
(*a*) be able to read and write English;
(*b*) describe how to start up an engine by hand, by air and by electric starter and the precautions to be taken and the reasons for taking them;
(*c*) describe how to take over watch-keeping duties on a motorship and what things to be especially careful to check before assuming responsibility;
(*d*) state the procedure to adopt if an engine will not start and state what action should be taken if an engine is running under load and the lubrication oil pressure falls suddenly;
(*e*) state what precautions should be taken against fire in the engine room and describe how to deal with any fire that did start and one type of chemical fire extinguisher;
(*f*) describe how to prepare an engine for a complete survey and detail the points to check for the information of the surveyor;
(*g*) describe with the aid of sketches any of the following—
(i) starting air bottle;
(ii) lubricating oil pump;

(iii) fuel pump;
(iv) starter motor and electric battery;
(v) scavenge pump;
(vi) fuel injector;

(*h*) describe with the aid of sketches the following instruments, stating clearly what they are used for and the safe working limits where applicable—
(i) pressure gauge;
(ii) pyrometer;
(iii) voltmeter;
(iv) thermometer;
(v) ammeter;
(vi) battery hydrometer;

(*i*) state the essential differences between a petrol and a diesel engine and how the fuel is utilized in both types of engine, describing two-stroke and four-stroke cycles in both cases;

(*j*) describe an electric generator and how it produces electricity and, with the aid of sketches, the general layout of a main switchboard, stating how an "earth" should be dealt with;

(*k*) sketch and describe the timing on any four-stroke engine, showing where the valves are stituated;

(*l*) assuming an engine breakdown, produce a properly dimensioned drawing of an engine part so that a workshop can make this part. The following is a list of parts which may be asked for—
(i) bottom end bolt;
(ii) cylinder cover stud;
(iii) shaft coupling bolt;
(iv) gudgeon pin;
(v) relief valve spring;
(vi) pump spindle;

(*m*) sketch and describe the fuel lines, tanks, etc., of a typical engine room, showing clearly all necessary fittings and tracing the path of the fuel oil from bunkers to injector and state how to clear air locks from any part of the system.

An applicant must be able to answer all questions verbally and must be prepared to answer a written paper for which two hours is allowed. The paper will be set within the framework of the above questions. Question (*d*) is a failing question if not answered correctly.

5. *Malaŵi Engineers' Certificate Class III*

An applicant for a Motor Certificate shall—

(*a*) be able to read and write English;

(*b*) describe how to start up an engine by hand, by air and by electric starter and the precautions to be taken and the reasons for taking them;

(*c*) describe how to take over watch-keeping duties on a motorship and what things to be carefully checked before taking over such duties;

(*d*) state the procedure to adopt if an engine does not start and what action should be taken if an engine is running under load and the lubrication oil pressure falls suddenly;

(*e*) state what precautions should be taken against fire in the engine room and describe how to deal with a fire that has started and how to operate a chemical fire extinguisher;

(*f*) describe how to prepare an engine for a complete survey and detail the points to check for the information of the surveyor;

(*g*) describe with the aid of sketches any of the following—

(i) starting air bottle;

(ii) lubricating oil pump;

(iii) fuel pump;

(iv) starter motor and electric battery;

(v) scavenge pump;

(vi) fuel injector;

(*h*) describe with the aid of sketches the following instruments, stating clearly what they are used for and the safe working limits where applicable—

(i) pressure gauge;

(ii) pyrometer;

(iii) voltmeter;

(iv) thermometer;

(v) ammeter;

(vi) battery hydrometer;

(*i*) state the essential differences between a petrol engine and a diesel engine and how the fuel is utilized in both types of engine, describing two-stroke and four-stroke cycles in both cases;

(*j*) describe an electric generator and how it produces electricity and, with the aid of sketches, describe the general layout of a main switchboard, stating how an "earth" should be dealt with;

(*k*) sketch and describe the timing on any four-stroke engine, showing where the valves are situated.

NOTE: Examination for this Certificate will be oral and a general knowledge of (*a*) to (*j*) is sufficient.

6. *Malaŵi Engine Attendants' Certificate*

An applicant shall—

(*a*) be able to read a fuel tank indicator and estimate how many hours the fuel on board will carry the launch in good weather;

(*b*) be able to read intelligently all the gauges, and the engine room telegraph if one is provided and be able to stop, start and reverse the engine;

(*c*) be able to name the principal parts of the engine;

(*d*) be able to change an injector;

(*e*) understand how to clean and clear a bilge pipe or strum and know where all bilge strums are located;

(*f*) be able to top up a battery;
(*g*) be able to take a simple deck bilge pump apart and reassemble it;
(*h*) name all ship's side, inlet and outlet pipes, and the purpose of each valve on these pipes where fitted;
(*i*) know the correct procedure to follow in the case of a hot intermediate shaft bearing and a hot stern gland;
(*j*) know how to use a fire extinguisher;
(*k*) understand the necessity of obeying orders from the helmsman on deck quickly and correctly, the danger of naked lights in the engine room or the fuel stowage spaces, and that the greasing or oiling of the wheel, rudder lines and pulleys is his concern;
(*l*) know the correct procedure to follow in the case of the lubricating oil pressure falling below the safe minimum pressure and of a failure of the cooling water;
(*m*) know the correct procedure to follow when preparing to start an engine and the checks to make after starting an engine.

INLAND WATERS SHIPPING (TONNAGE AND DIMENSIONS) REGULATIONS

ARRANGEMENT OF REGULATIONS

REGULATION
1. Citation
2. Interpretation
3. Manner of ascertaining tonnage and dimensions
4. Tonnage of vessels re-assembled in Malaŵi
5. Builders to supply information
Schedule

INLAND WATERS SHIPPING (TONNAGE AND DIMENSIONS) REGULATIONS

G.N. 21/1970 1/1982

under s. 37

Citation

1. These Regulations may be cited as the Inland Waters Shipping (Tonnage and Dimensions) Regulations.

Interpretation

2. In these Regulations, unless the context otherwise requires—

"decked vessel" means a vessel which is decked in to the extent of her overall length;

"half-decked vessel" means a vessel which is not an open vessel nor a decked vessel;

"open vessel" means a vessel which is not decked in at the forward end to the extent of one-third of her overall length.

Manner of ascertaining tonnage and dimensions G.N. 1/1982

3.—(1) The tonnage of a vessel shall be determined—

(*a*) in the case of a steel or aluminium vessel, by applying the formula—

(breadth + girth) 2 × length × 0.018;

(*b*) in the case of a wooden or reinforced plastic vessel by applying the formula—

(breadth + girth) 2 × length × 0.016,

the breadth, girth and length being expressed in metres taken to the nearest 0.01 metre.

(2) For the purpose of assessing the dimensions of a vessel all calculations shall be made by the methods set out in the Schedule.

Tonnage of vessels re-assembled in Malaŵi

4. The tonnage of a vessel built outside Malaŵi and reassembled in Malaŵi shall be the gross tonnage as determined by the builders.

Builders to supply information

5. The builders of any vessel shall, if called upon to do so by a surveyor, supply such information as may be necessary for the purpose of measuring the dimensions and tonnage of a vessel.

reg. 3 (2)

SCHEDULE

METHODS OF ASSESSING DIMENSIONS OF A VESSEL

1. *Length*

The length of a vessel shall be measured from the forward edge of the stem along the centre line of the uppermost continuous deck to the outer edge of the plating or planking attached to that deck at the stern. In the case of vessels having a pointed stern the length shall be measured from the forward edge of the stem to the aftermost edge of the stern post, and in the case of vessels having a transom (that is a square stern) the length shall be measured from the forward edge of the stem to the outer edge of the transom plating or planking.

2. *Breadth*

The breadth of a vessel shall be measured from the outer edge of the hull plating or planking on one side where it is attached to the uppermost continuous deck, to the outer edge of the hull plating or planking on the other side, such measurement being made at the point of midlength of the vessel. In the case of half-decked vessels the breadth shall be measured between the outer edges of the hull plating or planking where attached to the half-deck at the point of mid-length, and in the case of open vessels the breadth shall be measured between the outer edges of the hull plating or planking at the gunwale and at the point of mid-length.

3. *Girth*

The girth of a vessel shall be measured by marking on both sides of the vessel the height of the uppermost continuous deck at the point of mid-length, then by measuring from the mark on one side downwards

in a direction perpendicular to the keel, across the bottom plating and up to the mark on the other side. This measurement should not take in such projections as rolling chocks (bilge keels) and bar keels. In the case of open and half-decked vessels the measurement shall be taken in a similar manner between the gunwales or the height of the half-deck.

4. *Depth*

The depth of a vessel shall be measured from the top of the keel to the underside of the deck planting or planking of the uppermost continuous deck at the point of mid-length. In the case of open or half-decked vessel it shall be measured from the top of the keel to a straight line drown between the gunwales or half-deck on each side at the point of mid-length.

5. *Measurement of open vessels*

In ascertaining the dimensions of open vessels the upper edge of the upper strake is to form the boundary line of measurement, and the depth shall be taken from an athwart ship line extended from upper edge to upper edge at the point of mid-length of the vessel.

INLAND WATERS SHIPPING (HARBOURS) REGULATIONS

ARRANGEMENT OF REGULATIONS

REGULATION

1. Citation
2. Interpretation

PART I

POWERS OF HARBOUR MASTER

3. Powers of harbour master in a harbour
4. Exercise of powers of harbour master by assistants

PART II

CONTROL OF VESSELS IN HARBOURS

5. Vessels arriving from any port outside Malaŵi
6. Berthing and movement within harbour
7. Ship's moorings
8. Use of buoys and marks in harbour
9. Displaced moorings
10. Speed in harbour
11. Small craft to give way
12. Explosives, etc.
13. Provision of a gangway

13A. Berthing fees

PART III

LOADING OR UNLOADING CARGOES

14. Manifest of cargo

REGULATION

15. Shipping of goods and documents
16. Charges to be prepaid
16A. Fees for loading or unloading cargo
17. Storage of goods
17A. Storage fees

PART IV

GENERAL

18. Warehouses
19. Trespassers
20. Entrance to harbour
21. Fire fighting operations
22. Animals
23. Objects dangerous to shipping
24. Vessels carrying inflammable material
25. Smoking prohibited
26. Guns and explosives
27. Divers
28. Offences and penalties.

G.N. 22/1970
2/1982
48/1993
48/1995
92/1996
51/2000
28/2006

INLAND WATERS SHIPPING (HARBOURS) REGULATIONS

under s. 37

Citation and application

1. These Regulations may be cited as the Inland Waters Shipping (Harbours) Regulations and shall apply to all vessels within any harbour designated by the Minister under section 37 (3) of the Act.

Interpretation
G.N. 2/1982

2. In these Regulations, unless the context otherwise requires—

"explosive" means any substance which is used or manufactured to produce an explosion or a pyrotechnic effect, or any fuse, detonator or cartridge;

"harbour master" means a person appointed by the General Manager, Malaŵi Railways Limited to administer and manage a harbour;

"small craft" means a vessel under 7.5 meters overall length, a dugout canoe or a dhow;

"warehouse" includes any building, place, vessel or vehicle used in a harbour for the purpose of warehousing or depositing goods.

PART I

Powers of Harbour Master

Powers of harbour master in a harbour

3.—(1) All persons within a harbour shall comply with such directions of the harbour master, such officer may do or cause to the purpose of carrying into effect the provisions of these Regulations.

(2) In the case of refusal or neglect to comply with the directions of the harbour master, such officer may do or cause to be done all acts necessary for the purpose of carrying such directions into effect, and all reasonable expenses incurred in his doing such acts may be recovered from the person refusing or neglecting to obey such directions.

(3) A harbour master may direct any person within the harbour to leave such harbour.

(4) A harbour master may, in cases of necessity, cut or cause to be cut any rope, warp, cable or hawser endangering the safety of any vessel in the harbour.

(5) A harbour master may order the removal of any object in the harbour which, in his opinion, obstructs or impedes the use of, or work in, any part of such harbour.

(6) A harbour master shall set aside in the harbour a place where vessels may be repaired and small craft may be beached, and no person shall repair a vessel or beach a small craft in any place outside the place set aside by such officer for repairs or beaching without the permission of the harbour master.

(7) A harbour master shall set aside places where vehicles may be parked, and no person shall park a vehicle in a place outside the places set aside for parking without the permission of the harbour master.

(8) A harbour master may close or impose conditions upon the use of any road, wharf, jetty, quay or warehouse or any part thereof within the harbour.

Exercise of powers of harbour masters by assistants

4. All acts or directions authorized by the Act or these Regulations to be done or given by a harbour master may, subject to his control, be done or given by his deputy or assistant.

PART II

Control of Vessels in Harbours

Vessels arriving from any port outside Malaŵi

5.—(1) Every vessel arriving in a harbour from a port outside Malaŵi shall report to the harbour master within twenty-four hours of arrival.

(2) The owners or agents of a vessel proposing to call at a harbour for the purpose of loading or unloading cargo shall, at least twenty-four hours before the arrival of such vessel, give notice to the harbour master of the expected date and time of arrival of such vessel and particulars of the nature and quantity of cargo to be loaded or unloaded.

Berthing and movement within harbour

6. Every vessel shall occupy the berth assigned to her by the harbour master and shall move to any other berth if directed to do so by the harbour master.

Ship's moorings

7.—(1) Ropes shall only be made fast to dolphins, rings, buoys, mooring posts or bollards provided for the purpose, and no wire rope shall be used unless there is proper protection from chafe to the satisfaction of the harbour master.

(2) Chain cables shall only be used for mooring alongside a wharf or jetty with the permission of the harbour master.

Use of buoys and marks in harbour

8.—(1) A vessel shall not use buoys which are the property of the Malaŵi Railways Ltd. without the permission of the harbour master.

(2) No buoys shall be laid down and no leading marks shall be erected within a harbour area without the permission of the harbour master.

Displaced moorings

9.—(1) Where a mooring buoy has been dragged from its position or damaged by a vessel the master or owner of such vessel shall bear the cost of replacing it.

(2) The master of a vessel which hooks or fouls a mooring buoy which is the property of the Malaŵi Railways Ltd. shall not, except in case of necessity, lift such buoy for the purpose of unhooking or getting clear but shall immediately report the occurrence to the harbour master and await his directions.

Speed in harbour

10. No vessel shall proceed at a speed of more than five knots within a harbour.

Small craft to give way
G.N. 2/1982

11. Small craft within a harbour shall at all times make way for—

(*a*) vessels of 15 metres or more in length which are under way; or

(*b*) vessels engaged in towing.

Explosives etc.
G.N. 2/1982

12.—(1) Notice in writing of the arrival of a vessel carrying explosives or inflammable cargo shall be given by the agent of such vessel to the harbour master before her arrival or by the master of such vessel immediately on her arrival.

(2) The International Code Flag "B" shall be displayed conspicuously in a vessel carrying explosives or inflammable cargo and shall be kept displayed—

(*a*) until such cargo is unloaded; or

(*b*) if such cargo is being loaded, until such time as she leaves harbour.

(3) No explosives or inflammable cargo shall be loaded or unloaded—

(*a*) without the permission of the harbour master; or

(*b*) at a time and place other than the time and place appointed by the harbour master.

(4) Notwithstanding anything contained in this regulation, a vessel carrying explosives or inflammable cargo which—

(*a*) weighs less than 20 kilograms; and

(*b*) is packed in a magazine or container designed for the carriage of such cargo,

needs not comply with this regulation.

Provision of a gangway

13.—(1) The master of a vessel of 50 tons or more at anchor or berthed in a harbour shall provide a safe and proper gangway so arranged as to admit of free and safe passage to and from the vessel.

(2) The master of a vessel referred to in subregulation (1) shall place a life-buoy with line attached near each gangway and at night shall attach a light to such life-buoy.

(3) In the case of a vessel at anchor embarking or disembarking passengers the gangway shall be provided with a guestwarp.

Berthing fees G.N. 48/1993

13A. There shall be paid for berthing any vessel at a harbour the fees set out in Part I of the Schedule.

PART III

Loading or Unloading of Cargoes

Manifest of Cargo

14.—(1) The master or a vessel, if required to do so by the harbour master, shall, within twenty-four hours of the vessel's arrival in a harbour, deliver to such officer a copy in duplicate of the manifest of report of cargo inwards giving detailed weights or measurements of such cargo.

Shipping of goods and documents

15.—(1) A harbour master may require a person desiring to ship goods to deliver to a place appointed by the harbour master and during working hours consignment notes specifying the respective marks or numbers on the packages or articles to be shipped, their number, description and weight, the name and address of the consignee and the port of destination.

(2) A person dispatching goods shall deposit such goods at the places directed by the harbour master.

Changes to be prepaid

16.—(1) The appropriate charges payable to a harbour master upon goods to be landed, shipped, trans-shipped, stored or warehoused shall be paid or sufficient security furnished for their payment before orders will be given for their shipment, delivery or forwarding.

(2) A harbour master may prevent the removal of any goods if the appropriate charges payable by the consignee are unpaid.

(3) The appropriate charges shall be collected by the harbour master on all cargo loaded or unloaded within a harbour.

Fees for loading, or unloading cargo G.N. 48/1993

16A. There shall be paid for loading or unloading cargo the fees set out in Part II of the Schedule.

Storage of goods

17.—(1) Goods for shipment or collection shall be stored at the places directed by the harbour master.

(2) The harbour master may refuse to store any goods because—

(*a*) of their size;

(*b*) of the way in which they are packed;

(*c*) he considers that they are dangerous or harmful; or

(*d*) the appropriate charges have not been paid.

(3) The storage of goods shall be at the risk of the owner of such goods.

Storage fees G.N. 48/1993

17A. (1) Subject to subregulation (2), there shall be paid for storage or warehousing of cargo the fees set out in Part III of the Schedule.

PART IV

General

Warehouses

18. No person shall enter a warehouse except for the purpose of collecting or depositing goods or any matter connected therewith without the permission of the person in charge of such warehouse.

Trespassers

19. No person shall climb upon the roof of any shed or upon any crane, lighthouse, signal station or navigation mark or cut or remove any timber, wood, vegetation or growth or remove any sand, stone, ballast or shingle in or from a harbour without the permission of the harbour master.

Entrance to harbour

20. No person entering or leaving a harbour shall do so except through the harbour entrances or exits provided for the purpose, except in emergency.

Fire fighting operations

21. No person in a harbour shall disregard the directions of a police officer or the harbour master in the event of an outbreak of fire or obstruct or in any way interfere with the fire fighting operations.

Animals

22. The owner or person in-charge of an animal shall ensure that such animal is properly secured at all times when it is within a harbour.

Objects dangerous to shipping

23.—(1) No person shall place any object likely to be a danger to vessels in the waters of a harbour.

(2) If an object likely to be a danger to vessels falls into the water from a vessel in the harbour the master or person in-charge of such vessel shall recover such object from the water or, if he is unable to do so, shall notify the harbour master immediately of the location of such object.

Vessels carrying inflammable material

24. No person shall smoke or use a naked light in the hold or near an open hatch, of a vessel carrying, loading or unloading any inflammable cargo or explosives, the loading or unloading of which shall be subject to any restrictions imposed by the master of such vessel and the harbour master.

Smoking prohibited

25. No person shall smoke within a shed or within any part of a harbour where no smoking notices are exhibited.

Guns and explosives

26. No person shall fire a gun or rocket or cause an explosion in a harbour without the permission of the harbour master.

Divers

27. No diver shall work within a harbour without the permission of the harbour master.

Offences and penalties

28. Any person who contravenes or fails to comply with any of the provisions of these Regulations shall be liable to a fine of K50.

SCHEDULE

G.N. 48/1995
92/1996
51/2000
28/2006

PART I

Berthing Fees

Length of Vessel	*Fees per day or part thereof* K t
1. Where the length of vessel does not exceed 20 metres	1,000 00
2. Where the length exceeds 20 metres but does not exceed 40 metres	1,800 00

		K	t
3.	Where the length exceeds 40 metres but does not exceed 60 metres	2,000	00
4.	Where the length exceeds 60 metres	3,000	00

PART II

FEES FOR LOADING OR UNLOADING CARGO

1.	Stevedoring—		
	(*a*) per tonne or part thereof for weight cargo	500	00
	(*b*) per cubic metre or part thereof for volume cargo	250	00
2.	Gantry Crane—		
	(*a*) per Forty Equivalent Unit (FEU) container	2,000	00
	(*b*) per Twenty Equivalent Unit (TEU) container	3,000	00
	(*c*) per move of any other cargo	2,000	00
3.	Mobile Crane—		
	per hour or part thereof	2,000	00
4.	Fork-lift, tractor or trailer—		
	per hour or part thereof	1,500	00

PART III

STORAGE FEES

1.	Covered storage—		
	(*a*) per tonne per day or part thereof for weight cargo	250	00
	(*b*) per cubic metre per day or part thereof for volume cargo	200	00
2.	Open storage—		
	(*a*) per tonne per day or part thereof for weight cargo	150	00
	(*b*) per cubic metre per day or part thereof . .	150	00

PART IV

VISITING FEES

	Per person per visit	20,000	00

PART V

HIRING CHARGES

Per day (client's fuel)—

(*a*)	per 20 tonne mobile crane	60,000	00
(*b*)	per 5 tonne mobile crane	15,000	00
(*c*)	fork-lift truck	12,000	00
(*d*)	tractor and trailer	20,000	00
(*e*)	ellicott dredger	60,000	00
(*f*)	tractor	12,000	00

PART VI

SUPPLY OF ELECTRICITY AND WATER

	K t
1. Supply of electricity to ships and other containers within the harbour area—	
(*a*) single phase—	
(i) fixed charge, per month	1,500 00
(ii) charge per KWh	2,000 00
(*b*) three phase—	
(i) fixed charge, per month	3,000 00
(ii) charge per KWh	15 00
2. Supply of fresh water, per litre	12 00

INLAND WATERS SHIPPING (NAVIGATION) REGULATIONS

ARRANGEMENT OF REGULATIONS

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[Subsidiary] *Inland Waters Shipping (Navigation) Regulations*

G.N. 42/1970
158/1972
3/1982

INLAND WATERS SHIPPING (NAVIGATION) REGULATIONS

under s. 37

PART I

Preliminary

Citation and application

1. These Regulations may be cited as the Inland Waters Shipping (Navigation) Regulations, and shall apply to all vessels used on inland waters except as provided in regulation 26.

Interpretation

2.—(1) In these Regulations, unless the context otherwise requires—

"engaged in fishing" means fishing with nets, lines or trawls, but does not include fishing with trolling lines;

"height above the hull" means height above the top of the uppermost continuous strake or gunwale;

"power driven vessel" means any vessel propelled by machinery:

Provided that—

(i) a power driven vessel which is under sail and not under power shall be deemed to be a sailing vessel; and

(ii) every vessel under power, whether or not under sail as well shall be deemed to be a power driven vessel;

"prolonged blast" means a blast of from four to six seconds duration;

"short blast" means a blast of about one second's duration;

"under way" in relation to a vessel means when the vessel is not at anchor, or made fast to the shore, or aground;

"visible", when applied to lights, means visible on a dark night with a clear atmosphere;

"whistle" includes a siren.

(2) For the purposes of these Regulations vessels shall be deemed to be in sight of one another only when one can be observed visually from the other.

Manner, etc., of showing lights

3.—(1) The provisions of these Regulations relating to lights shall be complied with in all weathers from sunset to sunrise and shall also be complied with from sunrise to sunset in restricted visibility.

(2) Subject to subregulation (3), the only lights other than the lights prescribed in these Regulations which a vessel shall display shall be lights which cannot be mistaken for and which

do not impair the visibility or distinctive character of such prescribed lights.

(3) No vessel shall display red or green lights in any manner other than in the manner prescribed in these Regulations.

Duties of masters in respect of lights, etc.

4. The master or person in charge of a vessel shall cause—

(*a*) the lights and shapes prescribed in these Regulations to be displayed;

(*b*) the signals prescribed in these Regulations to be given; and

(*c*) the actions prescribed in these Regulations to be taken, in the vessel under his command or in his charge and shall cause a proper lookout to be kept at all times in such vessel.

PART II

Lights and Shapes

Navigation lights to be carried by certain power driven vessels G.N. 3/1982

5. —(1) When under way a power driven vessel of 30 metres or more overall length shall carry—

(*a*) on or in front of the foremast, or, in the case of a vessel without a foremast, in the forepart of the vessel, at a height above the hull of not less than 6 metres, a bright white light so constructed as to show an unbroken light over an arc of the horizon of 20 points of the compass (225 degrees) on each side of the vessel, that is, from right ahead to 2 points (22 ½ degrees) abaft the beam on either side, and of such a character as to be visible at a distance of at least five miles;

(*b*) on the starboard side a green light so constructed as to show an unbroken light over an arc of the horizon of 10 points of the compass (112 ½ degrees) so fixed as to show the light from right ahead to 2 points (22 ½ degrees) abaft the beam on the starboard side, and of such a character as to be visible at a distance of at least two miles;

(*c*) on the port side, a red light so constructed as to show an unbroken light over an arc of the horizon of 10 points of the compass (112 ½ degrees), so fixed as to show the light from right ahead to 2 points (22 ½ degrees) abaft the beam on the port side, and of such a character as to be visible at a distance of at least two miles;

(*d*) at her stern a white light carried as nearly as practicable on the same level as the side lights, so constructed that it shall show an unbroken light over an arc of the horizon of 12 points of the compass (135 degrees) and so fixed as to show the light 6 points (67 ½ degrees) from right abaft on each side of the vessel, and of such a character as to be visible at a distance of two miles.

(2) The green and red sidelights referred to in subregulation (1) (*b*) and (*c*) shall be fitted with inboard screens projecting at least 900 millimetres forward from the light, so as to prevent these lights from being seen across the bows.

(3) When under way, a power driven vessel of 7.5 metres or more but less than 30 metres overall length shall carry—

(*a*) in the forepart of the vessel, where it can best be seen, and at a height above the gunwale of not less than 2.7 metres, a white light constructed and fixed as provided in subregulation (1) (*a*) and of such a character as to be visible at a distance of at least 3 miles;

(*b*) green and red sidelights constructed and fixed as provided in subregulation (1) (*b*) and (*c*) and subregulation (2) and of such a character as to be visible a distance of at least one mile, or a combined lantern showing a green light and a red light from right ahead to 2 points (22 ½ degrees) abaft the beam on the starboard and port sides respectively, such lantern to be carried not less than 900 millimetres below the white light; and

(*c*) at her stern a white light, constructed and fixed as provided in subregulation (1) (*d*) and of similar character:

Provided that if it is not possible on account of bad weather or other sufficient cause for this light to be fixed, an electric torch or a lighted lantern showing a white light shall be kept at hand ready for use and shall on the approach of an overtaking vessel, be shown in sufficient time to prevent collision.

(4) A sailing vessel under way, and any vessel being towed, shall carry the same red and green lights as are prescribed in subregulation (1) (*b*) and (*c*) and subregulation (2), and shall also carry a stern light as prescribed in subregulation (1) (*d*):

Provided that a towed vessel, other than the last vessel of the tow, shall carry in lieu of such stern light, a small white light as described in regulation 8 (2).

(5) A vessel being pushed ahead shall carry, at the forward end, on the starboard side a green light and on the port side a red light, which shall have the same characteristics as the lights prescribed in subregulation (1) (*b*) and (*c*) and subregulation (2):

Provided that any number of vessels pushed ahead in a group shall be lighted as one vessel.

(6)—(*a*) When it is not possible on account of bad weather or other sufficient cause to fix the green and red lights prescribed, these lights shall be kept at hand, lighted and

ready for immediate use, and shall, on the approach of or to other vessels, be exhibited on their respective sides in sufficient time to prevent collision, in such manner as to make them most visible, and so that the green light shall not be seen on the port side nor the red light on the starboard side, nor, if practicable, more than 2 points (22 1/2 degrees) abaft the beam on their respective sides.

(*b*) To make the use of these portable lights more certain and easy, the lanterns containing them shall each be painted outside with the colour of the lights they respectively contain, and shall be provided with proper screens.

Navigation lights and shapes to be carried by vessels engaged in fishing G.N. 3/1982

6.—(1) Power driven fishing vessels when not engaged in fishing shall show the lights or shapes for similar vessels of their length.

(2) Vessels engaged in fishing, when under way or at anchor, shall show only the lights and shapes provided in this regulation, which lights and shapes shall be visible at a distance of at least two miles.

(3) Vessels when engaged in trawling, by which is meant the dragging of a dredge net or other apparatus through the water, shall carry two lights in a vertical line, one over the other, not less than 1.2 metres nor more than 3.6 metres apart. The upper of these lights shall be green and the lower light white and each shall be visible all round the horizon. The lower of these two lights shall be carried at a height above the sidelights not less than twice the distance between the two vertical lights.

(4) Vessels when engaged in fishing, except vessels engaged in trawling, shall carry the lights provided in subregulation (3) except that the upper of the two vertical lights shall be red. Such vessels if of less than 12 metres in length may carry the red light at a height of not less than 2.7 metres above the gunwale and the white light not less than 900 millimetres below the red light.

(5) Vessels referred to in subregulations (3) and (4), when making way through the water, shall carry the sidelights or lanterns provided in regulation 5 (1) (*a*) and (*b*) as appropriate, and the stern light provided in regulation 5 (3) (*c*). When not making way through the water they shall show neither the sidelights nor the stern light.

(6) Vessels referred to in subregulation (4) with outlying gear extending more than 150 metres horizontally into the seaway shall carry an additional all round white light at a horizontal distance of not less than 1.8 metres nor more than 6 metres away from the vertical lights in the direction of the outlying gear. This additional white light shall be placed at a height not exceeding

that of the white light provided in subregulation (3) and not lower than the sidelights.

(7) In addition to the lights which they are required by this regulation to carry, vessels engaged in fishing may, if necessary in order to attract the attention of an approaching vessel, use flare-up light, or may direct the beam of their searchlight in the direction of a danger threatening the approach vessel, in such a way as not to embarrass other vessels. They may also use working lights but fishermen shall take into account that specially bright or insufficiently screened working lights may impair the visibility and distinctive character of the lights prescribed in this regulation.

(8) By day vessels when engaged in fishing shall indicate their occupation by displaying where it can best be seen a black shape consisting of two cones each not less than 600 millimetres in diameter with their points together one above the other. Such vessels if of less than 19.5 metres in length may substitute a basket for such black shape. If their outlying gear extends more than 150 metres horizontally into the seaway vessels engaged in fishing shall display in addition one black conical shape, point upwards, in the direction of the outlying gear.

7. [*Cancelled by G.N.* 158/1972.]

Towing lights and shapes G.N. 3/1982

8.—(1) A power driven vessel when towing or pushing another vessel shall, in addition to her side-lights, carry two white lights in a vertical line one over the other not less than 1.8 metres apart, and when towing and the length of the tow, measuring from the stern of the towing vessels to the stern of the last vessel towed, exceeds 180 metres, shall carry three white lights in a vertical line one over the other, so that the upper and lower lights shall be the same distance from, and not less than 1.8 metres above or below, the middle light. Each of these lights shall be of the same construction and character and one of them shall be carried in the same position as the white light prescribed in regulation 5 (1) (*a*). None of these lights shall be carried at a height of less than 4.2 metres above the hull. In a vessel with a single mast, such lights may be carried on the mast.

(2) The towing vessel shall also show the appropriate stern light as prescribed in regulation 5 (1) (*d*) or regulation 5 (3) (*c*).

(3) Between sunrise and sunset a power driven vessel engaged in towing, if the length of tow exceeds 180 metres, shall carry, where it can best be seen, a black diamond shape at least 600 millimetres in diameter.

(4) A power driven vessel of less than 19.5 metres in length when towing or pushing another vessel shall carry—

(*a*) in addition to the side-lights or the combined lantern prescribed in regulation 5 (3) (*b*), two white lights in a vertical line, one over the other not less than 1.2 metres apart. Each of these lights shall be of the same construction and character as the white light prescribed in regulation 5 (3) (*a*), and one of them shall be carried in the same position. In a vessel with a single mast such lights may be carried on the mast;

(*b*) the appropriate stern light as prescribed in regulation 5 (3) (*c*).

(5) A vessel referred to in this regulation when being towed shall carry the side-lights or the combined lantern prescribed in regulation 5 (3) (*b*) and except the last vessel of the tow, a small white light abaft the funnel or aftermast, but such light shall not be visible forward of the beam. When being pushed ahead it shall carry at the forward end the side-lights or combined lantern prescribed in regulation 5 (3) (*b*) as appropriate, provided that any number of vessels referred to in this regulation when pushed ahead in a group shall be lighted as one vessel under this regulation, unless the overall length of the group exceeds 19.5 metres when the provisions of regulation 5 (5) shall apply.

Lights and shapes for vessels at anchor G.N. 3/1982

9.—(1) A vessel when at anchor or made fast in or near a navigable channel where it is likely to be a hazard to other vessels shall display forward where it can best be seen at a height above the hull of not more than 6 metres a white light in a lantern so constructed as to show a clear, uniform and unbroken light visible all round the horizon at a distance of at least one mile.

(2) Between sunrise and sunset every vessel when at anchor shall carry in the forepart of the vessel, where it can best be seen, one black ball not less than 600 millimetres in diameter.

Lights and shapes for vessels not under control G.N. 3/1982

10.—(1) A vessel of 15 metres or more overall length which is not under control and which is in or near a navigable channel where it is likely to be a hazard to other vessels shall display, in lieu of the light referred to in regulation 5 (1) (*a*) or regulation 5 (3) (*a*), where they can best be seen two red lights in a vertical line, one over the other, not less than 1.8 metres apart and of such a character as to be visible all round the horizon at a distance of at least two miles. By day such vessel shall carry in a vertical line, one over the other, not less than 1.8 metres apart where they can best be seen, two black balls or shapes each not less than 600 millimetres in diameter.

(2) A vessel referred to in this regulation, when not making way through the water, shall not show the coloured lights referred to in regulation 5 (1) (*b*), (*c*) and (*d*), but when making way shall show them.

(3) The lights and shapes referred to in subregulation (1) shall be taken by other vessels as signals that the vessel showing them is not under control and cannot therefore get out of the way, but not as signals of a vessel in distress and requiring assistance.

(4) A vessel of less than 15 metres overall length shall, when not under control, have ready at hand either an electric torch or a lighted lantern showing a white light, which shall be exhibited in sufficient time to prevent a collision.

(5) A vessel engaged in picking up a navigation mark, or a vessel engaged in surveying or underwater operations, or a vessel engaged in replenishment at sea, or in the launching or recovery of aircraft when from the nature of her work she is unable to get out of the way of approaching vessels, shall carry, in lieu of the lights prescribed in regulation 5, three lights in a vertical line one over the other so that the upper and lower lights shall be the same distance from, and not less than 1.8 metres above or below, the middle light. The highest and lowest of these lights shall be red and the middle light shall be white, and they shall be of such a character as to be visible all round the horizon at a distance of at least two miles. By day, she shall carry in a vertical line one over the other not less than 1.8 metres apart, where they can best be seen, three shapes each not less than 600 millimetres in diameter, of which the highest and lowest shall be globular in shape and red in colour, and the middle one diamond in shape and white.

PART III

Sound Signal and Contact in Restricted Visibility

Action to avoid collisions at sea

11.—(1) The possession of information obtained from radar shall not relieve any vessel of the obligation of conforming strictly with the regulations and, in particular, the obligations contained in regulations 13 and 14.

(2) The First Schedule contains recommendations intended as aids to avoiding collision in restricted visibility.

Sound signals G.N. 3/1982

12.—(1) A power driven vessel of 12 metres or more overall length shall be provided with an efficient whistle, sounded by steam or by some substitute for steam, so placed that the sound may not be intercepted by any obstruction, and with an efficient fog-horn to be sounded by mechanical means, and also with an efficient bell. A sailing vessel of 12 metres or more overall length shall be provided with a similar fog-horn and bell.

(2) All signals prescribed in this regulation for vessels under way shall be given by whistle or fog-horn.

(3) In fog, mist, heavy rainstorm, or any other condition similarly restricting visibility, whether by day or night, the signals prescribed in this regulation shall be used as follows—

(*a*) a power driven vessel making way through the water shall sound at intervals of not more than 2 minutes a prolonged blast;

(*b*) a power driven vessel under way, but stopped and making no way through the water, shall sound at intervals of not more than 2 minutes two prolonged blasts, with an interval of about 1 second between them;

(*c*) sailing vessel under way shall sound, at intervals of not more than 1 minute, when on the starboard tack one short blast, when on the port tack two short blasts in succession, and when with the wind abaft the beam three short blasts in succession;

(*d*) a vessel when at anchor shall at intervals of not more than 1 minute ring the bell rapidly for about 5 seconds, and may, in addition, sound three blasts in succession, namely, one short, one prolonged and one short blast, to give warning of her position and of the possibility of collision to an approaching vessel;

(*e*) a vessel when towing, a vessel engaged in laying or in picking up a navigation mark, and a vessel under way which is unable to get out of the way of an approaching vessel through being not under command or unable to manoeuvre as required by these Regulations shall, instead of the signals prescribed in paragraphs (*a*), (*b*) and (*c*) sound, at intervals of not more than 1 minute, three blasts in succession, namely, one prolonged blast followed by two short blasts;

(*f*) a vessel being towed, or, if more than one vessel is towed, the first manned vessel of the tow, shall, at intervals of not more than 1 minute, sound four blasts in succession, namely, one prolonged blast followed by three short blasts, when practicable, this signal shall be made immediately after the signal made by the towing vessel;

(*g*) a vessel aground shall give the bell signal referred to in paragraph (*d*) and shall, in addition, give 3 separate and distinct strokes on the bell immediately before and after such rapid ringing of the bell;

(*h*) a vessel engaged in fishing, whether under way or at anchor, shall at intervals of not more than 1 minute sound the signal referred to in paragraph (*e*);

(*i*) a vessel engaged in fishing with trolling lines and under way shall sound the signals referred to in paragraphs (*a*), (*b*) or (*c*), as may be appropriate.

(4) A vessel of less than 12 metres overall length or a rowing boat or canoe shall not be obliged to give the signals referred to in subregulation (3) but if not, such vessel shall make some other efficient sound signal at intervals of not more than 1 minute.

Conduct in restricted visibility

13.—(1) Every vessel shall, in fog, mist, heavy rainstorm or any other condition similarly restricting visibility, proceed at a moderate speed, having careful regard to the existing circumstances and conditions.

(2) A power driven vessel hearing, apparently forward of the beam, the fog signal of a vessel the position of which is not ascertained, shall, so far as the circumstances of the case admit, stop engines, and then navigate with caution until danger of collision is over.

(3) A power driven vessel which detects the presence of another vessel forward of the beam before hearing her fog signal or sighting her visually may take early and substantial action to avoid a close quarters situation but, if this cannot be avoided, shall, so far as the circumstances of the case admit, stop engines in proper time to avoid collision, and then navigate with caution until danger of collision is over.

PART IV

Steering and Sailing Regulations

General observance of good seamanship

14.—(1) In obeying and construing these Regulations any action taken should be positive, in ample time, and with due regard to the observance of good seamanship.

(2) Risk of collision can, when circumstances permit, be ascertained by carefully watching the compass bearing of an approaching vessel. If the bearing does not appreciably change, such risk should be deemed to exist.

(3) Mariners should bear in mind that seaplanes in the act of landing or taking off, or operating under adverse weather conditions, may be unable to change their intended action at the last moment.

(4) In complying with these Regulations, the master or person in charge of a vessel shall have due regard to all dangers of navigation and collision and to any other special circumstances which may render a departure from them necessary in order to avoid immediate danger.

Two sailing ships approaching each other

15.—(1) When two sailing vessels are approaching one another, so as to involve risk of collision, one of them shall keep out of the way of the other as follows—

(*a*) when each has the wind on a different side, the vessel which has the wind on the port side shall keep out of the way of the other;

(*b*) when both have the wind on the same side, the vessel which is to windward shall keep out of the way of the vessel which is to leeward.

(2) For the purposes of this regulation the windward side shall be deemed to be the side opposite to that on which the mainsail is carried.

Power driven vessels meeting end on

16. When two power driven vessels are meeting end on or nearly end on in such manner as to involve risk of collision, each shall alter course to starboard, so that each may pass on the port side of the other.

Power driven vessels crossing

17. When two power driven vessels are crossing so as to involve risk of collision the vessel which has the other on her own starboard side shall keep out of the way of the other.

Power driven vessels and sailing vessels

18.—(1) When a power driven vessel and a sailing vessel are proceeding in such directions as to involve risk of collision, the power driven vessel shall, except as provided for in regulations 21 and 23, keep out of the way of the sailing vessel.

(2) This regulation shall not give to a sailing vessel the right to hamper in a narrow channel the safe passage of a power driven vessel which can navigate only inside such channel.

Emergency action

19. Where by any of these regulations one of two vessels is to keep out of the way, the other shall keep her course and speed. When, for any cause, the latter vessel finds herself so close that collision cannot be avoided by the action of the giving-way vessel alone, she also shall take such action as will best help to overt collision.

Action to keep out of way

20. Every power driven vessel which is directed by these Regulations to keep out of the way of another vessel shall, if the circumstances of the case permit, avoid crossing ahead of her, and shall on approaching her, if necessary, slacken speed or stop or reverse.

Vessels overtaking

21.—(1) Notwithstanding anything contained in the Regulations, every vessel overtaking another vessel shall keep out of the way of the vessel being overtaken.

(2) Every vessel coming up with another vessel from any direction more than 2 points (22 degrees) abaft her beam, i.e. in such a position, with reference to the other vessel, that at night she would be unable to see either of that vessels sidelights, shall be deemed to be an overtaking vessel; and no subsequent alteration of the bearing between the two vessels shall make the overtaking vessel a crossing vessel within the meaning of these

Regulations, or relieve such vessel of the duty of keeping clear of the overtaken vessel until she is finally past and clear.

(3) If the overtaking vessel cannot determine with certainty whether she is forward of or abaft this direction from the other vessel, she shall assume that she is an overtaking vessel and keep out of the way.

Navigating channels G.N. 3/1982

22.—(1) In a narrow channel every power driven vessel when proceeding along the course of the channel, shall, when it is safe and practicable, keep to that side of the fairway or mid-channel which lies on the starboard side of such vessel.

(2) Whenever a power driven vessel is nearing a bend in a channel where a vessel approaching from the other direction cannot be seen such power driven vessel shall, within one-half (½) mile of the bend, give a signal by one prolonged blast on her whistle or fog-horn, which signal shall be answered by a similar blast given by any approaching power driven vessel that may be within hearing around the bend. Regardless of whether an approaching vessel on the farther side of the bend is heard, such bend shall be rounded with alertness and caution.

(3) In a narrow channel a power driven vessel of less than 19.5 metres overall length shall not hamper the safe passage of a vessel which can navigate only inside such channel.

(4) A vessel (which expression shall include a pontoon ferry) crossing a river or channel shall keep out of the way of any power driven vessel proceeding upstream or downstream.

Keeping clear of vessels engaged in fishing

23. All vessels not engaged in fishing shall, when under way, keep out of the way of vessels engaged in fishing. This regulation shall not give to any vessel engaged in fishing the right of obstructing a fairway used by vessels other than fishing vessels.

PART V

Sound Signals for Vessels in Sight of One Another

Sound signals

24.—(1) When vessels are in sight of one another, a power driven vessel under way, in taking any course authorized or required by these Regulations shall indicate that course by the following signals on her whistle or fog-horn, namely—

(*a*) one short blast to mean "I am altering my course to starboard";

(*b*) two short blasts to mean "I am altering my course to port";

(*c*) three short blasts to mean "My engines are going astern".

(2) Whenever a power driven vessel which under these Regulations has the right to maintain her course and speed is in sight of another vessel and is in doubt whether sufficient action is being taken by the other vessel to avert collision, she may indicate such doubt by giving at least five short and rapid blasts on the whistle or fog-horn. The giving of such a signal shall not relieve a vessel of her obligations under these Regulations, including her duty to indicate any action taken under these Regulations by giving the appropriate sound signals laid down in this regulation.

(3) Any signal mentioned in this regulation may be further indicated by a visual signal consisting of a white light visible all round the horizon at a distance of at least 5 miles, and so devised that it will operate simultaneously, and in conjunction with the whistle-sounding mechanism and remain lighted and visible during the same period as the sound signal.

(4) All vessels shall endeavour to keep out of the way of any dug-out canoes that may be encountered, and extend courtesy by reducing speed or stopping engines if necessary so as not to endanger or inconvenience them by wash.

PART VI

Miscellaneous

Consequences of neglect

25. Nothing in these Regulations shall exonerate any vessel or the owner, master or crew thereof, from the consequences of any neglect to carry lights or signals, or of any neglect to keep a proper look-out, or of the neglect of any precaution which may be required by the ordinary practice of seamen or by the special circumstances of the case.

Reservation in respect of harbours and rivers

26. Nothing in these Regulations shall affect the operation of any special regulations made in relation to any harbour, river, lake, or reserved seaplane area, and where these Regulations conflict with any such special regulations, such special relations shall prevail.

Distress signals

27.—(1) When a vessel on the water is in distress and requires assistance from other vessels or from the shore, she shall use or display the following signals, either together or separately, namely—

(*a*) a gun or other explosive signal fired at intervals of about a minute;

(*b*) a continuous sounding with any fog-signalling apparatus;

(*c*) rockets or shells throwing red stars fired one at a time at short intervals;

(*d*) a signal made by radiotelegraphy or by any other signalling method consisting of the letters S O S in the Morse Code;

(*e*) a signal sent by radiotelephony consisting of the spoken word "Mayday";

(*f*) the International Code Signal of distress indicated by the letters N.C. in the Morse Code;

(*g*) a signal consisting of a square flag having above or below it a ball or anything resembling a ball;

(*h*) flames on the vessel (as from a burning tar barrel, oil barrel, etc.);

(*i*) a rocket parachute flare or a hand flare showing a red light;

(*j*) a smoke signal giving off a volume of orange-coloured smoke;

(*k*) slowly and repeatedly raising and lowering arms outstretched to each side.

(2) The use of any of the foregoing signals, except for the purpose of indicating that a vessel is in distress, and the use of any signals which may be confused with any of the foregoing signals, is prohibited, save to the extent that a fishing vessel uses flames or fire as a means of attracting fish.

Navigational aids

28. Navigation marks and buoys used on inland waters shall conform to the International Lateral System as set out in the Second Schedule.

Reporting of shipping casualties

29. When a shipping casualty is deemed to have occurred in accordance with section 21 of the Act, the master or person in charge of the vessel or vessels involved or any witness to such casualty shall, within 48 hours of such casualty, report the circumstances to the nearest surveyor, registrar of vessels, police officer or harbour master who shall immediately on receiving notification of the casualty investigate the circumstances and submit a full written report to the Minister.

Notices to Mariners

30. The Minister may publish from time to time by notice in the *Government Gazette* such "Notices to Mariners" as he may consider necessary. It is the duty of all owners and masters or persons in charge of vessels to be aware of and conform with such notices.

FIRST SCHEDULE

RECOMMENDATIONS ON THE USE OF RADAR INFORMATION AND AS AIDS TO AVOIDING COLLISIONS AT SEA

(1) Assumptions made on scanty information may be dangerous and should be avoided.

(2) A vessel navigating with the aid of radar in restricted visibility must, in compliance with regulation 13 (1), go at a moderate speed. Information obtained from the use of radar is one of the circumstances to be taken into account when determining moderate speed. In this regard it must be recognized that small vessels, and similar floating objects may not be detected by radar. Radar indications of one or more vessels in the vicinity may mean that "moderate speed" should be slower than a mariner without radar might consider moderate in the circumstances.

(3) When navigating in restricted visibility the radar range and bearing alone do not constitute ascertainment of the position of the other vessel under regulation 13 (2) sufficiently to relieve a vessel of the duty to stop her engines and navigate with caution when a fog signal is heard forward of the beam.

(4) When action has been taken under regulation 13 (3) to avoid a close quarters situation, it is essential to make sure that such action is having the desired effect; alterations of course or speed or both are matters as to which the mariner must be guided by the circumstances of the case.

(5) Alteration of course alone may be the most effective action to avoid a close quarters situation provided that—

(*a*) there is sufficient sea room;

(*b*) it is made in good time;

(*c*) it is substantial; a succession of small alterations of course should be avoided;

(*d*) it does not result in a close quarters situation with other vessels.

(6) The direction of an alteration of course is a matter in which the mariner must be guided by the circumstances of the case. An alteration to starboard, particularly when vessels are approaching apparently on opposite or nearly opposite courses, is generally preferable to an alteration to port.

(7) An alteration of speed, either alone or in conjunction with an alteration of course, should be substantial; a number of small alterations of speed should be avoided.

(8) If a close quarters situation is imminent, the most prudent action may be to take all way off the vessel.

SECOND SCHEDULE

NAVIGATIONAL AIDS reg. 28

(*a*) In this Schedule the term starboard hand denotes that side which would be on the right hand of a mariner either going with the main flood stream or approaching or entering a harbour river or channel from seaward. The expression port hand denotes the side on the left hand of the mariner in the same circumstances.

(*b*) The port hand of a channel shall be marked by flat topped cylindrical can buoys carrying red lights if required.

(*c*) The starboard side of a channel shall be marked by cone buoys with the points uppermost, carrying white lights if required.

(*d*) *Middle ground buoys* the ends of middle grounds shall be marked by spherical buoys, which are painted in horizontal bands, red and white the main channel is on the starboard hand or the channels are of equal importance and black and white where the main channel is on the port hand.

Middle grounds top marks if any, where the main channel is on the starboard hand shall consist of *red* cans on the outer buoys and *red* T's on the inner buoys. Where the main channel is on the port hand, the top marks, if any, shall consist of black cones on the outer buoys and black diamonds on the inner buoys. Where the channels are of equal importance the top-marks, if any, shall consist of red spheres on the outer buoys and red St. George's crosses on the inner buoys.

Lights on middle ground buoys if any, shall as far as possible be distinctive and coloured red or white, the colour (white or red) and the rhythm indicating the side on which the mark is to be passed.

Mid channel buoys shall be of distinctive shapes different from the principal characteristic (e.g., conical, can or spherical characteristic). They shall be painted in vertical stripes either black and white or red and white.

Mid channel top marks shall be of distinctive shapes other than can, cone or sphere. Lights on mid channel buoys, if any, shall be different from neighbouring lights at the side of the channel.

Isolated danger buoys shall be spherical and painted black and red in wide horizontal bands, separated by narrow white bands.

Isolated danger top marks if any, shall consist of spheres painted black and red or half black and red horizontally.

Lights on isolated danger buoys, if any, shall be flashing, either white or red.

Fairway buoys or land fall buoys which serve to indicate the seaward approach to a harbour or river shall be similar in shape and colour to mid channel buoys.

Lights on fairway buoys, if any, shall be flashing.

Buoys on the same side of a channel may be distinguished from each other by names, numbers or letters. Some buoys may also carry rader reflector.

(*e*) Buoys may also be used for the following—

(i) *Outfall and spoil ground buoys* these mark the position where sewage or other pipes discharge into the sea, and discharging grounds for dredges and sullage lighters. The shape of these buoys is optional, but they shall be painted yellow and black divided horizontally. *Lights* are optional but shall be different from neighbouring lights in the vicinity.

(ii) *Telegraph cables buoys* these mark the position of telegraph or other submarine cables in the vicinity of which anchoring is prohibited. The shape of these buoys is optional, but they shall be painted black with the word "TELEGRAPH" written thereon in white letters.

(iii) *Danger area buoys* these buoys are as allocated to naval and military authorities for purposes such as practice firing or bombing. The shape of these buoys is optional, but they shall be painted yellow with a red St. George's cross on top making red and yellow vertical stripes on the sides. The letters "DZ" shall be painted on the sides.

(iv) *Dan buoys* these buoys are cylindrical in shape with a tube through the centre to take a stave, to the top of which is secured a flag. At sea these mark the limit of fishing grounds where submerged nets may be encountered.

(v) *Mooring buoys* these are of many shapes and sizes and usually cylindrical in shape and may be found in any harbour or anchorage.

(vi) *Wreck marking buoys* Wrecks which constitute a danger to shipping in the vicinity of channels or fairways may be marked by wreck marking buoys, the shape of the wreck buoy (either can, conical or spherical) indicating on which hand it should be left. Wreck marking buoys shall be painted green with the word "WRECK" painted thereto in white letters. Lights, if any, shall be green flashing.

Caution: if buoys of the principal characteristic shapes (i.e., conical, can and spherical) are not available, buoys of other shapes may be used in their places. Such buoys shall be painted in a similar manner to the marks they replace, and if lighted will exhibit lights with similar characteristics.

If buoys are not available, spars may be used to indicate on which side they are to be passed—

(*a*) *Port hand* painted green and red divided horizontally.

(*b*) *Starboard hand* painted green and black divided horizontally.

(*c*) *Either hand painted green*.

INLAND WATERS SHIPPING (LICENSING OF VESSELS) REGULATIONS

ARRANGEMENT OF REGULATIONS

REGULATION

1. Citation
2. Interpretation
3. Issue of licence
4. Variation of licence
5. Display of licence
6. Surrender of licence
7. Vessel ceasing to be used
8. Penalty

G.N. 100/1980 125/1983 47/1993 47/1995 85/1996 52/2000 27/2006

INLAND WATERS SHIPPING (LICENSING OF VESSELS) REGULATIONS

under s. 37

Citation

1. These Regulations may be cited as the Inland Waters Shipping (Licensing of Vessels) Regulations.

Interpretation

2. In these Regulations "licence" means a licence to use a vessel upon inland waters, required by section 12 of the Act.

Issue of licence G.N. 125/1983 47/1993 47/1995 85/1996 52/2000 27/2006

3.—(1) Every application for a licence shall be on Form I in the Schedule hereto, and shall be addressed to the Licensing Authority, Ministry of Transport and Communications, Lilongwe.

(2) Every licence shall be on Form II in the Schedule hereto.

(3) There shall be paid on the issue of a licence a fee of—

(*a*) K50,000 for a vessel of than 100 gross tonnes or more;

(*b*) K30,000 for a vessel of less than 100 gross tonnes but not less than 15 tonnes; and

(*c*) K15,000 for a vessel of less than 15 gross tonnes or more.

Variation of licence G.N. 125/1983 52/2000 27/2006

4.—(1) Every application for the variation of the conditions contained in any licence shall be made in writing to the Licensing Authority, Ministry of Transport and Communications, Lilongwe.

(2) If in consequence of an application for the variation of a licence, the licensing authority consents to the variation of any condition contained therein, there shall be payable by the licensee a fee of K2,000.

(3) Any variation of a licence consented to by the licensing authority shall be entered by him on the licence in the space headed "ENDORSEMENTS".

Display of licence

5.—(1) Every vessel in respect of which a licence has been issued shall have a copy of this licence displayed in a conspicuous place on the vessel, e.g. in the wheel-house.

(2) The master of the vessel and the holder of the licence issued in respect of such vessel shall, if subregulation (1) is not complied with, be guilty of an offence.

Surrender of licence

6.—(1) Any holder of a licence which has expired and not been replaced by a new licence, or which has been revoked or suspended under section 21 (1) of the Act, shall forthwith surrender the same by sending it by registered post to the licensing Authority, Ministry of Transport and Communications, Lilongwe.

(2) Any person who fails to comply with subregulation (1) shall be guilty of an offence.

Vessel ceasing to be used

7.—(1) The holder of a licence shall, if the vessel in respect of which the licence was issued ceases to be used in accordance with the terms and conditions of the licence, notify the licensing authority to this effect within 30 days of the vessel ceasing to be so used.

(2) Any person who fails to comply with subregulation (1) shall be guilty of an offence.

Penalty

8. Any person who is guilty of an offence under these Regulations shall be liable to a fine of K100.

SCHEDULE reg. 3 (1)

FORM I

INLAND WATERS SHIPPING ACT

(CAP 71:01)

APPLICATION FOR LICENCE

Application for a licence to use a vessel upon Malaŵi Inland Waters for the carriage of goods or persons for hire or reward or for the carriage of goods in connexion with a trade or business.

1. Name and address of applicant .....
.....
2. If the application is made on behalf of a company or firm, give particulars .....
3. Is the vessel in respect of which this application is made registered, and if so where? .....
4. Name and address of owner(s) of vessel .....
.....
5. State amount of capital available to applicant .....
6. What is the nature of the shipping operations to be carried on by applicant? .....

   (*a*) Passenger Service

   (*b*) Cargo Service

   (*c*) Mixed (Passenger and Cargo) Service

   (*d*) Carriage of goods in connexion with applicant's trade or business.
7. State the places between which such vessel is intended to be navigated including places, if any, outside Malaŵi), and the proposed schedule of services to be provided .....
8. What is the name, type and tonnage of the vessel proposed to be used? .....
9. State the nature of the hull and date and method of construction .....
10. State the type of engine and the rated horse power of the engine fitted .....

11. State number of crew to be carried, including master and owner's representative .....
12. If a passenger service licence is required, state the number of passengers the vessel is intended to carry .....
13. State what life saving appliances are carried and their capacity—
    (*a*) Lifebuoys .....
    (*b*) Life jackets .....
    (*c*) Ships boats .....
    (*d*) Rafts (if any) .....
14. State nature of cargoes to be carried .....
15. What fire fighting appliances are to be carried .....
16. State name(s) of master and mate(s), and what certificates held .....
17. State name(s) of engineer(s), and what certificates held .....
18. Has the vessel been inspected and approved by the Government Surveyor of Vessels? .....

I/We the undersigned (on behalf of .....)

hereby state that the above particulars are correct in all details.

reg. 3 (2) *Signed* .....

FORM II

INLAND WATERS SHIPPING ACT

(CAP. 71:01)

LICENCE

LICENCE NO.
M .....

..... of .....

is/are hereby licensed to use the following vessel ..... (name of vessel) for carriage of .....
.....

upon the waters of ..... upon the following conditions .....

This licence is valid for one year from the date of issue.

Date of issue: ..... (*Signed*) .....

Place: ..... *Licensing Authority*

Fee paid: K

ENDORSEMENTS

Fee paid: K

INLAND WATERS SHIPPING (SAFETY APPLIANCES AND CONSTRUCTION OF VESSELS) REGULATIONS

ARRANGEMENT OF REGULATIONS

REGULATION

1. Citation and application
2. Interpretation
3. Submission of plans
4. Conventional standards
5. Stability and free board
6. Structural strength
7. Specifications
8. Metal buoyancy tanks
9. Safety and fire fighting appliances
10. Vessels with inboard engines
11. Alternate means of propulsion
12. Anchors and cables
13. Certain vessels to carry radio apparatus
14. Certain information to be displayed
15. Boat drill and fire drill
16. Appointment of life boatmen
17. Making of life-boats and buoyant apparatus
18. Life-boats and buoyant apparatus to be fully equipped
19. Exemptions

INLAND WATERS SHIPPING (SAFETY APPLIANCES AND CONSTRUCTION OF VESSELS) REGULATIONS

G.N. 44/1970
280/1971
4/1982

under s. 37

Citation and application

1.—(1) These Regulations may be cited as the Inland Waters Shipping (Safety Appliances and Construction of Vessels) Regulations.

(2) These Regulations shall apply to all vessels that require to be registered under Part I of the Act.

Interpretation

2. In these Regulations, unless the context otherwise requires—

"decked vessel" means a vessel which is decked in to the extent of her overall length;

"half-decked vessel" means a vessel which is not an open vessel nor a decked vessel;

"open vessel" means a vessel which is not decked in at the forward end to the extent of one-third of her overall length.

Submission of plans

3. If required by the surveyor, the owner of a vessel or his agent shall submit plans showing the construction, material and scantlings of the hull of such vessel. The plans shall also

show the passenger accommodation, if any, and if such accommodation is in an enclosed space, particulars of the entrances and exits.

Conventional standards

4. Every vessel shall be properly designed, constructed and equipped to conventional standards for the nature of the trade, business or undertaking in which it is intended it shall be used.

Stability and free board

5. Every vessel shall be of such form and proportions that it shall have sufficient stability in a sea-way and sufficient free board when loaded.

Structural strength

6. The structural strength of every vessel shall be sufficient to permit of it being towed against a sea-way when fully loaded without being strained in any manner.

Specifications First Schedule G.N. 4/1982

7. The specifications set out in the First Schedule are intended as a guide in the construction of open or half-decked vessels of less than 18 metres so as to comply with the requirements of regulation 5.

Metal buoyancy tanks G.N. 4/1982

8. Every open and half-decked metal vessel of less than 18 metres overall length shall be fitted with buoyancy tanks complying with the requirements set out in the Second Schedule, of sufficient cubic capacity to ensure that the vessel will remain afloat when water-logged and carrying a full load of machinery, stores, passengers and cargo.

Safety and fire fighting appliances Third Schedule

9.—(1) Every vessel shall be equipped with safety and fire fighting appliances in accordance with the requirements specified in the Third Schedule.

(2) Every such appliance shall be kept in good and efficient order so as to be at all times fit and ready for use.

Vessels with inboard engines

10.—(1) Every vessel fitted with an inboard engine using petrol, paraffin, diesel or other inflammable fuel shall be fitted with a proper drip tray located between the engine bearers and the engine, designed and located to collect all fuel leaking from carburettors, fuel pumps, fuel pipes, and other parts of the engine so as to avoid its collection in the bilges.

(2) Every inboard engine shall be fitted with a flame trap attached to each carburettor.

(3) Every vessel fitted with an inboard petrol engine shall have the fuel tanks installed in the stern away from the engine, and drip trays shall be fitted beneath the tanks to avoid the collection of petrol in the bilges.

(4) Every fully decked vessel fitted with an inboard engine shall be fitted with ventilators or cowls capable of removing gases from the bilges of the engine and fuel tank compartments.

(5) The exhaust pipes on inboard engines shall be efficiently lagged with asbestos cord or approved heat resisting lagging material.

(6) Every open and half-decked vessel fitted with inboard engines shall have a weather-proof removable engine casing made in such manner as to cover the entire engine when in position.

Alternate means of propulsion

11.—(1) Every vessel depending upon outboard motors for propulsion shall at all times carry some alternative means of propulsion such as oars, paddles, sweeps or complete reserve outboard assemblies.

(2) Every vessel depending upon sails for propulsion and not equipped with auxiliary engines shall at all times carry oars, paddles or sweeps.

Anchors and cables

12. Every vessel shall be equipped with an efficient anchor and cables of an approved pattern and size adequate for holding the vessel securely.

Certain vessels to carry radio apparatus

13.—(1) Every vessel authorized by the surveyor's certificate to carry or carrying 50 or more passengers, which proceeds more than five miles from the shore, shall carry radio transmitting and receiving apparatus.

(2) The master or person in charge of such vessel shall cause a radio log to be kept in such vessel.

Certain information to be displayed

14. Every vessel authorized by the surveyor's certificate to carry or carrying 50 or more passengers shall carry the following information on cards displayed in all parts of such vessel used as passenger accommodation and printed in English and Chichewa—

(*a*) the passenger assembly stations of such passengers;

(*b*) the nature and meaning of the general emergency signal;

(*c*) the method of putting on a life-jacket.

Boat drill and fire drill

15. Every vessel authorized by the surveyor's certificate to carry or carrying 100 or more passengers shall carry out boat drill and fire drill at least once during any voyage. During such drill all equipment shall be thoroughly checked and particulars of such drill shall be recorded in the log-book of the vessel.

Appointment of life-boatmen

16. The master of a vessel which is required to carry life-boats under heading B of the Third Schedule shall appoint two competent members of the crew as life-boatmen to take charge of each life-boat and shall, in the case of life-boats with motors, appoint a competent member of the engine-room staff to operate the motor of each such life-boat.

Marking of life-boats and buoyant apparatus

17. A life-boat or buoyant apparatus shall be permanently marked to the satisfaction of the surveyor to indicate its dimensions and the number of persons it is authorized by the surveyor's certificate to carry.

Life-boats and buoyant apparatus to be fully equipped

18. A life-boat or buoyant apparatus shall be fully equipped before the vessel on which it is carried leaves harbour and the equipment shall—

(*a*) remain in such life-boat or buoyant apparatus throughout the voyage; or

(*b*) be stowed in some convenient place where it will be immediately available in the case of an emergency.

Exemptions

19. A surveyor may exempt any vessel from any requirement of these Regulations to the extent that he thinks that compliance therewith would be unreasonable or impracticable in the circumstances and that the safety of the vessel or passengers or cargo therein would not be endangered by such exemption.

G.N. 4/1982 reg. 7

FIRST SCHEDULE

FORM AND PROPORTION OF VESSELS

1. Every vessel shall be constructed with rigid sides.

2. All thwarts and side seats shall be fitted as low in the vessel as practicable and bottom boards shall be fitted so that the thwarts shall not be more than 800 millimetres above them.

G.N. 4/1982

3.—(*a*) The breadth of any vessel (outside) must not be less than the ratio between its length (L) and its breadth (B) so, however, that—

(i) in the case of vessel of 7.3 metres in length or less, $\frac{(L)}{(B)}$ must not exceed 7.5;

(ii) in the case of a vessel of 13.5 metres in length or more, $\frac{(L)}{(B)}$ must not exceed 12;

(iii) in the case of a vessel between 7.3 metres and 13.5 metres in length, $\frac{(L)}{(B)}$ may be derived by direct interpolation.

(*b*) The freeboard of any vessel when loaded must not be less than 3.7 per cent of its length and never less than 250 millimetres.

G.N. 4/1982 reg. 8

SECOND SCHEDULE

BUOYANCY

1. Every vessel shall be fitted with internal buoyancy so placed as to secure stability when the boat is fully loaded under adverse weather conditions.
2. The internal buoyancy shall consist of air cases constructed of copper or muntz metal of a gauge not less than 0.6 millimetres. Galvanized iron or zinc must not be used.
3. The air cases shall be made with proper hook joints not less than 9.5 millimetres in width, hammered well down and soldered or welded.

4. No air case shall exceed a length of 1.2 metres, and if exceeding 1 metre in length and not constructed of corrugated sheeting shall, be strengthened by fitting an internal diaphram at the middle of the length, which shall be of the same material as the case and suitably flanged and soldered or welded.

5. Solid buoyancy units of non inflammable material, having a closed-cell structure or any other approved material, to specifications approved by the Minister, may be used in lieu of metal cases of equal total volume.

THIRD SCHEDULE reg. 9 G.N. 4/1982

Equipment

A. *Life Jackets*

(*a*) All vessels shall carry one approved life jacket for each person carried:

Provided that in the case of a vessel of less than 7.5 metres overall length it shall be sufficient if the vessel carries sufficient life jackets or buoyant apparatus to support every person on board or if the vessel is fitted with internal buoyancy sufficient to ensure that the vessel will remain afloat when waterlogged and carrying a full load of stores, passengers and cargo.

(*b*) An approved life jacket shall mean a jacket of approved material and construction which is capable of floating in fresh water for 24 hours with 7.5 kilograms of iron suspended from it, or any other approved appliance of equal buoyancy and capable of being fitted to the human body. It shall be reversible and suitable both for adults and children.

(*c*) A "Cork" life jacket must be capable of supporting 7.5 kilograms of iron in fresh water for 24 hours.

(*d*) A "Kapok" life jacket must be capable of supporting at least 11 kilograms of iron after floating in fresh water for 24 hours with 7.5 kilograms of iron attached. "Kapok" jackets must not be covered with linen as such material is not impermeable to oil, the absorption of which renders the buoyancy of the jacket negative. A "Kapok" jacket should not exceed 1.3 kilograms in weight when new.

(*e*) Each life jacket shall be fitted with two tapes, each 1 metre long, 38 millimetres wide and capable of withstanding a stress of 90 kilograms of suspended weight without distortion.

B. *Lifeboats*

A power driven vessel of 30 metres or more overall length shall carry not less than two lifeboats of a type and size approved by the surveyor, attached to davits.

C. *Lifebuoys*

(*a*) Vessels of less than 7.5 metres overall length shall not be required to carry an approved lifebuoy.

(*b*) Every vessel of 7.5 and less than 10.5 metres overall length shall carry one approved lifebuoy complete with 30 metres of life line.

(*c*) Every vessel of 10.5 and less than 18 metres overall length shall carry two approved lifebuoys, one on each side of the boat, one of which is to be fitted with 30 metres of life line.

(*d*) Every vessel of 18 metres and more overall length shall carry such number of lifebuoys as the Minister may deem sufficient.

(*e*) An approved lifebuoy shall be of solid cork, or other equivalent material, and shall be capable of floating in fresh water for at least 24 hours with 14.5 kilograms of iron suspended from it.

(*f*) An approved lifebuoy shall satisfy the following conditions—

Size:	Inside diameter	450 millimetres
	Outside diameter	750 millimetres
	Major axis of cork	150 millimetres
	Minor axis of cork	100 millimetres
Weight:	Not to exceed 6 kilograms when new.	
Grabs:	There shall be four loops of grab lines and the loops shall not be less than 700 millimetres.	

D. *Buoyant Apparatus including Buoyant Deck Seats*

(*a*) Every vessel of over 7.5 metres overall length, other than an open and half-decked boat, engaged in the carriage of passengers shall be equipped with buoyant apparatus and/or lifeboats, sufficient to support the total number of persons on board, distributed in suitable positions about the vessel from where they may be readily launched or float free. Buoyant apparatus means rafts and/or buoyant deck seats.

(*b*) Buoyant apparatus shall not be stowed on the top of deck houses or in other isolated positions from which it could not be launched directly into the water, nor shall it be stowed below deck or in any deck erection or on any deck which has another deck over it.

(*c*) Buoyant apparatus must not be secured to the deck except by lashings which can be easily slipped.

(*d*) Means shall be provided in the form of cants fastened to the deck or some other equally efficient arrangement to prevent buoyant apparatus from sliding across the deck in the event of the vessel taking a list, or from moving either forward or aft if the vessel takes a heavy trim by the bow or the stern.

(*e*) Buoyant apparatus shall be stowed in such a manner that the grab lines and floats are not liable to be damaged or to deteriorate, and that the apparatus receives adequate ventilation.

(*f*) (i) Buoyant apparatus shall be of such construction that it retains its shape and properties when exposed to the weather on board ship and when in the water. It shall be constructed so as not to require adjustment prior to use.

(ii) Buoyant apparatus shall be capable of withstanding a drop test, the height of which shall be equivalent to that of the deck on which it is stowed above the ship's light water line, but in no case less than 6 metres.

(iii) Buoyant apparatus shall be effective and stable when floating either way up. It shall be capable of supporting a weight of iron, suspended in fresh water from the grab lines, of 22.3 kilograms per metre of length along any edge (subject to a minimum of 30 kilograms without immersing any part of the upper surface of the apparatus.

(iv) The air cases or equivalent buoyancy shall be placed as near as possible to the sides of the apparatus, and such buoyancy shall not be dependent upon inflation. If the buoyancy is provided by metal air cases, such air cases shall be of copper, muntz metal or other durable material, and not more than 1.2 metres in length. If the air cases are more than 750 millimetres in length or breadth they shall be efficiently stiffened by divisions or stays. They shall be protected from damage by properly fitted wood casing or sparring and be secured against movement within the casing. No iron work shall be placed in contact with metal air cases.

(v) The framework of buoyant apparatus shall be of hardwood, but the wood casing or sparring may be of softwood. The method of securing the corners shall be such as to avoid fastenings into end grain timber. The interior of the apparatus shall be well ventilated. There shall be no projections from the apparatus which would prevent it from sliding easily over a ship's rail during launching.

(vi) Grab lines shall be fitted all round the apparatus in such a manner as to provide a number of equal loops corresponding to the number of persons which the apparatus is fit to support. Each loop shall have a cork or light wood float and the depth of the loop when wet shall not be less than 150 millimetres and not more than 200 millimetres.

On apparatus exceeding 300 millimetres in overall depth, two rows of grab lines shall be fitted, one having its points of attachment a little below the top of the air cases and as close to the sides of the air cases as is practicable. On apparatus of 300 millimetres or less in overall depth one row of grab lines may be attached along the line of the middle of the depth. The grab lines shall be of rope of not less than 45 millimetres in circumference. They may be attached to the apparatus by being passed through holes in the framing and being interlaced to prevent movement, or they may be attached to the apparatus by means of wrought iron or steel fastenings. Whichever method is adopted the attachment shall be strong enough to permit the apparatus being lifted by the grab lines.

(vii) Buoyant apparatus shall be fitted with a painter.

(viii) Buoyant apparatus shall not exceed 180 kilograms in weight unless suitable means are provided to enable it to be launched without lifting by hand. If the weight of the apparatus exceeds 136 kilograms, suitable handles or rings shall be fitted for this purpose.

(ix) Buoyant apparatus shall not be less than 1.05 metres in breadth.

E. Fire Extinguishers

(*a*) Every vessel fitted with an inboard petrol, paraffin or diesel engine and less than 7.5 metres overall length shall carry in an accessible position one fire extinguisher of 1 kilogram dry powder, one fire extinguisher of 4.5 litres foam or one fire extinguisher of 900 grams CO_2.

(*b*) Every vessel of less than 7.5 metres overall length fitted with an outboard engine shall carry in an accessible position one fire extinguisher of 1 kilogram dry powder.

(*c*) Every vessel fitted with an inboard petrol or paraffin engine, of 7.5 and less than 12 metres overall length shall carry in an accessible position two fire extinguishers of 1 kilogram dry powder and two fire extinguishers of 9 litres foam or two fire extinguishers of 1.8 kilograms CO_2.

(*d*) Every vessel of 7.5 and less than 12 metres overall length fitted with an outboard engine shall carry in an accessible position two fire extinguishers of 1 kilogram dry powder and one fire extinguisher of 9 litres foam or one fire extinguisher of 1.8 kilograms CO_2.

(*e*) Every vessel of 7.5 and less than 12 metres overall length fitted with an inboard diesel engine shall carry in an accessible position one fire extinguisher of 9 litres foam, and one fire extinguisher of 1 kilogram dry powder.

(*f*) Every vessel fitted with an inboard petrol or paraffin engine, of 12 and less than 18 metres overall length, shall carry in an accessible position three fire extinguishers of 1 kilogram dry powder and three fire extinguishers of 9 litres foam or three fire extinguishers of 1.8 kilograms CO_2.

(*g*) Every vessel of 12 and less than 18 metres overall length fitted with an inboard diesel engine, shall carry in an accessible position two fire extinguishers of 9 litres foam, and one fire extinguisher of 1 kilogram dry powder.

(*h*) Every vessel of 18 metres or more overall length shall carry such number of fire extinguishers as the Minister may deem sufficient.

(*i*) Every vessel where twin engines are fitted shall carry such additional fire extinguishers as the Minister may deem sufficient.

(*j*) All fire extinguishers shall be kept at all times fit and ready for use.

F. *Breathing Apparatus, Smoke Helmets, Smoke Masks and Safety Lamps*

(*a*) Every vessel of 30 metres and more overall length shall carry at least—

(i) one breathing apparatus, one smoke helmet or one smoke mask;

(ii) a life and signalling line at least 3 metres longer than is required to reach from the deck or elsewhere in clean air to any part of the cargo space, crew space or passenger space, if any; the line shall be made of hemp-covered wire rope at least 32 millimetres in circumference; the wire incorporated in the rope shall have a breaking strength of not less than 1 tonne and shall be made of copper or galvanized steel:

Provided that, in any tanker, rope made without wire, but having a breaking strength of not less than 1 tonne, may be carried in lieu;

(iii) an adjustable safety belt or harness to which the aforesaid line shall be securely attached;

(iv) means for protecting the eyes and face against smoke;

(v) a portable self contained electric battery operated lamp capable of functioning efficiently for a period of at least three hours.

(*b*) The breathing apparatus, smoke helmet or smoke mask shall each be clearly and permanently marked with the name of the maker or vendor and the year in which they were manufactured. Operating instructions in clear and permanent lettering shall be affixed to the said equipment.

(*c*) Every vessel of more than 30 metres overall length shall carry at least one fireman's axe with a short handle of wood or other well insulated material and a head with a spike as well as a cutting edge, and a carrying belt. It is recommended that, in addition a long handled axe of the felling type should be carried as an emergency fire appliance.

(*d*) (i) Every vessel shall be provided with fire buckets in accordance with the following table—

Length of vessels in metres	*Minimum number of buckets*
7.5 but less than 15	1, which shall be fitted with a lanyard
15 but less than 21	2, one of which shall be fitted with a lanyard
21 or more	3, two of which shall be fitted with lanyards;

(ii) Fire buckets must be of about 9 litres capacity and be light and easy to handle, they shall be painted red and shall be clearly and permanently marked with the word "FIRE". Every such bucket shall be kept filled with sand.

G. *Pumps, Water Service Pipes, Hydrants and Hoses*

In the case of a vessel of 30 metres or more overall length—

(*a*) fire pumps shall be independently driven;

(*b*) sanitary, ballast, bilge or general service pumps may be accepted as fire pumps;

(*c*) the capacity of the pumps designated for fire-fighting purposes shall be at least two thirds the capacity of the bilge pumps required for the particular vessel;

(*d*) every fire pump shall be capable of producing at least two powerful jets, and the throw at any nozzle shall be about 12 metres;

(*e*) relief valves shall be provided in connexion with all fire pumps and shall be so placed and adjusted as to prevent excessive pressure in any part of the fire main system;

(*f*) the diameter of the water service pipes shall be sufficient to ensure an adequate supply of water for the simultaneous operation of at least two fire hoses, and shall be based on the required capacity of the pumps designated for fire-fighting purposes;

(*g*) the number and position of the hydrants shall be such that at least two streams of water, one of which shall be from a single length of hose, may be directed into any part of the vessel;

(*h*) the pipes and hydrants shall be so placed that the fire hoses may be easily coupled to them, and in vessels where deck cargo may be carried, the positions of the hydrants shall be such that they are always readily accessible, and the pipes shall be arranged as far as practicable to avoid risk of damage by such cargo;

(*i*) cocks or valves shall be fitted in such positions on the pipes that any of the fire hoses may be removed while the fire pumps are at work;

(*j*) fire hoses shall not exceed 18 metres in length and shall be made of leather, seamless hemp, closely woven flax canvas, or other suitable material and shall be provided with couplings, conductors and other necessary fittings, and with a plain nozzle of not less than 13 millimetres diameter in addition to any spray nozzle required by these Regulations;

(*k*) every fire hose together with the tools and fittings necessary for its use, shall be kept in a conspicuous position near the water hydrants or connexions with which it is intended to be used.

H. *Bilge Pumping Arrangements*

(*a*) Every vessel of over 7.5 metres overall length shall be provided with efficient pumping plant capable of pumping from and draining any watertight compartment, other than a space permanently appropriated for the carriage of fresh water, water ballast or oil and for which other efficient means of pumping or drainage is provided, under all conditions likely to arise in practice after a casualty, whether or not the vessel remains upright. Wing suctions shall be provided if necessary for that purpose. Efficient arrangements shall be provided whereby water in any watertight compartment may find its way to the suction pipes.

(*b*) Every vessel shall be provided with bilge pumps in accordance with the following table—

Length of vessel metres	Main Engine Pump*	Independent Power Pumps	Hand Pumps8†
Over 7.5 and under 15	–	–	1
15 and under 45	1	1	One of the lever type for each watertight compartment
45 and over	1	2	One of the lever type for each watertight compartment

*The main engine pump may be replaced by one independent power pump.
†The hand pump may be replaced by one independent power pump.

(*c*) Sanitary, ballast and general service pumps may be accepted as independent power bilge pumps if fitted with the necessary connexions to the bilge pumping system.

(*d*) Every vessel of 7.5 metres overall length or less shall carry a bailer of not less than 225 millimetres diameter.

INLAND WATERS SHIPPING (SURVEY AND REGISTRATION) REGULATIONS

ARRANGEMENT OF REGULATIONS

REGULATION

1. Citation
2. Interpretation

PART I

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5. Periods for surveys
6. Surveyor's certificate
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8. Register of vessels
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10. Identity marks
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5/1982
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93/1996
29/2006

INLAND WATERS SHIPPING (SURVEY AND REGISTRATION) REGULATIONS

under s. 37

Citation

1. These Regulations may be cited as the Inland Waters Shipping (Survey and Registration) Regulations.

Interpretation

2. In these Regulations, unless the context otherwise requires—

"appropriate fee" means the appropriate fee prescribed in the First Schedule;

"appropriate form" means the appropriate form prescribed in the Second Schedule;

"buoyant apparatus" means floatation equipment other than lifebuoys or life-jackets designed to support persons who are in the water;

"identity mark" means the number allocated to a vessel by the registrar of vessels under regulation 7.

PART I

Exempted Vessels

Application of Part I of Act G.N. 126/1977

3. Life-boats or tenders which are carried in or attached to a registered vessel and which are surveyed during the course of the survey of such vessel and are specified in the survey certificate of such vessels shall be exempted from separate registration.

PART II

Survey and Registration of Vessels

Application for survey and registration

4.—(1) An application for—

(*a*) the initial survey and registration of a vessel;

(*b*) the annual survey of a vessel; or

(*c*) the survey of a vessel where an amendment in the certificate of registration of such vessel is required and the application is required to be accompanied by a valid surveyor's certificate under section 9 (2) of the Act,

shall be made by the owner of such vessel on form A to the Surveyor of Vessels, Ministry of Transport and Communications, Lilongwe, stating where the vessel is or is to be situated:

Provided that an application for the annual survey of a vessel shall be made not more than four months nor less than one month before each anniversary of the date of issue of the certificate of registration.

(2) Application under subregulation (1) shall be accompanied by the appropriate fee.

Periods for surveys

5.—(1) Each year the surveyor shall, by notice published in the *Gazette*, specify the dates and times when he will be present at the places specified in such notice for the purpose of surveying vessels.

(2) Surveys carried out at a place or at a time other than a place or time specified by the surveyor shall be at the expense of the applicant who shall pay all costs incurred by the surveyor in carrying out such survey.

Surveyor's certificate

6.—(1) If the surveyor is satisfied that the vessel is seaworthy and is equipped in accordance with the Act, he shall issue a surveyor's certificate by completing the reverse side of form A.

(2) The surveyor shall forward the surveyor's certificate and in the case of a first registration, four copies of form B duly completed on the obverse side to the registrar of vessels at the nearest port of registry and shall retain a fifth copy of form B for his records.

(3) A surveyor's certificate shall be valid for one year from the date of survey.

Registration of vessels

7.—(1) Upon receipt of the surveyor's certificate and the four copies of form B the registrar of vessels shall issue the owner with a certificate of registration by completing the reverse side of form B.

(2) The registrar of vessels shall, on first issuing a certificate of registration, allocate to the vessel an identity mark.

(3) The continued validity of a certificate of registration shall be subject to the production to the registrar of vessels of a valid surveyor's certificate on or before each anniversary of the date of issue of such certificate of registration.

(4) One copy of the certificate of registration shall be displayed in the vessel in respect of which such certificate was issued and the original shall be kept by the owner.

Register of vessels

8. The register of vessels referred to in section 6 of the Act shall consist of the copy of form A sent to the registrar of vessels by the surveyor and one copy of form B duly completed by such registrar on the reverse side.

Central registry of vessels

9.—(1) A central registry of vessels shall be established and maintained at the Ministry.

(2) The central registry shall retain the third copy of form B sent to the registrar of vessels by the surveyor, duly completed by such registrar and sent by him to the Ministry.

(3) The central registry shall also record such statistics of other vessels operating on inland waters as the Secretary may consider necessary.

PART III

Identity Marks and Names

Identity marks G.N. 5/1982

10.—(1) The identity mark allocated to a vessel shall not be required to be exhibited by a vessel of over fifty tons.

(2) The identity mark allocated to a vessel of fifty tons or less shall be clearly and legibly exhibited by such vessel upon each

side of her bows so that there shall be not less than 75 millimetres and not more than 125 millimetres between the top of the identity mark and the top of the uppermost continuous strake, and—

(*a*) in the case of a vessel of between fifty metric tons and fifteen metric tons, the identity mark shall be 225 millimetres in height;

(*b*) in the case of a vessel of less than fifteen tonnes but more than five tonnes, the identity mark shall be 150 millimetres in height;

(*c*) in the case of a vessel of five tonnes or less, the identity mark shall be 75 millimetres in height;

(*d*) in the case of a sailing vessel, the identity mark shall, in addition, be exhibited upon each side of the mainsail of such vessel;

(*e*) in no case shall the width of the stroke be less than 13 millimetres.

(3) Life-boats and tenders which have not been registered separately and which are carried in or attached to a vessel shall bear the identity mark allocated to the vessel in which they are carried or to which they are attached. The number of each life-boat shall be painted on each side of the bows, e.g. "starboard life-boat No. 1" and "port side life-boat No. 2;", etc.

Names
G.N. 5/1982

11.—(1) A vessel of over fifty tonnes shall have her name on each side of the bows and her name and port of registry on the stern in letters of not less than 150 millimetres in height.

(2) A vessel of fifty metric tons or less which has been registered under Part I of the Act shall have her name, if any, and port of registry on the stern in letters of not less than 75 millimetres in height.

(3) life-buoys and buoyant apparatus shall bear the name of the vessel in which they are carried.

Manner in which identity mark or name to be exhibited

12. The identity mark or name to be exhibited on a vessel shall—

(*a*) be painted in white paint on a dark background; or

(*b*) be painted in black paint on a light background, and shall not be defaced, covered or concealed in any manner whatsoever.

Offences

13. The owner of any vessel which fails to comply with the requirements of this Part shall be guilty of an offence and shall be liable to a fine of K50.

PART IV
General

Removal of vessels from the water

14. If, in the opinion of a surveyor, a vessel cannot properly be surveyed without being removed from the water, the surveyor may require the owner to remove such vessel from the water.

Duplicate certificate

15. If any certificate of registration or surveyor's certificate has been lost or destroyed the issuer of such certificate shall issue a duplicate certificate—

(*a*) if the issuer requires the production of an affidavit setting out the fact of the loss and the circumstances connected therewith, upon receipt of such affidavit; and

(*b*) upon receipt of the appropriate fee.

Amendments of certificate of registration G.N. 126/1977

16. When a certificate of registration is required to be amended in accordance with section 9 of the Act, such certificate, on being submitted by the owner to the registrar of vessels for amendment, shall be accompanied by the appropriate fee.

G.N. 126/1977 101/1980 124/1983 46/1993 46/1995 93/1996 53/2000 29/2006

FIRST SCHEDULE reg. 2 and 4 (2)

FEES

		K t
1.	For the survey of—	
	(*a*) a vessel of 100 tonnes or more	70,000 00
	(*b*) a vessel of less than 100 tonnes but not less than 15 tonnes	60,000 00
	(*c*) a decked vessel of less than 15 tonnes not, propelled by oars, paddles or poles or an outboard engine	20,000 00
	(*d*) an open or half-decked vessel of less than 15 tonnes not propelled by oars, paddles, or poles or an outboard engine	16,00 00
	(*e*) a vessel of less than 15 tonnes propelled by oars, paddles or poles, or an outboard engine	8,000 00
2.	For the registration of a vessel	3,000 00
3.	For the issue of a duplicate certificate	1,500 00
4.	For the amendment of a Certificate of Registration	1,000 00

SECOND SCHEDULE reg. 4

(OBVERSE) Form A

INLAND WATERS SHIPPING ACT

(CAP. 71:01)

APPLICATION FOR THE SURVEY AND REGISTRATION OF A VESSEL

(To be completed in triplicate)

To: The Surveyor of Vessels

.....

(*Port of registry*)

*I/We, ...
(*full name in block capitals*)

of .....
(*business address*)

and .....
(*residential address*)

the owner(s) of the vessel described below, do hereby apply for—

(*a*) the survey of that vessel for—

(i) first registration;

(ii) an alteration in the dimensions, superstructure or tonnage or a permanent alteration in the method of propulsion of the vessel or the addition of a superstructure to the vessel;

(iii) change of use;

(**Delete where inapplicable*)

(*b*) registration of that vessel by the registrar of vessels at .....
(*port of registry*)

in accordance with Part I of the Inland Waters Shipping Act.

Description of vessel—

(*a*) name of vessel .....

(*b*) location of vessel awaiting survey .....

(*c*) purpose for which and area in which it is intended to use vessel .....

(*d*) built by .....

(*e*) date of construction .....

Date: ....
(*Signature of owner*)

(Reverse)

INLAND WATERS SHIPPING ACT

(Cap. 71:01)

Surveyor's Certificate

To: The Surveyor of Vessels

.....
(*Port of registry*)

I certify that the vessel described overleaf and in accordance with form B No. ..... has been surveyed by me and found to be seaworthy and in a fit and proper condition to perform the services set out in Part III of that form.

This certificate is valid for a period of one year from .....
(*date of survey*)

.....
(*Signature of Surveyor of Vessels*)

*I/We, ...
(*full name in block capitals*)

of .....
(*business address*)

and .....
(*residential address*)

the owner(s) of the vessel described below, do hereby apply for—

(*a*) the survey of that vessel for—

(i) first registration;

(ii) an alteration in the dimensions, superstructure or tonnage or a permanent alteration in the method of propulsion of the vessel or the addition of a superstructure to the vessel;

(iii) change of use;

(**Delete where inapplicable*)

(*b*) registration of that vessel by the registrar of vessels at .....
(*port of registry*)

in accordance with Part I of the Inland Waters Shipping Act.

Description of vessel—

(*a*) name of vessel .....

(*b*) location of vessel awaiting survey .....

(*c*) purpose for which and area in which it is intended to use vessel
.....

(*d*) built by .....

(*e*) date of construction .....

Date ....
(*Signature of owner*)

(Reverse)

INLAND WATERS SHIPPING ACT
(Cap. 71:01)

Surveyor's Certificate

To: The Registrar of Vessels

.....
(*Port of registry*)

I certify that the vessel described overleaf and in accordance with form B No. ..... has been surveyed by me and found to be seaworthy and in a fit and proper condition to perform the services set out in Part III of that form.

This certificate is valid for a period of one year from .....
(*date of survey*)

.....
(*Signature of Surveyor of Vessels*)

(Obverse)

Form B

Number .....

INLAND WATERS SHIPPING ACT
(Cap. 71:01)

DETAILS OF VESSEL

PART I

Purpose of Survey

The purpose of this survey is for—

(*a*) first registration;

(*b*) annual survey;

(*c*) alteration in the tonnage, dimensions or method of propulsion of the vessel;

(*d*) change of use.

(*delete where inapplicable*)

PART II

Description of Vessel

Name of vessel ..... Date of construction .....
Builders .....
Full name of owner(s) .....
Residential and business addresses of owner(s) .....
.....
Full name, address and details of any other person with an interest in the vessel .....
.....
Port of registry ..... Identity mark .....
Type of construction .....
Method of propulsion .....
Tonnage ..... Length overall ..... Breadth .....
Depth ..... Girth ..... Hull condition .....
Freeboard (minimum) when loaded to full permissible capacity .....
Hand-pumps (number and type) ..... condition .....
Fire buckets (number) ..... Bailers (number) .....
Sand boxes (number) ..... Fire extinguishers (number and type) ..... Oars (number) ..... Anchors (number) .....
Cable (length, condition and cross-sectional diameter of links) .....

Navigation lights (number and type) .....

Sound signals (number and type) .....

Life-boats (number and type) ..... to carry (number of persons) .....

Life-jackets (number of persons) .....

Buoyant apparatus (number and type) ..... to carry (number of persons) .....

Machinery (items and condition) .....

.....

PART III

SERVICES FOR WHICH VESSEL IS TO BE USED

Nature of services .....

Limits of operations .....

Number of crew .....

Maximum number of passengers .....

Maximum cargo (deadweight tonnes) .....

Standards of competency: Master .....

Mate .....

Engineer .....

....

(*Date*) (*Signature of Surveyor of Vessels*)

(REVERSE)

INLAND WATERS SHIPPING ACT

(CAP. 71:01)

REGISTRATION CERTIFICATE

I hereby certify that the vessel .....
(*name of vessel*)

described overleaf has been registered to perform .....
(*nature of services*)

with effect from the ....., 20 .....

The identity mark allocated to the vessel is .....

.....
(*Registrar of Vessels*)

Place of registry .....

AMENDMENTS

1. Date ..... Port of registry .....
.....
(*Registrar of Vessels*)
2. Date ..... Port of registry .....
.....
(*Registrar of Vessels*)
3. Date ..... Port of registry .....
.....
(*Registrar of Vessels*)

INLAND WATERS SHIPPING (LOG-BOOKS) REGULATIONS

G.N. 46/1970

under s. 37

ARRANGEMENT OF REGULATIONS

REGULATION

1. Citation
2. Keeping of log-books
3. Offences and penalties

Citation

1. These Regulations may be cited as the Inland Waters Shipping (Log-Books) Regulations.

Keeping of log-books

2.—(1) The master of a vessel authorized by the surveyor's certificate to carry more than 25 passengers or any power driven vessel of ten tonnes or more shall keep a log-book in such vessel.

(2) The master of a vessel referred to in subregulation (1) shall enter in such log-book particulars of all matters relating to the operation of such vessel and in particular details of—

(*a*) any offence committed on board such vessel by a member of the crew and any findings of a court in connexion therewith;

(*b*) any illness or injury suffered by the master or a member of the crew;

(*c*) the discharge, resignation, retirement or death of a member of the crew;

(*d*) any shipping casualty deemed to have occurred in accordance with section 30 (1) of the Act.

(3) Any entry in a log-book shall be made as soon as possible after the event to which it relates and shall be dated to show the date of such event and of the entry.

Offences and penalties

3. Any person who destroys, mutilates or renders illegible an entry in a log-book or makes, procures to be made or assists in making a false or fraudulent entry in or omission from a log-book, shall be liable to a fine of K100.

G.N. 178/1972
170/1974
6/1982

INLAND WATERS SHIPPING (DESIGNATION OF AREAS AS HARBOURS) NOTICE

under s. 37

The Minister has designated the undermentioned areas as harbours for the purposes of the Act.

SCHEDULE

Monkey Bay

Commencing from a water tank point (1), which is in a position distance 1439 metres approximately on a bearing of 173.5(T) from Tumbi Island light beacon in a straight line to point (2) distance 503 metres on a bearing of 270°(T); thence in a straight line to point (3) distance 384 metres on a bearing of 102°(T); thence to point (1) distance 313 metres on a bearing of 168° 5'.

Chipoka

Commencing from Malaŵi Railways Rest House point (1), in a straight line to point (2) distance 610 metres on a bearing of 76° (T); thence in a straight line to point (3) distance 427 metres on a bearing of 347°(T); thence in a straight line to point (4) distance 564 metres on a bearing of 255°(T); thence to point (1) distance 404 metres on a bearing of 173° 03'(T).

Nkhata Bay

Commencing from point (1) a Flagstaff (FS) on Chirundu Point in a straight line to point (2) distance 366 metres bearing 226°(T); thence in a straight line to point (3) distance 238 metres on a bearing of 314°(T); thence in a straight line to point (4) distance 393 metres on a bearing of 51°(T); thence in a straight line to point (1) a Flagstaff (FS) on Chirundu Point distance 204 metres on a bearing of 141°(T).

Chilumba

Commencing from point (1) in a position 10° 25' 13"S, 34° 15' 35"E in a straight line on bearing of 356°(T) to point (2) 10° 25' 00"S, 34° 15' 35" E distance 549 metres; thence to point (3) 10° 24' 48"S, 34° 14' 56"E on bearing of 306°(T) distance 1128 metres; thence in a straight line to point (4) 10° 25' 03"S, 34° 14' 56"E on bearing of 176°(T) distance 549 metres; thence to point (1) distance 1128 metres on bearing of 125°(T).

WATERWORKS

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CHAPTER 72:01

WATERWORKS

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An Act to provide for the establishment of Water Boards and water-areas and for the administration of such water-areas and for the development, operation and maintenance of waterworks and water-borne sewerage sanitation systems in Malaŵi and for matters incidental thereto or connected therewith

17 of 1995
G.N. 68/1996

[1ST MARCH, 1996]

PART I

PRELIMINARY

1. This Act may be cited as the Waterworks Act. Short title

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

"Board" means a Water Board specified in the Schedule;

"domestic purposes" includes every kind of ordinary household purpose, but does not include the use of any engine or machine, any mining operations, the flushing of any sewer or drain, purposes connected with any trade, manufacture or business, the cleansing of any road, path or pavement, or garden purposes;

"fathering ground" means any natural or artificial surface which collects the rainfall or which contains any spring, well or stream from which water is or is intended to be drawn for the purpose of a waterworks;

"main" means any pipe laid by the Board for the purpose of providing either a general supply of water as distinct from a supply to individual consumers or a general conveyance of sewerage as distinct from the conveyance of sewerage from individual connexions and includes any apparatus used in connexion with such a pipe;

"member" means a member of the Board appointed pursuant to section 5, and includes the Chairman of the Board;

"meter" means any appliance used to measure or ascertain the amount of water taken or used from the waterworks by means of any service;

"occupier" in relation to premises, means any person lawfully occupying such premises;

"premises" includes any land, with or without buildings, and any building, room, hut or shed which is held or occupied as a distinct or separate holding or tenancy;

"public fountain" includes any fountain, standpipe, valve, tap or appliance used or intended to be used for, or in connexion with, the supply of water to the public from the waterworks erected by the Board and which is the property of the Board;

"service" means all pipes, valves, cisterns, casks, fittings and other appliances through which water flows or is intended to flow after leaving the meter on any premises, and which are intended for the supply of water to such premises only;

"supply pipe" means all pipes, valves, and apparatus between the main and the meter;

"water-area" means the area declared under section 4 to be the water-area of the Board;

"waterworks" means all reservoirs, dams, weirs, tanks, cisterns, tunnels, boreholes, filter beds, conduits, aqueducts, and all other structures or appliances used or constructed for the obtaining, storage, conveyance, supply, measurement or regulation of water which are so used or capable of use by or on behalf of the Board, and includes any land occupied by, or under the control of, the Board for the purposes of such structures or appliances, but does not include any service.

PART II

Water Boards, Water-Areas, Membership, Powers and Duties

Water Boards

3.—(1) There is hereby established for each water-area (in this Act otherwise referred to as the "water-area") a Water Board (in

this Act otherwise referred to as the "Board") as specified in the Schedule.

(2) The Board shall be a body corporate with perpetual succession and a common seal, with power to alter and change the same from time to time, and shall, under that name, be capable of suing and being sued and, subject to the provisions of this Act, of purchasing or otherwise acquiring, holding or alienating property, real or personal, and of doing all such acts and things as bodies corporate may by law do or perform.

(3) The powers of the Board shall include power to levy and enforce payment of rates in accordance with this Act, and power to engage in research or investigation in connexion with water supplies and water-borne sewerage sanitation either alone or by arrangement or in conjunction with other persons.

Water-area

4.—(1) The Minister may, from time to time, by notice published in the *Gazette*, declare any area to be a water-area of the Board.

(2) The Minister may, in the like manner, alter, amend, reduce or extend the boundaries of a water-area and assign another name thereto.

Constitution of the Board

5.—(1) The Board shall consist of a Chairman, a representative of local authorities, the Secretary for Education, the Secretary for Health and nine members, all of whom shall be appointed by the Minister, and five of whom shall be appointed to represent the interest of the water ratepayers in the water-area.

(2) The Minister may appoint alternate members to act in case any member is unable to be present at any meeting of the Board through illness or other cause.

(3) The Chairman and members of the Board shall, without prejudice to the power of the Minister, at his discretion, to earlier terminate such appointment, hold office for such periods, not exceeding two years, as the Minister may specify in the notice of appointment.

Control of Waterworks

6. The Board shall, except for rural water supply areas, have the control and administration of all waterworks and all the water in such waterworks and the management of the supply and distribution of such water in accordance with this Act.

Record of proceedings

7. The Board shall cause proper records to be kept of all its proceedings and kindred matters.

Officers and servants

8.—(1) The Board shall appoint the chief executive of the Board and may designate him by such title as the Board considers appropriate and shall also appoint the clerk to the Board.

(2) The Board shall have power to appoint all other officers and servants of the Board necessary for the due and proper performance of its duties and powers.

(3) The appointment of the officers and servants shall be upon such terms and conditions of service as the Board may determine.

(4) The Board may establish and maintain pension, superannuation or other funds as it may consider desirable for the provision of payments or other allowances on death, superannuation, resignation, retirement or discharge of its officers and servants.

(5) The Board may make rules, subject to the approval of the Minister, for the payment of moneys out of the revenue of the Board to such funds, and for the contribution of moneys to superannuation or provident funds by such officers and servants.

(6) The Board may contract with insurance companies and other bodies for the maintenance of such funds subject to the approval of the Minister.

Remuneration of members of the Board

9. A member of the Board who is not an officer in the public service shall be paid out of the funds of the Board such remuneration and allowances, if any, as may be prescribed.

Power to make standing orders

10. The Board may, from time to time, make standing orders for regulating—

(*a*) the mode and order of proceedings of the Board;

(*b*) the quorum necessary to constitute a meeting of the Board;

(*c*) the method of convening meetings of the Board;

(*d*) the place of meetings; and

(*e*) other matters relating to its meetings and procedure.

PART III

Further Powers to the Board

Purposes for which waterworks may be constructed

11. The Board may make, construct and maintain all such works as are necessary and convenient for the purpose of creating, maintaining and extending waterworks for supplying water for domestic, public and business purposes, for the extinction of destructive fires, for cleansing streets, lanes, gutters and sewers, and for all other purposes to which water and waterworks are supplied or are applicable.

Power to carry pipes, etc., through any land
Cap. 69:02

12.—(1) The Board may, for the purpose of the construction, maintenance, carrying on or extension of any works, carry any pipe or other equipment through, over or under any land whatsoever, subject to the Public Roads Act:

Provided that the Board shall not be entitled under this section to interfere with any existing building.

(2) The Board shall, at least one month before carrying any pipe or other equipment through, over or under any public or private land without the consent of the owner and occupier of such land or any customary land without the consent of the occupier of such land, give notice of the intended work either by notice published in the *Gazette*, or in such other manner as the Minister or any person deputed by him may in any case direct.

(3) Such notice shall describe the nature of the intended work and shall name a place where the plan of the intended work is open for inspection at all reasonable hours, and a copy of such notice shall either be—

(*a*) served on every person resident in Malaŵi whose place or residence is known and who is known or believed to be the owner or occupier of any land through, over or under which it is intended that any pipe or other equipment shall be carried; or

(*b*) displayed in a conspicuous position on such land.

(4) If the owner, lessee, or occupier of any land through, over or under which it is intended that any pipe or other equipment shall be carried objects to the intended work and serves notice in writing of such objection at the office of the Board at any time within the said month, the intended work, in so far as it affects the land or a person serving such notice of objection, shall not be commenced without the sanction of the Minister.

(5) The Minister may appoint such person or persons as he may think fit to make inquiry on the spot into the propriety of the intended work and into the objections thereto and to report to the Minister on matters with respect to which such inquiry was directed and, on receiving the report of such person or persons, the Minister may make an order disallowing or allowing, with such modifications as he may deem necessary, the intended work.

(6) If the person serving the notice of objection is not satisfied with any order made under subsection (5) he may, within fifteen days of the making thereof, appeal to the High Court, which shall decide whether it is reasonably necessary for the pipe or other equipment to be carried through, over or under the land in respect of which the objection is made by the route proposed or by any other route.

(7) The Court on hearing such appeal may order that the pipe or other equipment shall be carried through, over or under such land by the proposed route or by such other route as it may deem reasonable.

Compensation, etc.

13.—(1) The Board shall make good all public and private roads, streets, and paths disturbed by its waterworks operations

to the reasonable satisfaction of the highway authority or owner thereof. The Board shall also pay compensation for all loss or damage caused in the execution of any power by this Act conferred:

Provided that the owner or occupier of any land through, over or under which any pipe is placed, shall not be entitled to any rent or way-leave fee in respect of such pipe.

(2) In case any dispute shall arise as to whether any road, street or path has been adequately made good or as to the amount of compensation to be paid under subsection (1), such dispute may be referred to a Resident Magistrate having jurisdiction in the District in which the cause of dispute arose. Such Resident Magistrate shall have jurisdiction in respect of all such disputes irrespective of the amount thereof and may make such award as he deems reasonable to the person entitled thereto.

(3) Either party to the dispute may appeal from such decision to the High Court.

Power to enter land

14. Any officer or servant of the Board, duly authorized in writing by the Board, and any contractor executing any work for the Board, together with his agents and servants, may after due notice, at any time between 6 a.m. and 6 p.m. enter upon any land for the purpose of surveying, setting out and marking the line of any intended pipe or other equipment.

Power of entry at specified times

15. Any person duly authorized by the Board in writing may, any time between 6 a.m. and 6 p.m. or in the case of urgency at any other time, for the purposes hereinafter mentioned, enter into and upon any premises within the water-area through, over or under which any service or waterworks are laid—

(*a*) to inspect any service and to ascertain whether there is any waste, leakage, obstruction or damage to any service or meter therein and anything in connexion therewith;

(*b*) to regulate, repair, alter or make additions to any service or meter;

(*c*) to ascertain the amount of water taken or used; and

(*d*) to disconnect the supply of water to any premises or to diminish, withhold or suspend, stop, turn off or divert the supply of water to any premises.

Power to suspend, etc., supply of water

16. It shall be lawful for the Board, or any person duly authorized by it in writing, to diminish, withhold, suspend, stop, turn off or divert the supply of water through or by means of any service or public fountain either wholly or in part, or whenever the Board may think fit, and without prejudice to any water rate, meter rent or other sums due or to become due under this Act—

(*a*) whenever the available supply of water from the waterworks shall in the opinion of the Board be insufficient;

(*b*) whenever it may be expedient or necessary for the purpose of extending, altering or repairing the waterworks or for the purpose of connexion of service;

(*c*) whenever any public fountain is damaged or the waters thereof are polluted or wasted;

(*d*) if the construction or laying of any service by the owner of any premises is not made, altered or readjusted in accordance with this Act;

(*e*) if there is default in the payment of any moneys due under this Act from the occupier or owner of the premises or so long as such default continues or at the request of the owner of the premises; or

(*f*) in case of fire, sabotage, riot, bombing, war or civil commotion or other emergency; and

(*g*) if any act or thing is done or omitted contrary to this Act in relation to any damage, waste, pollution or abuse of the waterworks or any service, meter or public fountain.

Power to construct public fountains Cap. 69:02

17. It shall be lawful for the Board, subject to the Public Roads Act, to construct public fountains and connexions with the mains in, over or under any public road, street or path in, over or under land held under lease from the Government.

Supply of water in or outside water-area

18. The Board shall have power to enter into contracts to supply water from its waterworks or water-borne sewage sanitation services to any persons including any local authority, inside or outside the water-area on such terms and conditions as the Minister may approve.

Board to supply water

19. Subject to section 21, the Board shall provide a supply of potable water sufficient for the domestic purposes of the inhabitants within the water-area:

Provided that the Board shall not be required to deliver such water at a height greater than that to which such water will flow by gravitation through the Board's mains from the service reservoir or tank from which such water is taken.

Power to instal water-borne sewerage sanitation schemes

20. The Board shall have power to instal and operate water-borne sewerage sanitation schemes within the water-area.

PART IV

Services and Supply of Water

Request for supply of water

21.—(1) An owner or occupier of any premises within the water-area may make a request, on the prescribed form, for a supply of water from the Board.

(2) Where a water main owned by the Board lies within 100 metres of any boundary of premises for which a supply of water

for domestic purposes has been so requested, the Board shall, promptly but not later than sixty days after the receipt of the request, and on payment of the prescribed fee, lay a suitable supply pipe from the main to a point within the premises as near to the boundary as the Board may deem convenient.

(3) Where a supply of water from the Board is requested for purposes other than domestic purposes, or where no water mains owned by the Board lies within 100 metres of any boundary of premises for which a supply of water has been requested, the Board shall offer to provide a supply of water on such terms and conditions as it may decide, having regard to the costs which would be incurred in making such supply of water available.

Construction and connexion of service

22.—(1) Any person owning or occupying any premises may, with the approval of the Board, construct or alter a service for the supply of water from the waterworks. The construction or alteration of the service, including the nature, size and quality of the materials and fittings, shall be in accordance with the By-laws made under this Act. On the completion of the construction or alteration of a service to the satisfaction of the Board, such service shall be connected by the Board to the waterworks, subject to payment of the fee specified for such connexion in such By-laws.

(2) No person shall make any alteration to any service without the prior approval of the Board.

Expenses by whom borne

23.—(1) Save as provided in subsection (2), the expense of constructing, altering, maintaining or readjusting all services shall be borne by the owner of the premises to which such services are laid.

(2) Where such services already comply with this Act or with any By-laws made under this Act, the expenses of altering or readjusting any service shall be borne by the Board:

Provided that where any work is carried out either—

(*a*) at the request of the owner of the premises; or

(*b*) as a necessary consequence of any action the owner of the premises may take with respect to such premises, the expenses shall be borne by the owner.

Services may be constructed by the Board

24. The Board may, in its discretion, construct, alter or repair any service at the request of the owner or occupier, and on completion thereof the person who made such request shall pay the cost and expenses thereof in such manner and to such extent as the Board may require.

Supply pipes to be the property of the Board

25. All supply pipes shall be the property of the Board.

PART V

Operation of Water-Borne Sewerage Sanitation

Provision of public sewers and sewerage disposal work

26.—(1) The Board may, within its water-area and also, subject to the prior approval of the Minister, without its water-area—

(*a*) construct and maintain a public sewer—

(i) in, under or over any street, or under any cellar or vault below any street; and

(ii) in, or over any land not forming part of a street, after giving reasonable notice to every owner and occupier of that land;

(*b*) construct water-borne sewage disposal works on any customary land or public land or land acquired or lawfully appropriated for the purpose.

(2) In the exercise of its powers under subsection 1 (*a*) (ii), the Board shall make good, or shall pay for any damage done or occasioned to any private land by reason of the exercise of the said powers, failing which the Board shall be liable to pay compensation to the owner or occupier of the private land.

Board to keep map showing public sewers

27.—(1) The Board shall keep deposited at its offices, for inspection by any person at all reasonable hours, free of charge, a map showing and distinguishing all public sewers existing or in course of construction within its water-area or under its control.

(2) Where some of the public sewers are reserved for soil and waste water only or for storm water only, the map referred to in this section shall show also the purposes which each sewer is intended to serve.

Power of the Board to alter or close public sewers

28. The Board may alter the size or course of any public sewer vested in it, or may discontinue and prohibit the use of any such public sewer, either entirely, or for the purpose of soil and waste water drainage, or for the purpose of storm water drainage, but, before any person who is lawfully using the public sewer for any purpose is deprived by the Board of the use of the sewer for that purpose, the Board shall provide a public sewer equally effective for his use for that purpose and shall at its expense make his drains or sewers to communicate with the sewer so provided.

Certain matters not to be passed into sewers or drains

29.—(1) No person shall throw, empty, or turn, or suffer or permit to be thrown or emptied or to pass, into any public sewer, or into any drain or private sewer communicating with a public sewer—

(*a*) any matter likely to injure the sewer or drain, or to interfere with the free flow of its contents, or to affect prejudicially the treatment and disposal of its contents; or

(*b*) any chemical refuse or waste steam, or any liquid of temperature higher than forty-three degrees celcius, being refuse or steam, which, or a liquid which when so heated, is, either alone or in combination with the contents of the sewer or drain, dangerous or the cause of a nuisance, or prejudicial to health; or

(*c*) any petroleum spirit or carbide of calcium.

(2) A person who contravenes any of the provisions of this section shall be liable to a fine of K200 and to a further fine of K100 for each day on which the offence continues after conviction therefor.

Right of owners and occupiers within the water-area to drain into public sewer

30. Subject to this section and section 33, the owner or occupier of any premises, or the owner of any private sewer, within the water-area of the Board shall be entitled to have his drains or private sewer made to communicate with any available public sewer of the Board and thereby to discharge soil and waste water and storm water from those premises or that private sewer:

Provided that nothing in this section shall entitle any person—

(*a*) to discharge directly or indirectly into any public sewer—

(i) any liquid from a manufacturing process or any liquid from a factory, other than domestic sewage or storm water except by agreement with the Board;

(ii) any liquid or other matter the discharge of which into public sewers is prohibited under this Act or any other law; or

(*b*) where separate public sewers are provided for soil and waste water and for storm water, to discharge directly or indirectly—

(i) soil or waste water into a sewer provided for storm water; or

(ii) except with the approval of the Board, storm water into a sewer provided for soil and waste water; or

(*c*) to have his drains or private sewer made to communicate directly with a storm water overflow; or

(*d*) to have his drains or private sewer made to communicate with a public sewer provided for soil and waste water unless and until he satisfies the Board that the premises to be drained have a sufficient water supply available; or

(*e*) to have his drains or private sewer made to communicate with any public sewer if such sewer is situated in excess of thirty metres of the curtilage of the premises.

Use of public sewers by owners and occupiers without the water-area of the Board

31. Subject as hereinafter provided, the owner or occupier of any premises and the owner of any private sewer without the water-area of the Board shall have the like rights with respect to drainage into the available public sewers of the Board as he would have had under section 30 if his premises or private sewer were situate within its water-area and that section shall apply accordingly:

Provided that, without prejudice to the prohibition contained in section 30 against the discharge of certain liquids or other matters into public sewers or into some public sewers or the right of the Board under section 33 to refuse to permit a communication to be made on any of the grounds set out in subsection (1) of that section and to require the drain or private sewer to be laid open for inspection, the Board may, in the case of a drain or private sewer from premises outside its water-area, refuse to permit a communication to be made except upon such reasonable terms and conditions as may be prescribed or as the Minister may approve. Such terms and conditions may include—

(*a*) compliance with any reasonable requirements of the Board that the premises to be drained shall be sanitary or in a proper state of repair; and

(*b*) such reasonable payment or periodical payment, subject to any special or general directions of the Minister, as the Board may see fit to impose.

Sewer connexions in streets and through private land

32. For the purpose of making or maintaining a communication with a public sewer it shall be lawful for the Board to construct or repair a lateral drain or, with the prior consent of the Board and in such manner as it may approve, for the owner of any building to construct or repair a drain or private sewer, as the case may be, in, on or over any land, but where such land does not form part of a street, the Board or owner shall give to every owner or occupier of such land reasonable notice and shall be liable to make good or, at the option of the Board or the owner undertaking the works, to pay for any damage done or occasioned by reason of the exercise of the said power:

Provided that the works intended to be carried out in exercise of the powers herein conferred shall not interfere unduly with the amenities or future development of the land or any adjacent land and, in case of dispute, a person aggrieved may appeal to the Minister.

Procedure in regard to making communication with public sewers

33.—(1) A person who wishes or who is required to have his drains or private sewers made to communicate with a public sewer shall give to the Board notice of his proposals in writing in such manner as may be prescribed and at any time within twenty-one days of the receipt thereof the Board may by notice to him refuse to make the communication if it appears to the Board that the mode of construction of the drain or private sewer is not in conformity with the rules in force governing the

same or that the condition of the drain or private sewer or the matter carried or to be carried thereby is such that the making of the communication would be prejudicial to the sewerage system of the Board and for the purpose of examining the mode of construction and condition of the drain or private sewer the Board may, if necessary, require it to be laid open for inspection.

(2) If no such notice as aforesaid is served on such person, the Board shall, with all reasonable despatch, cause the communication to be made by means of a lateral drain to the public sewer in such manner as may be prescribed or as the Board may decide, but it shall not be obligatory on the Board to make the communication until the estimated cost of the work has been paid to it or security for payment has been given to its satisfaction.

(3) If any payment so made to the Board exceeds the expenses reasonably incurred by it in the execution of the work, the excess shall be repaired by it and, if and so far as those expense are not covered by the payment made to it, the Board may recover the expenses, or the balance thereof, from the person for whom the work was done.

(4) For the purposes of this section, the making of the communication between a drain or private sewer and a public sewer includes all such work as involves the breaking open of a street and the taking of any steps which the Board may consider necessary for repairing, relaying or safeguarding any pipes, drains, lines or any other works which may be or are liable to be disturbed or damaged by or in the course of making such communication.

(5) Any lateral drain so constructed shall vest in the Board (but shall not thereby become a public sewer) and the maintenance, repair and renewal of the same from time to time shall be carried out by the Board at the expense of the owner of the premises served by such drain.

(6) Any person (other than a person lawfully acting on behalf of the Board) who causes a drain or sewer to communicate with a public sewer and any person who fails to comply with or acts in contravention of any of the provisions of this section, shall be liable to a fine of K400, and, whether proceedings have or have not been taken in respect of that offence, the Board may close any communication made in contravention of any of such provisions, and recover from the offender any expenses reasonably incurred by it in so doing.

PART VII

Financial Provisions

Rates

34. The rates levied by the Board shall be an annual levy in respect of any premises or part thereof and may take the form of

a fixed sum, a sum calculated by reference to area or a sum calculated by reference to value and may be levied in respect of developed or undeveloped land and irrespective of whether there is a supply of water to the premises.

Board to make charges for supply of water

35.—(1) The Board shall make such charges as are approved, within a reasonable time, by the Minister for the supply of quantities of water measured by meter, for the rental of meters, or for the provision of other services. Such charges may differ in respect of different classes of consumers.

(2) Such charges shall be levied and enforced in accordance with rules made by the Minister.

(3) Such rules may provide for—

(*a*) different rates being fixed and levied in respect of different classes of premises or parts thereof;

(*b*) rates to be increased in response to price inflation.

(4) A schedule showing the tariff of rates and charges payable to the Board shall be available for inspection at the offices of the Board and shall be advertised in such other manner as the Minister may, on the advice of the Board, prescribe.

Rates and charges to be charged on premisses to which they relate

36. All rates and charges levied and made under this part shall, as from the date they fall due, be deemed to be a charge upon the premises to which they relate and shall be recoverable from the occupier, and if he fails to pay, from the owner of the premises or any subsequent owner or occupier or the agent of any such owner or occupier.

Revenue of the Board

37.—(1) The annual revenue of the Board shall include—

(*a*) income from all rates levied and all charges made, by the Board;

(*b*) one half of all fines imposed by a competent court for the contravention either of this Act or of by-laws made by the Board;

(*c*) all other fees, dues or rents recoverable by the Board;

(*d*) all sums received by the Board from the Government on revenue account; and

(*e*) interest on moneys invested by the Board.

(2) For the purpose of subsection (1) (*b*) every court imposing such a fine shall pay one-half thereof to the Board.

Disposal of funds

38. All moneys received by the Board shall be paid into a bank licensed or registered under any law for the time being in force in Malaŵi and shall be credited in the name of the Board to such account as they may belong.

Investment powers

39. The Board may invest all or any portion of its moneys—

(*a*) in the purchase of any security issued by or on any deposit account maintained by the Government;

(*b*) on deposits of any bank or building society licensed or registered under any law for the time being in force in Malaŵi; and

(*c*) in any other form or manner approved by the Minister acting either alone or in consultation with the Minister of Finance.

Expenditure of the Board

40.—(1) The expenses incurred by the Board in the execution of the powers and duties conferred on it under this Act or in the discharge of any liability incurred in pursuance thereof shall be defrayed out of the funds of the Board.

(2) The Board may create such general and other reserves as may be approved by the Minister and charge thereto such appropriations as may be authorized in the annual estimates of the Board.

Advances from the Government

41. It shall be lawful for the Board from time to time to obtain from the Government advances of money required for the proper carrying out of this Act. The money so advanced and the interest thereon, if any, shall constitute a liability of the Board and shall be charged on the property and annual revenues of the Board, present and future, subject however to the provisions of any agreement or other arrangement existing at the commencement of this Act.

Borrowing powers Cap. 37:01

42.—(1) Subject to the provisions of the Finance and Audit Act, it shall be lawful for the Board from time to time to raise loans, whether by way of bank overdraft or otherwise, in such amounts and on such conditions as may be approved by the Minister for the proper carrying out of this Act, and such loans may, subject to the provisions of any agreement or other arrangement existing at the commencement of this Act, be secured on the property and annual revenues of the Board, including any lands which may be specially placed at the disposal of the Board under any law:

Provided that this section shall not be deemed to confer any power of alienating such lands other than in accordance with the powers that are conferred by such law.

(2) Where any such loan shall be raised by means of stock, the provisions of any law that may be applicable and in force in Malaŵi with regard to the issuing of stock, the provisions to be made for the payment of interest thereof and for the redemption thereof at the time or times fixed for repayment and the proceedings to be taken in case of default shall apply.

Estimates and accounts

43. The Minister may make rules prescribing the manner in which the Board shall make and submit estimates of its revenue and expenditure or revenue and capital accounts, provided for the submission by the Board of annual statements of account, and prescribing the financial year in respect of which estimates shall be made and accounts submitted.

Keeping of accounts

44.—(1) The Board shall cause a true account to be kept of all its financial transactions during each financial year.

(2) The Board may keep such capital, renewals and other special accounts as it may consider necessary or as the Minister may direct.

(3) All the accounts of the Board shall be open to inspection by any member of the Board.

Audit of the Board's accounts

45. The accounts of the Board shall be audited from time to time by an auditor appointed by the Board.

Auditor may require production of documents and may summon persons

46.—(1) The auditor may, by writing under his hand, require the production of all books, deeds, contracts, vouchers, receipts and other documents relating to the accounts or investments of the Board which he may deem necessary for the purpose of the audit. He may summon in writing all such persons as he may think proper to appear before him personally at the offices of the Board at a time to be fixed in such summons, for examination in connexion with any documents or matter relating to the audit.

(2) For the purpose of any such examination, the auditor may take evidence upon oath. The auditor is hereby empowered to administer oaths for such purpose.

(3) Any person who without just cause fails or refuses to produce any document the production of which has been duly required by the auditor, or who having been so summoned—

(*a*) without just cause, neglects or refuses to comply with the summons;

(*b*) having appeared before the auditor, refuses without just cause to be examined on oath or to take such oath;

(*c*) having taken such oath, refuses without just cause to answer such questions pertaining to the audit as are put to him,

shall be guilty of an offence and be liable to a penalty of K500 for every such refusal or neglect and, in default of payment, such person shall be liable to imprisonment for three months:

Provided that no conviction under this section shall be taken to exempt the person convicted from liability to do or perform the act, matter or thing required of him under this section.

Report by the auditor

47. After completion of the audit of the accounts of the Board, the auditor shall report thereon in writing both generally and on any specific matters as the Minister may direct. The auditor shall send a copy of such report to the Board and the Board shall consider the report within two months after receipt thereof, whereupon a copy of the auditor's report together with the Board's comments thereon shall be sent by the Board to the Minister.

Minister may act on receipt of auditor's report

48.—(1) If, on receipt of the report of the auditor, the Minister is satisfied that an expenditure has been incurred without proper authority, he may, by order in writing, surcharge any person responsible for such expenditure for the whole or any part thereof.

(2) If, on receipt of the report of the auditor, the Minister is satisfied that—

(*a*) any failure to collect money due to the Board;

(*b*) any loss of money or property;

(*c*) any damage to property,

has occurred by reason of any wilful or wrongful act or any negligence by a member of the Board or person in its service, the Minister may, by order in writing, surcharge such member or person for the whole or any part of any money or property due to the Board.

(3) Any money or property surcharged on any person under this section shall be a debt to the Board and shall be payable by such person within one month, or such longer period as the Minister may approve, of the date of service upon him of the Minister's order.

(4) Any person aggrieved by an order of surcharge may, within one month from the date of the service of the order on him, appeal to the High Court which may confirm, vary or set aside such order.

PART VII

Inquiries

Inquiries by the Minister

49. (1) If the Minister has reasonable cause to suspect that—

(*a*) the Board has failed to observe or perform any of the duties or obligations conferred or imposed upon it by this or any other Act; and

(*b*) the Board has done or performed any act, matter or thing without due authority, he may, in his discretion, appoint a person or persons to inquire into such matter.

Cap. 18:01

(2) The Commissions of Inquiry Act shall apply to an inquiry under this Part, provided that for the purposes of an inquiry under this Part, those powers vested by the Commissions of Inquiry Act in the Minister responsible for the administration of that Act shall be deemed to be vested in the Minister responsible for the administration of this Act.

(3) If, upon an inquiry under this Part, the Minister is satisfied that the Board has done or suffered any of the acts, matters or things referred to in subsection (1) (*a*) or (*b*), he may

by order in writing, require the Board to remedy the same within such time as he may appoint.

(4) If the Board fails to comply with an order of the Minister made under subsection (3), the Minister may, in addition to any other powers conferred on him by this Act—

(*a*) suspend the exercise by the Board of any of the powers conferred upon it by this or any other Act for such period as he may think fit;

(*b*) remove from office all or any of the members and, in his discretion, appoint new members,

and during such period, or as the case may be, pending the appointment of new members, confer upon any person the exercise of any powers so suspended or of the members.

(5) The expenses incidental to—

(*a*) any inquiry under this section;

(*b*) the exercise of any of the powers of the Board under subsection (4),

shall be paid by such person as the Minister may direct. If the Minister directs payment by the Board, such expenses shall be charged upon the annual revenue of the Board.

PART VIII

Offences

Injury, pollution, etc.

50. Any person who wilfully and negligently causes damage to any waterworks, public fountains, public sewers, services, or meters, or who unlawfully draws off, diverts or takes water from the same or from any streams or waters by which the waterworks are supplied, or pollutes any such water or allows any foul liquid, gas or other noxious or injurious matter to enter into the waterworks, public sewers or any services connected therewith, shall be guilty of an offence and shall, for every offence, be liable to a fine of K2,000, and to a further penalty of K500 for each day during which the offence continues.

Waste, etc.

51. Any person who wilfully or negligently misuses or wastes or causes or allows to be misused or wasted any water passing into, through or upon or near any premises from any waterworks shall be guilty of an offence and be liable to a fine of K2,000. The liability to such fine shall not prejudice the remedy by suspension of supply or otherwise as proved by section 16.

Change of occupancy

52. Every change of occupancy of premises shall be notified to the Board. Such notification shall be made by the new occupier within seven days after going into occupation. Any person who fails to comply with this section shall be guilty of an offence and be liable to a fine of K200.

Fraudulent measurement

53. Any person who alters, or causes or permits to be altered, any service with intent to avoid the accurate measurement or register of water by means of any meter, or to obtain a greater supply of water than he is entitled to and to avoid payment therefor or who wilfully or negligently causes damage to any meter shall be guilty of an offence and be liable to a fine of K2,000 and any service so altered or meter so damaged shall be replaced or repaired by the Board at the expense of the person convicted, and the cost of replacing or repairing any such service or meter may be recovered upon the order of a magistrate in the same manner as any penalty herein provided may be recovered upon conviction.

Foul accumulation of earth

54. Any person who puts or accumulates or allows to be put or to remain or to accumulate, on any premises occupied or owned by him or his servants, or who shall not remove or cause to be removed or take such steps as may be necessary to prevent, upon notice in writing from the Board, any foul, noisome or injurious matter or any earth, deposit or excavated material in such manner or place that it may be washed, fall or be carried into the waterworks or the gathering grounds thereof shall be guilty of an offence and be liable to a fine of K2,000 and for each day during which such matter, earth, deposits or excavated material remains unremoved after notice in writing from the Board, requiring the same to be removed, to a further penalty of K500 for each day during which the offence continues.

Penalty for unauthorized building over or near to pipes, etc.

55. Any person who, without the consent of the Board (which consent shall not be unreasonably withheld), knowingly causes any building, works or construction of any kind whatsoever to be erected, performed or carried out, over abutting or adjoining any pipe or other equipment, the property of the Board, shall be guilty of an offence and be liable to a fine of K2,000 and a further fine of K500 for each day during which the offence continues after written notice has been served on such person by the Board; and the Board may cause such building, works or construction erected, performed or carried out in contravention of this section, to be altered, removed, or demolished or otherwise dealt with as it may deem fit, and may recover any expenses incurred by the Board in so doing from such person.

PART IX

By-Laws

Power of the Board to make by-laws

56.—(1) The Board shall have power, subject to the approval of the Minister, which approval shall be granted within a reasonable time, to make, alter or revoke by-laws for any such matters or things as may be found necessary for the proper

carrying out of this Act and more especially for any of the following purposes—

(*a*) the supply of water to all premises within the water-area;

(*b*) the regulation of the use and the prevention of pollution, misuse, waste of, or any interference with, any water supplied by or under the control of the Board;

(*c*) the regulation of the use and the prevention of pollution or any interference with any water-borne sewerage sanitation scheme operated by the Board;

(*d*) the prevention of pollution of gathering grounds, the waterworks and the water therein;

(*e*) the method and manner in which water may be taken from public standpipes;

(*f*) the form in which application for a supply of water may be made;

(*g*) the construction, laying, fitting, alteration or readjustment of service, and the nature, quality, size and pattern thereof and all meters used therewith;

(*h*) the duties of the officers and servants of the Board, their proper behaviour and conduct;

(*i*) the form of all notices required to be given or sent under this Act and the issuing and service thereof;

(*j*) the regulation of fishing in any water under the control of the Board, and the determination of fees payable in respect of any licence or right to fish granted by the Board;

(*k*) the regulation and control of sailing or boating on any water under the control of the Board and the determination of the fees payable in respect of any licence or right to sail or boat granted by the Board;

(*l*) the prohibition and regulation of the entry of any person into any waterworks occupied by or under the control of the Board;

(*m*) the prescription of the conditions of any licence which may be granted under this Act, the form of such licence and the fees payable; and

(*n*) the regulation of bathing or washing any person, animal or thing in any water under the control of the Board.

(2) The by-laws made under this Act may provide for a penalty for the breach of any of their provisions—

(*a*) upon first conviction, of a fine of up to K1,000 or imprisonment for up to one month;

(*b*) on a subsequent conviction, of a fine of up to K2,000 or imprisonment for up to three months; and

(*c*) in the case of a continuing offence, of a fine of up to K200 in respect of each day on which the offence continues.

PART X

MISCELLANEOUS

Recovery of penalties

57. All penalties under this Act may be recovered on summary conviction, and shall be in addition to any other remedy or proceeding, whether civil or criminal which may be taken pursuant to any other law in force in Malaŵi.

Limitation of time for prosecution

58. Any complaint or information in pursuance of this Act shall be made or laid within three months from the time when the matter of such complaint or information arose and not afterwards.

Burden of proof in certain cases

59. When in any proceedings under this Act any person is summoned or otherwise dealt with as the occupier of premises, if he alleges that he is not the occupier of such premises, he shall bear the burden of the proof of such allegations.

Recovery of moneys

60. All moneys, other than penalties or fines, payable or recoverable under this Act shall be recoverable at the suit of the Board in a court of competent jurisdiction as a civil debt.

Legal representation of the Board

61. In any action, suit or prosecution against, by, or on behalf of the Board, the Board may be represented by its chief executive officer (by whatever title designated), the clerk to the Board or by any other officer of the Board authorized in writing by the chief executive officer, unless in the case of prosecution, the Director of Public Prosecutions, otherwise directs.

Proof of documents

62. In any proceedings under this Act, a document certified by clerk to the Board as a copy of a resolution or order passed or made by the Board or as a copy of the appointment or of any authority given to an officer of the Board shall be evidence that the solution, order, appointment or authority was duly passed, given or made by the Board.

Good faith shall be defence to personal liability

63. No act, matter or thing done or omitted by—

(*a*) any member of the Board;

(*b*) any officer or other person in the service of the Board;

(*c*) any person acting under the direction of the Board,

shall, if such act, matter or thing was done or omitted in good faith in the execution of his duty, render any such member, officer or person personally liable to any action, liability, claim or demand whatsoever.

Minister may make rules

64. The Minister shall have power, on the advice of the Board, to make rules prescribing any matter or thing which may or should be prescribed under this Act and generally to carry into effect the provisions thereof.

Election to transfer to employment with the Board

65.—(1) Any person who, immediately prior to the commencement of this Act, is employed in the Department of Water may, at any time within twelve months thereafter, by notice in writing to the Minister, elect to become an employee

of the Board or retire from the public service on the terms and conditions on which he was employed prior to the commencement of this Act.

(2) After the expiry of twelve months from the date of commencement, no person to whom subsection (1) applies shall be entitled to elect to become an employee of the Board.

(3) A person who becomes an employee of the Board pursuant to subsection (1) shall enter such service on such terms of employment and under such conditions of service as may be applicable to employees of the Board:

Provided that in no case shall such terms of employment or conditions of service be less favourable than the terms and conditions he enjoyed, or were applicable to him, while employed in the Department of Water immediately prior to the commencement of this Act.

PART XI

Transitional Provisions

Power to take over existing waterworks

66. Upon the commencement of this Act, the Board shall take over—

(*a*) all waterworks for which the Minister is responsible;

(*b*) such other government operated waterworks for which another Minister is responsible as the Minister may, after consultation with that other Minister and the Board, declare by Order published in the *Gazette*.

Taking over water-borne sewerage sanitation

67. The Board shall, upon the commencement of this Act, and after consultations between the Minister and the Minister responsible for local authorities, take over the assets, plant and machinery in respect of a water-borne sewerage sanitation system installed and being operated in the water area by the local authority of the water-area.

Vesting of rights, liabilities, etc.

68. Any right, liability or obligation arising in respect of—

(*a*) the waterworks transferred to the Board from the Government pursuant to section 66; or

(*b*) any assets, plant and machinery of a water-borne sewerage sanitation system transferred to the Board from a local authority pursuant to section 67,

which may be enforced by or against the Government or a local authority, as the case may be, shall become instead enforceable by or against the Board to the same extent as it would have been enforceable by or against the Government or the local authority.

PART XII

Repeal and Savings

Repeal and savings
Cap. 72:01
Cap. 72:02
Cap. 72:04

69.—(1) The following Acts are hereby repealed—

(*a*) the Waterworks Act;

(*b*) the Blantyre Waterworks Act; and

(*c*) the Lilongwe Waterworks Act.

(2) Any subsidiary legislation made under the Acts repealed by subsection (1) in force immediately before the commencement of this Act—

(*a*) shall, unless in conflict with this Act, continue in force and be deemed to be subsidiary legislation made under this Act;

(*b*) may be replaced, amended or repealed by subsidiary legislation made under this Act.

(3) Any agreement or similar arrangement made pursuant to the provisions of the Acts repealed by subsection (1) shall continue in force until terminated in accordance with the terms and conditions thereof.

SCHEDULE s. 2

Water Boards

1. Blantyre Water Board
2. Lilongwe Water Board
3. The Northern Region Water Board
4. The Central Region Water Board
5. The Southern Region Water Board

SUBSIDIARY LEGISLATION

WATERWORKS (SOUTHERN REGION WATER BOARD) BY-LAWS

G.N. 27/2005
46/2007
22/2009

ARRANGEMENT OF BY-LAWS

BY-LAW

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BY-LAW

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BY-LAW

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BY-LAW

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[Subsidiary]

Waterworks (*Southern Region Water Board*) *By-Laws*

G.N. 27/2005
46/2007
22/2009
14/2014
50/2014

WATERWORKS (SOUTHERN REGION WATER BOARD) BY-LAWS

under s. 56

PART I
Preliminary

Citation

1. These By-laws may be cited as the Waterworks (Southern Region Water Board) By-laws.

Interpretation

2. In these By-laws, unless the context otherwise requires—

"backflow" means flows in a direction contrary to the intended normal direction of flow;

"back-siphonage" means backflow caused by the siphonage of liquid from a cistern or appliance into the pipe feeding it;

"boiler" means an enclosed vessel in which water is heated by the direct application of heat;

"cistern" means a fixed container for holding water at atmospheric pressure;

"closed circuit" means any system of pipes and other water fittings through which water circulates, but from which no water is drawn for use, and includes any vent pipe fitted thereto but not the feed cistern or the cold feed pipe;

"combined feed and expansion cistern" means a cistern for supplying cold water to a hot water system without a separate expansion cistern;

"communication pipe" means that part of a service pipe ownership of which is vest;

"cylinder" means a cylindrical closed vessel capable of containing water under pressure greater than atmospheric pressure;

"distribution pipe" means any pipe, other than an overflow pipe or a flush pipe, conveying water from a storage cistern, or from a hot water apparatus supplied from a feed cistern, and under pressure from that storage cistern or feed cistern, as the case may be;

"double feed indirect cylinder" means an indirect cylinder which has a separate cold feed pipe connexion for both the primary circuit and the secondary circuit;

"delivery pipe" is a pipe connected to the main supply pipe for the purpose of connecting premises with water supply and on which a meter is connected;

"expansion cistern" means a cistern connected to a water heating system which accommodates the increase in volume of water in that system when it is heated from cold;

"feed cistern" means any storage cistern used for supplying cold water to a hot water apparatus, cylinder or tank;

"float-operated valve" means a valve for controlling the flow of water into a cistern, the valve being operated by the vertical movement of a float riding on the surface of the water;

"fire service" includes any run of piping of a nominal diameter of 50 millimeters or more laid within the boundary of any property for conveying water to a fire hydrant, fire hose-reel or other fire-fighting apparatus;

"flushing cistern" means a cistern provided with a device for discharging the stored water rapidly into a water closet pan or urinal;

"flush pipe" means a pipe for conveying water from a flushing cistern to a water closet pan or urinal;

"flushing trough" means a flushing apparatus which combines several discharging units in one long cistern body to allow more frequent flushing of two or more water closet pans;

"indirect cylinder" means a hot water cylinder in which stored water is heated by a primary heater through which hot water is circulated from a boiler or a gas circulator without mixing of the primary and secondary water taking place;

"instantaneous water heater" means an appliance in which water is immediately heated as it passes through the appliance;

"main supply pipe" means a pipe from which a delivery pipe line is connected;

"primary heater" means a heater mounted inside a hot water storage vessel for the transfer of heat to the stored water from circulating hot water;

"primary circuit" means an assembly of pipes and fittings in which water circulates between a boiler or other water heater and the primary heater inside a hot water storage vessel;

"secondary circuit" means an assembly of pipes and fittings in which water circulates in distributing pipes to and from a water storage vessel;

"secondary system" means that part of hot water system comprising the cold feed pipe, any storage cistern, water heater and flow and return pipe work from which hot water for use is conveyed to all points of draw-off;

"service pipe" means so much of any pipe for supplying water from a main to any premises as is subject to water pressure from that main, or would be so subject but for the closing of some valve;

"service valve" means a valve for shutting off flow water in a pipe connected to a water fitting to facilitate the maintenance or service of that fitting;

"single feed indirect cylinder" means an indirect cylinder which has only one cold feed pipe connexion to supply both the primary and the secondary waters, so designed that the formation of an air seal during filling prevents mixing and accommodates expansion of the primary water;

"spill-over level" means the level at which the water in a cistern or vessel will first spill-over through any outlet and any overflow pipe, if the inflow exceeds the outflow;

"stopvalve" means a valve, other than a service valve, fitted in a pipe-line for controlling or stopping at will, the flow of water;

"storage cistern" means any cistern, other than a flushing cistern, storing water for subsequent use;

"supply pipe" means so much of any service pipe, as is not a communication pipe;

"tank" means a non-cylindrical closed vessel capable of containing water under pressure greater than atmospheric pressure;

"temporary purpose", in relation to the use of any pipe, means building, demolition, or construction work during such period as the work is in progress, or any other temporary purpose during a period not exceeding one month or such longer period not exceeding three months as the Board may approve in any particular case;

"unvented primary circuit" means a primary circuit which is not provided with a vent pipe;

"vent pipe" means a pipe open to the atmosphere and used in connexion with hot water system for the escape of air or steam;

"vented primary circuit" means a primary circuit which is provided with a vent pipe;

"warning pipe" means an overflowing pipe so fixed that its outlet, whether inside or outside the building, is in an exposed and conspicuous position where the discharge of water therefrom may be readily seen;

"washing trough" means a wash basin, wash trough or sink measuring internally more than 1.2 metres over its longest or widest part, at which two or more persons can wash at the same time;

"water fittings" includes pipes (other than mains), taps, cocks, valves, ferrules, meters, cisterns, baths, water closets, soil pans and other similar apparatus used in connexion with the supply and use of water;

"water-line", in relation to a cistern, means the top water level at which the cistern is designed to work.

Water fittings to which By-laws not applicable

3. Save as herein expressly provided, these By-laws shall not—

(*a*) require any person to remove, replace, alter, disconnect or cease to use any water fitting lawfully installed, or lawfully used, or capable of being so used before the date on which these By-laws come into operation; or

(*b*) apply in respect of any water fitting installed or used in connexion with water supplied by the Board for non-domestic purposes where the water supplied—

(i) is metered and taken for a period not exceeding one month or, with written consent of the Board, three months only; and

(ii) cannot return through the meter to any pipe belonging to the Board.

PART II
Prevention of Contamination of Water from Contact with Unsuitable Materials or Substances

Installation of water fittings

4. No person shall—

(*a*) install a water fitting for purposes of conveying or receiving water supplied by the Board, or alter, disconnect, or use a water fitting; or

(*b*) cause, or permit a water fitting to be installed, altered, disconnected or used,

in contravention of these By-laws.

Installation of water fittings causing waste, etc., of water supplied by Board prohibited

5.—(1) No person shall—

(*a*) install or cause or permit to be connected or arrange a water fitting; or

(*b*) cause or permit to be connected or used, a water fitting which is damaged, worn out or otherwise faulty,

such that it causes, or is likely to cause, waste, undue consumption, misuse or contamination of water supplied by the Board.

(2) The Board may test any water fittings used or to be used in connexion with water supplied by the Board.

Laying and installation of water fitting in foul soil, etc., prohibited

6. No person shall lay or install a supply pipe, distribution pipe or other water fitting in or on, or pass any such pipe or water fitting into or through, any foul soil, refuse or refuse chute, ash pit, sewer, drain or cesspool, pit latrine or any manhole connected with any such sewer, drain or cesspool.

Laying and installation of water fitting in place or position where permeation or deterioration occurs prohibited

7. No person shall lay or install a supply pipe, distribution pipe or water fitting made of any material susceptible to—

(*a*) permeation by any gas which causes or likely to cause; or

(*b*) deterioration by contact with any substance which causes or likely to cause,

contamination of water in the supply pipe, distribution pipe or water fitting, in any place or position where such permeation or deterioration occurs or is reasonably likely to occur.

Use of material which causes contamination prohibited

8.—(1) No person shall use any material or substance which causes, or is likely to cause, contamination of water in the construction or installation of any pipe or water fitting which conveys or receives water supplied for domestic purposes.

(2) Paragraph (1) shall not apply in respect of—

(*a*) any hosepipe used in connexion with a washing machine or dishwasher, or for watering a garden, or washing a vehicle kept for private use, where the pipe or other fitting to which that hosepipe is, or may be, connected incorporates a valve or some other suitable device capable of preventing the backflow or back-siphonage of water through the hosepipe;

(*b*) a flushing cistern;

(*c*) a feed cistern connected to a primary circuit;

(*d*) a closed circuit; and

(*e*) a warning pipe.

Use of pipe fitting internally lined with coal tar, etc., prohibited

9. No person shall, for the purposes of conveying or receiving water supplied by the Board, use a pipe, pipe fitting or storage cistern which is internally lined or coated with coal tar or any substance which includes coal tar.

Use of lead pipes prohibited

10. No person shall, for purposes of conveying or receiving water supplied by the Board, install in any manner whatsoever a lead pipe or other water fitting, or storage cistern made from, or internally lined with lead.

Copper pipe not to be connected to lead pipe

11. No person shall, for purposes of conveying or receiving water supplied by the Board—

(*a*) connect a copper pipe, or cause or permit the connexion of a copper pipe, to a lead pipe;

(*b*) incorporate a copper pipe, or cause or permit the incorporation of a copper pipe, with a lead pipe,

unless suitable means, from time to time, approved by the Board, are employed to prevent, so far as is reasonable, corrosion through galvanic action.

PART III
Prevention of Contamination of Water by Back-Siphonage, Back-Flow or Cross Connexion

Interpretation for this Part

12. For purposes of this Part—

"back-flow prevention device" means a type A or type B air gap, a check valve, a double check valve assembly, a combination of check valve and vacuum breaker, a pipe interrupter, or some other water fitting or arrangement of water fittings designed to prevent back-flow or back-siphonage of water;

"check valve" means a mechanical device which—

(*a*) by means of a resilient elastic seal or seals, permits waterflow in one direction only and is closed when there is no flow;

(*b*) is resistant to corrosion, immune from, or resistant to, dezincification, and is capable of operating in a continuous water temperature not exceeding 65 degrees centigrade; and

(*c*) when shut, prevents the passage of water from the inlet to the outlet where the water pressure at the valve inlet does not exceed 10 millibar;

"critical water level", in relation to type B air gap, means the steady water level in a cistern, vessel or other water fitting when there is a maximum inflow of water and all outlets, except any overflow, are closed;

"double check valve assembly" means a mechanical device comprising two check valves with a test cock between them;

"pipe interrupter" means a non-mechanical devise without any moving, flexible or elastic parts which—

(*a*) in the event that any vacuum in a pipe in which it is installed occurs, admits air into it to prevent the backflow of water;

(*b*) is resistant to water corrosion and is immune from, or resistant to, water corrosion and dezincification; and

(*c*) is an unobstructed air inlet-aperture, or apertures which, when a vacuum occurs on the inlet side, produces a corresponding vacuum on the outlet side not exceeding 5 millibar below atmospheric pressure;

"type A air gap" means the air gap which occurs if there is an arrangement of water fitting whereby—

(*a*) water is discharged into a cistern, vessel or other water fitting which has at all times an unrestricted overflow to the atmosphere;

(*b*) the pipe discharging into the cistern, vessel or other water fitting is not obstructed;

(*c*) water discharging downwards into the cistern, or vessel or other water fitting at not more than 15 degrees from vertical; and

(*d*) the vertical distance from the spill-over level of the cistern, vessel or other water fitting to the point above that spill-over level, being the lowest point of any pipe or water fitting which discharges into the cistern, vessel or other water distance referred to in Column 2 in relation to the corresponding pipe referred to in Column 1 of the following table—

1	2
Bore of pipe or outlet	*Vertical distance of points of outlet above spill-over level*
(*a*) not exceeding 14 mm	20 mm
(*b*) exceeding 14 mm but not exceeding 21 mm	25 mm
(*c*) exceeding 21 mm but not exceeding 41 mm	70 mm
(*d*) exceeding 41 mm	twice the bore of the outlet

"type B air gap" means the air gap which occurs when water is discharged into a cistern, vessel or other water fitting which is open at all times to the atmosphere, and the vertical distance between the lowest point of discharge into the cistern, vessel or water fitting and its critical water level is—

(*a*) sufficient to ensure that, if there is a vacuum in the discharge pipe or water fitting, no water in the cistern, vessel or water fitting would be siphoned back into the discharge pipe or fitting; or

(*b*) not less than the distance referred to in Column 2 of the preceding Table in relation to the corresponding pipe referred to in Column 1 of the Table; and

"vacuum breaker" means a mechanical device with an air inlet which is closed when water flows past it at or above atmospheric pressure, but which opens to admit air if there is a vacuum in the pipe and closes so as to be watertight when the flow of water is resumed at normal pressure.

Connexion of water supply for domestic purposes to water supply pipes for non-domestic purposes prohibited

13.—(1) Subject to subparagraph (2), no person shall connect a supply pipe or distributing pipe which conveys, or a cistern which receives, water supplied for domestic purposes such that it can convey or receive water supplied for non-domestic purposes.

(2) Paragraph (1) shall not apply in respect of a cistern, or conveying water from the cistern to a point of use if water is discharged into the cistern through type A air gap.

Pumps to be connected with prior written authority of the Board

14.—(1) No person shall, for the purpose of conveying or receiving water supplied by the Board, connect a pump or other apparatus in or to a supply pipe for the purpose of increasing the pressure in, or rate of flow from—

(*a*) a service pipe; or

(*b*) any water fitting connected on or to a service pipe, except with the prior written approval of the Board.

(2) No person shall connect a supply or pump delivery pipe drawing water from a supply pipe such that it can convey, water from—

(*a*) a distributing pipe;

(*b*) a storage or flushing cistern;

(*c*) a pump delivery pipe drawing water from a distributing pipe or cistern; or

(*d*) a pipe or vessel pressurized by a compressed air or gas.

Closed circuit not to be connected to supply pipe

15.—(1) Subject to paragraph (2), no person shall connect a closed circuit to a supply pipe.

(2) Paragraph (1) shall not apply in respect of temporary connexion if the connexion is made through a double check valve assembly or some other no less effective device which is permanently connected to the closed circuit.

Cistern pipe not to be connected to a secondary system

16. No person shall connect a pipe forming part of a cistern fed vented primary circuit to any pipe forming part of a secondary system.

Draw-off taps; how to be fitted

17.—(1) Subject to paragraph (3), every draw-off tap or other similar fixed fitting, other than a shower hosepipe, installed to discharge water into a bath, sink, washbasin or similar fixed appliance other than a bidet shall—

(*a*) be fitted so as to incorporate a double check valve assembly;

(*b*) be fitted as close as is practicable to the point of draw-off or use, or some other no less effective device to prevent the back-flow or back-siphonage of water; and

(*c*) comply with paragraph (2).

(2) For the purpose of subparagraph (1) (*c*), the vertical distance from the spill-over level of the bath, sink or other appliance to the point above the spillover level which is the lowest point of any draw-off tap or other fixed fitting which discharges into the bath, sink or other appliance shall, in relation to a draw-off tap of the appropriate size, be as follows—

Size of tap or combination fitting	*Vertical distance of points of outlet above spill-over level*
(*a*) not exceeding 15 mm	20 mm
(*b*) exceeding 15 mm but not exceeding exceeding 20 mm	25 mm
(*c*) exceeding 20 mm	70 mm

(3) Paragraph (1) shall not apply to any draw-off tap or other water fitting where—

(*a*) the draw-off tap or similar fixed fitting draws water by gravity only from a cistern, cylinder or tank having a vent pipe open at all times to the atmosphere;

(*b*) the vertical distance between the point at which the pipe supplying water to the draw-off tap or similar fixed fitting connects to the cistern, cylinder or tank and the spill-over level of the bath, sink or other appliance to which it is fitted is not less than 25 millimeters; and

(*c*) the pipe supplying water to the draw-off tap or similar fixed fitting does not supply water to any tap or fitting other than a drainage tap at a lower level.

Certain draw-off taps; what to incorporate

18.—(1) Subject to paragraph (2), every draw-off tap or other water fitting which incorporates a shower hosepipe, whether or not operated by a manual or automatic diverter installed to discharge water into a bath, shower tray, sink, wash basin or similar fixed appliance, other than a bidet, shall—

(*a*) incorporate a double check valve assembly;

(*b*) incorporate a check valve and vacuum breaker; or

(*c*) have fitted as close as is practicable to the point of draw-off some other no less effective device to prevent the back-siphonage or back-flow of water.

(2) Paragraph (1) shall not apply in respect of any draw-off tap or other fitting where—

(*a*) the draw-off tap or other fitting is installed in accordance with by-law 17 (3);

(*b*) the showerhead of any shower hosepipe is constrained by a fixed or sliding attachment so that the showerhead can only discharge water at a point above the spill-over level of the bath, shower tray or other fixed appliance, as the case may be; or

(*c*) the vertical distance between the showerhead of any unconstrained shower hosepipe and the spill-over level of the bath shower tray or other fixed appliance, as the case may be, is not less than the figure mentioned in the table in by-law 17 (2) in relation to draw-off tap or other similar fixed fitting of the appropriate size.

Use of certain hosepipes prohibited

19.—(1) No person shall connect a hosepipe, other than a hosepipe used in accordance with by-law 8 (2) or shower hosepipe installed in accordance with by-law 18, to a draw-off tap or other similar fitting for use either inside or outside any premises.

(2) Paragraph (1) shall not apply where a hosepipe connected to a draw-off tap or other similar fitting—

(*a*) draws water by gravity only from a cistern by means of a pipe which does not supply water to a draw-off tap or similar fitting other than a draining tap at a lower level; or

(*b*) is on any domestic premises with the written consent of the Board, and incorporates as close as is practicable to the point of draw-off or use either a double check valve assembly or some other no less effective backflow prevention device.

Bidet not to be connected to supply pipe

20. No person shall connect a bidet, which is equipped with any type of submersible spray, or any draw-off fitting to which a hand held flexible spray is or can be attached, to a supply pipe.

Where bidet may be connected to supply pipe

21. Subject to by-law 20, no person shall connect a bidet to a supply pipe, unless the bidet—

(*a*) is of the over-rim water fed type; and

(*b*) is installed so that the vertical distance between the outlet point of any draw-off or similar fitting and the spill-over level of the bidet is not less than the figure mentioned in the table in by-law 17 (2) in relation to a draw-off tap or other similar fitting of the appropriate size.

Hot water pipe and bidet: how connected

22.—(1) No person shall connect a hot water pipe or water heater which supplies hot water or a distributing pipe which supplies cold water to a bidet in such a way that the hot water pipe, water heater or distribution pipe, as the case may be, also supplies water to a draw-off tap or other similar fitting, except a drainage tap.

(2) Paragraph (1) shall not apply where—

(*a*) a supply pipe is connected to supply water to a bidet installed in accordance with by-law 21;

(*b*) a distribution pipe is connected only to supply cold water to a flushing cistern or to urinal; or

(*c*) a hot water pipe is connected to supply water only to a bidet and the hot water pipe either—

(i) has a check valve and vent pipe arranged to prevent the back-flow or back-siphonage of water from the bidet; or

(ii) is fitted with some other similar effective back-flow prevention device.

Washing machine dishwasher. etc., to incorporate type B air gap

23.—(1) No person shall use or install a washing machine, dishwasher or tumbler drier connected permanently or temporarily to the water service operated by the Board, unless the washing machine, dishwasher or tumbler drier is incorporated with either a type B air gap or a pipe interrupter which, if removed, stops the washing machine, dishwasher or tumbler drier, as the case may be, from functioning.

(2) Subject to paragraph (3), every machine of a kind mentioned in paragraph (1) which is connected permanently or temporarily to the water service elsewhere than in a domestic dwelling house shall, in addition to complying with paragraph (1), draw water by gravity only from a storage cistern.

(3) Paragraph (2) shall not apply where any machine mentioned in that paragraph incorporates a type A air gap.

Inlet pipe to incorporate a check valve and vacuum breaker

24. The inlet pipe of every ion-exchange common salt regenerated type water softener used in connexion with a clothes washing machine or dishwasher shall be fitted with a check valve and vacuum breaker or some other no less effective back-flow prevention device, except where the supply of water to such a softener passes first through the back-flow prevention device incorporated with the washing machine or dishwasher in accordance with by-law 23 (1).

Certain supply pipes to incorporate a type A air gap, etc.

25.—(1) Every supply pipe conveying water to a cistern, whether or not fitted with a float-operated valve, shall—

(*a*) if the cistern receives or contains, or is likely to receive or contain, any substance which is, or is likely to be, harmful to health, incorporate a type A air gap; or

(*b*) if the cistern supplies water to a primary circuit in a domestic dwelling house or is a flushing cistern, incorporate either a type B air gap, a pipe interrupter or a double check valve assembly.

(2) Subparagraph (1) (*b*) shall not apply where a supply pipe conveying water to a cistern—

(*a*) is installed in accordance with by-law 31; or

(*b*) is fitted with a float-operated valve of a reducing flow type which prevents back-siphonage through it in the event of vacuum occurring in the feed pipe.

Water supply pipes for domestic purposes to incorporate a type A air gap or type B air gap, etc.

26.—(1) Every pipe for the supply of water for domestic purposes to a point of use or draw-off where back-flow or back-siphonage is, or is likely to be, harmful to health by reason of a substance which—

(*a*) is continuously or frequently present in contaminated water, shall incorporate a type A air gap; or

(*b*) may be present in contaminated water, shall incorporate a type A air gap or type B air gap, a pipe interrupter, a combination of check valve and vacuum breaker, double check valve assembly, or some other similar effective backflow prevention device.

(2) Every pipe for the supply of water for domestic purposes to a point of use or draw-off where back-flow or back-siphonage is not, or is not likely to be, harmful to health, shall incorporate a check valve or some other similar effective back-flow prevention device.

(3) Paragraphs (1) and (2) shall not apply where a pipe supplying water to a point of use or draw-off is supplied from cistern which—

(*a*) supplies water by gravity only to the point of use or draw-off;

(*b*) is installed so that the vertical distance between the spillover level of any vessel containing used or contaminated liquid at any point of use or draw-off and—

(i) the invert level of the warning pipe in the cistern is not less than 300 millimetres; and

(ii) the lower point inside the cistern is not less than 15 millimetres; and

(*c*) is fed with water from a pipe fitted with one of the back-flow prevention devices referred to in subparagraph (1) (*b*).

(4) Where contamination by any disturbance or splashing of contaminated liquid in any vessel at a point of use or draw-off is likely to occur in a cistern referred to in paragraph (3), the cistern shall be tightly covered.

Certain supply pipes to be fitted with check valves, vacuum breakers, etc.

27. Every—

(*a*) supply pipe or distributing pipe which conveys water to two or more separately occupied premises, whether or not they are separately chargeable by the Board for the supply of water; and

(*b*) supply pipe which conveys water to premises which under any written law are required to provide a storage cistern capable of holding sufficient water for not less than 24 hours' ordinary use, shall be fitted with such combination or combinations of

check valves, vacuum breakers, double check valves assemblies or some other no less effective back-flow prevention device as shall effectively prevent the back-flow or back-siphonage of the water from one premises to another or from any floor or level or a building to a lower floor or level.

Water supply pipes for fire-fighting purposes to be clearly and indelibly marked

28. In any premises, or other than a dwelling house, every supply pipe and every pipe for supplying water solely for fire fighting purposes shall be clearly and indelibly marked so that such pipes are readily distinguishable from each other and every other pipe in those premises.

Water fittings, other than for fire-fighting purposes, prohibited

29. No person shall connect to any pipe used for the supply of water for fire-fighting a water fitting different from a water fitting installed solely for fire-fighting purposes.

Installation of backflow prevention device

30. Every backflow prevention device shall, so far as is reasonably practicable, be installed in such a manner that it is accessible for examination, repair or replacement.

PART IV
Prevention of Waste and Contamination of Stored Water

Installation of storage cistern

31.—(1) Subject to paragraph (2), every storage cistern for water supplied for domestic purposes shall be installed in a place or position which shall prevent the entry into the storage cistern of surface or ground water, foul water, or water which is otherwise unfit for human consumption.

(2) No person shall install a storage cistern unless the storage cistern—

(*a*) is insulated against extremes of temperature;

(*b*) if made of a material which may or is likely to contaminate stored water, is lined or coated with an impermeable material designed to prevent such contamination;

(*c*) has a rigid, close fitting and securely fixed cover which—

(i) is not air-tight;

(ii) excludes light and insects from the storage cistern;

(iii) is made of material which does not shatter or fragment when broken or which shall not contaminate any water which condenses on its underside:

(iv) in case of storage cistern with a water capacity of more than 1,000 litres, is so constructed that the storage cistern may be inspected and cleansed without having to be wholly

uncovered, and is made to fit closely around any vent or expansion pipe installed to convey water into the storage cistern; and

(*d*) is provided with warning and overflow pipes, as appropriate, which are so constructed and arranged as to exclude insects.

Storage cistern to be so installed as to allow inspection and cleaning, and to avoid damage

32. Every storage cistern shall be installed in such a way that—

(*a*) the storage cistern may be readily inspected and cleaned inside;

(*b*) any float-operated valve or other device used for controlling the inflow of water into the storage cistern may be readily installed, repaired, renewed or adjusted; and

(*c*) damage or distortion to the storage cistern or any water fitting connected directly to the storage cistern is avoided.

Float-operated valve to be fitted to pipe supplying water to storage cistern

33.—(1) Every pipe supplying water to a storage cistern shall be fitted with a float-operated valve or some other no less effective device for controlling the inflow of water by preventing any over-flow.

(2) Paragraph (1) shall not apply in respect of a pipe connecting two or more storage cisterns each of which has the same overflowing level.

Installation of float-operated valve and feed

34.—(1) Every float-operated valve or other device which controls the inflow of water to a storage cistern shall be—

(*a*) securely and rigidly fixed to the storage cistern; and

(*b*) installed so that the inflow of water is shut off when the level of water in the storage cistern—

(i) is not less than 25 millimetres below the over- flowing level of the storage cistern; or

(ii) where the storage cistern is fitted with a device referred to in by-law 38 (2), is not less than 50 millimetres below the overflowing level in the storage cistern.

(2) Every feed pipe supplying water to a float-operated valve or other device referred to in paragraph (1) shall be connected, braced and supported in such a way that the feed pipe is prevented from moving or buckling in relation to the thrust of the float-operated valve or other device, as the case may be.

Vent pipe, warning pipe or overflow pipe not to be connected as means of conveying water

35.—(1) No person shall install a vent pipe connected to a cistern-fed primary circuit as a means for conveying water into a cistern which supplies water to a secondary system.

(2) No person shall install a warning pipe or overflow pipe from any cistern connected to a vented primary circuit as means for conveying water to any cistern from which water may be drawn off for domestic purposes.

Pressure in primary heater not to exceed pressure of stored water

36.—(1) In every double feed indirect cylinder from which stored hot water is, or may be, drawn for domestic purposes, the pressure in the primary heater within the double feed indirect cylinder shall not exceed the pressure of the stored hot water under normal operating conditions.

(2) Paragraph (1) shall not apply where the primary heater inside the double feed indirect cylinder is made without joints or, if made with joints, such joints are capable of withstanding any water pressure to which the joints are, or may be, subjected under normal operating conditions.

Single feed indirect cylinder not to be connected to supply pipe and to have vent

37.—(1) No person shall connect a single feed indirect cylinder directly to any supply pipe.

(2) Every single feed indirect cylinder shall have a permanent vent into the atmosphere, and shall be constructed and installed such that a mixture of water in the primary circuit when operating at a sustained temperature not exceeding 80 degrees centigrade is prevented.

Overflow pipe and warning pipe to be fitted to storage cistern

38.—(1) Every storage cistern which has a capacity exceeding 1,000 litres shall, subject to paragraph (2), be fitted with an over-flow pipe and a warning pipe.

(2) Paragraph (1) shall not apply, in the case of the storage cistern with a capacity exceeding 10,000 litres, where the storage cistern is fitted with an audible or visual alarm operating independently of the valve or device which controls the inflow of water and indicates when the water in the storage cistern is about to overflow.

(3) A storage cistern which has a capacity not exceeding 1,000 litres shall be fitted with a warning pipe only.

(4) Paragraph (3) shall not apply, in case of a storage cistern with a capacity exceeding 500 litres but not exceeding 10,000 litres, where the water level is not less than 25 millilitres below the overflowing level of the lowest overflow pipe.

(5) In this By-law, "capacity" means the volume of water which the storage cistern is capable of holding measured to its overflow level.

Installation of warning pipe

39. Every warning pipe required to be installed in accordance with these By-laws shall be installed in such a way that water is discharged through the warning pipe when the water in the storage cistern has reached overflowing level.

Connexion of flexible hose prohibited

40. No person shall connect a flexible hose to a warning pipe or an overflowing pipe.

Connexion of warning pipe to other warning pipe or overflow pipe prohibited

41.—(1) No person shall connect a warning pipe to another warning pipe or overflow pipe except in case of two or more flushing cisterns each of which has the same overflow level.

(2) Where two or more flushing cisterns have a common warning pipe, the warning pipe shall be installed so that the source of any overflow may be readily identified.

Condition of float-operated valve

42. Every float-operated valve installed in the cistern or other apparatus shall—

(*a*) be capable of controlling the flow of water into the cistern of apparatus;

(*b*) be water-tight, when it is closed;

(*c*) incorporate either a renewable seat and washer each of which is resistant to corrosion and erosion by water, or some other no less effective valve assembly;

(*d*) on installation, be capable of withstanding an internal hydraulic pressure 1.5 times the pressure to which it shall ordinarily be subject;

(*e*) have a float which—

(i) is made of a material capable of withstanding any water temperature in which it is operating or is likely to operate; and

(ii) has a lifting effort such that when not more than one half of the float is immersed in water, the float-operated valve is capable of drop-tight closure against the highest pressure to which the float-operated valve is likely to be subjected; and

(*f*) have a level which—

(i) when the float-operated valve is closed, shall withstand without bending or distorting a force twice that to which it is ordinarily subjected, and

(ii) in case of a 15 millimeters float-operated valve, is constructed so that the water shut-off level may be altered or adjusted without bending the float lever.

Installation of float-operated valve

43. No person shall install a float-operated valve for the purpose of conveying hot water to a cistern unless—

(*a*) the float-operated valve is made of materials capable of withstanding without leaking any ordinary operating water temperature to which it is or may be subjected;

(*b*) so far as is reasonably practicable, operation of the float-operated valve is not, and is not likely to be prevented or impaired by the scale deposited thereon; and

(*c*) having regard to any scale which is, or is likely to be deposited on the valve or float valve, the float-operated valve is adjusted to prevent any overflow.

Valve or device to be capable of controlling flow of water into storage cistern

44. Every valve or device installed for controlling the inflow of water into any storage cistern, other than a float-operated valve, shall be capable of controlling the flow of water into the cistern.

Installation of storage cistern in a place in which water may be contaminated prohibited

45. No person shall install a storage cistern for water supplied for non-domestic purposes, or a cylinder or water fitting used in connexion with the storage cistern, in place or position which may result in the water stored in the cistern becoming unfit for the purpose for which the water is intended.

Float-operated valve to be fitted to pipe supplying water for animal use

46.—(1) Every pipe which conveys water supplied by the Board to a drinking trough or bowl for animals shall be fitted with a float-operated valve or some other no less effective device to control the inflow of water into the drinking trough or bowl and prevent the water from flowing over the drinking trough and bowl

(2) Subject to paragraph (1), the provisions of this Part shall apply to the drinking trough or bowl as if it was a storage cistern to which by-laws 32 to 34 apply.

Ponds, fountains or pools to be constructed with impervious lining or membrane

47. Every pond, fountain or pool supplied with water by the Board and has a capacity exceeding 10,000 litres of water shall be constructed with such an impervious lining or membrane as would prevent water from leaking or seeping from the pond, fountain or pool.

PART V
Prevention of Waste Water from Damage to Water Fittings from Causes other than Corrosion

Installation of pipes and other water fitting below ground level

48.—(1) Subject to paragraphs (2) and (3), the vertical distance between the top of every pipe or other water fitting laid or installed below the ground and the finished ground level shall be not less than 375 millimetres and not more than 850 millimetres.

(2) Where it is impracticable to comply with the provision of the minimum depth mentioned in paragraph (1), the pipe or other water fitting shall be laid or installed as deep as is reasonably practicable below the finished ground level, and shall be effectively protected against damage from any cause whatsoever.

(3) This By-law shall not apply where the pipe or other water fitting is laid or installed in the ground under any building or structure of a permanent nature, or is used only for a temporary purpose for a period not exceeding three months.

Pipes or water fittings to be protected from damage

49.—(1) No person shall install any pipe or water fitting inside or outside a building or structure, unless the pipe or other water fitting is, so far as is reasonably practicable, effectively protected, by the manner of its installation or insulation or by some other no less effective means, against damage from any cause whatsoever.

(2) Paragraph (1) shall not apply where a pipe or other water fitting is installed below ground level in accordance with by-law 48 (1), or in respect of a warning or overflow pipe.

Plastic pipes to be protected from damage

50. No person shall install a plastic pipe which is likely to be damaged when exposed to petroleum products, unless the pipe is covered or otherwise effectively protected from such damage.

PART VI
Prevention of Waste from or Contamination by Unsuitable or Improperly Installed Water Fittings

Installation of water fitting likely to contaminate water prohibited

51. No person shall install a water fitting intended to convey or receive water supplied by the Board for domestic purposes if such water fitting is made, wholly or partially of, or incorporates, or is lined or coated with, any material or substance which contaminates, or is likely to contaminate, the water by altering the colour, odour, taste or composition of the water.

Only water fittings capable of withstanding pressure, etc., be installed

52.—(1) No person shall install a water fitting, unless the water fitting is made of such materials as are, so far as is reasonably practicable, capable of withstanding external load, or physical pressure, vibration and stress, or settle internal and external water pressure, and temperature and corrosion.

(2) No person shall install a water fitting—

(*a*) under the ground;

(*b*) through or under any wall, footing or foundation;

(*c*) into any wall or solid floor;

(*d*) into any chase or duct; or

(*e*) in an inaccessible position, or a position to which access is difficult, unless the water fitting is—

(i) constructed to withstand, without bursting, buckling, fracturing or leaking, an internal hydraulic pressure twice that to which it would normally be subject;

(ii) installed to accommodate any reasonably foreseeable movement, including any thermal movement in the pipe; and

(iii) except in a closed circuit, resistant to dezincification.

Pipe to be free from airlock or reverberation

53. Every pipe installed for purposes, of supplying water shall be adequately supported and secured so as to avoid damage from any airlock or reverberation.

Pipe for supply of water for domestic purposes to be cleaned before use

54. Every pipe installed for purposes of supplying water for domestic purposes shall be flushed to remove debris before it is first used after installation, renewal or repair.

Supply of cold water to be exposed to minimum heat

55. Every supply pipe installed in a dwelling house for purposes of supplying cold water for domestic purposes to any tap shall be installed in such a place and position that, so far as is reasonably practicable, the water will not be warm when it is drawn off from that tap.

Connexion of metal pipe to water fitting by means of adhesive prohibited in certain circumstances

56. No person shall connect a metal pipe to any water fitting by means of an adhesive if the metal pipe is to be—

(*a*) installed below ground level or through or under any wall, or foundation;

(*b*) embedded into any wall or solid floor, or enclosed in any chase or duct;

(*c*) installed in any other place or position to which access is difficult.

Installation of pipe into wall, floor, etc., prohibited

57.—(1) No person shall embed a pipe or other water fitting into any wall or solid floor or in or below a solid floor or under a suspended floor at ground level.

(2) Paragraph (1) shall not apply where—

(*a*) the pipe or other water fitting is installed in a chase or duct, not being the cavity in a cavity wall, in a wall or solid floor which may, if necessary, be readily exposed;

(*b*) the pipe, excluding a pipe joint, is installed in a pipe sleeve or duct in or under a solid floor which may, if necessary, be readily removed or replaced;

(*c*) a pipe is installed in an internal wall, other than a solid wall; or

(*d*) a pipe is installed under a suspended floor at ground level which may, if necessary, be readily removed and replaced.

Disconnexion of pipes and water fittings

58.—(1) Where any water fitting is disconnected, every pipe or an appropriate part of the pipe which conveys water to the water fitting shall also be disconnected.

(2) Paragraph (1) shall not apply where a water fitting is disconnected for repair or renewal and is replaced within a period of sixty days from the date of disconnexion.

Metal pipes and other water fittings made of different metals not to be connected to each other

59. No person shall connect a metal pipe, pipe joint or other water fitting, whether by way of repair or replacement, to another pipe, pipe joint or other water fitting made of a different metal unless—

(*a*) deterioration through galvanic action is unlikely to occur; or

(*b*) effective measures are taken to prevent deterioration through galvanic action.

PART VII
Stop Valves

Interpretation of this Part

60. In this Part, unless the context otherwise requires, "premises" means—

(*a*) any premises to which a separately chargeable water supply is provided by the Board; and

(*b*) any premises which are occupied as dwelling premises, whether or not separately charged for water supply by the Board.

Stop-valve to be fitted to supply and distributing pipes, etc.

61.—(1) A stop-valve shall befitted to every supply pipe and distributing pipe conveying water to any premises supplied with water by the Board such that the supply of water to the premises may be shut off without shutting off water supply to any other premises.

(2) A stop-valve shall, so far as is reasonably practicable—

(*a*) be inside the premises;

(*b*) be above floor level;

(*c*) be as near as possible to the point where the supply of water first enters the premises; and

(*d*) be so installed that its closure prevents the supply of water to any point of use on the premises.

Stop-valve fitted to pipe supplying water to premises to be readily accessible

62.—(1) Every supply pipe or distributing pipe conveying water in common to two or more premises shall be fitted with a stop-valve at a place, whether inside or outside any premises, readily accessible to each occupier of the premises.

(2) Every stop-valve shall be installed such that its closure prevents the supply of water to all the premises supplied by the supply pipe or the distributing pipe.

Stop-valve to be water-tight, etc.

63. Every stop-valve fitted in accordance with these By-laws shall—

(*a*) be water-tight when closed;

(*b*) be water-tight when open, and subject to an internal hydraulic pressure 1.5 times the pressure to which it is normally subject;

(*c*) except in the case of a plug valve, be so designed or adapted that its seal can be readily renewed;

(*d*) not incorporate a loose washer plate; and

(*e*) be resistant to corrosion.

Supply pipe to be drained when stop-valve is closed and draining tap opened

64. Every supply pipe in any premises shall be installed so that when a stop-valve fitted in accordance with by-law 61 is closed and any drainage tap is open the supply pipe may be drained.

Supply pipe to be fitted with a draining pipe

65. No person shall install a supply pipe in any premises, unless the supply pipe is fitted with a draining tap which—

(*a*) is water-tight when closed, and is subjected to an internal hydraulic pressure 1.5 times the pressure to which it is normally subjected;

(*b*) is so designed or adapted that its seal can be readily renewed; and

(*c*) is resistant to corrosion.

Drainage tap not to be buried or submerged in water

66. A drainage tap fitted to a supply pipe shall not be buried in or covered with soil, or be submerged in water, or installed in a position which is likely to be submerged in water.

Servicing valve to be fitted to pipe conveying water from storage cistern

67. Every pipe for conveying water from—

(*a*) a cold water storage cistern the capacity of which exceeds 18 litres; or

(*b*) a hot water storage cistern, cylinder or tank,

shall be fitted with a servicing valve as close to that cistern, cylinder or tank as is reasonably practicable.

Servicing valve to be installed with float-operated valve

68.—(1) Every pipe supplying water to a float-operated valve shall be installed with a servicing valve to shut off the supply of water to the float-operated valve.

(2) Every servicing valve installed in accordance with paragraph (1) shall be installed as near as is reasonably practicable to the float-operated valve.

Servicing valve to have the characteristics of stop-valve

69. No person shall install a servicing valve as the sole means of controlling or preventing the flow of water through any pipe unless the servicing valve is installed as if it was a stop-valve under by-law 63.

Installation of servicing valve

70.—(1) No person shall install a servicing valve unless the servicing valve—

(*a*) is designed or adapted to operate only by insertion of a screwdriver or other instruments in a slot on the servicing valve;

(*b*) is water-tight when closed, and is capable of withstanding, without leakage, an internal hydraulic pressure 1.5 times the pressure to which it is ordinarily subjected.

(2) Paragraph (1) shall not apply where the servicing valve—

(*a*) is installed as if it was a stop-valve under by-law 63; or

(*b*) is installed on a distributing pipe with a static water pressure not exceeding 1 bar.

Vacuum breaker, check valve, etc., to be water-tight, etc.

71. Every vacuum breaker, check valve, double check valve assembly or combination of check valves and vacuum breakers installed in any pipe shall be water-tight when closed, and capable

of withstanding, without leaking, an internal hydraulic pressure 1.5 times the pressure to which it is normally subjected.

Stop-valve and servicing valve to be readily accessible

72. Every stop-valve or servicing valve installed in accordance with this Part shall be so placed that so far as is reasonably practicable the stop-valve or servicing valve can be readily examined, maintained and operated.

PART VIII
Water-Closets and Urinals

Water-closet to be supplied with water from valveless cistern trough

73. Every water-closet pan shall—

(*a*) be supplied with water from a flushing cistern of the valveless type which incorporates a siphonic apparatus; and

(*b*) be so made and installed that after normal use the water-closet is emptied by a single flush.

Installation of flushing cistern exceeding certain amount of water prohibited

74. No person shall install a flushing cistern which, when flushed at any one time, discharge into a water-closet pan water supplied by the Board exceeding 7.5 litres.

Cisterns not to give flushes of different volumes

75. No person shall install or adapt a cistern which when flushed discharges water supplied by the Board into a water-closet pan of different volumes.

Installation of flushing cistern trough exceeding certain amount of water prohibited

76. No person shall install a flushing cistern or trough which, when flushed at any one time, discharges into two or more water-closet pans water supplied by the Board exceeding 7.5 litres.

Flushing cistern or trough to be fitted with warning pipe and indelibly marked with water level line

77. Every flushing cistern or flushing trough installed in any premises supplying water to a water-closet pan shall be fitted with a warning pipe and shall be indelibly marked on the inside with a line indicating the water level at which a float-operated valve installed to control the flow of water into the flushing cistern or flushing trough is to shut off such that when flushed the flushing cistern or trough does not discharge into a water-closet pan water exceeding the amount referred to in by-laws 74 and 76.

Urinal to be supplied with water from flushing cistern or trough

78.—(1) Every urinal which is cleared by water after use shall be supplied with water from a flushing cistern or trough which incorporates a siphonic apparatus, and is designed or adapted to supply no more water than is necessary.

(2) No person shall install a flushing cistern or trough referred to in subparagraph (1) for use in connexion with two or more urinal bowls or stalls, or two or more urinal slabs each exceeding 700 millimeters in width, unless the flushing cistern or flushing trough is designed or adapted to fill at a rate exceeding 15 litres per hour for any one of the urinal bowls or stalls or urinal slabs.

(3) No person shall install a flushing cistern or flushing trough referred to in subparagraph (1) for use in connexion with one urinal bowl or stall, unless the flushing cistern or flushing trough is designed or adapted to fill at a rate exceeding 10 litres per hour.

Pipe supplying water to flushing cistern or flushing trough to be fitted with valve

79.—(1) Every pipe which supplies water to a flushing cistern or flushing trough used for flushing a urinal bowl or stall shall be fitted with—

(*a*) a flow shut-off valve controlled by a time switch and lockable shut-off valve; or

(*b*) some other equally effective automatic device or method for regulating the period during which the cistern or trough may fill.

(2) Paragraph (1) shall not apply where a flushing cistern or a flushing trough is manually operated or fills and flushes by the operation of some other fitting or a signal transmitted from a photo-electrical cell or pressure pad or some other device designed to ensure that the cistern flushes only after the urinal is used.

Flush and warning pipes only to supply water to water-closet, etc.

80. No person shall install a pipe to supply water to a water-closet pan or to a urinal bowl or stall or slab, except a flush pipe or warning pipe installed to discharge water into the air not less than 150 millimetres above the edge of water-closet pan.

PART IX

Prevention of Waste, Misuse and Contamination of Water from Draw-Off Taps, Baths, Basins, Sinks and other Fittings

Water inlet and outlet of bath, basin, sink, etc.

81.—(1) Every bath, wash basin or similar fitting installed for use in any premises shall—

(*a*) be so constructed or arranged that every inlet for water into the bath, wash basin, sink or similar filling is hydraulically separated from, and unconnected with, any water outlet thereof; and

(*b*) be provided with a water-tight and readily accessible plug or some other device capable of closing any outlet for water from the bath, wash basin, sink or similar fitting.

(2) Subparagraph (1) (*b*) shall not apply in respect of any—

(*a*) shower bath or shower tray;

(*b*) apparatus to which water is delivered at a rate not exceeding 3.6 litres a minute, or in case of a washing trough, 3.6 litres a minute to any unit of it, solely from a fitting designed or adapted for that purpose; or

(*c*) apparatus installed in any hospital or used in any medical, dental or veterinary practice which is designed or adapted for use with an unplugged outlet.

Washing trough to be fitted with draw-off taps

82. Every washing trough consisting of two or more units shall be fitted with separate draw-off taps or similar fittings for each such unit.

Draw-off tap to withstand certain temperature, pressure, etc.

83. Without prejudice to by-law 52, every draw-off tap to which water is supplied by the Board shall—

(*a*) be capable of operating effectively at—

(i) any water temperature not exceeding 65 degrees centigrade; and

(ii) any internal water pressure to which it is likely to be subjected;

(*b*) be made and designed so that it may be easily closed to shut off the flow of water;

(*c*) if it incorporates a renewable seal or washer, be made or adapted so that the seal or washer can be readily renewed or replaced;

(*d*) be resistant to corrosion; and

(*e*) be designed when new to withstand, without leaking, an internal water pressure which is 1.5 times more than that to which it shall ordinarily be subjected.

Types of washing machines to be connected to supply or distributing pipe

84. No person shall connect a washing machine, tumbler drier or dishwasher to any supply pipe or distributing pipe conveying water supplied by the Board, except—

(*a*) a washing machine, and which in any complete washing cycle uses not more than 3.6 litres of water for every litre of machine drum or tub volume;

(*b*) a washing machine incorporating a tumbler drier, and which in any complete a washing and drying cycle uses not more than 6.4 litres of water for every litre of machine kilogram of dry load;

(*c*) a tumbler drier incorporating a water spray which uses not more than 20 litres of water for every drum volume; and

(*d*) a dishwasher which in any complete washing cycle uses not more than 7 litres of water for every place setting.

PART X
Prevention of Waste and Contamination of Water from any Hot Water System

Vent pipe not to discharge water from secondary system to primary circuit

85. No vent pipe from any secondary system shall be connected to or arranged to discharge water into any combined feed and expansion cistern connected to a primary circuit.

Circumstances in which apparatus or cylinder may be installed

86. No person shall install any apparatus or cylinder, unless the apparatus or cylinder—

(*a*) is capable of accommodating any expansion water;

(*b*) is connected to a separate expansion cistern or vessel; or

(*c*) is so arranged that expansion water can pass back through a feed pipe to any storage cistern which the apparatus or cylinder is connected.

Unvented water heater

87. No person shall install an unvented water heater, which is not an instantaneous water heater, unless the unvented water heater—

(*a*) is capable of accommodating any expansion water;

(*b*) is connected to a separate expansion cistern or vessel; or

(*c*) is installed so that any expansion water can be accommodated in the pipe-work of any secondary system, and so that no hot water can enter any communication pipe or supply pipe to which a cold water draw-off tap is connected.

Installation of expansion cistern

88. Every expansion cistern or vessel, and every cold water combined feed and expansion cistern, connected to a primary circuit shall be—

(*a*) capable of accommodating any expansion water from the primary circuit to which the expansion cistern or vessel or the cold water combined feed and expansion cistern, as the case may be, is connected; and

(*b*) installed so that in ordinary operation the water level is not less than 25 millimetres below the overflow level of the warning pipe connected to the expansion cistern or vessel and the cold water combined feed and expansion cistern, as the case may be.

Boiler to withstand pressure and temperature

89. Every boiler shall be constructed with materials the nature, strength and thickness of which is capable of withstanding internal water pressure and operating temperature to which the boiler is, or is likely to be, subjected.

Pressure relief valve, etc., to function in a certain way

90. Every pressure relief valve, expansion valve, temperature relief valve or combined temperature and pressure relief valve connected to any boiler or hot water cylinder or storage tank shall—

(*a*) be capable of closing automatically after discharging water;

(*b*) be water-tight when closed;

(*c*) be resistant to corrosion;

(*d*) be constructed and installed so that the distance of water from the pressure relief valve, expansion valve, temperature relief valve or combined temperature and pressure relief valve or from any pipe connected to it, as the case may be, is readily visible; and

(*e*) except in the case of a temperature relief valve or temperature function of a combined temperature and pressure relief valve, discharge water only when it is subject to water pressure of at least 0.5 bar above the water pressure to which the boiler or hot water cylinder or storage tank, as the case may be, is, or is likely to be, subjected.

Unvented hot water cylinder or storage tank to be fitted with temperature relief valve

91. Every unvented hot water cylinder or storage tank which is supplied with water by the Board, whether or not by means of storage cistern and which is fitted with a non-mechanical safety device, shall be fitted with a temperature relief valve which—

(*a*) operates at a temperature not less than 5 degrees centigrade below that at which is fitted the non-mechanical safety device operates or is designed to operate;

(*b*) closes automatically after discharging water; and

(*c*) is water-tight when closed.

PART XI
Taps for Drawing Drinking Water

Draw-off tap to be connected to service pipe, delivery pipe and distribution pipe

92. In every premises to which water is supplied by the Board a draw-off tap convenient for drinking water shall be connected to—

(*a*) a service pipe;

(*b*) a pump delivering drawing water wholly from a service pipe; or

(*c*) a distribution pipe drawing water wholly from a storage cistern which is—

(i) installed in accordance with by-law 31; and

(ii) supplied with water from a service pipe or a pump delivery pipe drawing water from a service pipe.

Standpipe for communal water supply to be metered, etc.

93. Every standpipe which is used for providing a communal water supply shall be metered and be equipped with a non-concussive self-closing tap or other suitable waste preventing tap.

PART XII
Notice to the Board

Notices to be given before installation or alteration is carried out in respect of water fittings

94.—(1) Any person who, in respect of any premises to which water is supplied by the Board, proposes to carry out any of the installations or alterations referred to in paragraph (2) shall give at least five working days written notice to the Board before commencing such installations or alterations.

(2) The installations or alterations for which written notice is required under paragraph (1) are such installations or alterations, other than repairs or renewals, of—

(*a*) a bidet;

(*b*) a flushing cistern;

(*c*) a hose union tap or tap to which a hose may be connected; or

(*d*) a water fitting which, if there is a back-flow or back-siphonage of water through such water fitting, contaminates, or is likely to contaminate water supplied by the Board.

Notice to be given in respect of work affecting pipes

95. Any person who, in respect of any pipe which conveys, or is intended to convey, water supplied by the Board, proposes to—

(*a*) back-fill any excavation in which the pipe is laid; or

(*b*) thread the pipe through any tubular duct which enters a building below ground level; or

(*c*) embed the pipe in any solid floor or wall; or

(*d*) lay the pipe below ground level by means of a mole plough or similar apparatus,

shall give at least five working days written notice to the Board before commencing any of the activities referred to in this By-law.

PART XIII
Water Connexions, Water Disconnexions and Meters

Application for water connexion

96.—(1) Any person wishing to be supplied with water by the Board shall apply to the Board in the prescribed form for the supply of water to his premises; and the application shall be accompanied by a plan of the premises drawn to a scale of not less than 1:500 showing the size of the premises in hectare and details of existing and proposed service.

(2) The Board, upon receipt of the application pursuant to paragraph (1), shall carry out measurements to determine the distance from the closest Board's water main to the premises requiring the new water connexion; and the Board shall thereafter provide a quotation to the applicant based on the rates prescribed in the First Schedule. *First Schedule*

(3) Every new water connexion works for the premises shall only start upon payment of the new water connexion fee referred to in paragraph (7).

(4) The Board shall not be bound to provide or continue to provide a water connexion of the size for which an application is made, but the Board may provide such larger or smaller water connexion as it deems appropriate to the average monthly consumption or estimated consumption required.

(5) In the event of the existing water connexion requiring to be replaced by one of increased size, the owner or occupier of the premises supplied with water by the Board shall pay the appropriate water connexion fee.

(6) Where the Board provides a water connexion of a lesser size than that for which an application is made, or where no water supply exists, any excess fee tendered by the person making the application shall be refunded or credited to his account, as the case may be.

(7) The Board shall only connect water supply to any person wishing to be supplied with water by the Board upon payment of a water connexion fee as prescribed in Second Schedule. *Second Schedule*

Board not responsible for failure in water supply and water quality

97. The Board shall not be responsible for any failure in its water supply or defect in the quality of water, except where such failure is caused by the negligence of the Board or its employees, servants or agents; and the Board shall only be responsible for a defect in its water quality caused by the negligence of the Board or its employee, servants or agents upon the assessment and proof of

such a defect in water quality being certified by the Water Resources Board or any other authority so mandated by or under any written law.

Provision of water to premises comprising one or more buildings

98. Any property comprising a building or buildings on a separate subdivision of land for town planning purposes and supplied with water by the Board shall have its own and not more than one water connexion—

Provided that the Board may—

(*a*) elect to install more than one water connexion to any property where the level of any service reservoirs from which the property can be supplied are such that one water connexion would not provide an adequate supply either in volume or at sufficient pressure or both;

(*b*) agree to install more than one connexion to a separate subdivision of land for town planning purposes, but in such case the service from each such connexion shall be entirely separate, and no building shall obtain or be capable of obtaining water from more than one connexion;

(*c*) agree to provide one water connexion to supply more than one separate subdivision of land where—

(i) such subdivisions are continuous;

(ii) such subdivisions are and continue to be under one ownership;

(iii) any buildings erected thereon are held or occupied as a distinct or separate holding tenancy; and

(iv) such land is utilized for the purpose associated with such buildings.

Safe custody of meters

99. Each water connexion shall have a separate water meter provided by the Board and either the person making the application for a water supply or the occupier of the property served, as the case may be, shall be responsible for the safe custody and condition of the meter.

Board to remain owner of meter

100. The Board shall remain the owner of any meter provided under by-law 99, and shall be responsible for its maintenance, repair or replacement:

Provided that where any meter is found to have been willfully or accidentally damaged the occupier of the property served by the water meter may be liable to pay the cost of repairing or replacing such a meter; and the provision of water supply to the premises shall be discontinued until payment for the meter has been made.

Disconnexion and maintenance of meters

101. No person, other than an employee, servant or authorized agent of the Board, shall disconnect or interfere with any water or fittings connected herewith for the purpose whatsoever, and in event of any repairs to any meter being necessary, the owner or occupier of the premises shall immediately notify the Board whose employee, servant or authorized agent shall effect repairs without undue delay.

Private meters

102. Nothing in these By-laws shall prevent any person from installing a meter, other than a meter provided by the Board:

Provided that such a privately owned meter shall in all cases be fitted in such a way that it registers water which has already passed through a meter provided by the Board, and the privately owned meter is neither intended to replace the meter provided by the Board nor to interfere with the operations of a meter installed by the Board.

Meter readings

103.—(1) Any reading from a meter provided by the Board as entered in the books of the Board shall determine the quantity of water consumed, from time to time, unless there is evidence to show that either such reading was erroneously entered in the books of the Board or the meter was not effective at the time of such reading.

(2) In event that the Board discovers that a meter is stuck, the Board shall reasonably estimate the monthly water consumption during the month the meter was stuck by using an average of a minimum of three-months water consumption quantities prior to the meter getting stuck.

Board to disconnect water due to non-payment of water bills and illegal water connexion

104.—(1) The Board shall disconnect supply to any premises, through removal of the meter or any such mechanism that shall stop the supply of water to premises, if the owner or occupier of the premises does not pay his previous water bills beyond thirty days; and reconnexion of supply shall be done after payment of the outstanding water bill is made.

(2) The Board shall not unreasonably delay the reconnexion of the disconnected consumer upon his payment of an outstanding bill.

(3) Supply to disconnected premises shall only be restored upon the payment of the outstanding bills plus payment of a reconnexion fee prescribed in the Second Schedule.

Second Schedule

(4) In event that the owner or occupier of the premises decides to illegally reconnect the supply of water after disconnexion has been made, the Board shall remove the entire distribution pipe up to the

Board's main supply pipe, and the Board shall reconnect any illegally connected premises upon payment of the cost of new water connexion by the owner or occupier plus the cost of volume of water used during the time the premises were illegally connected estimated as being the sum monthly charges covering the period when the premises were disconnected to when the illegal connexion was discovered; and for purposes of this By-law, monthly charges shall be determined to be one-third of the aggregated consumption for the last three months prior to the disconnexion of the premises.

(5) No person shall by-pass a meter or have a completely new water connexion without the Board's consent, and the Board shall—

(*a*) completely remove the pipe and fittings used for any such meter by-pass or the new water connexion; and

(*b*) only provide any such person water supply upon—

(i) payment of new water connexion fee, reconnexion fee and water deposit fee; and

(ii) payment of the estimated water consumed during the period the person was using water supplied by the Board illegally, determined by an average water consumption of the group of consumers the person falls under for a period of one year using the appropriate consumer group water charge rates.

(6) Any person involved in any form of illegal water connexion, by-pass of water meter, or any form of activities whose aim is to interfere with the Board's system of water charging commits an offence.

Amnesty to be granted to those obtaining water before the commencement of these By-laws

105. A sixty calendar day amnesty shall be offered to those persons obtaining the water supplied by the Board before the enactment of these By-laws who come forward to declare the status of their illegal water consumption.

Right to have meter tested

Second Schedule

106.—(1) Any person receiving a water supply from the Board through a service meter may apply in writing to have the meter provided by the Board tested upon payment of the fee prescribed in the Second Schedule which shall accompany such application.

(2) If upon test the meter is found to be inaccurate beyond the limits of plus or minus five per cent of the true quantity the Board shall replace such meter at its own expense.

Board may remove any meter

107. The Board may at any time at its own expense remove any meter whether or not owned by the Board and replace it with another meter:

Provided that if such meter is privately owned, the cost of replacement shall be borne by the consumer or owner thereof.

Inspection of premises by the Board

108. Any authorized employee, servant or agent of the Board may, at any reasonable time and on the production of an identification approved by the Board, enter upon any premises for the purpose of inspecting the water supply, meter or any water fitting on such premises, including meter reading and disconnexion of water supply due to non-payment of water bills; and any person so authorized may, for purposes of such inspection, remove any obstruction and the Board shall make good any damage thereby caused, unless the cause for the inspection is due to the default or negligence of the occupier or owner of the premises.

Obstruction of Board's employee, etc., an offence

109. Any person who obstructs an authorized employee, servant or agent of the Board in the performance of his duties under these By-laws commits an offence.

Special agreement for water supply

110.—(1) Notwithstanding any provision contained in these By-laws, the Board may enter into any special agreement with any person for supply of water.

(2) In event that the Board receives an application for water supply which in the Board's opinion is deemed not feasible to supply of water due to either operation concerns or financial viability, the Board shall so advise the applicant, and in such case, the Board shall assist the applicant, at a fee to be determined by the Board, with technical know how for the applicant to develop his own water source which he shall operate on his own.

Ascertainment of water consumption when meter reading is found to be erroneous

111. Where it is found that a meter reading is entered erroneously in the books of the Board for any reason and no accurate assessment of the quantity of water consumed can be established, one-third of the aggregated consumption for the last three preceding months, or where this is impracticable, the quantity consumed in the next ensuing month shall be deemed to be the quantity of water in respect of which the meter reading was erroneously entered.

Change of occupancy

112.—(1) Any person occupying or vacating premises supplied with water by the Board shall give written notice to the Board of not less than three clear days, excluding Sundays, Saturdays and Public Holidays, of his intention to occupy or vacate the premises.

(2) Upon receiving the notice pursuant to paragraph (1) the Board shall cause the meter to be read on the date of such change of occupancy provided such change of occupancy does not occur on a Saturday, Sunday or Public Holiday.

(3) In event of either no notice or insufficient notice being given, in accordance with paragraph (1), by the person vacating premises supplied with the water by the Board, such person shall be bound to pay any metered water charges determined by the meter reading next following the date upon which such vacating occurs.

Repair of leaks and waste

113. Where there is any leak or waste on any premises supplied with water by the Board, the Board may, by written notice, require the occupier or owner of the premises to repair or prevent the leakage or waste, and if within forty-eight hours from the time of such notice, such leak or waste is not repaired or prevented, the Board may in its discretion disconnect the supply of water to the premises or enter upon the premises to repair or prevent the leak or waste at the expense of the occupier or owner of the premises.

Temporary water connexion

114.—(1) The Board may, on application and payment of an appropriate fee to be determined by the Board, supply water to any person for a temporary period for building or construction work or other temporary activity:

Provided that—

(*a*) the application for water connexion compiles with these By-laws; and

(*b*) the construction or building site or sites shall be deemed to constitute the premises under which the water connexion is being made.

(2) Temporary supply of water shall not be connected to a permanent service, except when it becomes necessary for purposes of testing.

PART XIV
Fire Services

Fire services

115.—(1) Any owner or occupier of premises within the water area wishing to have a connexion made to the Board's mains for the purpose of fire service shall submit two application forms to the Board for the supply of water for such purpose; and two copies of a plan to a scale of not less than 1:500 shall be attached to the application forms showing the size of the premises in hectares and details of the proposed fire service and fire-fighting apparatus.

(2) The Board may agree to provide a connexion from a main for any fire service subject to the adequacy of such main; and the Board may, in addition, require that the person making the application for fire service connexion shall bear the cost of providing such connexion.

(3) Where the fire service is intended to be used exclusively for fire-fighting purposes and separate water connexion has been or is about to be provided for other purposes, the fire service connexion need not be metered.

(4) Where the fire service is not metered by the Board such fire services shall—

(*a*) not be used for the purpose of conveying water other than to a fire hydrant, fire hose-reel or other fire-fighting apparatus: and

(*b*) be provided with a stop tap sealed by the Board in the closed position and the occupier or owner of the premises within which the fire service is laid shall be liable for the safe custody of the stop tap and seal; and if such seal is broken without the prior consent of the Board, except in the event of a fire occurring, a charge of K5,000 shall be paid for renewing the seal.

(5) Where any fire service is intended to be used for purposes other than fire-fighting it shall be metered, and any additional expenses to provide a combination or compound or other meter shall be borne by the person making the application for such fire service to be supplied with water; and such meter shall be the property of the Board which shall be responsible for its maintenance and repair or replacement.

(6) This By-law shall not apply to any fire service existing at the of date of these By-laws coming into operation so as to require such fire service to be altered in any way.

Misuse of unmetered fire service water an offence

116. Where water is taken through an unmetered fire service without the consent of the Board for a purpose other than to extinguishing a fire, any person so taking water or permitting water to be taken commits an offence.

Assemblies to be provided with fire hydrants

117.—(1) All town, municipal and city assemblies shall be provided with metered fire hydrants from where they can draw-off water for purposes other than fire-fighting, and all other fire-hydrants shall be available to the assemblies only for the sole purpose of fire-fighting.

(2) Any person drawing-off water from fire-hydrants which are not metered for purposes other than fire-fighting commits an offence.

PART XV
Restriction to Supply of Water

Power of Board to fix hours and quantities of water supply

118. The Board may, from time to time, fix the hours at and in the quantities which water may be supplied.

Power of Board to restrict use of water in time of shortage

119.—(1) The Board may, whenever the available supply of water from its waterworks is insufficient to satisfy the normal demand for water, by notice published in the *Gazette*, local newspapers and on the radio, declare that a water shortage exists; and shall specify in the notice appropriate restrictions which shall remain in force until the notice is revoked by the Board.

(2) Any person who, after the publication of a notice referred to in paragraph (1), uses water contrary to the restriction specified in the notice commits an offence, and the Board shall have powers to disconnect his water supply and shall only have his water supply reconnected upon the revocation of the notice by the Board and upon payment of the reconnexion fee by the occupier or owner of the premises.

Continuous feed

120.—(1) Any apparatus which is dependent upon a continuous feed of water from the Board shall be connected to a storage cistern containing sufficient water for such apparatus to operate under normal working conditions for at least twelve hours.

(2) Where from any service the maximum draw-off is capable of exceeding 100 litres in one minute, the Board may require a storage cistern of suitable capacity to be installed and the service so arranged as to moderate the draw-off direct from the main.

PART XVI
Charges for the Supply of Water and other Facilities

Water rate and service charge

121.—(1) The Board shall charge, in respect of a supply of water in one month, the quantity of which is ascertained by meter, at the rate specified in Part I of the Third Schedule and, in respect of a supply of water obtained from a water kiosk or a communal water point, at the rate specified in Part II of the Third Schedule.

Third Schedule

(2) The Board shall charge, in respect of a supply of water in one month, a meter service charge at the rate specified in the Fourth Schedule.

Fourth Schedule

(3) For the purpose of this By-law "month" means the period of time between consecutive readings of a meter which shall be as near to thirty days as is convenient to the Board; but so however that no interval between consecutive readings shall be less than twenty days other than in cases where the premises are being either occupied or vacated and a special meter reading is taken.

Fees for application for supply of water *Third Schedule*

122.—(1) The fees specified in the Third Schedule shall be paid for each application for the supply of water made under Part XIII of these By-laws.

(2) Where a supply of water from the Board is requested in the circumstances specified in section 21 (3) of the Act, the Board may demand the payment of such additional fees as the Board deem appropriate having regard to the cost which the Board would incur in making such supply of water available.

Fees for reconnexion of supply of water *Second Schedule*

123. Where supply of water is disconnected pursuant to by-law 104 a reconnexion fee prescribed in the Second Schedule shall be paid to the Board before supply is restored.

Deposit

Second Schedule

124.—(1) An occupier or owner of premises receiving a supply of water from the Board shall be required to pay to the Board a deposit prescribed in the Second Schedule.

(2) Subject to subparagraph (3), a deposit paid under paragraph (1) shall be refunded to the occupier or owner of the premises if such occupier or owner no longer requires a supply of water from the Board, and upon the occupier or owner expressing this requirement in writing.

(3) It at the time the occupier or owner of the premises no longer requires a supply of water from the Board there is any outstanding amount in respect of unpaid water rates, the Board shall apply the deposit towards the settlement of any such amount and take appropriate action to recover any other outstanding amounts in respect of water rates.

Misuse of water

125. Any person receiving a supply of water from the Board who, without the consent of the Board—

(*a*) persistently supplies any of that water to another person for use in the other premises;

(*b*) willfully permits another person to take any of that water for use in other premises;

(*c*) himself persistently takes or uses any of that water for use in other premises; and

(*d*) himself or his agent sells water to other person,

commits an offence, unless the water is required for the purpose of extinguishing a fire or that other person who is supplied with water from the Board but is temporary unable, through no default of his own, to obtain water.

Disconnexion of service

126. Without prejudice to the Board's right to recover any rates or other moneys due under the Act or other written law, the Board may disconnect supply of water to any premises when—

(*a*) the premises are vacated; or

(*b*) the occupier or owner of the premises fails to pay any rate charge or fee prescribed in the Act or under these By-laws within thirty days from the date such rate, charge or fee become payable:

Provided that advice of such rate, charge or fee shall have been given by posting an account to the occupier or owner concerned.

Authentication of notices, etc.

127. Every notice, order or other documents under these By-laws requiring authentication by the Board shall be deemed sufficiently authenticated if signed by the General Manager or any officially designated representative appointed by the Board or the General Manager.

PART XVII

Other Water Supply Within the Board's Water-Areas

Definition of water-area

128. For the purpose of this Part, unless the context otherwise requires—

"water-areas" means the twenty-three areas currently being supplied with water by the Board or any other areas so declared by the Minister in accordance with section 4 of the Act.

Supply of water within the Board's water-areas prohibited

129.—(1) No person shall supply water for any use within the Board's water areas through either boreholes or any other sources or means, whether free of charge or at a charge, unless a written consent is sought from the Board and such consent is granted by the Board in writing;

(2) The request for the consent referred to in paragraph (1) shall only be attended to by the Board upon presentation to the Board by the one requesting for the Board's consent of an abstraction licence obtained from the Water Resources Board or any other appropriate authority mandated to issue such licence.

(3) Any person supplying water to the Board's water-areas in contravention of paragraph (1) commits an offence.

Powers of the Board to stop other supply of water within its water-area

130. The Board shall have powers to stop any person from supplying water within its water-areas whenever it feels that such water supply in conflict with the Board's water supply or that the water thereof supplied shall have poor healthy effect to consumers, unless such powers should not unnecessarily be exercised wherever the Board's water supply to people within its water-area is not adequate or that there is a general shortage of water supply from the Board's waterworks.

Status of other existing water supplies

131.—(1) The Board shall have powers to discontinue any water supplied by any person, through the Water Resource Board or any other mandated Board, and to seal or stop supply of water, within its water-areas which were carried out before the commencement of these By-laws.

(2) For those borehole drilled and being operated within the Board's water-areas prior to the commencement of these By-laws, the Board shall have powers to assess the quality status of all the boreholes within its water-areas, and to seal all those boreholes with poor water quality standards; and for those boreholes with good water quality standards, the Board shall put in place appropriate locking devices which will enable the Board to open the borehole whenever there is acute shortage of water from the Board's waterworks.

PART XVIII

Fishing, Boating and Sailing

Interpretation of this Part

132. In this Part, unless the context otherwise requires—

"dam" means any dam owned by the Board, and includes the ground area owned by the Board, or acquired or to be acquired under any land ownership agreement, surrounding the dam and the reservoir formed by the dam;

"licence holder" means any person holding a current licence in the prescribed form;

"the close season for fishing" means any period or periods as the Board may, from time to time, determine and make known; and

"Management Committee" means any dam catchment management committee appointed to have the mandate to carry out, in respect of the Mulunguzi Dam, or any other dam so designated in writing by the Board, the dam catchment management activities.

Activities prohibited without licences

133. No person, other than a licence holder, shall enter a dam for the purpose of fishing, boating, sailing or any other purpose not connected with the Board's business.

Licences

134. The Board may, in its absolute discretion, issue licences for any period, and to any person, and upon such terms and conditions and in such form as the Board may, from time to time, determine.

Board to sub-lease dam recreation activities

135.—(1) The Board may sub-lease fishing, boating, sailing and recreation activities to individuals or group of individuals, and in case of sub-leasing, any person who is sub-leasing shall be responsible for the issuing out of licences, including management of the facilities and services related to fishing, boating, sailing and recreation.

(2) The management of fishing, boating, sailing and other recreation activities in the dam shall be monitored and regulated by a Management Committee.

(3) The Board shall have overall powers to terminate any sub-lease, whether stipulated in the sub-lease agreement or not, when it shall be established that any person holding the sub-lease is working against the guidelines of a Management Committee or the recommendations of the committee on management at any point in time.

Conditions for issuing licence

136.—(1) The conditions of the licences if issued may, *inter-alia*, specify—

(*a*) activities of the licensee whilst within the dam;

(*b*) that the licence shall not be transferable;

(*c*) that the licence may be cancelled at any time by the Board;

(*d*) that the licence shall be produced to any official of the Board, or its agent or authorized representative on demand;

(*e*) that the licence-holder shall sign the visitor's book provided for that purpose at the appropriate entrance or entrances when entering and leaving the dam;

(*f*) that the licence holder is fully conversant with these By-laws and is deemed to have had the same fully explained to him; and

(*g*) that the Board shall not be responsible for any loss or damage or injury sustained by the licence holder in consequence of his entering or remaining upon the Board's property or while engaged in fishing, boating, sailing or any other recreation

activity on the waters of the dam or otherwise, and whether such loss, damage or injury is occasioned by the negligence or default of the Board, its servants or agents or by a third party.

(2) In event of sub-leasing boating, sailing, fishing and any other dam recreation activities, the sub-leasee shall ensure, on behalf of the Board, that the conditions of licences outlined in paragraph (1) are being complied with, and shall make sure that all details to that effect are made available to the Board, its servants or any authorized representative on demand.

Fees for licence

137. The Board may charge such daily, monthly or annual fees, whichever the Board deems appropriate to use, from time to time, for the issue and renewal licences.

Hours of opening a dam

138. A dam shall be opened to licence holders every day of the year between 0700 hours and 1730 hours.

Prohibited time

139. The whole of the dam will not necessarily be available to licence holder, but only such portions thereof as the Board may, from time to time, determine and show on official charts.

Extent to which dam is open

140.—(1) No person shall interfere with any machinery, valves, drains, plantations, fences or other works or apparatus of the Board within the dam.

(2) Any person who contravenes paragraph (1) shall have his licence cancelled forthwith and evicted away from the dam.

Pollution

141.—(1) No person shall cause any pollution to water in a dam or stream or banks thereof, by the introduction of any deleterious or pollutant substance.

(2) Any person in possession of any deleterious or pollutant substance shall be refused entry into the dam, unless he disposes himself of the deleterious or pollutant substance at a site designated and acceptable by the Board, and away from the dam.

(3) The Board or its sub-leasee shall evict any person from the dam, if found within the dam, in possession of any deleterious or pollutant substance.

Motorized boats prohibited

142. No person shall use motorized boats within the dam.

Sanitation

143. The public conveniences provided within the dam shall alone be used for sanitary purposes, and it is an offence to use any other portion of the dam for this purposes.

Entrance to dam

144. No person shall enter the dam, unless under special consent of the Board, save for the entrance or entrances from time to time provided for that purpose by the Board.

Activities of licence holders

145. The activities of all licence holders shall be so regulated as not to interfere with or obstruct in any other activities being carried out on, upon or near the dam by the Board or by other persons authorized by the Board.

Delegation of powers

146. The Board may, from time to time, delegate any of its powers under these By-laws to any duly authorized officer or agent of the Board.

Conditions of entry into dam

147. The following general conditions of entry into a dam shall apply to all licence holders and all licence holders are deemed to have accepted these conditions—

(*a*) no person shall enter any prohibited area within the dam area; but so however that such prohibited areas shall be indicated as such by notices to that effect;

(*b*) no person having entered the dam may leave or cause to be left any litter within the dam area other than in the receptacles provided for that purpose;

(*c*) any dog accompanying any person to the dam shall be kept on a leash and shall at all times be under the control of a person aged 18 years and above;

(*d*) the Board may absolutely prohibit the public from entering the dam at its absolute discretion;

(*e*) the Board may prohibit any person from visiting the dam if such person has contravened the Act and these By-laws, whether or not he has been prosecuted for such contravention; and

(*f*) any person who does not comply with these conditions commits an offence.

Safety standards

148. No person shall use a boat in the dam unless the Board is satisfied that the boat meets such safety standards or requirement as the Board may, from time to time, determine.

Board to remove boats

149. The Board may at any time remove or order the removal of any boat from the dam.

Pollutant boat or equipment prohibited

150. The Board may prohibit the use of any boat or apparatus, including any fishing equipment or any boat whose exterior is coated with such paint, vanish or other material which may, or is likely to, pollute the dam.

Storage of boats and equipment

151.—(1) No person shall leave a boat or any apparatus, including fishing equipment, in a dam except in such places and at such times as the Board shall, from to time to time, designate as storage places for boats or apparatus.

(2) The Board shall not be responsible for loss or damage to any boat or apparatus, including fishing equipment, left in a dam.

(3) The Board may authorize the stowing or storage of any boat or apparatus, including fishing equipment in the water on such conditions and for such periods as the Board may, from time to time, determine.

Person under 14 years not to manage, etc., boat

152. No person of the age of 14 years and under shall be permitted to be in charge of or to manage or control any boat at any time in a dam.

Fishing

153. No person shall, in a dam—

(*a*) fish, except in such places in the dam as the Board may authorize;

(*b*) use live or dead bait except worms for the purpose of fishing; or

(*c*) fish during the period when fishing has been prohibited or suspended by the Board.

PART XIX

Offences and Penalties

Offences and penalties

154. Any person who contravenes these By-laws commits an offence and shall be liable, on conviction, to a fine not exceeding—

(*a*) K1,000 or imprisonment for up to one month;

(*b*) K2,000 on subsequent conviction or imprisonment for up to three months; and

(*c*) K200 in respect of each continuing offence, for each day during which the offence continues.

Defence

155. It shall be a defence for a person charged with an offence under these By-laws to show that—

(*a*) he took all reasonable steps and exercised due diligence to avoid commission of the offence; or

(*b*) he has a reasonable excuse for his act or omission which caused him to commit the offence.

FIRST SCHEDULE by-law 96

New Water Connexion Fees

Distance in Metres	*½ inch Connexion (Malaŵi Kwacha)*	*¾ inch Connexion (Malaŵi Kwacha)*
0 to 24	4325	4925
25 to 30	4560	5093
31 to 36	4771	5332
37 to 42	4981	5572
43 to 48	5191	5812
49 to 54	5401	6053
55 to 60	5612	6280
61 to 66	5822	6530
67 to 72	6076	6770
73 to 78	6242	7009
79 to 84	6453	7249
85 to 90	6663	7488
91 to 96	6895	7727
97 to 102	7083	7968
103 to 108	7294	8207
109 to 114	7504	8447
115 to 120	7714	8686
121 to 126	7924	8926
127 to 132	8135	9165
133 to 138	8345	9405
139 to 144	8555	9645
145 to 150	8765	9884
151 to 156	8976	10124
157 to 162	9186	10363
163 to 168	9396	10603
169 to 174	9607	10842
175 to 180	9817	11082
181 to 186	10027	11321
187 to 192	10236	11561
193 to 198	10448	11801
199 to 204	10657	12040
205 to 210	10868	12280
211 to 216	11078	12519
217 to 222	11289	12758
223 to 228	11499	12998
229 to 234	11709	13238
235 to 240	11919	13478
241 to 246	12130	13717
247 to 252	12340	13957
253 to 258	12550	14196
259 to 264	12760	14436
265 to 270	12971	14675
271 to 276	13181	14915
277 to 282	13391	15154
283 to 288	13601	15394
289 to 294	13812	15634
295 to 300	14022	15873
301 to 306	14232	16113
307 to 312	14442	16352

SECOND SCHEDULE by-law 96 G.N. 46/2007

Meter Testing Charge, Reconnexion Fee and Deposit

		K	*t*
1.	For the testing of the accuracy of a meter where the meter is not found to register an error more than 5 per cent . .	750	00
2.	Consumer account reconnexion fee	501	00
3.	Water deposit fee	501	00

THIRD SCHEDULE by-law 122 (1) G.N. 46/2007 22/2009 14/2014 50/2014

Water Rates

Part I

		K	*t*
1.	For water supplied through individuals meters—		
	(*a*) consumption up to 4 cubic meters, per month . .	715	31
	(*b*) consumption in excess of 4 cubic metres up to and including 15 cubic metres, per cubic metre . .	178	92
	(*c*) consumption in excess of 15 cubic metres, per cubic metre	187	74
2.	For water supplied through institutions meters—		
	(*a*) consumption up to 4 cubic metres, per month . .	1,412	64
	(*b*) consumption in excess of 4 cubic metres up to and including 15 cubic metres, per cubic metre . .	430	56
	(*c*) consumption in excess of 15 cubic metres, per cubic metre	488	28
3.	For water supplied through commercial and industrial meters—		
	(*a*) for the first 4 cubic metres, per month	1,360	32
	(*b*) consumption in excess of 4 cubic metres up to and including 15 cubic metres, per cubic metre . .	547	56
	(*c*) consumption in excess of 15 cubic metres, per cubic metre	659	88

Part II

4.	For water supplied from kiosks or communal water points, per cubic metre	40	00

G.N. 46/2007
22/2009
14/2014
50/2014

FOURTH SCHEDULE by-law 122 (2)

Service Charge

		K	t
1.	For water supplied through individuals meters—		
	(*a*) traditional housing areas, per month	115	50
	(*b*) medium density areas, per month	165	17
	(*c*) low density areas, per month	233	31
2.	For water supplied through institution meters . .	808	08
3.	For water supplied through commercial and industrial meters	1,102	92

Other Charges

		K	t
1.	For retesting of meters	3,125	00
2.	For consumer water connexion fees	3,750	00
3.	For water deposit	3,750	00

G.N. 43/2007
18/2009
15/2014
48/2014

WATERWORKS (CENTRAL REGION WATER BOARD) (WATER SUPPLY CHARGES) BY-LAWS

under s. 56

Citation

1. These By-laws may be cited as the Waterworks (Central Region Water Board) (Water Supply Charges) By-laws.

Water rates

2. For the supply of water to a consumer there shall be payable by the consumer the rates specified in the First Schedule.

Service, and other charges

3. For meter rental, meter reading services, new connexions, and other services to the consumer, charges shall be specified in the Second Schedule.

G.N. 18/2009
15/2014
48/2014

FIRST SCHEDULE by-law 2

Water Rates

Part I

		K	t
1.	For water supplied through individual meters—		
	(*a*) consumption up to 4 cubic metres, per month	568	79
	(*b*) consumption in excess of 4 cubic metres up to and including 30 cubic metres, per cubic metre	35	08

	K	t
(*c*) consumption in excess of 30 cubic metres, per cubic metre	146	46
2. For water supplied through institution meters—		
(*a*) consumption up to 4 cubic metres, per month	3,891	71
(*b*) consumption in excess of 4 cubic metres up to and including 30 cubic metres, per cubic metre	459	26
(*c*) consumption in excess of 30 cubic metres, per cubic metre	544	76
3. For water supplied through commercial and industrial meters—		
(*a*) for the first 4 cubic metres, per month (flat rate)	4,245	51
(*b*) in excess of 4 cubic metres up to and including 30 cubic metres, per cubic metre	501	01
(*c*) consumption in excess of 30 cubic metres, per cubic metre	594	28
4. For water supplied from kiosks or communal water points, per cubic metre	74	58

SECOND SCHEDULE by-law 3

G.N. 18/2009 15/2014 48/2014

A service charge as shown below is payable for all connexions on a monthly basis.

PART I

Service Charge

	K	t
1. For water supplied through individual meters—		
(*a*) traditional housing areas, per month	106	66
(*b*) medium density areas, per month	284	40
(*c*) low density areas, per month	284	40
2. For water supplied through institution meters	1,945	86
3. For water supplied through commercial and industrial meters	2,122	75

Other Charges

PART II

Connexion Fee and Deposit

	K	t
1. Consumer account connexion fee	2,000	00

	K	t
2. Water deposit fee—		
(*a*) for water supplied through individual meters—		
(i) Traditional housing areas, per month	1,997	11
(ii) Medium density areas, per month	2,995	75
(iii) Low density areas, per month	2,995	75
(*b*) for water supplied through institution meters . .	10,613	76
(*c*) for water supplied through commercial and industrial meters	9,729	28
3. Meter rentals—		
(*a*) Individuals	300	00
(*b*) Institutions	3,000	00
(*c*) Commercial	3,000	00

G.N. 44/2007
2/2009
19/2009
12/2014
51/2014

WATERWORKS (BLANTYRE WATER BOARD) (WATER SUPPLY CHARGES) BY-LAWS

under s. 56

Citation

1. These By-laws may be cited as the Waterworks (Blantyre Water Board) (Water Supply Charges) By-laws.

Water rates

2. For the supply of water to a consumer, there shall be payable by the consumer the rates specified in the First Schedule.

Rental, connexions, and other charges

3. For meter rental, meter reading services and new connexions, the charges shall be specified in the Second Schedule.

G.N. 19/2009
12/2014
51/2014

FIRST SCHEDULE

by-law 2

WATER RATES

	K	t
1. For water supplied from communal water points or kiosks, per 10 litres	1	41
2. For water supplied for domestic purposes—		
(*a*) for the first 5,000 litres or part thereof, per month . .	1,446	40
(*b*) exceeding 5,000 litres up to 10,000 litres, per litre (rate applicable from 0 up to 10,000 litres)	0	31
(*c*) exceeding 10,000 litres up to 40,000 litres per litre (rate applicable from 0 up to 40,000 litres)	0	36
(*d*) exceeding 40,000 litres per litre, (rate applicable from 0 and above 40,000 litres)	0	40

	K	t
3. For water supplied to institutions—		
(*a*) for the first 10,000 litres or part thereof, per month . .	5,707	68
(*b*) exceeding 10,000 litres up to 40,000 litres per litre, (rate applicable from 0 up to 40,000 litres)	0	64
(*c*) exceeding 40,000 litres per litre, (rate applicable from 0 and above 40,000 litres)	0	68
4. For water supplied for commercial purposes—		
(*a*) for the first 10,000 litres or part thereof, per month . .	6,408	04
(*b*) exceeding 10,000 litres up to 40,000 litres per litre, (rate applicable from 0 up to 40,000 litres)	0	70
(*c*) exceeding 40,000 litres per litre, (rate applicable from 0 and above 40,000 litres)	0	77
5. For water supplied for industrial purposes—		
(*a*) for the first 10,000 litres or part thereof per month . .	8,674	74
(*b*) exceeding 10,000 litres up to 40,000 litres per litre, (rate applicable from 0 up to 40,000 litres)	0	98
(*c*) exceeding 40,000 litres per litre, (rate applicable from 0 and above 40,000 litres)	1	09

SECOND SCHEDULE by-law 3 G.N. 19/2009

SERVICE, METER READING, NEW CONNEXIONS AND OTHER CHARGES

A service charge as shown below is payable for all connexions on a monthly basis.

	K	t
1. Individuals meters—		
(*a*) meter rental	300	00
(*b*) meter reading services	63	00
2. Other charges—		
(*a*) new connexion survey fee	300	00
(*b*) new connexion in all areas	actual cost	
(*c*) meter reconnexion fee	1,000	00

WATERWORKS (NORTHERN REGION WATER BOARD) (WATER SUPPLY CHARGES) BY-LAWS

under s. 56

G.N. 47/2007
21/2009
16/2014
49/2014

1. These By-laws may be cited as the Waterworks (Northern Region Water Board) (Water Supply Charges) By-laws. Citation

Water rates

2. For the supply of water to a consumer there shall be payable by the consumer the rates specified in the First Schedule.

Service and other charges

3. For meter rental, meter reading services, connexions and any other services to a consumer, the charges shall be specified in the Second Schedule.

G.N. 21/2009
16/2014
49/2014

FIRST SCHEDULE

by-law 2

Water Rates

Part I

	K	*t*
1. For water supplied through individual metres—		
(*a*) high density customers—		
(i) for the first 3 cubic metres, per month	750	65
(ii) in excess of 3 cubic metres up to and including 6 cubic metres, per cubic metre	194	73
(iii) in excess of 6 cubic metres, per cubic metre	208	35
(*b*) medium density customers—		
(i) for the first 3 cubic metres, per month	869	26
(ii) in excess of 3 cubic metres up to and including 6 cubic metres	225	50
(iii) in excess of 6 cubic metres	241	28
(*c*) low density customers—		
(i) for the first 3 cubic metres, per month	993	47
(ii) in excess of 3 cubic metres up to and including 6 cubic metres	257	73
(iii) in excess of 6 cubic metres	275	76
2. For water supplied from Kiosk or command water points—		
(*a*) consumption up to 3 cubic metres, per month	568	61
(*b*) in excess of 3 cubic metres up to and including 6 cubic metres, per cubic metres	85	80
(*c*) in excess of 6 cubic metres	128	74
3. For water supplied to commercial customers—		
(*a*) consumption up to 3 cubic metres, per months	1,858	11
(*b*) in excess of 3 cubic metres per cubic metre	834	89
4. For water supplied to major commercial customers—		
(*a*) consumption up to 3 cubic metres, per month	2,249	22
(*b*) in excess of 3 cubic metres	1,010	60
5. For water supplied to major institution customers—		
(*a*) consumption up to 3 cubic metres, per month	1,511	02
(*b*) in excess of 3 cubic metres per cubic metre	519	69

	K	t
6. For water supplied to major institution customers—		
(*a*) consumption up to 3 cubic metres, ...	1,587	27
(*b*) in excess of 3 cubic metres, per cubic metre	545	91
7. For water supplied through pre-paid meters per cubic metre—		
(*a*) Low density	343	32
(*b*) Medium density	318	90
(*c*) High density	259	80
(*d*) Communal water point	122	98
(*e*) Institutions	686	75
(*f*) Major institutions	552	43
(*g*) Commercial	1,018	79
(*h*) Major commercial	1,047	31
(*i*) Government institutions	538	53

SECOND SCHEDULE

by-law 3 G.N. 21/2009 16/2014 49/2014

Services and Other Charges

	K	t
1. A service charge as shown below is payable for all connexions on a monthly basis—		
(*a*) for water supplied through individual meters—		
(i) traditional housing areas, per month . .	173	70
(ii) medium density areas, per month	301	54
(iii) low density areas, per month	459	54
(*b*) for water supplied through institution meters . .	1,031	28
(*c*) for water supplied through major institution meters . .	1,083	33
(*d*) or water supplied through commercial meters . .	1,741	78
(*e*) for water supplied through major commercial and industrial meters	2,108	39
2. A meter rental charge as shown below is payable for all connexions, on a monthly basis—		
(*a*) for water supplied through individual meters—		
(i) traditional housing area, per month	354	99
(ii) medium density area, per month	633	51
(iii) low density areas, per month	962	18
(*b*) for water supplied through institution meters . .	2,473	13
(*c*) for water supplied through major institution meters . .	6,287	63
(*d*) for water supplied through commercial meters . .	2,715	53
(*e*) for water supplied through major commercial meters . .	7,607	25

[Subsidiary] *Waterworks (Lilongwe Water Board) By-Laws*

G.N. 20/2009
13/2014
47/2014

WATERWORKS (LILONGWE WATER BOARD) BY-LAWS

under s. 56

Citation

1. These By-laws may be cited as the Waterworks (Lilongwe Water Board) By-laws.

Water Charges

2. For the supply of water to a consumer, there shall be payable by the consumer the charges specified in the First Schedule.

Meter testing reconnexion and deposit charges

3. For meter testing, reconnexion and deposit, there shall be payable the charges specified in the Second Schedule.

Connexion Charges

4. For new connexions to the consumer, the charges shall be specified in the Third Schedule.

G.N. 13/2014
47/2014

FIRST SCHEDULE

by-law 2

WATER CHARGES

	K	*t*
1. For water supplied in bulk to kiosks, a flat rate will be levied as follows—		
(*a*) Lilongwe Water Board	152	00
(*b*) Community	37	00
2. For water supplied for domestic purpose—		
(*a*) for the first 5 cubic metres, per cubic metre	152	00
(*b*) in excess of 5 cubic metres up to and including 30 cubic metres	218	00
(*c*) in excess of 30 cubic metres	303	00
(*d*) minimum charge	760	00
3. For water measured by common meter and supplied to schools, colleges, hospitals, sports and cultural stadiums or grounds or places of worship, cemeteries and crematoria, social and recreational clubs not operated for gain, and places of public resort, per cubic metre—		
(*a*) for the first 5 cubic metres, per cubic metre	564	00
(*b*) in excess of 5 cubic metres up to and including 30 cubic metres	630	00
(*c*) in excess of 30 cubic metres	675	00
4. For water supplied to Government buildings where the Government is the registered meter holder, per cubic metre—		
(*a*) for the first 5 cubic metres, per cubic metre	564	00

	K	t
(*b*) in excess of 5 cubic metres up to and including 30 cubic metres	630	00
(*c*) in excess of 30 cubic metres	675	00
5. For water supplied for commercial or industrial purposes—		
(*a*) for the first 10 cubic metre, per cubic metre	629	00
(*b*) in excess of 10 cubic metres up to and including 40 cubic metres	690	00
(*c*) in excess of 40 cubic metres	750	00
6. For bulk water sales per cubic metre to Likuni and Bunda—		
a flat rate per cubic metre	183	00

SECOND SCHEDULE

by-law 3 G.N. 13/2014 47/2014

Meter Testing, Reconnexion and Deposit Charge

	K	t
1. For the testing of the accuracy of a meter, where the meter is found to register an error not more than 5 per cent	3,500	00
2. Reconnexion charge	4,000	00
3. Deposit in the case of premises needing pipes of the following sizes—		
(*a*) 15 mm	1,786	00
(*b*) 20 mm	5,902	00
(*c*) Contractors	17,640	00
4. Minimum charge is the value of the first 5 cubic metres in domestic category	760	00
5. Penalty for a cheque returned by a Bank	10,000	00
6. Meter reading fee per month	200	00
7. New connexion survey	2,500	00
8. Change of customer details	0	00
9. Penalty for meter tampering, by-pass and re-connexion—		
(*a*) Domestic	20,000	00
(*b*) Kiosk	40,000	00
(*c*) Industrial, commercial or institutional	50,000	00
(*d*) Cost of stolen water per cubic metre (domestic)	500	00
(*e*) Cost of stolen water per cubic metre (kiosk)	500	00
(*f*) Cost of stolen water per cubic metre (industrial, commercial or institutional)	2,000	00

G.N. 13/2014

THIRD SCHEDULE by-law 4

New Connexion Charges

For new connexion, the charge will be at the actual cost to the Board at the time the work is being carried out.

G.N. 3/2014

WATERWORKS (NORTHERN REGION WATER BOARD) (DECLARATION OF SONGWE WATER AREA) ORDER

under s. 4

Citation

1. This Order may be cited as the Waterworks (Northern Region Water Board) (Declaration of Songwe Water Area) Order.

Declaration of Songwe Water Area

2. The area described in the Schedule hereto is declared the Songwe Water Area.

SCHEDULE para. 2

Description of Songwe Water Area

The boundary description of Songwe Water Area is as follows—

To the northern part, the boundary starts at the banks of Songwe River whose coordinates are E584013.139, N8940525.807; then it goes south-west passing through the road that goes to Ngana to point E583937.144, N894385.016; from which it proceeds south-east to a point marked E584227.570, N8940002.307; then continues in the same south-easterly direction following the foot of Chipwera and Kutengela Hills marking points E585934.572, N8938189.924; E586692.891, N8939016.059; E585240.734, N8938778.940; E585934.572, N8938189.924; E586692.891, N8937693.094; E587283.856, N8937248.563; and E588400.415, N8935402; which is at Mwakaboko, beneath Chiyi Hill.

The boundary then passes Chiyi Hill in a south-westerly direction to mark a point at E588101.746, N893481.550; then it moves further south to a point marked E588160.338, N8934266.093; then moves south-easterly towards Iponga to mark a point E588865.291, N8933950.661; the boundary then takes a south-westerly direction marking points E588801.544, N8933727.538; E588823.002, N8933635.993; E588693.283, N8933394.211; E588084.594, N89332865.422; E587954.431, N8932233.199; then reaches Kyungu River at a point marked E587970.919, N8931928.564.

The boundary then follows the course of Kyugu River in an eastward direction up its confluence with Songwe River. From the confluence, the boundary follows the course of Songwe River in the northern direction up to the starting point E584013.139, N8940525.807.

WATERWORKS (NORTHERN REGION WATER BOARD) BY-LAWS

ARRANGEMENT OF BY-LAWS

BY-LAW

PART I

Preliminary

1. Citation
2. Interpretation

PART II

Installation of Water Fittings

3. Installation of water fittings
4. Installation of water fittings causing waste, etc., of water supplied by Board prohibited
5. Water fittings to which these By-laws not applicable

PART III

Prevention of Contamination of Water from Contact with Unsuitable Materials or Substances

6. Laying and installation of water fittings in foul soil, etc., prohibited
7. Laying and installation of water fitting in place or position where permeation or deterioration occurs prohibited
8. Use of material, which causes water contamination prohibited
9. Use of pipe fitting internally with coal tar, etc., prohibited
10. Use of lead pipe prohibited
11. Copper pipe not to be connected to lead pipe

PART IV

Prevention of Contamination of Water by Back-siphonage, Backflow or Cross Connexion

12. Interpretation for this Part
13. Water supply for domestic purposes to water supply pipes for non-domestic purposes prohibited
14. Pumps to be connected with prior written authority of the Board
15. Closed circuit not to be connected to supply pipe
16. Cistern pipe not to be connected to a secondary system
17. How to fit draw-off taps
18. Certain draw-off taps, what to incorporate
19. Use of certain hosepipes prohibited
20. Bidet not to be connected to supply pipe

BY-LAW

21. Where bidet may be connected to supply pipe
22. Hot water pipe and bidet, how connected
23. Washing machine, dishwasher, etc., to incorporate type B air gap
24. Inlet pipe to incorporate a check valve and vacuum breaker
25. Certain supply pipes to incorporate a type A air gap, etc.
26. Water supply pipes to domestic purposes to incorporate a type A air gap or type B air gap, etc.
27. Certain supply pipes to be fitted with check valves, vacuum breakers, etc.
28. Water supply pipes for non-domestic purposes to be clearly and indelibly marked
29. Water fittings other than fire-fighting purposes prohibited
30. Installation of backflow prevention device

PART V

PREVENTION OF WASTE OR CONTAMINATION OF STORED WATER

31. Installation of storage cistern
32. Storage cistern to be so installed as to allow inspection and cleaning and to avoid damage
33. Float-operated valve to be fitted to pipe supplying water to storage cistern
34. Installation of float-operated valve and feed pipe
35. Vent pipe, warning pipe or overflow pipe not to be connected as means for conveying water
36. Pressure in primary heater not to exceed pressure of stored water
37. Single feed indirect cylinder not to be connected to supply pipe and to have vent
38. Overflow pipe, warning pipe to be fitted to storage cistern
39. Installation of warning pipe
40. Connexion of flexible hose prohibited
41. Connexion of warning pipe to another warning pipe or overflow pipe prohibited
42. Condition of float-operated valve
43. Installation of float-operated valve
44. Valve or device to be capable of controlling flow of water into storage cistern
45. Installation of storage cistern in a place, which may contaminate water prohibited
46. Float-operated valve to be fitted to pipe supplying water for animal use
47. Ponds, fountains or pools to be constructed with impervious lining or membrane

BY-LAW

PART VI

Prevention of Waste of Water from Damage to Water Fittings from Causes other than Corrosion

48. Installation of pipes and other water fittings below ground level
49. Pipes or water fittings to be protected from damage
50. Erection of buildings, toilets and sewage reticulation pipes
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PART VII

Prevention of Waste from, or Contamination by, Unsuitable or Improperly Installed Water Fittings

52. Installation of water fitting likely to contaminate water prohibited
53. Only water fitting capable of withstanding pressure, etc., to be installed
54. Pipe to be free from airlock or reverberation
55. Pipe for supply of water for domestic purposes to be cleaned before installation
56. Supply for cold water to be exposed to minimum heat
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PART VIII

Stop Valves

60. Interpretation for this Part
61. Stop valve to be fitted to supply and distributing pipes, etc.
62. Stop valve fitted to pipe supplying water to premises be readily accessible
63. Stop valve to be water-tight, etc.
64. Supply pipe to be drained when stop valve is closed and draining tap opened
65. Supply pipe to be fitted with a draining tap
66. Draining tap not to be buried or submerged in water
67. Servicing valve to be fitted to pipe conveying water from storage cistern
68. Servicing valve to be installed with float-operated valve
69. Servicing valve to have characteristics of stop valve
70. Installation of servicing valve

BY-LAW

71. Vacuum breaker, check valve to be water-tight, etc.
72. Stop valve and serving valve to be readily accessible

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WATER CLOSETS AND URINALS

73. Water closet to be supplied with water from valveless cistern or trough
74. Installation of flushing cistern exceeding certain amount of water prohibited
75. Cistern not to give flushes of different volumes
76. Installation of flushing cistern or trough exceeding certain amount of water prohibited
77. Flushing cistern or trough to be fitted with warning pipe and indelibly marked with water level line
78. Urinal to be supplied with water from flushing cistern or trough
79. Pipe supplying water to flushing cistern or flushing trough to be fitted with valve
80. Flush and warning pipes only to supply water to water closet, etc.

PART X

PREVENTION OF WASTE, MISUSE AND CONTAMINATION OF WATER FROM DRAW-OFF TAPS, BATHS, BASINS, SINKS AND OTHER FITTINGS

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PREVENTION OF WASTE OR CONTAMINATION OF WATER FROM ANY HOT WATER SYSTEM

85. Vent pipe not to discharge water from secondary system to primary circuit
86. Circumstances in which apparatus or cylinder may be installed
87. Unvented water heater
88. Installation of expansion cistern
89. Boiler to withstand pressure and temperature
90. Pressure relief valve, etc., to function in a certain way
91. Unvented hot water cylinder or storage tank to be fitted with a temperature relief valve

BY-LAW

PART XII

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94. Notices to be given before installation or alteration is carried out in respect of water fittings
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98. Provision of water to premises comprising one or more buildings
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100. Board to remain owner of meters and stop cork
101. Disconnexion and maintenance of meters
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105. Right to have meter tested
106. Board may remove private meters
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108. Obstruction of Board's employee an offence
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130. Activities prohibited without a licence
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139. Sanitation
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141. Activities of licence holders
142. Delegation of powers
143. Conditions of entry into reservoirs
144. Safety standards
145. Removal of boat from the reservoir
146. Prohibition on the use of boat or equipment, which may pollute the reservoir
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BY-LAW
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MISCELLANEOUS PROVISIONS

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152. Pipe diversions
153. Installation and replacement of prepaid or post-paid meter diversions
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PART XXI

OFFENCES AND PENALTIES

155. Offences, penalties and defences

FIRST SCHEDULE
SECOND SCHEDULE

G.N. 18/2016

WATERWORKS (NORTHERN REGION WATER BOARD) BY-LAWS

under s. 56

PART I

PRELIMINARY

Citation

1. These By-laws may be cited as the Waterworks (Northern Region Water Board) By-laws.

Interpretation

2. In these By-laws, unless the context otherwise requires—

"authorized board's employee, servant or agent" means any person who has been assigned to execute the Boards' duties and has been identified as such by the Board;

"backflow" means flow in a direction contrary to the intended normal direction of flow;

"back-siphonage" means backflow caused by the siphonage of liquid from cistern or appliance into the pipe feeding it;

"bidet" means a plumbing fixture or type of sink intended for washing the genitalia or inner buttocks and anus after using the toilet;

"Board" means Northern Region Water Board as specified in the Act;

"boiler" means an enclosed vessel in which water is heated by the direct application of heat;

"cistern" means a fixed container for holding water at atmospheric pressure;

"closed circuit" means any system of pipes and other water fittings through which water circulates but from which no water is drawn for use and includes any vent pipe fitted thereto but not the feed cistern or the cold feed pipe;

"combined feed and expansion cistern" means a cistern for supplying cold water;

"communication pipe" means that part of a service pipe which is vested in the Board;

"cylinder" means a cylindrical closed vessel capable of containing water under pressure greater than atmospheric pressure;

"deleterious" means anything that is harmful or injurious to the consumers and water supply system;

"delivery pipe" is a pipe connected to the main supply pipe for the purpose of connecting premises with water supply on which a meter is connected;

"distribution pipe" means any pipe, other than an overflow pipe or a flush pipe, conveying water from a storage cistern, or from a hot water apparatus supplied from a feed cistern, and under pressure from that cistern or feed cistern, as the case may be;

"domestic purposes" means indoor and outdoor household uses;

"double feed indirect cylinder" means an indirect cylinder which has separate cold feed pipe connexions for both the primary circuit and the secondary circuit;

"expansion cistern" means a cistern connected to a water heating system which accommodates the increase in volume of water in that system when it is heated from cold;

"feed cistern" means any storage cistern used for supplying cold water to a hot water apparatus, cylinder or tank;

"fire service" includes any run of piping of a nominal diameter of 50 millimeters or more laid within the boundary of any property for conveying water to a fire hydrant, fire hose-reel or other fire-fighting apparatus;

"float-operated valve" means a valve, for controlling the flow of water into a cistern, the valve being operated by the vertical movement of a float riding on the surface of the water;

"flush pipe" means a pipe for conveying water from a flushing cistern to a water closet pan or urinal;

"flushing cistern" means a cistern provided with a device for discharging the stored water rapidly into a water closet pan or urinal;

"flushing trough" means a flushing apparatus which combines several discharging units in one long cistern body to allow more frequent flushing of two or more water closet pans;

"illegal connexion" means a connexion or alteration to the Board's water supply network, drawing of water from the Board's water system, without the due authorization of the Board;

"indirect cylinder" means a hot water cylinder in which stored water is heated by a primary heater through which hot water is circulated from a boiler or gas circulator without mixing of the primary and secondary water taking place;

"instantaneous water heater" means an appliance in which water is immediately heated as it passes through the appliance;

"main supply pipe" means a pipe from which a delivery pipe line is connected;

"month" means the period of time between consecutive readings of a meter which shall be as near to thirty days as is convenient to the Board:

Provided that no interval between consecutive readings shall be less than twenty-eight days other than in cases where the premises are being either occupied or vacated and a special meter reading is taken;

"non-domestic purposes" means any purposes other than domestic purposes;

"obstruction" means deliberate or intentionally turning away or denying access to authorized Board's staff from executing their duties;

"offence" means breaching of any of the Board's standing By-laws;

"other sources" means any other supply apart from the Board's water supply;

"pollutant" means any substance, chemical or waste product that renders the water resource harmful or unsuitable for public supply purposes;

"post-paid water meter" is meter that allows water to pass through before a customer pays for the supply of water;

"prepaid water meter" is meter that allows water to pass through only after a customer has loaded units in it for the supply of water;

"primary circuit" means an assembly of pipes and fittings in which water circulates between a boiler or other water heater and the primary heater inside a hot water storage vessel;

"primary heater" means a heater mounted inside a hot water storage vessel for the transfer of heat to the stored water from circulating hot water;

"pumping main" means any supply pipe conveying water under pumping pressure;

"secondary circuit" means an assembly of pipes and fittings in which water circulates in distributing pipes to and from a water storage vessel;

"secondary system" means that part of a hot water system comprising the cold feed pipe, any storage cistern, water heater and flow and return pipework from which hot water for use is conveyed to all draw-off points;

"service pipe" means so much of any pipe for supplying water from a main to any premises as is subject to water pressure from that main, or would be so subject but for the closing of some valves;

"servicing valve" means a valve for shutting off the flow of water in a pipe connected to a water fitting to facilitate the maintenance or servicing of that fitting;

"single feed indirect cylinder" means an indirect cylinder which has only one cold feed pipe connexion to supply both the primary and secondary waters, so designed that the formation of an air seal during filling prevents mixing and accommodates expansion of the primary water;

"spill-over level" means the level at which the water in a cistern or vessel will first spill-over through any outlet and any overflow pipe, if the inflow exceeds the outflow;

"stop valve" means a valve, other than a servicing valve, fitted in a pipeline for controlling or stopping at will, the flow of water;

"storage cistern" means any cistern, other than a flushing cistern, storing water for subsequent use;

"supply pipe" means so much of any service pipe, as is not a communication pipe;

"tank" means a non-cylindrical closed vessel capable of containing water under pressure greater than atmospheric pressure;

"temporary purpose" in relation to the use of any pipe means building, demolition or construction work during such period as the work is in progress or any other temporary purpose during a period not exceeding one month or such longer not exceeding three months as the Board may approve in any particular case;

"unvented primary circuit" means a primary circuit which is not provided with a vent pipe;

"vent pipe" means a pipe open to the atmosphere and used in connexion with a water system for the escape of air or steam;

"vented primary circuit" means a primary circuit which is provided with a vent pipe;

"warning pipe" means an overflow pipe so fixed that its outlet, whether inside or outside the building, is in an exposed and conspicuous position where the discharge of water therefrom maybe readily seen;

"washing trough" means a wash basin, sink measuring internally more than 1.2 meters over its longest or widest part, at which two or more persons can wash at the same time;

"water fittings" includes pipes (other than mains), taps, stop corks, valves, ferrules, meters, cisterns, baths, water closets, soil pans and other similar apparatus used in connexion with the supply and use of water;

"water meter" is a mechanical device fitted on a water supply service pipe to record how much water has been used in the premises for billing purposes;

"water-areas" means all areas currently being supplied with water by the Board or any other areas so declared by the Minister in accordance with section 4 of the Act; and

"water-line" in relation to a cistern means the top water level at which the cistern is designed to work; to a hot water system without a separate expansion cistern.

PART II

Installation of Water Fittings

Installation of water fittings

3. A person shall not—

(*a*) install a water fitting for purposes of conveying or receiving water supplied by the Board, or alter, disconnect, or use such a water fitting; or

(*b*) cause, or permit such a water fitting to be installed, altered, disconnected or used, in contravention of these By-laws.

Installation of water fittings causing waste, etc., of water supplied by Board prohibited

4.—(1) A person shall not—

(*a*) install or cause or permit to be connected or arrange a water fitting; or

(*b*) cause or permit to be connected or used, a water fitting which is damaged, worn out or otherwise faulty, such that it, causes, or is likely to cause, waste, undue consumption, misuse or contamination of water supplied by the Board.

(2) The Board may test any water fittings used or to be used in connexion with water supplied by the Board.

Water fittings to which these By-laws not applicable

5. Subject to any express provisions to the contrary, these By-laws shall not—

(*a*) require any person to remove, replace, alter, disconnect or cease to use any water fitting lawfully installed, or lawfully used, capable of being so used before the date on which these By-laws come into operation; or

(*b*) apply in respect of any water fitting installed or used in connexion with water supplied by the Board for non-domestic purposes where the water supplied—

(i) is metered and taken for a period not exceeding one month or, with the written consent of the Board, three months; and

(ii) cannot return through the meter to any pipe belonging to the Board.

PART III

Prevention of Contamination of Water from Contact with Unsuitable Materials or Substances

Laying and installation of water fittings in foul soil, etc., prohibited

6. A person shall not lay or install a supply pipe, distributing pipe or other water fittings in or on, or pass any such pipe or water fittings into or through any foul soil, refuse chute, ash pit, sewer, drain, cesspool, pit latrine or any manhole connected with any such sewer, drain or cesspool.

Laying and installation of water fitting in place or position where permeation or deterioration occurs prohibited

7. A person shall not lay or install a supply pipe, distributing pipe or water fitting, made of any material susceptible to—

(*a*) permeation by any gas which causes or can cause; or

(*b*) deterioration by contact with any substance which causes or likely to cause, contamination of the water in the supply pipe, distribution pipe or water fittings, in any place or position where such permeation or determination occurs or is reasonably likely to occur.

Use of material, which causes water contamination prohibited

8.—(1) A person shall not use any material or substance, which causes, or is likely to cause, contamination of water in the construction or installation of any pipe or water fitting which conveys or receives water supplied for domestic purposes.

(2) Paragraph (1) shall not apply in respect of—

(*a*) any hosepipe used in connexion with a washing machine or dishwasher, or for watering a garden, or washing a vehicle kept for private use, where the pipe or other fitting to which that hosepipe is, or may be, connected incorporates a valve or some other suitable device capable of preventing the backflow or back-siphonage of water through the hosepipe;

(*b*) a flushing cistern;

(*c*) a feed cistern connected to a primary circuit;

(*d*) a closed circuit; and

(*e*) a warning pipe.

Use of pipe fitting internally with coal tar, etc., prohibited

9. A person shall not, for purposes of conveying or receiving water supplied by the Board, use a pipe, pipe fitting or storage cistern which is internally lined or coated with coal tar or any substance which includes coal tar.

Use of lead pipe prohibited

10. A person shall not, for purposes of conveying or receiving water supplied by the Board, install a lead pipe or other water fitting, or a storage cistern made from, or internally lined with, lead.

Copper pipe not to be connected to lead pipe

11. A person shall not, for purposes of conveying or receiving water supplied by the Board—

(*a*) connect a copper pipe, or cause or permit the connexion of a copper pipe, to a lead pipe;

(*b*) incorporate a copper pipe, or cause or permit the incorporation of a copper pipe, with a lead pipe,

unless suitable means, from time to time approved by the Board, are employed to prevent, so far as is reasonable, corrosion through galvanic action.

PART IV

Prevention of Contamination of Water by Back-siphonage, Backflow or Cross Connexion

Interpretation for this Part

12. For the purposes of this Part—

"backflow prevention device" means either a type A or type B air gap, a check valve, a double check valve assembly, a combination of check valve and vacuum breaker, a pipe interrupter, or some other water fitting or arrangement of water fittings designed to prevent the backflow or back-siphonage of water;

"check valve" means a mechanical device which—

(*a*) by means of resilient elastic seal or seals permits water to flow in one direction only and is closed when there is no flow;

(*b*) is resistant to corrosion, immune from, or resistant to, dezincification and is capable of operating in a continuous water temperature not exceeding 65 degrees centigrade; and

(*c*) when shut, prevents the passage of water from the inlet to the outlet where the water pressure at the valve inlet does not exceed 10 millibar;

"critical water level" in relation to type B air gap means the steady water level in a cistern, vessel or other water fitting when there is a maximum inflow of water and all outlets, except any overflow, are closed;

"double check valve assembly" means a mechanical device comprising two check valves with a test cork between them;

"pipe interrupter" means a non-mechanical device without any moving, flexible or elastic parts—

(*a*) in the event of any vacuum in a pipe in which it is installed admits air into it to prevent the backflow of water;

(*b*) is resistant to water corrosion and is immune from, or resistant to dezincification; and

(*c*) has an unobstructed air inlet-aperture, or apertures which when a vacuum occurs on the inlet side, produces a corresponding vacuum on the side not exceeding 5 millibar below atmospheric pressure;

"type A air gap" means the air gap which occurs if there is an arrangement of water fitting whereby—

(*a*) water is discharged into a cistern, vessel or other water fitting which has at all times an unrestricted overflow to the atmosphere;

(*b*) the pipe discharging into the cistern, vessel or other water fitting is not obstructed;

(*c*) water is discharged downwards into the cistern, vessel or other water fitting at not more than 15 degrees from vertical; and

(*d*) the vertical distance from the spill-over of the cistern, vessel or other water fitting to the point above that spill-over level being the lowest point of any pipe or water fitting which discharges into the cistern, vessel or other water distance referred to in Column 2 in relation to the corresponding pipe referred to in Column 1 of the following table—

TABLE

1	2
Bore of pipe or outlet	*Vertical distance of point of outlet above spill-over level*
(*a*) not exceeding 14 mm	20 mm
(*b*) exceeding 14 mm but not exceeding 21 mm	25 mm
(*c*) exceeding 21 mm but not exceeding 41 mm	70 mm
(*d*) exceeding 41 mm	Twice the bore of the outlet

"type B air gap" means the air gap which occurs when water is discharged into a cistern, vessel or other water fitting which is open at all times to the atmosphere, and the vertical distance between the lowest point of discharge into the cistern, vessel or water fitting and its critical water level is either—

(*a*) sufficient to ensure that, if there is a vacuum in the discharge pipe or water fitting, no water in the cistern, vessel or water fitting would be siphoned back into the discharge pipe or fitting; or

(*b*) not less than the distance referred to in Column 2 of the preceding table in relation to the corresponding pipe referred to in, Column 1 of the Table;

"vacuum breaker" means a mechanical device with an air inlet which is closed when water flows past it at or above atmospheric pressure but which opens to admit air if there is a vacuum in the pipe and closes so as to be water-tight when the flow of water is resumed at normal pressure.

Water supply for domestic purposes to water supply pipes for non-domestic purposes prohibited

13.—(1) Subject to paragraph (2), a person shall not connect a supply pipe or distributing pipe, which conveys, or a cistern which receives water supplied for domestic purposes such that it can convey or receive water supplied for non-domestic purposes.

(2) Paragraph (1) shall not apply in respect of a cistern, or conveying water from the cistern to a point of use if water is discharged into the cistern through a type A air gap.

Pumps to be connected with prior written authority of the Board

14.—(1) A person shall not, for the purposes of conveying or receiving water supplied by the Board, connect a pump or other apparatus in or to a supply pipe for the purpose of increasing the pressure, in, or rate of flow from—

(*a*) a service pipe; or

(*b*) any water fitting connected or to a service pipe, except with the prior written consent of the Board.

(2) A person shall not connect a supply pipe or pump delivery pipe drawing water from a supply pipe such that it can convey water from—

(*a*) a distributing pipe;

(*b*) a storage or flushing cistern;

(*c*) a pump delivery pipe drawing water from a distributing pipe or cistern; or

(*d*) a pipe or vessel pressurized by compressed air or gas.

Closed circuit not to be connected to supply pipe

15.—(1) Subject to paragraph (2), a person shall not connect a closed circuit to a supply pipe.

(2) Paragraph (1) shall not apply in respect of a temporary connexion if the connexion is made through a double check valve assembly or some other no less effective device which is permanently connected to the closed circuit.

Cistern pipe not to be connected to a secondary system

16. A person shall not connect a pipe forming part of a cistern fed from a vented primary circuit to any pipe forming part of a secondary system.

How to fit draw-off taps

17.—(1) Subject to paragraph (3), every draw-off tap or other similar fixed fitting other than a shower hosepipe installed to discharge water into a bath, sink, wash basin or similar fixed appliance other than a bidet shall—

(*a*) be fitted so as to incorporate a double check valve assembly;

(*b*) be fitted as close as is practicable to the point of draw-off or use, some other no less effective device to prevent the backflow or back-siphonage of water; and

(*c*) comply with paragraph (2).

(2) For the purpose of paragraph (1) (*c*), the vertical distance from the spill-over level of the bath, sink or other appliance to the point above the spillover level which is the lowest point of any draw-off tap or other fixed fitting which discharges into the bath, sink or other appliance shall, in relation to a draw-off tap of the appropriate size, be as follows—

Size of tap or combination fitting	*Vertical distance of point of outlet above spill-over level*
(*a*) Not exceeding 15 mm	20 mm
(*b*) Exceeding 15 mm but not exceeding 20 mm	25 mm
(*c*) Exceeding 20 mm	70 mm

(3) Paragraph (1) shall not apply to any draw-off tap or other water fitting where—

(*a*) the draw-off tap, or similar fixed fitting draws water by gravity only from a cistern, cylinder or tank having a vent pipe open at all times to the atmosphere;

(*b*) the vertical distance between the point at which the pipe supplying water to the draw-off tap or similar fixed fitting connects to the cistern, cylinder or tank and the spill-over level of the bath, sink or other appliance to which it is fitted is not less than 25 millimeters; and

(*c*) the pipe supplying water to the draw-off tap or similar fixed fitting does not supply water to any other tap or fitting other than a draining tap at a lower level.

Certain draw-off taps, what to incorporate

18.—(1) Subject to paragraph (2), every draw-off tap or other water fitting which incorporates a shower hosepipe, whether or not operated by a manual or automatic diverter installed to discharge water into a bath, shower tray, sink, wash basin or similar fixed appliance other than a bidet shall—

(*a*) incorporate a double check valve assembly;

(*b*) incorporate a check valve and a vacuum breaker; or

(*c*) have fitted, as close as is practicable to the point of draw-off, some other no less effective device to prevent the back-siphonage or backflow of water.

(2) Paragraph (1) shall not apply in respect of any draw-off tap or other fitting where—

(*a*) the draw-off tap or other fitting is installed in accordance with by-law 17 (3);

(*b*) the showerhead of any shower hosepipe is constrained by a fixed or sliding attachment so that the showerhead can only discharge water at a point above the spill-over level of the bath, shower tray or other fixed appliance as the case may be; or

(*c*) the vertical distance between the showerhead of any unconstrained shower hosepipe and the spill-over level of the bath shower tray or other fixed appliance, as the case may be, is not less than the figure mentioned in the table in by-law 17 (2) in relation to a draw-off tap or other similar fixed fitting of the appropriate size.

Use of certain hosepipes prohibited

19.—(1) A person shall not connect a hosepipe, other than a hosepipe used in accordance with by-law 8 (2) or a shower hosepipe installed in accordance with by-law 18, to a draw-off tap or other similar fitting for use either inside or outside any premises.

(2) Paragraph (1) shall not apply where a hosepipe connected to a draw-off tap or other similar fitting—

(*a*) draws water by gravity only from a cistern by means of a pipe which does not supply water to a draw-off tap or similar fitting other than a draining tap at a lower level; or

(*b*) is on any domestic premises with the written consent of the Board and incorporates as close as is practicable to the point of draw-off or use either a double check valve assembly or some other no less effective backflow prevention device.

Bidet not to be connected to supply pipe

20. A person shall not connect a bidet, which is equipped with any type of submersible spray, or any draw-off fitting to which a hand held flexible spray is, or can be, attached, to a supply pipe.

Where bidet may be connected to supply pipe

21. Subject to by-law 20, a person shall not connect a bidet to a supply pipe, unless the bidet—

(*a*) is of the over-rim water fed type; and

(*b*) is installed so that the vertical distance between the outlet point of any draw-off or similar fitting and the spill-over level of the bidet is not less than the figure mentioned in the table in by-law 17 (2) in relation to a draw-off tap or other similar fitting of the appropriate size.

Hot water pipe and bidet, how connected

22.—(1) A person shall not connect a hot water pipe or water heater which supplies hot water or a distribution pipe which supplies cold water to a bidet in such a way that the hot water pipe, the water heater or the distribution pipe, as the case may be, also supplies water to a draw-off tap or other similar fitting except a draining tap.

(2) Paragraph (1) shall not apply where—

(*a*) a supply pipe is connected to supply water to a bidet installed in accordance with by-law 21;

(*b*) a distributing pipe is connected to supply cold water to a flushing cistern or to a urinal; or

(*c*) a hot water pipe is connected to supply water only to a bidet and the hot water pipe either—

(i) has a check valve and vent pipe arranged to prevent the backflow or back-siphonage of water from the bidet; or

(ii) is fitted with some other similar effective backflow prevention device.

Washing machine, dishwasher, etc., to incorporate type B air gap

23.—(1) A person shall not use or install a washing machine, dishwasher or tumble drier connected permanently or temporarily to the water service operated by the Board, unless the washing machine, dishwasher or tumble drier is incorporated with either a type B air gap or a pipe interrupter which, if removed, stops the washing machine, dishwasher or tumble drier, as the case may be, from functioning.

(2) Subject to paragraph (3), every machine of the kind mentioned in paragraph (1) which is connected permanently or temporarily to water service elsewhere than in a domestic dwelling shall in addition to complying with paragraph (1), draw water by gravity only from a storage cistern.

(3) Paragraph (2) shall not apply where any machine mentioned in that paragraph incorporates a type A air gap.

Inlet pipe to incorporate a check valve and vacuum breaker

24. An inlet pipe of every ion-exchange common salt regenerated type water softener used in connexion with a clothes washing machine or dishwasher shall be fitted with a check valve and vacuum breaker or some other no less effective backflow prevention device, except where the supply of water to such a softener passes first through the backflow prevention device incorporated with the washing machine or dishwasher in accordance with by-law 23 (1).

Certain supply pipes to incorporate a type A air gap, etc.

25.—(1) Every supply pipe conveying water to a cistern, whether or not fitted with a float-operated valve, shall—

(*a*) if the cistern receives or contains, or is likely to receive or contain any substance which is, or is likely to be, harmful to health, incorporate a type A air gap; or

(*b*) if the cistern supply water to a primary circuit in a domestic dwelling house or is a flushing cistern, incorporate either a type A air gap, a pipe interrupter or a double check valve assembly.

(2) Paragraph (1) (*b*) shall not apply where a supply pipe conveying water to a cistern—

(*a*) is installed in accordance with by-law 31; or

(*b*) is fitted with a float-operated valve of a reducing flow type which prevents back-siphonage through it in the event of a vacuum occurring in the feed pipe.

Water supply pipes to domestic purposes to incorporate a type A air gap or type B air gap, etc.

26.—(1) Every pipe for the supply of water for domestic purposes to a point of use or draw-off where backflow or back-siphonage is, or is likely to be, harmful to health by reason of a substance which—

(*a*) is continuously or frequently present in contaminated water, shall incorporate a type A air gap; or

(*b*) may be present in contaminated water, shall incorporate a type A air gap or type B air gap, a pipe interrupter, a combination of check valve and vacuum breaker, double check valve assembly, or some other similar effective backflow prevention device.

(2) Every pipe for the supply of water for domestic purposes to a point of use or draw-off where backflow or back-siphonage is not, or is not likely to be harmful to health, shall incorporate a check valve or some other similar effective backflow prevention device.

(3) Paragraphs (1) and (2) shall not apply where a pipe supplying water to a point of use or draw-off is supplied from a cistern which—

(*a*) supplies water by gravity only to the point of use or draw-off; and

(*b*) is installed so that the vertical distance between the spill-over level of any vessel containing used or contaminated liquid at any point of use or draw-off, and—

(i) the invert level of the warning pipe in the cistern is not less than 300 millimeters; and

(ii) the lowest point inside the cistern is not less than 15 millimeters; and

(*c*) is fed with water from a pipe fitted with one of the backflow prevention device referred to in paragraph (1) (*b*).

(4) Where contamination by any disturbance or splashing of contaminated liquid in any vessel at a point of use or draw-off is likely to occur in a cistern referred to in paragraph (3), the cistern shall be tightly covered.

Certain supply pipes to be fitted with check valves, vacuum breakers, etc.

27. Every—

(*a*) supply pipe or distribution pipe which conveys water to two or more separately occupied premises, whether or not they are separately chargeable by the Board for the supply of water; or

(*b*) supply pipe which conveys to premises which under any written law are required to provide a storage cistern capable of holding sufficient water for not less than 24 hours, ordinary use,

shall be fitted with such a combination or combination of check valves, vacuum breakers, double check valve assemblies or some other no less effective backflow prevention device as shall effectively prevent the backflow or back-siphonage of water from one premises to another or from any floor or level or a building to a lower floor or level.

Water supply pipes for non-domestic purposes to be clearly and indelibly marked

28. In any premises, other than a dwelling house, every—

(*a*) supply pipe; or

(*b*) pipe for supplying water solely for fire-fighting purposes,

shall be clearly and indelibly marked so that such pipes are readily distinguished from each other and every other pipe in those premises.

Water fittings other than fire-fighting purposes prohibited

29. A person shall not connect to any pipe used for the supply of water for fire-fighting, a water fitting different from a water fitting installed solely for fire-fighting purposes.

Installation of backflow prevention device

30. A backflow prevention device shall, so far as is reasonably practicable, be installed in such a manner that it is accessible for examination, repair or replacement.

PART V

Prevention of Waste or Contamination of Stored Water

Installation of storage cistern

31.—(1) Subject to paragraph (2), a storage cistern for water supplied for domestic purposes, shall be installed in a place or position which shall prevent the entry into the storage cistern of surface or ground water, foul water, or water which is otherwise unfit for human consumption.

(2) A person shall not install a storage cistern, unless the storage cistern—

(*a*) is insulated against extremes of temperature; and

(*b*) if made of a material which may or is likely to contaminate stored water, is lined to coat with an impermeable material designed to prevent such contamination;

(*c*) has a rigid, close fitting and securely fixed cover which—

(i) is not air-tight;

(ii) excludes light, insects, rodents, birds etc., from the storage cistern;

(iii) is made of a material which does not shatter or fragment when broken and which shall not contaminate any water which condenses on its underside; or

(iv) in the case of a storage cistern with a water capacity of more than 1,000 liters, is so constructed that the storage cistern may be inspected and cleaned without having to be wholly uncovered, and is made to fit closely around any vent or expansion pipe installed to convey water into the storage cistern; and

(*d*) is provided with warning and overflow pipes, as appropriate, which are so constructed and arranged as to exclude insects, rodents, birds, etc.

Storage cistern to be so installed as to allow inspection and cleaning and to avoid damage

32. Every storage cistern shall be installed in such a way that—

(*a*) the storage cistern may be inspected and cleaned inside; and

(*b*) any float-operated valve or other device used for controlling the inflow of water into the storage cistern may be readily installed, repaired, renewed or adjusted; and

(*c*) damage or distortion to the storage cistern or to any water fitting connected directly to the storage cistern is avoided.

Float-operated valve to be fitted to pipe supplying water to storage cistern

33.—(1) Every pipe supplying water to a storage cistern shall be fitted with a float-operated valve or some other no less effective device for controlling the inflow of water by preventing any overflow.

(2) Paragraph (1) shall not apply in respect of a pipe connecting two or more storage cisterns each of which has the same overflowing level.

Installation of float-operated valve and feed pipe

34.—(1) Every float-operated valve or other device which controls the inflow of water to a storage cistern shall be—

(*a*) securely and rigidly fixed to the storage cistern; and

(*b*) installed so that the inflow of water is shut off when the level of the water in the storage cistern—

(i) is not less than 25 millimeters below the overflowing level of the storage cistern; or

(ii) where the storage cistern is fitted with a device referred to in by-law 38 (2), is not less than 50 millimeters below the overflowing level of the storage cistern.

(2) Every feed pipe supplying water to a float-operated valve or other device referred to in paragraph (1) shall be connected, braced and supported in such a way that the feed pipe is prevented from moving or buckling in relation to the thrust of the float-operated valve or other device as the case may be.

Vent pipe, warning pipe or overflow pipe not to be connected as means for conveying water

35.—(1) No person shall install a vent pipe connected to a cistern-fed primary circuit as a means for conveying water into a cistern which supplies water to a secondary system.

(2) No person shall install a warning pipe or overflow pipe from any cistern connected to a vented primary circuit as a means for conveying water to any cistern from which water may be drawn for domestic purposes.

Pressure in primary heater not to exceed pressure of stored water

36.—(1) In every double feed indirect cylinder from which stored hot water is, or may be drawn for domestic purposes, the pressure in the primary heater within the double feed indirect cylinder shall not exceed the pressure of the stored hot water under normal operating conditions.

(2) Paragraph (1) shall not apply where the primary heater inside the double feed indirect cylinder is made without joints or, if made with joints, such joints are capable of withstanding any water pressure to which the joints are, or may be, subjected under normal operating conditions.

Single feed indirect cylinder not to be connected to supply pipe and to have vent

37.—(1) A person shall not connect a single feed indirect cylinder directly to any supply pipe.

(2) A single feed indirect cylinder shall have a permanent vent into the atmosphere and shall be constructed and installed such that a mixture of water in the primary circuit when operating at a sustained temperature not exceeding 80 degrees centigrade is prevented.

Overflow pipe, warning pipe to be fitted to storage cistern

38.—(1) A storage cistern having a capacity exceeding 1,000 liters shall, subject to paragraph (2), be fitted with an overflow pipe and a warning pipe.

(2) A storage cistern which has a capacity not exceeding 1,000 liters shall be fitted with a warning pipe only.

(3) Paragraph (1) shall not apply—

(*a*) in the case of a storage cistern with a capacity exceeding 500 liters but not exceeding 10,000 liters, when the water level is not less than 25 millimeters below the overflowing level of the lowest overflow pipe; or

(*b*) in the case of a storage cistern with a capacity exceeding 10,000 liters, the storage cistern is fitted with an audible or visual alarm operating independently of the valve or device which controls the inflow of water and indicates when the water in the storage cistern is about to overflow.

(4) In this by-law, "capacity" means the volume of water which the storage cistern is capable of holding measured to its overflow level.

Installation of warning pipe

39. A warning pipe shall be installed in such a way that water is discharged through the warning pipe immediately the water in the storage cistern has reached overflowing level.

Connexion of flexible hose prohibited

40. A person shall not connect a flexible hose to a warning pipe or an overflow pipe.

Connexion of warning pipe to another warning pipe or overflow pipe prohibited

41.—(1) A person shall not connect a warning pipe to another warning pipe or overflow pipe, except in the case of two or more flushing cisterns each of which has the same overflow level.

(2) Where two or more flushing cisterns have a common warning pipe, the warning pipe shall be installed so that the source of any overflow may be readily identified.

Condition of float-operated valve

42. A float-operated valve installed in any cistern or other apparatus shall—

(*a*) be capable of controlling the flow of water into the cistern or apparatus;

(*b*) be water-tight, when it is closed;

(*c*) incorporate either a renewable seat and washer each of which is resistant to corrosion and erosion by water or some other no less effective valve assembly; and

(*d*) on installation, be capable of withstanding, an internal hydraulic pressure 1.5 times the pressure to which it shall ordinarily be subject; and

(*e*) have a float which—

(i) is made of a material capable of withstanding any water temperature in which it is operating or is likely to operate; and

(ii) has a lifting effort such that when not more than one half of the float is immersed in water, the float-operated valve is capable of drop-tight closure against the highest pressure to which the float-operated valve is likely to be subjected; and

(*f*) have a lever which—

(i) when the float-operated valve is closed, shall withstand without bending or distorting a force twice that to which it is ordinarily subjected; and

(ii) in the case of a 15 millimeters float-operated valve, is constructed so that water shut off level may be altered or adjusted without bending the float lever.

Installation of float-operated valve

43. A person shall not install a float-operated valve for the purpose of conveying hot water to any cistern unless—

(*a*) the float-operated valve is made of materials capable of withstanding without leaking any ordinary operating water temperature to which it is or may be subjected;

(*b*) so far as is reasonably practicable, operation of the float-operated valve is not, and is not likely to be prevented or impaired by scale deposited thereon; and

(*c*) having regard to any scale which is, or is likely to be deposited on the valve or float valve, the float-operated valve is adjusted to prevent any overflow.

Valve or device to be capable of controlling flow of water into storage cistern

44. A valve or device installed for controlling the inflow of water into any storage cistern other than a float-operated valve shall be capable of controlling the flow of water into that cistern.

Installation of storage cistern in a place, which may contaminate water prohibited

45. A person shall not install a storage cistern for water supplied for non-domestic purposes, or a cylinder or water fitting used in connexion with the storage cistern, in a place or position which may result in the water stored in the cistern becoming unfit for the purpose for which the water is intended.

Float-operated valve to be fitted to pipe supplying water for animal use

46.—(1) Every pipe which conveys water supplied by the Board to a drinking trough or bowl for animals shall be fitted with a float-operated valve or some other no less effective device to control the inflow of water into the drinking trough or bowl and prevent the water from flowing over the drinking trough and bowl.

(2) Subject to paragraph (1), the provisions of this Part shall apply to the drinking trough or bowl as if it was a storage cistern to which by-laws 32 to 34 apply.

Ponds, fountains or pools to be constructed with impervious lining or membrane

47. Every pond, fountain or pool supplied with water by the Board and has capacity exceeding 10,000 liters of water shall be constructed with such an impervious lining or membrane as would prevent water from leaking or seeping from the pond, fountain or pool.

PART VI

Prevention of Waste of Water from Damage to Water Fittings from Causes other than Corrosion

Installation of pipes and other water fittings below ground level

48.—(1) Subject to paragraphs (2) and (3), the vertical distance between the top of every pipe or other water fitting laid or installed below the ground and the finished ground level shall not be less than 375 millimeters and not more than 850 millimeters.

(2) Where it is impracticable to comply with the provisions of the minimum depth, the pipe or other water fitting shall be laid or installed as deep as is reasonably practicable below the finished ground level and shall be effectively protected against damage from any cause whatsoever.

(3) This by-law shall not apply where the pipe or other water fitting is laid or installed in the ground under any building or structure of a permanent nature or is used only for a temporary purpose and period not exceeding three months.

Pipes or water fittings to be protected from damage

49.—(1) A person shall not install any pipe or water fitting inside or outside a building or structure, unless the pipe or other water fitting is, so far as is reasonably practicable, effectively protected, by the manner of its installation or insulation or by some other no less effective means, against damage from any cause.

(2) Paragraph (1) shall not apply where a pipe or other water fitting is installed below ground level in accordance with by-law 48 (1) or in respect of a warning or overflow pipe.

Erection of buildings, toilets and sewage reticulation pipes

50.—(1) A person shall not erect a structure on top of a pipe main or above any Board's reticulation pipes or within 5 meters for all pumping mains and 2 meters for all distribution pipes and 1 meter for all service pipes.

(2) A person shall not construct a pit latrine or any sewage disposal facility or structure on top, or within 10 meters, of a water supply pipe.

(3) Notwithstanding any other penalty that the Board may impose on a person for breach of these By-laws or any other written law, where a

person has breached this by-law, the Board may demolish the structure in question in order to access the pipes without paying compensation to the owner.

Plastic pipes to be protected from damage

51. A person shall not install a plastic pipe, which is likely to be damaged when exposed to petroleum products, unless the pipe is covered or otherwise protected from such damage.

PART VII

Prevention of Waste from, or Contamination by, Unsuitable or Improperly Installed Water Fittings

Installation of water fitting likely to contaminate water prohibited

52. A person shall not install a water fitting intended to convey or receive water supplied by the Board, if such water fitting is made wholly or partially of, or incorporates, or lined or coated with, any material or substance which contaminates, or is likely to contaminate, the water by altering the color, odor, taste or composition of the water.

Only water fitting capable of withstanding pressure, etc., to be installed

53.—(1) A person shall only install a water fitting, if the water fitting is made of such materials as are, insofar as is reasonably practicable, capable of withstanding external load or physical pressure, vibration, stress or settle, internal water pressure, internal and external temperatures and corrosion.

(2) A person shall not install a water fitting—

(*a*) under the ground;

(*b*) through or under any wall, footing or foundation;

(*c*) into any wall or solid floor;

(*d*) into any chase or duct; or

(*e*) in an inaccessible position or a position to which access is difficult, unless the water fitting is—

(i) constructed to withstand without bursting, buckling, fracture or leaking and internal hydraulic pressure twice that to which it would normally be subject;

(ii) installed to accommodate any reasonably foreseeable movement, including any thermal movement in the pipe; and

(iii) except in a closed circuit, resistant to dezincification.

Pipe to be free from airlock or reverberation

54. Every pipe shall be adequately supported and secured so as to avoid damage from airlock or reverberation.

Pipe for supply of water for domestic purposes to be cleaned before installation

55. Every pipe installed for purposes of supplying water for domestic purposes shall be flushed to remove debris and sterilized to kill off harmful micro organisms before it is first used after installation, renewal or repair.

Supply for cold water to be exposed to minimum heat

56. A supply pipe installed in a dwelling house for purposes of supplying cold water for domestic purposes to any tap shall be installed in such a place or position that, insofar as is reasonably practicable, the water will not be warm when it is drawn off from that tap.

Connexion of metal pipe to water fitting by means of adhesive prohibited in certain circumstances

57. A person shall not connect a metal pipe to any water fitting by means of an adhesive if the metal pipe is to be—

(*a*) installed below ground level or through or under any wall, or foundation;

(*b*) embedded into any wall or solid floor or enclosed in any chase or duct; or

(*c*) installed in any other place or position to which access is difficult.

Installation of pipe into wall or floor prohibited

58.—(1) A person shall not embed a pipe or other water fitting into any wall or solid floor or in or below a solid floor or under a suspended floor at ground level.

(2) Paragraph (1) shall not apply where—

(*a*) the pipe or other water fitting is installed in a chase or duct (not being the cavity in a cavity wall) in a wall or solid floor which may, if necessary, be readily exposed;

(*b*) the pipe, excluding a pipe joint, is installed in a pipe sleeve or duct in or under a solid floor which may, if necessary, be readily removed and replaced;

(*c*) a pipe is installed in an internal wall other than a solid wall; or

(*d*) a pipe is installed under a suspended floor at ground level, which may, if necessary be readily removed and replaced.

Isolation of pipes and water fittings

59.—(1) Where any water fitting is removed from a system, every pipe or an appropriate part of the pipe, which conveys water to the water fitting, shall be fully isolated.

(2) A person shall not connect a metal pipe, pipe joint or other water fitting, whether by way of repair or replacement, to another pipe, pipe joint or other water fitting made of a different metal, unless, either—

(*a*) deterioration through galvanic action is unlikely to occur; or

(*b*) effective measures are taken to prevent such deterioration.

PART VIII

Stop Valves

Interpretation for this Part

60. In this Part, unless the context otherwise requires, "premises" means—

(*a*) any property to which a separately chargeable water supply is provided by the Board; and

(*b*) any properties, which are occupied as dwelling premises whether or not separately charged for water supply by the Board.

Stop valve to be fitted to supply and distributing pipes, etc.

61.—(1) A stop valve shall be fitted to every supply pipe and distributing pipe conveying water to any premises supplied with water by the Board such that the supply of water to the premises may be shut off without shutting off water supply to any other premises.

(2) A stop valve shall, insofar as is reasonably practicable—

(*a*) be inside the premises;

(*b*) be above floor level;

(*c*) be as near as possible to the point where the water supply first enters the premises; and

(*d*) be so installed that its closure prevents the supply of water to any point of use on the premises.

Stop valve fitted to pipe supplying water to premises be readily accessible

62.—(1) A supply pipe or distributing pipe conveying water in common to two or more premises shall be fitted with a stop valve at a place, whether inside or outside any one of the premises, readily accessible to each occupier of the premises.

(2) A stop valve shall be so installed that its closure prevents the supply of water to all of the premises supplied by the supply pipe or distributing pipe.

Stop valve to be water-tight, etc.

63. A stop valve fitted in accordance with these By-laws shall—

(*a*) be water-tight when closed;

(*b*) be water-tight when open and subjected to an internal hydraulic pressure 1.5 times the pressure to which it is normally subject;

(*c*) except in the case of a plug valve, be so designed or adapted that its seal can be readily renewed;

(*d*) not incorporate a loose washer plate; and

(*e*) be resistant to corrosion.

Supply pipe to be drained when stop valve is closed and draining tap opened

64. A supply pipe in any premises shall be installed so that when a stop valve fitted in accordance with by-law 61 is closed and any draining tap is open the supply pipe may be drained.

Supply pipe to be fitted with a draining tap

65. A person shall not install a supply pipe in any premises, unless the supply pipe is fitted with a draining tap which—

(*a*) is water-tight when closed and is subjected to an internal hydraulic pressure 1.5 times the pressure to which it is normally subjected;

(*b*) is so designed or adapted that its seal can be readily renewed; and

(*c*) is resistant to corrosion.

Draining tap not to be buried or submerged in water

66. A draining tap fitted to a supply pipe shall not be buried in or covered with soil or be submerged in water, or installed in a position in which it is likely to be submerged in water.

Servicing valve to be fitted to pipe conveying water from storage cistern

67. A pipe for conveying water from—

(*a*) a cold water storage cistern the capacity of which exceeds 18 liters; or

(*b*) a hot water storage cistern, cylinder or tank,

shall be fitted with a servicing valve as close to that cistern, cylinder or tank as is reasonably practicable.

Servicing valve to be installed with float-operated valve

68.—(1) A pipe supplying water to a float-operated valve shall be installed with a servicing valve to shut off the supply of water to the float-operated valve.

(2) A servicing valve installed in accordance with paragraph (1) shall be installed as near as is reasonably practicable to the float-operated valve.

69. A person shall not install a servicing valve as the sole means of controlling or preventing the flow of water through any pipe, unless the valve is installed as if it was a stop valve under by-law 63.

Servicing valve to have characteristics of stop valve

70.—(1) A person shall not install a servicing valve, unless the valve—

Installation of servicing valve

(*a*) is designed or adapted to operate only by the insertion of a screwdriver or other instrument in a slot on the servicing valve;

(*b*) is water-tight when closed and is capable of withstanding, without leaking, an internal hydraulic pressure 1.5 times the pressure to which it is ordinarily subjected.

(2) By-law (1) shall not apply where the servicing valve—

(*a*) is installed as if it was a stop valve under by-law 64; or

(*b*) is installed on a distributing pipe with a static water pressure not exceeding 1 bar.

71. A vacuum breaker, check valve, double check valve assembly or combination of check valves and vacuum breakers installed in any pipe shall be water-tight when closed and capable of withstanding, without leaking, an internal hydraulic pressure 1.5 times the pressure to which it is normally subjected.

Vacuum breaker, check valve to be water-tight, etc.

72. A stop valve or servicing valve installed in accordance with this Part shall be so placed that, so far as is reasonably practicable, the stop valve or servicing valve can be readily examined, maintained and operated.

Stop valve and serving valve to be readily accessible

PART IX

Water Closets and Urinals

73. A water closet pan shall—

Water closet to be supplied with water from valveless cistern or trough

(*a*) be supplied with water from flushing cistern or of the valve-less type which incorporates a siphonic apparatus; and

(*b*) be so made and installed that after normal use the water closet is emptied by a single flush.

74. A person shall not install a flushing cistern which, when flushed at any one time, discharges into water closet pan water supplied by the Board exceeding 7.5 liters.

Installation of flushing cistern exceeding certain amount of water prohibited

Cistern not to give flushes of different volumes

75. A person shall not install or adapt a cistern which, when flushed, discharges water into a water closet pan of different volumes.

Installation of flushing cistern or trough exceeding certain amount of water prohibited

76. A person shall not install a flushing cistern or trough which, when flushed at any one time, discharges into two or more water closet pans water supplied by the Board exceeding 7.5 liters.

Flushing cistern or trough to be fitted with warning pipe and indelibly marked with water level line

77. A flushing cistern or flushing trough installed in any premises supplying water to a water closet pan shall be fitted with a warning pipe and shall be indelibly marked on the inside with a line indicating the water level at which a float-operated valve installed to control the flow of water into the flushing cistern or flushing trough is to shut off such that, when flushed, the flushing cistern or trough does not discharge into a water closet pan water exceeding the amount referred to in by-law 74 and 76.

Urinal to be supplied with water from flushing cistern or trough

78.—(1) A urinal which is cleared by water after use, shall be supplied with water from a flushing cistern or trough which incorporates a siphonic apparatus designed or adapted to supply no more water than is necessary.

(2) A person shall not install a flushing cistern or flushing trough referred to in paragraph (1) for use in connexion with two or more urinal bowls or stalls or two or more urinal slabs each exceeding 700 millimeters in width, unless the flushing cistern or flushing trough is designed or adapted to fill at a rate exceeding 7.5 liters per hour for any one of the urinal bowls or stalls or urinal slabs.

Pipe supplying water to flushing cistern or flushing trough to be fitted with valve

79.—(1) A pipe, which supplies water to a flushing cistern or a flushing trough used for flushing a urinal bowl or stall, shall be fitted with—

(*a*) a flow shut off valve controlled by a time switch and lockable shut off valve; or

(*b*) some other equally effective automatic device or method for regulating the periods during which the cistern or trough may fill.

(2) By-law (1) shall not apply where a flushing cistern or flushing trough is manually operated or fills and flushes by the operation of some other fitting or a signal transmitted from a photo-electric cell or pressure

pad or some other device designed to ensure that the cistern flushes only after the urinal is used.

Flush and warning pipes only to supply water to water closet, etc.

80. A person shall not install a pipe to supply water to a water closet pan or to a urinal bowl or stall or slab, except a flush pipe or a warning pipe installed to discharge water into air not less than 150 millimeters above the edge of a water closet pan.

PART X

Prevention of Waste, Misuse and Contamination of Water from Draw-Off Taps, Baths, Basins, Sinks and other Fittings

Water inlet and outlet of bath, basin, sink, etc.

81.—(1) A bath, wash basin, sink or similar fitting installed for use in any premises shall—

(*a*) be so constructed or arranged that every inlet for water into the bath, wash basin, sink or similar fitting is hydraulically separated from, and unconnected with, any water outlet thereof; and

(*b*) be provided with a water-tight and readily accessible plug or some other device capable of closing any outlet for water from the bath, wash basin, sink or similar fitting.

(2) Paragraph (1) (*b*) shall not apply in respect of any—

(*a*) shower bath or shower tray;

(*b*) apparatus to which water is delivered at a rate not exceeding 3.6 liters a minute, or in the case of a washing trough, 3.6 liters a minute to any unit of it, solely from a fitting designed or adapted for that purpose; or

(*c*) apparatus installed in any hospital or used in any medical, dental or veterinary practice, which is designed or adapted for use with an unplugged outlet.

Washing trough to be fitted with draw-off taps

82. Every washing trough consisting of two or more units shall be fitted with separate draw-off taps or similar fittings for each such unit.

Draw-off tap to withstand severe temperatures, pressure, etc.

83. Without prejudice to by-law 53, every draw-off tap to which water is supplied by the Board shall—

(*a*) be capable of operating effectively at—

(i) any water temperature not exceeding 65 degrees centigrade; and

(ii) any internal water pressure to which it is likely to be subjected;

(*b*) be made and designed so that it may be easily closed to shut off the flow of water;

(*c*) if it incorporates a renewable seal or washer, be made or adapted so that the seal or washer can be readily renewed or replaced;

(*d*) be resistant to corrosion; and

(*e*) be designed when new to withstand, without leaking, an internal water pressure, which is 1.5 times more than that to which it shall ordinarily be subjected.

Types of washing machines, to be connected to supply or distributing pipe

84. A person shall not connect a washing machine, tumble drier or dishwasher to any supply pipe or distributing pipe conveying water supplied by the Board, except—

(*a*) a washing machine, and which in any complete washing cycle uses not more than 3.6 liters of water for every liter of machine drum or tub volume;

(*b*) a washing machine incorporating a tumble drier, and which in any complete washing and drying cycle uses not more than 6.4 liters of water for every liter of machine kilogram of dry load;

(*c*) a tumble drier incorporating a water spray which uses not more than 20 liters of water for every drum volume; or

(*d*) a dishwasher, which in any complete washing cycle uses not more than 7 liters of water for every place setting.

PART XI

Prevention of Waste or Contamination of Water from any Hot Water System

Vent pipe not to discharge water from secondary system to primary circuit

85. A vent pipe from any secondary system shall not be connected to or arranged to discharge water into any combined feed and expansion cistern connected to a primary circuit.

Circumstances in which apparatus or cylinder may be installed

86. A person shall not install any apparatus or cylinder, unless the apparatus or cylinder which—

(*a*) is capable of accommodating any expansion water;

(*b*) is connected to a separate expansion cistern or vessel; or

(*c*) is so arranged that expansion water can pass back through a feed pipe to any storage cistern to which the apparatus or cylinder is connected.

Unvented water heater

87. A person shall not install an unvented water heater which is not an instantaneous water heater unless the unvented water heater—

(*a*) is capable of accommodating any expansion water;

(*b*) is connected to a separate expansion cistern or vessel; or

(*c*) is installed so that any expansion water can be accommodated in the pipe work of any secondary system, and so that no hot water can enter any communication pipe or supply pipe to which a cold water draw-off tap is connected.

Installation of expansion cistern

88. Every expansion cistern or vessel and every cold water combined feed and expansion cistern connected to a primary circuit shall be—

(*a*) capable of accommodating any expansion water from the primary circuit to which the expansion cistern or vessel or the cold water combined feed and expansion cistern is connected; and

(*b*) installed so that in ordinary operation, the water level is not less than 25 millimeters below the overflow level of the warning pipe connected to the expansion cistern or vessel and the cold water combined feed and expansion cistern.

Boiler to withstand pressure and temperature

89. A boiler shall be constructed with materials the nature, strength and thickness of which is capable of withstanding internal water pressure and operating temperature to which the boiler is, or is likely to be subjected.

Pressure relief valve, etc., to function in a certain way

90. Every pressure relief valve, expansion valve, temperature relief valve or combined temperature and pressure relief valve connected to any boiler or hot water cylinder or storage tank shall—

(*a*) be capable of closing automatically after discharging water;

(*b*) be water-tight when closed;

(*c*) be resistant to corrosion;

(*d*) be constructed and installed so that the discharge of water from the pressure relief valve, expansion valve, temperature relief valve or combined temperature and pressure relief valve or from any pipe connected to it is readily visible; and

(*e*) except in the case of a temperature relief valve or the temperature function of a combined temperature and pressure relief valve, discharge water only when it is subject to water pressure of at least 0.5 bar above the water pressure to which the boiler or hot water cylinder or storage tank is, or is likely to be, subjected.

Unvented hot water cylinder or storage tank to be fitted with a temperature relief valve

91. An unvented hot water cylinder or storage tank which is supplied with water by the Board, whether or not by means of a storage cistern and which is fitted with a non-mechanical safety device, shall be fitted with temperature relief valve which—

(*a*) operates at a temperature not less than 5 degrees centigrade below that at which the non-mechanical safety device operates or is designed to operate;

(*b*) closes automatically after discharging water; and

(*c*) is water-tight when closed.

PART XII

Taps for Drawing Drinking Water

Draw-off tap to be connected to service pipe, delivery pipe and distributing pipe

92. In every premises to which water is supplied by the Board, a draw-off tap convenient for drawing drinking water shall be connected to—

(*a*) a service pipe;

(*b*) a pump delivery pipe drawing water from a service pipe; or

(*c*) a distribution pipe drawing water wholly from a storage cistern which is—

(i) installed in accordance with by-law 31; and

(ii) supplied with water from a service pipe or a pump delivery pipe drawing water from a service pipe.

Standpipe for communal water supply to be metered, etc.

93. A standpipe which is used to provide a communal water supply shall be metered and be equipped with a non-concussive self-closing tap or other suitable waste preventing tap.

PART XIII

Notices to the Board

Notices to be given before installation or alteration is carried out in respect of water fittings

94.—(1) Any person who, in respect of any premises to which water is supplied by the Board, proposes to carry out any of the installations or alterations referred to in paragraph (2) shall give at least five working days written notice to the Board before commencing such installations or alterations.

(2) The installations or alterations for which written notice is required under paragraph (1) are such installations or alterations, other than repairs or renewals, of—

(*a*) a bidet;

(*b*) a flushing cistern;

(*c*) a hose union tap or tap to which a hose may be connected; or

(*d*) a water fitting which, if there is a backflow or back-siphonage of water through such water fitting, contaminates or is likely to contaminate water supplied by the Board.

Notice to be given in respect of work affecting pipe

95. A person who, in respect of any pipe which conveys, or is intended to convey, water supplied by the Board, proposes to—

(*a*) backfill any excavation in which the pipe is laid;

(*b*) thread the pipe through any tubular duct which enters a building below ground level;

(*c*) embed the pipe in any solid floor or wall; or

(*d*) lay the pipe below ground level by means of a mole plough or similar apparatus,

shall give at least five working days written notice to the Board before commencing any of the activities referred to in this by-law.

PART XIV

Water Connexions, Water Disconnexions and Meters

Application for water connexion *First Schedule*

96.—(1) A person wishing to be supplied with water by the Board shall apply to the Board in the Form prescribed in the First Schedule, for the supply of water to their premises; the application shall be accompanied by a sketch plan of the premises drawn to a scale of not

less than 1:500 showing the size of the premises in hectares and details of the proposed service.

Second Schedule

(2) On collecting the application form referred to in paragraph (1), a person shall pay the fee prescribed in the Second Schedule.

Second Schedule

(3) The Board, upon receipt of the application pursuant to paragraph (1), shall carry out measurements to determine the distance from the closest Board's water main to the premises requiring the new water connexion, and the Board shall thereafter provide a quotation to the applicant based on the rates prescribed in Part IV of the Second Schedule.

Second Schedule

(4) The Board shall only commence every new water connexion works for the premises upon payment of the new water connexion fee prescribed in Part IV of the Second Schedule.

(5) The Board shall not be bound to provide or continue to provide a water connexion of the size for which such application is made, but the Board may provide such larger or smaller water connexion as it deems appropriate to the average monthly consumption or estimated consumption required.

Second Schedule

(6) In the event that the owner or occupier of the premises requires that an existing water connexion be replaced by one of increased size, the occupier of the premises supplied shall pay the appropriate water connexion fee as prescribed in Part IV of the Second Schedule.

Board not responsible for failure in water supply

97. The Board shall not be responsible for any failure in its water supply or defect in the quality of water except where such failure is caused by the negligence of the Board or its employees, servants or agents; and the Board shall only be responsible for a defect in its water quality upon the assessment and proof of such a defect in water quality being certified by the Water Resources Board or any other authority so mandated by or under any written law.

Provision of water to premises comprising one or more buildings

98. Any property comprising a building or buildings on a separate subdivision of premises for town planning purpose and supplied with water by the Board shall have its own and not more than one water connexion:

Provided that the Board may—

(*a*) elect to install more than one water connexion to any property where the levels of any service reservoirs from which the property

can be supplied are such that one water connexion would not provide an adequate supply either in volume or at sufficient pressure or both;

(*b*) agree to install more than one connexion to a separate subdivision of premises for town planning purposes but in such case the service from each such connexion shall obtain or be capable of obtaining water from more than one connexion;

(*c*) agree to provide one water connexion to supply more than one separate subdivision of land where—

(i) such subdivision are continuous;

(ii) such subdivision are and continue to be under one ownership; and

(iii) any building erected thereon are held or occupied as a distinct or separate holding tenancy;

(iv) such land is utilized for a purpose associated with such buildings.

Safe custody of meters

99. Each water connexion shall have a separate water meter provided by the Board and either the person making the application for a water supply or the occupier of the property served as the case may be, shall be responsible for the safe custody and condition of the meter.

Board to remain owner of meters and stop cork

100. The Board shall remain the owner of any meter or stop cork provided under these By-laws and shall, be responsible for its maintenance, repair or replacement:

Provided that the person making the application shall contribute to the initial cost of the meter or stop cork or gate valve. Where any such meter or stop cork or gate valve is found to have been damaged or stolen in circumstances that would be attributable to the occupier, the occupier of the property served by the meter shall be liable to pay the cost of repairing or replacing such meter or stop cork or gate valve.

Disconnexion and maintenance of meters

101. Only the Board's employees, servants or authorized agents, shall disconnect or interfere with any meter or fittings connected therewith for any purpose whatsoever and, in the event of any repairs to any meter being necessary, the owner or occupier shall immediately notify the Board whose employees, servants or authorized agents shall effect repairs without undue delay.

Private meters

102. Nothing in these By-laws shall prevent any person from installing a meter other than a meter provided by the Board:

Provided that such a privately owned meter shall in all cases be fitted in such a way that it registers water which has already passed through a meter provided by the Board and the privately owned meter is not intended to replace the meter provided by the Board nor to interfere with the operations of a meter installed by the Board.

Meter readings

103.—(1) Any reading from a meter provided by the Board as entered in the books of the Board shall determine the quantity of water consumed, unless there is evidence to show that—

(*a*) either such reading was erroneously entered in the books of the Board or the meter was defective at the time of such reading; or

(*b*) the Board provided prepaid meters, which do not require the reading from the meter.

(2) In an event where the Board discovers that a meter is stuck, the Board shall reasonably estimate the monthly water consumption during the month in which the meter was stuck by using an average of a minimum three months water consumption quantities prior to the meter getting stuck.

Board to disconnect water due to non-payment of water bills, illegal water connexion, etc.

104.—(1) The Board shall disconnect supply to any premises, through removal of the meter or any such mechanism that shall stop the supply of water to premises, if—

(*a*) the owner or occupier of the premises has not paid his previous water bills, other charges or fees beyond the due date;

(*b*) the premises are vacated and owner or occupier has given the Board a minimum of three working days' notice; or

(*c*) a cheque being payment for an overdue account paid to the Board is referred to the drawer; such a cheque shall attract a penalty as prescribed by the Board according to Part III of the Second Schedule:

Second Schedule

Provided that—

(i) advice of such rate, charge or fee shall have been given to the attention of the occupier or owner concerned; and

(ii) reconnexion of supply shall only be made after the owner, or occupier of the premises has paid the outstanding water bill and a reconnexion fee as prescribed in Part VI of the Second Schedule to these By-laws.

Second Schedule

(2) In event that the owner or occupier of the premises illegally reconnects the supply of water after disconnexion has been made, the Board shall remove the entire distribution pipe up to the Board's main supply pipe.

(3) The Board shall only reconnect supply to premises upon payment of the cost of new water connexion by the owner or occupier plus the cost of volume of water used during the period when the premises were illegally connected estimated as being the sum of monthly charges covering the period when the premises were disconnected to when the illegal connexion was discovered.

(4) For purposes of this by-law, monthly charges shall be determined to be one-third of the aggregated consumption for the last three months prior to the disconnexion of the premises.

(5) A person shall not connect a supply pipe before the meter or have a new water connexion without the Board's consent.

(6) In the event that a person contravenes paragraph (5), the Board shall—

(*a*) completely remove the pipe and fittings used for such connexions; and

(*b*) only provide any such person water supply upon—

(i) payment of new water connexion and penalty fee prescribed in Part IV and Part VII of the Second Schedule, and any related costs; and *Second Schedule*

(ii) payment for the estimated water consumed during the period in which the person was illegally consuming water supplied by the Board, determined by an average water consumption of the group of consumers the person falls under for a period of one year using the appropriate consumer group water charge rates.

(7) Any person involved in any form of illegal water connexion, illegal drawing of water, or any form of activities whose aim is to interfere with the Board's system of water charging commits an offence.

Right to have meter tested

105.—(1) Any person receiving water supply from the Board through a service meter may apply in writing to have the meter provided by the Board for the service to be tested.

(2) When submitting an application under paragraph (1), a person shall pay a fee prescribed in Part V of the Second Schedule. *Second Schedule*

(3) If upon test the meter is found to be inaccurate beyond the limits of plus or minus five per centum of the true quantity, the Board shall replace such meter at its own expense, except where the meter was wilfully damaged.

Board may remove private meters

106. The Board may at any time, at its own expense, remove any meter whether or not the meter is owned by the Board and replace it with another meter:

Provided that if such meter is privately owned, the cost of replacement shall be borne by the consumer or owner thereof.

Inspection of premises by the Board

107.—(1) Any authorized employee, servant or agent of the Board may, at any reasonable time and on the production, if necessary, of an identification approved by the Board, enter upon any premises for the purpose of inspecting the water supply meter or any water fitting on such premises.

(2) A person authorized to enter the premises, under this by-law may, for purpose of such inspection remove any obstruction and the Board shall make good any damage thereby caused, unless the cause for the inspection is due to the default or negligence of the occupier or owner of the premises.

Obstruction of Board's employee an offence

108.—(1) Any person obstructing an authorized employee, servant or agent of the Board in the performance of his duties under these By-laws, commits an offence.

(2) Any other costs arising as a result of the obstruction shall be assessed separately and the offender shall reimburse the costs prior to restoration of supply.

Special agreement for water supply

109. Notwithstanding any provision contained in these By-laws, the Board may enter into any special agreement with any person or body corporate for the supply of water:

Provided that where the person is a private individual, the Board shall require the individual to produce, as a form of identification, a driver's licence, a passport, a national identity card, or an affidavit of identity sworn before a commissioner for oaths.

Ascertainment of water consumption when meter reading is found to be erroneous

110. Where it is found that a meter reading is entered erroneously in the books of the Board for any reason and no accurate assessment of the quantity of water consumed can be established, one-third of the aggregate consumption for the last three preceding months shall be deemed to be the consumption for the month or where this is impracticable, the

quantity consumed in the next ensuing month shall be deemed to be the quantity of water in respect of which the meter reading was erroneously entered.

Remedies to the Board for non-payment

111. Where an account has an amount which is overdue for a period of at least thirty days—

(*a*) the Board shall be entitled to charge monthly interest calculated at prevailing commercial bank rates;

(*b*) the Board shall be entitled to disconnect the water supply without notice to the debtor;

(*c*) the Board shall be entitled to transfer the bill to any known account of the debtor;

(*d*) the Board shall be entitled to enforce payment through any legally accepted means, including but not limited to taking a court action; or

(*e*) the Board shall be entitled to uproot the connexion at the cost of debtor and where payment has subsequently been made after uprooting the connexion, the debtor shall be deemed as an applicant for a new connexion for the purposes of these By-laws.

Change of occupancy

112.—(1) Any person occupying or vacating premises supplied with water by the Board shall give written notice to the Board of not less than three clear days excluding Saturdays, Sundays and public holidays of his intention to occupy or vacate the premises.

(2) Upon receiving the notice pursuant to paragraph (1), the Board shall cause the meter to be read on the date of such change of occupancy provided such change of occupancy does not occur on a Saturday, Sunday or public holiday.

(3) In the event of either no notice or insufficient notice being given by the person occupying or vacating premises supplied with water by the Board, such person shall be bound to pay for any metered water charges determined by the meter reading next following the date upon which such vacating occurs.

Repair of leaks and waste

113.—(1) Where there is any leak or waste on premises supplied with water by the Board, the Board may, by written notice, require the occupier of the premises to repair or prevent the leakage or waste, and, if within forty-eight hours from the time of such notice such leak or waste is not repaired or prevented, the Board may in its discretion disconnect

the supply of water to, or enter upon, the premises to repair or prevent the leak or waste at the expense of the occupier of the premises.

(2) Where an occupier of the premises is failing to reimburse to the Board the costs incurred by the Board in repairing or preventing a leak or waste referred to in paragraph (1), the Board may transfer the cost to the occupier's water bill account and subject the account to disconnexion.

Temporary water connexion

114.—(1) The Board may, on application and payment of an appropriate fee to be determined by the Board, supply water to any person for a temporary period for a temporary activity.

(2) Temporary supply of water shall not be connected to a permanent service except when it becomes necessary for purposes of testing.

(3) For the purposes of this section, "temporary water connexion" means a connexion required by a customer for a period less than thirty days.

Meter service fee

Second Schedule

115. Where premises have been provided with a water meter owned by the Board, a monthly meter service fee may be charged according to Part II of the Second Schedule.

PART XV

Fire Services

Fire services

116.—(1) Any owner or occupier of premises within the water-area wishing to have a connexion made to the Board's mains for the purpose of a fire service shall submit an application form as prescribed in the First Schedule.

First Schedule

(2) When submitting the application forms referred to in paragraph (1), the owner or occupier of premises shall attach two copies of a plan to a scale of not less than 1:500 to the application forms, showing the size of the premises in hectares and details of the proposed fire service and fire-fighting apparatus.

(3) The Board may agree to provide a connexion from a main for any fire service subject to the adequacy of such main and the Board may, in addition, require that—

(*a*) the person making the application for a fire service connexion shall bear the costs of providing such connexion;

(*b*) where the fire service is intended to be used exclusively for fire-fighting purposes, and a separate water connexion has been or is

about to be provided for other purposes, the fire service connexion shall be metered for determination of non-revenue water;

(*c*) where any fire service is intended to be used for purposes other than fire-fighting, it shall be metered and any additional expenses to provide a combination or compound or other meter shall be borne by the person making the application for such fire service to be supplied with water; and such meter shall be the property of the Board, which shall be responsible for its maintenance and repair or replacement.

(4) Where the owner or occupier under this by-law has used water through a fire connexion for purposes of fire fighting, he shall notify the Board in writing within twenty-four hours of use of the water.

(5) Where the owner or occupier under this by-law fails to notify the Board as required under paragraph (4), the Board shall charge for the water so used as prescribed in Part I of the Second Schedule.

Second Schedule

(6) This by-law shall not apply to any fire service existing at the date of commencement of these By-laws so as to require such fire service to be altered in any way:

Provided that if any such fire service is altered or extended at some future date, the whole of such fire service shall be operated in accordance with these By-laws.

Misuse of unmetered fire service water an offence

117. Where water is taken through an unmetered fire service without the consent of the Board for a purpose other than to extinguish a fire, any person so taking water or wilfully permitting water to be taken commits an offence.

Assemblies to be provided with fire hydrants

118.—(1) All town, municipal and city assemblies shall be provided with metered fire hydrants from where they can draw water for purposes other than fire-fighting and all other fire hydrants shall be available to the assemblies only for the sole purpose of fire-fighting.

(2) Any person drawing off water from fire hydrants which are not metered for purposes other than fire-fighting commits an offence.

PART XVI

Restrictions to Supply of Water

Power of Board to fix hours and quantities of supply

119. The Board may, from time to time, fix the hours at and in the quantities which water may be supplied.

Power of Board to restrict use of water in time of shortage

120.—(1) The Board may, whenever the available supply of water from its waterworks is insufficient to satisfy the normal demand for water, declare by notice in local newspapers and on the radio that a water shortage exists and shall specify in the notice appropriate restrictions which shall remain in force until the notice is revoked.

(2) Any person who, after the publication of the notice referred to in paragraph (1), uses water contrary to the restrictions specified in the notice commits an offence, and the Board shall have powers to disconnect his water supply and shall only have his water supply reconnected upon the revocation of the notice by the Board and upon payment of the reconnexion fee by the occupier or owner of the premises.

Continuous feed

121.—(1) Any apparatus which is dependent upon a continuous feed of water from the Board shall be connected to a storage cistern containing sufficient water for such apparatus to operate under normal working conditions for at least twelve hours.

(3) Where from any service the maximum draw-off is capable of exceeding 100 liters in one minute, the Board may require a storage cistern of a suitable capacity to be installed and the service so arranged as to moderate the draw-off direct from the main.

PART XVII

Charges for the Supply of Water and other Facilities

Water rate and service charge

Second Schedule

122.—(1) The Board shall charge, in respect of supply of water in one month or on prepaid arrangement, the quantity of which is ascertained by a meter, the rates prescribed in Part I of the Second Schedule.

(2) The Board shall charge in respect of a supply of water in one month, a meter service charge at the rate specified in Part II of the Second Schedule.

Second Schedule

Fees for application for supply of water

Second Schedule

123.—(1) A fee specified in Part V of the Second Schedule, shall be paid for each application for the supply of water made under Part XIV.

(2) Where a supply of water from the Board is requested in the circumstance specified in section 21 (3) of the Act, the Board may demand the payment of such additional fees as the Board may deem appropriate having regard to the costs which the Board would incur in making such supply of water available.

Fee for reconnexion of supply of water *Second Schedule*

124. Where a supply of water is disconnected pursuant to by-law 104, a reconnexion fee prescribed in Part VI of the Second Schedule shall be paid to the Board before supply is restored.

Authentication of notices, etc.

125. Every notice, order or other document under these By-laws requiring authentication by the Board shall be deemed sufficiently authenticated if signed by the Chief Executive or his authorized representative.

PART XVIII

Other Water Supply Within the Board's Water-Areas

Supply of water within the Board's water-areas prohibited

126.—(1) A person shall not supply water for any use within the Board's water-areas through other sources, unless a licence is obtained from the Water Resources Board upon recommendation by the Board.

(2) Provided that the Board has installed water supply in the area where licences were granted to drill boreholes, such licences shall be revoked by the Water Resource Board through recommendation from the Board and the boreholes capped by Board.

Powers of the Board to authorize other supply

127.—(1) A person shall not supply water in the Board's water-area without prior written authority from the Board and the Board shall stop any person from supplying water within its water-area whenever such water supply is in conflict with the Board's water supply or that the water thereof supplied shall have poor health effect to consumers, unless the Board's water supply to people within its water-area is not adequate or that there is a general shortage of water supply from the Board's waterworks.

(2) In exercise of the powers under subregulation (1), the Board shall liaise with the National Water Resources Authority.

Status of other existing water supplies

128.—(1) The Board shall have powers to discontinue any water supplied by any person, through the Water Resource Board or any other mandated Board, and to seal or stop supply of water, within its water-areas which were carried out before the commencement of these By-laws.

(2) Where a borehole has been drilled and being operated within the Board's water-area prior to the commencement of these By-laws, the Board may assess the quality status of the borehole.

(3) Where the Board, having assessed a borehole pursuant to paragraph (2), finds that the borehole is of poor water quality standards, the Board may seal the borehole.

(4) Where the Board, having assessed a borehole pursuant to paragraph (2), finds that the borehole is of good water quality standards, the Board shall put in place appropriate locking devices which will enable the Board to open the borehole whenever there is acute shortage of water from the Board's waterworks.

PART XIX

Access, Fishing, Boating and Sailing in Board's Controlled Water Sources

Interpretation of this Part

129.—In this Part, unless the context otherwise requires—

"reservoir" means any water body owned or used by the Board and includes the surrounding area of the reservoir;

"licence holder" means any person holding a current licence in the prescribed form; and

"the closed season for fishing" means any period or periods as the Board may from time to time determine and make known.

Activities prohibited without a licence

130. A person shall not enter a reservoir for the purpose of fishing, boating, sailing or any other purpose not connected with the Board's business, unless the person is a licence holder.

Licences

131. The Board may, in its absolute discretion, issue licences for any periods, and to any person or persons, and upon such terms and conditions and in such form as the Board may, from time to time, determine.

Conditions for issuing licences

132. The conditions of the licences issued by the Board may specify—

(*a*) activities of the licensee whilst within the reservoir;

(*b*) that the licence shall not be transferable;

(*c*) that the licence may be cancelled at any time by the Board;

(*d*) that the licence shall be produced to any official of the Board on demand;

(*e*) that the licence holder shall sign the visitor's book provided for that purpose at the appropriate entrance or entrances when entering and leaving the reservoir;

(*f*) that the licence holder is fully conversant with these By-laws and is deemed to have had the same fully explained to him;

(*g*) that the Board shall not be responsible for any loss or damage or injury sustained by the licence holder or his or her clients in consequence of his entering or remaining upon the Board's property or while engaged in fishing, boating or sailing on the waters of the reservoirs or otherwise, and whether such loss, damage or injury is occasioned by the negligence or default of the Board, its servants or agents or by a third party; or

(*h*) any other condition as the Board may deem fit within its lawful authority.

Fees for access and licences

133. The Board may charge such fees as the Board may determine—

(*a*) for the access by the public to the Board's reservoir area; or

(*b*) for issuance and renewal of licences for activities under this Part.

Hours of opening the reservoir

134. The reservoirs shall be open to licence holders every day of the year between 07:30 hours and 16:30 hours.

Extent to which reservoir is to open

135. The whole of the reservoir will not necessarily be available to licence holders but only such portions thereof as the Board may from time to time determine and show on the official charts.

Interference with machinery of the reservoir

136. A person shall not interfere with any machinery, valves, drains, plantations, fences or other works or apparatus of the Board within the area of a reservoir.

Pollution

137.—(1) A person shall not cause any pollution by introducing any deleterious or pollutant substance or by whatever unlawful means to water in the reservoir or transmission or distribution network or consumer point or its source or within a 100 meters radius from the intake point, streams or banks thereof.

(2) Any person who is found in possession of any deleterious or pollutant substance shall be refused entry into the reservoir, unless he disposes himself of the deleterious or pollutant substance at a site designated and acceptable by the Board, and away from the reservoir.

Motorized boats prohibited

138. A person shall not use a motorized boat within the reservoir.

Sanitation

139.—(1) A person shall use public conveniences provided by the Board for sanitary purposes, when accessing a reservoir area.

(2) Any person who, for sanitary purposes, uses any other portion of the reservoir area other than the public conveniences referred to in paragraph (1), commits an offence.

Entrances to reservoir

140. A person shall not enter a reservoir without first obtaining a special consent of the Board, save for the entrance or entrances from time to time provided for that purpose by the Board.

Activities of licence holders

141. The activities of all licence holders shall be so regulated as not to interfere with, or obstruct in any way, other activities being carried out on, upon or near the reservoir by the Board or by other persons authorized by the Board.

Delegation of powers

142. The Board may, from time to time, delegate any of its powers under these By-laws to any duly authorized officer or agent of the Board.

Conditions of entry into reservoirs

143. The following general conditions of entry shall apply to all licence holders, and licence holders are deemed to have accepted these conditions—

(*a*) a person shall not enter any prohibited area within the reservoir area, which prohibited areas shall be indicated by notices to that effect;

(*b*) a person, having entered the reservoir, shall not leave or cause to be left any litter within the reservoir area other than in the receptacles provided for that purpose;

(*c*) a person shall not be allowed to access the reservoir area with pets;

(*d*) the Board may absolutely prohibit the public from entering the reservoir at its discretion;

(*e*) the Board may prohibit any person from visiting the reservoir if such person has contravened the Act or these By-laws, whether or not he has been prosecuted for such contravention; and

(*f*) any person who does not comply with these conditions commits an offence.

Safety standards

144. A person shall not use a boat in a reservoir, unless the Board is satisfied that the boat meets such safety standards or environmental requirements as the Board may from time to time determine.

Removal of boat from the reservoir

145. The Board may, at any time, remove or order the removal of any boat from the reservoir.

146. The Board may prohibit the use of any boat or apparatus, including any fishing equipment or any boat whose exterior is coated with such paint, varnish or other material which may, or is likely to, pollute the reservoir.

Prohibition on the use of boat or equipment, which may pollute the reservoir

147.—(1) A person shall not leave a boat or any apparatus, including fishing equipment in a reservoir, except in such places and at such times as the Board shall, from time to time, designate as storage places for boats or apparatus.

Storage of boats and equipment

(2) The Board shall not be responsible for any boat or apparatus including fishing equipment left in the reservoir.

(3) The Board may authorize the stowing or storage of any boat or apparatus, including fishing equipment in the water on such conditions and for such periods as the Board may, from time to time, determine.

148. A person of the age below eighteen shall not be permitted to be in charge of, or manage or control, any boat at any time in the reservoir.

Person under eighteen not to manage boat, etc.

149. A person shall not, in a reservoir—

Fishing

(*a*) fish, except in such places in the reservoir as the Board may authorize;

(*b*) use live or dead bait that may be harmful for the purpose of fishing; or

(*c*) fish during the period when fishing has been prohibited or suspended by the Board.

PART XX

Miscellaneous Provisions

150. Any person who obstructs, threatens or otherwise injures a Board's employee, servant or agent in the course of the employee's, servant's or agent's, execution of his duties, commits an offence. These include but not limited to—

Injury to Board's employee, servant or agent

(*a*) bodily harm;

(*b*) verbal abuse;

(*c*) harassment; or

(*d*) unleashing a dog,

Cap. 7:01

and shall be charged under the applicable provisions of the Penal Code, unless otherwise not stated therein.

Damage to Board's infrastructure during road or, construction works, etc.

151.—(1) Any person intending to carry out road or construction works etc., within the Board's supply area shall notify the Board at least three working days prior to the commencement of works.

(2) Any person who causes damage to the Board's infrastructure during road works construction, etc., whether or not the person gave prior notice of commencement of the works to the Board, shall be liable to make good any loss resultant from the damage, notwithstanding his liability under any written law.

Pipe diversions

152. Any person or body corporate intending to construct near or above the Board's already laid pipes or infrastructure shall be responsible for all the costs to be incurred for relocation of the pipes or infrastructure.

Installation and replacement of prepaid or post-paid meter diversions

153. The Board shall be at liberty to install or replace a prepaid meter or post-paid meter at any premises as it deems appropriate at any one time:

Provided that the Board shall give a seven day written notice to an owner or occupier of the premises.

Protection of Board's water catchment areas

154. Any person that, or a body corporate whose officers, knowingly engages in activities that negatively impacts, or are likely to negatively impact on the Board's water catchment areas commits an offence.

PART XXI

Offences and Penalties

Offences, penalties and defences

155.—(1) Any person who contravenes these By-laws commits an offence and shall be liable, on conviction, if no any other punishment is provided by these By-laws or any applicable law, to a fine not exceeding—

(*a*) K1000 or imprisonment for one month;

(*b*) K2000 on subsequent conviction or imprisonment for three months; and

(*c*) K200 in respect of each continuing offence, for each day during which the offence continues.

(2) It shall be a defence for a person charged with an offence under these By-laws to show that—

(*a*) he took all reasonable steps and exercised due diligence to avoid commission of the offence; or

(*b*) he has a reasonable excuse for his act or omission which caused him to commit the offence.

FIRST SCHEDULE

by-law 96 (1)

APPLICATION FORM FOR NEW WATER CONNEXION

To be completed in triplicate Reference No: .....

1. Name of the Prospective Customer: .....

2. Permanent feature commonly known near the place/Physical Map:

.....

3. Location/Area: .....

4. Present Address: .....

Tel/Cell No: .....

Email: .....

5. Rough map of the place (Draw rough map of the place at the back of this form)

6. Purpose of the water applied for, Tick one.

(*a*) Dwelling house ☐

(*b*) Hotel/Lodge/Motel/Resthouse ☐

(*c*) Institution i.e. School ☐

(*d*) Industry/Business ☐

(*e*) Fire Hydrant ☐

(*f*) Other (Specify): ..... ☐

Customer: ..... Signature: ..... Date: .....

For Office Use only:

7.—

(*a*) Distance: .....

(*b*) Main: ..... MM: .....

(*c*) Customer Category (for dwelling house only):

LDA	MDA	HDA
☐	☐	☐

(*d*) Accountant NWC: ..... Signature: ..... Date: .....

(*e*) Plumber: ..... Signature: ..... Date: .....

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by-law 96 (3)

SECOND SCHEDULE

(*This Schedule should contain fees payable to the Board for new connexions, water rates, reconnexions, temporary connexions, fire services, etc.*)

WATER RATES

PART I

	K	*t*
1. For water supplied through individual household meters—		
(*a*) high density customers—		
(i) for the first 3 cubic meters, per month	1,035	90
(ii) in excess of 3 cubic meters up to and including 6 cubic meters, per cubic meter	268	72
(iii) in excess of 6 cubic meters, per cubic meter . .	287	52
(*b*) medium density customers—		
(i) for the first 3 cubic meters, per month	1,199	58
(ii) in excess of 3 cubic meters up to and including 6 cubic meters	311	19
(iii) in excess of 6 cubic meters	332	97
(*c*) low density customers—		
(i) for the first 3 cubic meters, per month	1,370	98
(ii) in excess of 3 cubic meters up to and including 6 cubic meters	355	66
(iii) in excess of 6 cubic meters	380	55

	K	*t*
2. For water supplied from Kiosk or command water points—		
(*a*) consumption up to 3 cubic meters, per month . .	784	69
(*b*) in excess of 3 cubic meters up to and including 6 cubic meters, per cubic meter	118	40
(*c*) in excess of 6 cubic meters	177	66
3. For water supplied to commercial customers—		
(*a*) consumption up to 3 cubic meters, per month . .	2,564	19
(*b*) in excess of 3 cubic meters, per cubic meter . .	1,152	14
4. For water supplied to major commercial customers—		
(*a*) consumption up to 3 cubic meters, per month . .	3,103	92
(*b*) in excess of 3 cubic meters	1,394	62
5. For water supplied to institution customers—		
(*a*) consumption up to 3 cubic meters, per month . .	2,085	20
(*b*) in excess of 3 cubic meters, per cubic meter . .	717	17
6. For water supplied to major institution customers—		
(*a*) consumption up to 3 cubic meters	2,190	43
(*b*) in excess of 3 cubic meters, per cubic meter . .	753	36
7. For water supplied through prepaid meters per cubic meter—		
(*a*) Low density	473	78
(*b*) Medium density	440	08
(*c*) High density	358	53
(*d*) Communal Water Point	169	71
(*e*) Institutions	947	72
(*f*) Major Institutions	762	35
(*g*) Commercial	1,018	79
(*h*) Major Commercial	1,405	93
(*i*) Government Institutions	762	35

PART II

Services and other Charges

1. A service charge as shown below is payable for all connexions on a monthly basis.

(*a*) for water supplied through individual meters—		
(i) traditional housing areas, per month	239	71
(ii) medium density areas, per month	416	12
(iii) low density areas, per month	638	17
(*b*) for water supplied through institution meters . .	1,423	17
(*c*) for water supplied through major institution meters	1,495	00
(*d*) for water supplied through commercial meters . .	2,403	66
(*e*) for water supplied through major commercial and industrial meters	2,909	58

2. A meter rental charge as shown below is payable for all connexions, on a monthly basis—

(*a*) for water supplied through individual meters—		
(i) traditional housing area, per month	489	89
(ii) medium density area, per month	874	24
(iii) low density areas, per month	1,327	81
(*b*) for water supplied through institution meters . .	3,412	92
(*c*) for water supplied through major institution meters	8,676	93
(*d*) for water supplied through commercial meters . .	3,747	43
(*e*) for water supplied through major commercial meters	10,495	25

PART III

Penalty for Refer to Drawer Cheque

A penalty charge as shown below is payable for refer to drawer cheques issued by customers—

(*a*) for—		
(i) Individual household customers	10,000	00
(ii) Institutions	25,000	00
(iii) Commercial	25,000	00

PART IV

New Water Connexion Fee

A new water connexion fee is payable by a new applicant based on the following formula: Cost of the connecting pipes (dependent on size and distance) from source to the tap + Cost of the meter + Cost of the fittings + Cost of labor on installation.

PART V

Application Fee

An application fee of K100 is payable by a new applicant for a connexion.

PART VI

Reconnexion Fee

A reconnexion fee is payable for all disconnected accounts due to non-payment of water bill as follows—

for—

(i) Individual household customers	1,200	00
(ii) Institutions	2,000	00
(iii) Commercial	2,000	00

PART VII

Illegal Connexion Fees

An illegal connexion fees of K2,000 for each day the connexion remains connected to the Board water supply system is payable for all connexion made to the Board water supply system without knowledge of the Board and paying for the connexions fees.

WATER RESOURCES

CHAPTER 72:03

Containing Pages 1–82

CHAPTER 72:03

WATER RESOURCES

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CHAPTER 72:03

WATER RESOURCES

2 of 2013
G.N. 56/2013

An Act to provide for the management, conservation, use and control of water resources; for the acquisition and regulation of rights to use water; and for matters connected therewith or incidental thereto

[1st December, 2013]

PART I

PRELIMINARY PROVISIONS

Short title

1. This Act may be cited as the Water Resources Act.

Interpretation

2.—(1) In this Act, unless the context otherwise requires—

"aquifer" includes a geological structure or formation and an artificial landfill permeated or capable of being permeated permanently or intermittently with water;

"Authority" means the National Water Resources Authority established under section 8;

"authorized" means authorized by or under this Act;

"authorized person" means a person acting on behalf of the Minister or the Authority to whom powers have been delegated under section 15 and includes an officer, servant or agent of an authority or any person acting on behalf of the authority;

"borehole" includes a borehole, well, excavation or other opening in the ground or any natural or artificially constructed or improved underground cavity which is used—

(*a*) for intercepting, collecting, obtaining or using ground water; or

(*b*) for disposing of any water or waste below the surface of the ground;

"catchment", in relation to a watercourse or any part thereof, means the area from which any rainfall will drain into, the watercourse or part of the watercourse through surface flow to a common point;

"catchment management committee" means a committee established under section 26;

"catchment area" means an area designated as such under section 25;

"charges", in relation to the use of water from a water resource, includes fees, levies and premiums of any kind;

"construct" includes alter, improve, maintain and repair;

"domestic purposes" includes the provision of water for household and sanitary purposes and for the watering and dipping of stock;

"domestic sewage" includes faecal matter, urine, household slops and other liquid house refuse;

"domestic use" includes use for the purpose of—

(*a*) human consumption, washing and cooking by persons ordinarily resident on the land where the use occurs;

(*b*) watering not more than thirty livestock units;

(*c*) irrigating a subsistence garden; and

(*d*) watering a subsistence fish pond;

"easement" means a right to enter a land owned or occupied by another person for all or any of the following purposes—

(*a*) to construct works on or in that land;

(*b*) to store water on or in that land; or

(*c*) to carry water, drainage or waste under, through or over that land;

"enclosed spring water" means water in a spring which—

(*a*) is situated wholly within the boundaries of the land owned by any one landholder; and

(*b*) does not naturally discharge water into a watercourse abutting on, or extending beyond, the boundaries of that land;

"effluent" means any liquid discharged as a result of domestic, commercial, industrial or agricultural activities;

"environment" means all aspects of the surroundings of humans, including the physical, biological, economic, cultural and social aspects;

"existing right" means any right to abstract and use water or to discharge effluent—

(*a*) which at the commencement of this Act was lawfully acquired, is possessed by, and is being exercised by, any person; or

(*b*) lawfully acquired by any person before the commencement of the Act for the purpose of supplying water to the public;

"hydrological station" includes a gauging, recording or monitoring station or an investigation or monitoring borehole or ancillary works constructed or installed on land;

"inspector" means a person appointed by the Minister or the Authority to exercise the powers of an inspector under this Act;

"in-stream habitat" includes the physical structure of a water resource and the associated vegetation in relation to the bed of the water course;

"ground water" means the water of underground streams, channels, artesian basins, reservoirs, lakes and other bodies of water in the ground, and includes water in interstices below the water table;

"land" includes premises;

"landholder", in relation to land, means the registered owner of the land or the person in whom the land is otherwise vested by, and includes—

(*a*) any person who by any established right, custom or estate whatsoever is, or is entitled to be, the holder or possessor of land;

(*b*) any person lawfully holding or occupying land in accordance with the provisions of any law empowering the allotment of land upon the promise of title, subject to the fulfilment by the allottee of prescribed conditions; and

(*c*) any person to whom a mining lease or mining location has been granted under the Mines and Minerals Act;

Cap. 61:01

"licence" means a licence issued under this Act;

"livestock unit" means a mature animal with a live weight of 250 kilograms and for purposes of this definition—

(*a*) one head of cattle shall be deemed to be 0.7;

(*b*) one horse shall be deemed to be 0.6;

(*c*) one donkey shall be deemed to be 0.4;

(*d*) one goat shall be deemed to be 0.15;

(*e*) one sheep shall be deemed to be 0.15,

of a livestock unit;

"natural resources" means land, soil and water in their physical aspects together with the natural vegetation associated therewith, and the normal balance between them;

"occupier" means any person in occupation of the land or any part of the land or premises;

"owner" includes—

(*a*) the person for the time being receiving the rent of the land in connexion with which the word is used, whether on his own account or as agent or trustee for any other person; or

(*b*) the person who would receive the rent if the land were let to a tenant;

"permit" means a permit issued under this Act;

"pollute", in relation to water, means directly or indirectly to alter the physical, thermal, chemical, biological or radioactive properties of any water so as to render the water less fit for any beneficial purpose for which it is, or may reasonably be, used or to cause a condition which is hazardous or potentially hazardous to public health, safety or welfare, or to animals, birds, fish or aquatic life or other organisms or to plants; and "pollution" has a corresponding meaning;

"premises" includes any building or structure whether of a temporary or permanent nature and any vehicle or vessel;

"public consultation", in relation to any application made, or action proposed to be taken, under this Act, has the meaning assigned to it in section 156;

"regional office" means an office of the Authority established under section 13;

"reserve", in relation to a water resource, means that quantity and quality of water required—

(*a*) to satisfy basic human needs for all people who are or may be supplied from the water resource; and

(*b*) to protect aquatic ecosystems in order to secure ecologically sustainable development and use of the water resource;

"resource quality", in relation to a water resource, means the quality of all the aspects of a water resource including—

(*a*) the water quality stipulated for the reserve;

(*b*) the quantity, pattern, timing, water level and assurance of in-stream flow;

(*c*) the physical, chemical and biological characteristics of the water;

(*d*) the charter and condition of the in-stream and riparian habitat; and

(*e*) the characteristics, condition and distribution of the aquatic biota;

"riparian habitat" means the dynamic complex of plant, animal and micro-organism communities and their non-living environment adjacent to and associated with a watercourse;

"shared waters" means such water resources as form, or are traversed by, the boundaries of Malaŵi with any of its neighbouring states;

"spring" means water emerging from beneath the surface of the ground otherwise than as a result of drilling or excavation operations;

"stream" means the water contained in a watercourse, and includes a river;

"subsistence fish pond" means a fish pond appurtenant to, or used in connexion with, a dwelling or group of dwellings for subsistence of its residents, the produce of which is predominantly consumed by the residents and is not sold or bartered;

"subsistence garden" means a garden, not exceeding 0.5 hectare in area, appurtenant to, or used in connexion with, a dwelling or group of dwellings for the subsistence of its residents, the produce of which is predominantly consumed by the residents and is not sold or bartered;

"surface water" means water flowing, stored or found on the surface of the ground;

"swamp" means any shallow depression on which water collects either intermittently or permanently and where there is a small depth of surface water or a shallow depth of ground water and a slight range of fluctuation either in the surface level of the water or of the ground water level so as to permit the growth of aquatic vegetation;

"underground water" means water naturally stored or flowing below the surface of the ground and not necessarily apparent on the surface of the ground;

"use", in relation to water, includes to withdraw, pump, extract, take, use or reuse or to divert for the purpose of using or reusing that water;

"water" includes—

(*a*) water flowing or situated upon the surface of any land;

(*b*) water flowing or contained in—

(i) any river, stream, watercourse or other natural course for water;

(ii) any lake, pond, swamp, marsh or spring, whether or not it has been altered or artificially improved;

(*c*) ground water;

(*d*) such other water as the Minister may, from time to time, declare to be water;

"Water Tribunal" means the Water Tribunal established under section 122;

"water resource" means any lake, pond, swamp, marsh, stream, watercourse, estuary, aquifer, artesian basin or other body of flowing or standing water, whether above or below ground;

"water right" subject to the provisions of section 38, includes any existing right;

"water table" means—

(*a*) in pervious granular or detrital material, the upper surface of the body of free water which fills all openings in material that is sufficiently pervious to permit percolation; and

(*b*) in fractured impervious rocks and in solution openings, the surface at the contact between the water body in the openings and the overlying ground air;

"watercourse" means any natural channel or depression in which water flows regularly or intermittently;

"works" means any structure, apparatus, contrivance, device or thing for carrying, conducting, providing or utilizing water or liquid waste, but does not include hand utensils or such other contrivances as may be prescribed by rules made under this Act.

(2) In interpreting this Act, an interpretation which promotes the objectives of the Act shall be preferred to one which does not.

Application of the Act

3. The Minister may, from time to time, by notice published in the *Gazette* declare part of this Act not to apply to an area defined in the notice for a purpose defined in the action plan.

Objectives

4. The objectives of the Act are—

(*a*) to promote the rational management and use of the water resources of Malaŵi through—

(i) the progressive introduction and application of appropriate standards and techniques for the investigation, use, control, protection, management and administration of water resources;

(ii) the regulation of all public and private activities which may influence the quality, quantity, distribution, use or management of water resources;

(iii) the coordination, allocation and delegation of responsibilities among Ministers and public authorities for the investigation, use, control, protection, management or administration of water resources;

(*b*) to allow for the orderly development and use of water resources for all purposes including domestic use, the watering of stock, irrigation and agriculture, industrial, commercial and mining uses, the generation of hydroelectric or geothermal energy, navigation, fishing, preservation of flora and fauna and recreation in ways which minimize harmful effects to the environment; and

(*c*) to control pollution and to promote the safe storage, treatment, discharge and disposal of waste and effluents which may pollute water or otherwise harm the environment and human health.

Water vested in the State

5. All water resources are hereby vested in the State, subject to any rights of a user granted by or under this Act or any other written law.

Public ownership of beds and banks of watercourses and lakes and of adjacent land strips

6.—(1) The bed and banks of watercourses and lakes and the adjacent land strips are declared public land and the Authority shall determine and regulate the management thereof.

(2) No person shall cultivate or carry out any activity within the bed and banks of watercourses and lakes and their adjacent land strips except as determined by the Authority under subsection (1).

(3) The Minister, in consultation with the relevant authorities, shall determine the width of the land which is subject to this section.

(4) The Minister, in consultation with the relevant authorities, shall facilitate payment of compensation for loss of property within any land which is a subject matter of this section.

(5) Any person who contravenes subsection (2) commits an offence.

Powers and duties of the Minister

7.—(1) The Minister shall, in accordance with this Act have, and may, exercise control over every water resource.

(2) The Minister shall promote the investigation, conservation and proper use of water resources throughout Malaŵi and ensure the effective exercise and performance by any authorities or persons under the control of the Minister of their powers and duties in relation to water.

(3) The Minister shall be assisted in the discharge of his duties under this section by the Authority established under this Act.

PART II
National Water Resources Authority

Establishment of the Authority

8.—(1) There is hereby established an Authority to be known as the National Water Resources Authority.

(2) The Authority shall be—

(*a*) a body corporate with perpetual succession and a common seal;

(*b*) have power, in and by its corporate name, to sue and be sued; and

(*c*) in the exercise and performance of its powers and functions, to do and permit all such things as may lawfully be done or permitted by a body corporate in furtherance of its objects.

(3) The powers and functions of the Authority shall be exercised and performed under the direction of a governing board, which shall consist of—

(*a*) the following members appointed by the Minister—

(i) a representative of one of the established catchment management committees;

(ii) one representative of associations of water users;

(iii) one representative of a non-governmental organization (NGO) engaged in the water sector; and

(iv) one member as the Minister may, in his discretion, appoint from the private sector as representing key private sector stakeholders;

(*b*) the following *ex-officio* members—

(i) the Secretary responsible for water development or his designated representative;

(ii) the Secretary responsible for health, or his designated representative;

(iii) the Secretary responsible for tourism, or his designated representative;

(iv) the Secretary responsible for agriculture, or his designated representative;

(v) the Secretary responsible for irrigation, or his designated representative;

(vi) the Secretary responsible for land matters, or his designated representative;

(vii) the Secretary responsible for natural resources, or his designated representative;

(viii) the Secretary responsible for environment, or his designated representative; and

(ix) the Secretary responsible for transport, or his designated representative.

(4) In making the appointments, other than of the *ex-officio* members, the Minister shall have regard to—

(*a*) the educational qualifications, experience, expertise, character and integrity of potential candidates for membership; and

(*b*) the degree to which water users, or water users of particular kinds, are represented on the board at the time the appointment is made.

(5) A member, other than an *ex-officio* member, shall hold office for a period of three years and may be eligible for re-appointment from time to time.

(6) The Minister shall designate one member who is not a public officer to be the Chairperson of the Authority.

(7) Members of the Authority shall elect from amongst their number a Vice-Chairperson.

(8) An appointment under this section may be revoked, by the person or his successor in office, who made the appointment.

(9) For the purposes of this section, a vacancy in the office of Chairperson shall be deemed to be an absence from office of the Chairperson.

(10) The terms and conditions of service of a member, including the remuneration, allowances and other expenses to which he is entitled, shall be as determined by the Authority and approved by the Minister.

(11) The office of a member shall become vacant if—

(*a*) he dies, resigns or is removed from office;

(*b*) he absents himself, without valid reasons, from three consecutive meetings of the Authority of which he has had notice;

(*c*) he is adjudged bankrupt;

(*d*) he is adjudged or declared, by any competent court or tribunal, to be of unsound mind; or

(*e*) he is convicted of an offence punishable by imprisonment without an option of a fine.

(12) On vacation of office by a member, the vacancy shall be filled by a person appointed in accordance with the relevant provision of section 8 (3) under which the former member was appointed:

Provided that if the remaining period is less than six months, the Minister may decide not to have the vacancy filled until the expiry of the period.

(13) The Authority shall meet at least four times in every year.

(14) Except as otherwise provided by or under this Act—

(*a*) meetings of the Authority shall be held at such times and places as are fixed by the Chairperson; and

(*b*) the procedure for the convening of meetings and for the conduct of business at those meetings shall be as determined by the Authority.

(15) Half of the members of the Authority shall constitute a quorum at any meeting of the Authority.

(16) The Chairperson or, in the absence of the Chairperson, the Vice-Chairperson and in the absence of both the Chairperson or the Vice-Chairperson, a member appointed by the members then present, and forming a quorum shall preside at a meeting of the Authority.

(17) A decision supported by a majority of the votes cast at a meeting of the Authority at which a quorum is present shall be the decision of the Authority.

(18) The presiding member at a meeting of the Authority shall cause a record of the proceedings at the meeting to be made.

(19) Records made for the purpose of subsection (17) may be destroyed after the expiry of the period determined by the Authority.

(20) The first meeting of the Authority shall be called by the Minister in such manner as the Minister thinks fit.

Disclosure of interest

9.—(1) A member who has a direct or indirect pecuniary interest—

(*a*) in a matter which is being considered, or is about to be considered, at a meeting of the Authority; or

(*b*) in a thing done or about to be done by the Authority,

shall, as soon as possible after the relevant facts have come to his knowledge, disclose the nature of the interest at a meeting of the Authority.

(2) A disclosure at such a meeting that the member concerned—

(*a*) is a member, or is in the employment, of a specified company or other body;

(*b*) is a partner, or is in the employment, of a specified person; or

(*c*) has some other specified interest relating to a specified company or other body or a specified person, shall be deemed to be a sufficient disclosure of the nature of the interest in any matter or thing relating to that company or other body or to that person which may arise after the date of the disclosure.

(3) The Authority shall cause particulars of any disclosure made under subsection (1) or (2) to be recorded in a book kept for the purpose and that book shall be open at all reasonable hours to the inspection, free of charge, by any person.

(4) After a member has, or is deemed to have, disclosed the nature of an interest in any matter or thing under subsection (1) or (2), the member shall not, unless it is otherwise determined—

(*a*) be present during any deliberation, or take part in any decision, of the Authority with respect to that matter; or

(*b*) exercise or perform any powers or functions under this Act with respect to that thing,

as the case may require.

(5) Subsection (4) shall not apply to a member whose interest consists merely of the fact that the member is the holder of a permit.

(6) A contravention of subsection (4) shall not in itself invalidate any decision of the Authority or the exercise or performance of any power or function under this Act.

Powers and functions of the Authority

10.—(1) The Authority shall have the following powers and functions—

(*a*) to develop principles, guidelines and procedures for the allocation of water resources;

(*b*) to monitor, and from time to time reassess, the National Water Policy and the National Water Resources Master Plan;

(*c*) to receive and determine applications for permits for water use;

(*d*) to monitor and enforce conditions attached to permits for water use;

(*e*) to regulate and protect water resources quality from adverse impacts;

(*f*) to manage and protect water catchments;

(*g*) in accordance with guidelines in the National Water Policy, to determine charges to be imposed for the use of water from any water resource;

(*h*) to gather and maintain information on water resources and from time to time to publish forecasts, projections and information on water resources;

(*i*) to liaise with the relevant stakeholders for the better regulation and management of water resources;

(*j*) to advise the Minister concerning any matter in connexion with water resources;

(*k*) to assist the Minister in the coordination of hydrological and hydrogeological investigations;

(*l*) to coordinate the preparation, implementation and amendment of a water action plan and to recommend the water action plan to the Minister;

(*m*) at the request of the Minister, advise any other Minister who may request advice on—

(i) issues of policy relevant to the investigation, use, control, protection, management or administration of water; or

(ii) any other issue that may be referred to it;

(*n*) whether on request or otherwise, to review the law relating to water and advise the Minister on any amendments that may be required for the improvement or better administration of that law;

(*o*) to advise the responsible Minister, as the case may require, on any dispute between agencies involved in water management that may be referred to it; and

(*p*) to undertake any other functions conferred upon it under this Act or referred to it by the Minister from time to time.

(2) The Authority may, with the consent of the Director of Public Prosecutions given under the Criminal Procedure and Evidence Code, undertake the prosecution of any offences arising under this Act or in connexion with the performance of its functions. Cap. 8:01

(3) The Authority shall have such other powers and functions as may be conferred or imposed on it by or under this or any other Act, or as may be reasonably incidental to the exercise or performance of any power or function so conferred or imposed.

(4) Except as to the contents of any report or recommendation made by it, the Authority shall, in the exercise and performance of its powers and functions be subject to such directions as may be given from time to time by the Minister.

(5) A summary of any directions given under subsection (4) during a financial year shall be published in the Authority's annual report prepared under section 23 (1).

Committees of the Authority

11.—(1) The Authority may, for the purpose of performing its functions under this Act, establish committees and delegate to any such committee such of its functions as it considers necessary.

(2) The Authority may appoint as members of a committee established under subsection (1) persons who are or are not members of the Authority and such persons shall hold office for such period as the Authority may determine.

(3) Subject to any specific or general direction of the Authority, a committee established under subsection (1) may regulate its own procedure.

Invited persons

12.—(1) The Authority may in its discretion at any time and for any period invite any person, and the Minister may in like manner nominate an officer in the public service, to attend any meeting of the Authority or of any of its committees and take part in the deliberations of the meeting, but such person or officer shall not be entitled to vote at the meeting.

(2) Section 9 shall apply *mutatis mutandis* to a person or an officer attending a meeting of the Authority pursuant to subsection (1).

Regional offices

13. The Authority may establish such regional offices in or near any catchment area as the Authority may determine.

Staff of the Authority

14.—(1) There shall be an Executive Director of the Authority who shall be appointed by the Authority on such terms and conditions as the Authority may determine.

(2) The Executive Director shall be the chief executive officer of the Authority and, subject to the directions of the governing board, shall be responsible for the management of the affairs of the Authority.

(3) The Authority may appoint such other officers and staff as may be necessary for the exercise and performance of its powers and functions, upon such terms and conditions as it may determine.

Delegation of powers and functions

15.—(1) The Minister may, in writing, delegate to the Authority any of his powers or functions under this Act other than—

(*a*) the powers conferred by this section;

(*b*) the power to make regulations; and

(*c*) the power to determine appeals.

(2) Delegation under subsection (1) may be in relation to a matter or class of matters or to any part of Malaŵi.

(3) The Minister may in writing, revoke a delegation under subsection (1), and the fact that the Minister has delegated a power or function shall not prevent him from exercising that power or function.

(4) Powers and functions delegated under subsection (1) shall be exercised or performed in accordance with the conditions set out in the instrument of delegation.

(5) A person to whom a power or function has been delegated under this section shall have all necessary power to exercise the powers or functions delegated notwithstanding that the person would not be legally empowered were it not for this section.

(6) The person exercising the delegated powers or functions under this section may receive written or oral submission from any person on any matter within the delegation.

(7) Where in the exercise of a delegated power or performing a delegated function the opinion or discretion of the Minister is required, the person may, unless the contrary intention appears, exercise or perform the power or function upon his own opinion or discretion as the case may require.

(8) Where there is a conflict between matters to which regard has to be made with respect to the provisions of this Act and the instrument of delegation, the person acting on behalf of the Minister or an authorized person shall apply the provisions of this Act.

Water resources investigation

16.—(1) The Authority shall provide for—

(*a*) the collection, collation and analysis of data concerning the occurrence, flow, characteristics, quality and use of any water or waste;

(*b*) the systematic gauging and recording of rainfall and of the volume, flow and quality of other water or waste;

(*c*) the construction, operation and removal of gauging, recording and monitoring stations and investigation and monitoring boreholes; or

(*d*) the sampling and analysis of any water or waste.

(2) The Authority may do anything necessary or expedient for or in connexion with the exercise of the powers conferred by subsection (1).

Authority's powers to require records, etc.

17.—(1) The Authority may require any class or type of persons, or the person on whom notice is served, as the case may be, to—

(*a*) keep and maintain records;

(*b*) install, operate and maintain equipment;

(*c*) take samples, dispose of them in a particular manner or submit them to such analysis by such person or class of persons; or

(*d*) provide information to a person,

concerning the investigation, use, control, protection, management or administration of any water or concerning any waste, as may be prescribed in a regulation or notice.

(2) Anything required to be done by a regulation made or a notice given under subsection (1) shall be done at the expense of the person to whom the notice or regulation applies, unless the Authority otherwise determines.

(3) A person who contravenes or fails to comply with or causes or allows any person to contravene or fail to comply with this section, commits an offence.

(4) Any person who furnishes any information under this section or who causes or allows any statement or representation to be made which he knows to be false or misleading in a material particular commits an offence.

National monitoring of, and information on, water resources management

18.—(1) The Authority shall provide for a national monitoring and information system on water resources.

(2) The system shall provide for—

(*a*) the collection and management of data and information regarding water resources and their management; and

(*b*) procedures for gathering data and the analysis and dissemination of information on water resources.

(3) For the purposes of the system established under this section, the Authority may, by order require any person, within a reasonable time or on a regular basis, to provide it with specified information, documents, samples or materials.

(4) Regulations made under this Act may specify requirements for the keeping of records and the furnishing of information to the Authority.

(5) On payment of the prescribed fee, any member of the public—

(*a*) shall have access to information contained in any national information system; and

(*b*) shall be supplied with a copy of the Authority's annual report.

Sources of funds

19.—(1) The funds of the Authority shall consist of—

(*a*) such sums as may be appropriated by Parliament for the purposes of the Authority;

(*b*) any fees, charges, etc., payable under this Act;

(*c*) such other moneys and assets as may vest in or accrue to the Authority in the course of its functions; and

(*d*) such moneys or other assets as may accrue to, or vest in the Authority by way of grants, subsidies, bequests, donations, gifts, subscriptions, rents, interest or royalties from any person.

(2) The Authority shall keep proper books of accounts and other records relating thereto in respect of its funds and shall in every respect comply with the provisions of the Public Finance Management Act. Cap. 37:02

(3) The accounts of the Authority shall be examined and audited annually by auditors appointed by the Authority and approved by the Minister.

Application of revenue from permit charges and licence fees Cap. 37:02

20.—(1) Without prejudice to the provisions of the Public Finance Management Act, the Authority shall retain in a fund managed by it all of the revenue from water use charges payable under a permit, to be applied by the Authority in meeting costs incurred in the performance of its functions.

(2) Without prejudice to the generality of subsection (1), funds retained by the Authority under that subsection may be applied for the payment of compensation payable by the Authority under this Act, whether or not the payment is subsequently recoverable from a permit holder or other person.

Investment powers of the Authority

21.—(1) The Authority may invest any sums which are not immediately required for its objects.

Cap. 37:02

(2) Subject to the provisions of the Public Finance Management Act, the Authority may borrow either temporarily by way of overdraft or otherwise, such sums as it may require for meeting its obligations or discharging its functions under this Act.

Financial year of the Authority

22. The financial year of the Authority shall be the period commencing on the date of commencement of this Act and ending on the following 30th June and thereafter it shall be a period of twelve months ending on 30th June every year.

Annual reports

23.—(1) As soon as practicable, but not later than six months after the expiry of each financial year, the Authority shall submit to the Minister a report concerning its activities during that financial year.

(2) The report referred to in subsection (1) shall be in such form as the Minister shall approve and shall include information on the financial affairs of the Authority, and there shall be appended to the report—

(*a*) an audited balance sheet;

(*b*) an audited statement of income and expenditure; and

(*c*) such other information as the Authority may consider appropriate or as the Minister may direct.

(3) The Minister shall, during the meeting of the National Assembly next following receipt by him of the report referred to in subsection (1), lay the report before the National Assembly and subsequently the report shall be published.

Progress reports

24. The Authority shall, at the end of each financial year, produce a progress report on its activities during that period and shall publish the report.

PART III
Catchment Management Committees

Catchment areas

25.—(1) In accordance with the National Water Policy, the Authority may, by notice published in the *Gazette*, designate a defined area from which rainwater flows or drains into a watercourse, to be a catchment area for the purposes of this Act.

(2) A catchment area designated under this section may include two or more sub-catchment areas.

Establishment of catchment management committees

26.—(1) A catchment management committee may be established for a specific catchment area, after public consultation, on the proposal of the community and stakeholders concerned, or the Authority may establish a catchment management committee on its own initiative.

(2) A proposal to establish a catchment management committee shall at least contain—

(*a*) a proposed name and description of the proposed catchment management committee;

(*b*) a description of the major water resources in the proposed catchment area, including information about the current status of protection, use, development, conservation, management and control of those resources;

(*c*) the proposed functions of the catchment management committee;

(*d*) the proposed funding of the catchment management committee;

(*e*) the feasibility of the proposed catchment management committee in terms of locally available technical, financial and administrative capacity; and

(*f*) an indication of the consultation made in developing the proposal, and the result of the consultation.

(3) The Authority may call for information additional to that required under subsection (2) and may conduct an investigation regarding the establishment of a proposed catchment management committee.

Procedure for establishment of catchment management committees

27. The Authority may, in consultation with the Minister and after receiving a proposal containing the information required in terms of section 26 (1) and any additional information called for or acquired on investigation under section 26 (3) or on its own initiative by notice in the *Gazette*—

(*a*) establish a catchment management committee, give it a name and determine its area; or

(*b*) change or amend the name or area of an existing catchment management committee.

Composition of a catchment management committee

28.—(1) The members of a catchment management committee shall be chosen from among—

(*a*) representatives of ministries, departments or other public bodies responsible for matters relating to water resources in the catchment area;

(*b*) representatives of any regional development authorities and local authorities whose areas of jurisdiction or any part thereof fall within the catchment area concerned;

(*c*) representatives of farmers within the catchment area concerned;

(*d*) representatives of the business community operating within the catchment area concerned;

(*e*) representatives of the non-governmental organizations engaged in water resources management programmes within the catchment area concerned; and

(*f*) other persons who have demonstrated competence in matters relating to the management of water resources.

Functions of catchment management committees

29.—(1) Without prejudice to the provisions of section 25, a catchment management committee shall, in relation to the catchment area for which it is appointed, advise officers of the Authority at the appropriate regional office concerning—

(*a*) water resources conservation, use and allocation;

(*b*) the grant, adjustment, cancellation or variation of any licence and permit under this Act; and

(*c*) any other matters pertinent to the proper management of water resources.

(2) Subject to the relevant Catchment Management Strategy, a catchment management committee may also undertake, on its own initiative and with funding received pursuant to section 31, water resources conservation activities and works.

Authority to assist catchment management committees

30.—(1) The first meeting of a catchment management committee shall be called by the Authority in such manner as the Authority thinks fit.

(2) The Authority shall facilitate the activities of the catchment management committees by making available secretariat services and logistical and administrative support.

Funding and auditing of activities of operational catchment management committees

31.—(1) Catchment management committees wishing to engage in water resources conservation activities and works pursuant to section 29 (2)—

(*a*) shall obtain from the Authority, on request, a percentage from the proceeds of the collection of water charges, in accordance with section 120; and

(*b*) may obtain money from any other lawful source, including the Water Resources Trust Fund established under section 121, for the purpose of carrying out their functions.

(2) Catchment management committees engaging in water resources conservation activities and works and, which for these purposes receive and manage funds, shall submit to the Authority or to the provider of other funding, where applicable, an annual audited statement of their accounts.

Catchment management strategy

32.—(1) The Authority shall, at its own initiative or at the initiative of the relevant catchment management committee, formulate a catchment management strategy for the management, use, development, conservation, protection and control of water resources within each catchment area, in consultation with the relevant catchment management committee and following public consultation.

(2) In the process of formulating a catchment management strategy the Authority shall consult with the departments in charge of, respectively, forestry and the environment, and it shall take into account, but shall not be bound by, any relevant prior determination made by either department pursuant to the legislation in force.

(3) It shall be the duty of the Authority to review the catchment management strategy from time to time.

(4) A catchment management strategy shall—

(*a*) be consistent with the National Water Resources Master Plan;

(*b*) prescribe the principles, objectives, procedures for the management, use, development, conservation and control of water resources within each catchment area;

(*c*) contain water allocation plans which set out principles for allocating water; and

(*d*) provide mechanisms and facilities for enabling the public and communities to participate in managing the water resources within each catchment area.

(5) The catchment management strategy, in force for the time being, shall be published in the *Gazette*.

(6) Without prejudice to the generality of subsection (4) (*d*), the catchment management strategy shall encourage and facilitate the establishment and operation of associations of water users and for conflict resolution and cooperative management of water resources in catchment areas.

(7) The Minister, the Authority and any public authority shall, when exercising any statutory power or performing any statutory function, take into account and give effect to any catchment management strategy in force under this section.

Sensitization of users of watercourses on protection and management of watercourses and other bodies

33. The catchment management committees shall, with the technical assistance of the Authority, and with funding obtained in accordance with section 31, be under a duty to promote and sensitize all users of watercourses and water bodies within the applicable water management area on the protection and management of the watercourses and water bodies and the conservation and equitable, efficient and sustainable utilization of such watercourses and water bodies in conformity with national legislation and with regional and international water and environmental conventions.

PART IV
National Water Policy and National Water Resources Master Plan

National Water Policy

34.—(1) The Minister shall publish in the *Gazette*, the National Water Policy in accordance with which the water resources of Malaŵi shall be managed, protected, used, developed, conserved and controlled.

(2) The Minister shall periodically review the National Water Policy and may, from time to time, publish in the *Gazette* the revised policy.

(3) The National Water Policy shall prescribe the principles, objectives, procedures and institutional arrangements for the management, protection, use, development, conservation and control of water resources.

(4) The Minister, the Authority and all public bodies shall, when exercising any statutory power or performing any statutory function, take into account and give effect to the National Water Policy.

National Water Resources Master Plan

35.—(1) The Minister may, on the basis of data progressively generated under water resources investigations, require the Authority to—

(*a*) prepare, review and keep up-to-date, a comprehensive plan for the investigation, use, control, protection, conservation, management and administration of water resources for the nation; and

(*b*) recommend any revision of it.

(2) The National Water Resources Master Plan shall, among other things, address matters relating to—

(*a*) a water balance for each catchment area that compares forecasted water demand with data and information regarding water availability;

(*b*) proposed options for meeting forecasted demand for each catchment area in which forecasted water demands exceeds available supply, which options may include—

(i) water demand management programmes;

(ii) necessary infrastructure construction;

(iii) any other measure, including appropriate legal reforms considered necessary in achieving the objectives of the National Water Resources Master Plan;

(*c*) the protection of water resources from over-exploitation and from pollution; and

(*d*) the conservation of water resources, including through the recycling and re-use of wastewater, the harvesting of rainwater, and any other suitable conservation practice and technique.

(3) The Minister shall submit the National Water Resources Master Plan recommended to him under subsection (1) to the Cabinet with his recommendations within twenty-one days of receiving it.

(4) The detailed components of the National Water Resources Master Plan and procedures for its preparation, revision and recommendations to and consideration by the Minister may be as prescribed by the Minister, and if the Minister does not prescribe, as may be determined by the Authority.

Action Plan to be adhered to

36. After approval by the Cabinet, the Minister shall by notice published in the *Gazette*, issue the National Water Resources Master Plan which shall be binding to all persons and public authorities.

PART V
Water Abstraction and Use

Reservation of water resource

37.—(1) The Minister, in consultation with the district councils concerned may, by notice published in the *Gazette*, reserve part or all of the flow of a watercourse, including any ground water resource and the water stored in a public reservoir to—

(*a*) meet the domestic use of the water users concerned; or

(*b*) reasonably protect aquatic and wetland ecosystems, including their biological diversity, and to maintain essential ecosystem functions.

(2) Any water resource reserved under subsection (1) shall be taken into account in—

(*a*) the licensing of water abstractions under section 39; and

(*b*) the issuing of a permit for effluent discharge under section 92.

(3) The Minister may allow the use of a reserved water resource if such use is compatible with the purposes of the reserve.

(4) The Minister, the Authority and all public bodies shall, when exercising any power or performing any function in relation to the water resource concerned, take into account and give effect to the requirements of the reserved water resource.

Abstraction of water for domestic use, use of groundwater, and rainwater harvesting

38.—(1) Subject to subsection (4), a person having lawful access thereto may abstract water from a water resource for domestic use without obtaining a licence from the Authority under this Part.

(2) A person having lawful access thereto may abstract and use water for domestic use, subject only to public health and environmental limitations, and any other limitations that may be imposed from time to time by the Authority for purposes of efficient water management practices or in prescribed emergency circumstances.

(3) A person having lawful access thereto may abstract and use groundwater—

(*a*) where none of the necessary works are situated—

(i) within one hundred metres of any body of surface water, other than inclosed spring water, or

(ii) within a groundwater conservation area;

(*c*) by means of hand-dug boreholes; or

(*d*) by means of a borehole not deeper than ten metres.

(4) Subsection (1) shall not apply to a person who abstracts water in bulk from a water resource and supplies it to others for domestic use.

(5) A person has the right to harvest rainwater on his own land or on communal land and to use it for domestic purposes.

Abstraction and use of water subject to licence

39.—(1) No person shall abstract and use water unless authorized to do so under this Part.

(2) A licence under this Part shall be required for any of the following purposes—

(*a*) the abstraction, impoundment and use of water from a water resource; and

(*b*) the drainage of any swamp or other land.

(3) A person who—

(*a*) not being the holder of a licence under this Part, constructs or employs any works for the abstraction or impoundment of water; or

(*b*) being the holder of a licence under this Part, constructs or employs any such works in contravention of the conditions of the licence,

commits an offence.

(4) A holder of a licence authorizing the construction of works who, without the permission of the Authority, takes water from any water resource by means of any work authorized by the licence before the whole of the works authorized by the licence have been inspected and cleared commits an offence.

Application for licence

40.—(1) A person wishing to abstract and use water shall apply to the Authority in the prescribed form for a licence and the application shall contain the following information—

(*a*) the name of the applicant;

(*b*) the water resource from which the proposed abstraction will be made;

(*c*) the proposed location of the abstraction;

(*d*) the type and location of the proposed beneficial use;

(*e*) the names of owner or occupier of the land upon which the proposed beneficial use will be made;

(*f*) the proposed rate and volume of the abstraction;

(*g*) the proposed timing of the abstraction;

(*h*) a description of any waterworks necessary to accomplish the proposed abstraction and put the abstracted water to beneficial use and a proposed schedule for the completion of such waterworks;

(*i*) description of the proposed treatment, if any, that will be given to the abstracted water, including any chemicals proposed to be applied to the water;

(*j*) a description of the volume, rate and chemical composition of any effluent or return flow resulting from application of the abstracted water to beneficial use and a description of the location that any such effluent or return flow is expected to enter a water resource; and

(*k*) any additional information the Minister may prescribe.

(2) The Authority shall, on receipt of an application under subsection (1), give public notice of the application in the prescribed manner.

(3) Any interested person may notify the Authority within such period as may be prescribed that he objects to the grant of a water right and specify the grounds of such objection, upon receipt of such objection the Authority shall invite the person objecting to a hearing.

(4) The Authority shall consider every application and any objections made to it in respect thereof and after consulting such persons and authorities as it may deem necessary, submit the application together with its recommendations to the Minister.

(5) The application for a licence to abstract and use water shall be accompanied by—

(*a*) the prescribed charge; and

(*b*) where applicable, an environmental impact analysis of the proposed abstraction of water upon the environment and existing water users and water resources.

(6) The Authority may, after taking into consideration any objection that may be raised and after consultation with any person or public authority as it may see fit, grant a licence to the applicant.

(7) A grant of a licence under this Part shall not imply representation or guarantee by the Authority, authorized person or public authority that water is or will be available in the place and at the times indicated in the licence.

Criteria for issuing a licence

41.—(1) The Authority shall take the following matters into consideration in determining whether or not to issue a licence—

(*a*) whether or not the proposed abstraction and use of water are consistent with—

(i) the objectives referred to in section 4 and the National Water Policy;

(ii) the National Water Resources Master Plan; and

(iii) any reservation of water made under section 37;

(*b*) the impact of the proposed abstraction upon existing water users, water resources and the water reserved or allocated for environmental uses;

(*c*) the safe yield of the aquifer from which the abstraction is proposed, if the application is for abstraction of ground water;

(*d*) the conformity of the proposed use with the efficient water management practices;

(*e*) the likely effect of the proposed abstraction—

(i) on the quality of any water resource, and on aquatic ecosystems dependent on the resource;

(ii) on Malaŵi's obligations relating to shared waters;

(*f*) the need to ensure the efficient and beneficial use of water resources;

(*g*) any catchment management strategy applicable to the relevant water resource;

(*h*) the likely effect of the proposed water use on the water resource and on other water users;

(*i*) the existence of any traditional community and the extent of customary rights and practices in, or dependent upon, the water resource to which an application for the licence relates;

(*j*) the investments already made and to be made by the water user in respect of the water use in question;

(*k*) the strategic importance of the proposed water use;

(*l*) the probable duration of the activity or undertaking for which a water use is to be authorized; and

(*m*) any additional criteria the Minister may prescribe.

(2) The Minister may issue more than one licence to abstract and use water from one water resource, subject to such terms and conditions that will enable concurrent use of the same resource by the applicants.

(3) A licence shall, subject to this Act, remain in force for the period specified in it, and may be renewed from time to time on application by the licensee, which shall be filed no less than six months before the due expiration date of the licence.

Contents of the licence

42.—(1) A licence to abstract and use water shall specify—

(*a*) the duration of the licence, which shall be determined in accordance with the provisions of section 55;

(*b*) the location of the abstraction and location of the use;

(*c*) the water use or uses for which it is granted;

(*d*) the name and other details of the person to whom it is granted;

(*e*) the conditions under which it is granted;

(*f*) the frequency of review of the licence;

(*g*) whether the licence is subject to periodic review, suspension, amendment or cancellation in accordance with this Act;

(*h*) any fees and charges payable as prescribed in section 119; and

(*i*) any other matter as may be prescribed.

Terms and conditions of licence

43. A licence to abstract and use water shall be issued subject to—

(*a*) the achievement of the goals and objectives of the National Water Resources Master Plan;

(*b*) the protection of the environment and water resource from which the abstraction is made, the stream flow regime, and other existing and potential use of the water resource, including uses by virtue of customary rights and practices, by—

(i) setting out the specific volume of water or percentage of flow which may be abstracted;

(ii) setting out the rate of abstraction;

(iii) specifying the place where water may be abstracted;

(iv) specifying the times when water may be abstracted and used, or not used;

(v) limiting the volume of water which may be impounded and stored;

(vi) specifying locations where a watercourse may be impounded and where water would be stored;

(vii) requiring the licensee to become a member of a local association of water users, where appropriate, before water may be abstracted; and

(viii) adding any such terms regarding protection of the water resource, and stream flow regime or existing or potential uses of water resource which the Minister determines to be appropriate;

(*c*) proper water management, by—

(i) specifying efficient water resources management practices and general requirements for any water use, including water conservation measures;

(ii) requiring monitoring, analysis and reporting by the licensee on every water use dependent upon the licence, including bulk uses or local authority uses, by specifying the aspects of water use to be monitored and reported, and the devices to be used for such monitoring;

(iii) requiring the preparation and approval of a water resources management plan;

(iv) requiring the licensee to make water available to any person specified in the licence; and

(v) adding any such terms regarding proper water resources management which the Authority determines to be appropriate;

(*d*) the proper discharge or disposal of any return flow or effluent, by—

(i) specifying the water resource to which and the manner in which return flow or effluent shall be returned or disposed of;

(ii) specifying permissible levels for some or all of the chemical or physical components of the return flow or effluent;

(iii) specifying the treatment to which the return flow or effluent shall be subject, before its return or disposal;

(iv) specifying the volume and rate of discharge of return flow or effluent which may be returned or disposed of;

(v) adding such terms regarding discharge or disposal of excess flow or effluent which the Authority determines to be appropriate; and

(*e*) the accommodation of any reasonable requirements of a community.

Reference of licences to other authorities

44.—(1) Where the Authority proposes to grant, or to amend the terms of, a licence under this Part, it shall refer the proposal, together with a copy or summary of the application and appropriate plans, specifications and other information to any relevant public authority.

(2) A public authority to which a proposal is referred under subsection (1) shall inform the Authority in writing within thirty days after the day on which the proposal was referred to it—

(*a*) whether the proposal is supported or whether there are objections to it;

(*b*) whether, and if so, what special terms should be included in the proposed licence or amendment.

(3) The Authority shall—

(*a*) take into account any report and comments received under subsection (2);

(*b*) refuse to grant the proposed licence or make the proposed amendment if a competent public authority submits a written report objecting to the proposal on the grounds that public health is likely to be endangered by the proposed licence or amendment; and

(*c*) refuse to grant the proposed licence or make the proposed amendment if an Environmental Impact Assessment carried out pursuant to the provisions of the Environment Management Act and the Environment Impact Assessment Guidelines determines that the environmental is likely to be endangered by the proposed licence or amendment.

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Exemption of works

45. Subject to guidelines established by the Minister from time to time, the Authority may exempt—

(*a*) a public authority; or

(*b*) a class of persons or works,

from all or any of the provisions of section 39 on such conditions as it may deem fit.

Issue of temporary licence

46.—(1) The Authority may, if in its opinion exceptional circumstances warrant such action, grant a temporary licence authorizing, unconditionally or subject to conditions, the use of water from a water resource and construction of the works required therefor, without subjecting the application to public consultation.

(2) In considering whether or not to grant a licence in accordance with this section, the Authority shall have regard to the extent to which the grant of such a licence would be likely to interfere with the domestic requirements of other users.

(3) A licence granted in accordance with this section shall not be granted or renewed so as to be in force for a period exceeding, or for periods which in the aggregate exceed, one year.

Licence conditional on inspection of works

47. Where under section 40 (1) (*h*) a licence includes an authorization to construct necessary works, the licensee shall not commence operations under the licence unless and until the relevant works have been inspected and cleared by the Authority.

Licensee to inform Authority of change of location of water use

48. A licensee shall inform the Authority of any change in the location of use of the water allowed to be abstracted under a licence, including in particular upon the subdivision of the land on which the water is used, or for the benefit of which the water is used.

Variation of a licence owing to change in circumstances, etc.

49.—(1) Whenever it is shown to the satisfaction of the Authority that, owing to increased demand or other cause, the use of water under a licence, or the method or point of diversion or other manner in which the water is so used causes—

(*a*) a deterioration in the quality of water;

(*b*) a shortage of water for domestic purposes; or

(*c*) a shortage of water for any other purpose which in the opinion of the Authority should have priority,

it may vary the licence so as to alter the discharge or quantity of water or any other aspect of water use authorized by the licence, or alter the method or point of diversion or other specifications, terms or conditions of the licence.

(2) No licence shall be varied under this section unless notice of the proposed variation has been served on the licensee and the licensee has been given a reasonable opportunity to show cause to the Authority why the licence should not be cancelled or varied.

Cancellation of a licence

50.—(1) The Authority may cancel a licence where the licensee has—

(*a*) failed to comply with any express or implied condition to which the licence is subject;

(*b*) taken or used more water than he is entitled to take in any period;

(*c*) taken or used water for a purpose other than that for which he is entitled;

(*d*) failed to comply with any provision of this Act; or

(*e*) not made full beneficial use of the licence within the two preceding years.

(2) No licence shall be cancelled under this section unless notice of the proposed cancellation has been served on the licensee and the licensee has been given a reasonable opportunity to show cause to the Authority as to why the licence should not be cancelled.

(3) No compensation shall be payable to any licensee whose licence has been cancelled pursuant to this section.

Cancellation or variation of a licence for a public purpose

51.—(1) Subject to section 52, where the Authority is of the opinion that in order to make water available for a public purpose it is necessary to cancel or vary a licence, the Authority may cancel or vary the licence.

(2) The Minister may, by notice published in the *Gazette*, declare any purpose to be a public purpose for the purpose of this section.

(3) The Authority shall pay compensation to any licensee whose licence has been cancelled pursuant to this section.

Variation of licence following change in flows

52. Where it is established that, for any reason beyond the reasonable control of the Authority, the natural flow in a watercourse available to all users has dropped or is likely to drop so that more water is permitted to be diverted, stored, or used than is available in the watercourse, the Authority shall hold a public hearing into the matter and thereafter may amend any or all licences to divert, store, or use water from that watercourse in an equitable and fair manner as the Authority may deem appropriate.

Variation of a licence at request of licensee

53.—(1) On the application by a licensee, the Authority may vary the licence or any condition attached to a licence in accordance with the application of the licensee or on such conditions as the Authority may deem necessary having regard to the circumstances.

(2) The Authority may vary the licence so as—

(*a*) to vary the point of diversion or abstraction of the water used under the licence;

(*b*) to vary the use of water authorized by the licence; or

(*c*) to permit the mixture of waters authorized to be taken or used with those authorized to be taken or used by another licence, whether held by the same or another licensee;

(*d*) to remedy any defect whereby the licence is incomplete or indefinite in its terms and conditions; or

(*e*) to vary any other term or condition of the licence,

if the Authority is satisfied that the variation is not contrary to the public interest or the rights of others.

(3) A variation relating to—

(*a*) the use of water authorized by the licence; or

(*b*) a term or condition of a prescribed kind,

shall not be made without public consultation.

Effects of expiry or cancellation of a licence to abstract and use water

54. If a licence to abstract and use water expires and is not renewed, or is cancelled the Minister may—

(*a*) require the licensee, at the licensee's expense, to remove any liens or other restrictions preventing the free use of the abstraction works;

(*b*) order the licensee to restore, at the licensee's expense, the state of affairs which existed before a licence was issued, if doing so is reasonable and practicable under the circumstances; and

(*c*) enter into an arrangement with the licensee or any other person for maintenance of the impoundment, abstraction or effluent discharge works.

Lease of licence to abstract and use water

55.—(1) A licensee may lease his licence to another person for a period not exceeding six months, after giving thirty days' notice to the Authority.

(2) A licensee may only lease his licence to another person for a period longer than the period referred to in subsection (1) if such lease is approved by the Authority.

(3) An application for approval of the leasing of a licence under subsection (2) shall be submitted to the Authority for consideration in accordance with subsection (4).

(4) Upon receipt of an application for approval of the leasing of a licence, the Authority shall consider—

(*a*) whether the terms and conditions of the proposed lease is consistent with the terms and conditions of the licence; and

(*b*) any deviation from the terms and conditions of the licence that may impact adversely upon other persons and the environment.

(5) The Authority may, within ninety days from receipt of the application for approval of the leasing of a licence, grant the application with or without conditions or refuse the application.

Succession to a licence to abstract and use water

56. A licence may be passed on to a named licensee as a successor-in-title at death or transfer, but such passage shall not extend the duration of the licence.

Abandonment of permitted or licensed activities

57.—(1) A licensee who ceases to utilize water in accordance with the terms of his licence shall, by notice to the Authority, abandon the whole of the licence or any part capable of separation.

(2) Upon such abandonment, the Authority may direct the licensee to remove, within such time as it may specify, all or any works erected in connexion with the licence.

(3) A licensee who neglects or fails to remove the works concerned commits an offence, and the Authority may remove all or any portion of the works, and recover the cost of their removal from the licensee as a civil debt in any court of competent jurisdiction.

(4) Nothing in this section shall be construed as requiring or authorizing a licensee wholly or in part to abandon a licence contrary to the conditions of any mortgage or charge upon the land to which the licence is appurtenant.

Surrender of licence

58.—(1) Where—

(*a*) a licence is to be cancelled or varied by the Authority in pursuance of this Act;

(*b*) a licence has been granted on the basis of false or misleading information supplied by the licensee; or

(*c*) a licence has been granted in contravention of the provisions of this Act or any regulations made under this Act with respect to the terms and conditions of such a licence,

the Authority may, by notice served on the licensee, require the licensee, if he has not already done so, to surrender the licence to the Authority:

Provided however that, if subsection (1) (*c*) a defect has been detected, the Authority shall cure such defect if it is in its power to do so, whereupon this section shall not apply.

(2) A licensee who fails to comply with such a notice commits an offence.

Register of licences

59.—(1) The Authority shall establish and maintain a register of all licences issued and in force including details of the licences and their terms and conditions and the results of monitoring and enforcement action taken by the Authority regarding each licence.

(2) Information contained in the register shall be accessible by the public on payment of the prescribed fee.

Combined licence to abstract and use water and to discharge effluent

60.—(1) Where the same person needs a licence to abstract and use water and a permit to discharge effluent, the Authority shall grant to the person a combined licence to abstract and use water and to discharge effluent.

(2) A person to whom a combined licence has been issued shall not require a separate effluent discharge permit under section 92.

Duration of a licence to abstract and use water

61. A licence to abstract and use water shall be granted for a duration of at least five years.

Renewal of a licence to abstract and use water

62.—(1) A licence to abstract and use water issued under this Part may be renewed at least three months prior to its expiry, if the licensee submits an application for renewal to the Authority in the prescribed manner.

(2) When considering an application for renewal made under subsection (1) the Authority shall consider the application taking into account—

(*a*) the provisions of section 41; and

(*b*) the provisions of section 43.

Right to transfer saved water

63. A person who has saved water whether from harvesting the same or otherwise may transfer to another person the water so saved, in return for a price or free of charge:

Provided that in times of water scarcity it shall be obligatory for any person to transfer saved water to the persons who need the water, as directed by the Authority under section 65.

Easements for works

64.—(1) A licensee who authorizes the construction of works for a portion thereof that would, when constructed, be situated upon lands not held by the licensee shall acquire an easement on, over or through the land on which the works would be situated and, unless the works have previously been lawfully constructed, shall not construct or use the works unless and until he has acquired such an easement by an agreement.

(2) A licensee who wishes to bring water to, or drain water from his land over land owned or occupied by another person, may apply to the Authority for the creation of an easement over that land if he has been unable to obtain an easement by agreement with the owner or occupier of that land.

(3) A licensee who wishes to drain waste from his land over land owned or occupied by another person may apply to the Authority for the creation of an easement over that land if he has been unable to obtain an easement by agreement with the owner or occupier of that land.

(4) On receiving the application under subsection (2) or (3), the Authority shall, in the prescribed manner, give notice to the owner, occupier or any other person having an interest in that land.

(5) A person who has any objection to an application made under subsection (2) or (3) may give notice of objection to the Authority in a manner and within the period that may be prescribed.

(6) Subject to section 152 and after giving a hearing to all persons who have an interest in the land, including the applicant, who wish to be heard, the Authority may create an easement over the land in the prescribed form as may be appropriate.

(7) An easement under subsection (6) may make provision for—

(*a*) the construction of works necessary to carry water or waste across that land;

(*b*) construction of fences, bridges, crossings or other works in that land;

(*c*) the amount of compensation, if any, to be paid to the owner, occupier or other person having interest in that land,

and the person having the easement shall comply with the provisions.

(8) Any person aggrieved by the decision of the Authority under subsection (6) may appeal to the Water Tribunal against the decision, if the decision was made without his consent.

(9) If a person who has an easement fails to comply with subsection (6), the Authority may cancel the easement and notify the person and the Commissioner for Lands.

(10) If the person who has an easement fails to maintain any works he constructed under this section, the owner or occupier of the land on which the works are situated may maintain or repair the works and recover the reasonable costs as a civil debt from the person who has the easement.

(11) Any compensation due under this section which remains unpaid for an unreasonable period may be recovered as a civil debt.

(12) An easement created under this section shall terminate after six months after the date of creation, unless it is registered with the Commissioner for Lands.

Emergency powers in case of shortage of water

65.—(1) For the purposes of this Act, a drought shall be deemed to exist in any area when the Minister, upon such information as seems to him sufficient, by order published in the *Gazette*, declares that a drought exists in that area.

(2) If the Minister, on the advice of the Authority, is satisfied that, by reason of an exceptional shortage of rain or by reason of accident or other unforeseen circumstances, a serious deficiency of water for essential domestic purposes exists or is threatened in any area, he may, by order—

(*a*) declare that an emergency exists; and

(*b*) direct a person who has a supply of water in excess of his needs for domestic purposes to supply to the area concerned, or to a specified person in the area, such quantity of water, and for such period, as the order may specify.

(3) Any person so directed by an order under this section who fails to comply with the provisions of the order concerned commits an offence.

(4) An order under this section may require or authorize—

(*a*) the laying of pipes and the construction of works on any land;

(*b*) the entry on to any land by servants or agents of the Authority; and

(*c*) such other measures as the Minister may consider necessary for the giving and taking of any such water.

(5) If a person to whom an order under this section is directed fails to comply with the order, the Minister, or any person deputed by him for the purpose—

(*a*) may take possession of the water supply and operate any works of the person concerned for the drawing, diversion or use of water; and

(*b*) shall have and may exercise the person's rights in connexion with them during the period of the order, subject to any conditions imposed by the order.

(6) It shall be the duty of any person exercising any powers under this section to do so with reasonable care and in such a manner as to cause as little damage as possible in so doing, and subject to compensation for any damage done.

(7) The compensation made under subsection (5), or such proportion of it as the Minister may determine, may be recovered by the Minister, as a debt due to the Government, from a person benefiting by the supply of water under the order.

(8) A person who, without lawful authority, hinders or obstructs any person acting in pursuance of an order under this section, or interferes with any works constructed or under construction in pursuance of such an order shall be guilty of an offence.

PART VI
Control and Protection of Groundwater

Groundwater conservation areas

66.—(1) Where the Authority is satisfied that, in any area, special measures for the conservation of groundwater are necessary in the public interest—

(*a*) for the protection of public water supplies; or

(*b*) for the protection of water supplies used for industry, agriculture or other private purposes,

it may, following public consultation, by order published in the *Gazette* declare the area to be a groundwater conservation area.

(2) The Authority may impose such requirements, regulate or prohibit such conduct or activities, in or in relation to a groundwater conservation area as the Authority may think necessary to impose, regulate or prohibit for the protection of the area and its groundwater.

Issuing of licence not guarantee to supply of water

67.—(1) The issuing of a permit under this Part shall not be construed as a guarantee, express or implied of a supply of groundwater.

Permit to drill a borehole or to engage in borehole drilling programme for groundwater exploration

68.—(1) No person shall drill, construct, enlarge or otherwise alter a borehole, or engage in borehole drilling programme, for the purpose of exploring for groundwater, except in accordance with the provisions of a permit issued under subsection (4).

(2) Any person who wishes to drill, construct, enlarge or alter a borehole, or engage in a borehole drilling programme for exploring for groundwater, shall apply to the Authority for a permit to drill a borehole or to engage in borehole drilling programme in the prescribed manner.

(3) An application for a permit to construct or drill a borehole shall be made in the manner and it shall be subject to such terms and conditions as the Authority thinks fit, including a term of duration which shall not exceed one year:

Provided that, where the borehole is intended to be constructed or drilled inside the area of operation of a Water Board—

(*a*) a notice of intent under subsection (1) shall also be filed with such Board; and

(*b*) such Board may advise the Authority as to why, in the Board's opinion, an application should not be granted, but the Authority shall not be bound by the advice of the Board.

(4) Upon receipt of the application for a permit under subsection (2), the Authority shall, among other things, consider—

(*a*) the safe yield of the aquifer from which the abstraction of water is proposed to be made; and

(*b*) the conformity of the proposed use with efficient water management practices.

(5) After considering the application in accordance with subsection (3), the Authority may issue a permit to drill a borehole or to engage in a borehole drilling programme subject to the prescribed terms and conditions, and such other conditions as the Minister may prescribe.

(6) The provisions of Part V shall apply, with the necessary changes, to a permit to drill a borehole or to engage in borehole drilling programme issued under this section in relation to the renewal, transfer, succession, suspension, variation or cancellation of such permit.

(7) Unless otherwise exempted, a person constructing a borehole shall keep a record of the progress of the work, which shall include—

(*a*) measurements of the strata passed through and the specimen of such strata;

(*b*) measurements of the levels at which water was struck; and

(*c*) measurements of the quantity of water obtained at each level, the quantity finally obtained and the rest level of the water.

(8) A person to whom subsection (7) applies shall allow any person authorized by the Authority, at any reasonable time—

(*a*) to have free access to the borehole;

(*b*) to inspect the borehole and the material excavated from it;

(*c*) to take specimens of such material and of water abstracted from the borehole; and

(*d*) to inspect and take copies of or extracts from the record required to be kept under this section.

(9) Where the person constructing a borehole on any land is not the occupier of the land, the obligation to allow any person authorized by the Authority to exercise his rights under this section shall be the obligation of the occupier of the land as well as of the person constructing or drilling a borehole.

(10) The Authority may by notice, whether conditionally or subject to specified conditions, exempt any person, in such circumstances as may be specified in the notice, from the operation of subsections (7) and (8).

Submission of records

69. A person constructing or drilling a borehole, if required to keep records under this Part, shall, within one month of the cessation of the construction, send to the Authority—

(*a*) a complete copy of the record, together with the specimens referred to in the record; and

(*b*) particulars of any test made, before such cessation of the construction, of the yield of water, specifying—

(i) the rate of flow throughout the test and the duration of the test; and

(ii) where practicable, the water levels during the test and thereafter until the water has returned to its natural level;

(*c*) a statement of whether, in his opinion (as determined by testing) the water is suitable for drinking or is highly mineralized, as the case may be; and

(*d*) if required by the Authority, such water samples as it may consider necessary.

Tests on neighbouring boreholes

70.—(1) Where any borehole is being constructed within eight hundred metres of an existing borehole, the Authority may, by notice require the person constructing the borehole to apply tests, to be specified in the notice, to the existing borehole and to supply to the Authority the particulars of the results of such tests including the rate of pumping and rest levels of water.

(2) Where the borehole to which the tests are to be applied is situated on the property of a person other than the person constructing the borehole and the person constructing the well or borehole is unable for any reason to apply the test, the Authority may, by notice, require the person upon whose property the existing borehole is situate to apply the tests to be specified in the notice to him, and to supply to the Authority the particulars of the results of such tests.

Contractor deemed to be constructor

71. Where any contractor constructs or drills a borehole on land belonging to or occupied by any other person, the contractor shall be deemed, for the purposes of this Act, to be the person constructing or drilling the borehole, and he shall be jointly and severally liable with the owner of the land to the discharge of the obligations under section 69.

Records may be required to be treated as confidential

72.—(1) A person constructing or drilling a borehole or the owner or occupier of the land on which construction takes place may give notice to the Authority requesting that—

(*a*) any copy of, or extract from, the record required to be kept under this Act; or

(*b*) any specimen taken or any other particulars connected with the borehole,

be treated confidentially.

(2) In response to such a notice, the Authority shall, if sufficient cause has been shown, thereupon not allow such copy, extract, specimen or other particulars, except in so far as it contains or affords information as to water resources or supplies, to be published or shown to any person other than a member of the Authority without the consent of the person giving the notice:

Provided that, if at any time the Authority gives notice to the person that, in its opinion, his consent is unreasonably withheld—

(*a*) the person may, within three months after the notice given by the Authority, appeal to the Water Tribunal; and

(*b*) if, at the expiration of that period, no such appeal has been made or, after hearing the appeal, the Water Tribunal does not make an order restraining it from doing so, the Authority may proceed as if such consent had been given.

Waste of groundwater

73.—(1) No person shall—

(*a*) cause any groundwater to run to waste from any borehole, except for the purpose of testing the extent or quality of the supply or cleaning, sterilizing, examining or repairing the borehole;

(*b*) conduct the water from any borehole through any channel or conduit so that more than twenty per cent of the water is lost between the point of extraction and the point of use:

Provided that, where the water from any borehole is conducted through channels or conduits together with water from other sources, no person shall permit the waste of more than twenty per cent of the water in conducting the water from the point of extraction from the borehole to the point of use;

(*c*) use any water from any borehole for the purpose of domestic use or the watering of stock, except where such water is carried through pipes fitted with float valves or other satisfactory means of control, to prevent waste:

Provided that, where groundwater interferes or threatens to interfere with the execution or operation of underground works, whether water works or not, the Authority may, in any particular case, by notice permit such water to waste upon such conditions, regarding quantity and method of disposal, as the notice may specify.

Contamination and pollution of groundwater

74. Every person abstracting groundwater by means of a borehole shall, in order to prevent contamination or pollution of the water—

(*a*) effectively seal off to a sufficient depth any contaminated or polluted surface or shallow water in rock openings or soft broken ground;

(*b*) effectively seal the top of the borehole between the surface casing and the internal pump column, and the suction or discharge pipe;

(*c*) dispose of all return or waste water by means other than by return to the borehole;

(*d*) extend the borehole casing to a point not less than twenty centimeters above the elevation of the finished pump house or pump pit floor;

(*e*) use either welded or screw type borehole joints on the casing, if made of metal;

(*f*) dispose of effluents or drainage from any household, stable, factory, trade premises or other premises in such a manner as will prevent any such effluent or drainage from reaching such seal or groundwater; and

(*g*) carry out such other work as the Authority may by order direct, from time to time, for the prevention of contamination or pollution.

Authority may order special measures to safeguard groundwater resources

75. If—

(*a*) during the construction of or drilling a borehole, water is encountered in an aquifer;

(*b*) water from a water table or lower aquifer tends to flow from the upper aquifer to the lower aquifer; and

(*c*) in the opinion of the Authority this is likely to prove detrimental to the groundwater resources of the area,

the Authority may order what special measures shall be taken by the owner of the borehole so that the water from the higher aquifer cannot flow to the lower aquifer.

Artesian boreholes to be cased

76. Every artesian borehole and every sub-artesian borehole shall be efficiently cased, capped or furnished with such appliances as will readily and effectively arrest and prevent the flow therefrom over the surface of the ground or wasting from the borehole through the strata through which it passes.

Defective boreholes

77.—(1) Any borehole which encounters salt water, in this Part referred to as a "defective borehole", shall be securely cased, plugged or sealed off by the owner of the borehole, so that the salt water is confined to the strata in which it was found, and such casing, plugging or sealing shall be done in such a manner as effectively to prevent the salt water from escaping from the strata in which it was found into any other water bearing strata or on to the surface of the ground.

(2) This section shall apply to boreholes constructed or drilled before or after the commencement of this Act.

Interference with defective borehole, etc.

78. Any person who re-cases or removes the plugs or seals from a defective borehole, or deposits or causes or knowingly permits the deposit of, any dirt, rubbish or other material in any such borehole, except with the written permission of the Authority, commits an offence.

Application to carry out work on a defective borehole

79.—(1) Before any defective borehole is re-cased or the plugs are removed, the owner of the borehole, or his duly authorized representative, shall file with the Authority an application for permission to carry out such re-casing or the removal of the plugs or seals.

(2) The application shall contain such information as the Authority may require in relation to—

(*a*) the name and address of the owner of the borehole;

(*b*) its location, depth and size;

(*c*) the amount and location of casing or sealing in the borehole;

(*d*) the distance below the surface of the ground to the water level in the borehole;

(*e*) the strata penetrated;

(*f*) the distance from the surface of the ground to the top of the salt water stratum and the thickness of the salt water stratum; and

(*g*) any other matter specified by the Authority in respect of the borehole.

(3) The application shall also state the methods proposed for re-casing, re-plugging or resealing of the borehole.

Instructions to deal with defective borehole

80. The Authority, after consideration of any application under section 79, may call for additional data, and may make such investigation as it considers necessary, and if the borehole is found to contain salt water, shall by order give instructions to the applicant, specifying—

(*a*) the work that shall be done by the owner to place it in a satisfactory condition; and

(*b*) the time that shall be allowed to complete the work, and may inspect such work while it is in progress.

Authority may inspect borehole

81. The Authority may on its own initiative, or upon information or complaint from any source, make an examination of any borehole suspected of containing salt water, and may by order issue instructions for curing any defects in the borehole.

Sworn statements to be submitted

82.—(1) Upon completion of the works in pursuance of any instructions issued under this Act—

(*a*) the contractor who carries out the work; or

(*b*) if the work is done without a contractor, the owner of the borehole,

shall file with the Authority a statement sworn or affirmed specifying in detail the manner in which such work was done.

(2) The statement shall be filed within thirty days after the completion of the work.

Additional work on defective borehole

83.—(1) Upon receipt of a statement under section 82, the Authority shall determine, either from the statement or from inspection or test, whether the work has been satisfactorily performed.

(2) If the Authority determines that the work has not been satisfactorily performed, it shall, by order, issue additional instructions specifying the additional work required to place the borehole in a satisfactory condition, and specifying the time for the completion of such additional work.

(3) Upon the completion of such additional work, a statement sworn or affirmed shall be filed with the Authority as provided for in section 82.

Licensing of borehole drillers and constructors

84.—(1) No person shall engage in the trade of drilling or construction of boreholes unless the person is licensed as a borehole driller or a borehole constructor in accordance with the provisions of subsection (2).

(2) The Authority on application made to it in the prescribed manner and after being satisfied that the applicant meets the requirements specified in subsection (3) shall issue the applicant with a licence as a borehole driller or borehole constructor.

(3) The Minister shall prescribe the requirements including professional qualifications, terms and conditions that any person wishing to be issued with a licence as a borehole driller or borehole constructor under subsection (2) shall comply with and the circumstances under which a licence may be cancelled or suspended.

PART VII
Protected Areas and Controlled Activities

Protected areas

85.—(1) Where the Authority is satisfied that special measures are necessary for the protection of a catchment area or part thereof, notably from deforestation and from other land degradation activities, it may, with the approval of the Minister, by order published in the *Gazette*, declare such an area to be protected area.

(2) The Authority may impose such requirements, and regulate or prohibit such conduct or activities, in or in relation to a protected area as the Authority may think necessary to impose, regulate or prohibit for the protection of the area and its water resources.

Controlled areas in relation to drought

86. The Minister may, in relation to any water source, where the situation so requires due to shortage or anticipated shortage of water, by notice published in the *Gazette* and in such other manner appropriate for such area as the Minister may see fit, on the advice of the Authority, declare any part of Malaŵi to be a controlled area and establish a comprehensive and integrated plan for managing land, water and other natural resources within that area.

Controlled activities

87.—(1) Activities which constitute controlled activities include—

(*a*) irrigation of any land with waste water generated through any industrial activity or a water work;

(*b*) an activity aimed at the modification of atmospheric precipitation;

(*c*) artificial recharge of an aquifer with any waste or water containing waste; and

(*d*) any activity regarded by the Minister as likely to have a detrimental impact on water resources and declared by him as a controlled activity.

(2) Before declaring an activity as a controlled activity the Minister shall publish a notice in the *Gazette*—

(*a*) specifying the activity or class of activities proposed to be declared;

(*b*) listing all activities previously already declared controlled activities; and

(*c*) invite written comments on the proposed declaration to be received by him not later than sixty days after publication of the notice.

(3) No person shall undertake a controlled activity except under a permit granted by the Authority under Part VIII of this Act, *mutatis mutandis*.

PART VIII
Prevention and Control of Water Pollution

Prohibition of pollution

88.—(1) A person or public authority who, unless authorized under this Part, causes or allows—

(*a*) effluent to come into contact with any water;

(*b*) effluent to be discharged directly or indirectly into water; or

(*c*) water to be polluted,

commits an offence.

(2) Without prejudice to the provisions dealing with the safeguarding of existing lawful uses of water, subsection (1) shall apply to permits granted and works constructed before the commencement of this Act.

(3) In any proceedings for an offence under subsection (1), proof of the existence of a drain, pond, dump or other means by which effluent may be conveyed, retained or deposited as to come into contact, directly or indirectly, with water shall be *prima facie* evidence of pollution of that water.

(4) A person or public authority contravening subsection (1) through which damage is caused shall be liable to pay the cost of remedying the damage caused and restoring the environment, as far as is possible, to the condition that would have existed if the damage had not been caused.

(5) Where a person or authority fails to comply with subsection (4), the Authority may—

(*a*) apply to court for enforcement of compliance with the provisions; or

(*b*) enter any land and take such measures as may be necessary to ensure compliance with the provisions.

(6) In any proceedings under subsection (5), the court may, on application by the Authority acting on its own initiative or at the request of a catchment management committee or a Local Authority, require that person or authority to pay into court a sum not being less than one hundred per cent of the cost estimated by the Authority of remedying the damage caused and restoring the environment.

Pollution of water resources from an activity or process

89.—(1) Any person who owns, controls, occupies or uses land on which an activity or process is or was performed and which, unless authorized under this Part, causes, has caused or is likely to cause pollution of a water resource, shall take all such measures as may be necessary to prevent any such pollution from occurring, continuing or recurring.

(2) Measures referred to in subsection (1) may include—

(*a*) ceasing, modifying or controlling any activity or process causing the pollution;

(*b*) complying with any prescribed effluent standard or waste management practices;

(*c*) containing or preventing the movement of pollutants;

(*d*) eliminating any source of the pollution;

(*e*) remedying the effects of the pollution; and

(*f*) remedying the effects of any disturbance to the bed and banks of a watercourse.

(3) The Authority may direct any person who fails to take the measures required under subsection (1) or any one of them to—

(*a*) commence taking specific measures before a specific date; and

(*b*) complete them before a specific date.

(4) If a person fails to comply or to comply adequately with a directive given under subsection (3) the Authority may take the measures it considers necessary to remedy the situation and recover all costs incurred as a result thereof from the following persons—

(*a*) any person who is or was responsible for or who directly or indirectly contributed to the pollution or the potential pollution;

(*b*) the owner of the land at the time when the pollution or the potential pollution occurred or his successor in title;

(*c*) the person in control or in use of the land at the time when—

(i) the activity or the process was performed, or

(ii) the situation existed; or

(*d*) any person who negligently failed to prevent—

(i) the activity or the process being formed;

(ii) the situation from arising; or

(*e*) any other person who, in the opinion of the Authority, benefited from the measures undertaken by it under subsection (4), to the extent of such benefit.

Declaration of prohibited substances by the Authority

90. The Authority shall prescribe a list of substances which shall not be discharged under any circumstances under this Part.

91. The Minister shall, after consultation with competent authorities, prescribe standards of effluent quality with which effluent discharges shall comply.

Standards of effluent quality

92.—(1) A person who wishes to discharge effluent shall apply to the Authority for a discharge permit in the prescribed manner.

Application for effluent discharge permit

(2) The Authority shall, on receipt of an application under subsection (1), give public notice of the application in the prescribed manner.

(3) Any person with an interest in the outcome of the application made under this section may give notice of objection to the Authority in a manner and within the time prescribed.

(4) In determining whether or not to issue a permit to discharge effluent, the Authority shall consider the following—

(*a*) whether the proposed discharge is consistent with the National Water Resources Master Plan;

(*b*) the use of water from any source to which the discharge will be made;

(*c*) the standards for waterborne contaminants adopted by a competent authority;

(*d*) the impact of the discharge on existing water uses;

(*e*) the impact of the proposed discharge upon groundwater;

(*f*) any impact of the proposed effluent discharge upon the environment, including owners and occupiers of land and water resources in the vicinity of the proposed effluent discharge or construction of effluent treatment facility or disposal site;

(*g*) the effect of the proposed effluent discharge on Malaŵi's obligations relating to shared watercourses;

(*h*) the need to ensure the efficient and beneficial use of water resources; and

(*i*) any additional criteria the Minister may prescribe.

93. A permit to discharge effluent shall specify—

Contents of the permit

(*a*) the name and other details of the person to whom it is granted;

(*b*) the location of the discharge;

(*c*) the location of the relevant effluent treatment facility, if any;

(*d*) the limits of any constituent elements of the discharge;

(*e*) requirements for waterproofing or covering the relevant effluent treatment facility, if any;

(*f*) the duration of the permit, which shall be determined in accordance with the provisions of section 96;

(*g*) the conditions under which the permit is granted;

(*h*) the frequency of review of the permit; and

(*i*) whether the permit is subject to periodic review, suspension, amendment or revocation under this Act.

Terms and conditions of a discharge permit

94. A permit to discharge effluent shall be issued subject to—

(*a*) the protection of any water resource to which the discharge will be made as well as any existing or potential uses of the water resource, including environmental uses, by—

(i) setting out the specific volume of effluents that may be discharged;

(ii) setting out the rate of discharge;

(iii) specifying the concentration of certain constituents of the effluent;

(iv) specifying the times, if any, when effluents may not be discharged;

(v) specifying the locations where a discharge may, or may not, be made; and

(vi) adding only such terms regarding the protection of the water resource which the Authority may determine to be appropriate;

(*b*) the protection of any water resource, including groundwater, in the vicinity of a relevant effluent treatment facility, if any, by—

(i) specifying the location of the effluent treatment facility;

(ii) limiting the type, volume, composition or concentration of effluent discharged to the effluent treatment facility;

(iii) specifying the requirements for lining or covering the effluent treatment facility;

(iv) specifying the requirements for operating, managing or closing the effluent treatment facility; and

(v) adding any such terms for the protection of residents, water uses or water resources in the vicinity of the effluent treatment facility which the Authority may determine as appropriate;

(*c*) proper efficient discharge management, which—

(i) requires the monitoring, analysis and reporting on every discharge specifying the aspects of the discharge to be monitored and reported and specifying the devices to be used for such monitoring;

(ii) requires the preparation for the approval of the Authority of an effluent discharge management plan;

(iii) requires the payment of charges;

(iv) may require the addition of any such terms regarding proper effluent management which the Authority may determine to be appropriate; and

(v) requires the protection of public health.

Reference of permits to other authorities

95.—(1) Where the Authority proposes to grant, or to amend the terms of an effluent discharge permit, it shall refer the proposal, together with a copy or summary of the application and appropriate plans, specifications and other information to any relevant public authority.

(2) A public authority to which a proposal is referred under subsection (1) shall inform the Authority in writing within thirty days after the day on which the proposal was referred to it—

(*a*) whether the proposal is supported or whether there are objections to it; or

(*b*) whether, and if so, what special terms should be included in the proposed permit or amendment.

(3) The Authority shall—

(*a*) take into account any report and comments received under subsection (2);

(*b*) refuse to grant the proposed permit or make the proposed amendment if a competent public authority submits a written report objecting to the proposal on the grounds that public health is likely to be endangered by the proposed permit or amendment; and

(*c*) refuse to grant the proposed permit or make the proposed amendment if an Environmental Impact Assessment carried out pursuant to the provisions of the Environment Management Act and the Environmental Impact Assessment Guidelines determines that the environment is likely to be endangered by the proposed permit or amendment.

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Duration of permit to discharge effluent

96.—(1) The duration of a permit to discharge effluent may not exceed a term of five years.

(2) Subject to sections 98 and 101, a permit to discharge effluent expires at the end of its term of duration.

Renewal of permit to discharge effluent

97.—(1) A permit to discharge effluent may be renewed at least three months prior to its expiry if the permit holder submits an application for renewal to the Authority in the prescribed manner.

(2) When considering an application for renewal submitted under subsection (1), the Authority shall consider the application using the criteria for determination of applications referred to in section 92.

Review of permit to discharge effluent

98.—(1) The Authority, at any time during the duration of a permit to discharge effluent, may review such permit and amend the terms and conditions, if it considers it to be in the public interest.

(2) Before the Authority amends the terms and conditions of a permit to discharge effluent under subsection (1), the Authority may invite the permit holder to make representation in respect of the amendment.

Transfer of permit to discharge effluent

99.—(1) A holder of a permit to discharge effluent may apply to the Authority for approval to transfer his permit to another person.

(2) Upon receipt of an application for transfer of a permit to discharge effluent, the Authority shall—

(*a*) evaluate whether the terms and conditions of the proposed transfer are consistent with the terms and conditions of the permit;

(*b*) evaluate any deviation from the terms and conditions of the permit that may have an adverse impact upon other persons or the environment; and

(*c*) give the proposed transferee and any interested persons an opportunity to make representations with regard to the application, if they so wish.

(3) The Authority, within sixty days of receipt of the application for a transfer of a permit to discharge effluent, may grant the application, with or without additional conditions, or deny the application.

Succession to permit to discharge effluent

100. A permit to discharge effluent may pass to the named person as a successor-in-title at death or transfer, but that passage of the permit to a successor-in-title does not extend the duration of the permit.

Suspension and cancellation of permit to discharge effluent

101.—(1) Subject to subsection (2), the Authority may cancel a permit to discharge effluent, or suspend it in whole or in part, if—

(*a*) the permit holder fails to comply with this Act or any of the terms or conditions of the permit;

(*b*) the permit holder fails to commence discharge operations or effluent treatment facility construction operations within the period stipulated in the permit;

(*c*) having commenced with the discharge of effluent or construction of an effluent treatment facility, the permit holder ceases the discharge or construction; or

(*d*) it is in the public interest to do so.

(2) The Authority may not suspend or cancel a permit referred to in subsection (1), without giving the permit holder an opportunity to make representations within thirty days of receipt of the notification of the Authority's intention to suspend or cancel such permit.

Effects of expiry or cancellation of permit to discharge effluent

102. If a permit to discharge effluent expires and is not renewed, or is cancelled prior to its expiry, the Authority may—

(*a*) order the permit holder to restore, at the permit holder's expense, the state of affairs that existed before the permit was granted, if doing so is reasonable and practicable under the circumstances; or

(*b*) enter into an arrangement with the permit holder or any other person for the maintenance of the effluent discharge works.

Pollution of water resources from spillage

103.—(1) If an incident occurs in which a harmful substance which may find its way into a water resource spills, then the person responsible for the incident or the owner of the substance involved in the incident or the one in control of the substance involved in the incident at the time of the incident or any other person with knowledge of the incident shall, as soon as reasonably practicable after obtaining knowledge of the incident, report to—

(*a*) the Minister;

(*b*) the Authority;

(*c*) the Malaŵi Police Service or to the relevant District Council; and

(*d*) the relevant catchment management committee.

(2) The person responsible for the incident, the owner of the substance involved in the incident and the person in control of the substance involved in the incident at the time of the incident shall—

(*a*) take all reasonable measures to contain and minimize the effects of the incident;

(*b*) perform clean-up procedures;

(*c*) remedy the effects of the incident;

(*d*) take such measures within such specified time as the Authority may either verbally or in writing direct; and

(*e*) compensate any affected community for any and all damage suffered to life and property.

(3) Any verbal directive by the Authority shall be confirmed in writing within fourteen days, otherwise the directive shall be deemed to have been withdrawn.

(4) If the person specified in subsection (2) fails to comply or to adequately comply with a directive of the Authority, or if the Authority be unable to give the directive timeously it may itself take the measures it considers necessary to—

(*a*) contain and minimize the effects of the incident;

(*b*) perform clean-up procedures; or

(*c*) remedy the effects of the incident.

(5) The Authority may recover all reasonable costs incurred by it from the persons specified in subsection (2) jointly or severally as a result of taking measures under subsection (4).

PART IX
Government Waterworks

Powers of Authority to undertake works

104.—(1) Subject to the provisions of this Act and the National Water Resources Master Plan prepared under Part IV the Authority may for purposes of sustainable development of water resources or the performance of any of its functions, under this Act—

(*a*) construct, use or operate any works;

(*b*) abstract and impound the water from any watercourse or borehole, or

(*c*) alter the course of any watercourse.

(2) Any land needed for purposes of subsection (1) may be acquired in any manner provided by law for the acquisition of land for public purposes.

State schemes and community projects

105.—(1) In this Part—

"community project" means a project operating under a licence for one or more purposes which are—

(*a*) connected with the use of water or the drainage of land situated entirely or for the most part, within a given area; and

(*b*) classified by the Authority, with the approval of the Minister, as community purposes,

which has been declared by the Authority by notice published in the *Gazette*, to be a community project for the purposes of the Act;

"state scheme" means—

(*a*) a scheme, whether formulated in detail or not, for the use for any public purpose of the whole or part of a water resource; or

(*b*) a scheme for draining any land,

which has been declared by the Minister after consultation with the Authority, by notice published in the *Gazette*, to be a state scheme for the purposes of this Act.

(2) For the purposes of the definition of "state scheme" in subsection (1), "public purpose" includes any of the following—

(*a*) the supply of water, or of electrical energy derived from the energy of moving water, to the public or any section of the public;

(*b*) the drainage or reclamation of lands;

(*c*) the protection of any water resource, its source or catchment;

(*d*) identification and development of a retarding basin for the control and management of flood water or any other measures for its control or disposal;

(*e*) the conservation or improvement of water quality;

(*f*) the distribution and allocation of water among the beneficiaries of the scheme;

(*g*) the measurement of water; or

(*h*) the storage or impoundment of water for purposes of bulk distribution, including the construction of reservoirs for impounding surface run-off and for regulating stream flows.

Precedence of schemes and projects

106.—(1) A state scheme shall take precedence over all other schemes for the use of water or the drainage of land.

(2) A community project shall take precedence over all other schemes for the use of water or the drainage of land, except a state scheme.

(3) The Minister—

(*a*) may direct that a state scheme or community project be executed in augmentation, modification or improvement and, subject to the provisions of this Act, so as to supersede any other works for the use of water; and

(*b*) may at any time order that any works contemplated or under execution or completed be aided from public moneys to such extent as may be appropriated by Parliament.

Construction of works for state schemes

107.—(1) The Authority may, after reasonable notice to any landholder concerned, construct and maintain upon any land such works as it may deem necessary or desirable for the purposes of any state scheme.

(2) Compensation on just terms shall be payable by the Government to the owner of the land on which any such works are constructed, but in assessing the amount of compensation payable, the Minister shall take into consideration any benefit accruing to the land by the construction of the works and any adverse effect on the land caused by the works, as the case may be.

(3) The cost of construction and maintenance of any such works shall be paid out of moneys appropriated by Parliament.

Community projects

108.—(1) The Authority shall not issue a licence to abstract and use water to a community project unless—

(*a*) the proposed project is approved by the persons owning or occupying at least two-thirds of the particular area concerned in the project; and

(*b*) provision is made by the project for any adequate alternative supply of water to be supplied to permit holders likely to be adversely affected and unable to benefit from the scheme.

(2) No licence for a community project shall be cancelled or varied except with the consent of the Minister.

Contribution towards schemes and projects

109. Any person who, in the opinion of the Minister, will benefit from the scheme or project shall, if the Minister so determines, contribute towards the cost of the state scheme or community project in cash or in kind.

PART X
Safety of Dams and Flood Management

Definitions

110.—(1) In this Part—

Cap. 53:03
Cap. 53:05

"approved professional person" means a person registered under the Engineers Act, and National Construction Industry Act, and approved by the Authority after consultation with the Engineers Board and the National Construction Industry Council as the case may be;

"dam" includes any existing or proposed structure which is capable of containing, storing or impounding water, including temporary impoundment or storage, whether that water contains any substance or not;

"dam with a safety risk" means any dam—

(*a*) which can contain, store or dam more than 50,000 cubic metres of water, whether that water contains any substance or not, and which has a wall of a vertical height of more than five metres, measured as the vertical difference between the lowest downstream ground elevation on the outside of the dam wall and the non-overspill crest level or the general top level of the dam wall;

(*b*) belonging to a category of dams declared under section 112 (2) to be dams with a safety risk; or

(*c*) declared under section 112 (3) (*a*) to be a dam with a safety risk;

"owner of a dam" or "owner of a dam with a safety risk" includes the person in control of that dam; and

"task" includes a task relating to designing, constructing, altering, repairing, impounding water in, operating, evaluating the safety of, maintaining, monitoring or abandoning a dam with a safety risk.

Blockage of watercourses

111.—(1) No person shall engage in any construction activity that blocks or otherwise impedes the flow of water in a watercourse unless a licence authorizing the activity has been obtained in accordance with the provision of Part V of this Act.

(2) Subsection (1) shall apply regardless of whether an activity is directly instrumental to the abstraction of water from the watercourse or not:

Provided however that, if the activity is directly instrumental to the abstraction of water from the watercourse, the relevant abstraction licence shall imply an authorization to carry out a construction activity under this section.

(3) The Authority may take all reasonable measures to remove or to mitigate the effects of an unauthorized blockage of a watercourse and may recover the cost of such measures from the person or persons responsible for the blockage.

(4) Any person responsible for causing the unauthorized blockage of a watercourse shall be responsible for any damage to persons, property, or the environment caused by the unauthorized blockage, which damage shall be determined and assessed by a court of law.

(5) The Authority may bring an action for damage against any person or persons responsible for the blockage of a watercourse, for the purpose of compensation for any damage to the environment caused by the blockage.

Control measures for dams with safety risk

112.—(1) An owner of a dam shall—

(*a*) before submitting an application for a licence under Part V or within the period specified, provide the Authority with—

(i) any information, drawings, specifications, design assumptions, calculations, documents, copies of the Environmental Impact Assessment Report and test results requested by the Authority; and

(ii) a copy of the Environmental Impact Assessment Report and certificate issued in accordance with the Environment Management Act; and Cap. 60:02

(*b*) give any person authorized by the Authority access to the dam, to enable the authorized officer to determine whether—

(i) the dam is a dam with a safety risk;

(ii) the dam should be declared to be a dam with a safety risk;

(iii) a directive should be issued for specific repairs or alterations to the dam; or

(iv) the owner has complied with any provisions of this Act applicable to the dam.

(2) The Authority may by notice published in the *Gazette* declare a category of dams to be dams with a safety risk.

(3) The Authority may—

(*a*) direct the owner of a dam with a safety risk to submit, at the owner's cost, and within a period specified by the Authority, a report by an approved professional person regarding the safety of that dam; and

(*b*) direct the owner of a dam with a safety risk to undertake, at the owner's cost, and within a period specified by the Authority, any specific repairs or alterations to that dam which are necessary to protect the public, property or the resource quality from a risk of failure of the dam.

(4) The Authority shall afford affected persons the opportunity to petition for the review and evaluation of any dam reasonably believed to be a dam with a safety risk and shall provide the owner of any dam that is the subject of such a petition, a right to respond.

(5) If the owner of the dam fails to comply with the directive contemplated in subsection (3) (*b*), within the period specified, the Authority may undertake the repairs or alterations and recover the costs from the owner.

(6) Before issuing a directive, the Authority shall—

(*a*) be satisfied that the repairs or alterations directed are necessary, adequate, effective and appropriate to reduce the risk to an acceptable level; and

(*b*) consider the impact on public safety, property, the resource quality and socio-economic aspects if the dam fails.

Responsibilities of approved professional persons

113.—(1) When carrying out a task under this Part, an approved professional person also has a duty of care towards the Government and the general public.

(2) An approved professional person appointed to carry out a task on a dam shall—

(*a*) ensure that the task is carried out according to acceptable dam engineering practices;

(*b*) keep the prescribed records;

(*c*) compile the prescribed reports; and

(*d*) where the task includes constructing, altering or repairing a dam, issue a completion certificate to the owner of the dam to the effect that the task on that dam has been carried out according to the applicable design, drawings and specifications.

(3) An approved professional person appointed to carry out a dam safety evaluation shall—

(*a*) consider whether the safety norms pertaining to the design, construction, monitoring, operation, performance and maintenance of the dam satisfy acceptable dam engineering practices; and

(*b*) compile a report on the matters contemplated in (*a*) according to the prescribed requirements and submit the signed and dated report to the owner of the dam within the prescribed period.

Registration of dams with safety risk

114.—(1) The owner of a dam with a safety risk shall register that dam with the Authority.

(2) An application for registration shall be made within one hundred and twenty days—

(*a*) after the date on which the dam with a safety risk becomes capable of containing, storing or impounding water;

(*b*) after the date on which an already completed dam is declared to be a dam with a safety risk; or

(*c*) after publication of a notice declaring a category of dams to be dams with a safety risk, as the case may be.

(3) A successor-in-title to an owner of a dam with a safety risk shall promptly inform the Authority of the succession, for the substitution of the name of the owner.

Factors to be considered in declaring dams with safety risk

115. In declaring a category of dams or a dam to be a category of dams or a dam with a safety risk, the Authority shall consider—

(*a*) the need to protect the public, property and the resource quality against the potential hazard posed by the dam or category of dams;

(*b*) the extent of potential loss or harm involved;

(*c*) the cost of any prescribed measures and whether they are reasonably achievable;

(*d*) the socio-economic impact if such a dam fails;

(*e*) in the case of a particular dam, also—

(i) the manner in which that dam is designed, constructed, altered, repaired, operated, inspected, maintained or abandoned;

(ii) the person by whom that dam is designed, constructed, altered, repaired, operated, inspected, maintained or abandoned; and

(iii) the manner in which the water is contained, stored or impounded in that dam.

Exemptions

116.—(1) The Minister may, on the recommendation of the Authority, exempt a dam belonging to a certain category, by notice published in the *Gazette*, from compliance with any provision of this Part or any regulation made under this Act, on conditions determined by the Minister on the recommendation of the Authority.

(2) The Minister may withdraw the exemption or impose further or new conditions in respect of the exemption.

(3) Before recommending an exemption, the Authority shall consider—

(*a*) the degree of risk or potential risk posed by the dam or category of dams to public safety, property and the resource quality;

(*b*) the manner of design, construction, alteration, repair, impoundment of water in, operation or abandonment of the dam or category of dams;

(*c*) the supervision involved in the dam or category of dams;

(*d*) alternative measures proposed for regulating the design, construction, alteration, repair, operation, maintenance, impoundment of water in, inspection or abandonment of the dam or category of dams and the effectiveness of these measures;

(*e*) the knowledge and expertise of the persons involved in any task relating to the dam or category of dams;

(*f*) comments solicited from the surrounding communities;

(*g*) the costs relating to the dam or category of dams;

(*h*) any security provided or intended to be provided for any damage which could be caused by the dam or category of dams;

(*i*) recommendations made in an environmental impact assessment or an environmental audit report; and

(*j*) whether the dam or category of dams are permitted in terms of a licence or any other authorization issued by or under any other Act.

Regulations regarding dam safety and prevention of flood risk

117.—(1) The Minister may make regulations regarding dam safety including—

(*a*) the establishment of a register of approved professional persons for dealing with dams with a safety risk;

(*b*) the provision of technical audit of the work of approved professional persons;

(*c*) classifying dams into categories;

(*d*) standard specifications regarding the construction, maintenance and repair of dams;

(*e*) requiring the owner of a dam with a safety risk to accomplish regular monitoring of the dam, to the extent and in the manner prescribed;

(*f*) requiring the registration of a specific dam with a safety risk, and setting out the procedure and the processing fee payable for registration;

(*g*) requiring an approved professional person appointed for a specific purpose for a specific dam to submit information, drawings, reports and manuals; and

(*h*) specifying time periods that shall be complied with.

(2) In making regulations under subsection (1), the Minister shall consider—

(*a*) the expertise required for the effective design, construction, alteration, repair, operation, maintenance and abandonment of a dam in the category concerned; and

(*b*) the qualifications and experience needed to provide the expertise for a particular category of tasks.

(3) Before making regulations under subsection (1), the Minister shall consult the relevant professional categories and any other appropriate statutory bodies.

Measures for flood mitigation and control

118. For the purpose of preventing or minimizing the risk of flooding and flood damage, the Authority may do any of the following—

(*a*) prohibit the construction on submersible lands or dikes, levees or other structures likely to hinder the run-off of flood-water; provided that authorization may be granted for the development of such structures if they are determined to be necessary for the protection of already existing residences or other private structures;

(*b*) alter or demolish dikes, embankments, levees, structures or other works, irrespective of their legal status, if they are determined by the Authority to hinder water run-off or to extend the flood plain with harmful results;

(*c*) prohibit the growing of crops, the building of structures or the placing of deposits on land located between a watercourse and any protective dikes, embankments or levees;

(*d*) cooperate with Local Authorities in determining the geographic extent of floodplain areas and assist such Authorities in regulating the development and use of lands within such areas; and

(*e*) in consultation with the Ministry responsible for Local Government, develop regulations providing for the control and management of storm water within municipal areas.

PART XI
Water Charges and Financial Provisions

Charges

119.—(1) The Minister may, on the recommendation of the Authority, by notice published in the *Gazette*, prescribe charges for—

(*a*) services provided by the Minister, the Authority, a public authority or authorized person under this Act;

(*b*) the abstraction and use of water under a licence granted under this Act;

(*c*) the discharge of effluents under a discharge permit granted under this Act; or

(*d*) any other licence or permit granted under this Act.

(2) The water abstraction charges determined by the Minister shall be based on a pricing strategy that takes into consideration—

(*a*) the need to differentiate among geographical areas, categories of water uses and water users;

(*b*) the need to achieve an equitable and efficient allocation of water and water conservation;

(*c*) the need to adhere to sound water management practices based on the "user pays" and the "polluter pays" principles; and

(*d*) the need to provide for incentives for timely payment of the charges and disincentives for non-payment of same.

Collection and use of water fees and charges

120.—(1) The Authority shall levy and collect charges and fees prescribed under section 119 (1) and it shall deposit the proceeds from the collection thereof into a separate account owned and operated by the Authority.

(2) A percentage of the proceeds from the collection of water charges and fees, to be determined on a yearly basis by the Minister on the recommendation of the Authority, shall be earmarked for use by the catchment management committees for their statutory purposes and paid out to them on request:

Provided that such percentage shall in no case be less than twenty per cent of the total amounts collected in any one year.

(3) The Authority shall apply the balance of the proceeds from the collection of charges in the pursuit of its statutory purposes.

(4) The Authority shall submit yearly to the Minister an audited statement of accounts under this section.

Water Resources Trust Fund

121.—(1) There is hereby established a fund to be known as the Water Resources Trust Fund (hereinafter referred to as the "Fund").

(2) The objective of the Fund is to assist in financing the conservation and management of water resources in Malaŵi.

(3) There shall be paid into the Trust Fund—

(*a*) such moneys as may be appropriated by Parliament for the purposes of the Fund;

(*b*) such moneys as may be received by the Fund from donations, grants, and bequests from whatever source; and

(*c*) such other moneys as may, by or under any Act, be payable to the Fund.

(4) The Fund shall be managed by trustees from time to time appointed and holding office under a trust deed, to be drawn-up by the Minister.

(5) The trustees shall develop and apply principles governing the grant of moneys from the Fund and for achieving the objective of the Fund.

(6) There shall be paid from the Fund such grants as the trustees may, from time to time, authorize in furtherance of the objective of the Fund.

PART XII
WATER TRIBUNAL

Establishment of Water Tribunal

122.—(1) There is hereby established a tribunal to be known as the Water Tribunal.

(2) The Water Tribunal shall have jurisdiction throughout Malaŵi, with power to conduct hearings anywhere in Malaŵi.

Composition of the Water Tribunal

123.—(1) The Water Tribunal shall consist of the following persons appointed by the Minister—

(*a*) a Chairperson;

(*b*) a Deputy Chairperson; and

(*c*) three other persons.

(2) The Minister shall appoint the Chairperson, and the Deputy Chairperson of the Water Tribunal on the recommendation of the Judicial Service Commission, provided that the Chairperson shall be a person qualified to hold the office of a judge of the High Court of Malaŵi.

(3) Only persons with knowledge of law, engineering, water resources management or related field, may be appointed to the Tribunal.

(4) A member of the Water Tribunal shall hold office for a period of five years and may be reappointed for one more period of five years.

(5) The terms and conditions of the members of the Water Tribunal shall be determined by the Minister in consultation with the Minister of Finance.

Vacancy in the office of a member of the Water Tribunal

124.—(1) The office of a member of the Water Tribunal shall become vacant if the member—

(*a*) dies or resigns;

(*b*) becomes bankrupt;

(*c*) adjudged or declared to be of unsound mind;

(*d*) is convicted of an offence punishable by imprisonment; or

(*e*) has had his appointment terminated in accordance with subsection (2).

(2) The Minister may, after consultation with the Judicial Service Commission and after giving the member an opportunity to make representations and after considering those representations, for good reason terminate the appointment of any member of the Water Tribunal.

Support staff and funds of the Water Tribunal

125.—(1) Administrative support for the Water Tribunal shall be provided by officials of the Ministry responsible for water affairs.

(2) Expenses of the Water Tribunal shall be paid out of money appropriated by Parliament for that purpose.

Indemnity of the Tribunal and its members

126. The Water Tribunal and the members of the Water Tribunal shall not be liable for an act or omission committed in good faith in the course of performing their functions under this Act.

Jurisdiction of the Water Tribunal

127.—(1) An appeal shall lie to the Water Tribunal at the instance of any aggrieved person who has a right or proprietary interest which is directly affected by a decision or order of the Authority, the Minister or a catchment management committee concerning any matter regarding water resources management, a permit or licence under this Act, and the Water Tribunal shall hear and determine any such appeal.

(2) In addition, the Water Tribunal shall have such jurisdiction to hear and determine disputes, and shall have such other powers and functions, as may be conferred or imposed on it by or under this or any other written law.

Time for lodging appeal

128. No appeal shall be entertained by the Water Tribunal unless it is lodged, where no period is so prescribed, within thirty days after the date on which written notice was served on the appellant notifying him of the decision or order against which he wishes to appeal:

Provided that the Water Tribunal may in any case, for good cause shown, admit an appeal after the time limited for lodgment of an appeal has expired.

Determination of appeals and disputes Cap. 18:01

129.—(1) In proceedings on any matter before it, the Water Tribunal shall have and may exercise all the powers vested in Commissioners under the Commissions of Inquiry Act.

(2) In determining an appeal, the Water Tribunal may affirm, quash or vary the decision or order concerned, as justice requires.

(3) In determining a dispute, or in exercising any other function, the Water Tribunal shall decide the matter on the merits of the case and may make such order as, in its judgment, will do justice between the parties.

(4) Any person aggrieved by the decision of the Water Tribunal may apply to the High Court for judicial review:

Provided that on a matter of law, an appeal shall lie to the High Court.

Rules and procedures of the Water Tribunal

130. The Water Tribunal shall determine its own procedures and rules for or with respect to the lodgment, hearing and disposal of appeals and other matters before it.

PART XIII
Associations of Water Users

Establishment and purposes of associations of water users

131.—(1) An association of water users (hereinafter called an "association") may be established by the agreement of the simple majority of a group of water users, at their initiative or also at the

initiative of the Authority, for one or a combination of the following purposes—

(*a*) to manage, distribute and conserve water from a source used jointly by the members of the association;

(*b*) to manage groundwater resources in a Groundwater Conservation Area established under Part VI;

(*c*) to acquire and operate an abstraction licence or a discharge permit under this Act;

(*d*) to resolve conflicts between members of the association related to the joint use of a water resource;

(*e*) to collect water user charges and fees on behalf of the Authority; and

(*f*) to represent the special interests and values arising from water used for a public purpose, such as in an environmental or conservation area.

(2) A group of water users for the purpose of subsection (1) shall comprise any user of water from a common stream or other source irrespective of the purpose of that use.

Approval and registration of associations of water users

132.—(1) The proposed members of an association shall prepare a constitution in the form set out in the Schedule hereto and submit such constitution to the Authority for approval in accordance with the procedure as the Minister may prescribe in regulations made under this Act.

(2) The Minister may, by regulation, amend the constitution set out in the Schedule hereto.

(3) Upon request of a group of water users intending to establish an association, the Authority shall provide assistance in formulating the constitution.

(4) A management committee shall be the executive organ of the association and shall be elected and have the powers as set out in the constitution prepared under subsection (1).

Registration of associations of water users, compulsory membership implied

133.—(1) Upon approval by the Authority of the constitution prepared under section 132, the association shall be registered in the Register maintained by the Authority in accordance with section 134.

(2) With effect from the date of registration in the Register, all water users within the area of an association as defined in the constitution shall be required to become members of the association and shall be bound by the constitution.

(3) Any person who has reasonable grounds to object to becoming a member of an association of water users under subsection (2) shall

lodge an appeal to the Minister in accordance with the provisions of section 142.

(4) The Authority shall cause membership of an association to be recorded on the abstraction licence or on the effluent discharge permit of each member issued in accordance, respectively, with Parts V and VIII of this Act and in the Register maintained by the Authority in accordance with section 134.

Register of associations of water users

134.—(1) The Authority shall establish and maintain a Register in which it shall record the particulars of associations registered with the Authority.

(2) The Authority may determine additional particulars of associations registered with the Authority to be included in the Register.

(3) Information contained in the Register shall be accessible by the public on payment of prescribed fee.

Power of Authority to give directions

135. In any case where the Authority is satisfied that an association does not perform its functions satisfactorily, it may give directions to the association relating to the performance of the functions of the association. Such directions may refer to—

(*a*) the division and distribution of water amongst the members of an association;

(*b*) the management and protection of any water source;

(*c*) the drainage of the land where water is used; and

(*d*) any other matter which the Authority considers necessary or desirable.

Disestablishment of associations of water users

136.—(1) The Minister may, on the recommendation of the Authority, by notice published in the *Gazette*, disestablish an association of water users—

(*a*) in the circumstances provided for in the constitution of the association;

(*b*) if it is in the best interest of the association or its members;

(*c*) if an investigation of its affairs or financial position reveals that disestablishment is appropriate;

(*d*) if the Authority has taken over a power or duty of the association as a result of dissensions among the management committee or its members; or

(*e*) if the association is no longer active or effective.

(2) Before disestablishing an association of water users the Minister shall—

(*a*) publish a notice in the *Gazette*—

(i) stating the intention to disestablish the association of water users;

(ii) setting out the reasons for disestablishing the association of water users; and

(iii) inviting written comments on the proposal, which comments shall be submitted by a date which may not be earlier than sixty days after the publication of the notice; and

(*b*) consider all comments received by the specified date.

(3) Upon disestablishment of an association of water users, the Authority shall enter a corresponding record in the Register it keeps under section 134, and on the abstraction licence or on the effluent discharge permit of each member, issued in accordance with Parts V and VIII of this Act, respectively.

Winding-up of affairs of associations of water users

137.—(1) When an association of water users is disestablished, its affairs shall be wound-up—

(*a*) as provided for in its constitution; or

(*b*) by a person appointed by the Minister in accordance with directives given by the Minister if the constitution does not provide for winding-up.

(2) The costs of winding-up an association of water users shall be a cost against the estate of the association.

(3) If the affairs of an association of water users are wound-up, the Minister may direct that an amount equivalent to any financial contribution with interest made to the association from public funds be reimbursed, before assets are distributed among the members of the association.

(4) No transfer duty, other tax or duty is payable in respect of the transfer of any assets under subsection (3).

PART XIV
Miscellaneous Provisions

Entry by Authority for monitoring of water resources

138.—(1) An employee or agent of the Authority, on the instructions of the Authority, may without warrant enter onto any land and inspect any water resource located within or accessible from the land concerned, in order to take such measures as the Authority may think fit for the purpose of—

(*a*) conserving or regulating the water resource, or preserving it from pollution or protecting the bed over which it lies or flows;

(*b*) removing any obstruction from, or for clearing and deepening, the bed; or

(*c*) preventing the illegal diversion, waste or pollution of the water resource or interference with any such bed.

(2) A person authorized by the Authority may enter and remain on land for purposes of performing functions or exercising powers conferred under this Act and may take such measures and construct or operate works as may be necessary for the investigation, monitoring, use, control, protection, management or administration of water resources.

(3) Subject to section 152, an authorized person may enter any land for the purpose of investigating water resources and may—

(*a*) construct works;

(*b*) install and equip gauging, recording and monitoring stations;

(*c*) investigate or monitor boreholes and ancillary works on any land;

(*d*) make surveys;

(*e*) take measurements or samples; or

(*f*) make alterations or remove any of the above.

(4) Whatever is attached to land does not become part of the land for the purposes of giving the owner or occupier of land a proprietary interest in it.

Obligations on entry on land

139.—(1) In exercising the powers under section 138, the authorized person shall—

(*a*) cooperate, as much as possible, with the owner or occupier of the land;

(*b*) stay on the land only for as long as it is reasonably necessary;

(*c*) remove from the land, on completing any works, all plant, machinery, equipment, goods or buildings brought on to the land, other than anything that the owner or occupier of the land agrees may be left there; and

(*d*) leave the land as nearly as possible in the condition in which it was prior to the entry being made.

(2) Subject to section 138 (1) an authorized person shall not enter on to the land or premises without first giving reasonable notice, whether written, verbal or otherwise, to the landholder or other responsible person in charge of the land or premises, and any such entry shall be at a reasonable hour:

Provided that an authorized person may enter without giving notice if—

(*a*) he has reason to believe that a provision of this Act or of any regulation or order made under this Act has been or is about to be contravened;

(*b*) he is unable to give notice within a reasonable time having regard to all the circumstances; or

(*c*) he has reasonable grounds for not giving notice.

(3) If so requested by the owner or occupier of the land or premises, the authorized person shall produce evidence of his right or permission, as the case may be, to enter on to the land.

(4) It shall be the duty of any person exercising any powers under this section to do so with the reasonable care and in such manner as to cause as little damage as possible in so doing.

Inspection of land in relation to water use

140.—(1) An inspector may enter land for purposes of—

(*a*) inspecting works or use of water; or

(*b*) taking samples or making tests, to find out whether—

(i) water is being wasted, misused or polluted;

(ii) the terms of any water permit, waste discharge permit or any other permit granted under this Act are being complied with; or

(iii) an offence is being committed against this Act, regulation or an order made under this Act is otherwise being complied with.

(2) An inspector may, without warrant, enter any land or premises for the purpose of ascertaining whether there is or has been any contravening of the provisions of this Act or of any regulation or order made under this Act in relation to any water resource.

Establishment of bodies to implement international agreements

141.—(1) The Minister, acting in consultation with other relevant Ministers, may establish bodies to implement—

(*a*) international agreements relating to the management and development of water resources; or

(*b*) regional agreements relating to the management and development of water resources shared with other countries in the promotion of regional cooperation over shared water resources.

(2) Whenever it appears to the Minister expedient to do so, he may consult with his counterpart within the Southern African Development Community (SADC) on matters relating to water resources management in line with the SADC Protocol on Shared Watercourses.

(3) The Minister may share relevant information with other state, regional and international organizations regarding water and water research, subject to the limitations such as requirements of state security.

General appeals

142.—(1) Except as otherwise provided under this Act, any person aggrieved by a decision of the Authority, authorized person or public authority made under this Part of the Act may, within one month, appeal to the Minister in a prescribed manner.

(2) A person who fails, without reasonable cause or neglected to exercise his right of objection under this Act, shall not have a right to appeal under subsection (1).

(3) Where a person is still aggrieved with the decision of the Minister, he may appeal to the Water Tribunal.

General offence and penalty

143. A person who neglects or fails to comply with any order or requirement given or imposed on him by or under this Act commits an offence and on conviction shall be liable to a fine of K1,000,000 and to four years imprisonment.

Specific offences

144.—(1) Any person who diverts, dams, stores, abstracts or uses water or constructs or maintains any waterworks or in any way interferes with the flow of watercourse other than in accordance with a right granted under this Act commits an offence and, upon conviction shall be liable to a fine of K5,000,000 and to eight years imprisonment.

(2) Any person who discharges effluents in contravention to the provisions of this Act commits an offence and upon conviction shall be liable to a fine of K10,000,000 and to ten years imprisonment.

(3) Any person who fails to comply with a notice given by the Authority requiring him to take measures specified therein to avoid or mitigate damage to water resources commits an offence and shall be liable to an administrative penalty.

(4) Any person who continues to exercise a water right previously granted to him after suspension or variation of the same by the Minister commits an offence and shall be liable to an administrative fine.

(5) Any person who continues to exercise a water right previously granted to him after determination or diminution of the same by the Minister commits an offence and shall be liable to an administrative penalty.

(6) Any person who fails to comply with any condition, express or implied, subject to which a right was granted or who abstracts or uses water for a purpose other than the one authorized in the grant, commits an offence and shall be liable to an administrative fine and in addition to any requirement which the Minister may impose.

(7) Any person who prevents, obstructs or refuses entry upon his land by the Authority or any member or agent thereof for purposes of inspecting any works thereon or ascertaining the amount of water being abstracted commits an offence and shall be liable to an administrative penalty.

(8) Any person who refuses, fails or neglects to demolish or to change the use of waterworks as required of him by the Authority commits an offence and shall be liable to an administrative penalty and in addition to any suspension of right which the Authority may impose.

(9) Any person who refuses, fails or neglects to demolish any unlawfully constructed works after being ordered by the Authority to demolish the same commits an offence and shall be liable to an administrative fine and where the Authority demolishes the unlawful works, the Authority shall recover all expenses incurred as a civil debt from the person.

(10) Any person who, after being ordered by the Authority to modify or to demolish works previously constructed under a right which has been determined, refuses, fails or neglects to do so commits an offence and shall be liable to an administrative penalty.

(11) Any person who prevents, constructs or refuses entry upon his land by the Authority or any member or agent thereof for the purposes of conducting investigations and surveys commits an offence and shall be liable to an administrative penalty.

(12) Any person who interferes with or damages a hydrometeorological station, water quality station, hydrological station, hydrogeological station, groundwater monitoring station or any equipment thereof of works connected therewith commits an offence and shall be liable to an administrative penalty and if the equipment or works, as the case may be, have been damaged so as to require replacement or reconstruction, the person responsible shall be liable further to pay the costs of replacement or reconstruction, as the case may be.

(13) Any person who prevents, obstructs or refuses entry upon any land by a representative or agent of a catchment management committee for the purposes specified under this Act commits an offence and shall be liable to an administrative penalty.

(14) Any person who refuses or fails to submit himself to the jurisdiction of a catchment management committee by refusing, failing or neglecting to comply with directions, rules, regulations, by-laws or guidelines of the catchment management committee commits an offence and shall be liable to an administrative penalty.

(15) Any person who fails to provide the Minister within the time specified by him with any data, information, documents or materials required by the Minister under this Act commits an offence and shall be liable to an administrative penalty.

(16) A water management institution which fails to make information at its disposal available to the public under this Act commits an offence and shall be liable to an administrative penalty.

(17) Any person who undertakes a controlled activity without a permit granted under this Act commits an offence and shall be liable to an administrative penalty and the controlled activity undertaken shall thereupon be forthwith stopped by the Minister.

Miscellaneous offences

145.—(1) No person shall—

(*a*) willfully obstruct, molest or hinder any inspector or other employee of or person authorized by the Minister or the Authority acting in the exercise or performance of his powers and functions under this Act;

(*b*) without the written permission of the Authority, knowingly or wilfully—

(i) deface, alter or remove; or

(ii) cause to be defaced, altered or removed,

any survey mark, water gauge, weir or measuring device or other work, structure or appliance installed with the approval of the Authority for the purposes of water control or investigation;

(*c*) willfully hinder or interrupt, or cause to be hindered or interrupted, any permit holder, or his employee, contractor or agent, in the lawful exercise or performance of any powers and functions under this Act;

(*d*) without lawful authority, willfully let off or discharge water from the works of any permit holder so that the permit holder loses the use of that water;

(*e*) without lawful authority, lay, erect or construct, or cause to be laid, erected or constructed, any work to connect with the work of any permit holder which is capable of drawing water from that work;

(*f*) unlawfully interfere with the works or water supply of any permit holder; or

(*g*) neglect or fail to comply with any lawful order given under this Act.

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

(3) Any person who—

(*a*) causes or allows water to be wasted or misused; or

(*b*) takes or uses water for a purpose other than provided by the water permit,

commits an offence.

(4) Any person who—

(*a*) assaults, threatens, resists, obstructs, hinders or delays the authorized person or a public authority in the performance of any function or duty under this Act; or

(*b*) allows or encourages another person to do any of the acts under paragraph (*a*),

commits an offence.

(5) Where a person is convicted under subsection (2), the court may, in addition to any other penalty, order that person to pay, by way of compensation, any person who may have suffered any damage as a result of the action for which that person is convicted.

(6) Any person who—

(*a*) interferes;

(*b*) attempts to interfere; or

(*c*) allows another person to interfere, with any hydrological station,

commits an offence.

Proceedings for offences

146. Without prejudice to the rights of any person to bring proceedings in respect of an offence, the Minister or the Authority may, subject to section 148, institute and maintain criminal proceedings in any court against any person accused of an offence under this Act or under any rules or regulations made under this Act.

Penalties for offences

147.—(1) Any person convicted of an offence under this Act, or under any regulations or rules made under this Act for which no other penalty is provided shall be liable to a fine of K1,000,000 and to four years imprisonment and where the person continues the contravention, shall be liable to a fine of K5,000 for every day during which the offence continues.

(2) A person who is convicted of the same offence subsequently shall be liable to a fine of K10,000,000 and to ten years imprisonment and where the person continues the contravention, shall be liable to a fine of K20,000 for each day during which the offence continues.

(3) Where under this Act penalty is provided for a continuing or subsequent offence, the penalty shall apply—

(*a*) in the case of a continuing offence, if the person continues to contravene the provision for which he was convicted after the date on which he was convicted; or

(*b*) in the case of a subsequent offence, if the person contravenes the same provision for which he was convicted earlier.

Administrative penalties

148.—(1) If the Authority is satisfied on reasonable grounds that a person has contravened this Act, the Authority may impose administrative penalties on the person by doing one or more of the following—

(*a*) giving the person a written warning;

(*b*) directing the person to do a specified act, or refrain from doing a specified act, for one or more of the following purposes—

(i) to remedy the effects of the contravention;

(ii) to compensate persons who have suffered loss because of the contravention;

(iii) to ensure that the person does not commit further contravention;

(*c*) requiring the person to pay monetary penalty of K2,000,000; or

(*d*) requiring the person to pay monetary penalty of K10,000 for each day during which the contravention continues.

(2) Before taking action under subsection (1), the Authority shall give the person written notice of the proposed action, specifying the grounds for it and the facts supporting those grounds, and allowing twenty-one days after the notice is given for the person to ask for a hearing on the matter. If the person requests a hearing on the matter, the Authority shall hold a hearing before taking the action. The hearing shall be held in private unless the person consents to the hearings being held in public.

(3) A person on whom an administrative penalty has been imposed and who fails or refuses to comply with the administrative penalty commits an offence and, on conviction shall be liable to a fine of K5,000,000 and to five years imprisonment.

(4) Where the administrative penalty imposed by the Authority is a monetary penalty and the person on whom the monetary penalty has been imposed does not pay the monetary penalty for more than thirty days from the date of the initial demand in writing by the Authority, the amount in respect of the monetary penalty shall be recoverable by the Authority as a civil debt.

Offences by bodies corporate relating to state of mind

149.—(1) Where it is necessary to establish, for the purposes of this Act, the state of mind of a body corporate in relation to particular conduct, it is sufficient to show that—

(*a*) the conduct was engaged in by a director, employee or agent of the body corporate within the scope of his actual or apparent authority; and

(*b*) the director, employee or agent had the state of mind.

(2) A reference in subsection (1) to the state of mind of a person includes a reference to—

(*a*) the knowledge, intention, opinion, belief or purpose of the person; and

(*b*) the person's reasons for the intention, opinion, belief or purpose.

(3) A reference in this section to engaging in conduct includes a reference to failing or refusing to engage in conduct.

Offences by bodies corporate relating to liability of directors

150. Where an offence against a provision of this Act or regulations made hereunder is committed by a body corporate, each director of the body corporate also shall be guilty of the offence and on conviction shall be liable to the same penalty unless it is established that he took reasonable precaution and exercise due diligence to avoid the commission of the offence.

Penalties for offences by bodies corporate

151. Where a body corporate is convicted of an offence under this Act, the court may, if the court thinks fit, impose a pecuniary penalty not exceeding an amount equal to five times the amount of the maximum pecuniary penalty that could be imposed by the court on an individual convicted of the same offence.

Damage caused by the Minister, etc., to be compensated

152.—(1) Where damage is caused to land through the exercise of powers conferred upon the Minister, the Authority or an authorized officer by this Act, the Government shall compensate all parties having an interest in that land.

(2) For purposes of this section, damage to land includes—

(*a*) deprivation of possession of the surface land;

(*b*) damage to the surface of land and any improvements, trees or crops;

(*c*) damage to stock; or

(*d*) all consequential damage.

(3) Compensation under this section may be—

(*a*) in the form of money;

(*b*) provision of an alternative supply of water;

(*c*) exchange of land for another piece of public land; or

(*d*) any other type of compensation which the Minister may consider appropriate.

(4) In calculating monetary compensation—

(*a*) for damage to land under this section;

(*b*) in respect of compulsory acquisition of any interest in land.

Prescribed guidelines

153. The Minister may, on the advice of the Authority, from time to time, prescribe guidelines to be followed by any authorized person or public authority while exercising their powers under this Act.

Decision to be in regard to objectives

154. While exercising his powers and functions under this Act, the Minister, Authority, authorized person or any other person shall have regard to—

(*a*) the objectives of this Act;

(*b*) any relevant international agreement regulating the use of water to which Malaŵi is a party;

(*c*) the provisions of the water action plan;

(*d*) any policy of the Government concerning the decentralization of administrative responsibilities;

(*e*) any guidelines prescribed by the Minister under this Act; and

(*f*) any delegation that may have been made by the Minister.

Protection of the Minister and others from liability

155. No matter or thing done or omitted to be done by—

(*a*) the Minister, the Authority, a catchment management committee or the Water Tribunal;

(*b*) any person acting under the direction of the Minister; or

(*c*) any member of or person acting under the direction of the Authority, the catchment management committee, the Water Tribunal authorized under this Act,

shall, if the matter or thing was done or omitted in good faith for the purpose of executing this Act or any rule, regulation or order made under this Act, subject the Minister or any such member of the Authority, Committee, or Water Tribunal or person in his personal capacity to any action, suit, claim or demand whatsoever.

Public consultation

156.—(1) A requirement imposed by or under this Act for a person (in this section called the "designated person") to undertake public consultation in relation to any application made, or action proposed to be taken, under this Act shall be construed as a requirement to ensure that this section is complied with in relation to that application or action.

(2) The designated person shall publish or broadcast, as the case may be, a notice, in relation to the application or proposed action—

(*a*) in the *Gazette*;

(*b*) in at least one national newspaper circulating in the area to which the application or proposed action relates; and

(*c*) in at least one local radio station broadcasting in that area.

(3) The notice shall, in each case—

(*a*) set out a summary of the application or proposed action;

(*b*) state the premises at which the details of the application or proposed action may be inspected;

(*c*) invite written comments on or objections to the application or proposed action;

(*d*) specify the person or body to which any such comments are to be submitted; and

(*e*) specify a date by which any such comments are required to be received, not being a date earlier than thirty days after publication of the notice.

(4) The designated person shall make arrangements for the public to obtain copies, at reasonable cost, of documents relating to the application or proposed action which are in the possession of the designated person.

(5) The designated person shall consider—

(*a*) any written comments received on or before the date specified under subsection (3) (*e*); and

(*b*) any comments, whether in writing or not, received at any public meeting held in relation to the application or proposed action at which the designated person was represented, or pursuant to any other invited to comment.

(6) The designated person shall publish, through the same media as were employed pursuant to subsection (2), notice of the fact that a copy of the decision in writing of the designated person in relation to the application or proposed action, and of the reasons therefor, is available for public inspection at the same premises as were notified under subsection (3) (*b*).

(7) Where regulations made under this Act so require, the designated person shall cause a public meeting to be held in relation to the application or proposed action.

Regulations

157.—(1) The Minister may make regulations, not inconsistent with this Act, for or with respect to any matter which by this Act is required or permitted to be prescribed, or which is necessary or expedient to be prescribed for carrying out or giving effect to this Act.

(2) Without prejudice to the generality of subsection (1), such regulations may make provision for or with respect to—

(*a*) abstraction of groundwater and works therefor;

(*b*) inspection of works;

(*c*) plans and specifications to be submitted by applicants under this Act;

(*d*) charges for water use under a permit and fees for licences;

(*e*) forms to be used under this Act;

(*f*) provide for the registration of existing users of water and structures;

(*g*) the duration, granting, amending, renewing, suspending, varying or cancelling of permits or licences as the case may be, or any other conditions;

(*h*) provide for and regulate the making of objections and the time in which objections shall be made;

(*i*) provide for the prevention of waste, misuse or pollution of water;

(*j*) providing for the formation, functions and conduct of associations of water users;

(*k*) for safety in dam construction; and

(*l*) generally for the better carrying out of the provisions of this Act.

(3) The Authority may make rules, not inconsistent with this Act, for or with respect to any matter which by this Act is required or permitted to be prescribed by the Authority.

Cap. 1:01

(4) Notwithstanding section 21 (*e*) of the General Interpretation Act, the regulations or rules made under this section may create offences in respect of any contravention of the regulations or rules and may, for any such offences, impose a fine of up to K250,000 and to imprisonment for two years.

PART XV
Repeals, Savings and Transitional Provisions

Transitional provisions

158. At the commencement of this Act—

Cap. 61:01

(*a*) no person shall sink any borehole or use any water pursuant to the provisions of the Mines and Minerals Act without a permit to construct or to drill a borehole issued under section 68 of this Act, and without a licence to extract groundwater issued under section 39;

Cap. 61:01

(*b*) no consent for alluvial or river locations under the provisions of the Mines and Minerals Act shall be given without the prior written approval of the Authority, and any consent given shall be subject to conditions that the Authority may require;

(*c*) reference to the Minister in so far as it relates to issues relating to water resources in the Mines and Minerals Act shall be deemed to be a reference to the Minister under this Part of the Act; Cap. 61:01

(*d*) the provisions dealing with works and uses existing before the commencement of this Act shall apply to existing permits and rights to use water granted under the Mines and Minerals Act exercised by the Minister and the Authority in accordance with the provisions of this Act. Cap. 61:01

Notification of existing rights

159.—(1) Every person claiming an existing right shall, within twelve months from the date on which this Act comes into operation, notify the Authority of such claim.

(2) Every existing right shall determine if the person entitled thereto fails to notify the Authority in accordance with subsection (1).

Authority to record existing rights and to issue licence

160.—(1) Where the Authority receives a notification under section 159, it shall carry out investigations to verify the existence of the right and if satisfied shall record such right and issue a licence in respect thereof.

(2) Where an existing right has been recorded and a corresponding licence issued in accordance with subsection (1), the existing right shall be subsumed by such licence and dealt with in the manner prescribed for abstraction licences under Part V.

Application of other relevant laws

161. Wherever the provisions of this Act are inconsistent with the provisions of—

(*a*) the Environment Management Act; Cap. 60:02

(*b*) the Fisheries Management and Conservation Act; Cap. 66:05

(*c*) the Forest Act; Cap. 63:01

(*d*) the Inland Shipping Waters Act; Cap. 71:01

(*e*) the Waterworks Act; Cap. 72:01

(*f*) the Mines and Minerals Act; or Cap. 61:01

(*g*) any other written law, the provisions of this Act shall apply.

Repeal and savings

162.—(1) The Water Resources Act is hereby repealed.

(2) Any subsidiary legislation made under the Act repealed under subsection (1) in force immediately before the commencement of this Act— Cap. 72:03

(*a*) shall remain in force unless in conflict with this Act and be deemed to be subsidiary legislation made under this Act; and

(*b*) may be repealed or amended by subsidiary legislation made under this Act.

SCHEDULE

Model Constitution of an Association of Water Users

s. 132

1. The Constitution of the Association of Water Users:

There is hereby formed the Association of Water Users (hereinafter referred to as the "Association").

The Association, including its management committee, shall have the status of a legal person and in that capacity it shall be capable of suing and being sued.

The liability of any venture of the Association shall be limited.

The members of the Association shall be villagers, institutions, companies, committees and government authorities or any person natural or legal, as may be users of water from sources located within the area of operation of the Association.

2. The objects of the Association:

The objects of the Association shall be to—(*delete those not applicable*)

(*a*) manage, distribute and conserve water from a source used jointly by the members of the Association;

(*b*) to construct, rehabilitate, operate and maintain any works for the purposes of management of the water resource in its area of operation;

(*c*) arbitrate in the resolution of conflicts among holders of water abstraction licences and/or effluent discharge permits within its area of operation;

(*d*) agree by consensus of its members equitable reductions in the quantities of water abstracted from the source under its responsibility in times of drought or other restrictions on resource availability;

(*e*) obtain and operate any water abstraction licence and/or effluent discharge permit or any other permit under the provisions of the Water Resources Act;

Cap. 72:03

(*f*) do such other things as may be considered necessary by a majority of its members in order to manage the water resources in its area of operation in a fair and equitable manner in accordance with the intent and provisions of the Water Resources Act.

Cap. 72:03

3. The area of operation of the Association:

The area of operation of the Association shall be as shown on the attached map.

4. Annual General Meeting and Extraordinary General Meetings:

An annual general meeting shall be held at least once each year, not more than fifteen months following the previous annual general meeting. An extraordinary general meeting of the Association may be called by five per cent of members giving two weeks notice to the Secretary in writing.

One-third of the full number of members representing no fewer than four from each of the upper and the lower area of the catchment or from each village present shall constitute a quorum.

Voting can be exercised by a member or proxy in favour of another member provided the proxy form is in the hands of the Secretary prior to the meeting.

Decisions at the annual general meeting shall be made by simple majority vote, including decisions on the assessments to be levied of members and on the budget of the Association.

5. Management Committee:

A management committee shall be elected at the annual general meeting of the Association and shall consist of six elected members from among the membership of the Association.

The committee so elected may sue and be sued in the name of the Association for moneys or otherwise, and shall have the powers to bind the Association by contract.

The committee shall collect and receive any moneys due to the Association and pay moneys owed by the Association from time to time and open and maintain a bank account through its authorized officers and submit such annual audited accounts to the Annual General Meeting and to the National Water Resources Authority.

The management committee shall meet not less than once in each quarter of the year and all elected members must be present.

The management committee shall decide by a two-thirds majority vote.

The management committee shall also decide the extent, manner and time of levying the assessments laid down by the annual general meeting of the Association.

The management committee shall appoint and employ such employees as may be necessary to fulfil the purposes of the Association.

6. Liability of members:

The liability of members is limited to the amount of unpaid charges and interest thereon owing by them to the Association.

7. Liability of Association:

The Association shall not be liable for any indebtedness other than that contracted by its management committee in conformity with this constitution.

8. General duties of members:

Each member hereby undertakes with other members and each of them as follows—

(*a*) to pay all assessments levied against him/her by the Association;

(*b*) not to draw from the source more water than the amount specified in the member's abstraction licence, or as determined by the committee if this is the object of the Association, and, in general; and

(*c*) to observe the rules of the Association.

IRRIGATION

CHAPTER 72:04

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CHAPTER 72:04

IRRIGATION

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CHAPTER 72:04

IRRIGATION

An Act to make provision for the sustainable development and management of irrigation, protection of the environment from irrigation related degradations, establishment of the National Irrigation Board and for matters connected therewith or incidental thereto 16 of 2001 G.N. 2/2013

[31st January, 2002]

PART I
Preliminary Provisions

1. This Act may be cited as the Irrigation Act. Short title

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

"Board" means the National Irrigation Board established under section 5;

"Chairman" means the Chairman of the Board who is elected under section 6 (3);

"committee" means a committee of the Board established under section 11;

"drainage" means removal of excess surface and ground water from agricultural land;

"existing Government smallholder irrigation scheme" means a smallholder irrigation scheme specified in the Schedule;

"Executive Secretary" means the Executive Secretary of the Board who is appointed under section 21;

"farm" includes garden, plot or any other agricultural holding;

"farmer" means an owner or subsector of an agricultural holding or a tenant;

"Fund" means the Irrigation Fund established under section 25;

"immediate family member", in relation to any person, means that person's spouse, child, parent, brother, sister, grandchild or grand parent;

"irrigation" means application of water, confined in time and space, enabling satisfaction of water requirements of a crop at a given time of its vegetative cycle or to bring the soil to the desired

moisture level outside the vegetative cycle and, in the case of a field, includes one or more water applications per season;

"irrigation consultant" means any person engaged to carry out civil works related to irrigation and drainage;

"irrigation management authority" means any local community organization established for the purpose of promoting local participation in the development and management of irrigation and includes any irrigation scheme, club, cooperative or association;

"irrigation scheme" means a systematic and orderly irrigation programme covering a defined area of land regardless of the type or system of irrigation employed;

"member" means a member of the Board;

"Policy" means National Irrigation Policy and Development Strategy;

"public watercourse" means a public watercourse which is commonly used for irrigation; and

"Register" means the register kept by the Board under section 40.

PART II
National Irrigation Policy and Development Strategy

Policy to rank paramount

3. Every public officer and any authority in Malaŵi exercising or performing powers, duties or functions in connexion with or concerning the commitment of the Government in development and management of irrigation in Malaŵi as declared in the National Irrigation Policy and Development Strategy (in this Act otherwise referred to as the "Policy") shall, in the exercise of his powers or the performance of his duties or functions, consider and treat the Policy as ranking paramount in the business of the Government and shall further consider it to be his paramount duty to act with all due diligence and dispatch in taking such action as is required or necessary to give effect to the Policy.

Publication and revision of Policy

4.—(1) The Policy shall be published by the Minister for general distribution and copies of its publication shall be made freely available and without charge in and outside Malaŵi to bodies connected with irrigation.

(2) Following any change in the Policy or following any legislative or statutory action or other action having similar effect taken by the Government in pursuance or in the implementation of the Policy, the Minister shall publish in the *Gazette* the changes.

PART III
Establishment of the Malaŵi Irrigation Board

Establishment of the Malaŵi Irrigation Board

5. There is hereby established a Board to be known as the Malaŵi Irrigation Board (in this Act otherwise referred to as the "Board").

Composition of the Board

6.—(1) The Board shall consist of—

(*a*) six persons, who shall be appointed by the Minister, at least four of whom shall be appointed from industry, academic, research and irrigation institutions;

(*b*) two local farmers who shall be appointed by the Minister from irrigation organizations; and

(*c*) the following *ex officio* members—

(i) the Secretary for Agriculture or his representative;

(ii) the Secretary for Lands or his representative;

(iii) the Secretary for Water Development or his representative; and

(iv) the Controller of Irrigation Services.

(2) A representative of an *ex officio* member referred to in subsection (1) shall be designated by, or on behalf of, the *ex officio* member by a notice in writing to the Board to attend the meetings of the Board and, upon such designation, such representative shall not attend to the business of the Board by representation.

(3) The Chairman shall be elected by the Board from among its members:

Provided that no member appointed under paragraph (*c*) of subsection (1) shall be elected as Chairman.

Tenure of office and vacancies

7.—(1) Subject to subsection (2), a member, other than an *ex officio* member, shall hold office for a period of three years and shall be eligible for re-appointment for another three-year term but the office of the member shall become vacant—

(*a*) if he resigns by giving one month notice in writing to the Board;

(*b*) upon his death;

(*c*) if he is absent without valid excuse from three consecutive meetings of the Board of which he has had notice;

(*d*) if he becomes an undischarged bankrupt;

(*e*) if, upon conviction of any offence of moral turpitude, he is sentenced to a term of imprisonment exceeding six months without the option of a fine;

(*f*) if he becomes of unsound mind; or

(*g*) if he participates, directly or indirectly, in an activity which is in contravention of this Act.

(2) A member, other than an *ex officio* member, shall be subject to removal by the Minister on grounds of incompetence, incapacity or being compromised in the exercise of his duties to the extent that his ability to give objective advice is seriously in question.

(3) On vacation of office by a member, the vacancy shall be filled by a person appointed in accordance with the provisions of section 6 (1) (*a*) under which the former member was appointed:

Provided that if the remaining period is less than six months, the Minister may decide not to have the vacancy filled until the expiry of the period.

Allowances and expenses of members

8.—(1) Members or members of a committee shall be paid such an allowance as the Minister shall determine.

(2) The Board may make provision for the reimbursement of any reasonable expense incurred by a member or a member of a committee in connexion with the business of the Board or the committee.

Policy directions

9. The Board may, where necessary, seek the general direction of the Minister on the manner in which it is to carry out its duties under this Act.

Proceedings of the Board

10.—(1) Subject to the other provisions of this Act, the Board may regulate its own procedure.

(2) The Board shall meet for the transaction of business at least once every three months at such places and at such times as the Chairman may determine.

(3) An extraordinary meeting of the Board may be called by the Chairman upon written notice of not less than seven days received from any member and shall be called if at least four members so request in writing:

Provided that if the urgency of any particular matter, does not permit the giving of such notice, an extraordinary meeting may be called upon by giving a reasonable notice.

(4) Half of the members shall form the quorum of any meeting of the Board.

(5) There shall preside at any meeting of the Board—

(*a*) the Chairman; and

(*b*) in the absence of the Chairman, such member as the members present and forming a quorum may elect among their number for the purpose of that meeting.

Committees of the Board

11.—(1) The Board may, for the purpose of performing its functions under this Act, establish other committees and delegate to any such committee such of its functions as it considers necessary.

(2) The Board may appoint as members of a committee established under subsection (1) persons who are or are not members of the Board and such persons shall hold office for such period as the Board may determine.

(3) Subject to any specific or general direction of the Board, a committee may regulate its own procedure.

Minutes of meetings

12. The Board shall cause minutes to be kept of the proceedings of every meeting of the Board and of every meeting of a committee.

Disclosure of interest by members

13.—(1) If any member is present at a meeting of the Board or of any committee at which any matter which is the subject of consideration is a matter which that person or his immediate family member or his professional or business partner is directly or indirectly interested in a private or professional capacity, he shall, as soon as is practicable after the commencement of the meeting, disclose such interest and, unless the Board or the committee otherwise directs, that person shall not take part in any consideration or discussion of, or vote on, any question touching on such matter.

(2) A disclosure of interest shall be recorded in the minutes of the meeting at which it is made.

Protection of members

14. No action, suit or other proceedings shall be brought or instituted personally against any member or a member of a committee in respect of any act done in good faith in the course of carrying out the provisions of this Act.

Invited persons

15.—(1) The Board may in its discretion at any time and for any period invite any person, and the Minister may in like manner nominate an officer in the public service, to attend any meeting of the Board or of any of its committees and take part in the deliberations of the meeting but such person or officer shall not be entitled to vote at the meeting.

(2) Section 14 shall apply, *mutatis mutandis*, to a person or an officer attending a meeting of the Board or committee pursuant to subsection (1).

Oath of secrecy

16. Every—

(*a*) member;

(*b*) member of a committee;

(*c*) employee of the Board; and

(*d*) consultant in the service of the Board,

shall, upon assumption of his office, take such oath of secrecy as may be approved by the Board or as may otherwise be prescribed under this Act.

Prohibition of publication or disclosure of information by unauthorized persons

17.—(1) No person shall, without the consent in writing given by or on behalf of the Board, publish or disclose to any person, otherwise than in the course of his duties, contents of any document, communication or information which relates to, and which has come to his knowledge in the course of, his duties under this Act.

(2) Any person who contravenes subsection (1) shall be guilty of an offence and liable to a fine of K100,000 and to imprisonment for five years.

PART IV
Functions and Powers of the Board

Functions of the Board

18.—(1) The functions of the Board shall be to advise Government and other stakeholders on policy matters relating to irrigation and drainage.

(2) Without prejudice to the generality of subsection (1), the Board shall—

(*a*) approve standards and guidelines for the development and management of irrigation and drainage;

(*b*) consider and advise on proposals for the enactment of legislation that may affect irrigation and drainage;

(*c*) review progress of the development and management of irrigation and drainage at national level;

(*d*) act as a forum for information sharing;

(*e*) conduct an inquiry into any matter falling within the scope of the functions of the Board;

(*f*) exercise authority affecting registration of irrigation consultants under this Act; and

(*g*) promote and maintain cooperation in irrigation and drainage with similar bodies in other countries and with international bodies connected with irrigation and drainage.

Powers of the Board

19. Subject to the directions of the Minister, whether general or special, the Board shall have the power to do all such things as are incidental or conducive to the carrying out of its functions under this Act.

PART V
The Secretariat of the Board

Secretariat of the Board

20. The secretariat of the Board shall consist of the Executive Secretary and such other suitably qualified public officers as may be required for the proper administration of this Act.

Executive Secretary of the Board

21.—(1) The Board shall appoint, on such terms and conditions as it may determine, an Executive Secretary of the Board who shall be the chief executive of the Board and shall in addition perform such duties as the Board shall assign to his office and ensure the effective administration and implementation of this Act.

(2) For the avoidance of doubt, the Executive Secretary shall be appointed from within or without the civil service.

(3) Without derogation from the generality of the responsibilities and duties of the Executive Secretary conferred under subsection (1), the Executive Secretary shall be responsible for the day to day administration of the Board.

(4) The Executive Secretary, or such other officer of the Board as the Executive Secretary may designate, shall attend meetings of the Board and of any committee and may address such meetings but shall not vote on any matter:

Provided that the person presiding at any meeting may, for good cause, require the Executive Secretary or such other officer to withdraw from such meeting.

(5) Section 14 shall apply, *mutatis mutandis*, to the Executive Secretary and other employees of the Board.

Other employees

22.—(1) The Board may appoint, on such terms and conditions as it may determine, such other employees, subordinate to the Executive Secretary, as it considers necessary for the performance of its functions and to assist the Executive Secretary in discharging his duties and responsibilities.

(2) The Board may delegate to the Executive Secretary the appointment of employees of the Board of such junior ranks as the Board shall specify.

Disclosure of interests by employees, etc.

23.—(1) An employee of the Board or a consultant to the Board who, or whose immediate family member, is directly or indirectly interested in a private, professional or official capacity in any matter being considered by the Board shall disclose such interest.

(2) A disclosure of interest under subsection (1) shall be made to the Executive Secretary who shall take such decision as he considers appropriate in each case and submit a report thereon to the Board.

Functions of the secretariat of the Board

24.—(1) The secretariat of the Board shall be responsible for implementing the programmes of the Board.

(2) Without prejudice to the generality of subsection (1), the secretariat of the Board shall—

(*a*) provide administrative backup services to the meetings and other functions of the Board;

(*b*) compile and present to the Board irrigation and drainage programmes for review;

(*c*) manage and coordinate the Fund in accordance with general and specific directions of the Board;

(*d*) prepare and submit annual progress reports for consideration by the Board; and

(*e*) perform such other functions as may be assigned to it by the Board.

PART VI
Irrigation Fund

Establishment of the Irrigation Fund

25.—(1) There is hereby established a fund to be known as the Irrigation Fund (in this Act otherwise referred to as the "Fund").

(2) The Fund shall consist of—

(*a*) such sums as shall be appropriated by Parliament for the purposes of the Board;

(*b*) any levy imposed pursuant to section 33;

(*c*) advances made to the Fund under section 27;

(*d*) such sums as are paid under this Act by way of fees, fines or other penalties;

(*e*) such sums or other assets as may be received by the Board under subsection (3); and

(*f*) such moneys as may otherwise vest in or accrue to the Board.

(3) The Board may—

(*a*) accept money by way of grants or donations from any source in or outside Malaŵi;

(*b*) with the approval of the Minister, raise by way of loans from any source, in or outside Malaŵi, such money as it may require for the discharge of its functions; and

(*c*) charge and collect fees in respect of programmes, publication, documents and other services provided by the Board.

The Fund to vest in the Minister Cap. 37:01

26. The Fund shall be vested in the Minister and, subject to this Act and the Finance and Audit Act, shall be administered in accordance with his directions.

Advances to the Fund

27. If in any financial year the income of the Fund together with any surplus income brought forward from a previous year is insufficient to meet the actual or estimated liabilities of the Fund, the Minister responsible for finance may make advances to the Fund in order to meet the deficiency or any part thereof and such advances shall be made on such terms and conditions, whether as to repayment or otherwise, as the Minister responsible for finance may determine.

Objects of the Fund

28. The objects for which the Fund is established shall be the development and management of irrigation and drainage.

Application of the Fund

29. Without derogation from the generality of section 28, the Fund may be applied for the purposes of—

(*a*) financing, by way of loans or grants, any research or study carried on, by or for the benefit of persons or organizations engaged in irrigation and drainage;

(*b*) the acquisition of land, equipment, materials and other assets and the construction of buildings in order to promote the objects of the Fund;

(*c*) paying the cost of any irrigation scheme which the Minister, on the recommendation of the Board, considers to be in the interest of the development and management of irrigation and drainage;

(*d*) meeting any expenses of the Board and those arising from the establishment and maintenance of the Fund; and

(*e*) any purpose which the Minister, on the recommendation of the Board, considers to be in the interest of the objects of the Fund.

Books and other records of accounts, audit and reports of the Fund

30.—(1) The Minister shall cause to be kept proper books and other records of account in respect of receipts and expenditure of the Fund.

(2) The accounts of the Fund shall be audited by the Auditor General who shall have all the powers conferred upon him by the Finance and Audit Act. Cap. 37:01

(3) The Minister shall cause to be prepared, as soon as practicable, but not later than six months after the end of the financial year, an annual report on all the financial transactions of the Fund.

(4) The report under subsection (3) shall include a balance sheet, an income and expenditure account and the annual report of the Auditor General and shall be laid by the Minister before the National Assembly.

Holdings of the Fund

31.—(1) All sums received for the purposes of the Fund shall be paid into a bank account and no amount shall be withdrawn therefrom except by means of cheques signed by such persons as are authorized in that behalf by the Minister.

(2) Any part of the Fund not immediately required for the purposes of the Fund may, on the recommendation of the Board, be invested in such manner as the Minister, after consulting with the Minister responsible for finance, may determine.

Financial year

32. The financial year of the Fund shall be the period of twelve months ending on 30th June in each year or on such other date as the Minister may specify by order published in the *Gazette*:

Provided that the first financial year of the Fund may be a period shorter or longer than twelve months as the Minister shall determine, but in any case not longer than eighteen months.

Levy

33. The Board may, from time to time, by order published in the *Gazette*, impose a levy.

PART VII
Local Community Participation

Purpose of this Part

34. The purpose of this Part is to provide for local community participation in development and management of irrigation and drainage.

Irrigation management agreement

35.—(1) For proper management of irrigation, the Minister may, on the recommendation of the Board, enter into an irrigation management agreement with an irrigation management authority providing for—

(*a*) a management plan; and

(*b*) assistance to be provided by the Government.

(2) Subject to performance of unfulfilled obligation under an irrigation management agreement to the right of third party, an irrigation management agreement may be terminated by either party.

Minister may make rules

36.—(1) The Minister may, on the recommendation of the Board, make rules for the better carrying into effect of the purposes of this Part.

(2) Without prejudice to the generality of subsection (1), the rules may—

(*a*) provide for development and management of irrigation and drainage;

(*b*) facilitate the establishment of irrigation management authorities for the benefit of the local communities;

(*c*) encourage District Assemblies, nor-governmental organizations, the private sector and other relevant institutions to contribute towards provision of irrigation extension services, in accordance with guidelines provided by the Government;

(*d*) authorize payments of grants or bonus out of public funds for encouragement of irrigation; and

(*e*) prescribe a mechanism for sharing costs between the Department of Irrigation and irrigation management authorities with regard to development and management of irrigation and drainage.

Incentives to farmers

37. The Minister shall, on the recommendation of the Board and in consultation with the Minister responsible for finance, determine—

(*a*) such fiscal incentives as may be necessary for the promotion of irrigation farming; and

(*b*) such measures as may be necessary for preventing the failure or non-viability of irrigation farming.

Rectification order

38.—(1) The Minister may, on the recommendation of the Board, issue a rectification order against any person whose acts or omissions have or are likely to have adverse effects on a public watercourse.

(2) A rectification order under subsection (1) shall specify—

(*a*) the particulars of the person or persons against whom it is made;

(*b*) the period within which anything required to be done under the rectification order shall be done;

(*c*) the penalties which may be imposed for non-compliance with the rectification order; and

(*d*) such other matters as the Minister may, on the recommendation of the Board, consider necessary with respect to rectification measures.

(3) For avoidance of doubt, a rectification order under subsection (1) may be issued against all users of a public watercourse and may also specify how the expenses in respect of rectification measures shall be apportioned amongst the users.

PART IX
Registration of Irrigation Consultants

Restriction on engagement of irrigation consultants

39.—(1) After the expiration of six months from the date of coming into operation of this Act, no person shall be engaged as an irrigation consultant unless he is registered under this Act.

(2) Any person who contravenes subsection (1) shall be guilty of an offence.

Register

40. The Board shall keep a Register in which the name of every person, immediately on his being accepted for registration by the Board, shall be registered, showing against his name such particulars as the Board shall from time to time deem necessary, and the Board shall enter into such Register all changes of registration particulars.

Qualification for registration as an irrigation consultant

41.—(1) No person shall be registered as an irrigation consultant unless he shall at the date of his application for registration have attained the age of twenty-five years, paid the prescribed registration fee and either—

(*a*) passed a qualifying examination approved by the Board and have had not less than three years post qualification practical experience in the work of an irrigation consultant; or

(*b*) satisfied the Board that he possesses a qualification which, in the opinion of the Board, furnishes a sufficient guarantee of the possession of the requisite knowledge and skill for the efficient practice of the work of an irrigation consultant.

(2) Notwithstanding subsection (1), the Board shall not register any person as an irrigation consultant unless it is satisfied that his professional and general conduct has been such as should not, in the opinion of the Board, debar him from registration.

Striking out

42. The Board shall have power to strike out of the Register a name of a registered person who shall have been found guilty of unprofessional conduct as defined in regulations made under section 55.

Unauthorized entry, etc., in the Register

43. Any person who, without the authority of the Board in that behalf, given generally or specially—

(*a*) makes any material entry in the Register;

(*b*) alters or changes any entry in the Register in any material particular; or

(*c*) gives false information to the Board or to any person knowing it to be false or having cause to believe it to be false with a view to securing his registration or the registration of another person, whether or not he or that other person is registered, shall be guilty of an offence.

Remuneration not recoverable by unregistered persons

44. A person who is not registered on the Register shall not be entitled to recover remuneration in respect of irrigation consultancy work done by him.

PART IX
Offences and Penalties

Wilful damage, etc. of canals

45.—(1) Mo person shall wilfully damage irrigation canals drains or associated infrastructure.

(2) No farmer shall fail to maintain irrigation canals, drains and associated infrastructure in his agricultural holding if the holding is within a communal irrigation scheme.

(3) Any person who contravenes subsection (1) or subsection (2) shall be guilty of an offence.

Destructive practices

46.—(1) No person shall—

(*a*) engage in practices which are destructive or potentially destructive to the catchment area of a river or public watercourse supplying water to an irrigation scheme or farm; or

(*b*) permit livestock to graze, otherwise than as prescribed by the Minister, in dambo areas under irrigation.

(2) Any person who contravenes subsection (1) shall be guilty of an offence and liable to a fine of K100,000 and to imprisonment for five years.

Setting or permitting fire

47.—(1) No person shall—

(*a*) set or cause to be set on fire crops on an irrigation scheme or farm; or

(*b*) without reasonable cause, refuse to assist in averting, fighting or extinguishing a fire on an irrigation scheme or farm.

(2) Any person who contravenes subsection (1) shall be guilty of an offence and liable to a fine of K100,000 and to imprisonment for five years.

Encroachment prohibited

48.—(1) No person shall graze livestock or permit livestock to encroach upon any irrigation scheme or farm on which there is a crop which has not been harvested or which has been harvested but not removed.

(2) Any person who contravenes subsection (1) shall be guilty of an offence and liable to a fine of K100,000 and to imprisonment for five years.

Applying prohibited chemicals and substances

49.—(1) The Minister may, by notice published in the *Gazette*, prohibit the application on an irrigation scheme or farm of any chemical or substance.

(2) Any person who applies or causes to be applied on an irrigation scheme or farm any chemical or substance prohibited under subsection (1) shall be guilty of an offence and liable to a fine of K200,000 and to imprisonment for ten years.

PART X
Miscellaneous Provisions

Secrecy to be observed

50.—(1) A member, a member of a committee and every person employed under this Act shall not disclose to any person, except in the performance of his duties under this Act or when required to do so by any written law, any information which he may have acquired in the course of his duties in relation to the financial or business affairs of any person, undertaking or business.

(2) Any person who contravenes subsection (1) shall be guilty of an offence and liable to a fine of K100,000 or to an amount equivalent to the financial gain generated by the offence, if such amount be greater, and to imprisonment for five years.

Failure to comply with directives, etc.

51. Any person who—

(*a*) contravenes or fails to comply with any provision of this Act or any regulations made hereunder, or any directive or order lawfully given, or any requirement lawfully imposed under this Act or any regulation made hereunder; or

(*b*) omits or refuses—

(i) to furnish any information when required by the Board to do so; or

(ii) to produce any document when required to do so by a notice sent by the Board; or

(*c*) knowingly furnishes any false information to the Board, shall be guilty of an offence.

General penalty

52. A person guilty of an offence for which no specific penalty is provided shall be liable to a fine of K60,000 or to an amount equivalent to the financial gain generated by the offence, if such amount be greater, and to imprisonment for three years.

Appeals

53.—(1) Any person aggrieved by the decision of the Board may, within thirty days thereof, appeal in writing to the Minister.

(2) Any person aggrieved by the decision of the Minister may, within thirty days thereof, apply to the High Court for judicial review of the decision of the Minister.

Keeping of records

54.—(1) The Minister may, on the recommendation of the Board, prescribe activities in respect of which records shall be kept for purposes of this Act and may require any person in possession or control of such records to transmit the records to the Board at such intervals as he may determine.

(2) Any person who—

(*a*) fails to keep records required under this Act; or

(*b*) fraudulently or knowingly alters any such records,

shall be guilty of an offence and liable to a fine of K40,000 and to imprisonment for two years.

Regulations

55.—(1) The Minister may, on the recommendation of the Board, make regulations for the better carrying into effect of the purposes of this Act.

(2) Without prejudice to the generality of subsection (1), the regulations may provide for—

(*a*) anything required to be prescribed under, or for the purposes of, this Act;

(*b*) any forms required for the purposes of this Act;

(*c*) fees payable in respect of any service provided by the Board;

(*d*) the furnishing of reports to the Minister on irrigation and drainage;

(*e*) the form of awards and certificates to be awarded by the Board;

(*f*) the manner of and conditions for recognition by the Government of associations and other bodies engaged in irrigation and drainage;

(*g*) the procedure to be followed in handing over existing Government smallholder irrigation schemes to local communities;

(*h*) the management of irrigation schemes;

(*i*) reports to be made for the purposes of this Act; and

(*j*) the definition of unprofessional conduct, the mode of inquiry into and the method of dealing with such conduct and the penalties which may be imposed upon a registered person found guilty of such conduct.

(3) Any regulation made under this Act may, notwithstanding the provisions of section 21 (*e*) of the General Interpretation Act, prescribe a fine of up to K20,000 and imprisonment for up to one year for an offence committed against any provision of such regulation. Cap. 1:01

SCHEDULE

ss. 2 and 55

EXISTING GOVERNMENT SMALLHOLDER IRRIGATION SCHEMES

Bua Irrigation Scheme

Chiriko Irrigation Scheme

Domasi Irrigation Scheme

Hara Irrigation Scheme

Kasinthula Irrigation Scheme

Khanda Irrigation Scheme

Lifuwu Irrigation Scheme

Likangala Irrigation Scheme

Limphasa Irrigation Scheme

Lufira Irrigation Scheme

Mpamantha Irrigation Scheme

Muona Irrigation Scheme

Njala Irrigation Scheme

Nkhate Irrigation Scheme

Segula Irrigation Scheme

Wovwe Irrigation Scheme

ELECTRICITY

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CHAPTER 73:01

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CHAPTER 73:01

ELECTRICITY

An Act to make provisions for the regulation of the generation, transmission, wheeling distribution, sale, importation and exportation, use and safety of electricity and for matters connected therewith or incidental thereto 22 of 2004 12 of 2016 G.N. 39/2007

[28th December, 2007]

PART I
Preliminary

1. This Act may be cited as the Electricity Act. Short title

2. In this Act unless the context otherwise requires— Interpretation 12 of 2016

"Authority" means the Malaŵi Energy Regulatory Authority established under section 3 of the Energy Regulation Act. Cap. 73:02

"average selling price" means the weighted average of the price paid by the single buyer in its contracts with generators, imports and any other supply obtained by the single buyer; 12 of 2016

"bulk consumer" means a consumer that is allowed to buy electricity directly from a generator; 12 of 2016

"case of emergency" with reference to a right of entry on or to land or premises conferred under this Act, means a case in which the person requiring entry to the land or premises in question has reasonable cause to believe that circumstances exist which are likely to endanger life or property, and that immediate entry to such land or premises is necessary to verify the existence of the circumstances or to ascertain the cause or to effect a remedy;

"customer" means a person purchasing electricity;

"consumer" means a person using electricity;

"contract of supply" means a contract between the operator of an electricity undertaking and any other person for the supply of electricity to that person;

"distribution" means the conveyance of electricity at less than 66,000 volts, or as may be prescribed by notice in the *Gazette*, from the transmission grid to customers through a distribution power system, and the terms "distribute" and "distributing" have corresponding meanings;

"distributor" means a person distributing electricity;

"distribution line" means any cable underground or overhead line for the distribution or reticulation of electricity from an electricity undertaking to a customer, together with any transformers, switchgear or other works necessary to, and used in connexion with, such cable underground or overhead line, and the buildings or such part thereof as may be required to accommodate transformers, switchgear and other works;

"electricity" means electric energy generated from hydro, thermal, coal, diesel, oil, biomass, gas, photovoltaic, wind, nuclear and any other source as defined in Energy Laws;

"electricity undertaking" means any installation works or services for the commercial generation, transmission, wheeling, distribution or supply of electricity which is owned or operated by a licensee, and 'electricity undertaker' bears a corresponding meaning;

Cap. 73:02 "energy laws" has the meaning ascribed thereto in the Energy Regulation Act;

"generation" means the production of electricity for sale, and the terms 'generate' and 'generating' have corresponding meanings;

"generator" means a person generating electricity;

"generation station" means any station for generating electricity, including any building, plant and machinery used for the purpose and all accessories necessarily incidental thereto, together with the site thereof, and any site intended to be used for such a station;

12 of 2016 "Grid Code" means the set of rules made by the Authority for operation, dispatch and reporting of the Malaŵi electricity supply industry;

12 of 2016 "independent power producer" means a person that privately builds, owns and operates facilities to generate and sell electricity to the Malaŵi electricity supply industry;

"interconnected system" means all high voltage electricity lines of 66,000 volts and above, or as may be prescribed by notice in the *Gazette*, including the related substations and associated equipment and generation stations to which they are connected and any distribution system connected thereto;

12 of 2016 "licensee" means the holder of a licence granted by the Authority under this Act for the generation, transmission, distribution, importation

or exportation of electricity, system and market operator and single buyer of electricity;

"Load Dispatch Centre" means a business area within the system and market operator which is used for coordination of generation, transmission and distribution of electricity in the interconnected electricity system; 12 of 2016

"power purchase agreement" means a contract between a generator and a single buyer or between a single buyer and a distributor to buy electricity for a pre-established period of time; 12 of 2016

"regulated consumer" means a consumer that must buy electricity from a distributor; 12 of 2016

"rural electrification" means grid or off-grid extension of distribution lines and generation of electricity in rural and remote areas whose internal rate of return is up to a maximum value set by the Authority, line voltage level is less than 66 kilovolts and generation capacity is up to 5 megawatts; 12 of 2016

"single buyer" means a licensee responsible for buying electricity from generators; 12 of 2016

"supply" means the sale of electricity to customers;

"supplier" means a person supplying electricity;

"system and market operator" means a licensee responsible for operating the transmission system and the electricity market of Malaŵi; 12 of 2016

"transmission" means the conveyance of electricity at 66,000 volts or more, or as may be prescribed by notice published in the *Gazette*, from generators or import points to distributors or large customers or export point through a transmission power system, and the terms "transmit" and "transmitting" have corresponding meanings;

"transmitter" means a person transmitting electricity;

"wheeling of power" means the transmission of power from a seller to a buyer using a transmission system of one grid to a load outside the grid boundary. 12 of 2016

PART II

Licences

Electricity supply activities to be carried on under licence 12 of 2016

3.—(1) A person shall not carry on or be engaged in any activity for the supply of electricity, including the export of electricity from, and import of electricity into, Malaŵi, without a generation, transmission, importation, exportation, system and market operation, single buyer or distribution licence, as the case may be, issued by the Authority.

(2) The activities in the electricity supply industry for which a licence is required are—

(*a*) generation of electricity for sale;

(*b*) operation of a transmission network;

(*c*) operation of a distribution network for the supply of electricity;

(*d*) importation of electricity into Malaŵi;

(*e*) exportation of electricity out of Malaŵi;

12 of 2016 (*f*) system and market operation; and

12 of 2016 (*g*) buying electricity from generators.

(3) The Authority has the power—

(*a*) to determine whether any person is carrying on or engaging in any activity for the supply of electricity; and

(*b*) to order any person not holding a licence and who is required to apply for and hold a licence under this Act to cease carrying on or be engaged in any activity in the generation, transmission, importation, exportation or distribution of electricity.

Licensees to hold only one type of licence 12 of 2016

4.—(1) Save as provided for in subsection (2), a licensee shall not be granted more than one type of licence listed in section 3 (2).

12 of 2016 (2) A holder of a transmission licence before commencement of this Act, shall hold simultaneously licences for distribution, imports, exports, system and market operator and single buyer.

12 of 2016 (3) A person may hold more than one generation licence.

(4) A licensee breaches this section if he or she holds more than five per cent shares in another company which holds a licence under this Act.

12 of 2016 (5) A person that holds a licence for generation may also hold a licence for exportation.

Application for licences 12 of 2016

5.—(1) A person required to hold a licence under this Act shall apply to the Authority for a generation, transmission, system and market operator, single buyer, exportation, importation or distribution licence, as the case may be.

12 of 2016 (2) On commencement of this Act, the Authority shall issue licences for system and market operation and single buyer to the current holder of transmission and distribution licences.

12 of 2016 (3) On commencement of this Act, the Authority shall issue a licence for the generation facilities currently in the country.

Mode and procedure of application for licence

6.—(1) Every application for a licence shall be made to the Authority and be advertised by the Authority at the expense of the applicant, in the prescribed manner.

(2) Every application for the licence shall be accompanied by—

(*a*) licence application fees as the Authority shall prescribe by notice published in the *Gazette*; and

(*b*) a schedule of the proposed tariffs which a licensee intends to charge customers.

(3) Any person may object to the issuing of the licence, and any such objection shall be submitted to the Authority in the prescribed manner and time.

(4) The Authority shall consider an application under subsection (1) and any objection thereto, and may for that purpose arrange for a public hearing of the application at a suitable time and place of which not less than fourteen days' notice shall be given to the applicant and every objector.

(5) At the hearing of an application under subsection (4) the applicant and any objector may be represented by a legal practitioner and may lead evidence in support of the application or objection.

(6) Not later than thirty days after conclusion of a hearing in terms of subsection (4) or if no hearing was arranged, thirty days after the expiry of the period allowed for the submission of objections in terms of subsection (3), the Authority shall either grant or refuse the application for the issue of a licence.

(7) If an application for the issue of a licence is refused, the Authority shall inform the applicant in writing of the reasons for the refusal.

(8) If an application for the issue of a licence is granted, the Authority shall issue the licence in the prescribed manner and the licence shall—

(*a*) specify the particular activity authorized by the licence;

(*b*) define the area in respect of which the licence is issued;

(*c*) contain or have attached to it any conditions imposed in relation to the licence in accordance with this Act; and

(*d*) contain a schedule specifying the approved tariffs that may be charged by the licensee to its customers.

Criteria for consideration of application for licence

7.—(1) The Authority shall, in considering the application for the issue renewal, amendment or transfer of a licence, give due consideration to matters or activities which may adversely affect, or result in damage to, the environment or the rights of others, weighed against the advantages in general that may be derived from the grant of the application.

(2) Without derogating from the generality of the provisions of subsection (1) the Authority may—

(*a*) request from the applicant, an environmental and social impact assessment study indicating the extent of any potential damage to or pollution of the environment or social disruption and the steps proposed to be taken by the applicant to prevent or minimize such damage or pollution and to restore the environment generally and in terms of existing environmental legislation;

(*b*) request the applicant to submit details of the technical and economic-financial resources available to the applicant to execute the work, to operate the system in an effective, efficient and safe manner and to carry on the business to which the application or licence relates, substantiated by documentary proof where applicable;

(*c*) request the applicant to submit details of its shareholding structure and related business interests as would be material in terms of section 4 (4);

(*d*) take into consideration the extent to which the activities of the applicant may be detrimental to or adversely affect the rights and operation of other licensees or their customers in their area of operation; and

(*e*) take into consideration the ability of the applicant to provide an effective service to customers.

Incomplete premises

8.—(1) If an application for a licence is made in respect of premises which still require work of a structural nature to be carried out including the installation of plant and equipment, before operations under the licence can be commenced, the Authority may, upon approval of the plans in respect of such work grant the licence subject to compliance with such conditions and requirements, and within such period, as the Authority may determine before the licence can be issued.

(2) The Authority shall in writing inform the applicant of the conditions and requirements imposed under subsection (1).

(3) The Authority may at any time, on application of the applicant concerned—

(*a*) withdraw or amend any condition or requirement referred to in subsection (1);

(*b*) extend or further extend the period referred to in subsection (1); and

(*c*) approve an amended plan in respect of the premises.

(4) When the Authority is satisfied that the subsection (1) have been completed in accordance with the approved plan thereof, the conditions and requirements have been complied with and the premises are suitable for the purpose for which they will be used under the licence, the Authority shall issue such licence.

(5) A licence granted in terms of subsection (1) shall lapse if it is not issued before the expiration of the period referred to in that subsection or any extension thereof under subsection (3) (*b*).

Conditions of a licence

9.—(1) A licence shall be subject to such conditions as may be prescribed under this Act.

(2) Without derogating from the generality of the power conferred by subsection (1) conditions prescribed under that subsection may include provisions relating to—

(*a*) implementation of environmental impact mitigation measures proposed by the licensee in his or her application;

(*b*) the obligation of the licensee, upon cessation of the activities carried on under the licence concerned, with regard to the destruction, dismantling or removal of any buildings, walls, installations, equipment, structures, waste dumps or other facilities erected or used for purposes of, or in connexion with, those activities, whether on the premises of the licensee or elsewhere, and the restoration of any land disturbed by such activities;

(*c*) the furnishing by the licensee of acceptable security for compliance with any condition contemplated in paragraph (*a*) or (*b*) or acceptable security for compliance with duties of a licensee under this Act; and

(*d*) lodging with the Authority of annual returns containing prescribed particulars.

Amendment or revocation of licences

10.—(1) Subject to section 11, the Authority may revoke or amend a licence or a condition of a licence

(*a*) on application, or with the consent, of a licensee;

(*b*) upon material breach by the licensee of any of the conditions of the licence or the provisions of this Act, or the Energy Regulation Act; or Cap. 73:02

(*c*) if subsequent to granting of the licence it is discovered that information furnished in connexion with that application was incorrect or incomplete in a material respect.

(2) The provisions of section 6 shall apply *mutatis mutandis* to applications for amendment or revocation of a licence under subsection (1).

Breach of conditions of licence Cap. 73:02

11. If a licensee fails to comply with his licence, the conditions on which it was granted or the provisions of this Act or the Energy Regulation Act, or modifies the purpose for which the licence was granted, or fails to commence or complete any works required in his licence, the Authority may serve him or her a notice in writing requiring him to comply within such reasonable period as the Authority may determine, and where the licensee fails to comply, the Authority may—

(*a*) call for any security provided by the licensee to rectify the breach where feasible;

(*b*) impose such penalties or sanctions as may be provided for under this Act or the Energy Regulation Act, or the licensing conditions of such licensee which may include recovery in a court by the Authority from such licensee of any profit earned by the licensee as a result of the non-compliance; Cap. 73:02

(*c*) amend the licence; and

(*d*) revoke the licence or suspend the licence and appoint new managers, for a period not exceeding one year, to manage the operations of the licensed activity temporarily while conducting competitive bidding to identify a licensee to take over that licensed activity.

Duration and renewal of licences 12 of 2016

12.—(1) Unless sooner revoked under section 10, a licence shall remain valid for such period as shall be prescribed in the licence which period shall not exceed—

(*a*) in the case of a generation licence, fifty years;

(*b*) in the case of a transmission licence, thirty years;

(*c*) in the case of a distribution licence, twenty years;

(*d*) in the case of a licence to export or import electricity, thirty years; and

(*e*) in the case of a system and market operator and a single buyer, twenty-five years. 12 of 2016

(2) A licensee may within a period of not less than twelve months before the date fixed for the termination of the licence, make application to the Authority for a renewal of such licence and the application shall be made in accordance with this Act.

(3) A licence shall be renewed if the Authority is satisfied that the licensee has acted in accordance with the terms and conditions of the licence and the provisions of this Act, and that renewal of such licence will further enhance the objectives of this Act.

Transfer of licence

13.—(1) A licence may not be transferred or ceded to any other person, unless the Authority has granted approval therefor.

(2) An application for the transfer of a licence shall—

(*a*) be made by the licensee and proposed transferee jointly;

(*b*) be submitted to the Authority; and

(*c*) be advertised at the expense of the applicant, in the prescribed manner.

(3) Any objection to the transfer of a licence shall be submitted to the Authority in the prescribed manner.

(4) The Authority shall consider an application in terms of subsection (1) and any objection thereto, and may for that purpose, at its discretion, arrange for public hearing of the application at a suitable time and place of which not less than fourteen days notice shall be given to the applicants and every objector.

(5) At a hearing of an application under subsection (4), the applicant and an objector may be represented by a legal practitioner and may lead evidence in support of the application or objection.

(6) Not later than thirty days after conclusion of a hearing under subsection (4) or, if no hearing was arranged, thirty days after expiry of the period allowed for the submission of objections under subsection (3), the Authority shall either grant or refuse the application for transfer.

Rural electrification licensees

14. The Authority may, by notice published in the *Gazette*, prescribe special and less onerous licensing regulations in respect of applications for rural electrification.

Register of licences

15. The Authority shall keep and maintain a public register of licences issued, including the following information—

(*a*) the terms and conditions of each licence; and

(*b*) such other information as may be prescribed or required under this Act.

PART III

Tariffs

Licensees to charge only approved tariffs 12 of 2016

16.—(1) Subject to the provisions of this Part, a licensee shall not charge any customer any tariffs higher than those specified in the schedule of approved tariffs for his or her licence.

(2) The schedule of tariffs approved by the Authority under subsection (1) shall comprise—

(*a*) a base tariff determined in accordance with the principles laid down in section 18; and

(*b*) a tariff adjustment formula which takes into consideration exchange rate movement, consumer price index increases and other unavoidable cost increases and expected efficiency gains in the sector.

(3) The expected efficiency gains referred to in subsection (2) for distribution licensee shall include—

(*a*) reduction of technical and non-technical losses; 12 of 2016

(*b*) accounts receivables of not more than sixty days;

(*c*) connexion rates;

(*d*) customer-employee ratio; and

(*e*) any other performance indicator as deemed necessary by the Authority. 12 of 2016

(4) The Authority shall determine the components of the base tariff from time to time, by notice published in the *Gazette*. 12 of 2016

(5) The Authority shall, every four years, revise the base tariff and review the tariff adjustment formula referred to in subsection (2) for all licensees, with the exception of generation licensees. 12 of 2016

(6) At the end of four years and before the Authority approves the new base tariff or new tariff adjustment formula for the next period, the base tariff and respective tariff adjustment formula shall remain in force. 12 of 2016

(7) The generation component of the base tariff shall be adjusted based on the respective power purchase agreements, and informed by the single buyer to the Authority. 12 of 2016

(8) Every licensee, with the exception of a generation licensee, shall publish the approved tariff or any revision thereof in a manner prescribed by the Authority. 12 of 2016

(9) A single buyer shall publish the tariff agreed in each power purchase agreement, as well as the resulting average selling price. 12 of 2016

Public hearing before tariff revision

17.—(1) Before revising the base tariff and the tariff adjustment formula in accordance with section 16 (5) the Authority shall publish the proposed tariff revision and may cause tariff studies to be carried out.

(2) Any objection to the tariff revision shall be submitted to the Authority in the prescribed manner and time.

(3) The Authority shall consider the objections and tariff studies in terms of subsection (1), and shall for that purpose, arrange for a public hearing of the tariff revision at a suitable time and place of which not less than fourteen days notice shall be given.

(4) At a hearing in terms of subsection (3) any objector may be represented by a legal practitioner and may lead evidence in support of the objection.

(5) Not later than thirty days after conclusion of a hearing under subsection (3), the Authority shall either revise the tariff or leave it as it may be or modify the proposed revisions.

Criteria for granting or revising tariffs

18.—(1) The tariff of charges for new entrants or revision of tariff of charges provided under this Act shall be approved by the Authority and shall be set at levels sufficient to allow the licensee an opportunity to recover his costs of service, including a reasonable return on capital and encourage efficiency.

(2) In addition to the principles set in subsection (1), the Authority shall have regard to the following when setting or revising tariff of charges—

(*a*) predictability of adjustments;

(*b*) financial sustainability of licensees;

(*c*) price stability;

(*d*) equity and fairness;

(*e*) cost of service;

(*f*) quality of service; and

(*g*) the value of the Malaŵi Kwacha in relation to foreign currencies.

PART IV

12 of 2016

Transmission, Distribution, System and Market Operator and Single Buyer Licensee

Transmission licence
12 of 2016

19.—(1) The Authority shall issue a transmission licence to the system and market operator to build, operate and maintain the transmission network in Malaŵi.

(2) The Authority shall issue additional transmission licences to generators that need to connect their plants with the network owned and operated by the system and market operator.

(3) On recommendation of the single buyer and upon approval by the Minister, the Authority may issue a transmission licence to a person different from a transmission operator to build, operate and maintain transmission facilities:

Provided that the holder of this licence shall operate under the coordination of the transmission licensee, following the orders of the system and market operator licensee.

Duties and functions of a transmission licensee and a distribution licensee
12 of 2016

20.—(1) The duties and functions of the transmission licensee shall be to—

(*a*) build, operate and maintain the transmission network in Malaŵi;

(*b*) undertake transmission planning in collaboration with the single buyer licensee;

(*c*) provide information for the single buyer licensee's planning activities;

(*d*) coordinate the operation of the transmission system with the system and market operator licensee;

(*e*) comply with the operation procedures and criteria established in the market rules and Grid Code for the reliable and economic operation of the transmission system; and

(*f*) coordinate the importation and exportation of electricity as instructed by the single buyer licensee.

(2) The duties and functions of the distribution licensee shall be to—

(*a*) plan, build, operate and maintain the distribution network in Malaŵi;

(*b*) supply electricity to consumers;

(*c*) take meter readings, prepare and deliver invoices, and collect payments from consumers;

(*d*) provide information to the single buyer licensee for planning and forecasts purposes;

(*e*) coordinate the operation of the distribution system with the system and market operator licensee;

(*f*) forecast the electricity consumption in each node or zone supplied by the licensee at every time segment of the day; and

(*g*) provide information to the system and market operator licensee for the daily generation dispatch.

Duties and functions of system and market operation licensee
12 of 2016

20A.—(1) The duties and functions of the system and market operator licensee shall be, to—

(*a*) guarantee to all generation plants a fair dispatch and non-discriminatory access to the transmission system;

(*b*) own, manage and operate the Load Dispatch Centre in a non-discriminatory manner and at least cost in the interconnected system;

(*c*) plan and control the daily operation of the integrated and interconnected system;

(*d*) dispatch generation in line with market rules and the Grid Code;

(*e*) optimize the use of reservoirs, taking into consideration other water usages and environmental constraints;

(*f*) supervise and coordinate the real time operation of the market;

(*g*) meter and settle transactions between licensees;

(*h*) determine the actual power of generation units of the interconnected system;

(*i*) determine the valued balance of the movement of electricity resulting from the integrated operation of the system;

(*j*) provide accurate information to licensees and companies interested to invest in the sectors;

(*k*) manage imports and exports arising from the operation of the Southern Africa Power Pool's Day Ahead electricity market;

(*l*) represent Malaŵi in the Southern Africa Power Pool;

(*m*) submit periodic reports to the Authority in respect of each of the functions in this subsection; and

(*n*) perform such other duties incidental to and connected with the objective of the Load Dispatch Centre.

(2) For the purposes of subsection (1), "Southern Africa Power Pool" means a cooperation of the national electricity companies in Southern Africa that have created a common power grid between their countries and a common market for electricity.

Duties and functions of single buyer licensee
12 of 2016

20B. The duties and functions of the single buyer licensee shall be to—

(*a*) prepare a long term forecast of demand, taking into consideration the targets of electricity supply coverage and expected economic growth in consultation with the Minister;

(*b*) undertake least cost long-term generation and transmission expansion plan;

(*c*) prepare a ranking of generation projects to be tendered out with the approval of the Minister;

(*d*) prepare a ranking of transmission projects to be built, in coordination with the transmission licensee, with the approval of the Minister;

(*e*) organize, with the approval of the Minister, open tenders for independent power producers that shall comply with guidelines established by the Authority;

(*f*) evaluate unsolicited proposals from independent power producers and recommend to the Minister for approval;

(*g*) negotiate and submit power purchase contracts to the Authority for approval, and sign the contracts with the independent power producers;

(*h*) prepare the annual generation forecast;

(*i*) conclude power purchase agreements with generation licensees;

(*j*) conclude power supply contracts with distribution licensees; and

(*k*) conclude power purchase agreements for importation and exportation of electricity.

Power sales and purchase contracts 12 of 2016

21.—(1) In order to comply with their obligations to meet the total demand for electricity within their area of distribution, distributors shall sign electricity supply contracts with the single buyer licensee at rates agreed upon between the parties and approved by the Authority.

12 of 2016

(2) All licensees shall sell or purchase bulk power through the single buyer licensee.

12 of 2016

(3) Upon approval by the Authority, a bulk consumer may buy power directly from generators.

Import and export of power 12 of 2016

22.—(1) The single buyer licensee shall, under licence from the Authority, whenever there is need for additional generation capacity, consider purchase of power from other countries through international interconnectors.

12 of 2016

(2) The single buyer licensee shall under licence from the Authority, whenever there is excess generation capacity or reserve capacity when feasible, consider sale of power to other countries through international interconnectors.

12 of 2016

(3) Apart from the single buyer licensee no other licensee shall be licensed to import or export power into and out of Malaŵi, respectively:

Provided that a distribution licensee may be licensed to export power out of Malaŵi if such export is through a distribution line, and provided further that export of power shall not affect the local capacity to meet the demand for power at any time.

Wheeling of power

23. The wheeling of power through the Malaŵi transmission system shall be in accordance with the principles of the Southern Africa Power Pool.

Third party access 12 of 2016

24.—(1) A transmission licensee who is licensed to transmit electricity may not, upon the request of another licensee, refuse that licensee the right of transmitting electricity through its electrical or transmission line against payment of compensation at a rate approved by the Authority, except if such refusal is reasonably based on an insufficiency of technical availability of capacity:

12 of 2016

Provided that in case of insufficiency of technical availability of capacity, the allocation shall be based on the economical dispatch of generation.

(2) For purposes of this section there is a rebuttable presumption that there is always available capacity in the transmission system until the contrary is demonstrated by the transmission licensee to the satisfaction of the Authority.

(3) The tariff of charges charged by a transmission licensee shall be approved by the Authority and the tariff shall reflect cost of service and be non-discriminative.

Load Dispatch Centre

25. A transmission licensee shall own, manage and operate the Load Dispatch Centre which shall be responsible for coordination of generation, transmission, load dispatch and distribution in a non-discriminatory manner and at least cost in the interconnected system.

Functions and reports of the Load Dispatch Centre

26.—(1) A transmission licensee shall, through the Load Dispatch Centre, be responsible for the following functions—

(*a*) the planning and control daily of the integrated operation of the interconnected system to ensure satisfaction of demand through safe, reliable and low cost operation;

(*b*) the carrying out of load dispatch in real time at minimum cost;

(*c*) the determination of the actual power of generation units of the interconnected system;

(*d*) the determination of the valued balance of the movement of electricity resulting from the integrated operation of the system; and

(*e*) the performance of such other duties incidental to and connected with the objective of the Load Dispatch Centre.

(2) A transmission licensee shall submit periodic reports to the Authority in respect of each of the functions in subsection (1).

PART V

System Operation

12 of 2016

Requirements of the Load Dispatch Centre
12 of 2016

27.—(1) The Load Dispatch Centre shall perform daily the economical dispatch of generation, in accordance with the market rules and the Grid Code.

(2) Every generator shall comply with the instructions of the Load Dispatch Centre and shall inform the Load Dispatch Centre daily of its availability.

Transmission or distribution licensee not to own a generation station

28. No transmission licensee or distribution licensee shall be licensed to build, own or operate and maintain a generation station for sale of power whether for firm or standby purpose.

29. A transmission and distribution licensee shall conduct its operations in accordance with the Grid Code.

Transmission or distribution licensee to conduct operations in accordance with Grid Code
12 of 2016

30. All generators shall sign power sale agreements with the single buyer for sale of their power at a price to be agreed between the parties but approved by the Authority.

Generators to sell power to single buyer
12 of 2016

PART VI

Distribution

31. Subject to the terms and conditions of a licence issued in accordance with this Act and the Energy Regulation Act, every distributor shall supply electricity to every consumer who is in a position to make satisfactory arrangements for payment under a contract of supply with that operator.

Duties of Distributor
Cap. 73:02

32. Where a distributor unduly refuses to supply any applicant with electricity, the applicant may appeal to the Authority, which shall determine the conditions under which the distributor shall undertake such supply.

Delays in supply

33. A consumer shall not be entitled to a standby supply of electricity from the distributor in respect of any premises unless that consumer has agreed to pay and has given security to pay, such minimum annual sum as shall give to the distributor a reasonable return (which return shall be determined by the Authority) on any capital expenditure and any other standing charges which may be incurred in meeting the maximum demand for the premises.

Standby supply

34. A distributor shall test any installation of an applicant before a supply of electricity:

Provided that the testing of such installation shall not render the operator liable in law for any damages or injury flowing from defective installations of applicants.

Customers' installation testing

35. A customer shall ensure that the operations of his or her system does not interfere with the smooth and safe operation of the licensee's system to which he or she is connected.

Interference with licensee's system

PART VII

Inspection, Accidents, Inquiries and Investigations

Entry and inspection of premises

Cap. 73:02

36. The Authority, or any person authorized by it in writing, may at all reasonable times enter any premises or any licensed activity for the purpose of ascertaining whether or not the provisions, of this Act or the Energy Regulation Act, or the conditions of any licence are being complied with, or for the purpose of any inspection which is incidental to or connected with the carrying out of the duties of the licensee.

Licensee to report accidents

37.—(1) A licensee shall send to the Authority notice of any accident of such a kind as to have caused, or likely to have caused, loss of life or serious personal injury which has occurred in any part of such licensee's works or equipment, together with notice of any loss of life or serious personal injury occasioned by any such accident.

(2) Nothing contained in subsection (1) shall absolve the licensee from the duty of complying with the provisions of any other written law relating to the reporting of accidents.

Inquiries and investigations

38.—(1) The Authority may, at its own instance or on receipt of a complaint or inquiry relating to the supply of electricity, appoint any person to make inquiries in respect thereof and report thereon to the Authority.

(2) On receipt of a report under subsection (1), the Authority may—

(*a*) issue such notice, licensing conditions, guidelines, or directives as it is empowered to do under this Act or the Energy Regulation Act; or

Cap. 73:02

(*b*) institute a formal investigation.

(3) The Authority shall on receipt of a complaint regarding unlawful conduct by a licensee, institute a formal investigation in respect of that complaint.

(4) Upon instituting a formal investigation under subsection (2) or (3) the Authority may appoint any person to chair the investigation and as many persons as may be necessary to assist with the investigation; and the person so appointed and the persons assisting him may summon witnesses and conduct the investigation in accordance with the procedure the Authority shall publish in the *Gazette*.

(5) On completion of the investigation under subsection (4) the person chairing it shall submit his written report thereon to the Authority.

(6) On receipt of the report under subsection (5), the Authority—

(*a*) may refer it to the Attorney General for his consideration;

(*b*) if a licensee is involved—

(i) may issue notice, licensing conditions, guidelines, or directives as it is empowered to do or make under this Act or the Energy Regulation Act; or Cap. 73:02

(ii) may amend or revoke the licence of that licensee in accordance with this Act or the Energy Regulation Act; and Cap. 73:02

(*c*) shall give a copy of the report to a concerned customer or consumer or affected person who requests for it.

PART VIII

Rights Over Land

Wayleaves over land Cap. 69:02

39.—(1) Subject to the Public Roads Act, a licensee may, for the purpose of the construction, maintenance, carrying on or extension of any of its works, place, lay down or carry any transmission line or distribution line or water pipeline or other equipment through, over or under any land whatsoever:

Provided that the licensee shall not, without the consent of the owner, be entitled under this section to interfere with any existing building.

(2) A licensee shall, not less than thirty days before placing, laying down or carrying any transmission line, or distribution line, water pipeline or other equipment through, over or under any land without the consent of the owner, lessee or occupier of such land, give notice of the intended work either by notice published in the *Gazette* or in a paper in general circulation.

(3) Every notice referred to in subsection (2) shall—

(*a*) describe the nature of the intended work;

(*b*) describe the name of the place where the plan of the intended work shall be open for inspection during normal hours of business; and

(*c*) be served on any person resident in Malaŵi whose place of residence is known to the licensee, its staff or agents, and who is known or believed to be the owner, lessee or occupier of any land through, over and under which it is intended that any transmission or distribution line, water pipeline or other equipment shall be carried.

(4) If the place of residence of any person who is believed by the licensee, its officers, servants or agents to be the owner, lessee or occupier of any land is not known to the licensee, its staff or agents, or if for any reason it is not possible to effect service of the notice upon such persons, then, or in either of those events, the licensee shall cause such notice, or a true copy thereof, to be posted in a conspicuous position upon such land.

(5) If the owner, lessee or occupier of any land through, over or under which it is intended that any transmission line or distribution line, water pipeline or other equipment shall be placed, laid down or carried, objects to the intended work and shall have served notice in writing of such objection at the office of the licensee at any time within the period of thirty days referred to in subsection (2), the intended work, in so far as it affects the land of the person serving such notice of objection, shall not be commenced unless the Authority approves the commencement of the intended work notwithstanding such objection.

(6) Where any notice of objection is given in accordance with subsection (5), the Authority may appoint such person or persons as it may think fit to make inquiry into the necessity, propriety or desirability of the intended work, and into the objections made thereto, and to report to the Authority in respect of those matters and on receiving the report of such person or persons, the Authority may make a decision either to allow the intended work, with such modifications, if any, or disallow the intended work, as it may deem necessary.

(7) Nothing in this section shall authorise or empower the licensee to lay down or place any transmission line or distribution line, water pipeline or other equipment in, through or against any building, or in, on or through any land covered with buildings, without the consent of the owner, lessee or occupier thereof, so however that any overhead line and any support, stay, strut or structure required for the sole purpose of supporting any overhead line may be placed in, on, through or over any land or against any building with the consent of the Authority if, in his opinion, the consent of such owner, lessee or occupier is being unreasonably

withheld, and in any such case, the Authority shall determine the amount of compensation, whether by way of payment of a lump sum or an annual rental, or of both, to such owner, lessee or occupier.

(8) If the owner, lessee or occupier of any land in, on, through or over which any transmission line or distribution line, water pipeline or other equipment is placed, laid down or carried, or, in the case of a street, the local or other authority concerned, shall require and request that the position of such transmission line or distribution line, water pipeline or other equipment be changed, the Authority may, by notice in writing, order the licensee to alter the position of such transmission line or distribution line, water pipeline or other equipment, subject to such conditions as, in the absence of agreement between the parties, may be specified by the Authority.

(9) Where any rights over land have been acquired by a licensee, whether by an agreement or under this Part, then, notwithstanding the fact that those rights may not have been registered against the title to the land which they relate in accordance with the written law relating to registration of title or deed, those rights shall be binding on the owner of such land and on the successor in title.

Right of entry on land

40.—(1) Any member, or staff or agent of the licensee, duly authorized in that behalf by the licensee, and any contractor executing any work for the licensee together with its agents and staff may, on giving to the occupier such notice as, having regard to all the circumstances of the case, is reasonable, enter upon land at any time between the hours of six o'clock in the forenoon and six o'clock in the evening for the purpose of surveying, setting out and marking the line of any intended transmission line or distribution line, water pipeline or other equipment.

(2) It shall be lawful for the licensee or any person in that behalf duly authorized by the licensee in writing any time between the hours of six o'clock in the forenoon and six o'clock in the evening, or, in the case of emergency, at any other time, to enter into and upon any premises, through, or under which the licensee has placed a transmission line or distribution line, water pipeline or other equipment, in order to perform and carry out the licensee's purpose on such and or premises, or to maintain, remove, repair or replace any such transmission line or distribution line, water pipeline or other equipment or carrying out any works urgently needed to be done in relation thereto.

Trees or buildings interfering with electricity supply and equipment

41.—(1) Where, on any land, trees or undergrowth of any kind obstruct or interfere with the construction, working or supply and maintenance of any transmission line, distribution line, water equipment, pipeline or other equipment, the licensee may give to the owner, lessee or occupier of the land upon which such trees or growth are situated not less than fourteen days' notice in writing of its intention to enter upon the land and to cut down or to trim such trees or growth, and after the expiry of the time limit in the notice, may enter upon the land and effect such notified intention.

(2) The owner, lessee or occupier, on receiving notice in accordance with subsection (1), may at his or her own expense and at any time before the expiry of the time limit in the notice, but in consultation with the licensee to ensure safety, cut down or trim the trees or undergrowth so as to comply with the requirements of the licensee in that regard.

(3) Notwithstanding the provisions of subsection (1) and after taking such immediate action which is essential in order to protect any transmission line, distribution line, water pipeline or other equipment from damage by any trees or undergrowth on any land, the licensee may without any notice to the owner, lessee or occupier, enter upon such land and cause such trees or undergrowth to be cut down or trimmed in such a manner as may be necessary to prevent the anticipated or other damage.

(4) Except with the permission of the licensee, no person shall erect any building or structure in the wayleave or in such a position or in such a manner as likely to interfere with the supply of electricity through any transmission line or distribution line and if after a transmission line or distribution line has been constructed, any person erects any building or structure in the wayleave or in such a position or in such a manner as likely to interfere with the supply of electricity through such transmission line or distribution line the licensee may request such a person to remove or adjust such a building or structure as may be necessary; and if such person fails or omits to comply with such a request, the licensee may apply to the Authority for an order for the removal or adjustment of the building or structure and, after such inquiry as it may deem necessary, the Authority may make such order as it deems fit.

(5) No person, owner, occupier or lessee shall grow trees or undergrowths or allow trees or undergrowths to grow or to be grown on the land he owns, occupies or leases in such a manner as likely to interfere with the supply of electricity through any transmission or distribution line of the licensee.

Breaking up of streets

42.—(1) Subject to subsection (2), where the licensee has acquired the right to place the transmission line or distribution line across, under or along any street either in accordance with the Act or any other written law, the licensee may break up any street in which such right has been acquired and may from time to time as may be necessary repair, alter or remove any such lines.

(2) Before the licensee exercises any power conferred by this section, it shall give to the local or other authority concerned and to respective owners of all water pipes, telephone cables or other installations at least thirty days notice in writing of its intention to exercise such power:

Provided that in any case of emergency, the licensee shall give notice thereof to such authority and to respective owners of all water pipes, telephone cables or other installations, as soon as is practically possible after the emergency has arisen.

(3) Except in cases of emergency, the powers conferred by this section shall only be exercised under the superintendence of the local authority or other authority concerned, and according to such specifications and such plan showing the route along which the transmission lines or distribution lines are to be erected as may be approved by that authority, or if any difference arises with regard to the specification, plan or route, then according to such specification and such plan as may be approved by the Authority:

Provided that if the authority concerned fails, within reasonable time, to exercise the powers of superintendent conferred by this section, after such notice shall have been given to the authority, then the licensee may exercise those powers without superintendent of the authority.

(4) Every licensee that carries out any work authorized by this section shall—

(*a*) comply with the relevant by-laws and regulations of the local or other authority concerned;

(*b*) complete the work with reasonable dispatch;

(*c*) reinstate and make good the street opened or broken up in the course of such work and remove therefrom all material remaining as a result of the work;

(*d*) leave the street in all respects in a clean and tidy state; and

(*e*) cause all works to be at all times properly fenced and guarded and to be adequately marked with warning lights during the hours of darkness while the street is in the course of being opened, broken up or obstructed.

(5) If a licensee fails to comply with subsection (4), the local authority or other authority concerned may cause to be carried

out, at the expense of the licensee, any work necessary for the due discharge of that duty.

Licensees' equipment not part of the land

43. Any lines, meters, fittings, works or apparatus belonging to a licensee and lawfully placed or installed in or upon any premises not in his possession shall, whether or not fixed to any part of such premises, remain the property of and may be removed by the licensee, and are not liable to be taken in execution under any process of law or any proceedings in insolvency or liquidation against the owner or occupier of such premises.

Compensation for damage caused by licensee

44.—(1) The licensee shall make good to the reasonable satisfaction of the local or other authority, or the owner, as the case may be, of all public and private roads, streets and paths opened or broken up by the licensee in the course of its operations and shall also pay fair and reasonable compensation or rent or both for all losses or damage caused in the execution of any of its powers conferred by this Act.

(2) Where a dispute arises as to whether any road, street or path has been adequately made good, or as to the amount of compensation or annual rent to be paid under subsection (1), such dispute shall be referred to a Resident Magistrate having jurisdiction in the District in which the cause of the dispute arose and for that purpose the Resident Magistrate shall have jurisdiction in all of such disputes irrespective of the amount of compensation or rent involved and may make such award as he deems fair and reasonable to the person who is found to be entitled thereto.

(3) Either party to the dispute may appeal from the decision of the Resident Magistrate to the High Court.

PART IX
Offences and Penalties

Offences

45.—(1) Any person who carries on in any manner any activity for the supply of electricity in contravention of this Act, or fails to carry out any order or decision of the Authority made or given under this Act or otherwise contravenes the provisions of this Act, shall be guilty of an offence.

(2) Without prejudice to the right of a licensee to recover for any illegal consumption of electricity, including costs associated with such recovery, a customer or any other person who—

(*a*) illegally connects electricity to any premises;

(*b*) disturbs or tampers with any electricity meter or other measuring instrument or apparatus;

(*c*) denies access to premises for inspections by authorized personnel of the licensee or the Authority; or

(*d*) damages or vandalizes any electricity installation equipment or apparatus,

shall be guilty of an offence.

(3) Any transmitter who denies access on his system to licensees shall be guilty of an offence.

Penalties

46. Any person who is guilty of an offence under this Act shall be liable to a fine of K5,000,000 and to imprisonment for ten years.

PART X

Miscellaneous Provision

Consumer and customer education brochure

47. The Authority shall develop and publish an information brochure and other modes of communication for consumer and customer education on the structure and price regulation or on technical, safety and legal aspects of the electricity supply industry.

Resolution of disputes by the Authority

48.—(1) The Authority shall, if requested by a party to a dispute, act as a mediator or arbitrator in disputes between licensees or between a licensee and its customer or a licensee and the Coordination Centre relating to—

(*a*) the right to supply electricity;

(*b*) the duty to supply electricity;

(*c*) the tariffs and charges at which electricity is applied;

(*d*) delays in or refusal to supply electricity; and

(*e*) the quality of electricity supply and the provision of services in connexion therewith.

(2) The Authority may act as mediator or arbitrator in any matter in respect of which a licensee or customer requests the Authority to act as such.

(3) The Authority may, on approval of the parties involved, appoint a suitable person to act as mediator or arbitrator on its behalf and any action or decision of a person so appointed shall be deemed to be an action by or decision of the Authority.

(4) The Authority shall by notice published in the *Gazette* prescribe the procedure to be followed and arbitration fees to be paid in arbitrating a dispute and the decision of the Authority, shall be binding on the disputing parties, subject only to the right of each party to appeal to the High Court as provided in this Act.

Service of notice

49. Any notice or other document required or authorized to be given, delivered or served under this Act may be given, delivered or served—

(*a*) by delivering it to the person to whom it is to be given or delivered or on whom it is to be served;

(*b*) by leaving it at the usual or last known place of abode of that person;

(*c*) by sending it in a prepaid registered letter addressed to that person at his usual or last known place of abode or postal address;

(*d*) in the case of company, by delivering it to the secretary or clerk thereof at its registered or numbered office or by sending it in a prepaid registered letter addressed to the secretary or clerk of the company at that office; or

(*e*) if it is not practicable after reasonable enquiry to ascertain the name or address of a person to whom it should be given or delivered or on whom it should be served, as being a person having an interest in land, being the person to whom by the description of the person having that interest in the premises (naming those premises) to which it relates, or by delivering it to some person on the premises or, if there is no person on the premises to whom it can be addressed, by affixing a true copy of it to some conspicuous part of the premises.

Distribution licensee may discontinue supply for non-payment, etc.
12 of 2016

50.—(1) A licensee shall not vary or discontinue a supply which is required to be constantly maintained except—

(*a*) for causes beyond the control of the licensee; or

12 of 2016

(*b*) where the consumer has failed to pay charges lawfully due in accordance with the conditions of supply or any written law, as the case may be; or

12 of 2016

(*c*) where the consumer has failed to comply with the conditions of supply or any written law and failed to remedy his default within seven days of receiving written notice from the licensee calling upon him to do so.

(2) A licensee may temporarily vary or discontinue a supply of electricity under subsection (1)—

12 of 2016

(*a*) without prior notice to a consumer likely to be affected—

(i) where such action is necessary to prevent danger to life or damage to property;

(ii) in any emergency, from whatsoever cause arising, to ensure the proper working of the licensed activity or of any other licensed activity with which it is interconnected;

(iii) by the automatic operation of a protective device installed to disconnect supply of electricity in fault conditions; or

(iv) by the automatic or hand operation of a device installed to disconnect a supply of electricity in terms of the conditions or agreement to supply; or

(*b*) on giving not less than twenty-four hours notice—

(i) for the purposes of making alterations or additions to a system;

(ii) for normal maintenance work; or

(iii) for testing a device referred to in paragraph (*a*) (iii) or (iv).

Right of appeal to the High Court

51.—(1) Any person aggrieved by the decision or action of the Authority under this Act may appeal to the High Court by way of petition and lodged within three months from the date of the decision or action of the Authority.

(2) The Chief Justice may make such rules as he considers proper in relation to the procedure on the hearing of such appeals, including the appointment and remuneration of assessors and regulating the costs of the appeal.

By-laws, rules, codes and guidelines
12 of 2016

52.—(1) The Authority may make by-laws, rules, codes and guidelines to give effect to this Act or for its better administration.

(2) The by-laws, rules, codes and guidelines to be promulgated by the Authority under subsection (1) for distribution licensees shall apply to rural electrification schemes.

Repeal and savings
Cap. 73:01

53.—(1) Subject to subsection (2), the Electricity Act is hereby repealed.

(2) Anything done in accordance with the Electricity Act repealed by subsection (1), prior to the commencement of this Act and which may be done in accordance with the provisions of this Act shall be deemed to have been done in accordance with this Act.

(3) Any subsidiary legislation made or deemed to have been made under the Electricity Act, repealed by subsection (1) in force immediately before the commencement of this Act— Cap. 73:01

(*a*) shall remain in force, unless in conflict with this Act, and shall be deemed to be subsidiary legislation made under this Act; and

(*b*) may be replaced, amended or repealed by subsidiary legislation made under this Act.

(4) All licences issued by the Electricity Council in accordance with the Electricity Act repealed by subsection (1), prior to the commencement of this Act, if not in conflict with the provisions of this Act, shall be deemed to be licences granted by the Authority in accordance with this Act.

Cap. 73:01

SUBSIDIARY LEGISLATION

ELECTRICITY BY-LAWS

G.N. 11/2012

under s. 52

ARRANGEMENT OF BY-LAWS

BY-LAW

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PART I
Preliminary Provisions

1. These By-laws may be cited as the Electricity By-laws. Citation

2. In these By-laws, unless the context otherwise requires— Interpretation

"additional earth" means earthing equipment of an approved type, applied after the issue of a safety document;

"applicant" in relation to a service, means a natural person or legal entity in the process of seeking to become a customer of a service provider;

"apparatus" means any item of electrical machinery or equipment in which conductors are used or supported, or of which they form part;

"auditor" means a person registered as an accountant or auditor in terms of the Public Accountants and Auditors Act; Cap. 53:06

"authorized person" means an authorized person appointed by the licensee in writing to carry out specific operational duties;

"billing error" means an error by a service provider resulting in incorrect charges to the customer—

(*a*) billing errors include—

(i) incorrect meter readings or clerical errors by a service provider representative, such as applying the wrong rate;

(ii) performing an incorrect calculation; or

(iii) failure by the service provider to send a bill to a customer;

(*b*) billing errors do not include—

(i) errors resulting from theft or unauthorized use, switched or mismarked meters by other than the service provider;

(ii) inaccessible meter location; or

(iii) failure of the customer to take advantage of a rate or condition of service that may apply;

"business day" means any day other than Saturday, Sunday or a public holiday;

"cable" means an insulated conductor or an assemblage of such conductors enclosed within a common sheathing;

"caution notice" means a notice in writing conveying a warning against interference;

"circuit main earth" means earthing equipment of an approved type, applied before the issue of, and at a position recorded in a safety document;

"Committee" means the Electrical Installations Permits Committee established under these By-laws;

"competent person" means a person appointed by a licensee in writing—

(*a*) having sufficient technical knowledge or experience to enable him avoid danger and who may be nominated to receive and clear specified safety documents; or

(*b*) being capable of installing electrical installations and of altering, extending and maintaining existing electrical installations;

"complaint" means any communication by an applicant or a customer to a service provider alleging—

(*a*) the service provided by the service provider to be inadequate and in need of improvement;

(*b*) a breach of the contract, if any, under which the service provider provides electricity service to that customer; or

(*c*) a breach by the service provider of any applicable law;

"conductor" means a bar, tube, wire or line used for conducting electricity;

"customer installation" means the consumer's electrical wiring together with any electricity consuming device connected with such installation;

"control engineer" means—

(*a*) for the generation control centre, an engineer responsible for the operation of the generation equipment;

(*b*) for the Load Dispatch Centre, an engineer responsible for coordinating generation, transmission and supply operation; or

(*c*) for the Area Control Centre, an engineer responsible for the operation of the distribution systems in a designated area;

"danger" means a risk to health, life or bodily injury;

"danger notice" means a notice of durable material inscribed with the word "DANGER" in white letters at least 31 mm in height together with a red symbol, illustrating a skull and cross-bones, all on a red background;

"dead" means disconnected from a live system and fully discharged;

"designated engineer" means an engineer appointed by a licensee to be responsible for the application of these By-laws;

"disconnexion notice" means a notice stating—

(*a*) in bold-face at the top of the notice: "Disconnexion Notice";

(*b*) the date on or after which disconnexion will occur;

(*c*) that if the customer disputes the reason for disconnexion, the customer may file a complaint with the service provider and request that the Authority mediates or arbitrates the dispute between the customer and the service provider in the event that the customer remains unsatisfied with the service provider's reason for disconnexion of service to the customer; and

(*d*) the address and telephone numbers of the Authority;

"earth" means the conductive mass of the earth, whose electric potential at any point is conventionally taken as zero;

"earthed and connected with earth" means connected with the general mass of earth in such manner as will ensure at all times an immediate and efficient discharge of electricity and cognate expressions shall be construed accordingly;

"electrical inspector" means a person appointed in accordance with by-law 102;

"electrical installation work" means the installation, alteration or repair, wholly or partially, of any conductor, apparatus or system of wiring in or upon premises, connected or intended to be connected to a supply of electricity;

"electrical installations person" means a person who carries out electrical installations work and holds a valid permit issued under these By-laws;

"electric line" means a cable, overhead line or other equipment intended to be used for the purpose of conveying, transmitting or distributing electricity together with any casing, covering, tube, pipe or insulation surrounding or supporting the same, or any part thereof or any apparatus connected therewith for the purpose of conveying, transmitting or distributing electricity;

"estimated system expansion cost" has the meaning given in by-law 179;

"extra-low-voltage" means normal operating voltage not exceeding 30 volts alternating current or 50 volts direct current;

"failing load" means a load on a support which, if exceeded will result in the conductor not being supported in accordance with these By-laws;

"high-voltage" means voltage exceeding 650 volts AC;

"high-voltage live line work" means work in an approved manner on the conductors or apparatus of a high-voltage overhead line, with the conductors being live;

"immediate supervision" means supervision by a person, having adequate technical knowledge, experience and competence, who is continuously available at the location where work or testing is in progress and attends the work area as is necessary for the safe performance of the work or testing;

"insulated conductor" means a conductor covered with insulation suitable for the normal operating voltage;

"insulation" means non-conducting material rounding or supporting a conductor or any part thereof;

"isolated" means disconnected from an associated plant, apparatus or conductor by an isolating device in the isolating position or by adequate physical separation with sufficient gap;

"isolating device" means a device for rendering plant and apparatus isolated;

"key-safe" means an approved type of device used for the secure retention of keys;

"Licensed Activity" means an activity for the generation, distribution, transmission, import or export of electricity for which a licence is intended to be or has been granted under the Act;

"limitation-of-access" means a safety document that defines the limits and nature of work that may be carried out from the ground level in high voltage substations or when verbal instructions are not considered sufficient for that purpose, and where a permit-to-work or sanction-for-test is not applicable on medium voltage network;

"live" means electrically charged;

"line conductor" means a conductor of an overhead line;

"low-voltage" means normal operating voltage exceeding 30 volts AC or 50 volts direct current but not exceeding 250 volts;

"main" means an electric line through which electricity is supplied or is intended to be supplied by the service line;

"medium-voltage" means normal operating voltage exceeding 250 volts but not exceeding 650 volts;

"metal armouring" means a metal wire or a metal type completely covering a cable and manufactured as an integral part of the cable;

"metal sheathing" means a continuous and water tight metal sleeve surrounding a cable and manufactured as an integral part of the cable;

"metal-work" means any metal-work other than—

(*a*) a conductor and its associated live parts; or

(*b*) an earth conductor;

"overhead line" means a conductor erected above ground and in the open air and includes any pole-mounted substation or switchgear associated therewith;

"permit" means a permit issued under these By-laws;

"permit-to-work" means a safety document specifying the high-voltage apparatus made safe to work on and the work that is to be carried out;

"personal supervision" means supervision by a person having adequate technical knowledge, experience or competence such that he is always in the presence of the person being supervised while the work or testing is being carried out;

"plant" means a mechanical plant including all machinery and equipment not elsewhere defined as apparatus;

"pole mounted substation" means transformer equipment, high-voltage switchgear or high-voltage apparatus mounted on a support and associated with the operation and control of an overhead line;

"private owner" means—

(*a*) a person producing electricity for own use and not for sale; and

(*b*) a person who generates electricity for own use and in these By-laws, where the context admits, licensee includes a private owner;

"protective multiple earthing" means more than one connexion with earth in accordance with these By-laws;

"ring-fence" means the keeping of separate accounting records in respect of a licensed activity so that revenue and cost, assets and liabilities, reserves and provisions of or reasonably attributable to the licensed activity are separately identifiable in the books of the licensee from those of any other activity, business or operations of the licensee;

"safety distance" means the distance from the nearest high-voltage exposed conductor not earthed, or from an insulator, supporting a high-voltage conductor which must be maintained to avoid danger;

"safety document" means a limitation of access, permit-to-work or sanction-for-test;

"safety lock" means a device, for instance a padlock, used exclusively for approved purposes, such as locking off the points at which the circuit can be energized, and different from all other standard locks used in systems;

"sanction-for-test" means a safety document specifying the high-voltage apparatus made safe for testing, and the conditions under which the testing is to be carried out;

"senior authorized person" means an authorized person appointed in writing by a licensee, to carry out specific operational duties that may include authority to issue and cancel safety documents;

"service cable" means the final cable provided by the service provider connecting to the service provider's network;

"service line" means an electric line through which electricity may be supplied or is intended to be supplied by the licensee to a consumer either from a mains or directly from the premises of the licensee;

"service provider" means a person licensed by the Authority as a distributor of electricity;

"special pricing agreement" means an agreement between a licensee who distributes electricity and a customer whereby the licensee, notwithstanding these By-laws, offers to the customer charges or tariffs lower than those approved by the Authority for that licensee;

"supply terminals" means the end of a service line at which the supply of electricity is delivered from the said line to the consumer;

"support" means a structure or pole for supporting an overhead line and includes any stay or strut associated therewith;

"switching" means the operation of circuit breakers, isolators, disconnectors, fuses or other methods of making or breaking an electrical circuit or the application and removal of circuit main earths;

"system" means an electrical system in which conductors and apparatus are electrically connected to a common source of supply;

"system expansion" means an expansion of the capacity of a service provider's network, including transformer upgrading, in order to connect more customers to an area served by the existing distribution network;

"system extension" means an extension of a service provider's existing electricity distribution system to an area not previously served by the service provider and shall not include a customer service cable;

"tariff" means a price or schedule of prices for the supply and distribution of electricity to customers by a service provider as approved by the Authority;

"terms and conditions of service" means, with respect to any particular service provider, the terms and conditions on which the Authority has authorized the service provider to sell electricity to its customers;

"telecommunication" bears the meaning as defined in the Communications Act; Cap. 68:01

"telecommunication line" bears the meaning as defined in the Communications Act; Cap. 68:01

"telecommunication lines protection" means standards to enforce section 40 (2) (*b*) of the Communications Act; Cap. 68:01

"voltage" means—

(*a*) the electro-motive force existing between any pair of live conductors forming part of the common supply of electricity or between any part of either of such conductors and earth; and

(*b*) in the case of alternating current, means the virtual voltage or root-mean square value as determined by the square root of the mean value of the squares of the instantaneous values of the voltage during complete cycle;

"working and access clearance" means the distance to be maintained from the nearest live exposed high-voltage conductor, to ensure observance of the safety distance in work on systems; and

"working party" means—

(*a*) persons under the immediate supervision of a competent or senior authorized person and shall be a member of the working party; or

(*b*) a competent or senior authorized person when working alone.

PART II
Licensing

Licence application fees

3. A person applying for issue, transfer, amendment or renewal of a licence shall pay the application fee specified in Part A of the First Schedule hereto.

Objects of licensing system

4. The objects of the licensing system are to promote—

(*a*) effective, reliable and appropriate systems of electricity supply;

(*b*) long-term sustainability of resources;

(*c*) efficiency and cost effectiveness;

(*d*) management of quality of supply and services;

(*e*) responsiveness to the interests of customers;

(*f*) justice, equity and transparency in the electricity supply industry;

(*g*) health and safety of persons;

(*h*) responsible protection of the environment;

(*i*) recognition and response to regional policies, objectives and developments; and

(*j*) responsiveness to customers, private, non-governmental and statutory institutions where to do so would support the purposes of the Act.

Applications

5.—(1) An application for the issue, renewal, amendment or transfer of a licence shall be made in Form EA 1 for generation, Form EA 2 for transmission, import or export and Form EA 3 for distribution contained in Second Schedule hereto and shall be accompanied by the appropriate application fee in accordance with by-law 3 hereof.

(2) Any person making an application shall, in so far as it is applicable to an application, include the following information in an application under paragraph (1)—

(*a*) the name, nationality and postal, physical and business address of the applicant, and in the case of an application for a transfer of a licence, this information shall be provided with regard to both the licensee and the proposed transferee;

(*b*) the type of application, namely an application for the issue, renewal, amendment or transfer of a licence;

(*c*) the type of activity to which the application applies, namely generation, transmission, supply, distribution, importation or exportation of electricity;

(*d*) in the case of an application for the issue or amendment of a licence—

(i) the proposed location of where the applicant intends to erect or alter plant;

(ii) a description, including a schematic layout, of the proposed plant which the applicant intends to erect or alter; and

(iii) a description, including a schematic layout, of the area within which the applicant intends to carry out the activities to be authorized under the licence;

(*e*) in the case of an application for the issue of a licence, a complete list of the standard tariffs which the applicant intends to charge, to be specified in the schedule of approved tariffs to be contained in the relevant licence; and

(*f*) in the case of the issue, renewal, amendment or transfer of a licence, an outline of the intended operational and business plan, unless such plan has already been submitted during a previous application and has not changed in which case such previous plan shall be attached;

(*g*) in the case of an application for a licence, an estimate of the expected income and expenditure during the first full year of operation and one additional year of the relevant activity to be carried on by the applicant under a licence;

(*h*) in the case of an application for the issue, amendment or transfer of a licence, copies of letters of recommendation as to the credit worthiness of the applicant or transferee from at least one local commercial bank and one reputable international bank;

(*i*) in the case of an application for the issue, amendment or transfer of a licence, a copy of the advertisement referred to in by-law 6 and a copy of the newspaper in which such advertisement was placed;

(*j*) in the case of application for amendment or transfer of licence, the reasons for such amendment or transfer shall be given;

(*k*) such other particulars the Authority may require in general or in the case of a particular type of or particular licence, or in terms of the Act or any subsidiary legislation made thereunder, in order to enable the Authority to make a decision on such application or on conditions to be imposed on a licence in terms of the Act.

(3) The Authority shall not consider any application unless the Authority has received all the prescribed information.

Advertising

6.—(1) An applicant applying for the issue, amendment or transfer of a licence shall submit an advertisement to that effect to the Authority which shall be advertised by the Authority at the cost of the applicant not more than fourteen days prior to the submission of such application to the Authority.

(2) An advertisement referred to in paragraph (1) shall be published in at least one daily newspaper circulating in Malaŵi.

(3) The advertisement shall—

(*a*) specify the information required in terms of by-law 5 (2) (*a*), (*b*), (*c*) and (*d*) (*i*); and

(*b*) list the information required in terms of by-law 5 (2) (*d*) (ii) and (iii), (*e*), (*f*) and (*g*) and indicate clearly the physical address where such complete information can be inspected during normal business hours by any interested person.

Objections

7.—(1) Any person desiring to object against an application advertised in terms of by-law 6 may, within a period of thirty days after the date of the publication of an advertisement, lodge a written objection against such application with the Authority.

(2) The objection, shall be lodged in Form EA 4 contained in the Second Schedule hereto, and the person objecting shall include the following information in the objection—

(*a*) his name, nationality, postal and physical address;

(*b*) a copy of the newspaper in which the advertisement was placed;

(*c*) the nature of his interest *vis-à-vis* the application; and

(*d*) his detailed reasons for the objection.

(3) The Authority shall provide the applicant to whom the objection relates, a complete copy of the objection within seven days of such objection being lodged with the Authority.

(4) Where there has been no objection or where the Authority considers that the objections are not serious or that they can be adequately addressed in correspondence with the person objecting and the applicant, the Authority shall not call for public hearing but in all other cases the Authority shall call for a public hearing.

(5) If no public hearing is to be held with regard to an application, the Authority shall give the relevant applicant at least fourteen days to respond to the Authority in writing to an objection lodged in terms of this by-law.

PART III
Installation Permits

Division 1
The Committee

Establishment of Committee

8.—(1) There is hereby established an Electrical Installation Permits Committee.

(2) The Committee shall consist of the following members—

(*a*) two persons representing the Authority who shall be Chairperson and Secretary, respectively;

(*b*) one person representing the holders of a distribution and supply licences;

(*c*) one qualified and practicing electrical engineer appointed by the Board of Engineers;

(*d*) one person representing the National Construction Industry; and

(*e*) a recognized person from the renewable testing and training centre for renewable energies.

Rules and procedures

9. The Committee shall, with the approval of the Authority, make such rules and procedures as may, in the opinion of the Committee, be necessary for the performance of the Committee's functions under these By-laws.

Permit required

10.—(1) A person shall not practice as an electrical installations person unless he is in possession of a valid permit issued by the Authority.

(2) A permit under these By-laws may be issued to an individual person or to a firm or a company, as the case may be:

Provided that a permit issued to a company or a firm shall be on condition that the firm or company has in its employment a person who possesses a valid permit issued by the Authority.

(3) A Permit issued to a firm or a company on account of an employee who possesses a permit ceases to be valid when that employee ceases to be employed by the firm or company.

(4) No person holding a permit under these By-laws shall be used for purposes of application by a firm or a company unless such person is an employee of that firm or company.

(5) A person employed by a company or firm may obtain a permit issued under these By-laws notwithstanding the fact that such company or firm is in possession of its own valid permit.

Meetings of the Committee

11.—(1) The Committee shall meet at such times as the Committee may determine.

(2) At any meeting of the Committee, three members shall form a *quorum*.

Technical qualifications

12.—(1) A person shall not be considered for a permit under these By-laws unless he possesses any of the following technical qualifications—

(*a*) a Degree from a recognized university in the relevant field of study;

(*b*) a Higher Technician's Diploma from a recognized institution;

(*c*) an Ordinary Technician's Diploma from a recognized institution;

(*d*) a City and Guilds Certificate;

(*e*) a Craftsman's Certificate from a recognized institution;

(*f*) a Degree, Diploma or Certificate in the relevant field of renewable energy technologies from a recognized university or institution or other qualification acceptable by the Committee; or

(*g*) any other technical qualification recognized by the Committee.

(2) The Committee shall use the qualifications under paragraph (1) and relevant experience to determine the class of permit which the Committee shall issue to each respective applicant.

Types of permit

13.—(1) The Committee may, subject to such conditions as it may impose, issue any of the following types of permit—

(*a*) CLASS A for carrying out all and any kind of class of electrical installation work;

(*b*) CLASS B for carrying out electrical installation work of such medium value or complexity, including heavy low-voltage and simple high-voltage connexions up to 33 kV;

(*c*) CLASS C for carrying out electrical installation work of such small value including—

(i) installation in multi-storied building and other big buildings of complex design and commercial buildings; or

(ii) installation of light plants of up to a level of 400 volts;

(*d*) CLASS D for carrying out work restricted to any specialized class of electrical installation work, including—

(i) installation in residential premises not exceeding five bedrooms; and

(ii) repairs on equipment of up to 240 volts;

(*e*) CLASS E for carrying out specialized fields such as—

(i) centralized cooling and refrigeration;

(ii) installation of generator sets;

(iii) solar systems and other renewable energy technologies; and

(iv) electrical installation systems and designs.

(2) The Committee shall consider an application for a permit within a period of thirty days from the date of application.

(3) A permit issued under these By-laws may be renewed but shall not be transferable.

(4) Subject to by-law 14, a permit issued under these By-laws shall be renewed annually on 31st December.

Division 2
Application for Permit

Application for permit

14.—(1) An application for a permit shall be submitted in writing to the Committee and the permit shall be issued in the prescribed form and subject to such conditions as the Committee may determine.

(2) Every person issued with a permit under these By-laws shall exhibit such permit at all times in his usual place of business.

(3) Every person applying for a permit shall pay the permit fees specified in Part E of the First Schedule hereto.

Companies and organizations

15.—(1) Every company or firm applying for a permit under these By-laws shall have amongst its staff persons qualified to be issued with Class A or B categories of permit and shall pay the permit fees specified in Part F of the First Schedule hereto.

(2) Whenever a company or firm holding a licence under these By-laws does not have amongst its staff persons qualified to be issued with class A or B category of permit, the firm or company's permit shall automatically be cancelled.

Conditions to be satisfied

16. Any person who applies to the Committee for a permit shall be required to satisfy the Committee—

(*a*) that he is at least eighteen years of age and is a fit and proper person to conduct the business of electrical installations;

(*b*) that he has satisfactory knowledge of the latest edition of the rules and regulations and of all legislation applicable to the type of installation specified in the permit he is applying for;

(*c*) that he has made adequate provisions for the carrying out of his work and for the supervision of his staff;

(*d*) that he has suitable premises from which to conduct his business;

(*e*) that he has suitable instruments to enable him carry out the recognized tests on the type of installation to which his permit applies; and

(*f*) that in the case of renewal of a licence, the standard of work and the conduct of business have been satisfactory during the period of validity of the previous permit.

Voting

17. In the event of non-consensus among the members of the Committee when deciding whether to grant a permit or not, the matter shall be decided by a majority vote, taken at a meeting at which at least two-thirds of all the members are present.

Grant of permit

18. The Committee shall make recommendation to the Authority which permit to grant to an applicant and the Authority shall issue the said permit to the applicant.

Cancellation of permit

19.—(1) The Committee may, at any time, refuse to grant or renew a permit or cancel a permit if it is satisfied that the person has failed to comply with any conditions contained in these By-laws.

(2) In case of refusal to grant a permit or cancellation of a permit, the Committee shall request the applicant concerned in writing, to appear in person or by representation, before the Committee and show cause why the Committee should not exercise its power under paragraph (1) of this by-law.

Obtaining information

20. In order to obtain any information and to carry out any inspection as provided under these By-laws, the Committee may, at its direction, request any person to carry out any such inspection or tests as it may require and to furnish a report of such inspection to the licensee.

PART IV
Supply and Quality of Service

Division 1
Supply

Declared method of supply to consumers

21.—(1) Subject to paragraph (4), before giving a supply of electricity to a consumer, a licensee shall declare, in writing, to the consumer the standard type of current and number of phases, the standard frequency and the standard voltage at which the licensee proposes to deliver the electricity to the supply terminals.

(2) Subject to paragraph (4), for the purposes of paragraph (1)—

(*a*) the standard type of current and number of phases shall be alternating current, one or three phases;

(*b*) the standard frequency shall be fifty cycles per second;

(*c*) the standard voltage shall be—

(i) 230 volts phase to neutral for a single-phase supply; or

(ii) 400 volts phase to phase for three-phase supply.

(3) A licensee shall constantly maintain the standards referred to in paragraph (2) (*a*), (*b*) and (*c*), subject to a permissible variation—

(*a*) of frequency, between a lower limit of 48.75 cycles per second and an upper limit of 51.25 cycles per second;

(*b*) of voltage of plus or minus six *per centum* of the voltage stated in paragraph (2) (*c*).

(4) A licensee may depart from paragraph (1), (2) or (3), with the approval of the Authority—

(*a*) by agreement with a consumer to whom it is intended to give an individual supply of electricity from a distributing main to be used solely for the purposes of that one consumer;

(*b*) by agreement with each consumer, in a group of consumers to whom it is intended to give a supply of electricity from a common distributing main for the group;

(*c*) in giving a supply of electricity at high-voltage in accordance with a published tariff; or

(*d*) in giving a special supply of electricity for purposes outside the terms of the licensee's published tariffs:

Provided that a departure made in accordance with this paragraph to a consumer shall not adversely affect any other consumer.

(5) Before giving a supply of electricity to a consumer in accordance with paragraph (4), the licensee shall declare, in writing, to the consumer the type of current and, if alternating current, the number of phases and frequency and the voltage at which he proposes to deliver the electricity to the supply terminals.

(6) Where a supply of electricity is given in accordance with paragraph (4) a licensee shall constantly maintain supply as declared in paragraph (5), subject to a permissible variation—

(*a*) of frequency, if alternating current, not exceeding two and a half *per centum* above or below the declared frequency;

(*b*) of voltage, not exceeding six *per centum* above or below the declared voltage where the special agreement for the supply stipulates a different permissible voltage variation.

(7) Before giving a bulk supply of electricity to another licensee for redistribution, the licensee supplying the electricity shall declare in writing to the licensee receiving the electricity the type of current and, if alternating current, the number of phases and frequency and the voltage at which it is proposed to deliver the electricity:

Provided that where the bulk supply is alternating current intended for redistribution to consumers to whom paragraphs (1), (2) and (3) apply—

(*a*) the declared frequency shall be fifty cycles per second which shall be constantly maintained subject to the permissible variations set out in paragraph (3) (*a*);

(*b*) any limits to voltage variation agreed between the two licensees, with the approval of the Authority, shall be such as will not adversely affect any consumer in respect of paragraph (3) (*a*).

(8) Except for causes beyond the control of the licensee and subject to paragraph (7)—

(*a*) any permissible variation provided for in this by-law to a declared frequency of fifty cycles per second shall be compensatory adjusted to give a mean frequency of fifty cycles

per second as far as practicable in each continuous period of twenty-four hours;

(*b*) any permissible variation provided for in this by-law to a declared voltage may be exceeded during control operations on the system for a period not longer than ten consecutive minutes.

(9) Subject to the terms and conditions of a contract of supply between a licensee and a consumer, nothing provided under this by-law shall prevent the licensee and the consumer, by agreement, to terminate the contract of supply made in accordance with paragraphs (1), (2) and (3) and substituting therefor a new contract of supply made in accordance with paragraphs (4), (5) and (6), or vice versa provided that no other consumer is adversely affected by such substitution.

Licensee to provide constant supply

22.—(1) Subject to paragraph (2), from the time a licensee begins to supply electricity through a distributing main or service line, he shall maintain a supply of electricity in terms of the agreement, sufficient for the use of each consumer entitled for the time being to be supplied therefrom and that supply shall be constantly maintained to each consumer without change—

(*a*) in the declared method of supply set out in by-law 21 except as provided for therein;

(*b*) in the relationship between the neutral conductor and earth or between the neutral conductor and any phase conductor;

(*c*) in the phase rotation, except by agreement in writing between a licensee and a consumer with the approval of the Authority provided that no other consumer is adversely affected thereby.

(2) A licensee shall not lessen or discontinue a supply which is required to be constantly maintained in accordance with paragraph (1) except—

(*a*) for causes beyond the control of the licensee;

(*b*) where the consumer has failed to pay charges lawfully due in accordance with the conditions of supply or any written law, as the case may be;

(*c*) where the consumer has failed to comply with the conditions of supply or any written law and failed to remedy his default within seven days of receiving from the licensee a notice calling upon him to do so; or

(*d*) where required or permitted by the provisions under these By-laws.

Licensee may lessen or discontinue supply

23.—(1) A licensee may temporarily lessen or discontinue a supply of electricity referred to in by-law 22—

(*a*) without prior notice to a consumer likely to be affected—

(i) where such action is necessary to prevent danger to life or damage to property;

(ii) in any emergency, arising from whatsoever cause, including any political cause, to ensure the proper working of the licensee or any other undertaking with which it is interconnected;

(iii) by the automatic operation of a protective device installed to disconnect a supply of electricity in faulty conditions;

(iv) by the automatic or hand operation of a device installed to disconnect a supply of electricity in terms of the conditions or agreement to supply;

(*b*) on giving not less than twenty-four hours notice—

(i) for the purposes of making alterations or additions to a system;

(ii) for normal maintenance work; or

(iii) for testing a device referred to in subparagraph (*a*) (iii) or (iv) above.

(2) A licensee shall resume the normal supply of electricity as soon as it is safe and expedient to do so after the temporary lessening or discontinuance referred to in paragraph (1).

(3) The notice required in accordance with paragraph (1) (*b*) shall state the period during which the supply may be affected and shall—

(*a*) be served on all affected consumers;

(*b*) be published in a newspaper circulating in the area affected; or

(*c*) be announced on radio operating in the area affected.

(4) In temporarily lessening or discontinuing a supply of electricity in the circumstances set out in paragraph (1) (*a*) (ii), a licensee, unless all his consumers are affected thereby, may select which consumer or group of consumers shall have lessened or continued supply.

Licensee shall not permanently connect

24.—(1) A licensee shall not permanently connect a consumer's installation or part thereof with his low-voltage or medium-voltage electric lines if he or a person authorized by him is aware that the

connexion, if made, would cause a dangerous leakage of electricity from such installation or part thereof.

(2) A licensee shall not permanently connect a consumer's installation or part thereof with his high-voltage electric lines unless he or a person authorized by him is satisfied that the high-voltage portion of the consumer's installation is of a standard of construction and safety not less than that required for a licensee's high-voltage works in accordance with these By-laws.

Disconnexion of works in certain circumstances

25.—(1) Every section of a licensee's works, including cables and overhead lines, which is in such a faulty condition so as to cause or is likely to cause death or injury to any person or damage to any property and where the condition becomes known to the licensee or to a person authorized by him to operate the section, the licensee or the duly authorized person shall disconnect from the supply of electricity immediately and shall not reconnect it until the faulty condition of the section is remedied.

(2) Every section of a licensee's works, including cables and overhead lines, which because of a faulty condition, is causing interference with the use of a telegraph line and where the faulty condition becomes known to the licensee or to a person authorized by him to operate the section, the licensee or the dully authorized person shall disconnect from the supply of electricity and shall not reconnect it until the faulty part of the section is remedied.

(3) Nothing provided under paragraph (1) or (2) shall prevent a licensee from temporarily reconnecting a section referred to therein to a supply of electricity for testing purposes where such temporary reconnexion can be made without risk to life or property.

Protection of telegraph lines Cap 68.01

26. A licensee shall comply with the Communications Act in regard to protection of telegraph lines where—

(*a*) a cable laid by him crosses or is in close proximity to an underground telegraph line; or

(*b*) an overhead line installed by him crosses or is in close proximity to an overhead telegraph line.

Inspection and testing

27.—(1) A consumer shall not be relieved of any liability or responsibility for inspecting, testing or maintaining, in a safe condition, his own installation by virtue of any obligation to inspect or test placed on a licensee.

(2) For the purposes of by-law 24 (2) or by-law 25, a licensee may, in lieu of an inspection or test by himself or by a person authorized by him, accept from a consumer a certificate in approved form given on behalf of the consumer by an electrical installations person or competent

person that the consumer's installation or part thereof has been inspected and tested in a manner approved by, and with results satisfactory to, the licensee.

(3) A consumer shall cause his electrical wiring to be tested every five years and maintain and keep a record thereof until the next installation testing and the record shall indicate the particulars of the installations person who carried out the inspection and the work or repairs done, if any.

Availability of By-laws

28. A licensee shall keep a copy of these By-laws at each office, depot or service centre attached to his licensed activity.

Division 2

Construction of Licensee's or Private Owner's Works

Design and protection of works

29.—(1) The works of a licensee shall—

(*a*) be sufficient in size and rating to perform their intended functions;

(*b*) be designed, constructed, installed and protected, where necessary, with such material and of such quality as to prevent danger;

(*c*) be specially designed and constructed or additionally protected where exposed to—

(i) the weather;

(ii) wet conditions;

(iii) vermin;

(iv) corrosion;

(v) flammable surroundings;

(vi) dust; or

(vii) explosive atmosphere,

so as to prevent danger from such exposure.

(2) A licensee shall ensure that conductors and live parts, except as otherwise provided for in these By-laws are—

(*a*) where necessary, fully insulated and mechanically protected; or

(*b*) placed and safeguarded to prevent danger.

(3) A licensee shall ensure that high-voltage conductors and high-voltage live parts, unless completely surrounded and protected by earthed metal, have the minimum section clearances set out in the Third Schedule hereto or are guarded by a protective barrier in order to prevent inadvertent touching or dangerous approach by a person standing on any floor-level, walkway, stairway or working platform.

Switch gear

30. A licensee shall ensure that a switch, fuse-switch, circuit-breaker or isolating link is—

(*a*) accurately adjusted to make and maintain good contact;

(*b*) provided with an operating handle which is insulated from the electrical conductors;

(*c*) arranged in such a way that it cannot accidentally reclose from the open position;

(*d*) arranged so as to make and break all live poles of the supply simultaneously, except in the case of fuses or where an isolating link is intended for use on a circuit not carrying load; and

(*e*) designed or constructed so that in breaking a live circuit an arc is not maintained.

Fuse

31. A licensee shall ensure that a fuse is designed, constructed, installed and protected in such a manner that—

(*a*) it effectively interrupts the circuit current under fault or abnormal overload conditions; and

(*b*) the fusible portion may be readily be removed or replaced without danger.

Automatic circuit-breakers

32. A licensee shall ensure that an automatic circuit-breaker is designed, constructed, installed and protected in such a manner that—

(*a*) it effectively interrupts the circuit current under fault or abnormal overload conditions;

(*b*) there is no danger from overheating or arcing or the scattering of hot oil when it operates; and

(*c*) where arranged for manual closing, the operating mechanism provides trip-free operation.

Joints and connexions

33. A licensee shall ensure that an electrical joint or connexion is designed, constructed, installed and protected in such a manner that—

(*a*) electrical conductivity is maintained satisfactorily;

(*b*) its insulation, where insulation is necessary, is suitable for the formal operating voltage; and

(*c*) its mechanical strength is suited to its location and environment.

Isolating and protective devices

34.—(1) A licensee shall ensure that isolating and protective devices—

(*a*) for disconnecting all voltages from any part of a system; and

(*b*) starting and stopping every motor,

are provided to prevent danger.

(2) Every part of a system shall be protected from excess current except a control or other circuit where such protection may be undesirable or unnecessary.

Switchboard

35.—(1) A licensee shall ensure that a switchboard is designed, constructed, installed and placed in such a manner that the—

(*a*) parts which have to be handled or adjusted are readily accessible from the working platform; and

(*b*) measuring instruments and indicators are observable from such platform:

Provided that where such handling, adjustment or observation is made from another position, such additional precautions as are necessary to prevent danger shall be taken.

(2) A licensee shall ensure that a low-voltage or medium-voltage switchboard which has bare conductors normally exposed that they can be touched—

(*a*) is located in an area specially provided or be suitably fenced or enclosed; or

(*b*) has a working platform or passageway that has—

(i) a firm and even floor;

(ii) adequate means of access free from danger;

(iii) a clear head-room of not less than 2.12 metres; and

(iv) a clear width of not less than 1.2 metres measured from any bare conductor or a clear width of 2.43 metres between bare conductors arranged in switchboards on opposite sides of the same passageway.

Building for electrical purposes

36.—(1) A building constructed by a licensee for the accommodation of any of his works shall—

(*a*) be substantially constructed and designed for its intended purposes;

(*b*) be arranged in a such manner to prevent, as far as practicable, access thereto except by a doorway or gateway;

(*c*) enclose the works in such a manner that they cannot readily be interfered with from outside;

(*d*) be ventilated, kept dry and made vermin-proof, as far as practicable;

(*e*) have fixed outside each entrance a notice of durable material inscribed with the word "DANGER" in white letters of at least 3.13 centimetres in height on a red background; and

(*f*) have fixed inside, printed instructions as to the proper first-aid treatment of persons suffering from electric shock.

(2) Where the building referred to in paragraph (1) is below ground level, the licensee shall ensure that—

(*a*) it has adequate means of access by a door or trap-door with a staircase or ladder securely fixed and so placed that no live part of a system or conductor shall be within reach of a person thereon; and

(*b*) where a person is to be regularly employed therein and high-voltage is present, it has access referred to in subparagraph (*a*) by door and staircase only.

Outdoor substations

37.—(1) Any part of a licensee's works for the transformation, control, regulation or switching of electricity in the open air shall, except as otherwise provided for in these By-laws—

(*a*) be completely enclosed in a metal casing connected with earth at all points below a height of 3.0 metres from the ground;

(*b*) be mounted on the supports of an overhead line; or

(*c*) be enclosed by a fence not less than 1.8 metres in height fitted with a suitable anti-climbing device for the purpose of preventing access not authorized by the licensee.

(2) A licensee shall ensure that a notice of durable material inscribed with the word "DANGER" in white letters of at least 3 centimetres in height on a red background shall be fixed to the metal casing, supports or fence referred to in paragraph (1) (*a*), (*b*) or (*c*).

Earthing of metal-work

38.—(1) A licensee shall ensure that—

(*a*) metal-work attached to or forming part of a metal or reinforced concrete support and a metal transformer case or metal switch handle mounted thereon is connected with earth;

(*b*) metal-work attached to or forming part of a wooden support which is liable to become dangerous because of leakage across or failure of the insulation—

(i) is connected with earth if the metal-work is within 3 metres of the ground; or

(ii) where the metal-work is not connected with earth and is more than 3 metres above the ground, it has effective secondary insulation sufficient to withstand the voltage to earth.

(2) Notwithstanding subparagraph (*b*), where a metal-work is mounted on a wooden support, a licensee shall ensure that—

(*a*) a metal transformer case together with its associated metal-work and a metal switch handle is connected with earth;

(*b*) a high-voltage switch is inserted in the operating rod between the switch handle and the switch insulator capable of withstanding the normal operating voltage where such switch handle is within 3 metres of the ground.

(3) A licensee shall ensure that metal cradle or a stay-wire is—

(*a*) connected with earth; or

(*b*) has inserted insulation capable of withstanding the normal operating voltage.

(4) A licensee shall ensure that a metal armouring or metal sheathing, except sheathing intended for use as a concentric neutral conductor at earth potential—

(*a*) is connected with earth;

(*b*) has earth continuity maintained by a separate earth conductor across any joint-box or terminal enclosure associated with the cable; and

(*c*) where the joint-box or enclosure referred to in subparagraph (*b*) is of metal and bonded thereto.

(5) Save as otherwise provided in these By-laws, the licensee shall ensure that any metal-work associated with or forming part of a licensee's works, unless isolated from and not likely to come into contact with live parts or with earthed metal-work, is connected with earth.

Earthing of consumer's installation

39.—(1) Where a licensee provides protective multiple earthing in accordance with Part V, he shall, before supplying a consumer with electricity therefrom, interconnect with his own earthing arrangements the main earthing conductor of the consumer's installation.

(2) In any other case other than that set out in paragraph (1), a licensee may, before supplying a consumer with electricity, permit an interconnexion between his own earthing arrangements and the main earthing conductor of the consumer's installation, subject to such conditions as the licensee considers necessary.

Earth electrodes

40. A licensee shall ensure that an earth electrode is installed in a way that no voltage gradient is maintained at ground-level which may cause danger to life.

Leakage to earth

41. A licensee shall ensure that where metal-work is earthed, the associated earthing system is designed, constructed and maintained in a way that any leakage resulting from contact of negligible resistance between a live conductor or live part and any metal-work connected with earth is sufficient to operate the protective device which is installed to make that conductor or part dead.

Arc-suppression coil

42. Nothing provided under by-law 41 shall prevent a licensee from using an arc-suppression coil inserted between the transformer or generator neutral and earth in such a manner as to ensure that in the event of a live conductor or live part coming into contact with earth or with any metal-work connected with earth an arc between that conductor or part and earth is immediately suppressed and the voltage of that conductor or part thereof is reduced to prevent, as far as reasonably practicable, the risk of accident therefrom.

Service lines on consumer's premises

43.—(1) A licensee shall ensure that a service line has a suitable fusible cut-out or circuit-breaker as a protective device placed, as near as practicable, to the supply terminals on the consumer's premises.

(2) A protective device referred to in paragraph (1) shall be—

(*a*) supplied and installed by a licensee or, in the event of agreement between him and the consumer, by the consumer;

(*b*) of adequate rupturing capacity, suitably enclosed and of fire-resisting construction;

(*c*) placed at a position to be selected by the licensee after consultation with the consumer; and

(*d*) inserted in each live conductor and not in any neutral conductor permanently connected with earth.

(3) Where supply of electricity is provided at high-voltage, a licensee shall make provision that—

(*a*) the protective device referred to in paragraph (1) can be isolated from the service line; and

(*b*) the consumer can cut off all voltage at or after the supply terminals without danger.

Construction and installation of cables

44.—(1) A licensee shall ensure that a cable is fully insulated for the normal operating voltage and is of a type and construction and is laid or installed in a manner suited to its particular environment and shall take into account—

(*a*) by-law 29 (*a*), (*b*) and (*c*);

(*b*) the normal usage of the ground in which any part of it is to be laid; and

(*c*) any foreseeable risk of damage to the cable and danger to persons, property and to other electrical services, water, gas, sewerage and telegraph services, railways and constructional works at or below ground-level.

(2) A licensee shall ensure that a component used with a cable is of a type and construction and is laid or installed in a manner suited to that cable and shall take into account—

(*a*) paragraph (1); and

(*b*) by-law 33 where a joint or connexion is necessary.

Metallic protection for high-voltage cables

45.—(1) A licensee shall ensure that a high-voltage cable is laid or installed so that it is completely surrounded and protected by earthed metal as provided—

(*a*) by its own metal sheathing or metal armouring; or

(*b*) by an extraneous metallic covering.

(2) A licensee shall ensure that a joint, connexion or termination of a high-voltage cable is surrounded and protected by earthed metal.

(3) Notwithstanding paragraph (1) or (2), the surrounding and protection by earthed metal referred to therein may be omitted in a power station, substation, switch-room or similar premises designed for electrical purposes:

Provided that where it is omitted, the high-voltage cable, joint, connexion and terminal shall—

(*a*) have the section clearances required in accordance with by-law 29 (3); or

(*b*) be guarded by a protective barrier to prevent inadvertent touching or dangerous approach by a person standing on a normal floor-level, walkway, stairway or working platform.

Identification of neutral conductor, cable labeling and insulation test

46.—(1) A licensee shall ensure that a neutral conductor of a cable can, at its termination, be permanently identified so that it is readily and uniformly distinguishable from other conductors.

(2) Where two or more cables forming part of different circuits terminate at adjacent positions, a licensee shall ensure that each circuit—

(*a*) is permanently labeled on its exterior or on its terminating box or component; or

(*b*) has other means of identification so that it is readily distinguishable from other circuits.

(3) A licensee shall ensure that a cable is subject to an insulation test after being laid or installed before being connected to a supply of electricity and that it is not connected if the connexion would result in an electrical leakage which might be a danger to persons or property.

(4) A licensee shall ensure that no cable is permanently connected to a supply of electricity unless tests have been carried out—

(*a*) to ensure compliance with these By-laws; and

(*b*) to establish electrical continuity of conductors.

Division 3
Standards of Measurement

Fundamental electrical units

47.—(1) The fundamental electrical units of measurement shall be—

(*a*) the ohm;

(*b*) the ampere; and

(*c*) the volt,

and the value of each is set out in Part I of the Sixth Schedule hereto.

(2) Denominations of standards for the fundamental electrical units referred to in paragraph (1) are set out in Part II of the Sixth Schedule hereto.

(3) Limits of accuracy attainable in the use of standards denominated in paragraph (2) are set out in Part III of the Sixth Schedule hereto.

Derived electrical units

48. The electrical unit for the measurement of electricity shall be the kilowatt-hour and the value of such unit shall be derived from the fundamental units referred to in by-law 62 and shall be set out in Part IV of the Sixth Schedule hereto.

Measurement of electricity

49.—(1) The amount of electricity supplied by the licensee shall, except where otherwise agreed between the consumer and the licensee, with the approval of the Authority, be ascertained by means of an appropriate meter or meters supplied by the licensee.

(2) In addition to a meter which may be placed upon the premises of a consumer to ascertain the amount of the supply, the licensee may place upon those premises such meter or other apparatus as may be desired for the purpose of ascertaining or regulating the amount of electricity supplied to the consumer, the number of hours during which the supply is taken, the maximum rate of supply taken by the consumer or any other quantity or time connected with the supply.

(3) A meter used by a licensee for measuring a supply to a consumer of electricity in kilowatt/hours shall have permissible limits of error in registration not exceeding two decimal point five *per centum* above nor below a true and precise registration of kilowatt/hours.

Division 4
Quality of Service and Supply Standards

Quality of service and supply standards

50.—(1) A holder of a transmission licence and every holder of a distribution licence shall comply with and adhere to the quality of service and supply standards set out in the Tenth Schedule hereto.

(2) Persistent or gross breach of the standards referred to in paragraph (1) by a licensee may lead to suspension, amendment or cancellation of the licence by the Authority.

PART V
Safety Code Rules

Division 1
Application of Part

Application of this Part

51.—(1) This Part shall apply to electrical systems and to associated plant and apparatus under licensees' or private owners' ownership or control.

(2) Rules, documents or procedures issued by other authorities or licensees may apply in accordance with management instructions, but where no such rules, documents or procedures have been issued, or if there is a conflict between such rules, documents or procedures with these By-laws, these By-laws shall prevail.

Division 2
General Provisions

Information and instruction

52.—(1) Each licensee shall sufficiently inform and instruct its employees about the system, plant or apparatus affected by a particular operation or work, and the rules, procedures or documents which apply to such licensee's operations.

(2) A licensee shall, in addition to paragraph (1), furnish information to other persons not being its employees who are likely to be exposed to danger by the operations or work of the licensee, to such extent as may, in the licensee's opinion be reasonably practicable.

Variation

53. The Authority may, in exceptional or special circumstances, vary these By-laws and issue additional guidelines to such extent as may, in the opinion of the Authority, be necessary to achieve the objectives of these By-laws.

Special procedures

54. A licensee shall ensure that work on or testing of apparatus, conductors or plant to which these By-laws are for special reasons not applicable, shall be carried out according to a special procedure, which shall adhere to the safety requirements prescribed under these By-laws.

Objections

55.—(1) A person who receives instructions regarding the operation of or work upon a licensee's systems and associated plant and apparatus shall, if he has an objection on safety grounds against the carrying out

of such instructions, lodge the objection with the person issuing the instructions.

(2) Where an objection has been raised under paragraph (1), the licensee or other concerned entity shall institute investigations into the merits of the objection and, if necessary, refer the matter to an immediate supervisor for a decision before proceeding with the operation or work.

Accident and dangerous occurrences

56. Every electrical accident and dangerous occurrence involving a licensee's system shall be reported immediately to the appropriate control engineer who shall report to the designated engineer.

Duties

57.—(1) A person engaged in the operations or work on electrical systems and associated plant and apparatus shall comply with these By-laws and other related rules and legal procedures relevant to his duties.

(2) A person shall not neglect his duties on the ground that he is ignorant of the relevant legal requirements and procedures.

(3) A person who has any doubts concerning duties shall report the matter to an immediate supervisor for advice before proceeding with the work.

Safety equipment and protective clothing

58.—(1) Every licensee shall obtain and issue to its employees safety equipment and protective clothing which comply with the standards approved by the Authority.

(2) Each employee working under circumstances requiring safety precautions shall wear appropriate protective clothing and foot wear or such other protective clothing, as may be necessary, having regard to the work that employee may be involved in.

Electric shock

59.—(1) Every licensee shall train each person involved with the operation of or work upon the licensee's system and associated plant and apparatus in the treatment of electric shock.

(2) Every licensee shall provide each employee with a copy of these By-laws.

Division 3
General Safety Precautions

Access to work in operational premises

60.—(1) No person shall, without authority, enter or have access to any operational premises such as a control room, substation, switching station or underground chamber belonging to or under the control of a licensee.

(2) A barrier, door or gate restricting access to an underground chamber or other confined space, substation or tunnel shall be kept

locked and the control of the keys shall be in accordance with approved procedure.

(3) A person shall not enter or work in any indoor substation or confined space such as an underground chamber, tunnel, vessel, tank, pit, culvert or pipeline without the consent of a senior authorized person.

(4) Where it becomes necessary for a person to enter and work in any of the places specified under paragraph (3), adequate safety precautions shall be taken against danger arising from toxic and flammable or abnormal temperature.

(5) Safety precautions under paragraph (4) include—

(*a*) use of approved natural or forced ventilation or air conditioning;

(*b*) wearing approved breathing apparatus;

(*c*) testing the atmosphere using approved specialized equipment;

(*d*) prohibition of smoking and use of exposed flame; and

(*e*) posting a person outside such place to keep in constant touch with the person engaged in the work with appropriate rescue equipment, ready and capable of assisting in an emergency.

(6) A person using the apparatus under paragraph 5 (*b*) shall be specially trained in its use.

(7) Before a person enters an area under this by-law, he shall be issued with a limitation-of-access, and the arrangements for access and work and the precautions to be taken shall be in accordance with approved procedures.

Vessel containing flammable substance

61.—(1) A person shall not smoke or expose a flame near any flammable substance.

(2) A person shall not engage in work involving application of heat unless that person has taken all practical precautions to prevent a fire or explosion. The prevention of fire or explosion shall be by removal of the flammable substance and any fumes, or by rendering them non-explosive and non-flammable.

(3) A person shall not enter a vessel that has recently been emptied of oil or other flammable or toxic substance unless a senior authorized person is satisfied that all dangerous vapours have been expelled, and a limitation-of-access has been issued.

Work in fire protected areas

62.—(1) Unless alternative approved safety procedures apply because of special circumstances, before access or work is carried out in an enclosure protected by automatic fire-extinguishing equipment—

(*a*) the automatic control shall be rendered inoperative and the equipment left on manual control, and a caution notice attached;

(*b*) the precautions taken to render the automatic control inoperative and the conditions under which it may be restored shall be noted on a safety document or written instruction issued for such access or work or other activity; and

(*c*) the automatic control shall be restored immediately after the persons engaged in the work have withdrawn from the enclosure.

(2) Only approved portable fire-extinguishers shall be made available and shall be the only extinguishers to be used near live apparatus and conductors.

(3) In the handling of fire-extinguishers, the safety distances specified in by-law 87 shall be maintained.

(4) After the discharge of a portable fire-extinguisher in an enclosed space, personnel shall leave the space until the precautions specified in by-law 76 (3) have been taken.

(5) After an explosion, fire or discharge of a fire-extinguisher in an enclosed space, the space shall be adequately ventilated before any person enters it.

Work on poles, towers and high structures

63.—(1) A person shall not climb any pole unless that pole has been tested in a manner approved by the Authority and climbing and descending a pole shall be by approved means and methods.

(2) A person shall not climb a pole which is impaired by decay or damage, or whose stability is in doubt until that pole has been supported by approved means.

(3) Where a pole is supported as provided under paragraph (2), the pole shall be climbed by one person at a time or access to its top may be by other approved means independent of the pole.

(4) A person gaining access to work on a tower, pole or other high structure shall use safety belts, harnesses or other safety equipment of an approved type.

(5) A person working on a tower, pole or other high structure shall be in visual range of another person who shall be fully conversant with approved rescue procedures.

(6) Every gate or device to prevent climbing of towers and gantries supporting high-voltage conductors shall always be kept secured in an approved manner, and access shall be controlled by a senior authorized person or an authorized person in receipt of an appropriate safety document.

Access to high-voltage apparatus and conductors

64.—(1) Guards to an access ladder, barrier, door or gate on or in an outdoor compound preventing access to a live high-voltage conductor shall be kept secured in an approved manner, and access to them shall be according to approved procedure.

(2) Any barrier, door or gate preventing access to a totally enclosed chamber, cubicle or cell containing live high-voltage conductors shall be kept locked and the keys shall be accessible only by a senior authorized person.

(3) Any spout shutter not required for immediate work or operation shall, if the spout is otherwise made accessible, be locked and the key accessible only by a senior authorized person.

High-voltage switching

65.—(1) High-voltage switching shall not be carried out by any person other than an authorized person, a senior authorized person or by remote control directed by a control engineer.

(2) Notwithstanding paragraph (1), an authorized person may, for the purpose of training and acting under the personal supervision of a senior authorized person, carry out high-voltage switching.

(3) Except in cases of emergency, high-voltage switching shall not be carried out without the authority of the appropriate control engineer.

(4) When a control engineer gives authority for high-voltage switching to be carried out, he shall communicate directly with the person intending to carry out the switching, and where for special reasons direct communication is not possible, an approved procedure shall be followed.

(5) Before any high-voltage switching is carried out on any system that may affect another system, the control engineer authorizing the switching shall communicate with the control engineer of the other system and the switching shall be agreed between them and recorded in the respective control books of all control engineers concerned.

(6) Where high-voltage switching is to be carried out for issuing a safety document and there are two or more control functions involved, in the absence of a standing agreement for such matter, the control engineers concerned shall—

(*a*) agree on the person to be in control of the part of the system in the isolated state and to be responsible for giving consent to the issuing of a safety document; and

(*b*) such agreement between the control engineers shall be recorded in the respective control log books by each control engineer.

(7) Where there are special requirements to be complied with before, during or after high-voltage switching operations, approved procedures

shall apply and special provisions shall be made to ensure that the control engineers, the operators and others affected are aware of their responsibilities.

(8) High-voltage switching with the control engineer's authority shall be carried out without undue delay and all such switching or switching in emergency, shall be reported to the control engineer as soon as possible. For emergency switching, the circumstances demanding such switching shall be reported at the same time.

(9) If a switchgear shows any sign of distress, the operator shall report its condition to the control engineer who shall in turn report to a higher authority in order to have it examined before taking a decision about further operation.

(10) An operator shall, while operating a switching gear mounted on a pole or other structure from ground level where necessary, wear rubber gloves or use other approved equipment.

(11) A person shall not undertake switching or work on high-voltage equipment by signal or pre-arranged understanding after an agreed interval of time.

Records

66.—(1) Every message by telephone or otherwise relating to the operation of a high-voltage system shall be recorded down and shall be read back to the sender to ensure that it has been accurately received.

(2) A control engineer shall ensure that a record is made of the time and particulars of all high-voltage switching including that carried out by the control engineer by remote control.

Failure of supply

67.—(1) A failure of supply to or from any part of a high-voltage system from whatever cause, shall immediately be reported to the control engineer.

(2) During a failure of supply, all apparatus and conductors shall be regarded as live unless they are isolated and proved dead by approved means.

Voltage testing devices

68.—(1) Voltage testing devices shall be of an approved type and shall be used in accordance with approved procedures.

(2) Voltage testing devices shall be tested in an approved manner immediately before and after use, and where this is not practically possible, in accordance with other approved procedures.

Division 4
Safety Precautions for Work on or near High-Voltage Systems

General requirements

69.—(1) Subject to the exceptions specified in this by-law and those expressly allowed by individual rules, a person shall not undertake any

repair, maintenance, cleaning, alteration or such work, on or within the safety distance of an exposed conductor, part of a high-voltage system distance of an exposed conductor or part of a high-voltage system unless such parts of the system are—

(*a*) dead;

(*b*) isolated and all practicable steps taken to lock off from all points of supply, including voltage and auxiliary transformers, common earthing equipment and other sources from which the apparatus and conductors may become live, with caution notices fixed at all points of isolation;

(*c*) earthed by approved means at all points of disconnexion of high-voltage supply from the system or between such points and the point of work;

(*d*) screened where necessary to prevent danger, and danger notices are attached to apparatus containing live conductors and attached near other live conductors;

(*e*) identified at the point of work by approved means; and

(*f*) released for work by the issue of an appropriate safety document that shall not be issued unless such person is fully conversant with the precise parts of the systems, apparatus and conductors to be worked upon, the nature and extent of the work to be done and the safety precautions to be taken.

(2) It is the duty of the person issuing the appropriate safety documents to ensure compliance with the provisions of paragraph (1).

(3) Notwithstanding the provisions of paragraph (1)—

(*a*) work such as cleaning and painting of earthed metal enclosures, connexions or disconnexions of circuits to or from live high-voltage systems, live line testing and live insulator washing may be carried out but only according to approved procedures;

(*b*) as a safeguard for personnel carrying out cleaning and painting works on substations, the system diagram in the appropriate local office shall be marked to show the work locations;

(*c*) high-voltage live line on high-voltage overhead lines may be carried out but only according to approved procedures; and

(*d*) where the design of apparatus does not allow strict compliance with all the requirements in paragraph (1) and if an operational procedure for carrying out the work does not exist, the work shall be carried out—

(i) in accordance with special instructions issued by an authorized person to ensure that safety is achieved; and

(ii) under the personal supervision of the authorized person, with the control engineer kept informed of the circumstances.

Isolation of apparatus and conductors

70.—(1) Isolation or reconnexion of high-voltage apparatus or conductors shall not be initiated except with the sanction of the control engineer.

(2) Safety locks shall be used to lock all switchgears at points where the circuit on which work is to be carried out is likely to be energized and the keys for such locks shall be kept in a key safe, if provided, or in some other safe place under the control of an authorized person.

(3) Safety locks shall be fitted to the switchgear at all points of isolation immediately following the sectionlization of defective apparatus.

(4) Details of the isolation referred to in paragraph (1) and the deposit of safety lock keys associated with the isolation shall be recorded by the Control Centre.

(5) Where the circuit on which work is to be carried out is controlled only by fuses or links, the fuses or links (and carriers) shall—

(*a*) be removed and kept in a safe place preferably in the possession of the person responsible for issuing the safety documents;or

(*b*) where such removals are not practicable approved procedures to ensure safety shall be followed.

(6) When the mechanical isolation of a voltage transformer involves physical difficulty in withdrawal to achieve total high-voltage isolation, the withdrawal of the voltage transformer, secondary fuses or links may be accepted as isolation, and fuses or links so withdrawn shall be kept in a safe place in the possession of the person responsible for issuing the safety document and caution notices shall be fixed at all points of isolation.

Earthing

71.—(1) Where high-voltage apparatus or conductors are to be discharged and earthed in accordance with by-law 84 (1), the discharging and earthing shall be done when reasonably practicable, by using a circuit-breaker or earthing switch provided for the purpose of making the earthing connexion, and where a circuit-breaker is used, the trip feature shall be rendered inoperative before closing and unless this is not practicable it shall then be done afterwards. After closing, the circuit-breaker or earthing switch shall be locked in the earthed position, so that it remains inoperative while it is in the circuit main earth.

(2) Where circuit-breaker is used to make the earth connexion, the operation of closing to earth shall be carried out locally and SCADA shall not be used for this purpose.

(3) Where subparagraph (1) is not reasonably practicable or not applicable, the high-voltage apparatus and conductors shall be checked by means of an approved testing device to verify that they are not live, and may then be discharged and earthed by an earthing lead applied by means of an approved earthing appliance.

(4) Where work is carried out on an overhead system to which a consumer remains connected, a circuit main earth shall be provided and maintained between that consumer and the point of work.

(5) Due to the possibility of low-voltage and high-voltage inversions such as those from customers' generation, care shall be taken when using earthing lead following a test with the conductor to verify that the circuit is not live, and one conductor shall be earthed and subsequent tests carried out to verify that the remaining conductors are not live before applying an earth to them.

(6) Earthing leads and associated clamps shall be of an approved type and of adequate capacity for duty at the point of application, and shall be adequately maintained and always examined immediately before use.

(7) Subject to paragraph (1), the general procedure to be followed when using earthing leads shall be as follows—

(*a*) the circuit shall be verified that it is not live and where practicable, checked by means of an approved voltage testing device or other approved means;

(*b*) the circuit shall be verified that it is not live and, where practicable, checked by means of an approved earthing pole or other approved appliance and care shall be taken to ensure that good contact is made and that earthing leads are clearly visible;

(*c*) earthing leads shall be connected to earth before being connected to the phase conductors and shall only be connected to the phases by means of an approved earthing pole or other approved appliance. Care shall be taken to ensure that good contact is made and that earthing leads are clearly visible;

(*d*) all phases shall be earthed, even if work is to be carried out only on one phase;

(*e*) earthing leads shall not be applied in any cell or compartment in which there is any exposed metal live at high-voltage that may be a source of danger, and shall be applied so that they remain clearly visible as far as it is reasonably practicable;

(*f*) when earthing leads are being removed, each lead shall be disconnected from its phase conductor by means of an approved earthing appliance before it is removed from its earth connexion; and

(*g*) for earthing on spout contacts of metal-enclosed switchgear, only approved appliances shall be used and a person shall not insert a hand or tool into contact with spouts for this purpose.

(8) A person shall not operate a high-voltage earthing switch or circuit main earth connected or disconnected, except with the consent of the control engineer, or under the terms of a sanction-for-test, or by an authorized person or by a competent person acting under the personal supervision of a senior authorized person.

(9) Each operation of circuit main earths shall be reported to the control engineer as soon as possible after completion, and when operating to a high-voltage switching schedule, the application or removal of circuit main earths shall be reported to the control engineer at the appropriate control break.

(10) The location of each circuit main earth shall be recorded on the safety document.

(11) Additional earths applied after the issue of a permit-to-work or sanction-for-test may be attached or removed by a competent person.

Approach to exposed live high-voltage conductors or insulators supporting them

72.—(1) The safety distances designated in the Seventh Schedule shall be maintained at the respective system voltages between any part of a person or object and the nearest exposed live high-voltage conductor.

(2) A distance of three hundred millimetres (300) shall be maintained at all system voltages, from the portion of insulators supporting live high-voltage conductors which is outside the appropriate safety distance to the conductors.

(3) Subject to the provisions of paragraph (4), a person shall not allow any part of his body or any other object not provided for within the approved procedures, to approach exposed high-voltage conductors or insulators supporting such conductors within the safety distances specified in paragraph (2)—

(*a*) unless the conductors have been made safe for work and a safety document issued as required by by-law 84 (1); and

(*b*) such person's hands shall be kept below shoulder height when in the vicinity of the exposed live high-voltage conductors, unless it is unavoidable.

(4) When a person is applying an approved voltage testing device to high-voltage conductors contained within the open spouts of metal enclosed switchgear, it is allowable for those parts of the body of such

person required to do the task to approach within the safety distances specified in paragraph (2), subject to approved procedures.

(5) Where exposed high-voltage conductors are not isolated, the only objects that shall be made to approach them or the insulators supporting them, within the safety distances specified in paragraph (2), shall be insulated devices approved for high-voltage live line work or approved voltage testing devices.

(6) Where exposed conductors are isolated but not proved dead, the only objects that shall be caused to approach them or the insulators supporting them within the safety distances specified in paragraph (2), shall be insulated devices approved for high-voltage live line work or approved voltage testing devices.

(7) Where exposed high-voltage conductors in a substation have been isolated, a circuit main earth may be applied to the apparatus following a visual examination to confirm that adequate isolation has been achieved.

(8) Taking account of the nature and location of the work and the hazards and the presence of persons, an authorized person or the person in charge of the work, shall establish working and access clearances to ensure that the safety distances specified in paragraph (2) are maintained, both in respect of those persons present and the objects being handled.

(9) Where work is to be carried out within a one metre distance of the safety distance specified in paragraph (2), a supervisor shall ascertain if any of the following additional precautions have been taken before work commences—

(*a*) danger notices or red pennants are attached to the pole or structure at a distance not less than that specified in that paragraph; or

(*b*) a limitation-of-access has been issued defining the work to be carried out in the vicinity of live conductors and detailing any specified potential hazards to be avoided.

(10) Danger notices or red pennants shall be attached by a senior authorized person or engineer or by a competent person acting under personal supervision of an authorized person or senior competent person.

Work in substations and switching stations containing exposed live high-voltage conductors

73.—(1) The following provisions apply to a zone of work—

(*a*) when work is to be carried out in a substation, or switching station in which there are exposed live high-voltage conductors, the zone of work shall be properly identified by an authorized person, and shall be defined as far as possible by the use of approved barrier roping, yellow demarcation ribbons or by other approved means and shall be arranged so that the specified working and access clearances, from the nearest exposed live conductor or supporting insulator to

ground level or platform or access way which may be repaired to be used, are established;

(*b*) the zone of work to be defined at ground level shall be only that in which the work is to be carried out;

(*c*) if the work cannot be carried out without leaving the ground level or a platform or access way, the working and access clearances shall be obtained from the nearest exposed live high-voltage conductor to the points from which work is actually carried out, and in such cases, access shall only be by means of an approved ladder or other approved means;

(*d*) a person shall not climb any structure to gain access, and in the case of terminal poles in substations, access shall be in accordance with approved procedures;

(*e*) if the work is such that the specified working and access clearances are not sufficient to avoid danger, other suitable arrangements shall be made;

(*f*) the approved barriers or roping shall be clearly visible, so far as it is reasonably practicable, and shall not be supported by any structure carrying electrical apparatus or conductor and shall not carry any notice; and

(*g*) at ground level, the section so defined shall be clearly distinguished by green flags by day or, if not otherwise satisfactorily illuminated, by green lights at night, fixed on separate supports and suitably spaced within the safe boundary. Danger notices shall be attached to adjoining apparatus containing live conductors or adjacent conductor supports at the limits of the zone of work.

(2) Where necessary to prevent danger, the means of access to and from the zone of work shall be defined in an approved manner.

(3) The working and access clearance required at the zone of work under paragraph (1) shall be as specified in by-law 87 (8).

(4) The following provisions apply to the use of portable ladders and long objects where there are exposed live conductors—

(*a*) the type of portable ladders shall be approved and shall be of no greater length than is required for the work involved;

(*b*) portable ladders and other long objects shall not be used without the permission of an authorized person, who shall define the conditions of use to the senior authorized person in charge of the work, the movement and erection of such ladders and objects shall then be carried out only under the personal supervision of the senior authorized person and shall be carried only in a horizontal position and as near the ground as reasonably practicable;

(*c*) portable ladders provided for giving access to fixed ladders which terminate above ground level, and to provide access in other approved cases, shall be padlocked in position or otherwise secured by a senior authorized person while work is being carried out; and

(*d*) all portable ladders within substations, or switching stations shall be securely locked to a suitable anchorage when not in use.

(5) The following provisions apply to the use of cranes, scaffolds and other equipment—

(*a*) when cranes, scaffolds or other equipment and materials transported by vehicles or otherwise are taken into or out of a substation, the route to be followed shall be agreed by an authorized person, and the cranes, scaffolds or other equipment shall be connected to the substation earthing system as soon as reasonably practicable;

(*b*) the limits of operation of such equipment shall be defined by an authorized person to a senior authorized person who shall be in charge of the work, and thereafter the equipment shall be erected or moved only within such limits under the personal supervision of the senior competent person.

(6) Danger notices, barriers and screens shall be fixed or moved only by, or under the personal supervision of an authorized person.

(7) In the event of a lightning storm, work on exposed conductors in outdoor substations or outdoor switching stations, or on apparatus directly connected to exposed conductors shall cease immediately where necessary, to prevent danger, and the control engineer shall be informed.

Permit-to-work

74.—(1) A permit-to-work shall be issued by a senior authorized person before any work is carried out on any apparatus or conductor.

(2) A permit-to-work shall only be issued with the knowledge of the control engineer, who shall maintain a record of the issue and cancellation of each permit-to-work.

(3) When working on a high-voltage switching schedule, the issue and cancellation of a permit-to-work shall be recorded by the control engineer after its issue as soon as it is practicable.

(4) Where more than one working party is involved in work on apparatus or conductors associated with the same circuit main earths, the authorized person in charge of the high-voltage switching schedule shall record the issue of all safety documents on his copy of the high-voltage switching schedule or danger envelope.

(5) If after agreement with the control engineer, it is found necessary to move any point of isolation located between the zone of work and

a live high-voltage system, every outstanding permit-to-work shall be cancelled and new ones issued for any subsequent work on the apparatus.

(6) A permit-to-work shall be explained and issued to the person in direct charge of the work, who after reading its contents and confirming that he understands it and is conversant with the nature and extent of the work to be done, shall sign receipt and its duplicate.

(7) The recipient of a permit-to-work shall be a competent person who shall retain the permit-to-work in his possession at all times while work is being carried out.

(8) Where more than one working party is involved, a permit-to-work shall be issued to the competent persons in direct charge of each working party and they may, where necessary, be cross-referenced with each other.

(9) A permit-to-work shall be cleared and cancelled—

(*a*) when work on the apparatus or conductor for which it was issued has been completed;

(*b*) where it is necessary to issue a sanction-for-test, in which case, all permits-to-work that are associated with the apparatus and conductors to be tested shall be cancelled;

(*c*) where it is necessary to change the person in charge of the work detailed on the permit-to-work; or

(*d*) at the discretion of an authorized person, when it is necessary to interrupt or suspend the work detailed on the permit-to-work.

(10) The recipient shall sign the clearance and return the permit-to-work to a senior authorized person who shall cancel it and inform the control engineer, and in all cases, the recipient shall indicate in the clearance section whether the work is complete or not, and whether all gears and tools have been removed or not.

(11) Where more than one permit-to-work have been issued for work on high-voltage apparatus or conductors associated with the same circuit main earths, the control engineer shall ensure that all such permits-to-work have been cancelled before the circuit main earths are removed.

(12) Where there is a requirement for a permit-to-work to be temporarily withdrawn or suspended, such withdrawal or suspension shall be in accordance with an approved procedure.

Sanction-for-test

75.—(1) A sanction-for-test shall be issued by a senior authorized person initiating the testing under these By-laws before any testing is carried out on any apparatus or conductor.

(2) Apparatus shall be connected to earth in accordance with by-law 84 (*c*) prior to the issue of a sanction-for-test.

(3) A sanction-for-test shall only be issued with the knowledge of the control engineer, who shall maintain a record of the issue of each sanction-for-test or its cancellation.

(4) When working on a high-voltage switching schedule, the issue or cancellation of a sanction-for-test shall be recorded by the control engineer after its issue or cancellation as soon as it is practicable.

(5) A sanction-for-test shall be explained and issued to a person in direct charge of the testing, who after reading its contents and confirming that he understands it and is conversant with the nature and extent of the testing to be done, shall sign its receipt and duplicate.

(6) The recipient of a sanction-for-test shall be a senior authorized person who shall retain the sanction-for-test in his possession at all times whilst tests are being done.

(7) When testing on apparatus for which a sanction-for-test has been issued is suspended or completed, the recipient shall sign the clearance and return the sanction-for-test to an authorized person who shall cancel it and inform the control engineer.

Procedure for temporary withdrawal or suspension

76. Where there is a requirement for a sanction-for-test to be temporarily withdrawn or suspended, such withdrawal or suspension shall be in accordance with an approved procedure.

Limitation

77.—(1) A limitation-of-access shall be issued by an authorized person or a senior authorized person specially authorized to do so, when it is considered necessary to have written instructions to avoid danger and when a permit-to-work or a sanction-for-test is not applicable.

(2) Where a limitation of access is required for work above ground level in a high-voltage substation, it shall only be issued by an authorized person with the knowledge of the control engineer.

(3) A person issuing a limitation-of-access shall determine from the nature of the work, occasions when the control engineer shall record its issue and cancellation.

(4) A limitation-of-access shall, when there is danger, be issued for the following types of activity—

(*a*) work in proximity to, but outside the working and access clearance from exposed live high-voltage conductors;

(*b*) when work is to proceed in the vicinity of an overhead line and the line is made dead in accordance with by-law 84;

(*c*) access to and work in underground chambers and similar confined spaces;

(*d*) work on plant operated by or containing compressed air or other gases; or

(*e*) such other access or work as may be specified by a designated engineer.

(5) A limitation-of-access shall be explained and issued to the person in direct charge of the work, who after reading its contents and confirming that he understands it and is conversant with the nature and extent of the work to be done, shall sign its receipt and duplicate.

(6) The recipient of a limitation-of-access shall be an authorized person who shall retain it in his possession at all times whilst work is being carried out.

(7) Where more than one working party is involved, a limitation-of-access shall be issued to the competent persons severally having personal supervision of each working party.

(8) A limitation-of-access shall be cancelled by the recipient signing the clearance and returning the limitation-of-access for cancellation to an authorized person or senior authorized person specially authorized to do so.

Division 5

Safety Precautions and Procedures Applicable to Low-Voltage Systems

General

78.—(1) Where work or testing is carried out on or near low-voltage apparatus and conductors—

(*a*) precautions shall be taken to prevent danger of body injury due to electric arc or electric shock;

(*b*) the conductors shall be covered with insulation and screening, and the adequacy of these materials to prevent danger shall be assessed before work or testing is carried out; and

(*c*) precautions appropriate to work on or near exposed conductors shall be applied.

(2) Danger may arise in the following circumstances—

(*a*) where a person confuses apparatus and conductors which have been made dead with those which remain live;

(*b*) dead apparatus and conductors are accidentally or inadvertently made live;

(*c*) if a person accidentally or inadvertently makes contact with adjacent live conductors; or

(*d*) if inadequate precautions are taken during live work or testing.

(3) The term "earthed" when applied to the low-voltage system, comprises the bonding of the phase conductors (including any switch or earth wire) to the neutral conductors by means of an approved device or leads.

(4) Control and operation of low-voltage systems shall be in accordance with an approved procedure, and only persons appointed in accordance with an approved procedure shall carry out activities such as switching and the live testing of low-voltage systems.

(5) Work or testing of low-voltage apparatus and conductors shall be carried out by a competent person, and where working arrangements so require, approved procedures for the control of work, including the issue of a safety document shall apply.

(6) Where work or testing involves the initial connexion or the re-arrangement of conductors to a consumer, the electricity supply shall not be provided to the consumer until checks have been made at an appropriate point on the system to ensure correct polarity at the supply terminals and where necessary, in the case of a three-phase supply, the phase rotation shall additionally be checked.

(7) A person shall not erect or dismantle a low-voltage overhead line under a live high-voltage overhead line without the authority of an authorized person, who shall ensure that when necessary, because of insufficient clearance, the high-voltage line is made dead and a permit-to-work issued.

(8) When a low-voltage overhead line conductor is to be raised or lowered or otherwise held on temporary support or connexions, approved procedures shall be followed to ensure that no danger is caused at locations such as road or rail crossing where other persons may be present.

Requirements for work on dead low-voltage apparatus

79.—(1) When work is to be carried out on dead low-voltage apparatus—

(*a*) the conductors shall be isolated from all sources of supply from the system;

(*b*) where the isolating devices are lockable, safety locks shall be applied;

(*c*) if components such as fuses and links are removable, they shall be removed;

(*d*) caution notices shall be securely fixed at all points of isolation; and

(*e*) keys and removed components shall be kept in a secure place in the possession of the person in charge of the work.

(2) Conductors shall be earthed using an earthing device or earthing leads approved for use on the conductors concerned.

(3) Except when work on a low-voltage system is being carried out as part of approved high-voltage live line work, the following requirements apply—

(*a*) if the work requires a point of isolation to be established on a high-voltage system, an appropriate safety document shall be issued;

(*b*) if the work requires a high-voltage system to be made dead, isolated and earthed, a permit-to-work shall be issued; and

(*c*) if the work is being done in conjunction with work on a high-voltage system which has been made dead, isolated and earthed, the work shall be included on the permit-to-work issued for the high-voltage work.

(4) Suitable precaution shall be taken by approved screening or other approved means to avoid danger from inadvertent contact with adjacent live conductors including, where necessary, the fixing of danger notices to apparatus containing live conductors adjacent to other live conductors and at the limits of the zone in which the work may be carried out.

(5) Where conductors are likely to become live due to the operation of a consumer's generator, the following precautions shall be taken to prevent danger—

(*a*) the conductors shall be isolated from the consumer's system; or

(*b*) the conductors shall be earthed on an earth provided between the point of work and the consumer's system.

(6) Before work is connected, the apparatus and conductors shall be identified and proved dead at the point of work by means of an approved voltage testing device, and whilst work is in progress, any live working method that can reasonably be applied to minimize the risk of danger from the conductors being accidentally or inadvertently made live shall be used.

Precautions for work on live low-voltage cables

80.—(1) A cable to be worked on shall be identified in accordance with the following—

(*a*) unless the point of work can be visually traced from a point where the conductors are accessible and have been proved dead at that point, it will be necessary to open the cable as if it is live and test each conductor with an approved voltage testing device; and

(*b*) if the cable has been damaged or is faulty, it shall not be presumed dead, and consequently, the test shall be made at a safe distance from the suspected point of damage on fault and the cable shall be visually traced from the point of test to the suspect point

of damage or fault. Appropriate precautions shall be taken to avoid danger from electric arcing until the point of damage or fault is located.

(2) Where work is to be carried out on an auxiliary cable which may be subject to induced voltage from a high-voltage circuit, additional precautions to prevent danger from these voltages shall be taken in accordance with approved procedures.

Precautions for work on dead low-voltage overhead lines

81.—(1) Bare open-wire low-voltage conductors shall be earthed using approved earthing leads, and where insulated but unscreened conductors are present, the requirements for live working shall be observed until the conductors have been proved dead.

(2) Any unearthed steelwork such as an offset racket or the upper portion of a stay above the insulator shall be treated as live until it is or the conductors have been proved dead.

Work on live low-voltage apparatus and conductors

82.—(1) A person shall not carry out low-voltage live work except in accordance with an approved procedure, which shall ensure adequate protection from danger from electric shock and inadvertent short-circuiting of the conductors.

(2) Where low-voltage live work is to be carried out, the authorized person in charge of the working party shall make an assessment of the site conductors, and the work shall only commence where site conditions enable work to be done safely.

(3) If the site conditions become unsafe, low-voltage live working shall be suspended and the following requirements shall be followed—

(*a*) the apparatus to be worked on shall be visually inspected to ascertain if it is in a satisfactory condition;

(*b*) there shall be adequate working space and safe means of escape;

(*c*) the working space and the apparatus to be worked on shall be adequately illuminated; and

(*d*) if the work is to be done outdoors, it shall only be done if weather conditions are not unduly adverse.

(4) Every person who carries out live working shall be an authorized person and shall have received appropriate training in the particular low-voltage live working procedure, and adequately instructed by the senior authorized person in charge of the working party.

(5) Tools and equipment approved for that purpose shall be the only tools used for work on, or the testing of low-voltage apparatus and conductors.

(6) A person shall not carry out work which involves, or is equivalent to a manipulation of bare live conductors unless accompanied by another person who shall be available to render or obtain assistance in an emergency.

Precautions for work on live low-voltage cables

83.—(1) A cable to be worked on shall be identified by approved means, and all metal-work adjacent to the point of work shall be adequately shrouded with approved insulating material to prevent inadvertent contact. The metallic sheaths of cables shall be bonded to each other with an approved insulated conductor before jointing and cutting to ensure continuity of the electrical circuit through the sheath.

(2) Unless alternative approved procedures allow, during all work including the change of cut-outs, only one conductor shall be bared at a time and insulating gloves and an insulating mat shall be used.

Precautions for work on live low-voltage overhead lines

84.—(1) Where work is carried out on live overhead lines, any unearthed steelwork such as an offset bracket shall be proved dead using an approved voltage testing device.

(2) When work is carried out on insulated but un-screened low-voltage conductors, a person working on such conductors shall wear insulated gloves and use insulated tools to prevent danger that may arise if the insulation has deteriorated or is damaged.

Application of high-voltage rules to work on low-voltage apparatus and conductors

85. Safety rules applicable to work on high-voltage systems, apparatus and conductors may, with the necessary modifications, be applied to work on low-voltage systems, apparatus and conductors in accordance with approved procedures.

Testing and adjustment of low-voltage apparatus

86.—(1) Testing and adjustment including functional testing may be made with low-voltage apparatus live if a person making such testing and adjustment uses approved insulated tools and instruments.

(2) If the testing or adjustment requires covers to be removed so that terminals or connexions that are live or can be made live are exposed or temporarily disconnected, precautions shall be taken to prevent unauthorized access to or interference with the apparatus. Such precautions shall include, where necessary, personal supervision or erection of suitable barriers or screening and the display of danger notices.

(3) If the conductors are to be made dead in order to avoid danger, appropriate requirements under by-laws 94 and 95 shall be applied.

(4) In this Part, "low-voltage" applies to a licensee's 400/240V distributing mains and services.

PART VI
Wiring

Division 1
General

Administration of by-laws

87.—(1) The Authority or any of its authorized members or officers or other person authorized by it shall, subject to any special or general directions of the Authority, be responsible for the administration and the proper execution of these By-laws, and shall have such powers of entry and inspection for such purposes as the Authority may specifically or generally direct.

(2) Any member or officer of the Authority or any other authorized person referred to in paragraph (1) shall be deemed to have been appointed as an electrical inspector.

Application of by-laws

88.—(1) Subject to paragraphs (2) and (3) and by-law 151, these By-laws shall apply to every consumer and every private owner.

(2) Divisions 2, 3 and 4 shall not apply to—

(*a*) the construction, installation, quality, alteration, operation, control, protection, inspection and testing of parts of a consumer's or private owner's installation which are used exclusively for mining or factory purposes at a mine or factory where such parts comply with the electrical provisions of any written law relating to such construction, installation, quality, alteration, operation, control, protection, inspection and testing at a mine or factory.

(3) By-law 125 shall not apply to the construction of a substation by a consumer or private owner for the accommodation of a high-voltage part of his installation where such substation complies with any written law relating to its construction.

Inspection of installations

89.—(1) All installations made prior to the coming into force of these Regulations shall be required to be inspected by an electrical installations person and be issued with a Certificate of Installation by the electrical installations person within two years of the coming into force of these Regulations.

(2) All electrical installations shall be inspected by an electrical installations person and issued with a Certificate of Compliance every five years from the date of their previous Inspection Certificate.

Procedure for settling disputes

90. Where a difference arises between a consumer and a licensee, such dispute shall be resolved in accordance with the Energy Regulation Act.

Prior notification to undertaker

91.—(1) Before any work is commenced on a new installation or on any alteration or extension to an existing installation, an electrical installations person or a competent person, authorized by a consumer or prospective consumer, as the case may be, to carry out the work, shall, for and on behalf of the said consumer or prospective consumer—

(*a*) advise the licensee in writing with reference to—

(i) the purpose, type and extent of the proposed work;

(ii) the electrical loading of equipment for which the supply or additional supply, as the case may be, is required;

(*b*) obtain from the licensee in writing details of—

(i) the type of current, number of phases and frequency if alternating current, and voltage at which the licensee proposes to deliver electricity to the supply terminals;

(ii) the licensee's property which is to be accommodated in accordance with by-law 107;

(iii) the meter panel and connexions required in accordance with by-law 107;

(iv) earthing requirements; and

(v) proposed tariff.

(2) Where the work referred to in paragraph (1) is commenced it shall—

(*a*) not thereafter be changed in relation to its purpose, type, extent and electrical loading except as may be agreed with the licensee; and

(*b*) be executed to suit the licensee's stated specification details referred to in paragraph (1) (*b*).

Accommodation to be provided

92.—(1) A consumer requiring a supply of electricity, or a consumer receiving a supply of electricity who requires an alteration in the terms of his original electricity supply agreement involving a change in the licensee's metering arrangements, shall unless otherwise agreed in writing with the licensee, provide all necessary accommodation on his premises for the undertaker's property as is necessary to provide the said supply or change in metering arrangements, as the case may be.

(2) Accommodation referred to in paragraph (1) shall be located at a position to be agreed between the consumer and the licensee and be of a type, design and size required by the licensee.

(3) Where the accommodation referred to in paragraph (1) is outside a building, it shall be fully weatherproofed and have no means of access other than by a lockable door.

(4) Where the accommodation referred to in paragraph (1) is located in a substation, switch room, or similar compartment designed solely for

electrical purpose, such place shall have a lockable door and shall not be used for purposes other than accommodation of the licensee's property.

(5) Where a group of shops, offices, flats, tenements, or workshops is to be erected for occupation by separate tenants or a building is to be converted for such use and it is intended that each tenant shall have an individually metered supply of electricity, the owner of the building shall—

(*a*) provide such accommodation at one or more places as may be required by the licensee for his meters and other property; and

(*b*) ensure that each tenant has—

(i) free access to the meter registering the tenant's supply of electricity for checking and inspecting purposes; and

(ii) a main switch and fuses or a circuit-breaker necessary for controlling the tenant's supply of electricity situated in that part of the building occupied by the tenant.

Meter panels and connexions

93.—(1) A consumer who has provided accommodation in accordance with by-law 107 shall supply two copies of a plan to a scale of not less than 1:500 on which it shall be agreed between him and the licensee the route of the service mains and entry point to the premises.

(2) The consumer shall further unless otherwise agreed in writing with the licensee—

(*a*) supply and fix in a manner and at a position to be agreed between the consumer and licensee, a meter panel of the size, type, design and construction required by the licensee;

(*b*) supply and fix such additional component parts as may be required for the operation of transformer metering where such metering is to be used;

(*c*) supply all necessary meter loops, line and load connexions; and

(*d*) where the service line to be used is an overhead line, supply and fix, at a position to be agreed between the consumer and licensee, internal service mains and roof shackles.

Custody of licensee's property

94.—(1) A consumer shall take all reasonable steps necessary to ensure the safe custody of the licensee's property installed on the consumer's premises for or incidental to the supply of electricity.

(2) Accommodation provided by a consumer under the provisions of these By-laws for the licensee's property shall be maintained by the consumer, his servants and agents in a fit and proper state.

(3) A consumer, his servants and agents on whose premises property belonging to a licensee is accommodated for or incidental to the supply of electricity shall not, in relation to the said property—

(*a*) permit access thereto by a person other than—

(i) the licensee;

(ii) a person authorized by the licensee; or

(iii) an electrical inspector;

(*b*) unless permitted by the licensee—

(i) remove or attempt to remove the property from its position;

(ii) remove or attempt to remove any lock or seal attached to the property;

(iii) connect thereto or disconnect therefrom, a consumer's installation or other electrical circuit; or

(iv) alter, adjust, handle, operate, tamper or interfere with the property in any way.

Disconnexion in certain circumstances

95.—(1) Any part of a consumer's installation which is in a faulty condition as to have caused or is likely to cause death or injury to any person or damage to any property shall, on the faulty condition becoming known—

(*a*) subject to by-law 34 (2), immediately be disconnected by that consumer or person from the supply of electricity; and

(*b*) subject to paragraph (3), not be reconnected until the faulty condition of the said part has been remedied.

(2) Any part of a consumer's installation, which, due to a faulty condition, is causing interference with the use of a telecommunication line, shall, on the faulty condition becoming known to the consumer or to a person authorized by him to operate the installation—

(*a*) subject to regulation 34 (2), be disconnected by that consumer or person from the supply of electricity; and

(*b*) subject to subregulation (3), not be reconnected until the faulty condition of the said part has been remedied.

(3) Any part of an installation disconnected in accordance with paragraph (1) or (2) may be reconnected to a supply of electricity for testing purposes where such temporary reconnexion can be made without risk to life or property.

Connexion of neutral with earth

96.—(1) On a single-phase two-wire or three-phase four-wire consumer's installation operating at low-voltage or medium-voltage supplied from the consumer's own generator or transformer, one

generator or transformer winding directly supplying that voltage shall have—

(*a*) if single-phase, one pole or its neutral point earthed; and

(*b*) if three-phase, its neutral point earthed.

(2) Where a consumer's installation operates at a high-voltage and is designed for operating with an earthed neutral, the neutral of the generator or transformer winding shall be earthed at the point of generation or transformation:

Provided that where the generator or transformer feeds a remote transformer, via a transmission line, the neutral of the generator or transformer shall be required to be earthed if the neutral of the transformer is earthed at the point of the remote transformation.

(3) On a consumer's installation which is high-voltage and designed for operating with an insulated neutral—

(*a*) provision shall be made to indicate a displaced neutral; and

(*b*) precautions shall be taken against a breakdown of insulation.

(4) Save for operational purposes on a consumer's high-voltage installation, a conductor which is connected to earth in accordance with this regulation shall be interrupted by a fuse, switch, circuit-breaker, link or other means whilst any phase conductor of the installation remains live.

Protection of telecommunication

97. A consumer shall comply with the standards for telecommunication lines protection where—

(*a*) a cable by him crosses or is in close proximity to an underground telecommunication line; or

(*b*) an overhead line installed by him crosses or is in close proximity to an overhead telecommunication line.

Guidance and instructions

98.—(1) For the guidance of a person authorized by the consumer to operate, control or work on or near the consumer's installation, whether under supervision or otherwise, where high-voltage may be present, the consumer shall issue instructions regarding the working procedure to be followed to ensure maximum safety.

(2) The instructions referred to in paragraph (1) shall, where the person is engaged in inspection, testing, cleaning, repairs, painting or constructional or general maintenance work in proximity to live high-voltage conductors, require that person to observe the minimum section clearance set out in the Seventh Schedule hereto.

Certificate of inspection and testing

99. A consumer who wishes to supply a certificate for the purposes of by-law 27 (2), as read with by-law 35 (2), that his installation or part thereof has been inspected and tested shall furnish a certificate which shall be executed by either an electrical installations person or a competent person.

Division 2
Construction of Consumer's Installations

Design and mechanical protection

100.—(1) A consumer's installation shall have conductors—

(*a*) sufficient in size and power rating for purposes for which the supply of electricity is to be used; and

(*b*) constructed, installed and protected so as to prevent, as reasonably practicable, danger to person or property.

(2) The consumer's installations shall not be temporarily or permanently added to unless—

(*a*) it has been ascertained that the current rating and condition of the existing installation, which will have to carry the additional load and the earthing arrangements, are adequate for the increased loading; and

(*b*) by-law 106 has been complied with.

(3) Where the consumer's installation or any part thereof is exposed to adverse weather, corrosive atmosphere or other adverse conditions, the installation or that part shall be constructed and, additionally or alternatively, protected to prevent danger to any person or property arising from such exposure:

Provided that where the conditions comprise exposure to flammable surroundings or an explosive atmosphere, the consumer's installation shall—

(*a*) be protected by a flameproof enclosure of an appropriate standard of construction; and

(*b*) be of such construction as to prevent danger or have intrinsically safe characteristics so as to prevent danger to any person or property.

(4) Conductors and live parts of a consumer's installation shall be—

(*a*) insulated and further effectively protected where necessary; or

(*b*) so placed and safeguarded as to prevent, so far as is reasonably practicable, danger to any person or property.

(5) Medium-voltage conductors and medium-voltage live parts of a consumer's installation shall be—

(*a*) completely enclosed in earthed metal which is electrically continuous and adequately protected against mechanical damage; or

(*b*) so constructed, installed and protected as to prevent, is reasonably practicable, danger to any person or property.

(6) Subject to by-law 129, high-voltage conductors and high-voltage live parts of a consumer's installation shall—

(*a*) be completely surrounded and protected by earthed metal;

(*b*) have the minimum section clearance set out in the Seventh Schedule; or

(*c*) be guarded by a protective barrier to prevent inadvertent touching or approach by a person standing at floor level or on a walkway, stair or working platform.

Electrical protection

101.—(1) Every distinct circuit of a consumer's installation shall be protected against excess current by means of a suitable fuse or automatic circuit-breaker—

(*a*) of adequate breaking capacity; and

(*b*) suitably located and of such construction as to—

(i) prevent danger from overheating, arcing or the scattering of hot metal when it comes into operation; and

(ii) permit the ready renewal of the fusible metal without danger to any person or property.

(2) No fuse, non-linked switch or non-linked circuit-breaker shall be inserted in a conductor connected with earth.

(3) A single-pole switch may only be inserted in a live conductor.

Isolation and control position

102.—(1) Except in the case of an unmetered service line, effective means suitably placed for ready operation shall be provided so that all voltage may be cut off from every part of a customer installation as may be necessary to prevent danger, and such means shall include a fireman's emergency switch on the exterior of a building, where necessary, to disconnect a high-voltage discharge-lamp installation or an electrified barrier.

(2) An electricity consuming device which requires operation or attention in normal use shall be installed so that adequate means of access and working space are afforded for such operation or attention.

(3) An electric motor shall be controlled by an efficient switch or switches for starting and stopping and the switch or switches shall be placed so as to be readily accessible to and easily operated by the person in charge of the motor.

Earthing of metal-work

103.—(1) Metal-work of a consumer's installation enclosing, supporting or otherwise associated with conductors operating at a

voltage in excess of extra-low-voltage shall, where necessary to prevent danger, be connected with earth.

(2) Metal-work attached to or forming part of a metal or reinforced concrete support and any metal transformer-case or metal switch handle mounted thereon shall be connected with earth.

(3) Subject to paragraph (4), metal-work attached to or forming part of a wooden support which is liable to become dangerous of leakage across or failure of the insulation shall—

(*a*) if the metal-work is not more than 3 metres above the ground, be connected with earth; and

(*b*) where the metal-work is more than 3 metres above the ground, be connected with earth or have effective secondary insulation sufficient to withstand the voltage to earth.

(4)—(*a*) A metal transformer-case together with its associated metal-work and any metal switch handle shall be connected with earth if it is mounted on a wooden support; and

(*b*) a high-voltage switch with a switch handle not more than 3 metres above the ground shall have inserted in the operating rod between the switch handle and the switch, an insulator capable of withstanding the normal operating voltage if it is mounted on a wooden support.

(5) A metal cradle or stay-wire shall—

(*a*) be connected with earth; or

(*b*) have inserted insulation capable of withstanding the normal operation voltage.

(6) Metal armouring or metal sheathing, except sheathing intended for use as a concentric neutral conductor or earth potential, shall—

(*a*) be connected with earth;

(*b*) have earth continuity maintained by a separate earth conductor across any joint-box or terminal enclosure associated with the cable; and

(*c*) where the joint-box or enclosure referred to in subparagraph (*b*) is of metal, be bonded thereto.

(7) Save as is otherwise provided in these By-laws, any metal-work associated with or forming part of the consumer's installation shall, unless isolated from and not likely to come into contact with live parts or with earthed metal-work, be connected with earth.

Protection against earth leakage

104.—(1) Every circuit of a consumer's installation shall be protected against the persistence of earth leakage currents liable to be a danger to any person or property.

(2) Where metal-work is earthed in accordance with the provisions of these By-laws, the associated earthing system shall—

(*a*) incorporate a protective device which makes any live conductor or live part dead when there is leakage as referred to in paragraph (1), between that live conductor or live part and any metal-work connected with earth; and

(*b*) be designed, constructed and maintained so that the leakage referred to in subparagraph (*a*) is sufficient to operate the protective device.

Arc-suppression coils

105. In addition to the protective device referred to in by-law 119 (2) (*a*), an arc-suppression coil may be inserted between a transformer or generator neutral and earth in such a manner as to ensure that in the event of a live conductor or live part coming into contact with earth, or with any metal-work connected with earth, an arc between that conductor or part and earth shall be immediately suppressed and the voltage of that conductor or part shall be reduced so as to prevent, as far as reasonably practicable, danger to any person or property.

Earthing of installation

106.—(1) Where a licensee operates a protective multiple earthing system in accordance with Division 4 of Part IV—Supply and Quality of Service of these By-laws and connexions with his own earth arrangements, the main earthing conductor of the consumer's installation, before supplying a consumer with electricity therefrom, an earth electrode or electrodes shall be installed by the consumer at or on his premises by arrangement with and to the satisfaction of the licensee and shall also be interconnected with the said earthing arrangements.

(2) Save as is provided in paragraph (1), where there is an interconnexion between the earthing arrangements of the licensee and the main earthing conductor of the consumer's installation, the consumer shall comply with the conditions considered necessary by the licensee in accordance with the Part IV—Supply and Quality Service of these By-laws.

(3) Where there is no interconnexion between the earthing arrangements of the licensee and the main earthing conductor of the consumer's installation, the consumer shall provide and install his own earthing arrangements to ensure compliance with these By-laws.

(4) An earth electrode of a consumer shall be installed so that no voltage gradient is maintained at ground level which may cause danger to life and property.

Electrode boilers

107.—(1) In this by-law—"electrode boiler" includes an electrode type of water heater.

(2) An electrode boiler shall—

(*a*) be used only on alternating current; and

(*b*) have an isolating and protecting circuit-breaker.

(3) The circuit-breaker referred to in paragraph (3) (*b*) shall—

(*a*) be of the multi-pole linked type arranged to disconnect the supply from all electrodes simultaneously;

(*b*) have an over-current protective device for each electrode;

(*c*) have a locking-off device to prevent the electrode boiler inadvertently being made live whilst a person is working thereon;

(*d*) is arranged for direct hand operation from a position near the boiler, and be readily accessible and visible to a person using the boiler;

(*e*) if not arranged for direct hand operation from a position near the boiler, have remote control by a hand-operated switch or push-button—

(i) with a lamp or other instrument to provide visual indication of the "ON" and "OFF" condition of the electricity supply fixed at or near the boiler; and

(ii) readily accessible and visible to a person using the boiler;

(*f*) where the boiler is to be operated at high-voltage, have automatic tripping in the event of phase currents becoming unbalanced to the extent of ten *per centum* of the full load current of the boiler:

Provided that—

(i) the margin may be increased to fifteen *per centum* where the higher setting is essential to ensure operational stability; and

(ii) an inverse time-element device may be associated with the automatic tripping to prevent unnecessary tripping where the imbalance is momentary or of short duration.

(4) The earthing system of electrode boiler shall, in addition to complying with by-laws 117 and 118, include—

(*a*) the bond together of—

(i) the metallic shell and other metal-work of the boiler;

(ii) any water pipes or steam pipes of metal in metallic contact with the said shell or other metal-work; and

(iii) any metal armouring or metal sheathing of a cable providing a supply of electricity to the said boiler;

(*b*) the connexion of bonded metal-work referred to in subparagraph (*a*) to the neutral conductor and to the main earthing terminal of the consumer's installation.

(5) In the case of electrode boiler, the neutral conductor, main earthing conductor and bonding and the connexions to such bonding shall have a current-carrying capacity not less than that of any live or phase conductor at all points except in a subsidiary tripping-circuit where the current-carrying capacity shall be in accordance with the designed tripping-circuit current.

(6) An electrode boiler of a type other than a three-phase three-electrode balanced-load type shall not be connected to a supply of electricity otherwise than by means of a double-wound transformer situated within the same building as the said boiler or as close as is practicable and on the same premises.

Auto-transformers

108.—(1) An auto-transformer shall not be fed from a circuit operating at a voltage exceeding low-voltage unless such auto-transformer is used—

(*a*) in motor starting or control-gear;

(*b*) in conjunction with and installed adjacent to a capacitor which is employed for improving the power factor; or

(*c*) in a high-voltage discharge-lighting circuit.

(2) An auto-transformer shall not be used to supply—

(*a*) a socket-outlet;

(*b*) a portable appliance unless the auto-transformer is contained therein;

(*c*) an electric toy or model;

(*d*) earthed concentric wiring; or

(*e*) an extra-low-voltage circuit.

(3) An auto-transformer shall—

(*a*) if used for step-up purposes—

(i) be supplied only from a system in which the neutral conductor is earthed; and

(ii) have the neutral conductor connected to the common pole of the primary and secondary windings;

(*b*) if used for step-down purposes, have the secondary winding insulated for the maximum voltage likely to be applied to the primary winding.

(4) Where an auto-transformer is used for step-up purposes, means of isolation required in accordance with by-law 116 shall be arranged to disconnect all primary supply conductors simultaneously.

Capacitors

109.—(1) Save in the case of a capacitor incorporated in apparatus for the sole purpose of radio interference suppression; or where the capacitor is so small that no risk of electric shock can arise therefrom, a capacitor shall have a high resistance leak or other means for the prompt and automatic discharge of electricity immediately the supply thereto is disconnected.

Indoor substations

110.—(1) Subject to by-law 103 (3), a substation constructed by a consumer for the accommodation of a high-voltage part of his installation shall—

(*a*) be substantially constructed and designed specifically for its intended purposes; and

(*b*) be arranged so—

(i) as to prevent, as far as practicable, access thereto except by a doorway or gateway; and

(ii) that no hinged door opens inwards;

(*c*) enclose the said part of the installation, as far as practicable;

(*d*) be ventilated, kept dry and made vermin-proof, as far as practicable;

(*e*) have fixed outside each entrance a danger notice; and

(*f*) have prominently displayed inside, printed instructions as to the proper first-aid treatment of persons suffering from electric shock.

(2) Subject to by-law 103, a substation referred to in paragraph (1) constructed below ground level shall—

(*a*) have adequate means of access by a door or trap door with a staircase or ladders securely fixed and placed so that no live part of the system or conductor is within reach of a person thereon; or

(*b*) where a person is to be regularly employed therein, have the access referred to in paragraph (*a*) by door and stair case only.

Outdoor substations

111.—(1) Any part of the consumer's installation for the transformation, control, regulation or switching of electricity in the open air shall, save as is otherwise provided for in Division 3 or 4—

(*a*) be mounted on the supports of an overhead line;

(*b*) be enclosed by a fence not less than 1.8 metres in height, fitted with a suitable anti-climbing device for the purpose of preventing access not authorized by the consumer; or

(*c*) where subparagraph (*a*) or (*b*) is not complied with, have all parts below the height of 3 metres from the ground completely enclosed in a metal casing.

(2) A danger notice referred to in paragraph (1) (*a*), (*b*) or (*c*), shall be fixed to the supporters, fence or metal casing, as the case may be.

Division 3
Underground Cables

Construction and installation

112.—(1) An underground cable shall be fully insulated for the normal operating voltage and shall be of a type and construction and be laid or installed in a manner suited to its particular environment and having regard to—

(*a*) by-law 116;

(*b*) the normal usage of the ground in which any part of it is to be laid; and

(*c*) foreseeable risk of damage to the cable and danger to persons, property and to other electrical services, railways and constructional works at or below ground level.

(2) A component used with an underground cable shall be of a type and construction and shall be laid or installed in a manner suited to that cable and having regard to the provisions of—

(*a*) paragraph (1); and

(*b*) by-law 127 in circumstances where a cable joint or connexion is necessary.

Joints and connexions

113. An electrical joint or connexion associated with an underground cable shall be designed, constructed, installed and protected in a manner that—

(*a*) electrical conductivity is maintained satisfactorily;

(*b*) its insulation, where insulation is necessary, is suitable for the normal operating voltage; and

(*c*) its mechanical strength is suited to its location and environment.

Metallic protection of high-voltage cables

114.—(1) Subject to paragraph (3), a high-voltage underground cable shall be laid or installed so that it is completely surrounded and protected by earthed metal as provided by—

(*a*) its own metal sheathing or metal armouring; or

(*b*) an outer metallic covering.

(2) Subject to paragraph (3), a joint, connexion or termination of a high-voltage underground cable shall be completely surrounded and protected by earthed metal.

(3) In a power station, substation, switch-room or similar premises designed for electrical purposes, it shall not be necessary for a high-voltage cable, joint, connexion or termination to be completely

surrounded and protected by earthed metal where the cable, joint, connexion or termination has the minimum section clearance, or is guarded by the protective barrier required in accordance with by-law 115 (5).

Identification and insulation test

115.—(1) A neutral conductor of an underground cable shall, at its termination, be permanently identified so that it is readily and uniformly distinguishable from other conductors.

(2) Where two or more underground cables forming part of different circuits terminate at adjacent positions, each circuit shall—

(*a*) be permanently labelled on its exterior or on its terminating box or component; or

(*b*) have other means of identification, so that it is readily distinguished from other circuits.

(3) An underground cable shall not be subject to an insulation test after being laid or installed and before being connected to a supply of electricity, and it shall not be so connected if the connexion would result in an electrical leakage which might be a danger to persons or property.

(4) No underground cable shall be permanently connected to a supply of electricity unless tests have been made—

(*a*) to ensure compliance with these By-laws, and in particular by-law 118 (1) and (2); and

(*b*) to establish that there is electrical continuity of conductors.

Division 4
Overhead Lines

Overhead lines

116. This Division shall apply to overhead lines other than—

(*a*) an overhead crane wire or trolley wire;

(*b*) an overhead line consisting entirely of insulated conductors enclosed in earthed metal sheathing or earthed metal armouring;

(*c*) a conductor used above ground and in the open air as a fence specially designed for the control of the movement of animals;

(*d*) an overhead telecommunication line;

(*e*) an overhead line and substation within a fenced enclosure specially erected by the consumer operating such line and substation for the purpose of prohibiting entry not authorized by him where such fence is not less than 1.8 m in height and is fitted with a suitable anti-climbing device.

Constructional materials requirements

117.—(1) Line conductors shall be of acceptable conductor materials—

(*a*) line conductors and earth conductors are of copper, cadmium copper, steel-cored copper, aluminium, steel-cored aluminium, aluminium alloy, copper-clad steel, galvanized steel, stainless steel or any compatible combination of these materials;

(*b*) cradle supporting wires and stay-wires are of stranded galvanized steel or of material of not less than equivalent strength and durability;

(*c*) a support is made from wood, metal or reinforced concrete or a combination of these materials and where wood or metal is used in the construction of a support, such wood or metal is protected against decay or corrosion as far as is reasonably practicable;

(*d*) supports and the foundations thereof are constructed and placed, taking into account the characteristics of the ground in which they are embedded and to the load which they are to carry; and

(*e*) insulators are—

(i) of durable materials; and

(ii) designed to withstand the mechanical loading and electrical stresses of normal operating conditions.

(2) Cradle supporting wires and stay-wires shall be of stranded galvanized steel or a material of a strength and durability not less than that of stranded galvanized steel.

(3) A support shall be of wood, metal or reinforced concrete or a combination of these materials and any other acceptable materials, and where wood or metal is used in the construction of a support, such wood or metal shall be protected, as far as is reasonably practicable, against decay or corrosion.

(4) Supports and the foundations hereof shall be constructed and placed having regard to the characteristics of the ground in which they are embedded and to the load, which they are to carry.

(5) Insulators shall—

(*a*) be of durable materials; and

(*b*) be designed to withstand the mechanical loading and electrical stress of normal operating conditions.

Minimum heights and insulation

118.—(1) A line conductor near a building or other permanently raised position existing at the time of erection of the line shall—

(*a*) if operating at extra-low-voltage, low-voltage or medium-voltage, be insulated at all places within a distance of 1.83 m from any part of such building or raised position; and

(*b*) if operating at high-voltage, be completely surrounded and protected by earthed metal or have the minimum section clearance or protective barrier required in accordance with by-law 115 (5) between it and any part of such building or raised position.

(2) Service lines in the terminal span of a connexion between an overhead line and a building, or in a span between one building and another building, shall be insulated conductors.

(3) The point of attachment of a service line shall—

(*a*) where connexion is to an overhead line, be at a support:

Provided that a vertical service connexion may be made elsewhere if it does not exceed 3.1 metres in length; and

(*b*) where connected to a building, be at a terminating device securely fixed to the building.

(4) A conductor, other than an earth conductor, leading to or from a transformer or other apparatus as a pole-mounted substation shall, at all points below a height of 3.7 m from the ground, be insulated and, in the case of a high-voltage conductor, shall have earthed metal sheathing or earthed screening.

(5) The height above ground of a line conductor, other than an extra-low-voltage, low-voltage or medium-voltage insulated line conductor, shall be not less than the appropriate height specified in the Third Schedule or such greater height as may be required either for compliance with by-law 112 or 115 in accordance with by-law 135.

(6) Subject to by-law 135, the height above ground of an extra-low-voltage, low-voltage or medium-voltage insulated line conductor shall not be less than—

(*a*) where the line is above a road normally accessible to vehicular traffic, 5.5 metres;

(*b*) save as is provided in subparagraph (*c*), where the line is not above a road normally accessible to vehicular traffic, 4.3 metres; and

(*c*) in the case of a service line in the terminal span of a connexion between an overhead line and a building or in a span between one building and another building, 3.1 metres at any point where the line is not above a road normally accessible to vehicular traffic.

(7) Where an earth conductor, stay-wire or cradle fitted between supports crosses a road normally accessible to vehicular traffic, the height thereof above the road surface shall not be less than 5.5 metres.

(8) Any minimum height or clearance required by these By-laws shall be maintained under any conditions of loading and temperature likely to occur in the area concerned.

Unmetered service lines

119.—(1) A consumer shall comply with the directions of a licensee in relation to the design and construction of a line or part of a line—

(*a*) where a consumer installs an unmetered service line on his premises;

(*b*) or where a part of the consumer's installation is to be solely operated and controlled by the licensee; and

(*c*) where the licensee in accordance with the Supply Regulations is required to ensure that such service line or such part of the installation is suitable for its intended purpose and is installed to prevent, as far as practicable, leakage of electricity to adjacent metal.

(2) Where the consumer has no effective means of cutting off the voltage to a line or part of a line referred to in paragraph (1) he shall, if a disconnexion is required, immediately notify the licensee that it is required.

(3) Where a licensee has advised the consumer of any remedial measures necessary to correct any defect, deficiency or faulty condition which may exist in a line or part of a line referred to in paragraph (1), the consumer shall effect such remedial measures to the satisfaction of the licensee, after the said line or part of the line has been disconnected from the supply of electricity for that purpose.

Overhead lines crossing railway tracks

120. Where an overhead line crosses a permanent railway track having a gauge of not less than 1.1 metres, the following conditions shall apply—

(*a*) the height above the rail of—

(i) a line conductor, shall not be less than the appropriate height specified in the Fifth Schedule; and

(ii) an earth conductor, stay-wire or cradle between supports, shall not be less than 7 metres;

(*b*) there shall be no joints in the crossing span;

(*c*) the crossing shall be made at right angles or as near thereto as practicable and shall be not less than 70 degrees, unless permission in writing therefore has been obtained from the authority responsible for the operation of the railway; and

(*d*) the length of span at the crossing shall be as short as is reasonably practicable, and notwithstanding by-law 136 (6), line conductors used at the crossing shall be stranded with not less than 0.42 square centimetres cross-section area copper or its equivalent conductivity.

Different voltages in proximity

121.—(1) Where a high-voltage overhead line crosses an extra-low-voltage, low-voltage or medium-voltage overhead line or where line conductors forming part of such differing systems are erected on the same supports, provision shall be made to guard against the extra-low-voltage, low-voltage or medium-voltage system being charged above its normal voltage.

(2) Where a pilot circuit is installed and operated as part of an overhead line system, paragraph (1) shall apply thereto and such pilot circuit shall be installed and operated with due regard to any dangers which may arise from its use.

Loading conditions and factors of safety

122.—(1) In calculating the strength of the various constituent parts, including supports of an overhead line, the following basic conditions shall be assumed—

(*a*) a minimum temperature of zero degrees Celsius;

(*b*) the wind pressure acting on the projected area of line conductors and supports not exceeding 12.2 metres in height shall not be less than 1 kilogram per square centimetre, and of those exceeding 12.2 metres but not exceeding 36.6 metres in height shall be not less than 1.1 kilogram per square centimetre; and

(*c*) in the case of conductors, earth wires and round, elliptical or hexagonal poles used as supports, the area on which the pressure acts shall be taken as sixty *per centum* of the projected area, and in the case of lattice or composition structures, as one and one-half times the projected area of the constituent parts of one side.

(2) In the design of spans of over 122 metres the assumed wind load on conductors and earth wires may be reduced to seventy *per centum* of the calculated load.

(3) In the design of spans, due regard shall be given to the possibility of injurious conductor vibration by wind effects.

(4) A support shall be designed so that the failing load operating conditions shall be not less than the resultant of simultaneous horizontal and vertical loads calculated in accordance with the provisions of this by-law multiplied by the following factors—

(*a*) where the support is of metal or concrete, 2.5; and

(*b*) where the support is of wood, 3.5.

(5) Subject to paragraph (6) and load in a line conductor, earth conductor, insulator, joint or cradle component or an associated fitting, under operating conditions shall not exceed 50 *per centum* of its ultimate breaking load.

(6) The minimum permissible size for a single line conductor shall be such as to have an ultimate breaking load of not less than 360 kg and shall not be less in gauge than No. 10 British Standard Wire Gauge.

Periodic testing and inspecting

123.—(1) Where metal-work is required to be earthed in accordance with by-law 117, the earthing system of the overhead line with which it is associated, shall be tested at least one point by the consumer or by a person authorized by him—

(*a*) before commissioning such overhead line; and

(*b*) thereafter, at intervals of not more than five years; and repaired if necessary.

(2) The purpose of a test made in accordance with paragraph (1) shall be to ensure that the leakage result from contact of negligible resistance between a line conductor and any metal-work connected with earth is sufficient to operate the protective device installed in accordance with by-law 118 to make that line conductor dead.

(3) An overhead line and its supports and any outdoor substation shall be inspected from ground level or above, by the consumer or by a person authorized by him—

(*a*) before commissioning; and

(*b*) thereafter, at intervals not exceeding five years after the date of inspection referred to in subparagraph (*a*); and repaired if necessary.

(4) A test or inspection made in accordance with this by-law shall be recorded by the person making the test or inspection and such records shall be retained by the consumer until the next test or inspection is made.

Danger notices

124. There shall be fixed in a prominent position at every pole mounted substation a danger notice.

Unauthorized climbing of supports

125. In order to prevent, as far as is reasonably practicable, climbing which has not been authorized by a consumer, an anti-climbing device shall be fitted—

(*a*) at every support for a pole-mounted substation; and

(*b*) at every support which has broken surface within 3.1 metres of the ground.

Division 5
Protective Multiple Earthing

Provision of protective multiple earthing

126. Where a consumer operates or is about to operate a transformer supplying low-voltage or medium-voltage to a single-phase two-wire or three-phase four-wire installation and is satisfied that protective multiple earthing is necessary in order to improve the general factor of safety in relation to earthing of metal-work, he may provide protective multiple earthing in accordance with this Division.

Application of protective multiple earthing

127. Protective multiple earthing shall—

(*a*) only be applied to the consumer's electricity operating at low-voltage or medium-voltage; and

(*b*) when so applied, extend to every such line of a group supplied with electricity from a common transformer at the said voltage:

Provided that no such line shall be directly interconnected in a permanent manner with any other line supplied with electricity from any part of another system not similarly earthed.

Limitations

128. A transformer which is to supply the low-voltage or medium-voltage to an electric line provided with protective multiple earthing shall be arranged so that—

(*a*) an earthing connexion is taken from the metal-core or metal-work closely associated with the higher voltage winding to an earth electrode; and

(*b*) another earthing connexion is taken from the neutral point on the low-voltage or medium-voltage winding to the same earth electrode with its own resistance area.

Connexions at transformers

129. Where a cable is used as an electric line provided with protective multiple earthing, it shall be arranged so that—

(*a*) an earthing connexion is taken from the metal-core or metal-work closely associated with the higher voltage winding to an earth electrode; and

(*b*) another earthing connexion is taken from the neutral point of the low-voltage or medium-voltage winding to the same earth electrode or to another earth electrode with its own resistance area.

Use of cables

130.—(1) Where a cable is used as an electric line provided with protective multiple earthing and is laid underground such cable shall—

(*a*) have a neutral conductor of the same material as, and be of a cross-sectional area not less than, any phase conductor; and

(*b*) have metal sheathing or metal armouring.

(2) The metal sheathing or metal armouring or, if the cable had both metal sheathing and metal armouring, the metal sheathing and metal armouring and the neutral conductor referred to in paragraph (1) shall be bonded together and also bonded to—

(*a*) the earthing connexion referred to in by-law 143 (*b*) at the transformer position; and

(*b*) an earth electrode or electrodes installed at points at or near the end of each line.

Use of overhead lines

131.—(1) Where an overhead line is used as an electric line provided with protective multiple earthing, such line shall—

(*a*) have a neutral conductor of the same material as, and of a cross-sectional area not less than, any phase conductor; or

(*b*) have two neutral conductors of the same material as, and each of a cross-sectional area not less than one-half that of any phase conductor.

(2) The neutral conductor or the two neutral conductors referred to in paragraph (1) (*a*) or (*b*) shall be bonded to—

(*a*) the earthing connexion referred to in by-law 143 (*b*) at the transformer position; and

(*b*) earth electrodes installed at regular intervals as far as practicable, along the route of the line at branching points and at the final pole of each line.

Use of cables and overhead lines

132.—(1) Where an underground cable and an overhead line are used in association with each other, an electric line provided with protective earthing, by-law 145 or 146, shall apply respectively, to the cable and the overhead line, except that bonding to the earth connexion at the transformer position referred to in by-law 145 (2) (*a*) or 146, as the case may be, may be omitted in the case of—

(*a*) an underground cable which starts at a position remote from the transformer if that cable is fed from an overhead line which has such bonding to the earth connexion at the transformer position; and

(*b*) an overhead line which starts at a position remote from the transformer if that line is fed from an underground cable which has such bonding to the earth connexion at the transformer position.

(2) At every point where an underground cable and an overhead line referred to in paragraph (1) are connected with each other, each neutral conductor of the said cable and line and the metal sheathing or metal armouring of the cable shall be bounded together.

Overall resistance

133. By-laws 144, 145 and 147 shall not have been complied with until it has been established that the overall resistance to earth of a neutral conductor—

(*a*) is such that the fuse, circuit-breaker or other protective device of the high-voltage side of the transformer will operate safely in the event of a breakdown between the transformer windings;

(*b*) does not exceed ten ohms; and

(*c*) is such that by-laws 119 and 120 where applicable, can be complied with efficiently.

Neutral and earth conductor

134. No fuse switch, circuit-breaker, link or device, other than a bolted link, for interrupting continuity, shall be inserted in a neutral or earth conductor used for protective multiple earthing purposes.

Separate installations

135. Where a supply of electricity is delivered from an electric line provided with protective multiple earthing to a separate installation, and whether such installation is to be operated and used by the consumer or by another person, the consumer, before providing an earth connexion thereto, shall satisfy himself in regard to the separate installation that—

(*a*) metal-work enclosing, supporting or in proximity to, or likely to come into contact with any live conductor or live part is bonded together by one or more earth-continuity conductors;

(*b*) the overall resistance to earth of the system is such that by-law 119 can be complied with efficiently; and

(*c*) by-law 149 has been complied with.

Division 6
Private Generation and Supply

Application to private owner

136.—(1) Subject to by-law 103 (2), this Part shall apply to every private owner.

(2) Divisions 1, 2, 3, 4 and 8 shall, *mutatis mutandis*, apply to a private owner and to his electrical installation as they apply to a consumer and a consumer's installation.

Consumer and private owner

137.—(1) A private owner shall erect and maintain a switchboard for each generator to control supply therefrom and shall fit to each switchboard, as a minimum requirement—

(*a*) the appropriate supply contract controls and protective apparatus specified in Part I of the Eight Schedule hereto; and

(*b*) where two or more private generators are to be operated, in parallel—

(i) if it is two-wire system, a reverse-current trip in series with the live conductor of each generator;

(ii) if it is a three-wire system, a reverse-current trip in series with each out conductor of each generator; and

(iii) if they are compounded generators, an equalizer connexion by means of—

(A) a single-pole switch from each generator to an equalizer bus-bar so arranged that each switch is interlocked so that it shall be closed before the main switch is closed and opened after the main switch is opened;

(B) a multi-pole linked-switch arranged and interlocked to perform the same sequence of operations as described for single-pole switches, with operating coil of a circuit-breaker connected to a pole other than that to which the equalizer connexion is made;

(C) where a direct-current generator is connected in parallel with a secondary battery—

(*aa*) a reverse-current trip, which may be of the cut-out type, connected between the generator and the battery;

(*bb*) safe means for isolating the battery from the generator;

(*cc*) protection of the battery by means of a fuse or circuit-breaker against excessive charge or discharge currents;

(*dd*) an ammeter to measure the current supplied by the generator;

(*ee*) an ammeter with a mid-point zero or so, switched so as to measure separately the charge and discharge currents of the battery; and

(*ff*) a voltmeter arranged to measure separately the voltage of the generator and of the battery;

(D) where compounded generators are operated in parallel, an ammeter connected to the pole other than to which the equalizer connexion is made;

(E) where a direct-current generator operates a three-wire system, an arrangement to prevent the balance being disconnected whilst the outer conductors are live;

(F) the appropriate instrument specified in Part II of the Eighth Schedule hereto; or

(G) where an altering-current generator is operated—

(*aa*) a speed indicator for the prime-mover or a frequency indicator; or

(*bb*) if two or more generators are to be operated in parallel, a synchronizing device.

(2) Where an instrument fitted to the switchboard in accordance with paragraph (1) is required to make more than one measurement, provision for this shall be made by a suitable switch or plug.

(3) If the generator of a private owner is arranged for automatic starting or for remote control, the prime-mover shall have local

overriding control for stopping the prime-mover and for preventing automatic starting—

(*a*) fixed nearby; and

(*b*) labelled with clear operating instructions.

Liquid and gaseous fuel

138. A private owner shall—

(*a*) where liquid or gaseous fuel for the generating plant is piped from outside the plant room, provide a quick-acting valve to cut off the supply of fuel with the valve—

(i) fixed near the door to the plant room in a conspicuous position; and

(ii) labelled with clear operating instructions; and

(*b*) arrange to trap or drain and disperse safely any leaking or surplus fuel and ensure that none is permitted to enter any sewer.

Plant rooms

139.—(1) A private owner shall ensure that any room in which his generating plant is to be erected and maintained—

(*a*) is of such size that the plant can be easily and adequately serviced and maintained;

(*b*) is adequately ventilated; and

(*c*) is provided with the exhaust pipes or ducts necessary to discharge exhaust fumes from the rooms to the outside air and clear of any window, door or fresh-air intake of any building.

(2) A plant room described in paragraph (1) shall have adequate artificial lighting, in addition to any natural lighting and discharge-lighting shall not be used in a position where it may cause rotating machines to appear to be stationary.

Protection of batteries

140. A private owner whose generator is connected with a secondary battery installation shall erect and maintain a switchboard for that installation and shall fit to the switchboard, as a minimum requirement—

(*a*) safe means—

(i) for isolating the battery from the load or from the charging circuit or simultaneously from both; and

(ii) where the charging circuit is arranged to share the load, for isolating the charging circuit from the battery and from the load;

(*b*) a suitable fuse or circuit-breaker with overhead trip to protect—

(i) the battery from excess charge and discharge currents; and

(ii) the charge circuit from excess charge currents;

(*c*) where the circuit is not a rectifier circuit which prevents a reversal of current, a reverse-current trip, which may be of the cut-out type;

(*d*) an ammeter with a mid-point zero or so, switched so as to measure separately the charge and discharge currents;

(*e*) a voltmeter with an "off" position to prevent continuous discharge and to indicate—

(i) battery terminal voltage; and

(ii) where the charging circuit has no cut-out, the voltage of the charging circuit separately from the battery terminal voltage;

(*f*) where the charging circuit shares the load with the battery, an ammeter to measure the current output of the charging circuit.

Installation of batteries

141.—(1) A battery in a battery installation connected with the generator of a private owner shall—

(*a*) have insulated supports for each cell of glass or vitreous porcelain which is part of the container;

(*b*) have insulated battery stands;

(*c*) have connected bolts—

(i) of a non-corrosive type; or

(ii) coated with petroleum jelly;

(*d*) have spray arrestors on open cells;

(*e*) if not portable, contain no celluloid in its construction; and

(*f*) if portable, and with celluloid in its construction, have suitable safeguards at the charging location to prevent ignition of the celluloid and the spread of fire.

(2) A room containing a battery installation connected with the generator of a private owner shall—

(*a*) be adequately ventilated to the outside air; and

(*b*) where sulphuric acid is used as an electrolyte, ensure its construction is—

(i) of non-corrosive material; or

(ii) painted with acid-resisting paint.

Labeling

142. All machinery, switchgear and instruments associated with the generation and supply of electricity of a private owner shall be indelibly labelled so as to indicate their functions and ratings.

Connecting private plant

143. A plant of a private owner shall not be interconnected, either directly or indirectly, with the electrical works lines or cables of a licensee or other person unless—

(*a*) there is an agreement in writing for such interconnexion between the private owner and the owner of the said works, lines or cables; and

(*b*) adequate safeguards are installed to prevent accidental or uncontrolled interconnexion.

Private owner to comply with relevant by-laws

144. Every private owner shall ensure that technical standards prescribed by these By-laws are complied with whenever applicable and shall, where appropriate, have the same obligations as a licensee or consumer, as the case may be.

Division 7
Offences

Offences and penalties

145. Subject to by-law 103 (2) and (3), a consumer or a private owner who erects or operates an electrical installation for or in connexion with the generation, transmission, distribution, connexion, installation and use of electricity, whether on his premises or elsewhere, and whether such installation is constructed, operated, maintained, repaired, tested or inspected otherwise than in accordance with the provisions of these By-laws commits an offence.

PART VII
CUSTOMER SERVICE

Division 1
Objectives

Objectives

146. The objectives of this Part are to ensure that customers—

(*a*) receive safe and reliable electricity from service providers;

(*b*) have access to information about an electricity service; and

(*c*) have a mechanism for redress for complaints against service providers.

Division 2
Customer Information and Education

Information and obtaining service

147. A service provider shall, on request from an applicant or a customer—

(*a*) provide to the applicant or customer any information or assistance necessary to enable the applicant or customer become aware of the service provided by the service provider; and

(*b*) facilitate the provision of the service on application by the applicant or customer.

Billing and metering information

148. A service provider shall, on the request by a customer, provide to the customer information regarding the service provider's—

(*a*) method of reading meters;

(*b*) method of preparing bills; and

(*c*) meter reading and billing cycle.

Modifications to tariffs, terms and conditions of service

149.—(1) A service provider shall, within seven days of the Authority's approval of—

(*a*) its tariffs or terms and conditions of service;

(*b*) any material change to its tariff, or terms and conditions of service; or

(*c*) adjustment of its tariff under the automatic Tariff Adjustment Formula,

publish a notice informing its customers of the approval and any material effects the changes will have on the customers.

(2) The service provider shall publish the information referred to in paragraph (1) once in any two daily newspapers in general circulation in Malaŵi.

Information on tariffs, terms and conditions of service

150.—(1) A service provider shall keep a complete copy of its tariffs and terms and conditions of service at each of its business offices.

(2) Upon request from an applicant or a customer, the service provider shall provide to the applicant or customer, at a reasonable price, a copy, and explanation of the tariff and terms and conditions of service applicable to the service that the service provider may provide to the applicant or is providing to the customer.

Information on customer usage

151. Upon request from any of its customers, a service provider shall provide a concise statement of the actual consumption and billing of electricity by that customer for each billing period during the previous twelve months:

Provided, however, that this obligation shall not apply if the service provider has, during the same period, provided such information to the customer making the request.

Information on service provider performance

152. Upon request from any of its customers, a service provider shall either—

(*a*) provide, at a reasonable cost, a copy of any annual report that it has provided to the Authority during the past twelve months; or

(*b*) direct the customer to an easily accessible establishment where the reports may be obtained or inspected.

Customer information programmes

153. A service provider shall establish a reasonable programme to inform its customers of the following information, and shall, in any

event, provide the following information at each of its customer service centres, and if requested by a customer, to that customer by mail—

(*a*) information on the rights and responsibilities of customers, including—

(i) an explanation of a customer's right to file a complaint with the service provider and to request that the Authority mediate or arbitrate any dispute between the customer and the service provider; and

(ii) any materials related to the rights and responsibilities of customers published by the Authority;

(*b*) a postage prepaid envelop addressed to the Authority's dispute resolution centre together with any forms needed by its customers to—

(i) make a request to the Authority that it mediate or arbitrate any dispute between the customer and the service provider; or

(ii) appeal against a decision by the service provider not to provide service to an applicant;

(*c*) information about the consequences of unauthorized use and theft of electricity;

(*d*) information about safety issues associated with the use of electricity; and

(*e*) statistical and other information concerning the service provider's sales, number of customers, sources of electricity supply and contact information for the service provider's customer service centres.

Division 3
Customer Service Centres and Customer Complaints

Operation of a customer service centre

154.—(1) A service provider shall maintain at least one customer service centre for the purpose of addressing and resolving applicant and customer service matters in each city, town or district served by the service provider.

(2) All customer service centres shall operate during normal business hours on each business day.

Information about customer service centres

155.—(1) A service provider shall display the telephone number and mailing address of its customer service centres on its customer's bills.

(2) A service provider shall provide information concerning its customer service centres in announcements run on national radios and in local newspapers at least once every three months.

Filing a complaint with a service provider

156.—(1) An applicant or customer may make a verbal or written complaint to a service provider by communicating the complaint to the service provider's customer service centres.

(2) Upon communication of a complaint, the service provider shall—

(*a*) immediately assign the complaint a registration number and provide this number to the applicant or customer;

(*b*) immediately inform the applicant or customer of the service provider's procedures for handling complaints and the applicant's or customer's rights with regard to the complaint, including the customer's right to request that the Authority mediate or arbitrate any dispute between the customer and the service provider if the customer remains unsatisfied after the service provider has responded to the complaint; and

(*c*) investigate the inquiry and provide a written response to the applicant or customer within fourteen days.

Division 4
Establishing a Service

Application process

157.—(1) All service providers shall prepare and maintain a standardized application form to be completed by applicants seeking service from the service provider.

(2) The application form shall be simple and easily understood, shall incorporate the applicable tariffs and terms and conditions of service by reference, and shall make no substantive changes to the applicable tariffs and terms and conditions of service:

Provided that the service provider may request such additional reasonable information as may be required in each case.

(3) A service provider shall require all applicants to complete and sign the standard application form in order to become a customer.

Effect of application

158.—(1) A service provider shall respond to an application for service to an applicant within fourteen days and indicate the cost required for such service.

(2) An application form submitted to a service provider shall upon being accepted form a binding contract between the applicant and the service provider, which binding contract shall remain in effect until the service has been discontinued and all other obligations of the parties thereto have been satisfied.

Confidentiality

159. All information provided by an applicant shall be considered confidential by the service provider, and no service provider shall release such information without the prior written consent of the applicant.

Obligation to provide service and grounds for refusal

160. A service provider shall provide electricity to any applicant located within its service area:

Provided that the service provider may refuse to serve an applicant if—

(*a*) the applicant fails to comply with any regulation issued by the Authority related to the provision of the service requested by the applicant;

(*b*) the applicant's electrical equipment is known to be of such character that satisfactory service cannot be given, or the applicant's equipment does not comply with—

(i) any written law, or

(ii) technical standards approved by the Authority or technical standards contained in the terms and conditions of customer service;

(*c*) the applicant applies for service at a location where a customer receive, or continues to receive service where there are unpaid charges arising from services provided to that location remain outstanding if the service provider can prove that the applicant intends to assist the prior customer in avoiding payment;

(*d*) the applicant owes an undisputed debt to any service provider for the same kind of service being requested;

(*e*) the applicant owes a disputed debt to any service provider for the same kind of service being requested and the applicant has not paid a cash deposit pursuant to Division 5 of this Part;

(*f*) the applicant fails to provide collateral to the service provider, when collateral may be required pursuant to Division 5 of this Part; or

(*g*) the applicant applies for the service at a location which is within the restricted servitude.

Notice of Refusal of service

161. If a service provider refuses to provide service to an applicant, the service provider shall provide the applicant with a written notice of such refusal to provide service within fourteen days of the request, and the notice shall contain—

(*a*) the grounds for refusal to provide service, or an explanation of how to remedy the cause for refusal; and

(*c*) the applicant's options for recourse to the Authority pursuant to by-law 177.

Applicant's recourse to the Authority

162.—(1) An applicant who is refused service for any reason may appeal, using the forms promulgated by the Authority, within fourteen days of the applicant's receipt of the service provider's decision refusing to provide service.

(2) If the Authority finds the service provider to have inappropriately denied service to the applicant—

(*a*) the applicant shall be deemed to have submitted an application form to the service provider on the date of the Authority's decision; and

(*b*) the service provider shall provide the requested service to the applicant in accordance with these By-laws and the applicable terms and conditions of service.

Commencement of service

163. Subject to by-law 180, a service provider shall connect service to an applicant within thirty days of the applicant's delivery of a completed installation form to the service provider and the required payment.

System extensions

164.—(1) Where a service provider needs to make a system extension or a system expansion in order to provide an applicant with electricity, then the service provider may not refuse to provide the services requested by the applicant unless—

(*a*) the system extension or system expansion is not technically feasible; and

(*b*) the applicant agrees to pay the service provider for the costs to be incurred by the service provider in constructing and installing the system extension (the "System Extension Cost") or expanding the capacity of the existing system in the area already serviced.

(2) In the event that the applicant agrees to pay the applicant's portion, then the service provider may refuse to begin making the system extension or system expansion until the applicant has deposited the estimated system extension cost or system expansion cost, as the case may be, with the service provider.

(3) Under no circumstances shall a service provider charge a system extension cost or a system expansion cost to an applicant that exceeds the estimated system extension cost or system expansion cost by more than twenty per cent.

System extension or expansion cost refunds

165.—(1) When charging applicants, for new connexions, consideration for future connexions shall be taken into account by the service provider in areas with low potential for connexions as long as this fact is made clear in writing to the applicant.

(2) In the event that an applicant, has paid for a system extension cost or system expansion cost in areas of low potential for connexions and additional customers connect, within five years of the completion of the system improvement to which the applicant's portion related, to the distribution system of the service provider using any part of the system

extension or system expansion paid for by the applicant, then the service provider shall—

(*a*) charge a portion of the system extension cost or system expansion cost paid by the applicant to each such customer; and

(*b*) refund the amount charged to such customers to the applicant that paid for the system extension cost or system expansion cost.

Division 5
Treatment of Capital Contributions

Service provider to treat contribution as trust funds

166.—(1) All monies paid to a service provider as contribution to a system extension cost or system expansion cost shall be placed in a separate bank account operated by the service provider for such purposes.

(2) Monies placed in the system extension or system expansion bank account shall be regarded by the service provider as trust funds until they are actually used for the purpose of system expansion or system extension they were paid for.

(3) Monies paid in the system extension or system expansion bank account shall begin to attract interest at the ruling bank rate on the expiry of the period prescribed for connexion of the customer as specified in the Standard of the Quality of Service and Supply Standards contained in the Ninth Schedule hereto.

Requirement to provide acceptable collateral

167. A service provider may, when acting pursuant to a pre-established and non-discriminatory policy approved by the Authority, require an applicant to provide, and a customer to maintain, collateral in an amount not greater than the service provider's reasonable estimate of the amount of charges the applicant will incur over any two months' period.

Payment before reconnexion

168. A service provider may require an applicant who was previously a customer of the service provider and whose service was disconnected for non-payment of bills or theft of service to pay all amounts due to the service provider before connecting or reconnecting the service.

Division 6
Metering and Control Equipment

Installation

169. A service provider shall, prior to providing electricity to an applicant or location that has not yet received electricity from the service provider—

(*a*) provide a meter appropriate for the services the applicant has requested and arrange for its installation in a location that is easily

accessible for reading of the meter, and agreeable to both the service provider and the applicant; and

(*b*) certify the accuracy of the meter before providing service to the customer.

Access to metering equipment

170. The following terms shall govern service provider access to metering equipment installed in accordance with by-law 184 at the customer or applicant's premises—

(*a*) service provider personnel shall carry a valid identification card with a photograph when entering places where customers metering devices are kept;

(*b*) customers shall be required to provide access only to service provider's personnel that are able to provide valid identification pursuant to subparagraph (*a*); and

(*c*) service provider personnel working on customer meters and measuring devices including reading, maintenance and installation, shall do so during normal business hours except in the case of service termination due to unauthorized use of electricity, or if the service provider and the customer agree otherwise.

Meter testing and accuracy

171.—(1) Where a customer requests a service provider to test the accuracy of a meter and the customer pays for the meter test, the service provider shall test the meter within thirty days of receiving the payment thereof.

(2) The service provider shall notify the customer at least five days prior to performing the test so that the customer may observe the testing if the customer wishes to do so.

(3) If the test reveals that the meter has a margin of error of two decimal point five per cent or less, then the customer shall not be refunded the meter testing cost paid.

(4) In the event that the test reveals the meter to have a margin of error of more than two decimal point five per cent, and to have resulted in the overcharging of the customer, then the service provider shall adjust the customer's bill for the previous twelve months, or back to the date of which the service provider last tested the meter, whichever occurred later, and credit the overcharges charged to the customer within such period to the customer's account and refund to the customer the meter testing cost paid.

Obtaining meter data

172.—(1) The service provider shall read meters at least once every month.

(2) If the service provider is unable to obtain a customer's meter readings during the service providers normal business hours, having exercised due diligence pursuant to the service provider's established

policy, then the service provider may estimate the amount of electricity consumed by the customer and make any necessary adjustments on subsequent bills.

Division 7
Service Quality and Continuity

Continuous service

173.—(1) All service providers shall use their reasonable efforts to ensure that they can provide electricity to their customers at all times.

(2) When interruption does occur, a service provider shall re-establish service within the shortest possible time consistent with prudent operation principles, so that the smallest number of customers are affected.

(3) Each service provider shall make reasonable provisions to meet emergencies resulting from a failure of service, and shall issue instructions to its employees covering procedures to be followed in the case of an emergency in order to prevent or mitigate the interruptions or impairment of service.

Records of interruptions

174.—(1) Except for momentary interruptions lasting not more than two minutes each and which do not cause a major disruption of service, each service provider shall keep a complete record of all emergency and scheduled interruptions.

(2) The Authority shall be notified in writing of any interruption in service affecting the entire system or any of its major divisions that lasts more than two minutes.

(3) The record under paragraph (1) shall show the cause of interruption, the date, time, duration, approximate number of customers affected, and in cases of emergency interruptions, the remedy and steps taken to prevent recurrence.

(4) Every service provider shall issue quarterly and annual reports to the Authority containing the aggregate version of the record provided under paragraph (1).

(5) The Authority may further prescribe the contents of any record under paragraph (1).

Minimum service standards

175.—(1) Minimum service standards or customer service charter developed by the service provider and approved by the Authority shall be adhered to by the service provider at all times.

(2) The minimum service standards or customer service charter shall provide for—

(*a*) continuity of service;

(*b*) maintenance of proper customer relations;

(*c*) the right of a service provider to refuse service in exceptional circumstances;

(*d*) the right of the service provider to demand a deposit from customers against future service;

(*e*) the adoption of proper billing procedures;

(*f*) the establishment of principles governing new construction; and

(*g*) the procedure for abandonment or discontinuance of service.

Division 8
Customer Obligations and Rights

Obligations of the customer

176. The customers shall—

(*a*) use electricity in a manner that pays due regard to its scarcity and value as a resource;

(*b*) protect service provider meters and similar equipment from vandalism and damage;

(*c*) use electricity in a manner that does not endanger peoples lives and property;

(*d*) use electricity equipment conforming to the service provider's supply agreement and the Act; and

(*e*) not trespass onto or tamper with the service provider's equipment.

Disconnexion of service

177. A service provider shall not disconnect electricity supply to a customer except for the following reasons—

(*a*) non-payment of bills more than sixty days in arrears:

Provided that the service provider delivers a disconnexion notice to the customer's address five days before service is disconnected;

(*b*) unauthorized use or theft of electricity;

(*c*) refusal to grant access at reasonable times to equipment installed upon the premises of the customer for the purpose of inspection, meter reading or maintenance;

(*d*) failure to reimburse the service provider for repairs to, or replacement of the service provider's property used to supply service, when such repairs or replacements are necessitated by negligence on the part of the customer;

(*e*) misrepresentation of identity for the purpose of obtaining service;

(*f*) actions adversely affecting the safety of any customer or the integrity of the service provider's distribution system;

(*g*) failure to comply with the credit requirements set in Division 5; and

(*h*) any other reasons identified in the applicable terms and conditions of service.

Situations in which disconnexion is prohibited

178. A service provider shall not disconnect service to a customer solely for the following reasons—

(*a*) delinquency in payment for service by a previous occupant of the premises; or

(*b*) failure to pay charges not properly reflected on a service provider's bill.

Disconnexion of service during dispute over a bill

179. Where a customer has disputed a bill and has filed a complaint with its service provider related to such bill or requested that the Authority mediate or arbitrate the dispute, then the service provider shall not discontinue service to a customer because of failure to pay the disputed portion of a bill:

Provided that the service provider may require the customer to pay that part of a bill that is not in dispute and if the customer fails to pay the undisputed portion of the bill, the service provider may discontinue service to the customer subject to all applicable provisions of these By-laws.

Diagram and specifications

180. If, at any time after the date of commencement of these By-laws, an initial connexion is made to any customer premises, the customer shall, if a service provider so requires, provide the service provider with a diagram of the circuits on the customer premises, starting from the point of supply and the specifications of the electrical installation to be installed on the customer premises.

Electrical installation

181.—(1) A customer shall be responsible for the installation and maintenance, at its own expenses, of the electrical installation on the customer premises from the point of supply in accordance with the requirements of these Regulations and the standards applicable to the wiring of premises.

(2) No electrical installation may extend from one customer premises to another or if the customer premises comprises more than one building, from one building to another without prior approval of the service provider.

Fault on electrical installation

182.—(1) If any fault develops on the electrical installation on any customer premises, the customer shall—

(*a*) immediately switch off the supply by means of the switch provided for that purpose on the distribution board and, where

considered necessary, request the service provider to disconnect the supply to the customer premises; and

(*b*) cause the necessary steps to be taken to remedy the fault on the electrical installation.

(2) The service provider is not obliged to effect any repair to the electrical installation on the customer's premises, but shall repair any damage which may have been caused to the service apparatus as a result of the fault on the electrical installation.

(3) Where, owing to a fault as envisaged in paragraph (1) a service provider repairs the damage caused to the service apparatus in accordance with paragraph (2), the customer shall—

(*a*) reimburse the service provider for any expenses which the service provider incurs in connexion with the repair; and

(*b*) pay to the service provider the fee determined by the service provider in its schedule of tariffs for the disconnexion of the supply of electricity and for the subsequent restoration of the supply.

Equipment to be provided by the customer

183.—(1) A customer shall, at his own cost, erect, connect, operate and maintain in good order—

(*a*) all circuits from the point of supply, referred to in the contract of supply, to the electrical installation;

(*b*) all apparatus necessary for controlling the said circuits, including efficient apparatus for automatically isolating any circuit which may break down; and

(*c*) other equipment which the service provider requires the customer to install.

(2) The said circuits, electrical installation, apparatus and equipment and the adjustment thereof shall be accepted to the service provider.

(3) The service provider shall be entitled to recover from the customer, any loss or expense which the service provider incurs for damage to the service provider's plant and equipment or otherwise because of failure by the customer to comply with this by-law.

(4) The electrical installation and all other electrical equipment belonging to the service provider shall be accommodated separately on the customer premises in a manner which distinguishes clearly between the electrical equipment which is the property of the customer and the electrical equipment which is the property of the service provider.

(5) The electrical equipment of the customer shall be of a design and construction in line with good industry practices, properly installed and maintained by the customer, and shall in all respects comply with the standards applicable to the wiring of premises.

(6) The customer shall at all reasonable times grant to the service provider unhindered access to the electrical installation for the purposes of inspection and, where necessary, approval.

(7) The customer shall provide adequate equipment for the protection of the electrical installation after ascertaining the nature of the protection equipment which the service provider installed at the point of supply.

(8) It shall be the responsibility of the customer to take the necessary measures to protect itself where its business is of such a nature that a voluntary or involuntary outage may cause a cessation of, or damage to, its plant or operations.

(9) A customer may at no time exceed the rated capacity of the distribution line or cable, equipment or apparatus which the service provider provides, and the service provider may provide and install apparatus designed and arranged to interrupt the supply of electricity to the customer premises in the event of an overload occurring.

Charges in case of improper use

184.—(1) If a customer uses electricity supplied to the customer's premises for any purpose, or deals with the supply of electricity to the customer's premises in any manner, which, in the opinion of the service provider, interferes with or is likely to interfere with the efficient supply of electricity by the service provider to any other premises, the service provider may, without prior notice, suspend the supply of electricity to the customer's premises.

(2) The service provider must restore any supply of electricity suspended in terms of paragraph (1), if—

(*a*) the cause of the suspension of the supply has been permanently remedied or removed to the satisfaction of the service provider; and

(*b*) the fees which the service provider determines in its schedule of tariffs for the suspension and restoration of, as well as any other arrears for, the supply of electricity and costs for physical damage caused by the customer to the equipment of the service provider have been paid.

Division 9
Billing

Details on bills

185.—(1) A service provider's bill to a customer shall provide the following details—

(*a*) the amount of the bill, including, as applicable, separate line items for the Energy Regulation Levy, the Rural Electrification Levy, duties, fees and taxes, any discounts or penalties, and past due amounts:

Provided that the levies shall be made only on the basic charges for consumption;

(*b*) the date and reading of the meter at the beginning and the end of the billing period;

(*c*) the due date of the bill;

(*d*) the applicable tariff; and

(*e*) any conversions from meter reading units to billing units:

Provided that where the bill is in the form of a prepaid sale of electricity the receipt thereof shall contain the information stated in paragraphs (*a*) to (*e*) above.

(2) All receipts for payments for electricity consumption issued by the service provider to the customer shall contain all the information indicated in paragraph (1) of this By-law.

Information on billing and payment history

186. A service provider shall provide to an applicant or a customer a breakdown of charges at the time service is initially installed or is modified, and upon request by a customer, a service provider shall also provide receipts for any amount paid by a customer.

Records retention

187.—(1) A service provider shall maintain monthly billing records for each customer account for at least two years after the date the bill is mailed.

(2) Billing records shall contain sufficient data to reconstruct a customer's billing for a given month.

(3) Copies of a customer's billing records may be obtained by that customer on request at a reasonable cost.

Adjustments for billing error

188. If a billing error is discovered, a service provider shall account for the billing error in the next month's bill as follows—

(*a*) if charges are found to be higher than the correct amount, an adjustment shall be made for the entire period of the over billing, and the service provider shall pay interest on the amount of the overcharge at a rate set by the Authority:

Provided, however that the service provider shall not pay interest on the amount of the correction if the service provider corrects the over billing within one month of making the error.

(*b*) if charges are found to be lower than the correct amount, then the service provider may retroactively bill the customer for any under-billed amount that would have been payable by the customer no more than three months prior to the date the under-billed amount is billed to the customer, and the service provider shall not charge interest on under-billed amounts; and

(*c*) where it is established that the under-billed amount was due to fraud or illegal transaction by the customer, the service provider shall be entitled to recover the full amount with interest at a rate to be approved by the Authority.

PART VIII
Tariffs and Charges

Division 1
Applications

Application

189. This Part shall apply to applicants or holders of licences for—

(*a*) generation;

(*b*) distribution;

(*c*) transmission or export or import; and

(*d*) any other licensed activity.

Objectives

190. The objectives of this Part are to—

(*a*) provide customers with fair and reasonable price structures consistent with the maintenance of a financially and operationally secure electricity supply system;

(*b*) structure the costs reflected in the tariff in such a way as to encourage customers to make efficient use of generation, transmission and distribution assets;

(*c*) encourage licensees towards efficient use of and electrical plant and increased operational effectiveness based on financial benefits and penalties;

(*d*) provide all licensees in the electricity supply industry with a fair and reasonable return for their service and production, including a reasonable profit;

(*e*) encourage customers towards efficient and economical use of energy based on price signals;

(*f*) provide a structure for the formulation of the incentive based tariffs, taking into account the limited scope of competition in the current market system configuration;

(*g*) provide for a tariff structure that accommodates future progress towards a commercially competitive market system;

(*h*) provide for a tariff structure and regulatory environment that gives confidence to current and prospective investors in the Malaŵi electricity industry;

(*i*) provide for tariff structure and a regulatory environment that promotes public safety, health and environmental protection; and

(*j*) provide for a tariff structure and a regulatory environment that promotes a social responsibility without sacrificing the need for cost recovery and financial sustainability on the part of the service provider.

Division 2
Tariff Principles

General duties of licensee

191.—(1) A licensee shall—

(*a*) carry out its licensed activities in an effective and efficient manner;

(*b*) work towards the long-term and sustainable provision of electricity and the development of electricity services;

(*c*) where applicable, to develop a fair and transparent electricity pricing methodology;

(*d*) avoid the making of exorbitant profits with regard to its licensed undertaking to the detriment of customers; and

(*e*) endeavour to facilitate national economic and social objectives in the electricity industry.

(2) The Authority shall endeavour to ensure that licensees comply with paragraph (1).

Ring-fence accounting

192.—(1) A licensee shall, within the period stipulated in its licence conditions, fully ring-fence every Lincensed Activity in accordance with this by-law.

(2) In order to give effect to paragraph (1), a licensee shall, in respect of the Licensed Activity—

(*a*) maintain ring-fence accounting records; and

(*b*) in respect of each financial year, prepare consistent and uniform financial statements comprising of the following—

(i) an income statement;

(ii) a balance sheet;

(iii) a cash-flow statement;

(iv) an asset register; and

(v) a statement showing the amounts paid as Energy Regulation Levy and Rural Electrification Levy.

(3) The statements referred to in paragraph 2 (*b*) shall be accompanied by notes showing separately for each Licensed Activity and in appropriate detail—

(*a*) the amounts of any revenue, cost, asset, liability, reserve or provision which has either been charged from or to any other activity;

(*b*) business or operations of the licensee, whether licensed or not; and

(*c*) a description of that charge.

(4) A licensee who has commenced ring-fence accounting of its Licensed Activity as provided in paragraph (1) shall—

(*a*) submit to the Authority a report by its auditor stating whether, in the auditor's opinion, the statements referred to in paragraph (2) (*b*)—

(i) have been prepared in accordance with these By-laws; and

(ii) give a true and fair reflection of the financial affairs of the licensed activity;

(*b*) the submission referred to in paragraph (*a*) shall be made—

(i) not later than six months or any longer period as the Authority may determine after the end of the licensee's first full financial year; and

(ii) after the date on which the lincensee would have commenced the ring-fence accounting; and

(iii) thereafter, annually.

Allowable assets, revenue and costs

193.—(1) The Authority may, with regard to the ring-fence accounting of a Licensed Activity for different categories of licensees, issue guidelines in accordance with the Act pertaining to the following—

(*a*) revenue, costs, assets, liabilities, reserves and provisions which the Authority deems allowable as forming part of or emanating from the licensed activity;

(*b*) any method or formula for allocating overhead expenses; and

(*c*) a standardized asset valuation schedule for all licensees.

(2) Any guidelines issued under this by-law may—

(*a*) distinguish the different types of licensed activities; and

(*b*) be specific for the category of licensees to which such rules or guidelines relate.

Principles

194. In implementing these By-laws and furthering their objectives, regard shall be given to the following underlying and guiding principles—

(*a*) tariffs shall be based on accurate cost information provided by licensees and on a transparent formulation and review process;

(*b*) tariffs shall be structured and developed in a way that will reflect variations in costs imposed on the system at the time of use, and seasonal factors, consumer load profile, voltage levels and similar factors; and

(*c*) tariffs shall reflect a true cost of service and provide clear price signals to customers on the economic and efficient use of energy.

Regulation of costs and investments

195.—(1) A licensee shall be responsible for justifying that costs or investments included in the formulation of tariffs are reasonable in the circumstances, and the Authority may reject the costs if it considers them to be unreasonable or imprudent.

(2) To clarify a regulatory situation and allow for eventual differentiation in regulatory control, there shall be a clear separation of activities and costs between potentially competitive activities and naturally monopolistic activities.

Licence conditions

196. The following licence conditions are particularly relevant to the tariffs setting process and shall consequently be taken into account by every licensee—

(*a*) accounting records shall be maintained and financial statements produced in accordance with the regulatory accounting standards determined by the Authority;

(*b*) a reasonable apportionment of common costs into tariff cost categories shall be carried out in accordance with accepted business practices, and the Authority shall be informed of the allocation methods used;

(*c*) there shall be no cross-subsidies between customers or groups of customers for different activities undertaken by the licensee, except with a prior approval of the Authority;

(*d*) the licensee shall ensure that any activity, including tariff setting, does not impede competition in the industry;

(*e*) the licensee's tariffs shall be consistent with maintaining an acceptable level of quality and reliability;

(*f*) the structure of the tariff shall encourage the improvement of operational and economic efficiency; and

(*g*) tariffs shall be developed in accordance with these by-laws.

Components of tariff computation

197.—(1) The components of base tariff computation for each licensee shall be in accordance with the Tariff Methodology approved by the Authority in respect of each particular licence and may include the following general categories of costs—

(*a*) power acquisition related costs;

(*b*) operation and maintenance costs;

(*c*) investment related costs;

(*d*) return on investment;

(*e*) adjustment factors for system losses, inflation and foreign exchange; and

(*f*) other costs as approved by the Authority.

(2) A licensee shall structure its tariffs in the schedule of tariffs according to this by-law and include tariff components in a way that the schedule of tariffs appropriately reflects the following main types of costs—

(*a*) demand related costs;

(*b*) energy related costs;

(*c*) shared customer's related costs; and

(*d*) customer specific costs.

(3) The manner in which the structuring referred to in paragraph (2) shall be effected, shall be determined by the Authority.

(4) In the interests of economic and rational use and consumption of electricity, and whenever feasible, a licensee shall—

(*a*) provide customers with an option of time of use of tariffs for the variable energy component of the tariff that reflects the difference in the cost of supply in off-peak periods; and

(*b*) ensure that the option and its structure is authorized in its schedule of tariffs prior to offering the option to its customers.

(5) Only the specific costs allowable by the Authority and associated with the activities of each licence shall be included in the tariff computation.

Automatic tariff adjustment formula

198.—(1) A licensee may adjust his tariffs in accordance with the tariff adjustment formula specified in the Tenth Schedule hereto.

(2) A licensee shall not adjust tariffs without verification and approval by the Authority.

(3) A licensee may publish and implement new tariffs if the Authority does not respond to the licensee's application for tariff adjustment after thirty days of receiving the application.

Special pricing agreements

199.—(1) A licensee that distributes electricity may include special pricing agreements in its schedule of approved tariffs.

(2) The licensee may only conclude a special pricing agreement with a customer if the customer complies with any of the following—

(*a*) the electricity costs of the customer represent a percentage that equals to or exceeds the percentage of the total electricity costs of that customer as determined by the Authority; and for this purpose the Authority shall decide the manner of determining the costs and also which costs may be taken into consideration;

(*b*) the electricity load factor of the customer equals or exceeds the percentage for the continuous period which the Authority determines; or

(*c*) any other criteria which the Authority may determine.

(3) When considering whether or not to approve charges or tariffs relating to a special pricing agreement, the Authority may request the licensee to submit to the Authority any information which the Authority deems necessary.

(4) Once the Authority is satisfied with the requirements outlined in paragraph (1) it shall not be necessary for the concerned licensee to send to the Authority for approval any particular special pricing arrangement with a customer, but the licensee shall be required to send a copy of that agreement to the Authority for information and monitoring.

PART IX
Miscellaneous

Surcharges and levies

200. A licensee collecting surcharges and levies shall—

(*a*) distinguish the surcharges and levies in its billing and receipts issued from the electricity tariffs it charges;

(*b*) indicate the surcharges and levies in its billing and receipts issued in a transparent and understandable manner; and

(*c*) recover the surcharges and levies from customers in accordance with the applicable laws.

Licence fees

201.—(1) If an application for the issue, renewal, amendment or transfer of a licence, has in terms of the Act been granted by the Authority, the applicant must, prior to the issue, renewal, amendment or transfer of such licence, pay the appropriate fee prescribed in Schedule B.

(2) The above fees shall be paid for any additional generation capacity and distribution load above the original load.

Register of licences

202.—(1) The Authority must keep and maintain a register, in such form as may be determined by the Authority, in respect of every licence issued under the Act, and in which register shall be recorded—

(*a*) the name of every holder and joint holder of the licence;

(*b*) the type of licence issued and the area in respect of which the licence has been issued;

(*c*) the conditions imposed on the licence;

(*d*) the names of the persons, if any, to whom any interest in any licence has been granted, ceded, transferred or assigned and the nature of such interest;

(*e*) revocations, amendments and cancellations of licences; and

(*f*) such other particulars as may, from time to time, be determined by the Authority.

(2) The register shall, during normal office hours, be open for inspection by any interested person at the place of business of the Authority, and any such person may request copies or extracts of any entry in the register and the Authority shall provide the person with such copies or extracts on payment of the cost thereof.

Information about installation

203. Any electrical installations person who completes or directs the completion of any electrical installation work which is to be connected to a supply system shall—

(*a*) when such supply is to be delivered by the licensee, submit to the licensee a "Completion of Installation" report in such form as the Committee shall require; and

(*b*) in all other cases give information to a licensee or private owner under the Act, including the completion date and a summary of the work carried out.

Discipline

204.—(1) Every person issued with a permit under these By-laws shall exhibit a high degree of discipline in the performance of his work.

(2) The licensee shall monitor the professional performance of a permit holder under these By-laws and shall report any case of malpractices to the Authority.

(3) The Committee may, at any of its sittings consider any case reported under subregulation (2) and may, depending upon the gravity of the case, recommend to the Authority which may suspend a permit holder from practising for a period determined by the Authority or cancel the permit.

Appeals

205. A person aggrieved by any decision of the Authority concerning the refusal or cancellation of a permit may apply in writing within fourteen days of the date of such refusal or cancellation for mediation or arbitration under the Energy Act.

General offences and penalties

206.—(1) Any licensee or person who contravenes any provision of these By-laws commits an offence and shall, on conviction, be liable to a fine of K2,000 and to imprisonment for six months.

(2) In addition to the penalties provide for the offences under these By-laws, a court may also order that the guilty person repay any expenses incurred by the Authority or any other person as a consequence of the offence.

207. Every permit holder shall pay the annual permit renewal fees specified in the First Schedule hereto. Annual fees

208. All permits issued under any previous subsidiary legislation by licensees shall be deemed to have been issued under these By-laws by the Committee but shall be subject to renewal at the end of December every year. Transitional arrangement

FIRST SCHEDULE

PART A

APPLICATION FEES by-law 3

Nature of Fee	*Fee* K t
Application fee for—	
(*a*) issue of licence	5,000 00
(*b*) renewal of licence	50,000 00
(*c*) amendment of licence	25,000 00
(*d*) transfer of licence	50,000 00

PART B

FEES FOR ISSUING, RENEWAL OR TRANSFER OF LICENCE
INTERCONNECTED SYSTEM by-law 5

	Matter	*Amount Payable*
B. 1	GENERATION RELATED LICENCES:	
CAT. I	Larger Generators, 50 MVA or above . .	USD40,000 per 50 MVA or part thereof payable in Malaŵi Kwacha equivalent.
CAT. II	Medium Generators,10 MVA and above but less than 50 MVA	USD20,000 fixed, plus USD 10,000 per 25 MVA or part thereof payable in Malaŵi Kwacha equivalent.
CAT. III	Small Generators, 0.5 MVA and above but less than 10 MVA	USD10,000 payable in Malaŵi Kwacha equivalent.
CAT. IV	Very Small Generators, less than 0.5 MVA	USD5,000 payable in Malaŵi Kwacha equivalent.

Matter		*Amount Payable*
B. 2 Transmission, Import or Export Related Licences:		
	Transmission, import or export	USD60,000 payable in Malaŵi Kwacha equivalent.
B. 3 Distribution Related Licences:		
CAT. I	Larger Distributors, 50 MVA or above . .	USD40,000 payable in Malaŵi Kwacha equivalent.
CAT. II	Medium Distributors, 10 MVA and above but less than 50 MVA.	USD 15,000 fixed plus USD5,000 per 10 MVA or part thereof.
CAT. III	Small Distributors, 2 MVA and above but less than 10 MVA	USD5,000.
CAT. IV	Very Small Distributors—	
	(*a*) 0.5 MW and above but less than 2 MVA	USD2,500;
	(*b*) less than 0.5 MVA	USD1,250.

PART C

Isolated Grid Systems Combined Generation and Distribution — by-law 152

Matter		*Amount Payable*
CAT. I	Medium Generators, 10 MVA and above but less than 50 MVA	USD25,000 plus USD10,000 per 25 MVA or part thereof payable in Malaŵi Kwacha equivalent.
CAT. II	Small Generators, 2 MVA and above but less than 10 MVA	USD15,000 payable in Malaŵi Kwacha equivalent.
CAT. III	Very Small Generators, less than 2 MVA	USD10,000 payable in Malaŵi Kwacha equivalent.

PART D

Licence Fees for Import or Export of Electricity — by-law 5

CAT. I	Export or Import of Electricity at 33 kV or below.	USD10,000 payable in Malaŵi Kwacha equivalent.

PART E

INSTALLATION PERMIT FEES FOR INDIVIDUAL APPLICANTS by-law 14

Class of Permit	*Application Fees*	*Annual Renewal Fees*
A	K10,000	K5,000
B	K9,000	K4,500
C	K8,000	K4,000
D	K7,000	K3,500
E	K8,000	K4,000

PART F

INSTALLATION PERMIT FEES FOR COMPANY OR FIRM AS APPLICANTS by-law 14

Class of Permit	*Application Fees*	*Annual Renewal Fees*
A	K20,000	K10,000
B	K18,000	K9,000

PART G

The fees for amendment of any licence specified under this First Schedule shall be ten per cent of the above fees.

SECOND SCHEDULE

REPUBLIC OF MALAŴI

ELECTRICITY ACT

(CAP. 73:01)

ELECTRICITY BY-LAWS

APPLICATION FOR LICENCE TO GENERATE ELECTRICITY FOR SALE by-laws 5 and 7

FORM EA 1

SECTION A

PARTICULARS OF APPLICANT

A. 1 Full name of Applicant: .....

A. 2 Address of Applicant, or in the case of a body corporate, the registered office: .....

A. 3 Telephone Number of Applicant: .....

A. 4 Fax Number: .....

A. 5 E-mail Address: .....

A. 6 Details of Contact Person:

Full Name: .....

Telephone Number: .....

Fax Number: .....

E-mail Address: .....

A. 7 Legal form of applicant: .....

A. 8 If the applicant is a company provide the following details—

(*a*) full names of shareholders (holding more than 5% of shares) and their holding percentages;

(*b*) full names and occupation of Directors;

(*c*) Certificate of Incorporation; and

(*d*) Memorandum and Articles of Association.

SECTION B

COMMENCEMENT DATE, PURPOSE AND DURATION OF LICENCE

B. 1 Desired date from which the licence (if granted) is to take effect:

.....

B. 2 Duration of the licence from commencement date: .....

B. 3 Purpose for which electricity is to be generated: .....

B. 4 Type of application (issue, transfer, amendment or renewal):

.....

SECTION C

PARTICULARS OF GENERATING STATION

(To be provided for each generating station separately)

C. 1 Name of generating station: .....

C. 2 Location of generating station: .....

C. 3 Address of generating station:

C. 4 Details of Contact Person:

Full Name: .....

Telephone Number: .....

Fax Number: .....

E-mail Address: .....

C. 5 Type and age of generating station (thermal, nuclear, hydro, pumped storage, gas turbine, diesel generator, solar, wind or other including equipment description): .....
.....

C. 6 Date on which the generating station was commissioned for an existing station or the expected commissioning date for a proposed station: .....
.....

C. 7 The installed capacity of each unit within the generating station (MW): .....

C. 8 Life span of each generation station: .....

C. 9 Maximum generating capacity (MW) expected to be available from the generating station and energy to be produced (kWh):

	Max. MW	Total Energy (kWh)	Own Use kWh	For sale kWh
YEAR 1				
YEAR 2				
YEAR 3				
YEAR 4				
YEAR 5				
YEAR 6				
YEAR 7				

C. 10 Estimate of the energy conversion efficiency of—

(*a*) Turbine: .....

(*b*) Generator: .....

(*c*) Estimated overall station: .....

SECTION D

PARTICULARS OF ANY LONG-TERM ARRANGEMENTS WITH ENERGY SUPPLIERS

(To be provided for each generating station separately)

D. 1 Name of Transmission company: .....
.....

D. 2 Particulars of the contractual arrangements (attach draft contract if in place):

.....
.....
.....

SECTION E

GENERATION BUSINESS

(To be provided for each generating station separately)

E. 1 Details of proposed major maintenance programmes, including the expected cost and duration thereof, covering the next five years:

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E. 2 Details of major generating station rehabilitation and modifications dates, cost and description for the next five years:

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E. 3 Details of generating station expansion, dates, cost and description:

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E. 4 Particulars of power sales agreements and tariffs therein:

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.....
.....

E. 5 Particulars of anticipated outages and duration thereof as a result of E1 and E2 above:

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.....
.....

SECTION F

FINANCIAL INFORMATION

F. 1 Income Statement:

Provide statements and annual forecasts of sales, revenues and costs. Attach copies of the current and/or budgeted balance sheet, rate of return, profit and loss account and source and application of funds for current and next two years. Indicate major cost items such as staff costs, maintenance.

F. 2 Investment Programme:

Investment Programme for current and the next five years. Attach copies of the detailed scheme or schemes prepared by a competent engineer and mode and cost of financing such a scheme.

F. 3 Fixed Assets:

Summary of total assets of all generating plant.

F. 4 Audited Accounts:

Provide copies of the latest audited accounts of the applicant.

F. 5 Letters of Reference from Banks:

Provide one letter of recommendation as to credit worthiness from a local commercial bank and one from a reputable international bank.

SECTION G

INFORMATION ON HUMAN RESOURCES

G. Personnel:

(*a*) Submit details of the number of staff and employees and their categories and grades in the service of or to be recruited by the applicant, showing their qualifications and number of years of experience in similar jobs.

(*b*) Provide *curriculum vitae* of top management personnel of the applicant.

SECTION H

ENVIRONMENTAL CONSIDERATION

H. (*a*) Provide a brief description of the likely negative impact of the generation facility on natural resources and the environment and mitigation measures proposed.

(*b*) Provide a copy of the approved environmental mitigation plan (if any) by the relevant authority.

SECTION I

PERMITS FROM OTHER GOVERNMENT DEPARTMENTS OR REGULATORY AUTHORITIES

I. Permits:

Submit copies of permits or approvals issued by public or local authority or other regulatory agencies necessary for the operation of the generating plant.

SECTION J

ADVERTISING NOTICE

Attach draft copy of the notice of advertisement as to representations or objections.

SECTION K

TARIFFS

Provide a schedule of the proposed tariffs.

SECTION L

ADDITIONAL INFORMATIONAL

Provide any other relevant information which the applicant wishes to include with this application:

.....
.....
.....
.....

Signed: ..... Date: .....

Receipt acknowledged by: ..... Date: .....

MERA Stamp

REPUBLIC OF MALAŴI

ELECTRICITY ACT

(CAP. 73:01)

ELECTRICITY BY-LAWS

APPLICATION FOR LICENCE TO TRANSMIT OR TO IMPORT OR TO EXPORT ELECTRICITY — by-law 5, FORM EA 2

SECTION A

PARTICULARS OF APPLICANT

A. 1 Full name of applicant: .....

A. 2 Address of applicant, or in the case of a body corporate, the registered office:

.....

.....

A. 3 Telephone Number of Applicant: .....

A. 4 Fax Number: .....

A. 5 E-mail Address: .....

A. 6 Details of Contact Person:

Full Name: .....

Telephone Number: .....

Fax Number: .....

E mail Address: .....

A. 7 Legal form of applicant: .....

A. 8 If the applicant is a company provide the following details—

(*a*) Full names of shareholders (holding more than 5% of shares) and their holding percentages;

(*b*) Full names and occupation of Directors;

(*c*) Certificate of Incorporation; and

(*d*) Memorandum and Articles of Association.

SECTION B

COMMENCEMENT DATE, PURPOSE AND DURATION OF LICENCE

B. 1 Desired date from which the licence (if granted) is to take effect:

.....

B. 2 Duration of the licence from commencement date:

.....

B. 3 Description of the purpose for the licence:

.....

.....

B. 4 Type of application (issue, transfer, amendment or renewal):

.....

SECTION C

AREA TO WHICH THE APPLICATION RELATES

C. 1 Provide a sufficient description of the area to which the application relates (attach map showing routes of the transmission lines):

.....

.....

C. 2 Provide a list of local authorities covered by the area of transmission:

.....

.....

C. 3 Electricity will be imported from or exported to:

.....

SECTION D

DETAILS OF THE TRANSMISSION SYSTEM

D. 1 Provide an overview of the existing system and plan for the next five years, which includes—

D. 1.1 The Physical system:

(*a*) telecommunication and telecontrol plant schedule and ages thereof;

(*b*) large-scale map showing geographical location of plant and facilities;

(*c*) single line diagram of the transmission system;

(*d*) supply and delivery points, metering arrangements and policies, location, type, reading, calculating charges and billing systems; and

(*e*) list, description and age of transformers, switchgear and associated equipment.

D. 1.2 System Characteristics:

(*a*) energy entering the system at supply points:

(*b*) energy leaving the system at delivery points:

(*c*) electrical losses:

(*d*) maximum power transfer capability (lines + transformers); and

(*e*) maximum fault levels at all interfaces.

D. 2 Provide similar information for works to be purchased as well as location thereof.

SECTION E
TRANSMISSION BUSINESS

E. 1 Provide your proposed policy and practice in respect of charging for the usage of the transmission system:

.....

.....

E. 2 Analyse total purchases; (kWh; Kwacha) from your suppliers of electricity (generators and your customers distributors) for current year and the next five years:

.....

.....

.....

.....

E. 3 Provide your pricing policy for electrical energy trading:

.....

.....

E. 4 Attach a schedule of the proposed tariffs and prices for bulk supply.

E. 5 Attach a copy (if any) of the power purchase agreement with a generator or other supplier.

E. 6 Attach a copy of the power sales agreement with distributors.

E. 7 Details of proposed major maintenance programmes including expected costs and duration thereof for the next five years:

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E. 8 Details of major rehabilitation and modifications or upgrading, dates, costs and description for the next five years:

.....

.....

.....

.....

SECTION F

FINANCIAL INFORMATION

F. 1 Income Statement:

Provide statements and annual forecasts of sales, revenues and costs. Attach copies of the current and/or budgeted balance sheet, rate of return, profit and loss account and source and application of funds for current and the next two years. Indicate major cost items such as staff costs, maintenance.

F. 2 Investment Programme:

Investment Programme for current and the next five years. Attach copies of the detailed scheme or schemes prepared by a competent engineer and mode and cost of financing such a scheme.

F. 3 Fixed Assets:

Summary of total assets of all transmission plant.

F. 4 Audited Accounts:

Provide copies of the latest audited accounts of the applicant.

F. 5 Letters of Reference from Banks:

Provide one letter of recommendation as to credit worthiness from a local commercial bank and one from a reputable international bank.

SECTION G

INFORMATION ON HUMAN RESOURCES

G. Personnel:

(*a*) Submit details of the number of staff and employees and their categories and grades in the service of or to be recruited by the applicant, showing their qualifications and number of years of experience in similar jobs.

(*b*) Provide *curriculum vitae* of top management personnel of the applicant.

SECTION H
ENVIRONMENTAL CONSIDERATION

H. 1 Provide a brief description of the likely negative impact of the transmission facility on natural resources and the environment and mitigation measures proposed:

.....

.....

.....

.....

H. 2 Provide a copy of the approved environment mitigation plan (if any) by the relevant authority.

SECTION I
PERMITS FROM OTHER GOVERNMENT DEPARTMENTS OR REGULATORY AUTHORITIES

I. Permits:

Submit copies of permits or approvals issued by public or local authority or other regulatory agencies necessary for the operation of the transmission system.

SECTION J
ADVERTISING NOTICE

Attach draft copy of the notice of advertisement as to representations or objections.

SECTION K
TARIFFS

Provide a schedule of the proposed tariffs.

SECTION L
ADDITIONAL INFORMATION

Provide any other relevant information which the applicant wishes to include with this application:

.....

.....

.....

.....

Signed: ..... Date: .....

Receipt acknowledged by: ..... Date: .....

MERA Stamp

REPUBLIC OF MALAŴI

ELECTRICITY ACT

(CAP. 73:01)

ELECTRICITY BY-LAWS

LICENCE APPLICATION FORM

APPLICATION FOR LICENCE TO DISTRIBUTE ELECTRICITY

by-law 5
FORM EA 3

SECTION A

PARTICULARS OF APPLICANT

A. 1 Full Name of Applicant: .....
.....

A. 2 Address of applicant, or in the case of a body corporate, the registered office:
.....
.....

A. 3 Telephone Number of Applicant: .....

A. 4 Fax Number: .....

A. 5 E-mail Address: .....

A. 6 Details of Contact Person:

Full Name: .....

Telephone Number: .....

Fax Number: .....

E-mail Address: .....

A. 7 Legal form of applicant: .....
.....

A. 8 If the applicant is a company provide the following details—

(*a*) Full names of shareholders (holding more than 5% of shares) and their holding percentages;

(*b*) Full names and occupation of Directors;

(*c*) Certificate of Incorporation; and

(*d*) Memorandum and Articles of Association.

SECTION B

COMMENCEMENT DATE, PURPOSE AND DURATION OF LICENCE

B. 1 Desired date from which the licence (if granted) is to take effect:

.....

B. 2 Duration of the licence from commencement date: .....

B. 3 Description of the purpose for which a supply is to be distributed:

.....

.....

B. 4 Type of application (issue, transfer, amendment or renewal):

.....

SECTION C

AREA TO WHICH THE APPLICATION RELATES

C. 1 Provide sufficient information (maps, etc.) of the area or areas to which the application relates:

.....

.....

.....

C. 2 Provide a list of local authorities covered by the area of distribution:

.....

.....

.....

SECTION D

TECHNICAL INFORMATION

Submit single line diagram(s) of the system by means of which the applicant intends to supply electricity. Identify any parts of that system which will not be in possession or control of the applicant. The diagram should show the applicant's points of supply (input).

D. 1 Domestic metering details:
Number of customers on— . . . . Prepayment metering;
Conventional credit metering;
Ripple control/load limiting devices;
AMR metering system.

D. 2 Commercial metering details:
Number of customers on— . . . . Conventional credit metering;
Prepayment metering;
Maximum demand metering;
AMR metering.

D.3 Industrial metering:
Number of customers on— . . . . Maximum demand metering;
Time of day metering;
Remote metering.

D. 4 Special Agreements:
Number of customers on— . . . . Maximum demand metering;
Time of day metering.

D. 5 Transformer Capacity:

		Number	*Ages*	*(kVA) Capacity*
D. 5.1	Power transformers (kV)			
D. 5.2	Distribution transformers (kV)			

D. 6 Lines:
Total Circuit length (Km) when commissioned

D. 6.1	Distribution Lines 66 kV (if not part of Transmission)			
D. 6.2	Distribution Lines 33 kV			
D. 6.3	Distribution Lines 11 kV			
D. 6.4	400/230 Volts			

D. 7 Cables:
Total Circuit length (Km) when commissioned

D. 7.1	Distribution 33 kV			
D. 7.2	Distribution Cables 11.kV			
D. 7.3	Distribution Cables LV/MV			

SECTION E

DISTRIBUTION BUSINESS

E. 1 General:

Provide projected details of the following—

	Year 1	Year 2	Year 3	Year 4	Year 5
Number of consumers					
Total kWh Sales					
Total energy (kWh) purchased					
Percentage (kWh) losses					

E. 2 Consumer Profile:

Tariff	Number of Consumers				Sales (kWh)				Total Revenue (k, 000)					Growth Rate Consumer Nos./ Sales
	Year 1	Year 2	Year 3	Year 4	Year 1	Year 2	Year 3	Year 4	Year 1	Year 2	Year 3	Year 4	Average consumer Numbers	Average Sales Growth
Domestic Urban														
Domestic Rural														
General														
Maximum Demand (Low-Voltage)														
Maximum Demand (Medium-Voltage)														
Optional Demand (Off-peak)														

E. 4 Provide details of long-term power purchase agreements:

.....

.....

.....

.....

E. 5 Attach details of proposed tariff structure for each category of consumers:

.....

.....

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.....

E. 6 Provide details of your policy regarding capital contribution, connexion and reconnexion charges, inspection charges, etc.:

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.....

E. 7 Provide details of proposed major maintenance programmes including expected cost and duration thereof covering the next five years:

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E. 8 Provide details of major rehabilitations and modifications and dates, costs and description thereof for the next five years:

.....

.....

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.....

E. 9 Details of distribution expansion programme including dates, description and how much of it will be for rural electrification for the next five years:

.....

.....

.....

.....

SECTION F
FINANCIAL INFORMATION

F. 1 Income Statement:

Provide statements and annual forecasts of sales, revenues and costs. Attach copies of the current and/or budgeted balance sheet, rate of return, profit and loss account and source and application of funds for current and next two years. Indicate major cost items such as staff (as staff) costs, maintenance.

F. 2 Investment Programme:

Investment Programme for current and the next five years. Attach copies of the detailed scheme or schemes prepared by a competent engineer and mode and cost of financing such a scheme.

F. 3 Fixed Assets:

Summary of total assets of all distribution plant.

F. 4 Audited Accounts:

Provide copies of the latest audited accounts of the applicant.

F. 5 Letters of Reference from Banks:

Provide one letter of recommendation as to credit worthiness from a local commercial bank and one from a reputable international bank.

SECTION G
INFORMATION ON HUMAN RESOURCES

G. 1 Personnel:

(*a*) Submit details of the number of staff and employees and their categories and grades in the service of or to be recruited by the applicant, showing their qualifications and number of years of experience in similar jobs.

(*b*) Provide *curriculum vitae* of top management personnel of the applicant.

SECTION H
ENVIRONMENTAL CONSIDERATION

Provide a brief description of the likely negative impact of the distribution facility on natural resources and the environment and mitigation measures proposed.

SECTION I
PERMITS FROM OTHER GOVERNMENT DEPARTMENTS OR REGULATORY AUTHORITIES

Submit copies of permits or approvals issued by public or local authority or other regulatory agencies necessary for the operation of the distribution system.

SECTION J

ADVERTISING NOTICE

Attach a draft copy of the notice of advertisement as to representations or objections.

SECTION K

TARIFFS

Provide a schedule of the proposed tariffs.

SECTION L

ADDITIONAL INFORMATION

Please provide any other information which the applicant wishes to include with this application:

.....

.....

.....

.....

REPUBLIC OF MALAŴI

ELECTRICITY ACT

(CAP. 73:01)

ELECTRICITY BY-LAWS

OBJECTION TO THE ISSUING OF A LICENCE by-law 7
FORM EA 4

Full name: .....

Nationality: .....

Address (postal and physical) of Objector, or in the case of a body corporate, the registered office:

.....

.....

Telephone Number of Objector: .....

Fax Number: .....

E-mail Address: .....

Details of Contact Person:

Full Name: .....

Telephone Number: .....

Fax Number: .....

E-mail Address: .....

Legal form of Objector: .....

.....

Reason for the objection: .....

.....

.....

.....

Attach or refer to copy of the advertisement.

Nature of interest entertained by the Objector in the application: .....

.....

.....

.....

.....

Signed: ..... Date: .....

Receipt acknowledged by: ..... Date: .....

MERA Stamp

REPUBLIC OF MALAŴI

ELECTRICITY ACT

(CAP. 73:01)

ELECTRICITY BY-LAWS

APPLICATION FORMS

by-law 43

APPLICATION FOR ELECTRICAL INSTALLATION PERMIT

To: The Chief Executive Officer

Malaŵi Energy Regulatory Authority (MERA)

Private Bag B496

Lilongwe 3

SECTION A

A. 1 Full Name of Contractor: .....
.....

A. 2 Address of Applicant, the registered head office:
.....
.....

A. 3 Name of company for which Registration is required: .....
.....

A .4 Telephone Number: .....

A. 5 Fax Number: .....

A. 6 E-mail Address of Contractor: .....

A. 7 Nationality: .....

Passport Number: .....

Where/when issued: .....

A. 8 Company Registered? (if yes attach copy of certificate).

A. 9 Company affiliated to Electrical Contractors Association? .....

A. 10 Attach copy of old Registration Certificate (if upgrading): .....

A. 11 Category in which registration is sought: .....

A. 12 If application is on behalf of a limited liability company, state the following—

(*a*) Foreign/Local Malaŵian: .....

(*b*) Paid-up capital K.....

(*c*) Date of incorporation: .....

(*d*) Place of incorporation: .....

(*e*) Name of Managing Director: .....

Address: .....
.....

SECTION B

B. 1 Give details of the technical qualifications of your staff indicating which members of your staff will be in actual control of the work and attach copy of their professional certificates.

Name	Position in Organization	Qualifications

B. 2 Give below, details of what tools, equipment and transport facilities you own and which are in sound working order and have valid certificates and are currently licensed where required:

.....
.....
.....
.....

B. 3 For those applying for upgrading only—

Give details of works completed during past three years:

Value of Contract	Class of work	Location of Project	Client

B. 4 Have you ever failed to complete any work awarded to you? If so why?

.....
.....
.....

Present number of staff employed:

Craftsmen	Supervisors (state where trained)	Labourers

B. 5 Give two names and full addresses of referees (Electrical Engineers/consultants or other relevant competent professionals) who know you or under whom you have recently carried out work (Reference letters to be attached).

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SECTION C

C. 1 Are you familiar with the Laws of Malaŵi relating to your trade. If so, please list them down. Do you hold copies of these relevant legislations?

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.....

C. 2 Remarks: .....

.....

.....

.....

.....

C. 3 A council appointed official might be required to make a physical verification of the information given herein. Do you have any objections?

.....

C. 4 Declaration:

I, the above mentioned applicant, hereby solemnly and sincerely declare that the information I have given above is true in every respect to the best of my knowledge and belief and that I have read the Act and the regulations made under the Act and understanding that, if registered, I shall be bound thereby and by any amendments thereto, for as long as my name shall remain on the register.

Declared at: ....

Signature of Applicant

Before me on this ..... day of ....., 20.....

.....

Commissioner for Oaths

This declaration must be signed, in the case of an application by a limited liability company, by the Managing Director or Secretary, and in the case of a partnership, by the principal partner or where none is resident in Malaŵi, by the local representative.

C. 5 **FOR OFFICIAL USE ONLY—**

(*a*) Date Received: .....

(*b*) Date sent to the Installations Permits Committee: .....

(*c*) Date of approval of application: .....

(*d*) Allocated Contractor Identification Number: .....

(*e*) Registration Certificate Number: .....

(*f*) Receipt Number of Registration fees: .....

(*g*) Allocated MERA Working Licence Number: .....

(*h*) Remarks: .....

Dated this ..... day of ....., 20.....

.....

Chief Executive Officer
Malaŵi Energy Regulatory Authority (MERA)

THIRD SCHEDULE

MINIMUM SECTION CLEARANCE

by-laws 29, 113 and 115

Normal operating voltage between bare line conductors—	Minimum clearance from any point on or about the permanent equipment where a man may be required to stand (measures from the position of the feet).	
	To the nearest unscreened live Conduct in air	To the nearest part not at earth potential of an insulator supporting a live conductor
	Metres	*Metres*
1. Not exceeding 15,000 volts	2.5	2.4
2. Exceeding 15,000 volts but not exceeding 33,000 volts . .	2.7	2.4
3. Exceeding 33,000 volts but not exceeding 44,000 volts . .	2.9	2.4
4. Exceeding 44,000 volts but not exceeding 66,000 volts . .	3.0	2.4
5. Exceeding 66,000 volts but not exceeding 88,000 volts . .	3.2	2.4
6. Exceeding 88,000 volts but not exceeding 110,000 volts . .	3.4	2.4

7. Exceeding 110,000 volts but not exceeding 132,000 volts . .	3.6	2.4
8. Exceeding 132,000 volts but not exceeding 165,000 volts . .	3.8	2.4
9. Exceeding 165,000 volts but not exceeding 220,000 volts . .	4.3	2.4
10. Exceeding 220,000 volts but not exceeding 275,00 volts . .	4.6	2.4
11. Exceeding 275,000 volts but not exceeding 330,000 volts . .	5.2	2.4

NOTES—

(*a*) The above provisions concern the means of access for works which are permanently available, such as fixed ladders or platforms attached to structures. The means of access shall also comprise the structures themselves and the tops of circuit-breakers or transformers if a man is required to stand on them to carry out work. The provisions do not apply to portable ladders, cradles or similar equipment, the use of which is governed by the general instructions issued by the consumer in accordance with by-law 13.

(*b*) Portable ladders and platforms specially designed for specific maintenance work and so arranged that they cannot readily be employed in any way other than that intended, shall be considered as permanent means of access for the purpose of safety clearance.

FOURTH SCHEDULE

REPUBLIC OF MALAŴI

ELECTRICITY ACT

(Cap. 73:01)

ELECTRICITY BY-LAWS

Minimum Heights of Overhead Lines by-law 48

Normal operations voltage between line conductors—

	Over roads normally accessible to vehicular traffic	*In any position except where otherwise specified in these By-laws*
(*a*) not exceeding 650 volts	5.5 metres	4.9 metres
(*b*) exceeding 650 volts but not exceeding 33,000 volts . .	5.8 metres	5.2 metres
(*c*) exceeding 33,000 volts but not exceeding 88,000 volts . .	6.1 metres	6.1 metres
(*d*) exceeding 88,000 volts but not exceeding 132,000 volts	6.7 metres	6.7 metres
(*e*) exceeding 132,000 volts but not exceeding 275,000 volts	7.0 metres	7.0 metres
(*f*) exceeding 275,000 volts	7.3 metres	7.3 metres

FIFTH SCHEDULE

Minimum Heights of Overhead Lines Crossing Railway Tracks

by-laws 49 and 135

Normal operating voltage between line conductors height—	*Minimum above rail*
1. Not exceeding 33,000 volts	7.6 metres
2. Exceeding 33,000 volts but not exceeding 88,000 volts . .	7.9 metres
3. Exceeding 88,000 volts but not exceeding 132,000 volts . .	8.5 metres
4. Exceeding 132,000 volts but not exceeding 275,000 volts . .	8.8 metres
5. Exceeding 275,000 volts but not exceeding 330,000 volts . .	9.1 metres

SIXTH SCHEDULE

PART I

Fundamental Units

by-laws 62 and 63

The fundamental electrical units are the units agreed as such at an international conference on electrical units and standards held in London in October, 1908 (the magnitude thereof being determined on the electro-magnetic system of measurement, with reference to the centimetre as the unit of length, the gram as the unit of mass and the second as the unit of time), and compromising—

(*a*) the ohm, the unit of electrical resistance, the value thereof being one thousand million in terms of the centimetre and the second;

(*b*) the ampere, the unit of electrical current, the value thereof being one tenth in terms of the centimetre, the gram and the second;

(*c*) the volt, the unit of electro-motive force, the value thereof being one hundred million in terms of centimetre, the gram and the second.

PART II

Denominations of Standards

1. Electrical Resistance:

A standard of electrical resistance denominated one ohm, agreeing in value within the limits of accuracy specified in Part III with that of the fundamental unit in paragraph **(***a***)** of Part I, and being the resistance between the copper terminals of the instrument marked "Board of Trade Ohm Standard Verified 1894 and 1909" to the passage of an unvarying electrical current, when the coil of insulated wire forming part of the instrument aforesaid is in all parts at a temperature of fourteen point decimal nine degrees centigrade.

2. Electrical Current:

A standard of electrical current denominated one ampere, agreeing in value within the limits aforesaid with that of the fundamental unit in paragraph **(***b***)** of Part I, and being the current which is passing in and through the coils of wire forming part of the instrument marked "Board of Trade Ampere Standard Verified 1894 and 1909" when, on reversing the current in the fixed coils, the change in the forces acting on the suspended coil in its sighted position is exactly balanced by the force exerted by gravity in Teddington in the United Kingdom upon the iridioplatinum weight marked A and forming part of the said instrument.

3. Electrical Pressure:

A standard of electrical pressure denominated one volt, agreeing in value within the limits aforesaid with that of the fundamental unit in paragraph **(***c***)** of Part I, and being one-hundredth part of the pressure which, when applied between the terminals forming part of the instrument marked "Board of Trade Volt Standard Verified 1894 and 1909 and 1948", causes that rotation of the suspended portion of the instrument which is exactly measured by the coincidence of the sighting wire with the image of the fiducial mark A before and after the application of the pressure, and with that of the fiducial mark B during the application of the pressure, these images being produced by the suspended mirror and observed by means of the eye-piece.

4. The coils and instruments referred to herein are deposited at the National Physical Laboratory' at Teddington, Middlesex, in the United Kingdom.

PART III
Limits of Accuracy

The limits of accuracy attainable in the use of the standards denominated in Part II are—

(*a*) for the ohm, within one-hundredth part of one per centum;

(*b*) for the ampere, within one-tenth part of one per centum; and

(*c*) for the volt, within one-tenth part of one per centum.

PART IV
Derived Electrical Unit of Energy

The derivation of the kilowatt-hour as the lawful electrical unit for the measurement of electricity shall be from the fundamental units described in Part I of this Schedule. Thus one watt (the practical unit of power) shall be equal to the amount of energy expended per second by an unvarying current of one ampere with a steady applied voltage

of one volt. For the purpose of expressing watts in terms of voltage and resistance, or current and resistance, the steady voltage applied to a constant resistance shall be equal to the unvarying current in amperes multiplied by the value of the resistance in ohms.

In an alternating-current circuit the product of the instantaneous value of the amperes and the volts represents the instantaneous value of the power and the algebraic mean value of the instantaneous values over one second shall be the power in watts provided that the frequency is fifty cycles per second. One watt-hour shall be equal to the energy expended in one hour when the power is one watt, and a kilowatt-hour shall be equal to one thousand watt-hours.

SEVENTH SCHEDULE

Minimum Section Clearance

by-laws 87, 113 and 115

Normal operating voltage between bareline conductors—	Minimum clearance from any point on or about the permanent equipment where a man may be required to stand (measures from the position of the feet).	
	To the nearest unscreened live Conduct in air	To the nearest part not at earth potential of an insulator supporting a live conductor
	Metres	*Metres*
1. Not exceeding 15,000 volts	2.5	2.4
2. Exceeding 15,000 volts but not exceeding 33,000 volts	2.7	2.4
3. Exceeding 33,000 volts but not exceeding 44,000 volts	2.9	2.4
4. Exceeding 44,000 volts but not exceeding 66,000 volts	3.0	2.4
5. Exceeding 66,000 volts but not exceeding 88,000 volts	3.2	2.4
6. Exceeding 88,000 volts but not exceeding 110,000 volts	3.4	2.4
7. Exceeding 110,000 volts but not exceeding 132,000 volts	3.6	2.4
8. Exceeding 132,000 volts but not exceeding 165,000 volts	3.8	2.4

9. Exceeding 165,000 volts but not exceeding 220,000 volts	4.3	2.4
10. Exceeding 220,000 volts but not exceeding 275,000 volts	4.6	2.4
11. Exceeding 275,000 volts but not exceeding 330,000 volts	5.2	2.4

NOTES—

(*a*) The above provisions concern the means of access for works which are permanently available, such as fixed ladders or platforms attached to structures. The means of access shall also comprise the structures themselves and the tops of circuit-breakers or transformers if a person is required to stand on them to carry out work. The provisions do not apply to portable ladders, cradles or similar equipment, the use of which is governed by the general instructions issued by the consumer in accordance with by-law 13.

(*b*) Portable ladders and platforms specially designed for specific maintenance work and so arranged that they cannot readily be deployed in any way other than that intended, shall be considered as permanent means of access for the purpose of safety clearance.

EIGHTH SCHEDULE

Minimum Requirements for Protection of Private Generation

by-laws 152 and 159

PART I

Switchboard Supply Controls and Protective Apparatus

System of Supply	*Number of poles to be broken by circuit-breaker or Switch*	*Position of circuit-breaker of fuse*
1. Two-wire, alternating current or direct current, earthed at either pole	1	In non-earthed conductor
2. Two-wire, alternating current or direct current, not earthed at either pole	2	In each conductor
3. Three-wire, single-phase, alternating current or direct current	2	In each outer conductor
4. Three-wire, three-phase, alternating current or four-wire, three-phase alternating current.	3	In each non-earthed conductor

PART II

Instrumentation for a Switchboard

	Type of System	*One Generator Only*	*More than One Generator*
1.	Two-wire, alternating or direct current	(*a*) an ammeter; and	(i) an ammeter for each generator
		(*b*) a voltmeter.	(ii) a voltmeter to measure the voltage of any generator; and
			(iii) if generators are paralleled, a voltmeter to measure the busbar voltage.
2.	Three-wire, single-phase, alternating current or direct current	(*a*) an ammeter to measure the current in each outer conductor; and	(i) an ammeter for each generator to measure the current in each outer conductor;
		(*b*) two voltmeters, each connected between an outer conductor and neutral.	(ii) two voltmeters, each connected between an outer conductor and neutral of the busbars; and
			(iii) if generators are paralleled, two voltmeters, each connected between an outer conductor and neutral, to measure the voltage of any of the two generators.
3.	Three-wire, three-phase, alternating current or four-wire, three-phase, alternating current	(*a*) an ammeter to measure the current in each phase; and	(i) an ammeter for each generator to measure the current in each phase;
		(*b*) a voltmeter to measure the line voltage.	(ii) a voltmeter to measure the line voltage of each generator; and
			(iii) if generators are paralleled, a voltmeter to measure the busbar voltage.

NINTH SCHEDULE

Minimum Distances Between Power Lines and Wayleaves

by-law 175

	Power Line Voltage	*Length between parallel power lines (metres)*	*Wayleave (metres)*
1.	Not exceeding 11,000 volts (11 kV)	5	10
2	Exceeding 11,000 volts but not exceeding 22,000 volts (22 kV)	12	15
3.	Exceeding 22,000 volts but not exceeding 33,000 volts (33 kV)	14	20
4.	Exceeding 22,000 volts but not exceeding 33,000 volts (33 kV) (H-pole)	14	30
5.	Exceeding 66,000 volts but not exceeding 88,000 volts (88 kV)	15	30
6.	Exceeding 88,000 volts but not exceeding 132,000 volts (132 kV)	25	30
7.	Exceeding 132,000 volts but not exceeding 275,000 volts (275 kV)	32	47
8.	Exceeding 275,000 volts but not exceeding 330,000 volts (330 kV)	35	50
9.	Exceeding 330,000 volts but not exceeding 400,000 volts (400 kV)	35	55
10.	Exceeding 400,000 volts but not exceeding 420,000 volts (420 kV)	35	55
11.	Exceeding 420,000 volts but not exceeding 500,000 volts (500 kV)	40	60
12.	Exceeding 500,000 volts but not exceeding 533,000 volts (533 kV)	40	60
13.	Exceeding 533,000 volts but not exceeding 765,000 volts (765 kV)	40	60
14.	765,000 volts and above (765 kV)	60	80

TENTH SCHEDULE

QUALITY OF SERVICE AND SUPPLY STANDARDS

by-laws 65 and 180

1.0 BACKGROUND

The Minimum Standards for Electricity Supply Industry (ESI) shall provide the industry in Malaŵi the basis for checking to ensure that the quality of electricity supplied conforms to the acceptable minimum standards for normal operation of electricity dependent processes of customers.

Based on these standards, quality of supplies in the country shall be checked on a continuous basis. Compliance with the standards shall be checked using measurement and reporting procedures specified herein for both licensees and consumers.

2.0 MINIMUM QUALITY STANDARDS

2.1 Quality of Service Parameters:

Quality of Service Standards specifies requirements for monitoring and reinforcing reliability of electricity supply. This includes minimum times for clearing various faults on the network and monitoring frequency of forced and planned interruptions on the system.

2.2 Quality of Service and Reliability Objectives:

(*a*) Each licensee shall maintain procedures to meet service levels established herein.

(*b*) In the event that service must be interrupted for purposes of working on the lines or equipment, the licensee's work procedure shall provide that an attempt be made to—

(i) do the work at a time which will cause minimal inconvenience to customers; and

(ii) where reasonable and practicable, provide notice to customers in advance about the interruption.

(*c*) The licensee shall keep a record of those instances where it is not reasonable or practical to provide advance notice.

2.3 Quality of Supply Parameters:

Qualities of Supply (QOS) parameters have been defined for both licensees responsible for generation, transmission and distribution in order for them to co-ordinate their contractual relationships with each other and between distributors and end customers. The characteristics of electric power that detract from its quality include momentary interruptions, waveform irregularities and voltage variations, which are either prolonged or transient.

Minimum standards for each one of the parameters have been developed. This minimum level shall represent the lower threshold of adequate service below which further review analysis and corrective action may be required by the licensee. The measured and assessed levels of these QOS parameters will then be compared to these minimum standards. The immunity levels of licensee and customers equipment are set at a percentage above the defined minimum or maximum nominal standards.

2.4 Quality of Power Supply Objectives:

Each licensee shall consider power quality in the design of power delivery system. It shall also strive to avoid and to mitigate to the extent feasible and cost effective, power quality disturbances under its control that adversely affect customers properly designed processes and equipment.

Each licensee shall, as a minimum, maintain a power quality programme that includes its performance objectives and procedures. The programme should be designed to respond promptly to customer reports of power quality problems.

3.0 CUSTOMER COMPLAINTS

Each licensee will receive customer service complaints and that licensees and their customers will be expected to resolve the problem between themselves first. Only those issues, which have not been successfully resolved between the licensees and their customers, as well as those between licensees, can be referred to the Authority for arbitration.

4.0 REPORTING PROCEDURES

In cases where the licensee has already been collecting the required information for a number of years, it is relatively easy to use the same information for the performance review plan. The performance requirements, reporting formats and the definition of the data will have to be agreed upon between the Authority and the licensee concerned.

4.1 Annual Report:

Each licensee shall file a report with the Authority by the end of each calendar year that includes the following information—

(*a*) An overall assessment of the reliability performance cooperate wide in each of the licensee's operating area in relation to the minimum standards set for interruption frequency and duration.

(*b*) A status report on the power quality programme including data on the number of power quality complaints received during the year and the number of power quality

investigations conducted during the year. Copies of monthly and quarterly circuit analysis reports by the company can be used.

(*c*) A list of circuits' performance by operating area based on applicable forced outage performance indicators (AFIk, TITk, CAIDI, SAIFI, SAIDI, FIU and TIU) for the calendar year.

4.2 Under Achievements of Base line Target:

When a licensee data for a given operating area does show that performance has gone down, the licensee will prepare a report to the Authority. This report should analyze the interruption patterns and trend as well as the maintenance history of the affected operating area and describe the problem causing the unacceptable performance and the action the licensee is taking to resolve them. The report shall contain target dates for completion of corrective action.

4.3 Assessment Method:

Faults centers as well as consumers shall keep record of the date, time and duration of all reported interruptions. As far as practicable, the reported interruptions shall be corrected and related with the known disturbances on the network. Samples of fault-reporting format for operators are appended with these standards as attachment.

Operators shall submit to the Authority annual reports based on these recordings in order for the Authority to analyze licensee service quality performance. The Authority may request interim reports from licensees if required.

The Authority shall monitor continuously the reliability of the supply on a network sample basis using specialized equipment and data that shall be recorded and compiled annually. A report will be published based on the findings indicating the extent of compliance to these standards and the comparative performance of the concerned network.

If a consumer complains of non-compliance with quality of service standards by the operator, the issue shall first be settled between the operator and the consumer. If the issue is not resolved and has been referred to the Authority for resolution, the Authority shall put specialized equipment on a section of the network to verify and resolve the complaint.

5. 0 COST OF INVESTIGATIONS

The cost of investigations carried out by the Authority to determine non-compliance with standards during disagreements between licensees, and between licensees and consumers, will be borne by the Authority. After determination, the cost will be charged to the party found guilty.

QUALITY OF SERVICE STANDARDS

1.0 PURPOSE

The Authority sets the minimum standards for the quality of electricity services supplied by Malaŵian utilities to end customers. They are intended to provide the Authority with means of evaluating and monitoring reliability of electricity supply in Malaŵi. This include minimum fault clearing time on the distribution network and maximum number of forced and planned interruptions for each category of the MV and LV distribution networks. While some key parameters of quality of service are measurable, overall quality of service includes many aspects that cannot be readily measured. Target standards for these have been established, which should be achieved under normal circumstances.

2.0 DEFINITIONS

2.1 "interruptions" refer to an occurrence when one or more phases of supply to a customer or a group of customers are disconnected for a defined period exceeding 3 minutes.

2.2 "planned interruptions" refer to an occurrence when a component is deliberately taken out of service by a utility or its agent at a selected time, usually for the purpose of a construction or for preventive maintenance or repair.

2.3 "forced interruptions" refer to an occurrence when a component is taken out of service immediately, either automatically or as soon as switching operations are performed as a direct result of emergency conditions, or an interruption caused by improper operation of equipment or human error.

2.4 "equipment failure" refers to interruptions that result from electric breakdown or mechanical failure of any plant.

2.5 "operational causes" refer to interruptions from operational action or from the operation of protection control equipment including interruption caused by lack of preventive maintenance.

2.6 "third party causes" refer to interruptions that result from damage to licensee's equipment by another party, such as theft of conductors, vandalism, motor vehicle accidents, customers protection device failure.

2.7 "natural events" refer to interruptions that result from lightning, windstorms, fire and other natural events, including those caused by birds or animals directly.

2.8 "low-voltage (LV)" means normal operating voltage exceeding 30 volts AC and/or 50 volts direct current but not exceeding 250 volts.

2.9 "medium-voltage (MV)" means normal operating voltage exceeding 250 volts but not exceeding 650 volts.

2.10 "high-voltage (HV)" means normal operating voltage exceeding 650 volts.

3.0 SERVICE QUALITY AND RELIABILITY STANDARDS

The following performance indices for measuring frequency and duration of interruptions have been developed and comply with the International Electrotechnical Commission (IEC) standards. These are universally recognized standard definitions and shall be applied to the entire distribution system, operating areas, sub-operating areas or individual circuits.

3.1 Frequency and Duration of Forced Interruptions Per Year:

Interruptions of duration less than 3 minutes or due to *force majeure* are not considered. Major events shall be considered separately.

The standards are implemented in phases. Improving gradually towards internationally acceptable standards. The AFIk and TITk indices (described below) are applied in the transition stage. After the transition stage (year 2) more detailed (SAIFI, SAIDI and CAIDI indices) are used as specified below. In this period DisCos are expected to carry out necessary improvements and adjust their information system to comply with SAIFI, SAIDI and FAIDI indices.

Stage I, Phase I

In Phase I of Stage I global values shall be used as follows—

(*a*) System Average Interruption Index:

AFIk = (Average Frequency of Interruptions per kVA)

= Sum [kVA disconnected during outage/Total installed kVA]

Average frequency of interruptions per unit (kVA) of distribution transformation capacity installed. AFIk specifies the number of times a unit of installed distribution transformation capacity is interrupted.

(*b*) Customer Average Interruption Duration Index:

TITk = (Total Interruption Time per installed kVA)

= Sum [(kVA disconnected during outage) × (Duration of outage)/ Total installed kVA].

Total interruption time per unit of installed capacity. TITk specifies the average amount of time a unit of installed distribution transformation capacity is disconnected.

Stage I, Phase II

Phase II of Stage I shall use more detailed indicators and DisCos shall be required to improve carry-out improvements and adjust their information system to comply with the standards specified below: Global values shall be used as follows—

(*c*) System Average Interruption Index:

The average number of times that a customer is interrupted in a year.

SAIFI = (System Average Interruption Frequency Index)

= Sum [Customers disconnected by outage/Total customers in system]

(*d*) Customer Average Interruption Duration Index:

This index defines an average interruption duration time for those customers that experience an interruption during the year. This index provides a basis of estimating the average length of time required to complete service restoration.

SAIDI = (System Average Interruption Duration Index)

= Sum [(Customers disconnected by outage) × (Duration of outage)/ Total customers in system].

CAIDI = (Customer Average Interruption Duration Index) it specifies the average outage duration experienced by a customer defined by the following formula—

= SAIDI/SAFI

Compatibility levels shall be as specified in Tables 4–6 below.

Table 4–6

	Yearly Values Excluding External Events											
	Stage I									Stage II		
	Year 1			Year 2			Year 3 Use SAIDI and SAIFI			Objective		
	Urban Service	Rural Service	System Equivalent	Urban Service	Rural Service	System Equivalent	Urban Service	Rural Service	System Equivalent	Urban Service	Rural Service	System Equivalent
AFIk/ SAIFI (events)	8.0	10.0	9.4	7.0	9.0	8.4	7.0	8.0	7.7	6.0	7.0	6.7
TITk/ SAIDI (hours)	16.0	30.0	25.8	14.0	27.0	23.1	12.0	20.0	17.6	9.0	17.5	15.0
CAIDI (hours)	2.0	3.0	2.7	2.0	3.0	2.7	1.7	2.5	2.3	1.5	2.5	2.2

Stage II:

The final stage moves DisCos to International Standards where individual customer indices (FIU and TIU), as defined below, are used. The Discos are expected to have implemented necessary improvements and adjusted their information system to provide all necessary data.

(*e*) Customer Average Interruption Index:

FIU = (Frequency of Interruptions experienced by individual customer within a fiscal year).

(*f*) Customer Average Interruption Duration Index:

TIU = (Total duration, cumulative, of Interruptions experienced by individual customer within a fiscal year).

Compatibility levels shall be as specified in Table 4–7 below.

Table 4–7

	Yearly Values Excluding External Events				
	Stage II				
	Low-Voltage Customers		*Medium-Voltage Customers*		*High-Voltage Customers*
	Urban Service	Rural Service	Urban Service	Rural Service	All Service
TIU (hours)	6.0	8.0	4.0	6.0	3.0
TIU/FIU (hours)	12.0	24.0	8.0	12.0	6.0
FIU (events)	2.0	3.0	2.0	2.0	2.0

NOTE: The numbers and durations are for overhead distribution lines and assume bare conductor. These figures shall also apply where aerial bundled conductor (ABC) is used. Generally better performance is expected from ABC.

3.2 Establishment of Service Level Performance Values:

The Authority shall verify the actual numerical values for the service quality and reliability indices provided in tables 4–6 and 4–7 above before using them. Minimum levels shall be assigned to each operating area of the licensee. Factors to be considered to guide the establishment of the indices shall include physiographic, demographic and load characteristics

of an operating area and relative performance of an operating area in relation to other operating areas within a given licensee franchise area.

3.3 Penalty:

Non-compliance to the service quality standards by a Licensee shall attract a penalty charge equal to the cost of energy not supplied. The cost of the unsupplied energy shall be calculated based on the tariffs (measured in Malaŵi Kwacha/kWh) applicable to affected customer(s). The penalty shall be used to compensate affected customers. Each in proportion to its annual consumption.

Global indemnification (INIG) shall be used to compensate all customers where customers are affected in general and is defined as follows—

INIG = Maximum of {ENS system_t, ENS system_f} × VENS.

Where ENS system_t	=	Estimated Energy not supplied to the customers in terms of TITk
	=	E system × (TITk – TIT limit)/8760.
ENS system_f	=	Estimated Energy not supplied to the customers in terms of AFIk.
	=	E system × {(AFIk – AFIk limit) × (TITk/AFIk)/8760}.
E system	=	Energy billed during the monitoring period (year) in kWh.
VENS	=	Value of energy not served (used in computation of electricity rates in K/kWh.)

After information system is fully established, three years later INIG shall be calculated in terms of SAIFI and SAIDI and in terms of TIU and FIU in the final phase as determined by the Authority and agreed by the Licensee.

3.4 Tariff Implications:

A Licensee shall be allowed to increase the level of investment to enable supply of services consistent to these standards. Tariff restructuring shall therefore be recommended to enable the Licensee collect adequate revenue to make such investments.

4.0 STANDARD GUIDELINES FOR THE QUALITY OF OTHER SERVICE PARAMETERS

(*a*) General:

The following service standards shall be applied and achieved by a licensee.

(*b*) Processing of Request for Service:

A licensee is required to connect its customers within the time frame (number of days) specified in Table 4–4 below, which is based on whether network extensions are required and the size of the new demand to be connected. The last two columns specify time frames where network extension within 100 m is required. A response to a customer shall indicate expected date for the provision of the service.

Table 4–4

Time frame for Compliance (Days from receipt of payment)

	Where extension is not required		*Where extension of less than 100 m is required*	
	Stage I	Stage II	Stage I	Stage II
Urban/sub-urban demarcated areas	6	3	15	7
Urban/sub-urban un-demarcated areas . .	10	5	20	10
Isolated Rural Areas	20	10	30	15

Where works are required to extend the existing network beyond the 100 m limit, a Licensee shall conduct a study to work out a budget and time frame for the works. The study shall be provided within thirty days. Upon agreement with the customer the Licensee shall proceed with the works after payment of a contribution by the customer. After works are completed the Licensee shall complete the connexion in five days.

(*c*) Customer Commercial Complaints:

(i) The number of complaints received by a licensee shall not exceed an average of 10% of the total customers connected in a system within the first stage and reducing to 5% in the final stage.

(ii) The time in days taken to process customers' commercial complaints shall not exceed seven calendar days if the complaint is related to the supply of electricity and thirty calendar days if it is of public liability in nature during Stage I. The period shall be reduced to three days in Stage II.

The Licensee shall endeavor to resolve ninety per cent of general complaints without further referral.

(*d*) Telephone response times at emergency/fault Reporting Centers:

Ninety per cent of telephone requests for information shall be dealt with within five minutes.

(*e*) Replacement of Electric Consumption Meter:

Meters shall be replaced if when tested are found to have errors of more than 3% for low consumption measurements (MD < 10 kW), 2% for medium consumption measurements (MD > 10 kW) and 1% for higher consumption measurements where a customer is connected at voltages higher than 11 kV.

All meters shall be checked at least every six years or at the request of the customer. In the latter case, if the meter is found within specifications, the licensee shall charge a reasonable fee to the customer. If the meter is found with an error the last measurement that was deemed correct shall be used for the estimation of the current consumption.

(*f*) Disconnexion of Supply and Penalties for non-Payment—

(i) Disconnexions:

A licensee shall send written notices of termination of service before disconnecting a customer from the service. The notice shall be tendered fourteen days after the due date indicated on the bill. A minimum of forty-eight hours notice shall be given to all consumers before disconnexion. An exemption to this rule shall include the following—

- If an immediate condition dangerous or hazardous to life exists.
- If order to terminate has been issued by any Court or any duly authorized public authority
- Illegal use of electricity for instance, in cases where such service is obtained diverted or used without the authority or knowledge of the licensee.

Dealing with non-payment:

- No disconnexion shall be effected until after fourteen days after the due date written on a bill.
- Commercial and industrial customers shall be given at least forty-eight hours notice of an impending disconnexion using major circulation newspapers or other means. The Authority shall monitor failure to give notification of scheduled disconnexions.

- Disconnexions shall be carried out in the morning hours only and during normal working days.
- Disconnexions shall not be carried out over the weekend and public holidays.

(ii) Reconnexion (After paying penalties):

Where a service is discontinued and the cause has been remedied and the penalty paid by the customer, the customer shall be reconnected by the first working day after settling the account and paying the reconnexion fee and within 24 hours.

(iii) Penalties:

A licensee shall be charged a fine determined by the Authority for repeated non-compliance based on records.

- Planned Interruptions without Proper Warning:

  All planned interruptions without proper warning shall be deemed as forced interruptions and their duration shall be counted towards the calculation of the reliability statistics and compensation for poor quality.

- Billing Errors:

  A licensee shall charge an uncontested amount only and later if proven correct, shall correct the difference with interest.

- Connexion Delays:

  The Authority shall determine a fine for repeated offences.

QUALITY OF SUPPLY STANDARDS FOR DISTRIBUTION NETWORK

1.0 PURPOSE

This standard specifies the minimum acceptable limits for voltage dips, voltage harmonics, voltage imbalance, voltage regulation and voltage flicker. The standard recommends network planning levels and Power Quality (PQ) process parameters for use by Licensees and Customers in planning to achieve the required compatibility at points of common coupling.

The minimum standards are intended to be used by licensees, customers and the Authority as criteria for compliance or non-compliance with acceptable PQ standards.

Where specific network conditions make it difficult to meet the minimum acceptable limits for declared reasons, for example where the electrical infrastructure is under development, a licensee

may deliver levels of specified PQ parameters below the minimum requirement as agreed between the licensee and the customer, with the exception of voltage regulation and frequency.

Where measured PQ parameters indicate that the minimum standards have not been achieved at a particular site, or where a PQ sensitive customer requires an enhanced PQ, countermeasures can be considered. Such countermeasures might include the installation of compensation equipment within the customer's network by mutual agreement between the licensee and the customer, including the relative allocation of costs where such an installation is found to be more practical or cost effective than an installation on the licensee's networks.

The licensee shall be deemed to have supplied the required PQ, even if the standards are not achieved at the point of common coupling, if the countermeasures installed within the customer's network have resulted in an acceptable PQ being provided to sensitive loads.

2.0 DEFINITIONS AND ABBREVIATIONS

"customer" means a person or legal entity that has entered into an electricity supply agreement with a licensee;

"declared voltage" means the voltage declared by the licensee as the voltage at the of supply;

"developing network'' means a network, the construction of which has not yet reached the initially planned configuration, and from which temporary or early supply is made available to customers by agreement, in order to avoid delayed service availability;

"extra-high-voltage (EHV)" means the set of nominal voltage levels that are used in power systems for bulk transmission of electricity in the range Un > 220 kV;

"frequency" means the frequency of alternating voltage generated by power system generators:

"high-voltage (HV)" means the set of nominal voltage levels that are used in power systems for bulk transmission of electricity in the range 650 V < Un < 220 kV;

"interruption" means a phenomenon that occurs when one or more phases of a supply to a customer or group of customers are disconnected for a period exceeding 3 minutes;

"licensee" means a body licensed to generate, transmit or distribute electricity.

"low-voltage (LV)" means normal operating voltage exceeding 30 volts AC and/or 50 volts direct current but not exceeding 250 volts;

"medium-voltage (MV)" means normal operating voltage exceeding 250 volts but not exceeding 650 volts;

"measurement period" means the minimum period of time for taking a measurement. Normally, a full week (5 working days and a week-end); and

"measurement interval (k)" means the minimum period of time for recording instantaneous values of each parameter. Normally 15 minutes and 10 minutes intervals are specified;

"monitoring period" monthly periods during which several areas in the network shall be covered;

"planning level" means the level to which a licensee designs its networks when it evaluates the impact on the supply system of all loads connected to the system. These levels might change from network to network, depending on network structure and circumstances, and are typically lower than the compatibility level;

"point of common coupling (PCC)" means the point of a public supply network electrically nearest to a particular consumer's installation, and at which other consumer installations are, or may be connected;

"power quality (PQ)" means technical parameters to describe the electricity supplied to customers, and that are used to determine the extent to which the needs of customers are met in the utilization of electricity;

"physical points" means the points in the electricity supply network which have been categorized for the purpose of monitoring PQ;

"rural" means clustered or scattered structures, usually of low-density, not served by a well-established infrastructure (roads, telecommunication, etc.). Usually supplied with power through radial overhead lines emanating from one distribution station;

"standard voltage" means a phase voltage of 230 V measured between a phase conductor and a neutral conductor, or a line voltage of /3 × 230 V measured between phase conductors;

"ten minute r.m.s. value" means the average (root mean square) value of all the samples taken during a 10 minute period;

"urban" means formally or informally built structures, usually of high-density, served by a well-established infrastructure (roads, telecommunication, etc.). The power network is usually supplied by more than one distribution station;

"voltage dip" means a sudden reduction in the r.m.s. voltage on any or all of the phase voltages of a single-phase or a poly-phase supply;

"voltage flicker" means the modulation of the amplitude of the supply voltage, perceived by the observer as a fluctuation of light intensity in electric lighting;

"voltage harmonics" means the sinusoidal components of the fundamental waveform (i.e. 50 Hz) that have a frequency that is an integral multiple of the fundamental frequency;

"voltage regulation" means the ability of the steady-state r.m.s. voltage to remain between the upper and lower limits;

"voltage imbalance" means the voltage imbalance that arises in a poly-phase system when the magnitudes of the phase voltages or the relative phase displacements of the phases (or both) are not equal.

3.0 THE SUPPLY STANDARDS

Standard 3–1—

Voltage Regulation (%):

Voltage regulation refers to the absolute value of the difference between the average of the effective instantaneous values (RMS) of the voltage measured at the point of delivery, and the value of the nominal voltage at the same point expressed as a percentage of the nominal value at that point where:

Voltage Regulation (% Vk) is defined below as—

Ave. RMS measured voltage (Vk) – Nominal voltage (Vn)/Vn × 100.

Voltage regulation shall be limited to a maximum value of ±6%. Measurements shall be carried out at 15 minutes intervals for a minimum period of 7 days for an individual case or complaint. Overall system performance shall be established for a Monitoring Period of not less than 6 months.

Compliance:

System performance shall be deemed to be compliant to voltage regulation standard if Equivalent Frequency of Voltage Deviation (EFVD), defined as the percentage of measurements with voltage deviation outside the specified bandwidth, is equal to or less than 5%. Penalties shall be charged if EFVD exceeds 5%.

Where	EFVD	=	{NRV_ob/NRV}
	NRV_ob	=	Number of registered values outside the bandwidth.
	NRV	=	Sum of registered values.
			The standard bandwidths for the voltage shall be ±6%.

Penalties (In two scenarios):

Scenario I—

Indemnification for Poor Voltage Regulation (IVR) (where affected customers are known).

The Licensee shall make correction within (5 days), repair damaged equipment and pay affected customers indemnification if no correction is done within the five days limit or as may be determined.

Where IVR = CAT × EFE_ob × ADE × ED × Wf.

and CAT = Tariff (K/kWh) of affected customers.

ED = Excess Days to correct the problem.

Wf = Weighing factor.

ADE = Average Daily Energy consumption in kWh from last bill for the affected customers.

EFE_ob = ES_ob/TES.

(Equivalent Frequency of Energy supplied outside the voltage bandwidth specified above).

ES_ob = Energy supplied outside the bandwidth during the measuring period.

TES = Total Energy supplied during the period.

The weighting factor (Wf) ranges from (0.4 to 10) and is adjusted based on impact of non-compliance. Table 3–1–2 below refers—

Table 3–1–2

Permissible Voltage Unbalance (%)

Average deviation above (below) the voltage band	Wf
≤ 1%	0.4
≤ 2%	0.8
≤ 4%	2.0
≤ 6%	4.0
≤ 8%	6.0
≤ 10%	10

Scenario 2 (Global Non-Compliance)—

Sanction for Poor Voltage Regulation (IVRg), where voltages have generally been outside the bandwidth). Proceeds are used to compensate the customers in proportion to electric service payments (consumption).

Where IVRg = ATc × EFE_ob × TESc × Wf (Global indemnification).

and ATc = Average Tariff (K/kWh) for the company.

TESc = Total Energy supplied during the control periods being considered (kWh).

Standard 3–2—

Voltage Imbalance in Three-Phase Services—

Voltage imbalance shall be defined by the following formula:

Voltage Regulation (%) = 3(Vmax. – Vmin.)/(Va + Vb + Vc) * 100.

And Vmax. = Maximum voltage recorded during a measuring interval (k).

Vmin. = Minimum voltage recorded during a measuring interval (k).

Va = Voltage of Phase A recorded during a measuring interval (k).

Vb = Voltage of Phase B recorded during a measuring interval (k).

Vc = Voltage of Phase C recorded during a measuring interval (k).

Compliance:

System performance shall be deemed to be compliant to voltage imbalance standard if during the Measurement Period 5% of the measurements taken, voltage imbalance is equal or less than 3% for system voltage rating of up to 11 kV, and 1% at higher voltage rating. Penalties shall be charged if more than 5% of the measurements taken, voltage imbalance exceeds the limits.

Penalties:

The licensee shall make correction within 5 days and be liable to related damages. If the fault is due to customer installation, time shall be fixed to make correction or be disconnected. Where the imbalance causes grave impact to affect other customers on the system, the licensee shall pay a penalty and be reimbursed by the responsible customer.

Indemnification for Voltage Imbalance (IVU) to affected customers.

Where IVU (Kwacha) = ADE × ED × AT × Wf.

and AT = Average Tariff (K/kWh) for the company.

ED = Excess Days to correct the problem.

Wf = Weighing factor.

ADE = Average Daily Energy consumption in kWh from last bill for the affected customers.

The weighing factor (Wf) ranges from 0.5 to 10 and is adjusted based on impact of non-compliance. Table 3–2–2 below refers—

Table 3–2–2

Average deviation beyond the acceptable values	Wf
≤ 1%	0.5
≤ 3%	2.0
≤ 5%	5.0
≤ 7%	8.0
≤ 7%	10

Standard 3-3—

Voltage Harmonic Distortion:

Voltage Harmonic Distortion shall be measured in terms of Total Harmonic Voltage Distortion (THVD) and Individual Harmonic Voltage Distortion (IHVD) defined by the formulae below where—

THVD (%) = $\{(/\Sigma V_i^2)/ V_l^2\} \times 100$

IHVD (%) = V_i/V_l^2

Where V_i = Voltage component of the order—i harmonic

V_l = Voltage component of the fundamental frequency (50 HZ).

Compliance:

System performance shall be deemed to be of poor quality if during the Measurement Period greater than 5% of the Measurement Period THVD or IHVD exceed the established tolerance range shown in Table 3–3–1 below.

Each point shall be measured for at least seven days at ten minutes intervals. Suspect points shall be monitored in the transition period. Measurements shall include 6 points across suspect area, which shall include—two residential, two commercial and two industrial customers.

Table 3–3–1

Individual Harmonic Distortion Limits

Individual Harmonic (Voltage) Distortion, IHD (%)					
Old, Not Multiples of 3		Old, Multiples of 3		Even	
Order of the Harmonic (n)	Limit of Individual Harmonic	Order of the Harmonic (n)	Limit of Individual Harmonic	Order of the Harmonic (n)	Limit of Individual Harmonic
5	6	3	5	2	2
7	5	9	1.5	4	1
11	3.5	15	0.3	6	0.5
13	3	21	0.2	8	0.5
17	2	<21	0.2	10	0.5
19	1.5			12	0.2
23	1.5			<12	0.2
25	1.5				
<25	0.2 + 1.3 * 25/n				
Total Harmonic (Voltage) Distortion, THD (%)					8

Penalties:

Indicator of the level of deviation above the threshold (between 0 and 1.0) shall be calculated and be used to calculate the compensation as below:

$$PHDk = Max.[0. (THDk - THD)/THD] + 1/3 \times \sum_{i=2}^{40} Max.[0, (IHDik - IHDi)/IHDi].$$

and (PHDk) = Penalised Harmonic Distortion measured during the interval k.

THDk = Total Harmonic Distortion measured during the interval k (k).

THD = Threshold for Total Harmonic Distortion given in these Standards.

IHDk = Individual Harmonic Distortion measured during the interval k (k).

IHD = Threshold for Individual Harmonic Distortion given in these Standards.

The penalty during the interval k shall be calculated based on the value of PHDk above.

Penalty (k) = If PHDk < 1 ⇨ $(PHDk)^2 \times (10 \times AT) \times E(k)$

If PHDk ≥ 1 ⇨ $(10 \times AT) \times E(k)$.

Penalty paid for the energy supplied with sub-standard conditions during the interval k.

Where AT = Average Tariff for affected customers

E(k) = Energy supplied during period k to the affected customers.

Standard 3–4—

Voltage Flicker Distortion:

Quantitative methods shall be used to measure flicker and the standard shall be measured in terms of Short-term Flicker severity indicator (Fst), which shall not exceed 1.0. Reference is made to IEC standard 1000–3–7.

i.e. $Fst \leq 1.0$

Measurements shall be taken at six points each month for a minimum period of seven continuous days at intervals of ten minutes. Two for residential, two for commercial and two for industrial customers. A flicker meter shall be used according to IEC Standard 868 or IEC Standard 61000–4–15.

Compliance:

System performance shall be deemed to be of poor quality if during the Measurement Period greater than 5% of the Measurement Period, the records show that Flicker exceeded the compliance level.

Penalties:

Discos shall be asked to correct the problems and shall be subject to sanctions.

The following Indicator of deviation shall be used:

PFDk = Max.[0, (Fstk – Fst)/Fst]

Penalized Flicker Distortion during the interval k.

Where Fstk = Flicker severity factor measured during interval k.

Fst = Threshold total for Flicker severity (1.0).

The penalty during the interval k shall be calculated based on the value of PFDk above.

Penalty (k) = If PFDk < 1 ⇨ $(PFDk)^2 \times (10 \times AT) \times E(k)$.

If PFDk ≥ 1 ⇨ $(10 \times AT) \times E(k)$.

Penalty paid for the energy supplied in sub-standard condition during the period k.

Where AT = Average Tariff for affected customers.

E (k) = Energy supplied during period (k) to the affected customers.

Standard 3–5—

Harmonic Distortion of the Current (By a customer):

The customer shall be limited in the value of the harmonic currents that can be injected into the system.

Where a customer is connected at a voltage greater than 1.0 kV and demands greater than 10 kW the limit shall be defined in terms of Total Harmonic Current Distortion (THCD) and Individual Harmonic Current Distortion (IHCD).

Where THCD (%) = $[(\sqrt{\sum I_i^2})/I_l^2] \times 100$

IHCD (%) = $I_i/I_l^2 \times 100$

and I_i = Current intensity component of the order—i harmonic

I_l = Current intensity component of the fundamental frequency (50 HZ).

Where a customer is connected at 1 kV or less with a demand of less than 10 kW the following formula shall apply—

Delta I_i = (I_i load – I_i maximum)

Compliance:

System performance shall be deemed to be of poor quality if during the Measurement Period is greater than 5% of the Measurement Period, Harmonic Current Distortion exceeded the compliance level. Table 3–5–1 refers—

Table 3-5-1
Maximum Harmonic Tolerances to distortion produced by Customer

	P10 kW Vl kV	P>10 kW 1 kV<V60kV
Order of the Harmonic (n)	Maximum Harmonic Intensity (AMP)	IHCD (%)
Odd, Not Multiples of 3		
5	2.28	12.0
7	1.54	8.5
11	0.66	4.3
13	0.42	3.0
17	0.26	2.7
19	0.24	1.9
23	0.20	1.6
25	0.18	1.6
>25	4.5/n	0.2 + 0.8*25/n
Odd, Multiples of 3		
3	4.60	16.6
9	0.80	2.2
15	0.30	0.6
Odd, Not Multiples of 3		
21	0.21	0.4
>21	4.5/n	0.3
Even		
2	2.16	10.0
4	0.86	2.50
6	0.60	1.0
8	0.46	0.8
10	0.37	0.8
12	0.31.	0.4
>12	3.68/n	0.3
THCD (%)		20

Penalties:

The Authority shall discuss necessary remedies with the customer and agree the time frame to make corrections. The customer shall be subject to disconnexion if not compliant and shall be asked to reimburse the licensee for any penalty.

QUALITY OF SUPPLY STANDARDS FOR TRANSMISSION NETWORK

1.0 PURPOSE

This standard specifies minimum acceptable limits for voltage dips, voltage harmonics, voltage imbalance, voltage regulation, voltage flicker, system frequency and quality of electricity services supplied by the Transmission Licensee to the Distribution Customers for operation of a transmission network with a rated voltage of 66 kV and above.

Network planning levels and Power Quality (PQ) process parameters are specified for use by Licensees and Customers to achieve an internationally acceptable level of system reliability. The standard defines a minimum level of investment, which shall enable the system meet customer projected demand and energy requirements, reliably deliver (from generation to large customers and distribution companies), achieve system flexibility in switching arrangement, voltage control, etc., and improve availability of the system to acceptable level.

Excessive dependence on any one transmission circuit, structure, right of way or substation and cascaded trip of any other element due to an outage of any facility (N – 1 criteria) shall be avoided.

The Licensee shall ensure speed recovery, sophistication of protective equipment and system restoration to reliable operation by limited load shedding or re-dispatching of generation in the system.

The Authority shall approve system expansion and transmission rate base paid for by system users. A Licensee in liaison with the Authority shall develop a transmission investment plan followed by international bidding for all major expansions. The Licensee shall construct and maintain the facilities and be subjected to availability standards and penalties for non-compliance.

2.0 SERVICE QUALITY AND RELIABILITY STANDARDS

2.1 Availability Measure:

The duration and frequency of forced outages shall be monitored in terms of accumulated duration of forced outages (Deik) in minutes per line or transformer per voltage class, (66 kV and 132 kV) in a fiscal year and in terms of frequency of forced outage (Feik) per line or transformer per voltage class, (66 kV and 132 kV) in a fiscal year.

Scheduled outages (O and M) deemed necessary by the Authority and outages due to events external to transmission system including generation related forced outages, outages due to other licensees,

customer equipment, earthquakes, floods, wars, sabotage and other natural catastrophes shall be excluded.

Availability performance indices shall be calculated by voltage class and used as compatibility measure as shown below—

(*a*) Frequency Index (Fl_{vc-k}):

(For Transmission Lines)

Annual Average Forced Outage Frequency (Fl_{vc-k}) for all transmission lines per 100 km per voltage class.

Where $Fl_{vc-k} = (1/L_{vc}) \times \sum_{i=0}^{i=Nk} [Flik* 100]$

for i = 1 to Nk (sum of forced outages on the element)

Average number of forced outages for all transmission line circuits in a voltage class within a fiscal year k (given by faults/100 km).

L_{vc} = Total length of transmission line circuits in a voltage class in fiscal year k.

Flik = Frequency of forced outages for the ith transmission line circuit in a fiscal year k.

(*b*) Frequency Index (Ft_{vc-k}):

(For Transmission System Transformers)

Annual Average Forced Outage Frequency Index (Ft_{vc-k}) for all transmission system transformers.

Where $Ft_{vc-k} = (1/Nt_{vc}) \times \sum_{i=0}^{i=Nk} [Ftik]$

for i = 1 to Nk (sum of forced outages on the element).

Average number of forced outages for all transformers whose primary voltage is in a particular voltage class for the fiscal year k.

and Nt_{vc} = Total number of transformers with a primary voltage rating in one voltage class in a fiscal year k.

Ftik = Frequency of forced outages for the ith transformer in a fiscal year k.

(*c*) Duration Index:

(For Transmission Lines)

Accumulated Annual Average Forced Outage Duration (Dl_{vc-k} per 100 km of all transmission line circuits that experienced forced outage in the fiscal year k.

$$\text{Where} \quad Dl_{vc-k} = (1/Fl_{vc-k}) \sum_{i=0}^{i=Nk} [Dlik]$$

for i = 1 to Nk (total duration of forced outages on the line circuit).

Accumulated Average Duration of Forced Outages for all transmission line circuits in a voltage class which experienced forced outages in a fiscal year k given by Min./Outage/100 km}.

and Dlik = Accumulated duration of forced outages for the transmission line circuit having a forced outage frequency availability measure (fik > 0) in a fiscal year k.

(*d*) Duration Index (Ft_{vc-k}):

(For Transmission System Transformers)

Accumulated Annual Average Forced Outage Duration (Dt_{vc-k}) of transformers that experienced forced outage in a fiscal year.

$$\text{Where} \quad Dt_{vc-k} = (1/Ft_{vc-k}) \times \sum_{i=0}^{i=Nk} [dtik]$$

for i = 1 to Nk (sum of forced outages on the element).

Average number of forced outages for all transformers whose primary voltage is in a particular voltage class for the fiscal year k.

and dtik = Accumulated duration of forced outages for the transformer having a forced outage frequency availability measure (ftik > 0) for fiscal year k.

Compliance Limits:

Table 3–1 below specifies transmission lines tolerance values for the parameters specified above. The tolerance limits are set based on existing statistics of the licensee's system. The Authority shall adjust the limits towards internationally accepted standards (the permanent phase) to allow for improvements in system performance. The tolerance limit for system transformers shall be defined by the Authority taking into account the current performance and necessary investment to improve performance.

Table 3–1: Proposed Maximum Tolerance Values

			Testing Phase		Transition Phase		Permanent Phase	
	Symbol	Current Avg.	Warning Level	Max. Value	Warning Level	Max. Value	Warning Level	Max. Value
(Average Number of outages/100 km of transmission Lines/year)	F1_lim	10	8	10	6	8	5	6
Annual Average Forced outage duration (hours/100 km of transmission lines)	D1_lim	70	50	70	30	40	10	24

Control Charts:

Annual availability control charts shall be developed and Upper Control Limit and Upper Warning Limit (UCL and UWL) set to values to drive improvement in system performance. Reference is made to Table 3–1 above.

Figure 3–1

Sample Control Chart

Annual Performance Index

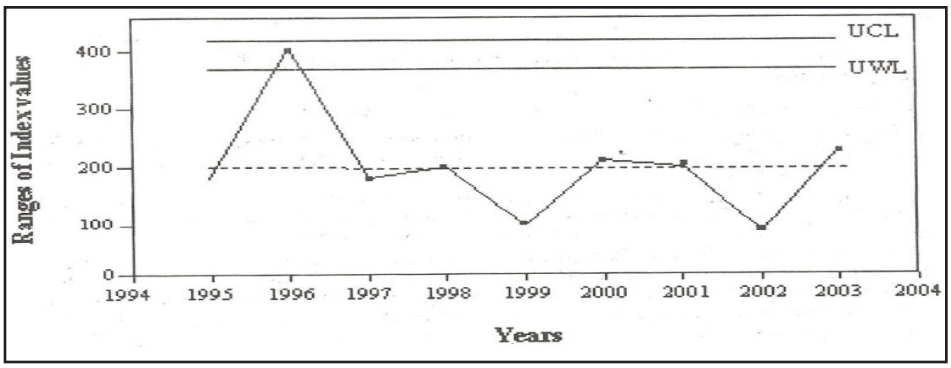

The center Line in figure 3–1 above is calculated based on the historical data. Control charts shall be developed for each line and transformer. The charts shall be reviewed quarterly and annually to track performance and evaluate to see if intended improvements are complied with.

Penalties and Incentives:

Outages due to scheduled maintenance and initiated by events caused by third parties shall not be considered.

The Authority shall specify a penalty factor per event in MK/event and a penalty factor per hour in MK/hour. Actual values of the penalty factor shall be defined taking into consideration the revenue that the Transmission Company (TransCo) receives from the of the service, i.e. Dividing annual payment TransCO receives for each asset by 8,760 (hours in a year) and multiplying the result by a penalty multiplier.

The formulae below shall apply—

(i) Where frequency of forced outages exceeds threshold:

PFl_{vc-k} = $\{Rl_{vc-k}/8{,}760\} \times (Fl_{vc-k} - F1_lim) \times (L_{vc}/100) \times$ 1 hour × Wf.

PFl_{vc-k} = Penalty factor for frequency.

Wf = Penalty factor (Based on importance of the transmission system. Typically 60 or more).

Rl_{vc-k} = Revenue per asset/voltage category.

(ii) Where duration of forced outages exceeds threshold:

PDl_{vc-k} = $\{Rl_{vc-k}/8{,}760\} \times (Dl_{vc-k} - D1_lim) \times (L_{vc}/100) \times 1$ hr × Wf.

PDl_{vc-k} = Penalty factor for frequency.

The proceeds from the penalties shall be used to compensate customers by a way of reducing transmission rates.

Penalty regimes consider that TransCo pay a maximum of either—

(i) Penalty based on violation of frequency $index^N$ or

(ii) Penalty based on violation of duration $index^M$.

System Maintenance:

System maintenance, rehabilitation and reinforcement programmes shall be strategically planned to enable the licensee improve its services to the level required by these standards.

3.0 TRANSMISSION SYSTEM OPERATION STANDARDS

The TransCo responsible for system operation shall ensure that electric service is provided with appropriate levels of quality of service in terms of voltage quality and continuity of supply.

This standard specifies minimum acceptable limits for voltage regulation, voltage dips, voltage imbalance, voltage flicker and system frequency for operation of a transmission network with a rated voltage of 66 kV and above.

The transmission operation standards shall be consistent with the standards in force in the Southern African Power Pool (SAPP) which defines in detail obligations of parties connected to the pool in terms of generators response to frequency deviations, of generators to be controlled by other machines, the Automatic Generation Control (AGC) facility, reserve margin (standby spare capacity), frequency excursions generators and loads can withstand before tripping, information requirements and communication procedures.

N{Number of events exceeding tolerance × Penalty factors per event (MK/event)}

M{Number of hours exceeding tolerance × Penalty factors per event (MK/event)}

The Transmission Operation standards shall be complemented by the SAPP Grid Code and Ancillary Services Normative. They shall be tools used by the TransCo to achieve correction of deviation from the operation standards described below once the responsible party is identified.

3.1 Voltage Regulation:

Variations in magnitude of transmission system voltage (rated at 66 kV and above) shall be limited to ± 5% of the nominal value.

Measurements shall be taken continuously for a minimum period of seven days for 24 hours and at 10 minutes intervals. The highest 10 minutes r.m.s. voltage not exceeded for 95% of the time shall be recorded, and the highest of these values shall be retained as the daily high value. Similarly, the lowest 10 minutes r.m.s. values of the supply voltage within which the voltage remains for 95% of the time shall be recorded and the lowest of these values shall be retained as the low value.

All incidences where two or more consecutive 10 minutes values are outside compatibility levels shall be reported.

3.2 Voltage Imbalance (Vlmb):

Voltage imbalance shall be limited to a maximum value of 2%.

Where

$$\text{Vlmb} = \sqrt{\{(1 - \sqrt{(3 - 6\beta)})/(1 + \sqrt{(3 - 6\beta)}) \times 100\}}$$

and

$$\beta = \{V^4_{12} + V^4_{23} + V^4_{31}\}/\{V^2_{12} + V^2_{23} + V^2_{31}\}$$

V_{12} fundamental frequency phase-to-phase voltage between phases l and 2, etc.

Measurements shall be taken continuously for a minimum period of seven days and 24 hours in a day at 10 minutes intervals. The

highest 10 minutes percentage unbalanced value not exceeded for 95% of the time is recorded as the daily high value. The highest of the daily value over the full assessment period shall be compared with the compatibility level.

The 10 minutes % imbalanced values (VU_{10}) over a period of 24 hours (00:00 to 24:00) shall be calculated as follows:

$$VU_{10} = \sqrt{\{\sum_{1}^{N} VU^2/N\}}$$

Where VU_{10} = measured sample of imbalance within a 10 minute period.

N = number of samples in that 10 minute period.

The total accuracy of the measurement shall be limited to a maximum value of 0.5% in the calculated imbalance and measuring instruments with an accuracy class of 0.2% or better shall be used.

3.3 Voltage Dips:

Voltage dips shall be defined in terms of dip windows. The dip windows shall be defined based on duration and magnitude of the voltage dips. Figure 3.3–l below refers. The compatibility level shall be specified in terms of maximum number of dips in each dip window.

Figure 3.3–1

Measured Voltage Dip Parameters

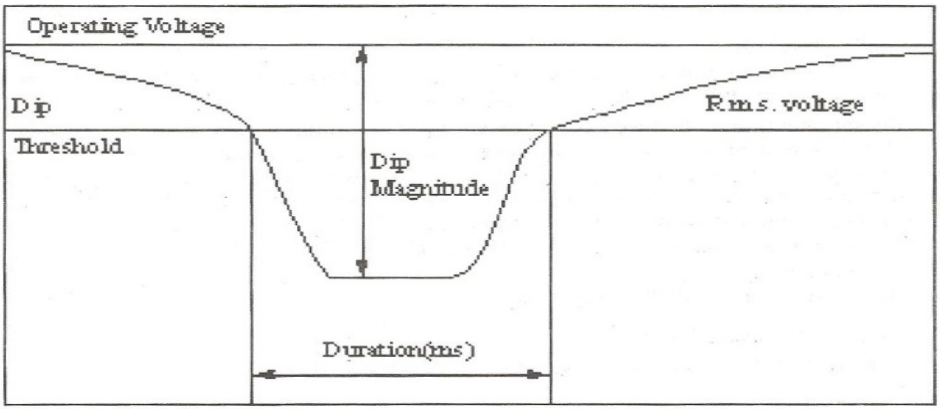

Figure 3.3–2 below defines the dip windows.

Magnitude of Voltage Depression

Figure 3.3–2

Voltage Dip Window

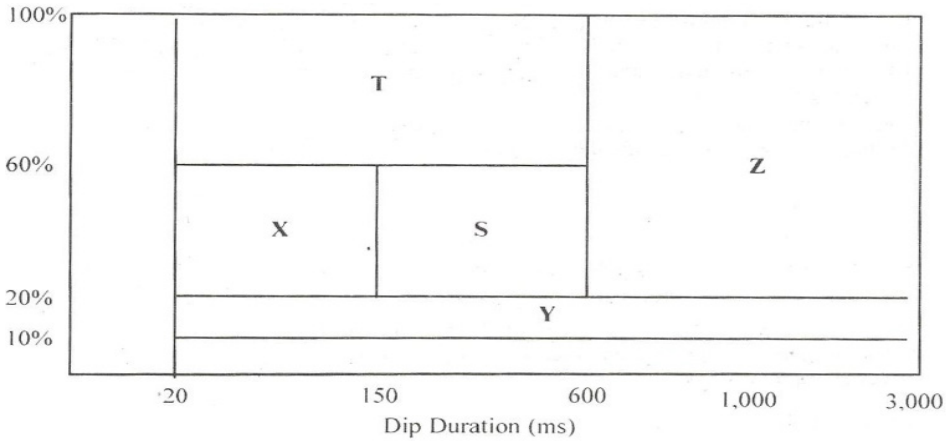

Table 3.3–2 specifies compatibility levels in terms of maximum number of dips per feeder per year for the defined ranges on voltage dip duration and magnitude (dip window categories "7", "T", "S" and "X").

Table 3.3–2

Limits for the number of voltage dips per year for each category of dip window:

Transmission System	Number of Voltage Dips per Year				
Voltage Range	Dip Window Category				
	Z	T	S	X	Y (*see* Note)
<66kV to ≤132 kV	16	25	25	80	120
220 kV and above	5	6	11	45	88

NOTE:

The number of "Y" dips is provided for completeness of information, but is not intended to regulate licensees on the basis of the number of "Y" dips.

All three phases of the supply voltage shall be monitored. Measurements shall comprise phase to neutral voltage and phase-to-phase voltage wherever applicable. Metering classes of 0.1, 0.2, 0.5 and 1.0 shall be used for measurements. Measurement accuracy for the duration of the dip shall be 10 ms. The accuracy of the logged time of occurrence shall be ±10 minutes.

The assessed level for each dip window shall be the number of dips that occur in that window. The assessed level shall be compared to the compatibility level for that window.

3.4 Voltage Flicker:

Voltage flicker shall be measured using a flicker meter in terms of Short-term flicker severity (Pst) and Long-term flicker severity (Plt). All three phases of supply voltage shall be monitored. Measurements shall comprise phase to neutral voltages and phase-to-phase voltages wherever applicable.

Measurements shall be carried out at 10 minute intervals for a minimum period of seven days. The highest 10 minute Pst value in 24 hours, which is not exceeded for 95% of the time shall be recorded for each phase and the highest of these shall be retained as a daily value. High Pst values known to have occurred coincidentally with voltage dips shall be ignored.

Compatibility levels for Short-term flicker severity Pst and Long-term flicker severity Pit shall be 1.0 and 0.8, respectively.

Long-term flicker severity value shall be measured every 10 minutes and calculated over a two-hour period from the preceding (12) Pst values where

$$Plt = \sqrt{(\Sigma P3_{st,k}/12)} \text{ for } k = 1 \text{ to } 12$$

and Pst,k = General term for consecutive 10 minute Short-term flicker severity.

The highest retained daily values over the full assessment period shall be compared with the compatibility levels specified above.

3.5 Frequency:

Frequency deviations from the nominal frequency of 50 Hz shall be limited to a maximum of ±2.5%.

3.6 Harmonics and Total Harmonic Distortion (THD):

Total harmonic distortion (THD) shall be defined as follows—

$$THD = \sqrt{\sum V^2_k} \quad \text{for } k = 1 \text{ to } N$$

Where

k = is the harmonic number

V = is the percentage r.m.s. value of the hth harmonic or inter-harmonic voltage component.

N = the highest harmonic considered in the calculation and N shall be equal to 25.

The compatibility levels for harmonics on the transmission network shall be as provided in Table 3–6 below.

Table 3–6

Compatibility Levels for Harmonic Voltages

(Expressed as a percentage of the operating voltage in the transmission system)

Odd Harmonics (Non-multiples of 3)		Odd Harmonics (Multiples of 3)		Even Harmonics	
Order (h)	Voltage (%)	Order (h)	Voltage (%)	Order (h)	Voltage (%)
5	2	3	2	2	1.5
7	2	9	1	4	1
11	1.5	15	0.3	6	0.35
13	1.5	21	0.2	8	0.4
17	1	>21	0.2	10	0.4
19	1			12	0.2
23	0.7			>12	0.2
25	0.7				
>25	0.2 + 0.5 × 25/h				
Total Harmonic Distortion (THD) ≤ xx%.					

All three phases of the supply voltage shall be monitored. Measurements shall comprise phase to neutral voltages and phase-to-phase voltages wherever applicable.

The measurement shall be done continuously at a maximum of 3 seconds intervals for a minimum period of seven days. The measurements shall be summated over a 10 minute period to obtain 10 minutes r.m.s. values using the following formula—

Where for the h th harmonic

Vs,h = measured r.m.s. value at 3 seconds intervals during the 10 minute period.

$$V_{10,k} = \sqrt{\frac{\sum_{1}^{N} V_{S,k}^2}{N}}$$

H = the harmonic number

N = the number of r.m.s. values within the measured 10 minute period.

Where more than one sample is calculated in every 3 seconds Vs,h shall be calculated as below—

Where

Vo,h = is the value in volts of each of the samples calculated using a time window of between 80 ms and 500 ms.

$$V_{S,k} = \sqrt{\frac{\sum_{1}^{N} V_{o,k}^2}{N}}$$

A gap between the windows shall be permissible. The highest 10 minutes r.m.s. values for each harmonic and THD, within each 24–hour period (00:00 – 24:00) not exceeded for 95% of the time shall be recorded for each phase. The highest of the values in each phase shall be retained as the assessed daily values over the assessment period. The highest of the retained assessed daily values over the full assessment period shall be compared with the compatibility levels.

The number of days during the assessment period during which the THD level exceeds the compatibility levels as provided in Table 3–6 above, shall be recorded. The assessed levels shall be less than the compatibility levels defined above.

TENTH SCHEDULE

REPUBLIC OF MALAŴI

ELECTRICITY ACT

(Cap. 73:01)

ELECTRICITY BY-LAWS

by-law 212 Electricity Tariff Formulae

The Normal Tariff Formula:

The formula for normal tariff setting or tariff review process for electricity is based on the traditional Revenue Requirement Approach [RRA]. This approach defines what should be the acceptable annual revenue requirement [RR] and reasonable rate of return on investment [RRI].

In practice the revenue to be earned by a licensee is equal to the cost of supply for electricity plus a fair return on the rate base as shown below.

Revenue Requirement	=	Electricity Production Cost
	+	Operation and Maintenance [O and M]
	+	Customer Service Costs
	+	Overhead Costs
	+	Depreciation Costs
	+	Rate of Return on Investment [RRI]
	+	Cost of Working Capital
	+	Bad Debts
	–	Income from other sources.

The Automatic Tariff Adjustment Formula (ATAF):

The formula is applied when the licensee's costs rise or fall as a result of fluctuations in exchange rate and inflation rate above or below a defined trigger limit of ± 5%.

The automatic tariff adjustment formula is structured as follows:

$$\Delta T = \frac{\Delta TC}{TC} = DC \times 0.2\,\frac{\Delta CPI}{CPI} + FC \times 0.8\,\frac{\Delta ER}{ER}$$

The rate of change in tariff is equal to the rate of change in total cost which in turn is equal to the share of domestic cost in total cost multiplied by the rate of inflation plus the share of foreign costs in total costs multiplied by the rate of currency change.

Where;

ΔT	=	Change in tariff.
ΔTC	=	Change in total cost.
DC	=	Percentage of the total cost which is domestic.
FC	=	Percentage of the total cost which is foreign.
CPI	=	The consumer price index.
ER	=	The exchange rate between Malaŵi Kwacha and USA Dollar.

ENERGY REGULATION

CHAPTER 73:02

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CHAPTER 73:02

ENERGY REGULATION

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20 of 2004
G.N. 37/2007

An Act to establish an Energy Regulatory Authority to regulate the energy sector, to define the functions and powers of the Energy Regulatory Authority, to provide for licensing of energy undertakings, and for matters connected therewith and incidental thereto

[28TH DECEMBER, 2007]

PART I

Preliminary

1. This Act may be cited as the Energy Regulation Act. Short title

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

"Authority" means the Malaŵi Energy Regulatory Authority established under section 3;

"coal" means coal as defined in the Energy Laws;

"customer" means a person purchasing energy;

"consumer" means a person consuming energy;

"electricity undertaking" means electricity undertaking as defined in the Electricity Act; Cap. 73:01

"energy" means such sources of renewable and non-renewable energy as defined in this Act;

"Energy Laws" means this Act and any other written law under which the Authority exercises any function;

"energy undertaking" means any undertaking selling energy or commercial activities related thereto, whether public or private as defined in the Energy Laws;

"licence" means a licence granted under Part III;

"licensee" bears a corresponding meaning;

"liquid fuels and gas" means liquid fuels and gas as defined in Energy Laws;

"member" means a member of the Authority and includes the Chairperson or Vice-Chairperson;

"non-renewable energy" means those sources of energy available to mankind arising from natural processes in the interaction between the sun and the earth's surface but not regularly replenished and these include uranium and fossil fuels e.g. coal, peat, crude oil, natural gas;

"Public Appointments Committee" means the Public Appointments Committee established under section 56 (7) of the Constitution;

"renewable energy" means those sources of energy available to mankind arising from natural processes in the interaction between the sun and the earth's surface and regularly replenished and these include the sun as the primary renewable energy resource and the secondary renewable energy resources that derive from the sun including wind energy, hydro, ocean thermal, ocean wave, ocean tidal and electricity from photovoltaic effects, biomass, geothermal, etc.;

"rural electrification" means rural electrification as defined in the Rural Electrification Act;

Cap. 73:03

"Rural Electrification Fund" means the fund set up under the Rural Electrification Act;

Cap. 73:03

"solar, wind, biogas" means solar, wind, biogas as defined in the Energy Laws;

PART II
Establishment of the Energy Regulatory Authority: Constitution, Functions, Powers and Duties

Establishment of the Authority

3. There is hereby established an Authority known as the Malaŵi Energy Regulatory Authority (in this Act otherwise referred to as the "Authority") which shall be a body corporate by that name with perpetual succession and a common seal and capable of suing and being sued in its corporate name and capable of acquiring and disposing of any moveable or immoveable property and performing such acts and things as bodies corporate may by law do or perform and have power to perform such functions and exercise such powers as are conferred by this Act and the Energy Laws.

Constitution of the Authority

4.—(1) The Authority shall comprise—

(*a*) a Chairperson, a Vice-Chairperson and three other members;

(*b*) the Principal Secretary responsible for Energy Affairs as *ex officio* member;

(*c*) the Director of Energy Affairs; and

(*d*) the Chief Executive of the Authority as *ex officio* member so long as he or she remains in the post of Chief Executive.

(2) Members of the Authority shall be persons who have adequate knowledge and experience in any one or more of the following functional areas—

(*a*) energy supply and demand, including the end use consumption of energy;

(*b*) commercial and business practices and procedures;

(*c*) financial and funding aspects of the energy sector;

(*d*) energy tariffs, pricing or charges;

(*e*) energy planning and project development;

(*f*) energy technology and standards or renewable energy technologies;

(*g*) environmental issues; or

(*h*) legal matters.

(3) Candidates for appointment as members of the Authority shall be selected on the basis of their knowledge and experience of national, regional and international issues relating to the supply of energy in Malaŵi.

(4) The overall composition of the Authority shall as far as possible reflect a balance of knowledge and experience relevant to the different types of energy supply regulated by the Authority and the distinct industries involved in the energy sector.

(5) Any person who—

(*a*) is a Member of Parliament;

(*b*) is a Minister or Deputy Minister;

(*c*) is a holder of a licence;

(*d*) is an employee of a licensee;

(*e*) is a director of a company holding a licence under this Act;

(*f*) holds five per cent or more shares in a company holding a licence under this Act;

(*g*) has, in the last seven years, been convicted of an offence under this Act, or an offence involving fraud or dishonesty by a competent court in Malaŵi or elsewhere; or

(*h*) is in a position where there is a material conflict of interest between the interests of the member as member of the Authority and the business interest of that member,

shall be disqualified from being appointed as a member of the Authority.

Appointment of members of the Authority

5.—(1) The President shall appoint members of the Authority and each appointment shall be subject to confirmation by The Public Appointments Committee.

(2) The first appointment of members of the Authority as provided for in subsection (1) shall be made within twenty-eight days of the coming into force of this Act.

(3) The names of all members of the Authority as first constituted and every change of membership of the Authority shall be published in the *Gazette*.

(4) In appointing members of the Authority under subsection (1), the President shall have regard to the need for continuity of service on the Authority so that at least half of the members of the Authority appointed thereunder shall be reappointed for the next term of office.

Chairperson of the Authority

6. The President shall appoint one of the members of the Authority as Chairperson and another member as Vice-Chairperson.

Tenure of office of members

7.—(1) A member of the Authority, other than an *ex officio* member, shall hold office for a period of three years and shall be eligible for reappointment:

Provided that no member may be reappointed for more than two consecutive terms.

(2) The office of a member of the Authority shall become vacant—

(*a*) if he or she resigns;

(*b*) upon his or her death;

(*c*) if he or she becomes bankrupt;

(*d*) if he or she knowingly fails to declare a conflict of interest relating to any matter under consideration by the Authority;

(*e*) if he or she is absent, without the consent of the Chairperson or without valid excuse, from three consecutive meetings of the Authority of which he or she has had notice;

(*f*) upon the expiry of the term of his or her appointment;

(*g*) if he or she becomes, by reason of mental or physical infirmity, incapable of performing his or her duties as a member; or

(*h*) if any circumstances arise that, if he or she were not a member, would cause that member to be disqualified for appointment as a member.

Removal from office and vacancy

8.—(1) A member of the Authority shall not be removed from office except for reasons of incompetence or misconduct and only after due inquiry and subject to the approval of the Public Appointments Committee.

(2) A vacancy in the Authority shall be filled by the appointment of another member in accordance with this Act, and the member so appointed shall hold office for the unexpired period of the term of office of his or her predecessor.

Powers and functions

9.—(1) The Authority shall have power to regulate the activities of the energy industry in accordance with this Act and the Energy Laws and, without limitation to the generality of the foregoing, shall carry out the following functions—

(*a*) receive and process licence applications for energy undertakings;

(*b*) grant, revoke or amend licences granted under this Act and Energy Laws;

(*c*) approve tariffs, and prices of energy sales and services;

(*d*) monitor and enforce compliance by licensees with licences granted under this Act and Energy Laws;

(*e*) develop and enforce performance and safety standards for energy exploitation, production transportation and distribution;

(*f*) prescribe and collect fees, charges, levies or rates under this Act and Energy Laws;

(*g*) arbitrate commercial disputes under this Act and Energy Laws;

(*h*) recommend reforms to this Act and Energy Laws as the Authority may deem desirable;

(*i*) resolve or mediate consumer complaints against licensees; and

(*j*) do all such things as are necessary or incidental or conducive to the better carrying out of the functions of the Authority provided for in this Act and Energy Laws.

(2) In exercising its powers and functions under this Act and the Energy Laws, the Authority shall be independent of interference or direction of any other person or authority, and shall—

(*a*) promote the interests of consumers of energy with respect to energy prices and charges and the continuity and quality of energy supply;

(*b*) monitor the efficiency and performance of energy undertakings, having regard to the purposes for which they were established;

(*c*) in conjunction with other relevant agencies, monitor the levels and structures of competition within the energy sector in order that competition in and accessibility to the energy sector in Malaŵi is promoted;

(*d*) facilitate increasing access to energy supplies;

(*e*) promote energy efficiency and energy savings;

(*f*) promote consumer awareness and education;

(*g*) promote the integrity and sustainability of energy undertakings and seek to ensure that energy undertakings, whilst providing efficient service, are able to finance the carrying on of the activities which they are licensed or authorized to carry on;

(*h*) in conjunction with other relevant agencies, formulate measures to minimize the environmental impact of the exploitation, production, transportation, storage, supply and use of energy and enforce such measures by the inclusion of appropriate conditions to licences held by energy undertakings;

(*i*) promote the exploitation of renewable energy resources; and

(*j*) take all such measures as are necessary to fulfill the above purposes through regulations to be made under this Act or the Energy Laws.

(3) The Authority shall, in undertaking its regulatory tasks, regulate in a manner that is transparent, cost effective and fair.

(4) The Authority may advise the Government on matters affecting the energy sector generally and energy undertakings specifically.

Minister to *Gazette* policy

10.—(1) Whenever the Minister intends to revise the policy with regard to the energy sector, he or she shall prepare a draft thereof and invite comments from licensees and other stakeholders, and he or she shall take those comments into account before issuing the new policy.

(2) Any policy issued under subsection (1) shall be in writing and shall be published in the *Gazette* and in such other manner as the Minister may determine.

Remuneration of members

11.—(1) A member of the Authority shall be paid such remuneration or allowances as the Minister of Finance may approve on the recommendation of the Authority:

Provided that such remuneration or allowances shall be set at levels that are comparable to those offered to similar professionals on the open market in Malaŵi.

(2) Members shall be paid out of the funds of the Authority.

Meetings of the Authority

12.—(1) The members of the Authority shall meet at such times and places and in the manner as the Chairperson may from time to time determine provided that the Authority shall meet at least once every quarter.

(2) The Chairperson of the Authority may at any time convene an extraordinary meeting of the Authority to be held at a time and place and in the manner determined by him or her and shall, upon a written request of at least two other members of the Authority, convene an extraordinary meeting to be held within two weeks after the date of such request.

(3) The Chairperson of the Authority or, in the absence of the Chairperson, the Vice-Chairperson of the Authority shall preside over any meeting of the Authority, and in the absence of both the Chairperson and Vice-Chairperson, the members present shall elect one of their number to preside at the meeting.

(4) The Authority may publish in the *Gazette* the procedure to be followed at meetings of the Authority.

(5) In the absence of a published procedure under subsection (4), the person presiding at such a meeting of the Authority shall determine the procedure to be followed thereat.

(6) The quorum for a meeting of the Authority shall be a majority of all its members.

(7) The decision of a majority of the members of the Authority present at a meeting thereof shall constitute a decision of the Authority, and in the event of an equality of votes on any matter the person presiding at a meeting has a casting vote in addition to his or her deliberative vote.

(8) No member of the Authority, except *ex officio* members, shall attend the meeting of the Authority by representation.

(9) Other officers of the Authority as the Chief Executive may designate, shall attend meetings of the Authority and of any committee of the Authority and may address such meetings, but shall not vote on any matter:

Provided that the person presiding at any meeting may, for good cause, require such other officers to withdraw from such meeting.

(10) No decision taken by the Authority or act performed under it shall be invalid only by reason of a vacancy on the Authority or of the fact that any person not entitled to sit as a member of the Authority sat at such a meeting at the time the decision was taken or the act was authorized.

(11) The Authority may, at its discretion, allow members of the public or licensees to attend any of its meetings.

(12) If the Authority takes a decision in any manner other than at a formal meeting, such decision shall come into effect immediately but shall be reduced to writing and submitted for ratification at the first formal meeting of the Authority following such decision.

(13) The Authority shall cause a record of its proceedings to be kept.

Duties and responsibilities of members

13.—(1) Any member of the Authority shall—

(*a*) act in a justifiable and transparent manner whenever the exercise of his or her discretion is required;

(*b*) at all times act in the interests of the Authority and not in his or her sectoral interest;

(*c*) act independently of any outside influence or instruction; and

(*d*) act in a manner that is required of any holder of a public office.

(2) A member of the Authority having any interest, directly or indirectly, in any matter under discussion by the Authority shall as soon as possible after the relevant facts have come under his or her knowledge, disclose to the Authority the facts of his or her interest and nature thereof.

(3) A disclosure under subsection (2) shall be recorded in the minutes of the Authority and, after the disclosure, the member—

(*a*) shall not take part nor be present in any deliberation or decision of the Authority; and

(*b*) shall be disregarded for the purpose of constituting a quorum of the Authority.

(4) Any member of the Authority who fails to disclose his or her interest as provided under subsection (1) shall be guilty of an offence and liable on conviction to a fine of K500,000 and to imprisonment for five years.

(5) No act or proceedings of the Authority shall be invalidated on the grounds only that any member of the Authority has contravened the provisions of this section.

Just administrative action

14.—(1) Any decision of the Authority affecting the rights of another person shall—

(*a*) be within the powers of the Authority as set out in this Act and Energy Laws;

(*b*) be taken within a procedurally fair process; and

(*c*) be reasonable.

(2) Any person adversely affected by a decision of the Authority shall on request be furnished with written reasons for the decision.

Committees of the Authority

15.—(1) The Authority may appoint committees consisting of as many members of the Authority and employees of the Authority as may be deemed necessary to perform such functions or exercise such powers of the Authority as the authority may perform or exercise under this Act, and Energy Laws and may at any time dissolve or reconstitute such committees, and the chairperson of any such committee shall be a member of the Authority but so however that the Authority is not divested of any function or power conferred upon a committee under this subsection.

(2) Any decision of a committee performing a function or exercising a power of the Authority shall be tabled at a meeting of the Authority and may be withdrawn or amended by the Authority or referred back to such committee and shall, until it has been so withdrawn or amended, be deemed to be a decision of the Authority.

Advisory Committees and customer-consumer fora

16.—(1) The Authority may appoint committees consisting of as many members of the Authority, employees of the Authority and other persons as may be deemed necessary to advise the Authority in general or on a particular matter.

(2) The Authority may establish customer-consumer fora consisting of as many of the members of the Authority, employees of the Authority and other persons as may be deemed necessary to represent the interests of consumers or consumers of energy in relation to consumer or consumer information, education, energy pricing and dispute resolution.

Members or employees not to be engaged in licensed activity

17.—(1) A member or employee of the Authority shall not seek employment with any licensee for a period of two years after leaving the position as member or employee of the Authority.

(2) A member or employee of the Authority, as the case may be, shall not, after leaving the membership or employment of the Authority act as an agent for or on behalf of a licensee in any matter before the Authority that was under consideration by the Authority during the term of office of that member or during the employment of the employee with the Authority.

Chief Executive of the Authority

18. The Authority shall appoint a Chief Executive to be known by such title as the Authority may deem fit, who shall be the chief executive officer of the Authority and responsible for the administrative control of, and supervision over the work and staff of the Authority.

Other staff of the Authority

19.—(1) The Authority shall establish its own Secretariat and may appoint such staff, subordinate to the Chief Executive, as the Authority deems necessary.

(2) The Authority may delegate to the Chief Executive the appointment of staff of such ranks as the Authority may specify.

(3) The Authority may pay to persons in its employ, or provide them with, such remuneration, pension and employment benefits as the Authority may, after having obtained such professional advice as it may deem fit, consider as being competitive in the employment market in Malaŵi.

Disclosure of interest

20.—(1) The Chief Executive shall disclose to the Authority any interest he or she has, whether in a private or professional capacity, in any matter that is under consideration by the Authority and shall not attend any meeting of the Authority or of any committee of the Authority while any question touching such matter is being discussed.

(2) Every employee of the Authority or any consultant, adviser or sub-contractor to the Authority shall disclose to the Chief

Executive any interest he or she has, whether in a private or professional capacity, in any matter that is under consideration by the Authority, and the Chief Executive shall take such decision as he or she considers appropriate in each case and submit a report thereon to the Authority.

Hiring of services

21. The Authority may, subject to such conditions as the Authority may determine contract with any person to provide goods or supply services as may be necessary to perform the work connected with the powers, functions and duties of the Authority.

Delegation of powers and Authority

22.—(1) The Authority may delegate any power or function assigned to it under this Act and Energy Laws to the Chairperson or any member of the Authority or to any employee of the Authority to facilitate the day to day operation of the Authority.

(2) The Chairperson of the Authority may, with the approval of the Authority, delegate any power or function assigned to him or her under this Act and Energy Laws or delegated to him or her under subsection (1) to any member of the Authority.

PART III

Financial Provisions

Funds of the Authority

23. The funds of the Authority shall consist of—

(*a*) all fees, charges, energy regulation levies, dues or rates imposed under this Act and Energy Laws;

(*b*) one-half of all fines imposed by a competent court for the contravention of the provisions of this Act and Energy Laws or by-laws made by the Authority;

(*c*) revenue accruing to the Authority from the Government or other body or person, whether as a grant-in-aid or otherwise;

(*d*) all such monies as are, from time to time, appropriated to the Authority by Parliament; and

(*e*) any other income authorized under this Act and Energy Laws or income recognized as such by accounting standards and practices.

Energy regulation levy

24.—(1) For the purposes of the levies referred to in section 23, the Authority may by notice in the *Gazette* impose an energy regulation levy on energy sales to be paid by licensees.

(2) A notice under subsection (1)—

(*a*) shall state the amount of the levies or the basis or method of calculation or determination of the amounts;

(*b*) shall specify the date on which or periods within which the levies are payable and the manner of payment; and

(*c*) may stipulate that a licensee becomes liable for payment of interest on any arrear payments of the levy and specify the rate of interest and manner of calculation thereof.

Rural electrification levy

25.—(1) In order to promote and fund rural electrification, every licensee shall pay to the Authority a rural electrification levy which levy shall be part of the tariffs or prices of energy payable by energy customers.

(2) The rural electrification levy referred to in subsection (1) shall be 4.5 per cent of retail energy sales.

(3) Every licensee shall pay the levy referred to in subsection (1) to the Authority within forty-five days from the date of sale or billing for the energy as the case may be, whichever shall occur first.

(4) The Authority shall pay the levy referred to in subsection (1) to the Rural Electrification Fund within seven days of receipt of the same from a licensee.

(5) If a licensee or the Authority, as the case may be, fails to remit the levy referred to in subsection (1) within the periods specified in subsections (3) and (4) interest on the levy at the rate of 2 per cent above the bank lending rate shall be chargeable and payable to the Rural Electrification Fund.

(6) The rural electrification levy shall be used for the purposes prescribed under the Rural Electrification Act. Cap. 73:03

Books of accounts

26.—(1) The Authority shall cause to be kept proper books of accounts and other records relating to its accounts.

(2) The Authority shall, as soon as possible after the end of each financial year, cause to be prepared a statement of the cash-flow and income and expenditure of the Authority for that financial year and a balance sheet of its assets and liabilities as at the end of that financial year.

(3) The accounts of the Authority shall—

(*a*) be audited annually by independent public auditors appointed by the Authority; and

(*b*) be examined by the Auditor General before being presented to Parliament in accordance with this Act.

(4) The financial year of the Authority shall be the period of twelve months commencing on 1st July of each year and ending on 30th June of the following year:

Provided that the first financial year of the Authority may be a period shorter or longer than twelve months as the Authority may determine, but in any case not longer than eighteen months.

Annual report

27.—(1) The Authority shall as soon as practicable, but not later than six months after the expiry of the financial year, submit to Parliament, through the Minister, a report concerning its activities during that financial year.

(2) The annual report referred to in subsection (1) shall include—

(*a*) an audited balance sheet and income statement, including any notes thereon and documents annexed thereto whereby relevant information is provided;

(*b*) the report of the examination of the accounts referred to in section 26 (3);

(*c*) information regarding licences granted, renewed, amended, suspended, cancelled or withdrawn;

(*d*) information regarding the amount of rural electrification levies collected and paid to the Rural Electrification Fund;

(*e*) a report regarding the execution of the business plan of the Authority;

(*f*) a report of the future strategic plans of the Authority;

(*g*) a status report on the performance of the energy sector and energy undertakings; and

(*h*) such other information as the Authority may, from time to time, deem necessary.

(3) The Authority shall, after submission of the annual report to Parliament in accordance with subsection (1), cause a summary of the report to be published in such manner as the Authority shall deem appropriate or as Parliament may direct.

PART IV

Regulation of the Energy Sector

Activities to be carried out under licence

28.—(1) No person may establish, operate, carry on or be involved in any manner in an energy undertaking in Malaŵi, without a licence issued by the Authority.

(2) Any person who contravenes the provisions of subsection (1) shall be guilty of an offence.

(3) For the purposes of this section the Authority has the power—

(*a*) to determine whether any person is carrying on or involved in any energy undertaking; and

(*b*) to order any person not holding a licence and who is obliged to apply for and hold a licence under this Act or Energy Laws to cease carrying on or being involved in any energy undertaking.

29. Any person obliged to hold a licence under this Act or Energy Laws shall apply to the Authority for a licence in the prescribed form in accordance with the procedure and subject to payment of fees laid down in this Act or Energy Laws.

Application for and issuing of licence

30. A licensee shall not charge a customer any other tariff, price or charge more than that forming part of the conditions of his or her licence or revision thereof and as approved by the Authority.

Tariffs or prices of energy

31. No licence and no rights or privileges thereunder shall be assigned or transferred, either in whole or in part, nor shall title thereto, either legal or equitable, or any right, interest or property therein, pass to or vest in any person without the prior written consent of the Authority, but so however that such consent shall not be unreasonably withheld.

Transfer of licences

PART V

Resolution of Disputes

32. The Authority shall, if requested thereto by a party to a dispute, act as arbitrator in disputes between licensees or between a licensee and its customers or consumers relating to—

Authority may arbitrate

(*a*) the right to energy supply;

(*b*) the duty to supply energy;

(*c*) the tariffs, process or charges at which energy is supplied;

(*d*) delays in or refusal to supply energy; and

(*e*) the quality of energy supply and the provision of services in connexion therewith.

33. The Authority may act as mediator in any other matter in respect of which a licensee, customer, or consumer requests the Authority to act as such.

Authority may act as mediator

34. The Authority may, on approval of the parties involved, appoint a suitable person to act as mediator or arbitrator on its behalf and any action or decision of a person so appointed is deemed to be an action or decision of the Authority.

Authority may appoint another arbitrator

35. The Authority shall by notice published in the *Gazette* prescribe the procedure to be followed and mediation and arbitration fees to be paid in mediating and arbitrating disputes.

Procedure and fees for mediation and arbitration

36. The decision of the Authority in arbitrating a dispute, including a decision as to costs, shall be final and binding on the disputing parties, subject only to the right of appeal to the High Court.

Decision of the Authority is final

PART VI

Inspections, Accidents, Inquiries and Investigations

Inquiries and formal investigations

37.—(1) The Authority may, at its own instance or on receipt of a complaint or enquiry relating to the supply of energy, appoint a person to make enquiries in respect thereof and report thereon to the Authority.

(2) On receipt of a report under subsection (1), the Authority may—

(*a*) issue such licensing conditions, guidelines, rules or directives as it is empowered under this Act; or

(*b*) institute a formal investigation.

(3) The Authority shall, on receipt of a complaint regarding unlawful conduct by a licensee, institute a formal investigation in respect of that complaint.

(4) Upon instituting a formal investigation under subsection (2) or (3)—

(*a*) the Authority may appoint a person to chair the investigation and as many persons as may be necessary to assist with the investigation; and

(*b*) the person appointed under subparagraph (*a*) and the persons assisting him or her may summon witnesses and conduct the investigation in accordance with the rules made by the Authority by order published in the *Gazette*.

(5) On completion of an investigation under subsection (4), the person chairing the investigation shall submit his or her written report thereon to the Authority.

(6) On receipt of the report under subsection (5), the Authority—

(*a*) may refer it to the Attorney General for his or her consideration;

(*b*) if a licensee is involved, may take action in accordance with this Act or Energy Laws,

and the Authority shall give a copy of the report to a concerned consumer or affected person who requests for it.

Licensee to report accidents

38.—(1) Every licensee shall send to the Authority notice of any accident of such a kind as to have caused, or likely to have caused, loss of life or serious personal injury which occurs in any part of such licensee's works or equipment, together with notice of any loss of life or serious personal injury occasioned by any such accident, within twenty-one days of such accident.

(2) Nothing contained in subsection (1) shall absolve a licensee from the duty of complying with the provisions of any other written law relating to the reporting of accidents.

Entry and inspection of premises

39.—(1) The Authority, or any person authorized thereto in writing by the Authority may—

(*a*) at any time enter upon the premises of a licensee and inspect any plant, machinery, books of accounts and other documents found thereat for the purpose of ascertaining whether or not the provisions of this Act, the Energy Laws or other written law or the conditions of any licence are being complied with, or for the purpose of any inspection which is incidental to or connected with the carrying out of the duties of the licensee; and

(*b*) call upon any licensee to furnish to the Authority such periodical or other returns in such form and such particulars as the Authority may, from time to time, prescribe by notice in the *Gazette*.

(2) The Authority may require that the accuracy of the returns and particulars be verified on oath by the licensee.

(3) A person authorized by the Authority to carry out an inspection or call for a return shall on request by a licensee show his or her authorization.

(4) A person who intentionally alters, destroys or otherwise suppresses a document or information required of him or her or under subsection (1) shall be guilty of an offence.

PART VII

Offences and Penalties

Offences

40.—(1) Any person who carries on in any manner any activity for the supply of energy in contravention of this Act, or fails to carry out or to comply with any order or decision of the Authority made or given under this Act or otherwise contravenes the provisions of this Act, or Energy Laws shall be guilty of an offence.

(2) Without prejudice to the right of a licensee to recover for any illegal consumption of energy, including costs associated with such recovery, a customer or any other person who—

(*a*) illegally abstracts energy;

(*b*) disturbs or tampers with any meter or other energy measuring instrument or apparatus;

(*c*) denies access to premises for inspections by authorized personnel of the licensee or the Authority;

(*d*) damages or vandalizes any energy installation equipment or apparatus,

shall be guilty of an offence.

(3) Any transmitter who denies access on his or her system to a licensee shall be guilty of an offence.

Penalties

41. Any person who is guilty of an offence under this Act for which no penalty is provided shall be liable to a line of K5,000,000 and to imprisonment for ten years.

PART VIII

Miscellaneous Provisions

Service of notice

42. Any notice or other document required or authorized to be given, delivered or served under this Act may be given, delivered or served—

(*a*) by delivering it to the person to whom it is to be given or delivered or on whom it is to be served;

(*b*) by leaving it at the usual or last known place of abode of that person;

(*c*) by sending it in a prepaid registered letter addressed to that person at his or her usual or last known place of abode or postal address;

(*d*) in the ease of a company, by delivering it to the secretary or clerk thereof at its registered or numbered office or by sending it in a prepaid registered letter addressed to the secretary or clerk of the company at that office; or

(*e*) if it is not practicable after reasonable enquiry to ascertain the name or address of a person to whom it should be given or delivered or on whom it should be served, as being a person having an interest in land, being the person to whom the description of the person having that interest in the premises (naming those premises) to which it relates, or by delivering it to some person on the premises or, if there is no person on the premises to whom it can be addressed, by affixing a true copy of it to some conspicuous part of the premises.

Right of appeal to the High Court

43.—(1) Any person aggrieved by the decision or action of the Authority under this Act may appeal to the High Court within three months from the date of the decision or action of the Authority.

(2) The Chief Justice may make such rules as he or she considers proper in relation to the procedure on the hearing of appeals under subsection (1), including the appointment and remuneration of assessors and regulating the costs of the appeal.

Obligation of secrecy

44. Except for any of the purposes of this Act or the Energy Laws or for the purpose of any civil or criminal proceedings under any written law or where otherwise authorized by the Authority, no member of the Authority or a committee of the Authority or any officer, servant or agent of the Authority or any person attending any meeting of the Authority or a committee of the Authority, whether during his or her tenure of office or during his or her employment or for a period of five years thereafter, shall disclose any information which has been obtained by him or her in the course of his or her duties and which is not published in pursuance of this Act or the Energy Laws.

By-laws

45. The Authority may make by-laws to give effect to any of the provisions of this Act and without prejudice to the generality of the foregoing, the Authority may make by-laws—

(*a*) for securing that the supply and use of energy is regular, safe and efficient;

(*b*) prioritizing of fuels and technologies for energy supply;

(*c*) for bulk stockholdings;

(*d*) for protecting the public in so far as practicable from any personal injury, fire or other dangers arising from the use of energy;

(*e*) prescribing anything, including fees, required to be prescribed under this Act prohibiting, controlling or restricting the importation, disposal, sale of defective or dangerous goods or fittings used in the supply of energy;

(*f*) for the testing of meters and the adjustment of accounts where meters are found to be defective; and

(*g*) providing for matters incidental to and connected with the matters mentioned in the preceding paragraphs of this section.

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ENERGY REGULATION BY-LAWS

under s. 45

G.N. 5/2009
29/2010

PART I

PRELIMINARY

1. These By-laws may be cited as the Energy Regulation By-laws. Citation

2. In these By-laws, unless the context otherwise requires— Interpretation

"applicant" means with respect to any licensee, a person or legal entity that has applied for service from a licensee;

"arbitrator" has the meaning given in by-law 88;

"auditor" means a person registered as an accountant and auditor in terms of the Public Accountants and Auditors Act; Cap. 53:06

"claimant" has the meaning given in by-law 89;

"customer" means with respect to any licensee, a person or legal entity that purchases energy from that licensee;

"demand" has the meaning given in by-law 89;

"licensee" means a person or persons or legal entity licensed by the Authority to supply or sell energy;

"licensed activity" means an activity for which an energy licence is required under the Energy Laws;

Cap. 50:03

"liquid fuels" has the meaning ascribed to the words in the Liquid Fuels and Gas (Production and Supply) Act;

"LPG" means Liquefied Petroleum Gas;

"respondent" has the meaning given in by-law 89;

"retailing", for liquid fuels and gas includes sales of liquid fuels and gas by holders of retail licences in bulk to end users;

"ring-fence" means the keeping of separate accounting records in respect of a licensed activity so that revenue and cost, assets and liabilities, reserves and provisions of, or reasonably attributed to, the licensed activity are separately identified in the books of the licensee from those of any other activity, business or operations of the licensee;

"Roster of Arbitrators" has the meaning given in by-law 88.

PART II
Energy Regulation Levy

Division 1—Regulation Levy System

The amount of Levy

3. Every licensee under the Energy Laws shall pay the Energy Regulation Levy specified in the First Schedule hereto.

Levy to be charged on basic income

4. The Energy Regulation Levy referred to in by-law 3 shall be charged on the basic income derived from licensed energy activity or undertaking and not from any other income of the licensee.

Period for paying levy

5.—(1) Every licensee shall pay the Energy Regulation Levy to the Authority within forty-five days from the date of sale of or billing for energy, as the case may be.

(2) Failure to collect or difficulty in collecting the monies from customers shall not exonerate the licensee of his obligation to pay the Levy to the Authority within the time specified in paragraph (1).

Interest on delayed payment of levy

6. If a licensee fails to remit the amount of the Levy within the time specified in by-law 5, interest at the rate per annum equivalent to commercial bank lending rate shall be paid on the delayed payment and such interest shall accrue on a daily oasis.

Liquid fuels wholesalers to collect levy from retailers at source

7. Every holler of a wholesale liquid fuels licence shall be responsible for collecting from the retailers the Energy Regulation Levy and paying the Levy to the Authority and the holder of a wholesale liquid fuel licence shall include the Levy in the sale price of liquid fuels sold to the retailers.

Division 2—Billing and Ring-Fence Accounting

Bills to clearly show levy amount

8. A licensee charging the levies shall—

(*a*) distinguish the different levies in its billing from the basic energy tariffs of prices it charges;

(*b*) indicate the levies in its billing in a transparent and easily understandable manner;

(*c*) indicate the date of the bill on each bill;

(*d*) exclude, from the bills when billing a customer the levy paid by the licensee as part of energy acquisition costs; and

(*e*) subject to by-law 5, recover such levies from customers and pay them over to the Authority in accordance with these By-laws.

Ring-fence accounting

9.—(1) Every licensee shall ring-fence every licensed activity in accordance with this by-law.

(2) In order to give effect to paragraph (1), a licensee shall in respect of any licensed activity—

(*a*) keep, or cause to be kept, ring-fenced accounting records; and

(*b*) prepare, in a consistently uniform manner, in respect of each financial year of the licensee, financial statements comprising—

(i) an income statement;

(ii) a balance sheet;

(iii) a cash-flow statement;

(iv) an asset register; and

(v) a statement showing the amounts paid as energy regulation levy.

(3) The financial statements referred to in paragraph (2) (b) shall be accompanied by notes showing separately for each licensed activity and in appropriate detail, the amounts of any revenue, cost, asset, liability, reserve or provision which has been either charged from or to any other activity, business or operations of the licensee, whether licensed or not, together with a description of that charge.

(4) A licensee shall submit to the Authority, not later than six months or such longer period as the Authority may determine after the end of the licensee's financial year, a report by its auditor stating whether, in the auditor's opinion, the financial statements referred to in paragraph 2 (b) have been prepared in accordance with these By-laws to give a true and fair reflection of the financial affairs of the licensed activity and the amount of levy paid by the licensee.

(5) A licensee shall submit to the Authority management accounts within three months at the end of each quarter.

(6) The Authority may subject any financial statements or management accounts submitted to it to independent audit and the cost of such audit shall be borne by the licensee.

Part III

The Rural Electrification Levy

Division 1—The Rural Electrification Levy

The Rural Electrification Levy

10.—(1) Every retail energy licensee shall pay the Rural Electrification Levy specified under section 25 of the Act in accordance with the provisions thereunder and these By-laws.

(2) Failure to collect or difficulty in collecting the monies from customers she 11 not exonerate the licensee of his obligation to pay the Levy to the Authority within the period specified in the Act.

Levy to be charged on basic income

11. The Rural Electrification Levy referred to in by-law 10 shall be charged on the basic income derived from retail energy sales and not from any other income of the licensee.

Liquid fuels wholesalers

12. Every holder of a wholesale liquid fuels licence, shall be responsible for collecting from retailers the Rural Electrification Levy and paying the Levy to the Authority and the holder of wholesale liquid fuel licence shall include the Levy in the sale price of liquid fuels sold to retailers.

Bills to clearly show levy amount

13. A licensee charging the levies, other than retail liquid fuels licensees, shall—

(*a*) distinguish the different levies in its billing from the basic energy tariffs or prices it charges;

(*b*) indicate the levies in its billing, in a transparent and easily understandable manner; and

(*c*) indicate the date of the bill on each bill.

Division 2—Ring-Fence Accounting

Ring-fence accounting

14.—(1) Every licensee shall ring-fence every licensed activity in accordance with this by-law.

(2) In order to give effect to paragraph (1), a licensee shall in respect of any licensed activity—

(*a*) keep, or cause to be kept, ring-fenced accounting records; and

(*b*) prepare, in a consistently uniform manner, in respect of each financial year of the licensee, financial statements comprising—

(i) an income statement;

(ii) a balance sheet;

(iii) a cash-flow statement;

(iv) an asset register; and

(v) a statement showing the amounts paid as rural electrification levy.

(3) The financial statements referred to in paragraph (2) (b) shall be accompanied by notes showing separately for each licensed activity and in appropriate detail, the amounts of any revenue, cost, asset, liability, reserve or provision which has been either charged from or to any other activity, business or operations of the licensee, whether licensed or not, together with a description of that charge.

(4) A licensee shall submit to the Authority, not later than six months or such longer period as the Authority may determine after the end of the licensee's financial year, a report by its auditor stating whether, in the auditor's opinion, the financial statements referred to in paragraph (2) (*b*) have been prepared in accordance with these By-laws and give a true and fair reflection of the financial affairs of the licensed activity and the amount of Levy paid by the licensee.

(5) A licensee shall submit to the Authority quarterly management accounts within three months at the end of each quarter.

(6) A licensee who holds more than one type of licence in the chain of supply of energy shall clearly show the income derived from retail sale of energy for purposes of the Rural Electrification Levy, otherwise it shall be assumed that its total income is derived from retail sale of energy.

(7) The Authority may subject any financial statements or management accounts submitted to it to independent audit and the cost of such audit shall be borne by the licensee.

Part IV

Coal Supply

Division 1—Licences

Licence for coal supply activities

15. No person shall carry on the business of importing, exporting, transporting, storage or selling of coal without a licence issued to him by the Authority.

Application for a licence

16.—(1) Any person who wishes to carry on the business of importing, exporting, transporting, storage or selling of coal shall apply to the Authority for a licence in Form ECS I contained in Part I in the Second Schedule hereto.

(2) There shall be only one type of licence covering any type of activity dealing with coal supply:

Provided that an applicant may apply for licence for one or more coal supply activity.

(3) Every licence issued by the Authority shall be in the form prescribed in Part II in the Second Schedule hereto and shall be valid on the conditions and for the period provided therein.

(4) Every licence issued under these Regulations shall have the following details—

(*a*) name and type of the licence;

(*b*) name and particulars of the licensee;

(*c*) commencement and expiry date;

(*d*) emblem or logo of the Authority;

(*e*) designated signature of the Authority;

(*f*) any such security features as the Authority may determine; and

(*g*) the common seal of the Authority.

Application and licence Fees

17.—(1) No application for licence under these By-laws shall be considered by the Authority unless the applicant has paid the application fees prescribed in Part I of the Third Schedule hereto.

(2) Upon the grant of a licence and upon the annual renewal thereof, an applicant shall pay the licence fee or the renewal fee, as the case may be, specified in Part I of the Third Schedule hereto.

Information to be supplied by applicants

18. An applicant shall, for every application, furnish to the Authority the following—

(*a*) the information specified in Form ECS I contained in the Second Schedule hereto; and

(*b*) a copy of the schedule of prices of the different types or grades of coal or charges for licensed activities it intends to charge consumers.

Grant or denial of application

19.—(1) The Authority shall consider each application under these By-laws and determine if the application meets the criteria specifically set out under this Part and if the Authority is satisfied that the applicant has met all the requirements hereunder, it may issue the licence to the applicant.

(2) Where the Authority determines that the applicant does not meet all the requirements, the Authority shall refuse to grant the licence.

Communication of the Authority's decision

20. Once the Authority determines the outcome of any application for licence, the Authority shall communicate its decision in writing to the applicant within thirty days from the date a decision was made.

Refusal to be accompanied by reasons

21. Where the Authority refuses to grant the licence, it shall give reasons in writing for such refusal to the applicant.

Right of appeal

22. Any applicant whose application for licence has been refused may appeal against the decision in accordance with the Act.

Duration and renewal of licence

23.—(1) Any licence issued under this Part shall be valid for a period of twelve months and may be renewed for a similar period alter the expiration of the period.

(2) An application for renewal of a licence shall be made in a similar manner used when making the initial application.

Division 2—Prices and Charges

Licensees to charge only approved prices

24.—(1) No person shall sell or provide coal supply services to any other person at a price or charge that is higher than the maximum selling prices or charges approved by the Authority.

(2) The Authority may review maximum prices and charges for coal supply licensed activities any time that circumstances necessitate such review, on its own initiative or on the application of a licensee.

(3) Once the Authority has set the new maximum prices or charges it shall communicate the new prices or charges to all licensees.

Factors determining prices

25.—(1) In determining the maximum prices and charges for coal supply licensed activities, the Authority shall take into account the following factors—

(*a*) the acquisition costs of coal;

(*b*) the cost of transportation and distribution to the place of use;

(*c*) the weighted cost of storage;

(*d*) the cost of goods in transit, insurance and other transit expenses;

(*e*) Government taxes and levies on the sale of the product;

(*f*) the weighted cost of labour; and

(*g*) the licensee's approved mark-up.

(2) The Authority, in its discretion, or at the instance of a licensee may take into account other factors as the Authority may deem necessary.

Authority may obtain independent quotations

26. The Authority may obtain independent quotations for prices of all types or grades of coal or charges for coal supply activities for purposes of determining the appropriate prices and charges.

Renewal application to be accompanied by new prices

27. Each licensee applying for renewal of licence shall submit to the Authority the approved maximum prices and charges which the licensee is authorized to charge.

Division 3—Standards and Code of Practice

Standard specification Cap. 51:02

28. Every licensee shall comply with and adhere to the Malaŵi Standards as promulgated under the Malaŵi Bureau of Standards Act in respect of coal.

29. Every licensee shall comply with and adhere to the Environment Management Act.

Compliance with Environment Management Act Cap. 60:02

30. The Authority may through its members, officers or other authorities carry out inspections on the premises or operations of the licensee or on the premises of the customer at the place of use to verify or monitor compliance with the above standards, or Energy Laws or these By-laws.

Authority to monitor standards

Division 4—Coal Transportation and Storage

31. No person shall keep or cause to be kept any coal in excess of two tonnes on any premises other than in an approved storage area.

Prohibition against storage of coal

32. The following conditions shall apply to all storage areas in which coal is stored—

Conditions for management and control of storage area

(*a*) every person managing or employed in or in connexion with the storage area shall abstain from any act or acts whatsoever which may cause fire and shall take all reasonable and necessary steps to prevent any other person from so doing;

(*b*) no fire or naked light shall be permitted in a storage area or within sixteen metres thereof; and

(*c*) all grass, bushes and shrub within sixteen meters near a storage area shall be cut short to the satisfaction of the Authority and no cultivation shall be permitted within sixteen metres from the boundaries of any storage area.

33. No person shall carry out or permit the carrying out of any soldering work within the storage area except in a workshop specifically constructed for that purpose.

Prohibition against soldering

34. No person shall store any type of coal of a quantity of more than half tonne within any building, which or part of which, is used as accommodation or as a place of habitual public resort.

Coal storage in accommodation

35. All accidents arising out of the storage of coal to which these By-laws apply involving fire, shall be reported immediately in writing by the licensee of the storage area to the Authority, any nearest police and fire station.

Reports of accidents

36. Any member or authorized officer of the Authority may, at all reasonable times of the day, enter and inspect any premises in

Inspections by the Authority

respect of which a licence has been granted under or by virtue of these By-laws for purposes of monitoring compliance with these By-laws or the Energy Laws.

Coal transportation Cap. 60:02

37. Every licensee involved in the transportation of coal shall comply with the provisions of the Environment Management Act in respect of pollution of the environment during transportation of coal as well as storage and supply thereof.

Licensee to provide information to applicants and customers

38. A licensee shall, upon the request of an applicant or a customer, provide to the applicant or customer such reasonable information and assistance as may be necessary so that the applicant or customer has sufficient information regarding the service provided by the licensee.

Copies of agreements to be sent to the Authority

39. Every licensee shall within one month of the execution of any coal Sale and Purchase Agreement, provide to the Authority a copy of the Sale and Purchase Agreement.

Registration of coal importers for own use

40.—(1) Every person who wishes to import coal for own use shall register with the Authority and give the necessary details contained in Form ECS 3 in the Fourth Schedule hereto.

(2) Whenever there is a change in the particulars provided under paragraph (1), the registered importer of coal for own use shall immediately advise the Authority of the new particulars.

(3) Every registered importer of coal for own use shall pay a registration fee and annual renewal registration fee prescribed in Part I of the Third Schedule hereto.

(4) Renewal of registration for importation of coal for own use shall be due on the 1st day of January each year.

Mining of coal for own use

41.—(1) Every person who wishes to mine coal for own use shall register with the Authority and give the necessary details contained in Form ECS 4 in the Fourth Schedule hereto.

(2) Whenever there is a change in the particulars provided under paragraph (1), the registered miner of coal for own use shall immediately advise the Authority of the new particulars.

(3) Every registered miner of coal for own use shall pay a registration fee and annual renewal registration fee prescribed in Part 1 of the Third Schedule hereto.

(4) Renewal of registration for mining coal for own use shall be due on the 1st day of January each year.

PART V
Renewable Energy Technologies

Division 1—Licences

42. No person shall carry on the business of importing and selling or installation and maintenance of renewable energy technologies without a licence issued to him by the Authority.

Licences for renewable energy technologies activities G.N. 29/2010

43.—(1) Any person who wishes to carry on the business of importing and selling or installation and maintenance of renewable energy technologies shall apply for a licence in Form ERET 1 contained in the Fifth Schedule hereto.

Licence applications and fees G.N. 29/2010

(2) The Authority shall issue two types of licences for activities dealing with renewable energy technologies—

(*a*) importation and selling; or

(*b*) installation and maintenance.

(3) Every licence issued by the Authority shall be in the form prescribed in the Fifth Schedule hereto and shall be valid on the conditions and for the period therein.

(4) Every licence issued under these By-laws shall have the following details—

(*a*) name and type of the licence;

(*b*) name and particulars of the licensee;

(*c*) commencement and expiry date;

(*d*) emblem or logo of the Authority;

(*e*) designated signature of the Authority;

(*f*) any such security features as the Authority may determine; and

(*g*) the common seal of the Authority.

(5) No application for a licence under these By-laws shall be considered by the Authority unless the applicant has paid the application fees specified in Part II of the Third Schedule hereto.

(6) Upon the grant of the licence and annual renewal thereof, an applicant shall pay the issue fee specified in Part II of the Third Schedule.

44. The Authority shall not issue a licence to an applicant for renewable energy technologies unless the Authority has granted to the applicant an electrical installations permit issued under the Electricity By-laws.

Installations permit under Electricity Act Cap. 73:01 Sub. Leg.

Information to be supplied by applicants

45. Every application for a licence under this Part shall be accompanied by the following—

(*a*) the information specified in Form ERET I;

Cap. 73:01, Sub. Leg.

(*b*) a copy of the Electrical Installations Permit issued to the applicant under the Electricity By-laws;

(*c*) a Schedule of charges for each type of renewable energy technologies equipment to be supplied by him in the next twelve months; and

(*d*) a Schedule of the maintenance charges, where applicable, for all types of maintenance for renewable energy technologies it intends to charge customers in the next twelve months.

Grant or denial of application

46.—(1) The Authority shall consider each application under this Part and determine if the application meets the criteria specifically set out under this Part and if the Authority is satisfied that the applicant has met all the requirements hereunder, it may issue the licence to the applicant.

(2) Where the Authority determines that the applicant does not meet all the requirements, the Authority shall refuse to grant the licence.

Communication of the Authority's decision

47.—(1) Once the Authority determines the outcome of any application for licence, it shall communicate its decision in writing to the applicant within thirty days from the date any such decision is made.

(2) Where the Authority refuses to grant the licence, it shall give reasons in writing for such refusal to the applicant.

Right of appeal

48. Any applicant whose application for licence has been refused may appeal against the decision in accordance with the Act.

Duration and renewal of licence

49.—(1) Any licence issued under this Part shall be valid for twelve months and may be renewed for a similar period after the expiration of the period.

(2) An application for renewal of a licence shall be made in a similar manner used when making the initial application.

Division 2—Prices and Charges

Licensees to charge only approved prices

50.—(1) No person shall sell or provide maintenance services for renewable energy technologies to any other person at a price or maintenance charge that is higher than the maximum selling prices or maintenance charges approved by the Authority.

(2) The Authority may review maximum prices and maintenance charges for renewable energy technologies once a year unless there are special extenuating circumstances necessitating an earlier review.

Factors determining prices

51.—(1) In determining the prices and maintenance charges for renewable energy technologies, the Authority shall take into account the following factors—

(*a*) the Free on Board (FOB) cost of the equipment and associated service spares, tools and materials;

(*b*) the cost of transportation and distribution to the place of use;

(*c*) the weighted cost of storage;

(*d*) the cost of goods in transit, insurance and other transit expenses;

(*e*) Government taxes and levies on the sale of the product;

(*f*) the weighted cost of labour; and

(*g*) the licensee's approved mark-up.

(2) The Authority, in its discretion or at the instance of a licensee, may take into account other factors as the Authority may deem necessary.

Licensees to propose prices annually

52. In order to help determine the prices and charges applicable in the following year, at the time each applicant is applying for renewal of licence, each licensee shall present to the Authority a schedule of prices and charges for all types of renewable energy technologies equipment and maintenance charges it proposes to charge consumers or purchasers during the next twelve months.

Authority may obtain independent quotation

53. In addition to proposals by licensees in by-law 52 above, the Authority may also obtain independent quotations for prices of all types of renewable energy technologies equipment for purposes of determining the appropriate prices and charges for the next twelve months.

Renewed licence to be accompanied by new prices

54. The renewal of licence for each licensee shall be accompanied by the approved maximum prices and charges which that licensee is authorized to charge during the next twelve months.

Division 3—Standards, Code of Practice and Inspections

Standard specification and code of practice

55.—(1) Every licensee shall comply with and adhere to the standard specifications for renewable energy technologies approved by the Authority.

(2) Every licensee shall comply with and adhere to the standard code of practice for renewable energy technologies approved by the Authority.

Electrical installation permits Cap. 73:01, Sub. Leg

56. Every licensee shall comply with and adhere to the applicable provisions in the Electricity By-laws under the Electricity Act in respect of authorized persons or licensees to carry out installations and maintenance of renewable energy technologies installations.

Inspections by the Authority

Cap. 73:01, Sub. Leg.

57. The Authority may, through its members, officers or authorized agents, carry out inspections on the premises or operations of the licensee or on the premises of the customer to verify or monitor compliance with the above standards and code of practice or the Electricity By-laws and shall have power to order rectification of non-compliance thereof.

Division 4—Purchase, Sale and Service Agreements

The Authority to approve purchase agreements

58. Every licensee selling and installing renewable energy technologies equipment shall enter into a sale and purchase agreement with the purchaser and the terms of such agreement shall be subject to the approval of the Authority.

Terms in purchase agreements

59. Every sale and purchase agreement shall contain the following terms and conditions—

(*a*) that the contractor shall fully and faithfully provide all labour, plant, and materials and complete the works and deliver, install, test and commission at buyer's premises the renewable energy technologies equipment, including instructions on location, in operating the system in accordance with the specifications of the contract;

(*b*) that the contractor shall give the buyer the following documents—

(i) commissioning certificate;

(ii) operation manual for the system;

(iii) service contract, signed by both contractor and buyer;

(iv) warranty guarantee or certificate, including warranty transfer agreement transferring the manufacturer's product guarantee to the buyer, where applicable;

(*c*) that if the contractor fails to complete the works within the period specified in the contract, including any extension of time that may be granted, the contractor shall pay the buyer zero point one per cent (0.1%) of the contract price each day of delay up to a maximum often per cent (10%) of the contract price as liquidated damages;

(*d*) that the buyer shall give the licensee free access to his premises to the extent necessary for the licensee to install, test and commission the renew able energy technology system described in the contract; and

(*e*) that the buyer shall reasonably prepare his premises for the installation, and shall attend personally or by duly appointed representative the installation in order to discuss with the licensee's installation crew the exact location of the equipment.

Licensees to sign service agreements with buyers

60.—(1) Every licensee selling and installing renewable energy technologies equipment shall enter into a service agreement with the purchaser.

(2) The Authority shall approve the terms of the agreement referred to in paragraph (1).

Obligations of licensees in service agreements

61. The following licensee's obligations shall be specified in every service agreements, that the licensee shall—

(*a*) perform the maintenance services with reasonable care and skill;

(*b*) perform any associated services within a reasonable time after being requested by the buyer; and

(*c*) use parts that are of merchantable quality and reasonably fit for their purpose.

Obligations of buyers in service agreements

62. The following buyer's obligations shall be specified in every service agreement that the buyer shall—

(*a*) grant the licensee such access to the premises as the licensee shall from time to time reasonably require in order to discharge its obligations hereunder;

(*b*) make available at the premises such facilities as the licensee shall reasonably require in order to discharge its obligations hereunder, including adequate work space and storage;

(*c*) take all reasonable precautions to protect the health and safety of the licensee's employees agents and sub-contractors while on the buyer's site;

(*d*) make available all the documentation and other information necessary for the licensee to diagnose any fault in the equipment; and

(*e*) the licensee shall have a free and unencumbered title to any replaced parts for the equipment replaced during service.

Division 5—Customer Information and Reports

Service agreements

63.—(1) The Authority shall prescribe a standard service agreement in the form set out in the Sixth Schedule hereto.

(2) Licensees and buyers shall enter into a service agreement for the duration of the warranty period.

Licensees to provide information to applicants and customers

64. A licensee shall upon the request of an applicant or a customer provide to such applicant or customer such reasonable information and assistance as may be necessary to enable the applicant or customer become informed about the service provided by the licensee and to apply to receive such service from such licensee.

Copies of agreements to be sent to the Authority

65. Every licensee shall within one (1) month of the execution of the equipment sale and purchase agreement and service agreement provide to the Authority a copy of such equipment sale and purchase agreement and service agreement.

PART VI

Generation of Electricity for Own Use

Registration and annual renewal fees for private owner G.N. 29/2010

66.—(1) Every private owner with a generation capacity of below and above 20 kVA shall register with the Authority, details required under sections A and C only in Form EPOU 1 in the Seventh Schedule hereto:

Provided that only those registered by the Authority shall be permitted to generate electricity for own use.

(2) Whenever there is a change in the particulars provided under paragraph (1), the private owner shall immediately advise the Authority of the new particulars.

(3) Every private owner shall pay a registration fee and an annual renewal fee prescribed in the Third Schedule hereto.

(4) Every person, who, before entry into force of these By-laws, owns generation facilities for own use shall register with the Authority within six months from the date of these By-laws.

(5) Every Registration Certificate issued by the Authority shall be in Form EPOU 2 prescribed in the Seventh Schedule hereto and shall be valid on the conditions and for the period provided therein.

(6) Every Registration Certificate issued under these By-laws shall have the following details—

(*a*) name and type of the Registration Certificate;

(*b*) name and particulars of the registered private generator;

(*c*) commencement and expiry date;

(*d*) emblem or logo of the Authority;

(*e*) designated signature of the Authority;

(*f*) any such security features as the Authority may determine; and

(*g*) the common seal of the Authority.

(7) Generators of less than 20 kVA shall be registered—

(*a*) on importation, at the border of entry; and

(*b*) on sale in Malaŵi, by shop owners who shall transmit a register of such sales to the Authority every three months.

PART VII
Mediation

Division 1—Application

Application of this Part

67. This Part shall apply to all disputes arising between any licensee and any customer or applicant of that licensee.

Division 2—Commencement of Mediation and Appointment of Mediators

Initiation of mediation

68.—(1) Any licensee, customer or applicant may initiate mediation under this Part by filing with the Authority a submission to mediation or a written request for mediation pursuant to the procedures contained under this Part, together with the non-refundable fee specified in Part III of the Third Schedule hereto.

(2) Such initiation of mediation under by-law 68 (1) shall be done within six months from the date on which the last act or omission giving rise to the dispute occurred or failed to occur:

Provided that the Authority may on good cause allow the initiation of mediation more than six months from the date on which the last act or omission giving the rise to the dispute occurred or failed to occur as the case may be.

Requests for mediation

69.—(1) A request for mediation shall contain a brief statement of the nature of the dispute, the names, addresses and telephone numbers of all parties to the dispute and those who will represent them, if any, in the mediation.

(2) The party initiating the mediation shall simultaneously file two copies of the request with the Authority and one copy with every other party to the dispute.

Appointment of the mediator

70.—(1) Upon receipt of a request for mediation, the Authority shall appoint a qualified mediator to deal with the matter.

(2) Unless the parties agree otherwise or the Authority determines otherwise, a single mediator shall be appointed who may be a member of the Authority or an independent person.

Qualifications of the mediator

71.—(1) No person shall serve as a mediator in any dispute in which the person has any financial or personal interest in the results of the mediation.

(2) Prior to accepting an appointment, the prospective mediator shall disclose any circumstance likely to create a presumption of bias or prevent a prompt meeting with the parties and upon receipt of such information, the Authority shall either replace the mediator or immediately communicate the information to the parties for their comments.

(3) In the event that the parties disagree as to whether the mediator shall serve, the Authority shall appoint another mediator.

(4) The Authority may appoint another mediator if the appointed mediator is unable to serve promptly.

Vacancies

72. If any mediator is unwilling or unable to serve, the Authority shall appoint another mediator, unless the parties agree otherwise.

Division 3—Conduct of Mediation and Authority of Mediator

Representation

73.—(1) Any party may be represented by any person of the party's choice.

(2) The name and address of the person shall be communicated in writing to the Authority and to all parties.

Date, time and place of mediation

74.—(1) The mediator shall determine the date and the time of each mediation session.

(2) The mediation shall be held at the appropriate office of the Authority, or at any other convenient location agreed upon by the mediator and the parties.

Identification of matters in dispute

75.—(1) At least five days prior to the first scheduled mediation session, each party shall provide the mediator with a brief memorandum setting out each party's position regarding the issues that need to be resolved and at the discretion of the mediator, such memoranda may be mutually exchanged by the parties.

(2) At the first session, the parties will be expected to produce all information reasonable required for the mediator to understand the issues presented.

(3) The mediator may require any party to supplement such information or provide other documentary and other evidence.

Authority of the mediator

76.—(1) The mediator shall not impose a settlement on the parties but shall attempt to help them reach a satisfactory resolution of their dispute.

(2) The mediator may conduct joint and separate meetings with the parties and make oral and written recommendations for settlement.

(3) Whenever necessary, the mediator may also obtain expert advice concerning technical aspects of the dispute:

Provided that the parties agree and shall be responsible for expenses of obtaining such advice.

(4) Arrangements for obtaining expert advice shall be made by the mediator or the parties, as the mediator shall determine.

(5) The mediator may end the mediation whenever, in the opinion of the mediator, further efforts at mediation would not result into the resolution of the dispute between the parties.

Confidentiality of proceeding

77.—(1) Mediation sessions shall not be open to the public and only the parties and their representatives may attend mediation sessions.

(2) Other persons may attend the mediation only with the permission of the parties and with the consent of the mediator.

Confidentiality of information

78.—(1) Confidential information disclosed to a mediator by the parties or by witnesses in the course of the mediation shall not be disclosed to any other person by the mediator.

(2) The mediator shall treat all records, reports or other documents received by him while serving in that capacity with confidentiality.

(3) The mediator shall not be compelled to disclose the information referred to in paragraph (2) or to testily in regard to the mediation in any adversary proceedings or at any judicial forum.

(4) The parties shall maintain the confidentiality of the mediation and shall not rely on, or introduce as evidence in any arbitral, judicial or other proceeding—

(*a*) views expressed or suggestions made by another party with respect to a possible settlement of the dispute;

(*b*) admissions made by another party in the course of the mediation proceedings;

(*c*) proposals made or views expressed by the mediator; or

(*d*) the fact that another party had or had not indicated willingness to accept a proposal for settlement made by the mediator.

No stenographic record

79. There shall be no stenographic record of the mediation process except for the signed mediation settlement agreement.

Settlement agreement

80.—(1) When it appears to the mediator that there exist elements of a settlement which may be acceptable to the parties, the mediator shall formulate the terms of a possible settlement and submit them to the parties for their consideration, and after receiving the observations of the parties, the mediator may finalize the terms of a possible settlement taking into account the observations and submit them to the parties as it appears to him expedient.

(2) If the parties reach a settlement to the dispute—

(*a*) the mediator shall immediately thereafter draw up a settlement agreement in conjunction with the parties; and

(*b*) the parties shall sign the settlement agreement in the presence of each other, and the mediator shall also sign the settlement agreement in the presence of the parties.

(3) The mediator shall furnish a copy of the signed settlement agreement to each of the parties.

(4) When the parties sign the settlement agreement, the settlement agreement shall be binding on the parties and any persons claiming under them.

Division 4—Miscellaneous Provisions

Termination of mediation

81. Mediation proceedings shall be terminated—

(*a*) by the execution of a settlement agreement by the parties;

(*b*) by a written declaration of the mediator to the effect that further efforts at mediation are no longer worthwhile; or

(*c*) by a written declaration of a party or parties to the effect that the mediation proceedings are terminated.

Exclusion of liability

82.—(1) The Authority or a mediator shall not be compelled to be a party or witness in any judicial proceedings because of their involvement in any mediation proceedings under this Part.

(2) Neither the Authority nor any mediator shall be liable to any party for any act or omission in connexion with any mediation proceedings conducted under this Part.

Interpretation and application of procedures

83.—(1) The mediator shall interpret and apply these procedures insofar as they relate to the mediator's duties and responsibilities.

(2) All other procedures shall be interpreted and applied by the Authority.

Fees and expenses

84.—(1) The expenses of witnesses for either side shall be paid by the party producing such witnesses.

(2) All other expenses of the mediation, including required travel and other expenses of the mediator and representatives of the Authority, and the expenses of any expert advice or witnesses produced at the direct request of the mediator and agreed to by the parties shall be borne equally by the parties unless they otherwise agree.

(3) The fees payable to the mediator shall be borne by the parties equally unless they otherwise agree and such fees shall be as specified in Part IV of the Third Schedule hereto.

Use of forms

85. The parties shall use the forms specified in the Eighth Schedule hereto or any other forms approved or promulgated by the Authority.

Part VIII

Arbitration

Division 1—Application

Application of this Part

86. This Part shall apply to all disputes arising between any licensee and any customer or applicant of that licensee.

Division 2—Arbitrators and Commencement of Arbitration

The Authority and delegation of duties

87.—(1) The powers and duties of the Authority with respect to the arbitration of disputes between licensees and their customers or applicants are prescribed under this Part and the Act and may be carried out by representatives of the Authority as it may direct.

(2) The Authority may in its discretion, assign the administration of arbitration to any of its members or officers.

Roster of Arbitrators

88.—(1) The Authority shall establish and maintain a roster of arbitrators (the "Roster of Arbitrators") and shall appoint arbitrators from the Roster of Arbitrators when there is need.

(2) Under this Part, members of the Authority may be included on the Roster of Arbitrators.

(3) For the purposes of this Part "arbitrator" means the person appointed to consider and deal with a particular matter, whether composed of one or more arbitrators.

(4) The Roster of Arbitrators shall contain fee rate, in front of the name of each arbitrator.

Initiation of arbitration

89.—(1) Any licensee, customer or applicant may initiate an arbitration process under this Part in the following manner—

(*a*) the initiating party (the "claimant") shall give to the other party (the "respondent") written notice of its intention to arbitrate (the "demand") within six months from the date on which the last act or omission giving rise to the dispute occurred or failed to occur, as the case may be:

Provided that the Authority may on good cause allow the initiation of arbitration more than six months from the date on which the last act or omission giving rise to the dispute occurred or failed to occur, as the case may be.

(*b*) The demand shall contain a statement setting out the nature of the dispute, the names and addresses of all parties involved, the amount in question, if any, the remedy being sought, and the venue of hearing being requested;

(*c*) the claimant shall file at the office of the Authority two copies of the demand, together with the application fee, as prescribed in Part IV of the Third Schedule hereto; and

(*d*) the Authority shall acknowledge receipt of the demand after the demand is filed with the Authority.

(2)—(*a*) A respondent may file a response to the claim in duplicate, with the Authority within fifteen days after the acknowledgment of demand is sent by the Authority to the respondent;

(*b*) the respondent shall, at the time of filing the response, send a copy of the response to the claimant;

(*c*) if the respondent wishes to file a counterclaim, the counterclaim shall contain a statement setting out the nature of the counterclaim, the amount in question, if any, and the remedy being sought and the respondent shall forward to the Authority with the counterclaim and the appropriate fee specified in Part IV of the Third Schedule hereto.

(3) If no response or counterclaim is filed within the specified time, the respondent shall thereby be deemed to deny the claim and arbitration process shall proceed.

(4) When filing a demand, response or counterclaim pursuant to this by-law, a party shall sufficiently describe the demand, response or counterclaim as the case may be, so that the circumstances of the dispute are clear to the arbitrator.

Changes of claim

90.—(1) If a party, after filing a matter desires to make any new or different demand, response or counterclaim, as the case may be, it shall be made in writing and filed with the Authority.

(2) The party wishing to make the change shall provide a copy containing the changes to the other party, who shall have fifteen (15) days from the date of such transmission within which to file a response in respect of the changes with the Authority.

(3) However, after the appointment of an arbitrator, no new or different issue may be submitted to the Authority except with the arbitrator's consent.

Jurisdiction

91.—(1) The arbitrator shall have the power to rule on the question regarding his own jurisdiction, including any objections with respect to the existence, scope or validity of the arbitration agreement.

(2) A party may object to the jurisdiction of the arbitrator or to the arbitrability of a demand or counterclaim no later than the filing of the response to the demand or counterclaim, as the case may be, that gives rise to the objection.

(3) The arbitrator may rule on the objection as a preliminary matter or as part of the final award.

Mediation

92.—(1) At any stage of the proceedings, the parties may agree to conduct a mediation conference in accordance with the provisions under Part VI on Mediation in order to facilitate a settlement.

(2) The mediator shall not be the same person as the arbitrator dealing with the matter.

(3) Where the parties to a pending arbitration agree to mediate under the mediation provisions, no additional application fee is required to initiate the mediation.

Administrative conference

93.—(1) At the request of any party or upon the Authority's own initiative, the Authority may conduct an administrative conference, in person or by telephone, with the parties or their representatives.

(2) The conference may address such issues as arbitrator selection, potential mediation of the dispute, potential exchange of information, venue of arbitration, a timetable for the hearings, payment of deposit fees for arbitrator and any other administrative matters.

The venue

94.—(1) The parties may mutually agree on the venue where the arbitration is to be held.

(2) Where any party requests that the hearing be held at a specific place and the other party files no objection thereto within fifteen days after notice of the request has been sent to it by the Authority, the venue shall be the one requested.

(3) Where the other party objects to the venue requested by the party, the Authority shall determine the venue, and the Authority's decision on the matter shall be final and binding.

Appointment from Roster of Arbitrators

95.—(1) An arbitrator shall be appointed in the following manner—

(*a*) immediately after the filing of the demand, response or counterclaim, as the case may be, or upon the expiration of the time within which a response is supposed to be filed, whichever occurs last, the Authority shall send simultaneously to each party to the dispute an identical list of six, unless the Authority decides that a different number is appropriate, names of persons chosen from the Roster of Arbitrators together with their fee rate.

(2) The parties shall choose an arbitrator from the submitted list and to advise the Authority of their choice.

(3) Where the parties are unable to agree upon an arbitrator—

(*a*) each party to the dispute shall have seven days from the transmittal date during which to strike off the names objected to, and number the remaining names in order of preference and return the list to the Authority;

(*b*) if a party does not return the list within the time specified, all persons named therein shall be deemed acceptable to that party; and

(*c*) from among the persons who have been approved on both lists, and in accordance with the designated order of mutual preference, as far as it is possible, the Authority shall invite the acceptance of an arbitrator to serve.

(4) Where acceptable arbitrators are unable to act, or if for any other reason the appointment cannot be made from the submitted lists, the Authority shall appoint an arbitrator from among other members of the Roster of Arbitrators without submitting the new list to the parties.

(5) Unless the parties otherwise agree, where there are two or more claimants or two or more respondents, the Authority may appoint all the arbitrators.

Number of arbitrators

96. All disputes shall be heard and determined by one arbitrator, unless the Authority, in its discretion, directs that three arbitrators be appointed.

Disclosure

97.—(1) Any person appointed or to be appointed as an arbitrator shall disclose to the Authority any circumstance likely to give rise to justifiable doubt as to the arbitrator's impartiality or independence including any bias or any financial or personal interest in the result of the arbitration or any past or present relationship with the parties or their representatives.

(2) The obligation to disclose shall remain in effect throughout the arbitration.

(3) Upon receipt of such information from the arbitrator or another source, the Authority shall communicate the information to the parties and, if it deems it appropriate to do so, to the arbitrator and others.

(4) In order to encourage disclosure by arbitrators, disclosure of information under this By-law shall not be construed as an indication that the arbitrator considers that the disclosed circumstances is likely to affect impartiality or independence.

Disqualification of arbitrator

98.—(1) An arbitrator shall be impartial, independent and diligent in the performance of his duties and shall also carry out his duties in good faith.

(2) An arbitrator shall be disqualified for—

(*a*) partiality or lack of independence;

(*b*) inability or refusal to perform his duties with diligence and in good faith; or

(*c*) any grounds for disqualification provided for under any written applicable law.

(3) Upon objection of a party to the continued service of an arbitrator, or on its own initiative, the Authority shall determine whether the arbitrator should be disqualified under the grounds set out above and shall inform the parties of its decision which decision shall be binding.

Communication with arbitrator

99. Any party or any person acting on behalf of a party, shall not communicate with an arbitrator or a prospective arbitrator concerning the arbitration without the knowledge of the other party.

Vacancies

100.—(1) If for any reason, an arbitrator is unable to perform his duties and, the Authority is satisfied that this is the case, the Authority shall terminate the services of the arbitrator.

(2) The Authority shall replace the arbitrator in accordance with the provisions of this Part.

(3) Where a vacancy occurs in a panel of arbitrators after the hearing of a matter has commenced, the remaining arbitrator or arbitrators may continue with hearing the matter unless the parties otherwise agree.

(4) In the event of the appointment of a substitute arbitrator, the panel of arbitrators shall determine in its discretion whether it is necessary to repeat all or part of any prior hearings.

Division 3—Conduct of Arbitration Proceedings

Preliminary hearing

101.—(1) At the request of any party or at the discretion of the arbitrator or the Authority, the arbitrator may schedule as soon as practicable a preliminary hearing with the parties or their representatives.

(2) During the preliminary hearing, the parties and the arbitrator shall discuss the future conduct of the case, including clarification of the issues and claims, a schedule for the hearings and any other preliminary matters.

Exchange of information

102.—(1) At the request of any party or at the discretion of the arbitrator, consistent with the expedited nature of arbitration, the arbitrator may direct—

(*a*) the production of documents and other information; and

(*b*) the identification of any witness to be called.

(2) The arbitrator may resolve any disputes concerning the exchange of information.

Date, time and place of hearing

103.—(1) The arbitrator shall set the date, time and place for each hearing.

(2) The parties shall respond to the notice of hearing dates in a timely manner, be cooperative in scheduling the earliest practicable date and adhere to the established hearing schedule.

(3) The Authority shall send a notice of hearing to the parties at least ten (10) days prior to the date of hearing, unless otherwise agreed by the parties.

Confidentiality of hearing

104.—(1) Arbitration sessions shall not be open to the public and only the parties and their representatives may attend arbitration sessions.

(2) Other persons may attend the arbitration only with the permission of the parties and with the consent of the arbitrator.

Representation

105.—(1) Any party may be represented by a legal practitioner or other authorized representative.

(2) A party intending to be represented shall notify the other party and the Authority of the name and address of the representative at least three days prior to the date set for the hearing at which the representative will first appear.

(3) Where such a representative initiates arbitration or responds for a party, notice of representations is deemed to have been given.

Oaths

106.—(1) Each arbitrator shall, before the commencement of the arbitration proceedings take an oath.

(2) The arbitrator may require witnesses to testify under oath administered by any duly qualified person.

Stenographic record

107.—(1) Where a party wants a stenographic record, he shall make arrangements directly with a stenographer and notify the other parties of the arrangements at least three days before the date of hearing.

(2) The requesting party shall pay the cost of the record.

(3) Where the parties agree, or the arbitrator determines that the stenographic record be the official record of the proceedings, the record shall be provided to the arbitrator and made available to the other parties for inspection, at a date, time and place determined by the arbitrator.

Interpreters and language of proceedings

108. Where a party requires an interpreter, he shall make all arrangements directly with the interpreter and shall be responsible of the costs of the service, otherwise all proceedings shall be conducted in English.

Postponement

109. The arbitrator may postpone any hearing upon—

(*a*) mutual agreement of the parties;

(*b*) the request of a party for good cause shown; or

(*c*) the arbitrator's own initiative.

Arbitration in the absence of a party or representative

110.—(1) Arbitration may proceed in the absence of any party or representative who, after due notice, fails to be present or fails to obtain a postponement:

Provided however that an award shall not be made against a party solely on the grounds of the absence of the party.

(2) Where a party is absent during arbitration under the circumstances referred to in paragraph (1), the arbitrator shall require the party who is present to submit such evidence as the arbitrator may require for the making of an award and the arbitrator shall make a decision on the merits of the case.

Conduct of proceedings

111.—(1) A claimant shall present evidence to support its demand and a respondent shall then present evidence to support its response or counterclaim, as the case may be.

(2) Witnesses for each party shall answer questions from the arbitrator and the other party.

(3) The arbitrator may vary this procedure:

Provided that the parties are treated with equality and that each party has the right to be heard and is given a fair opportunity to present its case.

(4) The arbitrator in the exercise of his discretion, shall conduct the proceedings with a view to expediting the resolution of the dispute and may direct the order of proof, order the separation of issues and direct the parties to focus their presentations on issues which could dispose of all or part of the matter.

(5) The parties may agree to waive oral hearings in any case.

Evidence

112.—(1) The parties may offer such evidence as is relevant and material to the dispute and shall produce such evidence as the arbitrator may deem necessary for understanding and determination of the dispute.

(2) Conformity to legal rules of evidence shall not be necessary in the arbitration.

(3) All evidence shall be taken in the presence of all the arbitrators and all of the parties, except where any of the parties is absent, in default or has waived the right to be present.

(4) The arbitrators shall determine the admissibility, relevance and materiality of the evidence offered and may exclude evidence deemed by the arbitrator to be cumulative or irrelevant.

(5) An arbitrator shall take into account applicable legal principles of legal privilege such as those involving the confidentiality of communication between a lawyer and client.

(6) An arbitrator shall have the power to subpoena witnesses and order production of documents and the arbitrator or other person authorized by law to subpoena witnesses or documents may do so upon the request of any party or independently.

Evidence by affidavit, filing of documents or other evidence

113.—(1) An arbitrator may receive and consider the evidence of witnesses by declaration or affidavit, but shall give the evidence only such weight as the arbitrator deems fit after taking into consideration any objection made to its admission.

(2) If the parties agree or the arbitrator directs that documents or other evidence be submitted to the arbitrator after the hearing, the documents or other evidence shall be filed with the Authority for transmission to the arbitrator.

(3) All parties shall be afforded an opportunity to examine and respond to such documents or other evidence.

Inspection or investigation

114.—(1) Where an arbitrator deems it necessary to conduct an inspection or investigation in connexion with the arbitration, he shall direct the Authority to advise the parties accordingly.

(2) The arbitrator shall set the date and time and the Authority shall notify the parties when the inspection or investigation, as the case may be, shall be conducted.

(3) Any party may be present at such an inspection or investigation.

(4) Where one or all parties are not present at the inspection or investigation, the arbitrator shall make an oral or written report to the parties and afford them an opportunity to comment.

Interim measures

115.—(1) An arbitrator may determine whatever interim measures he deems necessary.

(2) Such interim measures may be in the form of an interim award, and the arbitrator may require security for the costs of such measures.

(3) A request for interim measures addressed by a party to a judicial authority shall not be deemed incompatible with the agreement to arbitrate or a waiver of the right to arbitrate.

Closing of hearing

116.—(1) Before the conclusion of an arbitration, an arbitrator shall specifically inquire from all parties whether they have any further evidence or proof to offer or witnesses to be heard.

(2) Upon receiving negative replies or if satisfied that the record is complete, the arbitrator shall declare the hearing closed, however where briefs or submissions are to be filed, the hearing shall be declared closed on the final date set by the arbitrator for the receipt of briefs or submissions.

(3) If documents are to be filed as provided under by-law 113 and the date set for their receipt is later than that set for the receipt of briefs or submissions, the later date shall be the closing date of the hearing.

(4) The time limit within which the arbitrator is required to make the award shall commence, in the absence of other agreements by the parties, upon the closing of the hearing.

Reopening of hearing

117.—(1) The hearing may be reopened on an arbitrator's initiative, or upon an application of a party, at anytime before an award is made.

(2) If reopening the hearing would prevent the making of an award within the specific time agreed by the parties, the matter may not be reopened unless the parties agree on an extension of time.

(3) Where no specific date is fixed, the arbitrator may reopen the hearing and shall make an award within thirty days from the day the reopened hearing was closed.

Waiver of objection

118. Any party who proceeds with the arbitration after the knowledge that any provision or requirement under these By-laws has not been complied with and who fails to object in writing shall be deemed to have waived the right to object.

Extension of time

119.—(1) The parties may modify any period of time by mutual agreement.

(2) The Authority or the arbitrator may, for good cause, extend any period of time established under this Part except the time for making an award and the Authority shall notify the parties of any extension.

Service of notice

120.—(1) Any papers, notices or process necessary or proper for the initiation or continuation of an arbitration under this Part or any court action in connexion therewith or for the entry of judgment on any award made under this Part may be served on a party by mail addressed to the party or its representative at the last known address or by personal service.

(2) Unless otherwise instructed by the Authority or by the arbitrator, any documents submitted by any party to the Authority or to the arbitrator shall simultaneously be provided to the other party or parties to the arbitration.

Division 4—Awards and Follow up Judicial Process

Majority decision

121. Where a panel consists of more than one arbitrator, unless required by any written law or by the arbitration agreement, the decision of the arbitrators shall be that of the majority.

Time of award

122. An award shall be made promptly by an arbitrator and unless otherwise agreed by the parties or specified by law, no later than thirty days from the date of closing the hearing or if oral hearings have been waived from the date of the Authority's transmittal of the final statements, submissions, briefs and proofs to the arbitrator.

Form of award

123.—(1) Any award shall be in writing and signed by the majority of the arbitrators.

(2) An arbitrator need not render a reasoned award unless the parties request such an award in writing prior to appointment of the arbitrator or unless the arbitrator determines that a reasoned award is appropriate.

Scope of work

124.—(1) An arbitrator may grant any remedy or relief that the arbitrator deems just and equitable and within the scope of the agreement of the parties, including specific performance of a contract.

(2) In addition to a final award, the arbitrator may make other decisions, including interim, or partial orders and awards.

(3) In any interim or partial award, the arbitrator may assess and apportion the fees, expenses and compensation related to such award as the arbitrator determines is appropriate.

(4) In the final award, an arbitrator shall assess the fees, expenses and compensation provided in by-laws 131, 132 and 133 and the arbitrator may apportion such fees, expenses and compensation among the parties in such amounts as the arbitrator determines is appropriate.

(5) The award of an arbitrator may include—

(*a*) interest at such rate and from such date as the arbitrator may deem appropriate; and

(*b*) an award of legal practitioner's fees if the parties have requested such an award or it is authorized by law or their arbitration agreement.

Consent award

125.—(1) Where the parties settle their dispute during the course of the arbitration and if the parties so request, an arbitrator may set forth the terms of the settlement in the "consent award".

(2) A consent award shall include an allocation of arbitration costs, including application fees and expenses as well as arbitrator fees and expenses.

Delivery of award to parties

126. Parties to the arbitration shall accept as notice and delivery of an award where the award or a true copy thereof is sent through the mail addressed to the parties or their representatives to their last known addresses, personal or electronic service of the award, or the filing of the award in any other manner that is permitted by law.

Correction of an award

127.—(1) Within twenty days after the transmittal of an award, any party, upon notice to the other parties, may request an arbitrator through the Authority to correct any clerical, typographical, or computational errors in the award.

(2) While the arbitrator is making the corrections, he shall not re-determine the merits of any claim already decided and the other parties shall have ten days to respond to the request for corrections.

Release of documents for judicial proceedings

128. The Authority shall, upon the written request of a party, furnish to the party, at the party's expense, certified copies of any papers in the Authority's possession that may be required in judicial proceedings relating to the arbitration.

Applications to court and exclusion of liability

129.—(1) No judicial proceedings by a party relating to the subject matter of the arbitration shall be deemed a waiver of the party's right to arbitrate.

(2) The Authority or an arbitrator shall not be compelled to be a party or a witness in any judicial proceedings because of their involvement in any arbitration proceedings under this Part.

(3) Parties to an arbitration under this Part shall be deemed to have consented that an arbitration award may be filed in any court of competent jurisdiction.

(4) Parties to an arbitration under this Part shall be deemed to have consented that neither the Authority nor any arbitrator shall be liable to any party in any action for damages or injunctive relief for any act or omission in connexion with any arbitration under this Part.

Division 5—Fees and Expenses

Application of fees

130. A claimant or a respondent in any matter shall pay the application fees prescribed in Part IV of the Third Schedule hereto.

Expenses

131.—(1) The expenses of witnesses for either side shall be paid by the party producing such witnesses.

(2) All other expenses of the arbitration, including required travel and other expenses of an arbitrator, representatives of the Authority and any witness and the cost of any proof produced at the direct request of the arbitrator, shall be borne equally by the parties, unless the parties otherwise agree or unless the arbitrator in an award assesses such expenses or any part thereof against any specific party or parties.

Neutral arbitrator's fees

132.—(1) Any person appointed from the Roster of Arbitrators, other than a member of the Authority, shall be paid the fees specified in the Arbitrator's Roster for that particular arbitrator.

(2) Where there is disagreement concerning the rate of fees, an appropriate rate shall be determined by the Authority together with the arbitrator and the parties shall be informed accordingly.

(3) Any arrangement for the fees, including payment of such fees shall be made through the Authority and not directly between the parties and the arbitrator.

Arbitration fees for member of Authority

133. Where a member of the Authority acts as an arbitrator, the arbitration fees payable shall be those spelt out in Part V of the Third Schedule hereto:

Provided that the non-refundable application fees shall be K20,000.

Deposit

134. The Authority may require the parties to deposit in advance of any hearing such sums of money as it deems necessary to cover the expenses of the arbitration, including the arbitrator's fee, and the Authority shall account to the parties on how the money was spent and return any balance to the parties at the conclusion of the matter.

Suspension for non-payment

135.—(1) If arbitrator's fees or other expenses have not been paid in full by the parties, the Authority shall inform the parties so that one party may advance the required payment.

(2) If the payments are not made, the arbitrator may order the suspension or termination of the proceedings, or if no arbitrator has yet been appointed, the Authority may suspend the proceedings.

Division 6—Miscellaneous Provisions

Interpretation and application of this Part

136.—(1) An arbitrator shall interpret and apply the provisions under this Part insofar as they relate to the arbitrator's powers and duties.

(2) Where there is more than one arbitrator and a difference arises among them concerning the meaning or application of the provisions under this Part, the arbitrators shall decide the matter by a majority vote.

(3) Where the issue is still not resolved, the arbitrators or a party may refer the question to the Authority for final decision.

(4) All other rules in respect to arbitration shall be interpreted and applied by the Authority.

PART IX
Licensees to Supply Information

Licensees to supply required information

137. Every holder of a licence under these By-laws shall provide information to the Authority about any licensed activity it deals with including any information on amounts, prices, specifications in the manner prescribed by the Authority.

PART X
Offences and Penalties

Offences and penalties

138. A person who contravenes any provision of these By-laws commits an offence and on conviction, shall be liable to a fine of K2,000 and to imprisonment for a term of six months.

FIRST SCHEDULE by-law 3

ENERGY REGULATION (LEVY PAYABLE BY ENERGY LICENCE HOLDER UNDER THE ENERGY LAWS)

(1) Levies on Electricity Sales:

One per centum (1%) of basic income on electricity sales.

(2) Levies of Liquid Fuels:

(i) Fossil Fuels—

	Matter	*Levy Payable*
(*a*)	Diesel	37 tambala per litre;
(*b*)	Petrol	41 tambala per litre;
(*c*)	Paraffin	29 tambala per litre;
(*d*)	Aviation fuel	50 tambala per litre
(e)	Jet-Al	50 tambala per litre;
(*f*)	Bitumen	50 tambala per kilogram;
(*g*)	Other organic compounds, pure or blended, which are derived from the refining or processing of crude oils or mixtures of crude oils, or refined from plant organic materials	50 tambala per litre.

(i) Bio-Fuels—

	Matter	*Levy Payable*
(*a*)	Ethanol	50 tambala per litre;
(*b*)	Bio-Diesel	50 tambala per litre; and
(*c*)	Any other product categorized as a bio-fuel	50 tambala per litre.

(3) Levies of Gas:

	Matter	*Levy Payable*
(*a*)	LPG	50 tambala per kilogram;
(*b*)	AV-GAS	50 tambala per litre;
(*c*)	Methane	50 tambala per kilogram;
(*d*)	Ethane	50 tambala per kilogram;
(*e*)	Butane	50 tambala per kilogram;
(*f*)	Propane	50 tambala per kilogram; and
(*g*)	Other similar gases or mixtures of the gases whether in gaseous or liquefied state	50 tambala per kilogram.

(4) Levies of Solid Fuels:

	Matter	*Levy Payable*
(*a*)	Coal	50 tambala per kilogram;
(*b*)	Peat	50 tambala per kilogram; and
(*c*)	Other	50 tambala per kilogram.

(5) Levies of Lubricants:

Matter	*Levy Payable*
Lubricants	50 tambala per litre.

(6) Other products or by-products of crude oil processing having a Flash Point lower than 120°C, determined in a Pen sky-Martens closed test apparatus . . . . 50 tambala per litre.

SECOND SCHEDULE by-law 16

PART I

REPUBLIC OF MALAŴI

ENERGY REGULATION ACT

(Cap. 73:02)

ENERGY REGULATION BY-LAWS

Form ECS 1

Application For Licence

SECTION A

PARTICULARS OF APPLICANT

A.1 Full names of applicant: .....

A.2 Address of applicant, or in the case of a body corporate, the registered office:
.....

A.3 Telephone number of applicant: .....
Fax number: .....

A.4 E-mail address: .....

A.5 Details of the Contact Person:
(*a*) Full Name: .....
(*b*) Telephone number: .....
(*c*) Fax number: .....
(*d*) E-mail address: .....

A.6 Legal personality of applicant: .....

A.7 If the applicant is a company provide the following details—
(*a*) full names of shareholders and their holding percentages;
(*b*) full names and occupation of Directors;
(*c*) Certificate of Incorporation;
(*d*) Memorandum and Articles of Association.

SECTION B

COMMENCEMENT DATE AND PURPOSE OF LICENCE

B.1 Desired date from which the licence (if granted) is to take effect:

.....

B.2 Purpose of licence: .....

B.3 Type of application (issue, transfer, amendment or renewal):

SECTION C

PARTICULARS OF ANY LONG-TERM ARRANGEMENTS WITH ENERGY SUPPLIERS

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.....

Particulars of the contractual arrangements (attach draft contract if in place):

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SECTION D

FINANCIAL INFORMATION

D.1 *Income Statement:*

Provide statements and annual forecasts of sales, revenues and costs. Attach copies of the current or budgeted balance sheet, rate of return, profit and loss account and source and application of funds for current and next two (2) years. Indicate major cost items such as staff costs, transport, etc.

D.2 *Audited Accounts:*

Provide copies of the latest audited accounts of the applicant.

SECTION E

INFORMATION ON HUMAN RESOURCES

E.1 Submit details of the number of staff and employees and their categories and grades in the service of or to be recruited by the applicant, showing their qualifications and number of years of experience in similar jobs.

E.2 Provide *curriculum vitae* of top management personnel of the applicant.

SECTION F

PERMITS FROM OTHER GOVERNMENT DEPARTMENTS OR REGULATORY AUTHORITIES

Submit copies of permits or approvals issued by public or local authority or other regulatory agencies necessary for the operation of the Coal Supply business.

SECTION G

ENVIRONMENTAL CONSIDERATION

G.1 Provide a brief description of the likely negative impact of the Coal Supply business on natural resources and environment and mitigation measures proposed.

G.2 Provide a copy of the approved environmental mitigation plan (if any) by the relevant authority.

SECTION H

PRICES AND CHARGES

Provide a schedule of the proposed prices and charges.

SECTION I

ADDITIONAL INFORMATION

Provide any other relevant information which the applicant wishes to include with this application.

PART II

REPUBLIC OF MALAŴI

ENERGY REGULATION ACT

(CAP.73:02)

ENERGY REGULATION BY-LAWS

FORM ECS 2

LICENCE FOR COAL SUPPLY by-law 16

[No.....]

This Licence is hereby granted to: .....

.....

of (physical address): .....

for the importing/exporting/transporting/storage/selling of coal subject to the conditions prescribed by the Energy Regulation By-laws, 2009, made under the Energy Regulations Act (Cap. 73:02).

This Licence shall expire on the ..... day of ..... next following the date of issue hereof, and may be renewed on application being made for this purpose.

Issued this ..... day of....., 20 .....

.....

for Malaŵi Energy Regulatory Authority

This Licence is issued subject to the Energy Regulation By-laws of which the Licensee admits cognizance.

G.N. 29/2010

THIRD SCHEDULE by-laws 16, 40 and 41

FEES

PART I

FEES PAYABLE UNDER PART IV FOR THE COAL SUPPLY

		K	t
1.	On application for a licence or renewal thereof—		
(*a*)	Wholesale Licence	200,000	00
(*b*)	Distribution Licence	50,000	00
(*c*)	Retailing Licence	20,000	00
(*d*)	Storage Licence	50,000	00
(*e*)	Transportation Licence	50,000	00
(*f*)	Exportation Licence	50,000	00
(*g*)	Importation Licence	200,000	00

	K	t
2. On application for registration for importation and mining of coal for own use or renewal thereof—		
(*a*) importation for own use	30,000	00
(*b*) mining for own use	30,000	00
3. On issue of a licence:		
Applicable to all types of licences considered under Part I of this Third Schedule	5,000	00

PART II

FEES UNDER PART V FOR RENEWABLE TECHNOLOGIES — by-law 43 (5)

1. On application	10,000	00
2. On issue	5,000	00
3. On renewal	10,000	00

PART III

REGISTRATION FEES FOR PRIVATE GENERATION — by-law 66

CAT. I	Less than 20kVA	Nil (Free)
CAT. II	Standby Private Generation 20kVA or above	MK100/kVA with MK 3,000 as a minimum
CAT. III	Base Load Private Generation 20kVA or above . . .	MK150/kVA

PART IV

FEES PAYABLE UNDER PART VII FOR MEDIATION — by-laws 68 and 84

1. Non-refundable fee for initiating mediation . .	4,000 00
2. Mediator's Fees—	*Fees Payable*
(*a*) value of subject matter:	
(i) where the value exceeds K50,000 but does not exceed K100,000	5 per cent, subject to a minimum of K5,000
(ii) where the value exceeds K 100,000 but does not exceeds K500,000	3 per cent, subject to a minimum of K10,000
(iii) where the value exceeds K500,000 but does not exceed K1,000,000	2 per cent, subject to a minimum of K15,000
(iv) where the value exceeds K 1,000,000 and above	1 per cent, subject to a minimum of K20,000 and maximum of K100,000

(*b*) where the value of the matter has not been determined, the rate of fees shall be K2,000 per hour subject to a minimum of K5,000 and a maximum of K100,000.

PART V

FEES PAYABLE UNDER PART VIII FOR ARBITRATION — by-laws 84, 130 and 133

1.	Non-refundable fee for initiating arbitration	K20,000
2.	Arbitrator's Fees—	*Fee Payable*
	(*a*) value of subject matter:	
	(i) where the value exceeds K50,000 but does not exceed K100,000	5 per cent, subject to a minimum of K5,000
	(ii) where the value exceeds K 100,000 but does not exceed K500,000	3 per cent, subject to a minimum of K10,000
	(iii) where the value exceeds K500,000 but does not exceed K1,000,000	2 per cent, subject to a minimum of K15,000
	(iv) where the value exceeds K1,000,000 and above	1 per cent, subject to a minimum of K20,000 and maximum of K100,000

(*b*) where the value of the matter has not been determined, the rate of fees shall be K2,500 per hour subject to a minimum of K5,000 and a maximum of K100,000.

FOURTH SCHEDULE — by-law 40

REPUBLIC OF MALAŴI

ENERGY REGULATION ACT

(CAP. 73:02)

ENERGY REGULATION BY-LAWS

REGISTRATION FORM FOR COAL IMPORTATION FOR OWN USE

FORM ECS 3

SECTION A

PARTICULARS OF APPLICANT

A.1 Full Name of Applicant: .....

.....

A.2 Address of Applicant, or in the case of a body corporate, the registered office:

.....

A.3 Telephone Number of Applicant: .....

A.4 Fax Number: .....

A.5 E-mail Address: .....

A.6 Details of Contact Person:

Full Name: .....

Telephone Number: .....

Fax Number:.....

E-mail Address: .....

A.7 Legal Form of Applicant (specify—company, partnership, individual, cooperative):

.....

A.8 If the applicant is a company provide the following details:

(*a*) full names of shareholders and their holding percentages;

(*b*) full names and occupation of Directors;

(*c*) Certificate of Incorporation;

(*d*) Memorandum and Articles of Association.

SECTION B

COMMENCEMENT DATE, PURPOSE AND DURATION OF REGISTRATION

B.1 Desired date from which the registration (if granted) is to take effect:

.....

.....

B.2 Duration of the registration from commencement date: .....

B.3 Purpose for registration: .....

B.4 Type of application (issue, transfer, amendment or renewal):

.....

.....

SECTION C

INFORMATION ON HUMAN RESOURCES

(*a*) submit details of the number of staff and employees and their categories and grades in the service of or to be recruited by the applicant, showing their qualification and number of years of experience in similar jobs; and

(*b*) provide curriculum vitae of top management personnel of the applicant.

SECTION D

PERMITS FROM OTHER GOVERNMENT DEPARTMENTS OR REGULATORY AUTHORITIES

Submit copies of permits or approvals issued by public or local authority or other regulatory agencies necessary for the operation of the Coal Importation business.

SECTION E

ENVIRONMENTAL CONSIDERATION

Provide a brief description of the likely negative impact of the Coal Importation business on natural resources and environment and mitigation measures proposed.

Provide a copy of the approved environmental mitigation plan (if any) by the relevant authority .....

SECTION F

ADDITIONAL INFORMATION

Please provide any other relevant information which the applicant wishes to include with this application:

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.....

REPUBLIC OF MALAŴI

ENERGY REGULATION ACT

(CAP. 73:02)

ENERGY REGULATION BY-LAWS

REGISTRATION FORM FOR COAL MINING FOR OWN USE by-law 41

FORM ECS 4

SECTION A

PARTICULARS OF APPLICANT

A.1 Full Name of Applicant: .....

A.2 Address of Applicant, or in the case of a body corporate, the registered office:

.....

.....

A.3 Telephone Number of Applicant: .....

A.4 Fax Number: .....

A.5 E-mail Address: .....

A.6 Details of Contact Person:

Full Name: .....

Telephone Number: .....

Fax Number: .....

E-mail Address: .....

A.7 Legal Form of applicant (specify—company, partnership, individual, cooperative):

.....

A.8 If the applicant is a company provide the following—

(*a*) full names of shareholders and their holding percentages;

(*b*) full names and occupation of Directors;

(*c*) Certificate of Incorporation;

(*d*) Memorandum and Articles of Association.

SECTION B

COMMENCEMENT DATE, PURPOSE AND DURATION OF REGISTRATION

B.1 Desired date from which the registration (if granted) is to take effect:

.....

B.2 Duration of the registration from commencement date: .....

B.3 Purpose for registration: .....

B.4 Type of application (issue, transfer, amendment or renewal):

.....

SECTION C

INFORMATION ON HUMAN RESOURCES

(*a*) submit details of the number of staff and employees and their categories and grades in the service of or to be recruited by the applicant, showing their qualifications and number of years of experience in similar jobs.

(*b*) provide curriculum vitae of top management personnel of the applicant.

SECTION D

PERMITS FROM OTHER GOVERNMENT DEPARTMENTS OR REGULATORY AUTHORITIES

Submit copies of permits or approvals issued by public or local authority or other regulatory agencies necessary for the operation of the Coal Mining business.

SECTION E

ENVIRONMENTAL CONSIDERATION

Provide a brief description of the likely negative impact of the Coal Mining business on natural resources and environment and mitigation measures proposed.

Provide a copy of the approved environmental mitigation plan (if any) by the relevant authority.

SECTION F

ADDITIONAL INFORMATION

Please provide any other relevant information which the applicant wishes to include with this application:

.....

.....

FIFTH SCHEDULE by-law 43

G.N. 29/2010

REPUBLIC OF MALAŴI

ENERGY REGULATION ACT

(CAP. 73:02)

ENERGY REGULATION BY-LAWS

FORM ERET 1

LICENCE FOR RENEWABLE ENERGY ACTIVITIES

This Licence is hereby granted to: .....

of (physical address): .....

.....

for the importation and selling/installation and maintenance of renewable energy technologies subject to the conditions prescribed by the Energy Regulation By-laws, made under the Energy Regulation Act (Cap. 73:02).

This Licence shall expire on the ..... day of ..... next following the date of issue hereof, and may be renewed on application being made for this purpose.

Issued this ..... day of ....., 20.....

.....

for Malaŵi Energy Regulatory Authority

This Licence is issued subject to the Energy Regulation By-laws, of which the Licensee admits cognizance.

SIXTH SCHEDULE by-law 63

REPUBLIC OF MALAŴI

ENERGY REGULATION ACT

(CAP. 73:02)

ENERGY REGULATION BY-LAWS

SERVICE AGREEMENT UNDER RENEWABLE ENERGY TECHNOLOGIES

THIS SERVICE AGREEMENT is made the ..... day of ..... , 20.....

Between ..... of ..... (hereinafter referred to as "the Owner") of the one part and ....., (hereinafter referred to as "the Contractor") of the other part:

WHEREAS by an agreement made the .....day of ..... , 20..... Between the ..... (hereinafter referred to as the "Buyer") and the Contractor, the Contractor sold to the Buyer the Renewable Energy Technology Equipment, more fully described in the Schedule attached hereto: WHEREAS the signing of Hand Over and User Agreement will pass the title in the Renewable Energy Technology Equipment to the Buyer;

WHEREAS it is a condition of the said Purchase Agreement that the Contractor and the Buyer shall execute this Service Agreement for the service and maintenance of the said Renewable Energy Technology Equipment;

NOW THEREFORE the Parties to this Agreement hereby agree that:

1. DEFINITIONS

1.1 In this Agreement unless the context otherwise requires—

"additional charges" means the charges to be calculated by the Contractor on a time and material basis at its then prevailing rates in respect of the provision of Exempted Services pursuant to clause 6.3;

"commencement date" means the date set out in the Schedule hereto upon which this Agreement shall commence;

"excepted services" means those services referred to in clause 6 which do not fall within the Maintenance Services;

"Government" means the Department of Energy Affairs or its authorized representative;

"initial period" means the period of twelve months from the commencement date;

"maintenance charges" means the aggregate annual charges for the Maintenance Service calculated in accordance with clause 3.1 below and set out in the Schedule hereto;

"maintenance services" means the provision of preventative maintenance, curative maintenance and other services as defined in clause 4;

"monitoring engineer" means the Authority or its Agents or other body authorized by the Malaŵi Government;

"place of use" means that part of the Buyer's premises at the Site where the Renewable Energy Technology is installed and operated;

"renewable energy technology equipment" means the items of Renewable Energy Technology Equipment identified by type and serial number in the Schedule hereto; and

"site" means the Buyer's address specified in the Schedule hereto.

2. CONTRACTOR'S UNDERTAKING

2.1 In consideration of the payment by the Buyer from time to time of the maintenance charges in accordance with the provisions of clause 3, the Contractor undertakes to provide the Maintenance Services in respect of the Renewable Energy Technology Equipment upon the terms and conditions of this Agreement.

3. MAINTENANCE CHARGES

3.1 The annual maintenance charges at the date hereof in respect of each item of Renewable Energy Technology Equipment shall be as set out in the Schedule. The aggregate of such annual maintenance charges shall constitute the maintenance charges for the purposes of this Agreement.

3.2 The Contractor shall not be entitled to vary the maintenance charges during the period of twelve months commencing on the commencement date.

Thereafter the Contractor shall be entitled to vary the maintenance charges not more than once in every successive period of twelve months upon giving not less than ten days prior written notice of increase to the Buyer.

3.3 Upon receipt of a notice of increase in Maintenance Charges in accordance with clause 3.2 above, the Buyer shall be entitled to terminate this agreement in accordance with clause 12.

3.4 The maintenance chares shall cover two scheduled semi-annual visits to the plant and shall include the cost of travel, accommodation and subsistence expenses of the Contractor (including the cost of time spent travelling) incurred in the provision of the maintenance services plus Contractor's fees and the cost of spare parts replaced due to normal wear and tear during the warrant) period of each such component.

3.5 The service visits shall comprise a comprehensive inspection, and eventual repairs and adjustments of components as deemed necessary to secure continued trouble free operation.

3.6 The maintenance charges shall not include the cost of any exempted services.

3.7 The maintenance charges shall be levied by the Contractor immediately after delivery of services.

3.8 Maintenance charges shall be payable by the Buyer. The Contractor shall send his invoices to the Buyer.

3.9 During renewed period as in clause 10, maintenance charges shall include the cost of spare pails replaced due to normal wear and tear only during the subsistence of the warranty period for the particular component.

4. MAINTENANCE SERVICE

4.1 Maintenance services shall comprise the provision by the Contractor of "preventive maintenance" and "curative maintenance" in respect of the Renewable Energy Technology Equipment at the place of use.

4.2 Preventive maintenance shall comprise—

(*a*) the routine inspection and testing (by attendance on site) by the Contractor of each item of Renewable Energy Technology Equipment in accordance with the Contractor's recommendations thereof; and

(*b*) the carrying out by the Contractor of such repairs replacement of parts worn out due to normal wear and tear, cleaning, and adjustment to each item of Renewable Energy Technology Equipment as the Contractor shall deem necessary as a result of the said inspection and testing.

4.3 Curative maintenance shall comprise—

(*a*) upon receipt of a request from the Buyer, the inspection, testing and diagnosis (by attendance on site) by the Contractor of any fault reported in an item of Renewable Energy Technology Equipment; and

(*b*) the earning out by the Contractor of such repairs, replacement of parts. cleaning and adjustment as the Contractor shall deem necessary to remedy the fault.

5. TIMES FOR MAINTENANCE SERVICES

5.1 Curative maintenance shall be provided upon a request by the Buyer to the Contractor. The Contractor shall use its reasonable endeavors to carry out the curative maintenance within seven days of receipt of such request.

5.2 Preventative maintenance shall be provided by the Contractor at least once every six months.

5.3 If the Contractor persistently tails to carry out curative maintenance within the stipulated seven days, the Government may issue a written warning to the Contractor.

6. EXEMPT SERVICES

6.1 The maintenance services shall not include the correction of any fault due to—

(*a*) the Buyer's neglect or misuse of the Renewable Energy Technology Equipment or his failure to operate the Renewable Energy Technology Equipment in accordance with the Contractor's operation manual or for the purposes for which it was designed;

(*b*) the alteration, modification or maintenance of the Renewable Energy Technology Equipment by any party other than the Contractor without the Contractor's prior consent;

(*c*) any accident or disaster affecting the Renewable Energy Technology Equipment including fire, hood, water, wind, lighting, vandalism or burglary; or

(*d*) the Buyer's failure, inability or refusal to afford the Contractor's personnel proper access to the Renewable Energy Technology Equipment;

6.2 Maintenance services shall also not include additions to the Renewable Energy Technology Equipment.

6.3 The Contractor shall upon request by the Buyer provide all or any of the exempt services referred to in Clauses 6.1 and 6.2 above but shall be entitled to charge for the same by levying additional charges in the manner described in Clause 6.5.

6.4 Without prejudice to the Clause 6.3 above, the Contractor shall be entitled to levy additional charges in the manner described in Clause 6.5 below if maintenance services are provided in circumstances where any reasonable operator of the Renewable Energy Technology Equipment would have judged the Buyer's request to have been unnecessary.

6.5 Additional charges shall be levied by the Contractor by delivering an invoice to the Buyer soon after earning out exempt services and the Buyer shall pay the same within three days from the date of receipt of the invoice.

6.6 All exempt services shall be carried out after getting prior approval from the Buyer.

7. BUYER'S OBLIGATIONS

7.1 The Buyer undertakes to the Contractor throughout the term of this Agreement—

(*a*) to grant the Contractor such access to the place of use as the Contractor shall from time to time reasonably require in order to discharge its obligations hereunder;

(*b*) to make available the place of use such facilities as the Contractor shall reasonably require in order to discharge its obligations hereunder, including adequate work space and storage;

(*c*) to take all reasonable precautions to protect the health and safety of the Contractor's employees, agents and sub-contractors while on the Buyer's site; and

(*d*) to make available the Renewable Energy Technology Equipment and supply all documentation and other information necessary for the Contractor to diagnose any fault in the Renewable Energy Technology Equipment.

8. CONTRACTOR'S WARRANTY

8.1 The Contractor warrants and undertakes to the Buyer—

(*a*) to perform a the maintenance services and any exempt services with reasonable care and skill;

(*b*) to perform any exempt services within a reasonable time after being requested by the Buyer;

(*c*) that he shall have a free and unencumbered title to any replacement parts for the equipment supplied hereunder; and

(*d*) that the Buyer will enjoy quiet possession of any such replacement parts and that the same will be of merchantable quality and reasonably fit for their purpose.

8.2 The Contractor does not warrant that the maintenance services (or any additional services) will cause the Renewable Energy Technology Equipment to operate without interruption or error.

9. REPLACEMENT OF PARTS

9.1 The Contractor shall supply new replacement parts in the performance of its duties hereunder.

9.2 Any parts of the Renewable Energy Technology Equipment replaced by the Contractor pursuant to clause 9.1 above ("replaced parts") shall upon replacement become the property of the Contractor and the Buyer warrants that either it shall have a fee and unencumbered title to such Replaced Parts and/or that he shall have obtained all necessary consents and authorities to part with possession and give good title to the Replaced Parts.

9.3 This Agreement shall not hinder transfer of manufacturers warranty.

10. DURATION OF AGREEMENT

(*a*) this Service Agreement shall commence on the commencement date and shall continue until the expiry of the initial period during which period either party shall not terminate the Agreement; and

(*b*) after the expiry of the initial period, this Agreement may be renewed by mutual agreement of the Parties. However if three months before the expiry date of the initial period or renewed period, the Contractor sends a quotation to the Buyer in respect of maintenance charges for the proposed renewed period and the duration thereof and if the Buyer accepts the quotation, this Service Agreement and all the conditions herein shall be deemed to have been renewed automatically:

Provided that if no duration is specified in the quotation, this Service Agreement shall be deemed to have been renewed for a period of twelve months.

11. MAINTENANCE REPORTS

11.1 The Contractor shall upon carrying out any maintenance work on the Renewable Energy Technology Equipment, prepare a maintenance report and deliver the same to the Buyer.

11.2 The said maintenance reports shall describe in detail the inspection, testing. repairs, the parts replaced, additions and other maintenance work done.

11.3 The Monitoring Engineer may earn out inspection and testing of the Solar Equipment to counter check or verify the finding in the maintenance report.

12. TERMINATION

12.1 Subject to clause 10.1 of this Service Agreement, this Service Agreement max be terminated—

(*a*) by the Buyer upon giving not less than ninety days written notice to the Contractor at any time after the expiry of the Initial Period;

(*b*) forthwith by the Contractor if the Buyer fails to pay the maintenance charges or any additional charges due hereunder within thirty days of the due date thereof; or

(*c*) forthwith by either party if the other commits any material breach of any term of this Agreement (other than one falling within (*b*) above) and which (in the case of breach capable of being remedied) shall not have been remedied within thirty days of a written request by the other parts' to remedy the same.

12.2 Any termination of this Agreement pursuant to this clause shall be without prejudice to any other rights or remedies a party may be entitled to hereunder or at law and shall not affect any accrued rights or liabilities of either party nor the coming into or continuance in force of any provision hereof which is expressly or by implication intended to come into or continue in force on or after such termination.

13. INVALIDITY AND SEVERABILITY

If any court or administrative body of competent jurisdiction shall find any provision of this Service Agreement to be invalid or unenforceability the invalidity or unenforceable, of such provision shall not affect the other provisions of this Service Agreement and all provisions not affected by such invalidity or unenforceable shall remain in full force and effect.

14. SUCCESSORS

This Service Agreement shall be binding upon and endure for the benefit of the successors in title of the parties hereto.

15. ASSIGNMENT

Neither parts shall be entitled to assign this Service Agreement nor all or any of their rights and obligations hereunder without the prior written consent of the other.

16. APPLICABLE LAW AND PLACE OF ARBITRATION

This Service Agreement shall be governed by and construed in accordance with the Laws of Malaŵi and the parties hereto agree to submit to the jurisdiction of Malaŵi Courts and venue of arbitration shall be Blantyre, Malaŵi.

IN WITNESS WHEREOF the authorized representatives of the parties hereto have signed this Service Agreement on the day and year first above written.

Signed: for Buyer
for Contractor

.....	.....
(Name)	(Name)
.....	.....
(Witness)	(Witness)

SEVENTH SCHEDULE by-law 66

REPUBLIC OF MALAŴI

ENERGY REGULATION ACT

(Cap. 73:02)

ENERGY REGULATION BY-LAWS

Form EPOU 1

REGISTRATION FORM FOR PRIVATE ELECTRICITY GENERATION

SECTION A

PARTICULARS OF APPLICANT

A.1 Full name of Applicant: .....

A.2 Address of Applicant, or in the case of a body corporate, the registered office:

.....

.....

A.3 Telephone Number of Applicant: .....

A.4 Fax Number: .....

A.5 E-mail Address: .....

A.6 Details of Contact Person:

Full Name: .....

Telephone Number: .....

Fax Number: .....

E-mail Address: .....

A.7 Legal Form of applicant (specify—company, partnership, individual, cooperative):

.....

(A separate application is required in respect of every installation).

SECTION B

INSTALLATION

(*a*) Total capacity to be installed for the purpose of this licence, Kilowatts comprising the following units—

Capacity of Units	Prime Mover Hydro, Steam, Diesel	If Steam (Wood or coal fired)	Voltage	A.C. or D.C. Phase and Frequency	Age	Date of Installation

(*b*) Indication of capital investment in generating plant (book value).

(*c*) Undertakings Distribution System (if any) (Voltages, length of lines or cables, number and capacity of substations):

.....

.....

.....

SECTION C

OPERATION

(The information given here will be affected by whether the undertaking is connected to the utility, distribution system or not)—

(*a*) normal maximum total electrical load: ..... Kw

(*b*) proportion derived from own plant: ..... Kw

(*c*) proportion derived from Electricity Supply Corporation of Malaŵi: ..... Kw

(*d*) total energy derived from plant for year ending 31st December, 20 ..... Kw

SECTION D

STAND-BY PURPOSES

(Defined as "purpose" of generating electricity for a consumer's own use or business when by reason of technical failure, or for any other reason the utility is for the time being unable to provide an adequate supply of electricity to that consumer"). If the generating plant is not normally in use, all supplies being taken from the utility, the following information is required—

(*a*) time taken to bring plant into commission;

(*b*) is the plant capable of supplying the full load to the undertaking? If not, the proportion should be stated.

SECTION E

BASE LOAD GENERATION

(Defined as "purpose of generating electricity continuously to subsidise electricity from a registered electric utility e.g. ESCOM").

Is the plant going to be used for base load generation? Yes/No:

.....

.....

SECTION F

FUTURE PROGRAMME

(*a*) Is an increase in electrical load expected within the next three years? If so, state extent.

(*b*) Will this increased load be met from—

(i) existing installation;

(ii) the installation of additional plant (if approved);

(iii) an increased demand for supply from the electrical utility.

SECTION G

GENERAL

Any further information relevant to the application should be stated hereunder—

.....

.....

.....

.....

Signed by, for and on behalf of the Applicant: .....

Dated: .....

SECTION H

LICENCE FEES

CAT. I	Less than 20kVA	Nil (Free);
CAT. II	Stand-by Private Generation 20kVA or above	MK100/kVA with MK3,000 as a minimum;
CAT. II	Base Load Private Generation 20kVA or above	MK150/kVA.

SECTION I

OTHER

1. Application by:.....
.....
with regard to the Licence No.: .....
issued to: .....
dated: .....
to—(*a*) increase the rated capacity of the undertaking;
(*b*) otherwise amend the licence;
(*d*) cancel the licence;
(*e*) substitute another licence or licences thereof.
} Strike out where inapplicable.
2. Reasons for the application: .....
.....
.....
3. Signed: ..... Dated: .....

MALAŴI ENERGY REGULATORY AUTHORITY
(MERA)

ENERGY REGULATION ACT

(CAP. 73:02)

ENERGY REGULATION BY-LAWS

FORM EPOU 2

REGISTRATION CERTIFICATE FOR PRIVATE ELECTRICITY GENERATION by-law 66

Issued to: .....
of: ..... (hereinafter called the "private generator").

1. Granting of Certificate of Registration:

   The Malaŵi Energy Regulatory Authority (the "Authority") in exercise of the powers conferred by by-law 66 of the Energy Regulation By-laws hereby issue this Certificate of Registration to: ..... for the generation of electricity.

2. Duration of Registration Certificate:

   This Certificate of Registration shall be valid for one year (or less than one year up to 31st December in the case of initial registration in the middle of the calendar year) and shall be renewed by 1st January of each year and shall continue for a period of one year unless revoked or modified in accordance with the provisions of the Energy Regulation By-laws.

3. Collection of Information:

   The Authority shall be entitled to collect such information from the registered private generator, as it deems necessary.

4. Inspection:

   The Authority is empowered to perform inspections of the equipment of the registered private generator and the Authority or any person authorized by it in writing may enter the premises of the registered private generator and inspect any other plant and machinery which form part of the generation equipment under this Registration Certificate.

5. Prohibition of Transfer of Registration Certificate:

   This Registration Certificate is not transferable without the approval of the Authority.

6. This Registration Certificate is granted under the authority of the Energy Regulation By-laws.

7. For other private generation registration requirements (See behind certificate).

   The Common Seal of the Malaŵi Energy Regulatory Authority was hereunto affixed.

   This ..... day of ..... , 20.....

   .....

   Chief Executive Officer

   Other private generation registration requirements (Reverse of Certificate)

   7.1 Map of the location of the Service Area;

   7.2 Prime Mover;

   7.3 Total capacity installed for the purpose of this Licence (kVA);

   7.4 Service and supply conditions;

   7.5 Installation Permit under the Electricity By-laws.

This Registration Certificate is issued subject to the Registered Private Generator adhering to the relevant requirements under the Electricity By-laws.

EIGHTH SCHEDULE

REPUBLIC OF MALAŴI

ENERGY REGULATION ACT

(CAP. 73:02)

REQUEST FOR MEDIATION FORM

FORM EMR 1

HEADED

IN THE MATTER OF THE ENERGY REGULATION ACT

WHEREAS differences have arisen and are still subsisting Between.....

.....

(AB) of:

Address: .....

.....

Telephone Number: .....

E-mail Address: .....

And

(CD) of:

Address: .....

Telephone Number: .....

E-mail Address: .....

Brief Statement of the nature of differences:

.....

.....

.....

NOW I/WE,* the said AB/CD do hereby agree to refer the said matters for settlement by a mediator appointed by the Authority.

AND I/WE* the said AB/CD hereby appoint the following to be my/our* representative in the said mediation:

Name of Representative: .....

Address: .....

Telephone Number: .....

E-mail Address: .....

Dated the ..... day of ..... , 20.....

.....

AB/CD

* Delete which is inapplicable.

ENERGY REGULATION ACT

(CAP. 73:02)

MEDIATION SETTLEMENT AGREEMENT FORM

FORM EMR 2

HEADED

IN THE MATTER OF THE ENERGY REGULATION ACT

BETWEEN

AB .....

And

CD .....

WHEREAS the parties have agreed following mediation by the Malaŵi Energy Regulatory Authority through ..... (XY), in the matter described in Form EMR 1.

The parties having duly considered the matters summarized by the ..... (XY) and submitted to us.

WE hereby certify that the said terms which are detailed below are agreed:

1. That: .....

2. That: .....

AND, WE, AB and CD. hereby agree to be bound by this Agreement upon signature.

Dated this ..... day of ..... , 20.....

....

AB CD

.....

XY

RURAL ELECTRIFICATION

CHAPTER 73:03

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CHAPTER 73:03

RURAL ELECTRIFICATION

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21 of 2004
G.N. 38/2007

An Act to make provision for the promotion, funding, management and regulation of rural electrification; and for matters connected therewith and incidental thereto

[28TH DECEMBER, 2007]

PART I

PRELIMINARY

Short title

1. This Act may be cited as the Rural Electrification Act.

Interpretation

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

"Authority" means the Malaŵi Energy Regulatory Authority established under section 3 of the Energy Regulation Act; Cap. 73:02

"beneficiary" means a person who procures a credit guarantee under section 18;

"candidate site" means a site included in the rural electrification programme;

"Committee" means the Rural Electrification Management Committee established under section 3;

"Concedante" means the Department of Energy Affairs and any other entity or body as the Minister may designate by notice published in the *Gazette*;

"Concessionaire" means a person who has entered into concession agreement to install, operate or maintain a rural electrification installation on behalf and as agent of a Concedante;

"concession agreement" means a concession agreement concluded between a Concedante and a Concessionaire whereby the Concessionaire agrees to construct, install, operate or maintain a rural electrification installation on behalf and as an agent of the Concedante in accordance with section 27;

"concession area" means an area demarcated in the concession agreement over which a Concessionaire is granted exclusive right to construct, install, operate or maintain a rural electrification installation on behalf of a Concedante;

"Credit Finance Manager" means the Credit Finance Manager appointed under section 19;

"Fund" means the Malaŵi Rural Electrification Fund established under section 12;

"grant and subsidy agreement" means the agreement entered into between the Concedante and the Concessionaire for purposes of channelling funds from the Fund to the Concessionaire for rural electrification and m accordance with section 2;

"grid extension rural electrification" means rural electrification installation that is connected to the interconnected system;

"interconnected system" means the high voltage national electricity system of 66 KV and above, or as may be prescribed by notice in the *Gazette*, including related substations and associated equipment and generation stations to which they are connected and any distribution system connected thereto;

"Malaŵi Bureau of Standards" means the Malaŵi Bureau of Standards established under the Malaŵi Bureau of Standards Act; Cap. 51:02

"management fee" means the fee payable by a Concessionaire to a Concedante in accordance with section 28;

"micro hydropower station" means a hydropower station whose installed generation capacity is not less than 2 KW, but is less than 100 KW;

"mini hydropower station" is a hydropower station whose installed generation capacity is not less than 100 KW, but is less than 500 KW;

"off-grid rural electrification" means rural electrification installation that is not connected to the interconnected system;

"public institutions" includes Government schools, hospitals, clinics, health centres, police stations and other Government offices and institutions;

"renewable energy resources" means solar home system, micro, mini and small hydro-electric power stations, biomas, biogas, wind, and other thermal electricity generation systems and technologies;

"rural electrification" means grid extension or off-grid electrification or renewable energy resources electrification whose internal rate of return is up to 6 per cent per annum and line capacity is lower than 66 KV or generation capacity is up to 5MW;

"rural electrification programme" means the rural electrification programme prepared or compiled in accordance with section 34;

"rural electrification site" means a site where rural electrification installation is in progress or under commercial operation;

"Rural Electrification Unit" means the Rural Electrification Unit in the Department of Energy Affairs;

"small hydropower station" means a hydropower station whose installed generation capacity is not less than 500 KW and up to 5 MW;

"solar home system" means photovoltaic solar home systems technology as contemplated in section 31;

"Solar Home System Purchase, Guarantee and Service Agreement" means the agreement entered into between the Concedante or Purchaser and the Concessionaire or between the Concessionaire and the supplier of solar home system equipment for the purpose of purchase, guarantee and service of the same in accordance with section 32.

PART II
Establishment of Rural Electrification Management Committee

Establishment of the Committee

3. There is hereby established a committee to be known as the Rural Electrification Management Committee (in this Act otherwise referred to as the "Committee").

Composition of the Committee

4.—(1) The Committee shall consist of—

(*a*) the Principal Secretary responsible for energy affairs;

(*b*) the Director of Energy Affairs in the Department of Energy Affairs;

(*c*) the Chief Executive of the Authority or his or her designated representative;

(*d*) the Secretary for Economic Planning and Development;

(*e*) the Secretary to the Treasury;

(*f*) the Secretary for Local Government;

(*g*) a representative of the Board of Engineers; and

(*h*) a representative of the Society of Accountants of Malaŵi.

(2) The Minister shall appoint one of the members of the Committee as Chairperson of the Committee.

Objectives of the Committee

5. The objectives of the Committee shall be—

(*a*) to ensure that the majority of the Malaŵian population in peri-urban and rural communities have access to efficient, sustainable and affordable energy for their social economic development through grid extension and off-grid electricity supply, including solar home system technologies;

(*b*) to raise funds and receive and to administer the Fund for the benefit of rural electrification in Malaŵi;

(*c*) to prepare annual rural electrification programmes and advise the Minister on the prioritization, selection criteria on candidate sites, and ensure the efficient and effective implementation of rural electrification programmes; and

(*d*) to promote rural electrification and act as a source of technical, commercial and institutional advice in rural electrification matters.

Functions of the Committee

6. For purposes of achieving the objectives set out in section 5, the Committee shall carry out the following functions—

(*a*) develop a rural electrification master plan and update it at regular intervals;

(*b*) set criteria for candidate site selection;

(*c*) act as a source of technical, commercial and institutional advice;

(*d*) seek and access donor funding and soft credit for rural electrification;

(*e*) undertake publicity and marketing campaigns on the new approach to rural electrification and the opportunities provided;

(*f*) contract and oversee the construction and management of rural electrification projects;

(*g*) administer the Fund and decide on the allocation of financial resources from the Fund;

(*h*) monitor implementation of rural electrification projects by Concessionaires;

(*i*) carry out or commission studies and research for promoting the development of rural electrification;

(*j*) advise the Authority on the specifications, design and safety standards for rural electrification systems, equipment and technologies;

(*k*) advise the Authority on the prices for solar home system equipment and on the tariffs and maintenance charges for rural electrification;

(*l*) advise the Minister on the appropriate amount to be appropriated by Parliament for the Fund;

(*m*) in liaison with the Authority, carry out evaluations and publish periodic reports of the activities of the Committee;

(*n*) prepare, publish and submit to the Minister audited annual accounts of the Fund; and

(*o*) do all such things as are necessary for achieving the purposes for which the Committee and the Fund are established.

Meetings of the Committee

7.—(1) The Committee shall meet at least once every six months at such place or places and at such time or times as the Chairperson may determine.

(2) The Chairperson shall preside at the meetings of the Committee and, in the absence of the Chairperson, the members present and forming a *quorum* shall elect one of their number to preside over the meeting of the Committee, and the member so elected shall exercise all the powers and functions and perform all the duties of the Chairperson.

(3) At any meeting the decision of the Committee on any matter shall be that of the majority of the members present and at all such meetings the person presiding shall have, in the event of an equality of votes a casting vote in addition to his deliberative vote.

(4) Save as otherwise provided in this section, the Committee shall have power to determine its own procedure of meetings and operating guidelines.

Remuneration and expenses of the Committee

8. The members of the Committee shall be paid from the proceeds of the Fund such allowances as the Minister, on the recommendation of the Committee, may determine, and the Committee shall make provision for the reimbursement of any reasonable expenses incurred by a member of the Committee in connexion with the business of the Committee.

Committee may co-opt advisors

9.—(1) The Committee may in its discretion at any time, and for any length of period, co-opt any person to attend deliberations of the Committee, but such person shall not be entitled to vote on any matter.

(2) The Committee may in its discretion engage any advisor or consultant to carry out any assignment on behalf of the Committee in relation to rural electrification and pay him or her out of the proceeds of the Fund.

Committee to be accountable to the Minister

10.—(1) The Committee shall be responsible and accountable to the Minister for ensuring efficiency, transparency and propriety in—

(*a*) the collection, allocation and utilization of funds of the Fund;

(*b*) the conduct of its business and the performance of its functions and duties; and

(*c*) the operations and activities of the Committee.

(2) The Committee shall at such intervals as the Minister may in writing require submit to the Minister reports and financial statements, in such form as the Minister may determine, regarding the operations and activities of the Committee and the Fund.

Secretariat and staff of the Committee

11.—(1) The Rural Electrification Unit shall provide services and resources to the Committee.

(2) The members of staff of the Rural Electrification Unit shall carry out the day to day work and operations of the Committee as the Committee may, from time to time, require.

(3) The Committee may delegate to the Director of Energy Affairs functions and duties of the Committee and the supervision of the said staff members carrying out the day to day work and operations of the Committee.

(4) Save as otherwise provided in this Act, the Director of Energy Affairs and members of staff of the Rural Electrification Unit shall not be entitled to any additional remuneration by reason only of their carrying out the functions for or of the Committee.

(5) Members of staff of the Rural Electrification Unit or the Department of Energy Affairs may, at the invitation of the Committee, or for purposes of presenting reports attend meetings of the Committee.

PART III

Establishment of Malaŵi Rural Electrification Fund

Establishment of the Fund

12. There is hereby established a Fund to be known as the Malaŵi Rural Electrification Fund (in this Act otherwise referred to as the "Fund") which shall comprise—

(*a*) such sums as shall be appropriated by Parliament for the purposes of the Fund;

Cap. 73:02

(*b*) rural electrification levies on energy sales as may, from time to time, be imposed by the Authority under the Energy Regulation Act;

(*c*) such sums or assets as may, from time to time, accrue to or vest in the Fund by way of grants, subsidies, bequests, donations, gifts and subscriptions from the Government or any person;

(*d*) such sums or assets as may be donated to the Fund by any foreign Government, international agency or other external body of persons, corporate or unincorporate;

(*e*) 50 per cent of penalties and fines payable or imposed under this Act;

(*f*) the proceeds from sale of rural electrification lines and equipment funded by the Fund; and

(*g*) any other income authorized under this Act or income recognized as such by accounting standards and practices.

Purpose of the Fund

13. The proceeds of the Fund shall be used to finance—

(*a*) the capital cost of rural electrification grid extension and off-grid electrification;

(*b*) the capital cost of solar home system equipment to be acquired for public institutions;

(*c*) operational and maintenance costs of rural electrification projects, to the extent to which it makes the project viable;

(*d*) provision of credit guarantees for the capital cost of solar home system equipment other than those to be acquired by a Concessionaire;

(*e*) any monetary contribution required to be made by the Government for the implementation and execution of a donor-funded rural electrification project;

(*f*) the administrative expenses associated with the execution of the duties and functions and responsibilities of the Committee and the management of the Fund;

(*g*) research and consultancy assignments related to rural electrification;

(*h*) expenses for credit guarantee funds management; and

(*i*) compensation for removal of off-grid installations in accordance with section 33.

Advances to the Fund

14.—(1) The Committee shall ensure that in any financial year expenditures and commitments from the Fund shall not exceed the annual income of the Fund.

(2) If, in exceptional circumstances, the income of the Fund together with any surplus income brought forward from a previous year, is insufficient to meet the actual or estimated liabilities of the Committee and rural electrification projects, the Committee may apply to the Minister responsible for finance for an advance to the Fund in order to meet the deficiency or any part thereof and, subject to subsection (3), such advance shall be made on such terms and conditions, whether as to repayment or otherwise, as the Minister responsible for finance may determine.

(3) Every advance made available pursuant to subsection (2) shall be repaid from the income of the Fund in the next financial year following the financial year in which the advance was made available.

Holdings of the Fund

15. All sums received for purposes of the Committee and the Fund shall be paid into one or more banking accounts at such bank or banks or other financial institutions as the Committee may determine, and no amount shall be withdrawn therefrom except under the authority of the Committee and by means of cheque or other authorization signed by such person or persons as are authorized in that behalf by the Committee.

Surplus funds to be invested

16. Any part of the Fund not immediately required for the purposes of the Committee or rural electrification may be invested in such manner as the Committee may, with the prior approval of the Minister, determine.

Disbursements from the Fund

17.—(1) Disbursements of monies from the Fund to a Concessionaire shall be made by the Committee subject to fulfilment of the following conditions—

(*a*) acceptance by the Committee of a business plan of the Concessionaire;

(*b*) where applicable, the conclusion and implementation of the concession agreement by the Concedante and the Concessionaire;

(*c*) proof, acceptable to the Committee, that the proposed installation or equipment complies with the applicable equipment standards, design and performance criteria;

(*d*) proof, acceptable to the Committee, that the Concessionaire has a valid rural electrification licence for the area in question;

(*e*) in the case of final disbursement, proof that the installation or equipment is fully functional, completely installed and operational;

(*f*) in the case of solar home system equipment, additionally, proof that the Authority has approved the equipment supply and service contract price; and

(*g*) that the project has been approved as a priority rural electrification project by the Committee.

(2) The Committee shall not be obliged to disburse monies from the Fund to a Concessionaire and may refuse to do so on breach or non-compliance by the Concessionaire with the provision of the concession agreement or the provisions of this Act or the Energy Regulation Act, or the Electricity Act.

Cap. 73:02
Cap. 73:01

(3) The Committee shall disburse monies from the Fund to a Concessionaire only for rural electrification projects of the highest priority in accordance with the priority listing criteria set down in section 35 and regulations made by the Minister in that regard.

Credit guarantees

18.—(1) The Committee may authorize the provision of a credit guarantee to a beneficiary if—

(*a*) the conditions stated in section 17 (1) (*c*), (*e*) and (*f*) which shall apply *mutatis mutandis*, have been fulfilled; and

(*b*) the Credit Finance Manager has certified that the beneficiary is capable of servicing the credit.

(2) The Committee shall not authorize the provision of a credit guarantee unless the provisions of subsection (1) are complied with.

Appointment of Credit Finance Manager

19. The Minister shall, on the recommendation of the Committee, appoint one or more institutions as a Credit Finance Manager.

20.—(1) For purposes of channeling the funds from the Fund, the Department of Energy Affairs shall enter into a grant and subsidy agreement, in the prescribed form with a Concessionaire for each rural electrification project. Grant and subsidy agreements

(2) In addition to the terms and conditions of the grant and subsidy agreement, the following terms and conditions shall be implied in every grant and subsidy agreement—

(*a*) that the Concessionaire shall use the monies from the Fund for financing the capital costs or operational costs of the rural electrification project specified in the agreement;

(*b*) that disbursements from the Fund shall be made in accordance with progress of works, including a reasonable amount as advance payment as the parties may agree; and

(*c*) that, the Concedante shall grant the Concessionaire exclusive concession for the concession area and shall not disburse any monies to another concessionaire in the same concession area.

PART IV

Financial Provisions

21.—(1) The Committee shall cause to be kept proper books of accounts and other records relating to the Fund. Books of accounts

(2) The Committee shall as soon as possible after the end of each financial year cause to be prepared a statement of the cash flow and income and expenditure of the Fund for that financial year and a balance sheet of the assets and liabilities of the Fund as at the end of that financial year.

(3) The accounts of the Fund shall be audited annually in accordance with the Public Audit Act, before being presented to the Minister in accordance with section 22. Cap. 37:01

(4) The financial year of the Fund shall be a period of twelve months commencing on 1st July in each year and ending on 30th June in the following year:

Provided that the first financial year of the Fund may be a shorter or longer period than twelve months as the Minister may determine, but being not less than six months nor more than eighteen months.

22.—(1) As soon as practicable, but not later than six months after the expiry of each financial year, the Committee shall submit to the Minister an annual report concerning rural electrification and the Fund during that financial year. Annual report

(2) The annual report referred to in subsection (1) shall include—

(*a*) an audited balance sheet and statement of cash flow and income and expenditure;

(*b*) a report of the examination of the accounts referred to in section 21 (3);

(*c*) a status report on rural electrification;

(*d*) a report regarding rural electrification programme for the next financial year;

(*e*) a list of Concessionaires and beneficiaries who have benefitted from the Fund including the provision of any credit guarantee; and

(*f*) a report on the performance of Concessionaires with respect to rural electrification projects in progress, planned and completed.

PART V

Regulation of Rural Electrification

Application of Cap. 73:01 and Cap. 73:02

23. The provisions of the Electricity Act and the Energy Regulation Act shall apply to rural electrification activities under this Act *mutatis mutandis*:

Cap. 73:01 Cap. 73:02

Provided that where the Electricity Act or the Energy Regulation Act are in conflict with the provisions of this Act and the regulations made hereunder, the provisions of this Act and the regulations made hereunder shall prevail over the provisions of the Electricity Act or the Energy Regulation Act as the case may be.

Cap. 73:01 Cap. 73:02

Rural electrification activities to be licensed

24.—(1) No person shall carry on or be engaged in any manner in any rural electrification activity without a licence issued by the Authority.

(2) Separate licences shall be issued for generation, distribution or renewable energy technologies.

(3) Any person required to hold a licence under this Part shall apply to the Authority for a licence.

(4) An application for a licence under this section shall be in the prescribed form.

(5) A licence under this section shall be in the prescribed form.

(6) The Authority shall consider an application for the issue of a licence and may issue or refuse to issue the licence.

(7) The Authority may only issue a licence if it is satisfied that—

(*a*) the applicant has or has access to financial, technical and human resources to enable it install and operate a rural electrification scheme;

(*b*) in the case of solar home system, the applicant or its officers have valid accreditation certificates issued by the Malaŵi Bureau of Standards or other body or agency the Minister may designate by notice in the *Gazette*; and

(*c*) subject to funding from the Fund, the applicant will be able to meet reasonably foreseeable obligations under contracts for sale of electricity within the area covered by his or her licence.

(8) A holder of a generation licence may apply and be granted a distribution licence or renewable energy licence and *vice versa* for off-grid electrification.

Tariffs

25. The tariffs for grid extension or off-grid rural electrification shall be approved by the Authority and shall be set, administered and revised in accordance with the Electricity Act. Cap. 73:01

Safety by-laws Cap. 73:01

26.—(1) The supply, wiring, design and safety by-laws under the Electricity Act shall apply to the grid and off-grid extension rural electrification system:

Provided that in order to ensure that rural electrification schemes are appropriately engineered and costs are minimized, the Authority, on the recommendation of the Committee, may develop and publish in the *Gazette* by-laws regulating the supply, wiring, design and safety standards for rural electrification grid extension or off-grid schemes.

(2) The Authority may, on the recommendation of the Committee, by notice published in the *Gazette* prescribe minimum codes of practice and design specification standards for solar home system equipment for rural electrification.

Concession agreements

27.—(1) Where the execution of a rural electrification project is to be carried out by a Concessionaire, there shall be executed a concession agreement between the Concedante and the Concessionaire in the prescribed form.

(2) For purposes of subsection (1) the Concedante shall demarcate the concession area and grant the Concessionaire exclusive right to establish, operate and maintain a rural electrification scheme or schemes and sell electrical energy to customers in the concession area.

(3) The electricity tariffs and charges by the Concessionaire under a rural electrification project shall be set at the rate as approved by the Authority.

(4) The Concessionaire shall submit to the Concedante within sixty days of the end of the Concedante's financial year an annual report of the rural electrification activities in the concession area.

Concession management fee

28.—(1) The Concedante shall be entitled to be paid by the Concessionaire a concession fee to cover the monitoring and management costs and costs of channelling monies from the Fund to the Concessionaire and also costs of identifying and demarcating the concession area.

(2) The amount of the management fee referred to in subsection (1)—

(*a*) shall be agreed upon between the Concedante and the Concessionaire and approved by the Authority; and

(*b*) may be reviewed annually by the Authority on application by the Concedante or the Concessionaire.

Duration of concession agreement

29. A concession agreement shall remain in force for a period of up to twenty years as long as the Concessionaire complies with the provisions thereof and this Act or any other relevant written law.

Implied terms and conditions in concession agreement

30. There shall be implied in every concession agreement the following terms and conditions—

(*a*) no monies from the Fund shall be payable to the Concessionaire if the Concessionaire operates outside the concession area unless the parties agree otherwise before hand;

(*b*) provided the Concessionaire has complied with the provisions of the concession agreement, the Concedante shall be obliged to forthwith pass on the approved monies from the Fund to the Concessionaire; and

(*c*) the concession agreement shall come into force upon the successful conclusion of the grant and subsidy agreement between the Concedante and Concessionaire.

Solar home system agreements

31. Where the rural electrification is by means of solar home system technologies, the Concedante and the Concessionaire and the supplier of the equipment shall enter into the Solar Home System Purchase Guarantee and Service Agreement in the prescribed form.

Ownership of lines and equipment

32.—(1) All rural electrification lines and equipment installed or acquired with funding from the proceeds of the Fund shall be owned by the Government represented by the Concedante for each rural electrification project.

(2) A Concessionaire shall not transfer or cede any rural electrification line or equipment installed or acquired with funding from the proceeds of the Fund to any person without the written consent of the Concedante.

(3) In the case of sale of any rural electrification line or equipment installed or acquired with funding from the proceeds of the Fund the proceeds of such sale shall be appropriated to the Fund.

Grid power coming to off-grid system

33.—(1) When the interconnected system extends to an off-grid electrification area, the consumers in that area shall have an option of either continuing with the off-grid electrification system or connecting to the interconnected system.

(2) If a consumer referred to in subsection (1) elects to connect to the interconnected system, the Concessionaire shall have the option of either removing the off-grid installation or connecting such installation to the interconnected system, where technically feasible, for purposes of feeding into such system, subject to the approval of the owner and operator of the interconnected system, and in either case without any penalty to the consumer.

(3) The cost of connecting to the interconnected system or adjusting the off-grid system to make it compatible with the interconnected system shall be financed from the proceeds of the Fund on the same terms as other rural electrification projects.

(4) Where a Concessionaire, referred to in subsection (2), decides to remove the off-grid installation—

(*a*) the Concessionaire shall move the installation to another area to be agreed between the Concedante and Concessionaire;

(*b*) the Concedante shall define a new or extend existing concession area for the Concessionaire without additional charge to the Concessionaire; and

(*c*) the Concessionaire shall be compensated for the costs involved in the removal and reinstallation of the rural electrification installation and any consequential damages thereof out of monies from the Fund.

(5) The quantum of compensation under subsection (4) (*c*) shall be determined by the Committee, and shall be subject to the approval of the Authority.

(6) If the licensee was holding a generation and distribution licence or renewable energy licence he or she shall surrender the other licences and remain with only one licence if he or she will be a licensee in the interconnected system.

PART VI

Management of Rural Electrification Activities

Annual rural electrification programme

34.—(1) Every Concessionaire shall, at least six months before the commencement of the Committee's financial year, submit to the Committee an annual rural electrification programme in such form and containing such details as the Committee shall specify and the programme shall contain an estimated cost of such rural electrification programme.

(2) The Committee shall compile a rural electrification programme which shall—

(*a*) specify the amounts allocated for grid extension, off-grid electricity supply and solar home system electricity supply and include an annual budget for rural electrification;

(*b*) prepare a candidate site priority list in accordance with the criteria laid down in section 35.

(3) The Committee shall submit to the Minister the annual rural electrification programme and the budget for approval.

Priority listing of projects

35.—(1) Each project in the rural electrification programme shall be assessed by the Committee, for technical, financial, economic, environmental and social feasibility and only those projects that are proved to be technically, financially, economically, socially and environmentally feasible shall qualify for funding from the Fund.

(2) The rural electrification project with the highest internal rate of return shall be placed at the top of the priority list of rural electrification projects:

Provided that where a Concessionaire or consumers are able and willing to contribute up to 20 per cent of the capital cost of the project for grid or off-grid electrification or up to 50 per cent for renewable energy project such a project will gain additional priority on the priority list.

Promotion of rural electrification

36. The Committee shall take steps and do all things necessary to promote, attract, encourage, facilitate and market rural electrification in Malaŵi and in particular shall—

(*a*) conduct civic education to the peri-urban and rural population on the advantages of and opportunities available in rural electrification services and technologies;

(*b*) conduct market research on the acceptance or satisfaction of rural electrification customers with rural electrification technologies and services for purposes of attracting potential customers to rural electrification;

(*c*) provide to potential customers, investors, concessionaires, donors, beneficiaries, and all others, information regarding rural electrification in Malaŵi;

(*d*) develop and promote a favourable image of rural electrification for Malaŵi;

(*e*) undertake rural electrification promotion missions within and outside Malaŵi;

(*f*) recommend to the Minister changes in the statutory and administrative framework which act as barriers to the promotion of rural electrification in Malaŵi and make representations against or regarding any changes to such statutory or administrative framework;

(*g*) develop and promote strategies aimed at building confidence among various stakeholders in rural electrification services and technologies;

(*h*) develop and promote strategies aimed at ensuring the sustainability of rural electrification in Malaŵi;

(*i*) develop and promote strategies aimed at increasing the access to energy sources by the majority of the peri-urban and rural population in Malaŵi and raise their living standards and empower women as key players in energy matters at household level; and

(*j*) do all such things as are necessary and conducive to the achievement of the objectives of this Act.

Committee to monitor rural electrification

37.—(1) The Committee shall monitor, through reports or site visits, the implementation and operation of rural electrification projects and schemes for purposes of ensuring that the Concessionaires are implementing the rural electrification projects or operating the rural electrification schemes in accordance with the grant and subsidy agreement, the concession agreement, this Act, the Energy Regulation Act or the Electricity Act.

Cap. 73:02
Cap. 73:01

(2) A Concessionaire found to be in breach of his or her obligations as set out in subsection (1) shall be notified by the Committee in writing on the nature of the breach and the Concessionaire shall be requested to remedy the breach, if capable of remedy, within thirty days of receipt of such notice.

(3) Where a Concessionaire fails to remedy the breach notified in accordance with subsection (2), the Committee shall take any of the following actions, as the case may be—

(*a*) withhold further disbursements from the Fund;

(*b*) recommend to the Malaŵi Bureau of Standards for cancellation of the accreditation certificate, where applicable; and

(*c*) recommend to the Authority to take action in accordance with this Act, the Energy Regulation Act or the Electricity Act.

Cap. 73:02
Cap. 73:01

Reports of rural electrification

38. A Concessionaire shall submit to the Committee reports in such form and containing such information as the Committee shall determine as follows—

(*a*) an initial rural electrification plan and budget for the next financial year in accordance with section 34;

(*b*) implementation progress reports at least quarterly, detailing progress of each rural electrification project, special attention being paid to cases where the cost estimate changes significantly as the project develops;

(*c*) project completion report containing such details and information as the committee may specify; and

(*d*) one year after completion, an evaluation report on the success and failures of the project and any special issues that may have arisen.

PART VII

Miscellaneous

Offences

39.—(1) Any person who contravenes any provisions of this Act shall be guilty of an offence.

(2) It shall not be a defence to an offence under this Act that proceeds or assets of the Fund have been appropriated for the benefit of the public.

Penalties

40. Any person who is guilty of an offence under this Act shall be liable to a fine of K5,000,000 and to imprisonment of ten years.

Regulations

41. The Minister may, by notice published in the *Gazette*, make regulations for the better carrying into effect of this Act.

SUBSIDIARY LEGISLATION

RURAL ELECTRIFICATION REGULATIONS

ARRANGEMENT OF REGULATIONS

REGULATION

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2. Application of Energy Laws

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LICENCES

3. Rural electrification licence

PART III

TARIFFS, CHARGES AND FEES

4. Electricity tariffs and charges
5. Renewable energy technologies system prices and charges
6. Licensing fees

PART IV

CONCESSION AND GRANT SUBSIDY AGREEMENTS

7. Form of a grant and subsidy agreement
8. Form of a concession agreement
9. Termination of licence
10. Form of a solar home system purchase agreement
11. Form of a solar home system service agreement

PART V

RURAL ELECTRIFICATION SITE SELECTION AND FUNDING

12. Site selection and funding
13. Rural electrification projects
14. Funding

PART VI

MISCELLANEOUS PROVISIONS

15. Mandatory use of Forms
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SCHEDULES

First Schedule —Application Forms and Form of Licences

Second Schedule—Licence Fees

Third Schedule—Prescribed Forms for Agreements

Fourth Schedule— Procedure and Criteria for Rural Electrification sites selection

G.N. 6/2009
22/2010

RURAL ELECTRIFICATION REGULATIONS

under s. 41

PART I

Preliminary

Citation

1. These Regulations may be cited as the Rural Electrification Regulations.

Application of Energy Laws

2. These Regulations shall apply to the Energy Laws with respect to—

(*a*) carrying out rural electrification electricity licensed activities and all consumers serviced by such licences under the Electricity By-laws under the Electricity Act:

Cap. 73:01

Provided that the Authority, on the application of a licensee, may approve other standards or designs in respect of a particular consumer or concession area, if such standards or designs are cheaper and shall not compromise quality and safety under the Electricity Act;

Cap. 73:01

(*b*) carrying out renewable technologies licensed activities under the Energy Regulation By-laws under the Energy Regulations Act.

Cap. 73:02

PART II

Licences

Rural electrification licence

3.—(1) No person shall carry out any activity under the Act except—

(*a*) under a licence granted under the Electricity Act and any by-laws made thereunder; or

Cap. 73:01

(*b*) under a licence granted under the Energy Regulation Act and any regulations made thereunder.

Cap. 73:02

(2) An application for a licence under these Regulations (1) (*a*) and (*b*) shall be in Form RE 1 prescribed in the First Schedule hereto.

(3) The rural electrification licences under these Regulations shall be in Form RE 3 and RE 4 prescribed in the First Schedule hereto.

PART III
Tariffs, Charges and Fees

4. The charges or tariffs for electricity supply to be charged by licensees under these Regulations shall be those approved by the Authority for such particular licensee under the Electricity Act and as revised from time to time.

Electricity tariffs and charges Cap. 73:01

5. The equipment prices and the maintenance charges to be charged by licensees for renewable energy technologies equipment supply, installation and maintenance thereof shall be those approved by the Authority under the Energy Regulation Act.

Renewable energy technologies system prices and charges Cap. 73:02

6. Licensing fees under these Regulations shall be those prescribed in the Second Schedule hereto.

Licensing fees

PART IV
Concession, Grant and Subsidy Agreements

7. A grant and subsidy agreement under section 20 of the Rural Electrification Act shall be in Form RE 5 prescribed in the Third Schedule.

Form of a grant and subsidy agreement Cap. 73:03

8.—(*a*) A concession agreement under section 27 of the Rural Electrification Act shall be in Form RE 6 prescribed in the Third Schedule hereto;

Form of a concession agreement Cap. 73:03

(*b*) a concession agreement shall have general obligations which shall form part of the agreement.

9. A licence issued under a concession agreement shall terminate three months after the termination or expiration of the concession.

Termination of licence

10. A solar home system purchase agreement under the Energy Regulations Act shall be in Form RE 7 prescribed in the Third Schedule hereto.

Form of a solar home system purchase agreement Cap. 73:02

Form of a solar home system service agreement Cap. 73:02

11.—(*a*) A solar home system service agreement under the Energy Regulation Act shall be in Form RE 8 prescribed in the Third Schedule hereto;

(*b*) a solar home system service agreement shall have general obligations binding the buyer and licensee which shall form part of the agreement.

PART V

Rural Electrification Site Selection and Funding

Site selection and funding

12. The Rural Electrification Management Committee shall comply with the procedures and criteria for rural electrification site selection and funding guidelines prescribed in the Fourth Schedule hereto when compiling a priority list for sites:

Provided that, where the Committee wishes to make minor alterations to the prescribed criteria, it shall seek the approval of the Authority before making such minor alteration.

Rural electrification projects

13. A project for rural electrification under these Regulations shall be—

(*a*) for the extension of 400v, 11kV and 33kV distribution lines from the national grid;

(*b*) for the a construction of an isolated mini, micro and small hydropower station and associated substations and distribution reticulation; or

(*c*) for the supply and installation of renewable energy technologies.

Funding

14. The Malaŵi Rural Electrification Fund shall provide capital costs funds for projects under these Regulations:

Provided that operational costs for the project from the Fund shall not exceed an amount that shall make the project's internal rate of return reach up to six per cent (6%).

PART VI

Miscellaneous Provisions

Mandatory use of forms

15. The use of forms prescribed herein is mandatory, unless the Authority approves modification to such forms.

General offences and penalties

16.—(1) Any person or licensee who contravenes any provision of these Regulations commits an offence and shall, on conviction, be liable to a fine of K2,000 and to imprisonment for six months.

(2) In addition to the penalties prescribed for the offences under these Regulations, a court may also order that the guilty person repay any expenses incurred by the Authority or any other person as a consequence of the offence.

FIRST SCHEDULE reg. 3 (2)

REPUBLIC OF MALAŴI

RURAL ELECTRIFICATION ACT

(Cap. 73:03)

Form RE 1

Application For Electricity Generation Licence For Rural Electrification

SECTION A

PARTICULARS OF APPLICANT

A.1 Full name of Applicant: .....

A.2 Address of Applicant, or in the case of a body corporate, the registered office:
.....
.....

A.3 Telephone Number of Applicant: .....

A.4 Fax Number: .....

A.5 E-mail Address: .....

A.6 Details of Contact Person:
Full Name: .....
Telephone Number: .....
Fax Number: .....
E-mail Address: .....

SECTION B

PARTICULARS OF A GENERATION LICENCE ISSUED UNDER THE ELECTRICITY ACT BY THE AUTHORITY

B.1 Date from which the licence became effective:
.....

B.2 Duration of the licence from the effective date: .....

B.3 Purpose for which the licence was issued: .....

B.4 Location of the existing licensed generation station(s): .....

B.5 Reference number for the existing generation licence: .....

SECTION C

COMMENCEMENT DATE, PURPOSE AND DURATION OF THE RURAL ELECTRIFICATION LICENCE

C.1 Desired date from which the licence (if granted) is to take effect:

.....

C.2 Duration of the licence from commencement date: .....

C.3 Purpose for which electricity is to be generated: .....

C.4 Type of application (issue, transfer, amendment or renewal): .....

SECTION D

PARTICULARS OF GENERATING STATION

(To be provided for each generating station separately)

D.1 Name of generating station: .....

D.2 Location of generating station: .....

D.3 Address of generating station: .....

.....

D.4 Details of Contact Person:

Full Name: .....

Telephone Number: .....

Fax Number: .....

E-mail Address: .....

D.5 Type and age of generation station (thermal, nuclear, hydro, pumped storage, gas turbine, diesel generator, solar, wind or other including equipment description):

.....

D.6 Date on which the generating station was commissioned for an existing station or the expected commissioning date for a proposed station:

.....

D.7 The installed capacity of each unit within the generating station (MW):

.....

D.8 Life span of each generating station: .....

D.9 Maximum generating capacity (MW) expected to be available from the generating station and energy to be produced (kWh):

	Maximum kWh	Total kWh	Own use (kWh)	For sale (kWh)
YEAR 1				
YEAR 2				
YEAR 3				
YEAR 4				
YEAR 5				
YEAR 6				
YEAR 7				

D.10 Estimate of the energy conversion efficiency of—

(*a*) Turbine: .....

(*b*) Generator: .....

(*c*) Estimated overall station: .....

SECTION E

PARTICULARS OF ANY LONG-TERM ENERGY SUPPLY ARRANGEMENTS

(To be provided for each generating station separately)

E.1 Name of transmission company: .....

E.2 Particulars of the contractual arrangements (attach draft contract if in place):

.....

.....

.....

.....

SECTION F

GENERATION BUSINESS

(To be provided for each generating station separately)

F.1 Details of proposed major maintenance programmes, including the expected cost and duration thereof, covering the next five years:

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F.2 Details of major generating station rehabilitation and modifications dates, cost and description for the next five years:

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F.3 Details of generating station expansion, dates, cost and description:

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F.4 Particulars of power sales agreements and tariffs therein:

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F.5 Particulars of anticipated outages and duration thereof as a result of F.1 and F.2 above:

.....

.....

.....

.....

.....

SECTION G

FINANCIAL INFORMATION

G.1 Income Statement:

Provide statements and annual forecasts of sales, revenues and costs. Attach copies of the current and/or budgeted balance sheet, rate of return, profit and loss account and source and application of funds for current and next two years. Indicate major cost items such as staff costs, maintenance.

G.2 Investment Programme:

Investment Programme for current and the next five years. Attach copies of detailed scheme or schemes prepared by a competent engineer and mode and cost of financing such a scheme.

G.3 Fixed Assets:

Summary of total assets of all generating plant.

G.4 Audited Accounts:

Provide copies of the latest audited accounts of the applicant.

G.5 Letters of Reference from Banks:

Provide one letter of recommendation as to credit worthiness from a local commercial bank and one from a reputable international bank.

SECTION H

INFORMATION ON HUMAN RESOURCES

H. Personnel:

(*a*) submit details of the number of staff and employees and their categories and grades in the service of or to be recruited by the applicant, showing their qualifications and number of years of experience in similar jobs.

(*b*) Provide *curriculum vitae* of top management personnel of the applicant.

SECTION I

ENVIRONMENTAL CONSIDERATION

1.1 Provide a brief description of the likely negative impact of the generation facility on natural resources and environment and mitigation measures proposed.

1.2 Provide a copy of the approved environmental mitigation plan (if any) by the relevant authority.

SECTION J

PERMITS FROM OTHER GOVERNMENT DEPARTMENTS OR REGULATORY AUTHORITIES

Submit copies of permits or approvals issued by public or local authority or other regulatory agencies necessary for the operation of the generating plant.

SECTION K

ADVERTISING NOTICE

K. Attach draft copy of the notice of advertisement as to representations or objections.

SECTION L

TARIFFS

Provide a schedule of the proposed tariffs.

SECTION M

ADDITIONAL INFORMATION

Provide any other relevant information which the applicant wishes to include with this application:

.....

.....

.....

.....

.....

.....

Signed: ..... Date: .....

Receipt acknowledged by: ..... Date: .....

MERA Stamp

REPUBLIC OF MALAŴI

RURAL ELECTRIFICATION ACT

(Cap. 73:03)

Form RE 2

Application for Electricity Distribution Licence for Rural Electrification

SECTION A

PARTICULARS OF APPLICANT

A.1 Full name of Applicant: .....

A.2 Address of Applicant, or in the case of a body corporate, the registered office:

.....

.....

A.3 Telephone Number of Applicant: .....

A.4 Fax Number: .....

A.5 E-mail Address: .....

A.6 Details of Contact Person:

Full Name: .....

Telephone Number: .....

Fax Number: .....

E-mail Address: .....

SECTION B

PARTICULARS OF A DISTRIBUTION LICENCE ISSUED UNDER THE ELECTRICITY ACT BY THE AUTHORITY

B.1 Date from which the licence became effective:

.....

B.2 Duration of the licence from the effective date: .....

B.3 Purpose for which the licence was issued: .....

B.4 Area to which the existing licence relates: .....

B.5 Reference number for the existing distribution licence: .....

SECTION C

COMMENCEMENT DATE, PURPOSE AND DURATION OF LICENCE

C.1 Desired date from which the licence (if granted) is to take effect:

.....

C.2 Duration of the licence from commencement date: .....

C.3 Description of the purpose for which a supply is to be distributed:

.....

C.4 Type of application (issue, transfer, amendment or renewal): .....

SECTION D

AREA TO WHICH THE APPLICATION RELATES

D.1 Provide sufficient information (map, etc.) of the area or areas to which the application relates:

.....

.....

.....

.....

D.2 Provide a list of local authorities covered by the area of distribution:

.....

.....

.....

.....

.....

SECTION D

TECHNICAL INFORMATION

Submit single line diagram(s) of the system by means of which the applicant intends to supply electricity. Identify any parts of that system which will not be in possession or control of the applicant. The diagram should show the applicant's points of supply (input).

E.1 Domestic metering details:

Number of customers on— . . . . . Prepayment metering;
Convectional credit metering;
Ripple control load limiting devices;
AMR metering system.

E.2 Commercial metering details:

Number of customers on— . . . . . Convectional credit metering, prepayment metering;
Maximum demand metering;
AMR metering.

E.3 Special Agreements:

Number of customers on . . . . . Maximum demand metering;
Time of day metering.

E.4 Transformer Capacity:

		Number	Ages	(kVA) Capacity
E.4.1	Power transformers (kV)			
E.4.2	Distribution transformers			

E.5 Lines:
Total circuit length (Km) when commissioned

E.5.1	Distribution Lines 66 kV (if not part of Transmission			
E.5.2	Distribution Lines 33 kV			
E.5.3	Distribution Lines 11 kV			
E.5.4	400/230 Volts			

E.6 Cables:
Total circuit length (Km) when commissioned

E.6.1	Distribution Cables 33 kV			
E.6.1	Distribution Cables 11 kV			
E.6.1	Distribution Cables LV/MV			

SECTION F

DISTRIBUTION BUSINESS

F.1 General:

Provide projected details of the following—

	Year 1	Year 2	Year 3	Year 4	Year 5
Number of consumers					
Total kWh Sales					
Total energy (kWh) purchased					
Percentage kWh losses					

F.2 Provide details of long-term power purchase agreements:

.....

.....

.....

.....

F.3 Attach details of proposed tariff structure for each category of consumers:

.....

.....

.....

F.4 Provide details of your policy regarding capital contribution, connexion and reconnexion charges, inspection charges, etc.:

.....

.....

.....

.....

.....

F.5 Provide details of proposed major maintenance programmes including expected cost and duration thereof covering the next five years:

.....

.....

.....

.....

.....

F.6 Consumer Profile:

Tariff	Number of Consumers				Sales (kWh)				Total Revenue (K'000)					Growth Rate Consumer Nos./ Sales
	Year 1	Year 2	Year 3	Year 4	Year 1	Year 2	Year 3	Year 4	Year 1	Year 2	Year 3	Year 4	Average Consumer Numbers	Average Sales Growth
Domestic Urban														
Domestic Rural														
General														
Maximum Demand (Low voltage)														
Maximum Demand (Medium voltage)														
Optional Demand (Off-peak)														

F.7 Provide details of major rehabilitations and modifications and dates, costs and description thereof for the next five years:

.....

.....

F.8 Details of distribution expansion programme including dates, and description:

.....

.....

.....

.....

SECTION G

FINANCIAL INFORMATION

G.1 Income Statement:

Provide statements and annual forecasts of sales, revenues and costs. Attach copies of the current and/or budgeted balance sheet, rate of return, profit and loss account and source and application of funds for current and next two years. Indicate major cost items such as staff costs, maintenance.

G.2 Investment Programme:

Investment Programme for current and the next live years. Attach copies of detailed scheme or schemes prepared by a competent engineer and mode and cost of financing such a scheme.

G.3 Fixed Assets:

Summary of total assets of all distribution plant.

G.4 Audited Accounts:

Provide copies of the latest audited accounts of the applicant.

G.5 Letters of Reference from Banks:

Provide one letter of recommendation as to credit worthiness from a local commercial bank and one from a reputable international bank.

SECTION H

INFORMATION ON HUMAN RESOURCES

Personnel:

(*a*) submit details of the number of staff and employees and their categories and grades in the service of or to be recruited by the applicant, showing their qualifications and number of years of experience in similar jobs.

(*b*) Provide *curriculum vitae* of top management personnel of the applicant.

SECTION I

ENVIRONMENTAL CONSIDERATION

Provide a brief description of the likely negative impact of the distribution facility on natural resources and environment and mitigation measures proposed.

SECTION J

PERMITS FROM OTHER GOVERNMENT DEPARTMENTS OR REGULATORY AUTHORITIES

Submit copies of permits or approvals issued by public or local authority or other regulatory agencies necessary for the operation of the distribution system.

SECTION K

ADVERTISING NOTICE

Attach draft copy of the notice of advertisement as to representations or objections.

SECTION L

TARIFFS

Provide a schedule of the proposed tariffs.

SECTION M

ADDITIONAL INFORMATION

Provide any other relevant information which the applicant wishes to include with this application:

.....

.....

.....

.....

Signed: ..... Date: .....

Receipt acknowledged by: ..... Date: .....

MERA Stamp

FORM RE 3

RURAL ELECTRIFICATION ACT

(CAP. 73:03)

GENERATION AND DISTRIBUTION LICENCE reg. 3 (3)

[No. .....]

This Licence is hereby granted to: .....

.....

of ..... for the generation and/or distribution of electricity (delete whichever is inapplicable at .....

....., subject to the conditions prescribed by the Rural Electrification Regulations and those mentioned below, made under the Rural Electrification Act.

This Licence shall expire on the ..... day of ..... next following the date of issue hereof, and may be renewed on application being made for this purpose.

Issued this ..... day of ....., 20.....

.....

for Malaŵi Energy Regulatory Authority

1. This Licence is issued subject to the Rural Electrification Regulations of which the Licensee admits cognizance.
2. This Licence is not transferable without the approval of the Authority.

FORM RE 4

RURAL ELECTRIFICATION ACT

(CAP. 73:03)

RENEWABLE ENERGY TECHNOLOGIES LICENCE

[No. .....]

This Licence is hereby granted to: .....

.....

of .....

for the importation, sale, installation and/or maintenance of renewable energy technologies

equipment (delete whichever is inapplicable) at.....

..... , subject to the conditions prescribed by the Rural Electrification Regulations and those mentioned below, made under the Rural Electrification Act.

This Licence shall expire on the ..... day of ..... next following the date of issue hereof, and may be renewed on application being made for this purpose.

Issued this ..... day of ....., 20.....

.....
for Malaŵi Energy Regulatory Authority

1. This Licence is issued subject to the Rural Electrification Regulations of which the Licensee admits cognizance.
2. This Licence is not transferable without the approval of the Authority.

SECOND SCHEDULE reg. 6

G.N. 22/2010

LICENCE FEES

TABLE I

Matter	*Fee* K	t
1. For rural electrification electricity licensed activity—		
(*a*) on application	20,000	00
(*b*) on issue	5,000	00
(*c*) on renewal	20,000	00
(*d*) on amendment	10,000	00
(*e*) on transfer	20,000	00
2. For a combined distribution licence—		
(*a*) CAT I—Small Hydro power station and associated distribution reticulation	250,000	00
(*b*) CAT II—Mini Hydropower station and associated distribution reticulation	150,000	00
(*c*) CAT III—Micro Hydro power station and associated distribution reticulation	75,000	00
3. For a licence for exporting of electricity—		
(*a*) CAT I—for voltage up to 33 kV	250,000	00
(*b*) on amendment	20% of export fees	

THIRD SCHEDULE reg. 7

PRESCRIBED FORMS FOR AGREEMENTS

FORM RE 5

RURAL ELECTRIFICATION ACT

(CAP. 73:03)

GRANT AND SUBSIDY AGREEMENT

THIS GRANT AND SUBSIDY AGREEMENT is made on the ..... day of ..... , 20..... BETWEEN the Malaŵi Government represented by the Department of Energy Affairs (hereinafter referred to as the Government) on the one part

AND ..... of ..... (hereinafter referred to as "the Concedante") on the other part.

WHEREAS the Government through the Rural Electrification Unit is willing and desirous to give a grant and subsidy out of the Malaŵi Rural Electrification Fund to the Concedante for the installation of rural electrification system which is more fully described in the First Schedule hereto (hereinafter referred to as "the Project").

AND WHEREAS the Concedante is willing and is able to carry out the project or to enter into a Concession Agreement with a Concessionaire to carry out the Project.

NOW THEREFORE the parties hereby agree as follows—

1. In consideration of the Concedante carrying out the Project, the Government shall grant to the Concedante a grant and subsidy in the sum of K ..... (Malaŵi Kwacha (hereinafter referred to as "the Funds") for purposes of financing the capital cost of the Project and operational cost of the Project as the Rural Electrification Management Committee (hereinafter referred to as "the Committee") may approve.
2. The Funds shall be disbursed to the Concedante upon the Concedante fulfilling the conditions set out in the Rural Electrification Act.
3. The Funds shall be disbursed to the Concedante in accordance with progress of work on the Project and in accordance with the disbursement schedule set out in the Second Schedule hereto.
4. The Grant and Subsidy shall be a once off payment to the Concedante for each Project and shall be used solely for payment of the capital costs of the Project, provided that for operational cost of the Project, the funds may be disbursed monthly over a period as the Committee may approve.
5. In the case where there is a Concessionaire, the Concedante shall not pay the Funds or any part thereof to another Concessionaire other than the Concessionaire granted exclusive rights in the concession area as demarcated in the Concession Agreement, a copy of which Concession Agreement is attached hereto.

FIRST SCHEDULE

DESCRIPTION OF THE PROJECT

SECOND SCHEDULE

DISBURSEMENT SCHEDULE FOR THE FUNDS

IN WITNESS WHEREOF the authorized representatives of the parties hereto have hereunto signed this Grant and Subsidy Agreement the day and year first above written.

Signed for the Government in the presence of:

Witness: .....

Address: .....

Occupation: .....

Signed for the Concedante in the presence of:

Witness: .....

Address: .....

Occupation: .....

FORM RE 6

reg. 8

RURAL ELECTRIFICATION ACT

(CAP. 73:03)

CONCESSION AGREEMENT

THIS CONCESSION AGREEMENT is made the ..... day of....., 20.....

BETWEEN .....

of .....

(hereinafter referred to as "the Concedante") of the one part AND .....

.....of .....

(hereinafter referred to as "the Concessionaire") of the other part.

WHEREAS the Government through the agency of the Concedante is willing and desirous to give a grant and subsidy for the installation, operation and maintenance of rural electrification installation;

AND WHEREAS the Concessionaire is desirous to provide the services for the installation, operation and maintenance of rural electrification installation and has agreed with the Concedante to enter into this Concession Agreement.

NOW THEREFORE this Agreement witnesseth as follows—

1. The Concessionaire shall carry out the installation operation and maintenance of rural electrification system in the concession area demarcated in the First Schedule hereto and shall not charge consumers any tariffs or charges other than those specified in the Second Schedule hereto or as may be revised in accordance with the Energy Regulation Act (Cap.73:02) and the Act.

2. This Concession Agreement is subject to the provisions of the Rural Electrification Act and the regulations made thereunder.
3. The Concessionaire shall pay to the Concedante a management fee of K..... (Malaŵi Kwacha) per annum payable quarterly in advance provided that the said management fee shall be subject to revision with the approval of the Malaŵi Energy Regulatory Authority.
4. This Concession Agreement may not be transferred in whole or in part, by the Concessionaire, without the prior written approval of the Concedante.
5. Where the Concession Agreement has been terminated by the Concedante, the concession may be granted to any other person the Concedante may deem fit, after approval of the Rural Electrification Management Committee and the Malaŵi Energy Regulatory Authority and after consultation with creditors. Any compensation to the Concessionaire shall be determined by the parties and approved by the Malaŵi Energy Regulatory Authority.
6. The Concessionaire shall be solely liable for the installation, operation and maintenance of the rural electrification system and shall operate the same solely and exclusively and for the account of the Concessionaire.
7. Each of the parties shall ensure that their contractors, subcontractors, consultants and agents, and each of their respective permitted assigns and successors, hold in confidence all documents and other information whether technical or commercial, which are of a confidential nature supplied to it by or on behalf of the other party relating to the Concession and shall not publish or otherwise disclose or use the same for its own purpose, other than as may be required to perform its obligations under this Concession Agreement.
8. The provisions of the clause 8 herein shall survive the termination of this Concession Agreement but shall expire and be of no further effect from the fifth anniversary of the date of termination of this Concession Agreement.
9. The Concessionaire's obligations under this Concession Agreement include—
   (*a*) to carry out the service of supplying electricity and renewable energy technologies in such a way as to best serve the interests and needs of customers (both existing and future) and for the benefit of Malaŵi's economic and social development;
   (*b*) to utilize the grant and subsidy for the intended purpose and in accordance with the Rural Electrification Act and the Grant and Subsidy Agreement;
   (*c*) not to remove any installation from the concession area without the prior written consent of the Concedante and to ensure that at all times each system is identifiable;
   (*d*) to carry out the Concessionaire's obligations under this Concession Agreement so long as it remains in force;
   (*e*) to allow the Concedante to enter any installation for purposes of verifying if the Concessionaire is complying with this Concession Agreement and the Rural Electrification Act;

(*f*) to supply electricity or renewable energy technologies as the case may be, within the concession area to all Consumers who are prima facie able to pay for the services charged by the Concessionaire, provided that the grant and subsidy received by the Concessionaire is enough to cover all such supply of energy;

(*g*) to cooperate with other suppliers of electricity with regard to national and regional plans and operation of electricity supply systems;

(*h*) not to reduce or terminate supply of electricity or remove the installation except in accordance with—

(i) the Rural Electrification Act;

(ii) the Electricity Act;

(iii) the Energy Regulation Act;

(iv) this Concession Agreement; and

(v) the contract for supply of electricity entered into between the Concessionaire and a consumer;

(*i*) not to charge consumers any other tariffs or charges that have not been agreed in accordance with the Act, and as varied from time to time in accordance with the provisions thereof;

(*j*) to submit to the Concedante within sixty days of the end of each financial year an annual report on all relevant parts of the operation including, but not limited to—

(i) actual and target total number of installations for each month;

(ii) year end projection of installations for the next financial year; and

(iii) any particulars as may be specified by the Concedante;

(*k*) to maintain full and proper records of all its activities and to make the same available to the Concedante and the Authority and their servants at any reasonable times including—

(i) complete records of maintenance and repair activities including dates, personnel and the contractors involved and the costs thereof where these can be reasonably calculated or estimated;

(ii) particulars of the physical locality and the identification of all installations in terms of which a grant or subsidy has been granted; and

(iii) any other records as may reasonably be required by the Concedante or the Authority to properly monitor the activities of the Concessionaire;

(*l*) to indemnify the Concedante and its employees for all liabilities arising out of the installation operation and maintenance of the rural electrification installation; and

(*m*) in the case of solar home system, to enter into the solar home system purchase agreement and solar home system service agreement with the supplier as prescribed in the Rural Electrification Regulations.

10. This Concession Agreement may be terminated by the Concedante following the occurrence of any one or more of the following events—

(*a*) material suspension by the Concessionaire of rural electrification activities which do not result from a force majeure event;

(*b*) repeated refusal by the Concessionaire to permit the due exercise of inspection, monitoring and supervision operations;

(*c*) refusal by the Concessionaire to undertake the appropriate maintenance and repair of the rural electrification installations;

(*d*) the charging by the Concessionaire of tariffs at a rate in excess of that which has been fixed under this Concession Agreement and as varied from time to time with the consent of the Authority;

(*e*) bankruptcy of the Concessionaire;

(*f*) unauthorized transfer or assignment of the Concession Agreement by the Concessionaire;

(*g*) breach of the Electricity Act, the Energy Regulation Act, the Rural Electrification Act or other material breach of this Concession Agreement; and

(*h*) material deviation by the Concessionaire from the purpose of the Concession: Provided that the Concession Agreement shall not be terminated if the Concessionaire has taken appropriate remedial action within thirty (30) days of being given notice of intention to terminate by the Concedante.

12. The Concession Agreement may be terminated—

(*a*) by the Concessionaire, on giving three months written notice following material violation of the grant and subsidy agreement in the non payment of grant and subsidy:

Provided that such violation has resulted in such infringement or such prejudice that the Concessionaire is unable to install, operate or maintain the rural electrification system on an economical basis in part or in whole; or

(*b*) after twenty years for rural electrification electricity and five years for renewable energy technologies or as specified in the Concession Agreement which ever occurs first.

FIRST SCHEDULE

DEMARCATION OF CONCESSION AREA

SECOND SCHEDULE

CONSUMER TARIFFS AND CHARGES

IN WITNESS WHEREOF the authorized representatives of the parties hereto have hereunto signed this Concession Agreement the day and year first above written.

Signed for the Concedante in the presence of:

Witness: .....

Address: .....

Occupation: .....

Signed for the Concessionaire in the presence of:

Witness: .....

Address: .....

Occupation: .....

FORM RE 7

RURAL ELECTRIFICATION ACT

(CAP. 73:03)

SOLAR HOME SYSTEM PURCHASE AGREEMENT reg. 10

THIS SOLAR HOME SYSTEM PURCHASE AGREEMENT is made on the..... day of ..... , 20....., BETWEEN ..... of ..... (hereinafter called "the Buyer'), of the one part, AND ..... of ..... (hereinafter called 'The Contractor"), of the other part.

WHEREAS the Contractor submitted a quotation dated the ..... day of ...., 20..... for the Solar Home System works at the request of the Buyer; and

WHEREAS the Buyer has accepted the said quotation.

NOW THEREFORE the parties agree as follows—

1. The following documents shall be deemed to form and construed as an integral part of this Agreement and in case of discrepancies, the following sequence of priority shall govern among the documents—
   (*a*) Appendix A — General Conditions;
   (*b*) Appendix B — Scope of works, Technical Specifications and Description of the Works including Drawings;
   (*c*) Appendix C — Forms:
      (i) Form C1 — Commissioning Certificate Form; and
      (ii) Form C2 — Warranty Transfer Form or Warranty Guarantee;
   (*d*) Appendix D — Site Map;
   (*e*) Contractor's Quotation; and
   (*f*) Solar Home Service Agreement.
2. Any changes, modifications or amendments to the Agreement shall be made only by mutual consent in writing between the Buyer and the Contractor and approved by the quality committee of the Rural Electrification Management Committee, which changes, modifications or amendments shall constitute an integral part of the Agreement.
3. For the avoidance of doubt, it is hereby agreed that the Contractor's signing of the Solar Home Service Agreement is a condition precedent to the effectiveness of this Contract.

4. For and in consideration of the payments to be made by the Buyer in accordance with the provisions of clause 7 hereof, the Contractor shall fully and faithfully furnish all labour, plant, and materials, and complete the works in accordance with the above mentioned documents, appendices attached to the documents or on file in the office of the Buyer, and the quotation of the Contractor, deliver, install, test and commission at Buyer's premises the Solar Home System described in Appendix B, including a verbal instruction, on location, in operating the system. Further, the Contractor shall hand over to the Buyer the following documents—
   (*a*) Commissioning Certificate;
   (*b*) Operation Manual for the system;
   (*c*) Solar Home Service Agreement, signed by both Contractor and Buyer; and
   (*d*) Warranty Guarantee or Certificate, including Warranty Transfer Agreement transferring of manufacturer's product guarantee to Buyer.
5. The Installation Site shall be the Buyer's premises at .... District and more fully described in Appendix D attached hereto.
6. The Contract price for the works is K..... (Malaŵi Kwacha).
7. The Buyer shall pay the Contractor in local currency for the latter's satisfactory performance of this Agreement, in accordance with the provisions of the Agreement Documents, and on the basis of the Contractor's lump sum quotation in the following manner—
   (*a*) 30% to be paid by the Purchaser upon signing this Agreement and 70% to be paid upon completion of the works; and
   (*b*) payment of the said 70% will be made within fourteen days from the date of receipt of certified and approved certificate and invoices plus the delivery of the documents specified in the clause 9 hereunder.
8. This Agreement is subject to the provisions of the Rural Electrification Act and the regulations made thereunder.
9. The Contractor shall commence the Works specified in this Agreement within fourteen days after signing of the Agreement and payment of the deposit and shall complete the same within ..... days counted from the date of commencement and based on the following programme of events:

Date	*Event*
.....	Signing of Contract and Service Agreement.
.....	Presentation to the Purchaser of invoice on first installment.
.....	Payment to Contractor of 1st instalment.
.....	Delivery, installation and commissioning of equipment, issuing and handing over to Buyer of Commissioning Certificate, Operation Manual, Guarantee Certificate, Warranty Transfer Agreement, etc.
.....	Presentation of invoice on second instalment.
.....	Payment to Contractor of the second and Final Instalment.

10. Should the Contractor fail to complete the Works under this Agreement within the period specified in this Agreement, plus any extension of time that may be granted under the provisions of this Agreement, the Contractor shall pay the Buyer 0.1% of the contract price per each day of delay up to a maximum of 10% of the contract price.

11. If any term or condition of this Agreement is held invalid or contrary to the law, the validity of the other terms and conditions hereof shall not be affected thereby.

12.—(*a*) The Buyer shall give the Contractor free access to his premises to the extent necessary for the Contractor to install, test and commission the Solar Home System described in Appendix B. The Buyer shall reasonably prepare his premises for the installation, and shall personally attend the installation in order to discuss with the Contractor's installation crew, the exact location of lamps and other equipment. In case the buyer is unable to attend the installation, he shall send a duly identified and authorized person to represent him.

(*b*) The Buyer shall cover any additional costs incurred as a result of the Buyer's unnecessary obstruction of installation.

(*c*) The Buyer's general obligations under the Solar Home Service Agreement shall be provided for in every renewable energy technologies system service agreement as follows—

(i) to grant the licensee such access to the premises as the licensee shall from time to time reasonably require in order to discharge its obligations hereunder;

(ii) to make available at the premises such facilities as the licensee shall reasonably require in order to discharge its obligations hereunder including, without limitation, adequate work space and storage;

(iii) to take all reasonable precautions to protect the health and safety of the licensee's employees, agents and sub-contractors while on the Buyer's Site; and

(iv) to make available the renewable energy technologies equipment and supply all documentation and other information necessary for the licensee to diagnose any fault in such Equipment.

(*d*) that the Buyer shall have a free and unencumbered title to any replaced parts for the Equipment replaced during service.

(*e*) The Buyer shall report to Police any theft of the Solar Home System Equipment immediately after the incident and submit a copy of the police report to the Contractor.

13.—(*a*) The licensee's general obligations shall be provided for in every renewable energy technologies system service agreement as follows—

(i) to perform the Maintenance Services and any other services with reasonable care and skill; and

(ii) to perform any Excepted Services within a reasonable time of being so requested by the Buyer;

(*b*) that the licensee will enjoy possession of any such replacement parts and that the same will be of merchantable quality and reasonably fit for their purpose.

14. The Contractor shall execute the Warranty Assignment in Form C2 of Appendix C attached hereto, assigning the Contractor's benefit of the manufacturer's Warranty for the Solar Panel to the Buyer and shall also deliver the Manufacturer's Warranty to the Buyer. The Contractor shall also execute a Warranty guarantee for the battery and charger in favour of the Buyer. It is further agreed that the signing and delivery of the Warranty Assignment for the Solar Panel and the signing and delivery of the Warranty Guarantee for the battery and charger is a prerequisite for the payment of the final installment.

15. The procedural law for arbitration is the Energy (Renewable Technologies) By-laws under the Energy Regulation Act.

For the Buyer: .....

Address .....

Malaŵi .....

The Contractor: .....

Address .....

Malaŵi .....

IN WITNESS WHEREOF, the parties hereto have signed this Agreement the day and the year first written above.

Signed for the Buyer in the presence of:

Witness: .....

Address: .....

Occupation: .....

Signed for the Contractor in the presence of:

Witness: .....

Address: .....

Occupation: .....

APPENDIX A

GENERAL CONDITIONS

The general conditions of the contract—Appendix A shall be those forming the "Short form of Contract" First Edition 1999, prepared by the Federation Internationale des Ingenieurs—Conseils (FIDIC) subject to the variations and additions set out in the contract.

A copy of the published "Short Form of Contract" may be inspected at the office of the Department of the Energy Affairs at .....

Or purchased from:

FIDIC
P O Box 86
CH-1000 LAUSANE
12 Chaily
SWITZERLAND
e-mail: FIDICpobox.com

APPENDIX B

Scope of works, Technical specifications and description of the works including Drawings.

APPENDIX C

FORMS

FORM C 1

COMMISSIONING CERTIFICATE

This certificate establishes that today ..... 20..... the *Seller* has installed on site, started up, tested and handed over to *Buyer* the *Equipment and Services* uniquely described underneath, and that the *Buyer*, after having satisfied himself that the *Scope of Work* specified in the *Purchase Agreement* of....., 20..... has been supplied in full, take final delivery of the said

Equipment and Services.

Buyer's Name: .....
Address: .....
.....
Seller's Name: .....
Address: .....
.....
Lead Technician's Name: .....
Installation Site Address: .....
.....
Equipment:
Type of System: .....
System name: .....
Size/rating: .....
Type Approval No.: .....

Key Components:

Item	*Make*	*Type*	*Serial Number*
.....	.....	.....	.....

Other deliveries:

Verbal instruction in daily operation
Operation Manual
Service Agreement (signed)
Warranty Agreement
Warranty Transfer Agreement

Signed: ..... Signed: .....
(Buyer) (Seller)

FORM C2

THIS WARRANTY ASSIGNMENT is made the ..... day of....., 20.....

BETWEEN ..... of

.....

(hereinafter referred to as "the Buyer") of the one part AND .....

of ..... (hereinafter referred to as "the Contractor") of the other part.

WHEREAS under and by virtue of a sale agreement dated the ..... day of ....., 20..... and made between the Contractor and the Buyer the Contractor sold the Solar Home System Equipment more fully described in the Schedule hereto to the Buyer;

WHEREAS the Contractor is the beneficial owner of the Manufacturer's Warranty for the Solar Panel of the said Solar Home System equipment.

WHEREAS it was a condition of the sale agreement that before final payment for the said Solar Home System Equipment, the Contractor should assign to the Buyer the benefit of the said Manufacturer's Warranty for the said Solar Home System Equipment;

WHEREAS it was a condition of the sale agreement that the Contractor undertakes to grant a warranty guarantee of all components of the Solar Home System Equipment which do not have the Manufacturer's Warranty more fully described in the Schedule hereto to the Buyer.

NOW THEREFORE this Agreement witnesseth as follows—

1. In pursuance of the aforesaid sale agreement, the Contractor as beneficial owner hereby assigns to the Buyer the Manufacturer's Warranty for the said Solar Home System Equipment's Solar Panel battery and charge controller which has been granted to the Contractor together with the Buyer's full right, title and interest therein and all rights of action powers and benefits accruing or belonging to the Contractor.

2. The Contractor will at the request and cost of the Buyer join with the Buyer in any proceedings for and do all such acts and things as may be reasonably required for enforcing the said Manufacturer's Warranty during the duration of that warranty.
3. The Contractor further warrants the Solar Home System Equipment before, during and after the transfer or installation of the said equipment for a period of ..... to the Buyer.

SCHEDULE

Solar Home System Equipment Particulars:

Type: .....

Serial No: .....

Duration of Warranty: .....

Site: .....

(to be repeated for each component).

IN WITNESS WHEREOF the authorized representatives of the parties hereto have signed this Warrant) Assignment on the day and year first above written.

Signed for the Buyer in the presence of:

Witness: .....

Address: .....

Occupation: .....

Signed for the Contractor in the presence of:

Witness: .....

Address:.....

Occupation: .....

APPENDIX D

SITE MAP

FORM RE 8

RURAL ELECTRIFICATION ACT

(CAP. 73:03)

SOLAR HOME SYSTEM SERVICE AGREEMENT reg. 11

THIS SERVICE AGREEMENT is made the ..... day of ....., 20.....

BETWEEN .....

of.....(hereinafter called "the Buyer") on the one part AND .....

..... of ..... (hereinafter called "the Contractor") on the other part.

WHEREAS by an agreement made the ..... day of ....., 20..... BETWEEN the Buyer AND the Contractor, the Contractor sold to the Buyer the Solar Home System Equipment more fully described in the Schedule attached hereto.

WHEREAS it was a condition of the said Solar Home System Purchase Agreement that the Contractor and the Buyer shall execute this Service Agreement for the service and maintenance of the said Solar Home System Equipment.

NOW THEREFORE this Service Agreement witnesseth as follows:

1. In this Agreement unless the context otherwise requires—

"additional charges" means the charges to be calculated by the Contractor on a time and material basis at its then prevailing rates in respect of the provision of Excepted Services pursuant to clause 5 (*c*) below;

"commencement date" means the date set out in the Schedule hereto upon which this agreement shall commence;

"solar home system equipment" means the items of Solar Home System Equipment identified by type and serial number in the Schedule hereto;

"excepted services" means those services referred to in clause 5 below which do not fall within maintenance services;

"initial period" means the period of twenty-four months commencing on the Commencement Date;

"maintenance charges" means the aggregate annual charges for the Maintenance Services calculated in accordance with clause 3 below and set out in the Schedule hereto;

"maintenance services" means the provision of Preventative Maintenance, Curative Maintenance and other services as defined in clause 4 below;

"monitoring engineer" means the Malaŵi Bureau of Standards or other body authorized by the Malaŵi Government;

"place of use" means that part of the Buyer's premises at the Site where the Solar Home System Equipment is installed and operated;

"regulator" means the Malaŵi Energy Regulatory Authority or its authorized representative; and

"site" means the Buyer's address specified in the Schedule hereto.

2. In consideration of the payment by the Buyer from time to time of the Maintenance Charges in accordance with the provisions of clause 3 below, the Contractor undertakes to provide the Maintenance Services in respect of the Solar Home System Equipment upon the terms and conditions of this Service Agreement.

3. The annual maintenance charges at the date hereof in respect of each item of Solar Home System Equipment shall be as set out in the Schedule. The aggregate of such annual maintenance charges shall constitute the maintenance charges for the purposes of this Service Agreement—

(*a*) The Contractor shall not be entitled to vary the maintenance charges during the period of twenty-four months commencing on the Commencement Date. Thereafter the Contractor shall be entitled to vary the maintenance charges not more than once in every successive period of twelve months upon giving not less than ninety days prior written notice of increase to the Buyer. But such increase shall be subject to the approval of the Malaŵi Energy Regulator) Authority.

(*b*) Upon receipt of a notice of increase in maintenance charges in accordance with paragraph (*a*) above, the Buyer shall be entitled to terminate this Service Agreement in accordance with clause 12 below.

(*c*) The maintenance charges shall cover two scheduled semi annual visit to the plant and shall include the cost of travel, accommodation and subsistence expenses of the Contractor (including the cost of time spent travelling) incurred in the provision of the maintenance services plus Contractor's fees and cost of spare parts replaced due to normal wear and tear during the warrant} period of each such component.

(*d*) The service visits shall comprise a comprehensive inspection, and eventually repairs and adjustments of components as deemed necessary to secure continued trouble free operation.

(*e*) The maintenance charges shall not include the cost of any Excepted Services.

(*f*) The maintenance charges shall be levied by the Contractor annually in advance. Maintenance charges shall be payable by the Buyer and the maintenance charges for the initial period shall be included in the purchase price for the equipment.

(*g*) During renewed period provided for in clause 10 maintenance charges shall include cost of spare parts replaced due to normal wear and tear only during the subsistence of the warranty period for the particular component.

4.—(*a*) Maintenance services shall comprise the provision by the Contractor of

"Preventative Maintenance" and "Curative Maintenance" in respect of the Solar Home System Equipment at the place of use.

(*b*) Preventative maintenance for the purposes of this Service Agreement shall comprise—

(i) the routine inspection and testing (by attendance on Site) by the Contractor of each item of Solar Home System Equipment in accordance with the Contractor's recommendations therefor; and

(ii) the carrying out by the Contractor of such repairs replacement of parts worn out due to normal wear and tear, cleaning, lubrication or adjustment to each item of Solar Home System Equipment as the Contractor shall deem necessary as a result of the said inspection and testing.

(*c*) Curative maintenance for the purposes of this Service Agreement shall comprise—

(i) upon receipt of a request from the Buyer the inspection testing and diagnosing (by attendance on Site) by the Contractor of any fault reported in an item of Solar Home System Equipment; and

(ii) the carrying out by the Contractor of such repairs replacement of parts cleaning, lubrication or adjustment as the Contractor shall deem necessary to remedy the said fault.

(*d*) The times for maintenance services under this Service Agreement shall be—

(i) curative maintenance will be provided upon a request by the Buyer to the Contractor. The Contractor shall use its reasonable endeavours to carry out the Curative Maintenance within forty-eight hours of receipt of such request;

(ii) preventative maintenance shall be provided by the Contractor at least once every twelve months; and

(iii) if the Contractor persistently fails to carry out curative maintenance within the stipulated forty-eight hours the Monitoring Engineer may withdraw the Contractor's accreditation and the Authority may cancel its licence.

5. The following shall form part of the services expected to be carried out under this Service Agreement—

(*a*) The maintenance services shall not include the correction of any fault due to—

(i) the Buyer's neglect or misuse of the Solar Home System Equipment or his failure to operate the Solar Home System Equipment in accordance with the Contractor's instruction manuals or for the purposes for which it was designed;

(ii) the alteration modification or maintenance of the Solar Home System Equipment by any party other than the Contractor without the Contractor's prior consent;

(iii) any accident or disaster affecting the Solar Home System Equipment including without limitation, fire, flood, water, wind, lightening, transportation, vandalism or burglary; or

(iv) the Buyer's failure, inability or refusal to afford the Contractor's personnel proper access to the Solar Home System Equipment.

(*b*) maintenance services shall also not include additions to the Solar Home System Equipment.

(*c*) The Contractor shall, upon request by the Buyer, provide all or any of the Excepted Services referred to in clause 5 (*a*) and (*b*) above but, shall be entitled to charge for the same by levying additional charges in the manner described in Clause 5 (*e*) below.

(*d*) Without prejudice to clause (*b*) above, the Contractor shall be entitled to levy additional charges in the manner described in clause (*e*) below, if maintenance services are provided in circumstances where any reasonable operator of the Solar Home System Equipment would have deemed the Buyer's request to have been unnecessary.

(*e*) Additional charges shall be levied by the Contractor by delivering an invoice to the Buyer soon after carrying out Excepted Services and the Buyer shall certify the same for payment and forward to the Lender who shall pay the same within fourteen days from the date of receipt of the certified invoice.

6.—(*a*) The Buyer's general obligations shall be provided for under the Service Agreement in every renewable energy technologies system service agreement as follows—

(i) to pay for the service charges in accordance with this Service Agreement;

(ii) to grant the licensee such access to the premises as the licensee shall from time to time reasonably require in order to discharge its obligations hereunder;

(iii) to make available at the premises such facilities as the licensee shall reasonably require in order to discharge its obligations hereunder including without limitation adequate work space and storage;

(iv) to take all reasonable precautions to protect the health and safety of the licensee's employees, agents and sub-contractors while on the Buyer's Site;

(v) to make available the renewable energy technologies equipment and supply all documentation and other information necessary for the licensee to diagnose any fault in such equipment; and

(vi) that the licensee shall have a free and unencumbered title to any replaced parts for the equipment replaced during service.

7. The licensee's general obligations which shall be provided for in even renewable energy technologies system service agreement are—

(*a*) to perform the Maintenance Services and any other services with reasonable care and skill;

(*b*) to perform any Excepted Services within a reasonable time of being so requested by the Buyer; and

(*c*) that the Buyer will enjoy quiet possession of any such replacement parts and that the same will be of merchantable quality and reasonably lit for their purpose.

8. The Contractor does not warrant that the Maintenance Services (or the Additional Services) will cause the Solar Home System Equipment to operate without interruption or error.

9. The Contractor shall at all times provide insurance cover (at his cost and as part of the price for the equipment) for the supply, installation and operation of the Solar Home System Equipment against fire, lightening, storm, flood, theft and vandalism in the names of the owner from the date of commissioning up to the expiration of the initial service contract.

10.—(*a*) Subject to the warranty set out in this Service Agreement, the Contractor reserves the right to supply new, second-hand or reconditioned replacement parts in the performance of its duties hereunder.

(*b*) Any parts of the Solar Home System Equipment replaced by the Contractor pursuant to clause 10 (*a*) above ("replaced Parts") shall upon replacement become the property of the Contractor and the Buyer warrants that either it shall have a free and unencumbered title to such Replaced Parts and/or that he shall have obtained all necessary consents and authorization to part with possession and give good title to the Replaced Parts.

11.—(*a*) This Service Agreement shall commence on the Commencement Date and shall continue until the expiry of the Initial Period during which period the agreement shall not be terminated by either party.

(*b*) After the expiry of the Initial Period this Service Agreement may be renewed. three months before the expiry date of the Initial Period. The Contractor shall send a quotation to the Buyer in respect of maintenance charges for the proposed renewed period and the duration thereof. If the Buyer accepts that quotation, this service agreement and all the conditions herein shall be deemed to have been renewed without further assurance thereof, provided that if no duration is specified in the quotation, this service agreement shall be deemed to have been renewed for twelve months.

12.—(*a*) The Contractor shall upon carrying out any maintenance work on the Solar Equipment, prepare a maintenance report and deliver the same to the Buyer;

(*b*) The said maintenance reports shall describe in detail the inspection, testing, repairs, the parts replaced, additions and other maintenance work done and where excepted services have been undertaken; a detailed justification as to why the work done has been classified as Excepted Services; and

(*c*) The Monitoring Engineer may carry out inspection and testing of the Solar Home System Equipment to counter-check or verify the finding in the maintenance report.

13.—(*a*) Subject to clause 11 (*a*) of this Service Agreement, this Service Agreement may be terminated—

(i) by the Buyer upon giving not less than ninety days notice to the Contractor at any time after the expiry of the Initial Period;

(ii) forthwith by the Contractor if the Buyer fails to pay the Maintenance Charges or any Additional Charges due hereunder within sixty days of the due date therefor; or

(iii) forthwith by either party if the other commits any material breach of any term of this Service Agreement (other than one falling within (ii) above) and which (in the case of a breach capable of being remedied) shall not have been remedied within sixty days of a written request by the other party to remedy the same.

(*b*) Any termination of this Service Agreement pursuant to this clause shall be without prejudice to any other rights or remedies a party may be entitled to hereunder or at law and shall not affect any accrued rights or liabilities of cither party nor the coming into or continuance in force of any provision hereof which is expressly or by implication intended to come into or continue in force on or after such termination.

14. If any provision of this Service Agreement shall be found by any Court or administrative body of competent jurisdiction to be invalid or unenforceable, the invalidity or unenforceability of such provision shall not affect the other provisions of this Service Agreement and all provisions not affected by such invalidity or unenforceability shall remain in full force and effect—

(*a*) This Service Agreement shall be binding upon and inure for the benefit of the successors in title of the parties hereto.

(*b*) Neither party shall be entitled to assign this Service Agreement nor all or any of their rights and obligations hereunder without the prior written consent of the other.

15.—(*a*) This Service Agreement shall be governed by and construed in accordance with the Laws of Malaŵi.

(*b*) Arbitration shall be in accordance with the Energy Regulation By-laws under the Energy Regulation Act (Cap. 73:02).

SCHEDULE

1. *COMMENCEMENT DATE*

The ..... day of ....., 20.....

2. SOLAR HOME SYSTEM EQUIPMENT PARTICULARS

Type: .....

Serial No.: .....

(To be repeated for each component).

3. *SITE*

Address: .....

.....

4. *AGGREGATE ANNUAL MAINTENANCE CHARGES*

K .....

5. DURATION

Two years as the initial period subject to renewal by mutual agreement.

IN WITNESS WHEREOF the authorized representatives of the parties hereto have signed this Service Agreement on the day and year first above written.

Signed for the Buyer in the presence of:

Witness: .....

Address: .....

.....

Occupation: .....

Signed for the Contractor in the presence of:

Witness: .....

Address: .....

.....

Occupation: .....

.....

FOURTH SCHEDULE reg. 14

PROCEDURE AND CRITERIA FOR SELECTION OF RURAL ELECTRIFICATION SITES

Type of Rural Electrification	*Technical Feasibility*	*Financial and Economic Feasibility*	*Social Feasibility*	*Scoring*	*List of Target Groups*
1. Rural Electrification by Grid Extension Candidate sites for electrification shall be assessed according to the following criteria, and shall be prioritized according to the result of the assessment by the Committee.	(*a*) Location of the candidate site— (i) The supply voltage at the site has to be within statutory limits of +/- 6% of the supply voltage. (ii) Anything below 25 kVA will be subject to contribution of 20% of total cost. (*b*) Power Demand (i) The estimated power demand should be at least 25 kVA. (ii) Anything below 25 kVA will be subject to contribution of 20% of total cost. (*c*) Capacity of existing distribution lines	(*a*) The project should have a positive Internal Rate of Return to be on the priority list, i.e. above 0% and up to 6%. (*b*) Costs and revenues are compared based on the present value throughout the project life— (i) The costs consist of construction, connexion fees, operation and maintenance of the distribution lines; (ii) The project life consists of a construction period and 20 years of operation period; and (iii) Benefits are the revenues derived from electricity-sales and potential economic activities.	(*a*) The existence of social facilities with some local groups working together to utilize such social facilities. (*b*) Social acceptance of electricity is assessed by– (i) Willingness to pay; and (ii) Readiness to connect which could be represented by advance house wiring.	In order to prioritize the areas, each will be scored based on the factors in the criteria— (*a*) Technical feasibility This has a score of 1 to 5. The area with the highest score is the one which will be considered with priority and the one with the least score will be considered for the other options if feasible. (*b*) Financial, Economic and Social Feasibility These two factors will be scored together based on a scale of 1 to 10. (*c*) The former has a maximum score of 6 while the latter s maximum score is 4.	The target beneficiaries of distribution lines extension under this criteria are as below— (*a*) public schools; (*b*) rural clinics; (*c*) rural hospitals; (*d*) trading centres; (*e*) orphanages; (*f*) irrigation schemes; (*g*) police units; (*h*) border posts; and (*i*) rural growth centres.

FOURTH SCHEDULE —(*continued*) reg. 14

PROCEDURE AND CRITERIA FOR SELECTION OF RURAL ELECTRIFICATION SITES

Type of Rural Electrification	*Technical Feasibility*	*Financial and Economic Feasibility*	*Social Feasibility*	*Scoring*	*List of Target Groups*
	(i) Where there is existing capacity in the distribution network to accommodate new and future power demand, the area will be given first priority. (ii) Where there is no capacity, hence a need to reinforce existing distribution lines, the area will be considered later. (*d*) Systems stability and reliability (i) Extension of distribution lines should not disturb the system stability and reliability.	(*c*) The candidate site should be accessible by (*d*) The candidate site should have existing economic activities represented by the number of shops, agro-businesses and other small businesses (*e*) Community contribution— (i) The beneficiaries are encouraged where possible, to contribute towards the project costs either in kind or monetary terms in order to be considered with the highest priority; and (ii) The total contribution should be at least 20 per cent of the total cost.			

FOURTH SCHEDULE —(*continued*) reg. 14

PROCEDURE AND CRITERIA FOR SELECTION OF RURAL ELECTRIFICATION SITES

Type of Rural Electrification	*Technical Feasibility*	*Financial and Economic Feasibility*	*Social Feasibility*	*Scoring*	*List of Target Groups*
2. Rural Electrification by Isolated Stand alone grid powered by micro, mini and small hydro-power	(*a*) Adequate power demand to justify installation of either of the power stations above. (*b*) The river should be perennial and have the potential for either micro, mini and small hydro-power. (*c*) Consideration for basic design of civil, mechanical and electrical works. (*d*) In the case of micro and mini hydro-power development, the stations will be isolated and have no voltage transformation.	(*a*) Cost of construction (i.e. cost of plant and distribution network); (*b*) Costs of revenues are compared based on the present value throughout the protect life. (*c*) The project life consists of construction period and 20 years of operation period. (*d*) Benefits are connexion fees and the revenues derived from electricity sales. (*e*) The project should have a positive Internal Rate of Return of up to 6%.	(*a*) Community's willingness to contribute towards the project either in kind or monetary terms. (*b*) The existence of social/public facilities as load centres. (*c*) Willingness to pay for electricity (*d*) Willingness of concessionaires to operate and maintain the micro and mini and small hydro-power station.		The target beneficiaries will work as a guide to check the availability of load— (*a*) large farms; (*b*) tea, coffee and tobacco estates; (*c*) commercial enterprises; (*d*) public schools/ colleges; (*e*) rural clinics; (*f*) trading centres; (*g*) religious institutions; (*h*) rural growth centres; (*i*) orphanages; and (*j*) police units.

FOURTH SCHEDULE —(*continued*) reg. 14

PROCEDURE AND CRITERIA FOR SELECTION OF RURAL ELECTRIFICATION SITES

Type of Rural Electrification	*Technical Feasibility*	*Financial and Economic Feasibility*	*Social Feasibility*	*Scoring*	*List of Target Groups*
3. Rural Electrification by Renewable Energy Technologies (RET) The assumptions for the installation of RET are that— (*a*) site is for the national grid; (*b*) site is too costly to connect to the grid; or (*c*) one option either grid or non-grid to be considered per site.	(*a*) Power demand (i) The type and size of load has to be consistent with RET applications; (ii) The systems are capable of providing power for lighting, radio and black and white TV tor a limited number of hours; (iii) The average system is a 50 watt single panel system which provides enough power to operate 4 lights for 4 hours per day, power a 2.5 W radio for 10 hours per day and a 35W black and white TV for 4 hours per day; and	Economic Analysis— (*a*) Cost-Benefit analysis. (*b*) Opportunity cost. (*c*) Rate of Return. NOTE: Because we are targeting public entities, the issue of financial analysis may not arise but an economic analysis will have to be done.	(*a*) Willingness by the community to protect the system. Willingness of the community to pay for maintenance charges. (*b*) Willingness of the beneficiaries to operate and maintain the system. (*c*) Willingness by the communities to accept limitations of RET applications.		The target beneficiaries are— (*a*) schools; (*b*) colleges; (*c*) rural clinics; (*d*) community water supply; (*e*) religious institutions; and (*f*) CHAM health facilities.

FOURTH SCHEDULE —(*continued*) reg. 14

PROCEDURE AND CRITERIA FOR SELECTION OF RURAL ELECTRIFICATION SITES

Type of Rural Electrification	*Technical Feasibility*	*Financial and Economic Feasibility*	*Social Feasibility*	*Scoring*	*List of Target Groups*
	(iv) The system cannot be used for cooking (*b*) Solar radiation period of sunshine to be considered. (*c*) Location of site in relation to the distance from the existing grid. (*d*) Inclusion or exclusion of the site from the Rural Electrification Master Plans. (*e*) Period of electrification within live to ten years.				

PAYMENT SYSTEMS

CHAPTER 74:01

Containing Pages 1–20

CHAPTER 74:01

PAYMENT SYSTEMS

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CHAPTER 74:01

PAYMENT SYSTEMS

An Act to provide for the operation, regulation and supervision of payment, clearing and settlement systems in Malaŵi, and matters connected therewith and incidental thereto 15 of 2016 G.N. 35/2017

[30th June, 2017]

PART I

Preliminary

1. This Act may be cited as the Payment Systems Act. Short title

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

"bank" has the meaning ascribed to that term in the Banking Act; Cap. 44:01

"business day" means any day other than a Saturday, Sunday or public holiday;

"card" means any card including an Auto-Teller Machine card, point of sale card, debit card, credit card or stored value card, used by a consumer to effect an electronic funds transfer, electronic payments or withdrawals;

"cheque" has the meaning ascribed to that term in the Bills of Exchange Act; Cap. 48:02

"circular" means a written notice on a new policy or change of policy that relates to clearing and settlement systems operators, participants and includes instruments associated with such systems;

"clearing" means the process of transmitting, reconciling and confirming transfer instructions regarding funds, securities or other financial instruments prior to settlement, including the netting of instructions and the establishment of final positions prior to settlement;

"clearing system" means a system that facilitates the presentment and exchange of transfer instructions regarding funds, securities or other financial instruments prior to settlement;

"direction" means a specific mandatory instruction or set of instructions to do or not to do certain acts or things addressed to specific payment, clearing and settlement systems and operators, participants and instruments associated with such systems;

"directive" means a general mandatory instruction or set of instructions that apply or relate to all or specific payments,

clearing and settlement systems or operators, participants and instruments associated with such systems;

"electronic funds transfer" means the transfer of funds through an electronic mechanism;

"finality" means that a settlement or transfer is unconditional, enforceable and irrevocable;

"financial collateral arrangement" means an arrangement under which a participant provides acceptable collateral by way of securities in favour of, or to another participant, and where the full ownership of the collateral remains with the collateral provider when the security right is established whether or not the arrangement is covered by a master agreement, standard form contract, or any other general terms and conditions;

"financial institution" has the meaning ascribed to the term in the Financial Service Act; Cap. 44:05

"guidelines" means a standard or set of standards that relate to payments, clearing and settlement systems and operators, participants and instruments associated with those systems;

"mobile payment system" means a system that enables the process of money transfer and exchange of money for goods and services between two parties using a mobile phone or an electronic mobile device;

"netting" means the offsetting of positions or obligations by participants leading to the determination of net payment obligations between two or more clearing system participants within a clearing system, or the determination of the net settlement obligations between two or more settlement system participants within a settlement system;

"officer" means a person who is—

(*a*) an employee of the Reserve Bank;

(*b*) a person engaged by the Reserve Bank to provide services to it; or

(*c*) an examiner or investigator appointed under this Act;

"oversight" means monitoring, regulation and supervision of payments including mobile payments, clearing systems, settlement systems and payment instruments;

"parent company" has the meaning ascribed to that term in the Companies Act; Cap. 46:03

"payment instruction" means an order or instruction, whether electronic or physical, requesting movement of funds, securities or other financial instruments or the right pertaining to those funds, securities or financial instruments to a system operator by a system participant;

"payment instrument" means any instrument, whether tangible or intangible, that enables a person to obtain money, goods or services or to otherwise make a payment;

"payment system" means a system that enables funds transfer to be effected between a payer and a payee, utilizing payment instruments and procedures that relate to the payment system;

"Registrar" means the Registrar of Financial Institutions appointed under the Financial Services Act; Cap. 44:05

"remittance" means an in-country or cross-border person-to-person payment or transfer of relatively low value as may be prescribed by the Reserve Bank from time to time;

"remittance service provider" means a person that provides remittance services;

"Reserve Bank" means the Reserve Bank of Malaŵi as established under the Reserve Bank of Malaŵi Act; Cap. 44:02

"settlement" means an act of discharging obligations by transferring funds, securities or financial instruments between two or more parties in central bank money or through accounts with a settlement agent;

"settlement account" means an account held at the Reserve Bank or any other institution acting as a settlement agent, which is used to settle transactions between participants in a settlement system;

"settlement agent" means the Reserve Bank or any other bank or financial institution which holds accounts on behalf of clearing and system participants and effects settlements on their behalf;

"settlement instruction" means an instruction given to a settlement system by a system participant or by a payment clearing house system operator on behalf of a system participant to effect settlement of one or more payment obligations, or to discharge any other obligation of one system participant to another system participant;

"settlement obligation" means an indebtedness that is owed by one system participant to another as a result of one or more settlement instructions;

"settlement system" means a system used to facilitate the settlement of transfer instructions regarding funds, securities or other financial instruments;

Cap. 46:03 "subsidiary" has the meaning ascribed to that term in the Companies Act;

"system operator" means a person establishing or operating a payment, clearing, settlement system or services, or remittance services;

"system participant" means a person who has access to a payment, clearing or settlement system under a contractual arrangement with a system operator;

"systemic risk" means a risk of failure by one participant in a payment, clearing or settlement system to meet its obligation which results in other participants being unable to meet their obligations when due;

"truncation" means a procedure in which paper payment instruments within a bank, between banks or between a bank and its customers are replaced, in whole or in part, by electronic records for their further processing and transmission; and

"winding-up proceedings" means proceedings involving realization of assets and distribution of the proceeds among creditors, shareholders or members as appropriate, which involve an intervention by administrative or judicial authorities, including where the proceedings are terminated by a composition or other analogous measures, whether or not they are founded on insolvency or are voluntary or compulsory.

Objectives

3. The principal objective of this Act is to provide for the regulation and oversight of payment, clearing and settlement systems, payment instruments, remittance service providers, electronic money transfers, card issuers and travellers cheques agencies by—

(*a*) promoting the soundness, integrity, safety and efficiency and reliability of the payment, clearing and settlement systems or payment instruments including security and operating standards, and infrastructure arrangements;

(*b*) providing for minimum standards for protection of customers; and

(*c*) determining respective rights and obligations of system operators, participants and their customers.

PART II

Powers and Functions of the Reserve Bank

4. Without limiting the generality of the powers conferred on it by the Reserve Bank of Malaŵi Act, the Reserve Bank shall have, powers, duties and functions, to— Powers, duties and functions of the Reserve Bank Cap. 44:02

(*a*) promote the soundness, safety and efficiency, integrity and reliability of payment, clearing and settlement systems in Malaŵi;

(*b*) take all available measures to ensure that this Act is complied with by system operators and system participants;

(*c*) establish settlement systems;

(*d*) license and authorize payment, clearing and settlement systems operators;

(*e*) inspect system operators' and system participants' premises, equipment, machinery, apparatus, books or other documents, or accounts and transactions relating to the systems and payment instruments referred to in section 3 to ensure compliance with this Act;

(*f*) ensure that system operators comply with the Financial Crimes Act, and regulations made thereunder; Cap. 7:07

(*g*) exercise an oversight role over payment, clearing and settlement systems, and issuing of payment instruments in Malaŵi; and

(*h*) exercise and perform all other powers, duties, and functions as may be deemed necessary in the regulation of payment systems from time to time, or conferred on it by any other written law.

5. The Reserve Bank may, in writing, delegate any power or assign any function conferred on it by this Act, to any person, subject to such conditions as the Reserve Bank may determine. Delegation of powers

6. Any delegation of power under section 5— Reserve Bank not precluded from exercising and withdrawing delegated powers

(*a*) shall not prevent the Reserve Bank from exercising that power or performing that duty; and

(*b*) may be withdrawn at any time by written notification from the Reserve Bank.

7. In carrying out its functions, the Reserve Bank shall cooperate with other regulatory authorities within and outside Malaŵi by Cooperation with other regulatory authorities

sharing information and doing such other acts to achieve the objectives of this Act.

Directives, guidelines, circulars and directions

8. The Reserve Bank may issue directives, guidelines, circulars and directions for the proper administration of this Act.

Breaches of directives, etc

9. Any person who refuses or fails to comply with a directive, guideline, circular or direction issued under this Act, shall be liable to administrative or monetary penalties as may be prescribed by the Reserve Bank in directives.

Directions for inadequate control of risks

10. Where the Reserve Bank is of the opinion that a system operator or system participant engages in, or is about to engage in, any act or omission that results in, or is likely to result in, a systemic risk, or is, or may be detrimental to, or contrary to public interest in the security and effectiveness of payment, clearing and settlement systems of Malaŵi, the Reserve Bank may issue a direction in writing requiring the system operator or system participant, within the period specified in the direction, to—

(*a*) cease or refrain from engaging in the acts or omissions;

(*b*) perform such acts with respect to their participation in the payment system as the Reserve Bank considers necessary to remedy the situation;

(*c*) conform to requirements contained in the direction; or

(*d*) provide the Reserve Bank with such information and documents relating to the matter as specified in the direction within such period as the Reserve Bank may specify.

Court order for compelling compliance with a direction

11. Notwithstanding that criminal proceedings have been or may be instituted against a person relating to non-compliance of a direction given under section 10, the Reserve Bank may apply to the High Court for an order compelling such a person to comply with a direction issued under the section.

PART III

Regulation and Oversight by the Reserve Bank

Restrictions on operating a payment system etc. or services

12.—(1) Except for the Reserve Bank acting in its capacity as a system operator, a person shall not establish or operate a payment, clearing and settlement system or service, remittance services including electronic money transfer services, mobile payment services or issue payment instruments without a licence or authorization issued by the Reserve Bank.

(2) The Reserve Bank may, by a written order, prohibit a person from issuing or using any payment instrument, or from operating a payment, clearing or settlement system, if it is of the opinion that—

(*a*) the operation of the payment, clearing or settlement system, issuing or use of the payment instrument, is detrimental to the reliable, safe, efficient and smooth operation of the payment, clearing and settlement systems of Malaŵi, or monetary policy of Malaŵi;

(*b*) the prohibition is in the interest of the general public; or

(*c*) the payment instrument has been issued or the system is operated with intent to defraud the general public.

(3) Subsection (2) shall not be construed as prohibiting the acceptance of money or payment instructions—

(*a*) by any person acting as a duly appointed agent of a person to whom a payment is due;

(*b*) by a company from its subsidiary or by a subsidiary from its parent company, or by one subsidiary from another subsidiary, of the same parent company; or

(*c*) for purposes of effecting a money lending transaction by an agent.

(4) Any person who contravenes subsection (1), commits an offence and shall on conviction, be liable to a fine of K50,000,000 and to imprisonment for seven years.

Application for licences or authorization

13.—(1) An application for licensing or authorization by a payment system operator shall include information on the following—

(*a*) system owners, system participants and a plan for the organization and operation of the payment system, including the distribution of responsibilities between the system operator and individual system participants;

(*b*) the criteria established for direct and indirect participation in the payment system;

(*c*) measures to safeguard technical operations in the event of a payment system failure, including a contingency plan that lays down the disaster recovery arrangements in the event of any operational disruption should the payment system fail to function;

(*d*) measures to mitigate risks in the payment system arising from illiquidity, insolvency or winding-up of a system operator and system participants;

(*e*) the agreements referred to in section 14 (4); and

(*f*) such other requirements as the Reserve Bank may prescribe from time to time.

(2) The Reserve Bank may prescribe more detailed procedures for application for licensing or authorization in directives or guidelines.

14.—(1) A system operator shall have a registered office in Malaŵi.

Licence and authorization requirements

(2) For the purposes of this Act, a system operator may be the Reserve Bank, commercial banks, non-bank financial institutions, mobile payment system operators, remittance service providers, card issuers, or other persons as licensed or authorized by the Reserve Bank.

(3) A system operator shall satisfy the necessary requirements that may be set out by the Reserve Bank from time to time in directives or guidelines.

(4) A system operator shall enter into agreements with individual system participants which shall stipulate their respective responsibilities, rights and obligations.

(5) The Reserve Bank may stipulate more detailed requirements regarding activities, legal form, fit and proper management, capital, risk management, security requirements and such other requirements deemed applicable to a system operator, in directives.

(6) The Reserve Bank may in writing and stating reasons therein, grant exemptions to licensing and authorization requirements for a particular payment system or system operator if the Reserve Bank is satisfied that—

(*a*) the operation of the payment system is in the public interest;

(*b*) the operation of the payment system will not cause undue risk to the payment, clearing and settlement systems of Malaŵi or the monetary policy of Malaŵi; or

(*c*) there are other grounds for exemption as the Reserve Bank may determine:

Provided that the Reserve Bank shall publish a notice of such exemption in the *Gazette* and electronic and print media of nationwide circulation.

Revocation or suspension of authorization or a licence

15.—(1) The Reserve Bank may, by notice in writing to a system operator, withdraw authorization or revoke or suspend a licence if the Reserve Bank has reasonable grounds to believe that the system

operator has contravened any provision of this Act or is managing its payment system in a manner that poses risks to the payment system, other payment system operators, systems participants or to the general public:

Provided that, before withdrawing the authorization or revoking or suspending the licence, the Reserve Bank shall grant the system operator an opportunity to be heard.

(2) In the case of revocation of a licence, the Reserve Bank shall make its decision public by publishing a notice in the *Gazette* and electronic and print media of nationwide circulation.

(3) The Reserve Bank may impose other administrative sanctions as it deems fit, in addition to, or prior to, the revocation or suspension of a licence or withdrawal of authorization as the case may be.

Responsibilities of system operators

16.—(1) A system operator shall implement and operate a payment system in a manner that promotes secure, efficient, effective and coordinated execution of payment services.

(2) A system operator and system participants shall be required to provide information which the Reserve Bank may require for regulatory, oversight and investigative purposes.

(3) A system operator shall submit its system rules to the Reserve Bank for vetting and approval.

(4) An issuer of payment instruments shall ensure that all payment instruments issued contain minimum security features as prescribed by the Reserve Bank or comply with prevailing international standards and best practices.

Actions requiring prior approval of the Reserve Bank

17. A system operator shall seek prior approval of the Reserve Bank before making any changes to its ownership, management personnel and structure, system operations and any other changes or actions as may be determined by the Reserve Bank.

Investigative powers of the Reserve Bank

18.—(1) The Reserve Bank shall have powers to investigate a matter where it has reasonable grounds to believe that—

(*a*) an offence under this Act has been, or may have been committed;

(*b*) a system operator or system participant is not complying with, or has not complied with, this Act or any other relevant law; or

(*c*) a system operator or system participant has been involved in financial crime.

(2) Notwithstanding anything to the contrary provided by any written law for the time being in force, all information relating to the commission of an offence under this Act shall be recorded in writing by an officer, employee or any appointee of the Reserve Bank or police officer investigating the matter.

(3) Investigation of offences committed under this Act may be carried out by an officer, employee or any appointee of the Reserve Bank.

(4) Any person who causes or attempts to cause obstruction to an investigation into any matter conducted by an officer, commits an offence and, shall on conviction, be liable to pay a fine of K20,000,000 and to imprisonment for four years.

Requirements for participation in, and operation of a settlement system

19.—(1) The Reserve Bank shall set minimum requirements for participants in settlement systems that the Reserve Bank establishes, operates or controls.

(2) The Reserve Bank shall stipulate specific requirements in the form of directives, directions, guidelines or circulars regarding the activities and security requirements applicable to settlement agents other than the Reserve Bank.

PART IV

Protection of Settlement Systems

Discharge of settlement obligations

20. A settlement system operator shall discharge obligations between settlement participants by means of entries passed through accounts of settlement participants held with the settlement system operator.

Finality and irrevocability of settlements

21.—(1) A settlement that has been effected in accordance with section 20, shall be final, unconditional and irrevocable.

(2) Notwithstanding the provisions of any other written law, no settlement which has been finally and irrevocably effected in terms of this section or any payment instruction entered into a settlement system before commencement of any winding-up proceedings, shall be reversed, netted or set aside.

(3) Any entry or a payment out of the settlement account of a participant held at the Reserve Bank, or a settlement agent to settle a payment obligation in a settlement system shall not be the subject of any provision that operates as a stay of that activity.

(4) For the avoidance of doubt, the finality provisions of this Act derogate from the general insolvency rules contained in any other written law.

Winding-up of a system participant on application by a person other than the Reserve Bank Cap. 46:03

22.—(1) An application to court for an order to wind-up a system participant under the Companies Act shall not be made except with prior notification of twenty-one days to the Reserve Bank.

(2) Where a system participant is wound up on application by a person other than the Reserve Bank, a copy of—

(*a*) the application for winding-up when it is made; and

(*b*) the subsequent winding-up order which shall record the minute, hour and day that such order is made,

shall be lodged by the applicant, with the Reserve Bank on the same business day, and in any case, not later than the start of the next business day, and served on any other settlement agent that requires notification and the Reserve Bank shall immediately notify all relevant domestic and foreign system operators of the winding-up proceedings.

(3) The relevant settlement system operator shall enforce the winding-up order immediately upon being notified by the Reserve Bank of the order lodged with the Reserve Bank under subsection (1).

Winding-up of a system participant by the Registrar Cap. 44:01 Cap. 44:05

23.—(1) Where a system participant is wound up on application by the Registrar under the Banking Act, or the Financial Services Act, the winding-up order shall state the minute, the hour and the date on which the order is made and the Reserve Bank shall, on the same business day and in any case, not later than the start of the next business day—

(*a*) serve the order on the system participant concerned;

(*b*) notify other system participants or agents required to be notified; and

(*c*) notify all relevant domestic or foreign system operators.

(2) The relevant settlement system operator shall enforce the winding-up order immediately upon being notified by the Reserve Bank of the order lodged with the Reserve Bank under subsection (1).

Voluntary winding-up of a system participant Cap. 44:01 Cap. 44:05 Cap. 46:03

24.—(1) Subject to the provisions of the Banking Act, the Financial Services Act, or the Companies Act, where a system participant is voluntarily wound up, that system participant shall inform all other system participants of the winding-up resolution within twenty-four hours of the winding-up resolution taking effect:

Provided that the resolution, demand or other step to wind-up a system participant or system operator shall have no effect unless approved by the Reserve Bank.

(2) The Reserve Bank shall notify relevant domestic and foreign system operators and system participants about the voluntary winding-up of a system participant on the same business day and in any case, not later than the start of the next business day of the winding-up resolution taking effect.

Irrevocability and finality of settlements prior to lodging of winding-up order
Cap. 44:01
Cap. 44:05
Cap. 46:03
Cap. 11:01

25. Notwithstanding the provisions of the Banking Act, the Financial Services Act, the Companies Act, the Insolvency Act and any other written law of Malaŵi, where a system participant is wound up, the relevant winding-up order or resolution shall not affect any settlement that has become final and irrevocable under this part prior to—

(*a*) the lodging of the copy of such order with the Reserve Bank under section 22;

(*b*) the Reserve Bank informing the settlement system operator of the winding-up order under section 22; or

(*c*) the winding-up resolution taking effect as provided under section 23.

Cessation of participation in clearing and payment systems

26. Any clearing or system participant in respect of whom a winding-up order has been effected in terms of sections 22, 23 or 24, shall cease to participate in any clearing or settlement system.

Passing of settlement transactions subsequent to winding-up proceedings

27.—(1) A settlement system operator shall have authority to credit and debit the settlement accounts of a system participant subsequent to a winding-up order for purposes of—

(*a*) discharging outstanding payments or settlement obligations;

(*b*) making use of a credit line; or

(*c*) realizing collateral provided, in order to enable settlement in accordance with the rules and practices of the clearing, netting and settlement agreements to which that system participant was a party.

Cap. 44:05
Cap. 11:01

(2) With the exception of prudentially regulated financial institutions as defined in the Financial Services Act, the Insolvency Act shall apply to winding-up proceedings of system participants.

Restrictions against attachments, garnishee proceedings or seizures

28. A settlement account of any system participant shall not be liable to attachments, garnishee proceedings or seizures.

PART V

Netting and Financial Collateral Arrangements

Obligations under netting agreements, arrangements and rules

29.—(1) A clearing or settlement system shall have netting agreements which shall stipulate the rights and obligations of participants and the system operator.

(2) Where a clearing or system participant is wound up or placed under receivership or statutory management, any arrangement or provision contained in a written netting agreement to which such a system participant is a party, or any netting rules and practices applicable to such a system participant, shall be binding on the liquidator, receiver or statutory manager appointed as the case may be, in respect of any payment or settlement obligation—

(*a*) which has been determined through netting prior to the issue of a winding-up order, receivership order or appointment of the statutory manager as the case may be;

(*b*) which is to be discharged on or after the date of the winding-up order, receivership order or appointment of the statutory manager as the case may be; or

(*c*) the discharge of which was overdue on the date of the winding-up order, receivership order or the appointment of the statutory manager as the case may be.

Recognition of financial collateral arrangements

30.—(1) A clearing or settlement system may, in its rules and procedures, have financial collateral arrangements whose value may be realized for the satisfaction of outstanding rights and settlement obligations within the system.

(2) The financial collateral to be provided shall be either in cash, Malaŵi Government Treasury Bills, Reserve Bank of Malaŵi Treasury Bills or any other assets as determined by the Reserve Bank from time to time.

(3) A system participant shall not provide as collateral security in relation to its operations within a payment system, assets which are subject to a security interest or any other encumbrance in favour of a third party, without obtaining the prior release or waiver from the third party.

(4) The Reserve Bank may issue directives or guidelines pertaining to financial collateral arrangements in a particular payment system.

Utilization of collateral

31. Notwithstanding the provisions of any other written law, any asset of a clearing or system participant which the clearing or

settlement system participant, prior to the issue of a winding-up order, provided to—

(*a*) the Reserve Bank as security for a loan, or otherwise as security in respect of its settlement obligations; or

(*b*) a clearing or settlement system in form of a written agreement as security in respect of its payment obligations,

may be utilized by the Reserve Bank or the relevant clearing or settlement system operator to the extent required for the discharge of such settlement obligations or payment obligations as the case may be.

PART VI

Truncation, Imaging and Electronic Entries

Truncation and imaging Cap. 48:02

32.—(1) Notwithstanding any provisions to the contrary in the Bills of Exchange Act, a bank may request payment of a cheque or other payment instrument from another bank on which it is drawn by notifying the other bank of the essential features of the cheque or payment instrument essential features electronically, instead of presenting the cheque or other payment instrument physically.

(2) Where a bank notifies another bank electronically of the essential features of a cheque or other payment instrument, the paying and collecting bank shall be subject to the same duties in relation to the collection and payment of the cheque or other payment instrument as if the cheque or other payment instrument had been presented for payment physically.

Admissibility of photographic images of payment instruments and electronic entries

33.—(1) Photographic images of original cheques or other payment instruments shall be admissible in any court as *prima facie* evidence of the matters, and or transactions of the original instrument, through proof provided by an affidavit that attests to their existence.

(2) The electronic entries in books of accounts of any system operator or system participant shall be *prima facie* evidence in court of matters, transactions and accounts therein recorded—

(*a*) through proof provided by affidavits of at least two executive officers of the clearing or system participant; or

(*b*) by evidence showing that—

(i) such entries are, or have been the ordinary books of accounts of the payment system participant;

(ii) the said entries have been made in the usual and ordinary course of business; and

(iii) such books of accounts are in, or come immediately from, custody or control of the clearing or system participant.

Right of a bank to request original payment instrument or image thereof

34.—(1) Subject to section 32, where a paying bank has reason to believe that a cheque or payment instrument is fraudulent, it may request the collecting bank to provide to the paying bank, the original payment instrument or a legible image thereof.

(2) The paying bank shall, within two business days of the receipt of the original payment instrument, or a legible image thereof, determine and advise the collecting bank of its acceptance or non-acceptance of the cheque or other payment instrument.

(3) A request made under subsection (1) for the presentment of a cheque, other payment instrument, or a legible image thereof, shall not constitute dishonour of that payment instrument.

PART VII

Dispute Resolution

Dispute resolution

35.—(1) Any dispute arising in payment systems shall be settled in accordance with this section.

(2) Any person who is aggrieved by the operation of a payment system shall submit a written statement setting out full particulars of the grievance to the party to which the grievance relates, and the parties shall attempt to settle the matter by conciliation within seven business days.

(3) If the parties are unable to settle the matter as contemplated in subsection (2), they shall attempt to settle the matter within a further period of ten business days through mediation whereby—

(*a*) the parties shall agree on a mediator;

(*b*) the mediator shall familiarize himself with the parties' respective contentions;

(*c*) the mediator and all parties shall discuss the matter at one or more meetings attended by all of them and attempt to settle the matter by consensus; and

(*d*) the parties shall share the mediator's costs equally between them.

(4) If the parties are unable to settle the matter by conciliation under subsection (2), or by mediation under subsection (3), the matter may be referred to arbitration by a single arbitrator, and where the parties fail to agree on an arbitrator, the parties shall notify the President of the Malaŵi Law Society who then shall appoint an arbitrator on their behalf.

(5) The arbitrator referred to in subsection (4) shall, as far as possible, be a person appointed on account of his or her knowledge of the law and payment systems.

(6) The UNCITRAL Arbitration Rules of 2010 or other subsequent version that the parties may agree on, shall apply to arbitration proceedings done pursuant to this section.

(7) The arbitrator shall reach his decision in the matter within one month after his appointment, unless the parties agree to an extension of that period.

(8) A decision of the arbitrator shall be final and binding on the parties.

PART VIII

Miscellaneous

Access to information

36.—(1) A system operator, system participant and issuer of payment instruments shall provide information which the Reserve Bank considers necessary to ensure that the payment system is organized and operated in accordance with this Act.

(2) A system operator or system participant in possession of information referred to in subsection (1), shall provide such information to the Reserve Bank at any time and in such form as the Reserve Bank may request from the system operator or system participant, in writing.

(3) A system operator or system participant who contravenes subsection (1) commits an offence and, on conviction, shall be liable to a fine of K20,000,000 and to imprisonment for four years.

Confidentiality of information

37. Any information obtained by the Reserve Bank under section 36 (1) which relates to a specific system operator, system participant or issuer of payment instruments, shall be confidential and shall not be disclosed by any officer to any person.

Use of confidential information for personal gain

38. An officer or a member or employee of a licensed payment system, who, for his personal advantage or the advantage of another person, makes use of any information which relates to the affairs of a particular system operator or system participant, acquired in the performance of their duties under this Act, commits an offence and shall on conviction, be liable to a fine of K50,000,000 and to imprisonment for seven years.

Conditions for disclosure of information

39. Section 38 shall not apply—

(*a*) if the information is disclosed to a relevant regulatory authority;

(*b*) to any disclosure made by a person concerned in the performance of their functions under this Act or under the rules of any licensed settlement system, or when required to do so by a court of law or in terms of any other written law;

(*c*) to the disclosure of information that is generally known to members of the public or a substantial section of the public; or

(*d*) if, in the opinion of the Reserve Bank, disclosure is necessary and in the interest of the public to protect the integrity, effectiveness or security of payment systems in Malaŵi.

Indemnity of officers and other officials

40. Any act or matter done by any officer or by any other person in the exercise or performance or purported exercise or performance, in good faith, of any power or function under this Act, shall not give rise to any action, claim, liability, suit or demand against the officer or person concerned.

Retention of records

41.—(1) Notwithstanding anything to the contrary contained in any law relating to the retention of records, the Reserve Bank, payment system operators, system participants and issuers of payment instruments shall retain all records obtained or generated by them during the course of the operation and administration of the payment system for a minimum period of seven years as from the date of each particular record.

(2) The retention of any record in terms of subsection (1) may be effected electronically.

Penalties

42.—(1) Any person who—

(*a*) contravenes a provision of this Act for which no penalty is specifically provided; or

(*b*) fails to comply with any direction given under this Act,

commits an offence and on conviction, shall be liable to a fine of K10,000,000 and to imprisonment for two years.

(2) Where an offence is committed by a body corporate each director, employee or agent of the body corporate shall also be liable to the same penalty in subsection (1) unless it is established that the director, employee or agent took unreasonable applications and exercise due diligence to avoid the commission of the offence.

Regulations

43.—(1) The Minister may, on the recommendation of the Reserve Bank, make regulations for the better carrying out of the provisions of this Act.

(2) The regulations made under subsection (1) may provide for offences with respect to acts done or carried out wholly in or outside Malaŵi or partly in or partly outside Malaŵi.

Cap. 1:01

(3) Notwithstanding section 21 (*e*) of the General Interpretation Act, the regulations made pursuant to this section may create offences in respect of any contravention to the regulations, and may for any such contravention, prescribe penalties up to K10,000,000 and to imprisonment for a period of up to two years.

PART IX

Transitional Arrangements

Transitional arrangements

44.—(1) Any person who, immediately before the commencement of this Act, was—

(*a*) operating a system for—

(i) the clearing of payment instructions; or

(ii) the netting or settlement of obligations arising from the clearing of payment instructions; or

(*b*) issuing payment instrument; or

(*c*) conducting the business of payment service provider,

may continue to operate the system or issue the payment instrument or conduct the business of payment service provider for six months after the commencement of this Act, even if the system of the payment instrument has not been licenced or authorized by the Reserve Bank under this Act and shall, within six months of the commencement of this Act, apply to the Reserve Bank for a licence or authorization to operate such systems in accordance with this Act.

(2) Notwithstanding subsection (1), from the commencement of this Act, the Reserve Bank may, by directives, stipulate terms and conditions or requirements for the operation of payment systems including periods within which, such terms and conditions or requirements are to be complied with by system operators.

ELECTRONIC TRANSACTIONS AND CYBER SECURITY ACT

CHAPTER 74:02

Containing Pages 1–56

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CHAPTER 74:02

ELECTRONIC TRANSACTIONS AND CYBER SECURITY

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CHAPTER 74:02

ELECTRONIC TRANSACTIONS AND CYBER SECURITY

33 of 2016
G.N. 25/2017

An Act to make provision for electronic transactions; for the establishment and functions of the Malaŵi Computer Emergency Response Team (MCERT); to make provision for criminalizing offences related to computer systems and information communication technologies; and provide for investigation, collection and use of electronic evidence; and for matters connected therewith and incidental thereto

[1st June, 2017]

PART I

Preliminary Provisions

Short title

1. This Act may be cited as the Electronic Transactions and Cyber Security Act.

Interpretation

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

"Authority" means the Malaŵi Communications Regulatory Authority established under section 3 of the Communications Act; Cap. 68:01

"CCTLD" means the Country Code Top Level Domain which is at the top level of the internet domain name, system assigned according to the two letter codes in the international standards ISO3166–1 by ICANN;

"certification authority" means a trusted third party organization or company licensed or authorized by the Authority to issue digital certificates used to create digital signatures and public-private key pairs;

"child pornography" means visual and pornographic material that depicts, presents or represents a person under the age of eighteen

engaged in sexually explicit conduct or an image representing a person under the age of eighteen engaged in sexually explicit conduct;

"comparative advertising" means any advertising winch explicitly or impliedly identifies a competitor, or goods or services offered by a competitor;

"computer system" means a device or a group of interconnected or related devices, one or more of which performs automatic processing of data pursuant to a program;

"consumer" means any person who enters or intends to enter into a contract by electronic means with a supplier as the end-user of the goods or services offered by the supplier and acts, for that purpose, outside his trade, business or profession;

"content provider" means a person or organization who supplies information for use on a website or an electronic media platform;

"critical data" means data which is declared by the Minister in accordance with this Act, to be of importance to the protection of national security of the Republic or the economic and socio well being of its citizens;

"cryptography" means the method of storing and transmitting data by transferring it into unreadable format so that only those for whom it is intended can process and read it;

"cyber inspector" means a person appointed as such under section 69;

"data" means electronic presentation of information in any form;

"data controller" means a person who, acting either alone or in common with other persons, determines the purpose for which, and the manner in which, any personal data is processed, or is to be processed and thus, controls and is responsible for the keeping and using of personal data, and the term includes a person who collects, processes or stores personal data;

"data subject" means a person from whom data relating to that person is collected, processed or stored by a data controller;

"digital certificate" means an electronic document to prove ownership of a public key, and certificate includes information about the key owners' identity and the digital signature of an entity that has verified the certificates contents are correct;

"digital signature" means an electronic signature consisting of a transformation of an electronic message using an asymmetric crypto system and a hash function such that a person having the

initial and transformed electronic message and the signatory's public key can accurately determine—

(*a*) whether the transformation was created using the private key that corresponds with the signatory's public key; and

(*b*) whether the initial electronic message is as it was after the transformation was made;

"digital signature certificate" means a record which is issued by the Authority for the purpose of supporting a digital signature;

"distance contract" means any contract concluded between a supplier and a consumer under an organized remote sales or service-provision scheme run by the supplier, who, for the purpose of that contract, makes exclusive use of one or more electronic means up to and including the time at which the contract is concluded;

"domain name" means an alphanumeric designation that is registered or assigned in respect of an electronic address or other resources on the internet;

"e-government service" means a public service provided by electronic means;

"electronic commerce" means any economic activity provided by electronic means, including remote services and products, particularly services that consist of providing online information, commercial communications, research tools, or access to, or downloading of, online data, access to a communication network or the hosting of information;

"electronic message" means any communication created, sent, received or stored by electronic communication means, such as computerized data exchange system, electronic mail system and instant messaging;

"electronic record" means a record created, generated, sent, communicated, received and maintained by electronic means;

"electronic signature" means data attached to, incorporated in, or logically associated with, other data and which is intended by the user to serve as a signature;

"encryption" means a method of transforming signals or messages in a systematic way so that the signal would be unintelligible without a suitable receiving apparatus;

"financial services" has the meaning ascribed to the term under section 2 of the Financial Services Act; Cap. 44:05

"financial services law" has the meaning ascribed to the term under section 2 of the Financial Services Act; Cap. 44:05

"ICANN" means Internet Corporation for Assigned Name and Numbers;

"information system" means a system for generating, sending, receiving, storing, displaying or otherwise processing electronic messages, including internet;

"intermediary service provider" means any person or entity that provides electronic communications services consisting of the provision of access to communications networks, storage, hosting or transmission of information through communication networks;

"internet" means the interconnected system of networks that connects computers around the world using Transmission Control Protocol/Internet Protocol (TCP/IP) or other protocols, and includes future versions thereof;

"Internet Service Provider (ISP)" means a company that provides access to the internet and other related services such as website building and virtual hosting to individuals or other companies;

"key" means a piece of information that determines the functional output of a cryptographic algorithm;

"key pair" means a pair of keys used for cryptography;

"Malaŵi CERT" means the Malaŵi Computer Emergency Response Team established under section 6;

"misleading advertising" means any advertising which in any way, including its presentation, deceives or is likely to deceive a person to whom it is addressed or whom it reaches and which, by reason of its deceptive nature, is likely to affect his economic behaviour or which, for those reasons, injures or is likely to injure a competitor's economic or business interests;

"online public communication" means any transmission of digital data, signs, signals, texts, images, sounds or messages, of whatever nature, that are not private correspondence, by electronic communication means that enable a reciprocal exchange of information between an issuer and a receiver;

"opt-in" means a system where a consumer gives consent to an electronic communication service provider to receive any other communication;

"open standard" means any protocol for communication, interconnexion or exchange and any format of interoperable data

whose technical specifications are public and the access or use thereto is not restricted;

"personal data" means any information relating to an individual who—

(*a*) may be directly identified; or

(*b*) if not directly identified, may be identifiable by reference to an identification number or one or several elements related to his physical, physiological, genetic, psychological, cultural, social, or economic identity;

"place of business" means a place where a person has established, in a stable and lasting way, his activity whatever it is, and as regards a legal person, the place where its registered office is located or where it has its principal activity;

"pornography" means visual material that depicts images of a person engaged in sexually suggestive or explicit conduct;

"private key" means the key of a pair of an isometric crystal system used to create a digital signature by a holder of the digital signature which is exclusively known by the holder and is not made available to anyone;

"processing of data" means any operation or set of operations which is performed upon data, whether or not by automatic means, such as collection, recording, organization, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, blocking, erasure or destruction;

"public key" means a key of a pair of an isometric crystal system used to verify a digital signature that the holder of a digital signature makes available to the public or intended recipients;

"recipient" means a person to whom a sender intends to send an electronic communication, but does not include an intermediary for that communication;

"record" means recorded information, in any form, including data in computer systems, created or received and maintained by a public body in the course of official duties and kept as evidence of such activity;

"record keeping" means making and maintaining a complete, accurate and reliable evidence of official formalities in the form of recorded information;

"Registrar" means an entity designated by the Authority to manage and maintain the reservation of domain names and domain name registry;

"registry" means a central place where domain names are kept and maintained in an organized way;

"sender" means a person by whom, in whose name, or on whose behalf an electronic communication is sent or created before being stored, where necessary, but does not include an intermediary for that communication;

"signatory" means a person who holds a digital signature creation device and acts either on his own behalf or on behalf of a person he represents;

"subscriber" means a person who agrees to receive or be allowed to access electronic texts or services by subscription;

"supplier" means a person or entity that is the source for goods or services;

"Transmission Control Protocol/Internet Protocol (TCP/IP)" means a system of digital rules for data exchange within or between computers; and

"virus" means a malicious program or script that negatively affects the functioning of a computer by creating files, moving files, erasing files or consuming computer memory, causing the computer not to function properly.

Objectives

3. The objectives of this Act are—

(*a*) to set up a responsive information and communication technology legal framework that shall facilitate competition, development of information and communication technology and the participation of Malaŵi in the information age and economy and in particular—

(i) to ensure that the development, deployment and exploitation of information and communication technology within the economy and society and related legal provisions shall balance as well as protect community and individual interests, including privacy and data protection issues;

(ii) to address ethical issues in the use of information and communication technology in order to protect the rights of children and the under-privileged;

(iii) in liaison with the Malaŵi Revenue Authority, to create a legal framework for favourable tax policies that promote

information and communication technology products and services that originate from within Malaŵi; and

(iv) to provide a responsive and efficient regulatory environment, promote economic subsectors, asset accumulation and tax activities that arise from the use of information and communication technology;

(*b*) to ensure that information and communication technology users are protected from undesirable impacts of information and communication technology, including the spread of pornographic material, cybercrime and digital fraud; and

(*c*) to put in place mechanisms that safeguard information and communication technology users from fraud, breach of privacy, misuse of information and immoral behaviour brought by the use of information and communication technology.

Principles

4. The following principles shall, at all times, be adhered to in the implementation and application of this Act—

(*a*) e-transactions shall benefit from a secure legal framework that recognizes the legal value of electronic transactions and electronic documents;

(*b*) freedom of communication over electronic networks shall be promoted, with the exception of specific reasons as provided for in this Act;

(*c*) there shall be clear and fair specification of responsibilities of intermediaries and editors; and

(*d*) consumer's rights shall be respected, protected and upheld.

Implementation of this Act

5. Unless otherwise provided in this Act, the Authority shall be responsible for the implementation of this Act.

PART II

Administration

Establishment of the Malaŵi CERT

6.—(1) There is hereby established the Malaŵi CERT which shall be a unit under the Authority.

(2) The Malaŵi CERT shall take charge of its information infrastructure protection actions and serve as a base for national coordination to respond to information and communication technology security threats.

(3) The Authority shall ensure that the Malaŵi CERT is capable of providing reactive and proactive services, communicating timely

information on recent relevant threats and, whenever necessary, bringing its assistance to bear for response to incidents.

(4) The Authority shall ensure that the Malaŵi CERT executes the following minimum services—

(*a*) reactive services, early warning and precaution notice, incidents processing, incidents analysis, incident response facility, incidents response coordination, incident response on the web, vulnerability treatment, vulnerability analysis, vulnerability response and vulnerability response coordination;

(*b*) proactive services, public notice, technological surveillance, security audit and assessment, security installations and maintenance, security tools development, intrusion detection services and security information dissemination;

(*c*) artefacts treatment, artefacts analysis, response to artefacts, coordination of response to artefacts, risk analysis, continuation and resumption of activities after disaster, security consultation and sensitization campaign, education or training and product appraisal or certification; and

(*d*) do anything incidental to the functions of Malaŵi CERT.

PART III

Formation and Validity of Electronic Transactions

Recognition of electronic writing

7. Notwithstanding the contrary intention of any written law, where a law requires that certain information or any other matter be in writing, typewritten or printed form, the requirement shall be satisfied if the information or the matter is—

(*a*) rendered or made available in an electronic form;

(*b*) accessible; and

(*c*) capable of being retained for a subsequent reference.

Electronic signature

8.—(1) Where a law requires a document to be signed, an electronic form of the document shall satisfy the requirement if an electronic signature is used.

(2) An electronic signature shall be authentic if—

(*a*) the means of creating the electronic signature is, within the context in which it is used, linked to the signatory and not any other person;

(*b*) the means of creating the electronic signature, was at the time of signing, under the control of the signatory and not any

other person and was done without duress and undue influence; and

(*c*) any alteration made to the electronic signature after signing is detectable.

(3) Subsection (2) does not limit the right of a person—

(*a*) to prove the authenticity of an electronic signature in any other lawful way; or

(*b*) to adduce evidence in respect of non-authenticity of an electronic signature.

Equal treatment of electronic signature

9. Except as otherwise provided for in this Act, the provisions of this Act shall not exclude, restrict or affect the legality of any method of creating an electronic signature which—

(*a*) satisfies the requirements of this Act;

(*b*) meets the requirements of other statutory provision; or

(*c*) is provided for under a contract.

Conduct of a person relying on a digital signature

10. A person may sign an electronic record by affixing a personal digital signature or using any other recognized, secure and verifiable mode of signing agreed by parties or recognized by a particular industry to be safe, reliable and acceptable.

Bearing legal consequences of relying on electronic signature

11. A person who relies on a digital signature shall bear the legal consequences of failure to—

(*a*) take reasonable steps to verify the authenticity of the digital signature; or

(*b*) take reasonable steps where a digital signature is supported by a certificate, to—

(i) verify the validity of the certificate; or

(ii) observe any limitation with respect to the certificate.

Recognition of digital signature certificates and digital signatures

12.—(1) Unless otherwise prescribed by law, a person may decide the use of a digital signature, digital signature certificate or any other mode of authentication, of his choice.

(2) The Authority may, by notice published in the *Gazette,* approve digital signatures, certification authorities offering digital certificates, or authentication of a foreign information security service provider, for use by the public.

(3) The Authority shall ensure that digital certificates comply with international best practices and standards.

(4) A certification authority shall be liable for damages incurred by any person who reasonably relied on a digital certificate issued by the certification authority if—

(*a*) all or part of the information contained in the digital certificate on the date of issuance was incorrect;

(*b*) all or part of the data required for the digital certificate to be regarded as qualified were incomplete;

(*c*) the digital certificate has been issued without checking that the signatory is duly entitled to receive such digital certificate; or

(*d*) the certification authority has not registered the revocation of the digital certificate or has not made this information available to third parties or both.

(5) A certification authority shall not be responsible for damage caused by the use of a digital certificate that exceeds fixed limits on the use or the value of transactions for which the digital certificate has been used, if this condition has been made available to the users prior to the use of the certificate.

Notarization, acknowledgement and certification

13.—(1) Where a law requires a signature, statement or document to be notarized, acknowledged, verified or made under oath, that requirement shall be satisfied if the electronic signature of the person authorized to perform those acts is affixed to an electronic record.

(2) Where a law requires or permits a person to provide a certified copy of a document and the document exists in paper or in another physical form, that requirement shall be satisfied if an electronic copy of the document is certified to be a true copy by using an electronic signature of the certifying person.

Other requirements

14.—(1) A requirement in any written law for multiple copies of a document to be submitted to a single recipient at the same time shall be satisfied by the submission of a single electronic record of such document that is capable of being reproduced by the recipient.

(2) Where a corporate seal is required to be affixed to a document, the requirement shall be satisfied if the electronic signature of the corporate body is affixed to the electronic record in accordance with the provisions relating to the use of the corporate seal.

Determination of originality of an electronic message

15.—(1) Where any written law requires information to be presented or retained in its original form, the requirement shall be satisfied by an electronic record if—

(*a*) there is reliable assurance of the integrity of the electronic record; and

(*b*) the electronic record is capable of being displayed to the person to whom it is to be presented.

(2) For the purposes of this section—

(*a*) criteria for assessing integrity of information shall be whether it has remained complete and unaltered, save from the addition of any endorsement and of any change which may arise in the normal course of communication, storage and display; and

(*b*) the standard of reliability required shall be assessed in the light of the purpose for which the information was created and in the light of all the circumstances thereof.

Admissibility and evidential weight of electronic messages

16.—(1) An electronic message shall be admissible as evidence in court proceedings as provided for in this Act.

(2) In assessing the evidential weight of an electronic message, the court shall have regard to the following—

(*a*) the reliability of the manner in which the electronic record was generated, displayed, stored or communicated;

(*b*) the reliability of the manner in which the integrity of the information was maintained;

(*c*) the manner in which the originator of the electronic message was identified; and

(*d*) any other facts that the court may consider relevant.

Storage of electronic messages

17.—(1) Where any written law requires that a document, record or information shall be retained, that requirement shall be satisfied if the document, record or information is held in electronic form, and—

(*a*) is accessible;

(*b*) is capable of retention for subsequent reference;

(*c*) is retained in the format in which it was generated, sent or received, or in a format which can be demonstrated to represent accurately the information generated, sent or received; and

(*d*) is retained to enable the identification of the origin and destination of the electronic record and the date and time when it was sent or received.

(2) A document, record or information referred to in subsection (1) shall be kept in electronic form for at least seven years.

(3) The obligation to retain a document, record or information under this section shall not extend to information whose purpose is only to enable the message to be sent or received.

(4) The provisions of this section may be satisfied by the use of services of another party as long as all the provisions of the section are complied with.

Secure electronic record

18.—(1) Where a security procedure has been applied to an electronic record at a specific point in time, the record shall be a secure electronic record from the time the security procedure has been applied.

(2) An unauthorized alteration of a security procedure shall render the record invalid.

(3) An alteration shall be unauthorized if it is done by a person without the lawful authority of the person who originally applied a security procedure.

Validity of a contract executed in electronic form

19. Validity of a contract shall not be affected by the sole reason that it is executed in electronic form, if the contract has fulfilled all other requirements for formation of such type of contract.

Time and place of dispatch and receipt of an electronic message

20.—(1) Unless otherwise agreed by the parties, the dispatch of an electronic message shall occur when such message leaves an information system under the control of the sender or an agent of the sender.

(2) Unless otherwise agreed by the parties, receipt of an electronic message shall occur—

(*a*) where the recipient has designated an information system for the purpose of receiving the electronic message, when the electronic message has entered the designated information system; or

(*b*) where the recipient has not designated an information system, when the electronic message enters an information system through which the recipient retrieves the electronic message.

(3) Unless otherwise agreed by the parties, an electronic message shall be dispatched at the sender's registered place of business and shall be received at the recipient's registered place of business.

(4) Where a sender or recipient has more than one registered place of business, his retained place of business shall be the one having the closest link with his underlying operation or, in the absence of such underlying operation, with the principal place of business.

(5) If a sender or recipient does not have a place of business, the place of usual domicile shall be taken into consideration.

(6) The provisions of this section shall apply even though the information system supporting the electronic address of the recipient

differs from the place where an electronic message is considered to be received under this section.

Offer and acceptance

21.—(1) Unless otherwise agreed by the parties, an offer and acceptance of the offer may be wholly or partly expressed by electronic means.

(2) A contract concluded between parties by means of electronic messages shall be concluded at the time when, and place where, the acceptance of the offer was received by the recipient:

Provided that parties may agree that the contract was concluded at the place of residence of one party or the place of location of the legal entity, who accepted the offer.

Attribution of electronic messages to sender

22.—(1) An electronic message shall be considered to be that of the sender, if it was sent—

(*a*) by the sender personally;

(*b*) by an agent of the sender; or

(*c*) by an information system programmed by the sender or on behalf of the sender to send electronic messages automatically.

(2) The recipient of an electronic message shall justifiably consider that the electronic message came from the sender and act accordingly if—

(*a*) the recipient properly applied a procedure previously agreed with the sender for this purpose; or

(*b*) the electronic messages received by the recipient results from the actions of a person whose relationship with the sender or with an agent of the sender, enabled the recipient to gain access to a method used by the sender to identify an electronic message as that of the sender.

(3) Where parties have not agreed on a procedure of ascertaining the sender of an electronic message, the sender shall be presumed to be the person who objectively appears to be the sender.

(4) The presumption in subsection (3) shall not apply in the following circumstances—

(*a*) where a recipient of an electronic message was timely notified by the sender that an electronic message did not emanate from the sender;

(*b*) where a recipient of an electronic message has received notice from the sender that the electronic message was issued without the knowledge or consent of the sender;

(*c*) where a recipient of an electronic message knew or should have reasonably known, if he had used an agreed procedure that the electronic message did not come from the sender, or that the person who sent the electronic message did not have the authority of the sender to issue or send the electronic message; or

(*d*) the recipient of an electronic message knew or should have reasonably known that the electronic message resulted from a transmission error.

(5) A recipient of an electronic message shall be entitled to consider each electronic message received as a separate electronic message and act accordingly, unless it duplicates another electronic message which the recipient knew or should have known after taking reasonable steps or complying with an agreed procedure that the electronic message was a duplicate.

Acknowledgement of receipt of an electronic message

23.—(1) Where acknowledgment of an electronic message is required, a sender of the message shall indicate this requirement to the recipient of the message on or before sending the message.

(2) Where a sender of an electronic message has not specified a particular form of acknowledgement, the recipient may apply one of the following methods—

(*a*) any communication by automated means or any other means, which originated from the recipient; or

(*b*) any act of the recipient, reasonably sufficient to notify the sender that the electronic message was received.

(3) Where a sender of an electronic message states that an electronic message shall be valid on receipt of acknowledgement by the recipient, the electronic message shall not be considered as sent until the acknowledgement is received.

(4) Where a sender of an electronic message receives a recipient's acknowledgement of receipt of the message, it shall be presumed that the message has reached the recipient, but this presumption shall not mean that the electronic message corresponds to the message received.

(5) Where a party has not indicated that the communication of the electronic message is conditional on receipt of an electronic message, and acknowledgement has not been received by the recipient within the time specified or agreed, or if no time has been specified or agreed, within a reasonable time—

(*a*) the sender of the electronic message may notify the recipient that no acknowledgement has been received and specify

a reasonable time by which the acknowledgement shall be received; and

(*b*) if the acknowledgement of receipt is not received within the specified period stipulated in paragraph (*a*), the sender of the electronic message may, upon notice to the recipient, treat the electronic message as though it has never been sent, or exercise any other right that the sender may have.

(6) Where an acknowledgement of receipt indicates that an electronic message complies with the technical conditions, prescribed either by an agreement or by applicable law, these conditions shall be deemed to be fulfilled.

(7) Except insofar as it relates to the sending or receipt of an electronic message, this section shall not affect the legal consequences that may flow either from that message or from the acknowledgement of its receipt.

PART IV

Liability of Online Intermediaries and Content Editors and Protection of Online Users

Freedom of communication and its limitations

24.—(1) Subject to this Act, there shall be no limitations to online public communication.

(2) Notwithstanding the provisions of subsection (1), online public communication may be restricted in order to—

(*a*) prohibit child pornography;

(*b*) prohibit incitement on racial hatred, xenophobia or violence;

(*c*) prohibit justification for crimes against humanity;

(*d*) promote human dignity and pluralism in the expression of thoughts and opinions;

(*e*) protect public order and national security;

(*f*) facilitate technical restriction to conditional access to online communication; and

(*g*) enhance compliance with the requirements of any other written law.

Liability of an intermediary service provider

25.—(1) An intermediary service provider shall not be liable in any civil or criminal proceedings for any information contained in an electronic message in respect of which he provides services, if the intermediary service provider—

(*a*) has not initiated the transmission of the message;

(*b*) has no actual knowledge of the act or omission that gives rise to the civil or criminal liability as the case may be, in respect of the message; and

(*c*) has no knowledge of any facts or circumstances from which the likelihood of such civil or criminal liability ought reasonably to have been known.

(2) Nothing in this section shall be construed as—

(*a*) requiring an intermediary to monitor any information contained in any electronic message, in order to establish knowledge of any act, omission, fact, or circumstance giving rise to civil or criminal liability or imputing knowledge of such liability; or

(*b*) relieving an intermediary from complying with any law, court order, ministerial direction, or contractual obligation in respect of an electronic message.

(3) If in relation to information contained in an electronic message in respect of which an intermediary service provider renders his services, the intermediary service provider has—

(*a*) actual knowledge of the act or omission that gives rise to civil or criminal liability, as the case may be, in respect of the message; or

(*b*) knowledge of any fact or circumstance from which the likelihood of such civil or criminal liability ought reasonably to have been known, he shall forthwith remove the document from any electronic communication system within his control and shall cease to provide services in relation to the message.

(4) An intermediary service provider shall not be liable for any act done in good faith pursuant to this section.

Liability for being a conduit

26.—(1) An intermediary service provider shall not, when supplying services of transmission of information, or when offering access to online public communication, be held liable for the information transmitted on condition that the intermediary service provider—

(*a*) does not monitor the online communication;

(*b*) does not initiate the transmission;

(*c*) does not select the receiver of the transmission; or

(*d*) does not select or modify the information contained in the transmission.

(2) The acts of transmission, routing and provision of access include the automatic, intermediate and transient storage of the information transmitted in so far as this takes place—

(*a*) for the sole purpose of carrying out the transmission in the information system;

(*b*) in a manner that makes it ordinarily inaccessible to anyone other than an anticipated recipient; and

(*c*) for storage for a period not longer than is reasonably necessary for the transmission.

Liability for caching services

27. An intermediary service provider shall not be liable for the automatic intermediate and temporary storage of the electronic message, where the intention of such storage is for its onward transmission to other recipients who requested it, if the intermediary service provider—

(*a*) does not modify the electronic message;

(*b*) complies with the conditions on access to electronic message;

(*c*) complies with rules regarding updating of the electronic message, specified in a manner widely recognized and used by the information and communication technology industry;

(*d*) does not interfere with the lawful use of technology that is widely recognized and used by the information and communication technology industry, to obtain information on the use of electronic message;

(*e*) acts expeditiously to remove or to disable access to the information it has shared upon obtaining actual knowledge of the fact that the information at the initial source of the transmission has been removed or access to it has been disabled or that a court or an administrative authority has ordered such removal or disablement; and

(*f*) removes or disables access to the electronic messages it has stored upon receiving a takedown notice.

Liability for the supply of hosting services

28. An intermediary service provider who provides a service comprising storage of electronic messages shall not be liable for the information stored if—

(*a*) he was not aware of the unlawful character of the stored information; or

(*b*) immediately after becoming aware of the unlawful character of the stored information, he took all necessary measures

to withdraw the information or to make access to such information impossible; or

(*c*) upon receipt of the takedown notice issued under this Act, he expeditiously removes or disables access to the information.

Saving of data

29.—(1) An intermediary service provider shall, while exercising the activities prescribed in section 30, maintain and preserve the data that permits the identification of any person who contributed to the creation of all or part of the content relating to the services rendered by such intermediary service provider.

(2) The High Court may require from the intermediary service provider communication of the data referred to in subsection (1).

(3) The Authority may issue regulations governing the retention of data referred to in this section.

Takedown notification

30.—(1) An intermediary service provider offering access to online public communication services shall provide, and inform its subscribers of the existence of any technical means which permit restriction of access to certain services.

(2) An intermediary service provider shall set up an easily accessible and visible system to enable any person inform the intermediary service provider of any content which is unlawful or infringes, or may infringe, on such person's rights.

(3) An intermediary service provider shall—

(*a*) inform promptly the Authority or its organs of any illegal content reported as indicated in subsection (2) and made available online by the beneficiaries of their services; and

(*b*) make public the means taken to fight against the dissemination of such illegal content.

(4) Any person who claims that a published electronic message is unlawful or infringes on his right, shall notify the intermediary service provider of such message.

(5) A notification stipulated in subsection (4) shall be in permanent medium addressed by the complainant to the intermediary service provider, and shall include the following information—

(*a*) the full name and address of the complainant;

(*b*) the written or electronic signature of the complainant;

(*c*) the right that has been infringed;

(*d*) identification of the material or activity that is claimed to be the subject of the infringing or unlawful activity;

(*e*) the remedial action required to be taken by the intermediary service provider in respect of the complaint;

(*f*) telephone and electronic mail contacts;

(*g*) a statement that the complainant is acting in good faith; and

(*h*) a statement by the complainant that the information is true and correct.

(6) Any person who notifies an intermediary service provider of an infringement or unlawful activity or content knowing that the notification is false, commits an offence and is liable to a fine of K1,000,000 and imprisonment for twelve months.

(7) An intermediary service provider shall not be liable for a takedown in response to a wrongful or false notification.

Online content providers

31.—(1) An online content provider shall display in a conspicuous manner, the following information on its webpage—

(*a*) in case of a natural person, full name, domicile, telephone number, and email address, of the editor;

(*b*) in case of a legal entity, corporate name, postal and physical address of the registered office, telephone number, email address, authorized share capital, and registration number, of the editor;

(*c*) where applicable, the name of the corporate officer appointed as director of the publication of the online public communication and the editor in chief; and

(*d*) the name, title, corporate name, postal and physical address and telephone number, email address of the intermediary service provider prescribed in this section.

(2) A person editing online public communication on a non-professional basis may make publicly available his name as well as the name and address of the intermediary service provider prescribed in this Act:

Provided that the person has duly communicated to the intermediary service provider the particulars of personal identification prescribed by subsection (1).

(3) Any intermediary service provider identified in this section shall be subject to professional secrecy as regards disclosure of the particulars of personal identification or of any information sufficient to identify the source of online content.

(4) A person may act as an editor of an online public communication, and as an intermediary service provider, if his activities fall under both regimes.

(5) Where a person acts as an editor of an online public communication and as an intermediary service provider as provided in subsection (4), legal obligations of both regimes shall apply respectively to each activity.

(6) An intermediary service provider exercising the activities prescribed in this section shall provide to editors of online content under this section the technical means to comply with the requirements of identification prescribed in this section.

Right of reply

32.—(1) A person who can be directly or indirectly identified in an online public communication, shall have the right to demand a publication of his response, without prejudice to his right to request correction or deletion of the content.

(2) A request stipulated in subsection (1) shall be addressed to the editor in chief designated in section 31 (1) (*c*).

(3) In the event that a person editing an online public communication on a non-professional basis elects to remain anonymous, the complainant shall directly address the request to the hosting intermediary service provider.

(4) An online editor shall publish the response stipulated in subsection (1) within twenty-four hours of receipt of the request in subsection (1).

(5) A person who contravenes subsection (4) commits an offence and is liable to a fine of K1,000,000 and imprisonment for twelve months.

(6) A right of reply shall be exercised free of charge.

PART V

Electronic Commerce

Information to be provided by a supplier

33.—(1) A supplier of goods or services through electronic commerce (in this Act otherwise referred to as a "supplier") shall make available the following information to consumers—

(*a*) full name and legal personality;

(*b*) postal and physical address and telephone number;

(*c*) website address and email address;

(*d*) in case of a corporate entity, its registration number, name of its office bearers and its place of registration;

(*e*) if the supplier is subject to a tax on consumer goods and services, his tax personal identification number;

(*f*) details of membership to any regulatory or accreditation body to which the supplier belongs or subscribes to, and contact information of such body;

(*g*) if the activity of the supplier is subject to any professional regulation, reference to the applicable professional rules, his professional title, the place where such title was granted, or organization to which the person is registered;

(*h*) if the supplier belongs to a self-regulatory body, to a professional association, to an organization for dispute settlement, or to any other relevant certification organization, the supplier shall provide adequate information and ensure easy means of verification of such belonging and of access to the codes and practices applicable to that body, association or organization; and

(*i*) physical address where the supplier receives service of legal documents.

(2) A supplier shall, before conclusion of a contract, provide to consumers the following information regarding the terms, conditions and costs associated with the transaction—

(*a*) sufficient description of goods or services subject of the contract;

(*b*) instructions for use and, in particular, the warnings related to security and health;

(*c*) restrictions, limitations or conditions related to the purchase, such as an agreement of a parent or of a guardian, and any territorial or temporal restrictions;

(*d*) details of full costs, including taxes and costs of shipping and delivery to be paid by the consumer, and terms and conditions of payment;

(*e*) conditions of delivery or execution such as the time of delivery of goods or provision of services:

Provided that—

(i) unless otherwise agreed by the parties, the supplier shall be bound to deliver the goods or to provide the services immediately upon conclusion of the contract; and

(ii) where the supplier fails to deliver the goods and provide the services as stipulated in subparagraph (i), the consumer shall be entitled to terminate the contract;

(*f*) mode of payment;

(*g*) information regarding available after-sale service;

(*h*) details and conditions of withdrawal, denunciation, return, cancellation or reimbursement, in accordance with the provisions of sections 36, 37, 38 and 39;

(*i*) warranty conditions;

(*j*) return, exchange and refund policy of the supplier;

(*k*) manner and the period within which the consumer can maintain a full record of the transaction;

(*l*) any alternative dispute resolution code to which the supplier subscribes and how the details and content of that code may be accessed electronically by the consumer; and

(*m*) security procedures and privacy policy of the supplier in respect of payment, payment information and personal information of the consumer.

Formation of electronic contracts with consumers

34.—(1) Every contract with a value exceeding K5,000,000, or a value as will be prescribed by the Minister by notice published in the *Gazette*, concluded by electronic means shall be achieved by the supplier for a period of not less than seven years from the date when the contract was formed.

(2) A supplier shall ensure that the terms and conditions referred to in subsection (1)—

(*a*) specify the time and manner the contract is formed; and

(*b*) are in a form that guarantees their preservation and production.

(3) A supplier shall—

(*a*) provide the technical means which permit the consumer to review the transaction and correct any errors made;

(*b*) indicate the languages in which the contract shall be formed;

(*c*) in case the contract is archived, provide the conditions of such archiving by the supplier and the conditions of access to the archived contract; and

(*d*) if applicable, provide the way to access, through electronic means, professional and commercial rules that the supplier considers binding.

(4) Every contract with a value exceeding K5,000,000 concluded by electronic means shall be archived by the supplier for a period

of not less than seven years from the date when the contract was formed.

Cooling-off period

35.—(1) A consumer shall be entitled to exercise the right of withdrawal from a contract concluded by electronic means without giving reasons and without penalties—

(*a*) with respect to goods, within seven days of receipt of the goods or a period as agreed by the two parties in the agreement;

(*b*) with respect to services, within seven days of the formation of the contract or a period as agreed by the two parties in the agreement.

(2) Where consumer has cancelled a contract under this section, the consumer may, if necessary, bear return costs for the goods supplied or services rendered.

(3) After a consumer has cancelled a contract under this section, a supplier shall, within fourteen days of cancellation of the contract by the consumer, reimburse to the consumer all sums paid.

(4) After expiry of the period specified in subsection (3), the sum due shall attract interest at the prevailing bank rate as specified by the Reserve Bank of Malaŵi.

(5) A supplier shall reimburse to a consumer, all sums due, in a payment mode agreed by the parties:

Provided that in the event that the parties fail to agree on the mode, the reimbursement shall be made in the same mode in which the consumer paid the supplier.

(6) Notwithstanding subsection (1), a consumer shall not withdraw from a contract concluded by electronic means where—

(*a*) the provision of services started with the consumer's consent, before the end of the seven day period;

(*b*) the price of the goods or services depends on the fluctuations of financial market rates and the price is not in the control of the supplier;

(*c*) the provision of goods was made according to the consumer's own specifications or clearly personalized, or goods which by their nature cannot be returned or are liable to deteriorate rapidly;

(*d*) the contract relates to the provision of audio or video recording or software;

(*e*) the contract relates to the provision of newspapers, periodicals or magazines; and

(*f*) the contract relates to the provision of betting and authorized lotteries.

Performance of an electronic transaction

36.—(1) A supplier shall put technical measures on his electronic platform that will enable a consumer to verify the accuracy of the details of an order, failing which an electronic transaction made on the platform shall be invalid.

(2) A supplier shall acknowledge receipt of the order electronically within forty-eight hours of receipt of the order.

(3) Unless the parties agree otherwise, a supplier shall execute the order within thirty days of receipt of the order.

(4) Where a supplier has failed to execute an order within the thirty days or within the agreed period, the consumer may, after the expiration of that period, cancel the contract upon giving a seven days' written notice.

(5) The order, the acceptance of the order, and the acknowledgement of receipt of such acceptance of the order, shall be considered received in accordance with section 20.

(6) For the purposes of this section, an "order" shall amount to an "offer".

Default in contract performance

37.—(1) Where a supplier fails to perform his part of the contract, the supplier shall inform the consumer of the failure and the supplier shall refund the consumer any sums paid within seven days of notifying the consumer of his failure or at the expiry of the thirty days or at the expiry of the period agreed by the parties, whichever comes first.

(2) Where a supplier fails to refund a consumer as required by subsection (1), interest shall accrue on the sum at the applicable bank rate as specified by the Reserve Bank of Malaŵi.

(3) Where a consumer is contractually required to bear costs of returning goods that the supplier has delivered to a consumer, the supplier shall inform the consumer of this fact in advance.

Review and cancellation of contract by a consumer

38.—(1) A supplier shall provide to a consumer with an opportunity to do the following—

(*a*) review the entire electronic transaction;

(*b*) correct any errors; and

(*c*) withdraw from the transaction before finally placing an order.

(2) Where a supplier's transaction fails to comply with subsection (1), a consumer is entitled to cancel the transaction within fourteen days after receiving the goods, services or facilities to which the transaction applies.

(3) Where a transaction is cancelled under subsection (2)—

(*a*) a consumer shall return the goods and cease using the services or facilities supplied pursuant to the transaction, as the case may require; and

(*b*) a supplier shall refund all payments made by the consumer in respect of the transaction.

(4) A supplier shall utilize a payment system that is sufficiently secure having regard to—

(*a*) accepted technological standards at the time of the transaction; and

(*b*) the type of transaction concerned.

(5) A supplier shall be liable for any damage suffered by a consumer due to a failure by the supplier to comply with subsection (4).

Cancellation of payment

39. A consumer may require the cancellation of a payment in case of fraudulent use of his payment for the purposes of execution of a contract by electronic means, and in such a case the sums paid shall be reimbursed to the consumer.

Prohibition of misleading advertising

40.—(1) A person dealing on online communication shall not advertise in a misleading manner.

(2) In determining whether online advertising is misleading, account shall be taken of all its features, and in particular, of any information it contains concerning—

(*a*) the characteristics of goods or services, such as their availability, nature, execution, composition, method and date of manufacture or provision, fitness for purpose, uses, quantity, specification, geographical or commercial origin, the results to be expected from their use, or the results and material features of tests or checks carried out on the goods or services;

(*b*) the price or the manner in which the price is calculated, and the conditions on which the goods are supplied or the services provided; and

(*c*) the nature, attributes and rights of the advertiser, such as its identity, assets, qualifications, ownership of industrial, commercial or intellectual property rights or its awards and distinctions.

(3) Comparative advertising shall, as far as the comparison is concerned, be permitted if the advertising—

(*a*) is not misleading within the meaning of subsections (1) and (2);

(*b*) compares goods or services meeting the same needs or intended for the same purpose;

(*c*) objectively compares one or more material, relevant, verifiable and representative features of those goods and services, which may include price;

(*d*) does not discredit or denigrate the trademarks, trade names, other distinguishing marks, goods, services, activities or circumstances of a competitor;

(*e*) for products with designation of origin, relates in each case to products with the same designation;

(*f*) does not take unfair advantage of the reputation of a trademark, trade name or other distinguishing marks of a competitor or of the designation of origin of competing products;

(*g*) does not present goods or services as imitations or replicas of goods or services bearing a protected trademark or trade name; and

(*h*) does not create confusion among traders, between the advertiser and a competitor or between the advertiser's trademarks, trade names, other distinguishing marks, goods or services and those of a competitor.

Identification of advertisement content Cap. 48:10

41.—(1) Subject to the Consumer Protection Act and any other written law, any advertisement made by electronic means shall be clearly identifiable as such and the natural or legal person for whom the advertisement is placed shall be clearly identifiable.

(2) The terms and conditions for benefiting from promotional offers and for participating in sweepstakes, lotteries or in other promotional games shall be clearly and precisely indicated and easily accessible.

Unsolicited communications

42.—(1) Except in the case of a notice sent by an electronic communications provider to a customer in relation to services, a

person shall not send unsolicited electronic communications to a consumer without obtaining the prior consent of the consumer.

(2) A person who sends electronic commercial communication to a consumer shall provide the consumer—

(*a*) with an option to unsubscribe from the mailing list of that person; and

(*b*) at the request of the consumer, the identifying particulars of the source from which that person obtained the consumer's personal information.

(3) A recipient shall have the opportunity to object, free of charge, to the use of his personal data for prospection purposes by a data controller.

(4) A person who contravenes subsection (1) commits an offence and shall, upon conviction, be liable to a fine of K2,000,000 and imprisonment for five years.

(5) A person who sends unsolicited commercial communications to another person or who continues to send unsolicited commercial communications to a person after unsubscribing in accordance with subsection (2) (*a*) commits an offence and shall, upon conviction, be liable to a fine of K1,000,000 and imprisonment for twelve months.

(6) The provisions of subsections (1) and (2) shall not apply where—

(*a*) the sender of the electronic message has obtained the personal data of the recipient in the course of negotiations for the sale of the product or the provision of the service referred to in the electronic message; or

(*b*) the commercial solicitation is directly linked to the product or the service.

Scope of application of financial provisions Cap. 74:01

43.—(1) Subject to the Payment Systems Act, and any financial services law, the provisions of this Part shall apply to any supply of electronic financial services without prejudice to application of—

(*a*) specific legal and regulatory obligations applicable to certain financial products, instruments or services; and

(*b*) other provisions applicable to contracts concluded between natural persons or a supplier and a consumer.

(2) The Minister of Finance, on recommendation from the Authority and the Governor of the Reserve Bank of Malaŵi, shall

make regulations defining specific obligations with regards to online banking.

Identity of a provider of financial or banking services

44.—(1) Before a conclusion of a distance contract or acceptance of an offer, a consumer shall receive from the supplier the information indicated in section 33, and where applicable—

(*a*) when the supplier uses the services of a representative, the supplier shall communicate to the consumer the identity of the representative and his address and the following information—

(i) the fact that financial services are linked to instruments involving special risks related to their specific features or the operations to be executed or the fact that their price depends on fluctuations in the financial markets outside the supplier's control;

(ii) the fact that past performances do not allow to predict future performances; and

(iii) any limitation of the term during which the information provided is valid, the conditions of payment and execution and, if necessary, the existence of any specific additional costs for the consumer arising out of the use of electronic communication;

(*b*) where necessary, the existence of a right of withdrawal as prescribed by section 35, its duration, the possible pecuniary consequences of its exercise, as well as the address to be used by the consumer to notify the supplier of his decision;

(*c*) in a case where the right of withdrawal is not exercisable, the supplier shall inform the consumer about that and the consequences.

(2) For a contract with a withdrawal period, the supplier shall inform the consumer that without his express consent, the contract may not be executed before expiry of the withdrawal period.

(3) The terms and conditions of the contract and in particular the information indicated in subsections (1) and (2) shall be—

(*a*) provided in a clear and comprehensible manner and in any way appropriate to the means of electronic communication used;

(*b*) communicated to a consumer in writing prior to the conclusion of the contract; and

(*c*) communicated to a consumer in writing upon the consumer's request at any time during the contractual relations.

Right of withdrawal from a contract

45.—(1) Notwithstanding the provisions of section 35, a consumer entering into a distant contract for the provision of financial services shall have twenty calendar days unless otherwise agreed by the parties, within which he may exercise his right to withdraw from the contract without penalty and without giving reasons.

(2) The period referred to in subsection (1) shall be extended to forty-five calendar days for distance contracts relating to life insurance and retirement.

(3) The term during which the right of withdrawal may be exercised starts—

(*a*) either from the day when the distance contract was concluded, except the case of the life insurance with respect to which the term of withdrawal starts from the date when the consumer became aware of the conclusion of a distance contract; or

(*b*) from the day when the consumer received the terms and conditions of the contract, if the period is later than the period prescribed under subsection (1).

(4) The right of withdrawal shall not apply—

(*a*) to financial services having prices dependent on fluctuations of the financial market on which the supplier has no influence and which are susceptible to occur during the withdrawal period;

(*b*) to insurance of travel or luggage, or similar types of short-term insurance not exceeding one month;

(*c*) to contracts—

(i) executed exclusively by the supplier and the consumer;

(ii) executed upon the express request of the consumer; and

(iii) where the consumer has not yet exercised the right of withdrawal;

(*d*) to online auctions;

(*e*) to supply of food stuffs, beverages and other goods intended for daily consumption;

(*f*) where audio or video recordings or computer software were downloaded, or unsealed by the consumer;

(*g*) to sell of newspapers, periodicals, magazines and books;

(*h*) to the provision of gaming and rotary services;

(*i*) to online gambling;

(*j*) to the provision of accommodation, transport and catering services; and

(*k*) to start up transactions as the Minister may by notice published in the *Gazette* prescribe.

(5) Unless otherwise agreed by the parties, where a consumer exercises the right of withdrawal, he may only be required to pay, within seven days, for the financial services already provided by a supplier pursuant to the distant contract and the execution of a contract may only start upon consent of the consumer, and the amount due—

(*a*) has not exceeded the amount proportionate to the service already rendered as compared to the services to be rendered under the contract; and

(*b*) is not, under any circumstances, of such value or nature as to constitute a penalty.

(6) A supplier may not require a consumer to pay an amount due under subsection (5) unless the supplier proves that the consumer was duly notified of the amount.

(7) Where a supplier has started to execute a contract before expiry of the term of withdrawal, the supplier may not, under any circumstances, require the consumer to process the payment.

(8) Unless otherwise agreed by the parties, a supplier shall be required to reimburse to a consumer, not later than fourteen days, all sums which were paid by the consumer under a distant contract.

(9) The fourteen day period referred to in subsection (8) shall commence once a supplier receives a notification of a decision by a consumer to withdraw from the contract.

(10) Unless otherwise agreed by the parties, where a supplier fails to reimburse to a consumer the sums due within the period of fourteen days, the amount shall attract interest at the prevailing bank rate as specified by the Reserve Bank of Malaŵi.

(11) A consumer shall return to the supplier not later than fourteen days or such period as agreed by the parties and the calculation of time under this section shall start from when the goods received from the supplier and the fourteen day period shall start from the day when the consumer has sent a notification of withdrawal to the supplier.

PART VI

Security and Digital Economy

Use, supply, transfer, etc.

46. Where any portion of an electronic message is signed with a digital signature, the digital signature shall be treated as a secure electronic signature with respect to such portion of the message if—

(*a*) the digital signature was created during the operational period of a valid digital signatures certificate and is verified by reference to the public key listed in such certificate;

(*b*) the public key of the signatory has the same identity as the certificate based on the fact that—

(i) the digital signature certificate was issued by a competent licensed certification authority;

(ii) the digital signature certificate was issued by a certification authority outside Malaŵi recognized for this purpose by the Authority;

(iii) the digital signature certificate was issued by an organ licensed by the Authority to act as a certification authority in accordance with this Act; and

(iv) the sender and the recipient have expressly agreed between themselves to use digital signatures as a security procedure, and the digital signature was property verified by reference to the sender's public key.

Presumptions regarding digital signature certificates

47. Except for information identified as subscriber information which has not been verified, any other information included in a digital signature certificate issued by a licensed certification authority shall be deemed correct if the subscriber accepted the digital signature certificate, unless evidence to the contrary is adduced.

Unreliable digital signatures

48. Unless otherwise provided for by any written law or contract, a person relying on a digitally signed electronic message shall bear the risk that the digital signature is invalid as a signature or authentication of the signed electronic message, if reliance on the digital signature is not reasonable under the circumstances having regard to the following factors—

(*a*) acts which the person relying on the digitally signed electronic message knows or has notice of, including all facts listed in the digital signature certificate or incorporated in it by reference;

(*b*) the value or importance of the digital signed electronic message, if known;

(*c*) the course of dealing between the person relying on the digital signed electronic message and the subscriber and any available indication of reliability or unreliability apart from the digital signature; and

(*d*) any usage of trade, particularly trade conducted by trustworthy systems or other electronic means.

Reliance on digital signature and certificate

49. A person who relies on a digital signature shall be deemed to have relied on a valid certificate containing the public key by which the digital signature may be verified.

Requirements to publish digital signature certificate

50. A digital signature certificate may be published where—

(*a*) it has been issued by a competent authority;

(*b*) the subscriber mentioned on that digital signature certificate has accepted it; and

(*c*) the digital signature certificate has not been revoked or suspended.

Authority to appoint a certification authority

51.—(1) The Authority shall accredit certification authorities.

(2) The Minister shall, from time to time issue certification authorities accreditation regulations in consultation with the Authority which may include—

(*a*) application procedures accreditation;

(*b*) applicable fees;

(*c*) terms and conditions for accreditation;

(*d*) standards to be maintained by accreditation authorities;

(*e*) any other terms deemed necessary.

(3) The Authority shall—

(*a*) keep and maintain a register of certification authorities; and

(*b*) do such things as necessary for the implementation of this Act.

Encryption

52.—(1) A person shall not provide cryptograph services or products in Malaŵi without registration under this Part.

(2) Registration for provision of cryptograph services or products shall be made—

(*a*) to the Authority;

(*b*) in the prescribed manner and form; and

(*c*) upon payment of applicable fees.

(3) The Minister in consultation with the Authority shall issue regulations—

(*a*) in respect of use, importation and exportation of encryption programmes and encryption products; and

(*b*) prohibiting the exportation of encryption programmes or other encryption products from Malaŵi generally or subject to such restrictions as may be prescribed.

(4) For the avoidance of doubt, subject to any regulations made under subregulation (1), it is lawful for any person to use encryption programme or product provided that it has lawfully come into possession of that person.

Trustworthy system

53.—(1) A certification authority shall utilize a trustworthy system in performing its services.

(2) The registration for the provision of cryptographic services or products shall be made—

(*a*) to the Authority;

(*b*) in the prescribed manner and form; and

(*c*) upon payment of prescribed fees.

(3) The Minister in consultation with the Authority shall issue regulations—

(*a*) in respect of use, importation and exportation of inscription programmes and products; and

(*b*) prohibiting the exportation of inscription programmes or other inscription products from Malaŵi generally, or subject to such restrictions, as may be prescribed.

(4) For the avoidance of doubt, subject to any regulations made under subregulation (1), it is lawful for any person to use encryption programme or product provided that it has lawfully come into possession of that person.

Disclosure

54.—(1) A certification authority shall disclose—

(*a*) its digital signature certificate that contains the public key corresponding to the private key used by that certification authority to digitally sign another digital signature certificate;

(*b*) any relevant certification practice statement;

(*c*) notice of the revocation or suspension of its certification authority certificate; and

(*d*) any other fact that materially and adversely affects either the reliability of a digital signature certificate that the authority has issued or the authority's ability to perform its services.

(2) In case of an occurrence that materially and adversely affects a certification authority trustworthy system or its certification, the certification authority shall—

(*a*) use reasonable efforts to notify any person who is known to be foreseeably affected by that occurrence; and

(*b*) act in accordance with procedures governing such an occurrence specified in its certification practice statement.

Issuance of a digital signature certificate

55.—(1) A certification authority may issue a certificate to a prospective subscriber only after—

(*a*) it has received a request from the prospective subscriber; and

(*b*) the prospective subscriber has a certification practice statement in compliance with the content of such statement including procedures regarding identification of the prospective subscriber.

(2) In the absence of a certification practice statement, the certification authority shall confirm by itself or through an authorized agent that—

(*a*) the prospective subscriber is the person to be listed in the digital signature certificate to be issued;

(*b*) if the prospective subscriber is acting through one or more agents, the subscriber authorized the agent to have custody of the subscriber's private key and to request issuance of a digital signature certificate listing the corresponding public key;

(*c*) the information in the digital signature certificate to be issued is accurate;

(*d*) the prospective subscriber rightfully holds the private key corresponding to the public key to be listed in the digital signature certificate;

(*e*) the prospective subscriber holds a private key capable of creating a digital signature; and

(*f*) the public key indicated in the digital signature certificate is capable of verifying a digital signature affixed by the public key.

Representations upon issuance of a digital signature certificate

56.—(1) By issuing a digital signature certificate, a certification authority represents any person who relies on the digital signature certificate or a digital signature verifiable by the public key indicated in the certificate in accordance with any applicable certification practice statement.

(2) In the absence of such certification practice statement, the representing certification authority confirms that—

(*a*) the certification authority has complied with all applicable requirements of this Act in issuing the digital signature certificate, but where the certification authority has published or submitted it to such relying person, it shall confirm that the subscriber listed in the digital signature has accepted it;

(*b*) the subscriber identified in the certificate holds the private key corresponding to the public key listed in the digital signature certificate;

(*c*) the subscriber's public key and private key constitute a functioning key pair;

(*d*) all information in the digital signature certificate is accurate, unless the certification authority has stated in the digital signature certificate or incorporated by reference in the certificate a statement that the accuracy of specified information is not confirmed; and

(*e*) the certification authority has no knowledge of any material fact which if it had been included in the digital signature certificate would adversely affect the reliability of the representations above-mentioned.

Suspension of a digital signature certificate

57. A certification authority that issued a digital signature certificate shall suspend the certificate after receiving a request by—

(*a*) a subscriber listed in the digital signature certificate; or

(*b*) a person acting on behalf of a subscriber, where the subscriber is not available.

Revocation of a digital signature certificate

58. A certification authority shall revoke a digital signature certificate that it issued—

(*a*) upon request by the subscriber or his representative;

(*b*) upon receipt of a certified copy confirming that the subscriber is dead;

(*c*) upon presentation of documents effecting a dissolution of the subscriber; or

(*d*) upon confirming by other evidence that the subscriber has been dissolved or has ceased to exist.

Revocation without a subscriber's consent

59.—A certification authority shall revoke a digital signature certificate, regardless of whether the subscriber listed in the certificate consents, if the certification authority confirms that—

(*a*) a material fact represented in the digital signature certificate is false;

(*b*) a requirement for issuance of the digital signature was not satisfied;

(*c*) the certification authority's private key or trustworthy system was compromised in a manner materially affecting the digital signature certificate's reliability; or

(*d*) a subscriber has ceased his activities.

Notice of suspension of a digital signature certificate

60.—(1) Immediately upon suspension of a digital signature certificate by a certification authority, the certification authority shall publish a signed notice of the suspension.

(2) A certification authority shall keep and maintain a register containing notices of suspended digital signature certificates, which registers shall be open for inspection by the public.

Notification of revocation of a digital signature certificate

61.—(1) Immediately upon revocation of a digital signature certificate by a certification authority, the certification authority shall publish a signed notice of the revocation.

(2) A certification authority shall keep and maintain a register containing notices of revoked digital signature certificates which shall be open for inspection by the public.

Generating a key pair

62.—(1) If a subscriber generates a key pair whose public key is to be listed in a digital signature certificate issued by a certification authority and accepted by the subscriber, the subscriber shall generate the key pair using a trustworthy system.

(2) This section shall not apply to a subscriber who generates a key pair using a system approved by a certification authority.

Accurate and complete representations

63. A subscriber shall not make material representations to a certification authority for purposes of obtaining a digital signature certificate, including all information known to the subscriber and represented in the certificate, unless the representations are accurate and complete.

Acceptance of a digital signature certificate

64.—(1) A subscriber shall be deemed to have accepted a digital signature certificate if he publishes in writing or authorizes the publication of a digital signature certificate—

(*a*) to one or more persons;

(*b*) in a register; or

(*c*) where another digital signature certificate is produced or proved by written evidence.

(2) By accepting a digital signature certificate issued by a subscriber or a certification authority, the subscriber listed in the certificate certifies to all who reasonably rely on the information contained in the certificate that—

(*a*) the subscriber rightfully holds the private key corresponding to the public key listed in the digital signature certificate; and

(*b*) all representations made by the subscriber to the certification authority and material to the information listed in the digital signature certificate are true.

Control of a private key

65.—(1) By accepting a digital signature certificate issued by a certification authority, the subscriber identified in the certificate shall assume a duty to exercise reasonable care to retain control of the private key corresponding to the public key listed in such digital signature certificate and shall prevent its disclosure to a person not authorized to create the subscriber's digital signature.

(2) The duty referred to in subsection (1) shall continue during the operational period of the digital signature certificate and during any period of suspension of the certificate.

Requesting for suspension or revocation

66. A subscriber who has accepted a digital signature certificate shall, as soon as possible, request the issuing certification authority to suspend or revoke the certificate if the private key corresponding to the public key listed in the certificate has been compromised.

Provision of encryption services

67.—(1) A person who provides encryption services shall declare to the Authority the technical characteristics of the encryption means as well as the source code of the software used.

(2) Regulations made under this Act shall define the conditions for making declarations referred to in subsection (1), and may define encryption services whose technical characteristics or conditions of supply are such that, with regard to national defence or internal security interests, their provision shall not require any prior formality.

(3) An encryption services provider shall be bound by professional secrecy.

(4) Unless it is proved that no intentional wrongful conduct or negligence was involved, a provider of encryption services for confidentiality purposes shall be liable, notwithstanding any contractual provision to the contrary, for the damage suffered by the persons that entrusted the management of their confidential conventions to them in case of violation of the integrity, confidentiality or availability of the data object of such convention.

Administrative sanctions

68.—(1) Without prejudice to applicable criminal sanctions, where a supplier of encryption, including free of charge encryption, does not comply with its obligations under this Act, the Authority may, after having given the supplier the opportunity to give its observations, prohibit the distribution of the concerned encryption.

(2) The prohibition of distribution shall entail an obligation for the supplier to withdraw—

(*a*) from distribution networks, the prohibited encryption; and

(*b*) materials constituting encryption whose distribution has been prohibited and that have been acquired against payment directly or through distribution networks.

Appointment of cyber inspectors

69.—(1) The Authority shall appoint any person as a cyber inspector to perform the functions provided for in this Part for a term of two years, renewable for another term of two years.

(2) A person may be appointed as a cyber inspector if that person—

(*a*) is a citizen and a resident of Malaŵi;

(*b*) possesses qualifications, expertize and experience in any field of communications technology, law, economics or finance; and

(*c*) is an individual who is committed to fairness, openness, accountability and to principles by which the Authority is guided.

(3) A person shall be disqualified from being appointed as a cyber inspector if he—

(*a*) is a Member of Parliament;

(*b*) is a Minister or Deputy Minister; or

(*c*) is a member of a committee of a political party.

(4) The Authority shall provide any person appointed as a cyber inspector with a certificate of appointment.

(5) The certificate of appointment referred to in subsection (4) may be accompanied by a digital signature of the Authority.

(6) A cyber inspector shall, in performing any function under this Act—

(*a*) be in possession of the certificate of appointment referred to in subsection (4); and

(*b*) upon request by a person who is subject to investigations or an employee of that person, show the certificate of appointment to that person.

Powers and functions of a cyber inspector

70.—(1) A cyber inspector shall have the following powers and functions—

(*a*) to monitor and inspect any website database with critical data or activity on an information system in the public domain and report any unlawful activity to the Authority;

(*b*) in respect of suppliers of encryption and encryption service providers—

(i) to investigate the activities of suppliers of encryption and of encryption service providers in relation to compliance with this Act; and

(ii) to issue orders in writing to suppliers of encryption and encryption service providers to comply with the provisions of this Act;

(*c*) in the performance of his functions, at any reasonable time, without prior notice, and under the authority of a search warrant issued by a court, to enter any premises or access any information system and—

(i) search the premises or the information system;

(ii) search any person on the premises if there are reasonable grounds to believe that the person has possession of a document, record or any element that is connected to an investigation;

(iii) take extracts from, or make copies of, any book, document, record or any element that is in the premises or in the information system and has a bearing on an investigation;

(iv) demand the production of, and inspect, relevant authorizations, declarations and certificates;

(v) inspect any facilities on the premises, which are linked or associated with the information system;

(vi) access and inspect the operation of any computer or equipment forming part of an information system and any associated apparatus or material which the cyber inspector has reasonable cause to believe is, or has been used in, connexion with the commission of any offence;

(vii) use or cause to be used any information system or part thereof to search any data contained in or available to such information system;

(viii) require the person by whom, or on whose behalf, the cyber inspector has reasonable cause to suspect the computer or information system is or has been used, or require any person in control of, or otherwise involved with the operation of the computer or information system, to provide the cyber inspector with such reasonable, technical and other assistance as the cyber inspector may require for the purposes of this Part; or

(ix) make such inquiries as may be necessary to ascertain whether the provisions of this Act or any other written law on which an investigation is based, have been complied with.

(2) A person who—

(*a*) hinders or obstructs a cyber inspector in the performance of his powers and functions under this Part;

(*b*) refuses to cooperate with a cyber inspector; or

(*c*) falsely holds himself out as a cyber inspector,

commits an offence and shall, upon conviction, be liable to a fine of K5,000,000 and imprisonment for seven years.

(3) For the proper performance of his functions under this Act, a cyber inspector may be accompanied by a police officer.

PART VII

Data Protection and Privacy

Processing of personal data

71.—(1) A data controller shall ensure that personal data is—

(*a*) processed fairly and legally;

(*b*) collected for specified, explicit and legitimate purposes and not further processed in a way incompatible with those purposes;

(*c*) adequate, relevant and not excessive in relation to the purposes for which they are collected and processed;

(*d*) accurate and, where necessary, kept up to date;

(*e*) every reasonable step shall be taken to ensure that data which is inaccurate or incomplete, having regard to the purposes for which they were collected or for which they are further processed, is erased or rectified; and

(*f*) kept in a form which permits identification of data subjects for no longer than is necessary for the purposes for which the data was collected or for which it is further processed.

(2) Personal data may be processed only if—

(*a*) the data subject has unambiguously given his consent;

(*b*) the processing is necessary for the performance of a contract to which a data subject is party or in order to take steps at the request of the data subject prior to entering into a contract;

(*c*) the processing is necessary for compliance with a legal obligation to which a data controller is subject;

(*d*) the processing is necessary in order to protect the vital interests of a data subject;

(*e*) the processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in a data controller or in a third party to whom the data is disclosed; or

(*f*) the processing is necessary for the purposes of the legitimate interests pursued by a data controller or by the third party or parties to whom the data is disclosed, except where such interests are overridden by the interests for fundamental rights and freedoms of the data subject.

(3) For purposes of this section, "consent" means any freely given specific and informed indication by a data subject, of his wishes, by agreement, to his personal data being collected, processed or stored.

Rights of a data subject

72.—(1) A data subject shall be entitled to obtain from a data controller, without constraint or unreasonable delay and at no expense—

(*a*) confirmation as to whether or not the data relating to him is being processed;

(*b*) communication to him of the data undergoing processing and of their source; and

(*c*) communication for the purposes of the processing and the recipients to whom the data is disclosed.

(2) A data subject shall be entitled to object at any time on legitimate grounds relating to his situation to the processing of data relating to him and where there is a justifiable objection, the processing instigated by the data controller may no longer involve such data.

(3) A data subject shall be entitled to obtain from a data controller, as appropriate, the rectification, erasure or blocking of data the processing of which does not comply with the provisions of this Act, in particular because of the incomplete or inaccurate nature of the data.

Accuracy and completeness of information

73. A data controller shall provide a data subject from whom data relating to himself is collected with at least the following information—

(*a*) the identity of the data controller and of his representative, if any;

(*b*) the purposes of the processing for which the data is intended;

(*c*) the existence of the right of access to and the right to rectify the data concerning him; and

(*d*) the existence of the right to object to the processing of the data concerning him.

Security obligations

74.—(1) A data controller shall implement technical and organizational measures enabling to protect personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorized disclosure or access, in particular where the processing involves the transmission of data over a network, and against all other unlawful forms of processing.

(2) Having regard to the state of the art and the cost of their implementation, such measures shall ensure a level of security appropriate to the risks represented by the processing and the nature of the data to be protected.

PART VIII

Domain Name and Management

Appointment of the Registrar of domain names

75.—(1) The Authority shall appoint a Registrar who shall administer and manage the ".mw" domain name space and any other Malaŵian names to be used for domain names (in this Act, otherwise referred to as the "Registrar").

(2) A person holding the office of the Registrar shall hold the office for such duration as the Authority, in its discretion, may determine.

Functions and powers of the Registrar

76.—(1) Without prejudice to generality of section 75, a person holding the office of the Registrar shall perform the following functions—

(*a*) ensuring compliance by users with international best practices in the administration of the ".mw" domain name space and any other Malaŵian names to be used for domain names; and

(*b*) publishing guidelines on—

(i) the general administration and management of the ".mw" domain name space and any other Malaŵian names to be used for the domain names;

(ii) the requirements and procedures for domain name registration; and

(iii) the maintenance of, and public access to, a registry.

(2) The Registrar shall enhance public awareness on the economic and commercial benefits of domain name registration.

(3) The Registrar, in relation to domain name regulation—

(*a*) may conduct such investigations as he may consider necessary;

(*b*) shall conduct research into, and keep abreast of, developments in Malaŵi and elsewhere on the domain name system and identifiers;

(*c*) shall continually survey and evaluate the extent to which the ".mw" domain name space and any other Malaŵian names to be used for domain names meet the needs of the citizens of Malaŵi; and

(*d*) may issue information on the registration of domain names in Malaŵi.

(4) The Registrar may—

(*a*) liaise, consult and cooperate with any person or other authorities in various fields which he deems fit for the purpose of implementing this Act; and

(*b*) appoint experts and other consultants on such conditions as the Authority may determine.

Recommendations relating to domain names

77.—(1) The Authority may make recommendations to the Minister in relation to policy on any matter relating to the ".mw" domain name space and any other Malaŵian names to be used for domain names.

(2) The Authority shall continually evaluate the effectiveness of this Act and the management of the ".mw" domain name space and any other Malaŵian names to be used for domain names.

(3) The Authority shall, in relation to the ".mw" domain name space and any other Malaŵian names to be used for domain names existing prior to the coming into force of this Act, uphold the vested rights and interests of any party involved in the management and administration of the ".mw" domain name space and any other Malaŵian names to be used for domain names at the date of its establishment:

Provided that—

(*a*) such party shall be granted a period of six months during which they may continue to operate in respect of their existing delegated sub-domains; and

(*b*) the Authority may, among other persons, consider the existing registrars for appointment to the post of registrar after the expiry of the six months.

Offence of administering domain name without authority

78. A person who administers, manages or operates second level domain name without authority commits an offence and shall, upon conviction, be liable to a fine of K5,000,000 and to imprisonment for seven years.

Dispute resolution concerning domain names Cap. 6:03

79. Any unresolved dispute under this Part shall be submitted to arbitration in accordance with the Arbitration Act.

PART IX

Electronic-Government Transactions

Requirement of electronic filing and issuing of documents

80.—(1) A public body shall take steps including entering into an arrangement to ensure that its functions are carried out, delivered or accessed electronically or online in full compliance with internationally recognized best practices.

(2) The Department of E-government shall assist and supervise public bodies in the establishment and delivery of e-government services.

(3) Where a law provides that a public body may—

(*a*) accept the filing of a document or requires that a document be created or retained;

(*b*) issue a permit, licence or an approval; or

(*c*) provide for the making of a payment, the public body may—

(i) accept the document to be filed, created or retained in the form of an electronic message;

(ii) issue the permit, licence or approval in an electronic form; or

(iii) make or receive payment by electronic means.

(4) A public body shall treat as official records, electronic records generated or received by a public body in the course of official duties.

(5) A public body shall maintain electronic records in a reliable record keeping system as defined in regulations made under this Act.

Specific guidelines to public bodies

81. The Department of E-government shall, for the purposes of section 80, from time to time, publish guidelines specifying—

(*a*) the manner and format in which the electronic message shall be filed, created or retained;

(*b*) the manner and format in which the permit, licence or approval shall be issued;

(*c*) where the electronic message has to be signed, the type of digital signature required;

(*d*) the manner and format in which the digital signature shall be attached to or incorporated into the electronic message;

(*e*) the appropriate control process and the procedure to ensure adequate integrity, security and confidentiality of an electronic message or a payment; and

(*f*) any other requirements in respect of the electronic message or payment.

Implementation of e-government

82.—The application of the provisions of this Part shall be subject to the adoption of necessary regulations made by the Minister, which shall establish—

(*a*) the legal framework to ensure security, storage, confidentiality and integrity of acts and exchanges done by electronic means; and

(*b*) the legal framework to ensure confidentiality of personal data and guaranteeing inviolability of private life.

PART X

Offences

Search warrant

83.—(1) A court may, on application by a cyber inspector, issue a search warrant.

(2) For the purposes of this section, a court may issue a warrant where—

(*a*) an offence has been committed in Malaŵi; or

(*b*) the subject of an investigation is—

(i) a Malaŵian or a person ordinarily resident in Malaŵi;

(ii) present in Malaŵi at the time when the warrant is applied for; or

(iii) information relevant to an investigation is accessible from within the area of jurisdiction of the court.

(3) A warrant to enter, search and seize may be issued at any time and shall—

(*a*) identify the premises or information system that may be entered and searched; and

(*b*) specify which acts may be performed by a cyber inspector in accordance with this Part.

(4) A warrant to enter and search shall be valid—

(*a*) subject to paragraph (*d*), until the warrant has been executed;

(*b*) until the warrant is cancelled by the court which issued it;

(*c*) until the purpose for issuing the warrant has lapsed; or

(*d*) until one month has passed from the date on which the warrant was issued.

(5) A warrant to enter and search premises may be executed only during the day, unless the court that issued it authorizes that it may be executed at any other time.

(6) Prohibition of disclosure of information to unauthorized persons shall be governed by the following provisions—

(*a*) except for the purposes of this Act or for the prosecution of an offence or pursuant to an order of a court, a person who has, pursuant to any powers conferred under this Part, obtained access to any information shall not disclose such information to any other person; and

(*b*) any person who contravenes paragraph (*a*), commits an offence and shall, upon conviction, be liable to a fine of K2,000,000 and to imprisonment for five years.

Unauthorized access, interception or interference with data

84.—(1) A person shall not gain unauthorized access to, or intercept, or interfere with data.

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(2) The Minister shall, by regulations, come up with specific cases where unauthorized access to, or interception of, or interference with, data may be permitted in specific conditions set out in the regulations.

(3) Any person who intentionally accesses or intercepts any data without authority or permission to do so, or who exceeds the authorized access, commits an offence and shall, upon conviction, be liable to a fine of K2,000,000 and to imprisonment for five years.

(4) Any person who intentionally and without authority to do so, interferes with data in a way which causes such data to be modified, destroyed or otherwise rendered ineffective, commits an offence and shall, upon conviction, be liable to a fine of K2,000,000 and to imprisonment for five years.

(5) Any person who unlawfully produces, sells, offers to sell, procures for use, designs, adapts for use, distributes or possesses any device, including a computer program, a component or a phone, which is designed primarily to overcome security measures for the protection of data, or performs any of these acts with regard to a password, access code or any other similar kind of data with the intent to unlawfully utilizing such item, commits an offence and shall, upon conviction, be liable to a fine of K2,000,000 and to imprisonment for five years.

(6) Any person who utilizes any device or computer program referred to in subsection (5) in order to unlawfully overcome security measures designed to protect such data or access thereto, commits an offence and shall, upon conviction, be liable to a fine of K2,000,000 and to imprisonment for five years.

(7) Any person who commits any act described in this section with the intent to interfere with access to an information system so as to constitute a denial, including a partial denial, of service to legitimate users commits an offence and shall be liable, upon conviction, to a fine of K2,000,000 and to imprisonment for five years.

(8) Any person who—

(*a*) communicates, discloses or transmits any data, information, program, access code or command to any person not entitled or authorized to access the data, information, program, code or command;

(*b*) knowingly introduces or spreads a software code that damages a computer, computer system or network;

(*c*) accesses or destroys any files, information, computer system or device without authorisation; or for the purposes of

concealing information necessary for an investigation into the commission, or otherwise, of an offence; or

(*d*) damages, deletes, alters, suppresses any communication or data without authorization,

commits an offence and shall, upon conviction, be liable to a fine of K2,000,000, and to imprisonment for five years.

(9) Any person who knowingly receives data which he is not authorized to receive commits an offence and shall, upon conviction, be liable to a fine of K2,000,000 and to imprisonment for five years.

(10) Where an offence under this section is committed in relation to data that is concerned with national security or the provision of an essential service, the person shall, upon conviction, be liable to imprisonment for a term of not less than ten years, but not exceeding fifteen years.

Child pornography

85.—(1) Child pornography in an electronic form is prohibited under this Act.

(2) Any person who—

(*a*) produces pornographic material for the purpose of its distribution through a computer system;

(*b*) reproduces pornographic material for the purpose of its distribution through an information system;

(*c*) offers or makes available any pornographic material through an information system;

(*d*) exposes a child to pornographic material through an information system;

(*e*) distributes or transmits any pornographic material through an information system;

(*f*) procures any pornographic material through a computer system for oneself or for another person; or

(*g*) possesses any child pornographic material in a computer system or on a computer data storage medium,

commits an offence and shall, upon conviction, be liable to a fine of K10,000,000 and to imprisonment for fifteen years.

(3) For the sake of protecting children from pornography as provided in subsection (1)—

(*a*) establishments serving the public, and places open to the public proposing access to internet shall use an adequate

pornography filtering software as defined by subsidiary legislation made under this Act;

(*b*) failure to comply with the obligation provided in this subsection shall be an offence punishable, upon conviction, with a fine of K10,000,000 and to imprisonment for fifteen years.

Prohibition of cyber harassment

86. Any person who uses any computer system and continues—

(*a*) making any request, suggestion or proposal which is obscene, lewd, lascivious or indecent; or

(*b*) threatening to inflict injury or physical harm to the person or property of any person; or

(*c*) knowingly permits any electronic communications device to be used for any of the above-mentioned purposes,

commits an offence known as cyber harassment and shall, upon conviction, be liable to a fine of K2,000,000 and to imprisonment for five years.

Prohibition of offensive communication

87. Any person who wilfully and repeatedly uses electronic communication to disturb or attempts to disturb the peace, quietness or right of privacy of any person with no purpose of legitimate communication whether or not a conversation ensues, commits a misdemeanour and shall, upon conviction, be liable to a fine of K1,000,000 and to imprisonment for twelve months.

Prohibition of cyber stalking

88. Any person who wilfully, maliciously, and repeatedly uses electronic communication to harass another person and makes a threat with the intent to instil reasonable fear in that person for his safety or to a member of that person's immediate family, commits an offence known as cyber stalking and shall, upon conviction, be liable to a fine of K1,000,000 and to imprisonment for twelve months.

Prohibition of hacking, cracking and introduction of viruses

89. Any person who hacks into any computer system, or knowingly introduces or spreads a virus into a computer system or network, commits an offence and shall, upon conviction, be liable to a fine of K5,000,000 and to imprisonment for seven years.

Unlawfully disabling a computer system

90. Any person who wilfully or maliciously renders a computer system incapable of providing normal services to its legitimate users, commits an offence and shall, upon conviction, be liable to a fine of K5,000,000 and to imprisonment for seven years.

Prohibition of spamming

91. Any person who transmits any unsolicited electronic information to another person for the purposes of illegal trade or

commerce, or other illegal activity, commits an offence and shall, upon conviction, be liable to a fine of K2,000,000 and to imprisonment for five years.

Prohibition of illegal trade and commerce

92. Any person who uses the internet as a medium for any illegal activity or trade, fraudulent transaction or as a means of procuring any internet related fraud, commits an offence and shall, upon conviction, be liable to imprisonment for ten years.

Attempting, aiding and abetting crime

93.—(1) A person who attempts to commit an offence under any provision of this Act, commits an offence and shall, upon conviction, be liable to a penalty not exceeding one half of the maximum penalty imposable by the provision creating the complete offence.

(2) A person who aids or abets any other person to commit any of the offences under this Act, commits an offence and shall, upon conviction, be liable to a penalty imposable by the provision creating the offence for actually committing the offence.

(3) The provisions of this section making reference to penalties imposed upon conviction shall apply *mutatis mutandis* to administrative monetary penalties imposable by the Authority under this Act and any regulations made under the Act.

Offences committed by legal persons

94. Where a legal person is convicted of an offence under this Act, every person who—

(*a*) is a director of, or is otherwise concerned with the management of, the legal person; and

(*b*) knowingly authorized or permitted the act or omission constituting the offence,

commits the same offence which the legal person is guilty of, and may be proceeded against and be sentenced accordingly.

General offence and penalty

95. A person who violates any provision of this Act, whose penalty has not been provided, commits an offence and shall, upon conviction, be liable to a fine of K5,000,000 and to imprisonment for seven years.

PART XI

General Provisions

Lodging of complaints to the Authority

96.—(1) Any person affected by a criminal offence defined under this Act may lodge a complaint to the Authority which shall direct a cyber inspector to assess the relevance of the complaint and, if the complaint is considered relevant and reasonable, proceed with investigations.

(2) Any interested organization whose members are affected by a criminal offence defined under this Act is entitled to lodge a complaint with the Authority.

(3) The Authority shall ensure that the complaining organization is kept informed of the investigations.

Public education programmes

97. The Authority shall implement public educational programs on the safe use of internet focusing in particular on—

(*a*) scope of cybercrimes;

(*b*) tips on safe cyber experience;

(*c*) promotion of educational uses of internet; and

(*d*) remedies and procedures when affected by cybercrime.

Intermediary service providers' levy

98. For the purposes of implementing the public educational programmes referred to in section 97, the Authority may impose intermediary service providers' levy on intermediary service providers who offer access to communications networks.

Codes of Conduct

99.—(1) In order to promote the development and the use of information technologies and electronic communications in Malaŵi and contribute to effective application of this Act, professional associations and organizations shall be encouraged to develop codes of conduct.

(2) A code of conduct shall in particular facilitate—

(*a*) the implementation of self-regulation practices with the assistance of representatives of consumers;

(*b*) access by consumers to information and advice regarding e-commerce;

(*c*) the setting up of alternative dispute resolution mechanisms between professionals and consumers at no fee to consumers; and

(*d*) communication, cooperation, elaboration and effective implementation of joint initiatives between companies, representative consumer associations and the Government to fight against fraudulent, misleading and unfair practices.

(3) A code of conduct shall be notified to the Authority and enter into force upon publication in the *Gazette.*

Act to prevail in case of inconsistency

100. Where any inconsistency arises between a provision of this Act and a provision of any other written law relating to the regulation of electronic transactions, the provisions of this Act shall prevail to the extent of the inconsistency.

101. The Authority may in its discretion impose administrative penalties to persons who violate a provision of this Act or the regulations made under it by imposing a fine not exceeding K5,000,000. Administrative penalties

102.—(1) The Minister may, in consultation with the Authority, by notice published in the *Gazette*, make regulations for carrying out the purpose and provisions of this Act into effect and prescribing all matters which are necessary or convenient to be prescribed for the better carrying out of the provisions of this Act and, without derogation from the generality of the foregoing, such regulations may provide for— Regulations

(*a*) the requirements and standards which registries and the registrar shall meet in order to operate with operational accuracy, stability, robustness and efficiency;

(*b*) the circumstances and manner in which registrations may be assigned, registered, renewed, refused, or revoked by the registries;

(*c*) the pricing policy;

(*d*) the provisions for the restoration of a domain name registration and penalties for late payments;

(*e*) the terms of the domain name registration agreement which registries and the registrar shall adopt and use in registering domain names, including issues in respect of privacy, consumer protection and alternative dispute resolution;

(*f*) the processes and procedures to avoid unfair and anticompetitive practices, including bias to, or preferential treatment of actual or prospective registrants, registries or the registrar, protocols or products;

(*g*) the requirements to ensure that each domain name contains an administrative and technical contact;

(*h*) the creation of new sub-domains;

(*i*) the procedures for ensuring the monitoring of compliance with this Act, including compliance with regular ".mw" domain name and any other Malaŵian names to be used for domain names space technical audits;

(*j*) any other matter relating to the ".mw" domain name space and any other Malaŵian names to be used for domain names as may be necessary to achieve the objectives of this Act;

(*k*) declaring certain classes of information to be critical data;

(*l*) establishing procedures for identification of database with critical data;

(*m*) the registration of database with critical data;

(*n*) prescribing minimum standards regarding management, access to transfer and control of databases with critical data;

(*o*) the inspection of databases by the Authority; and

(*p*) any other matter relating to management, protection, recovery and control of databases with critical data.

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(2) Notwithstanding section 21 (*e*) of the General Interpretation Act, the regulations, made under this Act may create offences in respect of any contravention to the regulations, and may for any such contravention impose a fine of up to K5,000,000 and to imprisonment for up to seven years.

Exemption orders

103. The Minister may, in consultation with the Authority, by notice published in the *Gazette,* make an order to exempt certain transactions from the application of the requirements of some provisions of this Act.

Transitional provision

104. The Minister shall, by order published in the *Gazette*, appoint a date or dates beyond which stakeholders affected by this Act, shall be required to comply with this Act.

CHRONOLOGICAL TABLE OF ENACTMENTS

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CHRONOLOGICAL TABLE OF ENACTMENTS

YEAR AND NUMBER	ORDINANCE	HOW DEALT WITH
1894		
4	Postal	Repealed by 3 of 1916
1898		
2	Stolen Property	Repealed by 22 of 1933
1902		
1	Shipping	Repealed by 28 of 1969
2	Banking	Repealed by 23 of 1959(F)
3	Marriage	Repealed by 4 of 2015
1903		
1	King's African Rifles	Repealed by 9 of 1911
2	Banking	Repealed by 23 of 1959(F)
3	King's African Rifles (Amendment)	Repealed by 9 of 1911
4	Epidemic and Contagious Diseases	Repealed by 5 of 1932
5	Credit Trade with Africans	Repealed by 15 of 1926
6	Judgments Extension	Repealed by 7 of 1912
7	Diseases of Animals	Repealed by 15 of 1922
8	Subordinate Court	Repealed by 24 of 1919
9	Patents, Designs and Trade Marks	Repealed by 14, 17 and 21 of 1932
1904		
1	Appeal	Repealed by 17 of 1911
2	Births and Deaths Registration	Repealed by 13 of 2010
3	Subordinate Courts (Amendment)	Repealed by 8 of 1911
4	African Labour	Repealed by 6 of 1909
5	African Locations	Repealed by 15 of 1928
6	Liquor	Repealed by 10 of 1911
1905		
1	King's African Rifles (Amendment)	Repealed by 9 of 1911
2	Appeal	—
3	Liquor (Amending)	Repealed by 10 of 1911
4	Judgments Extension	Repealed by 7 of 1912
5	Divorce	Repealed by 4 of 2015
6	Immigration Restriction	Repealed by 4 of 1928
7	Weights and Measures	Repealed by 18 of 1959(F)
8	Births and Deaths Registration (Amendment)	Repealed by 13 of 2010
9	Flogging Regulations	Repealed by 17 of 1908
10	Prisons	Repealed by 10 of 1922
1906		
1	Liquor (Amending)	Repealed by 10 of 1911
2	Mining	Repealed by 2 of 1937
3	High Courts	Repealed by 1 of 1958
4	Appropriation	Spent
5	Subordinate Courts	Repealed by 1 of 1958
6	Appropriation	Spent
7	African Labour	Repealed by 6 of 1909
8	Customs	Repealed by 1 of 1949
9	Medical Practitioners Registration	Repealed by 6 of 1926
10	Supplementary Appropriation	Spent
1907		
1	Appropriation	Spent
2	Fugitive Criminals Surrender	Repealed by 9 of 1968
3	Appropriation	Spent
4	Land Acquisition for Public Purposes	Repealed by 19 of 1948
5	African Hut Tax (Amendment)	Repealed by 13 of 1933
6	Fugitive Criminals Surrender (Amendment)	Repealed by 9 of 1968
7	Railway	Cap. 69:03
1908		
1	Supplementary Appropriation	Spent
2	Infectious Disease (Notification)	Repealed by 5 of 1932

YEAR AND NUMBER	ORDINANCE	HOW DEALT WITH
1908	(*Contd.*)	
3	Recognition of Probates (U.K.)	Repealed by 11 of 1917
4	Immigration Restriction (Supplementary)	Repealed by 4 of 1913
5	Town Councils	Repealed by 4 of 1912
6	Firearms and Ammunition	Repealed by 43 of 1967
7	Appropriation	Spent
8	Punishments	Repealed by 22 of 1929
9	Political Removal and Detention of Africans	Repealed by 1 of 1909
10	Epidemic and Contagious Diseases	Repealed by 5 of 1932
11	King's African Rifles (Amendment)	Repealed by 6 of 1910
12	Wireless Telegraphy	Repealed by 16 of 1926
13	Supplementary Appropriation	Spent
14	Appropriation	Spent
15	Firearms and Ammunition (Amendment)	Repealed by 43 of 1967
16	Vaccination	Repealed by 5 of 1932
17	Prisons (Amendment)	Repealed by 10 of 1922
18	Volunteer Reserve	Repealed by 28 of 1954(F)
19	King's African Rifles Reserve Forces	Repealed by 23 of 1955(F)
1909		
1	Political Removal and Detention of Africans	Repealed by 2 of 1960
2	African Labour (Amendment)	Repealed by 6 of 1909
3	Children (Prohibition of Sentence of Death)	—
4	Appropriation (Substituted)	Spent
5	Collective Punishment	Repealed by 37 of 1967
6	Employment of Africans	Repealed by 4 of 1944
7	Civil Police Discipline	Repealed by 15 of 1921
8	King's African Rifles Reserve Forces (Amendment)	Repealed by 23 of 1955(F)
9	Appropriation	Spent
10	Supplementary Appropriation	Spent
11	Promissory Oaths	Repealed by 39 of 1946
1910		
1	Licensing	Repealed by 33 of 1960
2	Vaccination (Amendment)	Repealed by 5 of 1932
3	Volunteer Reserve (Amendment)	Repealed by 28 of 1954(F)
4	Appropriation (Substituted)	Spent
5	Mining Regulation (Oil)	Cap. 62:01
6	King's African Rifles (Amendment)	Repealed by 9 of 1911
7	Cotton	Repealed by 16 of 1946
8	Appropriation	Spent
9	Supplementary Appropriation	Spent
10	Post Office Savings Bank	Repealed by 2 of 1936
11	Punishments (Amendment)	Repealed by 22 of 1929
12	Registration of Documents	Repealed by 8 of 1916
1911		
1	Census	Spent
2	Game	Repealed by 1 of 1927
3	Employment of Africans (Amendment)	Repealed by 14 of 1911
4	Witchcraft	Cap. 7:02
5	Forests	Repealed by 12 of 1926
6	Railway (Amendment)	Incorporated in Cap. 69:03
7	New Edition of the Ordinances	Spent
8	Subordinate Courts (Amending)	Repealed by 24 of 1929
9	King's African Rifles	Repealed by 9 of 1928
10	Intoxicating Liquor	Repealed by 1 of 1932
11	Appropriation (Substituted)	Spent
12	Interpretation	Repealed by 2 of 1953
13	African Hut Tax	Repealed by 4 of 1921
14	Employment of Africans Further (Amendment)	Repealed by 4 of 1944

YEAR AND NUMBER	ORDINANCE	HOW DEALT WITH
1911	(*Contd.*)	
15	Land Tax	Repealed by 35 of 1950
16	Supplementary Appropriation	Spent
17	Appeals	Repealed by 40 of 1946
1912		
1	Game (Amendment)	Repealed by 1 of 1927
2	African Foodstuffs	Repealed by 37 of 1967
3	Stage Plays and Cinematograph Exhibitions	Repealed by 11 of 1968
4	Townships	Repealed by 3 of 1931
5	Dogs	Repealed by 10 of 1924
6	Appropriation	Spent
7	Judgments Extension	Omitted
8	Land Surveyors	Repealed by 14 of 1952
9	Stamps	Repealed by 10 of 1969
10	Purchase of Cattle from Africans	Repealed by 2 of 1916
11	Departmental Offences	Repealed by 18 of 1961
12	General Revision	Spent
13	District Administration (African)	Repealed by 11 of 1924
14	African Hut Tax (Amendment)	Repealed by 4 of 1921
15	Christian African Marriages	Repealed by 4 of 1923
16	Plant Protection	Repealed by 1 of 1924
17	Supplementary Appropriation	Spent
18	Crown Lands	Repealed by 1 of 1931
19	Official Secrets	—
20	Sale of Drugs and Poisons	Repealed by 3 of 1941
1913		
1	Game (Amendment)	Repealed by 1 of 1927
2	Public Roads	Repealed by 25 of 1950
3	Official Secrets	Cap. 14:01
4	Immigration Restriction	Repealed by 17 of 1922
5	African Lunatics	Repealed by 17 of 1928
6	Appropriation	Spent
7	Christian African Marriage (Amendment)	Repealed by 4 of 1923
8	Divorce (Amendment)	Repealed by 4 of 2015
9	Central Africa Railway (Construction)	Spent
10	Supplementary Appropriation	Spent
11	Public Roads (Amendment)	Repealed by 25 of 1950
1914		
1	Customs (Amendment)	Repealed by 1 of 1949
2	Mining (Amendment)	Repealed by 2 of 1937
3	Commissions of Inquiry	Cap. 18:01
4	Medical Practitioners Registration (Amendment)	Repealed by 6 of 1926
5	Appropriation	Spent
6	Copyright	Repealed by 6 of 1918
7	Censorship	Repealed by 4 of 1917
8	Postal (Amendment)	Repealed by 3 of 1916
9	Aliens Restrictions	Repealed by 6 of 1947
10	Trading with the Enemy	Repealed by 4 of 1915
11	Nyasaland Defence	Repealed by 3 of 1917
1915		
1	Imperial Loans	Omitted
2	Customs (Railways)	Repealed by 1 of 1949
3	Protection of Women	Repealed by 22 of 1929
4	Trading with the Enemy	Repealed by 20 of 1929
5	Supplementary Appropriation	Spent
6	Appropriation	Spent
7	Copyright (Amendment)	Repealed by 6 of 1918
8	Registration of Companies	Repealed by 10 of 1917

YEAR AND NUMBER	ORDINANCE	HOW DEALT WITH
1915	(*Contd.*)	
9	Land Tax and Rents Recovery	Repealed by 9 of 1915
10	Subordinate Courts (Amendment)	Repealed by 13 of 1915
11	Nyasaland Defence (Amendment)	Repealed by 3 of 1917
12	Recognition of Probates (United Kingdom) (Amendment)	Repealed by 11 of 1917
13	Subordinate Courts (Amendment) (No. 2) . .	Repealed by 24 of 1929
14	Land Tax and Rents Recovery (No. 2)	Repealed by 1 of 1931
15	Marriage (Amendment)	Repealed by 4 of 2015
1916		
1	Customs (Amendment)	Repealed by 1 of 1919
2	African Cattle (Purchase and Removal) . .	Repealed by 6 of 1947
3	Post Office	Repealed by 16 of 1948
4	Volunteer Reserve (Amendment)	Repealed by 28 of 1954(F)
5	Supplementary Appropriation	Spent
6	Appropriation	Spent
7	Bills of Sale Registration	Repealed by 29 of 1967
8	Deeds Registration	Cap. 58:02
9	Notaries	Repealed by 26 of 1960
10	High Court Practice and Procedure (Amendment)	Repealed by 24 of 1921
11	Trading with the Enemy (Amendment) . .	Repealed by 20 of 1929
12	Trading with the Enemy (Amendment) (No. 2)	Repealed by 20 of 1929
1917		
1	Agricultural Statistics	Repealed by 44 of 1967
2	Marriage (Amendment)	Repealed by 4 of 2015
3	Nyasaland Defence (Repeal)	Spent
4	Censorship (Repeal)	Spent
5	Post Office (Amendment)	Repealed by 16 of 1949
6	Anglo-Portuguese Commercial Treaty	Repealed by 7 of 1918
7	District Administration (African) (Amendment)	Repealed by 11 of 1924
8	Supplementary Appropriation	Spent
9	Appropriation	Spent
10	Companies	Repealed by 19 of 1984
11	British and Colonial Probates	Repealed by 25 of 1967
12	Courts (Emergency Powers)	Spent
13	Trading with the Enemy (Amendment)	Repealed by 20 of 1929
14	King's African Rifles (Amendment)	Repealed by 9 of 1928
15	Supplementary Appropriation	Spent
16	African Rents (Private Estates)	Repealed by 15 of 1928
17	District Administration (African) (Amendment) (No. 2)	Repealed by 11 of 1924
18	Executions against Land	Repealed by 1 of 1958
19	Trading with the Enemy and Export of Prohibited Goods	Repealed by 20 of 1929
1918		
1	Appropriation	Spent
2	Punishments (Amendment)	Repealed by 22 of 1929
3	Seditious Publications (Prohibition)	Repealed by 18 of 1936
4	Agricultural Pests	Repealed by 1 of 1924
5	Supplementary Appropriation	Spent
6	Copyright	Repealed by 38 of 1965
7	Anglo-Portuguese Commercial Treaty (Repeal)	Spent
8	King's African Rifles (Amendment)	Repealed by 9 of 1928
1919		
1	Customs (Amendment)	Repealed by 1 of 1949
2	King's African Rifles (Amendment)	Repealed by 12 of 1920

YEAR AND NUMBER	ORDINANCE	HOW DEALT WITH
1919	(*Contd.*)	
3	Appropriation	Spent
4	Immigration (Former Enemy Aliens) Restriction	Spent
1920		
1	Marriage (Amendment)	Repealed by 4 of 2015
2	African Hut Tax (Amendment)	Repealed by 4 of 1921
3	Employment of Africans (Amendment) . .	Repealed by 4 of 1944
4	Crown Lands (Amendment)	Repealed by 1 of 1931
5	Land Surveyors (Amendment)	Repealed by 14 of 1952
6	Supplementary Appropriation	Spent
7	Uniforms (Restriction of Wearing)	Repealed by 22 of 1929
8	Shop Hours	Cap. 55:05
9	General Indemnity	Spent
10	Motor Traffic	Repealed by 1 of 1934
11	African Foodstuffs (Amendment)	Repealed by 37 of 1967
12	African Hut Tax (Military Forces) Exemption . .	Repealed by 6 of 1947
13	Treaty of Peace	Repealed by 20 of 1929
14	Appropriation	Spent
1921		
1	Census	Repealed by 44 of 1967
2	Income (Returns)	Spent
3	Treaty of Peace (Amendment)	Repealed by 20 of 1929
4	African Hut and Poll Tax	Repealed by 21 of 1926
5	Widows and Orphans Pensions	Omitted
6	Prisoners Identification	Repealed by 5 of 1928
7	Treaty of Peace (Austria and Bulgaria) . .	Repealed by 20 of 1929
8	Post Office Savings Bank (Amendment) . .	Spent
9	Supplementary Appropriation	Spent
10	Appropriation	Spent
11	Motor Traffic (Amendment)	Repealed by 1 of 1934
12	Aliens Restrictions (Amendment)	Spent
13	Maintenance Orders (Enforcement)	Repealed by 4 of 2015
14	Trustees Incorporation	Repealed by 5 of 1962
15	Nyasaland Police	Repealed by 5 of 1924
16	Income Tax	Repealed by 2 of 1925
17	Widows and Orphans Pensions (Amendment) . .	Omitted
18	Customs (Amendment)	Repealed by 1 of 1949
19	Subordinate Courts (Amendment)	Repealed by 24 of 1929
20	Appeal (Amendment)	Spent
21	Maintenance Orders (Enforcement) (Amendment)	Repealed by 14 of 1929
22	Mining (Amendment)	Repealed by 2 of 1937
23	Fire-arms and Ammunition (Amendment) . .	Repealed by 43 of 1967
24	Administrator General	Repealed by 30 of 1967
1922		
1	Appropriation	Spent
2	Supplementary Appropriation	Spent
3	British and Colonial Judgments	Omitted
4	Judgments Extension (Amendment)	Omitted
5	African Hut and Poll Tax (Amendment) . .	Repealed by 21 of 1926
6	Treaty of Peace (Hungary)	Repealed by 20 of 1929
7	Business Names Registration	Repealed by 12 of 2012
8	Immigration (Former Enemy Aliens) Restriction (Amendment)	Spent
9	Protection of Women (Amendment)	Repealed by 22 of 1929
10	Prisons	Repealed by 9 of 1924
11	Treasury Bills	Repealed by 43 of 1963
12	Missions	Repealed by 3 of 1923

YEAR AND NUMBER	ORDINANCE	HOW DEALT WITH
1922	(*Contd.*)	
13	Official Secrets (Amendment)	Incorporated in Cap. 14:01
14	Motor Traffic (Amendment)	Repealed by 25 of 1932
15	Diseases of Animals	Repealed by 41 of 1967
16	Defence Force	Disallowed
17	Immigration Restriction	Repealed by 20 of 1949
18	Supplementary Appropriation (No. 2)	Spent
1923		
1	Widows and Orphans Pensions (Amendment) . .	Omitted
2	Diseases of Animals (Amendment)	Repealed by 6 of 1924
3	Missions (Repeal)	Spent
4	Christian African Marriages (Repeal)	Spent
5	Divorce (Amendment)	Repealed by 4 of 2015
6	Official Secrets (Amendment)	Incorporated in Cap. 14:01
7	African Marriage (Christian Rites) Registration	Repealed by 4 of 2015
8	Cotton (Amendment)	Repealed by 16 of 1946
9	Queen Victoria Memorial, Zomba	Repealed by 37 of 1967
10	Appropriation	Spent
1924		
1	Plant Pests and Diseases	Repealed by 36 of 1946
2	Employment of Africans (Amendment) . .	Disallowed
3	Widows and Orphans Pensions (Amendment). .	Omitted
4	Crown Lands (Amendment)	Spent
5	Police	Repealed by 26 of 1946
6	Diseases of Animals (Amendment)	Repealed by 41 of 1967
7	Wild Birds Protection	Repealed by 7 of 1959
8	Appropriation (Supplementary)	Spent
9	Prisons	Repealed by 27 of 1945
10	Dogs	Repealed by 27 of 1947
11	District Administration (African)	Repealed by 6 of 1947
12	Appropriation	Spent
1925		
1	Licensing (Amendment)	Repealed by 33 of 1960
2	Income Tax	Repealed by 16 of 1954(F)
3	Interpretation and General Clauses (Amendment)	Repealed by 2 of 1953
4	Supplementary Appropriation	Spent
5	Immigration Restriction (Amendment)	Repealed by 20 of 1949
6	Grass Fires Prevention	Repealed by 13 of 1932
7	Business Names Registration (Amendment) . .	Repealed by 12 of 2012
8	Appropriation	Spent
1926		
1	Supplementary Appropriation	Spent
2	Widows and Orphans Pensions (Amendment) . .	Omitted
3	Justices of the Peace	Repealed by 37 of 1967
4	Marriage (Amendment)	Repealed by 4 of 2015
5	Tobacco	Repealed by 10 of 1946
6	Medical Practitioners and Dentist . .	Repealed by 28 of 1946
7	Maize Export	Repealed by 34 of 1946
8	Imperial Loans (Amendment)	Omitted
9	Post Office Savings Bank (Amendment) . .	Repealed by 2 of 1936
10	Appropriation	Spent
11	Waterworks	Repealed by 17 of 1995
12	Forest	Repealed by 2 of 1942
13	Employment of Africans (Amendment) . .	Repealed by 4 of 1944
14	District Administration (African) (Amendment)	Repealed by 6 of 1947

YEAR AND NUMBER	ORDINANCE	HOW DEALT WITH
1926	(*Contd.*)	
15	Credit Trade with Africans	Repealed by 18 of 1958
16	Telegraphs	Repealed by 20 of 1954(F) and 32 of 1957(F)
17	Fire-arms and Ammunition (Amendment) . .	Repealed by 43 of 1967
18	Bankruptcy	Repealed by 6 of 1928
19	Supplementary Appropriation (No. 2)	Spent
20	Diseases of Animals (Amendment)	Repealed by 41 of 1967
21	African Hut and Poll Tax	Repealed by 14 of 1939
22	Widows and Orphans Pensions (Amendment) (No. 2)	Omitted
1927		
1	Game	Repealed by 26 of 1953
2	Appropriation	Spent
3	Financial Year	Repealed by 19 of 1954
4	Intoxicating Liquor (Amendment)	Repealed by 1 of 1932
5	Dogs (Amendment)	Repealed by 27 of 1947
6	Licensing (Amendment)	Repealed by 33 of 1960
7	European Officers' Pensions	Repealed by 7 of 1945
8	Immigration Restriction (Amendment) . .	Repealed by 20 of 1949
9	Seditious and Dangerous Societies	Repealed by 37 of 1967
10	Motor Traffic (Amendment)	Repealed by 1 of 1934
11	King's African Rifles Reserve of Officers . .	Repealed by 28 of 1954(F)
12	King's African Rifles Reserve Forces (Amendment)	Repealed by 23 of 1955(F)
13	Mining (Amendment)	Repealed by 2 of 1937
14	Education	Repealed by 5 of 1930
15	Widows and Orphans Pensions (Amendment) . .	Omitted
16	African Hut and Poll Tax (Amendment) . .	Repealed by 14 of 1939
17	Supplementary Appropriation	Spent
18	Townships (Amendment)	Repealed by 3 of 1931
19	Widows and Orphans Pensions (Amendment) (No. 2)	Omitted
1928		
1	Interpretation and General Clauses (Amendment)	Repealed by 2 of 1953
2	Appropriation	Spent
3	Income Tax (Amendment)	Repealed by 16 of 1954(F)
4	Non-African Poll Tax	Repealed by 19 of 1962
5	Fingerprints	Cap. 8:02
6	Bankruptcy	Repealed by 9 of 2016
7	Employment of Africans (Amendment) . .	Repealed by 4 of 1944
8	Customs (Amendment)	Repealed by 1 of 1949
9	King's African Rifles	Repealed by 25 of 1936
10	Plant Pests and Diseases (Amendment) . .	Repealed by 36 of 1946
11	Waterworks (Amendment)	Repealed by 17 of 1995
12	African Hut and Poll Tax (Amendment) . .	Repealed by 14 of 1939
13	Supplementary Appropriation (No. 2)	Spent
14	Supplementary Appropriation	Spent
15	Africans on Private Estates	Repealed by 8 of 1952
16	Africans on Private Estates (Amendment) . .	Repealed by 8 of 1952
17	Lunacy	Repealed by 14 of 1948
18	Asylums	Repealed by 14 of 1948
19	Widows and Orphans Pensions (Amendment) . .	Omitted
20	High Court Practice and Procedure (Amendment)	Repealed by 1 of 1958
21	Subordinate Courts (Amendment)	Repealed by 24 of 1929
22	Tobacco (Amendment)	Repealed by 10 of 1946

YEAR AND NUMBER	ORDINANCE	HOW DEALT WITH
1929		
1	Rural Area Boards.	Repealed by G.N. 53 of 1966
2	Fugitive Criminals Surrender (Amendment) . .	Repealed by 9 of 1968
3	Widows and Orphans Pensions (Amendment) . .	Repealed by 18 of 1929
4	Lunacy (Amendment)	Repealed by 14 of 1948
5	European Officers' Pensions (Amendment) . .	Repealed by 7 of 1945
6	Fire-arms and Ammunition (Amendment) . .	Repealed by 43 of 1967
7	Employment of Africans (Amendment) . .	Repealed by 4 of 1944
8	Witchcraft (Amendment)	Incorporated in Cap. 7:02
9	Appropriation	Spent
10	African Hut and Poll Tax (Amendment) . .	Repealed by 16 of 1933
11	Income Tax (Amendment)	Repealed by 16 of 1954(F)
12	European Officers' Pensions (Amendment) (No. 2)	Repealed by 7 of 1945
13	Asiatics (Marriage, Divorce and Succession) . .	Repealed by 4 of 2015
14	Maintenance Orders (Enforcement) (Amendment)	Repealed by 4 of 2015
15	Supplementary Appropriation	Spent
16	Supplementary Appropriation (No. 2)	Spent
17	Game (Amendment)	Repealed by 26 of 1953
18	Widows and Orphans Pensions (Amendment) (No. 2)	Omitted
19	Tobacco (Amendment)	Repealed by 8 of 1930 and 9 of 1931
20	War Time and Peace Treaty Legislation Repeal	Spent
21	Customs (Amendment)	Repealed by 1 of 1949
22	Penal Code	Cap. 7:01
23	Criminal Procedure Code	Repealed by 36 of 1967
24	Courts	Repealed by 1 of 1958
25	Interpretation and General Clauses (Amendment)	Repealed by 2 of 1953
26	Employment of Africans (Amendment) (No. 2)	Repealed by 4 of 1944
27	District Administration (African) (Amendment)	Spent
1930		
1	Nursing Sisters' (Retiring Allowances)	Omitted
2	Plant Pests and Diseases (Amendment) . .	Repealed by 36 of 1946
3	Rural Area Boards (Amendment)	Repealed by G.N. 53 of 1966
4	Appropriation	Spent
5	Education	Repealed by 1 of 1945
6	Income Tax (Amendment)	Repealed by 16 of 1954(F)
7	Bankruptcy (Amendment)	Repealed by 9 of 2016
8	Tobacco (Amendment)	Repealed by 10 of 1946
9	Affirmation of the Abolition of Slavery . .	Repealed by 37 of 1967
10	Fugitive Criminals Surrender (Amendment) . .	Repealed by 9 of 1968
11	Africans on Private Estates (Amendment) . .	Repealed by 8 of 1952
12	Supplementary Appropriation	Spent
13	Appropriation	Spent
1931		
1	Crown Lands	Repealed by 8 of 1951
2	Nursing Sisters' (Retiring Allowances) (Amendment)	Repealed by 13 of 1931
3	Townships	Repealed by 37 of 1967
4	Supplementary Appropriation	Spent
5	Diseases of Animals (Amendment)	Repealed by 41 of 1967
6	Immigration Restriction (Amendment)	Repealed by 20 of 1949
7	Tobacco (Amendment)	Repealed by 10 of 1946

YEAR AND NUMBER	ORDINANCE	HOW DEALT WITH
1931	(*Contd.*)	
8	Income Tax (Amendment)	Repealed by 16 of 1954(F)
9	Deeds of Arrangement	Repealed by 9 of 2016
10	Waterworks (Amendment)	Repealed by 17 of 1995
11	Supplementary Appropriation (No. 2)	Spent
12	Appropriation	Spent
13	Nursing Sisters' (Retiring Allowances) (Amendment) (No. 2)	Omitted
14	African Hut and Poll Tax (Amendment) . .	Repealed by 14 of 1939
15	Nyasaland Loan	Omitted
1932		
1	Intoxicating Liquor	Omitted
2	Customs (Amendment)	Repealed by 1 of 1949
3	Deeds of Arrangement (Amendment)	Repealed by 9 of 2016
4	European Officers' Pensions (Amendment) . .	Repealed by 7 of 1945
5	Public Health	Repealed by 12 of 1948
6	European Officers' Pensions (Amendment) (No. 2)	Repealed by 7 of 1945
7	Dangerous Drugs	Repealed by 28 of 1955(F)
8	Widows and Orphans Pensions (Amendment) . .	Omitted
9	Trade Union	Repealed by 5 of 1944
10	Civil Servants (Proportionate Pensions) . .	Repealed by 7 of 1945
11	Banking (Amendment)	Repealed by 23 of 1959(F)
12	Game (Amendment)	Repealed by 26 of 1953
13	Bush Fires	Repealed by 2 of 1949
14	Trade Marks	Repealed by 36 of 1950
15	Education (Amendment)	Repealed by 1 of 1945
16	Widows and Orphans Pensions (Amendment) (No. 2)	Omitted
17	Designs	Repealed by 20 of 1936
18	Appropriation	Spent
19	Dangerous Drugs (Amendment)	Repealed by 28 of 1955(F)
20	Supplementary Appropriation	Spent
21	Patents	Repealed by 13 of 1957(F)
22	Bankruptcy (Amendment)	Repealed by 9 of 2016
23	King's African Rifles (Amendment)	Repealed by 25 of 1936
24	Police (Amendment)	Repealed by 26 of 1946
25	Motor Traffic (Amendment)	Repealed by 1 of 1934
26	Peters Pension	Spent
28	Income Tax (Amendment)	Repealed by 16 of 1954(F)
29	Immigration Restriction (Amendment) . .	Repealed by 20 of 1949
30	Destruction of Locusts	Repealed by 36 of 1946
31	Widows and Orphans Pensions (Amendment) (No. 3)	Omitted
32	Licensing (Amendment)	Repealed by 33 of 1960
1933		
1	Queen Victoria Memorial, Blantyre	Repealed by 37 of 1967
2	Shop Hours (Amendment)	Incorporated in Cap. 55:05
3	Criminal Procedure Code (Amendment) . .	Repealed by 36 of 1967
4	Patents (Amendment)	Repealed by 13 of 1957(F)
5	High Court Practice and Procedure (Amendment)	Repealed by 1 of 1958
6	Interpretation and General Clauses (Amendment)	Repealed by 2 of 1953
7	Townships (Amendment)	Repealed by 37 of 1967
8	Designs (Amendment)	Repealed by 20 of 1936
9	Widows and Orphans Pensions (Amendment) . .	Omitted
10	Licensing (Amendment)	Repealed by 33 of 1960
11	Intoxicating Liquor (Amendment)	Omitted

YEAR AND NUMBER	ORDINANCE	HOW DEALT WITH
1933	(*Contd.*)	
12	Supplementary Appropriation	Spent
13	Native Authority	Repealed by 13 of 1955
14	African Courts	Repealed by 8 of 1962
15	Forced Labour	Repealed by 4 of 1950
16	African Hut and Poll Tax (Amendment) . .	Repealed by 14 of 1939
17	Education	Repealed by 1 of 1945
18	Gratuities and Reduced Pensions	Repealed by 7 of 1945
19	Widows and Orphans Pensions (Amendment) (No. 2)	Omitted
20	Townships (Amendment)	Repealed by 37 of 1967
21	Revised Edition of the Laws	Spent
22	General Revision	Spent
23	Supplementary Appropriation (No. 2)	Spent
24	Appropriation	Spent
25	Motor Traffic (Amendment)	Repealed by 1 of 1934
1934		
1	Motor Traffic	Repealed by 34 of 1950
2	Rural Area Boards (Amendment)	Repealed by G.N.53 of 1966
3	European Officers' Pensions (Amendment) . .	Repealed by 7 of 1945
4	Revised Edition of the Laws (Amendment) . .	Spent
5	Dangerous Drugs (Amendment)	Repealed by 28 of 1955(F)
6	Tobacco Cess	Repealed by 21 of 1952
7	Loans Recovery	Cap. 6:04
8	Marriage (Amendment)	Repealed by 4 of 2015
9	African Hut and Poll Tax (Amendment) . .	Repealed by 14 of 1939
10	Native Authority (Amendment)	Repealed by 13 of 1955
11	Tobacco (Amendment)	Repealed by 10 of 1946
12	Purchase of African Produce	Repealed by 6 of 1947
13	Supplementary Appropriation	Spent
14	African Hut and Poll Tax (Amendment) (No. 2)	Repealed by 14 of 1939
15	Motor Traffic (Amendment)	Repealed by 34 of 1950
16	Cotton	Repealed by 11 of 1949
17	Tea	Expired
18	Penal Code (Amendment)	Incorporated in Cap. 7:01
19	Criminal Procedure Code (Amendment) . .	Repealed by 36 of 1967
20	Appropriation	Spent
21	Sentence of Death (Expectant Mothers) . .	Repealed by 15 of 1939
22	Infanticide	Repealed by 16 of 1939
23	Forest (Amendment)	Repealed by 2 of 1942
24	Medical Practitioners and Dentists (Amendment)	Repealed by 28 of 1946
1935		
1	Crown Lands Cotton (Tax)	Repealed by 32 of 1950
2	European Officers' Pensions (Amendment) . .	Repealed by 7 of 1945
3	Tea (Amendment)	Expired
4	Shop Hours (Amendment)	Incorporated in Cap. 55:05
5	Wild Birds Protection (Amendment)	Repealed by 7 of 1959
6	Income Tax (Amendment)	Repealed by 16 of 1954(F)
7	Cotton (Amendment)	Repealed by 11 of 1949
8	Penal Code (Amendment)	Incorporated in Cap. 7:01
9	Motor Traffic (Amendment)	Repealed by 34 of 1950
10	Tobacco (Amendment)	Repealed by 10 of 1946
11	Trans-Zambesia Railway Co. Ltd. (Notes Guarantee)	Spent
12	Cotton (Amendment) (No. 2)	Repealed by 11 of 1949
13	Income Tax (Amendment) (No. 2)	Repealed by 11 of 1937
14	Public Officers (Change of Titles)	Spent
15	Statistics	Repealed by 44 of 1967

YEAR AND NUMBER	ORDINANCE	HOW DEALT WITH
1935	(*Contd.*)	
16	African Hut and Poll Tax (Amendment) . .	Repealed by 14 of 1939
17	Tea Cess	Repealed by 10 of 1958
18	Interpretation and General Clauses (Amendment)	Repealed by 2 of 1953
19	Game (Amendment)	Repealed by 26 of 1953
20	Supplementary Appropriation	Spent
21	Appropriation	Spent
1936		
1	King's African Rifles Reserve of Officers (Amendment)	Repealed by 1 of 1938
2	Savings Bank	Repealed by 29 of 1954(F)
3	Medical Practitioners and Dentists (Amendment)	Repealed by 28 of 1946
4	Motor Traffic (Amendment)	Repealed by 34 of 1950
5	British and Colonial Probates (Amendment) . .	Repealed by 25 of 1967
6	Plant Pests and Diseases (Amendment) . .	Repealed by 36 of 1946
7	European Officers' Pensions (Amendment) . .	Repealed by 7 of 1945
8	Waterworks (Amendment)	Repealed by 17 of 1995
9	Cotton (Amendment)	Repealed by 11 of 1949
10	Flue-cured Tobacco Marketing	Repealed by 17 of 1937
11	King's African Rifles Reserve of Officers (Amendment) (No. 2)	Repealed by 28 of 1954(F)
12	Motor Traffic (Amendment) (No. 2)	Repealed by 34 of 1950
13	Supplementary Appropriation	Spent
14	Supplementary Appropriation	Spent
15	Appropriation	Spent
16	Employment of Women	Repealed by 22 of 1939
17	Noxious Weeds	Cap. 64:02
18	Penal Code (Amendment)	Incorporated in Cap. 7:01
19	Marriages (Removal of Doubts)	Omitted
20	United Kingdom Designs (Protection)	Repealed by 12 of 1958(F)
21	Tea Cess (Amendment)	Repealed, in effect, by 8 of 1939
22	Police (Amendment)	Repealed by 26 of 1946
23	Forest (Amendment)	Repealed by 2 of 1942
24	Shop Hours (Amendment)	Incorporated in Cap. 55:05
25	African Hut and Poll Tax (Amendment) . .	Repealed by 14 of 1939
26	King's African Rifles	Repealed by 23 of 1955(F)
27	Credit Trade with Africans (Amendment) . .	Repealed, in effect, by 23 of 1950
28	Game (Amendment)	Repealed by 26 of 1953
29	Nursing Sisters' (Retiring Allowances) (Amendment)	Omitted
30	Motor Traffic (Amendment) (No. 3)	Repealed by 34 of 1950
31	Widows and Orphans Pensions (Amendment) . .	Omitted
32	Waterworks (Amendment) (No. 2)	Repealed by 17 of 1995
33	Public Health (Amendment)	Repealed by 12 of 1948
1937		
1	Lunacy (Amendment)	Repealed by 14 of 1948
2	Mining	Cap. 61:01
3	Penal Code (Amendment)	Incorporated in Cap. 7:01
4	Licensing (Amendment)	Repealed by 33 of 1960
5	Fugitive Offenders (Pursuit)	Repealed by 37 of 1967
6	Bills of Sale Registration (Amendment) . .	Repealed by 29 of 1967
7	Townships (Amendment)	Repealed by 37 of 1967
8	Supplementary Appropriation	Spent
9	Appropriation	Spent
10	Wild Birds Protection (Amendment)	Repealed by 7 of 1959
11	Income Tax (Amendment)	Repealed by 16 of 1954(F)
12	Criminal Procedure Code (Amendment) . .	Repealed by 36 of 1967

YEAR AND NUMBER	ORDINANCE	HOW DEALT WITH
1937	(*Contd.*)	
13	Penal Code (Amendment) (No. 2)	Incorporated in Cap. 7:01
14	Motor Traffic (Amendment)	Repealed by 34 of 1950
15	King's African Rifles (Amendment)	Repealed by 23 of 1955(F)
16	Tobacco (Amendment)	Repealed by 10 of 1946
17	Tobacco Marketing	Repealed by 10 of 1946
1938		
1	King's African Rifles Reserve of Officers (Amendment)	Repealed by 28 of 1954(F)
2	Post Office (Amendment)	Repealed by 16 of 1948
3	Stamps (Amendment)	Repealed by 10 of 1969
4	Interpretation and General Clauses (Amendment)	Disallowed
5	King's African Rifles (Amendment)	Repealed by 23 of 1955(F)
6	Public Health (Amendment)	Repealed by 12 of 1948
7	African Hut and Poll Tax (Amendment)	Repealed by 14 of 1939
8	Education (Amendment)	Repealed by 1 of 1945
9	Hours of Employment of Women	Repealed by 22 of 1939
10	Tobacco (Amendment)	Repealed by 10 of 1946
11	Supplementary Appropriation	Spent
12	Appropriation	Spent
13	1939 Appropriation from Accumulated Surplus Funds	Spent
14	Marketing of African Produce	Repealed by 15 of 1959
15	Licensing (Amendment)	Repealed by 1 of 1957
16	Africans on Private Estates (Amendment)	Repealed by 8 of 1952
17	Wild Birds Protection (Amendment)	Repealed by 7 of 1959
18	Criminal Procedure Code (Amendment)	Repealed by 36 of 1967
19	Departmental Offences (Amendment)	Repealed by 18 of 1961
20	Factories	Repealed by 21 of 1964(N)
21	Police (Amendment)	Repealed by 26 of 1946
22	Prisons (Amendment)	Repealed by 27 of 1945
23	Asylums (Amendment)	Repealed by 14 of 1948
24	Dogs (Amendment)	Repealed, in effect, by 12 of 1939
25	European Officers' Pensions (Amendment)	Repealed by 7 of 1945
26	Motor Traffic (Amendment)	Repealed by 34 of 1950
27	Employment of Africans (Amendment)	Repealed by 4 of 1944
28	Customs (Amendment)	Repealed by 1 of 1949
29	Motor Traffic (Amendment) (No. 2)	Repealed by 34 of 1950
30	Interpretation and General Clauses (Amendment)	Repealed by 2 of 1953
1939		
1	Registration for National Service	Repealed by 17 of 1945
2	Licensing (Amendment)	Repealed by 33 of 1960
3	High Court Practice and Procedure (Amendment)	Repealed by 1 of 1958
4	Game (Amendment)	Repealed by 26 of 1953
5	Waterworks (Amendment)	Repealed by 17 of 1995
6	Education (Amendment)	Repealed by 1 of 1945
7	Tea (Amendment)	Expired
8	Tea Cess (Amendment)	Repealed by 10 of 1958
9	Police (Amendment)	Repealed by 26 of 1946
10	Prisons (Amendment)	Repealed by 27 of 1945
11	Asylums (Amendment)	Repealed by 14 of 1948
12	Dogs (Amendment)	Repealed by 27 of 1947
13	Supplementary Appropriation	Spent
14	African Tax	Repealed by 19 of 1962
15	Criminal Procedure Code (Amendment)	Repealed by 36 of 1967
16	Penal Code (Amendment)	Incorporated in Cap. 7:01

YEAR AND NUMBER	ORDINANCE	HOW DEALT WITH
1939	(*Contd.*)	
17	Police (Amendment) (No. 2)	Repealed by 26 of 1946
18	Prisons (Amendment) (No. 2)	Repealed by 27 of 1945
19	Minimum Wage	Repealed by 32 of 1949
20	Marketing of African Produce (Amendment) . .	Repealed by 15 of 1959
21	Motor Traffic (Amendment)	Repealed by 34 of 1950
22	Employment of Women, Young Persons and Children	Repealed by 6 of 2000
23	Military Units	Repealed by 37 of 1967
24	Registration for National Service (Amendment)	Repealed by 17 of 1945
25	Employment of Africans (Amendment)	Repealed by 4 of 1944
26	Trading with the Enemy	Omitted
27	Mining (Amendment)	Incorporated in Cap. 61:01
28	Income Tax (Amendment)	Repealed by 16 of 1954(F)
29	Non-African Poll Tax (Amendment)	Repealed by 19 of 1962
30	Appropriation	Spent
1940		
1	National Service	Repealed by 4 of 1947
2	Widows and Orphans Pensions (Amendment) . .	Omitted
3	Minimum Wage (Amendment)	Repealed by 32 of 1949
4	Tobacco Marketing (Amendment)	Repealed by 10 of 1946
5	Dogs (Amendment)	Repealed by 27 of 1947
6	Trading with the Enemy (Amendment) . .	Spent
7	Administration of Estates by Consular Officers	Repealed by 25 of 1967
8	Wild Birds Protection (Amendment)	Repealed by 7 of 1959
9	Pensions (War Service)	Repealed by 7 of 1945
10	Financial Officers (Change of Titles)	Spent
11	Fire-arms and Ammunition (Amendment) . .	Repealed by 43 of 1967
12	King's African Rifles (Amendment)	Repealed by 23 of 1955(F)
13	Police (Amendment)	Repealed by 26 of 1946
14	Asylums (Amendment)	Repealed by 14 of 1948
15	Prisons (Amendment)	Repealed by 27 of 1945
16	Game (Amendment)	Repealed by 26 of 1953
17	Income Tax (Amendment)	Repealed by 16 of 1954(F)
18	Soldiers (Exemption from Civil Process) . .	Repealed by 37 of 1967
19	Compensation (Defence)	Repealed by 37 of 1967
20	Nyasaland Defence Force	Repealed by 4 of 1946
21	Courts (Emergency Powers)	Repealed by 6 of 1947
22	Diseases of Animals (Amendment)	Repealed by 41 of 1967
23	Townships (Amendment)	Repealed by 37 of 1967
24	Rural Area Boards (Amendment)	Repealed by G.N. 53 of 1966
25	Bankruptcy (Amendment)	Repealed by 9 of 2016
26	European Officers' Pensions (Amendment) . .	Repealed by 7 of 1945
27	Supplementary Appropriation	Spent
28	Income Tax (Amendment) (No. 2)	Repealed by 16 of 1954(F)
29	Employment of Women, Young Persons and Children (Amendment)	Repealed by 6 of 2000
30	Tobacco (Amendment)	Repealed by 10 of 1946
31	Mining (Amendment)	Incorporated in Cap. 61:01
32	National Service (Amendment)	Repealed by 4 of 1947
33	Courts (Amendment)	Repealed by 1 of 1958
34	Appropriation	Spent
1941		
1	Nyasaland Defence Force (Amendment) . .	Repealed by 4 of 1946
2	National Service (Amendment)	Repealed by 4 of 1947
3	Pharmacy and Poisons	Repealed by 15 of 1988
4	Employment of Africans (Amendment) . .	Repealed by 4 of 1944

YEAR AND NUMBER	ORDINANCE	HOW DEALT WITH
1941	(*Contd.*)	
5	African Foodstuffs (Amendment)	Repealed by 37 of 1967
6	Police (Amendment)	Repealed by 26 of 1946
7	Immigration (Amendment)	Repealed by 20 of 1949
8	Supplementary Appropriation	Spent
9	Customs (Amendment)	Repealed by 1 of 1949
10	Death Duties (Active Service)	Repealed by 17 of 1944
11	Shipping (Amendment)	Repealed by 28 of 1969
12	High Court Practice and Procedure (Amendment)	Repealed by 1 of 1958
13	Business Names Registration (Amendment) . .	Repealed by 12 of 2012
14	Customs (Amendment) (No. 2)	Repealed by 1 of 1949
15	Income Tax (Amendment)	Repealed by 16 of 1954(F)
16	Supplementary Appropriation	Spent
17	War Savings Certificates	Omitted
18	His Majesty's Forces Pensions	Repealed by 37 of 1967
19	Prisons (Amendment)	Repealed by 27 of 1945
20	Police (Property)	Repealed by 26 of 1946
21	Waterworks (Amendment)	Repealed by 17 of 1995
22	Appropriation	Spent
1942		
1	Non-African Poll Tax (Amendment)	Repealed by 19 of 1962
2	Forest	Repealed by 11 of 1997
3	Pharmacy and Poisons (Amendment)	Repealed by 15 of 1988
4	Prisons (Amendment)	Repealed by 27 of 1945
5	Townships (Amendment)	Repealed by 37 of 1967
6	His Majesty's Forces (Control by Army Council)	Repealed by 28 of 1954(F)
7	Compensation (Defence) (Amendment) . .	Spent
8	Income Tax (Amendment)	Repealed by 16 of 1954(F)
9	Employment of Women, Young Persons and Children (Amendment)	Repealed by 6 of 2000
10	Tobacco (Amendment)	Repealed by 10 of 1946
11	Supplementary Appropriation	Spent
12	Supplementary (Agriculture) Appropriation . .	Spent
13	Appropriation	Spent
1943		
1	Tea (Amendment)	Expired
2	Alienation of Immovable Property (Restriction)	Repealed by 10 of 1943
3	Education (Amendment)	Repealed by 1 of 1945
4	His Majesty's Forces Pensions (Amendment) . .	Repealed by 37 of 1967
5	Marketing of African Produce (Amendment) . .	Repealed by 15 of 1959
6	Africans on Private Estates (Amendment) . .	Repealed by 8 of 1952
7	Widows and Orphans Pensions (Amendment) . .	Repealed by 9 of 1944
8	Supplementary Appropriation	Spent
9	Appropriation	Spent
10	Alienation of Immovable Property (Restriction)	Expired
1944		
1	Minimum Wage (Amendment)	Repealed by 32 of 1949
2	Workmen's Compensation	Repealed by 21 of 1990
3	Mining (Amendment)	Spent
4	African Labour	Repealed by 3 of 1954
5	Trade Unions and Trade Disputes	Repealed by 32 of 1958
6	Trade Disputes (Arbitration and Inquiry) . .	Repealed by 20 of 1952
7	Courts (Amendment)	Repealed by 1 of 1958
8	African Tax (Amendment)	Spent
9	Widows and Orphans Pensions (Amendment) . .	Omitted
10	Tea (Amendment)	Expired
11	Tobacco (Amendment)	Repealed by 10 of 1946

YEAR AND NUMBER	ORDINANCE	HOW DEALT WITH
1944	(*Contd.*)	
12	Income Tax (Amendment)	Repealed by 16 of 1954(F)
13	Rent and Mortgage Interest (Restriction)	Expired
14	African Development and Welfare	Repealed by 29 of 1949
15	Tobacco (Amendment) (No. 2)	Repealed by 10 of 1946
16	Protection of Animals	Cap. 66:01
17	Death Duties (Relief)	Repealed by 6 of 1946
18	African Labour (Amendment)	Repealed by 3 of 1954
19	African Courts (Amendment)	Repealed by 8 of 1962
20	Police (Amendment)	Repealed by 26 of 1946
21	Prisons (Amendment)	Repealed by 27 of 1945
22	Cotton (Amendment)	Repealed by 11 of 1949
23	Public Health (Amendment)	Repealed, in effect, by 22 of 1945
24	African Labour (Amendment) (No. 3) . .	Repealed by 3 of 1954
25	Income Tax (Amendment) (No. 2)	Repealed by 16 of 1954(F)
26	Supplementary Appropriation	Spent
27	Appropriation	Spent
1945		
1	Education	Repealed by 1 of 1962
2	Nyasaland Defence Force (Amendment) . .	Repealed by 4 of 1946
3	Penal Code (Amendment)	Incorporated in Cap. 7:01
4	Criminal Procedure Code (Amendment) . .	Repealed by 36 of 1967
5	Interpretation and General Clauses (Amendment)	Repealed by 2 of 1953
6	King's African Rifles (Amendment)	Repealed by 23 of 1955(F)
7	European Officers Pensions	Omitted
8	Soldiers (Exemption from Civil Process) (Amendment)	Repealed by 37 of 1967
9	Medical Practitioners and Dentists (Amendment)	Repealed by 28 of 1946
10	Probation of Offenders	Cap. 9:01
11	Administrator General (Amendment)	Repealed by 30 of 1967
12	Tea (Amendment)	Expired
13	Terneplate Tins	Repealed by 32 of 1961
14	Income Tax (Amendment)	Repealed by 16 of 1954(F)
15	African Development and Welfare (Amendment)	Repealed by 29 of 1949
16	Supplementary Appropriation	Spent
17	Registration for National Service (Repeal) . .	Spent
18	Criminal Procedure Code (Amendment) (No. 2)	Repealed by 36 of 1967
19	Poor Prisoners Defence	Repealed by 8 of 1964
20	African Courts (Amendment)	Spent
21	African Tax (Amendment)	Repealed by 19 of 1962
22	Public Health (Amendment)	Repealed by 12 of 1948
23	Stamps (Amendment)	Repealed, in effect, by 34 of 1955
24	Pensions (Increase)	Repealed by 32 of 1951
25	Education (Amendment)	Repealed by 1 of 1962
26	Widows and Orphans Pensions (Amendment) . .	Omitted
27	Prisons	Repealed by 9 of 1955(F)
28	Motor Traffic (Amendment)	Repealed by 34 of 1950
29	Dangerous Drugs (Amendment)	Repealed by 28 of 1955(F)
30	Supplementary Appropriation	Spent
31	Appropriation	Spent
1946		
1	Administrator General (Amendment)	Repealed by 30 of 1967
2	African Tax (Amendment)	Repealed, in effect, by 12 of 1951
3	Central African Air Services	Repealed by 23 of 1960
4	Nyasaland Defence Force (Repeal)	Spent
5	Children and Young Persons	Repealed by 7 of 1969

YEAR AND NUMBER	ORDINANCE	HOW DEALT WITH
1946	(*Contd.*)	
6	Estate Duty	Cap. 43:02
7	Interpretation and General Clauses (Amendment)	Repealed by 2 of 1953
8	Income Tax (Amendment)	Repealed by 16 of 1954(F)
9	Natural Resources	Repealed by 2 of 1949
10	Tobacco	Repealed by 9 of 1950
11	Tung	Cap. 65:05
12	Income Tax (Amendment) (No. 2)	Repealed by 16 of 1954(F)
13	European Officers' Pensions (Amendment) . .	Omitted
14	Pensions (Increase)	Repealed by 32 of 1951
15	Workmen's Compensation (Amendment) . .	Repealed by 21 of 1990
16	High Court Practice and Procedure (Amendment)	Repealed by 1 of 1958
17	Townships (Amendment)	Repealed by 37 of 1967
18	Trading with the Enemy (Amendment) . .	Omitted
19	Revised Edition of the Laws	Spent
20	Cooperative Societies	Cap. 47:02
21	King's African Rifles (Amendment)	Repealed by 23 of 1955(F)
22	Convicted Persons (Employment on Public Work)	Repealed by 16 of 1954
23	Rent and Mortgage Interest (Restriction) (Amendment)	Expired
24	Cotton (Amendment)	Repealed by 11 of 1949
25	Affiliation	Repealed by 22 of 2010
26	Police	Repealed by 12 of 2010
27	Authentication of Documents	Repealed by 50 of 1966
28	Medical Practitioners and Dentists Registration	Cap. 36:01
29	Archives	Repealed by 4 of 1958(F)
30	Motor Traffic (Amendment)	Repealed by 34 of 1950
31	Witchcraft (Amendment)	Incorporated in Cap. 7:02
32	Hotels	Repealed by 27 of 1960
33	Trade Unions and Trade Disputes (Amendment)	Repealed by 32 of 1958
34	Maize Control	Repealed by 12 of 1949
35	Prisons (Amendment)	Repealed by 9 of 1955(F)
36	Plant Protection	Repealed by 11 of 1969
37	Civil Procedure (Suits by or against the Government or Public Officers)	Cap. 6:01
38	Midwives	Repealed by 58 of 1966
39	Promissory Oaths	Repealed by 26 of 1966
40	Rhodesia and Nyasaland Court of Appeal . .	Spent
41	Licensing (Amendment)	Spent
42	Tung (Amendment)	Incorporated in Cap. 65:05
43	Supplementary Appropriation	Spent
44	Boy Scouts and Girl Guides	Cap. 31:02
45	Tobacco (Amendment)	Repealed by 9 of 1950
46	Marketing of African Produce (Amendment) . .	Repealed by 15 of 1959
47	Non-African Poll Tax (Amendment)	Repealed by 19 of 1962
48	Income Tax (Amendment) (No. 3)	Repealed by 16 of 1954(F)
49	Registration of Patents (Amendment)	Repealed by 13 of 1957(F)
50	Appropriation	Spent
1947		
1	Excise Duties	Repealed by 16 of 1955(F)
2	Customs (Amendment)	Repealed by 29 of 1948
3	Income Tax (Amendment)	Repealed by 16 of 1954(F)
4	National Service (Repeal)	Spent

YEAR AND NUMBER	ORDINANCE	HOW DEALT WITH
1947	(*Contd.*)	
5	Interpretation and General Clauses (Amendment)	Repealed by 2 of 1953
6	Repeal	Spent
7	Criminal Procedure Code (Amendment) . .	Repealed by 36 of 1967
8	Penal Code (Amendment)	Incorporated in Cap. 7:01
9	Police (Amendment)	Repealed by 12 of 2010
10	European Officers' Pensions (Amendment) . .	Omitted
11	Rent and Mortgage Interest (Restriction) (Amendment)	Expired
12	Forest (Amendment)	Repealed, in effect, by 5 of 1952
13	Tung (Amendment)	Incorporated in Cap. 65:05
14	Maize Control (Amendment)	Repealed by 12 of 1949
15	Control of Export of Cattle	Repealed by 30 of 1957
16	Tea (Amendment)	Expired
17	African Courts	Repealed by 1 of 1957
18	Printed Publications	Cap. 19:01
19	Wild Birds Protection (Amendment)	Repealed by 7 of 1959
20	Excise Duties (Amendment)	Repealed by 16 of 1955(F)
21	Supplementary Appropriation	Spent
22	Pensions (Increase) (Amendment)	Repealed by 32 of 1951
23	Revised Edition of the Laws (Statute Law Revision)	Spent
24	Revised Edition of the Laws	Spent
25	Radio-Active Minerals	Cap. 62:02
26	Diplomatic Privileges (Extension)	Repealed by 31 of 1956(F)
27	Dogs.	Repealed by 31 of 1949
28	Prisons (Amendment)	Repealed by 9 of 1955(F)
29	Trade Unions and Trade Disputes (Amendment)	Repealed by 32 of 1958
30	Intoxicating Liquor (Amendment)	Omitted
31	Tobacco (Amendment)	Repealed by 9 of 1950
32	Divorce (Amendment)	Repealed by 4 of 2015
33	Appropriation	Spent
1948		
1	African Labour (Amendment)	Repealed by 3 of 1954
2	Promissory Oaths (Amendment)	Repealed, in effect, by 43 of 1951
3	Pensions (Increase) (Amendment)	Repealed by 32 of 1951
4	Immigration (Control)	Repealed by 20 of 1949
5	Interpretation and General Clauses (Amendment)	Repealed by 2 of 1953
6	Motor Traffic (Amendment)	Repealed by 34 of 1950
7	Medical Practitioners and Dentists Registration (Amendment)	Incorporated in Cap. 36:01
8	Tea	Repealed by 5 of 1949
9	Inquests	Cap. 4:02
10	Townships (Amendment)	Repealed by 37 of 1967
11	Criminal Procedure Code (Amendment) . .	Repealed by 36 of 1967
12	Public Health	Cap. 34:01
13	Married Women (Maintenance)	Repealed by 4 of 2015
14	Mental Treatment	Cap. 34:02
15	Widows and Orphans Pensions (Amendment) . .	Spent
16	Post Office	Repealed by 20 of 1954(F)
17	Companies (Amendment)	Repealed by 19 of 1984
18	Africans on Private Estates (Temporary Provisions)	Expired
19	Acquisition of Land for Public Purposes . .	Repealed by 21 of 1970
20	Affiliation (Amendment)	Repealed by 22 of 2010

YEAR AND NUMBER	ORDINANCE	HOW DEALT WITH
1948	(*Contd.*)	
21	Convicted Persons (Employment on Public Work) (Amendment)	Repealed by 16 of 1954
22	King's African Rifles (Amendment)	Repealed by 23 of 1955(F)
23	Waterworks (Amendment)	Repealed by 17 of 1995
24	Intoxicating Liquor (Amendment)	Omitted
25	African Tax (Amendment)	Repealed by 19 of 1962
26	Courts (Amendment)	Repealed by 1 of 1958
27	Revised Edition of the Laws (Amendment) . .	Spent
28	Diplomatic Privileges (Extension) (Amendment)	Repealed by 31 of 1956(F)
29	Customs (Amendment) (Repeal)	Spent
30	Town and Country Planning	Repealed by 26 of 1988
31	Industrial Licensing	Repealed by 55 of 1966
32	Tobacco (Amendment)	Repealed by 9 of 1950
33	Income Tax (Amendment)	Repealed by 16 of 1954(F)
34	Motor Traffic (Amendment) (No. 2)	Repealed by 34 of 1950
35	Emergency Regulations	Repealed by 1 of 1960
36	Midwives (Amendment)	Repealed by 58 of 1966
37	Pensions (Increase) (Construction)	Spent
38	African Development and Welfare (Amendment)	Repealed by 29 of 1949
39	Townships (Amendment) (No. 2)	Repealed by 37 of 1967
40	Supplementary Appropriation	Spent
41	Appropriation	Spent
1949		
1	Customs	Repealed by 16 of 1955(F)
2	Natural Resources	Repealed by 10 of 1962
3	Mandated and Trust Territories	Repealed by 37 of 1967
4	King's African Rifles (Amendment)	Repealed by 23 of 1955(F)
5	Tea (Repeal)	Spent
6	Workmen's Compensation (Amendment) . .	Repealed by 21 of 1990
7	Stamps (Amendment)	Repealed by 10 of 1969
8	Inquests (Amendment)	Incorporated in Cap. 4:02
9	Motor Traffic (Amendment)	Repealed by 34 of 1950
10	Widows and Orphans Pensions (Amendment) . .	Omitted
11	Cotton	Repealed by 29 of 1951
12	Maize Control	Repealed by 34 of 1952
13	Adoption of Children	Cap. 26:01
14	Prisoners Removal (Southern Rhodesia) . .	Repealed by 9 of 1955(F)
15	Rhodesia and Nyasaland Court of Appeal (Amendment)	Spent
16	Post Office (Amendment)	Repealed by 20 of 1954(F)
17	Fisheries	Repealed by 25 of 1997
18	Criminal Procedure Code (Amendment) . .	Repealed by 36 of 1967
19	Penal Code (Amendment)	Incorporated in Cap. 7:01
20	Immigration (Control)	Repealed by 37 of 1954(F)
21	Electricity	Repealed by 8 of 1956(F)
22	Natural Resources (Amendment)	Repealed by 10 of 1962
23	1949 Laws (Conformity with the Revised Edition)	Spent
24	British Nationality (Supplementary Provisions)	Repealed by 8 of 1964(M)
25	Companies (Amendment)	Repealed by 19 of 1984
26	Income Tax (Amendment)	Repealed by 16 of 1954(F)
27	Marketing of African Produce (Amendment)	Repealed by 15 of 1959
28	Dogs (Amendment)	Repealed by 31 of 1949
29	African Development and Welfare Fund . .	Repealed by 4 of 1964(N)
30	Supplementary Appropriation	Spent

YEAR AND NUMBER	ORDINANCE	HOW DEALT WITH
1949	(*Contd.*)	
31	Control of Dogs	Repealed by 41 of 1967
32	Wages and Conditions of Employment	Repealed by 4 of 1958
33	Appropriation	Spent
1950		
1	Water Transport	Omitted
2	Dangerous Drugs (Amendment)	Repealed by 28 of 1955(F)
3	Courts (Amendment)	Repealed by 1 of 1958
4	Forced Labour (Repeal)	Spent
5	Cotton (Amendment)	Repealed by 29 of 1951
6	Income Tax (Amendment)	Repealed by 16 of 1954(F)
7	Factories (Amendment)	Repealed by 21 of 1964(N)
8	Maize Control (Amendment)	Repealed by 34 of 1952
9	Tobacco	Repealed by 39 of 1952
10	Archives (Amendment)	Repealed by 5 of 1958(F)
11	Motor Traffic (Amendment)	Repealed by 34 of 1950
12	Criminal Procedure Code (Amendment)	Repealed by 36 of 1967
13	General Loan and Stock	Repealed by 43 of 1963
14	Statutory Declarations	Repealed by 45 of 1967
15	Estate Duty (Amendment)	Incorporated in Cap. 43:02
16	Hotels (Amendment)	Repealed by 27 of 1960
17	Banking (Amendment)	Repealed by 23 of 1959(F)
18	Prisons (Amendment)	Repealed by 9 of 1955(F)
19	Deeds of Arrangement (Amendment)	Repealed by 9 of 2016
20	Loan, 1950	Omitted
21	Trustee Investment in Nyasaland Protectorate Government Securities	Repealed by 25 of 1964(N)
22	Electricity (Amendment)	Repealed by 8 of 1956(F)
23	Credit Trade with Africans (Amendment)	Repealed by 18 of 1958
24	Bills of Sale Registration (Amendment)	Repealed by 29 of 1967
25	Public Roads	Repealed by 11 of 1962
26	British Nationality (Supplementary Provisions) (Amendment)	Repealed by 8 of 1964(M)
27	Natural Resources (Amendment)	Repealed by 10 of 1962
28	Native Authority (Amendment)	Repealed by 13 of 1955
29	Aerodromes	Repealed by 3 of 1953
30	European Officers' Pensions (Amendment)	Omitted
31	Criminal Procedure Code (Amendment) (No. 2)	Repealed by 36 of 1967
32	Crown Lands Cotton (Tax) (Repeal)	Spent
33	African Courts (Amendment)	Repealed by 8 of 1962
34	Motor Traffic	Repealed by G.N. 20 of 1965
35	Land Tax (Repeal)	Spent
36	Trade Marks	Repealed by 14 of 1957(F)
37	Estate Duty (Amendment)	Incorporated in Cap. 43:02
38	Aliens Restrictions.	Repealed by 37 of 1954(F)
39	Penal Code (Amendment).	Spent
40	Pensions (Special War Appointments)	Omitted
41	Supplementary Appropriation	Spent
42	Weights and Measures (Amendment)	Repealed by 18 of 1959(F)
43	Excise Duties (Amendment)	Repealed by 16 of 1955(F)
44	Public Health (Amendment)	Incorporated in Cap. 34:01
45	Tax Reserve Certificates	Repealed by 44 of 1955
46	Appropriation	Spent
1951		
1	Petroleum	Repealed by 23 of 2004
2	Exchange Control	Repealed by 27 of 1954(F)
3	Hides and Skins Trade (Control)	Repealed by 23 of 1954
4	Hides and Skins (Cess)	Cap. 42:04

YEAR AND NUMBER	ORDINANCE	HOW DEALT WITH
1951	(*Contd.*)	
5	Maize Control (Amendments)	Repealed by 34 of 1952
6	Animal Feeding Stuffs	Repealed by 37 of 1967
7	Authentication of Documents (Amendment)	Repealed by 50 of 1966
8	Public Land	Repealed by 25 of 1965
9	Tobacco (Amendment)	Repealed by 39 of 1952
10	Natural Resources (Amendment)	Repealed by 10 of 1962
11	Diplomatic Privileges (Extension)	Repealed by 31 of 1956(F)
12	African Tax (Amendment)	Repealed by 19 of 1962
13	Shipping	Repealed by 34 of 1960(F)
14	Inquests (Amendment)	Incorporated in Cap. 4:02
15	National Service	Cap. 12:02
16	Registration	Not yet in operation
17	King's African Rifles (Absentee Soldiers) (Special Provisions)	Spent
18	Convicted Persons (Employment on Public Work) (Amendment)	Repealed by 16 of 1954
19	Volunteer Reserve (Amendment)	Repealed by 28 of 1954(F)
20	Nyasaland Farming Corporation	Repealed by 19 of 1956
21	Criminal Procedure Code (Amendment)	Spent
22	Crocodiles	Repealed by 12 of 1968
23	Exchange Control (Amendment)	Repealed by 27 of 1954(F)
24	Affiliation (Amendment)	Repealed by 22 of 2010
25	African Tax (Amendment)	Repealed by 19 of 1962
26	Midwives (Amendment)	Repealed by 58 of 1966
27	Telegraphs (Amendment)	Repealed by 20 of 1954(F) and 32 of 1957(F)
28	Customs (Amendment)	Repealed by 16 of 1955(F)
29	Cotton	Repealed by 1 of 2013
30	European Officers' Pensions (Amendment)	Omitted
31	Penal Code (Amendment)	Incorporated in Cap. 7:01
32	Pensions (Increase)	Omitted
33	King's African Rifles (Amendment)	Repealed by 23 of 1955(F)
34	Widows and Orphans Pensions (Amendment)	Repealed, in effect, by 10 of 1953
35	Consular Conventions	Repealed by 25 of 1967
36	Licensing (Amendment)	Spent
37	Diplomatic Privileges (Extension) (Amendment) (No. 2)	Repealed by 31 of 1956(F)
38	Immigration (Control) (Amendment)	Repealed by 37 of 1954(F)
39	Natural Resources (Amendment) (No. 2)	Repealed by 10 of 1962
40	Supplementary Appropriation	Spent
41	Income Tax Ordinance (Re Enactment)	Repealed, in effect, by 16 of 1954(F)
42	Income Tax (Amendment)	Repealed by 16 of 1954(F)
43	Promissory Oaths (Amendment)	Repealed by 26 of 1966
44	Appropriation	Spent
1952		
1	Excise Duties (Amendment)	Repealed by 16 of 1955(F)
2	Customs (Amendment)	Repealed by 16 of 1955(F)
3	Justices of the Peace (Amendment)	Repealed by 37 of 1967
4	Education (Amendment)	Repealed by 1 of 1962
5	Forest (Amendment)	Repealed by 11 of 1997
6	Intoxicating Liquor (Amendment)	Omitted
7	Native Authority (Amendment)	Repealed by 13 of 1955
8	Africans on Private Estates	Repealed by 12 of 1962
9	Medical Practitioners and Dentists Registration (Amendment)	Incorporated in Cap. 36:01
10	High Court (Amendment)	Repealed by 1 of 1958
11	Conveyancing	Cap. 58:03

YEAR AND NUMBER	ORDINANCE	HOW DEALT WITH
1952	(*Contd.*)	
12	Distribution of German Enemy Property . .	Omitted
13	Penal Code (Amendment)	Incorporated in Cap. 7:01
14	Land Survey	Repealed by 18 of 2016
15	Electricity (Amendment)	Repealed by 8 of 1956(F)
16	Malaŵi Ex-Servicemen's Memorial Home Trustees	Repealed by 23 of 1971
17	Estate Duty (Amendment)	Incorporated in Cap. 43:02
18	Consular Conventions (Amendment)	Repealed by 25 of 1967
19	Customs (Amendment) (No 2)	Repealed by 16 of 1955(F)
20	Trade Disputes (Arbitration and Settlement) . .	Repealed by 16 of 1996
21	Tobacco Cess	Repealed by 18 of 1970
22	Natural Resources (Amendment)	Repealed by 10 of 1962
23	Marriage (Amendment)	Repealed by 4 of 2015
24	African Tax (Amendment)	Repealed by 19 of 1962
25	Mining (Amendment)	Incorporated in Cap. 61:01
26	Estate Duty (Amendment) (No. 2)	Incorporated in Cap. 43:02
27	Pensions (Increase) (Amendment)	Repealed, in effect, by 41 of 1954
28	Banking (Amendment)	Repealed by 23 of 1959(F)
29	Architects and Quantity Surveyors	Repealed by 29 of 1991
30	Licensing (Amendment)	Repealed by 33 of 1960
31	Criminal Procedure Code (Amendment). .	Repealed by 36 of 1967
32	Town and Country Planning (Amendment) . .	Repealed by 26 of 1988
33	Building Societies (Application of United Kingdom Acts)	Repealed by 11 of 1964(N)
34	Produce Marketing	Repealed by 15 of 1959
35	Marketing of African Produce (Amendment) . .	Repealed by 15 of 1959
36	Railways (Amendment)	Incorporated in Cap. 69:03
37	Motor Traffic (Amendment)	Repealed by G.N. 20 of 1965
38	Income Tax (Amendment)	Repealed by 16 of 1954(F)
39	Tobacco	Repealed by 18 of 1970
40	Deportation (Immigrant British Subjects) . .	Repealed by 32 of 1954
41	Appropriation	Spent
1953		
1	European Officers' Pensions (Amendment) . .	Omitted
2	Interpretation and General Clauses	Repealed by 36 of 1966
3	Aerodromes (Repeal)	Spent
4	Licensing (Amendment)	Repealed by 33 of 1960
5	Prisons (Amendment)	Repealed by 9 of 1955(F)
6	Penal Code (Amendment).	Incorporated in Cap. 7:01
7	Central African Air Services (Amendment) . .	Repealed by 23 of 1960
8	Supplementary Appropriation	Spent
9	African Courts (Amendment)	Repealed by 8 of 1962
10	Widows and Orphans Pensions (Amendment) . .	Omitted
11	Land Survey (Amendment)	Repealed by 18 of 2016
12	Deportation (Immigrant British Subjects) (Amendment)	Repealed by 32 of 1954
13	Maintenance Orders (Enforcement) (Amendment)	Repealed by 4 of 2015
14	Tobacco (Amendment)	Incorporated in Cap. 65:02
15	Townships (Amendment)	Repealed by 37 of 1967
16	Penal Code (Amendment) (No. 2)	Repealed, in effect, by 28 of 1953
17	Marketing of African Produce (Amendment) . .	Repealed by 15 of 1959
18	Distribution of German Enemy Property (Amendment)	Omitted
19	Control of Dogs (Amendment)	Repealed by 41 of 1967
20	Public Roads (Amendment)	Repealed by 11 of 1962
21	Police (Amendment)	Repealed by 12 of 2010
22	Factories (Amendment)	Repealed by 21 of 1964(N)

YEAR AND NUMBER	ORDINANCE	HOW DEALT WITH
1953	(*Contd.*)	
23	Income Tax (Amendment)	Repealed by 16 of 1954(F)
24	Tobacco (Amendment) (No. 2)	Spent
25	Post Office (Amendment)	Repealed by 20 of 1954(F)
26	Game	Repealed by 11 of 1992
27	African Labour (Amendment)	Repealed by 3 of 1954
28	Penal Code (Amendment) (No. 3)	Incorporated in Cap. 7:01
29	Police (Amendment) (No. 2)	Repealed by 12 of 2010
30	Native Authority (Amendment)	Repealed by 13 of 1955
31	Civil Procedure (Suits by or against the Government or Public Officers) (Amendment)	Incorporated in Cap. 6:01
32	Criminal Procedure Code (Amendment) . .	Repealed by 36 of 1967
33	European Officers' Pensions (Amendment) . .	Omitted
34	Convicted Persons (Employment on Public Work) (Amendment)	Repealed by 16 of 1954
35	Native Authority (Amendment) (No. 2) . .	Repealed by 13 of 1955
36	Tobacco (Amendment) (No. 3)	Incorporated in Cap. 65:02
37	Motor Traffic (Amendment)	Repealed by G.N. 20 of 1965
38	Licensing (Amendment) (No. 2)	Repealed by 33 of 1960
39	Cotton (Amendment)	Repealed by 1 of 2013
40	Produce Marketing (Amendment)	Repealed, in effect, by 8 of 1955
41	Mental Treatment (Amendment)	Incorporated in Cap. 34:02
42	Emergency Regulations (Amendment)	Repealed by 1 of 1960
43	Penal Code (Amendment) (No. 4)	Incorporated in Cap. 7:01
44	Administration of Estates by Corporations . .	Repealed by 27 of 1967
45	Widows and Orphans Pensions (Amendment) (No. 2)	Omitted
46	Wild Birds Protection (Amendment)	Repealed by 7 of 1959
47	Loan, 1953	Omitted
48	Local Government (District Councils)	Repealed by 42 of 1998
49	Appropriation	Spent
1954		
1	African Emigration and Immigrant Workers . .	Cap. 56:02
2	Motor Traffic (Amendment)	Repealed by G.N. 20 of 1965
3	African Employment	Repealed by 14 of 1964
4	Wages and Conditions of Employment (Amendment)	Repealed by 4 of 1958
5	Education (Amendment)	Repealed by 1 of 1962
6	Marketing of African Produce (Amendment) . .	Repealed by 15 of 1959
7	Public Roads (Amendment)	Repealed by 11 of 1962
8	Tea Cess (Amendment)	Repealed by 10 of 1958
9	Stamps (Amendment)	Repealed by 10 of 1969
10	Non-African Poll Tax (Amendment)	Repealed by 19 of 1962
11	Supplementary Appropriation	Spent
12	Penal Code (Amendment)	Incorporated in Cap. 7:01
13	Witnesses Compulsory Attendance	Omitted
14	Evidence in Criminal Proceedings	Repealed by 36 of 1967
15	Criminal Procedure Code (Amendment) . .	Repealed by 36 of 1967
16	Convicted Persons (Employment on Public Work)	Cap. 9:03
17	Companies (Amendment)	Repealed by 19 of 1984
18	Control of Dogs (Amendment)	Repealed by 41 of 1967
19	Interpretation and General Clauses (Amendment)	Repealed by 36 of 1966
20	Widows and Orphans Pensions (Amendment)	Omitted
21	High Density Residential Areas	Repealed by G.N. 321 of 1965
22	Mudi River Board (Transfer)	Omitted
23	Hide and Skin Trade	Cap. 50:02

YEAR AND NUMBER	ORDINANCE	HOW DEALT WITH
1954	(*Contd.*)	
24	Dangerous Drugs (Amendment)	Repealed by 28 of 1955(F)
25	African Tax (Amendment)	Repealed by 19 of 1962
26	Poor Prisoners Defence (Amendment) . .	Repealed by 8 of 1964
27	Licensing (Amendment)	Repealed by 33 of 1960
28	Trade Disputes (Arbitration and Settlement) (Amendment)	Repealed by 16 of 1996
29	Deportation (Immigrant British Subjects) (Amendment)	Repealed by 32 of 1954
30	Savings Bank (Amendment)	Repealed by 29 of 1954(F)
31	Appropriation	Spent
32	Restriction and Security Orders	Cap. 14:03
33	Police (Amendment)	Repealed by 12 of 2010
34	Territorial Surcharge (Authorization) . .	Spent
35	Bicycles	Repealed by G.N. 20 of 1965
36	Public Roads (Amendment) (No. 2)	Spent
37	Cotton (Amendment)	Repealed by 1 of 2013
38	Penal Code (Amendment) (No. 2)	Incorporated in Cap. 7:01
39	Convicted Persons (Employment on Public Work) (Amendment)	Incorporated in Cap. 9:03
40	Building Societies (Application of United Kingdom Acts) (Amendment)	Repealed by 11 of 1964(N)
41	Pensions (Increase) (Amendment)	Omitted
42	Tobacco (Amendment)	Incorporated in Cap. 65:02
43	Inter-Territorial Movement of Persons (Control)	Repealed by 42 of 1965
44	Acquisition of Land for Public Purposes (Amendment)	Incorporated in Cap. 58:04
45	Industrial Licensing (Amendment)	Repealed by 55 of 1966
1955		
1	Penal Code (Amendment)	Incorporated in Cap. 7:01
2	Maintenance Orders (Enforcement) (Amendment)	Repealed by 4 of 2015
3	Tobacco Cess (Amendment)	Repealed by 18 of 1970
4	Rural Area Boards (Amendment)	Repealed by G.N. 53 of 1966
5	Intoxicating Liquor (Amendment)	Omitted
6	Cotton (Amendment)	Repealed by 1 of 2013
7	Tobacco (Amendment)	Incorporated in Cap. 65:02
8	Produce Marketing (Amendment)	Repealed by 15 of 1959
9	Law Reform (Imperial Acts Application) . .	Repealed by 27 of 1967
10	Building Societies (Application of United Kingdom Acts) (Amendment)	Repealed by 11 of 1964(N)
11	Farmers Marketing	Repealed by 8 of 2004
12	African Employment (Amendment)	Repealed by 14 of 1964(N)
13	Native Authority	Repealed by 39 of 1967
14	Fire-arms and Ammunition (Amendment) . .	Repealed by 43 of 1967
15	Export of Food (Control).	Repealed by 37 of 1967
16	Bankruptcy (Amendment)	Repealed by 9 of 2016
17	Waterworks (Amendment)	Repealed by 17 of 1995
18	National Assembly (Emoluments)	Cap. 2:05
19	Motor Spirit Tax	Omitted
20	Territorial Surcharge (Percentage and Rate)	Spent
21	African Employment (Amendment) (No. 2)	Repealed by 14 of 1964(N)
22	Wages and Conditions of Employment (Amendment)	Repealed by 4 of 1958
23	African Housing (Loan)	Omitted
24	Appropriation	Spent
25	Legislative Council	Repealed by 19 of 1961
26	Rural Area Boards (Amendment)	Repealed by G.N. 53 of 1966

YEAR AND NUMBER	ORDINANCE	HOW DEALT WITH
1955	(*Contd.*)	
27	Widows and Orphans Pensions (Amendment)	Omitted
28	European Officers' Pensions (Amendment) . .	Omitted
29	Territorial Surcharge (Authorization) (Amendment)	Spent
30	Native Authority (Amendment)	Repealed by 39 of 1967
31	Motor Traffic (Amendment)	Repealed by G.N. 20 of 1965
32	Control of Dogs (Amendment)	Repealed by 41 of 1967
33	Bills of Exchange Act, 1882 (Amendment) . .	Repealed by 15 of 1967
34	Stamps (Amendment)	Repealed by 10 of 1969
35	Trustee Act, 1893 (Amendment).	Repealed by 23 of 1957
36	Inter-Territorial Movement of Persons (Control) (Amendment)	Repealed by 42 of 1965
37	Farmers Stop-Order	Repealed by 8 of 2013
38	Supplementary Appropriation	Spent
39	Penal Code (Amendment) (No. 2)	Incorporated in Cap. 7:01
40	Licensing (Amendment)	Repealed by 33 of 1960
41	Intoxicating Liquor (Amendment) (No. 2) . .	Omitted
42	Law Reform (Imperial Acts Application) (Amendment)	Repealed by 27 of 1967
43	Temporary Control of Premises	Cap. 60:01
44	Tax Reserve Certificates (Repeal)	Spent
1956		
1	Territorial Surcharge (Authorization) (Amendment)	Spent
2	Widows and Orphans Pensions (Amendment)	Omitted
3	Poor Prisoners Defence (Amendment)	Repealed by 8 of 1964
4	Marketing of African Produce (Amendment)	Repealed by 15 of 1959
5	Fire-arms and Ammunition (Amendment) . .	Repealed by 43 of 1967
6	Interpretation and General Clauses (Amendment)	Repealed by 36 of 1966
7	African Development and Welfare Fund (Amendment)	Repealed by 4 of 1964(N)
8	Public Roads (Amendment)	Repealed by 11 of 1962
9	Cooperative Societies (Amendment)	Repealed by 36 of 1998
10	Water Transport (Amendment)	Omitted
11	Townships (Amendment)	Repealed by 37 of 1967
12	African Development (Loan)	Omitted
13	Urban Areas (Public and Private Streets) . .	Cap. 23:02
14	Tobacco Cess (Amendment)	Repealed by 18 of 1970
15	Appropriation	Spent
16	Nkhata Bay and Karonga District Councils (Tax Validity)	Spent
17	Territorial Surcharge (Percentage and Rate) . .	Spent
18	Estate Duty (Amendment)	Incorporated in Cap. 43:02
19	Farmers Marketing (Amendment)	Repealed by 8 of 2004
20	Printed Publications (Amendment)	Incorporated in Cap. 19:01
21	Africans on Private Estates (Amendment) . .	Repealed by 12 of 1962
22	Penal Code (Amendment).	Incorporated in Cap. 7:01
23	Public Land (Amendment)	Repealed by 25 of 1965
1957		
1	Revised Edition of the Laws	Spent
2	Pensions (Increase) (Amendment)	Omitted
3	Territorial Surcharge (Authorization) (Amendment)	Spent
4	National Assembly (Powers and Privileges) . .	Cap. 2:04
5	Building Societies (Amendment).	Repealed by 11 of 1964(N)
6	Police (Amendment)	Repealed by 12 of 2010
7	Non-African Poll Tax (Amendment)	Repealed by 19 of 1962

YEAR AND NUMBER	ORDINANCE	HOW DEALT WITH
1957	(*Contd.*)	
8	Fisheries (Amendment)	Repealed by 25 of 1997
9	High Court (Amendment).	Repealed by 1 of 1958
10	Tobacco (Amendment)	Incorporated in Cap. 65:02
11	Supplementary Appropriation (1954–1955) . .	Spent
12	Supplementary Appropriation (1955–1956) . .	Spent
13	Local Government (District Councils) (Amendment)	Repealed by 42 of 1998
14	Law Reform (Imperial Acts Application) (Amendment)	Repealed by 27 of 1967
15	Penal Code (Amendment).	Incorporated in Cap. 7:01
16	Art Gallery (Authorization)	Repealed by 6 of 1964(M)
17	Trade Unions and Trade Disputes (Amendment)	Repealed by 32 of 1958
18	Standardization of Soap.	Cap. 52:01
19	Adoption of Children (Amendment)	Incorporated in Cap. 26:01
20	Museums	Cap. 28:02
21	Legislative Council (Amendment)	Repealed by 19 of 1961
22	Native Authority (Amendment)	Repealed by 39 of 1967
23	Trustee Act, 1893 (Amendment)	Repealed by 24 of 1967
24	Waterworks (Amendment)	Repealed by 17 of 1995
25	Stage Plays and Cinematograph Exhibitions (Amendment)	Omitted (not yet in operation)
26	Control of Dogs (Amendment)	Repealed by 41 of 1967
27	African Emigration and Immigrant Workers (Amendment)	Incorporated in Cap. 56:02
28	Rural Area Boards (Amendment)	Repealed by G.N. 53 of 1966
29	Marriage (Amendment)	Repealed by 4 of 2015
30	Control of Export of Cattle (Repeal)	Spent
31	Pensions (Increase) (Amendment) (No. 2) . .	Omitted
32	Nyasaland Ex-Servicemen's Memorial Home Trustees (Amendment)	Repealed by 33 of 1971
33	Territorial Surcharge (Percentage and Rate) . .	Spent
34	African Housing (Loan) (Amendment) . .	Omitted
35	Education (Amendment)	Repealed by 1 of 1962
36	Tobacco (Amendment) (No. 2)	Incorporated in Cap. 65:02
37	Development Fund Appropriation (1957–1958)	Spent
38	Widows and Orphans Pensions (Amendment). .	Omitted
1958		
1	Courts	Cap. 3:02
2	Town and Country Planning (Amendment) . .	Repealed by 26 of 1988
3	Nursing Sisters (Retiring Allowances) (Amendment)	Omitted
4	Regulation of Minimum Wages and Conditions of Employment	Repealed by 6 of 2000
5	African Emigration and Immigrant Workers (Amendment)	Repealed by 6 of 2000
6	Farmers Marketing (Amendment)	Repealed by 8 of 2004
7	Periodical Revision of the Laws	Repealed by 15 of 1968
8	Architects and Quantity Surveyors (Amendment)	Repealed by 29 of 1991
9	Native Authority (Amendment)	Repealed by 39 of 1967
10	Tea Cess	Cap. 42:03
11	Planning (Sub-division Control)	Repealed by 26 of 1988
12	Authentication of Documents (Amendment)	Repealed by 50 of 1956
13	Advertisements	Repealed by 26 of 1988
14	Law Reform (Imperial Acts Application) (Amendment)	Repealed by 27 of 1967

YEAR AND NUMBER	ORDINANCE	HOW DEALT WITH
1958	(*Contd.*)	
15	Supplementary Appropriation (1st July, 1956, to 30th June, 1957)	Spent
16	Deeds Registration (Amendment)	Incorporated in Cap. 58:02
17	Motor Spirit Tax (Amendment)	Omitted
18	Credit Trade with Africans (Repeal)	Spent
19	Diseases of Animals (Amendment)	Repealed by 41 of 1967
20	Promissory Oaths (Amendment)	Repealed by 26 of 1966
21	Births and Deaths Registration (Amendment)	Repealed by 13 of 2010
22	Adoption of Children (Amendment)	Incorporated in Cap. 26:01
23	Territorial Surcharge (Percentage and Rate) . .	Spent
24	Appropriation (1958/59)	Spent
25	Development Fund Appropriation (1958/59)	Spent
26	Criminal Procedure Code (Amendment) . .	Repealed by 36 of 1967
27	Town and Country Planning (Amendment) . .	Repealed by 26 of 1988
28	Intoxicating Liquor (Amendment)	Omitted
29	Public Health (Revesting of Administration and Miscellaneous Provisions)	Incorporated in Cap. 34:01
30	European Officers' Pensions (Amendment) . .	Omitted
31	Game (Amendment)	Repealed by 11 of 1992
32	Trade Unions	Repealed by 16 of 1996
33	Motor Traffic (Amendment)	Repealed by G.N. 20 of 1965
34	High Density Residential Areas (Amendment)	Repealed by G.N. 321 of 1965
35	Widows and Orphans Pensions (Amendment)	Omitted
36	Waterworks (Amendment)	Repealed by 17 of 1995
37	Police (Amendment)	Repealed by 12 of 2010
38	Supplementary Appropriation (1957–1958) . .	Spent
39	Development Fund Supplementary Appropriation (1957–1958)	Spent
40	Penal Code (Amendment)	Incorporated in Cap. 7:01
1959		
1	Townships (Amendment)	Repealed by 37 of 1967
2	Mortmain	Repealed by 37 of 1967
3	Penal Code (Amendment).	Incorporated in Cap. 7:01
4	African Employment (Amendment)	Repealed by 14 of 1964(N)
5	Riot Damages	Cap. 14:10
6	Africans on Private Estates (Amendment) . .	Repealed by 12 of 1962
7	Wild Birds Protection	Repealed by 11 of 1992
8	Territorial Surcharge (Percentage and Rate) . .	Spent
9	Appropriation (1959/60)	Spent
10	Development Fund Appropriation	Spent
11	Produce Marketing (Amendment)	Repealed by 15 of 1959
12	Marketing of African Produce (Amendment)	Repealed by 15 of 1959
13	Development Fund Additional Expenditure (1957/1958)	Spent
14	Farmers Marketing (Amendment)	Repealed by 8 of 2004
15	Produce Marketing	Repealed by 33 of 1963
16	Town and Country Planning (Amendment)	Repealed by 26 of 1988
1960		
1	Preservation of Public Security	Cap. 14:02
2	Detained Persons (Special Provisions)	Spent
3	Criminal Procedure Code (Amendment) . .	Repealed by 36 of 1967
4	Pensions (Increase) (Amendment)	Omitted
5	Native Authority (Amendment)	Repealed by 39 of 1967
6	Protected Places and Areas	Cap. 14:04
7	Marriage (Amendment)	Repealed by 4 of 2015
8	Local Government (District Councils) (Amendment)	Repealed by 42 of 1998

YEAR AND NUMBER	ORDINANCE	HOW DEALT WITH
1960	(*Contd.*)	
9	Regulation of Minimum Wages and Conditions of Employment (Amendment)	Repealed by 6 of 2000
10	Territorial Surcharge (Percentage and Rate) . .	Spent
11	Appropriation (1960/61)	Spent
12	Development Fund Appropriation (1960/61)	Spent
13	African Wills and Succession	Repealed by 25 of 1967
14	Traditional Beer	Cap. 52:02
15	Intoxicating Liquor (Amendment)	Omitted
16	Penal Code (Amendment).	Incorporated in Cap. 7:01
17	Fugitive Criminals Surrender (Amendment) . .	Repealed by 9 of 1968
18	Criminal Procedure Code (Amendment) (No. 2)	Repealed by 36 of 1967
19	Nyasaland Law Society	Repealed by 20 of 1965
20	Development Fund Appropriation (1960/61) (Amendment)	Spent
21	Development Fund Additional Expenditure (1958/1959)	Spent
22	Supplementary Appropriation (1958/1959) . .	Spent
23	Central African Airways Corporation (Transfer of Assets)	Omitted
24	Authentication of Documents (Amendment) . .	Repealed by 50 of 1966
25	Poor Prisoners Defence (Amendment)	Repealed by 8 of 1964(N)
26	Commissioners for Oaths and Notaries . .	Repealed by 20 of 1965
27	Hotels (Repeal)	Spent
28	Deeds Registration (Amendment)	Incorporated in Cap. 58:02
29	Malaŵi Police Reserve	Omitted
30	Co-operative Societies (Amendment)	Repealed by 36 of 1998
31	Widows and Orphans Pensions (Amendment)	Omitted
32	Control of Foodstuffs	Repealed by 37 of 1967
33	Businesses Licensing	Repealed by 27 of 2012
34	Townships (Amendment)	Repealed by 37 of 1967
1961		
1	Townships (Amendment)	Repealed by 37 of 1967
2	High Density Residential Areas (Amendment)	Repealed by G.N. 321 of 1965
3	Rural Area Boards (Amendment)	Repealed by G.N. 53 of 1966
4	Poor Prisoners Defence (Amendment)	Repealed by 8 of 1964(N)
5	Protection of Animals (Amendment)	Incorporated in Cap. 66:01
6	Regulation of Minimum Wages and Conditions of Employment (Amendment) . .	Repealed by 6 of 2000
7	Apprenticeship	Repealed by 6 of 1999
8	Births and Deaths Registration (Amendment)	Repealed by 13 of 2010
9	Divorce (Amendment)	Repealed by 4 of 2015
10	Museums (Amendment)	Repealed by 21 of 1989
11	African Development and Welfare Fund (Amendment)	Repealed by 4 of 1964(N)
12	Tea Cess (Amendment)	Incorporated in Cap. 42:03
13	Children and Young Persons (Amendment) . .	Repealed by 7 of 1969
14	Crocodiles (Amendment)	Repealed by 12 of 1968
15	Criminal Procedure Code (Amendment) . .	Repealed by 36 of 1967
16	Promissory Oaths (Amendment) . . .	Repealed by 26 of 1966
17	Colonial Development Corporation (Mudi River Water Board) Loan Guarantee . .	Omitted
18	Departmental Offences (Repeal)	Spent
19	Legislative Council (Repeal)	Spent
20	District Messengers	Repealed by 37 of 1967
21	Supplementary Appropriation (1959/1960) . .	Spent
22	Development Fund Additional Expenditure (1959/1960)	Spent

YEAR AND NUMBER	ORDINANCE	HOW DEALT WITH
1961	(*Contd.*)	
23	African Development Loan (Registered Bonds)	Omitted
24	Non-African Poll Tax (Amendment)	Repealed by 19 of 1962
25	Territorial Surcharge (Percentage and Rate) . .	Spent
26	Development Loans (United Kingdom Government)	Omitted
27	Businesses Licensing (Amendment)	Repealed by 27 of 2012
28	Appropriation (1961/62)	Spent
29	Development Fund Appropriation (1961/62) . .	Spent
30	Local Government (District Councils) (Amendment)	Repealed by 42 of 1998
31	Territorial Surcharge (Percentage)	Spent
32	Terneplate Tins (Repeal)	Spent
33	Architects and Quantity Surveyors (Amendment)	Repealed by 29 of 1991
1962		
1	Education	Repealed by 21 of 2013
2	African Employment (Amendment)	Repealed by 14 of 1964(N)
3	Interpretation and General Clauses (Amendment)	Repealed by 36 of 1966
4	Farmers Marketing	Repealed by 8 of 2004
5	Trustees Incorporation	Cap. 5:03
6	Motor Traffic (Amendment)	Repealed by G.N. 20 of 1965
7	Water Transport (Amendment)	Omitted
8	Local Courts	Repealed by 9 of 2011
9	Supplementary Appropriation (1960/61) . .	Spent
10	Land Use and Protection	Repealed by 8 of 1967
11	Public Roads	Cap. 69:02
12	Africans on Private Estates	Cap. 33:01
13	Mudi River Waterworks	Cap. 72:02
14	Police (Amendment)	Repealed by 12 of 2010
15	Farmers Marketing (Amendment)	Repealed by 8 of 2004
16	Territorial Surcharge (Percentage and Rate) . .	Spent
17	Appropriation (1962/63)	Spent
18	Development Fund Appropriation (1962/63)	Spent
19	Personal Tax	Repealed by 46 of 1963
20	Co-operative Societies (Amendment)	Repealed by 36 of 1998
21	Regulation of Minimum Wages and Conditions of Employment (Amendment) . .	Repealed by 6 of 2000
22	Industrial Licensing (Amendment)	Repealed by 55 of 1966
23	Townships (Amendment)	Repealed by 37 of 1967
24	Local Courts (Amendment)	Repealed by 9 of 2011
25	Malaŵi Development Bond	Omitted
26	African Employment (Amendment) (No. 2) . .	Repealed by 14 of 1964(N)
27	Overseas Service	Omitted
28	Motor Traffic (Amendment) (No. 2)	Repealed by G.N. 20 of 1965
29	Town and Country Planning (Amendment) . .	Repealed by 26 of 1988
1963		
1	Natural Resources Legislation (Amendment) . . 64:02, 65:02, 65:04, 65:05, 66:03, 66:04, 66:05	Incorporated in Caps. 50:02, 63:01,
2	Traditional Beer (Amendment)	Incorporated in Cap. 52:02
3	Trade Unions (Amendment)	Repealed by 16 of 1996
4	Local Government (District Councils) (Amendment)	Repealed by 42 of 1998
5	Townships (Amendment)	Repealed by 37 of 1967
6	Industrial Licensing (Amendment)	Repealed by 55 of 1966
7	Museums (Amendment)	Repealed by 21 of 1989

YEAR AND NUMBER	ORDINANCE	HOW DEALT WITH
1963	(*Contd.*)	
8	Courts (Amendment)	Incorporated in Caps. 3:02, 4:02, 9:01, 25:05, 26:01, 26:02
9	Plant Protection (Amendment)	Repealed by 11 of 1969
10	Children and Young Persons (Amendment) . .	Repealed by 7 of 1969
11	Deeds Registration (Amendment)	Incorporated in Cap. 58:02
12	Appropriation (1961/62)	Spent
13	Appropriation (July-December, 1963)	Spent
14	Development Fund Appropriation (1963/64) . .	Spent
15	Public Finance (Votes on Account and Contingencies Fund)	Repealed by 43 of 1963
16	Territorial Surcharge (Percentage and Rate) . .	Spent
17	Sport and Culture	Repealed by 13 of 1967
18	Regulation of Minimum Wages and Conditions of Employment (Amendment) . .	Repealed by 6 of 2000
19	Intoxicating Liquor (Amendment)	Omitted
20	Radio Malaŵi	Repealed by 50 of 1963
21	Malaŵi Housing Corporation	Cap. 32:02
22	Affiliation (Amendment)	Repealed by 22 of 2010
23	Local Courts (Amendment)	Repealed by 9 of 2011
24	Electricity	Repealed by 19 of 1998
25	Motor Traffic (Amendment)	Repealed by G.N. 20 of 1965
26	Museums (Amendment) (No. 2)	Repealed by 21 of 1989
27	Special Crops	Cap. 65:01
28	Malaŵi Book Service	Cap. 30:03
29	Townships (Amendment)	Repealed by 37 of 1967
30	Farmers Marketing (Amendment)	Repealed by 8 of 2004
31	Land Survey (Amendment)	Repealed by 18 of 2016
32	Aviation	Repealed by 7 of 1970
33	Agricultural and Livestock Marketing	Repealed by 11 of 1996
34	Air Services	Repealed by 7 of 1970
35	Central African Civil Air Transport	Omitted
36	Supplementary Appropriation (July/December, 1963)	Spent
37	Forest (Amendment)	Repealed by 11 of 1997
38	Local Government (District Councils) (Amendment) (No. 2)	Repealed by 42 of 1998
39	Children and Young Persons (Amendment) (No. 2)	Repealed by 7 of 1969
40	Supreme Court of Appeal	Cap. 3:01
41	Immigration	Cap. 15:03
42	Businesses Licensing (Amendment)	Repealed by 27 of 2012
43	Finance and Audit.	Repealed by 44 of 1966
44	Inland Waters Shipping	Repealed by 12 of 1995
45	Protection of National Names	Repealed by 10 of 1967
46	Income Tax	Incorporated in Cap. 41:01
47	Posts and Telegraphs	Repealed by 41 of 1998
48	Radiocommunications	Repealed by 41 of 1998
49	Tobacco Control Commission	Repealed by 18 of 1970
50	Malaŵi Broadcasting Corporation	Repealed by 31 of 1991
51	Road Traffic	Repealed by 26 of 1997
1964	(Nyasaland)	
1	Appropriation	Spent
2	Development Fund Appropriation (1964) . .	Spent
3	Widows and Orphans Pensions (Amendment)	Omitted
4	African Development and Welfare Fund (Repeal)	Spent
5	Stamps (Amendment)	Repealed by 10 of 1969
6	European Officers' Pensions (Amendment) . .	Omitted

YEAR AND NUMBER	ORDINANCE	HOW DEALT WITH
1964	(*Contd.*)	
7	Customs and Excise (Amendment)	Omitted
8	Legal Aid	Repealed by 7 of 2011
9	Criminal Procedure Code (Amendment). .	Repealed by 36 of 1967
10	Immunities and Privileges (Extension and Miscellaneous Provisions)	Omitted
11	Building Societies	Cap. 32:01
12	Income Tax (Amendment)	Incorporated in Cap. 41:02
13	Malaŵi Development Corporation	Repealed by 13 of 2003
14	Employment	Repealed by 6 of 2000
15	Labour Legislation (Miscellaneous Provisions)	Repealed by 6 of 2000
16	Supplementary Appropriation (1964)	Spent
17	Supreme Court of Appeal (Amendment) . .	Incorporated in Cap. 3:01
18	Interpretation and General Clauses (Amendment)	Repealed by 36 of 1966
19	Income Tax (Amendment) (No. 2)	Incorporated in Cap. 41:01
20	Immigration (Amendment)	Incorporated in Cap. 15:03
21	Factories	Repealed by 21 of 1997
22	Malaŵi Development Corporation (Amendment)	Repealed by 13 of 2003
23	Customs and Excise (Amendment) (No. 2) . .	Omitted
24	Supplementary Appropriation (No. 2)	Spent
25	Government Securities	Cap. 38:01
26	Public Seal	Repealed by 10 of 1967
27	Convicted Persons (Employment on Public Work) (Amendment)	Cap. 9:03
28	Penal Code	Incorporated in Cap. 7:01
29	Town and Country Planning (Amendment) . .	Repealed by 26 of 1988
30	Protected Colours and Emblem	Repealed by 17 of 1966
31	Promissory Oaths (Amendment)	Repealed by 26 of 1966
32	Road Traffic (Amendment)	Repealed by 26 of 1997
33	Procedure in Appeals to the Judicial Committee	Repealed by 37 of 1967
34	National Flag and Armorial Ensign	Repealed by 10 of 1967
35	Reserve Bank of Malaŵi	Repealed by 8 of 1989
36	Wills and Inheritance (Kamuzu's Mbumba Protection)	Repealed by 25 of 1967
37	Income Tax (Amendment) (No. 3) (Malaŵi) . .	Incorporated in Cap. 41:01
1964	(Malaŵi)	
1	Constitution of Malaŵi (Amendment)	Repealed by 23 of 1966
2	Malaŵi Citizenship	Repealed by 28 of 1966
3	Road Traffic (Amendment)	Repealed by 26 of 1997
4	Game (Amendment)	Repealed by 11 of 1992
5	University of Malaŵi (Provisional Council) . .	Cap. 30:02
6	Art Gallery (Authorization) (Repeal)	Spent
7	Finance and Audit (Amendment)	Repealed by 44 of 1966
8	British Nationality (Supplementary Provisions) (Repeal)	Spent
9	Business Licensing (Amendment)	Repealed by 27 of 2012
10	Income Tax (Amendment)	Incorporated in Cap. 41:01
1965		
1	Building Societies (Amendment). . . .	Incorporated in Cap. 32:01
2	Alteration of Place Names	Repealed by 42 of 1967
3	Preservation of Public Security (Amendment) . .	Incorporated in Cap. 14:02
4	Army	Repealed by 11 of 2004
5	Income Tax (Amendment)	Incorporated in Cap. 41:01
6	Meat Marketing	Cap. 67:02
7	Bretton Woods Agreement	Cap. 40:02

YEAR AND NUMBER	ORDINANCE	HOW DEALT WITH
1965	(*Contd.*)	
8	Local Government (District Councils) (Amendment)	Repealed by 42 of 1998
9	International Finance Corporation and the International Development Association Agreements	Cap. 40:03
10	Banking	Repealed by 19 of 1989
11	Townships (Amendment)	Repealed by 37 of 1967
12	Colonial Development Corporation (Mudi River Water Board) Loan Guarantee (Amendment)	Omitted
13	Supreme Court of Appeal (Amendment)	Cap. 3:01
14	Criminal Procedure Code (Amendment)	Repealed by 36 of 1967
15	Apprenticeship (Amendment)	Repealed by 6 of 1999
16	Appropriation	Spent
17	Development Fund Appropriation (1965)	Spent
18	Local Government (Urban Areas)	Repealed by 42 of 1998
19	Regulation of Minimum Wages and Conditions of Employment (Amendment)	Repealed by 6 of 2000
20	Legal Education and Legal Practitioners	Cap. 3:04
21	Bills of Sale (Amendment)	Repealed by 29 of 1967
22	Customs and Excise (Amendment)	Repealed by 13 of 1969
23	Young Pioneers	Repealed by 12 of 1994
24	Penal Code (Amendment)	Incorporated in Cap. 7:01
25	Land	Repealed by 16 of 2016
26	Intoxicating Liquor (Amendment)	Omitted
27	Malaŵi Independence (Divorce Jurisdiction) (Amendment)	Repealed by 37 of 1967
28	Sport and Culture (Amendment)	Repealed by 13 of 1967
29	Professional Qualifications	Cap. 53:01
30	Local Government (District Councils) (Amendment) (No. 2)	Repealed by 42 of 1998
31	Townships (Amendment) (No. 2)	Repealed by 37 of 1967
32	Customs and Excise (Amendment) (No. 2)	Repealed by 13 of 1969
33	Income Tax (Amendment) (No. 2)	Incorporated in Cap. 41:01
34	Education (Amendment)	Repealed by 21 of 2013
35	Malaŵi Development Corporation (Amendment)	Repealed by 13 of 2003
36	Commonwealth Development Corporation (Mudi River Water Board) Second Loan Guarantee	Omitted
37	Mudi River Waterworks (Amendment)	Incorporated in Cap. 72:02
38	Copyright	Repealed by 9 of 1989
39	Supplementary Appropriation (1964)	Spent
40	Reserve Bank of Malaŵi (Amendment)	Repealed by 8 of 1989
41	Constitution of Malaŵi (Amendment)	Repealed by 23 of 1966
42	Inter-Territorial Movement of Persons (Control) (Repeal)	Spent
43	Exchange Control	Cap. 45:01
44	Monuments	Repealed by 16 of 1990
45	United Transport (Malaŵi) Limited (Purchase by the Government of Equity Share Capital) (Authorization)	Omitted
46	Legal Education and Legal Practitioners (Amendment)	Incorporated in Cap. 3:04
47	Fire-arms and Ammunition (Amendment)	Repealed by 43 of 1967
48	Land Survey (Amendment)	Repealed by 18 of 2016
49	Constitution (Amendment) (No. 2)	Repealed by 23 of 1966
50	Land (Amendment)	Repealed by 16 of 2016

YEAR AND NUMBER	ORDINANCE	HOW DEALT WITH
1965	(*Contd.*)	
51	Hotels	Cap. 50:01
52	Young Pioneers (Amendment)	Repealed by 12 of 1994
53	Penal Code (Amendment) (No. 2)	Incorporated in Cap. 7:01
54	Customs and Excise (Amendment) (No. 3)	Repealed by 13 of 1969
55	Development Fund Appropriation (1965) (Amendment)	Spent
56	Pharmacy and Poisons (Amendment)	Repealed by 15 of 1988
57	Engineers	Repealed by 17 of 1972
58	Patents (Amendment)	Incorporated in Cap. 49:02
59	Reserve Bank of Malaŵi (Amendment)	Repealed by 8 of 1989
60	Customs and Excise (Amendment) (No. 4)	Repealed by 13 of 1969
61	Penal Code (Amendment) (No. 3)	Incorporated in Cap. 7:01
62	Young Pioneers (Amendment) (No. 2)	Repealed by 12 of 1994
1966		
1	Forfeiture	Repealed 22 of 1993
2	Army Act, 1965 (Commencement)	Repealed by 11 of 2004
3	Local Government (Urban Areas) (Amendment)	Repealed by 42 of 1998
4	Road Traffic (Amendment)	Repealed by 26 of 1997
5	Appropriation	Spent
6	Development Fund Appropriation (1966)	Spent
7	Customs and Excise (Amendment)	Repealed by 13 of 1969
8	Taxation	Repealed by 6 of 1972
9	Bankruptcy (Amendment)	Repealed by 9 of 2016
10	Malaŵi Development Corporation (Amendment)	Repealed by 13 of 2003
11	Income Tax (Amendment)	Incorporated in Cap. 41:01
12	Land (Amendment)	Repealed by 16 of 2016
13	Malaŵi Broadcasting Corporation (Amendment)	Repealed by 31 of 1991
14	Tobacco Control Commissions (Amendment)	Incorporated in Cap. 65:03
15	Weights and Measures (Amendment)	Incorporated in Cap. 48:04
16	Public Stores	Cap. 18:06
17	Protected Names, Colours and Emblem	Repealed by 10 of 1967
18	Forfeiture (Amendment)	Repealed 22 of 1993
19	Supplies Control	Cap. 14:07
20	Malaŵi Housing Corporation (Amendment)	Incorporated in Cap. 32:02
21	Customs and Excise (Amendment) (No. 2)	Repealed by 13 of 1969
22	Election of the First President of the Republic	Spent
23	Republic of Malaŵi (Constitution)	Repealed by 20 of 1994
24	Parliamentary Elections	Repealed by 31 of 1993
25	Presidential Elections	Repealed by 31 of 1993
26	Promissory Oaths	Cap. 17:01
27	Registration of Voters	Repealed by 31 of 1993
28	Malaŵi Citizenship	Cap. 15:01
29	Statutory Bodies (Control of Contracts)	Cap. 18:07
30	Intoxicating Liquor (Amendment)	Omitted
31	Supplementary Appropriation (1965)	Spent
32	United Kingdom Loan (Authorization)	Omitted
33	Her Majesty's Forces Pensions (Amendment)	Repealed by 37 of 1967
34	Malaŵi Railway Holdings Company	Cap. 69:04
35	Local Government (Urban Areas) (Amendment) (No. 2)	Repealed by 42 of 1998
36	General Interpretation	Cap. 1:01
37	International Development Association Road Engineering Development Credit (Authorization)	Omitted
38	Danish Government Loan (Authorization)	Omitted

YEAR AND NUMBER	ORDINANCE	HOW DEALT WITH
1966	(*Contd.*)	
39	Constitution of the Republic of Malaŵi (Amendment)	Repealed by 20 of 1994
40	Births and Deaths Registration (Amendment) . .	Repealed by 13 of 2010
41	Statutory Bodies (Control of Contracts) (Amendment)	Incorporated in Cap. 18:07
42	Appropriation	Spent
43	Appropriation (Development Fund)	Spent
44	Finance and Audit	Repealed by 6 of 2003 and 7 of 2003
45	Farmers Marketing Board Loan (Authorization)	Omitted
46	Investment Disputes (Enforcement of Awards)	Cap. 40:01
47	Bankers' Books Evidence	Cap. 4:05
48	Taxation (Amendment)	Repealed by 6 of 1972
49	Engineers (Amendment)	Incorporated in Cap. 53:03
50	Authentication of Documents	Cap. 4:06
51	Malaŵi Red Cross Society	Cap. 18:09
52	Legal Aid (Amendment)	Repealed by 7 of 2011
53	Posts and Telegraphs (Amendment)	Repealed by 41 of 1998
54	Reserve Bank of Malaŵi (Amendment). . . .	Repealed by 8 of 1989
55	Industrial Development	Repealed by 26 of 1991
56	Local Courts (Amendment)	Repealed by 9 of 2011
57	Local Government (Urban Areas) (Amendment) (No. 3)	Repealed by 42 of 1998
58	Nurses and Midwives	Repealed by 16 of 1995
59	Inquests (Amendment)	Incorporated in Cap. 4:02
60	Immigration (Amendment)	Incorporated in Cap. 15:03
61	Explosives	Cap. 14:09
62	Public Roads (Amendment)	Incorporated in Cap. 69:02
63	Judges (Retiring Age)	Cap. 17:02
64	International Development Association Education Project Development Credit (Authorization)	Omitted
1967		
1	British South Africa Company (Relinquishing of Mineral Rights)	Omitted
2	Building Societies (Amendment)	Incorporated in Cap. 32:01
3	Malaŵi Book Service (Amendment)	Incorporated in Cap. 30:03
4	Legal Education and Legal Practitioners (Amendment)	Incorporated in Cap. 3:04
5	Customary Land (Development)	Cap. 59:01
6	Registered Land	Cap. 58:01
7	Local Land Boards	Cap. 59:02
8	Land (Amendment)	Repealed by 16 of 2016
9	Supplementary Appropriation (1966)	Spent
10	Protected Flag, Emblems and Names	Cap. 18:03
11	Public Holidays	Cap. 18:05
12	War Graves	Cap. 29:02
13	Sport and Culture (Repeal)	Spent
14	Sale of Goods	Cap. 48:01
15	Bills of Exchange	Cap. 48:02
16	Evidence by Commissions	Cap. 4:03
17	Limitation	Cap. 6:02
18	Geneva Conventions	Cap. 12:03
19	Supplementary Appropriation (1966) (No. 2) . .	Spent
20	Agricultural Research Council of Malaŵi . .	Repealed by 6 of 1975
21	Magistrate's Courts (Miscellaneous Amendments)	Incorporated in Caps. 3:02, 25:05, 26:01, 26:02

YEAR AND NUMBER	ORDINANCE	HOW DEALT WITH
1967	(*Contd.*)	
22	Land (Amendment) (No. 2)	Repealed by 16 of 2016
23	National Airline	Cap. 70:03
24	Trustee	Cap. 5:02
25	Wills and Inheritance	Repealed by 14 of 2011
26	Arbitration	Cap. 6:03
27	Statute Law (Miscellaneous Provisions)	Cap. 5:01
28	Road Traffic (Amendment)	Repealed by 26 of 1997
29	Bills of Sale	Repealed by 8 of 2013
30	Administrator General	Cap. 10:01
31	National Library Service	Cap. 31:01
32	Penal Code (Amendment)	Incorporated in Cap. 7:01
33	Education (Amendment)	Repealed by 21 of 2013
34	Widows and Orphans Pensions (Amendment)	Omitted
35	International Development Association Highway Project Development Credit (Authorization)	Omitted
36	Criminal Procedure and Evidence Code	Cap. 8:01
37	Statute Law (Miscellaneous Amendments)	Incorporated in various Chapters
38	Sheriffs	Cap. 3:05
39	Chiefs	Cap. 22:03
40	Post Office Savings Bank	Cap. 44:03
41	Control and Diseases of Animals	Cap. 66:02
42	Regional and District Boundaries and Place Names	Cap. 18:04
43	Firearms	Cap. 14:08
44	Statistics	Repealed by 6 of 2013
45	Oaths, Affirmations and Declarations	Cap. 4:07
46	International Development Association (Lilongwe Agricultural Development Project) Development Credit (Authorization)	Omitted
47	Courts (Amendment)	Incorporated in Cap. 3:02
48	United Kingdom Compensation Loan Increase (Authorization)	Omitted
49	International Development Association (Shire Valley Agricultural Development Project) Development Credit (Authorization)	Omitted
50	United Kingdom Commutation Loan Increase (Authorization)	Omitted
51	Kreditanstaltfur Wiederaufbau (Central Region Lake-shore Development Project) Loan (Authorization)	Omitted
52	Danish Government Loan (Authorization)	Omitted
1968		
1	Appropriation (Development Fund)	Spent
2	Appropriation	Spent
3	General Interpretation (Amendment)	Incorporated in Cap. 1:01
4	Customs and Excise (Amendment)	Repealed by 13 of 1969
5	Taxation (Amendment)	Repealed by 6 of 1972
6	Constitution (Amendment)	Repealed by 20 of 1994
7	Income Tax (Amendment)	Incorporated in Cap. 41:01
8	Reserve Bank of Malaŵi (Amendment)	Repealed by 8 of 1989
9	Extradition	Cap. 8:03
10	Capital City Development Corporation	Cap. 39:02
11	Censorship and Control of Entertainments	Cap. 21:01
12	Crocodiles	Repealed by 11 of 1992
13	Lakeshore Road Loan (Authorization)	Omitted
14	Supplementary Appropriation (1967)	Spent
15	Revision of the Laws	Cap. 1:02

YEAR AND NUMBER	ORDINANCE	HOW DEALT WITH
1968	(*Contd.*)	
16	African Development Bank	Cap. 40:04
17	New Capital Loan (Authorization)	Omitted
18	Income Tax (Amendment) (No. 2)	Incorporated as to part in Cap. 41:01
19	United Kingdom Loan (Authorization) . .	Omitted
20	Lakeshore Road Loan (Authorization) (Amendment)	Omitted
21	Nacala Rail Link Loan and Guarantee Authorization)	Omitted
22	External Missions Housing Loan (Authorization)	Omitted
23	Criminal Procedure and Evidence Code (Amendment)	Incorporated in Cap. 8:01
24	Malaŵi Supreme Court of Appeal (Amendment)	Incorporated in Cap. 3:01
25	Statute Law (Miscellaneous Amendments) . .	Incorporated in various Chapters
26	Veterinary Surgeons	Repealed by 7 of 2001
27	Consultants and Contractors	Repealed by 19 of 1996
28	Control of Goods	Incorporated as to part in Cap. 18:08, rest not yet in operation
29	Forfeiture (Amendment)	Repealed by 22 of 1993
30	Factories (Amendment)	Repealed by 21 of 1997
31	Kreditanstalt fur Wiederaufbau (Road Construction Chirumba-Chiweta) Loan (Authorization)	Omitted
32	Constitution (Amendment) (No. 2)	Repealed by 20 of 1994
33	Road Traffic (Amendment)	Repealed by 26 of 1997
34	Danish Government Loan (Authorization) . .	Omitted
35	United Kingdom Development Loan Increase (Authorization)	Omitted
36	Appropriation (Development Fund) (1969) . .	Spent
37	Taxation (Amendment)	Repealed by 6 of 1972
38	Finance and Audit (Amendment)	Repealed by 6 of 2003 and 7 of 2003
39	Building Societies (Amendment)	Incorporated in Cap. 32:01
40	Bretton Woods (Special Drawing Account) . .	Incorporated in Cap. 40:02 and Cap. 44:02
41	Appropriation (1969)	Spent
42	Registered Engineers (Amendment)	Incorporated in Cap. 53:03
1969		
1	Statute Law (Miscellaneous Amendments) . .	Incorporated in various Chapters
2	Retail Shops (Amendment) . . . . . incorporated in Cap. 46:01	Repeal of Shop Hours Ordinance
3	Regulation of Minimum Wages and Conditions of Employment	Repealed by 6 of 2000
4	Partnership	Cap. 46:04
5	Criminal Procedure and Evidence Code (Amendment) . . . . . Cap. 9:01	Incorporated in Cap. 8:01 and
6	Slaughter of Cattle	Cap. 50:04
7	Children and Young Persons	Repealed by 22 of 2010
8	Supplementary Appropriation (1968)	Spent
9	United Kingdom Development Loan Increase (Authorization)	Omitted
10	Stamp Duties	Cap. 43:01
11	Plant Protection	Cap. 64:01
12	Examination Board	Cap. 30:04
13	Customs and Excise	Cap. 42:01
14	Income Tax (Amendment)	Incorporated in Cap. 41:01

YEAR AND NUMBER	ORDINANCE	HOW DEALT WITH
1969	(*Contd.*)	
15	Water Resources	Repealed by 2 of 2013
16	Income Tax (Amendment) (No. 2)	Incorporated in Cap. 41:01
17	Agricultural Research Council of Malaŵi (Amendment)	Repealed by 6 of 1975
18	Hotels (Amendment)	Incorporated in Cap. 50:01
19	Income Tax (Amendment) (No. 2)	Incorporated in Cap. 41:01
20	Finance and Audit (Amendment and Validation)	Repealed by 6 of 2003 and 7 of 2003
21	United Kingdom Commutation of Pensions Loan Increase (Authorization)	Omitted
22	Electricity Development Loan (Authorization)	Omitted
23	Estate Duty (Amendment)	Incorporated in Cap. 43:02
24	United Kingdom (Central African Pension Fund) Loan (Authorization)	Omitted
25	Constitution (Amendment)	Repealed by 20 of 1994
26	Town and Country Planning (Amendment) . .	Repealed by 26 of 1988
27	Republic of Malaŵi (Constitution) (Amendment)	Repealed by 20 of 1994
28	Inland Waters Shipping	Repealed by 12 of 1995
29	Tea Cess (Amendment)	Incorporated in Cap. 42:03
30	Statute Law (Miscellaneous Amendments) (No. 2)	Incorporated in various Chapters
31	Local Courts (Amendment)	Incorporated in Cap. 8:01
32	Criminal Law (Amendment)	Incorporated in Cap. 7:01 and Cap. 8:01
33	National Parks	Repealed by 11 of 1992
34	Land (Miscellaneous Amendments)	Incorporated in Cap. 34:01
1970		
1	Constitution (Amendment)	Repealed by 20 of 1994
2	Finance and Audit (Amendment)	Repealed by 6 of 2003 and 7 of 2003
3	Appropriation (Development Fund)	Spent
4	Appropriation	Spent
5	Malaŵi Road Transporters Authority	Cap. 69:05
6	Railways (Amendment)	Incorporated in Cap. 69:03
7	Aviation	Cap. 70:01
8	Businesses Licensing (Amendment)	Repealed by 27 of 2012
9	Immigration (Amendment)	Incorporated in Cap. 15:03
10	United Kingdom Commutation of Pensions Loan Increase (Authorization).	Omitted
11	Mudi River Waterworks (Amendment). . . .	Incorporated in Cap. 72:02
12	Fertilizers, Farm Feeds and Remedies	Cap. 67:04
13	External Missions Housing Loan (Authorization)	Omitted
14	United Kingdom Loan (Authorization) . .	Omitted
15	United Kingdom (Central African Pension Fund) Loan (Authorization)	Omitted
16	Malaŵi Housing Corporation (Amendment) . .	Incorporated in Cap. 32:02
17	United Kingdom Compensation Loan Increase (Authorization)	Omitted
18	Tobacco	Cap. 65:02 and incorporated in Cap. 67:01 and 67:03
19	Constitution (Amendment)	Repealed by 20 of 1994
20	Kreditanstalt fur Wiederaufbau (New Blantyre Market) Loan (Authorization)	Omitted
21	Lands Acquisition	Cap. 58:04 and Incorporated in Cap. 57:01, 32:02, 69:03 and 73:01

YEAR AND NUMBER	ORDINANCE	HOW DEALT WITH
1970	(*Contd.*)	
22	Malaŵi Development Corporation (Amendment)	Repealed by 13 of 2003
23	Statute Law (Miscellaneous Amendments) . .	Incorporated in various Chapters
24	Kreditanstalt fur Wiederaufbau (Central Region Lakeshore Development Project) (Phase II) Loan (Authorization)	Omitted
25	Kreditanstalt fur Wiederaufbau (Karonga–Chiweta Road) Loan Increase (Authorization)	Omitted
26	Danish Government Loan (Authorization) . .	Omitted
27	Income Tax (Amendment)	Incorporated in Cap. 41:02
28	International Monetary Fund Quota Increase Loan (Authorization)	Omitted
29	Water Resources (Amendment)	Repealed by 2 of 2013
30	Decimal Currency	Cap. 45:02
31	Insurance (Amendment)	Repealed by 9 of 2010
32	Registered Land (Amendment)	Incorporated in Cap. 58:01
33	Criminal Procedure and Evidence Code Amendment)	Incorporated in Cap. 8:01
34	Supplementary Appropriation (1969/70) . .	Spent
35	Constitution (Amendment)	Repealed by 20 of 1994
36	Appropriation (Development Fund) (Amendment)	Spent
37	Tourism and Hotels (Amendment)	Incorporated in Cap. 50:01
38	Traditional Courts (Amendment)	Repealed by 9 of 2011
39	Widows and Orphans Pensions (Amendment) . .	Omitted
40	Customs and Excise (Amendment)	Incorporated in Cap. 42:01
41	Insurance (Amendment) (No. 2)	Repealed by 9 of 2010
42	Carriage by Air	Cap. 70:02
43	Control of Tobacco Auction Floors	Cap. 65:03
44	Penal Code (Amendment)	Incorporated in Cap. 7:01
45	Commercial Credits	Repealed by 8 of 2013
46	Businesses Licensing (Amendment) (No. 2)	Repealed by 27 of 2012
1971		
1	Appropriation 1971	Spent
2	Appropriation Development Fund	Spent
3	United Kingdom Loan (Authorization) . .	Omitted
4	Lilongwe Agricultural Development Project (Phase II) Loan (Authorization)	Omitted
5	Statute Law (Miscellaneous Amendments) . .	Incorporated in various Chapters
6	Blantyre-Tete Road Loan (Authorization) . .	Omitted
7	Second-Hand and Scrap Metal Dealers . .	Cap. 50:06
8	Urban Areas (Public and Private Streets) (Amendment)	Incorporated in Cap. 23:02
9	Finance and Audit (Amendment)	Repealed by 6 of 2003 and 7 of 2003
10	United Kingdom (Central African Pension Fund) Loan (Authorization)	Omitted
11	Tourism and Hotels (Amendment)	Incorporated in Cap. 50:01
12	Companies (National Bank of Malaŵi) (Special Provisions)	Incorporated in Cap. 46:03
13	The Standard Bank Limited and Barclays Bank D.C.O.	Cap. 44:04
14	Income Tax (Amendment)	Incorporated in Cap. 41:01
15	Taxation (Amendment)	Repealed by 6 of 1972
16	Agricultural Development and Marketing Corporation (Amendment)	Repealed by 8 of 2004
17	Appropriation (Development Fund) (Amendment)	Spent

YEAR AND NUMBER	ORDINANCE	HOW DEALT WITH
1971	(*Contd.*)	
18	Adjudication of Title	Cap. 58:05
19	Automotive Trades Registration and Fair Practices	Cap. 50:05
20	Banking (Amendment)	Repealed by 19 of 1989
21	Canadian Government Loan (Authorization) . .	Omitted
22	Mining (Amendment)	Incorporated in Cap. 61:01
23	General Interpretation (Amendment)	Incorporated in Cap. 1:01
24	United Kingdom Loan (Authorization) (No. 2)	Omitted
25	Constitution (Amendment)	Repealed by 20 of 1994
26	Africans on Private Estates (Amendment) . .	Incorporated in Cap. 33:01
27	Parliamentary Elections (Amendment)	Repealed by 31 of 1993
28	Capital City Development Corporation (Amendment)	Incorporated in Cap. 39:02
29	Appropriation (Development Fund) (Amendment) (No. 2)	Spent
30	Change of Name (Restriction)	Cap. 24:02
31	Companies (Amendment)	Repealed by 19 of 1984
32	Export Promotion Council	Cap. 39:03
33	Ex-Servicemen's Memorial Home	Cap. 29:03
34	Finance and Audit (Amendment)	Repealed by 6 of 2003 and 7 of 2003
35	Firearms (Amendment)	Incorporated in Cap. 14:08
36	Inter-Racial Association Funds	Omitted
37	Karonga Agricultural Development Project Loan (Authorization)	Omitted
38	Legal Education and Legal Practitioners (Amendment)	Incorporated in Cap. 3:04
39	Local Authorities' Loans Fund	Omitted
40	Maintenance Orders (Enforcement) (Amendment)	Repealed by 4 of 2015
41	Malaŵi Development Corporation (Amendment)	Repealed by 13 of 2003
42	Malaŵi Road Transporters Authority (Dissolution)	Cap. 69:05
43	Milk and Milk Products	Cap. 67:05
44	Post Office Savings Bank (Amendment) . .	Incorporated in Cap. 44:03
45	Road Traffic (Amendment)	Repealed by 26 of 1997
46	Audit and Supervision Fund	Omitted
47	Blantyre-Tete Road Loan (Authorization) (Amendment)	Omitted
48	Handicapped Persons	Cap. 33:02
49	Kamuzu National Foundation Trust	Cap. 18:01
50	Museums (Amendment)	Repealed by 21 of 1989
51	Statute Law (Miscellaneous Amendments) (No. 2)	Incorporated in various Chapters
1972		
1	Supplementary Appropriation	Spent
2	Appropriation (Development Fund) (Amendment)	Spent
3	Karonga Agriculture Development Loan (Authorization) (Amendment)	Omitted
4	South African Government Loan (Authorization)	Omitted
5	Customs and Excise (Amendment)	Incorporated in Cap. 42:01
6	Income Tax (Amendment)	Incorporated in Cap. 41:01
7	Companies (Amendment)	Repealed by 19 of 1984
8	Tobacco (Amendment)	Incorporated in Cap. 65:02
9	Special Crops (Amendment)	Incorporated in Cap. 65:01
10	Constitution (Amendment)	Repealed by 20 of 1994

YEAR AND NUMBER	ORDINANCE	HOW DEALT WITH
1972	(*Contd.*)	
11	Appropriation	Spent
12	Appropriation (Development Fund)	Spent
13	African Development Bank Loan (Authorization)	Omitted
14	Army (Amendment)	Repealed by 11 of 2004
15	Companies (Amendment)	Repealed by 19 of 1984
16	Danish Government Loan (Authorization) . .	Omitted
17	Engineers	Incorporated in Cap. 53:03
18	Finance and Audit (Amendment). . . .	Repealed by 6 of 2003 and 7 of 2003
19	Hijacking	Cap. 7:03
20	Industrial Training	Repealed by 6 of 1999
21	Lakeshore Road Loan (Authorization) (Amendment)	Omitted
22	Lower Shire Valley Agriculture Development Project Loan (Authorization)	Omitted
23	Malaŵi Bureau of Standards	Repealed by 14 of 2012
24	Statute Law (Miscellaneous Amendments) . .	Incorporated in various Chapters
25	Taxation (Consolidation) (Amendment) . .	Incorporated in Cap. 41:01
26	United Kingdom (Supplementary Projects) Loan (Authorization)	Omitted
27	United Nations Development Programme (Building Construction Loan) (Authorization)	Omitted
28	University of Malaŵi (Halls of Residence) Loan (Authorization)	Omitted
1973		
1	Constitution (Amendment)	Repealed by 20 of 1994
2	Appropriation	Spent
3	Appropriation (Development Fund)	Spent
4	Supplementary Appropriation (1971/72) . .	Spent
5	Banking (Amendment)	Repealed by 19 of 1989
6	Lower Shire Valley Agricultural Development Project Loan (Authorization) (Amendment)	Omitted
7	Parliamentary Elections (Amendment)	Repealed by 31 of 1993
8	Tedzani Falls Hydro-electric Project Loan (Authorization)	Omitted
9	United States for International Development (Authorization)	Omitted
10	Decency in Dress	Repealed by 23 of 1993
11	Penal Code (Amendment).	Incorporated in Cap. 7:01
12	Inland Waters Shipping (Amendment)	Repealed by 12 of 1995
13	Customs and Excise (Amendment)	Incorporated in Cap. 42:01
14	Supplementary Appropriation (1972/73) . .	Spent
15	Taxation (Consolidation) (Amendment) . .	Incorporated in Cap. 41:01
16	Fisheries	Repealed by 25 of 1997
17	Constitution (Amendment)	Repealed by 20 of 1994
18	Criminal Procedure and Evidence Code (Amendment)	Incorporated in Cap. 8:01
19	Supreme Court of Appeal (Amendment). .	Incorporated in Cap. 3:01
20	Penal Code (Amendment).	Incorporated in Cap. 7:01
21	Appropriation (Development Fund) (Amendment)	Spent
22	Kreditanstalt fur Wiederaufbau (Blantyre Sewerage System) (Stage II) Loan (Authorization)	Omitted
1974		
1	Appropriation (Development Fund)	Spent
2	Appropriation	Spent

YEAR AND NUMBER	ORDINANCE	HOW DEALT WITH
1974	(*Contd.*)	
3	Government of Canada Loan Agreement (Malaŵi Railways Development) (Authorization and Ratification)	Omitted
4	Kreditanstalt fur Wiederaufbau (Blantyre/ Chikwawa Escarpment Road) Loan (Authorization)	Omitted
5	Kreditanstalt fur Wiederaufbau (Blantyre Sewerage System) (Stage II) Loan (Authorization) (Amendment)	Omitted
6	Kreditanstalt fur Wiederaufbau (Malaŵi Development Corporation) (Liwonde Industrial Complex) Loan (Authorization) . .	Omitted
7	Land (Amendment)	Repealed by 16 of 2016
8	Lilongwe-Northern Region Road Loan (Authorization)	Omitted
9	Local Government (Urban Areas) (Amendment)	Repealed by 42 of 1998
10	Malaŵi National Council of Sports	Incorporated in Cap. 30:05
11	Property and Businesses (Presumptions of Ownership)	Incorporated in Cap. 46:05
12	Regulation of Minimum Wages and Conditions of Employment (Amendment) . .	Repealed by 6 of 2000
13	Statute Law (Miscellaneous Amendments) . .	Incorporated in various Chapters
14	Tung (Repeal)	Spent
15	United Kingdom (Supplementary Projects) Loan (Authorization)	Omitted
16	Viphya Pulp and Paper Project Loan (Authorization)	Omitted
17	Weights and Measures (Amendment)	Incorporated in Cap. 48:04
18	Constitution (Amendment)	Repealed by 20 of 1994
19	Appropriation (Development Fund) 1972 (Amendment)	Spent
20	Supplementary Appropriation (1973/74) . .	Spent
21	Kreditanstalt fur Wiederaufbau (Lilongwe City Centre Market) Loan (Authorization) . .	Omitted
22	Land Survey (Amendment)	Repealed by 18 of 2016
23	Kreditanstalt fur Wiederaufbau (Muhuju/ Chiweta Road) Loan (Authorization) . .	Omitted
24	African Development Bank Loan Agreement (Lilongwe International Airport) (Authorization and Ratification)	Omitted
25	University of Malaŵi	Incorporated in Cap. 30:02
26	Agricultural Research Council of Malaŵi (Amendment)	Repealed by 6 of 1975
27	United Kingdom Loan (Authorization) . .	Omitted
28	Lilongwe Agricultural Development Project (Phase III) Loan (Authorization)	Omitted
29	United States Agency for International Development Loan Agreement (Road Development) (Authorization and Ratification)	Omitted
30	Decency in Dress (Amendment)	Repealed by 23 of 1993
31	Bretton Woods Agreement (Amendment) . .	Incorporated in Cap. 40:02
32	Reserve Bank of Malaŵi (Amendment) . .	Repealed by 8 of 1989
33	Lilongwe-Zambia Border Railway Design Loan (Authorization)	Omitted
34	European Officers' Pensions (Amendment) . .	Omitted
35	Widows and Orphans Pensions (Amendment) . .	Omitted

YEAR AND NUMBER	ORDINANCE	HOW DEALT WITH
1975		
1	Finance and Audit (Amendment)	Repealed by 6 of 2003 and 7 of 2003
2	Appropriation (Development Fund) 1974 (Amendment)	Spent
3	Meat and Meat Products	Cap. 67:02
4	Nurses and Midwives (Amendment)	Repealed by 16 of 1995
5	Tobacco (Amendment)	Incorporated in Cap. 65:02
6	Agricultural Research Council of Malaŵi (Dissolution)	Spent
7	Appropriation	Spent
8	Appropriation (Development Fund)	Spent
9	Constitution (Amendment)	Repealed by 20 of 1994
10	Statute Law (Miscellaneous Amendments) . .	Incorporated in various Chapters
11	Chintheche Power Transmission Line Loan (Authorization)	Omitted
12	National Archives	Cap. 28:01
13	African Development Fund Loan Agreement (Mzuzu–Muhuju Road—Feasibility and Design) (Authorization and Ratification) . .	Omitted
14	Government of Canada Loan Agreement (Malaŵi Railways Development) Amending Agreement (Authorization and Ratification)	Omitted
15	Supplementary Appropriation, 1974/75. . . .	Spent
16	International Development Association Second Education Project) Loan (Authorization)	Omitted
17	Karonga Agricultural Development Project (Phase II) Loan (Authorization)	Omitted
18	Constitution (Amendment)	Repealed by 20 of 1994
19	Courts (Amendment)	Incorporated in Cap. 3:02
20	Statute Law (Miscellaneous Amendments) . .	Incorporated in various Chapters
1976		
1	Taxation (Amendment)	Incorporated in Cap. 41:01
2	Danish Government Loan (Authorization) . .	Omitted
3	Appropriation	Spent
4	Constitution (Amendment)	Repealed by 20 of 1994
5	Statute Law (Miscellaneous Amendments) . .	Incorporated in various Chapters
6	Francistown Air Disaster Benefits and Compensation Ratification and Distribution	Omitted
7	Appropriation (Development Fund)	Spent
8	Appropriation (Development Fund) (No. 2) 1975	Spent
9	Kreditanstalt fur Wiederaufbau (Chiweta–Kacheche Road) Loan (Authorization) .	Omitted
10	Kreditanstalt fur Wiederaufbau Loan (Authorization) Repeal	Omitted
11	National Celebrations Council	Repealed by 23 of 1998
12	Examination Board (Amendment)	Incorporated in Cap. 30:04
13	Reserve Bank of Malaŵi (Amendment)	Repealed by 8 of 1989
1977		
1	Supplementary Appropriation (1975/76) . .	Spent
2	African Development Fund Loan Agreement (Namwera Rural Development Project) (Authorization and Ratification)	Omitted
3	Constitution (Amendment)	Repealed by 20 of 1994
4	Finance and Audit (Amendment)	Repealed by 6 of 2003 and 7 of 2003
5	Taxation (Amendment)	Incorporated in Cap. 41:01
6	Appropriation (Development Fund)	Spent

YEAR AND NUMBER	ORDINANCE	HOW DEALT WITH
1977	(*Contd.*)	
7	Appropriation	Spent
8	Bretton Woods Agreement (Amendment) . .	Incorporated in Cap. 40:02
9	Statute Law (Miscellaneous Amendments) . .	Incorporated in various Chapters
10	Education (Amendment)	Repealed by 21 of 2013
11	Carriage by Air (Amendment)	Incorporated in Cap. 70:02
12	Commonwealth Development Corporation Loan (Authorization)	Omitted
13	African Development Fund Loan Agreement (Districts Water Supply Project) (Authorization and Ratification)	Omitted
14	Blantyre Water Board (Phase V) Development Project Loan (Authorization) . .	Omitted
15	Government of Canada (Second Malaŵi Railways Development Project) Loan (Authorization)	Omitted
16	Nkula Stage II (Phase I) Hydroelectric Project Loan (Authorization)	Omitted
17	Francistown Air Disaster Benefits and Compensation Ratification and Distribution (Amendment)	Omitted
18	African Development Bank Loan Agreement (Lilongwe International Airport Project—Civil Works Part I) (Authorization and Ratification)	Omitted
19	Statute Law (Miscellaneous Amendments) (No. 2)	Incorporated in various Chapters
20	Barclays Bank International and Standard Chartered Bank Loan (Authorization) . .	Omitted
1978		
1	National Rural Development Programme Loan (Authorization)	Omitted
2	OPEC Special Fund Loan Agreement (Kasungu-Jenda Road Construction) (Authorization and Ratification)	Omitted
3	Kreditanstalt fur Wiederaufbau Loan Agreement (Site and Service Scheme South Lunzu) (Authorization and Ratification) . .	Omitted
4	Citibank Loan Agreement (Authorization and Ratification)	Omitted
5	Chase Manhattan Bank Limited Loan Agreement (Lilongwe International Airport Project) (Authorization and Ratification) . .	Omitted
6	International Development Association (Shire Valley Agricultural Development Project) (Phase III) Loan (Authorization) . .	Omitted
7	Kreditanstalt fur Wiederaufbau (Nkula Stage II) (Phase I) (Hydroelectric Project) Loan (Authorization)	Omitted
8	Government of the Kingdom of the Netherlands Loan (Authorization)	Omitted
9	International Development Association Credit Agreement (Third Highway Project) (Authorization and Ratification)	Omitted
10	Kreditanstalt fur Wiederaufbau Loan Agreement (Commodity Aid) (Authorization and Ratification)	Omitted
11	Government of Japan Loan (Authorization) . .	Omitted

YEAR AND NUMBER	ORDINANCE	HOW DEALT WITH
1978	(*Contd.*)	
12	African Development Bank Loan Agreement (Lilongwe International Airport Project Civil Works Part II) (Authorization and Ratification)	Omitted
13	Kreditanstalt fur Wiederaufbau (Passenger Vessel) Loan (Authorization)	Omitted
14	Constitution (Amendment)	Repealed by 20 of 1994
15	Appropriation	Spent
16	Appropriation (Development Fund)	Spent
17	Supplementary Appropriation (1976/1977) . .	Spent
18	Businesses Licensing (Amendment)	Repealed by 27 of 2012
19	Commercial Advertising (Traditional Music) Control	Cap. 48:07
20	Revision of the Laws (Amendment)	Incorporated in Cap. 1:02
21	Young Pioneers (Amendment)	Repealed by 12 of 1994
22	National Road Safety Council of Malaŵi . .	Cap. 69:06
23	Skandinaviska Enskilda Banken Loan (Authorization)	Omitted
1979		
1	Liquor	Cap. 50:07
2	International Development Association (Third Education Project) Loan (Authorization) . .	Omitted
3	Government of the Republic of South Africa Loan Agreement (Authorization and Ratification)	Omitted
4	African Development Fund (John Mzumara–Ekwendeni Road) Loan (Authorization)	Omitted
5	Wills and Inheritance (Amendment)	Repealed by 14 of 2011
6	Appropriation	Spent
7	Appropriation (Development Fund)	Spent
8	Supplementary Appropriation (1977/78) . .	Spent
9	Statute Law (Miscellaneous Amendments) . .	Incorporated in various Chapters
10	National Westminster Bank Limited Loan Agreement (Agricultural and Airport Projects) (Authorization and Ratification) . .	Omitted
11	Kreditanstalt fur Wiederaufbau Loan Agreement (German Products) (Authorization and Ratification)	Omitted
12	Midland Bank Limited Loan Agreement (Authorization and Ratification)	Omitted
13	Danish Government Loan (Authorization) . .	Omitted
14	Nippon Electric Company Limited Loan Agreement (Authorization and Ratification)	Omitted
15	South African Government Loan (Authorization)	Omitted
16	Commonwealth Development Corporation Loan Agreement (Dwangwa Sugar Corporation) (Authorization and Ratification)	Omitted
17	National Rural Development Programme (Phase II) Loan (Authorization)	Omitted
18	British Aerospace Loan Agreement (Authorization and Ratification)	Omitted
19	Short Brothers Limited Loan Agreement (Authorization and Ratification)	Omitted
1980		
1	Supplementary Appropriation (1978/79) . .	Spent
2	European Investment Bank Loan (Authorization and Ratification)	Omitted

YEAR AND NUMBER	ORDINANCE	HOW DEALT WITH
1980	(*Contd.*)	
3	African Development Fund (First Education Project) Loan (Authorization)	Omitted
4	African Development Fund (Rural Electrification Project) Loan (Authorization)	Omitted
5	Nippon Electric Company Limited (Telephone Exchange Project) Loan (Authorization) . .	Omitted
6	Appropriation (Development Fund)	Spent
7	Appropriation	Spent
8	Statute Law (Miscellaneous Amendments) . .	Incorporated in various chapters
9	Factories (Amendment)	Repealed by 21 of 1997
10	International Development Association (Fourth Education Project) Loan (Authorization) . .	Omitted
11	Married Women (Maintenance)	Repealed by 4 of 2015
12	Commonwealth Development Corporation Loan Agreement (Dwangwa Sugar Corporation) (Authorization and Ratification)	Omitted
13	Statute Law (Miscellaneous Amendments) (No. 2)	Incorporated in various chapters
1981		
1	Mines and Minerals	Cap. 61:01
2	Government of Japan Loan Agreement (Kamuzu International Airport Project (II)) (Authorization and Ratification)	Omitted
3	Censorship and Control of Entertainments (Amendment)	Incorporated in Cap. 21:01
4	Statute Law (Miscellaneous Amendments) . .	Incorporated in various chapters
5	General Interpretation (Amendment)	Incorporated in Cap. 1:01
6	Malaŵi Broadcasting Corporation (Amendment)	Repealed by 31 of 1991
7	Industrial Development Bank of India Loan Agreement (Goods and Services) (Authorization and Ratification)	Omitted
8	Constitution (Amendment)	Repealed by 20 of 1994
9	Metrication	Cap. 48:08
10	Weights and Measures	Incorporated in Cap. 48:04
11	Parliamentary Pensions (Enabling Provisions) . .	Cap. 2:06
12	Museums (Dissolution)	Repealed
13	Banque Francaise du Commerce Exterieur Loan Agreement (Civil Aviation and Meteorological Equipment) (Authorization and Ratification)	Omitted
14	Government of the French Republic Loan Agreement (Civil Aviation and Meteorological Equipment) (Authorization and Ratification)	Omitted
15	Barclays Bank International Limited and Standard Chartered Bank Limited (Credit Agreement) (Authorization and Ratification)	Omitted
16	Appropriation	Spent
17	Appropriation (Development Fund) (No. 2) 1979	Spent
18	Appropriation (Development Fund) (No. 2) 1980	Spent
19	Appropriation (Development Fund) 1981 . .	Spent
20	Supplementary Appropriation (1979/80) . .	Spent
21	Accommodation and Refreshment Tax . .	Cap. 41:02
22	International Development Association Credit Agreement (Fourth Highway Project) (Authorization and Ratification)	Omitted

YEAR AND NUMBER	ORDINANCE	HOW DEALT WITH
1981	(*Contd.*)	
23	Reserve Bank of Malaŵi (Amendment) . .	Repealed by 8 of 1989
24	International Fund for Agricultural Development Loan (National Rural Development Programme) (Dowa West) (Authorization)	Omitted
25	European Investment Bank (Geological Study of Limestone Deposits) Loan (Authorization)	Omitted
26	International Development Association (National Rural Development Programme) (Karonga/Chitipa Rural Development Project (Phase III)) Loan (Authorization)	Omitted
27	United Nations Development Programme (Building Construction) Loan (Authorization)	Omitted
28	Bank of Taiwan (Goods and Services) Loan . .	Omitted
29	Old Mutual (Building Construction) Loan (Authorization)	Omitted
30	Government Loan (1978/79) (Authorization) . .	Omitted
31	International Bank for Reconstruction and Development (Structural Adjustment Loan) (Authorization)	Omitted
32	Government Loan (1980/81) (Authorization) . .	Omitted
33	International Bank for Reconstruction and Development Loan (Technical Assistance Project) (Authorization)	Omitted
34	Legal Education and Legal Practitioners (Amendment)	Incorporated in Cap. 3:04
35	Public Accountants and Auditors	Repealed by 5 of 2013
36	Carriage by Air	Cap. 70:02
37	Local Government Service	Cap. 22:04
38	Commerzbank (Purchase of Buildings) Loan (Authorization)	Omitted
39	Statute Law (Miscellaneous Amendments) (No. 2)	Incorporated in various chapters
40	Nippon Electric Company Limited (International Microwave Project) Loan (Authorization)	Omitted
41	Old Mutual (Local Authorities) Loan (Authorization)	Omitted
42	African Development Fund (Rural Health Care Project) Loan (Authorization)	Omitted
1982		
1	Government of the French Republic (Telecommunication Equipment and Civil Aviation Feasibility Studies) Loan (Authorization)	Omitted
2	Government of the Republic of South Africa (Reserve Seed Stocks and Storage Facilities) Loan (Authorization)	Omitted
3	OPEC Aid Funds (Project Finance) Loan (Authorization)	Omitted
4	Taxation (Amendment)	Incorporated in Cap. 41:01
5	Supplementary Appropriation (1980/81) . .	Spent
6	Appropriation	Spent
7	Appropriation (Development Fund)	Spent
8	Government Loan (1981/82) (Authorization) . .	Omitted
9	Government of Israel (Goods and Services) Loan (Authorization)	Omitted

YEAR AND NUMBER	ORDINANCE	HOW DEALT WITH
1982	(*Contd.*)	
10	Telecommunication Equipment and Civil Aviation Feasibility Studies Loan (Authorization)	Omitted
11	International Development Association (Lilongwe Water Supply Engineering Project) Authorization)	Omitted
12	International Bank for Reconstruction and Development (Second Structural Adjustment Loan) (Authorization)	Omitted
13	Skandinaviska Enskilda Banken (Authorization and Ratification)	Omitted
14	Vacant	Omitted
15	Vacant	Omitted
16	African Development Bank Loan (Kamuzu International Airport Phase III) (Authorization)	Omitted
17	International Fund for Agricultural Development Loan (Smallholder Fertilizer Supply Programme) (Authorization) . .	Omitted
1983		
1	Refinancing Agreement (Authorization and Ratification)	Omitted
2	Petroleum (Exploration and Production) . .	Omitted
3	Government Loan (1980/81) (Authorization) . .	Omitted
4	South African Government Loan Agreement (Purchase and Transportation of Fertilizer) (Authorization and Ratification)	Omitted
5	International Development Association (National Rural Development Programme) (Phase IV) Loan (Authorization)	Omitted
6	International Development Association (Smallholder Fertilizer Supply Programme) Loan (Authorization)	Omitted
7	International Development Association (Health Service Project) Loan (Authorization) . .	Omitted
8	Commonwealth Development Corporation Loan Agreement (Dwangwa Sugar Corporation) (Authorization and Ratification)	Omitted
9	International Development Association (Fifth Education Project) Loan (Authorization) . .	Omitted
10	Taxation (Amendment)	Incorporated in Cap. 41:01
11	Appropriation (Development Fund)	Spent
12	Supplementary Appropriation (1981/82) . .	Spent
13	Appropriation	Spent
14	Constitution (Amendment)	Repealed by 20 of 1994
15	Danish Government (Seventh Loan) (Authorization and Ratification)	Omitted
16	Statute Law (Miscellaneous Amendments) . .	Incorporated in various chapters
17	Government of the French Republic (Telecommunications and Meteorological Equipment and Customs and Excise Surveillance Vessel) Loan (Authorization) . .	Omitted
18	Telecommunication and Meteorological Equipment and Customs and Excise Surveillance Vessel Loan (Authorization) . .	Omitted
19	International Monetary Fund (Eighth General Review Quota Increase) Loan (Authorization)	Omitted

YEAR AND NUMBER	ORDINANCE	HOW DEALT WITH
1983	(*Contd.*)	
20	International Bank for Reconstruction and Development (Fifth Highway Project) Loan (Authorization)	Omitted
21	International Development Association (Fifth Highway Project) Loan (Authorization) . .	Omitted
22	African Development Bank (Fifth Highway Project) Loan (Authorization)	Omitted
23	African Development Fund (Feasibility Study for the District Water Supply Project) (Phase II) Loan (Authorization)	Omitted
24	Posts and Telecommunications Development Project (Telectron) Loan (Authorization) . .	Omitted
25	Censorship and Control of Entertainments (Amendment)	Incorporated in Cap. 21:01
1984		
1	African Development Fund (Blantyre/Shire Highlands and Namwera-Mangochi Rural Development Projects) Loan (Authorization)	Omitted
2	European Investment Bank (Authorization and Ratification)	Omitted
3	Appropriation	Spent
4	Appropriation (Development Fund)	Spent
5	Supplementary Appropriation (1982/83) . .	Spent
6	Government Loan (1982/83) (Authorization) . .	Omitted
7	Courts (Amendment)	Incorporated in Cap. 3:02
8	Republic of Malaŵi (Constitution) (Amendment)	Repealed by 20 of 1994
9	African Development Bank (Telecommunications Project) Loan (Authorization)	Omitted
10	European Economic Community (Lirangwe-Mwanza-Mozambique Border Road) Loan (Authorization)	Omitted
11	International Development Association Credit Agreement (Authorization and Ratification)	Omitted
12	International Bank for Reconstruction and Development (Viphya Wood Industries Project) Loan (Authorization)	Omitted
13	Kreditanstalt fur Wiederaufbau (Nkula Falls Hydropower Scheme B) (Phase II) Loan (Authorization and Ratification)	Omitted
14	European Investment Bank (Viphya Wood Industries Project) Loan (Authorization) . .	Omitted
15	Treaties and Conventions Publication	Cap. 16:02
16	Immunities and Privileges	Cap. 16:01
17	Exchange Control	Cap. 45:01
18	Courts (Amendment) (No. 2)	Incorporated in Cap. 3:02
19	Companies	Repealed by 15 of 2013
20	African Development Fund (Second Rural Health Care Project) Loan (Authorization) . .	Omitted
21	International Bank for Reconstruction and Development (Wood Industries Restructuring Project) Loan (Authorization)	Omitted
22	Government of the Republic of South Africa Railways Projects) Loan (Authorization) . .	Omitted
23	International Development Association (Urban Housing Project) Loan (Authorization) . .	Omitted

YEAR AND NUMBER	ORDINANCE	HOW DEALT WITH
1984	(*Contd.*)	
24	European Investment Bank (Dwangwa Sugar Corporation Project II) Loan (Authorization)	Omitted
25	International Fund for Agricultural Development (Kasungu Agricultural Development Project) Loan (Authorization)	Omitted
26	African Development Bank (Mpira-Balaka Water Supply Project) Loan (Authorization)	Omitted
27	Statute Law (Miscellaneous Amendments) . .	Incorporated in various chapters
1985		
1	Taxation (Amendment)	Incorporated in Cap. 41:01
2	African Development Fund (Second Rural Health Care Project) Loan (Authorization) (Amendment)	Omitted
3	Government of the French Republic (Lake Vessel) Loan (Authorization)	Omitted
4	Government of the French Republic (Goods and Services) Loan (Authorization)	Omitted
5	Customs and Excise (Amendment)	Incorporated in Cap. 42:01
6	Supplementary Appropriation (1983/84) . .	Spent
7	Appropriation	Spent
8	Appropriation (Development Fund)	Spent
9	Statute Law (Miscellaneous Amendments) . .	Incorporated in various chapters
10	International Development Association (National Agricultural Research Project) Loan (Authorization)	Omitted
11	Constitution (Amendment)	Repealed by 20 of 1994
12	Judges (Retiring age) (Repeal)	Repealed
13	International Fund for Agricultural Development Loan Agreement (Kasungu Agricultural Development Project) (Authorization and Ratification)	Omitted
14	African Development Fund (Champhoyo–Mbowe Road and Mzimba Spur Project) Loan (Authorization)	Omitted
15	European Development Fund (Small Enterprise Development Organization of Malaŵi Phase II Project) Loan (Authorization)	Omitted
16	International Development Association (Agricultural Extension and Planning Support Project) Loan (Authorization) . .	Omitted
17	International Development Association (Third Structural Adjustment Loan) (Authorization)	Omitted
18	International Development Association (Special Facility for Sub-Saharan Africa) (Third Structural Adjustment Loan) (Authorization)	Omitted
19	Refinancing Agreement (Authorization and Ratification)	Omitted
20	International Bank for Reconstruction and Development (Industrial and Agricultural Development Project) Loan (Authorization)	Omitted
21	Malaŵi Development Corporation (Amendment)	Repealed by 13 of 2003

YEAR AND NUMBER	ORDINANCE	HOW DEALT WITH
1986		
1	Appropriation (Development Fund)	Spent
2	Appropriation	Spent
3	International Bank for Reconstruction and Development (Second Wood Energy Project) Loan (Authorization)	Omitted
4	Overseas Economic Co-operation Fund of Japan (Third Structural Adjustment Programme) Loan (Authorization)	Omitted
5	Overseas Economic Cooperation Fund of Japan (Microwave Network Improvement Project) Loan (Authorization)	Omitted
6	Businesses Licensing (Amendment)	Repealed by 27 of 2012
7	Censorship and Control of Entertainments (Amendment)	Incorporated in Cap. 21:01
8	Petroleum Control Commission	Repealed by 23 of 2004
9	Statute Law (Miscellaneous Amendments) . .	Incorporated in various chapters
10	Supplementary Appropriation (1984/85) . .	Spent
11	Malaŵi Development Corporation (Amendment)	Repealed by 13 of 2003
12	International Development Association (Second Lilongwe Water Supply Project) Loan (Authorization)	Omitted
13	European Development Fund (Blantyre-Lirangwe-M1 Road) Loan (Authorization)	Omitted
14	African Development Fund (Studies for the Mchinji-Kasungu Road and the Kasungu–Nkhotakota Road Project) Loan (Authorization)	Omitted
15	African Development Fund (Strengthening of Primary and Secondary Education Project) Loan (Authorization)	Omitted
16	French Banks (Goods and Services) Loan (Authorization)	Omitted
17	Government of the French Republic (Goods and Services Loan (Authorization)	Omitted
18	Finance and Audit (Amendment)	Repealed by 6 of 2003 and 7 of 2003
19	Lilongwe Waterworks	Omitted
20	Milk and Milk Products (Amendment) . .	Incorporated in Cap. 67:05
21	European Investment Bank (Second Lilongwe Water Supply Project) Loan (Authorization)	Omitted
22	International Development Association (Northern Transport Corridor Project) Loan (Authorization)	Omitted
23	Immigration (Amendment)	Incorporated in Cap. 15:03
24	Land Survey (Amendment)	Repealed by 18 of 2016
1987		
1	Constitution (Amendment)	Repealed by 20 of 1994
2	Overseas Economic Cooperation Fund of Japan (Third Structural Adjustment Program) Supplemental Loan (Authorization)	Omitted
3	International Development Association (Special Facility for Sub-Saharan Africa) (Third Structural Adjustment Program) Supplemental Loan (Authorization and Ratification)	Omitted

YEAR AND NUMBER	ORDINANCE	HOW DEALT WITH
1987	(*Contd.*)	
4	International Development Association (First Education Sector Credit) Loan (Authorization)	Omitted
5	International Development Association (Second Family Health Project) Loan (Authorization)	Omitted
6	Statute Law (Miscellaneous Amendments) . .	Incorporated in various chapters
7	Council for National Herbarium and Botanic Gardens of Malaŵi	Cap. 30:06
8	Malaŵi Bureau of Standards (Amendment) . .	Repealed by 14 of 2012
9	Malaŵi Certificate Examination and Testing Board (Amendment)	Incorporated in Cap. 30:04
10	Nurses and Midwives (Amendment)	Repealed by 16 of 1995
11	Agriculture (General Purposes)	Cap. 65:05
12	Taxation (Amendment)	Incorporated in Cap. 41:01
13	Appropriation	Spent
14	Supplementary Appropriation (1985/86) . .	Spent
15	Appropriation (Development Fund)	Spent
16	Constitution (Amendment) (No. 2)	Repealed by 20 of 1994
17	Medical Practitioners and Dentists	Cap. 36:01
18	Trade Descriptions	Not yet in force
19	Courts (Amendment)	Incorporated in Cap. 3:02
20	Statute Law (Miscellaneous Amendments) (No. 2)	Incorporated in various chapters
21	Immigration (Amendment)	Incorporated in Cap. 15:03
1988		
1	Appropriation	Spent
2	Appropriation (Development Fund)	Spent
3	Supplementary Appropriation (1986/87) . .	Spent
4	Taxation (Amendment)	Incorporated in Cap. 41:01
5	Seed	Cap. 67:06
6	Export Incentives	Cap. 39:04
7	University of Malaŵi (Amendment)	Incorporated in Cap. 30:02
8	Industrial Development (Amendment)	Repealed by 26 of 1991
9	Engineers (Amendment)	Incorporated in Cap. 53:03
10	Government of the Republic of South Africa (Purchase and Transportation of Maize) Loan (Authorization and Ratification)	Omitted
11	African Development Fund (Zomba Rural Development Project) Loan (Authorization and Ratification)	Omitted
12	African Development Fund (National Livestock Development Project) Loan (Authorization and Ratification)	Omitted
13	International Development Association (Smallholder Agricultural Credit Project) Loan (Authorization and Ratification) . .	Omitted
14	International Fund for Agricultural Development (Smallholder Agricultural Credit Project) Loan (Authorization and Ratification)	Omitted
15	Pharmacy, Medicines and Poisons	Cap. 35:01
16	International Development Association (Industrial and Trade Policy Adjustment Program) Loan (Authorization)	Omitted
17	Government of the French Republic (Goods and Services Loan (Authorization)	Omitted

YEAR AND NUMBER	ORDINANCE	HOW DEALT WITH
1988	(*Contd.*)	
18	African Development Fund (Industrial and Trade Policy Adjustment Program) Loan (Authorization)	Omitted
19	Overseas Economic Cooperation Fund of Japan (Industrial and Trade Policy Adjustment Program) Loan (Authorization) . .	Omitted
20	Chase Manhattan Bank, N.A. (Telecommunications Project) Loan (No. 1) (Authorization and Ratification)	Omitted
21	Chase Manhattan Bank, N.A. (Telecommunications Project) Loan (No. 2) (Authorization and Ratification)	Omitted
22	Sheriffs (Amendment)	Incorporated in Cap. 3:05
23	Road Traffic (Amendment)	Repealed by 26 of 1997
24	Export Incentives (Amendment)	Incorporated in Cap. 39:04
25	Customs and Excise (Amendment)	Incorporated in Cap. 42:01
26	Town and Country Planning	Cap. 23:01
27	International Development Association (Agricultural Marketing and Estate Development Project) Loan (Authorization)	Omitted
28	European Investment Bank (Supply of Electricity Project) Loan (Authorization) . .	Omitted
1989		
1	International Development Association (Energy I Project) Loan (Authorization) . .	Omitted
2	Government of the Republic of Austria (Goods and Services) (Tedzani III Project) Loan (Authorization)	Omitted
3	Refugees	Cap. 15:04
4	National Archives (Amendment)	Incorporated in Cap. 28:01
5	Land Economy Surveyors, Valuers, Estate Agents and Auctioneers	Cap. 53:08
6	Public Roads (Amendment)	Incorporated in Cap. 69:02
7	Malaŵi Institute of Management	Cap. 30:07
8	Reserve Bank of Malaŵi	Cap. 44:02
9	Copyright	Repealed by 26 of 2016
10	Army (Amendment)	Repealed by 11 of 2004
11	Statute Law (Miscellaneous Amendments) . .	Incorporated in various chapters
12	Appropriation	Spent
13	Appropriation (Development Fund)	Spent
14	Supplementary Appropriation (1987/88) . .	Spent
15	International Development Association (Industrial and Trade Policy Adjustment Program) Loan (Authorization) (Amendment)	Omitted
16	International Development Association (Second Education Sector Credit) Loan (Authorization)	Omitted
17	International Development Association (Infrastructure Project) Loan (Authorization)	Omitted
18	International Development Association (Institutional Development Project) Loan (Authorization)	Omitted
19	Banking	Repealed by 10 of 2010
20	International Development Association (Agricultural Sector Adjustment Program) Loan (Authorization)	Omitted

YEAR AND NUMBER	ORDINANCE	HOW DEALT WITH
1989	(*Contd.*)	
21	Museums	Not yet in force
22	Statute Law (Miscellaneous Amendments) (No. 2)	Incorporated in various chapters
23	Kreditanstalt fur Wiederaufbau (Goods and Services) Loan (Authorization)	Omitted
1990		
1	Taxation (Amendment)	Incorporated in Cap. 41:01
2	Appropriation	Spent
3	Appropriation (Development Fund)	Spent
4	Supplementary Appropriation (1988/89) . .	Spent
5	Supplementary Appropriation (1989/90) . .	Spent
6	Statute Law (Miscellaneous Amendments) . .	Incorporated in various Chapters
7	Bayerische Vereinsbank Aktiengesellschaft (Goods and Services) Loan (Authorization and Ratification)	Omitted
8	African Development Fund (Road Maintenance and Construction II Project) Loan (Authorization)	Omitted
9	European Investment Bank (Risk Capital) (Blantyre Water Supply) Loan (Authorization)	Omitted
10	European Investment Bank (Own Resources) (Blantyre Water Supply Project) Loan (Authorization)	Omitted
11	Government of the Kingdom of Spain (Goods and Services) Loan (Authorization) . .	Omitted
12	Government of the French Republic (Goods and Services) Loan (Authorization)	Omitted
13	Finance and Audit (Amendment and Validation)	Repealed by 6 of 2003 and 7 of 2003
14	Anatomy	Cap. 34:03
15	Arts and Crafts	Cap. 49:07
16	Monuments and Relics	Cap. 29:01
17	Capital Market Development	Repealed by 20 of 2010
18	Constitution (Amendment)	Repealed by 20 of 1994
19	Court Proceedings (Amendment)	Omitted
20	National Family Welfare Council of Malaŵi . .	Repealed by 19 of 1997
21	Workers' Compensation	Repealed by 7 of 2000
22	European Economic Community (Dwangwa–Nkhata Bay Road Project) Loan (Authorization)	Omitted
23	African Development Fund (District Water Supply Phase II Project) Loan (Authorization)	Omitted
24	Manufacturers Hanover Export Finance Limited (Rural Telecommunications Network Project) Loan (Authorization)	Omitted
25	International Development Association (Industrial and Trade Policy Adjustment Program) Loan (Authorization) (Amendment)	Omitted
26	Legal Education and Legal Practitioners (Amendment)	Incorporated in Cap. 3:04
27	Statute Law (Miscellaneous Amendment) (No. 2)	Incorporated in Cap. 3:04
1991		
1	Taxation (Amendment)	Incorporated in Cap. 41:01
2	Appropriation	Spent

YEAR AND NUMBER	ORDINANCE	HOW DEALT WITH
1991	(*Contd.*)	
3	Appropriation (Development Fund)	Spent
4	Supplementary Appropriation (1989/90) . .	Spent
5	Supplementary Appropriation (1990/91) . .	Spent
6	International Development Association (Fisheries Development Project) Loan (Authorization)	Omitted
7	International Development Association (Financial Sector and Enterprise Development Project) Loan (Authorization)	Omitted
8	International Development Association (Population, Health and Nutrition Sector Credit) Loan (Authorization)	Omitted
9	Fertilizers, Farm Feeds and Remedies (Amendment)	Incorporated in Cap. 67:04
10	Public Accountants and Auditors (Amendment)	Repealed by 5 of 2013
11	Electricity (Amendment)	Repealed by 19 of 1998
12	Statute Law (Miscellaneous Amendments) . .	Incorporated in various Chapters
13	African Development Fund (Mchinji-Msulira-Nkhotakota Road Project) Loan (Authorization)	Omitted
14	Nordic Development Fund (Fisheries Development Project) Loan (Authorization)	Omitted
15	Export and Import Bank of the Republic of China (Purchase of Aircraft) Loan (Authorization and Ratification)	Omitted
16	African Development Fund (Entrepreneurship and Capital Market Adjustment Program) Loan (Authorization)	Omitted
17	African Development Fund (Mwanza Rural Development Project) Loan (Authorization)	Omitted
18	African Development Fund (Telecommunications II Project) Loan (Authorization)	Omitted
19	African Development Bank (Telecommunications II Project) Loan (Authorization and Ratification)	Omitted
20	African Development Fund (Mchinji–Msulira–Nkhotakota Road Project) Loan (Authorization)	Omitted
21	European Investment Bank (Risk Capital) (Blantyre Water Supply Project II) Loan (Authorization)	Omitted
22	European Investment Bank (Risk Capital) (Malaŵi Global Loan for Productive Enterprises) Loan (Authorization)	Omitted
23	International Development Association (Agricultural Sector Adjustment Program) Loan (Authorization) (Amendment)	Omitted
24	Mutual Assistance in Criminal Matters . .	Cap. 8:04
25	Transfer of Offenders	Not yet in force
26	Industrial Licensing	Cap. 51:01
27	Disaster Preparedness and Relief	Cap. 33:05
28	Investment Promotion	Cap. 39:05
29	Architects and Quantity Surveyors	Cap. 53:02
30	Statute Law (Miscellaneous Amendments) (No. 2)	Incorporated in various Chapters

YEAR AND NUMBER	ORDINANCE	HOW DEALT WITH
1991	(*Contd.*)	
31	Malaŵi Broadcasting Corporation	Repealed by 41 of 1998
32	Customs and Excise (Amendment)	Incorporated in Cap. 42:01
1992		
1	Regulation of Minimum Wages and Conditions of Employment (Amendment)	Repealed by 6 of 2000
2	Appropriation	Spent
3	Appropriation (Development Fund)	Spent
4	Supplementary Appropriation (1990/91) . .	Spent
5	Supplementary Appropriation (1991/92) . .	Spent
6	Customs and Excise (Amendment)	Incorporated in Cap. 42:01
7	Taxation (Amendment)	Incorporated in Cap. 41:01
8	International Development Association (Entrepreneurship and Capital Market Adjustment Program) Loan (Authorization) . .	Omitted
9	Young Pioneers (Amendment)	Repealed by 12 of 1994
10	International Development Association (Fifth Power Project) Loan (Authorization) . .	Omitted
11	National Parks and Wildlife	Cap. 66:07
12	Statute Law (Miscellaneous Amendments)	Incorporated in various Chapters
13	Constitution (Amendment)	Repealed by 20 of 1994
14	International Development Association (Entrepreneurship Development and Drought Recovery Program) Loan (Authorization) . .	Omitted
15	International Development Association (Local Government Development Project) Loan (Authorization) (Amendment)	Omitted
16	Government of the Republic of Austria (Goods and Services) (Tedzani III Project) Loan (Authorization) (Amendment)	Omitted
17	Preservation of Public Security (Amendment)	Incorporated in Cap. 14:02
18	Forfeiture (Amendment)	Repealed by 22 of 1993
19	Statute Law (Miscellaneous Amendments) (No. 2)	Incorporated in various Chapters
20	African Development Fund (Blantyre Water Supply Project II) (Phase VII) Loan (Authorization)	Omitted
21	Public Health (Amendment)	Incorporated in Cap. 34:01
22	Malaŵi Citizenship (Amendment)	Incorporated in Cap. 15:01
23	Constitution (Amendment) (No. 2)	Repealed by 20 of 1994
24	Waterworks (Amendment)	Repealed by 17 of 1995
25	African Development Fund (Lilongwe Forestry Project) Loan (Authorization)	Omitted
26	African Development Fund (Women in Development Project) Loan (Authorization)	Omitted
1993		
1	African Development Fund (Agriculture Sector Adjustment Programme) Loan (Authorization)	Omitted
2	Gota Bank (Goods and Services) Loan (Authorization)	Omitted
3	Customs and Excise (Amendment)	Incorporated in Cap. 42:01
4	International Development Association (Agricultural Services Project) Loan (Authorization)	Omitted
5	Appropriation (Development Fund)	Spent
6	Appropriation	Spent
7	Supplementary Appropriation	Spent

YEAR AND NUMBER	ORDINANCE	HOW DEALT WITH
1993	(*Contd.*)	
8	Supplementary Appropriation (Development Fund) (1992/93)	Spent
9	International Development Association (Rural Financial Services Project) Loan (Authorization)	Omitted
10	Taxation	Incorporated in Cap. 41:01
11	Constitution (Amendment)	Repealed by 20 of 1994
12	Statute Law (Miscellaneous Amendments) . .	Incorporated in various Chapters
13	Supplementary Appropriation	Spent
14	Constitution (Amendment) (No. 2)	Repealed by 20 of 1994
15	Political Parties (Registration and Regulations)	Incorporated in Cap. 2:07
16	General Amnesty	Incorporated in Cap. 14:05
17	Statute Law (Miscellaneous Amendments) (No. 2)	Incorporated in various Chapters
18	Mitsui and Company Limited (International Telephone Switching Centre No. 18 and Satellite Earth Station) Loan (Authorization and Ratification)	Omitted
19	Post Office Savings Bank (Amendment) . .	Incorporated in Cap. 44:03
20	National Consultative Council	Omitted
21	Preservation of Public Security (Amendment) . .	Incorporated in Cap. 14:02
22	Forfeiture	Repealed by 22 of 1993
23	Decency in Dress	Repealed by 23 of 1993
24	International Fund for Agricultural Development (Smallholder Food Security Project) Loan (Authorization)	Omitted
25	Constitution (Amendment) (No. 3)	Repealed by 20 of 1994
26	General Amnesty (Amendment)	Incorporated in Cap. 14:05
27	African Development Fund (Agricultural Services Project) Loan (Authorization) . .	Omitted
28	African Development Fund (Kapichira Hydroelectric Project) Loan (Authorization)	Omitted
29	African Development Bank (Kapichira Hydroelectric Project)	Omitted
30	Overseas Economic Co-operation Fund of Japan (Entrepreneurship Development) . .	Omitted
31	Parliamentary and Presidential Elections . .	Cap 2:01
32	Penal Code	Incorporated in Cap. 7:01
33	Prisons	Incorporated in Cap. 9:02
1994		
1	International Development Association (Entrepreneurship Development and Drought Recovery Program) Loan (Authorization) (Amendment)	Omitted
2	Taxation (Amendment)	Incorporated in Cap. 41:01
3	Customs and Excise (Amendment)	Incorporated in Cap. 42:01
4	Appropriation	Spent
5	Appropriation (Development Fund)	Spent
6	Supplementary Appropriation (1992/93) . .	Spent
7	Supplementary Appropriation (1993/94) . .	Spent
8	International Fund for Agricultural Development (Small-holder Food Security Project) Loan (Authorization and Ratification)	Omitted
9	International Fund for Agricultural Development (Mudzi Financial Services Project) Loan (Authorization and Ratification)	Omitted

YEAR AND NUMBER	ORDINANCE	HOW DEALT WITH
1994	(*Contd.*)	
10	African Development Fund (Agricultural Services Project) Loan (Authorization and Ratification)	Omitted
11	European Investment Bank (Kapichira Hydroelectric Project) Loan (Authorization and Ratification)	Omitted
12	Young Pioneers (Repeal)	Spent
13	Constitution (Amendment)	Repealed by 20 of 1994
14	National Consultative Council (Amendment) . .	Spent
15	Israel Aircraft Industries Limited (Goods and Services) Loan (Authorization and Ratification)	Omitted
16	Parliamentary and Presidential Elections (Amendment)	Incorporated in Cap. 2:01
17	Statute Law (Miscellaneous Amendments) . .	Incorporated in various chapters
18	International Development Association (Second Institutional Development Project) Loan (Authorization)	Omitted
19	Public Service	Cap. 1:03
20	Malaŵi (Constitution)	Published without Chapter number
21	International Development Association (Railways Restructuring Project) Loan (Authorization)	Omitted
22	International Development Association (Entrepreneurship Development and Drought Recovery Program) Loan (Authorization) (Amendment) (No. 2)	Omitted
23	Eastern and South African Trade and Development Bank (Posts and Telecommunications Wireless Loop Network Project Loan (Authorization)	Omitted
24	Appropriation (Amendment)	Spent
25	Appropriation (Development Fund) (Amendment)	Spent
26	Presidents (Salaries and Benefits)	Cap. 2:02
27	Land (Amendment)	Repealed by 16 of 2016
28	University of Malaŵi (Amendment)	Incorporated in Cap. 30:02
29	Post and Telecommunications	Repealed by 41 of 1998
30	Statute Law (Miscellaneous Amendments) (No. 2)	Incorporated in various Chapters
31	Republic of Malaŵi (Constitution) (Amendment)	Incorporated in the Constitution
1995		
1	Taxation (Amendment)	Incorporated in Cap. 41:01
2	Appropriation	Spent
3	Appropriation (Development)	Spent
4	Supplementary Appropriation (1993/94) . .	Spent
5	Supplementary Appropriation (1994/95) . .	Spent
6	Constitution (Amendment)	Incorporated in the Constitution
7	Republic of Malaŵi (Constitution)	Incorporated in the Constitution
8	National Compensation Tribunal (Miscellaneous Provisions)	Cap. 3:06
9	Advisory Committee on the Granting of Pardon	Cap. 9:05
10	Iodization of Salt	Cap. 52:02
11	Export Processing Zones	Cap. 39:06
12	Inland Waters Shipping	Cap. 71:01
13	Nordic Development Fund (National Water Development Project) Loan (Authorization)	Omitted

YEAR AND NUMBER	ORDINANCE	HOW DEALT WITH
1995	(*Contd.*)	
14	International Development Association (National Water Development Project) Loan (Authorization)	Omitted
15	Press Trust Reconstruction	Cap. 5:04
16	Nurses and Midwives	Cap. 36:02
17	Waterworks	Cap. 72:01
18	Corrupt Practices	Cap. 7:04
19	Statute Law (Miscellaneous Amendments) . .	Incorporated in various Chapters
20	Dangerous Drugs (Amendment)	Incorporated in Cap. 35:02
21	Penal Code (Amendment).	Incorporated in Cap. 7:01
22	International Development Association (Primary Education Project) Loan (Authorization)	Omitted
1996		
1	Export-Import Bank of the Republic of China (Balance of Payments Support) Loan (Authorization)	Omitted
2	Taxation (Amendment)	Incorporated in Cap. 41:01
3	Appropriation	Spent
4	Appropriation (Development Fund)	Spent
5	Supplementary Appropriation (1995/96) . .	Spent
6	National Compensation Tribunal (Miscellaneous Provisions) (Amendment) . .	Incorporated in Cap. 3:06
7	Public Enterprises (Privatization)	Repealed by 27 of 2011
8	Fertilizers, Farm Feeds and Remedies (Amendment)	Incorporated in Cap. 67:04
9	Seed (Amendment)	Incorporated in Cap. 67:05
10	Liquor (Amendment)	Incorporated in Cap. 50:07
11	Agricultural Livestock and Marketing (Repeal)	Spent
12	Government Teaching Service Commission . .	Cap. 30:08
13	Business Licensing (Amendment)	Repealed by 27 of 2012
14	International Development Association (Fiscal Restructuring and Deregulation Program) Loan (Authorization)	Omitted
15	International Development Association (Malaŵi Social Action Fund Project) Loan (Authorization)	Omitted
16	Labour Relations	Cap. 54:01
17	Ombudsman	Cap. 3:07
18	Statute Law (Miscellaneous Amendments) (No. 2)	Incorporated in various Chapters
19	National Construction Industry	Cap. 53:05
20	Criminal Procedure and Evidence Code (Amendment)	Incorporated in Cap. 8:01
21	Statute Law (Miscellaneous Amendments) . .	Incorporated in various Chapters
22	National Youth Council	Cap. 31:04
23	Environment Management	Cap. 60:02
24	Local Government Elections	Cap. 22:02
25	Overseas Economic Cooperation Fund (Fiscal Restructuring and Deregulation Program) Loan (Authorization)	Omitted
26	Gaming	Cap. 47:03
1997		
1	Constitution (Amendment) (No. 2)	Incorporated in the Constitution
2	International Development Association (Fiscal Restructuring and Deregulation Program) Loan (Authorization) (Amendment)	Omitted

YEAR AND NUMBER	ORDINANCE	HOW DEALT WITH
1997	(*Contd.*)	
3	Kuwait Fund for Arab Economic Development (Telecommunications Development Project) Loan (Authorization)	Omitted
4	European Investment Bank (Third Lilongwe Water Supply Project) Loan (Authorization)	Omitted
5	Taxation (Amendment)	Incorporated in Cap. 41:01
6	Scandinaviska Enskilda Banken AB (publ) (Scada Rehabilitation and Expansion Project) Loan (Authorization)	Omitted
7	International Development Association (Environmental management Project) Loan (Authorization)	Omitted
8	Appropriation	Spent
9	Appropriation (Development Fund)	Spent
10	Supplementary Appropriation (1996/97) . .	Spent
11	Forestry	Cap. 63:01
12	Mzuzu University	Cap. 30:09
13	National Roads Authority	Repealed by 3 of 2006
14	Legal Education and Legal Practitioners (Amendment)	Incorporated in Cap. 3:04
15	Estate Duty (Amendment)	Incorporated in Cap. 43:02
16	Business Names Registration (Amendment) . .	Repealed by 12 of 2012
17	Marriage (Amendment)	Repealed by 4 of 2015
18	Estate Duty (Amendment) (No. 2)	Incorporated in Cap. 43:01
19	National Family Planning Council of Malaŵi . .	Cap. 33:04
20	African Development Fund (Third Education Project) Loan (Authorization)	Omitted
21	Occupational Safety, Health and Welfare . .	Cap. 55:07
22	European Investment Bank (Second Global Productive Enterprises Project) Loan (Authorization)	Omitted
23	Taxation (Amendment) (No. 2)	Incorporated in Cap. 41:01
24	Army (Amendment)	Repealed by 11 of 2004
25	Fisheries Conservation and Management . .	Cap. 66:05
26	Road Traffic	Cap. 69:01
27	Nordic Development Fund (Salima Chintheche Transmission Line) Loan (Authorization and Ratification)	Omitted
28	African Development Fund (Mchinji–Kasungu–Msulira Road Project) Loan (Authorization)	Omitted
29	Marriage (Amendment) (No. 2)	Repealed by 4 of 2015
30	Affiliation (Amendment)	Repealed by 22 of 2010
1998		
1	African Development Fund (Rural Income Enhancement Project) Loan (Authorization) . .	Omitted
2	African Development Fund (District Water Supply III Project) Loan (Authorization) . .	Omitted
3	African Development Fund (Structural Adjustment Programme) Loan (Authorization)	Omitted
4	International Development Association (Secondary Education Project) Loan (Authorization)	Omitted
5	Nordic Development Fund (Telecommunications Sector Project) Loan (Authorization)	Omitted
6	Supplementary Appropriation (1997/98) . .	Spent

YEAR AND NUMBER	ORDINANCE	HOW DEALT WITH
1998	(*Contd.*)	
7	Supplementary Appropriation (Development Fund) (1997/98)	Spent
8	Taxation (Amendment)	Incorporated in Cap. 41:01
9	Building Societies (Amendment)	Incorporated in Cap. 32:01
10	Parliamentary and Presidential Elections (Amendment)	Incorporated in Cap. 2:01
11	Electoral Commission	Cap. 2:03
12	University of Malaŵi (Amendment)	Incorporated in Cap. 30:02
13	Law Commission	Cap. 3:09
14	Malaŵi Revenue Authority	Cap. 39:07
15	International Development Association (Fiscal Restructuring and Deregulation Program) (Second Amending Agreement) Loan (Authorization and Ratification) . .	Omitted
16	International Fund for Agricultural Development (Smallholder Flood Plains Development Programme) Loan (Authorization)	Omitted
17	Companies (Amendment)	Repealed by 15 of 2013
18	Taxation (Amendment)	Incorporated in Cap. 41:01
19	Electricity	Repealed by 22 of 2004
20	Electricity Supply Commission of Malaŵi . .	Repealed by 40 of 1998
21	Gaming (Amendment)	Incorporated in Cap. 47:03
22	Wills and Inheritance (Amendment)	Repealed by 14 of 2011
23	National Celebrations Councils (Repeal) . .	Spent
24	Appropriation	Spent
25	Appropriation (Development Fund)	Spent
26	Supplementary Appropriation (1997/98) (No. 2)	Spent
27	Human Rights Commission	Cap. 3:08
28	National Roads Authority(Amendment)	Repealed by 3 of 2006
29	Kuwait Fund for Arab Economic Development (Naminga-Mangochi Road Project) Loan (Authorization)	Omitted
30	African Development Fund (Smallholder Macadamia Development Project) Loan (Authorization)	Omitted
31	International Development Association (Second Social Action Fund Project) Loan (Authorization)	Omitted
32	International Development Association (Second Fiscal Restructuring and Deregulation Programme) Loan (Authorization)	Omitted
33	International Development Association (Second Fiscal Restructuring and Deregulation Technical Assistance Project) Loan (Authorization)	Omitted
34	International Development Association (Population and Family Planning Project) Loan (Authorization and Ratification) . .	Omitted
35	Parliamentary Service	Cap. 2:08
36	Cooperative Societies	Cap. 47:02
37	Customs and Excise (Amendment)	Incorporated in Cap. 42:01
38	Constitution (Amendment)	Incorporated in the Constitution
39	Insurance (Amendment)	Repealed by 9 of 2010
40	Electricity Supply Commission of Malaŵi (Repeal)	Spent

YEAR AND NUMBER	ORDINANCE	HOW DEALT WITH
1998	(*Contd.*)	
41	Communications	Repealed by 34 of 2016
42	Local Government	Cap. 22:01
43	Competition and Fair Trading	Cap. 48:09
44	OPEC Fund for International Development (Nkhotakota District Hospital Project) Loan (Authorization and Ratification)	Omitted
1999		
1	OPEC Fund for International Development (Naminga-Mangochi Road Project) Loan (Authorization and Ratification)	Omitted
2	African Development Fund (Smallholder Irrigation Project) Loan (Authorization) . .	Omitted
3	African Development Fund (Horticulture and Food Crops Development Project) Loan (Authorization)	Omitted
4	African Development Fund (Poverty Reduction Project) Loan (Authorization) . .	Omitted
5	Chiefs (Amendment)	Incorporated in Cap. 22:03
6	Technical, Entrepreneurial and Vocational Education and Training	Cap. 55:06
7	Local Government Elections (Amendment) . .	Cap. 22:02
8	Penal Code (Amendment)	Incorporated in Cap. 7:01
9	Criminal Procedure and Evidence Code (Amendment)	Incorporated in Cap. 8:01
10	Arab Bank for Economic Development in Africa (Naminga–Mangochi Road Project) Loan (Authorization)	Omitted
11	Constitution (Amendment)	Incorporated in the Constitution
12	Nordic Development Fund (National Water Development Project) Loan (Authorization and Ratification)	Omitted
13	Nordic Development Fund (Road Maintenance and Rehabilitation Project) Loan (Authorization)	Omitted
14	Taxation (Amendment)	Incorporated in Cap. 41:01
15	International Development Association (Road Maintenance and Rehabilitation Project) Loan (Authorization and Ratification)	Omitted
16	Appropriation	Spent
17	Supplementary Appropriation (1998/99) . .	Spent
18	Supplementary Appropriation (1997/998) . .	Spent
19	OPEC Fund for International Development (Nkhotakota District Hospital—Phase II Project) Loan (Authorization)	Omitted
2000		
1	International Development Association (Second Fiscal Restructuring and Deregulation Programme) Loan (Authorization)	Omitted
2	African Development Fund (Karonga–Chitipa Road Project) Loan (Authorization)	Omitted
3	African Development Fund (Smallholder Outgrower Sugar-cane Production Project) Loan (Authorization)	Omitted
4	Courts (Amendment)	Incorporated in Cap. 3:02

YEAR AND NUMBER	ORDINANCE	HOW DEALT WITH
2000	(*Contd.*)	
5	Government of the Kingdom of Belgium (Mangochi Transit and Local Telephone Exchange Project) Loan (Authorization) . .	Omitted
6	Employment	Cap. 55:01
7	Workers' Compensation	Cap. 55:03
8	Bail (Guidelines)	Cap. 8:05
9	Taxation (Amendment)	Incorporated in Cap. 41:01
10	Fertilizers, Farm Feeds and Remedies (Amendment)	Not yet in force
11	Judicature (Administration)	Cap. 3:10
12	Pesticides	Cap. 35:03
13	Appropriation	Spent
14	Supplementary Appropriation (1999/2000) . .	Spent
15	International Development Association (Privatization and Utility Reform Project) Loan (Authorization)	Omitted
2001		
1	International Development Association (Third Fiscal Restructuring and Deregulation Programme) Loan (Authorization)	Omitted
2	International Development Association (Third Fiscal Restructuring and Deregulation Technical Assistance Project) Loan (Authorization)	Omitted
3	African Development Fund (Rural Health Care Project III) Loan (Authorization) . .	Omitted
4	Constitution (Amendment)	Incorporated in the Constitution
5	Local Government (Amendment)	Incorporated in Cap. 22:01
6	Non-Government Organizations	Cap. 5:05
7	Veterinary and Para-Veterinary Practitioners . .	Cap. 53:04
8	Constitution (Amendment) (No. 2)	Incorporated in the Constitution
9	Arab Bank for Economic Development in Africa (Small Farms Irrigation Project) Loan (Authorization)	Omitted
10	Taxation (Amendment)	Incorporated in Cap. 41:01
11	International Development Association (Regional Trade Facilitation Project) Loan (Authorization)	Omitted
12	Appropriation	Spent
13	Constitution (Amendment) (No. 3)	Incorporated in the Constitution
14	Surtax	Repealed by 7 of 2005
15	International Fund for Agricultural Development (Rural Livelihood Support Programme) Loan (Authorization)	Omitted
16	Irrigation	Cap. 72:04
2002		
1	African Development Fund (Integrated Rural Water Supply and Sanitation Project for Mzimba and Ntchisi Districts) Loan (Authorization)	Omitted
2	African Development Fund (Skills Development and Income Generation Project) Loan (Authorization)	Omitted
3	OPEC Fund for International Development (Liwonde-Naminga Road Project) Loan (Authorization)	Omitted
4	Kuwait Fund for Arab Economic Development (Naminga-Mangoehi Road Project) Loan (Authorization and Ratification)	Omitted

YEAR AND NUMBER	ORDINANCE	HOW DEALT WITH
2002	(*Contd.*)	
5	Arab Bank for Economic Development in Africa (Naminga-Mangoehi Road Project) Loan (Authorization and Ratification) . .	Omitted
6	African Development Fund (Support to Community Day Secondary Schools Education IV Project) Loan (Authorization)	Omitted
7	Presidents (Salaries and Benefits) (Amendment)	Incorporated in Cap. 2:02
8	Explosives (Amendment)	Incorporated in Cap. 14:09
9	African Development Fund (Support for Good Governance Programme) Loan (Authorization)	Omitted
10	Bretton Woods Agreement (Amendment) . .	Incorporated in Cap. 40:02
11	Taxation (Amendment)	Incorporated in Cap. 41:01
12	Appropriation	Spent
13	Biosafety	Cap. 60:03
14	Government Health Service	Not yet in force
15	International Development Association (National Water Development Project) Loan (Authorization and Ratification)	Omitted
16	International Development Association (Emergency Drought Recovery Project) Loan (Authorization)	Omitted
17	International Development Association (Financial Management, Transparency and Accountability Project) Loan (Authorization)	Omitted
18	African Development Fund (Lake Malaŵi Artisanal Fisheries Development Project) Loan (Authorization)	Omitted
2003		
1	Tourism and Hotels (Amendment)	Incorporated in Cap. 50:01
2	Government of the Kingdom of Belgium (Mzuzu Telecommunications Project) Loan (Authorization and Ratification)	Omitted
3	International Development Association (Third Malaŵi Social Action Fund Project) Loan (Authorization)	Omitted
4	Surtax (Amendment)	Repealed by 7 of 2005
5	Supplementary Appropriation	Spent
6	Public Audit	Cap. 37:01
7	Public Finance Management	Cap. 37:02
8	Public Procurement	Repealed by 27 of 2017
9	Lotteries	Cap. 47:04
10	Taxation (Amendment)	Incorporated in Cap. 41:01
11	Customs and Excise (Amendment)	Incorporated in Cap. 42:01
12	Surtax (Amendment) (No. 2)	Repealed by 7 of 2005
13	Malaŵi Development Corporation (Repeal) . .	Spent
14	Consumer Protection	Cap. 48:10
15	Appropriation	Spent
16	Science and Technology	Cap. 30:10
2004		
1	Supreme Court of Appeal (Amendment) . .	Incorporated in Cap. 3:01
2	Courts (Amendment)	Incorporated in Cap. 3:02
3	African Development Fund (Roads Rehabilitation and Upgrading Project) Loan (Authorization)	Omitted
4	Constitution (Amendment)	Incorporated in the Constitution

YEAR AND NUMBER	ORDINANCE	HOW DEALT WITH
2004	(*Contd.*)	
5	International Development Association (Multi-Sectoral HIV/AIDS Project) (Authorization and Ratification)	Omitted
6	Land (Amendment)	Repealed by 16 of 2016
7	Education (Amendment)	Repealed by 21 of 2013
8	Agricultural Development and Marketing Corporation (Repeal)	Spent
9	Legal Education and Legal Practitioners (Amendment)	Incorporated in Cap. 3:04
10	Malaŵi National Examinations Board (Amendment)	Incorporated in Cap. 30:04
11	Defence Force	Cap. 12:01
12	Arab Ban for Economic Development in Africa (Lilongwe International Airport Rehabilitation Project) Loan (Authorization and Ratification)	Omitted
13	International Development Association (Fiscal Management and Accelerating Growth Adjustment Programme) Loan (Authorization)	Omitted
14	International Development Association (Community-Based Rural Land Development Project) (Authorization)	Omitted
15	National Parks and Wildlife (Amendment) . .	Incorporated in Cap. 66:07
16	Supplementary Appropriation (2003/04) . .	Spent
17	Corrupt Practices (Amendment)	Incorporated in Cap. 7:04
18	International Development Association (Development Learning Centre Project) Loan (Authorization)	Omitted
19	Kuwait Fund for Arab Economic Development (Zomba–Jali–Phalombe–Chitakale Road Project) Loan (Authorization)	Omitted
20	Energy Regulation	Cap. 73:02
21	Rural Electrification	Cap. 73:03
22	Electricity	Cap. 73:01
23	Liquid Fuels and Gas (Production and Supply) . .	Cap. 50:03
24	African Development Fund (Support for Good Governance Programme) Loan (Authorization)	Omitted
25	OPEC Fund for International Development (Roads Rehabilitation and Upgrading Project) Loan (Authorization and Ratification)	Omitted
26	Malaŵi Revenue Authority (Amendment) . .	Incorporated in Cap. 39:07
2005		
1	Appropriation	Spent
2	OPEC Fund for International Development (Zomba–Jali–Phalombe–Chitakale Road Project) Loan (Authorization and Ratification)	Omitted
3	International Development Association (Health Sector Support Project) (Authorization and Ratification)	Omitted
4	International Development Association (Education Sector Support project) (Authorization)	Omitted
5	Appropriation	Spent
6	Taxation (Amendment)	Incorporated in Cap. 41:01

YEAR AND NUMBER	ORDINANCE	HOW DEALT WITH
2005	(*Contd.*)	
7	Value Added Tax	Cap. 42:02
8	Customs and Excise (Amendment)	Incorporated in Cap. 42:01
9	International Development Association (Emergency Recovery Project) (Authorization)	Omitted
10	Fines (Conversion)	Cap. 8:06
2006		
1	International Development Association (Irrigation, Rural livelihoods and Agricultural Development Project) (Authorization and Ratification)	Omitted
2	International Fund for Agricultural Development (Irrigation, Rural Livelihoods and Agricultural Development Project) Loan (Authorization and Ratification)	Omitted
3	Roads Authority	Cap. 69:07
4	Roads Fund Administration	Cap. 69:08
5	Prevention of Domestic Violence. . . .	Cap. 7:05
6	Kuwait Fund for Arab Economic Development (Thyolo-Bangula Road-Project) Loan (Authorization)	Omitted
7	Arab Bank for Economic Development in Africa (Zomba-Jali-Chitakale Road Project) Loan (Authorization and Ratification) . .	Omitted
8	International Development Association (Health Sector Support Project) (Authorization and Ratification) (Amendment)	Omitted
9	Money Laundering, Proceeds of Serious Crime and Terrorist Financing	Repealed by 14 of 2017
10	International Development Association (Infrastructure Services Project) (Authorization)	Omitted
11	Value Added Tax (Amendment).	Incorporated in Cap. 42:02
12	Appropriation	Spent
13	Taxation (Amendment)	Incorporated in Cap. 41:01
14	Public Finance Management (Amendment) . .	Incorporated in Cap. 37:02
2007		
1	Export-Import Bank of the Republic of China (Karonga-Chitipa Road Project) Loan (Authorization)	Omitted
2	OPEC Fund for International Development (Nkhata Bay District Hospital Project) Loan (Authorization)	Omitted
3	OPEC Fund for International Development (Thyolo-Bangula Road Project) Loan (Authorization)	Omitted
4	International Development Association (National Water Development Project II) (Authorization)	Omitted
5	International Development Association (Business Environment Strengthening Technical Assistance Project) (Authorization)	Omitted
6	Value Added Tax (Amendment)	Incorporated in Cap. 42:02
7	Taxation (Amendment)	Incorporated in Cap. 41:01
8	Appropriation	Spent
9	Supplementary Appropriation (2006/07) . .	Spent

YEAR AND NUMBER	ORDINANCE	HOW DEALT WITH
2008		
1	Export-Import Bank of India (Loan) (Authorization)	Omitted
2	African Development Fund (Poverty Reduction Support) Loan (Authorization and Ratification)	Omitted
3	European Union Water Facility (Malaŵi Peri-Urban Water and Sanitation Project) (Authorization)	Omitted
4	European Investment Bank (Malaŵi Peri-Urban Water and Sanitation Project) (Authorization)	Omitted
5	OPEC Fund for International Development (Second National Water Development Programme) Loan (Authorization and Ratification)	Omitted
6	African Development Fund (National Water Development Program) Loan (Authorization)	Omitted
7	International Development Association (Third Malaŵi Social Action Fund Project) (Phase II) Loan (Authorization)	Omitted
8	Appropriation Act	Spent
9	Supplementary Appropriation Act (2007/2008)	Spent
10	Value Added Tax (Amendment)	Incorporated in Cap. 42:02
11	Taxation (Amendment)	Incorporated in Cap. 41:01
12	Customs and Excise (Amendment)	Incorporated in Cap. 42:01
2009		
1	OPEC Fund for International Development (Kamuzu International Airport Rehabilitation Project) Loan (Authorization and Ratification)	Omitted
2	International Development Association (Regional Communications Infrastructure Project) Loan (Authorization)	Omitted
3	African Development Fund (Blantyre–Zomba Road Project) Loan (Authorization) . .	Omitted
4	International Development Association (Multi-Sectoral HIV/AIDS Project) (Authorization)	Omitted
5	Export-Import Bank of China (International Conference Centre and Business Hotel Project) Loan (Authorization)	Omitted
6	Saudi Fund for Development (Thyolo–Makwasa–Bangula Road Project) Loan (Authorization and Ratification)	Omitted
7	African Development Fund (Multinational Nacala Road Corridor Project) (Phase I) Loan (Authorization)	Omitted
8	African Development Fund (Support to Local Economic Development Project) Loan (Authorization)	Omitted
9	Arab Bank for Economic Development in Africa (Thyolo–Makwasa–Bangula Road Project) Loan (Authorization and Ratification)	Omitted
10	Supplementary Appropriation Act (2008/2009)	Spent
11	Appropriation	Spent
12	International Fund for Agricultural Development (Rural Livelihoods and Economic Enhancement Program) (Authorization and Ratification)	Omitted

YEAR AND NUMBER	ORDINANCE	HOW DEALT WITH
2009	(*Contd.*)	
13	International Development Association (Agricultural Development Program Project) (Authorization)	Omitted
14	Taxation (Amendment)	Incorporated in Cap. 41:01
15	Value Added Tax (Amendment)	Incorporated in Cap. 42:02
2010		
1	Arab Bank for Economic Development in Africa (Teacher Training Colleges Project) Loan (Authorization)	Omitted
2	OPEC Fund for International Development (Teacher Training Colleges Project) Loan (Authorization)	Omitted
3	Bretton Woods Agreement (Amendment)	Incorporated in Cap. 40:02
4	Export-Import Bank of China (Construction of National Stadium) Loan (Authorization) . .	Omitted
5	African Development Fund (Agriculture Infrastructure Support Project) (Authorization)	Omitted
6	International Development Association (Additional Financing for Community Based Rural Land Development Project) (Authorization)	Omitted
7	Courts (Amendment)	Incorporated in Cap. 3:02
8	Constitution (Amendment) (No. 2)	Incorporated in the Constitution
9	Insurance	Cap. 47:01
10	Banking	Cap. 44:01
11	Constitution (Amendment)	Incorporated in the Constitution
12	Police	Cap. 13:01
13	National Registration	Cap. 24:01
14	Criminal Procedure and Evidence Code (Amendment)	Incorporated in Cap. 8:01
15	Abu Dhabi Fund for Development (Jenda–Edingeni Road Project) (Authorization) . .	Omitted
16	Electoral Commission (Amendment)	Incorporated in Cap. 2:03
17	Local Government (Amendment)	Incorporated in Cap. 22:01
18	Credit Reference Bureau	Cap. 46:09
19	Supplementary Appropriation (2009/2010) . .	Spent
20	Securities	Cap. 46:06
21	Microfinance	Cap. 46:08
22	Child Care, Protection and Justice	Cap. 26:03
23	African Development Fund (Governance and Poverty Reduction Support Program II) (Authorization)	Omitted
24	Protected Flag, Emblems and Names (Amendment)	Incorporated in Cap. 18:03
25	Legal Education and Legal Practitioners (Amendment)	Incorporated in Cap. 3:04
26	Financial Services	Cap. 44:05
27	Employment (Amendment)	Incorporated in Cap. 55:01
28	Customs and Excise (Amendment)	Incorporated in Cap. 42:01
29	Taxation (Amendment)	Incorporated in Cap. 41:01
30	Value Added Tax (Amendment)	Incorporated in Cap. 42:02
31	International Development Association (Additional Financing for Third Social Action Fund Project) (Phase II) Loan (Authorization)	Omitted
32	International Development Association (Project to Improve Education Quality in Malaŵi) Loan (Authorization)	Omitted

YEAR AND NUMBER	ORDINANCE	HOW DEALT WITH
2010	(*Contd.*)	
33	Arab Bank for Economic Development in Africa (Phalombe District Hospital Project) Loan (Authorization)	Omitted
34	Appropriation	Spent
35	Export-Import Bank of China (Construction of Malaŵi University of Science and Technology Project) Loan (Authorization)	Omitted
2011		
1	Penal Code (Amendment)	Incorporated in Cap. 7:01
2	Export-Import Bank of India (Loan) (Authorization)	Omitted
3	International Development Association (Additional Financing for Irrigation, Rural Livelihoods and Agricultural Development Project) Loan (Authorization)	Omitted
4	African Development Fund (Supplementary Loan to Finance the Local Economic Development Project) Loan (Authorization)	Omitted
5	Reserve Bank of Malaŵi (Amendment)	Incorporated in Cap. 44:02
6	Pension	Cap. 55:02
7	Legal Aid	Cap. 4:01
8	Financial Cooperatives	Cap. 46:10
9	Local Courts	Cap. 3:03
10	Supplementary Appropriation (2010/2011) . .	Spent
11	Civil Procedure (Suits by or against the Government or Public Officers) (Amendment)	Incorporated in Cap. 6:01
12	International Development Association (Mining, Governance and Growth Support Project) Loan (Authorization)	Omitted
13	University of Malaŵi (Amendment)	Not yet in force
14	Deceased Estates (Wills, Inheritance and Protection)	Cap. 10:02
15	National Council for Higher Education	Cap. 30:12
16	Atomic Energy	Cap. 61:03
17	Arab Bank for Economic Development in Africa (Additional Loan for Zomba-Jali-Chitakale Road Project) Loan (Authorization)	Omitted
18	International Development Association (Additional Financing for the Second National Water Development Project) Loan (Authorization) . .	Omitted
19	International Development Association (Energy Sector Support Project) Loan (Authorization) . .	Omitted
20	Kuwait Fund for Arab Economic Development (Supplementary Loan for the Financing of Zomba-Jali-Phalombe-Chitakale Project) Loan (Authorization and Ratification)	Omitted
21	International Development Association (Financial Sector Technical Assistance Project) Loan (Authorization)	Omitted
22	Lilongwe University of Agriculture and Natural Resources	Cap. 30:11
23	Value Added Tax (Amendment)	Incorporated in Cap. 42:02
24	Taxation (Amendment)	Incorporated in Cap. 41:01
25	Customs and Excise (Amendment)	Incorporated in Cap. 42:01
26	Appropriation	Spent
27	Public-Private Partnership	Cap. 46:07
28	Saudi Fund for Development (Teacher Training Colleges Project) Loan (Authorization) . .	Omitted

YEAR AND NUMBER	ORDINANCE	HOW DEALT WITH
2011	(*Contd.*)	
29	OPEC Fund for International Development (Supplementary Loan for the Zomba-Jali-Chitakale Road Project) Loan (Authorization) . .	Omitted
30	International Fund for Agricultural Development (Sustainable Agricultural Production Programme) Loan (Authorization)	Omitted
2012		
1	Labour Relations (Amendment)	Incorporated in Cap. 54:01
2	African Development Fund (Higher Education, Science and Technology Support Project) Loan (Authorization)	Omitted
3	African Development Bank acting on behalf of Nigeria Trust Fund (Higher Education, Science and Technology Support Project) Loan (Authorization)	Omitted
4	African Development Fund (Competitiveness and Job Creation Support Project) Loan (Authorization)	Omitted
5	Appropriation (Amendment)	Spent
6	International Development Association (Additional Financing for the Agricultural Sector-Wide Approach Support Project) Loan (Authorization)	Omitted
7	Value Added Tax (Amendment)	Incorporated in Cap. 42:02
8	Disability	Cap. 33:06
9	Malaŵi Television Limited (Dissolution) . .	Omitted
10	Protected Flag, Emblems and Names (Amendment)	Incorporated in Cap. 18:03
11	Investment and Export Promotion	Not yet in force
12	Business Registration	Cap. 46:02
13	Appropriation	Spent
14	Malaŵi Bureau of Standards	Cap. 51:02
15	International Development Association (Second Additional Financing for the Irrigation, Rural Livelihoods and Agricultural Development Project) Loan (Authorization)	Omitted
16	International Development Association (Second Additional Financing for the Third Malaŵi Social Action Fund Project) (Phase II) Loan (Authorization)	Omitted
17	Taxation (Amendment)	Incorporated in Cap. 41:01
18	Value Added Tax (Amendment)	Incorporated in Cap. 42:02
19	Bretton Woods Agreement (Amendment) . .	Incorporated in Cap. 40:02
20	International Development Association (Shire River Basin Management Project) (Phase I) Loan (Authorization)	Omitted
21	OPEC Fund for International Development (Rural Livelihoods and Economic Enhancement Programme) Loan (Authorization)	Omitted
22	International Development Association (Nutrition and HIV/AIDS Project) (Authorization) . .	Omitted
23	Civil Procedure (Suits by or against the Government or Public Officers) (Amendment)	Incorporated in Cap. 6:01
24	Penal Code (Amendment)	Incorporated in Cap. 7:01
25	Constitution (Amendment)	Incorporated in the Constitution
26	Companies (Amendment)	Repealed by 15 of 2013
27	Businesses Licensing	Cap. 46:01

YEAR AND NUMBER	ORDINANCE	HOW DEALT WITH
2012	(*Contd.*)	
28	Arab Bank for Economic Development in Africa (Small Farms Irrigation Project in the Region of Lake Malaŵi Littoral-Phase II) Loan (Authorization)	Omitted
29	Export-Import Bank of India (Loan) (Authorization)	Omitted
30	OPEC Fund for International Development (Supplementary Loan for Nkhata Bay District Hospital Project) Loan (Authorization) . .	Omitted
31	Malaŵi University of Science and Technology . .	Cap. 30:13
2013		
1	Cotton	Cap. 65:04
2	Water Resources	Cap. 72:03
3	Gender Equality	Cap. 25:06
4	Supplementary Appropriation (2012/2013) . .	Spent
5	Public Accountants and Auditors	Cap. 53:06
6	National Statistics	Cap. 27:01
7	Export Processing Zones (Amendment)	Incorporated in Cap. 39:06
8	Personal Property Security	Cap. 48:03
9	Local Government Elections (Amendment) . .	Incorporated in Cap. 22:02
10	Parliamentary and Presidential Elections (Amendment)	Incorporated in Cap. 2:01
11	Electoral Commission (Amendment)	Incorporated in Cap. 2:03
12	Saudi Fund for Development (Phalombe District Hospital Project) Loan (Authorization) . .	Omitted
13	African Development Fund (Mzuzu-Nkhata Bay Road Rehabilitation Project) Loan (Authorization)	Omitted
14	International Development Association (Agricultural Productivity Program for Southern Africa Project) Loan (Authorization)	Omitted
15	Companies	Cap. 46:03
16	Appropriation	Spent
17	Appropriation (2012/2013) (Amendment) . .	Spent
18	Customs and Excise (Amendment)	Incorporated in Cap. 42:01
19	Taxation (Amendment)	Incorporated in Cap. 41:01
20	Value Added Tax (Amendment)	Incorporated in Cap. 42:02
21	Education	Cap. 30:01
22	Public Officers (Declaration of Assets, Liabilities and Business Interests)	Cap. 1:04
23	Kuwait Fund for Arab Economic Development (Lirangwe-Chingale-Machinga Road Project) Loan (Authorization)	Omitted
24	Arab Bank for Economic Development in Africa (Upgrading of the Chitipa Water Supply Project) Loan (Authorization)	Omitted
25	OPEC Fund for International Development (Supplementary Loan for the Liwonde-Naminga Road Project) Loan (Authorization)	Omitted
2014		
1	African Development Fund (Multinational-Nacala Road Corridor Development Project Phase IV) Loan (Authorization)	Omitted
2	International Development Association (Strengthening Safety Nets Systems Project - Fourth Malaŵi Social Action Fund (MASAF IV)) Loan (Authorization)	Omitted

YEAR AND NUMBER	ORDINANCE	HOW DEALT WITH
2014	(*Contd.*)	
3	African Development Fund (Sustainable Rural Water and Sanitation Infrastructure for Improved Health and Livelihoods Project) Loan Authorization)	Omitted
4	International Development Association (Skills Development Project) Loan (Authorization) . .	Omitted
5	African Development Bank Acting on behalf of the Nigerian Trust Fund (Sustainable Rural Water and Sanitation Infrastructure for Improved Health and Livelihoods Project) Loan (Authorization)	Omitted
6	OPEC Fund for International Development (National Cancer Treatment Center Project) Loan (Authorization)	Omitted
7	Pension (Amendment)	Not yet in force
8	Supplementary Appropriation (2013/2014) . .	Spent
9	Appropriation Act	Spent
10	Customs and Excise (Amendment)	Incorporated in Cap. 42:01
11	Taxation (Amendment)	Incorporated in Cap. 41:01
12	Valued Added Tax (Amendment)	Incorporated in Cap. 42:02
2015		
1	International Development Association (Skills Development Project) Loan (Authorization and Ratification)	Omitted
2	Higher Education Students' Loans and Grants . .	Cap. 30:14
3	Trafficking in Persons	Cap. 7:06
4	Marriage, Divorce and Family Relations . .	Cap. 25:01
5	Supplementary Appropriation(2014/2015) . .	Spent
6	International Development Association (Malaŵi Floods Emergency Recovery Project) Loan (Authorization)	Omitted
7	European Investment Bank (Lilongwe Water Resources Efficiency Programme) Loan (Authorization)	Omitted
8	International Development Association (Additional Financing for Strengthening Safety Nets Systems Project-Fourth Malaŵi Social Action Fund (MASAF IV)) Loan (Authorization) . .	Omitted
9	Appropriation	Spent
10	Value Added Tax (Amendment)	Incorporated in Cap. 42:02
11	Customs and Excise (Amendment)	Incorporated in Cap. 42:01
12	Taxation (Amendment)	Incorporated in Cap. 41:01
13	Supplementary Appropriation (2014/2015) (No. 2)	Spent
14	Reserve Bank of Malaŵi (Amendment)	Incorporated in Cap. 44:02
2016		
1	Estate Duty (Amendment)	Incorporated in Cap. 43:02
2	Lilongwe University of Agriculture and Natural Resources (Amendment)	Incorporated in Cap. 30:11
3	Malaŵi Institute of Procurement and Supply . .	Cap. 30:15
4	European Investment Bank (Upgrading of Aviation Safety and Security Equipment at Kamuzu and Chileka International Airports Project) Loan (Authorization)	Omitted

YEAR AND NUMBER	ORDINANCE	HOW DEALT WITH
2016	(*Contd.*)	
5	International Development Association (Southern Africa Trade and Transport Facilitation Program-Phase 2) Loan (Authorization) . .	Omitted
6	Credit Reference Bureau (Amendment)	Incorporated in Cap. 46:09
7	OPEC Fund for International Development (Mzimba Integrated Urban Water and Sanitation Project) Loan (Authorization) . .	Omitted
8	African Development Bank (Mzimba Integrated Urban Water and Sanitation Project) Loan (Authorization)	Omitted
9	Insolvency	Cap. 11:01
10	Metrology	Not yet in force
11	Appropriation (Amendment)	Spent
12	Electricity (Amendment)	Incorporated in Cap. 73:01
13	Customs and Excise (Amendment)	Incorporated in Cap. 42:01
14	Appropriation	Spent
15	Payment Systems	Cap. 74:01
16	Land	Cap. 57:01
17	Physical Planning	Not yet in force
18	Land Survey	Cap. 59:03
19	Customary Land	Not yet in force
20	International Fund for Agricultural Development (Programme for Rural Irrigation Development) Loan (Authorization)	Omitted
21	Human Rights Commission (Amendment) . .	Incorporated in Cap. 03:08
22	Export-Import Bank of India (Loan) (Authorization)	Omitted
23	Courts (Amendment)	Incorporated in Cap. 03:02
24	Value Added Tax (Amendment)	Incorporated in Cap. 42:02
25	Taxation (Amendment)	Incorporated in Cap. 41:01
26	Copyright	Cap. 49:03
27	Malaŵi Housing Corporation (Amendment) . .	Incorporated in Cap. 32:02
28	International Development Association (Eastern and Southern Africa Higher Education Centres of Excellence Project-ACE II) Loan (Authorization)	Omitted
29	International Development Association (Additional Financing for Nutrition and HIV/AIDS Project) Loan (Authorization)	Omitted
30	International Development Association (Southern Africa Tuberculosis and Health Systems Support Project) Loan (Authorization)	Omitted
31	Penal Code (Amendment).	Not yet in force
32	Appropriation (Amendment) (2015/2016) (No. 2)	Spent
33	Electronic Transactions and Cyber Security . .	Cap. 74:02
34	Communications	Cap. 68:01
35	Anatomy (Amendment)	Not yet in force

YEAR AND NUMBER	ORDINANCE	HOW DEALT WITH
2017		
1	African Development Fund (Agricultural Infrastructure and Youth in Agribusiness Project) Loan (Authorization)	Omitted
2	Export and Import of Bank of China (National Fibre Backbone Project) Loan (Authorization)	Omitted
3	International Development Association (Malaŵi Drought Recovery and Resilience) (Authorization)	Omitted
4	International Development Association (Second Additional Financing for Strengthening Safety Nets Systems Project-Fourth Malaŵi Social Action Fund (MASAF IV) Loan (Authorization)	Omitted
5	Forestry (Amendment)	Incorporated in Cap. 63:01
6	Malaŵi Housing Corporation (Amendment) (No. 2)	Incorporated in Cap. 32:02
7	Registered Land (Amendment)	Not yet in force
8	Public Roads (Amendment)	Incorporated in Cap. 69:02
9	Lands Acquisition (Amendment)	Incorporated in Cap. 58:04
10	Local Government (Amendment)	Incorporated in Cap. 22:01
11	National Parks and Wildlife (Amendment) . .	Incorporated in Cap. 66:07
12	National Planning Commission	Cap. 39:01
13	Access to Information	Not yet in force
14	Financial Crimes	Cap. 7:07
15	Constitution (Amendment) (No. 3)	Incorporated in the Constitution
16	European Investment Bank (Northern Region Water Board Water Efficiency Project) Loan (Authorization)	Omitted
17	African Development Fund (Jobs for Youth Project) Loan (Authorization)	Omitted
18	Appropriation (Amendment)	Spent
19	Environment Management	Not yet in force
20	Customs and Excise (Amendment)	Incorporated in Cap. 42:01
21	International Development Association (Agricultural Support and Fiscal Management Development Policy Financing) Loan (Authorization)	Omitted
22	Appropriation	Spent
23	Greenbelt Authority	Not yet in force
24	Taxation (Amendment)	Incorporated in Cap. 41:01
25	Value Added Tax (Amendment)	Incorporated in Cap. 42:02
26	Supplementary Appropriation	Spent
27	Public Procurement and Disposal of Assets . .	Cap. 37:03
28	Civil Aviation	Not yet in force

YEAR AND NUMBER	ORDINANCE	HOW DEALT WITH
	LIST OF ACTS ENACTED DURING FEDERAL GOVERNMENT	
1954		
12	Control of Goods	Cap. 18:08
34	Aliens (Registration and Status)	Repealed by 5 of 1971
1955		
9	Prisons	Cap. 9:02
16	Customs and Excise	Repealed by 13 of 1969
24	Customs and Excise (Amendment)	Repealed by 13 of 1969
28	Dangerous Drugs	Cap. 35:02
1956		
4	Service of Process and Execution of Judgments	Cap. 4:04
16	Customs and Excise (Amendment) (No. 3) . .	Repealed by 13 of 1969
20	Customs and Excise (Amendment) (No. 2) . .	Repealed by 13 of 1969
25	Dangerous Drugs (Amendment)	Incorporated in Cap. 35:02
29	Customs and Excise (Amendment) (No. 4) . .	Repealed by 13 of 1969
33	Insurance	Repealed by 9 of 2010
34	Hire-Purchase	Repealed by 8 of 2013
1957		
1	Customs and Excise (Amendment)	Repealed by 13 of 1969
8	Prisons (Amendment)	Incorporated in Cap. 9:02
13	Patents	Cap. 49:02
14	Trade Marks	Cap. 49:01
17	Merchandise Marks	Cap. 49:04
20	Customs and Excise (Amendment) (No. 3) . .	Repealed by 13 of 1969
24	Customs and Excise (Amendment) (No. 4) . .	Repealed by 13 of 1969
1958		
4	National Archives	Repealed by 12 of 1975
11	Plant Pests and Diseases	Repealed by 11 of 1969
12	Registered Designs	Cap. 49:05
15	Customs and Excise (Amendment)	Repealed by 13 of 1969
1959		
7	Customs and Excise (Amendment)	Repealed by 13 of 1969
12	Patents (Amendment)	Incorporated in Cap. 49:02
14	Hire-Purchase (Amendment)	Repealed by 8 of 2013
17	Merchandise Marks (Amendment)	Incorporated in Cap. 49:04
18	Weights and Measures	Cap. 48:04
21	Customs and Excise (Amendment) (No. 3) . .	Repealed by 13 of 1969
22	Customs and Excise (Amendment) (No. 4) . .	Repealed by 13 of 1969
1959		
26	Insurance (Amendment)	Repealed by 9 of 2010
42	Prisons (Amendment)	Incorporated in Cap. 9:02
1960		
4	Customs and Excise (Amendment) (No. 2) . .	Repealed by 13 of 1969
18	Customs and Excise (Amendment) (No. 4) . .	Repealed by 13 of 1969
33	Insurance (Amendment)	Repealed by 9 of 2010

YEAR AND NUMBER	ORDINANCE	HOW DEALT WITH
1960	(*Contd.*)	
34	Inland Waters Shipping	Repealed by 28 of 1969
36	Patents (Amendment)	Incorporated in Cap. 49:02
37	Trade Marks (Amendment)	Incorporated in Cap. 49:01
1961		
13	Inland Waters Shipping (Amendment)	Repealed by 28 of 1969
16	Aliens (Registration and Status) (Amendment) . .	Repealed by 5 of 1971
1962		
1	Patents (Amendment)	Incorporated in Cap. 49:02
2	Trade Marks (Amendment)	Incorporated in Cap. 49:01
4	Customs and Excise (Amendment)	Repealed by 13 of 1969
24	Prisons (Amendment)	Incorporated in Cap. 9:02
25	Customs and Excise (Amendment) (No. 4) . .	Repealed by 13 of 1969
36	Customs and Excise (Amendment) (No. 3) . .	Repealed by 13 of 1969
47	Human Tissue	Repealed by 14 of 1990
1963		
3	Customs and Excise (Amendment)	Repealed by 13 of 1969
7	Service of Process and Execution of Judgments (Amendment)	Cap. 4:04
25	Customs and Excise (Amendment) (No. 3) . .	Repealed by 13 of 1969

OMITTED ENACTMENTS

Containing Pages 1–15

LIST OF OMITTED ENACTMENTS

ENACTMENTS OMITTED FROM THIS EDITION UNDER SECTION 9(c) OF THE REVISION OF THE LAWS ACT*

(The chapter numbers referred to in this list are the chapter numbers of the respective enactments in the 1957 Edition of the Laws.)

1 of 1915	Imperial Loans (Cap. 152)
17 of 1931	Malaŵi Loan (Cap. 153)
20 of 1950	Loan, 1950 (Cap. 154)
47 of 1953	Loan, 1953 (Cap. 155)
23 of 1955	African Housing (Loan) (Cap. 156)
12 of 1956	African Development (Loan) (Cap. 157)
17 of 1961	Colonial Development Corporation (Mudi River Water Board) Loan Guarantee (Cap. 192)
26 of 1961	Development Loan (United Kingdom Government) (Cap. 52)
36 of 1965	Colonial Development Corporation (Mudi River Water Board) Second Loan Guarantee
45 of 1965	United Transport (Malaŵi) Limited (Purchase by the Government of Equity Share Capital) (Authorization)
32 of 1966	United Kingdom Loan (Authorization)
37 of 1966	International Development Association Road Engineering Development Credit (Authorization)
38 of 1966	Danish Government Loan (Authorization)
45 of 1966	Farmers Marketing Board Loan (Authorization)
64 of 1966	International Development Association Education Project Development Credit (Authorization)
35 of 1967	International Development Association Highway Project Development Credit (Authorization)
46 of 1967	International Development Association (Lilongwe Agricultural Development Project) Development Credit (Authorization)
48 of 1967	United Kingdom Compensation Loan Increase (Authorization)
49 of 1967	International Development Association (Shire Valley Agricultural Development Project) Development Credit (Authorization)
50 of 1967	United Kingdom Commutation Loan Increase (Authorization)
51 of 1967	Kreditanstalt fur Wiederaufbau (Central Region Lakeshore Development Project) Loan (Authorization)
52 of 1967	Danish Government Loan (Authorization)
13 of 1968	Lake-shore Road Loan (Authorization)
17 of 1968	New Capital Loan (Authorization)
19 of 1968	United Kingdom Loan (Authorization)
20 of 1968	Lake-shore Road Loan (Authorization) (Amendment)
21 of 1968	Nacala Rail Link Loan and Guarantee (Authorization)
22 of 1968	External Missions Housing Loan (Authorization)
31 of 1968	Kreditanstalt fur Wiederaufbau (Road Construction Chirumba-Chiweta) Loan (Authorization)
34 of 1968	Danish Government Loan (Authorization)
35 of 1968	United Kingdom Development Loan Increase (Authorization)
9 of 1969	United Kingdom Development Loan Increase (Authorization)
21 of 1969	United Kingdom Commutation of Pensions Loan Increase (Authorization)
22 of 1969	Electricity Development Loan (Authorization)
24 of 1969	United Kingdom (Central African Pension Fund) Loan (Authorization)
10 of 1970	United Kingdom Commutation of Pensions Loan Increase (Authorization)
13 of 1970	External Missions Housing Loan (Authorization)
14 of 1970	United Kingdom Loan (Authorization)

*Section 9 of the Revision of the Laws Act reads—

"9. It shall not be necessary to include in the Laws of Malaŵi—

(*a*) any Appropriation Act or Supplementary Appropriation Act;

(b) any foreign law which is applied in Malaŵi by virtue of a specific provision in an Act of the Parliament of Malaŵi even though not therein set out;

(*c*) any loan Act or loan guarantee Act;

(*d*) any Act of a temporary nature which can, in the opinion of the Commissioner, be conveniently omitted;

(*e*) any Act specified by the Minister, by order for the purpose of this section;

(*f*) any subsidiary legislation which the Commissioner thinks fit to omit therefrom."

15 of 1970	United Kingdom (Central African Pension Fund) Loan (Authorization)
17 of 1970	United Kingdom Compensation Loan Increase (Authorization)
20 of 1970	Kreditanstalt fur Wiederaufbau (New Blantyre Market) Loan (Authorization)
24 of 1970	Kreditanstalt fur Wiederaufbau (Central Region Lakeshore Development Project) (Phase II) Loan (Authorization)
25 of 1970	Kreditanstalt fur Wiederaufbau (Karonga–Chiŵeta Road) Loan Increase (Authorization)
26 of 1970	Danish Government Loan (Authorization)
28 of 1970	International Monetary Fund Quota Increase Loan (Authorization)
3 of 1971	United Kingdom Loan (Authorization)
4 of 1971	Lilongwe Agricultural Development Project (Phase II) Loan (Authorization)
6 of 1971	Blantyre–Tete Road Loan (Authorization)
10 of 1971	United Kingdom (Central African Pension Fund) Loan (Authorization)
21 of 1971	Canadian Government Loan (Authorization)
24 of 1971	United Kingdom Loan (Authorization) (No. 2)
37 of 1971	Karonga Agricultural Development Project Loan (Authorization)
39 of 1971	Loan Authorities' Loans Funds
47 of 1971	Blantyre–Tete Road Loan (Authorization) (Amendment)
3 of 1972	Karonga Agricultural Development Project Loan (Authorization) (Amendment)
4 of 1972	South African Government Loan (Authorization)
13 of 1972	African Development Bank Loan (Authorization)
16 of 1972	Danish Government Loan (Authorization)
21 of 1972	Lake-shore Road Loan (Authorization) (Amendment)
22 of 1972	Lower Shire Valley Agricultural Development Project Loan (Authorization)
26 of 1972	United Kingdom (Supplementary Projects) Loan (Authorization)
27 of 1972	United Nations Development Programme (Building Construction) Loan (Authorization)
28 of 1972	University of Malaŵi (Halls of Residence) Loan (Authorization)
6 of 1973	Lower Shire Valley Agricultural Development Project Loan (Authorization) (Amendment)
8 of 1973	Tedzani Falls Hydro-electric Project Loan (Authorization)
9 of 1973	United States for International Development (Road Development) Loan (Authorization)
22 of 1973	Kreditanstalt fur Wiederaufbau (Blantyre Sewerage System) (Stage II) Loan (Authorization)
3 of 1974	Government of Canada Loan Agreement (Malaŵi Railways Development) (Authorization and Ratification)
4 of 1974	Kreditanstalt fur Wiederaufbau (Blantyre/Chikwawa Escarpment Road) Loan (Authorization)
5 of 1974	Kreditanstalt fur Wiederaufbau (Blantyre Sewerage System) (Stage II) Loan (Authorization) (Amendment)
6 of 1974	Kreditanstalt fur Wiederaufbau (Malaŵi Development Corporation) (Liwonde Industrial Complex) Loan (Authorization)
8 of 1974	Lilongwe–Northern Region Road Loan (Authorization)
15 of 1974	United Kingdom (Supplementary Projects) Loan (Authorization)
16 of 1974	Viphya Pulp and Paper Project Loan (Authorization)
21 of 1974	Kreditanstalt fur Wiederaufbau (Lilongwe City Centre Market) Loan (Authorization)
23 of 1974	Kreditanstalt fur Wiederaufbau (Muhuju/Chiŵeta) Road) Loan (Authorization)
24 of 1974	African Development Bank Loan Agreement (Lilongwe International Airport) (Authorization and Ratification)
27 of 1974	United Kingdom Loan (Authorization)
28 of 1974	Lilongwe Agricultural Development Project (Phase III) Loan (Authorization)
29 of 1974	United States Agency for International Development Loan Agreement (Road Development) (Authorization and Ratification)
33 of 1974	Lilongwe–Zambia Border Railway Design Loan (Authorization)
11 of 1975	Chintheche Power Transmission Line Loan (Authorization)
13 of 1975	African Development Fund Loan Agreement (Mzuzu–Muhuju Road–Feasibility and Design) Authorization and Ratification)
14 of 1975	Government of Canada Loan Agreement (Malaŵi Railways Development) Amending Agreement (Authorization and Ratification)
16 of 1975	International Development Association (Second Education Project) Loan (Authorization)
17 of 1975	Karonga Agricultural Development Project (Phase II) Loan (Authorization)
2 of 1976	Danish Government Loan (Authorization)
6 of 1976	Francistown Air Disaster Benefits and Compensation Ratification and Distribution
9 of 1976	Kreditanstalt fur Wiederaufbau (Chiŵeta–Kacheche Road) Loan (Authorization)
10 of 1976	Kreditanstalt fur Wiederaufbau (Muhuju–Chiŵeta) Road) Loan (Authorization) Repeal
2 of 1977	African Development Fund Loan Agreement (Namwera Rural Development Project) (Authorization and Ratification)
12 of 1977	Commonwealth Development Corporation Loan (Authorization)

13 of 1977	African Development Fund Loan Agreement (Districts Water Supply Project) (Authorization and Ratification)
14 of 1977	Blantyre Water Board (Phase V) Development Project Loan (Authorization)
15 of 1977	Government of Canada (Second Malaŵi Railways Development Project) Loan (Authorization)
16 of 1977	Nkula Stage II (Phase I) Hydroelectric Project Loan (Authorization)
17 of 1977	Francistown Air Disaster Benefits and Compensation Ratification and Distribution (Amendment)
18 of 1977	African Development Bank Loan Agreement (Lilongwe International Airport Project) (Civil Works Part I) (Authorization and Ratification)
20 of 1977	Barclays Bank International and Standard Chartered Bank Loan (Authorization)
1 of 1978	National Rural Development Programme Loan (Authorization)
2 of 1978	OPEC Special Fund Loan Agreement (Kasungu–Jenda Road Construction) (Authorization and Ratification)
3 of 1978	Kreditanstalt fur Wiederaufbau Loan Agreement (Site and Service Scheme South Lunzu) (Authorization and Ratification)
4 of 1978	Citibank Loan Agreement (Authorization and Ratification)
5 of 1978	Chase Manhattan Bank Limited Loan Agreement (Lilongwe International Airport Project) (Authorization and Ratification)
6 of 1978	International Development Association (Shire Valley Agricultural Development Project) (Phase III) Loan (Authorization)
7 of 1978	Kreditanstalt fur Wiederaufbau (Nkula Stage II) (Phase I) (Hydroelectric Project) Loan (Authorization)
8 of 1978	Government of the Kingdom of the Netherlands Loan (Authorization)
9 of 1978	International Development Association Credit Agreement (Third Highway Project) (Authorization and Ratification)
10 of 1978	Kreditanstalt fur Wiederaufbau Loan Agreement (Commodity Aid) (Authorization and Ratification)
11 of 1978	Government of Japan Loan (Authorization)
12 of 1978	African Development Bank Loan Agreement (Lilongwe International Airport Project) (Civil Works Part II) (Authorization and Ratification)
13 of 1978	Kreditanstalt fur Wiederaufbau (Passenger Vessel) Loan (Authorization)
23 of 1978	Skandinaviska Enskilda Banken Loan (Authorization)
2 of 1979	International Development Association (Third Education Project) Loan (Authorization)
3 of 1979	Government of the Republic of South Africa Loan Agreement (Authorization and Ratification)
4 of 1979	African Development Fund (John Mzumara–Ekwendeni Road) Loan (Authorization)
10 of 1979	National Westminster Bank Limited Loan Agreement (Agricultural and Airport Projects) (Authorization and Ratification)
11 of 1979	Kreditanstalt fur Wiederaufbau Loan Agreement (German Products) (Authorization and Ratification)
12 of 1979	Midland Bank Limited Loan Agreement (Authorization and Ratification)
13 of 1979	Danish Government Loan (Authorization)
14 of 1979	Nippon Electric Company Limited Loan Agreement (Authorization and Ratification)
15 of 1979	South African Government Loan (Authorization)
16 of 1979	Commonwealth Development Corporation Loan Agreement (Dwangwa Sugar Corporation) (Authorization and Ratification)
17 of 1979	National Rural Development Programme (Phase II) Loan (Authorization)
18 of 1979	British Aerospace Loan Agreement (Authorization and Ratification)
19 of 1979	Short Brothers Limited Loan Agreement (Authorization and Ratification)
2 of 1980	European Investment Bank Loan (Authorization and Ratification)
3 of 1980	African Development Fund (First Education Project) Loan (Authorization)
4 of 1980	African Development Fund (Rural Electrification Project) Loan (Authorization)
5 of 1980	Nippon Electric Company Limited (Telephone Exchange Project) Loan (Authorization)
10 of 1980	International Development Association (Fourth Education Project) Loan (Authorization)
12 of 1980	Commonwealth Development Corporation Loan Agreement (Dwangwa Sugar Corporation) (Authorization and Ratification)
2 of 1981	Government of Japan Loan Agreement (Kamuzu International Airport Project (II)) (Authorization and Ratification)
7 of 1981	Industrial Development Bank of India Loan Agreement (Goods and Services) (Authorization and Ratification)
13 of 1981	Banque Francaise du Commerce Exterieur Loan Agreement (Civil Aviation and Meteorological Equipment) (Authorization and Ratification)
14 of 1981	Government of the French Republic Loan Agreement (Civil Aviation and Meteorological Equipment) (Authorization and Ratification)
15 of 1981	Barclays Bank International Limited and Standard Chartered Bank Limited (Credit Agreement) (Authorization and Ratification)

22 of 1981	International Development Association Credit Agreement (Fourth Highway Project) (Authorization and Ratification)
24 of 1981	International Fund for Agricultural Development Loan (National Rural Development Programme) (Dowa West) (Authorization)
25 of 1981	European Investment Bank (Geological Study of Limestone Deposits) Loan (Authorization)
26 of 1981	International Development Association (National Rural Development Programme) (Karonga/Chitipa Rural Development Project) (Phase III) Loan (Authorization)
27 of 1981	United Nations Development Programme (Building Construction) Loan (Authorization)
28 of 1981	Bank of Taiwan (Goods and Services) Loan (Authorization)
29 of 1981	Old Mutual (Building Construction) Loan (Authorization)
30 of 1981	Government Loan (1978/79) (Authorization)
31 of 1981	International Bank for Reconstruction and Development (Structural Adjustment) Loan (Authorization)
32 of 1981	Government Loan (1980/81) (Authorization)
33 of 1981	International Bank for Reconstruction and Development Loan (Technical Assistance Project) (Authorization)
38 of 1981	Commerzbank (Purchase of Buildings) Loan (Authorization)
40 of 1981	Nippon Electric Company Limited (International Microwave Project) Loan (Authorization)
41 of 1981	Old Mutual (Local Authorities) Loan (Authorization)
42 of 1981	African Development Fund (Rural Health Care Project) Loan (Authorization)
1 of 1982	Government of the French Republic (Telecommunication Equipment and Civil Aviation Feasibility Studies) Loan (Authorization)
2 of 1982	Government of the Republic of South Africa (Reserve Seed Stocks and Storage Facilities) Loan (Authorization)
3 of 1982	OPEC Aid Funds (Project Finance) Loan (Authorization)
8 of 1982	Government Loan (1981/1982) (Authorization)
9 of 1982	Government of Israel (Goods and Services) Loan (Authorization)
10 of 1982	Telecommunication Equipment and Civil Aviation Feasibility Studies Loans (Authorization)
11 of 1982	International Development Association (Lilongwe Water Supply-Engineering Project) (Authorization)
12 of 1982	International Bank for Reconstruction and Development (Second Structural Adjustment) Loan (Authorization)
13 of 1982	Skandinaviska Enskilda Banken (Authorization and Ratification)
14 of 1982	*Vacant*
15 of 1982	*Vacant*
16 of 1982	African Development Bank Loan (Kamuzu International Airport: Phase III) (Authorization)
17 of 1982	International Fund for Agricultural Development Loan (Smallholder Fertilizer Supply Programme) (Authorization)
1 of 1983	Refinancing Agreement (Authorization and Ratification)
3 of 1983	Government Loan (1980/81) (Authorization)
4 of 1983	South African Government Loan Agreement (Purchase and Transportation of Fertilizer) (Authorization and Ratification)
5 of 1983	International Development Association (National Rural Development Programme) (Phase IV) Loan (Authorization)
6 of 1983	International Development Association (Smallholder Fertilizer Supply Programme) Loan (Authorization)
7 of 1983	International Development Association (Health Service Project) Loan (Authorization)
8 of 1983	Commonwealth Development Corporation Loan Agreement (Dwangwa Sugar Corporation) (Authorization and Ratification)
9 of 1983	International Development Association (Fifth Education Project) Loan (Authorization)
15 of 1983	Danish Government (Seventh Loan) (Authorization and Ratification)
17 of 1983	Government of the French Republic (Telecommunication and Meteorological Equipment and Customs and Excise Surveillance Vessel) Loan (Authorization)
18 of 1983	Telecommunication and Meteorological Equipment and Customs and Excise Surveillance Vessel Loan (Authorization)
19 of 1983	International Monetary Fund (Eighth General Review Quota Increase) Loan (Authorization)
20 of 1983	International Bank for Reconstruction and Development (Fifth Highway Project) Loan (Authorization)
21 of 1983	International Development Association (Fifth Highway Project) Loan (Authorization)
22 of 1983	African Development Bank (Fifth Highway Project) Loan (Authorization)
23 of 1983	African Development Fund (Feasibility Study for the District Water Supply Project) (Phase II) Loan (Authorization)
24 of 1983	Posts and Telecommunications Development Project (Telectron) Loan (Authorization)

1 of 1984	African Development Fund (Blantyre-Shire Highlands and Namwera-Mangochi Rural Development Projects) Loan (Authorization)
2 of 1984	European Investment Bank (Authorization and Ratification)
6 of 1984	Government Loan (1982/83) Authorization
9 of 1984	African Development Bank (Telecommunications Project) Loan (Authorization)
10 of 1984	European Economic Community (Lirangwe Mwanza–Mozambique Boarder Road) Loan (Authorization)
11 of 1984	International Development Association Credit Agreement (Authorization and Ratification)
12 of 1984	International Bank for Reconstruction and Development (Viphya Wood Industries Project) Loan (Authorization)
13 of 1984	Kreditanstalt fur Wiederaufbau (Nkula Falls Hydropower Scheme B) (Phase II) Loan (Authorization and Ratification)
14 of 1984	European Investment Bank (Viphya Wood Industries Project) Loan (Authorization)
20 of 1984	African Development Fund (Second Rural Health Care Project) Loan (Authorization)
21 of 1984	International Bank for Reconstruction and Development (Wood Industries Restructuring Project) Loan (Authorization)
22 of 1984	Government of the Republic of South Africa (Railways Projects) Loan (Authorization)
23 of 1984	International Development Association (Urban Housing Project) Loan (Authorization)
24 of 1984	European Investment Bank (Dwangwa Sugar Corporation Project II) Loan (Authorization)
25 of 1984	International Fund for Agricultural Development (Kasungu Agricultural Development Project) Loan (Authorization)
26 of 1984	African Development Bank (Mpira-Balaka Water Supply Project) Loan (Authorization)
2 of 1985	African Development Fund (Second Rural Health Care Project) Loan (Authorization) (Amendment)
3 of 1985	Government of the French Republic (Lake Vessel) Loan (Authorization)
4 of 1985	Government of the French Republic (Goods and Services) Loan (Authorization)
10 of 1985	International Development Association (National Agricultural Research Project) Loan (Authorization)
13 of 1985	International Fund for Agricultural Development Loan Agreement (Kasungu Agricultural Development Project) (Authorization and Ratification)
14 of 1985	African Development Fund (Champhoyo–Mbowe Road and Mzimba Spur Project) Loan (Authorization)
15 of 1985	European Development Fund (Small Enterprise Development Organization of Malaŵi Phase II Project) Loan (Authorization)
16 of 1985	International Development Association (Agricultural Extension and Planning Support Project) Loan (Authorization)
17 of 1985	International Development Association (Third Structural Adjustment) Loan (Authorization)
18 of 1985	International Development Association (Special Facility for Sub-Saharan Africa) (Third Structural Adjustment) Loan (Authorization)
19 of 1985	Refinancing Agreement (Authorization and Ratification)
20 of 1985	International Bank for Reconstruction and Development (Industrial and Agricultural Development Project) Loan (Authorization)
3 of 1986	International Bank for Reconstruction and Development (Second Wood Energy Project) Loan (Authorization)
4 of 1986	Overseas Economic Co-operation Fund of Japan (Third Structural Adjustment Programme) Loan (Authorization)
5 of 1986	Overseas Economic Co-operation Fund of Japan (Microwave Network Improvement Project) Loan (Authorization)
12 of 1986	International Development Association (Second Lilongwe Water Supply Project) Loan (Authorization)
13 of 1986	European Development Fund (Blantyre-Lirangwe Ml Road) Loan (Authorization)
14 of 1986	African Development Fund (Studies for the Mchinji–Kasungu Road and the Kasungu–Nkhotakota Road Project) Loan (Authorization)
15 of 1986	African Development Fund (Strengthening of Primary and Secondary Education Project) Loan (Authorization)
16 of 1986	French Banks (Goods and Services) Loan (Authorization)
17 of 1986	Government of the French Republic (Goods and Services) Loan (Authorization)
21 of 1986	European Investment Bank (Second Lilongwe Water Supply Project) Loan (Authorization)
22 of 1986	International Development Association (Northern Transport Corridor Project) Loan (Authorization)
2 of 1987	Overseas Economic Cooperation Fund of Japan (Third Structural Adjustment Programme) Supplementary Loan (Authorization)

3 of 1987	International Development Association (Special Facility for Sub-Saharan Africa) (Third Structural Adjustment Programme) Supplementary Loan (Authorization and Ratification)
4 of 1987	International Development Association (First Education Sector Credit) Loan (Authorization)
5 of 1987	International Development Association (Second Family Health Project) Loan (Authorization)
10 of 1988	Government of the Republic of South Africa (Purchase and Transportation of Maize) Loan (Authorization and Ratification)
11 of 1988	African Development Fund (Zomba Rural Development Project) Loan (Authorization and Ratification)
12 of 1988	African Development Fund (National Livestock Development Project) Loan (Authorization and Ratification)
13 of 1988	International Development Association (Smallholder Agricultural Credit Project) Loan (Authorization and Ratification)
14 of 1988	International Fund for Agricultural Development (Smallholder Credit Project) Loan (Authorization and Ratification)
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28 of 1988	European Investment Bank (Supply of Electricity Project) Loan (Authorization)
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2 of 1989	Government of the Republic of Austria (Goods and Services) (Tedzani III Project) Loan (Authorization)
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17 of 1989	International Development Association (Infrastructure Project) Loan (Authorization)
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20 of 1989	International Development Association (Agricultural Sector Adjustment Program) Loan (Authorization)
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8 of 1990	African Development Fund (Road Maintenance and Construction II Project) Loan (Authorization)
9 of 1990	European Investment Bank (Risk Capital) (Blantyre Water Supply Project) Loan (Authorization)
10 of 1990	European Investment Bank (Own Resources) (Blantyre Water Supply Project) Loan (Authorization)
11 of 1990	Government of the Kingdom of Spain (Goods and Services) Loan (Authorization)
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23 of 1990	African Development Fund (District Water Supply Phase II Project) Loan (Authorization)
24 of 1990	Manufactures Hanover Export Finance Limited (Rural Telecommunications Network Project) Loan (Authorization)
25 of 1990	International Development Association (Industrial and Trade Policy Adjustment Program) Loan (Authorization)
6 of 1991	International Development Association (Fisheries Development Project) Loan (Authorization)
7 of 1991	International Development Association (Financial Sector and Enterprise Development Project) Loan (Authorization)
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13 of 1991	African Development Fund (Mchinji–Msulira–Nkhotakota Road Project) Loan (Authorization)
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30 of 1993	Overseas Economic Cooperation Fund of Japan (Entrepreneurship Development and Drought Recovery Program) Loan (Authorization)
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9 of 1994	International Fund for Agricultural Development (Mudzi Financial Services Project) Loan (Authorization and Ratification)
10 of 1994	African Development Fund (Agricultural Services Project) Loan (Authorization and Ratification)
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19 of 2011	International Development Association (Energy Sector Support Project) Loan (Authorization)
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21 of 2011	International Development Association (Financial Sector Technical Assistance Project) Loan (Authorization)
28 of 2011	Saudi Fund for Development (Teacher Training Colleges Project) Loan (Authorization)
29 of 2011	OPEC Fund for International Development (Supplementary Loan for the Zomba–Jali–Chitakale Road Project) Loan (Authorization)
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4 of 2012	African Development Fund (Competitiveness and Job Creation Support Project) Loan (Authorization
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15 of 2012	International Development Association (Second Additional Financing for the Irrigation, Rural Livelihoods and Agricultural Development Project) Loan (Authorization)
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20 of 2012	International Development Association (Shire River Basin Management Project) (Phase I) Loan (Authorization)
21 of 2012	OPEC Fund for International Development (Rural Livelihoods and Economic Enhancement Programme) Loan (Authorization)
22 of 2012	International Development Association (Nutrition and HIV/AIDS Project) (Authorization)
28 of 2012	Arab Bank for Economic Development in Africa (Small Farms Irrigation Project in the Region of Lake Malaŵi Littoral Phase II) Loan (Authorization)
29 of 2012	Export-Import Bank of India (Loan) (Authorization)
30 of 2012	OPEC Fund for International Development (Supplementary Loan for Nkhata Bay District Hospital Project) Loan (Authorization)
12 of 2013	Saudi Fund for Development (Phalombe District Hospital Project) Loan (Authorization)
13 of 2013	African Development Fund (Mzuzu–Nkhata Bay Road Rehabilitation Project) Loan (Authorization)
14 of 2013	International Development Association (Agricultural Productivity Program for Southern Africa Project) Loan (Authorization)
23 of 2013	Kuwait Fund for Arab Economic Development (Lirangwe–Chingale–Machinga Road Project) Loan (Authorization)
24 of 2013	Arab Bank for Economic Development in Africa (Upgrading of the Chitipa Water Supply Project) Loan (Authorization)
25 of 2013	OPEC Fund for International Development (Supplementary Loan for the Liwonde–Naminga Road Project) Loan (Authorization)
1 of 2014	African Development Fund (Multinational Nacala Road Corridor Development Project Phase IV) Loan (Authorization)
2 of 2014	International Development Association (Strengthening Safety Nets Systems Project–Fourth Malaŵi Social Action Fund (MASAF IV)) Loan (Authorization)
3 of 2014	African Development Fund (Sustainable Rural Water and Sanitation Infrastructure for Improved Health and Livelihoods Project) Loan (Authorization)
4 of 2014	International Development Association (Skills Development Project) Loan (Authorization)
5 of 2014	African Development Bank acting on behalf of the Nigerian Trust Fund (Sustainable Rural Water and Sanitation Infrastructure for Improved Health and Livelihoods Project) Loan (Authorization)
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7 of 2015	European Investment Bank (Lilongwe Water Resources Efficiency Programme) Loan (Authorization)
8 of 2015	International Development Association (Additional Financing for Strengthening Safety Nets Systems Project–Fourth Malaŵi Social Action Fund (MASAF IV)) Loan (Authorization)
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5 of 2016	International Development Association (Southern Africa Trade and Transport Facilitation Program-Phase 2) Loan (Authorization)
7 of 2016	OPEC Fund for International Development (Mzimba Integrated Urban Water and Sanitation Project) Loan (Authorization)

8 of 2016	African Development Bank (Mzimba Integrated Urban Water and Sanitation Project) Loan (Authorization)
20 of 2016	International Fund for Agricultural Development (Programme for Rural Irrigation Development) Loan (Authorization)
22 of 2016	Export-Import Bank of India (Loan) (Authorization)
28 of 2016	International Development Association (Eastern and Southern Africa Higher Education Centres of Excellence Project ACE II) Loan (Authorization)
29 of 2016	International Development Association (Additional Financing for Nutrition and HIV/AIDS Project) Loan (Authorization)
30 of 2016	International Development Association (Southern Africa Tuberculosis and Health Systems Support Project) Loan (Authorization)
1 of 2017	African Development Fund (Agricultural Infrastructure and Youth in Agribusiness Project) Loan (Authorization)
2 of 2017	Export and Import of Bank of China (National Fibre Backbone Project) Loan (Authorization)
3 of 2017	International Development Association (Malaŵi Drought Recovery and Resilience) (Authorization)
4 of 2017	International Development Association (Second Additional Financing for Strengthening Safety Nets Systems Project–Fourth Malaŵi Social Action Fund (MASAF IV) Loan (Authorization)
16 of 2017	European Investment Bank (Northern Region Water Board Water Efficiency Project) Loan (Authorization)
17 of 2017	African Development Fund (Jobs for Youth Project) Loan (Authorization)
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(The Chapter numbers referred to in this list are the chapter numbers of the respective enactments in the 1957 Edition of the Laws. The amendments listed are the amendments subsequent to the latest publication of such chapter up to the 10th January, 1969)

7 of 1912	Judgments Extension (Cap. 15) As amended by: G.N. 22/1963, 216/1964(N)
5 of 1921	Widows and Orphans Pensions (Cap. 61)
All the applied Acts	As amended by: 3 of 1964 (N), 34 of 1967, G.N. 22/1963, 38/1963, 229/1963, 219/1964(N), 231/1964(N), 16/1964(M), 196/1965, 39/1970
3 of 1922	British and Colonial Judgments (Cap. 14) As amended by: G.N. 219/1964(N), 137/1966, 166/1967
1 of 1930	Nursing Sisters (Retiring Allowances) (Cap. 60) As amended by: G.N. 22/1963, 219/1964(N), 137/1966
16 of 1936	Marriages (Removal of Doubts) (Cap. 103)
26 of 1939	Trading with the Enemy (Cap. 190) As amended by: G.N. 22/1963, 219/1964(N)
17 of 1941	War Savings Certificates (Cap. 151) As amended by G.N. 229/1963, 166/1967
7 of 1945	European Officers' Pensions (Cap. 59) As amended by: 6 of 1964(N), G.N. 22/1963, 50/1963, 244/1964, 138/1964(N), 166/1964(N), 16/1964(M), 59/1964(M), 137/1965, 14/1966, 75/1966, 241/1966
40 of 1950	Pensions (Special War Appointments) (Cap. 63) As amended by: G.N. 22/1963, 16/1964(M)
32 of 1951	Pensions (Increase) (Cap. 62) As amended by: G.N. 22/1963, 50/1963, 16/1964(M)
12 of 1952	Distribution of German Enemy Property (Cap. 191)
13 of 1954	Witness Compulsory Attendance (Cap. 10) As amended by: G.N. 22/1963, 219/1964(N), 166/1967
22 of 1954	Mudi River Board (Transfer) (Cap. 118) As amended by: G.N. 219/1964(N)
19 of 1955	Motor Spirit Tax (Cap. 166) As amended by: G.N. 22/1963, 219/1964(N), 23/1965, 137/1966, 298/1966, 320/ 1966
13 of 1957(F)	Patents-section 96 As amended by: 21 of 1959(F), G.N. 5/1964(N)
4 of 1958(F)	National Archives As amended by: 37 of 1967, G.N. 13/1964(N), 129/1964(N)
23 of 1960	Central African Airways Corporation (Transfer of Assets) (Cap. 143)
29 of 1960	Malaŵi Police Reserve (Cap. 187) As amended by: G.N. 16/1964(M)
23 of 1961	African Development Loan (Registered Boards) (Cap. 194)
25 of 1962	Malaŵi Development Bond (Cap. 159)
27 of 1962	Overseas Service (Cap. 195)
35 of 1963	Central African Civil Air Transport As amended by: G.N. 219/1964(N)
46 of 1963	Income Tax (Cap. 158)–sections 183 and 195 As amended by: 37 of 1964(N), 5 of 1965
12 of 1964(N)	Income Tax (Amendment)–section 11 (2)
1 of 1967	British South Africa Company (Relinquishing of Mineral Rights)
9 of 2012	Malaŵi Television Limited (Dissolution) Act
G.N. 273/1963	Federation of Rhodesia and Nyasaland (Dissolution) Order in Council: Part IV
G.N. 215/1964(N)	Malaŵi Independence Order: sections 11 and 12 and sections 105 and 106 of the Second Schedule
G.N. 217/1964(N)	Malaŵi (Compensation and Retiring Benefits) Order

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28 of 1968	Control of Goods (all sections except sections 4, 5 and 18)
12 of 1970	Fertilizers, Farm Feeds and Remedies (all sections in force except Remedies)
18 of 1987	Trade Descriptions
21 of 1989	Museums
25 of 1991	Transfer of Offenders
10 of 2000	Fertilisers, Farm Feeds and Remedies (Amendment)
14 of 2002	Government Health Service
13 of 2011	University of Malaŵi (Amendment)
11 of 2012	Investment and Export Promotion
7 of 2014	Pension (Amendment)
10 of 2016	Metrology
17 of 2016	Physical Planning
19 of 2016	Customary Land
31 of 2016	Penal Code (Amendment)
35 of 2016	Anatomy (Amendment)
7 of 2017	Registered Land (Amendment)
13 of 2017	Access to Information
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